

CHIQUITA ANIMAL HOSPITAL

Issue: Vertical accessibility to the second floor of a veterinary clinic.

Analysis: The applicant is requesting a waiver from providing vertical accessibility to the second floor of an animal hospital. The project consists of a 2,800 square foot addition to the existing 3,675 square foot first floor. According to the applicant, it is both technically infeasible and disproportionate to the cost of the alteration to install an elevator in the facility. No cost estimates were submitted to substantiate the claim. The application states that the second floor will not be open to the public and that any employees could perform their job functions on the fully accessible first floor.

Project Status.

The project is under construction.

Items to be Waived:

Vertical accessibility to the second floor, as required by Section 553.509, F. S.

553.509 Vertical accessibility. Nothing in Sections 553.501-553.513 or the guidelines shall be construed to relieve the owner of any building, structure or facility governed by those sections from the duty to provide vertical accessibility to all levels above and below the occupiable grade level regardless of whether the guidelines require an elevator to be installed in such building, structure or facility, except for:

- (1) Elevator pits, elevator penthouses, mechanical rooms, piping or equipment catwalks and automobile lubrication and maintenance pits and platforms;
- (2) Unoccupiable spaces, such as rooms, enclosed spaces and storage spaces that are not designed for human occupancy, for public accommodations or for work areas; and
- (3) Occupiable spaces and rooms that are not open to the public and that house no more than five persons, including, but not limited to equipment control rooms and projection booths.

Waiver Criteria: There is no specific guidance for a waiver of this requirement in the code. The Commission's current rule, authorized in Section 553.512, Florida Statutes, provides criteria for granting waivers and allows consideration of unnecessary or extreme hardship to the applicant if the specific requirements were imposed.

opportunity to answer questions and /or give a short presentation **not to exceed 15 minutes**. The Commission will consider all information and the Council's recommendation before voting on the waiver.

This application is available in alternate formats upon request.

**REQUEST FOR WAIVER FROM ACCESSIBILITY REQUIREMENTS
OF CHAPTER 553, PART V, FLORIDA STATUTES**

Your application will be reviewed by the Accessibility Advisory Council and its recommendations will be presented to the Florida Building Commission. You will have the opportunity to answer questions and/or make a short presentation, not to exceed 15 minutes, at each meeting. The Commission will consider all information presented and the Council's recommendation before voting on the waiver request.

1. Name and address of project for which the waiver is requested.

Name: Chiquita Animal Hospital

Address: 3714 Chiquita Boulevard

Cape Coral, FL 33914

2. Name of Applicant. If other than the owner, please indicate relationship of applicant to owner and written authorization by owner in space provided:

Applicant's Name: John Kacoyanis

Applicant's Address: 3323 S.E. 22nd Place, Cape Coral, FL, 33904

Applicant's Telephone: (239)-340-2161 FAX: _____

Applicant's E-mail Address: Kacoyanis@MSN.com

Relationship to Owner:

Owner's Name: John Kacoyanis

Owner's Address: 3323 S.E. 22nd Place, Cape Coral, FL, 33904

quotations or bids from at least two vendors or contractors.

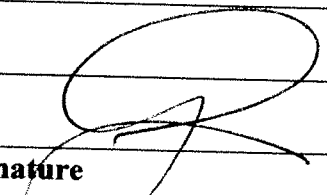
a. A ramp is technically infeasible as a chair lift. It is also unnecessary as the individuals who would utilize the altered second floor are employees. Disabled employees can utilize equal accommodations on the ground floor where these functions are currently taking place.

b.

c.

10. **Licensed Design Professional:** Where a licensed design professional has designed the project, his or her comments **MUST** be included and certified by signature and affixing of his or her professional seal. The comments must include the reason(s) why the waiver is necessary.

See item 10, attached.

Signature  Printed Name GREGORY S. GOETTER

Phone number (239) 481-5900

(SEAL)

Owner's Telephone: (239)-340-2161
FAX _____

Owner's E-mail Address:
Kacoyanis@MSN.com

Signature of Owner:

Contact Person: John
Kacoyanis

Contact Person's Telephone: (239)-340-2161 **E-mail Address:**
Kacoyanis@MSN.com

This application is available in alternate formats upon request.
Form No. 2001-01

3. Please check one of the following:

- New construction.
- Addition to a building or facility.
- Alteration to an existing building or facility.
- Historical preservation (addition).
- Historical preservation (alteration).

4. Type of facility. Please describe the building (square footage, number of floors).
Define the use of the building (i.e., restaurant, office, retail, recreation, hotel/motel, etc.)

Two story building consisting of 6,475 S.F. total area, broken down as follows;

First floor area = 3,675S.F., Second floor area = 2,800 S.F.

The use of this building is a "Veteranarian Hospital".

5. Project Construction Cost (Provide cost for new construction, the addition or the alteration): #3

6. **Project Status:** Please check the phase of construction that best describes your project at the time of this application. Describe status.

Under Design Under Construction*

In Plan Review Completed*

* Briefly explain why the request has now been referred to the Commission.

The local building office would not waive their interpretation of the code regarding vertical accessibility. The owner commissioned the Architect to provide design and construction drawings for the construction of an elevator. The bids for the elevator addition far exceeded the 20% financial feasibility limit by code. The local building office will issue a temporary certificate of occupancy once we submit this waiver request.

NO TCO
WILL BE
USED
JMK
JBO

7. **Requirements requested to be waived.** Please reference the applicable section of Florida law. Only Florida-specific accessibility requirements may be waived.

Issue

1: FBC 2004 Chapter 11, Section 11 - 4.1.6 Accessable Buildings: Alterations.

This edition of the code does not apply to buildings, structures or facilities which were in existence on October 1, 1997, unless: we believe (i), (ii), (iii) do not apply.

Issue

2: Assuming that we do not meet the requirements in (1) above, and we need to comply with Section 11 - 4.1.6 Accessable Buildings: Alterations

Then we believe the following exemptions from providing an elevator apply.

Issue

3: Section 11 - 4.1.6 (1) technically infeasible. It is structurally infeasible to install the elevator on the interior of the building.

Section 11 - 4.1.6 (2) Alterations to an area containing a primary function. The addition of an elevator is disproportionate to the overall alterations in terms of cost and scope.

Alterations shall be deemed disproportionate to the overall alteration when the cost exceeds 20 percent of the cost of the alteration.

8. **Reason(s) for Waiver Request:** The Florida Building Commission may grant waivers of Florida-specific accessibility requirements upon a determination of unnecessary, unreasonable or extreme hardship. Please describe how this project meets the following hardship criteria. Explain all that would apply for consideration of granting the waiver.

The hardship is caused by a condition or set of conditions affecting the owner which does not affect owners in general.

We request that the Florida Building Commission grant us a waiver from the Florida - specific accessibility requirement as interpreted by our local building official and as briefly outlined in item 6 and 7 above. As indicated on our plans and per our request the building is too small to justify the disproportionate cost.

Substantial financial costs will be incurred by the owner if the waiver is denied.

If the waiver is denied the alteration will be unusable and the owner will have to continue conducting his practice in cramped quarters and will have to refuse additional service.

The owner has made a **diligent investigation** into the costs of compliance with the code, but cannot find an efficient mode of compliance. Provide detailed cost estimates and, where appropriate, photographs. Cost estimates must include bids and quotes.

See the attached cost estimate prepared by Stultz, Inc., General Contractor.

9. **Provide documented cost estimates for each portion of the waiver request and identify any additional supporting data which may affect the cost estimates.** For example, for vertical accessibility, the lowest documented cost of an elevator, ramp, lift or other method of providing vertical accessibility should be provided, documented by

10. My interpretation of the Code is that an elevator is not required. In accordance with Section 11 - 1.4.6.1 (K) (I) this code does not require the installation of an elevator in an altered facility that is less than three stories or less than 3,000 square feet per story. We meet both of these requirements. In addition, the code states that unless the Building is a Shopping Center, a Shopping Mall, the Professional Office of a Health Care Provider, or another type of facility as determined by the U.S. Attorney General. We do not fall in any of these categories. We are not the Professional Office of a Health Care Provider which implies Human Health Care and not a Veterinarian Animal Hospital.

In addition, Section 11 - 4.1.3 (5) Exception 1 for "Accessible Buildings - New Construction, states that "If Toilets or Bathing Facilities are provided on a level not served by an elevator, then a Toilet or Bathing Facility must be provided on the accessible ground floor."

Therefore, if an elevator is not required for "Accessible Buildings - New Construction" one would conclude that an elevator would not be required for "Accessible Buildings - Alterations".

Our attempts to provide vertical accessibility via an elevator proved to be both technically and financially infeasible in accordance with Section 11 - 4.1.6.1 (2) (1).

The owner has paid for Architectural and Engineering Services for the preparation of drawings for a new elevator addition to the existing building. He has solicited and received a bid from a Florida Licensed General Contractor. The cost is nearly as much as the cost of the interior remodeling which exceeds the 20% mentioned in Section 11 - 4.1.6. (2).

Adding an elevator to the existing building is not readily achievable. The definition of "readily achievable" in Section 11 - 3, "miscellaneous instructions and definitions" means easily accomplished and able to be carried out without much difficulty or expense.

In accordance with Section 11- 4, accessible elements and spaces: scope of technical requirements, 11 - 4.1 exceptions (a) if providing accessibility in conformance with this section to individuals with certain disabilities (e.g., those who use wheel chairs) would be structurally impracticable, accessibility shall nonetheless be ensured to persons with other types of disabilities (e.g., those who use crutches or who have sight, hearing, or mental impairments) in accordance with this section.

We are able to provide accessibility and equal accommodation to persons in wheelchairs on the ground floor where business is currently being conducted.

Section 11 - 2, General, 11 - 2.2 Equivalent facilitation. Departures from particular technical and scoping requirements of this code by the use of other designs and technologies are permitted where the alternative designs and technologies used will provide substantially equivalent or greater access to and usability of the facility.

Telephone/FAX

Address:

_____.

Form No.: 2001-02, Page 1 of 2

Certification of Licensed Design Professional for Replicated Designs to be Placed on Consent Agenda

Note: This form is to be used only for cases in which design documents are duplicates of previously approved waivers and the project can be placed on a Consent Agenda pursuant to Rule 9B-7.003(3), Florida Administrative Code.

I, _____, a licensed architect/engineer in the state of Florida, whose Florida license number is _____, hereby state as follows:

1. I am the architect/engineer of record for the project known as (name of project)

_____,
_____, for which the Owner seeks a waiver of one or more accessibility requirements in an application to which this Certification is attached.

2. I hereby certify that to the best of my knowledge and belief to the Florida Building Commission that the design documents for the (insert project described in paragraph 1 above) _____ are the same as the design documents previously submitted to the Commission and referenced in paragraph 3 below, except that the two projects are built or to be built on different parcels of land at different locations.

3. The licensed design professional of record (identify the licensed design professional of record), _____, prepared the design documents for the project known as

_____, for which the majority of the Accessibility Advisory Council recommended approval and the Commission granted a waiver of one or more accessibility requirements in Final Order No. _____.

Printed Name: _____ Affix certification seal below:

Address: _____

CERTIFICATION OF APPLICANT:

I hereby swear or affirm that the applicable documents in support of this Request for Waiver are attached for review by the Florida Building Commission and that all statements made in this application are to the best of my knowledge true and correct.

Dated this 31st day of May, 2007


Signature

John G. Kacoyanis
Printed Name

By signing this application, the applicant represents that the information in it is true, accurate and complete. If the applicant misrepresents or omits any material information, the Commission may revoke any order and will notify the building official of the permitting jurisdiction. Providing false information to the Commission is punishable as a misdemeanor under Section 775.083, Florida Statutes.

The application has been reviewed by the Deputy Building Official and to the best of my knowledge find the information in the application is true and accurate EXCEPT for item #6 Projects Status.

Has there been any permitted construction activity on this building during the past three years? If so, what was the cost of construction?

Yes No Cost of Construction

Comments/Recommendations \$10, 256.00 AC/ Change -Out / Dumpster enclosure, LP Tank

Jurisdiction

City of Cape Coral

Building Official or Designee

Signature

Kathleen Croteau DBO

Printed Name

Kathleen Croteau

Certification Number

BU1529

STULTZ INC.

DESIGN BUILDERS / CONSTRUCTION MANAGERS

CGC1504629
12651 McGregor Blvd.
Suite 1-103
Ft. Myers, FL 33919
(239) 690-3033

Proposal

Job #: 7002

Estimator:

Date: 02/07/07

Project: CAH Elevator Addition

FL

Cost Code	Description	Amount
7002 CAH Elevator Addition		
1 General Requirements		
1000.000	General Conditions	
1200.000	Architectural Fees	
	By Owner	
1250.000	Engineering Fees	
	By Owner	
1290.000	Plan Cost	
1300.000	Permits	350.00
	By Owner	
1310.000	Impact Fees	
	By Owner	
1350.000	Tap/Connection Fees	
	By Owner	
1390.000	Testing	1,500.00
1400.000	Superintendent	10,000.00
1490.000	Temp. Labor	1,000.00
1510.000	Temp. Power	
	By Owner	
1511.000	Temp. Water/Sewer	
	By Owner	
1515.000	Telephone	250.00
1520.000	Temp. Sanitary	250.00
1600.000	Safety/OSHA Req.	100.00
1620.000	Temp. Protection	500.00
1700.000	Dumpster/Trash Removal	1,000.00
1790.000	Final Clean	350.00
1910.000	Builder's Risk Insurance	1,750.00
	Division Total:	17,050.00
2 Site Work		
2000.000	Site Work Allowance	7,500.00
	Division Total:	7,500.00
3 Concrete		
3000.000	Concrete	55,600.00
	Includes: Concrete/Masonry through Second Floor Tie Beams. 2" Topping on Second Floor.	

STULTZ INC.

DESIGN BUILDERS / CONSTRUCTION MANAGERS

CGC1504629

Proposal

Job #: 7002

Estimator:

Date: 02/07/07

Cost Code	Description	Amount
3800.000	Pre-Cast	8,610.00
5 Metals	Division Total:	64,210.00
5510.000	Metal Railings	2,500.00
5800.000	Soffit/Fascia	3,500.00
6 Wood & Plastics	Division Total:	6,000.00
6120.000	Wall Framing See Gypsum Board 9250	
6130.000	Roof Framing	8,400.00
6190.000	Truss (Prefab) Includes: Truss Bracing	1,900.00
7 Thermal/Moisture Protection	Division Total:	10,300.00
7200.000	Insulation Foil on exterior block walls and Icynene in trusses. Alternate: Seal/Paint Block Wall - DEDUCT \$450.	1,453.00
7300.000	Roofing	27,950.00
8 Doors & Windows	Division Total:	29,403.00
8100.000	Metal Doors & Frames	5,000.00
9 Finishes	Division Total:	5,000.00
9100.000	Stucco	18,720.00
9250.000	Gypsum Board Alternate: Seal/Paint Block Wall - DEDUCT \$5,200 (Net of cost to seal block wall).	6,000.00
9660.000	Resilient Flooring Allowance for first/second floor and elevator. No floor finish schedule shown.	5,000.00
9900.000	Painting	6,800.00
10 Specialties	Division Total:	36,520.00
10250.000	Awnings	1,500.00
14 Conveying Systems	Division Total:	1,500.00
14000.000	Conveying Systems Includes \$3,500 allowance for GC installation of conduit and electrical to elevator.	45,000.00

STULTZ INC.

DESIGN BUILDERS / CONSTRUCTION MANAGERS

CGC1504629

Proposal

Job #: 7002

Estimator:

Date: 02/07/07

Cost Code	Description	Amount
15 Mechanical		Division Total:
15210.000	Fire/Security Alarms By Owner	45,000.00
15290.000	Fire Extinguishers/Cabinets	100.00
15700.000	HVAC	1,200.00
		Division Total:
16 Electrical		1,300.00
16000.000	Electrical	59,500.00
	Allowance for electrical, relocate existing service (includes some premium time). Alternate: Value Engineer with Electrician.	
		Division Total:
99 Contingencies/Overhead/Fee		59,500.00
999997.000	Contingencies	5,000.00
999998.000	Overhead	20,180.00
	7%	
999999.000	Contract Mgmt Fee	24,678.00
	8%	
		Division Total:
		49,858.00
		Grand Total:
		\$333,141.00

Notes:

Joe Dubek, Architect, Inc.

GREG GOERTLER

Owner/Architect

13611 McGREGOR BLVD., SUITE 2
FORT MYERS, FL 33919
(239) 481-5900 • FAX 481-5903
AA-C000960

September 12, 2006

REVISION
SEP 13 2006
RESUBMIT

Kathy Croteau
City of Cape Coral
P.O. Box 150027
Cape Coral, Fl. 33990

Re: Chiquita Animal Hospital - Interior Remodeling
3714 Chiquita Blvd., South
Cape Coral, Fl. 33914
Applic. No.: 06-00008883

REVIEWED
FOR CODE COMPLIANCE
CAPE CORAL BUILDING DIVISION
BY *[Signature]* DATE 9/15/06

Dear Kathy,

The following is a list of corrective measures which will be performed/executed in order to comply with your Plan Review Report.

ALL CONSTRUCTION SHALL BE IN COMPLIANCE WITH THE FLORIDA BUILDING CODE, ALL STATE AND LOCAL CODES. THE GRANTING OF A PERMIT DOES NOT RELIEVE THE CONTRACTOR OF RESPONSIBILITY TO YOUR PLAN REVIEW ORDINANCES.

BUILDING: KATHY CROTEAU, 573-3184

1. The exterior CMU Wall Infill meets and /or exceeds the 130 MPH Windload Pressure for fully enclosed structures + 34.6 P.S.F. The Contractor shall use "Heckmann No. 187, Masonry Wall Ties, 16 gage x 1 1/4" wide x 5-1/2" long + 1-1/2" bend with a 5/16" hole, mill galvanized. The wall ties shall be anchored with 1/4" tapcons w/minimum 1" embedment into existing C.M.U. wall or concrete the beam as shown on the "Blocked Opening Detail" attached.
2. We agree to provide vertical accessibility to the second floor as quickly as possible. We are currently designing the elevator portion of our proposed Phase II Building Addition. We anticipate this will take approximately three to four weeks. We understand that we may proceed with the initial construction (especially closing the exterior C.M.U. openings and repairing the soffits damaged during the hurricane) and we agree that we must have these plans submitted to the Building Department before they will conduct any inspections. We request that should any inspections be required for the exterior hurricane damage repair they be conducted upon request. Your consideration/cooperation is deeply appreciated.

[Handwritten signatures and initials: "K" and "DBO"]

[Handwritten signature and date: "9/12/06"]

Facsimile

TRANSMITTAL

**CITY OF CAPE CORAL
DEPARTMENT OF COMMUNITY DEVELOPMENT
BUILDING DIVISION**



DATE: 12/05/07

TO: Mary Kathryn Smith

FAX NUMBER: (850-414-8436)

FROM: Kathleen Croteau, (239) 573-3184

FAX NUMBER: (239) 574-0590

RE: Florida Building Commission Accessibility Waiver

**NUMBER OF
PAGES (INCLUDING
COVER SHEET): 2**

Message:

Mary Kathryn Smith

I have attached my review and recommendation.

Please note that I recommended full compliance with vertical accessibility.

I would have preferred to attend this hearing. I did not receive notice from the Florida Building Commission on the hearing date. Please let me know how I can be advised of future hearing dates.

Thank you

Kathleen Croteau

Deputy Building Official

City of Cape Coral

The application has been reviewed by the Deputy Building Official and to the best of my knowledge find the information in the application is true and accurate EXCEPT for item #6 Projects Status.

Has there been any permitted construction activity on this building during the past three years? If so, what was the cost of construction?

Yes No Cost of Construction

Comments/Recommendations \$10,256.00 AC/ Change -Out / Dumpster enclosure, LP Tank

Jurisdiction

City of Cape Coral

Building Official or Designee

Signature

Kathleen Croteau DBO

Printed Name

Kathleen Croteau

Certification Number

BU1529

REVIEW AND RECOMMENDATION BY LOCAL BUILDING DEPARTMENT.

Please state why the issue is being referred to the Florida Building Commission as well as a recommendation for disposition. The Building Official or his or her designee should review the application and indicate that to the best of his or her knowledge, all information stipulated herein is true and accurate. Further, if this project is complete, explain why it is being referred to the Commission. The Building Official or his or her designee should sign a copy of the plans accompanying this application as certification that such plans are the same as those submitted for building department review. Please reference the applicable section of the Accessibility Code.

This alteration to an existing building is being referred to the Florida Building Commission to provide relief to the owner. The owner is seeking relief from the requirement of the FBC 2004 Chapter 11, Section 11-4.1.6. to provide vertical accessibility to the second floor.

This Occupancy change and renovation does not qualify for the exception to existing buildings as noted in 11-4.1.6. The building was built prior to 1997 but item (ii) applies to this existing building. This alteration will affect the usability or accessibility to a degree, which evokes the requirements of Section 303(a) of the ADA 1990.

The level three alteration to this existing building, as reviewed in the attached plans, does not comply with vertical accessibility requirements of FBC 2004 Sec 11-4.1.6 (k) iii. The plans do not indicate vertical accessibility by an elevator, platform lift, ramp or equivalent.

Although a elevator is not required, this does not relieve the owner from providing vertical accessibility to the level above the occupiable grade level by utilizing a platform lift, ramp or equivalent accessible means. It is technically feasible, structurally and financially practical to provide a platform lift.

The Building Officials recommendation is to provide full compliance with vertical accessibility to the second floor examination rooms. The surgery, ultrasound, treatment rooms on the second floor will be utilized by the public. This renovation does not provide financial hardship or structural impracticality to the owner to provide a platform lift.

The Building Official will not issue a temporary certificate of occupancy for alteration permit #06-8883. The final waiver issued by the Florida Building Commission will need to be included with the plans prior to the issuance of a Certificate of Occupancy.



Reply to
Sarah E. Spector
Direct Fax Number 239.344.1549
Direct Dial Number 239.344.1195
E-Mail: sarah.spector@henlaw.com

March 10, 2008

VIA FEDERAL EXPRESS

Peter Kelegian, Esq.
Assistant General Counsel
Department of Community Affairs
2555 Shumard Oaks Boulevard
Tallahassee, Florida 32399-2100
Telephone (850) 922-1693

Re: Chiquita Animal Hospital Accessibility Waiver

Dear Mr. Kelegian:

As follow-up to our telephone conversation on Thursday, January 31, 2008, I am writing to provide you with an update as to my continued efforts to work with Kathy Croteau, the City of Cape Coral Deputy Building Official, with respect to her recommendation on the above-referenced matter. When you and I had spoken in January, Ms. Croteau had asked that the Waiver Application, which had originally been approved in October 2007, be reheard based on the argument that her recommendation had not been included in the original application package. In accordance with this request, the Application was to be reheard at the January 2008 meeting but, due to missed public notice deadlines, the item was again rescheduled to the March 2008 meeting.

I have since had an opportunity to review Ms. Croteau's recommendation and it has come to light that there are several factual misstatements which may unduly influence the Accessibility Advisory Council and the Florida Building Commission when they reconsider the application at next week's meetings. These misstatements are summarized and addressed in the attached Memorandum which further provides an explanation as to why a wavier is appropriate in this instance. In an attempt to correct these misstatements prior to the rehearing of the Application, I contacted Ms. Croteau on February 7 and again on February 26 to ask that she revise the recommendation. At the time, Ms. Croteau seemed amenable to these changes, but I have not been able to reach her to confirm that these changes have been made and forwarded to your attention. Therefore, I am writing to forward you copies of my correspondence with Ms. Croteau.

Henderson, Franklin, Starnes & Holt, P.A.

Memorandum

Date : February 5, 2008
To : Peter Kelegian, Esq., Assistant General Counsel
Florida Department of Community Affairs
From : Sarah E. Spector
Re : Chiquita Animal Hospital Accessibility Waiver

Section 11-4 of the Florida Building Code provides the scope and technical requirements applicable to accessible elements and spaces. Subsection 11-4.1.6(ii) applies specifically to **alterations** and states that the 2004 edition of the code (which is the edition that has been adopted by the City of Cape Coral) does not apply to buildings, structures or facilities **which were in existence on October 1, 1997**, *unless the proposed alteration or renovation of the building, structure or facility will affect usability or accessibility to a degree which invokes the requirements of Section 303(a) of the ADA of 1990*. It is acknowledged that the build out of the second floor of the Chiquita Animal Hospital (the "Hospital") invokes the requirements of the Americans with Disabilities Act in that the second floor cannot be accessed by those with certain disabilities. However, the subsection also provides exceptions by which facilities are exempt from these requirements. Several of these exceptions apply to the Hospital and are outlined on the attached page labeled "Section 11-4, Florida Building Code, Applicable Exceptions."

In the Review and Recommendation by Local Building Department prepared by Ms. Croteau for presentation to the Accessibility Advisory Council ("AAC") and the Florida Building Commission ("FBC"), reference is made to "second floor examination rooms" when, in fact, there are no examination rooms on the second floor. Further, it was incorrectly stated that "[t]he surgery, ultrasound, treatment rooms on the second floor will be utilized by the public." As set forth on the attached building plans, there are rooms for surgery, treatment, and ultrasound¹, together with kennels for the recovery of post-surgery animals. All of these areas are strictly for doctor and staff use and no clients are allowed admittance. There are also offices for the comptroller, manager, and doctors. The doctors' "offices" are a conglomeration of several credenzas, as depicted in the attached photographs labeled "2nd Floor - Doctor's Offices, View #1" and "2nd

¹ The small closet on the second-floor labeled "X-Ray Stor" now serves as the Hospital's server room; it stores the main server as well as the server for the new digital x-ray and is not accessible by the public. The actual x-ray machine is on the first floor and the x-ray films are stored in a small attic above the first-floor kennel.

Peter Kelegian, Esq.

February 5, 2008

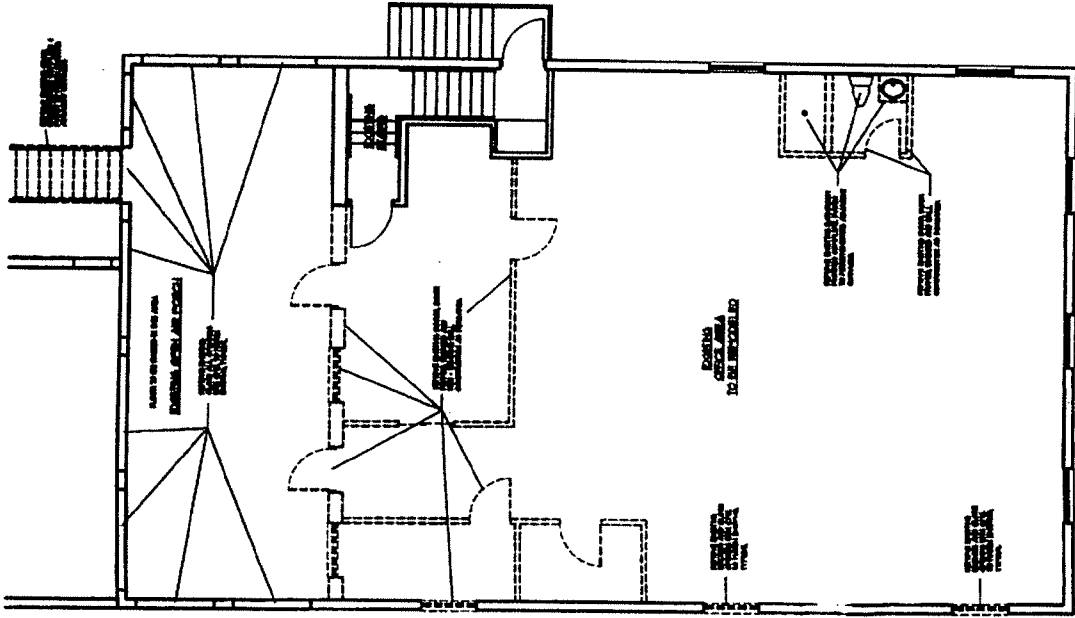
Page 2

Floor - Doctor's Offices, View #2," where the doctors may conduct various office tasks, but are not intended for client (human) consultation. Rather, such consultation is restricted to the patient (animal) rooms on the first floor.

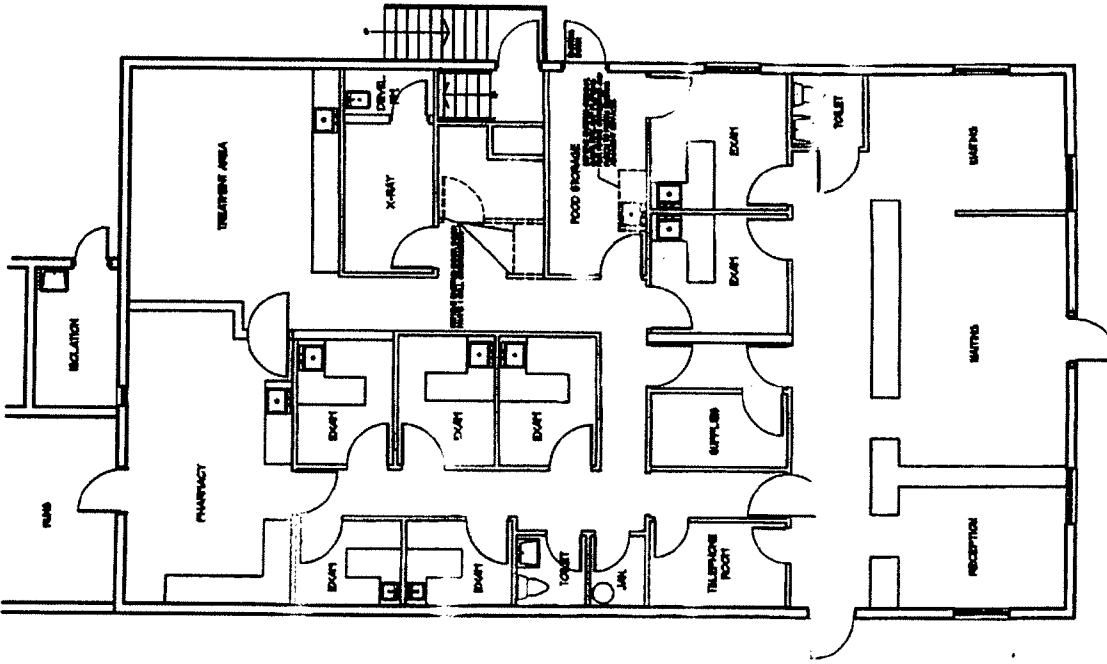
With regard to access available to the doctors and staff, it has clearly been stated in the waiver application made by the Hospital that all facilities located on the second floor are also available on the first floor. The Hospital has been operating on the first floor for an extended period of time and has been able to provide the patients with quality care with those facilities located there. The first floor has been minimally altered during the build out of the second floor and still houses a doctor's office as previously provided (see attached photograph labeled "1st Floor - Doctor's Drop Down Desk") together with surgery bays (see attached photographs labeled "1st Floor - Treatment Area", "1st Floor - Treatment Area, Surgery Bay #1", and "1st Floor - Treatment Area, Surgery Bay #2") and other miscellaneous treatment areas (see attached photographs labeled "1st Floor - Pharmacy, View #1" and "1st Floor - Pharmacy, View #2"). All referenced photographs were taken post-construction and depict the current state of the Hospital.

Taking into account the applicability of the exceptions provided in the Florida Building Code and the fact that the Hospital provides similar accommodations on the first floor as that which is provided on the second floor, the accessibility waiver request submitted by the Hospital is appropriate and should be approved when it is reconsidered by the AAC and the FBC at the March meetings of each.

SECOND FLOOR EXISTING/DEMOLITION PLAN



FIRST FLOOR EXISTING/DEMOLITION PLAN



GREG GOERTLER
 ARCHITECT / ARCHITECT - INC.
 Joe Dubick - Architect - Inc.
 844 FARMERS ROAD
 FORT MYERS, FLORIDA 33908
 PLY (813) 481-9989 FAX (813) 481-9989

CHICULTA ANIMAL HOSPITAL
 374 CHICULTA BLVD.
 CAPE CORRAL, FLORIDA 33904

A-2

Sarah Spector

From: Sarah Spector
Sent: Thursday, January 31, 2008 4:48 PM
To: 'peter.kelegian@dca.state.fl.us'
Cc: 'mary-kathryn.smith@dca.state.fl.us'
Subject: Chiquita Animal Hospital

Mr. Kelegian-

Thank you for taking the time to speak with me today concerning the accessibility waiver for the Chiquita Animal Hospital in Cape Coral, Florida. As was discussed, there are several issues relative to this case which have caused my client a great deal of concern and these issues are of such import that I would like to bring them to your attention in writing. The first of these issues is that they were not notified until January 24, 2008 that their item had been pulled from the January 28 and 29 agenda. The reason cited for this action, as set forth in the e-mail from Ms. Smith attached for your reference, is that the item was not properly noticed (i.e. published in the Florida Law Weekly). Given this "administrative glitch", the item will not be heard by the AAC or the FBC until the March meeting in Tampa. In an effort to avoid any further delays, I respectfully request that you provide me with verification that proper notice has been published in the FLW in a timely fashion prior to the March meeting.

Also in relation to this e-mail, I am a bit dismayed to read in Ms. Smith's e-mail that she and Ms. Croteau had a conversation prior to the item being pulled from the agenda relative to whether or not this action would be "detrimental" to Chiquita Animal Hospital. I am not certain how Ms. Croteau can state that this is not detrimental given the fact that the City will not issue a Certificate of Occupancy until we receive the waiver. Almost 4 months have lapsed since the time the original waiver was approved and today and another month and a half will pass before the item is reconsidered. This is time in which the hospital could be expanding the practice and better serving its clientele. As such, it is important that it is understood that any further delay is in fact detrimental. So as to avoid any further misunderstandings of this kind, I respectfully request that you notify me, as counsel to Chiquita Animal Hospital, in writing of any future changes as they relate to the accessibility waiver. My contact information can be found at the bottom of this e-mail.

In speaking to the application package itself, there is no requirement that the Building Official's Recommendation be included in what is presented to DCA and, furthermore, we continue to assert that the Recommendation was in fact included in the package. However, I understand that the FBC has made a motion to reconsider the item and, as such, it must go before the Council again. Given the fact that the AAC and the FBC will now be reviewing the Recommendation, presumably with scrutiny, we find it necessary that we correct several misstatements as to the use of the second floor. Therefore, as you have agreed to, we will be submitting an affidavit which addresses these misstatements.

Finally, I am going to make every attempt to have Ms. Croteau amend her Recommendation so that the Recommendation does in fact correctly classify the uses of the second floor and acknowledges that it will not be used by the public. If Ms. Croteau is willing to do this prior to the hearing, my question to you is whether the AAC and FBC must consider this item or whether it can be considered a perfunctory item with approval guaranteed given the only item being reconsidered is the Recommendation of denial?

Again, I greatly appreciate your assistance with this matter and I look forward to receiving a copy of the application package as submitted. Should you have any questions regarding this communication or the included requests, please do not hesitate to contact me directly.

Thank you.

Windows Live Hotmail Print Message

Page 1 of 1

Windows Live™

Waiver Application

From: **Mary-Kathryn.Smith@dca.state.fl.us**
Sent: Thu 1/24/08 1:31 PM
To: Kacoyanis@MSN.com

Please call me as soon as possible regarding this issue. I know you have been in touch with our attorney, Peter Kelegian, who will not be back in the office until next Wednesday due to a death in his family. The present bottom line is that because of an administrative glitch, the Commission cannot take action at this time. We are required by law to provide public notice in the Florida Administrative Weekly before anything may be considered. There was a degree of uncertainty how to handle this and the rehearing was not noticed. I have spoken with Kathy Croteau who does not feel postponing this will be detrimental to your project, as the Commission review is basically fact finding to ensure all appropriate information is available and considered before final action. In some ways, this may be beneficial to you, since the next Commission meeting will be in Tampa on March 17th, resulting in less expense and travel time for you. I can be reached at (850) 4410-2598. We apologize for the oversight and if I can be of further assistance, please call or e-mail me at any time and I will respond immediately.

Mary Kathryn

23



Reply to
Sarah E. Spector
Direct Fax Number 239.344.1549
Direct Dial Number 239.344.1195
E-Mail: sarah.spector@henlaw.com

February 7, 2008

VIA US MAIL

Kathleen Croteau
Deputy Building Official
Department of Community Development
City of Cape Coral
1015 Cultural Park Boulevard
Cape Coral, Florida 33915

Re: Chiquita Animal Hospital Accessibility Waiver

Dear Ms. Croteau:

It was a pleasure to speak with you this afternoon regarding the above-referenced matter. I have enclosed a copy of the memorandum we discussed. Based on our conversation, it seems that you are willing to address the issues raised in a revised Review and Recommendation by Local Building Department that you will submit directly to Mary-Kathryn Smith with the Florida Building Commission. As discussed, I would greatly appreciate it if you could amend the Recommendation currently on file with the Commission to reflect the following changes to the second to last paragraph:

The Building Officials recommendation is to provide full compliance with vertical accessibility to the second floor ~~examination~~ treatment rooms. The surgery, ultrasound, and treatment rooms on the second floor will not be utilized by accessible to the public and will only be utilized by the doctors and staff.

These changes serve to (1) recognize that there are no examination rooms on the second floor and (2) in accordance with the affidavit prepared by Dr. Kacoyanis, which is on file with the Florida Building Commission, only doctors and staff are permitted access to the second floor.

In addition to these changes, I would like to reiterate that the statements made in Dr. Kacoyanis's affidavit are accurate in that no more than five (5) individuals will be on the second floor at any one time. I understand that you are taking the position that the

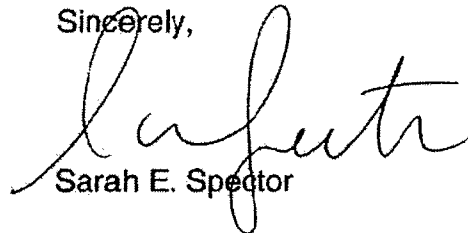
Henderson, Franklin, Starnes & Holt, P.A.

second floor has a maximum occupancy of thirty (30) persons and that, as such, 30 people could feasibly and legally occupy the second floor at one time. Despite the feasibility and legality of the maximum load, the truth of the matter is that no more than five people will occupy the space simultaneously. Therefore, the maximum occupancy should not be used to support a recommendation of denial of the accessibility waiver.

I understand that you will not have an opportunity to address this request until next week. Please note that the subject accessibility waiver application will be reconsidered at the March Accessibility Advisory Council meeting and the Florida Building Commission meeting which will take place between March 17 and 19, 2008. As such, I would greatly appreciate it if you could provide Ms. Smith with the revised Recommendation by the end of February so that it may be included in the information to be considered by the Council and Commission members. I also respectfully request that you forward a copy of the revised Recommendation at the same time.

Should you have any questions regarding these requests, please do not hesitate to contact me directly. Thank you in advance for your assistance with this matter.

Sincerely,



Sarah E. Spector

SES/

Enclosure

cc: Dr. & Mrs. Kacoyanis

Sarah Spector

From: Sarah Spector
Sent: Thursday, February 07, 2008 11:07 AM
To: 'kcroteau@capecoral.net'
Subject: Chiquita Animal Hospital

Ms. Croteau-

In light of the fact that we have not yet been able to connect via telephone, I wanted to forward the memo I would like to discuss with you so that you may have a chance to review it prior to our telephone conversation. I understand you are in meetings this morning, but will be available this afternoon. I will be in a meeting from 12-1 and tentatively from 3-4. I will be available between 1 and 3 and after 4 and look forward to the opportunity to speak with you.

As you are aware, Chiquita Animal Hospital, through veterinarian Dr. John Kacoyanis, has submitted an accessibility waiver application with the Florida Building Commission. This waiver was originally approved in October 2007, but will be reconsidered in March 2008 in light of the fact that your recommendation was not included with the materials presented to the FBC (despite the fact that the same was included in the application package originally submitted). The Hospital has retained my services to address the waiver application issue and more particularly determine whether you would be willing to revise your recommendation to correct certain understandable, yet incorrect, statements. Those misstatements are outlined in the attached memo which I have prepared to send to Peter Kelegian, assistant general counsel to the Florida Department of Community Affairs. I have not yet sent this memo to Mr. Kelegian because I am hoping that you and I can reach an agreement which negates the need for this memo.

As such, I ask that you please contact me via telephone following your review of the attached so that we may discuss possible alternatives. Your assistance with this matter is greatly appreciated. I look forward to hearing from you at your earliest convenience.

Thank you.

Sarah Spector

From: Sarah Spector
Sent: Tuesday, February 26, 2008 2:04 PM
To: 'kcroteau@capecoral.net'
Subject: Chiquita Animal Hospital
Importance: High

Tracking:

Recipient	Read
'kcroteau@capecoral.net'	
'kacoyanis@msn.com'	
Melissa Sharnsky	Read: 2/26/2008 2:44 PM

Ms. Croteau-

As follow-up to my voicemail message this afternoon, I am writing to inquire as to whether you have had an opportunity to review the request submitted in writing in a letter addressed to your attention and dated February 7, 2008. This letter, a copy of which is attached for your review, summarized the telephone conversation we had that day during which you agreed to revise your recommendation to the Florida Building Commission regarding the accessibility waiver Chiquita Animal Hospital has applied for. The changes were merely to correct certain factual statements relative to the types of rooms on the second floor and those who will have access to those rooms.

As previously mentioned, this request will again be before the Florida Building Commission during its March meeting (which is currently scheduled for March 17-19). It would be greatly appreciated if the revised recommendation could be made available at your earliest convenience so that the FBC staff has an opportunity to distribute the recommendation with the meeting materials. I respectfully request that you provide me with a copy of the revised recommendation so that I may have a copy for my file as well. Should you have any questions regarding this request, please do not hesitate to contact me directly. Thank you in advance for your assistance with this matter.

Sincerely,

AFFIDAVIT

**STATE OF FLORIDA
COUNTY OF LEE**

BEFORE ME, the undersigned notary public, on this 12 day of March, 2008, personally appeared Dr. John G. Kacoyanis who is personally known to me and who, after first being duly sworn, deposes and says that:

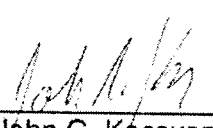
1. He is the primary veterinarian associated with the Chiquita Animal Hospital (the "Hospital") located at 3714 Chiquita Boulevard South, Cape Coral, Lee County, Florida 33914 further identified by STRAP Number 04-45-23-C3-04726.0380.

2. He has submitted a Request for Waiver From Accessibility Requirements of Chapter 553, Part V, Florida Statutes, to the Florida Building Commission with respect to vertical accessibility requirements for the build out of the second floor of the Hospital. The build out consists of a 2,800 square foot addition to the existing 3,675 square foot first floor of an existing off building.

3. As required by Subsection 11-4.1.6(1)(k)(iii)(3) of the Florida Building Code, the second floor of the Hospital is not and will not be open to the public.

4. As required by Subsection 11-4.1.6(1)(k)(iii)(3) of the Florida Building Code, the second floor of the Hospital will house no more than five persons at any one time.

FURTHER AFFIANT SAYETH NAUGHT.



Dr. John G. Kacoyanis

The foregoing instrument was sworn to and subscribed before me this 12th day of March, 2008, by Dr. John G. Kacoyanis. He is personally known to me or he produced _____ as identification.

My Commission Expires:

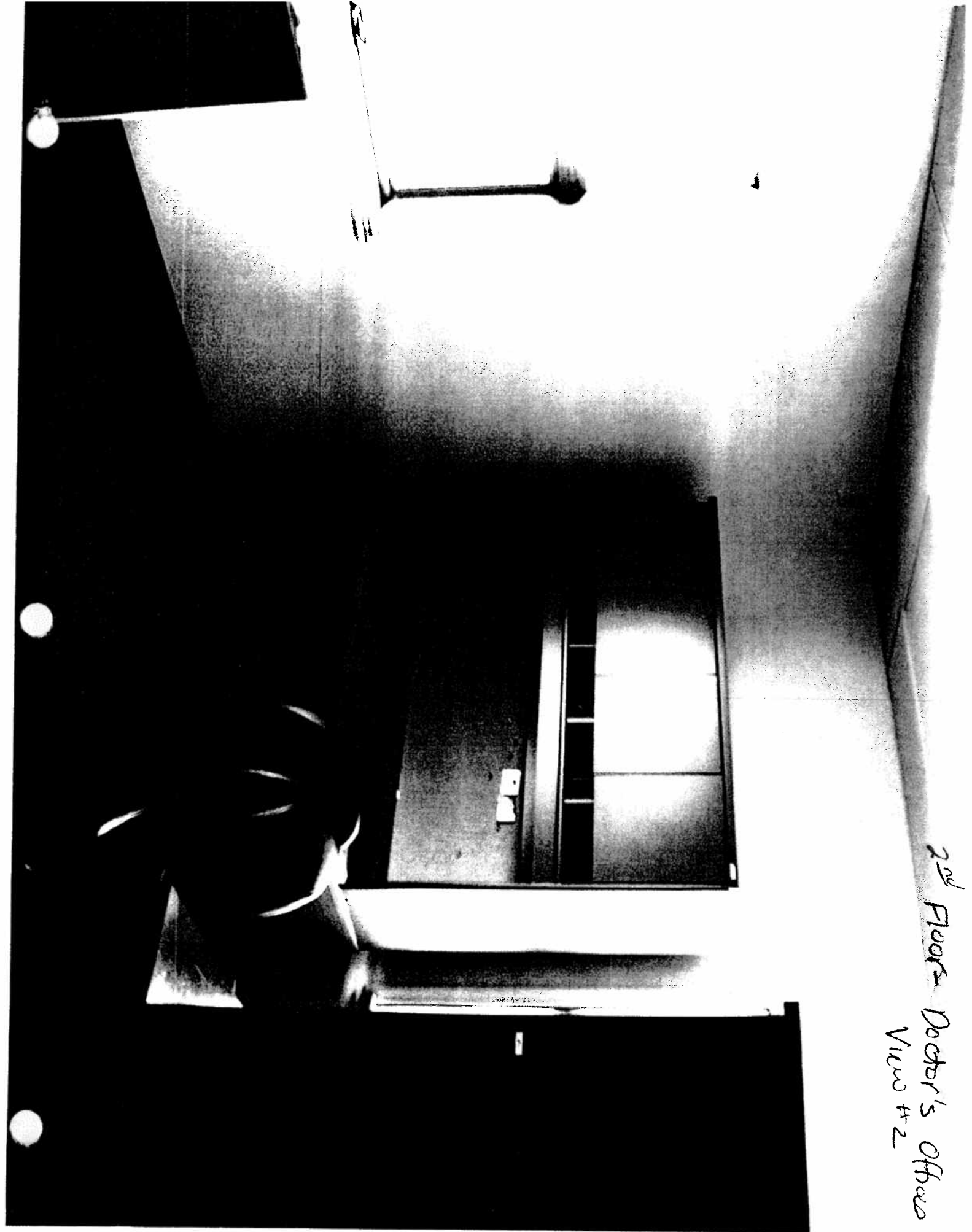


Notary Public



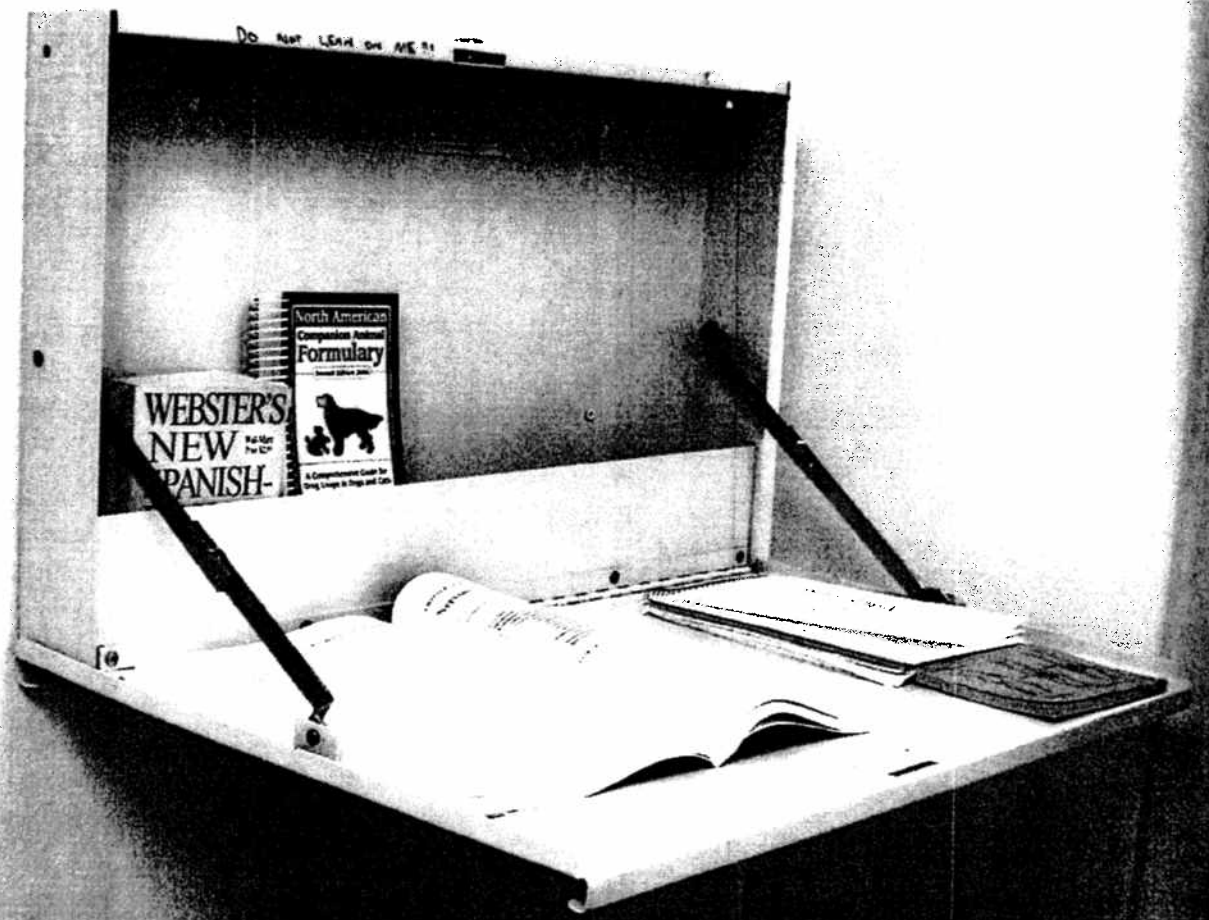


2nd Floor - Doctor's Offices
View #1

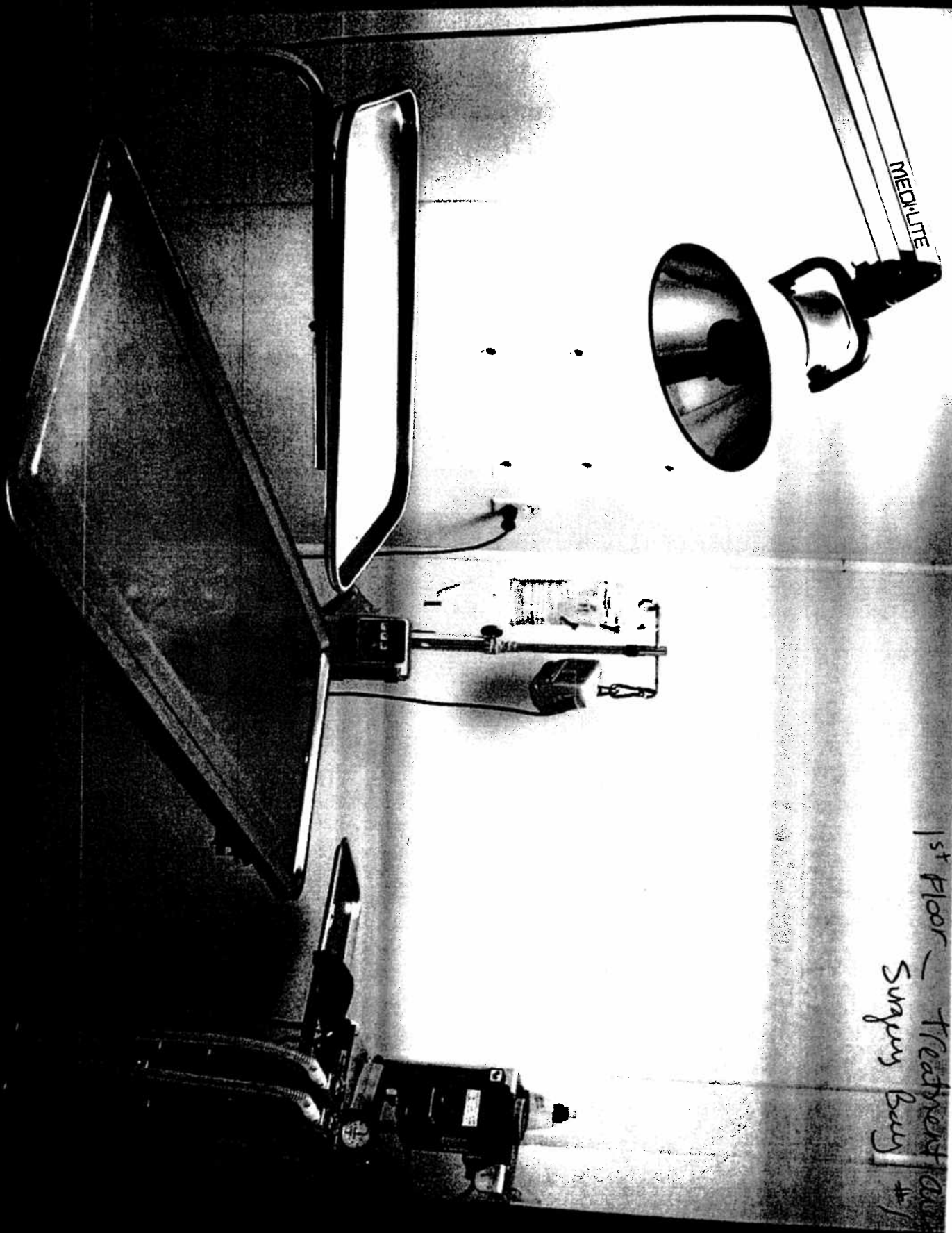


2nd Floor - Doctor's Office
View #2

1st Floor - Doctor's
Drop Down Desk
(This is all each doctor
had prior to the
creation of 2nd Floor
Doctor's offices

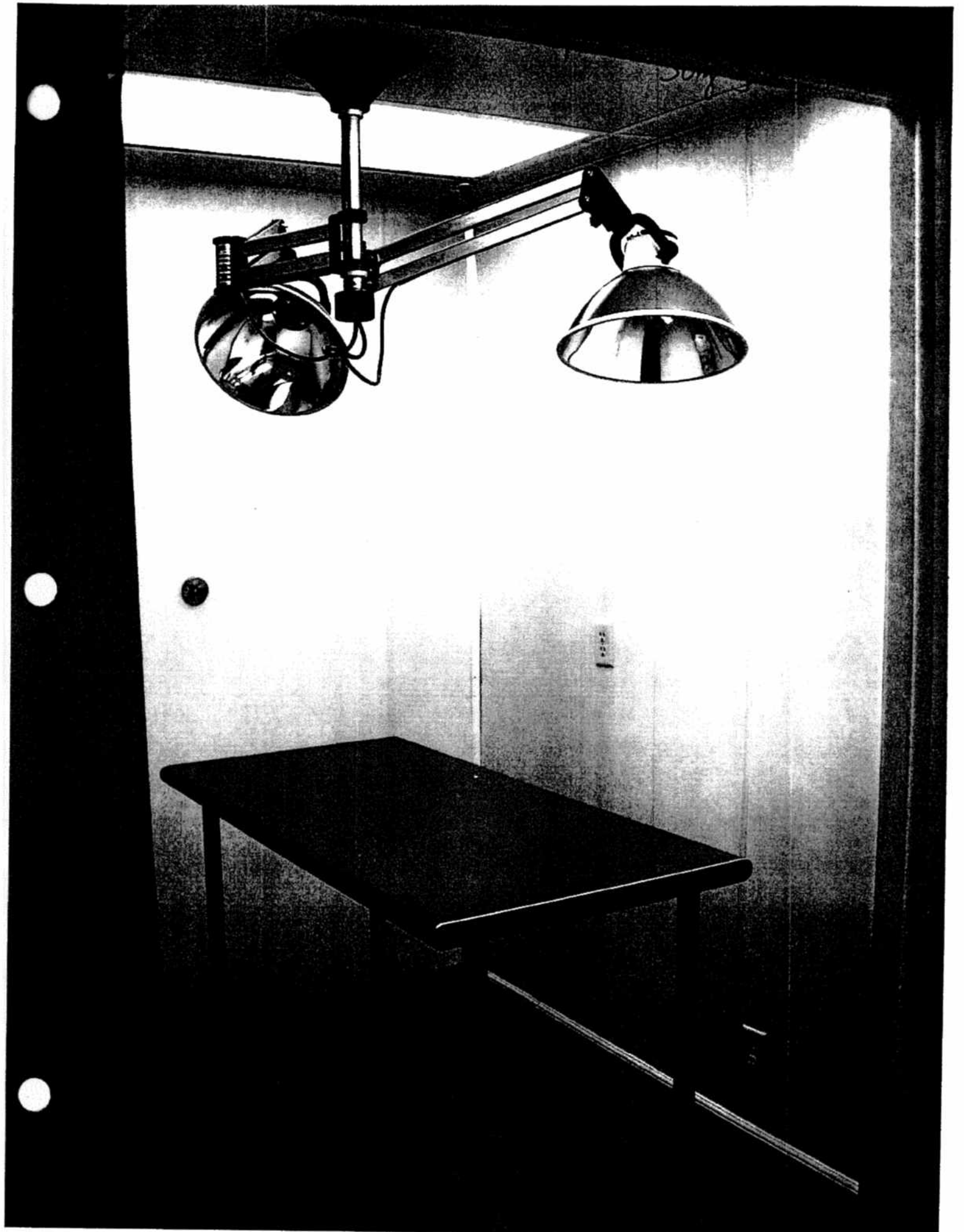






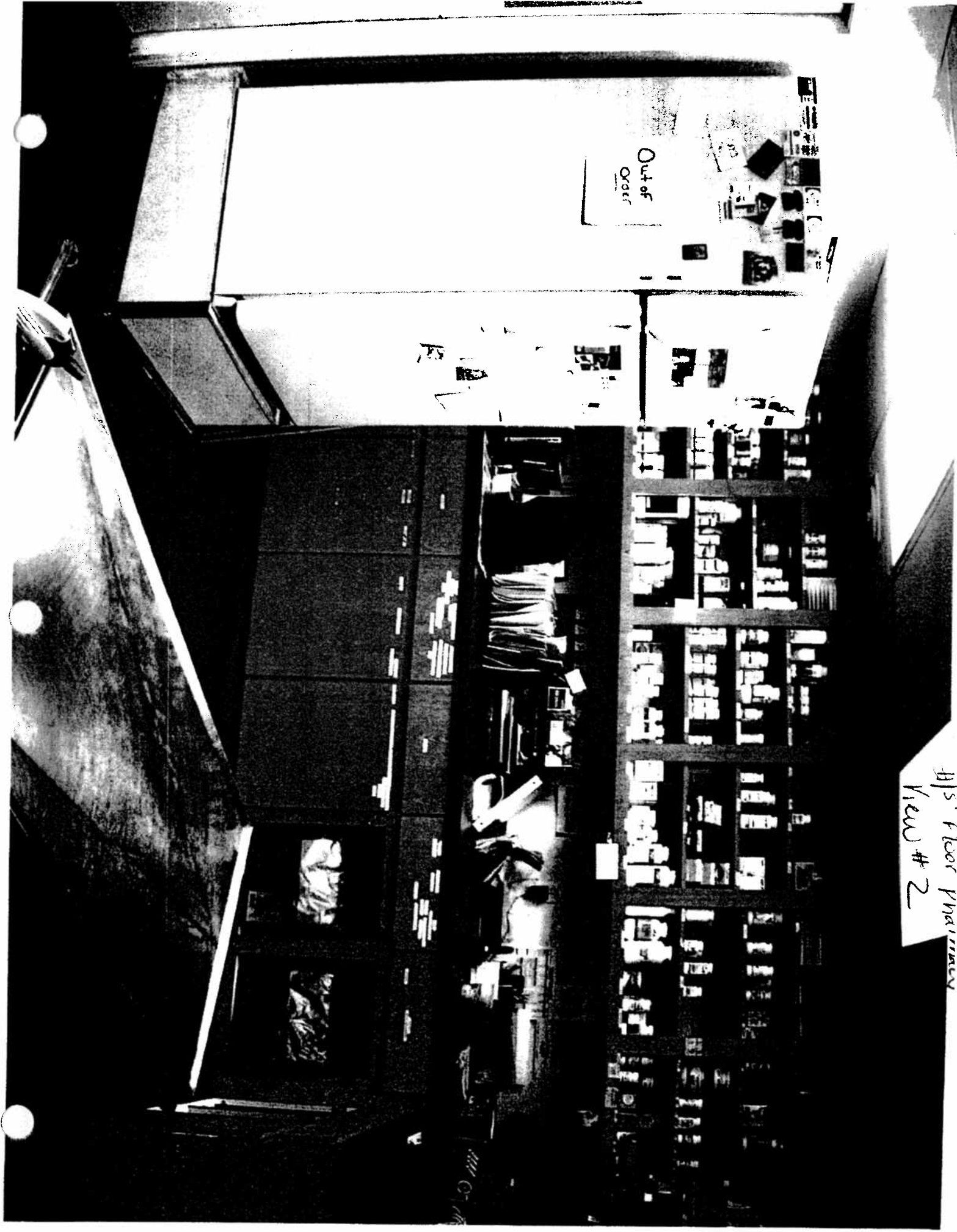
MEDILITE

1st Floor - Treatment Room
Surgery Bay #1





1st Floor Pharmacy
View #1



Ph's floor Pharmacy
View # 2

SECTION 11-4, FLORIDA BUILDING CODE, APPLICABLE EXCEPTIONS

Florida Building Code Reference	Provision	Applicability
(1) 11-4.1.6(1)(j)	In alteration work, if compliance with Section 11-4.1.6 is technically infeasible ² , the alteration shall provide accessibility to the maximum extent feasible.	The addition of an elevator or a platform lift is technically infeasible in that it would necessitate the addition of an exterior building to house the elevator or platform lift as there is no room for the elevator or platform lift within the Hospital itself. This would require the alteration of an exterior wall, a load-bearing wall which is an essential part of the structural frame.
(2) 11-4.1.6(1)(k)(i)	This code does not require the installation of an elevator in an altered facility that is less than three stories or has less than 3,000 square feet (279 m ²) per story unless the building is a shopping center, a shopping mall, the professional office of a health care provider, or another type of facility as determined by the U. S. Attorney General.	The Hospital is less than three stories and is not one of the listed uses which requires the installation of an elevator.
(3) 11-4.1.6(1)(k)(iii)(3)	Nothing in this section shall be construed to relieve the owner of any building, structure or facility from the duty to provide vertical accessibility to all levels above and below occupiable grade level, regardless of whether the code requires an elevator to be installed in such building, structure, or facility, except for . . . occupiable spaces and rooms that are not open to the public and that house no more than five persons including, but not limited to, equipment control rooms and projection booths.	Dr. Kacoyanis has prepared an affidavit which states that no more than five persons will occupy the second floor at any one time. This affidavit has been filed with the Florida Department of Community Affairs at the request of the AAC. Furthermore, this memorandum clarifies any confusion as to whether the public has access to the second floor. Dr. Kacoyanis is willing to submit an affidavit to this effect as well.

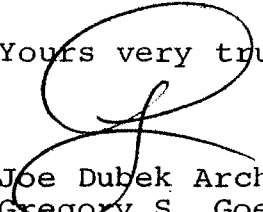
² "Technically infeasible" is defined as follows:

With respect to an alteration of a building or a facility, it has little likelihood of being accomplished because existing structural conditions would require removing or altering a load-bearing member which is an essential part of the structural frame; or because other existing physical or site constraints prohibit modification or addition of elements, spaces, or features which are in full and strict compliance with the minimum requirements for new construction and which are necessary to provide accessibility.

PAGE 2

- This document is a part of the original Contract Documents for the captioned project.
- If you have any questions, please contact me.

Yours very truly,


Joe Dubek Architect, Inc.
Gregory S. Goertler
Owner/Architect
Reg. No. 0009382

REVISION
SEP 13 2009
RESUBMIT


9/12-06



"John Kacoyanis"
<Kacoyanis@chiquitavet.com
>

05/01/2008 08:26 AM

To Mary-Kathryn.Smith@dca.state.fl.us

cc

bcc

Subject Re: Chiquita Animal Hospital - Vertical Accessibility

History:

This message has been forwarded.

Good Morning Mrs. Smith:

Lets continue until June meeting in Orlando. I will keep you informed of progress with the lift and keep Mrs. Croteau in the loop. I am hoping I Can provide you with news of a reasonable bid and get the lift installed in short order.

Thank you- John

John Kacoyanis, DVM
Chiquita Animal Hospital
3714 Chiquita Blvd.
Cape Coral, Florida 33914

tel: 239 945 2279

web: www.ChiquitaVet.com

Mary-Kathryn.Smith@dca.state.fl.us writes:

- > Do you want us to continue the review until the June meeting in Orlando or
- > go ahead and review it? If you decide to proceed to install the lift,
- > please just send me a note (email is fine) asking that the application be
- > withdrawn since you are planning to comply. MK
- >
- >
- > The Department of Community Affairs is committed to maintaining the
- > highest levels of service and values your feedback. Please take a few
- > moments to complete our Customer Service Survey by visiting
- > <http://www.dca.state.fl.us/CustomerServiceSurvey/>. Thank you in advance
- > for letting us know what you think.
- >
- > The Florida Discount Drug Card is designed to lower the cost of
- > prescriptions for certain Florida residents. To learn more, visit
- > <http://www.FloridaDiscountDrugCard.com> or call toll-free 1-966-341-8894 or
- > TTY 1-866-763-9630.
- >
- > Florida has a broad public records law and all correspondence, including
- > email addresses, may be subject to disclosure.



"John Kacoyanis"
<Kacoyanis@chiquitavet.com


>
04/30/2008 09:47 AM

To Mary-Kathryn.Smith@dca.state.fl.us,
peter.kelegian@dca.state.fl.us

cc

bcc

Subject Chiquita Animal Hospital - Vertical Accessibility

History:  This message has been replied to.

Good morning Mrs. Smith:

Want to keep you in the loop. I tried to contact you by phone but was not able to reach you, so I opted for the email communication!

I have contacted two builders and have received a verbal quote on lift installation of ~\$50,000 from one builder which is doable for me. However, I do not have written quotes, still pending architect, lift companies, etc.

Additionally, I have contacted Ms.Croteau (her # 239-573-3184) and informed her that if the final quote is in that ball park we will proceed with the lift. However, ball parks do change and I have had that happen to me in the past.

I will not be able to attend the meeting on Monday(MAY 5, 2008), because I do not have any concrete numbers.

John Kacoyanis, DVM
Chiquita Animal Hospital
3714 Chiquita Blvd.
Cape Coral, Florida 33914

tel: 239 945 2279
web: www.ChiquitaVet.com