

RICHLAND COUNTY BOARD OF ZONING APPEALS

February 4, 2009

[Present: Chairman Joshua McDuffie, Harold Branham, Elaine Perrine, Torrey Rush, Susanne Cecere, Sheldon Cooke, William Smith]

Called to order: 1:05 p.m.

CHAIRMAN MCDUFFIE: I'd like to call this meeting of the Richland County Board of Zoning Appeals to order. And now the attorney, Ms. Linder, will -

MS. LINDER: Thank you, Mr. McDuffie. Good afternoon, my name is Amelia Linder and I'm an attorney for the Board of Zoning Appeals. I'd like to welcome you this afternoon to the meeting that we're having this afternoon. I'd like to go through a few rules of procedure that we have to make sure that you understand what's going to happen this afternoon. The Board of Zoning Appeals is a *quasi* judicial setting, which means the decisions they make are final. If you are unhappy with the decision that the Board makes today, after the order is sent out you have 30 days to appeal the decision and that would be an appeal to circuit court, but this is a, a semi, formal court setting today and we'd ask you to respect common courtesy. When you come to speak, and anybody that does want to speak are gonna have to be sworn in, if you identify yourself as wanting to make testimony I'll have to swear you in. Then the applicant will have up to 15 minutes to make their case, if there's any opposition to what the applicant wants to do, the opposition has three minutes to speak and after the opposition has spoken the applicant has another five minutes to rebut the opposition. When you're at the podium if you'll just kindly make your comments to the Board and not to the members of the audience that would be appreciated. If you

1 have documents to submit, proper weight will be given to, to the documents that you
2 submit. The Board has the right to put conditions on any approvals that they may
3 give. Other house keeping matters, if you'll kindly silence or turn off your cell phones.
4 If you need to leave the room just do so quietly. And we may have an Executive
5 Session depending on if the Board would like to receive any legal advice or any legal
6 issues come up. Are there any questions on what I've just gone over? Okay if there
7 are members in the audience now that plan to testify and come to the podium to
8 speak, I need you at this time to stand up and raise your right hand. If you're
9 planning to address the Board in any capacity I need you to stand and raise your
10 right hand. Do you swear or affirm that the testimony you shall give shall be the truth,
11 the whole truth and nothing but the truth so help you God?

12 AUDIENCE MEMBERS: I do.

13 MS. LINDER: Okay, thank you, you may be seated. Oh, Mr. Chairman, there's
14 one other thing I'd like to go over with the Board Members. There's a number of
15 clerical corrections that need to be made to the Agenda so if you'll bear with me. On
16 your agenda the front page, Case number 08-63, that TMS number, the two digits
17 ending should be a 12 and not a 13 on the TMS number. On case number 08-64 the
18 two digits ending in that TMS number should be 13 and not 12. On Case 09-05,
19 that's a Special Exception for the cell tower; that particular location is zoned Rural not
20 General Commercial. And case number 09-06 that property is zoned General
21 Commercial, not Rural. And the final correction is found on page 41 of your Agenda,
22 at the top where you see the case number, that number should be 09-06. I apologize
23 for the errors but they're, they're fairly minor. Thank you.

1 CHAIRMAN MCDUFFIE: Thank you very much. At this time we would like to
2 reorder the schedule somewhat and move the approval of Minutes to the end and at
3 this point we'll commence with the public hearing if Mr. Price will call the, would call
4 the first case. And if it's the, if it's the Board's pleasure to combine the 08-63 and 08-
5 64 SE into, into one single case. Please call the first two cases Mr. Price.

6 **CASES 08-63 SE AND 08-64 SE:**

7 MR. PRICE: Okay the first item, items up are Case 08-63 Special Exception
8 and Case 08-64 Special Exception. Can y'all hear me?

9 MS. CECERE: No, barely.

10 MR. PRICE: Well we called IT to have him come down, I'll try to speak up
11 [inaudible]. The applicant for both cases is Leroy Jenkins, the locations are Old
12 Fairfield Road. The parcel size is about .45 tenths of an acre, the existing land use if
13 vacant. Subject properties are undeveloped and heavily wooded. The applicant
14 proposes to place a manufactured home on each of the parcels. The surrounding
15 area is comprised of undeveloped, heavily wooded parcels that are mostly zoned M-
16 1, which is Light Industrial. There is a home, you can see [inaudible] there's a home
17 on Old Fairfield Road. That seems to be the only residential use on that road, off of
18 Old Fairfield Road. Here's a plat of the property, they are next to each other. This
19 case was originally heard by the Board in October. Before the approval of the
20 Minutes there was, a reconsideration was granted to rehear the case after a couple
21 of deferrals we're here today.

22 **TESTIMONY OF ANDREW SERRATT:**

1 MR. SERRATT: Good afternoon, I'm Andrew Serratt, I'm Mr. Jenkins' attorney,
2 Mr. Jenkins is right here. It's my understanding that Mr. Jenkins wants to place a
3 mobile, a manufactured home on each of these properties primarily for his, his
4 daughters to, to live in while they go to, to school. Based on the information I see
5 here there's a house close, close by and the rest of the property that's, that's close is
6 simply not being used for anything, it's vacant land. The property is, is zoned M-1,
7 Light Industrial, which requires a Special Exception for these manufactured homes.
8 It's my understanding there's no opposition to this from the neighborhood. A
9 representative of Hollywood Hills is here and I think she would express that she
10 doesn't oppose it. In reading the Minutes from the hearing where the, the motion for
11 reconsideration was, was granted I believe that the person who asked for the
12 reconsideration was concerned about the incompatibility of this use with use of the
13 property in the surrounding areas and I, I simply don't, don't see that anybody is
14 using the property for anything other than, than growing trees at this point. There's
15 no intention to use this property for commercial uses, it's simply gonna be used as,
16 as, for his daughters and then if after they finished, perhaps as rental properties and
17 Mr. Jenkins is here certainly to answer any questions that the Board may have.

18 CHAIRMAN MCDUFFIE: Mr. Jenkins, do you have any further statements to
19 give at this time?

20 MR. JENKINS: Not at this time.

21 CHAIRMAN MCDUFFIE: Are there any questions from the Board for Mr.
22 Jenkins, or for Mr. Serratt?

1 MS. CECERE: Mr. Jenkins, when, I think your attorney stated that you are
2 going to, when your daughters finish school then you're going to turn this over as a
3 rental property?

4 MR. JENKINS: I'm, I'm not sure, it's hard to say, you know, we're looking at a
5 period of maybe about six to eight years from now. So, I mean, I'm not, you know,
6 I'm not sure about that.

7 MS. CECERE: One of my concerns would be at that point, you know, the
8 abandonment of the property and we certainly don't want to do that, we kind of want
9 to improve our areas where we live. And I think that when the county went and, and
10 did this light, they wanted to do a Light Industrial area they set aside certain pieces of
11 property and so we kind of want to look at that to make sure, you know, we're not
12 imposing on that.

13 MR. JENKINS: Okay. Well, I don't plan to abandon the place cause it's gonna
14 cost me somewhat, you know, a lot of money to get this place completed and I just
15 can't see it being abandoned with, you know, either a family member or my children
16 but you're looking at between the three kids we're talking about one going to college
17 each year. So you're talking about the next 10, maybe, you know, if they go and get
18 their Masters or whatever or longer. So, so I don't plan to abandon the property.

19 MR. SERRATT: Ms. Cecere, Mr. Jenkins is a real estate agent so he would be
20 uniquely qualified to market the property and sell it to someone if he no longer had a
21 need for it.

22 MS. CECERE: I, I understand. I'm familiar where the property is and I, I know
23 what's along that area and, but again, you know, we want to sort of abide also, we

1 have to take into consideration what County Council has set before us in the planning
2 stages of what this land should be used for. And so we may not have any Light
3 Industrial right now but, you know, in what's going to happen when, when property
4 becomes, or when somebody comes up and wants to use it Light Industrial then, you
5 know, then we have a problem. We don't, we've given that land to, you know, I
6 mean, to residential use and I know that if, let's say somebody came along and
7 wanted to put Light Industrial next to Mr. Jenkins then what would happen?

8 MR. SERRATT: I don't think he would have any standing to complain about
9 that if the property next door is zoned Light Industrial.

10 MS. CECERE: Well, let me ask you this, would you consider putting like a,
11 instead of like the manufactured housing, a prefab home instead?

12 MR. JENKINS: I think that's what I have in mind because I'm willing to do
13 whatever the Code, you know, specifies and I, like before I stated that I want to go
14 strictly by the Code, which you would have to a permanent foundation there and that
15 type of thing. So it wouldn't be like just some mobile home pulled, it would be like an
16 actual home with a foundation, you know, with no axels, none of that type of thing.
17 Because I think what it boils down to, even if it's a prefab it's all gonna end up being,
18 you know, kind of like a manufactured home, so.

19 MS. CECERE: Right.

20 CHAIRMAN MCDUFFIE: Mr. Price, could a, would a prefabricated home be, be
21 considered by the county to be the same as a manufactured home or the same as a
22 stick built home?

1 MR. PRICE: Actually a modular home is the term we use, it's more alike to a
2 stick built home or -

3 CHAIRMAN MCDUFFIE: Which, which would not be permitted in, in a Light
4 Industrial under -

5 MR. PRICE: No, no, no.

6 CHAIRMAN MCDUFFIE: - even with the Special Exception.

7 MR. PRICE: No residential use [inaudible] done by Special Exception in M-1
8 district.

9 MR. RUSH: It will be permitted by a Special Exception.

10 MR. PRICE: If you allow by Special Exception.

11 CHAIRMAN MCDUFFIE: The home is allowed in Light Industrial by Special
12 Exception?

13 MR. PRICE: By Special Exception, not outright.

14 MR. RUSH: And, and also to sort of echo what was said earlier, you know, I
15 think use is, is not necessarily what's there as what the land is designated for and it is
16 designated M-1.

17 MR. PRICE: For a correction, only manufactured homes are allowed by Special
18 Exceptions, no modular or stick built homes -

19 CHAIRMAN MCDUFFIE: That was my understanding of the Code, thank you.

20 MR. PRICE: So really what we have before us is a Special Exception to
21 establish a manufactured home, not a modular, not a stick built home.

22 CHAIRMAN MCDUFFIE: Okay, just so that we're all clear on, on that. And this
23 Board is able, assuming that the applicant meets the requirements for the Special

1 Exception, to grant a Special Exception for manufactured housing on a Light
2 Industrial zoned property. However, we cannot, it's not within our power to grant a
3 Special Exception for a modular home or a stick built home on a Light Industrial
4 property, so that we're all clear. Are there any more questions from the Board to the
5 applicant? At this time I would like to call people that have signed up to speak in
6 support. Excuse me, the first person on the list is Ms. Juliette Greenley. Ms.
7 Greenley, please come up to the podium and state your name and address for the
8 Record.

9 **TESTIMONY OF JULIETTE GREENLEY:**

10 MS. GREENLEY: My name is Juliette Davis Greenley, I'm the Vice President
11 of the Starks Terrace/Hollywood Hills Association and we're together so I wanted the
12 Record to show both communities. As you have stated we are not opposed of
13 whatever the Code stands for and we met with Mr. Jenkins before and in that area
14 the communities are meeting together and we have, and we want to develop that
15 area in the way that we would want, it's an older area but we want to develop it in the
16 way that we would be proud of it. And so we have met with Mr. Jenkins and we are
17 satisfied with what he's putting there along with the Code, if it did not go along with
18 the Code we would not. So we are very satisfied with that because we've been here
19 before about another property on that, in that area and we want to kind of keep it the
20 same. It's a long country block is what it is, just one half of, you know, one street and
21 we want to aim it where it works. Now the other properties on that, houses on the
22 end down by the highway department. And Mr. Jenkins' area is right next to it. So
23 sometimes you have to go that way, you try to keep it maybe the residential area that

1 way and if you, someone come in with light industrial maybe it would be on the, you
2 know, the other side. So we're trying to work with it to make sure it comes in
3 cohesiveness with the rest of this out there. So that's why we are satisfied with it. If
4 we had not met with him before and gone out and looked at what he wanted to do
5 and the way he wanted to use it, we would not be, but we are at this time.

6 CHAIRMAN MCDUFFIE: Thank you very much. Also signed up to speak is
7 J.D. Hayes.

8 **TESTIMONY OF J.D. HAYES:**

9 MR. HAYES: Actually I don't have anything to say [inaudible].

10 CHAIRMAN MCDUFFIE: Okay, thank you. Signed up is, I believe it's
11 [inaudible].

12 AUDIENCE MEMBER: We're just here to support -

13 CHAIRMAN MCDUFFIE: Okay, alright. And then also a Tiffany Bluford?

14 AUDIENCE MEMBER: [Inaudible]

15 CHAIRMAN MCDUFFIE: Alright. And of course the applicant. At this time
16 there is, and there is no one signed up against. At this time the Board will entertain
17 discussion. Alright, let's take a look at the criteria for a Special Exception and let's,
18 let's examine whether or not the applicant in this case meets these particular criteria.
19 Mr. Branham, would you care to go through the, go through the criteria?

20 MR. BRANHAM: Let's start with number five -

21 CHAIRMAN MCDUFFIE: Thank you.

22 MR. BRANHAM: Will the traffic be impacted by this proposal? I don't see the
23 traffic being impacted by it anymore than if it was a, if it was commercial. Would this

1 proposal affect vehicle and pedestrian safety? I don't see that. Is there a potential
2 impact on noise, lights, fumes or the obstruction of airflow on adjoining properties? I
3 would say no. Will the proposed use have an adverse impact on the aesthetic
4 character of the environs? No. Is the orientation and spacing of improvements of
5 buildings appropriate? And I would say yes to that.

6 CHAIRMAN MCDUFFIE: Alright. Is there any, any comment or any discussion
7 at this time? At this time I'll call for a motion.

8 MR. RUSH: I would like to make a motion that Case number 08-63 and 08-64
9 be approved. I had a question about, you know, can we make it specific to
10 residential use or can we even get into that? I guess that's a question for Staff?

11 MR. PRICE: Because the property is zoned M-1 it does allow for a number of
12 Commercial and Light Industrial uses on the property. If you're looking to restrict,
13 you know, certain types of commercial use, I'm sure you can make that part of the
14 stipulation, however Staff does kind of caution. Cause see there's a difference
15 between your permitted, you know, stand alone commercial uses as opposed to a
16 home occupation, you know, home occupations are really considered to be incidental
17 to residential use. So if you're looking to go in that direction Staff just cautions that,
18 you know, you could separate those types of uses.

19 MR. RUSH: Yeah, it would be, I guess more, you know, don't want trucks
20 parking on the property type deal, not necessarily selling Avon out the house, that's a
21 totally, you know, I don't want to even go in that direction. But I, I would like to make a
22 motion to approve based on, with the stipulation that, you know, no heavy, and no
23 industrial type or -

1 MR. PRICE: The commercial will be strictly to the uses that are allowed by
2 home occupation?

3 MR. RUSH: - yes, that's, that's it exactly.

4 CHAIRMAN MCDUFFIE: Alright there's a motion on -

5 MR. RUSH: Yeah. And also that if this property is abandoned that it would
6 have to come back before the Board for the Special Exception, abandoned for a year,
7 the Special Exception it would have to actually come back before the Board.

8 CHAIRMAN MCDUFFIE: Alright so we have a motion for approval of Special
9 Exception, or Case 08-63 SE and 08-64 SE based on that the, that the applicant
10 meets the requirements for a Special Exception subject to the stipulations that no, no
11 commercial activity other than what is permitted for a home occupation be practiced
12 there and also that any vacancy, discontinuance or abandonment for a period of 12
13 months would result in the Special Exception, in the Special Exception being voided
14 and would require a new Special Exception from this Board.

15 MR. PRICE: Mr. Chair, I also ask that the Board stipulates on the timeframe in
16 which this needs to be, be begun or, you know, or at least perfected in some way.

17 MR. RUSH: I guess I'll have to say a year.

18 CHAIRMAN MCDUFFIE: Construction to be commenced within one year.

19 MR. RUSH: Yes.

20 MR. SERRATT: Mr. Jenkins says that he might need a little more time. We'd
21 like to have two years if it's possible.

22 MR. RUSH: Well, I don't know, I'm a little – we'll say [inaudible].

1 CHAIRMAN MCDUFFIE: Construction to begin with in a period of 24 months.
2 Is there a second?

3 MR. BRANHAM: I'll second.

4 CHAIRMAN MCDUFFIE: All in favor?

5 MR. PRICE: All those in favor are Branham, Perrine, Rush, McDuffie, I'm sorry
6 Cooke, Smith.

7 CHAIRMAN MCDUFFIE: All opposed?

8 MR. PRICE: Cecere opposed.

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

10 CHAIRMAN MCDUFFIE: Mr. Jenkins, you have your motion [sic], Mr. Price will
11 be in touch. Thank you.

12 MR. SERRATT: Thank you so much.

13 CHAIRMAN MCDUFFIE: Alright at this time, Mr. Price would you please call
14 the next case?

15 **CASE 09-01 V:**

16 MR. PRICE: I believe you have the sign in sheet for this next case, I believe it's
17 09-01 Variance. Do you have anybody signed up for that particular case?

18 CHAIRMAN MCDUFFIE: At this time I do not have anybody on the sign in
19 sheet.

20 MR. PRICE: Is anybody here for Identiti Resources, the AllTell Store?

21 CHAIRMAN MCDUFFIE: If it's -

22 MR. PRICE: I understood that the last meeting, the applicant, we had to defer
23 this particular case because the applicant actually thought the meeting was on

1 Thursday for some reason, I'm not sure what the communication was. I'm not sure of,
2 the correspondence from this Department to the applicant, I'm not sure exactly what
3 happened, we haven't received any calls. So it's whatever the Board's pleasure is.

4 CHAIRMAN MCDUFFIE: At this time could we just dismiss it and the applicant
5 can reapply?

6 MR. PRICE: Just consider [inaudible] withdraw it?

7 CHAIRMAN MCDUFFIE: Yes, yes sir.

8 MR. PRICE: Amelia, is that, can the Board do that? Just withdraw the case
9 and do we need to take some type of approval or denial?

10 MS. LINDER: I, I believe this Board can vote to dismiss it or accept a
11 withdrawal. I'm not sure it would be a withdrawal but to just dismiss it I think would be
12 the appropriate thing to do.

13 MR. RUSH: Are there any, if you dismiss it are there any ramifications as far as
14 how long they have to come back or?

15 MR. PRICE: No not unless your bylaws -

16 CHAIRMAN MCDUFFIE: Well, we can dismiss it without, without -

17 MR. RUSH: Any penalties.

18 MS. LINDER: Without prejudice which will allow the applicant to reapply.

19 MR. PRICE: Okay.

20 CHAIRMAN MCDUFFIE: At this time, Mr. Price, please call the next case.

21 **CASE 09-05 SE:**

22 MR. PRICE: I'm just making some notes. The next case is, the next item is
23 Case 09-05 Special Exception. The applicant is requesting the Board of Zoning

1 Appeals to grant a Special Exception to permit the, a communication tower on a RU
2 zoning district. The applicant is Jonathan Yates who is representing Sequoia
3 Wireless, the location is Farming Creek Road, the parcel size is about five acres and
4 it's undeveloped at the time, heavily wooded and undeveloped. The applicant
5 proposes to erect a 190' telecommunications tower within a 6,400 square foot leased
6 area. The surrounding area consists of subdivisions, large residential tracts and
7 heavily wooded and undeveloped parcels. There's some discussion, I know the
8 question that normally comes up with cell towers, especially when there's some
9 residential nearby is the separation. The Staff did ensure that the separation is there
10 that meets the requirements of our Code from the next nearest residential and that
11 would have been part of your discussion. I think that was it.

12 CHAIRMAN MCDUFFIE: At this time we have Mr. Jonathan Yates signed up in
13 support of the case.

14 **TESTIMONY OF JONATHAN YATES:**

15 MR. YATES: Thank you so much, Chairman McDuffie. Jonathan Yates, and
16 with me today I have Martin Deputy of Sequoia Wireless, he's Director of Site
17 Development for Sequoia. First and foremost I want to thank Geo and Brian and all
18 the Staff here. I work out of Charleston and I don't know how you, how, how much you
19 know but you have some great folks here. They were very helpful to us throughout
20 this process, we had a lot of questions, they answered them and they met with us and
21 they, they did a lot to get us here today. What we're talking about is this is on the
22 Farming Creek Road section in Irmo. It is a five acre tract owned by Baker Metts, Jr.,
23 part of the Metts family that has a lot of property out in that area. We are proposing

1 190', and I, I'm gonna get into the criteria very quickly but just to give you a feel for
2 what we're doing. When you hear the word cell tower I think a lot of people put the
3 brakes on and say, hey what's coming at me? What we're proposing is 190' monopole
4 style and this is very important. We are under 200' and why that is important, at under
5 200' we get to do two things, a) we get to build a monopole. A monopole is just like a
6 pylon sign you'd have in front of a Hardees or a Wal-Mart, it's just that pole that goes
7 up. It is not the three-sided lattice structure nor is it what we call a guide tower, which
8 is the big tower with the wires coming all down. That's the first significant thing about
9 keeping it under 200'. The second very significant thing about keeping it under 200' is
10 that no lights, there will be no lights on this tower. We've had this site, Martin Deputy
11 did the development on this site, he worked on it for a period of time. What attracted
12 him, and this site is designed principally and initially for Sequoia Wireless. Sequoia
13 Wireless is a provider of wide max broadband services and digital phone services.
14 However, Martin designed the facility not just for Sequoia but for almost five of their
15 competitors. We've already had interest expressed by T-Mobile USA and AT&T
16 Mobility who would like to co-locate on this facility. What Martin was looking for, he
17 was trying to almost fit the center of a jigsaw puzzle. There were existing towers away
18 from this area but he had an interior area that's seen a lot of build out. If you don't
19 know this area of Irmo, we're about a half a mile away from Friarsgate Park and HE
20 Corley Elementary School. This area has seen an incredible amount of growth in the
21 past few years so you have a lot more rooftops. What Martin found on the Metts'
22 property was a five acre property completely treed, it is, it is completely covered in
23 some pretty nice old growth pine. In addition right, right above the property are two

1 very major, two separate elevated transmission lines, one with wooden poles another
2 with, another with steel structure, so you already have some visual interference in the
3 area. What we need to do today is, I, and I'm, and stop me if I go too quickly, if y'all
4 have not, Mr. Branham, Ms. Perrine they've, they've had to deal with me in the past. If
5 I move too quickly tell me to slow down, if I'm moving too slow tell me to speed up.
6 But what I need to do before you today is I have to present, under 26-152 of your
7 Code I have to present first nine criteria required for all cell towers in Richland County.
8 I'm going to go through those quickly [inaudible] five criteria that Mr. Branham just
9 went through for every Special Exception required under 26-152. The first criteria in
10 Richland County, oh and as another thought we talked about the 200', which we were
11 trying to achieve in order to build the monopole and to not have lights. We further,
12 even though it's under 200' we had this facility reviewed by the FAA and we received a
13 determination from the FAA that it would create no hazard to air navigation and most
14 importantly would not require the lights. The first requirement, requirement number
15 one under your Code for all cell towers is we have to be allowed in a specific use
16 district. We are located in the Rural district, the RU. RU is, communication of this sort
17 are allowed. The second criteria under 26-152 for cell towers is the cell towers must
18 be kept to a maximum of 300', we are at 190' so basically a little more than a third less
19 than what we could build. Number four, which Mr. Price touched on, we must be, if
20 you measure the height of the tower, 190', we must be at least one foot per foot of the
21 tower away from any inhabited residential structure. We are, we are in excess of 200'
22 from any residential structure so we would meet that requirement. Under your Code
23 that is up to a maximum of 250, measured from the base of the tower. The next, next

1 criteria is that we must have made an attempt to co-locate on any existing structure,
2 water tank, tall building before developing this facility. I can tell you that was Martin's
3 first job. The last thing that Sequoia Wireless wants to do is build a new facility, what
4 they'd like to do is not have to put up that money and go on existing facility.
5 Unfortunately in this area, there were no existing towers, water tanks or tall buildings
6 obviously in that rural, rural part of Irmo. The second criteria under number four is that
7 we must make this facility available for co-location, in fact we have. Martin has
8 designed the facility to put the Sequoia equipment up on the top but below that he has
9 at least four to five more spaces, and again we already have interest if we are
10 successful today and through the building permitting process, interest has been
11 expressed by T-Mobile USA who just recently last year acquired Sun-Com Wireless
12 and is trying to bring their coverage throughout the Carolinas, particularly in Richland
13 and Lexington county, and AT&T Mobility, the former Cingular Wireless who's been in
14 this market for sometime. So we couldn't, Martin couldn't find anything but he has
15 designed it so the other licensed carriers in this market can also go on the facility. The
16 next criteria, which I touched upon, under your Code if we are to light it it's to meet
17 FAA standards and we have no nighttime strobe, that's the good news here. By
18 Martin keeping it under 200' we will not be required to have lights and I think that's
19 significant when you have a facility. What gives cell towers a bad name quite simply
20 are those big three sided monsters or the things with guide wires with lights running up
21 and down the mass, that's what irritates people. When we can shrink it down under
22 200', deploy the monopole design, which is the most expensive, but what it provides to
23 the general public is the thinnest silhouette. It is at the top of this facility, at Martin's

1 facility it's only about 32" but most importantly, no lights. We are required under
2 section, section 7 of the tower criteria to enclose, we do not have any buildings, but to
3 enclose our tower and any equipment on the ground with a seven foot fence. What
4 we're gonna do in this case is we're gonna take an 80 x 80 area and we're gonna have
5 a seven foot fence topped with one foot of three strands of barbed wire to form and
6 anti-climbing device. So we will actually have a total of eight feet, thus meeting the
7 county's ordinance. Landscaping, we're required to meet the requirements of section
8 26-176, if you go out and see this property, which I took another look at earlier today, it
9 is completely treed. What we're gonna do, Martin is simply going to scoop out what he
10 needs in the back to put in the tower facility, have the 12' access road, all the
11 remaining vegetation will remain and it's, it's an incredible existing vegetation. Next
12 criteria, no signage. We will, the only signage on there, the FCC requires us to carry
13 certain emergency and identification signage that'll be the only signage and there will
14 be absolutely no advertising signage. Final requirement, the ninth of the requirements
15 for communication towers is that if for any reason in the future that it, we are not using
16 it, that T-Mobile USA, AT&T or Sequoia do not continue to use it, this facility has to be
17 removed within 120 days, it has to be dismantled, with the cessation of use. We, you
18 should have a letter in your file from Martin as Director of Site Development where we
19 agreed to that requirement and we agreed to make it a condition of this approval.
20 Those are the nine criteria for towers. Then if I may I'd like to go take a look with you
21 at the general 26-152 requirements of all Special Exceptions in Richland County. The
22 first one is traffic impact. That is another beauty of this site. We do not, we have
23 about a 30 day construction period and then after that the site will only be visited about

1 eight to 10 times per year. We do not create any traffic except for those very few
2 visits. I have done facilities, a couple places to give you a feel, I did a facility on the
3 Biltmore Estate in Ashville, the Brute(?) Foundation in Georgetown County and they
4 actually have gate guards where they monitored how often we came and about eight
5 times is about the average. So we do not create any traffic and those visits are usually
6 a light, a light utility vehicle or a pickup truck, technician comes for about an hour or
7 two, these are very low maintenance facilities. The next, the next criteria under all
8 Special Exception criteria is vehicle and pedestrian safety. We enhance vehicle and
9 pedestrian safety. Testimonials are in from law enforcement all over the state and the
10 country of what we do by providing this communication outpost from the, from the, well
11 really not minor but from things like reporting a drunk driver with their eyes on the road
12 to situations of imminent peril. It has been proved that wireless communication
13 absolutely enhances vehicle and pedestrian safety. And it caught me today as I drove
14 up from Charleston, a blue sign that I've probably seen a million times but for some
15 reason I read it today. It said in case of emergency hit *HP on your cell phone. That
16 was something we didn't have 15 years ago. If you were in a jam on the road you
17 were in a jam until someone drove along, we enhance vehicle and pedestrian safety.
18 The next, the next criteria under all criteria is impact of noise, lights, fumes or
19 obstruction of airflow onto adjoining property. This facility will create no noise, it will
20 have no lights, there will be no fumes, no odor and no obstruction of airflow on the
21 adjoining property. Anything on this facility is all contained on Baker Metts' property, it
22 will not go off property. The next criteria is adverse impact on the environs to include
23 the possibility of needing for screening, screening from view. We couldn't screen it

1 anymore, it is completely screened, it will be hidden in the back there. We're on a five
2 acre parcel, we're immediately adjacent to two major, major power easements. Martin
3 has designed this, he is 413' off of Farming Creek Road and he's designed it as a
4 monopole with low, no lights, we will have no impact whatsoever on the surrounding
5 area. Finally, the final criteria, the orientation and spacing of the improvements and
6 buildings, we will have no buildings on the site. It's just the equipment at the base of
7 the facility. We are setback 413' from the road as I discussed from Farming Creek
8 Road and we're designed to take advantage of the existing tree cover. I think, we're
9 here for any and all questions, Martin who designed the site. He has come up with a
10 very good site, it had all the criteria, it is a rural site but he did not go to the height that
11 you sometimes see in the Rural site, he feels at this height it will do what, it will cover
12 Sequoia's future and present needs. And in addition we've already had, which is
13 incredible in the cell tower business when you have someone like Sequoia go out and
14 build a tower for themselves you generally get interest after it's built, after people see it
15 go up you then will get some interest from the other carriers. This is phenomenal in
16 that Martin has not only Sequoia but two of their competitors are already interested in
17 utilizing this site. We're here for any and all questions, Martin and I, I hope you give
18 this a favorable review but if you look first at the nine general criteria of a cell tower
19 then the five specific criteria under 26-152 I feel that we not only meet but exceed all
20 the requirements of the county. I'm here for any and all questions.

21 CHAIRMAN MCDUFFIE: Are there any questions for, for Mr. Yates?

22 MS. CECERE: First I have a question for Mr. Price. The signs were posted in
23 the neighborhood?

1 MR. PRICE: Yes, ma'am.

2 MS. CECERE: And how far are the, is there subdivisions or just, it's more
3 rural?

4 MR. PRICE: Well, I pulled up, I pulled up the IMS mapping service as you can
5 see and of course the site is, well I hope y'all can see this, but here's the site kind of
6 highlighted within the little blue boundaries and here is the nearest subdivision.

7 MS. CECERE: Okay.

8 MR. PRICE: As you can see there are a number of homes that, you know,
9 have probably been out there for years on large lots but the nearest subdivision is
10 behind it and it's separated by another parcel.

11 MS. CECERE: Okay, thank you. Mr. Yates, I have a question for you.

12 MR. YATES: Yes, ma'am?

13 MS. CECERE: Were any of the neighborhoods contacted?

14 MR. YATES: No, ma'am. We, you know, the notice went up and we made
15 ourselves available for any questions. If you go out into this area and typically, and
16 we're seeing more and more, ma'am, where we get the support from the
17 neighborhoods. People are going, we're, we're in pretty tough times right now, times
18 that I've never seen and I think most of us in this room haven't seen and what is going
19 on across the country is what we have called the cord cutting phenomenon where the
20 50 or 60 bucks that you can cut if you cut out your land line phone, that can be food on
21 the table right now. So we've seen particularly in the past couple of months I do this
22 all over the State of South Carolina we're seeing more and more neighborhood
23 support. Particularly in the younger demographic as these burgeoning neighborhoods,

1 these are folks that are pretty much wireless only and typically they are going after us
2 to bring the wireless in. I think, I think particularly in this case where you see the
3 incredible situation that in 12 years of doing this, this is only the second time that I've
4 had three carriers interested in a facility at the zoning stage, there is a need there.
5 There is a need there to try to bring both voice and data coverage into those
6 residential rooftops to allow people the option if they're ready to cut the cord and
7 maybe save 50 or 60 bucks a month, which is real money right now to some folks,
8 they can do that.

9 MS. CECERE: Okay, thank you.

10 CHAIRMAN MCDUFFIE: Any further questions from the Board? Mr. Smith,
11 would you care to go through the Findings of Fact?

12 MR. SMITH: Yes, sir, I would. Were the specific requirements for the Special
13 Exception met? Yes, they were. Would the traffic be impacted by this proposal? No, I
14 don't think so. Would this proposal affect vehicle and pedestrian safety? Actually no,
15 not that I see at all. Is there a potential impact of noise, lights, fumes or obstruction of
16 airflow on adjoining properties? Actually looking at the information that Mr. Yates
17 provided, no because everything is on the property. Would the proposed use have an
18 adverse impact on the aesthetic character or the environment? Definitely no. Is the
19 orientation and spacing of improvement for building appropriate? Yes, it is.

20 CHAIRMAN MCDUFFIE: Is there any discussion from the Board at this time?
21 [Inaudible] make a motion?

22 MR. COOKE: Mr. Chairman, I would like to move to approve Special Exception
23 09-05 based on the Findings of Fact.

1 CHAIRMAN MCDUFFIE: I believe in this case the discontinuance and
2 abandonment stipulation would not be [inaudible] it's already in the Code. Is there a
3 second?

4 MS. CECERE: I second.

5 CHAIRMAN MCDUFFIE: All in favor?

6 MR. PRICE: Those in favor Branham, Perrine, Rush, McDuffie, Cecere, Cooke,
7 Smith.

8 CHAIRMAN MCDUFFIE: All opposed?

9 *[Approved: Branham, Perrine, Rush, McDuffie, Cecere, Cooke, Smith]*

10 CHAIRMAN MCDUFFIE: Mr. Yates, you have your Special Exception and Mr.
11 Price will be in touch. At this time we'll call the next case.

12 **CASE 09-06 SE:**

13 MR. PRICE: The next item is Case 09-06 Special Exception. The applicant is
14 requesting the Board of Zoning Appeals to grant a Special Exception to permit the
15 construction of a communication tower in a GC district. The applicant is Jonathan
16 Yates representing Optima Towers, the location is Leesburg Road, the, the existing
17 status of the property is vacant. The applicant proposes to erect a 150'
18 telecommunications tower within a 4,900 square foot leased area. Abutting, excuse
19 me, abutting properties along Leesburg Road are primarily commercial and developed.
20 The residential neighborhood is located north of the subject property, as you can see
21 here – let me go out a little bit - this is Leesburg Road, most of the properties along
22 Leesburg Road are commercial in nature. There's some that were formerly residential
23 or have become commercial over the years. And there's a neighborhood right behind

1 the property along Ulmer Road and Welbourne is residential and that's the closest
2 residential. Once again Staff did take into the [inaudible] distance that the nearest
3 residential structure would be from the tower and that particular criteria has been met.
4 The property was posted as required and advertised.

5 CHAIRMAN MCDUFFIE: Before we call the applicant, I have a quick question
6 of clarification about the distance from the proposed tower to the rear property line.
7 It's my understanding that for over 50' you need one foot of setback, is that only off of
8 front line or -

9 MR. PRICE: The separation is not from the property line, separation is from the
10 residential structure.

11 CHAIRMAN MCDUFFIE: Alright.

12 MR. COOKE: So it's not the setback, it's actually the actual residential
13 structure.

14 MR. PRICE: Yeah, I mean, they will meet the setbacks for that district but the
15 separation is from the nearest residential structure. So if there's a house you would
16 want it to be that distance as necessary.

17 MS. CECERE: Do we have any pictures of that, no?

18 MR. PRICE: Of the house? Ms. Cecere, pictures of?

19 MS. CECERE: Of how far, a picture of the house.

20 MR. PRICE: We have it for the plans that were submitted by the applicant.

21 MR. RUSH: And how close is that property?

22 MR. PRICE: I'll pull this up for you. It actually was part of the discussion. As
23 stated the tower is proposed to be located 135', 11" from Leesburg Road and

1 approximately 56' from the rear property line. The tower will be 157' from the nearest
2 existing residential structure.

3 MS. PERRINE: How many feet from the residential?

4 MR. PRICE: One hundred and fifty seven. As you can see the applicant,
5 here's the tower and this is the nearest residential structure and it's 157', 9".

6 CHAIRMAN MCDUFFIE: Mr. Price, is the, the property, the property at the rear
7 of this property, would that be zoned as residential property?

8 MR. PRICE: Yes. Yes.

9 MR. COOKE: But just the front of Leesburg Road, that's zoned commercial,
10 right?

11 MR. PRICE: The parcel that the, that the structure is on is zoned commercial.

12 MR. COOKE: Right.

13 MR. PRICE: The parcels where I guess north of it, behind it from Leesburg
14 Road are zoned residential.

15 MR. COOKE: Right.

16 MR. PRICE: According to the Code I think we're, Mr. McDuffie was kind of
17 looking at [inaudible] in no case shall a communication tower be located within 50' of a
18 residentially zoned district; that has been met. And the next one [inaudible] setback
19 shall increase one foot for each foot of height of the tower as measured from the base
20 of the tower, the maximum required separation being 250'. But if you look where this
21 is starting it's the minimum setbacks for communication towers certain uses, not from
22 the property line, from certain uses. So upon review it meets the setbacks from a
23 residential zoning district and it also meets the separation from a residential use.

1 MR. RUSH: I got a question about that. If that property right behind it is zoned
2 residential that that house is on right there how, how's the property, I would assume
3 that property's zoned residential?

4 MR. PRICE: Yes.

5 MR. RUSH: How is that sitting, maybe I'm confused. I'm trying to get -

6 MR. PRICE: Go ahead.

7 MR. RUSH: - how is that sitting 50' away if that lot line is contiguous to the lot
8 line of the cell tower's property?

9 MR. PRICE: Okay. The cell tower?

10 MR. RUSH: Yeah, the cell tower's going that way.

11 MR. PRICE: [Inaudible] from the base of the tower.

12 MR. RUSH: Right to the property line.

13 MR. PRICE: Yes.

14 MR. RUSH: And that's, okay.

15 MR. PRICE: We have it in here as 56' from the rear property line.

16 MR. RUSH: Okay.

17 MR. PRICE: You're looking more at the top of the structure to the property line.

18 CHAIRMAN MCDUFFIE: At this time I'd like to call Executive Session for the
19 purposes of getting some legal advice.

20 *[Executive Session]*

21 CHAIRMAN MCDUFFIE: So I would like to call the Board out of Executive
22 Session. At this point I would also like to ask the Zoning Administrator for some
23 clarification on Section 26-152(D)(23)(c).

1 MR. PRICE: Mr. Chair, it is my interpretation, which I've applied to cell towers
2 that have to come in over the past years that I've been charged with interpreting the
3 Code that the setbacks are from certain uses as follows and it states number one, in
4 no case shall, in no case shall a communication tower be located within 50' of a
5 residential zoning district, it says or an inhabited residential dwelling. When you get
6 into number two, for items in excess of 50' the setback shall increase one foot per
7 each foot of tower, each foot of height of the tower as measured from the base of the
8 tower, a maximum required separation being 250'. It has always been my
9 interpretation that when you do apply those additional setbacks that it's from a use
10 never apply that to the property lines. So that's the use in this particular case once
11 again from my interpretation is from a residential structure not from the property line.

12 MR. RUSH: I, I think that's sort of where the disconnect comes because I sort
13 of see use as the property itself, the land use and it says the residential zoning district,
14 which, you know, that's why I posed the question initially. It seems like, you know, if
15 that property is zoned commercial and the next one right beside it, behind it is zoned
16 residential that residential starts at that property line not necessarily at the house itself.
17 So then your measurements are totally, you know, you're measuring it from that
18 property line as opposed to a structure.

19 MR. PRICE: You're referring to the tower, measuring from the property line?

20 MR. RUSH: Yeah.

21 CHAIRMAN MCDUFFIE: At this time I'd like to call the applicant, once again
22 Mr., Mr. Yates to present the case.

23 **TESTIMONY OF JONATHAN YATES:**

1 MR. YATES: Thank you very much Chairman McDuffie, Members of the Board.
2 Jonathan Yates on behalf of Optima Wireless, Keith Powell, Director of Engineering of
3 Optima Wireless is here with me today. And before I get into it if I could digress, I've
4 been working on these facilities here in Richland County since 1995. The
5 interpretation, and I can see room for confusion, the interpretation has always been it
6 would be 50' to the residential district but then height of the facility to an inhabited
7 residential structure. And the thought process on this, this ordinance was actually until
8 the redo was done, Geo, I want to say in like '04, '05 this, this section was actually a
9 little bit expanded. It had some additional language, when it got re-codified in '05
10 some of that language got left out so it didn't leave it, it left, there was some confusion.
11 It always said the same thing but if you look at the Code prior to '05 and to just, it
12 wasn't that this was amended it was just when it was actually rerun into the Code a
13 little bit got left out that clarified that. So that has been, I've done most of the facilities
14 in Richland County for Cingular Wireless, AT&T Mobility, working with Geo and Staff
15 and that has always been the interpretation. And if I could give you the background
16 cause I was actually involved when the Code was being, Code was being prepared.
17 The thinking was you wanted to have a little bit more, the setback in this case, we're in
18 the General Commercial zone. The setback on General Commercial is 25 front feet,
19 10 rear and zero sides. The thought process behind this part of the ordinance was
20 you wanted some additional setback from say a GC to a residential so you had the 50'
21 but what you absolutely wanted to have if the structure was inhabited, you wanted to
22 make sure that it was at least height of the tower away. Now the thought process on
23 that was from a safety factor and this is more designed to the latticed or guide towers,

1 unlike the monopole. The monopole, which we have in this case 150' monopole it will
2 actually, and I'm gonna ask Keith, how far below grade, the foundation? This was
3 mainly designed for the guides and lattice cause in this case what they were
4 concerned about with one of the big guides or lattice towers, what if it fell and I will get
5 into this more in detail next. But with the monopole, which we're going with here, a
6 very short 150' monopole, Keith's pole is actually gonna go 25' below grade. So it's
7 like you stick a needle, you stick, you stick a needle into the ground and it doesn't
8 have the wind resistance. This particular pole has been battle tested particularly in
9 Katrina, this same design of pole and the only failure we had in Katrina is when flying
10 missiles like boats or parts of a bridge hit a pole then the pole came down. So the
11 thought process was let's have 50' to the district to beef up what would be over, say
12 the standard district but to absolutely have height from an inhabited, and Richland
13 County was very clear on this, they didn't just say residential structure, they had the
14 extra criteria that the structure had to be actually inhabited. If it was a vacant structure
15 they weren't worried about it and that was designed as a safety feature. The whole
16 setback was designed as a safety feature so that a tower in a very catastrophic
17 weather condition couldn't hit a house. And most of the thought process on that was
18 designed for the lattice towers that are simply bolted to foundations or the guide tower,
19 the guide wires that could not fall and hit a house. What we're talking about here
20 today is 150' monopole style tower. This one is very important and this very much was
21 to fit the center of the jigsaw puzzle. We're here along Leesburg Road, this is a built
22 out area and it's completely built out and the problem we have here with two carriers
23 right now, T-Mobile USA and Cricket Communications, they are both experiencing

1 what we call coverage and capacity problems. A capacity problem is what you would
2 see in an area like this, we're on a very busy commercial strip along Leesburg and
3 coming off that commercial strip you have fully, densely populated residential, whether
4 it be single or multifamily. What happens in this case there are existing towers around
5 separated but they cannot handle the volume of calls that are generated by the
6 number of folks trying to use their devices along Leesburg Road. Keith had a tough
7 assignment, when you're trying to do a capacity site it is very problematic cause you're
8 doing what we call an infill site. It is a site that has to come into the middle of three
9 existing sites that in this case we have an American Tower facility about a mile, about
10 one and a third mile away, closer to I-77. Further out Leesburg Road we have an SBA
11 communications facility that I actually did for AT&T two miles further out Leesburg, and
12 to the south we again have American Tower and Crown Castle facilities. Keith's
13 mission on behalf of these carriers was to find something in that middle where we had,
14 where we had the coverage and capacity issue where people, what will happen on
15 their phones is they will get a fast busy signal and they can't get a call out. It made
16 this, this was a very problematic search, trying to come up, we cannot go on the
17 residential property itself cause we couldn't meet the setbacks and we, we, we're not
18 allowed. We had to find something on General Commercial, we had to have, find a
19 property in there on General Commercial that allowed us enough distance in the back
20 to meet the setbacks and also what Keith was looking for, a way to shield this with
21 some incredible landscaping. So this was a very tough search to fill a very vexing
22 need for two carriers. I'm going to go through, and at any point we can stop, I'm going
23 to go through the nine criteria first. Slow me down if you need to. [Inaudible]

1 commercial district, wireless communication facilities are allowed in the General
2 Commercial district. Second criteria, communication towers are limited in Richland
3 County to 300', we are at 150' or half of that. What Keith was trying to do, he was
4 trying to go the leanest he could to create the capacity relief but not do a tall tower. So
5 he was able to get it down and this facility is designed not only for T-Mobile USA and
6 Cricket but it has positions for two other carriers. Most probably, we'll see what
7 happens but it'll most probably end up being AT&T and Verizon the other dominant
8 carriers in this market. He designed it so that all four could go on. We now get to the
9 setback and we've talked a lot about the setback but quite simply as we've always
10 interpreted the ordinance and if you could have seen the pre '05 ordinance it had a
11 little more verbiage that made it a little clearer, we are, we are 56' from the rear
12 property line and we are close to 158' from the inhabited residential structure on the
13 property of Mary Francis Goff. Ms. Goff owns the house behind us, she also owns
14 next to us the commercial property. Again where we are located this, this property is
15 on Leesburg and Welbourne, it is presently utilized, our piece is vacant. The, it is
16 owned by Stop and Save, Inc. they are renovating, there is a gas station on the corner
17 that is presently under renovation. So as we've always interpreted the ordinance we
18 meet the 50' setback to the line and we meet the setback to the inhabited residential
19 structure. The next criteria is illumination, Keith had this facility also reviewed by the
20 FAA, the FAA determined two things. One, it would be no hazard to air navigation,
21 included in that review is the review of any aviation, helicopter aviation emanating off
22 of Fort Jackson, which is behind us. In addition the FAA determined that there would
23 be no illumination. The next criteria is the facility must be enclosed with a seven foot

1 fence, Keith is enclosing a 50' x 50' area with a seven foot fence topped with one foot
2 of an anti-climbing device. The next criteria is landscaping, because of where it's
3 located on this busy commercial strip and because it's a vacant area, Keith is actually
4 going with two landscape buffers. He is going to ring the facility, the fenced area, the
5 50 x 50 will be ringed with a 10' buffer pursuant to 26-176 consisting of 17 Leyland
6 Cyprus trees. Behind the facility between us and the residential property there's some
7 existing trees. What Keith wanted to do to beef that up, along those existing trees he's
8 putting in additional October Glory Maple trees, eight feet tall at time of planting. He is
9 also coming back in underneath that with 57 Prague(?) bivurnim(?), the under story
10 shrubs so to create a green all the way across the back. So in versus just meeting
11 one criteria of 26-176, the 10' buffer, he's going to buffer around the pole itself and
12 then he's going to further buffer, augment the existing trees in the back by additional
13 buffering. The next criteria, signage, there is, there is no signage on here other than
14 the FCC emergency ID information required. The next criteria is that, agreeing to
15 dismantle the facility after 120 days cessation of use, you have a letter in file from
16 Keith as Director of Engineering of Optima Towers where he agrees to remove that
17 facility if it ever is not used by T-Mobile USA, Cricket or any of the other subsequent
18 carriers and we make that apart of the condition. Next we go to the five criteria, if we
19 can look at the five criteria for every, every Special Exception under 26-152, traffic
20 impact. Again as we talked before Keith, it will take Keith about 30 days to build this
21 facility and then he only expects eight to 10 visits a year. Vehicle and pedestrian
22 safety, and this is all important here, what, there is an absolute need to get this
23 coverage where it needs to be on this very busy section of Leesburg Road. We will

1 enhance vehicle and pedestrian safety by getting this coverage in where it needs to
2 be. The third criteria, impact of noise, light, fumes or obstruction of airflow, there will
3 be no noise, there are no lights on the tower, no fumes, no odors and there will be no
4 obstruction of airflow. The next criteria, adverse impact on the environs, we have to
5 look at the environs. Where we are is on a busy commercial strip of Leesburg, we're
6 sharing the property with a Stop and Save, Inc. that is undergoing a major renovation
7 there is commercial all along that strip, we back up to residential but what Keith has
8 elected to do is not just landscape around the facility but to beef up the existing trees
9 by bringing in large trees and the 57 Prague bivirnums. The final criteria is orientation
10 and spacing of the improvements of buildings, what Keith elected to do was to get this
11 facility, there's an existing tree on the property he wanted to take advantage of, he
12 pulled this back off of Leesburg 136', there will be no buildings and again he's going
13 with two layers of landscaping to absolutely cover it. We ask you to look at this
14 strongly, it is a very short, I do not believe I've done a monopole this short in Richland
15 County, this is very short but that's the nature of a capacity site. It'll be a little bit lower
16 than the existing site so as not to interfere and it is highly, highly needed. This search
17 has been going on for almost 24 months, it's been almost two years and the dilemma
18 is trying to fit, trying to find a piece of property that is available that you can fit this
19 facility in, this has been a very, very tough placement. The need is there but with the
20 layout along Leesburg Road there have just been not a lot of properties that would
21 meet the criteria. That's why we tell you it is absolutely essential that you approve this
22 very short monopole that is not lit. Our reading of both the nine criteria and the five
23 criteria is that we absolutely meet them. We're here for any and all questions.

1 CHAIRMAN MCDUFFIE: Thank you, Mr. Yates. Any questions from the Board
2 at this time for the applicant?

3 MS. CECERE: Yes. Did you say, is it, was Ms. Goff that lives behind the -

4 MR. YATES: We believe it's rental property. The owner is a Mary Francis Goff
5 who actually has the commercial property next to the Stop and Save property on
6 Leesburg and she has several properties in the area. We're not, I'm not sure if she,
7 but the house is inhabited and we do meet, the requirement would be from the base of
8 the tower to the structure 150', we actually meet it, we have 157.9.

9 MS. CECERE: Did you speak with the property owner in regards to -

10 MR. YATES: Did you speak to the property owner of the -

11 AUDIENCE MEMBER: No, sir, I did not.

12 MR. YATES: no we did not.

13 MS. CECERE: Thank you.

14 MR. YATES: But the property and the notice sign, I was by there again today
15 the notice sign is still up so it met all the criteria under the Richland County Code and
16 Title 6 of the South Carolina Code for notice.

17 MS. CECERE: [Inaudible] as interpreted by Staff, correct?

18 MR. PRICE: Yes.

19 MS. CECERE: Okay, thank you.

20 MR. YATES: Thank you, ma'am.

21 CHAIRMAN MCDUFFIE: Any further questions? Mr. Rush, would you care to
22 go through the criteria for a Special Exception?

1 MR. RUSH: Yeah, I can go through that but, well yeah I wanted to discuss this
2 a little bit because, you know, for one I don't think we can go by ordinance, an
3 ordinance that we don't, we're not privy to. This is sort of our guidelines and this is
4 what we're, we can go by cause I don't know for whatever reason it would, you know,
5 the proper language if you will was left out. You know, I just go back to the, the uses
6 and, and with that being a residential zoning district, which the definition, our
7 ordinance of a zoning district, the regulations governing the use of a building as, as
8 per the map of, for Richland County. So it's not necessarily the facilities itself, it's
9 more so the, the property is my interpretation of it. So I, I think we have an issue with
10 the, with the -

11 MR. COOKE: Yes cause, I mean, the say it does read it says no case, in no
12 case shall a communications tower be located within 50' of a residential zoning district
13 and it's my understanding that the property line is the beginning of the residential
14 district and it says or an inhabited residential dwelling. I mean, the way it reads it just,
15 it reads that it shouldn't be 50' within that, that zoning district. That's, I guess that's the
16 issue that I'm, I'm kind of looking at.

17 MR. RUSH: Well – plus the excess.

18 CHAIRMAN MCDUFFIE: It seems to meet that that 50', no problem obviously.

19 MS. CECERE: And they're at about 56'.

20 MR. COOKE: It's 56' right.

21 CHAIRMAN MCDUFFIE: - 54 at the nearest on the, you know, from the, the
22 diagrams we've been given. Yeah, 54 to the nearest residential zone is a vacant lot I
23 think.

1 MR. COOKE: Right.

2 CHAIRMAN MCDUFFIE: From, from the, from the drawings that [inaudible]
3 nonetheless it seems to me the criteria is spelt out in (C)(1) but I, I also have some
4 questions about (C)(2) in terms of -

5 MR. COOKE: One foot.

6 CHAIRMAN MCDUFFIE: - in terms of language and the Code. Is it, is it
7 intended to mean setback [inaudible] setback that was in excess of 50, does that
8 mean setback from the property line of the parcel that the, that the tower is sitting on
9 or if it means setback from, setback from -

10 MR COOKE: The dwelling.

11 CHAIRMAN MCDUFFIE: - the use such as a, a, a inhabited residence?

12 MR. PRICE: You know, let me just interject. Once again, you know, [inaudible]
13 before you. My interpretation has been my interpretation [inaudible] to what was in
14 there before that use, we've never considered a zoning district a use. For example, M-
15 1 what is that use, is it just a zoning district [inaudible] multiple uses within that. On
16 this particular property north of this, the property is zoned residential that is the zoning
17 district, the use on the property is residential and that's what we're looking, as I said
18 that's my interpretation and that's the one that we've always applied.

19 CHAIRMAN MCDUFFIE: Well, I mean I, I do have, I guess some, it does raise
20 some question [inaudible] a residential parcel that is used residentially, it's use would
21 be to [inaudible] extend to the entire parcel or simply to the physical structure on that,
22 on that parcel. If this Board was to request some clarification on this from say County
23 Council request say a text amendment on that what would the timeframe -

1 MR. PRICE: Starting in March, May, May more than likely when the Minutes
2 are approved.

3 CHAIRMAN MCDUFFIE: Does anyone else have any questions or comments
4 or discussion?

5 MR. RUSH: I, I feel there needs to be some additional interpretation because,
6 or some additional [inaudible]. My interpretation of the way it reads right now is that
7 this property is, or this, for what they're asking for it's, it's not in compliance. But what,
8 what you're saying if there is supposed to be additional language in this then, you
9 know, we can't interpret on, based on whether there is supposed to be additional
10 language. And if there needs to be clarification then maybe we need to get
11 clarification or go through the process of getting clarification. Because, you know, I
12 can only go by what I'm reading.

13 CHAIRMAN MCDUFFIE: I mean, as I read this it seems to say that, you know,
14 it, it's, in Section 2 it specifically says the setbacks shall increase and the Code defines
15 setback and the minimum distance by, by which any building or structure must be
16 separated from the lot lines of the lot on which it is located, not on, you know, on the
17 minimum distance by which it needs to be separated from a particular structure on
18 another lot, that type of thing.

19 MR. PRICE: Mr. McDuffie, just talking to the applicant, I'm gonna try to present
20 this. If that is the case, and once again I think we're still at a point of interpretation,
21 once again it's my interpretation [inaudible] the Board has the, you know, at this
22 particular junction you'll have, you make the interpretation.

1 CHAIRMAN MCDUFFIE: At this time I would like to call the Board into
2 Executive Session with its attorney.

3 MR. PRICE: Just let me finish, the applicant is willing to set the tower at a
4 distance that it would meet the implied interpretation at this time of I believe [inaudible]
5 150' from the property line.

6 CHAIRMAN MCDUFFIE: Is that possible to do on, on this lot?

7 MR. YATES: If, if I, with your permission Mr. Chair, yes talking to Keith what he
8 would be willing to do, cause I can't stress enough the essential nature of this facility
9 and the time that - we, we - it's a 200' lot, it's roughly a 200' lot so we would be willing
10 to bring the facility forward and to beef up the landscaping around it so we could,
11 under any interpretation, meet the ordinance, under any interpretation. So we would
12 be willing to bring it forward and that will still, that will still comply the setback in
13 General Commercial is 25' off the front so we'd still, even if we bring it forward we're
14 still meeting the setback by a factor of two, we're more than double the setback. But
15 Keith would just slide everything forward including all of his landscaping and we would
16 slide, slide it all forward and that way there could be no question under any
17 interpretation we'd meet the Code.

18 CHAIRMAN MCDUFFIE: At this time I'd like to take the Board into Executive
19 Session without Staff.

20 *[Executive Session]*

21 CHAIRMAN MCDUFFIE: Mr. Yates, one quick question. Oh, at this point I'd
22 like to call the Board out of Executive Session. Mr. Yates, you stated the applicant

1 would be willing to push the tower further forward at the site in order to meet even a,
2 even a potentially more stringent -

3 MR. YATES: Absolutely, yeah it, we just did the calculation it would be about a
4 94' move and we could do that and we'll bring, we'll leave our landscaping that we had
5 planned for the rear of the property in place cause again he was offering a double
6 buffer, but he will continue his buffer all the way around it so it would be shielded. And
7 one point of impact, you know, the signage has been up for a while on a busy street.
8 We've had no, you know, no complaints, no nothing about this. We, we think, we
9 really think the folks want their coverage back in that area so he would be probably
10 willing, it would be about a 94' move and that way any interpretation of the Code, he's
11 met it, he's met it.

12 CHAIRMAN MCDUFFIE: Thank you very much. At this time would anyone like
13 to make a motion or is there further discussion?

14 [Inaudible discussion]

15 CHAIRMAN MCDUFFIE: At this time I, I'd like to make a motion. I want to
16 make a motion to, at this time I'd like to make a motion to approve 09-06 Special
17 Exception to grant a Special Exception to permit the construction of the
18 communication tower in a General Commercial district given the, given the applicant
19 relocating the tower to the forward portion of, further forward on the parcel, which
20 would in that case meet even a more stringent setback requirement based on the -

21 MR. PRICE: We need to establish [inaudible].

1 CHAIRMAN MCDUFFIE: - okay, based on the applicant moving the tower to be
2 located at least 150' from the rear property line is what the applicant has offered,
3 based on meeting all of the criteria for a Special Exception.

4 MR. SMITH: I'll second.

5 CHAIRMAN MCDUFFIE: Okay, all in favor?

6 MR. PRICE: Those in favor Branham, Perrine, Rush, McDuffie, Cecere, Cooke,
7 Smith.

8 *[Approved: Branham, Perrine, Rush, McDuffie, Cecere, Cooke, Smith]*

9 MR. YATES: Thank ya'll very much [inaudible].

10 CHAIRMAN MCDUFFIE: All opposed? Mr. Yates, at this time you have your
11 Special Exception and Mr. Price will be in touch.

12 MR. YATES: We, we thank you [inaudible].

13 CHAIRMAN MCDUFFIE: Mr. Price, at this time also the Board would like to
14 request that Staff would go to Planning Commission and County Council to, to ask for
15 an amended ordinance that actually clarifies Part (C)(2) of the Code.

16 MR. PRICE: Is there a particular way you want it to read?

17 CHAIRMAN MCDUFFIE: I guess what we would, what we would like to ensure
18 is written in there is Staff's, or not Staff's but Council's intent for how the, for how the
19 ordinance should be construed, whether in fact [inaudible] the setback in Part, Part 2
20 from the residence or setback in Part 2 from the property line.

21 MR. RUSH: And could we, I would assume that's gonna be reviewed by the
22 Board before that's submitted.

23 MR. PRICE: No.

1 MR. RUSH: Can we get that -

2 MR. PRICE: We can, typically, Amelia you can correct me, more than likely
3 we'll take it to one of the committee meetings for Council or we could just take it
4 directly to Planning Commission.

5 MR. RUSH: I guess the reason why I'm asking that, we want to make sure
6 we're interpreting these ordinance that we understand the language that's being
7 [inaudible] before it goes forward.

8 MS. LINDER: What I can do is once Staff has created the ordinance -

9 MR. RUSH: Yeah, that's what I mean.

10 MS. LINDER: - we can certainly copy, with a copy to show you what's being
11 proposed.

12 MR. RUSH: Okay.

13 MR. PRICE: Do you want to see this, see the language prior to it going to
14 Council so we can have it for the March meeting?

15 MS. LINDER: I, I would just send it out as an email and then if there's any
16 comments you can certainly come to the zoning public hearing and make comments.

17 CHAIRMAN MCDUFFIE: I, I think that we just want to make sure that we
18 properly interpret the intent of, of the ordinance [inaudible].

19 MS. LINDER: I'm not sure the Board is saying how to, how to write the
20 ordinance.

21 CHAIRMAN MCDUFFIE: Yeah I don't think we're saying how to write it I just
22 want to make sure that it, in the future is interpreted appropriately. Thank you very

1 much. Let's see, at this time that concludes the public hearing portion of business
2 and we'll move on to Other Business.

3 **CASE 09-04 V:**

4 MR. PRICE: Mr. Chair, I believe we have a written request for reconsideration
5 of Case 09-04, which was heard before you last month. The applicant, the applicant
6 actually submitted this reconsideration, this is something of course that they desire
7 but also that's supported by Staff. From the last meeting until at this time we've had
8 a couple of meetings with the applicant, we've also had a couple of meetings with the
9 Department of Transportation regarding this matter. And then it's also requested
10 from Staff that this reconsideration be granted that way we're giving the applicant,
11 Staff and DOT a chance to get together so when it comes back to you you'll have a
12 little bit more of an informed decision and understand where we're all going. As
13 previously stated I believe during the original case this was a little unique, not just to
14 the Board but also to Staff. So it just kind of gives us a chance to see how we're
15 going to guide this in the future, not just in this particular case.

16 CHAIRMAN MCDUFFIE: Is there any discussion amongst the Board on the
17 request for reconsideration? Then at this time we'll entertain a motion.

18 MS. PERRINE: I make a motion that we grant the request for reconsideration
19 for case number 09-04 Variance.

20 CHAIRMAN MCDUFFIE: Is there a second?

21 MS. CECERE: I second.

22 CHAIRMAN MCDUFFIE: At this time there's a motion for reconsideration of
23 Case 09-04 Variance. All in favor?

1 MR. PRICE: Those in favor Branham, Perrine, Rush, McDuffie, Cecere, Cooke,
2 Smith.

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

4 CHAIRMAN MCDUFFIE: All opposed? Alright we have a reconsideration for
5 [inaudible].

6 MR. PRICE: [Inaudible]

7 MR. COOKE: And that will be on the Agenda next month?

8 MR. PRICE: What we're gonna do is we're gonna work with the applicants and
9 get everything taken care of, it will be, if not, whenever, whenever we have a
10 consensus on how we want to go.

11 CHAIRMAN MCDUFFIE: Alright at this time we'll move on to approval of the
12 Minutes from the previous session. So we will of course not be, not be approving the
13 portion of the Minutes that regard Case 09-04 Variance. So this will be for approval
14 of the other portions of the Minutes not to include that portion. Are there any
15 corrections, changes or amendments? Alright is there a motion to approve the
16 Minutes as, as –

17 MS. PERRINE: I didn't have any.

18 CHAIRMAN MCDUFFIE: [Inaudible] first. Is there a motion to approve the
19 Minutes as, as written?]

20 MR. RUSH: So moved.

21 CHAIRMAN MCDUFFIE: Of course, so moved but without the -

22 MR. RUSH: Yeah, I move to approve Minutes excluding request for case
23 number 09-04, request for consideration.

1 CHAIRMAN MCDUFFIE: So we have, we have a motion on the floor for
2 approval of Minutes other than approving Case 09-04 Variance, and do we have a
3 second?

4 MS. PERRINE: I second.

5 CHAIRMAN MCDUFFIE: All in favor?

6 MR. PRICE: All those in favor Branham, Perrine, Rush, McDuffie, Cecere,
7 Cooke, Smith.

8 *[Approved: Branham, Perrine, Rush, McDuffie, Cecere, Cooke, Smith]*

9 CHAIRMAN MCDUFFIE: The Minutes are approved. Is there any other
10 business?

11 MR. PRICE: I want to make sure you have your training in, make sure you all
12 go to your classes.

13 MR. RUSH: We were never updated with that information.

14 MR. PRICE: Okay what I'll do is I'll give [inaudible] to Suzy Haynes and she'll
15 contact each one of you and let you know -

16 MR. RUSH: But I think, yeah cause I think it was changed at one point, is that
17 correct?

18 CHAIRMAN MCDUFFIE: I'm not sure.

19 MR. RUSH: Is it supposed to be on the 23rd?

20 MR. PRICE: I will get with her.

21 CHAIRMAN MCDUFFIE: At this time I'd like to adjourn the meeting.

22
23 *[Meeting Adjourned at 2:45 p.m.]*