

PALM BEACH COUNTY
BOARD OF ADJUSTMENT

Thursday, August 18, 2005
9:10 a.m. - 11:35 a.m.
100 Australian Avenue
West Palm Beach, Florida

Reporting:

Sophie M. (Bunny) Springer
Notary Public

A T T E N D E E S

Ms. Chelle Konyk, Chairperson

Mr. Robert E. Basehart, Vice Chairman

Mr. Raymond Puzzitiello

Mr. William Sadoff

Mr. Donald Mathis

Annie Helfant, Assistant County Attorney

Leonard Berger, Assistant County Attorney

Terry Verner, Code Enforcement

Jon MacGillis, Zoning Director

Alan Seaman, Senior Site Planner

David Cuffe, Civil Engineer II, Land Development

Genni Messina, Zoning Site Plan Technician

Oscar Gamez, Planner I

Juanita James, Zoning Technician

Annette Stabilito, Secretary

Timothy Sanford, Student Para Professional

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P R O C E E D I N G S

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CHAIRPERSON KONYK: I'd like to call to order the Palm Beach County Board of Adjustment meeting, 8/18/2005, starting with the roll call and a declaration of quorum.

MS. STABILITO: Mr. William Sadoff.

MR. SADOFF: Here.

MS. STABILITO: Mr. Raymond Puzzitiello.
(No response.)

MS. STABILITO: Mr. Bart Cunningham.
(No response.)

MS. STABILITO: Chairperson Ms. Chelle Konyk.

CHAIRPERSON KONYK: Here.

MS. STABILITO: Vice-Chairman Mr. Robert Basehart.

VICE CHAIRMAN BASEHART: Here.

MS. STABILITO: Ms. Nancy Cardone.
(No response.)

MS. STABILITO: Mr. Joseph Jacobs.
(No response.)

MS. STABILITO: Mr. Stanley Misroch.
(No response.)

MS. STABILITO: Mr. Donald Mathis.

MR. MATHIS: Here.

CHAIRPERSON KONYK: We have a quorum. We'll start with the opening prayer, which is usually said by Mr. Cunningham, but he's not here today.

VICE CHAIRMAN BASEHART: So you do it.

CHAIRPERSON KONYK: I'll do it.

May we approach today's business as tasks of faith to do our best within our power to provide positive leadership on behalf of our community and those who live and work here, and that our decisions meet the standards of divine compassion for all. Amen.

Next item on the agenda is the Pledge of Allegiance, if everyone will stand?

(Whereupon, the Pledge of Allegiance was recited.)

VICE CHAIRMAN BASEHART: For the record, I'd just like to let everybody know that Mr. Puzzitiello is here.

CHAIRPERSON KONYK: And he's entering right now.

VICE CHAIRMAN BASEHART: See, I knew that.

CHAIRPERSON KONYK: Let the record reflect that Mr. Puzzitiello has arrived.

The next item is the Proof of Publication.

We have a publication in the July 31st Palm Beach Post.

Remarks of the Chair. For those of you who are not familiar with how this Board conducts its business, the agenda is divided into two parts, the consent and the regular agenda.

Items on the Consent Agenda are items that are recommended for approval by staff. The applicant agrees with any conditions that may be imposed. There's no opposition from the public

and there is no Board member that feels that the item warrants a full hearing.

If a Board member feels that the item warrants a full hearing or there's opposition from the public or the applicant does not agree with the condition, that item will be pulled from the Consent Agenda, re-ordered to the first item on the Regular Agenda.

The result letters are not ready today, so after the meeting after we've voted on the Consent, you can leave and your result letters will be available for pick up or they can be mailed to you.

Items on the Regular Agenda are items that have been recommended for denial or the other conditions are present, such as a disagreement with the conditions or a Board member feels the item warrants a full hearing or opposition from the public.

The item will be introduced by staff. The applicant will have an opportunity to give their presentation. After the applicant gives their presentation, the staff will give theirs. We'll hear from any opposing parties and then the public portion of the hearing will be closed and the Board members will have an opportunity to discuss and then vote on the item.

Everyone received a copy of the Minutes. Does anybody have any corrections or additions?

(No response.)

CHAIRPERSON KONYK: Seeing none, could I have a motion for approval?

VICE CHAIRMAN BASEHART: So moved.

CHAIRPERSON KONYK: Motion by Mr. Basehart.

MR. PUZZITIELLO: Second.

CHAIRPERSON KONYK: Second by Mr. Puzzitiello.

All those in favor?

BOARD: Aye.

All those opposed?

(No response.)

CHAIRPERSON KONYK: Motion carries unanimously.

Remarks of the Zoning Director.

MR. SEAMAN: There are none.

CHAIRPERSON KONYK: Are there any changes to the Agenda?

MR. SEAMAN: Yeah, there's a condition but once we get to that particular petition, I'll bring it up.

CHAIRPERSON KONYK: Okay. But there's nothing pulled. Okay.

Anyone in the public that plans on speaking on any item today needs to be sworn in by our court reporter. So if you would stand and raise your right hand, she will take care of that task.

If you don't swear in you can't speak. So if you think you might, just do it.

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

CHAIRPERSON KONYK: The first item on the agenda is the postponed item, BA2005-00603. Is this by right?

MR. SEAMAN: Thirty days by right to September 15th due to survey issues.

CHAIRPERSON KONYK: Okay. Next item is consent item, BA2005-00819, Jamie, I guess that's Jaime Florez, agent for Haverhill Quadplex, to allow a proposed incompatibility buffer to be reduced.

Is the applicant present?

MR. FLOREZ: My name is Jaime Florez and I agree with the staff's recommendation.

CHAIRPERSON KONYK: Okay. Thank you. Is there any member of the public here to speak against this item?

(No response.)

CHAIRPERSON KONYK: Any letters?

MR. SEAMAN: There is one for clarification.

CHAIRPERSON KONYK: Any Board member feel this item warrants a full hearing?

(No response.)

CHAIRPERSON KONYK: Okay. Your item will remain on consent and you can stay until we vote on the consent and then you can go.

BOARD OF ADJUSTMENT CONDITIONS

1. Prior to the issuance of the Certificate of Occupancy, all required landscape material shall be planted in accordance with Article 7 of the ULDC. (EVENT: LANDSCAPE: ZONING)

2. All landscape material required by Article 7 of the ULDC for a type 2 incompatibility buffer, shall be planted in the reduced incompatibility buffer along the north property line. (ON-GOING: LANDSCAPE: ZONING)

CHAIRPERSON KONYK: Next item on consent is BA2005-00820, Noelle Zulli-Adams, to allow an existing detached garage to be less than five feet from an easement.

Is the applicant present? Your name for the record?

MS. ZULLI: Noelle Zulli.

CHAIRPERSON KONYK: One condition has been recommended by staff. Do you understand and agree with that?

MS. ZULLI: Yes, I do.

CHAIRPERSON KONYK: Is there any member of the public here to speak against this item?

(No response.)

CHAIRPERSON KONYK: Any letters?

MR. SEAMAN: Two in favor.

CHAIRPERSON KONYK: Any Board member feel this item warrants a full hearing?

(No response.)

CHAIRPERSON KONYK: Seeing none, you can have a seat.

BOARD OF ADJUSTMENT CONDITIONS

By **November 18, 2005**, the applicant shall have applied and received a building permit; and have the building inspection completed for the existing accessory structure. A copy of the Board of Adjustment result letter shall be submitted with the building permit application. (DATE:BUILDING: ZONING)

CHAIRPERSON KONYK: BA2005-00828, Jon Schmidt, to eliminate certain screening, facade and roof treatments, et cetera. You're the applicant?

MR. SCHMIDT: Yes, Jon Schmidt for the record.

MR. SEAMAN: And I do have a condition change here.

CHAIRPERSON KONYK: Okay. There's a condition change so we'll read that into the record and then we'll proceed.

MR. SEAMAN: You can turn to page 16 of your packet. Under 'Conditions', conditions 1 and 2 are to be deleted and replaced with what I'm about to read, which says, "Prior to final DRO, a revised site plan shall be submitted and approved by the landscape section indicating the relocation and supportive square footage calculations of foundation plantings, terminal and interior

islands to alternative areas. Required trees and shrubs shall also be relocated to these alternative areas."

MR. SCHMIDT: We're in agreement with that.

CHAIRPERSON KONYK: Okay. Any member of the public here to speak against this item?

(No response.)

CHAIRPERSON KONYK: Any letters?

MR. SEAMAN: There are -- one in approval.

CHAIRPERSON KONYK: Any Board member feel this item warrants a full hearing? Seeing none, this item will remain on consent.

BOARD OF ADJUSTMENT CONDITIONS

Prior to final DRO, a revised site plan shall be submitted and approved by the landscape section indicating the relocation and supportive square footage calculations of foundation plantings, terminal and interior islands to alternative areas. Required trees and shrubs shall also be relocated to these alternative areas.

CHAIRPERSON KONYK: BA2005-00973, David and Kimberly Bates, to allow an existing single family dwelling to encroach into the side interior setbacks.

Name for the record?

MR. BATES: David L. Bates.

CHAIRPERSON KONYK: Staff has recommended two conditions. Do you understand and agree with those?

MR. BATES: Yes, I do and I agree.

CHAIRPERSON KONYK: Okay. Any member of the public here to speak against this item?

(No response.)

CHAIRPERSON KONYK: Any Board member -- any letters?

MR. SEAMAN: Three in favor.

CHAIRPERSON KONYK: Any Board member feel this item warrants a full hearing?

(No response.)

CHAIRPERSON KONYK: Seeing none, this item will remain on consent.

BOARD OF ADJUSTMENT CONDITIONS

1. By August 8, 2006, the applicant shall apply for a building permit and have the building inspection completed for the proposed screen

enclosure. A copy of the Board of Adjustment result letter shall be submitted with the building permit application. (DATE:BUILDING:ZONING)

2. The variance request for a reduction of the required side interior set backs along the east and west property lines is only for the existing single family dwelling. All future improvements shall meet the ULDC requirements. (ON-GOING: ZONING: ZONING)

CHAIRPERSON KONYK: BATE2005-00975, Land Design South, for Lowell Parkwood Estates, applicant. Okay.

(No response.)

VICE CHAIRMAN BASEHART: Probably looking for a parking space.

CHAIRPERSON KONYK: Okay. So let's just come back to it.

CHAIRPERSON KONYK: BATE2005-01047, Cotleur & Hearing, for Jeffrey Lichterman, owner, to allow a 12-month time extension.

Name for the record?

MR. LICHTERMAN: Jeffrey Lichterman.

CHAIRPERSON KONYK: There's no opposition from the public?

VICE CHAIRMAN BASEHART: You don't need any public.

CHAIRPERSON KONYK: I know, I know, but it's just easier to go with the flow. Don't bother me this early in the morning. Okay.

Any letters?

MR. SEAMAN: There's no letters. It's a time extension.

CHAIRPERSON KONYK: Okay. You sound like Basehart. I'm just testing you.

So obviously there's no disapproval. Does any Board member feel this item does not warrant a time extension?

(No response.)

CHAIRPERSON KONYK: Seeing none, this item will remain on consent. You can have a seat.

DEVELOPMENT ORDER

1. The development order for this variance shall lapse on July 17, 2005, two years from the approval date. The applicant may apply for an extension provided they complete the time extension application, prior to the original Development Order expiring. (DATE:MONITORING-ZONING)

IS HEREBY AMENDED TO READ:

The development order for this variance shall lapse on July 17, 2006, two years from the approval date.

BOARD OF ADJUSTMENT CONDITION

2. By July 17, 2005, the applicant shall obtain a building permit for the proposed single family residence in order to vest the variance approved pursuant to BA 2003-219. (DATE:MONITORING-BLDG PERMIT)

IS HEREBY AMENDED TO READ:

By July 17, 2006, the applicant shall obtain a building permit for the proposed single family residence in order to vest the variance approved pursuant to BA 2003-219. (DATE:MONITORING-BLDG PERMIT)

CHAIRPERSON KONYK: BATE2005-01060, Vincent and Christine Piazza, to allow a 12 month time extension.

Name for the record?

MR. PIAZZA: Vincent Piazza.

CHAIRPERSON KONYK: Okay. Any Board member have an objection to this item receiving a time extension?

(No response.)

CHAIRPERSON KONYK: Seeing none, this item will remain on consent. Have a seat.

MR. PIAZZA: Thank you.

DEVELOPMENT ORDER

The development order for this particular variance shall lapse on 08/19/2005, one year from the approval date. (DATE:MONITORING:Zoning)

IS HEREBY AMENDED TO READ:

The development order for this particular variance shall lapse on 08/19/2006, one year from the approval date. (DATE:MONITORING:Zoning)

BOARD OF ADJUSTMENT CONDITIONS

1. Prior to the issuance of the 'Certificate of Occupancy', the applicant shall replace the existing 6 ft wood fence along the north property line with a new 6' wood fence and 4 shade trees, 8 to 10 ft over all planted 15 ft apart (type to be determined by the applicant and approved by the landscape inspectors). (DATE:MONITORING-LANDSCAPE)

2. Prior to the issuance of a 'Building Permit', the applicant shall submit both the Board of Adjustment letter and a copy of the approved survey/site plan to the Building Division. (DATE:MONITORING-BUILDING)

CHAIRPERSON KONYK: SD-127, Kevin McGinley, agent for Ernest Carradori, requesting variances from the requirements, et cetera. Good morning.

MR. McGINLEY: Good morning. Kevin McGinley and we do accept the conditions of approval.

CHAIRPERSON KONYK: Okay. Any member of the public here to speak against this item?
(No response.)

CHAIRPERSON KONYK: Any letters?

MR. SEAMAN: No.

CHAIRPERSON KONYK: Any Board member feel this item warrants a full hearing?
(No response.)

CHAIRPERSON KONYK: Seeing none, this item will remain on consent.

MR. McGINLEY: Thank you.

CHAIRPERSON KONYK: Has anybody from Land Design South shown up?

Well, there's really no issue for them to be here for, is there?

MR. SEAMAN: Well, we do call them and request that they be here, but it's an extension of one more year on their development order.

CHAIRPERSON KONYK: Would you tell them -- they've been doing this a lot lately. Would you tell them to stop that? I mean, they really need to have someone at the meeting.

VICE CHAIRMAN BASEHART: Maybe we ought to just postpone this for thirty days.

CHAIRPERSON KONYK: Let's do that. Does somebody want to make a motion to postpone?

VICE CHAIRMAN BASEHART: I'll make a motion that we withdraw BATE2005-00975 from the agenda and place it on next month's agenda.

CHAIRPERSON KONYK: Okay. Do we have a second?

MR. SADOFF: Second.

CHAIRPERSON KONYK: Motion by Mr. Basehart, second by Mr. Sadoff.

All those in favor?

BOARD: Aye.

CHAIRPERSON KONYK: Opposed?

(No response.)

CHAIRPERSON KONYK: Okay. BATE2005-00975 will be postponed until the next meeting as the applicant was not present.

CHAIRPERSON KONYK: So we have on the consent agenda BA2005-00819, BA2005-00820, BA2005-00828, BA2005-00973, BATE2005-01047, BATE2005-01060, and SD-127. Can I have a motion for approval?

MR. SADOFF: So moved.

CHAIRPERSON KONYK: Motion by Mr. Sadoff.

VICE CHAIRMAN BASEHART: I'll second that and I'd like my second to reflect that my second is based on review of the staff report and I'd like the staff report to be reflected in the record as the evidence presented at the hearing.

CHAIRPERSON KONYK: We have a second by Mr. Basehart.

All those in favor?

BOARD: Aye.

CHAIRPERSON KONYK: Opposed?

(No response.)

CHAIRPERSON KONYK: Motion carries unanimously. Okay. Anybody that's on the consent

can go and your letters will be mailed, unless you give different instructions, if you want to pick them up.

CHAIRPERSON KONYK: First item on the regular agenda is BA2005-00817, Gregory Davis, agent for Advance Auto Parts to allow a wall sign to exceed the maximum allowable square footage. And this is an item that has been recommended for denial by staff.

Is the applicant present?

MR. DAVIS: Thank you, members of the Board. My name is Gregory Davis and I'm here to represent Advance Auto Parts in their request for additional signage.

CHAIRPERSON KONYK: Okay. We'll have the staff read the legal and then you can give your presentation.

MR. DAVIS: Thank you.

MR. SEAMAN: Gregory T. Davis, agent for Advance Auto Parts, Inc., owner, to allow a wall sign to exceed the maximum allowable square footage.

Location is 9950 Southern Boulevard on the southeast corner of Southern Boulevard and State Road 441 within the Home Depot Shopping Center in the CG Zoning District and the parent petition was 1977-048.

CHAIRPERSON KONYK: Okay.

MR. DAVIS: Again, Madam Chairman and members of the Board, I'm here at Advance Auto Parts' request that we be allowed to install an additional sign on the south or west elevation of this particular location. I tried to provide the Board my explanation to the seven criteria that needs to be answered here as far as the variance is concerned.

Of course, we're concerned about visibility at this particular location and we are trying to place additional signs on the west elevation to make this building more pleasing and comfortable to the eye by placing signage that would be compatible with the signs that exist now and permitted on the north of the Southern Boulevard location.

We, of course, the Code provides that we are allowed 122 square foot of signage on the Southern Boulevard of the north elevation of this particular building. We chose knowing that we would have to appear before this Board, we chose not to install the maximum or max out the square

footage on the north elevation on Southern Boulevard, but decrease the installable signage. The sign that's there now is 87.5 square feet, where we were allowed a sign at 122 square feet.

What we're proposing and I will suggest here and ask the Board to consider our recommendation that we be allowed to install a sign not at 40 square foot on the west elevation, but a sign that's comparable in size on the west elevation to match the sign that's existing now on the north elevation.

Again, 122 square footage of signage was allowed on the front elevation. We installed 87.5.

In searching through your Code, I didn't find any portion of the Code that didn't allow us to possibly if this Board saw fit to allow us to use that signage that is not used on the north elevation in calculation for the sign that we're proposing on the west elevation. If this Board decides to allow us to do this then our variance request would not be at 47.5 square feet but at 13 square feet.

We, again, installed a sign at 87.5 square foot on the north elevation, leaving about 34.5 square foot of signage that we could have used on the north elevation that we chose not to use. We're asking this Board to consider our recommendations for better visibility on the U.S. 441 State Road 7 west elevation by allowing us to make a transfer of the unusable signage to that elevation and allowing us or granting us a variance of an additional 13 square feet.

CHAIRPERSON KONYK: Okay. Staff?

MR. SEAMAN: When we reviewed this, there's actually a change of ownership and with the change of ownership they wanted to put new signs up obviously. In order to do the new signs, you have to meet today's Code. As we reviewed his justification, we didn't think that it was -- it met the seven criteria. There was no compelling reason to allow him to increase the sign on the side of 441 by 100 percent, which is basically what he's requesting to do.

And we felt that he could actually just reduce the sign to meet the Code. He wouldn't need the variance and therefore we recommend denial.

CHAIRPERSON KONYK: Okay.

VICE CHAIRMAN BASEHART: This is the old Discount Auto Parts building?

MR. DAVIS: Yes, sir. At the point that it was Discount Auto Parts, of course, that particular location had signs on all four elevations that totalled about 286 square foot of signage.

Of course, once this location was consumed or taken over by Advance Auto Parts, of course Advance Auto Parts was under the impression that they would be able to place signage on this building comparable to what existed.

We learned at the time, of course, that

the Code had changed and they would not be able to do it. So what we have done in removing signs from all four elevations is try to get a location that's more pleasing and more balanced as far as the signage that we're planning to install here.

Again, we have existing now an 87.5 square foot sign that's on the north elevation. We are trying to put this store in respect to architecturally design that is pleasing to the eye, rather than a sign that's half the size of what's on the front elevation to try to get this Board to agree to allow us to put a sign on the other elevation that would be equal and compatible with the same sign or the sign that's existing on the elevation now.

Again, 286 square foot was existing on the store before Advance took over the store. We are allowed 122 square foot sign on the north elevation. We are allowed 40 square foot on the west elevation, which comes out to 162 square feet.

Again, if the Board allows us to use the signage on the side that was not used on the front elevation, we are only talking about 175 square foot of total signage as opposed to 286 that was there before, and that's where we are with this particular location.

MR. SEAMAN: Could staff interject? Also, in the justification I think one of the main claims that the applicant had was that they needed to have good visibility. Well, they're basically at the corner of 441 and Southern Boulevard, so visibility -- it's not as if the building were, say, three or four hundred feet back where you couldn't see it. It's right basically on the right-of-way itself.

VICE CHAIRMAN BASEHART: I noticed, you know, I mean, I'm familiar with the location.

This particular site is an outparcel to the old Home Depot and Wal-Mart project. This particular building is up near, it has very little parking between the building and State Road 7. You know, it's probably from a setback point of view the closest to the road of any of the outparcels. There's a gas station, there's a McDonald's and there might be one other one at that center.

But I mean, the other thing about this location is really the -- I know the Code doesn't allow you to transfer allowed signage from one side of a building to another, but really the north side signage doesn't do them any good anyway because the overpass is currently under construction and nobody's going to see the north side of this building once that bridge is done.

MR. SEAMAN: Well, also, there's a -- with changing over to this new wall sign, there is a point of purchase sign out there which clearly says Advance Auto Parts, which you can see clearly from the road.

So we're actually allowing him to leave that sign there and you can change the face. It

just appears that there's clear visibility for the facility.

VICE CHAIRMAN BASEHART: Is the building going to be painted or is it going to remain yellow?

MR. DAVIS: The building to the best of my knowledge, Mr. Vice-Chairman, is at its existing color.

Again, the north elevation with the overpass and the -- of course, the north elevation at this particular site at Southern Boulevard, there's a great distance between Southern Boulevard and the front of this particular store.

Now.

MR. DAVIS: Now with the canal there and we're going to be in a position later on where the only wall sign on that parcel will be visible will be the sign that's on the west elevation.

I'm sure this Code and your Code here is trying to make things look better and I think what we're trying to do in some way is to try to conform to your Code.

We don't think the building will look very nice and very pleasing with an 87-square foot sign on the front wall and something as small as a 40-square foot on the side wall. We in our submittal to you gave you an idea of the comparison between an 87 square foot sign and a 40 square foot sign.

MR. PUZZITIELLO: The 40 square foot sign, what does that give you in height in letters, 15 inches?

MR. DAVIS: Or less. More or less about 12 inches in height.

And what we're trying to do is to try to make the building itself look more pleasing to the eye rather than so lopsided or mis-conformed (sic).

MR. SEAMAN: I mean, in some instances you could perhaps -- an auto parts store is something you directly know you're going to go to, generally speaking.

MR. DAVIS: I submit to this Board, Madam Chairman, and members of this Board, if we didn't have the intent of trying to comply or make this store look as pleasing as we possibly can, we would in turn want to maximize our square footage on the north elevation.

Again, at 122 square feet the sign that's existing now, we had the legal right to install 122 square feet of signage there. I convinced Advance Auto Parts that it wouldn't be proper to try just because we could to put the larger sign there because it will only make it look more disproportional if I had a 122 square foot sign on one elevation and a 40 square foot sign on the opposite elevation.

I convinced them to try to go down to a smaller sign and that's what we did at 87.5 square feet and try to see if we could get this Board to agree to allow us to install a comparable sign on the west elevation.

Clearly, we're not trying to maximize or end up with more signage on one elevation than the other.

CHAIRPERSON KONYK: This picture here is without the variance?

MR. DAVIS: Yes, ma'am.

CHAIRPERSON KONYK: And do we have one like this with the variance? It's in your back-up? That's with the variance?

MR. DAVIS: Yes, yes.

CHAIRPERSON KONYK: Okay.

MR. SEAMAN: And those are also in your packets, but they're not in color. They're in your --

CHAIRPERSON KONYK: I understand. These are just easier to see.

MR. SEAMAN: Yeah.

MR. SADOFF: Excuse me. This sign is all lit up?

MR. DAVIS: Lit up?

CHAIRPERSON KONYK: It's back lit. It's a back lit neon.

MR. DAVIS: It would be a low-lit sign, yes, sir.

CHAIRPERSON KONYK: What's there now?

MR. DAVIS: An 87.5 square foot sign exists now on the north elevation facing Southern Boulevard. CHAIRPERSON KONYK: But nothing's on the--

MR. DAVIS: Nothing's on the west elevation. And what we're asking to do is to install one that's comparable in size on that west elevation.

VICE CHAIRMAN BASEHART: How many square feet was the Discount Auto Parts west elevation sign before; do you know?

MR. PUZZITIELLO: Is that the one that was 120?

MR. DAVIS: It's my understanding, Mr. Vice-Chairman, that there was 125 square foot of signage facing Southern Boulevard when it was Discount Auto Parts. There was an 83.75 square foot sign facing U. S. 441 when it was Discount Auto Parts. There was a 38 square foot sign on the east elevation and a 38.40 square foot sign on the south elevation at the point it was Discount Auto Parts.

The answer to your question is there was an 83.75 square foot sign on the west elevation.

CHAIRPERSON KONYK: So this new Advance Auto Parts sign is on the north side of the building now?

MR. DAVIS: The one that's existing now is on the north side.

CHAIRPERSON KONYK: And it says Advance Auto Parts?

MR. DAVIS: And it says Advance Auto Parts. Madam Chairman, that sign has been permitted, installed, and exists now.

CHAIRPERSON KONYK: But that side you don't have any visibility once the overpass is built?

MR. DAVIS: That's our assumption, yes.

CHAIRPERSON KONYK: So why did you put the bigger sign on that side? Why didn't you just put it on the side where you were going to have the visibility?

MR. DAVIS: Well, the Code allows us signs on both sides of the building. We --

MR. SEAMAN: You need to understand, take that thing and fold it --

CHAIRPERSON KONYK: Right, I understand.

MR. SEAMAN: Those doors for -- the Code requires that the front doors indicate the front of the building generally and if you, that's deceiving -- my understanding is that the entry is basically like at the corner. So you can pick your choice.

MR. DAVIS: Well, we, Madam Chairman, it's common practice and I don't know whether it's improper for me to assume, but we assume that the front elevation was the elevation that it was addressed off.

It's addressed off of Southern Boulevard, so we were under the assumption that we should consider Southern Boulevard our front elevation and that's why we chose again, allowed 122 square foot of signage, we installed 87.5.

CHAIRPERSON KONYK: Is there anybody here from the public to speak on this item?

(No response.)

CHAIRPERSON KONYK: Okay. Seeing none, the public portion of the hearing is closed.

Is any Board member prepared to make a motion on this item?

(No response.)

CHAIRPERSON KONYK: I guess nobody's in a hurry today.

MR. PUZZITIELLO: I don't see anything wrong with the sign. I actually think it looks better than the old Discount Auto Parts sign, but we are regulated by the seven criteria.

If you can help us with your argument on the seven criteria?

MR. DAVIS: Criteria number one is special conditions and circumstances exist that are particular to the parcel of land, building or structure that are not applicable to other parcels of land.

My answer in response to condition one is that the size and location of the building with regards to the major and minor roads allowed by Code identifies visibility on Southern Boulevard, but we think it doesn't give us justifiable visibility on U.S. 441 or State Road 7.

CHAIRPERSON KONYK: Okay. So that's your justification for criteria one?

MR. DAVIS: Yes, ma'am.

CHAIRPERSON KONYK: Two is special circumstances and conditions do not result from the actions of the applicant.

MR. DAVIS: The reason we're seeking this variance is to increase the signage on U.S. 441 elevation due to visibility. The applicant

purchased this particular property provided the tenant that otherwise would have vacated the building. The applicant calculated its proposed sign height based on the original Discount Auto Parts signage at the time of purchase. So here we are in the transition of a name change.

CHAIRPERSON KONYK: Okay. Number three. Granting the variance shall not confer upon the applicant any special privilege denied by the Comprehensive Plan and this Code to other parcels of land, buildings or structures in the same zoning district.

MR. DAVIS: We feel that no special privilege will be granted to the applicant rather than some relief from the special conditions that exist at this particular site.

CHAIRPERSON KONYK: Okay. Number four is literal interpretation and enforcement of the terms and provisions of this Code would deprive the applicant of rights commonly enjoyed by other parcels of land in the same zoning district and would work an unnecessary and undue hardship.

MR. DAVIS: We think that the intent is to make this store both easy to locate and more architecturally balanced and give the store an overall attractive look.

CHAIRPERSON KONYK: Okay. Grant of the variance is the minimum variance that will make possible the reasonable use of the parcel of land, building or structure.

MR. DAVIS: We feel that our request for the variance for a 47.5 square foot of signage is the minimum variance. This location prior to the name change had signage on all four elevations -- north, south, east and west, for a total of approximately 286.21 square feet.

Our proposal at 175 square feet is minimal compared to what once existed.

CHAIRPERSON KONYK: The grant of the variance will be consistent with the purposes, goals, objectives and policies of the Comprehensive Plan and this Code.

MR. DAVIS: We feel that the purpose and the goal and the objective of the policy is to allow each business the ability to properly identify themselves in order to serve the general public.

CHAIRPERSON KONYK: And the grant of the variance will not be injurious to the area involved or otherwise detrimental to the public welfare.

MR. DAVIS: The granting of this variance will give the general public better visibility and assure safe entry into the property, a safe location of the business and safe entrance and exit.

CHAIRPERSON KONYK: Okay. Thank you.

VICE CHAIRMAN BASEHART: I've got a question for the staff.

You indicated that because of the location of this site really that the applicant has the ability to declare either the west side or the

north side the front of the building?

MR. SEAMAN: There's room for, you know, argument or adjustment.

VICE CHAIRMAN BASEHART: If he decided to say, you know, the Code isn't as clear. Actually, I think the Code gives you more option than most codes do. You know, most codes say the side facing the street of the highest classification on a corner lot is the front.

You know, here you basically go by where the front door is and since the door's right at the corner, you can go either way.

If he decided to declare the west side of the building the front, how many square feet could that sign be?

MR. SEAMAN: Then if he chose the other option, there are actually two variances at that point and, Oscar, I'm going to let you -- this was your research on it.

MR. GAMEZ: If 441 was the front, then he would be allowed 80.33 square feet and he would propose an 87.5 square foot sign, so that would be a variance of 7.17 square foot. Then Southern would be considered the side facade, so he would be allowed 61 square feet and he's proposing an 87.5, also. So it would be a variance of 26.5 feet.

MR. SEAMAN: Take into consideration the point of purchase sign is there on 441, so if the larger sign faced Southern, the smaller on 441 for the point of purchase --

VICE CHAIRMAN BASEHART: Well, sure, but one potential option would be that the applicant agreed to put the 87.5 square foot sign he wants on the front of the building on the west side and asked for a much, much smaller variance and then change out the sign on Southern Boulevard, which frankly, I don't understand why it has to be put in, anyway, because it's going to be blocked, totally blocked by the overpass over State Road 7. Nobody is going to see it.

Well, possibly people on the ramp going to go east on Southern Boulevard will see it, but other than that, you know, there won't be any visibility for it.

I mean, that would be one option. It would certainly make me feel more comfortable about supporting the variance.

MR. DAVIS: May I?

CHAIRPERSON KONYK: Yes.

MR. DAVIS: I'd like to ask staff, the way that you just proposed it, Mr. Vice-Chairman, would have me then requesting two variances, if I'm understanding.

A variance of 7 square foot on the west elevation and a variance of 30 square foot on the north elevation. That would change my variance then, my request from 47 square feet to 37 square feet.

VICE CHAIRMAN BASEHART: No, that's not what I said. My suggestion was that you put the 87.5 square foot sign facing on the west elevation

and take the one you've put on the north elevation off and replace it by one that will meet Code. A smaller sign.

MR. DAVIS: Then what we've basically done then is just switched out and, Mr. Chairman, it's my opinion that we're still back to where we were just on different elevations.

We're trying to prepare this particular location with equal signage in hopes that the store would look better to the general public and not so awkward or lopsided.

Now, granted, the overpass and them not being allowed to see the sign is justified, but up until that particular time we feel that this store would look better in this particular location or situation if we were allowed to have signs that were equal and balanced in size.

VICE CHAIRMAN BASEHART: Of course, the overpass is under construction. Are you aware of that? I mean, it's actually being built today.

CHAIRPERSON KONYK: Finished?

VICE CHAIRMAN BASEHART: No. It's under construction.

Just a suggestion. I take it you would not be interested in amending your request that way?

MR. DAVIS: I'm not instructed to do so.

VICE CHAIRMAN BASEHART: Okay.

MR. SEAMAN: Staff did actually call the other day and talked about this other option, but he chose to go forward with it the way it is.

MR. DAVIS: Let me make a statement. Staff did call and suggest the other option, but staff also suggested that in their other option that not at your suggestion, Mr. Vice-Chairman, that we go to a smaller sign on the north elevation.

It was my understanding that staff was saying that they thought it would be more acceptable for staff to possibly give us a better recommendation if we decided to reverse our suggestion, based on what I'm saying now, that my north elevation that sits on Southern Boulevard, with the canal that runs down and is a distance from the road and now the overpass that you're building, we still feel that we ought to have visibility.

But what we're trying to do is we're trying to put something here that looks architecturally pleasing and that's balanced as far as the signage is concerned. I think it looks rather weird to have a sign at 87.5 square feet and one at 40 square feet and that's what we were trying to do here with our request.

VICE CHAIRMAN BASEHART: Okay.

MR. PUZZITIELLO: I'll make a motion. I think what they're recommending here actually does give the building more of a symmetrical balance and is a better look and I think the applicant has met the seven criteria. I therefore recommend approval.

CHAIRPERSON KONYK: We have a motion by

Mr. Puzzitiello.

MR. SADOFF: Second.

CHAIRPERSON KONYK: Second by Mr. Sadoff.
All those in favor?

BOARD: Aye.

CHAIRPERSON KONYK: Opposed?

(No response.)

CHAIRPERSON KONYK: Motion carries
unanimously.

MR. DAVIS: Thank you.

CHAIRPERSON KONYK: Next item on the
agenda is an appeal, 2005 -- did Land Design South
show up?

MR. SEAMAN: Yeah, they did.

CHAIRPERSON KONYK: Where are they? Okay.
Why don't we pull that forward then? Can we do
that?

MS. HELFANT: You can make a substitute
motion.

VICE CHAIRMAN BASEHART: Madam Chair, I'd
like to make a motion or a substitute motion to
add --

CHAIRPERSON KONYK: Why don't you just
make a motion to approve --

VICE CHAIRMAN BASEHART: Well, because we
already acted on it and we have to amend that.

CHAIRPERSON KONYK: Okay.

MS. HELFANT: It has to be a substitute
motion.

VICE CHAIRMAN BASEHART: I'd like to make
a substitute motion to add BATE2005-00975 back on
the consent agenda.

I'd like to -- can we just approve it
without really putting it back on the consent
agenda?

MS. HELFANT: It has to be voted on by the
entire Board.

CHAIRPERSON KONYK: Okay. We'll have to
put it back on and then --

VICE CHAIRMAN BASEHART: Okay. So my
motion is to put it back on the consent agenda.

CHAIRPERSON KONYK: Okay. We have a
motion by Mr. Basehart. Second?

MR. MATHIS: Second.

CHAIRPERSON KONYK: Who seconded it? I
didn't hear.

COURT REPORTER: Mr. Mathis.

CHAIRPERSON KONYK: Second by Mr. Mathis.
All those in favor?

BOARD: Aye.

CHAIRPERSON KONYK: Motion carries unanimously. Now we need a motion to approve it on consent.

VICE CHAIRMAN BASEHART: I make a motion that we approve the amended consent agenda with that item added on.

MR. PUZZITIELLO: Second.

CHAIRPERSON KONYK: Okay. Motion by Mr. Basehart and second by Mr. Puzzitiello.

All those in favor?

BOARD: Aye.

Motion carries unanimously.

UNIDENTIFIED SPEAKER: Thank you.

CHAIRPERSON KONYK: Let them know if you're going to be late so that we won't pull you like that again. I mean, I know it's a parking issue, but we didn't know. Okay, thanks.

DEVELOPMENT ORDER

1. The development order for this variance shall expire on July 17, 2005, two years from the approval date. The applicant may apply for an additional one year extension provided he completes the time extension application on or prior to the original Development Order expiring.
(DATE: MONITORING)

IS HEREBY AMENDED TO READ:

1. The development order for this variance shall expire on July 17, 2006, two years from the approval date.

BOARD OF ADJUSTMENT CONDITIONS

2. Zoning - Prior to the Certificate of Occupancy for Lots 41, 53, 54, 64, 65, 66, 67, 77 and 78, the developer or builder shall install a 5 ft. wide landscape buffer along the rear property line to accommodate the following landscaping.
(ZONING-MONITORING-PERMITTING)

a) Within the 5' buffer, install 6' over all continuous ficus hedge, planted 36 inches on center, and install either 3 canopy trees 12 foot over all or 3 palms with minimum 12 foot clear trunk, equal distance apart.

OR

b) Within the 5' buffer, install a 6' high continuous wall or fence compatible with architecture of the residence; and install either 3 canopy trees 12 foot over all or 3 palms with minimum 12 foot clear trunk, equal distance apart.

3. The screen roof screen enclosure shall not exceed one story in height on Lot #17.

4. Prior to Certificate of occupancy on Lot #17, landscaping shall be installed per exhibit A, as

presented to the Board.

CHAIRPERSON KONYK: Okay. We'll wait a couple of minutes. Does anybody need a break? Bunny, do you need a couple of minutes because Mr. Sadoff left the room, so. We'll take a two minute break.

(Whereupon, a short recess was had.)

CHAIRPERSON KONYK: Is everyone back?

UNIDENTIFIED SPEAKER: No, unfortunately.

CHAIRPERSON KONYK: Okay. We'll wait.

We had some late arrivals. Anybody that is planning on speaking that has not yet been sworn in, could you please stand and raise your right hand and we'll start right off the bat?

Also, I see that we do have people from the public prepared to speak and I would just like -- I'll wait until you're sworn in.

(Whereupon, the members of the public were sworn in by the court reporter.)

CHAIRPERSON KONYK: We have members of the public here and we do hear from members of the public, but I just want to caution you that we won't hear a repetition of the same thing over and over and over again and we will limit your speaking time. So get your message out quickly if you could and stick to the subject of the issue that we're addressing today because that's the only thing that this Board can be concerned with.

Any other issues, Code enforcement issues, et cetera, there's other departments that handle that. Is that it?

VICE CHAIRMAN BASEHART: Yes.

CHAIRPERSON KONYK: Okay. Is the applicant present?

MR. TAYLOR: I'm the representative of the applicant. The applicant is here. My name is Barry Taylor. I'm an attorney.

CHAIRPERSON KONYK: Can you all hear?

UNIDENTIFIED SPEAKER: No.

MR. TAYLOR: I'm sorry. I should know better. My name is Barry Taylor. I'm an attorney and I represent the applicants today. I have witnesses and I have the owners of the applicant here and this is our appeal of Mr. MacGillis' decision that our facility is not a legal and non-conforming use predicated on the change in the rules in March, 1957.

The bottom line is that we're going to present evidence to you today to show that our facility was in operation, was being used for auto salvage and junk yard and basically that's --

CHAIRPERSON KONYK: Okay. Before you go on and on, we're going to have the staff read the legal.

MR. TAYLOR: Understood.

CHAIRPERSON KONYK: Okay.

MR. SEAMAN: Well, no legal, but --

CHAIRPERSON KONYK: Well, whatever.

MR. SEAMAN: Yeah, the request is for DJM International Enterprises, Incorporated, requests an appeal to the Palm Beach County Zoning Director's determination that Astro Auto Salvage

located at 12608 South Military Trail is an illegal use in the AR Zoning District.

CHAIRPERSON KONYK: Okay. Now you're on.

MR. TAYLOR: Thank you. The evidence today will show that the property was originally purchased by a John and Chloe Guarine in 1955, that in 1955 they began clearing the piece of property used as Johnny's Auto Salvage, that during the time that they owned the property from 1955 until 1992, they used the property as a junk yard and auto salvage.

It was a continuous business. We have affidavits to present to the Board. We have witnesses to testify to the facts and I think that we can clearly show through the testimony and the affidavits that in fact we were a -- we are a legal, non-conforming use in the community.

My first witness is Chloe Guarine. She is 89 years old and she is going to speak to you. Chloe? Can you come up, please.

CHAIRPERSON KONYK: Could someone close the door out there? I'm having a difficult time hearing you. I don't know why, if there's something wrong with your microphone?

MR. TAYLOR: Unfortunately, I don't seem to speak very loudly. My wife says that all the time.

CHAIRPERSON KONYK: Okay.

MR. PUZZITIELLO: You're not the only one.

MR. TAYLOR: Please state your name and address for the record.

MS. GUARINE: I'm Chloe B. Guarine. I'm the former owner of what's called Johnny's Auto Parts. I'm presently -- I returned back to Delray Beach, Florida, now.

MR. TAYLOR: Ms. Guarine, when did you move to Delray Beach, Florida?

MS. GUARINE: We moved to Delray Beach, well, actually I'm a native of Florida and I moved to the area in 1950.

MR. TAYLOR: Prior to 1955, did you own or your husband own an auto salvage yard?

CHAIRPERSON KONYK: Sir, I can't hear you.

MS. GUARINE: Yes.

CHAIRPERSON KONYK: I mean, it's not going to do us any good if we can't hear you and her.

VICE CHAIRMAN BASEHART: Why don't you take one of the other microphones and use it as a hand-held or something.

MR. TAYLOR: Let her have this one and I can just hold this one. We'll move that one over. Thank you.

Ms. Guarine, we're going to start again very slowly. You basically indicated that you moved to Delray Beach when?

MS. GUARINE: We moved in 1950 from Hillsboro County.

MR. TAYLOR: And from 1950 until 1955, what did you do?

MS. GUARINE: We owned a wrecking yard on Old Boynton Beach Boulevard -- Old Boynton Road, I'm sorry, and we had a license with the City of

Boynton Beach and Palm Beach County.

We operated a wrecking yard there from 1951 up until 1955. The County license was transferred from that operation to the one on Military Trail.

MR. TAYLOR: And is that piece of property that we're speaking about today, that being at 12608 South Military Trail?

MS. GUARINE: Yes, but it had three previous addresses before that.

MR. TAYLOR: But it was always the same property?

MS. GUARINE: The same property.

MR. TAYLOR: Okay. In 1955, did you clear the property that's the subject matter of this issue?

MS. GUARINE: Yes, we purchased the property in April, 1955. Immediately we secured a person with a bulldozer to clear the land, which was infested with a lot of rattlesnakes.

MR. TAYLOR: I'll show you what's been marked as Exhibit Number 1. What does this picture depict?

MS. GUARINE: This is the picture of the rear of the property facing Military Trail.

MR. TAYLOR: And --

MS. GUARINE: We had purchased five acres, so that's part of the five acres.

MR. TAYLOR: But you were clearing that and that's the property that subsequently became Johnny's Auto Parts?

MS. GUARINE: Yes.

MR. TAYLOR: Okay. I'm going to shift to photograph number two or Exhibit Number 2. Can you tell me what that photograph shows?

MS. GUARINE: Yes, we purchased a trailer, a 27-foot trailer, and had it put on the property as a temporary living facility.

MR. TAYLOR: And was that also at 12608 South Military Trail?

MS. GUARINE: Yes, yes.

MR. TAYLOR: And what else is in that photograph?

MS. GUARINE: There's a two-and-half-ton Dodge truck that we brought from the previous operation.

MR. TAYLOR: And was that going to be used in your auto wrecking business on this property?

MS. GUARINE: Yes, it was purchased for that.

CHAIRPERSON KONYK: Can you direct us to this photograph that you're looking at?

MR. TAYLOR: Oh, I'm sorry, Ma'am. It's in the blue pad that I gave you under photograph number two.

CHAIRPERSON KONYK: Thank you.

MR. TAYLOR: Photograph number one showed the bulldozer on the lot.

CHAIRPERSON KONYK: Okay. Got it.

MR. TAYLOR: Okay. Disregard the next picture, the next copy. It's out of order. Photograph number two shows the trailer.

CHAIRPERSON KONYK: Got it.
MR. TAYLOR: Okay.
MS. HELFANT: Excuse me, Madam Chair.
That needs to be introduced into evidence.
CHAIRPERSON KONYK: It wasn't introduced
into evidence? Okay. We need a motion to
introduce this into evidence.
MR. TAYLOR: May I make a motion to
introduce this into evidence?
CHAIRPERSON KONYK: Well, you can, but we
need to do it.
MR. TAYLOR: Okay, I'm sorry.
VICE CHAIRMAN BASEHART: So moved.
MR. PUZZITIELLO: Second.
CHAIRPERSON KONYK: Motion by Mr.
Basehart, second by Mr. Puzzitiello.
All those in favor?
BOARD: Aye.
CHAIRPERSON KONYK: Opposed?
(No response.)
CHAIRPERSON KONYK: Motion carries
unanimously.
MR. TAYLOR: Thank you.
CHAIRPERSON KONYK: Okay. Proceed.
MR. TAYLOR: Let's go on to photograph
number three. What is photograph number three?
MS. GUARINE: Oh, well, that's the same
1950 Dodge two-and-a-half ton truck and the
wrecker in the previous junk yard and we're moving
items to the new location.
MR. TAYLOR: And that was in 1955?
MS. GUARINE: Yes.
MR. TAYLOR: And I'm showing you
photograph number four. What is that photograph?
MS. GUARINE: That was one of our
employees, T. V. Hicks, and we were in the process
of building a new wrecker.
MR. TAYLOR: And where was that being
done, ma'am?
MS. GUARINE: That was on the new property
on Military Trail.
MR. TAYLOR: And when was that photograph
taken?
MS. GUARINE: 1955. Well, possibly going
into '56; I'm not sure.
MR. TAYLOR: Okay. And photograph number
five; what does that show?
MS. GUARINE: That was 1955; they were
removing the remains of the previous junk yard.
MR. TAYLOR: And you were moving into the
new junk yard?
MS. GUARINE: We sold that to Seacrest
Realty. It was approximately ten acres there at
that location.
VICE CHAIRMAN BASEHART: I didn't get
that. The remains of what?
MS. GUARINE: The existing junk yard
number one.
MR. TAYLOR: They were moving --
MS. GUARINE: Moving from Boynton Beach
Road to Military Trail.
MR. PUZZITIELLO: Is this picture on

Boynton Beach Road or Military Trail?

MS. GUARINE: Well, I believe this was on Boynton Beach Road across from the --

VICE CHAIRMAN BASEHART: Then it doesn't have anything to do with this case.

MR. TAYLOR: It doesn't except that it's basically showing the course --

MS. GUARINE: Well, we had licenses at that time and they were transferred to the new location.

MR. TAYLOR: Let's talk about photograph number six. What is photograph number six depicting?

MS. GUARINE: To the left is my son John David, which was shot and killed on the property in 1959, my daughter, Nancy Guarine, an employee, Phil Wren, an employee T. V. Hicks, and my husband, John Guarine, and them working on the bed of the wrecker.

MR. TAYLOR: And where was this photograph taken?

MS. GUARINE: This is on the property on Military Trail.

MR. TAYLOR: And are either one of the children here today?

MS. GUARINE: No, John David was killed Christmas, 1959. My daughter has just returned from a vacation and she's not here.

MR. TAYLOR: And what are the vehicles in the back of the wrecker?

MS. GUARINE: Those are junk cars that we had moved from the previous location.

MR. TAYLOR: And looking at photograph number seven --

VICE CHAIRMAN BASEHART: Excuse me. What year did you say number six was taken?

MS. GUARINE: That was in 1955.

MR. TAYLOR: Looking at photograph number seven, what do we see in this photograph?

MS. GUARINE: Well, these buildings are existing today. There were actually three buildings and then we -- on the left is the second building that we had erected and then added on to it. It was all used for Johnny's Auto Parts.

MR. TAYLOR: Now the photograph, at the top of the photograph it says "March, 1957". Was this photograph taken prior to that?

MS. GUARINE: No, well, this addition may have been added in '57, but the original, that was from '55-'56.

MR. TAYLOR: Okay, but if the photograph says it's March of 1957, it can't be after that date?

MS. GUARINE: No, no, definitely not.

MR. TAYLOR: And this was part of your facility?

MS. GUARINE: And also we had to purchase two telephone poles in order to get telephone service there because service didn't continue.

MR. TAYLOR: When did you purchase those telephone poles?

MS. GUARINE: In '55.

MR. TAYLOR: Now looking to the right of the building in the back, what do you see there?

MS. GUARINE: Some junked cars.

MR. TAYLOR: Going on to the next photograph, who is that handsome devil?

MS. GUARINE: That's John Guarine, my husband.

MR. TAYLOR: And is he sitting in front of a building?

MS. GUARINE: Yes, that's part of the building in the previous.

MR. TAYLOR: Does it actually show that building as part of the building that's shown in photograph number seven?

MS. GUARINE: Yes.

MR. TAYLOR: Okay. And going on to photograph number nine, what do we see?

MS. GUARINE: This is the inside of building number two that we had. It's adjoined in picture number seven. It's my son, John David, and my daughter, Nancy.

MR. TAYLOR: Okay. And is the building that I see in photograph number seven the same building that I see in here in your --

MS. GUARINE: Yes, that's the same building.

MR. TAYLOR: And is that the same building that Mr. Guarine is sitting in front of in photograph number eight?

MS. GUARINE: No, this was the addition.

MR. TAYLOR: Okay. Now this is upside down, okay. What does photograph, the next photograph show?

MS. GUARINE: Well, this is the rear of the building previous that you just saw and junk cars and my son, John David, my son, Kenneth Wofford, from a previous marriage and my daughter, Nancy.

MR. TAYLOR: When was that photograph taken?

MS. GUARINE: In 1956. I believe it was Easter.

MR. TAYLOR: And is the little boy who's in the middle of the photograph here today?

MS. GUARINE: Yes, he's present.

MR. TAYLOR: What does the next photograph, which would have been photograph number 11, show?

MS. GUARINE: Well, that was the first building. It was a gas station and a garage. It was built as soon as possible when we purchased the property.

MR. TAYLOR: Okay. I'm going to go back in the pile of photographs. There's a photograph that's out of order or actually a copy that's out of order. It shows the back of a photograph. It's right after Exhibit Number 1.

Is this the back of the photograph, which was Exhibit Number 11?

MS. GUARINE: I'm not sure which, I know it's the back of one of them. I can't swear which one because I don't see it.

MR. TAYLOR: Let me make it a little easier. I have the actual photograph.

MS. GUARINE: All right. That's the first building that we had. This is my handwriting. The address at that time was Route 1, Box 729, Delray Beach, Florida.

MR. TAYLOR: Now from 1955 to 1992, was this facility used continuously as a junk yard and auto wrecking facility?

MS. GUARINE: Yes, it most certainly was.

MR. TAYLOR: And in 1992, did you sell this piece of property to DJM International Enterprises?

MS. GUARINE: Yes.

MR. TAYLOR: And that's also known as Astro Auto Sales?

MS. GUARINE: Yes.

MR. TAYLOR: I have no further questions for the witness.

CHAIRPERSON KONYK: Okay.

MR. TAYLOR: Thank you very much.

I don't want to waste the Board's time. I don't want to put on duplicative testimony. I do have one of the young boys that are in the photograph. I'd like to have him just testify.

CHAIRPERSON KONYK: Sure.

MR. TAYLOR: Just to substantiate that.

Sir, what is your name?

MR. WOFFORD: Kenneth Wofford.

CHAIRPERSON KONYK: Is this the young boy?

MR. TAYLOR: This is the young boy. I have to say when I went through the photographs, I'm 54, so I was like three or four years old when these photographs were taken and you look at the photographs and they look like kids you used to know. But I grew up in New York and these kids were -- so everybody looked the same at that time.

Sir, I'm showing you what has been provided to the Board as photograph -- actually, it's not numbered. It's probably photograph number 10. Do you recognize that photograph, sir?

MR. WOFFORD: Yes, I do

MR. TAYLOR: Are you in that photograph?

MR. WOFFORD: I'm the tallest one in the back.

MR. TAYLOR: Okay, and do you recall when that photograph was taken?

MR. WOFFORD: About 1957, I think it was.

MR. TAYLOR: Sir, if you look in the background is there a building there?

MR. WOFFORD: Yes.

MR. TAYLOR: And that's the junk yard building?

MR. WOFFORD: Yes.

MR. TAYLOR: And was that facility used as a junk yard?

MR. WOFFORD: Yes, it was.

MR. TAYLOR: Was it used to the best of your knowledge as a junk yard from '55 to '92?

MR. WOFFORD: Oh, yes.

MR. TAYLOR: I have no further questions

for this witness.

CHAIRPERSON KONYK: Thank you.

MR. TAYLOR: I have a number of affidavits that I have in my hand. We attempted to present them to the County yesterday, but they wouldn't accept them. I guess eventually maybe they did. The photographs [sic] are from totally disinterested third parties. They specifically -- I can read each one --

CHAIRPERSON KONYK: The photographs or the affidavits?

MR. TAYLOR: I'm sorry, the affidavits. I can read each one of them into the record for you if you'd like me to do that.

MR. SEAMAN: These need to be entered into the record.

VICE CHAIRMAN BASEHART: I bet you they all say exactly the same thing, right?

MR. TAYLOR: Pretty much.

VICE CHAIRMAN BASEHART: Then why don't you just read one?

CHAIRPERSON KONYK: We can accept them into the record, right?

MR. TAYLOR: I would just basically provide them to you to be accepted into the record.

What they're basically going to do is they're going to substantiate that this facility operated prior to 1957 when the Code changed. It was a pre-existing use and we would ask the Board to review these and accept them as evidence that in fact our facility is a pre-existing use.

CHAIRPERSON KONYK: How many affidavits do you have?

MR. TAYLOR: One, two, three, four, five, six, seven, eight -- looks like I have about ten affidavits.

CHAIRPERSON KONYK: Can we have a motion to accept his affidavits into the record?

VICE CHAIRMAN BASEHART: So moved.

CHAIRPERSON KONYK: Motion by Mr. Basehart.

MR. MATHIS: Second.

CHAIRPERSON KONYK: Second by Mr. Mathis.

All those in favor?

BOARD: Aye.

CHAIRPERSON KONYK: Opposed?

(No response.)

CHAIRPERSON KONYK: Motion carries unanimously.

MR. TAYLOR: Thank you. I have a very short closing statement.

I think that the evidence has clearly shown that the facility has been in existence before 1957. I believe that the evidence is clear and convincing. I do not believe that the County will put on any testimony that will refute that claim.

This is a situation where probably at the time that my client, well, not my client but my client's predecessor in interest purchased the

property and started to work on it, there were probably more rattlesnakes out there than there were people. Now there are a lot of people and unfortunately they're not real happy with what's there.

But the bottom line is that there's a facility there and the way the law reads and the way the law works is if that we're pre-existing, then in fact you have to accept us.

As I stated before and just one more time, I believe that the evidence is overwhelming that we existed, we functioned and we ask you to find this to be a legally non-conforming use. Thank you.

VICE CHAIRMAN BASEHART: Before we get into the staff's presentation, would it be appropriate to ask the applicant some questions or should we wait till the end?

MR. BERGER: Why don't you ask them now? So you understand, there will be an opportunity under the procedures for appeal you have an opportunity for a brief rebuttal, so there will be ample opportunity for all of you to ask questions of whomever.

VICE CHAIRMAN BASEHART: Okay. Your first witness indicated that the property had been licensed both on -- the one on Boynton Beach Boulevard and here since prior to 1957.

Do you have any evidence that such a license existed?

MR. TAYLOR: I do not have any of that evidence in my possession, sir. The problem is that we're talking about something that happened fifty years ago and things disappear. We looked.

We went to the point where we were trying to contact FP&L or Southern Bell with regard to a survey that we provided to the County.

Unfortunately, I couldn't get the information here fast enough out of the archives, which would have substantiated her claim that she purchased those telephone poles in 1955 or 1956. But the problem is we're so far down the road, I'm just lucky to actually have the people here to be able to testify to this. If this had gone on a little bit longer, they might not have been here.

Also, the people -- everybody in this matter who's testifying or is going to give an affidavit is very old.

VICE CHAIRMAN BASEHART: Okay.

MR. TAYLOR: Any other questions?

VICE CHAIRMAN BASEHART: Not at this time.

MR. TAYLOR: Okay.

CHAIRPERSON KONYK: Staff?

MR. MacGILLIS: Good morning, Madam Chair, Board members. Today before you is the appeal of my decision whether or not this is a legally established use on this property.

This case came before me. It was cited by Code Enforcement as operating an illegal use on the property. The applicant approached the zoning staff in early or late May with evidence of photographs and stuff to show that the use was

established prior to 1957.

At that time when they first approached staff, their contention was back in 2003 they were previously cited by Code Enforcement for operating what at that time to be an illegal use on the property. The applicant or the property owner currently submitted a zoning confirmation letter to the Zoning Division in 2003 and he brought that up when he came and met with us in May and he said I don't know why this is still a problem. He said I understood it was resolved because the case in Code Enforcement was closed.

The Zoning Division looked in our records and found that there actually was a letter submitted; however, in the computer database it showed that we contacted the property owner and indicated that there was not substantial credible evidence submitted to the Zoning Director at the time to substantiate that the use was conforming or established prior to '57.

And I'll go into why 1957 is an important date here in this case.

Staff at that time had numerous conversations with the property owner and on page nine of your back-up material is a vested use form that the Zoning Division provides an applicant when they come in here if there's any question regarding the validity of a use. We often get people sent to us from Code Enforcement or from Building Division or other divisions when there's a question regarding how a use was established. This form was developed to provide the applicant with the various types of document that not one of themselves but usually a combination of these documents that the staff reviews to substantiate the use and critical things are dates on the documents.

Staff provided the applicant with this form. They went off and it was several weeks. We had several meetings in our office here with the documents. We went over the photographs. Our main thing and the main thing still for me is that the documents do not have any dates on them. We understand this is an old property that was established prior to '57. We're just trying to establish that it was prior to '57, because that's prior to the first zoning code, because ever since that a salvage yard has not been allowed in the AR Zoning District, which is what this property is zoned.

The applicant submitted their final documentation. I rendered a decision based on what I got at that time. I told the applicant and he called me and that's when the attorney came into the picture and said, "I'd like to come and sit with you, I think I have other evidence and photographs."

So I met with him and Terry Verner was in that meeting and Bob Banks, our county attorney. We went through the document once again and I said there's nothing in here that -- clearly the photographs don't have dates. There's nothing on

the building or there's no site plan. There's nothing that I can look at that clearly says that this was prior to '57. The photographs show a building. It could be here or anywhere.

The testimony here today was something I didn't have at the time. It was, I believe, late last week where the attorney contacted me and asked to submit additional information. I said I had already rendered my decision based on what I got, but after speaking to the County Attorney's Office, I said in an effort to try to resolve this, I would accept that material and look it over.

So it did come in yesterday. I asked Alan to look through it for me and then sat with me and we went through the documents and there's still nothing in those documents that I as the Zoning Director could clearly or was ever challenged whether or not this is the property because once again there's no addresses. There's no letters, no receipts, no inventory lists that we were looking for for them to submit.

The testimony from the prior owner, although it sounds strong in the sense that she was the actual prior owner, we asked them to provide receipts or anything they had, letters that were sent to this address that would establish the salvage yard because there was in some of the old records where you can see there was a retail on this site prior to '57, but retail would have been allowed prior to '57, and the question we're talking about here is a salvage yard.

So even if they were doing some minor selling of parts and stuff there prior to '57, that wouldn't make this a legal use today for an auto salvage yard.

What I would like to do is just take a few minutes, Genni, if you could put those boards up.

The Zoning Director must find consistency between the Zoning Code, the land use and the particular use here, so I just want to go through these boards here.

We didn't have a land use map in 1957, so I'll take you right on the right-hand side. I don't know if the public needs to see that, too. Move that back to where Juanita is sitting, okay.

Hopefully the Board can see or you can walk it around there, Genni.

The first thing we looked at when the question came to us, well, I think you're going to have to show the Board first, and we'll have to turn it around then.

To your right is the current land use which shows this property as commercial high with an underlying five units per acre residential. So we looked at that.

Then we went to the Zoning Code to see and the zoning map is to the bottom there, which shows the property is zoned AR. So when you went to the Zoning Code under AR, a salvage yard is not permitted.

So I said, okay, well, let's go back and look at prior codes. So we went all the way back, '92 wasn't allowed, '73 wasn't allowed, '57 wasn't allowed, so that's where the '57 date came up, that if you could prove prior to '57 this use was legally established it would be considered today a major non-conforming use.

This here is the current Zoning Code. We've indicated on here just the zoning districts that a salvage yard is permitted in and it's generally only permitted in an IL zoning district or IG. So if they could prove this, they would be considered a major non-conforming use, meaning it's not permitted today but at one time it was permitted.

We couldn't, I as the Zoning Director, could not find that on the evidence that was presented to me, so it would be considered an illegal use, meaning we can't establish that at any time that this was ever permitted in the Zoning Code to be allowed in that zoning district.

I'd like to take just a few minutes to walk you through the evidence that I had to base my determination on, which is found on three through five of what the applicant submitted to staff.

The first item was the Warranty Deed. There was nothing on the Warranty Deed other than establishing this was a property in 1955. I'm on page three. I'm just going to walk through these numbers. This is what the actual applicant submitted. We just took it out of his appeal application and responded one by one, so for the record I'd like that to be clear.

CHAIRPERSON KONYK: Sure.

MR. MacGILLIS: Number two. The applicants say from 1955 to 1992 when the property was sold, the testimony from Guarine will show they continually ran a junk yard at this site. That's the testimony we got this morning.

All I had at the time was the affidavit that was submitted where the applicant stated, and that's where I kept asking please give me some receipts, then the testimony with the receipts and inventories and letters to the property would help me substantiate and tie these two things together. I did not get that.

The second one, they didn't provide any documentation such as receipts, utility bills that clearly establish the use of the auto salvage yard prior to 1957. The photographs show no clear connection to the property at 12608 South Military, other than the testimony we've heard here today.

Number four, once again, that's regarding the photographs and stuff that were submitted in here and there was -- once again, there's no connection on the photographs back to establishing the junk yard use on the site.

Number five, Zoning Director based his decision on the evidence which has been presented. The evidence does not clearly demonstrate the

establishment of the location -- this was an FP&L pole located on the site to give power to this. But there's no connection once again to the use. From page three on, page five, all these documents are found were submitted by the applicant. The Warranty Deed, which was found on page 11, once again, I just went over that. So there's no clear connection to this property establishing other than this was a legal lot.

Page eleven, the business card. The business card has no date on it, just says since the property -- this use has been in existence since then, but it doesn't, once again, have a clear connection bringing you back to the address and this use was on this property prior to '57.

Number three on page four, this is the affidavit from the prior owner. There was nothing on here other than what she stated and once again that was stated on the record this morning. There was no connection with receipts or bills or anything or letters to that address that once again that would say that this was a salvage yard.

Number four is a copy they submitted off the Warranty Deed and the Occupational License. The Occupational License is for 1992. We contacted the Occupational License Office to find out where the salvage yard was indicated on here.

Even though it says a salvage yard, this was from 1992, they could not explain where this came on there other than there was a retail building on here, which you can see on the photographs, which was in 1955. But once again, no one could substantiate that there was a salvage yard on this property.

Number five, the FP&L document, there's nothing there once again to connect this to the salvage yard.

Number six, they submitted this as evidence that this property was found in violation several times or at least twice by Code Enforcement. The cases were closed out.

Mr. Verner is here if you would like to address any questions to him as to why this case was closed out as far as this being a question of the illegal use.

Number seven, Property Appraiser computer read-outs. There's nothing on here that once again substantiates that this use was established prior to 1957.

Aerial photographs. Both staff and the applicant worked really hard on this. We went to every source we could find to see if we could find a photograph prior to '57.

Apparently they flew one in 1955, which we have, that showed nothing on this site. Then the next one was in 1960. So we had nothing and in 1960 it was obviously there. Some of the photographs you can see the use has changed over the years.

There was another salvage junk yard right to the north of this property which in the 1990s it ceased and is now an MUPD.

Number nine is the 1957 Code. This property had an A-1 zoning at that time. A-1 you weren't allowed to have a junk yard, so I'm not sure what this piece of evidence proves.

Number ten, letter of August, 1977.

Page 42, this looks like the Southern Bell. Once again this was from 1988 to 1989, so there's nothing in here once again to establish a phone number to that particular address.

Number twelve, zoning confirmation letter request. This is what I referred to in the beginning of my presentation that there was a letter submitted to the Zoning Division and there was no letter sent to the applicant by the Zoning Director confirming or not confirming the status of this property at that time because the applicant did not submit the required documentation.

Apparently when we brought this up when he was in earlier to meet us, he indicated that apparently what we had in our computer the address or the phone number, the fax was wrong, so he never got the letter stating that we were still looking for information and never pursued why he never got the letter. He just assumed he was okay and the Zoning Division never sent him a follow-up letter.

Number thirteen is just a survey of the property. Once again, it's dated 1992 and it does nothing to substantiate that this use was there prior to 1957.

Number fourteen, he states all the documents in the file prepared by the Zoning Division in this matter. I don't know, there's nothing once again in here.

So based on all the information that was presented to me, staff looked it over and I can say both Genni and Alan worked very hard with the applicant on this to see anything we could find through building permit records. We went to the library. We went to the Clerk's Office.

We understand this is a difficult situation for the property owner because it's trying to establish something; even though it's only 1957 for the County, that's apparently old when you're trying to find records.

But based on what I was required to do to respond to the Code Enforcement Officer whether or not this was a legal use, based on what was presented to me, I could not find that.

So that concludes my presentation.

VICE CHAIRMAN BASEHART: Jon, I --

MR. MacGILLIS: Oh, yes, if we could have a motion to receive and file the staff's findings on this?

VICE CHAIRMAN BASEHART: So moved.

MR. SADOFF: Second.

CHAIRPERSON KONYK: Motion by Mr. Basehart, second by Mr. Sadoff.

All those in favor?

BOARD: Aye.

CHAIRPERSON KONYK: Opposed?

(No response.)

CHAIRPERSON KONYK: Motion carries unanimously.

VICE CHAIRMAN BASEHART: Jon, if these affidavits had been submitted prior to you rendering your decision, would that in your mind have changed your opinion or changed --

MR. MacGILLIS: I looked through them and once again there's nothing there, other than hearsay, I mean, I assume the person who's signing that is being honest when they signed it.

But typically when the Zoning Division or any county agency accepting something, we typically have a document with it that we can support that that's just support in evidence with it. But just to have a letter is very difficult for me because all the other evidence is pointing that there's nothing there.

So just to accept the affidavit is very difficult for me just to say, well, there could be five people walk into the Zoning Division tomorrow, but if I had some other evidence to refute what the other people on the opposing side are saying, then I could say that that's not true because I have aerials and stuff clearly showing there was something there, but it wasn't clear. The aerials were blurred and you're confirming that, but I have nothing else other than what I had to go on.

So, to answer your question, I looked at them and they would not change my opinion.

VICE CHAIRMAN BASEHART: Okay. Another question. I know that the first Zoning Code was adopted in 1957. Offhand, do you know when in 1957 because there is some stuff in here that the applicant had submitted that refers to dates in like April or May or something of 1957. But do you know --

MR. MacGILLIS: I think March sounds right, but Terry said he would go and look. I think March, 1957, sounds correct.

VICE CHAIRMAN BASEHART: Okay, okay.

MR. MacGILLIS: And I think that's what I told the applicant and Mr. Barry (sic) that that was the date that I think the Zoning Division was going by in terms of evidence.

MR. SADOFF: How about FP&L or BellSouth bills, you know, records of having a telephone listed on that name or FP&L bills listed on that name, also?

CHAIRPERSON KONYK: I think the applicant would have to answer that.

MR. MacGILLIS: It was something that we requested, if he could provide us something, something concrete that ties this business to that address.

MR. SADOFF: Well, that would be concrete in the event that there was evidence that there was a telephone with that listing back in 1955 or '56 or FP&L bills, you know, listed in that name.

MR. MacGILLIS: There's two things. There

would be establishing the use was there and then establishing the intensity of the use because if you find the use based on the evidence they present did exist prior to '57, then it would make this still a major non-conforming use in that zoning district.

And Article 1 of the Code has very strict requirements once something is determined to be non-conforming. There's very strict limitations on what you can do with that property. You can't change the use, you can't expand it other than the general ten percent maintenance in a year.

VICE CHAIRMAN BASEHART: Well, the intensity, of course certain uses and I think this is probably one, you know, the number in a salvage yard, the number of vehicles at any one time fluctuates, you know.

MR. MacGILLIS: I think one of the questions, too, that came up through the Code Enforcement investigation, I think some of the cars were being piled on top of one another and they were visible over the fence.

So I think if you looked at some of the original photographs, those were some of the things that you could see where definitely the amount of vehicles and piling them up and you actually see them on top of one another that would be something that somebody could say, well, that's definitely an increase in the intensity.

VICE CHAIRMAN BASEHART: Yeah. One question I have, you know, and I guess Terry Verner would be, you know, the one to answer it.

This use has obviously been here a long time, you know. I mean, it's either a valid major non-conforming use or it's an illegal use and if there is no evidence to point out that it was legally established when it was originally established, whether that be '58 or '59 or '60 or whenever, then it's been illegal.

How come it was allowed and able to function, you know, openly and actively as a salvage yard for all those years without having been shut down by Code Enforcement?

MR. MacGILLIS: I think there's probably the size of this County and the amount of staff we had; I mean, now we have a larger Code Enforcement Department.

But a lot of what the Code Enforcement, and Terry could address this, until 2000 when they only had five officers, it was on a complaint basis. So if this area was on Military Trail, it was doing its business and everybody once again just assumed, I mean, I would be happy to say this was a legal, major non-conforming use if I had the documentation to do it.

I mean, I sympathize with the property owner having to go through this process, but he was cited. A code enforcement officer for some reason was getting complaints because the area is being developed out there and whatever's going on there I guess people are watching it and saying it has more of an impact on the surrounding area.

It's an industrial use, you've got commercial to the north and you've got residential across Military and to the east of this property.

The area's changing so there's more apt to have complaints from residents.

CHAIRPERSON KONYK: Okay. We're going to take a five minute break for the court reporter.

(Whereupon, a short recess was had.)

CHAIRPERSON KONYK: All right. I'll give you another 60 seconds. If everybody's not here, that's okay, that's too bad. We gave them five minutes and it's been almost ten.

Let's go to the public portion of the hearing. If somebody could close the back door and the front door that would be great. Anybody have a cell phone on, let's turn them off just so we don't get interrupted.

Any members of the public that wish to speak on this item? I'm going to caution you now we're not here to hear about code enforcement issues or anything of that nature.

The only thing we're trying to establish is whether or not the Zoning Director has made the correct determination.

So if you're going to speak about the Code Enforcement issues, please don't even stand up. If you would like to send someone forward to speak about an issue that is relevant to what we're hearing today, that is fine.

Is there any member of the public who wants to speak? Your name for the record?

MS. KARKLINS: I'm Jeannine Karklins. I'm the owner's sister. I've dealt a lot with this evidence over the last ninety days and hearing some testimony today, I'd just like to point out yesterday we did drop off a packet and it has photographs in it. And some of the photographs are also in Mr. Taylor's evidence. I have the small ones.

CHAIRPERSON KONYK: Is this the packet you're referring to?

MS. KARKLINS: Yes.

CHAIRPERSON KONYK: Okay. We have that.

MS. KARKLINS: Okay. I'd like you to look at the little girl and the little boy that is stamped March of 1957. I think it's photograph number four.

And Mr. Basehart and Mr. MacGillis talked about things being date stamped. Mr. Basehart said that maybe some things are and Mr. MacGillis said clearly nothing is and saying that none of the affidavits are dated or refer to an address.

This photograph is a little girl and a little boy. The little boy's no longer with us.

Photograph number two is the same little girl and same little boy. This picture of her with hair I'd say about ten inches long in the photograph here has got to be at least a year before that considering she only has an inch of hair. The same girl. It has to be at least a month before because that's all I'm concerned

about, March of '57 is my deadline that I need to prove.

I have a little girl, same little girl, at the said property. You have testimony of the person that took this photograph. She took it at the location we're discussing today and there was a salvage yard. That I think goes to the date.

You also have an affidavit there, Mr. Everett Frye, the Palm Beach County Fire Chief, thirty years for Palm Beach County, moved here on January 1st, 1957, three months prior to your zoning change. And he stated in his affidavit, which you can read yourself, there was an existing salvage yard, auto salvage yard. The junk yard was there the day he moved here three months prior to your change.

You talk about the affidavits not being sufficient, that these people aren't here. These people are in their 80s and 90s. Due to health concerns, I couldn't bring them here today. Every single one of them are available by telephone right now and you can call them and speak to them or should you choose can be presented in front of you, so long as I can be given the opportunity to get them here.

Any Court in the United States accepts affidavits for people that can't be there. They are dated. They discuss the date they were born.

They discuss that in 1955 and 1956 they all observed a junk yard, an auto junk yard on the property.

You're talking about a fire chief, a fire marshall, a reverend, a man of God, the prior owner, two customers I believe there is, and I'm sure I'm forgetting somebody. The owners of the property directly across the street. You have testimony through the affidavits and you have dated photographs and I urge you to consider this.

That's all I really have to say and I only wanted to speak because I've been living this for the last 90 days.

CHAIRPERSON KONYK: We appreciate it. Thank you. You should have hired her. No, just kidding.

MR. MARESCA: Good morning. My name is Paul Maresca. I reside in Oak Run, which is the community that is directly behind Astro Auto Salvage.

Mr. Vice-Chairman, you had asked a very good question as to how this business could be operating for so many years and if not go unnoticed go undetected by either Zoning or Code Enforcement. Perhaps I could shed a little bit of light on that question.

I could sympathize with this family as a business owner, you know, not in trying to take somebody's family business away or shut it down. However, the impact of this facility has been phenomenal. So if we can get past the fact that let's assume that they've proven their case, which I think clearly they haven't, and unfortunately the burden is on them to prove that this was in

operation prior to 1957. And obviously there are many photos, but there are aerial photos that are obviously taken by the County that show that they were not there. But let's assume that they were.

The impact has been phenomenal on what's going on there.

Obviously, it is a changing area. There are many new homes and businesses going up so there are many more homeowners that are in view of what's happening. Two years ago --

MR. TAYLOR: Excuse me, excuse me. This is clearly code enforcement.

MR. MARESCA: No, this is going to go directly to the impact because it's --

CHAIRPERSON KONYK: But it's not impact. We're trying to establish if the business has been there since 1955 if they've established -- and that's the only thing we're concerned with right now.

MR. MARESCA: Okay.

CHAIRPERSON KONYK: The other thing is that I don't think that the aerials were found to have clearly established that the business wasn't there. I think they said that there was one in 1955 and one in 1960, so that wasn't clear, either.

MR. MARESCA: Okay. So I'll change it if we're not interested in the impact that this has to the neighborhood and to the possible safety issues and the hazards and all of that. Maybe that's for a separate --

CHAIRPERSON KONYK: Again, that's -- you know, I'm going to tell you something and this is really probably not appropriate for me to say. But I believe that that salvage yard was there when you bought your home.

MR. MARESCA: It was there when we bought our home but it has changed immensely. I've been there five years and in the five years that I've been there, it's changed immensely. We've had fires --

CHAIRPERSON KONYK: Okay, okay.

MR. MARESCA: -- we've had two deaths.

CHAIRPERSON KONYK: Thank you. Does someone else have something to say addressing the --

VICE CHAIRMAN BASEHART: Well, wait a minute. Wait a minute.

MR. MARESCA: Well, I didn't finish.

CHAIRPERSON KONYK: Well, you didn't ever get to the point that we've been telling you over and over and over.

MR. MARESCA: I'll change to the point.

CHAIRPERSON KONYK: Okay. Thank you.

MR. MARESCA: That if it goes back to 1957, the woman who stood up here, the original owner of that property, she had called this Johnny's Auto Parts. I think there's a clear difference between auto parts and a full blown auto salvage wrecking yard with nearly 400 cars that are piled on top of one another. Let's assume that that's correct. They have gone from

four different places. She admits that this has gone from four different locations to get to this location.

MR. TAYLOR: Objection.

CHAIRPERSON KONYK: No, she didn't say that.

MR. MARESCA: I believe she --

CHAIRPERSON KONYK: She said the address changed three times over the -- the County changed the address.

MR. MARESCA: They came from Old Boynton Beach Boulevard.

CHAIRPERSON KONYK: Correct.

MR. MARESCA: I'm sorry. So she said that the address changed on Military?

CHAIRPERSON KONYK: Correct, the same location, the address was just changed.

MR. MARESCA: So would there not be in some possession if this has gone from one business to another, knowing that it's vital, it changed in 1992, I believe, again.

MR. TAYLOR: Objection.

MR. MARESCA: Wouldn't there be something that would have to be established that there was some --

VICE CHAIRMAN BASEHART: Well, let me -- in the --

MR. MARESCA: Wouldn't it be vital in the interest of the --

VICE CHAIRMAN BASEHART: The County Attorney can correct me if I'm wrong, but basically a non-conforming use is one that was legally established prior to the time code provisions were adopted that would make it inconsistent with the Code, all right.

You're not supposed to -- well, a non-conforming use runs with the land, all right. The fact that somebody sells the property and the use to somebody else, as long as that same use continues, does not eliminate the right to continue that use. So it doesn't run with the owner; it runs with the land.

MR. MARESCA: Does it allow them to continue the use as it was in that year when it was prior or does it allow them to basically do whatever they like?

VICE CHAIRMAN BASEHART: No, it allows them to continue the same use at the same intensity that was there when it was originally established. One other issue, which doesn't seem to be on the table today, was the fact that non-conforming uses are not allowed to expand or intensify. You know, I mean, that's a whole 'nother issue.

Even if we accepted the photographs that are in here today as absolute proof that the use was there in 1957, it's clearly not using the whole property. It's clearly not as intensive as it appears from the current photograph, so obviously if there is an established legal non-conforming use here, there's a whole issue about its intensification, which, you know, I guess

isn't on the table today. We're not -- they haven't been cited for expanding a non-conforming use, have they?

MR. MacGILLIS: No. The question today is -- the question to the Zoning Director is the status of the use on this property and when I found it to be an illegal, not a major non-conforming use, I mean, whatever is determined here today, if it's an illegal use or a major non-conforming, then the questions you're asking are appropriate.

VICE CHAIRMAN BASEHART: If your interpretation stands, then the fact they've intensified doesn't matter because it shouldn't have been there in the first place.

But your testimony, the only thing we can accept from you today is evidence to document whether it was or wasn't there in 1957.

MR. MARESCA: Understood, understood, but I think you just brought up which was my questions directed to Mr. Seaman. That was my question. If it were and let's say that they've established that, which I don't believe they have, but if they have, then there's the question of the impact and the intensity.

VICE CHAIRMAN BASEHART: Right.

CHAIRPERSON KONYK: And that has to come after, it's like putting the cart before the horse. So one issue has to be resolved and when that issue is resolved, it opens up another door possibly.

MR. MARESCA: Thank you very much.

VICE CHAIRMAN BASEHART: But the fact remains that if this is a legal, non-conforming use, it was there when the area around it built up. I understand that incompatibilities can be created by new development moving in and around an existing development, but that's not the existing development's problem. You know, anybody that moved into there, if this is a legally established use since 1957, the fact that adjacent housing was built, you know, the people that bought housing adjacent to this site knew or should have known when they moved in that it was there and have no legitimate complaint about its continued use.

MR. PUZZITIELLO: Other than the increased intensification.

VICE CHAIRMAN BASEHART: Yeah, the intensification would be an issue.

MR. MATHIS: Well, if you open the documents that we were given in this packet and go back to 1970, the intensity in that aerial photo in '70 doesn't look all that much different than the intensity that we're looking at in the photo of today, page 56.

VICE CHAIRMAN BASEHART: In '70, yeah.

MR. MATHIS: So now we're just getting down to a couple of years here.

CHAIRPERSON KONYK: The question isn't what were they doing in 1970. The question is what are they doing in 2005 compared to 1957 or '56.

MR. SADOFF: I directed a question before to Mr. MacGillis, and I guess that was inappropriate. It should have been directed to -- I don't know the attorney's name.

MR. TAYLOR: I'm Barry Taylor, sir.

MR. SADOFF: Barry Schiller?

MR. TAYLOR: Taylor.

MR. SADOFF: Taylor. Mr. Taylor, I asked the question before with reference to bills, you know, from FP&L or BellSouth, Southern Bell at that time.

Have you ever checked to see whether there are any bills of this type from back in 1955, '56?

MR. TAYLOR: Sir, we have been trying to locate those bills, but it's so long ago that we just have not been able to do it.

If you call FP&L and you say can you track back on your computers, they only go back five years and to try to get into their archives is extremely difficult.

Sir, if this were a murder case and it's not, hopefully.

MR. SADOFF: Not right now.

MR. TAYLOR: And John were accused of killing Jim and an eyewitness basically came in before a jury and the eyewitness basically said, "I saw him pick up a gun and I saw him shoot him," all right. There's a good chance that the defendant would end up in prison and end up or even lose his life.

I have provided testimony. I have as Ms. Karklins has said, I have those witnesses who signed those affidavits ready to talk to you on the phone if necessary. I will wheel them in here if I have to. The actual testimony, actual photographs.

When you look at the list that basically the County put together, those are things that you may use. It doesn't say that you have to use and in any Court of law, eyewitness testimony, specific testimony, overrides everything else. And in this particular case to try to make this thing hinge upon the telephone bill or an electric bill which is contemporaneous or it's off to the side, it's collateral, I have actual testimony and actual affidavits from people who don't have a dog in this fight basically saying it was there.

I understand the pressures that the homeowners are under, the gentleman who spoke, but as Mr. Basehart said and Mr. Mathis said, it was there when they moved in and the Chairman said.

There are screen comments right from Planning and Zoning that were provided to you with regard to complaints on 8/15/2000 and 2003, which specifically say it was a grandfathered, non-conforming use. We don't know what those people saw, that inspector, Mr. Coder (ph). He's not here today.

I doubt very much they're going to bring in his testimony or the other inspector, all right. They may have even seen something, but we're so far down the road. I mean, how can you

miss, how can you miss an auto salvage yard on Military Trail?

And the reason that it was never cited was because it is what it is. It's a legal non-conforming use. Thank you.

CHAIRPERSON KONYK: But I think that another problem that has surfaced and I guess it will come back later on is the fact that even if it was there in 1955 or '56 or '57, the use has certainly intensified over the years and it would have to be pared back. Is that what they would have to do, to what it was in '57?

MR. MacGILLIS: Well, once again, we have no aerial photographs, so it would be very awkward for staff. We'd be in, I'm sure, a lawsuit with the property owner and try to go back and what year would we establish it?

CHAIRPERSON KONYK: Right.

MR. MacGILLIS: And as Mr. Basehart said, the nature of this use, you could have ten cars in one day and fifty cars in the next day.

CHAIRPERSON KONYK: Right.

MR. MacGILLIS: But I think some of these, we were looking at some of the original stuff that keeps getting confused here. Maybe if those two children that are standing in that building -- if I assume on page 27 this screen, which I could not get confirmation it was information in the property appraiser's screen, and they can't indicate to us where this information came from, if it was downloaded from anywhere or from historical records or wherever it came from, in 1955 there was a retail building here, which would support if that's true that they were selling auto parts.

It doesn't support, it doesn't go any further to say of the salvage yard. So the lady testified that the girls were standing in the kitchen and they attested, well, they could have been selling auto parts.

But there's nothing there that substantiates for me to say other than these couple of photographs here and there are cars behind the building that could have been there for 24 hours, 36 hours. There's nothing there to say that that back parking lot was full of cars like we see there today. MR. SADOFF: Excuse me. Were you referring to picture number eight, by chance?

MR. MacGILLIS: Page 27 of this package --

MR. SADOFF: No, no, I'm talking about the pictures.

MR. MacGILLIS: Which page are you on?

MR. SADOFF: In the blue --

MR. MacGILLIS: Oh, yes.

MR. SADOFF: With the original owner.

MR. MacGILLIS: Yes, this one here. If, assuming based on the --

MR. SADOFF: It says "Johnny's Auto Parts" right up on top, right? Is that the one you're referring to?

MR. MacGILLIS: Yes, yes.

MR. SADOFF: Okay. I just wanted clarification.

MR. MacGILLIS: And once again, that's taking the assumption that this thing on page 27, the '55, that's when the building was created, which I have nothing else to support that other than this photograph that would say, okay, I could start to see a correlation maybe between the 1955, the retail building, and this. But that's really stretching it on my part.

MR. PUZZITIELLO: Except for the property appraiser. There's the property appraiser's screen showing year built, 1955-1956. So there is two pieces of evidence from the property appraiser about the building and when it was built.

CHAIRPERSON KONYK: Well, that there was a building there, it doesn't show it --

MR. MacGILLIS: It says retail.

CHAIRPERSON KONYK: -- as a salvage yard.

MR. PUZZITIELLO: One says retail and one says garage. Retail store apparently.

VICE CHAIRMAN BASEHART: Yeah, there was a 710 square foot retail store and a 400 square foot garage.

MR. PUZZITIELLO: All right. And the other one is 2,012 square foot similar to the rest.

MR. TAYLOR: You don't sell auto parts out in the sun or in the yard. You have an office and you sell them right out of the office. That's the retail store. I mean, you don't sell these parts wholesale. People come in and they pay for these parts retail. They buy tires, they buy wheels, they buy gear boxes or whatever.

That's consistent with the testimony that you've heard today and you actually have a screen off the Property Appraiser's office. I mean, I am astounded that that would not be conclusive.

MR. MATHIS: The 50's were also a time when that's the way you fixed your cars. People fixed their own cars. You went to the junk yard and you got a new carburetor and you went out and got new radiators and stuff.

Is it appropriate to ask some more questions of staff?

CHAIRPERSON KONYK: Sure.

MR. MATHIS: When I looked back at the photos in the package you gave me, I'm looking at page 54, the '65 photo, clearly that's an area of a junk yard. Call it salvage, call it what you want. That's the first really clear and the furthest back clear picture you have.

We're kind of putting the burden and I understand some of the rules and regs and maybe the attorney will have to chip in, but we're putting the burden on the property owner to prove what was going on.

Isn't there some legitimate burden back on the County to come up with some records that have a little more information after -- I spent 25 years with BellSouth and I'll also tell you there are phone books that go back to the '20s in Palm

Beach County. And it's a pretty consistent whole stack of them. If you get your hands on them, you're going to find the phone record somewhere or a phone book that says here's an ad of what's going on.

And we may be playing around here with the definition between auto parts and salvage and what was that in that period of time. But isn't there some burden on the County to come up with some information through tax rolls and some other things?

MR. MacGILLIS: I'll let the attorney address that.

MR. BERGER: Well, I guess now's the time to lay out what the standards are and reiterate what you probably heard before in the Code.

When you deal with appeals of the Zoning Director's decision, the applicant has the burden of coming forward and showing that the decision was wrong. If there's competent substantial evidence to support the Zoning Director's decision, you're supposed to affirm that decision.

Competent -- you've probably heard those words a lot, too, and with the exception of the Chair probably pass it off as legal hokum, but ultimately all it means is --

CHAIRPERSON KONYK: So what does that mean?

MR. BERGER: Well, competent substantial -- well, going through the wonderful exercise of law school you hear about it from time to time.

CHAIRPERSON KONYK: I'm just kidding.

MR. BERGER: All competent substantial evidence is, probably the clearest description from a Court that I ever read described it as evidence that people of a reasonable mind would accept as adequate to support your conclusion. And what they say it isn't is innuendo, is assumptions, is unsupported sort of assumptions. That's what it is.

So that's really where you are. I mean, the fact is, you know, it sounds like staff has done a lot of work despite themselves, despite what the Code says, and I guess what you -- I guess Genni Messina who can testify, I guess, was whispering to me that she had researched FP&L records or phone.

MS. MESSINA: I went to the Summit library and looked in all of the books from '56, '57, '58, whatever they had, whether it was West Palm Beach, Boynton, Delray, because I thought you never know where it's going to pop up. Their books are like -- they're very small replica of what the Polk directory is today.

I looked under Johnny's, I looked under the address, I looked under salvage, I looked under junk, I looked under auto parts. I didn't find anything that said Johnny's that was on Military Trail.

MR. MATHIS: You were looking at cross-reference directories?

MS. MESSINA: Right.

MR. MATHIS: Not the actual phone books?

MS. MESSINA: That's what they have. In '57, '56, that's what they have.

MR. MATHIS: A regular phone book?

MS. MESSINA: They have the -- the telephone book, that's all they had. It looked like a Polk directory --

MR. MATHIS: But BellSouth has the books back to the '20s here. I've physically had them in my hands and I know that because we did some historical stuff with them. I'm not saying you guys didn't do the job.

Let me ask you a question from the attorney's side here, too. Reasonable minds, logical information, we have a stack of affidavits of people that were pretty upstanding citizens in the community. Is that assumed to be beyond your hearsay and other things or can that be accepted as solid information?

MR. BERGER: I'm not going to tell you what reasonable is. I'm afraid that's your job.

CHAIRPERSON KONYK: Yeah. The other thing is the affidavits say that something was there, but they don't go into any detail. It's very brief, you know, whatever.

MR. TAYLOR: May I ask Ms. Messina a question or two?

Genni, when you did the research did you research under the name of John and Chloe Guarine?

MS. MESSINA: I didn't look under the name Guarine.

MR. TAYLOR: Why not?

MS. MESSINA: Because I didn't have that name at that time. I was looking for Johnny's as a business.

MR. TAYLOR: Okay.

MS. MESSINA: I was looking as a business.

MR. TAYLOR: Do you have any information or do you know that the Guarines didn't have the money to put an ad in the paper and they just basically had a phone under their own name?

MS. MESSINA: No, I didn't. No one gave me that.

MR. TAYLOR: Mr. Mathis, you work for the telephone company?

MR. MATHIS: Yes.

MR. TAYLOR: Okay. If you were to look at the County's Exhibit Number 21, which is --

MR. MATHIS: It's this packet, isn't it? I've got about three up here.

MR. TAYLOR: And if you would look at the thing that's called the E-S-P-O-R-J-O?

MR. SADOFF: Wait a minute, what page are we on?

CHAIRPERSON KONYK: Twenty-one of this one.

MR. MATHIS: What page are we on? Page 21?

MR. TAYLOR: Twenty-one of the County's. And the number reads 562-1124.

Doesn't the '56' mean that that in fact was established in 1956?

MR. MATHIS: It probably could have. It could have been a district. They changed codings.

As a matter of fact, I will tell you in the early '70s I did these drawings. You'll find my name all over them in Boca and Delray and Boynton. It's a pretty simple sketch. It tells the guys exactly what to go out there to do. The coding was different at that point in time.

I wouldn't tell you one way or the other. You could find some old engineers who could probably tell you.

MR. TAYLOR: Thank you.

MR. MacGILLIS: I'd just like to, Madam Chair, for the record on that, when the applicant brought this drawing in we asked because right above the north arrow, you can see where it says, "March 19", and the date was taken off. So we said can you show us if this was prior to '57? We didn't get it back. And then the documents that were submitted yesterday, this big pile of stuff you have, you can see this same document. I don't know what it -- I think it's the last page of all this stuff.

It shows March, 1971. That's actually the date that got cut off on this that's the prior document that I received.

CHAIRPERSON KONYK: So this piece of paper was actually prepared -- it appears to be prepared in 1971?

MR. MacGILLIS: In 1971.

MR. MATHIS: No. I'll tell you that that date and that coding up in that corner comes from some other storage area for this document. This document was prepared in a different format. By 1971, a lot of this was being done with electronic equipment as opposed to this is a hand-drawn, handwritten in document, and it's a job order that's done on a draftsman's table.

They used to have a ton of them and that coding and what's up there on the 8409K is a format and a form number and this is how they were stored and what the storage is and how they would look them up, so that would be very different from what this drawing actually was.

That's not a legal comparison or it's not a factual comparison.

MR. MacGILLIS: That's why we asked him to bring this to somebody to bring back expert testimony, which I never got. This piece of evidence was useless to me because there wasn't even a date on it.

And I thought that, well, at least if you find the date, maybe there's some correlation to what this exhibit is supposed to be demonstrating to me.

So I guess Mr. Mathis just made it clear.

CHAIRPERSON KONYK: Lucky for everybody he was here today, huh.

MR. SADOFF: Madam Chair, may I?

CHAIRPERSON KONYK: Yes.

MR. SADOFF: May I ask Mr. Mathis a question through you? What does 2001 Barwick

mean? Is that anything? Is that Barwick Avenue?

MR. MATHIS: They used to have -- telephone cable in those days is very different from today -- used to have two pairs of wires running from a central off to a house. Each grouping, each cluster that's wrapped in 12 to 25, 50 to 100 sets of those wires got a name, got a number. It's a piece of cable. You can trace that number all the way back to a point in the frame in downtown Boynton or Delray.

That's just, Barwick tells you it's coming from an interface somewhere that got to there, maybe where the cable got split. That's really coding for guys in the field to understand what's going on.

MR. SADOFF: Yeah, but the 2001 doesn't mean the year?

MR. MATHIS: No, it doesn't have anything to do with the year. It has to do with probably the street addresses or Barwick Road somewhere between there and downtown Boynton.

MR. TAYLOR: It's right next to it.

MR. MATHIS: It's the form number itself.

That job doesn't mean anything to do with dates and times. The thing that got to me on that job is there wasn't very much cable under Military Trail back in the '50s.

So I've got to wonder when this was actually done from that standpoint. But you just look at it. Down here where this transmission stamp is and those, there's nothing in there down in the lower right-hand corner. Those would have all kinds of dates on it.

CHAIRPERSON KONYK: So there's really nothing here that establishes the date?

MR. MATHIS: No, nothing I can tell.

CHAIRPERSON KONYK: I mean, nothing that establishes that as 1956 or as 1971? Nothing, correct?

MR. MATHIS: In my mind, no. In a half-a-day you could probably find it pretty easily going through the records, but they would have to be willing to open up the records to you.

CHAIRPERSON KONYK: Someone else from the public wish to speak? Your name for the record, please?

MR. BILKIS: Good morning. Joel Bilkis. I don't have any doubt that these people who signed these affidavits signed them in good faith and are probably correct. I wasn't here at the time.

But I believe the whole issue should boil down to whether they ever had a legal right to have a salvage yard there in the first place and from what I understand, there's absolutely no proof from them whatsoever that they ever were there legally.

I'm sorry to make it so short, but --

CHAIRPERSON KONYK: We're not sorry about that.

VICE CHAIRMAN BASEHART: Let me explain to

you. The affidavits all say that these people have knowledge or remember that this use was there in 1957. Prior to 1957, the County didn't have a Zoning Code.

CHAIRPERSON KONYK: So if it was there then it could continue.

VICE CHAIRMAN BASEHART: You could put anything anywhere you wanted prior to --

MR. BILKIS: I thought I heard the young lady testify that she had something from the County at the old location and she transferred it over.

VICE CHAIRMAN BASEHART: She had an occupational license. That doesn't have anything to do with the Zoning Department. It's a license, it's a tax collection device, all right.

MR. BILKIS: Okay. I stand corrected. Thank you.

CHAIRPERSON KONYK: So in other words, if it was there before 1957, before there was a Code, it has permission and it can continue.

MR. BILKIS: Okay.

CHAIRPERSON KONYK: At the intensity that it was in 1950.

MR. BILKIS: It's a question of whether it was there or not and on what date?

CHAIRPERSON KONYK: Correct. That's the big issue right now.

MR. SADOFF: It would be grandfathered in, right?

MR. BERGER: Right.

CHAIRPERSON KONYK: Any more testimony? Anybody else have anything to add? Does the applicant want to rebut?

MR. KARKLINS: Good afternoon. My name is Dana Karklins. I'm the owner of the property, one of them, and we've had complaints before from people and the Zoning Department or the County --

CHAIRPERSON KONYK: Terry, shh. Okay. I'm sorry.

VICE CHAIRMAN BASEHART: She was asking you to be quiet.

MR. VERNER: Oh, sorry. Yes, ma'am.

CHAIRPERSON KONYK: It's for the court reporter. She appreciates it. Thank you.

MR. KARKLINS: And we've had complaints that our cars were stacked too high on our facility and the County has come out a couple of times and investigated and spoke to my brother, Michael, and they told him that, you know, the people behind you are complaining about the cars stacked too high, but there's nothing that we can do about it because you're vested and grandfathered in and you're non-conforming and it's on the paperwork as closed.

And now people are telling me that we're not vested and closed and non-conforming. I just wanted to let you know that it's stated that there's been complaints and they said that we're non-conforming and I'm a little confused on why I'm non-conforming today.

CHAIRPERSON KONYK: I think probably, and

Terry could probably answer this better, is that the Code Enforcement Officer doesn't have the authority to make the determination on whether or not you're vested and he incorrectly made that assumption, huh?

MR. KARKLINS: It's on the paperwork.

CHAIRPERSON KONYK: I understand that, but that wasn't the appropriate person to decide whether or not you were vested and I guess maybe if you didn't have the cars stacked up so high and you didn't get people mad at you, they wouldn't have made a complaint to Code Enforcement.

MS. KARKLINS: Is Terry Verner okay to say it because it --

CHAIRPERSON KONYK: Yeah. Terry, do you want --

MS. KARKLINS: It's his notes.

CHAIRPERSON KONYK: I know, but it's not a Code Enforcement issue whether or not you're vested. It's a Zoning issue whether or not you're vested.

MS. KARKLINS: Gotcha.

MR. VERNER: Good morning, Madam Chair, members of the Board. And it's probably a good thing we clear this up because reference has been made to the past notes in the file and we need to clear it up for the record. As some of you may know, over the years in working with Palm Beach County, Code officers go out in the field and they have to make a decision on how to handle a particular case. In addition to other complaints on this business throughout the years, we did receive two complaints, one in 2000, I think, and one in 2003, about the validity of the salvage yard.

Sometimes and not only in this case, in this particular instance, in other businesses we've dealt with, the Code officer will talk to the property owner, he'll gather some preliminary information and then the Code officer will make a decision, is it worth pursuing. And we come to a decision and say, you know, it's likely this could be grandfathered in. We'll let it go and we'll go from there. It's more a decision based on workload and time spent trying to pursue something as opposed to an official determination.

You're right, Madam Chair, case law has upheld time and time again that the decision by the Code officer in that regard does not waive the Code, does not give the property owner any rights that they didn't have prior to that Code officer coming to that conclusion. It simply was an assumption reached by the Code officer based on what they had at the time.

The difference is in those two cases this came around a third time. The Code officer got with me, we realized the history of this thing and I said, hey, this time let's let it go to Zoning.

The ULDC clearly sets forth that the Zoning Division, the Zoning Director is the one to make this call or the Zoning Division. Let's ask the property owner or business owner to go ahead and

get a zoning confirmation letter and we'll put this thing to rest once and for all.

And that's why we're here today.

CHAIRPERSON KONYK: Okay. Thank you. Now I'll let you continue since we cleared that up.

MR. KARKLINS: Thank you, ma'am. We also -- we had put a letter from Mrs. Guarine stating that she was the owner since 1955 and presented it, I believe, in 2001. This is when we were trying to get our grandfather letter from the County. The person that was in charge of this said that they tried to get a hold of me several times, as was stated earlier, but he never did try to get a hold of me. He never contacted me once by letter or by phone because as we found out from Genni that he was calling my fax number, okay.

And that's why I didn't know anything. It was my fault for not following up with him, but I thought it was already done.

And as for the houses where the cars were stacked up before they were built, you can see I have photographs where they were stacked up before the houses were there.

From what I understand, they purchased the houses for approximately \$250,000 and recently the houses are selling for \$550,000 and I just wanted to state that the junk yard is not slowing down the increase of value of their houses.

CHAIRPERSON KONYK: Thank you. Anybody else have anything else to add? Okay.

Back to the Board. We'll close the public portion of the hearing and the applicant will be the only one to speak after this point and the staff and the Board members.

MR. MATHIS: What are our choices?

CHAIRPERSON KONYK: Your choices are either to uphold the decision of the Zoning Director or to reverse it.

The question is did the applicant meet the burden of proof to establish that this business was in existence in the same capacity that it's in, well, I guess in any capacity as a salvage yard prior to 1957; right?

MS. HELFANT: Yes.

MR. KARKLINS: May I say something?

CHAIRPERSON KONYK: You are the applicant; correct?

MR. KARKLINS: Yes.

CHAIRPERSON KONYK: Then you may.

MR. KARKLINS: Okay. What I'd like to say is --

COURT REPORTER: State your name.

MR. KARKLINS: Mike Karklins. I'm Dana Karklins' brother.

Is that this is our livelihood and I'd just like you to take that into consideration. This is how we make our living and like you all realized before that, if somebody made a mistake over the past fifty years, it's not our fault.

This is our livelihood and this is how we make a living. This is how we bring up our children and send them off to school and clothe

them and feed them. That's all I'd like to say.

CHAIRPERSON KONYK: Thank you. Anybody have any questions of staff or the County Attorney or is someone prepared to make a motion?

MR. MATHIS: I'll make a motion. I think we're caught in a world where records aren't real clear 50 or 60 years ago and I think the Zoning group did what they could do and got what they want, but I think with some of the testimony and the affidavits we've had today that there's reason to believe that this was operating in what was -- call it an auto parts, call it a junk yard, call it a salvage yard -- to me, it was operating pretty much the same way since the early '50s and I'd like to make a motion that we reverse the decision and take the necessary steps or somebody else, I don't know if we get to do that or not, to make sure that this gets documented once and for all.

It's unfortunate when you look at these pictures in the last ten years, it's become a residential world. A junk yard and a residential world aren't going to get along, we know that, but we understand it's your living. I think some of the burden goes back to the folks in the residential neighborhoods. If they want to do something about this, then make an offer and I'm sure there's a willing price at some point and the junk yard will go to another location and won't bother people.

But my motion is to reverse the decision and I guess it grandfathers this in. I don't know whether that's permanent, or the lawyers have to figure out what that does.

CHAIRPERSON KONYK: We have a motion by Mr. Mathis. Do we have a second?

MR. PUZZITIELLO: I'll second it.

CHAIRPERSON KONYK: We have a motion by Mr. Mathis and a second by Mr. Puzzitiello.

Any discussion?

MR. PUZZITIELLO: The only thing I want to say is that I think there was an auto parts/junk yard, whatever you want to call it. I think it was there.

I think the biggest issue is going to be involved here is the intensity because I believe it's definitely more intensive now than it was back then. So that's probably the bigger issue.

CHAIRPERSON KONYK: I think it goes back to what we said. If you close one door, you're going to open another one and this issue probably isn't going to go away from this decision today.

So we have a motion by Mr. Mathis and a second by Mr. Puzzitiello.

All those in favor?

VICE CHAIRMAN BASEHART: Aye.

MR. MATHIS: Aye.

MR. PUZZITIELLO: Aye.

CHAIRPERSON KONYK: Opposed?

I'm going to oppose it, but it doesn't make any difference. It carries four to one.

MR. SADOFF: I didn't vote.

CHAIRPERSON KONYK: Oh, you didn't vote?
MR. SADOFF: I want to publicly state I haven't made my mind up yet. I'm confused to be honest with you. I don't know whether I am for it or against it. I don't have clarification in my mind as to -- I just want to --
CHAIRPERSON KONYK: Abstain.
MR. SADOFF: What?
CHAIRPERSON KONYK: Are you abstaining?
MR. SADOFF: I guess you might call it that.
MR. BERGER: I'm sorry. Unless you --
CHAIRPERSON KONYK: A reason?
MR. BERGER: -- have a conflict of interest, you have to say yes or no.
CHAIRPERSON KONYK: Okay, so then he has to say yes or no.
MR. BERGER: You have to say yes or no, sorry.
MR. SADOFF: Yes, but Lenny, I'm not clear on everything yet. I just haven't made my mind up.
CHAIRPERSON KONYK: You're going to have to go with yes or no.
MR. BERGER: Or ask more questions if you need to be clear in your mind, but State law requires folks like you on a Board to vote --
CHAIRPERSON KONYK: To vote.
MR. BERGER: -- yes or no, unless you've got some sort of conflict under the Code of Ethics which you don't.
VICE CHAIRMAN BASEHART: That's why you get the big bucks.
MR. PUZZITIELLO: No chickening out.
CHAIRPERSON KONYK: Okay. So we have Mr. Mathis' motion, Mr. Puzzitiello seconded it. Mr. Mathis voted yes, Mr. Puzzitiello voted yes, Mr. Basehart voted yes, I voted no.
Mr. Sadoff, do you have any other questions or can you supply us with a vote? It's really not going to make a difference either way.
MR. SADOFF: Well, if I vote against it, it will make a difference.
CHAIRPERSON KONYK: No, it carries 3 to 2.
MR. SADOFF: Oh, it's 3 to 2?
CHAIRPERSON KONYK: Hm-hmm, is that correct?
MS. HELFANT: Yes.
CHAIRPERSON KONYK: So, I mean --
VICE CHAIRMAN BASEHART: While he's making up his mind --
MS. HELFANT: He still needs to vote.
MR. SADOFF: I'm sorry. I didn't hear you.
MS. HELFANT: I said you still need to vote.
MR. SADOFF: Yeah, I know I still need to vote.
VICE CHAIRMAN BASEHART: While he's making up his mind, I'd just for the record like to indicate that actually after having read the staff report and everything, I came to the meeting, you

know, believing I was probably going to support the Zoning Director's determination, but at the hearing we received testimony under oath by the original owner who testified that this operation was in existence prior to the adoption of the '57 Code and then the affidavits. I guess there's a strong presumption of truth to affidavits because they're notarized and you know, I guess unless conflicting evidence, you know, was presented you have to take the affidavits as the truth.

Also, judging by some of the people that signed them, a former fire chief and a reverend, you know, that's what tipped it for me.

CHAIRPERSON KONYK: I know in all fairness to our Zoning Director, he did not have these affidavits.

MR. PUZZITIELLO: Absolutely.

CHAIRPERSON KONYK: So when did they show up? Yesterday?

VICE CHAIRMAN BASEHART: Yeah.

CHAIRPERSON KONYK: Okay. So we have to have a vote, Mr. Sadoff. Are you going to vote yes or no on this issue?

MR. SADOFF: I'm going to vote yes.

CHAIRPERSON KONYK: Okay. So 4 to 1. Your motion carries.

VICE CHAIRMAN BASEHART: I guess the next issue on this, is the issue of the intensity? That's not a part of this decision today, right?

MS. HELFANT: No, it's not.

MR. BERGER: All this does is establish that there was, that this salvage yard was there in 1957.

VICE CHAIRMAN BASEHART: Right.

MR. TAYLOR: And that's all we were asking you to do today.

MR. MATHIS: What is intensity based on? How do you justify that one?

MR. MacGILLIS: Square footage. In this case it's the number of cars.

VICE CHAIRMAN BASEHART: Or the percentage of the site that's used.

MR. MacGILLIS: Percentage that's covered by structures or use.

CHAIRPERSON KONYK: Let me adjourn. We don't have anything else today; right? We're going to adjourn the meeting.

(Whereupon, the meeting was adjourned at 11:35 a.m.)

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C E R T I F I C A T E

THE STATE OF FLORIDA)

COUNTY OF PALM BEACH)

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

DO HEREBY CERTIFY that the above-entitled
and numbered cause was heard as hereinabove set out; that I
was authorized to and did report the proceedings and
evidence adduced and offered in said hearing and that the
foregoing and annexed pages, numbered 4 through 57,
inclusive, comprise a true and correct transcription of the
Board of Adjustment hearing.

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

IN WITNESS WHEREOF, I have hereunto set my
hand and seal this 1st day of September, 2005.

Sophie M. (Bunny) Springer