

PALM BEACH COUNTY
BOARD OF ADJUSTMENT

Thursday, November 16, 2006
9:05 a.m. - 12:00 p.m.
2300 North Jog Road
West Palm Beach, Florida 33411

Reporting:

Sophie M. (Bunny) Springer
Notary Public

A T T E N D E E S

Ms. Chelle Konyk, Chairperson

Mr. Robert Basehart, Vice Chairman

Mr. Raymond Puzzitiello

Ms. Nancy Cardone

Mr. Joseph J. Jacobs

Mr. Stanley Misroch

Annie Helfant, Assistant County Attorney

F. Alan Seaman, Principal Planner, Zoning

C. Larry Roberts, P.E., Senior Registered Engineer

Joseph Cearley, Site Planner I

Juanita James, Zoning Tech

Annette Stabilito, Secretary

Barbara Alterman, Director, PZ&B

Maryann Kwok, Chief Planner, Zoning

William Cross, Senior Planner, Zoning

Ora Owensby, Senior Planner, Zoning

Thuy Shutt, Consultant

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P R O C E E D I N G S

CHAIRPERSON KONYK: Go ahead and call the meeting to order. This is the November 16th, 2006, Board of Adjustment meeting, and we will start with the roll call and declaration of quorum.

MS. STABILITO: Mr. William Sadoff.
(No response)

MS. STABILITO: Mr. Raymond Puzzitiello.

MR. PUZZITIELLO: Here.

MS. STABILITO: Ms. Dinah Stephenson.

(No response)

MS. STABILITO: Chairperson, Ms. Chelle Konyk.

CHAIRPERSON KONYK: Here.

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

(No response)

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)

CHAIRPERSON KONYK: Next item on our agenda is our opening prayer.

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.

If you join us in the Pledge of Allegiance.

(Whereupon, the Pledge of Allegiance was given.)

CHAIRPERSON KONYK: Next item on the agenda is proof of publication. I have it here before me. It was published in the October 29th, 2006, *Palm Beach Post*.

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

Items on the consent agenda are items that have been recommended for approval by staff. The applicant agrees with the conditions. There's no opposition from the public, and there's no Board member that feels the item warrants a full hearing.

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

If an item is on the consent agenda and remains on the consent agenda, we will vote on the consent agenda at the end of that portion of the hearing, and anyone that has had their item

approved is free to leave.

The next part of the agenda would be the regular agenda, and that consists of items that have been removed from the consent or items that have opposition from the public, the applicant does not agree with the conditions that the staff has imposed or a Board member feels the item warrants a full hearing.

The item will be introduced by staff. The applicant will have an opportunity to give their presentation. At this time we'll hear from staff.

We'll open the public portion of the hearing and hear from the public. After the public portion of the hearing is closed, the Board members will vote on the item.

Next item on the agenda is the approval of the minutes. Everyone should have received the minutes from the October 19th meeting. Can I have a motion to approve.

MS. CARDON: So moved.

CHAIRPERSON KONYK: By Ms. Cardone.

MR. JACOBS: Second.

CHAIRPERSON KONYK: Second by Mr. Jacobs.

All those in favor.

BOARD MEMBERS: Aye.

CHAIRPERSON KONYK: Opposed.

(No response)

CHAIRPERSON KONYK: Motion carries
unanimously.

Let the record reflect that Mr. Basehart has arrived.

Any remarks from the Zoning Director?

MR. SEAMAN: Well, actually, I guess we should say welcome to our new facility here. It's very nice.

CHAIRPERSON KONYK: New.

MR. SEAMAN: Pretty new, so this is our first -- well, first Board of Adjustment hearing in this room. So that's my comment.

CHAIRPERSON KONYK: Okay. Any changes to the agenda?

MR. PUZZITIELLO: So excited.

MR. SEAMAN: Yes, BofA 2006-1530, which was on the consent agenda, has been -- requests a postponement for 30 days by right to December 21st, and that's the only agenda change.

MR. PUZZITIELLO: 1530 is on the regular agenda.

CHAIRPERSON KONYK: It's -- yeah.

MR. SEAMAN: I'm corrected. It's on the

regular agenda, it needs to be postponed.
CHAIRPERSON KONYK: Postponed by right.
MR. SEAMAN: By right, 30 days.
CHAIRPERSON KONYK: Anything else?
MR. SEAMAN: That's it.

CHAIRPERSON KONYK: Okay. We have two
withdrawn items, BofA 2006-01355 and BofA 2006-
01549.

CHAIRPERSON KONYK: First item -- then we
have a postponed item in addition to the one you
just mentioned, BofA 2006-00725. Is that by
right?

MR. SEAMAN: This actually is an
interesting case. They have -- or will have taken
up the full six months of postponements that
they're entitled to, but the Zoning Director, Mr.
Jon Mac Gillis has actually issued a letter giving
them the right to be heard again in December.

So you'll be postponing by vote today, and
it will be the last of their six public hearings,
but we have a letter from the Zoning Director
allowing them to go forward to December.

CHAIRPERSON KONYK: Can he do that?

MR. SEAMAN: I believe he can do that,
yes.

CHAIRPERSON KONYK: Does it say it in the
code that he can do that?

MR. SEAMAN: Says it in the Code he can do
that.

CHAIRPERSON KONYK: Okay. Thank you.

Okay. BofA 2006-00725, we need a motion
to postpone for 30 days or to the next meeting,
rather.

VICE CHAIRMAN BASEHART: So moved.

MR. PUZZITIELLO: Second.

CHAIRPERSON KONYK: Moved by Mr. Basehart,
second by Mr. Puzzitiello.

All those in favor.

BOARD MEMBERS: Aye.

CHAIRPERSON KONYK: Opposed.

(No response)

CHAIRPERSON KONYK: If there's no one here from the public for this item, this will be postponed until the December meeting.

CHAIRPERSON KONYK: BofA 2006-01537, another postponed item. Is that by right or by vote?

MR. SEAMAN: It is by right, 30 days to December 21st.

CHAIRPERSON KONYK: Okay. All right. By right.

Is anyone here for that item?

(No response)

CHAIRPERSON KONYK: Okay. BofA 2006-01545, by right or by vote?

MR. SEAMAN: This is by right, 30 days, December 21st.

CHAIRPERSON KONYK: Okay. That's Ruden, McClosky, and is anyone here for that item?

(No response)

CHAIRPERSON KONYK: Okay. BofA 2006-01552, Kilday and Associates. Is that by right?

MR. SEAMAN: By right.

CHAIRPERSON KONYK: Okay. Is anyone here

for that item, for the -- agent for the School Board of Palm Beach County?

(No response)

CHAIRPERSON KONYK: Okay. That'll be postponed 'til the next meeting, December --

MR. SEAMAN: Twenty-first.

CHAIRPERSON KONYK: -- 21st.

UNIDENTIFIED SPEAKER: (Off mic)

MR. SEAMAN: That's correct.

CHAIRPERSON KONYK: You can speak to the staff after the meeting's over.

CHAIRPERSON KONYK: Items on the consent agenda, BofA 2006-01361, Miller Land Planning, agent for SRR Holding, owner, to exceed the maximum allowed distance between interior landscape items.

MR. SEAMAN: Madam Chairman, we need to swear people in.

CHAIRPERSON KONYK: Okay. Is anybody going to speak on any of the items? If you would stand up and get sworn in.

Yeah, I passed that, didn't I.

If you even think you might speak, get sworn in 'cause that way we don't have to do it twice.

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

CHAIRPERSON KONYK: Thank you, Alan.

MR. SEAMAN: You're welcome.

CHAIRPERSON KONYK: Is the applicant present?

MR. MILLER: I am.

CHAIRPERSON KONYK: Your name for the record.

MR. MILLER: Bradley Miller, with Miller Land Planning Consultants, here representing SRR Holding, LLC.

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

MR. MILLER: We do.

CHAIRPERSON KONYK: Is there anyone here from the public to speak against this item?

(No response)

CHAIRPERSON KONYK: Any letters?

MR. SEAMAN: Our new system doesn't put these in the numerical order.

1361 we have zero comments or letters.

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. Prior to the Development Order expiration, the project shall have received and passed the first building inspection. (DATE: MONITORING: ZONING)

2. By **11/16/2009**, 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. (ON-GOING-BLDG PERMIT BUILDING)

CHAIRPERSON KONYK: Oh, BofA 2006-01362, Miller Land Planning, agent for Richard Pribell, and the applicant is still present.

MR. MILLER: Yes, Bradley Miller, Miller Land Planning Consultants, and it's Rick Pribell.

CHAIRPERSON KONYK: Okay.

MR. MILLER: Alan, we've reviewed the staff report, the only comment I want to make there, we are -- we've reviewed the conditions.

This particular application gives us a one-year time frame to accomplish the -- get the building permit, which I think is unrealistic, and it's a little confused 'cause the prior one gave us a three-year time frame which I think is more realistic.

I just wanted to get that on the record. If you want to make that change, fine. If not, we can deal with staff through extensions, but I don't think we're going to be able to -- it's just --

MR. SEAMAN: Yeah, it's the -- the Board's choice, either accept the one year and they can go back and get extensions next year.

CHAIRPERSON KONYK: You need a motion for that? Okay.

Is anybody prepared to make a motion?

VICE CHAIRMAN BASEHART: Is two years enough?

MR. MILLER: Yeah, I think so.

I'm curious as to the decision process of

when it's one -- one year or three years.

MR. SEAMAN: Well, staff -- usually a project that is going to go through rezoning or is going to go to the Board of County Commissioners.

Obviously, it's going to take more than one year to get all those approvals done.

In the case of Board of Adjustment we do a lot of homeowners, and we like to keep it where it's a one-year increment so that we can keep track for them to keep them involved; otherwise, if we give them a full three years, they might lose sight of what they're supposed to be doing, but for larger projects such as yours, yes, we do at times give the full two or the maximum three years, so --

VICE CHAIRMAN BASEHART: All right, I'm going to make a motion that we modify that condition to give three years.

MR. PUZZITIELLO: Second.

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

All those in favor.

BOARD MEMBERS: Aye.

CHAIRPERSON KONYK: Opposed.

(No response)

CHAIRPERSON KONYK: Motion carries unanimously.

So now the conditions have been modified, and do you want to read that into the record, the modification.

MR. SEAMAN: This takes us, if my math is right, takes us to 2010.

MR. MILLER: Nine.

MR. SEAMAN: Thank you. The development order for this particular variance shall elapse on 11/16/2009, three years from the approval date, which is today.

CHAIRPERSON KONYK: Do you understand and agree with the conditions now as modified?

MR. MILLER: Yes, thank you.

CHAIRPERSON KONYK: Anybody from the public to speak against this item?

(No response)

CHAIRPERSON KONYK: Any letters?

MR. SEAMAN: There are -- we have 11 responses, and we have 11 who disapprove and --

CHAIRPERSON KONYK: Microphone.

MR. SEAMAN: -- they're basically concerned about noise -- they're basically concerned about noise and congestion.

CHAIRPERSON KONYK: So it doesn't really relate to the variance?

MR. SEAMAN: Does not relate to the variance, and they can address those issues in the venue of the public hearing.

MR. MILLER: Yeah, we are in the public hearing process for rezoning.

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

(No response)

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

MR. MILLER: Thank you.

VICE CHAIRMAN BASEHART: That, by the way, is a pretty sick commentary on the permitting process.

MR. SEAMAN: That -- excuse me?

VICE CHAIRMAN BASEHART: Never mind.

CHAIRPERSON KONYK: Hey, it's our second to last meeting. We're going to be feisty.

VICE CHAIRMAN BASEHART: We're not afraid of you any more.

CHAIRPERSON KONYK: We're telling the truth from now on.

MR. PUZZITIELLO: What are they going to do, fire us?

MR. SEAMAN: We can take it. We're staff.

BOARD OF ADJUSTMENT CONDITIONS

1. By **11/16/2007**, 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. (ON-GOING-BLDG PERMIT: BUILDING)
2. Prior to the Development Order expiration, the project shall have received and passed the first building inspection. (DATE: MONITORING-ZONING)
3. If approval of the PPP of the canal right-of-way is not granted by LWDD, then this variance becomes null and void. (DATE: MONITORING-ZONING)

CHAIRPERSON KONYK: Okay. BofA -- well, okay. Don't get me started.

BofA 2006-01365, Rick and Diane Shawbell, to allow a proposed pool to encroach into an easement.

Is the applicant present? Could you step forward for the -- could you please give your name for the record.

MS. SHAWBELL: Diane Shawbell.

CHAIRPERSON KONYK: Ms. Shawbell, the staff has recommended two conditions. Do you understand and agree with those?

MS. SHAWBELL: Yes.

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

item?

(No response)

CHAIRPERSON KONYK: Any letters?

MR. SEAMAN: There are six responses, and four are just -- well, actually, all six are concerned about the drainage issues.

The actual easement they're encroaching is a utility easement so it doesn't really have anything to do with drainage, per se.

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

(No response)

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

MS. SHAWBELL: Thank you.

CHAIRPERSON KONYK: Uh-huh.

BOARD OF ADJUSTMENT CONDITIONS

1. By **11/16/2007**, 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. (ON-GOING-BLDG PERMIT: BUILDING)

2. Prior to the Development Order expiration, the project shall have received and passed the first building inspection. (DATE: MONITORING -ZONING)

CHAIRPERSON KONYK: BofA 2006-01535, Margaret Locken and Thomas Petrilla, to allow proposed addition to encroach into the required rear setback.

Your name for the record.

MS. LOCKEN: Margaret Locken.

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

MS. LOCKEN: Yes, ma'am.

CHAIRPERSON KONYK: Okay. Is there anyone here from the public to speak against this item?

(No response)

CHAIRPERSON KONYK: Any letters?

MR. SEAMAN: There's a letter that's in total support for you.

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

(No response)

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

BOARD OF ADJUSTMENT CONDITIONS

1. By **11/16/2007**, 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. (ON-GOING-BUILDING PERMIT: BUILDING)
2. Prior to the Development Order expiration, the project shall have received and passed the first building inspection. (DATE: MONITORING-ZONING)

CHAIRPERSON KONYK: BofA 2006-01536, Charles and Eileen Woolard, to allow a proposed generator to encroach into the side interior and front setback.

Your name for the record.

MR. WOOLARD: Charles Woolard.

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

MR. WOOLARD: I do.

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

(No response)

CHAIRPERSON KONYK: Any letters?

MR. SEAMAN: There are five letters in support.

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. WOOLARD: All right.

CHAIRPERSON KONYK: You may have a seat.

MR. WOOLARD: You say we're free to leave at this point?

CHAIRPERSON KONYK: Well, you can, but you could wait 'til we vote on it if you'd like. You know, it --

MR. WOOLARD: When --

CHAIRPERSON KONYK: Well, it'll be -- we've got a few more items to go through, and then we vote on all the consent at once, and then the

letters will be mailed --

MR. WOOLARD: Thank you.

CHAIRPERSON KONYK: -- to you, but you --
I'm -- I mean you could leave now and --

MR. WOOLARD: All right. Fine.

CHAIRPERSON KONYK: You take the risk that
we might pull you off the agenda, off the consent.

MR. WOOLARD: I'd like to thank Alan and
Annette for the help they gave me preparing this
variance.

CHAIRPERSON KONYK: Aren't they helpful.

MR. SEAMAN: You're welcome. That's our
job.

CHAIRPERSON KONYK: That's nice.

BOARD OF ADJUSTMENT CONDITIONS

1. By **11/16/2007**, 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. (ON-GOING-BUILDING PERMIT: BUILDING)
2. Prior to the Development Order expiration (**11/16/07**), the project shall have received and passed the first building inspection. (DATE: MONITORING-ZONING)
3. By **5/16/07** the generator must be screened from view from adjacent property and any right-of-way by an opaque 6 foot high barrier constructed of compatible materials, color and character as the building. (DATE: MONITORING-ZONING)

CHAIRPERSON KONYK: Okay. BofA 2006-
01543, Stephen Aron, owner, to allow a generator
to be located in the side street yard.

Applicant, name for the record.

MS. SILVA: Andrea Silva, attorney with
Moyle, Flanigan, here on behalf of applicant,
Stephen Aron.

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

MS. SILVA: Yes.

CHAIRPERSON KONYK: Do they have an agent
on the record, an agent of record? Okay. 'Cause
it's not on here. Is there a reason it wasn't on

here?

MR. SEAMAN: Do we have the file, Annette?

CHAIRPERSON KONYK: Okay. Any letters?

MR. SEAMAN: There are eight letters in support.

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

(No response)

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

(No response)

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

You may have a seat.

I'm sorry. Could you spell your name for the court reporter?

MS. SILVA: A-n-d-r-e-a. Last name, Silva, S-i-l-v-a.

CHAIRPERSON KONYK: Thank you.

BOARD OF ADJUSTMENT CONDITIONS

1. By **11/16/2007**, 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. (ON-GOING-BUILDING PERMIT: BUILDING)
2. Prior to the Development Order expiration (**11/16/07**), the project shall have received and passed the first building inspection. (DATE: MONITORING-ZONING)
3. The applicant shall erect and maintain a 5 foot opaque fence with 5 feet of landscape hedge on the outside of the fence to screen the generator entirely from view. (ON-GOING: PIAA-LANDSCAPING)

CHAIRPERSON KONYK: Next item on consent is BofA 2006-01547, Ruden McClosky, agent for JCL Management, to allow a reduction of the right-of-way buffer.

Name for the record.

MS. GLAS-CASTRO: Kim Glas-Castro, with Ruden McClosky, here on behalf of the applicant.

CHAIRPERSON KONYK: Can you hear her, Bunny? She can't hear. Everybody needs to speak

way into the mic. I think the acoustics are very bad in this room, especially since she's sitting behind that pole. It might be getting caught up over there.

Sorry. Name for the record.

MS. GLAS-CASTRO: Kim Glas-Castro, with Ruden McClosky.

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

MS. GLAS-CASTRO: Yes.

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

(No response)

CHAIRPERSON KONYK: Any letters?

MR. SEAMAN: Three for clarification.

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

(No response)

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

BOARD OF ADJUSTMENT CONDITIONS

1. By **11/16/2007**, 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. (ON-GOING-BUILDING PERMIT: BUILDING)
2. Prior to the Development Order expiration, the project shall have received and passed the first building inspection. (DATE: MONITORING-ZONING)
3. Prior to Certificate of Completion, all landscaping materials, as required by the ULDC for the 20 foot R-O-W buffer shall be installed within the remaining 10 foot R-O-W buffer along Military Trail. (CO: LANDSCAPE-ZONING)

CHAIRPERSON KONYK: Next item on consent is BofA 2006-01548, Daniel and Sharon Rauth, owners, to allow an existing structure to encroach into the required side and front setbacks.

Name.

MS. RAUTH: Sharon Rauth.

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

MS. RAUTH: Yes.

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

(No response)

CHAIRPERSON KONYK: Any letters?

MR. SEAMAN: There are three in support.

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

(No response)

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

BOARD OF ADJUSTMENT CONDITIONS

1. By **11/16/2007**, 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. (ON-GOING-BUILDING PERMIT: BUILDING)
2. Prior to the Development Order expiration, the project shall have received and passed the first building inspection. (DATE: MONITORING-ZONING)
3. Both metal sheds in the rear of the lot (10'x10' and the 10'x20') must be relocated to meet the ULDC setback provisions or removed from the site by **05/16/07**.

CHAIRPERSON KONYK: Next item -- next item on consent is BofA 2006-01551, Kilday and Associates, agent for Boynton Beach Associates, owner, to allow a chain link fence in lieu of the required wall to be installed along the property line.

Your name for the record.

MR. RATTERREE: Good morning. For the record, Kevin Ratterree, R-a-t-t-e-r-r-e-e, with GL Homes, property owner.

CHAIRPERSON KONYK: Okay. You got me confused. I thought you changed jobs again.

MR. RATTERREE: No, no, no.

CHAIRPERSON KONYK: All right. Staff has recommended three conditions. You understand and

agree with those?

MR. RATTERREE: Actually, I should hire Mr. Miller or Mr. Seaman to do my presentation for me 'cause they raised an issue this morning that I agree with.

The development order expiration date on this project is 11/16/07. We'd request 11/16/08.

This is a 552-acre PUD. Getting to that particular portion of the property where the variance is needed would necessitate an extra year, which would mean Condition 1 should be 6/16/2008.

CHAIRPERSON KONYK: Is that long enough time? That's only two years.

MR. RATTERREE: That's fine. That's -- for GL that's plenty of time, but the one-year --

CHAIRPERSON KONYK: Are you about that?

MR. RATTERREE: -- is pretty quick.

CHAIRPERSON KONYK: All right. So --

MR. SEAMAN: Shall I read it?

CHAIRPERSON KONYK: Well, I think we need a motion --

MR. SEAMAN: Sorry.

CHAIRPERSON KONYK: -- to make -- yeah. You want to read it first, and then we'll make the motion?

MR. SEAMAN: I can do that.

CHAIRPERSON KONYK: Okay.

MR. SEAMAN: The Development Order for this particular variance shall elapse on 11/16/2008, two years from the approval date --

CHAIRPERSON KONYK: Motion to adopt that condition.

MS. CARDONE: So moved.

CHAIRPERSON KONYK: Motion by Ms. Cardone.

VICE CHAIRMAN BASEHART: Second.

CHAIRPERSON KONYK: Second by Mr. Basehart.

All those in favor.

MR. SEAMAN: Condition 1 should then get the extra year, as well, because it's tied with the building permit. So it'd be 6/16/2008.

CHAIRPERSON KONYK: Okay. We got to vote on them one at a time.

MR. RATTERREE: Oh, I'm sorry.

CHAIRPERSON KONYK: That's okay. Let's vote on -- let's finish this one first, and then we'll go to that one. How's that?

MR. SEAMAN: It's a development order. That's because --

CHAIRPERSON KONYK: Yeah. All right.

So motion, second.

All those in favor.

BOARD MEMBERS: Aye.

CHAIRPERSON KONYK: Approved.

Okay. Now, the second condition you want to change?

MR. SEAMAN: Condition 1, which would read by 6/16/2008, instead of 2007.

CHAIRPERSON KONYK: Okay.

MR. SEAMAN: That's fine.

CHAIRPERSON KONYK: Anybody have a motion

for that one?

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 MEMBERS: Aye.

CHAIRPERSON KONYK: Motion approved.

You want to read it just to make sure?

MR. SEAMAN: Got to check my math again, I know.

By 6/16/2008 -- this is Condition 1 of the development order -- the applicant shall provide the Building Division with a copy of the Board of Adjustment result letter and a copy of the site plan or survey which may be the same in some cases, presented to the Board of Adjustment simultaneously with the building permit application.

CHAIRPERSON KONYK: Okay. Any member of the public -- you -- you agree with that? Okay.

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

(No response)

CHAIRPERSON KONYK: Any letters?

MR. SEAMAN: Yes. There are eight letters, four disapprove, four for clarification. The disapprovals are based on concerns about the chain link fence, and some folks consider they'd rather have a wall than a chain link fence, but once again --

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

(No response)

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

MR. RATTERREE: Thank you.

BOARD OF ADJUSTMENT CONDITIONS

1. By **6/16/2008**, the applicant shall provide the Building Division with a copy of the Board of Adjustment Result Letter and a copy of the site plan or survey (which may be the same) presented to the Board of Adjustment, simultaneously with the building permit application. (BUILDING: DATE: ZONING)
2. Prior to the Development Order expiration, the fencing installation shall have received and passed an inspection by the Landscape Section. (LANDSCAPE: EVENT: ZONING)
3. The chain link fence proposed within the north, south and west perimeter buffers (adjacent to the Moody Bible Institute Tower Site) shall be black or green vinyl coated. (LANDSCAPE: EVENT: ZONING)

CHAIRPERSON KONYK: BofA 2006-01553, Land Design south, agent for Wycliffe Golf and Country Club, to allow a tennis court to encroach into the side interior setback.

Your name for the record.

MR. TERRY: Good morning. Brian Terry, with Land Design South.

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

MR. TERRY: I do.

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

(No response)

CHAIRPERSON KONYK: Any letters?

MR. SEAMAN: There are none.

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

(No response)

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

BOARD OF ADJUSTMENT CONDITIONS

1. Prior to the Development Order expiration, the fencing installation shall have received and passed the first building inspection. (DATE: MONITORING-ZONING)
2. By **11/16/2009**, 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. (ON-GOING-BLDG PERMIT: BUILDING)

CHAIRPERSON KONYK: BofA 2006-01561, Kim Glas-Castro, agent for Autonation Imports of Palm

Beach, to allow a reduction in the right-of-way buffer and for a buffer to encroach into an easement.

Your name again for the record.

MS. GLAS-CASTRO: Kim Glas-Castro with Ruden McClosky.

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

MS. GLAS-CASTRO: Yes.

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

(No response)

CHAIRPERSON KONYK: Any letters?

MR. SEAMAN: No letters.

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

(No response)

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

MS. GLAS-CASTRO: Thank you.

BOARD OF ADJUSTMENT CONDITIONS

1. By **11/16/2007**, 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. (ON-GOING-BLDG PERMIT: BUILDING)
2. Prior to DRO certification, the applicant shall ensure the BOFA conditions are shown on the site plan. (Pet 1987-006) (ZONING-DRO)

CHAIRPERSON KONYK: Board of Adjustment time extension, 2006-01619, Kilday and Associates, agent for K. Hovnanian, a 24-month time extension on approved variance BofA 2005-1318.

This wasn't advertised so I'm going to guess that there's nobody from the public here to speak against this?

MR. SEAMAN: Right.

CHAIRPERSON KONYK: Okay. Your name for the record?

MR. BRINK: Damian Brink (ph), with Kilday and Associates.

CHAIRPERSON KONYK: Okay. And there's no

new conditions on this, is there?

MR. SEAMAN: No.

CHAIRPERSON KONYK: Okay. Any Board member feel this item should not receive a time extension?

(No response)

CHAIRPERSON KONYK: Seeing none, your item will receive the time extension that you've requested.

DEVELOPMENT ORDER

The Development Order for this particular variance shall lapse on **10/20/2006**, one year from the approval date. (DATE: MONITORING: ZONING)

IS HEREBY AMENDED TO READ:

The Development Order for this particular variance shall lapse on **10/20/2008**, two years from the approval date. (DATE: MONITORING: ZONING)

BOARD OF ADJUSTMENT CONDITIONS

1. Prior to DRO approval, the variance approval pursuant BA-2005-1318 shall be reflected on the approved site plan. (DRO: EVENT: ZONING)
2. Prior to issuance of the Certificate of Occupancy, all landscape material required by the ULDC within both buffers addressed in BA-2005-1318, shall be planted throughout the remaining landscape buffers. (LANDSCAPE: EVENT: ZONING)

CHAIRPERSON KONYK: Next item on the consent is that. That's it. Okay. Well, let me recap here what we have.

MR. MILLER: Excuse me one second. Could I make a clarification on the one that I had --

CHAIRPERSON KONYK: Sure.

MR. MILLER: I need to return the favor and hire Mr. Ratterree. I --

CHAIRPERSON KONYK: He's gone. He doesn't know.

MR. MILLER: I made the assumption that the date was changing for the development order and the condition on 01362.

CHAIRPERSON KONYK: So he wants to change

it on both like Mr. Ratterree did.

MR. SEAMAN: What page number --

CHAIRPERSON KONYK: Page number. Do you have a page number?

MR. MILLER: It's not on my staff report.

MR. PUZZITIELLO: Which one, 61 or 62?

MR. MILLER: On 01362.

CHAIRPERSON KONYK: Six two.

MR. PUZZITIELLO: So it'd be Page 11.

MR. SEAMAN: Page 11, and it's the first condition, not the development order.

CHAIRPERSON KONYK: Okay. So let's read it as corrected, get a motion and then see if we can get that for him, as well.

MR. SEAMAN: So it'd be corrected to say by 11/16/2009 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.

CHAIRPERSON KONYK: Motion to --

MR. PUZZITIELLO: So moved.

CHAIRPERSON KONYK: Motion by Mr. Puzzitiello.

VICE CHAIRMAN BASEHART: Second.

CHAIRPERSON KONYK: Second by Mr. Basehart.

All those in favor.

BOARD MEMBERS: Aye.

CHAIRPERSON KONYK: Motion carries.

Okay. So you have two corrected conditions on that one.

CHAIRPERSON KONYK: All right. The items that remained on consent are BofA 2006-01361; BofA 2006-01362; BofA 2006-01365; BofA 2006-01535, BofA 2006-01536; BofA 2006-01543; BofA 2006-01547; BofA 2006-01548; BofA 2006-01551; BofA 2006-01553; BofA 2006-01561; Board of Adjustment time extension 2006-01619.

And Mr. Misroch has entered the meeting so I'd like the record to reflect that before I ask for a motion to approve the consent.

Now I'd like that motion.

VICE CHAIRMAN BASEHART: Madam Chair, I'd like to make a motion that we approve the consent agenda as just read with the modifications to conditions of approval that were identified and voted on as we discussed them.

I would also like the record to reflect that my feeling of justification for each one of

the variances is based on the staff reports that were presented, and I'd like those to be the record of the hearing.

MR. PUZZITIELLO: Second.

CHAIRPERSON KONYK: We have a motion by Mr. Basehart, a second by Mr. Puzzitiello.

All those in favor.

BOARD MEMBERS: Aye.

CHAIRPERSON KONYK: All those opposed.

(No response)

CHAIRPERSON KONYK: Motion carries unanimously.

Anyone that was on the consent is free to leave.

UNIDENTIFIED SPEAKER: Thank you very much for all your help.

CHAIRPERSON KONYK: Somebody call Kevin and tell him we pulled him from the consent after he left. Okay.

(Whereupon, a short break was taken in the proceedings.)

CHAIRPERSON KONYK: Okay. Are we ready to proceed with the regular agenda? Okay.

First item on the regular agenda is BofA 2006-01544, Patricia and Rick Upton, owners, to allow a proposed fence to exceed the maximum allowable height requirement in the front yard.

Your name for the record.

MS. UPTON: Patricia Munoz Upton.

MR. SEAMAN: And she needs to be sworn in because I think she came in after we did the swearing in.

MS. UPTON: Yes, I did.

CHAIRPERSON KONYK: Okay. So can we swear her in?

(Whereupon, speaker was sworn in by Ms. Springer.)

CHAIRPERSON KONYK: We'll have the staff read the legal, and then we'll let you give your presentation, and then we'll proceed.

MS. UPTON: These letters that I have from neighbors and the doctor.

CHAIRPERSON KONYK: You'll have the opportunity. We'll have to vote on accepting them, but you'll have the opportunity when you -- okay. I'll let you know when.

MR. SEAMAN: Okay. This is BofA 2006-1544, petitioners, Patricia and Rick Upton, owners, to allow a proposed fence to exceed the maximum allowable height requirement in the front

yard.

Location, 15655 75th Way North, approximately a tenth of a mile west of 75th Avenue North and approximately three-tenths of a mile south of 180th Street North in the AR zoning district.

Staff recommends denial because there basically are other design options available to the applicant.

CHAIRPERSON KONYK: Okay. I don't know if you're familiar with how this Board operates, but what you have to do is there are seven criteria, and it's necessary for you to demonstrate that you meet all seven of the criteria and could be, you know, you may clearly meet six, but in -- the way that this approval goes you have to actually meet all seven.

So if you can show us that you meet all seven and that we agree with you that you've met all seven, then there's a great possibility you'll get your variance.

If you can't demonstrate that you've met all seven or if staff's able to demonstrate convincingly that you don't meet all seven, then you won't get your variance.

Now, you mention that you had some letters you wanted to give us. If you could hand them to Annette, and she'll pass them around. We'll get -- are they from your neighbors?

MS. UPTON: From my neighbors and from the doctor and the therapists.

CHAIRPERSON KONYK: Okay. And will you kind of give us a brief -- we'll accept them into the record then just kind of tell us what these people are saying.

We'll take a look at them as they come around, but first let's get a motion to accept the letters.

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 MEMBERS: Aye.

CHAIRPERSON KONYK: Opposed.

(No response)

CHAIRPERSON KONYK: Motion carries unanimously. We've accepted several letters into the record. Do you know how many there are?

MR. SEAMAN: One, two --

MS. UPTON: Seven.

CHAIRPERSON KONYK: Seven letters into the record. Okay.

MS. UPTON: And then also the postmarked letter.

CHAIRPERSON KONYK: Okay.

MS. UPTON: I didn't get to mail it in.

MR. SEAMAN: This is from your doctor?

MS. UPTON: Uh-huh.

CHAIRPERSON KONYK: Okay. Ms. Upton, will

you kind of briefly tell us, first of all, what those letters are about and then get into your justification?

MS. UPTON: Okay. The most important thing is that the children have no danger awareness. They have severe autism, and they're great climbers.

So basically what the letter states there from the doctor and from the therapist and from the teachers that come to the home, because I do home school the children, is that the fence is necessary for their safety and for their well-being.

CHAIRPERSON KONYK: So you're requesting a two-foot variance in a front yard fence to protect your children that are how old?

MS. UPTON: Seven.

CHAIRPERSON KONYK: Seven. Okay.

MS. UPTON: Yeah, they're great climbers.

CHAIRPERSON KONYK: And the letters are from your doctor and then from the neighbors?

MS. UPTON: The neighbors also wrote letters saying that the fence looks, you know, it's a wonderful-looking fence, and that they, on the contrary, think that the value of the homes will come up, and it doesn't really affect the property, the aspect of the property value or the --

CHAIRPERSON KONYK: Okay. You want to start with the first -- first criteria, number one, and tell us how you feel that you met that?

MR. SEAMAN: Could I interject? In the -- in the context of the letters that she has received that support, for the record there are four who disapprove of the fence. Fence takes the county [sic] atmosphere away --

CHAIRPERSON KONYK: Okay. Well, when you do your report, we'll ask for those. How's that. Okay. Thanks.

Go ahead. First item is special conditions and circumstances exist that are peculiar to the parcel of land, building or structure that are not applicable to other parcels of land, structures or buildings in the same zoning district.

MS. UPTON: My neighbor has actually the same -- without having anything to do with it, my neighbor has the same exact fence except that it is two feet lower, but it's exactly the same design so it actually would look -- it would look very nice.

CHAIRPERSON KONYK: Okay. But the Code -- the Code does say you can only have a four-foot fence in the front yard.

MS. UPTON: But my --

CHAIRPERSON KONYK: Just 'cause it looks nice -- I mean there's a lot of things that we think looks nice that the Code doesn't allow.

MS. UPTON: Right, but like I said, the most important thing is the safety of the children, and they can jump a four-foot fence.

CHAIRPERSON KONYK: Okay. Well, that

will --

MS. UPTON: They have demonstrated that.

CHAIRPERSON KONYK: -- probably come under two, I would guess. Do you think? What would that come under?

VICE CHAIRMAN BASEHART: Not certain, a special circumstance.

CHAIRPERSON KONYK: Okay. Is there anything peculiar about your parcel of land, special condition or circumstance that are not applicable to other parcels of land, structures or buildings in the same zoning district?

You want to come back to that one?

MS. UPTON: Yeah, can I?

CHAIRPERSON KONYK: Okay.

MS. UPTON: I really don't even understand the question. I'm --

CHAIRPERSON KONYK: All right. Special circumstances and conditions do not result from the actions of the applicant. That would be your children?

MS. UPTON: Right, that would be my children.

CHAIRPERSON KONYK: Okay. So you have two children that are seven years old that you're concerned about them jumping over this fence.

Do they often get out in the yard by themselves?

MS. UPTON: Jumping the fence, and the -- the reason for the front yard fence is -- I have twins. It's very easy to shadow one child, but it's very difficult to have two children, and when you're getting them out of the car, holding their hands and making sure that they make it safely to the front door is a big concern.

And another thing is I have all the doors dead -- I have deadbolts on the top of the doors, but since they are home schooled, people will sometimes forget to put the bolt on the top of the door, and if they run out the front door, you know, there is a huge danger that they can get run over by a vehicle, a moving vehicle or bitten by a dog or kidnapped or whatever, lost, wander to a nearby canal.

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.

MS. UPTON: I have my seven criteria.

CHAIRPERSON KONYK: You have it on -- I think you did go through it.

Did she go through it?

MS. UPTON: Yeah.

CHAIRPERSON KONYK: You did go through it, so --

MS. CARDONE: Yeah, if I could ask a question, your response says that it is very typical in this area, and other fencing heights.

Are there other fences in this neighborhood that are six feet high?

MS. UPTON: Well, I wouldn't want, you know, to -- to -- to -- I don't know if it's done legally or it's not done legally. There are other fences that are six-foot high in my neighborhood, but that's -- that's not why actually I'm putting it up. I'm putting it up because of my -- my twins.

But for the look of the property and for my street I think it's actually an upgrade. It would -- it would look better, but that's not why I'm doing it. I'm doing it for the safety of my children.

But my neighbor, who lives right next door and has a four-foot aluminum fence, thinks it's a great idea, and she's seen the children jump her fence, and she knows that a four-foot fence would not be enough for my boys, and we all just want their safety.

CHAIRPERSON KONYK: Any other questions, Nancy?

MS. CARDONE: No.

CHAIRPERSON KONYK: Is that your fencing company that put the fence in?

MS. UPTON: My fencing company?

CHAIRPERSON KONYK: I don't know, it says the same name, isn't it?

MS. UPTON: Oh. Yes.

CHAIRPERSON KONYK: Okay. Just curious.

MS. UPTON: With this fence was our first job.

CHAIRPERSON KONYK: Okay. Good.

MS. UPTON: We got a very good --

CHAIRPERSON KONYK: 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.

See, all your stuff goes back to your children, which I can understand your concern about your children. Nobody would deny that you should have a concern about your children, as any parent would, whether they had autism or not, but, unfortunately, the Code only allows us to go based on the parcel of land, and you're not coming up with anything that's significant about the parcel of land, and that's the problem.

MS. UPTON: Well, the amount of land, I mean the front's -- the amount of land --

MR. PUZZITIELLO: It's a standard acre lot in the Acreage.

CHAIRPERSON KONYK: Oh, your variance was pulled from the consent.

MR. PUZZITIELLO: It's a standard acre plus lot in The Acreage, and it's --

CHAIRPERSON KONYK: Yeah, it's standard -- what did you say, an acre lot?

MS. UPTON: Well, the home, the -- actually, the home is pulled away from the front, so I have a lot of front yard space.

MR. PUZZITIELLO: That's what the setback is for the -- that area.

MS. UPTON: Sorry?

MR. PUZZITIELLO: That's the required setback for that area.

MR. SEAMAN: This might help the Board. This is her property and her six foot fence is down here, where actually if she pulled it up here there would be no variance needed.

MS. UPTON: But it doesn't cover -- for example, if -- when I come in with the children, I'm only one person and I have three children. If I come in to the front of -- with my car and I open the door, obviously, I have to grab one and grab the other, but sometimes they -- they -- they grab away from me, and they run into the street. That's the first place they go.

MR. PUZZITIELLO: But -- but their -- their suggestion puts it in front of the garage -- the fence in front of the garage, so you will have a parking area outside your garage --

MS. UPTON: And the front door --

MR. PUZZITIELLO: -- beyond the gate.

MS. UPTON: No. Actually, our driveway is long. We have a fence put up in -- in the sides of the house towards the back.

MR. PUZZITIELLO: Uh-huh.

MS. UPTON: And that's where their park space is, but that still doesn't cover the front of the yard where they -- they have opened the door and just run out the front yard, and where I do get them out of the car and they're, you know, they're able to run to the road.

CHAIRPERSON KONYK: Okay.

MS. UPTON: And, like I said, the most important thing is -- for me as a mother is their safety, and, unfortunately, autistic children do wander, and there's been a lot of, you know, things that have happened in the news that -- I don't know if you've heard --

CHAIRPERSON KONYK: Okay. Let me -- let me try this a little differently.

Let's go to number seven. The grant of the variance will not be injurious to the area involved or otherwise detrimental to the public welfare, and you've answered that correct. No impact. Again, it's compatible with the area so that one I can -- I can go with.

Grant of the variance will be consistent with the purposes, goals, objectives and policies of the Comprehensive Plan and this Code.

Any suggestions on that one, Bob?

VICE CHAIRMAN BASEHART: I don't know that it's appropriate for us to be, you know --

CHAIRPERSON KONYK: Yeah, I know. I don't know what to do with this, though, I really don't.

MS. UPTON: Sorry, I'm just not -- I really don't understand, you know --

CHAIRPERSON KONYK: Yeah.

MS. UPTON: -- how the -- the --

VICE CHAIRMAN BASEHART: Well, first -- first -- first of all, you know, I don't think that you'll find any goal, policy or objective in the Comprehensive Plan that deals with this

situation, you know, so I would think that, you know, from the Comprehensive Plan point of view it's -- it's really not applicable, you know -- you know, with -- with respect to, you know, the --

MS. UPTON: One of the first things that I did read, though, when -- when I was trying to find the security for my children on different awarenesses [sic] for autism is to go to the County and ask for a variance because it is necessary to have at least a five-to six-foot fence in your front yard for the safety of your children.

Unfortunately, my printer ran out of ink, and I could not print that and bring it today, but that is how I came to ask for the variance.

CHAIRPERSON KONYK: Here's my concern about this whole thing. We've had situations in the past where we've had people that had special circumstances, not even as severe as this woman's circumstance. I mean I can understand her concern about her children.

VICE CHAIRMAN BASEHART: You hit me.

CHAIRPERSON KONYK: I love you, that's why.

So, you know, and then we maybe denied the variance, and then it comes back out of a lot of pressure and things like that, and we had to re-look at it, and I don't know what to do with this. I really don't.

I mean I -- I can't with a clear conscience deny this variance. So that's my -- my dialog, I guess.

MS. CARDONE: Madam Chairman, may I ask staff.

Is it possible for a variance to be tied to the homeowner and not the property to -- if we could -- would consider granting the variance for this family because of their circumstance; however, should they move from the property and sell the property, the fence would have to be removed. It would then be out of compliance. Is that possible?

VICE CHAIRMAN BASEHART: I think it is.

MR. SEAMAN: We've tied variances to our -- parking variances to uses, so if that use stopped, then -- 'cause there was a concern that a commercial building would be -- be utilized with something with more intense traffic, so we've said your reduction in parking will be approved with the understanding that if the use should change, you have to come back and revisit the Board of Adjustment. We've done that before.

MR. PUZZITIELLO: So if they'd sell their home, they'd have to take the fence down --

MS. UPTON: That's fine with me.

MR. PUZZITIELLO: -- before they sold it?

MS. UPTON: That -- that's --

MR. PUZZITIELLO: I mean how do you -- how do you enforce it?

MR. SEAMAN: Well, again -- I'm kind of looking over here at Ann as the -- our -- our

legal assistant here, but the use is residential.

How do you tie it to use changing? It won't. It's residential, it'll always be residential.

VICE CHAIRMAN BASEHART: I mean I -- I think it would be basically done in the form of a, you know, a deed restriction, you know, and you guys require them all the time.

I don't know how many I've been involved in, you know, in -- and effectively the deed restriction, you know, could be -- the way you generally require them could be released, you know, by the, you know, by the Executive Director, but in this case, you know, I think it would simply require a future owner to come in and either seek a continuation based on their particular circumstances or remove the fence.

You know, I mean, you know, I've been looking at this number six that you've been, you know, bothering me with, and, you know, I think the issue here is -- is the fact is, is the Code would allow the fence to be there, it just requires it to be limited to four feet.

The purpose and intent of the Code is, for fencing, is to allow people to provide adequate security and safety, either from intrusion from the outside or from escape from the inside, you know, and I think under this particular circumstance with the documentation that's been submitted, you know, by the applicant that the additional two feet are necessary for the particular circumstance that exists on the property, and I think the condition -- I think the requirement has been met.

CHAIRPERSON KONYK: Okay.

MR. SEAMAN: Can we, can staff --

MR. JACOBS: Can the variance be limited in time, in other words, can we have a variance for a period of 10 years?

CHAIRPERSON KONYK: I guess you could do anything, but, you know --

MS. HELFANT: That's a structure on the property which is --

MR. JACOBS: The children are -- are seven years old at this particular time. A six-foot fence isn't going to be particularly meaningful when they're 17.

MR. SEAMAN: Can staff give you some more facts?

CHAIRPERSON KONYK: Yeah, we're going to hear from you, too. I just want to get through this part of it. She's, you know, going to go first.

I do like that -- the suggestion that Bob made, though, that it is a requirement or a condition that the -- if this variance were granted, that this applicant supply us with a deed restriction, wording to be developed by the County staff, and that would -- I would not put in that restriction that a subsequent owner could come forward and make justification for that fence to remain.

I would put in that restriction that the

fence has to be removed if she ever sells -- or lowered to the four-foot if she ever sells the property.

VICE CHAIRMAN BASEHART: Looking at the photograph, based on the type of fence it is, you know, I think that it physically could be adjusted to four feet high without a great deal of difficulty or without the requirement to remove the whole thing at some point in the future.

MS. HELFANT: Madam Chair, I think if you grant the variance, though, it has to be on the property. It cannot be taken away in later years -- I mean down the road if they move. I mean I think it's a permanent --

CHAIRPERSON KONYK: No, I disagree with you, Annie. We've done it before. We have. I mean there's -- there's variances that they do on commercial property. If it's not that use anymore, then --

MR. SEAMAN: Well, the use won't change. It's residential to residential. We did it --

CHAIRPERSON KONYK: Yeah.

MR. SEAMAN: -- before --

CHAIRPERSON KONYK: We had a situation in our community where we put up a fence, and it was particularly for that homeowner, and if they moved or -- well, I can't even remember, but I know that we've done it before.

MR. PUZZITIELLO: For a homeowner association.

CHAIRPERSON KONYK: No, it was the County. It was a fence that was put up. I can't remember. It's been a long time.

MR. SEAMAN: I just feel remiss if I don't get some facts --

CHAIRPERSON KONYK: Okay. Well, let's -- let's -- let's let you take a break for a minute and we'll hear from staff, and then you can come back up again.

MS. UPTON: I just want to mention one more thing.

There is another person that had similar circumstance than I, only one child, but he was granted his -- his -- his --

CHAIRPERSON KONYK: Variance in Palm Beach County?

MS. UPTON: Yes. The Eggle - Eggleton? Eggleton property. So --

VICE CHAIRMAN BASEHART: What was the staff recommendation on that one? Do you happen to know?

MS. UPTON: It was chain link.

MR. SEAMAN: Five-foot fence.

MS. JAMES: It was for a five-foot fence, and he wasn't an autistic child.

CHAIRPERSON KONYK: Yeah, and his was chain link, and hers is at least aluminum split rail.

VICE CHAIRMAN BASEHART: What was the staff recommendation on the other one?

CHAIRPERSON KONYK: Microphone.

MS. JAMES: Approval with conditions.

VICE CHAIRMAN BASEHART: Approval with conditions?

Do you know what the conditions were?

MS. JAMES: No, but I can find out.

MS. UPTON: I thought I had it here, and --

CHAIRPERSON KONYK: Well, can you -- can we see what she's got? Maybe she's got it. Yeah.

MS. UPTON: I had a copy of that whole thing. I'm just nervous.

CHAIRPERSON KONYK: Okay. Let's hear from staff while you look for that. Have a seat.

Alan, are you ready?

MR. SEAMAN: I sure am.

CHAIRPERSON KONYK: Where's Annie?

MR. SEAMAN: She went to call her office to see if she can get an answer for your question.

CHAIRPERSON KONYK: Okay. Good.

MS. UPTON: I have it here, I'm sorry.

CHAIRPERSON KONYK: Okay. Well, we'll wait for it. Go ahead.

MR. SEAMAN: Staff also is sympathetic to Mrs. Upton's --

CHAIRPERSON KONYK: Can you talk in the mic 'cause she keeps getting mad at me, and it's not my fault.

MR. SEAMAN: Staff is also concerned about Mrs. Upton's circumstances, but I -- I visited the site yesterday myself, and I just want to present the facts, you know, as I see them.

And I know that she's proposing a six-foot fence out front, and I'm asking what's happening on the south side of your property. What I saw there is a four-foot chain link fence.

MS. UPTON: Oh, no, the whole fence is going all the way around.

CHAIRPERSON KONYK: Can you step forward.

Do you have a permit to put more fencing up?

MS. UPTON: Yes.

CHAIRPERSON KONYK: Okay.

MS. UPTON: I'm -- I'm going to put it all around the whole property because he can jump over the chainlink fence.

MR. SEAMAN: That's just something I want to point out.

And also I did drive around the neighborhood, and I did not see any six-foot fences. There are fences similar to hers in design but they're four feet so that's why staff has said that it -- it isn't compatible with the surrounding neighborhood because hers would be the only one that is six feet along the front property line.

CHAIRPERSON KONYK: Okay. And you had some other things you wanted to bring forward?

MR. SEAMAN: We also have four letters from neighbors who disapprove. They say the fence takes away the country atmosphere and allows for others to do the same. Somebody else just says disapproval, and somebody else says, "I object to the height of the fence."

And basically we are just stating that there is another design option by pulling it back towards the home, and that would reduce the need for the actual variance.

CHAIRPERSON KONYK: How -- how far back would you recommend that she pull the fence?

MR. SEAMAN: She doesn't -- she doesn't need --

CHAIRPERSON KONYK: Or how could she --

MR. SEAMAN: She doesn't need a variance if she takes it where you see it right now 'cause that meets the front setbacks of the property so she wouldn't need a variance at all.

And I -- you have permits to put the fence up?

MS. UPTON: For the side's been -- no. I have to take the variance and then get a permit for the front, as well --

MR. SEAMAN: But you put the fence up.

MS. UPTON: -- as the side.

MR. SEAMAN: You put the fence up.

MS. UPTON: Yeah, I know. I know. I know because I --

MR. SEAMAN: The Board just needs --

MS. UPTON: I was really concerned with the safety of my children. I know I did something I shouldn't have, but I was concerned with their safety, and that's the most important thing in this whole world.

On the sides of the -- on the sides I don't need to get a variance for that. I can just do that altogether.

CHAIRPERSON KONYK: But you do need to get a permit.

MS. UPTON: Yes, I know. I --

CHAIRPERSON KONYK: Have you gotten a permit for the fence on the sides yet?

MS. UPTON: Actually it's ready and I just need to pick it up, but I had thought instead of picking that up and paying again, I would just do everything at once.

CHAIRPERSON KONYK: Well, I think you're going to pay more for the permit in the front fence if you did get it because of the fact that you didn't get it before you put it up so I'm sure there's a penalty involved with that one.

So I mean it is a process that's going to be separated, anyway, when you do actually do it.

Anything else, Alan?

MR. SEAMAN: I just wanted to give you the facts since she held out that information --

CHAIRPERSON KONYK: Can you show me up there -- Alan, can you go up there and show me where the house is and where the fence is and where you're -- I mean I see the red line, but I'm -- I'm not making out the diagram that well. It's a little far away.

MR. SEAMAN: We have a corral here. This portion right her, it looks like an H, that's her home.

CHAIRPERSON KONYK: Where's her front door?

MR. SEAMAN: Her front door I'm assuming is right here (indicating) .

MR. PUZZITIELLO: Right there.

CHAIRPERSON KONYK: So the way -- and the red line is where you're proposing the fence?

MR. SEAMAN: Yes.

CHAIRPERSON KONYK: So it wouldn't be covering the front door?

MR. SEAMAN: No, it would not.

MR. PUZZITIELLO: So it would put it in front of the walkway.

CHAIRPERSON KONYK: Right.

MS. UPTON: Or their bedroom window -- I'm sorry.

MR. SEAMAN: Her driveway goes into this fashion here, which would be behind the six foot fence.

MR. PUZZITIELLO: But if we pulled that front fence in to in front of that walkway, it's still a lesser variance than bringing it all the way to the street.

MR. SEAMAN: It is a second design option.

MR. PUZZITIELLO: And it -- and it takes into account the children's bedroom window and the walkway to get into the house so her car is behind the gate, but it's not all the way out to the street.

CHAIRPERSON KONYK: Can she -- well, she'd still need a variance for that, correct?

MR. PUZZITIELLO: But it's a lesser of a variance, which is what --

MR. JACOBS: Alan, what was the answer to my question about sunsetting a variance?

MR. SEAMAN: At this point in Palm Beach County as far as I know, we don't work -- sunsetting variances. They run with the actual property unless you don't meet the criteria which is the development order.

VICE CHAIRMAN BASEHART: But is there -- is there a reason why you couldn't sunset a variance?

MR. SEAMAN: Well, again, I need to defer to our attorney.

CHAIRPERSON KONYK: Okay. She got some information on deed restriction it looks like.

MS. HELFANT: On the deed restriction, you can place a variance on a property, and then the variance is only good essentially with that property owner, and that could be done with a deed restriction.

Essentially you would place a condition that it's only good with the property owner.

CHAIRPERSON KONYK: Okay. And then she'd have to file something with the County so it would come up in a title search when she sold the property. Okay.

MS. HELFANT: And that's if you find the seven criteria have been met.

CHAIRPERSON KONYK: Right. We have to find the seven --

VICE CHAIRMAN BASEHART: What -- what about sunsetting it?

MS. HELFANT: To essentially have the variance --

CHAIRPERSON KONYK: Expire after X number of years, and she'd have to remove the fence at that time, which --

VICE CHAIRMAN BASEHART: Or bring it into compliance.

MS. UPTON: Or do it again, right.

MR. SEAMAN: Or request another variance.

MS. UPTON: With an expiration.

CHAIRPERSON KONYK: I don't know that -- I don't know of anyone that we've ever done that. Have we ever done that?

MS. HELFANT: I would say that you should just do the deed restriction. I mean a variance, if you grant a variance, it would be essentially with the property for the property owner.

MR. SEAMAN: But if you have a deed restriction, doesn't that keep the individual purchaser of a house aware of what's going on.

CHAIRPERSON KONYK: Okay. Now how -- did you find the other one? And how was that seven criteria justified?

VICE CHAIRMAN BASEHART: We just believed the staff.

CHAIRPERSON KONYK: Yeah.

VICE CHAIRMAN BASEHART: Because staff recommended approval.

CHAIRPERSON KONYK: I gotcha.

MR. SEAMAN: There are two variances here. They had an accessory structure that was encroaching in the setback.

MS. UPTON: I have a copy if you'd like that.

MS. CARDONE: I have another question. I was under the impression when we started to hear this that this was for a proposed fence.

Looking at these pictures I'm getting the impression --

CHAIRPERSON KONYK: We already said that.

MS. CARDONE: -- this is not proposed --

CHAIRPERSON KONYK: Yeah, it's up.

MS. UPTON: Yeah, I put it up.

CHAIRPERSON KONYK: She's already in trouble for that.

MS. UPTON: I know. I got in big trouble.

I -- the reason why I did that, and I -- I -- my children were just running into the street, and I was really worried for their safety so I started putting up the fence.

CHAIRPERSON KONYK: She's in the permit process now, but obviously she can't get a permit.

MS. UPTON: Actually, the permit's ready for a four-foot fence in the front. It's ready. I just need to pick it up, but I'm not picking it up until, you know, I find out what's -- yeah, I'm in error.

CHAIRPERSON KONYK: Speak in the mic and on the record. Sorry.

MR. JACOBS: Couldn't you have a provision where the homeowner puts a deed restriction agreeing to bring the property into compliance in

10 years or whatever?

CHAIRPERSON KONYK: Well, we did determine that we could have a deed restriction, and our attorney recommended that we not have it expire at a number of years 'cause that's hard to monitor, whereas, the situation of it being for the owner only would be easy to monitor because it would come up in the title search.

MS. HELFANT: You can have a time period on the deed restriction, as well --

CHAIRPERSON KONYK: Well, you recommended that we didn't, though, 'cause who's going to enforce that? Who's going to enforce that in 10 years? The County certainly isn't going to be looking for it. It'd be a maybe, maybe not.

MS. HELFANT: Whatever you guys --

CHAIRPERSON KONYK: Me, I think the most important thing is that --

VICE CHAIRMAN BASEHART: Alan will still be here.

MS. UPTON: It serves its purpose, which is the safety of the children, and that's the only purpose it has.

CHAIRPERSON KONYK: Okay. All right.

So what did you find out about the one that was granted?

MR. SEAMAN: This was an existing fence, and they asked to replace it with one that is a foot higher.

CHAIRPERSON KONYK: Okay.

MR. SEAMAN: And they're -- they are discussing -- they're discussing the autism as just needing the five foot fence --

CHAIRPERSON KONYK: Well, I'm more concerned about how the staff came up with a recommendation for approval on that one.

MR. SEAMAN: One thing I don't have, and I wish we had the file here, I'd like to see the site plan, the survey.

MS. UPTON: I think I -- I think I have it.

MR. SEAMAN: I want to see -- I want to see what the impact of this chain link fence has 'cause it's in the -- what appears to -- I can't -- I can't tell by this. I need to see the file.

What I can't tell from this is it appears to have gone around the entire property, and it's existing, but I need the survey or the site plan.

CHAIRPERSON KONYK: Do you have the variance? Do you have what he's looking for?

MS. UPTON: No, for the -- for the other property? No. I had it, though. I did have the --

MR. SEAMAN: Okay. It says here the applicant is proposing a variance for the existing gazebo, and also from the rear property line is a -- is currently located an existing chain link fence in the front setback.

They want to go from four feet to five feet, but in fact I'm looking at this. This chain link fence is set back approximately -- it looks

like 15 or 20 feet from the right-of-way.

(Discussions off mic)

MS. HELFANT: Excuse me, Madam Chair. If there's going to be discussion, it has to be --

CHAIRPERSON KONYK: On the record.

MS. HELFANT: -- on the record.

MS. CARDONE: We just probably -- do you need a motion to accept this report?

CHAIRPERSON KONYK: I think it's already record, a County record.

MR. SEAMAN: Right, that staff report has been in the record since 19 -- 2003.

MS. CARDONE: And so is this what you need to look at, Alan, because there's a --

MR. SEAMAN: If you look very closely, you can see that the chain link fence wraps around the entire property, and at the front it appears to be set back from the right-of-way maybe 15, 30 feet, and that front is where they wanted to raise the fence from four to five feet, and that there is a wood fence in the rear of that property that apparently was six feet from what I can read on the survey.

CHAIRPERSON KONYK: Well, it says here on your justification this is -- applicant is proposing a five-foot chain link fence to remain into the front setback.

Doesn't say where it's -- doesn't say how far back it is, and -- I mean that wasn't part of your approval, is how far back it was in the setback. It was just in the setback.

MR. SEAMAN: Yeah, it already existed.

CHAIRPERSON KONYK: Already existed at four feet. She could have a fence that already exists at four feet where it is.

I mean so you want her to put up a four-foot fence and then come back to get a six-foot fence? She's already got -- she made a mistake. She got a fence without a permit.

I could show you 50 people in my neighborhood have done that. I've called Code Enforcement on them every day, and Code Enforcement hasn't done a darn thing about it. This woman got caught.

MS. UPTON: Well, actually I didn't get caught. I came here first and asked for my two feet variance and then I put up the fence.

MR. SEAMAN: You were told that you should get a permit.

MS. UPTON: Actually I told you Alan that I was going to put up my fence.

MR. SEAMAN: You were told to get a variance first and then you did it.

CHAIRPERSON KONYK: Okay. Whatever.

MS. UPTON: For the safety of my children.

CHAIRPERSON KONYK: I mean that -- that's -- I mean it's either she's got a four-foot fence or a six-foot fence. She either gets the variance or she doesn't. None of that matters.

She's got to get a permit. She's going to pay the fine. She's got to get a permit either way, whether it's four feet or six feet. That's

not an unusual thing, so.

Does the staff have anything to add?

MR. SEAMAN: I think I gave you all the facts that I have.

CHAIRPERSON KONYK: Okay. Does the applicant have anything to add?

MS. UPTON: Just that I do have twins with autism, and they have severe autism, and just to plead for them, you know, for their safety, as a mother.

CHAIRPERSON KONYK: Any more -- any questions from the Board additionally?

(No response)

MR. KILDAY: Comments from the public?

CHAIRPERSON KONYK: Pardon me?

MR. KILDAY: Comments from the public?

CHAIRPERSON KONYK: Certainly.

MR. KILDAY: Thank you. I'm John Q.

Public. My name's Kieran Kilday, and I'm speaking as a citizen, but also as a parent. Excuse me.

Let me help you through these seven items.

CHAIRPERSON KONYK: Thank you, Kieran.

MR. KILDAY: This is the Item 1, special conditions and circumstances.

The circumstances. It's a family who is in need, and they can't live anywhere else 'cause every residential district has the same rules, six-foot fence on the back and side, four-foot on the front.

So the circumstances in this case is that you have a family who needs to live in a residential zone in Palm Beach County, and they need to be able to meet their need, which is a special need, and it's not a need that they can resolve by just moving somewhere else.

Special circumstances are not the result of their actions. Special circumstances are the result of a condition that they received.

I'm emotional on this topic. I'm the past president of the ARC in Palm Beach County.

Third item. It doesn't give them a special privilege. There are many people with needs. The organization I was involved with works with these people. They need -- they have to have special equipment, special communication equipment. They have to have special fencing. They have to have their entire interior of their house designed to meet these needs, and that's the situation, again, for any family in a condition like this in any residential zone in Palm Beach County.

A literal interpretation would deprive them of the rights enjoyed by other parcels of land. We're talking about a fence that's permitted at six feet on three sides of the property, and because of their special need, just extending it on one side. Whether it needs to be right on the street, or it may need to be set back slightly more, that's a decision you need to make, but it needs to be put in a place so that the problem and the issue gets resolved, and that place is to provide a secure environment for those

children.

Five. The minimum variance is the six-foot fence. We've already indicated the four-foot fence would not act -- I believe from the testimony a five-foot fence would not do it. So the six-foot height placement is an issue you'll have to consider as to it.

Consistent with -- Item 6. The whole purpose of zoning codes is public health, safety and welfare. We try to do a code that's a generalized code that sees all circumstances. That's why our Code is 1200 pages, whatever it is, that -- but there are some things that codes can't foresee, and that's why you as a Board are here to react to those items, but I believe that if public, health, safety is the purpose of a code, and I think it's in the purpose and intent in the very first pages, this is a case of public, health, safety looking for a relief from you.

Seven item. It has no effect on anyone else. I think the concept that the circumstances related to the family, as opposed to the lot being narrow, means that with a removal agreement -- the County has a form that's called removal agreements.

When I worked here, we used to hand them to people, and we'd give them -- and I think that's a good solution on it, so -- and then if they move somewhere else, they may have to get another variance there, but it would be for that site, for that particular circumstance.

So I'd just like to support this variance.

MS. UPTON: Thank you so much.

CHAIRPERSON KONYK: Okay. I do have a removal agreement, thank you for reminding me, for a tree that I have in my back yard.

I got to ask the attorney something.

This Board conducts business under Roberts Rules of Order?

MS. HELFANT: Yes.

CHAIRPERSON KONYK: Under Roberts Rules of Order the Chair can make a motion if there's less than 13 people on the Board. There's less than 13 people on the Board. I'm going to do something I have never done in however many years I've been on this Board, at least 10.

I'm going to make a motion to approve this variance because I feel that the seven criteria has not only been demonstrated, it's been demonstrated more eloquently than Mr. Kilday has ever demonstrated the seven criteria for an item that he's been paid handsomely to represent.

And you are a very lucky woman today. I just want you to know that.

MS. UPTON: I am very lucky.

CHAIRPERSON KONYK: My motion is for approval.

Do we have a second?

MR. JACOBS: Second.

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

MR. PUZZITIELLO: Madam Chair, I'd like to

offer one modification, that we -- the gate for the driveway needs to be set back a minimum of 20 feet from the road so a car can pull out of the street roadway so the gate'll open, and they're not blocking the street.

So I don't know if the gate goes back or the whole line of the fence goes back 20 feet from the property line --

MS. UPTON: Actually -- I'm sorry to interrupt, but the gate is already up, and it opens inward, and it's all the way inside the columns.

MR. PUZZITIELLO: But if the gate doesn't open, the car has to sit in the roadway --

MS. UPTON: No.

MR. PUZZITIELLO: -- to -- how much --

MS. UPTON: The whole car does fit in --

VICE CHAIRMAN BASEHART: How much distance is there from the gate to the actual paved roadway?

MS. UPTON: Well, where Country Estates is, there's an area in front of the gate. Actually, the whole fence, where for the water -- I don't know what you call that.

VICE CHAIRMAN BASEHART: Drainage?

MR. PUZZITIELLO: Swale.

MS. UPTON: Actually, it has drains and everything for the water.

MR. PUZZITIELLO: It's a swale.

MR. SEAMAN: There's a swale.

MS. UPTON: So the set back from the road is at least 20 feet. And on top of that my driveway has concrete, maybe about another eight feet before the gates, you get to the gates that are closed. So a car does fit.

MS. CARDONE: Madam Chairman.

CHAIRPERSON KONYK: Yes.

MS. CARDONE: Before I vote on your motion, do we have some conditions that would accompany the approval?

CHAIRPERSON KONYK: Yeah, I guess that we would go ahead with that -- either the removal agreement that the County does already have, or we could do the deed restriction, and I think we should probably discuss that before we -- and I'll amend my motion for whatever the Board feels appropriate.

VICE CHAIRMAN BASEHART: The standard removal agreement basically is an agreement that you sign that says that if an improvement that you're putting in that caused that agreement to be done results in having to remove the improvement, it's at your cost and your jeopardy.

That's all that agreement does, you know, so I -- I think that --

MS. HELFANT: A deed restriction in this case --

VICE CHAIRMAN BASEHART: I think deed restriction would be more appropriate.

CHAIRPERSON KONYK: Okay. So then do you want to add a condition that the applicant has to provide us with a deed restriction stating that if

she no longer owns the property, the fence will be removed?

I -- who would word that deed restriction?

Would we word it now and tell her what we want, or what would we do, Annie?

MS. HELFANT: At a later -- if you have a condition that a deed restriction is required, then my office will work with the applicant on getting the wording of the deed restriction.

CHAIRPERSON KONYK: Okay. So do you want to give her 60 days to get that deed restriction or 90 days? What do you want to do?

MS. HELFANT: Ninety days. Have a deed restriction -- a deed restriction which is sent to Alan and then approved by the County within 90 days.

CHAIRPERSON KONYK: Okay. So the condition -- Alan is writing the condition. We'll ask you if agree -- if you understand it, and then I'll incorporate it into my motion, and then we'll take a vote.

(Off mic discussions)

MR. SEAMAN: Got it. Shall I read it now?

CHAIRPERSON KONYK: Yes, you shall.

MR. SEAMAN: The applicant shall provide staff within 90 days a deed restriction for the County Attorney's office's review and approval.

Is that good?

CHAIRPERSON KONYK: Well, I think that Annie had offered the County's assistance in developing the deed restriction.

MR. SEAMAN: Okay.

CHAIRPERSON KONYK: The wording of it, maybe. I don't know.

VICE CHAIRMAN BASEHART: Well, that -- that condition --

CHAIRPERSON KONYK: Can we just give her the basic wording that we want so she doesn't leave here not knowing what she's supposed to get?

MR. SEAMAN: Well, it's --

CHAIRPERSON KONYK: She's going to get a deed restriction that says that the --

MR. SEAMAN: Contact us afterwards, we'll -- we'll show her what to do, but this just says we need to have it within 90 days.

VICE CHAIRMAN BASEHART: Right, but the condition as you wrote it doesn't say what the deed restriction is.

CHAIRPERSON KONYK: Yeah.

MS. HELFANT: I'm getting ready to --

CHAIRPERSON KONYK: Okay. And, also, Ms. Cardone was forthright in pointing out that we probably need a second condition that she has to get this permitting issue resolved.

I think she's in the process, but it should also be a condition.

VICE CHAIRMAN BASEHART: Yeah, that basically that prior to making any more improvements you need a permit which -- right?

MR. PUZZITIELLO: Don't write too small Annie, you got to read it later.

MS. CARDONE: There's a time requirement

that by a certain time you will have the building permits, everything will be in order, and they will have been submitted --

CHAIRPERSON KONYK: Oh, this is -- no, you can't make it a time requirement. She better just get in the process of doing it 'cause I'm going to -- right.

MR. PUZZITIELLO: You have to have a permit by -- there's always a time requirement.

CHAIRPERSON KONYK: Well, you're going to have to give her a lengthy time requirement because I know what it's like to try to get a permit, and everybody else, does, too.

MR. SEAMAN: So if I -- so we put applicant shall apply and receive building permits for all fencing within 90 days?

MR. JACOBS: I would give her more time than that.

VICE CHAIRMAN BASEHART: I think we should make the requirement for applying, which she's already done.

Ninety days is --

CHAIRPERSON KONYK: She can't control when the permit's issued.

(Whereupon, there was interference with the sound system.)

MS. UPTON: Actually, my permit is ready.

CHAIRPERSON KONYK: Talk on the mic.

MS. UPTON: My permit already is ready.

CHAIRPERSON KONYK: Okay.

MS. UPTON: I don't know if I can change the existing permit with the --

CHAIRPERSON KONYK: You're going to have to start all over, pretty much.

(Whereupon, there was interference with the sound system.)

MR. SEAMAN: The applicant shall apply for building permits for all fencing within 90 days, just saying applies.

CHAIRPERSON KONYK: Well, I -- I wouldn't give her 90 days to apply. I mean --

MR. SEAMAN: Want to give her 30?

MS. UPTON: I'm going to go apply tomorrow.

MR. PUZZITIELLO: Well, she needs -- she needs the deed restriction, probably, before she applies for the permit.

CHAIRPERSON KONYK: No.

MR. SEAMAN: You can apply for the permits.

CHAIRPERSON KONYK: That has nothing to do with the permitting. It has to do with the variance.

So she's going to need the variance letters before she can get the permit.

MS. UPTON: Right.

MR. SEAMAN: Well, she'll get the letter --

CHAIRPERSON KONYK: All right. Give her 90 days.

MR. SEAMAN: -- next week, actually.

CHAIRPERSON KONYK: Okay. Let's get

this over with.

MR. SEAMAN: All right. What Annie's written here is, "Applicant shall provide staff within 90 days a deed restriction for County review and approval that the variance shall terminate and" --

MS. HELFANT: Once the applicant moves from the property.

MR. SEAMAN: -- "once the applicant moves from the property."

CHAIRPERSON KONYK: And the fence will be removed.

MR. SEAMAN: The fence will be removed.

CHAIRPERSON KONYK: Okay. And she's going to provide you with that and then file it.

MR. JACOBS: Removed at the owner's expense.

CHAIRPERSON KONYK: Right. We want to make sure that the -- the deed restriction isn't just prepared, we want it filed with the County clerk so that it becomes searchable in a title search; correct?

MS. HELFANT: Correct.

CHAIRPERSON KONYK: Okay.

MS. HELFANT: The applicant would have to -- have to provide the deed restriction, also file it in the --

CHAIRPERSON KONYK: File it with the clerk.

MS. HELFANT: -- County records.

CHAIRPERSON KONYK: Okay.

MS. UPTON: So I have to go --

CHAIRPERSON KONYK: You have to get a deed restriction drawn up. You have to bring it to Annie --

MS. UPTON: Who draws that up for me?

CHAIRPERSON KONYK: -- and have her review it.

You'll probably have to get an attorney to do that or maybe a title company.

MR. PUZZITIELLO: I've got a name of an attorney who would probably do it for you for free.

MS. UPTON: Really?

MR. PUZZITIELLO: His -- he's got a child that's autistic, too, so --

MS. UPTON: Oh, okay. Thank you.

MR. SEAMAN: Can I read this again?

CHAIRPERSON KONYK: Yes, you may.

MR. SEAMAN: Okay. "Applicant shall provide staff within 90 days for County Attorney review and" --

CHAIRPERSON KONYK: Please stop opening that door. If you're going to come and go, can you go out of the other door 'cause it just disrupts the whole meeting.

MR. SEAMAN: Okay. We'll do it again.

MS. HELFANT: "The applicant shall provide County within 90 days a deed restriction with County Attorney's review and approval that the variance shall terminate and the fence shall be removed upon the applicant's expense once the

applicant moves from the property."

CHAIRPERSON KONYK: Sells the property.

MS. HELFANT: Sells the property or moves away from the property.

CHAIRPERSON KONYK: Sells or moves. Okay. Great. She'll fine tune that a little bit, I'm sure.

We've got the basic flavor of what we're expecting, and you can get with her after the meeting, and then the second one is that she'll apply for a permit; correct?

MR. SEAMAN: Apply for a permit for all fencing within 90 days.

CHAIRPERSON KONYK: You understand and agree with those conditions?

MS. UPTON: Yes, I do.

CHAIRPERSON KONYK: So we have a motion, amended with conditions by Mrs. Konyk, a second by -- who made the second?

MR. JACOBS: I did.

CHAIRPERSON KONYK: Mr. Jacobs.

All those in favor.

BOARD MEMBERS: Aye.

CHAIRPERSON KONYK: Opposed.

(No response)

CHAIRPERSON KONYK: Motion carries unanimously.

You have been granted your variance.

MS. UPTON: Thank you. Thank you very much.

CHAIRPERSON KONYK: You're welcome.

Yeah, and we're going to take a break for the court reporter, 10 minutes.

(Whereupon, a short break was had in the proceedings.)

CHAIRPERSON KONYK: All right. Is everyone ready? Court reporter's ready. Staff is ready. Okay. We're ready. Okay.

The next item on the regular agenda is BofA 2006-01358, and we'll start with the staff reading the legal.

Is the applicant present? Can you come forward and give us your name for the record.

MR. KILDAY: Thank you. Kieran Kilday, agent for the applicant, Callery-Judge Groves.

MR. SEAMAN: The legal ad is Kilday and Associates, Incorporated, agent for Silver Lake Palm Beach, LLC, Silver Lake Enterprises, Incorporated, Seminole Improvement District and Judge Callery, owners, to allow an increase in

recreational and open space in TTD requirements, to increase the number of years per development phase and to allow the elimination of incompatibility buffers and right-of-way buffers.

General location, east and west of Seminole Pratt Whitney Road, south of 60th Street North and north of 50th Street North, east of Meadhill Drive and 44th Street North, east of 190th Terrace North and west of 140th Avenue North, within the boundaries of the Seminole Improvement District in the AR zoning district, and it's Petition 06-397.

CHAIRPERSON KONYK: All right. Before we get started with the applicant, I would like to ask any of the Board members if you would like to request a disclosure form if you've had any communication either with the County or the applicant that you feel that you need to disclose.

Does anyone need such a form?

MS. CARDONE: Madam Chairman, if they'd like me to fill out the form, I'd be happy to.

Yesterday I happened to be on the phone with Kerry for a moment, and he did ask if I needed any clarification, which was very nice, and that was the extent of the discussion.

CHAIRPERSON KONYK: That doesn't require a disclosure, does it?

MS. HELFANT: No.

CHAIRPERSON KONYK: They didn't discuss the item. Okay. Anybody else?

VICE CHAIRMAN BASEHART: I -- I did receive an e-mail from Kerry -- I'm sorry -- an e-mail, but I was out of town the last couple days.

I have not talked to him, and there was nothing in Kerry's e-mail that contained any information about the application.

CHAIRPERSON KONYK: Okay. Anybody else?
(No response)

CHAIRPERSON KONYK: Okay. Seeing none, Mr. Kilday, would you like to come forward and give us your justification?

MR. KILDAY: Thank you. Kieran Kilday, for the record, and let me just start out, give you this picture. This is my 23-year old daughter, who graduated from college, and my 25-year old daughter who lives in a group home in Virginia.

CHAIRPERSON KONYK: Okay. Thanks.

MR. KILDAY: It has nothing to do with this application.

CHAIRPERSON KONYK: It worked for the last one, though.

MR. KILDAY: And the 25 year old doesn't jump fences.

CHAIRPERSON KONYK: Okay.

MR. KILDAY: Anyhow, getting serious, Kieran Kilday, representing the applicant.

We're really down to two items today. There were four items that we submitted for a variance. One of the items we withdrew, which was an item regarding phasing that's being handled through a Code amendment.

One of the items is a requirement that would have required us to put a six-foot wall around the entire property, which is 4,000 acres.

Staff's recommended that variance be approved, and our justification is in the packet, and so it leaves two.

One of the items has to do with open space, and the other item has to do with a right-of-way buffer that's required by Code on two roads which are thoroughfare plan roads, and in keeping with the design of a traditional neighborhood we'd like to remove that, and I'll go through that in more detail.

I am going to have to take a little bit of time to walk you through the issue, although I think they're relatively simple issues, and -- but just so you know where you stand in this overall process.

First of all, where this property is located is shown here on this map of Palm Beach County. Over on the east side that's the Atlantic Ocean. This is what's -- I'm going to try picking this up, so -- this is what's known as 20-Mile Bend. This is Seminole Pratt Whitney Road, a thoroughfare road that essentially bisects the property. It's surrounded by the area known as The Acreage on the north, the east and the southwest, and on a small portion, Loxahatchee Groves, which recently was made into an incorporated municipality.

The project is a huge project. It's 4,000 acres. They are proposing 10,000 units, although the final unit count will be a decision of the Board of County Commissioners. It's a Development of Regional Impact, and it has been before the Regional Planning Council, and the Regional Planning Council has recommended approval. I believe the vote that day was 17 in favor and five against.

It has been to the Board of County Commissioners for various land use amendments to allow this project to move forward. The County Commissioners have transmitted the land use amendments to the State.

They have received back the comments of the State, and we're now moving forward to a three-part public hearing, which we hope to happen sometime in February or March, which would be the Development of Regional Impact approval, adoption of the land use amendments the Board of County Commissioners sent and the rezoning of the property to Traditional Town Development.

Now, for me to get to that process there was a couple of variances that were called make or break variances, and, as I say, we were able to work through two of the four, but there are two that we're still at odds, but if I can't get these variances, I never get to the County Commission. So they're very important that we be able to move forward.

With regard to the property and before I put down the location map I just need to give you

a sense of scale because I think this is going to relate to the variance as it relates to open space, and this issue of the word "compact," which is in your staff report.

But this is the to-scale property, and if I took this property and I moved it east to the Intracoastal Waterway, you'll see the property would be running from the Intracoastal Waterway to Florida's Turnpike. So it's a significant size property.

It's five miles from my east line to my west line, and that played a big role in the design of this project.

I'll move this out of the way.

This is a graphic of where the project is as of today, and it's gone through an evolution to get here, but what it is, is it's made up of a variety of neighborhoods, but, again, the scale, this being five miles by 1.8 miles, one and a half miles, 0.8 mile, is such that these areas, which you say they're little neighborhoods, they're big neighborhoods. These are the equivalent of the average Planned Unit Development, each one of these.

If you think of it, 10,000 units is 23,000 people. There's a college campus on the property, which is reflected here (indicating). There is a town center, which is located on Seminole Pratt Whitney Road. There's some existing conditions that have been incorporated into the project, a brand new high school, which has just opened up last fall. There's an elementary and middle school on this side.

Within this town center there's a suburban shopping center that would be revamped and redone which currently provides services for the greater Acreage neighborhood around here.

The proposal is to develop, in addition to the units, a significant town center, a lot of commercial space, a lot of services, a major employment node, as well as the schools and civic sites.

The other issue you'll see in here is a lot of blue, and that's really the issue that's coming before you today.

As part of going through this process, and I'm going to describe the process very briefly in a minute, there is a major element which is a what they call a polishing system, which is going to take water which comes out of the Everglades storage pits, which is just off this map, comes up this M-1 canal, will get routed through this project, which is a series of grasslands and preserves and waterways.

It'll be put back in the M-1 canal here (indicating), which will then head east to the Grassy Waters area, which is the West Palm Beach's conservation area. It's their water supply, but it also feeds the Loxahatchee River.

In going through this project -- and just the polishing pond element is 600 acres within this project. It takes the nutrients out of the

water and returns much cleaner water on the other side.

The process of getting to this plan -- well, let me tell you -- let me tell you what the variance is on open space and then go through the process.

This is a table that's in the TTD land development Code. No one has ever done a TTD in Palm Beach County. It's a relatively new section to the Code.

As often happens in a Code once you start trying to live with it, you find out there are potential issues. When the Code was written, it was written thinking that TTDs would occur within what they call the urban/suburban tier of Palm Beach County.

Well, it turns out there's no lands in the urban/suburban tier of Palm Beach County that can meet the size requirement of a TTD.

The Board of County Commissioners, as part of the land use, have now said let's try the TTD concept out in the western area. They've removed it from the rural tier, but one of their big issues was let's have lots of open space to protect the neighboring residents, to provide the flow way and go through it, but the chart, which was set up before those days, contains within minimum and maximum uses.

We are asking for a variance to this section of the chart, recreation and open space. It says you can have zero, which would be ridiculous, but you could according to the chart, but no more than 25 percent recreation and open space use.

We have done up a plan -- we have a condition of our DRI approval that throughout the whole project we have to have 60 percent open space, but with -- but within the -- this land use mix there's traditional neighborhoods, traditional marketplaces, institutional sites, although we've gone ahead and put those in with the recreation open space, and a PUD, which we're not asking for, and the MUPD we are as far as the employment center.

Our problem is we have a condition, which was imposed upon us, to have 60 percent overall open space, and to get to that 60 percent I've got to provide more open space than the Code allows.

Now, how about that. How often have you had someone come before you and say please allow me to have more open space on this project, but that's why we're here. The Code doesn't allow it.

The irony is within the traditional neighborhood development I have these uses, and when I go to open space within the boundaries of that development, it says I have to have five percent, and I can have 100 percent open space.

So I've got part of the Code, when I look at the big picture telling me I can't have more than 25 percent, but then when I go within each of these, it says have as much as you want.

We gave a chart to you and we broke it

out, and basically what we said is the areas that are shown in green here really aren't part of the TNDs, traditional neighborhoods, TMDs, traditional marketplace, and so we need to count that as that category, recreation open space.

Then within project we are going -- we provide the rest, which we're allowed, and that doesn't need a variance.

So what we ended up with is 36 percent of our property is not within the confines of these TNDs, and so that's why we're here asking for the open space variance which will let us get to the condition that was imposed upon us by the Treasure Coast of an overall --

(Whereupon, there was interference with the sound system.)

MR. KILDAY: You want me to try -- for you I'm stopping because I know it causes you problems.

(Whereupon, there was interference with the sound system.)

MR. KILDAY: Anyhow, so that's where we are in the open space.

Now, in the staff report, there's a lot of talk about being compact. Compact is not a term that's identified in the Code, and we believe we are compact.

What the staff report is suggesting is that we start redesigning this whole project, and we object to redesigning and I'm going to tell you why.

Did we give out those packets? Okay.

I'm going to give you a packet to make things go easier, and I'll tell you while you're receiving it what is in it.

One item is -- one item in it is a set of plans called Design Guidelines, which are plans -- and we have --

CHAIRPERSON KONYK: Wait. Don't pass those down. Come forward and hand them out. They're too heavy to pass. Thanks.

MS. HELFANT: Madam Chair, is there a motion to accept the --

CHAIRPERSON KONYK: We will when we get them.

VICE CHAIRMAN BASEHART: Well, I'll go ahead and make a motion to accept this packet into the record.

MR. PUZZITIELLO: Second.

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

All those in favor.

BOARD MEMBERS: Aye.

CHAIRPERSON KONYK: Opposed.

(No response)

CHAIRPERSON KONYK: Motion carries unanimously.

Thank you.

MR. KILDAY: Anyhow, what's in the packet, for the record, is there's a thick book called the Callery-Judge Grove Design Guidelines. This is part of the rezoning submittal, but I present it

to you because on the second variance we're going to be talking about why we want to eliminate a landscape buffer to allow buildings to be close to the street.

The second item is when I went through my staff report, the justification item did not seem to be included for the two items staff was recommending denial, so I'm providing that, and I'll reference to you where the item is.

The seven items that we have to address is on Page 8 as it does to the open space, Page 13, as it does to the landscape buffer issue.

A third item which I'm going to come back to in a minute is this Callery-Judge town-making principles. This is a -- is the big book, and a fourth item is a calendar which is -- which shows the number of meetings that have taken place to get us here, and that's where I'd like to continue to.

One -- one of the -- one of the -- one of the reasons --

CHAIRPERSON KONYK: Wait. You want to take a break and get this resolved. Let's take a two-minute break and see if we can't get this resolved. This is silly.

(Whereupon, a short break was taken in the proceedings to check the sound system.)

MR. KILDAY: Does that mean we're --

CHAIRPERSON KONYK: Are we done fixing it?

MR. KILDAY: Okay.

CHAIRPERSON KONYK: Let's get the laptop back on and make sure.

All right. Go ahead, Kerry.

MR. KILDAY: Okay. Anyhow, what I'd like to talk to is this shows you the number of meetings that have been held since 2004, various meetings that have to do with the neighborhood, the Treasure Coast Regional Planning Council, meetings here at staff throughout coming up with this plan.

This book, which kind of goes along with it, is a book that was prepared at the end of a charrette.

At the time this process started Treasure Coast Regional Planning Council said to the owner, "We want you to do a charrette and invite all the neighbors and invite all the stakeholders and have them come to it," and this walks you through how that charrette took place. You can see the dates.

On November 5th there was a kick-off. There was an all-day session on November 6th. There was a week of work with the various planners where people could come in and come out, and then finally at the end of the week there was a presentation of a plan.

The plan that came out of that process is this plan, and this plan became the plan that then went to the Regional Planning Council, and what it was was a plan that took into a tremendous amount of consideration and concerns of people who are in the regulating business and people that lived in the neighborhood.

I want to just hit on a few things on the plan because they deal with open space.

One of the big concerns was that there be a lot of open space, and as I went through that, the idea of this flow way came up. This was the initial design of the flow way going through the plan. It got further refined later.

The issue of how close homes could be to the surrounding neighbors came up, and these -- they look narrow here, but, again, remember the scale of this project, these are three to 500-foot waterways around the perimeter of the site, the size of the lots within the individual neighborhoods.

There's light green lots -- they're a little difficult to see -- are all over-size lots, seven and a half-acre minimum around the edges, so that this could fit into the fabric of what was already out there in The Acreage.

The issue was very important that the neighbors be included, and one of my problems is that now here I am two years later, and staff -- and I have to say, Barbara can correct me if I'm wrong -- various County staff did attend and observe the charrette. They didn't participate in the charrette.

And so now I'm here, and I've got staff saying well, now we want you to redesign it.

If that's the case, I have to have that discussion at the Board of County Commissioners because there's a lot of people out here, and I'm going to, before I finish my presentation, ask Leah Schad, who's the chairman of the Neighborhood Advisory Committee, to speak, who are sticking with this plan the way it is, and any major redesign would have serious repercussions to the promises we've made to the many residents who attended all those meetings.

So this plan came out of the meeting, but, as I say, it was still continually getting refined. Treasure Coast Regional Planning Council did want more compact, and what we ended up with was this plan, and I attended the neighborhood meeting, just so you know, and Andrew Georgiadis is going to speak from Dover Kohl and tell you a little bit more about it, and even when we came in with this, which looks pretty close to the other one, they were very specific; why have you moved this, why have you tightened up this area here, and we had to explain it all to the neighbors, and they accepted it, you know, but it's a process that we went through.

We believe that this plan is compact, and I'm going to tell you why.

First of all, given the sheer size of this property, five miles, one and a half miles, 1.8 miles, 0.85 miles, not everyone who lives here is going to be able to walk to that town center, and it was never intended.

That town center is to serve not only this project, but everyone in it, but just physically people who live on this side of the project

just -- they're not going to -- they can if they want to, but we know that they aren't.

I live on a cul-de-sac, and I've watched people go to a party at a neighbor's house back out of their driveway, drive up four things and go in. It -- there's some reality there.

But what we did do is we said we're going to make it as compact as possible. So I've taken the plan, and I passed out in my packet a smaller version for you all, but here's what I'd like to point out.

This is the town center which has the heaviest set of commercial, and 30.6 percent of the total units, of the 10,000 units, that'd be about 3,000 units, are within a half a mile of the town center.

If we go out to the next parcels, which are directly adjacent to the town center, 60 percent of all the units are located here (indicating).

The remainder consists of 37 percent, which is this area here (indicating), and I'm going to have Andrew talk a little bit about the design because we have a commercial node to serve these people, which is located in an area where there's existing schools, and we've designed it so they'd be in close proximity to the existing schools and to the neighborhood.

And then we have this one pod here which was specifically put at this location. It has only 3.3 percent. Why? Because this is our primarily equestrian pod. There is an equestrian center located in this pod. There's over 10 miles of equestrian trails running the entire perimeter of this project, and it was intended to be -- not everybody wants to live in the downtown -- that there be a choice there.

And then we used -- so in terms of compactness, if you look at it from this standpoint, it is compact, and we believe it's compact, but it's also sensitive to the area, and so we have compact neighborhoods that are located with a lot of green around them.

We've been very sensitive. One of our major streets runs right along this waterway. Here's a blow-up of it. The idea was this is kind of our central park, that we would have this waterway, we'd have these boardwalks, we have connectivity across the waterway. We have a main boulevard running here, like Flagler Drive in West Palm Beach against the water, open to everybody.

We didn't seal off the waterways where people's back yards went to the waterways. We made all our waterways public, but we feel very strongly that these waterways in this design are part of the whole fabric of the project, and they don't make it less compact because what they do is they string together a series of compact neighborhoods.

With that, I'd like Andrew to introduce himself. He's from Dover Kohl, who are eminent nationally known urban designers, to talk about

this concept called the transect and how it works, and I think one of the things with this scale is people are forgetting these TND neighborhoods are not going to be 100 percent residential. They're going to have civic uses, commercial uses and service built within each one of them.

Before I say everything, I'll let Andrew go on. I'll hand you these boards as you want them. Let me start with this one and explain what it is. Say your name first.

MR. GEORGIADIS: Hello. My name is Andrew Georgiadis, and I work with the firm Dover Kohl and Partners, who helped to conduct the charrette that produced the Callery-Judge master plan.

And so as you see here, at my left, this is the initial transect map which is a way of looking at the different intensities that occur in different places across the property, and for those of you who may be unfamiliar with the transect it's a way of looking at the -- the way of looking at environments from the most urban to the most rural and seeing what the appropriate character is to each zone.

So as you see here, you have the core or the most mixed use and intense part of a community, and that's where you would see the most urban character, and as you get closer to the edges of the neighborhood, it moves into ever -- into zones of less density. So then you'll see buildings become more detached and perhaps more setback and looser until you get to the rural condition and then eventually pure wilderness.

And so we see that sort of gradation of intensities is what has governed the traditional historic American towns since almost the beginning, and so this is the concept that we're trying to revitalize here on this property.

And this is a sample neighborhood plan showing one of the many neighborhoods on the property, and this one actually illustrates the idea of the most intensity here at the center that acts -- that then becomes less intense as you get toward the edges.

Finally at the edges you have very large equestrian-oriented lots so that within each community there's a complete choice, not only of types of house, but it allows people of different incomes and social-economic levels to live within close proximity of each other and also at least have some of their daily needs fulfilled by either walking or bike trips or at least a short automobile trip than they would have to make were they forced to go outside their neighborhood.

As Kerry was saying, each neighborhood will have its own mixed use district that would have some commercial or at least nonresidential needs for its residents.

So in addition to the main town center here (indicating), which is located on Seminole Pratt Whitney Road and would be more regional in nature, there are also some more local serving commercial and office needs that are scattered --

actually located at the center of each neighborhood.

And we see one here at the eastern edge of the property where Persimmon Road will be entering into the Grove and connecting in the east-west direction back to Seminole Pratt Whitney, and so the location of those is determined, not only to make it more convenient for the neighborhoods within Callery-Judge, but to also help attract some -- to eliminate the need of some long car trips for the surrounding communities in The Acreage and Loxahatchee Groves who can now have some opportunities to do some of their daily needs closer to home.

MR. KILDAY: Last item on this issue of open space is I'd like Leah Schad to speak. Leah Schad is the chairperson of the neighborhood advisory group. They've been meeting on a monthly basis since way back when, as you can see on this list.

They review every element of this plan and rely upon us to make sure we live by our words. That's why she's here listening to me now.

MS. SCHAD: Thank you, Kerry.

Good afternoon. For the record, my name is Leah Schad, S-c-h-a-d, and, yes, I have been chairing the Citizens Advisory Committee for Callery-Judge since the charrette was complete.

Our group is made up of realtors, retirees, educators, blue collar workers and professionals, and I can tell you that not all of them were gung ho about this project when it first came into being, and contrary to what I've heard about the, you know, what these people -- what do they know or what they don't know, these people know a lot, and they have -- they are -- a lot of them are residents out there in surrounding areas.

They know what neighbors think. They bring back to the committee concerns from their neighbors, and it has -- you know, it has been a really, I think, wonderful discussion and give and take between people and general residents out there and Callery-Judge.

And we have made some changes which they have requested. We have explained others that maybe could not have been changed, but by and large the committee has been -- the make-up of the committee is far from being yes people, and that's what makes for a good discussion. It also makes for a good project.

This isn't done enough, I think, in Palm Beach County over the years, and if we'd had more input from residents, then I believe the County would have a much better different -- be a different picture.

The -- of course, they have worked -- some of the things that I understand about the polishing pond and the water and the open space, it's wonderful when you have a project that has a lot of open space, and I can tell you that the Water Management District has been very much involved in the water issues here and what needs

to be done and what has to be done.

So I don't know what else you would like for me to say or what Kerry wants me to say, but I'm telling you -- I'm here to tell you that this committee has been a really useful group of people and with their input to the developer, to the designers and -- and I don't know what else to say except that they've been wonderful as far as giving their input.

CHAIRPERSON KONYK: Thank you.

VICE CHAIRMAN BASEHART: Well, we -- I guess what we'd like to know is does the committee support the variances.

MS. SCHAD: You know, I don't know that we talked about them, did we? I mean some of them -- supports the plan.

MR. KILDAY: The committee supports the plan, and if you need a variance, then they want us to get a variance. They don't want us changing the plan.

VICE CHAIRMAN BASEHART: Okay.

MR. KILDAY: We never asked them to write a letter because we had the --

MS. SCHAD: No.

MR. KILDAY: -- committee chairman coming to the meeting.

VICE CHAIRMAN BASEHART: Okay.

MS. SCHAD: Okay? Thank you.

CHAIRPERSON KONYK: Thank you.

MR. KILDAY: The last closing item on this is that if you read the staff report, the issue really is not the amount of open space, it's design of the project.

Even if -- even if I was to take one recommendation I read in the staff report, which I think is vital to the project, but they like it out of here, is this waterway here in the center and moved it out here (indicating), I'd still need the variance. I still need that many acres of open space to finally get to the 60 percent.

So whether the open space is more on the edge and less on the interior or not, it doesn't affect the need for the variance. So we would ask you to do that.

The second variance is a much simpler issue. It's, in my mind, a technical issue. The development Code shows streets where people build up to the front street, and we are happy with that, and we intend to do that. However, there's a provision in the Code that trips us up, and it says in addition to these landscape requirements which are in the traditional, it says you also have to go to Article 7, which is in the general Code.

Article 7 of the ordinance, Palm Beach County ordinance, says that if you have right-of-ways greater than 100 feet, then you have to have a 20-foot right-of-way buffer on the outside of the right-of-way between it, and that's -- in suburban development you have the 20-foot landscape strip, then you have the parking lot, and then you have the building.

In our case we have two roads which are County thoroughfare roads, Pratt -- Seminole Pratt Whitney Road, which is clearly going to be over 100 feet, and Persimmon Boulevard, which, because the County wants the ability, and this county engineer, to have additional lanes, is going to be over 100 feet.

So we believe it triggers that requirement unless we request a variance.

So we requested the variance, and the variance would eliminate the 20 feet so that on the outside of the roads we can have buildings come up to the roads, and we think that's very important.

On Pratt Whitney Road we're going to -- we want to have additional frontage roads. We have a lot of landscaping in the roads themselves, but from a design standpoint we aren't going to allow parking up against the roads. We are looking for parking within the right-of-ways, however.

So we saw it as a technical issue to eliminate where we'd run into it, which would be along Pratt Whitney Road and possibly along Persimmon Road, although we split Persimmon into two roads, and we may not need it, but in the event we do -- as I read the staff report, the staff report implies that we don't even need a variance, and -- but I can't figure out why it's saying that, and so I would say for safety sake we ask for the variance.

If staff determines later you didn't need it to begin with, there's no harm done, but we definitely want to do cross sections that are in tune with the requirements of the TTD, and I think it's just a Code glitch that needs to be taken care of. So that's my second variance.

Thank you.

CHAIRPERSON KONYK: Staff.

MS. SHUTT: Yes. Hi, good morning, Madam Chair and Board.

My name is Thuy Shutt, representing the Zoning Division. Ora Owensby and I will probably try to supplement each other's and Kerry's wonderful presentation to pretty much give you a quick brief history why staff -- what staff's position and disposition for the variance with respect to the denial of the two variances or a continuance.

We realize this is such a large project, and, according to Kerry, it's evolving. In fact, information's coming in to us as we speak, and there's some -- because of all the meetings we've evolved in our discussion with the design.

However, there's two important factors here that we need to consider, one being that because of its significant size there are broader issues that will effect the western development area of the County.

As Kerry had said before, this is a -- this is approximately five square miles in coverage. And we have quick, you know, if you can give me five minutes of your time, I can probably

get the point across.

Again, we can probably skip the next one, too, Juanita.

There are concurrent --

CHAIRPERSON KONYK: Can I ask you a question? Are we supposed to turn around and look at your --

MS. SHUTT: No, you've been given a handout, as well, a printout of the handout, and it's got exactly what you have in there.

CHAIRPERSON KONYK: Okay. Thanks.

MS. SHUTT: So we don't want you to have to strain your neck.

VICE CHAIRMAN BASEHART: She doesn't like to be inconvenienced.

MS. SHUTT: We just want to make sure you're comfortable.

CHAIRPERSON KONYK: Well, I just wonder why they would put that behind us. I -- okay. Just curious. Just commenting on the facilities again.

MS. SHUTT: We'll start on the second page, third slide.

CHAIRPERSON KONYK: You are going to miss me.

MS. SHUTT: Again, this kind of started off with the managed growth tier system, the award winning tier system that we got. It was dictated by the Comp Plan to have this type of alternative development form, meaning the BCC had felt that there's got to be alternatives for development in the rural area, as well as the suburban areas; therefore, you will have Traditional Town Development to be developed through the -- throughout the County.

One of the initial thoughts when the consultant was hired, if you remember Dyett and Bhatia and a group of consultants who are specialists in rural, urban, suburban, as well as mixed use developments come together and basically formulated the regulations for the ULDC major rewrite we had in 2004, the TTD, Traditional Town Developments, were not meant for the urban -- for the rural tier. They were meant for the urban-suburban tier.

The Board of County Commissioners had realized that there was a need to have alternative development in the rural area. You can't just hold development for forever.

They approved removal of the site from the rural tier for that reason; however, this is one of the reasons why that even more so that we would need a more compact design to preserve the rural landscape.

Again, if you can imagine the West Virginian or the Kentucky hillside, you go through the landscape, and then you stumble upon a compact development. Most of your western areas you see that, as well as in the more rural areas of --

CHAIRPERSON KONYK: Where the hills are? Is that what you're talking about?

MS. SHUTT: Yes.

CHAIRPERSON KONYK: Okay.

MS. SHUTT: My husband's from West Virginia so I can probably --

CHAIRPERSON KONYK: Well, I don't think you can make that comparison because we don't -- I think they probably compact them because of the hills, wouldn't you think?

MS. SHUTT: That, and also because of transportation and trying to maximize energy and just, you know, developable land, quite frankly, the infrastructure needs.

So, again, when -- go back to the presentation, the next slide shows the characteristics, just four basic characteristics of the differences between the suburban and the more compact development of a traditional town.

Building orientation, obviously we have built to lines. We try to create an outdoor more intimate pedestrian scale when we move the building up versus having setbacks. You have parking that's located behind where, you know, the pedestrian is the -- the hierarchy is concentrated on the pedestrian and the safety like Kerry said.

Streetscape design is very important because it sets the tone for the environment, the pedestrian environment, and the uses. It's more of a vertical integration versus the segregation horizontally.

The next two slides -- I'll go very, very quickly.

In order for the ULDC to forward and force the compact design of the traditional town, there's a requirement for 25 percent open space, and there's a maximum percentage, not a minimum like your traditional suburb.

Your PUDs -- you can have as many open -- as much open space as you want. It's 40 percent minimum, so there's a big difference in that, and we are not -- we're not very far apart between Kerry and staff's position.

We are really not concentrating on the percentage of the variance. We're really concentrating on the substantiation of that variance.

We are saying that there are ways and there are alternatives that are very minor that would change his site plan very, you know, very minor deviations that he could attempt, and it would not affect the residents.

In fact, the layout is probably in the same general layout as what he's proposing. We'll show you that in a few minutes.

We can also go through this slide pretty quickly, as well.

These are Code requirements, and the way that it reads it singles out compact development, first item, right away. That was the first thing for the purposes and intent of a TDD.

Touch base on the Treasure Coast, the next slide. Treasure Coast does require minimum 60 percent. Again, they are looking at this from a regional point of view. They're looking at it

from how it effects a broader scope of areas.

They also -- through coordination with them, staff did contact them about the current design, and they felt that it also needs to be more compact. How they accomplish that, that's up to the design team to figure out.

However, they felt that the internal design should be able to be reviewed by the County at the local level through the processes.

CHAIRPERSON KONYK: What is --

MS. SHUTT: I'm sorry.

CHAIRPERSON KONYK: I'll ask some questions, I'll wait until you're done.

MS. SHUTT: Okay. And here's some images of comparable large rural TTD images in Florida that's been developed to some extent and has been approved.

On the left-hand side you have Ave Maria, which is 6,000 acres in Collier County, where you do have a compact development. If you look visually it is surrounded by rural out to the upper left-hand corner and then, again, water bodies, as well, but primarily if you look at the development area there, it's compact.

Same thing with Babcock Ranch. That is 91,000 acres, okay, and the developable area is about 13,000, so it's more realistic in terms of comparison, but both of these are able to maintain the rural landscape and have some cluster and compact development.

Go to the next one, please.

Again, the TTD characteristics, and I'll explain why we don't think that Kerry will need a variance on this.

In the section he quoted it says that you have to refer to Article 7 of the ULDC. It's a landscape section.

However, in the very beginning of the TTD regulation it does clearly state that if there's any conflicts between the TTD regulations and the parking and the landscaping section of the Code, the TTD regulations will rule to the greatest extent of the Code.

So you will still need a variance at some point, but only to the streetscape cross section.

What he's asking for is a right-of-way buffer variance, and the reason why we felt it's self-created is that the distance -- I don't know if -- Kerry, could -- the MUPD, which is -- that runs east of Seminole Pratt Whitney -- further down where -- yeah, the white area there, that is proposed as an MUPD.

Even though, you know, there are some Comp Plan regulations for that, we feel that could have been a TND, and with the TND you don't have perimeter buffers because as a Traditional Town Development when you choose to request one, you need to understand there's a different development pattern characteristics to this, and in doing that you have to comply with a succinct streetscape design that's in the Code right now.

So in that sense we feel that it's not

necessary. It's also self-created because he chooses to have an MUPD there. There are other alternatives.

Again, we're looking for hardship criteria, self-creation and other criteria that the Board will look for for granting variances.

Now, I also know that the Code does allow alternative streetscape. If they can't meet the streetscape design of the Code, the Code allows alternative cross sections to be approved by the Engineering Department and the P&Z Department without having to go through a variance.

So if there are special circumstances for Pratt Whitney being an existing, you know, major hurricane evacuation route or whatnot, there are other avenues, other than go through and getting a right-of-way buffer variance.

So, to me, that's -- that's the main issue why we're recommending denial or even a continuance of that.

If he needs to have the proper variance advertised to the cross section, be it so, then -- next slide, please.

Okay. This is what we're going to show. Just, again, we don't have as much resources, but within the last couple weeks we were able to quickly put together an exhibit.

To the north -- I mean to the left, upper left corner of the slide in your handout is Kerry's proposal. In our -- in the lower corner is really our attempt, you know, as meek as it is to show that he could compact this in one way or another, and engineering-wise you can probably engineer it to do that.

The only thing the South Florida Water Management District desire is to get from -- the water from the west side to where the pink area is. They don't dictate how it's going to be designed.

So, to us it's premature in that alternatives have not been exhausted, and we really like this town center area. We think it's a great idea. It's forwarding the concept.

Our two main objections is really the golf course, which is the L-shaped green space on the west, and like Kerry had indicated, the middle area, the water flow area.

Now, we feel it's really important -- I think all the neighborhoods are compact. I think it's a wonderful thought to have this development pattern; however, they're isolated. So your child cannot go, unless they cross a bridge or some kind of a pathway in between those neighborhoods.

CHAIRPERSON KONYK: Wait a minute. I got to ask a question.

How many homes are in each one of those neighborhoods?

MR. PUZZITIELLO: Thousands.

CHAIRPERSON KONYK: Thousands in each one of those neighborhoods?

I mean I wouldn't let my child do that, anyway. Right.

MS. SHUTT: You got --

CHAIRPERSON KONYK: I mean that's not -- that's not a -- I'm sorry. I had to interrupt, but I mean that doesn't make any sense. No parent would let their child go between neighborhoods of 1200 and 1300 and 1500 homes.

MS. SHUTT: Of course, they have to be escorted, but certainly you don't want them in a major collector road.

CHAIRPERSON KONYK: I mean I have neighbors that drive their kids a quarter of a mile to school, so people don't let their kids walk anymore.

MS. SHUTT: I'm -- I'm just merely saying that not everybody has to go from one pod all the way to the other one. I'm just saying that if there's opportunities for two or more of them to be combined, it will also further the intent of walkability, and, again, I mean there are other designs. This is something that would preserve his main design and also limit the separation between pods.

And, again, I -- I live in a walking community. I drive an all electric vehicle. I live and breathe this. It works. It's just a small tweak that you need to have for this, and I think, you know, we can continue to work with the applicant on this.

The third issue that -- the next design that we want to look at is really the advantages of having a more compact development. One, via, you know, the minor change.

You would have more viable open space for natural amenities. There will be more wildlife habitat that's created for a larger amount of open space area, and it doesn't have to be water. It can be marshland. It could be a number of amenities.

It will also integrate the walkable neighborhood and have -- afford more place making and cohesive community identity.

This could possibly be the next town. It could be Wellington. It could be the next town in upcoming years, and you want to have an identity, and in doing so, you know, when you do have the synergy between the different neighborhoods, you have an identity, and that's one of the goals of the plan and also the Code.

The last two slides basically is just reiterating stuff, recommendations. Again, this is a work in progress according to Kerry.

We have not received -- we would like to receive technical data that says that the engineering design has to be this way. We also think that it's -- it could be, you know, tweaked a little bit so that we can have -- you know, we could be supportive of the variance.

And, again, there are three -- next slide, please.

The approval of variance, we think it's important because it will really blur the distinction between a Traditional Town Development

and a suburban development. It also will set the precedence development for the development of the rural area since we will be probably seeing another two or three of these types of developments coming down within the next year or two.

And then, third, again, your approval is usually site-specific and amount-specific. We would like to have the opportunity, also, to work with Kerry through the process up through the public hearing. By limiting it to this site layout it would prevent conditions of approval to be placed at the public hearing stage.

Should the Board choose to support Kerry's position, we would like to add a couple of conditions of approval.

Thank you.

VICE CHAIRMAN BASEHART: What would those be?

MS. SHUTT: That the overall final design -- I think Ora can read that into the record.

MS. OWENSBY: One condition would be if the Board approves the variance, staff would recommend the following conditions.

The final TTD design and layout will be subject to approval by the Board of County Commissioners at the time of rezoning. That one was not in the staff report.

And then at the end of the staff report is the open space condition that the calculations for the amount of variance from the ULDC shall be provided prior to certification by the development review officer of the TTD rezoning application. And I give the application number.

Under no circumstances shall this percentage exceed the 30 percent maximum limit of the Comprehensive Plan, Table 2.2 10-1.

Those are the two conditions.

CHAIRPERSON KONYK: Wasn't the first condition like something that you always have to do, anyway?

MS. OWENSBY: No, there are -- no, there is a development order condition which I did not read, but the two conditions which are not your standard conditions are the one that the -- a condition that the applicant would have to agree to change the plan at the Board level, and the other one is that the variance -- open space calculations would have to be recalculated because the Comprehensive Plan actually has a 30 percent maximum.

And not to confuse the issue too much, but the Treasure Coast requirement for 60 percent is based on the Treasure Coast definition which is gone over in this report in more detail, and the applicant has given us an estimation that the variance from the ULDC definition would be more like 36 percent just because of the disparity in the definitions, but we do have a Comprehensive Plan limitation also to deal with.

CHAIRPERSON KONYK: Okay.

VICE CHAIRMAN BASEHART: Would you like to address that?

MR. KILDAY: Yeah.

Can you read the first new condition that I don't have?

MS. OWENSBY: Right.

MR. KILDAY: 'Cause I don't know what --

MS. OWENSBY: Sure.

MR. KILDAY: I think I can agree to it, but I just need to know it.

MS. OWENSBY: Right. Okay.

The final TTD design and layout will be subject to approval by the Board of County Commissioners at the time of rezoning.

MR. KILDAY: Well, that's the Code, so I agree to that condition.

I mean that's exactly where we're trying to get to.

On the second -- while we're doing the conditions, I can agree to the first sentence of that condition.

The sentence that says, "Under no circumstances," we can't agree to, and the reason is that the Board of County Commissioners already transmitted a Comprehensive Plan amendment with this project eliminating that chart with the 30 percent maximum on it.

So if they're going to approve that, obviously, it would go over.

I'll -- I'll be very brief.

As I indicated, this is a design issue, and we certainly can discuss these designs, although I resent being given a new suggested plan at the day of the hearing, and I was given this, which didn't even contain the last sheet on it, when I was reading along, so you can imagine when that thing showed up on the board I said where'd it come from.

The problem is whether we go with our design that all the neighbors had input in or the design that staff is now suggesting, I still need the variance because I still, whether that -- whether they mush out the open space to the outside versus having some on the inside, I have that requirement to have more open space.

My feeling is these are huge neighborhoods. We saw that -- that one -- look at the plan. The only real change is taking this out and putting it off to an edge, taking the golf course and putting it off to an edge.

But we saw this as the reason people live along Flagler Drive in all those neighborhoods. Where do they go for a walk in the evening? They go right out there and walk up and down Flagler Drive.

We've designed part of Flagler Drive walkways. We saw it as an amenity for each of these neighborhoods.

So there's more than just the need to walk from one neighborhood to the next neighborhood, and I don't know anyone who walks from one neighborhood to the next one.

There's also an ability to walk within your own neighborhood and have views and vistas, and that's part -- that's a design element that's important to us, and I'm happy to debate that at the County Commission level.

I think what we have done is we have met your seven criteria. They're contained in the plan. The 60 percent open space is considerably.

When I saw that chart and I heard the statement, "Well, we put 25 percent in because it makes things more compact," frankly, I can tell you, 'cause we've been doing this plan, 60 percent open space makes things real compact.

So why you'd have a lower number to get more compactness, a higher number gets you greater compactness, and that was the intent of Treasure Coast when they gave us that requirement.

So I think we've met the standard as it relates to the buffer. Staff's saying they want to eliminate the buffer, too, but they -- but they're saying but get rid of the MUPD because they don't like MUPDs.

The Code says you are allowed an MUPD provided it's not greater than five percent and the overall TTD's greater than 320 acres. It's not greater than five percent, and the overall TTD's 4,000 acres. It's in their Code.

You know, they have something in their Code, they don't like it, and now they're telling me, well, you're not going to get a variance unless you take it out.

We're going to abide by the Code so I'd ask you to approve these variances.

I appreciate your patience with this long presentation. Obviously, it's something that the Board, who has already transmitted a plan much like this and seen this plan, can look at.

We'll continue to meet with staff, as we have, but I have to get through this with your approval to ever get that discussion with the Board of County Commissioners.

Thank you.

CHAIRPERSON KONYK: How does limiting the open space to 25 percent make it more compact than the 60 percent open space? How do you explain that?

MS. SHUTT: Again, this was never anticipated when the Code was done for the rural area. It was anticipated for urban-suburban area.

We do appreciate the applicant taking a more comprehensive approach to this. That's why we are working with him, as well, but just to -- this -- the plan and the idea was asked -- debated between Kerry's office and our office about compacting it weeks, months ago. It was only 'til --

CHAIRPERSON KONYK: I just want a question answered.

MS. SHUTT: Yeah. No, it's --

CHAIRPERSON KONYK: Very simple.

MS. SHUTT: It's --

CHAIRPERSON KONYK: You say that you want

no more than 25 percent open space.

MS. SHUTT: Right.

MR. PUZZITIELLO: Thirty is what they're recommending.

CHAIRPERSON KONYK: Or 30 or whatever. He says somebody else told him he can't do it unless he has 60 percent open space.

My understanding of open space is is that it's land that's not developed or built on. It could be a lake. It could be a park. It could be a whatever, a golf course.

If you have less open space, how does the neighborhood get more compact?

MS. SHUTT: It's --

CHAIRPERSON KONYK: I don't understand your analogy here.

MS. SHUTT: Okay.

CHAIRPERSON KONYK: That's the problem.

MS. SHUTT: Having the -- again, the Traditional Town Development is for more of an urban-suburban area.

Having this in the rural area you need to compact it further. It's not the percentage. We are in agreement with some of the percentages if the development is clustered enough to have it to look like a more traditional neighborhood.

CHAIRPERSON KONYK: Okay. Well, what you're saying is, is that you want him to build on 75 percent of the land and he wants to build on 40 percent. Is that what you're saying?

MS. SHUTT: For this particular type of development that he's requesting, yes.

CHAIRPERSON KONYK: Okay.

MS. SHUTT: The Code -- the Code is --

CHAIRPERSON KONYK: Barbara's shaking your head no, so -- I mean one person wants 60 percent open space and one person wants 30.

MS. SHUTT: No, no, no, no, no. It's a maximum -- yeah, no.

It's the max amount of -- the Code uses the open space to force the development together.

They could exceed --

CHAIRPERSON KONYK: I understand. I understand that the open space forces the development to be more compact, but he wants more open space, not less.

MS. SHUTT: Then --

CHAIRPERSON KONYK: Am I wrong?

MS. SHUTT: The question goes --

MR. KILDAY: You're right.

CHAIRPERSON KONYK: Okay.

MS. SHUTT: The question then becomes is this the right request?

MR. PUZZITIELLO: What's -- what's the difference between the open space --

MS. SHUTT: Well --

CHAIRPERSON KONYK: Microphone.

MR. PUZZITIELLO: What's the difference between the open space definition between Treasure Coast and the County that gives us this disparity?

MS. OWENSBY: It's on Page 86 of your --

MS. SHUTT: Of your staff report.

MS. OWENSBY: -- staff report.

MR. KILDAY: Even -- even the County allows -- within the TNDs I count that toward my open space, as well, and that's not -- that's not an issue with them, and so they let me do my civic sites. They actually allow me to even do some workforce housing and get open space requirements.

But the bottom line is that I've got this big flow way, and they would prefer I had more green open space than civic site open space, and we do.

So I mean it sounds -- I know it's hard because you're saying this doesn't make sense, because you're right on the money. It doesn't make sense.

What we have is the original Code when it was written, as indicated, they were thinking about urban areas, and they were saying we want to have it like a city with not a lot of open space, very compact.

When we came out to this area, the County and Treasure Coast said we want to have the individual neighborhoods very compact, but we want a lot of green space, buffering everyone else throughout it, and that's the design we did.

So they said 25's way too little when you're out in this area. We need more, and that's it.

So we came in for a variance. Staff really is saying we'd grant the variance if these guys, me, would agree to do a design the way they want it done, and I'm saying then they should have participated in the charrette two years ago which they were told not to, and they could have had their input, but it's unfair to the community to go through this entire process and then staff say now we want to design it.

And somebody's been putting in man hours designing it. It hasn't been shared with us, and no discussion, and I don't like that, and I'm going to tell the County Commission I don't like it.

MR. PUZZITIELLO: What -- what do you have -- with the County's way of calculating open space, what do you have as a percentage?

MR. KILDAY: I have 36 percent open space versus 25 in these green and water areas. I'm asking for 11 percent variance.

The rest of my 25 percent open space I'm going to provide within all these neighborhoods.

MR. PUZZITIELLO: So actually what the County's asking us as a 30 percent open space is going to make the variance larger?

MR. JACOBS: No.

MR. PUZZITIELLO: Yeah, 'cause you -- he has 36 right now.

VICE CHAIRMAN BASEHART: He's only allowed 25.

MR. KILDAY: Yeah, but it's a -- it's an unusual thing. You always give -- the hard part, it was hard for me when I was writing -- you always give variances against the minimums.

This is a variance against the maximum, and so it's just -- it's a total reversal from what you're used to. So the more open space, the bigger variance, but the neighborhood and everybody else said we want more open space, and they'd even like more open space, you know, and -- but we've given them a lot.

But I'd still need the variance to do the staff's design because I still have -- what they're saying, really, is we don't like where your open space is. That's what -- all it comes down to. We would like to have it here, we don't like this neighborhood -- even though I'm telling you it's an equestrian neighborhood, they're saying shove it in toward the town center.

And I'm saying, hey, it's an equestrian neighborhood. It needs to be out in the country.

So that's what we tried to do. It's a design thing. We'll sit with them. We've had meetings with them. We'll continue to meet with them.

And this is a great argument for the County Commission, but it's not going to change the need for the -- for me to get a variance on a percentage, which is really the only thing I'm in front of you, although we needed to share this whole design with you so you could understand why we need it, and if you went with Option A of the staff's, I'd be in here asking for the same exact variance because it's just that the water would be out here more than there (indicating), but I'd still need that variance.

VICE CHAIRMAN BASEHART: That would design the whole -- that would destroy the whole design concept.

MR. KILDAY: Right, and we want to defend that concept in front of the County Commission.

CHAIRPERSON KONYK: So is what staff is saying if they change the design to that A part, then you would support the variances? Is that what you're saying?

MS. SHUTT: Well, and also if there's any changes that, say, if you approve this design layout with the variance, you'd have to see it every time we change the design 'cause it is locked into a site layout to substantiate your variance.

MR. KILDAY: Well, if you approve the staff one, I'm locked into the staff's design layout. So it's the same thing.

It's just they want theirs, and I have an obligation to a lot of people to at least preserve this 'til I get to the County Commission.

If the County Commission, you know, who have the final say, say we want you to get more compact, take that waterway out of there, they'll have it, but at least at the County Commission we'll also have all the neighbors there telling the County Commission the way they want it.

CHAIRPERSON KONYK: I'm sorry to ask so many questions 'cause I don't usually ask so many questions. I usually get through this pretty

quickly, but I'm still trying to understand this.

You're saying that he would need the same variances with your design that he would without your design. So what's the point?

And why does the County staff come along and redesign a project that's going to need the same variances? It's not going to eliminate the variances.

I mean I could see if you were bringing forth something that was going to eliminate variances, but you're not. You're bringing forth something that's going to need the same variances that he needs, regardless.

So where does that become your job?

MS. SHUTT: We -- we're not recommending to redesign the site; however, after repeated requests for more substantiated design for us to support the variance we couldn't.

We couldn't get any of that. A lot of the justification statement was in just a week and a half ago. It poses a lot of hardship for us to make proper justification for this section of the Code and with -- in evaluating the variance we need to make sure it's applicable for other sites requesting the same one, and so we need to be consistent.

CHAIRPERSON KONYK: Okay. Can I ask you a question, though?

He's going to need to the same variances, regardless.

And only other thing I had to say is that, you know, I -- I totally understand why these areas are trying to pull out of the County because this is ridiculous, and I'm getting a little personal here, but I know what my husband, as a contractor in this County, has to go through, and I know why he doesn't build in Palm Beach County anymore, 'cause it's getting ridiculous.

The people that are coming forward with these variances have legitimate concerns and legitimate plans, and somebody decides that they don't like the way his plan is so they want him to rewrite it? I -- I don't -- I don't buy this at all.

MS. ALTERMAN: Chelle, I -- Madam Chair, if I may, I really need to address that because there are always competing interests when you look at any kind of design or any kind of approval or any kind of development, and there are competing interests here, and that's what the staff is trying to lay out for you.

So that to say that because a developer comes in with a design and they want it that way without considering other aspects of it and other interests that might be affected I think is really unfair.

CHAIRPERSON KONYK: But it's the same variances. They're not eliminating the variances.

They're -- they're still going to need the same exact variances. You're shuffling the plan.

I could see if you were shuffling the plan and eliminating the variances. That would make

sense to me, but it doesn't make sense to me for our staff to shuffle the plan and have the applicant still require the same variances. That's my concern.

MS. ALTERMAN: But remember, as part of a variance you have to justify it, and I think that what they're saying is that the justification wasn't forthcoming as they felt it should be.

MR. PUZZITIELLO: But they're asking for more open space.

MS. ALTERMAN: Absolutely, and, again, open space in a rural community is very different than open space in an urban community.

In an urban community you want less open space. You want things to be compact.

In this instance where that open space is placed is very strategic because while it may be fine for the residents of those communities, remember, you've got The Acreage surrounding it, at least on four sides, three sides.

CHAIRPERSON KONYK: And he wants more -- I don't get it. I'm sorry --

MR. PUZZITIELLO: And the -- but --

MS. ALTERMAN: And use -- one of the discussions that we've had with the Board, and I have to correct Kerry. This plan has not been before the Board. The Board did not look at a plan when they looked at Comp Plan amendments. This is part of --

MR. KILDAY: Oh, yes, they did.

MS. ALTERMAN: -- the DRI.

MR. KILDAY: Yes, they did and I'll give you a tape.

MS. ALTERMAN: This is part of the DRI.

MR. KILDAY: This plan was presented to the Board. I presented it at the land use hearing because for them to understand the land use, as for you to understand the variance, we needed to show the plan.

MS. ALTERMAN: And it's a conceptual plan, and until the Board sees the master plan at the zoning, which is the whole point, they don't approve anything.

CHAIRPERSON KONYK: He didn't make me think that they had approved it. I didn't -- I don't think I ever got that impression.

I know that this thing has to go through a process, and he's stuck right here right now, and I, you know, I mean, Kerry, I -- if you think that we -- I thought or any of the Board members thought that it'd been approved, I didn't think that.

MS. ALTERMAN: Okay. That's fine.

CHAIRPERSON KONYK: And I don't think the other Board members did. I'm speaking for them. But I understood what he meant.

MR. PUZZITIELLO: But, Barbara, one thing. You're saying that you think the surrounding neighborhood wants the open space on the perimeter of the project.

MS. ALTERMAN: I'm not saying -- I don't know what the surrounding neighborhoods, and I

don't purport to know what they're saying.

MR. PUZZITIELLO: But that's what staff's recommending.

MS. ALTERMAN: I do purport to know that the discussions have been had about usable open space, strategically located and those kinds of discussions, and we've had those discussions with the Board because this is -- these are discussions we've had.

Remember, this was once part of -- well, it still is part of the Sector Plan, and I know that's a whole 'nother concept that you haven't been involved with, but it is part of the Sector Plan although it's going off on its own and it's perfectly legitimate to do so, but those discussions have been part of the discussions we've been having. That's all.

MS. CARDONE: Has the Sector Plan been adopted?

MS. ALTERMAN: No. It's -- yes, it has been adopted. It's simply -- it's not in effect because it's -- it was subject --

MR. PUZZITIELLO: It's not approved by the State.

MS. ALTERMAN: -- to challenge. It was challenged.

VICE CHAIRMAN BASEHART: It's not certified. It's -- it's adopted by the County, but not certified by the State.

MS. ALTERMAN: Not in effect.

VICE CHAIRMAN BASEHART: Right.

MS. ALTERMAN: It's not in effect, right. That's correct.

MR. PUZZITIELLO: And that was all -- okay.

VICE CHAIRMAN BASEHART: Yeah, I think one of the big problems here, you know, I think it's the intent of the Code and it's the intent of the County Commission that these big TDD-type projects, you know, be really evolved through a process of involvement with the public and consensus building, you know, and you're forced to do that, and you did that, and you've come up with a plan which everybody's seen, you know.

Then on the other hand I think, like with a lot of other aspects of the Code, it attempts to get too minute in the formulation of requirements.

So I think the whole objective here is to have flexible requirements, you know, based on, you know, based on a concept and then let the -- let the consensus-building project dictate what the ultimate solution is.

I think, you know, from what I've heard, and I've been following it, I haven't been involved in it, you know, I mean the whole -- one of the principal concepts that this project revolves around is the central waterway, you know, that's a hallmark of the project. It's something that everybody's going to recognize the project by, in addition, you know, to the town center.

So, you know, I don't think anybody needs to be pointing fingers at anybody here. I think

we have a problem between a too strict Code that hasn't been tested yet because this is really the first big project, you know, that's using it, you know, and the Code's and the Comp Plan's overall objective of having these things be designed through a consensus-building process, you know, and I think that's why we're here.

MS. CARDONE: Madam Chair, may I ask a procedural question?

BofA 2006-01358 came before us with four requests for different variances.

According to the applicant, two of those requests seem to not be necessary. One was described to us, 3.F, as addressed by a Code change, and 3.F.5.D.4, I believe the applicant had indicated that the staff was supporting, which would leave two.

Would you like to deal with them on an individual basis, one by one, separate them out?

MR. PUZZITIELLO: Yes.

CHAIRPERSON KONYK: Sure.

MR. KILDAY: We still will need a motion on 3.5.D.4, which would be recommend staff's recommendation, which is approval on that one, too.

MR. PUZZITIELLO: Well, that's what -- I think that's what we're trying to do is get the one -- the easy ones out of the way and then --

CHAIRPERSON KONYK: All right. So does that mean you want to make a motion about something?

MS. CARDONE: Yes, Madam Chairman, I would make a motion that we support BofA 2006-01358, Part 3.F.5.D.4, overlays in zoning districts, Traditional Town Development, TTD landscape buffer.

MR. PUZZITIELLO: Second.

CHAIRPERSON KONYK: We have a motion by Ms. Cardone, a second by Mr. Puzzitiello.

Any discussion?

(No response)

CHAIRPERSON KONYK: All those in favor.

BOARD MEMBERS: Aye.

CHAIRPERSON KONYK: Opposed.

(No response)

CHAIRPERSON KONYK: Motion carries unanimously.

MR. PUZZITIELLO: And F.3's withdrawn -- or 3.F is withdrawn; correct?

CHAIRPERSON KONYK: I don't know.

MR. KILDAY: Yes.

CHAIRPERSON KONYK: Both of them?

MR. KILDAY: No, 3.F is withdrawn.

MR. PUZZITIELLO: Well, they're both the same.

VICE CHAIRMAN BASEHART: They're both 3.F.

You --

MR. KILDAY: Oh.

VICE CHAIRMAN BASEHART: You've withdrawn the one on the phasing.

MR. KILDAY: On the phasing.

VICE CHAIRMAN BASEHART: But you're not

withdrawing 3.F related to the open space.

MR. KILDAY: No. No, I see what you're saying.

VICE CHAIRMAN BASEHART: Okay.

CHAIRPERSON KONYK: Okay. So let's not even worry about the part that's withdrawn 'cause it's on the record that it's withdrawn. Okay.

MR. KILDAY: Right.

VICE CHAIRMAN BASEHART: So we have --

CHAIRPERSON KONYK: So now we have to consider 3.F and this --

MR. PUZZITIELLO: Article 3.D.2.

MR. JACOBS: 7.F.7.A.

CHAIRPERSON KONYK: -- 7.F.7.A; is that correct?

MR. KILDAY: That's correct.

CHAIRPERSON KONYK: Okay.

MS. CARDONE: Madam Chair, I move that we approve the applicant's request for BofA 2006-01358, 3.F, Traditional Development Districts dealing with the variance for open space.

CHAIRPERSON KONYK: We have a motion by Ms. Cardone.

MR. JACOBS: Second.

CHAIRPERSON KONYK: Second by Mr. Jacobs.

All those in favor.

BOARD MEMBERS: Aye.

CHAIRPERSON KONYK: Opposed.

(No response)

CHAIRPERSON KONYK: Motion carries unanimously.

MS. CARDONE: Madam Chairman, I move that --

CHAIRPERSON KONYK: Whoa, whoa, whoa. Staff wants to --

MS. OWENSBY: With the conditions?

MS. SHUTT: With the conditions?

MR. PUZZITIELLO: No, because your condition puts it down to 30 percent.

MS. OWENSBY: We -- you know what we could do would be to eliminate the number, 30 percent, and just say shall not exceed the maximum limit of the Comprehensive Plan so there's no specific number --

VICE CHAIRMAN BASEHART: I don't --

MS. OWENSBY: -- because it does -- it does -- at this point in time it's inconsistent with the plan --

VICE CHAIRMAN BASEHART: No, you can't -- you can't --

MR. PUZZITIELLO: We just approved 36 percent.

VICE CHAIRMAN BASEHART: You cannot --

MS. OWENSBY: Pardon?

MR. PUZZITIELLO: We just approved a maximum of 36 percent.

VICE CHAIRMAN BASEHART: Yeah.

MR. PUZZITIELLO: So why would we do any other number that says --

MS. OWENSBY: Because we can't violate the Comp Plan.

At this point in time the Comp Plan says

30 percent. They've got --

VICE CHAIRMAN BASEHART: Well, we don't -- we don't deal with the Comp Plan, basically. I mean we're --

MS. OWENSBY: You can't violate the Comp Plan.

CHAIRPERSON KONYK: Well, we're not going to. He's going to have to worry about that when he gets somewhere else.

MR. KILDAY: You can -- you can add --

MS SHUTT: I think -- right.

MR. KILDAY: -- a phrase --

MS. SHUTT: Or an amended --

MR. KILDAY: -- and take out the 30 percent and just say subject to the pending -- approval of the pending amendment of the Comp Plan with regard to this item.

VICE CHAIRMAN BASEHART: Well, I think the motion was with no conditions.

MR. KILDAY: That's simpler.

VICE CHAIRMAN BASEHART: Is that what your motion was?

MS. CARDONE: That is the motion that was made, that we approve --

VICE CHAIRMAN BASEHART: Okay.

MR. JACOBS: And seconded.

MS. CARDONE: -- that variance, and it was seconded, and it was voted upon.

VICE CHAIRMAN BASEHART: Okay.

CHAIRPERSON KONYK: Did we finish voting on it? Let's make sure. Did we finish voting on it? We did.

All those in favor.

BOARD MEMBERS: Aye.

CHAIRPERSON KONYK: Okay. Now what do we have?

MR. JACOBS: 7.F.7.a.

MS. CARDONE: Madam Chairman, I move approval of Board of Adjustment 2006-01358, 7.F.7.A, width of right-of-way buffer. The variance that is being asked for is 20 feet.

CHAIRPERSON KONYK: Motion by Ms. Cardone.

VICE CHAIRMAN BASEHART: Second.

CHAIRPERSON KONYK: Second by Mr. Basehart.

All those in favor.

BOARD MEMBERS: Aye.

CHAIRPERSON KONYK: Opposed.

(No response)

CHAIRPERSON KONYK: Motion carries unanimously.

MS. SHUTT: Madam Chair, just want to note if the applicant can't meet the cross section, that I would advise him to come back for a variance on the cross section, also.

MR. KILDAY: As long as you file it, fine with me.

CHAIRPERSON KONYK: All right. Okay.

MS. SHUTT: Because he'll need that, as well.

CHAIRPERSON KONYK: Okay.

MS. SHUTT: Thank you.

CHAIRPERSON KONYK: Thank you.

I've got to get back to Miami.

VICE CHAIRMAN BASEHART: Yeah, you got to close the meeting.

CHAIRPERSON KONYK: Oh. Meeting's adjourned.

(Whereupon, the meeting was concluded at 12:00 p.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 75, 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 11th day of December, 2006.

Sophie M. (Bunny) Springer