

BOARD OF ZONING APPEALS

September 3, 2008

[Present: Margaret Perkins, Torrey Rush, Harold Branham, Elaine Perrine, Joshua McDuffie, Susanne Cecere, Sheldon Cooke; Attorney: Amelia Linder]

Called to order: 1:00 p.m.

CHAIRWOMAN PERKINS: Good afternoon, it's 1:00, a quorum is present, and the Zoning Board of Appeals is called to order. Mr. Price are there any change, is there any change to the agenda?

MR. PRICE: No ma'am, actually – well, there's a case, one of the aerals for I believe it's the first case incorrectly identifies the parcel, however once we do to the aerals, when we do the presentation you'll actually see the parcel.

CHAIRWOMAN PERKINS: I'm sorry?

MR. PRICE: The wrong parcel is incorrectly identified on the aerial, but we have the correct parcel identified once we go to the presentation.

CHAIRWOMAN PERKINS: You will identify, okay, thank you. Okay, the first business in order is the Rule of Order, which will be presented by our attorney, Ms. Linder.

MS. LINDER: Good afternoon, my name is Amelia Linder and I'm the attorney for the Board of Zoning Appeals. I'd like to welcome you to this meeting this afternoon and just go over a few things with you. What's going to happen is we're going to follow the Agenda and the first, the applicants will be asked to speak first. The applicant has up to 15 minutes to present their case. At that, and then after the applicant has made their case then anybody in opposition to the request has a chance to speak and they'll

1 have three minutes to speak. After all the opposition has spoken, the applicant or their
2 representative can come back and rebut up to five minutes. When you come up to
3 make your comments, please address all your comment to the Board and not to
4 members of the audience. This is a *quasi* judicial hearing, which means it's, it's a
5 semiformal proceeding. The Board's decisions are final, subject to an appeal, which
6 would then be taken to circuit court, and once the Board makes its decision they will
7 wait until the next month to get the Minutes approved and then an order will be signed.
8 And then once that Order is sent out you'll have 30 days from the time that Order gets
9 sent out to appeal the decision. Today I would ask that if anyone has a cell phone if you
10 would quietly silent them or put them on vibrate, I'd appreciate that. The evidence that
11 you give will be taken into consideration by the Board, they will give the proper weight to
12 the testimony that you do give. And anybody that is desiring to speak does need to be
13 sworn in to tell the truth. And at this time if there's any questions I'll entertain the
14 questions, if not if you're planning to speak, if you at this time please rise and raise your
15 right hand. Do you swear or affirm that the testimony that you give today shall be the
16 truth, the whole truth and nothing but the truth?

17 AUDIENCE: I do.

18 MS. LINDER: Okay, you're all affirmed or sworn in and you make take your
19 seats, thank you. Madame Chairman, you may proceed.

20 CHAIRWOMAN PERKINS: The next business in order is the approval of the
21 August Minutes. Are there any corrections to the Minutes?

1 MS. PERRINE: I had a few and this may be a question too. On page 3 line 11,
2 Ms. Cecere, you made a motion that we accept the Minutes but then we have you not
3 voting.

4 MS. CECERE: I did vote.

5 MS. PERRINE: You did vote, that's what I thought. Okay, and then we had
6 McDuffie not voting. No, that would have been Mr. Cooke, okay, okay. [Inaudible]
7 abstained.

8 CHAIRWOMAN PERKINS: Abstained, oh I'm sorry [inaudible]

9 MS. PERRINE: Okay and then with that, we had Mr. Cooke voting but I think
10 then Ms. Perkins said we excluded him because he was, okay. Page 46 line 11, for
11 instead of or, "I have one more question for Ms Fuller". Page 87 line 16, he instead of,
12 "he wants to gain" instead of we. That's it.

13 CHAIRWOMAN PERKINS: Page 3 line 15, change the word not voting to
14 abstaining and do Mr. Cooke. Page 14 line 7, insert the word but after Board. Page 60
15 line 14, change the word hear to heard. Are there any other corrections? If there are
16 no other corrections I would move that we approve the Minutes as corrected. Are there
17 any objections? Okay, the next business in order is the public hearing. Mr. Price,
18 please present the first case.

19 MR. KOCY: Madame Chair, you didn't, you didn't vote on the Minutes yet.

20 CHAIRWOMAN PERKINS: We, *Robert's Rules of Order* said if it's routine we
21 can go ahead and do it without voting.

22 MR. KOCY: We still need to approve them, though.

1 CHAIRWOMAN PERKINS: We did, we, I did, I asked if there were any
2 objections and there were none.

3 MS. LINDER: Just for clarification on that, the Chair did consult with me prior to
4 the meeting beginning and we did consult with *Robert's Rules* and there is a procedure,
5 if there's no objection, they're automatically approved and I said that was at the
6 discretion of the Chair and this is how she's calling it.

7 **CASE 08-46 V:**

8 MR. PRICE: The first item is case 08-46 Variance. The applicant is requesting
9 the Board of Appeals to grant a waiver to the sidewalk requirements on property zoned
10 general commercial. The applicant is Kevin Nahigian, the location is 841 Polo Road,
11 parcel size is 4.78 acres. The existing land use is developing commercial, there is
12 some commercial occurring on the property. As stated it's being developed for multiple
13 commercial uses and it currently has a convenient store of gas pumps, and the second
14 phase of the development is currently under development. The area is comprised of
15 multifamily uses, north, south and, south and the west of the subject parcel and a
16 recreational park is located west of the subject parcel. That would be Polo Road Park,
17 I'm sorry, I can't really show it, which is located right here. According to the Code the
18 applicant is required to provide sidewalks on all public roads, along all public roads,
19 which would be Polo Road and going along Mallette Hill Road.

20 CHAIRWOMAN PERKINS: Okay, Mr. Kevin Nahigian, would you please come
21 to the podium and state your name and address for the Record and tell the Board what
22 it is you'd like to do.

23 **TESTIMONY OF KEVIN NAHIGIAN:**

1 MR. NAHIGIAN: Hi, my name is Kevin Nahigian and the address of the, the site
2 or my home address?

3 CHAIRWOMAN PERKINS: Home address.

4 MR. NAHIGIAN: My home address 85 Red Bay Road in Elgin, South Carolina.
5 Basically why I'm here is a couple things. Basically I, I did this to kind of give you some
6 sense of the terrain. On, on the, the plat that I've included there you can see the little
7 letters that I've put that are highlighted in orange and those letters correspond to the
8 colored pictures in the packets from, from A to G. And basically standing at A looking in
9 the direction of the arrow, that is the view that you see. The, there's multiple concerns
10 here regarding the placement of these sidewalks and I've been working with DOT and,
11 and talking about different problems of this site. To begin with, if we just look at, at A,
12 there's a very significant drop in terrain in, in this portion. As you can see it's a very
13 short [inaudible], it is basically a sidewalk to a drainage ditch. This is the only retail
14 place in the entire two and a half mile radius in, in any direction. And so there's no
15 sidewalks in any direction. Looking at, at A here first the, the terrain drop is pretty
16 extensive. It does drain into that drainage ditch, you can see, which is right at a
17 telephone pole. You can see kind of the relevance to the size of a car and it's basically
18 over the depth of a car that that drops. And my contention is here if you're standing at A
19 or B if you, if you flip to B, which is the next one if you're standing in essentially the
20 same spot and turning around in the opposite direction, this is a high speed curve,
21 unfortunately. It's about, it's a 35 mile and hour road but people fly down this road and
22 this is on the outside curb of that road and there is no curb to the sidewalk or to the, to
23 the, to the road. And so people are constantly kind of coming around this curve in a, in

1 a wide manner and I'm very concerned about the placement of a sidewalk in B
2 especially. But A would essentially lead to that pit and what, the problems we have with
3 DOT is across the street is, are the ball fields. We're gonna be having a pizza place
4 here, a soccer store, ice cream place, things where kids are going to want to come
5 across the street. And what we're trying to do is discourage that other than the
6 crosswalk. And if you can see on the topographical map DOT is, has put in a crosswalk
7 where it's written crosswalk there and what we're trying to do is bring kids across the
8 crosswalk and instead of walking around the perimeter of the, of the property bring them
9 into the interior of the property as quickly as possible. So instead of having people
10 walking along Polo Road there trying to get them into the property and off the road as
11 quickly as possible. If, if you go to letter C and if you pull C, D and E out together they
12 all line up where you can, you can put E overlapping D and C overlapping D where it
13 has the lines and you get a sense of what the corner looks like on, on Polo Road and
14 Mallette Hill Roads. You can see the, this neighborhood is a very well-established
15 neighborhood, very picky inhabitants of this neighborhood, I mean, we've been working
16 very closely with them with, with landscaping and trying to deemphasize these buildings
17 and deemphasize this retail area. You can see if I put the proposed sidewalks in, it
18 requires substantial digging and removing of the landscaping at the entrance of, of
19 Wildwood. I'd have to take out a bunch of those bushes, a bunch of the landscaping
20 that is at their main entrance and I, I just foresee some major discussions coming your
21 way as far as the group of homeowners regarding removing of all those bushes. What
22 I'm proposing is that you can see the sidewalk or the crosswalk that's already been put
23 in at C, is basically just making a quick sidewalk that quickly gets people around this

1 wall, does minimal destruction to any of the landscaping or any of the, the, the brick wall
2 that is there and get them off the street away from traffic. And I've kind of drawn in a
3 little hash line to where that would be. There's also some pretty significant problems
4 with some of the telephone poles. SCE&G has basically kind of refused to move any of
5 those poles, which also make it very difficult for our sidewalk placement. You can see
6 the, the terrain in, on letter C, it really ramps way up to that, to that pole and in order to
7 get the sidewalk off the road you have to get it very close to that pole and there's,
8 there's support lines that are all around there and we just don't feel it's such a great
9 place to be. And so that's why we're just, we're, we're asking if we can do a Variance to
10 redraw this just to bring them in the interior of the property. If you go back to that
11 picture that you just showed in the, the overhead there no, the one that had, no, right
12 there - this is another road that has been proposed where we put the sidewalk, these
13 trees that are here already have tremendous surface roots in every direction. They've
14 been there for a long period of time and you can see the space allowable for those
15 sidewalks would require substantial digging up those roots. We're intending to put more
16 of these same trees to keep the same look of this down the side and as, as you proceed
17 back from this direction the homeowners have asked us to even put a berm like an
18 elevated berm that is landscaped to help block some of the buildings. So the berm also
19 really complicates any kind of placement of sidewalk, it gets the sidewalk right out to the
20 curb area where there is no curb. And again these, every direction for two and a half
21 miles there is no other sidewalk. I know the new stipulations, I know the purpose
22 behind them I, I completely appreciate that I'm a, I'm a big zoning guy, I appreciate the
23 things that everyone is doing to try to make, you know, Two Notch and these other

1 places more appealing. I am making, doing everything possible as far as landscaping,
2 I'm doing \$100,000 worth of landscaping on this very small piece of property, so we're
3 doing everything to make it look nice but in this direction here we're gonna put more
4 trees but they're asking for like a six or seven foot mounded berm that can be
5 landscaped to really deemphasize the buildings that'll be going just to the left there. If
6 we do the berm and we do the trees and we deemphasize that there's, there's just not
7 room for a sidewalk, a sidewalk to going nowhere. If you look to up to the, the right
8 there where those yellow, or those red flowers are, that's an entrance to the apartment
9 buildings across there. We're proposing that, having DOT put a crosswalk there and
10 then we, again would have a sidewalk that leads directly into the property, gets them off
11 the street into the interior of the property where the sidewalks are, where the plaza area
12 is, where the outdoor eating areas are, again off the road. If they're walking along this
13 road, this again is a, is a pretty blind corner coming around here and with berm and
14 additional things it, it just basically it's a road leading to nowhere, or a sidewalk leading
15 to nowhere. So I did take some pictures in here included in your packet, just looking at
16 some of those, the roots. I mean, they're unbelievable, surface roots that go in each
17 direction. So I mean, we'd have to dig those out substantially and again the
18 homeowners, basically if I, you know, if I turn around funny on this piece of property
19 they're, they're on my back let alone if we have to dig up these roots and these trees
20 and, and really alter the terrain. So I'm just requesting that we modify some things in
21 order to just get people off this street and, and not go as stipulated by the Zoning Board
22 and the policies to put the established sidewalks as drawn on this, on this plot.

1 CHAIRWOMAN PERKINS: Okay, are there any questions for Mr. Nahigian? I
2 have one, you said that, you gave us information with the crosswalk and then I think I
3 heard you say that you're -

4 MR. NAHIGIAN: It would be about a second, a second crosswalk. So another
5 crosswalk coming across the street from, this is on, on -

6 CHAIRWOMAN PERKINS: It's not there yet?

7 MR. NAHIGIAN: It's not there yet, no. One is there, the one that I have written
8 there is crosswalk on Polo Road, at the corner of Polo and Mallette Hill, that one's there.
9 The other one would be at the entrance if you kind of go past G on your picture, you see
10 that little entrance coming out of the apartments across the street, some sort of
11 crosswalk in that area. The, the problem is that that is a still pretty high speed area far
12 as people kind of flying around that corner going to the corner of Polo and Mallette Hill
13 and DOT wasn't sure exactly where they could take people across safely. So again
14 we're just trying to get them off the street and into the property without walking around
15 the backsides of buildings on a, on a street that has no curb and pretty high speed
16 traffic.

17 CHAIRWOMAN PERKINS: Are there any other questions from the Board?
18 Okay, thank you very much.

19 MR. NAHIGIAN: You're welcome, thank you.

20 CHAIRWOMAN PERKINS: There is no one signed up in opposition.

21 MS. CECERE: Do you have any letters from like the homeowners association or
22 anything like that?

1 MR. NAHIGIAN: I, I can. I've been moved three times due to scheduling issues
2 on both ends. So I think that they, I can get them. Val Hutchinson has been very
3 involved with this. Bill McDougall who's the homeowner's association, he was able to
4 come to the other two meetings but not this one. I'll, I can get you whatever letters
5 regarding that landscaping or removing of that landscaping or, you know, whatever you
6 need.

7 MS. CECERE: What about DOT, do you have anything -

8 MR. NAHIGIAN: DOT, I can, I can do that too. The problem is the guy that I
9 work with DOT for the longest period of time has left. So I'm, I can start that process
10 over again.

11 CHAIRWOMAN PERKINS: The Chair is going to recognize Mr. Kocy.

12 MR. KOCY: Thank you, Madame Chairwoman. I have met with Mr. McDougall
13 on this site. I have not heard the homeowner's association support no sidewalks on this
14 site. The homeowner's association is concerned that the sidewalk placement not
15 interfere with the front entrance sign and the landscaping. I believe that we could
16 carefully and strategically place sidewalks to provide pedestrian safety and not interfere
17 with the entrance way to the subdivision. My concern is this is a high pedestrian site,
18 it's going to attract a lot of youngsters from across the street to the pizza parlor, ice
19 cream, convenient store, soccer store, and I think sidewalks are essential to pedestrian
20 safety here.

21 CHAIRWOMAN PERKINS: Thank you very much.

22 MR. NAHIGIAN: Can, can I go on the Record as saying one other thing?

23 CHAIRWOMAN PERKINS: Hold on just a minute.

1 MS. CECERE: I have a question for Mr. Price. Mr. Price, on that apartment
2 complex, was that built before the zone -

3 MR. PRICE: Yes.

4 MS. CECERE: Okay, thank you.

5 CHAIRWOMAN PERKINS: Okay, now Mr. Nahigian.

6 MR. NAHIGIAN: I have, I've gone to multiple people about this but I would like to
7 go on the Record as saying I am extremely concerned about the, the safety of
8 individuals walking on that street on this sidewalk. And I would, if I am forced to put this
9 in privately I would like some kind of protection legally against potential suits of
10 someone getting injured on the sidewalk because I am absolutely adamant that it is a
11 hazard to traffic in this area without a curb on this road, on these roads.

12 CHAIRWOMAN PERKINS: Mr. Nahigian – oh, go ahead.

13 MR. MCDUFFIE: I have one question for yourself or maybe for Mr. Price.
14 Where does the, where would the right-of-way end in terms of the right of way on Polo
15 Road there? I mean, how, how far off of the, the side of the street?

16 MR. PRICE: I think I might can get a picture for you.

17 MR. MCDUFFIE: Just curious as to how close to the actual edge of the street
18 the sidewalks would be placed if they were to be put in place as per the current
19 ordinance.

20 MR. PRICE: Just kind of, without actually having it, you know, surveyed
21 [inaudible] property lines [inaudible] public utilities typically placed on public property not
22 on private property so it will be definitely on the other side of this utility pole.

1 MR. MCDUFFIE: There would be a pretty substantial gap there between the
2 edge of the, between the current edge of the road and, and where the sidewalks would
3 be being placed.

4 MR. PRICE: Yes.

5 MR. MCDUFFIE: Okay, thank you.

6 CHAIRWOMAN PERKINS: Mr. Nahigian I, I'd like to know what, what are you
7 stating as the extraordinary, you know, conditions for this particular piece of property, is
8 it that the curb, it's a, in, in your information to us, is it that, you know, you have
9 speeders on that street and there is a curve?

10 MR. NAHIGIAN: It, it's, it's multiple. That's one huge one far as liability goes, no
11 question. I mean, if -

12 CHAIRWOMAN PERKINS: Do you have a, do, do you have anything to present
13 to the Board [inaudible] that that would be your liability if a car were to hit a pedestrian
14 coming from -

15 MR. NAHIGIAN: I would, I would be happy to do that cause I have been -

16 CHAIRWOMAN PERKINS: Now, do you have it now cause we're hearing the
17 case now.

18 MR. NAHIGIAN: No, I didn't realize that I needed to do that but I can tell you that
19 there's not only that but by putting a sidewalk there right where you're looking there, it, I
20 believe it encourages people to cross the walk or cross the road in a jaywalking manner
21 to get to a sidewalk. If there's no sidewalk there, and I've also talked to DOT about
22 putting a fence on the other side of the road to prevent kids from crossing over. So then
23 they're forced to go down to the corner to cross over on the, on the sidewalk or the

1 crosswalk to get to the property and then get them off the street as quickly as possible.
2 And see here if, if he's talking about putting that sidewalk where it's proposed it
3 basically kind of goes through that corner of that bed and drops down into an absolute
4 pit of nowhere. I mean, that's a drainage ditch there and, and to take a sidewalk,
5 there's no one coming from the other side through a drainage ditch to get to the
6 sidewalk, and then you're encouraging people to cross over the side, or cross over the
7 road to get to the sidewalk. If there's no sidewalk and there's a fence across the street
8 and there's a crosswalk up the street I believe the kids would be more likely to go up the
9 street to the crosswalk and cross over. So I believe that it encourages, not only does it
10 encourage kids to cross over but I, I believe it's in the position that without a curb on this
11 road and an outside curb of a road where people are travelling in excess of 40 miles an
12 hour, it says 35 there and I will tell you that people go through there like it's 50 miles an
13 hour. So, cause there's no, there's no residential or no business from this point all the
14 way out to the highway so they come flying around that corner and this is their first
15 encounter with, with any residential or retail area. So it's a sidewalk to nowhere, it goes
16 to into a pit, it is on an outside curve of unsafe road and I, I just don't think it's helpful as
17 opposed to getting them into the interior as quickly as possible.

18 CHAIRWOMAN PERKINS: But wouldn't you think that since you're putting up
19 some businesses at that, that kind of development would attract vehicular and
20 pedestrian traffic so it would, I, I'm asking, is the businesses that's going in that area
21 wouldn't you say it would attract pedestrian and vehicular?

22 MR. NAHIGIAN: Well, I am hopeful that it does. We're putting exterior walks all
23 the way through, you can see all the way by all the parking any, as soon as you bring

1 your car in there you can walk the entire distance. And all we're asking is that we
2 control the pedestrian entrance by getting them into the property. The, the area in the
3 lower left corner there, if I can go up here and point to it, I'm sorry?

4 MR. PRICE: There's a pointer.

5 MR. NAHIGIAN: Oh, this here? Thank you. This area right here what we're
6 proposing is you cross the sidewalk, you go quickly around this wall and then would
7 take this sidewalk into the interior. This is a plaza area where there's outdoor seating
8 and restaurants, so they'd come down these steps into this plaza and now they're
9 behind this entire area here. This, to, behind here where they're proposing to put this
10 long sidewalk, these are giant magnolias there behind this, you can go back to the, the
11 entrance. Now if you go, if you go to the entrance of Wildwood, actually if you look on,
12 on C in your, oh no, excuse me D in your packet you see those are very large magnolia
13 trees that are behind this, this wall. And where the proposed sidewalk is that goes
14 behind the wall, you can put a dirt path in there with no problem with some mulching
15 and some borders but to dig up that area adequately, to put in a sidewalk it's impossible
16 without losing all these magnolias. These magnolias will absolutely die because there's
17 just not enough space, you have to dig their roots out almost completely to get that, to
18 pass that sidewalk. So we're just trying to get them around the wall and then down a, a
19 dirt path, a mulch patch that gets them into the property as quickly as possible without,
20 right there in that view, that sidewalk goes right where those giant magnolias are and,
21 and they're a huge trunk trees. I mean, there's just, there's, there isn't room to put that
22 without digging them out.

23 MR. MCDUFFIE: Is the entrance to Wildwood then on your parcel?

1 MR. NAHIGIAN: No, no it's, no it's not. It's, it's deeded to the homeowners.

2 MR. RUSH: Are the magnolias?

3 MR. NAHIGIAN: I believe that even though they're technically on my piece of
4 property they're kind of assumed that it's part of the entrance way. So I think that
5 they're pretty borderline but they, they maintain them and that's definitely part of theirs.
6 So I mean, I've stayed away from those the best that I can. And we've put a brick
7 retaining wall behind there to, so, and, and we're gonna make it almost kind of like a
8 nature entrance into this piece of property. But if, if I have to put a true sidewalk or we
9 have to dig down to put concrete, there's no question that those magnolias are not
10 gonna make it.

11 CHAIRWOMAN PERKINS: Okay, are there any other questions for Mr., oh I'm
12 sorry, the Chair will recognize Mr. Kocy and then Mr. Torrey.

13 MR. KOCY: Madame Chairwoman, this is the first time I've heard of Dr.
14 Nahigian being willing to be flexible in providing a sidewalk. In our previous discussions
15 it has been no sidewalk. I am willing to be flexible and meet with Dr. Nahigian onsite
16 and talk and discuss and layout a pedestrian, safe pedestrian access in and around the
17 site. I'm certainly willing to be flexible and recognize that perhaps strict compliance of
18 the code for sidewalks in phase one might not be realistic. So if Dr. Nahigian is willing
19 to be flexible and if the Board would grant perhaps a month, he come back in a month
20 with a flexible plan that both of us can live with, that might be a, a better alternative than
21 an all or nothing sidewalks. I certainly do not support no sidewalks but I would be
22 willing, Mr. Price and I could work with Dr. Nahigian and come up with an alternative
23 pedestrian layout for this site.

1 CHAIRWOMAN PERKINS: Mr. Nahigian, do you understand what Mr. Kocy is
2 saying? If you would like to go, defer, upon your request we can defer this until next
3 month and the three of you can get together and, you know, re-present it to the Board at
4 the next meeting. Or we can vote on it now.

5 MR. NAHIGIAN: Now I, I will tell you that I think what Mr. Kocy just said is
6 absolutely not the truth at all. I have been flexible -

7 CHAIRWOMAN PERKINS: Well, the question - hold it, Mr. Nahigian, the
8 question now is we have, you have -

9 MR. NAHIGIAN: I understand, no I understand, I understand.

10 CHAIRWOMAN PERKINS: - you have presented your case, the Board is in a
11 position now to look at the finding of fact and go through a discussion phase and make
12 a motion and then vote on that motion. I think before we got to that Mr. Kocy was
13 saying that he would like to get with you because you have brought up quite a few
14 things that he has not heard maybe or, you know, he didn't listen well we don't know
15 which it is. [Laughter] At any rate he's willing to get with you and, you know, discuss
16 some alternative plan, is that correct Mr. Kocy?

17 MR. KOCY: Yes, ma'am.

18 CHAIRWOMAN PERKINS: Is that the alternative plan to the entire area being
19 sidewalk.

20 MR. NAHIGIAN: I, I have always been open to that, always. So, yes.

21 CHAIRWOMAN PERKINS: Yes, okay. Is there a motion to defer?

22 MR. MCDUFFIE: I'll make a motion to defer.

23 CHAIRWOMAN PERKINS: Oh, okay.

1 MR. NAHIGIAN: My, my only request is it is -

2 CHAIRWOMAN PERKINS: We're in the motion phase now you can't.

3 MR. NAHIGIAN: Oh I'm sorry, okay.

4 CHAIRWOMAN PERKINS: [Inaudible] we're finished with you, you can have a
5 seat. [Laughter]

6 MR. NAHIGIAN: Just about scheduling, can I say this? It is extremely difficult for
7 me to get, I'm a physician, to get time so when you say next month is it, is it possible
8 that we're able to work out dates that are -

9 CHAIRWOMAN PERKINS: We, we could do it when he's next available, we can
10 do the motion in such a fashion.

11 MR. PRICE: Yeah, we can just put this on the next scheduled meeting, we can
12 let you know right now when the next meeting is and a time -

13 MR. NAHIGIAN: Okay, okay.

14 MR. PRICE: - and so you'll know.

15 MR. NAHIGIAN: That'll be fine, thank you very much. I appreciate your time.

16 MR. MCDUFFIE: I motion that we defer this until the next scheduled meeting of
17 the Board.

18 MS. CECERE: I second.

19 CHAIRWOMAN PERKINS: There is a motion on the floor that Case 08-46 V be
20 deferred until the next scheduled meeting. All those in favor have a show of hands?
21 Opposes?

22 *[Approved: Rush, Branham, Perrine, Perkins, McDuffie, Cecere, Cooke]*

1 CHAIRWOMAN PERKINS: The ayes have it. Thank you very much, Mr.
2 Nahigian. Next case Mr. Price.

3 **CASE 08-57 V:**

4 MR. PRICE: Okay, the next item is Case 08-57 Variance. The applicant is
5 requesting the Board of Zoning Appeals to grant a Variance to exceed the allowable
6 square footage for a wall sign in an M-1, that's light industrial district. The applicant is
7 Paige Watson, the location is 11107 Broad River Road. It's part of a multiuse
8 development, commercial and it's eight plus acres. The existing land use is retail. As
9 stated, the subject property is located within a new retail shopping development. The
10 applicant proposes to exceed the allowed square footage for a wall sign by 26 square
11 feet. They're proposing a total of 70 and they are allowed 44, the surrounding area is
12 dedicated to commercial uses. As you can see this is the, this is the, an aerial of the
13 site. This is a shot of some of the other commercial tenants along this particular section
14 of the, of the development. Here we go. This is the subject tenant and you can see this
15 is the existing signage. This is a view from Broad River Road, if you take a look, I
16 guess right in front of that white car there's a, there's a red cover on the building, that's
17 the signage that they would like to put there, that, it would be under that cover. Again,
18 there's another shot of it. And that would be it.

19 CHAIRWOMAN PERKINS: Mr. Price, I have a question for you and, and it
20 concerns the packet. When I was going through this packet it seems as if there was a
21 letter asking for us to rehear the Variance on the Subway station and then we have this

22 -

23 MR. PRICE: Which one?

1 CHAIRWOMAN PERKINS: 08-57. So we're, we're, it's, it's not, we're aren't
2 asked to, to reconsider.

3 MR. PRICE: No, no this looks familiar because the case that we had last month
4 for the Subway -

5 CHAIRWOMAN PERKINS: Yeah.

6 MR. PRICE: - was on the other end of this building.

7 CHAIRWOMAN PERKINS: Okay, I thought that some of the material addressed
8 that and I wasn't certain and I wanted to make certain that we are just addressing a
9 Variance on that particular business.

10 MR. PRICE: Yes, ma'am.

11 CHAIRWOMAN PERKINS: Thank you very much. Paige Watson, please come
12 to the podium, state your name and address for the Record and tell the Board what it is
13 you'd like to do.

14 **TESTIMONY OF PAIGE WATSON:**

15 MS. WATSON: My name is Paige Watson and I live at 108 Willow Wood in
16 Chapin, South Carolina, and I am co-owner of Learning Express toy store, which leases
17 retail space at 11107 Broad River Road. At this time I'd like to have permission from my
18 business partner, Deidra Center to also present with me.

19 CHAIRWOMAN PERKINS: Okay, are you able to distinguish between
20 [inaudible]. State your name and address for the Record.

21 **TESTIMONY OF DEIDRA CENTER:**

22 MS. CENTER: Thank you, my name is Deidra Center, I live at 154 Kingship
23 Drive in Chapin, South Carolina, and I'm the co-owner of Learning Express at 1107 [sic]

1 Broad River Road. Thank you for having us today. As you can see from the pictures
2 we are a new toy store, we are a learning toy store. We opened as of Labor Day one
3 year ago. As part of our efforts to open the store, as most people do we hired a sign
4 tech, which is now named New Media, to fabricate, install and purchase the permits for
5 our signs. We received a letter from Ms. Williams in June of '08 stating that our signs
6 were not correctly permitted. Up until that date we had no idea that that was the case.
7 We immediately contacted Ms. Williams about what to do. We also contacted the sign
8 company that took our money. If it's possible I'd like to add to our Record, cause it is
9 not in the agenda, a copy of the contract that shows that we did pay for our permit, if
10 that's okay. Thank you.

11 MS. WATSON: Also on that, the original site plan, the yellow square is actually
12 not in the correct place. Okay.

13 MS. CENTER: The sign company did secure a permit for our front sign and as a
14 temporary measure we did cover up the side sign since it was not correctly permitted,
15 while we were in the process of applying for our Variance application. The sign has
16 been covered since July and we do realize that it is our responsibility to have verified
17 that the permits were, were granted and we're in no way making excuses for that that
18 we are doing our very best to be diligent about it and get the correct permits for that.
19 We'd like to emphasize to you as a small and new business that the sign is vital to our
20 business. We chose this specific location within the shopping center because it was
21 promised, the side sign was promised to us as part of the package. The side sign, the
22 front sign acts actually as a directional sign on the inside of the premises whereas the
23 outside is actually serving as our main advertising space. As it exists now, in looking at

1 the location of the building, the corresponding traffic patterns to the front of the store,
2 our space is 70% below ground level and one of the pictures you did show, shows the
3 actual retaining wall that allows it to go. Can you show us which, where the pointer is?

4 MS. WATSON: This one? I'm sorry. Thank you.

5 MS. CENTER: If we could look at the aerial photo, and we also have other
6 photos we'd like to add to the Record. You can see that we have an exceptional
7 condition that as a retail business we are located perpendicular to our road frontage.

8 MS. WATSON: We are in that building right there. And this is the main Broad
9 River Road and the interstate comes in from this direction right there, comes straight
10 into the shopping center that way.

11 MS. CENTER: We feel that we are, our exceptional condition is different from
12 those of, Food Lion and the other parcels that remain parallel to the road. As you exit
13 off the interstate you're forced to go right or left. Right will take you to Chapin, left takes
14 you to Ballentine, so it's a busy intersection and when you travel this, the flyover
15 pattern, the way that the interstate goes, you can see all the stores that run parallel to
16 the road but you cannot see, we become invisible. The primary, the three primary
17 factors that we believe creates our hardship, one our lease space is approximately
18 located 12' below a grade, so it's difficult to see our space and if you look at some more
19 photos number one -

20 MS. WATSON: Sorry.

21 MS. CENTER: Those, those are more copies. Number one, two and three, the
22 images depict how the grade hinders our visibility of the space. The second point would
23 be where the shopping center, where our lease space is located is at a busy

1 intersection. The busy intersection includes two lanes of traffic that travel Broad River
2 Road and three lanes of traffic on the off ramp of I-26 because of that flyover condition
3 of the roadway, the visibility for our specific lease space is constrained. If you look at
4 photo number five, which is on the second page of that, this is the view when you are
5 sitting in your car. This view that's shown on the big screen now is actually on the other
6 side of the intersection so it would be more about where a pedestrian stands. The
7 roadway of Broad River Road is elevated between both the exit ramp, and you can see
8 as this roadway goes down, so you're actually as a car on the downward sloping side
9 on the other side of this, so you're having to look up.

10 MS. WATSON: When you are coming in from off the interstate, you cannot see
11 this Pylon sign at all, it runs straight in front of you, like you cannot see that there's a
12 Learning Express in that shopping center. And that's where most of our traffic is coming
13 from is off the interstate and it is almost directly in front of you. That, that's a little
14 deceiving in that picture.

15 MS. CENTER: The roadway, it's, the, the Pylon sign is perpendicular to the
16 interstate, if that makes more sense. So the rear of our building actually shows more so
17 from that intersection than the front of our building does and that's where I was saying
18 the front sign actually only acts as an internal directional sign instead of a outward,
19 advertising type sign. The third point we'd like to make is that our lease space is
20 situated relative to the rest of the shopping center. If you look at the aerial again, you'll
21 see that the lease space is, where the lease space is the, like the side of our building
22 functions like the front of the building, both relative to Broad River Road and the access
23 road from I-26. We're, we are the lessee of this space, it, the building was designed

1 long before we ever came along. We did choose this space in the corner because we
2 were, the property owner said we would have, be able to have this side sign and we felt
3 like it was the safest place. We are a toy store, we have oodles of children coming in
4 and out of our doors, we wanted to pick a, a space that was safe for them. There is a
5 grassy area there and there's also a handicap ramp in front of our building, made it
6 extremely easy for moms with babies and shopping carts to come into our store. We're
7 not requesting any new signage for additional advertising, we'd just like to keep the
8 signs that we've paid for and installed a year ago. If you want to look at photo number
9 four, as we stated you can see that the, our sign has been covered up as soon as we
10 knew the appropriate way, we covered it up in July as soon as we realized what the
11 issues that we were facing. As of date, and if we can submit this on the Record, we've
12 had upwards of over 20 phone calls of people calling our business to ask us if we are
13 out of business before they will come visit our store cause they don't want to waste the
14 trip. Both myself and my business owner, Paige Watson and our employees have been
15 stopped, whether it's at the grocery store or at Sunday school or at dinner asking, you
16 know, what is the vitality of our business, were we going to remain open and that they're
17 concerned about losing our business at the store simply for that sign being covered up.
18 So it, what we're trying to state is that that is our main, that's what people look for, that's
19 what they see. As you can see from photo number two the sign is in scale with the
20 other existing signs in the shopping center and it is similar to the wall signage on the
21 front of the building. Our map did come out differently from the 26', it looks like that
22 we're requesting. We're, what I have or the way it, based on code section 26-180 is
23 that we need 11' of, of space and it is stated that since we are part of a combined

1 development, it's our understanding that the entire property may have 620 square feet
2 of signage and we believe that our side signage could be permitted from either granting
3 this Variance or by authorizing that our particular space be granted more than 44' of
4 lease area, since the shopping center has 620 square feet of, of frontage. We believe
5 that the literal interpretation of the sign code would prohibit us from achieving a visibility
6 needed and for our customers to locate us. Madame Chairman, I believe the letter that
7 you are referring to that was in our agenda was a letter from the owner of the building
8 on both our behalf and on Subway's behalf stating that they supported us having that
9 side sign and would be happy to reallocate the space to us in order for us to have those
10 signs.

11 CHAIRWOMAN PERKINS: Thank you.

12 MS. CENTER: Thank you.

13 CHAIRWOMAN PERKINS: [Inaudible] somewhere

14 MS. CENTER: We hope that ya'll grant us our Variance, we are trying to stay,
15 are a very small business that is two families working very hard to provide something
16 wonderful to the community. We really don't, we don't want anymore, we just want to
17 keep what we have so we can keep the vitality of our business up and running. We
18 appreciate your time and your looking into this.

19 CHAIRWOMAN PERKINS: Are there any questions for Ms. Watson or Ms.
20 Center?

21 MS. CECERE: I have one. When you contacted the sign company to do these
22 signs did they ask you how much space and how, what's available for the signs or
23 where did you come up with the, the logo on the front and then on the side.

1 MS. CENTER: We are a franchise so we knew what our signs had to look like as
2 far as the fonts and the colors and the way they had to be laid out. When we negotiated
3 with the sign company, they met us onsite, we measured the building and then they
4 proposed the signs to us as far as fitting in the space and working with the logo that we
5 had to have.

6 CHAIRWOMAN PERKINS: So no one knew of an ordinance that would require
7 certain amount of square feet for signage, no one looked into that, is that what you're
8 telling me? Not even you as -

9 MS. WATSON: We paid the sign company to do that because we felt like they
10 were qualified and that was something that we paid them in that contract to do and -

11 MS. CENTER: And at the time that we secured, we gave them their final
12 payment, it is written on our contract that the permits had been paid for and secured.

13 MS. CECERE: I have a question for Mr. Price. Now the permits are issued by
14 Richland County?

15 MR. PRICE: Ma'am?

16 MS. CECERE: The permit was issued, I mean, the payment was made to
17 Richland County?

18 MR. PRICE: The permit was issued by Richland County

19 MS. CECERE: And they didn't, there [inaudible] no other signage of the size of
20 the signs at that time?

21 MR. PRICE: I'm looking at [inaudible] we have a sign permit application and we
22 can get that. But according to the application, I was looking at it, they stated they were,

1 there's 44' of building frontage and there's, they're allowed a one to, one to one ratio, so
2 they're allowed 44 square feet.

3 CHAIRWOMAN PERKINS: Yeah, but she's saying to us, she's presenting to us
4 in the contract that she had with Sign Tech they informed her that they'd come to
5 Richland County, and correct me if I'm -

6 MS. CENTER: That is correct.

7 CHAIRWOMAN PERKINS: - and, and gotten the permit to put the type of sign
8 that, that she has up including the one that's being covered.

9 MS. CENTER: Yes, ma'am.

10 MR. PRICE: No, ma'am, the, the permit application, they were allowed 44 and
11 what they, and after all of the calculations and the permit that was given to them
12 showed that they were, they had, I don't know what, yeah 43 square feet.

13 CHAIRWOMAN PERKINS: Yeah. If, if I could call on Ms. Carol Williams to
14 come up and testify for a moment so we can get some clarification on some things.

15 MS. CENTER: Yes, ma'am.

16 CHAIRWOMAN PERKINS: Ms. Watson and Ms. Center and then you can come
17 back up if you'd like.

18 **TESTIMONY OF CAROL WILLIAMS:**

19 MS. WILLIAMS: Hi, I'm Carol Williams with the Zoning Department. New Media
20 was approved for the permit for one sign based on the square footage calculation that
21 they gave me. It was not enough for the second sign. So what happened was they
22 went ahead and put that second sign up and I had one of our enforcement officers to go
23 out there and check the Subway sign and when he took pictures I saw that there was

1 two signs there and I sent them a letter that they had to do something with the second
2 sign. So they offered to cover it up until they came before the Board. And I spoke with
3 New Media.

4 CHAIRWOMAN PERKINS: Okay, so you're saying Sign Tech or New Signs
5 offered to cover it up or the owners?

6 MS. WILLIAMS: New Media, the sign company themselves. I contacted them
7 and let them know that they was only approved for that one sign because the square
8 footage came up to 43 square foot and they was allowed 44 square feet.

9 CHAIRWOMAN PERKINS: Is there any questions from the Board? Thank you
10 so much, Ms. Williams.

11 MS. WILLIAMS: You're welcome.

12 CHAIRWOMAN PERKINS: Now Ms. Watson and Ms. Center you can come
13 back up.

14 MS. CENTER: We understand that we are over the allowable square footage,
15 unfortunately we did not understand that proactively. This was all -

16 MS. WATSON: [Inaudible] this happened a year, this happened a year ago and
17 our sign's been up for -

18 MS. CENTER: Twelve months.

19 MS. WATSON: - yeah 12 months until I guess Subway had applied and, and Ms.
20 Williams came out and took pictures. We did not understand that we did not have the
21 secured permits for both of the signs. We paid New Media, or Sign Tech for the, you
22 know, to secure the permits for us and they're in our contracts.

1 MS. CENTER: I, I don't want to point fingers, we are taking responsibility for the
2 fact that we violated Code, we are not in any way, shape or form trying to make
3 excuses. However if you, if Sign Tech were here or at the point of which we have now,
4 unfortunately had to have legal representation so they would not act on our behalf
5 because we've gotten who-does by them before, they will tell you, or what they told Ms.
6 Williams, or at least what they told us they told Ms. Williams was that the gentleman that
7 I work or that we worked with to fabricate our signs in the first place told them that it was
8 all taken care of and, you know, that he was speaking out of both sides of his mouth for
9 both the county, for his business and to us. And unfortunately, not that we became
10 victims because it was our responsibility but now we're left with this to rectify for a
11 mistake that they did to generate revenue.

12 MS. WATSON: But we do know these signs are vital to our business. I mean,
13 they, they are the sign that people see and we are not in a heavily populated retail area,
14 we are off the Peake exit, which we are the only center where [inaudible]. So we need
15 this sign to, for our business to survive.

16 CHAIRWOMAN PERKINS: There is, I'm gonna make a statement, there is
17 nobody signed up in opposition and if, if it's the Board's pleasure I would like for us
18 while they're standing to go over the criteria for the Variance so that they can help us.
19 And when we get to our finding of fact, so go ahead Mr. -

20 MR. RUSH: I guess I have a question for Mr. Price. If they had two signs that, I
21 guess with the one sign that meets the requirement, when you add the additional sign
22 that would be more of a Special Exception as opposed to a Variance wouldn't it be?

1 MR. PRICE: No, they're allowed, you know, hopefully I'm answering this
2 correctly for you. They're allowed 44 square feet -

3 MR. RUSH: Okay.

4 MR. PRICE: - you can break that down any way you want to and apply it to any
5 parts of the building.

6 MR. RUSH: Okay.

7 MR. PRICE: You know, you could put ten here, ten there, so on.

8 MR. RUSH: The first sign takes up the 44.

9 MR. PRICE: The first sign is 43.3 square feet.

10 MR. RUSH: Okay.

11 MR. PRICE: So that leaves them what .6, .7 left. So we just include what this,
12 what, for Variance request for signage to exceed what's allowed, you know, we don't
13 say, they just, you know, we just include everything they're asking for.

14 MR. MCDUFFIE: Even, even with, even with the pylon sign they're still, they're
15 still allowed 44 square feet?

16 MR. PRICE: Yeah, if they, if they did not have Pylon advertisement they'd be
17 allowed 66 square feet.

18 MR. COOKE: So Ms. Williams, did you state with, with the permit, it was a
19 permit for just one sign?

20 MS. WILLIAMS: Yes.

21 MR. PRICE: Once, once again for, you know, she's correct. The permit was for
22 43.3 square feet.

23 MR. COOKE: Okay.

1 MR. PRICE: Like I said, you know, we can say one sign but it's however they
2 want to put it.

3 MR. COOKE: However they want, however they wanted to do it.

4 MS. WILLIAMS: [Inaudible]

5 CHAIRWOMAN PERKINS: And I guess they're saying, this is a franchise and
6 they have a specific way -

7 MR. COOKE: Right.

8 CHAIRWOMAN PERKINS: Let me, let me do this. The criteria for the Variance,
9 Mr. Torrey, would you go through it with them so that we can -

10 MR. RUSH: I guess the first question is the zoning, it does have the proper
11 zoning.

12 CHAIRWOMAN PERKINS: Yeah, oh I was gonna say to Mr. I guess Mr. Price,
13 excuse me, all the properties are zoned correctly that are in our pamphlet?

14 MR. PRICE: There's zoned Light Industrial M-1.

15 CHAIRWOMAN PERKINS: So [inaudible].

16 MR. PRICE: I'm sorry, yes they are.

17 CHAIRWOMAN PERKINS: Okay cause we wouldn't know that and the public
18 hearing posted on the property for what these Variances and Special Exceptions are
19 and was the notice published in the newspaper of general circulation within the county
20 no less than 15 days prior to the public hearing. Would you affirm that those questions
21 for all of the cases in our pamphlet?

22 MR. PRICE: Yes, ma'am.

1 CHAIRWOMAN PERKINS: I mean, agenda, okay. So we don't, we can skip
2 over that and get -

3 MR. RUSH: I guess the biggest question is -

4 CHAIRWOMAN PERKINS: Extraordinary.

5 MR. RUSH: - yeah the extraordinary or exceptional conditions pertaining to the
6 property. What are your extraordinary conditions?

7 MS. CENTER: The extraordinary conditions were the three that I pointed out, the
8 primary again would be that, one we're located perpendicular to the rest of the building.
9 If you look at the aerial, the majority of the building faces parallel to Broad River Road.
10 We are that small space that faces perpendicular. The second exception would be that
11 we are almost 12, we are more than 12' below ground level but the, the elevation of the
12 land is one issue with the topography and then the second issue would be that huge
13 retaining wall that very, very much decreases our visibility. The only time that you can
14 see the front sign, the sign that is 43' is when you are in the parking lot. You would
15 already have to have arrived at the shopping center before, and from one direction,
16 which is not the primary access road. The primary access road goes behind our
17 building. So the only time you can see that front sign is when you are actually in the
18 shopping center. So it, that's where that sign actually acts more as a directional sign
19 versus the sign that we're seeking out for advertisement and location, for people to
20 locate us.

21 CHAIRWOMAN PERKINS: What about the pylon sign, what does it act as?

1 MS. CENTER: The pylon sign was just offered to us as a part of a lease
2 agreement. I mean, if we need to not have the pylon sign in order to have 66 square
3 feet of lease space, we would be happy to remove the pylon sign.

4 CHAIRWOMAN PERKINS: [Inaudible] you are distinguishing the sign from the
5 building and giving us information as to what they did [inaudible].

6 MS. CENTER: The pylon sign also faces perpendicular to the interstate, the exit
7 ramp, is there any chance we can pull up the aerial? The aerial?

8 MS. WATSON: Thank you.

9 MS. CENTER: Thank you very much. The pylon sign is right where the pointer
10 is and it, the way it faces you have to be on Broad River Road in order to read those
11 signs.

12 MS. WATSON: You have to be coming from this direction or from this direction
13 here to see the Pylon sign, which is not where most of the traffic is coming from.

14 MS. CENTER: Probably 75 to 80% of our traffic exits from the exit ramp, which
15 is perpendicular to our, to the pylon signs. You cannot read the pylon sign from the exit
16 ramp nor can you see our business without that side sign. Whereas if you come up to
17 the exit ramp, you can look out your car window at that intersection and you can see
18 Food Lion and you can see all the other parcels that are located in the other portion of
19 that shopping center.

20 CHAIRWOMAN PERKINS: I'm sorry, Mr. Rush. [Inaudible]

21 MR. RUSH: I guess the next one is do these conditions generally apply to the
22 property in the vicinity?

1 CHAIRWOMAN PERKINS: That would be a question for us, I guess, more or
2 less. Has your, how do you feel about the extraordinary exception [inaudible]. I guess
3 I'm asking, you know, [inaudible].

4 MR. RUSH: I'm not, I guess I can see from one, one standpoint of just the,
5 where property actually lays below grade, I, I understand that. But when you, when you
6 get back to the, you know, she brought up one, one issue of if you take out the sign off
7 the marquis would that give you more square footage. I guess that's one, one way you
8 probably, you know, can get around the Code, it'll give you 66 -

9 CHAIRWOMAN PERKINS: Mr. Rush, can I interrupt you?

10 MR. RUSH: Yes.

11 CHAIRWOMAN PERKINS: I just wanted to know if, if that were, you know, kind
12 of satisfying, if there were, when we're going through the finding of facts if we had
13 gotten enough information from them to help us -

14 MR. RUSH: Oh, okay.

15 CHAIRWOMAN PERKINS: Yeah. Are there any other questions from the
16 Board?

17 MR. MCDUFFIE: I mean, it doesn't seem to me like the, the orientation of the
18 building itself, which is what we're really dealing with here, versus the, versus the
19 prevailing traffic pattern would create a, a extraordinary or exceptional condition on this
20 particular parcel. I mean, we're talking about a building being turned on way or the
21 other. You know, I feel like it's very unfortunate that the, they've essentially been, you
22 know, taken advantage of by, by a sign company but I, that in itself also does not create
23 any kind of an extraordinary condition with regard to the parcel, and we're seeing lots of

1 similar cases, not all of them of course have, have already put a sign in place, you
2 know. But we're seeing a lot of, you know, out parcels in, in developments near the
3 interstate, I can think of several that we've seen just in the last couple of months and
4 they've all got sort of similar, similar conditions, which, which in -

5 CHAIRWOMAN PERKINS: So we're in the discussion phase?

6 MR. MCDUFFIE: Oh I'm sorry, I'm just saying they've all, they've all got very
7 similar conditions, which makes me think they are not exceptional, that they're more
8 standard than anything else.

9 CHAIRWOMAN PERKINS: Okay. I, I just I'll let you say [inaudible] one more
10 comment, I'm gonna ask you, we're gonna have to go ahead with the discussion phase
11 of this.

12 MS. CENTER: I would just like the Board to consider the fact that the owner of
13 the building has encouraged, has written a letter to the Board stating that, that that unit
14 has, and the county can correct me if I'm wrong, but that the unit has 620 square feet of
15 signage allotted to it [inaudible] allow it, will grant us the space from another retail space
16 if you all will approve it.

17 CHAIRWOMAN PERKINS: That's getting complicated. We can't, yeah, that's
18 something we can't, we can't, you'll have to talk with Staff about that. What we have
19 before us is, you know, the overage of the, of the signage that you have there now. Are
20 there any other questions for Ms. Paige or Ms., Linter, I think that's, Ms. Center? Thank
21 you very much.

22 MS. CENTER: Thank you.

1 CHAIRWOMAN PERKINS: There's no one signed up in opposition. I want to go
2 through the finding of fact. Torrey or, I mean, Mr. Rush or [inaudible].

3 MR. MCDUFFIE: I can start.

4 CHAIRWOMAN PERKINS: Thank you.

5 MR. MCDUFFIE: [Inaudible] the finding of fact. Are there extraordinary and
6 exceptional conditions that pertain to this particular piece of property, and my answer
7 would be no and I would certainly be willing to entertain discussion on it.

8 CHAIRWOMAN PERKINS: Yeah, is there any discussion?

9 MR. MCDUFFIE: And at that point I don't think we can, we can proceed with
10 this.

11 CHAIRWOMAN PERKINS: Well, is there a motion?

12 MR. MCDUFFIE: I'll make a motion.

13 CHAIRWOMAN PERKINS: Okay.

14 MR. MCDUFFIE: I'd like to make a motion to deny Case 08-57 V based on the
15 fact that there are no extraordinary, or that, that we don't feel that they're extraordinary
16 or exceptional conditions on this property.

17 CHAIRWOMAN PERKINS: Second? Second?

18 MR. RUSH: Second.

19 CHAIRWOMAN PERKINS: Motion on the floor to deny 08-57 V based on there
20 being no extraordinary and exceptional conditions. All those in favor of that motion
21 please have a show of hands?

22 MR. PRICE: Those in favor are Rush, Perrine, Perkins, McDuffie, Cecere.

23 CHAIRWOMAN PERKINS: Those opposed?

1 MR. PRICE: Those opposed Branham, Cooke.

2 *[Approved: Rush, Perrine, Perkins, McDuffie, Cecere; Opposed: Branham, Cooke]*

3 CHAIRWOMAN PERKINS: I'm sorry, Ms. Paige, your request for a Variance has
4 been denied and Mr. Price will be in touch. Next case.

5 **CASE 08-59 V:**

6 MR. PRICE: Okay the next item is Case 08-59 Variance. The applicant is
7 requesting the Board of Appeals to grant a Variance to encroach into the required front
8 yard setback on property zoned RS-LD, single-family residential low density. The
9 applicants are David and Carol Nute, the location is next to the 6615 Longbrook Road,
10 the parcel size is a fifth of an acre and it's currently undeveloped, it's wooded also. The
11 applicant is proposing to start a residential structure, which would encroach into the
12 required front yard setback. The area is comprised of a community of residential
13 structures. Let me get the pointer.

14 *[Inaudible discussion]*

15 CHAIRWOMAN PERKINS: Okay, okay. Yeah, our attorney would like to swear
16 you in.

17 MR. NUTE: Okay.

18 MS. LINDER: Is anyone else gonna be -

19 CHAIRWOMAN PERKINS: Yeah, is there anyone else for this case that has not
20 been sworn in?

21 MS. LINDER: If you'll both raise your hand, right hand please. Will the truth, will
22 the testimony you give today be the truth, the whole truth and nothing but the truth so
23 help you God. If so, say I do.

1 AUDIENCE MEMBERS: I do.

2 MR. NUTE: Thank you very much for hearing me today.

3 CHAIRWOMAN PERKINS: Wait a minute.

4 MR. NUTE: Alright.

5 MR. PRICE: Me first. So I'll kind of explain a little bit of history of the, their lot
6 with two frontages. Under our previous code the, if a lot fronted on two streets you were
7 allowed, one was considered a primary front, which it would observe the, the front yard
8 setbacks for that district and single-family was 25'. The other side of the lot that fronted
9 on the street would be considered just secondary front and that was, that setback was
10 12½'. With the adoption of the new Land Development Code, that was actually
11 replaced by, those, those setbacks were replaced in our Code by saying that if you abut
12 public road you must observe the front yard setbacks. So in this case both sides would
13 have to observe a 25' setback. I am, I tried to get some information regarding this, this
14 parcel. I check with our Public Works Department I was unable to find it and I will show
15 you a picture of this. If I can pull it up because the server seems to be down and
16 actually gives us a better view. One of the things that I was trying to understand is how
17 this lot came to be, you know, because it's only 50' in width and if you look at the other
18 lots along here and I believe they're all about 100' at least. What staff believes is that
19 when this road, and I spoke to some of the residents out there and this is how I got
20 some of this information, when Sandy Shore Road was constructed, you can see
21 there's two pieces, the two parcels here, one with the road and one that's now subject
22 property today, they were one, it was one parcel. Part of the parcel evidently was used
23 for right-of-way, which would be 50' and so that left this parcel here of 50'. So that may

1 have been how this parcel was created. So, sorry, this, what you're looking at here is a
2 view of Sandy Shore Road and here's, this is the parcel that would be across the street
3 from, it is across the street from the subject, subject parcel. This is the subject parcel,
4 as stated it is just wooded at this time and here's a front view. And what the applicant is
5 requesting, I actually had a bit of a conversation with him, he's asking for a set, an
6 encroachment of 15' so he would actually build 10' from the property line abutting
7 Sandy Shore Road in order to construct the home. He's a builder, correct?

8 MR. NUTE: I'm sorry?

9 MR. PRICE: You're a builder, correct?

10 MR. NUTE: Actually, yes I am.

11 MR. PRICE: Yes, he's a builder and so we just talked, what setback will work to
12 allow him to build within this home. If granted, well actually even without being granted
13 the Variance the two interior property lines would be the rear of 20' [inaudible] setback
14 of 20' and the side that's abutting the other home, and I don't have an aerial for it, oh
15 there it is, and the side that would be abutting the other parcel, where the house is right
16 here, would be five feet.

17 CHAIRWOMAN PERKINS: Okay, Mr. David Nute.

18 MR. NUTE: Yes, ma'am.

19 CHAIRWOMAN PERKINS: Please state your name and address for the Record
20 and tell the Board what it is you're wanting to do.

21 **TESTIMONY OF DAVID NUTE:**

22 MR. NUTE: Okay I'm David Nute, I reside at 121 Alexander Circle in Greg Park
23 subdivision, not more than about a mile or so from this property. And quite frankly I left

1 a perfectly good paying job installing computers for IBM 20 years to go to become a
2 builder, which would help enrich the family members over the years. We've adopted a
3 good many teenagers from the Children's Home and one by one we're trying to, to get
4 all of them into their own home. And when I purchased this lot, after I purchased the lot
5 I found out that basically I had a 50' lot, wide lot that I could only build a 20' wide home
6 instead of about 34, 35' wide that I had planned on building. I'll be building this home
7 for my daughter and her family and her three children and, so they can have a, a better
8 place to live. Currently one of her children lives with me, with my wife and I, she's a
9 teacher here in, in, in South Carolina, and what I did before I came to you, I spoke to the
10 people around there and I noticed that the house, you actually did a good bit of work for
11 me, that picture there pretty much shows it. I thought I was okay because the house
12 right across the street -

13 CHAIRWOMAN PERKINS: You can't, Mr. Nute, I'm gonna have to ask you to go
14 back to the mic.

15 MR. NUTE: Actually the house that he's showing, actually this has no outlet and
16 this actually shows the house across the street, which that particular house is about
17 eight feet, eight feet off the property, it's about eight feet off the property line or a total of
18 about 20' off the road and I'd like to be about 20' off the property line or about 22' off the
19 road if the easement is actually 12'. And what I did, and if you'd like to provide these, is
20 Mr. Manning here? Did Mr. Manning come today? Okay, Mr. Manning actually lives in
21 this house here, I spoke to him yesterday and he has no objections for us having the
22 house off of the road about as far as his, and I also went to all of the neighbors around
23 and across the street and on either side of this lot and cattycornered to this lot and

1 asked them permission, would they have any objections for us building a house that
2 was the similar setback of Mr. Manning's house and they said that be, that would be no
3 problem, they'd have no objections to that at all. My son-in-law, who is here, actually
4 bought the house behind that lot and they have no objections to it all, they would be
5 absolutely delighted to, to have Mary and her husband and children move in there. But
6 it would just, in keeping with the neighborhood it would be very challenging to build a
7 shotgun house, which probably wouldn't be as favorable to the neighbors there to have
8 a really long house that's just really narrow, you couldn't put a garage on the front, you
9 really couldn't put a garage on the side because 20' is just about not enough to have a
10 garage. But if we had more room then I'd have better options. I did have a site plan
11 that I drew up that, I think you have a copy, the copy of the site plan in your packet. We
12 would have, we came real close to having an actual house designed but I figured we
13 better wait before we spend money on house plans but basically what we'd like to do is
14 build something that is about 34, 35' wide and so it can be a much more functional
15 house and be more in keeping with the personality of the other homes there. The
16 residents are much more in favor of having a house that is not so skinny and long taking
17 up the, the back of the lot and coming in front of their homes along the street than they
18 would be on having something that we're proposing. And all we're asking is that you
19 would consider allowing us to have a similar setback to the house across the street,
20 which I assumed was the case when I bought this lot and found out later in talking with
21 Richland County that that is now not the case, so we're in trouble. And if you could help
22 we'd be grateful.

1 CHAIRWOMAN PERKINS: Are there any questions from the Board Members for
2 Mr. Nute?

3 MS. PERRINE: I have one. In the picture that shows the corner of the property,
4 that's it. Okay whose house is in the back, is that where your son-in-law lives?

5 MR. NUTE: It's direct, no he actually, they're fixing up a house. They bought it
6 and it's, it was, it's a total mess [inaudible].

7 MS. PERRINE: All I need to know is -

8 MR. NUTE: It's directly behind that line. If I had a pointer I'd, that house right
9 there, that is correct.

10 [Inaudible discussion]

11 CHAIRWOMAN PERKINS: Are there any other questions for Mr. Nute?

12 MS. CECERE: Yes, I have one question. What are the chances of designing a
13 house to fit that lot? I mean -

14 MR. NUTE: Whether it be 35' wide or 20' wide?

15 MS. CECERE: If you, if you comply what are -

16 MR. NUTE: If I complied it would be very challenging, it would look -

17 CHAIRWOMAN PERKINS: You mentioned the shotgun house and I know that
18 there are some shotgun houses that, you know, have a living room, bedrooms, baths
19 and stuff.

20 MR. NUTE: Right, the only this is you wouldn't really be able to put a garage on
21 it because most garages are 24' deep. So I couldn't put one on the front and I couldn't
22 really put one on the side and, and, and also if I did build a house that was only 20'
23 wide, which I'm sure we could probably design, it would go straight back either deep

1 into the lot or I'd have to bring it forward to, you know, the setback is actually 25' but all
2 the houses along that street are setback considerably more than 25'. So it would, in
3 order for the children to have a back yard we'd be pulling that house forward toward the
4 street, which I'm sure probably won't make many people very happy.

5 CHAIRWOMAN PERKINS: So when did, you, you owned this lot originally?

6 MR. NUTE: I just, no I just purchased it.

7 CHAIRWOMAN PERKINS: Oh, okay.

8 MR. NUTE: I just bought it a couple of months ago.

9 CHAIRWOMAN PERKINS: So you purchased this lot and with, in mind to build a
10 house, is that what -

11 MR. NUTE: Oh yeah, for my children that's, we've been looking for a place to
12 keep them close to us and to keep -

13 CHAIRWOMAN PERKINS: As a builder, you know that there are setbacks on
14 property if you're going to build a house, that, that's what you're telling me.

15 MR. NUTE: Right when I originally called -

16 CHAIRWOMAN PERKINS: [Inaudible] you were a builder.

17 MR. NUTE: - well when I originally called the setbacks were one thing but then
18 we realized that that is [inaudible] secondary setback.

19 CHAIRWOMAN PERKINS: But [inaudible] now that there are setbacks on
20 property.

21 MR. NUTE: Right.

22 CHAIRWOMAN PERKINS: And when you bought this piece of property did you
23 have in mind the kind of house that you just said to me that you were -

1 MR. NUTE: We did.

2 CHAIRWOMAN PERKINS: - [inaudible] to build a house [inaudible], just some
3 idea of what the setbacks were and I think there may even be a little, it was more of a
4 requirement sometime ago was it not? And it's less now, [inaudible].

5 MR. NUTE: Okay see, well first of all I've never built in this area before. Most of
6 the homes I build are very large, like Wildewood, Wood Creek Farms, Greg Park
7 subdivision, Kings Grant, this will be, you know, in the last 15 years I'll be, this will be
8 half the size of any other house I've built. So I've never really had a dealing with
9 setback problems cause most of the houses I build are on very large lots.

10 CHAIRWOMAN PERKINS: Okay. Alright, Mr. Rush.

11 MR. RUSH: Mr. Price, is this, this property is zoned low density, right?

12 MR. PRICE: Yes.

13 MR. RUSH: What is the minimum requirement for lot, lot requirement, is it
14 12,000 square feet?

15 MR. PRICE: Twelve thousand square feet.

16 MR. RUSH: If this was 9,000 then will they, I mean, would we even get into this?

17 MR. PRICE: It's a lot of record so it could be built upon, yes.

18 MR. RUSH: Okay so it doesn't have to meet the zoning requirement?

19 MR. PRICE: No.

20 MR. RUSH: Okay.

21 MR. PRICE: I mean, as far as setbacks yes, but as lot area, no because of how
22 it was created. And once again I'm kind of going on an assumption based on a

1 discussion I had with someone in the community and, and just from looking at it, it
2 seems that the way it was created more for [inaudible].

3 MR. MCDUFFIE: Mr. Nute, just, just to clarify, you're asking for a, you're asking
4 to encroach into what, what I would refer to as the front yard setback and the secondary
5 front yard setback?

6 MR. NUTE: No, no the front yard's fine.

7 MR. MCDUFFIE: Just into the secondary front yard?

8 MR. NUTE: See it's my fault. When I looked at the house across the street I
9 figured well they're that far from the street, I figured it'd be no problem to build it the
10 same way on this lot and I didn't really check into it to see if that was a problem.

11 MR. MCDUFFIE: But it would still, so what you're proposing to build would still
12 may -

13 MR. NUTE: Just the side setback.

14 MR. MCDUFFIE: - the pattern of, of setback along Longbrook you wouldn't be
15 closer out towards, towards Longbrook than, than the other -

16 MR. NUTE: No, we'd be lining up with the house -

17 MR. MCDUFFIE: Lining up with those other houses along -

18 MR. NUTE: Correct along, it, it would have the, basically the same front yard as
19 the other houses if I could build a wider house.

20 MR. PRICE: Is your question more of what would be the orientation of the
21 home?

22 MR. MCDUFFIE: Yeah, I guess that's my question is, is, is was he trying to
23 encroach into both, what I would refer to as the front yard setback along with sort of the

1 short access of the, of the lot there. And, and the, what I would call the secondary front
2 yard setback along the longer access of the, of the lot, or just trying to encroach into
3 the, what I would call the secondary front yard.

4 MR. NUTE: My, my main purpose is when we build this house for my children,
5 you always build a house to sell a house, so I'm sure that maybe, you know, if her
6 husband does real well and things go maybe five years from now they may be wanting
7 to move to a different home. And if I build in this neighborhood it's got to be in the
8 personality of the neighborhood, something that's gonna have curb appeal and have
9 marketability in order for them to realize the equity out of their home, if we have, if we
10 [inaudible] and so they can move someplace else. So my concern is in building a 20'
11 wide house that is very long, it's gonna be very challenging, A to design a house like
12 that and B from a marketability standpoint and also C, I don't think it will really be in
13 keeping with the rest of the homes in the neighborhood. It would stick out like a sore
14 thumb.

15 CHAIRWOMAN PERKINS: [Inaudible] marketability standpoint of view how
16 would encroaching, not having the, the, the rear yard and side yard, front yard setback,
17 it's not like, it's not, it will not be in line with the houses that are already there.

18 MR. NUTE: No, we're, it would be in line with, if, if we were able to widen it.

19 CHAIRWOMAN PERKINS: But you don't need the Variance, is that what you're

20 -

21 MR. NUTE: Oh, I do need the Variance.

22 CHAIRWOMAN PERKINS: Okay. So it wouldn't be in line with the other homes
23 that are there.

1 MR. MCDUFFIE: No, he's saying that along, along the, the front side of the lot it,
2 what I would call the front side of the lot, it would be in line with the existing homes but
3 he's trying to go wider than, than what the existing -

4 CHAIRWOMAN PERKINS: Oh, okay.

5 MR. MCDUFFIE: - than what the existing Code, is that, am I correct on that or
6 am I incorrect on that?

7 MR. COOKE: Mr. Price, can you go right to the aerial shot where it shows,
8 shows the lot?

9 MR. PRICE: Do you want to see the other homes?

10 MR. COOKE: Yeah.

11 MR. PRICE: Okay, I'll just go to the aerial.

12 CHAIRWOMAN PERKINS: Cause I thought he said [inaudible].

13 MR. MCDUFFIE: It's, it's a corner lot so he has two front yards.

14 MR. COOKE: He has two fronts to it. And from my understanding he doesn't
15 want to encroach into the front yard it's, it's like, like Mr. McDuffie was saying -

16 CHAIRWOMAN PERKINS: So which, which is -

17 MR. MCDUFFIE: My, my, my question was would he be building in line with
18 those other, the other houses are all oriented sort of in a [inaudible] direction, lined up
19 along, in a straight line along Longbrook there.

20 MR. NUTE: That's correct.

21 MR. COOKE: Right.

1 MR. MCDUFFIE: My question was was he gonna be building out, would his
2 house be jutting out closer towards Longbrook there than those other houses are and
3 he said no.

4 MR. NUTE: No.

5 CHAIRWOMAN PERKINS: Okay, okay, okay.

6 MR. MCDUFFIE: It would maintain the pattern.

7 MR. COOKE: And he wants to encroach more towards Sandy, Sandy Shores, is
8 that correct sir?

9 MR. NUTE: What I'd like to do, I'd much rather be encroaching into the setback
10 that I realize is now there into Sandy Shore, which would, it wouldn't be noticeable
11 because the other house is only about eight feet from the property line right now and it
12 wouldn't be as noticeable and then I could be in line with the other houses that are
13 along that street. But if I have to build something almost 50% less width then it's gonna
14 be challenging not to have to encroach out in front of it than have a real small house
15 with a large amount of space on the right hand side and be, and, and hardly anything on
16 the other side. It just, I just don't think, I could do it but it just wouldn't look very nice.

17 MS. CECERE: I have a question for Mr. Price. Most of the houses that are there
18 were built like possibly in the 60s or -

19 MR. NUTE: Yes, I know that the house next door was built in the mid-60s, the
20 one to the right, to the left of that lot. I spoke to Jean Davis, she said, cause their brick
21 looked a lot like my parent's brick house and so I said your house was built in the 60s
22 wasn't it, she said yes it was.

1 MR. PRICE: Well, you know, I could pull up some of the individual homes and
2 maybe they'll have a date to, of construction.

3 CHAIRWOMAN PERKINS: What I'm gonna have a problem with is, you know,
4 when, [inaudible] granting a Variance that he bought this property knowing that he
5 wanted to put a house on it. It states that if you knowingly do something when you bring
6 it on yourself how can we grant them a Variance, that is one of the questions that I
7 asked of him.

8 MR. NUTE: Yeah I didn't realize that the setback was -

9 MS. CECERE: [Inaudible] have the Code.

10 CHAIRWOMAN PERKINS: [Inaudible] saying so I'm having a difficult time -

11 MR. MCDUFFIE: I, I think the other thing to examine though is, is that, is that if,
12 if we can't grant a Variance on this property I, I think it's probably, the chance that
13 somebody will ever build a house on it, ever utilize it economically is probably very low.
14 I mean, I, makes a good point that people are, the shotgun houses are not exactly in
15 style right now, you know, and I don't think anybody's proposing to build any of them in,
16 in Forest Acres, you know, or in Arcadia Lakes or wherever we're, we're speaking about
17 here. You know, and, and I just think that that, to not, to not grant a Variance to
18 encroach into the side yard it would be essentially saying that this property is never
19 gonna get developed. [Inaudible] and it seems also to me as if he's willing to maintain
20 that original setback and original pattern along the main street there and we've got
21 essentially a nonconforming setback on the house across the side street, you know,
22 we're not talking about a significant change to the way that the neighborhood's gonna

1 look or feel. It doesn't seem to me that it would have any real impact on, you know, on,
2 on the neighborhood or anything like that, certainly no detriment.

3 MR. COOKE: Yeah, I think he's compromising with not having, I mean, he's
4 keeping the setback for the, on Longbrook and he just wants to go, he just wants to
5 make it wider. I mean and I, I agree with -

6 CHAIRWOMAN PERKINS: I'm just saying one of the, the standards that we had
7 it says if you impose the problem then it becomes difficult for us to find a way and he
8 purchased it with a, knowingly, you know, to build a house on it, and that's where I'm
9 confused. I understand, and I, I'm hearing both of you is that -

10 MR. NUTE: May I clarify that?

11 CHAIRWOMAN PERKINS: - [inaudible] and you know what, we aren't even in a
12 discussion right now.

13 MR. NUTE: I apologize, I would like to clarify that when I bought this lot it, it's, it
14 was very small and I, in my heart I really thought that the setback would be the same as
15 the house across the street and I did not realize that I was gonna have this concern until
16 after I had purchased the lot.

17 CHAIRWOMAN PERKINS: When did you purchase the lot?

18 MR. NUTE: In July. And as soon as I found out -

19 CHAIRWOMAN PERKINS: When did you find out?

20 MR. NUTE: I found out when I came down to the county, I wanted to build the lot
21 and I wanted to find out basically what the side setback was from the other, from the
22 other lot line. Generally they're anywhere between five and ten feet, I figured it was
23 probably five or six then they informed me that the other side was not five or six, they

1 thought it was at first but then, oh wait a minute this is a secondary setback even though
2 there's no outlet it's not the same as the house across the street. Then when I came
3 down here to find out what the side setback was on the left hand side, that's when I
4 learned that there was a 25' setback on the other side, which was kind of a shock, I did
5 not realize that.

6 CHAIRWOMAN PERKINS: Are there any other questions for Mr. Nute at this
7 time? I think we went into a -

8 MR. NUTE: We just want to remain continuity in the neighborhood, which I,
9 everybody is in favor of what I want to do, they really don't want to have a shotgun
10 house there and I, I guess I gave ya'll, the people on the left, the people on the right and
11 two people across the street are all in favor of what we'd like to do.

12 CHAIRWOMAN PERKINS: Thank you very much, Mr. Nute.

13 MR. NUTE: Thank you, I appreciate it very much. I did, I did, I did have a site
14 plan but I understand ya'll have a site plan of something that we're proposing, ya'll have
15 a copy, thank you for your help too. I appreciate it.

16 CHAIRWOMAN PERKINS: In support is, I think it's Mr. King Weston, if I'm
17 saying that correctly.

18 MR. NUTE: That's correct.

19 CHAIRWOMAN PERKINS: Would you come, like to come down to the podium,
20 state your name and address for the Record and tell us what you want us to know.

21 **TESTIMONY OF KING WESTON:**

22 MR. WESTON: Yes, ma'am. Well, good afternoon, my name is King Weston, I
23 am at 5903 Timley Lane in Columbia, in Forest Acres and my wife and I, we have the

1 property directly behind Mr. Nute's and our primary concern and, and what we really
2 would like and anticipate is to, you know, I guess really have that setback granted for
3 the fact being that all the houses are uniform. It is a ranch style house and we don't
4 want any shotgun houses. I've known Mary for a long time and, and I know that they
5 would be a good asset to the neighborhood and would fit in well with everybody around
6 us. It's a very family oriented neighborhood and, you know, I know that we'll, we'll, we
7 will really enjoy it as soon as we move in but would really appreciate them as neighbors
8 as well as knowing that we're going to have a house that's, you know, that's gonna be
9 identical to all the other houses in the, in the neighborhood. Just didn't want anything
10 that's a shotgun house and I know that he is qualified enough to, to make it look and,
11 and make it look very presentable and uniform to all the other houses in the
12 neighborhood. So I didn't really have much to say but just wanted to be here for
13 support being that we are going to live directly behind that property and in the house
14 that we purchased is 3,100 square feet, we're not going anywhere, we're gonna stay
15 there for, you know, a long period of time and, and, and that's gonna be our forever
16 house for the most part. And plan to have the people directly behind us and the
17 presentation behind us as well, look exactly like the rest of the neighborhood, so.

18 CHAIRWOMAN PERKINS: Thank you. Are there any questions from the
19 Board? Thank you very much.

20 MR. WESTON: Yes ma'am, thank you.

21 CHAIRWOMAN PERKINS: We have, I think this is, this is Marie Gonzales if
22 you'll come down to the podium, state your name and address, tell us what -

23 **TESTIMONY OF MARIA GONZALES:**

1 MS. GONZALES: Yes, my name is Maria Gonzales and I live in 4116 Beecliff
2 Drive and I just really would love to have a nice home for my family and that's all I'm
3 asking.

4 CHAIRWOMAN PERKINS: Questions?

5 MS. PERRINE: You're going, you're the one that will be living in the home?

6 MS. GONZALES: Yes, ma'am.

7 CHAIRWOMAN PERKINS: Okay, thank you very much.

8 MS. GONZALES: Thank you.

9 CHAIRWOMAN PERKINS: There is no one signed up in opposition. Would
10 someone like to go through the finding of facts.

11 MR. MCDUFFIE: I'd, I'd be happy to.

12 CHAIRWOMAN PERKINS: Thank you.

13 MR. MCDUFFIE: Start with number four here, are, are there extraordinary or
14 exceptional conditions pertaining to the particular piece of property? And I guess I
15 would say that it is, what we've got here is a nonconforming vacant lot. I think based
16 on, on Mr. Rush's [sic] assessment of, of the lot size. So I would say that we could
17 possibly have an extraordinary condition in this case cause typically this lot would not
18 have been created or currently I guess would not typically be created. Any dissent on
19 that?

20 CHAIRWOMAN PERKINS: Yeah, everybody is in kind of agreement with that?
21 What I'm trying to do is go along so we can do the motion. Is there any disagreement
22 with the, okay next.

1 MR. MCDUFFIE: Do these conditions generally apply to other properties in the
2 vicinity? And obviously the answer is no the, the prevailing properties along the street
3 here and in the vicinity are twice the width of, of this lot due to the, due to the street
4 [inaudible]. Would application of the, or of this chapter particularly to this property
5 effectively prohibit or unreasonably restrict the utilization of the property because of the
6 aforesaid extraordinary or exceptional conditions? And I would say the answer is yes,
7 that you're not gonna get very much house on this nonconforming lot, nonconforming
8 vacant lot, at least not enough that somebody would build one. I'm saying that, that the
9 answer is yes there is, that if we apply this chapter [inaudible] number six.

10 CHAIRWOMAN PERKINS: Oh, I'm sorry I'm, I'm on number, okay.

11 MR. MCDUFFIE: Number five the answer was no, the other lots are larger. And
12 so you, generally this, this would not be a, a lot that would be buildable, you know,
13 without, without some sort of Variance. And will the granting of this Variance be of
14 substantial detriment to adjacent property or to the public good or will it harm the
15 character of the district? And I would, since we've got all the neighbors out here and
16 they, they all seem to be in support and he's willing to maintain the existing setback
17 along, along I guess -

18 MR. COOKE: Sandy Shores.

19 MR. MCDUFFIE: Sandwood Road.

20 MR. COOKE: Sandy Shores.

21 MR. MCDUFFIE: Okay, Sandy Shores?

22 MR. COOKE: Yes, sir.

1 MR. MCDUFFIE: Okay, then I think that it will not harm the character of the
2 district.

3 CHAIRWOMAN PERKINS: Any questions about the discussion, about the
4 finding of fact? If not, the Chair will entertain a motion.

5 MS. CECERE: I'll make a motion that the Variance be granted for 08-59 the, the
6 application on this property, because of the shape of the property and the size of the
7 property there is a, there is, there are extraordinary and exceptional circumstances, and
8 I make a motion that, a recommendation for the Variance 08-59 be granted.

9 CHAIRWOMAN PERKINS: Second, is there a second?

10 MS. PERRINE: I'll second.

11 CHAIRWOMAN PERKINS: Okay, there's a motion on the floor to approve Case
12 08-59 V based on the extraordinary and exceptional conditions of the size and shape of
13 the property. All those in favor of that motion please have a show of hands?

14 MR. PRICE: Those in favor are Rush, Branham, Perrine, Perkins, McDuffie,
15 Cecere, Cooke.

16 *[Approved: Rush, Branham, Perrine, Perkins, McDuffie, Cecere, Cooke]*

17 CHAIRWOMAN PERKINS: I think that was unanimous. [Inaudible] all those
18 opposed? Mr. Nute, you have your Variance and Mr. Price will be in touch, next case
19 Mr. Price.

20 **CASE 08-60 V:**

21 MR. PRICE: The next item is Case 08-60 Variance. The applicant is requesting
22 the Board of Zoning Appeals to grant a Variance to reduce the minimum number of
23 parking spaces on property zoned M-1. The applicant is Michael Harris, the location is

1 1019 Broad Stone, the parcel size is a little more than seven acres and the existing land
2 use is recreational. The subject property has an existing 40,939 square foot building,
3 which is used primarily for recreational ice skating. The applicant is proposing a 29,497
4 square foot addition. The proposed use of the addition is a multi use recreation facility.
5 The surrounding area is comprised of large undeveloped property. The Department of
6 Transportation has facilities out at this location and there's some mini warehouses also.
7 A residential subdivision is located south of the parcel. As you can see this is an aerial
8 of the, of the site, of the Plex Indoor facility. You also have this in your packets, there is
9 an existing conditions plan and also a site plan showing the new addition. There's a
10 picture of the existing structure, this is the area for the new addition.

11 CHAIRWOMAN PERKINS: Mr. Price, I have a question for you before – I think
12 in the application on this from the applicant in, in the Agenda and you said they were
13 requesting, requesting to reduce the number of parking spaces. It seems as if his
14 application is saying he wanted a sidewalk waiver. So are we doing two in one?

15 MR. PRICE: No, initially they were going to come in for two Variance requests,
16 one for a sidewalk and one for a reduction in parking. Taking a look at this the sidewalk
17 was not required so we're just dealing with the parking.

18 CHAIRWOMAN PERKINS: Okay, Mr. Michael Harris, state your name and
19 address for -

20 **TESTIMONY OF EUGENE RESCH:**

21 MR. RESCH: My name is Eugene Resch, I live at 117 McLee Road in Lexington,
22 I am with Carlisle Associates, Civil Engineer for the project. Dr. Harris -

23 CHAIRWOMAN PERKINS: Speaking for?

1 MR. RESCH: Dr. Harris had to leave due to an appointment.

2 CHAIRWOMAN PERKINS: Mr. Price have it on record that -

3 MR. PRICE: He's speaking on his behalf.

4 CHAIRWOMAN PERKINS: Okay, now you can -

5 MR. RESCH: Thank you. I appreciate the opportunity to be here today and the
6 handout that Mr. Kocy passed out to you shows some additional information as to what
7 was in, in addition to what was in, in your packet. What is being planned here, as you
8 know the Iceland has been closed for several years and Dr. Harris and his associates
9 have purchased it and intend to construct an indoor soccer field as part of the addition
10 and a basketball court and will continue to operate the ice rink. The floor plan on the
11 sheet, on the first sheet of the handout that I gave to you shows the lower half of the
12 building, shows the ice rink and all of the offices and team rooms and the break, break
13 rooms and there's a, there's a snack bar and, and other facilities there in the middle of
14 the building. The upper half of the building shows the expansion, which consists solely
15 of a soccer, indoor soccer field and a basketball court. There's no other facilities going
16 in there no, no other rooms or, or restrooms or anything else. The, the second page
17 basically shows, this is a page that was in your packet, which shows the existing
18 conditions. They presently have 172 parking spaces on the, on the property with, and
19 included in that is seven handicap. The third sheet, which is labeled C200R1, which is
20 different from the C200 that's in your packet; the C200 in your packet just shows the
21 building and the existing parking as it, as it is, the 172 spaces, what, what we're asking
22 for, what Dr. Harris is asking for in this appeal is he does not need the parking spaces
23 that the Staff, the Staff has classified the use of this building as indoor recreation, which

1 is one space per 200 square feet. In our original application we had applied for it as
2 athletic fields, which is one space per 25, I mean, 25 spaces per athletic field, which we
3 called the ice hockey an athletic field, the soccer an athletic field, the basketball court an
4 athletic field. Then we took the remaining square footage, and that's tabulated on, on
5 the parking tabulation on the C200, the 11 x 17 sheet. Which if you take an athletic
6 field, 25 spaces, three athletic fields basically come up at 75 spaces and then the
7 remainder of the building, which if you go back to the first sheet we're taking the
8 remainder of the building, which is the, the break, snack bar, the break area, all of the
9 team rooms, the locker rooms, all of that was taken as indoor recreation and providing
10 one space per 200 square feet. Going by that interpretation it comes up with the
11 required number of parking spaces of 168 spaces, which is below what is existing and
12 that's basically what Dr. Harris was saying, that's all the parking spaces he needs based
13 on what his experience of, of running these facilities are. And what the sheet C200
14 shows is basically we're showing the shaded areas are overflow parking spaces that we
15 would propose that would remain grassed but could be used when they have soccer
16 tournaments, other tournaments that might cause them to exceed the parking spaces
17 that they have onsite, which are infrequent. The, there is another sheet in here that
18 shows compliance with what the Staff had requested, showing 343 spaces on the site.
19 To accommodate 343 spaces on the site would require significant demolition of curb
20 and gutter to squeeze in parking spaces throughout the site, in addition significant
21 grading and addition of impervious area that would not permit the storm water basins
22 that are on the site to function properly. So the application states that there isn't
23 sufficient room for, for the requested number of parking spaces. There's sufficient room

1 for the parking spaces but there isn't sufficient room for the storm water management
2 facilities that would have to accommodate making them paved, making them impervious
3 basically. Because the, the original facility was designed, the basins were sized and the
4 area allocated for the storm water basins were sized for some addition of parking but
5 definitely not 340 spaces. The – well, Geo has already said there is no requirement for
6 sidewalks so I don't need to get into that. In addition we have solicited from the Division
7 of Motor Vehicles, which is, let's see if I can find that pointer, the DMV office is, is just
8 across the road there. There's about 150 spaces in that parking lot. We have
9 discussed, Dr. Harris and I have both discussed with the DMV about using that for
10 overflow parking. They, to meet the requirements of Richland County, any offsite
11 parking must be deed restricted. Obviously the, well I won't say obviously but the, the
12 attorneys said that they could not deed restrict state property for a private owner but
13 since it's public property and it's not fenced there are no, there's nothing stopping
14 people from parking over there should overflow parking be required on the weekends.
15 And that's typically when they would have their tournaments at night or on the
16 weekends. So that, that's an, an additional option available for overflow parking. But as
17 we, as we said we approached the DMV but they cannot, they can't tell us you can't
18 park there but they can't give Dr. Harris a deed restricted permission to park there. I
19 believe that's everything, I'd be happy to answer any questions.

20 CHAIRWOMAN PERKINS: Any questions?

21 MR. MCDUFFIE: I have a question and maybe you covered it, I didn't hear.
22 How many patrons would, on say a busy weekend day would, would, would you expect
23 there to be at the, at the Plex?

1 MR. RESCH: I wish Dr. Harris could be here, he certainly could answer that a lot
2 better than I could. I, looking at my notes he usually runs, I believe he runs, they open
3 at I think 7:00 or 8:00 in the morning on the weekends and they may run 10, 10 soccer
4 matches through there in one day and you'll typically have, and I'm not a soccer person
5 so I don't know even how many people are on a team, but the types of, from, from his
6 discussion the types of people that, pretty much it's just the participants that come
7 there. They don't have a whole lot of, participants and their families, yes and the, just,
8 another point of, well I'll go ahead and just answer your question. But typically you're
9 probably only gonna have 20 people or so per game, so you'd have ice, ice rink and the
10 ice rink is gonna be opening but they're not gonna have a high, you know, any kind of a
11 hockey tournament at the same time they have a, have a soccer tournament.

12 CHAIRWOMAN PERKINS: So there aren't gonna be any lessons or anything,
13 parties or anything like that going on?

14 MR. RESCH: They have, they have facilities for birthday parties.

15 CHAIRWOMAN PERKINS: Simultaneously while soccer match or a basketball
16 game is going on or -

17 MR. RESCH: That could be possible.

18 CHAIRWOMAN PERKINS: Oh, it could be. So it would be more than 20 there.

19 MR. RESCH: Yes, so that's where we're accommodating one space per 200
20 square feet of the remainder of the building where, where the snack bar is, where the
21 break room is and the other facilities in there, the game, there's a little game room.

22 MS. CECERE: Would the overflow parking impact any of the, these houses that
23 we see here on this map?

1 MR. RESCH: The, no the, there is a landscape buffer required with this addition,
2 which is being constructed along that property line and it, it's in compliance with the
3 landscape ordinance because this property is now, this property is zoned rural and this
4 is used as residential, which was not the same as, well the ordinance wasn't in effect
5 when the original building was built. So we had to put a landscape buffer along that
6 property line.

7 MS. CECERE: There are no connecting roads to this -

8 MR. RESCH: No, no, ma'am, there are not. The entrance is solely off of Broad
9 Stone Road there.

10 MS. CECERE: And, and the entrance off of Broad Stone Road brings you right
11 by this open, open lot that belongs to the DOT?

12 MR. RESCH: The entrance is at the DOT, is that DOT property, I'm not sure
13 who, what property -

14 MS. CECERE: I thought you said that -

15 MR. RESCH: The DMV property is across Broad Stone Road.

16 MS. CECERE: Okay. And so when people were driving in and could not find,
17 let's say the parking lot was overflowing just, then they would have seen that there's a
18 lot there that they could park?

19 MR RESCH: Yes, they could go back out to Broad Stone and park down at the
20 DMV.

21 MS. CECERE: Okay, thank you.

1 CHAIRWOMAN PERKINS: One of, soccer field and I guess the, the, the size
2 and you said that they're gonna have, you don't know how many, like on Saturdays
3 they're gonna have how many tournaments, teams, you know, playing?

4 MR. RESCH: Well, there's only one soccer field so -

5 CHAIRWOMAN PERKINS: And what's the, and it's just the regular size
6 whatever, the size could you tell me what -

7 MR. RESCH: I'm not sure of the size, if that dimension is shown on here or not.

8 CHAIRWOMAN PERKINS: And that is to include the, the -

9 MR. RESCH: The soccer field takes up, well the soccer field and the basketball
10 court takes up 28,000 square feet, that's the addition, approximately 28,000 square feet.
11 The existing building is about 40,000 square feet.

12 CHAIRWOMAN PERKINS: So tell me what are the similarities between this
13 [inaudible] and the one in Northeast?

14 MR. RESCH: The similarities are it's indoor soccer but the differences are this
15 has hockey, which the other one does not, the other Plex does not have hockey. This
16 has one soccer field, I'm not sure how many soccer fields the other one has.

17 MR. COOKE: Two.

18 MR. RESCH: Two, okay.

19 CHAIRWOMAN PERKINS: Okay, are there any other questions for Mr. Harris?

20 MR. RESCH: Resch, I'm sorry.

21 MS. CECERE: What do you feel that the extraordinary and exceptional
22 conditions are to grant this Variance?

1 MR. RESCH: On the application what I put is that there is no other use of this
2 type, in the county, other than the Plex and I mean, there's, in the hockey there is no
3 other use of, of this type in the county and it's difficult, the zoning ordinance does not
4 have indoor athletic fields as a specific category, they do have athletic fields. And so
5 the, the application of indoor recreation through a hockey field I felt just was, was an
6 extraordinary hardship to provide that number of parking spaces. Now if you go by the
7 building ordinance, I mean, the building Code they have to say yes there could be 1,600
8 people in this building if they're all standing shoulder to shoulder and that's how they
9 provide the number of exits. But to say there are gonna be, you know, that number of
10 people on a, on a hockey rink -

11 CHAIRWOMAN PERKINS: But you're excluding the soccer and the basketball
12 and all that but what you're, cause you said things, there could be things going on
13 simultaneously.

14 MR. RESCH: Yes.

15 CHAIRWOMAN PERKINS: So -

16 MR. RESCH: But we're, we're saying there's three athletic fields.. -

17 CHAIRWOMAN PERKINS: Yeah.

18 MR. RESCH: - at 25 spaces each.

19 CHAIRWOMAN PERKINS: [Inaudible] reduce the parking.

20 MR. RESCH: We want to reduce the parking from what Staff has said is one
21 space per 200 square feet.

22 CHAIRWOMAN PERKINS: Which is, I think that would be, you want to reduce it
23 from 352 to 172 -

1 MR. RESCH: Hundred and seventy-two, yes ma'am.

2 CHAIRWOMAN PERKINS: So and you're a one of a kind that's what I heard you
3 say.

4 MR. RESCH: Yes.

5 CHAIRWOMAN PERKINS: You're one of a kind so that would seem to me you'd
6 have a lot more people wanting to come [inaudible]. [Laughter]

7 MR. RESCH: Well, if it was the Inferno I'm sure there would be more people.

8 CHAIRWOMAN PERKINS: Well, I'm just using, trying to use your language and,
9 and, you know, get a sense of what you're saying.

10 MR. RESCH: Well, the reason I'm saying it's a one of a kind is it's a, it's a
11 unique, extraordinary use that nobody else has that doesn't fit into the zoning
12 ordinance. And we, we researched similar zoning ordinances and no, there aren't any,
13 any cities that I found in the southeast that have indoor soccer specifically addressed in
14 their zoning ordinance. Most say there, base it on, they call them arenas from what I
15 saw, which would be one space per three seats or one space per four seats. And
16 there's seating for 413 people in, in this particular facility. So if you look at that, it's even
17 fewer spaces required but then, then there are some other features in here that arenas
18 don't have like the game room and, and so that's where you, it's just a unique use that
19 doesn't fall into the -

20 MR. MCDUFFIE: [Inaudible] there's several kind of categories we could probably

21 -

22 MR. RESCH: Yeah.

1 MR. MCDUFFIE: - that we could make a strong argument it fell into, you know,
2 whether it's an amusement park or athletic field or -

3 CHAIRWOMAN PERKINS: But he made a choice, he said that -

4 MR. MCDUFFIE: Certainly. I'm just saying that that's, we're trying to fit it into a
5 slot, there's probably several we could make arguments, strong arguments that it fit into.

6 MR. RESCH: Right, but if you, if you look at indoor recreation, I mean,
7 something like Frankie's Fun Park is indoor recreation, I mean, how many people can
8 you fit standing at those video games. They have a lot of people in there, are there, are
9 there gonna be video game machines on the ice, probably not.

10 MR. COOKE: Mr. Price what, what is, I mean, is he considered to be indoor
11 recreation or is he considered to be an athletic field? Which one is he, I mean, he's a,
12 he's an indoor, actually he's an indoor athletic field, actually.

13 MR. PRICE: This is indoor recreational.

14 MR. COOKE: So this is considered indoor recreation. I guess my question is
15 that you're, you're, you're applying for the Variance to not to have as many parking
16 spaces as the Code stipulates, but at the same time you're, you're looking to get, you
17 know, provision from the DMV for people to park down the street.

18 MR. RESCH: That was suggested by Staff as a way to say, look there is parking
19 available, I mean, can you, can you research this that, that maybe DMV could provide
20 you that, and so we did and, and that was the answer we got.

21 CHAIRWOMAN PERKINS: But that would say to me that you're saying that you
22 know that you're not gonna have ample enough parking and you're asking us to reduce
23 it by half.

1 MR. PRICE: Let me ask a question.

2 CHAIRWOMAN PERKINS: Yes, sir?

3 MR. PRICE: Mr., Mr. Resche?

4 MR. RESCHE: Yes, sir?

5 MR. PRICE: How many parking spaces does, does the DMV have?

6 MR. RESCHE: I didn't go out there and count exactly, it's about 150 just from I
7 counted some cars in, off the aerial photo.

8 CHAIRWOMAN PERKINS: Cause if he's required, according to this the 350, 352
9 and half of that is 176 and DMV has approximately 150 [inaudible] saying to me is you
10 actually need the [inaudible].

11 MR. RESCH: No, I'm not saying we need that.

12 CHAIRWOMAN PERKINS: But you're saying that the -

13 MR. RESCH: We would not have even approached DMV if it was not for Staff
14 saying, suggesting that.

15 MR. COOKE: Madame Chairperson, he was saying that, that yeah, Staff
16 suggested the DMV, that was not, that was not at their suggestion.

17 MR. RESCH: And we do have as overflow parking, which again as I said, it may
18 happen once a year and things like that, I mean, what, what the owner wants to do is
19 not, not pave every square inch that gets used once a year but allow it to be grass but
20 that once or twice a year that they have a big tournament and it, surprisingly a lot of
21 people show up they have another 130 spaces onsite, which give them 303 spaces with
22 the "overflow parking" on grass. Which is, which is allowed in the zoning ordinance if
23 you have excess parking. You can have grass if it's, does not, is not part of the

1 required parking, you can have grass parking. And that's what, that's what the owner's
2 requesting, that's what the applicant is asking for is to say we've got 130 spaces that
3 could park on grass, reduce us down to what we need is 172 and then the overflow
4 parking would be in those extraordinary cases when they have a big tournament with a
5 good turnout.

6 CHAIRWOMAN PERKINS: How much, doing the, the, the center now was, you
7 know, an ice skating rink and, and all of that, given now, how many parking spaces are
8 there now?

9 MR. RESCH: A hundred and seventy-two are there.

10 CHAIRWOMAN PERKINS: A hundred and seventy-two are there.

11 MR. RESCH: Yes.

12 CHAIRWOMAN PERKINS: Okay. And so adding the, for the new venues that
13 you're gonna put there, you only want to do 172, the same as you have now.

14 MR. RESCH: No, we don't, we don't feel we need any more with the new
15 venues.

16 CHAIRWOMAN PERKINS: Goodness I have missed this -

17 MS. CECERE: Mr. Price, I have a question. Was Staff involved in any of this
18 like planning or anything like that?

19 MR. PRICE: [Inaudible] in any discussions regarding this project.

20 MR. RESCH: No, we met with Staff I think twice.

21 MR. PRICE: He met with Anna.

22 MR. RESCH: Anna and I think Denny and Shaun.

1 CHAIRWOMAN PERKINS: So you didn't meet with the Zoning Boards, Zoning
2 Staff, you met with Planning and they suggested -

3 MR. RESCH: Yes Geo, Geo couldn't make the meetings.

4 MR. PRICE: [Inaudible]

5 CHAIRWOMAN PERKINS: The South Carolina, oh so you suggested the
6 Highway Department.

7 MR. RESCH: I believe it was Shaun, Geo wasn't at any of the meetings, he, he
8 wasn't available on those particular times.

9 [Inaudible discussion]

10 MR. PRICE: [Inaudible] because I was not at the meetings. Now you said that
11 you didn't want to do the remote parking because of the, the register, register of deeds
12 you have to do some type of deed restrictions on it.

13 MR. RESCH: Correct.

14 MR. COOKE: And I was asking, regarding not doing the remote parking because
15 you do have to put some deed restrictions on that property. But ya'll have spoken with
16 DMV regarding those and they are okay with you using, they just don't want to get into
17 restrictions?

18 MR. RESCH: Well, I mean, I, it, there was an attorney there I spoke with that
19 was [inaudible] talked with and he said for liability reasons and for just whatever
20 reasons, you know. I mean, you've got a litter questions, he said he was sure that it
21 would not be approved but he said, you know, it's a public property there's nothing to
22 stop you from parking there. So if it becomes a problem -

1 MR. COOKE: So he basically said he's not telling you you can't park there but
2 he's not telling you you can park there.

3 MR. RESCH: Yes. But when I, when I approached him about, you know,
4 Richland County requires a deed restricted parking he said that definitely could not
5 happen because it's public property and they could not deed restrict public property for
6 a private use.

7 MR. PRICE: Well, could they give you a letter just agreeing or understanding?

8 MR. RESCH: He -

9 MS. CECERE: Can I ask you one more question, I'm sorry. You said that, if I
10 understood this correct, that one of the reasons was that they don't, Dr. Harris does not
11 want to pave the spaces unless it was just, just because it was being used once a year
12 you didn't really want to spend the money, I guess to, to pave that available parking
13 spaces. Is that correct?

14 MR. RESCH: Yes.

15 CHAIRWOMAN PERKINS: Mr. Rush?

16 MR. RUSH: Well, I think we, we put these ordinances in place to, for the greater
17 good. Just like with the Fire Department, you can't put but so many people in a
18 building, I think we put the parking in place for the, the usage of that facility. And if, you
19 know, for the square footage that that facility will have, I think you've got, you have to
20 account for the parking that may be there and, you know, it may seem, you know,
21 especially with the hours of operation, you know, tournaments, different things like that
22 you, you just never know the amount of people that are gonna be there. So I, I think
23 the, the parking ordinance is in place for a reason.

1 MR. MCDUFFIE: Well, Mr. Rush I, I agree with you that the parking ordinance is,
2 is in place for a reason but, and, and I also agree that you never know how many
3 people are going to be there. But these really are, I mean, these really, if these weren't
4 covered they'd be considered athletic fields, bar none. I mean, if we had a, you know,
5 an outdoor, you know, an outdoor soccer field, an outdoor basketball field, they wouldn't
6 be considered indoor recreation at all, they would be considered athletic fields and then,
7 hence be subject to the athletic field requirement. I would argue that the other activities
8 that are going on here, whether it's an arcade or a skate rental shop or, you know,
9 locker rooms things like that, those are sort of incidental almost accessory uses to the,
10 to the overall athletic field, main use of the property. And maybe Mr. Price could
11 enlighten us about that but, you know, to me it almost seems like to hold, hold a, a
12 facility, you know, we've got the size, an area the size of a soccer field that's gonna
13 have 22 people on it. If we were talking about Frankie's Fun Park or a shopping mall or
14 something like that, it's going to have a much denser, you know, amount of people
15 involved in that same amount of space. You know, if you're talking about other, other
16 types of indoor uses, you know, so to hold them to sort of the same standard I think is,
17 is almost unreasonable because you're never gonna have, say more than 15 kids on a
18 soccer team or something like that or, you know, 20 something kids on a soccer field at
19 any given time, you know, you're not going to get the same density -

20 CHAIRWOMAN PERKINS: He's gonna build a facility to attract people so I'm,
21 I'm having a difficult time understanding why you want to reduce. I can, I can imagine
22 you're not wanting to have the 352 spaces, I would, you know, give or take a little on
23 that but you don't want any additional space. So I, I can't -

1 MR. RESCH: Based on his experience with the Plex at Sandhills and his
2 experience with, well I don't know if he has any experience with ice hockey but based
3 on what he's seen on ice hockey, he feels that using the, using the classification of
4 athletic fields that's sufficient parking.

5 CHAIRWOMAN PERKINS: Okay, are there any other questions for Mr. -

6 MR. COOKE: Are we in discussion?

7 CHAIRWOMAN PERKINS: Okay, thank you very much.

8 MR. RESCH: Thank you very much.

9 CHAIRWOMAN PERKINS: We have a Mr. Mike Harris.

10 MR. RESCH: Dr. Harris had to leave, he is the applicant, yes. He had to, he had
11 an appointment he had to get to.

12 CHAIRWOMAN PERKINS: Okay, there is no one in opposition, what is the
13 Board's pleasure? Discussion or go through the criteria for the [inaudible]

14 MR. COOKE: I think, I mean, as we stated before it is an indoor recreation, I
15 know we were saying that if it was or if it was outside or if it, but it's, it's actually not. It
16 is an indoor recreation, it is, and it has the capability of packing, I don't want to use the
17 word packing, but it has the capability of, of having, you know, over 600, 700 people. I
18 mean, from, from the, looking at the plans here it has the capabilities of having that.
19 And I just, I just really think having people, okay you say one time a year but we just
20 really, you really don't know, you really don't know. I know we can look at the Plex out
21 in the Northeast area and some of the, the parking spaces are not utilized but I guess
22 my thing is I just don't think people going down to the DMV and coming up that road, I'm

1 thinking of me and my five year old walking up that road after a game, it's just not, it just
2 doesn't seem safe. But, but that's, that's just my take on it.

3 CHAIRWOMAN PERKINS: Okay, would you like to run through the
4 extraordinary, I mean the criteria.

5 MR. COOKE: Sure I, I -

6 MS. CECERE: May I just say something real quick.

7 MR. COOKE: Yes, ma'am.

8 MS. CECERE: I, I could live with it probably if these additional parking spaces
9 were, even though it wouldn't come up to the number of 300, what was the, what's the -

10 MR. PRICE: Three fifty-two.

11 MS. CECERE: - 352, it would I think 303 if these other parking spaces were
12 paved, would that be something that we could consider, Mr. Price? Is that, instead, you
13 know, if, right now there are 172 spaces and, but there is in that shaded area on this
14 C200R1, that would give them I think, I hope I'm correct on this, I wrote down 303
15 parking spaces and if we could do that could we come to an agreement with that?

16 MR. PRICE: Yes, ma'am.

17 CHAIRWOMAN PERKINS: So, so the type is, what you have here is 352 and if
18 they would accept, they're saying they don't want to do anymore right?

19 MR. PRICE: Correct.

20 CHAIRWOMAN PERKINS: So you're saying 302.

21 MS. CECERE: Yeah, so we, if, you know -

22 MR. MCDUFFIE: If, if we, if we push out and include, and were to include all
23 these gray shaded spots, we're pushing right up to the edge of, I mean, there's a 16'

1 buffer or whatever but we're really pushing, pushing a massive parking lot, you know,
2 essentially very close to, to some people's back yards. And I have [inaudible] lighting
3 requirement and other things like that as well and you're talking about having, you
4 know, a few feet of trees or, or shrubs between somebody and essentially an acre,
5 acres of parking.

6 CHAIRWOMAN PERKINS: Well, I would prefer him to reduce the size of the
7 size of the arena [inaudible].

8 [Inaudible discussion]

9 CHAIRWOMAN PERKINS: No I'm just saying cause you're talking about, you
10 know, picking up the, you know, taking away the greenery and laying down concrete.
11 But, you know, it just, it's mindboggling to me how, you know, he can come in and make
12 a proposal, you know, to, to build such a complex and not want, you know, which is
13 going to, to me increase business, and not want to do anymore, you know, parking
14 spaces. And if he would come up with a suggestion of at least some of it, you know, if
15 it's, I think Ms. Cecere said 302 as opposed to, she's lessened it by - and are you, I
16 guess you need to come back to the podium. If there is a motion on the floor to - since
17 Mr. Price said something about we can do a motion giving a number of parking spaces,
18 was that not your answer to Ms. Cecere?

19 MR. PRICE: Yes, ma'am.

20 CHAIRWOMAN PERKINS: Okay, or do you think, I mean, if the Board is going
21 to recommend, you know, through a motion that some number of parking spaces are
22 going to, are going to be within our realm for you to put there, do you think, since you're,

1 you're speaking on behalf of Dr. Harris, that he would agree with that or do we need to
2 defer, I hate to say that word, to make sure? That's what I'm trying to -

3 MR. RESCH: Right, I, I understand.

4 CHAIRWOMAN PERKINS: - [inaudible] we can do some and if the Board does
5 some then he is speaking, I'm sorry go ahead Mr. -

6 MR. RUSH: I'm trying to put, I don't know how to put this but it's, it's our decision
7 to, to make that not necessarily -

8 CHAIRWOMAN PERKINS: But we're changing it, we're changing that, what he
9 originally, he originally asked for none and so he is not even Dr. Harris, who's the owner
10 of this. So I'm, I'm wondering if we make a motion to do some would Dr. Harris come
11 back and say, I guess that's what I'm trying to say are we going -

12 MS. CECERE: Will he be agreeable to -

13 MR. RUSH: I think if, if, if we, you know, if you want to defer that's one thing but
14 if we decide that he has to comply with the ordinance it's up to this Board's decision.

15 CHAIRWOMAN PERKINS: Right, I understand that.

16 MR. RUSH: We decide that instead of complying with 352 he needs to have
17 350, I think that's the Board's decision and we, and we can go forward with that as
18 opposed to asking him if he can -

19 CHAIRWOMAN PERKINS: No, no, no what I, what I, I guess I'm not asking him
20 -

21 MR. RUSH: Okay.

22 CHAIRWOMAN PERKINS: - I'm asking, I'm saying we're changing what he's
23 asking for and I, and I think we need to -

1 MR. MCDUFFIE: No we're not, we're not changing what he's asking for, we're
2 just not giving him what he's, we're just not giving him all of what he's asking for if we,
3 we're, we're not 100% granting his request. We're accommodating him somewhat,
4 which we do that from time to time. We say, we would say we can have some of your
5 [inaudible].

6 CHAIRWOMAN PERKINS: What I don't want to happen is if you want zero
7 parking spaces, in all fairness to the applicant, zero parking spaces he doesn't want to
8 increase it, the Board has a motion that he has to put in place 302 parking spaces, and I
9 know we can do that. We can make a motion to deny or accept the request. Yeah,
10 okay so let's go through the conditions and then that will answer the question. Thank
11 you very much. Go ahead, Mr. Cooke.

12 MR. COOKE: We're gonna start with number four, are there extraordinary and
13 exceptional conditions pertaining to the particular piece of property? I'm gonna go
14 ahead and say yes that there are extraordinary and exceptional -

15 CHAIRWOMAN PERKINS: And what are they, Mr. Cooke?

16 MR. COOKE: - conditions. Because it's really kind of vague in the zoning
17 ordinance I would say on whether it's, is it a field or is it indoor, it's kind of vague and
18 that's what I, I think is the extraordinary and exceptional conditions.

19 CHAIRWOMAN PERKINS: So the, the zoning ordinance -

20 MR. COOKE: Yes, the zoning ordinance.

21 CHAIRWOMAN PERKINS: - is vague.

22 MR. COOKE: Number five, do these conditions generally apply to - yes ma'am,
23 I'm sorry.

1 CHAIRWOMAN PERKINS: Hold on a minute. Let me just kind of get everybody
2 else's take on that. Is there [inaudible]?

3 MR. MCDUFFIE: I would think what's, what's vague is, is whether or not this,
4 this particular use fits into one category or another.

5 MR. COOKE: Right.

6 MR. MCDUFFIE: I think that that's the part that's actually questionable.

7 CHAIRWOMAN PERKINS: You know, I, I have a big problem with, I don't see
8 the extraordinary or exceptional condition pertaining to this piece of property. I, I just
9 can't, I can't, I can't see it, I'm sorry I would have to disagree with you [inaudible].

10 MR. MCDUFFIE: Were, were we not, were, were this not to be considered to be
11 indoor recreation rather than an athletic field, you know, this wouldn't be, this wouldn't
12 be here for a Variance at all, this would be granted out right. It would, it would fall within
13 the, the required amount of parking.

14 MR. COOKE: For an athletic field is one -

15 MR. MCDUFFIE: If, if we had a, if we had a, an athletic field complex with a, you
16 know, a snack bar and, and a shoe rental or something like that, you know, as sort of
17 the, you know, as a, as a structure on that, on that parcel we wouldn't call it a shoe
18 rental place we'd call it an athletic field. So, you know, you know, obviously the, or to
19 me it seems like the, the arcade and the locker rooms and the, and the, and the skate
20 rental are incidental to the operation of the, of the athletic courts or athletic fields that,
21 that we're talking about here. Without those, nobody would come.

22 CHAIRWOMAN PERKINS: Well it, that to me they're saying that, you know, that
23 according to this from Staff that a majority of the facility is designed for, you know,

1 [inaudible] video games, refreshments and parties. So I, I, I don't think that we're
2 looking at whether or not it's an athletic field or an indoor facility so I'm having, I am
3 really having difficulties with that. It's, it is, events that are taken on the inside and I'm
4 assuming since it's not so professional with things for parents to do with their children,
5 you know, and so I'm just having a difficult time viewing that. So I don't, I don't agree
6 with your extraordinary, that doesn't mean anything. I just wanted to get that out, okay.

7 MR. COOKE: Okay, moving along. Do these conditions generally apply to other
8 properties in the vicinity? No, it does not. Okay? Number six, would applications of
9 this chapter, to this particular piece of property effectively prohibit or unreasonably
10 restrict the utilization of the property because of the aforesaid extraordinary and
11 exceptional conditions? Yes, it would.

12 CHAIRWOMAN PERKINS: I don't, okay in your mind.

13 MR. COOKE: Okay. Will the granting of this Variance be a substantial detriment
14 to adjacent properties or to the public good or will it harm the, the character of the
15 district? That would be no. So -

16 CHAIRWOMAN PERKINS: [Inaudible] we can go through a discussion phase.
17 Does anybody, Harold, what's your take on it?

18 MR. BRANHAM: I agree with everything that was said on Mr. Cooke's part.

19 CHAIRWOMAN PERKINS: Okay. Elaine?

20 MS. PERRINE: Well, I'm kind of with you on the fact of extraordinary and
21 exceptional conditions because what we're trying to do is, he wants to have 172 parking
22 places, spaces, which he has now but he's supposed to have 352 and there is enough
23 room that he could put them. So if there's enough room to put them how is it -

1 CHAIRWOMAN PERKINS: The property, yeah [inaudible] extraordinary -

2 MS. PERRINE: And, and that's what we're dealing just with parking spots,
3 parking spaces or at least in my, and I think he wants to do a lot of business and, you
4 know, say you're ready for all these people that are gonna come, it's gonna be a neat
5 thing, it sounds good.

6 MR. COOKE: I don't, I don't think it's, it's the fact that he has a place to put them
7 or where to put them I think it's the fact that the, the ordinance, I mean, it's just kind of
8 like I said before, it's kind of vague. It kind of straddles the fence whether it's a indoor
9 recreational or whether it's an athletic field. It, and like I said before it's actually an
10 athletic field that happens to be indoors. So, and like my counterpart said -

11 CHAIRWOMAN PERKINS: But see in, in my definition an indoor recreational
12 thing can be basketball, basketball court is an indoor recreational and don't you play
13 basketball -

14 MR. COOKE: Like a gymnasium.

15 CHAIRWOMAN PERKINS: Yeah.

16 MR. MCDUFFIE: But you can also play it outdoors at a court and soccer is
17 typically always played outdoors.

18 CHAIRWOMAN PERKINS: Yeah, I'm not disagreeing with that but I'm saying
19 that it, you know, now you have football that is, you know, in a dome covered building or
20 something like that, you know, and it's typically played on the outside. So I'm just, you
21 know, I'm, I'm having a problem -

1 MS. CECERE: I think my solution is still I think that if, if, if we're going to grant
2 this we'll grant it with, that the applicant has to pave the additional parking spaces that
3 are available.

4 CHAIRWOMAN PERKINS: Additional parking spaces?

5 MS. CECERE: Yeah. That are, that are marked in the shaded area, that are not

6 -

7 MR. RUSH: I think if they do that they might as well pave it, I mean, they might
8 [inaudible].

9 MR. COOKE: That's not granting the Variance, then.

10 MR. MCDUFFIE: And also I think that that, that you've got, you've got sort of a
11 [inaudible] on this end here. You've got some sediment retention basins, things like that
12 that, that you might have to either relocate or encroach upon. And I, I really feel like at
13 that point you will be sort of affecting, to, to require them to put in the amount of parking
14 you do in fact then start affecting the surrounding parcels. I mean, you're, you're
15 essentially paving right up to the edge of somebody's back yard, you know, and, and
16 specifically somebody who, who, you know, right now kind of lives adjacent to some
17 woods is gonna essentially live adjacent to a, to a -

18 CHAIRWOMAN PERKINS: But he said that there was, there was no, there was
19 a buffer there -

20 MR. MCDUFFIE: There is a, there is a 16' buffer.

21 CHAIRWOMAN PERKINS: Yeah, that's what he said, you can't go cause I think
22 the question by Ms. Cecere, if I heard her correctly, that you could not, okay -

23 MS. PERRINE: Finish what you're saying and I'll say something.

1 CHAIRWOMAN PERKINS: Okay we were trying to find out would they park
2 along the street where those homes were and I think he said there was a buffer and
3 there's not a connecting road.

4 MR. MCDUFFIE: But that's not my point, my point is that, is that if you pave up
5 to the edge of that required landscape buffer, which is what he'll in effect be doing to
6 enlarge his parking lot, you are, you are significantly decreasing the distance between
7 their, those home's backyard and [inaudible].

8 CHAIRWOMAN PERKINS: Okay, I see what you're saying, okay.

9 MR. MCDUFFIE: And, and as to number six in here, you know, would, if we
10 required him to, you know, if we prohibited him essentially from building his soccer field
11 and the, the other, you know, the basketball court and the arcades and things like that.
12 I mean, it's already pretty well established that Columbia does not support an ice arena.
13 I mean, I can't think of how many times this one's gone out of business already, you
14 know, so, you know, like we, we would be sort of restricting the utilization of the
15 property, potentially unreasonably so, for, for, you know, lack of a few parking spaces.

16 MR. RUSH: I don't know if that's our call but, it's not our call to actually give into
17 the business side of this. I think when it comes to the property, it comes to the -

18 MR. MCDUFFIE: Well, but we, number six does require us to make a call though
19 as to, as to if we're, we're -

20 MR. RUSH: [Inaudible] extraordinary circumstances.

21 MR. MCDUFFIE: - well no it's if we're unreasonably, if, if applying the chapter,
22 you know, prohibits or unreasonably restricts the utilization of the property, you know,

1 what other things are you gonna collocate with an ice rink, first of all, you know, which
2 the ice rink's existing, you know. And the -

3 CHAIRWOMAN PERKINS: Okay.

4 MR. MCDUFFIE: - ice rink doesn't, doesn't work on it's own in Columbia for
5 some reason or another.

6 CHAIRWOMAN PERKINS: Okay, I'm going to, we've gone over the criteria for
7 Variance. There is some differences in, in what we're saying. I'm gonna, after, I'm
8 gonna, you want to speak?

9 MR. RUSH: I was gonna make a motion.

10 CHAIRWOMAN PERKINS: Okay I'm gonna ask for a motion. Mr. - and then
11 we'll just go, Mr. Price you have a comment, right quick.

12 MR. PRICE: I'll make it real quick, thought I'd have been gone by now. I, I hear
13 exactly some of the arguments that have been made by some of the Board Members
14 and, you know, the, the further you look into this one particular section of the Code, at
15 least the part regarding the parking, there's a part in here just, I actually just noticed it
16 where it says public parks and recreational facilities, public parks and recreational
17 facilities. And minimum, that would be on page 613 if you have the Code, the minimum
18 by, for that, kind of interesting, you either do it by function or one per 200 square feet of
19 activity area. So, you know, you take a, I guess a, county park now you would take your
20 25 per field and then you'll go, probably go back to the building and do your one per
21 every 200 and you have a case here, this is a little unique to Staff because here's that
22 question what is an indoor recreational use. It is kind of out there, this is, you know, this
23 is a privately owned facility. And, you know, this is just a category we have put it into,

1 not saying that you have to go one way or the other, I'm just saying we have to put it
2 into a category and whether, you know, that's the appropriate category or not, I'm not
3 sure but you can kind of look that there may be kind of a gray area looking at the actual
4 functions within that as opposed to just the fact that here's a building and here's the
5 square footage and because of that square footage we're going to require a certain
6 number of parking spaces.

7 MR. COOKE: Mr. Price, for the Record, what, what is this facility -

8 CHAIRWOMAN PERKINS: One, one, one, one, one, one, one minute.

9 MR. COOKE: I'm sorry. Yes.

10 CHAIRWOMAN PERKINS: Go ahead and then we're gonna go, I'm gonna ask
11 for a motion.

12 MR. COOKE: Yes, ma'am.

13 CHAIRWOMAN PERKINS: I'm gonna ask for a motion.

14 MR. COOKE: Final question Mr. Price, for the record, what is this facility
15 considered to be?

16 MR. PRICE: For parking purposes, it will be an indoor recreational use.

17 MR. COOKE: Thank you.

18 CHAIRWOMAN PERKINS: Having said that, that is there a motion?

19 MR. RUSH: I would like to make a motion to deny Special Exception, no I'm
20 sorry Variance in that it is an indoor facility, there are no extraordinary or exceptional
21 conditions pertaining to this particular property.

22 CHAIRWOMAN PERKINS: I'll second that. There's a motion on the floor to
23 deny Variance 08-60 based on there being no extraordinary and exceptional conditions

1 pertaining to the particular piece of property. All those in favor of that motion please
2 have a show of hands?

3 MR. PRICE: Those in favor are Rush, Perrine, Perkins, Cecere.

4 CHAIRWOMAN PERKINS: Okay, all those who are not in favor of that motion
5 please have a show of hands?

6 MR. PRICE: Those opposed Branham, McDuffie, Cooke.

7 *[Approved: Rush, Perrine, Perkins, Cecere; Opposed: Branham, McDuffie, Cooke]*

8 CHAIRWOMAN PERKINS: And that was three, four in favor.

9 MR. PRICE: Four in favor of the motion to deny.

10 CHAIRWOMAN PERKINS: I am so sorry, the request for the Variance has
11 failed. Mr. Price will be in touch. Okay, this concludes our public hearing, is there any
12 other business? There being none, this meeting is adjourned.

13

14

[Meeting Adjourned at 3:45]