

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

Thursday, September 21, 2000  
9:02 a.m. - 11:00 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. Joseph Jacobs

Mr. Glenn Wichinsky

Mr. Raymond Puzzitiello

Ms. Nancy Cardone

Ms. Meril Stumberger

David Cuffe, Civil Engineer II, Land Development

Laura Beebe, Asst. County Attorney

Jon P. MacGillis, Principal Planner, Zoning

Joyce Cai, Planner II

Brian Cheguis, Intern/Paraprofessional

John Dulmer,

Mary Moody, Secretary

**I N D E X**

<b><u>Petition</u></b>		<b><u>Page</u></b>
1	BOFA 2000-048	6
2	BOFA 2000-049	11
3	BATE 2000-047	15
4	SD-98	44
Discussion by Board		55

**CERTIFICATE OF REPORTER:**

P R O C E E D I N G S

CHAIRMAN BASEHART: It's after 9:00 and we have a quorum, so why don't we get started.

I'd like to call the September 21, 2000 Board of Adjustment meeting to order. First Item on the agenda is roll call.

MS. MOODY: Ms. 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: Here.

MS. MOODY: Ms. Meril Stumberger.

(No response.)

MS. MOODY: Mr. Stanley Misroch.

(No response.)

MS. MOODY: Mr. Jonathan Gerber.

(No response.)

MS. MOODY: Mr. Bob Basehart.

CHAIRMAN BASEHART: Here. We've got a quorum. As far as I know, I think Meril is coming. She must have gotten caught up in traffic.

Okay.

Next item on the agenda is the proof of publication. I've got a copy of the proof in front of me. So can we have a motion to accept this into the record?

MR. PUZZITIELLO: Motion to approve.

CHAIRMAN BASEHART: Okay. We have a motion.

VICE-CHAIRMAN KONYK: Second.

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

BOARD: Aye.

CHAIRMAN BASEHART: Opposed.

(No response.)

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

What I'd like to do, for those of you that are not familiar with the way the Board conducts business is to give you a little indication of how we operate; the agenda is broken in two sections, the first section is the consent agenda.

The consent agenda is made up of items that have been recommended for approval by the staff and where conditions of approval have been recommended, the applicant has indicated agreement with those conditions, and further, where those items have not received any indication of opposition from surrounding property owners and members of the public, those items -- if no one is here at the meeting to object to them and if the Board members after having read the staff report agree with the conclusions and the recommendations of the staff, and if the Petitioner indicates and acknowledges his or her agreement with the conditions, then there is no need to have a full public hearing on those items. And they would simply be approved and the staff report will become the record of the hearing.

The second group of items are those where either the Petitioner has not agreed with recommended conditions of approval or where the staff has recommended denial of the application and/or where there's an indication of opposition from the public. Those items will require a full public hearing.

The staff will do a presentation and give their reasons for recommending denial. Members of the public will be able to give their opinion and the applicant will be required to make a full presentation justifying why he or she believes that the petition should be approved.

On the agenda this morning we only have four items, and we have two on each portion of the agenda.

Is there any other member of the Board that has anything they would like to say before we get moving?

(No response.)

CHAIRMAN BASEHART: Seeing none we'll go onto the next part of the agenda which is the approval of the Minutes. We've all received the Minutes of the August meeting.

VICE-CHAIRMAN KONYK: Motion to approve.

CHAIRMAN BASEHART: We have a motion to approve.

MS. CARDONE: Second.

CHAIRMAN BASEHART: Okay. And a second by Ms. Cardone. All those in favor?

BOARD: Aye.

CHAIRMAN BASEHART: Opposed?

(No response.)

CHAIRMAN BASEHART: Okay. The September [sic] meeting minutes are approved.

Let the record reflect that Ms. Stumberger has joined us, so we have a full Board.

Okay. The next item on the agenda is the remarks of the Zoning Director. Jon?

MR. MacGILLIS: Just one comment. In your packet we provided you with a letter from an applicant regarding the last hearing. I'd just like to discuss that after the public hearing portion of the meeting.

CHAIRMAN BASEHART: Okay. Any other changes?

MR. MacGILLIS: No changes to the agenda.

CHAIRMAN BASEHART: Okay. Then the next item then would be to get to the agenda, the first part being the consent agenda.

When your item is read out, if you're on the consent agenda, please come to the microphone to acknowledge your agreement with conditions.

CHAIRMAN BASEHART: The first one is BOA2000-048. Is the applicant here?

MR. GRASSO: Yes.

CHAIRMAN BASEHART: Would you step forward, please? Give us your name for the record.

MR. GRASSO: John Grasso.

CHAIRMAN BASEHART: Okay. Mr. Grasso, staff has recommended approval of your application with four conditions. Do you understand the conditions?

MR. GRASSO: Yes, I do.

CHAIRMAN BASEHART: Do you agree with them?

MR. GRASSO: Yes, I do.

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

(No response.)

CHAIRMAN BASEHART: Seeing none, are there any letters?

MR. MacGILLIS: No letters on this one.

CHAIRMAN BASEHART: Any member of the Board feel this item should be pulled?

VICE-CHAIRMAN KONYK: No.

CHAIRMAN BASEHART: Okay. It will remain on consent.

MR. GRASSO: Thank you.

#### **STAFF RECOMMENDATIONS**

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

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

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

**YES.** The subject property where the

proposed tower/entrance wall is to be constructed on is an open space tract within a 123-acre Planned Unit Development, known as Palm View Lakes. The residential development was approved by the Board of County Commissioners in 1987 (Petition 86-100, Resolution R-87-427) to support a total of 247 single family dwelling units. This is an upscaled residential community on the west side of State Rd. 7 (U.S.441) between Forest Hill Blvd. and Lake Worth Rd.

The applicant is proposing two entrance wall signs on both sides of the main access/Whitehorse Dr. Facing State Rd. 7 (U.S. 441). Prior to pursuing this variance, the architect met with staff in an effort to design a decorative tower to attach to the entrance wall signs that would not require variances. However, as shown in the submitted plans and elevation, the proposed tower is an accessory structure, which does not comply with the list of structures to have a lesser setback because it will remain open on all sides and not be habitable, normal property development regulation will apply. In this case, the required front setback for the proposed tower is 25 ft. The decorative tower attached to the proposed entrance wall sign on the north side of the Whitehorse Dr. meets with the code requirement. The one on the south side setbacks 15 ft. from the front property line along U.S. 441, resulting in a setback encroachment of 10 ft.

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

**NO.** As previously indicated, the current property owner purchased the site after it had been platted with R-O-W dedication along the perimeter line abutting State Rd. 7. As a



result, the subject tract has only 25' depth with several required easements. The applicant proposed a decorative tower to attach to the entrance wall sign in order to provide a dramatic entrance statement for this up-scaled residential development. The structure was designed to accent the entrance to the development. Prior to pursuing this variance, the architect met with staff to discuss how to accomplish their client's desire to maintain symmetry that is created by two identical architectural features that frame the entrance. Staff informed the applicant that the ULDC did not exempt this structure from the required setbacks, even though it is a structure that will not be habitable and will be open on all sides. Therefore, the applicant will need a variance to allow the proposed decorative tower attached to the entrance wall sign to be constructed as proposed by the designer (see Exh. 9 & 16).

To construct an entrance wall sign/tower which provides easily-recognized architectural features will benefit both the residents and visitors by allowing motorists approaching the site ability to identify the entrance in time to merge out of traffic, thereby reducing traffic circulation conflicts. Since the variance is minimal and will not create any impact on the surroundings, it can be found that it **is not** a self-created situation.

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 entrance wall signs were

added to the final Site Plan and approved by Development Review Committee on April 5, 1995, provided that they will meet with applicable code requirements. The granting of the requested setback encroachment for the proposed decorative tower **will not** grant any special privilege onto the applicant. On the contrary, it will benefit both the residents and visitors by providing easily identified main entrance in order to avoid potential traffic conflicts on State Road as traffic merges into the site. The applicant can comply with the general intent of the front setback for this proposed 8' by 8' open structure. The impact of this structure will be mitigated by the surrounding landscape material.

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.** It is common for the up-scaled residential development to have similar entrance features to identify the community. The applicant is proposing a design that will provide a dramatic sense of entrance to this up-scaled residential development. The use of architectural feature is a very important part of creating this image and feeling that one is entering an upscaled community. In order to maintain the symmetry that is created by the two structures, as one approaches the entrance to the development, the two structures must be constructed on both sides of the main access. The landscaping that will be installed around the structures will mitigate any negative impacts associated with the 10 ft. minor setback encroachment. The front setback

encroachment from the south tower will not be easily recognized by those entering the 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.** Prior to purchasing the subject property by the current owner, the site had already been platted and conveyed the 200' right-of-way to west of the east right-of-way line of State Rd. As a result, the depth of the subject open space tract is only 25 feet, which creates a physical hardship for placing the decorative tower to meet with 25 feet of the required front setback from the east PUD perimeter line. As indicated by the applicant, the entire entrance features on the south side of Whitehorse Dr. is identical to the one on the north side. Both of these two structures face the State Rd. 7 for a purpose of creating a symmetrical appearance to enhance the entrance features for this upscaled residential development. In addition, 10' utility easements, 5' limited access easement, 24' water easements as well as a 25' buffer easement are required within this narrow tract. These required easements further limit the buildable area within the open space tract.

Therefore, the approval of variance **is** the minimum variance that will allow a reasonable use of the parcel of land, building or structure.

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

**YES.** The granting of the variance **will meet**

with the general intent of the code setback requirement, which is to ensure consistency is maintained between property lines and structures along the street. The proposed decorative structure is 8' by 8' and open on all sides. Granting the requested front setback variance will allow the developer to construct both the architectural structures and accomplish the desired look for the entrance to this upscaled residential development. Except for the proposed decorative tower, the remainder of the entrance wall will meet code requirements.

The proposed main entrance faces State Rd. 7 (US 441). It is the intent of the developer to create a strong visual statement for those entering the site. The use of architectural features (wall sign, decorative tower, pilaster, water spout, trellis, etc.) will accomplish this desired look. The structure (8'x8'X22'-1") requesting for setback variance is open on all sides with barrel tiled roof. It is identical to the structure on the north side of the Whitehorse Dr. in order to provide a uniform appearance along State Rd. 7.

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

**NO.** Granting the requested variance **will not** be injurious to the surrounding area. The structure is meant for identification and decorative purpose and is not habitable (open on all sides). The structure is intended to signify the entrance to motorist traveling State Road 7 by providing an easily-recognized vista. Said structure will benefit both the residents and visitors which provides a strong identity for the entrance, which will reduce traffic circulation conflicts as one de-

accelerates out of traffic flow to enter the site.

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

The requirement that the Base Building Line for the subject properties be forty (40) feet beyond the existing west right-of-way line of S.R. 7 is hereby waived. Said Base Building Line is hereby established at the east property lines of Tract "0-5", Whitehorse Estates (P.B. 73, Pg. 62) and Tract "0-S-1", Whitehorse Estates Plat 2 (P.B. 78, Pg. 92) as platted. **(ENG)**

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

1. By April 21, 2001, the property owner shall provide the Building Division with a copy of the Board of Adjustment Result Letter and a copy of the Site Plan presented to the Board (Exh. 9 & 16, BA file 2000-048), simultaneously with the building permit application. **(DATE: BLDG PERMIT: BLDG)**
2. By June 21, 2001, the property owner shall obtain building permit for the proposed entrance wall sign including a decorative tower on the south side of Whitehorse Dr. along State Rd. 7. **(DATE: BLDG PERMIT: BLDG)**
3. By December 21, 2000, the property owner shall administratively amend the approved Site Plan to show the correct locations and configurations of the proposed entrance wall signs on both sides of Whitehorse Dr. and a reduced copy of the sign site plan (Exh. 9, BA2000-048) as well as denote on site plan the approved variance (BA2000-048) with the conditions. **(DATE:DRC:BLDG)**
4. The variance is only for the decorative

tower along the south side of the main access, Whitehorse Dr. (ONGOING)

CHAIRMAN BASEHART: Okay. Next item is BOFA2000-049, Land Design South, Melrose Park. Is the applicant here?

MS. MORTON: Yes. Jennifer Morton with Land Design South.

CHAIRMAN BASEHART: Do you agree with -- there's four recommended conditions. Are you in agreement with them?

MS. MORTON: Yes, I am.

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

(No response.)

CHAIRMAN BASEHART: Seeing none, any letters?

MR. MacGILLIS: No letters on this item.

CHAIRMAN BASEHART: Any member of the Board?

(No response.)

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

MS. MORTON: Thank you.

**STAFF RECOMMENDATIONS**

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

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

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

**YES.** The subject site is located one mile north of Boynton Beach Boulevard on the east side of Lyons Road. The property in question is block 19 of Pod E located within Melrose PUD, on the north side of Venetian Isles Blvd. Pod E consists of 276 town homes in various stages of development on 39.95 acres. The land use for the property is LR 3. Lot 4 within block 19 is 4,459 sq/ft (.102 acres). The variance request is for a 4.7 foot side interior setback encroachment into the required 15' setback along the southern property line, leaving a 30'3" separation between the town home and the road right-of-way. The proposed building contains 4 units. This is the smallest building used within pod E. The approved plan for pod E contains 45 buildings. Twenty-seven of these buildings contain 6 units, eleven buildings contain 8 units, and only eight buildings contain 4 units. This particular parcel is bordered by a 20' lake maintenance easement to the east and a 15' right-of-way buffer and a 10' utility easement with a 5' overlap, and 28' road right-of-way to the south, which provides an adequate buffer to mitigate with the requested variance. In addition, the applicant has submitted a landscape plan describing in detail the extended landscaping material in the buffer consistent with the recommended conditions of approval. The open area, surrounding the location allows for the encroachment without disturbing the separation between residents, or upon the right-of-way.

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

**NO.** The non-conformities are a result of miscalculations that occurred between the platting and architectural drawing stage. The plat for Pod E was approved on August 3, 1999.

The development was also approved by the Board of County Commissioners (R-98-570) on April 21, 1998. The encroachment was not discovered until the developer applied for a building permit for this building. In order to resolve this situation, the applicant met with staff to discuss design options. Since the adjacent buildings are under construction, and furthermore, there are platted easements/rights-of-way bordering the lot. These inhibit unit from being shifted to avoid a variance. The applicant is applying for a variance to correct the encroachment. They also volunteered to upgrade the landscape material along the affected property to mitigate any negative impacts associated with this variance, if approved.

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.** Pod E, where the subject lot is located, was approved as part of Melrose PUD, by the BCC on April 21, 1998 (Pet. #82-040, Res. #98-0570). The final site plan was approved by the DRC on July 8, 1998. The boundary plat for Pod E was approved on August 3, 1999. The site is being developed consistent with the site plan. The proposed encroachment is internal to the PUD. The owner of Lot 4 of Block 19 will have over a 30 foot separation between the unit and Venetian Isles Boulevard. The separation consists of 10'3" separation between the corner of the townhome and the property line, a 15' right-of-way buffer, and a 10' utility easement (5' overlapping into ROW buffer). The encroachment occurs at the south side of the



unit adjacent to open space and a landscape buffer.

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.** There is an existing associated with the platting/construction drawings, as previously mentioned. A miscalculation of the setback for building 19 resulted in the proposed encroachment into the side interior setback. The encroachment was discovered when the building permit was being prepared by the architect. The variance request meets the general intent of the ULDC setback requirement, which is to provide adequate spatial and landscape separation between residences and of the ROW. The variance request will not have a negative impact upon the surrounding uses, since these uses are; a ROW and a lake easement. The applicant has voluntarily agreed to conditions to upgrade the landscaping material along the 15' ROW buffer to mitigate the 4.7 foot encroachment.

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 proposed building will have four townhomes. This is less than the six to eight units in other buildings. The proposed townhome has a width of 27 feet. The smaller townhomes have a width of 26'4". To change the townhouse model would only move the townhouse building 8", and would still require a variance. The building itself cannot be moved to the north within block 19 because of

a drainage easement located to the north side of lot 1.

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

**YES.** The granting of the variance is consistent with the intent of the Code and Comprehensive Plan. The Comp Plan encourages residential communities that provide the property owner with a complete living environment. The BCC has approved this PUD which is consistent with the Comp Plan. The approved site plan is also consistent with Boards approval. Pod E is Site Planned and supports townhouses in various stages of development. The building is adjacent to a 15' ROW buffer and a utility easement. These allow for a 30'3" separation between the edge of the porch and Venetian Isles Boulevard if the variance is approved. Staff is also recommending landscape conditions to mitigate the minor encroachment.

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

**NO.** To grant this variance **will not** be injurious to the area involved or otherwise detrimental to the public welfare. The side interior setback encroachment will be adequately buffered through upgraded landscaping, in addition to the 30 foot separation to the roadway will provide a visual buffer. The landscaping will be a condition of approval and the landscaping will be installed prior to the issuance of a Certificate of Occupancy for building 19.

**ENGINEERING COMMENT(S)**

No comment. (**ENG**)

**ZONING CONDITION(S)**

1. By February 21, 2001, the property owner shall provide the Building Division with a copy of the Board of Adjustment result letter and a copy of the site plan presented to the Board (Exhibit #9, BA File BA2000-049), simultaneously with the building permit application for townhouse building within Melrose PUD, Pod E, Block 19, Lot 4. (**DATE: MONITORING - BLDG PERMIT**)
2. By June 21, 2001, the property owner shall obtain building permit for the proposed townhouse, in Melrose PUD, Pod E, Block 19, Lot 4. (**DATE: MONITORING BLDG PERMIT: BLDG**)
3. Prior to issuance of the Final Certificate of Occupancy for Block 19, Unit 4, the buffer along the south side along the 15' buffer for Venetian Isles Boulevard will be consistent with the landscape plan, Exhibit #22 in the BA2000-049 file. (**DATE: MONITORING - LANDSCAPING**)
4. Prior to the Final Certificate of Occupancy the applicant shall contact the Landscape Section to request a site inspection to verify the landscape is installed consistent with Exhibit #22, in BA file 2000-049. (**DATE: MONITORING - LANDSCAPING**)

CHAIRMAN BASEHART: I guess we're ready for a motion --

VICE-CHAIRMAN KONYK: I'll make the motion to accept the consent agenda, BOFA2000-048 and BOFA2000-049 with staff reports becoming part of the record.

CHAIRMAN BASEHART: Motion by Ms. Konyk.

MS. JACOBS: Second.

MS. CARDONE: Second.

CHAIRMAN BASEHART: Sounded like a unanimous second. All those in favor?

BOARD: Aye.

CHAIRMAN BASEHART: Opposed?

(No response.)

CHAIRMAN BASEHART: The consent agenda is approved.

CHAIRMAN BASEHART: Let's move on to the regular agenda. The first item is BOFA2000-047, the application of Charles R. & Joyce Wilson. Is the applicant here? If you could step forward, please?

Since this will be a full public hearing, I'd like everybody that intends to speak on this item to please stand and raise your right hand and be sworn in by the reporter.

(Whereupon, the members of the public were sworn in by Ms. Springer.)

CHAIRMAN BASEHART: Thank you. Okay. I think we're going to start with staff introducing the item, please?

MR. CHEQUIS: Good morning. BOFA case 2000-047, Charles R. & Joyce Wilson to allow existing replacement mobile home to encroach into the required front setback.

COURT REPORTER: Would you please speak into the microphone?

MR. CHEQUIS: I'm sorry.

The location is 9201 Highpoint Drive approximately a quarter of a mile west of Alternate A1A on the north side of Northlake Boulevard within Hilltop Mobile Home Park in the RH Zoning District.

With respect to this case, the owners had recently replaced an older mobile home on this site in the park. They obtained all the required permits necessary to conduct the replacement, and they were assured by the contractor that the placement of the home would meet all regulations set forth by the park's covenant document.

An initial inspection was done and a CO, Certificate of Occupancy issued for the home. The inspection did not detect any encroachment.

A second inspection was done on the advice of neighbors who complained about the encroachment, and again, it wasn't detected. We should have representation from Building here. I think Mr. Joseph Sherpitis is here from the Building Division who's the chief structural inspector. He may be able to better speak on the facts in point.

Through subsequent complaints from the neighboring residents, encroachment was found and a survey was conducted and it was verified on survey that encroachment of approximately 3.3 feet existed. So the Code Enforcement proceeded to give the residents a violation. It was after that that the owners came in to seek variance relief from the county.

CHAIRMAN BASEHART: Okay. Mr. Sherpitis.

MR. SHERPITIS: Yes, sir.

CHAIRMAN BASEHART: Staff has indicated that you might be able to answer questions or fill us in a little more on the inspections and what actually happened in this case?

MR. SHERPITIS: I have a certain amount of information, yes, sir.

CHAIRMAN BASEHART: You need to step up to microphone. I think you were not here when the court reporter swore everybody in.

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

MR. SHERPITIS: Okay. Essentially what we had

was a large mobile home in the Hilltop Trailer Park. A building inspector had gone out there, done his thing, and pretty much had done the best that he could to determine that the trailer was sitting properly on the lot.

Now there are no property corners that were visible for the inspector, so in trailer parks like that it's pretty much best guess if these things meet the minimum setbacks, plus the fact that every single trailer park is a little bit different than every other trailer park.

So what we don't do in subdivisions like that or in trailer parks is ask for surveys. We haven't yet and I don't know that we will be.

But what you had here basically was a lot that was ultimately slightly a little bit too large to fit the trailer. We had received a certain amount of concerns about this from Code Enforcement as far as does this trailer meet the minimum setbacks. I had sent inspectors out on two separate occasions after the final inspection to verify this.

One of the inspectors said I'm not sure, but there may be a setback problem, and the other inspector said I'm absolutely not certain. You know, I just don't know, I can't tell.

At which point we had received several complaints. I explained to one of the persons or the person that was calling complaining about that that we can't make the determination; if you've got something that you could provide us that shows absolutely that this trailer doesn't sit on the lot, then we can do something about it. I said, as it is right now, I don't have any positive information that it's good or bad. It appears to be okay.

We went on. Eventually I received a survey from him. The survey showed that we were in violation of the setbacks, at which time I contacted the installer to let him know that we were going to have to rescind the certificate of completion or occupancy on this one because we did have a setback violation, and that they would probably be best suited to go and get a variance on it.

CHAIRMAN BASEHART: Okay. Any questions? Thank you.

If the applicants' representative could step forward and you've been sworn in?

MR. TELEPMAN: Yeah.

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

MR. TELEPMAN: My name is Jim Telepman, T-E-L-E-P-M-A-N.

CHAIRMAN BASEHART: And you're agent or attorney for --

MR. TELEPMAN: The Wilsons, that's correct.

CHAIRMAN BASEHART: All right. Will you make a presentation to us or maybe there's nothing more that you'd like to add, I don't know.

MR. TELEPMAN: Well, if you've reviewed the staff summary and the staff recommendation, I certainly couldn't make it any clearer than they've made it, that this variance should be granted for all the reasons stated therein. I mean, I don't want to take up a lot of your time repeating what staff has already said to you both verbally and in writing. Perhaps it would be better for you all to listen to the people that oppose this thing, and maybe I can respond to them.

I mean, essentially I would just ask you to focus on the items that are preeminent with respect to any variance determination, which are special circumstances and undue hardship.

This is not a case where the property owners tried to slip something through and do something without crossing their t's and dotting their i's. They did everything they were supposed to do. They hired a contractor to measure everything and move the mobile home onto the lot. The contractor who is here today measured everything and told them everything was fine. They paid a lot of money to move this trailer to this lot.

They came to the County and said check everything out and make sure we're doing everything right. The County came out and said everything's fine, we're going to give you the Certificate of Completion. And they're living in this home.

I think again in summary those are the special circumstances that exist here. The undue hardship is pretty obvious. I mean, they spent a ton of money, and for a three feet variance -- and if you look at this, you can see that the home is on an angle. The so-called violation is at the corner of the mobile home closest to the street. It's not like it's three feet straight on and into a setback. It's a corner of the home that enters into the setback area.

I would submit that the violation as it exists is not significant or something that adversely affects, as staff as already indicated, any neighbors or has any safety or health or blocks road vision or anything significant like that. And there's no aesthetic effect on the neighbors, either. Undue hardship would be --

CHAIRMAN BASEHART: Before you -- if those that are having conversations here could please either leave the room or stop the conversations so that we can hear the presentation, we appreciate it. Thank you.

MS. TELEPMAN: Again, I think you all can figure out without much more of a submission on my part or anyone else's part what the undue hardship is. It would be a tremendous expense for these people to move this home, to get another home, a smaller home, a less aesthetically pleasing home to the community at large to place on this lot.

And for all the reasons contained in the staff report, we think the variance should be granted. And I'd just like to reserve the right to comment to whatever the opposition has to say about it.

CHAIRMAN BASEHART: Of course. Thank you.

Okay. This is a public hearing and we're going to open it up to the public now. So anyone that would like to speak can step forward and give us your name, please, ma'am?

MS. PODESTA: Yes, my name is Kerry Podesta, P-O-D-E-S-T-A, and I'm an attorney and I'm here on behalf of the Hilltop Park Property Owners Association. I represent them and they represent the residents of the mobile home park.

The County and the Board of Directors for the Association actually have a common interest. They both



enforce the same setback restrictions, and those are subject or coming out of the same enabling authority, and that is not your Unified Land Development Code, but the Declaration of Protective Covenants and Restrictions for the mobile home park as set forth in the staff report. To that extent, in the past and the evidence will show today that both the County and the mobile home park, the Board, have strictly enforced the setback requirements in this park.

However, the Association strongly disagrees with staff and does not believe that this variance should be granted today. This is not a diminimus request. This is a 3.3 foot variance which is being sought today which is a 22% variance off of a 15 foot setback requirement.

The evidence will show today that if this Board grants this petition or this variance that they will be conferring upon them a privilege that has not been conferred on any other owner in the community. Again, the Board and the County have both strictly enforced this setback restriction against other owners in the park to the great expense of other owners.

There are no unique circumstances which pertain to this piece of property which justify the variance. The staff report indicates as a matter of fact that when you have a double lot, and these are two lots that are owned by the Wilsons that are considered a double lot under the Declaration, that in fact where you can place the home on the lot is actually relaxed. So there are other options that were available to the Wilson's as to where this home could have been placed.

If the variance is granted, I would disagree with counsel that it would destroy both the uniform appearance of the community and it would also adversely impact upon the line of sight and also the aesthetics of the lot contiguous to the property to the south because the home that was there before did comply with setbacks and therefore was not 3 feet forward of where this house is, at least as to that corner. I understand the Wilsons own that property, but they may sell it one day and that will impact upon the property

owner to the south.

The evidence will also show that there are other alternatives available to the Petitioner to allow them to use -- to obtain a reasonable use of their land.

Finally, and in all fairness to the Petitioner, the evidence will also show that this was a situation that could have been and should have been avoided. And therefore, the hardship or special conditions that were created unfortunately were created by the applicant.

So I would like to first call to testify this morning Mr. Milton Gainer.

Mr. Gainer, would you state your name and address for the record?

MR. GAINER: Milton Gainer, 2924 Croton Lane.

MS. PODESTA: And Mr. Gainer, are you a member of the association's Board of Directors?

MR. GAINER: Yes.

MS. PODESTA: And how long have you been on the Board, sir?

MR. GAINER: Well, I've been vice-president, president, and now currently on the Board of Directors.

MS. PODESTA: How long have you been on the Board?

MR. GAINER: About four years.

MS. PODESTA: Okay.

CHAIRMAN BASEHART: I need you to speak up.

MR. GAINER: About four years, sir.

CHAIRMAN BASEHART: Okay. And for the record, you have been sworn in?

MR. GAINER: Yes, sir.

CHAIRMAN BASEHART: Okay.

MS. PODESTA: Mr. Gainer, are you familiar with the restrictions which apply to the park?

MR. GAINER: Yes, I am.

MS. PODESTA: And these are the deed restrictions which set forth the setback requirements that were at issue here today?

MR. GAINER: Yes, they were.

MS. PODESTA: Are these the deed restrictions?

MR. GAINER: Yes.

MS. PODESTA: I would like to enter these into the record, please.

Now Mr. Gainer, are you familiar with the bylaws for the association, homeowners association?

MR. GAINER: Yes, I am.

MS. PODESTA: And are these the bylaws for the association?

MR. GAINER: Yes, they are.

MS. PODESTA: Okay. And these govern what the association does or can do?

MR. GAINER: Yes, they do.

MS. PODESTA: Thank you. I'd like to enter these into the record.

CHAIRMAN BASEHART: Okay. Let the record show that we've accepted the deed restrictions for the community and the bylaws of the Board of Directors.

MS. PODESTA: Mr. Gainer, during your tenure on the Board, did you have any personal experience with other owners in non-compliance of their residences with setbacks in the community?

MR. GAINER: Yes, I have.

MS. PODESTA: Can you describe those briefly for the Board, please?

MR. GAINER: Well, I was a -- there was a person on 2884 Banyan, his name was Edward Wright, and his trailer was oversized and I had to call Code Enforcement. They came down and he had to remove his trailer and put on another one.

Then at 2954 Croton Lane, Michael Warner put in a trailer that was too large and Code Enforcement was called again, and he had to take it off and put back his old trailer.

CHAIRMAN BASEHART: Just if I could question.

MS. PODESTA: Sure.

CHAIRMAN BASEHART: Were these individuals in the same situation as the applicant? Did they get the proper permits and get the proper inspections or did they just put the units in?

MR. GAINER: No, they had someone come down and inspect it and they were found in violation.

VICE-CHAIRMAN KONYK: But I think the question is this was discovered by the County, this -- you know,

within the time frame of the CO being issued.

The other ones, were they the same situation exactly? The County had approved them and had not noticed that the setback violation or were they just -- I don't understand how the other ones were installed?

MR. GAINER: They weren't set down yet.

VICE-CHAIRMAN KONYK: They weren't set down yet?

MR. GAINER: No, they weren't set down.

VICE-CHAIRMAN KONYK: They hadn't gone this far?

MR. GAINER: Excuse me?

VICE-CHAIRMAN KONYK: They hadn't gone this far?

MR. GAINER: No, they hadn't.

VICE-CHAIRMAN KONYK: Okay.

CHAIRMAN BASEHART: Okay. Thank you.

MS. PODESTA: Are you aware of any other experiences with other homeowners?

MR. GAINER: Well, I know that on Tangerine this John Webbow (ph) from Canada had one put down and that was too large. He had to remove the trailer and put on a double-wide that fit the trailer (sic).

And then a new experience was on Croton Lane, Thelma Penny put in a double-wide right, and asked the setbacks, went by the setbacks, had all the inspections and she conformed to what the Board and the restrictions of the covenants, and she complied.

MS. PODESTA: And how did she do that?

MR. GAINER: Well, she called the County. She went down to the -- she had inspectors come down and she surveyed the property and so forth to make sure that the mobile home was put down properly.

CHAIRMAN BASEHART: In that case, she did the same thing that the applicant here did, but hers fit, is what you're saying?

MR. GAINER: Yes.

MS. PODESTA: Mr. Gainer, will you describe any discussions that you had with the Wilsons regarding their home and the setbacks in the community?

MR. GAINER: Yes. Before the trailer was moved

up from the south, I don't exactly know where it was going to be moved from, but I was asked what they needed to do, and I told them the setbacks and I told them the 15 foot front, 10 foot back and six foot on each side.

And then later on I was contacted. They asked me if I knew of anybody that would move the trailer. I recommended LaCroix (phon.) because they had been involved with Mrs. Tunney's (phon.) property. I don't know who they got, but that's what I recommended.

MS. PODESTA: And these discussions took place before the home was moved to the site?

MR. GAINER: Before the home was even up there.

MS. PODESTA: Okay. Mr. Gainer, can you describe any communications you may have had with any county employee regarding the issue with the home and the compliance with the setbacks?

MR. GAINER: Well, when it was brought to my attention, I called up the County Commissioner's Office. I think it was Cindy Benedetto. And I told her about it and she contacted Code Enforcement, and then Code Enforcement came and found it in violation.

MS. PODESTA: Do you know about what time this might have been relative to the home being on the site?

MR. GAINER: It was after the home was on the place.

MS. PODESTA: Thank you, Mr. Gainer.

MR. TELEPMAN: Could I ask him a couple of questions?

What was on the lot before the mobile home that is currently on the lot?

MR. GAINER: What was on the -- on the -- I don't understand your question.

MR. TELEPMAN: Was there a bus on the lot? A tree?

MR. GAINER: No, there was a trailer on it.

MR. TELEPMAN: What did the trailer look like?

MR. GAINER: It was in disarray.

MR. TELEPMAN: Would you agree that the trailer that's there now is, you know, setting the setback

thing aside, is a better looking view than the one that was there --

MR. GAINER: I never said that it wasn't.

MR. TELEPMAN: I'm just asking.

MR. GAINER: No, that wasn't the issue as far as I was concerned.

MR. TELEPMAN: Just answer the --

MR. GAINER: It does look better.

MR. TELEPMAN: All right. Thanks. No other questions.

MS. PODESTA: One of the Board members has a question.

MR. PUZZITIELLO: I have a question. The property owners association, do you have an approval process before somebody can move or replace a trailer that somebody has to go through, do you know?

MR. GAINER: Well, yes, they come to us and ask us; if they don't, then I have to act on what's being done.

MR. PUZZITIELLO: Did this applicant come before you and get permission before they did this?

MR. GAINER: She came down and asked me what the setbacks were, the same as Thelma Penny did.

MR. PUZZITIELLO: Okay. So you don't have an official process that you go through to get approval?

MR. GAINER: No.

VICE-CHAIRMAN KONYK: I have a question for you, but I don't know your name.

MS. PODESTA: I'm Kerry Podesta.

VICE-CHAIRMAN KONYK: The lot south of the trailer would be the most affected owner by this whole thing. Did you say the same people own that lot as well?

MS. PODESTA: It's my understanding that they do. I haven't heard from --

VICE-CHAIRMAN KONYK: Okay. So subsequent owners would be aware of this setback, this 3-1/2 foot existing encroachment before purchasing that trailer, so I don't really think that's a valid argument. You know, they would know that it was there prior to purchasing.

MS. PODESTA: Again, if they were to --

VICE-CHAIRMAN KONYK: I mean, if they were a separate owner right now and they were complaining about it. I could understand even bringing them up, but they're the same owner, they're not complaining about it and the subsequent owner would be aware of the encroachment.

MS. PODESTA: Again, I was told by my client that they own it. I don't know that they do.

VICE-CHAIRMAN KONYK: Okay. Thanks.

MS. PODESTA: I'd like to call Ray Courtney to testify, please.

Mr. Courtney, you've been sworn in?

MR. COURTNEY: Yes, I have.

MS. PODESTA: Please state your name and address for the record.

MR. COURTNEY: My name is Raymond Courtney. I'm at 9145 High Point Drive.

MS. PODESTA: And Mr. Courtney, are you a member of the association's Board of Directors?

MR. COURTNEY: Yes, I am.

MS. PODESTA: And how long have you been on the Board and in what capacity have you served?

MR. COURTNEY: I've been on the Board for approximately six months. I've been active with them prior to that, but right now I'm acting vice-president.

MS. PODESTA: Mr. Courtney, can you describe any discussions you may have had with the Wilsons regarding their home and the compliance of same with the setback requirements?

MR. COURTNEY: Yes, I can. The day that the mobile home was being put on the lot the vice-president, the then vice-president, Jack Salano, who was a neighbor asked me to go down with him and to see if everything was being put on right.

We went down, we talked to the contractor that was setting it on the lot. He said that he was aware of the proper setbacks where the property line was and that he was aware of all that. He said there would be no problem, that the home would fit on.

MS. PODESTA: Did you have any other discussions?

MR. COURTNEY: At a later time before, as in -- I think we've submitted pictures, I don't know if they were on the evidence.

In fact, I took pictures so that we would have proof that we went down there before any of the serious work was done, such as the concrete front patio and the skirting and everything else was put on, before the driveway was finished.

The vice-president and I went down and we did tell them that it was too close to the street at that time. They said they didn't want to hear it. They said that the inspector said that it was all right.

We said, well, all we're trying to do, we're not trying to hassle anybody, we just want to save a lot of expense. If this is picked up later, we figured the inspector at the final inspection would get it, and we were trying to help the neighbor by not getting any of these additional costs.

And the contractor, at that point we asked to see the permits. We asked to see the survey. We were refused to see them. They said they were not available to us, so at that point we could not do anymore.

Shortly after that we started making calls to the Code Enforcement. Our reply by the code enforcement was that they could not do anything until the building inspector had finished signing off the permits. And then at that point they would look into it. That took almost two to three months for the Building Department to finally say yes, it was in violation.

MS. PODESTA: Mr. Courtney, are these the photographs that you were talking about?

MR. COURTNEY: Yes, they are.

MS. PODESTA: Do you want to describe each photograph and I'll let everybody look?

MR. COURTNEY: This is a photograph as the vice-president -- and I'll pass them up -- we were walking down there and you can show that the construction is in process. The home is not -- does not have skirting.

On the second photograph it shows that the



concrete work and everything had not been done. It was in place.

CHAIRMAN BASEHART: If we're going to consider these photographs as part of the evidence for this hearing, we're going to have to have them submitted for the record.

MS. PODESTA: Yes, I would just like to show them to counsel, and then I would like to submit them for the record.

MS. STUMBERGER: Sir, I'd just like to ask you a question.

When anyone else moves into the park, do you and one of your other officers take the same type of pictures of people walking down the street to prove that you were involved when they install the unit? Do you do this every time, take photographs?

MR. COURTNEY: No, we haven't in the past because it never got this far.

VICE-CHAIRMAN KONYK: Make a motion to accept these into the record.

MS. STUMBERGER: I'll second the motion.

CHAIRMAN BASEHART: There's a motion by Ms. Konyk and second by Ms. Stumberger. Are there any other pictures?

MS. PODESTA: No, Your -- no.

CHAIRMAN BASEHART: No other pictures, okay. All those in favor?

BOARD: Aye.

CHAIRMAN BASEHART: Opposed?

(No response.)

CHAIRMAN BASEHART: Okay. They will become part of the record.

MS. PODESTA: I'd like to have Mr. Courtney stay here for a moment.

I did have another witness who would have been an expert witness who was unable to attend this morning due to a physical problem. However, I do have an affidavit from him and I have copies that I would like to read and have entered into the record.

I talked with counsel, your Assistant County Attorney, Ms. Beebe, and she said that that would be acceptable. So I have enough copies for everybody to

read along to look at with me.

MR. TELEPMAN: For the record, she might have talked to Beebe, but she didn't talk to me and I know this is not -- and she didn't know that I existed. It's not her fault, but while this hearing is not governed by the Florida Rules of Evidence, I still object.

CHAIRMAN BASEHART: Okay.

MR. TELEPMAN: If you need to know my reasons, I'll tell you.

CHAIRMAN BASEHART: Why don't you do that, sir?

MR. TELEPMAN: Sure.

CHAIRMAN BASEHART: Glen, you wanted to say something?

MR. WICHINSKY: I know we weren't going to relax the Rules of Evidence on the Board. I just wanted to get clearance from Laura whether we should read this in view of expert testimony.

MS. BEEBE: Ultimately, it's up to the Board whether or not to accept it into evidence. However, you can --

COURT REPORTER: Wait; use the mic please.

MS. BEEBE: It's ultimately up to the Board whether or not to accept it into evidence, but there's no reason that you shouldn't be able to.

MR. WICHINSKY: No, but if it's accepted into evidence do we view it from an expert's point of view or as we would from anybody's submission?

MS. BEEBE: I don't think there's -- for purposes of this hearing, that's not really an issue.

MR. TELEPMAN: My objection is that, again, from a legal perspective and a strict evidentiary perspective, which I understand doesn't apply to this Board's hearings, this is hearsay.

I don't know this gentleman. I've never spoken to this gentleman and I'm not going to have the opportunity to speak to this gentleman about his conclusions or the basis for his conclusions which, again, if we were in a court of law would put me at a tremendous disadvantage, as it does here, but that's why in a court of law this type of thing is not

permitted to have any evidentiary value.

Again, I leave it to your discretion. I know the rules of the game and if you are going to consider it, I just hope you consider it in the context into which I just put it. Thanks.

MS. BEEBE: You can consider hearsay in these proceedings; however, it can't be the sole basis of your decision.

CHAIRMAN BASEHART: Okay. I think with that everybody can -- in fact, everybody has looked at it already, anyway, so I think we'll accept it into the record, and I think everybody should look at this as an opinion of this gentleman recognizing that the attorney for the applicant has not -- is not being given the opportunity to cross examine the individual. So just review it in that context.

MS. PODESTA: If it would please the Board, the witness said he could make himself available on a cell phone to appear by phone, and I could offer him. I have his cell phone number if you wanted to do that.

CHAIRMAN BASEHART: Okay. Anybody want to talk to him? We'll pass.

MS. PODESTA: Okay. If I may read his affidavit into the record, "Before me, the undersigned authority, on this 20th day of September, 2000, personally appeared James...", and I will spell the last name, G-I-G-N-I-L-L-I-A-T, "...Gignilliat, Sr., hereinafter referred to as Affiant, who being by me first duly sworn, deposes and says:

"1. I am the president of Advantage Mobile Home Sales, Inc., "Advantage".

"2. Advantage is currently the largest volume seller of new mobile homes in Palm Beach County.

"3. In the course of my duties of president or in connection with the sale of mobile homes by Advantage, either I, personally, or a representative or agent of Advantage under my direction performs an on-site measurement of mobile homesites in order to determine if the mobile home Advantage is selling to a customer is able to be located on a mobile home site in compliance with applicable setbacks and other constraints which may limit the location of the mobile

home on a mobile home site.

"4. Advantage has sold a mobile home in the Hilltop Park Mobile Home Park and has received a permit for same from Palm Beach County. A copy of the permit and survey submitted in connection with the permit application revealing a location of the mobile home, and setback lines are attached hereto as an exhibit.

Based upon my personal involvement with the permit referenced in paragraph number 4 above, I am familiar with the setback restrictions set forth in the Declaration of Protective Covenants, Restrictions and Reservations for Hilltop Park, including amendments thereto and Palm Beach County's procedure for ensuring compliance with these setback restrictions. It is my understanding that the County's procedures require a survey to be submitted in advance of setting the home to demonstrate compliance with setbacks prior to issuance of a permit.

"6. On or about September 19, 2000, I personally visited Hilltop Park to familiarize myself with the current location and dimensions of the Petitioner's mobile home located at 9201 Highpoint Drive.

"7. I have also been provided with a survey of the subject lot showing the location of the mobile home and encroachment of same into the front yard setback.

"8. Having personally viewed the petitioner's property, mobile home and survey, I am of the opinion that the mobile home (exclusive of the carport which is added as an amenity as there already exists a garage structure on the property) can be located on the petitioner's property in a manner so as to comply with all applicable setbacks.

"9. It is also my opinion that another professional in the business of setting or selling mobile homes could have or should have determined prior to setting the home that setting the mobile home in its current location would create a substantial encroachment into the front yard setback.

"10. It is my final opinion that the single lots in Hilltop Park averaging in dimension of 85 feet

in length and 50.81 feet in width, can accommodate the newer and larger mobile homes currently sold by Advantage without the need for a variance from the setback restrictions currently in effect for Hilltop Park."

And it's signed by the Affiant. And I'd like to enter the original affidavit and exhibit into evidence.

CHAIRMAN BASEHART: Okay.

MR. JACOBS: Mr. Chairman, may I ask the applicant's counsel a question?

CHAIRMAN BASEHART: Certainly.

MR. JACOBS: Is there any question that the mobile home could be repositioned on the lot in a manner which would comply with setback restrictions?

MR. TELEPMAN: Well, if you look at -- in the staff recommendations, paragraph numbered 4, I think there is and, I mean, I haven't gone out there with a tape measure myself, and I'm not a contractor, but in reading your staff's recommendations -- I mean, they speak for themselves.

So the answer to your question is yes, there is an issue, and perhaps staff is better equipped to address your question than I. But yes, there is an issue.

VICE-CHAIRMAN KONYK: Before we get out of that, can I just address this affidavit that was just read?

CHAIRMAN BASEHART: Sure.

VICE-CHAIRMAN KONYK: This affidavit was taken after the fact, obviously, but everybody already knew that there was an encroachment. The man was out there on September 19th inspecting this, but now we're being told he wasn't able to show up today because he's got an injury that prevents him from being here. But then we're told he's able to be reached on his cell phone.

So I really don't give this any credibility whatsoever. This man should have been here today; he should have been available for cross examination and he should have been available for questioning and I'm actually insulted that you even brought this forward.

MS. PODESTA: Well, if I may respond, he is having back problems and he is expecting a mobile home delivery. I mean, he was doing this as -- he's not being paid for his testimony today and I believe -- I went to great lengths to try to get him to be here this morning.

And I did speak with counsel before, so give it whatever weight you'd like to give it. But it was, believe me, a good faith effort on our part to try and get him here.

I do have a graphic. There was a question raised by Mr. Jacobs about whether you could fit the home on this lot, and I know Mr. Courtney is not an expert, but he does have a handmade graphic that he has made to physically show you how the home could be placed on the property in order to accommodate the setbacks and the issue that is raised by the carport structure.

CHAIRMAN BASEHART: Okay. Do you want to --

MS. PODESTA: He's not an expert, and I'm not, you know --

MR. COURTNEY: Fortunately, I did go to high school when they did teach architectural drawing as part of high school. So this is to scale as close as possible.

CHAIRMAN BASEHART: I don't even remember high school.

MR. COURTNEY: Basically what I have done, and I can make this closer if you need it, I've done a to-scale drawing of the existing home as it encroaches here.

I have taken a colored layout of it and by placing this within the lines, it's readily available that this home would fit without any problem, and this is what we suggested to the contractor at the time -- or I did -- that it could be turned and would fit very nicely.

MR. PUZZITIELLO: Aren't you crossing the property line of lot 2?

MR. COURTNEY: Pardon?

MR. PUZZITIELLO: You're encroaching on --

MR. COURTNEY: It's a double lot. It's a single piece of property.

MR. PUZZITIELLO: With a Unity of Title?

MR. COURTNEY: It's Unity of Title, that's correct. Okay.

VICE-CHAIRMAN KONYK: What's on that other lot?

MR. COURTNEY: There's an existing building. It's a garage type building on that. Okay.

I have also taken -- and the issue is an amenity. The basic home itself will fit, and I'm not trying to do anything to the Wilsons or anything like that because, you know, they're our neighbors, we have to live with them. They have a nice carport.

At the time the home was put up, as you see if the home were placed here, they would lose approximately 15% of their carport. It could have been modified at the time. They would have still had more than sufficient carport to accommodate a full size automobile and it would have fit on the lot even keeping the existing carport. It could have been modified at that time to fit the property, and there was no -- as far as I can see there was no reason why it could not have been placed on the property.

CHAIRMAN BASEHART: One thing that strikes me about that is, you know, potentially you could have changed the skew and kept the building, kept the trailer out of the setback area. That would put it the way you arranged it the first time.

MR. COURTNEY: Like this (indicating).

CHAIRMAN BASEHART: That would put the unit, you know, very, very close to the corner of the carport structure, the garage structure --

MR. COURTNEY: There's approximately over a 4-foot space there. There's more than enough space to pass through or whatever had to be done.

CHAIRMAN BASEHART: Okay. The main issue, though, is I assume that it's important to the Board of Directors of the park that there be a uniformity in the placement in the orientation of homes in the park. Looking at the aerial, there seems to be a continuity there.

MR. COURTNEY: No, if you look at the aerial,

the home directly across the street is askew on the property.

CHAIRMAN BASEHART: This bank of lots, though, all the units are basically parallel to each other --

MR. COURTNEY: Only because they're single lots. On double lots, almost every home on a double lot is set different than the continuity.

CHAIRMAN BASEHART: Okay.

MR. COURTNEY: If you look at the aerial view directly across the street from here on Highpoint, the home directly across the street is set askew.

Highpoint Drive is incorrect on that report. Highpoint Drive is the next street to the right. The street that's marked Highpoint Drive on that aerial is actually in Palm Beach Gardens, so that is an error on that report.

CHAIRMAN BASEHART: Okay.

MR. JACOBS: Mr. Chairman, I have one follow-up question I'd like to ask applicant's attorney.

CHAIRMAN BASEHART: All right. Go ahead.

MR. JACOBS: What would be the cost of moving the trailer and repositioning it in a manner which complies with the setback restrictions?

MR. TELEPMAN: You're asking the wrong guy once again, but I have with me here the contractor who moved the home. Maybe he can answer the question.

MR. BOYD: I'm Boyd from Boyd's Mobile Homes.

CHAIRMAN BASEHART: You've been sworn in?

MR. BOYD: Yes, sir.

CHAIRMAN BASEHART: Okay.

MR. BOYD: If they had it removed and put everything to gain three foot, they're probably looking at \$13,000 to \$16,000.

CHAIRMAN BASEHART: Okay.

MR. BOYD: And one other thing, if the way this gentleman was drawing this, if you turn it that way, you're going to get your three foot in the front but you're going to lose it in the back because as you swing it this way you're swinging it closer to the property line in the back. You're also swinging it toward the concrete building that's there.



And all the homes on that street going this way, all of them are on a slant uniform. There's none setting in there straight on the lots. So it's going to look worse than anything else.

CHAIRMAN BASEHART: Okay.

MR. TELEPMAN: Just to comment and this is just totally out of the blue, I don't know if there's some fire code prohibition about putting buildings too close together for safety reasons. But if he's talking about putting four feet between buildings, maybe somebody else might know that, but that seems like --

CHAIRMAN BASEHART: Maybe we could ask Mr. Sherpitis to come up and get to the microphone.

Is what he had suggested in reorienting that mobile home so that it was four feet or less from the concrete structure; would that be a code problem?

MR. SHERPITIS: Yes, it would. The State Fire Code requires I believe it's an eight or a 12 foot separation between all structures in a mobile home park like that.

CHAIRMAN BASEHART: Okay. Thank you.

MR. MacGILLIS: As part of the staff's report

--

MR. COURTNEY: Is that even a garage?

MR. MacGILLIS: Structures, sir, structures.

MR. COURTNEY: Any structure whether it be a garage, a carport or anything? Because I know most of them do not have that separation at their garages that are closer, but --

CHAIRMAN BASEHART: Well, maybe what we need to do is have the Code Enforcement division go down there and take a look at the separation between other structures in the park, and maybe there's a problem we need to correct here.

MR. SHERPITIS: Basically, what the problem is we're dealing with the State Fire Code which has received as I will call it nominal enforcement by both the Building Division and Code Enforcement. It's nothing that's actually within our ordinance to enforce.

CHAIRMAN BASEHART: Okay.

MR. COURTNEY: Also, when you said the homes

that are turned, the home directly to the north of this property -- if you looked at your own map again, that also is not in line with itself.

When he said every one on that street was in line, the one directly adjacent to it is not, also.

CHAIRMAN BASEHART: Okay.

MS. PODESTA: In conclusion I'd like to say that this is a substantial non-compliance, not a diminimus variance. Granting the variance would send the wrong message to those residents in the community who have gone to a great expense to try and comply with the setback requirements.

Granting the variance would condone the conduct of the Wilson's contractor who probably should have or could have avoided this whole situation had a proper survey and measurements been taken, and that it is the association's position that he should be made to correct that at his expense, not at the community's expense.

And in sum, we would like to say that no one is saying that this home is not nicer than the home that was there before, and nobody is trying to deprive the Wilsons of their home. It's just that the association does not believe that the Wilsons have established today -- satisfied the criteria for legally granting them the variance.

Thank you very much.

CHAIRMAN BASEHART: Thank you. Glenn?

MR. WICHINSKY: I'd like to ask a question of the attorney.

In your opening presentation you stressed the association's concern for uniformity in the community with setbacks and otherwise. Can you tell me, and outside from the legal standpoint why the association would want to address a 3-foot setback by having a trailer unit turned in a different direction than all of the other units which takes it out of uniformity?

I mean, I have a problem understanding the rationale behind why the association is so intent on making sure this meets the setback requirement with the result being that this one trailer out of how many that are there is the only one facing exactly left and

right?

MS. PODESTA: I believe Mr. Courtney testified that there are -- when you have two lots that are owned by the same party and Unity of Title was mentioned by another Board member, they are allowed under the Declaration and the restrictions that are being enforced today that the setback requirements are coming out of the Declaration for the association.

MR. WICHINSKY: But from a visual point of view, what sense does this make?

MS. PODESTA: Well, there are other homes that are situated on what we call double lots that are not angled -- not situated on the lot the same way, and they are next to ones that are angled. So it's not complete uniformity as far as that goes.

MR. WICHINSKY: Are they contiguous to this lot or --

MS. PODESTA: Mr. Courtney testified there's one directly to the north on the aerial photograph of this property that is not angled, that is situated parallel to the street.

VICE-CHAIRMAN KONYK: But the one on either side is angled?

MR. COURTNEY: No, on one side -- the north side --

VICE-CHAIRMAN KONYK: Oh, that's their carport?

MS. PODESTA: That is their carport. That is a garage structure actually that pre-existed their putting the home there. There were two structures actually.

I don't even know what the separation between the prior two structures were, maybe they were grandfathered in on the Fire Code, but they looked to be very close together.

VICE-CHAIRMAN KONYK: Okay. Thank you.

MS. PODESTA: Any other questions?

CHAIRMAN BASEHART: We indicated that we'd allow you a chance to respond to testimony.

MR. TELEPMAN: I'll be brief. You guys can look at this picture as easily as I can and see how the large majority of these homes are oriented, so I'm not

going to spend much more time on that.

And the bottom line is that the home cannot be reoriented without us violating yet another code and arguably a more important code in terms of health, safety and welfare. So I don't think that that's a reasonable suggestion.

If this isn't a diminimus violation, I don't know what is. Ms. Podesta made some comments in her opening remarks I'd just like to address.

Her initial remark is that she represented the residents of this community, and while we all understand the nature of associations in this county in particular, in your packet I believe there's a petition signed by I think it's 63 -- 53, sorry, residents of this community all supporting the Wilsons' request for a variance. So certainly Ms. Podesta doesn't represent all the residents of this community.

Yeah, it's a violation and it's 3.3 feet and I don't think there's much dispute about that, but that's why the zoning laws have variance procedures. That's why we're here today.

In situations where the strict enforcement of a zoning law would work an incredible hardship on somebody and where special circumstances exist to, you know, sort of look the other way I guess to put it in plain terms, that's what the variance laws are there for.

This is a particularly perfect example of where the variance law should be applied, and obviously staff wholeheartedly agrees.

Ms. Podesta commented that this hardship was created by the applicant. That is so far from the truth. Again, the contractor is here if you all want to ask him any questions.

The staff summary has already indicated quite clearly this applicant followed all steps and apparently even spoke to the folks out there in the community about what he was going to do, was told about the setbacks. There's no question that he knew about the setbacks. Everybody's supposed to have constructive knowledge of setbacks anyway. That's not the issue. That's why he relied upon this contractor,

he relied upon the County and unfortunately here we are today.

With respect to those other cases, obviously they're factually distinguishable and as you all know probably better than I, every variance request needs to be taken on its own particular facts, and again I think these facts cry out for the granting of the variance.

CHAIRMAN BASEHART: Thank you. One thing before we close the public hearing, is there anybody here that has not spoken that wishes to speak before we close the public hearing section?

(No response.)

CHAIRMAN BASEHART: Seeing none -- sir? Are you the applicant?

UNIDENTIFIED SPEAKER: No.

CHAIRMAN BASEHART: Come forward. You'd like to speak as well?

UNIDENTIFIED SPEAKER: Yeah.

CHAIRMAN BASEHART: After this gentleman.

MS. CARDONE: Mr. Chairman, may I just ask a question?

CHAIRMAN BASEHART: Yes.

MS. CARDONE: The attorney mentioned a petition. I don't have a copy of that. Were we provided a copy of a petition?

MR. CHEGUIS: It's with the case file. It was put in with the case file. I wasn't sure if the applicant would have brought that in. Thank you.

MR. TELEPMAN: I've got a copy if you --

VICE-CHAIRMAN KONYK: It's in the staff report.

MR. CHEGUIS: It's not in the report, but it's in our file.

CHAIRMAN BASEHART: All right. You might want to pass that around while these people --

Sir, could we have your name?

MR. ALLEY: I'm Louis Alley, A-L-L-E-Y.

CHAIRMAN BASEHART: And you've been sworn in?

MR. ALLEY: Yes, sir. I'm a neighbor of the Wilsons' and I've been on Highpoint Drive for 24 years. The people that owned the property, the original owners were named Shotts (phon). They passed away and it was left to their son who lived in Texas. And he would

come up once in a while, you know, to see how everything would go, and he asked me if I would look after the place because we were good friends. And I said, yeah, I'd be glad to.

I cut grass, I tried to keep the place up because that's what we should do is have a nice neighborhood. So the place was coming down to a point where the roof was caving in, and I called him and I said, "Bill, you know, you ought to try to sell that place," I said, "because it's coming down every day." It's leaking and I said it's in terrible shape.

And also there was people breaking in and the door would be open. I called the Sheriff and the Sheriff would come up and he said, "Did you go in?"

I said, "No, I didn't want to go in because I didn't know who was in there." He said you did the right thing.

But, anyway, he called Bill Shott in Texas and told him that the place was being broken into, and I mean on several occasions, and the garage was a real long garage and the kids were breaking into there, broke the glass out of it. I put new glass in, so I asked him to send me some padlocks, which he did. So I locked the doors, so he said, well, we'll go ahead and sell the place if you can.

I said, "Well, I'll try to sell it but I don't want a dime from you." So I had several people that wanted to buy it before the Wilsons, but I wanted to pick someone who was going to be a good neighbor.

So I talked to Ms. Wilson and her husband, and she explained to me that she was going to pull the old mobile home out of there and the mobile home had a basement. Mine has a basement, the only two in the park that has a basement.

She said, "I'm going to fill that basement with concrete and I'm going to have it all concreted over," and she said, "I'm going to put a nice mobile home in here because I want the place to look good." She said it would help the neighborhood and help the park, you know, in general. She was really enthusiastic about what she was going to do.

So that told me that she was the one that I

wanted to be my neighbor. So I called Bill myself in Texas and told him I had a couple that wanted to buy the place. And I said they'll make a good neighbor and they're really going to improve the looks of the place.

He said, "Well, you tell them to call me and we'll make the necessary agreement," which she and her husband did. So they sold it to the Wilsons, and they pulled the old mobile home out of there, filled in the hole and they just did a fantastic job.

Now, I can look down where the encroachment is; I can't see an encroachment. I can look from north to south and I can't see it. I go from south to north and I can't see it. I live next door. It doesn't bother me one bit and I can't see what's the big deal. Thank you.

CHAIRMAN BASEHART: Thank you. Any other member of the public that has not spoken that would like to say something?

Sir? Your name, please?

MR. CROAK: Richard Croak, 2037 Croton Lane, Hilltop Park.

CHAIRMAN BASEHART: And you've been sworn in?

MR. CROAK: Yeah. She asked -- she brought this around and asked about did the trailer look better? And I said, yeah, but this part down here about we ask you to grant them a variance was not on there, and they changed that around.

And also they're not on a concrete slab, they're supposed to be on a complete concrete slab underneath that trailer so you have hold-downs all around the trailer and all that.

CHAIRMAN BASEHART: The only thing that this Board is here for and the only thing that we're empowered to consider is the variance that's been requested.

Any other code requirements that may or may not have been met are not something this Board can deal with. All right.

There was one other gentleman?

MR. SILVERS: My name is Lester Silvers. I live at 2852 Tangerine Lane in Hilltop Gardens. I have

served three years in the past as vice-president of the association.

CHAIRMAN BASEHART: And you've been sworn in?

MR. SILVERS: Yes, I have. At other times there have been problems in the park in relationship to variances. Some were not granted; I don't know whether they were applied for or what, but those were years prior to when I became vice-president.

And during the time that I was vice-president we had problems and those were corrected before the people set the trailers, invested the thing and so on.

As to the present encroachment, I agree with what the gentleman said. I went down there yesterday and I stood and I sighted to the north and all I could see was the very peak of the roof sticking out, and I did the same thing, I went down to the very far north looking back south and I could only see the very peak of it sticking out.

Personally, I have no objections to this. This is not an encroachment of more than three feet. It's not a big problem in my opinion. Thank you.

CHAIRMAN BASEHART: Thank you. I think that was everybody that raised their hands.

Sir, you've already spoken.

MR. COURTNEY: Okay. I just have one more piece to submit. Okay.

CHAIRMAN BASEHART: All right. Well, we've gone this far. We'll let you and then we're going to close the public hearing.

MR. COURTNEY: I would like to submit this piece of paperwork if you want it. Right after we realized there was encroachment, I went down to the records department and got a copy of the permit and the original drawings submitted with the plans, and this is after it was approved, and this is a copy that I received from your records department here and Mr. Sherpitis.

And in this drawing it shows a six foot difference of space between the mobile home and the garage, and this was accepted by the Zoning Department at that time.



Also, there's a handwritten note on here that says the distance was wrong in this drawing, that it should be -- it was only 11 feet. It's noted in here and this is part of your records, so somebody at one time or another knew that this was in violation.

I got this from the records department and I would like to submit this.

CHAIRMAN BASEHART: Okay. We'll accept it into the record.

VICE-CHAIRMAN KONYK: You want to show that to counsel first?

CHAIRMAN BASEHART: Would you like to look at it?

MR. TELEPMAN: No.

CHAIRMAN BASEHART: Okay. Bunny, you want to just pass that around so we can all look at it?

Okay. We're going to close the public hearing session of this item, and we'll move onto comments or questions from members of the Board.

MR. MacGILLIS: I think staff is going to make a couple of comments.

CHAIRMAN BASEHART: Okay.

MR. MacGILLIS: I'm going to have Brian just go over some of the points that were brought up as far as the placement of the mobile home.

Just in general, the staff's findings are found on page four of your back-up material. Staff clearly finds that the applicant has met the seven criteria necessary to grant this variance. As previously stated here, this is a mobile home park that was approved in the 1960s.

The County has had a lot of problems with mobile homes specifically because of this reason, we don't have surveys that are submitted as part of the building permit process. It's very difficult for the inspector or even the contractor when they go out there to locate the actual setbacks because they're using the edge of pavement which sometimes is not even defined. They're using -- there's no curbs or anything to where they're actually measuring the setbacks from. But this Board has heard variances in the past similar to this where applicants got to the point where the mobile home

has been placed on the site and become a violation problem.

I mean, fortunately a lot of them are worked out between the HOA and Code Enforcement and the Building Division before they even get to this point, but as Brian will go up there -- I think Mr. Jacobs' questions regarding moving that mobile home along, staff has created graphics there to show you that it is our opinion that that mobile home, with the carport and with the existing accessory structures on there cannot be relocated to accommodate all the required setbacks of the district.

With that, I'll just let Brian quickly summarize the staff's final points on this item.

MR. CHEGUIS: Good morning. I'm Brian Cheguis. I'm project manager for BOA case 20000-047. When staff first received the application for variance, the initial thing that was considered was site design options.

MR. MacGILLIS: Brian, I'm sorry to interrupt. Can you take that mic because I don't think they can pick you up.

MR. CHEGUIS: Staff considered site design options immediately to see if there was any way to avoid having to go through variance and relocate it, which would nullify having to go for the variance.

As can be seen by this graphic, setbacks are in green, a 15 foot front setback, 6 foot side yard setbacks and 10 foot rear setback. If the trailer was to be rearranged to the northeast to meet the front setback and the side yard setback, it would then encroach into the rear setback, which is adjacent to a mobile home park within the City of Palm Beach Gardens and it also would conflict with the existing garage structure on the site.

I spoke with Mr. Courtney and Mr. Gainer about said design options, and Mr. Courtney, I also have some drafting background. I reoriented it the way he reoriented it --

CHAIRMAN BASEHART: Was yours in high school?

MR. CHEGUIS: No, it was in college. And he's correct, when reoriented the way he had mentioned to

me, it does meet the setback requirements, however it does conflict with the existing site condition with the structure that's already on there and it can also in effect cause the reduction of covered storage space. So the site design options were very limited.

Upon inspection of the site visit, I recognized that there were no safety or aesthetic considerations per se. There's no conflict with the traffic on the road. It's well out of the way of that. We're dealing with a small, approximately 12 square foot corner of the trailer, not the entire front. We're dealing with this triangle here (indicating).

And as was put on record, many residents signed a petition which spoke to the aesthetics of it. And upon my site inspection, I agree, there's no objectionable appearance. There's landscaping in the front as well.

In fact, until I measured it with a measuring tape, the encroachment is virtually undetectable. Three feet is three feet. I'm not trying to take away from the encroachment, but it's not significant visually.

And the last point is that the variance is specific to the structure as it exists now. The conditions if approved would apply to the variance and would restrict it to the existing home as it now stands. If any changes are made, we would then nullify the variance and the park's schedule of Protective Covenants, Restrictions and Reservations would then be reapplied.

CHAIRMAN BASEHART: Okay.

VICE-CHAIRMAN KONYK: I always have a difficult time when we have a variance -- a minimal variance like this that tends to create such emotion in a community.

In the scheme of things it just seems so trivial and every day people are killed in car accidents and planes crash, and I look at this little variance and I'm just appalled that when you look at it, it's a triangular portion of the trailer, and a portion of it is 3 feet, 3 inches encroachment, not even the whole portion of it is encroaching three feet.

MR. CHEGUIS: That's correct.

VICE-CHAIRMAN KONYK: I don't even know what the width of the area that is actually the three feet encroachment. I understand that the homeowners association or the mobile home association has their rules and regulations, but that's not a concern of this Board. We're only dealing with what's required by zoning.

After hearing everything that we've heard today, I feel that I am prepared to make a motion in support of BOA2000-047 supporting the variance with the three conditions recommended by staff and with the staff report becoming part of the record.

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

MS. STUMBERGER: Second.

CHAIRMAN BASEHART: Second by Ms. Stumberger. Any further discussion by members of the Board?

(No response.)

CHAIRMAN BASEHART: Seeing none --

MS. CARDONE: Mr. Chairman, I just have a comment to make.

I am going to support Ms. Konyk's motion, but I do want to say to the homeowners association that I do understand that you have rules and regulations, and when people go into any kind of homeowners association or condominium association, they know this going in, and so I do just want to say that not to thumb our nose at those rules and regulations because I do think that they are important and I think that's worth saying. We respect that very much.

There has been a mistake in this particular property, and to correct an error that was made and cause undue hardship, that I don't find reasonable. We must base our decision upon these seven criteria. That is our job and that's what we are charged to do. And if the criteria has been met, then we are responsible to that.

So I just wanted to make those comments to you, that I do respect that you have an association to run.

CHAIRMAN BASEHART: Thank you. I'm going to

support the motion as well. I'd just like to say I think the requested variance here is extremely minimal, and I think that although there may be potentially a solution by reorienting the building, I think we'd be looking at other variances in that case which would be, I think, more severe in nature than what's being requested here.

I really think that this situation -- to deny this variance would be like cutting somebody's arm off because they have a hangnail.

I think to reorient the building would be more damaging to the aesthetics of the park than to allow this encroachment, and I think a big factor here is that the applicant did everything right and stuff like this happens.

But a permit was applied for, a permit was issued, inspections were made. It was -- the county inspector couldn't detect that there was an encroachment in the routine inspection of the site. Maybe it would be wise if the County started requiring surveys for the placement of mobile homes. Maybe the thing could have been caught that way.

I think under the circumstances I agree totally with the staff report and recommendation, and I think clearly all the criteria for the granting of variances have been met.

Anybody else have anything? Okay. We'll take a vote.

MR. PUZZITIELLO: Mr. Chairman, I just suggest that the property owners association might want to consider changing their rules a little bit to require some sort of approval process before allowing trailers being changed so they can avoid this.

CHAIRMAN BASEHART: Good point. Okay. All those in favor of the motion indicate by saying aye?

BOARD: Aye.

CHAIRMAN BASEHART: Opposed?

(No response.)

CHAIRMAN BASEHART: Show the motion passes unanimously.

#### **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 BUILDING IN THE SAME DISTRICT:

**YES.** Special circumstances exist that are peculiar to the building that are not applicable to other structures or buildings in the same district. The applicant was in the process of replacing an older mobile home with a newer and larger mobile home. Prior to final placement of the new mobile home on the site, measurements were taken by the contractor and the property owner was informed that the mobile home would comply with all required setbacks. Final inspection was conducted by the Building Division and the setback encroachment was not discovered due to the lack of a survey and the existing paving conditions where the setback is typically measured from. A certificate of completion was issued for the mobile home on January 14, 2000. A complaint lodged by a neighbor living in the vicinity of the property identified the encroachment, which was subsequently investigated by a Building Division, Field Supervisor. The Supervisor was unable to determine if an encroachment into the front setback existed, (due to the lack of an official survey and to the existing paving and right-of-way conditions). Upon completion of

a new survey it was determined that an encroachment of 3.3 feet into the front setback existed. Code Enforcement was notified and a violation (C0003130012) was issued for the non-conforming encroachment of the mobile home into the front setback upon a follow-up inspection on July 10, 2000.

Informal research by staff of manufacturers and retailers of mobile homes revealed that many newer mobile homes are larger in width and length. The site development regulations that govern mobile home placement and orientation were developed specific to the Mobile Home Park prior to the 1973 Zoning Code and act as the overriding guidelines. Trailers constructed in the late fifties and early sixties were of a size that easily conformed to the setback requirements prescribed for the lots with this MHP, however the longer mobile home cannot be placed on the lot and comply with the established setbacks without interfering with an existing garage structure.

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

**NO.** The applicant has indicated that the contractor hired to move the newer trailer onto the lot took appropriate siting measurements to ensure the mobile home was properly placed. The applicant was informed that the new trailer would conform to the applicable setbacks. Necessary safeguards were taken by the applicant to ensure the new mobile home met the required Building Division property development regulations. Improper siting of the mobile home was not realized before the issuance of a final Certificate of Occupancy. The applicant continued with other site development work which included cementing

a front porch and paving of a driveway. A complaint by another property owner (and subsequent completion of a survey) revealed the encroachment which led to issuance of a code violation for the property. The applicant was cited by Code Enforcement and subsequently applied to the Board of Adjustment for variance relief to allow the mobile home to remain in its current location.

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

**NO.** Granting the variance would **not** confer special privileges upon the applicant. Replacing older mobile homes within this particular development with larger modern structures will be problematic given the combination of existing setback and orientation requirements specified within the regulating Schedule of Protective Covenant, Restrictions and Reservations on Lots in Hilltop Park document and the typical size of lots (85 feet by 50.81 feet). The encroachment is minimal for this interior lot and does not interfere with the adjacent roadway or conflict with the general aesthetics of the development.

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.** Current ULDC setback requirements are not applicable to this particular Mobile Home Park, since the park was approved and



developed under the 1957 Zoning Code. The applicable regulations found within the Schedule of Protective Covenant, Restrictions and Reservations on Lots in Hilltop Park document were originally approved in 1958 at a time when mobile homes were typically smaller in size. Site design options are limited for the applicant as only one mobile home can be placed on the lot and placement of the structure must meet all required setbacks. Regulations that guide site development for lots located in Hilltop Park require orientation of homes to be consistent with neighboring lots, while simultaneously meeting setback requirements. In this particular instance the trailer cannot meet all the setback requirements without interfering with an existing garage structure due to the size of the manufactured home and carport roof. Moving the trailer back to meet the front yard setback would infringe upon the rear yard setback. The rear yard boundary of this lot is also the mobile home park development boundary and is adjacent to Hilltop Gardens Trailer Park in the City of Palm Beach Gardens. Reorienting the mobile home is not possible without interfering with an existing single story garage structure located along the northern side of the mobile home, and with site development work carried out subsequent to final placement of the trailer including paving and cementing a porch.

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

**YES.** The variance, if granted, is the minimum variance that will allow a reasonable use of the mobile home lot. There is no immediate visual impact to the neighboring properties. Issuance of a Certificate of

Completion set in motion further site work (front porch, driveway paving) which would be impacted if the existing mobile home were to be moved from the current location. Also, relocating the trailer would cause encroachment into the required rear setback. The rear property line borders another jurisdiction's boundary and a trailer home park. The encroachment is minimal and poses no adverse impacts to roadway safety or adverse visual impact based on existing site conditions of various other sites within 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 current ULDC setback regulation of a twenty (20) foot required setback is not applicable to this particular Mobile Home Park Development, since the park was approved in 1960, pursuant to the 1957 Zoning Code. The regulations established by a Site Development Restrictive Covenant Document were consistent with the 1957 zoning requirements and were created as part of the original petition for development approval. The purpose of the restrictive covenant document was to attempt to maintain the uniformity and aesthetic quality of lots located within the development.

The objective of the front setback requirement is to ensure uniformity from the street and to protect adjacent property owners. The mobile home is not posing any safety concerns regarding use of the adjacent roadway (High Point Drive). The manufactured home is not posing any aesthetic problems with existing conditions on neighboring properties.

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

**NO.** Granting of the variance will **not** be injurious to the surrounding area or the public welfare. The applicant has produced a signed petition from neighboring residents in support of allowing the existing mobile home to remain in its current location. Residents appear to be in support of variance relief for this particular property. A petition with thirty-six (36) signatures was included in the application documentation (Exhibit #22) that indicates support for the newly relocated mobile home. Replacing the older structure with a newer model manufactured home is an improvement to the neighboring properties and will contribute to better visual quality and increased property values.

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

The requirement that the Base Building Line for the subject property be thirty (30) feet from the centerline of High Point Drive is hereby waived. Said Base Building Line is hereby established at the existing west right-of-way line, being the east property line of the subject lots as platted.

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

1. This variance is to be applied to the manufactured home currently located on the subject property located at 9201 High Point Drive, Lake Park, Florida within Hilltop Park Mobile Home Park, Block 1, Lot #2. (As per BOA Exhibit 10-Survey). Upon relocation or replacement of the current manufactured home this variance will then become null and void, and all applicable regulations within Hilltop Park's Schedule of Protective Covenant,

Restrictions and Reservations on Lots in Hilltop Park document shall apply. **(ONGOING)**

2. By September 21, 2001 the property owner/applicant shall present to Palm Beach County Building Division, Inspection Section with a copy of the approved result letter for the setback variance in order for the Certificate of Completion to be issued for the mobile home (Building Permit #99031877). **(DATE: MONITORING/BUILDING - INSPECTIONS - C/O)**
  
3. The front setback for the mobile home located on the subject property located at 9201 High Point Drive, Lake Park, Florida within Hilltop Park Mobile Home Park, Block 1, Lot #2. (As per BOA Exhibit 10 - Survey), is hereby established at 11.7 feet. **(ONGOING)**

CHAIRMAN BASEHART: As we get to the next item, I'd like to ask a question.

Mr. Ciklin's application here is on behalf of property that I was involved in as the zoning agent for. I was the one that prepared and represented the application to rezone the property from agricultural to industrial.

Under the circumstances, I'm wondering should I recuse myself. I've completed my job. I'm no longer employed by the applicant. I finished with the job, but I did do the zoning application.

MS. BEEBE: Do you anticipate any future employment?

CHAIRMAN BASEHART: I don't know. I think under the circumstances, probably the best thing to do would be to get one of your little forms and recuse myself, and I'll turn the meeting over to the vice-chair.

VICE-CHAIRMAN KONYK: The petition is SD-98 and no one here from the public to speak, but the people that are going to speak we'll go ahead and swear you in at the beginning.

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

VICE-CHAIRMAN KONYK: If staff would introduce the item.

MR. CUFFE: This is agenda Item SD-98, subdivision variance request. It's the petition of Pike Investments, Incorporated, and Capital Resources Group, Ltd. requesting a variance from the requirement that access to commercial or industrial subdivision lots be by an 80 foot wide local commercial street constructed to non-plan collector street standards, and to allow instead access by an existing 30 ft. wide right-of-way.

The requirements are set forth in the Unified Land Development Code, Section 8.22.A.2 and Chart 8.22-2. The property is located approximately 1,000 feet east of Pike Road on the north side of 7th Place North in the IL Zoning District.

VICE-CHAIRMAN KONYK: Okay. Applicant?

MR. CIKLIN: Good morning. My name is Alan Ciklin and I represent the Weitz Companies and Hudson Sparling. It's a little different than you see in the application. Those are companies that own this property, but that's who it is.

Both companies, as you may know, by their reputation are local construction companies well known for good work and good corporate citizenship.

Stuart Paul (phon.) is here representing Weitz; George Sparling is here representing Hudson Sparling and Jim Noth is the professional land surveyor that's going to give you a little professional rundown of what

we're talking about.

What we're asking for as Mr. Cuffe had indicated is that the subdivision regulations require an 80 foot right-of-way for an industrial subdivision. This property which is 10 acres, and Mr. Noth will tell you a little more about it in a moment, is served by an existing 30 foot right-of-way, which runs from Pike Road to the subject site.

What we're asking for is a variance to allow the 30 foot right-of-way to provide access rather than the required 80 feet. As Mr. Noth will show you, the property dead-ends at the Turnpike. It only services two other properties, maybe, and that 30 feet is more than adequate, and that 80 feet would be a real hardship for these particular property owners.

With that, Jim, if you would step forward and take the microphone and maybe explain to everybody where this is located and what we're talking about.

MR. NOTH: My name is Jim Noth. I'm with Crossroads Engineering & Surveying. We are the engineers and surveyors on the project. What I've done is I took this graphic and overlaid it on the aerial photograph so we can try to give you a little bit of an orientation. I apologize that the colors aren't more pronounced. But our project is located -- we have 10 acres -- is located on the north side at 7th Place North.

In terms of orientation on the aerial, this is Belvedere Road and it crosses the Turnpike there. This is the Florida's Turnpike and this is Southern Boulevard on the south and then Pike Road on our west. As most of you are probably aware, we have an interchange currently under construction at Southern Boulevard. So the 7th Place currently is an unimproved dirt road that terminates at the property and does not cross the Turnpike.

In terms of the orientation of our property and the existing rights-of-way, again here is our project site comprising ten acres. Our neighbor to the east is Palm Beach County Animal Regulation which comes down to 7th Place North and is about 35 feet away from the Turnpike right-of-way. We then have two properties

that separate us from Pike Road, and one of which has dedicated an additional 25 feet of right-of-way. As Alan will explain, that was part of another zoning application that they have.

On the south side we have the Town of Palm Beach owns the property here and then a Lawrence Johnson owns several properties that are surrounding the Turnpike and come over here.

The right-of-way that we have right now is 30 feet of right-of-way that goes from Pike Road over to the Turnpike, and then along that in order to make 80 foot of right-of-way that's being requested by the county, we would need to have additional dedications by the Town of Palm Beach, by Lawrence Johnson and by the Culpeppers.

With that I'll turn it back to you.

MR. CIKLIN: Thank you, Jim.

If I might now, I'd like to go through the criteria. I think the graphics and the explanation by Mr. Noth probably describe the criteria, but if I could highlight those a moment and I'll try to go as quickly as I can.

The first criteria, of course, is the uniqueness. And I think you can see from this graphic that's before you that a couple of unique features that exist. One is that the Florida Turnpike is here and 7th Place North I think it is safe to say will never go past the Florida Turnpike. It dead-ends; it's not going any place. So one of the unique characteristics is the dead-end of 7th Place North.

The other unique characteristic is that 7th Place only services a few properties. Someday Lawrence Johnson I trust will be served by this. That's an agricultural piece of property now. I don't know when that will be.

Valerie Zammit (phon.), this property, a portion of it, is presently used for industrial and access to 7th Place North. But as part of the zoning application which included this parcel and this parcel (indicating), there's a condition of approval that said that when this parcel is developed, its access would be

from Belvedere. It's a little unclear whether that means all access will be from Belvedere or this property would be from Belvedere, and this would remain -- have access from 7th. But in any event, Valerie Zammit might be another continual user of 7th Place.

The Culpepper property accesses Pike Road and as you can see from this green line, it reflects right-of-way dedications required by the County. So it's safe to say that their access will always be from Pike Road.

So the two unique features are one, it dead-ends which is, of course, a key one and I think it's probably not disputable. And the other one is very limited service requirements on this particular piece of property.

The second criteria, of course, is that it not be self-created. I think that the Turnpike location certainly reflects something that wasn't created by this applicant as is the limited service of perhaps two other property owners.

The other not self-created hardship problem is that it's almost -- nothing's impossible with money, of course, but it's highly unlikely that 80 feet of right-of-way could be required without a lot of problem.

Mr. Johnson, of course, has no reason to give additional right-of-way. The Town of Palm Beach, we all know the Town of Palm Beach, they don't give away anything for free, and the Culpeppers would be unlikely to do that. Their property isn't very wide, plus their access is off of Pike, so they don't need to do it.

The other thing that could happen, of course, is the County could come in and condemn that additional right-of-way. But that would in my humble opinion be a waste of money because why would you want an 80 foot right-of-way at this location to service just two pieces of property.

So we believe that these circumstances, the dead-end, the limited service and the unavailability of right-of-way are not self-created. Those would have existed had Hudson Sparling and Weitz bought this property or not.

The next criteria, of course, is no special



privilege, and this is sort of an interesting point. The reason we're here is that this is a ten acre site that went through the zoning approval and was approved for some limited building coverage, and a contractor storage yard for Weitz and Hudson Sparling.

It's a ten acre site and it has the square footage assigned to it. The plan is now which is a sort of a change of plans. It wasn't earlier anticipated at the beginning to make it two five-acre sites, one Hudson Sparling, the other one Weitz. There will be no increase in the usage as a result of this subdivision of property.

What they're using it for, what they could use it for as ten acres they will use it for as two five acre parcels. So there won't be any more traffic, there won't be any more trucks, there won't be any more activity. We can do exactly with ten acres as we hopefully will be able to do with two five acre parcels.

So I guess the point here is that there's no special privilege. The other thing is that Valerie Zammit accesses the property from here, and so it's not just us. It's Valerie Zammit as well. There's some who says well, this will create a precedent. Some day Lawrence Johnson may be in the same situation. I don't know.

MR. PUZZITIELLO: Lawrence Johnson, is that a land-locked triangle?

MR. CIKLIN: I think his access is off of 7th Place North, too. I'm not -- do you think that's true, Jim?

MR. NOTH: Yes, his southern boundary is now the Turnpike right-of-way where the interchange is.

MR. CIKLIN: He may be that other property. The undue hardship is, I hope obvious, requiring an 80 foot right-of-way is -- I mean, again, nothing is impossible but it's nearly impossible or the expense would be extraordinary and for only serving two other properties that goes nowhere. We think that it's undue and unnecessary.

It is a minimum variance, what we're seeking is to use the existing 30 foot right-of-way. However,

like Ms. Zammit here who dedicated 20 additional or 25 feet, this project will be dedicating 25 feet to the County for, I guess, for what purpose who knows. I suspect that they want it and we agreed during the zoning or Mr. Basehart agreed to it during the zoning process, and --

VICE-CHAIRMAN KONYK: He wisely recused himself.

MR. CIKLIN: Yeah, I was going to answer that question about whether he'd ever be hired again, but I -- only kidding. And by the way, I want you to know Mr. Basehart not only doesn't remember high school, he doesn't remember college, either.

VICE-CHAIRMAN KONYK: I heard he didn't go.

MR. CIKLIN: Well, he doesn't remember whether he went or not.

This is the minimum variance, as I mentioned.

The next criteria is the code's intent. When we went through the zoning process, and as many of you know, there's a staff report that's issued and is in conjunction with everyone from the Zoning Department to land development. And in that staff report it indicates that in support of the rezoning to light industrial was that it met all the code requirements. And again, there's not going to be any greater usage with one ten as there would be with two five's.

And again, the real code's intent is, is there adequate road capacity and is 30 feet adequate to service the properties. That's what codes are all about, I think, and clearly that's the case because of the limited usage.

The last criteria is that the public welfare's best -- is it best served by this? And we think actually by granting the variance, it's best served; it allows free trade, if you will, of two five acre parcels for the two companies to do their own thing on their parcels, and it doesn't necessitate an unnecessary expense to try to acquire 80 foot of right-of-way for two additional users which is probably impossible.

One of the things before I reach the -- well,

the conclusion is that I think we meet all the criteria. This is -- I would like to believe not a big deal.

Two things that I would want to correct in the County's staff report that were sort of listed as reasons for not granting this and recommended denial. One is that the issue is raised that the development of this site will create non-conformities because the lake is in a certain position and if you have two five acre sites, you have different setback requirements than you would with a ten acre site.

The development of this site as two five acre sites will meet all setback requirements. The lake will be relocated; the buildings will meet the setback requirements. We have no plans whatsoever to come back and say, oh, gee, thanks for the variance and now we need some more variances because we can't meet setback requirements. That's not the intention.

The other part of the staff report that I think needs an explanation is, and again, this is perhaps my fault for not conveying it to Mr. Cuffe, is that he indicates in his staff report that the project is required by the zoning conditions to dedicate 25 feet of right-of-way and to pave 7th Place North from Pike Road to the dead-end of the Florida Turnpike, and the point in the staff report was that this Board can't grant a variance from those conditions.

My point is we're not asking for a variance from those conditions. We will be dedicating the 25 feet of right-of-way, and you'll probably think this is extravagant in itself, they will be paving Pike Road through the dead-end which is by estimate somewhere between \$200,000 and \$250,000. So there will be paved access to this site.

That's our presentation. If you have any questions, both Mr. Paul from Weitz and George Sparling from Hudson Sparling are here. If you would like to know about the operational features of the road, they can certainly tell you about that, but I like to believe we meet the criteria and hopefully you agree, too.

If you have any questions I'll answer them. If

there's anything technical, Mr. Noth is in charge of that.

VICE-CHAIRMAN KONYK: I just have one question. The green line, that's additional right-of-way?

MR. CIKLIN: Yes.

VICE-CHAIRMAN KONYK: So what's the existing?

MR. CIKLIN: The existing is best shown here (indicating).

VICE-CHAIRMAN KONYK: How many feet is that?

MR. CIKLIN: That's 30.

VICE-CHAIRMAN KONYK: Then the additional is?

MR. CIKLIN: That's an additional 25 which would make --

VICE-CHAIRMAN KONYK: So we're up to 55?

MR. CIKLIN: Well, no, it's -- if you take half -- well, yes, total. But half of it is 40 to be -- from the center line would be 15 plus 25 --

VICE-CHAIRMAN KONYK: I understand.

MR. CIKLIN: -- and then the other side would be the additional 40 if you ever did it.

VICE-CHAIRMAN KONYK: Okay. So really the Culpeppers' property probably wouldn't be -- I mean, how wide is their property to begin with?

MR. CIKLIN: I'm guessing -- well, this dimension is 330. I'm guessing maybe 150.

VICE-CHAIRMAN KONYK: So you have to take the 25 feet that you've already got on the other side on the project site, plus then add another 30 feet, 25 feet?

MR. CIKLIN: Well, what you would do would be you would have the 30 feet here, and if Culpepper was inclined to dedicate, this green line would be extended along Culpepper.

VICE-CHAIRMAN KONYK: Then where would you get the other 25 feet from?

MR. CIKLIN: From the Town of Palm Beach. Well, we wouldn't get it, but we would ask for it.

VICE-CHAIRMAN KONYK: I understand, right.

MR. CIKLIN: And the same scenario with Lawrence Johnson. You have adequate right-of-way on this side with this dedication and this proposed dedication, but then you would have to go to Lawrence

Johnson and say, you know, how about coughing up another 25 feet? And Lawrence Johnson, you know, would probably after he stopped laughing would say, you know, if you have a checkbook, no problem. And then of course you get into the situation --

VICE-CHAIRMAN KONYK: Does Lawrence Johnson or the Town of Palm Beach have any impact or input into this variance request? Have they said anything?

MR. CIKLIN: Not that I know of. The Town of Palm Beach also has access from Pike Road, so they would have no -- if they needed access from 7th Place, they might say, well, yeah, we would do that. But I think that they'll eventually -- I don't even know what they use this for. I think it may be vegetative scraps or something like that; I'm not sure.

VICE-CHAIRMAN KONYK: Garbage out of Palm Beach.

MR. CIKLIN: Well, it's vegetative scraps in Palm Beach.

VICE-CHAIRMAN KONYK: Thank you.

MR. PUZZITIELLO: The only way -- (inaudible)

--

COURT REPORTER: Wait. I'm sorry, you have to use your microphone.

MR. PUZZITIELLO: The only way for the County to get anything from Lawrence Johnson or the Town of Palm Beach is if they try to rezone that property.

VICE-CHAIRMAN KONYK: Right. Okay.

Oh, I'm the chair. I forgot. Does anybody else have any questions?

Staff?

MR. CUFFE: Staff would like to actually clarify one of the statements before we get into the staff report itself. One of the statements Mr. Ciklin made about the question of the -- about the question of the voluntary or the commitment of the Board of County Commissioners' approval -- condition of approval requiring that additional 25 feet of right-of-way.

The staff comments noted strictly that since that required additional right-of-way was a condition of Board approval and the Board of Adjustment has no authority to grant relief from the condition, the

variance request, which was to use a 30 foot of right-of-way is a greater variance than what could be granted anyway because the minimum right-of-way that would be dealt with here would be a 55 foot right-of-way through the applicant's property and the adjoining property.

VICE-CHAIRMAN KONYK: So if you can get that 25

--

MR. CUFFE: So it's just a question of a minimum variance, the request was to use a 30 foot right-of-way, strictly use a 30 foot right-of-way not recognizing that there was additional right-of-way required anyway. That's the context in which that statement was made.

VICE-CHAIRMAN KONYK: Okay. So what is the request? Are they requesting to use 55 feet or are they requesting to use 30?

MR. CUFFE: The request that was submitted was to use a 30 foot right-of-way to allow subdivision of the property on the existing 30 foot right-of-way. That was it.

VICE-CHAIRMAN KONYK: Okay.

MS. STUMBERGER: Madam Chair, while it's fresh in my mind because I'm pretty new here, Mr. Ciklin, could you just address that for me because I'm not too sure I --

MR. CIKLIN: Well, I'm not too sure, either. I'm not trying to hide anything.

This 25 feet has not been dedicated yet, so our request was to use the existing 30 feet instead of having it being 80 feet. However, Mr. Cuffe, I guess, is correct. When we dedicate the additional 25 feet, that will be 55, so we're really seeking less of a variance after the dedication.

VICE-CHAIRMAN KONYK: Can this be corrected to reflect that or is it too late?

MR. PUZZITIELLO: You will be dedicating that 25 feet in the platting process?

MR. CIKLIN: That's correct.

MR. PUZZITIELLO: So by the time it's done you will have --

MR. CIKLIN: But right now we need the variance for the 50, but we'll dedicate it during platting and

then it will be --

VICE-CHAIRMAN KONYK: Can that be a condition if it was approved? It doesn't matter?

MR. CUFFE: It doesn't matter. It's academic. It's only a question of the interpretation.

VICE-CHAIRMAN KONYK: Mr. Ciklin --

MR. CUFFE: -- of what the request was for, what the request was for the use of a 30 foot right-of-way without recognizing the obligation that they're under to expand that anyway.

MR. CIKLIN: The other thing just for clarification, Mr. Noth just whispered in my ear, we will need the variance up to this point anyway. And we recognize what he said. I don't think it's a real issue.

MS. STUMBERGER: What about the property to the west?

MR. CIKLIN: The property to the west? There? The Zammit (indicating)? Zammit is in use. They're, I think a --

MR. PUZZITIELLO: Auto salvage yard.

MR. CIKLIN: Auto salvage. They access already off of 7th Place.

MR. PUZZITIELLO: That 25 feet has already been dedicated?

MR. CIKLIN: Yes.

MR. CUFFE: That is already a 55 feet of right-of-way at that point.

MR. CIKLIN: That's correct.

MR. CUFFE: And the point was that the request was to use the 30 foot right-of-way without recognizing the existing and required standard right-of-way conditions, anyway.

So it's a request for more variance, more relief than was necessary or possible for that matter. So the question of whether this was a minimum variance or not --

VICE-CHAIRMAN KONYK: That can be -- okay.

MR. NOTH: If I could step in here, I guess what we're trying -- the bottom line is at this point is we have two properties that we don't control, Culpepper and the Town of Palm Beach, there's only 30

feet of right-of-way.

So we've been asked in order to have a subdivision back here, we're being told that we have to have an 80 foot corridor all the way through in order to access that subdivision. What we're seeking relief from is we're saying we're constrained here down to 30 foot. That's the narrowest spot that we have and that's what we're asking for is to be able to build a road within this 30 foot right-of-way that would access that property.

VICE-CHAIRMAN KONYK: So really the variance that you're really asking for is an existing 30 foot right-of-way on the Culpepper property and an existing, plus an additional proposed through this process of another 25 feet on this subject property and Zammit or whatever that is.

MR. CIKLIN: Right. Actually, the variance request will end up being less after we dedicate and if you take into consideration Zammit, yes.

VICE-CHAIRMAN KONYK: But you're not under the allusion that you're going to get a variance today that's going to supersede the requirement of dedicating that additional 25 feet of right-of-way at --

MR. CIKLIN: No, no.

VICE-CHAIRMAN KONYK: -- some date in the future?

MR. CIKLIN: No. We have that commitment. We are going to dedicate that right-of-way through the platting process and we will be constructing Pike Road, approximately 1,000 feet to the site.

MR. CUFFE: And as long as that's acknowledged, we don't have a problem with that.

VICE-CHAIRMAN KONYK: And it's on the record. Okay. So we understand that the 30 feet of right-of-way will be on the Culpepper property and the eventual right-of-way on -- I'm sorry, I can't see that lady's name -- Valerie and the project site will ultimately be 55 feet.

MR. CIKLIN: Right. It will be 30 feet to this point and then it will lessen by 25 feet because of --

VICE-CHAIRMAN KONYK: Okay.

MR. CUFFE: Okay. Now as to the staff report,



as detailed in the staff report, the staff does not support this variance request. Staff and the engineering department is recommending denial of the variance request based on the applicant's failure to demonstrate substantial conformance with the standards for granting of the variance.

As far as uniqueness goes, and keeping in mind that this is a variance request to allow -- from the subdivision regulations, not for development of the property. The property is no different from any other lots that are on existing non-conforming streets that were established prior to the county's subdivision regulations. So as far as uniqueness goes, there is nothing unique about this situation from the standpoint of subdividing the property.

As far as it being a self-created condition, staff feels that it was a self-created condition in that the applicants purchased in 1998, the applicants purchased an existing 10 acre property in the AR zoning district with access on the existing road that met -- didn't meet the county right-of-way, nor the construction standards for subdivision access.

And subsequent to the purchase the applicants received a rezoning approval from AR to IL zoning. The rezoning justification statement submitted by the applicant specifically stated that the proposed project does not include any intent to subdivide the subject property. And in fact, subsequent to that, the final subdivision plan approval submitted to Development Review Committee, which was Petition, Zoning Petition 98-062, and approved October 27, 1999, showed the proposed development as a single 10 acre lot.

And in fact, at that time the justification statement for that submittal under subdivision, even though it wasn't being proposed to be subdivided, stated that the property met all the subdivision, all the regulations of Article 8 for subdivision.

So it appears that even with a -- essentially that the applicants were well aware of this situation right from the very beginning, and they're now coming in to subdivide and saying that it was not a self-created condition.

As far as undue hardship, and there again considering that they're asking for subdivision approval and not development approval, denial of this variance would still allow the applicants to develop the property in full accordance with the rezoning and the site plan approvals that have already been obtained. And it's only a question of whether or not we can subdivide the property.

The desire to subdivide the property creates an additional burden on the applicants, and that additional burden being -- number one being that the access requirements to new lots created by subdivision is required to be met.

And consequently, the Engineering Department does not feel that they've demonstrated conformance with the standards for granting of a variance from the subdivision regulations.

VICE-CHAIRMAN KONYK: So this isn't a subdivision now. You're going forward to make it a subdivision, and what's the purpose of that? Explain it to me.

MR. CIKLIN: Originally, and it wasn't that -- the original intention was to develop it as 10 acres and that it would be shared by Weitz and Hudson Sparling. I guess business plans have changed and they now would like to have two five acre industrial parcels rather than one ten.

But again, the development would be the same, it won't increase the square footage and won't increase parking or access or anything else. So it's either two fives or one ten, and that's really sort of the common sense point here.

MR. PUZZITIELLO: The property is going to be used the same way, either way; the only difference is that it is going to be a joint ownership or two separate ownerships, we're still going to have the same amount of traffic. We're going to still have the same burden on the roads, on water and sewer, everything else.

MR. CIKLIN: Exactly right.

VICE-CHAIRMAN KONYK: I have a question for staff when you're done. Are you done?

COMMISSIONER PUZZITIELLO: Yes.

VICE-CHAIRMAN KONYK: If this was granted, this variance, would there be conditions that you would want to impose?

MR. CUFFE: No.

VICE-CHAIRMAN KONYK: Okay. Just wondering.

I mean, such as they could only use it for the purposes that it's being used for now or anything like that?

MR. CUFFE: That would be something that would be determined by their development order.

VICE-CHAIRMAN KONYK: Okay.

MS. STUMBERGER: Just one question for Alan just so I can get it clear in my mind. The ten acres was originally ten, you want to subdivide it, we're going to put an imaginary line down the middle. Whatever you were going to do to either side, nothing is changing. It's just an imaginary line down the middle?

MR. CIKLIN: That's correct.

MS. STUMBERGER: Right?

MR. CIKLIN: Yes. A hundred percent of the development on ten acres will equal the same 100 percent on two fives.

MR. WICHINSKY: Madam Chair, I'm ready to make a motion.

VICE-CHAIRMAN KONYK: Okay.

MR. WICHINSKY: I'd like to move for approval of SD-98 based upon the discussions of this Board and the meeting of requirements by the applicant, and there were no conditions so I can't condition it.

VICE-CHAIRMAN KONYK: We have a motion by Mr. Wichinsky.

MR. PUZZITIELLO: Second.

VICE-CHAIRMAN KONYK: Second by Mr. Puzzitiello. Any discussion? All those in favor?

BOARD: Aye.

VICE-CHAIRMAN KONYK: Opposed?

(No response.)

VICE-CHAIRMAN KONYK: Motion carries unanimously.

MR. CIKLIN: Thank you.

VICE-CHAIRMAN KONYK: Where's our chairman? He can return. Anybody want to get him?

CHAIRMAN BASEHART: I was just filling out the form.

VICE-CHAIRMAN KONYK: Oh, you were just filling out the form. We denied it.

CHAIRMAN BASEHART: Okay. That will conclude the items on the agenda. Before we adjourn, we've got the attendance report to deal with. Everybody got a copy of that?

I guess for some reason this report wasn't done for the July meeting, so we've got July and August to consider.

In the July meeting Ms. Stumberger wasn't here because she wasn't appointed yet, and everybody else was here except Mr. Puzzitiello who was away on business. Is everybody willing to accept that as a legitimate excuse for July?

VICE-CHAIRMAN KONYK: Certainly.

CHAIRMAN BASEHART: Then in the August meeting Mr. Jacobs wasn't here, and it says it's unexcused. Do you want to explain yourself?

MR. JACOBS: Yes. I was in California on business.

CHAIRMAN BASEHART: Okay. Can everybody agree to change that to a business excuse?

VICE-CHAIRMAN KONYK: Sure.

MS. MOODY: If I could speak? The reason I put that is because I did not hear from him prior to the meeting and normally if I hear that a Board member is not going to be here, then I call in an alternate. So

not knowing, there wasn't time to call in an alternate.

MS. CARDONE: So that means he needs a letter?

MR. WICHINSKY: I recommend we slap his hands.

CHAIRMAN BASEHART: Do you want to slap his hand, Nancy, or we'll say it's okay?

VICE-CHAIRMAN KONYK: Well, it's important for the Board members to realize what a difficult position Mary's in trying to second guess whether or not we're going to be here. A quick phone call to let her know is appreciated and I think it's important that even if we have a good excuse, we let her know.

And if she hasn't called you before you left, you do know that the meeting is always the same Thursday of the month. Maybe you could put it in your schedules and then if you know that you're going to be out of town, you'll give her a call and let her know because it makes her job difficult, and she does have voice mail now.

MR. JACOBS: Well, mea culpa on that, but I was called out on almost 24 hours notice and it was a totally unexpected trip. And I apologize for any inconvenience.

VICE-CHAIRMAN KONYK: That's why we're going to let it be excused.

CHAIRMAN BASEHART: Okay. So we're going to change that from unexcused to business?

Okay. And of course, the only other absence was Mr. Misroch and it was because he's an alternate and his attendance was not required. Okay.

CHAIRMAN BASEHART: Okay. Do we have a motion to --

VICE-CHAIRMAN KONYK: Motion to accept the excused absences.

CHAIRMAN BASEHART: Okay. Motion by Ms. Konyk.

MS. STUMBERGER: Second.

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

BOARD: Aye.

CHAIRMAN BASEHART: Opposed?

(No response.)

CHAIRMAN BASEHART: That dispenses with that.

The last item on the agenda is the discussion of a letter that was written by an applicant from last month and a response to that letter by the Zoning Director and the Executive Director of Planning, Zoning and Building. Jon, you want to start this off?

MR. MacGILLIS: Just the Executive Director and Director asked me to forward this letter to you because I don't believe the applicant actually sent it to you. It was forwarded to the Zoning Director, Maude Ford Lee, the chair of the Board of County Commissioners, and the County Administrator, Bob Weisman. I'm sure you've all had a chance to read it.

This was the petition that was before you last month where staff had recommended denial of a cabana --

VICE-CHAIRMAN KONYK: We're aware of it.

MR. MacGILLIS: Okay. As you can see, the Executive Director's comments on the top corner of the letter, so staff would just like to know if you would like us to address the letter or leave it or just take note of the comments in her letter?

CHAIRMAN BASEHART: Chelle's fidgeting wildly over here, so I think we'll let her start.

VICE-CHAIRMAN KONYK: First of all, I hope Dominic's listening because I know he can hear this meeting up in his office.

I don't particularly give much credence to the letter that's written by an applicant that's been denied an application. Obviously, to me it seems like a sour grapes type of thing.

Dominic's got a note on here, "Please copy to the Board so they can see how the attention..." something, I can't see it, "to Petitioners is important."

We give attention to all petitioners and I'm insulted that anybody would think that we didn't.

Secondly, she makes a comment in here that I was passing notes, which I wasn't passing notes, I was passing her ridiculous pictures that she kept giving us.

Thirdly, she also indicates that the staff

advised her that although they were recommending denial, there was a good possibility -- a staff denial did not mean a denial by the Board, which is true, but I think that it's more important that you educate petitioners as to the thing that we talk about every meeting, the seven criteria.

If they meet the seven criteria, there's a good chance they'll get the variance. If they don't, there's a good chance they won't, and it is up to the interpretation of the individual Board members to decide whether or not we feel, and we have obviously, and we have just done it, had a different opinion than the staff.

It's obvious to me that this lady really wasn't paying attention. Our names are written on every piece of paper that she gets. They're up front. She doesn't have one person's name right.

And secondly, yeah, we did laugh. It was pretty funny when she said she was entitled to the variance because she was fearing a lawsuit from one of her guests that may fall on her tile floor, and as her three year old granddaughter had fallen many times, but she hadn't gotten hurt because she's much closer to the ground than the rest of her guests are.

It was a ridiculous hearing. Yes, we do laugh sometimes. We're human beings. I don't have any remorse or any apologies to this woman and I don't care if you ever do respond to her. I'd just file it.

CHAIRMAN BASEHART: Thank you.

VICE-CHAIRMAN KONYK: No laughing, no laughing allowed.

CHAIRMAN BASEHART: Anybody else?

VICE-CHAIRMAN KONYK: Wait, wait. I have one more thing to say.

We received a ridiculous letter from Dennis Koehler which was forwarded to everybody, and nobody even brought that to anybody's attention. That one was swept under the rug. Why? Why is this one given so much credence? Just curious.

MR. MacGILLIS: I'm sorry I missed that.

VICE-CHAIRMAN KONYK: You know, we got a ridiculous letter a couple of months ago from Dennis

Koehler saying that he violated the Constitution of the United States and Steve Rugen (ph). That was forwarded to everybody and the response back was, oh, well, you know, no response was necessary.

I don't appreciate coming here for free and being insulted; that's all.

CHAIRMAN BASEHART: Anything else? Anybody else have anything they'd like to say?

MS. STUMBERGER: Not now.

CHAIRMAN BASEHART: Nancy?

MS. CARDONE: Yes. As far as our response, I don't believe in breathing life into something that doesn't deserve it, better to leave it alone.

But although it is certainly outside of any of my purview, I think it would be appreciated if perhaps the Zoning Director might send a letter to say something like sorry you feel that way, but our Boards certainly do strive to be as professional as possible while putting in their own time to hear you. Something like that might be in order.

VICE-CHAIRMAN KONYK: I agree with that and I also think that it might not be a bad idea for our Chair to write a response to the people that were copied on this letter to relay our position that her complaints are not factual.

CHAIRMAN BASEHART: I will do that.

MR. WICHINSKY: And I'd like to further that by stating that on the second page of her letter, I'll refute one statement where she says that Carol spends the entire time looking at the ceiling and being bored. And our new member, Carol, I refute that; I think you're an excellent addition to the board.

VICE-CHAIRMAN KONYK: She called you Carol.

MS. STUMBERGER: Now wait a minute, now I'm going to get into this. She doesn't know me yet.

CHAIRMAN BASEHART: Okay. I think -- I will draft a letter as a response from the Board and get it to you to put it on letterhead.

VICE-CHAIRMAN KONYK: I don't think that should go to -- I think your letter should go to Bill Whiteford, Maude Ford Lee, Robert Weisman and Dominic.



CHAIRMAN BASEHART: I'm not going to respond to the lady?

VICE-CHAIRMAN KONYK: No. Nancy's suggestion of response was good.

CHAIRMAN BASEHART: Okay. Any other discussion or anything anybody want to bring up?

VICE-CHAIRMAN KONYK: No laughing.

CHAIRMAN BASEHART: You ticked off at anybody else today?

VICE-CHAIRMAN KONYK: Well, you know, obviously this arrived at a very bad time in my life, so I took it very personal, so.

CHAIRMAN BASEHART: Okay. I guess we're ready for an adjournment motion.

MR. JACOBS: I'd make that motion.

MS. STUMBERGER: So moved. I'll second it.

CHAIRMAN BASEHART: Moved by Mr. Jacobs and second by Ms. Stumberger. All those in favor?

BOARD: Aye.

CHAIRMAN BASEHART: Opposed?

(No response.)

CHAIRMAN BASEHART: We're adjourned.

(Whereupon, the meeting was adjourned at 11:00 a.m.)

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C E R T I F I C A T E

THE STATE OF FLORIDA )  
COUNTY OF PALM BEACH )

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

DO HEREBY CERTIFY that the above-entitled and  
numbered cause was heard as hereinabove set out; that  
I was authorized to and did report the proceedings and  
evidence adduced and offered in said meeting and that  
the foregoing and annexed pages, 1 through 59, comprise  
a true and correct transcription of the Palm Beach  
County Board of Adjustment Meeting.

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

IN WITNESS WHEREOF, I have hereunto set my hand  
and seal this 6th day of October, 2000.

---

Sophie M. Springer, Notary Public.