

PALM BEACH COUNTY
BOARD OF ADJUSTMENT

Thursday, June 16, 2005
9:02 a.m. - 9:21 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, Chairman

Mr. Robert E. Basehart, Vice Chairman

Mr. Joseph J. Jacobs

Ms. Nancy Cardone

Mr. Raymond Puzzitiello

Mr. William Sadoff

Mr. Bart Cunningham

Annie Helfant, Assistant County Attorney

Alan Seaman, Senior Site Planner

David Cuffe, Civil Engineer II, Land Development

Miradieu Aubourg, Planner II

Oscar Gamez, Planner I

Juanita James, Zoning Tech

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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CHAIRMAN KONYK: We're going to call this meeting to order as soon as everybody is settled. It's the June 16th, 2005, Board of Adjustment Meeting.

And we'll start with the roll call and the Declaration of a Quorum.

MS. STABILITO: Mr. William Sadoff?

MR. SADOFF: Here.

MS. STABILITO: Mr. Raymond Puzzitiello?

MR. PUZZITIELLO: Here.

MS. STABILITO: Mr. Bart Cunningham?

MR. CUNNINGHAM: Here.

MS. STABILITO: Chairperson, Ms. Chelle

Konyk?

CHAIRMAN KONYK: Here.

MS. STABILITO: Vice Chairman, Mr. Robert Basehart?

VICE CHAIRMAN BASEHART: Here.

MS. STABILITO: Ms. Nancy Cardone?

MS. CARDONE: Here.

MS. STABILITO: Mr. Joseph Jacobs?

MR. JACOBS: Here.

MS. STABILITO: Mr. Stanley Misroch?

(No response.)

MS. STABILITO: Mr. Donald Mathis?

(No response.)

VICE CHAIRMAN BASEHART: You did hear Bart say he was here, didn't you, from down the hall?

CHAIRMAN KONYK: He was throwing his voice.

Next item on the Agenda is the opening prayer and the Pledge.

And Mr. Cunningham does such a good job with the prayer, we're going to let him continue with it.

VICE CHAIRMAN BASEHART: He's the Board's chaplain.

CHAIRMAN KONYK: Reverend.

MR. CUNNINGHAM: Let us pray. 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.

Please join me in the Pledge of Allegiance.

(Whereupon, the Pledge of Allegiance was recited.)

CHAIRMAN KONYK: I have before me proof publication in the May 29th, 2005, Palm Beach Post.

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

Items on the consent agenda are items that are recommended for approval by staff either with

or without conditions, there's no opposition from the public, the applicant agrees with the conditions and no Board member feels that item warrants a full hearing.

If there is opposition from the public or the applicant does not agree with the conditions or a Board member feels the item warrants a full hearing, that item will be reordered to the regular agenda.

Items on the regular agenda are items that have either been recommended for denial by staff or that have been moved from the consent.

The items on the regular agenda will be introduced by staff. The applicant will give their presentation, the staff will then give their presentation, and at that point we'll hear from the public. After the public portion of the hearing is closed, we will have a discussion and the vote.

Next item on the Agenda is the approval of the Minutes of the May 19th, 2005. Does anybody have any corrections or additions?

(No response.)

CHAIRMAN KONYK: Seeing none, could I have a motion?

MR. SADOFF: So approved.

CHAIRMAN KONYK: Motion by Mr. Sadoff.

MR. PUZZITIELLO: Second.

CHAIRMAN KONYK: Second by Mr. Puzzitiello. All those in favor?

THE BOARD: Aye.

CHAIRMAN KONYK: Opposed?

(No response.)

CHAIRMAN KONYK: Motion carries unanimously.

I'd like to welcome our court reporter back. I think we're all going to enjoy having Bunny back.

Remarks of the zoning director?

MR. SEAMAN: Not today. There are none.

CHAIRMAN KONYK: Okay. Any changes in the agenda?

MR. SEAMAN: Yes, since everything is on the consent agenda, I might as well give you the two corrections we have today.

On page 27 of your report, the cover sheet needs to be changed under the proposed variance at the bottom. At the top it says code section. Follow down the list to the very last one where it says front setback, and if you move off to your right under required, what reads there is correct.

When you move over to the next column where it says proposed, it should read instead of what's there, it should read, "To allow a roof overhang to project into the reduced rear setback by two and a half feet."

In the variance column next to that it should read, "To allow a two and a half foot overhang encroachment into the reduced rear setback."

Then on page 5 of your report, you'll notice on the dais you were given a blank sheet.

That needs to be replaced, that page 5 that's there now. There were considerable changes in the conditions, so that will replace what's in your report now.

There should be some way to identify that.

I guess let me just read the zoning comments to make sure that that page is on the record.

And the zoning comments for that say, "The variance for the reduction of parking spaces is valid as long as a 'home improvement use' remains as the tenant of the total 175,930 square foot building. In the event that the 'home improvement use' should vacate the 175,930 square foot building, the current parking lot will not meet the number of parking spaces required by Code for 'general retail.' It would then be necessary for the building to be reduced in square footage, designate certain areas of the building to be dead space, or revisit the Board of Adjustment for any variance consideration."

So that's the sheet that needs to be in the record.

CHAIRMAN KONYK: Okay. Thank you.

Anybody that's going to speak at the hearing, I know everything is on consent, but we still need to swear you in. So anyone who plans on speaking today, if you could stand and raise your right hand and you'll be sworn in.

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

CHAIRMAN KONYK: First item on consent is BofA2005-00604, Eleanor Halperin, agent for Jimmy K. Boyd, to allow a reduction in the required number of parking spaces.

MS. HALPERIN: Good morning.

CHAIRMAN KONYK: Your name for the record?

MS. HALPERIN: Ellie Halperin, from Lowe's Home Centers.

CHAIRMAN KONYK: And staff has recommended five conditions. You understand and agree?

MS. HALPERIN: Yes, we do. And just for the record, one of the tenants of the adjacent building is here. She was concerned that the justification mentioned the demolition of part of that building.

It's not part of the justification for parking, and the demolition is not going to take place until the termination of their lease. It's nothing that we're doing now, it's not part of the justification. I wanted to clarify that for the

record.

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

(No response.)

CHAIRMAN KONYK: Any letters?

MR. SEAMAN: There are two. One clarification and one in support.

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

(No response.)

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

MS. BARTH: I would like to just clarify that the site plan is --

CHAIRMAN KONYK: Okay. Are you here to speak on this item?

MS. BARTH: I am. I apologize.

CHAIRMAN KONYK: Then you need to come forward, and you need to give us your name for the record.

MS. BARTH: My name for the record is attorney Krista Barth, and I represent the tenant, Country Entertainment, LLC, in this matter.

Ms. Halperin just did clarify one of my issues because the site plan makes it sound -- or the justification statement makes it sound like our parcel is going to be demolished for parking.

I just want that to be very, very clear that that's not what's she's representing even though that's what's in the justification statement that we're going to be demolished, because we do have a valid lease through 2010.

My other issue is -- and forgive me, because I know nothing about zoning, but I'm looking at the site plan that was attached to this, and I would also like to put on the record that the site plan -- she's telling me our sign is gone for the site plan.

So if this is what's being set forth for parking spaces, I don't know how they're calculating it, but our sign is there and it's going to stay there, and it's not on -- it's not represented on this map. So if it in any way changes the parking space situation, that is a sign that is also not going to move.

CHAIRMAN KONYK: Okay. It's a separate parcel; correct? It has nothing to do with that. So you can't make her --

MS. BARTH: It's all part of --

MS. HALPERIN: It is going to be an MUPD.

MS. BARTH: It's all part of their site plan that includes parking spaces --

MR. SEAMAN: It's not part of this variance.

CHAIRMAN KONYK: Yeah. There's nothing in there that says that their sign's coming down. There's no condition or anything such as that. So you just want it on the record that your sign is not coming down?

MS. BARTH: Because on there -- what they have attached to this whole thing here, it's

clearly left out. All the other signs are mentioned. All the parking spaces are in there. And my sign is not on it.

CHAIRMAN KONYK: Do you we need to correct the --

MR. SEAMAN: They're going to the Board of County Commissioners. I mean those issues should perhaps --

CHAIRMAN KONYK: This is not anything to do with the variance application?

MR. SEAMAN: No.

CHAIRMAN KONYK: Okay. Then we can't help you.

MS. BARTH: All I'm saying is, if any of the parking spaces that are being shown are in any way related or close to that sign, then they may be short a parking space, I don't know, but that sign's not going, so it just -- I don't know how they're calculating their parking spaces.

I just want to make sure that what they're utilizing is not any piece of my sign that's already there, my client's sign. Thank you.

VICE CHAIRMAN BASEHART: Could you clarify that?

MS. HALPERIN: I'm sorry. You could have taken it off consent.

CHAIRMAN KONYK: No, this is all I'm going to take.

MS. HALPERIN: The sign is something to be worked out with the owner. That won't change the number of parking spaces for the variance.

CHAIRMAN KONYK: Okay.

VICE CHAIRMAN BASEHART: So your variance doesn't include converting that sign space to a parking space?

MS. HALPERIN: It may, but if that is not allowed to be, then we'll have to find a space some place else. You're only giving us a certain number of spaces based on today's site plan.

MR. SEAMAN: We're only dealing with reducing the number of parking spaces. That's the only issue.

CHAIRMAN KONYK: Okay. And we're not dealing with where they are going to be?

MS. HALPERIN: Correct.

VICE CHAIRMAN BASEHART: That will be a Board of County Commissioners' issue.

MS. HALPERIN: Correct.

CHAIRMAN KONYK: Okay. Thank you.

That item will remain on consent with the comments noted.

BOARD OF ADJUSTMENT CONDITIONS

1. By **June 16, 2008**, the applicant shall amend the final DRO approved site plan to denote the variance request pursuant to BA2005-604.

2. By **June 16, 2008**, (the expiration date of the Development Order) the applicant shall have received the first inspection by a building permit inspector to vest the variance request for the

proposed home improvement store.

3. The variance is granted for the elimination of a total of 49 parking spaces, with the potential of eliminating 10 additional spaces in the event the BCC requires the site plan to be modified to accommodate modifications to the site layout. The additional 10 space reduction can only be utilized when the project is certified by DRO off first BCC 2005 Hearing. (ON-GOING: ZONING)

4. The variance for the reduction of parking spaces is valid as long as a "home improvement use" remains as the tenant of the total 175,930 square foot building. In the event that the "home improvement use" should vacate the 175,930 square foot building, the variance shall be null and void.

CHAIRMAN KONYK: BofA2005-00605, Perry & Taylor, agent for Everglades Farm Equipment, owner, to allow existing structures to encroach into the required front, side, rear setbacks, et cetera.

Your name for the record?

MS. TAYLOR: Good morning. Susan Taylor for Everglades.

CHAIRMAN KONYK: Staff has recommended three conditions. Do you understand and agree with those?

MS. TAYLOR: Yes, we do.

CHAIRMAN KONYK: Any member of the public here to speak against this item?

(No response.)

CHAIRMAN KONYK: Any letters?

MR. SEAMAN: There are none.

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

VICE CHAIRMAN BASEHART: Madam Chairman, just in the way of disclosure, I did have a conversation with the agent for the application, but that conversation did not affect my opinion of this application nor will it affect my vote.

CHAIRMAN KONYK: Okay. Noted.

MR. JACOBS: I also had a conversation with the agent. They sent me an e-mail, and that did not change my vote in any way.

CHAIRMAN KONYK: Anybody else? I think my name still has that big do not call on it.

Anyways, I don't even remember where I'm at. Now help me out. No, I'm just kidding. This item will remain on consent.

BOARD OF ADJUSTMENT CONDITIONS

1. By **May 19, 2006**, or upon DRO certification, the applicant shall amend the site plan to reflect the variance approval pursuant to BA2005-605. (DATE: DRO: ZONING)

2. By **December 16, 2005**, the applicant shall install along the south property line, a 3 feet high hedge along the parking area at the front of the property and slats in the chain link fence at the rear of the property. (DATE: LANDSCAPE: ZONING)

3. All required plant material pursuant to Article 7 shall be installed within the landscape buffers along north and east property lines in the event that the surrounding uses to the north and east are converted to a use other than agricultural production. (ON-GOING: ZONING: ZONING)

CHAIRMAN KONYK: BofA2005-00606, John Dalton, agent for Kenneth and Michelle Duke, to allow a proposed room addition and roof overhang to encroach into the required rear setback.

Your name for the record?

MR. DALTON: John Dalton.

CHAIRMAN KONYK: And the staff has recommended one condition. Do you understand and agree with that condition?

MR. DALTON: Yes, I do.

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

(No response.)

CHAIRMAN KONYK: Any letters?

MR. SEAMAN: Just one for clarification.

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

(No response.)

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

MR. DALTON: That's it? Thank you.

BOARD OF ADJUSTMENT CONDITIONS

1. By **May 16, 2006**, the applicant shall secure a building permit in order to vest this variance. (DATE: BUILDING: ZONING)

CHAIRMAN KONYK: Next item on consent is BofA2005-00607, Bradley Miller, agent for All Star Kids Learning Center, to allow a reduction in the minimum width for the access way.

Your name for the record?

MR. MILLER: Bradley Miller, for the record. And we're in agreement with the conditions.

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

(No response.)

CHAIRMAN KONYK: Any letters?

MR. SEAMAN: There are two, one is clarification and the other one disapproval. It says we'll only accept trees as a buffer to reduce noise.

I'm being corrected.

CHAIRMAN KONYK: Okay. That's not unusual.

MR. SEAMAN: Oooh, get that on video. On 608, two in approval, one disapproval.

CHAIRMAN KONYK: We were on 607 right now.

MR. SEAMAN: Right.

CHAIRMAN KONYK: We'll be on 608 in just a moment.

MR. SEAMAN: I was there.

MR. AUBOURG: The applicant has two variance applications in the system.

CHAIRMAN KONYK: Okay. We're going to go to that one next.

MR. MILLER: As usual, it's my fault.

CHAIRMAN KONYK: No. It's not. It's Alan's fault.

MR. SEAMAN: That's all right. I have the target on my back.

As I was saying, their concern is that the noise you may make, they'd like to have trees to buffer it.

MR. MILLER: This is on 607?

MR. SEAMAN: This is on 607, which doesn't really make sense, does it? So I don't think --

CHAIRMAN KONYK: They want the kids to be quiet is really what they're saying.

MR. SEAMAN: Thank you. It takes a Chair to do that.

CHAIRMAN KONYK: Okay. On 2005-00607, is there any Board member that feels this item warrants a full hearing?

(No response.)

CHAIRMAN KONYK: Seeing none, that item will remain on consent.

BOARD OF ADJUSTMENT CONDITIONS

1. By **December 16, 2005**, the applicant shall restripe the parallel parking spaces along the south side of the one-way access way, subject to this variance request, to a width of 10 feet and be inspected by Code Enforcement. (DATE: CODE ENFORCEMENT: ZONING)

2. By **June 16, 2006**, or prior to DRO certification, the applicant shall amend the site plan to reflect the variance approval pursuant to BA-2005-607. (DATE: DRO: ZONING)

CHAIRMAN KONYK: Next item on consent is BofA2005-00608, Bradley Miller, agent for petitioner Turtle Cove, to allow an existing building to encroach into the front setback and easement and to reduce the right-of-way buffer along the north property line.

And the applicant has already identified himself.

Do you have -- are you in agreement with the two conditions that staff has recommended?

MR. MILLER: We are in agreement with the conditions.

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

(No response.)

CHAIRMAN KONYK: Any letters?

MR. SEAMAN: There are two, one is clarification, and one is approval. They're concerned that the zoning does not reflect the peaceful existence and will prevent access to Hypoluxo Road.

I don't think that that's -- you might want to --

MR. MILLER: I don't know how to address the peaceful existence part of that. But it doesn't affect the access way.

What this is, there's an existing house on the property, it's been there since the 1930's and we want to try and utilize that house. And the variances that we've requested all pertain to that existing structure.

CHAIRMAN KONYK: Okay. Any member of the Board feel this item warrants a full hearing?

(No response.)

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

MR. MILLER: Thank you.

BOARD OF ADJUSTMENT CONDITIONS

1. By **June 16, 2007**, or prior to DRO certification, the applicant shall amend the site plan to reflect the variances approval pursuant to BA-2005-608. (DATE: MONITORING: DRO)

2. By **June 16, 2007**, the applicant shall have received the first inspection by a building inspector. (DATE: MONITORING: BUILDING)

CHAIRMAN KONYK: BofA2005-00611, Rafael Diaz and Caled Hamed, owners, to allow parking to be located in the front setback to eliminate dumpster and loading requirements, to reduce rear setback and parking width, and to allow overhang to encroach into the rear setback.

Your name for the record?

MR. DIAZ: Rafael Diaz.

CHAIRMAN KONYK: Staff has recommended three conditions. Do you understand and agree with those?

MR. DIAZ: Yes.

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

(No response.)

CHAIRMAN KONYK: Any letters?

MR. SEAMAN: There are none.

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

MR. CUNNINGHAM: Question.

CHAIRMAN KONYK: Sure.

MR. CUNNINGHAM: This applicant was before us a number of months ago, and the question had come up then, have we ever defined what type of building this is, proposed business is going to be?

MR. DIAZ: Yeah, what we did was, we were trying to maximize, so we were thinking about a small retail store.

MR. SEAMAN: They went in to talk about performance standards in traffic, the highest for concurrency, so they picked the highest use.

MR. DIAZ: Exactly.

MR. SEAMAN: Which is a general commercial, and that's what it's based on. You got concurrency for that; right?

MR. DIAZ: Yes. Through Ron Sullivan's office.

MR. CUNNINGHAM: Thank you.

CHAIRMAN KONYK: You okay with that now? All right. This item will remain on consent.

BOARD OF ADJUSTMENT CONDITIONS

1. By **June 16, 2006**, the applicant shall

obtain a building permit for the proposed structure in order to vest the variance approved pursuant to BA2005-611. (DATE: MONITORING-BLDG. PERMIT)

2. Prior to Certificate of Occupancy, all landscape required by Article 7, landscaping, shall be installed within the reduced ROW and type II incompatibility buffer located to the south.

3. The applicant shall install a permanent reserved employee parking sign in the first parking space adjacent to the reduced queuing distance route for which one of the above variances has been granted in order to minimize the use of this parking space and mitigate the shortage of the queuing distance.

CHAIRMAN KONYK: BofA2005-00604; BofA2005-00605; BofA2005-00606; BofA2005-00607; BofA2005-00608; BofA2005-00611 will all remain on the consent agenda.

Is a Board member prepared to make a motion?

VICE CHAIRMAN BASEHART: I'll make a motion that the consent agenda be approved as listed with each application being approved with the conditions listed in the staff report.

And I'd like the record to reflect that the staff report is the record of the hearing.

CHAIRMAN KONYK: We have a motion by Mr. Basehart. Do we have a second?

MR. PUZZITIELLO: Second.

CHAIRMAN KONYK: Second by Mr. Puzzitiello.

Any discussion?

(No response.)

CHAIRMAN KONYK: All those in favor?

BOARD MEMBERS: Aye.

CHAIRMAN KONYK: Opposed?

(No response.)

CHAIRMAN KONYK: Motion carries unanimously.

Now, are they getting their letters today or are they going to be mailed?

MS. JAMES: Some of them.

CHAIRMAN KONYK: Okay. Some people will get your letters today, some will be mailed.

We are adjourned.

(Whereupon, the meeting was adjourned at 9:21 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 14,
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 22nd day of June, 2005.

Sophie M. (Bunny) Springer