

**Minutes**  
**Florence County Board of Zoning Appeals Meeting**  
**Tuesday, December 6, 2011 at 6:30 p.m.**  
**City-County Complex, Council Chambers, Room 803**  
**180 N. Irby Street, Florence, South Carolina 29501**

**The Florence County Planning Department staff posted the agenda for the meeting on the information boards at the main entrance and the back entrance of the City-County Complex and at the entrance of the Planning and Building Inspection Department building.**

The agenda was also mailed to the media.

**I. Call to Order**

Mr. Dan Jackson called the meeting to order at 6:31 p.m. and declared a quorum of members present.

**II. Attendance:**

**Board Members Present:** James Cooper  
Gary Dauksch  
Craig Floyd  
Mack Gettis  
Bryant Hollowell  
Daniel Jackson  
Toney Moore

**Board Members Absent:** Bill Garner, Vice-Chairman  
Kenneth McAllister

**Staff Present:** Jonathan B. Graham, III, Planning Director  
Pearlie D. McDaniel, Development and Zoning Services Officer  
Angela C. Thomas, Secretary

**Public Attendance:** See sign-in sheet on file at the Florence County Planning Department.

### **III. Review and motion of the minutes:**

- Meeting of November 1, 2011

Mr. Jackson stated I would like to strike two things on page 10 in reference to mining and having an agricultural federal permit number; having talked with Mr. Anderson with the Department of Agriculture, there have been many farm bills that have passed and they are not now involved in anything with a mine; the question I had before, the gentleman had brought the issue up that there was going to be a pond; if it's going to be an agricultural type pond in which they are raising catfish ect., the Department of Agriculture may have something to do with it but as far as our county and the mining, those comments should be struck as clarification.

Mr. Gettis made a motion to approve the minutes.

Mr. Cooper seconded the motion.

The vote carried unanimously.

### **IV. Public Hearings:**

Mr. Jackson explained to those present the Public Hearing procedures.

<b>BZA#2011-06</b>	<b>A variance request by Joe O. Myers on behalf of Springbranch Baptist Church for a decrease in the minimum setback requirements of Section 30-111. Development standards for unzoned areas (7) Setbacks of the Florence County Code of Ordinances for property located at 945 E. Springbranch Rd., Pamplico shown on Florence County Tax Map No. 343, Block 2, Parcel 14.</b>
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Mr. Jonathan Graham presented the staff report to the Board.  
(Copy available at the Florence County Planning Department)

Mr. Dauksch asked this is unzoned land so what is the county setback requirement, is it 25 feet?

Mr. Graham responded yes sir.

Mr. Dauksch asked is that uniform for any unzoned land in Florence County?

Mr. Graham responded correct.

Mr. Dauksch asked is the property line setback from the road, is that seven feet back from the road where the property line is?

Mr. Graham responded right; (referencing the power point presentation) this is where the setback starts.

Mr. Dauksch asked that's where the sign is located?

Mr. Graham responded the sign is actually in DOT's right-of-way.

Mr. Dauksch asked how far from the sign will the addition be?

Mr. Graham responded I don't know because the law goes from property lines not objects; the applicant is here and may be able to answer that question.

Mr. Jackson asked did staff investigate the building to see if there was a place in the building or adaptation of restrooms that are presently there to meet the ADA standards.

Mr. Graham responded that would be a design question that a design professional would probably answer because I think what I'm hearing is, are there alternate ways to conform with ADA; liability issues keep public staff from answering those types of questions; if the applicant obtains a design professional then they can explore those.

Mr. Hollowell asked I was there and from the new addition to the highway is 40 feet; did y'all measure that?

Mr. Graham responded no; we go from property lines because the highway has a right-of-way itself and right-of-ways vary; the distance may actually be 40 feet but the actual distance from the property line, which is where our ordinance measures setbacks from are these dimensions that we put here; the highway department can utilize the entire right-of-way.

Mr. Hollowell asked has there been any negative response?

Mr. Graham responded we haven't had any inquiries of this project.

Mr. Jackson asked does this addition present any problems with the sight requirements from the highway department to see down the road; where driveways come in, would this interfere with that?

Mr. Graham responded I don't believe there would be a problem with line of sight.

Mr. Jackson stated at this time the applicant will present information to the board.

Mr. Joe Oliver Myers came forward to speak in favor of this request. He stated I am the Chairman of the Trustee Board of Springbranch Baptist Church.

Mr. Dauksch asked once the addition is completed, what would the clearance be between the building and the sign?

Mr. Myers responded it should be seven feet.

Mr. Dauksch asked so the front of your building would technically be 14 feet from the road?

Mr. Myers responded yes sir.

Mr. Dauksch asked Mr. Hollowell, you said when you measured it, it was 40 feet?

Mr. Hollowell responded from the corner it is somewhere around 40 feet, I stepped it off.

Mr. Hollowell asked the new addition is ten feet?

Mr. Myers responded yes sir.

Mr. Hollowell responded ten feet won't make it to the sign.

Mr. Myers responded from the existing building to where the line is, it is 17 feet; we need ten feet to do this and that will leave seven feet to the line.

Mr. Hollowell asked you're not going to have a front entrance now?

Mr. Myers responded our entrance will be right here and they will come in the side.

Mr. Hollowell asked will there be any doors on the front?

Mr. Myers responded no sir.

Mr. Jackson asked did you have an architect or engineer to look at this for your ADA plans to be met and did you get a citation?

Mr. Myers responded I got an architect to do this; Jesse Barber is one of them and Robert Davis is the other; if you give us permission to do this, I will ask them to draw a blueprint of it.

Mr. Jackson asked they looked at your building and said this was the most appropriate place for them?

Mr. Myers responded yes, there isn't any place else we can put a bathroom; all of this is the sanctuary and this is just a vestibule; we couldn't put a step here because it will take up a lot more room so we decided to put a step there and both bathrooms here; all done on this side here; for people that are handicapped or walking with a walker, we have to take them out of the front of the church, down the steps and come over and walk through the dining room and back over to the bathrooms.

Mr. Jackson asked do you have any more comments you would like to make?

Mr. Myers responded I would sure like to have those two bathrooms at the front of the church to really help the people that are disabled.

Mr. Jackson asked is there anyone here that's in favor of this request?

There was no response.

Mr. Jackson asked is there anyone opposed to this?

There was no response.

Mr. Dauksch asked on this drawing, the line at the bottom is not depicting the actual roadway; it's just depicting the right-of-way?

Mr. Graham responded this is the actual roadway; this is the property line and the right-of-way extends to the property line; this 40 feet that was mentioned earlier is 40 feet from the existing building down to this roadway.

Mr. Dauksch asked that doesn't add up; you've got 17 and 7, where's the rest?

Mr. Graham responded that 17 and 7 are concurrent; they are both coming off of the property line; the 17 feet is back to the existing base and 7 feet is from the same point to the proposed new base.

Mr. Hollowell asked with 7 feet and the addition, the church will be 14 feet off of the road?

Mr. Graham responded if you take 17 feet and if your measurement is correct, then this would be presumably 23 feet; however, this is all state right-of-way that we're talking about so it's not buildable, it's not usable and the road edge could someday conceivably end up right there; this could become a four lane highway; they're lots of things they can do with right-of-ways; all of this is not in play in the discussion; it is simply from the property line, the required setbacks that the ordinance has.

Mr. Gettis made a motion to approve the request.

Mr. Hollowell seconded the motion.

The vote carried unanimously.

**BZA#2011-07**

**A variance request by Steven G. Mikell on behalf of DAH Properties, LLC of the Florence County Code of Ordinances to allow two manufactured homes in an R-3A, Single-family residential district for property located at 1113 W. Sumter St., Florence shown on Florence County Tax Map No. 90044, Block 9, Parcel 6.**

Mr. Jonathan Graham presented the staff report to the Board.  
(Copy available at the Florence County Planning Department)

Mr. Jackson asked could you show us where this is on the maps?

Mr. Graham responded yes sir.

Mr. Hollowell asked from what I can tell, under extreme pressure the zoning was changed; it was R-3?

Mr. Graham responded it was unzoned.

Mr. Hollowell asked all the sudden just that one stretch got zoned?

Mr. Graham responded (referencing the zoning map on the power point presentation) you can see all around it is R-3A; back in 2009, the residents of this area approached the county because they did not like the way this area was transitioning over and more and more mobile homes were being put into the area so the residents approached the county and requested that the area be zoned in such a way that it would restrict any further mobile home development; the applicant mentioned a moratorium, the county put a moratorium on this whole area so they didn't allow anything to happen for approximately a year while they worked on developing the 3-A because that is a brand new zoning designation in our county; it's not R-3, it has all the same characteristics of an R-3 but the A is a new zoning that says you can do everything in an R-3 except mobile homes; that's the difference between R-3 and R-3A; you have R-4 zoning which allows for some business development such as condominiums, office condo's, duplexes and things like that can happen in an R-4.

Mr. Hollowell asked all of Carver Circle is new duplexes?

Mr. Graham responded that's correct but that was existing; what the public said back then basically was, we've got enough and we don't want it to keep going in that direction and county council voted to adopt a 3-A zoning; everything that's there, for instance the mobile home to the right of this property was there already when the new zoning designation of R-3A came into being and it can maintain that; for instance they can move that mobile home out and put a new one in that same place but if it ever stands vacant for more than six months then they lose that grandfather clause; if they move that mobile home away and left the property vacant for a year, then when they came back, they would not have the right to put a mobile home there.

Mr. Hollowell asked can we go back to the picture to the lot next door with the two mobile homes?

Mr. Graham responded sure; this is the property and it's a vacant lot; then there is this mobile home right here on the property adjacent to it which is the brown mobile home and this is the white concrete building to the left of it and these are two single-family stick built homes across the street.

Mr. Hollowell asked if I owned that property with two mobile homes, I could pull them out and continue replacing them?

Mr. Graham responded on this property where this mobile home is, since it is grandfathered, as long as they keep a mobile home in that spot, they can keep it but if it's vacated and gone for more than six months then they lose the grandfather privilege and they would be in the same boat that the applicant is in today where they would not be allowed to put a mobile home back on that lot; there are mobile homes in the area but the issue was that the general neighborhood approached the county back in 2009 and said we want to stop the direction that this area is going in and that was the request that was made and subsequent public hearings and the process went through.

Mr. Jackson asked where is the City of Florence in relation to this?

Mr. Graham responded if we go back to the site map (referencing the power point presentation) you can see up here, there is Cashua Drive up in the corner; see the green star, that's the approximate location of this property so you can see the relationship to Cashua, Darlington St. and then Sumter St.

Mr. Dauksch asked would regular R-3 allow what the applicant wants to do?

Mr. Graham responded R-3 does allow for mobile homes to be placed on lots; it would have to be a doublewide and a residentially designed home so it would have a minimum roof pitch and overhangs and things like that.

Mr. Dauksch asked is there a lesser strict zoning than that or is that the most lenient?

Mr. Graham responded unzoned would be the most lenient and that's what this whole area was up until 2010.

Mr. Dauksch asked I just want to make sure I'm clear on something because I was involved with this thing, isn't it true that the county planning board recommended to county council that they not put the R-3A zoning in that area but they did it anyway?

Mr. Graham responded it was two things; the planning commission approved the R-3A as a zoning designation for the county; then anybody in the county can come and ask to be rezoned for anything and so when this particular neighborhood came in and requested to be rezoned to the new R-3A zoning designation, the planning commission did recommend denial for that.

Mr. Dauksch stated I'm looking at the notes here and it says that the request would go forward to county council with the recommendation of disapproval.

Mr. Graham responded right and that was for this neighborhood; they approved the R-3A concept but they did not approve it for this neighborhood but then the council had their public hearings, their input and the council voted to go ahead and make this neighborhood R-3A.

Mr. Jackson asked is there just one tap on this lot?

Mr. Graham responded Mr. Mikell is here and he can probably answer that question.

Mr. Jackson stated the applicant may present information now.

Mr. Steve Mikell spoke in favor of this request. His comments were as follows:

- I'm an attorney here in Florence County.
- I represent today as an agent, DAH Properties, LLC.
- I'm accompanied here tonight by Gay Creedman and her husband Dr. Steven Creedman who are the members of the LLC.
- Of course the variance application does seek that the part of the ordinance that would disallow the homes on this particular subject property be changed or for them to be granted a variance.
- The property has been properly identified to you and this property was purchased by DAH Properties, LLC by a deed recorded downstairs on January 9, 2009 in deed book B-224 page 797; I do have a copy of that deed here if someone would like to see that.
- I would like to give the board a little bit of history here because I think it sheds light not only on the factors that have to be satisfied to the board as far as granting a variance but I think this sheds light on my clients too and their character and their intentions regarding this matter and I think that's important.
- In 2008 Mrs. Creedman became aware of the subject property that was for sale; prior to purchasing that property she set about doing her due diligence regarding the property which included but was certainly not limited to determining that the property was unzoned; she determined the procedure and cost for a water and sewer tap.
- She met personally, physically, not on the telephone with employees of the planning commission office on Irby Street to determine if there were restrictions on the property; this employee pulled up a copy of the map, probably the same thing we saw here tonight and told Mrs. Creedman that two mobile homes would fit on the lot and they also discussed setbacks and other matters that would relate to doing that including the tap and so forth.
- In early 2009 the property was purchased for \$8,000 and an additional approximate \$990 was paid for closing costs.
- The plan was to place two late model mobile homes on the property.
- On January 28, 2009 the sum of \$1,400 was spent by DAH LLC to hire heavy equipment to clean the lot which included an old foundation or at least part of one, remove trash of which there was quite a bit and place top soil on the lot.
- On January 30, 2009 the sum of \$4,395 was paid to the City of Florence to install a water and sewer tap and as an interjection here to your question, there is only one tap but the city advised Mrs. Creedman that it would serve both of the homes sufficiently.
- In January and the early part of February 2009 it was determined that the neighbors and that's the mobile home that you saw a moment ago, their electric service pole had to be moved; it had been placed on the subject lot; there was no direct cost of this to the LLC but I point it out because it required a lot of Mrs. Creedman's time to coordinate the



movement of that pole to where it should be going to the owners and CP&L and whoever else that she had to deal with to cause that to get done.

- During the summers of 2009 and 2010 she continued to maintain the lot by having it mowed regularly.
- She also purchased general liability insurance for the lot; of course that was for protection of the LLC but that was protection for anyone that might be on that lot and get injured also; that insurance is still in effect today.
- She has paid the property taxes for 2009 and 2010 in the approximate amount of \$130 to \$135 each year.
- In August of 2009 as you heard, the moratorium was placed on the area including the subject lot for one year; this was my client's first notice at all about the matter; this notice directed Mrs. Creedman or the reader of the notice to call the number thereon and ask about it; she called the number and once again she was told by the person on the other end of the phone that the ordinance would not affect the placement of mobile homes and she explained to that person that was what her intention was; she was told that the ordinance was designed to prevent the development of duplexes in the area as that had become apparently a problem in the area, I guess because of the number of people that can live in a duplex development; she stopped all activity at that point on her development including purchasing any homes; she made the simple decision at that time to wait the year; she was told the moratorium was through a year and there was nothing she could do so she sat back and waited.
- In the summer of 2010, notices were received regarding the readings of the ordinance; she did not go to the first meeting because of what she had been told that it was not going to affect her.
- In June of 2010, Dr. Creedman himself attended a planning commission meeting and he was told at that time that the new ordinance would not allow mobile homes; he was allowed to speak; he explained the existence of homes on the lot adjacent to his lot and his intentions regarding his lot.
- I believe in September of 2010, Mrs. Creedman appeared at the Florence County Council meeting to voice objections and to explain the circumstances to no avail.
- I'd like to point out to this panel that if this variance is granted, then of course the plan is to put two late model homes on that lot and I have here a plot plan that Mr. David Nesbitt, a local surveyor has prepared and I'd like to pass these out to the members.

Mr. Graham passed out the plot plan to all board members.

Mr. Mikell stated we also have some pictures of the home and you have already seen those but I'd like to introduce those anyway because I think that they show the character and the spirit of the neighborhood.

Mr. Mikell gave the pictures to the board members for them to view.

Mr. Mikell continued and his comments were as follows:

- The mobile homes that are being proposed by the members of DAH Properties would be three bedroom and two bathroom homes.

- If you will notice on our plot plan, you will see the placement of those homes; they meet all the setback requirements; you can also see the way the driveway would be configured and the landscaping which the Creedman's fully intend to follow through with.
- Furthermore, both mobile homes would be properly underpinned and more than likely that would be a brick underpinning to give it the appropriate look.
- The pictures support our assertion that there is similar development in this neighborhood that is very near this property, indeed next to it and that the proposed development will not affect the spirit or the character of the neighborhood; it will indeed blend well with it and maybe even improve it.
- Mrs. Creedman intends to do some heavy screening of any potential tenants that she's putting in there; of course this would protect her and we believe it would also benefit the neighborhood; if she takes her time to screen her tenants for her own protection, obviously she's looking for a higher class of tenant; I think that benefits the neighborhood because it creates a more stable environment with a stable tenant and one that is a capable tenant, one that will be there and hopefully have some pride in the property.
- For your information, there are various other mobile homes in the immediate area in addition to the two that I presented you pictures of; at the corner of Dixie and Dewey St. there is a mobile home; the other home is at 1253 W. Sumter St.; another mobile home is located at 1100 Dixie St. and another one at 1110 Dixie St.; all of which are in close proximity to the subject property; this is not an exhausted list of the mobile homes in the area, these are probably the closest ones to the subject property.
- Just as a little side about my clients, I can recall the time when Mrs. Creedman came to my office and wanted to establish DAH Properties, LLC and she said "Do you know what DAH stands for? That stands for decent affordable housing and that's what we want our LLC to be named because that's what we intend to do and want to do with our properties. We're going to put a nice development in there that people can live in and be proud of and the neighbors can be proud of."
- In summation of all this, Mrs. Creedman has been very diligent in her efforts to create her proposed use of the property, both before and after the purchase; she desires to create a development that everyone can be proud of; she has expended considerable time and money towards her goal prior to the moratorium and certainly prior to the purchase; in essence, I believe that the Creedman's were trapped in their efforts because of the passage of the imposition of this moratorium when it came down; for them it was very sudden and there was no notice of it and suddenly there was a moratorium that stopped them in their tracks and they indeed stopped in their tracks.
- I believe the entire situation creates special circumstances in which a serious hardship and an economic burden is created; all of which would support a variance; I believe the development would not infringe on neighboring property owner rights or the use or enjoyment of that land; these are the requirements that are contained in Section 30-293 that this board would have to make findings in order to grant this variance; I believe we have satisfied all those things.
- I'm not aware of any other property experiencing a situation where in the middle of the development process they were simply stopped and told you can't continue to do that despite how much money you have already spent.

- We are here tonight to request your serious and sincere consideration of this request and ultimately granting the variance which would allow this proposed development to continue.
- I did not bring receipts for the water tap and the clearing but I can provide that to this board if necessary and that would be done within 24 hours.

Mr. Jackson asked are there any others here to speak in favor of this request?

Mr. Al Bradley spoke in favor of this request and his comments were as follows:

- I serve on county council.
- This is the district that I represent and actually I am the person who came up with the idea of doing a moratorium for the area and basically what was happening, in the northwest community they were having so many multi-family complexes being built that it was densifying the community to where crime was going up and what have you.
- The community had tried for several years to stop the development of multi-family complexes from coming in that area and had failed; so they asked me to try to find a way to stop these multi-family apartments from coming up in the community and I came up with the idea of doing the moratorium to just stop it and to give the planning commission a chance to rezone the area and meet with the family and come up with a more appropriate zoning, which they did the R-3A but as I look back over the process, the only situation that I regret is the fact at what happened to Mrs. Creedman; she was caught up in the process; we were trying to address a bigger problem than Mrs. Creedman's situation; we were successful to stop the multi-family developments; the community is satisfied but Mrs. Creedman is out of, close to \$20,000 in the process.
- There really was no avenue for us to grandfather her in during this process and as I told her, I would be glad to come before you tonight to speak on her behalf.
- Really in my mind, the right thing would have been for her to be grandfathered in because she had invested so much and once her situation is satisfied, I believe that everything would have been done in a just way for that community so that's why I'm here.

Mr. Dauksch asked so as a member of Florence County Council, you would not have a problem with them being granted a variance?

Mr. Bradley responded no and I have gone before the community association over there and spoken to them on behalf of Mrs. Creedman and I basically told them the same thing; we were addressing a bigger problem and we were successful at stopping it; no one can go in that community and build these multi-family complexes and densify the community and increase the crime anymore; that has been solved; however, somebody got hurt in the process; we have a casualty in the process and I would hope that we could resolve her situation and everything would be perfect.

Mr. Cooper asked there is apparently no one here to speak opposed?

Mr. Jackson asked is there anyone here to speak opposed?

There was no response.

Mr. Graham stated staff did not receive any comments from the public.

Mr. Gettis asked the community was the one that asked for the 3-A designation for the zoning of that area?

Mr. Graham responded yes sir and I wasn't here but what I just heard from Mr. Bradley was he is the elected representative for that district and the community brought it through him and I heard his testimony that he actually initiated it and said what can we do but it was a community/Councilman Bradley effort.

Mr. Gettis asked my question was to him, he said he talked to the community, what are their thoughts about this?

Mr. Graham responded I believe I heard him say that he spoke to the community association already about this issue.

Mr. Gettis asked he did say he spoke to them but what did they have to say?

Mr. Graham responded my impression was they did not have a problem with that but maybe Mr. Mikell could help.

Mr. Mikell responded I can't quote anyone but based on Mr. Bradley's comments, it's a reflection of this community that they are okay with this or I believe they probably would have been here; I understand there was a pretty good outpouring of support in favor of the ordinance when it was first coming to pass; you heard Mr. Bradley's testimony and no one is here to object.

Mr. Gettis responded I'd like to hear from the community.

Mr. Graham responded this is a public hearing that we are in now and I believe that if there was a voice of the community, it should be here tonight according to the way the law is written; we did post it and we advertised it in the paper; this is the community speaking I believe.

Mr. Mikell stated with all due respect, I say there was a voice of the community, that being Mr. Bradley; I know you are speaking of individual members of the community but that is their elected representative and he has stated on the record that he has discussed this matter with them.

Mr. Jackson asked how did the one year come up for this being a moratorium for one year; I've had jobs that Hurricane Floyd put under water and they issued a moratorium for building permits down in Horry County but that was only for three months; could the work not have been done in a year?

Mr. Graham responded I don't know the answer, I wasn't here but I've read the record; there were numerous community meetings, not official public hearings like this but there were numerous community meetings where staff met the community at large; there are sign in sheets and comments were received; the first thing that would have been done is to craft the language and then meet with the community; it was brought to the planning commission and there was another meeting with the community; the planning commission felt the same way that Mr. Gettis does, they wanted to hear from the community so there was another community meeting then it came back for the vote that the planning commission made; it was two separate votes, two separate issues; one was do they want to adopt the concept of the R-3A and the second vote was on whether it would be applied to this neighborhood.

Mr. Dauksch stated there was no public hearing or notification prior to the moratorium; the moratorium was brought about by county council as a result of a request from the community so they were caught off guard and they had no opportunity to publicly oppose the moratorium.

Mr. Graham responded therein is the nature of moratoriums; it is legal to put down a moratorium because the whole point of a moratorium is to stop, as Mr. Bradley said, continued development; so a lot of fish get caught in the net and I think that was part of Mr. Bradley's statement too that this was an unintended fish in his opinion is what I heard; but it stopped all activity in that area and that is by design what moratoriums do and moratoriums generally don't come with public comment or public input because it either is or isn't because it is that kind of stoppage tool; usually if you ask about a moratorium, the public reaction is "we don't want one"; if they are in the position that the applicant is, because obviously they have projects that they want to put forth and the moratorium is to stop those people, not just people living in the area.

Mr. Hollowell responded the way I read everything, it came about until y'all could come up with an idea to slow down the situation and that's where the one year moratorium came in; so no activity happened in that community, no permits or nothing for a year.

Mr. Graham responded correct, and as Mr. Jackson pointed out, moratoriums can be for a week, a month, a year; just whatever the time is needed to sort out the issue and in this case it happened to be a year but I wasn't here.

Mr. Jackson asked the way I understand this, staff could not approve this as a non-conforming use?

Mr. Graham responded correct, our hands are tied; this is clearly R-3A.

Mr. Jackson responded your hands are tied and from the way I am reading Section 30-293, this would establish a zoning use not allowed in that area so in some ways our hands are tied as far as a variance is concerned; my question would be if we deferred this back to council; does council have the authority to backdate this as a non-conforming use?

Mr. Graham responded the way the law is written, items don't progress from this body to the council, they would go from here to the court system; that's why Mr. Mikell is here, if he gets a

no from this body, then his next legal avenue is to take it to the courts and discuss this matter before a judicial body.

Mr. Hollowell responded we do have the authority, that's the reason we're here.

Mr. Jackson stated we have deferred things back to council in the past.

Mr. Graham responded I had a long discussion with Mr. Starks, our previous administrator that just left and my understanding from that conversation with him was and the way I read the law, things progress from here to the court system, not from here to the council; if you were the planning commission, things progress from the planning commission to council on a routine basis; we had one extremely rare exception last month that in all of Mr. Starks history as an administrator over local government, he has never seen anything go from a board of zoning appeals to council until last month; the law is being re-written as we speak to take that out of our ordinance because somehow that got put into our ordinance and even Mr. Starks wasn't aware of that.

Mr. Jackson asked explain that again; we're not allowed, is it in the decision making process?

Mr. Graham responded the way things are structured in general statutes down through our local zoning ordinance that the process is this board is here to basically oversee decisions made by staff so everything that comes before you if there is a variance request, it is because staff said no that's not allowed by the ordinance; your role is to review our performance, to either agree or disagree that the ordinance does say what we thought it said; staff makes mistakes; that's why this board exists because you can and you have the legal authority to say no we think you made a mistake, we think this is okay and you can mediate between an applicant and staff; typically, board of zoning appeals in a 90+ percentile usually say no; that's just the nature of board of zoning appeals and in my 40 years in this business that's been my experience; if you say no, then that grants the applicant legal standing that they can now take this to the court system and let the court system review what our ordinance says and the legality of the ordinance and the court system can either choose to uphold the counties position or overturn the counties position; but that's in the judicial system and it doesn't keep going back to the council; otherwise you would create an indefinite loop and the council would send it back to staff and staff would bring it back here; it's got to spring out into the court system and that's just my understanding.

Mr. Dauksch stated I'm inclined to make a motion to approve the variance; I'm very familiar with the situation over there and I think Mr. Bradley hit on the fact that when moratoriums are used, they are casting a blanket over a piece of property and there are unintended consequences and I think they got caught up in that and for that reason I think they ought to be granted a variance because they already had significant monies invested in that property and got caught blindsided.

Mr. Jackson responded I think there could be some more questions asked at this time.

Mr. Jackson asked I would like to know if we had a proposal that said that we are going to backdate their request since they had done every intent to show that, can we declare it as being a non-conforming use for that particular property without violating this restriction that we have as a board; can we declare that we are backdating their request since they made every effort to do that?

Mr. Graham responded I'm not legal counsel but I don't believe backdating would be an appropriate approach for the board; I would have to seek legal counsel; in the previous instance that we just had tonight, that applicant was told no; it's clearly in violation of our ordinances; the same rules apply to this board that you can't approve stuff that is clearly in violation of the ordinance and yet this board voted unanimously to allow that church to go against the ordinance; so the board can do what they want, I think the only issue is if somebody sued the county, then what the courts would look at is, was the boards behavior appropriate and therein might be an overturn issue so in this case, I would see that again you could do as you did previously and go against the ordinance but the issue is, would a lawsuit be generated to try and overturn your decision; I think you are free to do what you want to do but it's just those long term questions, those issues.

Mr. Dauksch made a motion to approve the request.

Mr. Moore seconded the motion.

The vote was 5 to 2 to approve the request with Mr. Jackson & Mr. Gettis voting in opposition to the request.

**BZA#2011-08**

**A variance request by Mickey Moss on behalf of Moss Enterprises, Inc. for a decrease in the minimum setback requirements of Section 30-30. Table III Zoning setbacks and an increase in the expansion requirements of Section 30-249. Nonconformities of the Florence County Code of Ordinances for property located at 120 Conyers Ave., Florence shown on Florence County Tax Map No. 90080, Block 1, Parcel 3.**

This request was withdrawn by the applicant.

**V. Other Business:**

- **Review and approval of the 2012 Board of Zoning Appeal's Meeting Calendar.**

Mr. Cooper made a motion to approve the calendar.

Mr. Hollowell seconded the motion.

The vote carried unanimously.

## **VI. Adjournment**

Mr. Jackson declared the meeting adjourned at 7:54 p.m.

Respectfully submitted,

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Angela C. Thomas  
Secretary

Approved by:

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Jonathan B. Graham, III, Planning Director

\*These minutes reflect only actions taken and do not represent a true verbatim transcript of the meeting.