

RECEIVED

APPLICATION FOR APPEAL
FOR REVIEW BY CITY COUNCIL
11701 Community Center Drive
Northglenn, Colorado 80233-1099

MAY 25 2006

City of Northglenn
City Clerk's Office

Enalle

Case Number V-1-06

Application Date May 25, 2006

Board of Adjustment
Hearing Date May 16, 2006

Amount of Fee N/A

Original Request as Presented to the Board of Adjustment.

An appeal of an adverse decision by the City of Northglenn Building Official in accordance with Section 109 of the International Plumbing Code ("IPC"), as amended by Section 10-4-5 of the Northglenn Municipal Code.

Hardship Presented.

The primary reason is the security of its customers and employees.

BOARD OF ADJUSTMENT FINDINGS

In Favor of Application:

Opposed to Application:

Conclusion:

5-1 Vote

The Board of Adjustment concurred with the applicant that security concerns of the business outweigh conformance with the IPC Code requirement to construct public restrooms in business occupancies for customers.

I (we) Rick Davis, Chief Building Official of 11701 Community Center Drive
(street)

Northglenn Colorado 80233 Home Phone _____
(city) (state) (zip code) Bus. Phone 303-450-8833

do hereby request permission to appear before the Northglenn City Council on June 8, 2006
concerning the following appeal.

REASON FOR APPEAL

What is being appealed?

The Board of Adjustment waiver of 2003 International Plumbing Code Section 403.6 which states "Customers, patrons and visitors shall be provided with public toilet facilities in structures and tenant spaces intended for public utilization".

Please state clearly your reason for filing an appeal before City Council.

Please reference attachment to this application for appeal.

May 25, 2006
Date

Paul Davis Chief Building Official
Signature

May 25, 2006
Date

John C. ... City Manager
Signature

ACTION BY COUNCIL

Accept Review

Deny Review

Council Review Date _____

Sustain the actions of the Board of Adjustment

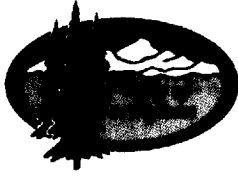
Overturn the actions of the Board of Adjustment

Conditions stipulated: _____

Date

Mayor

Attest: _____



City of Northglenn
Building Department
11701 Community Center Drive
Northglenn, Colorado 80233
303-450-8745 Phone
303-450-8708 Fax

APPLICATION FOR APPEAL
FOR REVIEW BY CITY COUNCIL

May 25, 2006

The 2003 International Plumbing Code, Section 403.6 speaks clearly as to the intent with the following requirement:

403.6 Public facilities. Customers, patrons and visitors shall be provided with public toilet facilities in structures and tenant spaces intended for public utilization. Public toilet facilities shall be located not more than one story above or below the space required to be provided with public toilet facilities and the path of travel to such facilities shall not exceed a distance of 500 feet (152 m).

In the opinion of the Building Official the use of the terminology "shall" clearly establishes the intent to construct restroom facilities within each business for the convenience of customers, patrons and visitors.

To further clarify, Section 101.3 of the International Plumbing Code defines the overall intent of the code by stating:

101.3 Intent. The purpose of this code is to provide minimum standards to safeguard life or limb, health, property and public welfare by regulating and controlling the design, construction, installation, quality of materials, location, operation and maintenance or use of plumbing equipment and systems.

As Chief Building Official for the City of Northglenn I am charged with interpreting the code as presented. When reading the code section there are key words on which to base interpretation. In the construction industry, as with the City of Northglenn Standards and Specifications, the word "shall" will be interpreted as mandatory. "May" will be interpreted as permissive.

The applicant submitted an appeal of an adverse decision of the Building Official based on the provision of Section 105.1 of the 2003 International Plumbing Code which is noted in its entirety here:

105.1 Modifications. Whenever there are practical difficulties involved in carrying out the provisions of this code, the code official shall have the authority to grant

modifications for individual cases, provided the code official shall first find that special individual reason makes the strict letter of this code impractical and the modification is in conformity with the intent and purpose of this code and that such modification does not lessen health, life and fire safety requirements. The details of action granting modifications shall be recorded and entered in the files of the plumbing inspection department.

The Building Official recognizes the concerns expressed by the applicant for a waiver to not construct public restrooms in the business. However, as the code section states "the code official shall first find that special individual reason makes the strict letter of this code impractical". In reviewing the request, the Building Official determined sufficient floor space existed within the facility to construct restrooms for customers, patrons and visitors. The code then states "the modification is in conformity with the intent and purpose of this code".

The Building Official was not presented with a modification of plans or materials on which to base a decision. The applicant simply requested a waiver of Section 403.6 of the 2003 International Plumbing Code. In the opinion of the Building Official neither of the conditions met the intent of the code.

If the decision of the Board of Adjustment to grant the waiver of Section 403.6 of the 2003 International Plumbing Code is allowed by City Council to stand, this will place an unnecessary burden on surrounding businesses that did construct restrooms for customers, patrons and visitors in conformance with applicable code.

**AGENDA
BOARD OF ADJUSTMENT
CITY OF NORTHGLENN
May 16, 2006**

COUNCIL CHAMBERS

7:00 pm. Regular Scheduled Meeting – Meeting rescheduled for Case A-1-06 from April 18, 2006 to May 16, 2006 due to lack of quorum.

1. CALL TO ORDER:

2. ROLL CALL OF MEMBERS:

3. ELECTION TO THE OFFICE OF SECRETARY:

4. PUBLIC HEARINGS:

- a. A-1-06: Money Tree, 580 E 120th Avenue. Appeal the Decision of the Chief Building Official. Money Tree is wanting to construct its office without providing public toilet facilities as would otherwise be required by the 2003 International Plumbing Codes.

5. COMMUNICATIONS:

6. STAFF AND COMMITTEE REPORTS:

7. OLD BUSINESS:

8. NEW BUSINESS:

9. MISCELLANEOUS MATTERS:

10. APPROVAL OF MINUTES OF PREVIOUS MEETING

11. ADJOURNMENT

NORTHGLENN BOARD OF ADJUSTMENT REGULAR MEETING

May 16, 2006
7:00 p.m.
City Council Chambers

1. Call to Order

7:01 p.m.

2. Roll Call

All Board members present except Jim Johnson (excused). Tommy Follett and Mary Peery (alternate members) were recognized as voting members for this hearing. Gene Wieneke was late but had provided notice to the chairman and clerk but was not voting.

3. Public Hearings:

- A. **A-1-06 Money Tree, 580 E 120th Avenue**

Appeal the Decision of the Chief Building Official. Money Tree is wanting to construct its office without providing public toilet facilities as would otherwise be required by the 2003 International Plumbing Codes.

After the public hearing, the Board approved the request for appeal as specified.

4. Communications

Terence Quinn (City Planner) reported on the presentation of plaque to John Johnston for his service to the Board of Adjustment. There was some discussion regarding new businesses potentially locating in Northglenn and when asked about Mervyns, Terence explained that it is a tricky site because it is 2 stories but there are a few possible retailers looking at the Mervyns site after being asked by a board member.

5. Staff and Committee Reports

None

6. Old Business

None

7. New Business

None

8. Miscellaneous

Tommy Follett asked that staff provide bottled water for the meetings

9. Approval of Minutes of Regular Meeting – April 18, 2006

Approved as written.

10. Adjournment

9:17 p.m.

Board of Adjustment Meeting
May 16, 2006

Terry Ketelsen – Good Evening we are going to call the Northglenn Board of Adjustment to order on this May 16th, 2006. Time is one minute after 7 for your record Megan. Ah, will the clerk please do a roll call?

Megan Maypole – Chairman Ketelsen?

Terry Ketelsen – Here

Megan - Vice chair Donelson?

Donelson – Here

Megan – Audrey McCutchen

Audrey – Present

Megan – Jim Johnson did call in on the 9th of May to let us know he would not be here.

Terry – Ok

Megan – Gene Wieneke did contact me yesterday to let me know that he was going to be late. Mary Peery?

Mary - Here

Megan – and Tommy Follett

Tommy – Present

Terry - Thank you. Um, we have a quorum present ah, this evening. We've got five, five members here. We're gonna have a 6th member um.

Unknown – in this case

Terry – At this time I'll explain the voting procedure of the board to you. Any motion to grant a request before us this evening requires the affirmative vote of 4 out of 5 of the ah, voting members. Any motion to deny a request requires only a simple majority or other wards 3 to 2. ah, we do have 2 alternates here this evening, Mary and Tommy in this case. I'm assuming Mr. Wieneke will be here by ah quarter after twenty after at the latest. Ah, so we will designate Mary you were designated last week or last month so Tommy we'll designate you as a voting member tonight. Ah, Mary you can ask questions just cannot vote from from that side.

Jeff - Ah, Chairman Ketelsen, I just wanna, sorry to cut in on you. Um, my only concern is that Mr. Wieneke misses part of the of the hearing. Um, I

Terry – Ok

Jeff – I think that do this properly he should hear the entire, ah the entire hearing
Terry – I'll go on your advice. And will designate Mary as a voting member and Wieneke will not be able to vote.

Jeff – Yeah unless he gets here in the next few minutes, I think (to mumbled to understand)

Terry – We'll go, we'll go on your recommendation. Ok? Um, let's see. Any decision of the board this evening may be appealed within 10 days to the Northglenn City Council. The appeal may be filed by filed by the City manager, the mayor, any member of the city council, the applicant, or any aggrieved person. If preferred, it may also be appealed ah directly through the court system. So that's kinda the ground rules that ah we go forward on this and before we actually start the case we have just a a parliamentary type of thing we need to do here and make an election of officers. We don't meet very often in this community for the outside so what we need to do is vote for secretary. Is that correct Megan?

Megan – That is correct

Terry – on that, the chair will entertain a motion then that um, the position be filled whoever you make the motion for.

Audrey – Yeah, I'd like to move that Gene Wieneke be nominated for secretary.

Terry – We have a motion, is there a second?

Annette – I'll second

Tommy – Second

Terry – K we have a Annette Donelson seconding it. Are there any comments ah questions since Mr. Wieneke isn't even here and this is always the issue of why you show up because you get voted in? Um, hearing none, will the clerk please poll the board?

Terry – Go ahead

Megan – what am I doing?

Terry – You're polling the board on the election for the secretary. You just go through and

Jeff – to mumbled to understand

Megan – Ok

Megan – Tommy Follett?

Tommy – Yes

Megan – Audrey McCutchen?

Audrey – yes

Megan – Annette Donelson?

Annette – yes
Megan – Chairman Ketelsen

Terry – yes

Megan - Mary Peery

Mary – Yes

Terry – Let the record then show that Gene Wieneke will serve as the secretary for this ah board ah until the next election process.

Ok, we are now ready to hear the case A-1-06, the Money Tree 580 East 120th Avenue. Who appeals the decision of the Northglenn Chief Building Official. Money Tree is going to construct its office without providing public toilet facilities as would otherwise be required by the 2003 International Plumbing Code. Um, let's see ah. The applicant is Money Tree. We've been given the request will the vice chairman please note for the record that the file is here and is intact.

Annette - The file is complete

Terry – The file is complete. Thank you. At this time Rick ah would you come to the podium please and we'll ask all of you as you begin to ah talk about any any talking up here. Please sign the register and your affiliation to the request or the applicant ah from that side.

Jeff – Chairman I'm going cut in again. Seeing as this is an appeal of the decision. The _____ is the Money Tree. Therefore they should be making the first presentation and the city should be responding.

Terry – Fair enough its different my _____ but if both of you are agreeing, I'll go

Jeff – yeah as long as there is no objection

MT lawyer – I concur

Terry – Super thank you

Jim – Ready?

Terry – Come on up Jim.

Jim – I'm gonna put this board up which is a floor plan of the Money tree store which I don't know if this is the best place to put it. Can you all see it? Would it be better if I put it over there?

Unknown – its fine, I can see it. We're fine

Jim – um, thanks very much. I'm glad we had the opportunity to to get together um.

Terry – We're gonna have you sign that first Jim and then the secretary or Annette will swear you in first

Jim - Ok

Annette – Will you state your name for the record please?

Jeff – Unknown. But seems like the attorney for the money tree. I'm guessing you're making an argument or _____ testimony. Its kinda _____

Jim – You know it's probably in a _____ area. Primarily I'm going to be making some argument um but I I going to be walking through the exhibit here so we can do it any way you want.

Jeff- Well if you don't mind being sworn in then we can do that.

Jim – I'd be perfectly happy to do that

Jeff – alright, okay

Terry – We defer to council. How ever it works.

Jim – I've seen it done both ways before and I'm perfectly happy to swear to tell the truth.

Various background

Annette – swear to tell the truth, the whole truth and nothing but the truth.

Jim - I do

Annette – state your name for the record

Jim – James Borgel, Jim borgel. I'm with Holland and Hart. Five fifty five Seventeenth Street in Denver. Thanks very much. Um, well thanks for the opportunity. I'm glad we were um able to get resceduled. Its it's um a pleasure to be back and have the opportunity to present our case. Um with me today and I that's why I was a little concerned about putting the board there is ah Ray Nagel who is the real estate manager with Money tree. He ah just fly in from Seattle which is actually the corporate headquarters for money tree and Tom Meyers is with us too. Tom is with Colorado Code Consulting which is a firm that does ah training for business er building officials and also ah acts as as sort of a contract building official for a number of different jurisdictions in the metropolitan area and ah frankly is much more versed in the code than I am so ah I asked him to come by and see if he could help us out today. Um as you've said Mr. Chairman, um we're talking about the Money Tree store which is at five eighty ah east one hundred Twentieth Avenue. It's the former Schlotsky's which is right over near the Albertson's store and ah you may have noticed it actually opened yesterday. Um it it ah I think it looks great and ah they put a lot time and a lot of money into opening their store up. And and we're not here today because of money um basically the store as it's been opened has a restroom that was put into it that has a a door uh with the building officials approval which is at the back of the building. Which is technically the the public restroom um and in fact if we are successful in our appeal today it's gonna cost money tree some additional funds because what they're gonna wanna do is actually retro fit the store so that there's no longer a an entrance at the rear of the building to access that second restroom and they'll put a door in the interior of the building so it's primarily going to be accessed by the by the employees. Um, well we're asking you to do today is basically one of two things. Ah, we would ask you to find that the building official here Mr. Davis in Northglenn has either incorrectly interpreted the building code by requiring that we provide this restroom which not only is a public restroom but it also at all times that we are open available to the

public or as an alternative that we be granted a modification to the code. So that I you know that there's a process in code that allows for a modification to be granted which is much like a variance I suspect you guys as a board of adjustment have uh sat in that sort of a capacity before were you can find that as a result that special circumstances that it's appropriate to say that they strict letter of the law doesn't apply. And that's basically what a modification provision is. Um, in turns of your authority tonight. Um, the the city attorney is correct with the appellants? We actually do have the burden of proof. It's poponderus of the evidence, uh but on the other hand you said in essence as the Building official you have the ability to make an independent decision in terms of interpreting the code and deciding whether or not the the requirements that have been imposed upon as are correct or not. You can approve, you can deny it or you can approve it with conditions. Um, in order to grant the request that we're seeking, we would ask that as a board it's your decision to make a determination that the building official is is either incorrectly interpreted the code or grant us a modification. And in order to find that there's a modification, there's a number of things that we we have be able to show you today. One is that because of our special circumstances there are practical difficulties associated with with the code requirement. It's a concern here. Also the special individual reason makes the strict letter of the code in this case impractical. That the modification is in conformity with the intent of the code and that the modification does not lessen health, life and fire safety requirements. And what we will show you today is that there are unique _____ security concerns associated with the money tree store. Um, which makes it very difficult for them if not impossible to provide public access to their restrooms. It's up to the property owner to determine even under the code despite from um the apart from the modification proceedings as to whether a public restroom in a building is available to the public at all times. It's not a question of access. We've all been in buildings for example where the public restroom is locked. We've all been in places of public accommodations such as perhaps a bank lobby where you have an ATM or an after hours type of uh teller window, there's no public restroom available in that that business at that point of time or that time of day. Um. Ah and and so it ultimately it's up to the property owner to determine the requirements for access to a restroom that's in their building. Um, we're also gonna show that as a practical matter there are numerous alternatives. The Money Tree store is part of a retail center and it was original developed as a retail center. It's not a mall but it was developed with a number of of big box stores at the back. There's an Albertsons, I believe there's a Big Lots and a number of pads along the street. There are restrooms in other buildings available to the customers of Money Tree and they as part of the retail development have the ability to use those alternative restrooms _____ Vicinity. And then finally we will show that the intent here as a result of Money Trees' concern with the health and safety issues um is is in furtherance of the public health and safety. Um one of the reasons we're here and one of the reasons Money tree believes so strongly that this requirement is inappropriate for them is due to safety and and we'll go into that in little bit but basically the position is that the requirement that a public restroom be available in the building at all times is is antithetical to Money Trees security requirements. We also show that that what we're asking for here is not at all out of line with many requests which have been granted in other jurisdictions. Um Money tree has stores in Denver, Westminster, Lakewood, Aurora, Colorado Springs, Greenwood Village and there might be one or two other ones that I I'm not remembering right now. But those are international building code, international plumbing code jurisdictions. And in those cases the plans have been approved essentially identical to what you see on the board there. And they in fact didn't get to this point in the process. The building officials there felt that they did have the discretion and the authority under the code to make a determination that the building could be constructed roughly along those lines where the uh the restrooms where not available to the public. So I'd like to spend a little bit of time just talking generally about Money Tree. Just to kinda tell you guys who they are and and Ray you feel free to jump up and correct me or or to contribute. Cause he's certainly a lot more familiar with uh with the business than I am but Money tree has 120 locations. Their in six western states. They have ten in Colorado. They've been in business since 1983 so they've been doing this for twenty three years. And if if any of you had have the opportunity to drive by the store over on 120th avenue its not your typical pay day loan check cashing

store. It's a very professional, very high quality operation and they pride themselves on that. They hold themselves out apart from some of the other payday loan check cashing operations around the country because of the quality of service that they provide and the type of service that they provide. And the reason we're here today is that for Money Tree security in their stores is a significant concern. Money Tree is is not. Can I walk over this, not sure about your taping system.

Unknown – certainly, no _____

Ray – Jim can can I interject perhaps I should be sworn in _____

Jim –Yeah can we do that?

Background talk not clear

Ray - _____ if there is questions that I can respond to

Unknown – absolutely

Ray – so that I'm of record

Terry - if you'll sign in and we'll get you on the record

Background talk not clear

Jim – sign there. Do you need a pen?

Terry - You're gonna be the dynamic duo?

Ray – No I I just sorta just here to watch.

Terry – OK

Ray – But in case there are questions that are specific to money tree I perhaps I can help out.

Unknown – ok, ok

Background noise

Unknown – should I pick it up or can I just

Annette - Do you swear to tell the truth, the whole truth and nothing but the truth?

Ray – I do

Annette – Please state your name for the board

Ray – Ray Nagel, director of real estate for money tree.

Terry – ok the ray and Jim

Ray – sorry

Jim – I'll ah I'll get started and then if if ah Ray wants to jump up and correct me or or add something then then he'll be in the position that he can do that. Basically um this this is the floor plan of the money tree store over on 120th avenue. This is actually one of the attachments to the appeal paper that we filed in order to get this process started. And um except that this the the configuration of the store essentially we originally submitted and that we would like to see in place at that location. And and as I said Money Tree is very concerned about security and there's a couple of reasons why their their concerned about security. Um one is that um unlike a lot of other unlike banks for example if you look at the staff report. Ah, One of one of the positions of the staff here. One of the points made by the staff is that banks have bathrooms all the time and and it's not a problem for them. Um and that's true in part. They do often have public restrooms available in them um although I I'm not sure that it's not a problem for them but I think they found that it's easier to just not fight it. Um and in many many jurisdictions they actually don't have bathrooms but they're not a bank and there are a couple of reasons why they're not that make them different from a bank. One is that they actually carry a significant amount of cash and banks don't always have that much cash available. Everybody walking into a money money tree store for the most part walks out with cash in their pocket. And that's not the situation in a typical bank environment. There's a number of different transactions that are going on. Taking loan applications, they're cashing checks, they're making deposits. Banks don't always keep all that much cash available and the cash that they do have available on hand the majority of it is kept in a vault. And and a money tree store does not have a vault. Secondly, the money tree operation is open early open late open weekends. It has long hours. You have employees there early in the morning. You have employees there late at night and um security as a result is is a significant concern for them. So what they have done in terms of their stores a number of things that is intended to address the security concerns that they have. If you look this this layout and I'm I keep looking at it it almost should be like this to me but.

Terry – Excuse me Jim just one second. Is this is this diagram or this diorama you have here the same we have in our packet.

Jim – That is number, yes

Terry – It is the same diagram

Jim – that is attachment B simply blown up. _____ to the appeal statement.

Terry – attachment B ok

Jim - B. yeah yeah so I'm I'm gonna put that way and it's that way it will be oriented the same way as as your sheets. I'm just gonna walk you through real quickly here a couple of a number of the the ah security aspects. This is basically the teller wall along here and that that wall is eight inches thick I believe filled with pea gravel. They have bullet proof or at least bullet resistant glass. It's much like what you would see in a in a convenience store or a gas station that's open late at night. And um the employees in the money tree operation area are all isolated from the public area of the building. So I'm call it basically the business area and the public area of the building. They're isolated by the the bullet resistant wall, the bullet resistant glass. To get between the two areas they have a double door system which is called a man trap. At least I think that's what it's called. It so that a person couldn't push their way through there. In order to get in, basically it's sort of like an air lock almost in a in a submarine. You go in you close the door and then the other door is unlocked so you can get through. And and the reason they do this is one of the concerns that they have since the area is relatively secure is that there be some sort of a hostage type situation. That's one of the one of the big concerns that they would have is that ah that you would develop some sort of a hostage situation with employees particularly but also potentially with customers. So they they go to great steps or

great lengths to isolate the public portion of the operation from the the business operation portion of it. And as you can see, well the other thing that they do is basically this is all glass along the front, this is all glass along the side. These are all windows which basically go floor to ceiling so that the area is visible. They they wanna make sure if a law enforcement officer is driving down the street or if a pedestrian is going by they can see in the building. The area is well lit so it makes sure that people are highly visible within that area. Um, secondly the uh they they have extensive security protocols or thirdly I guess so that basically an employee can't be in this area if there is a customer in there. That they have a protocol so that the outside doors all have to be locked and the the employees can only go into that area if it's cleared of the customers and and the doors are locked. And they can lock those doors remotely from inside the work area. So first of all, I mean if the was a restroom located in the public area of the building that would violate their concerns that they have. That would create a situation where you have an area that's within the public part of the building that's not visible from the street also to the employees. And that heightens the concern that there might be some sort of a hostage type situation. One of the proposals that that and and in fact it's its attachment A I believe to the appeal application that you've seen. Is is the current configuration of the building and basically what they done is they've taken this door from the original plan and they've put it on the outside wall. So there's a door at the back of the building frankly adjacent to to the service entrance. I think there's dumpsters back there and and they've put a door at the back of the building with the idea with that be the public restroom and that's still raises concerns because basically it have you have an area that needs to be accessible to the employees for example before they go home at night they need to make sure that there isn't anybody in that build in that in that restroom at the back of the building. Um somebody could try to punch through the wall. Um there's a lot of things that could happen. Or their gonna be out walking around the backside of the building at eleven o'clock at night in the dark and raise the specter of there being some sort of a public safety issue associated with that so that that's something that really is technically perhaps compliant with the requirements of the building department here but but frankly is not required by the code and is not something that that really is is satisfactory or least desirable to the money tree folks. There's a number of reasons why we think this configuration here is complaint and in conformance with the intent of the code. Um as I mentioned there's a number of public restrooms available. This is all part of a retail center and and there's a Burger King right across the street that which would be available to the customers who were in the vicinity and utilizing the retail center. Um the typical money tree transaction just takes several minutes. It's not like a bank where or or other types of business occupancies like the Albertsons for example where people may be in the store for an hour or more. Typically a transaction in the money tree store takes five or ten minutes and in the period of time that they're using that the the money tree store within the environment of the money tree store um its not likely that they're gonna need to use public facilities and if they do are there are alternatives available. Um we feel and and I think rightfully so that the public interest served by providing as safe an environment as we can in a money tree store outweighs or or or or overcomes the issue of public health and safety. That that's a paramount concern and when you look at public health safety and that sort of thing. This is a function of safety and and as a result the intent of the code is met. Um and then in terms of banks and the the idea that banks live with this sort of thing all the time there's sort of a simple fact here which is banks get robbed um in in in preparing for the hearing I talked with some folks at the Colorado Bankers Association and they said to this point in time they gotten in in the year as of the end of March their their looking at a record year for bank robberies. They've had sixty bank robberies and you know talking about public health and safety you can imagine what it's like being at a bank when there's an armed robbery. I mean not only is it physically threatening to you but physiological as well and and um it's not a situation that I like to see myself or my kids or my wife in and I don't suspect anybody would enjoy that. But banks get robbed; Money tree stores don't get robbed. And and they've had very few incidents of of robbery over the years. And the few incidents that they've had have been hostage type situations. Um as I said the the plan that you see here on the board is something that has been approved by a number of other jurisdictions. They're all under international plumbing code.

They're all operating under the international building code. And ah it hasn't even been an issue in the other jurisdictions. Money tree has over a hundred stores in the western United States. Only one of these stores actually has a public restroom and it's in the city of Boise. And they went through similar situation like this and and were not successful. Um and and it's they they they stopped at that point but its something that's of significant concern to them and uh its something that's that's why we're here. We feel that we need to pursue it. So I think that kind of wraps up what I'd like to say for now. I think probably as I mentioned Tom is with Colorado Code Consulting and ah they do training for building officials and also act as sort of contract building official for a number of smaller jurisdictions and I gonna get ask him to come up and talk a little bit more about sort of the finer points of the building code.

Terry – Jim before we do that can we ask Ray to come back up.

Jim – Sure

Terry – his and do you have anything Ray that's probably because you're sworn in at this point that you'd like to add to ah the testimony that's already been presented?

Ray – No I I think that Jim spoke to all the points. I think that what's critical here is that you know for twenty three years that ah we've built stores throughout the western United States safety has been paramount for the employees and customers. In fact in our lobbies in stores are designed in a manner so that there are no blind spots period. And if there are blind spots there's mirrors or whatever we need to do to eliminate the blind spots. In fact if there's a big column in the store we may choose not to do that store simply for that reason. And it's not just within the lobby but it's on the on the perimeter as well. Um Money tree (coughing) and it's uh lot of attention and importance they put to the employees and the customers and I I I really appreciate that. I was with Star Bucks for three and a half years and uh hands down Money Tree spends more time and effort to create a safe environment for their employees and their customers. The lobbies uh _____ not only not only safe but we spend you know in excess of three hundred thousand dollars just to build out a lobby to make it a nice professional clean safe feeling place. Um Jim referred to the the once instance in Boise where we were actually required and it's a very similar situation in a free standing building where we had to have a access to a public washroom and ah I talked to the district manager about a week ago and I said well how's that going? And and we can't we can't maintain that restroom cause we will we will not have our employees go out to check it. We just can't do that cause that that would be sacrificing the level of safety that we've instilled over the last twenty three years. It has not been used in a year and one of the first things that comes to mind as I read through the code and look at this, you talk about practical. Practical means is it useful _____. Um we're not trying to cut corners here. We're not trying to save money. What we're doing here, we believe is in the best interest of the public. For our employees and the customers just in in in safety. And then that that's why that's why spent the this time and money to come to ya'll and to to try get a modification to the code because I've run into this probably twelve fifteen times and only once have we not been able to succeed in proving that we've met the intent of the code. And that's where that's where gets that's where it gets tricky. Because you drill down to who has the authority to provide a modification and then what is the intent and if in my mind I would just like to think that you know common sense would prevail when you look at the the balance of what you've got here. The risk of employees and customers in a hostage situation. And blind spots in places where people can hide. As opposed to providing a public facility and a business that over the twenty three years I have yet to hear anybody complain about not having a restroom available in in a _____. It just hasn't been an issue. Again I I don't wanna take away from the intent of the code. I think that's it it's meaningful. I would be more than happy to contribute to public facilities at public parks etc etc and I understand the meaning of the IBC. In terms of putting _____ public facilities on the private sector. I think that's fine. I think that we get in

situations like this where I I just hoping we can set a precedence going forward where ah public safety prevails over this uh this need to provide facility. Waste of time and money in my mind of ah of dollars both public and private.

Terry – Thank you

Muffled background

Terry - The other gentleman

Muffled background

Jim- may I ask a question? Just a procedural question. Do do we have an opportunity to after Mr. Davis has spoken to ah to rebut.

Jeff – yeah I think you do. Yeah that's fine

Jim – thank you

Several people talking at once.

Terry – keep this one wrapped?? Cause

Jeff – is that how you normally do it here. Because it would be appropriate.

Terry –In these in these types of situations

Jeff – right that would be appropriate

Female voice – whispering

Tom - Well good evening everybody

Terry – excuse me let me she'll get you sworn in first

Annette – You swear to tell the truth, the whole truth and nothing but the truth?

Tom – I do

Annette – Would you state your name please?

Tom- Yes my name is Thomas Meyers and I'm employed by Colorado Code Consulting LLC and we're in Denver, Colorado. Good evening everyone.

Various - "hi", various background

Tom – Well, it ah listening to um Jim and Ray. They've covered pretty much the issues here and uh they invited me to come to speak to folks tonight to talk about unfortunately the tri minutia of the building code and try to give you some background as to its intent. And before I do that I gonna have I need to give you a little bit of my background to give you some credit understanding of ah myself and give you some ah sense of my credibility. I'm the ah past president of the Colorado Chapter of ICC, the states building officials organization. And I've been involved in the Code code enforcement arena now in Colorado for the last eleven years. Recently joining a private firm providing services to in my

case I'm the building official for Central City, Colorado, the town of Morrison, IBM's corporate facilities in Boulder as well as the ah Department of Energy Solar _____ in Washington D.C. so kinda a pretty broad range of experience in that regard. And in my capacity with the Colorado Chapter I currently serve as the chairman of the code change and code development committee so our committee are the ones to get together that weigh all the different code changes that are submitted and then actually attend the hearings to provide testimony either for or against particular changes. And in that process I've had the dubious honor of attending every single code hearing on the international series of codes since its inception in 1997. And the main reason why I was brought before you tonight was to actually talk about how the code is created and how the intent is formed and how you can use that to base your decision tonight on whether or not its acceptable to have a facility where in effect we have a public restroom but we may necessarily invite the public back to use that. So if you bear with me a minute, I've got a handout for you folks. Its one of the code issues we'll be discussing.

Various coughing and "thanks"

Terry – I'm gonna trust you'll summarize this

Tom – Very briefly yes. Do my best. The ah first page of the document I'll provided you with number one on the bottom is the provision of the IPC that we're discussing tonight dealing with public facilities. And I won't read this to you but parts of it is in the first sentence that shall we shall provide, I'm sorry. Customers, patrons and visitors shall be provided with public toilet facilities in structure content spaces intended for public utilization. So that's the basic general code requirement that we're dealing with evening. Now the question arises that seems to be pretty black and white and absolute. Unfortunately a building code in its production creating what we call prescriptive code to give a black and white answer to all circumstances isn't always effective. We come we come across circumstances periodically that just simply cannot really meant the intent letter of the code. And therefore building code provides the building official with some discretion and latitude in interpretation. The goal is to look at specific circumstances and create in a sense a logical or common sense solution for areas where we look at the code it says thus but there may be some special life safety circumstances which may supersede a publics need for the momentary use of a of a public restroom. So in doing so, on page two I've provided you with provisions that give that building official that rule making authority and that interpretation (coughing) interpretive authority. Tonight in this process, you've been in effect handed that authority now to render an interpretation. And particularly it says interest to public's health, safety and general welfare to interpret and implement provisions of this code to secure the intent thereof. And that's our goal tonight to determine what is really the intent behind that provision and how can you use that to weigh that and come up with a decision. Now on page three I've provided you with basic intent of the of the international plumbing code. And it's the intent is to provide minimum standards to safe guard life and limb, health, property and public welfare through regulation of specific building construction aspects. And that's the basic key here. We're looking at the overall broad big picture on a community based vision of what constitutes life safety. And in this case with the building code, its intent of that provision is that in circumstances where you are in a facility for a given amount of time you may have a bodily need to use the restroom and so we feel that that assist in the in providing some level of public health safety and hence that's where the requirement derives from. But in this particular circumstance we're dealing with a case where in doing that, in the five minute transaction that a customer may have in here the trade off may be much more extreme and we may have a circumstance where individuals are are put in greater peril by virtue of the fact of having concealed area within the building at which they can go ahead and initiate whatever mayhem they may have in their mind. So in looking at this, this leaves us with the case of what truly is the intent and here I think it's the big picture. Now here's where we go back and need to look at the specific provision I gave you on page one dealing with the requirement for 403.6. For the public

facilities, what is the intent? Bear with me a second. The way the building code is crafted, there's not a bunch of staff sitting in a corporate office somewhere that comes up with these requirements, writes a book and hopes that you guys will pay for it and adopt it in your jurisdiction. The way this book is crafted, is a number of professionals throughout the United States that are members of the International Code Council get together on a periodic basis typically two times within a three year code cycle and actually hear changes that occurred to the code. And there's a committee much like yourselves that sit and listen to testimony provided from a speaker at a microphone and that committee then weighs that and determines whether or not it'll be approved or disapproved. I sit on one of those committees. I'm one of three regulators in the United States that sits on the International Residential Code Committee. In doing that my charge is to weigh the options, look at the overall intent of the code and it's to be applied and then render my decision. When the committee is done rendering that decision the committee is obliged to indicate the reason why they either approved or disapproved that code change so that we all have now a reference that we can go back to to determine what exactly was that committee's intent. They're the ones that form the initial intent that membership does that and the book is crafted and then the building official then his or her charge is to make sure that committee's intent the overall membership's intent is followed. In doing so, I did some research. Fortunately in my vast collection of having served in in been to all this committee hearings I have tons of these very thick documents in my bookshelf what's left of it, it hasn't collapsed that have all the various and sundry code changes of per per these volumes. And in particular if we go to page four, the last _____ code cycle dealing with the international plumbing code the 2002 code adoption cycled in Pittsburgh, Pennsylvania actually addressed a code change specific to section 403.6. It was the only one that I could find that would talk to you tonight and tell you what the committee's intent is behind that section. On page five I've provided you with a code change label P29.02. And this code change was intended to make a modification to the provision we're looking at tonight to clearly indicate that the intent is to provide access to a public facility. And the underlined sections are the changes that he was this individual is proposing. He is stating that all of our facilities that are available to the public during the facilities normal working hours shall be available without permission. That was his change, he wanted to make sure it was clear that that bathroom that's located over there had to be in a place where someone could go there without asking permission. No keys, no access issues you would just go straight and use the bathroom. HE reason was the code requires public facilities be provided but does not mandate that they be available. In my opinion as a building official, when that when this plan provided to me that does not provide access to that public facility, it meets the intent of the code. Because in no case does the code say that I as tenant have to provide access to the public facility. Seems to make common sense that you'd do that but we're not saying to the owner that you have to put aside your security of the facility to allow someone to go back and use that. And you know of circumstances like were mentioned today. Gas stations often times have to give the key because they just don't anybody wandering in and vandalizing the facility. So in dealing with this code change so as submitted, it would have clarified this and clearly created a circumstance where ah Mr. Nagel would have had to provide access to that facility. The committee on page 8 last page thankfully of your document tonight, under the committee action. They disapproved that code change and left it as it stood and their reason was for _____ unenforceable and should be up to the tenant whether public toilet facilities are secured and locked for security purposes. So the committee clearly stated that it is our intent that you provide the public facilities or what you call public facilities which in this case they can clearly be called public facilities. But it's up to the tenant whether or not they invite the general public to use those facilities. And the committee stated you have the right as a tenant to determine whether you want to secure or otherwise not the public to use these. And in this particular circumstance, because of the life safety the overwhelming overarching life safety risk presented here, this tenant may indeed choose not to allow access to those facilities. The last thing I'll state is that I have to look at this from a building official how I would handle this in one of my jurisdictions and now I have to look at in light of the committee's intent here to decide how I'd act in this case. And common sense tells me that you know

my expectation as a patron of this facility. I'm gonna come in here, I'm gonna transact my transaction as quickly as possible and I'm gonna leave. My expectation is not that I'm gonna walk in here and there's gonna be free at my disposal a public bathroom for me to use. I'm in and out and leave. If driving around town and I'm looking for a public facility I know where I'm gonna find one. I find them in the supermarket. I'm gonna find it at Home Depot my favorite place. I'm gonna find it at a gas station, typically they'll be available. And not in this particular circumstance. So that said, I'll open this up to any questions you might have.

Terry – I'm not sure Jeff that we do questions at this point in this situation at this point. We're have we're gonna have some questions.

Jeff – I I think it's probably best to allow both sides to present and then you can ask questions ah after Terry – That kinda my personal preference?? So we'll let you sit down at this point and we'll ah

Tom – Thank you

Mumbled background

Terry- I guess I'll ask the Northglenn people to come forward. Whoever's gonna speak to the

Rick – Rick Davis, Chief Building Official City of Northglenn

Annette - Do swear to tell the truth, the whole truth and nothing but the truth?

Rick – I Do

Annette- Your name again please

Rick – Rick Davis

Terry – Rick I guess you can give us your decision and the background on the basis of your decision tonight so we

Rick - Ah yeah, I'll give our staff report we prepared on this

Terry – OK

Rick - The ah the request of the applicant is to appeal the decision of the Chief Building Official and section 109 of the 2003 International Plumbing Code in accordance with section 11.42.5 of the Northglenn Municipal Code. The reason for their request is section 403.6 of the 2003 International Plumbing Code which states Customers, patrons and visitors shall be provided with public toilet facilities and structures in tenant spaces intended for the public

END OF TAPE 1

Rick - The applicant's reason for the request is seeking a variance of section 403.6 of the 2003 International Plumbing Code due to security concerns that the employees and customers shouldn't be required public facilities be constructed at that facility. Our analysis, construction at the Money Tree facility in the former Schlotky's Deli required change of occupancy from the group A division to the

group B occupancy. Based on section 304.1 of the 2003 International Building Code. Section 403.6 of the 2003 International Plumbing Code requires public restroom facilities in group B occupancies. And I'll read you code section 403.6 Public Facilities - customers, patrons and visitors shall be provided with public toilet facilities constructed in tenant spaces intended for public utilization. And it goes on to say that public toilet facilities shall be located not more than one story above or below the space required to be provided with public toilet facilities and the path of travel to such facilities shall not exceed a distance of 500 feet. There's not a number (mumbled). Then if we look at the IPC code commentary, this is a document that's put out by the ICC Code which kinda gives or defines each of these code sections. Tom's aware of these. The IPC code commentary states that public facilities are required in restaurants, night clubs, places of public assembly and business occupancies open to the public. However such facilities can be centrally located in a covered mall building. It is inappropriate to locate them in a storage area, above any kitchen or in other areas not open and available to the public. Travel distance limitation of 500 feet is mandated along with the location of not more than one story above or one story below required to have public toilet facilities. We're not we've defined that we're not in a covered mall _____ meet the requirements of a covered mall. Section 403.4 of the International Plumbing 2003 International Plumbing Code states facilities shall be either separate or combined employee public facilities in Group B occupancies. The applicant for security concerns has located an employee restroom facility in a secure area of the building not accessible to the public. Section 403.4 of the 2003 International Plumbing Code states customer, patrons and visitors shall be provided with public toilet facilities in structures in tenant spaces intended for public utilization. A lack of a public restroom facility would make Money Tree a non-conformant facility. Then we look at section 403.4 and it states the location of employee toilet facilities in occupancies other than assembly or mercantile. Access to toilet facilities in occupancies other than mercantile assembly occupancies shall be from within the employees work area. Employee facilities shall either separate facilities or combined employee and public facilities. There's an exception on that. Facilities that are required for employees in storage structures or kiosks, and are located in adj adjacent structures under the same ownership, lease or control, shall be a maximum travel distance of 500 feet from the employees' working area. The applicant seeks relief from conformance of section 403.6 by citing section 105.1 of the 2003 International Plumbing Code. That states that states 105.1 modifications. Whenever there are practical difficulties involved in carrying out the provisions of this code, the code official shall have the authority to grant modifications for individual cases, provided the code official shall first find that special individual reasons makes the strict letter of this code impractical and the medication is in conformity with the intent and purpose of this code and that such modification does not lessen health, life (coughing) requirements. The details of action granting modifications shall be recorded and entered in the files of the plumbing inspection department. Again if we go back to the 2003 International Plumbing Code commentary it discusses section 105.1. This section establishes the requirement the code official shall review on materials intended to be used in construction of the building or structure for compliance. Additionally this section provides for modification and consideration of alternatives to the code compliance, along with a requirement for tecnic technically substantiation. It also states that alternative engineered design is addressed in this section including requirements for design, technical data submission, inspection and testing. The code is a compilation of criteria to which materials, equipment, devices and systems must comply to be approved by a particular application. The code official has a duty to evaluate such materials, equipment, devices and systems for compliance and when applicable, approve them for use. As a result, the material, equipment, device, and system must be constructed and installed in compliance with all conditions and limitations considered as a basis for that approval. For example, the manufacturer's instructions are to be followed if the approval of the material was based in whole or part on those instructions. The approval authority given to the code official is a significant responsibility and is a key to the code compliance. The approval process is first technical and then administrative and must be approached as such. For example, if data to determine code compliance are required, such data should be in the form of test reports or engineering analysis, not simply taken from a sales brochure. The duty of the

Building Official is defined by Section 105.1 of the 2003 International Building Code when interpreting provisions of the code. 2003 IBC section 104.1 which is labeled general states the building official is authorized (coughing) and directed to enforce the provisions of this code. The building official shall have the authority to render interpretations of this code and to adopt policies and procedures in order to clarify the application of the provisions. Such interpretations, policies and procedures shall be in compliance with the intent and purpose of this code. Such policies and procedures shall not have the effect of waiving requirements specifically provided by this code. Again if we go back and look at the IBC commentary, for section 104.1. The duty of the building official is to enforce the code and he or she is the authority having jurisdiction for all matters related to the code and its enforcement. It is the duty of the building official to interpret the code to determine compliance. Code compliance will not always determine and will require judgment and expertise particularly when enforcing provisions of sections 104.10 and 104.11. In exercising this authority however, the building official cannot set aside or ignore any provisions of the code.

Terry – Excuse Mr. Davis, before you move on here with your recommendations. Is there anything else at this point in time you wish to add to bring before the board tonight in relation to this application.

Rick – um, just to respond to a couple of things. Um, Mr. Borgel made the comment that we've all been in public facilities where the restroom wasn't locked but yet their desire is to push that responsibility off onto the adjoining businesses. Burger King is an example or the Albertsons over there. I don't think that those customers who have paid to put public facilities in their buildings want the additional responsibility of accepting the Money Tree customers as well??. Um, we also made several mentions of jurisdictions. Unfortunately the appeal is not filed in any other jurisdictions; it's filed in the City of Northglenn. As the building official, I looked at the intent of the code which said shall provide those facilities. An alternative method of construction was provided to me, alternative materials were not pre-se provided to me. Simply a request for waiver. I did not feel that complied with the intent of the code. Um, Tom brought up in ah, I've done some classes with Tom done there and he does a good job. Um, if we look at the section that Tom brought up, during the last code cycle, uh you'll notice that the committee choose not to approve that. However they did keep the code intact which stated that the public facilities shall be provided. Now we've not indicated that they need to keep them unlocked, we said they had provided with the intent of the code. When we're talking about health, I mean you can look at life safe life safety health issues in a number of ways. Um, I've gone into a number of banks. I've been in into many numbers of convenience stores. Ah, convenience stores are typically very high on the list of locations that are robbed. I'm provided public restrooms facilities in there, they're a different occupancy group I agree, but if we're looking at the overall life safety, I also have to look at the health of the community. I've got an elderly community in this in this in Northglenn. I've got younger people that are coming in there. Excuse me one sec. Um, you know, if I've driven my if I've driven up to the Money Tree with my baby in vehicle and that baby needs to use the restroom facility and Money Tree was my destination, the babies not going to understand that public restroom facilities are not available. If I'm an elderly person, or and I'm trying to visit that facility and I have special conditions and needs, it's not gonna matter that the next public facility is at Burger King several hundred feet away through a parking lot. I'm in that facility where I came to your business. So those are the things I have.

Terry – Ok if you'd like go on at this point, go ahead with your recommendation.

Coughing

Rick – Staffs recommendation. Numerous banking facilities currently exist within the City of Northglenn which conform to the adopted codes and provide public restroom facilities to customers.

The most recent banking project, the TCF Bank, located at 2185 East 120th Avenue, conforms to the public restroom facilities. The applicant cites 2003 IPC section 105.1, modifications as the reason for the reason of the adverse decision of compliance with the 2003 International Plumbing Code section 403.6. During the course of review, the Building Official did not concur with practical difficulties proposal as sufficient opportunities exist within the facility to construct public restroom facilities. Further the applicant has not presented the Building Official with alternative modifications in conformance with the intent of the code. The 2003 IPC section 105.1 Code commentary discusses alternative engineered design, as well as the value evaluation of such materials, equipment, devices and systems for compliance. Again the applicant has not provided alternative engineered design, nor is the applicant proposing alternative materials, equipment, devices for compliance. While the Building Official recognizes the security concerns regarding the employees and customers, the 2003 IPC Code commentary does not recognize security concerns as a practical difficulty. In regards to the applicants appeal, section 10, 112.2 of the 2003 IPC defines the basis of appeals. This is the Board of Appeals section 203 IPC section 112.2, limitations of authority. An application for appeal shall be based on a claim that the true intent of this code or the legal rules legally adopted thereunder have been incorrectly interpreted. The provisions of this code do not fully apply or an equally better good or better form of construction is proposed. The board shall have no authority to waive the requirements of this code. If you look at the 2003 IPC section 112.2 code commentary, it states that this section establishes the grounds for an appeal, which claims that the building official has misinterpreted or misapplied a code provision. The board is not allowed to set aside any of the technical requirements of the code; however it is allowed to consider alternative methods of compliance with the technical requirements. Now if you'll look at section 104.11, alternative materials, designs and methods of construction and equipment. The provisions of this code are not intended to prevent the installation of any material or to prohibit any design or method of construction not specifically prescribed by this code, provided that any such alternative has been approved. An alternative material, design or method of construction shall be approved where the building official finds that the proposed design is satisfactory and complies with the intents of the provisions of the code, and that the material, method or work offered is for the purposes intended, at least the equivalent of that prescribed in this code in quality, strength, effectiveness, fire resistance, durability and safety. If we look at the 2003 IPC section 104.11 code commentary. It states that the code is not intended to inhibit innovative ideas or technology advances. A comprehensive regulatory document such as a building code cannot envision and then address all future innovations in the industry. As a result, a performance code must be applicable to and provide a basis for the approval of an increasing number of newly developed, innovative materials, systems and methods for which no code text or referenced standards yet exist. The fact that a material, product, or method of construction is not addressed in the codes is not indication that such material, product or method is intended to be prohibited. The building official is expected to (coughing) apply sound technical judgment in accepting materials, systems or methods that while not anticipated by the drafters of the current code text, can be demonstrated to offer equivalent performance. By virtue of its text, the code regulates new and innovative construction practices while addressing the relative safety of building occupants. The building official is responsible for determining if a requested alternative provides the equivalent level of protection of public health, safety and welfare as required by the code. You want our opinion?

Terry - yeah, do you want to read the last sentence? Last paragraph?

Rick – It is the opinion of the Building Official that the true intent of this code or the rules legally adopted thereunder have been correctly interpreted and applied to the Money Tree, and therefore, the effective waiver of section 403.6 of the International Plumbing Code may not be granted to the applicant.

Terry - Thank you Mr. Davis. Um this is the City's presentation part (mumbled) Are there any questions of Rick at this point in time.

Jeff - I I I guess we're you know, we could have asked questions of the um applicant in the first place but we've kinda said they could opp opportunity to rebut. Maybe we should do that and then they can ask the questions of both sides.

Terry - Ok, ah Jeff how do how do you recommend we do this?

Jeff - Why don't you give the applicant a chance to rebut and then the members can ask questions of the app.

Terry - of both, of both sides? Right?

Jeff - Of both sides, right

Terry - Ok. _____ is that okay with you Jim?

Jim - yeah that's fine, I'd I'd prefer to do it that way. I think that makes the most sense.

Jeff - Mumbled

Terry - Ok, you're your opportunity then to what about the public portion? Is there any body that wish to speak to a or does that come in here?

Jeff - well, really we're having a quad?? _____ hearing, so the public really doesn't have any any say in it. Coughing

Terry - gotcha, ok.

Jim - can can we ah I assume since all three of us were involved in the presentation that that we can all be involved in the rebuttal.

Jeff - definitely

Jim - ok - mumbled

Terry - Could we ah could we maybe take a five minute break just to go to the restrooms.

Jim - certainly, sure.

Terry - and we'll reconvene here in five minutes

Various chatter - board takes five minute break

Terry - Northglenn Board of Adjustment ah, 8:13. Ok Jim and Ray and Tom.

Unknown - oh boy they took their coats off.

Laughter

Jim- It's actually its kinda warm in here so. Um I'll keep this really brief because I'm sure you guys wanna go home and um you all would like to do that as well. Um couple of things, I mean the reason we're here I think is because the board has the discretion to decide for us. I don't think there's question about that. That the code clearly states that the board basically in this situation acts in the role of the building official and so if if you have a difference of opinion, uh with Mr. Davis you're free to exercise that opinion in into interpret the code as you believe it should be interpreted. Really what we're talking about here is the intent of the code. What what does it really mean when you get down to it? And there isn't any question I don't think that there are sit situations where a public restroom is not an appropriate requirement in a business occupancy. Ah I use the example of sort of lobby for example, um you know in a bank where where there may even be a window, a teller window on the weekends on a Saturday that there's there's no requirement that they provide a a restroom in that sort of a situation. There may at least there certainly hasn't been been proposed so and in terms of exercising this discretion, I mean you can decide if the intent of the code is that you will always in every single instant have a restroom in every business occupancy that every existed in the City of Northglenn or that there is some kind of a rule of reason and if if there was an absolute rule that was to be followed in all instances you wouldn't need a building official and you wouldn't need a board of appeals. And that's why we're here. We we're asking the board to to make a decision and we think it's the right decision to make. Um, couple of things. The the staff report relies heavily on the commentary. The commentary is not part of the code. It was not adopted by the City Council; it's not in the book that was adopted by the City Council. It's an opinion of the code staff, which is not necessarily adopted; in fact it's not adopted by the code committee. It's put together by the group of people that staff the committee. But ultimately, it's not necessarily an expression of the intent of the code and if you look at the the staff's report it's very dependent upon the the committee commentary code commentary and I don't think it deserves the deference that that the building official here is giving to it. Um, you you know obviously, Mr. Davis isn't bound by other jurisdictions. And I did make the point that Denver and all these other places have approved Money Tree store with with the configuration that we're asking for. To to say that he's bound by those decisions, but I think it's an indication of common sense and what other people have been what other jurisdictions have been applying and so and and in fact to go the other direction is sort of ah its it's a variance itself. It's not consistent with what the vast majority of jurisdictions in Colorado are deciding. Um, we're not asking we're not asking for a variance. I think that's important to to recognize. We not asking for a variance, we're not asking for ah an approval of an alternative. We're asking for the board to decide what the true intent of the code is here or in the alternative we're asking for the the board to approve a modification. And as Mr. Davis said, the standards for a modification are; and I'm I'm reading, I'll paraphrase a little bit this is section 105.1 of the International Plumbing Code. Practical difficulties involved in carrying out the provisions of the code. In this case the code official has the authority to grant modifications for individual cases provided they find the individual reason makes the strict letter of the code impractical. Modification is in conformity with the intent of the purpose of the code and that it doesn't lessen health, public safety, life safety requirements. I I believe we've met all of those tests. We have practical difficulties, the security concerns of the Money tree, we we have ah special individual reasons because of the the unique nature of their business. And it not only doesn't lessen public health but it advances public health. So I I believe we have met that test. Um, now in terms of of the baby going into the Money tree needing a bathroom, I'd sure hate to have that baby in the Money Tree store when the the store is being held up and I think that's what you need to think about is what's more important. Being able to go to the bathroom or being able to have a public facility that is safe for the employees and for the customers.

Various background noises

Jim – Thanks, that that does it for me.

Various background noises

Tom – Tom Meyers and I do appreciate you ah listening to all this fairly lengthy testimony. I've actually attended a hearing for b nineteen straight hours one day on code issues with only a lunch and a dinner break so I understand how you feel about this stuff. Couple things I wanted to mention and reiterate. Jim had mentioned that the code commentary for the International Plumbing Code is exactly that. It's a commentary that's published by ICC staff, the publishers of the building code. It is not written, reviewed or otherwise endorsed by the ICC membership. The individuals that actually write the code that the City of Northglenn adopts, there is (Coughing) some commentary in here that was left out of the staff report pertaining to exceptions. And 105.1 he gave us a statement and then stopped at the paragraph that states the code official may in fact make exceptions as needed where strict compliance with the code is impractical. And I think tonight we've demonstrated, Jim has demonstrated that there is an impractical issue here in this case when it comes to looking at the over all intent of life safety and that creates a problem. It's impractical to provide a bathroom and then try to provide assurance of life safety for the individuals using the facility. And frankly Jim has er ah your building official has a very difficult job. He has a difficult job in that he's provided with a document that's written by an ICC committee that's undergone hundreds of hours of testimony to create it and then asked to look at this thing and to enforce this based on what is written in that document and in some circumstances he's forced to rely on something like the commentary or training that myself or other individuals in the state provide. And in doing that, unfortunately sometimes he doesn't have all the background necessary to make a full and complete interpretation of what the code intent is. And tonight that was my object. To provide you with that documentation and that code change and those committees comments to show what exactly that intent would be and I and in knowing that and have that been published in the commentary, and had staff taken the time to put that in there, we probably wouldn't be here tonight and so in leaving this I think that as a group, you have your obligation would be to look at what the intent of the code is and make a determination of whether or not the building as it stands meets the intent of the the code as the committee has published that in their statement. Or if a variant works, look at the modification process. Which says that there are practical difficulties present and if we determine that its mandatory regardless of the circumstances, the public has physical access to that toilet facility located in the back of that office area there and that there's sufficient practical difficulties presented tonight and significant issues in life safety. That you go ahead and determine that yes indeed we can go ahead and not require them to meet the letter of the code in this circumstance due to those practical difficulties. (coughing) And with that, I thank you.

Unknown – thank you

Terry – committee?? Any other part to your rebuttal

Unknown – Rick

Jim – You I I just ah I'd just like to say thank you, Um I appreciate the opportunity to get up here and ah locations of coming up twice. Ta to give us the opportunity and ah you know obviously we feel pretty strongly about this or we wouldn't be here. Um and ah we we recognize this as a difficult decision and we appreciate your time.

Terry – Jeff, procedural question.

Jeff- sure

Terry – now, I guess ah I would call the City people up to ask them questions first?

Jeff – yeah and just to be just to be ah clear yea uh unde ah the City ordinance, both parties get opportunity to rebut testimony. Um and and so

Unknown – mumble

Jeff – yeah yeah so you know I think that basically that one each is is fair and I I can slight you the section. It's section 37.10 ah subsection E and it's not quite the same as a as a ah a pellet procedure in front of the court appeals of Colorado but you that section of the the City code allow both parties to rebut if so I think the City if they if they want to say anything, should be allowed to do so. And then you could ask questions of ah I I really don't have any it's not addressed in the code, so it may be appropriate to ask either party questions. Ah uh I I can Mr. Borgel you can give me your opinion on that too if you wanna ask if you if you wanna just open for questions from the board for either side or if you want to do one at a time. I don't have I don't think it's actually addressed in the code.

Jim – yeah I don't it is, I don't think it's addressed very clearly in in the administrative procedures that you guys have.

Jeff – right

Jim – I guess my preference would be just sort of open it up and and _____ ask questions

Terry – I don't have a problem with that. I don't have a problem with that

Jeff – I think that that's appropriate so

Terry – Ok I'll ask the City is there any more rebuttal that you would like to uh state for the record

Rick –yes

Terry - and then are we ok with rebuttals? After this?

Jeff – that's it

Terry – hopefully ok that's it

Jeff- yeah

Laughter

Rick – Rick Davis again Chief Building Official City of Northglenn. Um, I respect the information that um (coughing) the applicant has provided tonight. Good information there. When I'm looking at the intent of the code for the City of Northglenn, not only having to look at this for the employees of that Money Tree facility but also any customers that are going to be utilizing that. Those customers may be may be walking in there with young children or they may be elderly, they may be disabled. ____ have any number of reasons why they when they arrive at that facility they will need a public restroom. When I look at the code, the intent of the code and it states shall. Very clear to me, now if modifications when their presented, I'm happy to look at those. But if I at the code commentary, which again, is not adopted by the City of Northglenn. It's a document that's used by building officials to seek clarification of the codes. As Tom stated there's a lot of code out here to look at (coughing) and we look at that commentary to get some guidance and direction. I've gone through there based (coughing) on my interpretation of that, providing me it's asking me to look at alternative systems, alternative methods of construction that still conforms and meets the true intent of the code. I go back

to section 403.6 which states These these public these B occupancies shall have public restroom facilities. I don't think I was provided that opportunity. The applicant did not bring information forward on an alternative method for construction, alternative design, alternative engineering. They simply did not want to construct public restroom facilities. They would rather send those customers to Burger King next door or Albertsons across the parking lot. Now I'm ok with that, I can again I can walk across there and every resident of Northglenn is going to utilize that facility and when a customer comes in there make that trip. _____ wheel chair, are they going to be able to make that trip? Doubt it, if we look at the overall problem?? Of this. It's my job as a building official of Northglenn. So, thank you.

Terry – Thank you. Appreciate it. Ok then for the record, the er both a both parties had an opportunity on the rebuttal. _____ and we'll open it up ah based on council?? From both sides to questions at this point in time. I will want I do want to make a note though that ah what we're doing this evening is in a denoble?? Which I guess it the lat Latin or the legal terminology. In term of the hearing and our decisions or questions tonight are to be independent of what the City has already made a decision on. This is a ah essential re-hearing, new with new information presented from that perspective so as board members we need to be cognizance of that situation. So um with that said, are there questions of the City or the applicant ah in this regard ah. Surely there's some.

Annette – I have a questions for money tree and ah you'll have to excuse me if I remember anyone's name

Terry – you need to speak up a little bit

Annette – uh, when you looked at the site, it was an old Schlowskys. They moved out, it was there. What part of that plan is still the way Schlowskys was there without all their equipment?

Unknown – You want to know?

Annette – They obviously took their equipment out when they moved out of the space. Was it just

Unknown – mumbled

Annette - a rectangle. Where the restrooms in place?

Ray – essentially

Annette- talk to me

Ray – it was a rectangle. When we come into a facility unlike most we we wipe the slate clean. Because of the emphasis we have on security and providing for employees. We we prefer to have two washrooms for our employees because there can be ten plus. So essentially it was the shell that's all. We wipe it clean in terms of of we we relocate washrooms and and that in order to accommodate our design.

Annette – ok, second question. Knowing that before you you do anything like this, obviously you had been talking with the City? Is that correct?

Ray – correct

Annette – So you knew that this was ah what is the referred to class b and that restrooms needed to be you know provided for the public.

Ray – ah

Annette – when you did the designing, did you take that into consideration with the design?

Ray – no, in fact ah when we did the preliminary design, and in we local architects that help us with the permit ah expediting in that process. Ah the initial design we we never and it's only been within the last two two and a half three years where we we come against this issue. I mean in twenty plus stores and and we don't have public washrooms available to the public. When we do design no we did not design for this in fact this kinda happened later later along the design process after we had submitted for permits. We were into the permit process before I th it was brought to our attention that a public facility was required. So our initial design was just like this but the only thing that's different and we're prepared to do this right now is is that there's not an exit here. We have another exit and this becomes a facility for the the employees. And that's how all of our stores are designed. With two, we've got ten plus employees for the men and women so we all try to provide two washrooms for them. And so

Annette – so in in your planning then (coughing) you were unaware that you needed to provide the public or you chose not to because (coughing) of the designs in other parts of the country were like this.

Ray - No initially initially when we when we went in for permits and in our application, we were not aware this was going to happen because in in every instance, and an most recently in Colorado Springs, uh you know we they they said you've met the intent of the code. So that ah no when we went in on this, and I always ask the question up from of our design team and the people that are responsible for this, say are are we certain we don't have the public washroom issue? We ask that question in the beginning here and the original answer I got back was no there is not that issue. During the process ah it became an issue and that's why we're here and we're trying to set a precedence and the store did by the way open ah yesterday. And it has opened with that exterior entrance. Um we have to hire a separate firm ah to to maintain that facility cause we would not even think about having any employee walk around to to try to keep that washroom clean an and maintained but I hope that answers your question but yes we do ask that question (coughing) up front and if it is an issue then we try to adjust the ah um on this one we tho thought we had addressed it, and then it became a a da ah halfway through our process.

Terry – Ray it is my understanding the way it is right now there is no public access, it's all you don't have that door there

Ray – oh yes we do

Terry – oh you do, so you can so you you're operating with that facility right now with it open to the public?

Ray - correct sir, that is just like the one other incidence where we have in Boise where we were required to do that. We did not we did not challenge that decision at that time and as I said earlier that uh that facility and it goes back to their practical applications of it. It hasn't been used in over a year. People go to banks in fact I was approached by a gentlemen the just re recently was talking about banks in the area. When you go to a bank and the bankers that I speak to, they may have a public

washroom, but they are not going to advertise it and (mumbled) hard to find it if you go into a banking facility. It's about again??? And we we have a unique situation from (mumbled).

Terry - The one question I have for Ray ka kinda caught me by shock. He says I think Jim says you have no vault. Where you keep all this money you're handing out to all the people and what security do you have there?

Ray - we don't we don't have we don't have a vault per say where it's the the huge in case but we have more security that your average bank. There is a safe and its it's called what what we call vault room. And its ju it's just hard panned and and there is a safe inside of there that uh (mumbled)

Terry - I don't want to breech your security. I I

Ray - yeah no no no not at all but you know you know safety safety and the ah the things that Money Tree has done over the years to to provide safety and and it's just been we've had a couple of ugly incidents and all of them had hostages and that's why from behind that teller wall we see our front doors will be secured by a switch. We have a a a locking system that you put the switch and it'll lock the front doors before the tellers even enter out into the lobby. Two people required to open and close every store. One at a time, one watching, one coming in. We go we go way out of our way. We have a very very high tech security system that's in place. Um but safety is par, that's that's why we're here and that's why we're spending money to do this so that the owner the ownership of the Money Tree is ah adamant that you know hey we want to provide for our for our employees and we want to provide safety for the customers and

Terry - any other questions of Mr. Nagel?

Unknown - yeah uh ah, Ray I think I can ask you. Uh how many older people or members of your family are going to come in there and are they at a higher risk for (coughing) being held as a hostage or higher risk or having to go to the bathroom?

Ray - Sir I can tell you that in the two and a half years of approaching four?? That the Money Tree that I have never once heard and I'm in charge of all the property management as well as constructing etc etc of the Money Tree facilities. I've never heard one complaint about not having a public facility. It's never been an issue. Our transaction time is much less than a bank. The people come in and out and ah they they do not expect to find a public facility nor do they need to I mean public health of course restaurants are going to have that when you need to wash say dinner time say??? There's not a need in the the instances we we have had, um is safety and in the hostage environment, I mean my goodness just one of those is enough to I I think in my mind it clearly outweighs the convenience of having a facility that may or may not ever be used. We just cannot afford to have blind spots in our store or any opportunity for somebody to hide and believe me they do.

Terry - well do you have any security cameras at all beside just mirrors and stuff like this on the outside and your interior walls? Do you have security cameras at all?

Ray - We we have found that ah to our consultants that security cameras don't don't really work. That it's not the security cameras that's why we have so many offer security measures in place. We have a high tech ah security ah system in place its actually there are microphones throughout the building where if any thing were to happen um all the employees, if they were to walk out into the lobby even if nobody's there, they have panic buttons. There's panic buttons at every station um the microphones are there and it's monitored twenty-four seven. We have ah infra red systems that are on the roof so that people because we've had instances where people have tried to come down through a roof. Any

exterior wall and we are in the center, any any adjoining walls are are um we put we put ¾' ply board so that people can't go through one tenant space to get to the next. We hard pan our lids. The teller wall goes up to uh to the roof and as we mentioned earlier eight inches thick filled with pea gravel up to eight feet, um. I mean I can go on and on about security. What we found though is that the security cameras just are not effective. The deterrents the effective deterrents in terms of safety is ah (coughing) lack??? Of success. Because you know what there is a circle of people out there when they when they are successful and and ah holding up a convenience store today that word gets around quickly. They you know so and so got away with it. They don't get away with it at Money Tree (coughing) that's why that's why our our our records so good.

Terry – yeah but Ray if you provide all these facilities for your interior and for your employees and everything, why couldn't you also provide microphones and ah infrared and everything for the restrooms that you're going to provide too.

Ray - Well sir I'm I'm gonna answer that question (mumbled) once you have a washroom for for the public you've created a si a a an area that's outside. You can't put a camera in a washroom um certainly the microphone ah infrared da you know perhaps but it's just one of those it it's one of those things that we just feel sacrifices the level of security that we have been able to establish over twenty three plus years. And once you have a secure area that's out of site whether it's infrared or microphones that that can be ah that can be avoided. And you can't put cameras in a in a private facility like that. So we just haven't been and it's not its not that we haven't tried to accommodate, we have. We we've thought about it, just ah as we think about it, in fact we've had you know we've be willing to turn down a site just for that reason alone. Cause we're not we don't want to put our our employees and customers in in any kind jeopardy whatsoever.

Terry – Thank you. Are there other questions of Mr. Nagel at this point? Thank you sir.

Ray – Thank you

Terry – I have a question for Mr. Meyers. Uh I guess we would consider you an expert. Eleven years I think that would qualify you ah in relations to this question here. Security is one of the exceptions that the applicants are arguing for this position. What would be other exceptions based upon the intent or how this reg is written?

Tom – In this particular case?

Terry – Yes sir

Tom – Well, I the only reason why we bring up security is because that's a case that was specifically mentioned by the ICC Plumbing Committee in that response so security is an issue. Why else would I not provide public restrooms? I think we've seen circumstances where from a more practical stand point; owners tend to want to secure their facilities so that they can determine who is going to be using this. If you look at for instance on the ah, I do a lot of work in Boulder. If you're on the Pearl Street Mall you deal with a large segment of say the homeless population and you may wanna control who going in and out of your facilities. They aren't actually customers but may be going in there and tying them up for a certain amount of time and you know vandalism can be a real issue and so those are circumstances of the Code Committee really recognizes and says you know really realistically the tenant really gets to build a control of those facilities. That's why we will not change the code and make it very clear that the public has to have access to those facilities and any or even all times.

Terry – Makes sense

Unknown – I got some questions.

Mary – I got a question for Mr. Meyer

Terry – Mary

Mary – I have a question for Mr. Meyer

Terry – you can ask whoever

Mary - you mentioned ah earlier you were talking to um someone with the the Colorado State Banking Commission. Getting a statistic

Jim – Ah, that that would be me

Tom – That was Jim

Mary - oh I'm sorry

Unknown – that's ok

Mary – ok ah I guess my question is addressed to you, ah

Jim - mumbled

Mary – yeah, I was wondering ah you said something about there there were seventy bank robberies so far this year?

Jim – I di, well the number I think was sixty as of the end of March.

Mary – Ok, did do you know off hand if these banks if ah bathroom was in play in any of that or is that just just the total of of statistics

Jim - No that was just I don't

Mary – What I'm trying to get behind is is is was the bathroom um part of the um crime.

Jim - I I don't know one way or the other, um

Mary – ok

Jim – I I simply was trying to make a point that that you know bank robberies actually are are significant problem um the one thing I did learn from talking with them, I I originally had called them to sorta see how banks deal with this issue cause I talked with a couple of folks ah a a gentlemen who works for Wells Fargo and ah a woman who for TCF and their initial response was well we don't provide restrooms. So its not it's not something that has happened. And we pursued it further I said you know in fact I I I know you do in some instances and in fact I know that the TCF Bank here in Northglenn built the code??? (mumbled) and and so I pursued that a little bit and the Colorado Bankers Association came back to me and said that well you know wha what are membership has determined is that its not worth fighting it when the issue comes up but si they simply put a restroom in a building. They don't sign, they don't tell anyone about it, they keep the door locked and they do everything they possibly can to discourage people from using it because um you know they they have

a lot of the same kind of concerns that we have. But ah they've they've in some instances I guess have decided that its sort of easier to go along then you cant fight city hall so to speak. (mumbled)

Terry – Other questions

Gene – (mumbled)

Terry – Gene

END OF TAPE 2

Gene – First question, legislative intent. What significance would you put on the fact that the applicant testified to have the oral??? 3.6 that was there was a suggested modification that was defeated.

Jeff – Let let me take take two take this question in two two steps. First step is what you're asking for is legal advice right now from me as the attorney for the BOA. So first of all um, I think the Board needs to decide whether or not they want legal advice out on the record in the open or if the want or if they want to do it in executive session. Um, and so it's up to the Board to decide that and and I'm happy to answer any questions anybody wants me to answer, um but I'm basically providing a legal opinion now on on these issues for the Board.

Terry – Unless there's a deference on the Board that they have, I would just as soon have has it open record. Any objection to that? Hearing none, go ahead

Jeff – Ok??? I need to have that question again then Mr. Wieneke (mumbled)

Gene – Um, the applicant sited the section of the code committee had ah considered an a clar clarification at uh P29-02 and a decision was made not to put it in and does that have any impact on should we consider the fact that the stronger language was rejected or not?

Jeff – Well the Board can certainly consider that. It's definitely a rele a revelant matter for consideration. How the Board wants to interpret that change is really up to the Board. Um, I I think that the uh appellants made the arguement that that's supports their position. And the Board can certainly take that into account. Um, I that's my answer without giving you my opinion on that, but it certainly is is a relavant matter for consideration.

Gene – Ok, uh. Alright. Next ah. I missed the first part of the hearing. I wanted to know, did you address the question of of a having restroom facilities available elsewhere in the mall area adjacent with you know that exception modification? Do do you address that?

Terry – Who you talking to? The applicant?

Gene – Yeah, did they address that?

Jim – May I answer that question?

Terry – Yes

Jim- Um, I I did. Ah and and my my response to that or at least the the part of presentation that addressed that related to the fact that that the Money Tree site is basically a pad in a retail center and we ah while there's not a formal agreement amongst the users that that they can share restrooms like

like all retail centers it has common parking, it has common access. They maintain common areas together, common parking areas and that sort of thing. And and it functions much like a retail center. In a lot of ways it functions like a mall. So while they don't have a formal agreement or or easement so to speak which says thou shall allow other people in the retail center to use your restroom. I said it's a practical matter that the customers in the retail center have many alternative restrooms available. And uh, you know that their well within five hundred feet which is the requirement of code.

Gene – Thank you. Um, I asked that because the City testified the adjacent businesses would not welcome your customers ut utilizing their facilities, he did not believe that they would. Uh, uh the uh on the City's on the City recommendation, the staff report, you have that section 403.6 states that uh requires a public facility in Group B occupancies. Did Is it part of 403.6 that has not been presented to us? Cause it's not in the text where group B occupancies is not stated in the text that we have.

Rick – All of 4 403.6 was presented to the Board.

Gene- Pardon?

Rick – All of section 403.6 is present provided to the Board.

Gene – Ok, so the group B occupancy comes from the building code?

Rick - The group B occupancy comes from the applicant. The applicant submitted their plans under group B occupancy.

Gene – Ok

Rick – I don't believe that been an appeal

Gene – following following up on the the first question was when did the applicant learn that pu ah public restrooms were required. Coughing. I've heard during the permit process, now the facility is open at what st what stage did did they get ah temporary permits of or get a permit and

Rick – The applicant submitted plans with the original the with the original design for no public restrooms. Those plans were kicked back because it did not contain public restroom facilities. Those plans were sub subsequently returned to staff with revisions and approved.

Gene – So then there was the this was plugged in. The the facilities.

Rick - The pu the applicant choose to show the public restroom facilities outside of the building, at the rear of the building.

Gene – ok, another question. Ah to keep moving here. Ah did Schl Schlotskys deli have a restroom.

Rick - Schlotskys Deli did have public restrooms

Gene – And how

Rick – it was ____ employee public restrooms

Gene – Ah in their testimony, they stated that they started with they cleared it out and started with the shell and located the restrooms. Um,

Rick – That is correct. They demo'd the entire facility with within and removed the former restrooms.

Gene- Former restrooms were not in the same location?

Rick - No.

Gene – They put em in.

Rick - They relocated them yes

Gene - _____ (mumbled) totally??? Ok.

Rick – yes. The former restrooms in Schlotskys were when you came in the the existing doorway that's shown on this drawing on the left hand side, if you came in there, there was the public restroom right back in there.

Gene – I'll

Rick – If I recall correctly

Gene – ok so they relocated it to that location then?

Rick – They yes they demo'd everything in in interior and constructed the facilities.

Gene – ok um left me see if I have any more here. Um, in the cor um sections of the plumbing code, that's you've quoted some sections are underlined and some are not. Was was underlining added or does that how the code.

Rick – That was added by my self in the staff report.

Gene – So we could find your points?

Rick –Correct

Gene - And the statement was made that part of 105.1 was missing by the I was under the impression that you that we had

Rick - no, (mumbled) and I let Tom answer that question

Gene – ok, that we had all you know you you gave us the entire section but he says there's a paragraph missing and I didn't catch it.

Tom – yes the uh he's citing the uh commentary. We discussed the difference between the commentary and the City adopted 2003 IPC. But the commentary was just staff's opinion in that he's providing you with some of the commentary require er the commentary discussion in 105.1 which aren't are not code provisions per say. There's considerable, there's more commentary here then what's provided in the staff report and I have a document here in front of me and you're welcome to review the remainder of that text.

Gene- ok then, what was given to the board as 105.1 code commentary is a portion of it.

Tom – yes that's correct.____ (mumbled) portion of it. The residual portion of that would ah provide some background and some guidance to the building official to deal with what we're asking as the applicant for an amendment or exception as needed where strict compliance of the code is impractical. And that's a direct quote that precedes the following segment of the statement you have.

Gene – That's all I have right now.

Tommy – Uh, Tom before you go away.

Terry- Uh Excuse me, let are there more questions of _____ (mumbled)

Unknown – No

Terry – ok then

Tommy – Tom can I ask you one you're talking about section 105 that's all??? Was omitted. Ah according to what we have here that ah it says other practical difficulties such as security concerns are not proper grounds for granting modification for the IPC requirements of section 105.1.

Tom – You'll have to bear with me for a moment. I presume that's in the commentary provisions that you're you're citing at that from or is it from staff's recommendation?

Tommy – No, this is a staff rec er ah recommendation.

Tom – Ok well that's that would be staffs opinion, not necessarily the opinion espoused by ICC staff.
Tommy- Well this is coming out of commentary 2 section 105.1 though that it says.

Tom –I'm sorry (mumbled)

Jeff – you know may I may I make a comment on that as the attorney.

Terry – yes

Jeff – I think there this may be a misunderstanding. Th that's that's sentence is not in the code. That may be an interpretation of the code. That your that's he's working on. I I don't think there's any argument that that's not in the code. Its more it's more of a ah ah summary interpretation of the code.

Terry – Thank you

Numerous thank yous

Tommy – Sorry???

Tommy – And I have one question of Rick. Uh, you know you're changing it from a group A to group B occupancy within the City of Northglenn. Do your

Rick – Well actually we are not. The applicant is.

Tommy – Well the applicant ok. To your knowledge and I'm just off the top of your head. Are there any other facilities within the City limits of Northglenn that do not have a public restroom?

Rick – Any other facilities?

Tommy – Right

Rick – ah

Tommy – ah of this type?

Rick – in group B occupancies?

Tommy – right

Rick – None that I am aware of. They may exist, I'm just not aware of them. I know that the Money er uh TCF Bank. I'm a customer at the TCF Bank. I know that they have public restroom facilities and I know their readily available to the customers because I utilized them when I'm there. So I've been in many other banks in the City of Northglenn where the public restroom facilities are there. Their readily accessible and they're frequently used by the public.

Terry – Mr. Davis, (coughing) um in your career with Northglenn as a building official, have you made exceptions to the plumbing code?

Rick – I've been the Building Official with the City of Northglenn for two years and the answer to that question is no.

Terry – Thank you

Gene – I'd like to follow up with a question that that

Terry – Mr. Wieneke

Gene- that you posed. Now because it relates to it. Uh Money Tree is classified as a bank uh by uh by by you

Rick - ____ (mumbled talking over each other) by the applicant

Gene –well it it's a group B

Rick – the applicant proposed a group B occupancy when the first (mumbled talking over each other)

Gene – okay. And and in the question was, are there any other ah facilities without a public restroom and if I remember the citation that I was given earlier is that the restroom is required in all business group B's?

Rick – under the 2003 International Plumbing Code and International Building Code it's required in group B occupancies. That is correct.

Gene – So

Rick – based on my interpretation of the code.

Gene – alright. Your question was are there other any exceptions or anything ah well I guess the the question to you is that every barber and beauty shop in the City have a public restroom?

Rick - Again I do not know

Gene – What about animal hospitals?

Rick – again that's a different occupancy classification

Gene – but it's a class, the plumbing code says that you have to have a public restroom in a group B Business group B. I'm sa reading group B.

Rick – k

Gene – and I'm reading animal hospital

Rick - the the last the Pete & Mac Pet Resort was constructed with public restroom facilities. That's the last animal hospital per say constructed in Northglenn. At 114th and Pearl and that facility opened last year late last year.

Gene – I'm I'm not trying to be terribly argumentative but I am trying to to to te to check out the consistency here. It says that there must be a public restroom in group B occupancies included in those (coughing) are architects, attorneys, dentists, physicians and engineers. They all have all have public restrooms.

Rick – we have not opened any of those facilities since I've been Building Official in Northglenn so I can't speak

Gene –So you don't

Rick - to previous

Gene – you don't know about existing?

Rick – Correct, I have not visited every architect business, lawyer in Northglenn.

Gene – ok and it's your interpretation that if a restrooms available for customers and employees, that's not adequate it must be open to ah people off the street?

Rick – That would be incorrect.

Gene – would you give me your interpretation then?

Rick – ah the code says that public restroom facilities can be joint. They can't??? be employee public facilities. The applicant choose not to do that. The applicant choose to provide the employee facilities in a secure area inaccessible to the public.

Gene – If you have a public restroom required and you have one you the owe owner business occupant cannot restrict it to customers and employees it be also be open to walk in off of the street individuals.

Rick – ah I did not state that no

Gene – well is that a requirement?

Rick – ah they (mumbled, Gene talking over Rick)

Gene – Could they, I'm asking

Rick – the applicant the applicant is trying to move forward that would be the case. Their asking that their customers by not being provided with public restroom facilities go to the adjoining businesses and utilize those facilities. Now if that facility has a policy that those restrooms are for customers only, will that customer of Money Tree is going to be turned away seeking a public restroom facility.

Gene – I'm not sure but I've asked enough questions.

Terry – ok. Other questions? We've gone on here for quite awhile but if you have questions we need to ah get those answered. Um or addressed um from that side.

Tommy – well Jim wasn't

Terry – Mr. Follett

Tommy – Jim wasn't you that brought up that property owners er maybe it was Ray, property owners do determine access to public restrooms? So as you have the right to determine whether they can a public restroom or restroom.

Jim – I I think that was actually Tom.

Tommy – Oh

Jim – Who brought that up in terms of the the code.

Tom - Yes in providing you with the code intent is that public restroom be provided in a very general circumstance, then from that point forward it's up to the tenant to choose whether or not access be provided. In effect that they've indicated on that plan that those are public restrooms in the back and at their discretion they would invite people through that lock to use those restrooms. They are strictly in compliance and that's how the majority of jurisdictions in the state of Colorado view that. It meets the strict letter and intent of the code. To provide a mandatory requirement for public access without having to diverse through the office area through here is an area that the code does not specifically address. The code change I've provided you you tonight would have made that mandatory had that been approved by committee. Committee disapproved that, they affirmed the fact that building officials understand that the tenant has full control over access to their pu their qasi public facilities and indicated that the reason is security was a primary reason (coughing) for providing limitations for access. So that's where it stands.

Tommy – ok thank you Tom

Terry – Other comments or questions of the applicant or the City? Ok hearing none. I'll close the (coughing) public portion of this and (coughing) we will begin our comments, our discussion here uh to decide.

Coughing

Terry - This is an interesting point that has been brought up to us here this evening. It's the intent and we have the (coughing) applicant saying they believe the intent they meet the intent of an expectation based on their security issues. The City has maintained their intent is that the strict enforcement requires that the (coughing) public access to the public restrooms comply. So have two two different opinions on that side. Um comments to it, issues that hear that you ah picked up from the testimony.

Unknown – yes

Terry – when you speak always speak in the mike (mumbled)

Audrey – It's my understanding that when you are going to be gutting a section of a shopping area and redoing it into a business that your p's and q's better all be in place and if you if you know that the group B then you know what's required. And just coming in and and asking is going to be problem if we don't have a public restroom. I would think that you'd want something in writing whatever before you put all of this work into remodeling a space. The responsibility lies with the person who's gonna put that building and tha that business.

Terry – Gene

Gene – ah, Jeff wou since I didn't hear the first part and I'm not gonna vote would it be out of line for me to ask um ah following question concerning the um um ah waiver of the whether or not its proper to waive the requirement provided that services is arranged for or by or with adjacent businesses that are agreeable to it? Is that kind of a thing that can be

Jeff – well I I I know I think that you know I try not to give like a legal opinion you know outside of a executive session where a boards making a decision but ah I think that the appellant has made that argument um that that they believe that's a factor to be considered um ah I don't bel and the appellant can correct me if they think I'm wrong but they haven't made the argument that that is the grounds for their appeal but they made that's that's a factor to be considered. Um so I'd be willing to address it in more detail if you wanted to go into executive session but I think that that that's my answer on the record right now as that I that's that's basically going to factor the appellant has has addressed and and thinks there's an appropriate factor for the Board to consider.

Terry – Mary

Mary – Um no

Terry – Annette

Annette – No

Coughing

(mumbled)

Terry – Audrey

Terry – I see this as an interesting um dilemma and ah in my occupation and working with um state statutes in many cases and sometimes occasionally with the CFR's that uh you wind up with situations where the laws intent is directed at one thing, to try to accomplish a purpose along those lines. But when it comes down to practical reality of of daily life, daily occupation, daily functions as the laws and the regs try to administer and manage sometimes there's change sometimes modifications are necessary ah from that side of the house. I guess even though I would liked to have seen that facility to stay a retail facility, isn't been. It's gone now to ah retail function that uh I take it as security being a little stronger in my my personal view of this. The Chief Building Official made comment in there that sec it is his opinion that in th in the literature that security was not ah strong enough concern to waive the the exception and so I guess my my reaction as this point in time is I'm I'm in favor of waiving it the exception to having the restrooms there and granting the applicant ah their their request from that side. Understanding the issues on all this but ah testimony given that and and I have no reason to question the testimony that the restrooms be used one time in Boise that certainly a huge expense for one issue related to providing a restroom. Added to that concern that Northglenn's a community of 35,000 people we we try to do things right. We're a small city and um that's what we need to be doing but in the same token we have other communities around us much larger who are ah broader thing dealing with more issues, more of those kinds of things and I always try to look from a broader perspective knowing that the city of Colorado Springs has moved along these lines. That's certainly helpful that Denver's moved these lines. They're much more tougher on the building issues than probably we are in many ways. Just in the permitting processing and inspection issues just from my normal business ah experience. So with those issues ah I certainly um understand how the City come with this. If your true intent of the law as building officials wanting and following the true intent of the law. Then reality is a practical law. Ah not only to the applicant in this situation but ah as well as the customer and and the citizens that are going using it. That said, the Chair will entertain a motion.

Gene – mumbled

Terry – The Chair can't make a motion so. Mr. Wieneke

Gene – Can I make a motion, I'm not gonna vote

Terry – Mumbled

Jeff- I think the motion should come from the members who are actually

Terry – voting

Jeff – um voting

Gene – that's what I thought

Terry – that's what I thought

Tommy - I'd still like to make a motion that we deny on the permit based on Rick and the evidence that her gave and I still feel that it's in the public interest to have a facility a public restroom in every facility. I don't care what it is so I'll still make a motion that deny

Terry – We have a motion ah on the floor that upholds the City's position regarding (coughing) this request. Is there a second to that motion? Is there a second to that motion? The motion is declared

dead to the lack of a second. The Chair will entertain another motion. (silence) I'll go ahead and kinda out of play, where normally the Chair doesn't make the motions but hearing one I'll, are you ready are one of you ladies ready? Go head

Annette – ah in the case of A-1-06, I make a motion that we do make an exception that will not have to have a bathroom.

Terry - Council are we wording that correctly.

Jeff – Well I I think what I I clarify I don't wanna put in um the members mouth but um I think id basically be a motion that you will um grant the appeal of the appellant that a public restroom not be required.

Terry – per said to the legal councils

Jeff – pursuant to section 403.6 of the I International Plumbing Code

Annette – ok

Jeff – That's appropriate

Terry – pursuant to the legal ah councils advice on the wording, that will stand and hopefully we got it down on the tape.

Megan – yep

Terry – to make sure its there. Is there a second to the motion?

Audrey – I second it

Terry – We have a second. Is there discussion regarding the motion that's before us. Is there additional discussion. Mary, Tom. Hearing none will the clerk please poll the Board?

Megan – Tommy Follett

Tommy – opposed

Megan – Vice Chair Donelson

Annette –ah I ah yes

Megan – Audrey McCutchen

Audrey – yes

Megan – Mary Peery

Mary – For, yes

Megan – Chairman Ketelsen

Terry – yes, gentlemen your appeal this evening has been granted base upon uh the testimony you've heard and the wording on the appeal. However I do caution you that there is an appeal process in place that we explained to you at the start of the meeting so no substantive action one way or another til appeal process has run its course. Ah from that side??? We thank everybody, we thank you for your testimony and ah again we'll move forward. Ok? Consider case A-1-06 ah closed for the time.

Thank you all and

Unknown – thank you

Terry – thank you kindly. We'll go onto other business and ah it's pretty mundane so we'll try to move through this pretty quickly. Um Megan has there been any communications other communications? Ah we understand that will you explain about Mr. Johnston.

Case# V-1-06
Applicant: Money Tree
Location: 580 E 120th Ave
Ordinance
Reference: 10-4

STAFF REPORT AND RECOMMENDATIONS

REQUEST: Appeal of a decision of the Building Official under Section 109 of the 2003 International Plumbing Code in accordance with Section 11-42-5 of the Northglenn Municipal Code.

REASON FOR REQUEST: Section 403.6 of the 2003 International Plumbing Code which states "Customers, patrons and visitors shall be provided with public toilet facilities in structures and tenant spaces intended for public utilization".

APPLICANTS REASON FOR REQUEST: The applicant seeks a variance of Section 403.6 of the 2003 International Plumbing Code due to security concerns of employees and customers should the required public restroom facilities be constructed.

ANALYSIS: Construction of the Money Tree facility in the former Schlotzsky's Deli requires a change of occupancy from Group A, Division 2 to Group B occupancy, based on Section 304.1 of the 2003 International Building Code.

Section 403.6 of the 2003 International Plumbing Code, requires public restroom facilities in Group B Occupancies.

403.6 Public facilities. Customers, patrons and visitors shall be provided with public toilet facilities in structures and tenant spaces intended for public utilization. Public toilet facilities shall be located not more than one story above or below the space required to be provided with public toilet facilities and the path of travel to such facilities shall not exceed a distance of 500 feet (152 m).

IPC Code Commentary. Public facilities are required in restaurants, nightclubs, places of public assembly and business occupancies open to the public. However, such facilities can be centrally located in a covered mall building.

It is inappropriate to locate them in a storage area, behind the kitchen or in other areas not open and available to the public. A travel distance limitation of 500 feet (152 m) is mandated along with the location of not more than one story above or below the space required to have public toilet facilities.

Section 403.4 of the 2003 International Plumbing Code states facilities shall be either separate or combined employee and public facilities in Group B Occupancies. The applicant, for security concerns, has located employee restroom facilities in a secure area of the building not accessible to the public. As Section 403.4 of the 2003 International Plumbing Code states customers, patrons and visitors shall be provided with public toilet facilities in structures and tenant spaces intended for public utilization, the lack of public restroom facilities would make Money Tree a non-conforming facility.

403.4 Location of employee toilet facilities in occupancies other than assembly or mercantile.

Access to toilet facilities in occupancies other than mercantile and assembly occupancies shall be from within the employees' working area. Employee facilities shall be either separate facilities or combined employee and public facilities.

Exception: Facilities that are required for employees in storage structures or kiosks, and are located in adjacent structures under the same ownership, lease or control, shall be a maximum travel distance of 500 feet (152 m) from the employees' working area.

The applicant seeks relief from conforming with Section 403.6 by citing Section 105.1 of the 2003 International Plumbing Code.

105.1 Modifications. Whenever there are practical difficulties involved in carrying out the provisions of this code, the code official shall have the authority to grant modifications for individual cases, provided the code official shall first find that special individual reason makes the strict letter of this code impractical and the modification is in conformity with the intent and purpose of this code and that such modification

does not lessen health, life and fire safety requirements. The details of action granting modifications shall be recorded and entered in the files of the plumbing inspection department.

2003 IPC 105.1 Code Commentary: This section establishes the requirement that the code official review all materials intended to be used in the construction of a building or structure for compliance. Additionally, this section provides for modification and consideration of alternatives to code compliance, along with a requirement for technical substantiation.

Alternative engineered design is addressed in this section, including requirements for design, technical data submission, inspection and testing.

The code is a compilation of criteria to which materials, equipment, devices and systems must comply to be approved for a particular application. The code official has a duty to evaluate such materials, equipment, devices and systems for compliance and, when applicable, approve them for use. As a result, the material, equipment, device and system must be constructed and installed in compliance with all conditions and limitations considered as a basis for that approval. For example, the manufacturer's instructions are to be followed if the approval of the material was based in whole or in part on those instructions. The approval authority given to the code official is a significant responsibility and is a key to code compliance. The approval process is first technical and then administrative and must be approached as such. For example, if data to determine code compliance are required, such data should be in the form of test reports or engineering analysis—not simply taken from a sales brochure.

The duty of the Building Official is defined by Section 105.1 of the 2003 International Building Code when interpreting provisions of the code.

2003 IBC 104.1 General. The building official is hereby authorized and directed to enforce the provisions of this code. The building official shall have the authority to render interpretations of this code and to adopt policies and procedures in order to clarify the application of its provisions., Such interpretations policies and procedures shall be in compliance with the intent and purpose of this code. Such policies and procedures shall not have the effect of waiving requirements specifically provided for in this code.

2003 IBC 104.1 Code Commentary: The duty of the building official is to enforce the code and he or she is the “authority having jurisdiction” for all matters relating to the code and its enforcement. It is the duty of the building official to interpret the code and to determine compliance. Code compliance will not always be easy to determine and will require judgement and expertise, particularly when enforcing the provisions of Sections 104.10 and 104.11. In exercising this authority, however, the building official cannot set aside or ignore any provision of the code.

RECOMMENDATION:

Numerous banking facilities currently exist within the City of Northglenn which conform with the adopted codes and provide public restroom facilities to customers. The most recent banking project, TCF Bank, located at 2185 E. 120th Ave, conforms to the public restroom facilities requirements.

The applicant cites 2003 IPC Section 105.1 Modifications, as the reason for the “appeal of adverse decision” of compliance with 2003 IPC Section 403.6. During the course of review, the Building Official did not concur with Practical Difficulties proposal as sufficient opportunities exist within the facility to construct public restroom facilities. Further, the applicant has not presented the Building Official with alternative modifications in conformance with the intent of the Code”.

The 2003 IPC Section 105.1 Code Commentary discusses alternative engineered design, as well as evaluation of such materials, equipment, devices and systems for compliance. The applicant has not provided alternative engineered design, nor is the applicant proposing alternate materials, equipment, devices and systems for compliance. While the Building Official recognizes the applicants concerns regarding security of employees and customers, the 2003 IPC Code Commentary does not recognize security concerns as practical difficulties.

In regards to the applicants appeal, Section 112.2 of the 2003 IPC defines the basis for appeals.

BOARD OF APPEALS

2003 IPC Section 112.2 Limitations on authority.

An application for appeal shall be based on a claim that the true intent of this code or the rules legally adopted thereunder have been incorrectly interpreted, the provisions of this code do not fully apply or an equally good or better form of construction is proposed. The board shall have no authority to waive requirements of this code.

2003 IPC Section 112.2 Code Commentary.

This section establishes the grounds for an appeal, which claims that the building official has misinterpreted or misapplied a code provision. The board is not allowed to set aside any of the technical requirements of the code; however, it is allowed to consider alternative methods of compliance with the technical requirements (see Section 104.11).

104.11 Alternative materials, design and methods of construction and equipment. The provisions of this code are not intended to prevent the installation of any material or to prohibit any design or method of construction not specifically prescribed by this code, provided that any such alternative has been approved.

An alternative material, design or method of construction shall be approved where the building official finds that the proposed design is satisfactory and complies with the intent of the provisions of this code, and that the material, method or work offered is, for the purpose intended, at least the

equivalent of that prescribed in this code in quality, strength, effectiveness, fire resistance, durability and safety.

2003 IPC Section 104.11 Code Commentary. The code is not intended to inhibit innovative ideas or technological advances. A comprehensive regulatory document such as a building code cannot envision and then address all future innovations in the industry. As a result, a performance code must be applicable to and provide a basis for the approval of an increasing number of newly developed, innovative materials, systems and methods for which no code text or referenced standards yet exist. The fact that a material, product or method of construction is not addressed in the code is not an indication that such material, product or method is intended to be prohibited. The building official is expected to apply sound technical judgement in accepting materials, systems or methods that, while not anticipated by the drafters of the current code text, can be demonstrated to offer equivalent performance. By virtue of its text, the code regulates new and innovative construction practices while addressing the relative safety of building occupants. The building official is responsible for determining if a requested alternative provides the equivalent level of protection of public health, safety and welfare as required by the code.

It is the opinion of the Building Official that the true intent of this code or the rules legally adopted thereunder have been correctly interpreted and applied to Money Tree, and therefore, the effective waiver of Section 403.6 may not be granted to the applicant.

RESPECTFULLY SUBMITTED:

APPROVED:

Rick Davis
Chief Building Official

Kurt Kowar
Manager of Logistics



Colorado Code Consulting, LLC

Inspections • Plan Review • Training

Thomas Meyers

Vice President

4610 S. Ulster, Suite 150, Denver, CO 80237
Direct 303-895-9988, Ph 303-400-6564, Fax 970-532-2789
Email: codeconsultant@gmail.com

05-16-06

BOARD OF ADJUSTMENT HEARING

MONEY TREE - IFC SECTION 403.6 INTERPRETATION

4. Separate facilities shall not be required in mercantile occupancies in which the maximum occupant load is 50 or less.

403.3 Number of occupants of each sex. The required water closets, lavatories, and showers or bathtubs shall be distributed equally between the sexes based on the percentage of each sex anticipated in the occupant load. The occupant load shall be composed of 50 percent of each sex, unless statistical data approved by the code official indicate a different distribution of the sexes.

403.4 Location of employee toilet facilities in occupancies other than assembly or mercantile. Access to toilet facilities in occupancies other than mercantile and assembly occupancies shall be from within the employees' working area. Employee facilities shall be either separate facilities or combined employee and public facilities.

Exception: Facilities that are required for employees in storage structures or kiosks, and are located in adjacent structures under the same ownership, lease or control, shall be a maximum travel distance of 500 feet (152 m) from the employees' working area.

403.4.1 Travel distance. The required toilet facilities in occupancies other than assembly or mercantile shall be located not more than one story above or below the employee's working area and the path of travel to such facilities shall not exceed a distance of 500 feet (152 m).

Exception: The location and maximum travel distances to required employee toilet facilities in factory and industrial occupancies are permitted to exceed that required in Section 403.4.1, provided the location and maximum travel distance are approved by the code official.

403.5 Location of employee toilet facilities in mercantile and assembly occupancies. Employees shall be provided with toilet facilities in building and tenant spaces utilized as restaurants, nightclubs, places of public assembly and mercantile occupancies. The employee facilities shall be either separate facilities or combined employee and public facilities. The required toilet facilities shall be located not more than one story above or below the employees' work area and the path of travel to such facilities, in other than covered malls, shall not exceed a distance of 500 feet (152 m). The path of travel to required facilities in covered malls shall not exceed a distance of 300 feet (91 440 mm).

Exception: Employee toilet facilities shall not be required in tenant spaces where the travel distance from the main entrance of the tenant space to a central toilet area does not exceed 300 feet (91 440 mm) and such central toilet facilities are located not more than one story above or below the tenant space.

403.6 Public facilities. Customers, patrons and visitors shall be provided with public toilet facilities in structures and tenant spaces intended for public utilization. Public toilet facilities shall be located not more than one story above or below the space required to be provided with public toilet facilities and the path of travel to such facilities shall not exceed a distance of 500 feet (152 m).

403.6.1 Covered malls. In covered mall buildings, the path of travel to required toilet facilities shall not exceed a distance of 300 feet (91 440 mm). Facilities shall be installed in each individual store or in a central toilet area located in accordance with this section. The maximum travel distance to the central toilet facilities in covered mall buildings shall be measured from the main entrance of any store or tenant space.

403.6.2 Pay facilities. Where pay facilities are installed, such facilities shall be in excess of the required minimum facilities. Required facilities shall be free of charge.

403.7 Signage. Required public facilities shall be designated by a legible sign for each sex. Signs shall be readily visible and located near the entrance to each toilet facility.

SECTION 404

ACCESSIBLE PLUMBING FACILITIES

404.1 Where required. Accessible plumbing facilities and fixtures shall be provided in accordance with the *International Building Code*.

SECTION 405

INSTALLATION OF FIXTURES

405.1 Water supply protection. The supply lines and fittings for every plumbing fixture shall be installed so as to prevent backflow.

405.2 Access for cleaning. Plumbing fixtures shall be installed so as to afford easy access for cleaning both the fixture and the area around the fixture.

405.3 Setting. Fixtures shall be set level and in proper alignment with reference to adjacent walls.

405.3.1 Water closets, urinals, lavatories and bidets. A water closet, urinal, lavatory or bidet shall not be set closer than 15 inches (381 mm) from its center to any side wall, partition, vanity or other obstruction, or closer than 30 inches (762 mm) center-to-center between water closets, urinals or adjacent fixtures. There shall be at least a 21-inch (533 mm) clearance in front of the water closet, urinal or bidet to any wall, fixture or door. Water closet compartments shall not be less than 30 inches (762 mm) wide or 60 inches (1524 mm) deep. There shall be at least a 21-inch (533 mm) clearance in front of a lavatory to any wall, fixture or door (see Figure 405.3.1).

405.3.2 Public lavatories. In employee and public toilet rooms, the required lavatory shall be located in the same room as the required water closet.

405.4 Floor and wall drainage connections. Connections between the drain and floor outlet plumbing fixtures shall be made with a floor flange. The flange shall be attached to the drain and anchored to the structure. Connections between the drain and wall-hung water closets shall be made with an approved extension nipple or horn adapter. The water closet shall be bolted to the hanger with corrosion-resistant bolts or screws. Joints shall be sealed with an approved elastomeric gasket,

SECTION 103

DEPARTMENT OF PLUMBING INSPECTION

103.1 General. The department of plumbing inspection is hereby created and the executive official in charge thereof shall be known as the code official.

103.2 Appointment. The code official shall be appointed by the chief appointing authority of the jurisdiction, and the code official shall not be removed from office except for cause and after full opportunity to be heard on specific and relevant charges by and before the appointing authority.

103.3 Deputies. In accordance with the prescribed procedures of this jurisdiction and with the concurrence of the appointing authority, the code official shall have the authority to appoint a deputy code official, other related technical officers, inspectors and other employees.

103.4 Liability. The code official, officer or employee charged with the enforcement of this code, while acting for the jurisdiction, shall not thereby be rendered liable personally, and is hereby relieved from all personal liability for any damage accruing to persons or property as a result of any act required or permitted in the discharge of official duties.

Any suit instituted against any officer or employee because of an act performed by that officer or employee in the lawful discharge of duties and under the provisions of this code shall be defended by the legal representative of the jurisdiction until the final termination of the proceedings. The code official or any subordinate shall not be liable for costs in any action, suit or proceeding that is instituted in pursuance of the provisions of this code, and any officer of the department of plumbing inspection, acting in good faith and without malice, shall be free from liability for acts performed under any of its provisions or by reason of any act or omission in the performance of official duties in connection therewith.

SECTION 104

DUTIES AND POWERS OF THE CODE OFFICIAL

104.1 General. The code official shall enforce all of the provisions of this code and shall act on any question relative to the installation, alteration, repair, maintenance or operation of all plumbing systems, devices and equipment except as otherwise specifically provided for by statutory requirements or as provided for in Sections 104.2 through 104.8.

104.2 Rule-making authority. The code official shall have authority as necessary in the interest of public health, safety and general welfare to adopt and promulgate rules and regulations to interpret and implement the provisions of this code to secure the intent thereof and to designate requirements applicable because of local climatic or other conditions. Such rules shall not have the effect of waiving structural or fire performance requirements specifically provided for in this code, or of violating accepted engineering practice involving public safety.

104.3 Applications and permits. The code official shall receive applications and issue permits for the installation and alteration of plumbing, inspect the premises for which such permits have been issued, and enforce compliance with the provisions of this code.

104.4 Inspections. The code official shall make all the required inspections, or shall accept reports of inspection by approved agencies or individuals. All reports of such inspections shall be in writing and be certified by a responsible officer of such approved agency or by the responsible individual. The code official is authorized to engage such expert opinion as deemed necessary to report on unusual technical issues that arise, subject to the approval of the appointing authority.

104.5 Right of entry. Whenever it is necessary to make an inspection to enforce the provisions of this code, or whenever the code official has reasonable cause to believe that there exists in any building or upon any premises any conditions or violations of this code that make the building or premises unsafe, insanitary, dangerous or hazardous, the code official shall have the authority to enter the building or premises at all reasonable times to inspect or to perform the duties imposed upon the code official by this code. If such building or premises is occupied, the code official shall present credentials to the occupant and request entry. If such building or premises is unoccupied, the code official shall first make a reasonable effort to locate the owner or other person having charge or control of the building or premises and request entry. If entry is refused, the code official shall have recourse to every remedy provided by law to secure entry.

When the code official shall have first obtained a proper inspection warrant or other remedy provided by law to secure entry, no owner or occupant or person having charge, care or control of any building or premises shall fail or neglect, after proper request is made as herein provided, to promptly permit entry therein by the code official for the purpose of inspection and examination pursuant to this code.

104.6 Identification. The code official shall carry proper identification when inspecting structures or premises in the performance of duties under this code.

104.7 Notices and orders. The code official shall issue all necessary notices or orders to ensure compliance with this code.

104.8 Department records. The code official shall keep official records of applications received, permits and certificates issued, fees collected, reports of inspections, and notices and orders issued. Such records shall be retained in the official records as long as the building or structure to which such records relate remains in existence unless otherwise provided for by other regulations.

**SECTION 105
APPROVAL**

105.1 Modifications. Whenever there are practical difficulties involved in carrying out the provisions of this code, the code official shall have the authority to grant modifications for individual cases, provided the code official shall first find that special individual reason makes the strict letter of this code impractical and the modification is in conformity with the intent and purpose of this code and that such modification does not lessen health, life and fire safety requirements. The details of action granting modifications shall be recorded and entered in the files of the plumbing inspection department.

CHAPTER 1

ADMINISTRATION

SECTION 101 GENERAL

101.1 Title. These regulations shall be known as the *International Plumbing Code* of [NAME OF JURISDICTION] hereinafter referred to as "this code."

101.2 Scope. The provisions of this code shall apply to the erection, installation, alteration, repairs, relocation, replacement, addition to, use or maintenance of plumbing systems within this jurisdiction. This code shall also regulate nonflammable medical gas, inhalation anesthetic, vacuum piping, nonmedical oxygen systems and sanitary and condensate vacuum collection systems. The installation of fuel gas distribution piping and equipment, fuel gas-fired water heaters and water heater venting systems shall be regulated by the *International Fuel Gas Code*. Provisions in the appendices shall not apply unless specifically adopted.

Exceptions:

1. Detached one- and two-family dwellings and multiple single-family dwellings (townhouses) not more than three stories high with separate means of egress and their accessory structures shall comply with the *International Residential Code*.
2. Plumbing systems in existing buildings undergoing repair, alteration, or additions, and change of occupancy shall be permitted to comply with the *International Existing Building Code*.

101.3 Intent. The purpose of this code is to provide minimum standards to safeguard life or limb, health, property and public welfare by regulating and controlling the design, construction, installation, quality of materials, location, operation and maintenance or use of plumbing equipment and systems.

101.4 Severability. If any section, subsection, sentence, clause or phrase of this code is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this code.

SECTION 102 APPLICABILITY

102.1 General. The provisions of this code shall apply to all matters affecting or relating to structures, as set forth in Section 101. Where, in any specific case, different sections of this code specify different materials, methods of construction or other requirements, the most restrictive shall govern.

102.2 Existing installations. Plumbing systems lawfully in existence at the time of the adoption of this code shall be permitted to have their use and maintenance continued if the use, maintenance or repair is in accordance with the original design and no hazard to life, health or property is created by such plumbing system.

102.3 Maintenance. All plumbing systems, materials and appurtenances, both existing and new, and all parts thereof, shall be maintained in proper operating condition in accordance with the original design in a safe and sanitary condition. All devices

or safeguards required by this code shall be maintained in compliance with the code edition under which they were installed.

The owner or the owner's designated agent shall be responsible for maintenance of plumbing systems. To determine compliance with this provision, the code official shall have the authority to require any plumbing system to be reinspected.

[EB] 102.4 Additions, alterations or repairs. Additions, alterations, renovations or repairs to any plumbing system shall conform to that required for a new plumbing system without requiring the existing plumbing system to comply with all the requirements of this code. Additions, alterations or repairs shall not cause an existing system to become unsafe, insanitary or overloaded.

Minor additions, alterations, renovations and repairs to existing plumbing systems shall be permitted in the same manner and arrangement as in the existing system, provided that such repairs or replacement are not hazardous and are approved.

[EB] 102.5 Change in occupancy. It shall be unlawful to make any change in the occupancy of any structure that will subject the structure to any special provision of this code without approval of the code official. The code official shall certify that such structure meets the intent of the provisions of law governing building construction for the proposed new occupancy and that such change of occupancy does not result in any hazard to the public health, safety or welfare.

[EB] 102.6 Historic buildings. The provisions of this code relating to the construction, alteration, repair, enlargement, restoration, relocation or moving of buildings or structures shall not be mandatory for existing buildings or structures identified and classified by the state or local jurisdiction as historic buildings when such buildings or structures are judged by the code official to be safe and in the public interest of health, safety and welfare regarding any proposed construction, alteration, repair, enlargement, restoration, relocation or moving of buildings.

102.7 Moved buildings. Except as determined by Section 102.2, plumbing systems that are a part of buildings or structures moved into or within the jurisdiction shall comply with the provisions of this code for new installations.

102.8 Referenced codes and standards. The codes and standards referenced in this code shall be those that are listed in Chapter 13 and such codes and standards shall be considered as part of the requirements of this code to the prescribed extent of each such reference. Where the differences occur between provisions of this code and the referenced standards, the provisions of this code shall be the minimum requirements.

102.9 Requirements not covered by code. Any requirements necessary for the strength, stability or proper operation of an existing or proposed plumbing system, or for the public safety, health and general welfare, not specifically covered by this code shall be determined by the code official.

INTERNATIONAL CODE COUNCIL

2002 CODE DEVELOPMENT CYCLE

PROPOSED CHANGES TO THE 2000 EDITIONS* OF THE

INTERNATIONAL FIRE CODE

ICC PERFORMANCE CODE**

INTERNATIONAL EXISTING BUILDING CODE***

INTERNATIONAL BUILDING CODE

ICC ELECTRICAL CODE

INTERNATIONAL PROPERTY MAINTENANCE CODE

INTERNATIONAL ZONING CODE

INTERNATIONAL ENERGY CONSERVATION CODE

INTERNATIONAL RESIDENTIAL CODE

INTERNATIONAL PLUMBING CODE

INTERNATIONAL PRIVATE SEWAGE DISPOSAL CODE

INTERNATIONAL MECHANICAL CODE

INTERNATIONAL FUEL GAS CODE

*Including the 2002 Accumulative Supplement

**2001 Edition

***Final Draft

April 8 - 19, 2002

**RADISSON HOTEL GREEN TREE
PITTSBURGH, PENNSYLVANIA**



~~more than one story above or below the tenant space.~~

Public Hearing: Committee: AS AM D
Assembly: ASF DF

Reason: This new requirement which was not in previous editions of the Code was generated by the IPC Ad Hoc Committee on Plumbing Fixtures. The reason in the original proposal is based on a simple statement. It states that malls need to provide shorter travel distances since the mall could be congested and occupants might not be familiar with the building, but this would not be the case for employees. Therefore the justification given by the Committee is not an adequate reason to penalize malls as compared with other mercantile occupancies.

The current 300 foot travel distance can also result in a number of unintended consequences. It will result in more, but smaller, toilet facilities, spread throughout the mall. These facilities will require more mall security to supervise the increased number of rooms to prevent vandalism. This could result in less safety for occupants.

To evaluate this change, what does the extra 200 feet of travel actually represent? Human movement studies set the normal speed of walking on a level surface at, coincidentally, 200 feet per minute. The outcome of this change would increase, by approximately 1 minute, the travel time to reach a toilet facility from a tenant space. This would result in the same amount of travel time and distance currently permitted for other large buildings such as department stores, restaurants and theaters.

This code provision is not a life safety issue. At best this is a comfort issue, one which does not warrant the additional maintenance and security and insurance costs which it will cause to covered mall buildings.

Cost Impact: This proposal will result in security and maintenance savings for mall projects, bringing malls back into parity with similar occupancies.

Analysis: The reduction in travel distances for employees in covered malls from 500 feet to 300 feet is intended to provide employees with reasonable accessibility to the public toilet facilities since the deletion of 900 square feet no longer requires such tenant spaces to contain toilet facilities.

Public Hearing: Committee: AS AM D
Assembly: ASF DF



P29-02
403.6

Proponent: Jay R. Gause, Conway, SC

Revise as follows:

403.6 Public facilities. Customers, patrons and visitors shall be provided with public toilet facilities, that are available to the public during that facility's normal working hours, in structures and tenant spaces intended for public utilization. Public toilet facilities shall be available without permission and shall be located not more than one story above or below the space required to be provided with public toilet facilities and the path of travel to such facilities shall not exceed a distance of 500 feet (152 m).

Reason: The code requires public facilities be provided but does not mandate that they be available. This addition will assure availability of public restrooms. Some people require permission to use their restrooms, others hang an out of order sign over the door. Still others say that the restrooms are available for employee use only. This change is an attempt to clarify this issue.

P30-02

403.6.1

Proponent: Ed Schultz, Code Consultants, Inc., representing the International Council of Shopping Centers/International Mass Retail Association

Revise as follows:

403.6.1 (Supp) Covered malls. In covered mall buildings, ~~the path of travel to required toilet facilities shall not exceed a distance of 300 feet (91 440 mm).~~ facilities shall be installed in each individual store or in a central toilet area located in accordance with this section. The maximum travel distance to the central toilet facilities in covered mall buildings shall be measured from the main entrance of any store or tenant space.

Reason: This new requirement which was not in previous editions of the code was generated by the IPC Ad Hoc Committee on Plumbing Fixtures. The reason in the original proposal is based on a simple statement. It states that malls need to provide shorter travel distances since the mall could be congested and occupants might not be familiar with the building. This same statement could be easily made for any number of occupancies including large retail department store or large assembly occupancies. These large facilities often do not have any signage to identify the location of toilet facilities from any location within the building while covered mall buildings provide signage in the mall directing the location of public toilet facilities. Further, most malls provide information booths, which are occupied by mall personnel, to assist mall occupants in finding the locations of mall amenities. Therefore, it is generally easier to locate public toilet facilities in covered mall buildings compared to other types of large buildings. Therefore the justification given by the Committee is not an adequate reason to penalize malls.

The current 300 foot travel distance can result in a number of unintended consequences. It will result in more, but smaller, toilet facilities, spread throughout the mall. These facilities will require more mall security to supervise the increased number of rooms to prevent vandalism. This could result in less safety for occupants.

To evaluate this change, what does the extra 200 feet of travel actually represent? Human movement studies set the normal speed of walking on a level surface at, coincidentally, 200 feet per minute. The outcome of this change would increase, by approximately 1 minute, the travel time to reach a toilet facility from a tenant space. This would result in the same amount of travel time and distance currently permitted for other large buildings such as department stores, restaurants and theaters.

This code provision is not a life safety issue. At best this is a comfort issue, one which does not warrant the additional maintenance and security and insurance costs which it will cause to covered mall buildings.

Cost Impact: This proposal will result in security and maintenance savings for mall projects, bringing malls back into parity with other, similar occupancies.

TENTATIVE ORDER OF DISCUSSION

2002 PROPOSED CHANGES TO THE INTERNATIONAL PLUMBING CODE & INTERNATIONAL PRIVATE SEWAGE DISPOSAL CODE

The following is the tentative order in which the changes to this code will be discussed at the public hearings. Proposed change numbers that are indented indicate proposed changes which have been grouped for purposes of discussion at the hearing.

P — International Plumbing Code
PSD — International Private Sewage Disposal Code

P1-02	P31-02	P61-02	P91-02
G3-02, Part 6 & 8	P25-02	P62-02	P92-02
P3-02	P27-02	P63-02	P93-02
G9-02, Part 6 & 8	P32-02	P112-02	P94-02
P4-02	P33-02	P64-02	P95-02
P5-02	P34-02	P65-02	P96-02
P6-02	P35-02	P66-02	P97-02
P7-02	P36-02	P67-02	P98-02
P8 -02	P37-02	P68-02	P99-02
P2-02	P38-02	P69-02	P100-02
P9-02	P39-02	RP28-02	P101-02
P10-02	P40-02	P70-02	P102-02
P11-02	P41-02	P71-02	P103-02
P12-02	P42-02	P72-02	P104-02
P13-02	P43-02	P73-02	P105-02
P14-02	P44-02	P74-02	P106-02
P15-02	P45-02	P75-02	P107-02
P16-02	P46-02	P76-02	P110-02
P17-02	P47-02	P77-02	P108-02
P18-02	P48-02	P78-02	P109-02
P19-02	P49-02	P79-02	P111-02
P20-02	P50-02	P80-02	P113-02
P21-02	P51-02	P81-02	PSD1-02
RP4-02	P52-02	P82-02	PSD2-02
P22-02	P53-02	P83-02	
P23-02	P54-02	P84-02	
P24-02	P55-02	P85-02	
P26 -02	P56-02	P86-02	
P28-02	P57-02	P87-02	
<u>P29-02</u>	P58-02	P88-02	
P30-02	P59-02	P89-02	
	P60-02	P90-02	

INTERNATIONAL CODE COUNCIL

2002 REPORT OF THE PUBLIC HEARING ON THE 2000 EDITIONS* OF THE

INTERNATIONAL FIRE CODE

ICC PERFORMANCE CODE**

INTERNATIONAL EXISTING BUILDING CODE***

INTERNATIONAL BUILDING CODE

ICC ELECTRICAL CODE

INTERNATIONAL PROPERTY MAINTENANCE CODE

INTERNATIONAL ZONING CODE

INTERNATIONAL ENERGY CONSERVATION CODE

INTERNATIONAL RESIDENTIAL CODE

INTERNATIONAL PLUMBING CODE

INTERNATIONAL PRIVATE SEWAGE DISPOSAL CODE

INTERNATIONAL MECHANICAL CODE

INTERNATIONAL FUEL GAS CODE

*Including the 2002 Accumulative Supplement

**2001 Edition

***Final Draft

HELD IN PITTSBURGH, PENNSYLVANIA

April 8 - 19, 2002

PUBLIC COMMENT DEADLINE JULY 3, 2002



Committee Reason: Footnote b located in Table 403.1 is unenforceable and should be deleted.

Assembly Action: **No Motion**

P25-02 **Withdrawn by Proponent**

P26-02 **Withdrawn by Proponent**

P27-02 **Withdrawn by Proponent**

P28-02

Committee Action: **Disapproved**

Committee Reason: The travel distance in malls was previously reduced from 500 to 300 feet to provide reasonable access to public toilet facilities to employees in tenant spaces without such facilities. Technical justification was not submitted to warrant an increase from 300 feet to 500 feet.

Assembly Action: **No Motion**

P29-02

Committee Action: **Disapproved**

Committee Reason: The proposed text is unenforceable and should be up to the tenant whether public toilet facilities are secured and locked for security purposes.

Assembly Action: **No Motion**

P30-02

Committee Action: **Disapproved**

Committee Reason: The travel distance requirements for covered malls provide a reasonable access to public toilet facilities. Technical justification was not submitted to delete travel distance requirements.

Assembly Action: **No Motion**

P31-02

Committee Action: **Approved as Modified**

Modify proposal as follows:

403.6.2 Pay facilities. Where pay facilities are installed, such facilities shall be in excess of the required minimum facilities. Required facilities shall be free of charge.

403.7 Signage. Facilities shall be designated by a legible sign for each sex. Signs shall be readily visible and located near the entrance to each toilet facility. A legible sign designating the sex shall be provided in a readily visible location near the entrance to each toilet facility. Signs for accessible toilet facilities shall comply with ICC/ANSI A117.1. Signs for accessible toilet facilities shall comply with ICC/ANSI A117.1.

Committee Reason: The modification provides additional requirements and clarification for signage in all toilet facilities.

Assembly Action: **No Motion**

P32-02

ITEM 1 (IPC)

Committee Action: **Disapproved**

Committee Reason: The IPC committee prefers existing code language and the additional text is not necessary.

Assembly Action: **No Motion**

ITEM 2 (IRC)

Committee Action: **Disapproved**

Committee Reason: The justification for the proposal lacks technical substantiation and is therefore insufficient to warrant this change.

Assembly Action: **No Motion**

P33-02

ITEM 1 (IPC)

Committee Action: **Approved as Modified**

Modify proposal as follows:

405.8 Design and installation of plumbing fixtures. Integral fixture fitting mounting surfaces on manufactured plumbing fixtures or plumbing fixtures constructed on site, shall meet the design requirements of ASME A112.19.2 or ASME A112.19.3. Plumbing fixtures designed or constructed on site, with fixture fitting mounting surfaces shall be installed such that the fixture fitting mounting surface is not lower .5 (13mm) below the flood level rim.

Committee Reason: The modification provides additional text for the design and installation of plumbing fixtures on mounting surfaces constructed on site. The reference to ASME standards provides the air gap requirements for the faucet.

Assembly Action: **No Motion**

ITEM 2 (IRC)

Committee Action: **Disapproved**

8

Board of Adjustment 5/16/06

Please sign in before addressing board

Name

James B. Sorgel

Ray Nagel

Tom McCreas

Rick Davis

Address

555 17th Street, Denver

Director of Real Estate

Col. Code Consulting.

CHIEF BUILDING OFFICIAL



Memo

To: Board of Adjustment

From: Rick Davis, Chief Building Official

CC: Lee Phillips, City Attorney

Date: April 17, 2006

Re: Mr. Gene Wieneke E-mail of April 16, 2006 – Money Tree Appeal

FILE COPY

Board of Adjustment member Gene Wieneke has requested additional information regarding the Money Tree appeal to be heard before the Board of Adjustment on April 18, 2006, case number V-1-06. I offer the following clarification to the Board of Adjustment in response to the questions presented by Mr. Wieneke.

Question 1

"The occupancy of the space has been changed from Group A to B. This has generated the issue at hand. The Board has not received information in the packet as to the necessity of the change. The former occupant of the space was Schlotzsky's Deli which should have already been a Group B. Group A uses need to be discussed".

As noted in the Board of Adjustment staff report, the change of occupancy occurs when the former Schlotzsky's Deli, an A-2 Occupancy under Section 303.1 of the 2003 International Building Code is closed for business and a new tenant, Money Tree, proposes a banking facility in the existing location. Section 304.1 of the 2003 International Building Code defines type B occupancies. In the case of Schlotzsky's Deli, the applicant submitted plans under the 1997 Uniform Building Code as an A-2.1 Occupancy, and subsequently a Certificate of Occupancy was issued to Schlotzsky's Deli as an A-2.1 Occupancy. Money Tree has submitted plans under the 2003 International Building Code as a B Occupancy.

It should be noted that the applicant determines occupancy based on applicable code. The Building Official then reviews the applicants plans for conformance to the occupancy group.

Both code 2003 Code Sections are noted here for clarification:

SECTION 303

ASSEMBLY GROUP A

303.1 Assembly Group A. Assembly Group A occupancy includes, among others, the use of a building or structure, or a portion thereof, for the gathering together of persons for purposes such as civic, social or religious functions, recreation, food or drink consumption or awaiting transportation. A room or space used for assembly purposes by less than 50 persons and

accessory to another occupancy shall be included as a part of that occupancy. Assembly areas with less than 750 square feet (69.7 m²) and which are accessory to another occupancy according to Section 302.2.1 are not assembly occupancies. Assembly occupancies which are accessory to Group E in accordance with Section 302.2 are not considered assembly occupancies. Religious educational rooms and religious auditoriums which are accessory to churches in accordance with Section 302.2 and which have occupant loads of less than 100 shall be classified as A-3.

Assembly occupancies shall include the following:

A-1 Assembly uses, usually with fixed seating, intended for the production and viewing of the performing arts or motion pictures including, but not limited to:

Motion picture theaters
Symphony and concert halls
Television and radio studios admitting an audience
Theaters

A-2 Assembly uses intended for food and/or drink consumption including, but not limited to:

Banquet halls
Night clubs
Restaurants
Taverns and bars

A-3 Assembly uses intended for worship, recreation or amusement and other assembly uses not classified elsewhere in Group A including, but not limited to:

Amusement arcades
Art galleries
Bowling alleys
Churches
Community halls
Courtrooms
Dance halls (not including food or drink consumption)
Exhibition halls
Funeral parlors
Gymnasiums (without spectator seating)
Indoor swimming pools (without spectator seating)
Indoor tennis courts (without spectator seating)
Lecture halls
Libraries
Museums
Waiting areas in transportation terminals
Pool and billiard parlors

A-4 Assembly uses intended for viewing of indoor sporting events and activities with spectator seating including, but not limited to:

Arenas
Skating rinks
Swimming pools
Tennis courts

A-5 Assembly uses intended for participation in or viewing outdoor activities including, but not limited to:

Amusement park structures
Bleachers
Grandstands

Stadiums

**SECTION 304
BUSINESS GROUP B**

304.1 Business Group B. Business Group B occupancy includes, among others, the use of a building or structure, or a portion thereof, for office, professional or service-type transactions, including storage of records and accounts. Business occupancies shall include, but not be limited to, the following:

Airport traffic control towers
Animal hospitals, kennels and pounds
Banks
Barber and beauty shops
Car wash
Civic administration
Clinic—outpatient
Dry cleaning and laundries; pick-up and delivery stations and self-service
Educational occupancies above the 12th grade
Electronic data processing

Question 2

"Section 403.6 states that the public facilities may be located up to 500 feet away. The Commentary on 403.6 states that such facilities may be centrally located in a covered mall building. While the location of the proposed business is in a mall, it is not covered. Could Money Tree make arrangements with adjacent businesses is a question I will have for Jeff".

The Money Tree fails to conform to definitions of a covered mall as defined by Section 402.2 of the 2003 International Building Code, and therefore, the provisions of Section 403.6 of the 2003 International Plumbing Code may not be applied to the Money Tree facility.

**SECTION 402
COVERED MALL BUILDINGS**

402.2 Definitions. The following words and terms shall, for the purposes of this chapter and as used elsewhere in this code, have the meanings shown herein.

COVEREDMALLBUILDING. A single building enclosing a number of tenants and occupants such as retail stores, drinking and dining establishments, entertainment and amusement facilities, passenger transportation terminals, offices, and other similar uses wherein two or more tenants have a main entrance into one or more malls. For the purpose of this chapter, anchor buildings shall not be considered as a part of the covered mall building.

Question 3

"Is the Money Tree required to be classified as a bank?"

The applicant has submitted plans conforming to Section 304.1 of the 2003 International Building Code, in which Money Tree is classified as a Group B Occupancy.

Question 4

"Is the fact that the Chief Building Official does not meet the minimum qualifications established in Appendix A Section 101.1 of the Building Code significant?"

Section 10-2-6 of the Northglenn Municipal Code did not adopt Appendix A of the 2003 International Building Code when presented before City Council by the former Chief Building Official in December, 2003. Therefore, the provisions of Appendix A are not enforceable by the jurisdiction.

Appendix A, Section A101.1 notes the following qualifications for Building Official:

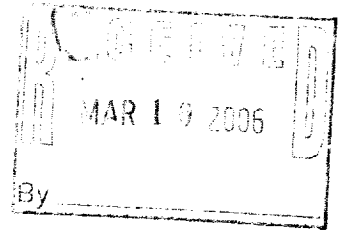
SECTION A101

BUILDING OFFICIAL QUALIFICATIONS

A101.1 Building official. The building official shall have at least ten years experience or equivalent, as an architect, engineer, inspector, contractor, or superintendent of construction, or any combination of these, five years of which shall have been in supervisory experience. The building official should be certified as a building official through a recognized certification program. The building official shall be appointed or hired by the applicable governing authority.

To provide clarification on the statement from Mr. Wieneke, the Chief Building Official of the City of Northglenn possess all of the named qualifications provided in Section A101.1

APPLICATION FOR VARIANCE
NORTHGLENN BOARD OF ADJUSTMENT
11701 Community Center Drive
Northglenn, Colorado 80233



Case Number V-1-06 Amount of Fee \$250.00 *UM*
Application Date 3-10-06 Amount Paid \$250.00
Publication Date 3-30-06 Date Paid 3/10/06
Posted Date 4-3-06 Receipt Number 37949
Hearing Date 4-18-06

I (we) Moneytree, Inc. of 6720 Fort Dent Way, Suite 230,
Seattle, Washington 98188 (address)
Phone (200) 246-3500

do hereby request permission to appear before the Northglenn Board of Adjustment on the date as shown above concerning the following variance for the following described property:

Known as 580 East 120th Avenue
(street address)

Legal Description: 6B Washington Point Replat Lot 6
(lot) (block) (filing)

Ordinance and Section for which variance is being requested:
Appeal of a decision under Section 109 of the International Plumbing Code
in accordance with Section 11-42-5 of the Northglenn Municipal Code.
(ordinance) (section)

PURPOSE OF VARIANCE

Please state clearly exactly how you would plan to vary from the regulations of the above ordinance and section.

Please see attached.

Please state clearly why you feel this variance is necessary.

Please see attached.

Floor Plan

- [] Two copies of an ~~original boundary survey (plot plan)~~ of the property are hereby attached. (Attachment A)
- [] Two copies of a sketch showing the proposed changes to the property are hereby attached. (Attachment B)

March 19, 2006
Date


Signature

James B. Borgel, Esq.
for
Holland & Hart LLP, Attorneys for Applicant

555 17th Street, Suite 3200
Denver, CO 80202
303-295-8245
303-713-6314 (fax)
jbborgel@hollandhart.com

ATTACHMENT TO MONEYTREE, INC.
APPLICATION

March 9, 2006

Authority for Appeal

The action we are requesting is not technically a "variance," but rather is an appeal of an adverse decision by the City of Northglenn Building Official in accordance with Section 109 of the International Plumbing Code ("IPC"), as amended by Section 10-4-5 of the Northglenn Municipal Code.

In accordance with Section 109 of the IPC, appeals are processed in accordance with Section 11-42-5 of the Northglenn Municipal Code. As set forth therein, the Board of Adjustment has the power to hear such an appeal, and has the authority to take the following actions as a result of such approval:

"The Board may reverse or affirm wholly or partly, or may modify the order, requirement, decision or determination appealed from and shall make such order, requirement, decision or determination as in its opinion ought to have been made in the premises, and to that end shall have the powers of the agency or the officer from whom the appeal was taken."

We are appealing a decision of the Building Official to deny Moneytree's request for a "modification" under Section 105.1 of the International Building Code, which states, in part, as follows:

"Whenever there are practical difficulties involved in carrying out the provisions of this code, the code official shall have the authority to grant modifications for individual cases, provided the code official shall first find that special individual reason makes the strict letter of this code impractical and the modification is in conformity with the intent and purpose of the code and that such modification does not lessen health, life and fire safety requirements."

Our request is that the Board of Adjustment modify the decision of the Building Official, and allow Moneytree to construct its office located at 580 E. 120th Avenue without providing public toilet facilities as would otherwise be required by Section 403.6 of the IPC. The reasons for the request are set forth in more detail below.

Background

Moneytree, Inc. is a retail financial services company, in which a variety of financial services are provided to its customers. Their services include check cashing, payday loans, debit cards, money orders, wire funds transfers, and other consumer-oriented

financial services. They currently operate over 110 locations in 6 western states, have 10 offices in Colorado and plan to open approximately 4 new offices in Colorado over the next year. Moneytree is a leader in the retail financial industry and has been in business since 1983.

Rationale for Request

Moneytree is requesting a variance from the strict application of Section 403.6 of the IPC for a number of reasons. The primary reason is the security of its customers and employees.

Unlike other financial institutions, the majority of customers that enter a Moneytree office depart with cash. This creates a unique security concern that is not faced by other retail establishments or financial institutions. Moneytree has developed an extensive set of security-oriented store designs and procedures to address these concerns, and providing a public toilet facility in their office (which, of course must involve creation of a private space which cannot be continuously monitored by Moneytree employees) lessens the effectiveness of these designs and procedures. As a result, although Moneytree operates retail financial service offices in many jurisdictions, including jurisdictions that have adopted the IPC, their standard office design template does not include a public toilet facility, and only 1 of its 110 offices currently provides a public toilet facility. Specifically, requiring Moneytree to install a public toilet facility in its Northglenn office will create the following security concerns:

1. As a retail financial institution, Moneytree maintains adequate cash in each office to meet its business requirements. To protect these funds, and their customers and employees, the standard Moneytree store design isolates the Moneytree employees and work area from the public space at the front of the store. The employees and work area are separated from the customer area by a solid partition and bulletproof glass, and the security entrance to the work area incorporates a double "mantrap" security door system. To prevent the possibility of a theft involving a hostage situation, Company procedures dictate that Moneytree employees cannot leave the work area and enter the customer lobby unless the lobby is empty and the external doors are locked. Providing a public restroom in the lobby area of the building weakens these security procedures, since Moneytree's employees cannot be certain that the public lobby area has been secured before leaving the work area.

2. Moneytree's basic building template is designed so that the entire lobby area of the store can be viewed from the street. This ensures that the public portion of the building can be seen by passing law enforcement officers, and creates a deterrent effect to any criminal activity. Providing an enclosed public restroom within the building is contrary to this design, in that it creates a "public" area within the building that cannot be viewed from the street. This is a security risk to the Moneytree employees and their customers.

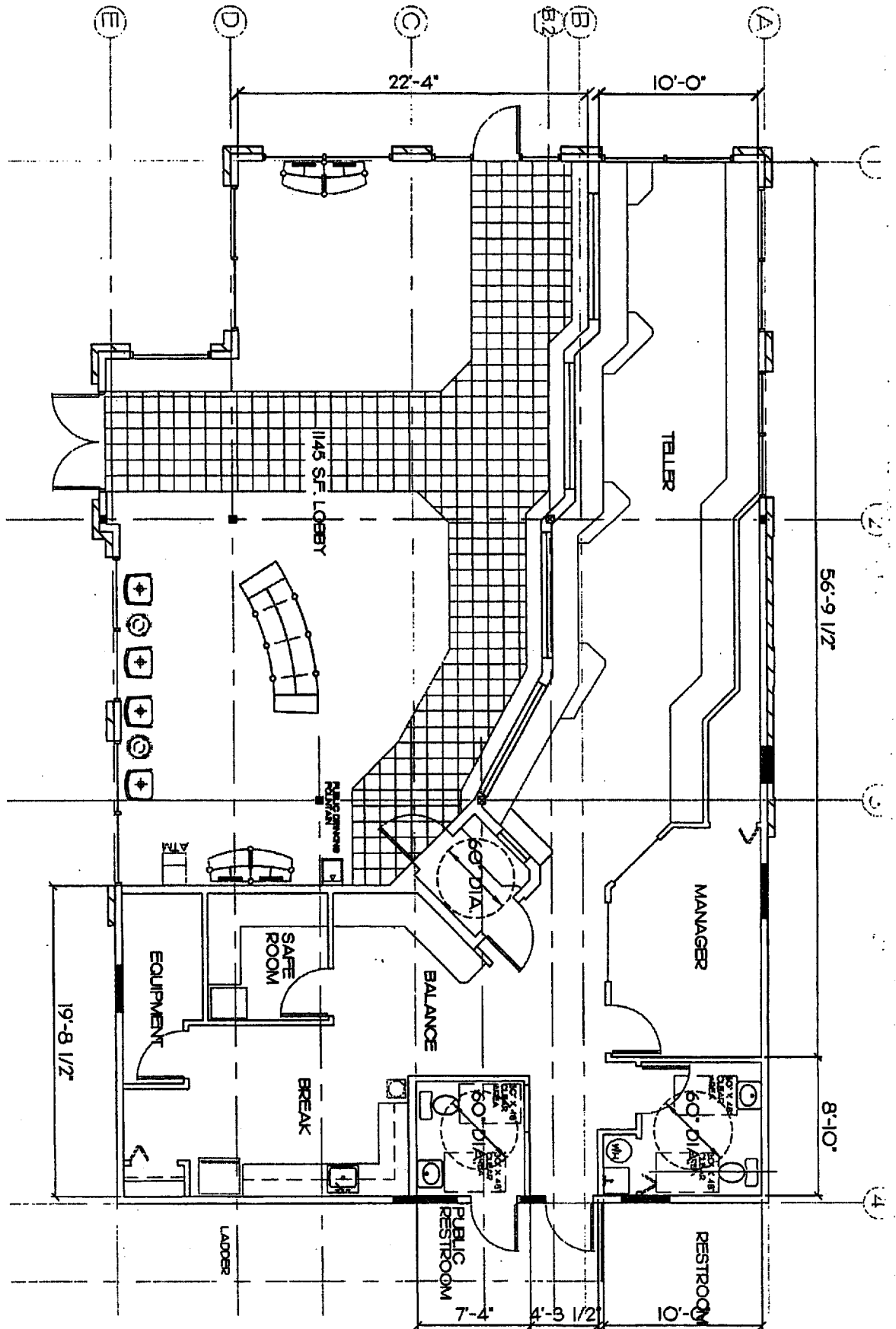
3. In an effort to address the Building Department's requirement that a public restroom be provided at the Northglenn site, Moneytree's architects have developed a plan for the Moneytree office that provides for a public restroom in the building at the back of the store that can only be accessed through an exterior entrance. While this design attempts to meet the letter of the IPC, the provision of such a restroom does not address the myriad security issues that Moneytree is concerned about, and will actually increase certain concerns. For example, a Moneytree employee will be periodically required to leave the secure work area to monitor and maintain the public toilet, and to ensure that the public toilet is empty prior to the close of business. This will expose the employee to potential criminal activity. The externally accessed restroom can also create a potential staging area for after hours break-ins into the Moneytree office. Neither of these risks are justified by the application of the technical IPC requirement requiring the provision of public toilet facilities.

In addition to the security concerns, the nature of Moneytree's business eliminates any public inconvenience that might be associated with approving the amended drawings. Primarily, the average length of a typical Moneytree transaction is only several minutes. The need for public restroom facilities is non-existent or minimal, in light of the practice and security concerns addressed above. Moneytree has also spent a significant amount of time and money at this location and in other jurisdictions in an attempt to reconcile its security concerns and business objectives with the code requirements, and has not been able to do so.

Request for Modification.

For the reasons set forth above, Moneytree respectfully requests that the decision of the Northglenn Building Department requiring Moneytree to provide a public toilet facility in the office that is under construction at 580 East 120th Avenue in Northglenn, Colorado be modified, and that Moneytree be allowed to amend the permit drawings for the 120th Avenue store consistent with the sketch showing the proposed change that is attached to this application. Specifically, we are asking the Board of Adjustment to make a determination that :

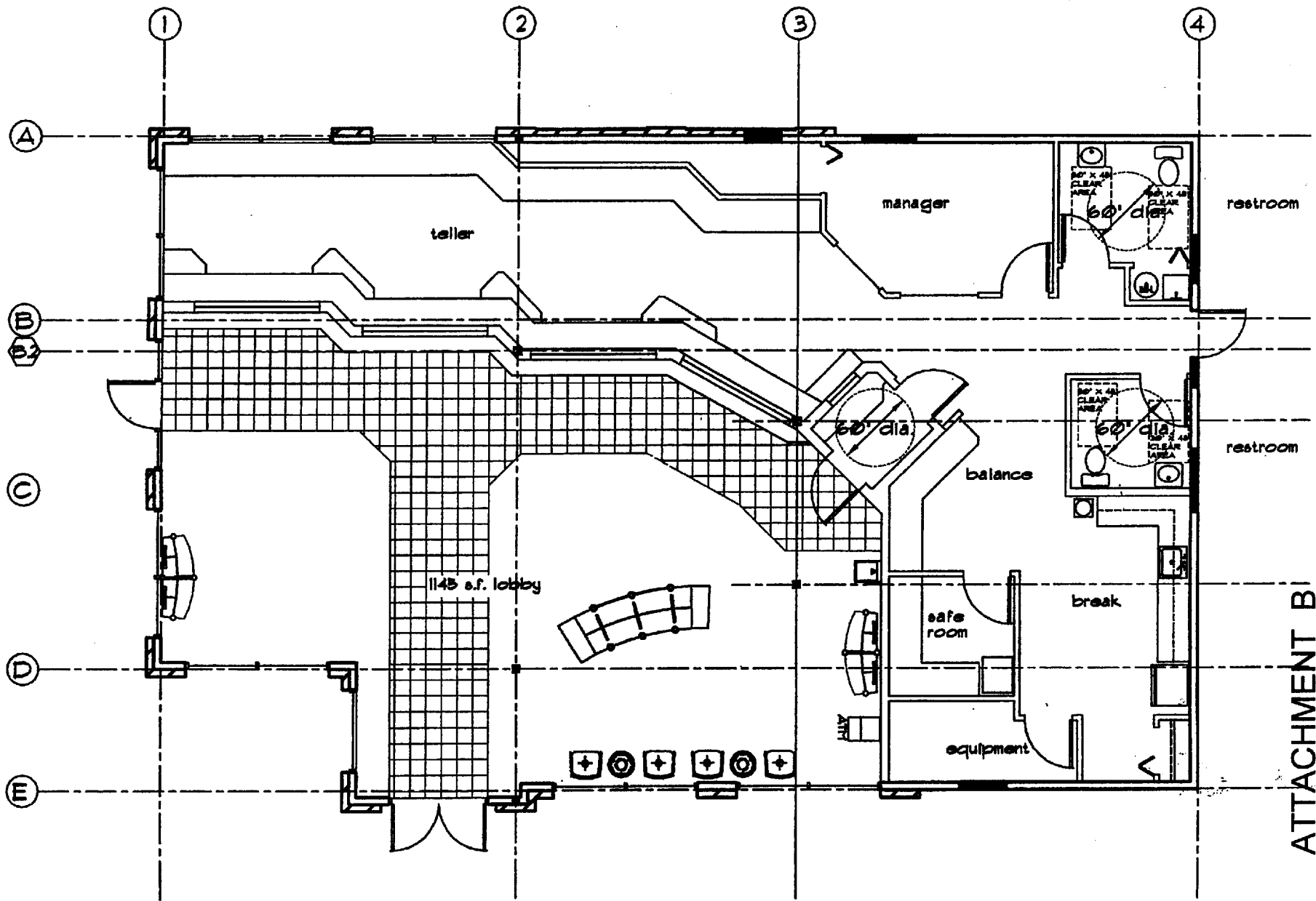
- A. In light of the foregoing circumstances, there are practical difficulties with regard to the provision of public toilet facilities at the 120th Avenue Store;
- B. The special security requirements associated with the operation of the Moneytree office at 580 East 120th Avenue makes the strict letter of the code impractical and the modification is in conformity with the intent and purpose of the code; and
- C. Such modification does not lessen health, life and fire safety requirements.



FLOOR PLAN

SCALE 1/8" = 1'-0"

ATTACHMENT A



ATTACHMENT B1

floor plan - money tree

scale: 1/8" = 1'-0" (nta)





June 29, 2006

VIA FACSIMILE & HAND-DELIVERY

City of Northglenn City Council
c/o Diana L. Lentz, City Clerk
11701 Community Center Drive
P.O. Box 330061
Northglenn, CO 80233-8061

**Re: Application for Appeal for Review by City Council
Case No. V-1-06 (Moneytree, Inc.)**

Dear Ms. Lentz:

Our firm is Counsel to Moneytree, Inc. in the above-referenced proceeding. On behalf of Moneytree, Inc., we respectfully make the following requests:

1. Request for Reconsideration of the City Council's Decision to Grant the Application for Review, due to a Lack of Adequate Notice to Moneytree. The appeal was filed on May 25, 2006, and notice of the appeal transmitted to our office via U.S. Mail, received May 31, 2006. We recognize that Section 11-42-8(e) of the Northglenn City Code requires delivery of the appeal to the Council at the next regular meeting. However, the notice provisions in Section 3-7-4 of the Northglenn Code provides that in general, a party should be given 10 days advance notice of a hearing on a quasi-judicial matter. The 10 day notice requirement was not met, and the prejudice to Moneytree was compounded by the fact that Moneytree corporate offices are located out of state, and Moneytree's counsel was out of the country when the notice was received.

For these reasons, we request that the Council reconsider its decision to consider the appeal, and that Moneytree be given an opportunity to appear before the Council to urge that the request for appeal be denied.

2. Request for Modification of the Record in Case No. V-1-06. A review of the record in this proceeding as posted on the Northglenn website indicates that the original application for appeal to the Board of Adjustment filed by Moneytree on March 10, 2006 was not included. This document (copy attached), which included several exhibits prepared by Moneytree, was before the Board of Adjustment at the hearing on May 18th and should be part of the record provided to the City Council.



3. Request for Supplementation of the Record. The application for appeal filed with the City Council by included an attachment setting forth the reasons for this request, to which Moneytree, Inc. had no opportunity to respond. This violates basic principles of due process, and is inconsistent with the provision of Section 3-7-9 of the Northglenn Municipal Code. Moneytree therefore requests that it be permitted to include an additional statement in the record for the proceeding setting forth the reasons why the appeal should be denied.

Thank you for your cooperation and assistance in this matter.

Very truly yours,

James B. Borgel
for Holland & Hart LLP

JBB/rld

Enclosure

cc: Ray Nagel, Moneytree, Inc.
Tom Meyers, Colorado Code Consulting

3568416_1.DOC

BEFORE THE CITY COUNCIL CITY OF NORTHGLENN, COLORADO 11701 Community Center Drive P.O. Box 330061 Northglenn, Colorado 80233-8061	<p style="text-align: center;">RECEIVED</p> <p style="text-align: center;">JUN 29 2005</p> <p style="text-align: center;">City of Northglenn City Clerk's Office</p> <p style="text-align: center;"><i>J. Small</i> 11:40 am</p>
APPEAL FROM THE CITY OF NORTHGLENN BOARD OF ADJUSTMENT CASE NO V-1-06	
Attorney or Party Without Attorney:	
Name: James B. Borgel Address: HOLLAND & HART LLP 555 Seventeenth Street, Suite 3200 Post Office Box 8749 Denver, Colorado 80201-8749 Telephone: (303) 295-8245 Facsimile: (303) 713-6314 E-mail: jbborgel@hollandhart.com Atty.Reg.#: 14009	
STATEMENT OF MONEYTREE INC. IN OPPOSITION TO APPEAL	

INTRODUCTION

This Statement in Opposition to Appeal is filed by Moneytree, Inc. ("Moneytree") in Board of Adjustment case No. V-1-06. Moneytree is asking the Northglenn City Council (the "Council") to either (1) reconsider its decision to grant a review of the decision made by the Northglenn Board of Adjustment (the "BOA") in this case, or (2) affirm the decision of the BOA. The reasons for this request are set forth below. This appeal to the Council was filed by Northglenn's Chief Building Official, Mr. Rick Davis, following the BOA's decision to grant Moneytree's request that it be allowed to construct its store located at 580 East 120th Avenue

with public restroom facilities that are located in a secure portion of the facility that is not open to public access. The rationale for this request is below.

FACTS

The underlying facts in this case are set out in the record of proceedings (the "Record") that was previously given to the Council, and in Moneytree's original Application for Appeal to the BOA that was erroneously omitted from the Record. Briefly, Moneytree has requested that it be allowed to provide restrooms in its store (consistent with the floor plan shown as "Attachment B" to Moneytree's Application for Appeal) in which both restrooms are located within the secure portion of their facility. Mr. Davis has attempted to require that Moneytree provide a separate access to one of the restrooms which can be accessed directly by the public without entering the secured portion of the store.

In the interest of brevity, a copy of that original Application for Appeal is attached in lieu of repeating the basic facts of this matter. As the Record discloses, the BOA carefully considered Moneytree's application for appeal on May 16th, and after an extensive hearing that lasted approximately 2-1/2 hours, the BOA, by a vote of 4-1, approved Moneytree's request. On May 25th, 2006 Mr. Davis filed an appeal of the BOA decision with the Council, asking the Council to overturn the BOA's decision. Moneytree strongly opposes Mr. Davis' request.

ARGUMENT

1. The Council should deny Mr. Davis' application for review.

The appeal filed by Mr. Davis should be dismissed by the Council for a number of reasons. First, the notice of appeal fails to state any grounds for appeal, as required by Northglenn Municipal Code Sec. 11-42-8(b). While Mr. Davis states that he does not believe

that Moneytree's request for a variance "met the intent of the [International Plumbing Code]," at no point in his request does he assert that the BOA either exceeded its jurisdiction or abused its discretion, which are the only two grounds on which the Council has the authority to reverse the BOA decision. Northglenn Municipal Code Sec 11-42-8(g). As a result, the Council should deny Mr. Davis' request for review.

Second, even if the Council should decide to consider Mr. Davis' appeal, the fact that the Building Official disagrees with the decision rendered by the BOA does not justify the granting of an appeal. Although it is clear that the BOA and Mr. Davis have a difference of opinion as to whether Moneytree's request for a modification should have been granted, a mere difference of opinion is not a sufficient grounds for a reversal of the BOA decision. This matter was originally filed by Moneytree as an appeal of Mr. Davis' determination that the restrooms within the Moneytree store required a separate public entrance in order to comply with the requirements of the International Plumbing Code (IPC) published by the International Code Council (ICC). This matter was thoroughly considered by the BOA at the May 16th hearing, and the BOA, in the exercise of its discretion, did not agree with Mr Davis' determination. As set forth in Section 11-42-5(d) of the Northglenn Municipal Code, in such a proceeding, the decision as to whether the requirements of the IPC have been met lie not with Mr. Davis but with the BOA:

"The [BOA] may reverse or affirm wholly or partly, or may modify the order, decision or determination appealed from and shall make such order, requirement decision or determination as in its opinion ought to be made in the premises, and to that end shall have the powers of the agency or officer from whom the appeal was taken [underlining added]."

This language gives the BOA authority to interpret the code in light of the facts that were presented at the hearing, and is a marked contrast to the limited authority that the council has in

this appeal. The fact that Mr. Davis disagrees with the BOA's decision is not a sufficient justification for an appeal.

2. The Record in this appeal contains sufficient evidence to justify the BOA decision that Moneytree's proposed building configuration either met the IPC requirements regarding public restrooms, or that a "modification" was justified pursuant to Section 105.1 of the IPC.

Section 105.1 of the IPC recognizes that that the Building Official (and, in these circumstances, the BOA) have the authority to grant a modification to the code (which is similar to a variance under the BOA's zoning authority) when individual circumstances require.

Section 105.1 of the IPC provides that a modification may be granted when:

" . . . special individual reason makes the strict letter of the code impractical and the modification is in conformity with the intent and purpose of this code and that such modification does not lessen health, life and fire safety requirements."

The Record clearly indicates that Moneytree's operation has unique security concerns. Even Mr. Davis recognizes that this is a legitimate concern in his application for appeal. The Record also contains ample evidence to support the BOA's finding that Moneytree's request for modification is consistent with the intent of the code. For example, Mr. Thomas Meyers, an expert in building code related matters who served as president of the Colorado Chapter of the International Code Council (CCICC) and Chairman of the CCICC Code Development Committee, the body that develops the International Building and Plumbing Codes, testified that at no point does the IPC require direct public access to restrooms within a facility. In fact, Mr. Meyers presented the BOA with a copy of an ICC Plumbing Code Committee decision made in 2002 at which the issue of public access to restrooms was considered during a public hearing where subsequently the proposal to require public access was rejected. The committee report presented by Mr. Meyers stated that it is "up to the tenant whether public toilet facilities are

secured and locked for security purposes." Record, Meyers materials, Page 8 Finally, the Record contains ample support for a finding that approval of Moneytree's request will enhance, rather than lessen the overall health, life and safety of Moneytree's customers and employees due to the security concerns created by a separate public entrance to the restrooms.

3. Mr. Davis' decision to deny Moneytree's request is not justified by the IPC.

Again, the Record contains ample evidence to demonstrate that Mr. Davis' denial of Moneytree's request is not consistent with the IPC. The Record indicates that much of Mr. Davis' interpretation of the IPC is based on the commentary to the IPC, which is not part of the IPC and was not adopted by the Council. The weight and deference that is attributed to the code commentary by Mr. Davis is not justified and is contrary to the ordinance that adopted the IPC. The testimony of the building code expert Mr. Meyers, who has been involved in the development of the IPC language stated that the code commentary is not developed by the committee that approves the code and is not necessarily an expression of the intent of the Code Committee. Record, page 18.

Similarly, Mr. Davis' opposition to Moneytree's request because they failed to provide an "alternative" is misplaced. Moneytree is not proposing an "alternative," which is a separate proceeding that would be followed under a different section of the IPC (Section 105.2). Moneytree is seeking either a "modification" under Section 105.1 of the IPC, or a decision that the proposed configuration as set forth in Exhibit B of Moneytree's Application for Appeal complies with the IPC requirements.

Finally, as amply demonstrated by the Record, numerous other jurisdictions throughout Colorado have previously approved plans for store configurations similar to that set forth in

Exhibit B under the IPC provisions that are under consideration here. This fact was considered and found persuasive by the BOA. We recognize that Mr. Davis is not bound by these decisions, but they do provide significant evidence of how other jurisdictions, and other building officials, are enforcing the Sections of the IPC that are the subject of this appeal.

CONCLUSION

For all of the forgoing reasons, this appeal should be denied and the decision of the BOA should stand.

Dated June 29, 2006

Respectfully submitted,

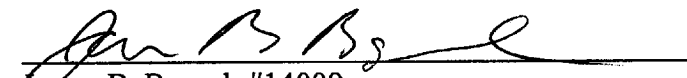

James B. Borgel, #14009
HOLLAND & HART LLP
ATTORNEYS FOR MONEYTREE, INC.

EXHIBIT A

Moneytree, Inc. Application For Appeal

(See Attached)



CITY OF NORTHGLENN
 Department of Community Services
 11701 Community Center Drive
 Northglenn, Colorado 80233
 303-450-8745 or 303-450-8720

Receipt #

37949

NAME: Money Tree/Holland+Hart DATE: 3/10/06

ADDRESS OF JOB: 580 E 120 Ave PERMIT OR CASE NUMBER

DESCRIPTION OF WORK: BOA fees

Building Fees:

Building Permits \$
 Plan Check Fees \$
 Electrical Permits \$
 Sign Permits \$
 Building Use Tax \$
 Other (Reinspection Fee, etc.) \$

Construction Fees:

Right of Way/ Utility Permits \$
 Connection Fee (50%-502) \$
 Connection Fee (50%-510) \$
 Meter Permit \$
 Construction Water Fee \$
 Construction Meter Deposit \$
 Other (Tap Fee, Land Disbursement, etc.) \$
 Inspection/Reinspection Fee \$

Planning/Zoning/Subdivision Fees \$ 250.00

Other:

Maps/Publications \$
 Photocopy Sales \$
 Miscellaneous Fees \$

TOTAL: \$ 250.00

PAYMENT METHOD:

Cash
 Check # 10013118
 Charge: Visa MasterCard By: NM

Application for Approval

Filed March 10,
2006

APPLICATION FOR VARIANCE
NORTHGLENN BOARD OF ADJUSTMENT
11701 Community Center Drive
Northglenn, Colorado 80233

Case Number _____ Amount of Fee _____
Application Date _____ Amount Paid _____
Publication Date _____ Date Paid _____
Posted Date _____ Receipt Number _____
Hearing Date _____

I (we) Moneytree, Inc. of 6720 Fort Dent Way, Suite 230,
Seattle, Washington 98188 (address)
Phone (200) 246-3500

do hereby request permission to appear before the Northglenn Board of Adjustment on the date as shown above concerning the following variance for the following described property:

Known as 580 East 120th Avenue
(street address)

Legal Description: 6B Washington Point Replat Lot 6
(lot) (block) (filling)

Ordinance and Section for which variance is being requested:
Appeal of a decision under Section 109 of the International Plumbing Code
in accordance with Section 11-42-5 of the Northglenn Municipal Code.
(ordinance) (section)

PURPOSE OF VARIANCE

Please state clearly exactly how you would plan to vary from the regulations of the above ordinance and section.

Please see attached.


Please state clearly why you feel this variance is necessary.

Please see attached.

Floor Plan

- [] Two copies of an ~~EXISTING~~ ~~BOUNDARY~~ ~~SURVEY~~ ~~(NOT~~ ~~A~~ ~~PLAN)~~ of the property are hereby attached. (Attachment A)
- [] Two copies of a sketch showing the proposed changes to the property are hereby attached. (Attachment B)

March 10, 2006
Date


Signature

James B. Borgel, Esq.
for
Holland & Hart LLP, Attorneys for Applicant

555 17th Street, Suite 3200
Denver, CO 80202
303-295-8245
303-713-6314 (fax)
jbborgel@hollandhart.com

ATTACHMENT TO MONEYTREE, INC.
APPLICATION

March 9, 2006

Authority for Appeal

The action we are requesting is not technically a "variance," but rather is an appeal of an adverse decision by the City of Northglenn Building Official in accordance with Section 109 of the International Plumbing Code ("IPC"), as amended by Section 10-4-5 of the Northglenn Municipal Code.

In accordance with Section 109 of the IPC, appeals are processed in accordance with Section 11-42-5 of the Northglenn Municipal Code. As set forth therein, the Board of Adjustment has the power to hear such an appeal, and has the authority to take the following actions as a result of such approval:

"The Board may reverse or affirm wholly or partly, or may modify the order, requirement, decision or determination appealed from and shall make such order, requirement, decision or determination as in its opinion ought to have been made in the premises, and to that end shall have the powers of the agency or the officer from whom the appeal was taken."

We are appealing a decision of the Building Official to deny Moneytree's request for a "modification" under Section 105.1 of the International Building Code, which states, in part, as follows:

"Whenever there are practical difficulties involved in carrying out the provisions of this code, the code official shall have the authority to grant modifications for individual cases, provided the code official shall first find that special individual reason makes the strict letter of this code impractical and the modification is in conformity with the intent and purpose of the code and that such modification does not lessen health, life and fire safety requirements."

Our request is that the Board of Adjustment modify the decision of the Building Official, and allow Moneytree to construct its office located at 580 E. 120th Avenue without providing public toilet facilities as would otherwise be required by Section 403.6 of the IPC. The reasons for the request are set forth in more detail below.

Background

Moneytree, Inc. is a retail financial services company, in which a variety of financial services are provided to its customers. Their services include check cashing, payday loans, debit cards, money orders, wire funds transfers, and other consumer-oriented

financial services. They currently operate over 110 locations in 6 western states, have 10 offices in Colorado and plan to open approximately 4 new offices in Colorado over the next year. Moneytree is a leader in the retail financial industry and has been in business since 1983.

Rationale for Request

Moneytree is requesting a variance from the strict application of Section 403.6 of the IPC for a number of reasons. The primary reason is the security of its customers and employees.

Unlike other financial institutions, the majority of customers that enter a Moneytree office depart with cash. This creates a unique security concern that is not faced by other retail establishments or financial institutions. Moneytree has developed an extensive set of security-oriented store designs and procedures to address these concerns, and providing a public toilet facility in their office (which, of course must involve creation of a private space which cannot be continuously monitored by Moneytree employees) lessens the effectiveness of these designs and procedures. As a result, although Moneytree operates retail financial service offices in many jurisdictions, including jurisdictions that have adopted the IPC, their standard office design template does not include a public toilet facility, and only 1 of its 110 offices currently provides a public toilet facility. Specifically, requiring Moneytree to install a public toilet facility in its Northglenn office will create the following security concerns:

1. As a retail financial institution, Moneytree maintains adequate cash in each office to meet its business requirements. To protect these funds, and their customers and employees, the standard Moneytree store design isolates the Moneytree employees and work area from the public space at the front of the store. The employees and work area are separated from the customer area by a solid partition and bulletproof glass, and the security entrance to the work area incorporates a double "mantrap" security door system. To prevent the possibility of a theft involving a hostage situation, Company procedures dictate that Moneytree employees cannot leave the work area and enter the customer lobby unless the lobby is empty and the external doors are locked. Providing a public restroom in the lobby area of the building weakens these security procedures, since Moneytree's employees cannot be certain that the public lobby area has been secured before leaving the work area.

2. Moneytree's basic building template is designed so that the entire lobby area of the store can be viewed from the street. This ensures that the public portion of the building can be seen by passing law enforcement officers, and creates a deterrent effect to any criminal activity. Providing an enclosed public restroom within the building is contrary to this design, in that it creates a "public" area within the building that cannot be viewed from the street. This is a security risk to the Moneytree employees and their customers.

3. In an effort to address the Building Department's requirement that a public restroom be provided at the Northglenn site, Moneytree's architects have developed a plan for the Moneytree office that provides for a public restroom in the building at the back of the store that can only be accessed through an exterior entrance. While this design attempts to meet the letter of the IPC, the provision of such a restroom does not address the myriad security issues that Moneytree is concerned about, and will actually increase certain concerns. For example, a Moneytree employee will be periodically required to leave the secure work area to monitor and maintain the public toilet, and to ensure that the public toilet is empty prior to the close of business. This will expose the employee to potential criminal activity. The externally accessed restroom can also create a potential staging area for after hours break-ins into the Moneytree office. Neither of these risks are justified by the application of the technical IPC requirement requiring the provision of public toilet facilities.

In addition to the security concerns, the nature of Moneytree's business eliminates any public inconvenience that might be associated with approving the amended drawings. Primarily, the average length of a typical Moneytree transaction is only several minutes. The need for public restroom facilities is non-existent or minimal, in light of the practice and security concerns addressed above. Moneytree has also spent a significant amount of time and money at this location and in other jurisdictions in an attempt to reconcile its security concerns and business objectives with the code requirements, and has not been able to do so.

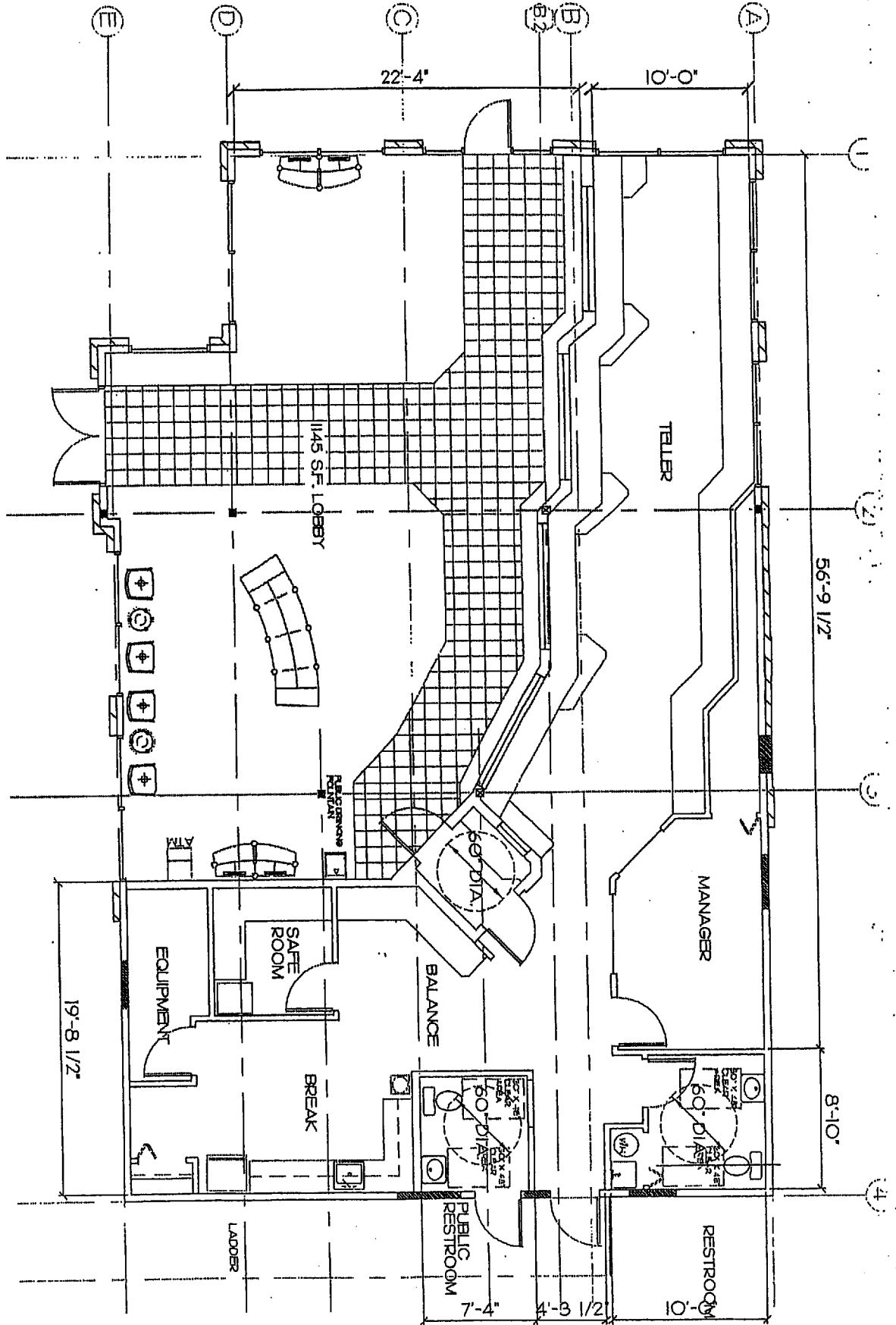
Request for Modification.

For the reasons set forth above, Moneytree respectfully requests that the decision of the Northglenn Building Department requiring Moneytree to provide a public toilet facility in the office that is under construction at 580 East 120th Avenue in Northglenn, Colorado be modified, and that Moneytree be allowed to amend the permit drawings for the 120th Avenue store consistent with the sketch showing the proposed change that is attached to this application. Specifically, we are asking the Board of Adjustment to make a determination that :

- A. In light of the foregoing circumstances, there are practical difficulties with regard to the provision of public toilet facilities at the 120th Avenue Store;
- B. The special security requirements associated with the operation of the Moneytree office at 580 East 120th Avenue makes the strict letter of the code impractical and the modification is in conformity with the intent and purpose of the code; and
- C. Such modification does not lessen health, life and fire safety requirements.

FLOOR PLAN

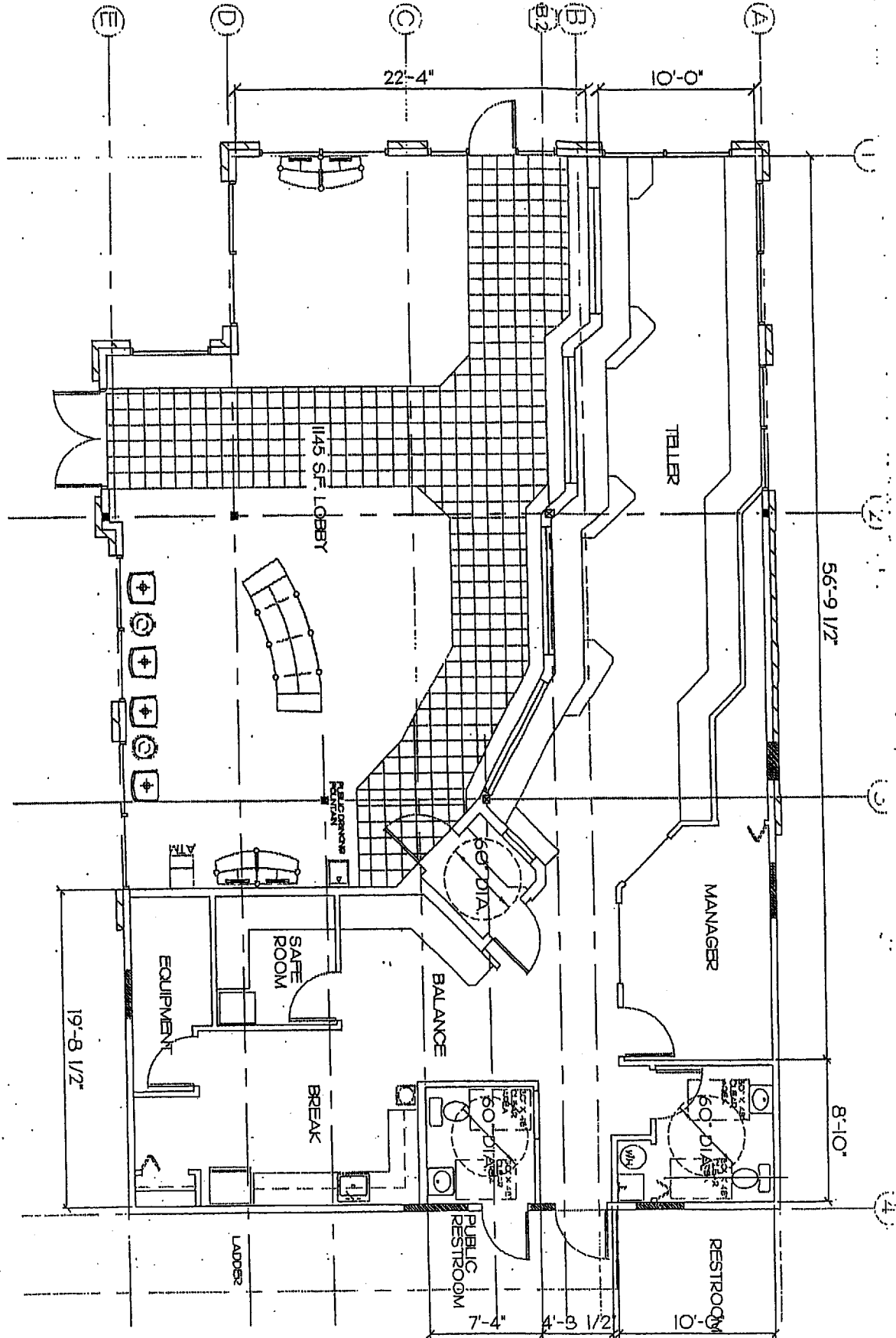
SCALE: 1/8" = 1'-0"



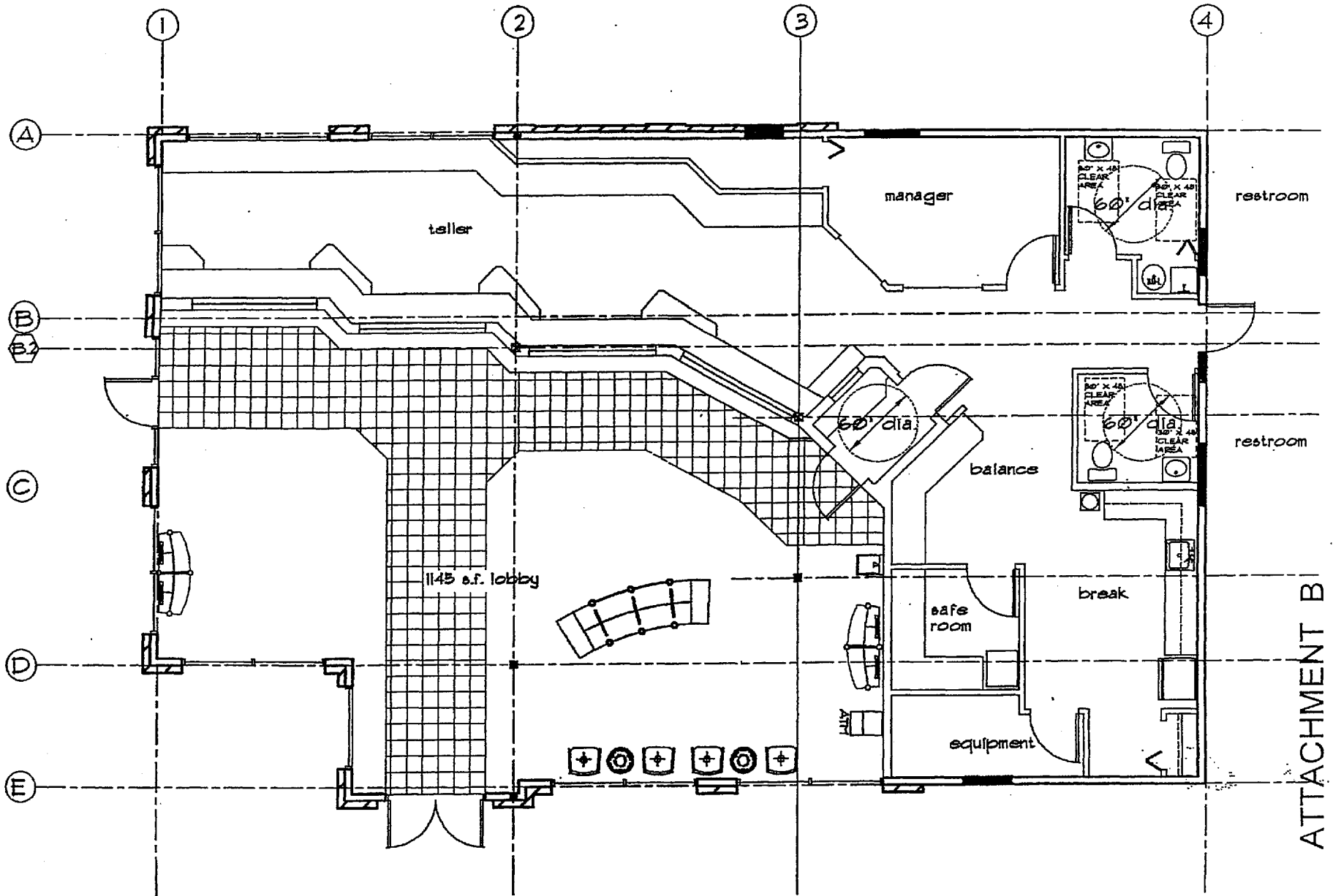
ATTACHMENT A

SCALE: 1/8" = 1'-0"

FLOOR PLAN



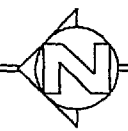
ATTACHMENT A

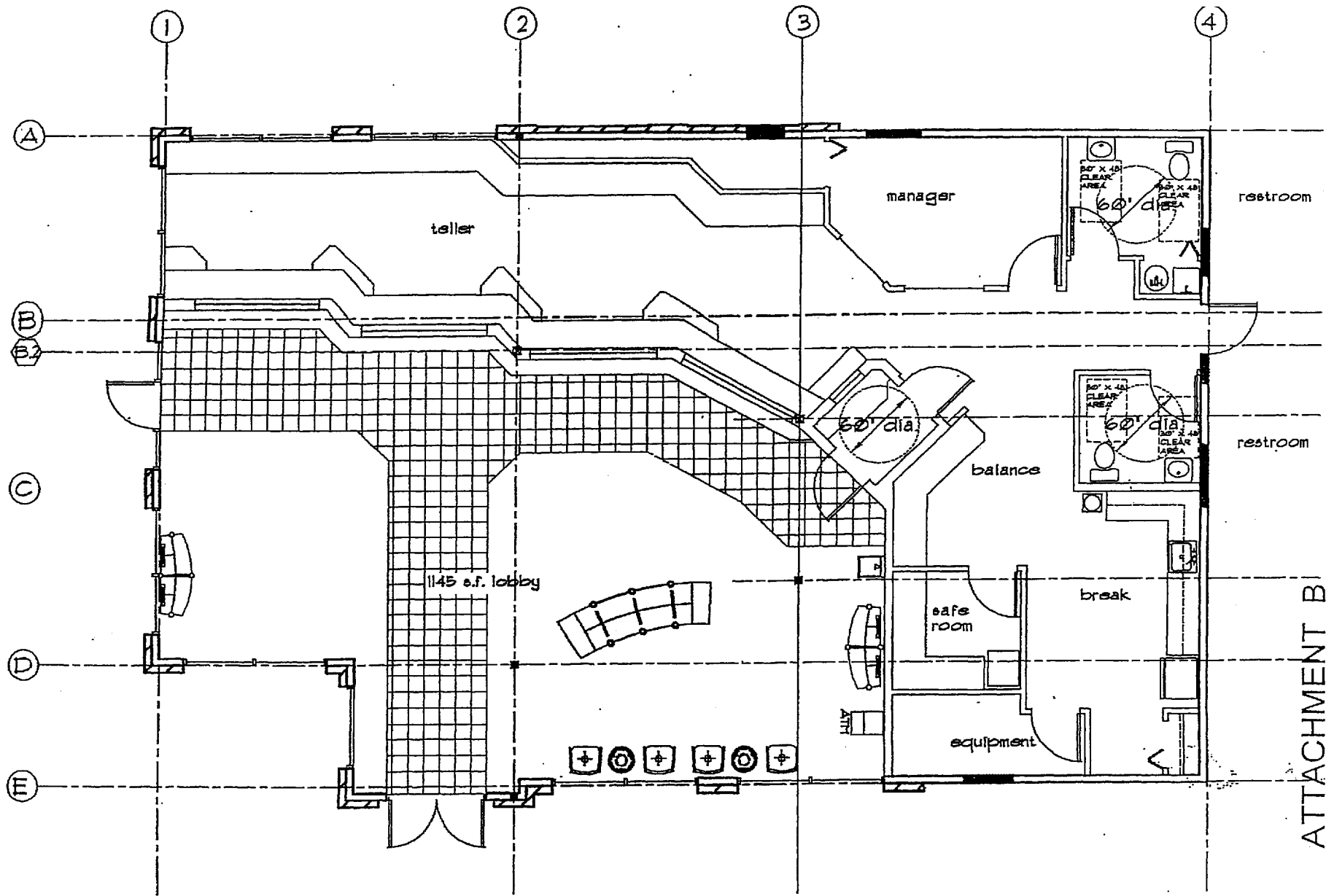


ATTACHMENT B1

floor plan - money tree

scale: 1/8" = 1'-0" (nts)





floor plan - money tree

scale: 1/8" = 1'-0" (nta)

