

**BOARD OF ZONING APPEALS**

May 3, 2006

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

5 Called to order: 1:04 p.m.

6 CHAIRMAN BROWN: I'd like to call the May meeting in the Board of Zoning  
7 Appeals to order and welcome all citizens in the audience. We're glad to have you  
8 hear, we're glad to have your participation. I'll ask Mr. Farrar from the County  
9 Attorney's Office to make some preliminary remarks regarding procedures for the  
10 Board.

11 MR. FARRAR: Thank you, Mr. Chairman. Good afternoon, I'm Brad Farrar from  
12 the County Attorney's Office. As the Chairman indicated I'm going to briefly touch on  
13 some of the high points of the Board's procedure and take any questions that you may  
14 have. The Board of Zoning Appeals is what they call a quasi court. It's not a court of  
15 law but it is similar in terms of how it functions and some of the decisions that it issues.  
16 The Board's order of presentation, the applicant for either a Special Exception or a  
17 Variance has up to 15 minutes to present his or her case. You don't have to take the  
18 full time, but you certainly may. Anyone in opposition to a request has up to three  
19 minutes per person. And then the applicant can come back for up to five minutes of  
20 rebuttal. So if you notice the order of proceedings it's applicant, opposition and then  
21 applicant gets to come back again. The reason for that comes back to the quasi court  
22 nature of the process. The applicant bears the burden of trying to convince the Board  
23 why he or she should get the Special Exception or Variance. So it's, that's simply the  
24 reason for that procedure. You can do anything that's appropriate to your presentation

1 if you have a, a video presentation etc., we'd be happy to accommodate that if you, you  
2 let us know in advance we should be ready for it. In terms of things you can submit to  
3 the Board, you can submit your documentation, evidence, letters etc. that you might  
4 have. If you've done that prior to now there's a good chance we've already put that in  
5 the agenda packet. If you have some last minute submissions we'll certainly take a look  
6 at those as well. The effect of a Board's decision, this is probably the most important  
7 thing I'm going to touch on. The Board will deliberate in open session, they will render a  
8 decision by motion, someone will second it and they'll take a vote and you'll have your  
9 decision in the case today, unlike a lot of times in a court proceeding you may have to  
10 wait a while for the judge to rule. But what's the effect of the decision? The decisions of  
11 the Board are not final until the minutes from which the decision was rendered have  
12 been approved and obviously we don't have real time transcript of the minutes taking  
13 place so that'll, the minutes are prepared, the Board's Members will review it and then  
14 they'll see if they want to make any changes and then the minutes will be approved.  
15 Typically that occurs the following month, so the May Board meetings very, very well  
16 should be approved in, at the June meeting. The reason I mention that is that prior to  
17 the minutes being approved, any Member of the Board may move for a reconsideration  
18 of a case. And I don't mention, I tell you that I only represent the Board as, as an  
19 attorney but I just give you this as information because you may not have committed the  
20 Board's rules of procedure to your memory and they are available and we, we have  
21 copies but it's something you do need to be aware of. And the example I always give  
22 on this is, is something that we, you know, could, could happen, a case that we could  
23 see. You could have a request to have a 1' Variance, you know, something as small as

1 a 1' Variance to go into your neighbor's side yard set back or your side yard set back  
2 and impinge a little bit on your neighbor's closeness of the proximity to their, their  
3 property. You come in, there could be no opposition to that and the Board could  
4 approve it unanimously. And you think well I'm good to go and that afternoon you go  
5 spend a bunch of money on the contractor pouring concrete and you've invested the  
6 money. Well it could happen that your next-door neighbor was out of the country when  
7 this hearing took place and missed all the advertisements of it and they might come in  
8 and say well if I had known about this hearing I would've come in and I would've  
9 opposed it. Well that's something new a different that the Board did not have at the  
10 previous meeting, new information, something that couldn't have been discovered  
11 through reasonable diligence or you could have fraud or misrepresentation. Every once  
12 in a while you get somebody who comes up here and under oath, unfortunately, says  
13 something that may not turn out to be true. If, if things like that occur you can have a  
14 reconsideration of a case. I just mention that because if you proceed prior to the  
15 minutes being approved, you are doing that at your own peril. Reconsiderations are,  
16 are, are rare, they're the exception but we do have them from time to time. I believe we  
17 have one on the agenda this afternoon. However, once the minutes have been  
18 approved you do have a final decision of the Board and the Board's process is  
19 completed. There's always a however, under the state law in Title 6 anyone who has  
20 aggrieved by a decision of the Board may appeal that decision to Circuit Court. This is  
21 not complicated you just simply set forth how the Board, as a matter of law, got their  
22 decision incorrect. You will get a hearing in front of a single judge who will be sitting as  
23 essentially an appellate body as if he were the Court of Appeals, for example, to hear

1 that case. It won't be a new presentation of evidence; it'll just be simply looking at the  
2 record that was created here today at this hearing. A person does not have an  
3 indefinite period of time to file such an appeal. They have 30 days from the date of the  
4 Board's decision being mailed. So my point is that you're not going to have to wonder  
5 four years from now, gee do I have a final decision from the Board. Once the minutes  
6 have been approved and the appeal period has run you have a final decision. Are there  
7 any questions about that? I think that was the two most critical things I touch on, how a  
8 Board's decision can be reconsidered or appealed. Okay, very good. Couple of house  
9 keeping notes if you, if you have a cell phone or pager if you could please turn that to off  
10 or vibrate so we don't pick it up on the recording system we'd appreciate that. Also we  
11 get a question from time to time the folks say well gee can I, can I, you know, come and  
12 go? This is an open public hearing you're certainly free to come and go and you need  
13 to, we just ask that you exit out this door, you'll set off the alarm if you go out the other  
14 one. So please out this door and if you'd just do it without disruptive that would, you  
15 can come and go as often as you like. Can't tell you when your case will be called.  
16 They'll be called in the order they appear on the agenda. We only have five cases listed  
17 however, one has fallen off already, case number two has been deferred. That is 06-16  
18 a Variance request by John Gardner, 112 Summer Haven Drive. If you are hear for that  
19 case it has been deferred and, and it'll be reposted in due course. The other cases will  
20 go in the order they're presented unless the Board decides otherwise. The only  
21 occasions where the Board will not be seated where they are at this point is if they  
22 decide to take a recess, which could happen or if they go into Executive Session. This  
23 is provided for under the state Freedom of Information Act. You can go to Executive

1 Session to discuss things like a contract matter, employment or to discuss something  
2 with your attorney. The only contacts in which this might occur today would be if the  
3 Board wants to discuss something with the attorney or staff that's a legal matter. This is  
4 like if you talk to your own attorney you, that's a private conversation, nobody's going to  
5 listen in on that or certainly nobody should, it's a private matter. However you cannot  
6 go back, and when I say go back it's the Chambers, Council Chambers and discuss or  
7 you cannot, excuse me, take a vote or a straw poll on how somebody might vote on a  
8 matter. You can just simply discuss a legal point, come out and resume the hearing in  
9 open session. So that's, that's the only times the Board will not be where, where it's  
10 located now. The Board of Zoning Appeals consists of seven members, all of whom are  
11 here today so we have a full panel, certainly a quorum to conduct business. I believe  
12 that is the gist of what I wanted to discuss. Are there any questions about anything  
13 that's been covered or the Board's procedure?

14 AUDIENT MEMBER:

15 MR. FARRAR: I'm sorry sir?

16 AUDIENCE MEMBER: I'd like for them to introduce themselves please.

17 MR. FARRAR: You'd like the Board members to introduce themselves. They're  
18 probably not going to do that, I'll be happy to read their nameplates for you. This is  
19 Heather Cairns, Harold Branham, Napoleon Tolbert, Terry Brown, Margaret Perkins,  
20 Elaine Perrine, and Mr. Reverend, I'm sorry George Ashford. Any other questions?  
21 Yes, ma'am.

22 AUDIENCE MEMBER: [inaudible]

1 MR. FARRAR: The Board's minutes will likely be approved the following month,  
2 so the best way to know about that is to call the Zoning Administrator. What's the, I  
3 believe the direct dial of Zoning Administrator is 576-2174. So you'll probably get Mr.  
4 Price, he can tell you for certain whether or not a matter has been reconsidered, but the  
5 question you also want to ask is have the minutes been approved.

6 MR. PRICE: Excuse me Brad, that's 2180

7 MR. FARRAR: 2180, 2180 is the number to call. So just, just and again the  
8 Zoning Department is also known as the Development Services Department. You may  
9 also hear Planning thrown in there. If you hear any of those things you're very close to  
10 where you need to be to get to an official who can help you with that. Any, any other  
11 questions? Okay if not the only other thing to do is if you are going to speak to a case  
12 today, you should be on the sheet signed up for the case you want to speak on. If you  
13 have not done that that's not a problem we can do it after we conclude the opening  
14 remarks, but whether you've signed up or not, if you want to come to the podium and  
15 testify in a case, if you would at this time I need to swear you in. I like to do this as a  
16 group to expedite this. If you would please stand and raise your right hand, I will swear  
17 you in as a group. It's not painful I promise, we're just going to do this, okay. Do you  
18 swear or affirm the testimony you shall give shall be the truth, the whole truth and  
19 nothing but the truth so help you God?

20 AUDIENCE MEMBERS: I do.

21 MR. FARRAR: Please be seated. This is largely the honor system. I think I saw  
22 everyone but if you said anything other than yes or you got it, please let me know,

1 otherwise we'll consider the group sworn and I'll turn it back to the Chairman at this  
2 time, thank you.

3 CHAIRMAN BROWN: Thank you, Mr. Farrar. Mr. Price, I don't have anyone  
4 signed up for the first case, have you been able to contact Mr. Davis?

5 MR. PRICE: Yes, we've been able to contact the applicant. They're on their way  
6 and they asked, they requested that their case be moved toward the end and give them  
7 some time to get here.

8 CHAIRMAN BROWN: And this will be how many times that we've moved that  
9 case?

10 MR. PRICE: This will be the first, second time.

11 CHAIRMAN BROWN: What is the pleasure of the Board?

12 MR. PRICE: I, I would like to, I would like point out to the Board that there may  
13 have been some misinformation that came about from, not so much the Planning  
14 Department but from someone on Richland County that may have caused the applicant  
15 not to come to this meeting. So I would like to, you know, to take that into  
16 consideration.

17 CHAIRMAN BROWN: All right. If that's the case then I would propose that -

18 MR. RUTHERFORD: Mr. Chairman, I'm sorry. I am Todd Rutherford. I am here  
19 on behalf of the applicant.

20 CHAIRMAN BROWN: Do you have signed permission -

21 MR. RUTHERFORD: I am an attorney, I have been retained by the client to  
22 represent him in front of, in front the Board.

23 CHAIRMAN BROWN: All right Mr. Price then we'll go with the first case.

1 **CASE 05-105 V:**

2 MR. PRICE: Okay the first case is Case 05-106 Variance. The applicant, the  
3 original applicant was John Tien, but this case is being presented by Todd Rutherford.  
4 The location is Bluff Road. The applicant is requesting the Board of Appeals to grant a  
5 Variance to reduce the required vehicular surface area separation screening planting  
6 strip from the required width of 5' to zero in an M-1 zoned district. The subject property  
7 - I believe before they had a structure on there, from that time to now that structure has  
8 been torn down, it's really a clear lot at this time. The applicant is proposing to  
9 construct a private parking lot. The surrounding area is comprised of parcels primarily  
10 devoted to industrial and commercial uses. The immediate area has recently started to  
11 experience a residential, multi-family type change in character

12 CHAIRMAN BROWN: Mr. Rutherford if you'd state your name and tell the Board  
13 what it is that you're thinking.

14 **TESTIMONY OF TODD RUTHERFORD:**

15 MR. RUTHERFORD: Sure Mr. Chairman, and thank you for the opportunity to  
16 speak. My name is Todd Rutherford last name is spelled R-U-T-H-E-R-F-O-R-D. I had  
17 spoken with Mr. Price prior to the hearing and I think that, and I hope that he can better  
18 present something that I think that we've come up with, which would relate to a  
19 Variance on what it is that we're requesting. Gamecock Pavilion is a commercial  
20 parking lot and we are seeking to provide parking to those people that are going to  
21 Williams Brice Stadium and other places down in the Bluff Road area. We are  
22 requesting a Variance because of the special conditions that relate to that piece of  
23 property. We are bordered by the National Guard Armory and a large fence on one side



1 and Carolina Rigging, whom we currently have an easement with that we share a  
2 driveway with on the other side. The property goes and, and it dips down in the back  
3 and is somewhat not visible from the street to a great degree as far as the landscaping  
4 that we would be doing on the property. But as I told you we, I spoke with Mr. Price  
5 prior to this and I hope that we've come up with something that he can live with and that  
6 you all can live with whereby we would ask that the isle widths which are currently listed  
7 at 25', that those be allowed to be 20'. Giving us a 5' reduction an isle width and giving  
8 us that natural boundary around the property that I think County Council and that the  
9 zoning ordinances support and that they are asking property owners in that area to do.  
10 I may add that if those of you that are familiar with Carolina Rigging or the National  
11 Guard Armory, this piece of property kind of sits down in it so you've probably driven by  
12 it a hundred, million times and never seen it. It is a piece of property that, up until this  
13 point, I don't think many people knew it existed otherwise they probably would have had  
14 something on it already. The bordering properties have very little landscape, so I'm  
15 thinking that, I'm hoping that what it, that what we add to that area will bring the area up,  
16 will make it look a whole lot better with the landscaping that we plan on doing and with  
17 the design that, that we plan on doing with the assistance of Mr. Price.

18 CHAIRMAN BROWN: Let me try to clarify what you described to us. Are you  
19 saying that you're going to reduce the island width and the, within the interior of the  
20 parking lot from 25' to 20' and then install the 5' perimeter around it, it that -

21 MR. RUTHERFORD: That's correct, we are not saying that's what we're going to  
22 do, we're asking permission to be able to do that.

1 CHAIRMAN BROWN: Is it that you're sort of, if I can put words in your mouth,  
2 you're sort of changing the nature of your request for a Variance from one pertaining to  
3 the landscaping buffer to one pertaining to the width of the islands within the parking  
4 area?

5 MR. RUTHERFORD: And, and you did a great job of putting words in my mouth,  
6 but in essence what we're trying to do is preserve what we believe County Council is  
7 trying to do with their ordinances and make it so that we do what, we do the  
8 beautification necessary, we do whatever it takes to make it fit in with what the county  
9 wants down there while still preserving what it is that we're asking for.

10 CHAIRMAN BROWN: Thank you. Mr. Price do you have any comment on that?

11 MR. PRICE: Yes, what I just gave you this is from the rules of procedures for the  
12 Board of Zoning Appeals, I believe this was adopted like last year. If you look at  
13 Section 2.2 under Amendments, it does state that technical or minor amendments to  
14 applications may be allowed to conform to the true nature of the request provided such  
15 amendments would not appear to the Board to substantially prejudice the rights of any  
16 party. I won't bother reading all of it. So I guess that from talking to legal and we  
17 discussed this previously it's really up to you to decide on to what extent this change in  
18 the Variance request would impact on the original request.

19 MR. RUTHERFORD: And if I may add to that Mr. Chairman, I don't know that I  
20 mentioned this before but I will at this point. As far as obviously this is the second  
21 hearing on this matter and no one from the community has objected and, and I say that  
22 because not only have they not objected, but we are working with both the National  
23 Guard Armory as well as Carolina Rigging who are the property owners on both sides of

1 the property. So not only do they not object, we're also dealing with them on how to  
2 make this a better project.

3 CHAIRMAN BROWN: Mr. Price, I appreciate your input. What I was looking for  
4 input on was your feeling with respect to a reduction in the size of the islands in the  
5 parking lot.

6 MR. PRICE: Well we've kind of discussed this a little bit. I do have Anna  
7 Almeida here, she's the Development Services Manager and she formally served as the  
8 Land Development Administrator and so she does have her eye on a lot of these  
9 projects. What we've been kind of looking at in this particular case is this is kind of  
10 unique in that when the applicant comes in and says can I do a parking lot, flipping  
11 through the code under the table of permitted uses, we go immediately to the  
12 commercial parking lot, automobile commercial parking lot. And I think that we mostly  
13 think of those as, you know, I go in there and I park my car, drop some money in the  
14 meter, or pay the attendant once I leave after I grab my ticket. This is a little different in  
15 that it's going to be privately owned so you won't have to worry about this traffic going in  
16 and out and so I believe Staff would be a little more receptive to, receptive to a  
17 reduction in the isle width in lieu of the Variance to eliminate the buffering.

18 CHAIRMAN BROWN: Well I think it's a lot different than a parking lot. I think it's  
19 probably a tailgating facility more than it is a parking lot or at least in equal parts as a  
20 parking lot. So I think to characterize it totally as a parking lot is kind of disingenuous,  
21 but regardless of that thank you. What's the feeling of the Board with respect to the  
22 nature of the amendment? I think that's the first hurdle we need to be, to cross before  
23 we get to the merits of the, of the request itself. Any discussion on that?

1 MS. CAIRNS: Do we have the code section for which now the Variance is being  
2 requested of? I mean the, you know, our materials provide that it's asking for a  
3 Variance from the separation part of the code and now we're being asked to grant a  
4 Variance on what section?

5 MR. PRICE: The isle width, okay I'm sorry, which the requirements of the isle  
6 width?

7 MS. CAIRNS: Yeah I actually don't have my book today either. While you guys  
8 are searching, Mr. Rutherford, if you could offer to the Board, you know, what's the  
9 extraordinary and exceptional conditions pertaining to this piece of property as it makes,  
10 I mean, you've touched on it but I'd like, I'd be curious if you could articulate specifically  
11 what that is.

12 MR. RUTHERFORD: Well I think the biggest difficulty with this property and the,  
13 and the circumstances, circumstance that affects us are the way the property is situated  
14 being between the National Guard Armory, which obviously we are intending to protect  
15 and help out as much as possible, but with the long fence that they have up there. We  
16 share a driveway with Carolina Rigging on the other side and we've also bought an  
17 easement so that we can make sure we always have access to that driveway on the  
18 other side. But the, we are before this Board because in, in essence to make a project  
19 like this work, in order to make it so that you are allowing ingress and egress and proper  
20 access to the parking spaces that are listed that are, and I think you all have the  
21 proposal in front of you even though I don't have one in front of me – exactly; that in  
22 order to do that we have done everything that we could up unto this point and we just

1 need you all's help in giving us a Variance to allow completion of the project to get to  
2 that point.

3 MS. CAIRNS: I mean, having a next door neighbor as a property owner, I mean,  
4 the fact that it's the National Guard, what makes that different than if it was a Piggly  
5 Wiggly? I mean, I don't understand.

6 MR. RUTHERFORD: Well I think what makes that different is that they have a, a  
7 giant privacy fence that runs along the right side of the property, I'm sorry.

8 MS. CAIRNS: But, but I mean, specifically you're asking for us to narrow the  
9 parking bays in your property -

10 MR. RUTHERFORD: No not narrow, I'm sorry not narrow the parking bays,  
11 narrow the -

12 MS. CAIRNS: The isle or whatever part you want to call it -

13 MR. RUTHERFORD: Yeah, narrow the isle.

14 MS. CAIRNS: But yeah the isle part of the -

15 MR. RUTHERFORD: Narrow it out so that, because rather than ask for a buffer  
16 that would allow us to resemble every other piece of property pretty much down in Bluff  
17 Road where most of them are nothing but concrete, we are asking that we be allowed to  
18 place the landscape to do what it is that we think the ordinance was set up to do and the  
19 green spaces were set up to do, by allowing us to minimize the driveway for the  
20 property. So it's allowing us to conform with what we think the County Council intended  
21 by allowing us an extra 5' on the driveway part of it.

22 MS. CAIRNS: But how does the fence of the National Guard affect the, I, I don't  
23 see a -

1 MR. RUTHERFORD: Well in my mind it affects us because we don't have  
2 access, we can't get access to the other side of that property to allow what I guess  
3 would be a better ingress and egress situation. And so our ingress and egress is all  
4 from one side, it's all from the front rather than being able to get it from that other side.  
5 And that's the only reason that I can think of that that fence line affects us.

6 MS. CAIRNS: Well I'm also curious, you're talking about an easement with the  
7 property owner on the other side, but yet the sight plan shows only a single access off  
8 Bluff Road.

9 MR. RUTHERFORD: Right. The easement on the other side was, was  
10 something that we procured after speaking with the County Attorney who said why don't  
11 you all get an easement and share the driveway, that would create an exemption.

12 MS. CAIRNS: You're saying that this sight plan is no longer accurate.

13 MR. RUTHERFORD: No, no, no. The sight plan is exactly accurate.

14 MR. PRICE: Let me interject. What he's referring to is, I believe they have  
15 worked out some type of agreement with the adjacent property owner, however the  
16 sight plans that would be required, the actual, a plat of the property showing that  
17 easement has not been perfected at this time so right now it's really more of a concept  
18 rather than something that - so what you're looking at before you is what they're  
19 requesting. At this time we did not have an easement on the adjacent property.

20 MS. CAIRNS: Okay, I mean -

21 MR. PRICE: There, there, right now if he, if he was going to do, to have an  
22 easement from the property that would allow access into Gamecock Pavilion, a sight

1 plan would have to be approved. As of this time nothing has been submitted so at this  
2 time it's more of a concept.

3 MR. RUTHERFORD: That's correct, and I didn't state that to say that we were  
4 changing the sight plan so much as to say that we are working with our neighbors on  
5 both sides.

6 MS. CAIRNS: Okay, but I mean, personally I'm still not hearing anything  
7 extraordinary or exceptional about this lot that makes the narrowing of the parking  
8 driveway part that's unique to this. I mean, other than the fact that it's just not wide  
9 enough.

10 MR. RUTHERFORD: In order to provide - well I think that is the exception in and  
11 of itself that because of the width of the property and because we cannot expand on  
12 one side of it, it is hardship to us because we can't expand, we can't go any further than  
13 we already have. And so as it relates to, and I don't have all the conditions in front of  
14 me, but as it relates to this particular piece of property, we are prohibited because of the  
15 narrowness of the property, because of the way the property dips, we are prohibited  
16 from doing anything on the other side to help our situation, but to come and ask you all  
17 for a zoning Variance to give us that 5' so that we can put in the landscape that's  
18 necessary.

19 MS. PERKINS: Would you be willing to reduce any of the parking spaces?

20 MR. RUTHERFORD: Well we'd ask that we not be and we've actually, 5'  
21 reduction in parking space, we can complete the landscaping and to the extent that I  
22 believe that a 5' reduction in the isle width affects anyone but us on the property, it  
23 allows us to stay in compliance, it makes for, as the Chairman said, a situation where

1 people are ingressing, they are staying on that property and then at the end of the  
2 game, so be it, then they leave. And so it does not affect any, a traditional, commercial  
3 parking situation as a situation where people are accessing the property and using the  
4 property and then egressing the property and that's it.

5 MS. CAIRNS: How many days a year is this parking lot going to be -

6 MR. RUTHERFORD: It depends, but probably about nine days a year.

7 MS. CAIRNS: Cause you said in your introduction it would be for home football  
8 games and then you said other places in the area it would be used for -

9 MR. RUTHERFORD: When I said other places in the area I intended that those  
10 persons that use the parking facility say, for example, on a Benedict/South Carolina  
11 State game, that it would be accessible for those days. So I couldn't give you an exact  
12 amount. I believe USC generally plays about seven home games, but I extended it to  
13 nine for those other two occasions where the stadium may be in use.

14 MR. PRICE: Mr. Chair, I normally don't do this because usually you have the  
15 information from Staff prior to the meeting but because we're kind of going on - one of  
16 the things to kind of look at is, I was talking to Ms. Almeida about this, without the  
17 granting of the Variance, and I was kind of listening to the reduction of the parking,  
18 without any Variance whether it be for the buffering or for the isle width, in order for  
19 them to get this project to go it would essentially eliminate the center part of the, of the  
20 parking lot. Where you see those center parking spaces. I mean, it seems like just  
21 from looking at this, this has been designed at it's maximum and if, and if they're even a  
22 foot of two off it seems like they're, you're pretty much going to have to eliminate, pretty  
23 much half of the parking on that. And so I guess maybe the argument could be made,



1 you know, reasonable use of the property, I guess that's where they're going to get into  
2 there. I'm not making any -

3 CHAIRMAN BROWN: Well I don't think that reasonable use of the property,  
4 whatever design the property will accommodate within the zoning district [inaudible].

5 MR. PRICE: Correct.

6 CHAIRMAN BROWN: I'll get back to that. I think the, did you have another  
7 question?

8 MS. CAIRNS: What, I'm just trying to make sure that we touch on the necessary  
9 criteria before we can grant a Variance, I mean.

10 CHAIRMAN BROWN: That's what I wanted to get to was the threshold question,  
11 first whether this was a technical amendment or whether it's a substantive amendment  
12 in terms of the requested Variance.

13 MS. CAIRNS: Well in terms of the change for the request?

14 CHAIRMAN BROWN: Yes, exactly.

15 MS. CAIRNS: Yeah I haven't addressed that at all, I mean, you can go, that's  
16 yours.

17 CHAIRMAN BROWN: It seems to me like that the, the first question that's got to  
18 be addressed.

19 MS. CAIRNS: Okay.

20 CHAIRMAN BROWN: Mr. Farrar, would you agree that that's the first question  
21 before the Board?

22 MR. FARRAR: Well Mr. Chairman it is, in looking this is kind of a short section,  
23 2.2 of the amendments and we, we changed these rules to give y'all more flexibility

1 when stuff like this occurs and essentially the amendment key is whether or not the  
2 amendment would appear to the Board to substantially prejudice the rights of any party.  
3 I mean, nobody showed up for this hearing the first time, you've got, you know, the  
4 National Guard would, I would hope would have somebody voice a concern if they had  
5 one and the neighbor apparently on the other side, some type of arrangement with them  
6 now on this. So I don't know that you're going to be able to show that, you know, this,  
7 what they're attempting to do is substantially prejudicing the rights of the party. If they  
8 came in and said, for example, rather than address the parking issue, we now want to  
9 put, you know, a commercial establishment like a, like a restaurant in there, that would  
10 be a major deviation from what their asking. But, I mean, this is probably not going to  
11 be a lot of people coming in saying they were misled about what they're attempting to  
12 do.

13 CHAIRMAN BROWN: Oh, I don't disagree with you, but it seems to me that as a  
14 matter of record that that question ought to be addressed by the Board.

15 MR. FARRAR: It should, it should.

16 CHAIRMAN BROWN: And acted on by the Board and it should be a matter of  
17 record that the Board consider that to be an acceptable amendment within the four  
18 corners of, of the [inaudible] application.

19 MR. FARRAR: I think there's no question this is an amendment and so you can  
20 take it up under the rules 2.2 that the Board's been, you can allow it or not but it does  
21 need, it's a threshold issue.

22 CHAIRMAN BROWN: I think that the first question before the Board and I'll  
23 present it to the Board and then take a vote on it is whether this constitutes a technical

1 amendment within the meaning of Article 2-2 of our bylaws. If, only if we find that that's  
2 the case I think do we get to the next question of, of the nature of the Variance itself, so.

3 MR. FARRAR: I'm just, excuse me for just, it's technical or minor, cause I don't  
4 want it to be construed that a technical is some type of scrivener's error or something,  
5 it's a substantive or not is technical or minor.

6 CHAIRMAN BROWN: Point well taken. So is there a motion by the Board with  
7 respect to that? Hearing none, I'll make a motion that - I move that the request by the  
8 applicant to reduce the isle width within this project be treated as a technical or minor  
9 amendment within the meaning of Article 2-2 or the rules.

10 MS. PERKINS: Second.

11 CHAIRMAN BROWN: I have a second by Ms. Perkins. It's been moved and  
12 seconded all in favor signify by raising their hand?

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

14 CHAIRMAN BROWN: Mr. Ashford will you be for or against or abstaining?

15 MR. ASHFORD: Abstaining.

16 CHAIRMAN BROWN: All right. The vote is 6-0 with one abstention by Mr.  
17 Ashford. All right now we can get to the question of the Variance itself. Is there any  
18 more questions?

19 MS. CAIRNS: I'm, I don't know, are there any, does anybody else have any  
20 questions? I don't mean to -

21 CHAIRMAN BROWN: I don't hear any other questions. Hearing none, thank  
22 you, Mr. Rutherford. The Board will entertain a discussion on the Variance request.  
23 Any discussion?

1 MS. PERKINS: He did come up with, well he talked about the way the property  
2 is situated as a - what am I trying to say?

3 MR. TOLBERT: As a hardship?

4 MS. PERKINS: A hardship. Is that, is that what I heard or what?

5 MS. CAIRNS: Well, I mean, I would offer in stitching together the comments  
6 from Mr. Rutherford is that what's extraordinary and exceptional to this particular piece  
7 of property is that it's a parking lot with nine times a year use. And that when the  
8 parking regulations were drafted it wasn't intended to apply to the lot that was only  
9 going to be used a dozen times a year and that that, you know, doesn't generally apply  
10 to most parking lots or other property in the vicinity and that, you know, because of the  
11 unique nature and use of this property that not allowing a Variation on the parking lot  
12 would be a little bit harsh from our standpoint. And as has been stated, there is no  
13 opposition to this parking lot.

14 CHAIRMAN BROWN: I think you captured that.

15 MS. PERKINS: Yeah, I would agree with that.

16 MS. CAIRNS: Yeah.

17 MR. TOLBERT: Also I think they made mention that they're going to try to follow  
18 the codes of the county as far as landscaping beautification is also a -

19 MS. CAIRNS: So did we get the code section that we're varying?

20 MR. PRICE: That section is -

21 CHAIRMAN BROWN: I think it's Section 26-173

22 MR. PRICE: 26-173.

1 CHAIRMAN BROWN: (D)(2)(b)(1). All right, any further discussion? Hearing  
2 none the Chair will entertain a motion.

3 MS. CAIRNS: I would make a motion that Variance 05-106 be granted such that  
4 the Variation of Section 26-173(D)(2)(b)(1) allowing the reduction of the drive isle of the  
5 parking lot be granted and this is with the condition that the original Variance request to  
6 minimize the landscaping not be altered it off from the code requirement.

7 CHAIRMAN BROWN: Would you accept that we state in that the isle width be  
8 reduced to no less than 20'?

9 MS. CAIRNS: Yeah, I mean, reduced to no less than to allow the minimum 5'  
10 planning buffer.

11 MR. TOLBERT: Second.

12 CHAIRMAN BROWN: It's been moved and seconded, all in favor signify by  
13 raising their hands?

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

15 CHAIRMAN BROWN: All right, Mr. Rutherford.

16 MR. PRICE: Mr. Chair before we get to our next case I meant to get to, get to  
17 this before we actually heard from the first one, we have a request for Mr. O'Brien, he's  
18 the Homeowner's Association President I think for the Windsor Lake area for Case 06-  
19 11 Special Exception to be moved, to be moved up. I believe most of the people here in  
20 the audience are here for that case.

21 CHAIRMAN BROWN: What is the pleasure of the Board with respect to that  
22 request? I'll entertain a motion.

23 MS. PERKINS: Is there, is there a special reason why?

1 MS. CAIRNS: Is there anyone here from 05-53 that has opposition to change it?

2 CHAIRMAN BROWN: There should be somebody here.

3 MR. TOLBERT: Anybody sign up?

4 CHAIRMAN BROWN: Collins is here.

5 MS. CAIRNS: Do you mind if we switch the order of the, okay. I make a motion  
6 that we change the order of the second and third, I don't want to rattle off the numbers.

7 CHAIRMAN BROWN: Is there a second to that?

8 MR. TOLBERT: Second.

9 CHAIRMAN BROWN: All in favor?

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

11 CHAIRMAN BROWN: All right, so done.

12 **CASE 06-11 SE:**

13 MR. PRICE: Next case is Case 06-11 Special Exception. The applicant is  
14 Monisha Smalls. The location is 3000 Kings Way. The applicant is requesting the  
15 Board of Zoning Appeals to grant a Special Exception to permit the establishment of a  
16 group daycare on property zoned RS-LD, Single Family Residential Low Density. The  
17 parcel is a little more than 2/3, excuse me 1/3 of an acre, .37. The existing land use is  
18 residential. The subject property has an existing single-family residential structure with  
19 a double car driveway that leads to a garage. The rear of the property is enclosed by a  
20 fence. The applicant proposes to establish a family daycare for a maximum of six  
21 children. The ages of the children would range from newborn to four years of age. The  
22 proposed hours are 6:30 a.m. to 6:00 p.m. The property is located within a subdivision  
23 of single-family residential structures, Briarwood Subdivision and directly across the

1 street is Windsor Elementary School. The property is also located on a corner, the  
2 address, of course, is 3000 Kings Way and it's on the corner of Kings Way and  
3 Dunbarton Drive.

4 CHAIRMAN BROWN: All right thank you. Ms. Smalls, could you come forward  
5 please? State your name and tell the Board what it is you want to do.

6 **TESTIMONY OF MONISHA SMALLS VERNER:**

7 MS. VERNER: Hello my name is Monisha Smalls Verner. Since I, you know, did  
8 this I've been married and the last name is V-E-R-N-E-R. And I want Special Exception  
9 for a home daycare for up to six children. I know they say that traffic would be, you  
10 know, increased, but I don't think traffic, you know, I don't think it would affect because  
11 it's only going to be, you know, worse case scenario I say five cars, five different  
12 parents and being that the hours of operation is 6:30 to 6:00 p.m. Windsor Elementary  
13 School doesn't open up until 8:00 and traffic doesn't really get that bad until 7:30. So  
14 about two or three of my kids could already be there so, you know, two or three cars  
15 affecting, you know, traffic I don't think that would be a problem. And they said another  
16 problem would be noise and if that was the case I can go out to recess the same time  
17 Windsor Elementary goes out to recess. And that's about it.

18 CHAIRMAN BROWN: All right questions for, Ms. Verner, is it now?

19 MS. VERNER: Yes, Verner.

20 MS. PERKINS: I have a question. How long have you lived in this area?

21 MS. VERNER: It'll be two years in August.

22 MS. PERKINS: I, I did understand that there was a homeowner's association.  
23 Are you a member of a homeowner's association?

1 MS. VERNER: No, I'm not.

2 MS. PERKINS: Is there a reason why?

3 **TESTIMONY OF ANTHONY VERNER:**

4 MR. VERNER: I'm sorry, I'm Anthony Verner, her husband and property owner.

5 [Inaudible].

6 MR. PRICE: Speak up, sir.

7 MR. VERNER: I'm sorry. We weren't aware of the homeowner's association, we  
8 know that there may be one out but we weren't informed or anything as far as joining.  
9 We're new homeowners so we're still learning the whole thing.

10 MR. TOLBERT: Have you discussed your intent with your neighbors?

11 MS. VERNER: No and my reason for that is that I didn't really think that it was  
12 going to, you know, be a big effect as far as traffic and noise, so I really didn't, no. One  
13 of my neighbors are -

14 CHAIRMAN BROWN: How many days a week do you plan to operate?

15 MS. VERNER: It's Monday through Friday.

16 CHAIRMAN BROWN: Monday through Friday?

17 MS. VERNER: Yes.

18 CHAIRMAN BROWN: Other questions for Ms. Verner? Okay, Mr. Verner did  
19 you have anything further you wanted to add?

20 MR. VERNER: Not right now, Mr. Chairman.

21 CHAIRMAN BROWN: This is your chance.

22 MR. VERNER: My chance?

23 CHAIRMAN BROWN: There is no not right now, it's now or never.



1 MR. VERNER: After a few, few of the oppositions get up I can come back and  
2 say something.

3 CHAIRMAN BROWN: Yes, you will be given an opportunity for rebuttal. All  
4 right, any questions for Mr. Verner at this point? All right, thank you. Before I get into  
5 those who are here in opposition, we want to give everyone who wishes an opportunity  
6 to speak that opportunity and we will. If you have a spokesperson that's helpful. If not  
7 we'll certainly listen to everybody, but I want to advise you at the outset that if the  
8 testimony gets repetitious we will cut you off in the interest of time. So first person I  
9 have signed up is Robert J. O'Brien.

10 **TESTIMONY OF ROBERT J. O'BRIEN:**

11 MR. O'BRIEN: Good afternoon, my name is Robert J. O'Brien. I am President of  
12 the Briarwood neighborhood association representing 580 residents in our, or houses in  
13 our neighborhood.

14 CHAIRMAN BROWN: It would be 579.

15 MR. O'BRIEN: We'd like to have them join.

16 CHAIRMAN BROWN: I know.

17 MR. O'BRIEN: We, to clarify something we do put out a quarterly newspaper, we  
18 have a meeting every quarter. The next one is May 11<sup>th</sup> and so the newsletters have  
19 gotten out to every house. We are, the people on all sides of this residence across the  
20 street, beside them, behind them are definitely against this. They've all notified me that  
21 they are against the approval of this. One of the things is there's a cross walk right  
22 there at the corner of the house that crosses from the school. The school comes across  
23 there, walks down that sidewalk beside the house and down to a blinker light where

1 there is a traffic control person. Also the, we have never been approached as it's been  
2 brought out at any of our association meetings to introduce themselves or even tell us  
3 about it. The covenant says that no lot shall be used except for residence, for resident  
4 purposes and that's written in our covenant. I think I'll leave it to the rest of the  
5 comments from some of the other people, but want to bring out, like to bring out one  
6 thing to the Board please. The notice was put up last week, sometime Wednesday or  
7 Thursday, I got a phone call on Friday, I'm talking about the sign in front of the house. I  
8 understand the newspaper puts it out 15, or they put it in the newspaper 15 days before  
9 but we never see, we're not looking at things like that. So we really only had a week to  
10 prepare this and we had to do some grabbing and quick phone calls but we would like  
11 to see in the future if they put a sign up like that that it at least be up there 21 days. The  
12 last couple that we've been here for, it's been up that long. So please take that into  
13 consideration and I thank you for your time.

14 CHAIRMAN BROWN: Questions?

15 MS. PERKINS: I've got a question.

16 MR. PRICE: I would like to state that all the requirements of the code were met  
17 for the posting and advertisement of the property.

18 CHAIRMAN BROWN: Any questions for Mr. O'Brien?

19 MS. PERKINS: You said that you put out a newsletter and I'm assuming in your  
20 newsletter from the homeowner's association you address where the meeting is going  
21 to be held and at what time.

1 MR. O'BRIEN: Yes, ma'am. On the front page of the newsletter, I'll just see if I  
2 have one here, it tells the date, time, where, guest speakers and every one we put out  
3 has the membership application on the last page.

4 MS. PERKINS: Thank you.

5 MR. O'BRIEN: And it's \$20 a year, \$.05 a day, it's a good deal. To have people  
6 who could take off from work to come down here and do what we're trying to do today,  
7 thank you very much.

8 MR. TOLBERT: Just a second, question. In your covenant do you have any  
9 type of notification when a new resident moves in as to notify them that there's a  
10 homeowner's association or is that apart of the closing package?

11 MR. O'BRIEN: It's in a, it's a project we're trying to work on. We've got  
12 somebody right now collecting names from the newspaper when a house is sold, try to  
13 get a hold of the new people to present and introduce ourselves, call them up and say  
14 hey welcome to the neighborhood but it's not really in place. But it is one of the  
15 objectives I've been trying to do is, is work towards that.

16 CHAIRMAN BROWN: Any other questions?

17 MS. PERRINE: How long have you had the homeowner's association or how  
18 long have you been having the meetings?

19 MR. O'BRIEN: The meetings have been going on for about - Cathy when did  
20 you - right it's been, it's been about seven, eight years. I'm sorry - it's close to ten  
21 years. It went through some transitioning where it was a different type of organization  
22 and then we developed further into the type of organization right now that we have. And  
23 we have, the other thing we do, at the three entrances to our neighborhood, Two Notch

1 Road and Windsor Lake Boulevard, Windsor Lake and Alpine Road, and then there's  
2 another entrance, we have a sign out there every - a week and a half before stating  
3 when the meeting is being held. So there's nobody that can miss those signs cause  
4 they've got to by them.

5 MS. PERRINE: Thank you.

6 CHAIRMAN BROWN: Any other questions for Mr. O'Brien? I'll make one  
7 comment so that there's no misunderstanding, covenants are a private agreement  
8 between the homeowner's within a development and the Board has no authority to  
9 enforce those covenants for the homeowner's association because they're a private  
10 agreement. But that doesn't mean we're not interested in what they say, but we're not  
11 in a position to enforce those on behalf of, of the homeowner's within a particular  
12 development. The next person I have signed up is Wayne Stevens.

13 **TESTIMONY OF WAYNE STEVENS:**

14 MR. STEVENS: First of all my name is Wayne Stevens. Jim covered pretty  
15 much most of the points I wanted to make except a couple. When we found out this  
16 was going to take place we made some phone calls and knew it, had we had a little bit  
17 more notice there would've been a lot more people here that are really against this  
18 taking place cause we don't want our housing area to have businesses in it. We don't  
19 want to start a precedent so this happens again. We've had a previous instance,  
20 situation where someone wanted to have a business in it and we protested with  
21 appropriate [inaudible]. I could have brought a list of hundreds of names, the  
22 association has somewhere around 175 members and there's 500, a little over 500  
23 families. So you can see it's a pretty large association and there are flyers that go out

1 all the time from garage sales that we have and so forth so to be a member of the, in  
2 that community and not be aware of an association is, is really hard to believe.

3 MS. PERKINS: What, let me ask you - I did understand from your President that  
4 you have signs posted through the entrances.

5 MR. STEVENS: Absolutely every time we have a meeting there's a sign posted  
6 to every entrance and fact I'm the sign guy.

7 MS. PERKINS: Okay.

8 MR. STEVENS: I post them and it says where it's taking place every time so I  
9 can't believe -

10 MS. PERKINS: What does the community as a whole, does somebody the  
11 notice the sign, I'm assuming in front of her residence, you know, that posting there?  
12 What do you do as a community, did you try as the, and maybe I should ask the  
13 President, or do you have a committee that perhaps would go to the homeowner and try  
14 to talk with them and see what they, you know, what they were trying to do? Or did  
15 anyone do that or?

16 MR. STEVENS: Well the location is not on a main thoroughfare so this probably  
17 could take place with a lot of folks not going by and seeing it to begin with, but we don't  
18 have any kind of organization set up within the homeowners' association that, that in a  
19 way to, you know, do what you're talking about. We probably should have one, but we  
20 don't. But we do have some kind, we have block captains within the association that  
21 goes to folks, new people and invites them and wants them to join the organization and  
22 so forth in all the areas too, that's another point.

23 MS. PERKINS: So you do have a block captain?

1 MR. STEVENS: We do.

2 MS. PERKINS: Okay, okay. So you don't know whether or not the block captain  
3 went to -

4 MR. STEVENS: I, I do not know that.

5 MS. PERKINS: Okay, thank you very much.

6 CHAIRMAN BROWN: Could you come back to the podium Mr. O'Brien?

7 MR. O'BRIEN: When the sign was put up and I was notified of the sign, I went  
8 up there twice to knock on the door and introduce myself. We did the same thing with  
9 the last lady that wanted to open up a beauty salon and introduce myself and there was  
10 a phone number that I've gotten from the county and nobody ever answered the phone,  
11 I was there twice to try to, you know, cause we don't want to build bad feelings between  
12 - we understand what they're doing, but the neighborhood is definitely against it, thank  
13 you.

14 MS. PERKINS: Okay, thank you.

15 MS. CAIRNS: I have a request for the Board. I'd like to go to Executive  
16 Sessions with the attorney for a second. I don't know how to, I make a motion that we  
17 go into Executive Session to discuss a legal matter.

18 MR. TOLBERT: I second.

19 CHAIRMAN BROWN: It's been moved and seconded, all in favor?

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

21 CHAIRMAN BROWN: All right we'll go into Executive Session.

22 *[Executive Session]*

23 CHAIRMAN BROWN: Is there a motion to come out of Execution Session?

24 MR. TOLBERT: So moved.

1 MS. PERKINS: Second.

2 CHAIRMAN BROWN: All in favor?

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

4 CHAIRMAN BROWN: All right, we're back in session. The next person I have  
5 signed up is Ervin Legrand. All right, Deputy are you signed up?

6 DEPUTY JENKINS: Yes sir.

7 CHAIRMAN BROWN: Okay, what was your last name please?

8 DEPUTY JENKINS: Jenkins, J-E-N-K-I-N-S.

9 CHAIRMAN BROWN: Norman?

10 DEPUTY JENKINS: Yes, sir.

11 CHAIRMAN BROWN: Okay.

12 **TESTIMONY OF DEPUTY NORMAN JENKINS:**

13 DEPUTY JENKINS: First and foremost, Mr. Chair and ladies and gentlemen of  
14 the Board, I am not here to represent the Sheriff's Department in no way, shape,  
15 fashion or form. I am here as a member of the, of the association and as a member of  
16 that neighborhood. I'm here just to say a few things, the traffic now is real bad. Just a  
17 year ago they had to put up a four-way stop to allow the kids that walk in the  
18 neighborhood, that crossing Kings Way going to Windsor Elementary to slow down the  
19 speed that's coming off Two Notch Road and off of Alpine. In a little while we're going  
20 to have three schools in that neighborhood. We're going to have E.L. Wright, Windsor  
21 and Polo Road. I stay on one of the adjacent streets that runs, Martindale, which runs  
22 from E.L. to, to Windsor. The traffic now, school bus and etc., cuts through Martin Dale  
23 to Wayborn, to Dunbarton to go to Windsor Elementary. In the morning now I can't

1 hardly back out of my own driveway to, to get to work. In the mornings now I can't  
2 hardly go up Windsor to get to, to get to work because I've got to snake through the  
3 neighborhood because of the vast amount of traffic that the schools have brought and  
4 the relocation of a lot of people that moved over in that neighborhood. The four-way  
5 stop, every morning you have each way from Two Notch Road and from Alpine way you  
6 have 10 to 15 cars both ways from Windsor to the opposite side there's back up. So  
7 when you look at a daycare, I don't think that would it be feasible for the kids and I don't  
8 think it's feasible for the neighborhood. Everyone within that neighborhood is trying  
9 hard to develop that neighborhood and keep that neighborhood pristine as possible. No  
10 harm nor disrespect to kids, I know that they have to have some where to go for people  
11 who, who work and need that type of facility. My suggestion to the Verners is they, they  
12 are trying everyday to redevelop the Decker Boulevard area. There's a vast, I mean,  
13 there's more places out there where they can establish a daycare where they can have  
14 ample parking. They don't have to have the problem of trying to get in and out of their  
15 driveway. Mr. Chair and Members of the Board, we as members of the neighborhood,  
16 every, every quarter there's a, there's a poster. I am one of the block captains. I walk  
17 up and down my street when there's newsletters that come out, put one in everybody's  
18 box. If they don't have a newspaper box I put it in their mailbox. Just recently we had a  
19 -

20 CHAIRMAN BROWN: You're going to need to wind it up here.

21 DEPUTY JENKINS: - all right and I, I will but what I'm saying is that I hope that  
22 the Board understands the concern, understands the concern of our neighborhood and  
23 leave our neighborhood as a residential and don't turn it into a business. Thank you.



1 CHAIRMAN BROWN: Thank you. Questions for Deputy Jenkins?

2 MS. CAIRNS: I do have a question. What street is it that you, you talked about  
3 having difficulty backing out of your driveway, so what?

4 DEPTUY JENKINS: Wayborn.

5 MS. CAIRNS: So you're not on Dunbarton?

6 DEPUTY JENKINS: No my, my, my house is at the face of Dunbarton. If you  
7 come Dunbarton from the school, if you don't stop you'll come right in my driveway.  
8 Since I, since I've been there we have had three accidents right there from people just  
9 not stopping. Matter of fact some times I sit out there and write traffic citations myself  
10 for that problem.

11 MS. CAIRNS: And the four-way stop you talked about was it the corner of Kings  
12 Way and Windsor Lake?

13 DEPUTY JENKINS: Yes, ma'am. And that's the spot where before that four-way  
14 was there people just rushed through and the kids couldn't, could not cross that.

15 MS. CAIRNS: But Kings, but Windsor Lake would become in essence a through  
16 road.

17 DEPUTY JENKINS: Yes.

18 CHAIRMAN BROWN: Other questions for the Deputy? All right thank you, sir.

19 DEPUTY JENKINS: Thank you.

20 CHAIRMAN BROWN: Next person I have signed up is Sara Smith. Johnny  
21 Faulkenberry?

22 **TESTIMONY OF JOHNNY FAULKENBERRY:**

1 MR. FAULKENBERRY: Not to be repetitious what everyone else said, I've just  
2 been in the neighborhood -

3 CHAIRMAN BROWN: Name first.

4 MR. FAULKENBERRY: Oh, I apologize. I'm Johnny Faulkenberry. I live on  
5 Hobkirk, which is right off of Dunbarton on the bus side of the school. Just to reinforce  
6 what they're talking about all the traffic with the schools and everything is definitely, has  
7 increased in my 21 years of being there. I came into this neighborhood as a single-  
8 family residential area and that's where my wife and I would like to continue to retire. I'd  
9 just like to say that's why we came into the area.

10 CHAIRMAN BROWN: Questions for Mr. Faulkenberry?

11 MS. PERKINS: So let me understand, the property is located on Kings Way and  
12 Kings Way is that directly in front of Windsor Elementary.

13 MR. FAULKENBERRY: That school, yes, ma'am. Right there at the children's  
14 crosswalk.

15 MS. PERKINS: Okay so it's right at the children's crosswalk.

16 MR. FAULKENBERRY: Yes, ma'am.

17 MS. CAIRNS: The children cross Dunbarton at that point to get to the school.

18 MR. FAULKENBERRY: Correct, Kings, come straight across from Kings  
19 Highway and the school, at the end of Kings Highway the school's right there in front of  
20 you and you cross there to go to the school, the elementary school.

21 MS. PERKINS: So there's vehicular traffic there.

22 MR. FAULKENBERRY: It's traffic there from basically early morning to actually  
23 about 9:00, but that's - I'm sorry.

1 MS. CAIRNS: I just, the traffic, the vehicular traffic cause I know it's all right to  
2 have some of it in there, but to just get a fuller - the buses and the parents dropping off  
3 children come up Hobkirk, is that correct?

4 MR. FAULKENBERRY: No, ma'am. What you do is the buses come on Kings  
5 Highway. The buses turn right to come on Hobkirk, which is the street that I live in to try  
6 to manage the traffic. The buses drop off on the right side of the school and the parents  
7 and children are dropped off, or the parents drop their children off there, is on the left  
8 side of the school.

9 MS. CAIRNS: All on Hobkirk or on a different - I'm just trying to figure out where  
10 the traffic's -

11 MR. PRICE: I, I believe, I think Staff went out there and I'm, correct me if I'm  
12 wrong here if, and I don't know why this isn't showing up any better, but it seems like  
13 the bus traffic takes place on Hobkirk Road. If you look, I believe off of Dunbarton Drive  
14 there seems to be an area designated for, you know, parent drop off and on Bancroft  
15 Road and I believe a little bit on Hobkirk is for staff parking. So there's like three roads  
16 that are abutting the Windsor, Windsor Lake Elementary and it seems like each of them  
17 is designated for a different type of traffic.

18 CHAIRMAN BROWN: Other questions for Mr. Faulkenberry? Thank you, sir.

19 MR. FAULKENBERRY: Thank y'all for your time.

20 CHAIRMAN BROWN: Next person I have signed up is Sara O'Brien. All right,  
21 Marilyn Summers. All right thank you, ma'am. Jane Smith? All right thank you. Sara  
22 Matthews? Joe Matthews? Vicki Herndon? Nancy Wolfe? Susan Lipencott? Ray or  
23 Deloris Ghanda? Lowery Stevens? Here's one that baffles me, 9801 Dunbarton Drive.

1 **TESTIMONY OF ROBERT MITCHUM:**

2 MR. MITCHUM: My name is Robert Mitchum. If you get back to these pictures  
3 I'd like to point a couple things out I think is vital for this area. If you could change the  
4 picture -

5 MR. PRICE: What are you trying to find, sir?

6 MR. MITCHUM: The house that you, their house. That house is on Dunbarton, it  
7 faces Dunbarton, the mailbox is on Kings Way. From that four-way stop sign if they  
8 would have taken a picture about five foot to the right you would've seen the side walk,  
9 the crosswalk and the four-way stop sign and caution light. From the stop sign and  
10 caution light at the four-way, there's one house in the middle then their house and mine.  
11 I'm on the adjacent corner. Kings Way, he's on one corner of Kings Way I'm on the  
12 other. Traffic is, we can't even get out in the morning sometimes cause they, when they  
13 pick the kids up it's doubled. The buses come right there and make a right, go around  
14 Hobkirk going to the right side of the school, the parents come to the left bringing them  
15 and, and it's just constant right there from about 7:15 to 9:00 every morning, mid  
16 afternoon. I do want to add that the school has an after school daycare and a  
17 kindergarten over there that they have playgrounds and the kids are over there at the  
18 school. That's commercial, we're not commercial, there is nothing commercial on  
19 Windsor Lake Boulevard except for the church, E.L. Wright and the Clubhouse, Windsor  
20 Lake. That's the only think commercial, oh one of the, there's a house on the corner of  
21 Chelsey down by the railroad that that is, they've got offices in that, but that's the only  
22 thing. That was a real estate office that developed that neighborhood from what I  
23 understand. There is, there is nothing there. My neighbors, I haven't met them. They,

1 as well you can see the, the dwelling, they keep up with it, their good neighbors, but I  
2 am not in for commercial business in the neighborhood. These houses range starting  
3 probably, the smaller ones probably \$145, 000 up to \$200,000. Everybody keeps their,  
4 tries to keep their yard as well as he does. I, I didn't know who, Freddy moved out the  
5 house and I thought they were renting the house, that's another thing, and Ms. Smalls I  
6 assume that you are Mr. Verner's wife, okay. Cause I, I had it here, when did you close  
7 your loan?

8 CHAIRMAN BROWN: We don't –

9 MR. MITCHUM: All right I didn't know, I just thought they were renting that's the  
10 one reason I had that down. But the, the traffic is awful, I mean, you can't get in there.  
11 And like I said, if they would've went to the right they would've seen what these people  
12 having been talking about with the traffic and all. It's a lot of buses coming in there and  
13 a lot of cars. Any questions?

14 CHAIRMAN BROWN: Questions for Mr. Mitchum?

15 MS. CAIRNS: When, when does the school day start at the elementary school?

16 MR. MITCHUM: It is an elementary school, they start, I don't know, they have  
17 early birds in there, kids coming in -

18 AUDIENCE MEMBER: The children are dropped off at 7:00 and they early time  
19 when the kids are supposed to be dropped off so that they can get breakfast and then  
20 they have, school is out at 2:50 and then they have a daycare there until 6:00, 6:00 or  
21 7:00 [inaudible].

22 MR. MITCHUM: Yeah we couldn't do anything with that cause that's a school, as  
23 far a commercial. And I'm not, I'm not - I want to get along with my neighbors, I haven't

1 met them, but I'm not one saying that Aunt can't watch nephew or Grandmamma  
2 watching two or three of her grandchildren, but when you start charging people for a  
3 daycare center, that's what I've got a problem with. Any questions?

4 CHAIRMAN BROWN: Any further questions for Mr. Mitchum? All right thank  
5 you sir. I'm sorry.

6 MS. PERKINS: Mr. Price, in your notation of the traffic impact you said that if it's  
7 established it would only be 12 additional, that's - so that would be what 21 ½ additional  
8 total trips or is it just -

9 MR. PRICE: It's 12, no you drop your kid off in the morning and that's just taking  
10 into account that each, you're talking about at the maximum if you would have six kids  
11 and they'll be, none of them will be related or they're coming in six different cars so 6:00  
12 in the morning or six whenever they're going to get picked up.

13 MS. PERKINS: Well he was saying that if you took, there was another angle that  
14 you could've taken the picture we could've seen the, the blinking light or something  
15 where the traffic is.

16 MR. PRICE: There's a, I mean, there is a crosswalk that goes, that leads to the  
17 school, it's a striped line. There's, there's a crosswalk there. Now I can tell you that,  
18 well Staff was out there I don't know if that, that crosswalk is managed by a crossing  
19 guard at any time, you know, when the kids are going, I'm not sure about that. But  
20 there is a crossing area, a designated crossing are for the, I guess community.

21 MS. CAIRNS: It's accurate there's no sidewalk that crosses their driveway, the  
22 sidewalk's on the side of the property. According to the sight map and according to the  
23 photograph I think that's accurate.

1 MR. PRICE: You're talking about right in, right along here.

2 MS. CAIRNS: There's no sidewalk there.

3 MR. PRICE: I don't remember seeing a sidewalk and I apologize.

4 AUDIENCE MEMBER: The sidewalk is [inaudible]

5 MS. CAIRNS: Yeah, not where the driveway is.

6 MR. PRICE: Okay, right.

7 CHAIRMAN BROWN: Kathy Henschell

8 **TESTIMONY OF KATHY HENCHELL:**

9 MS. HENCHELL: Good afternoon, my name is Kathy Henschell and I've been a  
10 resident at, in Briarwood for 15 years and we moved in hoping to remain a residential  
11 neighborhood and we are apart of the neighborhood association. My husband was  
12 President for four years. We would not like to see this property become a commercial  
13 property or have some sort of business in it. One thing I wanted to say to the right of  
14 that palm tree, there is a crosswalk that is not attended by a crossing guard. As you  
15 walk down the short Kings Way, that's where you get to the blinking light and the four-  
16 way stop and that's where they do have a crossing assistant in the afternoon and in the  
17 morning for the children. But that's a very difficult part, because from the school there is  
18 no sidewalk coming from the school to the crosswalk on the, on the school side of the  
19 property. It does cross the street and it goes to Kings Way, but right there at that corner  
20 there's a stop sign and the buses make a right, right in front of that property to come  
21 down to make a left on Hobkirk. And it's just that I drive that, that road every single day  
22 and I have for the past 15 years and it's very busy. I'm glad I live on the backside of the  
23 school so my kids didn't have to, to walk that way. But that's one thing I just wanted to

1 say is that, you know, we, we have commercial encroaching all around Briarwood  
2 neighborhood and we really don't want the businesses coming into our neighborhood,  
3 that's all. Questions?

4 CHAIRMAN BROWN: Questions for Ms. Henschell?

5 MS. CAIRNS: Do you know what the hours of the crossing guards?

6 MS. HENCHELL: She's just there in the morning -

7 MS. CAIRNS: When does she come, when is the traffic and the pedestrian traffic  
8 sufficient that she arrives?

9 MS. HENCHELL: She is there, let's see, from the time E.L. Wright goes in, she's  
10 probably there about 7:15 in the morning until about 8:15 in the morning and then 15  
11 minutes before E.L. Wright lets out which is, let's see they get out at 2:30, she's  
12 probably there at 2:15 until 3:15 when Windsor Elementary gets out. She helps those  
13 children there at Windsor Lake Boulevard get across Windsor Lake. But there's no one  
14 helping the children get from the elementary school to that sidewalk to the right of the  
15 property.

16 MS. CAIRNS: I understand.

17 MS. PERKINS: And you, and I have a question, usually at what time do the  
18 children cross that sidewalk?

19 MS. HENCHELL: Well they come up from, they come up Windsor Lake  
20 Boulevard from the middle school at about 2:30 to about 3:00 and then 3:00 Windsor  
21 Elementary gets out and they cross the street going back the other way.

22 MS. PERKINS: What about in the mornings?



1 MS. HENCHELL: In the mornings, in the mornings it's just reversed. When the,  
2 E.L. Wright Middle School begins at 7:30 and so the kids are going that, they're going  
3 down Kings Way and then they walk down Windsor Lake Boulevard to E.L. Wright  
4 Middle School. And then in the, coming the other way at just before 8:00, the children  
5 are going to the school, going to E.L. or Windsor Elementary. They've got the two  
6 schools in the neighborhood very close together. The middle school starts at 7:30 and  
7 the -

8 MS. PERKINS: So once it's starts at 7:30, so it would be safe to say that they're  
9 in route with the buses earlier.

10 MS. HENCHELL: Yes because there's buses at E.L. Wright Middle and there's  
11 buses at Windsor.

12 MS. PERKINS: Okay.

13 MS. HENCHELL: Any other questions?

14 MS. CAIRNS: Do you know what time the buses drop off at Windsor?

15 MS. HENCHELL: They drop off anywhere between 7:30 and 8:00 - 6:45 to just  
16 before 8:00.

17 MS. CAIRNS: I can't hear, I can't hear you. I heard you -

18 MS. PERKINS: She said 6:45 -

19 MS. HENCHELL: Until just before 8:00, the school starts right at 8:00.

20 CHAIRMAN BROWN: Any further questions for Ms. Henschell? All right thank  
21 you, ma'am. That completes the list of persons signed up to speak. Ms. Verner, you  
22 have an opportunity for rebuttal.

1 MS. VERNER: I want to first, you know, start off saying since I've been there,  
2 you know, August of '04, I've never, you know, seen or heard, no phone calls of  
3 anybody from the homeowner's association. As far as the newsletter, I don't ever recall  
4 getting one of those, I never recall getting a phone call and - not a visit. Now you may  
5 have visited us maybe on a Saturday or Sunday cause we do go out of town a lot, we  
6 do travel a lot and, you know, that's about it. And, you know, and I don't think that five  
7 cars would, you know, make traffic any worse because the hours of operation is at, from  
8 6:30 to 6:00 p.m. and two or three of those cars can come at 6:30, so.

9 CHAIRMAN BROWN: Let me ask you a question, Ms. Verner. How do you  
10 envision the parents unloading their children for your daycare?

11 MS. VERNER: Well, you know, coming up my, you know, driveway and then,  
12 you know, I have a sidewalk coming up to my front door.

13 CHAIRMAN BROWN: But they're going to come into the driveway, drop the child  
14 off and then back into the street is that it?

15 MS. VERNER: Yes.

16 CHAIRMAN BROWN: Any other questions for Ms. Verner?

17 MS. PERRINE: Yes, I have one. In one of the pictures that we have it shows  
18 you have a deck in the back, or a porch?

19 MS. VERNER: Yes.

20 MS. PERRINE: Do you have, can any of the children get out of that, do you have  
21 a gate, a security gate so they can't get off of that?

1 MS. VERNER: Well we wouldn't be using my backdoor for an exit unless, you  
2 know, it's an emergency or anything, but we wouldn't be on the patio. I wouldn't be  
3 using my patio for anything.

4 MS. PERRINE: Then on the gate or the fence there it has a sign Beware of Dog,  
5 are you going to have?

6 MS. VERNER: We forgot to take that down. The previous owner had a dog, we  
7 don't have a dog. We don't own any pets except for a fish.

8 MR. PRICE: I can tell you from someone that's always attacked by dogs when I  
9 go to these sites, I felt safe out there, no dog.

10 MS. PERRINE: And I believe all of the backyard is fenced right?

11 MS. VERNER: Yes.

12 MS. CAIRNS: A lot of the concern from the neighborhood came from the issue  
13 of the volume of traffic that runs down the street. I mean, can you speak to the -

14 MS. VERNER: Well I know at 7:00 there isn't that much traffic, you may have  
15 about, because when I used to work at the post office I would have to be at work, to  
16 work at 8:00 and I would have to drop my child off at 7:00 to Windsor Elementary.  
17 There would be maybe 10 to 20 cars at 7:00. Now it does get heavy around, between  
18 7:30 and 7:45 it does get really heavy, but like I said, you know, most of my parents will  
19 already have their child, you know, at my house by that time. So I, I don't think that five  
20 cars would, you know, make that big of a difference.

21 MS. PERRINE: Do you have any, any children in your home now?

22 MS. VERNER: Yes, I have a nine year old and a two year old.

23 MS. PERKINS: So actually she'll be keeping four.

1 MS. CAIRNS: I mean, would a restriction in terms of how many people can drop  
2 off in those critical, I mean, schools create enormous traffic at peak times, there's no  
3 question of that. I mean, if there were restrictions in terms of not having children  
4 dropped off at those critical times would that be, would that do in your daycare in  
5 essence if you couldn't drop off kids between 7:30 and 8:00 or something like that.

6 MR. PRICE: You know, once again you could actually put, make that a  
7 stipulation but, you know, just looking at it from a practical standpoint of enforcement.

8 MS. CAIRNS: Yeah, well I think we've got some property owners -

9 MR. PRICE: Right, but even if they call and complain we'll still have to go out  
10 there and monitor.

11 CHAIRMAN BROWN: Further questions for Ms. Verner? All right, thank you,  
12 ma'am. The Chair will entertain a discussion. Personally I have two concerns. The first  
13 is, has to do with the traffic and the idea of parents backing out of the driveway into  
14 traffic at times that are peak traffic, I think that's a safety hazard, both vehicular and  
15 possibly pedestrian in terms of children that may be walking to school and the potential  
16 for traffic accidents as a result of that. Second concern I have is the impact of  
17 residential character in the neighborhood in terms of business. That's, that's the  
18 concerns I have.

19 MS. PERKINS: And I, you know, I, I have to -

20 MR. PRICE: Could y'all please speak up please, we're just having a little trouble  
21 hearing. You too Mr. Brown, we can't hear you when you're talking.

22 MS. PERKINS: That is a particular concern of mine too because when you have  
23 students that are walking and I'm not certain that between 7:30 and 7:45 I think it, the

1 traffic may get a little heavier, but to say that, you know, there is no traffic when  
2 sometimes I can see elementary schools standing in the dark waiting to catch the, the  
3 school bus, that brings a concern. And since I'm not able to see the right side of the  
4 crosswalk of where you're saying that there's a crosswalk for pedestrians, for children  
5 that walk to school and she did say that her parents would be backing out and I, you  
6 know, and the school's right there in front of, of her house. I don't, I have some  
7 concerns about that. I have some real issues about that.

8 MS. CAIRNS: I think, I mean, I live in an area affected by school traffic so I  
9 totally understand it but I think in this particular situation the pedestrian traffic walking  
10 down the street and crossing with the driveway, there's no interaction between the  
11 students that cross in the crosswalk and use the sidewalk and their driveway. And I  
12 don't believe that any students walking to the school would be crossing their driveway  
13 anyways cause they would've already crossed over Dunbarton and gone in down  
14 probably Hobkirk or - just because they are so straight across. You wouldn't be  
15 traversing the front of that property. So in terms of the interaction of the cars backing in  
16 and out and that it's a, you know, couple, it's a small daycare, it's what one to six kids.

17 MR. PRICE: Yeah it'll actually be five because I believe her two year old will  
18 count against her.

19 MS. CAIRNS: Oh, so yeah so there's a maximum of even five cars in the  
20 morning and that there is, I mean just reason lets you know that most parents have to  
21 drop off their kids generally earlier before the elementary school starts so they can get  
22 themselves to work. But the number of times that a parent would be dropping off and  
23 the number of parents in this in home daycare I think that it lies, having a lot of potential

1 because there are a lot of traffic concerns that - factoring in the size of the daycare and  
2 the fact that they are just ever so slight, I mean, if their driveway went on the Kings Way  
3 it might be a completely different situation. But because it actually uses the road that  
4 doesn't have any pedestrian traffic itself, so I -

5 CHAIRMAN BROWN: Any further discussion? Hearing none the Chair will  
6 entertain a motion.

7 MR. ASHFORD: I so move.

8 CHAIRMAN BROWN: You want to approve or disapprove?

9 MR. ASHFORD: To approve it.

10 CHAIRMAN BROWN: There's a motion to approve the requested Special  
11 Exception is there a second?

12 MS. CAIRNS: I second.

13 CHAIRMAN BROWN: It's been moved and seconded that Special Exception 05-  
14 or excuse me, 06-11 be approved. All in favor signify by raising their hand. Opposed?

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

16 CHAIRMAN BROWN: Motion fails is there a substitute motion?

17 MR. BRANHAM: Mr. Chairman, I'd like to make a motion that Special Exception  
18 06-11 be approved, I'm sorry denied, I'm sorry.

19 CHAIRMAN BROWN: All right is there a second?

20 MS. PERRINE: I second.

21 CHAIRMAN BROWN: It's been moved and seconded that request 06-11 be  
22 denied. All in favor of the motion signify by raising their hand. Opposed?

1 [Approved to Deny: Branham, Tolbert, Brown, Perkins, Perrine; Opposed: Cairns,  
2 Ashford]

3 CHAIRMAN BROWN: Motion carries, Ms. Verner your request has been denied.  
4 Mr. Price will be in touch.

5 **CASE 05-53 SE:**

6 MR. PRICE: The next case is Case 05-53 Special Exception. The applicant is  
7 Sylather Collins. The location is 208 Auburnleaf Drive. The applicant is requesting the  
8 Board of Zoning Appeals to grant a Special Exception to permit the establishment of a  
9 group daycare on property zoned RS-HD, single-family high density. The subject  
10 property has an existing single-family residential structure with a single car driveway  
11 that leads to the rear of the property. A fence encloses the rear of the property. The  
12 applicant proposes to establish a family daycare for a maximum of six children, the ages  
13 of the children will range from newborn to 12 years of age. The proposed hours of  
14 operation will be 6:00 a.m. to 6:00 p.m. The property is located in a subdivision of  
15 single-family residential structures, that's the Green Lake Estates Subdivision.

16 MS. CAIRNS: Mr. Price, the sight map, is the access into the neighborhood off  
17 the top of the page?

18 MR. PRICE: Let me turn to that page.

19 MS. CAIRNS: You don't give us page numbers, sorry.

20 MR. PRICE: Yes, yes it is. If you were to take I believe Green Lake Drive north  
21 according to your - you would I believe turn into Leesburg Road.

22 MS. CAIRNS: Okay, but that's how you reach this subdivision is that way?

23 MR. PRICE: Yeah.

1 MS. CAIRNS: Okay, thank you.

2 MR. PRICE: Sorry about that. You wait until I get a hold of her.

3 CHAIRMAN BROWN: Ms. Collins, come forward and state your name and tell  
4 the Board what it is you propose to do.

5 **TESTIMONY OF SYLATHER COLLINS:**

6 MS. COLLINS: Hello, my name is Sylather Collins and I would like to establish a  
7 home daycare in my subdivision. I would like to provide care for children ages zero to  
8 12. I believe that this kind of business is much needed in our community. We have a  
9 lot of children and my yard is always filled with kids and I have discussed with some of  
10 my neighbors about it and they think it was a great idea so.

11 CHAIRMAN BROWN: How many days a week do you propose to operate?

12 MS. COLLINS: Five.

13 CHAIRMAN BROWN: Monday through Friday?

14 MS. COLLINS: Yes.

15 CHAIRMAN BROWN: And that's 6:00 a.m. to 6:00 p.m.?

16 MS. COLLINS: Yes.

17 CHAIRMAN BROWN: Have you discussed this with your neighbors?

18 MS. COLLINS: Some of them.

19 CHAIRMAN BROWN: And did you encounter any opposition?

20 MS. COLLINS: No.

21 CHAIRMAN BROWN: Do you know if there is a homeowner's association in  
22 Green Lakes?



1 MS. COLLINS: I don't believe so, sir. I've been there for approximately four  
2 years I believe, four or five years and I've never, never knew that there was one if there  
3 was one.

4 CHAIRMAN BROWN: Other questions for Ms. Collins?

5 MS. PERRINE: Now it would be six children from newborn to 12 years of age?

6 MS. COLLINS: Yes.

7 MS. PERKINS: Do you have children of your own?

8 MS. COLLINS: Yes, I sure do.

9 MS. PERKINS: How many?

10 MS. COLLINS: I have six children, they're all in school.

11 MS. CAIRNS: One of the concerns that was brought to our attention by the Staff  
12 involved the driveway in that as it is, if there's one car in the driveway there's not room  
13 for a second car or -

14 MS. COLLINS: Yes, we normally it is, you can park at least two cars in the  
15 driveway.

16 MS. CAIRNS: So in terms of, you indicate on your application that there would  
17 be one employee and yourself so there would be two cars there.

18 MS. COLLINS: No, my daughter, my daughter's 16, she would be there.

19 MS. CAIRNS: How many, I mean, how many cars would be there to service the  
20 like, you and your staff?

21 MS. COLLINS: Oh, well actually right now we only have one vehicle so my staff  
22 would basically be my daughter since I'll only have six children starting out and she  
23 don't drive.

1 MS. CAIRNS: Okay, so you're saying you'd have one car in the driveway as a  
2 basic rule so there'd be an opportunity for one car to pull into your driveway.

3 MS. COLLINS: Yes.

4 MS. CAIRNS: Okay.

5 MS. COLLINS: As a matter of fact they can also use the street. I know a lot of  
6 times I have guests they park right on the street. I don't know if they allow that but they  
7 can also use the street. They can park right in front of the house and get out.

8 MS. CAIRNS: But if somebody, if somebody parks, is parking allowed on the  
9 street?

10 MS. COLLINS: I don't know, people park on the street all the time though, I don't  
11 know if it's allowed or not.

12 MS. CAIRNS: There's was, there was concern about the fact that the street was  
13 narrow and that using the street to load and unload is not an ideal situation with a  
14 daycare. I mean, it's ideal that you can actually pull off into your driveway and with one  
15 car.

16 MS. COLLINS: Oh, okay.

17 MS. CAIRNS: I'm just trying to get, you know.

18 MS. PERKINS: That part, excuse me, where the [inaudible] shrubbery or what,  
19 has someone been parking there? Is that a Bradford Pear?

20 MS. COLLINS: Yes sometimes my husband used to pull in, in the grass all the  
21 time.

22 MS. PERKINS: So you do use that as a parking area?

23 MS. COLLINS: Yes, sometimes he does.

1 MS. PERRINE: I think what we're trying to, to find out is how the people will be  
2 bringing the children to your home and then leaving. You know, when they bring the  
3 children they're going to drop them off and then they're going to go, will they be backing  
4 into the street or do they cut across your grass?

5 MS. COLLINS: No, no I would, you know, when people normally come to my  
6 house, you know, cause I have kids at my house all the time, normally come to the  
7 house, they either park on the street right there, they'd find somewhere to park on the  
8 street or either they'll pull into the driveway. You know, that's how people normally  
9 come into my house, walk across the grass.

10 CHAIRMAN BROWN: Ms. Collins, one of the requirements is that there be  
11 provision to, to load and unload the children off of the public right-of-way.

12 MS. COLLINS: Okay.

13 MR. PRICE: Once again on that, that has actually been changed in the code. It  
14 does not state that it has to be off the right-of-way, but what it does is gives the Board  
15 more leeway in deciding whether there's an appropriate area to load and unload. It just  
16 has to be sufficient area to load and unload.

17 CHIARMAN BROWN: All right, there has to be a sufficient area, but we're talking  
18 apparently about a narrow street and so I think the thought is that, or what we're trying  
19 to get to is whether it's feasible for the parents to be able to pull into the driveway, drop  
20 off their child or children and then are they going to back back out in the street or is  
21 there a place for them to turn around there? I think, if I'm correct, I believe that's what  
22 the question really is?

1 MS. COLLINS: Okay, well if they, I guess I can let them pull in front of the  
2 house, you know, I can let them pull, you know, where that patch of grass that isn't  
3 there anymore, I can let them pull right in front of there. You know, I just, I guess I just  
4 never thought about a problem with that, you know, since I have kids at my house  
5 before.

6 MS. CAIRNS: How much traffic is there up and down your street?

7 MS. COLLINS: Very little, very little traffic unless it's the neighbors.

8 MS. CAIRNS: So a car occasionally stopping along a curb to let children in or  
9 out, does it or does it not obstruct traffic on that street?

10 MS. COLLINS: People usually go around the car, they usually go around.

11 MS. CAIRNS: So it does not obstruct traffic, you're still able to come and go -

12 MS. COLLINS: No, people are still able to come and go.

13 MR. PRICE: Maybe I can kind of help in this situation. When we're looking at  
14 the two vehicles there - both of those are yours? The two vehicles right there?

15 MS. COLLINS: Is that my vehicle, no, is that your vehicle?

16 MR. PRICE: No there was a white van there and there was a maroon -

17 MS. COLLINS: Oh no that's not mine, that's somebody else's, somebody else's  
18 vehicle.

19 MR. PRICE: So you just have the one vehicle?

20 MS. COLLINS: Well actually yes we own that one vehicle.

21 MR. PRICE: Okay, the reason I was saying is because right behind that maroon  
22 vehicle there is a gated, there's a fence that leads to the back. I mean, maybe one of  
23 the options could be is that during the hours of operation that her vehicle be moved

1 back behind the fence and that would open up a little more area for cars to pull in and  
2 pull out. There's, one of the, one of the concerns Staff did have as stated in the report  
3 was, of course, the traffic on the road because it's narrow, people park on the street.  
4 And I don't think, of course, would be an adequate area for loading and unloading,  
5 however there really isn't much traffic. As I stated most of the people that are traveling  
6 on this particular road seem to be going to a destination of their home. It's not much  
7 through traffic on there.

8 CHAIRMAN BROWN: Mr. Price there's another statement here under the  
9 conditions portion stating needed repairs to the fence are addressed. Could you  
10 expand on that a little bit?

11 MR. PRICE: Yeah, I apologize, somewhere during – when I was downloading  
12 the pictures that, that the backyard was deleted. They're just, on the side of the fence,  
13 the left of the van, just certain portions of the fence have like little holes in it, you know,  
14 over time wood starts to rot and little holes come about and I think that would probably  
15 need to be addressed, you know, just to keep kids from just trying to find a way to get  
16 out.

17 MS. PERKINS: Okay, so there's not an entrance on the other side? Is there a  
18 gate?

19 MR. PRICE: I didn't see one. She can answer that.

20 MS. PERKINS: But it is enclosed?

21 MS. COLLINS: There, there is entrance on the other side, there's just that one  
22 entrance.

1 CHAIRMAN BROWN: Ms. Collins, do you have any problem with making any  
2 necessary repairs to the fence to -

3 MS. COLLINS: No, I think, I think that is something my husband can accomplish.  
4 We had a tree to fall on our fence and, you know, did some damage to the fence, so he,  
5 he just patched it up a little bit. I think he could do, could do better.

6 CHAIRMAN BROWN: Any further questions for Ms. Collins? Thank you, ma'am.  
7 No one signed up in opposition. The Chair will entertain a discussion?

8 MS. PERKINS: Mr. Chairman, like this particular one [inaudible], there's not a  
9 lot of traffic to me in this in this area, and she said that she was willing to make the  
10 repairs, you know, to her fence. And I just think that there's a, there's a big difference  
11 between the two, at least as I see it.

12 CHAIRMAN BROWN: Any further discussion?

13 MS. CAIRNS: I may be beating a dead horse, but I feel that, you know, with the  
14 offering of the applicant that there would generally almost always be one spot available  
15 in the drive-way and the very low volume traffic on the road that the issue of child drop-  
16 off is not a concern for this particular spot.

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

19 MS. PERKINS: Mr. Chair, I move that 05-53 Special Exception be approved.

20 MS. CAIRNS: With the condition that the fence be repaired?

21 MS. PERKINS: Yeah, with the [inaudible] be repaired.

22 CHAIRMAN BROWN: Okay, is there a second?

1 MR. TOLBERT: Also, I think you noted about the, it being off the drive-way as  
2 well, parking.

3 MS. CAIRNS: Yeah, I mean, that's been also, it will be.

4 CHAIRMAN BROWN: Is there a second?

5 MR. ASHFORD: I second that motion

6 MR. PRICE: I would also like to - there is another condition that Staff requested  
7 be included if the you would approve this

8 MS. PERKINS: Vacancy, abandonment or discontinuation, I'm sorry, for any  
9 period of twelve months as verified by a business license, will void the Special  
10 Exception.

11 MR. CHAIRMAN: All right. Reverend Ashford seconded. All in favor, raise your  
12 hand.

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

14 CHAIRMAN BROWN: Ms. Collins, your request is approved and Mr. Price will  
15 be in touch with you. Next case, Mr. Price.

16 **CASE 06-15 SE:**

17 MR. PRICE: The next case is case 06-15 – Special Exception. The applicant is  
18 requesting the Board of Zoning Appeals to grant a special exception to permit the  
19 establishment of a group day care on property zone RS-MD – single-family medium  
20 density. The applicant is Michelle Jordan. Location is 427 Riverwalk Way. The parcel  
21 is A .42 acres tract. It's used residentially. The subject property has an existing single-  
22 family residential structure with a single car driveway that leads to the rear of the  
23 property. The rear of the property is not enclosed by a fence. However, the applicant

1 did state that they were making some provisions to fence in the rear of the property.  
2 The applicant proposes to establish a family daycare for a maximum of six children.  
3 The ages of the children would range from newborn to twelve years of age. The  
4 proposed hours of operation are 7:30 a.m. until 5:45 p.m. The property is located in the  
5 Riverwalk Subdivision.

6 CHAIRMAN BROWN: Michelle Jordan, come forward, state your name and tell  
7 the Board what you propose to do please.

8 **TESTIMONY OF MICHELLE JORDAN:**

9 MS. JORDAN: My name is Michelle Jordan. This is my husband Antoine Jordan  
10 and we are requesting a special exemption to have a family daycare home to keep a  
11 maximum of six children.

12 CHAIRMAN BROWN: All right, in your statement, you say that you're in the  
13 process of having your ground marked and you will be installing a fence. When do you  
14 anticipate that fence being completed?

15 MS. JORDAN: Well, the grounds have been marked and we are in the process  
16 right now, if you can see the poles, we have bought some of the fence, but, I don't know  
17 if you can see it in that picture, but we have a gate on that side that we already have  
18 installed and the poles, but everything has been marked and we're working on that now.

19 CHAIRMAN BROWN: Okay. Other questions for Ms. Jordan?

20 MR. TOLBERT: Have you discussed this with your neighbors?

21 MS. JORDAN: Yes, I have. Yes, I have and they, they all said it was a good  
22 idea. We didn't have any opposition.

23 CHAIRMAN BROWN: How many days a week do you anticipate operating?



1 MS. JORDAN: Five – Monday through Friday.

2 CHAIRMAN BROWN: Further questions for Ms. Jordan?

3 MS. PERRINE: The hours would be as he stated, 7:30 in the morning until 5:45?

4 MS. JORDAN: Yes, ma'am.

5 CHAIRMAN BROWN: Any other questions?

6 MR. TOLBERT: What type of traffic impact is in your neighborhood?

7 MS. JORDAN: Well, there's not a lot of traffic and especially that time of morning  
8 because the buses, they come through about 6:45, 6:50 and around 7:30 it is pretty  
9 calm out there.

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

11 MS. JORDAN: Thank you.

12 CHAIRMAN BROWN: No other questions, the Chair will entertain discussion.  
13 Being no discussion, the Chair will entertain a motion.

14 MR. TOLBERT: Mr. Chairman, I make a motion that 06-15 SE be approved with  
15 the completion of the fence and the normal twelve-month abandonment be applied as  
16 well to this case.

17 CHAIRMAN BROWN: Is there a second?

18 MR. BRANHAM: Second.

19 CHAIRMAN BROWN: It has been seconded that the, case 06-15 be approved  
20 with the fence being completed and the twelve-month normal abandonment provision.  
21 All in favor, signify by raising their hands. All opposed.

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

1 CHAIRMAN BROWN: Ms. Jordan, there you are, your request is approved. Mr.  
2 Price will be in touch with you. Nothing under other business. The next item on the  
3 agenda is approval of the April minutes. Is there a motion to approve those minutes?

4 MR. TOLBERT: So moved.

5 CHAIRMAN BROWN: Second?

6 MS. PERRINE: Second.

7 CHAIRMAN BROWN: It has been seconded that the 5 April minutes be  
8 approved. All in favor, signify by raising their hands.

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

10 CHAIRMAN BROWN: I don't believe there is any other business to come before  
11 the Board.

12 MR. PRICE: Well, the only thing, I believe in your package, you received some  
13 information regarding the next training and, to be offered.

14 CHAIRMAN BROWN: I didn't, so I guess I don't have to go.

15 MR. PRICE: No, I believe you are, it wasn't in your package? Maybe you lost it?

16 MR. BRANHAM: They put two in mine.

17 MR. PRICE: I'll get that for you then.

18 CHAIRMAN BROWN: Is that mandatory training?

19 MR. PRICE: Yes.

20 CHAIRMAN BROWN: Huh?

21 MR. PRICE: Yes. I thought everyone had a packet, but we can get some more  
22 copies and give it to you.

23 CHAIRMAN BROWN: It is mandatory?

1 MR. PRICE: Yes, it is.

2 MS. CAIRNS: This is mandatory?

3 MS. PERKINS: Where is it going to be?

4 MR. PRICE: Not for you.

5 MS. CAIRNS: Well, thank you.

6 MS. PERKINS: It's going to be here?

7 MR. PRICE: No, it's probably going to be once again at the ETV Center. Of  
8 course, you know, we will do as we did as before, that if there's, if you are unable to  
9 make those, we'll probably have to offer those classes at a later date.

10 CHAIRMAN BROWN: Okay, do they need to get this sheet into you? Is that the  
11 policy?

12 MR. PRICE: Yes, yes. Or we, you know, we gave the form, but you can always  
13 just let me know and I, we'll just fill out the form for you.

14 CHAIRMAN BROWN: Okay, which one is it? Okay, there being no other  
15 business, the May meeting of the Board is adjourned.

16

17

*[Meeting Adjourned at 3:00 p.m.]*