

RICHLAND COUNTY
BOARD OF
ZONING APPEALS



Wednesday, 3 June 2009
1:00 p.m.
Council Chambers



**Richland County
Board of Zoning Appeals
Wednesday, 3 June 2009
2020 Hampton Street
2nd Floor, Council Chambers**

Agenda

- | | | |
|-------------|--|--|
| I. | CALL TO ORDER & RECOGNITION OF QUORUM | Torrey Rush,
Vice-Chairman |
| II. | RULES OF ORDER | Amelia Linder,
Attorney |
| III. | APPROVAL OF MINUTES – May 2009 | |
| IV. | PUBLIC HEARING | Geonard Price,
Zoning Administrator |

OPEN PUBLIC HEARING

**09-04 V
Genesis Consulting Group
110 Clemson Rd. Ext.
Columbia, SC 29229
25608-01-40**

Requests a variance to reduce the required driveway separation on property zoned GC. (General Commercial)

V. OTHER BUSINESS

VI. ADJOURNMENT

CASE 09-04 V GENESIS CONSULTING GROUP

TMS 25608-01-40





3 June 2009
Board of Zoning Appeals

REQUEST, ANALYSIS AND RECOMMENDATION

09-04 Variance

REQUEST

The applicant is requesting the Board of Zoning Appeals to grant a variance to reduce the minimum driveway separation in a GC (General Commercial) district.

GENERAL INFORMATION

Applicant

Kevin Krick

Tax Map Number

25608-01-04

Location

110 Clemson Road

Parcel Size

1.42 acre tract

Existing Land Use

Undeveloped

Existing Status of the Property

The subject property is undeveloped.

Proposed Status of the Property

The applicant proposes to reduce the minimum driveway separation of 250 feet.

Character of the Area

The surrounding area is dedicated to commercial uses.

ZONING ORDINANCE CITATION

Section 26-33 (a) (2) of the Land Development Code empowers the Board of Zoning Appeals to authorize upon appeal in specific cases such variance from the terms of this chapter as will not be contrary to the public interest where, owing to special conditions, a literal enforcement of the provisions of this chapter would result in an unnecessary hardship. Such appeals shall be made in accordance with the procedures and standards set forth in Sec. 26-57 of this chapter.

CRITERIA FOR VARIANCE

Standard of review. The board of zoning appeals shall not grant a variance unless and until it makes the following findings:

- a. That there are extraordinary and exceptional conditions pertaining to the particular piece of property; and

- b. That these conditions do not generally apply to other property in the vicinity; and

- c. That because of these conditions, the application of this chapter to the particular piece of property would effectively prohibit or unreasonably restrict the utilization of the property; and
- d. That the authorization of a variance will not be of substantial detriment to adjacent property or to the public good, and the granting of the variance will not harm the character of the district.

DISCUSSION

Staff visited the site.

The staff discussion has been prepared by Carl Gosline, Richland County Transportation Planner.

The applicant requested a variance from Section 26-175 (2) (b) of the County Code regarding the number of driveway access points permitted for a proposed new Firestone facility. The proposed site has 205 feet of frontage on Clemson Rd with existing Clemson Rd access via the extension of Sparkleberry Road along the north side of the site.

The applicant has proposed a new Right-In, Right-Out (RIRO) driveway located 150 feet from the Clemson Rd/Sparkleberry Rd intersection. This intersection is signalized. There is no median opposite the proposed RIRO to prohibit left turns into the site from Clemson Rd.

The principal issue in this variance request is whether approval of the variance will result in proper access management to protect both vehicular and pedestrian safety. It is a well documented fact the number of accidents increase with the number of intersections (includes both street and private property driveways) in a given roadway segment. "...Various studies point to one consistent finding...the greater the frequency of driveways and streets, the greater the number of accidents..." (ITE, Traffic Engineering Handbook, 5th Edition, pg. 326)

Section 26-175 of the County Code was enacted to "...ensure that access to development...does not impair the public safety..." It based, in part, on the SCDOT Access And Roadside Management Standards (ARMS) document, the revised version of which was published in August 2008. The provisions of this document cited below are among those that are applicable to this variance request:

"...Reasonable access means that a property owner must have access to the public highway system, rather than being guaranteed that potential patrons should have convenient access from a specific roadway to the owner's property..." (pg. 5)

"...Since the primary purpose of highways is to provide for the safe and efficient movement of traffic, control of access points on the roadside is paramount..." (pg. 6)

"...The Department shall not issue a permit for encroachment that meets local standards, but violates the provisions of the ARMS. Similarly, the Department's (SCDOT) issuing of an encroachment permit does not relieve the applicant of the need to comply with local requirements, even if more restrictive..." (pg. 14)

Response to Applicant's Variance Arguments

a. Special conditions and circumstances exist

The applicant asserts that there is a Code conflict between Table 26-VII-4 and Table 26-VII-5 regarding the number of driveways and the driveway separation requirements. The applicant further asserts that a RIRO is not considered as full access and should not be subject to the number and separation requirements.

Response:

The requirements Section 26-175 must be considered as a whole. Limiting the number and spacing of driveways is critical to ensuring public safety. Neither the Code, nor the ARMS, distinguishes among the various types of access to be managed. The principal objective of these regulations is to minimize all access points to ensure public safety.

Another portion of this Section allows the County to require joint access between adjacent properties. The subject site has a joint point of access through a signalized intersection. Signalized access is far safer than unsignalized access.

b. Literal interpretation deprives the applicant of rights commonly enjoyed by others similarly situated

The applicant claims that the site is allowed 2 access points in 205 feet of frontage. It is also argued that since the site has a shared access point with the adjacent Frank's Car Wash, they are "entitled" to another access.

Response:

The applicant's cited Code provisions are not an "entitlement", but rather are an "allowance" that must consider other relevant factors prior to approval. Section 26-175 (2) (c) of the Code states "...Driveways will be limited to the number needed to provide adequate and reasonable access to the property. Factors such as alignment with opposing driveways and minimum spacing requirements will have a bearing on the number of driveways permitted..."

The term "adequate access" means the site is not guaranteed convenient access, but must be provided reasonable access. The sites' joint access with Frank's Car Wash, through a signalized intersection is both reasonable and adequate.

c. Special conditions do not result from the applicant's actions

The applicant argues that since the subject property is the victim of poor planning/engineering at the time the parent tract was subdivided, it has special circumstances beyond their control. It is further argued that the proposed RIRO will provide access for delivery trucks.

Response:

Since the applicant presumably exercised the proper due diligence in purchasing the site for a Firestone facility, they should have recognized the access issues that would occur. Therefore, no special conditions can arise due to their purchase decision.

The proposed RIRO is not "required" for delivery truck access. There is ample access to the site via the Sparkleberry Road Drive joint access roadway.

d. No special privilege will occur

The applicant argues that all the other properties on Clemson Road have full left turn access. It is also argued that the RIRO is safer access than an unrestricted full driveway.

Response:

It is true that all the other sites in this area of Clemson Road have unrestricted access. It is precisely this condition that access management regulations were enacted to prevent.

The Sparkleberry Rd/Clemson Rd area experiences heavy traffic, particularly during the afternoon rush hours. The combination of heavy traffic and a proliferation of access points create numerous opportunities for accidents due to conflicting vehicle turning movements.

It is true that the proposed RIRO is a safer means of access than a full driveway configuration. However, the discussion above has demonstrated that an even safer means of access is available through a signalized intersection.

e. The use is permitted

There are no contested issues

f. Variance requested is the minimum possible to make reasonable use of the site

The applicant claims that the RIRO is “allowed” by the ARMS. It is further argued that since the subject is a relatively low traffic generator, a RIRO is an appropriate type of access.

Response:

It is true that the RIRO is “allowed” by the ARMS and the Code. However, the proposed RIRO is not an “entitlement” to be unconditionally granted. Many other factors, including but not limited to, the traffic volume and proliferation of other unrestricted driveway movements are required to be considered in the decision.

The subject site has a safe point of access through the signalized Clemson/Sparkleberry Rd intersection. Therefore, a variance is not necessary to grant “adequate and reasonable” access to the site.

g. No claims of non-conforming uses in the area

There are no contested issues

Based on the findings of fact discussed above, the variance should be **denied** because the applicant has not demonstrated compliance with the conditions required to grant a variance.

CONDITIONS

26-57(f)(3)

Conditions. In granting a variance, the board of zoning appeals may attach to it such conditions regarding the location, character, or other features of the proposed building, structure or use as the board of zoning appeals may consider advisable to protect established property values in the surrounding area, or to promote the public health, safety, or general welfare. The board of zoning appeals may also prescribe a time limit within which the action for which the variance was sought shall be begun or completed, or both.

OTHER RELEVANT SECTIONS

Sec. 26-175. Access.

- (a) *General.* The standards contained in this section are designed to ensure that access to development in the unincorporated parts of Richland County does not impair the public safety. All proposed vehicle access points connecting to a public road shall conform to the provisions of this section.
- (b) *Driveway permit.*
 - (1) *Permit required.* Before any proposed vehicular access point connecting to a public road may be constructed, a driveway permit must be obtained from the Richland County Public Works Department. The South Carolina Department of Transportation (SCDOT) is required to review all connections to state system roads. Driveway permits on state system roads should be submitted to SCDOT for the initial review. Upon SCDOT approval, the driveway permit will be forward to Richland County for its approval. Where a conflict arises with respect to these standards, the more restrictive access standards shall apply. Single permits may be issued covering all access within a proposed subdivision.

- (2) *Existing driveway approaches.*
 - a. *Relocation, alteration, or reconstruction.* Existing driveway approaches shall not be relocated, altered, or reconstructed without a permit approving the relocation, alteration, or reconstruction, and such driveway approaches shall be subject to the provisions of this section.
 - b. *Changes resulting in closing of driveway.* When the use or layout of any property is changed, making any portion or all of the driveway approach unnecessary, the owner of the property shall, at his/her expense, replace all necessary curbs, gutters, and sidewalks, and/or correct all nonconforming features.

(c) *Driveway standards.*

(1) *Driveway width.* The width, in feet, of a driveway approach shall be within the minimum and maximum limits as specified below, excluding detached, single-family residential properties. Driveway approach widths shall be measured at the road right-of-way line and the width of any driveway shall not increase when crossing the right-of-way except at properly designated curb returns.

- a. *One-way drives.* One-way drives shall have a minimum width of twelve (12) feet and shall not exceed a maximum width of eighteen (18) feet.
- b. *Two-way drives.* Two-way drives shall have a minimum width of eighteen (18) feet and shall not exceed a maximum width of twenty-four (24) feet.

(2) *Number of drives.*

- a. *Generally.* Generally, one point of access to a given property will be allowed. However, additional access points may be allowed by the Richland County Public Works Department as provided in Table VII-4 below, provided the continuous roadway frontage of the property exceeds two hundred (200) feet.
- b. *Maximum number of drives per frontage.*

**TABLE VII-4
MAXIMUM NUMBER OF DRIVEWAYS PER FRONTAGE**

Length of Frontage (ft)	Maximum Number of Driveways
200 or less	1*
+200 to 600	2
+600 to 1000	3

+1000 to 1500	4
More than 1500	4 plus 1 per additional increment of 500 feet of frontage
* On frontages of 200 feet or less, a pair of one-way driveways may be substituted only if the internal circulation on the site is compatible with the one-way driveways and wrong-way movements on the driveways are rendered impossible or extremely difficult for motorists.	

- c. *Additional considerations in number of driveways permitted.* Driveways will be limited to the number needed to provide adequate and reasonable access to a property. Factors such as alignment with opposing driveways and minimum spacing requirements (see below) will have a bearing on the number of driveways permitted.
 - d. *Joint use of driveways/connectivity.* Wherever feasible, the Public Works Department shall require the establishment of a joint use driveway serving two (2) abutting properties. Additionally, when a property is developed, the public works department may require connectivity with adjoining parking areas or may require that a driveway/parking area be designed for future connection with an abutting property.
- (3) *Driveway separation.* All driveway approaches shall be allocated and spaced as outlined below.

TABLE VII-5
DRIVEWAY SEPARATION STANDARDS

Road Speed Limit (mph)	Minimum Spacing (ft)
30 or less	100
35	150
40	200
45	250
50	300
55 plus	350

Access separation between driveways shall be measured between the driveway centerlines. Speed limits are as determined by SCDOT. For single-family lots, the planning department may reduce the spacing requirements of this section if it can be demonstrated that a hardship exists and there is no opportunity to design a conforming access point. Internal roads in single-family detached subdivision developments are exempt from these standards.

- (4) *Driveway design.* All driveway approaches, except those to single-family homes, shall be a concrete apron (“ramp” type). Road type driveway entrances may be required to developments that have parking spaces for two hundred (200) or more vehicles when

required by the public works department. Driveway approaches must cross any sidewalk area at the sidewalk grade established by the public works department. All concrete aprons shall be installed to the right-of-way line or at least ten (10) feet from the edge of the traveled way and be built to the specifications of the public works department.

- (5) *Sight visibility triangles.* At all driveway approaches, a sight area shall be maintained. See Section 26-181(c) of this chapter for sight triangle requirements.

ATTACHMENTS

- Site plan
- Application attachments
- Applicants Submittal (Black Three Ring Binder)
- Correspondence from the Richland County Emergency Services Department
- Correspondence from Ed Sawyer, SCDOT District One Engineer
- Reconsideration request – dated March 26, 2009
- Staff response to reconsideration request (March 26, 2009)
- Reconsideration request – dated April 27, 2009

CASE HISTORY

- Originally heard by the Board of Zoning Appeals at the 7 January 2009 hearing. Variance request denied.
- 4 February 2009 hearing, reconsideration request granted by the Board prior to approval of the January minutes.
- 1 April 2009 hearing of case. Variance request denied.
- 6 May 2009 hearing, reconsideration request granted by the Board prior to approval of the April minutes.

Carl Gosline

From: Carl Gosline
Sent: Wednesday, March 04, 2009 9:27 AM
To: Joseph Kocy; Sparty Hammett; ANNA ALMEIDA
Subject: FW: Replat Clemson Rd.

Interesting

From: Sawyer, Ed [mailto:SawyerEA@dot.state.sc.us]
Sent: Tuesday, March 03, 2009 4:32 PM
To: Carl Gosline
Subject: FW: Replat Clemson Rd.

Please call me concerning this e-mail. It is my understanding that the developer is planning to use our e-mail in the hearing tomorrow. But, for information, as indicated previously to you and the developer, we have indicated that we would allow the right-in/right-out even though it does not meet our separation requirements from the McDonalds drive since it does meet the requirements for corner clearance from Sparkleberry Lane. However, it is the Departments position that we would support the county if your standards are more stringent.

Thanks,
Ed Sawyer, P.E.
 District Traffic Engineer
 (803) 737-6660
 (803) 315-5281

From: Sawyer, Ed
Sent: Wednesday, January 07, 2009 8:08 AM
To: 'David Brandes'
Subject: RE: Replat Clemson Rd.

I spoke with Thad. He would not have a problem allowing a right in/right out access on Clemson Road for this site since it meets the 150 foot corner clearance requirements.

Thanks,
Ed Sawyer, P.E.
 District Traffic Engineer
 (803) 737-6660

From: David Brandes [mailto:DBrandes@genesis-consulting-group.com]
Sent: Tuesday, January 06, 2009 9:36 AM
To: Sawyer, Ed
Subject: RE: Replat Clemson Rd.

Just a reminder. Thanks.

3/4/2009

Carl Gosline

From: Miranda Spivey
Sent: Monday, March 23, 2009 2:47 PM
To: GEO PRICE; Carl Gosline
Cc: GUY HEWITT
Subject: Firestone @ Clemson Rd. and Sparkleberry Lane.
Importance: High

Good Afternoon Gentlemen:

I want to take this opportunity to clarify the position of this office, as it relates to the number and location of access drives for the proposed project mentioned above.

The Richland County Emergency Services Department is **not** advocating for an access drive on Clemson Rd. While in most cases multiple routes of entry are preferred by emergency responders, it is not required nor encouraged in this particular case, based on the following:

1. Proposed building is equipped throughout with an automatic fire sprinkler system.
2. First responder routes and apparatus needs for fire fighting would come primarily from the North and East of the property boundary.

Other factors:

3. Increase potential for motor vehicle collisions, based on current traffic patterns, on Clemson (with no improvements to Clemson Rd.).
4. Close proximity of proposed access drives (less than 500 ft.).

M. Spivey,
Division Manager, Fire and Enforcement
Richland County Emergency Services Department
1410 Laurens St.
Columbia, SC 29204
803.576.3405 (office)
803.748.5077 (fax)
spiveym@rcgov.us

3/23/2009

09-04 V



Northern view from site



Southern view from site

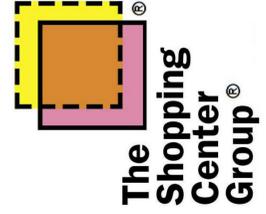
09-04 V



View of site from Clemson Road and Sparkleberry Road intersection



View of intersection from site



RETAIL REAL ESTATE SPECIALISTSSM
CHAINLINKS
RETAIL ADVISORS

BUILDING AREA: 5,000 S.F.
SITE AREA: ±27,400.5 SF (±0.629 AC)
LOT COVERAGE: 9.0 %

PARKING PROVIDED: 24 SPACES
PARKING RATIO(PER 1000 SF): 4.8 SPACES

SITE DATA (SHOP SPACE)

TIRE CAPACITY: 1,200 TIRES
PARTS SHELVES: 630 L.F.

BUILDING AREAS:
CUSTOMER WAITING: 953 S.F.
SERVICE AREA: 4,141 S.F.
INVENTORY: 1,872 S.F.
USED INVENTORY: 160 S.F.
OTHERS: 449 S.F.
TOTAL: 7,575 S.F.

SITE AREA: ±34,568.3 SF (±0.783 AC)
LOT COVERAGE: 21.9 %

TOTAL REQUIRED: 27 SPACES
PARKING PROVIDED: 31 SPACES
PARKING RATIO(PER 1000 SF): 4.1 SPACES

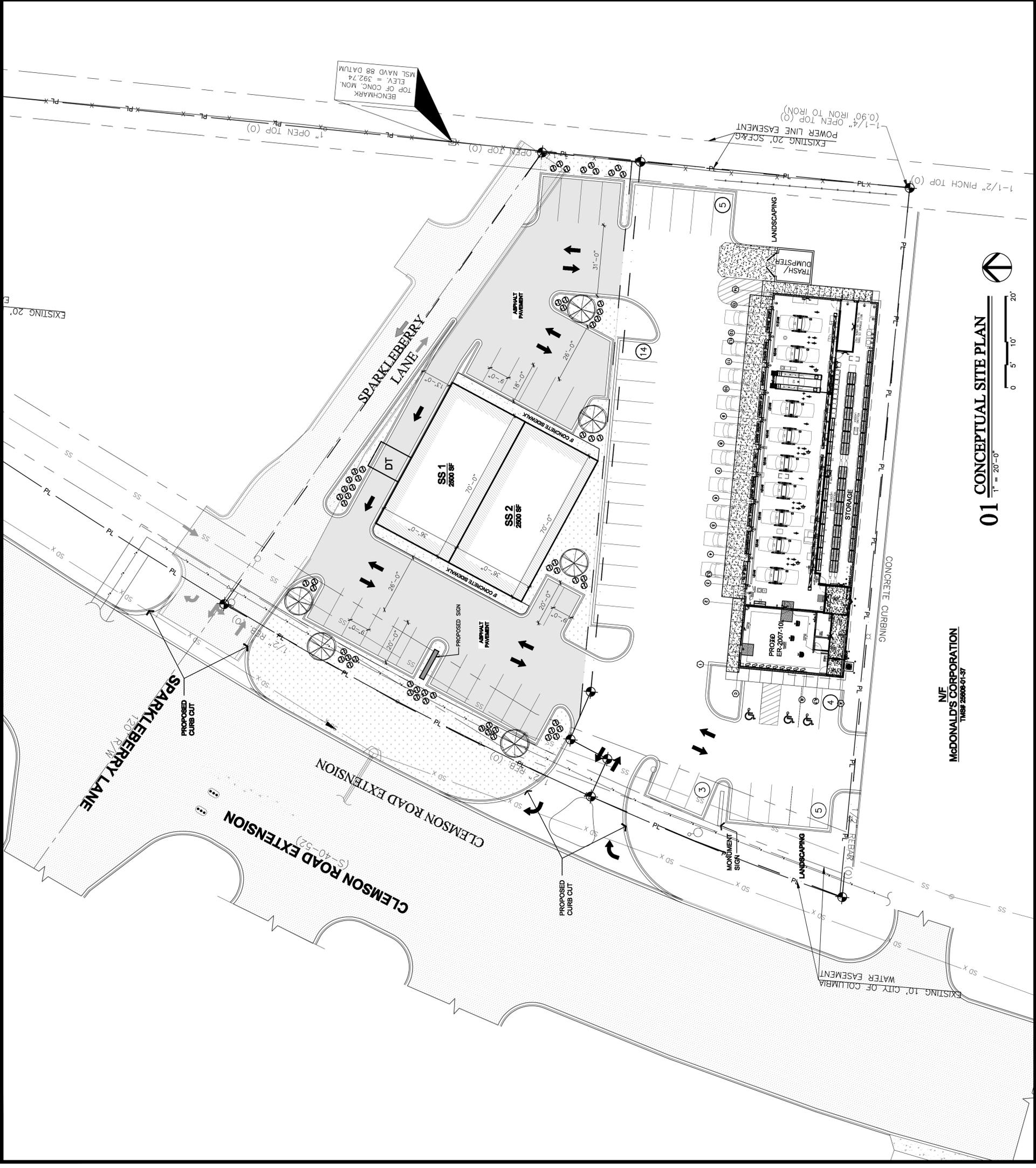
SITE DATA (FIRESTONE)

PARKING PROVIDED: 55 SPACES
PARKING RATIO(PER 1000 SF): 4.37 SPACES

TOTAL PARKING

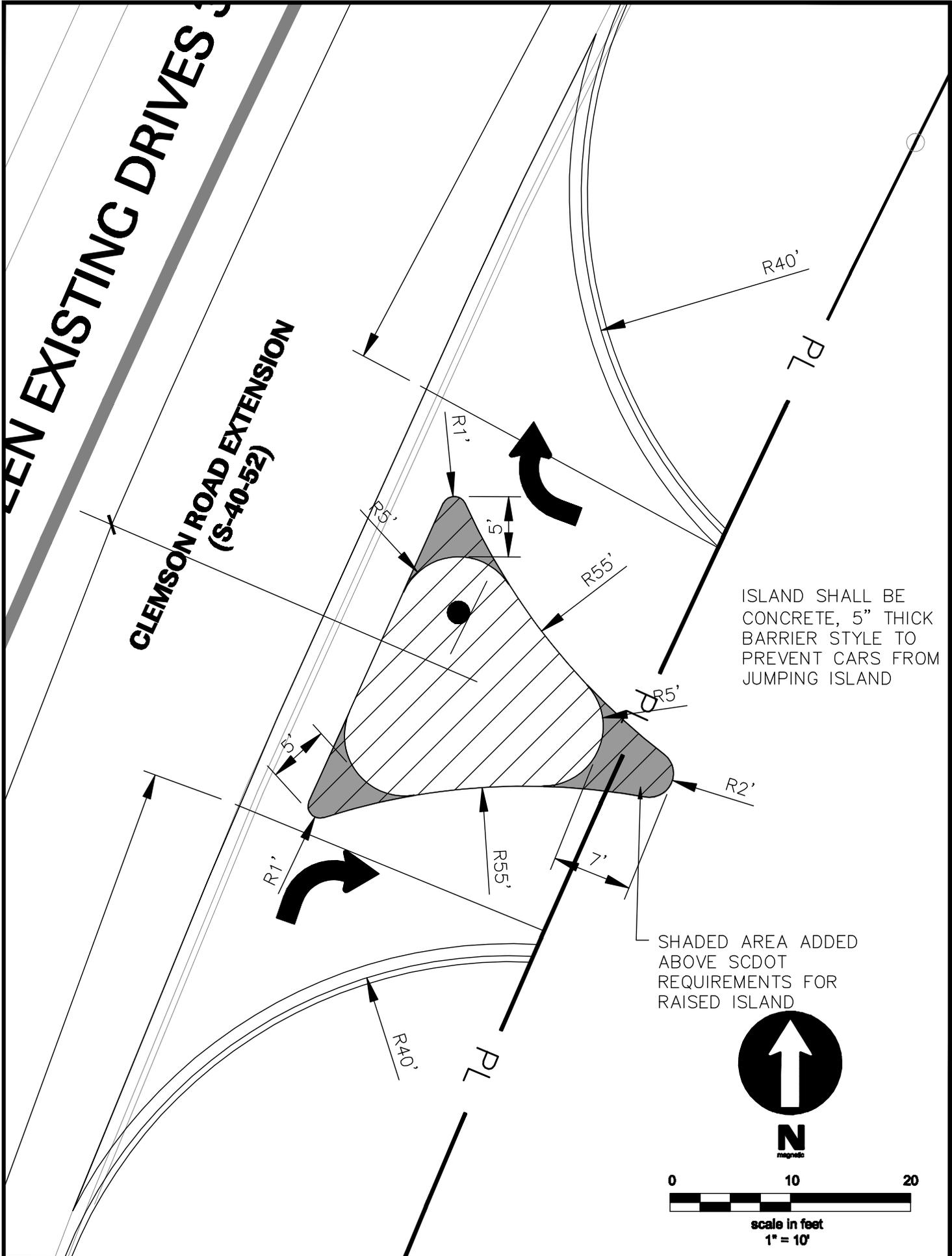
PARKING PROVIDED: 65 SPACES
PARKING RATIO(PER 1000 SF): 5.17 SPACES

TOTAL PARKING
(INCLUDING FIRESTONE BAY STACKING)



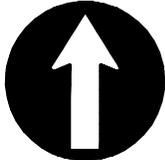
01 CONCEPTUAL SITE PLAN
1" = 20'-0"

NIF
McDONALD'S CORPORATION
TMSR 25008-01-37

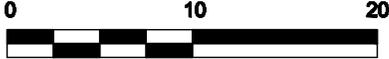


ISLAND SHALL BE CONCRETE, 5" THICK BARRIER STYLE TO PREVENT CARS FROM JUMPING ISLAND

SHADED AREA ADDED ABOVE SCDOT REQUIREMENTS FOR RAISED ISLAND



N
magnetic



scale in feet
1" = 10'

Request for Variance – Richland County Board of Zoning Appeals:

Background:

The property Owner, Columbia Development, is seeking a variance for the property located at 110 Clemson Road Extension, Columbia, SC., TMS R25608-01-40. The property is approximately 1.42 acres.

The applicant is seeking relief from the County Ordinance section 26-175 which in Table 26-VII-4 allows for frontage of 200' to 600', a maximum of 2 driveways. The frontage along Clemson Road is 204.856' which would allow for two driveways for this property. However, Table 26-VIII-5 states that for 45 mph roads, the minimum spacing measured from centerlines is 250 feet. The applicant is seeking allowance for a right-in right-out only access at a location 191.9' from the centerline of the existing Sparkleberry Road Drive to the new RI/RO and 156.4' to the existing McDonalds Drive. The project does have access to the private drive at Sparkleberry which includes a traffic light this does not allow safe access for delivery trucks to the Firestone store. If accessed by the Sparkleberry Drive, the WB-60 semi trailer would have to back up in the parking lot creating a safety hazard for delivery of the tires. Allowing the truck to enter off Clemson, turn left (a safer movement) at the rear of the property and leave head out of Sparkleberry is a much safer movement.

Answer to 4) a

Because the street frontage is above 200', the ordinance allows for two driveways, yet because two adjacent properties have constructed driveways close to the edge of their properties, a second driveway to access this property cannot be constructed due to a conflicting section of the code. Additionally, the code does distinguish between right-in/right-out only access which should not be treated as full access. Special provisions in the design of the driveway prevent left turns and provides a different functioning driveway that should be allowed.

Answer to 4) b

Properties along this road with greater than 200' street frontage are allowed two driveway access points. One of the access points to this property is a shared access with Frank's Car wash. This access will also be a shared access for two developments. Also, literal interpretation of this as a driveway without deference to the right-in/right-out nature of the drive will deprive this property of common rights.

Answer to 4) c

The configuration of the drives (existing) were not properly considered by the developers of the property and the McDonalds. Also, at the time of sub-dividing, the possibility of connection to Clemson Road for delivery trucks (semi's) should have been considered for safety and a right-in/right-out been developed at this location.

Answer to 4) d

Other properties along this route have full left turn access to Clemson Road with much less distance between drives. This connection is a much safer connection for truck delivery.

Answer to 4) e

Access is expressly allowed by the ordinance; cite Table 26-VII-4. While in compliance with this portion of the ordinance, another section does not prohibit, merely limits it.

Answer to 4) f

This is the least available variance because the applicant is requesting only right-in and right-out. Note that SCDOT allows this driveway by the 2008 ARMS manual. Additionally, a Firestone store is traditionally very low traffic generator for 7,575 sf of commercial space. A fast food restaurant would generate approximately 987 daily trips (Per ITE trip generation manual), while general commercial shopping center would generate 325 trips. Based on actual traffic counts from Firestones and similar stores, the actual use is much lower, less than 100 trips per day.

Answer to 4) g

No claims as defined by 4) g are being made.

Additional information:

This type of access, compared to a full access, is a much smaller impact to traffic. Additionally, because the use as a automotive and tire facility generates far less traffic than corresponding general commercial, the traffic impact, vehicle and pedestrian safety impact is much less. The access is being requested for safety reasons to allow direct, no backup access by a WB-60 semi trailer which will be able to make safer left turns in the parking lot.

This request will have no additional potential impact of noise, lights, fumes, or obstruction of air flow on adjoining properties because the request is not for the use of the building, but for the safer access. A automotive repair facility could existing on this site regardless of the granting of the variance, a Firestone could not due to the access constraint for the tire delivery. Firestone takes great efforts to contain all smoke, fumes, and liquids. All work will be performed inside the facility and no repairs or tires worked on outside the enclosed work bays. Fumes are contained by ventilation systems and liquids contained by a oil/water separator.

There will be no adverse impact of the proposed use on the aesthetic character of the environs, because the area is already a commercial area – no request to change this is being made. The rear will be heavily landscaped to protect the adjacent residential located behind the facility.

Reconsideration Request for Case 09-04 V
dated January 29, 2009

January 29, 2009

Ms. Suzie Haynes
Richland County
Planning Department
2020 Hampton Street
P.O. Box 192 Columbia
SC 29202 attn: Suzie Haynes

Re: Request for Reconsideration case 09-04V 110 Clemson Road Extension,
Columbia SC, 29229, TMS 25608-01-40, Genesis Consulting Group for Columbia
Development

Dear Ms. Haynes:

The applicant wishes to request a reconsideration for the variance denied at the January 7, 2009 Board of Zoning Appeals. The request was for the granting of a variance to Richland County Ordinance 26-175 regarding the number of allowable driveways for this property. We believe an error in fact made by the Board for the following reasons:

1. At the meeting, Carl Gosling with Richland County staff provided testimony against the proposal. The applicant was never made aware of staff comments or objections to the request by any staff person with the County. There was not provided sufficient time to discuss the differences of full access and the right-in right-out option with staff, SCDOT and the applicant prior to the testimony being given. The applicant should have had time to discuss this issue with staff prior to the hearing. We believe that the assertion that the access point was a safety concern was arbitrary and not a statement of fact. By this testimony being presented by a member of Richland County staff who had not consulted with SCDOT or the applicant, it appears to be a statement of fact rather than opinion which influenced the Board.
2. After the testimony, the applicant discovered that not all the Richland County staff had made comment about the project. Specifically, the Fire Marshall's opinion had not been considered about access points. The current code would allow only one access point. We have met with the Deputy Fire Marshall – Guy Hewitt – who is in agreement that a second access for fire safety is appropriate. The applicant could not have reasonably assumed that all members of staff did not comment on the variance. By including one staff member's comments and not another, it gave the appearance that they concurred with the recommendation.
3. We believe there was an error in fact as the Board did not consider the configuration of the other drives as a extraordinary reason to grant the variance when in fact, the code allows a driveway as a normal right granted to the property, but action of others has deprived this property of that right. Also, the conditions of 4) listed on the appeal application above do meet the minimum requirements for granting a variance and the Board ruled it did not. This was an error of fact.

We are asking for a Petition for Reconsideration. This is based on newly discovered evidence which by due diligence could not have been discovered in time. Specifically, because staff comments were not provided to the applicant, there is no way for the applicant to know that testimony from the Fire Marshall was not presented and consideration of safety as an access condition was not properly considered. Also, the applicant was not made aware of the staff concern with the safety of the access point. Had the applicant been made aware of the concern, meeting with the SCDOT, the applicant, appropriate engineers and the staff could have taken place prior to the hearing. Subsequent to the January 7, 2009 meeting, such a meeting has taken place and additional information is available to the staff and the Board for consideration. This is new information and a reason for reconsideration. We request it be voted for reconsideration on Feb 4, 2009, taken back up on Mar 4, 2009.

Staff's Response to Reconsideration
Request 09-04 V

dated 26 March 2009

MEMORANDUM

TO: Richland County Board of Zoning Appeals; Interested parties
FROM: Carl D. Gosline, AICP, RC Transportation Planner
DATE: March 26, 2009
RE: Reconsideration of 09-04-V - Firestone Store @ Clemson & Sparkleberry Roads

Since the Board of Zoning Appeals unanimously voted to deny the subject variance request at their January 7, 2009 meeting (see Attachment A), the Planning and Development Services Department (hereinafter referred to as PDS) has had multiple meetings with various applicant representatives to determine whether some compromise can be reached in this matter. To date, no compromise has been achieved.

On March 20, 2009, the PDS received a Traffic Management Plan (TMP) prepared by the Dennis Corp on behalf of the applicant. The results of this study are presented in a 3 ring binder provided to the Board as part of the April 1, 2009 Board of Zoning Appeals agenda package. The Department's response to the information provided in the TMP is provided below.

Tab 1 - Includes Copies Of Several Documents That Concerned The Department's Approval Of The Site Plan For A BB&T Bank On The Subject Site On September 6, 2005.

These documents show the PDS approved a site plan (SP-05-104) for a BB&T branch bank for the whole site in 2005. The site plan includes a full driveway onto Clemson Rd and two driveways onto Sparkleberry Lane.

Department Response:

The Land Development Code (Chapter 26 of the Richland County Code of Ordinances, hereinafter referred to as the Code or LDC) states that a site plan approval expires after two years, unless the applicant applies for an extension. An applicant can apply for up to 4 one-year extensions. (see section 26-53 (2) i). The current driveway separation requirements did not become part of the LDC until after the BB&T site plan had been submitted.

The PDS records do not contain any evidence that an extension of the BB&T site plan was ever requested. Therefore, it is the Department's position that the BB&T site plan (SP-05-104) approval expired on September 6, 2007.

Furthermore, even if the BB&T site plan was still valid, the submission of a new site development plan would render the BB&T site plan invalid. The Firestone site development plan was filed in late 2008 and is therefore subject to the Code requirements in place at the time the site plan application was filed.

Tab 2 – Includes A Copy Of Emails Between The Site Engineer And SCDOT Prior To The January 7, 2009 Board Meeting

On January 7, 2009, Ed Sawyer (*SCDOT District 1 Engineer*) stated "...I spoke to Thad (*Thad Brunson, SCDOT District 1 Administrator*). He would not have a problem allowing a right-in, right-out (RIRO) access on Clemson Road for this site since it meets the (*SCDOT*) 150 foot corner clearance requirements..."

Department Response:

This situation, the SCDOT standards being somewhat different from the County's, is the crucial principle involved in this variance and its reconsideration. The applicant's assertion that they comply with SCDOT regulations is irrelevant. The SCDOT's clearly stated policy in this regard is found in their Access & Roadside Management Standards (ARMS) document. The ARMS states "...The Department (SCDOT) shall not issue a permit for encroachment that meets local standards, but violates the provisions of the ARMS. Similarly, the Department's issuing of an encroachment permit **does not relieve the applicant of the need to comply with local requirements, even if more restrictive...**" (pg. 14)

In an email on March 3, 2009, Ed Sawyer stated "...we have indicated that we would allow the RIRO even though it does not meet our separation requirements from the McDonalds's drive since it does meet the (SCDOT) requirements for corner clearance from Sparkleberry Lane. However, it is the Department's (SCDOT) position that we would support the county if your standards are more stringent..." see Attachment B.

It has been SCDOT policy for several years to support local regulations, even if more restrictive than their own. The March 3, 2009 email simply reinforces their long held policy in this regard.

Tab 3 – Provides Acknowledgement That A Cross Access Agreement Between The Applicant And The Adjacent Mcdonalds Restaurant Has Been Reached

The information supplied is self-explanatory

Department Response:

The actual execution of a cross access agreement with McDonalds is a very positive step to improving safe access to the site, regardless of the final decision for the proposed RIRO driveway to Clemson Road. This easement will allow traffic from both McDonalds and the subject site to gain safe access to Clemson Rd at a signalized intersection. The cross access easement reinforces this Department's argument that a RIRO is not necessary to provide safe access from the subject development site to Clemson Rd.

The proposed site development diagram in Tab 3 depicts the cross access easement and two entrances to Sparkleberry Lane. The diagram also identifies approximately half of the site as "future development".

The PSDS has repeatedly advised the applicant that we will not approve a site plan, regardless of the RIRO decision, unless it identifies all types and the respective amounts of development on the whole site. We have also repeatedly advised the applicant that we will not accept two entrances onto Sparkleberry Lane, particularly since one of the proposed driveways is only 40 feet from the Clemson Rd right-of-way.

Tab 4 – Includes A Copy Of An Email From The RC Emergency Services Dept To The Site Engineer Dated January 20, 2009

In an email to the site engineer dated January 20, 2009, Guy Hewitt, Deputy Fire Marshal stated "...I am not that familiar with the Planning Department or SCDOT's regulations, but I would be very receptive with this type of setup. It would greatly be beneficial to the fire service in the event of an emergency, considering the amount of and type of stock that would be in this structure [referring to the proposed firestone building]..."

Department Response:

The RCESD has recently clarified their position in this matter. On March 23, 2009, an email from RCESD stated "... is not advocating for an access drive on Clemson Road. While in most cases, multiple routes of entry are preferred by emergency responders, it is not required or encouraged in this particular case..." See Attachment C.

Tab 5 - Includes A Copy Of The Site Purchase Agreement

The material supplied is self explanatory.

Department Response:

The contract to purchase, the amount involved and/or any conditions are none of the public's business and are totally irrelevant to the variance decision process.

Tabs 6 & 7 - Dennis Corp Background & Summary Recommendation

Tab 7 is a summary letter from the Dennis Corp regarding the TMP. The applicant asserts that SCDOT is comfortable with the spacing between Sparkleberry Lane and the proposed RIRO because it complies with their separation standards (called corner clearance) between driveways and road intersections.

The applicant acknowledges that the proposed RIRO is only 125 feet from the McDonalds driveway. The Dennis Corp. states the ARMS "...contains no guidelines for driveway spacing, however spacing less than 150 feet is common in urban areas..."

The summary letter further states "...The proposed design of only allowing right-in and right-out access at this intersection will provide significant safety benefits over a full access approach. Furthermore, the proposed site layout will provide significant safety benefit to the existing traffic by providing vehicles exiting McDonald's to access the signalized intersection at Sparkleberry Lane..."

The summary letter concludes "...It is my opinion that the construction of this development will increase the overall safety of the Clemson Road corridor in this location..." The letter is signed by Dan Dennis, President of the Dennis Corp.

Department Response:

The driveway separation standards in the LDC apply to all access points to an adjacent road and do not differentiate between corners and driveways. The reason for access management regulations is minimize conflicting traffic movements such as those that occur at driveways and intersecting roads. The technical literature uses the terms access points and/or intersections to include all kinds of "entrances" to a public road.

The PDSD agrees with the assertion that driveway "...spacing less than 150 are common in urban areas..." We also believe that this statement helps to justify the reason to control access points, particularly in a congested area such as this potion of Clemson Rd. In other words, the fact that ALL the other properties in the area have significant conflicting movements, full driveways generating left-turn movements across oncoming traffic, is ample evidence that an additional driveway of ANY configuration unwarranted.

The PDSD agrees with the Dennis Corp. statement that a RIRO is far safer than a full driveway and that it "...will provide significant safety benefits over a full access approach..." This statement is particularly applicable with the cross access easement in place because access through a signalized intersection is infinitely safer than any type of unsignalized access.

The applicant has repeatedly asserted that the RIRO is necessary to allow large tractor trailer trucks to supply the Firestone facility and a single access point off Sparkleberry Lane cannot be negotiated by these large trucks. The PDSD **does not assert** that no development should occur at the subject site.

We **do assert** that attempting to justify another access point, of any type, based on the need to allow large trucks for a particular commercial project is a totally inadequate reason to grant a variance. The subject site can, and should, be developed with commercial uses that can be sized, safely accessed and serviced by a single access point on Sparkleberry Lane. The fact that the applicant has a purchase agreement with Firestone is irrelevant to variance decision.

Tab 8 - Traffic Management Plan

The TMP (Tab 8) is a very good example of what the PDSD expects in a TMP. It even includes traffic estimates for development of the whole site, not just the Firestone portion, as the PDSD has requested.

It rightfully explains that the function of intersections determines the “real” operating conditions of a given road segment. The term intersection means ALL points of access to a public road, i.e., driveways and other roads. The proposed RIRO is denoted as Intersection 2 in the TMP.

The TMP properly thoroughly examines the existing conditions; estimates the No-Build condition (existing plus estimated future traffic in the development timeframe); and estimates the Build condition (what traffic is expected after the project is built). The TMP (pg. 17) makes the following closing statements:

- “...The proposed development is not anticipated to have a significant impact on traffic conditions within the study area. However, Intersection 1 (*Clemson Rd/Sparkleberry Lane*) is projected to operate at a poor Level-Of-Service (LOS) E during the AM peak hour period with, or without, the proposed development...”
- “...Furthermore, the proposed connection provided to McDonald’s to allow vehicles to access the Clemson Rd/Sparkleberry Lane signal will provide a safety benefit to all vehicles within the network...”
- “...The analyses discussed herein indicate that the anticipated traffic generated by this development is expected to have marginal impact on the intersections in the study area...”

Department Response:

The PDSD agrees that the proposed development of the site will not “...have a significant impact on traffic conditions within the study area...” The variance issue never has been the amount of traffic generated by the project. The variance issue has always been safe access to the project.

The PDSD also agrees with the statement that the cross access easement will make traffic access somewhat safer. However, our position in this regard is tempered by the fact unless a raised median is constructed in Clemson Rd from the Sparkleberry Lane intersection past the adjacent McDonald’s driveway, thereby forcing right turn only traffic, many vehicles will continue to make dangerous left turns out of McDonald’s.

The TMP clearly demonstrates that the amount of traffic generated by development of the entire site will be insignificant. The PDSD agrees with this statement.

SUMMARY

Both the applicant and the planning Department have provided the Board with a lot of information regarding the proposed variance. The amount of information is necessary to educate the Board on the complexities of roadway access management as background for the variance decision.

The fact that the SCDOT separation requirements are somewhat different is informative, but irrelevant to the decision. Both standards are based on thoroughly documented traffic data characteristics by nationally recognized agencies. The Board should focus on the standards currently required by Table 26-VII – 5 of the LDC.

There is no disagreement between the applicant and the PDSO that an RIRO is safer than a full driveway. However, the Board is not being asked to choose between a full driveway and a RIRO. The Board is being asked whether the required separation standards in the LDC should be essentially waived to allow ANY direct access to Clemson Road.

The Board should not get distracted by possible claims that denial of the RIRO will stop development of the site and may therefore be considered a taking of property rights. All access is not being denied. Safe and adequate access is provided to the site from Sparkleberry Lane, with or without the cross access easement with McDonald's.

Since public roads are owned by the public, i.e., they are a public "asset", the public has the right to manage the use of its "assets". No court has ever ruled that adjacent property owners have an unabridged right to convenient access to the road system. They have ruled that total access cannot be denied. It has been demonstrated that the development site has safe access to Clemson Road via a signalized intersection with Sparkleberry Lane

The essential reconsideration issue before the Board is (1) Have any new facts have been provided that are relevant to the original decision and (2) Are such facts sufficient to cause the Board to overturn its unanimous denial of the variance in January 2009. The PDSO recommends that the new facts provided by the applicant do not warrant reversing a unanimous denial of the variance.

Department Recommendation:

Based on the findings of fact provided herein and summarized below, the PDSO recommends **denial** of Variance # 09-04-V:

???

Attachments

Attachment A

MEMORANDUM

FROM: Carl D. Gosline, AICP, RC Transportation Planner
TO: Geo Price, RC Zoning Administrator
DATE: December 31, 2008
RE: 09-04-V – Proposed Firestone Facility @ Clemson & Sparkleberry Roads

The applicant requested a variance from Section 26-175 (2) (b) of the County Code regarding the number of driveway access points permitted for a proposed new Firestone facility. The proposed site has 205 feet of frontage on Clemson Rd with existing Clemson Rd access via the extension of Sparkleberry Road along the north side of the site.

The applicant has proposed a new Right-In, Right-Out (RIRO) driveway located 150 feet from the Clemson Rd/Sparkleberry Rd intersection. This intersection is signalized. There is no median opposite the proposed RIRO to prohibit left turns into the site from Clemson Rd.

The principal issue in this variance request is whether approval of the variance will result in proper access management to protect both vehicular and pedestrian safety. It is a well documented fact the number of accidents increase with the number of intersections (includes both street and private property driveways) in a given roadway segment. "...Various studies point to one consistent finding...the greater the frequency of driveways and streets, the greater the number of accidents..." (ITE, Traffic Engineering Handbook, 5th Edition, pg. 326)

Section 26-175 of the County Code was enacted to "...ensure that access to development...does not impair the public safety..." It based, in part, on the SCDOT Access And Roadside Management Standards (ARMS) document, the revised version of which was published in August 2008. The provisions of this document cited below are among those that are applicable to this variance request:

"...Reasonable access means that a property owner must have access to the public highway system, rather than being guaranteed that potential patrons should have convenient access from a specific roadway to the owner's property..." (pg. 5)

"...Since the primary purpose of highways is to provide for the safe and efficient movement of traffic, control of access points on the roadside is paramount..." (pg. 6)

"...The Department shall not issue a permit for encroachment that meets local standards, but violates the provisions of the ARMS. Similarly, the Department's (SCDOT) issuing of an encroachment permit does not relieve the applicant of the need to comply with local requirements, even if more restrictive..." (pg. 14)

Response to Applicant's Variance Arguments

a. Special conditions and circumstances exist

The applicant asserts that there is a Code conflict between Table 26-VII-4 and Table 26-VII-5 regarding the number of driveways and the driveway separation requirements. The applicant further asserts that a RIRO is not considered as full access and should not be subject to the number and separation requirements.

Response:

The requirements Section 26-175 must be considered as a whole. Limiting the number and spacing of driveways is critical to ensuring public safety. Neither the Code, nor the ARMS, distinguishes among the various types of access to be managed. The principal objective of these regulations is to minimize all access points to ensure public safety.

Another portion of this Section allows the County to require joint access between adjacent properties. The subject site has a joint point of access through a signalized intersection. Signalized access is far safer than unsignalized access.

b. Literal interpretation deprives the applicant of rights commonly enjoyed by others similarly situated

The applicant claims that the site is allowed 2 access points in 205 feet of frontage. It is also argued that since the site has a shared access point with the adjacent Frank's Car Wash, they are "entitled" to another access.

Response:

The applicant's cited Code provisions are not an "entitlement", but rather are an "allowance" that must consider other relevant factors prior to approval. Section 26-175 (2) (c) of the Code states "...Driveways will be limited to the number needed to provide adequate and reasonable access to the property. Factors such as alignment with opposing driveways and minimum spacing requirements will have a bearing on the number of driveways permitted..."

The term "adequate access" means the site is not guaranteed convenient access, but must be provided reasonable access. The sites' joint access with Frank's Car Wash, through a signalized intersection is both reasonable and adequate.

c. Special conditions do not result from the applicant's actions

The applicant argues that since the subject property is the victim of poor planning/engineering at the time the parent tract was subdivided, it has special circumstances beyond their control. It is further argued that the proposed RIRO will provide access for delivery trucks.

Response:

Since the applicant presumably exercised the proper due diligence in purchasing the site for a Firestone facility, they should have recognized the access issues that would occur. Therefore, no special conditions can arise due to their purchase decision.

The proposed RIRO is not "required" for delivery truck access. There is ample access to the site via the Sparkleberry Road Drive joint access roadway.

d. No special privilege will occur

The applicant argues that all the other properties on Clemson Road have full left turn access. It is also argued that the RIRO is safer access than an unrestricted full driveway.

Response:

It is true that all the other sites in this area of Clemson Road have unrestricted access. It is precisely this condition that access management regulations were enacted to prevent.

The Sparkleberry Rd/Clemson Rd area experiences heavy traffic, particularly during the afternoon rush hours. The combination of heavy traffic and a proliferation of access points create numerous opportunities for accidents due to conflicting vehicle turning movements.

It is true that the proposed RIRO is a safer means of access than a full driveway configuration. However, the discussion above has demonstrated that an even safer means of access is available through a signalized intersection.

e. The use is permitted

There are no contested issues

f. Variance requested is the minimum possible to make reasonable use of the site

The applicant claims that the RIRO is “allowed” by the ARMS. It is further argued that since the subject is a relatively low traffic generator, a RIRO is an appropriate type of access.

Response:

It is true that the RIRO is “allowed” by the ARMS and the Code. However, the proposed RIRO is not an “entitlement” to be unconditionally granted. Many other factors, including but not limited to, the traffic volume and proliferation of other unrestricted driveway movements are required to be considered in the decision.

The subject site has a safe point of access through the signalized Clemson/Sparkleberry Rd intersection. Therefore, a variance is not necessary to grant “adequate and reasonable” access to the site.

g. No claims of non-conforming uses in the area

There are no contested issues

Based on the findings of fact discussed above, the variance should be **denied** because the applicant has not demonstrated compliance with the conditions required to grant a variance.

Attachment B –
March 3, 2009 email from Ed Sawyer – SCDOT District 1 Engineer

Attachment C –
March 23, 2009 email from Miranda Spivey – RC Emergency Services Dept.

Reconsideration Request for Case 09-04 V
dated April 27, 2009

Law Offices
QUINN LAW FIRM, LLC
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Michael H. Quinn

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April 27, 2009

Mr. Geonard Price
Zoning Administrator, Richland County
Richland County Administration Building
2020 Hampton Street
Columbia, SC 29204

**RE: Request for Reconsideration Case 09-04 Variance;
110 Clemson Road Extension, Columbia, SC 29229;
TMS 256-08-01-40; Columbia Development Group, LLC**

Dear Mr. Price:

This request for reconsideration is submitted in behalf of Columbia Development Group, LLC, the owner of the property located on Clemson Road in Richland County, and reflected on the Richland County tax map as TMS 25608-01-40.

Columbia Development Group requests a reconsideration for the granting of a variance to Richland County Ordinance 26-175 reducing the required driveway separation on its property which is zoned General Commercial. The requested variance was denied at the April 1, 2009 Board of Zoning Appeals Hearing. Specifically, the variance requested was for access to and from Clemson Road by a curb cut allowing right in and right out access to and from Clemson Road.

This request for reconsideration is based on mistake of law, and due to, in part, the mistake of law, also on mistake of fact.

As reflected by the record, the property in question abuts on Clemson Road on its front, and on a private road on its side. The property does not have access to Clemson Road. The established law in South Carolina is that a property owner is entitled to access to and from any public road that abuts its property.

The South Carolina Supreme Court, in the 2007 case of Elisha B. Tallent d/b/a Elisha's California Hair v. South Carolina Department of Transportation, in referring to the right of access to a public road, stated the following:

Mr. Geonard Price
April 27, 2009
Page 2

As we have held, a property owner in South Carolina has an easement for access to and from any public road that abuts his property, regardless of whether he has access to and from an additional public road. (citing South Carolina State Hwy. Dept. v. Allison, 346 S.C. 389, 393, 143 SE2d 800, 802 (1965)). Thus, for example, in South Carolina, an owner of a corner lot has an easement for access to and from both roads that abut his property. 371 S.C. 598, 641 SE2d at 437, 442 (2007).

Based on the established law of this State, the property owner has a right (easement) of access to Clemson Road. The fact that it does not have such access is an extraordinary and exceptional condition pertaining to this particular property. Other properties abutting on Clemson Road in this area have access to Clemson Road.

The lack of access to Clemson Road is clearly out of the ordinary based on law and fact, thus meeting the requirements of extraordinary and exceptional conditions pertaining to this particular property.

The extraordinary and exceptional condition of non-access pertaining to this particular property, coupled with (i) the condition of non-access generally not applying to other properties in the area, (ii) the non-access effectively restricting use of the property, and (iii) the improvement of safety by allowing the variance as requested, with the conditions agreed to, all mandate granting of the variance, based on law and fact.

Should the Board grant this request, and in order to avoid the repetition of the testimony and other evidence presented at the previous hearing, we would ask that all evidence introduced in the previous hearing be admitted into the next hearing, and made a part of the record. As such, with prior testimony and evidence being a part of the record, the next hearing would only have to deal with the issues raised by this request.

Respectfully submitted,

QUINN LAW FIRM, LLC

By: Michael H. Quinn
Michael H. Quinn
Attorney for Columbia
Development, Group, LLC

MHQ/kb



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