

BOARD OF ZONING APPEALS

March 4, 2009

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4 *Present: Joshua McDuffie, Harold Branham, Torrey Rush, Susanne Cecere, William*
5 *Smith – in at 1:19 p.m.; Absent: Elaine Perrine, Sheldon Cooke*

6
7 Called to order: 1:00 p.m.

8 CHAIRMAN MCDUFFIE: We have a quorum here today and at this point I'd like
9 to turn the meeting over to the county attorney, Ms. Amelia Linder, and she can read the
10 Rules of Order, brief the audience.

11 MS. LINDER: Thank you, Mr. Chairman. My name is Amelia Linder and I'm the
12 Attorney for the Board of Zoning Appeals and I'd like to welcome you this afternoon. I'd
13 like to go over a few procedural matters for you to make the afternoon go a little bit
14 smoother and to answer any questions that you may have. As you may know, the
15 Board of Zoning Appeals is a *quasi*-judicial court, which means that their decisions are
16 final. If anybody is unhappy with a decision that the Board makes today, the option is to
17 appeal that decision to Circuit Court. If you do, if there is no appeal, then the decision
18 they make today is final. The applicant will be able to speak first to the Board and will
19 have 15 minutes to present his or her case. If there is any opposition to the applicant's
20 request, they will have up to three minutes to speak and then once the opposition has
21 spoken, the applicant can again address the Board and has another five minutes to
22 speak. We have an Agenda today, I believe there's five cases on the Agenda and we're
23 gonna take those in order. If you plan to testify today or come speak to the Board, I will
24 need you to take an oath that you will tell the truth and I'll, I'll do that at the end of my
25 talk here. You will be under when oath you address the Board. You need to speak
26 clearly into the microphone, you need to identify yourself by name and address. If you

1 have any material that you would like to have handed to the Board, you may do so. If
2 you need to leave the room for any reason, you may also do that, but I just ask that you
3 do so quietly. I would ask that you mute or silence or turn off your cell phones. I do ask
4 that everyone respect everyone else in the room, as well as the Board Members. Once
5 the Board makes their decision, we normally wait until the Minutes are approved, which
6 will be at the meeting next month and then an Order will go out to the applicant and any
7 parties of interest and from that time of when the Order is sent out, that's when the clock
8 starts ticking that you have the 30 days to appeal. Make sure if you are planning to
9 speak, that you have signed a, a sign-up sheet so I get your name and address
10 correctly because if you are speaking, then you're considered a party of interest and we
11 would like for you to receive a copy of that Order. At this time are there any questions
12 about what's happening this afternoon? If there are no questions and you are planning
13 to address the Board and come to the podium and speak, I would like for you to stand at
14 this time and raise your right hand. Do you swear or affirm that the testimony that you
15 give today shall be the truth, the whole truth and nothing but the truth so help you God?

16 AUDIENCE: I do.

17 MS. LINDER: Thank you, you may be seated.

18 CHAIRMAN MCDUFFIE: Thank you, Ms. Linder. At this time we'll move to
19 approve the meeting, Minutes from February, 2009. Are there any corrections that need
20 to be made to the Minutes? No? Alright, at this time I'll call for a motion.

21 MR. BRANHAM: I make a motion that the Minutes be approved as stated.

22 CHAIRMAN MCDUFFIE: Is there a second?

23 MS. CECERE: I second.

1 CHAIRMAN MCDUFFIE: Alright, all in favor?

2 *[Approved: Branham, Rush, McDuffie, Cecere; Absent: Perrine, Cooke, Smith]*

3 CHAIRMAN MCDUFFIE: Alright, none opposed. Alright, at this time the
4 Minutes are, from February 4, 2009 for the County Board of Zoning Appeals are
5 approved and we'll move on to the public hearing portion of, of today's meeting. Mr.
6 Price, would you please call the first case?

7 MR. PRICE: We're checking on the first case [inaudible].

8 CHAIRMAN MCDUFFIE: Okay, at this time if it, at this time if it's the Board's
9 pleasure we could defer it to the, to the end of the, to the end of the docket?

10 MR. BRANHAM: Yeah.

11 MR. PRICE: Okay, that would be fine.

12 CHAIRMAN MCDUFFIE: Alright, so we'll, we'll defer that case to the end of the,
13 and just do the other cases in order. So, if you would, please call the second one.

14 **CASE NUMBER 09-07 V:**

15 MR. PRICE: Alright, the next item is Case 09-07 V. The applicant is Elizabeth
16 Drake representing E.L. Wright Middle. The location is 2740 Alpine Road, the subject
17 property is an existing middle school [inaudible]. The request before you is to, is the
18 applicant wishes to exceed the maximum height for a pylon sign in the RS-MD zoning
19 district.

20 CHAIRMAN MCDUFFIE: Thank you, Mr. Price.

21 MR. PRICE: [Inaudible]

22 CHAIRMAN MCDUFFIE: Okay, sure.

1 MR. PRICE: I mean, as you can see before you, and this is an aerial of the site,
2 one of the things that I was trying to point to the Board during the discussion is that
3 while the school is zoned RS-MD, single-family, this portion on the east on Windsor
4 Lake Boulevard is really the residential side and it's pretty much residential from here
5 going all the way back up to Two Notch Road. On the other abutting road, which is
6 Alpine Road, there is a good bit of commercial, non-conforming commercial, some
7 zoned commercial, but there's a good bit of commercial. The applicant is proposing to
8 exceed the maximum allowed height for a pylon sign by four feet. The maximum
9 allowed is six feet and this sign would be about 10'.

10 CHAIRMAN MCDUFFIE: Mr. Price, is there anything we can do to get the, the
11 volume turned up? Because the people in auditorium are having trouble hearing.

12 AUDIENCE: We can't hear a thing.

13 MR. PRICE: I will speak up. Is that better?

14 CHAIRMAN MCDUFFIE: Better? Alright. At this time, Ms. Drake, would you
15 please state your case?

16 **TESTIMONY OF ELIZABETH DRAKE:**

17 MS. DRAKE: I'm Elizabeth Drake. I'm the PTO President this year at E.L.
18 Wright and just a little background, we bought the sign last year and then we went to put
19 it up, realized that some of the zoning things had changed a little bit. What would ya'll
20 like me to say? I've never been up here before, so I don't know if you have questions?
21 Or do you want me to -

22 MR. PRICE: Maybe I can kind of help you.

23 CHAIRMAN MCDUFFIE: Yeah, go ahead Mr. Price.

1 MR. PRICE: This is the proposed sign that the applicant is looking to, looking to
2 install -

3 MS. DRAKE: I don't think they can hear you.

4 AUDIENCE: [Inaudible]

5 MR. PRICE: It's the microphone, I'm sorry. This is the sign that the applicant is
6 proposing to put on the property. As you can see, it's about 13.5'. The applicant, you
7 know, from my conversations with the applicant, they're looking to place it in this area
8 here. It, once again, here's a view to go, looking down Alpine Road, as I stated there is
9 a number of businesses along here, so it really is more on the commercial side than
10 residential and this is the residential side. Talking to the applicant, of course, we try to,
11 to find the reasons why, you know, this, you know, what, what the, what would warrant
12 this variance being addressed, I mean, being approved. I need to state for the Record,
13 my son does go to school in the Alpine Road, I mean, at E.L. Wright, excuse me, and I
14 am familiar with the site. What the applicant is proposing to do is to actually establish
15 the sign where the traffic that is, which goes to the rear of the school and that's where
16 you drop off and also pick up your kids. And so the idea is that if you put the sign here
17 and make it a little higher everyone can see it as they're going in. Also, and of course it
18 will give visibility along Alpine Road, but by placing it at the maximum height that the
19 ordinance would allow it's lower and it's about car level and in the mornings, particularly
20 when the cars are all lined up here, it kind of blocks the sign from other angles coming
21 in. And that's the reason for the sign going higher and I believe the applicant also
22 stated that they're also worried about the kids potentially vandalizing the sign. So that's
23 another reason to move it up.

1 CHAIRMAN MCDUFFIE: Thank you, Mr. Price.

2 MS. DRAKE: I, I would like to say, at this time E.L. Wright does not have a sign
3 like a lot of the other schools do where we can put up local announcements that are
4 visible to the parents and to the neighborhoods, so if there's an emergency situation, if
5 the school, if the school needs to be closed or let out early, there's really no way to tell.
6 So, so we're using it more as a communication measure as well to the school's parents.

7 CHAIRMAN MCDUFFIE: And just to clarify this sign is not a, a lighted sign? It's
8 just a -

9 MS. DRAKE: No, if you look at it right there, it's the type where you manually
10 have to put the letters up.

11 CHAIRMAN MCDUFFIE: So there's no back lighting or anything like that to it?

12 MS. DRAKE: No, it's the, right, so, so and the height, you know, would be clear
13 for the cars, you would be able to read it when you're in the line either dropping off or
14 going.

15 AUDIENCE MEMBER: I believe [inaudible]

16 CHAIRMAN MCDUFFIE: If -

17 MS. DRAKE: I just -

18 CHAIRMAN MCDUFFIE: - you'd like to address the -

19 MS. DRAKE: Okay, just – sorry. Okay, just the, it's not, it's not the bright lights
20 like you see at - I don't know if any of ya'll live at Spring Valley, but it's not like the
21 Spring Valley sign. This is a, we, we paid about \$10,000.00 for this one and those are
22 about \$50,000.00, so this is just a little bit of a back light so that you can read the sign
23 where the white part is and then the rest of it's navy.

1 MR. PRICE: Well, I, I think the concern may be, and correct me if I'm wrong, this
2 will not be one of the digital LED signs. This would just be internally lit to kind of
3 differentiate between the letters and the background.

4 MS. CECERE: Would that, excuse me, would it be lit during the night or just
5 during the, like early morning hours and then -

6 MS. DRAKE: It's not very bright, it's, do you know the answer to that, Kim?

7 AUDIENCE MEMBER: [Inaudible]

8 MS. DRAKE: On all night, but again there's not -

9 CHAIRMAN MCDUFFIE: Could you repeat the answer, so that we have it on the
10 Record?

11 MS. DRAKE: Oh yes, I believe that the light would be on, but it is like, there's not
12 any homes right near it, it's all commercial across the street, it's a strip center and then
13 down the way is a plumbing center. So, it wouldn't be near any of the homes right
14 there.

15 CHAIRMAN MCDUFFIE: Thank you. And does anybody on the Board have any
16 questions for, for Ms. Drake at this time? Alright, I believe we have several other
17 individuals that are signed up in support of this? At this time, if any of them would like to
18 come up, I, I'll call their names. Mr. James Harper, if you would like to come up and
19 have anything to add?

20 MS. DRAKE: Okay, thank you.

21 CHAIRMAN MCDUFFIE: Thank you.

22 **TESTIMONY OF JAMES HARPER:**

23 MR. HARPER: Yes, I'm James -

1 CHAIRMAN MCDUFFIE: Please state your name and address for the Record?

2 MR. HARPER: I'm James Harper at 1110 Red Bay Road, in Elgin and my
3 mailing address is in Elgin, but I live in, in the City of Columbia, Richland County. And
4 of course I'm in support of the sign and as we stated earlier, E.L. Wright, the location
5 when you're driving in, you do not have visibility of any activity that's happening. So,
6 when you're exiting out, you're not aware; there's another sign that's similar, but it
7 doesn't give you the, the visibility to read it and this sign will let you know, especially
8 when you have a lock down or other emergencies that come through, you can pick up
9 on the other sign when you have an activity, this sign would allow us to do that. And,
10 and as noted, it was voted upon last year, but we were not aware of, of the zone
11 changes and due to the zone changes we've been in limbo for, for one year as, as a
12 probability of getting the sign, and we would very much appreciate it if we were allowed
13 to be kind of on the same par with other schools as, as to notify the, those that attend
14 that school and the parents of that activity that's occurring at that school. Right now,
15 we, ours is, is by other means and as the parents come in to pick up their children and
16 to drop them off, we don't have any way of knowing any current activities. Thank you.

17 CHAIRMAN MCDUFFIE: Thank you very much. Does anyone on the Board
18 have any questions for Mr. Harper? Thank you very much.

19 MR. RUSH: Question for Staff. Geo, what, how was this caught? How was this
20 issue with the sign?

21 MR. PRICE: Well, actually the applicant, this is one where they are asking for
22 forgiveness now. They actually haven't even erected the sign, they're coming in
23 proactively.

1 MR. RUSH: Oh, okay, so the site, they were trying to get site plans?

2 MR. PRICE: They understand that it, no -

3 MR. RUSH: [Inaudible]

4 MR. PRICE: - they understand that the sign that they were going to put up would
5 be in violation of our Code, so they're coming to the Board for a variance prior to
6 erecting the sign.

7 MR. RUSH: Okay.

8 MS. CECERE: Excuse Mr. Chairman, I have one more question. If it were, if
9 this sign was in a business located area, would it have been -

10 MR. PRICE: Yes, ma'am, if this sign were in any commercial or the OI zoning
11 district, which is Office and Institutional, would allow a sign up to 10'. Any of the other
12 zoning districts would pretty much go up to 35'.

13 MS. CECERE: And tell me again, will it be on the side where most of, I'm
14 familiar with that road, will it be on the side where most of the businesses are located?

15 MR. PRICE: Yes, ma'am, if you, if you take a look at this picture I have before
16 you, this is Alpine Road and on the sign would be to the right.

17 MS. CECERE: On the left hand side of the strip?

18 MR. PRICE: Yes, ma'am.

19 MS. CECERE: Okay, thank you.

20 CHAIRMAN MANNING: At this time, we have a Lorie Morero signed up to
21 speak, if you'd like to [inaudible]. Please state your name and address for the Record.

22 **TESTIMONY OF LORIE MORERO:**

1 MS. MORERO: Thank you, I appreciate it. I'm Lorie Morero, at 6 Rose Haven
2 Lane, Blythewood, South Carolina. I'm actually the principal at E.L. Wright Middle
3 School and I just want to first thank you for giving us this opportunity to speak to you. I
4 do want to address the lighting issue. If that is something that is a concern, I can
5 assure you we can find a way to make sure that the lights are off at night. That's not a
6 problem, we would love to save the electricity, so we're big into conservation, so if
7 that's, one of your concerns, if that would be something that you would put forth to us
8 I'm certain that we could make sure that that happens. Again, that is on the commercial
9 side of the school, it is not on the residential side of the school and so we believe that
10 that signage would not interfere in any way with the neighborhood and we appreciate
11 your consideration. Thank you.

12 CHAIRMAN MCDUFFIE: Thank you. Does anybody on the Board have any
13 questions for Ms. Morero? I have one question I guess. Basically I, I'm not as familiar
14 with the layout obviously of the school as you would be, but it shouldn't necessarily be
15 visible from, from individual's residences? It would really just be visible along the, along
16 the commercial corridor there?

17 MS. MORERO: Correct, that is correct, in fact, probably the closest residence
18 that would actually - I, I don't even think we have a site line on that, to a residence, it
19 would be behind actually our football.

20 CHAIRMAN MCDUFFIE: And the thinking on having the taller sign was, was in
21 order to have it be over the vehicles and things like that?

22 MS. MORERO: That, that is correct; communication, good visibility for all of our
23 parents.

1 CHAIRMAN MCDUFFIE: Thank you very much. We also have a, a M. Taylor
2 signed up to speak? If, if you, if you have anything to add?

3 M. TAYLOR: I don't have anything.

4 CHAIRMAN MCDUFFIE: And also a Lorie Cone?

5 MS. CONE: [Inaudible]

6 CHAIRMAN MCDUFFIE: Alright, thank you very much. At this point, Mr. Rush
7 would you like to review the Findings of Fact?

8 MR. RUSH: Mr. Chair, we'll start with number four. Are there extraordinary or
9 exceptional conditions pertaining to the, this particular property? I'll sort of open that up
10 for the Board. I guess on extraordinary conditions for the applicant is visibility and also
11 blocking, you know, traffic flow at the site. I don't know, I'll open that up to the Board.

12 CHAIRMAN MCDUFFIE: I mean it, it certainly seems like you could make a, a
13 good argument for there being an important safety reason to have the sign easily visible
14 in a, a high traffic area such as would be for, for just for dropping off and picking up,
15 picking up children and I can also see the benefit to elevating it just from a, you know, a
16 protecting of the sign point of view as well. You know, and we do have a case of a
17 school that's sitting on a, on a residential zoned parcel and it might not be the case if it
18 had a lot of other, had a lot of other schools. Mr. Price, generally are most of the
19 schools that are in, in a residential zoning or a more OI district?

20 *[Smith in at 1:19 p.m.]*

21 MR. PRICE: I really can't answer that, just, you know, the schools that I'm
22 familiar with, they seem to be located in a, in residential zoning, just - like I said most of
23 the schools I know are District 2, but most of them are also are on main corridors like

1 Clemson Road or even the school that my kids go to, the sign is up a hill, so they
2 wouldn't need this, so.

3 MS. CECERE: Mr. Chairman, I think that what happened here is that mostly on
4 the side where there is, where the sign is going up it's commercial anyway and it would
5 be zoned commercial if it was anything else. And on one corner they have the strip mall
6 and then on the other corner there's a church and then the subdivision is further behind,
7 so I think the visibility has a lot to do with it when you're coming Alpine Road and
8 Windsor Lake Boulevard. I think that that would come under extra, extraordinary
9 circumstances.

10 CHAIRMAN MCDUFFIE: And taking into -

11 MR. RUSH: And, do these conditions generally apply to other properties in the
12 vicinity? I would say no. Would application of this chapter to this particular piece of
13 property effectively prohibit or restrict utilization of property because of extraordinary
14 conditions? I guess I'll say yes on that. And will granting of this variance be of a
15 substantial detriment to the adjacent property? No.

16 CHAIRMAN MCDUFFIE: Alright, does anyone have any further discussion or
17 anything different on the Findings of Fact? At this point, does anyone care to make a
18 Motion?

19 MR. RUSH: I'll make a motion to approve Variance 09, 09-07 as it has met all
20 the requirements of a variance.

21 MS. CECERE: I'll second.

1 CHAIRMAN MCDUFFIE: Alright, we have a motion to approve 09-07 based on
2 the Findings of Fact that it does in fact meet the requirements for a variance. I think
3 there is a legitimate need for this as well in terms of public safety. All in favor?

4 MR. PRICE: Those in favor are Branham, Rush, McDuffie, Cecere.

5 CHAIRMAN MCDUFFIE: And all opposed?

6 *[Approved: Branham, Rush, McDuffie, Cecere. Not Voting: Smith; Absent: Perrine,*
7 *Cooke]*

8 CHAIRMAN MCDUFFIE: Alright, thank you Ms. Drake, you have your variance
9 and Mr. Price will be in touch. Mr. Price, please call the next case.

10 **CASE NUMBER 09-08 V:**

11 MR. PRICE: The next item is Case 09-08 Variance. The applicant is requesting
12 the Board of Zoning Appeals to grant a variance to encroach into the required rear yard
13 setback on property zoned RM-HD. The applicant is Heather Czekalski and the location
14 is 1308 Wildewood Down Circle. The subject property has an existing residential
15 structure, which is a patio home. The applicant is proposing to allow an addition of the
16 existing house to encroach into the required rear yard setbacks. Wildewood Downs,
17 which is where this, where the property is located, is a retirement community, it's
18 composed of multi-family and single-family residential structures. And then we go
19 through, this is the site, the subject property and see, and you can see this is all part of
20 Wildewood Downs community. And the home. This is the part of the structure that is
21 actually encroaching to the rear. As you can see here are the rear property lines, I'm
22 sorry, this is the easement for the development, so it's actually not part of the

1 applicant's property. And I believe I stated essentially that this is a variance that will put
2 it right at the property line, so thus the number is zero.

3 CHAIRMAN MCDUFFIE: Alright, at this time I'd like to call the applicant, Ms. -

4 **TESTIMONY OF HEATAHER CZEKALSKI:**

5 MS. CZEKALSKI: Czekalski. My name's Heather Czekalski and I am the
6 Executive Director of Wildewood Downs Retirement Community. The address that's
7 stated 1308 Wildewood Downs Circle is the address of one of the patio homes in our
8 community. Our, our corporate address or our business address is 731 Polo Road.
9 We, we sell, we sell patio homes, we have apartments and we also have assisted living
10 and a nursing care on 37 acres between Mallet Hill and Polo Road. We, on this existing
11 patio home that you're see, the, a new resident moved in and asked to have the patio
12 screened in for a screened porch and she wanted a little bit larger patio, so they poured
13 a little extra concrete and put up the, the screened porch. The builder that we had did
14 get a building permit. You know, the builder did not catch the setbacks, the building
15 inspector did not catch the setbacks, everything was approved, it was obviously built
16 and once the, the folks took possession of the home, then this complaint came through.
17 And, as you can see, from when I, when I heard about the complaint I had a survey
18 done, which I think I included in my application, of this particular parcel, which shows
19 that the screened porch is indeed into the setbacks. It's, it's eight feet into the 20' rear
20 setback and, but still within Wildewood Downs property boundary lines. Okay? It's over
21 the, the lot line, but within our boundary property lines. We do have a 20' rear
22 easement from Village Farms, which is the community behind us and it is not in - which
23 when we, when we built this community, Village Farms, excuse me, gave us a 20'

1 easement of which I have the documents here regarding for a walking trail and if you
2 can, you see that swath of grass between the brick wall and the trees, 20' of that is their
3 easement. Alright? And so we maintain it, we keep it landscaped and, and cut the
4 grass, etc. This porch is eight feet away from their 20' easement, so it's well within our
5 property boundary lines and away from their, their easement. If you, I have some
6 additional pictures here that show the rear, excuse me, the rear where, in the
7 community behind us the house right behind us, I mean, they cannot even see the
8 screened porch from their houses because it's covered up by a brick wall. It does not
9 encroach on the enjoyment of their walking trail, which, or our resident's walking trail. It
10 does not, they cannot see it, it's not impeding anyone's view, it's still within our property
11 line and I would hope that the, the Board would see fit to grant this variance.

12 CHAIRMAN MCDUFFIE: Thank you, Ms. Czekalski. At this time does anyone
13 on the Board have any questions for the applicant?

14 MS. CECERE: Yep.

15 CHAIRMAN MCDUFFIE: Ms. Czekalski?

16 MS. CECERE: When, when this structure was built, was this porch added to it?
17 Or was, was the structure up and then the porch was added?

18 MS. CZEKALSKI: The structure was existing, yes ma'am, and there was an
19 existing patio there that the, was just enclosed with screened.

20 MS. CECERE: Okay, was there, was there a roof over that patio?

21 MS. CZEKALSKI: No, ma'am.

22 MS. CECERE: So all, the roof and the screened porch was added on to, after
23 the -

1 MS. CZEKALSKI: After – yes, actually a couple of years after the structure was
2 built, or actually more than two years. That one was built, has been built six years or
3 so.

4 MS. CECERE: So how long, how, the patio's been up for six years?

5 MS. CZEKALSKI: Um-hum (affirmative).

6 MS. CECERE: Mr. Price, why, why is it just now coming to the - do we know? If,
7 if the patio has been up six years, why is it?

8 MR. PRICE: Are you talking about the screened in porch has just the concrete
9 patio?

10 MS. CZEKALSKI: The concrete patio [inaudible].

11 MS. CECERE: Oh, so it just recently was screened in?

12 MS. CZEKALSKI: Correct.

13 MS. CECERE: Thank you.

14 MS. CZEKLASKI: Now they, they did add some concrete, they extended the
15 concrete a couple of feet from the patio, so.

16 MS. CECERE: Just recently?

17 MS. CZEKALSKI: Yes.

18 MS. CECERE: Thank you. And did, did, they went ahead and got a permit to do
19 that? Or they just went ahead and did that?

20 MR. PRICE: They applied for a building permit and they were given, you know,
21 the required setbacks to build it. Building it is a permitted use, just building within the
22 setbacks is when it violates, not building within the setbacks is when the violation
23 occurred.

1 MS. CZEKALSKI: I do have a copy of the building permit if you need that.

2 MR. SMITH: I have a question Ms. Czekalski. Was it actually presented to the
3 neighborhood association beforehand? Before it was actually built? Because it was,
4 you had spoken to, or after the fact? I wanted to see if it was actually, if they had gotten
5 permission beforehand from you?

6 MS. CZEKALSKI: The way it works at Wildewood Downs is the company owns
7 all of the property, we own all of the single-family homes, we own all of the buildings
8 and the grounds. Okay? We then, in essence, lease back to our residents the, these
9 homes. So it's, those, the homeowner's association for Wildewood Downs is made up
10 of its owners, Wildewood Downs owners, which are, you know, four people, my bosses
11 and yes, they were aware that we were, you know, going to do this. We don't, we don't
12 have a structure in place where we have to present it to our homeowners because
13 they're not actually, they don't actually own the property, they lease it from us. Does
14 that answer your question?

15 MR. SMITH: It did.

16 CHAIRMAN MCDUFFIE: I guess I have a question about the, about the
17 easement that was granted to, to Wildewood Downs. You said it was granted from, you
18 said Village Farms subdivision granted the easement?

19 MS. CZEKALSKI: Correct.

20 CHAIRMAN MCDUFFIE: Okay, can you tell me a little bit more about that?

21 MS. CZEKALSKI: Sure, when Wildewood Downs used to be a polo field and we
22 built it in about the year 2000, we actually acquired, my, my current company acquired
23 Wildewood Downs from the former, the company that built it. The company that built it

1 had gotten an easement from Village Farms Homeowner's Association to, and I don't
2 know the reason for the easement, but I'm sure they can probably tell you better, there
3 was, but it was a 10' path, actually .46 acres total, it's about 1,000' long and 20' wide
4 along that brick wall there that was granted to Wildewood Downs for the use and
5 enjoyment of our community residents as "a walking path." So we, we allow, Village
6 Farms residents still have the right and the ability to utilize that walking path and that's,
7 you know, that's all I know. I've got the easement here, the documentation regarding
8 these easement if you'd like to see that.

9 CHAIRMAN MCDUFFIE: At this point I don't think we need to, but we may. Are
10 there any other questions for Ms. Czekalski? Thank you, thank you very much.

11 MS. CZEKALSKI: Thank you.

12 CHAIRMAN MCDUFFIE: At this time, we have several individuals signed up to
13 speak in opposition. The first individual is William, William A Groff. And if I might
14 address all of the people signed up in opposition, everyone is entitled to speak, but if
15 you feel that what you were going to say has already been said, please don't feel
16 obligated to speak if, unless you have something additional to add, but you, you are
17 entitled to. Mr. Groff, if you could please state your name and address for the Record?

18 **TESTIMONY OF WILLIAM A. GROFF:**

19 MR. GROFF: Yes, my name is William A. Groff and I live at 101 Village Farm
20 Road, Columbia, South Carolina 29223. I want to first thank the Board for the
21 opportunity to address you on this issue. I represent the Village Farm Road
22 Association, I'm the President there and most of those folks up there are in our
23 Association and they are very concerned about this particular issue. The Association

1 has a long and varied relationship with respect to Wildewood Downs. In many aspects
2 they have generously supported our Association. In this instance, though, they have
3 not. There's a long history concerning a parcel of land located to the rear of Village
4 Farm Road properties that has been mentioned by the previous speaker. These
5 properties - and it's contiguous to the Wildewood Downs property. This dispute was
6 thought to be resolved in March of 1999, with the granting of the 20' parcel running the
7 length of Village Farm Road, in other words we were deeded that property from a Trust
8 that owned the polo field. And there was also a, an agreement, an Easement
9 Agreement and Declaration of Restrictions was signed at that time. The Agreement set
10 forth the conditions for entry into and use of the parcel by both parties. Wildewood
11 Downs predecessor, Columbia Property, agreed to construct and maintain a walking
12 trail on Village Farm Road property; they have not. They also agreed to landscape the
13 property, they have not. The agreement states that neither party shall erect any
14 buildings, obstructions, fences, gates or permanent improvements other than the
15 walking trail or landscaping. The agreement does allow for the installation of fences,
16 walls or gates to limit the access by the general public, provided Village Farms Road is
17 given keys or codes, etc. to gain access. Wildewood Downs has erected a fence on the
18 Mallette Hills side of the property, which precludes access. They are supposed to
19 provide access; they have not. It has been reported to me by an Association member
20 that the dwellings located on Wildewood Downs Circle were initially erected, that when
21 the buildings located on Wildewood Downs Circle were initially erected in, in
22 approximately 2000, the dwelling in question did not comply with the setback
23 requirements and had to be relocated. There are two other factors bearing on this

1 situation. It's already been alluded to, but first it appears that a survey has been
2 recently conducted. It would be interesting to know exactly when that survey was
3 initiated and the timeline relative to the construction in a, and the, of the addition.
4 Second, the role of the Richland County Building Inspector. I contacted the inspector
5 and he told me that, that he does not measure setbacks, but eye-balls them. It would
6 be interesting to know how the obvious survey stakes were overlooked by both.
7 Richland County has developed zoning requirements for a reason. This is the second
8 time Wildewood Downs has attempted to skirt those requirements. We're also
9 concerned that once the adjacent residents see the improvements in this dwelling, there
10 will be other requests for variances to improve their situations. Those Village Farm
11 Association members deserve to be able to use their common grounds property as
12 originally intended; therefore we oppose this request and respectfully ask the Board of
13 Zoning Appeals to deny the request for a variance. I am ready for your questions.

14 CHAIRMAN MCDUFFIE: Thank, thank you Mr. Groff. Anyone have any
15 questions? I, I guess I have one question. So the, the easement that was granted, that,
16 that the deed to the property there was supposed to be for both neighborhoods or both
17 areas?

18 MR. GROFF: I, I was not there at the time. I've got to tell you, I'm a relatively
19 new resident, but it's my understanding in reading through all the documentation, there
20 is a lot of documentation, a lot of memos, a lot of notes that I have in my possession
21 that have dealt with this area. So that's, it's been an ongoing concern for our
22 Association and it has not been resolved, you know, favorably in our, in our, in our view.

1 CHAIRMAN MCDUFFIE: Thank you. At this time I'd like to call Mr. Fred
2 Leonard. Please state your name and address for the Record.

3 **TESTIMONY OF FRED LEONARD:**

4 MR. LEONARD: My name is Fred Leonard. I'm 104 Village Farm Road. My
5 house happens to be behind that wall and, but on the Mallette Hill side. I would like to
6 see a fence put up, the, the fence that they put on Mallette Hill side, I'd like to see a
7 gate put there so that we had access back there because currently I have to walk a full
8 block down the street and, and come around to get to, access to the trees that I have
9 planted behind there. But that's basically all I have to say and I'd like to see the, Bill
10 Groff's memo approved. [Inaudible]

11 CHAIRMAN MCDUFFIE: Anyone have any questions for Mr. Leonard at this
12 time? Thank you very much. We have a Bud Cronan? Do you want to come up to
13 speak?

14 MR. CRONAN: I have nothing further. [Inaudible]

15 CHAIRMAN MCDUFFIE: You haven't? Okay. Sylvia Schneider?

16 MS. SCHNIEDER: I agree with the previous speaker.

17 CHAIRMAN MCDUFFIE: Okay, Ms. Mavis Alloy?

18 MS. ALLOY: I agree [inaudible].

19 CHAIRMAN MCDUFFIE: Doris Green Groff? James Malloy, Sr.? Would you
20 like to speak?

21 AUDIENCE: I can't hear, I left my hearing aid at home. I have nothing to add.

22 MR. SMITH: That's why I was running late, too, so. [Laughter]

23 CHAIRMAN MCDUFFIE: We also have a, a [inaudible] Kline?

1 AUDIENCE: I support our fearless leader.

2 CHAIRMAN MCDUFFIE: I can't read the next name on here, but George
3 Langston maybe?

4 MR. LANGSTON: Perry, Perry Langston. I fully agree with the two speakers
5 that have spoken.

6 AUDIENCE: I'm next.

7 CHAIRMAN MCDUFFIE: Mr. George Lear?

8 AUDIENCE: [Inaudible]

9 CHAIRMAN MCDUFFIE: Anyone else that signed up to speak have anything to
10 add to the Record? Then please approach the podium and your name and address.

11 **TESTIMONY OF LEE SHYTER:**

12 MR. SHYTER: My name is Lee Shyter, I live at 140 Village Farm Road. The
13 property in question is behind my house and I can see the property, I can see the patio
14 from my, my backyard, so yes I can see over the fence. I cannot see the bottom of the
15 patio, but I can see the structure and you might be interested why it was not brought,
16 this instance was not brought to attention earlier. It, I was out of town in South Alabama
17 the end of October and it was about this time that I, I guess the construction started.
18 When I got back, the first day I heard hammering and etc. from my backyard, so it was
19 then and I went over and with my handy dandy tape rule I measured and found that yes
20 that they were in, in violation. And this was not new to me because some time back in
21 1999, 2000, in that era, I had the same situation, I went over and lo and behold I found
22 that the people were building the patio and so a complaint was made and in a matter of
23 weeks they dug up the patio. I, I, I thought that they did, but evidently they didn't, but

1 anyway the patio that they had constructed was removed. So that, that, that more or
2 less did away with that. If I might add, being an original owner, the 20' that we're talking
3 about was given to us by the builder, The Manning Company because I, I believe that
4 there's a, a requirement that a certain amount of footage must be common area in a
5 patio type complex. In order to comply with that, they initially, we, they initially gave us
6 40'. When it came time to sell the polo ground, they determined that no they had only
7 given us the 20'. So far as, I attended the meeting where the people from Aaron
8 Industry from North Carolina came down and made a presentation to our homeowner's
9 association and this walk way that we're talking about was an enticement from them to
10 Village Farm homeowners to, to let them include that, you know, in, in their building
11 complex and they told us they were going to build a six to eight foot walkway, they were
12 going to bring in 30 species of trees from all over the United States and make this the, a
13 curbed walkway that we would all enjoy, so it was, it was for our use as much as, as
14 Wildewood Downs. And, that has never come to fruition and we have, you know, we've
15 questioned it a number of times and with the number of changeovers and managers of
16 Wildewood Downs, we've never gotten any resolution to that effect. But I, I'm prepared
17 to answer any questions that you might have.

18 CHAIRMAN MCDUFFIE: Does anybody have any questions?

19 MS. CECERE: Mr. Shyster, I do. Is, the first time they were building the patio, is
20 this the same home? Are we talking about the same home?

21 MR. SHYTER: Yes ma'am, the same home.

22 MS. CECERE: Okay, and when you went over there with your tape measure, did
23 you call the county and complain or?

1 MR. SHYTER: I went to a, my homeowner's association and at the time I believe
2 it was a gentleman by the name of Don Troutan, I'm fairly sure of that, but yes I, I was
3 the one who - and, and, and I think Mr. Thomas was with me - he and I went over and
4 did the measuring and then I reported that, that this, you know, that I thought that there
5 was a violation.

6 MS. CECERE: Okay, did they stop at that time?

7 MR. SHYTER: They, I, I would say that they did. I, I'm, I'm not aware whether
8 they did or they didn't, but I am aware that within a matter of a week, a couple of weeks
9 that they dug up, because I saw, I heard and saw the foreman over there digging up the
10 - well I thought they did away with the concrete pad, but evidently I've learned today that
11 they, that they didn't.

12 MS. CECERE: When you got, when you got back from your trip this time, did
13 you contact the county in thinking that that was in violation?

14 MR. SHYTER: I, I did my measurement and then contacted Mr. Groff who is the
15 President of our Association. That 20' is, is not my property, it belongs to the
16 Association, so I, I felt that was the proper -

17 MS. CECERE: Proper channel?

18 MR. SHYTER: Route, uh-huh (affirmative).

19 MS. CECERE: Okay, thank you.

20 MR. SHYTER: Thank you.

21 CHAIRMAN MCDUFFIE: Any further questions?

1 MR. SMITH: I have a, I have another question. How many other, and you, and
2 anybody can answer this, how many other screened porches are in the area there? I
3 mean, just, just to kind of get an idea about the community.

4 MR. SHYTER: In the Wildewood Downs property, sir?

5 MR. SMITH: Yes.

6 MR. SHYTER: As far as I know there are no other.

7 MR. SMITH: Okay, so this is the only one?

8 MR. SHYTER: Yes, okay.

9 MS. CZEKALSKI: [Inaudible]. There are probably four to six screened porches
10 [inaudible].

11 MR. SHYTER: Not on the back wall, though.

12 CHAIRMAN MCDUFFIE: Please, if you have a remark, please come and, to the
13 podium and speak for the Record. And you'll, you'll have a chance, if you could just
14 wait one second and you'll have a chance to, to respond.

15 MS. CZEKALSKI: Okay, there are four to six screened porches in the
16 community, none of this, other than this one on this stretch along our brick wall.

17 CHAIRMAN MCDUFFIE: Thank you for that.

18 MS. CECERE: Okay, well, just a moment. Ms. Czekalski, when you say that
19 there are screened in porches, but the problem is not because of the setbacks, correct?
20 I mean, they're in the, in the proper setbacks, the other porches? Correct?

21 MS. CZEKALSKI: Yes ma'am, to my knowledge all the other porches are in the
22 proper setbacks.

23 MS. CECERE: But this one is not?

1 MS. CZEKALSKI: This one is within Wildewood Downs' boundary property lines,
2 but seven feet off the property setbacks.

3 MS. CECERE: So when we're talking about the other porches and this porch,
4 we're not talking about the same thing?

5 MS. CZEKALSKI: No, ma'am.

6 MS. CECERE: Okay, thank you.

7 CHAIRMAN MCDUFFIE: I guess I, I have one more question. You, you in, it, it's
8 inside the Wildewood Downs property line that is not actually in the 20'?

9 MS. CZEKALSKI: That's correct.

10 CHAIRMAN MCDUFFIE: Okay, it's just encroaching the, it's encroaching into
11 the setback?

12 MS. CZEKALSKI: It's within the, yeah, it's, it's not the full 20' of setbacks, but not
13 any of it is, it's eight feet away from their, their easement.

14 CHAIRMAN MCDUFFIE: Okay, okay.

15 MS. CZEKALSKI: And I have a copy of the survey if you need.

16 CHAIRMAN MCDUFFIE: Thank you, thank you. Is there anyone else that was
17 signed up to speak that has not had a chance to speak who would still like to? Okay.

18 MS. CECERE: I would like to ask Mr. Groff one more question, please.

19 MR. GROFF: Yes, ma'am?

20 MS. CECERE: When Mr. Shyter got back in October and he contacted, did he
21 contact you in regards to the porch not being in the proper setback?

22 MR. GROFF: He did contact me and I don't have the specific date, I have that
23 written down at home.

1 MS. CECERE: Okay.

2 MR. GROFF: And I did contact the, the county and my intent was to go to
3 Wildewood Downs and, but before I went to them I wanted to find out what all the
4 information I could find and I went to the County Planner and through the holidays, you
5 know, we got in there through Thanksgiving and I sent him something and I'd get
6 something back a couple of weeks later. And there are some emails that I'm sure that
7 you can get access to that went back and forth, so you can see how this kind of
8 dragged out through Christmas and then we, and then I went on vacation and, and then
9 we had the hearing. So when I asked for the information, that, I would surmise that that
10 generated interest by the County Planners, they went out and took a look at it and we
11 did not actually ever file a formal grievance. I just started asking the questions and then
12 I'd have to defer to the County Planners as to why this got on the Agenda, but I
13 presume that they went to Wildewood Downs and said hey, you know, you've got a
14 problem here and the way to resolve it is to come before this Board and get a variance.

15 MS. CECERE: Thank you.

16 MR. SMITH: Mr. Groff, I have a question for you as well.

17 MR. GROFF: Yes, sir.

18 MR. SMITH: Just for my personal understanding, what do you and your
19 representatives, what are you looking for? With the property already being built, the
20 screened porch already being built, what are you guys looking for in regards to, that
21 could make you happy? This is just for a perception and - perception purposes.

22 MR. GROFF: Well, you know, that's in the hypothetical and I represent an
23 organization and I can give you my own personal views, but I cannot speak for the

1 organization, you know, to say what would make us happy other than to, to adhere to
2 the zoning requirements. That, that's what my Association wants. Now if there's some
3 other things that you or Wildewood Downs would, would propose, then we would have
4 to take a look at that, we have a Board of Directors, they would look at it, and most likely
5 they would go to the membership, we have an annual meeting coming up here and, and
6 then we would have to get our members to, to approve that because that whole area is
7 owned by the members and, and it impacts everybody.

8 MR. SMITH: I, I just wanted to get your general opinion, so thank you.

9 CHAIRMAN MCDUFFIE: Would anyone like to go through the Findings of Fact?

10 MR. BRANHAM: I will.

11 CHAIRMAN MCDUFFIE: Okay, thank you.

12 MR. BRANHAM: Again, I'll start with number 4 under extraordinary or
13 exceptional conditions pertaining to the piece of, the particular piece of property. I
14 would find that to be no.

15 CHAIRMAN MCDUFFIE: Okay, does anyone have any other opinion on that at
16 all? Can you elaborate a little bit on that?

17 MR. BRANHAM: I think that if there were any extraordinary or exceptional
18 conditions they would have been caught prior to the homeowners next door catching it.
19 I don't think the proper permits and so forth were [inaudible] to.

20 CHAIRMAN MCDUFFIE: And it certainly seems like all of the units in that whole
21 stretch, you know, that are all like up against that 20' easement would all have the same
22 exact conditions applied to them. And then it, you know, and all of the same conditions
23 I would assume would apply also to the, to the neighboring properties. I mean, they're

1 all sited similarly with a similar setback from, from that easement in relation to the
2 property line as well. So, so your answer is that, that no it does not have any
3 extraordinary or exceptional conditions?

4 MR. BRANHAM: That's what I find, yes.

5 CHAIRMAN MCDUFFIE: Okay. Okay, at, at this point, would you like to make a
6 motion?

7 MR. BRANHAM: I would like to make a motion that Variance Number 09-08 be
8 denied, request for Variance 09-08 be denied.

9 CHAIRMAN MCDUFFIE: Is there a second?

10 MS. CECERE: I second.

11 CHAIRMAN MCDUFFIE: All in favor?

12 MR. PRICE: Those in favor: Branham, McDuffie, Cecere, Smith.

13 CHAIRMAN MCDUFFIE: All opposed?

14 MR. PRICE: Rush.

15 *[Approved: Branham, McDuffie, Cecere, Smith. Opposed: Rush; Absent: Perrine,*
16 *Cooke]*

17 CHAIRMAN MCDUFFIE: Alright, Ms. Czekalski, your variance request has been
18 denied and Mr. Price will be in touch.

19 MS. LINDER: Let, let me also just say for the, for the audience that the Board is
20 required to go through four different criteria. All four criteria have to be met, and
21 because they found that the first criteria was not met, the variance could not be granted
22 because all criteria have to be met, and that's the reason they did not go through all the
23 other findings.

1 CHAIRMAN MCDUFFIE: Thank you. Mr. Price, would you please call the next
2 case?

3 **CASE NUMBER 09-09 V:**

4 MR. PRICE: Okay. The next item is Case 09-09 Variance. I believe y'all got a
5 corrected insert?

6 CHAIRMAN MCDUFFIE: Yeah, I believe we all have the, the corrected version.

7 MR. PRICE: Okay, the applicant is requesting the Board of Zoning Appeals to
8 grant a variance to encroach into the required rear yard setback on property zoned RM-
9 HD. The applicant is - I'm sorry, let me change that. The applicant is requesting the
10 Board of Zoning Appeals to exceed the allowed square footage for an accessory
11 structure on property zoned RU, excuse me. The applicant is Deborah Jowers. The
12 location is 201 Holly Grove Road. The subject, the subject property has an existing
13 residential structure and according to our, our calculations a 720 square foot building.
14 The applicant is proposing to establish a second accessory structure on the property.
15 The area is comprised primarily of large residential, residentially developed parcels. As
16 you see here, it's located on the corner of Hunter Hill Road and Holly Grove Road.
17 There's a picture of the sub, the residential structure and here is the existing 720 square
18 foot accessory structure. This is where the applicant is proposing to locate the, the
19 proposed structure and this is from the rear. This is the rear of the house and here's
20 another view of the site. The, currently our Code limits accessory structures to 1,200
21 square feet and that would be total, you know, not an individual, but total. And in this
22 case, the proposed structure would exceed that number.

1 CHAIRMAN MCDUFFIE: Okay, at this time I'd like to call Ms. Deborah Flowers?

2 Please come to the podium and state your name and address for the Record.

3 **TESTIMONY OF DEBORAH JOWERS:**

4 MS. JOWERS: Yes, my name is Ms. Deborah Jowers, there's a misprint. And I
5 am at 201 Holly Grove Road in Blythewood, South Carolina. As Mr. Price has already
6 informed y'all, we are proposing to build a new shop in the lower portion of our
7 backyard. The existing building has been there for 50+ years and it's, for that we need
8 the new shop for it cannot provide. It's not adequate storage, it's not secure, it's -
9 because of the way our house is positioned, and I don't think you can go back to the
10 pictures? That one probably. We access our house from the road that, this here, just to
11 get to the existing building, we, you would have to basically go around the house and
12 the new building, what we're proposing to use it for is storage of a boat, storage of a
13 motorcycle, storage of a third vehicle and then also just space for my husband to work
14 on vehicles and then also just general storage. So, to use the old building for that, it
15 would create, we would probably spend as much money to, to bring the old building up
16 to where it would be secure, adequate storage and we could access it easily with those,
17 with those items as it would be to build the new building, which is the main reasons why
18 we're requesting this variance.

19 CHAIRMAN MCDUFFIE: Are there any questions at this time for Ms. Jowers?

20 MR. SMITH: Yes, I do. Did you get an estimate from a contractor to, to know
21 exactly the price in between the existing, building up the existing building and building
22 the new one?

1 MS. JOWERS: No, I haven't gotten any, any kind of concrete quotes. I mean,
2 the, the main structure of the existing building is somewhat [inaudible], but I mean, it
3 was built by my great-uncle 50 years ago, so it's, you know, rough cut lumber, cedar
4 posts. So, the siding is wood siding, it's in okay shape in other places, but basically
5 you'd have to strip it down and then start from the ground up. It's a dirt floor, it doesn't
6 have any kind of concrete flooring, so you would basically be rebuilding a new building.

7 MR. SMITH: Thank you.

8 MS. CECERE: Do you use it for anything now?

9 MS. JOWERS: Currently we do use it somewhat for storage, but it's, it used to
10 be an open carport. My first husband closed it in and it's just plywood boards, so that
11 has not weathered well. It's just got like a padlock latch on it that anybody could easily,
12 you know, rip off to get into the building, whereas the new building will be a metal sided
13 building and it will just, it'll provide, the storage will be much more secure. And a lot of
14 the stuff that we currently have in the old building, we want to put into the new building
15 because of that reason, because it's not secured.

16 MR. SMITH: So will there be any reason, any ideas in the future for you to knock
17 that building down before you actually build the other?

18 MS. JOWERS: Well, I mean, that's, that's obviously the, the propose, the
19 proposal is to demolish it, but we would like to keep it, not so much for storage space,
20 but we had plan to use it for like a picnic shelter type structure, to open it back up a little
21 bit more to the original. It just, it has some historical and sentimental value because it
22 was built by my great-uncle. It also provides for us on that side of the property kind of a
23 buffer and some privacy from the, the road that is, you have that line of sight, it kind of

1 blocks that line of sight from that part of our house. So it does provide some benefits to
2 the building, I mean, to the property, it just doesn't meet our needs for what we are
3 asking for the new building.

4 MS. CECERE: Would there a park, be a possibility to just add it on to the
5 house? No?

6 MR. PRICE: It, it would [inaudible].

7 MS. CECERE: It would?

8 CHAIRMAN MCDUFFIE: Are there any other questions for Ms. Jowers at this
9 time? We have a Mr. Claude Frick signed up to speak. Would you please come to the
10 podium and state your name and address for the Record?

11 **TESTIMONY OF CLAUD FRICK:**

12 MR. FRICK: I appreciate the opportunity to address the Board. I'm Claude Frick,
13 I live 8511 Windsberry(?) Road, Blythewood and my property is adjacent to Ms. Jowers,
14 we're neighbors so to speak. What she's proposing to do, I don't see in any way that
15 would detract from her property, it can only enhance it. What she's proposing would
16 provide secure storage for a boat they currently have sitting in the yard, lawn mowers,
17 as she mentioned a motorcycle and that sort of thing, it will certain enhance her
18 property and will enhance the entire community. It will in no way take away from it that I
19 can see, sir.

20 CHAIRMAN MCDUFFIE: Any questions for, for Mr. Frick? Alright, thank you
21 very much.

22 MR. FRICK: Thank you as well.

23 CHAIRMAN MCDUFFIE: And -

1 MS. CECERE: I, I, I have, well -

2 CHAIRMAN MCDUFFIE: Go ahead.

3 MS. CECERE: I have a, I'm kind of unclear on this. If, if you were to add on like
4 let's said a three car garage to your existing house, would that not work either?

5 MR. PRICE: One of the things that we've been kind of, you know, debating on
6 with Staff is exactly when you add on to your home, you know, is it really a separate
7 structure or is it a part of the, you know, the principal structure? And most of the time if
8 you're gonna add on, when you add on to a garage, you actually have access through
9 your home to your garage. I mean, if you're talking about adding on to, essentially, you
10 know, a barn, a warehouse or a storage building and just physically connecting it
11 without having direct access and actually being really part of the home, we wouldn't
12 consider that to be the same structure and we would count it, the, we will consider it to
13 be an accessory structure and that's how we would calculate the square footage.

14 CHAIRMAN MCDUFFIE: What, Mr. Price, what's the, the actual zoning on, on
15 this piece of property?

16 MR. PRICE: It's rural.

17 CHAIRMAN MCDUFFIE: Rural?

18 MR. PRICE: Yes.

19 CHAIRMAN MCDUFFIE: So in the case of somebody with, say a barn, like a
20 farmer or something like that that was actively engaged in, you know, in a farming
21 pursuit, would they still also be subject to the, to the same limits on an accessory
22 structure? Or is that under a different -

1 MR. PRICE: No sir, because that's all part of the agricultural use, which is
2 actually a permitted use that's in the zoning district. We run across people with, you
3 know, 40, 50, 100 acres and so -

4 CHAIRMAN MCDUFFIE: And so if she was going to use it to store a tractor for
5 her, for her garden or something like that, would that then qualify as a permitted
6 agricultural use?

7 MR. PRICE: We will look to see what the actual agricultural use would be.

8 CHAIRMAN MCDUFFIE: I'm just throwing up a hypothetical -

9 MS. CECERE: Why doesn't she, I think that, you have to have five acres don't
10 you to actually to, to, to farm?

11 MR. PRICE: According to the Assessor's Office.

12 MS. CECERE: Yeah, uh-huh (affirmative), yeah. And then this is 1.6 acres.
13 Okay? So what you're actually saying unless it's absolutely connected to the house, if
14 she, then she could not add it on? I mean, let's say she added it on to the back part of
15 her house, I don't have any, well we don't have a photograph of the back of the house,
16 right? Is there already a garage there? On that house? I mean, the house goes like an
17 L from what I can see here? Well, it's so far away.

18 MR. PRICE: I'm sorry.

19 MS. CECERE: Could you, could you give me a big picture?

20 MR. PRICE: I'm sorry about that. Where the arrow is right here?

21 MS. CECERE: Yeah.

22 MR. PRICE: Well, actually I'll tell you what, right here there's actually a carport.

23 MS. CECERE: Okay.

1 MR. PRICE: And this looks like just a little back deck.

2 MR. SMITH: A question Mr. Price. What, what does the proposed property have
3 to be minimized to for it to be approved? We're at a 24 x 48 in the discussion here.
4 Reducing the size of it, of the proposed structure, I mean, I don't, I don't know if you had
5 that?

6 MR. PRICE: Four eighty, 480 square feet.

7 MR. SMITH: So 480 square feet and we're looking -

8 MR. PRICE: And that would give them 1,200 total with the accessory structures.

9 MR. SMITH: Okay, so we're looking at a difference of, [inaudible] and this is a
10 1,200 square foot?

11 MR. PRICE: Yeah, what they're proposing is 1,152 square feet.

12 MR. SMITH: Four hundred eighty wouldn't work with you, Ms. Jowers, for the
13 space that you guys are - I'm asking that from a perspective of -so I'm asking if the
14 [inaudible].

15 MS. JOWERS: [Inaudible] a motorcycle that's currently in my sister's basement.
16 So it's, I mean, honestly, if anything, we really need a larger size building than what
17 we're asking for, but, but this is kind of the minimum we thought we could get away with
18 to, to give us the storage space that we needed. And then also just the working space, I
19 mean, my husband works on vehicles as a recreational activity and, you know, I'd like
20 for him to have a place where he can, he can do that, and not, you know, it not be in the
21 middle of the driveway.

22 MS. CECERE: Ms. Jowers, what would you say was the extraordinary and
23 exceptional circumstances to build this building?

1 MS. JOWERS: Basically just, kind of what I put on the application, that the
2 existing building does not provide us secure, adequate storage and work space, which
3 is why the one is necessary, that the existing building has sentimental and historical
4 value, it does provide benefits to our residence and adds value to the property as a
5 whole. So, I don't want to demolish it either to come within the requirements.

6 CHAIRMAN MCDUFFIE: Does anyone have any further questions or
7 discussion? Ms. Cecere, would you care to go through the Findings of Fact?

8 MS. CECERE: Are there extraordinary and exceptional conditions pertaining to
9 this particular piece of property? I would say no, and as my, and that would, you know,
10 make that -

11 CHAIRMAN MCDUFFIE: Does anyone else have a different opinion on that?
12 Okay. At this point would you like to make a motion?

13 MS. CECERE: I don't, well, when, the, the barn building that is on this property,
14 I, in regard to historical value, I mean, I don't see the reasoning on that, and then it does
15 not meet the zoning ordinances in regards to the larger building.

16 CHAIRMAN MCDUFFIE: Yeah, I mean, it appears to me that the only reason
17 that there's a, an issue here is because there is an existing accessory structure already.

18 MS. CECERE: Right.

19 CHAIRMAN MCDUFFIE: If there was not an existing accessory structure, then
20 we wouldn't be having this discussion here because it would have just occurred.

21 MS. CECERE: I think if the building was, you know, I, I would say maybe a
22 former school house 100 years old, I would consider that a historical building, but, you
23 know, a barn structure, 50 years old, I don't, I mean.

1 CHAIRMAN MCDUFFIE: Would you care to make a motion? Would anybody
2 care to make a motion?

3 MS. CECERE: I'll make a motion. I make a motion that the Variance 09-09 be
4 denied.

5 CHAIRMAN MCDUFFIE: Alright, we have a motion that the Variance 09-09 be
6 denied, based on the fact that there are no extraordinary or exceptional conditions.

7 MR. RUSH: I'll second.

8 CHAIRMAN MCDUFFIE: All in favor?

9 MR. PRICE: Those in favor: Branham, Rush, Cecere, Smith.

10 CHAIRMAN MCDUFFIE: All opposed?

11 MR. PRICE: McDuffie.

12 *[Approved: Branham, Rush, Cecere, Smith. Opposed: McDuffie; Absent: Perrine,*
13 *Cooke]*

14 CHAIRMAN MCDUFFIE: Alright, Ms. Jowers your variance request has been
15 denied. Mr. Price will be in touch.

16 MR. PRICE: The next item?

17 CHAIRMAN MCDUFFIE: Mr. Price, please call the next case.

18 **CASE NUMBER 09-12 V:**

19 MR. PRICE: The next item is Case 0, 09-12 Variance. The applicant is
20 requesting the Board of Zoning Appeals to grant a variance to locate an accessory
21 dwelling in front of the building line of a principal structure on property zoned RU. The
22 applicant is Robyne Shealy and the location is 1910 Martin Road and the parcel size is
23 about five acres and it is used residentially. The subject property has an existing 6,797

1 square foot residential structure, some of that is heated, and a small portion of it is not
2 heated. The applicant is requesting to establish an accessory dwelling in front of the
3 building line of the residential structure. The area is comprised of heavily wooded, large
4 parcels and that are used either residentially or just undeveloped. This is a view from
5 Martin Road, I'm sorry, toward the home, as you can see it's kind of, this will give you a
6 view, if you kind of look at the [inaudible] the way it kind of slopes on the sides here and
7 there. Here are some better views. This is a little further into the property. This is the
8 site where the applicant is proposing to place the structure. It's relatively flat when you
9 consider the rest of the property and it's, it looks like it's been cleared some time ago.

10 CHAIRMAN MCDUFFIE: Mr. Price, do you have a, either a plat or an aerial for
11 this one? We don't seem to have a [inaudible].

12 MR. PRICE: Let, let me pull them all for you.

13 CHAIRMAN MCDUFFIE: Thank you.

14 MR. PRICE: The, the big portion that you see that's highlighted, that was
15 actually part of, I believe the parent tract. [Inaudible] this is [inaudible], this is her
16 property. I, I can tell you Staff walked the site and there's one picture I don't have
17 where, even from the rear of the property, you know, you're looking, there weren't many
18 flat areas on, on the property. I just can tell you from a Staff perspective.

19 CHAIRMAN MCDUFFIE: So there's not any areas, any flat areas on the
20 property, you mean in the rear of the property? Not on the -

21 MR. PRICE: The rear, the sides, most of the area we walked, you can tell we
22 were pretty much out of shape.

1 CHAIRMAN MCDUFFIE: Even the, even the front doesn't look particularly flat
2 though?

3 MR. PRICE: No. Like I said the area that they're proposing seems to be, you
4 know, the flattest on, on the property.

5 CHAIRMAN MCDUFFIE: Before, before I ask Ms. Shealy to speak, can you,
6 would you be able to point out exactly where the proposed structure's gonna go on
7 there?

8 MR. PRICE: It would be [inaudible]. It's, I was pushing the button, I'm sorry. It
9 would be right, right in this area.

10 CHAIRMAN MCDUFFIE: Okay.

11 MR. PRICE: As you can see, evidently there's some, a trail that leads to it, if you
12 look closely from the home.

13 CHAIRMAN MCDUFFIE: Alright, thank you Mr. Price. Ms. Robyne Shealy, state
14 your name please and address for the Record?

15 **TESTIMONY OF ROBYNE SHEALY:**

16 MS. SHEALY: Robyne Shealy, 1910 Martin Road, Chapin, South Carolina. And
17 the reason for the need for an additional area is, it's become apparent during the past
18 year that my mother who is widowed is going to need additional support and so we
19 thought since we had the acreage we could bring her closer to us. And she's currently
20 raising her five-year-old granddaughter and just with age, she has legal custody of this
21 child, and so just basically as a support system to have her closer to us then and also
22 as she ages, the care of an aging parent. And, as Mr. Price has said, we ideally, you
23 know, there are many in-law suites for a lack, lack of a better word in the Martin Road

1 area, it's just that they are all either beside or behind the existing dwelling, which is,
2 when we built our home this was not a consideration. So when we placed our home in
3 the center because we wanted to be in the woods, but so that, the placement of our
4 house obviously impeded later needing to bringing mama to live closer to us, but not
5 quite as close as in our house. But this is the only even remotely flat area that we have
6 on our five acres.

7 CHAIRMAN MCDUFFIE: Are there any questions for, for Ms. Shealy? No
8 questions?

9 MS. CECERE: What would you state the extraordinary and exceptional
10 conditions are on this property?

11 MS. SHEALY: For me, the fact, you know, I mean, it's a personal need to bring a
12 family member closer, but the fact that we, by Richland County restrictions, cannot build
13 in front of an existing dwelling, by the placement of our existing home we're not allowed
14 to because of the topography of our lot. It is very hilly, I mean, the, right beyond our
15 pool is a direct drop down and then kind of into a ravine and then right back up, a very
16 steep climb. So the, the circumstances are just the terrain that exists doesn't allow us
17 to build beside or behind the existing structure.

18 MS. CECERE: Mr. Price, could you put the site map back up, please? Where
19 the pool is located, how, to the left of that, are you - okay, you're going to my right,
20 you're going to the left, yeah. Right back at the pool there, what does, is the property
21 downhill there? Or did you go out and look at this property?

22 MR. PRICE: Yes, ma'am.

1 MS. CECERE: Okay. How far would, would that have to be off of that, where
2 the house is, how, how far would it have to be off of the line?

3 MR. PRICE: Twenty feet.

4 MS. CECERE: Is it possible? You know?

5 MR. PRICE: I, I mean, one of the things that I pointed out during the discussion
6 part, I mean, you can do this. I mean, I'm sure y'all have seen places being built, like
7 how did they even get that there. It's always possible, it's just a matter of, you know, is
8 it the, you know, the easiest way, the most practical way to do it?

9 MS. SHEALY: Even to put the pool in, we had to build a retaining wall between
10 our home patio in the back, that you have to go down steps to get to an area that we
11 cleared for the pool, but again the pool decking is three feet, three or four feet wide and
12 then a steep drop. And then when you were asking, like if you're standing facing the
13 back of our house, to the right there is some acreage, but not, if you came in 20', again
14 where the driveway is, it's somewhat flat but then it, again drops, drops off significantly.
15 We built a basement, walk out basement style home to accommodate where we placed
16 our home, but this would be, you know, 1,000 to 1,200 hundred square feet, so it's not
17 really a basement style home.

18 CHAIRMAN MCDUFFIE: Are there any other -

19 MR. SMITH: I, I have another question. Have you had any, any builders look at
20 the, the scene at all, the property at all to see if it could be built on?

21 MS. SHEALY: We had, my husband is in commercial construction, but we had
22 also, I think it's Owen Construction up in Ballentine come out and again this is what they
23 recommended, but we did not approach them with the, is this the only possibility.

1 MR. SMITH: Okay.

2 MS. SHEALY: I will say when we were building our home, even to put our home
3 where it is was extremely difficult for, not only for the placement of the home, we
4 designed the home to be on a slope, but to get the equipment to be accessible to build
5 the home was very, very difficult and to lift like the trusses and whatnot for the top, the,
6 the cranes and bulldozers and whatnot had a very difficult time. Construction was
7 stopped a couple of times because of the tilt.

8 MR. SMITH: But you do agree that it can be done?

9 MS. SHEALY: I do. My husband says no, he said due to - so, I can go with what
10 he said and, you know, from his construction experience he said that due to the fact that
11 it would have to come in, is it 10 or 20' from the property line, then that puts it into an
12 area in which the slope is too extreme to make it so that it is, you know, ninety degrees,
13 whatever the regulation reads behind the existing dwelling.

14 MR. SMITH: Thank you.

15 CHAIRMAN MCDUFFIE: Would, would anyone care to go through the Findings
16 of, of Fact?

17 MR. SMITH: I'll go through it.

18 CHAIRMAN MCDUFFIE: Alright.

19 MR. SMITH: Are there any extraordinary or exceptional conditions pertaining to
20 the particular piece of property? I'd say no. I say no only because it can be built on
21 other parts of the property, that you've already had experience with building on the
22 property already before and you have the, the professional opinion of your husband
23 being in the property, in the home.

1 MS. SHEALY: Now his opinion was it could not be built. Is that what you're
2 saying?

3 MR. SMITH: Actually it's not, it, it's the point of -

4 MS. SHEALY: The fact that it -

5 MR. SMITH: - you, you have the opportunity to be able to have outside as well
6 as professional opinion in home to be able to amass what you need to do on the
7 property, what you've done on the primary resident.

8 CHAIRMAN MCDUFFIE: I mean, it seems to me that even -

9 MR. SMITH: Meaning that you have somebody that could, I'm sorry, Mr. Chair.

10 CHAIRMAN MCDUFFIE: I was just going to say it seems to me that even if we
11 do think that there are exceptional or extraordinary conditions on this piece of property, I
12 don't think that failure to grant a variance here would, would prohibit or unreasonably
13 restrict the use of the property. I mean, it's a residential, you know, use of this property
14 already, so having a second primary residence effectively on it, or as an accessory
15 residence isn't really - we're not, we're not, you know, causing a restriction on that, it's
16 still being utilized as a, as a residence. So, even if, even, even granted that the
17 possibility that there's no other good spot or no other economically feasible spot to build
18 on, by, you know, by, by not granting that variance we're still not unreasonably
19 restricting the use of the property.

20 MR. SMITH: Yes, ma'am?

21 MS. SHEALY: The use of the property -

22 CHAIRMAN MCDUFFIE: The property as in residential -

23 MS. SHEALY: - as in -

1 MR. SMITH: - meaning that you could still build on the property.

2 CHAIRMAN MCDUFFIE: Well, it, it's already been built on.

3 MR. SMITH: Yeah.

4 MS. SHEALY: Correct.

5 CHAIRMAN MCDUFFIE: It's already occupied, so -

6 MR. SMITH: For the uses that you need.

7 MS. SHEALY: Correct, just saying that it is not to be built beyond what exists?

8 MR. SMITH: Yes, ma'am.

9 MS. SHEALY: Okay.

10 CHAIRMAN MCDUFFIE: In, in my opinion that, even if, even if you meet the
11 tests in, you know, the test for four, for whether there are extraordinary and exceptional
12 conditions, my other guess is that it would be that other properties in the vicinity also
13 has similar topography?

14 MR. SMITH: Yes, it is.

15 CHAIRMAN MCDUFFIE: And then also that, that not, you know, failure to grant
16 this variance here would not effectively prohibit utilization of the property because it's,
17 you know, if, if the applicant was here to say add a wing on to the house, they wouldn't,
18 they wouldn't necessary be here because it could be done. But I mean, that would be
19 within the Code, so in no way are we restricting the property by not granting the
20 variance.

21 CHAIRMAN MCDUFFIE: At this point in time, I guess I would like to make a
22 motion, I mean, if there's no -

23 MR. SMITH: Are there any other people -

1 CHAIRMAN MCDUFFIE: There's no one else signed up.

2 MR. SMITH: Okay, I thought there was somebody in the audience.

3 DR. NAHIGIAN: I would like, I would like to speak on her behalf.

4 MR. SMITH: Can, can that be done or -

5 MS. LINDER: Have you been sworn in, sir?

6 DR. NAHIGIAN: No.

7 CHAIRMAN MCDUFFIE: No? If I could get you to sign in and then if, if Ms.
8 Linder would swear you in?

9 MR. RUSH: Will there be a requirement as far as how big the house can be on
10 that property?

11 MR. PRICE: Yes, I believe they'll be limited to, a little less than 1,200 square
12 feet. Accessory structures are allowed up to five hundred square feet or one-fourth the
13 size of the principal dwelling, the heated area.

14 CHAIRMAN MCDUFFIE: Up to how large?

15 MR. PRICE: Five hundred feet, 500 hundred square feet or one-fourth the size
16 of the heated area of the home.

17 CHAIRMAN MCDUFFIE: Okay. At this point, the Chair will recognize Mr. Kevin,
18 Dr. Kevin Nahigian.

19 **TESTIMONY OF KEVIN NAHIGIAN:**

20 DR. NAHIGIAN: My name is Kevin Nahigian. I reside at 85 Red Bay Road,
21 Elgin, South Carolina. I, I have a quick question and that is if her primary residence was
22 built on the place that she's proposing her secondary residence, would she be allowed
23 to build her other building where her current house exists?

1 CHAIRMAN MCDUFFIE: Right, right, Mr. Nahigian, I, I don't think that's the,
2 that's the question that is before this Board.

3 DR. NAHIGIAN: Well, it, well and my point is that I see everyday people and
4 their families where they have no place to take them, they end up putting them in
5 nursing homes and the quality of their life goes downhill from there. You have a piece
6 of property that's very difficult to walk on, you know, a very difficult piece of property to
7 build on, and it's a very expensive thing to go through to build a secondary residence for
8 someone. Someone who is willing to take a family member in, build a secondary
9 residence, go through the hassle of that, go through the expense of that and as a
10 Zoning Board, we sit here and we say, you know what, it was the other way around and
11 the other building was built first, it would be okay, but since it was built second, your
12 mother gets to go to a nursing home instead. Or we put it on a very steep piece where
13 she can fall and break her hip or have other issues and I, I think that, I, I've sat here
14 today and watched everything that goes on, I'm not sure that I can read that far, the
15 gentleman at the end, every single person that's come up, he has tried to think outside
16 the box a little bit and, and think about what we could do to make things work in a
17 positive way for individuals. But when someone, the expense of building on this type of
18 property, with retaining walls, with steel, with things that you have to do for it, it's
19 exorbitant and I think that we have to start looking in ways that say, what makes sense?
20 This is a wooded area, you can't even see it from the road. If there's concerns about
21 the appearance, let's legislate some of the zoning of it, but instead we just, we abide by
22 a set of rules and think that a cookie cutter can make sense for everyone's piece of
23 property. We have to start looking at the expenses of this and this, this poor woman is

1 trying to take care of her family member and is just asking for, and again it's one thing if
2 it was sticking out on the road, but if it was the opposite way and her house was built
3 there first, she'd be allowed to build on the other place. Let's look at this as common
4 sense and, and start, and use that in our decision making process. Thank you.

5 CHAIRMAN MCDUFFIE: Does anyone have any question for, for Dr. Nahigian?

6 MS. CECERE: Well, I think that it - here we go, we have to go through the
7 Findings of Facts and when it doesn't meet extraordinary or special conditions, then we
8 can't allow it. I mean -

9 DR. NAHIGIAN: Fine, but I just -

10 MS. CECERE: But somebody, but somebody's made the law and we're just
11 trying to go by what County Council puts before us and we have to abide, whether we
12 like it personally or not, has nothing to do with it. That's the unfortunate thing, if
13 somebody, if you lived in a subdivision and somebody came along and put something
14 next to you and you said well fine, that's just fine, you know, but your neighbor didn't like
15 it, and so here we, we go, when you talk about we're in a box, I mean, we have to go by
16 what we're, we, what County Council sets before us and that's what we're trying to do.

17 MS. SHEALY: And had I been aware that I needed additional statements from
18 contractors or what have you, I certainly would have come prepared to say whether or
19 not it could or could not. Yes, the existing dwelling was built there with great difficulty,
20 but when it was put there, it was not with the thought that there would need to be an
21 additional dwelling built anywhere in that general area. I mean, our home is perched, it,
22 you know, if you were able to see, I mean, pictures do not do the terrain - the front is the
23 flattest part and when I said could it be built, I'm not a builder and, you know, I did not

1 specifically say to the builder that came and looked at the, the area, is there anywhere
2 else on the lot to built it. My husband, being a professional walked the lot, this is not an
3 ideal place for us either. It, it goes against the typical, but because of Richland County
4 restrictions, this is, I mean, this is why I'm here. This is the only feasible place and,
5 again, I do understand rules and regulations but I also know that you make a judgment
6 based on the facts and I'm not sure the definition of extraordinary, it certainly is
7 extraordinary to our family what we are going through, but -

8 CHAIRMAN MCDUFFIE: Absolutely ma'am, it, it, and we unfortunately are, our
9 tasks is to look at the, the particular use for the particular parcel, not, not, you know,
10 unfortunately we're not asked to say -

11 MS. SHEALY: But the remaining portion of the parcel, that's what's in question
12 that you feel that it can be put on the remaining portion? Is that correct?

13 CHAIRMAN MCDUFFIE: Well that's, I, I don't think that necessarily is what's in
14 question because what, what, you know, what we're looking at is a residential use on a
15 piece of property that's already being used residentially.

16 MS. SHEALY: But I'm asking for the variance -

17 CHAIRMAN MCDUFFIE: You're talking about constructing an additional, well
18 what would be considered an accessory structure, you know, which, you know, by the,
19 by the development Code is required to go in a particular, you know, portion of, you
20 know, of, of -

21 MS. SHEALY: And that's what I guess I'm asking the variance of.

22 CHAIRMAN MCDUFFIE: And we've had, you know, several other cases where
23 people have come, you know, with legitimate, you know, everyone has their own

1 personal, you know, issues and, and problems and things like that, you know, coming
2 looking for similar relief from, from the existing zoning ordinance. And, and while I think
3 that every, every person on the Board, you know, has, you know, certainly is, is
4 sympathetic to the situation, we can, legitimately we can, we can grant what we can,
5 what we can grant based on the way that the law is written or based on the way that the
6 Code is written. But, I do think that -

7 MS. SHEALY: May I ask -

8 CHAIRMAN MCDUFFIE: - there are certain things that we cannot do because
9 that would sort of take us down a road that is going to be -

10 MS. SHEALY: May I ask the grounds, wouldn't you say, not extraordinary
11 circumstances? May I ask you to clarify?

12 CHAIRMAN MCDUFFIE: And I, I, Mr. Smith could speak to that, I, I -

13 MR. SMITH: I spoke of, with, with the five acres that you actually have, not
14 saying that all five acres are, are able to be built on, but you have the opportunity to be
15 able to build on, on other parts of that property.

16 MS. SHEALY: None.

17 MR. SMITH: And what you, you're giving a, and that's why I asked the question
18 earlier in regards to who you had look at the actual property. But in regards to the
19 Code, what we're doing is, we go by the specifics that we, that we have here and again
20 we do look out of the box, all of us, not just myself, but the main key is understanding
21 what the law allows you to do and what we're gonna hold. And in regards to that
22 property, you do have an opportunity to build on another part of that property.

1 MS. SHEALY: So how could I make, who could make that determination? I
2 mean, how can, in other words, if I attempt to appeal this, I want to come prepared with
3 the information necessary, but who can make that determination that it can or cannot be
4 built upon?

5 MR. SMITH: Well –

6 CHAIRMAN MCDUFFIE: And this is a, and correct me, but if, if based on the
7 Findings of Fact, this Board were to find incorrectly, you do have the recourse of, of
8 taking this, of taking the findings to court, based on, based on the Findings of Fact that
9 have been presented today. If, if there are additional facts or additional testimony that
10 you would like to present to the Board for our consideration, you may ask at this time for
11 a deferral before we go through the motioning and, and making a ruling if there is
12 additional, you know, if there is additional items that would support, support your
13 request.

14 MS. SHEALY: And what I'm hearing is additional items would need to proof that
15 the other areas of the terrain are just not -

16 CHAIRMAN MCDUFFIE: Well, and I can't speak for, for the other Members of
17 the Board with, as far as what, what might, you know, in, in their minds be necessary to
18 convince them that your request meets the criteria for a variance. But if you think that
19 there are additional items that could be brought up or if you wish to, to consult with Staff
20 on, on essentially what other types of things could be provided, certainly you may ask
21 for a deferral. Mr. Price?

22 MR. PRICE: It seems like if there was, if there was some information that the
23 Board feels necessary to make, maybe make a more, an informed decision, seems like

1 the Board would direct the applicant as to what of that information they would need. If
2 the applicant feels that maybe there's something they could have brought that would
3 have assisted, they can do that upon an Appeal if the Board were to deny the request.

4 MR. SMITH: I, I would definitely recommend a topographical report for, on that
5 property, just pertaining to the actual land use. You're saying it's a hilly, you're also
6 saying that it's no other place for it to be build on, on the five, on the five acres and if
7 that's gonna be requested, that would be my, my idea of something to bring to the table
8 in that case. But in my regards now there is no, I don't see any kind of special
9 exception, excuse me, not special exception, any extraordinary case in regard to this
10 property whatsoever and I'd like to make a motion now if we can?

11 MS. SHEALY: So are you saying that I can ask for - or no -

12 CHAIRMAN MCDUFFIE: Well I, I believe that, that, Mr. Price -

13 MR. PRICE: The, the Board can go ahead and make a decision and I can get
14 with the applicant afterwards. If it is approved, then of course, I won't need to get with
15 her. if it is a denial, I can then get with the applicant and -

16 MR. SMITH: Just as [inaudible], yeah.

17 MR. PRICE: - and then she can bring forth -

18 MR. SMITH: I'm sorry.

19 MR. PRICE: - other information for reconsideration.

20 MS. SHEALY: Or if you, you can said to postpone the final decision?

21 MR. SMITH: No, ma'am, we're - no postponement from my end - from my
22 aspect as reading the Finding of Facts and there is no extraordinary or exceptional

1 conditions pertaining to the particular property and I'll leave it at that point and, and
2 have you do what you feel is necessary after the fact. But, I'd like to -

3 MS. SHEALY: Can I -

4 CHAIRMAN MCDUFFIE: Hold on, ma'am.

5 MS. SHEALY: Okay.

6 CHAIRMAN MCDUFFIE: You're, you are at this point making a motion?

7 MR. SMITH: And I was about to, yes. I'd like to make a, a motion to deny the
8 request for a variance for Variance 09-12 for Mrs. Robyne Shealy.

9 CHAIRMAN MCDUFFIE: Is there a second?

10 MR. RUSH: I second.

11 CHAIRMAN MCDUFFIE: At this point, all, all in favor?

12 MR. PRICE: Those in favor: Branham, Rush, McDuffie, Cecere, Smith.

13 *[Approved: Branham, Rush, McDuffie, Cecere, Smith; Absent: Perrine, Cooke]*

14 CHAIRMAN MCDUFFIE: None opposed. At this point, Ms. Shealy the request
15 for a variance has been denied, and Mr. Price will be in touch. Alright, at this point, I, I
16 believe, at this point I believe the applicant from the first case is here. So if you'd like to
17 go ahead and call the next case.

18 **CASE NUMBER 08-46 V:**

19 MR. PRICE: The next item is Case 08-46 Variance. The applicant is requesting
20 the Board of Appeals to grant a variance to the sidewalk requirement on property zoned
21 GC. The applicant is Kevin Nahigian and the location is 841 Polo Road. The parcel
22 size is a little less than five acres and it's commercially developed. The parcel has an
23 operating commercial building, a convenience store with gas pumps and they are, and

1 the second phase is under development. This area is comprised of multi-family uses,
2 north, south and west of the subject parcel and a recreational park is located west of the
3 subject parcel. This case was originally heard from you in September, heard by the
4 Board in September and was deferred until – there's been some obstacles, but it's here
5 before you now. What you have before you is a, is a site plan of the development. Kind
6 of go through some of the slides and we can always go back to them. Staff has met
7 with the applicant. Staff has offered to you Staff's proposed sidewalk. You have that
8 before you, that's Exhibit A and I'll get to that. In meeting with the applicant, there were
9 some areas of the, of that proposal he did not agree with so we submitted with what he
10 felt comfortable with as far as the, as a sidewalk proposal and that will be Exhibit B and
11 I'll get to those. And just from speaking to the applicant and I explained to him that he
12 had an opportunity to state why he feels certain areas of this property would not be
13 appropriate for a sidewalk. I'll kind of go through it. As you can see is, okay, near the
14 corner of Polo Road and Mallette Hill and I'm facing this way. This is the back area
15 behind the building. I believe the applicant's proposing an access along here. One of
16 the things that I think everybody agrees with is, is that we would want to protect these
17 magnolia trees that are there. This is a view across the street just to kind of show you
18 that this is a pretty open area and one of the contentions of Staff is, you know, because
19 it's open and there's really no guided access from the park to this development, you
20 know, kids are gonna come or not just kids but parents will come just in any direction to
21 get to the park and so the idea was to provide some sidewalk or at least some kind of
22 destination for them, to get them off the road. This is a view towards the subject
23 property from the Polo Road. This is Mallette Hill. As you see here, this is where

1 Wildewood has a sign identifying the community. This is not part of the applicant's
2 property, so it is not subject to having sidewalks, so, of course sidewalks won't come,
3 they may come up to a certain area and stop, but they would not run along this portion.
4 This is a view down Mallette Hill Road and what you'll see on, on Staff's presentation is
5 that, you know, we don't really support sidewalks along this area. One, this is existing
6 trees there and we would like preserve, and also just kind of looking at the area, most of
7 the traffic, the pedestrian traffic would be kind of funneled into the development and not
8 coming this way. And of course, we also had to take into consideration that if you work
9 to kind of guide traffic along here, you're gonna take it right back, kind of going back
10 here again. There's, there's really no place for pedestrians to, to stand [inaudible] even
11 though there's a crosswalk, it kind of puts them right near the road. There's a, you
12 know, we have a number of views here. This is from across the street at the, there's an
13 apartment complex. This is from the entrance from the apartment complex. And this is
14 looking down Mallette Hill Road. There's another apartment complex down here and
15 this is another entrance on, this is the entrance off of Mallette Hill into the development.

16 MR. SMITH: Is that Gable Hill to the right? Gable Hill Apartments?

17 DR. NAHIGIAN: No, it's the Grove.

18 MR. SMITH: I'm looking at it, I'm sorry, the Grove, okay.

19 DR. NAHIGIAN: I think it just changed names to something else, but it's been
20 the Grove for a long period of time.

21 MR. SMITH: I was getting confused with –

22 MR. RUSH: Mr. Price what did you say that you guys were recommending that
23 no sidewalk?

1 MR. PRICE: I, I will, I will get to that.

2 MR. RUSH: Oh, okay, okay, alright.

3 MR. PRICE: Also, I have two Exhibits here for you. This is Exhibit A, this is
4 Staff's recommendation and when I get to Exhibit B, this will be Dr. Nahigian's.

5 MR. SMITH: Oh, okay, alright.

6 MR. PRICE: As you can see the areas of red are the required sidewalks or
7 where Staff feels that sidewalks should be required. The blue area is kind of optional.
8 One of the things that you can see along here, this is where the tree line was along
9 Mallette Hill Road. This is one of the areas that we stated would not, you know, we
10 didn't feel sidewalks necessarily needed to be. I'm gonna turn this over to Mr. Kocy at
11 this time.

12 MR. KOCY: Good afternoon. I am frequently a pedestrian and pedestrians like
13 and need sidewalks, a clearly delineated safe place to walk and this site needs
14 sidewalks. Mr. Price, could you show that, the aerial, the first photo?

15 MR. PRICE: There's a lot of pictures on this. We'll make sure -

16 MR. KOCY: This is a retail site. It's across the street from a very large park
17 complex and it's sandwiched between two high density housing complexes. This site is
18 going to be a magnet for pedestrians at both locations and I'm suggesting that
19 sidewalks are gonna get the potential customers from these locations to this site. Mr.
20 Price and I have visited this site several times examining potential sidewalk location
21 placement. We've met with the HOA President of an HOA down the street and the
22 reason we've done that is the HOA holds a very key piece of real estate right there at
23 the corner of Mallette Hill and Polo Road. Mr. Price and I are proposing an alternative

1 to sidewalks on the entire perimeter of the site, that's what the Code requires, sidewalks
2 on Polo Road, sidewalks on the entire length of Mallette Hill Road. We're proposing
3 sidewalk systems for safe access to the site and sidewalks designed complying with
4 ADA regulations. Our proposal is for sidewalks along the frontage of Polo Road,
5 leading from the road into the site so pedestrians don't have to interfere with traffic at
6 the entrance there. We're also proposing sidewalks, sidewalks along Mallette Hill Road,
7 along part of Mallette Hill Road here about half of Mallette Hill Road here and here.
8 We're proposing a sidewalk up the entranceway so pedestrians don't have to interfere
9 with the cars on the driveway here, and along the parking lot again, so pedestrians don't
10 have to interfere with the cars. And we're proposing sidewalks from this end of the
11 sidewalk, of, of Mallette Hill Road, again into the internal part of the shopping center,
12 where these sidewalks will hook up at the interior patios, plazas, walking areas,
13 pedestrian areas so pedestrians have full access to the site without interfering with all
14 the cars in this parking space. An optional portion that I'd like to see is this blue area
15 here, again a sidewalk that provides safe access up the site into this future building, so
16 pedestrians don't have to mess with the cars. This building isn't built yet, so we can
17 save that discussion for a later day, but we believe all the sidewalks here in red provide
18 for safe access to the site and keeping people out of harm's way with traffic.

19 MR. PRICE: That will be it for Staff's presentation. I'll leave this one up because
20 they, once again the applicant has an alternative follow-up plan, also, and this is what
21 he's going to discuss.

22 MR. RUSH: I have a question. You say optional, what, what are you referring?
23 Do you, is it up to the Board to put that in or is that -

1 MR. KOCY: I'll, I'll defer to the Board on that. I, I think the optional sidewalk
2 makes sense because again that's gonna be a future pad site there and without a
3 sidewalk there - I think it makes good business sense to put a sidewalk there, so
4 customers can get to and from their cars without having to walk in the parking lot and
5 you know, interfering with moving traffic.

6 MR. RUSH: Alright.

7 CHAIRMAN MCDUFFIE: Anymore questions for Staff? At this time I'd like to
8 call the applicant, Kevin Nahigian to the stand and please state your name and address
9 for the Record again?

10 **TESTIMONY OF KEVIN NAHIGIAN:**

11 DR. NAHIGIAN: My name is Dr. Kevin Nahigian and I reside at 85 Brad Bay
12 Road, Elgin, South Carolina. I would make a, a separate request here before we get
13 started. I, I'd like to have two minutes after your decision, unrelated to your decision
14 about concerns as a taxpayer that I have, that I've had a very, very difficult time and I'd
15 like to express those.

16 CHAIRMAN MCDUFFIE: Dr. Nahigian, I don't believe that this is the appropriate
17 forum for that.

18 DR. NAHIGIAN: Is there, or County Council?

19 CHAIRMAN MCDUFFIE: I would be possible the, if you have concerns about,
20 concerns as a taxpayer to address County Council.

21 DR. NAHIGIAN: No, this has to do with coming here, notification of here,
22 logistics of getting here, all those things and I think it's important as a Board.

1 CHAIRMAN MCDUFFIE: And, but any changes that would be occurring from
2 this Board would needed to be directed from County Council, so I believe that that
3 would be the appropriate forum to address such, such issues.

4 DR. NAHIGIAN: I started this process 14 months ago. Okay? As a business
5 owner I'm extremely frustrated with what has occurred. I have from day one, I just
6 listened to a, a the first lady that presented here about a sign and about the height of
7 that sign and the concerns about safety if that sign was at a certain level and not being
8 able to see. From day one I have, that has been my concern about this entire piece of
9 property. This is a six million dollar piece of property and project that I'm doing.
10 Expense is not the issue here, and I've gone to Mr. Price and Mr. Kocy repeatedly and
11 I've, and I've expressed concerns about, about safety of this piece of property and, and
12 that's all this is about. Okay? Well I take it back, safety and common sense, both at the
13 same time. If I can break down these individual pieces instead of just going all the way
14 around, I'd like to just show you each little piece and what the problem is with each one.
15 I guess, if you can go back to your -

16 MR. PRICE: If you could just [inaudible].

17 DR. NAHIGIAN: Okay, I'd like to start out with this little piece right here.

18 MR. PRICE: Okay, sorry.

19 DR. NAHIGIAN: Right here, the, my sign was required to go here by zoning. I
20 was required to put trees all the way through this area and you can't really see in this
21 picture, but trees to come all around this corner to help block the view of this. So as
22 they grow there, there's also this entrance, this, from this walk down it's like falling off a
23 cliff into a retention pond and there's another view that really shows what we're talking

1 about. There's a light pole that's here. There's a big ditch of weeds and, and detention
2 area. If you look here, this is probably, you can see the height of the car, this is
3 probably eight feet down to this ditch and so what they're requesting me to do is start a
4 sidewalk somewhere along this area, in this ditch to bring it up to this corner. Now my
5 sign, I, I believe that this is actually an that's an older picture because my sign's not
6 there - if you can go back. Right here on this one.

7 MR. PRICE: [Inaudible] to show that.

8 DR. NAHIGIAN: I know but my sign's not, see that sign there? That sign and the
9 light post are not in that other picture. Because the sign and the light post that are here,
10 but not pictured here, require me to put this sidewalk all the way out here by the street.
11 I went to Mr. Kocy and Mr. Price and I said, this is a, it's the outside curb of a 50 mile
12 and hour road. Okay? People come over this hill, come around this corner at 50 miles
13 an hour. I said to them I, I am going to be sued, I'm, it's on my property, I'm going to be
14 legally responsible for people walking on that piece of, on that sidewalk. I said, I will put
15 a sidewalk there if you put a curb and I said, the curb at least will give pedestrians some
16 protection against a high speed vehicle coming around the corner, there's absolutely
17 nothing to stop it and they said we couldn't do it, it's a county road or some kind of road
18 that they can't do it. I, this piece of property, or this portion right here, which I'll show
19 you on the next view, Mr. Kocy just came up there and said, I'm very concerned about
20 ADA access, that's what it's been, his big thing to me is. I find that's, it's kind of funny
21 because someone coming across this road here, we're not allowed to go build on this
22 corner. Okay? I had an agreement with the Homeowner's Association that I would
23 create a path here that would come here, wrap around this corner and go behind these

1 magnolias to funnel everyone into my piece of property. They were in agreement with
2 it, Mr. Kocy was not, he said that's not ADA accessible. Well, coming across the road
3 for the first 25' you have to be on a, on a bank, on, on grass because they're not, I'm not
4 allowed to put a sidewalk on that piece of property. So he's, he states that on this
5 corner there's not enough room for people to stand, to even put a sidewalk, but down
6 here there's plenty of room. You can see, if you come from the other direction from
7 here and Mr. Price had one in a different, in a different time, if you could back up a little
8 bit more? This, where right here, if you were to back up further, this is a huge crest of a
9 road. People, this, with this light, people come 50 miles an hour around this outside
10 curb and there's no curb here against here because of this light post, because of these
11 bushes, because of my signage that has to go out on the, on the corner in a certain
12 location that you all required me to put that signage, I have to put this, this sidewalk
13 right along the edge of this road, someone is going to get killed.

14 CHAIRMAN MCDUFFIE: Dr. Nahigian, a quick question. Is 50 miles an hour the
15 speed limit on the road?

16 DR. NAHIGIAN: It's 40, it's 45 miles an hour and I'm telling you people fly down
17 this road. It, it's essentially unpopulated until this point. Okay? So they, you know, all
18 of a sudden you're on top of developments, but it's been basically a country road until
19 that, until this intersection. And I, once again I asked Mr. Kocy, I said, if you guys put a
20 curb on that road I'll put the sidewalk, I'll pay the expense of the sidewalk and that again
21 was not an option. So, you guys are requiring me to put a sidewalk in an area that I
22 know someone is going to get hit. I have absolutely no doubt someone is gonna get hit.
23 My proposal was to bring them across the street, have an agreement with the

1 Homeowner's Association with a path that goes up around this corner and brings them
2 right into my property. This, this would be a lighted path, this would have security
3 cameras on it, this would get them off of this high speed curb to get them in, and this is
4 a plaza area. Our intentions are to bring them through this plaza and then it's a good
5 foot traffic they can access any store. It's the shortest distance, this path is going to be
6 there anyways. Okay? I'm putting that in because I want them to come in, so I think by
7 putting this sidewalk out here it encourages people to walk on this portion of the road.
8 Again, now Mr. Kocy and Mr. Price have said - I will do that if I got a letter from the
9 county that says we are mandating that you do this at, because I know someone is
10 gonna get hurt on this road. I've also gone to the, to the county and, or to the Parks and
11 Recreation Department, I've asked them to put some fencing along here, we're in the
12 process of trying to figure out what kind retention area, or some kind of fence that would
13 limit people from crossing the street, to encourage them to cross at this point. We are
14 all in agreement, we want them to cross at that corner, it's the safest place to do it.
15 Now, Mr. Kocy has, has made accommodations to something else that I suggested
16 way, way, way back and that was to alleviate the sidewalk through this area. These,
17 these are magnificent, nice, pin oak trees and, that are here, the root balls are gigantic
18 and it just doesn't make sense for a sidewalk to come up here, plus the wall is here and
19 there's not enough room. So, he has given in on that and it took months for me to get
20 the okay with that. My contention here is that these people, this is all gated here, it's all
21 gated here, these are all fenced in, so there's no one coming across this road in any
22 place other than the entrance. That's the only place you can access it is through this
23 gate. You can even go to it and there would be a road here. My proposal was to have

1 this access to bring them again right into this piece of property. I've worked with the
2 Sheriff's Department regarding safety behind these buildings and one thing I just cannot
3 seem to get anyone to listen to me is these buildings all face inward. If you could turn to
4 the topographical picture again Mr. Price? These buildings are -

5 MR. PRICE: This is the aerial.

6 MR. KAHIGIAN: No, no, that's it right there. These buildings face this direction,
7 towards the parking lot. These are all the backs of the buildings. The Sheriff's
8 Department, well and let me back up for a second, the, the homeowners have required
9 me to put very heavy vegetation along the back side of these to hide the backside of
10 these buildings, which I've agreed to without problem. I have no problem with doing
11 that. The problem is if I have a sidewalk here, again it's way out on the road, it's, this
12 heavy vegetation here, there's a signage that I'm again required to put on this corner
13 and it, and there's no reason to put this because there's no, this is all fenced, fenced,
14 fenced. So, the, I feel that this sidewalk encourages them to walk behind the building
15 and it was the Sheriff's Department, they, they're recommendations were to limit the
16 amount of, of sidewalk behind a building where there's no visualization of those
17 buildings because there's no one overlooking them and whatever happens here, no one
18 looks because it's all, it's all vegetation and there's nobody in the buildings that can see
19 out in this direction. My proposal was to have a, a crosswalk here directly into the
20 property, then feeding them in, into other accesses. All these developments down here
21 are all gated. I have no problem bringing the sidewalk in, I'm a gigantic sidewalk guy, I
22 wish every person in Columbia had sidewalks. And that's fine even though that leads to
23 absolutely nowhere, I mean, there's, there's no one that's walking down this road from

1 this direction. This is Wildewood Downs up in this community, I'm opening up the back
2 of this property to bring those people in from Wildewood Downs so they can access the
3 property safely as well. So there's no one that walks down here. I understand the
4 restrictions and what you have to do and finally I just gave in on that and said well I, if
5 that's the case, again it doesn't make any sense to me, it's a substantial cost, it's a
6 [inaudible] of development, fine. These, this one here and this one here is already
7 there, I've already put the other one in. The only reason why this is not in there, I mean,
8 listed that as optional, we don't even know what's gonna go here. This detention pond
9 can be buried and so you don't want to put this in at this stage, this is a much later
10 stage anyway, so we could come back and, and discuss both of these things. These
11 two are here, all I'm requesting is that this makes the most sense to get people across.
12 This is incredibly dangerous leading to nowhere. This is incredibly dangerous and, and
13 is gonna lead to a disaster. And I'm just trying to get them into the piece of property as
14 quickly as possible. Again, we're not allowed to build here, so ADA accessible, again
15 they're already coming across grass in a wheelchair anyway, if someone's coming
16 across. So it's, it's no different if they, if they come here or not because we're not
17 allowed to do anything there anyway, but the homeowners agreed that I could put a,
18 you know, more of a bark type path through here, they would allow me to do that if it
19 was continuous with this area right here. Because of the signage here that sits on this
20 corner that has to be there by law and by zoning restrictions and the amount of
21 vegetation I have to put here, this has to go right on the road and I'm very, very
22 concerned that someone's gonna get hurt.

1 MR. PRICE: Just for the Record, Richland County does not require a
2 commercial business to, to erect signage. We have certain requirements on where it
3 can be located, but we do not require that a business have signage.

4 DR. NAHIGIAN: I, I misspoke, we have to have a sign showing what's on the
5 property and that was the position it had to be.

6 MR. KOCY: Thank you, Mr. Chairman. ADA requirements govern slope, not
7 grass. Mr. Price, could we go to this, Dr. Nahigian's proposal? The, the photos of the
8 actual topography and such? If Dr. Nahigian was to put a, a landscape path in there,
9 with the Homeowner's Association, we have no problem with that, but that does not
10 substitute for a sidewalk. Next picture, Mr. Price? Imagine walking at night, trying to
11 get from here behind the landscaping down to the back of the buildings. I agree with
12 the Sheriff that you should not have sidewalks behind landscaping and behind the back
13 of the building. That is a recipe for disaster and chaos. Could you go back to our
14 proposal, Mr. Price? Sidewalks are required by the County's Development Regulations.
15 They are mandated by the County's Development Regulations of all commercial
16 developments in all major subdivisions. It's not a, it's not a negotiation where someone,
17 if the county puts in a, a curb, then the developer puts in a sidewalk. All commercial
18 developments are required to have sidewalks. Polo Road is a state road, not a county
19 road, it's beyond the county's jurisdiction. That's why I could not agree to put a
20 sidewalk, to put a curb on Polo Road, it's not a county road. It would have been an idle
21 promise. The applicant had deed restrictions and requirements on this property, which
22 is why he's got extensive landscaping on the, on the property, which might interfere with
23 the location of some sidewalks. It wasn't a county requirement that all this landscaping

1 go there and the deed restrictions and the landscaping do not exempt this site from
2 sidewalks. Sidewalks should be required on this site. I believe that sidewalks along the
3 road frontage here is not a threat, although it's behind the building. The sidewalks are
4 adjacent to the street providing access to cars. It's not a safety concern being on the
5 sidewalk here. There's, there'd be no threat because you're behind a building, you'll be
6 on the street, you'll be seen. So I'm sticking with my original conclusion that the, the red
7 areas here are perfectly viable, safe places for sidewalks. If, if Dr. Nahigian wants to
8 put a path in here, that would be fine, but that would be in addition to the red sidewalks.
9 There's nothing in our Development Regulations that would prohibit a path, be it bark, a,
10 a natural type materials, that would be fine here, nothing in our regulations would
11 prohibit that, but these areas here are areas for sidewalks that must be constructed to
12 county and federal ADA requirements.

13 MR. SMITH: I, I have a question.

14 MR. KOCY: Yes, sir?

15 MR. SMITH: In regards to the regulations, is it possible to be able to put any
16 type of poling in the area around the curve that, that can, that will actually be able to be
17 a defense to the, to, to the people walking through?

18 MR. KOCY: If it's, again this would be if, if this is a state highway that would be a
19 state highway requirement or a state highway project that they, if they decided to do it;
20 we have no control over that.

21 MR. SMITH: So this would, from your, from your history of working with the
22 state, is there anything that could be provided in that case? Because that area, looking
23 at the area, I, I unfortunately sometimes go over the speed limit in that area and, and

1 right there going around the curve I, it, it's extremely, extremely - I think I've actually
2 gone off the road there. And this is not to add anything to, to what's going on, but I've
3 been off the road going around that curve and, but if there was, yes, putting the actual
4 sidewalk there is something that would work well with a business, but being able to
5 have some type of pole, I know you said it's the state, but to where it can be regulated
6 or some type of terms could be made to be able to put a security poling in that area,
7 going at least 10', 15', whichever amount it would take going around the curve to be
8 able to help in that regard. And I'm looking at it from the county aspect one, but then
9 also from the perspective of what, what could be done. And you're saying that you, you
10 can't answer for the state, so

11 MR. KOCY: It's a state, right away it's a state road, that would be up to the, that
12 would be a state decision whether they were going to do any safety enhancements
13 there.

14 MR. SMITH: But it sounds like the doctor should talk to the state or –

15 MR. KOCY: Correct.

16 MR. SMITH: - as far as to what should be done in that regard and that should
17 be, could be an amenable request, but I wanted to ask that question, thank you.

18 CHAIRMAN MCDUFFIE: Mr. Kocy, I have a couple of questions.

19 MR. KOCY: Yes, sir?

20 CHAIRMAN MCDUFFIE: So, if I understand correctly, Mr. Price if you could put
21 up Exhibit A one more time? If you could put up Exhibit A one more time, Mr. Price?
22 There's a portion of the property that abuts Mallette Hill Road where's no red sidewalks
23 drawn on there?

1 MR. KOCY: Correct.

2 CHAIRMAN MCDUFFIE: Then Mr. Nahigian's, having a variance for that portion
3 of, of the property?

4 DR. NAHIGIAN: Can I ask why that is? Ask why he's putting the variance there?

5 MR. KOCY: I agree with Dr. Nahigian that walking along the sidewalk here, you
6 can walk into the site, into the plaza and if you needed to get to the park you can cut
7 back out and cross into the park here. There is, saving some expense, saving some of
8 the mature oak trees, I, I'm not a botanist, I don't know exactly what the trees are. I do
9 believe you could put side, a sidewalk in here and not destroy the trees, but I, I agree as
10 an alternative taking an internal sidewalk through the plaza area back on the sidewalk
11 here to get to the park would work.

12 CHAIRMAN MCDUFFIE: And I guess my second question is we've seen a, I
13 think, and this is [inaudible] what we've encountered on Clemson Road where we've got
14 a state highway that doesn't have any kind of pedestrian sidewalk with the
15 developments going in, that eventually the thought would be that they would eventually
16 all have sidewalks?

17 MR. KOCY: Correct, as these, as this corridor gets developed and redeveloped
18 and, and reused, yes the sidewalks would be placed so that there wouldn't be sidewalks
19 leading to nowhere, correct.

20 CHAIRMAN MCDUFFIE: A very analogous situation though. Mr., Mr. Price -

21 DR. NAHIGIAN: Can I, can I respond to some of the things that Mr. Kocy said?
22 It would be a sidewalk to nowhere - safety on the road, it doesn't seem to be a very big
23 priority. The problem with this right here is and, and my contention just from a common

1 sense standpoint, so this isn't so much a security thing as much as a common sense,
2 someone coming down this road, which again I don't know who that would be because
3 there's no sidewalks, there's a detention pond up here, there's no one that walks down
4 this road in this direction, but let's say they are. They come down here, they can access
5 this property easily this way. They can come across, access it easily this way. Why
6 they would have to travel more on the outside of the property behind the building to
7 access it again, it, it makes no sense to me. So if the purpose is accessing the
8 buildings, a person is always going to take the shortest route and they're gonna come
9 here and come into this piece of property in the shortest manner and not travel along
10 the back. People coming across here - excuse me, can I just have a little space for a
11 second?

12 MR. KOCY: All right.

13 DR. NAHIGIAN: Okay? People coming across the road here are not gonna
14 travel back up this direction, they're gonna be coming into this property because there,
15 there's just, there's no reason to travel up away from the property when you can access
16 it the shortest way.

17 CHAIRMAN MCDUFFIE: Yes, yes sir, and I think that we all understand that
18 there's nothing currently a little bit further up the road say on the Mallette Hill side that,
19 that would be a, a draw or that people would be walking from. But I think part of our
20 concern is, is not just for, for what's going in currently, we have to think about what
21 potentially could be there in the future.

22 DR. NAHIGIAN: That's all constructed, there's no, there's no additional property
23 here. That's all finished construction with a detention pond that's there, those are

1 developments that are closed. This is, this is it. There's no, and again I, I am here
2 today because I'm trying to get a Certificate of Occupancy of a building I opened 14
3 months ago. Okay? Only on that, and can you go back to the topographical again?
4 The, the one portion where that, where this, this building is here. This whole thing is
5 about [inaudible] just east of the property and this has all been thrown in because after
6 spending a year on this, I can't go through another five years or whatever it takes to do
7 this. So I figured we'd have discussion about this. This piece here is a separate piece
8 of property that hasn't, isn't even part of this development. It is something that will
9 probably be sold in the future, so, these right here have no real bearing on this process
10 right now because that piece is not being constructed. And this already exists, this is
11 existing, and this, this is the only part here that is, that is, you know, really part of this
12 discussion and they need to put this on a high speed curb. Can, can I just go back to
13 one thing with one of the pictures to truly show you what the difference is? Yeah, if you
14 could go, I'm not sure where it is. If you could go through some of the pictures of, of like
15 this area?

16 MR. PRICE: Oh, okay.

17 DR. NAHIGIAN: Right here. I mean, this is a huge pit down in here and this,
18 from this edge of the property down in this pit is probably a 10 to 12' drop. No one is
19 coming down this way through this pit to come up on this sidewalk, and again my sign is
20 not pictured, the trees that are here, the final trees in that picture here. So it's, it's just
21 and again this is on this edge of this high speed road. It's just that this is encouraging
22 people to cross the street and if they do cross the street, they're not gonna walk along
23 this road to go around here to get to this property, they're gonna come straight through

1 these bushes and all the way into the piece of property. So it, it's just another piece,
2 another area where someone can get injured walking along the edge of this road and I, I
3 can't, I, I would beg, I asked these guys to come out and just sit on that road and watch
4 the speed of people coming by. I'm telling you they go off this road, there's tire tracks
5 everywhere here, it's gonna hit a kid on this road. If we can make a variance for trees
6 and, and tree roots, we can make it for kids.

7 MR. KOCY: Did you notice the speed limit sign there is 35 miles an hour? Mr.
8 Price, could you go back a couple of slides please? Alright, you can stop right there.
9 We, we, are not suggesting a sidewalk go down off the property into this ditch. The first
10 slide Mr. Price, the first photo. We are proposing it go to the end of the property,
11 relatively flat, it's not falling off into a ditch, parallel to the road. Could you go back to
12 the aerial of the whole project, Mr. Price?

13 DR. NAHIGIAN: Who's walking on that road, on that sidewalk?

14 MR. KOCY: I'm gonna answer, I'm gonna answer that in just a second. Who's
15 gonna walk are all these little league players and these soccer players and all the other
16 athletes are gonna be walking from this part of the baseball facility, the athletic facility
17 into this site and youngsters do jaywalk, they are going to cross and what we're
18 suggesting is when they cross they have got a safe pedestrian path to go into this
19 shopping center.

20 MR. SMITH: The good doctor, can I ask the good doctor, please? Is this a, a
21 price issue in regards to the, I mean, I want to kind of get an idea about the, about that
22 mark there because I did play football right across the street there and baseball. But,
23 the question is with that area there, I mean, again this is something that can go to the

1 state in regards to what could, what kind of security measures could be put up, but from,
2 in regards to what's going on with, what's been proposed by the Staff, it looks as if, I
3 see that that will be something that will actually help enhance the business in your
4 location. Now just because of the, the vicinity of where and what's, not even for the kids
5 but the adults that are right there, and to be able to have a matter of I'm looking from a
6 sponsorship, a sponsor of whatever is going on over there, make it a mandate for them
7 to come over there, it's gonna be a, to, to be able to have a sidewalk, a safe route for
8 them to go into and from that point be able to have -

9 DR. NAHIGIAN: I, I proposed to them again that if that was the concern, first of
10 all it's encouraging kids to come across and can we go back to that, that, that actual
11 picture of that there? No, no, no, that we had up there before with that picture of the
12 ditch and the -

13 MR. PRICE: This one?

14 DR. NAHIGIAN: Yeah. This right here – am I pointing this the wrong way - this,
15 all the cars are coming out here and looking back up over this hill to jump out. Okay?
16 So this is a, really when they come out here, they're really looking back up here and it's
17 a very difficult thing to see because of the crest of the road. So as sunsets here, they're
18 looking back up this road and they're jumping out. I would suggest because of, again,
19 all of this, there's no room, once you get to this curve because of things that we've
20 already, you know, we've already gone through, there's sewers here, there's big curb
21 cuts, there's parking spaces that were required for us to put in, there's no room to put
22 the sidewalk here and into the property in, in this location. Okay? And, and this was,
23 the thoughts behind this were we don't want people coming in and, and walking across,

1 cars going out, cars coming into this area. So that, on the original plans that, you know,
2 a sidewalk in this area was not planned. This right here, by encouraging them to cross
3 the street to come here and now these cars are now turning right here, right in front of
4 them, so they're never look for people caught jaywalking the street here. This is a
5 recipe for disaster because as you come out you are kind of facing that direction,
6 looking over this hill trying to jump out. So you're potentially going to have someone
7 come across here. I've said to them if it's that important having access into this piece of
8 property, I'll put a sidewalk directly from the road in. Okay? So they get in off the
9 street, so at least they're in this area more protected than out here on the, on the street.
10 That wasn't amenable either. Okay? Again these are, because of these trees I had to
11 put in here and I had to put numerous trees into here that were just not pictured here for
12 some reason. As a matter of fact this sign was back in September, so I know that that's
13 how old this is, that additional trees had to be added in here because of the
14 homeowners. I mean, if it's that important to bring the little five foot sidewalk in here so
15 they can access, I said I would do it. I don't want them out on this road. If they're out
16 on this road, they're gonna have encouragement to cross over here to this other
17 sidewalk, that again leads to nowhere and again that doesn't bring people into the
18 property and, and if access to the property is the reason behind the sidewalk, then let's
19 access the property, but let's not have them walking around the outside in dangerous
20 areas. If, if people want to come across the street and it's important to have a sidewalk,
21 I'm willing to put one boom here if, if it's gonna make everyone happy, I'll do it. It, it still
22 doesn't make sense because I still am worried about people jaywalking across the
23 street for this. I'd rather have the Parks and Recreation people put a fence along here,

1 so that if the kids do come up with their parents to the side, to the crosswalk and come
2 across in, in a safe manner. I, I would much prefer that. As far as putting safety poles
3 and things along here, I'm under unbelievable demands by the Homeowner's
4 Association, there are complete deed restrictions on this. There's no way in heck any
5 eyesore is gonna be allowed on here, safety or not because they don't care about
6 safety. They care more about aesthetics and entrance to, to Wildewood, so there's no
7 way they would go for it. So I'm looking to avoid, to make everyone happy, have people
8 access it easily, have safety without an eyesore.

9 CHAIRMAN MCDUFFIE: Thank you. Are there any questions at this time either
10 for Staff or for, for Dr. Nahigian?

11 MS. CECERE: Mr. Kocy? I know when we went around with this the last time
12 you and Dr. Nahigian were going to get together and try to work this out? What
13 happened to that?

14 MR. KOCY: We met on the site, it was last fall and we met with the HOA
15 Presidents, we walked the perimeter of the site, we discussed various sidewalk
16 alternatives, which is where we came up with the areas of the sidewalk plans that Dr.
17 Nahigian and I agree on. There are parts, if you overlaid our two proposals on one
18 another there is 50% of the proposal we agree on.

19 MS. CECERE: Thank you. Dr. Nahigian, I have the same question for you.

20 DR. NAHIGIAN: Because my primary concern has never been addressed and I,
21 and I, I've gone over it, over and over and over. He's compromised on the area of the
22 root balls and having to dig up where the trees, which makes sense, I mean, it really
23 does make sense. There's no reason to kill giant trees to put a sidewalk that leads to

1 nowhere. But then at the same time to put a sidewalk that leads to nowhere on a high
2 speed curve with no protection, this doesn't make sense. And again I'm trying to
3 access this property, I believe in sidewalks, I wish every community had sidewalks, I
4 wish my neighborhood had sidewalks. And you can see on the interior of my property, I
5 put sidewalks everywhere, I put a \$150,000.00 worth of landscaping to make it look nice
6 so it, so it would be a nice accessible peaceful place with, for, for the neighborhood to
7 congregate and I wanted them into the property as opposed to walking around the
8 backside.

9 CHAIRMAN MCDUFFIE: I, I guess I have a, I have a personal concern. I, I'm
10 also, obviously a huge fan of sidewalks and, and also of public safety, but, you know, I
11 guess part of my concern would be that in the absence of sidewalks there's, it's not
12 going to create an absence of people attempting to walk alongside the road there. If,
13 you know, granted that we would like everybody to be just coming from wherever and
14 entering directly onto the property, there are going to be, I would assume, some people
15 that are walking past the property and not partaking in the businesses that are, that are
16 available there. And I think that is the potential, people that are, that are, you know, the
17 external sidewalks would be, would be necessary to address.

18 DR. NAHIGIAN: And that's -

19 CHAIRMAN MCDUFFIE: I, I feel like having, obviously creating a, putting a
20 sidewalk would, you know, in your estimation create sort of an attractive nuisance, you
21 know, that would attract people there and potentially put them in, you know, in the path
22 of this, you know, an out of control vehicle. But at the same time I, I'm not entirely convinced
23 that not having a sidewalk would -

1 DR. NAHIGIAN: From the edges of this property, it literally is unwalkable then
2 there's no reason to have those paths going to unwalkable places when you can access
3 them into a walkable accessible area. So and, and that's one of my contentions. They,
4 they're not walking past this piece of property because there's no place to go. I mean,
5 they're, they're pits, they're giant pits that are already constructed, that are already
6 grandfathered in and that's the reason why we can't build a sidewalk on the corner is
7 because the homeowners have that grandfathered in. So no one is gonna have
8 sidewalks down into the pits to meet my sidewalks.

9 CHAIRMAN MCDUFFIE: At this point in time we, we also have one other
10 individual signed up in, in support of the project and I'd like to call them. Mr. James
11 Harden to speak at, at this point? Is he here? All right, I here -

12 DR. NAHIGIAN: In support of me or against me you said?

13 CHAIRMAN MCDUFFIE: He's actually in support of the project, he signed up
14 for.

15 DR. NAHIGIAN: Such is my luck.

16 CHAIRMAN MCDUFFIE: He's not here. Does anyone have any other questions
17 for Dr. Nahigian and for Staff? No? Would anyone care to go through the findings?

18 DR. NAHIGIAN: I, also, one other thing, it was not posted, in fairness for people
19 to either fight this or agree with me, it has not been posted on my piece of property and
20 that is one of my contentions about some of the logistics of this and what has gone on.

21 CHAIRMAN MCDUFFIE: Thank you, Mr., Mr. Price could you? Mr. Price, could
22 you clarify that?

23 MR. PRICE: The property was advertised and posted as required by the Code.

1 MR. RUSH: Okay, and we'll go through all of them. Is the property properly
2 zoned? Yes. Was notice of public hearing posted on the property for which the
3 variance is sought? Mr. Price?

4 MR. PRICE: Yes.

5 MR. RUSH: Yes. Was notice published in the newspaper or a general
6 circulation within the county no less than 15 days prior to the public hearing?

7 MR. PRICE: Yes.

8 MR. RUSH: Okay.

9 DR. NAHIGIAN: Number 2 is not true.

10 MR. RUSH: Are there extraordinary and exceptional conditions pertaining to the
11 particular piece of property? I would say no on that.

12 CHAIRMAN MCDUFFIE: At, at this point I, I have a quick question for Mr. Price.
13 Did you personally go out and post the property as required by, by the county?

14 MR. PRICE: I would say I post 99% of all the properties that come before the
15 Board of Zoning Appeals and I did post this property. Actually, I posted it and so did Mr.
16 Cook.

17 CHAIRMAN MCDUFFIE: Could you tell what, what day this property was posted
18 on?

19 DR. NAGHIGIAN: It must have been in the last couple of days.

20 MR. PRICE: Yeah.

21 DR. NAHIGIAN: I mean, it wasn't, how long ago was it?

22 MR. PRICE: You were out of town last week, right?

23 DR. NAHIGIAN: Yeah.

1 MR. PRICE: Have you been by there since?

2 DR. NAHIGIAN: Yeah.

3 MR. PRICE: And you didn't see the signs?

4 DR. NAHIGIAN: Yeah, but two weeks ahead of time, that was not true.

5 MR. PRICE: That was for that.

6 MR. RUSH: That was for a newspaper.

7 MR. PRICE: That was for a newspaper, general circulation.

8 CHAIRMAN MCDUFFIE: What, what's the requirement for, for public posting?

9 MR. PRICE: There is no requirement.

10 MR. RUSH: For public?

11 MR. PRICE: The requirement is 15 days prior to for the newspaper.

12 MR. RUSH: For the newspaper?

13 CHAIRMAN MCDUFFIE: There's no requirement for posting of the property.

14 MR. RUSH: It was number 4 – Are, are there any extraordinary or exceptional
15 conditions pertaining to the particular piece of property? I'm, I'd say no and I'll open that
16 up to, for discussion.

17 CHAIRMAN MCDUFFIE: Does anyone have any particular thoughts on that? I, I
18 don't think that the, that the topography of the parcel really create, creates a, an
19 exceptional condition, you know, as we would be considering it now if it was, if it's
20 physically impossible to build something then, or it would just be, you know,
21 unreasonably to be able to do it. I mean, that, that's sort of one thing, but I think in this
22 case we're talking about something that, that could in fact be, be reasonably built, it's

1 just, is it, is it going to be, you know, [inaudible]? [Inaudible] the external, because of
2 the external sidewalks?

3 MR. RUSH: Yeah, and also looking at those pictures you've got, you know, per
4 those pictures they may be old, but, you know, you've got grass, dirt, you know, it may
5 be hilly now, but when you put a sidewalk in, with my experience, when you put a
6 sidewalk in there will be, you will have to grade the property in order to put the
7 sidewalks in. So, you would have to bring the property up to a standard in order to
8 construct the sidewalks, so looking at it from a raw land standpoint and what, what you
9 would actually have to do to construct the sidewalk are totally two different.

10 CHAIRMAN MCDUFFIE: I, I guess I have a question as well and that would be
11 the deed restrictions that are on this particular parcel. I mean, certainly while they exist
12 on the, on the property, they, they can't really create an extraordinary and exceptional
13 condition. Can I, I mean, is that, it's definitely, we could get a legal clarification on or
14 that Staff could potentially provide some clarification on? If, if the existing covenants or
15 restrictions requirements that are placed on that deed, if those could in fact, giving
16 [inaudible] to create a extraordinary and exception condition on the parcel.

17 MR. RUSH: The deed is not restricted, from what standpoint [inaudible] is not
18 restricted to sidewalks?

19 CHAIRMAN MCDUFFIE: The deed is, the deed is requiring certain things to be
20 placed at, at certain places as I, I understand it like particular landscaping and things
21 like that, but I don't see how that can possibly create a burden on the county to, to
22 relieve the need to build sidewalks.

1 MR. KOCY: Mr. McDuffie, I don't have a copy of the deed here at this meeting,
2 but I have seen a copy and the, the deed gave the previous property owner the right to
3 approve landscaping, architecture and signage. It didn't mandate where it could and
4 couldn't be, it just said that the previous property owner had to sign off on everything
5 and it certainly did not exclude sidewalks from this site.

6 CHAIRMAN MCDUFFIE: Well and I, and I wouldn't think it would exclude it, my,
7 my question was though that the, the fact that the, the previous owner had, or that the,
8 whoever it is, has the right to say this landscaping needs to be here or this tree needs to
9 stay here, that doesn't absolve the, the applicant from, from having a need to build
10 sidewalks per, per County Code. I mean, if, if that were the case, we'd have all sorts of
11 ridiculous deed restrictions that obviated the need to do anything. I mean, you know, I
12 mean, I can just think of a million examples of how that could, you know, that would
13 totally override any kind of zoning or any kind of, you know, Development Code.

14 CHAIRMAN MCDUFIE: Point of order, a point of order, Dr. Nahigian. At this
15 point the Board is, is in discussion. Does anyone have any further thoughts on whether
16 or not there are extraordinary and exceptional conditions on this piece of property?
17 The, the public safety aspect is certainly there.

18 MR. SMITH: That, that's the big -

19 CHAIRMAN MCDUFFIE: That, that's -

20 MR. SMITH: But I think that's something that needs to be dealt with, with the
21 state in regards to what the state will allow and what -

22 DR. NAHIGIAN: He's gone off the road where I said it's gonna happen.

23 MR. SMITH: Point of order.

1 CHAIRMAN MCDUFFIE: Dr. Nahigian, please, this is not the time to - I guess,
2 and I mean I, I'm certainly not saying that people won't drive off the road there, I mean,
3 obviously that's something that, that occurs there, but at the same time that's not -

4 DR. NAHIGIAN: Extraordinary.

5 CHAIRMAN MCDUFFIE: Well it's not, it's not a particular condition to just that
6 piece of property, I mean, any property that's on a, on a curve on a high speed road is
7 gonna have that or, or a similar thing.

8 DR. NAHIGIAN: But [inaudible] - it makes no sense. I'm done.

9 MR. RUSH: If you don't mind, I'd like to make a motion to go into Executive
10 Session to get some clarification on, on some legal clarification on that, and Staff is
11 invited.

12 CHAIRMAN MCDUFFIE: Alright, at this point we'll, we'll go into Executive
13 Session for the purposes of receiving legal counsel.

14 *[Executive Session]*

15 CHAIRMAN MCDUFFIE: Alright, who would like to make a motion to come back
16 out of Executive Session?

17 MR. RUSH: So moved.

18 MS. CECERE: Second.

19 CHAIRMAN MCDUFFIE: All right. Let's, at this point we'll continue discussions
20 of the Findings of Fact.

21 MR. RUSH: After clarification and in talking to our attorney, I would like to
22 actually say there are extraordinary conditions pertaining to this property. I guess with,
23 with the way the conversation was going the, just the direction of what we were actually

1 talking about was coming into play, so, so for number four – are there extraordinary
2 conditions? The answer to that is yes.

3 CHAIRMAN MCDUFFIE: And, could you clarify what, what conditions apply and
4 where they are?

5 MR. RUSH: Okay, there's extraordinary, according to Exhibit A, the
6 extraordinary conditions would be that parcel, well not the parcel, but the, the, where
7 the, where the property, where the property actually connects with Mallette Hill and Polo
8 Road connects, there's a, you know, signage, also there's trees there that we're saying
9 it wouldn't make sense to actually disturb. Also there's a big retaining wall, it doesn't
10 make sense to actually put a sidewalk at that point, so -

11 MS. CECERE: And also Mr. Rush I believe there's a very big ditch.

12 MR. RUSH: And there, I don't know if there is a ditch right there.

13 MS. CECERE: I think that there, I thought there was a ditch.

14 CHAIRMAN MCDUFFIE: Are you speaking about the intersection of, of Mallette
15 and Polo.

16 MS. CECERE: Oh, okay, okay, I'm sorry.

17 MR. RUSH: Mallette and Polo Road, so. Alright, number five, do these
18 conditions generally apply to the property in the vicinity? No on that one. Would
19 application of this chapter to this particular piece of property effectively prohibit or
20 unreasonably restrict the utilization of the property because of the aforesaid
21 extraordinary conditions? The answer to that is yes. Oh, the prohibited restrictions
22 would be the tress on the front part of that parcel at the corner of Mallette and Polo.
23 The trees, also, I think there's a retaining wall there, those would be the restrictions.

1 And will granting of this variance be a substantial detriment to the adjacent property?
2 And the answer to that is no. So with that being said, I would like to grant, I'd like to
3 make a motion to grant the variance for Case 08-46 with, using Exhibit A as, as the, as
4 the format for, for applying the sidewalks, Exhibit A and Staff recommendations as a, as
5 the format for applying sidewalks.

6 CHAIRMAN MCDUFFIE: All right, so we have at this point a motion for, to apply
7 Exhibit A as the, as the model and grant a variance for the portion of the property along
8 Mallette Hill Road that would be offset from the, from the road due to the landscaping
9 buffer there and to the corner there at Polo Road, to grant a variance for that piece of
10 property. Is there a second?

11 MS. CECERE: I second.

12 CHAIRMAN MCDUFFIE: All in favor?

13 MR. PRICE: Those in favor are Branham, Rush, Cecere.

14 CHAIRMAN MCDUFFIE: Okay, all opposed?

15 MR. PRICE: McDuffie, Smith.

16 *[Approved: Branham, Rush, Cecere; Opposed: McDuffie, Smith; Absent: Perrine,*
17 *Cooke]*

18

1 CHAIRMAN MCDUFFIE: Okay, I don't see that Dr. Nahigian is, is with us at this
2 point, but there is a variance and Mr. Price will be in touch. At this point, is there any
3 other business at this time? I, I know that an email went out earlier this week about
4 potential upcoming training. If anybody needs any training with these, make sure that
5 you take care of it. Any other business? Okay, at this time I'd like to call this meeting to
6 a close.

7 *[Meeting Adjourned: 3:43 p.m.]*