GRAND JUNCTION BOARD OF APPEALS
MAY 12, 2004 MINUTES
12:00 P.M. to 2:25 P.M.

The regularly scheduled Board of Appeals meeting was called to order at 12:00 P.M. by Chairman Paul Dibble. The public hearing was held in the City Hall Auditorium.

In attendance, representing the Board of Appeals, were Paul Dibble (Chairman), Travis Cox, Thomas Lowrey and Mark Williams. One position is currently vacant.

In attendance, representing the Community Development Department, were Bob Blanchard (Community Development Director), Senta Costello (Associate Planner) and Ronnie Edwards (Associate Planner).

John Shaver, City Attorney, was also present.

The minutes were recorded by Bobbie Paulson and transcribed by Terri Troutner.

There were five citizens present during the course of the meeting.

I. APPROVAL OF MINUTES

Available for consideration were the minutes of the February 11, 2004 public meeting.

MOTION: (Mr. Cox) "Mr. Chairman, I move that we approve the minutes of February 2004."

Mr. Lowrey seconded the motion. A vote was called and the motion passed unanimously by a vote of 4-0.

II. ANNOUNCEMENTS, PRESENTATIONS AND/OR VISITORS

There were no announcements, presentations and/or visitors.

III. FULL HEARING

VAR-2003-281 VARIANCE--HOLIDAY INN EXPRESS LIGHTING PLAN
A request to proceed with hearing the variance application for the Holiday Inn Express lighting plan.
Petitioner: Budget Motel Management, Inc.--Jim Koehler
Location: 625 Rae Lynn Street

STAFF'S PRESENTATION
Bob Blanchard said that the petitioner's initial request had been heard on February 11, 2004. The Board of Appeals postponed its decision pending outcome of an enforcement action previously filed on that particular development. Mr. Blanchard stated that the Board could reverse its previous decision and hear the application or decline the petitioner's request for reconsideration of the February 11 tabling. Should the Board choose to move forward, Board members have been supplied with copies of the February 11, 2004 minutes, the original staff report and a submittal packet. Should the Board decide not to reconsider its previous action, the Petitioner would have to proceed with the court action before the request could be heard.

QUESTIONS

Mr. Cox asked for an update on the actions taken over the last couple of months. Mr. Blanchard said that staff had been working with the petitioner's representative, Mr. Balaz, on proposed changes to the building; however, no response from Mr. Balaz had yet been received. Mr. Shaver referenced his advice given during the February 11, 2004 public meeting and said that pending the outcome of enforcement action against the petitioner, it may have been improper to consider the variance request because of a potential conflict between the jurisdiction of the municipal court and the Board of Appeals. While he had had no additional involvement with the enforcement issue, a member of his staff had engaged in negotiations. A disposition offer had been made but later rejected by the Petitioner. Mr. Shaver said that he and the petitioner's counsel, Christopher McAnany, had corresponded regarding the request's original postponement, and Mr. Shaver had reiterated his rationale for why a postponement was appropriate. Mr. McAnany had responded with a letter to Mr. Blanchard, asking that the item be heard and a decision rendered (copies of letters included in Board member packets).

Chairman Dibble asked both the petitioner's representative and staff if all were ready to present if the Board chose to move forward. Both assented.

When Board members were asked by Chairman Dibble if they wanted to proceed, Mr. Lowrey expressed a preference for Board's original action to wait until the court's decision was rendered.

Mr. Cox agreed, adding that no new information had been presented to warrant the item's rehearing. Referencing a portion of Mr. McAnany's letter (which cited section 2.3 of the City's Zoning and Development Code, it said that if an application was deemed by the Director to be complete, a public hearing would normally be scheduled within 60 days). Mr. Cox noted that there was no language there to suggest that a decision had to be made within that timeframe. The item had in fact been scheduled within a suitable timeframe; it had been the Board that tabled the item.

Chairman Dibble asked for a legal opinion about the timeframe associated with tabling the item. Mr. Shaver suggested that because Mr. McAnany was the one who felt that the Code had been violated that the clarification should come from him. Mr. Shaver did not agree that a violation had been committed. Mr. Shaver added that the variance application would prospectively address the problem; the enforcement action represented a retrospective addressing of the problem. His opinion was that each action should be undertaken sequentially. Once the municipal court determined whether or not there was illegal use of lighting, that finding would be relevant to the Board in its own deliberations.

PETITIONER'S PRESENTATION

Christopher McAnany, legal counsel for the petitioner, felt that there was sufficient justification to proceed with a hearing. He acknowledged what he felt to be staff's frustration over the pace at which resolution was occurring. He maintained that while the municipal court would adhere strictly to the letter of the Code, the Board of Appeals had the authority to consider granting exceptions. A decision from the Board would provide guidance to the court. He asked both that the request be heard and that the decision be favorable.

The Code, he said, did not prohibit a variance proceeding when an enforcement action was pending. Code section 2.3 stated, "If the Director finds that an application is complete, he shall schedule it and give proper notice." The use of the word "shall," he said, made the timely scheduling of a request mandatory. State law required (CRS 31-23-307) that the Board hear all items referred to it. It was his contention that tabling the item did not comply with that statutory requirement. He felt that a decision by the Board would "narrow the issues for the municipal court." It could determine whether this enforcement issue represented a past violation or an ongoing one requiring abatement. Mr. McAnany felt that, with respect to the current application, the City's Planning Commission had granted a height

variance for the structure in question. Approval of that variance request, he maintained, should encompass the lighting that had been installed as part of that structure.

QUESTIONS

Chairman Dibble felt that the height variance was irrelevant to the current issue.

Mr. Shaver said that the only issue relevant to the hearing request was the timing and the relationship between the enforcement case and the Board of Appeals hearing. Mr. Shaver suggested that Mr. McAnany's point is that if there truly is a "log jam," someone may have to go first. Mr. Shaver's interpretation of C.R.S. 31-22-307 regarding an appeal staying all enforcement proceedings was that there could not be any "additional" enforcement proceedings. Mr. Shaver said that means to him that no further citations could be issued for that problem prior to review. In the context of Mr. McAnany's apparently broader-based interpretation, Mr. Shaver said that he would ask if Mr. McAnany filed a motion with the court under that statutory argument suggesting that the court did not have authority to proceed. If that motion had been filed and a determination has been made by the court that it couldn't proceed, that finding could also be helpful to the Board of Appeals.

Mr. McAnany said that he hadn't filed such a motion although he was prepared to do so. He felt that there was an applicable rule of law in place which encouraged administrative processes to run their courses before resorting to the "heavy hand" of court proceedings.

Chairman Dibble understood that a court date had been set and postponed twice. Did Mr. McAnany plan to ask for another continuance of next week's court date? Mr. McAnany said that he'd spoken with the City's municipal prosecutor. It continued to be his position that the court date be postponed pending resolution of the variance issue. The prosecutor's notification of a May 20, 2004 court date had prompted Mr. McAnany to generate his April 21, 2004 letter to Mr. Blanchard, asking the Board to reconsider its original decision.

Mr. Lowrey asked if there were any regulations mandating the timeframe during which a rehearing must occur, or was it just a matter of what was deemed to be "reasonable." Mr. Shaver said that the Code didn't address that question; it addressed only the initial scheduling of a request. Because the item had been properly scheduled, and it continued to be scheduled, it was Mr. Shaver's contention that there was no violation of the Code. If subject to judicial review, a judge would likely expect a reasonable timeframe; however, what that might be would again be subject to interpretation, perhaps up to six months.

Mr. Lowrey agreed with Mr. McAnany's logic that administrative processes should logically be concluded prior to any court involvement. It was logical to assume that judicial bodies would rely upon the expertise of administrative bodies. Mr. Shaver said that while he did not disagree, his concern was more over how the Board's decision would be used.

Mr. Lowrey asked if the prosecutor was in agreement with Mr. McAnany's rationale for wanting the variance issue decided ahead of a court proceeding. Mr. McAnany said that while the City's prosecutor didn't necessarily agree with his position, she understood why he was taking it. At the very least, the Board's decision could change the posture of what the court would do.

Mr. Shaver said that a disposition of the case had been offered to the petitioner. Had the applicant agreed to it, it would have provided a blending of the two processes as much as they could be. In that case, the Board's decision would have been considered during the sentencing phase of the court process instead of during the phase where actual guilt or innocence was determined.

When asked by Mr. Lowrey where he stood, Mr. Shaver answered that he could see both sides of the argument, although he recommended the Board's position to table its decision pending court action.

Mr. Cox felt that the court continuances were a hardship that had been self-imposed by the petitioner. The issue could have been decided by the court long ago. The petitioner's "log jam" was as a direct result of the petitioner's refusal to submit to the court process, not the Board's unwillingness to hear the request.

Chairman Dibble remarked that if Mr. McAnany elected to file the motion mentioned previously by Mr. Shaver, and if the court decided that it didn't have the authority to proceed, it would free up the Board to proceed. Mr. McAnany confirmed that if the Board chose not to hear the item, he intended to file a motion with the court. It was not the petitioner's intention to stall the proceedings and he hoped the variance could proceed with today's public meeting.

Jim Koehler, petitioner, came forward and said that he'd originally tried to do everything himself but found himself falling further behind. This was in part the reason for all the delays.

Chairman Dibble asked Board members whether or not they wanted to hear the request. Mr. Cox reiterated that the delays argued by Mr. McAnany were as a direct result of the petitioner's unwillingness to submit to court proceedings. He felt their hardship to be self-imposed. As such, he found no merit in the Board's hearing of the request.

Mr. Lowrey felt that there had been sufficient arguments made to justify hearing the item. Once the Board rendered its decision, that decision could then be used by a judge as he/she chose. It posed no benefit to either staff or the City to continually delay a decision.

Both Chairman Dibble and Mr. Williams expressed a willingness to hear the item.

By a majority decision, the Board decided to move forward with the rehearing.

VAR-2003-281 VARIANCE--HOLIDAY INN EXPRESS LIGHTING PLAN (A REQUEST TO SET A DATE FOR REHEARING)
A request for approval of a variance from the lighting code regarding the height, timeframe, and type of lights in a C-1 (Light Commercial) zone.
Petitioner: Budget Motel Management, Inc.--Jim Koehler
Location: 625 Rae Lynn Street

PETITIONER'S PRESENTATION
Mr. McAnany said that the request consisted of two issues: 1) allowing the lighting located on the towers and the soffet of the building to be placed above the 35-foot height restriction; and 2) allowing the lighting located midway on the building to remain on past 10:00 P.M. because of the 24-hour nature of the business. Each request represented some deviation from the Code, but he felt approval for each was justified. Both the presence and duration of the lighting address safety and security concerns and was in conformance with 24 Road Corridor Design Standards and Guidelines, which encouraged appropriate architectural lighting and lighting that enhanced the architectural features of buildings.

Mr. McAnany felt that there was sufficient justification to permit the hotel's lighting to stay on past 10:00 P.M., that it met the security exception provided by the Code. He felt that the Planning Commission's approval of the height variance included the building's appurtenances. He said that lighting was almost always included with any building's architectural features. The granting of the building's height variance, he felt, also seemed to suggest an "implicit green light to go ahead with that kind of lighting." Citing Code section 3.2.H regarding dimensional standards, it suggested that height limitations did not necessarily apply to customary architectural features such as "spires, domes…or similar structures or

mechanical appurtenances if the feature comprises less than 20 percent of the roof area." The lighting, he felt, fell within that definition of a mechanical appurtenance. He said that an argument could be made, based on Code verbiage, that some variance of the 35-foot height restriction was justified, and that literal application of the height restriction would pose a hardship, probably not serve any useful purpose and that granting the variance would not do violence to the overall scheme which encouraged appropriate architectural lighting and features.

Mr. McAnany recognized that the contractor probably should have received proper planning clearance approval for the subject lighting features during initial construction. The plan submitted to staff hadn't included those features. He felt that this was nothing more than an oversight on the part of the contractor. At the time the project was moving forward, the Code was under revision, and there was some confusion over which criteria applied. The feature in question was very attractive, and the hotel represented the "flagship" building for the 24 Road corridor. The hotel was an attractive community amenity, and the petitioner had invested substantial financial resources in the community and in the building's construction. The petitioner was striving hard to comply with City criteria, trying to rectify what was believed to be a good faith oversight.

QUESTIONS

Mr. Cox asked if Mr. McAnany was contending that the lights were “mechanical” and therefore allowed by the Code, and that while not reflected on the submitted plan, the lighting had always been a part of the plan. Mr. McAnany confirmed that that was his assertion. Mr. Cox said that if the lighting were allowed by the Code, there would be no need for the variance. Mr. McAnany maintained that it appeared there were two Code sections seemingly "at odds” with each other; one section gave justification for prohibiting the lighting while another seemed to allow it. Mr. Cox said that issues over Code interpretation should be brought before a court and not the Board of Appeals. Mr. McAnany disagreed. He felt that the Board had an obligation to interpret the Code when considering variance applications. If a revised site plan were submitted to the Director, he may still decide that the request still didn’t fall within the purview of administrative review, that a public body would still be asked to render a decision.

Chairman Dibble said that the 24 Road Corridor Guidelines were the underlying governing directives for development within that corridor. Mr. McAnany suggested that there existed a discrepancy between the Guidelines and the Code where it addressed the subject of lighting.

Bill Balaz, petitioner's representative, said that the petitioner had a Holiday Inn Express located in Moab, UT with a peak height of 35 feet. The height of the lighting, if placed on the soffet of that building, would be approximately 27 feet. If you compared that 8 foot difference to the difference between the present 50-foot high building and the 38-foot mounted lighting in Grand Junction, the proportions are very similar. Mr. McAnany contended that if the gutters were raised to the new roofline, the lighting should be moved upwards along with them. In a previously submitted application, the light intensity curves for both the light fixture located mid-wall and the ones located at the soffet were shown. Approval for lighting past 10:00 P.M. would apply only to the mid-wall lighting and not the soffet lighting. The hotel is a 24-hour business, with people often checking in past 10:00 P.M. Many other businesses in the area were allowed to keep lights on past 10:00 P.M., and one kept its lights on 24 hours. Mr. McAnany said that approval of the request would not represent an exception and in fact ensure greater compatibility with other area business lighting. Mr. Balaz reiterated the need for evening lighting for reasons of safety and added security. The third variance request initially submitted for the uplighting above the hotel's entrance is being withdrawn as he believed this to be an issue which could be resolved without Board involvement. Thus, the uplighting approval request should be removed from Board consideration.

STAFF'S PRESENTATION

Senta Costello noted the site's location and zoning and offered to go into greater detail if requested by Board members. Ms. Costello felt the request failed to meet the intent of the Growth Plan with regard to community appearance and it failed to meet Code criteria 2.16.C.4 with regard to the variance. She recommended that the variance be denied.

QUESTIONS

Chairman Dibble asked if anything had changed since the last hearing of the item. Ms. Costello agreed that staff had discussed the uplighting approval request with the petitioner's representative and she agreed that it could be resolved at staff level.

Chairman Dibble asked how tall the lights are at the peak of the towers. Ms. Costello said that the tower height is 50 feet, with lighting located at approximately 48 feet. Soffet lighting is located at approximately a 38-foot height. Tower and soffet lighting did not consist of full cutoff fixtures, a requirement of the Code. If the variance request is approved, existing lighting would have to be exchanged with full cutoff fixtures, a condition with which the petitioner has expressed agreement. The mid-wall lighting would continue to shine up and down. Ms. Costello noted the midway lighting fixtures that had not been included on the original plan. She said that the contractor has come to discuss options for the lighting with her.

Mr. Cox asked if turning the lights off after 10:00 P.M. was a Code requirement or was it included in the 24 Road Corridor Design Standards and Guidelines? Ms. Costello said that the requirement is found in Code section 7.2.F. and was applicable to fixtures that are not full cutoff. "Full cutoff" is defined as not being able to see the lightbulb from the side view and where such fixtures have no upward lighting.

Mr. Lowrey felt that it would be acceptable to allow the lighting after 10:00 P.M. provided the lights would be downward-directed only. He asked “would that be something agreeable to all parties?”

Mr. Cox asked if there would still be an issue with the lighting midway on the building if the fixtures were directed downward, to which Ms. Costello replied negatively. If the lighting were full cutoff without being directed upwards, she said, that lighting would be allowed to shine 24 hours. When asked whether or not the tower lighting met the definition of "mechanical," Ms. Costello said that question is not answered by the Code; however, Code section 7.2.F specifically stated that "no lights shall be mounted higher than 35 feet."

Chairman Dibble wondered how staff resolved the issue of the height variance without taking into account the soffet lighting. He said “if the height of the structure were allowed to increase, wouldn't it be reasonable to presume that the soffets and their related lighting would be raised to compensate for the added height?” Ms. Costello reiterated that the contractor had come in to talk with her about the midway lighting; had the tower lighting been discussed, the contractor would have been told that those lights would not be allowed.

PUBLIC COMMENTS

There were no comments either for or against the request.

PETITIONER'S REBUTTAL

Mr. McAnany asked for clarification on what Code criteria staff felt had not been met. Ms. Costello referenced section 2.16.C.4.A-H. Mr. McAnany asked if citizen complaints had been received. Ms. Costello responded that the complaint was staff initiated. He disagreed with staff's position, and stated that he believed all Code criteria had been met. Mr. McAnany said that the hardship was self-inflicted; rather, it was representative of just a simple mistake. Granting the variance would not be contrary to the 24 Road Corridor Design Standards and Guidelines, which encouraged the use of architectural lighting; it

did not negatively impact the area or anyone else in the area; there had been no complaints registered by any other citizen or business. He said that granting the variance would be reasonable.

Mr. Balaz said that Mr. Koehler was agreeable to removing all tower lighting above 35 feet. Mr. Balaz disagreed with staff's definition of full cutoff. The upward lighting is necessary because once they went out at 10:00 P.M., the building and grounds got very dark. Referencing before and after photos available to Board members, he said that the upward lighting accented the building much more effectively after dark, a criterion consistent with the 24 Road Corridor Guidelines and consistent with the original finding on the increased height allowance. He noted that the building's eaves caught the upward lighting, preventing it from continuing skyward. Referencing light intensity charts provided to staff and Board members, he noted that light shining 20 feet above the fixture shone at an intensity of only 1/10th of a foot-candle. At 30 feet, lighting intensity would be only 0.05; between 0.1 and 0.05 the lighting was so dispersed in the night sky, a person could not even see it. Thus, about the time the lighting reached the building's eaves, it was already at that 0.1 and 0.05 range. Light intensity charts were referenced by both the petitioner's representatives and Board members.

QUESTIONS

Mr. Lowrey asked if the variances could be granted with conditions. Mr. Shaver replied affirmatively, adding that conditions should be articulated, and the issue of whether or not those conditions were tied to the land should be clarified. Mr. Lowrey expressed a willingness to support the variances provided that all lighting be downward-directed from 10:00 P.M. to 6:00 A.M., and that the lighting on the peaks of the towers be removed.

Mr. Blanchard said that he understood that the Board would be willing to grant the variance provided that: 1) all lighting above the soffet would be removed; 2) soffet lighting would all be down-directional, according to staff's definition; 3) lighting located midway on the building should meet staff's definition of down-directional after 10:00 P.M. Therefore, the fixture would have to contain two bulbs, one facing up and one facing down. The petitioner would be required to turn off the uplit bulb at 10:00 P.M.; however, the down-lit bulb could remain on all night if full cutoff. Conditions would apply to all applicable lighting located on any face of the building.

Mr. Cox noted that these conditions would not waive the 10:00 P.M. Code requirement because the Code mandated only that all lighting after 10:00 P.M. be full cutoff and downward-directed. So if the petitioner and his representatives were in agreement, the only variance would be in allowing the additional soffet height.

Mr. Blanchard recommended that the Board approve the 35-foot soffet height variance as one motion but include findings. In a separate motion, it should deny the variance for the midway lights, but explain the denial by outlining added conditions as part of that motion.

Since only one file number existed for the request as a whole, Mr. Cox asked how the Board should best address the various facets of the request in motions. Mr. Shaver suggested addressing each facet independently, as the petitioner had requested. A brief discussion ensued over the various motion options available to the Board.

Mr. Williams referenced the conditions along the 24 Road corridor and wondered if a timeline could be affixed to outlined conditions. Mr. Shaver said that if the Board were inclined to affix a timeline, it should be related to the use. That way, if the use should change in the future, the variance would effectively expire at that time.

Mr. Cox disagreed that the affixing of a timeframe was even necessary, given that the only variance being granted was the height variance to the existing towers. Regardless of what use existed on the property, the few extra feet being granted should not be an issue.

MOTION: (Mr. Cox) "Mr. Chairman, on variance VAR-2003-281A, a variance for lights at the peaks of the turrets, I move that we find the project consistent with the Growth Plan, the 24 Road Corridor Design Standards and Guidelines, and that the findings required by section 2.16.C.5 of the Zoning and Development Code can be made for approval of the variance subject to the conditions listed above."

Mr. Lowrey seconded the motion. A vote was called and the motion failed by a unanimous vote of 0-4.

MOTION: (Mr. Cox) "Mr. Chairman, on variance VAR-2003-281B, a variance concerning lights on the soffets on all sides of the building being full cutoff and down-lighting, I move that we find the project consistent with the Growth Plan, the 24 Road Corridor Design Standards and Guidelines, and that the findings required by section 2.16.C.5 of the Zoning and Development Code can be made for approval of the variance subject to the conditions listed above."

Mr. Lowrey seconded the motion. A vote was called and the motion passed by a vote of 3-1, with Mr. Williams opposing.

MOTION: (Mr. Cox) "Mr. Chairman, on variance VAR-2003-281C, a variance allowing lights that are not full cutoff or are uplighting to be on after 10:00 P.M., I move that we find the project consistent with the Growth Plan, the 24 Road Corridor Design Standards and Guidelines, and that the findings required by section 2.16.C.5 of the Zoning and Development Code can be made for approval of the variance subject to the conditions listed above."

Mr. Lowrey seconded the motion. A vote was called and the motion failed by a unanimous vote of 0-4.

VAR-2004-067 VARIANCE--FORD SIGN VARIANCE REQUEST
A request for approval of a variance from the sign code regarding the number of freestanding signs allowed on one parcel in a C-2 zone district.
Petitioner: Michael Ferris
Location: 2264 Highway 6 & 50

PETITIONER'S PRESENTATION
Kirk Rider, representing the petitioner and Western Slope Auto, said that the focus of the request pertained to an 11-acre parcel where the Western Slope Auto car dealership is currently operating. Historically, a number of vehicle franchises had been represented on the site. Manufacturers always required dealers to display their signage on freestanding poles. He noted that a variance had been granted in 1986 allowing the placement of Mercedes-Benz and Subaru freestanding signage on the property. It had been felt by the petitioner that that variance grandfathered in future signage alterations. Staff had determined otherwise. Directional signage is also present on the site. Mr. Rider said it was learned recently that the requested signage would not meet Code requirements.

Mr. Rider said that in the year 2000 Ford undertook measures to "re-image" all of its dealerships. He asked Mr. Ferris to come forward and speak on that issue.

Michael Ferris said that in the year 2000 he had agreed to Ford's request, under duress, to purchase and display its new signage; however, he had understood that Ford representatives would be the ones to work through and resolve any issues with installation of the new signage. After two years, they'd come to him and said they'd been unsuccessful; however, Ford's insistence that the new signage be displayed had not

abated. The basis for his request, he said, was to ask for approval to update existing signage only. No additional signs are being requested, nor would new signage be larger, in a different location, or installed at a higher elevation. The property is large, he added, and patrons needed directional signage to help them navigate the site.

QUESTIONS

Chairman Dibble referenced the variance request, which contained verbiage that implied that new signage would be both refaced and elevated in height. He also said there appeared to be a problem with the request for two additional signs to be refaced and supported with a new pole base. He asked for verification that five signs were involved in the current request. Mr. Ferris said that he did not intend to downsize the new directional signage but requested they be increased in height from the existing signage. The new directional signage needed to be approximately two feet in width, but this was not that great an increase. Mr. Rider interjected that there was no intension to elevate the new directional signage as reported by staff.

Mr. Cox asked if the "service sign" was down. Mr. Rider replied affirmatively. Referencing page 3, the last sentence of the last paragraph under *Undue and Unnecessary Hardship,* and page 4, the last paragraph under *Hardship Unique to Property, Not Self-Imposed* in the May 12, 2004 staff report, Mr. Rider said references to height did not apply to the current request. Thus, he thought that if height were the issue, agreement on the request should be easily achieved between the petitioner and staff. The increases to directional signage are necessary because people were looking at them from 200-300 feet away.

STAFF'S PRESENTATION

Ronnie Edwards said that she had discussed the height question with Mr. Rider. The necessity for a variance had not been triggered by the sign's refacing; rather, it had been triggered because the support structures (poles) of Ford's signage were being increased in width. Referencing the 1986 variance, Ms. Edwards said that approval had been general in nature. Staff had interpreted the proposed change in the support as increasing the area of the sign. Based on that, a variance to Code section 4.2.E.1, which required all non-conforming signage to be brought into conformance with the Code, was being required. Ms. Edwards said the Board was actually considering the variance for five separate freestanding signs on a single parcel. The directional signage had been included because the width of proposed signage exceeded 3 square feet. Because the petitioner was requesting approval for a wider support structure for the two existing freestanding signs, the Code mandated conformance of all signage. Unless it could be demonstrated that the added support structure width was for sign support only against excessive wind velocities, staff regarded the increase as an expansion of the overall amount of signage.

Mr. Blanchard said that there were three directional signs under consideration. Because those signs had never been granted a variance under County jurisdiction, the City was attempting to bring them into compliance with current City Code requirements. Approval of that portion of the variance would allow the Petitioner to both install them and to permit measurements exceeding 3 square feet. The other two freestanding signs had been installed along the street frontage and the issue there was in the widening of the base. He confirmed that the increase to the base measurement went into overall calculations of the sign face. The County variance permitted the two freestanding signs; however, at issue was the enlargement of the sign based on calculations which included enlargement of the sign's support structure.

Chairman Dibble asked for the applicable Code section that pertained to the base widening. Ms. Edwards cited Code section 4.F.2.D.

Mr. Williams asked staff why denial of the request had been recommended. Ms. Edwards said that based on review criteria, staff determined that technical criteria had not been met. When asked if there was any

other basis for denial (*i.e.,* public complaint), Ms. Edwards replied negatively, adding that her review could only include the application of legal criteria.

Mr. Blanchard added that from a hardship perspective there was nothing unique to the property to satisfy the requirement that the hardship be non self-imposed. Staff had determined that criteria 1 and 3 had not been met. If approved by the Board, findings of hardship would have to be made.

When asked by Chairman Dibble if additional building signage were allowed for the business, Ms. Edwards responded affirmatively; however, only a maximum of 300 square feet was allowed per sign for freestanding signage. The two freestanding signs (excluding bases) currently measured 263 square feet. The increased support width would add another approximately 60 square feet to one sign and approximately 32 square feet to the other, although it was unclear how wide the bases actually were.

Mr. Shaver asked staff if the elliptical Ford sign was measured based upon a square sign. Ms. Edwards replied affirmatively. No credit had been given for the rounded corners.

Referencing a measurement table, Mr. Cox noted the Ford sign's measurement as being 19' 11" x 8' 3 1/2", which was the same size proposed by the petitioner. The table stated that that signage would then measure 130 square feet. Even with the additional 60 square foot from the increased base, that would still total only 190 square feet, which would still fall under the Code's maximum of 300 square feet. Ms. Edwards said that she'd come up with 164 square feet without including the base, but she acknowledged that the unused portion of the elliptical signage had not been deducted from the calculation.

Mr. Rider said that the petitioner would agree to stay within all bulk signage requirements. Ms. Edwards said that the 300 square foot reference was really irrelevant; the issue was that the petitioner was proposing any increase at all.

Mr. Shaver asked staff if there were any conversations with the petitioner or his representative over how much of the pole was used for support. Ms. Edwards replied negatively. She added that it was the Petitioner's responsibility to demonstrate that the wider pole was structurally necessary. If such a demonstration could be shown, then staff would be considering face changes only and no variance would be required.

PETITIONER'S REBUTTAL

Mr. Rider said that he was surprised by the concept of taking the base into overall sign calculations. Referencing Code section 4.F.2.D., he didn't feel that it applied to freestanding signs at all; rather, it applied only to flush wall signs. Mr. Rider felt that staff's position was unsupported and that the petitioner had a large amount of bulk signage capacity available that was currently not being used. All signs taken together--flush wall, freestanding, directional, *etc.*--used only about half the available signage capacity available for the site. It was unreasonable to assert that one single freestanding sign was just as appropriate for an 11-acre site as it would be for a 2-acre site. The petitioner was being forced by Ford to comply with new signage requirements. This situation, he maintained, was not one of the petitioner's making. Thus, it did qualify as a non self-imposed hardship. Approval of the variance request would represent just good common sense. He reiterated his belief that all criteria had been met.

QUESTIONS

Mr. Lowrey asked if at least some part of the pole was being used to support the sign's structure, to which Mr. Rider responded affirmatively. When asked if the Ford Motor Company had mandated those changes "or else," Mr. Rider again responded affirmatively.

Chairman Dibble agreed that Code section 4.F.2.D. dealt with flush wall signage. Ms. Edwards said that perhaps not as clear in that section's wording was "intent." She said that staff's position in this case was

consistent with previous actions. Chairman Dibble referenced section 4.F.2.E pertaining to sign support. It was possible that section pertained to things such as mounting brackets, angle iron, *etc*., something other than a pole.

Mr. Shaver also suggested referencing Exhibit 4.2 which shows how sign dimensions are calculated. The pole is not included in the geometric face of the sign. In his opinion, Mr. Shaver advised that Exhibit 4.2 at least to the supplementary nature of the exhibit, expresses the intention of the Code that the pole not be included. He wasn't convinced that the Board had an evidentiary requirement to find that the component parts were used for support.

Mr. Cox felt that all four variance criteria had been met for both requests. He said that Ford had clearly imposed the current hardship upon the Petitioner; it was not self-imposed, and the Petitioner implied that he would have liked to have kept his existing signage as-is. Whether the Code rendered the issues moot, he felt that the request should be approved based on the satisfaction of the criteria.

Mr. Shaver said that approval of the current request would satisfy some of the currently unresolved questions originating from Mesa County's original variance approval.

Chairman Dibble agreed with Mr. Cox's assessment, and he reiterated that section 4.F.2.D dealt not with freestanding signs but flush wall signs. He also agreed with Mr. Shaver's rationale for moving forward with a decision on the variance.

MOTION: (Mr. Cox) "Mr. Chairman, on item VAR-2004-067, I move that the Board of Appeals approve the request to: 1) allow three existing non-conforming 22 square foot directional signs be replaced; and 2) to allow two existing freestanding signs to be replaced and supported with new pole bases in a C-2 zone district for the parcel at 2264 Highway 6 & 50."

Mr. Shaver asked that the record could reference submitted exhibits and reflect that signs would be generally in conformance to those exhibits? Mr. Rider agreed, and the amendment was included by Mr. Cox.

Following is the revised motion:

MOTION: (Mr. Cox) "Mr. Chairman, on item VAR-2004-067, I move that the Board of Appeals approve the request to: 1) allow three existing non-conforming 22 square foot directional signs be replaced; and 2) to allow two existing freestanding signs to be replaced and supported with new pole bases in a C-2 zone district for the parcel at 2264 Highway 6 & 50 [and that signs will generally conform to exhibits submitted and referenced by the petitioner]."

Mr. Lowrey still was unconvinced that the current issues were appropriately addressed through the variance process, although he supported the petitioner's request for approval. Chairman Dibble said that the variance process would address the non-conforming status of existing signage. Mr. Shaver said that approval would effectively render all of the decisions under the City's jurisdiction, since the petitioner's previous variance had been granted under the County's jurisdiction. If ultimately deemed to be moot, granting the variance would not hurt anything.

Mr. Lowrey seconded the motion. A vote was called and the motion passed unanimously by a vote of 4-0.

With no further business to discuss, the meeting was adjourned at 2:25 P.M.