

BOARD OF ZONING APPEALS

November 4, 2009

[Present: Sheldon Cooke, Torrey Rush, Joshua McDuffie, William Smith; Absent: Harold Branham, Elaine Perrine, Suzanne Cecere]

Called to order:

CHAIRMAN MCDUFFIE: - instructions to, to the applicants.

AMELIA LINDER: Thank you, Mr. Chairman. Good afternoon folks, my name's Amelia Linder, I'm the attorney for the Board of Zoning Appeals and I'd like to welcome you this afternoon. I'd like to go over just a few rules of procedures so that we can make this afternoon go as smooth as possible. If you are the applicant, you will be able to address the Board first and you will have up to 15 minutes to present your case. After you have presented your case, then if there's any opposition they may come forward and address the Board. They will have three minutes to speak. When you come to the podium if you're planning to testify, I need to swear you in and give you an oath that you'll speak the truth. The Board of Zoning Appeals is a *quasi* judicial body, so any decision they make today will be final, subject to the Minutes being approved next month. So if the Board renders a decision today either in favor or denial, that is a tentative approval or a tentative denial and once those Minutes get approved an Order is signed and then that Order would be, would be mailed to you and any persons of interest. If you are upset with the Board's decision you have the right to appeal to circuit court and you have 30 days to do that. I would ask everyone to address their comments to the Board and not to members of the audience or to Staff. If you need to leave I would just ask that you go quietly and also if you have a cell phone, at this time I'd ask you to either silence it put it on vibrate or turn it off and I think I'm gonna have to

1 do the same thing. At this time if you're planning to testify and come to the podium to
2 address the Board I need you to stand to take the oath of, or take the oath that you'll
3 speak the truth. If you'll raise your right hand, please? Do you swear or affirm that the
4 testimony that you shall give today shall be the truth, the whole truth and nothing but the
5 truth so help you God?

6 AUDIENCE: I do.

7 MS. LINDER: Thank you.

8 CHAIRMAN MCDUFFIE: Thank you very much Ms. Linder. At this time if, if
9 Staff is ready, we will, oh, okay, alright. Before we, before we begin today, I will
10 recognize that we do have a quorum, however we do not have the entire Board here
11 today. If, if there are any applicants that would prefer to have their case heard by a, or
12 take the chance of having their case heard by a larger portion of the Board or the entire
13 Board at the next hearing, we would certainly extend that option. However, we, we do
14 have a quorum and, and certainly could hear any of the cases today, so we can
15 certainly extend that option to any of the applicants though. At this time, we'll look at
16 the approval of the Minutes from, from September. Are there any corrections from the
17 Board? Is there a motion to approve?

18 MR. RUSH: I'd like to make a Motion to approve the September '09 Minutes.

19 CHAIRMAN MCDUFFIE: Okay, is there a second?

20 MR. SMITH: I second.

21 CHAIRMAN MCDUFFIE: Alright, all in favor? It's unanimous.

22 *[Approved: Rush, McDuffie, Cooke, Smith]*

1 CHAIRMAN MCDUFFIE: Alright the Minutes from September, 2009 are
2 approved and at this time if Staff is ready we can now call the first case.

3 **CASE NO: 09-26, SE:**

4 MR.PRICE: The first case is, the first item is case 09-, I'm sorry, it's 09-26,
5 Special Exception. The applicant is requesting the Board of Zoning Appeals to grant a
6 Special Exception to permit the construction of a communication tower in a GC District,
7 it's General Commercial. The applicant is Jonathan Yates who is representing
8 American Tower, the location is 7360 Garner's Ferry Road. The parcel size is .88 of an
9 acre and the existing land use is commercial. I believe they have a, an insurance
10 business on the property. The applicant proposes to erect a 130' telecommunications
11 tower within a 3,000, which is a 50 x 60 square foot leased area. The abutting and
12 adjacent parcels along Garner's Ferry Road are commercially developed and there's a
13 residential neighborhood located north of the subject property. One of the things that
14 you would notice in your package under the discussion was that the initial site plans that
15 were submitted to Staff and I believe this is actually in your booklet also, the, the tower
16 is not set back 130' from the, the rear property line and according to the Code §26-
17 152(D)22(c) it has to be set back from the property line whatever the height of the tower
18 is, up to 250'. I spoke to the applicant and they got that corrected and I will actually,
19 one of the site plans that I will show you will, has the cell tower meeting the required
20 separation from the property lines. I'm just gonna go through some pictures here,
21 subject property, it says located along Garner's Ferry Road, many of the parcels in this
22 area are in the City of Columbia and they're all commercial developed. This is the site
23 and as you can see there's a couple of commercial businesses beside it, to the left and

1 right of it. This is a view from the businesses in the area. This is the bank that's
2 actually right [inaudible] on Garner's Ferry Road and this is a view of the rear property
3 and this is the view of some of the residential, residential properties in the rear, to the
4 rear of the property. And this house sits exactly, from this location this home sits
5 directly behind there, this is the closest residential structure. This is a proposed sketch
6 of the cell tower stating that it would be 130'. This was one of the original site plans and
7 you can't really see clearly on the presentation but in your packet it was, I believe 98'
8 away from the rear property line. As stated from talking to the applicant they did correct
9 that and the tower would now be 130' from the rear property line. That's it.

10 CHAIRMAN MCDUFFIE: As this time we have several individuals signed up in
11 support. The first one I believe is the applicant, if Mr. Jonathan Yates, would please
12 state your name and address for the Record?

13 **TESTIMONY OF JONATHAN YATES:**

14 MR. YATES: Thank you very much, Mr. Chairman. My name is Jonathan Yates,
15 I'm here on behalf of American Tower Corporation and AT&T Mobility. With me today, I
16 would like to introduce Mr. Jason Groseclose of American Tower Corporation and Mr.
17 John Coleman, who is the property owner for the property in question. With your
18 permission sir, I, I have a couple of boards I'm going to walk through to show our
19 compliance with the county requirements, so with your permission I'm gonna walk a little
20 bit in front here just to work from the boards if I may?

21 CHAIRMAN MCDUFFIE: Certainly.

22 MR. YATES: Yeah, I think I have enough room. First, we just want to say we
23 apologize for the inconsistency, the ordinance was changed on July 21st of this year,

1 unfortunately I'm too much of an old hand in Richland County so I, I was working under
2 the old rules, we apologize. Geo quite correctly contacted us, we were able to then able
3 to contact Mr. Coleman and he was perfectly willing to make this fully compliant with all
4 the rules of Richland County. We have some nice folks here with us today from the
5 neighborhood, who after talking to Mr. Bryant, we understand they have some
6 concerns. I hope to address all those concerns today, but what I want to make perfectly
7 clear on behalf of American Tower and AT&T, we've worked very hard for a long period
8 of time to get a tower that meets every one of your regulations. We don't start, we don't
9 stop there, as I committed to Mr. Bryant we will work, if approved, we will work
10 afterwards with the neighborhood, I've supplied my own personal cell phone number,
11 we're gonna work with them during the construction phase and any phase thereafter to
12 make sure if possible we become a good neighbor. The reason for this site, quite
13 simply, AT&T has a severe capacity issue in the neighborhoods. This property, Mr.
14 Coleman's property is on Garner's Ferry, it's just off I-77, it's between I-77 and
15 Greenlawn, which is a fairly busy commercial strip. We're encountering some fair
16 capacity issues in the neighborhoods behind Garner's Ferry and that is what this tower
17 is designed to correct. Consequently these are the people we're trying to serve, maybe
18 not everybody has our phone, but we have a lot of complaints coming there, people
19 unable to use our devices. I've done a total of, gosh I don't Geo maybe about 30
20 facilities here in Richland County, this is the shortest one I've ever done. What
21 American Tower wanted to do from the outset is we wanted to get the proper coverage
22 into these neighbors, but in addition we wanted to do it in the most innocuous way
23 possible. In that end, we went, we did a couple of things, we went with a monopole

1 design, a monopole is just a thin pile-on. Why did we go with the monopole? Visually
2 it's the least obtrusive. We then went with the lowest height possible, AT&T and
3 American Tower worked very closely not to do 180 or a 275' tower as exists throughout
4 the county, but we wanted to get it as low as possible. We then went to work on the
5 property issue and we zeroed in on the Coleman property because (a) it was in the
6 center of the search area; it was zoned properly and also behind it we had a very good
7 existing tree cover that would help shield the facility. At every stage of the game we
8 said here are the rules, but can we go a little bit past the Richland County rules and do it
9 a little bit better? At the end of the day it will be a wireless facility and if you are able to
10 look for it, you will be able to see it. At least another good thing, we were also able, we
11 have it reviewed and approved by the FAA and it will not have lights. So in every case
12 we took the assignment and said not how can we do the minimum, how can we do it
13 best? So with your permission I'm going to very quickly, and I'll move quickly, we're
14 gonna work through your criteria because what I have to do today under South Carolina
15 law is show you I meet your criteria. Number one, the first question that is required
16 under the tower ordinance, are we in a district that allows towers, that is a use district.
17 Yes, in fact we are, we are in the general commercial district, Mr. Coleman's property,
18 and towers are allowed. Number b, in the general commercial district, Richland County
19 has an absolute height limitation of 300', we were able to come in at 130', so greater
20 than half of the requirement we were able to come in under. Number c, and we just
21 discussed this one, this is, c is new, this is, this represents the ordinance which was
22 passed on July 21, we have to be one foot for each foot of tower height to our rear
23 property line, we have accomplished that, we are one foot for one foot to the rear

1 property line. In addition, when we abut a non-residentially zoned parcel with a
2 habitable residential dwelling, it must have a set-back of 50'. All the properties behind
3 us are residential, the other three sides are commercial, which leads to number 3,
4 communication towers abutting on a non-residentially zoned parcel without a habitable
5 residential dwelling shall observe the setbacks of the zoning district. The GC zoning
6 district in Richland County requires 25 front feet, 10 rear and zero sides. We're about
7 287' off the front on Garner's Ferry, 130 to the rear and 82 to one side and about 18 or
8 19 to the other side. So in each case, for instance the front set-back we meet it by a
9 factor of 11, the rear set-back 13, so in each case we tried to take your rules and take it
10 a little further, do a better job. Number d, we must show proof that we attempted to co-
11 locate on an existing structure and we must show that we're going to allow others to co-
12 locate on this. In your package you'll see, hopefully we'll see two things, one the
13 memorandum by Mr. Stephen M. Howard, Real Estate Manager of the Carolinas. AT&T
14 has been looking for a site to cover this hole for almost 24 to 36 months. If there had
15 been anything out there existing AT&T would have gone on it a long time ago and
16 solved this problem. AT&T has an absolute corporate mandate that if there's any way
17 to co-locate, the co-location must be exhausted first before they will authorize American
18 Tower to do another tower. We could, they could find nothing in this area to cover, to
19 the cover the deficit. In addition the tower has been designed not only for AT&T's
20 present and future needs, needs, but we're also designed it for at least three of their
21 competitors will have space on the tower. Mr. Groseclose of American Tower has
22 further verified that that is available and open for co-location. The next criteria and this
23 is a good one for us, towers shall not be, shall be illuminated as required by the FCC or

1 FAA. Jason, would you bring me the [inaudible]? And to get here today, just to give
2 you a feel for us, for me to get everything together to get to Geo, we've been working on
3 this in terms of federal and state regulatory for about eight months to get here before we
4 could apply. We submitted this facility to the FAA and they gave us two very important
5 determinations. Number one, no hazard to air navigation and number two, and this is
6 very important, no marking or lighting are required, so there will be no lights. If you
7 went out to this site and the tower was up tonight around 8:00 o'clock, you obviously
8 couldn't see it, there would, it would be dark outside. Thank you, Jason. We'll go back
9 to the ordinance. The next requirement each communication tower and associated
10 building shall be enclosed with a fence at least seven feet in height. Again here, we, we
11 read the rule, but we went a little further. Because of the proximity of the residential and
12 wanting to do everything we could to be a good neighbor, we decided not to go with the
13 standard chain link fence, instead we're going to go with a wooden fence. In addition,
14 we thought it would be better to make it about a foot higher, take it up to eight feet over
15 the seven feet required to give it just an additional buffer around that area. The wooden
16 fence for us obviously is more expensive to build and more expensive to maintain, but
17 we thought it was more in keeping with the character of the area than the standard
18 chain link. The next requirement is that we must meet §26-176, landscape
19 requirements, in this case in order to comply with 26-176 we have employed the
20 wooden fence, we're going to be using, and you saw from Geo's pictures the incredible
21 existing tree cover around the back, that's what attracted us to this property, we're going
22 to incorporate that, but further we're going to come back in and we're going to place the
23 perimeter of the wooden fence 30 Wax Myrtles, they grow very well and very quick in

1 this environment and help, will help shield the fence. The next requirement is that no
2 signage may be attached to any portion of the communications tower, particularly for
3 advertising; absolutely not, if you will see in our site plans we've attached our signage
4 requirements, they are limited to the FCC required emergency and identification
5 signage, there will be no advertising signage on the facility. The last, last one, number
6 I, if the tower for any reason could be, it was out of use for a period of 120 days we
7 have to dismantle or move it. You should also see in your package a letter from Mr.
8 Groseclose where American Tower agrees with that provision and is willing to make it a
9 condition to this application. But to be very frank, we do not see that happening any
10 time soon, this tower is very, very needed in this case. Next Jason, we'll go to the next
11 set of criteria. These are the tower specific criteria in your ordinance. In addition as you
12 are well aware in Richland County in order for approval of the special exception we
13 have to go through the five part test set under, under 26-152. The first part of this test is
14 traffic impact of the proposed facility, at this case it takes, we have about a 30 day
15 construction period to place the tower into place, 30 day total. After that AT&T on
16 average visits the site maybe seven to eight times a year, the visit is by a, a technician
17 in a light truck or a, or an SUV for about an hour or two just to tinker with the equipment.
18 Quite frankly our total trip generation over a period of a year, maximum would be 10 or
19 12 visits, so very, very low traffic impact. Number b, vehicle and pedestrian safety, this
20 is important. For vehicle and pedestrian safety the jury is no longer out, it is back, cell
21 towers absolutely enhance vehicle and pedestrian safety. The testimonials are in from
22 around the country, from law enforcement and first responders, most importantly and
23 this is very important is what we do for 911 services. Presently in the United States on

1 a daily basis over 300,000 calls a day to a 911 service originate from a wireless phone.
2 As of last month that number was up over 50% of every 911 call comes from a wireless
3 phone. These range from simply reporting a drunk driver ahead of you on the road to a
4 situation of imminent peril. The testimonials from law enforcement, first responders are
5 manifest, we had a particular situation where Jason and I from the City of Charleston,
6 we had a tragic fire three years ago at the Sofa Ware, Sofa Superstore. The one
7 person, employee who was saved in the fire was saved by the fact that he had his
8 phone on him, was able to call, it was patched through to the Charleston Fire
9 Department and they were able to get to the exact part of the building and extricate him.
10 Pure and simple, what do we do for pedestrian and vehicle safety, we absolutely
11 improve it. The next one, c, is the potential impact of noise, lights, fumes or obstruction
12 of airflow off of our property. The site will generate no noise, no lights, no fumes, no
13 odors, and there will no obstruction of airflow off of the Coleman property. The good
14 news is our coverage evidently works in the chambers – no. Quite simply there is no
15 effect off of the Coleman property of our facility. Number d, the, the adverse impact of
16 the proposed use on the aesthetic character or the environs to include the possible
17 need for screening from view? We have done everything here to go above and beyond
18 the ordinance. The ordinance allows for a 300' tower in the GC, we've taken it down to
19 130. Under the ordinance we could do a guide or what we call a lattice tower, which are
20 the big three sided structure, we went with a monopole, the most expensive and the
21 best, and the best looking. In addition, we had it reviewed and approved by the FAA
22 where it will not have lights on it. I have a tough job, for the past 15 years I've worked
23 all over the two Carolinas working on cell towers. I've done close to 1,500 of them in

1 the two Carolinas and Coastal Georgia, the only time ever, I've had a lot of furor before
2 a tower was built, people coming into rooms like this saying it's gonna change my life,
3 the world as I know ended, the only time I ever got a follow-up call and I told him it's not
4 gonna change anything for you, the only time I've ever gotten a follow-up call was on
5 one of the 300' towers with lights, the lights irritate people, this one will not have lights.
6 In addition, where we're located, we're right off I-77, we're behind Mr. Coleman's State
7 Farm Agency, a very, very busy commercial strip and one other thing that is interesting,
8 presently the property, Mr. Coleman's property runs from Garner's Ferry to Asbury
9 Drive. We will be accessing the property through the existing curb cut on Asbury.
10 Unfortunately for Mr. Coleman, what has developed over the years is that's become a
11 dangerous cut-through, people are cutting along side of his building to get onto to
12 Asbury so they don't have to get held up by the lights at Greenlawn and Garner's. Our
13 facility will stop that. There have been at least two to my knowledge, accidents for
14 people are cutting through and then popping onto Asbury, so we, we will help with that.
15 Again with the site, a very short monopole, no lights, wooden fence, 30 Wax Myrtles
16 and we will utilize the existing tree cover. Can I make it invisible? No I can't, I, there's a
17 line of sight technology, it has to be visible to communicate with the other towers and
18 the people that want to use it, but I can do my best job possible. Why am I doing this
19 whole thing? We're trying to provide wireless infrastructure. The world is going
20 wireless, the United States, we now have 270 million Americans with wireless and they
21 want their devices to work. This year particularly, in the economic climate unfortunately
22 our country has found itself in, we have seen a phenomenal number each month do
23 what we call cutting the chord, it might not sound like a lot of money to some folks, but

1 to a, a lot of folks if they can get rid of their land line phone company for \$50.00 or
2 \$60.00 a bucks a month, it can be food on the table and that means a lot to some folks.
3 To do that though wireless has to work inside, in building residential, people do not like
4 it if they have to go on their porch or into their yard to use the phone. Particularly this
5 year we've seen a lot of folks going wireless only. And my last criteria, the orientation
6 and spacing of the improvements or buildings, we will have no buildings, it will all be
7 cabinetry, we have the setbacks we described, the 287 from Garner's Ferry, the 130
8 from Asbury and coming back with the landscaping. I thank you so much for your
9 consideration and I apologize because this is a bit of a boring, a boring presentation but
10 it is a lot of criteria to go through, but what I want to leave you with, these are good folks
11 here today and they have a concern and we're gonna work with them going forward, we
12 will continue to work with them, but what we did is we took your rules, the rules of
13 Richland County, we followed every single one of those rules and in each case we said
14 how can we go just a little bit better? Take the seven foot fence, let's make it eight and
15 let's make it wood, let's bring in 30 Wax Myrtles, let's go to a monopole and let's do it so
16 we don't have to have lights. The last thing I'll do today Geo I have a copy or you can,
17 I'd like to enter into the Record by application if it's not already added? Okay, thank y'all
18 so much for your indulgence.

19 CHAIRMAN MCDUFFIE: Thank you. At this time is there anything to add from
20 either of the other two individuals signed up in support? Any, anything additional?
21 Okay, alright.

22 MR. RUSH: I've got a question, I saw that you said that, that there was an
23 attempt to co-locate, is there any evidence of that?

1 MR. YATES: Yes, sir, the evidence is provided in the memorandum and Mr.
2 Howard has, if you would look -

3 MR. RUSH: Yeah, I saw the letter.

4 MR. YATES: - yeah, just -

5 MR. RUSH: Yeah, alright.

6 MR. YATES: They looked at everything and let me, let me explain that from
7 AT&T's perspective. They've been dealing with a deficit there with customer complaints
8 and problems and they've been trying to solve it. They looked at every single, not only
9 tower, but they also looked to see if there were any tall buildings, which there weren't,
10 any water towers, they, they did a thorough search over almost a two year period to see
11 if anything absolutely would work. AT&T, believe it or not, the last thing they really want
12 to see happen is a new tower, they'd much rather prefer, prefer to deploy on an existing
13 infrastructure if it's there for a variety of reasons. One, they do not have to go through
14 this hearing, we simply apply to Richland County for a co-location and within 30 days
15 you're approved and they can be on the air. This site has not been able to get on the
16 air for almost two years because they had to develop a tower, they do everything
17 possible to avoid this, this is not what they want to do, but they have to do it when
18 there's absolutely nothing to work with.

19 MR. RUSH: I guess the reason why I'm asking is typically when we get cases
20 similar to this, there's some evidence showing, some type of geographical location
21 where the tower's going where -

22 MR. YATES: Sure. And what we included, what we, yeah -

23 MR. RUSH: Geo?

1 MR. PRICE: If you take a look at, this is from our, Richland County IMS Service,
2 we are able to at least identify some of the towers we have in our system, and as you
3 can see they, they are, the parcel that is highlighted in the aqua color is the subject
4 parcel and at least according to what I have here, these are the two nearest towers, and
5 there may be some more, but this is just what we have currently on our system.

6 MR. RUSH: And that's not necessarily as of today?

7 MR. PRICE: True.

8 MR. RUSH: Okay.

9 MR. YATES: But what, what we did sir, Mr. Rush, we also submitted in our
10 package all the, all the towers are registered through the FCC and we submitted the
11 results from the search of the FCC website, what they call their antenna site registration
12 site that shows that there were no towers within the half-mile radius and that was what
13 was required in order to make what we call under the ordinance the tower site search
14 area, in the tower site search area there were no existing towers and this is confirmed
15 by the FCC.

16 MR. RUSH: You said that information is in the packet?

17 MR. YATES: Yes sir, it would be right, it should be right behind the letter of
18 Stephen M. Howard.

19 CHAIRMAN MCDUFFIE: Thank you very much.

20 MR. YATES: Thank you sir. Thank you, Mr. Rush.

21 CHAIRMAN MCDUFFIE: At this time, we have several individuals signed up in
22 opposition, first one is Mr. Harold Bryant, who is, could you please come to the stand
23 and state your name and address for the Record?

1 **TESTIMONY OF HAROLD BRYANT:**

2 MR. BRYANT: Mr. Price, and other Members of the Richland County Zoning
3 Administration -

4 CHAIRMAN MCDUFFIE: Mr., Mr. Bryant, if you could please state your name
5 and address for the -

6 MR. BRYANT: Oh, I'm sorry.

7 CHAIRMAN MCDUFFIE: Thank you very much.

8 MR. BRYANT: Thank you. My name is, I was going to come to that in a minute,
9 but I'll be glad to tell you. My name is Harold Bryant. I live at 800 Fairwood Drive in
10 Richland, in, in Richland County and it's in the City of Columbia. I've lived there for over
11 25 years and have had many enjoyable experiences. However, I find that I am at the
12 age, I was born in September of 1921, so cell towers probably were not even thought of
13 that long ago, however, also, I am situated, I own a home at 800 Fairwood Drive, which
14 is on the corner of Fairwood and Asbury Drive and that is, my, my home is located, well
15 I don't even know the distance, but it, it's so close to the communication tower that I can
16 walk over across Asbury and I can see it without any problem, any objection
17 whatsoever. But I do have the objection that, first of all, and I think Mr. Yates was kind
18 enough to furnish me with a copy of the application, otherwise I would probably be in
19 the midnight of ignorance, of course I stay there most of the time anyway. But, this cell
20 tower, communication tower is so close to me that I fear several things; number one
21 what will it do to the value of my real estate and the real estate in that area? I, secondly
22 I am concerned about the health and welfare of the people that live in that area. I don't
23 know whether there's been enough experience with cell towers or, or communication

1 towers to know whether it will have any adverse effect on the health of the people that
2 live in that area. And incidentally there is a, a, I, I'm trying to think of how to express it,
3 a settlement or a, a group of residential area or houses that are known as Asbury Park
4 or Pine Wood Park, it has several names and I've heard it called by a number of them,
5 but I, I feel that this is something that might have been placed across Greenlawn Drive
6 in a community, in a commercial area and now Mr. Coleman's business is in a
7 commercial area, but it's not as occupied. It's not as built up as the commercial area
8 that's across Greenlawn Drive.

9 CHAIRMAN MCDUFFIE: Alright, thank you very much Mr. Bryant, your, your
10 time is, your time is expired.

11 MR. BRYANT: Thank you.

12 CHAIRMAN MCDUFFIE: And now we have, is that Mentor or Menton Wade?

13 AUDIENCE MEMBER: Mentor Wade.

14 CHAIRMAN MCDUFFIE: Mentor Wade? Okay.

15 AUDIENCE MEMBER: Yeah, they're here in support.

16 CHAIRMAN MCDUFFIE: Oh, you're here in support, okay, alright, then there is
17 also one more individual, I can't read the name here, but if you would please state your
18 name and address for the Record?

19 **TESTIMONY OF PAUL PICKLE:**

20 MR. PICKLE: My name is Paul R. Pickle, I, I live at 806 Fairway Drive, I've lived
21 there for 37 years. I, I probably will be asking more questions than expressing some
22 facts, but I will try my best to say what I feel about this project. I think all the thunder is
23 already taken out, out of my part, but I'll give it to you as my, my say so. I'm requesting

1 that the construction of this community, communication tower be denied because the
2 setback requests requires, requirements had been met, plans have not been met.
3 Plans for this tower outlined that the 130' required by law is short by approximately 10
4 or more feet. The plan shows that initial start point is from the center of the tower,
5 whereas I contend that the measurement should be from the security fence line which is
6 the nearest point of this facility to Asbury Drive. Just for the Record plans and some of
7 the drawings and letters and so forth show such wording as Asbury Park, which should
8 be named, it's named Pine Wood Park and they have a few mistakes in Asbury, A-S-H-
9 B-U-R-Y, I wish they were putting that thing over on that road wherever it's at, but I think
10 that's just a typographical error, and which is should be Asbury Drive. I was unable due
11 to the short period of time or period to conduct research on the matter of noise, the
12 requirements, which I did not see any noise barrier requirements in this request. I
13 assume this facility has some noise that will probably be very annoying to residents of
14 this area. What is the requirement by law as to the decimal measurement allowable?
15 How many decimals must be, must I be subject to, subjected to before I may be able to
16 ask or at least through judicial processing? A very disturbing point is how many gamma
17 rays and beta rays are being produced by this tower, tower and thrown off to the wind?
18 This radiation may cause health problems, if not today, but what about tomorrow or the
19 day after tomorrow, or tomorrow, or the other tomorrow?

20 CHAIRMAN MCDUFFIE: Thank you, thank you very much Mr. Pickle.

21 MR. PICKLE: I don't get 15 minutes?

22 CHAIRMAN MCDUFFIE: No, no, only, not for rebuttal sir.

23 MR. PICKLE: Oh.

1 CHAIRMAN MCDUFFIE: Not for, not for opposition, that's just -

2 MR. PICKLE: I've only got one more, give me time for that?

3 CHAIRMAN MCDUFFIE: Yes, sir.

4 MR. PICKLE: If this project is so good for this area, why is it not being put in the
5 area between the Post Office and Lowe's, or the area near Wal-Mart? Or any area
6 where it is further away from residential areas? As if it is as good for our area, why not
7 put it in front of Mr. Coleman's building, along Garner's Ferry Road? In closing I would
8 like to, to ask you and other Members of the panel there to, how would you like to have
9 this tower in your, your backyard? Thank you, sir.

10 CHAIRMAN MCDUFFIE: Thank you very much. I'll call the applicant back to the
11 stand.

12 MR. YATES: Thank you very much, sir and I, I thank, I thank Ms. Wade, Mr.
13 Bryant and Mr. Pickle for coming out today and I would to address their concerns one
14 by one. In terms of the evaluation, the facts are quite, quite simply very much in our
15 favor, we are seen now with the need for wireless and the people that wanted to have it
16 deployed in their house, we're actually seeing the way it can enhance values. We have
17 a situation in the Lake Norman area of Charlotte, Lake Norman is a very nice suburban
18 community of Charlotte where they actually, the developer actually charged a premium
19 for those properties closer to the cell tower mainly because folks want their wireless
20 devices to work. As to the health, quite simply, Ms., Ms. Linder can communicate more
21 to you of the federal, the fact of the matter is the federal law preempts any concern for
22 health, but I want to address it even though it, it is preempted by federal law, I want to
23 address it. Cell towers have been studied by the American Cancer Society, the FDA,

1 and the World Health Organization and they have all conclusively found there is no
2 harm. Quite simply to have any harm whatsoever you have to be at height in front of
3 the panels for a prolonged period of time. As to noise, we create no noise, there will be
4 no noise from this facility coming off of the Coleman property, none whatsoever. As to,
5 and one thing I need to explain in our site plans, with each site we assign a name, it's
6 just a name we create. The name we created for this site was Ashbury, so if you look at
7 the site plans closely, we, everywhere we're supposed to mentioned Asbury the road
8 we, we got it right. I, it caught me the first time I read the plans myself and visited the
9 property. These are nice folks and they have concerns, but quite simply we can
10 address every one of their concerns today and going forward. As I explained I've just
11 met Mr. Pickle and Ms. Wade this morning, having talked to Mr. Bryant several times,
12 and what I tried to tell them is we do meet the ordinance, but we don't stop there. Mr.
13 Groseclose and I will be involved personally, if approved, during the construction period
14 and thereafter and we will then be available for any time. If they think there's noise or
15 they think there's a problem, I have issued not just my office number, but my personal
16 cell phone number. We ask you to take a look at this in the context of the two, two sets
17 of criteria we're asked to meet both, both regarding communication towers in Richland
18 County and the special exception criteria, and I feel after your review and also I took the
19 time to look in your Findings of Fact worksheet, based on your Findings of Fact I feel
20 strongly you will find as I do that we not only meet, but exceed all of these requirements.
21 Back to Mr. Rush's comment; Mr. Rush, if there had been any other way we could have
22 done this without having to build this tower and go through this process, we would have
23 done it. We were unable to find any way in the tower site search area, as further

1 verified by the FCC, there was nothing we could use. Fortunately that area is blessed,
2 there aren't a lot of tall buildings, you know, that we could have gone on and there
3 certainly were no towers. I know this is a tough decision for you today because these
4 are good folks, but I ask you to look at the ordinance and see if in fact we did meet the
5 ordinance. Thank you so much for your time.

6 MR. PICKLE: I have, I have a rebuttal.

7 CHAIRMAN MCDUFFIE: I'm sorry sir we don't, we don't offer any additional
8 rebuttals.

9 MR. PICKLE: Do I have the right to put some more material into the Record?

10 CHAIRMAN MCDUFFIE: Yeah, I, I believe you've, you've already used up your
11 time, but I appreciate it very much. I, I have a quick question for Staff though. Mr.
12 Price, you mentioned at the beginning of, of the presentation that the, the surveys that
13 we have in our packet are, are, or the site plans that are in the packet are no longer
14 correct, but it had been moved a little bit?

15 MR. PRICE: Yes, it, the, the 130' required setback has been, or a revised site
16 plan has been submitted.

17 CHAIRMAN MCDUFFIE: It, so, so the 130' will now be from -

18 MR. PRICE: From the property line.

19 CHAIRMAN MCDUFFIE: From the property line?

20 MR. PRICE: Yes, sir.

21 MR. YATES: Mr. Chair, if I may approach?

22 CHAIRMAN MCDUFFIE: Alright, this is the, this is the revised site plan?

1 MR. YATES: Yes, sir, this is the revised site plan based on the change on July
2 21, which we [inaudible]

3 CHAIRMAN MCDUFFIE: Could you please move it back a little bit?

4 MR. YATES: I apologize, sir. It's actually, it's 130' four inches to the rear of the
5 property line and then you have an excess of a 50' right-of-way of Asbury, so before you
6 hit it, not a, not a residence but hit another property line it would be an excess of 180'.

7 CHAIRMAN MCDUFFIE: Are there any questions from the Board for either the
8 applicant or any of the other, any of the other individuals that spoke at this time?

9 MR. COOKE: I've got a question for, for Staff, when we say, we went ask that
10 they must show proof for an attempt to co-locate, is this normally acceptable what we
11 have here before us today, which is this letter from Mr. Howard basically saying that
12 they made an effort, they exhausted all their efforts and possibilities? Is this something
13 that's normally -

14 MR. PRICE: Yes, we've accepted that in the past, I don't think we've actually
15 established any specific, you know, criteria or any standards for what we, what the
16 Board would prefer to have. Like I said over the years we've always accepted either the
17 testimony of the applicant of grounds that there were no other towers to, to co-locate,
18 co-locate on other than the site.

19 MR. COOKE: And Mr. Yates stated that, that you had to find within a, what a half
20 a mile by the FCC?

21 MR. YATES: Yes, sir, yes, sir, in addition to the certification by Mr. Howard we
22 also attached the FCC database, that's the, for the ASR, all towers in the country are
23 registered and are assigned a number and a location with their, the, with their

1 coordinates by the FCC. Our site search area was actually shorter than that for the site
2 search area to make the coverage objectives was actually about half that size, but we
3 took it out, we wanted again, really it was about half that size but in our, in our
4 earnestness to exceed the requirements of the ordinance we took it out a half mile and
5 showed that there are no structures in there.

6 MR. RUSH: Yeah, also I, I share that concern Mr. Cooke, because I think in the
7 past we've actually, we've been requiring cell companies or tower companies to show
8 some proof of co-location, not just a letter saying that they've tried, they've attempted to
9 co-locate, not that saying they will deliberately misrepresent themselves, but at the
10 same time we've been looking for actual evidence of a location whether there was some
11 diagram showing other towers in the area and there was some indication with those
12 other tower companies. I think we did that on the last case, didn't we?

13 MR. PRICE: I think that was for the last case, but I mean, if we just go by the
14 history I don't think we have so much and I -

15 MR. YATES: And if I'd known Mr. Rush in your last case they did not have a cell
16 carrier, it was not actually as I understand it, from my knowledge the last case was
17 Pegasus Towers -

18 CHAIRMAN MCDUFFIE: I believe they were not specifying who the carrier was,
19 but they did express that they in fact had a -

20 MR. YATES: Okay, here, here the carrier himself, the carrier himself has a, has,
21 has shown, they're on the plans, we're showing on the plans the carrier and it is the
22 certification of the carrier's Real Estate Manager for the Carolinas, but what I can
23 assure you that is what AT&T does because it is for, among other things Mr. Rush and,

1 and Mr. Cooke and Members of the Board, if there's a tower there they don't have to
2 pay for a new tower or go through what has, in this case, been almost a two year
3 process to get here today, it has been almost two years of work, if there was an existing
4 tower they can draw plans in two days and be on it in 30, they would have gone on it for
5 both cost and time. But we do have the letter of, of Mr. Howard and in addition the data,
6 the FCCA is our database.

7 CHAIRMAN MCDUFFIE: Thank you very much. Are there any further questions
8 from, from the Board at this time? If there are none, then I would have Mr. Rush please
9 go through the Findings of Facts.

10 MR. RUSH: Was there a proper zoning? Yes. Was there notice of public
11 hearing? Yes. Was it published? Will the proposed tower, will it have a maximum
12 height of less than 300'? Yes. If the proposed tower will be located on a building 40' or
13 four stories - that really doesn't apply. Does the base of the tower located at least 130'
14 from the residential zoning district? Yes. Is the base of the tower of the proposed
15 located at least 50' from a non-residential zoning district with a habitable dwelling? And
16 I would say yes on that one.

17 CHAIRMAN MCDUFFIE: Could we get clarification from there are no, that there
18 aren't any dwellings in the adjacent properties?

19 MR. PRICE: No, sir, during, during our visit to the site we weren't able to make
20 that determination, you know, we looked around, everything seemed commercial.

21 CHAIRMAN MCDUFFIE: Commercial? Okay.

22 MR. RUSH: Okay, is the base of the proposed tower at least 20' from a non-
23 residential zoning district without a habitable dwelling? How far was it from that building

1 that's located on that property, the commercial building? Was it 29'? The, the building
2 that's actually on the property -

3 MR. PRICE: You mean on the site plan?

4 MR. RUSH: Yeah, on the site plan.

5 CHAIRMAN MCDUFFIE: Mr., Mr. Coleman's office building?

6 MR. PRICE: You mean on this, on the property?

7 MR. RUSH: Yeah, how far is that with the new site plan?

8 MR. PRICE: I'll let [inaudible].

9 MR. RUSH: Alright.

10 MR. PRICE: Thirty feet.

11 MR. RUSH: Alright. Has applicant shown proof of an attempt to co-locate on an
12 existing communication tower? Did the applicant show alternative towers, buildings or
13 structures were, were not available for use within the applicant's tower site search area
14 that were structurally capable of supporting the intended antennae or meeting the
15 applicant's necessary height criteria or provide location free of interference from other
16 communication towers? And I would, I would like to put that out for discussion. I'm, I'm
17 sort of hung up on that one.

18 CHAIRMAN MCDUFFIE: I, I feel like the applicant has met the, has met the
19 burden of proof of showing an attempt to co-locate that, I think that the letter both from,
20 both from Mr. Howard with AT&T and the, also the determination from the FAA that
21 there are no towers within I believe it was a half a mile, and both would be suitable and
22 have been accepted in the past I think as, as suitable evidence of that attempt to co-
23 locate. And, and I mean, they have entered into the Record as -

1 MR. RUSH: Yeah, I understand, and well I guess one of my concerns is, I mean,
2 with the towers we're hearing so many different stories, depending on what cell tower is
3 being put up. So, you know, some are saying it's a mile radius which, which would, you
4 know, be necessary, you know, in this instance it's a half a mile radius, so, you know,
5 with conflict being evidence of saying okay is it a mile that towers need to be separated
6 in order to, you know, without any interference or something? I guess, I guess what I'm
7 getting at is without any proof of saying, okay, these, this is where a tower is and
8 showing, showing some type of evidence that there are some communications at that
9 other tower, it's hard to say that there was an attempt, even though and I understand
10 that that's what the letter says and by all means I would imagine AT&T wouldn't
11 misrepresent themselves, but at the same time for our purposes, having a -

12 MR. YATES: Mr. Rush, I, I think we can assist with that. The closest tower is
13 actually owned by Mr. Groseclose' company, American Tower and he can address the
14 attempt that was made to go on that tower and why, why it didn't work for AT&T.

15 MR. RUSH: Okay.

16 MR. YATES: He actually has the closest towers, an American Tower tower.

17 CHAIRMAN MCDUFFIE: Mr. Mr. Groseclose please state your name and
18 address for the Record?

19 **TESTIMONY OF JASON GROSECLOSE:**

20 MR. GROSECLOSE: Jason Groseclose, 496 Long Point Road, Mt. Pleasant,
21 South Carolina 29464. Our tower, existing tower out along the I-77 beltway there is
22 approximately the same height, about 130', it went up back in 1999 I believe. Currently
23 it has four existing users on it and is located approximately on almost three quarters of a

1 mile, three quarters of a mile away from this proposed location, probably about .62 to be
2 exact. When this, when this search area that Jonathan represented came out I
3 obviously made sure we presented that as an option to see if they could use this
4 existing tower, it would go much faster for them, much easier and it was evaluated and
5 rejected by their radio frequency engineers. So, hence here we are, we are, are back at
6 this spot. But with the four carriers on the 130' pole down there, obviously you can
7 imagine the available height is very, very low and I believe the compound is full as well,
8 so it was, it was just an attractive option.

9 CHAIRMAN MCDUFFIE: You mentioned that that nearest carrier or that nearest
10 site had four carriers on it?

11 MR. GROSECLOSE: It has four on it.

12 CHAIRMAN MCDUFFIE: And this one would be able to have how many sets of
13 equipment on it?

14 MR. GROSECLOSE: I believe we went with four on this one as well.

15 CHAIRMAN MCDUFFIE: Thank you.

16 MR. COOKE: Mr. Gross – what's your last name?

17 MR. GROSECLOSE: Groseclose.

18 MR. COOKE: Groseclose?

19 MR. GROSECLOSE: Yes, sir.

20 MR. COOKE: And this is the nearest tower that you own?

21 MR. GROSECLOSE: Yes, American Towers' existing tower.

22 MR. COOKE: But that nearest tower that you own, but it, what about, I mean -

1 MR. GROSECLOSE: No, no, what we meant when we said that, the nearest
2 tower to this proposed location happens to be our tower and was presented, so
3 American Tower owns the closest tower.

4 MR. SMITH: But, Geo was that in the, excuse me, was, was that in the, the map
5 that we had?

6 MR. GROSECLOSE: It was.

7 MR. SMITH: It was?

8 MR. GROSECLOSE: Uh-huh (affirmative).

9 MR. SMITH: I just wanted to make that that was in the -

10 MR. COOKE: The, the thing is that I, I'm pretty sure this year we just recently
11 approved a cell communication tower on Leesburg Road that is located up by the Shell
12 Gas Station and the reason why I know this and remember this because I live in that
13 neighborhood, I live not too far from Leesburg Road. There is a cell tower very close in
14 proximity to where you're trying to locate this and, and I'm pretty sure it's less than three
15 quarters of a mile, or, I wouldn't say less than three quarters of a mile, but I, that, that's
16 why I asked the question if the, the co-location efforts were met because I know for a
17 fact in our efforts to try to create a harmonious community we did approve a cell tower
18 in that area recently this year.

19 MR. GROSECLOSE: But this is off of Leesburg?

20 MR. COOKE: Yes.

21 MR. PRICE: If you will take, if you will a -

22 MR. GROSECLOSE: To the northwest, northeast?

23 MR. COOKE: Yeah.

1 MR. GROSECLOSE: In this community?

2 MR. COOKE: Right in that area.

3 MR. PRICE: [Inaudible] and if you want this is the subject property and this is the
4 one that you're referring to -

5 MR. COOKE: Right.

6 MR. PRICE: And it just so happened I think Mr. Yates actually represented that
7 location.

8 MR. COOKE: He did.

9 MR. YATES: And I believe Geo if you can check on yours, I, I believe we're over
10 a mile away and off, and I -

11 MR. COOKE: Is it over a mile?

12 MR. YATES: Yeah. And, and my understanding is AT&T will most probably be
13 going on that one also. They will need that also to complete their coverage in that area,
14 yeah. And that's, Mr. Cooke, that's again what we're trying to do is get the, get
15 everyone to have the same coverage in Richland County that they enjoy in Charleston
16 County in their homes and that's it.

17 MR. COOKE: Right.

18 MR. YATES: But the closest tower to this tower is the one owned by American
19 Tower, Mr. Groseclose' company with four carriers on it, AT&T looked on it, looked at it,
20 studied it because it would have been very easy if they could have done it in less than
21 30 days, it could, it could not work and that's what lead to the letter of Mr. Stephen
22 Howard.

23 CHAIRMAN MCDUFFIE: Thank you.

1 MR. RUSH: I think everybody's given their opinion on that. I'm sort of stuck I
2 know on that one, but is the applicant willing to allow other users to co-locate on the
3 proposed tower in the future subject to engineering capabilities of the structure? So
4 that's a yes. Will the proposed tower meet the illumination requirements of regulatory
5 agencies such as FAA? Yes. Has the applicant agreed to have no nighttime strobe
6 lights? I'd say yes on that. Will the communication tower and associated buildings be
7 enclosed with a fence of at least seven feet? Yes. Has the applicant agreed to
8 landscape the communication tower site in accordance with the requirements? Yes.
9 Has the applicant agreed to place no signage? Yes. Has the applicant agreed to
10 dismantle and move the communication's tower within 120 days? Yes. Would the
11 traffic be impacted by this proposal? I don't see a big traffic issue. Will this proposal
12 affect vehicle or pedestrian safety? No. Is there a potential impact of noise, lights,
13 fumes or obstruction of airflow? I would say no on that. Does the proposed
14 communication tower have an adverse impact on the aesthetic character of the
15 environs? I would say no on that. Is the orientation and spacing of the improvements
16 or buildings appropriate? Yes.

17 CHAIRMAN MCDUFFIE: Is there any, any discussion from, from the Board?

18 MR. RUSH: I don't know, the co-location thing, I mean, if we, we don't have it
19 now, we need some type of standards on that because for one, you know, if we're
20 looking at, you know, this location is a mile away, we're saying in some cases that, you
21 know, like in this case we're saying that, you know, there's nothing within a half a mile
22 and then other companies are saying well within a mile. So, I mean, we need some
23 type of, some type of -

1 MR. COOKE: Standard.

2 MR. RUSH: - uniform standard that says that it needs to be within a mile or what
3 have you, because we're gonna have towers popping up all over the place if that's the
4 case because they can go back and say well to the north there's nothing within a half a
5 mile so we need another tower.

6 MR. PRICE: Yes, sir, maybe -

7 MR. RUSH: When will it stop I guess is -

8 MR. PRICE: I mean I, I can recall a couple of cases where some of the
9 applicants have shown proposed towers and there have been towers, you know, less
10 than a half a mile from each other, they just seemed to serve co, offer a service or a
11 coverage of different areas. I don't have that kind of information that maybe we could,
12 you know, maybe we could find someone that could kind of offer us that type of
13 information that would help in our decisions on the towers, that could give us a better
14 explanation.

15 MR. COOKE: Yeah, because I think we, you know, obviously the, the applicant
16 is going to be enough involved in this in favor of themselves getting the tower and we,
17 we've, we're trying to look at it from more from a neutral standpoint this makes sense
18 according to what the special exception requires. And you know I'm still sort of, you
19 know, the co-locate thing is, is a sticking point, I'll, I'll sort of put it out to the Board on
20 their opinion but that's, that's sort of sticking point for me.

21 CHAIRMAN MCDUFFIE: Yeah, and I mean we've certainly accepted in the past
22 though the applicant's sworn testimony or letters produced by the applicant in evidence
23 of, of, of an attempt to co-locate and frankly it, it, it makes perfect sense that they

1 wouldn't try to build a new tower if they had another, you know, more, more economical
2 option, a more, you know, if it wouldn't give them some type of advantage to do it. I
3 think, I mean it seems to me also that, that may be with the height of the towers and,
4 and the amount of network traffic they're expecting would affect, even with the proximity
5 of the adjacent towers would need to be as well. Frankly, I mean, we have to examine
6 this do they meet the requirements for the special exception and I, I think that, you
7 know, I don't see that they're not meeting the, the requirements here. As much as, you
8 know, as much as I would not like to, you know, look out my window and, and look
9 directly at a cell tower, there's not really anything, you know, there's, they've been
10 meeting the requirements for the, the special exception, then there's not anything to
11 oppose it based on.

12 MR. RUSH: And that's the, and also and I think that's a common argument again
13 with the cell towers that we wouldn't build it if we didn't have to, but they can [inaudible]
14 cell towers, so there's something, there's some financial benefit to, you know, I, I think
15 that's becoming a common argument with every single one that I've heard so far. So I
16 don't know if that's necessary, I don't know if that's necessarily a barrier of whether it's,
17 you know, there, there are some benefit to it. Well not necessary that there's some
18 benefit to it, I won't say financial, but there's some benefit to it and they continue to build
19 them.

20 CHAIRMAN MCDUFFIE: Okay, is, the Chair would love to entertain a motion if
21 anyone would care to make one?

22 MR. COOKE: Mr. Chairman, I would like to move to make a, make a motion to
23 approve Special Exception 09-26 based on the findings of the fact.

1 CHAIRMAN MCDUFFIE: Okay, is there a second?

2 MR. SMITH: I'll second it.

3 CHAIRMAN MCDUFFIE: Okay, all in favor?

4 MR. PRICE: Those in favor: Rush, McDuffie, Cooke, Smith.

5 *[Approved: Cooke, Rush, McDuffie, Smith]*

6 CHAIRMAN MCDUFFIE: Alright, Mr. Yates you have your special exception and
7 Staff will be in touch.

8 MR. YATES: Thank you very much.

9 CHAIRMAN MCDUFFIE: Okay, at this time I would ask the Staff to call the, the
10 next case.

11 **CASE NUMBER 09-27 SE:**

12 MR. PRICE: I'm not sure if the applicant for 09-27 Special Exception is here at
13 this time.

14 CHAIRMAN MCDUFFIE: I don't believe we have anyone signed up on the list as
15 being here.

16 MR. PRICE: I know we've had sine discussions with the applicant regarding the
17 case. [Inaudible] defer this until the next, next scheduled BOZA hearing.

18 CHAIRMAN MCDUFFIE: Is that, is that the Board's pleasure?

19 MR. RUSH: That's fine.

20 CHAIRMAN MCDUFFIE: Do we need a motion or?

21 MR. COOKE: Do we need a motion, Mr. Price?

22 MR. PRICE: Yes.

1 MR. RUSH: I'd like to move to defer Special Exception 09-27 to the next
2 scheduled, the next scheduled -

3 CHAIRMAN MCDUFFIE: And I'll, I'll second that. All in favor?

4 MR. PRICE: Those in favor are Rush, McDuffie, Cooke, Smith, okay.

5 *[Approved: Cooke, Rush, McDuffie, Smith]*

6 CHAIRMAN MCDUFFIE: Alright, Mr. Price is you'll call the next, next case.

7 **CASE NUMBER 09-28V:**

8 MR. PRICE: The next item is case 09-28 Variance. The applicant is requesting
9 the Board of Zoning Appeals to grant a variance to encroach into the required rear yard
10 setbacks on property zoned OI, which is office and institutional. The applicant is Jake
11 Williams representing Stewart Enterprises, Inc., the location is 4219 Hard Scrabble
12 Road, the parcel size is a little more than two and half acres and it's commercial and it
13 is actually Dunbar, Dunbar Funeral Home and Crematorium, I believe that's it correctly.
14 The subject property has an existing funeral home, crematorium and on the rear of the
15 property is a metal carport. The applicant is proposing to allow the metal carport to
16 encroach into the required rear yard setbacks as stated. The area is comprised
17 primarily of commercial and institutional structures and uses, and that's mostly in this
18 particular area of Hard Scrabble Road, you know, if you go further down you get into
19 some residential, but this is closer to the Clemson Road/Hard Scrabble Road
20 intersection. You know, within your package you will find site plans of this, of the parcel
21 and the, you know, the structures on it including the carport, but also you will find some
22 correspondence from Staff, which has kind of played a, a big part in Staff's
23 determination or the Staff's recommendations of approval or denial on this. You can

1 see, see that there was plenty of correspondence between Staff and I guess the project
2 engineer regarding this, this carport and at one time it was removed from the plans, so
3 the plans were revised for, to reflect that it would no long, no longer be a part of the, the
4 development. And up, upon inspection by Staff it was found that the, the carport was
5 there, without being on the, without any site plan submittal or without any building
6 permits and it was based on that and it was determined that it encroaches into the
7 required rear yard setback. I can, can put up some, I think you have, and here's your
8 site plan, it's kind of, you can kind of crop this just to show, it's about a I think 12'8" from
9 the rear property line, this is the funeral home. I wasn't able to fully identify where the
10 rear property lines were on this. This is the drive, driveway out, but this is probably the
11 best way to determine this, that, the encroachment.

12 MR. COOKE: Does that tree line represent the property line?

13 MR. PRICE: I'm not sure, I believe, I looked for stakes when we were out there, I
14 believe it, it does, it may, it may run a little further into it, but, into the woods, I'm not
15 exactly sure.

16 MR. COOKE: But he's asking for a variance to encroach seven feet into the
17 setback?

18 MR. PRICE: Yes, sir, it will be a little more than seven feet.

19 MR. COOKE: Seven and half feet, seven feet and six inches to be exact?

20 MR. PRICE: Yes.

21 MR. RUSH: But on the actual approved site, this building, this facility wasn't on
22 that?

23 MR. PRICE: No, sir.

1 MR. RUSH: Okay.

2 MR. PRICE: And that'll be it from Staff.

3 CHAIRMAN MCDUFFIE: Alright, at this time I'd like call the applicant Mr. Jake
4 Williams to the stand, please state your name and address for the Record?

5 **TESTIMONY OF JAKE WILLIAMS:**

6 JAKE WILLIAMS: Yes, I'm Jake Williams, 855 Camelia Street, Columbia, 29205.
7 And protocol here, I'm, I'm not as experienced as our, our prior guests and I was hoping
8 maybe to have one other petitioner here so I could understand what behavior might be
9 expected of me. Should I, can I just more or less summarize my position and, and
10 where we find ourselves? You know, and I've, I've had conversations with an architect,
11 a civil engineering firm and Mashburn Construction Company, who is our construction
12 company here. You know, we recently finished construction and had been permitted by
13 the State Board of Funeral Service and have occupancy permit for the building itself and
14 we opened about a month ago. As I understand it in, in talking with all parties initial
15 drawings submitted by civil engineer did fully indicate the, the parking garage or, or
16 shed as we might call it where I come from. In discovery, soil testing and in other work
17 to satisfy other requirements for site development there were issues of drainage and,
18 and to be brief the discovery that anticipated area set aside for water detention ponds
19 was not sufficient given the particularities of this one particular two and half acre parcel.
20 And as I understand they may have been back and forth with, with maps from civil
21 engineers to DHEC addressing this issue. To make a long story short as a, as, as you
22 all are aware when the drawings were submitted that did result in a construction permit,
23 this shed and garage was not on it. The permit is delivered to or acknowledgement of

1 the permit is given to the Mashburn Construction, they simply go ahead, they've only
2 seen drawings that has the parking garage on it. To accommodate the detention pond
3 in the front of the building adjacent to Hard Scrabble Road that either was unanticipated
4 or required more space than anticipated, in essence a decision was made somewhere
5 among civil engineers and architect to move the entire footprint back away from Hard
6 Scrabble Road, a sufficient measure to accommodate the expanded area for the
7 detention pond in front. Now I learned that the, that that was an encroachment issue
8 after the county inspection was done to actually grant the occupancy permit. So, in, in
9 brief our civil engineers are saying that the nature of, and I've got some pretty specific
10 information that I can find relatively quickly, the sandy soil's very low pre-development
11 flows caused the need for maximum detention storage and this required moving the site
12 improvements, i.e. building and paving, everything there, closer to the rear of the site.
13 The site in essence required what may be considered exceptional storm water facilities
14 to meet the drainage requirements of the Department of Transportation and DHEC.
15 And what we now have is a situation where we've got this six foot or so encroachment
16 on the rear. We have discussed this, our, our, our neighbor on that, on that side of the
17 property is Hope Baptist Church, where they have been extremely accommodating
18 neighbors of that, well we actually acquired the property to construct from Hope Baptist
19 Church. You know, they've expressed no concern whatsoever about this
20 encroachment. We have offered and I think you have in your package a letter from the
21 church, we offered to buy the property that would have precluded even this hearing
22 today or my appearance at this hearing. They have no interest in selling property and
23 declined our offer to buy, so obviously we are asking for a variance because we really

1 don't have, I mean, there's, there's really nothing else for us to do. As I understand it in
2 conversations with architect and engineers, we can't simply move the garage forward
3 because we then run into, run into problems with the required spacing for a driveway
4 and parking that's at the rear of the building that I noticed in one of the photographs that
5 was on, one of the photographs that were previously shown. If we're not granted the
6 variance either the, the garage has to go away or, or, in essence it will have to go away
7 because the, it's a five, if I'm not mistaken it's a five bay parking garage, we saw a
8 photograph of it and it's made to accommodate six door limousines. If we cut, you
9 know, if we, if, if we cut the garage to make it fit, i.e. either move the overhang back we,
10 we defeat the purpose of the garage in that it is no longer substantial enough to cover
11 the length of the vehicles that we would intend to park underneath. Am I describing the
12 situation thoroughly enough? Do I need to give us more how we got to the situation
13 here?

14 CHAIRMAN MCDUFFIE: I, I think, the only thing I would advise is the, you to
15 demonstrate how you as the applicant meet the requirements necessary for the Board
16 to grant a variance.

17 MR. WILLIAMS: Well, if I, I'm just looking at our application, the size, the size of
18 the detention pond required at the front caused the building footprint and required
19 parking spaces to be pushed towards the rear in a manner that the furthest rear parking
20 spaces are in the building setback, those are the parking spaces under the garage. We,
21 we obviously want to be able to cover those parking spaces because we intend to park
22 not inexpensive vehicles there that we make every effort to take care of. We, we
23 garage our other vehicles of course at Devine Street and don't, don't store vehicles at

1 our, at our facility in Irmo. The size of the, of the detention pond at the front is larger
2 than an average or initially assumed by the civil engineer detention, that, that an
3 average detention pond because discoveries were made about drainage properties of
4 the soil in conducting tests to, to facilitate the permitting process. It is a, as I understand
5 it from the civil engineers, they were relatively limited in where that additional front
6 detention pond could be placed, there was not a whole lot of flexibility. I, I'm not an
7 engineer of course and don't understand the, and don't understand the stipulations they
8 work under, but the discovery that we had to do more than anticipated and more than
9 typical for a site this size, detention pond and property characteristics determined where
10 the retention ponds have to be necessitated or led to decision to simply move
11 everything back. If I'm not granted a variance I can't cover the limousine spaces and
12 obviously the intent of, of erecting the garage was to be able to, to do just that. We
13 don't understand or don't see that, that we're creating a problem or a diminution in value
14 aesthetically or real to adjacent property owners. Due to the nature of the, the actual
15 encroachment and as I said I think you have a copy of, of a letter from a representative
16 of the church declining our effort to, to, to buy the property involved here. So I guess in
17 essence my hardship is that, you know, the site required exceptional storm run-off
18 detention capacity and the only way the engineer saw to accommodate that was to
19 move us back on the footprint, unfortunately however and I'm not denying it that's put
20 me in the spot of having to, to request a variance as a result.

21 CHAIRMAN MCDUFFIE: Thank you very much. Are there any questions either
22 for the applicant or for Staff at this time?

23 MR. COOKE: Yes, Mr. Price?

1 MR. PRICE: Sorry, go ahead.

2 MR. COOKE: Do we need a new computer system, Mr. Price? No, Mr. Price,
3 can I ask you a question? Is the structure, is the structure in, in violation, the structure
4 is in violation of the setbacks, but are the parking spaces also in violation, violation of
5 those setbacks also, encroach, encroachment? I'm sorry.

6 MR. PRICE: No, sir, typically what we do when it comes to, when it comes to
7 encroachment it's usually for, reserved for a structure.

8 MR. COOKE: So a structure.

9 MR. PRICE: At grade uses typically, you know, can go into the required setback.

10 MR. COOKE: Okay, and also the original site plans did note the structure, the
11 carport encroaching into the rear setbacks and then they resubmitted without the, the
12 structure on there?

13 MR. PRICE: Yes, sir, that's, that's part of the correspondence that was included
14 in the packet.

15 MR. COOKE: Okay.

16 CHAIRMAN MCDUFFIE: And basically what happened was that the county
17 approved one set of, one set of site plans and the builder was left with a different set of
18 site plans, and never received the update, is that how it seems to have worked out?

19 MR. PRICE: I, I can't tell you what happened on their part as far as with the
20 builder, but, you know, just from, from the county standpoint the plans, the approved
21 plans, you know, it would just be my assumption that those should have been the ones
22 given to the builder.

1 MR. RUSH: If this were my experience, and I agree with the last comment Mr.
2 Price said, typically you go by whether it's a subdivision or a building you go by the
3 approved plans that are permitted. So, for the builder to go by a separate set of plans I,
4 I don't know, that just doesn't sound right, it doesn't sound like, it, it, it's almost like it's
5 moving forward and, you know, hope, asking for forgiveness.

6 CHAIRMAN MCDUFFIE: We've had several cases that were in this sort of
7 similar veins just within the last year or so, typically we've had several involving signage
8 that had been already procured and installed at considerable expense to the applicant
9 that did not meet, that, that did not meet the county's signage requirements and we may
10 have had some other similar type cases. But it's always, sort of always the question is,
11 is are we being backed into a corner I guess and then in terms of –

12 MR. RUSH: And then if we, I mean, we start backing ourselves into the corner,
13 I'll, I'll go out there and building and say you know what I, you know, forgive me I, I did
14 [inaudible]. I think we have to be -

15 MR. WILLIAMS: Is, is it appropriate for me to speak?

16 CHAIRMAN MCDUFFIE: Sure.

17 MR. WILLIAMS: And I, I agree with that contention and, and I'm just
18 acknowledging reality, as I said we discovered what happened at the same time the
19 county did and, and my behavior since then has been to try to do, you know, what, you,
20 you folks are being paid to, to accomplish this for us. I'm not trying to absolve myself of
21 responsibility, but again this was our discovery at the end of the project as well and
22 unfortunately, you know, now I a, a garage there of some expense and some

1 anticipated utility. And in conversations with both engineers and architects are leaving
2 me not, not any viable alternatives.

3 CHAIRMAN MCDUFFIE: Are there any additional questions for, for the applicant
4 or for Staff? Mr. Cooke, would you care to go through the Findings of Fact for this?

5 MR. COOKE: Sure. The Findings of Fact: Are there extraordinary or
6 exceptional conditions pertaining to the particular property or piece of property? In this,
7 I'm gonna, I'm gonna, let's discuss that, I, I'm, I mean, I would like to move to entertain
8 a discussion on that. I would like to say no, but at the same time when you do speak
9 about the size of that detention pond that's required for the, for I think storm drainage, if
10 you would Mr. Price, that's what it's called? And that, that, I guess switching that to the
11 rear, pushing those parking spaces to the back of the, of the parcel, I guess my
12 question for Staff is there, can I ask a question to Staff at this point? Mr. Price, you
13 visited the site, is that correct?

14 MR. PRICE: Yes.

15 MR. COOKE: Was there, as I look at the layout, so without, is he in violation
16 without the structure? He's just in violation with the structure, so if he moves the
17 structure, he's not in violation, he can keep the parking spaces?

18 MR. PRICE: Yes.

19 MR. WILLIAMS: And it's really the overhang, it is the actual cover itself that, that
20 is, that's committing the encroachment, it's not base or anything like that if I understand
21 correctly as well.

22 MR. PRICE: Mr. Cooke, when earlier you asked, let me see if I can find this -

23 MR. WILLIAMS: Right, right there.

1 MR. PRICE: You were, you were asking about the property lines, I could be
2 wrong here, but I believe the stake that you see, I'll kind of point it out, right here -

3 MR. WILLIAMS: Right.

4 MR. PRICE: - may actually be the building line, so that, and so the
5 encroachment is actually from that stake going back, everything, you know, from what
6 we're looking at on the left of that stake is in compliance.

7 MR. COOKE: You mean everything on the right? So we're talking about -

8 MR. WILLIAMS: Yeah, I'm talking about my supports too then.

9 MR. PRICE: Yeah, actually if you look under the shed there's a nice little
10 shadow -

11 MR. COOKE: Yeah.

12 MR. PRICE: - that forms a nice line that kind of shows you where the property -

13 MR. COOKE: So everything on this side, well my right, your left is, is not in
14 compliance, correct?

15 MR. PRICE: Right -

16 CHAIRMAN MCDUFFIE: Or actually would be within seven and half feet of the
17 right side of that structure is what's in question today.

18 MR. PRICE: Correct.

19 MR. COOKE: Okay, so again I ask, extraordinary and exceptional conditions
20 pertaining to the particular piece of property -

21 CHAIRMAN MCDUFFIE: I guess my question would be could, have, if the
22 appropriate setbacks had been utilized from the beginning, couldn't the site have been
23 configured to accommodate both the, the main structure there, the funeral home and

1 then the, and, and the canopy without, without having any issue with, with site specific
2 concerns? Could it have been configured in such a way as to not require a variance?

3 MR. RUSH: I, I don't think it, well, let, let me put it like this, when, they, they
4 knew that this was out of compliance, that's why it was left off of the, the plans that were
5 submitted for approval, so it, it was known that this was out of compliance, so I, I don't
6 know if there was any other way that they could have configured it. But whomever
7 submitted for permitting knew that structure wasn't there, and they knew that it wouldn't
8 be, that this, the site plans would not have been approved with that structure there,
9 therefore it was left off to get approval, but now it's built. So that, that's, so, I, I don't,
10 you know, to get back to what you're saying extraordinary conditions pertaining,
11 pertaining to the parcel of land I don't see the extraordinary or exceptional conditions.

12 CHAIRMAN MCDUFFIE: Mr. Price, quick question. Any, any parcel that
13 someone wanted to put a significant amount of impermeable surface on, whether it's
14 pavement or a rooftop or whatever, they would be required to build a retention basin,
15 some sort of a [inaudible] containment for the run-off on the property, correct?

16 MR. PRICE: Pretty much so.

17 CHAIRMAN MCDUFFIE: And just, any, any new construction going on in the
18 county would require some sort of -

19 MR. PRICE: Yes.

20 CHAIRMAN MCDUFFIE: [inaudible] water basin? So, I mean, I don't see how
21 that really creates the fact that this, this property needed one and that it might have
22 happened to be large, that would be effected by the amount of, by the amount of

1 surface they're putting down, correct? And the size of the basin that would be required
2 to be effected by the amount of pavement, right?

3 MR. PRICE: Yes.

4 CHAIRMAN MCDUFFIE: So I, I don't really understand how that would create
5 an extraordinary or exceptional condition for this particular site, you know, like a very
6 ordinary and unexceptional condition.

7 MR. WILLIAMS: Well, the engineers of course maintain to me that this, that the
8 size and location of the front retention pond, the detention pond, that's there at Hard
9 Scrabble Road, was determined subsequent to at least reasonable and conventional
10 assumptions as to where and how much detention pond area would have to be there,
11 and that still doesn't address the fact of course that they submitted a plan without the
12 shed on it. But I talked with engineers who, of course the engineer himself is no longer
13 a member of the firm who actually did the work, but I talked with his successor and
14 superior, you know, in the past week or so in an effort to fully understand the sequence
15 of events and, and what led me to be in here this afternoon.

16 MR. COOKE: So saying this detention pond was larger than ordinary is not
17 correct? So this is just, it meets regulations, it's just the average size, correct Mr. Price,
18 that you would have for the structure, is that correct?

19 MR. PRICE: You mean the detention pond?

20 MR. COOKE: Detention pond.

21 MR. PRICE: It, it is the size that's required for that.

22 MR. COOKE: Okay, so it's required?

23 MR. PRICE: Okay.

1 MR. RUSH: Yeah, I don't think the question is necessarily the detention pond,
2 that's not necessarily the property. The property itself, all of the, the, the development
3 or, you know, the development of the property doesn't create the, the extraordinary
4 conditions, it's the property itself which when it was a raw piece of land was there any
5 extraordinary conditions?

6 CHAIRMAN MCDUFFIE: Right, and I'm, I'm just attempting to determine if
7 perhaps this property does have some sort of extraordinary condition or the conditions
8 that we're dealing with here are [inaudible] of the applicant's creation. So, it's an
9 unfortunate kind of situation.

10 MR. COOKE: Yes, it is, it is, it is. So again I'll ask are there extraordinary and
11 exceptional conditions pertaining to the particular piece of property in that, I mean, after
12 having a discussion I would say no at this time.

13 CHAIRMAN MCDUFFIE: If, if that is the determination then, then I'd entertain a
14 motion.

15 MR. COOKE: Okay, so I would like to move to deny the variance based on the,
16 deny the variance 09-28 based on the Findings of Facts.

17 MR. RUSH: I'd like to second.

18 MR. WILLIAMS: Is it appropriate for me to ask one question or not?

19 CHAIRMAN MCDUFFIE: I, I believe not at, not at this time. We have a motion
20 on the floor and it has been properly seconded. All in favor of the motion?

21 MR. PRICE: Those in favor are Rush, McDuffie, Cooke, Smith.

22 *[Approved: Cooke, Rush, McDuffie, Smith]*

1 CHAIRMAN MCDUFFIE: Okay, Mr. Williams your, your variance, request for
2 variance has been denied and Staff will be in touch.

3 MR. WILLIAMS: Okay. Thank you.

4 CHAIRMAN MCDUFFIE: Alright, I would ask that Staff call our next case.

5 MR. PRICE: Okay.

6 **CASE NUMBER 09-29V:**

7 MR. PRICE: Okay, the next item is case 09-29 variance. The applicant is
8 requesting the Board of Zoning Appeals to grant a variance to encroach into the
9 required rear yard setbacks on property zoned GC. The applicant is [Inaudible]
10 Solutions, Inc. represented by Gerald Steele. The location is 131 [Inaudible] Drive. The
11 parcel site is a little more than half an acre, commercial and it has an existing 3,354
12 square foot office and this is according to our records. The applicant is proposing to
13 establish an accessory use in the required rear yard setback which will also encroach
14 into the required buffer. The area is comprised primarily of office buildings and it looks
15 like some institutional uses also.

16 CHAIRMAN MCDUFFIE: I think it's a Mr. Meetze that's signed up as the
17 applicant.

18 MR. PRICE: Okay.

19 CHAIRMAN MCDUFFIE: Please continue.

20 MR. PRICE: I'm just kind of go through some quick pictures of, this is a picture
21 of the building, this is I guess a little driveway going to the rear of the property
22 [inaudible]. This, I'm sorry, this is where they're proposing to put a dumpster and as you
23 can see this area is right, located right behind the dumpster is the proposed location. I

1 believe it's for a generator and some propane tanks for the building, the applicant can
2 explain a little bit more the need for them [inaudible] there and he informed to me they
3 wanted a back-up power just in case. There's another picture and this would be the
4 area where you, where you see the doors, where the, I guess the generator and the
5 propane tank where the proposed accessory is, as you can see right, right beside it
6 that's where the buffer yard is, the required buffer yard and this gives you a better view
7 of it also. Some plans that are also in your packet indicating where they are proposing
8 to putting the generator and propane tanks. And the applicant has stated that they
9 would enclose the area with a wooden fence, as you can see the wooden fence is
10 already there. And that's it.

11 CHAIRMAN MCDUFFIE: Alright, at this time I'd like to call the applicant Mr.
12 Gerald Meetze, please state your name and address for the Record?

13 **TESTIMONY OF GERALD MEETZE:**

14 MR. MEETZE: Hey I'm Gerald Meetze with G. Meetze Construction. My
15 address is 103 Beaufort Street in Chapin, South Carolina. I'm the contractor on the
16 project and I'm a commercial contractor here in town. On my buildings that I build I try
17 to make them architecturally pleasing and unique and challenging and, you know, I
18 design my own stuff and build it. You know, I don't do, you know, square boxes or
19 metal buildings. Also, you know, I support the Richland County landscaping ordinance,
20 I wish Lexington County would enforce theirs because I live in Lexington County and,
21 you know, as far as in the Town of Chapin, also right there the landscaping ordinances
22 and their architectural review design committee ordinance. So we're not trying to pull
23 anything here, you know, trying to pull a fast one here, but, but what happened was a,

1 as it was originally submitted it was just a dumpster pad with a screen, an eight foot
2 screen wall. Two, two weeks into the final inspection my client said hey I need a
3 generator, you know, our power keeps going out around here I've got to have a
4 generator and I said well where are you gonna put it? You can't put it on the right side
5 of the building, there's a driveway, you can't put it behind the building, or on the left side
6 of the building, but there's not much room and you've got, you can't put a propane tank
7 right next to a building and we had to use propane because natural gas wasn't
8 available, diesel generator they're two to three times more money, so we wanted to go
9 propane. So the only option was in the rear or the side buffers. Well, as you can see
10 the, the property is only about a half acre so we maximized the property with a parking
11 lot to, you know, it's tight to the buffer on the sides and in the rear. What's behind the
12 property is showing a parcel there, but it's actually a field, a vacant field with a cell
13 phone tower, so we're buffering a cell phone tower that's gigantic. And anyway we, you
14 know, we put the rear landscaping in like we're supposed to and then I figured the best
15 place to put the generator was behind the dumpster pad so it would be hidden. Well, I
16 knew that I needed to submit the plans, but I didn't have the time to get them approved
17 because I was two weeks out from finals and it takes a long time to get your plans back,
18 so I went ahead and put the wooden fence in, but, roughed in the conduit. And my
19 inspector came out and he said whoa we can't put, can't put that wooden fence back
20 there, it's not on the plans, it's not approved. And I said well you're allowed to have
21 them under the ordinance, you know, you're allowed to have wooden fences and, and
22 gates on the buffer and he said well it's not on the plans. So, he said to call up his
23 boss, I called, I called Ms. Almeida and she said well if you put a wooden fence back

1 there you can't just put it part of the way, you have to run it all the way down the
2 property, which if, you know, according to what I read in the landscape ordinance if you
3 put a wooden fence you don't have to have landscaping, it's one or the other. So, but I
4 left the landscaping just to leave it, so we have a eight foot wooden fence, we've got
5 landscaping and the generator is completely surrounded by a eight foot wooden fence.
6 So the neighbor to the right can't see it, the neighbor behind me, which is the cell phone
7 tower, can't see it, and the neighbor to the left is a vacant wooded lot and, you know,
8 one day if somebody builds there they won't be able to see it either. So I feel that since
9 there's no other place to put this generator, he didn't have any other options and he
10 really, we need, really needs this generator and, you know, if we could, you know, if I
11 had known about it in the beginning I would have planned for it, but I didn't and it was
12 kind of after the fact and, and that's why I'm requesting the variance.

13 CHAIRMAN MCDUFFIE: Okay, are there any questions for the applicant or for
14 Staff? Mr. Price, what's the required, what would the required setback be for, for the
15 side of this property?

16 MR. PRICE: I mean, in a general commercial is zero [inaudible], and it's 10' in
17 the rear and zero on the sides. But the buffer, you're required to have a 10' buffer, even
18 with a wooden fence, [inaudible] correction, even with a fence there you are still
19 required to, to install a buffer. There, there's a provision in the Code, if you'll let me go
20 specifically there, I mean, go to the ordinance where it states that if you're installing a
21 fence you're allowed to reduce the required width, buffer width by half. But the Code
22 also states that you're required to have a 10' buffer and in cases where there's a
23 conflict, the more restrictive would apply, so I think in this case, you know, in all cases

1 the more restrictive is you have to have at a minimum a 10' buffer regardless of whether
2 you have a fence or not.

3 CHAIRMAN MCDUFFIE: The fence can be right up on the property line adjacent
4 to the property line and buffers behind the fence? Is that correct?

5 MR. PRICE: We have Sean Busbee here, he actually goes out and does the site
6 plans, he was the one who went out there, I'll let him answer that if you don't mind.

7 CHAIRMAN MCDUFFIE: r. Busbee if I could get you to, to come to the
8 microphone and were you, were you sworn in today?

9 MR. BUSBEE: No.

10 CHAIRMAN MCDUFFIE: Okay, if I could get Ms. Linder to swear you in very
11 quickly.

12 MS. LINDER: Raise your right hand, please? Do you swear or affirm the
13 testimony you will give today shall be the truth, the whole truth and nothing but the truth
14 so help you God?

15 MR. BUSBEE: I do.

16 CHAIRMAN MCDUFFIE: Yeah, no please state your name -

17 **TESTIMONY OF SEAN BUSBEE:**

18 SEAN BUSBEE: Sean Busbee, Richland County planner. Generally I do the
19 inspections so I don't do the, the plan review beforehand, I'm generally the one that's
20 out on site dealing with the contractors and, and whatnot. Most of the time the fence
21 will be under the old ordinance which backed off the property and the buffer was planted
22 to the, to the property line so it benefited the neighbor. Now along with the new Code I
23 don't believe there's anything that says he cannot have the property, the fence on the

1 property line like he has it. So the, the fence is fine where he put it, the problem being
2 is that the encroachment of the one end into the buffer yard. You know, so I mean, like,
3 like he stated he couldn't put it beside the, beside there, the, the building so that was
4 where he went with that. But, there was, if he would have submitted the plans and held
5 back then we could have worked all of this out before he went ahead and put the fence
6 up, but, you know, like he said due to, due to time constraints they went ahead and did
7 what they did.

8 CHAIRMAN MCDUFFIE: Now is, are there any restrictions in, that you're aware
9 of, what kind of proximity the propane tanks or generators could have to these
10 structures?

11 MR. BUSBEE: Not that I'm aware of, no, sir.

12 CHAIRMAN MCDUFFIE: Thank you.

13 MR. RUSH: What's, looking at the site plans in rear, rear parking, you have a,
14 you know, your parking stops 14' away from the side setback on the left. What's over
15 there, back there on the right? And I'm with, I guess the question I'm asking, how much
16 space do you, because you only have 10' in the back?

17 MR. PRICE: You mean in here?

18 MR. RUSH: How much space do you, yeah,

19 CHAIRMAN MCDUFFIE: Is that a question for the, for the applicant?

20 MR. RUSH: I guess.

21 MR. MEETZE: It's all landscaping, I could put the generator over there, but then
22 when a neighbor comes in on the left he's gonna have to look at it and hear it and deal
23 with it, but behind the dumpster pad it's hidden from everyone. And I don't mind, it's not

1 a big deal for me to take that conduit stuff down, I'll just shoot on around it, it's six of
2 one, half a dozen to me, you know, but it's hidden in that back right corner.

3 MR. RUSH: So there's options?

4 MR. MEETZE: I can go either way, but the next guy that moves in there is not
5 gonna like it, but -

6 CHAIRMAN MCDUFFIE: So they could basically put, be put, in sort of the back
7 corner of the property but still meet the required buffer, just not being behind the, if, if, if
8 a variance were denied and it needed to -

9 MR. MEETZE: Yeah, I could put it, you know, see where that little radius?

10 MR. COOKE: Um-hum (affirmative).

11 MR. MEETZE: I would put it right there, where that, it looks like a little X or
12 something right there, I could put it there.

13 MR. SMITH: Would you meet Code if you put a fence around it?

14 MR. MEETZE: Sir?

15 CHAIRMAN MCDUFFIE: So that would, that would meet Code if the applicant
16 were to do that?

17 MR. PRICE: Yes, I think [inaudible].

18 MR. COOKE: Yeah, yeah, is it then, would it meet, meet Code are you saying?

19 MR. RUCH: I mean, you could still box that in couldn't you, with a fence?

20 CHAIRMAN MCDUFFIE: The fence goes all the way across the rear of the
21 property is that correct?

22 MR. MEETZE: It stops at the rear corner there.

23 MR. RUSH: Yeah, you can still box it in.

1 MR. PRICE: [inaudible] that area.

2 MR. COOKE: You can put a fence there?

3 [Inaudible discussion]

4 CHAIRMAN MCDUFFIE: Mr. Busbee, if I could get you to speak into the
5 microphone.

6 MR. PRICE: It's still a required setback [inaudible] outside of the [inaudible].

7 CHAIRMAN MCDUFFIE: Right, yeah. Sure, sure.

8 MR. BUSBEE: I do believe that would be appropriate. He just would need to
9 verify that he's not in, in relocating that, that he's not removing any trees that would be
10 required for his parking area. He is, he does have a pretty intensive landscape plan and
11 he would, he would have to make sure that it is, that he's not removing any of the
12 required trees.

13 CHAIRMAN MCDUFFIE: But I just, but then the applicant would have some
14 options though even without a variance as to the location of the proposed -

15 MR. BUSBEE: That's right, he would just need to submit us a sketch showing us
16 where he's gonna put it or have his plans revised to, it would be a simple review on that.

17 CHAIRMAN MCDUFFIE: I'm really not really see a, a lot of extraordinary or
18 exceptional conditions on, in regard to this. Mr. Smith, would you care to go through the
19 findings of facts?

20 MR. SMITH: Are there any extraordinary and exceptional conditions pertaining
21 to the particular piece of property? No, they're not.

22 CHAIRMAN MCDUFFIE: Alright, would you care to make a motion?

1 MR. SMITH: I'll make a motion to deny Special Exception number 09-29 based
2 on the fact that no special exception is needed, no, excuse me, no extraordinary or
3 exceptional conditions are on the property.

4 CHAIRMAN MCDUFFIE: Is there a second?

5 MR. RUSH: I'll second.

6 CHAIRMAN MCDUFFIE: Alright, it was Mr. Rush. Alright so we have a motion
7 and it has been seconded. All in favor?

8 MR. PRICE: Those in favor are Rush, McDuffie, Cooke, Smith.

9 *[Approved: Cooke, Rush, McDuffie, Smith]*

10 CHAIRMAN MCDUFFIE: Mr. Meetze your request for a variance, your request
11 for a variance has been denied and Staff will be in touch.

12 MR. MEETZE: Thank you.

13 CHAIRMAN MCDUFFIE: We have a rather unusual request I guess, whose
14 next?

15 MR. COOKE: Alright to suspend the -

16 CHAIRMAN MCDUFFIE: Mr., Mr. Price, would you care to present the, the next
17 issue?

18 **CASE NUMBER 09-08V:**

19 MR. PRICE: Yes. In your packet I included a letter from Amelia Linder kind of
20 just to the applicant explaining the process for requesting, for this request, and I also
21 have a letter from the applicant requesting the suspension on the rules. But first I'll start
22 with the BOZA Order, it's for case 09-08V, which is a variance was denied by the Board
23 previously at the March 4, 2009 Board of Zoning Appeals meeting. According to your

1 Rules of Procedures and you have 30 days to ask for a reconsideration prior to the
2 approval of the Minutes and those days elapsed. Upon discussion with, with Ms. Linder
3 and also Larry Smith, the county attorney, and a review of the Rules of Procedure that
4 there's, we found that there's a provision for you to suspend your rules to allow a case
5 to come back because typically once you've missed those days that's it.

6 CHAIRMAN MCDUFFIE: Now if an applicant wishes to reapply for a variance or
7 an additional variance, they would be able to do so after a period of one year?

8 MR. PRICE: A year, yes.

9 CHAIRMAN MCDUFFIE: But in this case this is sort of an unusual case
10 potentially because the, the structure in question has already been built?

11 MR. PRICE: Yes.

12 CHAIRMAN MCDUFFIE: As I recall from, from -

13 MR. PRICE: Yes, the structure was there, yes. And it, just so I can give you
14 some history, the structure was built and then once Staff received a complaint regarding
15 this structure, that's when we went out there and it was noted that it encroached into the
16 required setback.

17 CHAIRMAN MCDUFFIE: As, as far as I can recall we've never had a, at least in
18 my tenure on the Board I don't recall any requests for suspension of the rules.

19 MR. PRICE: This is a new one for me also.

20 CHAIRMAN MCDUFFIE: And I guess I'm, I'm, I, I guess I'm, I'm questioning if
21 there is any sort of a, a good cause at this point? Or a, a, or need to suspend, I guess
22 we do have -

23 MR. PRICE: We, we have someone here -

1 CHAIRMAN MCDUFFIE: - we don't have two-thirds of the Board here today, do
2 we?

3 MR. RUSH: No.

4 CHAIRMAN MCDUFFIE: We have a quorum, yet we do, yet we don't have two-
5 thirds of the appointed Members of the Board at this time, do we?

6 MR. PRICE: I believe -

7 CHAIRMAN MCDUFFIE: We have, we have four out of seven.

8 MR. PRICE: I'm sorry, no I was counting -

9 CHAIRMAN MCDUFFIE: Yeah, so we have four out of seven here, we can't, I
10 don't even think we can suspend the rules today were we to wish to, as, as, the, as the
11 Code is written, or as the, as the By-laws are written, is that correct?

12 MR. PRICE: Well let you take that up with your attorney.

13 CHAIRMAN MCDUFFIE: But it doesn't even look like even if we would like to do
14 that today, we can't do that today. So, I guess what I would, what I would ask that this
15 be continued to the next, to the next hearing in hopes that we will have at least five
16 Members and could, and could make a determination upon this in whichever case.

17 MR. PRICE: Okay.

18 CHAIRMAN MCDUFFIE: And so I'll, I'll make a motion to defer until, until the
19 next month. Is there a second?

20 MR. SMITH: I second.

21 CHAIRMAN MCDUFFIE: Alright, all in favor?

22 MR. PRICE: All in favor are Rush, McDuffie, Cooke, Smith.

23 *[Approved: Rush, McDuffie, Cooke, Smith]*

1 CHAIRMAN MCDUFFIE: So the, the request to suspend the rules in 09-08
2 Variance has been deferred. Is there any other, is there any other new business?

3 MR. PRICE: No, sir. I believe at one meeting, I can't remember specifically, I
4 asked that, that the Board appoint a few Members for, you know, to discuss the Code
5 itself and some issues and I believe that was Mr. Rush, Ms. Cecere and I believe you,
6 Mr. McDuffie, also?

7 CHAIRMAN MCDUFFIE: Yes, sir.

8 MR. PRICE: Some time, you know, we can pick a time between now and maybe
9 the next hearing and we can get together and discuss these cell towers and exactly
10 what type of information that you would like. So that when the applicants come in I will
11 be able to present that to them as opposed to us trying to debate it during a meeting on
12 what we originally had or did not have.

13 MR. COOKE: We would like that a lot.

14 MR. PRICE: And, you know, we can do that.

15 CHAIRMAN MCDUFFIE: Okay, alright, thank you very much. If there is no other
16 business at this time I'll adjourn the meeting. We are adjourned.

17

18

[Meeting Adjourned]