

MINUTES OF THE HENDERSON COUNTY
ZONING BOARD OF ADJUSTMENT

August 31, 2011
4:00 PM

The Henderson County Zoning Board of Adjustment held its regular meeting on August 31, 2011 at 4:00 p.m. in the King Street Meeting Room, 100 N. King Street, Hendersonville, North Carolina. Those present were: Jim Phelps, Chairman, Jim Crafton, Vice Chairman, Ann Pouch, Tony Engel, Alternate Jim Clayton, Zoning Administrator Toby Linville, Deputy County Attorney Sarah Zambon, and Zoning Board Secretary Karen Ann Wall. Regular Board Member Hunter Marks was not present.

Chairman Phelps called the meeting to order at 4:00 pm. He introduced the board members.

Chairman Phelps: The first order of business is review and approve of minutes of the last meeting. Pretty brief, so I hope everyone's had a chance to read over them. Are there any corrections or additions that anyone has to them?

JCrafton: I move we approve.

TEngel: I second.

Chairman Phelps: Motion to approve, second, all in favor, aye. Opposed, no.

All board members stated aye.

Chairman Phelps: The ayes have it. The minutes are approved. Ok. The next order of business, new business we have a case number SUP-11-04, James Fatland, requesting special use permit for Bed and Breakfast for 163 Northern Lights Lane, required in (R-40) Zoning District Regulation (page 31) and per SR 1.2 in the Land Development Code, PIN 9566493941. And I think everybody has the case and I think Mr. Fatland, you've already signed in up here?

JFatland: Yes, sir.

Chairman Phelps: And I think we'll need to swear you in, so if you'll come up to the podium, please. If you'll raise your right hand. Do you solemnly affirm to tell the truth, the whole truth, and nothing but the truth, on the penalty of perjury?

Jim Fatland and Zoning Administrator Toby Linville stated, 'yes'.

Parties:

Jim Fatland, Property Owner

Toby Linville, County Zoning Administrator

Witnesses:

N/A

Chairman Phelps: Toby, you want to begin by introducing the special use permit application, and give us some of the details?

Zoning Administrator TLinville: I'd be glad to. You'll see in your packets we have the special use application, the first three pages. then the approval letter from the Technical Review Committee. They approved both the site plan and gave favorable recommendation to this board to approve the project. Next is the zoning report showing an aerial photo of the house. That is another parcel map and here is another aerial. Then there are some photos of the home showing that he's got extensive landscaping. And finally you've got the site plan that was presented to Technical Review Committee. And there's not really anything to show because it's going to - the home will look exactly as it does. They'll just start using a couple of the interior bedrooms as bed and breakfast rooms. If you all don't have any questions, please accept the packet as evidence.

APouch: Where is this property?

Zoning Administrator TLinville: It is off of Little River.

APouch: I see the address. It isn't in the Village of Flat Rock?

Zoning Administrator TLinville: No. It's right on the outside of it though. There's, I think, adjoining property that's Flat Rock, but it's in the County.

Chairman Phelps: Further questions of Toby? Any objections to presenting all the materials as presented by Toby into the record?

JClayton: I move we accept them.

Chairman Phelps: Ok, there being no objections they'll be admitted. Sarah, do you have any questions at this time?

Deputy County Attorney SZambon: I have no questions for Mr. Linville.

Chairman Phelps: Ok then, Mr. Fatland, if you would come up to the podium and state your name and address.

JFatland: Jim Fatland, 163 Northern Lights Lane, Hendersonville.

Chairman Phelps: Would you like to tell us about your request?

JFatland: Yeah. My wife is retiring after 30 years of teaching and we've always wanted to do a B&B but on a large scale. And our request before you is for two bedrooms, each with their own private bath. And that we do not desire nor want to put up a sign because we want to be in keeping with the neighborhood. And we don't feel that would be an inconvenience to the neighbors. We've talked to most of the neighbors. And as far as the B&B goes, my wife and I have toured a number of B&Bs and spent time with the proprietors and learned the good and the bad with a B&B. But we're looking forward to opening a B&B with just two rooms. And as far as the property goes, it has City water. It has electric and has natural gas. We installed a new septic system when we first bought the place and then we also have an emergency generator for the entire property.

Chairman Phelps: And do you have any special parking for the guests?

JFatland: Yeah. We'll have parking on the side of the home for three parking spaces. We have a detached garage for the private vehicles.

Chairman Phelps: Questions from the board?

APouch: Do your neighbors object? Have you talked to them?

JFatland: We met with all the neighbors. They're not happy we're doing it but they are not opposed to it either. We've been good neighbors. And when I first moved into the property, the road into Northern Lights Lane was in really bad shape and even before we got out of the car we agreed to contribute \$2,500 toward paving the road. And that was on the first weekend we moved into the home. And also on the Stonebridge side there is a Hendersonville water pump station. And all the neighbors went together, including us, and put in \$1,500 apiece for a generator for the water pump station, so we would have water during power outages and so forth. But we've been good neighbors and we've worked with the neighbors, and we're looking forward to being good neighbors. Most of them we talked to over the weekend and the last several days, and with any concerns they had. I think the one concern they had was they didn't want to see a large sign go up. And our feeling is we don't want a sign. The reason for that is we don't want people driving down, up to our home and saying, 'do you have a room for this evening?' Because we like our freedom too and if we don't have anybody booked for the weekend and we want to go down to Charlotte to see our daughter we want the flexibility just to go. Our first concern is to make it look like a residential home at all times.

Chairman Phelps: You say you do not plan to put up a sign?

JFatland: No, we don't need one.

APouch: How will people know about you?

JFatland: We're going to be having a website. And then being a member of the Hendersonville B&B Association.

JCraton: In reading the Technical Review Committee's report they refer to some stipulations that are in the Code having to do with bathrooms, parking, and in particular it talks about not serving food to the public or not serving any meal to your tenants other than a breakfast meal. Are you familiar with all those requirements?

JFatland: Yes we are.

JCrafton: Are you in compliance?

JFatland: We've got all the requirements that were sent to us by Seth in the Health Department. And we fully understand and will comply with those rules.

Chairman Phelps: How long have you owned the property?

JFatland: We closed on it September 2007 so we're approaching the four year anniversary.

JClayton: You mentioned when you bought it that you put in a new septic system.

JFatland: Yes.

JClayton: How many bathrooms are in the total house?

JFatland: There's a total of seven bathrooms.

JClayton: I meant to say bedrooms, I'm sorry.

JFatland: Five bedrooms.

JClayton: Five bedrooms. And the permit that you got is for how many bedrooms?

JFatland: It's for five bedrooms, or seven bathrooms. The reason why the septic system was replaced is the previous owner had brought in heavy equipment in the front yard and they cut down all the trees in the front yard because they wanted open space. And by so doing they collapsed a number of the septic lines. And I was paying a contractor to come out and fix these broken lines and the Henderson County Health Inspector said it might be cheaper just to do a new septic system. And I'm glad we took his advice because we put a new septic system in at the lower portion of the front yard.

JClayton: Your permit allowed for five bedrooms and seven bathrooms?

JFatland: Yes.

JClayton: So often that's not the case when someone buys a big house.

JFatland: There's plenty of room in the front yard to do it right and that's what we did.

Chairman Phelps: Any additional questions? Sarah?

Deputy County Attorney SZambon: You said you're on private septic. How does this project comply with the harmony of the area?

JFatland: It would be consistent with the neighborhood. It's a residential neighborhood.

Deputy County Attorney SZambon: And you're not changing the parking or anything outside, right?

JFatland: No. We have adequate access to the property and plenty of parking on the side of the home. We have two driveways into the home. We have a concrete driveway by the home itself and a lower driveway and pavement on the left side of the property.

Deputy County Attorney SZambon: Your application talks about landscaping. What is the existing landscaping?

JFatland: Here are some pictures.

Deputy County Attorney SZambon: I have those pictures. Do you plan to do anything else to the landscaping?

JFatland: We are in the process of replacing a front rock way. It's a brick wall that's kind of corroded. And we're putting a rock wall up that's more decorative, leading down from the upward driveway down to the lower sitting area in the front yard.

Deputy County Attorney SZambon: And again, you only plan to serve breakfast to your guests. You're not planning to serve any other meal?

JFatland: No other food.

Deputy County Attorney SZambon: I don't have any further questions.

JClayton: I guess I'll have one more. For holidays are you planning on having guests in and perhaps family at the same time? What I'm leading up to is; do you have sufficient parking? You mentioned three parking spaces but let's say your daughter and family come up from Charlotte over Thanksgiving and Christmas -

JFatland: There would be additional parking but in talking to some other B&B owners what we'd like to do is, we've got Labor Day weekend is a big thing for our family - for 17 straight years we've gone to the Apple Festival, so we have family here - and so what we will do when we have family occasions is to block that out as booked and not take in any rooms during those holidays. Because Fourth of July is big to our family, as well as Thanksgiving and Christmas holidays so we just learned that if you have some time that's in conflict with your family, just tell your guests it's booked on those dates and show that on your website. And I think the key thing is you want to make the B&B a positive experience not a negative one. And we've sort of watched others make mistakes, and don't want to make the same mistakes of having a conflict of having family and B&B guests at the same time.

Chairman Phelps: Tony, any questions? Thank you.

JFatland: Thank you.

Chairman Phelps: If there's no further questions, do we have a motion to go out of public hearing? I don't know that we had a motion to go into it. I need a motion to go in and out of public hearing. Sorry. I guess we can just continue the discussion then.

APouch: He completes all these requirements. There's not reason not to.

Chairman Phelps: Toby, do we know if the requirements have been met?

Zoning Administrator TLinville: Yeah, I think so. He'll be inspected by the Health Department and those requirements are straight out of state law. They're nothing that we look at zoning-wise. It's straight out of the Health Department requirements for Bed and Breakfast. So he'll have to meet all those things to get his permit.

TEngel: Does he need a license or permit?

Chairman Phelps: He'd have to meet them anyway so that is kind of a somewhat redundant saying it's a requirement.

JCrafton: A special use is required to simply say we can evaluate compatibility, safety, and those issues but otherwise this use is allowed under special use.

Zoning Administrator TLinville: This actually is a holdover of the old R40 district. A special use is not required in any of the residential districts other than the old R40, which is what this is zoned. If this were anywhere else it would just be a matter of permitting it and not require a public hearing.

TEngel: Can we say if he wanted more rooms he'd have to go before the board again, to make any modifications? Because I see there are a lot of more than two rooms.

Zoning Administrator TLinville: No, we're not going to limit, other than him expanding the home, the number of rooms, as long as he doesn't add bedrooms to that structure, which would require a septic upgrade and everything.

Deputy County Attorney SZambon: We typically put in our orders that ya'll read and approve that any substantive amendments or changes to the plan or the permit must be brought back to the Zoning Board. So it's just whether or not Toby will consider using another bedroom as substantive change, which it doesn't seem like he does. But if that is a concern for you, depending on how the property owner feels, we can put it in the order, to limit it.

TEngel: It could be a concern to neighbors.

Deputy County Attorney SZambon: It's entirely up to this board.

TEngel: That's what he applied for.

Chairman Phelps: Any additional must be a resubmission?

APouch: I have no problem with it.

JCrafton: I don't have a problem with the application, with the way the application was put before us. He's fairly limited with what he can do. Because to change the structure he has

to get a permit for that. And at the most he might rent out one more bedroom. He's got plenty of bathrooms. He meets all the other criteria and it looks like he's out in the middle of nowhere in terms of close proximity to neighbors or busy thoroughfares or anything of that type. If the board wants to add that restriction I wouldn't object but I don't see a need for it.

JClayton: Would the board be happy by wording it such as, 'up to three rooms or four rooms without coming back'? So that - I just hate bureaucracy and red tape - I would be willing to entertain something like that, that he's permitted to go up to three guestrooms. Pick a number.

Chairman Phelps: Or we could say, 'more than one additional one than three if added', so he'd have to come back. So he could add one without coming back. So how do you want to - if you want to make the motion and want to make that the wording we could do that, Jim.

Chairman Phelps: Do we have a format to go by on the motion, Sarah, on the books?

JCrafton: Is it adding a condition?

Deputy County Attorney SZambon: Yes.

Chairman Phelps: Yes, just adding that would it be ok up to three?

Deputy County Attorney SZambon: Up to three bedrooms? No more than three bedrooms?

Chairman Phelps: No more than three. Any additional would require coming back. Do you have any objection to that, Mr. Fatland?

JFatland: No objection.

JClayton: So that's the motion I make however she - when she finishes typing you read it.

Deputy County Attorney SZambon: The applicant must comply with the terms of his application and is limited to no more than three bedrooms.

JClayton: Ok. I make that motion.

JCrafton: I'll second it.

Chairman Phelps: We have a second and any discussion on the motion? If not, shall we come to a vote? All in favor please say aye. Opposed, no.

Chairman Phelps: voted in favor of the motion.

Jim Crafton: voted in favor of the motion.

Ann Pouch: voted in favor of the motion.

Tony Engel: voted in favor of the motion.

Jim Clayton: voted in favor of the motion.

Chairman Phelps: Unanimously approved. Mr. Fatland you have heard the ruling of the board. Sarah, will you tell Mr. Fatland what happens next, please?

JCrafton: I think our vote was on the motion to add the condition. We still need to vote on the application.

Chairman Phelps: I thought that was all inclusive. Sorry. I apologize. Thank you, Jim, for bringing that to my attention. So now we need a motion to approve the application.

APouch: I move we approve the application. Do I have to say the number?

Deputy County Attorney SZambon: You can say the number or the applicant's name or whatever or the address. Whatever information you find first. SUP-11-04 is his application.

APouch: I move that we approve the application SUP-11-04.

TEngel: I second it.

APouch: With the additional recommendation that he can have up to three bedrooms that he can rent.

TEngel: I'll second that.

Chairman Phelps: Ann made the motion. Tony second it. Any discussion on that motion? If not, shall we come to a vote? All in favor of the motion say aye. Opposed, no.

Chairman Phelps: voted in favor of the motion.

Jim Crafton: voted in favor of the motion.

Ann Pouch: voted in favor of the motion.

Tony Engel: voted in favor of the motion.

Jim Clayton: voted in favor of the motion.

Chairman Phelps: That's unanimous. Now, Mr. Fatland, I can say we've approved everything. Sarah, can you tell him what the next steps are, please?

Deputy County Attorney SZambon: So what happens now is the board has approved the special use permit but they have to - they have 30 days - I'll come back to them with an order at their next meeting. But they have to approve the order. Once the order is approved and signed then you can start getting all your permits and move forward.

JFatland: And the Health Department permits?

Deputy County Attorney SZambon: Yeah.

Chairman Phelps: Ok. Thank you, Sarah. Is there any other business to come before the board? Karen Ann made a summary of the year's activities of the board, haven't yet sent it to the board. Do we want her to forward this to the board, so they will have it for their records?

There was a brief discussion about the report.

JCrafton: I move that we authorize our secretary to forward this to the Board as a report of our year's work.

JClayton: I second.

Chairman Phelps: Jim moves, Jim seconds. Any other discussion, if not all in favor say aye. Opposed, no.

All board members voted to send the report to the Board of Commissioners.

Chairman Phelps: Karen Ann, if you will see that that's done. Then we would have complied as per the requirements. For the record too, they are done monthly. It's done on a monthly and this is just an FYI one on our yearly activity. Our next meeting day will be September 28th same time and place. Do we know if we have any cases, Toby?

Zoning Administrator TLinville: No. We don't, other than the order right now, unless we get an appeal between now and now.

Deputy County Attorney offered to give training on Open Meetings Law and Public Records Law at the next meeting. The board agreed to have the training.

Chairman Phelps: Any other business to come before the board? If not, I'll entertain a motion to adjourn.

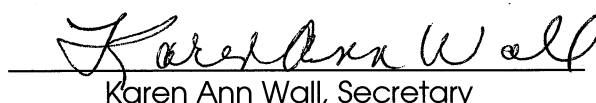
APouch: I so move.

JClayton: Second.

Chairman Phelps: The motion clearly carries. We are adjourned.

Meeting adjourned at 4:24 pm.


Jim Phelps, Chairman


Karen Ann Wall, Secretary