

MINUTES OF THE HENDERSON COUNTY  
ZONING BOARD OF ADJUSTMENT

May 25, 2011  
4:00 PM

The Henderson County Zoning Board of Adjustment held its regular meeting on May 25, 2011 at 4:00 p.m. in the King Street Meeting Room, 100 N. King Street, Hendersonville, North Carolina. Those present were: Jim Crafton, Vice Chairman, Ann Pouch, Alternate Board Member Jim Clayton, Alternate Board Member Janice Brown, Alternate Board Member JoAnne Telker, Zoning Administrator Toby Linville, Deputy County Attorney Sarah Zambon and Zoning Board Secretary Karen Ann Wall. Regular Board Member Hunter Marks came just at the start of the meeting and chose to allow Alternate JoAnne Telker to take his place. He remained in the audience the entire hearing. Tony Engel and Jim Phelps were not present.

Vice Chairman Crafton called the meeting to order at 4:00 P.M. He introduced the board members (Ann Pouch, Jim Clayton, Jim Crafton, sitting in for Jim Phelps as Chairman, Janice Brown and JoAnne Telker). I'd like to welcome those who are here. It looks like we have an audience of one, the applicant. But our first order of business would be to approve the minutes from the last meeting. There are three of you serving as alternates today, but Karen were the minutes made available to them?

Secretary KAWall: Yes.

Vice Chairman Crafton: Anyone have any – it was a very brief meeting. As you can see by the one page, front and back.

JClayton: It took longer to read it than the meeting took.

Vice Chairman Crafton: It was a quick meeting, it was. Anyone have any comments or corrections to the minutes as presented? If there are none do we have a motion we approve the minutes?

JClayton: So moved.

Vice Chairman Crafton: Motion. And second?

APouch: Second.

Vice Chairman Crafton: A motion and a second. And discussion? All those who approve say aye. Opposed, same.

All board members stated aye in favor of approving the minutes.

Vice Chairman Crafton: The minutes will stand approved then. There are no orders to be approved so we'll move directly into the business for the day which has to do with a special use permit application to us. And before I start the process let me double check one thing, Sarah.

Deputy County Attorney SZambon: Yes, sir.

Vice Chairman Crafton: I notice we have an applicant present, but not likely an owner. Do we require an owner?

Deputy County Attorney SZambon: I was going to inquire about that whether or not – in cases like for example, if the special use permit was cond- the sale was contingent on the special use permit, we've allowed that, without an owner present. But if he's just renting we typically have not allowed just the applicant to testify because of the nature of the conditions this board could put on that would make a difference to the subject property. Mr. Linville may know more.

Vice Chairman Crafton: Because I don't want to open the hearing unless we're prepared to go forward with it.

Deputy County Attorney SZambon: I concur.

Vice Chairman Crafton: Would it be appropriate for us to inquire of him before we begin the process?

Deputy County Attorney SZambon: I would if I were you, yes.

Vice Chairman Crafton: Mr. Garrett, you are the applicant here today?

TGarrett: Yes.

Deputy County Attorney SZambon: Would you please come to the microphone?

Vice Chairman Crafton: We're not in legal session yet so it's informal, but you are the applicant today.

TGarrett: I am.

Vice Chairman Crafton: What is the nature of your relationship with the owner in terms of use of the land?

TGarrett: If the permit is presented to myself I will be purchasing the piece of property. That's the condition. If we're able to get the special use permit I'll be purchasing the piece of property from the owner.

Vice Chairman Crafton: You made an offer to purchase contingent upon receipt of this permit today?

TGarrett: Correct. Yes.

Vice Chairman Crafton: Sarah?

Deputy County Attorney SZambon: Depending on the board's comfort level I'm comfortable moving forward because he won't have any right or access to the property until he buys it so whatever conditions wouldn't go into effect until after he purchased it. And we can put that in the order if you'd like to make it more specific. But since it's an 'option to buy' contingent on this permit I feel more comfortable than when somebody is renting and they want to mess around with people's property. Because he wouldn't be able to do any of the changes until he actually owned it.

Vice Chairman Crafton: Ok, but the other thing I'd be concerned about is if we issue a special use permit that obligates the land in some fashion to the owner who's not represented.

Deputy County Attorney SZambon: We can put as one of the conditions to the special use permit something to the effect of; this permit only goes with Mr. Garrett or only starts once the purchase of the sale of land is finalized.

Vice Chairman Crafton: Ok. Since that works, how do you folks feel about moving forward?

JClayton: I was hesitant until I heard that part that we could make it apply only to him and no one else. In other words it doesn't –

Deputy County Attorney SZambon: We can make the permit apply once the sale is finalized.

APouch: We could put a condition on it?

Deputy County Attorney SZambon: I mean if Mr. Garrett is alright with that. You haven't had a hearing so who knows if you're going to approve or deny it. It's kind of a mute point right now but yes, we could put something on there; the special use permit is conditioned upon the sale of the property to Mr. Garrett.

APouch: Would the owner have to approve this, what we agree to today?

Vice Chairman Crafton: Well the owner would then be selling the property based on that so they'd have the choice whether to sell it or not because that's in place. Is everyone comfortable with that?

JClayton: I just didn't want to encumber the seller with this use if he wasn't going to - if something should happen to the purchase.

Deputy County Attorney SZambon: Right, exactly. And we can – if this board goes through with this and grants it we can put a condition that the permit is contingent upon the final sale of the property and if there is no final sale the permit shall be revoked.

JClayton: As a realtor I know it's not closed until it's closed.

Deputy County Attorney SZambon: Exactly.

Vice Chairman Crafton: Ok. Mr. Garrett you're the only one to testify today so you can stay there for a few minutes if you like. We've got a few legal procedures we need to deal with.

Vice Chairman Crafton: In that case we need to go into a public hearing for a quasi-judicial hearing and I would invite a motion that we do that.

JClayton: I'll make that motion.

JBrown: I'll second.

Vice Chairman Crafton: Ok, we have a second.

APouch: Second.

Vice Chairman Crafton: All those in favor say aye. Opposed, same.

All board members voted in favor of opening the hearing.

### **Case SUP-11-03**

#### **Parties:**

Tyler C. Garrett, applicant

Toby Linville, Henderson County Zoning Administrator

#### **Witnesses:**

N/A

Vice Chairman Crafton: Ok. I've got a script here that I need to read that will help you to be sure what our proceeding is like and what's involved. So bear with me as I read it to you. (the statement is italicized)

*A quasi-judicial proceeding is much like a court proceeding where an individual's rights and interests are being decided under specific rules of procedure. Parties to this case have the right to present evidence and cross examine witnesses.*

And I don't think we'll be dealing with that today.

*The burden of proof in these cases typically lies with the applicant.*

That would be you.

*The extent to which the Rules of Evidence used in courts apply is up to the discretion of the board.*

But generally we use the same guidelines. Like for example, we don't accept hear-say evidence. We don't accept something reported as expert testimony if the person is not identified as being an expert but those are mute points today, I believe.

*Quasi-judicial proceedings are different from other public hearings in that not everyone has the right to present evidence before this board and to become a party to this proceeding. Only those who can demonstrate that they will be affected by the outcome of the hearing may become parties. After a description of the person's interest in this case the board will determine whether they will be allowed to present evidence as a party. Please note, you do not have to be a party to testify if someone who is a party calls you as a witness.*

Did you expect to have anyone here today to be a witness for you?

TGarrett: I did not. I was actually expecting the homeowner or the property owner to be here but you can all see they're not here.

Vice Chairman Crafton: All right, well then the next thing we need to do is ask you for just a formality to state your name and your address, please, for us.

TGarrett: My name is Tyler Cole Garrett. My address is 1925 Pilot Mountain Road, Hendersonville, North Carolina.

Vice Chairman Crafton: And you are the applicant today for this special use permit?

TGarrett: I am.

Vice Chairman Crafton: And Toby, would anyone other than you be giving evidence from staff?

Zoning Administrator TLinville: (indicated no).

Vice Chairman Crafton: Alright Toby, would you join Mr. Garrett if you will and swear in. Put your left hand on the Bible and raise your right hand, please. Do you solemnly swear to tell the truth, the whole truth, and nothing but the truth, so help you God?

TGarrett: I do.

Zoning Administrator TLinville: I do.

Vice Chairman Craffton: Mr. Garrett you can be seated for a minute if you like. Staff has a report to give us, to begin with. And Toby, before you begin, one thing I neglected, I need to inquire; does anyone on the board have any connection, relationship to any of the parties in this matter that you feel would – to keep you from being perfectly objective in the rendering of a decision today? No one? Ok, thank you. Toby.

Zoning Administrator TLinville: Alright. You'll see in your packet the special use permit application form signed by the applicant, the surveyor, and the owners, the current owners of the property. Next is the packet that we sent to the - or the results of the TRC Meeting where the Technical Review Committee approved the site plan and gave a favorable recommendation to this board. Next is a zoning report of the property showing the 2010 aerial. It's just a vacant piece of property right now. And it's zoned Residential 2 Rural. Next is a pictometry view of the property that was a 2011 aerial that looks pretty much the same. It's still vacant. And then there are some photos of the property. It's currently under just small trees and grass and the next couple of photos show the ingress and egress there, what you see as you pull out onto Ridge Road. And then finally the site plan showing what's proposed, which is parking in front for Tyler's equipment and then a metal building and office for his lawn care business. Any questions?

Deputy County Attorney SZambon: At this time the County would like to enter the packet into evidence. And I have some questions for Mr. Linville.

Vice Chairman Craffton: Alright, we'll receive that information into evidence as described and presented to us by Mr. Linville. Sarah, any questions?

Deputy County Attorney SZambon: What is the address of the subject property?

Zoning Administrator TLinville: It doesn't have one.

Deputy County Attorney SZambon: There's no address?

Zoning Administrator TLinville: Ridge Road.

Deputy County Attorney SZambon: It's not this 119 Patrick Way? What's that?

Zoning Administrator TLinville: That's where the owners live.

Deputy County Attorney SZambon: So there's no address. Is there a structure on the property?

Zoning Administrator TLinville: No.

Deputy County Attorney SZambon: There's no structure. Will the applicant be adding a structure?

Zoning Administrator TLinville: Yes. He's building a 40 x 60 office slash storage building.

Deputy County Attorney SZambon: What kind of property surround this property or are adjacent? What uses are in the area?

Zoning Administrator TLinville: It's rural residential, some agricultural. There's a garage, Jernigan's Automobile Repair, not adjacent but very near the property across the street.

Deputy County Attorney SZambon: So it's just residential, this garage and some agriculture?

Zoning Administrator TLinville: (indicated yes)

Deputy County Attorney SZambon: In your role as the Zoning Administrator do you find this project meets all the compliance of the SR?

Zoning Administrator TLinville: Yes.

Deputy County Attorney SZambon: And it received a favorable review from the Technical Review Committee?

Zoning Administrator TLinville: Correct.

Deputy County Attorney SZambon: Were there any conditions from the Technical Review Committee?

Zoning Administrator TLinville: Submittal of an erosion control plan, stormwater plan, they had to change the site plan to show the well relocated, he'll have to get a NCDOT driveway permit, and specify which screen class for the dumpster, and change the notation on the parking, which has all been completed.

Deputy County Attorney SZambon: Why does this use not materially endanger public health, safety or welfare?

Zoning Administrator TLinville: Because it's consistent with what's in the area.

Deputy County Attorney SZambon: Is the plan that's presented today consistent with all state, federal, and local laws? And the Comprehensive Plan, Long Range Transportation Plan, and the Comprehensive Transportation Plan of the County?

Zoning Administrator TLinville: Yes.

Deputy County Attorney SZambon: Are there any environmental impacts from this project?

Zoning Administrator TLinville: No.

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

Vice Chairman Crafton: Does the board have any questions of Mr. Linville? Toby, you did say that all six of the conditions imposed by the Technical Review Committee have been met?

Zoning Administrator TLinville: Correct.

JClayton: Mr. Chairman, I have a question. Toby, on the parcel polygon report it shows that the owner has 1.26 acres of property and the survey or the site plan calls for 2.61. Is there another owner involved?

Zoning Administrator TLinville: No. Are you buying the piece behind there too?

TGarrett: Correct. What they had done was that is as listed by GIS – per GIS is the easiest way to explain it. That piece of property is one solid piece of property. At one time they had marked it off and had it resurveyed and were going to try to sell it as two separate pieces.

Zoning Administrator TLinville: So the piece, the separate tract in the back is part of that?

TGarrett: Correct.

Zoning Administrator TLinville: 2.61 acres?

JClayton: So there would be another parcel ID for the remainder of the –

Vice Chairman Crafton: Yeah, that's the one.

APouch: Is that here?

JClayton: This is the part where he's going to build. I just want to be sure that there weren't two owners involved.

Zoning Administrator TLinville: Same owners.

JClayton: That's all I have.

Vice Chairman Crafton: Ok. Any other questions of Mr. Linville from the board? Ok, Mr. Garrett you have the podium. It's your opportunity to present your application or just state your case or why you'd have us approve what you want to do. And tell us a little bit about it if you would, what you plan to do on the property.

TGarrett: My plan for the property is just going to be an office space for myself and then storage for our equipment. Going through this process I wanted the property to be appealing as possible. I didn't want to have any other structures or anything like that impeding the property, you know housing or anything like that or anything like that allowed for storage or things such as that. Our goal is just to keep a place to keep our equipment nice and safe. It's going to be accessible throughout the County. We service quite a few properties throughout Henderson, Buncombe, Spartanburg, Greenville County. Where primarily it's just a place where my employees and myself can keep everything in order throughout our work weeks and through the year. Could you describe what kinds of equipment you'll be storing? Primarily it will just be lawnmowers, tractors, skid steers, some of

the trucks, any kind of small hand tools, small equipment. Stuff like that. We don't do anything large. No grading or anything like that.

Vice Chairman Crafton: In your application you indicate storage of equipment and supplies. What type of supplies might you have there?

TGarrett: Grass seed, straw, mulch, fertilizer, things of that nature.

Vice Chairman Crafton: Any liquid chemicals?

TGarrett: We would have herbicides and things of that nature that would be in a storage locker per North Carolina State. There's a requirement for them to be kept in a dry – they have their own individual – it's a green cabinet just like flammable liquids do that we keep our spray chemicals and things of that nature and where they're stored.

Vice Chairman Crafton: Questions from the board?

JClayton: Is most of the stuff going to be stored in your building or is the building just going to be for an office?

TGarrett: Most of the stuff is going to be stored within the open space.

JClayton: Out in the open?

TGarrett: No. Most of it will be stored indoors.

JClayton: Indoors.

Vice Chairman Crafton: Any more questions from the board? Sarah, do you have any questions of the applicant?

Deputy County Attorney SZambon: Mr. Garrett, will this project have any environmental impacts?

TGarrett: No.

Deputy County Attorney SZambon: Why?

TGarrett: Primarily most of the lot is already primarily already level. Anything to do with runoff or drainage has a plan for where the water will be runoff to. And I guess I primarily won't have any public use or anything like that. We'll be in and out in the morning and evening and that will be the only time we'll be in and out of that piece of property.

Deputy County Attorney SZambon: How have you designed the project to minimize the effects of dust, noise, glare, and solar access or odor on the surrounding neighborhoods?

TGarrett: The parking area will be gravel. The screening is set in place per plan for the dumpster and for the property.

Deputy County Attorney SZambon: And how does your project substantially injure the value of the property or the improvements in the area?

TGarrett: I don't know how to answer that one.

Deputy County Attorney SZambon: Is it similar to uses that are currently in the area?

TGarrett: It is. It's almost going to be identical to the – there is an automotive garage probably within 150 feet of where we're talking about putting the building. It may be a little bit further than that but the building style that we're going to be putting up is going to be a two tone Morton building. I think it's listed as 40 x 60. We won't have any debris or trash or anything of that nature on the site. We're going to be using that to kind of – if anyone drives by will recognize it as being a nice, clean, well kept piece of property.

Deputy County Attorney SZambon: And I assume you don't get – you said mainly the site was going to be used for you and your employees picking up the equipment in the morning and then bringing them back at night.

TGarrett: Right.

Deputy County Attorney SZambon: So there's not going to be a lot of in and out traffic?

TGarrett: No. There will not.

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

Vice Chairman Crafton: Ok, if there's no one else to do any cross examination of Mr. Garrett, the applicant, before we close the public session are there any other questions from the

board you have for Mr. Garrett? Ok, thank you Mr. Garrett. May I have a motion that we close the public portion of this hearing?

JBrown: I motion.

APouch: I so move.

Vice Chairman Crafton: A motion and a second that we close the public portion. All those in favor say aye. Any opposed, same.

All board members stated aye in favor of closing public hearing.

Vice Chairman Crafton: Now it's our turn. You've heard the applicant's request to put a storage building on this 2.6 acres of land. His being able to do that and receiving this special use permit is a contingency of him completing a purchase of the land. And we have previously discussed that if we chose to do so we could stipulate a condition of the permit be that the owner accepts this special use permit in the sale of such land before he can construct anything else so, what's your pleasure?

JTelker: I have a quick question. Because it's an empty lot right now and you have neighbors. Were we obligated to notify them?

Zoning Administrator TLinville: They've been notified.

JTelker: Ok. That was my question.

Zoning Administrator TLinville: All adjoining property owners received a mailing.

JTelker: Since no one's here to object to this I can't see why anybody who wants to put a business in in this day and age should not be granted business permit. Anybody who's going to hire some people, I mean you know, run a company, it looks like he's going to make it look nice because he's going to be a landscaping service so he'll make it look pretty. People aren't going to hire him if they drive by his facility and it's a mess so it looks like it will be probably the nicest area on the block eventually and you know me, I'm all for business. As long as the neighborhood is not unduly upset by it and since nobody's responded and there's not a bunch of people here saying, 'you know we don't want this in our neighborhood' or there's a good reason not to I can't see why we should deny him the permit.

Vice Chairman Crafton: Other comments from the board?

APouch: No objections.

Vice Chairman Crafton: Anyone want to put forth a motion?

APouch: Ok, how are we going to word this? That we will give a special use permit to Mr. Garrett, he may use the property this way if he indeed buys it. But if he doesn't, the next buyer, if it doesn't go through, would have to reapply. Is that what we're saying?

Vice Chairman Crafton: You could say that if this special use permit is issued for use by Mr. Garrett on the purchase of this property and it's tied to that purchase by him from that owner.

Deputy County Attorney SZambon: If you want I can read the language that I drafted. This is what I was planning to put in the permit itself if you do grant it. The permit is conditioned upon the final sale of the property from the owner to Mr. Garrett. If the sale is not finalized to Mr. Garrett this permit shall be null and void.

Vice Chairman Crafton: Ok. Is there an interest in putting a time frame on that language?

Zoning Administrator TLinville: A special use permit is good for a year to get the other permits.

Vice Chairman Crafton: So it has a time limit all by itself. Ok. Is that a motion, Ann?

APouch: I so move.

JBrown: I second it.

Deputy County Attorney SZambon: Who second, Janice? Did you second?

JBrown: Yes I did.

JClayton: Question, you're the attorney.

Deputy County Attorney SZambon: I am.

JClayton: So I don't know – to me I would prefer that his full name be in that motion. I don't know if that's necessary from your perspective but I would prefer that.

Deputy County Attorney SZambon: It's fine. If you want to restate the motion.

Vice Chairman Crafton: I think when the orders are written they will have all of that plus it will have the application number in it, if I recall, because the motion should also say that it refers to SUP-11-03. And I believe it –

JClayton: If it's not necessary, then it's not necessary but I want *that* Mr. Garrett to be the one that special use permit and not another Mr. Garrett.

Vice Chairman Crafton: Sarah, can you make a note to include it to say Tyler C. Garrett?

Deputy County Attorney SZambon: Yes, sir.

Vice Chairman Crafton: Ok, do we have a second to the motion?

JClayton: I second.

Vice Chairman Crafton: You second and Janice second. Discussion? We have a motion to approve the application with the condition that the issuance of the permit is tied to the completion of the sale. Are we ready to vote? All those in favor of granting the special use permit as we heard today those would do with uplifted hand.

All board members voted on favor of the motion with an uplifted hand.

Vice Chairman Crafton: It's unanimous. Mr. Garrett, your application has been approved. The legal office will write out what we call a set of orders that will describe the approval of which you've applied for and the condition that we described here today. That will be ready for us to approve when we meet next month. And once we have signed and actually have to read what she prepares and it's another formal step that we approve. It just costs you another month before you can really accomplish anything. But once we have that in place, and we meet on the 5<sup>th</sup> Wednesdays of the month. Are there five or four Wednesdays next month?

Deputy County Attorney SZambon: I don't know. The last Wednesday of the month, whatever that is.

Vice Chairman Crafton: It's the last Wednesday, whatever, however many there are. We would have our next meeting in which this board would then take steps to approve the actual document. And there would be no reason we wouldn't that I can think of. But at any case in a month's time then you would have your final authorization to move forward to complete your sale. But the reality of the matter is while we have taken favorable action on your behalf today you don't really have the legal means to proceed with the special use permit until those orders are actually approved by this body. So you should take that into consideration in what you do in terms of completing your sale. Alright, that concludes that. Do I have a motion that we then close the quasi-judicial hearing proceeding?

APouch: I move we close.

Vice Chairman Crafton: Motion. Second?

JClayton: Second.

Vice Chairman Crafton: All those in favor say aye. Opposed same.

All board members stated aye in favor of closing the hearing.

Vice Chairman Crafton: Is there any other business that we need to deal with today? Toby, are we likely to have any case in June?

Zoning Administrator TLinville: No, because yesterday was the deadline. Unless we get an appeal before the end of the month.

Vice Chairman Crafton: So our reason for coming together next month will be just so we can deal with the orders and approve them, so it will be a short meeting. Sarah, do you have anything you need to educate us about?



Deputy County Attorney SZambon: No, not yet.

Vice Chairman Crafton: We're just so good that you can't think of anything.

Deputy County Attorney SZambon: Anthony Starr in the Planning Department has a video on how to run meetings better and process kinds of stuff that he played for the Planning Board. If you guys would like to see that video I'm sure we can get it, if you think it would be helpful. But if you do not want to watch it then we don't have to.

Vice Chairman Crafton: How long does it run?

Deputy County Attorney SZambon: I think Anthony cut it down to about 35 minutes, 30 minutes. I didn't watch it when the Planning Board watched it so I don't really know. And I don't know necessarily how much it would apply to you all as a quasi-judicial board but I know many of you sit on other boards also. So we'd be happy to get that for you if you'd like but if you don't want it then that is entirely up to you.

Vice Chairman Crafton: Well what do you think? Do you want to invest 35 minutes of your time to see a video on conducting meetings?

JClayton: Have we had complaints about how meetings are conducted?

APouch: No, we never -

Deputy County Attorney SZambon: No, it's just a video came out from somewhere, I don't know, School of Government or something.

Vice Chairman Crafton: Hunter, your vote?

HMarks: Na, I don't think so. If it's something specific yes, but something like that, no.

Vice Chairman Crafton: I'll see Anthony in a separate setting. Let me ask him a little more about it. Anyone else have anything to bring up today? If not I declare this May meeting of Zoning Board of Adjustment adjourned, thank you.

Meeting adjourned at 4:31 pm.

  
Vice Chairman, Jim Crafton

  
Karen Ann Wall, Secretary