

MINUTES OF THE HENDERSON COUNTY
ZONING BOARD OF ADJUSTMENT

The Henderson County Zoning Board of Adjustment held its regular January meeting, Wednesday, January 28, 2009, at 4:00 p.m. in the King Street Meeting Room, 100 N. King Street, Hendersonville, North Carolina. Those present were: Dean Bonessi, Chairman, Jim Phelps, Vice-chairman, Jim Crafton, Tony Engel, Ann Pouch, Alternate Board Member Brandon Yelverton, Zoning Administrator Toby Linville, Associate County Attorney Sarah Zambon, and Zoning Board Secretary Karen Ann Antonucci.

Chairman Bonessi called the meeting to order at 4:00 PM. He introduced the board members to the parties present.

Chairman Bonessi asked for a motion for approval of the minutes for the January 7, 2009 meeting.

JPhelps: I move acceptance.

TEngel: Second.

All board members were in favor of accepting the minutes as presented.

Chairman Bonessi asked for a motion on the approval on the order A-08-18, Joseph A. Petree, Heliport.

JPhelps: So moved.

JCrafton: Second.

All board members were in favor of accepting the order as written.

New Business:

Case SUP-09-01, Carol Denski, owner / Osvaldo Lapido, applicant, requesting special use permit for Auto Sales – required in Community Commercial zoning as defined by SR 7.10 in the Land Development Code. Location: 3605 Asheville Highway, Mountain Home, on .36 acres, (PIN 9650877723).

Chairman Bonessi reminded those present to sign up if they wanted to speak. He then read the Opening Statement for Zoning Board of Adjustment:

The case we're about to hear is a quasi-judicial proceeding. It 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 than other public hearings in that not everyone has the right to present evidence before this Board and to become a party to this proceeding. Only those who can demonstrate that they will be affected by the outcome of the hearing may become parties. After a description of the person's interest in this case, the Board will determine whether they will be allowed to present evidence as a party. Please note, you do not have to be a party to testify if someone who is a party calls you as a witness. All parties and witnesses who intend to present evidence or testify before this Board must be sworn in.

- Parties- for which case must give their name and address
- Witnesses- for which case must give their name and address
- Swear everyone for all hearings in

When Chairman Bonessi asked for the sign-in sheet to determine who had standing Zoning Administrator TLinville told Chairman Bonessi that the board would need to decide if they should even hear the case. He said the property owner, Carol Denski had assigned the applicant, Mr. Lapido as agent but as the board was aware the property owner or their attorney needed to be present, not an applicant.

Associate County Attorney SZambon further explained that because the North Carolina Bar Association had made the determination some time ago and the Zoning Board has been following the bar guidelines with cases they had heard since its inception, that they may want to continue to only hear cases with the property owner or their attorney present. She also suggested the board wait until the board decided if the case can be heard before they open it.

TEngel asked if Ms. Denski was informed that she or her attorney needed to be present.

Associate County Attorney SZambon read the notice letter and the section that states:

Please ensure that you or your attorney is here to present this case to the Board. It is the Board's policy to deny an application that is not represented by the owner or an attorney at the time it is scheduled to be heard by the Board.

TEngel asked if the requirement to have an attorney or themselves present should somehow be made clearer to the property owner.

Zoning Administrator TLinville told the board that if they chose to continue the case there would be no additional advertisement required and no additional advertisement fees incurred.

JCrafton suggested they open the hearing and continue it to avoid the additional fees.

Chairman Bonessi asked if there were time limits on continuing a case.

Zoning Administrator TLinville said it would depend on if Ms. Denski or her attorney could be present on a selected date.

Mr. Lapido told the board Ms. Denski was handicapped and may not be able to come to a rescheduled hearing. He said that due to financial limitations Ms. Denski may not be able to hire an attorney.

After some discussion as to possible dates for a continuation the board asked Mr. Lapido to contact Ms. Denski to see if she would be available on Wednesday, February 4th at 4:00 p.m. The board selected this date so that the applicant, Mr. Lapido, who had already paid some lease fees, may be able to be heard by the Zoning Board as soon as possible, so that if they approved his special use permit application he could start his business immediately after the hearing, and not continue to lose revenue.

After Mr. Lapido spoke to Ms. Denski via cell phone she agreed to be present on February 4th at 4:00 p.m.

Chairman Bonessi said that he may not be able to attend the continued hearing, but alternate member Brandon Yelverton would be able to appear in his place. The board would then have five members present.

Chairman Bonessi asked for a motion to open case SUP-09-01 and a vote to continue the case to Wednesday, February 4th at 4:00 p.m.

JCrafton: So moved.

All board members were in favor of opening the case and continuing the case on February 4 at 4 p.m.

Chairman Bonessi asked for a motion to close the hearing.

APouch: I make a motion.

TEngel: Second.

All board members were in favor of closing the hearing.

Chairman asked Justin and Linda Brooks, two adjoining property owners that were present, if they understood what had just occurred and if they understood the case would be continued. Mr. Brooks said they understood and thanked Chairman Bonessi.

Board Member Terms:

The board had its required January discussion and vote on the board member terms and positions. Zoning Administrator TLinville pointed out that Chairman Bonessi and Vice Chairman JPhelps are the only board members that were up for reappointment in December 2009.

Chairman Bonessi told the board that this would be his last year because of personal and business obligations. He said he would need to step down and step aside as Chairman immediately but he would continue his term on the board as a regular member.

Associate County Attorney SZambon said the board needed a nomination for a new Chairman and whether or not Vice Chairman Jim Phleps wanted to continue as such, they would need to vote on both of those issues.

APouch made a motion to nominate Jim Phelps for Chairman.

TEngel: Second.

All board members were in favor of approving Jim Phelps as Chairman of the Board.

APouch nominated Tony Engel for Vice Chairman.

TEngel declined the nomination.

APouch nominated Jim Crafton for Vice Chairman.

TEngel: Second.

All board members were in favor of approving Jim Crafton as Vice Chairman of the Board.

Associate County Attorney SZambon said the board needed the formality of approving Karen Ann Antonucci to continue as Secretary of the Board.

JPhelps said that by unanimous consent Karen Ann continues as Secretary.

All board members were in favor of approving Karen Ann Antonucci's continuation as Secretary.

Associate County Attorney SZambon told the board the Henderson County Minimum Housing Code went into effect January 1, 2009 and is another ordinance that appeals from will be heard by the Zoning Board of Adjustment. She suggested the training take place at the March meeting. She said that Natalie Berry of someone from Planning would offer training on the ordinance so the board had a general overview of it. She asked them if there was any other training or any other information that staff should provide to them in the coming months. JCrafton asked that written text of the ordinance be provided to the board members before the March meeting.

Chairman Bonessi: I need a motion to adjourn.

JPhelps: Motion to adjourn.

TEngel: Second.

Chairman Bonessi: All in favor.

All board members were in favor of adjourning the meeting at 4:47 p.m.

Chairman Dean Bonessi

Karen Ann Antonucci, Secretary