

PETITION OF APPEAL FROM DECISION OF
MIAMI-DADE COUNTY COMMUNITY ZONING APPEALS BOARD
TO THE BOARD OF COUNTY COMMISSIONERS

CHECKED BY CD AMOUNT OF FEE \$2594.14

RECEIPT # I200414537

DATE HEARD: 12/2/04

BY CZAB # 2

RECEIVED
DEC 20 2004

ZONING HEARINGS SECTION
MIAMI-DADE PLANNING AND ZONING DEPT.
BY [Signature]

DATE RECEIVED STAMP

This Appeal Form must be completed in accordance with the "Instruction for Filing an Appeal" and in accordance with Chapter 33 of the Code of Miami-Dade County, Florida, and return must be made to the Department on or before the Deadline Date prescribed for the Appeal.

RE: Hearing No. 204-57

Filed in the name of (Applicant) ROY R. LUSTIG, TRUSTEE

Name of Appellant, if other than applicant ART PAPANSTAVROS

Address/Location of APPELLANT'S property: 2429 NE 184 TERRACE
MIAMI, FL. 33160

Application, or part of Application being Appealed (Explanation):
ZONING CHANGE FROM RU-1 TO RU5-A AND
ALL VARIANCES GRANTED BY COMMUNITY COUNCIL No. 2

Appellant (name): ART PAPANSTAVROS

hereby appeals the decision of the Miami-Dade County Community Zoning Appeals Board with reference to the above subject matter, and in accordance with the provisions contained in Chapter 33 of the Code of Miami-Dade County, Florida, hereby makes application to the Board of County Commissioners for review of said decision. The grounds and reasons supporting the reversal of the ruling of the Community Zoning Appeals Board are as follows:
(State in brief and concise language)

ZONE CHANGE WILL DIVERT TRAFFIC FROM MIAMI GARDENS DRIVE
THROUGH RESIDENTIAL NEIGHBORHOOD FOR ACCESS TO OFFICE BUILDING
WHICH WOULD DISRUPT THE SAFETY, TRANQUILITY AND OVERALL
WELFARE OF THE NEIGHBORHOOD WHICH IS NOT IN
KEEPING WITH POLICY 4C OF THE COMP.

APPELLANT MUST SIGN THIS PAGE

Date: 20 day of DECEMBER, year: 2004

Signed Art Papastavros

ART PAPAStAVROS

Print Name

2429 NE 184 TERRACE
MIAMI, FL. 33160

Mailing Address

(954) 608-8334 (954) 236-0972

Phone

Fax

REPRESENTATIVE'S AFFIDAVIT

If you are filing as representative of an association or other entity, so indicate:

_____ Representing

_____ Signature

_____ Print Name

_____ Address

_____ City State Zip

_____ Telephone Number

Subscribed and Sworn to before me on the 20th day of December, year 2004

Dianne Hough
Notary Public



DIANNE HOUGH
MY COMMISSION # DD 154631
EXPIRES: December 6, 2008
Bonded Thru Budget Notary Services

(stamp/seal)

Commission expires:

APPELLANT'S AFFIDAVIT OF STANDING
(must be signed by each Appellant)

STATE OF FLORIDA

COUNTY OF DADE

Before me the undersigned authority, personally appeared ART PAPANSTAVROS
(Appellant) who was sworn and says that the Appellant has standing to file the attached appeal
of a Community Zoning Appeals Board decision.

The Appellant further states that they have standing by virtue of being of record in Community
Zoning Appeals Board matter because of the following:

(Check all that apply)

- 1. Participation at the hearing
- 2. Original Applicant
- 3. Written objections, waivers or consent

Appellant further states they understand the meaning of an oath and the penalties for perjury,
and that under penalties of perjury, Affiant declares that the facts stated herein are true.

Further Appellant says not.

Witnesses:

Earl Jones
Signature

Earl Jones
Print Name

Art Papanst
Appellant's signature

ART PAPANSTAVROS
Print Name

Ronald Connolly
Signature

Ronald Connolly
Print Name

Sworn to and subscribed before me on the 20th day of December, year 2004.

Appellant is personally know to me or has produced Drivers id as
identification.

Dianne Hough
Notary
(Stamp/Seal)

Commission Expires:



04	52	42
Sec.	Twp.	Range

RECEIVED
204-57
FEB 16 2004

**ZONING HEARING APPLICATION
MIAMI-DADE COUNTY
DEPARTMENT OF PLANNING & ZONING**

ZONING HEARING
MIAMI-DADE PLANNING AND ZONING DEPT.

BY [Signature]

LIST ALL FOLIO #S: 30-2204-001-0200 and 30-2204-001-0210

Date Received

1. **NAME OF APPLICANT** (Provide complete name of applicant, exactly as recorded on deed, if applicable. If applicant is a lessee, an executed 'Owner's Sworn-to-Consent' and copy of a valid lease for 1 year or more is required. If the applicant is a corporation, trust, partnership, or like entity, a 'Disclosure of Interest' is required).

ROY R. LUSTIG, TRUSTEE of the 2390 Gardens Florida Land Trust dated October 15, 2002

2. **APPLICANT'S MAILING ADDRESS, TELEPHONE NUMBER:**

Mailing Address: 2600 Douglas Road, #908
City: Coral Gables State: FL Zip: 33134 Phone#: _____

3. **OWNER'S NAME, MAILING ADDRESS, TELEPHONE NUMBER:**

Owner's Name (Provide name of ALL owners): Same as above
Mailing Address: Same as above
City: _____ State: _____ Zip: _____ Phone#: _____

4. **CONTACT PERSON'S INFORMATION:**

Name: Stanley B. Price, Esquire/Brian S. Adler, Esquire Company: Bilzin Sumberg Baena Price & Axelrod LLP
Mailing Address: 200 South Biscayne Boulevard, Suite 2500
City: Miami State: FL Zip: 33131
Phone#: (305) 350-2374 and (305) 350-2351 Fax#: (305) 351-2204 and (305) 351-2206
E-mail: sprice@bilzin.com and badler@bilzin.com

5. **LEGAL DESCRIPTION OF ALL PROPERTY COVERED BY THE APPLICATION**

(Provide complete legal description, i.e., lot, block, subdivision name, plat book & page number, or metes and bounds. Include section, township, range. If the application contains multiple rezoning requests, then a legal description for each sub-area must be provided. Attach separate sheets, as needed).

See Exhibit "A".

AMENDED

6. **ADDRESS OR LOCATION OF PROPERTY** (For location, use description such as NE corner of, etc.)
2390 N.E. 186th Street (Miami Gardens Drive) and adjacent property to the west, Miami, Florida

7. **SIZE OF PROPERTY** (in acres): 0.385+/- (divide total sq. ft. by 43,560 to obtain acreage)

8. **DATE** property acquired leased: 10/02 9. **Lease term:** _____ years
(month & year)

10. **IF CONTIGUOUS PROPERTY IS OWNED BY THE SUBJECT PROPERTY OWNER(S)**, provide complete legal description of said contiguous property.

Yes. See Exhibit "B".

11. **Is there an option to purchase** or lease the subject property or property contiguous thereto? No Yes (If yes, identify potential purchaser or lessee and complete "Disclosure of Interest" form): D&J HOLDINGS AND/OR ASSIGNS

12. **PRESENT ZONING CLASSIFICATION:** RU-1

13. **APPLICATION REQUESTS** (Check all that apply and describe nature of the request in space provided) (DBC's require special exception to permit site plan approval unless rezoning 3 acres or less to residential categories)

District Boundary Changes (DBC) [Zone class requested]: from RU-1 to RU-5A

Unusual Use: _____

Use Variance: _____

Non-Use Variance: of the front and side setbacks to permit 0-foot setbacks where 75 feet and 7.5 feet, respectively, are required; and a non-use variance to permit an accessory structure to be located in front of a principal structure.

Special Exception: _____

Modification of previous resolution/plan: _____

Modification of Declaration or Covenant: _____

14. **Has a public hearing been held on this property within the last year & a half?** no yes. If yes, provide applicant's name, and date, purpose and results of hearing, and resolution number:

15. **Is this hearing is as a result of a violation notice?** no yes. If yes, give name to whom the violation notice was served: _____ and describe the violation:

16. **Describe structures on the property:** None

OWNERSHIP AFFIDAVIT FOR TRUSTEE

STATE OF FLORIDA

Public Hearing No. _____

COUNTY OF MIAMI-DADE

Before me, the undersigned authority, personally appeared, ROY R. LUSTIG, TRUSTEE OF THE 2390 GARDENS FLORIDA LAND TRUST DATED OCTOBER 15, 2002, hereinafter the Affiant, who being first duly sworn by me, on oath, deposes and says:

- 1. Affiant is the fee owner of the property which is the subject of the proposed hearing.
2. The subject property is legally described as: See Exhibit "A".
3. Affiant understands this Affidavit is subject to the penalties of law for perjury and the possibility of voiding of any zoning granted at public hearing.

Witnesses:

Signature [Handwritten Signature]

[Handwritten Signature]
Roy R. Lustig, Trustee of the 2390 Gardens Florida Land Trust dated October 15, 2002

Print Name MARILYN GODDY

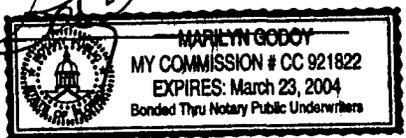
Signature [Handwritten Signature]

Print Name MARSHALL KASEN

Print Name

Sworn to and subscribed before me on the 17th day of February, 2004. Affiant is personally known to me or has produced identification: _____ as

Notary [Handwritten Signature] (Stamp/Seal)



My Commission Expires: _____

APPLICANT'S AFFIDAVIT

The Undersigned, first being duly sworn depose that all answers to the questions in this application, and all supplementary documents made a part of the application are honest and true to the best of (my)(our) knowledge and belief. (I)(We) understand this application must be complete and accurate before the application can be submitted and the hearing advertised.

OWNER OR TENANT AFFIDAVIT

I, ROY R. LUSTIG, TRUSTEE, being first duly sworn, depose and say that I am the [X] Owner [] tenant of the property described and which is the subject matter of the proposed hearing.



[Signature]
Roy R. Lustig, Trustee of the 2390 Gardens Florida Land Trust
Dated October 15, 2002
Notary Public: [Signature]
Commission Expires: [Signature]

Sworn to and subscribed to before me this 17th day of February, 2004.

CORPORATION AFFIDAVIT

I, _____ being first duly sworn, depose and say that I am the [] President [] Vice-President [] Secretary [] Asst. Secretary of _____, and as such, have been authorized by the corporation to file this application for public hearing; and that said corporation is the [] owner [] tenant of the property described herein and which is the subject matter of the proposed hearing.

Attest: _____

(Corp. Seal)

Sworn to and subscribed to before me this _____ day of _____, 2004.

Notary Public: _____
Commission Expires: _____

PARTNERSHIP AFFIDAVIT

(I)(WE), _____, being first duly sworn, depose and say that (I am)(we are) partners of the hereinafter named partnership, and as such, have been authorized to file this application for a public hearing; and that said partnership is the [] owner [] tenant of the property described herein which is the subject matter of the proposed hearing.

(Name of Partnership)

By _____ %
By _____ %

By _____ %
By _____ %

Sworn to and subscribed to before me this _____ day of _____, _____.

Notary Public: _____
Commission Expires: _____

ATTORNEY AFFIDAVIT

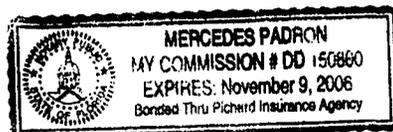
I, Brian S. Adler, Esq., being first duly sworn, depose and say that I am a State of Florida Attorney at Law, and I am the Attorney for the Owner of the property described and which is the subject matter of the proposed hearing.

[Signature]
Brian S. Adler

Sworn to and subscribed to before me

Notary Public: Mercedes Padron

173190\10719\# 662772 v.2
2/13/04 11:22 AM



RESPONSIBILITIES OF THE APPLICANT

I AM AWARE THAT:

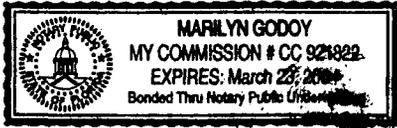
1. The Public Works Department, the Department of Environmental Resources Management (DERM), and other County agencies review and critique zoning applications which may affect the scheduling and outcome of applications. These reviews may require additional public hearings before DERM's Environmental Quality Control Board (EQCB), or other County boards, and/or the proffering of agreements to be recorded. I am also aware that I must comply promptly with any DERM or Public Works conditions and advise this office in writing if my application will be withdrawn.
2. Filing fees may not be the total cost of a hearing. Some requests require notices to be mailed to property owners up to a mile from the subject property. In addition to mailing costs, fees related to application changes, plan revisions, deferrals, re-advertising, etc., may be incurred. Applications withdrawn within 60 days of the filing are eligible for a refund of 50% of the hearing fee but after that time hearings withdrawn or returned will be ineligible for a refund. I understand that fees must be paid promptly.
3. The South Florida Building Code requirements may affect my ability to obtain a building permit even if my zoning application is approved; and that a building permit will probably be required. I am responsible for obtaining permits and inspections for all structures and additions proposed, or built without permits. And that a Certificate of Use and Occupancy must be obtained for the use of the property after it has been approved at Zoning Hearing, and that failure to obtain the required permits and/or Certificates of Completion or of Use and Occupancy will result in enforcement action against any occupant and owner. Submittal of the Zoning Hearing application may not forestall enforcement action against the property.
4. The 3rd District Court of Appeal has ruled that zoning applications inconsistent with the Comprehensive Development Master Plan (CDMP) cannot be approved by a zoning board based upon considerations of fundamental fairness. Therefore, I acknowledge that if the hearing request is inconsistent with the CDMP and I decide to go forward then my hearing request can only be denied or deferred.
5. In Miami-Dade County v. Omnipoint Holdings, Inc., Case No. 3D01-2347 (Fla. 3rd DCA 2002), the 3rd District Court of Appeal has held invalid the standards for non-use variances, special exceptions, unusual uses, new uses requiring a public hearing and modification of covenants. This is not a final decision and the County Attorney's Office is seeking further review. In the interim, the County Attorney's Office is working with the Planning and Zoning Department's professional staff to develop new standards that will address the Court's concerns. While the new standards are being developed, applicants are advised that any non-use variance, special exception, unusual use, new use requiring a public hearing or request for modification of covenants granted under the existing standards are subject to being reversed in the courts. An applicant wishing to avoid the substantial legal risks associated with going forward under the existing standard may seek a deferral until the new standards are developed..
6. Any covenant to be proffered must be submitted to the Department's Legal Counsel, on County form, at least 1 month prior to the hearing date. The covenant will be reviewed and the applicant will be notified if changes or corrections are necessary. Once the covenant is acceptable, the applicant is responsible to submit the executed covenant with a current 'Opinion of Title' within 1 week of the hearing. And that Legal Counsel can advise as to additional requirements applicable to foreign corporations. Documents submitted to Legal Counsel must carry a cover letter indicating subject matter, application number and hearing date. Legal Counsel may be reached at (305) 375-3075

[Signature]
 Roy R. Lustig, Trustee of the 2390 Gardens Florida Land Trust
 dated October 15, 2002

Sworn to and subscribed before me this 17th day of February, 2004. Affiant is personally known to me or has produced _____ as identification.

[Signature]

 (Notary Public)



PH # _____

Notice to all Applicants

Advisories from the County Attorney's Office

Advisory 1

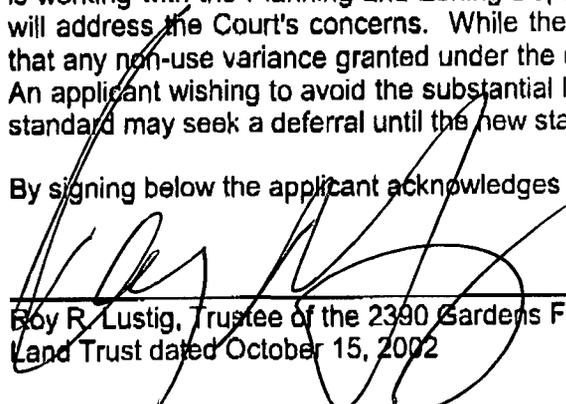
A recent decision of the Third District Court of Appeal has ruled that zoning applications that are inconsistent with the Comprehensive Development Master Plan cannot be approved by a zoning board based upon considerations of fundamental fairness.

Applicants are advised that if their hearing request is inconsistent with the Comprehensive Development Master Plan and they decide to go forward with the public hearing they cannot be approved under considerations of fundamental fairness, but can only be denied or deferred.

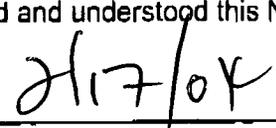
Advisory 2

A panel of judges of the Third District Court of Appeal, recently issued a statement that the standard for non-use variances in the Code of Miami-Dade County is legally insufficient. *Miami-Dade County v. Brennan*, 2001 WL 1472655 (Fla. 3rd DCA 2001). Although the Court was not in a position to issue a binding ruling, it is the opinion of the County Attorney's Office that any non-use variance issued under the present standard would be unlikely to be sustained if challenged in court. The County Attorney's Office is working with the Planning and Zoning Department's professional staff to develop a new standard that will address the Court's concerns. While the new standard is being developed, applicants are advised that any non-use variance granted under the existing standard is subject to being reversed in the courts. An applicant wishing to avoid the substantial legal risks associated with going forward under the existing standard may seek a deferral until the new standard is developed.

By signing below the applicant acknowledges that they have read and understood this Notice.



Roy R. Lustig, Trustee of the 2390 Gardens Florida
Land Trust dated October 15, 2002



Date

If there is a **CONTRACT FOR PURCHASE** by a Corporation, Trust or Partnership, list purchasers below, including principal officers, stockholders, beneficiaries or partners. [Note: Where principal officers, stockholders, beneficiaries or partners consist of other corporations, trusts, partnerships or similar entities, further disclosure shall be made to identify natural persons having ultimate ownership interests].

NAME OF PURCHASER: D&J HOLDINGS, a Florida general partnership, and/or assigns

NAME, ADDRESS AND OFFICE (if applicable)	Percentage of Stock
<u>David Messinger, 20770 W. Dixie Highway, Aventura, FL 33180</u>	<u>50%</u>
<u>Jesse Small, Managing Partner, 20770 W. Dixie Highway, Aventura, Florida 33180</u>	<u>50%</u>

Date of contract: February 5, 2004

If any contingency clause or contract terms involve additional parties, list all individuals or officers, if a corporation, partnership or trust:

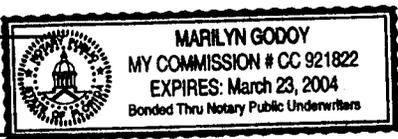
NOTICE: For changes of ownership or changes in purchase contracts after the date of the application, but prior to the date of final public hearing, a supplemental disclosure of interest is required.

The above is a full disclosure of all parties of interest in this application to the best of my knowledge and belief.

Signature: [Signature]
Roy R. Lustig, Trustee of the 2390 Florida Gardens Land Trust dated October 15, 2002

Sworn to and subscribed before me this 17th day of January, 2004. Affiant is personally known to me or has produced as identification.

[Signature]
(Notary Public)



My commission expires _____

* Disclosure shall not be required of: 1) any entity, the equity interests in which are regularly traded on an established securities market in the United States or another country; or 2) pension funds or pension trusts of more than five thousand (5,000) ownership interests; or 3) any entity where ownership interests are held in a partnership, corporation or trust consisting of more than five thousand (5,000) separate interests, including all interests at every level of ownership and where no one (1) person or entity holds more than a total of five per cent (5%) of the ownership interest in the partnership, corporation or trust. Entities whose ownership interests are held in a partnership, corporation, or trust consisting of more than five thousand (5,000) separate interests, including all interests at every level of ownership, shall only be required to

DISCLOSURE OF INTEREST*

If a **CORPORATION** owns or leases the subject property, list principal stockholders and percent of stock owned by each. [Note: Where principal officers or stockholders consist of other corporation(s), trust(s), partnership(s) or similar entities, further disclosure shall be made to identify the natural persons having the ultimate ownership interest].

CORPORATION NAME: _____

<u>NAME AND ADDRESS</u>	<u>Percentage of Stock</u>
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

If a **TRUST** or **ESTATE** owns or leases the subject property, list the trust beneficiaries and percent of interest held by each. [Note: Where beneficiaries are other than natural persons, further disclosure shall be made to identify the natural persons having the ultimate ownership interest].

TRUST/ESTATE NAME: ROY R. LUSTIG, TRUSTEE OF THE 2390 GARDENS FLORIDA LAND TRUST DATED OCTOBER 15, 2002

<u>NAME AND ADDRESS</u>	<u>Percentage of Stock</u>
<u>Roy R. Lustig, Trustee</u>	_____
<u>James A. Hauser</u>	<u>100%</u>
_____	_____
_____	_____
_____	_____
_____	_____

If a **PARTNERSHIP** owns or leases the subject property, list the principals including general and limited partners. [Note: Where partner(s) consist of other partnership(s), corporation(s), trust(s) or similar entities, further disclosure shall be made to identify the natural persons having the ultimate ownership interests].

PARTNERSHIP OR LIMITED PARTNERSHIP NAME:

<u>NAME AND ADDRESS</u>	<u>Percentage of Stock</u>
-------------------------	----------------------------

disclose those ownership interest which exceed five (5) percent of the ownership interest in the partnership, corporation or trust.

EXHIBIT "A"

Lot 1 and 2 less the North 30.09 feet, Block 3, RIVERDALE, according to the plat thereof as recorded in Plat Book 44, Page 71, of the Public Records of Miami-Dade County, Florida.

EXHIBIT "B"

Lot 1, 2, 3 and 4, of Block "C", GEORGE P. BULL'S AMENDED IN PLAT OF
OJUS, according to the plat thereof as recorded in Plat Book 3, Page 95, of the
Public Records of Miami-Dade County, Florida.
