

**PALM BEACH COUNTY**  
**BOARD OF ADJUSTMENT**

Thursday, February 15, 2001  
9:00 a.m. - 11:15 a.m.  
100 South Australian Avenue  
West Palm Beach, Florida

Reporting:

Sophie M. (Bunny) Springer  
Notary Public

A T T E N D E E S

Robert E. Basehart, Chairman

Mr. Jonathan Gerber

Mr. Joseph J. Jacobs

Mr. Glenn Wichinsky

Mr. Raymond Puzzitiello

David Cuffe, Civil Engineer II, Land Development

Dawn Wynn, Asst. County Attorney

Jon P. MacGillis, Principal Planner, Zoning

Alan Seaman, Senior Planner, Zoning

William Whiteford, Zoning Director

Mary Moody, Secretary

I N D E X

<u>Petition</u>		<u>Page</u>
1	BOFA 2000-069	9
2	BATE 2001-006	15
3	BOFA 2001-007	8, 36
4	BATE 2001-008	17
5	BOFA 2001-009 thru BOFA 2001-013	18
6	BOFA 2001-014	8, 25
7	BAAA 2000-072	42

CERTIFICATE OF REPORTER:

P R O C E E D I N G S

CHAIRMAN BASEHART: All right. I'd like to welcome everyone to the February 15, 2001 Palm Beach County Board of Adjustment meeting.

Why don't we start with -- I guess we got -- we're going to have, I think, just a bare quorum so, hopefully, nobody other than Glenn is going to have to leave because the meeting would end.

At any rate, let's start with the roll call.

MS. MOODY: Ms. Nancy Cardone.

(No response.)

MS. MOODY: Mr. Joseph Jacobs.

MR. JACOBS: Here.

MS. MOODY: Ms. Chelle Konyk.

(No response.)

MS. MOODY: Mr. Raymond Puzzitiello.

MR. PUZZITIELLO: Here.

MS. MOODY: Mr. Glenn Wichinsky.

MR. WICHINSKY: Here.

MS. MOODY: Mr. Wayne Richards.

(No response)

MS. MOODY: Mr. Stanley Misroch.

(No response)

MS. MOODY: Mr. Jonathan Gerber.

MR. GERBER: Here.

MS. MOODY: And Mr. Bob Basehart.

CHAIRMAN BASEHART: Here. We have a quorum, barely. Are you going to be able to stay for awhile?

MR. WICHINSKY: No, I've got to go, but maybe you can bring up the procedure stuff.

CHAIRMAN BASEHART: Yeah, I'll do that at the end of the meeting.

MR. WICHINSKY: With the Board's permission so I don't infect anybody with my cold, being that we have a quorum, I'm going to step out.

CHAIRMAN BASEHART: Okay.

MR. WICHINSKY: Thanks.

CHAIRMAN BASEHART: Hope you feel better.

Okay. Next item on the agenda is swearing in of the new member who isn't here.

MR. MacGILLIS: Right. After we sent the letter out, he informed us that actually he wasn't going to be attending this meeting. So it'll be next month.

CHAIRMAN BASEHART: Okay. While we're on this item, I'd like to bring another issue up, and I wish the attorney was here.

And that's the issue of, you know, members serving until, you know, an appointment is made. It's always been my understanding and the way it's always been done on any boards I've been involved with, either here as a staff member or other places or on boards is that if you're an appointed member and your term expires, you continue to serve until either you're reappointed or a replacement is appointed.

I understand that Chelle was informed today that she couldn't come because her appointment had expired

and her district commissioner hadn't made the reappointment, although I understand he intends to. So I don't understand, you know, why she would, you know, was told she couldn't come and she couldn't vote today. Maybe you can shed some light on it.

MR. MacGILLIS: I think the County Attorney's calling someone else in the County Attorney's Office just for clarification. I mean the ULDC is very -- the language is very clear, when your term runs out. Whether the County Attorney has the right to override a ULDC code provision that's very clear. I don't -- that's what she's looking for, clarification.

We tried to get it last week, and I apologize for the confusion on all the reappointments -- we've got two people working on them here, and apparently they never followed through on stuff, and we tried to get the paperwork to the commissioners as quickly as they could, so I know -- was it yesterday that Chelle's was reappointed at the Tuesday meeting?

MS. MOODY: No. Her reappointment is going the last of February.

MR. MacGILLIS: Right. So some of the district appointments could be made under the regular BCC meetings, and then if it's the -- Misroch, he's at large, has to be put on a regular Board meeting, can't be just --

CHAIRMAN BASEHART: Right, 'cause everybody has to vote on him; right?

MR. MacGILLIS: So some of them, like yours, was made by your commissioner right immediately. When we sent the paperwork down, we called her, and she made it immediately, but --

CHAIRMAN BASEHART: Right.

MR. MacGILLIS: I, you know, Dawn's out there on the phone now trying to clarify whether Chelle can vote or not, but I guess she's concerned if it comes down to some tie vote or something on any of these items, it could jeopardize the case or having to have it come back.

CHAIRMAN BASEHART: Okay. That's the first time I've seen that interpretation, like I said, and maybe the language is specific enough that, you know, that's the case here, but that wasn't the way I understood it, and I'd suggest somebody call Chelle and -- she's here?

MR. MacGILLIS: Yeah.

CHAIRMAN BASEHART: Oh. Okay. You going to let her vote?

MR. MacGILLIS: That's the County Attorney. It's not up to me. I mean I have no problem with her voting, but it's not -- it's the County Attorney who advises you on procedures.

She's your attorney, so if she recommends she not vote, I -- it's up to the Board whether you follow her direction or not.

CHAIRMAN BASEHART: Okay. Well, you know, let's move on.

Next item is the proof of publication. We have proof. Do we have a motion to accept it into the record?

MR. JACOBS: So moved.

CHAIRMAN BASEHART: We have a motion by -- okay. We have a motion --

MR. GERBER: Second.

CHAIRMAN BASEHART: -- and a second. All those in favor indicate by saying aye.

BOARD: Aye.

CHAIRMAN BASEHART: Opposed, no.

(No response.)

CHAIRMAN BASEHART: Okay. Next item on the agenda is remarks of the Chair and the Board.

All I'd like to do for those of you that aren't familiar with the Board and familiar with the way we conduct our business, the agenda is broken down in really two sections.

One is the consent agenda. The other is the regular agenda. Items that are on the consent agenda are items that the staff is recommending approval of, and if conditions are recommended, the applicant has indicated agreement with those conditions, and where there's been no indication of opposition by members of the public, surrounding property owners, those items are put on the consent agenda, and we'll bring them up one at a time.

If nothing changes, if there's no one here to object and if the applicant indicates agreement with the conditions, then they'll remain on consent agenda. Those items will not require a public presentation and discussion by the Board. They will be approved in the staff -- or the staff report will be made the public record for the item.

If you're on the consent agenda and there is an objection by someone from -- in the public or if one of the Board members is uncomfortable with the staff report, then the items will be pulled, and they'll require a full hearing.

The other items are the regular agenda, and those are items where there is opposition or there is a staff recommendation for denial or there are disagreements over proposed conditions of approval. Those items will require a presentation by the applicant to justify the variance under the criteria and the code. There will be a staff report read into the record, and the Board will discuss these individually and vote individually.

So that's the way we conduct our business. Is there any other member of the Board that has anything they would like to add to the discussion, any comments you'd like to make?

(No response.)

CHAIRMAN BASEHART: Seeing none, we can move on to the approval of the minutes. Now, actually, we have -- we all received two sets of minutes. The minutes from the December meeting weren't ready in time for the

January meeting so we passed on those, and this month we got the December and the January minutes.

If everybody's looked at them, is there anybody that would like to make a motion to adopt? Can we do them in one vote for both sets of minutes?

MS. WYNN: Yes, as long as there are no changes.

CHAIRMAN BASEHART: Okay.

MR. PUZZITIELLO: I make a motion to approve the December 21<sup>st</sup> and the -- December 21, 2000 and January 18, 2001 minutes.

CHAIRMAN BASEHART: Motion by Mr. Puzzitiello. Do we have a second?

MR. JACOBS: Second.

CHAIRMAN BASEHART: Second by Mr. Jacobs.

All those in favor indicate by saying aye.

BOARD: Aye.

CHAIRMAN BASEHART: Opposed, no.

(No response.)

CHAIRMAN BASEHART: Okay. Minutes are adopted.

CHAIRMAN BASEHART: Next are the remarks of the Director. Jon?

MR. MacGILLIS: I don't know if you wanted to -- Dawn is here now if you wanted to direct that prior question to her.

CHAIRMAN BASEHART: Yeah. We had a question with respect to Chelle's participation in the meeting today. As you may be aware, her term technically expired month ago, and her appointing commissioner did not reappoint her prior to this meeting.

My understanding and my experience sitting on boards and dealing with boards over the years has been that if someone's appointment expires, they continue to serve until either they're reappointed or someone is appointed to take their place, but they're allowed to continue to serve until an appointment is made.

MS. WYNN: It's not the case with this Board.

CHAIRMAN BASEHART: Okay.

MS. WYNN: Her appointment expired January 1<sup>st</sup>. She was allowed to or is allowed to continue serving until the first Tuesday after the first Monday in February. It's very specific for this Board, and, of course, that date has passed, and, therefore, she is not allowed to serve until her -- until she is reappointed, which I understand is the end of this month.

CHAIRMAN BASEHART: Okay. Is this different on other boards?

MS. WYNN: This is very -- I've never seen it for a board before. This is specific as to this Board.

CHAIRMAN BASEHART: Well, you know, maybe when we take a look at our by-laws, you know, like we do on an annual basis, maybe that's something that we want to suggest be changed, especially with -- you may recall that certain former commissioners had a problem appointing people, and I mean if that were to happen, since a bunch of our appointments come up all at the same time every year, you know, it's possible that if a County Commission meeting is cancelled or commissioners

don't react quickly, there could be no quorum, there could be no Board for a month or two, and I hate to see that happen.

MS. WYNN: You could amend it to state that when the term expires, that the member continue to serve until they are either reappointed or someone else is appointed to take their place.

CHAIRMAN BASEHART: I think -- I'd like to approach that. Would everybody else? Okay. Very good. Next item on the agenda, again, Jon, anything?

MR. MacGILLIS: No, just items on the agenda, changes to the agenda.

CHAIRMAN BASEHART: Okay. Well, then let's get to that.

CHAIRMAN BASEHART: Get right to the agenda. Any changes?

MR. MacGILLIS: One item we're just -- actually, two items we're going to pull. We're still -- hopefully, we can work them out.

First item we want to pull on the regular agenda is 2001-007.

CHAIRMAN BASEHART: Okay.

MR. MacGILLIS: The applicant's here, and it's on the consent agenda, but we're waiting for a revised survey to come in, and apparently they brought that in. They're meeting with staff.

So we ask -- we'll just put that on the regular agenda. If we got what we need, we can just vote on it then, but we need to pull it off because the document wasn't brought in yesterday. So we -- I don't want it left on the consent agenda.

CHAIRMAN BASEHART: Okay.

MR. MacGILLIS: And the other item is BOFA 2001-014. The agent is here. They have amended the application, and staff didn't have time to revise the report for you. We are supporting their change, but we do have two residents here who have some questions regarding the variance so we would like to do a quick presentation so we have it on the record, the change.

CHAIRMAN BASEHART: Okay.

MR. MacGILLIS: That's the only changes.

CHAIRMAN BASEHART: All right. So before we get to looking at the other consent items, we are pulling BOFA 2001-007 and 2001-014.



CHAIRMAN BASEHART: Let's look at the other consent items. First item is BOFA 2000-069, Shannon Jones. Is the applicant here?

MR. JONES: Yes.

CHAIRMAN BASEHART: Okay. If you can approach the microphone.

Staff is recommending approval of your variances, subject to five conditions. Are you familiar with those conditions?

MR. JONES: Yes, we are.

CHAIRMAN BASEHART: Do you agree with them?

MR. JONES: Yes, we do.

CHAIRMAN BASEHART: Okay. Is there any member of the public that's here to speak on this item?

(No response)

CHAIRMAN BASEHART: Seeing none, any letters?

MR. SEAMAN: No, there were no letters, but there were -- there were no letters, but there were two phone calls, and they were for clarification only.

CHAIRMAN BASEHART: Okay. Any member of the Board feel this item needs to be pulled?

(No response)

CHAIRMAN BASEHART: Okay. Seeing no objection, then we will leave this on consent agenda.

MR. JONES: Thank you.

#### **STAFF RECOMMENDATIONS**

**Approved with conditions**, based upon the following application of the standard enumerated in Article 5, Section 5.7.E. of the Palm Beach County Unified Land Development Code (ULDC), which a petitioner must meet before the Board of Adjustment may authorize a variance.

#### **ANALYSIS OF ARTICLE 5, SECTION 5.7.E VARIANCE STANDARDS**

1. SPECIAL CONDITIONS AND CIRCUMSTANCES EXIST THAT ARE PECULIAR TO THE PARCEL OF LAND, BUILDING OR STRUCTURE, THAT ARE NOT APPLICABLE TO OTHER PARCELS OF LAND, STRUCTURES OR BUILDINGS IN THE SAME DISTRICT:

**YES.** The applicant purchased the site in the current configuration with the existing non-conforming 1,404 square foot structure (SFD). The applicant is an evangelist minister who proposes to utilize the existing SFD structure as the business office for scheduling her revival engagements and to construct a proposed 4,800 square foot accessory structure. Of the

4,800 square feet, 1,760 square feet will be used to garage a semi-trailer. The remaining area will be used to store all associated revival equipment. The access and configuration of the site severely limits the design options available to the property as Neighborhood Commercial use. The site is long and narrow; 90 feet by 267 feet. The subject property has been unkempt for some time and the applicant's proposal will eliminate the neglected appearance of the site. The proposed 4,800 square foot structure, proposed along the west section of the property, would not be out of character in the area since similar structures exist to the east, west and south. The addition will, however, require an interior and street side setback variance. The lot to the south is occupied by Gilley's Automotive Repair with an 18-foot high building accessed by four bay doors 12 feet high. Further south is Napa Auto Supply with a 25-foot high building accessed by an 18-foot high bay door; to the east is Carpet World with a 30-foot high building accessed by a 20-foot bay door, and to the north, across Pine Forest Drive is a SFD which has sold to Bishop Grey (assisted care facility located to the west) for its further expansion. Should the Board approve the variances, it is recommended by staff that additional landscaping be provided on the south and north property between the proposed structure in the area of the reduced setbacks. The attempt at making the site useful and safer for traffic access is a positive one and is supported by staff.

2. SPECIAL CIRCUMSTANCES AND CONDITIONS ARE THE RESULT OF ACTIONS OF THE APPLICANT:

**NO.** The variances **are not** self-created. As mentioned above the applicant purchased this .55-acre non-conforming lot August 19, 2000 in the current configuration and with the existing 1,090 square feet SFD on-site. Granting the requested three variances are the minimum variances required to bring the site into compliance with the general intent of the ULDC and allow practical commercial use of the site. The applicant is proposing a building to garage their semi-trailer and office-related equipment associated with the evangelist business. The structure, as shown on Exhibit 27, will be in keeping with the vernacular of the area and with the existing SFD.

3. GRANTING THE VARIANCE SHALL CONFER UPON THE APPLICANT SPECIAL PRIVILEGE(S) DENIED BY THE COMPREHENSIVE PLAN AND THIS CODE TO OTHER

## PARCELS OF LAND, BUILDINGS OR STRUCTURES, IN THE SAME DISTRICT:

**NO.** The granting of the variances **will not** grant any special privilege on the applicant. The applicant has unique circumstances surrounding this non-conforming property and proposed project that warrant special consideration when applying the literal intent of the code provisions. The subject property currently has a Future Land Use Atlas (FLUA) designation of C/8 or Commercial High and a current zoning district classification of CN-Neighborhood Commercial. To allow lots that are non-conforming in terms of size, configuration or structures to redevelop, property owners typically need variance relief. The applicant has requested the least number of variances which will allow the owner to use the site, existing SFD, construct an accessory structure and meet the general intent of the ULDC. As previously stated, the Board of County Commissioners has encouraged the redevelopment of infill of lots along major corridors supporting non-conforming uses. The subject property's proximity to the Lake Worth Road and location on Military Trail makes the site suitable for redevelopment.

The applicant was requested by staff to submit two site plans. The first site plan (Exhibit 26) indicates the proposed use of the site to support the ministry use, while the alternate plan (Exhibit 25) indicates that in the event this use ceases, that the future owner can utilize this commercial site and meet all development regulations. This site in the future can support as office or other CN/CG uses which may generate higher traffic volumes. Exhibit 25 indicates that the site could accommodate an increase in parking to 1/200 SF if the existing SFD were removed. The applicant is aware that a rezoning to CG would require removal of the SFD in order for the site to accommodate code-required additional parking.

4. A LITERAL INTERPRETATION AND ENFORCEMENT OF THE TERMS AND PROVISIONS OF THIS CODE WILL DEPRIVE THE APPLICANT OF RIGHTS COMMONLY ENJOYED BY OTHER PARCELS OF LAND IN THE SAME DISTRICT, AND WOULD WORK AN UNNECESSARY AND UNDUE HARDSHIP.

**YES.** The enforcement of the literal intent of the ULDC (setback/accessory building size) would place a significant hardship on the applicant. The applicant has worked with staff's recommendations to redesign the site to avoid

the need for additional variances. The site has a Commercial C/8 land use designation and the applicant is not proposing to over-utilize the subject property. The applicant is requesting variances to allow them to utilize an existing 1,404 square foot non-conforming Single Family Dwelling (SFD) as an office and to increase the office use into a proposed accessory structure garage of 4,800 square feet. One thousand seven hundred sixty (1,760) square feet of the new structure will garage a semi-trailer with the remainder of the building storing evangelist business-related items between revival events. The items include a sound system, tents, chairs and stages/risers. The .55-acre site (1-acre minimum required in CN) cannot meet the minimum ULDC property development regulations for Neighborhood Commercial Development. Similar properties in the area are benefitting from the same type of advantages.

5. THE APPROVAL OF VARIANCE IS THE MINIMUM VARIANCE THAT WILL ALLOW A REASONABLE USE OF THE PARCEL OF LAND, BUILDING OR STRUCTURE:

**YES.** The requested variances are the **minimal** variances needed to make possible the reasonable use of the existing site and structure, as well as meet the general intent of the ULDC. To allow lots that are non-conforming in terms of size, configuration or structures to redevelop, property owners typically need variance relief. The sites long and narrow; 90 feet by 267 feet. The subject property has not been maintained for some time, and the applicant's proposal will eliminate the neglected appearance of the site. The proposed 4,800 square foot structure proposed along the west section of the property would not be out of character in the area since similar structures exist to the east, west and south. The addition will, however, require minimum variances to meet interior and street side setbacks. The lot to the south is occupied by Gilley's Automotive Repair with an 18-foot high building accessed by four bay doors 12 feet high. Further south is Napa auto Supply with a 25-foot high building accessed by an 18-foot high bay door; to the east is Carpet world with a 30-foot high building accessed by a 20-foot bay door, and to the north across Pine Forest Drive is a SFD which has sold to Bishop Grey (assisted care facility located to the west) for its future expansion. As previously stated the Board of County Commissioners has encouraged the redevelopment of infill of lots along major corridors supporting non-conforming uses. The subject property's proximity to Lake Worth Road

and Military Trail makes the site suitable for redevelopment. The variances requested provide a reasonable use of the lot.

6. GRANT OF THE VARIANCE WILL BE CONSISTENT WITH THE PURPOSES, GOALS, OBJECTIVES AND POLICIES OF THE COMPREHENSIVE PLAN AND THIS CODE:

**YES.** The subject property presently has a Future Land Use Atlas (FLUA) designation of C/8 and a zoning district classification of CN-Neighborhood Commercial. The applicant is **not proposing** to increase the size of the existing SFD structure or over utilize the subject property. The request promotes a better environment for the area and does improve the public welfare in the area through cleaning up the site, maintaining business and making the site attractive with landscaping. The request is also compatible with the surrounding area since to the south is Gilley's Automotive Repair with an 18-foot high building accessed by four bay doors 12 feet high. Further south is Napa Auto Supply with a 25-foot high building accessed by an 18-foot high bay door; to the east is Carpet World with a 30-foot high building accessed by a 20-foot bay door, and to the north across Pine Forest Drive is a SFD which has sold to Bishop Grey (assisted care facility located to the west) for its future expansion. Granting of the variances will be consistent with the goals, objectives and policies of the Comp Plan and the ULDC.

7. THE GRANT OF THE VARIANCE WILL BE INJURIOUS TO THE AREA INVOLVED OR OTHERWISE DETRIMENTAL TO THE PUBLIC WELFARE:

**NO.** The granting of the variances **will not** be injurious to the surrounding area. The site has a Commercial C/8 land use designation and the proposed site layout will provide for evident on-site circulation, access and parking. The applicant is proposing to construct a 4,800 square foot (80 feet by 60 feet) building to a height of 18 feet and accessed by two bay doors of 16-foot and 14-foot. The applicant will install the required landscape buffer along Pine Forest Road. As previously stated, the site is long and narrow; 90 feet by 267 feet. The subject property has been unkempt for some time, and the applicant's proposal will eliminate the neglected appearance of the site. The proposed 4,00 square foot structure proposed along the west section of the property would not be out of character in the area since similar structures exist to the east, west and south. The lot to

the south is occupied by Gilley's Automotive Repair with an 18-foot high building accessed by four bay doors 12 feet high. Further south is Napa Auto Supply with a 25-foot high building accessed by an 18-foot high bay door; to the east is Carpet world with a 30-foot high structure accessed by a 20-foot bay door, and to the north, across Pine Forest Drive as a SFD which has sold to Bishop Grey (assisted Care Facility located to the west for its future expansion.

#### **ENGINEERING COMMENT**

The requirement that the Base Building Line for the subject property be thirty (30) feet from the centerline of Pine Forest Drive is hereby waived. Said Base Building Lien is hereby established at the existing south right-of-way line, being the north property line of the subject property.

#### **ZONING COMMENT**

The City of Greenacres (adjacent municipality) is not opposed to the proposal.

#### **ZONING CONDITION(S)**

1. By August 15, 2001 the property owner shall provide the Building Division with a copy of the Board of Adjustment Result Letter and a copy of the Site Plan Exhibit 26, indicating the BOFA conditions of approval. **(DATE: MONITORING-BLDG PERMIT)**
2. By February 18, 2002 or prior to the final CO of the 4,800 square foot accessory structure, whichever occurs first, the applicant shall remove the carport attached to the west side of the existing SFD. **(BOFA-ZONING)**
3. The proposed 4,800 SF accessory structure shall be constructed consistent with the elevation shown on Exhibit 27, in the BA file BA2001-069. **(BOFA-ZONING)**
4. By February 18, 2002 or prior to CO of the 4,800 SF building, whichever occurs first, the applicant shall upgrade the north and south property line buffers as shown on Exhibit 9 in the BA2000-069 file. **(DATE: MONITORING-ZONING-LANDSCAPE)**
5. The proposed variances are granted for the specific use of a "ministry". In the event the "ministry use" ceases, the applicant shall be required to meet the required off-site parking

if the accessory building is to be utilized as the principal structure. (ONGOING)

CHAIRMAN BASEHART: Okay.

Next item is BATE 2001-006, Judy S. and Ralph J. Chackal.

MR. MacGILLIS: Mr. Chairman, the staff has some additional changes to this. This is a time extension to some conditions --

CHAIRMAN BASEHART: Right.

MR. MacGILLIS: -- that are -- apparently, the applicant and staff wasn't clear. We thought he was only asking for a time extension on one of the conditions, but actually it's several conditions that he needs time extensions.

Staff doesn't have a problem. He's been working diligently with the Health Department and other things to get this variance to move forward and build the building.

So there'll be amendments on Page 3 of your backup material. The Conditions No. 2 will be amended to read by November 20, 2001 the applicant shall obtain a building permit for the proposed single family residents.

No. 3 shall be amended to read by November 20, 2001 the applicant shall obtain a building permit for the swimming pool.

And Condition No. 4 shall be amended to read by September 20, 2001, and the rest of the language shall remain the same.

CHAIRMAN BASEHART: Okay. Do you agree with those?

MS. CHACKAL: Yes.

MR. MacGILLIS: Okay. Would you please state your name on the record.

MS. CHACKAL: My name is Judy Chackal.

CHAIRMAN BASEHART: Okay. And you're aware of all the conditions and the --

MS. CHACKAL: Yes.

CHAIRMAN BASEHART: The changes in conditions are only to reflect the extension, actually.

MS. CHACKAL: Right.

CHAIRMAN BASEHART: Okay.

This is not an advertised item because it's only an extension, but is there anybody here to object?

(No response)

CHAIRMAN BASEHART: Seeing none, anybody have a problem?

(No response)

CHAIRMAN BASEHART: Okay. We'll leave this on consent. Okay.

MS. CHACKAL: Thank you.

#### STAFF RECOMMENDATIONS

Staff recommends a maximum six-month time extension for

Condition No. 1 and No. 4 from March 20, 2001 to September 20, 2001, consistent with Section 5.7.H.2 of the ULDC, to provide additional time for the petitioner to commence development and implement the approved variances.

The property owner shall comply with all conditions of approval of BA 2000-039, unless modified herein:

#### **ZONING CONDITIONS**

1. By March 20, 2001 the applicant shall provide the Building Division with a copy of the Board of Adjustment Result letter and a copy of the Site Plan (Exhibit No. 23, BA2000039) presented to the Board, simultaneously with the building and permit application. **(DATE:BLDG PERMIT-Bldg)**
2. By May 20, 2001 the applicant shall obtain a building permit for the proposed single family residence. **(DATE-MONITORING-Bldg Permit)**
3. By May 20, 2001 the applicant shall obtain a building permit for the proposed swimming pool. **(DATE-MONITORING-Bldg Permit)**
4. By March 20, 2001, simultaneously with the building permit application, the applicant shall submit a Conceptual Landscape Plan to include the following material in front of the proposed residence. The specific location to be determined by staff and applicant at time of permitting. **(DATE:MONITORING-LANDSCAPE)**
- \* One 14-foot high native shade tree;
- \* Three palm trees with 30 feet measured from the center of the required shade tree;\*
- Continuous 36-inch high native hedge planted 24 inches on center along the front property line.
5. Prior to issuance of a final Certificate of Occupancy for the proposed SFD, the applicant shall install the landscape material as indicated in Condition No. 4. **(CO-INSPECTIONS:LANDSCAPE)**
6. By September 20, 2000 the applicant shall contact the Zoning Division for inspections to verify that all the existing and proposed fences on the subject property comply or shall comply with the code requirements. **(DATE-MONITORING-INSPECTION:ZONING)**
7. By September 20, 2000 the applicant shall contact the Zoning Division for an inspection to verify that the existing vinyl fence along the south side of the existing driveway in front of



the existing residence at 2112 South Suzanne Circle is removed, as well as the required off-street parking space standards are in compliance. **(DATE-MONITORING:ZONING - BA)**

#### **ENGINEERING COMMENT(S)**

The Base Building Line for South Suzanne Circle(Extension) has been established at the north property line of the subject property by Base Building Line Waiver issued on June 9, 2000. **(ENG)**

CHAIRMAN BASEHART: Okay. The next item has been pulled, 2001-007.

Next item after that, Board of Adjustment time extension, again, 2001-008, Kilday and Associates.

MS. AKERS: Cherie Akers with Kilday and Associates.

CHAIRMAN BASEHART: Okay. The staff, of course, is recommending approval of your extension with three conditions. Do you agree with that?

MS. AKERS: Agree.

CHAIRMAN BASEHART: Okay. Is there any member of the public to speak in opposition of this item?  
(No response)

CHAIRMAN BASEHART: Seeing none, we'll leave this on consent, as well.

#### **STAFF RECOMMENDATION**

Staff recommends a maximum 12-month time extension from **February 17, 2001 to February 17, 2002**, consistent with the Section 5.7.H.2 of the ULDC, to provide additional time for the petitioner to commence development and implement the approved variances.

The property owner shall comply with all conditions of approval of BA2000009, unless modified herein:

#### **ZONING CONDITIONS**

1. Board of Adjustment conditions must be attached to the site plan submitted for BCC approval and final DRC site plan certification. **(Zoning-Zoning review/DRC)**

2. Site plan submitted for BCC approval and final DRC certification shall be consistent with the general intent of the Site Plan reviewed by the Board of Adjustment. Any modifications shall be reviewed by the BA Staff to ensure consistency with the intent of the Board approval. **(Zoning-DRC) COMPLETED, SITE PLAN APPROVED SEPTEMBER 27, 2000**
3. The required landscape buffer along the southern edge of the property bordering the RM zoning district (approximately 374 feet of southeast property line) shall be upgraded as follows:
  - a) 10-foot wide landscape buffer;
  - b) 1.5 foot high berm; and
  - c) 1 additional palm or pine every 30 linear feet. **(Zoning-Landscape)**

**ENGINEERING COMMENTS:**

No comment **(ENG)**

CHAIRMAN BASEHART: Okay. The next one is a series of variances, Board of Adjustment 2001-009, through 013.

Lisa Carney for Albanese Homes. Is the applicant here?

MR. MacGILLIS: Just for clarification in the staff report backup material on Page 47 to Page 60, I guess, is the backup material for this report.

The model they're proposing to put on here that's the subject of this variance is the Elegrande B, not the Elegrande Deluxe model. So we need that clarified for the record because there's some residents were concerned.

Just for the Board's information, there was a previous variance approved on a portion of this subdivision several years ago, and what the developer did, he acquired additional land area and added it onto this subdivision.

CHAIRMAN BASEHART: Right.

MR. MacGILLIS: What he's proposing to do on those additional lots is have the option available to future property owners to also build this Elegrande B model on that's already built on the existing portion.

Staff inadvertently made reference to the Elegrande deluxe model, which is a larger different type of model, so we want that clarified for the record, and the applicant is aware of that.

MS. CARNEY: That's right.

MR. MacGILLIS: Okay.

CHAIRMAN BASEHART: Okay. All right. With those notations, you're familiar with the five conditions?

MS. CARNEY: Yes.

CHAIRMAN BASEHART: And do you agree with those conditions?

MS. CARNEY: Yes, we do.

CHAIRMAN BASEHART: Okay. Is there any member of the public that's here to speak on this item?

(No response)

CHAIRMAN BASEHART: Seeing none, any letters?

MR. MacGILLIS: There were no letters.

CHAIRMAN BASEHART: Okay.

MR. MacGILLIS: We had several calls from neighbors in the subdivision to the west of this who were -- once we explained it was actually within the subdivision itself, they -- there's two that were concerned. They said they may show up, but other than that, the rest of them were -- it was just clarification.

CHAIRMAN BASEHART: Okay. Any member of the Board have any difficulty with these variances?

(No response)

CHAIRMAN BASEHART: Seeing none, we'll leave BOFA 2001-009 to 013 on the consent agenda.

#### **STAFF RECOMMENDATIONS**

**Approved with conditions**, based upon the following application of the standard enumerated in Article 5, Section 5.7.E. of the Palm Beach County Unified Land Development Code (ULDC), which a petitioner must meet before the Board of Adjustment may authorize a variance.

#### **ANALYSIS OF ARTICLE 5, SECTION 5.7.E VARIANCE STANDARDS**

1. SPECIAL CONDITIONS AND CIRCUMSTANCES EXIST THAT ARE PECULIAR TO THE PARCEL OF LAND, BUILDING OR STRUCTURE, THAT ARE NOT APPLICABLE TO OTHER PARCELS OF LAND, STRUCTURES OR BUILDINGS IN THE SAME DISTRICT:

**YES.** This 79.6-acre residential subdivision, known as The Club at Indian Lakes (a/k/a Rossmoor Lakes), is located at the southwest corner of El Clair Ranch Road and Boynton Beach Boulevard. The land use designation is MR-5 with a zoning classification of RTU. The property supports 268 zero lot line homes. This

project was approved for a rezoning from AR to RTU in 1993 by the Board of County Commissioners (Petition Z93-34, Resolution R93-1367) to support 223 zero lot line units on 59.63 acres. On September 24, 1998 the BCC approved a Development Order Amendment (93-34A, Resolution 98-1506) to add 19.99 acres of land area to the existing development. This 19.99 acres was added to the west side of the existing development.

Special circumstances and conditions **do exist** which are peculiar to this parcel of land, building or structure which are not applicable to other parcels within the same zoning district.. The subject site is a "straight" subdivision (not approved as a PUD) of 268 zero lot line homes. The applicant is requesting this variance so that the largest model, Elegrande B, could be constructed on the subject lots. The special circumstances in this case result from the fact that this site was approved as a "straight" subdivision instead of a Planned Unit Development (PUD). According to Section 6.8.A.7.a of the ULDC, if this site is approved as a PUD, then the required maximum lot coverage of 50 percent can be administratively increased to 55 percent; therefore, the applicant would not require variance relief. However, because the subject site was approved as a regular subdivision, the applicant is requesting variance relief to allow for a five percent increase in lot coverage to 55 percent. In addition, the subject subdivision has all the design characteristics of a PUD. The size of the subdivision, housing type, landscape buffers, recreational tracts and open space are all consistent with Planned Unit Development type developments. Therefore, the applicant has limited options in terms of providing the two subject models to the buyer market since no administrative remedy is available, other than a variance or a redesign of the two models. Furthermore, the applicant could redesign the subject models as two-story units and meet lot coverage. However, the buyer market for the subject subdivision is mostly elderly, and a two-story house would not be marketable to this type of buyer market. The typical lot in the subject subdivision is 55 feet by 110 feet. The Elegrande B is 3,053 square feet.

Considering the fact that in 1997 a similar variance was granted for this development warrants special consideration when evaluating this request. If the 19.99 acres that were added on in 1998 had been part of the 1997 BA

application, the applicant would have requested these nine lots to be part of the original variance request. The granting of this variance will recognize that this unit is already constructed in western portion of the development and allow it to be carried over to helots added in 1999 to the western portion of the site for consistency.

2. SPECIAL CIRCUMSTANCES AND CONDITIONS ARE THE RESULT OF ACTIONS OF THE APPLICANT:

**NO.** The applicant is requesting a variance that will allow the Elegrande B model to be constructed on the units located in the 19.99 acres that was added to the development in 1998. When the original variance was granted in 1997, the nine units that are the subject of this variance were not part of the development. The applicant is requesting this variance to allow this model to be constructed on these lots should an owner choose it. It allows more flexibility for the future lot owner and developer to choose from the various models available. Only the Elegrande B model will not fit on these nine lots. Should the owner choose this model, the developer does not want to have to delay the closing while a variance is secured; therefore, the applicant is requesting the Board to approve the requested variances that will avoid unnecessary confusion and delays for future property owners, should they choose the Elegrande model on their lot. Since the unit is consistent with the model approved previously by the Board of Adjustment, the applicant would like to carry it onto the remaining undeveloped lots.

3. GRANTING THE VARIANCE SHALL CONFER UPON THE APPLICANT SPECIAL PRIVILEGE(S) DENIED BY THE COMPREHENSIVE PLAN AND THIS CODE TO OTHER PARCELS OF LAND, BUILDINGS OR STRUCTURES, IN THE SAME DISTRICT:

**NO.** As previously stated this development is a straight zoned zero lot line community. However, the development in layout and amenities is very similar to a Planned Unit Development. It provides a variety of open space, recreation amenities, landscape buffer, variation in architectural treatment of housing units. The ULDC PUD regulations permit a developer to apply to DRC to exceed the lot coverage by 5%. However, this project does not qualify for this provision. Therefore, the applicant is required to either comply with code or seek a variance. In 1997 the applicant did apply and was granted

a variance to exceed the building coverage on various lots within the development. After the variance was approved, the developer acquired additional land area along the western portion of the project. The land area accommodates 49 additional zero lot line units. The applicant is requesting with this variance application that nine of these units be permitted to exceed the lot coverage in the event a property owner chooses the largest model available, the Elegrande B. Staff has determined that since this model has already been approved and constructed within this development, to extend it to the requested nine units is warranted and consistent with the overall development.

4. A LITERAL INTERPRETATION AND ENFORCEMENT OF THE TERMS AND PROVISIONS OF THIS CODE WILL DEPRIVE THE APPLICANT OF RIGHTS COMMONLY ENJOYED BY OTHER PARCELS OF LAND IN THE SAME DISTRICT, AND WOULD WORK AN UNNECESSARY AND UNDUE HARDSHIP.

**YES.** The Board of Adjustment in 1997 approved a similar variance for 111 lots within this development. The applicant informed staff that the larger model has never been constructed on all 111 lots for which the variance was granted (See Attachment). Some owners chose a different model and complied with code, while other lots are currently vacant. The current variance request is only for nine additional lots that are similar in size and cannot accommodate the larger Elegrande B model should future property owner desire it. All other lots within the subdivision shall comply with the building coverage of 50 percent. Furthermore, the two subject models are of similar size to the other residential units in the general area of this development.

5. THE APPROVAL OF VARIANCE IS THE MINIMUM VARIANCE THAT WILL ALLOW A REASONABLE USE OF THE PARCEL OF LAND, BUILDING OR STRUCTURE:

**YES.** The granting of this variance will allow a future property owner of these nine lots to select the Elegrande B model which already exists in the development. The model is only five percent over the building coverage, and eight out of the nine lots abut onto a lake to the rear that will mitigate the impact of the increased building coverage. While the ninth lot (Lot 274) abuts a landscape buffer to the rear, which will also mitigate the increase in lot coverage.

6. GRANT OF THE VARIANCE WILL BE CONSISTENT WITH

THE PURPOSES, GOALS, OBJECTIVES AND POLICIES OF THE COMPREHENSIVE PLAN AND THIS CODE:

**YES.** The intent of the ULDC provision to limit building coverage on a residential lot is to ensure there is area for landscape and on-site percolation. The nine lots subject of this variance, as stated in No. 5 above, abut open space to thereat of the lot (either lake or buffer) which will further ensure the general intent of the code is met. The five percent increase in building coverage is minimal, and the developer is required to landscape the lot, which will mitigate any negative impact associated with this minimal variance request from the street.

7. THE GRANT OF THE VARIANCE WILL BE INJURIOUS TO THE AREA INVOLVED OR OTHERWISE DETRIMENTAL TO THE PUBLIC WELFARE:

**NO.** This particular model, the Elegrande B, is already constructed within the western portion of the development. The applicant is requesting that this model be permitted on nine additional lots in the case a property owner chooses this model. Some of the future property owners may select a model that can comply with the lot coverage. However, the developer does not want to inform a potential buyer that the Elegrande B model cannot be accommodated on their lot due to a building coverage requirement.

**ENGINEERING COMMENT**

No comments. **(ENG)**

**ZONING CONDITIONS**

1. The property owner shall provide the Building Division with a copy of the Board of Adjustment Result Letter and a copy of the Site Plan presented to the Board simultaneously with the building permit application. **(BLDG PERMIT:BLDG)**
2. Prior to February 15, 2002 the applicant shall obtain a building permit for one of the nine lots **(238, 239, 246,252, 235, 267, 268, 269, 274)** within the Club at Indian development (Petition 93-034) in order to vest the building coverage variance approved pursuant to BA2001-009 through BA2001=013. **(DATE:MONITORING-BLDG PERMIT)**
3. The Elegrande B model of 3,053 square feet, as shown on the floor plan exhibit in BA2001-009 file, shall not be modified on any of the nine

lots subject of this variance. (ONGOING)

4. By March 15, 2001 the applicant shall amend the approved Site Plan through an Administrative Amendment to reflect the lots subject of the variances of Petition BA2001-009 to BA2001-013. Also, the BA conditions shall be placed on the approved Site Plan. (DATE:MONITORING-DRC)
5. The variance to exceed building coverage pursuant to BA2001-009 to BA2001-013 shall be limited to the following lots: **238, 239, 246, 268, 274, 252, 23, 267,269**, within, the Club at Indian Lakes (a/k/a Rossmoor Lakes), Petition 93-034. The variance was only for the Elegrande B model, as shown on the floor plan exhibit in the BA2001-009 file. (ONGOING)

CHAIRMAN BASEHART: Okay. That completes the items. I guess we're ready for a motion.

MR. PUZZITIELLO: I make a motion we approve the items on the consent agenda, BOFA 2000-069, BATE 2001-006, BATE 2001-008, BOFA 2001-009 through 013, and making the staff comments part of the record.

CHAIRMAN BASEHART: Okay. We have a motion by Mr. Puzzitiello. Do we have a second?

MR. JACOBS: Second.

CHAIRMAN BASEHART: Okay. We have a second by Mr. Jacobs.

Any discussion?

(No response)

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

BOARD: Aye.

CHAIRMAN BASEHART: Opposed, no.

(No response)

CHAIRMAN BASEHART: Okay. The consent agenda is adopted and approved. Anybody with anything on that agenda is free to leave.



CHAIRMAN BASEHART: That'll get us to the regular agenda, and the first item will be the item -- first item pulled, which is Board of Adjustment 2001-007, Albert Cohen, agent for Park Lakes Builders.

MR. MacGILLIS: Staff is still working on that with the applicant in the hall, so maybe if we can --

CHAIRMAN BASEHART: Okay. Why don't we pass by that one, and we'll go to BOFA 2001-014, Anna S. Cottrell for Wellington Regional Medical Center.

Jon, can you introduce this item into the record?

MR. MacGILLIS: This is the petition of Anna Cottrell for Wellington Regional Medical Center to allow a proposed office building to exceed the required maximum building height.

The location is the vacant parcel on the west side of State Road 7 approximately 1600 feet north of Forest Hill Boulevard within the Palm Beach Farms county subdivision in the AR zoning district, also known as Zoning Petition 00-89.

Staff was recommending approval on the original request that came in that's found on Page 63 of your backup material.

The zoning district this petition is located in has a height limitation of 35 feet. The applicant is proposing -- was originally proposing 52 feet with a 17-foot variance.

Last week the applicant called us, and that's why I want this pulled, so that Anna Cottrell can explain it on the record.

This is a medical office building that's being proposed. Apparently, the first floor, when the architects were drawing it up, have to be higher than a typical floor to accommodate medical equipment; therefore, they've come back to us to ask for the additional height that's needed for that thing.

The building will still be only four floors and 50,000 square feet, so they're not changing what staff originally reviewed it, but actually the square footage on the first -- the height on the first floor is being increased. So they've provided us a letter with the -- from the architect which I believe should be on your desk there and a letter from Anna Cottrell justifying the extra height.

Staff supports the additional variance and has some minor changes to the conditions on Page 69, but if, Anna, you want to just go over the additional variance request.

CHAIRMAN BASEHART: Okay. The modification is to go from 52 to 58; right?

MR. MacGILLIS: Correct.

CHAIRMAN BASEHART: Okay. Ms. Cottrell.

MS. COTTRELL: Good morning.

CHAIRMAN BASEHART: Bunny.

Anyone that would like to speak on this item please rise.

MS. VERGA: I just want to know how high it's going to be, taking a glance at that, how far to our canal are you coming?

CHAIRMAN BASEHART: All right. Ma'am, I guess that's something that'll have to come up during the hearing. Do you intend -- since you may speak, why don't you be sworn in.

Please remain standing.

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

MS. COTTRELL: Good morning. For the record, I'm Anna Cottrell, and there has been a change. We were on the consent agenda, and there are a couple of items that are going to require a little bit of explanation.

Although the site's right now zoned AR, there is an application pending for approval to rezone it to institutional. That application we had anticipated would have been approved by the time we got to this Board for review of the variance, but it is being held up under concurrency review because it is one of the projects that impacts State Road 7.

So although we started this process for development approvals last May, we're just now still dealing with the zoning issue.

So it's zoned AR, but we are requesting that it be taken to institutional. We anticipate that that will be done in the next couple of months.

The institutional, the IPF zoning district, was only adopted last year, and the adoption of those regulations mirrored the general commercial zoning district regulations. All the property development regulations with the IPF zoning district are identical to the CG district, except for the fact that within the code there are allowances in CG and other commercial districts, and even the higher residential districts, to allow increased building setbacks by right if -- I'm sorry, increased building height if setbacks are increased, as well,

We have done that with this plan. It's an anomaly in the code that does not permit the same consideration for the institutional zoning district and the fact that we're delayed a little bit on zoning, so we're coming to you with the AR zoning, even though it will be institutional.

The plan was that the building would be precisely the same building that's already been developed on the north end of the Wellington Regional Medical Center. It's a four-story medical office building that's primarily physicians' offices.

That was built pursuant to a variance. That property is zoned RSER so it also needed a variance which was approved by this Board in 1998.

When the architect went to work on this

particular building, the analysis was done of how well the first building actually met the physicians' needs, and there were a couple of changes, the most important of which is that the first floor of this building will be ancillary medical services, diagnostics, treatment and even outpatient surgery. It requires higher ceilings than does the typical physician offices.

And typically physicians' offices require higher ceilings even than standard professional offices, and that's because of the ceiling lighting that's required to maintain an efficient practice.

In addition, the area between the ceiling and the upper floor is required to be greater than in typical offices because of the requirement to put in those types of medical gases that run through the ceiling, plumbing, electrical, the air handlers.

The architect determined that when the first building was constructed, there was not enough room between the ceiling and the bottom of the next floor to handle all of those things, the air handlers, particularly, and the ceilings had to be lowered, and when careful attention was paid to the details on the construction of that, it was determined that in order to meet current practice standards for physicians' offices, in particular, the ancillary, that the greater building height was needed.

In this case the floor to ceiling on the first floor would be 16 feet with 14 feet on each of the other three floors which will be maintained probably as physicians' offices.

So that was the reason for the height increase. Even if it was three stories which is permitted under the zoning district where it is, there would have been a need for a height variance because of these additional items that are peculiar to medical offices, rather than professional offices.

In this case it was a decision to go to four stories, rather than three because -- well, it's more efficient to build four stories than it is.

And given the nature of this particular site, approximately a third of the site's going to have to be devoted to preservation, 'cause there is wetlands on the site, and storm water management. The topography requires that about a third of the site be set aside for stormwater management.

So there is a need for efficiency in the site design and a need for efficiency in the building design, based on the particular use.

With that, I'll be glad to answer any questions about the design or the requirement.

CHAIRMAN BASEHART: What -- for my part, more than a question, a comment. Seems like there was an oversight.

It would seem to me, anyway, there was an oversight in the drafting of the institutional district when, you know, the same kind of, you know, height opportunities that exist in the normal office commercial

districts wasn't provided.

Is that something that is intended to be corrected?

MR. MacGILLIS: Actually, unfortunately, I didn't have time to talk to the code revision staff or Bill about it, but I mean it's been brought -- I think this is one of the first of the properties to come in under that zoning, if not the first, so --

MS. COTTRELL: It is. Actually, at the time that they -- my firm had several applications pending to rezone to institutional. Health care district property on 10<sup>th</sup> Avenue is one of them. The staff was drafting IPF district regs at the time, and when I asked about those extra allowances under the commercial, there really was no accounting.

It wasn't addressed, and there was not a response that it was going to be addressed, but it was recognized that there was a difference there, although the staff who wrote that code said that it was intended to mirror the CG district regs.

MR. JACOBS: Ms. Cottrell, what are the nature of the medical devices that require the additional space?

MS. COTTRELL: It's the lighting that's required particularly for the surgical and other treatment activities that occur on the first floor, but also the ceiling-to-floor, the four to five feet there has the plumbing, the electrical, the air handlers and the medical gases. It's really the medical gases that's different, but also the air conditioning needs, where it's located and how it's operated.

In the first building once the shell of the building was completed, when the air handlers were installed, it was determined there was not enough room to put it in the space it was intended between the ceiling and the floor, and the ceilings were lowered, and they wound up only eight to eight and a half feet.

The physicians have determined that that is insufficient to maintain room, particularly for operating space.

CHAIRMAN BASEHART: Thank you.

I understand the lady in the middle of the room had some questions about how far this building will be from her home and some other things.

Ma'am, if you could come up and give us your name and bring the questions forward.

MS. VERGA: My name is Gloria Verga. I live in Wellington's Edge.

CHAIRMAN BASEHART: Okay. And you've been sworn in.

MS. VERGA: We'll be -- we'll be back to back where they're going to build. There is a canal or -- I don't -- well, it's water, and there's a road there where the Department of Parks or whomever they are go back and forth.

I want to know how close that's going to be because I don't want these big buildings on top of my

house.

When we bought the property four years ago, they told us there -- it was going to be open land, but I'm sure the builder must have sold it, and this is the problem.

CHAIRMAN BASEHART: Okay. Ms. Cottrell.

MS. COTTRELL: This building is situated as close to State Road 7 as we can to meet the setback requirements. This is a 30-acre site. It's long and deep, and about nine acres of the back of the site closest to this lady's house will be water management and preservation.

All of the building -- this is our first phase of development which is anticipated to be a total of about 150,000 square feet, or two more buildings of medical office space, will be situated close to State Road 7.

One of the reasons is that the physicians' offices need to be as close to the hospital as possible, so there's been a deliberate choice about locating the water management preserve in the rear, and it has the benefit of protecting the residents in the back, as well.

You got through this agenda much more quickly than I expected. I thought we were going to be last, and so now we actually have here a graphic that shows this medical office building. It shows the connection to the hospital, and so the plan is, of course, is to provide the kinds of connections for the physicians to be able to get back to the hospital as quickly as they can, and they're -- one of the reasons this is so attractive for medical offices is that the physicians want to be close to the hospital as they can to be able to maintain their office schedules so they can get back and forth to the hospital in emergencies, but also when they do their morning and evening rounds.

So we will pull the buildings towards the front, and the rear will be water. Now, that might change as we go through some of the permitting on the water management, but this is essentially the design that will be maintained.

CHAIRMAN BASEHART: All right. This particular building, could you point it out, where on that plan -- okay. So it's -- how far -- how far is that in feet to the boundary, common boundary with Wellington's Edge? Do you have an estimate?

MS. COTTRELL: We've 2361 feet from the front to the back property line, and the front takes up about four acres. So it's probably a good 1600 feet.

CHAIRMAN BASEHART: Okay. So --

MS. COTTRELL: That's almost a third of a mile.

CHAIRMAN BASEHART: Talking about a third of a mile.

MR. PUZZITIELLO: So it's further away than the actual hospital is.

MS. COTTRELL: Oh, yeah. Sure.

MR. PUZZITIELLO: So it's not going to really --

MS. COTTRELL: This property goes deeper than the hospital site does, but, you know, it's a big piece of property at 30 acres, and the development, ultimate development that's proposed is actually quite low because of the restrictions for the water management and preserve areas.

So you're not going to hear anything from this site.

MS. VERGA: It's going to be next to where the new building just went up?

MS. COTTRELL: It's going to look just like it and right next to it, very --

MS. VERGA: On State Road 7.

MR. PUZZITIELLO: It's actually -- it looks like it's actually closer to 7. It looks like it's actually a little closer to State Road 7 than the existing building.

MS. COTTRELL: That's because when the existing building was built, we could put a driveway in the front that accommodated the drop-off. In this case we didn't have an opportunity for that driveway connection, so it was just determined that the building would go a little bit closer. It's actually going to shift six feet now to meet the setbacks that would be required were we zoned something other than IPF. So it'll meet the -- those increased setbacks.

MS. VERGA: Okay. Thank you.

CHAIRMAN BASEHART: Okay. With that knowledge, are you interested in indicating either support or objection to the variance or you don't care?

MS. VERGA: I can't fight them.

CHAIRMAN BASEHART: Okay.

MS. VERGA: Thank you.

CHAIRMAN BASEHART: Thank you.

Is there any other member of the public that would like to speak on this item?

(No response)

CHAIRMAN BASEHART: Seeing none, is anyone --

MR. MacGILLIS: Wait. There's amendments. On Page 63 the variance request required 35 feet, proposed 58 feet, for a variance of 23 feet.

CHAIRMAN BASEHART: Okay.

MR. MacGILLIS: And staff's findings of facts are on Page 66 so I won't go over them. The main three points that staff is supporting this variance are because of the uniqueness of the site because of the vegetation and the amount of on-site water retention that has to occur, that it's limiting the amount of area remaining for landscaping and parking.

The second reason being that in the -- this new zoning district, as Ms. Cottrell has explained, the code provision that other districts similar to this are allowed, for every additional foot you go over 35 feet you're allowed to add one additional foot to the setback, you wouldn't even need to come here for a variance.

So we used that principle and applied it to this

site, and that's why one of the conditions I'll read in here is requiring the proposed building to be shifted back in order to meet these percentage setbacks. So since they are 23 feet over the 35-foot height limitation, we added 23 feet to the setbacks, and so it's making it no setback can be less than 73 feet on any side, which is what they're accommodating with the minor amendment and one of the conditions we're requiring.

CHAIRMAN BASEHART: Okay.

MR. MacGILLIS: And the -- the last reason is there was a variance granted on a similar request to the building on the property to the south two years ago, based on similar circumstances.

With that, I'll -- Page 69 I'll go over the amendments to the conditions, and, unfortunately, we hadn't had time to go over these with the applicant, but I think we talked in general.

Page 2 -- Condition No. 2, "The final site plan layout by the DRC committee shall have the same or greater setback as shown on Exhibit 9 in the BOFA file. The proposed setback shown on Exhibit 9 are necessary to mitigate the increase in building height of 23 feet."

No. 3 shall be amended to read, "The proposed 50,000 square foot building shall not exceed 58 feet in total height."

And there'll be a new Condition 5 added, "The final site plan certified by DRC shall reflect the porte-cochère being shifted on" -- which is attached to the building. The entire building shall be shifted to the west to meet the 73-foot front setback along 441.

CHAIRMAN BASEHART: Okay. Those are the revised conditions?

MR. MacGILLIS: Yes.

CHAIRMAN BASEHART: Ms. Cottrell, do you agree with those?

MS. COTTRELL: They are acceptable. When I talked to Mr. MacGillis last night we suggested maybe we could shorten up the canopy or the porte-cochère, and the developer said that that's not really something that he's desired, but the building can easily be shifted.

Basically, we're just swapping landscaping from the back to the front. So the conditions are acceptable that way.

CHAIRMAN BASEHART: Okay. I have a feeling by the time Maryann's done with you that it'll have to be there, anyway. Okay.

Any further discussion by the Board?

(No response)

CHAIRMAN BASEHART: Okay. I think we're ready for a motion.

MR. GERBER: Mr. Chair, I move that we approve BOFA 2000-014 with the conditions and revised conditions stated by staff.

CHAIRMAN BASEHART: Okay. Motion by Mr. Gerber. Any second?

MR. JACOBS: Second.

MR. PUZZITIELLO: Second.

CHAIRMAN BASEHART: Okay. I think Mr. Jacobs beat you to the punch, so second by Mr. Jacobs.

Any discussion?

(No response)

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

BOARD: Aye.

CHAIRMAN BASEHART: Opposed, no.

(No response)

CHAIRMAN BASEHART: Show the motion carries unanimously.

#### STAFF RECOMMENDATIONS

**Approved with conditions**, based upon the following application of the standard enumerated in Article 5, Section 5.7.E. of the Palm Beach County Unified Land Development Code (ULDC), which a petitioner must meet before the Board of Adjustment may authorize a variance.

#### ANALYSIS OF ARTICLE 5, SECTION 5.7.E VARIANCE STANDARDS

1. SPECIAL CONDITIONS AND CIRCUMSTANCES EXIST THAT ARE PECULIAR TO THE PARCEL OF LAND, BUILDING OR STRUCTURE, THAT ARE NOT APPLICABLE TO OTHER PARCELS OF LAND, STRUCTURES OR BUILDINGS IN THE SAME DISTRICT:

**YES.** This 4.34-acre legal non-conforming AR-Agricultural Residential lot is located 1600 feet north of Forest Hill Boulevard on State Road 7 (441). The site is currently vacant and supports significant stands of both native and prohibited vegetation. The property currently has a land use designation of LR-2 and zoning classification of AR. The applicant submitted a small scale land use amendment in October 2000 to change from LR-2 to INST. Also, the applicant currently has an application in the Zoning process, Petition 2000-089, to redone the property from AR to IPF-Institutional and Public Facilities. The subject parcel is part of a 31.56-acre property which is located north, WRMC (Wellington Regional Medical Center). The entire 31.56 acres is proposed for development as a medical campus which will include medical office building and a congregate living facility. The 4.3-acre parcel will be developed as the first phase of the project.

Development of the 4.3-acre site will consist of a 50,000 square foot, four-story medical office building and associated parking. A portion of the parking will be provide on an elevated parking deck on the west side of the property.



The elevation of the parking deck will allow for needed area for drainage and compensating storage for the site.

The applicant states that the lot has limitation that result in the need to construct the building higher than the permitted 35 feet. The on-site stormwater storage and preservation of native vegetation reduce the buildable lot area. The site design layout proposes a 50,000 square foot building along the eastern portion of the site, with parking to the west of the building. There is a 1.4-acre retention area along the entire west and south property line. The proposed 50,000 square foot building requires 250 parking spaces; the applicant is proposing 260 spaces.

Therefore, considering the size of the property, site limitation and proposed use, the requested building height variance is warranted. The increased setbacks on along all property lines will mitigate any negative impacts associated with the increase in building by 17 feet. Also, the site will be landscaped in accordance with the PBC Landscape Code with perimeter buffers and on-site parking lot landscaping.

2. SPECIAL CIRCUMSTANCES AND CONDITIONS ARE THE RESULT OF ACTIONS OF THE APPLICANT:

**NO.** The applicant is currently in the Zoning process to obtain a small scale land use amendment and rezoning of this property to support the proposed medical office building. The land use amendment and rezoning will allow the proposed 50,000 medical building on this property. This type of use is needed to service the needs of the residents and Wellington Regional Medical Center to the south of this site. There will be cross access between the two properties. The applicant has limitations on the site that restrict the site design and warrant consideration for a variance on building height. The land area that has to be dedicated to on-site stormwater management and preservation all limit the design options. The land area remaining after meeting stormwater management and preservation has to accommodate the 120 by 100 footprint of the office building and 260 parking spaces, as well as landscaping.

The applicant's request to increase the building height will be consistent with the existing medical office building on the site to the south. The applicant has provided increased setbacks to mitigate the increase in building

height consistent with a provision that does apply to other zoning districts by right and avoids the need for variances.

3. GRANTING THE VARIANCE SHALL CONFER UPON THE APPLICANT SPECIAL PRIVILEGE(S) DENIED BY THE COMPREHENSIVE PLAN AND THIS CODE TO OTHER PARCELS OF LAND, BUILDINGS OR STRUCTURES, IN THE SAME DISTRICT:

**NO.** The applicant is requesting a 17-foot building height variance. The property to the south was granted a similar variance in 1998 based on similar site constraints and code limitations. The proposed medical office building is needed to meet the growing demands of the residents and hospital in the western community. The proposed building will be consistent in height and size (50,000 square feet) to the building to the south. If the code provision that allows an increase in building height, by right, when the applicant can provide an increase in setbacks applied to the IPF zoning district, the applicant would not require a variance. The intent of that code provision is to recognize that if the setbacks are increased, then the impacts associated with higher building (shadows) can be met.

4. A LITERAL INTERPRETATION AND ENFORCEMENT OF THE TERMS AND PROVISIONS OF THIS CODE WILL DEPRIVE THE APPLICANT OF RIGHTS COMMONLY ENJOYED BY OTHER PARCELS OF LAND IN THE SAME DISTRICT, AND WOULD WORK AN UNNECESSARY AND UNDUE HARDSHIP.

**YES.** The applicant **has** demonstrated that this 4.34-acre site has limitations created by on-site stormwater retention and preservation that restrict the footprint of the building to be expanded to support a three-story building to accommodate the same 50,000 square feet. The site as currently laid out in compliance with all other code requirements.

5. THE APPROVAL OF VARIANCE IS THE MINIMUM VARIANCE THAT WILL ALLOW A REASONABLE USE OF THE PARCEL OF LAND, BUILDING OR STRUCTURE:

**YES.** The granting of this variance will allow the applicant to proceed through the Zoning and Building permit review process. The proposed medical office building is needed to meet the needs of the residents in the western community. Considering the applicant has greatly increased the required setbacks to mitigate 17-foot increase in building height, this is the minimum necessary variance. The variance will recognize

the site limitations and permit an office building consistent to the one on the property to the south that received BA approval for a similar variance in 1998.

6. GRANT OF THE VARIANCE WILL BE CONSISTENT WITH THE PURPOSES, GOALS, OBJECTIVES AND POLICIES OF THE COMPREHENSIVE PLAN AND THIS CODE:

**YES.** The granting of this variance **will be** consistent with the general intent of the Comp Plan and ULDC. That code establishes minimum building heights for various zoning districts to ensure consistently [sic] in the neighborhood. The IPF-Institutional and Public Facilities District corresponds to the institutional land use designation in the Future Land Use Element of the Comprehensive Plan. The purpose and intent of the IPF is to provide lands in appropriate locations for a variety of regional and community uses that are either publicly or privately operated. The proposed use of this site to support a 50,000 square medical office building will require approval by the BCC. The applicant is currently in the zoning review process for this approval. The BCC will determine if the proposed rezoning and use of this property is appropriate for the location. With respect to the ULDC code provision to limit building heights in zoning districts, the applicant can comply with the general intent of the provision. The general intent is to ensure that all buildings are constructed at consistent heights. On this particular lot the zoning, after the rezoning will be IPF, which corresponds to INST land use. Therefore, this zoning district can be located in many areas of the county and support a variety of uses. Unlike the other zoning districts, AR, RTS, CG, there is a more homogenous land use pattern and building architecture character. These zoning districts are also permitted to increase the building heights, provided the setbacks are increased proportionally.

The applicant is proposing a 52-foot high building with setbacks far in excess of what is required in the IPF zoning district. The proposed building height and setbacks will be consistent with the office building on the property to the south that was also granted a building height setback in 1998.

7. THE GRANT OF THE VARIANCE WILL BE INJURIOUS TO THE AREA INVOLVED OR OTHERWISE DETRIMENTAL TO THE PUBLIC WELFARE:

**NO.** The proposed use of this property to support a 50,000 square foot office building is currently being reviewed by the county for a small scale land use amendment and rezoning. The applicant is requesting the building height variance in order to ensure the final site plan can be certified. The proposed increase in the required setbacks for the building will mitigate any negative impacts associated with the 17-foot increase in building height. The future uses and residents of the western community will clearly benefit from the increase in medical office in close proximity to the existing Wellington Regional Medical Center located to the south.

#### **ENGINEERING COMMENT**

No Comment. **(ENG)**

#### **ZONING CONDITIONS**

1. By February 15, 2002 the applicant will obtain a building permit for the 50,000 square foot office building on this property (00424327050180201) in order to vest the building height variance. **(DATE:MONITORING-BLDG PERMIT)**
2. The final site layout approved by Development Review Committee shall have the same setbacks as shown on Exhibit 9, found in the BA2001-014 File. The proposed setbacks shown on Exhibit 9 are necessary to mitigate the increase in building height of 17 feet. **(DRC)**
3. The proposed 50,000 square foot building shall not exceed 52 feet in total height. **(BLDG PERMIT)**
4. When submitting for a building permit for the 50,000 medical office building, the applicant will be required to submit a copy of the BA Result Letter (conditions) and copy of the DRC certified Site Plan, that shall be consistent with the BA Site Plan, Exhibit 9. **(BLDG PERMIT-DRC)**

CHAIRMAN BASEHART: Are we ready?

MR. MacGILLIS: Yes. I believe we resolved the issues. If the applicant wants to stand up that can -- we don't need a hearing on this unless somebody wants one.

CHAIRMAN BASEHART: Okay.

MR. MacGILLIS: We were waiting for a revised survey which staff has been provided.

CHAIRMAN BASEHART: Okay. BOFA 2001-007, Albert Cohen, for Park Lakes Builders.

Indicate your name for the record, sir.

MR. DAVIS: My name is Jerry Davis. I brought a new consent form this morning.

CHAIRMAN BASEHART: Okay.

MR. DAVIS: Mr. Cohen is no longer available.

CHAIRMAN BASEHART: Okay. Staff has recommended approval of the variance with two conditions. Are there any changes to the conditions?

MR. MacGILLIS: No.

CHAIRMAN BASEHART: Okay. Any member feel that -- I mean the whole issue was a revised survey.

Any board member feel that there's a need to pull this -- or to discuss this item?

(No response)

CHAIRMAN BASEHART: Okay. Then --

MR. MacGILLIS: Just for the record, are you familiar with the two conditions on here, that you have to get a building permit by April 15, 2001?

MR. DAVIS: Yes, sir. All we're waiting for is this variance, and then --

MR. MacGILLIS: Okay. I just wanted it clear, 'cause you're the new agent. I just don't want to be confused that April comes and goes and you didn't apply for a permit.

MR. DAVIS: Yes, sir.

MR. MacGILLIS: And the second one is by July 15, 2001 the applicant shall obtain a final inspection on the sign.

MR. DAVIS: Yes, sir.

MR. MacGILLIS: Okay.

CHAIRMAN BASEHART: Do you agree with those conditions?

MR. DAVIS: Yes, I do.

CHAIRMAN BASEHART: Okay. We're ready for a motion.

MR. PUZZITIELLO: I make a motion that we approve BOFA 2001-007 with the staff report and comments.

CHAIRMAN BASEHART: And the two conditions.

MR. PUZZITIELLO: And the, yeah, two conditions.

CHAIRMAN BASEHART: Okay. We have a motion by Mr. Puzzitiello. Do we have a second?

MR. JACOBS: Second.

CHAIRMAN BASEHART: Second by Mr. Jacobs. All those in favor indicate by saying aye.

BOARD: Aye.

CHAIRMAN BASEHART: Opposed, no.  
(No response)

CHAIRMAN BASEHART: Motion carries.

MR. DAVIS: Thank you for your time.

CHAIRMAN BASEHART: Thank you.

#### STAFF RECOMMENDATIONS

**Approved with conditions**, based upon the following application of the standard enumerated in Article 5, Section 5.7.E. of the Palm Beach County Unified Land Development Code (ULDC), which a petitioner must meet before the Board of Adjustment may authorize a variance.

#### ANALYSIS OF ARTICLE 5, SECTION 5.7.E VARIANCE STANDARDS

1. SPECIAL CONDITIONS AND CIRCUMSTANCES EXIST THAT ARE PECULIAR TO THE PARCEL OF LAND, BUILDING OR STRUCTURE, THAT ARE NOT APPLICABLE TO OTHER PARCELS OF LAND, STRUCTURES OR BUILDINGS IN THE SAME DISTRICT:

**YES.** This 7.8-acre Planned Unit Development is located on Jog Road, south of Boynton Beach Boulevard. The land use and zoning for this general area is residential. Many of the properties currently support large PUDs that have frontage and access onto Jog Road. Jog Road is six lanes with a divider median with traffic traveling at 45 miles per hour or greater. Within this Oasis PUD is 78 multifamily units which rely on clear signage to identify their project for visitors and service people. The fact that there are many residential developments along Jog Road, it is critical that the identification be unique and visible to someone trying to locate the entrance. When the PUD was developed, a privacy wall was constructed along the 382 feet of frontage along Jog Road. The privacy wall was designed, similar to other PUD walls, with two entrance gates that extended into the entrance to the development. The entrance walls typically support the entrance wall sign that identifies only the name of the PUD or subdivision. In this case the wall was constructed, but the signage was not placed on the wall until after the wall was permitted and inspected. When the developer was informed that a wall sign permit was required, the developer applied to the Building Division for permit. However, the letter in the sign exceeded the sign code; therefore, the applicant is apply for a variance that will allow the existing letter to remain higher than permitted by code. If the

variance is granted, the applicant will be able to apply for a sign permit to legalize the wall sign.

Therefore, the uniqueness to this particular situation is the sign design was done to improve the visibility of the development for motorists traveling along Jog Road. Also, the sign letter was stylized to create a unique identity for the community. Only the O and I in the subdivision name Oasis exceed the code by twice the letter height. The other letters are only two inches higher than permitted by code. Considering the location of the PUD along a major thoroughfare and limited frontage, the signage as exists is critical to this development's identity.

2. SPECIAL CIRCUMSTANCES AND CONDITIONS ARE THE RESULT OF ACTIONS OF THE APPLICANT:

**NO.** The applicant failed to answer this criteria in the justification; however, staff contacted the applicant by telephone to discuss how the sign was erected without obtaining a permit. The applicant states it was an oversight on the developer's part. They did send a representative to meet with Zoning staff in early 2000 and were informed by staff that the existing design could not be permitted without a variance. Staff indicated that the sign did not meet the literal intent of the sign code but could meet the variance criteria for a variance. Zoning staff were notified by the Building Division staff in early December 2000 that a Building Inspector driving by the site noticed the letters on the wall and asked the developer for a copy of the permit. It was at that time that the developer was informed that the sign required a permit. When the applicant tried to submit for a permit, they were informed, as they had been in early 2000, the design did not comply with code and would require variance. The applicant is now applying for a variance for the sign to allow it to remain without costly redesign. The applicant was informed that since a building permit was not obtained prior to erecting the sign, building permit was no [sic] going to cost three times the fee.

Although a representative of the developer met with staff in early 2000 to discuss the sign design and were informed it required a variance, these are not actions of the applicant. Staff has made the applicant aware that any future signage on the project would require permits prior to doing the work. Considering the fact

the variance is minimal and the applicant is having to pay triple building permit fees, the actions of their prior representative not obtaining the variance should not be held against the owner. The applicant will obtain a permit and legalize the existing sign. To remove the letter for any amount of time to correct the letter would affect all the residents and visitors to this project.

3. GRANTING THE VARIANCE SHALL CONFER UPON THE APPLICANT SPECIAL PRIVILEGE(S) DENIED BY THE COMPREHENSIVE PLAN AND THIS CODE TO OTHER PARCELS OF LAND, BUILDINGS OR STRUCTURES, IN THE SAME DISTRICT:

**NO.** The granting of this variance **will not** grant a special privilege onto the applicant. The applicant is permitted to have a wall sign to identify the name of the PUD/subdivision. Other residential developments along Jog Road have wall signs and entrance features that are larger than permitted by the current code since they were permitted under various variations of the sign code. The fact that there are many PUDs in this area, the need for clear identification for these is critical. It is important that a motorist traveling either north or south on Jog Road be able to see the wall sign traveling at 45 miles per hour along Jog Road. In order to avoid unnecessary slowing down of motorist in traffic trying to read the sign from distance is important. The extra height on the sign lettering is enough to make the sign clearly readable from a further distance along Jog Road.

4. A LITERAL INTERPRETATION AND ENFORCEMENT OF THE TERMS AND PROVISIONS OF THIS CODE WILL DEPRIVE THE APPLICANT OF RIGHTS COMMONLY ENJOYED BY OTHER PARCELS OF LAND IN THE SAME DISTRICT, AND WOULD WORK AN UNNECESSARY AND UNDUE HARDSHIP.

**YES.** The literal intent of the code is all signs comply with the sign code. However, the sign code does not contemplate unique site location or limitations that warrant special consideration. In this particular situation the PUD has only 382 feet of frontage along Jog Road. Therefore, for a motorist traveling along Jog Road at 45 miles per hour it is critical to have the time to read to seeing the sign and merging out of the flow of traffic into the development. The limited frontage does not allow much time for a motorist to see the sign and slowdown. The extra height to the lettering will provide the motorist with better signage



and additional time to react.

5. THE APPROVAL OF VARIANCE IS THE MINIMUM VARIANCE THAT WILL ALLOW A REASONABLE USE OF THE PARCEL OF LAND, BUILDING OR STRUCTURE:

**YES.** The sign was placed on the existing permitted entrance wall. The sign was placed on the wall without first obtaining a sign permit. The signage is necessary to identify the development to people traveling along Jog Road. The sign meets the general intent of the code in terms of being consistent with other signs in this zoning district and comply to the greatest extent possible to the height limitations. The unique typeset on the lettering results in the need for a variance. The stylized O and I create lettering twice that permitted by code. However, the sign is in keeping in scale and character to the wall and, therefore, not imposing or offensive.

6. GRANT OF THE VARIANCE WILL BE CONSISTENT WITH THE PURPOSES, GOALS, OBJECTIVES AND POLICIES OF THE COMPREHENSIVE PLAN AND THIS CODE:

**YES.** The general intent of the ULDC, sign code provisions, is to ensure signage in the various zoning districts is consistent in size, location and materials. This sign meets all code requirements with the exception to sign lettering. The letter was stylized to establish an identity for the community. The O and I are larger and stylized to accentuate the name of the community, Oasis. The existing sign provides clear identification for this community to residents and visitors. The signage is consistent with other existing signage along Jog Road in terms of size, location and materials.

7. THE GRANT OF THE VARIANCE WILL BE INJURIOUS TO THE AREA INVOLVED OR OTHERWISE DETRIMENTAL TO THE PUBLIC WELFARE:

**NO.** Granting the variance **will not** be injurious to the surrounding area. If one considers the sign design, only the O and I are out of proportion to the code regulations. The other letters are only two inches larger than permitted by code. The letters O and I were enlarged and stylized to provide a visual effect to the overall sign. The O is capitalized stress the name of Oasis, while the stylized I in the shape of a palm tree reflects the tropics/Florida. The signage letter is critical to motorists traveling at 45 or greater speeds along Jog Road time to see the name and react to

slow down to enter the project. Therefore, the extra height to the letter will hopefully improve visibility and avoid unnecessary accidents that might occur with less effective signage.

#### **ENGINEERING COMMENT**

No Comments. **(ENG)**

#### **ZONING CONDITIONS**

1. By April 15 2001 the applicant shall submit for a building permit for the existing wall signs for the Oasis PUD. The entrance wall signage submitted for permitting shall be consistent with sign elevation, Exhibit 16 in the BA2001-07 BA file in the Zoning Division. The applicant shall be required to submit a copy of the elevation to the Building Division when submitting for the sign permit. **(DATE:MONITORING-BLDG PERMIT)**
2. By July 15 200 the applicant shall obtain a final inspection on the wall sign from the Building Division in order to vest the sign letter variance granted, subject to BA2001-007. **(DATE:MONITORING-INSPECTIONS)**

CHAIRMAN BASEHART: That gets us down to the only originally scheduled regular item, Board of Adjustment BAAA 2000-072. Mr. Hertz.

MR. HERTZ: Mr. Chairman, for the record, my name is Cliff Hertz. I'm with Broad and Cassel law firm.

I'm here on behalf of Atlantic Coast Towers. I have with me Mr. Lee Chapman, president of Atlantic Coast, also Mr. Mike Houston, Houston Cuozzo (ph) Group, who are consultants to Atlantic Coast Tower, and also Mark Sharfello (ph), who is currently with a firm called Site Concepts.

Mark is here more as a witness than anything else. Mark was involved, as I was, in the -- in the drafting and all of the development of the tower ordinance back in '96, '97, '98, so --

CHAIRMAN BASEHART: Sorry. Just a question for

the County Attorney.

This is not a variance application. It's an appeal from an administrative decision. Is it necessary that witnesses be sworn in?

MS. WYNN: Yes, definitely.

CHAIRMAN BASEHART: Okay. Anyone who desires to speak on this item please stand and raise your hand, your right hand.

Bunny.

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

CHAIRMAN BASEHART: Did you raise your hand?

MR. WHITEFORD: Oh, yes. I didn't stand.

MR. PUZZITIELLO: Before -- before we get started -- before we get started, I think we should have the attorney, since we have some new Board members, explain what the -- what our charge is on this.

CHAIRMAN BASEHART: Yeah. Good idea.

MR. WHITEFORD: While we're waiting for the attorney, do you want Cliff go first then me, me go first then Cliff? How do you --

CHAIRMAN BASEHART: You know, I think since -- we might as well handle it the way we do any other item. We'll start with the introduction of the item by the staff, and then I think, you know, maybe give your feelings or your reasons for why your interpretation of the code is as it is, and then we'll let Mr. Hertz then make his presentation.

MR. WHITEFORD: Okay.

MS. WYNN: With regard to administrative appeals, for the new board members, obviously staff has made a decision that the applicant disagrees with, and, therefore, the applicant has filed an appeal.

What the Board is obligated to do is to listen to both sides and -- and, with the facts, make an interpretation based on the law that will be presented to you, as well, as to whether -- as to whether the appeal should be granted or not.

You can agree with the interpretation of staff, or you can disagree with the interpretation of staff, you can modify the interpretation of staff, sustain it or revoke it.

CHAIRMAN BASEHART: And in a nutshell, ULDC provides that the Board of Adjustment is the interpretive body for ULDC provisions, and I guess what we have here is there was -- there's a request, in this case, a tower to increase height which the applicant believes is administratively provided for.

Staff interpretation, Mr. Whiteford's interpretation differs from that, and so they've come here to have the decision made or the interpretation made, and my understanding is that the interpretation of the Board of Adjustment is final.

MS. WYNN: That's correct.

CHAIRMAN BASEHART: Okay, and then the only way around that for whichever side may be displeased with the result would be to --

MS. WYNN: Appeal to circuit court.

CHAIRMAN BASEHART: -- appeal to circuit court, and other than that, to seek an amendment to the code. Okay.

Bill.

MR. WHITEFORD: Good morning. You know me, Bill Whiteford, the County Zoning Director.

Cliff and I have had a friendly disagreement, you know, we've agreed to disagree on this issue. We've had a lot of friendly banter back and forth about it, and you'll hear my presentation. It could be actually very brief. I think it's pretty cut and dried, black and white.

I know Cliff has asked for an -- up to an hour maybe to discuss this. I don't know. I'm not sure what exactly he's going to throw against the wall to see what sticks, but perhaps when he gets done with his presentation, I can maybe just readdress the Board of Adjustment one more time just to get us back to the specifics of the issue at hand, which simply is the appeal of a particular section of the code.

It's in your backup material. I have last month's report. The staff report beginning on what page? Seventy-six?

The section of the code we're talking about is actually on Page 104 of your backup material. It's this section right here. I'll just read it for the record.

It's regarding monopoles, and the section reads, "The height of an existing monopole may be increased by a maximum of 20 percent to accommodate a second user, subject to standard building permit review."

The sentence goes -- the section of the code goes on to read, "An additional increase up to 20 percent may be approved to accommodate additional users, subject to standard building permit review. Increases shall be based upon the original approved tower height."

As you know from the report, and had a chance to read it, that Atlantic Coast Tower, who Cliff represents, seeks to administratively increase the height of an existing monopole tower from 120 feet a second time by an additional 20 percent.

We've made a determination that the administrative increases in height to existing monopoles are subject to the setback and separation requirements of the code except where specifically stated where they're -- where they're not, and the agent disagrees with that opinion. His appeal is attached to your report as Exhibit A.

The commercial communication towers section of the code is very specific. It contains provisions which do allow administrative increases in height and administrative increases in height to a tower where the separation and setback provisions do not apply. That section of the code is found on Page 101 of your backup material, and it's this section right here, and it's actually a section of the code that the petitioner has actually already utilized.

They have increased the particular tower from 100 to 120 feet in height without regard to the separation setback standards, as the code allows, and we permitted that administratively through staff.

This section of the code's very clear. It says without regard to separation or setback standards, and we have -- I believe that was an appropriate application of the code for that request.

This section of the code, the section Cliff would like to use does not exempt towers from the setback and separation standards. If it meant to, it obviously would say it. It does not.

And I think it's -- it's really that clear. If the code meant to say it, it would. It doesn't. It's -- there's nothing magical here. There's no invisible ink. There's nothing of that nature. It's simply an application of the code where one section does relieve you from the separation setback requirements. Another section does not.

And if that's not enough to convince you, I did have another issue I was going to bring home a little bit more graphically, and that is that I don't -- I don't think this section of the code actually applies to Cliff's situation at all because it fails a particular test, and that test, and you see it highlighted in yellow, is that the height of an existing tower, the first sentence, may be increased by a maximum of 20 percent to accommodate a second user.

Well, in Cliff's case, and towers built under today's standards, and this is on Page -- it's 105 of your backup material -- all towers built today under today's standards are already required to have a second additional user at the time it's constructed.

So I brought my red pen, and I was going to, you know, cross out this section of the code, just tell you it obviously doesn't apply to his case because it already has a second user. It's required by code. Just simply draw a big X through this section because it's simply just not applicable to his case.

That's my presentation. I'd like to have the opportunity to rebut anything that Cliff says at the end.

CHAIRMAN BASEHART: Okay. An hour? An hour?

MR. HERTZ: Well, it's going to take a little time because what Bill has explained to you so simply and so apparently logically is really incorrect, and I think that what y'all have to understand is that the Commercial Communication Tower Ordinance that was passed by the county was a result of almost two years of meetings.

Meetings were held by the Citizens Task Force. Meetings were -- first they were held by staff. We must have had 15 meetings with the county Zoning staff. We probably had five or six with subcommittees and committees of the Citizens Task Force, and then we had a number, five or six, in front of the County Commission of workshops and adoption hearings, and this ordinance

is something that was written in pieces and in stages, and this is the true legislative sausage that came out the other end after huge amounts of input from industry, and I can't tell you -- and one of the reasons I was sworn in is because I'm going to give you facts, as well as argument, based upon my experience in connection with the drafting of the ordinance.

There is nobody currently in the county Zoning staff who was involved in that process. Everybody here is coming after the fact or they were not involved.

There is one person who's still employed by the county who, in essence, was the draftsman of this particular ordinance and was involved in all the rewrites, all of the revisions, and certainly understands what the intent was when it was written. That person is not here today.

The county did not see fit to bring that person forward, and I just wanted to point that out because they certainly could have, and it certainly would have bolstered their position tremendously if they would have the person that wrote it who was involved in it come forward, and they didn't.

I was there, and one of the reasons I brought Mark was Mark was employed by PrimeCo at the time. Mark attended, I would say, probably about 80 percent of all of the meetings and was part of an industry group that I coordinated on behalf of the wireless telephone industry, you know, in connection with our effort to get the ordinance to look the way we wanted it.

There were a citizens group, the Family Against Cell Towers. There was a group of citizens in south county who was lobbying very hard for, you know, what I'll call anti-tower.

The one thing that everybody involved in this process, staff, the industry, the resident groups -- Dagmar Brahs was involved in this. She came to almost all the meetings, and the County Commission agreed on one thing, and that was the most important thing we can do in crafting this ordinance is to make sure and to assure that we get as much collocation as possible.

What is collocation? When a tower is built, it may only be built to accommodate one user. It may be built to accommodate two users. You may have AT&T Wireless and BellSouth, who's now Cingular, and they may be on a tower, but the more people you can get on one tower, the less towers you have, and the mantra of the County Commission, the mantra of the staff, the mantra of the citizens group were we want collocation. We don't want more towers. We want less towers, and the more we can use a carrot and stick approach with industry to force them to collocate or to make it easier for them to collocate, as opposed to build new towers, the better off we're going to be.

When I made my application, there was an attachment to the application which didn't make it into your -- into your package. I mentioned this to staff last week.

My revised application, which is essentially a letter, contained -- came to the county two ways. One as by fax, and one was by hand delivery, and I do have a copy of the hand delivery receipt and a copy of what was sent over.

When it was faxed, there was a lengthy exhibit that was not attached, and I will give it to you, but let me tell you what it is. What this is is a very early -- I believe it's February of '97 -- draft of the commercial communication tower ordinance.

I can tell you that this provision was not in there. Neither -- neither were -- was -- well, this provision that Bill has focused on was not part of the ordinance, nor was the provision that discussed proposed monopoles.

At the very beginning of the ordinance, and I'll -- let me hand this out, and I'll explain it to you.

The historical development of the ordinance will show very clearly what was intended.

CHAIRMAN BASEHART: I think as Chairman I can just accept it in the record. We don't have to vote.

For the record, an attachment which is draft code language for the tower provisions has been handed to each member of the Board, and we're accepting that into the record for this procedure.

Go ahead.

MR. HERTZ: If you look at this early 1997 draft, you'll notice that there's no provision which is similar in any way to that which is found in the existing ordinance which is attached to the staff report.

In particular, the provision that appears on Page -- there it is, on Page 100 of your backup materials, which is the provision that basically states for a proposed monopole tower you can get an additional 20 percent without regard to setback and separation. Bill mentioned that provision.

That provision did not exist in the initial draft, nor did the provision that's shown here as Item B exist.

The only provision that existed was this one, and if you would carefully read our application, you would note that our request for code interpretation to you is based on this provision, 2.a. Bill has responded under 2.b.

And I mentioned at the last meeting when I appeared before you that I did not think Mr. Whiteford's response to our petition was on point in that our application is basically saying we believe under this Paragraph 2.a that we are entitled to Development Review Committee administrative amendment, X.1, for increases of 25 feet or less for any conforming and non-conforming tower.

So everything dealing with 2.b really is irrelevant to me. That's really not what I'm traveling under. I do believe, and I'll -- and I'll walk you through it. It's somewhat complicated.

This provision was the original provision in the first draft. This was the only provision dealing with height extensions of towers existing or proposed.

Sometime in March of 1997 this provision, B, which Bill has highlighted, was added. The intent of B was clearly to make it easier to get height extensions for monopole towers than other types of towers, but because it was so poorly drafted, I decided that it's not as clear -- it's not going to be as clear to you that I'm entitled to my height increase under this as it is here, and I'll explain why.

So first this language was in the ordinance, then this language, B, and then at the last minute, just before the County Commission adoption a year and a half later, the provision that states, "Any proposed tower can be extended 20 feet," that's in the front of the ordinance on -- that I pointed out on Page 100 of your backup material -- that was added.

That was the -- and that was added, interestingly enough, at the request of the Family Against Cell Towers. They were the parties that requested that existing towers -- I'm sorry, proposed towers be able to be increased by 20 feet without regard to separation setback, and it was drafted, and it was well drafted, and it's been implemented.

The reason they asked for it was the same reason that everybody was on the same page regarding collocation. They wanted less towers, not more, but this was the granddaddy provision regarding height increases, and the intent of that provision, and Mark is here and he was involved in all these discussions -- the intent of this provision was regardless of whether your tower is an existing tower, any existing tower, is conforming or non-conforming, you can extend the height of that tower based on one -- on one occasion, based upon this chart.

This provision and the provision in the front dealing with proposed towers has nothing to do -- they have nothing to do with each other. You have a proposed tower, you build it. A year later you get an additional user and you want to extend the height of that tower, you've got an existing tower that can be extended under 2.a.

We want to extend our tower 20 feet. It says if you're a conforming tower, which our tower is, and you want to extend it 25 feet or less, you can go to the Development Review Committee for an administrative amendment process.

This provision was unchanged from the first time -- from the first draft to the last. Bill will come back here and rebut and say oh, it may say -- first of all, I didn't understand Cliff's application to really be under this section, but if it is under that section, let me tell you it doesn't say in here that it's without regard to separation and setback requirements. He'll use that same argument.

We think that that argument is -- one of the



reasons I decided to travel under this provision is because how could you have a conforming -- a non-conforming tower that you can increase the height of? Plain. I mean it's plain language. Well, you could have a non-conforming tower as to separation and setbacks.

So if you have a non-conforming tower as to separation and setbacks, the clear language of this tower allows you the height increase. So why are you now going to drag yourself back into the separation and setback provisions of the -- of the ordinance?

This, again, to me, is very clear. I think it should be clear to everybody that reads it whether the tower is conforming or non-conforming, you get a one-time height increase if you're an existing tower, and I can't understand why the response to this was really a response to monopole towers height extensions, which, unfortunately, was not well drafted.

This was intended to be more liberal than this. I can -- I can understand how, not knowing the intent of the ordinance and not having been at the ordinance -- all of the meetings regarding it, how one could take the position, well, maybe this, you know, maybe this, it still is subject to separation and setbacks.

Of course, it makes no sense, but I mean I could at least see from a pure reading of the words how -- how Bill could take this position.

I think part of the reason that Bill is taking the position he's taking, and this is not a slap at him at all, is that staff is very reticent and very hesitant -- I'm sorry. Staff is very hesitant and reticent about making any staff determinations relating to any height extensions of towers.

They believe that it's probably a sensitive issue, and that, frankly, I just think they don't have the guts to make the call, and they don't have the guts to implement the ordinance the way it was intended to be drafted.

And I can understand that. I mean I can understand as an -- as an administrative person not wanting to necessarily say yes, you are right. As a matter of ordinance you can extend this thing 20 feet, or in other cases you know, maybe 45 feet.

So -- but that doesn't change what the ordinance says, and it says any conforming or non-conforming tower height extension based on this chart. And the reason why I feel very strongly that the interpretation that I'm giving you is correct is because of the word "non-conforming tower".

There was a lot of discussion about this -- this new ordinance when it was passed making all of the existing towers non-conforming, and we wouldn't necessarily be able to expand the non-conforming use. So the whole idea was let's recognize that you've got a non-conforming structure or a non-conforming use, and let's build into the ordinance the ability to extend and expand it in an effort to reduce the proliferation of

new towers.

So what we were doing is saying okay, we recognize it's non-conforming, but let's allow people to expand and extend that, which is contrary to all usual zoning principles, which is that you cannot expand or extend a non-conforming use.

And it was purposely done differently here. So we might have existing towers that are out in the field, and they may not comply to separation and setbacks or an extension of the height may cause them to become non-conforming as to separation and setbacks, but nonetheless, they're non-conforming towers that should be able to be extended under this provision based on the plain language and meaning of the provision.

That's the essential argument. I feel somewhat badly that Bill misinterpreted my application, and if it was unclear, which I don't think it was -- if it was unclear, I am sorry about that.

You want to give the history?

There's also a lengthy history involved in the development of the particular site in question, but I don't -- I think we're just going to forego that.

I would like the opportunity maybe to say a few words if anything new comes up.

CHAIRMAN BASEHART: Okay.

MR. HERTZ: Hold it. I'm sorry. Mr. Houston, I guess, wants to talk a little about the site, this particular site.

MR. HOUSTON: Good morning, members of the Board. Michael Houston, for the record with Houston Cuozzo Group.

We were the land planners on the project, and I think the one item that I want to emphasize that I think is in support of Cliff's arguments and certainly the original drafting of the ordinance.

We have a site now that essentially has added additional wireless carriers to it. It originally started off with just a few and it's increased because of the demand in the area and obviously because of demand in wireless needs in general.

We worked very hard to try to find the right appropriate place in this commercial center to make this tower the appropriate location. We started off in an area closer to a residential neighborhood but still within the setbacks. We shifted it further to the west to try to accommodate questions about what would be the best location, as well as achieving the setbacks.

The point that I'm going to make that's important here is that if we -- if the ordinance, as is interpreted by staff is followed, we will be looking for a second tower on this site. There are additional users and additional needs in this area. That will be an inevitable part of that interpretation, is that another tower will have to go up.

We can achieve standards and setback requirements on the site for an additional tower. There actually could be two towers on this site, and we began

that discussion with staff some -- nearly a year ago about where would the appropriate place be and what it would look like.

We believe the appropriate place is where the tower is today. We believe the extension will not harm the community in any way. It is consistent with the interpretation that Cliff has just walked through with you, and, more importantly, it keeps the second tower from being built that will have to be built to provide for the additional needs in the area, and that's an important issue as far as that. Thank you.

MR. WHITEFORD: Just brief quick comments. I won't use one of Cliff's exhibits, I brought my own.

I'd like to point out that my exhibits are nicer than Cliff's, too. Anyone notice that? No.

CHAIRMAN BASEHART: Yeah, I was a little surprised that that site plan's not nicely colored. It's hard to read.

MR. WHITEFORD: A lot of green always kind of helps.

MR. HERTZ: Well, it's the taxpayer dollar versus the private sector.

CHAIRMAN BASEHART: They've got deeper pockets, and I understand that.

MR. WHITEFORD: That's right.

What I've always told Cliff about this particular section of the code -- and it's true, I think that a tower meeting this section of the code can be approved by this section of the code.

This section of the code is a processing break, and if you meet that criteria, you can get that process break, and you certainly can get a tower made higher under that provision of the code. No problem, no sweat.

The only hangup is there's no provision in that section of the code which says without regard to separation or setbacks.

In their particular case they would need a waiver approved by the Board of County Commissioners, and then they would go through the process break that they got.

Another tower in another location that didn't have a separation or setback problem would just simply go through the process break. That simple.

The other is, you know, obviously, the no guts comment. I thought that was kind of a low blow. I mean my neck's out there every day, all day, and we make plenty of gutsy decisions.

In this particular case this issue was discussed with obviously the Executive Director, the County Attorney's Office. It went up to the Deputy County Administrator. They all concurred with the decision and the approach that we were taking on this particular matter.

And the third thing that Mike referenced about the need for perhaps a second tower on that site, you know, we've been debating this issue for so long that had it gone forward and had it gotten a waiver for an

additional whatever it is they need, 18, 19, 20 feet, I mean it's a compelling argument that that's maybe perhaps a better situation than a second tower on the particular site. You know, it could have been done perhaps.

The process is there. This is not -- it's simply a process issue. This is not going to prevent the tower from getting the increase in height, the existing tower. It's just a -- simply a process that they would need to go through, and the process being to request that waiver from the Board of County Commissioners.

MR. HERTZ: I do apologize for that low blow comment. It was, and I'll agree with Bill.

I am -- I apologize for that, but the staff has been hesitant to, I think, undertake to use all of the authority that's granted to them in this ordinance, and typically we're getting a lot of responses just on general terms that we'll take it to the Board of County Commissioners for a waiver, and what -- what -- and we could, I suppose, do that.

But one of the things you have to understand about the wireless telephone industry is that it will always take the path of least resistance. The path of least resistance is generally not a public hearing process if it's available. If you can avoid the public hearing process, you're not going to go there.

Sometimes it's easier to build a second tower through a DRC approval than it is to file a waiver application with the Board, and I have -- I can tell you, I filed one of the few applications. It's not like a simple one-page little document. It's a full-blown deal, and -- I mean you'll go to DRC twice and get comments, even if you know what you're doing, before you can actually get to the Board of County Commissioners. But I don't think that's what we're here for.

I do not believe that this is a procedural kind of all this does is give you a break, 2.a, a break on process, and the reason I -- I feel that way is, number one, it was the original height extension provision throughout the process of developing the ordinance, but more importantly, I think -- I think the crystal -- the crystallization of all this discussion comes down to one thing, the word "non-conforming" here.

I don't think that staff can explain away why the word "non-conforming" is in this section of the ordinance because the tower could be non -- an existing tower could be non-conforming in a million different ways.

It could be on a lot that's not big enough. It could not meet -- it could have a million -- and I listed a few in my application, you know, besides separation and setback requirements.

So if a non-conforming tower can exist, and one of the things that could be non-conforming with respect to the separation and setback requirements and you can extend it, then why can't you extend the height of this

tower.

I mean it's just -- and what we're hearing is you can't extend the height of this tower because it will make the tower non-conforming, but non-conforming towers can be extended. So I really -- I really think that staff is -- really wants to ignore this provision, and that's why it didn't come up in staff's response to my application, did not come up in staff's presentation. It only came up in rebuttal, but I don't think there's any way to get around the fact non-conforming towers can be extended; period.

And if they can, then I can extend this tower, too, and I can do it based upon this chart. I'm a conforming -- but if I were non-conforming, I could -- I could do it, also.

Understand the collocation mantra that we heard, and Mark had testified to this, also, from the County Commission until -- I mean until it just basically became the watch word for the entire process at every public hearing; what are we doing to promote collocation; what is in here to give incentives to industry to collocate; we don't want to see new towers. And this is one of the things that was done early on.

Other things were done later in the drafting of the ordinance.

I know I've taken up a lot of time, but I think the historical perspective about this provision being in first then this provision, and then the one in the front, highlights that this wasn't the first substantive provision, and it did and was intended to stand on its own.

We believe non-conforming and conforming towers can be extended in height one time pursuant to this chart without regard to whether setbacks and separations are violated or they're non-conforming as to separation setbacks to start with. We just think it's a common sense reading, and it's consistent, very consistent with the intent.

I mean it's kind of hard to come after the fact with nobody who was involved in the process and kind of explain to you what we went through in the development of the ordinance. But, you know, I can only tell you this. I think this section does speak for itself.

Happy to answer any questions regarding anything I've said or anything Mike said, or I have Mark here if you'd like to hear from him, who was also intimately involved on almost a daily basis for a year and a half, you know, in connection with this ordinance, as was I.

CHAIRMAN BASEHART: Okay. Thank you.

Members of the Board, any comments?

MR. PUZZITIELLO: Couple quick questions.

You already have -- is there two users on that tower now, and you're looking for a third? Is that what it is?

MR. CHAPLIN: My name's Lee Chaplin, and I'm the president of Atlantic Coast Towers.

This site is a truly unique site in the county.

Currently we have seven users who want on this tower. We have five located from -- to 120 feet. We're asking for 20 more feet to accommodate two more users.

I don't know of any tower in the county -- I don't know of any tower with the seven users at a minimum of 140 feet.

MR. PUZZITIELLO: Okay. And one question for the attorney.

Basically, your whole premise is stating that the Zoning administrator can allow you to increase a tower and make it go from conforming to non-conforming.

MR. HERTZ: Well --

MR. PUZZITIELLO: I know conforming towers were originally put in because of existing towers that were there before the code.

Where does it allow the Zoning administrator to allow him to change -- change a tower to convert to a non-conforming tower?

MR. HERTZ: The -- I have a conforming tower. Let's take that as a given. All this says is that conforming towers can be extended.

It doesn't say, you know, take into account separation and setbacks. Doesn't say that, but what kind of bolsters my position is that clearly if you had a non-conforming tower and it was non-conforming as to separation and setback, you can extend it.

So I also think that, notwithstanding -- and I ignored it 'cause I didn't really think it was relevant, but I can see that, you know, you're focused on it.

This has nothing to do with whether or not the tower existed on the date of the ordinance or not. Bill has made the argument under B, which I am not traveling under or really trying to address, that because of the language to accommodate a second user, that somehow under B it only applies to towers existing on the date of the ordinance.

It's interesting to note, though, that back in October I received a letter that was exactly the opposite of that, but that's neither here nor there, and that's in your backup material.

The point is it doesn't say anything here that the tower had to be existing on the date of the ordinance, and I think part of the intent was if on the day of the ordinance or a month after the ordinance was -- was passed, I built a 100-foot -- 120-foot tower that was conforming and I hung five carriers on it or two carriers on it, and then two years later somebody came to me as the owner of the tower and said you know what, I've got two more users that want to go on this tower, but they need to go at heights that are a little bit higher.

I believe it was clearly the intent of this provision to say towers that are built after the ordinance where an additional need arises for -- where you have additional users and you're promoting collocation, that you could extend the height of that tower.

So I don't believe that this provision in any way could be construed to apply solely to towers existing on the date of the ordinance.

I understand because of the poor drafting down here how Bill is making that argument, and from a pure language, reading it very -- look at each word point of view, I can understand the argument he made here, which is why I said you know what, I know what this was really intended to mean, but it was poorly written, so forget this. Let's go back and talk about this, and that's really what my letter application focused on, the -- and in that letter application I focused on the fact that non-conforming towers could be non-conforming as to separation and setback, and it doesn't say they can't be extended here.

So if I have an existing tower, I want to use this provision, and, interestingly enough, if I use this provision and you agree with me, the tower still is not non-conforming because it was extended in conformance with the ordinance.

In other words, I have 100 feet, and that would be my max. Then I have a provision that says you can extend 20 feet for a new tower, a proposed tower, without regard to separation and setback. It's still conforming.

Then it says if you have an existing tower, you can extend it pursuant to this chart.

So if I extend it, a conforming tower pursuant to this chart, it's still conforming.

MR. PUZZITIELLO: Initial construction was 120.

MR. HERTZ: Initial construction was 120.

MR. WHITEFORD: Well, 100.

MR. HERTZ: One hundred -- well --

MR. WHITEFORD: And then they increased it in height, based upon that provision of the code down there.

MR. HERTZ: The proposed tower, which this --

MR. PUZZITIELLO: When it went up the first time, it only went up to 120. They didn't increase it after it was up.

MR. WHITEFORD: Went to 100, then it went to 120.

MR. HERTZ: Well, but it was really all -- it was really all done under as -- under kind of one process, if you will, I think. I mean we were -- I was in the meetings, and Bill was there.

We were allowed to use this provision of proposed tower in order to get the initial extension to 120 feet. This --

MR. WHITEFORD: Well, if I can just back up for a second, Cliff.

The original tower was actually approved by the Board of County Commissioners; wasn't it? No? Just went through DRC as 100-footer?

Went through DRC as a 100-footer, got the approval, then did you come back for the 20 percent before it was built?

MR. HERTZ: Before it was fully constructed, we had a meeting at which Bill said it's still a proposed tower because it's not existing, it's not completed, and you can do this, based upon this provision that's in the front of the ordinance, increase the height of your proposed tower up to 20 percent; is that correct, or do you want to --

MR. CHAPLIN: We originally came in, once we pulled the building permit and started construction, once that happens, it's hard to get the telecommunication industry all behind you at one time.

Once it started going vertical, we started getting all sorts of interest. Once we got the approval -- excuse me, before going vertical.

Once we pulled the building permit, we made application under this provision, actually for 45 feet, and we were denied this process because we were not existing and were given this opportunity as proposed, and we took that.

Once we were existing, we then re-entered the office under -- under this provision again and asked for our one-time extension. We were here going to DRC. We asked for -- and the second time since we only are now needing the 20 feet, we came in under the Development Review Committee administrative.

The -- one more little piece of history, if I may.

This is Shadowood Shopping Center. This is 441, and this is Glades Road. We originally had a letter determination that allowed us to go here from Mr. Whiteford. As we got down the process through -- through relooking at it, decided that that better not happen, then we then came back in and said okay, but this is not camouflaged. We're looking at this site or this site.

This site is very near the corner. I'm telling you as an industry person that, while I could get my approval for that, this would cause ramifications to the community. It would cause ramifications to my industry.

We sat there and had the discussions that this may take us longer and it may be more steps in the process, but I should be here in between two buildings and an existing shopping center than up on the corner. That is why I ended up in this location. That's why we took the 100 feet, and that's why we came back in.

We knew we were going to have high demand for this site. Seven users is extraordinary.

Thank you.

MR. WHITEFORD: Just a real quick point. I think we all can agree on makes a use conforming or non-conforming. It's generally a change in the code or it's a new ordinance that may effect an existing structure or previously approved use that makes a use conforming versus non-conforming. We generally all agree on that?

MR. HERTZ: I'm just -- I think I've kind of beat my point to death. I've answered the questions.



I'm happy to answer any other questions you may have that may come up in your discussion.

I just do feel that it's in the interests of everybody that these kind of height extensions be allowed, especially in view of the clear language that we have there. That's all I can say.

Be happy to answer any questions.

MR. JACOBS: I have a question. Are you essentially saying that you're put in a -- at a competitive disadvantage, compared to a new tower that goes up tomorrow because you're an existing tower?

MR. HERTZ: I'm not sure that's -- that's really what we're saying. What we're saying is we followed a process that allowed us to build a 120-foot tower. Now we have additional users who want to come on, and we want to extend it pursuant to that provision.

I don't think that we're really -- actually, the newer towers, I think, have a little bit of an advantage over the existing towers because a new tower can become existing, and that's exactly what's happened with us.

A new tower can take advantage of this provision, which is the 20 percent height increase without regard to separation and setback, and then once the new tower is built, it then becomes an existing tower and a year later or two years later if additional users are identified, he could then come back with this. Whereas an existing tower only has this, the one-time height increase that's available to existing towers.

So, really, a new tower, if you can get one height increase there and then one here, which is exactly what we're -- what we're trying to accomplish, take advantage of the proposed tower, the height increase, and then once we become an existing tower, take advantage of the existing tower height increase, and we think that is consistent with the intent of the ordinance, and we think, frankly, that's just the way it reads.

I think the most unfortunate part is that this deed provision was not drafted the way it was intended to be drafted, and that's really why I just chose not to even get into it, but it was clearly intended to give you more of a break as a monopole -- what should have happened or what did happen, but is being read a little differently, is this was supposed to give you more of a break than this.

And because of the way this was drafted, it's being interpreted not to. That's okay. I can live with that, but I still want to take advantage of this, this being the two-way provision.

And I -- and I truly do wish that the parties who were involved on the county side in drafting this were available because they could probably put some -- some gloss on that, but I -- there's nothing I can do with the way that was written down there.

MR. GERBER: I have several questions. It's purely from a legal perspective, and it's going to be

addressed both to Mr. Hertz and staff.

First, just so I'm clear that there's an agreement by Mr. Hertz and staff that 2.b is not an issue here, 'cause I know, Bill, when you came up, you said, you know, draw a line through it, and Cliff said I'm not traveling under 2.b. So 2.b is out of the picture at this point? So 2.b or not 2.b, that's the question.

MR. WHITEFORD: 2.b, if it's not an issue to Cliff, it's not an issue to me.

MR. GERBER: Okay. All right. That hadn't been answered. All right.

So the next -- we're looking at 2.a, 2.a and no one's addressed this so far, has at the very end, subject to the requirements of Table 6.4-4E, and this may just be a typo in the code, but --

MR. WHITEFORD: Oh, yes.

MR. GERBER: Okay.

MR. WHITEFORD: A typo, yes.

MR. GERBER: All right.

MR. HERTZ: I looked really hard for that.

MR. GERBER: Okay. That having been said, we've got, to me, from what I see, the -- looking at the code as a whole we've got three different types of standards here. We've got what's in 2.a, which you just says subject to this table and doesn't mention subject to building review or setback requirements. It just says look at the table.

You've got 2.b -- and I'm not saying you're relying on 2.b. I'm just looking at how we're supposed to interpret 2.a. 2.b talks about subject standard building permit review, whatever that is.

5.c.i is another example of review, talks about without regard for required separation or setback requirements.

So when I look at 2.a, it's silent on subject to review, and it's also silent on without regard to separation or setback requirements.

You have two opposite ends of the spectrum and 2.a addresses neither.

MR. WHITEFORD: Can I maybe shed a little light on it?

Typically the way the code is drafted, if there's a specific provision about a specific use, that specific provision applies, and in this case we're under this Section 2, and there's an A and a B. B is specific to monopoles, so, you know, most people are going to take the approach 2.b applies to me because I'm a monopole, not 2.a because it's specific about monopoles.

That's one of the reasons I concentrated on B, because this is a monopole that we're talking about.

MR. GERBER: I've got a problem with that, and my problem with that is that, yeah, there's also a canon of law, and I apologize 'cause I'm coming at it from a legal perspective, that, you know, it was meant to be put in one place, it should -- and it is in another

place, it would be in both places. So to the extent it's in 2.b and not in 2.a creates an argument that it was purposely excluded from 2.a. That's an argument.

MR. WHITEFORD: And that may be. That's why 2.b would apply in this case if it were -- because it's a monopole.

MR. GERBER: What I'm saying is it could or couldn't. You could look at it one of two ways.

MR. WHITEFORD: And I guess from my perspective it doesn't matter because the bottom line is the phrase, without regard to required separation or setback requirements, isn't there in A or B.

MR. HERTZ: Well, this is where I got to jump in and say that's why I walked you through the historical development of the ordinance to understand this was here first. This was here second. This was misdrafted, and this was stuck in at the very last minute at the final hour, and, believe me, when this was drafted, nobody was thinking about what was going -- two years later.

This provision is drafted two years after this provision. Nobody was thinking about well, gee, we said specifically here without regard to separation and setback. Here where we've got non-conforming towers already identified, I mean do we really need to go back and stick it in there?

And that's why I'm telling you this -- that's why the -- as an introduction I said this thing was a sausage. This was not something that somebody sat down and rationally and logically tried to get it all to hang together. This was a political process.

This was there first and stood alone, and it did say non-conforming towers, and I don't understand if you could have a non-conforming tower, clearly it can be separation and setback, could be part of the non-conformity.

But, you know, you said well, here it says subject to standard building permit review, but up here we don't really -- it doesn't say anything.

Well, it does. It says you get sent to the Development Review Committee for an administrative amendment for this, that's a process.

Here, a Development Review Committee process is a process that not only involves just running some papers through, but this process actually has standards by which the Development Review Committee must make a determination of consistency with the surrounding area.

So -- and this process, you know, clearly is going to the Planning Board, and this process going to the County Commission. So the processes and the standards are all built -- it's all built into this chart.

Building permit review is a building permit review; does it have the structural capacity, yada, yada, yada, yada. That's the way I read it, and I think this really was truly intended to give a much bigger break for monopoles, but it was -- it was poorly drafted.

But this, which was supposed to be more stringent and my interpretation still is more stringent than this, I mean it gives you your process. Your process defines what the standards are in the process, and, again, I have to come back to non-conforming.

So one of the reasons I spent the time to go through the historical development is to, you know, to get you to see that these things did and were intended to stand alone, not necessarily start causing you to go back and forth.

MR. GERBER: Development Review Committee, I don't know what that committee does. What are the standards of review by that committee?

MR. WHITEFORD: Well, the Development Review Committee is an administrative approval. It's by staff. It's -- they're made up of representatives from over a dozen departments. It's simply administrative review approval.

CHAIRMAN BASEHART: It's over 20, isn't it?

MR. WHITEFORD: Close to 20.

MR. GERBER: Well, what's the standard of review? Under 2.b standard of review is whatever such building permit review -- 2.a. What does Development Review Committee review?

MR. WHITEFORD: They review for code requirements. They don't -- they don't have these type of standards that, say, the Board of County Commissioners would have to look at unless it specifically says they have it in the code, which it does for certain uses, to address compatibility and some things like that. Their authority is basically to enforce the code.

MR. HERTZ: Mr. Chairman, if I may. With regard to the administrative amendment, I believe that they have little discretion. It's more of a paperwork, record keeping type of item, which is why it's only to allow for these small increases of 25 or less.

But I can tell you with regard to Development Review Committee process here, which is X.2, which is really when you're getting to the 25 to 45-foot increases, there is a compatibility standard, and as a matter of fact, I have had applications that have gone to DRC, a stealth tower, which is, you know, treated to look like a tree, and I've had staff say we're not going to approve it at DRC because it's not compatible.

So there is an increasing level of review as you go from an administrative amendment, which really is an administrative process. It is paperwork, but as you go here, you get a compatibility standard. As you go here, you get the full Planning Commission standards of review, and as you go here, you're at the County Commission level, and they have their own standards of review.

So there are review standards that are built into this chart, and the scrutiny becomes a lot higher as the height increases go up.

MR. WHITEFORD: I just want to add one other

thing to give you a level of comfort that when we put together the code, certainly a lot of people were involved, a lot of voices, a lot of opinions, you know, is it making sausage, you know, it's -- it's a -- like I said, it's a lot of people involved in putting together the code, but the code is well thought out.

We do take the time to put it together and connect the dots, and I think that's one of the important things here, and that's what I do when I apply the code. I try to connect the dots and say, you know, from point A to point B to point C and make everything logically apply.

In this particular case, I think that the approach that I've given you and what I've told you makes sense, and it is the correct application of the code, and the way we've applied it to date to this particular applicant has been proper.

They've got the one-time 20 percent increase without regard to required setback or separation. If they want to pursue the procedural breaks allowed under 2.a, which I think also are allowed, in that particular case, though, it would be subject to separation and setback requirements.

MR. GERBER: Yes or no question to each of you.

Under 2.a, Development Review Committee administrative amendment, is it your position that the Development Review Committee administrative amendment does or does not include consideration of separation or setback requirements?

MR. HERTZ: I don't believe that in the -- traveling under this section it has -- it's with regard to separation and setback requirements 'cause that's how I interpret the ordinance.

MR. GERBER: Okay. Bill, do you have a different --

MR. WHITEFORD: Oh, of course. I mean you hit the nail on the head. I mean obviously they would apply the setback and separation standards.

MR. GERBER: All right. The way -- my position on this is I think as a matter of law, 2.a is ambiguous, and as matter of law in an ambiguous situation you look at parol evidence to see the intent of the parties.

I think we need testimony -- I know you've given testimony. It's been mentioned that there's a person from the county, who is not here, who -- who, from the county's perspective may have a different opinion.

MR. WHITEFORD: And I'm not real sure who Cliff was talking about.

MR. GERBER: Can you identify the person, Cliff?

MR. HERTZ: You know, here's the thing. It's kind of an unusual circumstance.

I don't think it's -- I don't want to put that person in that position because, frankly, and I'll put this on the record, I don't want that person to come up here, tell the truth and lose their job.

So I will not identify that person, and if I

lose the vote because of that, so be it, but I'm not going to put a county employee in the position to have to come up and testify against the county Zoning Director.

MR. GERBER: Bill, you don't know who he's referring to?

MR. WHITEFORD: Now that he's said that, you know, I do know who he is talking about, and that person did have a -- initially a different opinion, and in -- what I did was to contact the Zoning Director at the time and ask him his opinion, and his opinion was consistent with mine, and in fact he pointed out the last argument I made, that the 2.b actually didn't apply in this case because it failed to meet the test because there was no need for a second additional user because it already had one.

And that's actually where I got that thought from, was from Marty, but, no, I ran this whole thing through Marty, and he concurred with the position I was taking.

MR. JACOBS: May I ask the staff a question?

Is it your interpretation that Section 2.a, had it been properly drafted, would have read, "conforming and non-conforming towers, other than monopoles, shall be," et cetera, et cetera.

MR. WHITEFORD: You know, I can't say properly written. I mean people still debate, you know, how the Bible is written. You know, I don't know if it would be, you know, properly or improperly or better or, you know, more clearer if it were written that way or not.

MR. JACOBS: But to support your position doesn't that have to be the way the section should have been written?

MR. WHITEFORD: No, because in my -- my estimation is that whether it's A applies or B applies, is not relevant because in either case separation and setback requirements apply.

MR. HERTZ: And I guess my response to that has been all along if you can have a non-conforming tower eligible for a height increase and a process that goes with it, and that non-conforming tower may not meet separation and setback requirements, how can you then read back in the -- well, it's got to meet separation and setback requirements?

I don't understand it. I have a non-conforming tower, and it doesn't meet. It's currently up, and it doesn't meet separation and setbacks, where does it say here it's got to meet separation and setbacks?

MR. JACOBS: What troubles me is, is that -- is --

MR. HERTZ: That's kind of a --

MR. JACOBS: -- that the -- that subsection B here, I mean to take the -- take the position that the staff is taking, you have to read subsection A as excluding monopoles. That's the only -- that's the only way to --

CHAIRMAN BASEHART: Well, I don't see it that way. The way I see it is, you know, and I think it's been said during the discussion here is that I think that the county would like to give more flexibility to monopoles than guyed towers because guyed towers are generally much more of a nuisance because, you know, of the guy wires themselves, and they have a greater impact, you know.

So I think -- I think it's -- I mean there are a lot of confusing elements with, you know, the way all of these provisions, you know, try to interrelate, but, you know, it would be my interpretation, again, not as a lawyer, you know, that the intent of the language in here is to, you know, to provide all -- under A to provide all towers with opportunities, and then to provide some further opportunities to monopoles over and above what guyed towers might be able to take advantage of, and, you know, where I differ with Mr. Gerber and -- and the issue of the non-conforming versus conforming issue, it's inconceivable to me, you know, that -- that the code would intend to say if you have a non-conforming tower, you can extend the height, but if you have a conforming tower and it would be made somewhat inconsistent with the code through an extension that you can't do that, it's giving more flexibility to -- to towers that are in more discord or more non-conformance with, you know, with the code.

I mean it would seem to me that the -- and after hearing all the discussion and mainly my opinion is based not on too much any of that, but what I'm reading. I think it was clearly the intent of the code that any tower, you know, is allowed to take advantage of a one-time increase based on the chart, and that basically anything that wants 25 feet or less extension, whether it meets current setback and separation standards or not, you know, can do that through the administrative DRC process, and then, you know, the 25 or 45 -- to 45 through the full DRC and on and on.

And, you know, when you look at what the clear intent of the code is, that I think everybody agrees with, is to minimize the number of new towers, you know, it makes perfect sense to me.

MR. GERBER: Mr. Chair, if I may. I think we are in agreement that I believe that this applies to conforming and non-conforming. I mean there's only two types, conforming and non-conforming.

CHAIRMAN BASEHART: Right.

MR. GERBER: It applies to them all. I think where the issue is -- has to do with is whether consideration of separation and setback requirements are included as part of the Development Review Committee administrative process. That's the issue.

They say it isn't. He says it is. That's the issue, and we have to rely on the intent of the parties who drafted this stuff as to whether it was or not.

All we've gotten evidence-wise that we can consider, I think, is the applicant's position, which

was it was not intended to include separation or setback requirements.

CHAIRMAN BASEHART: Okay. Well, you know, I mean if you look at the code, there are three -- the code defines non-conformities three separate types, non-conforming uses, you know, non-conforming structures and non-conforming with respect to development standards.

MR. GERBER: Again, we're past that. It has nothing to do with conforming or non-conforming because A allows for both.

CHAIRMAN BASEHART: Right.

MR. GERBER: A says if you are conforming or non-conforming, you go to Development Review Committee administrative amendment.

What does that entail? Does it entail consideration of separation and setback requirements or not?

CHAIRMAN BASEHART: I think anything that would make it non-conforming. You know, like I said, you can be non-conforming with respect to use, structure or development standards such as setbacks and separations.

So I think -- and where I'm coming from is it's inconceivable to me that the code would say if you have a structure that, you know, a tower that's non-conforming, you can extend it according to this schedule, but if you have one that's conforming, all right, you can't extend it, according to this schedule if you create a non-conformity as a part of that.

It seems that, you know, you're treating the -- the more inconsistent with the code facilities more liberally than you are the conforming ones, and I don't think that ever could have been the intent of the code.

MR. GERBER: I understand your point.

MR. JACOBS: Is it your opinion, Bob, that the -- that the purpose of subsection B was to, in effect, give monopoles an additional break?

In other words, they had the break provided in 2.a, and then they got, if you will, an additional break under 2.b if they wanted to go that route?

CHAIRMAN BASEHART: Yeah. I mean that's the way I read it. You know, if -- yeah, I know what you're saying in that, you know, B and C only refer to monopoles and A doesn't. It just says towers, you know, then your interpretation -- or I think the way you're going is that then A must have intended to exclude monopoles. I don't think that's what it says.

MR. JACOBS: Or it probably should have been -- should have said conforming and non-conforming towers, including monopoles.

CHAIRMAN BASEHART: I mean, you know, basically there's two types of towers. You know, there's the monopoles and there's the guyed towers --

MR. JACOBS: Guyed, right.

CHAIRMAN BASEHART: -- and, you know, it's clear to me since some additional breaks, some additional opportunity is listed under B and C, you know, that



aren't available under A, and it specifically, you know, is for monopoles, it's my interpretation that the code intended to treat monopoles more liberally than -- in terms of additional opportunities than it did guyed towers.

MR. JACOBS: Yeah.

CHAIRMAN BASEHART: I mean A, you know, if it was the intent to be otherwise, you know, then A should have said, you know, guyed towers. It doesn't. It includes all towers, whereas, B and C include only monopoles.

MR. WHITEFORD: Bob, can I just maybe just shed some more light and --

CHAIRMAN BASEHART: Sure.

MR. WHITEFORD: Again, not -- it's more a philosophical discussion than it is particularly of Cliff's case, but I think it could be said that the code was more liberal for existing and possibly non-conforming towers than conforming towers.

I mean the intent -- the code is always trying to drive towards conformance and keep uses conforming. The situation with non-conforming towers usually is that they're existing. They're in place. They're more urban area. Their impact is already there. It's created.

I think the intent of this ordinance was to take advantage of those existing-type situations and allow them a little bit more liberal extensions than perhaps a conforming tower.

MR. GERBER: Cliff, I just wanted you to, if you could, respond to Bob's point. I think, if I understand Bob's point correctly, is that if you were traveling under a Development Review Committee initially an amendment and the result of your change is a result in a non-conforming tower, is it your position that that's allowed?

MR. HERTZ: I don't think it results in a non-conforming tower for the simple reason that the code allows you to do it.

MR. GERBER: Well, it's non-conforming in the sense that it may violate separation or setback requirements.

MR. HERTZ: Well, this is without regard to separation and setback requirements, and as a result of that, the tower stays conforming.

You have a code that implements and allows for you to make that height increase without regard to separation and setback.

MR. GERBER: Well, that being the case --

MR. WHITEFORD: On one occasion and that's it.

MR. HERTZ: Excuse me. Excuse me.

MR. WHITEFORD: I'm sorry, Cliff. I apologize for interrupting.

MR. HERTZ: And -- and as a result, the tower stays conforming the same way, really, when it says right here, without regard to separation and setback on the proposed towers when you go up 20 feet, you're not meeting separation and setback, but you had a code

provision that was -- that was being used that allowed you to do it.

So the tower as it currently sits, if you want to take that logic, the tower that's now 120 feet that does not meet separation and setback is non-conforming, and if you want to make me non-conforming, then clearly, even under Bill's argument, non-conforming towers should be given a bigger break, which I think -- really, I think that Bob has hit it on the head.

When you look at the front of the ordinance, it gives you your tower hierarchy. In other words, the least impact, most impact. Least impact, stealth, camouflage, monopole, self-support, guyed. So the least impacting of the towers that are generally built is the monopole.

MR. GERBER: At what stage on this table do you think that the consideration of separation or setback requirements come into play?

MR. HERTZ: With this table?

MR. GERBER: Yeah.

MR. HERTZ: I don't believe that separation and setbacks --

MR. GERBER: So even if they were -- if you were coming in today requesting an increase of 65 feet --

MR. HERTZ: Who would approve it?

MR. GERBER: That's what I'm looking at.

MR. HERTZ: The Board of County Commissioners.

MR. GERBER: This X.4.

MR. HERTZ: Have to go to the Board of County Commissioners.

MR. GERBER: And you're saying that the County Commissioners at that point would not be able to consider separation and setback requirements?

MR. HERTZ: The County Commissioners would have to approve it under the general standards for County Commission approvals, and so they could take into account whatever they want and approve it or deny it, to be frank, and so could the Planning Board under X.3.

MR. GERBER: Well, in those cases --

MR. WHITEFORD: That's not necessarily true, Cliff. You know that the Board has certain standards that they have to apply that are identified in the code, and it's my position that we would apply the separation and setback standards.

MR. GERBER: What a mess.

MR. HERTZ: Well, this -- again, this is not easy, and it's one of the reasons I wanted to clearly try to separate -- when you try to read this together, as I've said, you will get brain damage.

What happens -- and that's why I tried to tell you that these were all done in pieces, but I do believe that Bob is correct in this analysis.

This was poorly drafted and really was intended to give you a break so that you could just go straight to building permit on a monopole height increase, but because the words were imperfect, and Bill does not -- and the county really doesn't want to interpret it to

allow those going to building permit only types of height increases because it then becomes a staff function to allow a height increase of a tower, it kind of puts you in a strange position here.

But this was intended, 'cause it appeared first in the ordinance by itself, to cover all towers. This was at industry's request, well, on a monopole give us a better break so we don't have to go through any process, we can go right to building permit.

Mark was involved in that provision.

MR. WHITEFORD: And let me just -- oh, I'm sorry. Cliff, you done?

I was going to say I mean I will gladly, you know, enforce or allow somebody to go through the 2.b process if they met the criteria if the first 20 percent was to accommodate a second user.

I mean we would allow them to go through that process and get the 20 percent increase. Of course, it would be subject to separation and setback standards, but -- and, again, they could get in additional users, meaning, you know, third, fourth, fifth, whatever more, get a second 20 percent through that process.

I mean we haven't been approached by that as far as I know. I don't think anybody who's come in requesting that -- most of today's standards -- well, all of today's towers are already built with that second user. We haven't seen any old towers, I think, come in under that provision of the code yet, but we would apply it.

MR. HERTZ: That's why I'm telling you it was a poorly drafted provision because it's totally and completely worthless. That's why you haven't seen any applications under it because when you look at the words as opposed to what was intended, the precise words where it says to accommodate a second user, that wasn't -- wasn't intended to mean not a third or a fourth or a fifth or a sixth, but it does say to accommodate a second user. Poor drafting of item B, which is why I really threw it out.

In my heart of hearts I believe that B should allow this particular tower to go to building permit and get it -- get a height increase and maybe even a second one as an existing monopole. That's what my heart tells me, but my head tells me it was poorly drafted, so that's why I just backed up and said this was the first provision that was drafted with regard to height increases of existing towers.

This is -- this was intended to stand alone at one point. This came later. This was meant to apply to all towers. This was meant to give an additional break to monopoles. This was written poorly. Let's go back over here because this makes more sense to me, and it's, frankly, easier for me to argue to the Board of Adjustment.

CHAIRMAN BASEHART: Okay. Anybody else have anything further?

(No response)

CHAIRMAN BASEHART: No? Okay. I guess we're ready for somebody to make a motion, that either being to support Mr. Hertz' interpretation, support staff's interpretation or, I guess as a third alternative, come up with something else. We're open to a motion.

MR. GERBER: If I may, Mr. Chair, I just want to ask one question to Bill.

Bill, this person -- you apparently know who this person is. Do you want the opportunity to bring this person before the Board to offer what may be a counter-position to the applicant or not?

MR. WHITEFORD: I think that person would be very, very uncomfortable, and I appreciate Cliff's sensitivity to that particular person, the position they would be put in.

I think you've heard everything that you can possibly hear today to make a decision.

MR. GERBER: Mr. Chairman, I move to approve BAAA 2000-072.

The basis for my motion is that I believe Section 2.a that we've been discussing is ambiguous. As such, parties, being the applicant and the county, were entitled to present parol evidence to explain the intent of Section 2.a. The only evidence that's been put before us today is evidence to show that the intent was not to include consideration of separation and setback requirements; therefore, I believe that we are bound, with that being the only evidence, to interpret 2.a as not including consideration of separation and setback requirements.

CHAIRMAN BASEHART: In other words, you're in favor of the applicant?

MR. GERBER: Yep.

CHAIRMAN BASEHART: Okay. We have a motion by Mr. Gerber. Do we have a second?

MR. JACOBS: I'll second that.

CHAIRMAN BASEHART: Okay. Second by Mr. Cone (sic).

Any further discussion?

MR. JACOBS: Mr. Jacobs.

CHAIRMAN BASEHART: I'm sorry, Jacobs.

MR. JACOBS: That was my predecessor.

CHAIRMAN BASEHART: I know, I'm sorry. I'm sorry.

Second by Mr. Jacobs.

All those in favor indicate by saying aye.

BOARD: Aye.

CHAIRMAN BASEHART: Opposed, no.

(No response)

CHAIRMAN BASEHART: Show the motion carries unanimously.

MR. HERTZ: Thank you very much for your time and consideration. I know this was a little thorny.

MR. WHITEFORD: Mr. Chair, I need to make sure I'm real clear about this on the application of this decision to future petitions.

It's the decision that when applying 2.a that we

are not to give any significance or weight to the separation or setback requirements of the code; is that correct?

CHAIRMAN BASEHART: With respect to extensions, yes.

MR. WHITEFORD: 2.a.

MR. GERBER: And I would say unless and until you present evidence to contradict what's been presented today. That was the only evidence. I can't consider --

MR. PUZZITIELLO: I think the most important underlying thing was --

MR. WHITEFORD: I mean I think the best evidence was it didn't say it.

MR. PUZZITIELLO: -- the whole reason for this code --

MR. WHITEFORD: I mean I don't know what better evidence you could get, but that's fine.

MR. PUZZITIELLO: But the whole reason for this code was to have as few towers as possible.

MR. WHITEFORD: Oh, sure. Absolutely. I agree.

MR. PUZZITIELLO: I mean we're -- they're putting seven providers on one tower.

MR. WHITEFORD: Oh, sure.

MR. PUZZITIELLO: That cuts out a lot of our towers.

MR. WHITEFORD: Oh, sure. We probably would have supported the waiver. I mean I thought -- like I said, I thought it was a compelling argument, you know, another 20 feet to support two more users versus a second tower. I mean I think that's compelling. I mean it's just a process thing.

MR. GERBER: To answer -- to answer your question, the fact that it didn't say anything to me made it ambiguous. It didn't make it clear, and that's the problem.

When it becomes ambiguous, I need to hear from somebody that says well, why doesn't this say it, and they gave -- presented evidence to show why it didn't, and the county -- and I -- that's why I wanted to give you the opportunity to have that person for the next application to come by.

If indeed you want to continue to pursue opposition to applications like this, I'd give serious consideration to bringing that person here to say that's not what it was intended to do.

MR. WHITEFORD: I don't think that staff person was going to say that. That staff person actually was more likely going to say that they agreed with Cliff's position versus my own.

MR. GERBER: Then what are you left with, because then you have to go for whoever writes these code provisions to have them change it because -- then it is what it is at the present time.

MR. WHITEFORD: Well, I mean that was a low level staff person. They don't have the ultimate decision.

I did talk to the ultimate decision maker, who

was the Zoning Director at that time, and they gave me a much different answer.

MR. GERBER: I mean I'm trying to work with you, trying to solve the problem from your perspective here.

MR. WHITEFORD: Sure. That's okay. And I know -- no, I respect your decision. It's not a problem.

MR. JACOBS: I move we adjourn.

CHAIRMAN BASEHART: We can't. We're not done. Go ahead.

MS. WYNN: Just as another order of business, I don't know if that's -- if you were going for something else or not.

CHAIRMAN BASEHART: Yeah, I was going to the attendance list.

MS. WYNN: Then I have something.

CHAIRMAN BASEHART: Okay. Let's do that.

We have the attendance list for the January meeting, at which time Mr. Puzzitiello was absent because of business reasons, and so was Ms. Stumberger.

Now, my understanding -- is anybody left? The staff has abandoned us.

My understanding is that since the list on the cover page has been changed, that Ms. Stumberger has been removed from the Board by Commissioner Greene.

MS. MOODY: That's correct.

CHAIRMAN BASEHART: And replaced by Wayne Richards?

MS. MOODY: That term expired January 1<sup>st</sup>, and it was her option to replace Ms. Stumberger.

CHAIRMAN BASEHART: Okay. So we can expect that -- and I guess, Jon, you explained that Mr. Richards wasn't here because the appointment just happened Tuesday, and there wasn't time to get him advised of his appointment and get him a package and train him?

MR. MacGILLIS: Oh, I think he got everything. He just -- he indicated to -- he was going to be out of town. So I mean he had everything, but I think something came up, and he had to be out of town, so --

CHAIRMAN BASEHART: Okay. So I guess -- well, you know, we might as well just for the record deal with Ms. Stumberger's absence. Let's do that first.

Is everyone ready to make her absence last month an excused absence?

MR. JACOBS: Yes.

MR. BASEHART: Okay. And what are we going to do about Ray?

Does everyone agree that, you know, Ray's business would be an excused absence?

MR. JACOBS: Yes.

MR. GERBER: Yes.

CHAIRMAN BASEHART: Okay. Then we'll just agree on that unanimously, and we won't need to take a vote.

MS. WYNN: Yes. There was some unfinished business, I guess, from last month.

Nancy Cardone requested that the Board be given information regarding changes in the financial disclosure laws.

CHAIRMAN BASEHART: Okay.

MS. WYNN: She asked Laura Beebe to do that, and I just wanted to let you know that the law, effective January of this year, states that you -- each Board member has to mail in the required public disclosure form, and that failure to do that results in a fine of \$20 per day for each day that you're late doing so.

So Laura wanted me to impress upon you --

CHAIRMAN BASEHART: When's it due?

MS. WYNN: Not later than the 30 days before July 1<sup>st</sup> of each year.

CHAIRMAN BASEHART: Yeah, I think usually we get our disclosure forms from --

MS. WYNN: County government.

CHAIRMAN BASEHART: -- county --

MS. WYNN: County administration.

CHAIRMAN BASEHART: Yeah, usually in like June or maybe May.

MR. JACOBS: Well, I must have got one sometime 'cause I sent one back.

CHAIRMAN BASEHART: Yeah.

MR. PUZZITIELLO: You get one every year.

MR. MacGILLIS: Each year you get one.

MS. WYNN: Each year you get one.

CHAIRMAN BASEHART: Yeah, you have to do one every year.

MS. WYNN: So you have to send it in.

CHAIRMAN BASEHART: So you'll --

MR. JACOBS: Can I just incorporate my last one by reference?

CHAIRMAN BASEHART: No, you can probably just copy the same information down, though.

MS. WYNN: And sign it again, correct, sign and date it again.

CHAIRMAN BASEHART: I mean they haven't changed it to where we have to disclose numbers or anything.

MS. WYNN: No.

CHAIRMAN BASEHART: It's -- that's only for elected officials; right?

MR. MacGILLIS: This is for us.

MS. WYNN: Correct.

MR. MacGILLIS: It's just for Zoning staff.

CHAIRMAN BASEHART: Okay.

MS. WYNN: It's just that before there was no penalty. This is a new -- the penalty is new, and we thought you'd want to know that.

CHAIRMAN BASEHART: So we want to get ours in on time from now on.

MS. WYNN: Correct.

CHAIRMAN BASEHART: And maybe hand deliver it and get a receipt.

I remember one year I mailed mine, and, you know, and then like three months later I was notified by Theresa LePore's office that they had never gotten it. So I mean I don't know if I forgot to put a stamp on it or if it got lost in the mail or what happened, but if that happened now, then it would cost you 20 bucks a

day?

MS. WYNN: Twenty-five dollars a day up to a maximum of \$1500.

MR. JACOBS: Oh, that's good.

CHAIRMAN BASEHART: Well, at least there's a ceiling.

MR. JACOBS: That's right.

CHAIRMAN BASEHART: Okay. Do we have any other business?

MR. PUZZITIELLO: Motion to adjourn.

CHAIRMAN BASEHART: Okay. We have a motion by Mr. Puzzitiello to adjourn.

MR. JACOBS: Second.

CHAIRMAN BASEHART: And Mr. Jacobs seconded that?

MR. JACOBS: Yes.

CHAIRMAN BASEHART: Okay. All those in favor.

BOARD: Aye.

CHAIRMAN BASEHART: Opposed.

(No response)

CHAIRMAN BASEHART: We're adjourned.

(Whereupon, the meeting was adjourned at 11:15 a.m.)

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**C E R T I F I C A T E**

THE STATE OF FLORIDA )

COUNTY OF PALM BEACH )

I, Sophie M. Springer, Notary Public, State of Florida at Large,

DO HEREBY CERTIFY that the above-entitled and numbered cause was heard as hereinabove set out; that I was authorized to and did report the proceedings and evidence adduced and offered in said hearing and that the foregoing and annexed pages, numbered 4 through 71, inclusive, comprise a true and correct transcription of the Board of Adjustment hearing.

I FURTHER CERTIFY that I am not related to or employed by any of the parties or their counsel, nor have I any financial interest in the outcome of this action.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this 6th day of March, 2001.

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Sophie M. Springer