

**BOARD OF ZONING APPEALS**

July 5, 2006

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

Called to order: 1:03 p.m.

CHAIRMAN BROWN: We'll call the July meeting of the Board of Zoning Appeals to order and I'll ask a representative from the County Attorney's office to make a few preliminary remarks regarding procedural matters. If you would please.

MS. MCLEAN: Good afternoon, my name is Elizabeth McLean and I work with the Richland County Attorney's office. I'm just going to run over a quick overview of the procedure of the Board and some things to keep in mind when you're speaking to the Board. First of all if you have any cell phones or pagers or anything like that if you'd please turn them off so we don't disturb the proceeding today. We are recording this proceeding, detailed minutes will be made so turn everything off that might make some noises we'd appreciate it. The Board of Zoning Appeals is a quasi judicial body, it's like a quasi court, okay. Okay we will hear testimony, there will be witnesses, people will be sworn in, you are under oath when you come before the Board, okay. It is much like a court in many ways, you will get a decision rendered in an order and so when you come up here please be advised you are under oath, okay. We have no idea exactly how long the meeting will last today. When you come up there will be a presentation by the applicant, the Zoning Administrator and such things, I have no idea how long that will last, it'll depend on how long the Board takes asking you questions things like that. It could last 15 minutes a case or 30 minutes a case, an hour a case it just depends on how many people come to speak as well. The order of presentation today will be a

1 case will be called according to the agenda. The Board may change the order of the  
2 agenda upon a motion of the Board or someone else for good cause for an emergency  
3 or some reason. Generally speaking they'll follow the agenda though. The Zoning  
4 Administrator or a representative of the Zoning Department will speak first and present  
5 the case, then the applicant will be called. The applicant can speak for 15 minutes, if he  
6 so chooses to present his case or anyone the applicant wishes to speak on his behalf  
7 can, can partake in that 15 minutes. Then the opposition can speak, anyone who  
8 signed up to speak in opposition of the case gets three minutes apiece. Now if there  
9 are a lot of people here we will take spokespersons, they're very welcome to speak. If  
10 you've got five people that want to say generally the same thing, someone can speak  
11 on everyone's behalf and if it's more than, if they're speaking for more than three people  
12 we'll allow them five minutes to speak, okay. But if you, if you've got a spokesperson on  
13 your behalf you don't get to speak so you can't do both and you can't yield or seed your  
14 time to someone else. So three minutes apiece or a spokesperson five minutes, okay  
15 but that's up to you, you make that decision. Once all the opposition has spoken then  
16 the applicant can come up for a five-minute rebuttal. Now all these time periods can be  
17 waived or changed by the Board if the Board is asking questions for 20 minutes,  
18 obviously you'll get more than five minutes to speak or three minutes to speak,  
19 whatever it may be but that's all up to the Board, this is general guidelines. Please  
20 when you come to the microphone, speak into the microphone and say your name and  
21 address into the microphone so the Board can contact you if we need to afterwards for  
22 any questions or concerns or to mail you anything, any decision of the Board. Please  
23 address all your comments to the Board. Don't speak to someone in the audience and

1 if you're in the audience and not in front of the microphone please don't speak the  
2 Board or to someone speaking. If you need to address someone in the audience,  
3 please ask the Board's permission to get a comment from the audience, okay. Other  
4 than that address all your comments straight to the Board. If you're in the audience  
5 speaking, the Board is not going to take your comments, they will not listen while you  
6 are not under oath and before the Board so there's need to yell out comments, okay  
7 wait till it's your turn to speak please. Like I said before you are under oath. I will swear  
8 everybody in that wants to speak today. There is a such thing as contempt of the  
9 Board, we can certify that to the Circuit Court and they can issue any kind of  
10 punishment that is allowed under law for contempt of the Board, so just be advised  
11 you're under oath. Also we ask that you not generally bring petitions before the Board  
12 we prefer that you have, you know, affidavits and the such. If you'd like to bring, the  
13 Board can take positions, petitions if they like but they're not going to be given as much  
14 weight as something that's a signed letter or an affidavit; that's up to the Board.  
15 Something the Board cannot do is enforce restrictive covenants or neighborhood  
16 covenants. The Board has nothing to do with this. Any kind of restrictive covenant you  
17 have with your neighbors goes to the court, it has nothing to do with the Board of Zoning  
18 Appeals, okay. We cannot, cannot enforce them so if you bring them up to the Board  
19 it's information they can't use. They can't use it in their decision as much as it, it seems  
20 like it would be something they need to know, it has nothing to do with the Board.  
21 That's something that has to be taken to the court so keep that in mind. If you talk to  
22 them about it they can't take it into consideration in their decision. What will happen  
23 today is the Board will reach a decision, that decision we'll call a conditional decision. It

1 is not final until, until the minutes are approved. Now the minutes of this meeting will go  
2 up for approval at the next BOZA meeting most likely, that'll be the next month's  
3 meeting. So no decision of this Board is final until the minutes are approved. Keep that  
4 in mind, that's a good thing to know if you are waiting to do some construction or  
5 something. The Board can reconsider their decision the next time, the next meeting  
6 before the minutes are approved they could reconsider this and this could get turned  
7 around. So you're doing any work or any anything at your own risk before the minutes  
8 are approved. Now once the minutes are approved it's out of the Board's hands. Any  
9 kind of appeal would go to the Circuit Court. Any interested party may appeal to the  
10 Circuit Court within 30 days of the decision of the Board being mailed; that's according  
11 to Title 6 of the *South Carolina Code of Laws*. So just keep in mind if you have any  
12 other questions about any of this, the appeal process or anything like that just let me  
13 know and I'll, I'll slow down, just, just try to go through this quickly. If you don't have any  
14 other questions, did everyone sign up that wants to speak? Okay if you didn't, okay if  
15 you want to speak, after I, after I give the oath you can come down front and sign up if  
16 you want to speak today you need to be signed up on the correct form. So after I give  
17 the oath I'll go ahead and swear everyone in, if you have not signed in come down front  
18 and sign in and so we'll know who needs to speak today okay. Now if you plan to speak  
19 before the Board please stand up and raise your right hand, I'm going to give everyone  
20 the oath together. If you plan to speak, okay everyone who's going to speak stand up,  
21 raise your right hand and repeat after me please, or answer this please. Do you swear  
22 or affirm that the testimony you shall give here today shall be the truth, the whole truth  
23 and nothing but the truth?

1 AUDIENCE: I do.

2 MS. MCLEAN: All right you may be seated. If you need to sign up please come  
3 up now okay. Mr. Chair, you have the sign up forms?

4 CHAIRMAN BROWN: Yes.

5 MS. MCLEAN: Okay, the Chair has the sign up forms right up here.

6 CHAIRMAN BROWN: Mr. Price you want to proceed with the first case?

7 **CASE 06-18SE:**

8 MR. PRICE: The first case is case 06-18 Special Exception. The applicant is  
9 requesting the Board of Zoning Appeals to grant a Special Exception to permit the  
10 construction of a communication tower in an RU, that's Rural District. The applicant is  
11 Jonathan Yates. The location is 1209 Montgomery Lane, the parcel is about a 10 plus  
12 acre tract. The existing land use is residential. The applicant proposes to erect a 230'  
13 telecommunications tower within a 10,000 square foot leased area. The surrounding  
14 area is predominantly large tracks that are devoted to agricultural and residential uses.  
15 If granted approval by the Board, the applicant would be subject to the, to the provisions  
16 of Section 26-152(D)(24).

17 CHAIRMAN BROWN: All right Mr. Yates, you want to come forward and give us  
18 your name and tell the Board what it is you're wanting to do please?

19 **TESTIMONY OF JONATHAN YATES:**

20 MR. YATES: Thank you very much Mr. Chairman, members of the Board my  
21 name is Jonathan Yates. It's been a while, we stayed away as we said. Very briefly  
22 Cingular Wireless here on today, this is part of our plan that we had talked about a little  
23 bit last year and this year, while we were very busy in Richland County bringing our

1 coverage last year, this year we're not doing as much. We're presenting two towers  
2 today one that I'm doing and one with my good friend and colleague Greg Brown, who's  
3 doing a tower for us. In addition we'll be coming back in August with another. Quite  
4 simply a very busy year for us. Bellsouth and SPC, our two parent companies are  
5 merging so when I come to you next year we're going to be called AT&T, so a big year  
6 for Cingular, a big year for South Carolina. Briefly what it meant to us with the merger is  
7 we merged our operations with the operations of AT&T Wireless, which meant a lot to  
8 folks around the country but in South Carolina where we had no AT&T Wireless it meant  
9 that we had to get South Carolina equivalent to the rest of the country in terms of  
10 coverage. Today we have before you a site on Montgomery Lane. To get to  
11 Montgomery Lane you go down Bluff Road, it's about a half-mile north of Bluff Road and  
12 about 700' north of John Wesley Road. Greg, we'll show them the site plan real quickly.  
13 We were, we were attracted to this site in that it, it's owned by James and Barbara  
14 Collins, it was a 10 acre and as you can see heavily wooded sight. The Collins are in  
15 the middle, in the middle of the property away from the tower, are in the process of  
16 building out I think a sort of retirement place with that. And it's going to be a log sided  
17 dwelling and some out buildings that they're continuing to work on. A very, a very good  
18 sight for us in that it achieved the coverage objectives. What we're trying to do, we  
19 have existing coverage along I-77 with this site we're bringing our coverage east at,  
20 east of Columbia into the Gadsden area where we have some deficiencies at present.  
21 Before we came here today just a few things we did, we, we had this tower reviewed  
22 and approved by every state and every federal agency that has jurisdiction over cell  
23 towers, which is many. In addition we had to go to several Indian tribes, Native

1 American tribes and we got approval from what we call their THPO of this to make sure  
2 that we're not disturbing any Native American burial or archeological remains. As is  
3 important for Richland County I always bring the FAA, this is our determination from the  
4 FAA that we create no hazard to air navigation. Greg, we'll next look at the first set of  
5 boards; this one, this one right here. Since I've seen you last the ordinance has  
6 changed slightly so if you bear with me we'll work through the ordinance quickly. What I  
7 need to do today is to show you how we meet the requirements of the ordinance. We  
8 have first just the general tower requirements and then we have as required by Richland  
9 County, a requirement for any Special Exception going before Richland County. First  
10 and foremost use districts, we find ourselves at 1209 Montgomery Lane in the Rural  
11 District. Rural Districts allow facilities as, as we are proposing. The next one is the  
12 setback and Greg let's put this down for a second and go back to the site plan let me  
13 walk you through this one. The setback requires first there are two parts to the setback  
14 requirement. First I must meet the underlying setbacks of the Rural District, which are  
15 40 front feet, I always, I always mess that up when I say too quickly, 40 front feet, 50  
16 rear and 20 on the sides. Our facility is located here. We're some 250' off of  
17 Montgomery Lane, we only have to be 40. We're 630' to the rear property line to the  
18 west, we only have to be 50. And on the sides, on this side I'm 280', on this side I'm 90'  
19 and we only have to be 20. In addition, under your ordinance we have to be setback  
20 the height of the tower from any inhabited residential structure. The structures owned  
21 by the Collins are over 230' back here. We did detect on the aerial and we did the  
22 measurements on it, there's an uninhabited residential home trailer that is presently in  
23 the midst of foreclosure we understand, that's 190' over here. So just to be safe and in

1 case it ever gets re-inhabited we sent out to Glen Martin Engineering to review for us  
2 what the fall zone radius would be for this facility. It's a 230' lattice, it's designed in a  
3 catastrophic conditions, which we've yet to see in South Carolina but to break at the  
4 180' point, meaning the top 50' would sway down. Mr. Tinsley, head of Engineering for  
5 Glen Martin, confirms that if there was a catastrophic condition that it would within 85' of  
6 the tower base. That 85 is important, so consequently we designed our sight to allow  
7 us to have not just 85 but 90' to the property line. Presently the trailer is another 100'  
8 over there, but we just wanted to be additionally safe for the future. All right Greg, we'll  
9 go back to the ordinance board. The, and this is an important one, and Greg and I are  
10 going to talk about it a little more later, in D we have to show why didn't we use anything  
11 that was existing out there and also are we going to allow others on our, on our tower.  
12 Cingular, and I say this again, we build towers and you've seen a lot of us, we build  
13 them by default. What we prefer is to have someone like Greg, who used to be with us,  
14 go out and build it for us. We're in the communications business, not the tower  
15 business. In this case we did a search everything around there, there was nothing and  
16 it was confirmed by the, which we submitted in our application the FCC Antenna Sight  
17 Registration Form, there was nothing within one mile. What I can tell you if there was  
18 anything close, we would have used it cause I wouldn't have to come here before you  
19 today, we could have co-located and saved a lot of money. On the flip side of the coin,  
20 we have designed this facility for Cingular to be at 230', however we've also designed  
21 the facility, and you can see in our site plans, where at least three of our competitors  
22 can also go on the facility. In addition, it is Cingular's policy throughout the State of  
23 South Carolina that if any Richland County agency, particularly Public Safety or any

1 other agency for the public good needs our tower to transmit their communications, we  
2 will make it available and we'll make it available free of charge to the County. So we  
3 designed our tower not just for us, three of our competitors and any public, the most  
4 recent use we've had of this is in Berkley County. We assisted Berkley County with the  
5 deployment of their 800 Mega Hertz system, or emergency system and they're going to  
6 probably use about seven or eight of our towers at no cost. Next requirement is  
7 illumination; this is always a tough question. At 230', we've been approved by the FAA,  
8 but as we're over 200', we have to be illuminated. We've talked about this before, there  
9 are a couple of ways to illuminate, the purpose of illumination is not to create a harm to  
10 air navigation safety. The easiest way that people traditionally did it was just a bunch of  
11 strobe lights running up the tower blinking white 24 hours a day. We take it, we take our  
12 job a little more seriously, we're going to go with a system designed by an outfit called  
13 Flash Tech, similar systems designed by Honeywell and TRW. What this does is a  
14 special patent that all the light has a deflector built into the light system so it deflects it  
15 upward, where it needs to be for the airplanes. Further it's white during the day, red at  
16 night but the important thing at night when people can see lights, not only do we have  
17 the deflection system built in but if you go 10 degrees below the horizon you only get  
18 1% of output. What does that mean? If you go off the Collins property, it's equivalent to  
19 a 60-watt patio bulb. This system cost about 10 times what a normal system would do  
20 but what we've found in our deployment throughout mid and eastern South Carolina  
21 where we have flatter terrain, it does not have a deleterious affect on passerbys. Okay  
22 Greg, we'll go back to this board; sorry for all the boards up and down. Next  
23 requirement is that we must have secure our equipment and the tower with a seven foot

1 high fence. We've leased a 100 x 100 area, inside of that we're going to fence 70 x 70  
2 with a seven foot fence that we top with an anti-climbing device for 1' 3, so we'll actually  
3 have a total of 8' 3 of fencing on a 70 x 70 area, which leads to the next question. We  
4 have to comply with the requirements of 26-176, which is your landscaping  
5 requirements. As you can see from the aerial this is a heavily treed property, but what  
6 we're going to do is we're going to scoop out at least 10' around our fence line, we're  
7 going to come back in with 71 Leland Cypress trees, we're going to plant them 8' 6 off  
8 center and so even though we have the incredible existing vegetation, we're going to  
9 put in new vegetation to absolutely screen and mask the base of our facility. H, we're  
10 not allowed to have any signage or advertising on the facility, that is Cingular's policy on  
11 all sights. The only signage we have is required by the FCC, it is emergency  
12 information and it's identification for the sight required by the Feds. Last question,  
13 communication tower which is no longer used must be removed within 120 days. If you  
14 look through your application there's a letter from me to that effect. Cingular will  
15 absolutely remove it if we're not using it and we would make it a condition this approval.  
16 These are the tower requirements. Greg, the last board we'll go to. In Richland County  
17 every Special Exception requires that we meet the following, following criteria. A, traffic  
18 impact that's really the good news. It takes us about 30 days to build out this sight, after  
19 that Cingular will only visit eight, nine, maximum 10 times per year and by a visit, a  
20 technician in an SUV is only on sight for an hour or two. So we do not create any  
21 additional traffic into the neighborhood. What affect do we have on vehicle and  
22 pedestrian safety? Here we get to brag a little bit too. It has been shown clearly by law  
23 enforcement agencies not only through the country but through the world that cellular

1 saves lives. The sheer fact of the matter, accidents are reported quickly, people can get  
2 in touch with law enforcement and also as we move closer and closer to the completion  
3 of the E911, or the 911 capabilities, cellular does enhance vehicle and pedestrian  
4 safety. C, potential impact of noise, light, fumes or obstruction of air flow on adjoining  
5 properties, we create no noise, we create no fumes, no odor, no smoke and with the  
6 lighting we've done the best job possible but using the downward deflection device, so  
7 off sight from the Collins property the equivalent of a 60-watt patio bulb. Last question,  
8 next to the last question, adverse impact of the proposed use on the aesthetic character  
9 of the environs to include the possible need for screening. We have selected a 10  
10 acres parcel heavily treed, we've gone 250' off Montgomery Lane to get it into the  
11 parcel and furthermore we're going to actually remove some of the vegetation and come  
12 back in with the 71 Leyland Cypress trees so in terms of screening, the base of the  
13 facility will be absolutely screened. Last question, orientation and spacing of buildings.  
14 We do not employ any buildings on this site, it'll simply be outdoor cabinets, which will  
15 be inside the 70 x 70 compound, which is kept secure at all times, which works off our  
16 tower. Sorry I was long winded, just because we haven't been before you in a while, I  
17 wanted to walk you through the ordinance, we're here for any questions. Greg and I will  
18 be presenting another one. Greg was formally the Senior Radio Frequency Engineer  
19 for Cingular for South Carolina. He retired early on us and has gone into the tower  
20 business and he's a good ally and a good friend and he knows how these sites are  
21 designed. We thank you for your time. We hope we can get your approval on this site

1 as it will assist Cingular into bringing coverage into Gadsden where we presently have a  
2 void. Thank you very much.

3 CHAIRMAN BROWN: Questions by members of the Board? Mr. Yates, I've got  
4 one. You indicated that specific distance that you were separated from the residents on  
5 the property can you tell me again what that distance was?

6 MR. YATES: It's around 250, sir. It's over 230, we have to be 230 and we, we  
7 make the 230 and I'm not sure of the exact, specific but it's in excess of 230, which is  
8 the height of the facility.

9 CHAIRMAN BROWN: I think that's more than 230. The way I read the  
10 ordinance it's 50' plus one foot -

11 MR. YATES: It's 50' up to, up to, it reads a little funny sir. It's 50' up to the first  
12 50 feet.

13 CHAIRMAN BROWN: Right.

14 MR. YATES: And then a maximum of 250.

15 CHAIRMAN BROWN: Right.

16 MR. YATES: Yeah.

17 CHAIRMAN BROWN: But the tower is what 230 and you're how far away?

18 MR. YATES: We're right at, let me - yeah the ordinance has always been a little  
19 confused - for towers in excess of 50', the setback shall increase one foot for each foot  
20 of height as measured from the base, the maximum required to -

21 CHAIRMAN BROWN: I would take that as increasing from 50' -

22 MS. CAIRNS: I wouldn't.

1 CHAIRMAN BROWN: You wouldn't? What's been the position in the  
2 Department on that?

3 MR. PRICE: Well I'm kind of looking at that now Mr. Brown.

4 CHAIRMAN BROWN: Or you might want to talk to the attorney and -

5 MR. PRICE: You know, it does state here, it says for towers in excess of 50', the  
6 setback shall increase one foot for each foot of height of the tower as measured it says  
7 from the base of the tower. So that puts [inaudible] starting back over.

8 CHAIRMAN BROWN: I would say at the very minimum you'd, you'd still have to  
9 be 230'.

10 MR. YATES: Right 230 and it goes to a maximum of 250.

11 CHAIRMAN BROWN: And you're how far?

12 MR. YATES: We're somewhere between 230 and 250, but I can't confirm that.

13 MS. CAIRNS: I have a question on the setbacks from the side property line  
14 you're setback about 75 or 85'?

15 MR. YATES: Ninety feet, 90' on one and 280 on the other.

16 MS. CAIRNS: So you're not 230' setback?

17 MR. YATES: Yeah, but from, the setback is from an inhabited residential  
18 dwelling.

19 MS. CAIRNS: It's a setback.

20 MR. YATES: Yeah from an inhabited residential structure.

21 MS. CAIRNS: I mean, that would impose restrictions on the neighboring property  
22 that don't otherwise exist.

23 MR. YATES: No, no ma'am. It's -

1 MS. CAIRNS: Setbacks are from property lines.

2 MR. YATES: Not on this one. This one is from an inhabited residential structure  
3 and which also leads, Colonel, to the building - the Collins are not presently occupying  
4 their house on their property, they're working on it so it's not inhabited either. As, as  
5 we, yeah the ordinance requires setbacks from the inhabited residential structure.

6 MS. CAIRNS: I, I disagree. I believe that the restriction is that you must setback  
7 230' as well as not being within 200' of a residence. Cause the neighboring property -

8 MR. YATES: It says for an inhabited residential dwelling.

9 MS. CAIRNS: Can I, I'm curious, Mr. Price, I mean the setbacks are they from  
10 the property lines?

11 MR. PRICE: Typically we, we always measure our setbacks from the property  
12 lines, however as I'm reading here it says the minimum setbacks for communication  
13 towers from certain uses shall be as follows. So evidently -

14 MS. CAIRNS: Well one of the uses is a residential use and the neighboring  
15 property is a residential use property being that it's zone Rural, which allows residential  
16 use, right?

17 CHAIRMAN BROWN: But he's setback 50' from that, over 50.

18 MS. CAIRNS: Yeah but his tower's 230' tall so it'll require a 230' setback from  
19 the side property line. Cause the neighboring property owner has the right to build a  
20 house within what 20 or 50' of, I don't remember the setback -

21 MR. PRICE: Twenty feet from the side -

22 MR. YATES: Ms. Cairns, you're right that's why on that setback we got the full  
23 zoned certification that in case of any, the purpose is to stop a tower from going -

1 MS. CAIRNS: I understand the fall safe concept but the code requires the  
2 setback of 230' and you can't give a setback of 230' on this particular property.

3 MR. YATES: No, and if we've misread the code we apologize. We've always  
4 thought it was from the residential structure in the RU -

5 MS. CAIRNS: [Inaudible] residential structure on the property for which -

6 MR. YATES: Yeah well we've always read it as the structure itself is the way  
7 we've done the setback.

8 CHAIRMAN BROWN: I'm inclined to agree with you -

9 MR. PRICE: Just reading from the code we know it's going to be at least a  
10 minimum of 50' regardless.

11 MS. CAIRNS: Well but it's, that if the tower was less than 50' I think it's, I think  
12 it's a 230 -

13 MR. PRICE: Right I'm agreeing with you.

14 MS. CAIRNS: Okay, I'm sorry.

15 MR. PRICE: Yeah I'm saying you have to give at least 50' so that's, that's  
16 already established and then of course once they go over 50' then that's when you kick  
17 in one foot per with, with not, with the maximum being 250'.

18 CHAIRMAN BROWN: And I think while we understand the concept of the, the  
19 fall zone that's not going to obviate the requirements of the zoning ordinance.

20 MR. YATES: In that case cause, could we request to review it as a Variance for  
21 that one side setback cause otherwise the property, the property is a total of about 300,  
22 you know, 400' apart so it would make the property unusable and it's a perfect piece of  
23 property for that.

1 CHAIRMAN BROWN: Well, as I remember the code, and correct me if I'm  
2 wrong, you can't have a Variance and Special Exception in the same application. I think  
3 it would require you to come back with a separate application for a Variance.

4 MS. CAIRNS: Can you piggyback them anyways?

5 CHAIRMAN BROWN: You can't have both on the same property can you?

6 MR. YATES: I can just say in the past we've, we've always measured from the  
7 house.

8 MS. CAIRNS: Well that would be the house that's on the property.

9 MR. YATES: Yeah, no, no, no we've measured from the off, the off site, if there  
10 was a house off site we got to measure from the base of the tower to the structure.

11 MS. CAIRNS: But I mean that belies the concept of what a setback is, setbacks  
12 are measured from property lines.

13 MR. YATES: Not always, no ma'am. Under South Carolina law you can have  
14 them measure from a use, a, a actual structure or you can have them measured from  
15 property line and this references inhabited residential structure.

16 MS. CAIRNS: For residential use land.

17 MR. YATES: And in both cases neither of the structures are inhabited.

18 MS. CAIRNS: Well but the land is residential use.

19 MR. YATES: Yeah, no it gets confusing.

20 MR. PRICE: Mr. Chair, yeah this is, unfortunately this is one of those situations  
21 where the new code, just by some changes from the previous code, has kind of thrown  
22 us for a little bit of a loop because if I think, if you'll remember and I don't have the  
23 previous code in front of me and I apologize for that, but the previous code allowed for a

1 Special Exception within the Special Exception previously. So back, you know, under  
2 the old code you could have granted a Special Exception to go along with this Special  
3 Exception essentially without the Variance. Unfortunately, with the revision to the new  
4 code, that part was not carried over so it's going to be a little different in which I think a  
5 Variance may be necessary for this and then the granting of the Special Exception. Of  
6 course, normally when we deal, when we kind of couple a Variance and a Special  
7 Exception for one case, usually there's a structure there you try to grant the Variance to  
8 make it conforming then you can, you know, grant the Special Exception to them, for  
9 them to establish a use. I think in this case this may require a Variance and if so you'd  
10 probably, if at the next meeting you would actually grant a Variance you'd probably have  
11 to put some conditions on it that a Special Exception must be obtained.

12 CHAIRMAN BROWN: Well let's look first on page 80 at sub paragraph G it says  
13 unless otherwise specified Variances from the specific standards for a Special  
14 Exception -

15 MR. PRICE: Excuse me, Mr. Chair -

16 CHAIRMAN BROWN: - in article six of this chapter are not permitted.

17 MR. PRICE: Could you give that section?

18 CHAIRMAN BROWN: It's section, subsection G on page 80.

19 MR. PRICE: We're, we're looking in different books here that's why I was saying.

20 CHAIRMAN BROWN: And it's under Section 26-56(G).

21 MR. PRICE: Okay.

22 CHAIRMAN BROWN: My reading on that would be that he could not get a  
23 Variance for the setback, specific setback requirements for towers.

1 MR. PRICE: I knew that was going to come up on this one.

2 MS. CAIRNS: What is the distance from the mobile home on the adjoining lot?

3 MR. YATES: One ninety, and it's, it's not inhabited and the ordinance says  
4 inhabited.

5 MS. CAIRNS: How long has it not been inhabited?

6 MR. YATES: Some period of time. It's supposedly in foreclosure at time of  
7 application, which is the magic date. We've done many of these in rural and it's, in the  
8 past it's always been from the inhabited structure.

9 CHAIRMAN BROWN: What say you, Ms. Attorney?

10 MS. MCLEAN: Me?

11 CHAIRMAN BROWN: Um-hum (affirmative).

12 MS. MCLEAN: Well I say that the zoning code is not under the Legal  
13 Department it's under the Zoning Department. So I can't make a determination without  
14 Mr. Price asking me for help I mean I, you know, it's under Mr. Price.

15 MR. PRICE: Well feel free to interject here because this question has come up  
16 before [inaudible]. This is what we've been kind of looking at here. I'll speak and let me  
17 turn to my pages so we can make sure that we follow along here. Okay Mr. Brown and  
18 the rest of the Board Members, this is kind of what we're, I think what we're looking at  
19 here. If you were to go back to Section 26-1, excuse me -56(G), unless otherwise  
20 specified Variances from the specific standards for a Special Exception as set forth in  
21 Article 6 of this chapter are not permitted. Other Variances shall be reviewed as set  
22 forth. Okay so as, as we're I think we've discovered, Variances are not allowed for

1 these sections. However as I'm looking at 26-152(B) under the conditions for a Special  
2 Exception -

3 CHAIRMAN BROWN: 26 what?

4 MR. PRICE: -152, 26-152(B)

5 CHAIRMAN BROWN: Okay.

6 MS. CAIRNS: What page?

7 MR. PRICE: If you have the new, do you have that, do you have that section,  
8 that version of the code?

9 MS. CAIRNS: 152(B)?

10 MR. PRICE: 152(B).

11 MS. CAIRNS: Okay, 221.

12 CHAIRMAN BROWN: Two what?

13 MR. PRICE: Remind me to give ya'll the same book that I'm looking into. Okay  
14 all Special, "All Special Exceptions shall at a minimum meet the conditions set forth in  
15 this section. The Board of Zoning Appeals shall approve or deny an application for a  
16 Special Exception, see Section 26-56 of this chapter based on the following. [Okay]  
17 one a determination that all standards for the particular use as defined in this article and  
18 in other relevant sections of this chapter have been met. Two finding that the Special  
19 Exception is in harmony with the intent and purpose of this chapter . . .". Okay if you go  
20 up to one, you're making a determination that all the standards have been met and then  
21 if we go to Subsection 24 for the Radio, Television and Telecommunications towers it  
22 says the minimum, it's (C), "The minimum setbacks for communication towers from  
23 certain uses shall be as follows. One in no case shall a communication tower be

1 located within 50 feet of a residential zoning district or an inhabited residential dwelling.”

2 Okay so if it's not, the question just becomes, if it is not a residential zoning district and  
3 there is not an inhabited residential zoning, residential dwelling on the property,  
4 inhabited residential dwelling, 50' would seem to be the minimum; that's what they  
5 would have to meet.

6 CHAIRMAN BROWN: So you're saying that the rural zoning district is not a  
7 residential zoning...

8 MR. PRICE: That is, is not defined. It's really up to interpretation. Now if the  
9 property is residentially zoned or it is inhabited then we go to two. I think there's a word  
10 missing there at the end of one after dwelling, maybe the word "or" should have been  
11 there. But it is a residentially zoned district and is inhabited residentially then I believe  
12 you apply the standards for two because I don't believe you can actually apply both of  
13 those because they would actually kind of contradict each other. So really it's up to the  
14 Board to determine which essentially, because in this case once you take, you know,  
15 once you come into session you become the Zoning Administrator essentially and you  
16 will make the determination on whether first it's a residentially zoned district and  
17 secondly whether it's inhabited residential dwelling and if so the 50' setback wouldn't  
18 apply. In this case he does have 90'. So I just don't think that you can apply both of  
19 those.

20 CHAIRMAN BROWN: I think he's got 190 feet.

21 MR. YATES: Yeah I have 190 and -

22 MR. PRICE: I don't believe you can actually apply both of these -

1 MR. YATES: And I can say when they transferred the old ordinance, which  
2 came through almost exactly, actually took [inaudible] word or two got left, we have  
3 done many of these in the past with some, with Ms. Perkins, Mr. Tolbert, Mr. Branham  
4 where it was determined that they RU was not a residential zoning district and we  
5 measured from the house. And in each case I had, I had way more than 50' from each  
6 structure even though they're not inhabited I still had more than 50' from each structure.

7 MS. PERKINS: Who owns the trailer? Is it on a separate lot?

8 MR. YATES: It's on a separate lot yes, ma'am. It's on a separate lot -

9 CHAIRMAN BROWN: On an adjoining tract?

10 MR. YATES: Adjoining track, and that's why we did the fall zone letter just to be  
11 safe from our base of tower to the property line we've got 90' and the fall zone letter  
12 came at 85 and then where the trailer is now there's still another 100' past that. So in  
13 terms of the 50' [inaudible] about four times.

14 CHAIRMAN BROWN: Let me see if I understand what your position is, Mr.  
15 Price. You're saying that if the rural zoning district is not treated as a residential zoning  
16 district then the setback from the property line is 50'?

17 MR. PRICE: Yes, it can be 50' if the conditions for the zoning district or an  
18 inhabited residential dwelling apply.

19 CHAIRMAN BROWN: Now there's a, there's a dwelling on the adjoining tract.  
20 The question with respect to that dwelling is whether or not it's inhabited inasmuch as  
21 it's not presently inhabited, at least Mr. Yates states that it wasn't inhabited as of the  
22 time that they filed the application whatever date that might have been.

23 MR. YATES: And we checked again too.

1 CHAIRMAN BROWN: I'm sorry.

2 MR. YATES: We checked again two weeks ago.

3 CHAIRMAN BROWN: And it was not inhabited.

4 MR. YATES: No, sir.

5 MR. PRICE: And of course regardless of what, what your, what your findings are  
6 today and, you know, of course until the minutes are approved then it's not final and of  
7 course between then and now we can definitely go by it and check ourselves from a  
8 Staff standpoint and let you know.

9 MS. CAIRNS: Do we have any standard for what uninhabited, I mean is it the 12  
10 months of abandoned use or is it just that, a magical day there's no one there?

11 MR. PRICE: I don't know if we do. Once again we can -

12 CHAIRMAN BROWN: I'm not aware that it's defined anywhere.

13 MR. PRICE: We, we could definitely go by and we could make that  
14 determination or at least we could come back and let you know whether it is -

15 CHAIRMAN BROWN: I think the thing we might ask you to do would be to  
16 contact the owner and find out how long that trailer's been uninhabited.

17 MR. PRICE: I mean we could also go and, and we could do some research such  
18 as if there's power to it, when was the last time power was there and we could check  
19 those to confirm and also -

20 CHAIRMAN BROWN: I think that would probably be the simplest thing.

21 MR. PRICE: - and also there's, we can also do a, just check the conditions of the  
22 home. I mean cause you're, you're right there's, there's, it could be just vacant as  
23 opposed to be, right.

1 CHAIRMAN BROWN: All right any additional questions for Mr. Yates? Hearing  
2 none, thank you Mr. Yates. Chair will entertain discussion. I guess the problem  
3 becomes one of the status of the, primarily one is the status of the dwelling on that, on  
4 the adjoining property and how long it's been uninhabited. And one approach to it could  
5 be to approve the request, if that's the desire of the Board, with a condition that the  
6 status with regard to inhabitation of the, or habitation rather of the trailer on the  
7 adjoining property be determined prior to approval of the minutes at the next meeting. I  
8 don't know how the rest of the Board feels about that and I'm not advocating that as a  
9 position necessarily, it would just be a means of addressing the problem. Comments?

10 MR. TOLBERT: I think the only way you're going to be able to determine that is,  
11 the measures is that, the Zoning Administrator stated either by they go into it as some  
12 legal matter but the simple way is to check the utility.

13 CHAIRMAN BROWN: That's right. And a visual inspection. I mean, if it's in a  
14 state of extreme disrepair then it's unlikely that it has been or will be inhabited, but of  
15 course we don't know that. Further discussion? Hearing none the Chair will entertain a  
16 motion.

17 MR. TOLBERT: Mr. Chairman I make a motion that 06-18 SE be approved with  
18 the status condition prior to signing off the minutes of our next meeting.

19 CHAIRMAN BROWN: Okay. Is there a second?

20 MR. BRANHAM: Second.

21 CHAIRMAN BROWN: We've moved and seconded that Case 06-18 be  
22 approved with a condition that the status of the residence on the adjoining property be  
23 determined prior to the approval of the minutes in, in final approval of the Special

1 Exception. All those in favor signify by raising their hand. Opposed? *[Approved:*  
2 *Cairns, Branham, Tolbert, Brown, Perkins, Perrine, Ashford]*

3 CHAIRMAN BROWN: Mr. Yates you may have your Special Exception. Next  
4 case Mr. Price.

5 **CASE 06-24 SE:**

6 MR. PRICE: Next case 06-24 Special Exception. The applicant is requesting the  
7 Board of Zoning Appeals to grant a Special Exception to permit the construction of a  
8 communication tower in the RU district. The applicant is G & K Towers. They'll be  
9 represented by Gregory Brown. The location is on Meeting House Road, the existing  
10 zoning is rural as stated previously. It's a 33-acre tract. The subject property is heavily  
11 wooded and undeveloped and I believe as you can see a large portion of it is in the  
12 wetlands. The applicant proposes to erect a 300' telecommunications tower within a  
13 10,000 square foot leased area. The surrounding area consists of predominantly large  
14 tracts that are heavily wooded and undeveloped. Residential structures scattered west  
15 of the parcel. Look down, it's kind of hard to tell but just in that little section right down  
16 in here, excuse me right here is where you'll find a little section of residential dwellings  
17 but the rest of it is pretty much undeveloped. Aside from the subject property of the  
18 subject parcel along Meeting House is a community of residential structures as  
19 previously stated.

20 CHAIRMAN BROWN: All right Mr. Brown would you tell us, state your name and  
21 tell us what it is that you're proposing to do?

22 **TESTIMONY OF GREGORY BROWN:**

23 MR. BROWN: My name is Gregory Brown.

1 CHAIRMAN BROWN: You're gonna need to be at a microphone.

2 MR. BROWN: Good afternoon and thank you for allowing this opportunity. My  
3 name is Gregory Brown. I was previously introduced by Mr. Yates and what we're  
4 proposing to do is erect a 300' communication tower at this particular site. We have  
5 presented the Board with an area map of, - I'll refer to as we go on. I guess for the sake  
6 of expedience of time, I'm going to go over all your zoning ordinances. And this  
7 particular parcel is zoned as rural. This is an undeveloped tract of land, mainly trees.  
8 There's a small section of that property that was used once for farmland and the 1,000,  
9 200 square feet within that section, strictly is just for farming, which is no longer being  
10 farmed, it's just an open field within that tract. The communication tower is designed to  
11 be a 300' site. There are no structures within the property, but, inside that property  
12 boundary and the property boundary from this site is roughly 400' to the actual street  
13 itself. As far as the setback, which gives us that, [inaudible] the setback, there are no  
14 problems there. We have similar; I'm in the business strictly for as an RF Engineer or  
15 Design Engineer. Cingular came to me; in this case, they needed to have coverage in  
16 this area. There were no other cell sites or towers within a search range and on that  
17 map I gave you, I think the closest one is probably maybe three, three and a half miles  
18 away, which given that, there is no cell phone coverage in this particular area. And,  
19 actually probably within about a mile circular radius of this area, your cell coverage for  
20 any carrier is very sparse. The tower will be illuminated in accordance to the FCC  
21 regulations and any state or federal government regulations it will be as such. As far as  
22 fencing, we, it's been, well, it's a standard to build a seven foot fence with an additional  
23 one foot, I guess you call it a non-climbing barrier, which makes it about an eight foot

1 fence that will be around this particular site. As far as landscaping, we will also put  
2 cypress trees around this particular property and in accordance to your zoning  
3 requirements. Even though this side again, the tree heights or the, or the average  
4 height of the trees or timber in this area is probably about 40 to 60'. So, as far as the  
5 base of the site, you're, there's no way that you could possibly see within that 400' of  
6 line of sight, the base of that site, but, nevertheless, we still would, in accordance to  
7 your zoning, we will plant the trees at the base of that site for our landscape. There,  
8 there will be no signage on this tower whatsoever. The only sign is that will be on, this  
9 premises, will be for emergency communication or any notification of the site for any  
10 tenants. For example, Cingular would be the base tenant for signage or any signage  
11 that is required by the federal government. And, we have agreed that within 120 days, if  
12 there's no activity or if this site is not being in use, it will be decommissioned and  
13 deconstructed or taken down. We have also applied for all of the regulations with the  
14 FCC, all the state and federal government regulations, we have applied and we've  
15 passed all of the them to erect this site.

16 CHAIRMAN BROWN: All right, anything further Mr. Brown?

17 MR. BROWN: That, that's pretty much it.

18 CHAIRMAN BROWN: Questions for Mr. Brown from Members of the Board?

19 MR. TOLBERT: Yes sir. Is there a maximum height, the height of the towers?  
20 We have one at 200, 250 and then we've got one at three. Is there a maximum amount  
21 for, that you can do a tower to prevent so many towers as coverage wise?

22 MR. BROWN: Three hundred feet is, I think even in your ordinance, is typically  
23 the maximum. There are some counties and areas that I've seen them more, but it is

1 very rare that that happens anymore, as far as the maximum height. Once you exceed  
2 a 300' tower, it becomes very difficult now; you've got to bring the communication from  
3 that height back down to where everyone is using it. So, therefore, with the, the  
4 electronics I would say the maximum height, in my view as an engineer, that you'd  
5 really want to put your equipment to get the most effective use out of it would be around  
6 the 300' mark.

7 MR. TOLBERT: Does that give you a wider range of coverage at 300'?

8 MR. BROWN: Yes and no. It has the potential of giving you a wider range; a  
9 wider range of coverage is really determined by the actual antennae or equipment that's  
10 put on the tower. One thing that I failed to mention as well as when you get above 300',  
11 you start having problems with the FAA, with the planes flying. We have, with this  
12 particular site, we have McEntire Air Base, which is about, I think roughly about four  
13 miles away. They don't like to have structures that high about the 300'. As a matter of  
14 fact, when we filed with the FAA, I think in this case, it would have been difficult to get  
15 anything greater than 300'.

16 MS. PERKINS: I have a question. You said there is potential, possibilities for  
17 wider coverage and then you run into problems. So, tell me why you're putting up a  
18 300' tower.

19 MR. BROWN: Let me elaborate. First, to address the wider coverage. If you  
20 use equipment that gives you a wider, in other words, the average or most antennas are  
21 built on either 45 in width or 90. And when you go 45, it goes further, but then it's hard  
22 to fill those areas in between. If you're above 300', you're going have a lot of those little  
23 pockets in between. If you go 90, then your signal doesn't travel as far. So, that's why I

1 was saying, there, there's a potential yes to go farther, but you create other problems,  
2 which now you have to have another site that can shoot back at that site to fill in those  
3 gaps. So, you solve one problem. If you're just shooting down a highway and there's  
4 nothing else around but farmland and that farmer's not worried about, you can go down  
5 that highway a long way. But, in an area where you want to get good coverage all  
6 around, that, I wouldn't advise that at all. And, I'm sorry, I, I forgot the second half of the  
7 question.

8 MS. PERKINS: Basically, that, you answered.

9 MR. BROWN: Okay.

10 CHAIRMAN BROWN: Any further questions for Mr. Brown?

11 MS. PERRINE: I have one. You didn't state, but I'm sure you're going to allow  
12 other companies to -

13 MR. BROWN: Absolutely, we have, this site is designed to have at least five  
14 tenants. That's the other reason we wanted to get at least 300, so that we wouldn't  
15 have problems with a lot of other towers popping up in the area.

16 CHAIRMAN BROWN: Any additional questions? All right, thank you sir. There's  
17 no one signed up in opposition. The Chair will entertain discussion, if any. There's no  
18 discussion, the Chair will entertain a motion.

19 MR. ASHFORD: Mr. Chairman, I so move.

20 CHAIRMAN BROWN: To approve?

21 MR. ASHFORD: Yes.

22 CHAIRMAN BROWN: So moved, is there a second?

23 MS. PERKINS: Second.

1 CHAIRMAN BROWN: And moved and seconded. The case 06-24 SE be  
2 approved. All in favor, signify by raising their hand. None opposed.

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

4 CHAIRMAN BROWN: Mr. Brown you have your request. Mr. Price will be in  
5 touch with you. Next case Mr. Price.

6 MR. PRICE: Ready, Mr. Chair?

7 MR. TOLBERT: Waiting on you.

8 **CASE 06-14 V:**

9 MR. PRICE: The next case is 06-14 Variance. The applicant is requesting the  
10 Board of Appeals to grant you a variance to encroach into the required, excuse me, I  
11 have a side, but it is actually a rear yard setbacks. No, I'm sorry, you're correct; to  
12 require side and rear yard setbacks on property zoned RU. The applicant is Edwin  
13 Davis. The location is 142 Summerhaven Drive. The parcel is a little less than half an  
14 acre. The subject property has an existing 2,697 square foot structure that was  
15 constructed in 1954, at least that's according to the records from the Assessor's office.  
16 The applicant proposes to encroach into the required and northern side yard setback by  
17 six feet. [pause] Okay, by six feet. The southern side yard setback by 10' and the rear  
18 by 30'. The surrounding area is comprised of residential structures located on non-  
19 conforming parcels. I think we've kind of gone through this previously. The parcels are  
20 non-conforming due to the zoning and the square footage of the lots. So, the square  
21 footage of the lots does not meet their lot area as required by the Rural Zoning. I think  
22 we have a couple of pictures here, excuse me. I can kind of tell you what's going on  
23 here. As you can see, this is across the area of the parcel and I think it's safe to say

1 that that the applicants are looking to add an addition on to the home, you know, to  
2 enjoy the Lake Murray view, of course. And, you can see part of the parcel is in the  
3 wetlands. Here is a picture of the house and I believe inside your package you do have  
4 what the site plans would be on it. There's the rear of the property and you can see this  
5 is part of the, the existing deck out there or the patio. What, I took a picture, took  
6 pictures of the side, the adjacent, the abutting property on the, excuse me. This is from  
7 his deck or patio and that is the home on, if you're facing it from the rear to the left, and  
8 as you can see, that home kind of already encroaches he, and he's asking for his, his  
9 request to kind of come in line with what is already out there. And, also this is the other  
10 abutting parcel and as you can see, that kind of goes already too. And that's it.

11 CHAIRMAN BROWN: All right, Mr. Davis, if you would state your name and tell  
12 the Board what it is you want to do please.

13 **TESTIMONY OF EDWIN DAVIS:**

14 MR. DAVIS: I'm Edwin Davis and I, I think Mr. Price did an excellent job of  
15 showing the site. My wife and I purchased this home back in 1989. We had teenage  
16 children and it was a weekend recreational place. It was in pretty bad shape at the  
17 time, but it was inhabitable with what we had to do. At this stage of this life, we're  
18 rethinking things and we want to build a permanent home on this site, which would  
19 actually require demolition and reconstruction of a new house. We had an architect  
20 look at it and he basically said don't try to salvage what you've got because the roof has  
21 leaked for years and there are structural defects and foundation problems. It was his  
22 advice that we not do that. So, in order to build a house that we would like to live in,  
23 we're requesting basically to stay within the same side setbacks that are existing with

1 our current house, but for the structure to move forward slightly. You saw on the  
2 pictures, the side houses - we would still be behind both of our neighbors on the, as far  
3 as setback from the lake if we do this and build it as we're asking for a variance. And as  
4 he said, the house was there before zoning was there. Everything around the  
5 neighborhood is out of compliance but, then all of our neighbors, I shouldn't say all, but I  
6 spoke to the four adjoining neighbors and they had no problems whatsoever in our  
7 doing this. They're very supportive of it. I know that this property, on one side is a  
8 house, the other house will be, I don't know, should not say soon, it is the desire of the  
9 owner to do the same thing we want to do and build a retirement home on that lot. But,  
10 again, whenever we, if we get the variance that we're requesting, we will still be further  
11 back than, than they will. So, we would like to do that but if, we, further, the lot narrows  
12 as you get to the street. If you had to go further back, that, that decreases the side  
13 setbacks, as the lot gets narrower. We just feel that this is in no way detrimental to the  
14 adjoining properties. We know it's going to improve the neighborhood and any other  
15 questions you have, I'll be happy to answer.

16 CHAIRMAN BROWN: I understood you to say that, insofar at least as to the  
17 sides of your proposed house, would, they'll would be within the footprint of the existing  
18 house?

19 MR. DAVIS: Actually according to the site plan, on one side is the same and  
20 other same, we have, we're actually increasing the set, increasing the distance to the  
21 property line, yes sir for a couple feet, but it is for practical purposes just the same.

22 CHAIRMAN BROWN: But, but the house will be longer than the -

23 MR. DAVIS: Yes, sir.

1 CHAIRMAN BROWN: - present -

2 MR. DAVIS: It's longer than the present structure yes, sir.

3 CHAIRMAN BROWN: By how much?

4 MR. DAVIS: I can't answer that question. We have an attached garage that this  
5 house does not have. The current house does not have an attached garage so that  
6 adds quite a bit to the back of the house also.

7 CHAIRMAN BROWN: Mr. Price?

8 MR. PRICE: It looks like it would be about 16'.

9 CHAIRMAN BROWN: But you're saying is the way it's designed, you're not going  
10 to in any way impinge on the, the views of your adjoining owners, is that correct?

11 MR. DAVIS: That, that is correct. He showed you an aerial of that. I actually  
12 have another copy of the aerial from the county web site if you would like to look at it. It  
13 shows the placement for the houses.

14 CHAIRMAN BROWN: I can see from the picture. Personally, does anyone want  
15 to see that aerial? Any members of the Board?

16 MS. CAIRNS: One question I have is the setback illustrated on the architect's  
17 drawing is to some point of the structure, but it's not really - the setback variance  
18 requested is to the edge of the deck because all parts of the structure are considered  
19 for setback. So, on this, like on this drawing, the architect has shown that it's a 46'  
20 setback to the corner of that, but it really is to that point that the code wants to know.

21 MR. PRICE: I believe what you're looking at is that, that is the setback to the  
22 existing portion of the house right here.

1 MR. DAVIS: But the 46' is to the corner of the structure itself. It does not  
2 include, does not include the decks.

3 MS. CAIRNS: Is to the structure.

4 MR. DAVIS: The decks will be a lower level down.

5 CAIRNS: But the deck, but in terms of our code when we look at setback for  
6 buildings.

7 MR. DAVIS: Yes, ma'am.

8 MS. CAIRNS: They, it includes, the decks have to be within the setback because  
9 the setbacks are part of the structure when you're trying to look at how far back you  
10 have to set -

11 CHAIRMAN BROWN: Are they, are the decks part of the structure if they aren't  
12 enclosed, if they aren't under a roof?

13 MR. PRICE: That is, that is, right now with the current code it is included as part  
14 of.

15 MS. CAIRNS: Only things like a patio, you know, an at-grade patio, I think.

16 MR. PRICE: Right, even, yeah, all of that, even, under the current code, even  
17 though, I, I know Mr. Brown what you're thinking. That if it wasn't covered, a lot of times  
18 we didn't include it, but right now it is included under the new code.

19 MS. CAIRNS: So, do, do we know what the distance is from the front of the deck  
20 to the property line?

21 MR. DAVIS: It's approximately 16' from the front of the house, the front of deck,  
22 would, it would be approximately 16' less than the 46'. It would be about 30' then and

1 again that is lower than the level of the house. You, you walk down steps to get through  
2 part of that deck and then you walk down further to get to the ground.

3 MS. CAIRNS: But the Board requires that we consider that.

4 MR. DAVIS: I understand, yes, ma'am, I understand that, but, I feel like we're  
5 improving our neighborhood and doing what's in keeping with what's happening at Lake  
6 Murray at this time.

7 CHAIRMAN BROWN: There's no questions for the applicant? Okay Mr. Davis  
8 thank you.

9 MR. DAVIS: Thank you very much.

10 CHAIRMAN BROWN: If there are no additional questions for Mr. Davis, the  
11 Chair will entertain discussion of the application.

12 MS. CAIRNS: I would, to whomever, the issue with these zoning, these not, well  
13 we have a non-conforming lot occupied. Looking at the zoning, because this is a 50'  
14 rear and 20' sides, but based on the side of the lot, it's as if it ought to be zoned RS-E,  
15 which would be, that's basically what size lot it is, 20,000 square foot lot, closer to that  
16 size. Which would be a 30' rear and 10' sides. So, I know it's not our job to change the  
17 zoning, but when you consider what it actually is and what kinds of requirements we  
18 have for those types of lots, I find that granting the variance for this, assuming that the  
19 point of the deck is 30' from the property line, I find granting the variance acceptable  
20 considering that we're just in a hard spot, where these things, in essence of being mis-  
21 zoned.

22 CHAIRMAN BROWN: Well, and it, it's a common problem we find out the lake,  
23 particularly.

1 MS. CAIRNS: Right.

2 CHAIRMAN BROWN: Because a lot of the property on the lake, when zoning  
3 became into affect, well, it was all when zoning came into affect, it was kind of a  
4 patchwork proposition of what they zoned rural at the lake and what they zoned  
5 residential. And it worked out fine for the people who, whose property was zoned  
6 residential, but it didn't work out nearly as well for the people whose property was zoned  
7 rural and didn't meet, it was non-conforming as of the time it was zoned. So I know  
8 that this not an uncommon type of request from, before the Board. People who have  
9 been on the Board for a while -

10 MS. CAIRNS: Yeah.

11 CHAIRMAN BROWN: And, even, you, you've been on the Board long enough -

12 MS. CAIRNS: To see this.

13 CHAIRMAN BROWN: - too, so it's not an unusual request. The Chair will  
14 entertain a motion. I think Ms. Cairns, you essence made one.

15 MS. CAIRNS: I, okay.

16 CHAIRMAN BROWN: If you would like to formalize it.

17 MS. CAIRNS: With respect to variance request 06-14 to intrude upon the  
18 setbacks as shown on the included plat showing the side setback staying primarily the  
19 same as is and the setback to the lake being 30', although dimensioned as such, that it  
20 approved such that, that the setback from the lake not be less than 30' from the side  
21 setback state, as shown on the plat -

22 CHAIRMAN BROWN: Is there a second?

23 MS. CAIRNS: - be approved.

1 CHAIRMAN BROWN: Oh, I'm sorry. Is there a second?

2 MR. TOLBERT: Second.

3 CHAIRMAN BROWN: It has been moved and seconded that the variance be  
4 approved as stated. All those in favor signify by raising their hand.

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

6 CHAIRMAN BROWN: Mr. Davis you have your request. Mr. Price will be in  
7 touch with you.

8 MR. DAVIS: Thank you very much.

9 CHAIRMAN BROWN: Mr. Price, the next case.

10 MR. PRICE: Just for information purposes, the part there about the decks is 26-  
11 172(b), that's going to be 5(b), you know, about the decks being included within the  
12 setbacks.

13 CHAIRMAN BROWN: Okay, give me that site again please.

14 MR. PRICE: 26-172(5)(B).

15 CHAIRMAN BROWN: Thank you.

16 **CASE 06-17 SE:**

17 MR. PRICE: The next case is 06-17 Special Exception. The applicant is  
18 requesting the Board of Zoning Appeals to grant a special exception to permit the  
19 establishment of a group daycare on property zoned RS-HD a single-family residential  
20 high density. The applicant is Patricia Sparks. The location is 405 Alderston Way. The  
21 parcel is .25-acre tract. The subject property has an existing single-family residential  
22 structure with a double car driveway that leads to a garage. The rear of the property is  
23 enclosed by a fence. The applicant proposes to establish a family daycare for a

1 maximum of six children. The ages of the children would range from newborn to five  
2 years of age. The proposed hours of operation would be from 6:30 a.m. to 6:00 p.m.  
3 The property is located within a subdivision of single-family residential structures. It's  
4 the Winchester Subdivision.

5 CHAIRMAN BROWN: All right, Ms. Sparks, would you come forward and give us  
6 your name and tells us what you intend to do please?

7 **TESTIMONY OF PATRICIA SPARKS:**

8 MS. SPARKS: Okay, thank you. My name is Patricia Sparks. I, I am here  
9 today, after raising four children and working for over 30 years, affordable and safe and  
10 convenient daycare has always been a concern of mine. I am now a housewife and I  
11 would just like to provide babysitting care in my home for my neighbors within my  
12 subdivision, for no more than six children. I am here today as part of my requirements  
13 with the South Carolina Department of Social Services. We, my street is a fairly large  
14 street and we do have parking allowed on the street and I do have some additional  
15 pictures that does show parking and how, just to show how wide the street is, if you  
16 would like to see these. Also, I have a fairly large driveway which is about 48' long and  
17 we do have two entrance, entrances and exits from my subdivision to go either way, to  
18 go out to the main street, so they wouldn't be virtually any traffic on the street. That's  
19 about it.

20 CHAIRMAN BROWN: Any questions for Ms. Sparks? Ms. Sparks, have you  
21 discussed this with your neighbors?

22 MS. SPARKS: I spoke to a couple of my neighbors about it. My neighbors on - I  
23 don't see them here, the ones that I did speak with about it. But, I do understand, I just

1 moved there in December, I do understand that there was someone else that did  
2 babysitting on the block and there was really no problem. It was across from the street  
3 on the other side.

4 CHAIRMAN BROWN: The property was posted with a sign?

5 MS. SPARKS: Yes, sir.

6 CHAIRMAN BROWN: That didn't elicit any reactions from any of your  
7 neighbors?

8 MS. SPARKS: I do have, I see two of my neighbors here that came over and  
9 spoke to me Sunday and we just talked about it. But, other than that, no one really said  
10 anything.

11 MS. PERKINS: So, the neighbors that you spoke to before did understand, did  
12 you say that they were okay with it?

13 MS. SPARKS: Yes, the neighbors, I have neighbors across the street, they're  
14 not here.

15 MS. PERRINE: But the ones that you, you said some are here today?

16 MS. SPARKS: There is a family here today, yes.

17 MS. PERRINE: So they're -

18 MS. SPARKS: Right beside me.

19 MS. PERRINE: They're okay; they're okay with it?

20 MS. SPARKS: They didn't say whether or not they were. They're here, but they  
21 didn't say if they were.

22 MS. PERRINE: Thank you.

23 MS. SPARKS: Thank you.

1 CHAIRMAN BROWN: Any additional questions? I guess not.

2 MS. PERRINE: Wait a minute. I have one.

3 CHAIRMAN BROWN: Wait, there's another question Ms. Sparks.

4 MS. SPARKS: Oh, I'm sorry.

5 MS. PERRINE: With the pictures of your yard, I think in the back I saw a dog  
6 house. Do you have a dog?

7 MS. SPARKS: Yes I do. He's a chained all the way in the back. I have like a  
8 quarter acre back there, which is chained all the way in the back.

9 MS. PERRINE: What kind of dog?

10 MS. SPARKS: He is part Labrador and, he's a mixed breed.

11 MS. PERRINE: So when the children are in the yard, the backyard playing -

12 MS. SPARKS: Well, my dog is a friendly dog, but he's all the way in the back  
13 and I really don't plan on using that part of the backyard. My back yard is just so big  
14 and I have other pictures of my backyard if you would like to see it. I also have a deck  
15 back that that I, I -

16 MS. PERRINE: So you're going put like maybe a pen around his house so that -

17 MS. SPARKS: Yeah, we're, well my husband did talk about getting a gate, a  
18 high gate so that he can have a little more freedom also, because he's sort of chained  
19 up back there all the time.

20 CHAIRMAN BROWN: Do you intend to have the children, to have periods where  
21 they play in the backyard or outside?

1 MS. SPARKS: Outside, I, I was going to have maybe some time out there but, I  
2 do have a pretty sized big front yard also, but the back is so big that, you know, we  
3 could just use off my deck or just the front part of my back yard.

4 CHAIRMAN BROWN: I think the concern I'm hearing is that if the children are in  
5 the backyard, children have a way of squirting out in different directions and sometimes  
6 it, it's difficult to keep an eye on five or six active youngsters and how there's going. I  
7 think it might be a concern of the Board with respect to the dog that some provision  
8 needs to be made to insure that there are separation between the dog and any children.

9 MS. SPARKS: Right, and we, we are, yeah, we, we will be getting a gate put in.  
10 I have discussed this.

11 CHAIRMAN BROWN: Did you say gate or are you talking about a, a separate  
12 little fenced area?

13 MS. SPARKS: Yes, a separate gate for him.

14 CHAIRMAN BROWN: Any additional questions for Ms. Sparks? All right, thank  
15 you ma'am.

16 MS. SPARKS: Thank you.

17 CHAIRMAN BROWN: No additional questions, the Board will entertain  
18 discussion.

19 MR. TOLBERT: Other than the concern about the dog, I, like you said, kids will  
20 wander off and I don't care how friendly a dog is, there's a time when he will bite.

21 CHAIRMAN BROWN: And you startle them.

22 MS. CAIRNS: Does our, does our review go to the extent of addressing the  
23 issue of a dog? I mean, our criteria for granting the special exception doesn't; we don't

1 rate the safety factor of the home and/or the dog. I mean, it seems to us that our criteria  
2 are the traffic, the noise, the suitability of the property.

3 CHAIRMAN BROWN: I think that addresses as maybe within, comes within the  
4 gambit of the safety of the property. Well, it may not be a -

5 MS. CAIRNS: [Inaudible] people, I mean, I just don't feel that the dog is within  
6 our purview. I mean, I think that, you know, DSS has got to license the place and they  
7 get much more involved in the safety of the particular facilities. Whereas, we're saying  
8 does this piece of land from a land use standpoint, for, this particular use is a special  
9 exception.

10 MS. PERRINE: Well, I was concerned about the safety of the children.

11 MS. CAIRNS: Sure, I'm saying that it's not a concern, I'm just not sure that it's  
12 within our scope of review.

13 CHAIRMAN BROWN: Well, you may be right.

14 MR. TOLBERT: You might, you might be, and I'm sure you're right about that,  
15 but it's just personal concern that I have.

16 MS. CAIRNS: Yeah, but we, yeah, but I mean we're always going to have  
17 personal concerns beyond which we can rule upon.

18 CHAIRMAN BROWN: Good point. Any additional discussion? Hearing none,  
19 the Chair will entertain a motion.

20 MS. CAIRNS: I would make a motion that special exception 06-17 for  
21 establishment of a day care be approved.

22 CHAIRMAN BROWN: Is there a second?

23 MR. ASHFORD: I second the motion.

1 CHAIRMAN BROWN: Has been moved and seconded. The special exception  
2 06-17 be approved. All in favor signify by raising their hand. Opposed.

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

4 CHAIRMAN BROWN: There are two in opposition. Ms. Sparks, you have your  
5 request. Mr. Price will be in touch with you. Mr. Price the next case.

6 **CASE 06-05 SE:**

7 MR. PRICE: The next case is 06-05 Special -

8 CHAIRMAN BROWN: Before you get into it, is Avery Winder here? I don't have  
9 anyone signed up.

10 MR. PRICE: Long story.

11 MS. PERKINS: So, what does that mean? A long story?

12 CHAIRMAN BROWN: I don't know what that means.

13 MS. PERKINS: I don't either

14 MR. PRICE: You know, we're already, I probably know the answer.

15 CHAIRMAN BROWN: No we don't know.

16 MR. PRICE: I know what's going to happen. If we, if we could just move this to  
17 the end, you know, maybe he may come in. He does live in Charlotte and I'm sure he  
18 was notified of this meeting. We've been in constant contact with him over the past  
19 year at least regarding this piece of property. So, you know.

20 MS. PERKINS: Now, we've been in session since 1:00 o'clock.

21 CHAIRMAN BROWN: And it's 2:30.

22 MS. PERKINS: Yeah. And, so. Are we moving to the end of, end of, end of the  
23 agenda, I don't think is - how much time does he need to get here?

1 MR. PRICE: Well, you don't, I mean, and, and, fortunately, I mean you could  
2 take a vote on it, but we don't really know the, the reasons for him not being here.

3 CHAIRMAN BROWN: We don't know what?

4 MR. PRICE: I don't know the reasons for him not being here at this time.

5 CHAIRMAN BROWN: Well, I don't either, but I'm not sure I really care what the  
6 reason is unless it's -

7 MR. PRICE: What, I mean if could have been something of a serious nature.

8 CHAIRMAN BROWN: It seems like the person could have called probably.

9 MS. PERKINS: Would you like to take a moment to call?

10 CHAIRMAN BROWN: Before we get to that, if we're gonna, if this case is going  
11 to be disposed of one way or another, I don't have the applicants signed up for the  
12 following case either. Is Lorine Simmons here?

13 MS. SIMMONS: Yes I am.

14 CHAIRMAN BROWN: Would you come up and sign in please ma'am? And is  
15 Raphielle Green here? Would you come up and sign in please?

16 MR. TOLBERT: I make a motion that we have a five-minute recess.

17 CHAIRMAN BROWN: It's been moved that we take a five-minute recess. Is  
18 there a second?

19 MR. BRANHAM: Second.

20 CHAIRMAN BROWN: All in favor.

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

22 *[Break]*

23 CHAIRMAN BROWN: Is there a motion to reconvene?

1 MR. TOLBERT: So moved.

2 CHAIRMAN BROWN: Seconded?

3 MS. PERRINE: Seconded.

4 MR. BRANHAM: Seconded.

5 CHAIRMAN BROWN: All in favor? *[Approved: Cairns, Branham, Tolbert,*  
6 *Brown, Perkins, Perrine, Ashford]*

7 CHAIRMAN BROWN: All right, we're back in open session Mr. Price. What's the  
8 status of Mr. Winder?

9 MR. PRICE: Evidently - now we haven't spoken to him directly, we spoke to a  
10 family member, he was under the impression that the meeting was tomorrow and  
11 they're trying to contact him to have him give Ms. Haynes a call. But right now -

12 CHAIRMAN BROWN: Didn't he have a sign in his yard?

13 MR. PRICE: Yes, but he, once again, he doesn't live here, in Columbia, as you  
14 can, if you just look at the pictures, it's really just a vacant piece of land, with an old  
15 uninhabitable house.

16 MR. TOLBERT: But, isn't he sent information from you?

17 MR. PRICE: Sir, we, we sent, we send letters.

18 MR. TOLBERT: Okay.

19 MR. PRICE: I don't know if we send them, we don't send them certified, but we  
20 do send them letters. I think Ms. Haynes may be getting some information now, I'm not  
21 sure, but I'm -

22 CHAIRMAN BROWN: What does the rule?

1 MR. PRICE: But, clearly, I know, I mean, I, I feel assured that based on the  
2 conversations that we've had over the past couple of months, clearly he should have  
3 know. Now, either, he was here on Wednesday, excuse me, last week. I may, I think it  
4 was on Friday. He had to deliver something for us and so if we were, was to converse  
5 with one of the ladies downstairs, he could have easily gotten the wrong information.  
6 They could have said that the meeting is tomorrow, which is when the Planning  
7 Commission is going to meet, so I don't know.

8 CHAIRMAN BROWN: And the Commission meets on Thursday?

9 MR. PRICE: Yeah-

10 MR. TOLBERT: The Planning Commission meets on Monday.

11 MR. PRICE: Ah-hah, the Planning Commission was scheduled to meet in  
12 Monday as always, but because it was coming the day before the holidays, they, they  
13 moved it until Thursday so

14 CHAIRMAN BROWN: What do, I can't remember what the By-Laws say about  
15 an absent applicant.

16 MS. MCLEAN: Yes sir, your Rules of Procedures actually state under  
17 appearances, "The Board may treat the failure to appear by on or behalf an applicant as  
18 a withdrawal or it may postpone any matter before it in the absence of such an  
19 appearance for a period other than that prescribed for withdrawal."

20 CHAIRMAN BROWN: Okay, in that case, what's the pleasure of the Board in  
21 terms of this particular applicant?

22 MS. CAIRNS: I would move that we defer this for one month and allow the  
23 applicant an opportunity.

1 MR. BRANHAM: I, I would agree. It's a mistake. You know, if he was thinking  
2 that it was tomorrow, then I think they should have another chance. But, it would be  
3 next month.

4 CHAIRMAN BROWN: I would agree with that also. Is that the pleasure of the  
5 Board that we treat it as a deferral until the meeting for August?

6 MS. CAIRNS: Yes.

7 CHAIRMAN BROWN: Is there a motion to that affect?

8 MR. BRANHAM: I so move.

9 CHAIRMAN BROWN: Is there a second.

10 MR. TOLBERT: Second

11 CHAIRMAN BROWN: All in favor?

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

13 CHAIRMAN BROWN: Okay. Next case Mr., Mr. Price.

14 **CASE 06-20 SE:**

15 MR. PRICE: Forgot my name already, huh? The next case is case 06-20.  
16 Excuse me, before we get into this, I believe some people may have come in and they  
17 may want to speak on some of these cases, but I don't believe they've been sworn in  
18 yet, if Ms. McLean could address that.

19 MS. MCLEAN: I just want to check to make sure that anyone who signed up late  
20 was actually sworn in, so, I, I'm not sure. Were you sworn in?

21 AUDIENCE MEMBER: No.

1 MS. MCLEAN: Please stand up and raise your hand. Do you swear or affirm  
2 that testimony you shall give here today shall be the truth, the whole truth and nothing  
3 but the truth?

4 AUDIENCE MEMBER: I do.

5 MS. MCLEAN: Thank you.

6 CHAIRMAN BROWN: Have you signed in on the sign-in sheet?

7 AUDIENCE MEMBER: I have.

8 CHAIRMAN BROWN: Pardon me.

9 AUDIENCE MEMBER: Yes.

10 CHAIRMAN BROWN: Okay.

11 MR. PRICE: Next case is case 06-20 Special Exception. The applicant is  
12 requesting the Board of Zoning Appeals to grand a special exception to permit the  
13 establishment of a group daycare on property zone RS-MD, single-family medium  
14 density. The applicant is Lorine Simmons. The location is 5 Scanley Court. The parcel  
15 is a little more than a third of an acre. The subject property has an existing single-family  
16 residential structure with a double car driveway that leads to a garage. The rear of the  
17 property is enclosed by a fence. The applicant proposes to establish a family daycare  
18 for a maximum of six children. The ages of the children will range from newborn to five  
19 years of age. The proposed hours will be 6:00 a.m. to 12:00 a.m. The subject property  
20 is located within a subdivision of single-family residential structure in the Heatherstone  
21 Subdivision. I don't know if I stated, but this home is also located in a cul-de-sac.

22 CHAIRMAN BROWN: It's a, located what?

23 MR. PRICE: In a cul-de-sac.

1 CHAIRMAN BROWN: Oh, all right.

2 MR. PRICE: You can view the aerial right there.

3 CHAIRMAN BROWN: Ms. Simmons, would you come forward and explain to the  
4 Board what it is you intend to do or wish to do please?

5 **TESTIMONY OF LORINE SIMMONS:**

6 MS. SIMMONS: Yes, my name is Lorine Simmons and I live at 5 Scanley Court  
7 in Irmo and my plan is to run a daycare center so that, and the hours are from 6:00 to  
8 12:00 midnight because of the fact that there are parents that work second shift and I  
9 want to be available for them. And, also I want to not only be a babysitting service, but  
10 also teach children. I, originally I'm from New York, I was working doing investment  
11 banking and I retired from that and for two years after that I worked in a daycare center  
12 and I really appreciate it with the fact of helping children and helping them to prepare for  
13 their education in school. And, the children is just a joy to me, and they, I got so  
14 attached I, I had to do this. So, I said when I moved south, I'm, I was born in Sumter  
15 and I moved back home. So, I said when I moved back, that's what I was going to do  
16 because I really enjoyed.

17 CHAIRMAN BROWN: Any questions for Ms. Simmons?

18 MR. BRANHAM: What kind of help you plan to have?

19 MS. SIMMONS: My sister told me that she would help me even before I really  
20 made up my mind that that was exactly what I was going to do. So, she's going to be  
21 my back-up.

22 CHAIRMAN BROWN: Any additional questions?

1 MS. PERKINS: So, is it kind of from 6:00 a.m. to midnight. Are, or you gonna  
2 keep the same six children for that entire period of time, or are you going to, or are  
3 some of those children come in at 6:00 going to leave and then you're get more  
4 children?

5 MS. SIMMONS: Exactly.

6 MS. PERKINS: And they stay to midnight?

7 MS. SIMMONS: Exactly, I'll get more or if, in fact, maybe I would have three in  
8 the morning and some three others would come in the afternoon, but the total children  
9 that I am going to watch is six.

10 MS. PERKINS: I understand that. But, there's a good possibility to be 6:00 in  
11 the morning and then they go home and then 6:00 in the afternoon?

12 MS. SIMMONS: Yes.

13 MS. PERKINS: Okay, that's what I was thinking.

14 CHAIRMAN BROWN: Any additional questions?

15 MS. PERRINE: I have a couple. You live in this home, right?

16 MS. SIMMONS: Yes I do.

17 MS. PERRINE: That you're going to have the children in? How long have you  
18 lived there?

19 MS. SIMMONS: Since October, October.

20 MS. PERRINE: Last October?

21 MS. SIMMONS: Yes.

22 MS. PERRINE: Do you own the home?

23 MS. SIMMONS: I own the home.

1 MS. PERRINE: Have you talked with the, any of the neighbors around or -

2 MS. SIMMONS: Yes I have. I've spoken to four of my neighbors, you know, who  
3 have children and I notice in your audience my, some of my other neighbors are here  
4 also. They didn't have any children, so I didn't really approach them with it but they saw  
5 the sign.

6 MS. PERRINE: Do you know if, if there's a homeowner's association in that  
7 subdivision?

8 MS. SIMMONS: Yes there is. There's also other daycare providers in that  
9 subdivision also.

10 MS. PERRINE: Are they, like on the same street as you are, or -

11 MS. SIMMONS: Right in the cul-de-sac where I'm at, there's no others. But in  
12 the subdivision itself, there's others.

13 MS. PERKINS: Being a good neighbor, are you a member of the homeowner's  
14 associations?

15 MS. SIMMONS: Yes.

16 MS. PERKINS: You are?

17 MS. SIMMONS: Yes.

18 MS. PERKINS: Did you present it at one of their meetings?

19 MS. SIMMONS: No, I did not because the first meeting that they had since I was  
20 there I was in transition of moving from New York to South Carolina.

21 MS. PERKINS: Okay.

22 MS. SIMMONS: So, I missed the first meeting.

23 MS. PERKINS: So, you said you were there since October, 2006 [sic]?

1 MS. SIMMONS: Yes.

2 MS. PERKINS: How often do they meet?

3 MS. SIMMONS: I have no idea how often but I know that they sent out a notice  
4 that was going to have a meeting, but I wasn't present for the meeting.

5 MS. PERRINE: It's just you and your sister that live in the home?

6 MS. SIMMONS: Yes.

7 MS. PERRINE: Just the two of you then?

8 MS. SIMMONS: Well, I have a nephew that is back and forth. He doesn't really  
9 *per se* live there. He's back and forth.

10 MS. PERRINE: How old is he?

11 MS. SIMMONS: He's 25.

12 MS. PERRINE: Would there be any other children that would be -

13 MS. SIMMONS: No, no other children.

14 MS. PERRINE: Okay.

15 CHAIRMAN BROWN: Any additional questions for Ms. Simmons? All right.  
16 Thank you ma'am. We do have some people signed up in opposition and I'll give you a  
17 chance to rebut out any of that after they're completed.

18 MS. SIMMONS: Okay then, thank you.

19 CHAIRMAN BROWN: The first person I have signed up is, is it Lobard or  
20 Robard? What did she say? Okay. The next person I have signed up is LeAnn  
21 Hansel.

22 **TESTIMONY OF LEANN HANSEL:**

1 MS. HANSEL: That's me, sir. Good afternoon Mr. Chairman, Members of the  
2 Board. Thank you for allowing me to speak this afternoon. I am the direct neighbor to  
3 the individual who is wanting to open the daycare at 5 Scanley Court. I'm not sure what  
4 neighbors she has spoken to, however, I am here as a spokesperson for many of the  
5 neighbors in our cul-de-sac. 5 Scanley Court is one of eight homes in this cul-de-sac,  
6 so therefore seven other homeowners would be affected by this daycare opening.  
7 Myself and Mr. Mark Dukes and Mr. and Mrs. Robold are here as three of the neighbors  
8 to protest the, the possibility of this daycare being granted special exception. I also  
9 have two letters of protest from two other neighbors who do not wish to see this happen  
10 in our cul-de-sac. Therefore, I have the support, including myself of five of the seven  
11 homeowners who would be directly affected by this daycare opening. We were  
12 unaware until today that the hours would be 6:00 a.m. until 12:00 a.m. and obviously,  
13 that concerned us as homeowners that children could be being picked or dropped of as  
14 late as 11:00 or 12:00 at night. I, myself, have a ten and half year old son, who lives  
15 with my husband and I and have a baby on the way and that's certain noise and traffic  
16 that we do not wish to be subjected to. I realize that the Board does not uphold the  
17 covenants and restrictions and we do not ask them to do so. However, that is one of  
18 the reasons that many of us bought in this neighborhood. Another of our concerns,  
19 being the traffic, this is a cul-de-sac kind of off of a cul-de-sac. Obviously, with eight  
20 homes being off of it, only one of them does not have their driveway on the actual cul-  
21 de-sac. Therefore, we have seven homes that have traffic in and out of their driveways,  
22 many have more than one car that, you know, is coming and going. Obviously, any  
23 additional traffic, even from just six parents would be a hardship on all of us as

1 homeowners. So, we do, the five of us, out of the seven homeowners who would be  
2 affected, one of whom of the other two chose not to make a stand and the other, I've not  
3 been able to contact for the past week, I believe she's been out of town for the holiday.  
4 We respectfully request that you deny the Special Exception to open the daycare at 5  
5 Scanley Court. Thank you.

6 CHAIRMAN BROWN: Are there any questions for Ms. Hansel? All right, Edrie  
7 Cornish.

8 AUDIENCE MEMBER: She left.

9 CHAIRMAN BROWN: She left, okay. Hugh Tillson?

10 **TESTIMONY OF HUGH TILLSON:**

11 MR. TILLSON: I would like to thank the members for allowing me to speak. My  
12 name is Hugh Tillson. I'm with Phillips Property Management and we represent  
13 Heatherstone Homeowner's Association where this property is located. I represent, I  
14 am here on the Board's behalf to oppose it. It is a covenanted neighborhood. Those  
15 covenants of the neighborhood do prohibit the operation of a daycare center or like  
16 business. I know that may not be relevant, however Code 26-152, Section J, I lost my  
17 glasses, I believe it's Section J, wait it's Section D, and I apologize to the Board, says  
18 that the client must provide clear pick-up and drop-off of any vehicles and not obstruct  
19 traffic flow on adjacent public roads. The picture that ya'll saw, the applicant, in our  
20 opinion, has not provided in for any pick-up and drop-off area other than her current  
21 driveway. Second, under 26.1 52(e) it also says that parking shall not be located in the  
22 required front yard. Once again, we're not sure that that's enough adequate parking for  
23 this type of facility.

1 MR. PRICE: Excuse, excuse me, on that, on that particular section that you  
2 quoted, about the parking on the front yard, that has been taken out. The, we haven't  
3 received the new pages for that particular section of the Code. But, as you remember  
4 that was a text amendment that was done and approved by Council to take that out of  
5 the, the requirement for Special Exceptions for a daycare.

6 MR. TILLSON: By the applicant's previous discussion, she's also going to have,  
7 what could potentially be double traffic flow at this property, the constant flow between  
8 the 6:00 in the morning and 12:00 at night. So, we are very concerned as the  
9 Association that this exception would be detrimental to this neighborhood. We  
10 appreciate the time that you have given us.

11 CHAIRMAN BROWN: All right, thank you Mr. Tillson. Questions for Mr. Tillson?  
12 Thank you sir. Dana -

13 **TESTIMONY OF DANA GERTZ:**

14 MS. GERTZ: Gertz.

15 CHAIRMAN BROWN: Okay, if you say so.

16 MS. GERTZ: I married into it. Thank you. My name is Dana Gertz and I am the  
17 current chairman of the Heatherstone Homeowner's Association and I just wanted to  
18 make a comment on the statement that she had made that there were other daycares  
19 within the community. If there are, they are not approved by the Homeowner's  
20 Association and we are enforcing all covenants, including the restriction against  
21 commercial use of the homes. We have several other small business owners in our  
22 community who have had to purchase or lease outside structures to facilitate their  
23 purposes and in keeping with that, we feel that that's the best way to go. That, although

1 I, I can, I commend her in her wanting to reach out to these children and be a safe spot  
2 for them, as far as the traffic control and the noise complaints, for our community, we  
3 bought into this community under the assumption that our covenants would protect us  
4 from businesses opening up in the community. And, I believe that there would be more  
5 people in opposition because they were wrongly told that our covenants would, would  
6 support a denial of this. So, I'm respectfully requesting that you deny this measure.

7 CHAIRMAN BROWN: Any questions? All right, thank you ma'am.

8 MS. GERTZ: Thank you.

9 CHAIRMAN BROWN: I have a Latent Cornish, since Dedry Cornish wasn't here;  
10 I assume that person probably isn't here either. And the last person I have signed up is  
11 Mark Dellus or Dales.

12 MS. HANSEL: I spoke on his behalf.

13 CHAIRMAN BROWN: Oh, all right. All right, Ms. Simmons, if you'll come back  
14 up to the podium to address concerns you've heard.

15 MS. SIMMONS: I don't have anything to say.

16 CHAIRMAN BROWN: You don't have any remarks, all right. If there is no  
17 further testimony, the Chair will entertain discussions from members of the Board.

18 MS. PERKINS: You know, 12 people that's got me, 12 different children and I  
19 think she had testified to that, it says six, but then she said that she could have some in  
20 the morning and then some six [inaudible] later on in the day. And I, I am imagining that  
21 when the Staff did this traffic implant with the six additional, with keeping six children,  
22 they said 12 additional trips per day. Is that what it's based on, the six children?

23 MR. PRICE: Yes.

1 MS. PERKINS: But it seems to me she's saying she could have 12 children.

2 MR. PRICE: Right, and I, I think that, that can occur with any of the daycares  
3 that are, that come before you and they can keep so many kids at a time as opposed to,  
4 you know, just locking them in to just the same six kids.

5 CHAIRMAN BROWN: Well, that may be, but I don't think that the likelihood of  
6 that is nearly as great when you have one that runs from say 7:00 in the morning until  
7 6:00 in the evening as you do one that runs from 6:00 in the morning until midnight. I  
8 think the likelihood of a, of a different number of children is far greater in that aspect.  
9 And, I, I tend to agree with you that six vehicles dropping off children in a cul-de-sac is  
10 one thing, as many as nine or 12 vehicles dropping off children in a cul-de-sac is  
11 something a little different. Is there other discussion by the Members of the Board?  
12 Hearing none, the Chair will entertain a motion.

13 MR. PRICE: I just, I want to understand from our, is it that, that the hours that  
14 kind of determines the traffic flow? I mean is that something that we're looking at?  
15 Extended hours?

16 CHAIRMAN BROWN: Yes.

17 MR. PRICE: Okay.

18 CHAIRMAN BROWN: I think the gist of the comment was that where you have  
19 hours of the duration that the applicant's proposing, the likelihood of there being  
20 different children coming and going is greater than it would be where the hours are from  
21 say 6:00 in the morning until 5:00 or 6:00 in the afternoon.

22 MS. PERKINS: And not only that, for me, that is one, but you have a group of  
23 neighbors who are, you know, who see it as a, a problem. You have someone who has

1 moved in and not told her that there is Homeowner's Association and I know the Board  
2 doesn't want to get into this, but I, I'm taking a lot of things into consideration. They do  
3 have a covenant which we, you know, we don't take up, but I think we were told at least  
4 the covenant says that, you know, home occupations for business operations not be  
5 operated out of the household. So, I think that's a culmination of, of what [inaudible], it  
6 bothers me.

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

9 MS. PERKINS: Chairman, since I, I've got the loudest mouth, I'll move that 06-  
10 20, that 06-20 Special Exception be denied.

11 CHAIRMAN BROWN: Is there a second?

12 MS. PERRINE: I second.

13 CHAIRMAN BROWN: Moved and seconded that 06-20 SE be denied. All in  
14 favor of the motion signify by raising their hand. Opposed. *[Approved: Branham,*  
15 *Tolbert, Brown, Perkins, Perrine, Ashford; Opposed: Cairns]*

16 CHAIRMAN BROWN: Sorry, Ms. Simmons, your request has been denied. Mr.  
17 Price will be in touch with you. Mr. Price, next case please.

18 **CASE NO 06-21SE:**

19 MR. PRICE: The next case is 06-21 Special Exception. The applicant is  
20 requesting the Board of Zoning Appeals to grant a special exception to permit the  
21 establishment of a group daycare on property zoned RS-MD, Single Family Medium  
22 Density. The applicant is, I believe is Ralphielle or Ralphielle Green. The location is  
23 7262 Highview Drive. This is a little more than a fifth of an acre, a fourth of an acre,

1 excuse me. The subject property has an existing single-family residential structure  
2 with a single car driveway that leads to a carport. The rear of the property is enclosed  
3 by a fence. The applicant proposes to establish a family daycare for a maximum of six  
4 children. The ages of children will range from two to 10 years of age. The proposed  
5 hours of operation would be 24 hours, so it would be providing overnight care. The  
6 subject property is located in a subdivision of single-family residential structures. I  
7 believe this is Trenholm Acres, and I believe that's the subdivision name that came up.

8 CHAIRMAN BROWN: All right, Ms. Green, if you - oh, I'm sorry, you're already  
9 there. If you would tell the Board what it is you want to do please.

10 **TESTIMONY OF RAPHELLE GREEN:**

11 MS. GREEN: I would like to open a licensed family childcare. I currently work  
12 for school district two as a teacher's assistant, but in the summer time, I usually work at  
13 a daycare. I've been doing daycare for 15 years. I am also a Girl Scout and Boy Scout  
14 leader, so I have always been working with children. Basically, right now I have three  
15 extra bedrooms. It's just me and my husband and DSS has already approved me  
16 because I am DSS certified to watch one child that is not a family member and that's  
17 why I put the 24 hour on there, because I have one child whose parent is a nurse and  
18 their father is in the Army. So, that one child I currently keep now sometimes on the  
19 weekends overnight. I would not be keeping any other children overnight but that one  
20 child.

21 CHAIRMAN BROWN: What would you, what would your hours of operation be  
22 for the other children?

23 MS. GREEN: It would just be 6:00 to 6:30, regular daycare hours.

1 CHAIRMAN BROWN: Would you have anyone helping you with this other -

2 MS. GREEN: Yes because I had to come here today, I currently have someone  
3 who is also certified at my home right now taking care of that one child.

4 MS. PERKINS: So, so you have a daycare?

5 MS. GREEN: No, I don't have a daycare daycare. What I was approved for  
6 already by DSS because I am certified was to take care of one child that's not a family  
7 member and then if I had any family members that needed childcare.

8 MS. PERKINS: Were you, so she didn't need approval?

9 MS. GREEN: No, I need approval, I need zoning approval because of the fact  
10 that I'm going to get more children, I'm going to get my six.

11 MS. PERKINS: No, wait a minute. I'm sorry; I'm not asking you. I'm asking Mr.  
12 Price.

13 MS. PRICE: Mr. Price, oh, I'm sorry.

14 MR. PRICE: I'm not sure what the DSS requirements are for keeping one child.  
15 If you go by our code of five or less, that requires Special Exceptions, so I believe one  
16 would fall in there.

17 MS. PERKINS: So she is operating within, okay, so you're, you're not suppose,  
18 it is my understanding she shouldn't be keeping the kid now?

19 MR. PRICE: Right.

20 MS. GREEN: I, before I took him, I went to DSS before I got my zoning letter  
21 and they told me that as long as it was only the one child, that I could have the one  
22 child. That's what the, and the same person that told me that is the same person that  
23 wrote my letter to give to Mr. Price. Otherwise, I would not have done it.

1 MR. PRICE: For I, and, and I can, you know, we just need to check it.

2 MS. GREEN: Yeah.

3 MR. PRICE: I can see DSS saying, you know, you, they don't need any approval  
4 from Richland County before they'll approve the -

5 CHAIRMAN BROWN: I don't think Ms. Perkins is being critical of you.

6 MS. GREEN: Yes, yeah I understand fully. Yeah, I fully understand, yeah. But,  
7 I think basically also because when I went to her and asked her that because this child,  
8 I was working at another daycare and his mother needed care and so when I went to  
9 DSS, I asked her if I could take this one child on before I got my zoning information and  
10 stuff and she informed me okay and then also because I've been in DSS and in the  
11 system of DSS for over 10 years, she didn't see a problem with it.

12 MS. PERKINS: Now, I'm gonna ask Geo another question, this April McDaniel,  
13 is that who, who certified you for the one child.

14 MS. GREEN: No, it wasn't April McDaniel. I have her letter though.

15 MS. PERKINS: Can you tell me who -

16 MS. GREEN: The person's name?

17 MS. PERKINS: Cause I, I don't understand how you're, I want to make sure that  
18 we are not again getting letters.

19 MS. GREEN: Yeah, and then I also -

20 MS. PERKINS: No, just one minute.

21 MS. GREEN: Oh, I'm sorry.

22 MS. PERKINS: To make sure that, I thought we had gotten this straightened out  
23 with DSS.

1 MS. GREEN: Yes, it was -

2 MR. PRICE: We have and once again, we can check on this and I guess we just  
3 never really came across a situation where somebody was just keeping that one child  
4 and, you know, is that a requirement and according to our code yes. But, I need to  
5 check with DSS and see if, you know.

6 MS. PERKINS: That's why I was concerned if, if the letter, if someone signed the  
7 letter, in fact, this one is done by, oh an interim [inaudible] and to make sure that we're,  
8 that the letters on the name, I'm sorry, the name on the letter is accurate and they're not  
9 misinforming people and just telling them that they can -

10 MR. PRICE: I, I'm, I think that's something will live in, we'll look into after this  
11 after this and as kind of a separate.

12 MS. PERKINS: You've been looking into that every year, every year since I've  
13 been here.

14 MR. PRICE: Right, but we're -

15 MS. PERKINS: I've looking into it, too.

16 MR. PRICE: Right, but I think we're looking at two separate issues now and  
17 whether she's keeping one child legally and that's something that, from an enforcement  
18 standpoint, we will look into, but I believe the request before you is to establish a  
19 daycare; kind of a separate issues.

20 CHAIRMAN BROWN: Questions for Ms. Green from Members of the Board?

21 MS. PERRINE: You're only keeping the one overnight, but what happens if  
22 some of these other children that come to you and their parents ask, you know, can  
23 mine stay overnight tonight or I need some -

1 MS. GREEN: Um-hum (affirmative), yeah.

2 MS. PERRINE: For two nights, what's going to happen?

3 MS. GREEN: I'm only going to keep this one child overnight and actually his  
4 mom is changing jobs, so once she change jobs at the end of the month, I won't have  
5 any overnight. I had to put that on my application because of the fact that I was keeping  
6 him overnight and I am as of, you know, this week coming to the Board Meeting.  
7 Otherwise, after this and his mother changes jobs, I won't do overnight.

8 MS. PERRINE: So, then you're going to be 6:00 a.m. to 6:30 p.m.

9 MS. GREEN: Yes ma'am, um-hum (affirmative).

10 MS. PERRINE: Monday through Friday?

11 MS. GREEN: Yes, ma'am.

12 MS. PERRINE: How long have you lived in the home?

13 MS. GREEN: Actually my husband and I, we closed on it on June the 1<sup>st</sup>. So,  
14 we just recently moved in. We still have yard renovations and stuff, but we are planning  
15 to do, that we haven't started yet.

16 MS. PERRINE: Have you talked with any of the neighbors out there to see what  
17 they -

18 MS. GREEN: No ma'am, I just moved in and actually, I, I've been backwards  
19 and forwards, we still haven't even actually fully moved in also. We're just getting  
20 settled.

21 CHAIRMAN BROWN: Additional questions? All right, thank you ma'am. We  
22 have some people signed up in opposition and you'll have a chance to address their  
23 concerns. Kenneth Bednar?

1 **TESTIMONY OF KENNETH BONAR:**

2 MR. BONAR: Bonar.

3 CHAIRMAN BROWN: Bonar, I'm sorry.

4 MR. BONAR: Thank you Mr. Chairman and Members of the Board for letting me  
5 express my disapproval of this. On this particular street, although the picture looks like  
6 it was shot with a wide angle, it's really not that, can we go back to the, to that picture of  
7 the house, of the residence? That street is really not that narrow and the driveway is  
8 very small and I am concerned about traffic problems in the neighborhood. I'm also  
9 concerned about the, location as close, so close to Columbia Mall and the increased  
10 probability of what I'm afraid would be more daycares opening up on the street. I  
11 noticed today four of the eight people you will see are for daycares in residential homes.  
12 I prefer to keep the street residential and not commercially for daycares. Really, that's  
13 my biggest objection to it. It's just I don't feel it's accessible as such for daycare that,  
14 the front yard, I don't see much room for parking and cars in and out. I hope you would  
15 not approve this. Thank you.

16 CHAIRMAN BROWN: Questions for Mr. Bonar? All right, thank you, sir. Denise  
17 White? All right. Teresa Boyer?

18 **TESTIMONY OF TERESA BOYER:**

19 MS. BOYER: I have concern for several issues and I appreciate ya'll allowing  
20 me to speak and express my concerns. I'm concerned, first off, and I did not realize  
21 that this was going to be approved as a 24 hour daycare center. As she's told you,  
22 she's not spoken with any of the neighbors. We knew nothing about what she was  
23 planning. If you approve her as a 24 daycare center, even though she stands before

1 you after she listens to the oppositions of the lady that was here a few minutes ago and  
2 she hears the concerns that you had a for a daycare that was going to be open from  
3 6:00 in the morning until 12:00 midnight, of course she's not going to stand before you  
4 and tell you, well, yes, I think I'm going to operate 24 hours because she knows that  
5 your concerns for a daycare that was going to be open from 6:00 to 12:00 caused  
6 opposition for that daycare. So, she's not going to stand before you and tell you yes,  
7 she really is going open 24 hours. But, she's applied for a 24 hour daycare center. If  
8 you approve her for a 24 hour daycare center, then that leaves her open to run a 24  
9 hour daycare center, even though she tells you that her idea is that she's not going to  
10 run one. Being as close as she is to Fort Jackson and telling you that she's already  
11 keeping a child for somebody that's a nurse and that she's already keeping a child, the  
12 person is a nurse and affiliated with Fort, the Fort, that opens her up to people that are  
13 having trouble finding daycare. So, that's going to make her a person that wants to be  
14 accessible to people that are people that are looking for somebody that is accessible  
15 with difficult to find daycare. So, I know from experience of how, of having to find hard  
16 to find daycare for my children when they were younger, it's hard to find daycare for  
17 nurses and it's hard to find daycare for people that are military. So, she's gonna make  
18 herself accessible to those type people because you make more money off of those  
19 type people. And, once again she's not gonna tell you that. I'm concerned about that  
20 because that's going to make traffic up and down the roads at all hours of the night. He  
21 has also expressed to, this is an older neighborhood; older neighborhoods has a lot  
22 narrower streets. This is a very narrow street. The street is already difficult to turn  
23 around in to begin with. If she has people that are coming up and down the streets, and

1 people that are parking on the street, because as you saw from the picture of her  
2 house, if you will go back to that picture, she doesn't have anywhere to park. As you  
3 see, her car is parked in the driveway there. When her car is parked in the driveway,  
4 there's nowhere for anybody else to park, but in the street. So, if her customers are  
5 parking in the street, then where are we going to be able to pull out, up and down the  
6 road? There's no where on the sides of the street for her, them to park, but in the street  
7 directly. So, we're gonna have to try to pull around the cars. They're going to be  
8 parked in the lanes and we're not gonna be able to get up and down the roads well.  
9 There's gonna be traffic trying to get around those and traffic at all hours of the night.  
10 And, then, that's going to cause a lot of noise at night with us trying to rest and I just  
11 don't see where we're equipped for having a daycare center in our neighborhood and I  
12 just, I don't see where that's going to work out. And, I don't feel like that this  
13 neighborhood is, is ready for that and I don't feel like we're able to handle that.

14 CHAIRMAN BROWN: All right, questions for Ms. Boyer?

15 MR. PRICE: I, I, just for clarification, this may help out the Board and I'm sorry  
16 that this isn't on a wider angle because she lived there. Am I correct, you, to get to  
17 Highview Drive, you would have to come in from either Parkview or is it Pinedale Drive?

18 MS. BOYER: Um-hum (affirmative).

19 MR. PRICE: Because you can't take Highview Drive and go all the way out?

20 MS. BOYER: That's right.

21 MR. PRICE: Okay, that's what, I wasn't sure.

22 CHAIRMAN BROWN: All right, Ms. Green, do you want to come back up and  
23 make any remarks?

1 MS. GREEN: Yes, yes. In reference to what was just said, like I said, my  
2 husband is a landscaper. We are in the process of putting a curved driveway in our  
3 yard. So, our, so that the parking will change the entire yard. They're going to come in  
4 from that side and if I was to leave my driveway as it is, on the side of my driveway is a  
5 whole nother area if I wanted someone to park. As far as the neighborhood is  
6 concerned, in order to get to my house, like Mr. Price was saying, you have to actually  
7 go through the neighborhood to get to my house. Traffic on my house, on the street  
8 right now is not as bad and as far as the noise is concerned, it's a calm neighborhood,  
9 but the noise is there. My house was broken into twice and I have an alarm system  
10 now, so it's not like it's a down, like really quiet neighborhood or anything. But, the  
11 traffic problem will be solved as soon as we get the renovations and stuff done and  
12 we're in the process of doing that now. I only have this one child. I will not get any  
13 more children until the renovations are done and right there on the side is extra parking  
14 also. The 24 hour issue I only intend on keeping this child until his mom's schedule is  
15 changed. I will not have any kids after that. But because I have this child, DSS told me  
16 I had to put it on my paperwork and out of all honesty; I was putting him on my  
17 paperwork. I did hear the last lady with the 12 hours and everything, but like I said, I do  
18 not intend on doing 12 hours, 12, until 12:00 o'clock at night, or midnight, or overnight  
19 after this one child is done with. And, the traffic problem will be solved once I get my  
20 curved way, curved driveway put in my yard. And, right now, the street where I'm at, my  
21 house goes all the way back. You can't really see it there and where my house is  
22 located and the two houses on the side of me, those are, those are quiet areas, but in  
23 the back of me and everything, and there are children walking up and down the street

1 all the time, shooting fireworks, shooting guns and shooting everything. And, so saying  
2 that my business will cause any more problems that's already there, I don't think that's  
3 going to happen. Thank you.

4 CHAIRMAN BROWN: Any additional questions for Ms. Green? All right, hearing  
5 none, the Chairman will entertain discussions.

6 MS. CAIRNS: Mr. Price? Is it possible to approve a 6:00 to 6:00 daycare, with  
7 the exception of just this one fellow? That it, you know, the, the 24 hour expires upon  
8 his, or even within some [inaudible], so you said in a month, right?

9 MS. GREEN: Yes.

10 MR. PRICE: Yes,

11 MS. GREEN: And if you need letters or anything or -

12 MS. CAIRNS: We could calendar something.

13 MR. PRICE: You, you can impose any stipulations on approval that you so  
14 desire.

15 MS. PERKINS: So actually, what you're saying is changing her hours with that,  
16 with the exception of that one child?

17 MS. CAIRNS: Yeah or just approve it from 6:00 to 6:30.

18 MS. PERKINS: Or 6:00 to 6:00.

19 MS. CAIRNS: Or 6:30, I think she offered 6:30.

20 MR. PRICE: Maybe that she knows exactly when the, the person she's, who's  
21 child she's keeping will be changing jobs, we could at least tie it down to that time.

22 MS. CAIRNS: Like September 1 or something like that.

23 MR. PRICE: Okay.

1 MR. TOLBERT: So, the others, if she had, she said she had other work to be  
2 done as well.

3 MS. CAIRNS: Yeah, those are also to be conditions.

4 MR. TOLBERT: Those are something, that, that would have to be considered as  
5 well.

6 CHAIRMAN BROWN: Any additional discussion? Hearing none, the Chair will  
7 entertain a motion.

8 MS. CAIRNS: I would make a motion that case 06-21 Special Exception for the  
9 operation of a daycare be approved with the condition that it be a 6:00 a.m. to 6:30 p.m.  
10 daycare, however allowing the child who's currently a 24 hour daycare child to stay until  
11 September 1, with 24 hour care and that the driveway offered by the applicant as being  
12 installed, be installed, so as to eliminate the problem with the single, single width  
13 driveway.

14 CHAIRMAN BROWN: Is there a second?

15 MR. TOLBERT: I second.

16 CHAIRMAN BROWN: It has been moved and seconded, the case 06-21 SE be  
17 approved with the hours of 6:00 to 6:30, 6:00 in the morning until 6:30 in the evening,  
18 with the exception of the one child currently being kept on a 24 hour basis and that 24  
19 hour daycare expire as of 1 September, and that the applicant make the improvements  
20 to the driveway that she presented to the Board. All those in favor of the motion signify  
21 by raising their hand. Opposed?

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

1 CHAIRMAN BROWN: All right, Ms. Green, you have your request. Mr. Price will  
2 be in touch with you. Next case Mr. Price.

3 MR. PRICE: Just taking us some notes, Chairman Brown. Sorry.

4 **CASE NO: 06-22 SE:**

5 MR. PRICE: The next case is 06-22 SE. The applicant is requesting the Board  
6 of the Zoning Appeals to grant a special exception to permit the establishment of a  
7 group daycare on property zoned RS-HD, Single Family Residential High Density. The  
8 applicant is Sharon Johnson-Frye. The location is 222 Bennington Court. The parcel  
9 is, looks about a fourth of an acre, a little bit less than that. The subject property has an  
10 existing single-family residential structure with a double car driveway that leads to a  
11 garage. The rear of the property is not enclosed by a fence. The applicant proposes to  
12 establish a family daycare for a group, maximum of five children. The age of the  
13 children would range from newborn to six years of age. The proposed hours of  
14 operation would be 6:00 a.m. to 6:00 p.m. The property, the subject property is located  
15 within a subdivision of single-family residential structures, that's Ashley Hall Subdivision.

16 CHAIRMAN BROWN: All right, Ms. Frye, if you would come forward and tell the  
17 Board what it is you want to do please.

18 **TESTIMONY OF SHARON JOHNSON-FRYE:**

19 MS. FRYE: Good afternoon. My name is Sharon Johnson-Frye and as stated, I  
20 have applied for a family daycare in my home. I have been in my home for almost a  
21 year. I do have a Homeowner's Association, which I have sent a letter, if you need to  
22 review that, before the sign was even put up, explaining my intentions on the home  
23 daycare. The reason being is that I do feel that care, caring for children is, is something

1 that is close to my heart number one. I do have a three-year-old daughter myself that I  
2 have had trouble getting into daycare since I relocated here. She's been on a waiting  
3 list for almost two years, which is why I would only be allowed, if approved, to keep five  
4 children. One of the things that I wanted to address that was I was told by my  
5 Homeowner's Association is that, if you'll notice, my backyard is not totally fenced, it is  
6 partially fenced. At this time, due to allergies that I suffer, I have no intention on taking  
7 the children into the backyard. What I would do is have trips to a playgrounds,  
8 McDonald's, things of that nature where I would provide transportation for the children.  
9 As stated, my hours of operation are going to be 6:00 a.m. to 6:00 p.m. I don't feel that  
10 there would be an increase in traffic and if it would be, it would be minimal because of  
11 the hours and the way the children would be arriving. There are going to be different  
12 shifts. I do have a finished basement, which is already set up as a play/child care room,  
13 which is where I would be doing most of my teaching and I do have a full separate room  
14 that has a television that I will be doing educational teaching as well. I do have a  
15 fourteen-year-old daughter, who after school would be assisting me with any children  
16 that are there. Like I said, it would be two different shifts. And upon completion of my  
17 hearing, any licensing and special permits will be provided to the Homeowner's  
18 Association because that is something that they also requested. And in closing, I just  
19 want to state something that I did put in my letter. As a citizen of the community, I want  
20 to express that my intent is to provide an opportunity for working class individuals to  
21 have access to affordable, dependable, Christian family-structured care for their  
22 children. I feel that this is a key component to helping a neighborhood thrive and hope  
23 that the Association and the Board will be in agreement with me. I have also stated to

1 the Board if there is any problems, any complaints, anything, if I am approved, I am  
2 readily available and I am a person that is, is, into upholding my community, I'm not  
3 here to destroy or put it down. But, because I see that there is a need for daycare,  
4 which, this is one of the reasons that I, I wanted to get involved in daycare. And, like I  
5 said, I am open to any questions, concerns about anything regarding the coming and  
6 going. I do feel that the way my driveway is set up, it is easily accessible for them to  
7 move in and out. Part of my contract with the parents would, would address that issue;  
8 that they are going to have a time limitation to be parked in my driveway. There will be  
9 no soliciting as far as if they need to discuss something with me, then I would setup an  
10 appointment with them, where they won't be staying there and lingering around. I will  
11 be at the door with the children to have them pick the children up, so that there will not  
12 people parked at any time, on the, you know, on the area in front of my mailbox or more  
13 than two cars at any time in my driveway. And, that's basically what I have to say. And  
14 thank you again for your time.

15 CHAIRMAN BROWN: Questions for Ms. Frye from the members of the Board?

16 MS. PERRINE: I have one.

17 MS. FRYE: Um-hum (affirmative).

18 MS. PERRINE: I think you said you had a fourteen-year-old daughter that would  
19 help some?

20 MS. FRYE: Yes.

21 MS. PERRINE: Then I think I heard you say something that there would be two  
22 shifts?

1 MS. FRYE: What, and now, I should, I should correct myself. Not two shifts  
2 meaning that if people - right now I have some people who are interested because I  
3 have some people at my church, as well as in my community, who have questioned me  
4 when they saw the sign go up. Meaning that, the mostly people I've talked to, some  
5 want to come in at 6:00, there are other people who work a shift where they may go in  
6 in the afternoon and say like they would drop, some people would be dropping their  
7 children off as early as 6:00 a.m., some may be coming at 8:00. But the latest that any  
8 child would be there would be until 6:00, so that's what I meant by two shifts. I  
9 apologize. And, it wouldn't be, what I'm trying to essentially say, is there would not be  
10 five or six cars dropping their children off at 6:00 a.m. at the same time.

11 MS. PERRINE: You didn't mean employees?

12 MS. FRYE: Right, no, no, not at all. Not at all.

13 CHAIRMAN BROWN: Other questions for Ms. Frye? Okay, thank you ma'am.

14 MS. FRYE: Thank you.

15 CHAIRMAN BROWN: Let me ask, I'm sorry, let me ask a question if I might.

16 MS. FRYE: Certainly.

17 CHAIRMAN BROWN: You said you had written a letter to the Homeowner's  
18 Association?

19 MS. FRYE: Yes I did.

20 CHAIRMAN BROWN: Did you get a response?

21 MS. FRYE: No, but I did speak to a gentleman on the Board this morning as a  
22 matter of fact and he did confirm that he did receive that by, via email. I have not  
23 received any questions, but I know that there are some concerns, but no one has

1 addressed them with me personally, so I assume that they are here to address them  
2 with the Board.

3 CHAIRMAN BROWN: Okay, all right, thank you. We had some people signed in  
4 opposition. Lee Mills?

5 **TESTIMONY OF LEE MILLS:**

6 MR. MILLS: Good afternoon. Thank you members of the Board and Chairman  
7 of the Board for letting me appear before you. I have a home in Ashley Hall, just down  
8 the street from her. My concern is that what they're doing is turning a residential area  
9 into a commercial area. Because if you have one, you have two. Then what comes  
10 after this? What else can come in? The reason we have covenants, the reason that we  
11 buy there is for protection. I ask you to keep us protected. Thank you.

12 CHAIRMAN BROWN: Questions for Mr. Mills? Thank you, sir.

13 MR. MILLS: Thank you.

14 CHAIRMAN BROWN: Geri Meade?

15 **TESTIMONY OF GERI MEADE:**

16 MS. MEADE: Hi, I'm Geri Meade. Thank you for hearing me. Along with Mr.  
17 Mills, I, I agree with, once we get one, then we get two, then you get three. Right now, I  
18 don't know if you know where Ashley Hall is. It's off of Hardscrabble Road. I think if  
19 you live in Columbia and you've read the Sunday newspapers, you've heard all about  
20 Hardscrabble Road and the traffic. To make matters worse, there are two entrances  
21 into Ashley Hall; one off of Lee Road, which runs into Hardscrabble, the other off of  
22 Hardscrabble. Because there is so much traffic on Hardscrabble Road and particularly  
23 the intersection of Lee and Hardscrabble, people are constantly using Ashley Hall as a,

1 a cut-through, as a short-cut to bypass the traffic. We have so much traffic, we have  
2 speeding. This is just going to add more traffic to the area. To address Ms. Johnson-  
3 Frye's point that she did send a letter, I received a copy of the letter this morning from  
4 our Association, Association Management Company, which is MJS. The only  
5 explanation they had to offer was they thought they had sent it out to the Board  
6 members and they discovered they did not. So, this morning was the first time I got a  
7 copy of the letter. We did not know that she had written a letter and to her I apologize  
8 for that, but again, I, I had no idea. One thing I would like to point out is that very few  
9 people - we, we had another situation like this a year ago and the next-door neighbor  
10 was quite concerned and took a petition around to all the neighborhoods back there and  
11 had quite a few signatures against this and the applicant, therefore, withdrew her  
12 request. But, I'm sorry; I've forgot where I was going with that. Oh, the, this time, when  
13 this came up, very few of the neighbors knew that this was happening and I think it's  
14 because there's, for a number of days, there was a car parked in the street that hid the  
15 sign and it was just a couple days ago when one of my neighbors called me and said,  
16 "Have you seen that sign?" And then since then, we put, excuse me, we put out a flyer  
17 advising people of, of this hearing and I did get quite a few of the neighbors in  
18 opposition to it. And, unfortunately there have been a couple that have had to leave.  
19 Thank you for hearing me.

20 CHAIRMAN BROWN: Questions for Ms. Meade? All right, thank you ma'am.  
21 Ginger Bruce?

22 **TESTIMONY OF GINGER BRUCE:**

1 MS. BRUCE: Thank you for hearing me. Seven years ago, I built my house in  
2 Ashley Hall. I moved in seven years ago this month and we did this because it was an  
3 up and coming neighborhood, it was a beautiful neighborhood. It looked like a place  
4 that my husband, he was in a dying condition and has since died and he thought I would  
5 be very safe there. It had a strong governing board. One of the things that we liked  
6 was the fact that it had every little contingency, even to what color rock you could put in  
7 your yard. I mean it was just very tight. We loved the fact that the Association would  
8 take care of me. Widow ladies don't have anyone to take care of them, so we have to  
9 look to our Zoning Board and our, our governing board at Ashley Hall to take care of  
10 people like me. I came to the last hearing about the same thing. There was someone  
11 that wanted to have a daycare at Ashley Hall. I'm not saying - and you can see by her  
12 house, it's a lovely neighborhood. And, she said one thing, that she lived there for a  
13 year. She evidently knew that she was going to have a daycare and we all get a copy  
14 of the covenant that says those things are forbidden. She bought the house with -  
15 knowing that that was not going to be allowed by the board, but she did it in order to  
16 change the board or to change your all's rulings and I think that the board put very good  
17 rules in affect and if you know you're going to have to have to business, don't buy a  
18 house where that's restricted or else go out of the neighborhood and have the  
19 neighborhood where you live and your business somewhere else. And she said that  
20 there was a need there. Well, right around, within a half-mile of where we live, there are  
21 four or five daycares. And, she also said that she would take them outside. Well,  
22 there's a rule here in Richland County that I think started when a child was killed by  
23 being transferred in a van, you have to have a little mini school bus to take children

1 away. I, I believe I'm right on that. I think Heathwood Hall originated that rule, perhaps  
2 you all would know more about that than I do. So, if she can't use the backyard, she's  
3 going to have to have a mini van and a mini school bus, like the little half ones and you  
4 don't want that parked in the neighborhood either. So, there are so many reasons why,  
5 I just really beg you, I'm very old and I want to live the rest of my life in a beautiful  
6 neighborhood and where everybody is kind to each other and loves everybody and that  
7 we don't have a commercial enterprise of any kind where I live. And, thank you so  
8 much for letting me speak.

9 CHAIRMAN BROWN: Any questions for Ms. Bruce? I thank you ma'am. The  
10 next person I have signed is Carl McCormick. I guess he's not here. Patricia  
11 McCormick? All right. John Brunell or Brunelli?

12 **TESTIMONY OF JOHN BRUNELLI:**

13 MR. BRUNELLI: Thank you very much. My name is John Brunelli and I live at  
14 203 Ashley Place Road. I won't go into why I oppose this as I think some of the  
15 neighbors have already stated their reasons, however, I, I have lived in this  
16 neighborhood for two years. I moved here from Beaufort County and when I was in  
17 Beaufort I was on First Steps Partnership Board and indeed, it is correct that a daycare  
18 or any kind of, transporting any kind of children, you do need a bus. One of the things  
19 that I would like to point out about Bennington Circle is that it is a circle. And, so you  
20 know, you drop off a child, you're going to have to go around the whole thing. And it is  
21 true that people, unfortunately have used this neighborhood as a cut-through and so  
22 any, any job that, that, that you can do to lessen that would be greatly appreciated. I  
23 live actually in Ashley Place, which is the, the neighborhood behind Ashley Hall, but do

1 belong to the same Homeowner's Association, and so I just also am concerned about  
2 the, the fact that, that this is a blatant violation of our covenant. I understand that you  
3 can't force a covenant, but just realize that, that, you know, this is, this is not, when we  
4 moved to Richland County, that we were also looking for a quiet neighborhood and, and  
5 one of the things I noticed as soon as I got out of the car with the real estate agents is  
6 that we couldn't hear Hardscrabble. And so, I'd just like to continue to, to live in a  
7 neighborhood that has the least amount of traffic as possible. And, in the Northeast  
8 area, now that's getting awfully hard to come about. So, anyway, again, I would like to  
9 state my opposition to this and hope that you agree with it.

10 CHAIRMAN BROWN: Any questions for Brunelli? Thank you, sir. Roy Vic?

11 **TESTIMONY OF RON VIC:**

12 MR. VIC: Yes, my name's Ron Vic. My, my handwriting wasn't very good, I'm  
13 sorry. I'm a resident of Ashley Hall. I live at 204 Bennington Circle, which is just below  
14 the, the property in question here. I'm actually a resident and I've been in, in that home  
15 now since 1998. I've served on the Board of Directors since, since that time of, of the  
16 Ashley Hall Homeowner's Association. I am the current President of the Association  
17 and I do oppose this, the approval of a daycare center for various reasons. My  
18 background before I moved here and actually since, since I lived here for a couple of  
19 years, I, I spent 25 years in safety and I'm a safety, a former safety director at the  
20 Kennicott Ridgeway Mine and again, 25 years in the safety business and I, I feel like I  
21 am an expert in that area. There are several safety concerns that, that should be  
22 obvious to everybody. This, this property, first of all does not meet the requirement of,  
23 of having a fence, fenced in backyard and the applicant is trying to skirt that issue by

1 saying that she doesn't plan on taking the children outside. It's tough to keep children  
2 inside for, for 10 hours a day. For the second issue, the site is at the top of a hill there  
3 and at an intersection where, where the circle joins itself. The, that intersection is, is  
4 quite busy. There's cars traveling both ways around the circle and it, it gets, it gets  
5 quite a bit of traffic from all those homes in that area, especially during the morning and  
6 the evening hours when people are going to work and coming home from work. The,  
7 the site is at the top of the hill as I mentioned and I'm at the bottom of the hill and I've  
8 quite frequently am the recipient of, of things that roll, basketballs and other things and  
9 kids that, that would drop a ball and would, would frequently come down and I'll give it  
10 back to them. But, that, that's an issue, I think. There's an issue where's there is very,  
11 very little areas for, to park and to drop, drop children off. We had, had an incident just  
12 the other day where I had to put a violation sticker on the applicant's car that was in  
13 front of their, their house because it was parked on the wrong side of the house and I  
14 had a discussion with, with the applicant this morning about, she didn't, didn't  
15 understand why there would there would be violation for a car parked in front of their  
16 house even though it was, it was facing the wrong way. It was parked on the wrong  
17 side of the street. I realize my time is up and I'll, I'll end, end with that, but please do not  
18 approve this. Thank you.

19 CHAIRMAN BROWN: Any questions for Mr. Vic? Thank you sir. Ms. Frye, you  
20 have an opportunity to come forward and address any of the concerns you've heard  
21 expressed.

22 MS. FRYE: The first one being the last gentleman, Mr. Vic, which I didn't realize  
23 he was the President, because he didn't make me aware of that when I spoke with him

1 this morning. I had a, my uncle come visit from Philadelphia. That car was not parked  
2 for 48 hours in front of my mailbox or near the curb and we did discuss that. He had  
3 moved the car. The first time, it was facing as you go out. I don't have any sign or  
4 anything or anything in my covenant that explained that to me. I, I am a friendly  
5 neighbor. I asked him in a very friendly manner to explain that to me and because of,  
6 as soon as the sign went up, I start to get all of this information as far as what I'm  
7 violating. My husband has always cut the lawn. Suddenly, I have a violation for that,  
8 which he did do and that is up to par within the timeframe as they asked. I'm not here  
9 to cause any problems or any confusion. I respectfully understand their concerns, but I  
10 last night myself experienced neighbors who were shooting firecrackers, kids running up  
11 and down the street, there are always cars parked on the curb, there are trash bags left  
12 on the driveway. I don't see anyone else with violations. I've never gotten a violation  
13 prior to me putting the sign up and if I do, and it was basically was a warning. I did  
14 address it because I am a concerned parent and a concerned citizen as well. As far as  
15 the traffic, once again, the way my driveway is set up, they will not need to be parking  
16 on the side. As I stated previously it would be part of my contract to the, excuse me, to  
17 the parents and they can back out of my driveway and go back towards, they will not  
18 have to go around the circle and interrupt Mr. Vic or anyone else in the neighborhood. I,  
19 myself, love my neighborhood and I think it's beautiful and the issue here is no matter  
20 where you move, we all know that things do change. A daycare may cause some,  
21 some concern. The children will not be outside making noise. You can keep children in  
22 the home because I keep mine in my home because of the heat issue and heat down  
23 here in South Carolina, most people do. You don't even see children out during the day

1 because of the heat, so I wanted to address his comment that you can't keep a child in  
2 a house for 10 hours. If you have a curriculum and like I stated, when, when children  
3 are in daycares that are even within a facility, a lot of times they will state they may not  
4 take the child out because it's too hot or to, due to inclement weather, so the same  
5 situation applies even if you have a daycare that's in a facility. The older lady and I'm  
6 sorry, I forget your name, I understand her concern, but she made a comment about me  
7 having a bus. I wouldn't need a bus. I do currently own a mini van and that's not  
8 something that I would be doing all of the time. And the other situation she discussed is  
9 about keeping the neighborhood quiet. Currently the neighborhood is not that quiet and  
10 it's not due to me. There are, there are going to be times that people are going to have  
11 visitors, when you have holidays, so I just wanted to make that clear that I have no  
12 intention of trying to disrupt the neighborhood and I just wanted to, I think it was one  
13 more thing, one second. If you will allow me one moment, I'm sorry. Okay, and as far  
14 as the issue that Mr. Vic brought up about my fence, I have no reason to sit here in front  
15 of the Board or anyone else, because like I said, I am a Christian woman, and make up  
16 an answer and as far as me knowing that I had intentions on starting a business when I  
17 came here, I certainly did not. Because of the fact that like she stated, there are several  
18 daycares around me, as I stated when I first came up, my daughter has been on a  
19 waiting list for daycares at all four of those places she mentioned for almost a year now  
20 and I have not received a call. So, that's part of why I thought it was something that  
21 would help the neighborhood. So, I just wanted to address that as well. There are  
22 daycares around, but they are full to the max. Thank you.

23 CHAIRMAN BROWN: Any questions for Ms. Frye? All right, thank you ma'am.

1 MR. PRICE: Excuse me, Mr. Chair. I just became aware that there are a couple  
2 of people that just came in and they wanted to speak on this case. Of course, it is up to  
3 the Board to decide if they, if you're going to allow them to speak on this.

4 CHAIRMAN BROWN: What's the pleasure of the Board? How many people are  
5 we talking about?

6 MR. PRICE: Just one. I believe she's been here a while, she's, you know,  
7 during the duration of the meeting, I don't think she just signed up, she didn't sign up.

8 CHAIRMAN BROWN: The question is whether we want to allow her to speak. I  
9 don't see why not.

10 MR. TOLBERT: I don't see why not either.

11 CHAIRMAN BROWN: All right, come forward.

12 MR. TOLBERT: I mean, was she sworn in?

13 CHAIRMAN BROWN: Were you sworn in ma'am?

14 **TESTIMONY OF MARILYN RAMOS:**

15 MS. RAMOS: Excuse me.

16 CHAIRMAN BROWN: Were you sworn in?

17 MS. RAMOS: Yes, I have been.

18 CHAIRMAN BROWN: Okay.

19 MR. PRICE: She has to sign in also.

20 MS. RAMOS: I have to sign?

21 CHAIRMAN BROWN: Okay, thank you. Yes, please. Now, Ms. Ramos is you'd  
22 state your name and express to the Board to your concerns.

1 MS. RAMOS: Yes, hi, good afternoon, my name is Marilyn Ramos. I have lived  
2 in Ashley Hall for eight years and I moved to this neighborhood because all, you know, I  
3 like the neighborhood. And, I really, I agree with all my neighbors who have said that,  
4 have said about, you know, that we need to keep this neighborhood the same way. I  
5 really like the way I live and I believe that one of them mentioned that if we allow this to  
6 happen, how many other things will come to our neighborhood that we really are against  
7 it? I have the same situation that she had when I first moved, [inaudible] an area to  
8 South Carolina. You know, to find a daycare and I worked and called and called, called  
9 everybody until I found a daycare for my daughter. And, but I just really disagree, you  
10 know, I don't want, I would not like for this to happening in the neighborhood. I think the  
11 values of our house also will decrease if something like that, like this happen in our  
12 neighborhood. Thank you.

13 CHAIRMAN BROWN: Any questions for Mr. Ramos? All right, thank you  
14 ma'am. Mr. Tillson?

15 **TESTIMONY OF MR. TILLSON:**

16 Mr. Tillson: Once again, I thank the Board for allowing me to speak and my  
17 apologies of not understanding. I represent Magnolia Hall, which is sub community of,  
18 of that entire area out there. Our concerns, once again, I'll go back to code or that the  
19 outdoor play area, while stated that there's not going to be outdoor play, does not  
20 provide any fencing. We think that should be considered a violation of the code 26-152.  
21 Also, we're concerned about parking, which would fall under the same code D and E in  
22 traffic flow. I guess maybe even a bigger question in my mind is while the zoning does  
23 not deal with covenants, and I understand that, most of the residents that you've heard

1 from Ashley Hall are on the Board of Directors, they are volunteers, they are required to  
2 continue to process to attempt to avoid these types of violations of their covenants. So,  
3 respectfully we would ask that you don't put that Board of Directors and those  
4 volunteers in that position to continue to enforce their covenants. So, why once again, it  
5 may be outside of zoning, we think we could give you Section 26-152 to look at as the  
6 fencing. We would appreciate you, your consideration on that.

7 CHAIRMAN BROWN: Mr. Tillson does your company represent Ashley Hall?

8 MR. TILLSON: No sir, we represent Magnolia Hall, which is, uses the same  
9 entrance as, there's one entrance into the entire area, Magnolia and Ashley.

10 CHAIRMAN BROWN: Do you live in Ashley Hall?

11 MR. TILLSON: Do I live in Ashley Hall? No sir, I do not.

12 CHAIRMAN BROWN: Okay.

13 MR. PRICE: Is it Big Leaf Road sir?

14 MR. TILLSON: I'm sorry?

15 MR. PRICE: Big Leaf Road off of Hardscrabble, is that the main entrance?

16 MR. TOLLISON: Yes.

17 MR. PRICE: And that's it right here.

18 MR. TOLLISON: That's right. Ashley Hall would go to the right and down further  
19 Magnolia Hall goes down in on that same road, going down in. It's off Hardscrabble,  
20 which once again everybody knows the problem, but they also, my company also  
21 represents the Summit on the other side, several communities out in that area.

1 MS. CAIRNS: I have just comment I have to make about your implication that  
2 our ignoring covenants is forcing the board to do something. That's really quite unfair.  
3 The covenants or private agreements, we have nothing to do with it.

4 MR. TILLSON: And, and I, I didn't -

5 MS. CAIRNS: And if there's any forcing, it's the people who buy under private  
6 covenants, they have already accepted that any enforcement of that would be by  
7 themselves. And I just don't like the implication that we should somehow help them by  
8 making our decisions based on the existence of covenants.

9 MR. TILLSON: Well, I apologize for any insinuations I may have made. I guess,  
10 I just, I said when I started it, it offers up the question of what, what happens next upon  
11 these approvals. I mean, it does offer up that question for the board to consider.

12 CHAIRMAN BROWN: The simple question is is private remedy is available.

13 MS. CAIRNS: We have nothing to do with that.

14 MR. TOLLISON: Yeah, yeah.

15 MS. CAIRNS: I mean we -

16 MR. TOLLISON: I, and I understand that.

17 MS. PERKINS: And I think in the statement I made that it, it was not that, you  
18 know, we take it, just looking at what the covenant says. It is not by the covenant itself.

19 MR. TOLLISON: And I understand that. And if, if I got off track, I certainly  
20 apologize to that. Our concern is the traffic flow coming off Hardscrabble and once  
21 again I'll refer back to the Section of 26-152 about the fence. Thank ya'll.

22 CHAIRMAN BROWN: Any questions for Mr. Tillson? Thank you, sir.

23 MS. FRYE: Can I make my final comments?

1 MS. CAIRNS: We let opposition go after her replies.

2 CHAIRMAN BROWN: Yes, yes ma'am.

3 MS. FRYE: There was one thing that I forget to address, address earlier. One of  
4 the young ladies that came up said that, that my sign was being blocked by a car. This  
5 sign went up June 20<sup>th</sup> and has been there since. So, the car did not come until this  
6 Friday and so I just wanted to address that and when I spoke to Mr. Vic about that, he  
7 did explain to me and I did apologize. But, like I said my uncle was moving the car in  
8 and out, it was not sitting there. So, I just wanted to address that the sign has been up  
9 there since June 20<sup>th</sup> so.

10 CHAIRMAN BROWN: So we know the timeframe.

11 MS. FRYE: Thank you very much.

12 CHAIRMAN BROWN: All right discussion by the Board. Hearing no discussions,  
13 I'm sorry.

14 MS. CAIRNS: I just, I mean, it sounds as if much of the opposition is based on  
15 concepts of a slippery slope with allowing commercial into residential areas. And the  
16 covenants in both of those, I mean the code allows daycares in residential areas so long  
17 as the site supports it. And the covenants are not of our concern. The only concern  
18 that I have is that, that a plain reading of the code does require that the backyard be  
19 fenced. So, I think that a fence in the backyard is a requirement, regardless of the use  
20 of the area, the code simply requires it. But I don't hear the concerns involving traffic  
21 and parking that are really of a degree such that this particular property doesn't support  
22 use of a daycare. Yes, sir?

23 MR. PRICE: Looking at the code about the, about the play area.

1 MS. CAIRNS: Uh-huh (affirmative).

2 MR. PRICE: It says any outdoor play area shall be fenced or otherwise enclosed  
3 on all sides and shall not include driveways, parking areas or land otherwise unsuited  
4 for children's play area. Now, I've been looking at that "any outdoor play area". So, it  
5 seems like an area would need to be designated and that would have to be fenced  
6 because there may be a situation, you know, maybe not such much in this case, where  
7 someone isn't going to have an outdoor play area, they may have some, you know,  
8 some adequate room outside. And, their intention is not, so, you know, I don't, I think  
9 we have to careful on, is that just going to be a normal requirement. So you have to  
10 have it fenced regardless of whether it's going to be used or not.

11 CHAIRMAN BROWN: Any additional discussion? Hearing none, the Chair will  
12 entertain a motion.

13 MS. CAIRNS: I would make a motion that Special Exception 06-22 be approved  
14 for the use of five children daycare from 6:00 a.m. to 6:00 p.m. with the provision that  
15 there be no outdoor play area because of the lack of fencing and if there were to be  
16 outdoor play, there would be a fence. [Inaudible] those as part of the requirement.

17 CHAIRMAN BROWN: Is there a second? Is there a second? Well, in order to  
18 get the motion on the table, I'll second the motion. All those in favor of the motion,  
19 please indicate by raising their hand. Opposed.

20 *[Approved: Cairns; Opposed: Branham, Tolbert, Brown, Perkins, Perrine; Absent for*  
21 *vote: Ashford]*

22 CHAIRMAN BROWN: Is there a, another motion?

23 MR. BRANHAM: I make a motion that Special Exception 06-22 be denied.

1 CHAIRMAN BROWN: Is there a second to that motion?

2 MS. PERRINE: I second.

3 CHAIRMAN BROWN: It's been moved and seconded that case 06-022 SE be  
4 denied. All in favor of the motion, signify by raising their hand. Opposed?

5 *[Approved: Branham, Tolbert, Brown, Perkins, Perrine; Opposed: Cairns; Absent for*  
6 *vote: Ashford]*

7 CHAIRMAN BROWN: Let the record reflect that Mr. Ashford is absent. Next  
8 case, Mr. Price.

9 **CASE NUMBER 06-23 V:**

10 MR. PRICE: Okay, the next case is case 06-23 Variance. The applicant, the  
11 applicant is requesting the Board of Appeals to grant a variance to encroach into the  
12 required side and rear yard setbacks on property zone RU. The applicant is Vicki Cruel.  
13 The location is 7765 Fairfield Road. It's, the parcel is a little more than an acre tract.  
14 The subject property has an existing 1,048 square foot structure that according to the  
15 [inaudible] records was constructed in about 1951. The applicant proposes to encroach  
16 into the side yard setback by nine feet. The surrounding area is primarily comprised of  
17 residential structures located on one plus acres tracts. I'm familiar with this case for  
18 some reason. As you can see here, this is the, you know, the, the existing home and  
19 this where they currently park and here, I believe, this what, this is about right where the  
20 property line is going to run. Right here, I believe, as the applicant has stated, this is a  
21 family member that may be here to voice some support for this. The, and I wanted,  
22 wanted to point out is the actual addition, I don't believe is going to take up the whole  
23 side here. It's gonna fall back in this area, correct? So, it's going to fall back in here

1 and connect to this side. And, I believe as I stated in, in the agenda, this is the rear of  
2 the yard and I've spoken to the applicant about, you know, other areas that this addition  
3 could have taken place that would not necessarily, that would not require a variance,  
4 but this the rear; there's a septic tank right in the rear, so that eliminates that. And,  
5 there's an existing storage building that would kind of block an addition, but it's also,  
6 also, it really wouldn't meet the needs by putting the addition on that side of the home.  
7 So, that kind of leads us back to this particular area here.

8 CHAIRMAN BROWN: All right, Ms. Cruel, would you tell the Board what it is you  
9 want to do please?

10 **TESTIMONY OF CHRISTOPHER PEARSON:**

11 MR. PEARSON: Yes, hi, my name is Christopher Pearson and I'm just at  
12 address 7765 Fairfield Road. The addition actually takes up about 36' from the existing  
13 part of the house to near the property line and the property line actually is exact  
14 distance from the house to the property line is 37.8 feet, which would allow a little, little  
15 bit less than two feet in the property line with the new construction of that, the addition  
16 to construct. And I would just ask for variance for that.

17 CHAIRMAN BROWN: All right, and the purpose of this addition?

18 MR. PEARSON: The purpose of this addition is a double garage, and above the  
19 garage and a foyer area in between to make up the 36'.

20 CHAIRMAN BROWN: All right, questions for Mr. Pearson?

21 MS. CAIRNS: Well the request is basically to use all of the setback. You are  
22 going within two feet of the property line?

23 MR. PEARSON: Yes, it's a -

1 MS. CAIRNS: Which is rather extraordinary request I would sort of behoove you  
2 to reconsider your location of the building on the property because in essence you're  
3 asking for the setback to not even exist. [Inaudible] on the neighboring property.

4 MR. PEARSON: The neighbor is actually here. She's a relative, a homeowner,  
5 she's [inaudible] construction.

6 MS. PERKINS: Do you own that property?

7 MR. PEARSON: Excuse me, ma'am?

8 MS. PERKINS: Do you own, do you own that property?

9 MR. PEARSON: She owns it. I'm actually, I'm the builder, I'm sorry.

10 MS. PERKINS: Okay, you own the property [inaudible]?

11 MR. PEARSON: Yes, she owns it, the homeowner; she's the homeowner, Ms.  
12 Cruel.

13 MS. PERKINS: Okay, you're the owner?

14 MR. PEARSON: Right.

15 MS. PERKINS: You're building the double car garage with her. Something over  
16 [inaudible].

17 MR. PEARSON: Right.

18 MS. PERKINS: Who owns the property that abuts that property that leave that,  
19 pick up all the, I thought there was somebody, there was something said that there was  
20 neighbor, which was of ya'll family.

21 MR. PEARSON: Her.

22 MS. PERKINS: Oh, okay. Geo, Mr. Price, did you say that there, did I hear you  
23 say that there, that you looked for other places on that property?

1 MR. PRICE: Well, well, I mean usually when someone comes in and they ask,  
2 they say want to do a variance, you know, I kind of look at, you know, if there's really a  
3 necessity for the variance request or either sometimes people just want to put it in a  
4 location that looks better. But we did, we met the applicant out there under, at the  
5 property and we looked at the rear and the side and I asked him just the general  
6 questions why they couldn't put there and they stated, you know, because of the septic  
7 tank and also, the other side of the house, not only the storage building but the  
8 practicality of it. I, I don't want to get into this too much, but maybe the applicant could  
9 explain. I know you asked a question earlier on what was the need of this or the reason  
10 for this addition. I think she can explain it a lot better.

11 **TESTIMONY OF VICKI CRUEL:**

12 MS. CRUEL: Okay, basically I work third shift at, at night and basically I get off  
13 at 3:00 a.m. in the morning and awfully fear of getting out of my car at night. The  
14 addition above the garage is basically, I've remarried since I moved into this home and I  
15 have two stepchildren. I also have two children of my own. My daughter now is staying  
16 in a room approximately about 8 x 5. It's a utility room that she really don't have any  
17 room to maneuver in at all. We have one bathroom. Of course, we need another  
18 bathroom because often we have six people in the house. When I see this, this is a kit  
19 that Boozer have that actually fits my budget that I can buy and actually the addition,  
20 let's see, the package is actually is like 28, it's like 28'. The breezeway is basically for  
21 the stairs to come into the new home.

1 CHAIRMAN BROWN: Mr. Price, you said the applicant proposes to encroach  
2 into the required side yard setbacks by nine feet. That would mean that there was still  
3 11' left to the property line, wouldn't it?

4 MR. PRICE: In answer, the problem with that [inaudible]-

5 CHAIRMAN BROWN: Pardon?

6 MR. PRICE: Yeah, 11' maybe.

7 MS. CAIRNS: But they're encroaching 18' into the 20' setback.

8 MR. PRICE: Yeah.

9 CHAIRMAN BROWN: It says nine feet.

10 MR. PRICE: I made an error, just a moment. I, I think that when I was doing my  
11 calculations, I left off the breezeway, the eight foot breezeway, so I apologize for that.

12 CHAIRMAN BROWN: Okay. Are there any additional questions for Mr.  
13 Pearson? Any additional questions for Ms. Cruel?

14 MS. PERKINS: Would the family deed that property over to you?

15 MS. CRUEL: Excuse me?

16 MS. PERKINS: Would she, would she willing to deed some of that property to  
17 you?

18 MS. CRUEL: No, I don't think so. We're still a good distance from her home.  
19 Basically all I'm doing, is, it's a concrete slab that's already there. So, basically I just  
20 want to be able to drive forward into the garage and also be able to utilize the space for  
21 my daughter and two stepchildren.

22 CHAIRMAN BROWN: I have three other people signed up. Juanita Seals? Are  
23 you just here for moral support?

1 MS. CRUEL: Yeah, that the daughter that's in the little utility room.

2 CHAIRMAN BROWN: All right, Genus Cruel?

3 MS. CRUEL: That's my husband.

4 CHAIRMAN BROWN: Oh, all right, and Kim Labrew?

5 MS. CRUEL: That's my next-door neighbor that while we're doing the addition,  
6 she actually [inaudible] and she's in full support of it.

7 CHAIRMAN BROWN: All right. Any additional questions either for Mr. Pearson  
8 or Ms. Cruel? All right, thank you. There is no one signed in opposition, the Chair will  
9 entertain discussion.

10 MS. CAIRNS: I find it difficult to basically completely eliminate the setback. I  
11 mean maybe it's just sort of an unfortunate occurrence of events, but we've got a full  
12 one-acre parcel. There's no non-conformity. There's no issues of zoning problems. It's  
13 just the house sits close to the property line, but, closer, it should set back enough. But,  
14 I'm not comfortable approving a setback that completely, I mean, a variance that  
15 completely eliminates the setback without there being some restrictions to the property  
16 other than the location that things happen to land.

17 CHAIRMAN BROWN: Okay, additional discussion? Hearing none, the Chair will  
18 entertain a motion.

19 MR. TOLBERT: Mr. Chairman before you, can I ask a question of -

20 CHAIRMAN BROWN: Certainly.

21 MR. TOLBERT: With what they're asking, how much, I, I can't get my numbers,  
22 they keep coming up wrong. How much will be left as far as easement on this? Is it -

23 MS. CAIRNS: Setback?

1 MR. TOLBERT: Set back.

2 MS. CAIRNS: Less than two feet.

3 MR. TOLBERT: Less than two.

4 MS. CAIRNS: From the property line.

5 MR. PRICE: Yeah, it's gonna vary just because of the, you know, the way that  
6 the property line kind of angles, but -

7 MS. CAIRNS: The addition is 36' and the property line 37.6.

8 MR. PRICE: Yes, it, it could fall there

9 MS. PERKINS: He stated, I think he stated that.

10 MR. PRICE: Yeah, it could fall anywhere between two, to, you know, six feet,  
11 probably.

12 MS. PERKINS: Two to six feet?

13 MR. PRICE: Yeah just, you know, depending on how far it goes down the  
14 property line.

15 CHAIRMAN BROWN: I'm still waiting on a motion.

16 MR. ASHFORD: Mr. Chairman, I so move, make a motion that we approve.

17 CHAIRMAN BROWN: All right, there's a motion to approve case 06-23, is there  
18 a second?

19 MS. PERKINS: I'll second.

20 CHAIRMAN BROWN: Moved and seconded case 06-23 be approved. All those  
21 in favor, signify by raising their hand. Opposed. *[Approved: Branham, Tolbert, Brown,*  
22 *Perkins, Perrine, Ashford; Opposed: Cairns]*

1 CHAIRMAN BROWN: Ms. Cruel you have your request. Mr. Price will be in  
2 touch with you. All right, we have the minutes, which we only received earlier today. I  
3 understand the problem with getting them approved since it's been two months since  
4 these cases took places and we finally got some finality to it, but some of the people  
5 have not seen them at all. [Inaudible], I don't know what the feeling of the Board is. Is  
6 there a motion of one sort or another to as to how to deal with the minutes?

7 MR. BRANHAM: I looked through Mr. Chairman. With the time that was allotted  
8 to me and I didn't see any errors in it. Of course, I didn't have time to read it all the way  
9 through. I don't have a problem with approving it. I would like to make that motion.

10 CHAIRMAN BROWN: A, a motion to approve? Is there a second?

11 MR. ASHFORD: I second that motion.

12 CHAIRMAN BROWN: All those in favor? Opposed?

13 *[Approved: Branham, Tolbert, Brown, Perkins, Perrine, Ashford; Abstained: Cairns]*

14 CHAIRMAN BROWN: MS. CAIRNS: I didn't get a chance to read them.

15 CHAIRMAN BROWN: All right, the minutes are approved then. Anything  
16 further?

17 MR. PRICE: Yes sir. Yeah, we kind of skipped old business here, but this is  
18 more of a FYI.

19 MR. TOLBERT: Uh-oh.

20 MR. PRICE: Well, County Council has initiated a text amendment that is going to  
21 the Planning Commission on tomorrow, starting tomorrow that essentially requires all  
22 future, [inaudible] future Board members and this also will apply to the Planning

1 Commission members and I believe all of the other appointed bodies by the county, to  
2 reside within the unincorporated area of Richland County.

3 CHAIRMAN BROWN: Okay.

4 MS. CAIRNS: So you're saying that you going to have in the unincorporated part  
5 of the county?

6 MR. PRICE: Yes. I mean those that are present, that presently serve on the  
7 Boards that would be in the city or, area allowed to remain on, but any future appointed  
8 people would have to reside in the unincorporated.

9 MS. CAIRNS: But that's not, that's not, I mean, this just says that they have to  
10 give consideration. You have be in the county; and consideration will be given as to  
11 whether you are in incorporated or unincorporated.

12 MR. PRICE: No, it says any person who's appointed to the Board of Zoning  
13 Appeals after September 1, 2006 must reside in Richland County, what they're trying to  
14 get at is unincorporated areas of Richland County.

15 MS. CAIRNS: Yeah, but this just says that they should give consideration to  
16 what part of the county they live in, not just that they have to be county residents.

17 MR. PRICE: Well, that's what the Council is aiming for – okay.

18 MS. CAIRNS: Yeah.

19 MR. PRICE: [Inaudible] they're aiming for.

20 MS. CAIRNS: You know, this is me.

21 MR: PRICE: I know.

1 CHAIRMAN BROWN: It sounds reasonable to me. If there's nothing further, the  
2 meeting is adjourned.

3 *[Adjourned at 4:25 p.m.]*