

**SEMINOLE COUNTY GOVERNMENT
BOARD OF COUNTY COMMISSIONERS
AGENDA MEMORANDUM**

SUBJECT: Review of the Policies and Procedures of the Seminole County Board of Adjustment (continued from May 14, 2002; withdrawn on May 28, 2002)

DEPARTMENT: Planning and Development **DIVISION:** Planning

AUTHORIZED BY: Donald S. Fisher **CONTACT:** Tony Matthews **EXT.** 7373

Agenda Date <u>10/22/02</u> Regular <input type="checkbox"/> Consent <input type="checkbox"/> Work Session <input type="checkbox"/> Briefing <input checked="" type="checkbox"/>
Public Hearing – 1:30 <input type="checkbox"/> Public Hearing – 7:00 <input type="checkbox"/>

MOTION/RECOMMENDATION:

Staff is seeking direction regarding Board of Adjustment policies and procedures as set forth in the attached staff report.

(Countywide) (Tony Matthews, Principal Planner)

BACKGROUND:

The Seminole County Board of Adjustment (BOA) is charged with hearing and deciding on variances, special exceptions/conditional uses, including telecommunication towers and mobile home requests, administrative appeals, and appeals of an aggrieved person from a decision of the Planning Manager. The policies and procedures for the BOA are set forth in Section 30.43 of the Land Development Code of Seminole County.

On October 23, 2001, the Board of County Commissioners directed staff to provide recommendations on revising the BOAs procedures.

-The attached staff report sets forth the current policies and procedures of the BOA and provides issues and options for continuation of an exceptional BOA process. Staff will present a slide presentation at the Board briefing summarizing the issues and options contained in this report (see attached slide presentation).

Reviewed by:
Co Atty: <u>KEC</u>
DFS: _____
Other: <u>NA</u>
DCM: <u>[Signature]</u>
CM: _____
File No. <u>bpdp01</u>

- **Attachment:** Staff Report and slide presentation.

T:\pd\projects\bcc agenda\planning\2002-10-22\bpdp02.doc

BOARD OF ADJUSTMENT BRIEFING (SEPTEMBER 23, 2002)

On September 23, 2002, staff presented this item to the BOA to request any comments/recommendations to be forward to the Board of County Commissioners.

Comments/recommendations of the BOA from that meeting are as follows:

1. The subject report does not include a "statement of the problem" that the report is attempting to address.
2. There are not substantive reasons within the report for changes to the existing BOA policies and procedures.
3. Consider changing the criteria for granting variances to add flexibility and provide a more lenient method for granting variances within the law. As an example, the criteria "undue hardship" shown under *III, Definitions, A, Variance, item 4, page 7*.
4. The report does not describe the obstacles that are keeping the BOA from reaching the goals and objectives of the BOA.
5. Refresher/training for BOA members that relates to court cases/innovations, as an example, would be helpful (see *Option #4, provide training and refresher courses for BOA and staff members to improve understanding of what constitutes a hardship, page 12*).
6. The BOAs function is to uphold the law but also to find a way for applicant's to use their property for its best use. Often an applicant's "desire" becomes a "hardship" in light of variance criteria (see *page 6, III - Definitions, A - Variance, editor's note*).
7. The deadline for submittal of an executed development order (i.e., 60 days from the time the development order is transmitted to the applicant for signature) should be changed to one (1) year in keeping with the expiration date of the development order of one (1) year, if the development order is not returned to the County (see *Note, page 8*).
8. The term "minor" be should defined as it relates to the approval of administrative variances (see *Option #1, establish procedures and criteria for granting minor variances administratively (e.g., wall heights, setbacks for pool screen enclosures, page 11)*).
9. Amend the description of the term "Special Exceptions" to read as follows: "Special exceptions involve a change of use of property are the method by which conditional land uses are permitted in particular zoning categories and therefore require knowledge of the comprehensive plan and development trends (see *Issue #B, special exceptions involve a change in use of property and require knowledge of the comprehensive p/an and development trends, page 12*).
10. The BOA should continue to be the decision making body regarding telecommunication towers (see *Issue #C, Telecommunication Towers, page 13*).
11. Use of a hearing officer would require the swearing in and cross examination of speakers and would cut down on the free flow of information (see *Option #3, Employ a hearingofficer in lieu of the Board of Adjustment, page 11*).
12. As the community continues to grow, more variance requests are likely to be submitted by property owners.

Board of Adjustment
Review of Policies and Procedures



**Briefing for the
Board of County Commissioners**

**Seminole County Planning Division
Staff Issues and Options**

October 22, 2002

TABLE OF CONTENTS

	Page
INTRODUCTION	3
BOARD OF ADJUSTMENT OVERVIEW	3
↗ Appointment	3
C Powers and Duties	3
☐ Definitions	5
BOARD OF ADJUSTMENT APPLICATIONS, FISCAL YEAR 1995-2001	9
ISSUES AND OPTIONS:	9
↗ Variances	9
c Special Exceptions	11
☐ Telecommunication Towers (with location map)	12
ROLE OF STAFF AND COUNTY ATTORNEY'S OFFICE IN THE BOARD OF ADJUSTMENT PROCESS	12
WHAT OTHER JURISDICTIONS ARE DOING TO MANAGE BOARD OF ADJUSTMENT ISSUES	13
OPTIONS FOR CONTINUATION OF AN EXCEPTIONAL BOARD OF ADJUSTMENT PROCESS	14
☐ Amendments to Land Development Code	14
☐ Other Administrative Amendments	14
↗ Administrative Amendments for Future Consideration	15
BOARD OF ADJUSTMENT BRIEFING	15
CONCLUSION	16
ENCLOSURES	16
☐ Permitting Policy/Procedures/Criteria Sheet	---
☐ Board of County Commissioners Minutes from October 23, 2001	---
☐ PowerPoint Slide Presentation	---

INTRODUCTION

On October 23, 2001, the Board of County Commissioners (the "BCC") directed staff to provide recommendations on revising the Board of Adjustment's procedures. This report sets forth the current policies and procedures of the Board of Adjustment (the "BOA"), examines issues and options for potential changes to the BOA process.

As the BOA has been in existence since 1959, this provides an opportunity to review potential changes to the policies and procedures of the BOA toward the continuation of an exceptional BOA process.

In preparing this report, staff benefited greatly by attending hearings in Orange County, Hillsborough County and the City of Orlando and from information provided by the America Planning Association and the seven cities within Seminole County. Also incorporated into this report are comments/recommendations from the BOA during a briefing held on September 23, 2002.

I. Appointment:

The Seminole County Board of Adjustment, created in 1959, is a quasi-judicial/citizens board. Members of the BOA are appointed by the Board of County Commissioners for four (4) year terms. Membership consists of not less than five (5) and no more than 10 members with two (2) alternates. Alternate members serve in the temporary absence or disability of any regular member or may serve when a regular member is otherwise disqualified in a particular case that may be presented to the BOA. No member or alternate member of the BOA is a paid or elected official or employee of Seminole County. There are no established term limits for membership.

II. Powers and Duties:

A. Public Hearing Agenda:

On the fourth Monday of each month, the BOA conducts a public hearing to routinely consider and decide on one or more of the following:

1. Variances to zoning regulations for lot size, lot width, building setbacks, structure heights, and separation of communication towers.
2. Special exceptions/conditional uses within zoning districts, including requests for telecommunication towers and mobile homes.
3. Appeals of administrative decisions.
4. Appeals of any aggrieved persons resulting from decisions of the Planning Manager.

Decisions of the BOA may be appealed to the BCC as provided for in the Land Development Code of Seminole County (the "LDC"). Decisions of the BOA are final unless appealed to the BCC.

The powers and duties of the BOA are set forth in Part 3, Administration, of the LDC.

The enclosed bar graph titled "Board of Adjustment Applications, 1995-2001", provides a view of the recent case load of the BOA.

B. Appeals from Planning Manager:

The BOA may hear and decide appeals where it is alleged there is error in any order, requirement, decision, or determination made by the Planning Manager under the provisions of the LDC. In exercising its powers, the BOA may, upon appeal and in conformity with provisions of the LDC, reverse or affirm, wholly or partly, or may modify the order, requirement, decision, or determination made by Planning Manager, and make such order, requirement, decision or determination as ought to be made and, to that end, shall have all powers of the Planning Manager. A majority vote of all members of the BOA shall be necessary to reverse any order, requirement, decision, or determination of the Planning Manager or to decide in favor of the applicant on any matter upon which the BOA is required to pass under the LDC.

C. Appeal to the BOA from decision of the Planning Manager:

Appeals to the BOA may be taken by any person aggrieved or by any officer, board, or bureau of the County affected by any decision of the Planning Manager under the LDC. Such appeal shall be taken within thirty (30) days after such decision is made by filing with the Planning Manager a notice of appeal specifying the grounds thereof. The appeal shall be in such form as prescribed by the rules of the BOA. The Planning Manager shall, upon notification of the filing of the appeal, forthwith, transmit to the BOA all the documents, plans, papers, or other materials constituting the record upon which the action appealed from was taken.

D. Notice required on hearing of appeal:

The BOA shall fix a reasonable time for the hearing of the appeal, give public notice thereof, as well as due notice to the parties in interest, and decide same within a reasonable time. Upon the hearing any party may appear in person or by agent or by attorney. For procedural purposes, an application for a special exception shall be handled by the BOA the same as for appeals.

E. Appeals from BOA decision:

Any person, or persons, jointly or severally, aggrieved by any decision of the BOA, may, within fifteen (15) days after the filing of any decision in the office of the BOA, but not thereafter, apply to the Board of County Commissioners for relief. The appeal before the Board of County Commissioners shall be de novo.

An appeal to the Board of County Commissioners shall stay all proceedings in furtherance of the action appealed from, unless the officer from whom the appeal is taken certifies to the Board of County Commissioners, after the notice of appeal shall have been filed with him, that by reason of acts stated in the certificate, a stay would, in his opinion, cause imminent peril to lives or property. In such case, proceedings shall not be stayed otherwise than by a restraining order which may be granted by the Board of County Commissioners or by a court of record on application, on notice to the officer or board from which the appeal is taken, and on due cause shown. The Board of County Commissioners shall fix a reasonable time for the hearing of the appeal, give public notice thereof, as well as due notice to the parties in interest, and decide the same within a reasonable time. Upon the hearing any party may appeal [a decision to the circuit court].

III. Definitions:

A. Variance:

As used in connection with the provisions of the LDC dealing with zoning, a variance is a relaxation of the terms of the zoning ordinance where such variance will not be contrary to the public interest and where, owing to conditions peculiar to the property and not the result of the actions of the applicant*, a literal enforcement of the ordinance would result in unnecessary and undue hardship. As used in the LDC a variance is authorized only for height, area, and size of structure, or size of yards and certain open spaces. Establishment or expansion of a use otherwise prohibited shall not be allowed by variance, nor shall a variance be granted because of the presence of nonconformities in the zoning district or classification or adjoining zoning districts or classifications.

Applicable to Part 51, Chapter 30 - A grant of relief from the requirements of Part 51, Chapter 30, which permits construction in a manner otherwise prohibited by Part 51, Chapter 30, LDC, where specific enforcement would result in unnecessary hardship.

****Editor's note** – It is the charge of the BOA to distinguish between hardship vs. desire of an applicant and whether the actions of the applicant are involved in seeking relief. LDC provisions and the courts have intentionally defined hardship so as to have a high threshold of proof.*

-Typical variances considered by the BOA include:

- *Wall or fence setback/height*
- *Accessory building setback/height*
- *Sign setback/size/height*
- *House setback/size*

The BOA may grant variances that are not contrary to the public interest where, owing to special conditions, a literal enforcement of the provisions of Chapter 30 [LDC] will result in unnecessary and undue hardship. In order to grant a variance, the BOA must first determine each of the following:

1. That special conditions and circumstances exist which are peculiar to the land, structure, or building involved and which are not applicable to other lands, structures, or buildings in the same zoning classification; and
2. That the special conditions and circumstances do not result from the actions of the applicant; and
3. That granting the variance requested will not confer on the applicant any special privilege that is denied by Chapter 30 [LDC] to other lands, buildings, or structures in the same zoning classification; and
4. That literal interpretation of the provisions of Chapter 30 [LDC] would deprive the applicant of rights commonly enjoyed by other properties in the same zoning classification and would work unnecessary and undue hardship on the applicant; and
5. That the variance granted is the minimum variance that will make possible the reasonable use of the land, building, or structure; and
6. That the granting of the variance will be in harmony with the general intent and purpose of Chapter 30 [LDC] will not be injurious to the neighborhood, or otherwise detrimental to the public welfare.

B. Special Exceptions:

A use that would not be appropriate generally or without restriction throughout the particular zoning district or classification but which, if controlled as to number, area, location, or relation to the neighborhood, would promote the public health, safety, comfort, good order, appearance, convenience, prosperity, morals, and the general welfare. Such uses may be permitted in such zoning district or classifications as conditional uses, if specific provision for such conditional use is made in the Zoning Ordinance.

Typical special exceptions considered by the BOA include:

- *Telecommunication towers*
- *Churches*
- *Guest cottages*
- *Mechanical garages*

Mobile homes may either be limited or conditional uses requiring a special exception.

The BOA may hear and decide only special exceptions as the BOA is specifically authorized to pass on under the terms of the LDC; to decide such questions as are involved in determining when special exceptions should be granted; to grant special exceptions with appropriate conditions and safeguards; or to deny special exceptions when not in harmony with the purpose and intent of the LDC. After review of an

application and a public hearing thereon, with due public notice, the BOA may allow any uses for which a special exception is required; provided, however, that said board may allow said uses only upon a determination that the use requested:

1. Is not detrimental to the character of the area or inconsistent with trends of development in the area;
2. Does not have an unduly adverse effect on existing traffic patterns, movements and intensity; and
3. Is consistent with the County's Comprehensive Plan. In granting any special exception, the board shall find that such grant will not adversely affect the public interest.

Note: In granting any special exception or variance, the BOA may prescribe appropriate conditions and safeguards. Violation of such conditions and safeguards, when made a part of the terms under which the variance is granted, shall be deemed a violation of the LDC. Special exceptions expire after one (1) year unless a development permit is obtained based upon and incorporating the special exception.

- A one (1) time extension of six (6) months may also be granted by the BOA. If a development order associated with a special exception is not executed within 60 days of transmittal of the order to the applicant, the special exception shall expire.

*--- **Editor's note** - Some zonings also require findings beyond the three (3) criteria listed above when granting a special exception.*

Under no circumstances shall the BOA grant a special exception or variance to permit a use not generally or by special exception permitted in the zoning classification involved (i.e., commonly known as a "use variance", which would allow a use not permitted within the zoning classification) or any use expressly or by implication prohibited by the terms of this chapter in the said zoning classification. No nonconforming use of neighboring lands, structures, or buildings in the same zoning classification, and no permitted use of lands, structures, or buildings in other zoning classifications shall be considered grounds for the authorization of a variance or special exception.

C. Mobile Homes:

For the purpose of the LDC, mobile homes are defined by Section 320.01(2)(a), Florida Statutes (1993) as follows:

"A structure, transportable in one or more sections, which is 8 body feet or more in width and which is built on an integral chassis and designed to be used as a dwelling when connected to the required utilities and includes the plumbing, heating, air-conditioning, and electrical systems contained therein.

The LDC provides for mobile homes as both limited and conditional uses. Mobile homes/travel trailers as limited uses may provide housing such as:

1. *while a permanent dwelling is under construction.*
2. *for a chronically ill relative or practical nurse.*
3. *for a night watchman for nonresidential uses.*
4. *for a family member(s) with a documented hardship.*

Limited uses may only be approved for up to one (1) year with approval of one (1) additional year, if necessary.

A mobile home may also be approved as a conditional use for a length of time as determined by the BOA after determining the trend of development in the area and finding that the mobile home is a compatible use.

In 1993, the BCC and BOA conducted a work session to discuss the issues and options for permitting new mobile homes and granting permanent status to mobile homes. The County's current policy is set forth in the enclosed pages titled "Permitting Policy/Procedure/Criteria Sheet".

Editor's note - *The LDC also provides for mobile homes as permitted uses within the RM- 1, RM-2 and PUD zoning classifications.*

D. Telecommunication Towers:

A tower (including the antenna component) which supports communication (transmission and receiving) equipment. Examples of the methods which communication towers may be designed are: (a) self supporting lattice; (b) guyed; (c) monopole; and (d) camouflage. Amateur radio operator's equipment, over 35 feet in height, may be allowed, subject to the communication tower ordinance.

The LDC provides setback requirements for towers from residential areas (i.e., 200 feet or 300% of the tower height, which ever is greater). A separation variance may be granted if the determination is made that the aesthetic impacts of the tower are enhanced, compatibility is maintained and the request is consistent with other LDC requirements for communication towers.

Editor's note - *Staff applies a proactive approach with the telecommunication companies prior to review and consideration by the BOA. This helps ensure compliance with the intent of the tower ordinance by assisting the telecommunication companies in identifying suitable tower locations. Staff also notifies telecommunication companies when an application for a cell tower is under review by the County in an effort to find co-locators.*

The County's Telecommunication Tower Ordinance is intended to:

1. *promote co-location.*
2. *promote reduction in number of towers to provide adequate service.*
3. *allow certain towers by right in commercial and industrial districts.*
4. *encourage camouflage towers.*

Although not currently up to date, the location of various types of towers is depicted on the map on the following page.

Editor's note - *Development orders, with conditions, if any, are required for variances, special exceptions and mobile home approvals granted by the BOA. A decision on appeal is also required when decisions of the BOA or Planning Manager are issued.*

**BOARD OF ADJUSTMENT APPLICATIONS
FISCAL YEARS 1995-2001**

The enclosed bar graph on the following page depicts the number of special exceptions, variances, mobile home requests, and appeals for fiscal years 1995-2001. The most striking feature of this chart is the increase in the number of variances between 1997/98 and 2000/01.

Editor's note – *Requests for variances may be reduced, for example, by amending the LDC relating to fence heights and pool screen enclosure setbacks in certain cases, by allowing administrative variances and by negotiating superior design during the PUD (Planned Unit Development) process.*

ISSUES AND OPTIONS

ISSUE #A - VARIANCES:

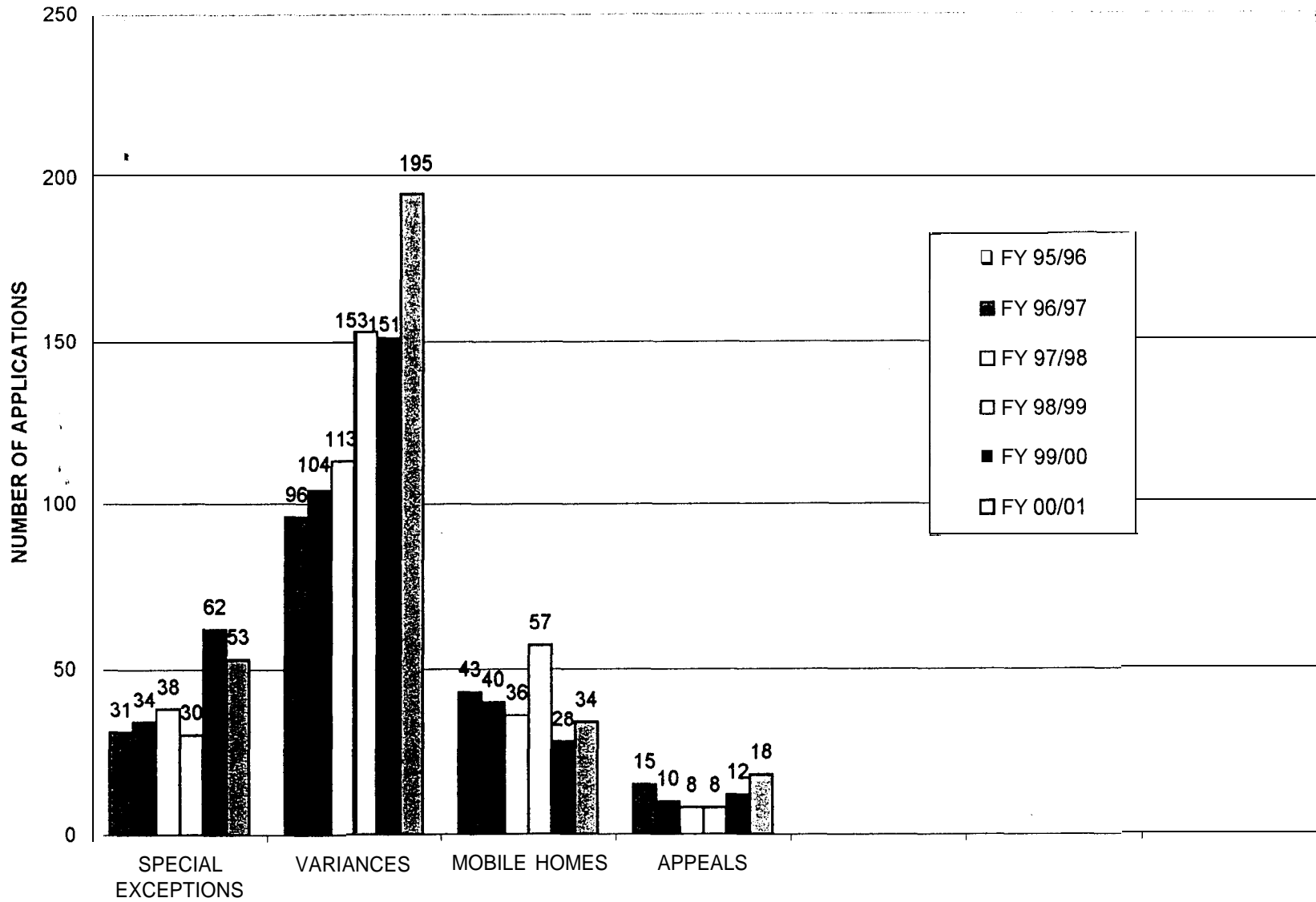
Variances are granted by boards of adjustment without adequate findings of legal hardship and not in accordance with LDC criteria for granting variances.

A hardship occurs when physical characteristics of a property are such that it cannot be used for any purpose permitted by County codes or only a permitted purpose which is prohibitively expensive. Such a hardship may be created by the surroundings, shape or topographical conditions particular to that specific property. However, if the property owner knew or should have known of those conditions at the time they purchased the property, then there cannot be a finding of a legal hardship.

An example of a finding used by the Board of Adjustment to support granting of variances is “reasonable use of the land”. This phrase does not actually have any legal significance and has been used as a catch-all basis for the granting of variances.

Editor's note – *It is not uncommon practice for boards of adjustment to “legislate” rather than render a quasi-judicial decision (i.e., a simple determination of consistency*

BOARD OF ADJUSTMENT APPLICATIONS 1995 - 2001



of a variance request with the criteria established in the LDC). Although as a non-elected body, the BOA may exceed its scope by rendering legislative decisions.

Option #1:

Establish procedures and criteria for granting minor variances administratively (e.g., wall heights, setbacks for pool screen enclosures).

The granting of minor variances administratively may help to ensure that the number of variances required to undergo a BOA public hearing are reduced, customer service is improved, and the cost of processing variance requests is reduced. Minor variances may also be granted in cases of saving of trees and superior design. Note: In fiscal year 2000-2001, the BOA processed 195 variances.

Option #2:

Instruct applicants regarding the County's criteria for requesting a variance and determining/defining a hardship.

Instructing applicants would result in determining whether a valid hardship exists and whether an alternative solution is possible in lieu of granting a variance. A valid hardship could be supported both by staff and the BOA. Such information could prepare the applicant to present sufficient evidence at the hearing upon which a finding of hardship could be made.

--Editor's note - Staff routinely meets with applicants to discuss their proposal, looks for options to meet their proposal and explain the BOA process and hardship provisions of the LDC. The BOA has commended staff for assisting applicants. Staff does not encourage nor discourage applicants from applying for variances.

Option #3:

Employ a hearing officer in lieu of the Board of Adjustment.

This option would involve replacing the BOA with a hearing officer to adjudge variances, special exceptions, mobile homes, cell towers and/or various appeals. The LDC also provides for hearing officers to resolve appeals of the Planning and Development Director's decisions. One example of the County's use of a hearing officer was to hear an appeal of an adult entertainment issue during the time the County's adult entertainment ordinance was being reviewed.

The role of the hearing officer would be to make written findings of fact based on the evidence presented by all parties and County staff and to apply relevant laws to those facts to reach a conclusion. Section 15.7, LDC, permits the BCC to accept appeals of the hearing officer's findings of fact and/or legal conclusion.

Some of the advantages and disadvantages of this option includes:

Advantages:

- May reduce the number of variance applications, especially those not based on a legal hardship.
- Help ensure objective and legally sufficient determinations based on competent, substantial evidence and compliance with state and local laws. This will provide a stronger record in favor of the County's decision should the issue be appealed to a court.

Disadvantages:

- Involves a cost for providing services of a hearing officer.
- Transfers decision making from a group to a single person.
- Limits public participation.

Editor's note – *The advantages and disadvantages of a hearing officer cited above are not to be construed to favor the hearing officer option over the existing BOA process.*

Option #4:

Provide training and refresher courses for BOA and staff members to improve understanding of what constitutes a hardship.

The criteria for granting variances are not always easy to apply to all cases. Among the findings of a survey of small and medium size communities conducted by the American Planning Association in 1995 was that: "without a doubt, adequate training is the primary issue for planners working with ZBAs" (zoning boards of adjustment).

Requiring training of new BOA members and a refresher course for staff and current members which could help ensure that the LDC is enforced and that decisions are made on the basis of defensible findings. Any such course should reiterate to staff and BOA members that decisions which disregard the law or the evidence may result in costly, indefensible lawsuits.

Editor's note – *The intent of ongoing training is to ensure that staff and BOA members are aware of current trends/court decisions relating to boards of adjustments and to ensure that staff recommendations and BOA decisions are based on defensible findings.*

ISSUE #B – SPECIAL EXCEPTIONS:

Special exceptions involve a change in use of property and require knowledge of the comprehensive plan and development trends.

Option:

Transfer requests for special exceptions directly to the Planning and Zoning Commission for approval/denial.

In fiscal year 2000-2001, the BOA processed 53 special exceptions. Adding special exceptions to the Planning and Zoning Board (the "P&Z") agenda may require longer or additional P&Z hearings.

All of the municipalities within Seminole County use their respective planning and zoning boards or city commissions to approve special exceptions. Orange County operates via board of zoning appeals.

With special exceptions, staff prepares a report for the BOA with findings and recommendations and development order, if conditions are applied.

Editor's note – *The BOA believes that staff has not provided conclusive reasons why special exceptions should not remain with the BOA. Staff, however, is not advocating a position; it is merely presenting options to the County Commission.*

ISSUE #C – TELECOMMUNICATION TOWERS:

Communication towers result in a change of use of property and often result in significant community impacts.

---Option:

Transfer requests for communication towers directly to the Board of County Commissioners for approval/denial.

In calendar year 2001, the BOA averaged one (1) communication tower per month. Unlike other special exceptions, the additional work load required from these uses may not have a significant impact upon the agenda of BCC.

All of the municipalities within Seminole County make use of their respective planning and zoning boards or city commissions to approve communication towers. Orange County operates via a board of zoning appeals. None of these jurisdictions routinely employ a hearing officer.

With communication towers, staff prepares a report for the BOA with findings and recommendations and conditions, if any are applied.

ROLE OF STAFF IN THE BOARD OF ADJUSTMENT PROCESS

The role of County staff in the BOA process may be summarized as follows:

1. Orient new members upon appointment to the BOA.
2. Satisfy all advertising and public notice requirements.

3. Prepare and share relevant information in a timely fashion (e.g., location maps, applications, support documents, etc.)
4. Assist customers with application process.
5. Conduct research/fact finding by meeting with staff members, field surveys, taking photos and review of past case files.
6. Prepare a staff report consisting of background information, LDC criteria, staff findings and a recommendation for approval or denial with or without conditions.
7. Staff has taken a more active role in the BOA process via staff reports which include findings for BOA consideration in decision making, draft motions, development orders, and use of power point presentations.
8. Take minutes of meeting, transcribe for BOA approval and maintain case files.
9. Present each case at a public hearing and provide the BOA with staff findings and recommendation(s).
10. The role of County Attorney's Office is to advise staff and the BOA. The County Attorney's Office does not advocate on behalf of staff or the BOA.

WHAT OTHER JURISDICTIONS ARE DOING TO MANAGE BOARD OF ADJUSTMENT ISSUES

In 1995, the American Planning Association conducted a survey of small and medium size communities and communities of 100,000 or more in population. The survey focused on information such as frequency of meetings, compensation, annual case load, and terms of office. Below are selected highlights from these surveys provided here for the purpose of information and not necessarily recommendations for Seminole County.

Champaign, Illinois

Variance applications were reduced by amending the code to address repetitive requests under the same conditions.

Huntington, Indiana

A hearing officer reviews all applications; appeals are forwarded to the zoning board of appeals.

Evanston, Wvoming

Board members are made up of planning and zoning board members.

Iowa City, Iowa

Board members undergo orientation at appointment. A workshop is held periodically to discuss protocol, due process, quasi-judicial nature of the board, and importance of clear statements of findings of fact.

In summary, of the jurisdictions with a population of 100,000 or greater (see following page):

Frequency of meetings	At least monthly; New York City meets weekly.
Annual Case Load	Ranges from 12 in Springfield, Missouri to 600 in Milwaukee and Pittsburgh.
Compensation	Ranges from \$0 to \$36,978 annually for the chairman of the Milwaukee Zoning Board of Appeals. Some jurisdictions offer salaries and stipends. Compensation may be by monthly payments or per each meeting.
Terms	3, 4 and 5 years are typical.
Membership	Five (5) members are common.
Hearing Officer	Two (2) of the jurisdictions surveyed employed a hearing officer.

Source: American Planning Association, Zoning News, February and March 1996.

OPTIONS FOR CONTINUATION OF AN EXCEPTIONAL BOARD OF ADJUSTMENT PROCESS

In view of the findings and analysis throughout this report, staff is requesting direction regarding the following options:

A. Amendments to Land Development Code:

1. Authorize staff to review and grant or deny minor variances, such as approval for wall heights, setbacks side streets and for pool screen enclosures, etc., and establish procedures and criteria for such administrative review.
2. Transfer authority to the P&Z to review and grant or deny special exceptions.
3. Transfer authority to the P&Z to hear appeals of administrative decisions and decisions of the Planning Manger.
4. Revest sole authority within the BCC to review and approve or deny final development orders for communication towers.
5. Authorize use of a hearing officer (special master) to hear appeals of the decisions of the BOA and P&Z.
6. Specify whether the factual and/or legal decisions of the hearing officer should be appealed to the BCC or directly to the court system.

B. Other Administrative Amendments:

7. Establish an interval for review of BOA policies and procedures by the BOA including the need for findings of fact to support each decision and the consequences of deviation from legal guidelines.

8. Identify repetitive variance requests and evaluate whether an amendment to the LDC is needed to reduce the number of recurring requests.
9. Continue to research other jurisdictions to garner information about successful processes throughout the state for resolving land use matters.

D. Administrative Amendment for Future Consideration:

10. At a future date, evaluate the possibility of allowing mobile homes as permitted uses within the East Rural Area, within specified locations, and identify those areas where mobile homes would be prohibited.

**BOARD OF ADJUSTMENT BRIEFING
SEPTEMBER 23, 2002**

On September 23, 2002, staff presented this item to the BOA to request any comments/recommendations to be forward to the Board of County Commissioners.

Comments/recommendations of the BOA from that meeting are as follows:

1. The subject report does not include a “statement of the problem” that the report is attempting to address.
2. There are not substantive reasons within the report for changes to the existing BOA policies and procedures.
3. Consider changing the criteria for granting variances to add flexibility and provide a more lenient method for granting variances within the law. As an example, the criteria “undue hardship” shown under *III, Definitions, A, Variance, item 4, page 7*.
4. The report does not describe the obstacles that are keeping the BOA from reaching the goals and objectives of the BOA.
5. Refresher/training for BOA members that relates to court cases/innovations, as an example, would be helpful (*see Option #4, provide training and refresher courses for BOA and staff members to improve understanding of what constitutes a hardship, page 12*).
6. The BOAs function is to uphold the law but also to find a way for applicant’s to use their property for its best use. Often an applicant’s “desire” becomes a “hardship” in light of variance criteria (*see page 6, III - Definitions, A – Variance, editor’s note*).
7. The deadline for submittal of an executed development order (i.e., 60 days from the time the development order is transmitted to the applicant for signature) should be changed to one (1) year in keeping with the expiration date of the development order of one (1) year, if the development order is not returned to the County (*see Note, page 8*).
8. The term “minor” should be defined as it relates to the approval of administrative variances (*see Option #1, establish procedures and criteria for granting minor variances administratively (e.g., wall heights,- setbacks for pool screen enclosures, page 11)*).

9. Amend the description of the term "Special Exceptions" to read as follows: "Special exceptions ~~involve a change of use of property~~ are the method by which conditional land uses are permitted in particular zoning categories and therefore require knowledge of the comprehensive plan and development trends (see *Issue #B, special exceptions involve a change in use of property and require know/edge of the comprehensive p/an and development trends*, page 12).
10. The BOA should continue to be the decision making body regarding telecommunication towers (see *Issue #C, Telecommunication Towers*, page 13).
11. Use of a hearing officer would require the swearing in and cross examination of speakers and would cut down on the free flow of information (see *Option #3, Employ a hearing officer in lieu of the Board of Adjustment*, page 11).
12. As the community continues to grow, more variance requests are likely to be submitted by property owners.

CONCLUSION

Several noteworthy conclusions may be drawn from this report:

1. A review of the American Planning Association's 1996 survey of boards of appeals for those jurisdictions of 100,000 and over in population reveals that: "despite the broad range [of proceedings], it is clear that most ZBAs [zoning boards of adjustment] are very busy."
2. Although boards of appeals may differ in the number of applications processed, which tends to be a function of overall population and growth trends, there are similarities in the number of board members, meetings per month and length of terms for members.
3. The County may want to consider allowing staff to grant administrative variances, or amend the LDC, for such items as fence and wall height variances and setbacks for pool screen enclosures

ENCLOSURES

- Permitting Policy/Procedures/Criteria Sheet.
- Board of County Commissioners minutes from October 23, 2001.
- PowerPoint slide presentation.

I:\pl\projects\boa\boa worksession\9_23_02.doc

PERMITTING POLICY/PROCEDURE/CRITERIA SHEET

ITEM: MOBILE HOME APPROVALS

BCC APPROVED: Board of County Commissioners/Board of Adjustment Work Session (3/22/93)

BACKGROUND: As a result of several **appeals** of the Board of Adjustment's decision to the Board of County Commissioners; a joint work session was held to discuss the issues and options for permitting mobile homes. Mobile homes are a permitted use in the **RM-1, RM-2,** and PUD Zoning Classifications and a Conditional Use in the A-1, R-3, R-5 and **R-10** Classifications.

New Permit Applications: Continue the existing procedure and **review each application on its own merits** with the length of permits to be on a case-by-case basis. To assist the BOA in evaluating development trends, staff will provide the Board with up-to-date development trend information (e.g., new plats and land use changes) in the area surrounding the application. The ability to provide a parcel-by-parcel identification map showing conventional and mobile homes will be provided when the map has been previously prepared in conjunction with an appeal to the Board of County Commissioners (see Appeals section).

Special Exceptions within any Zoning Classification **are generally granted permanently.** However, with respect to mobile homes, the LDC Sec. 5.104(b) provides the ability to "place such restrictions and conditions therein as the Board shall, in its sound discretion, deem necessary to protect the character of the area or neighborhood and the public health, safety and welfare.

Therefore, the **first consideration should be given to granting permanent status or denying a special exception** based upon the following factors:

- Development trends in the area (conventional vs. mobile home);
- Compatibility; and,
- Previous BOA decisions.

If after considering the above factors, the Board(s) wish to use Sec. 5.104(b) of the LDC and approve a special exception with time limitations and/or other constraints, the **conditions to b-e placed in a Development Order must be stated-as part of the motion.**

Extensions for Existing Mobile Homes: Continue the existing procedure and **review each application on a case-by-case basis. The factors to be considered by** the BOA include, but are not limited to:

- **Development trends** and changes in the area since the original approval;
- **Age and current condition of the mobile home:**
- **Past BOA decisions in the area:** and
- **Change in ownership,** owner versus rental status.

Anneals to the Board of County Commissioners: Appeals will be heard on a case-by-case **basis.** In addition to the information provided to the BOA, BOA **minutes,** findings and area map showing conventional and mobile home units will be provided.

Limited Use Permits: Limited use permits may be approved by the Board of Adjustment for short term occupancy of a mobile home for the following:;

- Temporary occupancy of a mobile home while a permanent dwelling is under construction.
- Temporary occupancy of a mobile home to house a sick relative or a practical nurse.
- Temporary occupancy of a mobile home to house a night watchman.
- Temporary occupancy of a mobile home to house a member of the immediate family due to a documented hardship.

Development Orders: All approved mobile home permits will require the execution of a Development Order before being effective. Failure to execute the DO within 60 days of Board action will result in denial of the permit application.

(mb1harrng.msc)

Commissioner Morris discussed the Board of Adjustment and how they are interpreting codes. He stated what is happening is the Board of Adjustment is granting things that the BCC would never have granted under the code after being rejected at the site planning stage.

Planning & Development Director, Don Fisher, addressed the Board to advise staff is looking into several things in order to make the process better. One of the things is how staff makes their presentations to the Board of Adjustment in doing more research and laying out staff's position. He stated that a workshop is needed with the BOA and the staff in order to lay out what the Board's duty is and what it means when they make recommendations without having proper findings.

Commissioner Van Der Weide stated the BOA is in need of an attorney being present at all their meetings. Whereupon, Mr. McMillan advised a member of the County Attorney's Office is present at all BOA meetings.

Commissioner Henley stated the attorney needs to be proactive.

Mr. McMillan advised the current structure of the BOA is decades old and was established by State Statute. He said the BCC now has the ability to restructure the system and decide what is heard-by the BOA and how the BCC gets things up to them. He added that many of the decisions made by the BOA are not appealed and the BCC never sees them.

Commissioner Morris requested staff come back to the Board with a recommendation on revising the BOA procedures.

***Board of Adjustment
Review of
Policies and Procedures***

**Board of County Commissioners
Briefing**

**October 22, 2002
Seminole County Planning Division**

ISSUES AND OPTIONS: VARIANCES

ISSUE A:

& Granting of variances without findings of legal hardship.

OPTION #1:

- ***Establish procedures and criteria for granting minor variances administratively.***

ISSUES AND OPTIONS: VARIANCES

OPTION #2:

- ***Instruct applicants regarding the County's criteria for variances and hardship.***

OPTION #3:

- ***Employ a hearing officer.***

ISSUES AND OPTIONS: VARIANCES

OPTION #4:

- ***Provide training and refresher courses for BOA and staff members regarding findings of hardship.***

TYPICAL VARIANCE REQUESTS

➤ **Wall/fence
setback/height**

➤ **Sign
setback/size/height**

➤ **House
setback/size
&Accessory
building
setback/height**

ISSUES AND OPTIONS: SPECIAL EXCEPTIONS

ISSUE B:

- **Special exceptions involve a change in use of property and require knowledge of the Comprehensive plan and development trends,**

OPTION:

- ***Transfer authority for special exceptions to the P&Z for approval/denial.***

TYPICAL SPECIAL EXCEPTIONS

➤ **Communication towers**

➤ **Guest cottages**

➤ **Mechanical garages**

➤ **Churches**

ISSUES AND OPTIONS: TELECOMMUNICATION TOWERS

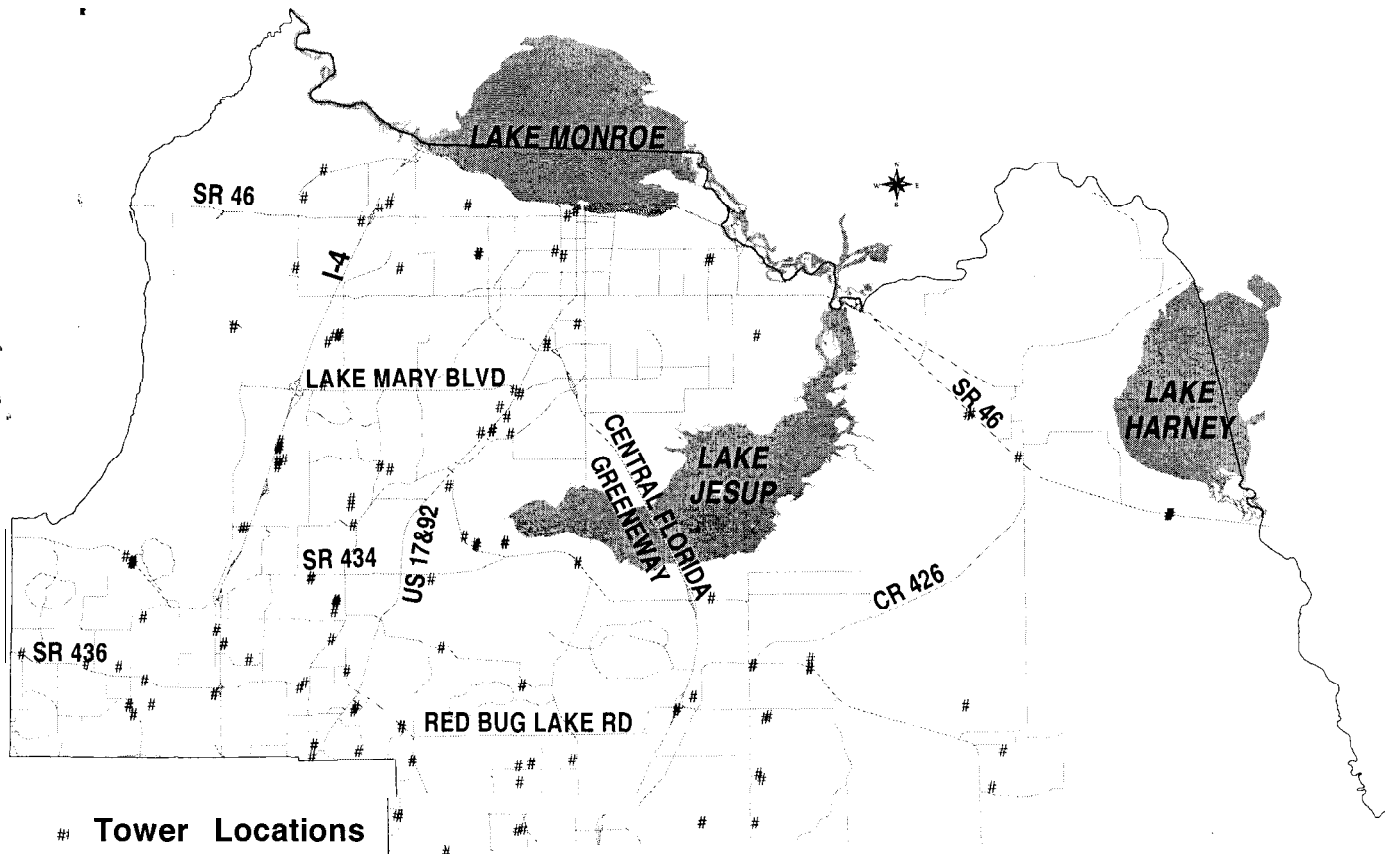
ISSUE C:

- **Telecommunication towers result in a change of use of property and often result in significant community impacts.**

OPTION:

- ***Transfer authority for cell towers to the BCC for approval/denial.***

TOWER LOCATIONS City and County



Note: Not all towers are depicted on this map; map is being updated.

BOARD OF ADJUSTMENT VS. HEARING OFFICER

Advantages:

- **May reduce the number of applications not based on a legal hardship.**
- **Helps ensure objective and legally sufficient determinations and compliance with local and state laws.**
- **Provides a stronger record in favor of the County.**

BOARD OF ADJUSTMENT VS. HEARING OFFICER

Disadvantaees:

- **Involves a cost for hearing officer.**
- &Transfers decision makers from a group to an individual.**
- **Limits public participation.**

WHAT OTHER JURISDICTIONS ARE DOING

➤ **Terms**

3, 4 and 5 years are typical.

➤ **Membership**

Five (5) members are common.

➤ **Hearing Officer**

Two (2) jurisdictions surveyed employed a hearing officer.

BOA AGENDA ITEMS FY 2000-2001

➤ Variances	195
➤ Special Exceptions	53
➤ Mobile Homes	34
➤ Appeals	<u>18</u>
• Total	300

See chart titled "Board of Adjustment Applications, Fiscal Years 1995- 2001."

ROLE OF THE COUNTY ATTORNEY'S OFFICE

- **The role of the County Attorney's Office is to advise staff and the BOA. The County Attorney's Office does not advocate on behalf of staff or the BOA.**

OPTIONS

- 1. Authorize staff to review and grant or deny minor variances.**
- 2. Transfer authority to the P&Z to grant or deny special exceptions.**

OPTIONS

- 3. Transfer authority to the P&Z to hear appeals of administrative decisions and appeals of the Planning Manager.**
- 4. Revest sole authority to the BCC to approve/deny telecommunication towers.**

OPTIONS

- 5. Authorize hearing officer (special master) to hear appeals of the decisions of the BOA and P&Z.**
- 6. Specify whether decision of the hearing officer are sent to the BCC or court system.**

OPTIONS

- 7. Establish an interval for review of BOA procedures by the BOA.**
- 8. Identify repetitive variances to determine if an amendment to the LDC is needed.**

OPTIONS

- 9. Continue research of other jurisdictions to garner information relating to resolving land use matters.**

, OPTIONS

- 10. At a future date, evaluate the possibility of allowing mobile homes as permitted uses within the East Rural Area,, and where mobile home would be prohibited.**
- ii . Continue status quo.**

END

BOA Policies and Procedures_presentation slide show.ppt_9_23_02