



AGENDA ITEM MEMORADUM

Item No. 14a

Development Services

Department

Bud Bentley

Assistant Town Manager & Department Director

BB

COMMISSION MEETING DATE (*) - 7:00 PM	Deadline to Town Clerk
X Oct 25, 2011	Oct 14th

*Subject to Change

- | | | | |
|---------------------------------------|---|---------------------------------------|---------------------------------------|
| <input type="checkbox"/> Presentation | <input type="checkbox"/> Reports | <input type="checkbox"/> Consent | <input type="checkbox"/> Ordinance |
| <input type="checkbox"/> Resolution | <input checked="" type="checkbox"/> Quasi-Judicial | <input type="checkbox"/> Old Business | <input type="checkbox"/> New Business |

FY2011 DESIGNATED HIGH PRIORITY ITEM - PRIORITY TOPIC

SUBJECT TITLE: Cloisters Co-Op's Variance Application to maintain a fence and gate within the front setback.

EXPLANATION: At the October 5, 2011 meeting, the Board of Adjustment reviewed an application (**Exhibit 1**) from the Cloisters Co-Op (1420 South Ocean Boulevard) to provide relief from Chapter 30-313 (4) (h) of the ULDR regarding the setback requirement for fences. A variance was necessary as the property owner installed a fence in the front setback without a permit. The staff report and minutes from the BOA meeting are attached. The Staff Report is attached (**Exhibit 2**).

BOARD RECOMMENDATION: After hearing testimony from the applicant and Town staff, the Board of Adjustment voted 3 – 0 to approve the variance. The minutes of the meeting are attached (**Exhibit 3**).

The Variance Order is attached (**Exhibit 4**) and includes the following conditions:

1. Submission of a traffic statement certified by a state-licensed engineer, demonstrating that the vehicular use access and stacking area that exists between the motorized gate and the front property line will not create a traffic hazard for vehicles accessing the site and for vehicles driving northbound on SR AIA.
2. The applicant shall be required to apply to the Town for a building permit for the fence and gate within 60 days of the approval of the Variance.
3. The Variance Order shall be recorded in the Public Records of Broward County by the applicant, at his/her sole cost and expense, and a certified copy of the recorded document returned to the Town within 30 days of the close out of the building permit.

RECOMMENDATION: If the Commission approves the variance, staff recommends approval of the attached Order.

- EXHIBIT 1:** Board of Adjustment Application
- EXHIBIT 2:** Staff Report
- EXHIBIT 3:** Board of Adjustment Minutes
- EXHIBIT 4:** Variance Order

Reviewed by Town Attorney
 Yes No

Town Manager Initials *BB*



TOWN OF LAUDERDALE-BY-THE-SEA, FLORIDA
ZONING VARIANCE

PROPERTY INFORMATION

Date: 8/8/2011

Property Address: 1420 SOUTH OCEAN BLVD.

Legal Description: Lot _____ Block _____ Folio _____

Subdivision _____

Zoning District: R M - 25

Property Owner's Name: CLOISTERS CO-OP

Address: 1420 SO OCEAN BLVD

Phone #: 954-781-2592 Fax 954-781-4887

Owner/Applicant's Name: EDWARD J. SMITH, PRESIDENT

Phone #: 954-781-2592 Fax 954-781-4887

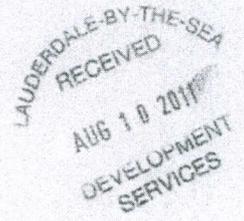
*Letter required from Owner if represented by Agent.

Signature of Applicant/Owner: [Signature]

Print Name of Applicant/Owner: EDWARD J. SMITH

Notary: [Signature]

My Commission expires :



VARIANCE REQUIREMENTS

Code Section from which Variance is sought: 30-313-(4) H

Description of your request: FRONT FENCE AND
MOTORIZED EXIT GATE SETBACK

Describe the existing special conditions and circumstances affecting the land, structure or building involved preventing the reasonable use of said land, structure, or building:

THE PREVAILING LAYOUT WAS DESIGNED
TO PRESERVE THREE (OR FOUR) VEHICULAR
PARKING SPACES AND TO PROTECT THE LARGE
SEA GRAPES TREE FRONTING THE PROPERTY

Describe the circumstances, which cause the hardship to be peculiar to the property or to such a small number of properties that they clearly constitute marked exception to other properties in the district:

THE LOSS OF THREE (OR
FOUR) PARKING SPACES WOULD RESULT IN
19 VEHICULAR PARKING SPACES FOR TWENTY
(20) CLOISTERS APARTMENTS

Describe why the literal interpretation of the provisions of the applicable would deprive the applicant of a substantial property right that is enjoyed by other property owners in the same district. It is of no importance whatever that the denial of the variance might deny to the property use in a more profitable way or to sell it at a greater profit than is possible under the terms of the regulations:

SEE PICTURES
INCLUDED IN THIS REQUEST

Explain why the hardship is not self-created or the result of mere disregard for, or ignorance of, the provisions of the regulations:

SEE APRIL 10 2011
LETTER TO LBT'S AND BROWNARD
COUNTY FROM EDWARD J SMITH PRESIDENT
OF THE CLAYTONS INCLUDED IN THESE DOCUMENTS

Describe how the variance is the minimum variance that will make possible the reasonable use of the property and that the variance will be in harmony with the general purposes and intent of the applicable zoning regulations and will not be injurious to the neighborhood or otherwise detrimental to the public welfare.

THE LAYOUT AND DESIGN BEST ACCOMMODATES
THE PREVAILING CONDITIONS WHILE
PROTECTING AND IMPROVING THE NEIGHBORHOOD
AMBIENCE. (SEE E-MAIL FROM THE
PRESIDENT OF OUR NORTHSIDE A BUTTER

2 of 3

Supply copies of the following:

Two (2) Sealed Surveys of the entire property, completed within sixty (60) days of the date this application is filed. The survey must clearly identify and indicate distances between all structures, property lines, setbacks, easements, and adjacent rights of way.

Seventeen (17) copies of a Site Plan under Seal of a Florida licensed Architect or Engineer, which clearly depicts the proposed improvements, which necessitates the variance in relation to the above-delineated elements for survey. For single-family and duplex properties the site plan drawn to scale, which depict the proposed improvements, which necessitates the variance, does not need to be sealed.

In addition, the Applicant must complete the application submission checklist form that is attached.

To be completed by Town

Date Application submitted: 8/10/2011

Date Application found complete: 8/22/2011

Pre-Application meeting date: _____

Board of Adjustment meeting date: 10/4/2011

Town Commission meeting date: 10/25/2011

Zoning Code Variance Fee Amount:

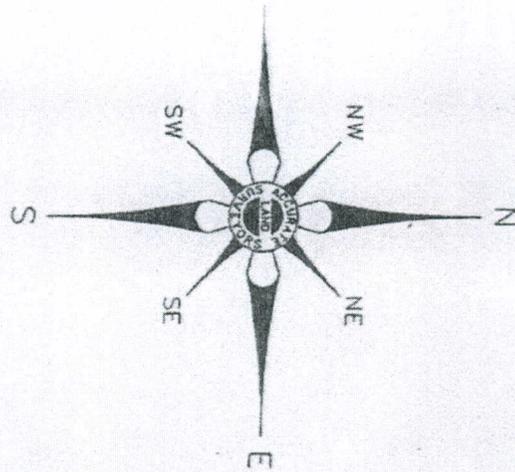
Single Family \$350.00 (Resolution 2008-03)

All other Variance submissions \$350.00 CK # 1389

Minimum Deposit for Consultant(s) \$500.00 CK # 1390

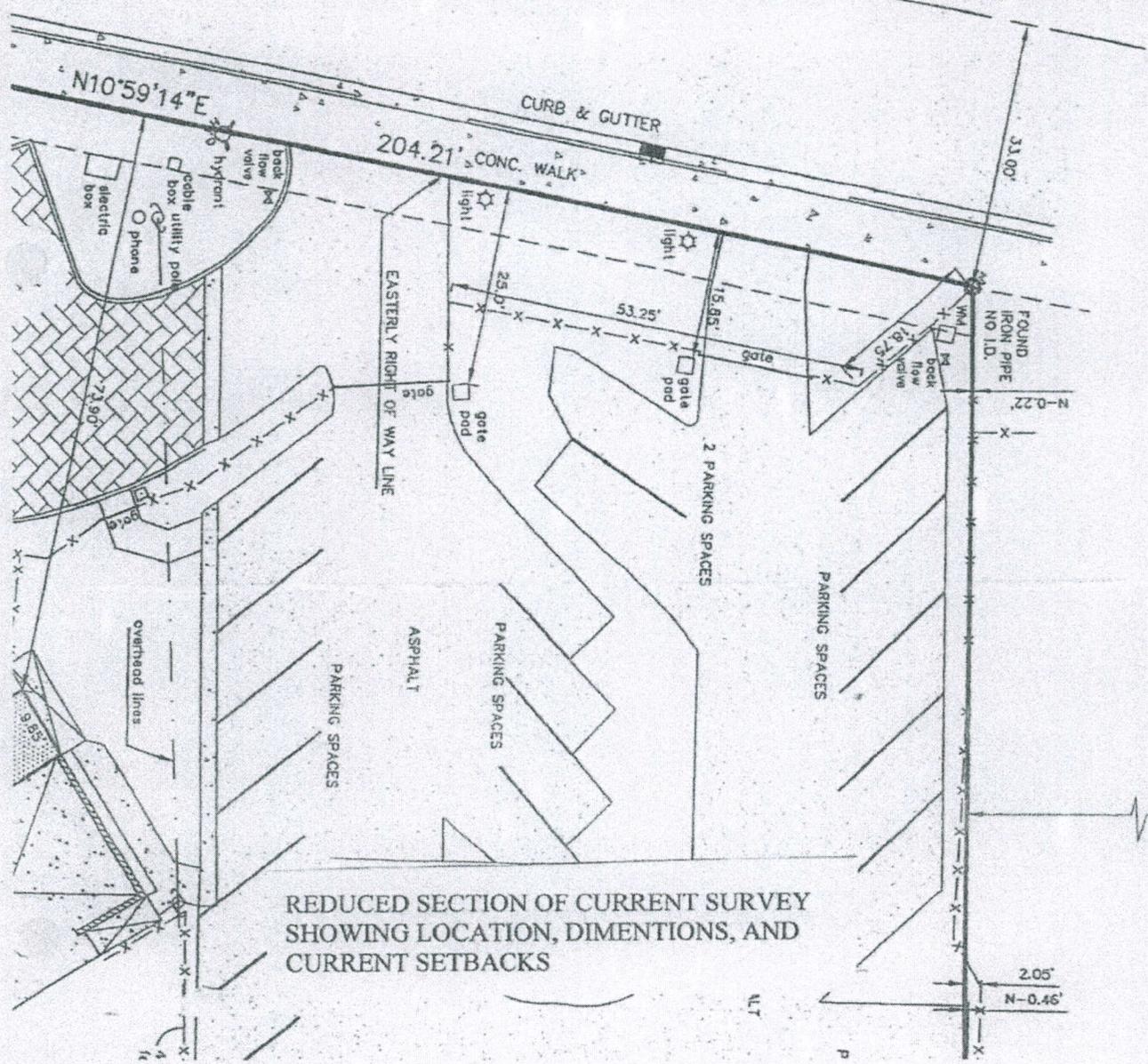
TOWN OFF-SITE CONSULTANT FEE (if applicable)

NOTE: The Town Code provides for cost recovery of outside consultants, legal advertising costs, direct mail notice costs, etc. and depending on the scale of the project, additional fees may be incurred. Therefore, the above fees reflect a \$500 deposit for third party fees. Any unused portion of the \$500 deposit will be refunded to the Applicant.



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STATE ROAD A-1-A
66' RIGHT-OF-WAY
ASPHALT ROADWAY



REDUCED SECTION OF CURRENT SURVEY
SHOWING LOCATION, DIMENTIONS, AND
CURRENT SETBACKS

THE CLOISTERS CORPORATION
1420 South Ocean Boulevard
Lauderdale By The Sea, Florida

April 10, 2011

To: The Lauderdale By The Sea and Broward County Development Services, Code Enforcement

From: Edward J. Smith, President, The Cloisters Corporation

Subject: Security Fence and Gates Installation, chronological and statistical review of incidents relating to its permitting, construction and completion

May 2008 Edward Smith met with Tatiana at the Lauderdale By The Sea Building Codes Department to discuss The Cloisters plans for a security project involving the installation of fences and gates. Arrangements were made for a June meeting to further discuss the plans and required procedures.

June 6, 2008 a meeting was held in the LBTS offices attended by Ed Smith, Tatiana, Sandra Sly, Senior Zoning Plans Examiner, Building Code Service Division, Broward County, At that meeting preliminary plans were submitted for the installation of fence and gates. It was suggested that The Cloisters engage an engineering firm to develop specific plans with dimensions etcetera.

September, 2008 Gator Engineering, Regina Bobo-Jackson (principal), 10620 Griffin Road, Cooper City, Florida was engaged to provide professional engineering for the project.

Thereafter countless meetings, telephone conversations, and discussions with Sandra Sly, Tatiana, Jeff Bowman, Dan O'Linn, Broward County, Jeff Day, LBTS, Regina Jackson, Ed Smith and others spanning a period from May 2008 to present regarding the Security Project which provided for the installation of fence and gates.

Within this time span plans and drawings were submitted, reviewed, revised, and tweaked to meet the approval of the City and County officials.

On January 6, 2010 Ed Smith received a call from Dan O'Linn, Broward County that the final plans were approved and that we could proceed with the project.

On January 10, 2010 Ed Smith received a call from the LBTS telling him the plans were approved and that we could proceed with the project.

Thereafter, Permit # 08-02525 was secured and after considerable visitations, inspections, and reviews by city and county personnel, while the project was ongoing, it was finally completed precisely in accordance with the approved drawings. (After completion it was discovered that, inadvertently, the permit did not cover the fence and gates portion, the layout of which was clearly shown on the approved drawings.)

Early in February 2011 we were advised that a section of the fence and the exit gate, (constructed precisely as on the approved plans), did not meet the setback requirement.

In a meeting on February 24, 2011 in the LBTS offices attended by Dan O'Linn Broward County, Jeff Day, Broward County, Kim Williams LBTS Code Enforcement Officer, Steven Mitchell, (representative of Gate Masters, the fence contractor), and Ed Smith, President of The Cloisters, we were told that neither the Broward County officials or the Lauderdale By The Sea officials were aware that fences and gates were involved when they approved the plans, , and gave the go ahead for the project!

POINTS FOR CONSIDERATION

1. From day one this project was defined as a security project involving fence and gates. All else on the project was incidental to this intention.
2. As part of the project a wood fence which extended to the sidewalk in the middle of the property was removed. Another wood fence on the north side extended to within five feet of the sidewalk. Both exceeded the existing setback requirement and were in place for 40 years. Does this speak to a grandfather issue?
3. In the center of the project (where the fence in question is located) a structure built with 36 railroad ties enclosing a large scale planter bordered the sidewalk. This wooden structure also established existing proximity to the sidewalk.
4. As can be seen from that attached pictures the fence in question is shielded from front view by a fichus hedge and a flora planting. The issue (brought up at the 2/24/11 meeting) that the restriction was originally initiated to prevent lawn fencing certainly shields the fence from this violation.
5. To accommodate the suggested setback would call for the removal and destruction of the large sea grapes tree that has shielded the property for 50 years. (see pictures) The removal of this shade tree would dramatically derogate from the esthetic this tree contributes to the local environment!
6. In addition to the preservation of the aforementioned tree, the plans were designed to preserve three or four parking spaces that would have been otherwise eliminated. Resulting in a balance of 19 parking spaces for 20 apartments!
7. Residents, neighbors, city, county personnel, and even strollers constantly remark about how the project, in its completed form, has dramatically added to the ambiance of this section of A1A and the neighborhood.
8. An inspection of fence installations in the neighborhood along A1A, Ocean Boulevard within 15 feet of the road testify to the exceptions to the criteria suggested for the Cloisters, (see pictures provided with this critique). Even the Cristelle Cay, a recently constructed condominium contiguous to The Cloisters was granted approval to build a fourteen story building within fifteen feet of The Cloisters south property line! (See pictures)
9. We feel the accompanying pictures will clearly demonstrate how this project, as completed, has made a dramatic improvement to the Cloisters and the community.
10. For these reasons, and others, we respectfully request that the involved authorities see fit to give their final approval to the completed project.

GATOR ENGINEERING CONSULTANTS, P.A.

July 7, 2011

George Day
Town of Lauderdale By the Sea
4501 Ocean Drive
Lauderdale By the Sea, Florida 33308

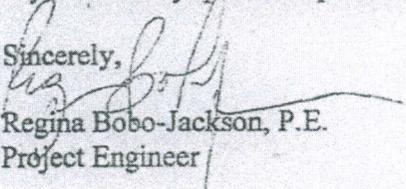
Subject: The Cloisters – Fence Permitting
1420 S. Ocean Boulevard
Lauderdale By the Sea, FL 33308

Dear Mr. Day:

After rereading my letter dated January 26, 2011, this letter is to clarify my statement, on behalf of Gate Masters and The Cloisters Coop. The Site Plan for the subject site was approved by the Town in coordination with Broward County Zoning (Mr. Jeff Day) after much discussion on specifically the location of the fence and gates. The entrance gate was required to be set-back 25 feet from the back of sidewalk to allow storage and the remaining gates/fence were permitted to be "within" 25 feet from the edge of pavement, as shown on the approved plans. Even though the fence was not specifically spelled out on the plans (layer off in drawing) the delineation is clear and should have been a red flag to a reviewer for questions.

If you have any questions please contact me.

Sincerely,


Regina Bobo-Jackson, P.E.
Project Engineer

10620 GRIFFIN ROAD, SUITE 102 – COOPER CITY, FL 33328

TEL: (954) 434-5905 - FAX: (954) 434-5904

www.gatorengineering.com

An Equal Opportunity Employer

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From: Kathleen M. Jenkins <kjenkins@swiftmanagement.com>
To: Ed Smith <hawktanks@aol.com>
Cc: Chuck Swift <csswift@swiftmanagement.com>; Al Surprenant <capeoyster@comcast.net>; Ed Smith <hawktanks@aol.com>; Juan D. Morales <j_dmorales@bellsouth.net>; Linc Mossop <lmossop@barrettandcompany.com>
Subject: Fw: Cloisters
Date: Fri, Nov 19, 2010 9:42 am

— Original Message —

From:
To:
Sent: Friday, November 19, 2010 9:13 AM
Subject: Cloisters

Hi Kathie,
Just want you to know that the landscaping and gating project at Cloisters is fabulous. I particularly like the landscaping at the front entrance.
Also, the new sign is beautiful. Please tell Ed Smith that he did a great job on the project.
Bonnie

E-mail from Bonnie Myers, President Coastal Arms, (Cloisters north bound abutter), making reference to finished project stating landscaping and GATING project looks fabulous!

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7/08/11 view (looking south) showing new
Fence with 15.85 foot setback



7/08/11 view (looking north) showing new
fence with 15.85 foot setback



7/08/11 view, (from sidewalk), of the vehicle exit gate. Gate has a 15.85 foot setback from sidewalk.



7/08/11 view of exit gate and the fence, designed to preserve the two existing parking spaces on the north side and the one existing space in the middle of the property. Three critical spaces saved.



7/08/11 view of entrance gate in open position designed to protect and preserve the sea grapes tree. Without the fence jog, the northbound fence would intersect the gate and run through the tree



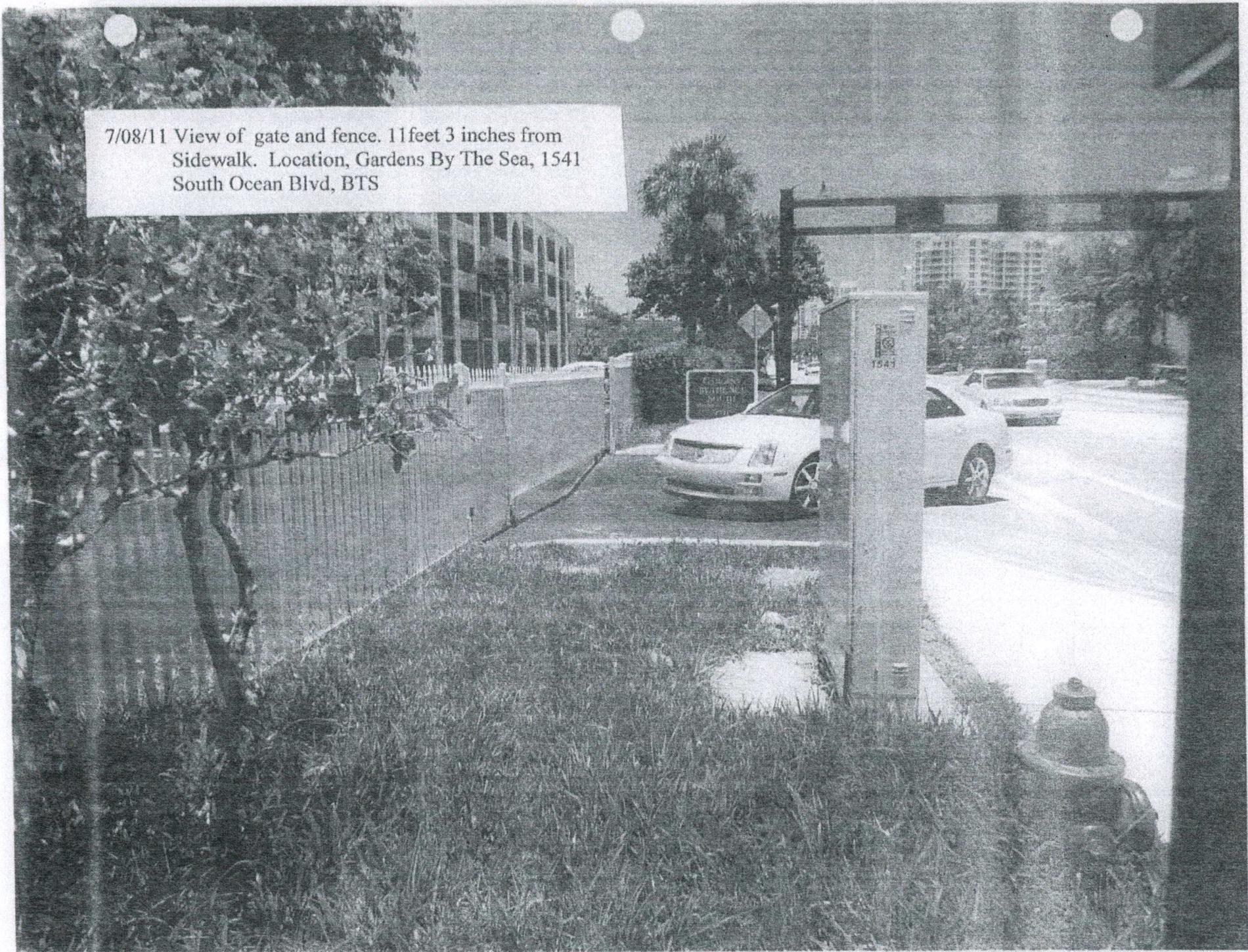
7/08/11 view of main resident entrance showing jog in fence designed to protect sea grapes tree and preserve three critical parking spaces (shown later).



7/08/11 view of visitor and maintenance vehicle
Parking, and exit, completed project



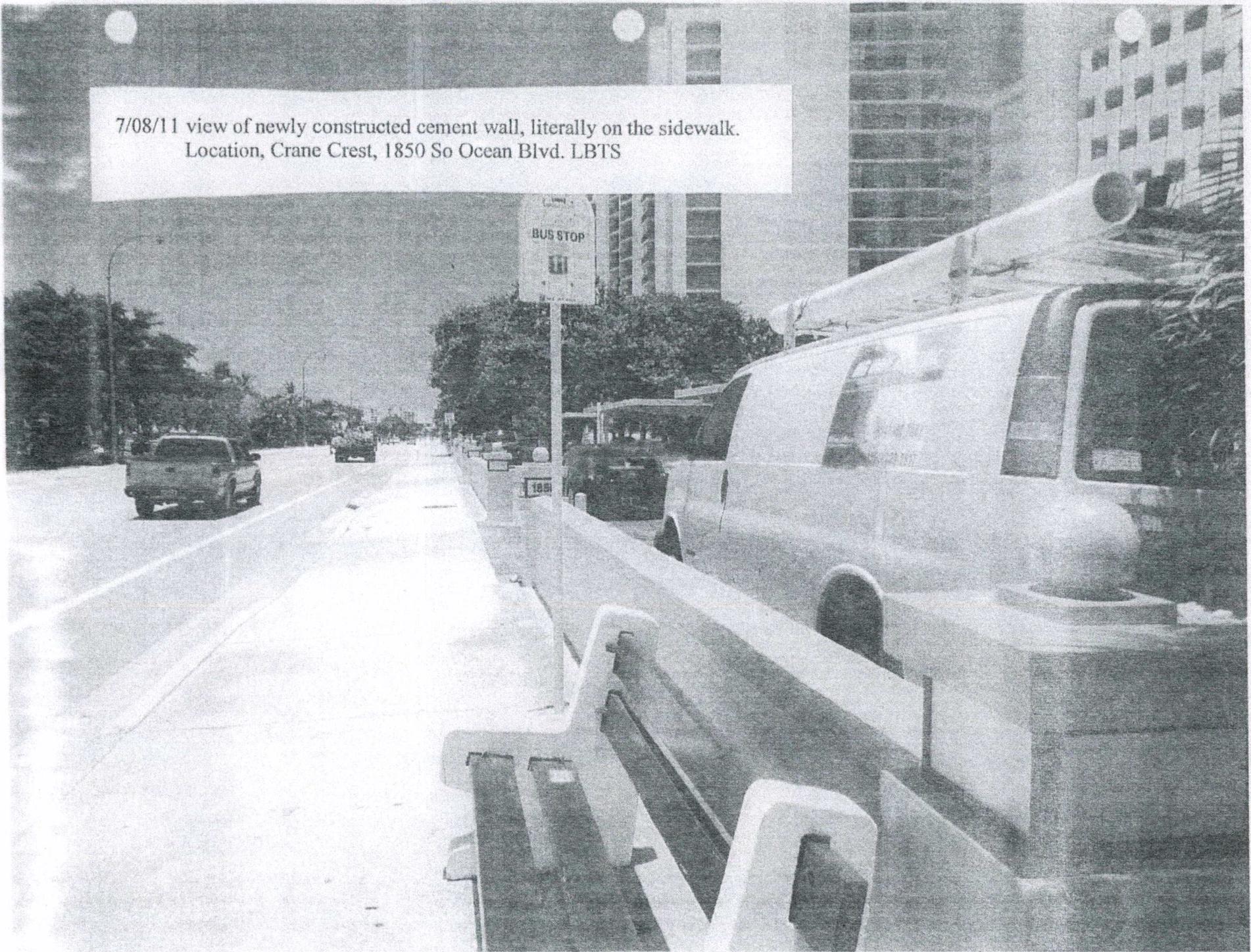
7/08/11 View of gate and fence. 11 feet 3 inches from
Sidewalk. Location, Gardens By The Sea, 1541
South Ocean Blvd, BTS



7/08/11 view of fairly new fence, 1700 So Ocean Blvd.
LBTS 5 feet, 15 inches from sidewalk



7/08/11 view of newly constructed cement wall, literally on the sidewalk.
Location, Crane Crest, 1850 So Ocean Blvd. LBTS





Town of Lauderdale-by-the-Sea

Development Services
4501 N. Ocean Drive
Lauderdale-by-the-Sea, FL 33308
Phone (954) 776-3611
Fax (954) 776-3431

To: Board of Adjustment
Thru: Bud Bentley, Assistant Town Manager
From: Jeff Bowman, Zoning/Code Supervisor
Date: August 22, 2011
Meeting Date: October 5, 2011
Re: Cloisters Co-Op / Variance Request Application for Fencing in the RM-25 Zoning District.

STAFF REPORT

The purpose of this memorandum is to provide an application (**Exhibit 1**) for your examination and recommendation of a zoning variance application submitted on August 10, 2011 by Edward Smith, the President of Cloisters Corporation located at 1420 South Ocean Boulevard. Additionally, Town consultant (Cecelia Ward) has provided her written review and recommendation (**Exhibit 2**) for your consideration.

The subject property is located within the RM-25 zoning district along the east side of A-1-A. The current use of the property is condominium.

Description of the Variance Request:

The applicant is requesting a variance from the Towns Zoning Code, Chapter 30- 313 (4) (h) so they can maintain a fence and gate within the front setback.

Variance	Required Setback	Proposed Setback	Code Section
Fence in front setback	25' Ft	Maximum 0 ft. to 15.85' ft. along the front (north to south approx. 70 ft.) of the property. (As per the survey revised and dated 7-25-11)	30-313 (4) (h)

The applicant has paid the appropriate fee and submitted the required documents.

Notice to all property owners within 300 feet has been given pursuant to Section 30-13 of the Code of Ordinances.

Criteria and Analysis (*Findings provided by Town Consultant*)

Town Ordinance 30-8. Criteria for considering an "Application for a Variance." In considering an application for a variance an application shall be evaluated by considering the following criteria:

1. Special conditions and circumstances exist affecting the land, structure or building involved preventing the reasonable use of such land, structure or building.

Findings: The existing parking and large Sea Grape Tree do present special circumstances relative to the subject property that impact the ability to locate a security fence and motorized gate in accordance with the required 25 foot front yard setback.

2. The circumstances, which cause the hardship, are peculiar to the property or to such a small number of properties that they clearly constitute marked exception to other properties in the district.

Findings: The existing parking is legal nonconforming. There is limited area between the existing buildings on the site and the front property line abutting SR AIA to be able to accommodate the parking required to serve the residents of this residential use. A reduction in parking to accommodate the fence and gate would result in an increase in the nonconforming status of the existing parking.

3. The literal interpretation of the provisions of the applicable regulation would result in a particular hardship upon the owner, as distinguished from a mere inconvenience.

Findings: The literal requirement to locate a fence and gate no less than the 25 feet from the front property line would result in the loss of at least 3 to 4 parking spaces that are currently needed to meet the parking needs of the existing residences. The large Sea Grape Tree would also need to be removed.

4. The hardship is not self-created or the result of mere disregard for, or ignorance of the provisions of the regulations.

Findings: Although the fence and gate was installed without permits, it appears from the plans submitted by the applicant for overall improvements to the parking area, that the fence and gate was illustrated on the plans. It should be noted, however, that while the fence was shown less than required 25 feet, the gate was show to comply with the 25 foot setback as required by the Code.

However, the applicant claims in their application that their intent was for approval of the location of the fence and gate, as installed.

5. The variance is the minimum variance that will make possible the reasonable use of the property and that the variance will be in harmony with the general purposes and intent of the applicable zoning regulations and will not be injurious to the neighborhood or otherwise detrimental to the public welfare.

Findings: The request is to allow a fence and gate with a 0' to 15'.85" minimum setback to ensure that the existing parking and existing Sea Grape tree are not removed.

Other properties in the area provide for similar fences and gates within 15 feet of the front yard. As such the request is in keeping with the pattern of development permitted in the general area.

In order to ensure that the variance will not result in a situation that will be injurious to the neighborhood or otherwise detrimental to the public welfare, the applicant should provide a traffic statement certified by a state-licensed engineer, demonstrating that the remaining vehicular use access and stacking area that exists between the motorized gate and the front property line will not create a traffic hazard

6. The grant of the variance does not permit a use not generally permitted in the district involved or a use expressly or by implication prohibited by the terms of the regulations of the district in which the affected property lies.

Findings: The use of a fence and motorized gate to provide security for the subject property is similar to other fences and gates provided on nearby residential properties.

7. Financial hardship is not a basis for granting a variance unless the failure to grant the variance will render the property unusable as a permitted use in the zoning district in which the property lies.

Findings: The property would not be rendered unusable if the variance is not approved.

STAFF REVIEW COMMENTS:

Prior to 2007, the County Zoning Code for land development was applied to the north end of Town, which allowed fencing in the front 25 feet of properties. In 2007 the Town unified its Land Development Code, which governs land development Town wide. Those fences in the setbacks are now considered legal non-conforming.

The applicant has suggested in his narrative dated April 10, 2011 that the fencing was approved as part of their permit (08-02525 new paver parking lot) because the fencing layout was shown on the approved drawings. The application submitted with the plans describing the scope of work does not indicate new perimeter fencing to be installed. The Engineer for the project in a letter dated July 7, 2011 indicates that "Even though the fence was not specifically spelled out on the plans (layer off on drawing) the delineation is clear and should have been a red flag to a reviewer for questions".

Findings: The Civil Plan submitted to the Town depicted most if not all of the improvements on the property. The improvements indicated on the drawings include a clubhouse, walkways, the condominium buildings, the pool and decking, and other improvement on the drawings. The Town reviewed the documents only for the scope of work indicated on their application and not the other improvements shown on the drawings.

The applicant has provided a picture showing a wall located at 1850 S Ocean Boulevard and points out it is newly constructed within the front setback.

Findings: Application for the wall at 1850 S. Ocean Boulevard was applied for on April 18, 2006 and finalized on June 29, 2007. The wall was permitted prior to September 2007 when the Land Development Code was Unified, therefore, no front setback was required at the time of approval.

STAFF RECOMMENDATIONS: Approval with the following conditions:

1. Submission of a traffic statement certified by a state-licensed engineer, demonstrating that the vehicular use access and stacking area that exists between the motorized gate and the front property line will not create a traffic hazard for vehicles accessing the site and for vehicles driving northbound on SR AIA.
2. The applicant shall be required to apply to the Town for a building permit for the fence and gate within 60 days of the approval of the Variance.
3. The Variance Order shall be recorded in the Public Records of Broward County by the applicant, at his/her sole cost and expense, and a certified copy of the recorded document returned to the Town within 30 days of the close out of the building permit.

The Variance Request and the Board's Recommendation will be scheduled for Town Commission consideration.

TOWN OF LAUDERDALE-BY-THE-SEA
BOARD OF ADJUSTMENT MINUTES
Town Commission Meeting Room
Tuesday, October 4, 2011, at 6:30 P.M.

I. ELECTION OF OFFICERS

Town Attorney Kathryn Mehaffey stated, as a short workshop, she would give a PowerPoint presentation, reviewing the backup material pertaining to the Sunshine Law, public records, ethics, meeting procedures, and voting guidelines and conflicts. She commented the entire presentation was conceptual in nature, and Board members were to use the information as a questioning block should any issue or situation trigger questions in their mind, or they could contact her office at any time if they had questions, particularly in relation to the matter if their responsibilities as Board members. She went on to outline the election of officers procedure, stating the Board needed to elect their chairperson and vice chairperson by a majority vote, and they would serve in those positions for the remainder of their term; the chairperson, or the vice chairperson in the absence of the chairperson, would vote only in the event of a tie vote, but was considered a voting members for the purposes of establishing a quorum. She requested nominations or volunteers for the two positions.

Ms. Swinghammer volunteered for the position of Vice Chairperson.

Mr. Franczak seconded the appointment of Ms. Swinghammer as Chairperson on the Board of Adjustment.

Mr. Overton volunteered for the position of Vice Chairperson.

Ms. Swinghammer seconded the appointment of Mr. Overton as Vice Chairperson on the Board of Adjustment.

There was a unanimous voice vote of approval for the election of Helen Swinghammer to the position of Chairperson of the Board of Adjustment, and for the election of Henry Overton to the position of Vice Chairperson.

II. CALL TO ORDER

Chairperson Swinghammer called the meeting to order at 6:30 p.m. Members present were Arthur Franczak, Henry Overton, Verence Rapaport and Helen Swinghammer. Also present were Town staff Budd Bentley, Assistant Town Manager/Acting Department Director of Development Services, Acting Town Planner Linda Connors, and Town Attorney Kathryn Mehaffey. Board Secretary Colleen Tyrrell was present to record the minutes of the meeting.

III. PLEDGE OF ALLEGIANCE TO THE FLAG

The Pledge of Allegiance was recited.

IV. APPROVAL OF MINUTES

Regular Board of Adjustment Minutes of July 15, 2009

A motion was made and seconded to approve the subject minutes as presented. In a roll call vote, the motion passed 3 - 0.

V. NEW BUSINESS

- A.. Applicant: Cloisters Co-Op
- Location: 1420 South Ocean Boulevard
- Request: Description of Variance request:
The Applicant is requesting a variance from the Town's Zoning Code,

Chapter 30-313 (4) (h) so they can maintain a fence and gate within the front setback.

Town Attorney Mehaffey reviewed the quasi-judicial procedures.

Ms. Tyrrell collectively swore in all persons wishing to speak on the subject item.

Town Attorney Mehaffey requested Board members disclose any *ex parte* communications regarding the subject application.

Mr. Franczak stated he stopped by the subject property a number of times and discussed the matter with his parents.

Vice Chairperson Overton indicated he too stopped by the property to get a better picture of the situation.

Chairperson Swinghammer noted she visited the property just prior to the present meeting to get a better handle on what the applicant's request was about versus the impact on the surrounding area.

Ms. Rapaport commented she read the contents of the backup but had not recently visited the area.

Assistant Town Manager/Acting Department Director of Development Services Bud Bentley introduced himself to the Board, giving them a brief synopsis of his time with the Town of Lauderdale-By-The-Sea. He indicated Linda Connors was a contractor currently assisting the Town in the time of transition since the resignation of Jeff Bowman from the position of the Director of Development Services two weeks prior; Mr. Bowman had been with the Town for 11 years and left to take up a post on the west coast. Ms. Connors and he would provide Board members with their contact information, and they should feel free to call upon them both and their staff to answer any questions or provide any needed support.

A male speaker stated he was unfamiliar with the contents of Chapter 30-313, and requested staff read the information if it was available.

Town Attorney Mehaffey pointed out the applicant and staff would give presentations on the application, and staff would read section H containing Chapter 30-313 for clarification. After the presentations, there would be an opportunity for members of the public to speak and ask questions.

Edward Smith, president of the Cloister's Co-Op, referred to the proposed application as detailed in the backup, thanking the Board for hearing their application. He felt it was important for the Board to understand his position on the subject matter, mentioning in 2008 they came to the conclusion at the Cloisters that they needed some protection from the intrusion of various parties who were, for one purpose or another, continuously passing through their property. They had problems related to theft: automobiles, bicycles, appliances, etc. He stated in 2008 they proposed a security provision and project for the Cloisters and, as the testimony in his original presentation illustrated, there were numerous meetings over a period of 20 months as to appropriate measures that would address the problematic situation. He indicated they had three primary points in mind: the preservation of the ecological position of the facility; the preservation of parking; and the installation of a fence and gate to eliminate the continuous traffic traversing the property. After a number of changes to the plans, they received both County and Town approval to move forward with the project and applied for the necessary permits. Mr. Smith remarked there were a number of unanticipated occurrences related to the subject project that arose, one being an almost \$30,000 addition for a French drain that was required. Thus, in the course of the various negotiations, a number of things were brought as necessary, even to the extent of having to move the trash container three feet in one direction. He noted they proceeded with their plans and, after the project was completed, a question arose through research by Town staff as to when the permit was granted for the project did it specifically include the fence and the gates. Several meetings with Town staff took place in this regard, such as that on April 10, 2011, at which he recapped all the details associated with the project, including the history of what transpired. He thought it unbelievable, given the fact that they were speaking about a security project, that the fence and gates were left out of the consideration to grant the permit, as it was the main method by which they hoped to rectify the problem of unauthorized persons passing through their property. The project, as completed, was done in accordance with the precise plan that had been tweaked and finalized over the 20-month period, and the dimensions on the fence and gates were precisely in accordance with those dimensions. They felt the subject project had dramatically improved the area, particularly as it related to their property, and he received many compliments on the significant improvements to the site, so they felt the changes contributed dramatically to the improvement of the general community as well. In light of this evidence, they respectfully requested the Board approve the project as completed in accordance with the design that was approved by both the County and the Town authorities.

Mr. Franczak asked when Mr. Smith was notified the property was out of compliance.

Mr. Smith responded a number of Cloister residents in poor health had called 911 for assistance and, when the ambulance came to pick them up, they had difficulty accessing the property through the gates. He mentioned the lockbox system the Town's fire and police departments were familiar with, and it was this the emergency personnel were looking for to open the gate but could not find one, as there was one. They were eventually able to get through the gates when a resident used their remote to open the gates for them. The situation led to a member of the emergency services going to the Town to investigate the Cloisters and determine whether a lockbox was included in the requirement for the front gate; it was then the discovery was made as to the specifics of the permit for the project; that is, it contained no mention of the fence and gates. He indicated they had spared no expense on the project improvements and had installed a state-of-the-art siren-operated system that allowed any emergency vehicle to hit the siren and open the gate without the need for a key as required with a lockbox. Both the Town's police and fire chiefs visited his property to look at the gate and stated they were unfamiliar with the particular feature, as it did not exist anywhere else in the Town. Mr. Smith reiterated the gate mechanism was state of the art, as any emergency vehicle could easily access the property when needed, mentioning whenever an emergency vehicle drove by with their siren blaring, the gate opened; it responded to all vehicles with a siren. He pointed out, if it were not for the fact that the gate did not have a lockbox, the subject matter would not be before the Board for consideration. Since that time, various types of emergency vehicles accessed the property without incident or difficulty; all emergency vehicles were now familiar with how to access the Cloisters.

Acting Town Planner Linda Connors distributed copies of and reviewed Section 30-8, the code section regarding variances. She went on to discuss the material provided in the backup as it related to the subject variance application; she read for the record Section 30-313 (4) (H). Staff recommended approval of the application for the proposed variance with three staff conditions as noted in the backup. If approved, the matter would go onto the Town Commission for approval at their second regular Commission meeting in November; that meeting would be advertised, and there would be another public hearing at that time.

Mr. Franczak sought clarification the Town was not opposing the proposed variance.

Ms. Connors answered, no, staff had no objection to Board granting the variance with the staff conditions.

Mr. Franczak inquired if the applicant agreed to staff's conditions.

Ms. Connors responded staff spoke with the applicant, and he agreed to satisfy the three conditions.

Ms. Rapaport wished to know if Town staff was satisfied the code's minimum requirements were met by the requested variance.

Ms. Connors clarified the minimum requirement per the code was for a 25-foot setback; as the applicant did not meet that requirement, they were required to come before the Board of Adjustment to request a variance from that minimum requirement. Staff, by their recommendation of approval with conditions, were indicating to the Board that, though the applicant's fence and gates did not meet the Town's current code, they were satisfied with the Board recommending approval to the Town Commission, providing the applicant met the three staff conditions stated in the backup.

Mr. Franczak wondered if the applicant's neighbors had voiced any complaints.

Ms. Tyrrell replied there were no phone calls or written complaints, though the public comment portion of the meeting had yet to be opened.

Ms. Connors indicated there was a notification sent out by the City informing property owners that the item would be coming before the Board and Commission. Normally, if there were any complaints, members of the public either attended the meetings or voiced their objections to Town staff via phone, email or in writing; no complaints from these various sources of communication had been recorded.

Chairperson Swinghammer opened the discussion to the public.

Bonnie Myers, president of Coastal Arms Co-Op, 1410 S. Ocean Blvd., Lauderdale-By-The-Sea, stated they were the Cloisters direct neighbor to the north. She was present on behalf of their board of directors in support of the Cloisters request for the proposed variance, as they felt Mr. Smith's completed project was an enhancement to his property and definitely an improvement to the entire neighborhood. Thus, they not only had no objection to the gates and fence remaining as is, they were very pleased with the end results and hoped the Board would approve their application for the variance.

Chairperson Swinghammer invited Mr. Smith to make any final comments.

Mr. Smith noted he neglected to point out that the entrance gate to the Cloisters was well within the 25-foot setback, as they provided for space to enable easy access to the property and to the visitor parking area. That area of the property was designed so as not to create any obstruction, and the gates allowed emergency vehicles to be off the street when they turned in to access the property.

Mr. Franczak questioned if Mr. Smith objected to any of the three staff conditions for approval of the variance.

Mr. Smith indicated he had no objections to any of the three staff conditions of approval.

Alan Scheiner, a resident of the Cloisters, stated since the subject project had been completed, their community had a complete reversal in the traffic that used to go through their property, using their restrooms, kitchens, etc.; it filled their lives with unease having strangers roaming around the property. The improvements had made living at the Cloisters much easier for the residents, and he urged the Board to approve the application for the variance.

Chairperson Swinghammer closed the public hearing after receiving no further input. She requested a motion to approve or deny the application for the proposed variance.

Mr. Franczak made a motion to approve the proposed variance application with staff conditions as written, seconded by Ms. Rapaport. In a roll call vote, the motion passed 3 – 0.

VI. UPDATES/BOARD MEMBER COMMENTS

Mr. Overton felt the above variance application represented a legitimate request, and the project had been presented and approved, nor would the variance create a problem and was, therefore, in order.

Chairperson Swinghammer echoed the belief it was proper to approve the variance, as installing the fence and gates appeared to be a very good move on the Cloisters part; she was pleased it had improved the quality of life of the residents, both in the Cloisters and the surrounding community.

Ms. Rapaport concurred.

VII. ADJOURNMENT

Having nothing further to discuss, Chairwoman Swinghammer requested and received a motion and second to adjourn the meeting at 7:50 p.m.

Helen Swinghammer, Chairperson

ATTEST:

Date Accepted: _____

Colleen Tyrrell, Board Secretary

CT/cc



**VARIANCE DEVELOPMENT ORDER _____
TOWN OF LAUDERDALE-BY-THE-SEA, FLORIDA**

PROJECT NAME: The Cloisters
ADDRESS OF PROPERTY: 1420 South Ocean Boulevard
PROPERTY OWNER: Cloisters Co-op
APPLICANT: Edward J. Smith, President
APPLICANT ADDRESS: 1420 South Ocean Boulevard

REQUEST: To allow a variance from Section 30-313(4)(h) of the Town's Zoning Code to maintain a fence and gate within the front setback, pursuant to Sections 30-8, "Variances", and Section 30-13, Quasi-Judicial Procedures of the Lauderdale-By-The-Sea Code of Ordinances.

SECTION 1. FINDINGS. THIS MATTER came before the TOWN Commission of the TOWN of LAUDERDALE- BY-THE-SEA, Florida, on October 25, 2011, following due public notice. The TOWN Commission having considered the public testimony, evidence in the record, the testimony of the applicant, and the recommendation of the TOWN Board of Adjustment and administrative staff, finds that the application, as conditioned herein, will promote the public health, safety, welfare, order, comfort, convenience, appearance, or prosperity of the neighborhood and further, that the application does meet all of the criteria in Section 30-8, which are as follows:

1. Special conditions and circumstances exist affecting the land, structure or building involved preventing the reasonable use of such land, structure or building.
2. The circumstances, which cause the hardship, are peculiar to the property or to such a small number of properties that they clearly constitute marked exception to other properties in the district.

3. The literal interpretation of the provisions of the applicable regulation would result in a particular hardship upon the owner, as distinguished from a mere inconvenience.
4. The hardship is not self-created or the result of mere disregard for, or ignorance of the provisions of the regulations.
5. The variance is the minimum variance that will make possible the reasonable use of the property and that the variance will be in harmony with the general purposes and intent of the applicable zoning regulations and will not be injurious to the neighborhood or otherwise detrimental to the public welfare.
6. The grant of the variance does not permit a use not generally permitted in the district involved or a use expressly or by implication prohibited by the terms of the regulations of the district in which the affected property lies.
7. Financial hardship is not a basis for granting a variance unless the failure to grant the variance will render the property unusable as a permitted use in the zoning district in which the property lies.

SECTION 2. APPROVAL. The request to maintain a fence and gate within the front setback is hereby approved as shown on the Survey dated 12/01/2006 revised 07/25/2011 and attached in portion as Exhibit 1.

SECTION 3. CONDITIONS. The APPROVAL granted herein is subject to the following conditions:

1. Submission of a traffic statement certified by a state-licensed engineer, demonstrating that the vehicular use access and stacking area that exists between the motorized gate and the front property line will not create a traffic hazard for vehicles accessing the site and for vehicles driving northbound on SR AIA.
2. The applicant shall be required to apply to the Town for a building permit for the fence and gate within 60 days of the approval of the Variance.
3. The Variance Order shall be recorded in the Public Records of Broward County by the applicant, at his/her sole cost and expense, and a certified copy of the recorded document returned to the Town within 30 days of the close out of the building permit.

SECTION 4. VIOLATION OF CONDITIONS. Failure to adhere to the terms and conditions of this Development Order shall be considered a violation of the Town Code and persons found violating the conditions shall be subject to the penalties prescribed by the Town Code, including but not limited to, the revocation of any of the approval(s) granted in this Development Order. The Applicant understands and acknowledges that it must comply with all other applicable requirements of the Town Code before it may commence construction or operation, and that the foregoing approval in this Development Order may be revoked by the Town at any time upon a determination that the Applicant is in non-compliance with the Town Code or the conditions of this Approval.

SECTION 5. APPEAL. In accordance with Section 30-13(d)(12) of the Town Code, the Applicant, or any aggrieved property owner in the area, may appeal the decision of the Town Commission in the Circuit Court of Broward County, Florida, in accordance with the Florida Rules of Appellate Procedure.

SECTION 6. EFFECTIVE DATE. This Development Order shall become effective upon Approval by the Commission.

APPROVED this ____ day of _____, 2011.

MAYOR ROSEANN MINNET

ATTEST:

June White, Town Clerk, CMC

Approved as to form:

Susan L. Trevarthen, Town Attorney

