

# TOWN OF LAUDERDALE-BY-THE-SEA

## BOARD OF ADJUSTMENT AGENDA

*Town Commission Meeting Room*

*Tuesday, October 4, 2011 at 6:30 P.M.*

**I. CALL TO ORDER**

**II. PLEDGE OF ALLEGIANCE TO THE FLAG**

**III. APPROVAL OF MINUTES**

Regular Meeting – July 15, 2009

**IV. 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.**

**V. UPDATES/BOARD MEMBER CONCERNS**

**VI. ADJOURNMENT**

THE TOWN OF LAUDERDALE-BY-THE-SEA WILL FURNISH APPROPRIATE AIDS AND SERVICES NECESSARY TO AFFORD AN INDIVIDUAL AN EQUAL OPPORTUNITY TO PARTICIPATE IN MEETINGS OF THE BOARD OF ADJUSTMENTS. IN DETERMINING WHAT TYPE OF AUXILIARY AID AND SERVICE IS NECESSARY, THE TOWN OF LAUDERDALE-BY-THE-SEA, WILL GIVE PRIMARY CONSIDERATION TO THE REQUESTS OF THE INDIVIDUAL WITH DISABILITIES. PLEASE CONTACT THE TOWN CLERK AT LEAST 48 HOURS PRIOR TO THE MEETING TO MAKE ARRANGEMENTS FOR APPROPRIATE AUXILIARY AIDS. (AUXILIARY AIDS AND SERVICES, 56 FED. REG. 35721, SECTION 36.160(B)).

IF ANY PERSON DECIDES TO APPEAL ANY DECISION MADE BY THE BOARD OF ADJUSTMENTS WITH RESPECT TO ANY MATTER CONSIDERED AT SUCH MEETING OR HEARING, HE/SHE WILL NEED A RECORD OF THE PROCEEDINGS AND FOR SUCH PURPOSES MAY NEED TO INSURE THAT A VERBATIM RECORDING OF THE PROCEEDINGS IS MADE, WHICH RECORD INCLUDES THE TESTIMONY AND EVIDENCE UPON WHICH THE APPEAL IS TO BE BASED.

# TOWN OF LAUDERDALE-BY-THE-SEA

## BOARD OF ADJUSTMENT MINUTES

*Town Commission Meeting Room*

*Wednesday, July 15, 2009 at 11:00 A.M.*

### I. CALL TO ORDER

Chairman Thomas Carr called the meeting to order at 11:00 a.m. Members present were Chairman Thomas Carr, Vice Chair Joseph Couriel, and George Crossman. Also present were Acting Town Attorney Nancy Stuparich, Code Compliance Officer Kam Parker and Board Secretary Colleen Tyrrell.

### II. PLEDGE OF ALLEGIANCE TO THE FLAG

The Pledge of Allegiance was recited.

### III. APPROVAL OF MINUTES

Regular Meeting – May 20, 2009

All voted in favor to approve the May 20, 2009 minutes as presented.

Acting Town Attorney Nancy Stuparich swore in all those that would be testifying at the hearing.

### IV. OLD BUSINESS ( Tabled from May 20, 2009 )

- A. Project: To allow the existing shed, installed without permit, to be located within the front yard setback;  
To allow a proposed swimming pool to be constructed within the front yard setback and within 10' of a public right of way;  
To allow the required swimming pool enclosure (fence) to be located within the front yard setback and within 10' of a public right of way

Applicant: Karen A. D'Uva  
Location: 1658 West Terra Mar Drive  
Request: Description of Variance request: The property owner is seeking three (3)

#### Variances:

1. From the provision of the Section 30-211(c) (1) and Section 30-313(31) to allow the existing shed, which was installed without permit, to be located within the required front yard setback and within ten (10) feet of a public right-of-way. The proposed location is five (5) feet two and three eight (2 3/8) inches from the front property line, rather than the twenty-five (25) feet as required by Code.
2. From the provision of Section 30-313(29) to allow a swimming pool to be constructed within the required front yard setback and within ten (10) feet of a public right-of-way. The proposed pool location to be constructed is three (3) feet one and a half (1 1/2) inches from the front property line rather than the twenty-five (25) feet as required.
3. From the provision of Section 30-313 (4) (e), to allow the required swimming pool enclosure (fence) to be located within the required front yard setback and within ten (10) feet of a public right-of-way. The proposed location for the fence is directly on the front property line rather than the twenty-five (25) feet required.

Karen D'Uva and her attorney, Paul G. Finizio, were present at the hearing to present the history of Mrs. D'Uva's variance request. This matter was brought before the Board of Adjustment on May 20, 2009 at which time the board recommended that this item be tabled to the July 15, 2009 hearing to allow the applicant time to appear before the Town Commission for approval to change the designated front yard from Seaward Drive to West Terra Mar Drive and to re-submit plans reducing the size of the pool and/or shed. Mrs. D'Uva said that she was advised that she would have to apply for another variance to have the address changed. Mrs. D'Uva stated that two years ago she and her husband and their had spoken to Tatiana Solovieva and was told that Tatiana would concur with the address change to West Terra Mar Drive. So they proceeded on those comments. Mrs. D'Uva said that you can only enter her house through the front door that is on Seagrape Drive and verified that her mail is delivered to West Terra Mar Drive which is her front yard. Mrs. D'Uva said that she was confused and was not sure if she should proceed with changing the address designation, however, if it would help this cause she would rather leave everything as is and try to get the variances with the front yard the way it is.

Chairman Carr referred to the diagram presented to the board in the packet and noted that the West Terr Mar side was the longer of the property lines which was 71.19' which he thought was part of the criteria in determining the front and side yards. Mr. Carr said that Mrs. D'Uva was also before the Board of Adjustment back in 2001 and they accepted the address change on West Terra Mar Drive. Mr. Carr said that in his opinion he would go along with that.

Mrs. D'Uva said that she did not want to go again go through who said what, but the two people that were working in the Planning and Zoning Department were no longer working for the Town. Mrs. D'Uva said that she researched for hours to find the variance that she obtained in 2001 to put in her rear patio. Mrs. D'Uva referred to Mr. Noah's letter that stated that the swimming pool would devalue the property and said that statement was an ignorant statement and that everyone knows that if you put in a pool, the real estate for the house would go up. Mrs. D'Uva felt that she was being discriminated against because she made a complaint to the building department about Mr. Noah and that is when all of these issues came up about her shed.

Mrs. D'Uva said that she has returned with new plans and said that she has spent almost \$4,000 in trying to get this resolved. Mrs. D'Uva said that she could not afford to spend money on any more variances or surveys, architects or attorneys and all she wanted was to be allowed a few feet. Mrs. D'Uva said that this was a sentimental matter for her since you husband recently passed away and the shed contains all of his tools and personal things.

Attorney Finizio said that the conditions that exist there especially in this situation since shed is hidden behind the hedges and does not create any obstruction and there was no safety violation and that esthetically the shed does not detract from it and ask that the board approve the variance.

Chairman Carr commented that the swimming pool would be now 5 feet into the property line which was just to the edge of the patio and assumed Mrs. D'Uva would be staying with the 3 foot wide perimeter around the pool. Chairman Carr said that Mrs. D'Uva was also proposing to move the shed about 4 feet closer to the home.

Attorney Finizio said that they would do whatever the board wanted and it would be a difficult thing to move the shed, however, they do not feel this should be needed and would like to keep the shed in its place.

Chairman Carr said that he went by the property a few days ago and that he could not see the shed at all behind the hedges. Chairman Carr verified with Mrs. D'Uva that the shed was hurricane secured. Chairman Carr stated that the Town has certain standards and that is why Mrs. D'Uva was before the Board of Adjustment, however, the board would try and take everything into consideration. Chairman Carr closed his comments and asked those present to come forward for public comments.

Kay Bayman of 1603 W. Terra Mar Drive stated that he lived across from Karen D'Uva for a number of years. He knew intimately both Karen and her husband, Robert. Mr. Bayman said that this shed was a pet project of Robert's

and said that they were very respectful and considerate of others and that whatever they did, they took seriously. Mr. Bayman took special interest in the swimming pool because it was his opinion that it would enhance the value of the property and the neighborhood because there were very few pools on the island. Mr. Bayman said that he finds the project worthwhile and wanted to touch on the moral aspect of the family because it was the dream of Robert's to put in a swimming pool and asked that the project be revived in memory of Robert.

John Seville a resident of 232 Oleander Way stated that he has been a neighbor of the D'Uva's for six years and said that he was in full support of the variance request and considered it an asset to the area and to her property values.

Chuck Gress lives on Terra Mar Way and is also a neighbor of Karen's. Mr. Gress said that the shed was completely hidden by the hedges and did not impose any devaluation of the property. Mr. Gress said that Karen was a great neighbor and asked the board for a positive decision on her request for a variance.

Mr. Couriel asked Officer Parker why Seaward Drive was considered Mrs. D'Uva's front yard when her address is located on West Terra Mar Drive.

Officer Parker indicated that per Town Code on a corner lot the shorter of the two fronts would be designated as the front yard.

Mr. Couriel verified with Officer Parker that if the designated front address was changed, a new variance would be required and for comments from Acting Town Attorney Stuparich.

Attorney Stuparich agrees with Officer Parker's statements regarding Town Code designation of front yards and confirmed that a variance would be required.

Mr. Couriel stated that Mrs. D'Uva must seek a new variance to change the front yard and commented that he would not have any problem with approving the change of address.

Attorney Finizio asked that the change of address be considered at this hearing.

Officer Parker advised that the board would be unable to consider the change of designated front because of the Public Notice Requirements.

Mr. Couriel referred to the table that was done by Officer Parker that was included in the backup material from the previous May 20, 2009 Board of Adjustment hearing and asked how the dimensions would vary if the designated front yard was changed to West Terra Mar Drive.

Officer Parker responded and reviewed each item separately. Regarding the shed, Officer Parker advised that the new encroachment would be 9' 9 5/8 " which would be the encroachment into the required 15 foot setback from the public right of way. Regarding the swimming pool, the new encroachment would be 6' 6" which would encroach into the required 10 foot setback from the public right of way. Regarding the fence, the new encroachment would be 10 feet which would encroach into the required 10 foot setback from the public right of way. Either way, the shed would encroach into the public right of way.

Mr. Couriel stated that if the designated front was changed there would be a reduction in the required variances. Mr. Couriel felt that, the impact of the shed and the swimming pool would be minimized with the change of address.

After further discussion, Attorney Finizio said that this matter was form over function and asked that the Board of Adjustment approve the requested variance as submitted now and said that a new variance was not needed.

Chairman Carr reviewed and discussed the submitted pervious/impervious calculations and advised that it appears that Mrs. D'Uva has at least 50% pervious property which would not be an issue. Chairman Carr said that in his view, moving the shed would encroach no matter where it was moved and it was completely hidden from view by the hedges and that was not an issue.

Mr. Crossman expressed his concerns with the location of the swimming pool but was not concerned with the location of the shed. Mr. Crossman said that no matter where the shed was moved it would still encroach into the public right of way.

Mr. Couriel felt that in his opinion the shed would be a problem if it was moved closer to the house and he was more inclined to leave the shed in line with the smaller pool. He agreed that if the address was changed to West Terra Mar Drive, and the shed remains in its current location, and the pool was changed slightly, no matter what, Mrs. D'Uva would have to spend money either to move the shed or apply for an additional variance.

Attorney Finizio again asked that the variance be approved as presented at the hearing.

Town Attorney Stuparich commented that this is the way the code is written and that staff has to apply the code in accordance with how it is written. Attorney Stuparich said that the change of address was not included in the original Public Notice and would therefore have to go before the Town Commission for approval.

Officer Parker commented that the residence is now a legal conforming building and if the address change was approved by the Town Commission, the residence would become non-conforming.

During the continued discussion regarding the setbacks of the pool, Officer Parker clarified for the board that there was no decking indicated on the revised plans.

Mr. Couriel made a motion, the motion was discussed in great detail and was later withdrawn. Mr. Couriel restated the motion to grant the variance with the condition that the Applicant go before the Town Commission to gain approval to change the designated front in order to allow the shed to remain in its current location and to allow the shed to encroach 9 feet 9 5/8 inches into the required 15 foot setback from the public right of way; and to allow the revised smaller swimming pool to encroach 4 feet 9 5/8 inches into the required 10 foot setback from the public right of way; and to allow the fence to encroach all 10 feet of the required 10 foot setback from the public right of way. The motion was seconded by Mr. Crossman. In a roll-call vote, all voted in favor. The motion carried 3-0.

## V. NEW BUSINESS

A..	Applicant:	Ezer Investments, LLC c/o Joe Brennan
	Location:	101 E. Commercial Boulevard
	Request:	Description of Variance request: <b><u>The Applicant is requesting an exception to the Town's Zoning Code, Chapter 30-315 ( 4 ) ( j ), to maintain a chain link fence to enclose a dumpster in the B-1 Zoning District.</u></b>

Joe Brennan, Business Manager and Secretary/Treasurer of 101 Ocean A/KA Beach Restaurant Inc. was present at the hearing. Mr. Brennan explained that a permit was issued and a final inspection was approved by the Zoning Department. He was later advised that the permit was issued in error and that the Town Code prohibits chain link fences in the B1 District. Mr. Brennan presented photos of the purpose-built enclosure and photos of wooden dumpster enclosures for comparison. Mr. Brennan said that it would be a hardship to remove the chain link fence enclosure and requested that the Board grant an exception to the Town's Zoning Code and approve the variance request.

After further discussion Mr. Couriel said that the dumpster enclosure faced the Municipal Parking Lot and that he noticed that the dumpster enclosure was kept open and it looked unsightly.

Chairman Carr said that he thought the appearance of the chain link fence with the heavy grade green vinyl slats that were inserted to block the view was more attractive than the wooden fence enclosures and suggested that some kind of spring mechanism could be installed to keep the door closed on the dumpster enclosure.

Mr. Crossman made a motion to for the Board of Adjustment to approve the variance as requested and recommends that this be an exception to the Town's Code Chapter 30-315 (4) (i) that prohibits chain link fences in the B1 Zoning District.

Mr. Couriel seconded the motion with the stipulation that some kind of automatic mechanism be installed to keep the gate closed on the dumpster enclosure.

In a roll call vote, all voted in favor. The motion carried 3 – 0.

**V. UPDATES/BOARD MEMBER CONCERNS**

There were no updates or board member concerns.

**VI. ADJOURNMENT**

Having nothing further to discuss, Chairman Carr adjourned the meeting at 1:45 P.M. July 15, 2009

\_\_\_\_\_  
Thomas Carr, Chairman

ATTEST:

Date Accepted: \_\_\_\_\_

Colleen Tyrrell, Board Secretary

\_\_\_\_\_



**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 *B Bentley*  
From: Jeff Bowman, Zoning/Code Supervisor *JB*  
Date: August 22, 2011  
Meeting Date: October 5, 2011  
Re: Cloisters Co-Op / Variance Request Application for Fencing in the RM-25 Zoning District.

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**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.

Board of Adjustment  
October 5, 2011 Meeting

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, FLORIDA  
ZONING VARIANCE

PROPERTY INFORMATION

Date: 8/8/2011

Property Address: 1420 SOUTH OCEAN BLVD.

Legal Description: Lot \_\_\_\_\_ Block \_\_\_\_\_ Folio \_\_\_\_\_

Subdivision \_\_\_\_\_

Zoning District: RM-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

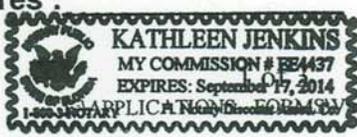
\*Letter required from Owner if represented by Agent.

Signature of Applicant/Owner: [Handwritten Signature]

Print Name of Applicant/Owner: Edward J. Smith

Notary: Kathleen Jenkins

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) VEHICLE  
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 VEHICLE 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 LBTS AND BROWARD  
COUNTY FROM EDWARD J SMITH PRESIDENT  
OF THE CLOISTERS 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 BUTTER

**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.**







CONC. SDWK 6" THICK 3000 PSI  
O REINFORCEMENT

V10°59'14"E

STERLY RIGHT OF WAY LINE

EXIST. WOODEN  
PLANTER BOX

CURB & GUTTER

CONC. WALK

PROP.  
WHITE (T)

204.21'

REMOVE  
EXISTING  
WHITE  
PAINT  
SAW-CUT &  
MATCH-EXIST.  
ASPHALT

REMOVE  
EXISTING  
WHITE  
PAINT

STOP

FOUND  
IRON PIPE  
NO I.D.

EXIST. FENCE

REMOVE  
EXISTING  
ASPHALT

SEE DETAIL  
SHEET C2  
8.13'

6' lattice fence  
TO BE REMOVED

2.05'

N-0.46'

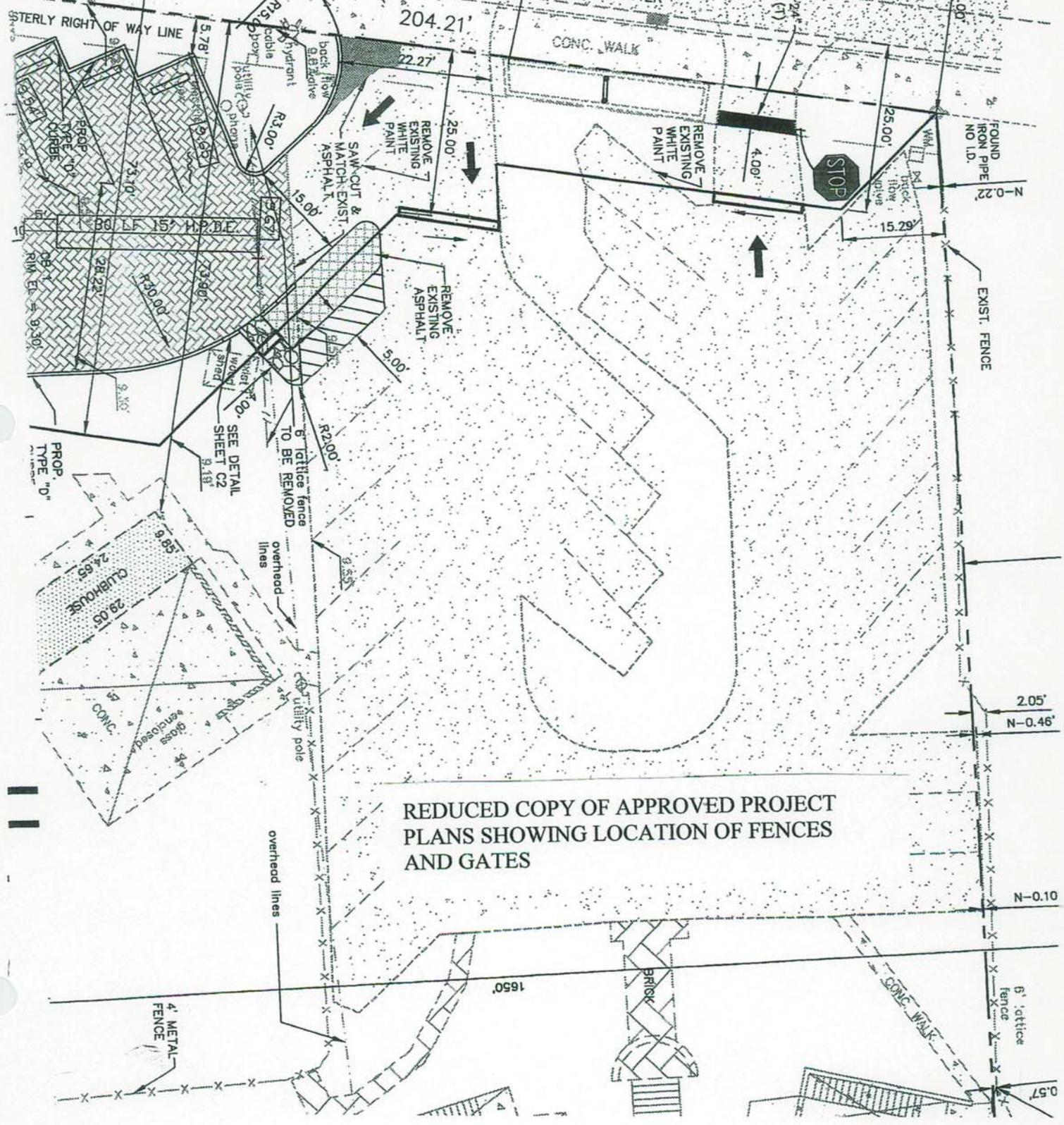
REDUCED COPY OF APPROVED PROJECT  
PLANS SHOWING LOCATION OF FENCES  
AND GATES

N-0.10

4' METAL  
FENCE

6' lattice  
fence

0.57'



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.

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# GATOR ENGINEERING CONSULTANTS, P.A.

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July 7, 2011

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

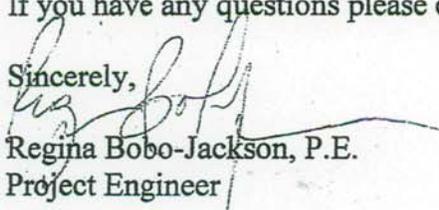
Subject: The Cloisters – Fence Permitting  
1420 S. Ocean Boulevard  
Lauderdale By the Sea, FL 33308

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](http://www.gatorengineering.com)

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(14)

**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!

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



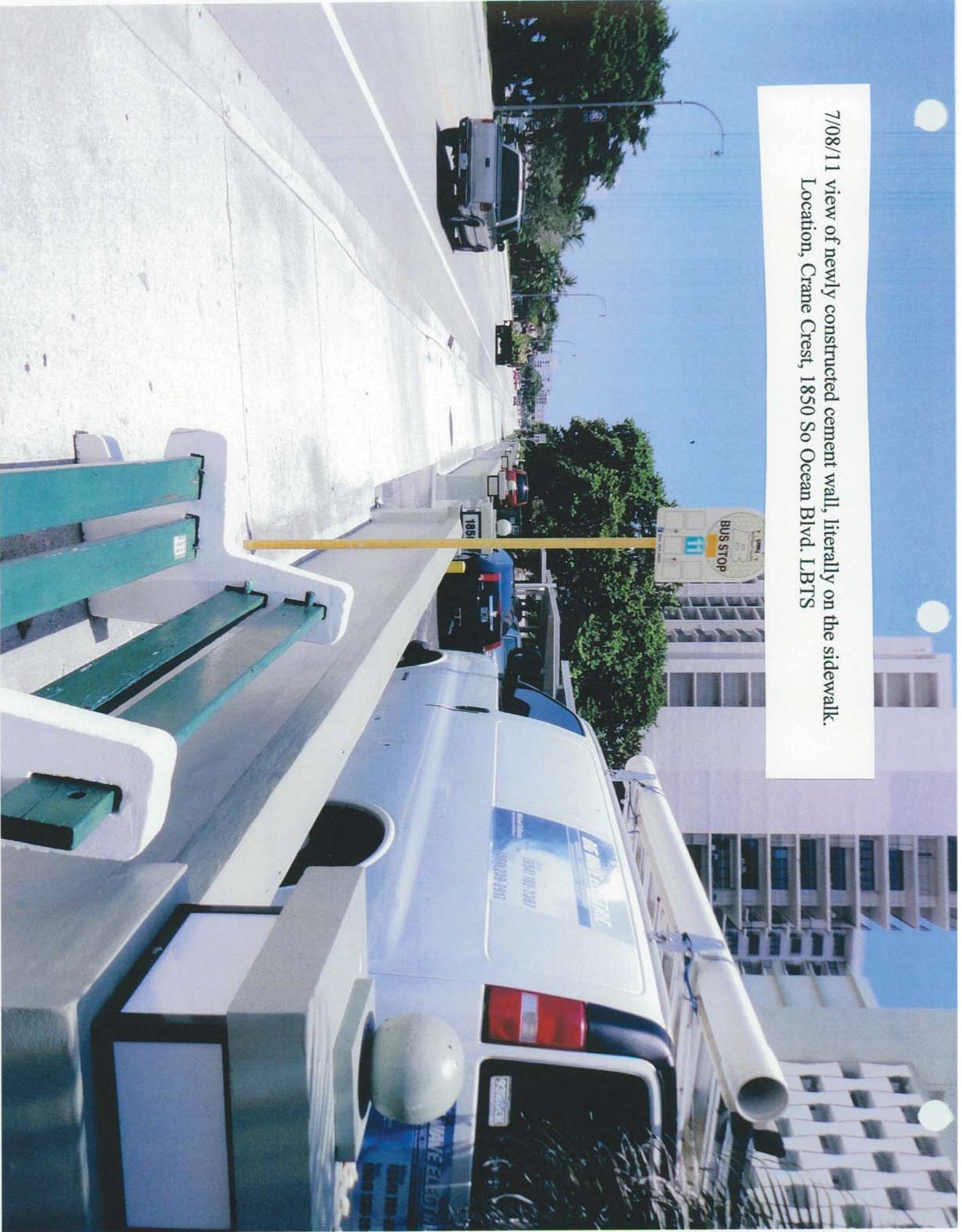
7/08/11 View of gate and fence. 11 feet 3 inches from  
Sidewalk. Location, Gardens By The Sea, 1541  
South Ocean Blvd, BTS



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



**CECELIA WARD AICP  
PRESIDENT  
JC CONSULTING ENTERPRISES, INC.**

102 NE 2<sup>nd</sup> Street #145      Mobile: (954) 815-4298  
Boca Raton, Fl 33432      PH: (561) 451-2937  
Fax: (561) 451-2939  
E-mail: cward@jcconsultinginc.com

**MEMORANDUM**

**To: Jeff Bowman, Zoning / Code Supervisor**

**From: Cecelia Ward, AICP / JC Consulting Inc.**

**Date: August 29, 2011**

**Re: Review of Application for Variance for Fence and Motorized Gate  
Cloisters Co-Op 1420 South Ocean Boulevard  
Town of Lauderdale-By-The-Sea, Fl**

The following provides my findings and recommendations regarding the application submitted for the residential property located at 1420 South Ocean Blvd. (Cloisters Co-Op) for a Variance from Chapter 30 - Town of Lauderdale-By-The-Sea Unified Land Development Regulations, requesting relief from the requirements of Section 30-313 (4) (h) of the Town of Lauderdale-By-The-Sea Unified Land Development Regulations to permit a fence and motorized gate to be constructed within the front setback as indicated on the attached survey (signed and updated 7-25-11), which ranges from 0 feet setback starting at the northwest corner of the property running south 70 feet to a minimum 0" to 15'.85" setback, where a 25 foot front setback is otherwise required by the Code as cited below.

Sec. 30-313. - General provisions

*(4) Height, design, and location of fences, walls, hedges.*

**h.**

*Visibility limitations.* No fences or walls shall be constructed within 25 feet of the front property line or within 30 feet of the clear site triangle at the corner of the property on residential lots. No walls, fences, hedges or plantings shall be planted or maintained to a height exceeding 30 inches above the crown of the roadway within sight visibility triangles: within 25 feet of the intersection of the front and side street property lines, within ten feet of any driveway, within ten feet from the intersection point of the edge of a driveway and alley or street, and within 15 feet from the intersection point of the extended property lines at an alley and a street.

**Findings and Recommendations**

I have performed a review of the following documents

- Town of Lauderdale-By-The-Sea Adopted Comprehensive Plan.
- Town of Lauderdale-By-The-Sea Unified Land Development Regulations (Chapter 30).
- Application information submitted by the applicant, Edward J. Smith, President of the Cloisters Co-Op.

I have also visited the subject property and the surrounding area.

Based on the above, I recommend approval of the Variance as requested, *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. Should the Variance be approved, that the applicant be required to apply to the Town for a building permit for the fence and gate within 60 days of the approval.
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.

**Summary of Application for a Variance as Per Section 30- 8 of the ULDRs:**

1. The subject property is a residential apartment use (20 units) located at 1420 South Ocean Boulevard (Cloisters Apartments).
2. Section 30-313 (4) (h) of the Town's ULDRs requires a minimum setback for a fence and gate of no less than 25 feet from the front property line.
3. A fence and motorized gate has been installed on the subject property in violation of the required minimum setback [at a minimum 0" to 15' 85"]. According to the applicant, the fence and gate is necessary to provide security for the residences of the Cloisters Co-Op apartments.

## Exhibit 2

Compliance with the required setback would result in a loss of 3 to 4 existing parking spaces, leaving only 19 to 20 parking spaces to serve the existing residents and their guests. This would result in less parking, thereby increasing the nonconforming parking status of the site.

According to Section 30-318 (b) of the ULDRs, multi-family units are required to provide one and a half ( 1 ½) parking spaces for units less than three (3) bedrooms and two (2) for three (3) or more.. This results in a requirement of 30 parking spaces. According to the Town, the subject property was annexed into the Town with less parking required by the Broward County zoning code. As such, the existing parking is legal nonconforming.

If the fence and gate were to be located in accordance with the 25 foot front setback requirement, additional parking spaces would need to be removed, further reducing the availability of parking for the unit residents and their guests.

4. There is an existing large Sea Grape tree that would need to be removed to accommodate the fence at the required 25 foot front yard setback.
5. A review of the properties in close proximity to the subject site reveals that there are other residential developments that have access to their sites from SR AIA and that have fences and gates within the 25 foot front yard setback.

According to the Town, when the Town annexed this area it was agreed that existing development would be reviewed in accordance with the Broward County regulations until the two codes were unified. The codes were unified in 2007. Fencing prior to 2007 in the north end of Town was not prohibited in the front setbacks per the Broward County zoning code; therefore all fencing currently in the front setbacks is considered legal non-conforming.

As such, approval of the fence and gate within the front yard as requested would be consistent with the pattern established for similar development within the area.

**Variance Criteria - Section 30-8 (3)**

The following addresses the criteria to be applied in the review of Variance applications, as contained in Section 30-8. (3), as follows:

- a. 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.

- b. The circumstances, which cause the hardship, are peculiar to the property or to such as 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.

- c. 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.

- d. 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.

## Exhibit 2

Such approval cannot be granted by the Town without approval of the Variance from the setback requirements of the Code, which is the purpose of this application.

- e. 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.

- f. The granting 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.

- g. 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.