

**RICHLAND COUNTY BOARD OF ZONING APPEALS**  
**February 2, 2011**

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4  
5 *[Present: Joshua McDuffie, Elbert Meetze, Elaine Perrine, Torrey Rush, Susanne*  
6 *Cecere, Sheldon Cooke, William Smith]*

7  
8 Called to order: 1:07pm  
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10 CHAIRMAN MCDUFFIE: I'd like to call this meeting of the Richland County  
11 Board of Zoning Appeals to order. At this time we do have a quorum and I will turn the  
12 meeting out to Attorney Amelia Linder. I'd like to mention that in accordance with the  
13 Freedom of Information Act, a copy of the Agenda was sent to radio and television  
14 stations, newspapers, persons requesting notification, and posted on the bulletin board  
15 located in the lobby of the County Administration Building.

16 MS. LINDER: Thank You. Ladies and Gentleman, thank you for attending this  
17 meeting today. My name is Amelia Linder and I'm the attorney for the Board of Zoning  
18 Appeals and I'd like to go over just a few rules of procedure today so you'll know how  
19 we're going to proceed. This Board is a *quasi* judicial court; that means they'll take the  
20 evidence, you'll do testimony, you'll be sworn if you're planning to testify, if you have  
21 documents you want to submit you may do so. It's not quite as formal as a court but we  
22 would ask that you be respectful of the Board. The applicant will have up to 15 minutes  
23 to present their case, when the applicant is finished presenting his or her case, if there's  
24 any opposition they will have three minutes to speak. At the end of opposition's  
25 testimony, the applicant will have five minutes to rebut what the opposition has said. We  
26 will take up the cases in the order they're presented on the Agenda today. When you  
27 come to testify you'll please address your comments to the Board and not to members  
28 of the audience. You will be under oath, the testimony you give will be recorded. Once

1 the Board has heard your case, they'll act upon it with either approval or denial. If you're  
2 not happy with the Board's decision you do have the right to take it to Circuit Court.  
3 Once the Board makes their decision we will wait until next month's Minutes get  
4 approved and then Orders will be going out to all the interested parties on what the  
5 results of today's decisions were. And then like I said, you will have 30 days to appeal  
6 that decision if you're not happy with it. Please mute or turn off any cell phones you may  
7 have. If you're planning to testify make sure your name is on the sign up sheet. And if  
8 you need to leave I just ask that you do so quietly. Are there any questions at this point  
9 from any members in the audience? At this time if you're planning to testify, which  
10 means you'll be coming to the podium, I would ask you to stand take an oath, take an  
11 oath that you'll tell the truth. If you'll raise your right hand, please, if you do plan to  
12 testify by coming to the podium I need you to stand at this time. Do you swear or affirm  
13 that the testimony you shall give, shall be the truth, the whole truth, and nothing but  
14 truth so help you God.

15 AUDIENCE: I do.

16 MS. LINDER: Thank you very much.

17 CHAIRMAN MCDUFFIE: Alright at this time the next item on the Agenda is the  
18 election of Officers for 2011. That will be - how do we normally go about this?

19 MR. PRICE: We open up the floor for nominations for. Yeah, I guess we want to  
20 go ahead and identify the two positions that, that are open and then just take those in  
21 that order.

22 CHAIRMAIN MCDUFFIE: Okay. At this time we'll need an election for a Chair  
23 and Vice-Chair, is that correct?

1 MR. PRICE: Yes.

2 CHAIRMAN MCDUFFIE: Okay. First off let's make nominations for Chair. Are  
3 there any nominations from the floor?

4 MS. CECERE: I nominate that Mr. McDuffie will continue as the Chair.

5 MR. RUSH: I second it.

6 CHAIRMAN MCDUFFIE: Are there, are there any other nominations?

7 MR. PRICE: I guess y'all need to take vote.

8 CHAIRMAN MCDUFFIE: I don't know that that's necessary. Alright.

9 MS. CECERE: We'll take a vote.

10 CHAIRMAN MCDUFFIE: Alright, so all in favor of myself continuing on as the  
11 Chair.

12 MR. PRICE: Those in favor Meetze, Perrine, Rush, McDuffie, Cecere, Cooke and  
13 Smith.

14 *[Approved: Meetze, Perrine, Rush, McDuffie, Cecere, Cooke, Smith]*

15 CHAIRMAN MCDUFFIE: Thank you very much. At this time are there any  
16 nominations for the position of, of Vice-Chair?

17 MR. SMITH: I'd like to nominate Torrey Rush for Vice-Chair.

18 CHAIRMAN MCDUFFIE: And I'll second that. Are there any other nominations at  
19 this time for Vice-Chair. Being none, I'll close the floor to nominations. All in favor of Mr.  
20 Rush continuing on as Vice-Chair.

21 MR. PRICE: Alright, those in favor of Meetze, Perrine, Rush, McDuffie, Cecere,  
22 Cooke and Smith.

23 *[Approved: Meetze, Perrine, Rush, McDuffie, Cecere, Cooke, Smith]*

1 CHAIRMAN MCDUFFIE: Mr. Rush will be the Vice-Chair for this year. At this  
2 point we won't need to change seats. Next item on the Agenda is the approval of  
3 Minutes from our last meeting, which was December 1<sup>st</sup> of 2010. I don't know that we've  
4 actually had an opportunity to read the Minutes yet, since they were just presented, so I  
5 guess I would like to put this off until, until next month so that we've had an opportunity  
6 to read the Minutes. Anyone care to make a motion?

7 MR. MEETZE: So moved.

8 CHAIRMAN MCDUFFIE: Are there any pressing issues in -

9 MR. PRICE: I don't believe that there are. I don't think there's anything pressing  
10 at this time. However, it has been a while and right now we don't have any cases  
11 scheduled for the March meeting.

12 CHAIRMAN MCDUFFIE: Right, so maybe we can defer them to the end of this  
13 meeting and then, and then read over them quickly.

14 MR. PRICE: Right, and I do remember that this has occurred before and I believe  
15 in that case the, your attorney who's really, you know, goes over the Minutes will point  
16 out any discrepancies she may see. I think that the Board has kind of relied upon her in  
17 this particular case so this something we can look at toward the end if you would like.

18 CHAIRMAN MCDUFFIE: Okay, so at this point I'd like to just move, move the  
19 Minutes until the end of the public hearing. Pick them up at that point.

20 MR. PRICE: Okay.

21 CHAIRMAN MCDUFFIE: So at this time let's, I'd like to move to the public  
22 hearing portion of our, today's session and Mr. Price when you're ready will you call  
23 your first case.

1 **CASE NO. 11-01V:**

2 MR. PRICE: Okay, the first item is case, is case 11-01V. It's a variance and the  
3 Applicant is Carl Schaefer and the Applicant is requesting the Board of Zoning Appeals to  
4 run a variance to exceed the maximum square footage for an accessory structure on  
5 property zoned RS-LD, which is residential single-family low density. The location is,  
6 excuse me 336 Waddell Street, that's spelled incorrectly on what you have before you.  
7 It's actually Weddell. The partial size is about two acres and it's residential. The subject  
8 property has, at least according to our records, a 3,813 square foot dwelling, which was  
9 constructed in around 1994. And the applicant is, you know what, let me, the applicant  
10 is proposing the construction of an accessory structure which will be like a canopy or a  
11 roof over the tennis courts, which will exceed the maximum allowed square footage.  
12 The area is comprised of single-family residential structures. We've kind of had  
13 situations like this before, come in - structure by Code once you have that roof over it,  
14 it's a structure. So, the walls don't, don't need to be present in order for it to be  
15 considered a structure. And according to our Code the maximum square footage  
16 allowed for an accessory structure is 1200 square feet or 50% of the gross floor area of  
17 the principal building on the property. In this particular case the Applicant, at least  
18 according to my calculations, is proposing to construct an, it's about 9500 square foot  
19 structure which would cover the tennis courts, and it would exceed to allowed square  
20 footage by 8,304; maybe a little less than that if you take into the house of, I would say  
21 probably about 8,000 square feet and I can give you those exact numbers. According to  
22 the Applicant the proposed structure will allow them to keep the blotching and staining  
23 pollen off of the court, to keep pine straw and leaves off of the court, and to the protect

1 the players when it's raining. I'm kind of go with some pictures. This is an aerial of the  
2 sight, there were no ground level street view pictures for this particular case. And this is  
3 just a close up of the tennis courts. That will be it from Staff. If I'm correct, I think you  
4 said Mr. Fuller you're going to present? The Applicant has elected for a representative  
5 to speak on this case, Mr. Robert Fuller, will speak for the Applicant.

6 CHAIRMAN MCDUFFIE: Mr. Fuller, if you would please state your name and  
7 address for the Record.

8 **TESTIMONY OF ROBERT FULLER:**

9 MR. FULLER: Thank you Mr. Chairman. Congratulations on your re-election. We  
10 appreciate your service. My name is Robert Fuller, I'm an attorney here in Columbia,  
11 practicing on Main Street, and am here this afternoon to represent the interest of Paul  
12 and Barbara Schaefer who are the petitioner/applicants for this variance on Weddell  
13 Street in the Spring Wood Lakes area. Mr. Price has introduced the matter and noted  
14 that there were not in the package of the proposed variance any street level views. I  
15 would like to pass up to you a package that does show the property from across  
16 Weddell Street which would be the off sight view of the premises at present from  
17 anyone passing by Weddell or off the sight from that particular location. You will  
18 observe from page 5 of your, your Board package the identification of the site of the  
19 tennis court and the Schaefer home, essentially centered of the mid portion of the  
20 property and surrounded by significant vegetation out to each and all four of the  
21 property boundaries of the property. Mr. Price has made notation of the particulars of  
22 the, of the application. I would point out to you that, that in conjunction with the  
23 extraordinary circumstances that accompany this request for variance it appeals to me,

1 is not so much the, the situation of the, of the square footages as they apply to a single  
2 lot but as they would apply to this property parcel. It is an extraordinary circumstance  
3 that this property parcel which is in an RS-LD zone is actually the composition of four  
4 separate building lots, each one of which would, if standing by itself, be entitled to a, to  
5 a set of setbacks, a set of square footage coverage requirements, a, a set of  
6 appurtenant and accessory structure ratios to the property itself. The application of the  
7 standard for an accessory building I believe in this case would not be capped at 1200  
8 square feet, but would be 50% of the, the principal structure of the residence so it would  
9 actually be closer to 1900 square feet.

10 MR. PRICE: He's correct.

11 MR. FULLER: The fact of the matter is the tennis court was built shortly after the  
12 construction of the house itself in 1994. This is a structure which has been in place  
13 uncovered for the entire single-family use life of that property. There has never been a  
14 complaint by any neighbor; there has never been jurisdictional complaint from any  
15 source regarding the size or the presence or the application of the tennis court,  
16 including the lights that are currently attached to it and have been used routinely  
17 throughout the course of the life of the tennis court. What I would suggest to this Board  
18 is that, that it is unrealistic to expect that the same standard of, of lot coverage ratio and  
19 an accessory building limitation on 86000 square feet, should be the same as it would  
20 on essentially 20,000 square feet of the typical lots in this subdivision. The actual  
21 coverage of the tennis, existing tennis court by a covering will simply be a, an upright  
22 structure with open walls and will not have any of the density of an RV shed, a barn,  
23 most closed in structures that you would expect in the nature of garages or equipment

1 sheds or other principal accessory uses on any sort of a residential property. There is in  
2 your package a visual of what the, what the tennis cover will be. Those appear on  
3 various pages of the packet at pages 11 and 12. It struck me when I looked at those  
4 visuals that it looks like a fairly imposing structure that might erratically change the view  
5 of the, of the circumstance as you appreciate it, as you approach the property, but it  
6 then occurred to me also that the significant amount of tree coverage that is on this lot is  
7 in the main pine trees which have an upper story coverage which would be beginning at  
8 or above the level of the covering structure itself. So the actual view of the when  
9 constructed tennis cover will leave you with basically the same representation from off  
10 sight viewing as exist now. The, the shape of the roof line will be obscured by the  
11 existing tree cover on the lot. One of the photographs that is in the, the three page  
12 package that I just passed around to you shows the perimeter sides of the existing  
13 tennis court and there is a substantial open area between the present tennis court  
14 fence, which would be the outer edges or perimeter of what would be covered by the  
15 covering, so there is no need and no intention of removing any of the existing buffering  
16 trees from the sight. The construction of those upright support members and the, and  
17 the, the shed over the top of the court itself to protect the playing surface will be virtually  
18 unseen from the street or from off sight. It is a densely covered lot. Now, I'm going to  
19 pass up a, those two sheets in which I have illustrated to you, and I did not have my 10  
20 year old granddaughter do it, but she could have done about the same thing I think, to  
21 give you the idea of how the plain view of that structure that you look at in the package  
22 would be affected when it is set in the midst of that lot and screened by the tree cover  
23 that is already in place on the property. Now, I do, I do recognize that there are



1 requirements that you must consider in the granting of a variance and I would suggest  
2 to you that in the determination of extraordinary circumstances that the single most  
3 extraordinary circumstance here is that we are dealing not with a typical single-family  
4 residential lot. It is the combination of four lots permitted by the private governance and  
5 restrictions that are applicable to the subdivision and not prohibited in any way by the  
6 county zoning district requirements.

7 CHAIRMAN MCDUFFIE: Is it in fact one lot though now that it's been combined,  
8 it's one, one parcel of property?

9 MR. FULLER: It is, it is one TMS parcel, it is one TMS parcel.

10 CHAIRMAN MCDUFFIE: Okay.

11 MR. FULLER: The, the property is, is extensively covered as I have indicated to  
12 you by the vegetation, and the, the square footage of the structure is not significantly  
13 increased over the square footage of the, of the intended and continuing use, which is  
14 as a tennis court playable in, in what we would call I guess clement weather now and  
15 would possibly be playable in less than ideal conditions, and it will also protect the  
16 covering surface of the court itself. As I indicated before that the, there has never been  
17 any contention about the use of the facility as a private tennis court on the property by  
18 any neighbors or surrounding people, indeed they enjoy the use of it from time to time  
19 themselves. The establishment is certainly at the instance and for the benefit of the  
20 property owner. It is not a condition that has been imposed on them by some exterior  
21 condition other than the extensive buffering cover that protects the site view of the  
22 neighboring properties also produces the yellow pollen and the substantial amount pine  
23 cones and burrs and those things that fall on the court and, and produce both the

1 maintenance and the inability to utilize the facility at certain times of the year as, as  
2 problems and difficulties. There simply are no other, no other similar lots in the general  
3 vicinity. In looking at the site myself it was, it was obvious that this subdivision has been  
4 built out over a long period of time, many very nice homes. I would say that the Schaefer  
5 home is at the top end of that, that spectrum but they are nice homes throughout that  
6 area and they are well settled. The, they are generally kept up well but there are not to  
7 the, to the eye any significant lot combinations in that vicinity. The subdivision  
8 regulations of the subdivision also prohibit the division of lots, they don't prevent the  
9 compilation of multiple lots. There are - the Schaefer's in point of fact continue this to be a  
10 completion of the project that was initiated in 1994, it completes the effect of that  
11 combination of lots for the purpose of having the court at home for the convenience of  
12 their use as an amendment and, and appurtenance to their own private residence and it  
13 is really not considered to be by them actually an enlargement of an existing use. It  
14 does in fact include an additional structure utilization which is the upright supports for  
15 the roof covering that will essentially be seen on site only by the Schaefer's and the tennis  
16 players. There is, I would submit to you in the last analysis no detriment to the  
17 neighborhood, to the surrounding properties, and no detrimental precedential effect to  
18 the, to the granting of this variance. It is going to be obscured from view. There indeed  
19 has been nobody who has appeared to object to it, the neighbors have never raised  
20 question about the utilization of the court itself, and this will really make no significant  
21 difference to them. One of the variance criteria of course, is, is this the minimum  
22 variance that could be applied to remediate the situation and it is a, strictly a cover of  
23 the court, it's not any expansion beyond that.

1 CHAIRMAN MCDUFFIE: Thank you very much. Are there questions at this time  
2 for either Mr. Fuller or for Staff, or for Applicants from the Board?

3 MS. CECERE: I wanted to ask Staff, and I think Mr. Fuller talked about this. That  
4 the lot could not be divided, is that correct?

5 MR. FULLER: That would be a violation of the sub division regulations and -

6 CHAIRMAN MCDUFFIE: Please speak into the mic so the -

7 MR. FULLER: Excuse me.

8 CHAIRMAN MCDUFFIE: No problem.

9 MR. FULLER: That would be a violation of the subdivision regulations *per se* so  
10 that could not be done without a procedure outside of the Schaeff's themselves. And  
11 then the Planning and Developing Services Department would, would have to make a  
12 determination with respect to whatever lot was attempted to be created as to whether or  
13 not that was going to be possible.

14 CHAIRMAN MCDUFFIE: And, and just for clarification. At this time since they  
15 have consolidated four lots into this, you know, mega lot, they couldn't go and build four  
16 single-family residences on it without having to, without having to get it re-divided and  
17 go through the processes that you mentioned.

18 FULLER: That is correct.

19 CHAIRMAN MCDUFFIE: So it seems like the fact that the lot could in fact  
20 support X-thousand square foot of development in terms of residences is almost  
21 immaterial.

22 MR. FULLER: Well it, it -

1 CHAIRMAN MCDUFFIE: Granted that, granted if they were still four separate lots  
2 with vested property development rights for four houses, sure they could support 12,000  
3 square feet or 16,000 square feet of houses.

4 MR. FULLER: Well, Mr. Chairman, had they elected to build a 19,000 square foot  
5 house we wouldn't be here today. But it is, it is for a variance, it is an extraordinary  
6 circumstance that we find ourselves in and I think that's why the Code and the Board  
7 are given latitude to make site specific adjustments.

8 CHAIRMAN MCDUFFIE: I have one other question and you mentioned that they  
9 see this as sort of the continuation of a, a project that was started with the development,  
10 the original development of the lot. Was, you know, was there some sort of plan in place  
11 at that time that was approved by the Development Staff or anything like that, to enclose  
12 or to cover, you know, canopy the tennis court, at that time, or is this simply a more  
13 recent, recent expansion on the original idea to do that?

14 MR. FULLER: I certainly cannot speak to that. I was not in place at that time. Mr.  
15 Schaef is shaking his head no, that it was not – in, as in most things that we do at our  
16 homes, I'm sure it had something to do with cost of -

17 CHAIRMAN MCDUFFIE: Certainly, and one might not know what one wants  
18 until, you know, one has a tennis court and can't use it for -

19 MR. FULLER: Well, they are pretty well settled now, since 1994 that they like  
20 being there, they like having the court and are willing to make the additional investment  
21 in the property.

22 CHAIRMAN MCDUFFIE: Certainly, thank you. Are there any other questions for -

1 MR. MEETZE: Yes, a comment and then maybe a tongue-in-cheek sheet  
2 statement. You're right, I've been there. That is a high end property, very high end. I  
3 had problems from the street even seeing the tennis courts so they're very, very well  
4 shielded. And you answered a concern I had earlier that the buffer will remain, that  
5 they're not going to be clear cutting the property or anything like that. And also will this,  
6 how much, it will also not only enhance the value their property, will no doubt add to the  
7 value of their property and will enhance the coffers of Richland County's tax treasurer I  
8 would imagine.

9 MR. FULLER: Well, were not going to tell John Cloid about it just yet.

10 MR. MEETZE: And as I look at it, these folks are spending their own money;  
11 they're not getting any grants, federal handouts, no stimulus funds or anything like that.

12 CHAIRMAN MCDUFFIE: I don't know that it's necessarily within our purview  
13 what it will do to the -

14 MR. MEETZE: But it, that's just a tongue-in-cheek.

15 MS. CECERE: Mr. Fuller, my concern is yes you stated the extra, on what you  
16 consider the extra in exceptional circumstances, but they just really are man made  
17 circumstances. It wasn't anything - I'm trying to say, the, the circumstances stated are  
18 that the tennis court gets dirty and, and they're trying to prevent, you know, from getting  
19 wet and that sort of, that sort of your own making.

20 MR. FULLER: Have you really in your experience here ever dealt with a variance  
21 or special expectation where the part of the matter and the gravamen of the deal, it was  
22 not a man made condition in part?

1 MS. CECERE: I'm not going to get in an argument with you here, and not a man  
2 made by the person itself, it could have been through a utility company, etc., but our,  
3 the way I interpret this is it, the circumstances should be created, or should have been  
4 created through some other than the owner itself, the property owner.

5 MR. FULLER: Well, well, you know, I could, I'm not going to try to manufacture  
6 something contrary to that statement –

7 MS. CECERE: I understand.

8 MR. FULLER: - but it is a circumstance that exists. It extraordinary by virtue of  
9 the culmination of several events and, and the size of the lot to accommodate the use in  
10 the first place, distinguishes it from most everybody who would wish to make that the  
11 idea behind their desire to do something that was extraordinary.

12 CHAIRMAN MCDUFFIE: You know, I guess my, my issue first would be, you  
13 know, certainly maybe there are, you know, circumstances that apply to this piece of  
14 property given that, that it is larger than the other, you know, properties in the area and  
15 there aren't tennis courts around all the other houses but, you know, not granting a  
16 variance here today would not effectively, you know, prohibit or unreasonably restrict  
17 utilization of this property. I mean, that they can still - granted without a roof, without,  
18 you know, that type of - they can still live at the property, play tennis at the property, it's  
19 not, you know, it's not preventing them from, from being able to use the property in any  
20 way and, you know, I sort of fail to see how they meet that requirement for the variance.  
21 I, I feel like yes I'm sympathetic because, you know, I know how bad the pollen gets  
22 around here, you know, and the times of the year when it's nice to be outside playing  
23 tennis seem to coincide with, you know, the times of year when you're going to have an

1 issue with pollen or with, you know, debris falling onto the court that type of thing. But  
2 you know, I still fail to see how they might, might meet that requirement.

3 MR. FULLER: I think the latitude that you are, you are allowed under the Code is  
4 to make consideration of what the overall asset or detriment regarding the condition in  
5 the variance would be, and I, I think you can shield yourself under the cover of that, of  
6 that shelter to, to grant the variance if you see your way clear to do it. I, I would suggest  
7 to you that it is a better use of the facility and an appropriate use of the facility and you  
8 can deal with that under the variance language in the Code.

9 MCDUFFIE: Thank you, thank you very much, Mr. Fuller. Are there any  
10 questions for Mr. or Mrs. Schaef at this time? Or would they like to, would Mr. and Mrs.  
11 Schaef like to address the Board at this point? Okay, alright. Now moving to the  
12 discussion, I don't know if anybody has anything?

13 MR. RUSH: I just, me personally, I just fail to see the extraordinary conditions for  
14 this property. That's why I'm having a hard time, especially when you look at the  
15 specifics of the property itself, despite all the, like I said all the man made issues that  
16 may have been caused. Really, I don't even see a man made issue but if you just look  
17 at the, the property itself, I just don't see any extraordinary condition for putting a  
18 structure of this size up.

19 CHAIRMAN MCDUFFIE: Would you care to go through the Findings?

20 MR. RUSH: I will. And I'll start with number four – well, I'm assuming that Staff  
21 put a notice and posted a notice. Okay. I'll start with number 4, are there extraordinary  
22 or exceptional conditions pertaining to the particular piece of property? I'm going to  
23 have to say no on that. And with that being said, I would like to make a motion to deny

1 Variance 11-01 based on the fact that there are no extraordinary or exceptional  
2 conditions pertaining to that particular piece of property.

3 MR. SMITH: I second.

4 CHAIRMAN MCDUFFIE: Alright, so we have a motion that has properly  
5 seconded to deny Variance 11-01 based on the fact that there are not extraordinary or  
6 exceptional conditions pertaining to the piece of property. All in favor?

7 MR. PRICE: Those in favor, Perrine, Rush, McDuffie, Cecere and Smith.

8 CHAIRMAN MCDUFFIE: And all opposed.

9 MR. PRICE: Those opposed, Meetze and Cooke.

10 *[Approved: Perrine, Rush, McDuffie, Cecere, Smith; Opposed: Meetze, Cooke]*

11 CHAIRMAN MCDUFFIE: The motion carries. Mr. Fuller, the variance has been  
12 denied and Staff will be in touch. Thank you very much.

13 MR. FULLER: Thank you.

14 CHAIRMAN MCDUFFIE: Mr. Price, when you're ready please call your next  
15 case.

16 **CASE NO. 11-02V:**

17 MR. PRICE: Alright, the next item is case 11-02 Variance. The Applicant is  
18 requesting the Board of Zoning Appeals to grant a variance to reduce the required  
19 number of off street parking spaces on property zone GC, which is general commercial.  
20 The Applicant is Jeston McMoore, the location 51 – there are actually two structures on  
21 a property but it's in the 5100 block of Two Notch Road. The parcel size is little, about a  
22 third of an acre. The existing land uses commercial, there are two commercial buildings  
23 on the property, about 2,042 square feet on one building, and 287 square feet on



1 another. According to our records, they were constructed around 1978. The Applicant is  
2 proposing to establish the motor vehicle sales business and the 287 square foot  
3 building is proposed to serve as the primary office for they use. The area is comprised  
4 of various commercial uses. Okay. As you can see under the discussion I went into the,  
5 how we came up with the determination as to the number of parking spaces. The  
6 Applicant - I'll show you on the back screen. The applicant is going to use this part, this  
7 structure right here, but because this is one parcel, we do have to take into  
8 consideration that there will need to be parking needs for both, you just have to have  
9 that number. And according to our calculations the minimum require parking spaces for  
10 both uses in which this one was taken as the office, would be 14.

11 MR. SMITH: How many?

12 MR. COOKE: Fourteen.

13 MR. PRICE: 14 total. The motor sales, the motor vehicle sales would be about  
14 eight parking spaces and the, just for the office use would be about six. Kind of, we've  
15 been working with the Applicant on this so at least, we've been looking at this one for a  
16 while, kind of give you a little quick history on this. This parcel, if you look here, I'll tell  
17 you what, let me, let me go to his, to the plat that he's providing. When, if you go out to  
18 the site what you see is concrete, or at least asphalt that comes up by Two Notch Road  
19 and you see some railings. Well, part of that, right here this is the area that you see  
20 goes out to Two Notch Road, and you see the railings go along here. That is actually in  
21 the right-of-way. The property line is here, it kind of runs down, I won't say the middle of  
22 the property but you can be deceived if you just go out there because you just assume  
23 that it's right there on the road. It's been vacant for over a year, so any non-conformity

1 they would applied to it has been lost. And so they have to come in and they have to  
2 meet our requirements and one of them is the parking. Now it's kind of, I'm going to the  
3 next one they have, sorry, this is another angle here. It runs like right in here. So this is  
4 kind of where the line would run, the separation of parcels, and using the technology  
5 that we have.

6 MR. SMITH: Could you go back to that last picture, if you don't mind?

7 MR. PRICE: Sir?

8 MR. SMITH: Where would the line be again?

9 MR. PRICE: I'll, I'll, it's going to run somewhere around here. Somewhere right in  
10 this area.

11 MR. SMITH: Okay.

12 MR. PRICE: Now to kind of, to go back, and we'll go to our IMS, this is, when you  
13 go to the Google, this is how it used to be, because, you know, Google goes back a few  
14 years on us. So this is what you would see. Actually, the cars that you see that are  
15 parked right here near the road are actually parked in the right-of-way. And so once  
16 again due to the time that it's been vacant, you know, that has been lost, so we as a  
17 Staff we cannot approve any parking, the required parking that actually would be in the  
18 right-of-way. And I'll show you a few others. This is a view from the rear, this is Baldwin,  
19 I think it's Baldwin Avenue. Once again here's a view, and this actually is part of the, the  
20 office structure that, that I referred to earlier and as you can see in the back where the  
21 county car is parked, that's where the office would be for the proposed car dealership.

22 MR. COOKE: So is the front part of the office also in the right-of-way?

1 MR. PRICE: No, sir. I think you could almost go from this, the utility lines are to  
2 kind of separate. And one of, one of the things that I did reference in the discussion was  
3 subsection 26-173(D)(a) of our Code, and it states, and I'll just read for Record, "All off-  
4 street parking areas with the exception of parking areas for single-family detached and  
5 two family dwellings, shall be so designed that vehicles will not be required to back onto  
6 a public road when leaving the premises. All parking areas shall be designed so that  
7 there is sufficient area for access to all parking spaces and safe maneuvering within the  
8 parking area." So what the, with the issue that, from a Staff standpoint that we have,  
9 and I do need to pull up his, the drawings actually that you have in your -

10 MS. CECERE: Mr. Price, may I ask you a question? The fence that's shown is in  
11 the right-of-way then? Is that correct?

12 MR. PRICE: The fence in the rear?

13 MS. CECERE: I thought there was a fence all the way around the property, is it  
14 not? From one of those little low fences?

15 CHAIRMAN MCDUFFIE: The fence against Two Notch Road is in the right-of-  
16 way.

17 MR. PRICE: Yes.

18 MS. CECERE: It's in the right-of-way?

19 CHAIRMAN MCDUFFIE: I have a question. Maybe I'm not understanding and  
20 maybe this is a better question for Staff. Is the, are there going to be two separate  
21 businesses going on, on this lot or is it, is it, is there something going in the office other  
22 than just the general office for the dealership?

1 MR. PRICE: At this time no, sir. But like, as stated, we do have to take into  
2 consideration how that would be used in determining the parking. Because we wouldn't  
3 allow, we wouldn't want to allow one use that would encompass the entire lot for parking  
4 so that when the other one came in we say, guess what, you can't use it.

5 CHAIRMAN MCDUFFIE: So, he's not going to be using that building for a sales  
6 office, for the -

7 MR. PRICE: No, sir. Not to my understanding.

8 CHAIRMAN MCDUFFIE: That answers my question.

9 MR. MEETZE: Question. This is the sight of the old C&J Auto Sales. Is this the  
10 reason that maybe C&J is not there now, was this regulation -

11 MR. PRICE: No, sir.

12 MR. MEETZE: - put into effect the reason they're not there now?

13 MR. PRICE: No, sir, evidently they just closed on their own. Once again, that  
14 would have been grandfathered in and that would have been something more of less  
15 DOT would have had to enforce rather than us. Because technically it's in their right-of-  
16 way. What we're looking at here and it's in your package on page 21, what we have,  
17 and, like I said we've been talking to the Applicant for a while regarding this and they,  
18 you know, they've, he's actually been very patient dealing with Staff and also he's also  
19 come up with a number of proposals, but once again we still have to approve what we  
20 feel that the Code requires. A couple of these parking spaces, I don't know if Staff can,  
21 you know, reasonably approve. Because once again, you're looking here at a couple of  
22 the parking spaces, and I have them identified as, they're identified as parking spaces  
23 one and two, and I think what the Applicant is stating that rather than people backing

1 out into the right-of-way, they would actually just back into the property. I don't know  
2 how reasonable that is. And also it's not really enforceable. And also, I think it also can  
3 be pretty hazardous when it comes to the existing, to other parking, cars that are parked  
4 in the area.

5 CHAIRMAN MCDUFFIE: But, but they could have a car sales on this lot as long  
6 as there wasn't any other use that occurred on that lot, they would meet the requirement  
7 for car sales.

8 MR. PRICE: If, right, if, right, correct.

9 CHAIRMAN MCDUFFIE: But it would preclude other, other, another use of the  
10 other building for being offices or whatever.

11 MR. PRICE: Yes, sir. Well, I think, another use could come, they would just have  
12 to provide parking somewhere. And what's kind of confusing about this and I, once  
13 again we've been looking at this for a while, essentially there's an imaginary line there  
14 that really, that can't back out across. This is isn't a case where simply you could see,  
15 where they're going to back out into Two Notch Road, there's an imaginary line. And  
16 part of the right-of-way would be considered part of the road. And so what we can't do is  
17 we can't allow any vehicles to leave the parking spaces and back into, across this line.  
18 And one of the concerns that Staff has is that some of the proposals by the Applicant, I  
19 don't see where they're reasonable. I think they present hazards the way they'll be, the  
20 way they will back out into the property. Because you could have, when you're looking  
21 at a, at this prepared plat maybe it looks like it will work but then you put cars on the  
22 property I think that kind of, everything gets jumbled within there. People backing out, if

1 people don't park correctly, I think it just once again it just causes a hazard within this  
2 area.

3 MR. RUSH: Is there any diagram showing how there will be parking?

4 MR. PRICE: Yes, sir. Once you look, if you look at page 21 within your package,  
5 the Applicant has submitted what would be his proposed parking.

6 MR. RUSH: So, you're going to have, can you - so you're saying all 12 parking  
7 spaces, so they are going to use that other parcel, or the other piece.

8 MR. PRICE: Yeah, what happens, this is the entrance.

9 MR. RUSH: Okay, alright.

10 MR. PRICE: This is the entrance. Actually, and the, there's a pretty significant  
11 dip there that right now you wouldn't be able to just drive across. So even though it's  
12 one parcel, it's kind of separated by that. But the entrance will come here. And one of  
13 the concerns we have is one with the display of the cars, you know, if you're gonna  
14 have cars typically you may have a display or two. I think the way he's going to operate  
15 would be your typical car dealership but the point of it is, we have to take into account  
16 that there should be, I mean, there will be some cars on the property for display. And as  
17 it concerns wherever you put those, will it impede access into the property. In, in the  
18 ingress/egress. So here's your access, it has to come in here some place. And looking  
19 at parking spaces, and I'll reference them by number, if you look at, you know, space 9,  
20 10, 9 and 10 and 11, how they would back out, one would probably need to go into the  
21 right-of-way, or also without crossing over into maybe another parking spot.

22 MR. RUSH: So, those are the only parking spaces that will be used on that, well  
23 he can use the whole parcel.

1 MR. PRICE: Correct.

2 MR. RUSH: Or whole parcel's going to be used as a car dealership.

3 MR. PRICE: No, sir.

4 MR. COOKE: Just the small 287?

5 MR. PRICE: Now, he can use part of it for parking. But we're just looking at a  
6 total number of 14 for the uses that, that will typically be allowed there, including his  
7 proposed use as a car dealership.

8 CHAIRMAN MCDUFFIE: And the one story brick and metal building, number  
9 5101 on the left, is not being used for anything right now?

10 MR. PRICE: No, sir.

11 MR. SMITH: Do they own any other property adjacent to this at all?

12 MR. PRICE: No. That wasn't, you know, once again we've been, we've had  
13 numerous discussions with the Applicant about some potential solutions, so it's not like  
14 we just told him no and just go before the Board, we've actually tried to work with him.  
15 We do have within our Code, remote parking and that's whenever you cannot meet the  
16 requirements on your parcel you can put some agreement with another property owner.  
17 Looking at some of the parcels, I think we looked across the street, across Baldwin  
18 there's a church, here that we thought at one time may be able to be used for remote  
19 parking. A couple of the issues, one, that church sits on a parcel, this is all one parcel,  
20 there aren't any designated parking spaces, so in order for you to do remote, clearly we  
21 would like to see that the church has adequate parking spaces and parking area. And I  
22 think, safe to say that they don't, it's another one of those just nonconforming for the  
23 church. So you can almost eliminate that area behind them, and I'm not sure about the

1 other locations in this area. I don't think it would be, I don't think it would be reasonable  
2 to try to use, go across the street on Two Notch Road for any remote parking.

3 MR. RUSH: Can I ask you a question? If, being that whatever use in the past  
4 has expired and were trying to establish use now for a variance, if you were to park in  
5 that right-of-way, what would happen, what are the consequences if they were to park  
6 cars in that right-of-way?

7 MR. PRICE: I think that's more of an issue with DOT. But from a Staff standpoint,  
8 we cannot allow you to, you know, it's part of your, your plat that you're submitting us to  
9 show that you're parking will take place outside of the property.

10 MR. RUSH: Okay.

11 MS. CECERE: What about that covered area, Mr. Price?

12 MR. PRICE: That's, I think there's a little shed there. The applicant states -

13 MS. CECERE: I mean, is it significant if that was gone? I mean, it looks like you  
14 would have to pull in and back out of those two parking spaces. If that shed was gone,  
15 would it not allow for two more parking spaces?

16 MR. PRICE: According to, they've already accounted for that.

17 MS. CECERE: I know two, but two additional - I'm sorry go ahead.

18 MR. PRICE: If you look at the plat on page 21, those have been identified as  
19 parking spaces 8, 7, 6.

20 MS. CECERE: Yes, oh, okay.

21 MR. PRICE: So, they've already taken that into consideration.

22 MS. CECERE: Yeah, but if the shed was gone, you could pull in this way.



1 MR. PRICE: Yeah, they've already identified those as parking spaces, so  
2 whether the shed is there or not.

3 MS. CECERE: Um-hum (affirmative). Well, I was thinking if the shed wasn't  
4 there, you'd maybe have additional parking, but I see you've already, there's a 6 over  
5 here on the other side.

6 CHAIRMAN MCDUFFIE: Before we go any further down this road with Mr. Price,  
7 let's go ahead and have the Applicant please come up and please state your name and  
8 address for the Record.

9 **TESTIMONY OF JESTON MCMOORE:**

10 MR. MCMOORE: My name is Jeston L. McMoore and I'm the Applicant. This is  
11 Rob Lapin, he's the commercial real agent, and I'm a local product from Columbia, went  
12 to Spring Valley and I joined the military. And I've always dreamed of being a small  
13 business owner.

14 CHAIRMAN MCDUFFIE: Please speak up a little bit.

15 MR. MCMOORE: Okay, I've always dreamed of being a small business owner.  
16 And I felt as though the opportunity was being realized back in, I believe it was July,  
17 August, when I contacted Mr. Price and his Staff. And I tell you what, they've, they've  
18 been wonderful trying to, you know, get everything I guess up to speed and coach me  
19 up a little bit. I've gotten so much information, I feel like I can apply for a job down here.  
20 [laughter] To kind of bring you guys up to speed on, on what we've done and what I've  
21 done, I, was, had, I had limited resources, but, but rich in ideas, and beating that was  
22 tough. I would like to be downtown Main Street, but you know, you've got to start  
23 somewhere. And that came [inaudible] property 5101 and 5103 and when I called Geo

1 up as a, Mr. Price as a courtesy to see if there was anything I needed to do and he  
2 advised I need to get a site map. And, and so while those are being passed out, I  
3 contracted out through Baxter Land and Survey and if you look at the first plat, the first  
4 plat is the overall site map for the property and the invisible line that was referred to, you  
5 will see right there, the second line from the base of flag. If you flip to the next page, this  
6 is the final plat, I believe after meeting with Geo he was concerned about some parking  
7 spaces, so we reduced it and tried to get a visual of how it would look. The remaining  
8 plats, we only was able to keep three of them but we, I paid for a total of about eight or  
9 nine of them, that sticker price was tough. But we showed, we try to bring them in left to  
10 right, front to back, side to side, and I understand exactly what, what Mr. Price and his  
11 Staff was talking about when you attempt to back up into the right-of-way. And, and as  
12 far as improving the plat, even though, this area, this line is not specific to this property,  
13 it's specific to Two Notch Road and so every business on Two Notch Road is kind of,  
14 you know, in character with - there are, a lot of people told me I wouldn't make it there,  
15 cause there was six car dealerships within a, within about 150 yards. But you know, as  
16 you canvas the area, this has always been a car dealership. Even when I was a kid  
17 playing football at Spring Valley High School, I used to drive up and down this road, it  
18 was Bailey's before that and CJ's, and I think CJ's actually moved to another location.  
19 He's still in business. But because this property was vacant and it exceeded, the  
20 number of, I guess number of months or days it could be vacant, it fell out of the  
21 grandfather clause, which brings us here today in reference to a variance. And I believe  
22 based on my experience now for the last six months, through all the research, I believe  
23 anything that has a triangular, I guess structure, kind of throws up red flags because if

1 you're trying to navigate through, as Geo mentioned earlier when you come in through  
2 the entrance, there's not much space there on the map to get through, so that kind of  
3 just throws up red flags and make you look deeper into the issue, to start with.

4 MR. MCMOORE: Do you have the, the picture of the property, Geo? No, the one  
5 that you did at ground level? While he's doing that, just to, this area - this area, is a, I  
6 guess less than desirable area, a lot of businesses have packed up and moved to, to  
7 greener pastures. See, the last one Geo, if you see the difference between this parking  
8 lot at the front and the parking lot in the back they charged, I believe \$2,000 to come out  
9 with a spray can, and spray the black top on there and so that was out of my budget so I  
10 called up a, I called up a pretty, good buddies of mine and we went out there and went  
11 to Lowes, and got black top paste, and got a paint roll that you, that you use in  
12 residential areas, and we got out there, and a lot of sweat equity. We rolled the parking  
13 lot. And the community the church that Mr. Price spoke about earlier that you can see  
14 back there and a lot of the other businesses in the back as well as areas that extend  
15 Baldwin Road, everyone stopped by just to introduce themselves and, and kind of  
16 welcomed us to the community. And kind of felt that the area was being revitalized after,  
17 after so many times being vacant. But, we are - yeah that's a good picture there. I'm still  
18 sore from that. But everything from the painting and, of the poles and in anticipation, I  
19 went ahead and got the infrastructure of the entire property set up with Internet, fax,  
20 phone line, and we've been, we've invested extremely into it. And so when, you know, I  
21 ran into the roadblock of the variance, or the, the parking structures that was required I  
22 was willing to do anything to get everything up and running.

1 MR. RUSH: Mr. Price, what, without the variance what could be done to that  
2 property? I mean, how many cars could be on that property?

3 MR. PRICE: I can't say.

4 MR. COOKE: The right-of-way, the right-of-way.

5 MR. PRICE: I mean, you're really kind of limited.

6 MR. RUSH: Can you operate? So you can't even operate because you're  
7 without, you're outside of the parking.

8 MR. COOKE: Because of the right-of-way.

9 MR. RUSH: So, you can't even open doors, right?

10 MR. PRICE: It just depends on the use and the number of parking spaces. It's  
11 hard for me to give you an answer, because the depending upon the use that the  
12 number of parking spaces -

13 MR. RUSH: Okay. So with the automotive use, or the dealership -

14 MR. PRICE: Potentially, based on, if it was just the motor vehicle sales and I  
15 think I said it was eight parking spaces. Potentially if that was it, I think potentially they  
16 could get those on there; again we'd have to really look at it.

17 MR. RUSH: So, there are only eight parking spaces?

18 MR. PRICE: They're required to have eight.

19 MR. RUSH: Along with -

20 MR. PRICE: As a minimum.

21 [Inaudible discussion]

22 MR. RUSH: Right, but then the company - but we can't look at it as that one  
23 building, we have to look at the whole parcel.

1 MR. PRICE: Correct.

2 CHAIRMAN MCDUFFIE: But we're looking at the use that's being proposed for  
3 the parcel and no one's proposed to use for that other building.

4 MR. PRICE: Right, but we have to look at that because, because what your, what  
5 ends up happening is, let's just say we just took into account only the motor vehicle  
6 sales and they came in and they took up basically all of the parking on there, then when  
7 someone came in to, to do the office which may require six, maybe more just depending  
8 upon the use, where's that going to go? Then you kind of leave us trying to figure out  
9 where, you know, trying to back track should we have approved this one, how did this  
10 one get approved – well, they're in there, where's everyone parking?

11 MR. RUSH: And that's a possibility.

12 MR. PRICE: And it's really more of a safety issue from a Staff standpoint.

13 MR. RUSH: Because that one's up for lease as well, right?

14 MR. PRICE: Yes.

15 CHAIRMAN MCDUFFIE: I guess my point would be that, that by granting a  
16 variance to operate this, then they would need to come back and ask for another  
17 variance to operate again almost, because there would be no possible way to meet the,  
18 to add additional parking.

19 MR. PRICE: In that sense this variance request would be for both, for the entire  
20 parcel. Now if it was determined, like I said, we based this on the, the larger building on  
21 office use. Now if it had turned out they were proposing something completely different  
22 and it would exceed the required, the minimum parking spaces for office -

1 CHAIRMAN MCDUFFIE: Potentially what use might have less, less parking  
2 requirement than office use?

3 MR. PRICE: Not many. I would have to flip through the Code.

4 CHAIRMAN MCDUFFIE: But, I mean, office use is pretty low, low intensity.

5 MR. PRICE: Yeah, well once you get to that one in 300, that's pretty much -

6 CHAIRMAN MCDUFFIE: Could we attach the condition that, to the granting of a  
7 variance that would essentially preclude use of, of any other use that required additional  
8 parking spaces to the property? And then it would not necessarily the county's problem,  
9 but the lessor's problem at that point?

10 MR. RUSH: But you're still going to have a problem with spacing.

11 MR. PRICE: So essentially you're just making building – the building would be  
12 there unused. It will be un-useable.

13 CHAIRMAN MCDUFFIE: I'm just asking if the, is that something that would even  
14 be within our purview?

15 MS. CECERE: I don't know if you could do that, because then that building would  
16 not be, you would not be able to lease that building. If you, if you, if you gave all the  
17 parking spaces to the car dealership and then they wanted any left for the building then  
18 that would leave the building not being able to be rented.

19 CHAIRMAN MCDUFFIE: How many, Mr. Price, how many square feet of display  
20 area are there proposed for use?

21 MR. PRICE: For a car dealership?

22 CHAIRMAN MCDUFFIE: A car dealership.

1 MR. PRICE: A car dealership, I thought I had it in there. No, he was asking for  
2 the car dealership. One per 10,000 gross floor area.

3 CHAIRMAN MCDUFFIE: Right, and I was just wondering how many gross foot  
4 area -

5 MR. PRICE: What we do, it would just be one; for the display, just one, based on  
6 the out door display.

7 CHAIRMAN MCDUFFIE: Mr. Lapin.

8 **TESTIMONY OF ROBERT LAPIN:**

9 MR. LAPIN: Yes, hey. My name's Rob Lapin. I was the leasing agent for Mr. and  
10 Mrs. Terry Yang from Philadelphia who bought the property, I guess in the last two  
11 years, and - two and half years. And they bought the property from the Yandles, Dick  
12 Yandle who had owned it for a long time, along with some other businesses along Two  
13 Notch Road. And the property as I know it and understand has always been used, the  
14 primary office, the 2,000 foot building as an insurance office/ tax type building and then  
15 he would sublease out the little 300 square foot building to a used car lot, and in fact I  
16 think he might have even had his own at one time. And then do to, you know, economic  
17 times and trying to lease the property it's taken us a long time. And obviously we feel  
18 out of play or, as you guys call it grandfather clause and the use. So, you know, whether  
19 it's Mr. McMoore or whomever, I mean, the owners did spend a good bit of money on  
20 the property and the 2,000 foot building is obviously a lot more valuable than the little  
21 300 square foot building, but they would, you know, want to, you know, get the variance  
22 for the entire parcel and as it was proposed to us by Geo. And like I said, if there's any  
23 other questions I'm happy to answer them too.

1 CHAIRMAN MCDUFFIE: Thank you. I guess my concern is that really there's, it's  
2 almost trying to shoe-horn something on to this lot that doesn't really seem to have the  
3 space to go. I mean, granted that in reality the right-of-way space is there and it's  
4 probably going to be used, but we can't consider that anymore than we could consider  
5 someone parking on their neighbor's lot just because it happens to belong to the state  
6 rather than to necessarily the individual. So I don't - but once again I mean, it, it  
7 obviously the, the -

8 MR. RUSH: How will that space get the greatest benefit, because if it's for the  
9 entire parcel, I mean, will that that triangle, will the piece that's accompanied with the  
10 smaller building, will that gain the greatest benefit for this variance? Or will the bigger  
11 space, bigger office, Mr. Price?

12 MR. PRICE: Who will get the better, bigger benefit?

13 MR. RUSH: I mean, because of space, I mean.

14 MR. COOKE: Who will get the bigger benefit?

15 MR. RUSH: Where are you going to fit cars? I guess that's what, because you  
16 can't park in the right-of-way. The property is dramatically reduced because you can't  
17 park in the right-of-way. So I'm trying to see if -

18 MR. COOKE: Mr. Price, I just have a question. And there's been something  
19 brought up about the grandfather clause, but is it correct that Mr. McMoore is going to  
20 be leasing this property so -

21 MR. SMITH: He's already leasing now, correct?

22 MR. COOKE: He's already leasing now, so if, if the -

23 MR. LAPIN: He signed a lease.



1 MR. SMITH: Has he already signed the lease?

2 MR. LAPIN: Yes. Yes, sir.

3 MR. SMITH: Okay.

4 MR. COOKE: If the property is not changing ownership, changing hands as far  
5 ownership is concerned, why is the grandfather clause being -

6 CHAIRMAN MCDUFFIE: Cause it's discontinued.

7 MR. PRICE: You're looking at 12, 12 or months of discontinuous.

8 MR. COOKE: Okay.

9 CHAIRMAN MCDUFFIE: Mr. Price, you had mentioned at one point that it's  
10 almost divided, that, that - so there was some sort of a dip or a curve or something like  
11 that?

12 MR. PRICE: Right, I don't know if I put that picture in here, but you can see it  
13 right here.

14 CHAIRMAN MCDUFFIE: Okay. And is there entrance to, I'll call it the corner  
15 portion of the lot the car, the designated car dealer portion of the lot, is there entrance to  
16 that off of Two Notch at all?

17 MR. PRICE: No, sir.

18 MR. LAPIN: I mean, there entrance into the big building on Two Notch, small  
19 building on Baldwin.

20 CHAIRMAN MCDUFFIE: The entrance off of Two Notch is to the left of the curve,  
21 as I'm looking at it and the entrance to the right portion of the curve is off of Baldwin?

22 MR. PRICE: There's your curve and here's the access.

1 CHAIRMAN MCDUFFIE: Okay, so any cars coming in and out of the lot, the car  
2 lot would be really coming out in and off of Baldwin not trying to back out into Two Notch  
3 or come out into Two Notch.

4 MR. PRICE: Right.

5 MR. SMITH: Question. I missed the - when you guys spoke of the remote parking  
6 earlier, the likelihood of the remote parking, the realtor here, you were actually working  
7 with the property before the current owner owns it. Was there any type of satellite  
8 parking during that time at all, or remote parking?

9 MR. LAPIN: No, we never, you know, we, we entertained talking to several car  
10 dealerships during the leasing period –

11 MR. SMITH: Yeah.

12 MR. LAPIN: - and never was successful. And quite honestly wasn't aware of the  
13 right-of-way situation until Mr. Price -

14 MR. SMITH: Okay. I missed that earlier, I apologize.

15 CHAIRMAN MCDUFFIE: Mr. Price, can you or can someone point out where  
16 exactly the, the Baldwin entrance is. Okay.

17 MR. LAPIN: We even entertained moving that entrance that he just circled closer  
18 to the buildings because it's all, as you saw in one of those pictures, it's all flat there,  
19 you know –

20 CHAIRMAN MCDUFFIE: It'd be a matter of moving the fence around?

21 MR. LAPIN: But you know, I think that, that Google map pretty much shows how  
22 that property will be used in the future, as it's been used in the past.

1 CHAIRMAN MCDUFFIE: Are there any other questions for either Staff or for the  
2 Applicant or any discussion?

3 MS. CECERE: Mr. Price, did you see this, the map that, I guess you saw all  
4 these maps?

5 MR. PRICE: I've seen many of those. [laughter]

6 MR. COOKE: Too many of them, right?

7 MS. CECERE: And none of these are what you would consider possible, would  
8 work?

9 MR. PRICE: You know, it's tough. You know, clearly, there's so many things that  
10 could be done, they could put - what we're trying to avoid is backing out into the right-of-  
11 way.

12 MS. CECERE: Right.

13 MR. PRICE: You could put signs up that say, no backing out and you must turn,  
14 you know, back out into the property. So I just, you know, if they're reasonable, I think  
15 most people are going to back out which comfortable for them. And I think you also  
16 have to take into consideration now other, the way other cars park, or, excuse me, are  
17 parked in the parking spaces. That could help, that could determine if you're able to  
18 back out what kind of car you're driving. You know, a lot of these, these, you know,  
19 really the access into and out of the property could be dependent upon the type of  
20 vehicle that's there.

21 CHAIRMAN MCDUFFIE: Would anyone care to go through the Findings of Fact?  
22 Don't all jump at once. Ms. Cecere, would you mind going through some Finding of  
23 Facts?

1 [Inaudible discussion]

2 MS. CECERE: Are there extraordinary or exceptional conditions pertaining to the  
3 particular piece of property? I did not see them. I mean, I've looked at the maps and,  
4 and because it no longer is grandfathered in, I don't think it can be granted. So my  
5 answer is no.

6 CHAIRMAN MCDUFFIE: I guess I would say I'm not sure that this - and this  
7 parcel does have a kind of crazy shape and the fact that we do have a, a DOT right-of-  
8 way -

9 MR. COOKE: In the parking lot.

10 CHAIRMAN MCDUFFIE: This parcels a very small parcel and very oddly shaped.  
11 My issue would, would not be until the fact that, that, that this would not necessarily, it  
12 would not necessarily, not granting the variance would not restrict the use of the  
13 property because the primary use, the office space would still be useable even without  
14 this variance. And I also worry about potential detriment to, you know, a potential safety  
15 issue. As Mr. Price said, you're going to, you're going to end up with people I think  
16 trying to back out, almost regardless of how you orient the parking structure within this  
17 lot.

18 MR. MEETZE: With being a lot said prior to now, is there any record as to what  
19 kind of accidents, any safety hazards there have been up until now? Why would a  
20 safety hazard be a factor now when apparently we don't have any doubt as to what's  
21 happened there before? Have there been wrecks, have there been accidents, this type  
22 of thing?

1 MR. PRICE: No, sir, that type of research was not done for this particular piece.  
2 But I think you also -

3 MR. MEETZE: I don't see that this should be an issue now.

4 MR. PRICE: Well, I think you have to look into, to the fact that during the time  
5 when this was an operation, we're talking about the entire asphalted area, between I  
6 guess the railings on the fence they have up there, was being used. What you're  
7 looking at now, I don't want to say cutting it in half, because it's not, it wouldn't be  
8 accurate, but you're talking about eliminating a good portion of the property, you're kind  
9 of confining the parking and the maneuvering for the vehicles within that area. So that's  
10 what we're looking at. Clearly I think you're correct if you can go and check how it was  
11 used, when it was just used in the full parcel plus the right-of-way. But we're not talking  
12 about the use of the right-of-way now, were just talking about just for that parcel.

13 MR. LAPIN: Excuse me, can I say something? Or is too late?

14 CHAIRMAN MCDUFFIE: I think were involved in Findings of Fact and  
15 discussion.

16 MR. COOKE: With the right-of-way being in the parking lot, that's not  
17 extraordinary? That's not something that's extraordinary?

18 CHAIRMAN MCDUFFIE: I think that's fairly ordinary?

19 MR. COOKE: I mean.

20 MR. PRICE: That's not really common.

21 CHAIRMAN MCDUFFIE: I don't know that that's necessarily, even if there are  
22 extraordinary and exceptional conditions, I still don't think that applying the ordinance is  
23 going to prevent utilization of this property.

1 MR. COOKE: Yeah, it's just not conducive.

2 CHAIRMAN MCDUFFIE: It's just not going to, to necessarily get as many parking  
3 spaces as what they're asking to sort of shoe-horn on to the, this, you know, pretty  
4 small parcel.

5 MR. SMITH: But my question is, Geo in regards to the signage that you spoke of,  
6 is that, you were saying there could be signage put in?

7 MR. PRICE: Oh, I'm sorry, yes, sir.

8 [Inaudible discussion]

9 MR. SMITH: Could the signage actually still be placed within the, the right-of-way  
10 to where it could warn people, I mean?

11 MR. PRICE: Only DOT can place a sign in the right-of-way.

12 MR. SMITH: That's DOT. So this is something DOT, if we did pass it, DOT would  
13 have to deal with. So, in reality there's really nothing we can approve or not approve,  
14 because with the, well what I'm saying is with the plans that are here, to me they don't  
15 make sense, in regards to the, into the safety first of all for the community, and unless  
16 they can be drawn up differently, but right now I don't think so. But I'll second, if we're in  
17 the discussion now.

18 CHAIRMAN MCDUFFIE: Mr. Price had something.

19 MR. PRICE: Yeah, I just want to point out, I know you said earlier, and I, maybe it  
20 came up during our discussion, that the office could, you know, be accommodated. I'm  
21 not sure, but clearly if you just did the offices and you're only required to have six  
22 parking spaces, your odds are going to improve that you could put, that you can meet  
23 the requirements for the parking on the parcel, but that has not been determined yet,

1 until it's actually drawn out, we can see. So potentially, just based on the fact that  
2 you're eliminating pretty much that, and maybe it's more than that, from this property  
3 and any of the uses, potentially you're right, none of these, maybe nothing can go here,  
4 maybe someone would have to come in to you and ask for a variance request to reduce  
5 the six parking spaces and something may need to happen with that. I'm not sure.

6 CHAIRMAN MCDUFFIE: I guess that's the question though, is, if we deny a  
7 variance is it a situation where nothing could go there? Because that would in fact  
8 effectively prohibit the use of this property parcel.

9 MR. PRICE: I can't answer that right now and that's because when you're  
10 looking at it from a motor vehicle sales, as you can see there are, the actual motor  
11 vehicle sales that requires more parking spaces than the building, then the office  
12 building which is much larger, so you're looking at a six to eight difference. So it's, right  
13 now I can't answer that. It's almost dependent upon the use that's proposed, and we  
14 would have to look at the plans and review them before we can accurately state that the  
15 property could or could not be used.

16 MR. MEETZE: Getting back to the safety issue, could there not be a requirement  
17 - because most of these places like car lots in particular, I've seen several of them  
18 where they have those little small rail fence, which would prohibit people coming in and  
19 out of, of a dangerous area. Where there's only one way in and one way out. You herd  
20 the people in and herd the people out.

21 CHAIRMAN MCDUFFIE: I think there is a fence up at this point, but there's  
22 nothing -

1 MR. MEETZE: I don't think there's a fence, I think the little post is there but I  
2 don't think there is a fence there at this time. I didn't see it while ago.

3 MR. PRICE: Well, the posts serve essentially as a barrier.

4 MR. MEETZE: If this is denied, looks like we may have a white elephant on our  
5 hand.

6 CHAIRMAN MCDUFFIE: There any further discussion? Okay, at this point, I  
7 would like to make a motion to deny variance 11-02 based on the fact that application of  
8 the ordinance would not prevent the utilization of this, would not effectively prohibit or  
9 unreasonably restrict the utilization of this property.

10 MR. PRICE: Oh, maybe I missed it, but I think Ms. Cecere -

11 CHAIRMAN MCDUFFIE: I didn't know she had a motion.

12 MR. PRICE: No, what I'm saying actually, she read the first one, and you kind  
13 jumped to D, so.

14 CHAIRMAN MCDUFFIE: Oh, I'm sorry. I apologize. Then I'll retract my proposed  
15 motion then, and let Ms. Cecere continue with the findings.

16 MS. CECERE: Oh.

17 MR. PRICE: Well, I think were you are is, she's making a motion based on the  
18 first one, so.

19 MS. CECERE: Do what now? I'm sorry.

20 MR. PRICE: No, I was saying you were making that motion of denial based on  
21 the first criteria.

22 MS. CECERE: Correct, yes. Let's see, where's my - I make a motion that case  
23 11-02 be denied due to the property can be used for other purposes. Is that good or



1 not? Okay. I agree with the motion made by Mr. McDuffie, there are extraordinary and  
2 exceptional condition pertaining to this particular piece of property, but the application in  
3 this chapter of this particular piece of property effectively prohibits or unreasonably  
4 restricts the utilization of the property because of the aforesaid the extraordinary  
5 exceptional condition. Correct?

6 CHAIRMAN MCDUFFIE: I'm not sure I understood that.

7 MS. CECERE: Oh, I didn't either. [laughter]

8 [Inaudible discussion]

9 CHAIRMAN MCDUFFIE: Let me, can I clarify?

10 MS. CECERE: Go ahead. I'm sorry.

11 CHAIRMAN MCDUFFIE: Yeah, so the motion is to deny 11-02?

12 MS. CECERE: Correct.

13 CHAIRMAN MCDUFFIE: Although we, although we are of the opinion there are  
14 extraordinary and exceptional conditions pertaining to the property, we do not feel that  
15 the application of this chapter would effectively prohibit or unreasonably restrict the  
16 utilization of the property because of those conditions.

17 MS. CECERE: Yes.

18 CHAIRMAN MCDUFFIE: Okay.

19 MS. CECERE: Thank you.

20 CHAIRMAN MCDUFFIE: Is there a second?

21 MR. SMITH: I'll second.

22 CHAIRMAN MCDUFFIE: We have a motion that's been properly seconded. All  
23 in favor?

1 MR. PRICE: Those in favor, Meetze, Rush, McDuffie, Cecere and Smith.

2 CHAIRMAN MCDUFFIE: I think you counted incorrectly. [Inaudible]

3 MR. MEETZE: Oh, not in favor.

4 MR. PRICE: Oh, I'm sorry. I'm kind of used to going through that. Perrine, Rush,  
5 McDuffie, Cecere and Smith.

6 CHAIRMAN MCDUFFIE: All opposed?

7 MR. PRICE: Those opposed, Meetze and Cooke.

8 *[Approved: Perrine, Rush, McDuffie, Cecere, Smith; Opposed: Meetze, Cooke]*

9 CHAIRMAN MCDUFFIE: Okay. Mr. McMoore your request for variance has been  
10 denied and Staff will be in touch.

11 MR. LAPIN: That's it?

12 MS. LINDER: If I may say something for the clarification of the audience. There  
13 are four criteria that have to be met. Even if one criteria is met, if another criteria is not  
14 met, the variance has to be denied. All four criteria have to be met and the Board has  
15 found you did not meet all four criteria.

16 CHAIRMAN MCDUFFIE: That concludes the public hearing portion of today's  
17 hearing. At this point what is the Board's pleasure with regards to the recently received  
18 Minutes from last, or from December?

19 MR. MEETZE: I make a motion that we delay them to the next meeting.

20 CHAIRMAN MCDUFFIE: Thank you, we have a motion to delay and I will  
21 second. All in favor of delaying the approval of Minutes until, until the next meeting?

22 MR. PRICE: And potentially that will be in April, potentially.

23 CHAIRMAN MCDUFFIE: We haven't had an opportunity to read the Minutes.

1 MR. PRICE: I was just pointing out that -

2 CHAIRMAN MCDUFFIE: All in favor?

3 MR. PRICE: Those in favor, [inaudible]

4 *[Approved: Meetze, McDuffie, Cecere, Cooke, Smith; Abstained: Perrine, Rush]*

5 CHAIRMAN MCDUFFIE: So the motion will carry. There is no other business at  
6 this time from Staff. I'll go ahead and adjourn.

7

8

*[Meeting Adjourned at 2:30pm]*