

**BOARD OF ZONING APPEALS**

September 6, 2006

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5 *[Present: Cairns, Tolbert, Brown, Perkins, Perrine, Ashford; Absent: Branham]*

6 Called to order: 1:02 p.m.

7 CHAIRMAN BROWN: We will call the Richland County Board of Zoning Appeals  
8 to order and the first thing I'll do is ask Mr. Farrar from the County Attorney's office to  
9 acquaint you with some of the procedures before the Board.

10 MR. FARRAR: Thank you Mr. Chairman, good afternoon I'm Brad Farrar from  
11 the Richland County Attorney's Office. Let me go over the Board's procedure and take  
12 any questions you have before we move into the cases today. The Board of Zoning  
13 Appeals sits as what they call a *quasi* court. It's not a court of law but it's similar in  
14 terms of how it functions. The Board will hear evidence and take testimony, receive  
15 evidence, take testimony and they'll render a decision. Unlike a court where sometimes  
16 you may have to wait several days or weeks to get a decision, you'll have a decision  
17 from the Board today in open session. I'll talk about the effect of that decision in a  
18 moment. The order of operations for a case is the applicant has up to 15 minutes to  
19 present his or her case for Special Exception or Variance. Those in opposition have up  
20 to three minutes to state the opposition and then the applicant can come back for up to  
21 five minutes of rebuttal and so those time limits are, are, are just that. They're limits you  
22 can go less if you want to, that's certainly fine, but you can take up to that amount of  
23 time if you'd like to. You can do anything that's appropriate to present your case, if you  
24 have a video presentation, you have some handouts you'd like to present or you just

1 want to testify from the podium that's perfectly fine. If you notice the order of procedure  
2 the applicant goes first and last with the opposition in the middle. Again the reason for  
3 that is the *quasi* court nature where the applicant bears the burden of trying to convince  
4 the Board why he or she should get the Special Exception or Variance. So it simply  
5 comes back to burden of proof, which is a term you, you may be, you may be familiar  
6 with. The, in, in today's agenda we just have four cases. Case 06-19 Special  
7 Exception, Cingular Wireless, McCords Ferry Road, that case has been deferred. If  
8 you're here for that case it'll be placed on the agenda, upcoming agenda. At the end of  
9 the presentation of the case, the Board will have a discussion and they'll take up  
10 motions. The Board may decide that it wants to discuss something with staff or legal  
11 counsel, me, in Executive Session. The Board can do this under the Freedom of  
12 Information Act, the public body can meet and talk to it's lawyer just like you can meet  
13 and talk to your lawyer in private. However, you can't take any action in Executive  
14 Session. You can't go back behind closed doors and take a straw poll or see how  
15 somebody's leaning, you just have to discuss the particular issue that's of legal concern.  
16 And when that's resolved you come back out in open session, you take up the case  
17 again and proceed at that point. When the hearing is over you'll have a decision of the  
18 Board. Someone will move, it will be seconded either to approve, deny or some other  
19 type of motion and you'll have a decision of the Board. Now the decision does not  
20 become final until the minutes from which that decision was rendered have been  
21 approved, and I'll explain why in a moment, but the minutes typically are approved at  
22 the following meeting. So for example the September meeting of the Board the, in  
23 October when we come back those minutes should be prepared and the Board likely

1 would approve them at that time and then you would have a final decision of the Board.  
2 Prior to the minutes being approved under the Board's rules, any member can move to  
3 reconsider a case if, if they so choose. And the reason you might reconsider a case,  
4 give an example you have a piece of property, somebody wants to put a carport in a  
5 side yard. He comes in there's no opposition, the Board unanimously approves it. Well  
6 it turns out a week or two after the hearing, the next door neighbor comes up and says  
7 well gee I was out of the country or, you know, indisposed. I didn't even know the  
8 hearing was going on, I certainly am concerned about a car port in my side yard. Oh  
9 well that might be something new, new evidence, something the Board might want to  
10 reconsider. So the reason I mention this is if you take an action based upon the Board's  
11 decision prior to the minutes being approved, you are doing that at your own risk as the  
12 Board can reconsider the case. But once the minutes have been approved you have a  
13 final decision. Now the only other thing you need to look at in terms of the finality of the  
14 Board's decision is the appeal process that's provided for under state law, this is not a  
15 county appeal process, this is a state, under Title 6 of the *South Carolina Code of Laws*.  
16 Essentially anybody who is aggrieved by a Board's decision can, you know, write a  
17 short petition, get that in front of the Circuit Court judge who will hear the case as  
18 essentially an appeal at that point. There won't be any new testimony, there won't be  
19 any witnesses, you'll just simply go in and explain as a matter of law why the Board got  
20 it wrong. This is not a second bite at the apple, this is not gee I want to do over. This is  
21 there's something the Board did that was illegal that needs to be corrected. Now a  
22 person does not have an indefinite period of time in which to file their appeal, they must  
23 do it within 30 days of the date of the Board's decision being mailed. So you kind of

1 wonder gee was my decision final, and the minutes have been approved and when the  
2 appeal period's run you have a final decision. These are probably things you are not  
3 going to be terribly concerned with unless you sense that there is great opposition to  
4 what you're trying to do. You can kind of handicap your case. If somebody's come in  
5 they're, they're, you know, vehemently opposed to what you're trying to do you very well  
6 may see an appeal or request for consideration. Doesn't mean a case is going to be  
7 overturned, it just means that you may have to wait a little bit longer to have some  
8 comfort in what you're, you're trying to achieve. Okay, any questions about the  
9 reconsideration process or the appeal? I think that's the most important thing that I, I hit  
10 on. Okay a few house keeping items we, we do have a tape recorder going. We will  
11 keep a, a transcription of today's proceedings so that could be important if, if you need  
12 to see the case for, for an appeal or, or some other action. So we do ask that you  
13 speak in the microphone. We also ask that you have no exchanges with audience,  
14 please just direct your comments to the Board. If you have a cell phone or pager if  
15 you'd please turn that off so we don't pick that up on the machine we'd appreciate that.  
16 People ask sometimes, you know, gee can I, can I step out if my hearing's not going?  
17 This, this is a public forum you're free to come and go as you like. We just ask that you  
18 exit out of this door here, I believe that one will set off the fire alarm, there's no reason  
19 to go out that way. If you need to go out to Hampton or Harden it's out these doors,  
20 restrooms are immediately outside and you're certainly free to come and go. Just make  
21 sure you're here when your case is called and I can't tell you when that's going to be.  
22 The Board takes them pretty much in order of the agenda but they can alter it at any  
23 time if they feel it's necessary to do so. Just make sure you're back when your case is

1 called. The affect of a tie vote, today we have six members present. The Board  
2 consists of seven members, we have one absent, the person's in training. If, if the, the  
3 matter were to be tied I'll explain a little bit more at that point. Since there are six  
4 members present that is a possibility. However we do have six present and so that is a  
5 quorum we can, we can conduct business. If you'd like to wait for a full panel you  
6 certainly can make that motion and the Chairman will take that up if you'd like to request  
7 a deferment until your full panel is available. Of course, I can't guarantee in October  
8 that we'll have all seven, but that's certainly an option for you. If you are going to speak  
9 to a case you need to be on a sign up sheet for that case. They were outside before  
10 you came in here, if you didn't see that or didn't get signed up, not a problem you just  
11 need to make sure you sign up after I conclude the opening remarks. In a moment I'll  
12 swear everyone in as a group who is going to testify, if you've signed up or not I need  
13 you to stand and take the oath so we, we have that part of it done. And I believe that's  
14 the highlights of what I want to discuss. Any questions about anything that, that I've  
15 mentioned? Okay if not at this time, we're going to do this as a group, if you, if you will  
16 please stand and raise your right hand whether you've signed up or not if you're going  
17 to testify to a case. Okay, do you swear or affirm the testimony you shall give shall be  
18 the truth, the whole truth and nothing but the truth so help you God?

19 AUDIENCE: I do.

20 MR. FARRAR: Please be seated, thank you very much. Again I always said if - I  
21 heard yes or I do, if there's anything other than yes I do, you've got it, you know, let me  
22 know otherwise we'll consider you sworn as a group and I'll turn it back to the Chairman  
23 at this time. Thank you very much.

1 CHAIRMAN BROWN: Thank you Mr. Farrar, Mr. Price first case please.

2 **CASE 06-32 V:**

3 MR. PRICE: Okay the first case is 06-32 Variance. The applicant is requesting  
4 the Board of Appeals to grant a Variance to encroach into the required side yard  
5 setback on property zoned RS-LD, Single Family Residential Low Density. The  
6 applicant is Karen Brags, the location is 7825 Bay Springs Road, the existing zoning as  
7 stated is RS-LD. The subject property has an existing 3,582 square foot structure that  
8 was constructed in 1968, the rear of the property is enclosed by a fence. The applicant  
9 is requesting to have an accessory structure, which is a tree house encroaching into the  
10 required side yard setback by four feet, so which would essentially put it one feet from  
11 the property line. The surrounding area is comprised of residential structures and this is  
12 in the Windsor Lake Park subdivision.

13 CHAIRMAN BROWN: Mr. Louis Brags, will you come forward please and tell the  
14 Board what it is that you're proposing to do?

15 **TESTIMONY OF LOUIS BRAGS:**

16 MR. BRAGS: How are you doing? I moved into the neighborhood in 2002, I'm  
17 retired from the military and I bought the property for my, for my kids so they'd have a  
18 place to run around cause on post you're kind of limited to what we can do as far as  
19 swimming pools, basketball goal and tree houses. And when I returned from Iraq in  
20 2004 I had already promised my son, that's when we got a house, that I was going to  
21 build him a tree house and I got back, I started building the tree house in 2004, which it  
22 took me till this, this past summer to finish. So I've been building on that for like a year  
23 and a half and from my understanding that the Variance we're talking about, it just took

1 affect in 2005 and when I started building that I didn't have anyone opposing me or  
2 have any problem with me building the tree house, nothing was brought to my  
3 knowledge at all. And when the county came out and measured it's, it's like three feet,  
4 the neighbor's property line and I'm actually three and a half feet away from that. And I  
5 was asking to try to keep the tree house for my kids. I got, I got five boys and they're  
6 not out running the street, try to keep them here on the property, they're safe and with  
7 my knowledge, what's been going on cause I've been out of country, I got back and I'm  
8 heading back out the country again today, the housing I mean I guess they complained  
9 about it and riding down the street, taking pictures, got the kids, you know, outside  
10 playing and now I can't even let them go outside and play because I don't know who is  
11 out there taking pictures of them and just this past month we had the police come  
12 rushing up in the yard, four car loads of police. I guess they're trying to intimidate my  
13 wife about the tree house and like I said I've been out of the country and now I thought it  
14 was safe for them back here in the States and all this is going on. I'm concerned about  
15 it, my wife is more, she knows what's more, been going on with it cause like I said I've  
16 been out of country the past, past four months in Iraq. And as you can see the  
17 structure, I took some time doing this. It's nothing I just threw up and like I said it took  
18 me a year and a half. I did, I did the structure first and it, like I said it took me a whole  
19 year to do that. Like I said no one came and said anything about too close to the line or  
20 what are you doing and I finished it off like I said before I left in April this year. And I  
21 can't understand why I can't have a tree house for my kids to play in.

22 CHAIRMAN BROWN: Mr. Brags did you have a building permit for this tree  
23 house?

1 MR. BRAGS: I called the county they said tree houses and doghouses it's not  
2 required. I went down to the county and they told me it's not required for a tree house  
3 or a doghouse cause it's not inspected.

4 MR. PRICE: From talking to the building officials, structures that are under 200  
5 square feet, the accessory structures, are not required to have a building permit.

6 CHAIRMAN BROWN: What's the square footage on this?

7 MR. BRAGS: I'm not exactly sure, it's about a 10 by 12.

8 MR. PRICE: It's not, it's not over 200 cause we would have discussed that with  
9 the Building Department previous.

10 CHAIRMAN BROWN: So you were not aware or did not make yourself aware of  
11 the fact that you had setbacks of the property lines in which you weren't permitted to  
12 build?

13 MR. BRAGS: I wasn't aware. Now my wife talked, told me about it taking affect  
14 cause like I said she brings me up on it that this setback, which took affect for our area,  
15 took affect 2005 and like I said I started construction on that 2004 when I came back  
16 from Iraq.

17 CHAIRMAN BROWN: Well there have been setbacks in affect a lot longer than  
18 that. Additional questions for Mr. Brags? Okay thank you sir. Karen Brags?

19 **TESTIMONY OF KAREN BRAGS:**

20 MS. BRAGS: I was informed in May by [inaudible]

21 CHAIRMAN BROWN: - mic up a little bit we're having a hard time -



1 MS. BRAGS: I was informed in May by Brian Cook that the setbacks for the, the  
2 rear property changed in November of 2005 from 10' to five feet and I got a letter saying  
3 that I needed to tear down the structure. I came down -

4 CHAIRMAN BROWN: A letter saying what now?

5 MS. BRAGS: Saying that the structure needed to be removed. I came down and  
6 I talked to Mr. Cook and he told me that the setbacks had changed in November of last  
7 year; that it was 10' and now it was five feet and I needed to tear down the structure and  
8 if I couldn't that he would get someone to come out to tear it down for me. And I told  
9 him that I did not want to do that because my husband put in years and time building  
10 that tree house for our kids. Mr. Price was walking by and asked him did he tell me  
11 about the appeal process. He said he hadn't, he would get to that, which they told me I  
12 did everything the first of August, the neighborhood association sent five police cars to  
13 my house to tell me that I needed to tear down the tree house. I called and I talked to  
14 Sheriff Lott about it. He said that's something that his officers didn't handle.  
15 Investigator Raphael Gonzales is the person that's handling it, he was supposed to be  
16 here but I'm not sure if he got called on a case. I received anonymous letter in the mail  
17 telling me about raising my boys. My children are not bad children, they don't get into  
18 anything. We've been in that house for four years; no one, none of my neighbors can  
19 say that their property's been vandalized or anything. I don't understand why am I  
20 being intimidated about a tree house, I got people riding past my house stopping, the  
21 lady over the neighborhood association will park in front of my yard and just look at my  
22 children playing and taking pictures and when I tried to ask what the problem is she  
23 won't talk to me. The way society is today, people are killing people's children,

1 kidnapping them and everything else and I don't think that all of this should be about a  
2 tree house. When I got the notice we went down, we got this to stop construction, we  
3 came down here we talked to Kay Bender and Michael Smith. They told us that we  
4 didn't need anything with a tree house, it was about a shed that my husband wanted to  
5 build on the opposite side of the garage, okay. He okayed that for my husband to do  
6 and my husband completed the tree house. Once the tree house was completed then it  
7 was like it's, it's a big thing. I have five boys, they can't wash the car in the yard unless  
8 somebody complains. I don't think that we are paying property taxes for someone else  
9 to dictate what we're doing on our property. I understand about the setbacks, I don't  
10 have a problem with that. If something was said to us when the foundation was in the  
11 tree it could have been removed. In February we had seven trees cut down out of our  
12 back yard, we have no other trees to put it in. Like my husband said, a year and a half,  
13 the foundation was there no one ever said anything, you know. It's not that I'm trying to  
14 be a difficult neighbor or anything. I like the neighborhood that I stay in, that's why I  
15 chose to live there because I feel that it's a safe neighborhood and it's a nice place to  
16 raise children but if people riding past your house, sending anonymous letters, no return  
17 address I didn't, do I need to let someone see this?

18 CHAIRMAN BROWN: What is it?

19 MS. BRAGS: It's a anonymous letter telling me about 'good old fashioned  
20 rearing is the key to saving our boys. There's much more to life than cars and loud  
21 music'. And I'm more than certain that it came from one of my neighbors because ever  
22 since the incident with the tree house it's like nobody wants to talk to me but they're

1 taking pictures, they're stopping, looking at the kids and, you know, I think that it needs  
2 to stop because it really shouldn't go to that point.

3 CHAIRMAN BROWN: Is this tree house completed now?

4 MS. BRAGS: The tree house, the only thing is we haven't, my husband was  
5 going to put the roof on there, the shingles and have it painted. Everything else is done,  
6 it's nothing else that needs to be done to it.

7 CHAIRMAN BROWN: Questions for Mrs. Brag?

8 MS. PERKINS: Is that a garage?

9 MS. BRAGS: Yes, ma'am that was there when we bought the property. It's a  
10 three-car garage.

11 MS. PERKINS: That's a three-car garage?

12 MS. BRAGS: Yes, ma'am.

13 CHAIRMAN BROWN: Additional questions for Ms. Brags? All right thank you  
14 ma'am. I have a Kathy Kittle?

15 **TESTIMONY OF KATHY KITTLE:**

16 MS. KITTLE: Good afternoon. I too am a stay at home mom, I have two boys  
17 that romp around. I'm on the board for beautification and my concern is being a stay at  
18 home mom -

19 CHAIRMAN BROWN: Excuse me are you speaking in opposition today?

20 MS. KITTLE: In opposition, yes.

21 CHAIRMAN BROWN: Oh all right.

22 MS. KITTLE: I'm sorry.

23 MR. FARRAR: Name and address please.

1 MS. KITTLE: Kathy J. Kittle, 2503 Chatsworth Road.

2 CHAIRMAN BROWN: All right ma'am, sorry go ahead.

3 MS. KITTLE: That's all right, excuse me. Anyway as, as Vice President of  
4 beautification my concern is, and as a stay at home mom, we are within limited income  
5 and the valuation of our property is of utmost importance to us. And, and I feel like  
6 [inaudible] it's going to be one of the broken window theory, and for those who don't  
7 know what that is, when a warehouse is vacant and the windows are in tact it stays that  
8 way but once that first window is broken it's an invitation for everyone else to come  
9 along and break the remaining windows. And no one is going to want to buy the  
10 adjacent properties for the true value that they hold if we allow structures such as this.  
11 And I certainly appreciate a father's love and, and desire to create something but it sets  
12 a precedence and, and I'm sorry but it's not something that's attractive to look at. And  
13 again it just concerns me and I live on the opposite side of the subdivision and it  
14 concerns me, thank you.

15 CHAIRMAN BROWN: Thank you, ma'am. Questions for Ms. Kittle? All right,  
16 thank you. Next person I have signed up in opposition is Frank Washington.

17 **TESTIMONY OF FRANK WASHINGTON:**

18 MR. WASHINGTON: I am Frank B. Washington; I'm a resident of Windsor Lake  
19 subdivision. My address is 7814 Bay Springs Road; I live diagonally across from the  
20 Brags. I am a resident of five years. I moved from a city location where a Variance was  
21 violated and devalued my property to the extent that five years now, I'm not able to sell  
22 it because I didn't want it and no one else wants it under the circumstances. Now the  
23 Brags certainly are entitled to the quiet enjoyment of their home. I would love to see

1 them do that but in doing so I would not want to see them devalue my property and the  
2 neighborhood association has declared this tree house an eye sore and a structure that  
3 is not in keeping with what is done in Windsor Lake subdivision. If my property is  
4 devalued then I'm in pretty bad shape. As I told the group coming down, yesterday was  
5 my birthday, I was 77 years old, and I don't think that I need to move again if what's  
6 going on is not in favor of my property being increased in value because I do this  
7 annually. I, my last property I had just put \$75,000 improvement in my property and had  
8 to leave it and I, if you come and look at my property right now, which I would invite you  
9 to do, you will see a property that is kept up inside and outside. We take great pride in  
10 that and I'd just like for the Brags to know that we enjoy them as neighbors, but if the  
11 neighborhood association is in disagreement with what they are doing then they ought  
12 to work along with us. Thank you so much.

13 MR. TOLBERT: A question.

14 MR. WASHINGTON: Yes?

15 MR. TOLBERT: You say you've been in the neighborhood for five years?

16 MR. WASHINGTON: Five years.

17 MR. TOLBERT: Were you aware when they first started construction, were you  
18 aware of it at that point?

19 MR. WASHINGTON: No sir I, I was not aware of it. I, I have not been familiar  
20 with what was going on over there, no. But I will say this if, when I bought that property  
21 if I had seen that house I probably would have been concerned about buying.

22 CHAIRMAN BROWN: Additional questions for Mr. Washington?

1 MS. PERRINE: One, okay you said you weren't that aware that anything was  
2 going on over there, I think she had said something about the foundation had been  
3 down for a year. So you didn't, living across the street you didn't see that or?

4 MR. WASHINGTON: I am diagonally across -

5 MS. PERRINE: Okay.

6 MR. WASHINGTON: - and the driveway side, which this tree house, house is  
7 built, is away from me, not on my side.

8 MS. PERRINE: Oh, okay.

9 CHAIRMAN BROWN: Any other questions for Mr. Washington? All right sir -

10 MR. WASHINGTON: Thank you.

11 CHAIRMAN BROWN: Ruby Thomas?

12 **TESTIMONY OF RUBY THOMAS:**

13 MS. THOMAS: Good afternoon, my name is Ruby Thomas. I live in Windsor  
14 Lake, 7817 Castleton Lane. I'm a retired health care person that has relocated in  
15 Columbia and has lived in Windsor Lake for the last 10 years. I was very proud to move  
16 into Windsor Lake because it seemed to be such a quiet and caring community where  
17 property was well kept. I have concerns now about this tree house because it's so  
18 visual from the street and it's a very unsightly house. Also I have concerns that it's  
19 going to make my property value decrease. As a retired person I do not plan to move  
20 also and I would like to maintain the community with the property value as it stands and  
21 also as far as the tree house there, I understand the Brags has boys. I have  
22 grandchildren and great grandchildren and I would like a nice place for them also, but

1 it's not just for the Brags family alone from what I have observed, it's also for other  
2 young people as well and I have concerns about that.

3 CHAIRMAN BROWN: All right, questions for Ms. Thomas?

4 MS. PERKINS: Were you aware of the building when it was being, tree house  
5 when it was being constructed?

6 MS. THOMAS: No ma'am because I'm not in that block; where that block is it's  
7 a small cul de sac and most persons don't go into that area?

8 CHAIRMAN BROWN: Any other questions? Thank you, ma'am. The next  
9 person I have signed up is Ralph Hail.

10 **TESTIMONY OF RALPH HAIL:**

11 MR. HAIL: My name is Ralph Hail, I'm in charge of the safety and security in the  
12 Windsor Lake Park community and of course I'm concerned with the safety, senior  
13 citizens and the tranquility and peace. [Inaudible] have men that work for me, we patrol  
14 the area and we try to keep everything peaceful and safe as we can. I've been living  
15 there, I live at 2603 Chatsworth Road, it's about six blocks from where this tree house is  
16 located. I was not aware, I've been there about 17, 18 years by the way. I was not  
17 aware of this being built until maybe six months ago. About two or three months ago,  
18 something like that between two and three months, I begin to get calls from people  
19 about the noise and they told me about the tree house, I went by and looked at it and it  
20 definitely is a blight on the community. It will not help the property values, it would be  
21 better located if it was maybe out in the woods somewhere, a mile from where anybody  
22 else lived. Of course that is definitely I do not feel it has a proper place there. I believe  
23 it's a [inaudible] to our community.

1 CHAIRMAN BROWN: All right, any questions for Mr. Hail? All right, sir thank  
2 you.

3 MR. HAIL: Thank you.

4 CHAIRMAN BROWN: Next person I have signed up is Jimmy Williams.

5 **TESTIMONY OF JIMMY WILLIAMS:**

6 MR. WILLIAMS: My name is Jimmy Williams. [Pause] My name is Jimmy  
7 Williams. I'm presently the President of Windsor Lake Homeowners Association and I  
8 moved in Windsor Lake in 1991 okay and I've been there since I retired from the military  
9 and also I'm very concerned about the property. We're concerned about the entire  
10 neighborhood and periodically we do have a safety patrol that rides around to see,  
11 keeping crime at watch at all times. We also have beautification committee that goes  
12 around and looks at houses and judge them for different events. We also have what we  
13 call is watchful eyes cause we meet every month so when we meet every month  
14 different issues would come up whereas we need road maintenance, whereas we need  
15 things done to the community and keeping the community safe. So we feel as a  
16 community, when we had the meeting, we want to keep watch on our neighborhood to  
17 keep the value up. Most people in the community are retired personnel and they buy  
18 their home in there for their final savings or value. The problem with the structure that  
19 we're talking about we think the code has been in place to maintain value and standards  
20 and it has done that throughout the years and we want to maintain that standard so  
21 we'd like to keep that code and everybody within the regulation as required. The main  
22 thing that we want to do also is keep our value up as other folks have told me. So, if the  
23 encroachment that had occurred it is not up to standard as you look at the house that



1 don't have a roof on it, that probably, it looks very tart looking from the back side so  
2 that's where the value would probably cut in for most people. At the same time we think  
3 it needs to be maintained and safe, it looks unsafe cause it don't have any handrails on  
4 it. It, and it's very close to the fence as you can see there and perhaps the other thing is  
5 some people may have complained about noise and I think that was a totally different  
6 incident when the Sheriff, policemen came up to the people's house that was because  
7 there was loud music and that was reported. And, but that was not because of anything  
8 else I know at that time. Also as a community, there are things we want to use proper  
9 judgment and since we are here and all the members of the Board, we decided that  
10 we'd like to keep things the way they are and we believe the county has done an  
11 excellent job of that and we'd like to keep it going that way. I did notice the house when  
12 it was started, but it was not, never completed and it don't look complete now but it has  
13 maintained, you know, at a slow progress we think. So we'd like to have the Zoning  
14 Board do the job of the Zoning Board and maintain the standings.

15 CHAIRMAN BROWN: All right sir, questions for Mr. Williams?

16 MS. PERRINE: I have one question.

17 MR. WILLIAMS: Yes, ma'am?

18 MS. PERRINE: I believe you said that the police were called because of noise?

19 MR. WILLIAMS: It was loud noise at that time.

20 MS. PERRINE: Okay.

21 MR. WILLIAMS: Kids music too loud or -

22 MS. PERRINE: Okay.

1 CHAIRMAN BROWN: Any other questions? All right thank you sir. The next  
2 person I have signed up is Patrick Palmer.

3 **TESTIMONY OF PATRICK PALMER:**

4 MR. PALMER: How y'all doing? Mr. Chairman, members of the Board, I live in  
5 this neighborhood. This is the neighborhood I live in and my parents have lived in this  
6 neighborhood for - Patrick Palmer 220 Windsor Point Road Columbia, SC 29223 - my  
7 parents have lived in this neighborhood for, going on 10, 15 years so I've kind of grown  
8 up around this area and that kind of stuff but I, I've now moved in this neighborhood  
9 about three years ago. And whether or not the foundation was poured a year ago or, or  
10 however that occurred and, and nobody may or may not have seen it, the burden here  
11 does lie on the applicant to prove the need for this tree house. In my opinion, and it's  
12 just my humble opinion, I don't think they've proved a need for the tree house. They  
13 have other areas and as you can tell they have a very large yard, it's a low density  
14 zoning so they do have a very large yard. They built this right up on the property line,  
15 the neighborhood has a six foot fence, but now this tree house is elevated to where  
16 anyone who's in that tree house now can see over that fence or drop things over or  
17 however, you know. But that five-foot setback is, is there to prevent some of those  
18 things from occurring and those people have clearly violated that five-foot setback and  
19 they do have other area in which they could build the tree house where they put it on  
20 stilts as, as you can tell they do have some pillars here that are, that are used that's not  
21 all trees and the applicant said that they did remove some trees from their, from their  
22 yard but perhaps those trees could have been used if they had not removed them. But  
23 in any case the, the variance is put there for a reason and I don't see that in this case,

1 there are cases where the Variance needs to be granted, but in this case the applicant  
2 has plenty of room to put their house, their tree house, you know, it's a large yard, low  
3 density so putting it right up on the property line and making it so that anyone can see  
4 over into the yard or what the, the neighbors, the, from all areas are doing it just doesn't  
5 seem like the appropriate thing to do here. I don't think anyone in the neighborhood  
6 would have a problem if the tree house were built further in to the yard or away from the  
7 setbacks, I don't think anyone would have a problem with it, but it's just the placement  
8 of it and I don't think it's the neighborhood's responsibility to try to enforce the codes. It  
9 was the responsibility to find out if there were any codes, if there were any setbacks and  
10 whether they'd poured the foundations or not a year ago and had been working on it  
11 ever since then, it's really up to the applicant, all the burden is on them to find out what  
12 the rules and regulations for building this are. And it seems like to me this is a case of  
13 asking for forgiveness is easier than asking for permission and we kind of see that a lot  
14 in positions that I have, I'm sure you guys do as well. But in this case I would request  
15 that you would not grant that forgiveness and would ask them to move the tree house to  
16 a more suitable location in the yard. Thank you.

17 CHAIRMAN BROWN: Any questions for Mr. Palmer? All right thank you sir.  
18 That concludes the testimony. Ms. Brags you have an opportunity to come back and,  
19 and state any matters you wish in rebuttal to the testimony you heard in opposition.

20 MS. BRAGS: The thing that I wanted to say about the property value, I just had  
21 my house appraised actually the day that the police came to my house and it wasn't  
22 about loud noise it was about the tree house. We bought the house at \$154,000 and  
23 the house appraised at \$180,000. The gentleman that was there said it wasn't a

1 problem with the tree house because I just had my house refinanced last month. So it  
2 wasn't a problem with the tree house, it wasn't anything wrong with the structure and as  
3 a matter of fact my property value went up instead of down. We have a Babcock house  
4 that's across the street from me and I feel that if anything would bring down the property  
5 value it would be that versus the tree house. I'm not asking for forgiveness. When we  
6 got the stop work order, we came down here and like I said once again Michael Smith  
7 and Kay Bender said that we did not need a permit or anything for the tree house and  
8 that was the reason that my husband completed it. So we did what we were supposed  
9 to do. We followed directions and came down and they're saying that some seen it,  
10 some saying that they didn't see the foundation. The foundation was there and if  
11 something would have been said before February of 2006 before we had the seven  
12 trees cut down I'm sure my husband wouldn't have had a problem putting it in another  
13 location. I chose that location because I could see my child. If I'm in the kitchen  
14 washing dishes I could see my seven year old playing in the tree house in the back yard  
15 versus pretty much all of the rooms in the back of the house I could get a good location  
16 out of the windows at that spot. I picked that spot and I picked it because the trees  
17 wasn't as high as the other trees, the trees were over the house, all of the other trees  
18 that were in the back yard. So those were the lower trees and that's why I picked that  
19 foundation and it was said about we have other young people; this is my home. All of  
20 my family is here and yes I have nieces, I have nephews, I have cousins that come over  
21 to my house to play with my children so I can't not have company in my yard because  
22 it's going to draw too many people? I don't think that that's the way society should be.  
23 You know, we're living in America and if I want to have company to my house I should

1 be able to have company to my house without having people taking pictures and  
2 stopping and spying on me. I feel uncomfortable, my husband is out of the country and  
3 he's leaving again today and this is stuff that I have to deal with. Mr. Washington has  
4 been to my house when my husband was gone and if they had a problem he could have  
5 come to me as an adult to talk to me instead of doing this. No one, the neighborhood  
6 association never sent a letter or anything to me saying anything was wrong with the  
7 foundation or anything. I never received anything until I got the paper from here dated  
8 April 13<sup>th</sup>, 2006 and when I got that paper, me and my husband, before he left the  
9 country, came down here to rectify the problem to see if it was something that we could  
10 do. I'm not a difficult neighbor and I'm not trying to beg for forgiveness, but I didn't  
11 know. I came, I was told that I did not need a permit for the tree house, so we  
12 continued to build it. It's, it's not asking for forgiveness because I've done something  
13 wrong. That's, that's not the incident. I was told that I didn't need one so we continued.  
14 That's, you know, that's all that I have to say. You can just I guess find what's in your  
15 heart that's to do, to do but I hope that I am able to keep my kid's tree house because  
16 my seven year old is crying about why is his tree house having to be tore down. You  
17 know, that's, I wish it would have been brought up before it was completed and now  
18 they're knowing that it has to be tore down.

19 MS. PERKINS: Ms. Brags, I just want to point something out to you, you know,  
20 it's not so much - I understand that you don't need a building permit to build anything  
21 under 200 square feet but what you're in violation of is where it's -

22 MS. BRAGS: And I understand that but I didn't know and we -

1 MS. PERKINS: Okay but I'm saying what their thing is, is that even though, you  
2 know, you, you are doing it for your children and stuff like that you're in violation of  
3 where's it's placed -

4 MS. BRAGS: Yes, ma'am.

5 MS. PERKINS: - not because you're husband built it.

6 MS. BRAGS: No and I'm not saying that.

7 MS. PERKINS: I thought you were, okay.

8 MS. BRAGS: No ma'am, I'm saying the location where it was. If it would have  
9 been told to us in the beginning we could have found another spot to put in the yard.  
10 My husband is leaving, he won't be back for months. I don't have anybody to take the  
11 tree house down and replace it in another place, you understand what I'm saying. And  
12 if it would have been said in the beginning I'm not out to do something from, that's my  
13 house and like them I may be young but when I bought that house, that's where I want  
14 to be I don't want to move anymore. You know, I can't afford to buy a house and stay  
15 five years and move somewhere else. I did want a starter home, I wanted a home that  
16 was big enough to accommodate me and my children until I die and that's what I said  
17 when I purchased the house. I'm not trying to be difficult but if it would have been told  
18 that no it can't stay there then we could have worked on other options instead of him  
19 completing it and then having to move it. It would have been easier to move before it  
20 was completed is all I'm saying. You know, it's not, it's not that and I understand what  
21 you're saying. I understand that completely.

22 CHAIRMAN BROWN: Any additional questions for Ms. Brags? Thank you  
23 ma'am.

1 MS. BRAGS: Thank you.

2 CHAIRMAN BROWN: The Chair will entertain discussion.

3 MS. CAIRNS: I just, I guess mostly for the Staff, wanted to make sure the tree  
4 house as a use is completely allowable.

5 MR. PRICE: Yes the tree house, as a use, is allowable.

6 MS. CAIRNS: And being elevated is completely allowable.

7 MR. PRICE: It is. In this particular zoning district, structures, and it says all  
8 structures are allowed to go up to 45' in height.

9 MS. CAIRNS: Okay so the issue only is whether the violation of the setback  
10 needs a Variance not whether the structure should be allowed to exist?

11 MR. PRICE: No that is the only issue that whether the encroachment is going to  
12 be allowed or not.

13 MS. CAIRNS: I mean, I would offer to the Board, I mean I know that we've heard  
14 a lot of opposition from the neighbors but much of the opposition centered on whether  
15 there should be a tree house at all, which I think is really not at issue and I think that,  
16 you know, the fact that this is the only spot on the property where there's trees and that  
17 tree houses are allowable and the applicant has offered that that was a great location  
18 for monitoring her children from the kitchen that, you know, the granting of the Variance,  
19 which is simply the setback violation not the existence of the structure itself in this  
20 situation, I mean, I'm welcome to hear from the Board but I feel that it's, you know, that  
21 the criteria for the Variance are satisfied and that, in general I feel that the Variance  
22 should be granted.

1 CHAIRMAN BROWN: I'm in a little different view on it. I think it's incumbent on  
2 the property owner initially to acquaint themselves on what restrictions or constraints  
3 there may be on building something on their property. They didn't do that unfortunately  
4 but that's equally unfortunate for the neighbors as it is for them. They've created this  
5 house, I don't think it's particularly attractive, and one of the criteria for the Variance is it  
6 will not be a detriment to adjacent properties. To me, if I were an adjoining property  
7 owner I would see this as a detriment on my property value, so while I understand what  
8 you're saying but I really don't share your view.

9 MS. CAIRNS: It just, it just seems that the, the - if the structure is unsightly that  
10 is not an issue of violating the setback. The structure would be equally unsightly if it  
11 was located four feet to the left. And so whether it degrades the property values or  
12 whatnot is an entirely separate issue. I mean I, this is one that I look at had the property  
13 owner come ahead of time had there been recognition by everybody that a Variance  
14 was going to be required on something that the county treats the same as a doghouse,  
15 which obviously, you know, people aren't forced to move doghouses five feet away from  
16 their property line, that, you know, had we simply been asked, you know, if the trees in  
17 the corner I get to see it from the kitchen can I build my tree house there, that in terms  
18 of, you know, our scope of review would simply addressing a Variance not the ultimate,  
19 you know, structure itself that, you know, my inclination would have been to approve it  
20 then and I, you know, I just think it's important not to muddy with the structure itself.

21 MS. PERKINS: Well I don't, you know, I kind of agree with Chairman Brown. I, I  
22 do think the codes say that in a sense if it's, if the structure is not appealing in any way,  
23 I do, I do and I think I heard testimony where someone in the neighborhood came up



1 and said if it had, because of the low density, the placement of it, it would not have been  
2 seen. I don't know whether they would have been satisfied with it some place else but I  
3 think that, that, you know, it being right on, that's pretty close to the line.

4 MS. CAIRNS: Right but I just think it's important to focus on that the issue is not  
5 whether the building itself is slightly or not, but whether the granting of a Variance with  
6 the fact that the only trees on the property exist in that corner and if you want to build a  
7 tree house it's sort of helpful to have some trees.

8 CHAIRMAN BROWN: The only trees exist there cause the others were cut  
9 down.

10 MS. PERKINS: Cut down.

11 MS. CAIRNS: Sure but I mean that's where we get into reasonable reliance in  
12 what was happening and issues like that but I, you know, I, you know, and I mean I  
13 think I've sort of had my speak.

14 CHAIRMAN BROWN: Additional discussion? Hearing none, the Chair will  
15 entertain a motion.

16 MS. PERKINS: Mr. Chair, Mr. Chair, I move that, what is this, 06-32 Variance  
17 request be denied.

18 CHAIRMAN BROWN: Is there a second?

19 MR. ASHFORD: I second the motion.

20 CHAIRMAN BROWN: Motion's been made and seconded that the Variance  
21 request be denied. All in favor of the motion signify by raising their hand? Opposed?

22 *[Approved: Tolbert, Brown, Ashford, Perkins; Opposed: Cairns, Perrine]*

1 CHAIRMAN BROWN: Ms. Brags your request for a Variance has been denied;  
2 Mr. Price will be in touch. Mr. Price next case.

3 **CASE 06-33 VARIANCE:**

4 MR. PRICE: The next case is 06-33 Variance, the applicant is requesting the  
5 Board of Appeals to grant a Variance to encroach into the required front yard setbacks  
6 on property zoned RS-MD, Single-Family Medium Density. The applicant will be  
7 Hurricane Construction, which will be represented by Richard Ramero. The location is  
8 40 Serendipity Court, the subject property has a residential structure that is currently  
9 under construction. The garage portion of the structure encroaches 10.48' into the  
10 required 25' front yard setback. As stated the applicant is asking for a Variance to allow  
11 for this encroachment. The surrounding area is comprised of newly constructed or  
12 structures under construction. This is in the Alexander Point subdivision.

13 CHAIRMAN BROWN: Mr. Price the agenda says he's requesting an 8.8'  
14 Variance and it encroaches 10 ½' into the setback.

15 MR. PRICE: Which one are you looking at sir?

16 CHAIRMAN BROWN: On the agenda, which is accurate?

17 MR. PRICE: I'm sorry it is a 10.48, I'm sorry.

18 MS. CAIRNS: But that's, it's probably more like, I mean that's what it measures  
19 on the plat, but I mean it's probably more like eight because it would be perpendicular to  
20 the setback line, not along the edge of the wall.

21 MR. PRICE: It is 8.8. That's what we discussed. I'm sorry.

22 CHAIRMAN BROWN: Mr. Ramero?

23 **TESTIMONY OF RICHARD RAMERO:**

1 MR. RAMERO: Yes sir. Yes my name is Richard Ramero with Hurricane  
2 Construction. I'm trying to request a setback to be changed from 25' to 15' and this is  
3 because of the location of the utilities, were on the opposite side of the house and this  
4 was the only way I could build this type of house and it was already pre-sold this way.  
5 We tried to maintain this 25' for, for the beauty of the neighborhood but this case I mean  
6 one house is probably going to be the, the only one to be request like this.

7 CHAIRMAN BROWN: And I understand when there are minor encroachments  
8 on setbacks, but you've got to explain to me how you went eight, almost nine feet into  
9 the setback.

10 MR. RAMERO: It's for the way how the subdivision is assigned this is a cul, cul  
11 sac [sic], what it goes a circle and it changes, it's only allowed these 25' in the cul sacs  
12 and the other places it's not as much, it's 15-foot for setbacks. If you can see the  
13 garage -

14 CHAIRMAN BROWN: I don't think that's accurate Mr. Ramero. I think you've  
15 got a 25' setback on every piece of property.

16 MR. RAMERO: Yeah, what I'm trying to say, I'm sorry, my English [inaudible] is  
17 probably not gonna be a whole lot of help in here but for the way how the [inaudible]  
18 and the circle there's a cul sac, the house needs to be located in a different place. In  
19 this case the garage probably needed to be on the other side but we had a utilities in  
20 there and the picture is not showing there, but we have utilities, sewer and water tapes  
21 on the other side and it would be almost, much more difficult to go the other way.

22 CHAIRMAN BROWN: Are you building other houses in this cul de sac?

23 MR. RAMERO: Yes.

1 CHAIRMAN BROWN: Do you have a problem with the setback on those?

2 MR. RAMERO: No. When the houses are built as a spec I'll get to choose how  
3 to, I can fix this and the homeowner will buy the way it is and this house, this is the type  
4 of house where the homeowner wanted to build this type of house and as you see it's  
5 right where the cul sac it starts.

6 CHAIRMAN BROWN: Additional questions for Mr. Ramero? All right thank you  
7 sir. I'm sorry did you have a question?

8 MS. CAIRNS: No I just can't [inaudible].

9 CHAIRMAN BROWN: There's no one signed up in opposition. The Chair will  
10 entertain a discussion.

11 MS. CAIRNS: For the Staff, Mr. Staff I have a question for y'all. In terms of  
12 getting a builder, does a building permit need to be obtained before construction can  
13 start?

14 MR. PRICE: Yes. The way it works now is the first stop is at the Zoning counter  
15 where they receive a land development permit, which they pretty much state what  
16 they're going to do, the square footage and that's when Staff will assign the setbacks for  
17 the structure based on the zoning district that it's in.

18 MS. CAIRNS: But they're never required to show a sight map showing how the  
19 proposed house is going to fit on the property?

20 MR. PRICE: No what happens some, well no, no not for the, not for the  
21 particular house they're going to build there. Most of the time on subdivisions it does  
22 show the subdivision plat shows the setback lines and where it's going to, where it  
23 needs to be placed.

1 MS. CAIRNS: I guess I have a - Mr. Ramero if you're still there, at what point did  
2 you realize that you had gone over the setback line?

3 MR. RAMERO: Well the, the choice was made about my superintendent on  
4 sight. He couldn't, he couldn't build the house with the garage where it's supposed to  
5 be because it was utilities there -

6 MS. CAIRNS: Sure.

7 MR. RAMERO: - and he took, and he's, as the superintendent I guess he flipped  
8 the house, put the garage on the opposite side, which it still it's a big, roomy place in  
9 there but he was violating the setback in the cul sac.

10 MS. CAIRNS: But when did you realize that the setback had been violated?

11 MR. RAMERO: Well when the house was up and then we were doing our  
12 inspections and there was the homeowners and we checked the plans. That's  
13 whenever we realizing that they was there. I mean I go inside like every two weeks  
14 and, you know, I go with my plat and survey and plans and there, that's whenever we  
15 realized that the inspector, the superintendent explained why he did it and, you know,  
16 they build so many houses and sometimes they feel like they're right all the time and  
17 this is the case where they flipped the house at the wrong time. Normally it doesn't  
18 matter today if they, if house wouldn't be on a cul sac. But you can see, you know, if  
19 the house was in a straight line -

20 MS. CAIRNS: Yeah the reverse curve.

21 MR. RAMERO: - yeah it wouldn't matter, you could flip the house two or three  
22 times, you know, it would fit okay.

23 MS. CAIRNS: Thank you.

1 CHAIRMAN BROWN: Additional questions for Mr. Ramero? All right thank you  
2 sir. The Chair will entertain a discussion. Hearing no discussion, the Chair will  
3 entertain a motion.

4 MS. CAIRNS: Well I would make a motion that Variance number 06-33 be  
5 granted; that the eight foot setback violation towards the street with the reverse curve of  
6 the cul de sac and the overall size of the lot is not going to create any kind of  
7 unnecessary detriment, and that in essence it was simply the result of a, you know, an  
8 error on sight. I mean it sounds as if they've tried to address it as quickly as possible  
9 once it was determined that it occurred. I just don't see there's any overall detriment to  
10 the neighborhood and considering that it's a 25' setback an eight foot projection is not  
11 egregious.

12 CHAIRMAN BROWN: There's a motion to approve the request for Variance. Is  
13 there a second?

14 MR. TOLBERT: Second.

15 CHAIRMAN BROWN: We've moved and seconded that Variance 06-33 be  
16 approved. All those in favor signify by raising their hand? Opposed?

17 *[Approved: Cairns, Tolbert, Perrine, Ashford, Perkins; Opposed: Brown]*

18 CHAIRMAN BROWN: Mr. Ramero you have your request. Mr. Price will be in  
19 touch. Next case Mr. Price.

20 **CASE 06-34 VARIANCE:**

21 MR. PRICE: Okay. Okay, the next case is 06-34 Variance. The applicant is  
22 requesting the Board of Zoning, Board of Appeals to grant a Variance to encroach into  
23 the required side yard setback on property zoned RU, sorry about that. The applicant

1 is, the applicants are Anthony and Tabethia Scott. The location is 230 Country Haven  
2 Road. The parcel size is 1.2 acres, little more than that. The subject property has a  
3 manufactured home on the property. The applicant proposes to, to actually, they're  
4 under construction for, this construction for an addition on to the existing manufactured  
5 home, which is a double car garage. The addition will encroach into the required  
6 setback by 15.6'. The surrounding area is comprised of residential structures, primarily  
7 manufactured homes on large tracks of land and it's in the Eastwood Acres subdivision.

8 CHAIRMAN BROWN: All right, Tabethia Scott? Please state your name please  
9 ma'am and tell the Board what it is you want to do.

10 **TESTIMONY OF TABETHIA SCOTT:**

11 MS. SCOTT: Yes sir. My name is Tabethia Scott, I stay at 230 Country Haven  
12 Road. I went to put up a garage on my property and I went through the channels that I  
13 needed to go, I came down to Zoning, I got a permit to build and they okayed it. And I  
14 have the pictures of the home and, and everything. I'm not trying to make the  
15 neighborhood ugly or anything, I'm trying to fix it up. And where I live at is where  
16 trailers, like behind in the front it's not great set and the only thing I'm asking for is a  
17 Variance to please let me keep it up because I have put so much money into it and I  
18 went by the proper channels to get it done.

19 CHAIRMAN BROWN: Did you obtain a building permit for this?

20 MS. SCOTT: Yes, sir. I have all that.

21 CHAIRMAN BROWN: Okay.

22 MS. SCOTT: I came up here. I got everything.

1 CHAIRMAN BROWN: When you got that building permit did they give you a  
2 sheet indicating to you what the setback requirements were?

3 MS. SCOTT: They might.

4 CHAIRMAN BROWN: How far off of each property line you, you had to be.

5 MS. SCOTT: Well I know someone came out and they I guess looked at the  
6 property, Chris came.

7 MR. PRICE: I think the question, did you pull your permits or did you contractor  
8 pull the permits?

9 MS. SCOTT: I came up and got the permit.

10 MR. PRICE: Okay.

11 MS. SCOTT: Because he said I needed a permit.

12 CHAIRMAN BROWN: You got, you personally came and got the permit?

13 MS. SCOTT: Yes, sir and I personally did everything by the book.

14 CHAIRMAN BROWN: And when you, and my question is normally speaking  
15 when those permits are given one of the papers that you're given is a sheet that tells  
16 you how far from each property line, whatever you're building, has to be located. Did  
17 you, did you receive a sheet like that?

18 MS. SCOTT: I probably did. I don't remember.

19 MS. PERKINS: Is it not on the sheet itself on the, on the side over on the left  
20 hand corner someplace?

21 MS. SCOTT: That I have in my hand?

22 MS. PERKINS: The building permit.

23 MR. PRICE: They have copy of it, Ms. Scott.



1 MS. SCOTT: Oh, okay.

2 MR. TOLBERT: Did you, you had someone else to build this?

3 MS. SCOTT: Yes, sir.

4 MR. TOLBERT: Did you give them all the information that you received from  
5 here?

6 MS. SCOTT: The permit and everything? Yes, sir.

7 MR. TOLBERT: But all the sheets, so they were aware of the setbacks?

8 MS. SCOTT: I guess.

9 CHAIRMAN BROWN: Did you, you had an inspector come out and, and  
10 question the location of the -

11 MS. SCOTT: Yes sir, yes sir and he passed everything.

12 CHAIRMAN BROWN: Mr. Price, your discussion states that the inspector said  
13 that he gave approval for the foundation, is that correct?

14 MR. PRICE: Yes, sir. I'm not, just from the information that I gathered it seemed  
15 to be a little bit of confusion as to what kind of approval was given. I believe just talking  
16 to the inspector he said he spoke to the contractor and I think the contractor, this is of  
17 course what the inspector told me; that the contractor thought that the setbacks were  
18 five feet and he told him no they weren't. And then the inspector came out and he took  
19 a look at the property and I guess he, what he was kind of basing his decision on was  
20 that he thought that this property right here, which actually is another parcel, was part of  
21 their property so he didn't see any issues with the setbacks. So that's why he really  
22 didn't pay much attention to it, but according to him his approval was for the foundations  
23 because I believe that's where his initial issues are.

1 CHAIRMAN BROWN: But he did approve the foundation?

2 MR. PRICE: Yes sir, yes.

3 CHAIRMAN BROWN: Any additional questions for Ms. Scott? All right thank  
4 you ma'am.

5 MR. PRICE: Mr. Brown, excuse me I believe there's someone else that would  
6 like to speak that did not sign up.

7 CHAIRMAN BROWN: All right, have you been sworn?

8 MR. RADERS: Yes.

9 CHAIRMAN BROWN: All right if you'd come forward then and first sign up and  
10 then we'll be glad to hear your testimony. All right sir if you'd state your name and  
11 whatever information you'd like to give the Board.

12 **TESTIMONY OF ANTHONY RADERS:**

13 MR. RADERS: My name is Anthony Raders I live at 230 Country Haven also.  
14 When we first got this inspector, he was a -

15 CHAIRMAN BROWN: Can you move that up just a little? We're having a hard  
16 time understanding you.

17 MR. RADERS: Yes, when we first got this, you know, started we assumed that  
18 our builder knew the setbacks when we gave him everything, but obviously he didn't.  
19 Like I said, we're upgrading our, the whole house has been vinyl siding. We started the  
20 footing, we, we got, they failed the first time, the inspector came back and then  
21 approved it and gave us permission to build and we started building. Once we got it all  
22 built up and got the, the roof on then it was told to us that we weren't in the proper  
23 channels. We're not going to hurt anybody. On both sides of us is an empty lot, they

1 haven't been able to sell that lot since we've been there and we've been there probably  
2 five years now. We bought the land two years before we move out on it. We're just  
3 trying to upgrade, we need a two-car garage for our vehicles. There's been some home  
4 break ins in out there, you know, stuff like that. But we, we knew after we were told that  
5 there should have been 20' on each side, we did have it inspected and we would have  
6 never built on it if they'd told us from the foundation that this is no good we would have  
7 tore it down right there. We'd never went no farther, we'd try to move it somewhere else  
8 but we put a lot of time and a lot of money in this and it's really to upgrade our own  
9 home and the neighborhood around us. It's not to depreciate it, it's, it's bringing up the  
10 value of everybody, as you can see by the picture it looks almost brand new.

11 CHAIRMAN BROWN: All right questions for Mr. Rader?

12 MS. PERKINS: I have a question for the Staff. As I understand it they had a  
13 building permit, right?

14 MR. PRICE: Yes.

15 MS. PERKINS: And then I, I think I heard the gentleman say that the first  
16 inspection the footing did not pass, did I hear him say that?

17 MR. RADER: Yes ma'am.

18 MS. PERKINS: What kind of measurements are done as far as looking at, you  
19 know, where the footings are as far as measurement and, and telling someone whether  
20 or not they've encroached on the side yard or backyard setback? At what point in time,  
21 was it after the concrete?

22 MR. PRICE: Well, well see it's kind of separate. Right here that's what the  
23 inspector was dealing with but I think one of the things that I tried to point out during the

1 discussion is that when inspectors go out there it just, don't, you really can't ask them to  
2 just approve all of the setbacks. What they will do is if they notice that it may be an  
3 encroachment issue with the setbacks that they will bring that to the, to the attention of  
4 the contractor. I believe that's what happened here, he brought that to the attention of  
5 the contractor. But what the inspector was really looking at was, was the foundation  
6 going to be poured not so much where it was being poured but was it being, you know,  
7 poured correctly and being built correctly.

8 MS. PERKINS: So at that point in time they don't look at, they're not, you're  
9 saying they're not concerned with whether or not, you know, they're within the  
10 perimeters to meet code requirements.

11 MR. PRICE: As far as the setbacks go right.

12 MS. PERKINS: So at what point when the structure is up, is completed and then  
13 they look at setbacks?

14 MR. PRICE: Well no what happens is from that sheet that I gave you the land  
15 development permit we give that to, whether it be the contractor or the individual that  
16 pulls the permit -

17 MS. PERKINS: I understand that [inaudible].

18 MR. PRICE: - we give that to them telling them where the setbacks, so really we  
19 leave it up to them to, to find where it's at.

20 MS. PERKINS: So how did you find out, tell me how did you know that she was  
21 encroaching? At what point?

22 MR. PRICE: I'm actually, I'm trying to remember when this was brought to our  
23 attention. Okay, she cannot remember. I met with the applicants regarding this, but -

1 MS. PERKINS: You knew that you were encroaching is that is -

2 MS. SCOTT: No, ma'am, he didn't know.

3 MS. PERKINS: So how did you bring it to his attention?

4 MS. SCOTT: Someone stopped by my home and told us that we had to tore [sic]  
5 it down because we was in violation of either by the other lot which is selling at \$20,000.

6 MS. PERKINS: Who is the someone do you know?

7 MR. RADERS: It was our realtor, Ken Steiner. He stopped by he, his exact  
8 words to me were -

9 MS. PERKINS: Who did you say I'm sorry repeat that?

10 MR. RADERS: Ken Steiner.

11 MS. PERKINS: Ken Steiner.

12 MR. RADERS: His exact words to me when he came out to talk to me, he said,  
13 "I meant to stop by here two weeks ago", he said "when I seen the footing for it to tell  
14 you that you couldn't have this." He waited till we built it all the way up, then he stopped  
15 by the house.

16 CHAIRMAN BROWN: That's Ken Steiner with Capital Realty?

17 MR. PRICE: Yes. I'm sorry it's kind of coming back to me. She's correct they  
18 did bring this to our attention. I believe that's, from the meeting we had that's where I  
19 think it was brought to their attention that they may be encroaching into the setbacks  
20 and there's some issues involved about trying to get them to purchase the property.

21 MS. PERKINS: So, so okay so my question is you would have never, you would  
22 have never caught that when they went out to check the footings and the foundation  
23 and, and -

1 MR. PRICE: Probably not.

2 MR. FARRAR: Ma'am, you're asking, they basically self reported it, is that what  
3 you're -

4 MS. PERKINS: Sir?

5 MR. FARRAR: They self reported is that what you're getting at?

6 MS. PERKINS: No I think he said, yeah I think he said that the realtor stopped  
7 by.

8 MR. FARRAR: I mean the, but I mean the applicant called it to the county's  
9 attention, is that what you're saying?

10 MS. PERKINS: No, no, no, no. I asked him how did he find out about the  
11 encroachment and -

12 MR. FARRAR: That's what I'm saying.

13 MS. PERKINS: - she said, I think he said that a gentleman stopped by his house  
14 and he gave a name and then they came in and reported it.

15 MS. CAIRNS: So it's self reported.

16 MR. FARRAR: That's what I'm saying, they reported to the -

17 MS. PERKINS: Self reported yeah.

18 MS. SCOTT: Yeah because I wanted to go by the right way and I told them we  
19 already the permit and everything and he said well you still can't, still you need to take it  
20 down and that's when I came up that -

21 MS. PERKINS: Okay I understand, I understand. I was trying to find out at what  
22 point in time did you know, did the county know and the county didn't know until you,  
23 someone approached you, you self reported it, okay. That's basically -

1 CHAIRMAN BROWN: Any additional questions for Ms. Scott or Mr. Raders?  
2 Okay thank you. There is no one signed up in opposition the Chair will entertain a  
3 discussion. Hearing no discussion the Chair will entertain a motion.

4 MS. CAIRNS: I would make a motion that Variance request 06-34 to encroach in  
5 the side setback 15.6' be approved.

6 MS. PERKINS: Second.

7 CHAIRMAN BROWN: We've moved and seconded that Case 06-34 be  
8 approved signify by raising their hand? Opposed?

9 *[Approved: Cairns, Tolbert, Brown, Perrine, Ashford, Perkins]*

10 CHAIRMAN BROWN: Okay Ms. Scott you have your request. Mr. Price  
11 will be in touch. Next case Mr. Price.

12 **CASE 06-35 VARIANCE:**

13 MR. PRICE: The next case is 06-35 Variance. The applicant is requesting the  
14 Board of Appeals to grant a Variance, excuse, I have the wrong language up here.  
15 What they're asking for is a Variance to reduce the required 50' easement from the  
16 required 50' to 20'. The applicant is Perry Wilson, Jr., the location is 102 but it's also  
17 100, this will affect two parcels, Wells Point Drive. The existing zoning is Single-Family  
18 Medium Density, the first parcel and I'm, I'm sorry yeah I actually have the plat. Here  
19 we go right here, there's the first parcel it's .44 acres and then here's your second  
20 parcel, it's .96 acres and there's an existing structure on the home. There's never been  
21 a, at least from the record that we have, never a recorded easement, a legal easement  
22 onto the property. There was a kind of an existing driveway I guess over the years  
23 that's always been the avenue to get to the rear of the property. In talking to the

1 applicant what they were, the purpose of this is to establish a legal easement to, you  
2 know, along both properties and the reason why they're asking for the reduction in, in  
3 the easement is because if, right what you're seeing here is what it will look like if you  
4 were to grant the Variance, here's the 20'. Which, you know, if you kind of put it here  
5 that's where the 50' easement would come and essentially would eliminate any ability to  
6 build on this parcel so that's the reason for the request.

7 CHAIRMAN BROWN: All right Mr. Wilson?

8 **TESTIMONY OF PERRY WILSON:**

9 MR. WILSON: Good afternoon. Yes, working with Mr. Price in, in this project  
10 we've explored many ways that we might be able to build on the initial, the parcel  
11 closest to the cul de sac and as he explained that would not be able to happen if we had  
12 a 50' easement. It is also my understanding that Mr. Price has spoken with Emergency  
13 Services or a representative from them who said that a 20' easement would be perfectly  
14 acceptable to them. The hardship created for the, the further of the two properties is  
15 that it's land locked and that's basically I guess because it, probably was before the  
16 zoning restrictions or anything out, out that way. These, both of the pieces of property  
17 now are currently owned by the same people and we've come to the end of our due  
18 diligence with that and that's how this all came up to our attention. And that is basically,  
19 basically it, let me see here. It also does not adversely affect any of the other properties  
20 in the area. We're also, you know, it's well under the, I believe it's 800' from the end of  
21 the cul de sac, it's well within those limits. We're not really creating any hardships  
22 because it is already land locked. I believe that I see that the four, I think we met four of



1 the hardships that we're required I think there may be a fifth one that we, that wasn't  
2 really applicable but I can't recall.

3 CHAIRMAN BROWN: Questions for Mr. Wilson?

4 MS. CAIRNS: The easement's a non-exclusive easement?

5 MR. WILSON: Ma'am?

6 MS. CAIRNS: Is the easement a non-exclusive easement?

7 MR. WILSON: That I'm not sure of. It would just be, you know, ingress, egress  
8 for that, for the further property.

9 MS. CAIRNS: Just because if the .44-acre parcel were to ever get a structure it  
10 would use the same drive.

11 MR. WILSON: Yes that's correct.

12 MS. CAIRNS: So it's a non-exclusive easement.

13 MR. WILSON: And it's, that's apparently was the, with the town and country laws  
14 or something there was some sort of issue of, of a shared driveway and I guess that's  
15 how the 50' easement came up and, according to Mr. Price which seems a big  
16 exorbitant on that piece of land because I mean it basically is, renders it unbuildable.

17 CHAIRMAN BROWN: Additional questions for Mr. Wilson? All right thank you  
18 sir. We have one person signed up in opposition, Mike Watson.

19 **TESTIMONY OF MIKE WATSON:**

20 MR. WATSON: I'm Mike Watson and I live at 101 Wells Point Drive, which is the  
21 piece of property immediately before the subject property we're talking about and I live  
22 right next door to the, what they're calling the .44-acre piece of property on this, the plat  
23 they had up there. And I stand against this proposal because of the fact that, several

1 things. First of all is I've just retired and my wife's retired, we specifically bought our  
2 property at 101 Wells Point because we were told that there was not an adequate  
3 amount of land next to us to build a house, immediately adjoining us. There is a house  
4 way out on the point but we have a nice quiet separation because of the narrowness of  
5 that piece of property. Now they're, they want to divide it into three parcels of ground, it  
6 appears from their diagram there, which would increase the population density, increase  
7 the traffic and increase the noise. I don't feel that that's in the best interest of the  
8 neighborhood and I don't feel that my wife nor I would care to have that particular  
9 development put in there. And my, one of my major concerns is that if they're taking a  
10 single plot of ground and dividing it up three times, once the Variance is granted what's  
11 to prevent them from dividing it up into quarter acre parcels or even smaller, whatever  
12 the smallest amount of land would be, and increasing the, have eight or 10 houses out  
13 there on that little point of land? So I'm, I'm fundamentally opposed to the noise, the  
14 increase in traffic and the increase in the population density, thank you.

15 CHAIRMAN BROWN: Any questions for Mr. Wilson?

16 MR. PRICE: I would, I would like to state that what, currently on this plat there's  
17 only two parcels.

18 CHAIRMAN BROWN: Or Watson, I'm sorry I called you Mr. Wilson.

19 MR. WATSON: That's common, I don't know why, but. Now, the house is  
20 located where on your...

21 MR. PRICE: Here's the house.

22 MR. WATSON: Okay there's the house now isn't there a dash line indicating a  
23 property line right -

1 MR. PRICE: This is where the property line is.

2 MS. CAIRNS: Chain link fence.

3 MR. WATSON: Okay now up next to where the house is right there, what's that  
4 line?

5 MR. PRICE: That's a fence.

6 MR. WATSON: Oh that's a fence, okay. So they're just dividing it into two  
7 pieces?

8 MR. PRICE: Well currently they are already two parcels these are the two  
9 parcels.

10 MR. WATSON: Okay, now I guess, can I ask a question. Once the Variance is  
11 granted, if it's granted can they decide to redivide it?

12 CHAIRMAN BROWN: I'll let Mr. Price answer that.

13 MR. PRICE: Yes, they would be able to.

14 MR. WATSON: Thank you very much.

15 CHAIRMAN BROWN: Thank you, sir. No one else signed up. Mr. Wilson do  
16 you have any rebuttal this is your time.

17 MR. WILSON: Yes I certainly can appreciate Mr. Watson's concern, especially  
18 with, you know, how many little cookie cutter neighborhoods get put up these days.  
19 That's really not, not what our bag is. We have maybe considered subdividing it into  
20 where it has three lots, but that would be the most that we'd do so actually we'd just be  
21 creating an additional property line. And we would build no more than two houses  
22 simply because of the lot sizes and the type of houses that we build we would not meet  
23 density requirements in that area. You know, a house could be built and I'm very, I'm

1 certainly very sorry that someone misrepresented to him that on the .44-acre parcel that  
2 there is not sufficient room because of, I think it's well under density [inaudible] I want to  
3 say 3,500 square feet. I just, you know, and I certainly can understand that it's nice out  
4 there now because there are woods and, and everything else and, you know, I guess in  
5 a perfect world we could keep it that way, but, you know, we would like to build an  
6 additional house out there and, you know, try to keep our, our company going and  
7 would like to try to be a good neighbor to Mr. Watson in the process.

8 MS. PERKINS: So, I have a question. You said that you might do it into,  
9 subdivide it into three parcels but you would only build two houses, then why subdivide  
10 it into three parcels?

11 MR. WILSON: Well one of them is already existing. May I approach the screen  
12 over here? It might make it a lot more clear for you. It's this area roughly right here  
13 would be where we propose to subdivide it - no excuse me right here in this area. So  
14 we would have a house here and a house here and there's already a, an existing house  
15 here. So it would actually just be creating, moving this creating these two, or this would  
16 be the only new lot created as this one exists and this one already does. You know,  
17 and, and the type of houses we build up here on the lake you don't really build, you  
18 know, four or five houses in a small area. I don't, I don't think you could build more than  
19 one in there in the first place to meet density. So that, that, did I answer your question?

20 MS. PERKINS: Yeah, I, I, you did thank you.

21 MR. WILSON: Yes, ma'am, thank you.

22 CHAIRMAN BROWN: Any additional questions for Mr. Wilson? All right, go  
23 ahead I'm sorry.

1 MS. CAIRNS: Well I mean, no I think I actually have a question for Mr. Farrar  
2 that might actually - I don't know if it should be in here or in the back or what not but in  
3 terms of, we've been offered that this is single ownership and in essence prior to it  
4 being single ownership you had non-conforming status and now with single ownership  
5 in essence you no longer have non-conforming, I mean the .44-acres, I'm just, should  
6 we take this in the back or is this - I'm curious about whether we're dealing with a non-  
7 conformity or not cause of what the affect of single ownership is. I think it's not  
8 irrelevant. I mean I just –

9 MR. FARRAR: Do you want to call an Executive Session or –

10 MS. CAIRNS: I guess, I mean I just have a question.

11 CHAIRMAN BROWN: Do we have a motion to go into Executive Session?

12 MR. TOLBERT: So moved.

13 CHAIRMAN BROWN: Second?

14 MR. ASHFORD: Second the motion.

15 CHAIRMAN BROWN: All in favor?

16 *[Approved: Cairns, Tolbert, Brown, Perrine, Ashford, Perkins]*

17 CHAIRMAN BROWN: We're going to go into a short Executive Session.

18 MR. PRICE: Before we go to Executive Session, to keep him from going, I don't  
19 know if any of you have met Donnie Phipps. He came in as our building official but he's  
20 serving now as our interim planning director and here to assist with a couple of the  
21 cases in case some questions came up, I just wanted you to meet Mr. Phipps.

22 CHAIRMAN BROWN: Always a pleasure to see Mr. Phipps.

23 *Executive Session*

1 CHAIRMAN BROWN: Is there a motion to go back into open session.

2 MR. TOLBERT: So move.

3 CHAIRMAN BROWN: Is there a second?

4 MS. CAIRNS: Second.

5 CHAIRMAN BROWN: All in favor?

6 *[Approved: Cairns, Tolbert, Brown, Perrine, Ashford, Perkins]*

7 CHAIRMAN BROWN: Mr. Price would you like to take over?

8 MR. PRICE: I sure would not. [Laughter]

9 CHAIRMAN BROWN: Would you be kind enough to take over?

10 MR. PRICE: I think I'm just as confused as some people here in this particular  
11 case. However I would actually like to, to know that Ms. Cairns for her legal, you know,  
12 from her, from her legal background can you -

13 MS. CAIRNS: I cannot do that, as a Board member.

14 MR. PRICE: Brad can you?

15 MR. FARRAR: Yeah.

16 MS. CAIRNS: I can't offer legal stuff as a Board member.

17 CHAIRMAN BROWN: I think the end result is that -

18 MS. CAIRNS: But I thought we decided that we didn't even have jurisdiction?

19 MS. PERKINS: Make the motion Mr. Brown.

20 CHAIRMAN BROWN: My understanding that there is no subject matter for the  
21 Board to, to act on and that the case should be administratively withdrawn by the  
22 Zoning Administrator.

1 MR. PRICE: I'm able to explain that, I can do that at a later time because, cause  
2 I believe right now there's -

3 MR. FARRAR: I think the essence of it under the Board's -

4 MR. PRICE: I think what I want to do is I want to make sure I explain it to the  
5 applicants so he'll know where he needs to proceed. And I believe that -

6 CHAIRMAN BROWN: That should be done outside of the Board.

7 MS. CAIRNS: Yeah I don't think it needs to be on record.

8 MR. PRICE: Okay. So what we'll do is we'll administratively withdraw this and  
9 I'll deal with the applicant based on the grounds that this probably should not have gone  
10 before the, excuse me the Board of Zoning Appeals as it, as it's come to us. Yes and  
11 there needs to be some changes first.

12 CHAIRMAN BROWN: If you would get with Mr. Wilson and explain the niceties  
13 of that.

14 MR. PRICE: I'll be sure and do that.

15 CHAIRMAN BROWN: We can move on with the other business of the Board.

16 MR. WILSON: Do you just need a plat that shows the subdivision?

17 MR. PRICE: I'll get with you on this. I'll get with you right after this.

18 CHAIRMAN BROWN: So that case is administratively withdrawn. I guess the  
19 next item on the agenda is the, the reconsideration?

20 MR. PRICE: Yes I'd like to discuss that briefly. When I spoke to Ms. Karen  
21 Canzater, I believe this case came before you last month this was a daycare in the  
22 Highland Forest subdivision, she asked that, she wanted to do a reconsideration of the  
23 case and of course I gave her the requirements for our reconsideration as found in your

1 rules of procedures and bylaws. One of the things that I do like to do is give the  
2 applicant the actual minutes to the meeting, you know, so they can kind of read over  
3 and just make sure that, you know, if they're going to base it on something that was said  
4 or done, you know, they would have it, you know, accurately before them. We, we were  
5 unable to get the minutes to Ms. Canzater at this time, so I'm requesting that, you know,  
6 you can approve the minutes but not that particular case and allow her to come before  
7 you at the next meeting, which will be October 4<sup>th</sup> to bring her reconsideration request  
8 before you. By then she would have the actual minutes from the meeting to make a  
9 better argument.

10 MR. TOLBERT: What is she basing it on cause if I, reading this I don't -

11 MR. PRICE: Right well one of the things is she had to, to just deliver that  
12 because she was, you know, there were no minutes.

13 MS. CAIRNS: So what we're requesting is a deferral?

14 MR. PRICE: Yeah a deferral.

15 MS. CAIRNS: In this particular situation because of the delay in obtaining the  
16 minutes to the meeting that this applicant be given in essence a 30 day extension on  
17 the request for reconsideration so that she can more formally submit such a request.

18 MR. PRICE: Yes, yes.

19 MS. PERKINS: Can I ask this, is this usual? Is, is this, this is a new procedure?  
20 Because I know that we have not, you have not done this in the past so?

21 MR. PRICE: Done what?

22 MS. PERKINS: Is this, this is something new now that, that you've decided to  
23 do?



1 MR. PRICE: What the, give minutes?

2 MS. PERKINS: Yeah to the applicants.

3 MR. PRICE: No we've always tried to give the, the applicants the minutes if they  
4 request it.

5 MS. PERKINS: No my question to you is so you've always given them?

6 MR. PRICE: We've always offered to give them the minutes if that's what they  
7 desire. Most, most of the reconsiderations you've had they've either known what  
8 they're basing it on. I believe the last one we had was in Meadow Lakes, I believe that  
9 was a, it was another daycare and to be honest with you I wasn't sure if the minutes  
10 were there or not, but their actual request was because some of the changes that they  
11 had made, but the option to give them the minutes is always there. You know, and I  
12 think that it gives them the opportunity to make a better argument for the  
13 reconsideration.

14 MR. TOLBERT: I, I don't, I don't totally agree with that because we're talking  
15 about facts here and all the facts here are descending facts. These facts are talking  
16 about she first started off with 12, now she's down to six, now she's down to three and  
17 we, before found that she was not truthful in her statements and I think one of the things  
18 came out in this that it blatantly says she was asked directly what was her plan for this.  
19 She bought it to do a daycare. So I mean what else could she tell me from the minutes  
20 that I'm going to hear differently? I can't hear anything different.

21 MR. PRICE: I believe there's a lot of discussion on it, but if you go back to your  
22 minutes and you look at where the actual motion was, I mean I understand that there  
23 was some discussion as to, you know, how many kids she was going to keep and, you

1 know, there was some other arguments going on. However the basis for the, the basis,  
2 the motion that was made to deny her request, I believe that was done by you Mr.  
3 Tolbert.

4 MR. TOLBERT: It was.

5 MR. PRICE: And you said, I'm going from the minutes, you said, "Mr. Chairman I  
6 make a motion that 06-31 SE be disapproved based on Ordinance 26-56 The Welfare  
7 of the Community because of the dissention and stuff, I just feel like it's not a good  
8 place." And I believe that's what she wanted to look at to debate but of course she  
9 could not do that without the minutes.

10 MS. CAIRNS: I also think it could be, I mean an applicant requesting a  
11 reconsideration, it is reasonable for them to have the minutes to work on and so for us  
12 to say we already know how we'd rule on a reconsideration, she doesn't, she shouldn't  
13 have the right to have all of the evidence available to help create, you know, shouldn't  
14 have the formal record, I think it's a, it's a bad step to say, you know, yeah the minutes  
15 weren't available but we're telling you they wouldn't matter anyway. I mean I think the  
16 question is -

17 MS. PERKINS: But, but you present, what, what he does is he's presented us  
18 with a letter from her stating what her argument is. I'm not going to, I'm not going to sit  
19 and wait and defer 30 more days, you have 30 days, she sent in a request. It says okay  
20 we've gone from six to 12 to now three. And so she -

21 MS. CAIRNS: She wasn't able to -

22 MS. PERKINS: - you know, I don't know. I don't recall, I didn't know that, this is  
23 something new to me. I've never heard him say that they, they've been given the

1 minutes so as, as, you know, as long as I've been on the Board. I, you know, and she  
2 has her request but I don't see any new information in the letter.

3 MS. CAIRNS: Well except for the fact that she didn't have the minutes to work  
4 off of and I think that, you know, I just, someone that works off the record I think that it's,  
5 it's not particularly good precedence as simply, to deny the applicant that -

6 MR. PRICE: No I was just talking to Suzy Hanes just now who sends out the  
7 actual letters, you know, from the actions of the Board and she states that in the letters  
8 that are sent out it does state that, that the minutes are available, you know, if you so  
9 desire.

10 MR. TOLBERT: Did she come and ask for them?

11 MS. PERKINS: Yeah, did she ask for them?

12 MR. PRICE: Yeah, I spoke to her about this and she asked for them.

13 MR. TOLBERT: When?

14 MS. PERKINS: When, when did you give them to her? I mean -

15 MR. PRICE: This, I mean this was right after the meeting, I want to say she was  
16 calling me like the day of the meeting.

17 MS. CAIRNS: When were the minutes made available?

18 MR. PRICE: Yesterday.

19 MS. CAIRNS: So I feel it's proper for the Board to grant her the additional time. I  
20 don't think that her attempt to do the best she could without having the minutes - I mean  
21 okay had she made a request to ask for the 30-day extension, I mean the request is  
22 being made by the Staff.

1 CHAIRMAN BROWN: I certainly think it's, it's proper for the Board to agree to  
2 give her the 30 days if that's the will of the Board. That's a question for the Board to  
3 decide whether they want to grant her the 30 day extension [inaudible] value or the use  
4 of the minutes or not. The Chair will entertain a motion.

5 MS. PERRINE: Can I say something to that? I'm kind of like Ms. Perkins that  
6 because I was on the Board previously and I know when we would have, just like this,  
7 she – we had her at the August meeting and then we come back for September and  
8 we're already asked to reconsider a case and I don't ever remember anybody saying,  
9 you know, they've got to wait to read the minutes. She should know what happened.  
10 She should know what she wants to do now, which is different than the original request  
11 that came before us. And some of the things she's saying in the letter, well I mean -

12 MS. PERKINS: I've never heard that before either I'm just.

13 MS. PERRINE: I mean because we would just go ahead and vote -

14 MS. PERKINS: So this is something new -

15 MS. PERRINE: - on this just like we, which ya'll could have changed things  
16 since.

17 MS. PERKINS: No we haven't, we haven't.

18 MR. FARRAR: I think you need to distinguish between things that are requested  
19 of you and things that you have the power to do. An applicant can ask for anything they  
20 want to, I mean they can come in here and ask can you give me another 30 days, 60  
21 days, whatever. And so you've got a request that's before you and I don't know if this  
22 request is just to approve the minutes except for this one case or don't approve the

1 minutes at all, whatever the request is you can take it up and it's simply a matter of the  
2 Board's vote.

3 CHAIRMAN BROWN: [Inaudible] It has nothing to do with [inaudible].

4 MR. FARRAR: So, so you can take up the merits in the request for  
5 reconsideration. You can say you wan to wait and let the applicant have the minutes.  
6 You can decide under your rules, and this is why you do this it's a series of months  
7 where we would just get the second bite at the apple request for reconsideration that  
8 were absolutely nothing new it was just gee I didn't like that first one how I lost will you  
9 hear it again. And so that's when we put Rule 3.7(A) it says, "A request for  
10 reconsideration shall be based and acted upon entirely upon the written request  
11 submitted pursuant to the subsection provided; however that testimony may be allowed  
12 only by leave of the Board." You don't have to hear from these people again if you want  
13 to hear from an applicant you can take testimony again but it's entirely upon the written  
14 request of something, mistake in law, mistake in fact, inadvertence, excusable neglect,  
15 newly discovered evidence, fraud, misrepresentation, misconduct of a party, or  
16 evidence of a material clerical error. And so those, those are the standards and, and  
17 you can take this up now, you can do what you want, you can wait 30 days if you want  
18 to give her the minutes. If you don't give her the minutes you may be creating some  
19 other issue that's, you know, the issue about whether she got the minutes as opposed  
20 to the substance of her case, you know, that type of thing you can talk about but  
21 whether you want to do it or not is entirely a Board decision. You have the power to  
22 hear it now or to approve it, not approve it.

23 CHAIRMAN BROWN: All right the Board will entertain a motion.

1 MR. TOLBERT: I make a motion that the request be denied.

2 MS. PERRINE: Second.

3 CHAIRMAN BROWN: It's been moved and seconded that the request for  
4 reconsideration of the case for 601 Wilmette Road and I don't know what the number of  
5 it is, be denied. All those in favor of the motion signify by raising their hand? Opposed  
6 or in opposition?

7 *[Approved: Tolbert, Brown, Perrine, Ashford, Perkins; Opposed: Cairns]*

8 CHAIRMAN BROWN: The request for reconsideration is denied five to one.

9 MS. CAIRNS: I'm sorry but would also, as a Board member, make a request for  
10 reconsideration on that particular case myself in that I believe that Ms. Perkins as a  
11 Board member indeed should have been recused. It became apparent during the  
12 hearing that she was offering, in essence, testimony from work that she had done based  
13 on research with DSS and things like that. And I just feel that your residency in the  
14 neighborhood was one that I just think that recusal, recusal was appropriate at that time.

15 MS. PERKINS: I think, I think if you would have gone back to any of the  
16 daycares I do research and have always done research on anybody offering a daycare  
17 in the community. I think that you'll find that that's a consistency with me.

18 MS. CAIRNS: I just make, I just feel that, you know, with your living in the  
19 neighborhood and with some of what came forward that's all I say is I just think, I make  
20 a request for reconsideration based on that.

21 CHAIRMAN BROWN: All right so you're making a motion for reconsideration?

22 MS. CAIRNS: Based on the issue of recusal of the Board, the failure to recuse  
23 the one Board member.

1 CHAIRMAN BROWN: And is there a second on that motion? For purpose of  
2 getting the motion up for consideration I'll second it. It's been moved and seconded that  
3 the case be reconsidered on the basis presented by Ms. Cairns that it's her feeling that  
4 Ms. Perkins should have recused herself from acting on this case. Am I stating that  
5 accurate?

6 MS. CAIRNS: Correct.

7 CHAIRMAN BROWN: All right that's the motion. All those in favor of the motion  
8 signify by raising their hand? Opposed?

9 *[Approved: Cairns; Opposed: Tolbert, Brown, Perrine; Abstained: Ashford, Perkins]*

10 CHAIRMAN BROWN: Motion failed by a vote of three to one. All right.

11 MR. PRICE: We'll do the approval of the minutes.

12 CHAIRMAN BROWN: Is there a motion to approve the minutes?

13 MR. TOLBERT: So moved.

14 MS. PERRINE: Oh, wait, wait.

15 MR. TOLBERT: Uh-oh.

16 MS. PERRINE: I'm back, are we doing August or, okay yeah we're doing  
17 August.

18 CHAIRMAN BROWN: Yes.

19 MS. PERRINE: Okay I, if we could add, okay. Let me find, okay where we were  
20 saying about all the corrections and stuff if you could add another sentence down there  
21 to, on page 86.

22 MR. TOLBERT: Excuse me, which one are you correcting the, the old –

23 MS. CAIRNS: August.

1 MR. TOLBERT: August? Oh, okay.

2 MS. PERRINE: Around line 20 if you could add another sentence maybe  
3 because I, I'm not sure that - I mean we've got some corrections on, you know, typed in  
4 here but then I have given you my copy of the July 5<sup>th</sup> minutes so could we just have a  
5 sentence put in there that you received the copy with corrections or something just for  
6 the record, is that?

7 CHAIRMAN BROWN: Okay, Ms. Perrine presented you with, with a copy of the  
8 minutes containing required corrections.

9 MR. ASHFORD: She got a corrected copy here, can't we vote on the corrected  
10 copy?

11 CHAIRMAN BROWN: But the record should reflect that that was, that's how she  
12 obtained them. Can you do that Stephanie?

13 MS. SWORD: Yes sir.

14 MS. PERRINE: Okay y'all gonna have to get used to me then. On page 14 I  
15 have a question about this, the motion to approve and the voting because I kind of  
16 make notes and I try to keep up with who is voting for and against and, you know, I  
17 don't put everything down but I try to keep up with who made the motion and all that  
18 stuff. But in my records I had Reverend Ashford voting against but then we go on  
19 further and I think Geo was saying that it's four to three and I think it was, should have  
20 been denied.

21 MS. CAIRNS: Hum-um (negative) no it was. It was approved four to three I  
22 couldn't tell you who the people were but I can tell you that it was approved four to  
23 three.



1 MR. TOLBERT: What page is it on?

2 MS. PERKINS: He voted against it.

3 [Inaudible discussion]

4 MS. PERRINE: All right did y'all see the arm, you know, when we -

5 MS. SWORD: What case is this please?

6 CHAIRMAN BROWN: 06-05 SE.

7 MS. PERRINE: So how do we handle that?

8 MR. TOLBERT: I wrote it down as approved.

9 MS. CAIRNS: Yeah I mean it, the motion was to approve.

10 MS. PERRINE: But, but he, there were four voting -

11 MS. PERKINS: Against.

12 MS. PERRINE: - in opposition.

13 MS. CAIRNS: There were, it was a four/three positive vote. I could not, I mean I  
14 could not begin to tell you which four, but I know that that was passed four to three.

15 MR. PRICE: I mean if you want to wait I can go get my, I can go get my agenda  
16 where I actually write down who votes where, but I remember that was passed.

17 MS. PERRINE: I mean I may have had it wrong but Reverend Ashford is saying  
18 that he voted against it and I have Harold, you know, and I shouldn't be using the first  
19 names I guess but anyway Harold, Margie, Elaine and Reverend Ashford against. But  
20 maybe I had it wrong.

21 MS. CAIRNS: Well then, yeah we wouldn't have gone on to the next case if we  
22 had a three/four vote on a motion.

23 MS. PERRINE: No, that is true but then -

1 CHAIRMAN BROWN: Do you have the minutes?

2 MR. PERRINE: - [inaudible] talking to me and I couldn't quite get everything in  
3 and we started with the next one and I'm thinking oh wait a minute okay, so I said okay  
4 well before the meeting is over I will bring this up and then we had a lot of things going  
5 on and I just didn't say anything.

6 CHAIRMAN BROWN: Do you have a record of who voted and on which way,  
7 Geo, did you say?

8 MR. PRICE: Yeah I usually write it down in my notes, that's usually when you  
9 say Mr. Price next case and I have to hurry. If you hold on I can go -

10 CHAIRMAN BROWN: All right go ahead and lets try to resolve this.

11 MS. PERRINE: Sorry.

12 MS. SWORD: May I ask a question?

13 MS. CAIRNS: Sure.

14 MS. SWORD: Then I'd like to go ahead and clarify a vote please, so maybe this  
15 won't happen again.

16 CHAIRMAN BROWN: It was the first case today.

17 MS. SWORD: No, sir.

18 MS. PERRINE: The last case?

19 MS. SWORD: I believe it was the last case where the Reverend -

20 MS. HAYNES: It was case 06-34.

21 MS. SWORD: - was not with us and Ms. Perkins nudged him to vote and he  
22 voted after everybody had approved so I don't know if his vote was approve or deny. I  
23 wrote everybody approved on that case.

1 MS. HAYNES: It actually happened twice. This last time [inaudible] voted and  
2 then case 06-34.

3 MS. PERRINE: 06-34

4 MR. ASHFORD: 06-34

5 MS. PERRINE: It was everybody for.

6 MS. SWORD: That's what I have I just want to make sure that's correct.

7 MS. PERKINS: And what's the other one?

8 MS. SWORD: That was the only one I had a question on.

9 MS. PERKINS: I think he's kind of a little slower than most people.

10 MS. SWORD: Right and I - just with that one specifically I was not sure so I  
11 wanted to go ahead and get that clear.

12 [Inaudible discussion]

13 CHAIRMAN BROWN: [Inaudible] – 43 the one in Hopkins.

14 MS. PERKINS: That's the one who was for the, that's the double car garage?

15 MR. TOLBERT: Yeah.

16 MS. PERKINS: Yeah that's the one you said that, yeah that's the one, he was  
17 for it, yeah. Yeah I couldn't remember the numbers I know the cases I can't remember  
18 the number.

19 MS. SWORD: And if for some reason Geo does not have his notes written down,  
20 cause he does say he's in a hurry when he's trying to write that because he's got to  
21 move on to the next case, I do keep that written down on my notes but of course they're  
22 at the office for last month, so I'll be glad to check those if it doesn't pan out.

1 CHAIRMAN BROWN: Well we can always approve the minutes with the  
2 exception of this case until -

3 MR. TOLBERT: I have a question what happens, that turns the whole case  
4 around?

5 MS. CAIRNS: It makes the motion denied but then we didn't have a subsequent  
6 motion. And I don't know if, you know, I mean, you know, I understand Ms. Perrine  
7 says, you know, that the next case started rolling but I not really sure we have the  
8 chance to go back and reverse all of that. I mean that's an extraordinary -

9 MS. PERKINS: But are you reversing it or is it recorded?

10 MR. TOLBERT: The actions will reverse it.

11 MS. CAIRNS: We would have a denied motion so we'd have a non-motion. We  
12 had a case that's still standing.

13 MR. TOLBERT: So you, and then if they go out and do something then you, you  
14 got a mess.

15 MS. PERKINS: So we can't approve the minutes?

16 MS. CAIRNS: But I think that, I think the names might not, I mean it passed  
17 four/three. I mean, I just, I do know that. Four hands went up in approval.

18 CHAIRMAN BROWN: Well I don't, I don't think I would have gone on if, I would  
19 have asked for another motion if -

20 MS. PERRINE: Well that's what I thought too, so, you know, it's very, I could  
21 have done -

22 MR. TOLBERT: But now if he's saying that now, that makes it even worse.

1 MS. PERKINS: Are you saying, are you saying about the last case or this case?  
2 He's talking about the garage right?

3 CHAIRMAN BROWN: We're talking about last month.

4 MS. PERKINS: Oh, last month.

5 MS. CAIRNS: That one that you're - yeah.

6 [Inaudible discussion]

7 MR. PRICE: I remember after that meeting I went straight home so I probably  
8 just took it with me so I don't have it.

9 MS. PERRINE: Let's just say that I just jotted it down wrong.

10 MR. PRICE: What's the, I'm sorry, the question is what the vote?

11 MS. PERRINE: Because you all had to have seen four, four arms, yeah it was  
12 four to three. Four arms go up so it doesn't matter who voted for or against then.

13 MR. PRICE: Right.

14 MS. PERRINE: So it's okay.

15 MS. CAIRNS: Can we have a motion to approve the minutes? Are there, are  
16 there -

17 CHAIRMAN BROWN: She's got some other corrections.

18 MS. CAIRNS: There are other typos?

19 MS. PERRINE: No that was all.

20 CHAIRMAN BROWN: Oh, that was all, all right. Then is there a motion to  
21 approve the minutes?

22 MR. TOLBERT: So approved.

23 MS. CAIRNS: So moved.

1 MR. TOLBERT: So moved rather.

2 MS. CAIRNS: I second.

3 CHAIRMAN BROWN: All in favor?

4 *[Approved: Cairns, Tolbert, Brown, Perrine, Ashford, Perkins]*

5 CHAIRMAN BROWN: Approved. Any other business Mr. Price?

6 MR. PRICE: No sir, not at this time.

7

8

*[Meeting adjourned 3:30 p.m.]*