

PALM BEACH COUNTY
BOARD OF ADJUSTMENT

Thursday, September 15, 2005
9:02 a.m. - 9:55 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

Robert E. Basehart, Vice Chairman

Mr. Bart Cunningham

Ms. Nancy Cardone

Mr. Raymond Puzzitiello

Mr. William Sadoff

Mr. Stanley Misroch

Annie Helfant, Assistant County Attorney

Alan Seaman, Senior Site Planner

David Cuffe, Civil Engineer II, Land Development

Oscar Gamez, Site Planner I

Timothy Sanford, Intern

Juanita James, Zoning Tech

Annette Stabilito, Secretary

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P R O C E E D I N G S

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VICE CHAIRMAN BASEHART: All right. We'll start the September 15th, 2005, Board of Adjustment meeting. First item would be the roll call and the Declaration of 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?

(No response.) MS. STABILITO: Vice Chairman, Mr. Robert Basehart?

VICE CHAIRMAN BASEHART: Here.

MS. STABILITO: Ms. Nancy Cardone?

MS. CARDONE: Here.

MS. STABILITO: Mr. Joseph Jacobs?

(No response.)

MS. STABILITO: Mr. Stanley Misroch?

MR. MISROCH: Here.

MS. STABILITO: Mr. Donald Mathis?

(No response.)

VICE CHAIRMAN BASEHART: Okay. We have a quorum.

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

Everybody please stand and we'll say the Pledge.

(Whereupon, the Pledge of Allegiance was recited.)

VICE CHAIRMAN BASEHART: Next, Reverend Cunningham will say the opening prayer.

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.

VICE CHAIRMAN BASEHART: We do have proof of publication, we'll just place this in the record.

Under remarks of the Chairman, just for those of you that are not familiar with the proceedings of this Board, we break the agenda into two parts.

First part is what we call the consent agenda. Consent items are those where the staff has recommended approval and if there are conditions of approval where the applicant has agreed with those proposed conditions and where there's been no indication of opposition from any member of the public.

Beyond that, the Board members have all received the staff report and if all the precedent conditions are met and no Board member feels that there's any reason to pull the item from consent, they'll remain on the consent agenda.

The consent agenda then are items where no public presentation will be required. The staff report is made a part of the record, and we vote on all the items on the consent agenda in one vote. When we complete the consent agendas -- are the letters ready today?

MR. SEAMAN: They will not ever be ready today.

VICE CHAIRMAN BASEHART: They'll never be ready again?

MR. SEAMAN: Our new system requires we wait until after the hearing.

VICE CHAIRMAN BASEHART: So after the conclusion of the consent agenda, those of you who are on it may leave, and you'll receive your letter of approval from the staff.

Items that are on the regular agenda are items where either the staff is recommending partial or complete denial of the application, where applicants may not be in agreement with proposed conditions of approval, or where there's been an indication of opposition from surrounding property owners.

Those items will require a full hearing. The applicant will be required to make a presentation, provide justification to show that they've met the seven criteria for approval.

Staff will make a presentation, and then the matter will be open to the public for comments and recommendations from anyone who is interested in speaking. And at the conclusion, the Board will make its findings and vote on the item.

Any item here on consent agenda that someone in the audience would like to object to will require that that item be pulled from consent and put on the regular agenda.

With that, I have no other comments.

Any other member of the Board has anything they'd like to -- yes, one thing we should point out is that this is a public hearing to consider the approval or the denial of specific variances from the development standards of the Code. This Board will not hear testimony on unrelated issues.

A lot of times we get applications where an individual or group of individuals would not prefer to see a particular use there on the subject property, but the matter before us may be a setback variance or a parking variance or a landscape variance.

The actual items that are advertised for hearing for a variance are the only items we consider. We are not a Land Use Board, we are not a Zoning Board.

So we request that every member of the public that wishes to speak limit your presentation specifically to those items that are on the agenda, those issues that are on the agenda.

Okay. Other than that I don't have any other remarks.

We do have the minutes from the August 18th meeting. Has everybody read them and do we have a

motion for adoption?

MR. PUZZITIELLO: So moved.

MR. SADOFF: Second.

VICE CHAIRMAN BASEHART: I believe that it was a motion by Mr. Puzzitiello and a second by Mr. Sadoff.

Any comments?

(No response.)

VICE CHAIRMAN BASEHART: All those in favor indicate by saying aye.

BOARD: Aye.

VICE CHAIRMAN BASEHART: Opposed, no.

(No response.)

VICE CHAIRMAN BASEHART: Okay. The minutes for August 18th are approved.

Next item on the agenda is the remarks of the Director.

Alan, do you have any?

MR. SEAMAN: Today we have none.

VICE CHAIRMAN BASEHART: Approval of the agenda. Are there any changes to the agenda?

MR. SEAMAN: There are, but as we get to that item I'll bring it up.

VICE CHAIRMAN BASEHART: Okay. At this time, since this is a quasi-judicial Board and all testimony must be under oath, I'd like everyone in the audience that wishes to speak today on any item to please rise and be sworn in.

MS. SPRINGER: Raise your right hand, please.

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

VICE CHAIRMAN BASEHART: Okay. Now we've reached the agenda.

The first item is withdrawn items, there are none. Then postponed items, there are none. So we've reached the consent agenda.

What we like you to do, when your petition number is called, we'd like you to come to the microphone, recognize that you've been sworn in, give your name and then advise us if you agree with the proposed conditions of approval.

Alan?

MR. SEAMAN: I do have corrections on the first one.

VICE CHAIRMAN BASEHART: Okay. The first item is BofA2005-00603; Alan?

MR. SEAMAN: If you'll turn to your report to page 1 or 001, at the top where we're discussing the Agenda Item; Code Section;

Required, Proposed and Variance.

Under the Required column, instead of it saying hedge height to be a maximum of 8 feet, it needs to read 12. We recently changed the Code and now allow ficus to be at 12 feet.

VICE CHAIRMAN BASEHART: Okay.

MR. SEAMAN: Under the Proposed column where it says 20 feet, it needs to say to a maximum of 20 feet.

And under the Variance column it should say the variance request is for an 8 foot increase in height.

VICE CHAIRMAN BASEHART: Okay.

MR. SEAMAN: And if you'll turn to in that same report, page 005. We have two conditions. And the second condition needs to be replaced with one that's being rewritten to say, "By December 15th, 2005, the applicant shall schedule an appointment with the landscape inspector for an on site inspection to ensure the ficus hedge has been reduced in height down to a minimum of 20 feet."

And this is for Annette's benefit,
Date/On-Going: Landscape: Zoning.

VICE CHAIRMAN BASEHART: Okay. This is BofA2005-00603, Samuel Moore, agent. Is Mr. Moore here?

MR. MOORE: Yes.

VICE CHAIRMAN BASEHART: You've been sworn in?

MR. MOORE: Yes.

VICE CHAIRMAN BASEHART: The staff is recommending approval with two conditions. You heard the modification to the second condition, are you in agreement with those?

MR. MOORE: I'm in agreement with that, yes.

VICE CHAIRMAN BASEHART: Okay. Is there any member of the public that's here to speak either in favor or in opposition to this item?

Sir. Sir, if you'd stand. You're hear to speak against the item?

MR. GREENBLATT: I'm here to speak against the variance.

VICE CHAIRMAN BASEHART: Okay. Well, then we're going to pull this item from the consent agenda. It'll become the first item on the regular agenda.

MR. SEAMAN: Do I give the Board the letters that have come in?

VICE CHAIRMAN BASEHART: I think we do it when we open the hearing.

VICE CHAIRMAN BASEHART: Second item on the consent agenda is BofA2005-00974, Tranquilino

Velazquez. Is the applicant here?

Any changes to this item, Alan?

MR. SEAMAN: No, there are no more changes.

VICE CHAIRMAN BASEHART: Any letters of support or opposition?

MR. SEAMAN: We have six letters, two in approval, two for clarification and two disapprove.

And the ones that disapprove say that -- I don't think they agree with a single family dwelling in a commercial corridor.

VICE CHAIRMAN BASEHART: Okay. Which is not what the variance is?

MR. SEAMAN: Right.

VICE CHAIRMAN BASEHART: Okay. Your name for the record, sir?

MR. VELAZQUEZ: Tranquilino Velazquez.

VICE CHAIRMAN BASEHART: You've been sworn in?

MR. VELAZQUEZ: Yes.

VICE CHAIRMAN BASEHART: Staff's recommending approval with two conditions. Do you understand those conditions and agree with them?

MR. VELAZQUEZ: Yes.

VICE CHAIRMAN BASEHART: Thank you. Is there any member of the public here to speak in opposition of this item?

(No response.)

VICE CHAIRMAN BASEHART: Seeing none, any member of the Board feel this item needs to be pulled?

(No response.)

VICE CHAIRMAN BASEHART: Okay. You'll remain on consent.

BOARD OF ADJUSTMENT CONDITIONS

1. By **09/15/2006**, the applicant shall provide the Building Division with a copy of the Board of Adjustment result letter and a copy of the site plan presented to the Board, simultaneously with the building permit application. (BUILDING: DATE: ZONING)
2. Prior to the Development Order expiration (**09/15/2006**), the project shall have received and passed the first building inspection. (BUILDING: DATE: ZONING)

VICE CHAIRMAN BASEHART: Next item is BofA2005-01105, Urban Design Studio, agent.

MS. TUMA: Wendy Tuma, with Urban Design Studio.

VICE CHAIRMAN BASEHART: You've been sworn in?

MS. TUMA: Yes, I have.

VICE CHAIRMAN BASEHART: Okay. Staff's recommending approval of this variance with two conditions also. Are you in agreement with those conditions?

MS. TUMA: Yes, we are.

VICE CHAIRMAN BASEHART: Any letters?

MR. SEAMAN: We have two letters. One in approval and one clarification.

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

(No response.)

VICE CHAIRMAN BASEHART: Any Board member want to be pull this?

(No response.)

VICE CHAIRMAN BASEHART: Okay. You'll remain on consent.

BOARD OF ADJUSTMENT CONDITIONS

1. Prior to issuance of the Certificate of Occupancy, all landscape material required by the ULDC within the 50 foot landscape buffer along Smith-Sundy Road, shall be planted within the remaining 40 feet of the landscape buffer. (LANDSCAPE: EVENT: ZONING)
2. Prior to DRO approval, the variance approval pursuant BA-2005-1105 shall be reflected on the approved site plan. (DRO: EVENT: ZONING)

VICE CHAIRMAN BASEHART: Item BofA2005-01108. This is the petition of Michelle [sic] Kirschner.

MS. GRIFFIN: Good morning. Actually it's Mitchell Kirschner, who could not be here this morning. My name is Janice Griffin, of the law firm of Hodgson Russ.

VICE CHAIRMAN BASEHART: Okay. Staff has recommended approval with three conditions. You're aware of them and you agree with them?

MS. GRIFFIN: We are aware of them. We are in agreement with them, yes.

MR. SEAMAN: We have a question. I'm sorry. We have a consent from that allows certain people to represent the owner. Are you on the consent from?

MS. GRIFFIN: I'm an attorney with Hodgson Russ, a partner in the firm. Mitchell Kirschner was the attorney who signed the application.

MR. SEAMAN: And you're part of the firm?

MS. GRIFFIN: Yes.

VICE CHAIRMAN BASEHART: All right. Any letters.

MR. SEAMAN: There are two for clarification. That's all.

VICE CHAIRMAN BASEHART: Any member of the public here to speak in opposition to this item?

(No response.)

VICE CHAIRMAN BASEHART: Any Board member feel it needs to be pulled?

(No response.)

VICE CHAIRMAN BASEHART: You'll stay on consent.

MS. GRIFFIN: Thank you.

BOARD OF ADJUSTMENT CONDITIONS

1. By **09/15/2006**, the applicant shall provide the Building Division with a copy of the Board of Adjustment result letter and a copy of the site plan presented to the Board, simultaneously with the building permit application. (BUILDING: DATE: ZONING)
2. Prior to the Development Order expiration (**09/15/2006**), the project shall have received and passed the building inspection. (BUILDING: DATE: ZONING)
3. By **09/15/2006** or prior to DRO certification, the applicant shall amend the approved site plan to reflect the variance approval pursuant BA-2005-1108. (DRO: DATE: ZONING)

VICE CHAIRMAN BASEHART: Next item, BofA2005-01112, Sara and Jeff Wolff.

MR. WOLFF: Good morning.

VICE CHAIRMAN BASEHART: Good morning. You're Jeff Wolff?

MR. WOLFF: I am.

VICE CHAIRMAN BASEHART: And you've been

sworn in?

MR. WOLFF: I have.

VICE CHAIRMAN BASEHART: Staff is recommending approval subject to three conditions. Do you agree with those conditions?

ME. WOLFF: Yes.

VICE CHAIRMAN BASEHART: Any letters, Alan?

MR. SEAMAN: We have five letters; four support, and one clarification.

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

(No response.)

VICE CHAIRMAN BASEHART: Seeing none, any Board member? (No response.)

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

MR. WOLFF: Thank you.

BOARD OF ADJUSTMENT CONDITIONS

1. By **09/15/2006**, the applicant shall provide the Building Division with a copy of the Board of Adjustment result letter and a copy of the site plan presented to the Board, simultaneously with the building permit application. (BUILDING: DATE: ZONING)
2. Prior to the Development Order expiration (**09/15/2006**), the project shall have received and passed the first building inspection. (BUILDING: DATE: ZONING)
3. The variance approval pursuant BA-2005-1112, applies only to the proposed 19ft. X 19.7 ft. garage addition and the existing SFD. All other improvements shall meet the ULDC requirements. (ZONING: ON-GOING: ZONING)

VICE CHAIRMAN BASEHART: Next item.
BofA2005-01113, Susan Taylor.

MR. PERRY: Good morning, Marty Perry, attorney/agent for the applicant.

I've been duly sworn and we accept and agree to the conditions.

VICE CHAIRMAN BASEHART: Okay. Any letters?

MR. SEAMAN: There are none.

VICE CHAIRMAN BASEHART: Any members of the public?

(No response.)

VICE CHAIRMAN BASEHART: Okay. This stays on consent.

BOARD OF ADJUSTMENT CONDITIONS

1. By **09/15/2006**, the property owner shall provide the Building Division with a copy of the Board of Adjustment result letter and a copy of the site plan presented to the Board simultaneously with the building permit application. (BUILDING: DATE: ZONING)
2. By **09/15/2006** or prior to the DRO certification, the applicant shall amend the site plan to reference the conditions as approved by the Board of Adjustment public hearing. (DRO: DATE: ZONING)
3. Prior to the Development Order expiration (**09/15/2006**), the project shall have received and passed the first building inspection. (BUILDING: DATE: ZONING)

VICE CHAIRMAN BASEHART: BofA2005-01115, Cotleur & Hearing.

MR. CHEGUIS: Good morning, for the record, Brian Chegus with Cotleur & Hearing.

VICE CHAIRMAN BASEHART: And you agree with the proposed condition of approval?

MR. CHEGUIS: We do.

VICE CHAIRMAN BASEHART: Any letters?

MR. SEAMAN: There are 14 letters. Seven disapprove and six clarification. And of the six that -- of the seven that disapprove, they're saying it will increase traffic, the road is too small.

But once again, those issues don't relate to the variance.

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

MS. BENAMI: Yes.

VICE CHAIRMAN BASEHART: Does your objection relate to the width of the lot or does it relate to some other issue?

MS. BENAMI: Lisa Benami. Hi. There has been no traffic flow pattern or analysis from the County as yet.

VICE CHAIRMAN BASEHART: You need to understand, ma'am, that this item is a request for a variance to allow a reduction in the minimum frontage requirement for a lot. It doesn't have anything to do with traffic flow,. It doesn't have anything to do with traffic generation.

It has to do simply with whether or not this Board should grant a variance to allow a reduction in the required width of lot. Do you have an objection to that?

MS. BENAMI: Yes, I do. If it was a single family home, we would allow it. But it's an access to a landlocked piece of property for further development, so traffic has to be a factor in there.

VICE CHAIRMAN BASEHART: Okay. We'll pull this item.

MS. BENAMI: Thank you, sir.

VICE CHAIRMAN BASEHART: And the last item on the consent agenda is Board of Adjustment Time Extension 2005-01218.

MS. WALTER: Good morning, Collene Walter with Kilday and Associates. I have been sworn in. We are in agreement with the conditions of approval.

I would just like to note one scrivener's error, and I apologize to staff, I just caught this this morning. But in the staff report on page 2 for the previous variance request. The previous variance was actually granted from ULDC Section 3.E.1.C.2.H.2, which is parking for non-residential uses.

Staff report indicates that it's a building height for airport zones. But the information that's contained in the table is for the parking, so I just wanted to clarify that that's the variance that we're asking for the extension for.

VICE CHAIRMAN BASEHART: Okay.

MR. SEAMAN: Okay. Is that our wonderful system? Okay.

We need to double check our EPZB system for merging.

VICE CHAIRMAN BASEHART: Okay. We know what the variance was for and this is an extension. Extension's are -- public notice is not sent out so I guess there's -- well, is there anyone here to object to this item?

(No response.)

VICE CHAIRMAN BASEHART: I didn't think

so. So okay, any member of the Board want to pull this?

(No response.)

VICE CHAIRMAN BASEHART: You're on consent.

MS. WALTER: Thank you.

DEVELOPMENT ORDER

The Development Order for this particular variance shall lapse on **August 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 **August 19, 2007**, two years from the approval date. (DATE: MONITORING-ZONING)

BOARD OF ADJUSTMENT CONDITIONS

1. By August 19, 2005, or prior to DRO certification, the applicant shall ensure the BA conditions are shown on the certified site plan. (DATE: MONITORING-DRO)

IS HEREBY AMENDED TO READ:

1. By August 19, 2007, or prior to DRO certification, the applicant shall ensure the BA conditions are shown on the certified site plan. (DATE: MONITORING-DRO)
2. By August 19, 2006, the applicant shall obtain a building permit for the first phase of the proposed manufacturing and processing facility in order to vest the variance approved pursuant to BA-2004-00431. (DATE: MONITORING-BLDG PERMIT)

IS HEREBY AMENDED TO READ:

2. By August 19, 2007, the applicant shall obtain a building permit for the first phase of the proposed manufacturing and processing facility in order to vest the variance approved pursuant to BA-2004-00431. (DATE: MONITORING-BLDG PERMIT)

VICE CHAIRMAN BASEHART: Okay. The consent agenda then, which we're ready for a motion on, will be BofA2005-00974; 01105; 01108;

01112; 01113; and 01218.

MR. SADOFF: So moved.

VICE CHAIRMAN BASEHART: Motion by Mr. Sadoff.

MS. CARDONE: Second.

VICE CHAIRMAN BASEHART: Second by Ms. Cardone.

Any discussion?

(No response.)

VICE CHAIRMAN BASEHART: All those in favor indicate by saying aye.

BOARD: Aye.

VICE CHAIRMAN BASEHART: Opposed, no.

(No response.)

VICE CHAIRMAN BASEHART: Okay. All of you who were on the consent agenda are free to leave and you'll receive your letters of approval in the mail.

VICE CHAIRMAN BASEHART: Okay. Then we can get to the first pulled item, which is Board of Adjustment 2005-00603.

The applicant ready to make a presentation?

Okay. Alan, you want to introduce the item?

MR. SEAMAN: I'm going to let Oscar go ahead.

MR. GAMEZ: The legal ad reads, Samuel Moore, agent for Estates of Boynton Waters, petitioner, and Palm Isles II, owner, to allow an existing hedge to exceed the maximum height requirement along the east property line. Location is .5 miles north of Boynton Beach Boulevard and halfway between Hagen Ranch Road and Jog Road, within the Palm Isles II PUD in the PUD Zoning District, Petition 1987-092.

This existing hedge is -- serves as the perimeter buffer between the Boynton Waters community and the Palm Isles II community. And because of limited access, the hedge has been allowed to grow into trees and is currently at a height of 24 feet.

VICE CHAIRMAN BASEHART: Okay. If you would, re-introduce yourself for the record and --

MR. MOORE: Okay. My name is Sam Moore. And I am representing the Palm Isles II Homeowners Association and also the Estates of Boynton Waters Homeowners Association.

I'm also a certified arborist, so I do have some knowledge as far as the trees and what

has grown into trees. And one of the things that came to my attention, that's not in this particular record, which came as a result of a meeting that I had with Bobbie Boynton, who is in Code Enforcement, is that I believe that any plant that has been planted more than 30 inches apart, is actually a tree.

This is actually a zone that was planted that was planted in a vacated zone, that is actually not a part of the Boynton -- the Palm Isles Homeowners Association or the Estates of Boynton Waters Homeowners Association, but a vacated area.

When it was planted in that particular area, it was planted actually on 32 inch centers. I went out there and I measured them after I had that meeting with Bobbie Boynton. And she said that basically then they would be classified as a tree, not as a hedge.

Now I don't know if that's absolutely correct, but that's what she told me the other day, that if they are planted beyond the 30 inch zone.

So I believe that in any event, they have grown into trees, they are in fact trees by any definition of arboriculture, they are a tree. But they have fallen into, because of the course of this meeting, they have fallen into being a hedge. But I believe they really are trees.

They really are, in fact, were planted as trees, they are trees, and they are trees that are there.

Now, that needs to be supported by staff or your Zoning Department, yes or no, I don't know.

VICE CHAIRMAN BASEHART: If they are trees, then no variance is needed.

MR. SEAMAN: Well, you've thrown us a bit of a curve ball here. We need to discuss this. One of the things we need to determine is if there is a buffer that's required between the two PUDs.

These were approved some time back, and it was our understanding that they were a buffer and a hedge, and they were allowed to grow taller because of whatever. They didn't realize there was a regulation that required they be eight feet.

MR. MOORE: No, these were never planted nor required to be planted as a hedge or a tree by either of those two communities. It's a vacated right-of-way that was 50 foot of vacated right-of-way.

And basically then yes, there is a hedge that's planted on the other side of Palm Isles and there's even more hedges on the other side of the Estates of Boynton Waters.

But in fact, that hedge, those were something that were just planted and they're planted and they're actually in a vacated right-of-way.

So, but, again, I didn't mean to throw you this curve, but basically I've got an objection that I'm dealing with and I've got to deal with

what the real facts are.

MR. SEAMAN: But it does change -- it changes what we're looking at here.

MR. MOORE: Yes, yes, it does.

MR. PUZZITIELLO: Whose property is it?

MR. MOORE: As I understand it, it does belong to the Estates -- it does belong to the Palm Isles Homeowners Association because it was actually -- it was a 50 foot right-of-way, 25 was deeded I think into the Estates of Boynton Waters and 25 was voted into the Palm Isles Homeowners Association. That's my understanding.

MR. SEAMAN: I need to interject too, that Code Enforcement has -- they were put in violation for exceeding the height of a hedge.

Now, if we're looking at trees, this changes the information and almost, you know, as staff continues to discuss it, of course, but it's almost like I recommend to the Board that we postpone this so we have the opportunity to look into why the violation was different than what you're suggesting.

MR. MOORE: Actually, this only came, that -- this particular information only came as a result of a conversation that I had with Bobbie Boynton on a completely unrelated matter, and then I went out and measured in between each tree, and found that they were in fact planted on 32 inch centers, and that's how I got to this.

MR. SEAMAN: That's good information, but we would have to verify with our Code Enforcement officer.

VICE CHAIRMAN BASEHART: You know, there's some question here. I mean I don't agree necessarily with the provision that any plant planted more than 30 inches apart is a tree. I mean, you know. Now these are ficus?

MR. MOORE: These are ficus, but they've grown to be trees. They're a ficus tree.

VICE CHAIRMAN BASEHART: Ficus may be a different situation, because ficus can be actually grown as hedges or trees. But for instance, you know, pick a plant.

MR. SEAMAN: There is criteria in the Code in Article 7, that discusses ficus. And if ficus are planted a certain distance apart they can be considered trees versus hedge.

We had a controversy regarding that several years ago. But it does take a little bit research to determine if in fact what was originally supposed to be there and were they supposed to be trees or were they hedges that were allowed to grow into trees.

MR. PUZZITIELLO: So the original development order we don't know if -- we don't know what the original development order was. Was it a required buffer hedge or was it just a roadway that there was plants in?

MR. SEAMAN: Correct.

And we can enter these pictures in for the Board to look at for the record, too. They were turned into us just recently, if you wanted to see

what it actually looks like.

VICE CHAIRMAN BASEHART: So that what you're saying is that this row of trees or hedge was not a required -- was it required or not? Was it a required landscape area in the original approval?

MR. SEAMAN: That's what I don't know. That's what staff doesn't know and we need to look into that. It was presented to us as if it was a hedge.

VICE CHAIRMAN BASEHART: If it was a required buffer treatment and was required to be a hedge and in fact we have a row of trees, well, then he's in violation of a condition of approval. But he may or may not be in violation, you know, of the Code.

MR. PUZZITIELLO: Looks like FP&L is going to do more of a deal on this than anybody, because it's right under -- their power lines are right over it.

MS. HELFANT: Excuse me. Those pictures have to be entered into evidence.

VICE CHAIRMAN BASEHART: Pardon?

MS. HELFANT: Those pictures need to be entered into evidence.

VICE CHAIRMAN BASEHART: Okay.

MR. CUNNINGHAM: So moved.

MR. SADOFF: Second.

VICE CHAIRMAN BASEHART: We have a motion and a second for acceptance of these pictures into the record.

All those in favor?

BOARD: Aye.

VICE CHAIRMAN BASEHART: And opposed?

(No response.)

VICE CHAIRMAN BASEHART: These will become part of the record.

I think the Board needs to decide whether or not we can go on with this hearing or whether we need a staff interpretation of, you know, if in fact these are trees, then this whole variance, this request is irrelevant and there's no basis for the request.

MR. PUZZITIELLO: I make a motion we postpone this so staff can do some more research.

We need to find out if there was a required hedge from the original development order or was it in a roadway that was abandoned.

VICE CHAIRMAN BASEHART: And are they trees or hedges.

MR. PUZZITIELLO: Are they trees or hedges, I mean, what, you know --

MS. HELFANT: Excuse me. This will be a continuance, not a postponement because you've already started this.

VICE CHAIRMAN BASEHART: Okay. Motion by Mr. Puzzitiello for a 30-day?

MR. PUZZITIELLO: Yes.

VICE CHAIRMAN BASEHART: A 30-day continuance?

MR. PUZZITIELLO: Continuance, yes.

MR. SADOFF: I second that motion.

VICE CHAIRMAN BASEHART: Second by Mr. Sadoff. All those -- any discussion?

MS. CARDONE: Yes. I'm going to vote in favor of the motion, just for my own informational purposes though, I'm wondering the folks who have come here to speak, do they want the hedges higher or lower, or they don't want them, just so that I know why they're here.

MR. MOORE: There are people here who want them to be at that 20 foot height and I believe there might be an objection as well for that height.

VICE CHAIRMAN BASEHART: Do you want to hear the --

MS. CARDONE: No, I was just wondering what --

MR. SEAMAN: For the record we have --

MS. CARDONE: -- was out there. But I will be voting in favor of the motion.

MR. SEAMAN: We have 12 letters, five support and five don't support it.

MR. PUZZITIELLO: They want to leave it the way it is or --

MR. SEAMAN: Five of the folks they want it at eight feet, some want it at 12 feet.

Those two that did make comments who are in the five that disapprove said it blocks sunlight and it's an eyesore. So some people disapprove but they didn't say why.

VICE CHAIRMAN BASEHART: Okay. I know people have come here for this hearing, so I'm going to give everybody that wants to say something one minute to express -- because we're not going to vote on this today.

It's going to be coming back next month, but, you know, you've come down here and I think you should be allowed to get your basic position in the record.

MR. GREENBLATT: My name is Jerry Greenblatt, and I'm not an attorney. I live at 7039 Summer Tree Drive.

I had quite a few things to say but I'm going to make it short. I'm just going to read a statement.

"We the residents of Summer Tree Drive who are adversely affected by the wild, unruly 35 foot hedges in our backyard, which is approximately 25 to 30 feet from the back of our house, request that said hedges be cut to County Code and maintained the same as all the other hedges in Palm Isle. The existing hedges behind our home are an eyesore, block the light and horizon and are in violation of our own condo by-laws. All hedges in Palm Isles should be a uniform height and maintained equally. We feel we are being discriminated against and our homes will depreciate in value due to the poor appearance of the hedges."

Secondly, more letters would have been received by this Board, but the notice that was sent was full of inaccuracies and misinformation.

The location of the hedges was incorrectly

stated. Mr. Moore, to the best of my knowledge, and I've been living in Palm Isle for 12 years, is not an agent of Palm Isle. In the notice it stated that, giving the people the impression that Palm Isle wanted the variance.

Well, that's about it for now. Thank you very much.

VICE CHAIRMAN BASEHART: Okay. Alan, will you check the legal notice? The gentleman has indicated that the legal notice was riddled with errors.

MR. GREENBLATT: Completely.

MR. SEAMAN: If you can show me the --

MR. GREENBLATT: Absolutely, I have it here.

VICE CHAIRMAN BASEHART: After the meeting if you maybe see Alan.

MR. GREENBLATT: I spoke to Mr. Gamez, and told him that and he readily agreed. And he postponed this meeting for us from August 8th to September 15th because of the inaccuracies.

MR. SEAMAN: And I also need -- you made a statement that the association has rules that requires the hedge to be less than the County's.

MR. GREENBLATT: Our documents.

MR. SEAMAN: If that's true, then that supercedes the County if you wish to have it that height. Our rules don't -- if our rules are more restrictive than yours, then you have to follow them.

MR. GREENBLATT: This particular petition was directed towards our association, not to the County.

MR. SEAMAN: If we could have a meeting between all the parties with me. Before you leave, set up a time so we can talk about this.

MR. GREENBLATT: Sure. Thank you very much.

VICE CHAIRMAN BASEHART: Okay. Is there anybody else that feels they need to speak this morning?

MR. BERNER: Yes, I do. My name is Larry Berner, I'm the president of condo II, which is the opposite side of Boynton Waters.

I was not -- I didn't realize I would be required to speak this morning and I was not sworn in at that time.

VICE CHAIRMAN BASEHART: Well, you're not required to speak. You're speaking because you want to.

MR. BERNER: Well, if there's any informational questions that need to be asked based upon the history that we had from our initial involvement that may add some additional information to any Board member.

VICE CHAIRMAN BASEHART: Yeah, I think what would be good would be for you to meet with the staff so that if there are things that have not been brought to our attention in the staff report or if there are inaccuracies, then you know, they can be corrected so that our new staff report next month is completely on line.

MR. BERNER: Okay. I do have the documented history of the events that led up to the request for a variance, and if anybody from the staff would like copies of this when we speak, I have these for their review of whatever action they need.

MR. SEAMAN: If you would be so inclined, when you leave, be sure we set up an appointment and bring all that information to the meeting when you see me and let me go through this.

MR. BERNER: In the event that I am not here because of prior arrangements made, when the next meeting is held, Mr. Leon Lipson is here also who --

MS. HELFANT: Excuse me, if he continues to speak, he needs to be sworn in.

MR. BERNER: -- is a Board member and is privy to the same information.

MS. HELFANT: If he continues to speak --

MR. PUZZITIELLO: The attorney says if he's going to speak --

VICE CHAIRMAN BASEHART: Pardon?

MS. HELFANT: He needs to be sworn in if he continues to speak.

VICE CHAIRMAN BASEHART: Okay. Are you finished?

MR. BERNER: Yes, sir.

VICE CHAIRMAN BASEHART: Okay. Do we still need to swear him in?

Tell you what, swear him in retrospectively.

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

VICE CHAIRMAN BASEHART: Okay. Thanks.

MR. SEAMAN: One more thing. Whoever is going to meet with me, have it be the representative that is of all these different entities come to the meeting. I want to meet with all of you so I get all of your information.

That's just a request. So everybody come to see me, not just --

MR. BERNER: Besides the Board members that are here now? And you want the individual unit owners?

MR. SEAMAN: I want the representative from the association and the folks who are the decision -- whoever is representing your association.

MR. BERNER: That's me and Mr. Lipson.

MR. SEAMAN: I need to meet with you folks because you represent the community.

If other folks want to meet with me, that's fine. But I need to talk to the people who are empowered to make decisions.

MR. BERNER: Yes.

VICE CHAIRMAN BASEHART: Okay. We have a motion on the floor and a second for a 30 day continuance of this item.

All those in favor?

BOARD: Aye.

VICE CHAIRMAN BASEHART: All those opposed?

(No response.)

VICE CHAIRMAN BASEHART: Motion carries unanimously.

VICE CHAIRMAN BASEHART: The last item on our agenda today would be BofA2005-01115, Cotleur & Hearing, agent for Noonan Construction.

Alan, you want to introduce the item?

MR. GAMEZ: The legal ad reads, Cotleur & Hearing, Incorporated, agent for Noonan Construction, owner, to allow a reduction in the minimum frontage requirement. Location is the vacant lot on Kelly Drive, approximately .09 miles west of Military Trail and .07 miles south of Cresthaven Boulevard, within the Veldor Lane subdivision, in the RM Zoning District, Petition 2005-369.

The variance is for a reduction of a legal lot that was 50 feet in width, and the variance is to allow it to serve as the access point to a landlocked property to the north.

VICE CHAIRMAN BASEHART: Okay. Why don't we start with the applicant's presentation and then we'll come back to the staff for theirs.

MR. CHEGUIS: Good morning, members of the Board, thank you. For the record, Brian Cheguis again. I just want to walk you through the application before you today.

We are asking for a variance from the front yard width requirement of 65 feet for medium density zoned property. The area in question is this drive, which comes off of Kelly Drive, which runs east/west, and Military Trail is further to the east.

This is the only point of access to the property. The property was platted in 1950. As such, it was given a 50 foot ingress/egress easement dedicated for this purpose. It's always been dedicated for this purpose.

Unfortunately, it doesn't meet the 2004 ULDC requirements for lot frontage of 65 feet.

Quickly, with respect to all the conditions of approval, staff's in full agreement.

We meet all the conditions wholeheartedly with respect to granting this variance to have a reduced frontage onto Kelly Drive.

As you can see, this is our preliminary development plan. The intent of that frontage would be strictly as driveway as a granted access to right-of-way legally and has that right to do so. We're asking for that same right. This 50

foot space will be dedicated to driveway and landscaping and you can see just roughly there's some nice improvements to the entry into the property.

With respect to Condition 1, circumstances that are peculiar to the parcel, this property was platted in 1950. It was platted at a 50 foot right-of-way access point. At the time that may have met Code. Today it doesn't. We're trying to get that established.

VICE CHAIRMAN BASEHART: To give you a little hint, in 1950 there was no Code. All right.

MR. CHEGUIS: I'll trust Mr. Chairman on that.

VICE CHAIRMAN BASEHART: In 1957 was the first Zoning Code.

MR. CHEGUIS: Right.

VICE CHAIRMAN BASEHART: And 1963 -- '73 was the first subdivision Code.

MR. CUFFE: 1955, but it wasn't a mandatory subdivision Code.

VICE CHAIRMAN BASEHART: Okay. And this was 1950.

MR. CHEGUIS: Correct.

MR. PUZZITIELLO: Is this something between the old timers? You're the only ones with this memory.

MR. CHEGUIS: With respect to Condition 2, the special circumstances are the fact that it is a 50 foot ingress -- egress, excuse me, that has been dedicated for this purpose for this landlocked parcel. It's bounded on all sides by development, there's no other points of access in and out to the site. This is the only point of legal access that's available to it.

Granting the variance with respect to Condition 3, conferring special privileges. The applicant is only asking for access onto a right-of-way which is provided for and allowed under our Code and by law.

Literal interpretation and enforcement of the terms and provisions of the ULDC would be a hardship on the applicant as this is the only point of access in and out of the site and it's not his fault that it was platted at a 50 foot right-of-way -- sorry, easement for ingress/egress.

This is the minimum variance. We needed the 15 feet, we only have 50 feet of area to deal with. This will adequately allow for a driveway access in and out and ample landscaping in and out of the -- in this area, in and out of the development.

With respect to Condition 6, it is consistent with the purposes, goals, objectives and policies of the ULDC and the Comp Plan, based on the fact this is an infill development and it'll be providing necessary rental homes for working class families. The entire area is high residential density and medium density residential to the south, with these lots here and south, high

residential density to the west and to the north, and commercial to the east.

And with respect to condition 7, the grant of the variance will not be injurious to the areas involved or otherwise detrimental to the public welfare. The development will provide needed redevelopment in the area. It's going to be an improvement to property values in the area. It'll be fully landscaped and screened meeting the ULDC requirements, site planning requirements of the Development Review Office, and we feel that this is going to be an added attraction and compliment the existing neighborhood as it exists today.

So with that, I would like to request this Board's support for our variance and reserve the right to provide comment or clarify any issues that the public may be raising after my presentation.

VICE CHAIRMAN BASEHART: Okay. Thank you. Staff, can we have your report and recommendation, and then we'll go to the public.

MR. GAMEZ: Staff has made their decision on certain key points.

First of all, the legal access is on the survey, it's 50 foot in width. The applicant has also offered to purchase 15 feet of the property to the west and the homeowner refused to sell that parcel. That would have made the lot at legal, at conforming width.

Question No. 1 of the seven criteria, due to the infill nature of the subject property, the property has a limited point of access, and without this variance, the property would never be developed.

In Question No. 2 of the seven criteria, the neighborhood was established by the 1950 plat and has created a specialized area of the County which typically encounters urbanized infill development. The lot along Kelly Drive has been bought by the applicant to provide a point of access to the property to the north that is landlocked.

As for the minimum variance requested, the applicant is asking for a variance for how that lot is existing now at the 50 foot width, and again, they had tried other alternatives by purchasing the 15 feet from the neighbor, which cannot be done. And because there's development around the entire property there's no other access.

VICE CHAIRMAN BASEHART: Okay. This is a public hearing.

Any member of the public wishing to speak either in favor or in opposition is welcome to approach the microphone at this time.

MS. BENAMI: Thank you. I'm Lisa Benami, property owner on Kelly Drive.

VICE CHAIRMAN BASEHART: And you've been sworn in?

MS. BENAMI: Yes, I have, sir.

VICE CHAIRMAN BASEHART: Okay.

MS. BENAMI: We don't have a homeowners

association, but I am here loosely representing the 14 or so homeowners that we have spoken with.

Earlier the County said they received only seven opposing forms. We actually have ten or so in my hand here that oppose. I don't have any questions or clarification statements, as this gentleman said.

Our main issue is this particular -- I'm speaking only to the driveway.

VICE CHAIRMAN BASEHART: Okay.

MS. BENAMI: We've got a problem, if you look on the aerial provided by you this morning, Kelly Drive is a single, two lane little street. There are no sidewalks. There's a limited swale and just now we have commercial property on both sides of our street, which run off of Military Trail.

So actually, if you back up to the frontage on Military Trail which is going to service this particular ingress/egress, we don't believe that with the increased traffic we're going to have enough spots to turn off of Military Trail. There is no traffic signal there, there's not a long taper on the median, which was just installed by the County.

So at this point, a hundred and -- let's see, it would be -- I spoke to the folks in the Traffic Department, and for the use of 26 properties, the County has a rule of thumb of saying seven trips per home per day would be 182 or more trips in and out of this narrow proposed landscape strip.

Now they did provide a very nice plan. We met with Mr. Cheguis, we've met with Mr. Gamez and of course I called the Traffic Bureau.

And so in researching this, we feel we have to reject it at this point because there's been no traffic flow study, and even though it's a landlocked property and it's off of Military Trail, the impact will be people walking, there is no sidewalk. If you've got 26 homes, three bedrooms each, you're going to have 60, 70 children perhaps.

They did provide a buffer zone with landscaping and a nice entrance with a little gate. We're not objecting to that, but the fact that their sidewalk ends, there is no continuous sidewalk that would take them from their community to Military Trail. We'd have kids walking on the street. We have a problem as it is now.

Just now there are no speed bumps, there's very little signage out there as far as caution, slow, children, so forth, and the two commercial properties, the boatyard particularly parks, pulls in with semi-tractors blocking Military Trail and Kelly Drive access, so we just feel that aside from the residential situation and residential vehicles, the construction as people pull from the narrow Kelly Drive by-passing the boatyard traffic, they pull around, they have to swing their construction trailers into a 50 foot strip. We really don't believe that that's going to be a

safe situation for our families.

VICE CHAIRMAN BASEHART: Can I ask you a question?

MS. BENAMI: Sure.

VICE CHAIRMAN BASEHART: If this access strip that gets back and provides the access to the property were 65 feet instead of 50 feet, how would that change the problems you have with Kelly Drive?

MS. BENAMI: Actually, it would not. The fact is it is 50 feet.

VICE CHAIRMAN BASEHART: So you're objection then is really based on the number of dwelling units that are being proposed for that property and the traffic impact that they will have on Kelly Drive as opposed to what the variance is all about, and that's the width of the driveway going back to those new homes.

MS. BENAMI: However, it is a two-part question. I refer you to number 7, grant of the variance will not be injurious to the area involved or otherwise detrimental to the public welfare.

You've got to consider traffic flow when you consider the use of it. Had it been a single family home, no problem. But it's not as cut and dried an issue as that.

So we would like further study. We've met with the site planner, sir. He did suggest putting a wall on one side to accommodate -- they are willing to work with us.

As a matter of fact, we're not opposing the development of property. But you do have to consider the fact that children, pets, the street, the use of the street, the construction traffic on that little strip of street.

When I moved in it was a dirt road. We, all the homeowners, paid \$3,000 each to get it paved. It wasn't paved for a commercial use. It was a small street.

I don't know that the construction of the road was heavy enough to take the construction traffic, I'm sure it might, you know, but we just have a couple of concerns here that it's not a cut and dried issue of just getting a driveway in there. It has to -- the impact of that driveway is part of the problem.

VICE CHAIRMAN BASEHART: Okay.

MS. BENAMI: So we'd like further study on this. And as I said, we did have more homeowners object or oppose. And we all sent in our forms. I have copies of them right here.

So I have at least ten property owners right now who definitely oppose.

VICE CHAIRMAN BASEHART: Okay. Thank you.

MS. BENAMI: Thank you for your time.

VICE CHAIRMAN BASEHART: All right. Is there any other member of the public here to speak on this?

(No response.)

VICE CHAIRMAN BASEHART: Okay. We'll give the applicant an opportunity for rebuttal.

MR. CHEGUIS: Thank you, Mr. Chair. Just to reiterate. I concur, we met with Ms. Benami and her husband and we did express that we'd be willing to work with them through the site planning process to ensure that any potential adverse outcomes of developing the site could be mitigated for prior to us getting development rights to the property. No wall was promised.

It was more a matter of working with the residents, finding out the specific points of issue that they had with the site development portion of it, and we're going to work with them throughout that process. I just wanted to clarify that.

VICE CHAIRMAN BASEHART: Okay. We'll close the public hearing at this point.

Any questions of the applicant or the other -- the speaker from members of the Board or questions to staff?

(No response.)

VICE CHAIRMAN BASEHART: Seeing none, I'd like to --

MR. SEAMAN: May I make a comment?

VICE CHAIRMAN BASEHART: Yes.

MR. SEAMAN: I'm sure -- just to bring of the awareness, that this project I understand will go to a Development Review Officer, and a number of these issues would be also addressed at that hearing. I just wanted to make that for the record.

VICE CHAIRMAN BASEHART: Okay. Again, the consideration that this Board is giving to this project is simply whether or not a variance should be granted to allow a 50 foot wide access to the property as opposed to the normally required 65.

It's not a variance requesting increased density or rezoning or any of those kinds of issues so the number of units and the amount of traffic is not a relevant issue I don't believe for this consideration. It's whether it's appropriate to allow a narrower than usual access to the property.

I do have before somebody makes a motion, I do have a question for David. The normal street section would be what, about 24, 25 feet?

MR. CUFFE: Actually, it's -- it really shouldn't be confused with the frontage requirement, which is the request for a variance at this point.

It's strictly a request for a variance from the required frontage for a single lot, and this is a single lot. It's not an access issue.

The standard local street would be a 50 foot wide right-of-way with 20 feet of pavement and curb and gutter drainage or valley gutter drainage.

VICE CHAIRMAN BASEHART: So if this piece of property converted to a road, it meets the standards for a road?

MR. CUFFE: If this property were to be developed as a subdivision, then the local street access with the exception of the corner clips now

at the intersection, the standard local street access would be able to be constructed for -- as a local street coming off the -- what is it, Kelly Drive?

VICE CHAIRMAN BASEHART: Right.

MR. CUFFE: And that's -- but this is strictly -- this is not a proposed subdivision. This is a proposed multi-family. That whole property is one single lot.

VICE CHAIRMAN BASEHART: Right.

MR. CUFFE: It's effectively a flag lot.

VICE CHAIRMAN BASEHART: Okay. Exactly.

Any other questions from Board members?

(No response.)

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

MS. CARDONE: Mr. Chairman, I move that we approve the variance for BofA2005-01115 based upon my belief that the applicant has met the seven criteria and I would ask that the staff report be a part of that record.

VICE CHAIRMAN BASEHART: Okay. We have a motion by Ms. Cardone.

MR. PUZZITIELLO: Second.

VICE CHAIRMAN BASEHART: And a second by Mr. Puzzitiello.

Any further of discussion?

(No response.)

VICE CHAIRMAN BASEHART: All those members in favor of the motion indicate by saying aye.

BOARD: Aye.

VICE CHAIRMAN BASEHART: Opposed, no.

(No response.)

VICE CHAIRMAN BASEHART: Motion carries unanimously.

MR. CHEGUIS: Thank you very much.

VICE CHAIRMAN BASEHART: Thank you.

BOARD OF ADJUSTMENT CONDITIONS

1. By **09/15/2006** or prior to DRO certification, the applicant shall amend the site plan to reference the conditions as approved by the Board of Adjustment public hearing. (DRO: DATE: ZONING)

VICE CHAIRMAN BASEHART: Okay. That leads us to the adjournment of the meeting. Do we need a motion? Let's have a motion.

MR. SADOFF: So moved.

MR. PUZZITIELLO: So moved.

MS. CARDONE: So moved.

VICE CHAIRMAN BASEHART: Okay. Unanimous
vote for motion for adjournment. Meeting's
adjourned.

(Whereupon, the meeting was adjourned at
9:55 a.m.)

* * * * *

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 29, 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 20th day of September, 2005.

Sophie M. (Bunny) Springer