

**BOARD OF ZONING APPEALS**

June 3, 2009

1  
2  
3  
4 *Present: Chairman Joshua McDuffie, Harold Branham, Elaine Perrine, Torrey Rush,*  
5 *Sheldon Cooke, William Smith; Absent: Susan Cecere*

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

8 CHAIRMAN MCDUFFIE: I am calling the meeting of the Richland County Board  
9 of Zoning Appeals to order and at this point our attorney Ms. Linder will give  
10 instructions.

11 MS. LINDER: Good afternoon ladies and gentlemen. Welcome to the Board of  
12 Zoning Appeals Meeting this afternoon. My name is Amelia Linder and I'm the attorney  
13 for the Board of Zoning Appeals. The Board of Zoning Appeals, as you know, is a *quasi*  
14 judicial court, which means their decisions are final subject to an appeal to Circuit Court.  
15 The applicant will have up to 15 minutes to speak. If there's any opposition, they will  
16 have three minutes to speak. Today's Agenda is, is short, we have one reconsideration  
17 matter that's going to be heard today. When you come to testify or, or when you testify,  
18 please address your remarks to the Board. You will be under oath and the testimony  
19 you give will be recorded. We will accept any documents or exhibits that you have and  
20 the Board will give appropriate weight to those exhibits. The Board will make a finding  
21 today and then the Minutes will be approved next month and until that, those Minutes  
22 are approved no orders will go out based on today's findings, and then once that order  
23 has been mailed out, the applicant will have, or any other party of interest will have 30  
24 days to appeal that decision. Please turn off cell phones at this time, make sure your  
25 name is on the sign-up sheet if you plan to speak. You may come and go as you  
26 please, as long as you do so quietly. At this time, if there's anybody here that's

1 planning to testify, would you please stand so I can give you the witness oath? Do you  
2 swear or affirm that the testimony you shall give shall be the truth, the whole truth and  
3 nothing but the truth so help you God?

4 AUDIENCE: I do.

5 MS. LINDER: Thank you, you may be seated. Mr. Chairman we may proceed.

6 CHAIRMAN MCDUFFIE: At this time, I would like to call the Board into  
7 Executive Session. Is there a motion?

8 MR. BRANHAM: Mr. Chairman, I make a motion that we do that.

9 MR. SMITH: Second.

10 CHAIRMAN MCDUFFIE: Alright, we'll go into Executive Session.

11 *[EXECUTIVE SESSION]*

12 CHAIRMAN MCDUFFIE: We're back from Executive Session. If Mr. Price would  
13 call the first case?

14 **CASE NUMBER 09-04 V:**

15 MR. PRICE: The first case is 09-04 Variance. The applicant is Genesis  
16 Consulting Group, they'll be represented by Michael Quinn. The location is 110  
17 Clemson Road. The applicant is requesting a variance to reduce the required driveway  
18 separation on property zoned GC. This case has been heard by the Board previously.  
19 It was originally heard in January and the variance request was denied and in February  
20 the, a reconsideration was requested by the applicant and it was granted by the Board,  
21 and this was done prior to the approval of January Minutes. April the case was heard  
22 again and again the variance request was denied, and on May the 6<sup>th</sup> of 2009, a hearing

1 and a reconsideration request was granted by the Board and that's where we are at this  
2 time, to rehear the case again.

3 CHAIRMAN MCDUFFIE: Alright, for the Record in the request for, for  
4 reconsideration that was submitted and was received last month, or and received -

5 MR. PRICE: At the last time.

6 CHAIRMAN MCDUFFIE: - at the last meeting they are requesting that all  
7 testimony from the previous, from the previous hearing shall be reconsidered. At this  
8 time we have Mr. Michael Quinn signed up in support.

9 **TESTIMONY OF MICHAEL QUINN:**

10 MR. QUINN: Mr. Chairman and Board Members, in, in addition to, you're  
11 referring to the testimony being made part of the Record, there were also exhibits  
12 introduced and Mr. Chairman we ask that they be made part of the Record also.

13 CHAIRMAN MCDUFFIE: Absolutely.

14 MR. QUINN: First, let me thank the Board for again giving me this opportunity to  
15 come back before you. We, we sent Mr. Price a letter requesting a reconsideration.  
16 You were gracious enough to grant it and I am appreciative of that and I thank you for it.  
17 As my letter of, of reconsideration request reflected, we're, we're here before the Board  
18 based on a mistake in law and when the law, as decided by the Supreme Court of this  
19 state is applied to the facts, we have a, what we believe to be a mistake of facts. With  
20 respect to the law, I might, if I might just quote to the Board the case of Elijah Tallent,  
21 d/b/a Elijah's California Hair v. South Carolina Department of Transportation, that case,  
22 and we have provided the cite to counsel for the, for the Board, that case is what we  
23 refer to as an inverse condemnation case. An inverse condemnation case is one

1 where there is not a direct taking of the property, but the court determines whether or  
2 not there are damages to the property as a result of certain things happening. Quite  
3 frankly, like some regulatory procedures can be what we refer to as an inverse case. Of  
4 particular import to the Board and the matters before you today is the following  
5 language by Chief Justice Jean Toal in the Tallent case. And Tallent incidentally  
6 referred to it, it was a case out of Greenville County prior to the highway construction.  
7 The landowner in that case had direct access to a public road and afterwards the road  
8 access was cut off. In Tallent, the court said this, in referring to the right of access to a  
9 public road, our court has stated the following: "As we have held a property owner in  
10 South Carolina has an easement for access to and from any public road that abuts his  
11 property regardless of whether he has access to and from an additional public road."  
12 The court cited a long-standing case of the Highway Department v. Allison, I believe  
13 that was an Aiken County case in 1965, and that has been the law in this state since  
14 1965; that a property owner has a, an easement of access or a right of access to an  
15 abutted public road, just like this owner adjoins, the Columbia Development Group,  
16 adjoins Clemson Road. Again based on the law of this state, the owner has that right of  
17 access which is referred to as an easement. As the court also points out the fact that  
18 there is an adjoining road, public or private, is of no consequence. The owner still has  
19 that, that right. Now with respect to that, because of the right of access, which this  
20 property does not have, I think clearly that is an extraordinary and exceptional condition  
21 to this property. Here we have property that our law says has a right of access to an  
22 adjoining road, Clemson Road, and yet it does not. In addition to that, I would also say  
23 that, and I'm not going to go back into the Record or what was testified to before you at

1 the last hearing, you heard that, the Minutes were made available to you, and again  
2 we're here on an error of law or I would call it a mistake of law, there are a couple of  
3 things that, that I think also go to it. We all know based on the record that this is the  
4 only property on Clemson Road in this area that does not have access to Clemson  
5 Road. The other conditions, just briefly, Mr. Chairman and Board Members, clearly the  
6 lack of access that affects this property does not exist with respect to the other  
7 properties on Clemson Road. I think there's total agreement on that. Another criteria is  
8 the lack of access, just common sense reflects that it effectively restricts the use of this  
9 property, without that access on Clemson Road. Briefly, the Record reflects that the  
10 lack of access effectively impedes, restricts the usability of the property. Commercial  
11 users would not find it attractive, would not use it. We've talked about trucks not being  
12 able to get in and out and the, there's no doubt that lack of access here, that has been  
13 testified to, effectively restricts the usability of the property. And then the last criteria  
14 relates to the public good in the granting of safety and I think the Record is clear that the  
15 conditions that this Board can impose, the raised island for the right in and right out and  
16 the road on the back of the property providing access primarily out from McDonald's will  
17 be a benefit to the public and there is ample testimony in the Record that that will be a  
18 safety factor, that it will improve the safety of the traffic on Clemson Road. This Board  
19 really didn't get to the other criteria because we were talking in terms I think of the  
20 exceptional and extraordinary conditions and whether or not they applied. I think clearly  
21 the other criteria were met. We're dealing again with the extraordinary and exceptional  
22 conditions, the law of South Carolina is that property owners have that right of access to  
23 the abutting road. This property does not have it; that, in my opinion, and I believe

1 makes this property extraordinary and a special exceptional condition. I do have, and  
2 this has been given to again the Board, we have exhibits that we would like to be made  
3 a part of the Record. One shows the island with the five feet by five inches of a thick  
4 barrier and I am told by the engineer that the island that will be constructed if this Board  
5 grants the variance on Clemson Road exceeds the Highway Department's  
6 specifications and, and as I understand that's with respect to the turning in and out. The  
7 intent was to make the island so that automobiles or vehicles coming out of the property  
8 could not realistically take a left onto Clemson Road. The other exhibit would be, again  
9 prepared by the engineers, it shows the island and it also shows the back road, which  
10 would provide access to and from McDonald's. So, if I might, could ask that these be  
11 made part of the Record?

12 CHAIRMAN MCDUFFIE: Thank you.

13 MR. QUINN: Mr. Chairman, those are my remarks. I'll be happy to, to answer  
14 any questions that any Board Members might have with respect to the position of the  
15 applicant and what I have just said.

16 CHAIRMAN MCDUFFIE: Thank, thank you very much. I think some Members of  
17 the Board may have some, some questions regarding your remarks and then also  
18 perhaps regarding the, the exhibits you presented here.

19 MR. RUSH: I've got a question. Attorney Quinn is, is right?

20 MR. QUINN: Yes, sir.

21 MR. RUSH: In that case does it state whether the size of access off of a public  
22 road?

23 MR. QUINN: No, it does not.

1 MR. RUSH: It just says access?

2 MR. QUINN: No, no it does not.

3 MR. RUSH: It just says an access?

4 MR. QUINN: Access, and, and I, I, you know, that it, it does not, I suspect it is a  
5 realistic or reasonable access. I mean, I think that's where the court would go, but I  
6 can't give you any authority for that, Mr. Rush.

7 CHAIRMAN MCDUFFIE: I have a question regarding the private drive that, that  
8 we've got named here?

9 MR. QUINN: Yes, sir.

10 CHAIRMAN MCDUFFIE: Sparkleberry Lane Extension or what was previously  
11 Sparkleberry Lane Extension.

12 MR. QUINN: Right, right.

13 CHAIRMAN MCDUFFIE: On the, on the plat submitted here or the, the site plan  
14 submitted here, we have a, it, it looks like it shows the, the property line running down,  
15 directly down the middle of the drive there. Is that correct?

16 MR. QUINN: Correct. Yes, it's, that's my understanding.

17 CHAIRMAN MCDUFFIE: So, just help, help me understand here though if we do  
18 in fact have access to Clemson Road there on that private drive directly, how do we  
19 have, I guess a, a mistake in, you know, a mistaken law or a mistaken fact because in  
20 the, in your letter that you've written here, you've said that the property in question  
21 abuts on Clemson Road on the front, which I agree obviously it does, and then it says  
22 and on a private road on the side. It doesn't necessary abut it though, it actually  
23 contains a significant portion of that private road, right?

1 MR. QUINN: Well, it's half of it.

2 CHAIRMAN MCDUFFIE: Yes, sir.

3 MR. QUINN: And based on what I understand from the Record, Mr. Gosline I  
4 think in one of the hearing said that it was a shared road. That was confirmed to me by  
5 my client with cross, as I understand cross easements. So, both property owners on  
6 each side can use the entire road. Now, I'm not sure if, Mr. Chairman, I really  
7 understand your question. It, it, it is a private road that is shared, it abuts on the private  
8 road, but from a legal standpoint it really does not affect the property owner's right to  
9 access to Clemson Road. Essentially what Tallent is saying to the Supreme Court of  
10 our state is that property owner would have (1) unqualified and I don't mean, well that  
11 one would have the access to Clemson Road; and, (2) he would also have access to  
12 the unabutting side road. Now -

13 CHAIRMAN MCDUFFIE: And, and I believe it specifically states that a public?

14 MR. QUINN: Well that's right, that's right. But, but I think what the court was  
15 trying to point out is simply because you have the right of access to one public road that  
16 abuts your property, that will not deprive you of access to an adjoining public road.

17 CHAIRMAN MCDUFFIE: Certainly.

18 MR. QUINN: Yes, sir, or and, and I see y'all are following me. As stated another  
19 way, you can't use access to a side road to deprive you of access to another public  
20 road.

21 CHAIRMAN MCDUFFIE: Absolutely.

22 MR. RUSH: And, and even, even looking at the case and looking at this  
23 situation, I don't think the fact that of depriving access is the issue. I think because you



1 have over 250' of access between that McDonald's driveway and that Sparkleberry  
2 Lane driveway, if that entrance, even your side was extended, you know, to meet Code,  
3 whatever that length is as an access point, I mean, you, you have access off of the  
4 Clemson Road. So I, I think it's, the point of having an access point directly in the  
5 middle is the issue at hand and I just, you know, I, I have some concerns with that. I, I  
6 really do because I, I don't think that this property lacks access to Clemson Road.

7 MR. QUINN: Mr. Rush, I'm not sure that I understand. How, how can you say,  
8 see -

9 MR. RUSH: Well what -

10 MR. QUINN: Go ahead.

11 MR. RUSH: Go ahead, no go ahead.

12 MR. QUINN: What, what the court is saying is they're not saying access by any  
13 means, what the court is saying is direct access, i.e. a curb cut. Am, am I responding?

14 CHAIRMAN MCDUFFIE: Well, but I guess, I guess my, my question would be  
15 does not a curb cut already exist at this corner of the property directly on to Clemson  
16 Road? At the, at the, at the corner of the property -

17 MR. QUINN: Oh, by virtue of the shared road?

18 MR. RUSH: - in the middle of the, that, that falls in the middle of it?

19 MR. QUINN: No, no, no I don't know, I don't think, I don't think that does that  
20 and I don't think that's what Tallent says. I mean, one, you've only got, for example,  
21 you've got half of the property that could be a, you know, that could somehow get  
22 access, but I don't think the court in any means would say that is the access we're  
23 talking about. I mean, this is -

1 CHAIRMAN MCDUFFIE: Then why not widen the access point where we  
2 already do have access onto Clemson Road at the corner there so that we could have  
3 two lanes of traffic there? Why would that be a worse solution than they putting access  
4 anywhere else on the frontage? It seems like that, that, but the question is how much.

5 MR. QUINN: But, but let me, let me, okay, let me visualize. If you come off the  
6 side property onto the, onto Sparkleberry Extension, that's what you're talking about?

7 MR. RUSH: If you did that? Let's say that.

8 MR. QUINN: And then what you're saying is you would have, you then would  
9 have access to the signalized intersection, by half the road, or by that property?

10 CHAIRMAN MCDUFFIE: My, my point is that the half of the road is on the  
11 property so in theory you have access directly from the public road or to the public road  
12 from that property?

13 MR. QUINN: Well, well I think that goes, and it's a good question, frankly I have  
14 thought about that and, and I can't cite you an authority, but I would go back to what Mr.  
15 Rush said, does the Supreme Court, do they set out any standards to access and the  
16 answer is no. And, and, but I don't think the court would have any difficulty in saying  
17 that is not the access we mean. You, you, again, I don't know how wide that public road  
18 is, I mean, the private road is. It, it, I, I just don't know, but at best the property owner is  
19 gonna be limited to whatever portion of the public road comes into the intersection and  
20 then I'd think you'd say alright is, is, is that sufficient access? I think the court would  
21 say, I just don't believe, it's a good question and, and I have thought about it and I don't  
22 know there's a legal answer to it that I can give you now except I don't think the court  
23 would have any problem finding that is not the access we're talking about.

1 CHAIRMAN MCDUFFIE: I guess my question is that maybe they have, let's say,  
2 you know, maybe, maybe they've got 10' of the road or 15' of the road that's currently  
3 on their property and, you know, directly onto Clemson Road. If they had 30' of the  
4 road on their property, that would certainly constitute sufficient access for the court,  
5 would it not?

6 MR. QUINN: I, I think you'd really have a problem. I mean, when you think  
7 about bringing access into, you've got Sparkleberry Extension, so I think what you  
8 would be saying is putting all the traffic on Sparkleberry Extension, that would be your  
9 access?

10 CHAIRMAN MCDUFFIE: My, Sparkleberry Extension is sort of neither here nor  
11 there.

12 MR. QUINN: Oh, okay.

13 CHAIRMAN MCDUFFIE: Because, just assume that it's a driveway, if you have  
14 all of the driveway on your property and, and your driveway sticks out onto, or abuts  
15 Clemson Road, you would then have access onto Clemson Road, correct?

16 MR. QUINN: Let, let's say that, yeah, you would have some type of access. Is it  
17 the access that the courts are talking about when they're protecting the rights of the  
18 property owner? I don't think so, Mr. McDuffie. Now, let me, just as a matter of fact,  
19 look at the Allison case if I might just for a second. Mr. McDuffie, the, the case of South  
20 Carolina State Highway Department v. Allison, a 1955 case, it is in 143 S.E. 2<sup>nd</sup> and I'm  
21 just citing this for the Record, 800, does not directly answer that particular question, but  
22 I think what it does it, let's see here - in referring to the rights of an abutting property  
23 owner, the court says this, and I'm reading this in part: "We think clearly established in

1 this state that an abutting property owner has a right of access over a street adjacent to  
2 his property as an appurtenance thereto and that an obstruction that materially injures  
3 and deprives the abutting property owner of ingress or egress to and from his property  
4 is a taking.” Now when, when there is a taking that means that the property owner is  
5 being deprived of a right to which the property owner is entitled. And the court goes on  
6 and says, “The fact that other means of access are available affects merely the amount  
7 of damages.” So I think responding to your question, which is a good question, number  
8 one, I think it has to be a realistic access and, and I don’t think the fact that you’ve got  
9 half of Sparkleberry Extension leading into the intersection, I just don’t believe that’s  
10 gonna meet the court’s criteria. I don’t think the court would say that is the type of  
11 access we are referring to. Now, that’s my thought, who knows what a court would do,  
12 but I’ve tried condemnation cases for 30 some years and, and that’s just what I believe.  
13 So that’s, that’s the closest thing right now that I can, you know, that I can use in  
14 responding to it.

15 CHAIRMAN MCDUFFIE: Thank you.

16 MR. QUINN: I’d be happy to hear any other questions. And again all I can do is  
17 reiterate I don’t believe that based on Tallent, based on Allison, I don’t think that’s the  
18 type of access that the courts are referring to because what I think, I think a court would,  
19 would say, easily say this is, this is not what we intended, it’s not the access to which  
20 property owners are entitled and, you know, with due respect to the Board, I, I think the  
21 courts would probably say the issue was not really addressed properly.

22 CHAIRMAN MCDUFFIE: Thank you. Are there any further questions?

23 MR. QUINN: Is that is? Okay, thank you Mr. Chairman.

1 CHAIRMAN MCDUFFIE: Is there any, any discussion at this time? At, at this  
2 point I'd like to go through the Findings of Facts with regards to the variance.

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

4 CHAIRMAN MCDUFFIE: Yes, Mr. Price?

5 MR. PRICE: You know, Staff request that if, if it is, when you get to your motion  
6 for this case, if, if Staff decides, excuse me, if the Board decides to grant this variance  
7 request, that you incorporate the following stipulations with, along with the passing, with  
8 this: First, that the driveway access granted from Clemson Road would be the only  
9 access from Clemson Road for this parcel and other parcels created by subdivision.  
10 Secondly, the access to the parcel will follow the conceptual site plan as found on page  
11 16 and it's identified as C-2.1. And number three, the barrier will be designed at a  
12 minimum as found on page 15 and I believe that was actually referenced by Mr. Quinn.  
13 And four and five, prohibiting left turns from Clemson Road would be located at the  
14 median or the barrier.

15 CHAIRMAN MCDUFFIE: Thank you, thank you, Mr. Price. Alright, at this time  
16 we will go through the Findings of Fact. Notice of the, notice of public hearing was  
17 posted on the property as well we published in the newspaper of general circulation  
18 within the county no less than 15 days prior to the public hearing. Are there  
19 extraordinary and exceptional conditions pertaining to the particular piece of property?  
20 And does anyone feel that there are or not?

21 MR. COOKE: I'm gonna say yes, there are some extraordinary conditions.

22 CHAIRMAN MCDUFFIE: Would you care to, you care to expound upon what  
23 those might be?

1 MR. COOKE: Based on the, based on the South Carolina law, South Carolina v.  
2 Allison and Tallent, a right of access to a public road to this piece, this parcel has been  
3 denied the right of access to a public road. And that would be the extraordinary or  
4 exceptional condition.

5 MR. RUSH: You know, I really, you know, in my opinion, I don't think that there,  
6 there is, you know, there's no extraordinary conditions. I, I really feel that there are, you  
7 know, even though there is, because the case law does not state the size of access, it  
8 just says that an access point. I think it's up to interpretation and I think that's why we  
9 have our ordinance in place to help govern those types of things. And I think, you know,  
10 I just think that there is an access point. It might not be the most desirable one by the  
11 developer themselves, but at the same time there is an access point, so I, I feel that  
12 there is no extraordinary conditions.

13 CHAIRMAN MCDUFFIE: Alright, is there anyone that has anything to add to  
14 that? Okay, let's continue on. Do these conditions generally apply to other property in  
15 the vicinity? I think it sort of falls in line with the, the previous question.

16 MR. COOKE: Yeah, the answer is gonna be no.

17 CHAIRMAN MCDUFFIE: Okay, alright. I mean, we sort of have a, a  
18 disagreement at this point I guess whether or not there are exceptional or, or  
19 extraordinary conditions and then before we come to whether or not they might apply to  
20 other properties in the vicinity to, to determine whether or not the conditions are  
21 exceptional and extraordinary, which ones those might be? Anybody else have a -

22 MS. PERRINE: I agree with Mr. Cooke, that there are extraordinary and  
23 exceptional conditions because of the South Carolina law as he presented.

1 MR. BRANHAM: I also agree with Mr. Cooke and Ms. Perrine on that issue.  
2 There are exceptional conditions.

3 MR. SMITH: Looking at the law, there are a lot of issues in regards to what the  
4 actual width can be and what can and cannot be an entrance, and I see issue within  
5 the, with the property in regards to what's gonna be there because there is no specific  
6 business or anything of that nature that's there. And in comparison to what's on the rest  
7 of the street, there is accessibility to that property from Clemson Road and the law  
8 states that. So I agree with Mr. Rush.

9 CHAIRMAN MCDUFFIE: I tend to also agree with Mr. Rush that, that the  
10 property already has access, that the access that it currently has directly onto Clemson  
11 Road at the light would seem to meet the requirement for it to have access on a public  
12 road, but then that leaves us with a, with a deadlock at this point. At this point -

13 MR. QUINN: May I point out one thing to the Board with respect to access and  
14 ingress just for the Board to think about?

15 CHAIRMAN MCDUFFIE: Absolutely, if you have something that can enlighten  
16 us.

17 MR. QUINN: Just sitting and thinking about access in and out and on half of the  
18 private road which we're, we're not aware of, we, we don't know how wide it is, if you  
19 wanted to come out on that side of the road, you're gonna be leaving the property,  
20 you're gonna be coming out into a lane of traffic that would be coming into the property.  
21 If, if my thinking is right, and I don't take full credit for this, he doesn't practice with me,  
22 but my son is here, so but if you think about that, the lane that's there, that is the  
23 incoming traffic. And, and, you know, so if you go into that incoming traffic I think -

1 CHAIRMAN MCDUFFIE: I, I certainly agree with, with your statement there, I  
2 guess my, my question is, is, you know, does that, does that access that it has currently  
3 meet the, meet the qualifications for -

4 MR. QUINN: Tallent?

5 CHAIRMAN MCDUFFIE: For, yes, for Tallent?

6 MR. QUINN: And, and again this, this is my opinion as a lawyer, I, I don't think  
7 there's any question about that now as I think about it. In other words if you would find  
8 access is there, you know, a court would really have to say that we're gonna let you, in  
9 effect, come in here contrary to the, the oncoming traffic could well be a violation of the  
10 law. I don't think it will happen anyway at all, I'm just, I, I feel much stronger about that  
11 now. Although I did before, I just wanted to point that out. Thank you for letting me  
12 come back.

13 CHAIRMAN MCDUFFIE: Alright, at this, at this point is there anyone that would  
14 like to make a motion to accept the fact that there are extraordinary and exceptional  
15 conditions, or, or for the contrary?

16 MR. RUSH: I would like to make a motion. I would like to make a motion to, to  
17 deny variance, well Case -

18 MR. COOKE: 09-04.

19 MR. RUSH: - 09-04 because I don't think that there are any extraordinary  
20 conditions, being that there is an access point coming off of Clemson Road that actually  
21 goes onto the property because, you know, based on the fact that the property line goes  
22 to the middle of that extension, there is an access point. So I would like to make a  
23 motion to deny.



1 CHAIRMAN MCDUFFIE: Is there a second?

2 MR. SMITH: Second, I'm sorry.

3 CHAIRMAN MCDUFFIE: Okay, there's a second. Alright, all in favor of Mr.  
4 Rush's motion to deny the request for Variance 09-04?

5 MR. PRICE: Those in favor: Rush, Smith.

6 CHAIRMAN MCDUFFIE: All opposed?

7 MR. PRICE: Those opposed: Branham, Perrine, McDuffie, Cooke.

8 *[Approved to Deny: Rush, Smith. Opposed: Branham, Perrine, McDuffie, Cooke;*  
9 *Absent: Cecere]*

10 CHAIRMAN MCDUFFIE: The motion, the motion to deny fails. Is, is there a  
11 motion? Is there another motion?

12 MR. COOKE: Mr. Chairman, I'd like to make a motion to accept Variance 09-04.

13 MR. PRICE: Mr. Chair, I think that you -

14 MR. COOKE: Do you want me to go back to it? Okay. In saying that, we're  
15 gonna have to go back through the, the questions, which is fine. Are there  
16 extraordinary and exceptional conditions pertaining to the particular piece of, of  
17 property? Once again based on the law in reference to South Carolina State Highway  
18 Department v. Allison and v. Tallent, a right of access to a public road has been denied  
19 to this particular property. That would be the special, I'm sorry the exceptional  
20 condition.

21 MR. RUSH: What, what was that again?

22 MR. COOKE: That would be the exceptional condition.

23 MR. RUSH: Well, I didn't hear it.

1 MR. COOKE: A right of access to a public road. Okay, do these conditions  
2 generally apply to other properties in the vicinity? The answer to that question would be  
3 no, the answer would be no. Would the application of this chapter to this particular  
4 piece of property effectively prohibit or unreasonably restrict the utilization of the  
5 property because of the aforesaid extraordinary and exceptional conditions? That  
6 would be yes. That would be yes. Okay?

7 MR. RUSH: I, I just want to make a point of Record -

8 MR. COOKE: Sure.

9 MR. RUSH: - that I feel that it does not restrict access to that property by any  
10 means.

11 MR. COOKE: Okay, noted. Will the granting of this variance be of a substantial  
12 detriment to adjacent properties or the public good, or will it harm the character of the  
13 district? The answer to that would be no. Yes sir, Mr. Rush?

14 MR. RUSH: I would also like to say on that one that when it comes to the harm,  
15 as far as public good, when it comes to a safety issue on that property, by having that  
16 access there, I think there's a big safety issue with that. So, just for a point of Record I  
17 want to make.

18 MR. COOKE: Okay, noted.

19 CHAIRMAN MCDUFFIE: So you're, you're making a motion to approve? And  
20 would you care to include the stipulations that, that Mr. Price has, that Mr. Price has  
21 made? Mr. Price, would you care to repeat the -

22 MR. COOKE: Here are the stipulations that Staff has requested: The right, the  
23 right in and right out driveway shall be constructed in accordance, in accordance with

1 the diagram shown on Exhibit A and located as shown on Exhibit B, both of which are  
2 attached hereto and incorporated herein. Also no additional driveways shall be allowed  
3 on Clemson Road. The applicant shall notify all successors and interests in the event  
4 any portions of the property is conveyed to a third party. The applicant shall construct,  
5 at its own expense, a 31' wide paved road behind it's property, which I like, which will  
6 connect the McDonald's property to Sparkleberry Lane Extension for the purposes of  
7 allowing public access to and from the McDonald's fast-food restaurant as shown on  
8 Exhibit B.

9 CHAIRMAN MCDUFFIE: Mr. Price, are you satisfied with, with those as they  
10 were just read?

11 MR. PRICE: Yes, well, I mean, if the, the barrier was included as pictured in the  
12 diagram?

13 CHAIRMAN MCDUFFIE: I don't think I heard that. Mr. Cooke, could you include  
14 that one as well?

15 MR. COOKE: We also would like to include the barrier that's included on Exhibit  
16 A and Exhibit B.

17 MS. PERRINE: Does that also include a sign prohibiting a left turn?

18 CHAIRMAN MCDUFFIE: I think so, yes. I think that would need to be stated as  
19 well?

20 MR. COOKE: Yeah, when we, Mr. Price, correct me if I'm wrong, will the right in,  
21 the right in driveway would be constructed, but like as shown on the diagram? On the  
22 diagram it has the sign on it, doesn't it?

1 MR. PRICE: Based on the, we just want to make sure that we're specific as to  
2 what that sign would say.

3 MR. COOKE: Yes, sir. So, we would also like to have a sign clearly stating the  
4 right in, right out entrance that's shown on the Exhibit A.

5 MR. PRICE: Which is a sign prohibiting left turns from Clemson Road.

6 MR. COOKE: Right, which is prohibiting the signs, prohibiting from turning onto  
7 Clemson Road.

8 CHAIRMAN MCDUFFIE: Does that, does that complete your motion then?

9 MR. COOKE: That completes my motion at this point.

10 CHAIRMAN MCDUFFIE: Okay, is there a, is there a second?

11 MS. PERRINE: I'll, I'll second.

12 MR. RUSH: Mr. Price, I don't know if this is proper, I, I guess with that, also with  
13 the turning lane just for the Record, that's not, because I think it was stated the last time  
14 Mr. Quinn came up, that there were, you know, problems, you know, traffic coming in  
15 and traffic going out, that would be the same traffic. There's no exclusive turn lane right  
16 there, so it's not necessarily because they're coming down Clemson they're turning into  
17 that drive there. So there's no exclusive turn lane and in that right out there's, there's  
18 gonna have to be some yield and merger in there. So there's no exclusive turn lane for  
19 that, that traffic island right there.

20 MR. COOKE: So would you like a yield sign?

21 MR. RUSH: No, no.

22 MR. COOKE: Or up there also?

1 MR. RUSH: I just wanted to state, I just wanted to state for the Record that, so  
2 you understand it.

3 MR. COOKE: Oh, okay.

4 CHAIRMAN MCDUFFIE: We have a second at this point. All of, all in favor?

5 MR. PRICE: Those in favor: Branham, Perrine, McDuffie, Cooke.

6 CHAIRMAN MCDUFFIE: All opposed?

7 MR. PRICE: Those opposed: Rush, Smith.

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

10 CHAIRMAN MCDUFFIE: Alright Mr. Quinn, you have your, you have your  
11 variance and Mr. Price will be in touch. Thank you very much.

12 MR. QUINN: And again I'd like to thank the Board for giving me the opportunity  
13 to come back and I know this is the third time and I, of course appreciate the votes in  
14 favor and I respect the votes against.

15 CHAIRMAN MCDUFFIE: At this point, do we have Minutes from the May  
16 meeting to approve at this point?

17 MR. RUSH: I doubt it, man, the county's been -

18 CHAIRMAN MCDUFFIE: Do we have, do we have the Minutes from our -

19 MS. PERRINE: I make, I make a motion they be approved.

20 MR. COOKE: Yes, it's in there.

21 CHAIRMAN MCDUFFIE: Okay. I have received a motion to approve the  
22 Minutes, is there a second?

23 MR. COOKE: I second the motion.

1 CHAIRMAN MCDUFFIE: All in favor of the approval of the Minutes?

2 MR. PRICE: All in favor are: Branham, Perrine, Rush, Cooke, Smith.

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

4 CHAIRMAN MCDUFFIE: Alright the Minutes from May are approved and is  
5 there any other business at this time?

6 MR. PRICE: No sir, we don't have any.

7 CHAIRMAN MCDUFFIE: Okay.

8 MR. PRICE: Just ask Mr. Rush not to play around about the Minutes. He said  
9 that there's -

10 CHAIRMAN MCDUFFIE: At this time I'd like to adjourn the meeting. Thank you.

11

12

*[Meeting Adjourned at 2:10 p.m.]*