

MINUTES OF THE HENDERSON COUNTY
ZONING BOARD OF ADJUSTMENT

March 30, 2011
4:00 PM

The Henderson County Zoning Board of Adjustment held its regular meeting on March 30, 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, Hunter Marks, Tony Engel, Zoning Administrator Toby Linville, Deputy County Attorney Sarah Zambon, and Zoning Board Secretary Karen Ann Wall. Alternate Board Member Brandon Yelverton was not present.

Chairman Phelps called the meeting to order at 4:02 P.M. He introduced the board members and staff.

Chairman Phelps: We'll come to order and I'll introduce the people that are here. On my far left is Karen Ann who is secretary to the board, Ann Pouch on my far left then Jim Crafton, I'm Jim Phelps, Tony Engel is playing the tune, Hunter Marks and Toby Linville who is the Development and Enforcement Director for the County, and Sarah Zambon is our attorney or assistant attorney for the County who is here to keep us legal today. Thank you all for attending. Now the first order of business is approval of the minutes. And I'm sure all of had to struggle to get through. Are there any comments, adjustments or modifications to be made to them?

JCrafton: Move we approve.

HMarks: Second.

Chairman Phelps: Second. All in favor, aye. Opposed, no.

All board members were in favor of approving the minutes.

Chairman Phelps: Unanimously approved. Thank you very much. We don't have any orders today so the first thing of New Business will be Case SUP-11-02, Nelson Morales, requesting special use permit for Automobile Equipment and Service and Outdoor Storage greater than 5,000 sq. ft. – required in Industrial one, or is that I? zone as defined by S.R. 6.2 and 2.9 in the Land Development Code. Location: 139 Twin Springs Road, Hendersonville (PIN 9651775867). I would like to explain what a quasi-judicial proceeding is and what we'll be following today. *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. The burden of proof in these cases typically lies with the applicant. The extent to which the Rules of Evidence used in courts apply is up to the discretion of the board. 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 evidences 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. All parties and witnesses who intend to present evidence or testify before this board must be sworn in.* So I would like to ask those who intend to testify to come for- or to be a party to this proceeding to come forward, please, to the podium. And one at a time I would like for you to state your name and address.

WAlexander: Mr. Phelps, my name is William Alexander, Jr. I serve as attorney to the owners, Danny and Patricia House, who are prevented from being here today by illness. I'm also personally familiar with the property for a period of many years and will offer testimony and support.

Chairman Phelps: So you will be representing them.

WAlexander: Representing them for purposes of consent of the application as well as offering testimony.

Deputy County Attorney SZambon: Where do the Houses live?

WAlexander: The Houses own the property.

Deputy County Attorney SZambon: Oh, the Houses own the property, I'm sorry.

Chairman Phelps: Ok, thank you. If you'll stand aside we'll swear everybody in at one time.

SBassine: I am Stuart Bassine and I live next door to the subject property. My address is 141 Twin Springs Road.

Chairman Phelps: So you're next door?

SBassine: Next door.

Chairman Phelps: Any objection to him being a party? Thank you, if you will stand over.

DShelton: Good afternoon, I'm Dee Shelton and I live at 104 Twin Springs, the first house on the street.

Chairman Phelps: Is that an adjacent property across the street?

DShelton: It's across the street and down the – it's just a little ways down.

Chairman Phelps: What distance would you say?

DShelton: About a block. My property will definitely be affected.

Chairman Phelps: Could you show us on the map about where your house is?

JCrafton: That's just a plat of the piece of property.

Chairman Phelps: That's just a plat.

DShelton: We're the first house at Twin Springs and Naples. Only we're offset from Naples.

HMarks: You're looking at the site map that gives you an idea.

Chairman Phelps: What's the road? Twin Springs Road? The first house?

Zoning Administrator TLinville: If you'll look at the zoning report in the packets, her address is on there, on the aerial photo of the site.

Deputy County Attorney SZambon: Mr. Chairman, before –

Chairman Phelps: So it's in easy site of the property?

TEngel: 104, yeah right here.

JCrafton: It's way over here.

Chairman Phelps: I mean it's direct. There's nothing –

Deputy County Attorney SZambon: Mr. Chairman, I just want to advise the board that the board can decide how they would like to proceed but typically in these cases we have kept fairly – usually limit it to adjacent property owners for the purposes of standing and testifying at this hearing as a party. Now they can testify as a witness. So as you hear people come forward I just caution you against going against what you have done in the past too much and opening the door too much.

(man from the audience) The only reason we're all here today is because our well water is going to be affected. We're all on wells.

Chairman Phelps: We'll get to that, thank you. Ok, I mean it is in line of site of the property. I can't tell the exact distance but she says it's partly on the block.

HMarks: Mr. Chairman, it appears from here that it's two properties away and that it is on Twin Springs Road and that the traffic access of this property will go by this residence.

DShelton: That is correct. And that's why I'm here.

HMarks: I would be inclined to accept it.

Chairman Phelps: Any objection?

TEngel: She could be called as a witness by one of the other people that are closer. And then we wouldn't change our precedence.

Chairman Phelps: Well we have had some that didn't actually adjoin, had been across from it or behind the property without actually adjoining. What is the will of the board, then? Have her be a witness or a party?

JCrafton: I prefer to see her be a witness.

TEngel: So would I.

HMarks: That's ok.

Chairman Phelps: Is that ok?

Deputy County Attorney SZambon: And ma'am without getting into the substance of your testimony, are you looking just to present testimony to this board or are you actually looking to cross examine the witnesses and the parties?

DShelton: Well, the only way I can answer your question is by saying that I received no notification of this until Friday. And that came from one of my neighbors, and so I would like to be able to cross examine folks, especially the party who wishes to open this junkyard. And I would not object to being a witness if I'm allowed to offer information that I want to offer because I have a completely different viewpoint than some of my neighbors.

JCrafton: I guess I would ask if you were not notified – if she was not notified officially Toby, does that suggest she's outside the parameter of the normal notification?

Zoning Administrator TLinville: The Ordinance only requires notification of adjoining property owners.

DShelton: That's too bad.

JCrafton: Ok. I would continue with my position that she could be called upon as a witness by one of the other property owners as they seem to be here as a group.

TEngel: And I agree with that.

Chairman Phelps: Any discussion on that, as a witness?

APouch: Yep, as a witness.

Chairman Phelps: Ok. So we will swear you in as a witness. So if you'll stand right over there.

DShelton: Ok. Thank you.

RLeighdon: My name's Roy Leighdon. I live directly across the street at 118 Twin Springs.

And I would like to add that I was not notified of this either until a neighbor notified me that this hearing was going to take place.

Chairman Phelps: Does your property line go all the way to Twin Springs Road?

RLeighdon: Yes, it does.

Chairman Phelps: So you're directly across from-

RLeighdon: Directly across the street, 118.

Chairman Phelps: Thank you. You will be qualified as a party, sir. If you will stand over too we'll swear you in when we get through all of this. Next.

JBlack: My name is John Black and I live at 146 Twin Springs Road. That is directly across the road from the property.

JCrafton: He's comparable to 118.

APouch: Yeah.

Chairman Phelps: Yes, sir, we will qualify you as a party and if you will stand over and wait to be sworn.

SJarvis: My name is Scott Jarvis. I live at the end of Twin Springs Road. I also have a house next door to the same property. And my brother and I own the mountain and the right-of-way that's directly across from this property, that goes up above their property, around the ridge.

Chairman Phelps: You say you own the house there, what number?

SJarvis: I'm 163, 198.

APouch: 163?

HMarks: So it's further towards the end of Twin Springs?

SJarvis: Ha?

HMarks: Your property is further towards the end of Twin Springs Road?

SJarvis: My property is above – my brother and I own property which I'm co-trustee on it is directly across the road that has access right next to 118. And we were not notified either.

JCrafton: His property is going to be out of sight on our drawing.

SJarvis: I don't believe so.

JCrafton: No, on our drawing that we have. It's just that he has access to going down that road.

Chairman Phelps: So yours is adjacent to 118?

SJarvis: It's behind it, the Jarvis property.

HMarks: Is your access from Will Road?

SJarvis: No, sir. It has access from Twin Springs directly across from the House's property.

APouch: Does he go down this road and in here?

Chairman Phelps: Yeah, back here. Is there a name for that little road, Toby?

HMarks: So are you between 118 and 104?

SJarvis: No, sir, we're above it. Up on the mountain above it. My brother and I own that.

Chairman Phelps: So he's back over here.

TEngel: Is your driveway between 118 and 126?

SJarvis: There's an access – no sir, the drive would be an access lot. The 90 foot right-of-way is between 118 and Naples Road. So it's directly across from it. If you got a map I'll be glad to show you.

Chairman Phelps: Will Road, did you say?

SJarvis: No, sir.

Chairman Phelps: Would you come forward and show it to us on this map here?

JCrafton: Here's 118 in here.

HMarks: It looks like there's a property in here and there's a neck between the –

SJarvis: The property that goes up above it, we own this mountain up here and I own this house right here. And then I own at the end of Twin Springs. But we own all this up in here.

JCrafton: And how do you access this? This road here?

SJarvis: No, sir. We have a right-of-way, a 90 foot right-of-way right up through here.

JCrafton: Is there a road on the right-of-way? So you own the right-of-way?

SJarvis: We wanted to put a road up there.

JCrafton: But there's not road there now.

SJarvis: No, that's correct.

Chairman Phelps: If you'll go back to the podium and we will discuss this. He has a right-of-way from Twin Springs on that road that's part of the property.

JCrafton: I would suggest he's more remote than 104 is and therefore could be subject to be called as a witness but would not be subject to be a party.

SJarvis: How would you say when you can look on that property that you're not a party to it?

APouch: There are properties that you could –

SJarvis: You could stand –

Chairman Phelps: It doesn't abut and that's what I guess we were saying, either across the road or-

SJarvis: It does, right across the road from the House's property.

Chairman Phelps: If I'm understanding this right, it's closer than 104 if he's going through here.

JCrafton: Sarah, what's the guide line on line-of-sight?

Deputy County Attorney SZambon: Again, there's no real hard and fast rule on standing issue. And as this board has seen before a lot of – there's a lot of confusion in the public as to the difference between a party and a witness. The standard the court will use is something about who has the legal right to bring this issue. And if it were to go before a court or go before a board, who would be the appropriate party to bring the issue? So usually we use adjacent property owners as is in the Land Development Code so that a lot of these issues are – not to say that other parties – people may not be parties, but that's why we notify adjacent property owners because they clearly have standing. And if you start going

too far then the issue is, you know, it has to be an interest distinct from an average person or an average person in that neighborhood or community.

SJarvis: Excuse me, if you stand on my brother and our's right-of-way to that property up on the mountain you can toss a rock across Twin Springs Road onto the House's property. That appears to be without Twin Springs Road there of being adjacent.

TEngel: How many pieces of property is on the –

HMarks: Well it appears that the Houses own two pieces of property, is that correct, then the property we're discussing? That other piece of property is across from his right-of-way.

JCrafton: And then he's using his access to having a right-of-way as placing him adjacent as opposed to his physical owned property.

SJarvis: But I also am part owner in that property. I own half of it. My brother and I own it together. It's in an estate. If it's not adjacent then you can't – If Twin Springs Road's took out of the picture then it's not adjacent. You can't be adjacent if your across the road.

JCrafton: But adjoining is interpreted to be directly across the road. If a roadway separates properties that's not it.

Chairman Phelps: Sharing frontage there.

JCrafton: And I don't think our decision is going to deny him the opportunity to speak and present his thoughts on the matter.

Deputy County Attorney SZambon: Assuming if you choose not make him a party, another party has to call him as a witness. This board can't just call him.

Chairman Phelps: We can't just call him.

JCrafton: Understood.

SJarvis: But I don't –

SBassine: I'll him as a witness.

Chairman Phelps: You would call him, sir?

SBassine: I would call him as a witness, yes.

SJarvis: I mean we have property that looks down on it that's adjacent and you could stand on one side of the road throw a rock across on the House's property.

HMarks: But not this property. That appears to be the House's other piece of property.

SJarvis: Right.

APouch: Where is that?

HMarks: It's right here. The Houses own both these tracks. You can see from the survey.

SJarvis: The Houses I believe they are splitting that property now.

TEngel: So it's not shown on the survey?

HMarks: It's showing on the survey as two different properties.

SJarvis: Right.

HMarks: I agree. I would think that he could be a witness in this. He can be called by someone else so he will have the opportunity.

SJarvis: I could probably stand still on that right-of-way and throw a piece of a rock, and I'm an old man now, I could throw a rock and hit this subject property.

TEngel: So you should be sworn in.

SJarvis: I would think so.

Chairman Phelps: We will swear you in and you can be called as a witness by this gentleman here. So if you'll stand over there and wait for the next person.

LRohe: I'm Lesley Rohe the agent for the buyer, potential buyer, and I'd like to offer details about our due-diligence period if required. And what we have done to do site assessments and site plans and so forth for this transaction.

Chairman Phelps: So the buyer could call you as a witness to give your testimony?

LRohe: That's correct.

JCrafton: Who is the buyer?

LRohe: Nelson Morales.

Deputy County Attorney SZambon: The applicant.

Chairman Phelps: Pardon.

Deputy County Attorney SZambon: The applicant.

Chairman Phelps: So the applicant will call you as a witness.

LRohe: Ok.

Chairman Phelps: We'll take you as a witness.

TELkins: Good afternoon, gentlemen and lady, ladies. Trade Elkins, attorney for Nelson Morales who is our applicant and is the gentleman seeking to purchase the subject property. Mr. Morales is here sitting down over on the side and I suppose we need to swear him, obviously as well. We plan on him giving some testimony. We'll be discussing, I guess, some of the procedures involved and I'll be calling the real estate gal who just spoke to you as well to give you some background on what we've done as far as our due-diligence leading up to this point, and any other information that you need from me at this point. I am familiar with the property myself to the degree that I might proffer testimony as opposed to listening I suppose I should be sworn in as well.

Chairman Phelps: If you're going to offer testimony we normally, even though some attorneys have that option that if they're not going to testify we don't require that they be sworn in, is that correct?

Deputy County Attorney SZambon: Right, but

Chairman Phelps: I would prefer, sir, that you be sworn in.

TELkins: I think that's appropriate.

Chairman Phelps: And I forgot to ask the first one. It's your option on that. Did you want to be sworn in?

Deputy County Attorney SZambon: He wants to be sworn in. Mr. Alexander had said that he had evidence to present.

WAlexander: I'd like to be sworn. Thank you.

Chairman Phelps: Thank you. Is there anyone else that wants to testify as a party or a witness?

JCrafton: We need Mr. Morales, don't we? He said he was going to testify.

TELkins: Yes, Mr. Morales will testify. Do you need him to state his name for the record?

Chairman Phelps: Name and address for the record.

NMorales: My name's Nelson Morales. I live at 726 Tracy Grove Road and I'd like to share my views on this property.

Chairman Phelps: You are the applicant?

NMorales: I'm the applicant, yes.

Chairman Phelps: Ok. We need to swear you in. So at this point if you'll all come up and we'll gather around the podium and I can swear those in that have been - Raise your right hand, please. Do you swear or affirm that the testimony you shall give to the Zoning Board of Adjustment shall be the truth, the whole truth, and nothing but the truth under the penalty of perjury.

All parties and witness stated, "I do".

Parties:

William Alexander – attorney for Houses, property owners

Nelson Morales – applicant

Trade Elkins – attorney for Mr. Morales

Stuart Bassine – adjoining property owner

Roy Leighdon – adjoining property owner

John Black – adjoining property owner

Witnesses:

Scott Jarvis

Lesley Rohe

Dee Shelton

Chairman Phelps: At this time we will begin our hearing. Decisions of this board are based upon the Henderson County Code. After we hear all the evidence, the board will discuss the matter and may either vote on the case or continue the case to another date. The board may direct staff to bring back a draft order for the board to review at our next meeting. The board's decision must be made in writing within 45 days of the conclusion of the hearing. We will now start and I guess I need a motion to open the hearing.

TEngel: I motion to open the hearing.

APouch: Second.

Chairman Phelps: Tony motions, Ann seconds. Any discussion on the motion? If not all in favor of opening the hearing please say aye. Opposed, no. Unanimously open.

All board members were in favor of opening the hearing.

Chairman Phelps: Ok. I've already read the case number and description earlier so the first order would be to hear from the staff and Toby, if you would please brief us on the application and what we have here.

Zoning Administrator TLinville: Certainly. I'll go through the case packet here. First is the special use permit application form signed by the applicant. I gave you a letter before the meeting. You will hear a question as to the use of this property; is it automobile repair?; is it a junkyard?, and the application does say automobile service slash junkyard. The use in our Land Development Code that will be permitted if approved will be automobile repair and service and outdoor storage. We are not hearing a case for junkyard. We're hearing a case for automobile repair with an accessory use of storage because his primary use of his property will be for the repair shop. And the storage of the vehicles will be secondary to that. So that's what my note was about.

Chairman Phelps: Well what is the County definition of a junkyard?

Zoning Administrator TLinville: Well, it depends on what definition you're talking about.

Junkyard does not pertain to automobiles.

Chairman Phelps: It does not?

Zoning Administrator TLinville: Our junkyard definition says; A parcel having a principle use consisting of the storing, keeping, buying or selling of junk, as defined herein. This definition excludes any vehicle graveyard or manufactured/mobile home graveyard.

Chairman Phelps: It excludes vehicle graveyards? So if I have a collection of wrecked cars in the back of my building that is not junk?

Zoning Administrator TLinville: That is a vehicle graveyard.

Chairman Phelps: Ok. I think that's what we were concerned about that term, junkyard.

APouch: I have a question.

Chairman Phelps: Please, Ann.

APouch: Toby, I thought in the past we could only give a permit to the owner of the property and I'm confused.

Zoning Administrator TLinville: That's correct. And the owners are not here but they are represented by an attorney.

Deputy County Attorney SZambon: So all the parties are represented. This is one of those instances, and Toby will correct me if I'm wrong, that we've had in the past where there will be - in an instance where someone is planning to purchase the property or rent the property for this use the applicant would be the person planning to use the property, and as long as

we have the owner here is how we've approached this in the past. In case you all want to put any conditions that would change the property or change the land.

TEngel: Toby, I have a question for you. Are we now just going for automobile service not for junkyard? So is that being amended now to automobile service?

Zoning Administrator TLinville: That's correct.

Chairman Phelps: And storage, though? Outdoor storage?

HMarks: And outdoor storage.

Zoning Administrator TLinville: That's correct.

TEngel: So junkyard is completely out?

Zoning Administrator TLinville: Right.

JCrafton: Tony, the letter you have underneath your book.

TEngel: Yeah, I know that but I still see it in the application.

Chairman Phelps: We just want it for the record here.

JCrafton: His letter indicates that he didn't change the application. He didn't cause the applicant to change the application but he accepted the change in wording.

TEngel: So we're basically going only for automobile service and junkyard is no longer part of the use permit that they're going for.

JCrafton: But outdoor storage is.

TEngel: Which is totally different.

Zoning Administrator TLinville: If approved, the permit that they get will say 'automobile repair and service', which is the primary use and then 'outdoor storage', which is the accessory. It won't be for a junkyard. And that's what ultimately matters is what's on the permit if it's approved. So after the application you have the supplemental requirements for automobile and equipment service and outdoor storage. And then the screening requirements for the outdoor storage.

Chairman Phelps: The screening requirements?

Zoning Administrator TLinville: Yes. The two areas that are shown on the site plan will have to be screened with at least a six foot fence that's opaque. It's either covered with solid material or, like chain-link with vinyl slats, and landscaped.

Chairman Phelps: But that is a requirement.

Zoning Administrator TLinville: Next is the letter from the Technical Review Committee. The Committee gave a favorable recommendation with two conditions to obtain a DOT driveway permit, which the applicant has done, and a change in use permit from Inspections. Which they will do, but they can't until they're granted special use permit.

Chairman Phelps: But they've gotten the first one, they've gotten the DOT and the second is dependant upon the ruling of this board.

Zoning Administrator TLinville: Correct. Next is a zoning report showing the aerial of the property with those details: acreage, industrial zoning. Next is an overhead pictometry aerial of the property from January 2010. The building is still the same. Next are some photos of the building. The first one is the corner that you can see from Twin Springs Road. And the area that had been used for parking or storage, that will be one of the storage areas that you'll see on the site plan. Next is a close up of the entrance doors. And finally the site plan that the Technical Review Committee approved. You'll see the existing building. Parking along that building and then the two outdoor storage areas which are already flattened off, previously graveled areas that were already used for driveways or storage. Just another note, I don't know exactly when this building was built but I looked back through our permits to see what occupants, occupancies had been there. In 2005 it was North State Environmental and Health. And then I didn't have a 2006 but 2007 and 2008 that was Saluda Mountain Products which is woodworking or cabinetry or something like that. Those are the kind of uses that have been there. So it has not been a garage before. And that's why

we're here because it's a change in use. If it were another manufacturing type of business it would just continue.

JCrafton: Toby, two things. One, again just to confirm, you said the use they are applying for is permitted under a special use in that zoned area.

Zoning Administrator TLinville: Correct.

JCrafton: And the second question, on the second aerial photograph, can you tell us what this other major building at the lower part of the photograph is? It has it looks like a truck trailer, has blue and red vehicle to the left of it.

Chairman Phelps: The bottom.

Zoning Administrator TLinville: I do not know. That's Mr. Bassine's property. I do not know what it's used for.

Chairman Phelps: Looking down at that same exhibit can you tell me where the storage specifically will be?

Zoning Administrator TLinville: You see the area where the semi-trailer is sitting?

Chairman Phelps: Right.

Zoning Administrator TLinville: That's one of them and then the small area directly behind the building.

Chairman Phelps: This here?

JCrafton: Yeah, it would be over here and then back there.

Chairman Phelps: And over to the bottom of it.

Zoning Administrator TLinville: There is a – that's roughly 1,600 square feet is what's proposed here. And the other area is 28 – 4,900, sorry.

Chairman Phelps: So one will be adjacent to the road and the other one is further back to the back of the property.

Zoning Administrator TLinville: Correct. The back of that building there, there's an entrance, just a regular walkway, doorway, and then the – you see the two shrubs right beside the building, that's a loading dock.

Chairman Phelps: Loading dock there?

Deputy County Attorney SZambon: Mr. Chairman, when it's appropriate I have some questions for Mr. Linville.

Chairman Phelps: Any other question from the board of Toby? If not, Sarah.

Deputy County Attorney SZambon: First of all staff would like to enter Mr. Linville's staff report including all the photographs, his letter that he submitted today, and the site plan, and the letter from TRC into evidence.

Chairman Phelps: No objection? So entered.

Deputy County Attorney SZambon: Mr. Linville, TRC approved this project?

Zoning Administrator TLinville: Correct.

Deputy County Attorney SZambon: With only those two conditions?

Zoning Administrator TLinville: That's correct.

Deputy County Attorney SZambon: Do you recall what the vote was when TRC?

Zoning Administrator TLinville: It was unanimous.

Deputy County Attorney SZambon: And you said of the two conditions one has already been met.

Zoning Administrator TLinville: Correct.

Deputy County Attorney SZambon: And the other one, the only reason it hasn't been met is because it can't be met until this permit is approved.

Zoning Administrator TLinville: Correct.

Deputy County Attorney SZambon: What is the recommendation from staff?

Zoning Administrator TLinville: I haven't given one. We recommend approval.

Deputy County Attorney SZambon: You recommend approval?

Zoning Administrator TLinville: Um-hm.

Deputy County Attorney SZambon: With the project as it is currently presented does it meet all the SR requirements of the Automobile Repair and Outdoor Storage?

Zoning Administrator TLinville: For automobile repair and storage, yes. Once the fences and the screening is in place it will meet the outdoor storage requirement.

Deputy County Attorney SZambon: So outdoor storage requires screening?

Zoning Administrator TLinville: Correct, and fencing.

Deputy County Attorney SZambon: And fencing.

Zoning Administrator TLinville: Correct.

Deputy County Attorney SZambon: Can you describe a little bit about the area around the project? Would this project be in conformance with the surrounding area?

Zoning Administrator TLinville: The adjoining properties are Industrial just like this property on that side of Twin Springs. The opposite side of the road is residentially zoned. The adjoining property has some commercial buildings on it, so yes.

Deputy County Attorney SZambon: And you said this property is zoned Industrial?

Zoning Administrator TLinville: Correct.

Deputy County Attorney SZambon: And from your previous statements about what this property has been used for in the past has it been zoned Industrial for a while?

Zoning Administrator TLinville: At least since September 2007.

Deputy County Attorney SZambon: And the use that he's asking for is permitted with a special use permit in Industrial?

Zoning Administrator TLinville: Correct.

Deputy County Attorney SZambon: So to go back to this issue, is this project a junkyard?

Zoning Administrator TLinville: No.

Deputy County Attorney SZambon: Is it a vehicle graveyard?

Zoning Administrator TLinville: No.

Deputy County Attorney SZambon: Why does it say on the application 'junkyard'?

Zoning Administrator TLinville: Because the applicant was just putting that as an accessory and didn't understand the terms, because he has vehicle storage as part of his business. But it's not the primary use of his business.

Deputy County Attorney SZambon: Can you explain what this 'vehicle storage' is?

Zoning Administrator TLinville: He has – his business is BMW Auto House. He primarily deals in BMW repair and service. And these are vehicles that are parts vehicles or ones, you know, whole vehicles that he rebuilds to sell.

Deputy County Attorney SZambon: So is there anything on this property that would be considered junk to the best of your knowledge?

Zoning Administrator TLinville: No, they'd just be vehicles stored.

Deputy County Attorney SZambon: So under – you've reviewed the application?

Zoning Administrator TLinville: Yes.

Deputy County Attorney SZambon: And so this project only really fits our definitions of automobile repair and storage?

Zoning Administrator TLinville: Correct.

Deputy County Attorney SZambon: I don't have any further questions for Mr. Linville. The other parties may. Or the board may.

JCrafton: I don't think I have anything.

Chairman Phelps: From the board? Ok. Thank you, Toby. Then I think we need to hear from the applicant and his attorney. You'll need to come because there's no microphone at that table so you'll need to come up, please, to the podium as you address the board. Please state your name again for the record.

NMorales: My name is Nelson Morales.

TElkins: Mr. Morales is the applicant. I'm his attorney, Trade Elkins. I think it might be useful and hopefully appease some of the interested parties today to generally have me ask my client some questions about his business, historically what he's done, what he intends to do at this new location and allow everyone to get a feel for what exactly is anticipated to take place at the site. So with that, Mr. Morales if you'll just give a general explanation of what it is that you do, the activities that are involved in your business and how long you've been operating, and things of that nature I think it'd be helpful and instructive.

NMorales: I've been in the automotive repair industry for European cars since 1974. I moved into the area in 1993. I opened my first shop right off of Old Spartanburg Highway. It was Import Service and I was there for six years. And in April of 01, I expanded to move to Tracy Grove Road, which I'm still there. So it's 11 years I've been there as Beemer Clinic. And I've been working on these cars, it's just a passion of mine that became an occupation that's been a service to the community. Basically what I do is – my main focus is to provide an alternative for people to not have to go to the dealer so that's 90% of my business is the traffic of repair of those kinds of cars. And if you come to my shop now which I invite people to see my environment I have – you can see it's not like a garage. It's very different. It's very clean. We actually are under the guidelines of a green shop which we use recycled materials. Everything goes in certain bins. All the oils, all the fluids go into waste oil bins. We have two waste oil furnaces. We have one that uses volatile explosive materials. There's other materials that can burn but we have, like dirty motor oil – another furnace that does that. It's catalyzed under OSHA guidelines. We take pride in being a state-of-the-art shop that also accommodates an environmentally friendly environment. So I just want to on the record to share that because I heard something about people concerned about contamination. Again, I invite anyone to come to the shop where we're at right now and see the environment. You can see how the cars are moved around. That's kind of the nature of how I do my business because I think the way things appear to be are very important for my business because 80% of my clientele are middle to upper class people so I have to make sure I have an environment for them. So I've been looking for the last three, four years to find a place that would accommodate my growing business and my clientele. So I would think it would be a good asset to that area. And when I heard about the concern last night, it was actually last night, I made some due diligence. I took my day and I went ahead and drew a picture of what I think my shop would look like. And I'm willing to work with my neighbors because I want to enjoy my neighbors too. So I went ahead and did a plan that would make it look like something that maybe not only I can be proud of but maybe my neighbors can be proud of having me around. So I'm here to work around all those questions, objections. So what I tried to do - I'm always looking to find, to improve the technologies that's out there for this type of service industry. I'm not a, how do you call it, I'm not a Shade Tree garage, I'm not a junkyard. I also restore BMWs. I have two right now that I'm restoring. Come see them and sometimes I need other cars that are the same type. I just finished paying \$4,000.00 for a parts car. \$4,000.00, that's for a parts car. People don't pay that for cars and so these cars that I do get they need to be built, these other cars, they don't look like junkyards. They don't look like junk cars until I start to tear them down. I was very interested in the facility because where the loading dock is where if I do decide to – I'm going to take a car, let's say it's going to appear a little bit different, and these cars are, by the way, going to be in the fenced area where you can't see them anyway. But be as it may once I get to a junk car or I think this car needs to be handled as a junk car I have my neighbor from Naples Iron, we have an agreement – which I have cars there right now that are junk cars that I use. And so I have that place there that if it gets to a point where the car needs to go, I send them over there anyway because I don't have much space. I have about 15 – 20 cars there, my own, that I buy and restore. And they're all cars that are going to be built and they're beautiful cars, you should come look at them. I just want to give

people a feel of what we're trying to do. The other side of the building that's to the left is where I wanted to – which we also have our own parts department so I want to – we also have a parts business there – and it's mostly going to be to the repair public. It's not going to be to the public for the most part, so the traffic's not going to be very high. I accommodate parts to about 18 shops in the area for specialized BMW parts. They want to come to me to get parts. They also come to me to help them accommodate their repair capabilities that they have limitations and I work around that and all these different shops in the whole community. I really enjoy that kind of work. It's very fulfilling. That's why I'm interested in expanding it and improving it and putting it in an environment that clientele can enjoy and people around me.

TELkins: Does the board have any particular questions for Mr. Morales?

Chairman Phelps: In addition to repairing, just repairing and restoring do you do performance enhancements too?

NMorales: Very little, very little. Most of the restorations I do are classic cars that are entered in shows. I go to a lot of shows. Also I may, maybe once or twice a year I may have an event myself, where I have a lot of people with their collectable cars come and share with the – with their projects they've completed, and things like that. I do that on a small scale and most of them are my own clients. I just feel – I throw parties for them. We come together, we get to enjoy, you know, having restored your European car like that.

Chairman Phelps: So you do a good bit of restoring older cars, Beemers?

NMorales: Yeah, if I was going to build dollar for dollar in value of what I do for restoration it's probably 10% of my business, 90% is repairs and parts. It's a small portion but it's there. So I'm planning to build a small showroom and stuff like that to accommodate my restorations. I drew – I'd like to present as just kind of a general idea – I just did it two hours ago of how I feel that the new Beemer Clinic would look like. Can I share that?

Chairman Phelps: Certainly.

Deputy County Attorney SZambon: Mr. Elkins, do you want that submitted into evidence?

TELkins: I'm not sure. It's probably just instructive. Let me have a look.

Chairman Phelps: It's showing some greenery, let's start passing.

TELkins: Let's let Miss Wall have it and she'll pass it around. I suppose that it wouldn't hurt. We'll ask that it be admitted to the degree that it helps.

Chairman Phelps: Sarah, at what point do we allow the others to question Mr. Morales?

Deputy County Attorney SZambon: Well, typically we allow staff to cross examine first and then any other parties. Not witnesses, but parties would be allowed to ask him any questions.

Chairman Phelps: I want everybody to hear how we're proceeding.

Deputy County Attorney SZambon: And that's the same for any witness, any party or witness.

Chairman Phelps: Any other questions from the board?

TELkins: If I might ask the board for a little indiscretion here, I'm happy to go back through some of the preliminaries and procedures but as that was very well summarized by the staff I just figured we'll save that time. If you would like me to go into any of those details I'll be happy to. But I think everybody's seen the application packet and we would just simply state that we believe that we would conform with any requirements procedurally as far as obtaining the permit and that we believe that the recommendation by the preliminary folks that looked at it would be appropriate in this instance and that we are a good candidate for special use given the circumstances.

JCrafton: I have a question. What type of fencing and how high would your fencing be?

NMorales: I was just discussing that. I was thinking of something in the area of wood. That would be a bit more appealing as opposed to chain link fence unless they're opposed to

that. And I'm also willing to show the designs. I'd like to work around what they'd like to see, so that would be something I would like to work with my neighbors.

JCrafton: How high will it be?

NMorales: I was thinking at least six feet, maybe eight.

HMarks: On the site plan it specifies exactly what it has to be.

NMorales: Ok.

HMarks: Six or eight feet.

JCrafton: Ok. Thank you.

APouch: That's part of his requirement. He has to do that.

Chairman Phelps: Sarah, do you have any questions?

Deputy County Attorney SZambon: I do. Just to clarify for the record or in an instance where – so it's easier for me to draw up the order. Mr. Morales, can you talk a little bit more about how your project minimizes the environmental impact?

NMorales: Can you please rephrase that?

Deputy County Attorney SZambon: You had talked about that your shop is a green shop. Can you talk a little bit more about whether or not environmental items like stormwater or well water or any of that will be affected by your shop, and if, how?

NMorales: I don't see any affect that my vehicles will take because the process that we do, for example, how we clean engines, if we do – if we do anything outdoors we have a process that we're very careful about. I understand the ramifications of not complying with the respecting the properties that you have, excuse me, the properties I have owned. In fact I was so concerned myself that I spent \$3,100.00 to this date doing not only a Phase One Environmental and I did the Phase One and I was recommended to do the Phase Two. And we did a very comprehensive one on that property. I just as much want the place to be – I want to come to a place that I feel it's qualified in the standards that I want to have them. It was not required for me to do that. So that's how conscious I am about the environmental issues.

Deputy County Attorney SZambon: And you talked about that all of the different fluids go into a different spot. How do you prevent any of those fluids from getting into the ground?

NMorales: All of my – we have three different forms of recycling apparatuses. In fact I got some of these bins - North Carolina doesn't require any containment of fluids except that it requires that the used motor oil has to be indoors and in a sealable container. There's no requirement for me to have to have trays or bins or catches under it. But all of our containers we have two containers of this stuff that's comparable to Speedy Dry. We never use it but it's there. And then we also have this other apparatus that we actually have to send off to get recharged. It's an apparatus. If we ever have a spill of some sort, let's say for some reason the barrel springs a leak, I don't know how that would happen - I haven't had it happen in my years but there's a apparatus that's like a fire extinguisher, it actually shoots out a foam that can suck up about 20 gallons of oil instantly. But also I also have some of this environmental spill kit is what it is. I had one episode that I remember that one of my guys didn't tighten an oil drain plug and the BMW started and it worked it's way back out and it just poured out this two gallons of oil and we had that picked up, cleaned, and in a sealed container within 20 minutes because we have the preparation for things like that. I can see, I can picture the concerns that my neighbor – I can because you go to most any other garages and it's just dirt. It's trashy, it's oily, it's just messy. You go outside in front of their shop and you see these dark stains all around and of course those can seep down, it takes a lot but they can seep down into the aquifers. It can do that. But again you're welcome to come to my shop and see that the concrete right in front of my shop, you may see a droppling here or there but it still has a very bright light color grey. So again, we're very careful about our process, what we do here.

Deputy County Attorney SZambon: And can you tell me the impacts of this project on traffic in the general area?

NMorales: Well, I took an average because I was thinking what kind of questions can come to me that would be addressed. One of them would be traffic flow. Again, we may work on up to six to eight cars a day. So think about, you know, six, eight cars going down the road to drop the cars off. You have an oil change or water pump or State inspection or work on a convertible top, whatever, I mean they come. And I probably have about up to five to ten clients. They may come for parts but again, most of our parts business we sell to other garages. I have a guy that we deliver parts most of the time. I just came from Rutherfordton delivering a part. So it's just what we do to accommodate our area for service in this industry. One of my decisions – and whether it makes any significance to anyone but it does to me – I was contemplating a lot whether my wife and I wonder whether we should go small, do we need to make it big, change, you know, something's happening here. I got this growing pain. You can even go in my shop you can see it want's to explode, it really wants to expand. I really like these cars. I think – I don't know how much you guys like these cars but almost 80% of most technologies that you find in your American or Japanese cars came from BMW. And saying that, I spent a lot of time and a lot of hours, I just came from Orlando the last weekend on one of the BMW software forums. I really am into being the alternative for BMW dealership. I'm probably the only guy in a hundred mile radius that can program a BMW that went from a dead computer. And so it's something that's kind of important to me because I think now there are these cars that are coming in so complicated and so difficult to work on. One guy touches it and it won't even start, you know, so I'm the guy for that job. I need to find an environment so that people don't have an option of being, I hate to use the word, victimized by dealerships. So I think it's important for us as business people to – I came here with the ergonomics. One of my service reps when I was with quality control inspector for BMW up in DC back in the 80s, I became good friends with the quality control rep at that time and he told me, he said, "Nelson, if I were in your shoes I'd be opening a shop in the Asheville area". Because of the need that he was getting and he was challenged with finding somebody else that can help people with a car that they still like and appreciate. And yet they need to have other options besides the dealership to repair their car. And that's one of the decisions I made when I came up here.

Deputy County Attorney SZambon: Mr. Morales what hours will the shop be open?

NMorales: Our hours are, we open at 10:00 a.m. and we close at 7:00.

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

Chairman Phelps: Any additional questions from the board?

Deputy County Attorney SZambon: Now you can open it up to all the other parties.

Chairman Phelps: So we will now open it up to others who – sir?

SBassine: Yes, I have a question.

Chairman Phelps: Alright come to the podium, please, and state your name again and speak into the microphone.

SBassine: I'm Stuart Bassine and I'm the neighbor next door. I have some photos here. Is this your facility in Naples, or in Hendersonville, your current operation?

NMorales: That's the current operation.

SBassine: I'd like to give these as evidence. There's a group of pictures here. Take a look at them please. The first picture – there's a bunch of stains in the driveway. Can you explain what those are?

TElkins: Can I see what he's showing Mr. Morales?

Zoning Administrator TLinville: Give those to Karen.

TElkins: Well, I'm just taking a look at them (to Mr. Bassine).

SBassine: The stains in the driveway would be? Grease stains or like something leaked?

Deputy County Attorney SZambon: Mr. Chairman, did Mr. Morales look at all the pictures and identify that all of those are in fact his shop?

SBassine: Here, be my guest.

Chairman Phelps: Mr. Morales, is that the case? Have you seen the pictures?

NMorales: No, I've not seen them but I'll look at them, yeah.

Chairman Phelps: And are they in fact pictures of your present operation?

SBassine: I took them Sunday.

NMorales: Yeah, those are current pictures. Did you come by Friday?

SBassine: No, I came there Sunday.

NMorales: Ok. There's a guy with a skid steer that broke down right in front of me, just so you know.

SBassine: So these are true representations of your current business?

NMorales: Well, right now –

SBassine: How many cars would you normally store as these parts cars? Ten? I mean I'm just asking. I noticed in one picture I think I counted about 13 or 14 outside.

Deputy County Attorney SZambon: Mr. Chairman, it's time for cross examination of the witness. Cross examination of the witness where the witness would be allowed to answer the question.

SBassine: Ok.

Deputy County Attorney SZambon: It is not the time for testimony.

Chairman Phelps: We will give you an opportunity to present your evidence. Right now we're merely cross examining the statements already made by Mr. Morales.

SBassine: What I'm trying to find out is how many cars would he be putting in the yard?

NMorales: I don't know. I may be putting any in the yard but that's why I requested that space. I may have 30 cars because I have –

SBassine: I'd like to put into evidence –

Chairman Phelps: Well we don't want to enter evidence at this time.

SBassine: No, this is the North Carolina law.

JCrafton: So you're cross examining, you're not entering evidence.

Deputy County Attorney SZambon: He can only ask questions at this time.

TElkins: If he wants to testify then I think he can testify.

Deputy County Attorney SZambon: But not right now.

Chairman Phelps: We'll give you an opportunity to testify and present your evidence. Right now we're only doing a cross examination of what the testimony so far by Mr. Morales. If there are questions concerning what he has said we'll entertain that. If there's additional evidence then you will have ample opportunity to come forward and present all of your evidence.

SBassine: Ok. You said about 15 cars, maybe more? That's what I wanted to ask the question about was if those pictures were of your facility and represent what you're currently doing?

Deputy County Attorney SZambon: And Mr. Morale, answer that question, that those are pictures of his current facility.

NMorales: Yes, it is.

Deputy County Attorney SZambon: That question's been asked and answered.

SBassine: Thank you.

RLeighdon: I have some questions.

Chairman Phelps: Come forward and state your name. The question should be directed to Mr. Morales.

RLeighdon: My name is Roy Leighdon I live at 118 Twin Springs Road, right across the street. Mr. Morales, you said that when you stripped the cars outside that you don't put anything underneath to catch the oil. Where's that oil go? Just on the ground?

Deputy County Attorney SZambon: Mr.- was he admitted as a party Karen Ann, before we continue?

Secretary Wall: Roy Leighdon, yes.

Deputy County Attorney SZambon: Yes, he was, ok.

TELKINS: I'm going to object to the form of the question. It's assuming testimony that I don't believe was given.

RLEIGHDON: Well he said he didn't take precaution when he was outside that he wasn't required to put anything underneath the cars.

TELKINS: I don't believe that's what the man said.

NMORALES: That's not what I said.

RLEIGHDON: I believe that's what he said.

Deputy County Attorney SZambon: I believe Mr. Morales said, and I can be, I could be wrong, he said that there are North Carolina laws regarding putting - when you change oil or used oil it has to be inside. This is the testimony I heard.

NMORALES: I was talking about the requirements the State has for containing fluids. It has nothing to do with whether there are cars outside or not.

RLEIGHDON: I'm aware of that. I just want to know how you proceed when you strip those cars outside.

NMORALES: How would you proceed?

RLEIGHDON: Yeah.

RLEIGHDON: What do you do when you pull the heads off of one?

NMORALES: Well everything gets done inside, sir.

RLEIGHDON: Those cars just sitting out there -

NMORALES: I said the one's I know that don't get restored the engines, transmissions get pulled, differentials and the master cylinder.

RLEIGHDON: Later I guess when we testify I can -

NMORALES: No, just so you know, if there's any cars that may be out there, in fact there's not a decent car except for two in the back that got stripped down.

RLEIGHDON: What are your plans for water runoff on that property? There's a creek that runs right behind that property. The whole thing slopes to the creek.

Deputy County Attorney SZambon: Again, it has to be in the form of a question. We can't hear testimony at this point.

RLEIGHDON: Well that's why I asked what is his plan for -

NMORALES: When we store - the cars I restore, they're not parts cars. They're not going to discharge fluid. They're the cars I work on to fix. Then the cars that I use -

RLEIGHDON: My question was -

TELKINS: Let him answer the question, please.

RLEIGHDON: My question was is what was his plans to capture anything outside?

TELKINS: I believe he's getting there if you'll let him finish answering.

RLEIGHDON: He said he doesn't have any.

TELKINS: No, I don't believe you let him finish his answer.

NMORALES: Sir, I haven't stated, it has not been a question neither did I make any statements on what I plan or what do I do with fluids or oil.

RLEIGHDON: That's what I'm asking.

NMORALES: Now you're asking. So please rephrase the question so I can answer.

RLEIGHDON: What are your plans to capture any pollutants on the ground?

NMORALES: What I've been doing for the last 35, 40 years, same thing. Any car that I may be suspicious of, that I may decide that I'm not going to restore or repair, that's why I was interested in this facility because there's a loading dock, so I was going to put a lift there where all the dischargeable material, all the liquids of any kind, break fluid, power steering fluid, differential oil, transmission fluid and engine oil, and anti-freeze, all of that get's

removed from the vehicle. And if that's the case then that is a junk car. So it's going to Naples.

RLeighdon: Yes, junk.

NMorales: So it goes on my flatbed truck on the loading dock to Naples.

RLeighdon: I have also here some pictures of his current operation and it's outside and there is –

Chairman Phelps: Again, we just need questions of his testimony. You will be given opportunity to present any evidence that you have.

RLeighdon: Alright.

Deputy County Attorney SZambon: And I'd like to remind the board that the board does not have to hear evidence that is repetitive or irrelevant to the issue at hand. So for example, if many people present pictures that are largely the same you don't have to receive all of them.

RLeighdon: How many employees do you have Mr. Morales?

NMorales: We are between three and seven.

RLeighdon: Three and seven?

APouch: I think we're out of –

RLeighdon: Alright I think I can take a rest now.

HMarks: Just to, can you clarify one more time, exactly, right now, these people are to question Mr. Morales on testimony that he has given. They cannot ask him questions on testimony he has not given, correct, at this time? Is that correct?

Deputy County Attorney SZambon: They can ask him questions on things related to his application.

HMarks: Ok, so it's permitted for him to ask questions such as –

Deputy County Attorney SZambon: As long as it is relevant to the actual application of the special use permit and considerations that this board will be looking at.

HMarks: I just want to make sure that I understand

Deputy County Attorney SZambon: But they have to be questions. They cannot be testimony by any other parties.

WAlexander: Mr. Chairman, with all due respect I submit to the board that the issue of relevance is determined by the application at hand the use intended for this specific property and the man is being badgered with questions about a use that's current on Tracy Grove Road. That has nothing to do with his application and his compliance with the zoning act in relation to this location.

RLeighdon: It does when we have to take this man's word for what he plans to do there when he hasn't done it in the past.

Chairman Phelps: Ok. Then we will give you ample opportunity to present your evidence as we proceed in the hearing.

Deputy County Attorney SZambon: Are there any other parties that wish to cross examine Mr. Morales before Mr. Morales sits down?

Chairman Phelps: If not, thank you sir.

(a lady in the audience) I have a quick question. I'm not familiar with how the County's proceedings go. When is the time that we would get to ask him questions that we have? I don't know how this goes.

Deputy County Attorney SZambon: This would be now. This is a quasi-judicial proceeding which means that it is not a public hearing in that not everyone gets to ask questions to the applicant or to staff or to the board. Only parties with standing who have been sworn in get to ask questions of Mr. Morales. There may be opportunities outside of this proceeding to ask questions of Mr. Morales and he seems like he has given testimony that is open to talking to the neighbors about the design of his shop and how this project is going to proceed. But the purpose of this hearing is not to necessarily to inform the public regarding this proceeding. It

is for the board to decide whether or not to issue a special use permit permitting Mr. Morales to go forward with his project.

(the same lady from the audience) Ok, then back to my question, when do we –

Chairman Phelps: We can't hear you. Would you please come up to the podium.

Deputy County Attorney SZambon: Ma'am, were you sworn in as a witness or a party?

(the same lady from the audience) No, I was not.

Deputy County Attorney SZambon: She was not sworn in as a witness or a party so she will not have the opportunity to ask any questions of Mr. Morales in this hearing. There may be other opportunities outside of this hearing but for the purposes of this hearing this is for you all to make a decision based on this application.

Chairman Phelps: At this point we will only entertain questions from properly sworn parties and witnesses.

Deputy County Attorney SZambon: And that are relevant to this application before you.

Chairman Phelps: Must be relevant to the application before us. Any other questions of Mr. Morales or his attorney, if not –

Deputy County Attorney SZambon: Mr. Elkins, do you have any further witnesses?

TElkins: I think it would just be repetitive. I believe we've addressed most of the factors that we think the board should be considerate of. I would just point out briefly that we think that the use that is planned for this particular property is in conformance and in line with the other types of uses that are specified under the current zoning for Industrial use, just pointing out some of those things that are allowed under the Industrial subheading.

Deputy County Attorney SZambon: Mr. Elkins, I don't mean to interrupt you but you'll have time for closing.

TElkins: Understood.

Deputy County Attorney SZambon: Would you prefer to do it then?

TElkins: Ok. Well I'm essentially done with what I was going to say anyway but I'll use it wrap up and say, 'ok, we're done'.

Deputy County Attorney SZambon: Sorry, I'm just trying to move it along.

TElkins: No, no. I understand. All in favor of moving it along. So that would be our position.

Chairman Phelps: Now who do we call next?

Deputy County Attorney SZambon: I would call the owner next and then the adjacent property owners who are parties.

Chairman Phelps: Again, state your name.

WAlexander: Ladies and gentlemen of the board, my name is William M. Alexander, Jr. I serve, I'm an attorney, I serve as counsel to Danny and Patricia House who are the owners of this property. Also have taken the oath and am personally familiar with this property, having been on it, searched the title, looked at it, been around it many times a year since 1985. I'm very thoroughly familiar with it. Danny and Patricia House came to the local community in the early 1980s. Mr. House came here for the specific purpose of forming an industrial contracting company in conjunction with Mr. Ed Elliot who was at that time out in Edneyville in Pifco Manufacturing. They formed a company for the fabrication and installation of conveyor systems and industrial applications. The company grew from its Hendersonville base to a multi state, in fact, a multi national company doing business, licensed to do business in 29 States at its closure, and having done business in at least five foreign countries to my knowledge. The property in question was purchased by the company, which was known as Industrial Automation Contracting, Incorporated in 1985. The brick building on the property, not the property that's in question but the property to the east that adjoins, you'll see it on your plat, was utilized as the home office and company offices of Industrial Automation and Contracting and various subsidiaries. The metal building, which is on the tract you are considering, was built later. And that building and actually, that piece was purchased, it was a kind of a two piece put together thing later, but that piece and its

building from its inception was used by Industrial Automation and Contracting for storage of various materials, raw steel materials, fabricating materials, other type contracting materials as well as for the fabrication of metal parts, used in conveyor systems. That building I am sure over its history and prior to 2005 contained at many times chemicals and used caustic, if not more caustic than any chemical that Mr. Morales' proposed business will employ. And I think as Mr. Morales' Phase Two Environmental Study that's shown in this process the property was never contaminated. I know that all these good folks here and neighbors are concerned. They have voiced to my clients in the last couple days concerns about possible contamination of wells from this applied use. First I'd like to remind the board and certainly with all due respect, that the board's role is not to enforce the environmental laws of the State of North Carolina. We all know that there are good shops and there are bad shops and anybody can violate an environmental law creating damage to our environment. And that specifically is why we have the Department of Environment and Natural Resources with the State of North Carolina it's their job to monitor contamination of ground water. And I can tell you from experience from various clients who've done so that they have severe fines if you do that. And if Mr. Morales goes out there and he allows large amounts of oil to seep down through the gravel and get into the aquifer or into the surface water that the fines could easily start at \$10,000.00 a day until the situation is remedied. I'd like to point out a similar business, Moore Farm Equipment out here on Linda Vista Drive I think, operated for years by the Moore family as a tractor dealership and repair shop. I'm sure many times oil spilled on their gravel parking lot but taking measures to collect those oils and whatever they passed an Environmental Phase One study here recently showing that it's not nearly as easy as the public imagined for oils used in a shop to infiltrate the aquifers. On behalf of the owners I would like to indicate to the board that they consent to the issuance if this permit. A special use permit is obviously not a rezoning of the property. The property is currently Industrial. From a history perspective, and Toby can correct me if I'm wrong, for a couple of years prior to the enactment of the Comprehensive Land Use Plan, I believe this property was zoned in Open Use zoning and then prior to that it was just not zoned. And so when they went from the Open Use zoning to the Industrial it was at the very inception of the Comprehensive Land Use Plan which the Commissioners placed into effect after, I'm not sure if any of ya'll were on that board, but after two years of very serious study by staff and by the Planning Board relative to those issues, I know for a fact because I attended some of the meetings that it was not accident that this area of Twins Springs got zoned Industrial. I would like to point out to the board that the neighbor to the west side, I believe it's the gentleman who was asking questions a few minutes ago, himself operates an industrial operation on his property adjoining this. And so I don't think there was ever any real dispute in the passage of the Comprehensive Land Use Plan that this property should be zoned Industrial. The Houses have a contract to sell the property that you are considering to Mr. Morales. The contract to sell that property, I'm authorized to tell the board and the public, involves a financing contingent that for a period of a few years at least, the Houses are going to carry a portion of the purchase price on purchased money mortgage. So if anyone should be concerned about contamination of the property it should be them. And they are not. They have looked at the use. They are realistic people. They realize that any business runs risks but they believe Mr. Morales will apply within the law and that there will be no such contamination or detriment to their property. And because I'm going to be leaving I will say there are many, many uses within the Industrial use that would not require a special use permit that would be far more noxious than this potential use. I would also like to point out that the Houses are retaining title to the 1.01 acre tract to the east that they, obviously that property is also for sale. The Houses are both retired now and they want to sell it. And they don't want to sell it – obviously not entertain a sale to someone of the adjoining property that they thought was going to significantly impact the value of their adjoining property and they encourage you

not to make such a finding. On the issue of contamination the first to suffer would be the Houses because there is a well located on the remaining parcel of the Houses. It's down near the brick office building approximately 200 feet from the subject property. That well is actually going to be a shared well with the purchaser of this property under a shared well agreement. And if his use contaminates our well he's going to be drinking that same water and the Houses are going to be drinking that water. And their employees or renters are going to be drinking that water. And we just do not have those concerns. Special use permits, ladies and gentleman, are kind of a strange creature of zoning law. They, as I'm sure you know as well as I, having served as you have, we establish zones where certain permitted uses can operate without a special use permit. And then we have identified uses which require a special permit to operate within that zone and under certain requirements. Those requirements can include off-street parking for certain types, those requirements which include screening, but the Code itself establishes what those requirements are and unless you find that the contemplated use of this property so clearly departs from the uses of the existing zone as to create a danger or detriment to the community at large then you should grant the special use permit. And I encourage you to do so because these people have made quite an effort to comply with the code. We think Mr. Linville's and staff's or Ms. Zambon's recommendations to you are in accord with the Code. And thank you very much and I hope you won't think I've disrespectful but I have a 14 year old I need to attend to and I'm going to say, "good-bye".

Deputy County Attorney SZambon: Can I just ask him two questions real quick before he leaves?

WAlexander: Yes, ma'am.

Deputy County Attorney SZambon: Mr. Alexander, has the owner seen the site plan for Mr. Morales?

WAlexander: Yeah.

Deputy County Attorney SZambon: And are they in agreement with it?

WAlexander: They absolutely are.

Deputy County Attorney SZambon: Are they in agreement with all the SR Requirements that would be put on this project should it be approved?

WAlexander: They are.

Deputy County Attorney SZambon: Ok. That's all I had.

Chairman Phelps: From the board?

Chairman Phelps: Mr. Morales, do you or your attorney have a question for this witness?

TElkins: No, sir.

RLeighdon: Do the Houses live on that property?

WAlexander: They don't live on it sir. They live over -

RLeighdon: I see.

WAlexander: They live over on Twin Springs, but it's a different area, the other side of the interstate.

RLeighdon: So it's not -

WAlexander: But they have worked on that property for many, many years.

RLeighdon: So they're not real concerned about well issues.

Deputy County Attorney SZambon: Mr. Chairman, Mr. Alexander answered the question and he can't really speculate whether or not the Houses are concerned or not.

WAlexander: I know they are not. They told me.

Chairman Phelps: Thank you sir. It might be good before we proceed any further, and this is just a further comment on what was just said, here are some possible factors that we are to consider when granting a special use permit and that's like a type of use, a size of use, the size of the property, if the project meets all site standards of public health, safety and welfare considerations and does not substantially injure the value of the property or improvements in

the area, that it's in harmony with the surrounding area, that it complies with all local, State, Federal laws, statutes, ordinances and regulations, in accordance with the Comprehensive Plan, Long Range Transportations Plans, Comprehensive Transportation Plans of the County or a municipality within the County, minimizes the effect of noise, glare, dust, and solar access and odor on persons residing or working in the neighborhood for the proposed use. Minimize environmental impact in the neighborhood – i.e., groundwater, surface water, wetlands, endangered/threatened species, archeological sites, historic preservation, and unique natural areas. And we would have to see that we have satisfactory provisions for: ingress/egress, off-street parking and loading areas; utilities (locations, availability, and compatibility); buffering and landscaping (location, type and dimensions); structures (location, size, use). Other considerations; additional safeguards that might be determined to be needed; time limits for uses sometimes; time limit when it's complete; time limit for the completion of the project in order to get it operational; and staff recommendations if any; and established factors above. So those are the source of things we would consider in granting a special use permit.

WAlexander: Absolutely.

Chairman Phelps: So that's just general information.

Deputy County Attorney SZambon: And I would urge the board when hearing any testimony or any cross examination to keep those in mind and to keep it on topic as much as possible. to the factors you can actually consider.

Chairman Phelps: Ok, who will we call next?

Deputy County Attorney SZambon: Whoever the first party is named after that.

Chairman Phelps: Sir, there's your opportunity. Again, state your name and location.

SBassine: Hi, I'm Stuart Bassine and I'm the adjacent property owner. I do own an industrial park. I live right next to the property in my own personal residence. I own two industrial buildings. They were originally open zoning. I had no input by the County when they said Industrial. Those two buildings, one I occupy, one I assembled medical products, very clean business, the other one is a billboard company. They just run vehicles out of there. I would never permit anybody that discharged oil in the septic system or the well because that can be a big issue. What I wanted to talk about is with Mr. Morales, he mentioned that he would probably have about 15 cars that he would be using or doing something with at any one time. I'd like to put into evidence, this is a North Carolina General Statue 136-143 definition. May I read it? It says, "as in this article, the term 'automotive graveyard' shall be any establishment of place of business which maintains used or operated or stored, keeping, buying or selling wrecked, scrapped, ruined, or dismantled motor vehicles or motor parts vehicles. Any establishment or place of business upon which six or more unlicensed used motor vehicles which cannot be operated under their own power are kept or stored for a period of 15 days or more, such to be deemed as an automotive graveyard. I believe that it's going to be an automotive graveyard. Why would you need a 5,000 square foot yard for 15 vehicles?

Deputy County Attorney SZambon: Mr. Chairman, staff's going to object to that. That is not – while that may be persuasive to this board that is not binding on this board regarding a special use permit. What is binding on this board is the Henderson County Land Development Code which we've already told you what was the definition of a junkyard and a vehicle graveyard are and that Mr. Morales does not meet those. So while there may be State statues that define a lot of things they are not pertinent to this proceeding. I would object to the relevance.

SBassine: Ok. Again, let me go to my next thing about what you want to do with the outside storage. The front of this building, may I here, show you a photograph.

Deputy County Attorney SZambon: Um-hm.

SBassine: Pass these around.

Deputy County Attorney SZambon: Sir, can you please identify what this photograph is?

SBassine: That is a picture of the subject property, the building.

Deputy County Attorney SZambon: And did you take those pictures?

SBassine: Yes I did, today. Under the outdoor storage greater than 5,000 square feet, the first requirement says location requirement; storage areas shall not be placed in front yard. That is the front of the building, where this yard is right here.

Zoning Administrator TLinville: The front of the building as defined by the Ordinance is the portion of the building that runs parallel to Twin Springs Road.

SBassine: Well from that corner

Zoning Administrator TLinville: The corner beyond is the sides.

SBassine: Well here is the road, here. Which part is parallel? The front entrance is that piece. That is the front of that building. The back of it is a solid dirt wall. So they're going to put that storage area right in the front of that building. Twin Springs runs right around that building. And anybody that drives down Twin Springs will see that junkyard or that storage area right away. So my question is why are they putting it in the front of the building when it says it's not supposed to be there?

TEngel: It's the side.

SBassine: What?

TEngel: It's the side of the building.

HMarks: Per the Ordinance, Mr. Bassine, it appears, I can see your point but as per the Ordinance, it is to the side of the building.

SBassine: Well, I'm saying that it looks like the front of the building to me. As you drive in you look right at that building. The reason they don't want it in the front yard is so you don't see the thing.

TEngel: There is a fence around it.

SBassine: But the road goes 15 feet higher than the front of that property so as soon as you drive down Twin Springs, the fence is five feet, you're going to look right into the vehicles. The fence is really not going to do anything unless you made it 20 feet tall. Everybody that drives down that road is going to see those vehicles. I still believe it's going to be a scrap yard or junkyard. Mr. Morales already admitted there's going to be 15 vehicles. I realize that they're saying just a storage area but in reality what is he going to use that area for? I also have a letter from a realtor that states that if it is a junkyard, which I think it's going to be, it's going to impact the value of our properties, all of us in that neighborhood.

WAlexander: I move that it's not given consideration.

Deputy County Attorney SZambon: The County objects to the letter.

Chairman Phelps: The realtor is not here to present testimony

Deputy County Attorney SZambon: First of all it is not a junkyard and second that person is not here to verify the letter.

SBassine: Ok.

Deputy County Attorney SZambon: So we're going to object to any submission of the letter.

SBassine: That's all I have. Thank you.

Chairman Phelps: Questions? Does Mr. Morales or his attorney have questions for this gentleman?

TElkins: No questions.

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

Chairman Phelps: Anyone one else? Staff?

Deputy County Attorney SZambon: Any other people have questions of this particular witness?

RLeighdon: Well, I don't have any questions of the witness I would just like to make a statement.

RLeighdon: Deputy County Attorney SZambon No. That is not – unless you are going to be called by a witness, you are a party?

RLeighdon: I'm sworn in.

Deputy County Attorney SZambon: I know but you are a party.

Chairman Phelps: It's not your turn is what she's saying.

Deputy County Attorney SZambon: Do you have any witnesses that you would like to call?

SBassine: Yes, this lady right here. Dee Shelton.

Chairman Phelps: Please come to the podium, Ms. Shelton and state your name and address.

DShelton: Dee Shelton, I live at 104 Twin Springs. Is he going to ask me questions?

JCrafton: Somebody needs to.

Deputy County Attorney SZambon: Or she can just give a narrative if the party says please state whatever you –

SBassine: Please state.

DShelton: Just a couple of things, I live, my husband and I live right on the very, the corner, we're the first house. Will Road, I heard you talking about Will Road, well it runs right beside, it's part of our driveway. And so we're the very first house when you turn left from 25 off of Naples Road. You turn left, our house is the first one on the right. It's the only one right at that position. My concern is that there will be more traffic such as flatbeds carrying parts cars or cars that need repairs. We have owned that property for 10 years and it is a constant problem with any large vehicles such as a flatbed, wrecker or a semi or anything that's turning onto our street. They almost every time knock down the stop sign. They cross the – there is a median that goes down the middle of our road that goes in front of our house and extends to Naples. And that median is very poorly maintained by the County, very poorly. And it's at this time still it's broken up into pieces on one end and that is from semis crossing over it trying to get onto Twin Springs to go down to the industrial buildings down there. And they also cross over into our front yard and are always tearing up our yard. So this is something that we are personally concerned about is what it's going to do to the traffic, how much of an increase in traffic it's going to create especially with large vehicles such as a flatbed, wrecker or car transporter, because quite honestly they cannot get around. They cannot make an adequate turn onto our road. And you know this is our residence. This is our home. We do live there so we're also concerned about our property value. And Mr. Morales seems like a very nice person to me who does care but I just want to make sure that it's understood that even though that particular property is zoned Industrial all the rest of us are residence and homeowners who live there. And that's really all I have.

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

TElkins: No questions.

Chairman Phelps: Board? Thank you.

Deputy County Attorney SZambon: Karen, who's the next party?

SBassine: I'd like to call a witness.

Deputy County Attorney SZambon: Oh, you have another?

Chairman Phelps: Go ahead. Again, if you'll state your name and address and speak at the podium, please.

SJarvis: 163 or 198 Twin Springs and the mountain overlooking this situation, I guess that's covering it. Having been in the grading business for 30 some years I helped Mr. House when he graded out for his building. The elevation of his slab is 16 feet five tenths below the road. You can stand in the street and look in the gutters. A six foot fence around that property will provide no privacy. You will see it stick out. Should we decide to develop that 30 acres up on the mountain that my brother and I own how would it look sitting up there trying to sell

somebody a house-site or a house you built and you're looking down into a junkyard?
Pardon me, graveyard.

Deputy County Attorney SZambon: Staff said it's neither a graveyard nor a junkyard.

Chairman Phelps: Neither of those are allowed.

SJarvis: It's a storage - the County zoning people have visited my business and they've approached me about vehicles that I'm not using and the one's I have titles for and tags on, even though I'm not using them. How many of these vehicles does he have titles for? Because a lot of wrecked vehicles you cannot buy with a title. So that would not be in that class. I'm really concerned about the traffic that would be on Twin Springs. I just had a house broke into last week and more and more traffic gets more and more people out looking around. They are trying to find his place but they want to see where that dead-end road goes, pardon me, no outlet road. But it doesn't matter. They come out that road and they visit and do what they want. The more traffic you get the more problems you're going to have. I agree when they did their zoning thing that the left side of the road should basically be Industrial. I was questioning it at that point, and we got into the part of whether it would be Industrial like manufacturing or would it be Industrial like retail and everybody said, oh no, there'll be no retailing it will be businesses that make stuff, store stuff as Trade Master or Industrial Automation did as they do next door to Moore Sign, or as Mr. Bassine does in his business. So I'm a little bit confused by the input I've gotten from the County. And I'd like for you to think about the other properties that this is going to effect. Because a six foot fence is just basically useless if you stand there at that fence and you can look over it. If it's six feet tall you're looking down in a hole as you turn off of Naples Road. You'll see it coming out Twin Springs. You can't - a six foot fence will basically be not practical.

Chairman Phelps: Questions?

Deputy County Attorney SZambon: No.

TElkins: No questions.

Chairman Phelps: Board, anyone? Thank you. Alright, are you finished?

SBassine: Yes. Thank you.

Deputy County Attorney SZambon: Karen Ann, who's the next party?

Secretary Wall: John Black.

Deputy County Attorney SZambon: Are you John Black?

RLeighdon: Nope. Roy Leighdon.

Secretary Wall: They went out of order.

Chairman Phelps: Mr. Black, if you will state your name and address for the record.

JBlack: I'm John Black and I live at 146 Twin Springs Road, Naples. I'm here with my neighbors to object to the special use application for a new business in our community. I would like thank you for being notified of this application and have an opportunity to respond. I've had an opportunity to review the application form and would like to commend Mr. Morales for being upright and honest enough to call this business what it is; a junkyard.

Deputy County Attorney SZambon: Objection.

TElkins: Objection.

JBlack: The difference is Mr. Morales will see these wrecked and rusty cars as valuable assets for his business. We will see them as junk. This is not the worst of it. Cars will leak oil and fuel will be spilled and soak into the soil. My well is within 200 feet of this location. And in a short time this material could be in my well. I have no choice but to do everything I can to prevent this, and I will. Thank you very much.

Chairman Phelps: Mr. Black is your well, are you uphill from this property? Does it slopes down from your property towards his?

JBlack: That is correct.

Chairman Phelps: Other questions from the board? Mr. Morales or your attorney?

TElkins: No questions.

Deputy County Attorney SZambon: No thank you.

Chairman Phelps: Toby? Thank you. Karen Ann who's next?

Secretary Wall: It looks like all the parties have spoken. I have Stuart -

Deputy County Attorney SZambon: No, I have Mr. Leighdon as a party.

Secretary Wall: Mr. Leighdon, right.

Deputy County Attorney SZambon: Mr. Leighdon, you can come and present your evidence now.

RLeighdon: I agree with Mr. Black 100% that it makes no difference whether his well is uphill or downhill from that place. Water seeks its own level and we drill down to that level. The water level is the same where we live as it is across the street. There's a creek that runs right behind that property. Any contamination that's on that ground, every time it rains, like it is right now. It's going to wash everything into that creek and right into our wells and that's a fact. I have been to his current place and he paints a really pretty picture of it like he's clean. His inside may be spotless but his parking lot is an oil slick. And I was over there, it was raining, you could see it glisten everywhere. So he can't tell me that he doesn't create slicks outside. He's doing it where he's at. He'll do it where he's going to be. You're making a serious mistake if you let that man create his business there. It's going to ruin our property values. It's going to ruin our wells. It'll ruin our lives. You can't let him do it. Take a look at his property like he asked you to and you'll see for yourself what he intends to do there. That's all I have to say.

Chairman Phelps: Questions from our board?

SBassine: I have one more thing to add.

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

Chairman Phelps: Ok. Sir if you'll stay please.

Deputy County Attorney SZambon: I don't think his question is for him. I think he wants rebuttal evidence, if you will.

Chairman Phelps: Ok, is that -

Deputy County Attorney SZambon: It's up to this board. I would keep it short, though. Oh, Mr. Elkins has a comment.

Chairman Phelps: A short rebuttal.

TElkins: I would just say as far as a point of contention as far as any rebuttal there hasn't been anything else presented so I'm not sure what the rebuttal would be to.

Deputy County Attorney SZambon: The argument is that the evidence that the party is probably going to offer is not in rebuttal to any evidence he's heard. It's probably something that he forgot.

SBassine: It's different.

Deputy County Attorney SZambon: So it is up to this board if you want to hear that evidence.

Chairman Phelps: We have no problems with a short -

SBassine: My well is 10 feet from the property line, 15 feet from the building. So that if there is any contamination - the problem is I built the industrial park, I asked four years ago to get City water to Twin Springs and they quoted me \$70,000.00. And so if the contamination does occur it's going to put undo hardship on everybody in the neighborhood, particularly the Blacks who have lived there for 50 years. And now if you do approve this they have to worry about a contaminated well and where are they going to come up with the money to pay their share?

TELkins: I'm not making any sense at all in this discussion about wells and possible contamination assuming these facts that aren't before the board and obviously pure speculation.

RLeighdon: It's not speculation if you go see the distance.

Deputy County Attorney SZambon: There's no evidence offered by any expert witnesses to say what the impact of this business could be on well water. Otherwise it's just speculation and opinion.

RLeighdon: Well, the EPA has done several studies about contamination and that –

TELkins: None of those studies are before the board.

RLeighdon: This board is not ignorant of what goes on in this world.

Deputy County Attorney SZambon: You can only consider evidence regarding this property that has been given before you. There's been no evidence offered in the record by an expert about how this project in this location will impact well water. All the evidence you've been given is just fear mongering and speculation.

RLeighdon: (inaudible comment)

Deputy County Attorney SZambon: Please sir, do not interrupt me. So it is up to this board to the weight that you would want to give that evidence but again, it's not based in fact.

Chairman Phelps: Yes, we've heard the comments and like you said there's nothing from any expert witness on the environmental conditions. And they would also have to meet any business in that area and they would have to meet the prescribed environmental laws and regulations. So we are aware of that. At this point I guess we could see if you have a closing statement.

JCrafton: Will we allow rebuttal for the applicant?

Chairman Phelps: I think that's what we're about to hear is rebuttal and a closing from the applicant. Do you have any closing statement or rebuttal?

TELkins: I'm going to waive my closing with just a simple - I think that the application and the information the board's been presented is pretty clear. I think we've met the burden that the County and the State place upon us as far as moving forward in request of this particular permit and ask that you issue in favor of my client, Mr. Morales.

Chairman Phelps: Sarah?

Deputy County Attorney SZambon: Staff recommends this project. It meets all the requirements of the special use permit and the SR. It's also gone to our Technical Review Committee which has approved it. All the criticisms of this project have been speculative and not fact based in nature regarding the well water, the creek contamination and property values.

Chairman Phelps: Any other questions from the board? If not, at this point we can have a motion to close the public hearing.

TEngel: I'll motion

APouch: So moved, I second.

Chairman Phelps: Moved and seconded. Tony moved, Ann second. Any discussion on the motion? If not shall we come to a vote? All in favor say, aye. Opposed, no.

All board members stated aye.

Chairman Phelps: Passes unanimous, we are now in closed to public hearing and we go to discussion by the board. Before we do I'd like to declare a five minute break so we can stretch our legs and reconvene and discuss the issue among ourselves.

Chairman Phelps: Ok are we all reassembled here again? And when we say closed to public hearing that's just closed to public comment. You are free to remain in and hear everything that goes on. We will just be in closed discussion which means the board will be discussing

the materials presented to at this point and see if we can come to some consensus and render a decision. So we are now open to comments from board members.

APouch: I think people who have homes in a district like this I can see why they would be opposed to an industrial site but that's what it's zoned and that's what he has a right to do. So if he conforms with the stipulations Tony has or Toby has I don't see any objection to give it to him.

TEngel: This is not a junkyard and it's not an auto wrecking, no, auto graveyard either. Neither of those. And those have all their particular requirements so it's totally different. It's just for automobile servicing and for storage of automobiles.

APouch: I agree.

Chairman Phelps: And I'm assuming, Toby that any license for business in that area would be under continued inspection as far as compliance with all laws, rules, regulations, and special permits, right?

Zoning Administrator TLinville: And as you all know, when you grant a special use permit, it's for the site specific use. This could become another, if Mr. Morales sold it, it could continue to be an automobile repair shop but it couldn't turn into another use without disrupting the special use permit. So depending on those requirements it would either have to get another special use or it could be permitted by right, some of those industrial uses on it.

Chairman Phelps: If we say it's an auto repair facility would that prevent a subsequent purchaser or owner to having say, a diesel repair shop?

Zoning Administrator TLinville: As long as it was comparable, I mean it would depend on what the vehicles were.

Chairman Phelps: If they drove tractor diesels would that be considered auto repair?

Zoning Administrator TLinville: Yes.

Chairman Phelps: Just for my clarification. So anything automotive related could continue on.

Zoning Administrator TLinville: Yeah.

TEngel: I did notice in the overhead photo of it they did have big tractor trailers going in and out with the previous use. I don't think he'll have as large of vehicles running in and out now. A flatbed trailer is not that long so I think that'll be a little easier on the community than previous uses.

Chairman Phelps: Over here too, Toby also says, down here it also says no watershed found, no flood zone found so we're talking about hazards that might come from being in a flood zone.

JCrafton: Mr. Chairman I think that the criteria that this board has to consider, has been addressed for us; number one it is zoned Industrial. There are other industrial uses currently active in the area and this site has been utilized as a Industrial use although of different types in the past. The Technical Review Committee is just that, they have reviewed the technical aspects of the application and provide to us their recommendation for approval. And as I see, our role is to consider; does it comply with the County's Use Plan; is it in compliance with the zoning issues; is it a permitted use under special use permits which we find that it is; and that it satisfies the needs of the Technical Review Committee. I can appreciate concerns from the neighbors but this is not an uncommon situation when you have Residential areas bordering Industrial areas. There are going to be those concerns but never the less it is an Industrial area and I feel that we're constrained that lack of finding a significant deviation from the County standards and the zoning requirements that we have no choice but to approve. The only thing that might be applicable is if some member of this board felt there were additional restrictions that need to be applied for protection of surrounding areas over and above what the Technical Review Committee. But based on those criteria I think that this board should approve the application.

APouch: I agree.

TEngel: I second.

HMarks: I would agree. One thing I would like to say though, is that it appears from the site plan and the topography that the road is 10, 12, 15 feet above the property. And the buffers around the storage areas are, you know, specified in the ordinance, six to eight feet tall. And could we ask that the applicant consider some additional buffering maybe along the road which would provide some more meaningful screening, I guess, around the property?

Chairman Phelps: Like some tall trees or some trees that would grow tall?

HMarks: Large sized trees that would screen the front. It says 'satisfactory provisions'. One of the things we need to consider is satisfactory provisions for both buffering and landscaping. And I think that something we should at least discuss.

APouch: But the property next door doesn't have plants to screen it.

HMarks: That's true. That's true.

Zoning Administrator TLinville: I have trouble with this too. When we think about screening a use we always think about right beside it. But it just has to be somewhere on that property so he can certainly, you know, the Ordinance would allow for the fencing to be down on the flat area. And the screening can be anywhere as long as it blocks, you know, it's there to block the view of whatever that thing is. So if you wanted to make that a condition -

HMarks: Well if he would agree for example, that the large area, if he would agree to instead of putting that, which is a type, it's a Class 4 Buffer, instead of putting the Class 4 Buffer there, putting the Class 4 Buffer somewhere along the road at a higher elevation which would provide much more buffering visually for the people. It would be no difference as far - we wouldn't be imposing and make an additional burden on the applicant.

TEngel: But then the road curves there. You'll be looking through the side anyway so where do you stop?

HMarks: Well, that's true.

JCrafton: Hunter, the only problem I see with that idea is as I read this site plan, he is prepared to put fence on all four sides. It might be somewhat more difficult to put the other buffering on all four sides to protect from all views.

TEngel: Right. We could ask him to go two foot higher which might block it a little more but I don't know.

Chairman Phelps: Well, the fencing is back from the road already for the proposed area isn't it?

APouch: It looks like a lot of trees around this building. Would that be here?

Chairman Phelps: This is pretty open here.

HMarks: Well, if you look at this picture that was submitted as evidence. Here's a picture looking from the road. The lot would be there and that would have an eight foot fence around it.

TEngel: And you would see over it slightly.

HMarks: It appears that way, yeah.

TEngel: So you'd be looking inside a little bit. One thing with the photograph that were taken of the present business, it doesn't look like there're a bunch of junk cars there. They look like they're all fairly decent vehicles.

HMarks: I notice one car that doesn't have a license plate. All the other cars that you can see appear to be newer cars or they have license plates. Even the ones in the back have license plates, the ones that you can see the rear of the car.

TEngel: As far as operations go it looks fairly clean.

JCrafton: While the property is lower, if you look at this picture that we were given, there is quite a bit of tree cover and foliage now.

TEngel: That's behind it.

JCrafton: I agree but this large space, I believe, would be to the left hand end of this picture.

HMarks: It's between you and the building, where the space would be.

TEngel: All the foliage is behind it here.

HMarks: It's this large gravel area.

JCrafton: But you do have foliage behind to that left side.

APouch: It looks to me like he'd have to plant almost all the way around this property which I think is a lot to ask. I mean you'd have to do the side, the front.

TEngel: And then you'd still probably see over it.

Chairman Phelps: The other thought I had too was the question the runoff if some way there could be a burrow or a detention so if any liquids came out it wouldn't flow directly immediately to the creek but it would be somewhat of a –

TEngel: I think there's not a concern about it at this point. EPA and the regulations they have now are so strict that most people are very careful not to have any runoff. Fines are huge.

APouch: Um-hm.

JCrafton: I wasn't thinking so much as a mandatory thing as more of a conciliatory gestures.

TEngel: Well I was just thinking they regulate it pretty well to begin with. And that's not our jurisdiction to do.

JCrafton: Well as I read the County's standards and it talks about outdoor storage and it talks about fencing, it doesn't appear to me that we can require him to do more than the County requires. And it's very clear in here that he should have a Class 3 or Class 4 Screening consistent with the requirements of screening and then what's given down here is a minimum of six feet, that's at least 75% opaque.

TEngel: Class 4 is eight feet.

JCrafton: Ok, or eight feet but I don't know that it's within our jurisdiction to say you've got to build something that hides everything from the road to 16 feet higher than the lowest level of your property.

Deputy County Attorney SZambon: I don't think you should deviate too far off from the requirements in the SR not to, you know, screening is important and what you want him to do for screening is up for debate. The Class 3 or 4 Screening is certainly, and I believe in there it says minimum, so you could increase it. Are you going to increase it to 20 feet, you know, and like there's clearly a reasonableness in there. So then the other issue when creating conditions that may not be in the SR is you may want to ask the applicant if he has a problem complying with them while he's here. Then at least there would be some agreement on to whether or not they're reasonable and feasible for him to comply with.

TEngel: As it is it does call for Class 4 on that buffering so that is the eight foot high fence which is the higher fence.

Chairman Phelps: Also though, as part of the possible factors in consideration of a special use permit it is one of those that is a satisfactory provision for buffering and landscaping and that includes the location, type and dimensions. So that does come under the purview of this board if we wanted to impose additional standards or restrictions.

TEngel: We could ask for all rusted cars and those in poor shape to be placed against the forward fence therefore it would be hidden. They wouldn't be seen over it. The fence would block the view.

Chairman Phelps: Any that are unlicensed.

TEngel: Well that are not in good shape. But I think he'll probably try to do that anyway.

Chairman Phelps: I don't think it would do anything as far as abating anything concerning appearances. He said they're covered by tarps either.

TEngel: That would be too difficult.

APouch: Well he has to have the fence.

TEngel: Yes, and it does have to be an eight foot fence.

Chairman Phelps: I think we can specify that it will be eight feet.

JCrafton: Well his site plan that he is based on specifies that.

Chairman Phelps: Yeah, but some of them say six, over here.

HMarks: It depends on the –

JCrafton: It says eight feet.

Zoning Administrator TLinville: Class 4 requires an eight foot fence.

HMarks: How much le-way does the applicant have as to exactly where he puts these buffers? I mean, does he have to put them exactly around this square?

Zoning Administrator TLinville: Well it can't be – the dimensions of the storage area can't be different than what he's doing here. If he wants to, you know, he can certainly move the landscaping to a place that would help screen it better.

HMarks: Well all I'm saying is that maybe we ask the applicant to consider that when he installs the buffer and the fence that he looks at not only the letter of the Ordinance but practically how it actually buffers the property. That's what I would ask.

TEngel: He did say he'd use a wooden fence.

Zoning Administrator TLinville: He and I have already talked about the plantings, that they would do more good up on the bank closer to the road than down along the fence.

TEngel: But you would need more plantings, a lot more, because it's a lot longer run. And then you'd be able to see around it unless he did the whole side too. So I think that's quite a hardship.

HMarks: But we haven't heard any evidence that would prohibit this. We've heard opinions, and I can understand as Ann said today, there's concerns. But we have not heard any evidence that I think would justify us not being able to approve this. That's our role.

Chairman Phelps: So is there a motion?

HMarks: I would make a motion to accept the special use permit.

Chairman Phelps: Is there particular wording here we need, Sarah?

Deputy County Attorney SZambon: No. Just if there are any particular conditions you want. From your discussion I think I've gotten enough in the record regarding how they meet the special use requirements.

TEngel: Solid wood fence would be one, around as buffer.

Chairman Phelps: And meeting the, what do you call that, Class 4 Buffer?

HMarks: Let me amend that. I would make a motion that we approve the special use permit and that we ask the applicant to consider the buffer – to consider the buffer requirements, not only at the minimum but to possibly relocate some to provide more actual screening of the site.

JCrafton: Would you include the conditions stipulated by the Technical Review Committee?

HMarks: Yes.

Chairman Phelps: Those two conditions.

Deputy County Attorney SZambon: Do you want both of the conditions, just so I know for the order? Do you want both of the conditions of the TRC or just the one that hasn't been met yet? The driveway permit, I believe, Toby said has been met.

TEngel: That's been met.

Deputy County Attorney SZambon: Ok, just the other one.

Chairman Phelps: To clarify the motion, we move to accept the application for special use permit with the provision that the applicant attempt to provide the best screening location possible and comply with the second issue on the Technical Review Committee's letter which was –

HMarks: Which was to obtain a change in use permit from Building Department.

Chairman Phelps: Change in use from the Building Department. Ok, Everyone –

TEngel: Are we saying anything about wooden fence or not?

Chairman Phelps: Just to consider? I thought that was part of the deliberation.

HMarks: It requires that the fence be at least 75% opaque. And it's going to be screened with plant material as well.

APouch: So we're saying he just has to comply with the fencing and no other? Ok.

Chairman Phelps: And to give consideration to other location and the best screening and it would have to meet the Class 4 Buffer Requirements which is the opaque as part of that, isn't it?

JCrafton: With regard to the wooden fence, Mr. Morales volunteered in his testimony that he'd be willing to put up a wooden fence to make something appealing for his neighbors.

TEngel: Right, so why don't we just throw that in?

JCrafton: But he's only obligation is to have 75% opaque and I keep thinking in terms it is an Industrial zoned community. And I think we might be going a little too far if we try to turn it into something that is more residential in appearance. That's my only thinking. It is an Industrial area and there are other industries in the area.

TEngel: But he already said that he agreed to do that.

Chairman Phelps: We'd say 'consider' using it. We won't force that. And that would be – whatever provides the best blockage of view as far as locating it and the types of materials used. So how did you want it amended Jim or restated?

JCrafton: No. I was just commenting on the question that was raised. I'm satisfied with the motion.

Chairman Phelps: So there's no mandatory wooden fence is that right? Is there a second?

JCrafton: I'll second.

Chairman Phelps: You understand the motion everyone and what we're saying here that we're going to approve?

Deputy County Attorney SZambon: Can I repeat it back just to make sure I have it right?

Chairman Phelps: Please.

Deputy County Attorney SZambon: The motion was made by Hunter to accept the special use permit. One condition would be the condition in the TRC that doesn't involve the driveway permit, and I'll get that exact language. The other condition would be a Class 4 Minimum Buffer but for the applicant to consider relocating some of the – or adding some additional screening to protect the neighborhood and as part of this he might want to consider additional plantings or a wooden fence. Is that appropriate?

TEngel: Yes. It's Class 4 around the larger area. The one in the back is Class 3. So we're not changing it from the site plan. That's what the site plan has on it.

Deputy County Attorney SZambon: Ok.

Chairman Phelps: As called for in the site plan.

TEngel: One's called 4 the other's called 3. That's called 4 on the site plan, yes.

Chairman Phelps: For not four, Southern accent, I apologize. Is there a discussion on the motion? Questions? If not shall we call the question? All in favor please let it be known by saying aye. Opposed, no. It's unanimously approved and adopted.

All board members stated aye, in favor of the motion.

Chairman Phelps stated aye.

Jim Crafton stated aye.

Ann Pouch stated aye.

Tony Engel stated aye.

Hunter Marks stated aye.

Chairman Phelps: Mr. Morales, would you come to the podium please? You heard the recommendation of the board and the granting of the special use permit. Sarah, would you tell him what happens after this.

Deputy County Attorney SZambon: What happens now is I go back and draft an order that is brought to this board at their next meeting, their April meeting. At which point they'll approve it and you'll be given a copy of the order and at that point you can proceed with

the project. Now you can get all the stuff in line that you need before you have this permit but like for example the building code permit we can't give you until this order's approved and signed, which will happen next month because we have to do it within 30 days of the hearing.

Chairman Phelps: Do you understand?

NMorales: Yes.

Chairman Phelps: Thank you. Do I have a motion that we close the public hearing?

TEngel: I so motion.

HMarks: Second.

Chairman Phelps: all in favor aye. Opposed no. We are now closed from public hearing.

All members stated they were in favor of closing public hearing.

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


HMarks: I motion.

TEngel: Second.

Chairman Phelps: So moved. Second. All in favor aye. Motion is carried. We are adjourned.

Meeting adjourned at 6:17 p.m.


Chairman, Jim Phelps


Karen Ann Wall, Secretary