

RESOLUTION NO. R-2000- 1579

RESOLUTION APPROVING WAIVER REQUEST W81-095(C)
WAIVER FROM REQUIRED DIMENSIONAL CRITERIA
PETITION OF ATLANTIC COAST TOWER
BY MICHAEL HOUSTON, AGENT
(FOREST HILL CENTER)

WHEREAS, the Board of County Commissioners, as the governing body of Palm Beach County, Florida, pursuant to the authority vested in Chapter 163 and Chapter 125, Florida Statutes, is authorized and empowered to consider petitions relating to zoning; and

WHEREAS, the Board of County Commissioners, pursuant to Article 5 (Development Review Procedures) of the Palm Beach County Unified Land Development Code (Ordinance 92-20, as amended) is authorized and empowered to consider, approve, approve with conditions or deny Waiver from Required Dimensional Criteria for Communication Towers; and

WHEREAS, the notice and hearing requirements, as provided for in Article 5 of the Palm Beach County Unified Land Development Code have been satisfied; and

WHEREAS, Waiver Request WI-095(C) was presented to the Board of County Commissioners at a public hearing conducted on September 28, 2000; and

WHEREAS, the Board of County Commissioners has considered the evidence and testimony presented by the petitioner and other interested parties, and the recommendations of the various county review agencies; and

WHEREAS, this approval is subject to Article 5, Section 5.8 (Compliance with Time Limitations) of the Palm Beach County Unified Land Development Code (ULDC) and other provisions requiring that development commence in a timely manner; and

WHEREAS, the Board of County Commissioners made the following findings of fact:

1. This request for a Waiver for separation from residential structures for a commercial communication tower complies with the intent of Section 6.4.D.22 of the ULDC.
2. This request for a Waiver for separation from residential structures for a commercial communication tower, will not be injurious to the uses in the area adjacent to the structure and otherwise will not be detrimental to the public welfare.
3. This request for a Waiver for separation from residential structures for a commercial communication tower is not granted based solely upon or in large measures due to costs associated with complying with all requirements of Section 6.4.D.22.
4. This request for a Waiver for separation from residential structures for a commercial communication tower, will not result in an incompatibility between the proposed tower or communication facility and adjacent uses.

5. This request for a Waiver for separation from residential structures for a commercial communication tower is necessary within the defined search or propagation study area as all other waiver alternatives have been exhausted.
6. This request for a Waiver from separation from residential structures for a commercial communication tower, is the minimum waiver that will make possible the reasonable use of the parcel of land, building or structure.
7. This request for a Waiver for separation from residential structures for a commercial communication tower, is consistent with the purposes, goals, objectives, and policies of Palm Beach County Comprehensive Plan and with relevant and appropriate portions of Article 6, Supplementary Use Standards of the Palm Beach County Unified Land Development Code.
8. This request for a Waiver for separation from residential structures for a commercial communication tower, will not be injurious to the area involved or otherwise detrimental to the public welfare.
9. This request for a Waiver for separation from residential structures for a commercial communication tower based upon documentation submitted by the applicant is necessary within the defined search or propagation study area so as not to prohibit the provision of personal wireless, television, and related communication services as defined by the Telecommunications Act of 1996 and rules of the FCC.
10. This request for a Waiver for separation from residential structures for a commercial communication tower is required to comply with locational standards established by the Federal Aviation Administration (FAA).
11. This request for a Waiver for separation from residential structures for a commercial communication tower based upon documentation submitted by the applicant is necessary within the defined search or propagation study area as existing towers or other structures do not possess the capacity to allow reasonable technical service.
12. This request for a Waiver for separation from residential structures for a commercial communication tower based upon documentation submitted by the applicant is necessary within the defined search or propagation study area as existing towers or other structures are not of sufficient height to provide reasonable service.
13. This request for a Waiver for separation from residential structures for a commercial communication tower based upon documentation submitted by the applicant is necessary within the defined search or propagation study area as the fees, costs or contractual provisions to collocate on or adapt an existing tower or structure for collocation are unreasonable.
14. This request for a Waiver for separation from residential structures for a commercial communication tower based upon documentation submitted by the applicant is necessary within the defined search or propagation study area and will allow a proposed tower location to reduce the impact on adjacent residential uses.

WHEREAS, Article 5 of the Palm Beach County Unified Land Development Code requires that the action of the Board of County Commissioners be adopted by resolution,

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA, that Waiver Request W81-095(C), the petition of Atlantic Coast Tower, by Michael Houston, agent, for a Waiver(W) for additional waivers for separation from residential structures in the Multiple Use Planned Development (MUPD) Zoning District, on a parcel of land legally described in EXHIBIT A, attached hereto and made a part hereof, and generally located as shown on a vicinity sketch as indicated in EXHIBIT B, attached hereto and made a part hereof, was approved on September 28, 2000, subject to the conditions of approval described in EXHIBIT C, attached hereto and made a part hereof.

Commissioner Roberts moved for the approval of the Resolution.

The motion was seconded by Commissioner Masilotti and, upon being put to a vote, the vote was as follows:

| | | |
|---------------------------|---|--------|
| Maude Ford Lee, Chair | | Aye |
| Warren Newell, Vice Chair | - | Absent |
| Karen T. Marcus | | Aye |
| Carol A. Roberts | | Aye |
| Mary McCarty | | Absent |
| Burt Aaronson | | Absent |
| Tony Masilotti | | Nay |

The Chair thereupon declared that the resolution was duly passed and adopted on September 28, 2000.

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY

PALM BEACH COUNTY, FLORIDA
BY ITS BOARD OF COUNTY
COMMISSIONERS

DOROTHY H. WILKEN, CLERK

BY: 
COUNTY ATTORNEY

BY: 
DEPUTY CLERK

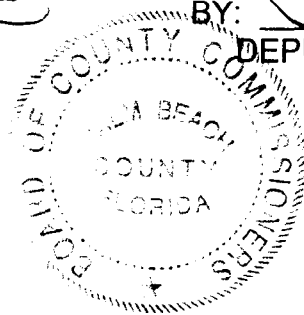


EXHIBIT A

LEGAL DESCRIPTION

The East 1/2 of Lot 2, Block 4, Section 7, Township 44 South, Range 43 East, according to the plat of Palm Beach Plantations, in Palm Beach County, Florida Public Records, Plat Book 10, Page 20, EXCEPTING the North 60 feet thereof for canal right-of-way (Roberts Property) and less the South 60 feet thereof for road right-of-ways as shown in Road Plat Book 5, Page 198, Palm Beach County, Florida Public Records. Subject to that certain order of taking of additional lands, said order dated 9/25/79, case 79-3241.

TOGETHER WITH

The East 1/2 of the NE 1/4 of the SE 1/4 of Section 7, Township 44 South, Range 43 East Palm Beach County, Florida, LESS the North 518 feet thereof, the East 50 feet thereof, the South 226.5 feet of the West 133 feet of the East 183 feet thereof; and less the South 60 feet thereof for the road right-of-way as shown in Plat Book 5, Page 198, Palm Beach County, Florida.

Containing in all 19.53 acres, more or less.

DESCRIPTION OF LEASE PARCEL

A parcel of land lying in the Southeast 1/4 of Section 7, Township 44 South, Range 43 East, Palm Beach County, Florida, being a portion of the East 1/2 of Lot 2, Section 7, Township 44 South, Range 43 East, of the Plat of Palm Beach Plantations, as recorded in Plat Book 10, Page 20, Palm Beach County, Florida Public Records, said parcel more particularly described as follows:

Commence at the intersection of the Survey Baseline of Forest Hill Boulevard (State Road No. 882) and the centerline of Congress Avenue (State Road No. 807) as shown on Florida Department of Transportation right-of-way map for State Road No. 882, Section 93690-2602, Dated 9/77, said map being recorded in Road Plat Book 5, Page 198, Palm Beach County, Florida Public Records; thence proceed North 01°27' 34" West along said centerline of Congress Avenue a distance of 827.19 feet; thence North 88°13' 30" West a distance of 50.08 feet to the intersection of the West right-of-way line of Congress Avenue and the North line of Lot 5 of Palm Acres Tract #3, an unrecorded subdivision; thence departing said West right-of-way line, continue North 88°13' 30" West along said North line a distance of 611.94 feet; thence continue North 88° 13' 30" West a distance of 44.65 feet; thence South 01° 41' IO" West a distance of 51.90 feet to the POINT OF BEGINNING of the herein described parcel of land; thence continue South 01°41' IO" West a distance of 34.75 feet; thence North 88°18' 50" West a distance of 85.00 feet; Thence North 01°41' IO" East a distance of 34.75 feet; thence South 88°18' 50" East a distance of 85.00 feet to the POINT OF BEGINNING.

Said parcel containing an area of 2,953.75 square feet.

DESCRIPTION OF ACCESS EASEMENT

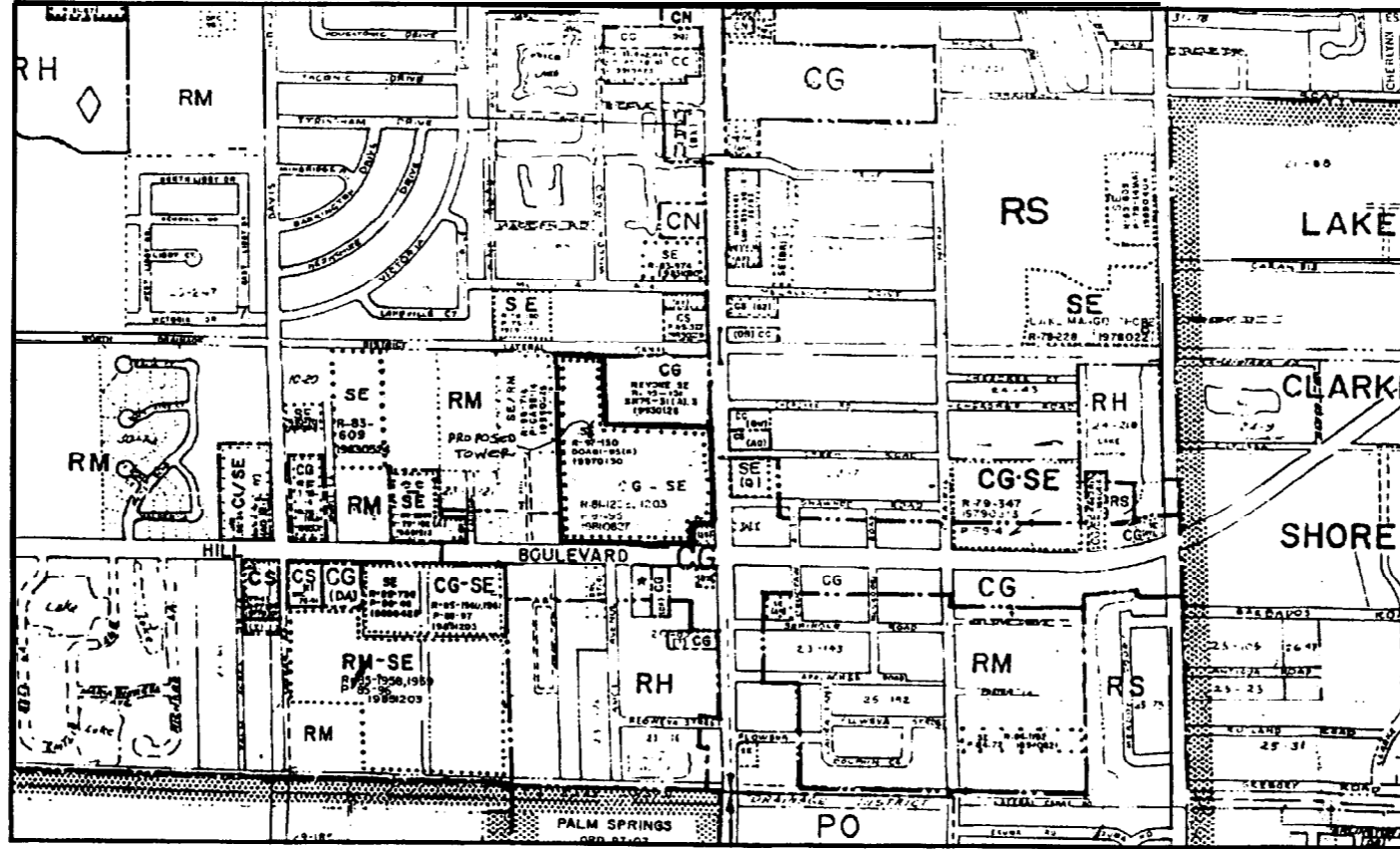
The right of ingress and egress, including but not limited to vehicular traffic and utilities services, upon the following described lands from all public rights-of-way to the lease parcel described hereon, said lands being more particularly described as follows:

The East 1/2 of Lot 2, Block 4, Section 7, Township 44 South, Range 43 East, according to the plat of Palm Beach Plantations, in Palm Beach County, Florida Public Records, Plat Book 10, Page 20, EXCEPTING the North 60 feet thereof for canal right-of-way (Roberts Property) and less the South 60 feet thereof for road right-of-ways as shown in Road Plat Book 5, Page 198, Palm Beach County, Florida Public Records. Subject to that certain order of taking of additional lands, said order dated 9/25/79, case 79-3241.

TOGETHER WITH

The East 1/2 of the NE 1/4 of the SE 1/4 of Section 7, Township 44 South, Range 43 East Palm Beach County, Florida, LESS the North 518 feet thereof, the East 50 feet thereof, the South 226.5 feet of the West 133 feet of the East 183 feet thereof; and less the South 60 feet thereof for the road right-of-way as shown in Plat Book 5, Page 198, Palm Beach County, Florida.

Containing in all 19.53 acres, more or less.



ZONING FILE COPY

JUN 21 2000
81-095C

EXHIBIT B
VICINITY SKETCH

Atlantic Coast Tower

Forest Hill Center Palm Beach County, Florida

Zoning Map



Petition Number: 81-95

EXHIBIT C

CONDITIONS OF APPROVAL Waiver for 135 Foot Monopole Tower

NOTE: All previous conditions of approval are shown in **BOLD** and will be carried forward with this petition unless expressly modified.

NOTE: There is no C or D, E is always Engineering and Compliance is always last.

A. ALL PETITIONS

1. All previous conditions of approval applicable to the subject property, as contained in Resolution R-2000-0592 (Petition **W81-095(B)**), have been consolidated as contained herein. The petitioner shall comply with all previous conditions of approval and deadlines previously established by Section 5.8 of the ULDC and the Board of County Commissioners, unless expressly modified. (ONGOING: MONITORING-Zoning)
2. **All previous conditions of approval applicable to the subject property, as contained in Resolutions R-81-1202 (Petition 81-95), R-81-1203 (Petition 81-95) and R-97-150 (81-95(A)), shall remain in full force and effect. The petitioner shall comply with all previous conditions of approval and deadlines previously established by Section 5.8 of the ULDC and the Board of County Commissioners, unless expressly modified.** (ONGOING: MONITORING-Zoning) (Previously Condition A.1 of Resolution R-2000-0592, Petition W81-095(B))
3. Condition A.2 of Resolution R-2000-0592, Petition **W81-095(B)** which currently states:

Development of the site is limited to the uses and site design as approved by the Board of County Commissioners. The approved site plan is dated February 24, 2000. All modifications must be approved by the Board of County Commissioners unless the proposed changes are required to meet conditions of approval or are in accordance with the ULDC.

is hereby amended to read:

Development of the site is limited to the uses and site design as approved by the Board of County Commissioners. The approved site plan is dated July 25, 2000. All modifications must be approved by the Board of County Commissioners unless the proposed changes are required to meet conditions of approval or are in accordance with the ULDC. (ONGOING: ZONING) (Previously

B. TOWER

1. **Palm Beach County and the State of Florida shall have the right to co-locate communication equipment on the subject tower at no charge, provided the placement of County or State equipment does not interfere with the petitioner's equipment or operations.** (ONGOING: PREM) (Previously Condition B. 1 of Resolution R-2000-0592, Petition W81-095(B))

2. **Prior to site plan certification by the DRC, the petitioner shall comply with the shared use provisions of the ULDC, Section 6.4.D.22.k. (shared use), as may be amended. Additional square footage on the site of the tower approval, to accommodate additional unmanned users only, may be permitted administratively subject to approval by the DRC. (DRC: ZONING) (Previously Condition B.2 of Resolution R-2000-0592, Petition W81-095(B))**
3. **All liquid propane tanks associated with the use of the communication towers shall be double walled and installed underground in accordance with Palm Beach County Fire Rescue and Environmental Resource Management requirements. (BLDG PERMIT: FIRE/ERM) (Previously Condition B.3 of Resolution R-2000-0592, Petition W81-095(B))**
4. **Temporary diesel powered generators shall only be permitted on site in the event of natural disaster and shall be removed once power and operations are restored to the tower. (ONGOING: FIRE/ERM/HEALTH) (Previously Condition B.4 of Resolution R-2000-0592, Petition W81-095(B))**
5. **Should the requisite authority, such as the FCC or OSHA, having jurisdiction over the same, determine that the Tower and/or facilities are dangerous to the public's health, safety and welfare, Palm Beach County shall have the right to require the tower and/or facilities to be removed or made safe within sixty (60) days written notice. (ONGOING: FIRE/ERM/HEALTH) (Previously Condition B.5 of Resolution R-2000-0592, Petition W81-095(B))**
6. **No microwave dishes shall be permitted on the tower except in the event of natural disaster. In the event of natural disaster, microwave dishes may be temporarily installed on the tower until such time as land lines are restored. (ONGOING: BLDG PERMIT/ZONING) (Previously Condition B.6 of Resolution R-2000-0592, Petition W81-095(B))**
7. **If tower lighting is required by the requisite authority such as the FAA, the lighting shall include a screening device to direct light away from the ground. The lighting shall also include a dual lighting system consisting of red lights for nighttime and high or medium intensity flashing white lights for daytime and twilight. (CO: BLDG - Zoning/FAA) (Previously Condition B.7 of Resolution R-2000-0592, Petition W81-095(B))**
8. Condition B.8 of Resolution R-2000-0592, Petition W81-095(B)) which currently states:

The communication tower shall be limited to a monopole structure, a maximum of 115 feet high, measured from finished grade to highest point. Only one tower shall be permitted on the subject property.

Is hereby amended to state:

The communication tower shall be limited to a monopole structure, a maximum of 133 feet high, measured from finished grade to highest point, with no additional height allowed. Only one tower shall be permitted on the subject property. (DRC: ZONING - Bldg)

9. **The required tower landscaping shall be installed on site or a landscape betterment plan utilizing the equivalent required landscaping shall be provided for the commercial center adjacent to Forest Hill Boulevard and Congress Avenue. (DRC: ZONING/LANDSCAPE) (Previously Condition 6.9 of Resolution R-2000-0592, Petition W81-095(B))**

E. ENGINEERING

No Engineering Conditions for the Tower see Petition 81-95 (A) for conditions addressing the existing MUPD.

F. COMPLIANCE

1. **In granting this approval, the Board of County Commissioners relied upon the oral and written representations of the petitioner both on the record and as part of the application process. Deviations from or violation of these representations shall cause the approval to be presented to the Board of County Commissioners for review under the compliance condition of this approval. (ONGOING: MONITORING - Zoning) (Previously Condition F. 1 of Resolution R-2000-0592, Petition W81-095(B))**
2. **Failure to comply with any of the conditions of approval for the subject property at any time may result in:**
 - a. **The issuance of a stop work order; the issuance of a cease and desist order; the denial or revocation of a building permit; the denial or revocation of a Certificate of Occupancy; the denial of any other permit, license or approval to any developer, owner, lessee, or user of the subject property; the revocation of any other permit, license or approval from any developer, owner, lessee, or user of the subject property; revocation of any concurrency; and/or**
 - b. **The revocation of the Official Map Amendment, Conditional Use, Requested Use, Development Order Amendment, and/or any other zoning approval; and/or**
 - c. **A requirement of the development to conform with the standards of the ULDC at the time of the finding of non-compliance, or the addition or modification of conditions reasonably related to the failure to comply with existing conditions; and/or**
 - d. **Referral to code enforcement; and/or**
 - e. **Imposition of entitlement density or intensity.**

Staff may be directed by the Executive Director of PZ&B or a majority vote of the Code Enforcement Board to schedule a Status Report before the body which approved the Official Zoning Map Amendment, Conditional Use, Requested Use, Development Order Amendment, and/or other zoning approval, in accordance with the provisions of Section 5.8 of the ULDC, in response to any flagrant violation and/or continued violation of any condition of approval.

Appeals of any departmental administrative actions hereunder may be taken to the Palm Beach County Board of Adjustment or as otherwise provided in the Unified Land Development Code (ULDC), as amended. Appeals of any revocation of an Official Zoning Map Amendment, Conditional Use, Requested Use, Development Order Amendment or other actions based on a Board of County Commission decision shall be by petition for writ of certiorari to the Fifteenth Judicial Circuit. (MONITORING) (Previously Condition F.2 of Resolution R-2000-0592, Petition W81-095(B))