

MINUTES OF THE HENDERSON COUNTY
ZONING BOARD OF ADJUSTMENT

The Henderson County Zoning Board of Adjustment held its regularly scheduled October meeting on Wednesday, October 31, 2007, at 4:00 p.m. in the Board of Commissioners Meeting Room, 100 N. King Street, Hendersonville, North Carolina. Those present were: Dean Bonessi Chairman, Jim Phelps Vice-chairman, Tony Engel, Ann Pouch, Gary Griffin, Jim Crafton, Zoning Administrator Toby Linville, Secretary to the Board Karen Ann Antonucci, Associate County Attorney Sarah Zambon, and Planning Director, Anthony Starr.

Chairman Dean Bonessi called the meeting to order at 4:00 PM. He introduced the board. He asked for a motion to amend the agenda to go to public hearing first. Engel offered 1st motion and Pouch offered 2nd motion.

The agenda was adjusted to go to public hearing first.

Chairman Bonessi asked for a motion to go to public hearing. Tony Engel moved to hear case A-07-16 with a second from Ann Pouch. Chairman Bonessi went over the rules for a public hearing. He asked the board if they understood the rules. There was a general agreement of the board.

OPEN HEARING

Chairman Bonessi stated that George Andrew Bennett is a party in the public hearing proceedings. He also stated that James Owens owns property next to Bennett. Chairman Bonessi asked Owens how he would be effected by the outcome of this hearing. Owen stated the Motorcross site produces noise and tracks on his property.

Chairman Bonessi clarified that Owens is a party in the hearing.

Chairman Bonessi said the parties needed to be sworn in.

Zoning Administrator, Toby Linville said to put your left hand on the Bible and raise your right and repeat after me, I swear that the testimony that I am about to give is the truth, the whole truth and nothing but the truth so help me God.

Sworn in were: Planning Director, Anthony Starr, James Owens and George Andrew Bennett.

Zoning Administrator, Toby Linville reviewed the material from the Case File concerning this case. He said that Supplemental Requirement 4.14 requires that Recreation Motor Sports Facilities be located on a Collector or higher classification roadway. He explained that N. Egerton Road is classified as a Local Road so Mr. Bennett is appealing the road classification.

Planning Director, Anthony Starr submitted an Aerial Map and Current Zoning Map to the board. He stated the board needed to decide what type of road N. Egerton is and not to decide the type of use for the Motorcross Park. He reminded the board that the Henderson County Commissioners set up the road types. He offered some examples of Collector Roads; South and North Rugby, Stoney Mountain Road. He offered some examples of Local Roads; dead-end or subdivision streets. He stated that the Land Development Code also requires amusement parks, correctional facilities and waste collection facilities be located on a Collector Road or higher. This policy was set forth by the Henderson County Board of Commissioners.

Planning Director, Anthony Starr noted that N. Egerton Road has a road classification of Local Road. He noted a technical point – that even changing the classification of N. Egerton Road would not allow for the use of a Motorcross Park because the property is located on Carolina Industrial Court.

Planning Director, Anthony Starr said he would take questions from the board.

Ann Pouch asked if the road classifications were state or federal.

Starr reminded Pouch that our County Land Development Code classifications were not determined by the State.

Associate County Attorney Sara Zambon pointed out to the board that they can only enforce Henderson County codes.

Chairman Bonessi stated that even if the board approved reclassification of N. Egerton Road as Collector Road, it would not matter for the use of the site. He asked if the board could change the classification of N. Edgerton Road.

Pouch asked if Bennett could ask for special use.

Associate County Attorney Sara Zambon reminded the board that the hearing was for reclassification of the road not the use of the property. Bennett can challenge the reclassification of N. Edgerton Road in court.

Chairman Bonessi did not want to go through the process again in another month.

Associate County Attorney Sara Zambon stated that without seeing the legal notice in the paper she feels the board cannot consider the individual use.

Pouch asked if Bennett could do this in any other area of town.

Jim Phelps asked if the road is gravel.

Chairman Bonessi reminded the board that the discussion could only be on appeal of the classification of N. Egerton Road.

Associate County Attorney Sara Zambon agreed with Chairman Bonessi's statement.

Chairman Bonessi asked if Bennett had any evidence he would like to present.

Bennett referred to the Aerial Map that Planning Director Anthony Starr had submitted earlier. He mentioned the street name change onto the unpaved road (Cloverdale Street). He said set backs are greater in this section. He said R. H. Darnell from NCDOT was supposed to be his witness of this statement. Bennett restated that N. Egerton Road could be a Collector Road and he read the definition of a Collector Road from the Code. He stated that road handles 3,000 cars per day and the function of the Motorcross Park would only be approximately more 300 cars in the area near his site.

Chairman Bonessi asked if N. Edgerton actually handles 3,000 cars per day.

Bennett responded – yes and he was not trying to make N. Egerton Road a thoroughfare.

Tony Engel asked if all roads are essentially Collector Roads.

Gary Griffin felt that all roads are essentially Collector Roads. He then asked Bennett if N. Egerton Road dead ends.

Bennett stated several requirements of a Collector Road : 50 feet right-of-way, pavement, then asked if the board read the definition of a Collector Road. The general response of the board was yes, noted by head nods. Bennett feels the road can handle 300 cars and he wants to get the road reclassified if he can get approval of Zoning Board for use of the property today. He does not want to wait until the middle of next year. He felt that all the roads in the area were the same classification, as there are no stop signs.

Associate County Attorney Sara Zambon reminded the board that the case is similar to a re-zoning case.

Chairman Bonessi noted that the road dead ends.

Bennett noted that the code states the road can dead end.

Chairman Bonessi sited the state minimal guidelines and the Zoning Board is governed by the County Board's restrictive rules and the Zoning Board can't do anything about state guidelines. They can only work within the Henderson County Codes.

Bennett again sited how the definition of the code does fit his request and sited the high traffic area already. He stated that he lives 13 miles away, but when he ran the Motorcross Park before we had strict rules.

Chairman Bonessi stated the board must focus on whether N. Egerton Road is a Collector Road or a Local road and decide if they can reclassify it to a Collector Road.

Bennett stated he does not have another year. Under the definition he feels the Zoning Board can call N. Egerton road a Collector Road because of the traffic signs, etc. and asked the board to change it from a Local Road to a Collector Road, according to how he reads the code. He stated that if the road meets state and Federal standards then it should meet our County Codes to change it.

Associate County Attorney Sara Zambon said to Chairman Bonessi that unless Mr. Bennett has any other comments she recommends the board let Mr. Owens speak.

Bennett stated that state route 1633 is N. Egerton Road and Industrial Park Drive is N. Egerton Road, being that Industrial flows into N. Egerton.

Chairman Bonessi asked if anyone else had questions. There were none. Chairman Bonessi called James Owens to the stand.

Tony Engel asked Owens to point out the property on the map that Planning Director, Anthony Starr had supplied.

Jim Phelps asked the speed limit.

Planning Director Anthony Starr stated 35 m.p.h.

Gary Griffin felt it may be 45 m.p.h.

Owens stated that Cloverdale is a narrow road and if it was reclassified properties would be too close to the road.

Gary Griffin opened a discussion on the entrance and exit of Industrial Park Drive.

Chairman Bonessi reminded Griffin that the board was just discussing N. Egerton Road.

Ann Pouch asked if there was a stop sign at the end of N. Egerton Road.

Owens stated no, the road just curves.

Chairman Bonessi asked the board if there were any more questions of Owens. There were none. Then he asked if Bennett had a rebuttal to Owens' remarks.

Bennett had rebuttal, and wanted to reiterate that the road has no stop signs up to his house, the speed is 45 m.p.h., there are tractor trailers every 10 minutes and that if N. Egerton was reclassified to a Collector Road it could connect to Cloverdale and get to Route 25. He said, "It was one continuous road".

Chairman Bonessi thanked Bennett and asked for closing comments from staff.

Planning Director, Anthony Starr restated the definition of a Collector Road are for mobility and the definition of a Local Road is for final access to properties.

Chairman Bonessi asked Zoning Administrator, Toby Linville if he had anything to add.

Zoning Administrator, Toby Linville said no, because the board knows what the decision has to be made on.

Chairman Bonessi stated at this time the board will close public discussion – no further public comments.

Jim Phelps said he feels N. Egerton Road meets definition of local road. He was bothered by the speed limit. If it is 45 m.p.h., it is not in compliance with local speeds.

Associate County Attorney Sara Zambon reminded the board that the Henderson County Board of Commissioners did not look at *specific* roads to make the classifications. The board approved the definitions and the classifications were a policy decision in the Planning Department.

Ann Pouch said it looked to her that a lot of people use the road for a lot of business, it has a 45 m.p.h. speed limit and is state maintained.

Tony Engel stated that N. Egerton Road does not meet the definition of Local Road because of the speed limit. According to the Henderson County Board of Commissioners definition the road is not a Local Road and is up for interpretation.

Jim Phelps asked, "Do we know for sure that section of the road (N. Egerton) is 45 m.p.h. or are there varying speeds?"

Tony Engel said the board should be sure before they decide.

Gary Griffin said he was concerned. The road goes into an industrial park with trucks going into plants. There are many businesses located on the road, more than a housing development road. He observed the roads should have one name because they are continuous.

Tony Engel stated the board should know definitely if the speed is 45 m.p.h..

Chairman Bonessi asked if the speed limit was the sticking point for the board.

Jim Phelps commented that if it is 45 m.p.h. then the road needs to be a Collector Road.

Jim Crafton asked Associate County Attorney Sara Zambon if he could give his opinion.

Associate County Attorney Sara Zambon stated he could.

Jim Crafton stated that if a 45 m.p.h. speed limit sign is there it does not meet the Collector Road definition. As other Collector Roads in the county a 45 m.p.h. speed limit is irrelevant. The sign may not be in compliance. He said the board should not set a precedent for the county.

Gary Griffin said the area is in an industrial park.

Ann Pouch asked for clarification – what are we saying? – if it a Local Road then he (Bennett) can't have his business?

Zoning Administrator, Toby Linville said the board can recommend a text amendment from the Board of Commissioners (to take road classifications off of requirement). Bennett can attack the definition.

Associate County Attorney Sara Zambon said the only thing the board needs to do is decide if N. Egerton Road is Local Road or classified as something else. Bennett can apply for text amendment or explore other avenues. The board should look at road in terms of the definition regardless of Bennett's application (use) of the land.

Gary Griffin said the area is an industrial zone. He feels roads can be re-zoned because it is not a housing development. Roads should be different in an industrial park.

Jim Phelps said a Local Road is more than just inside a neighborhood.

Ann Pouch stated the board just needs to agree or disagree with staff's definition.

Tony Engel asked who determines road type.

Associate County Attorney Sara Zambon said that the Planning Department determines road types. Her legal opinion was the main thrust of definition is connecting things vs. final destination. – Anthony Starr can answer this better.

Chairman Bonessi stated the names on that one road are different but the state route number is the same all the way through. It dead ends – there is not connection. He also said the Commissioners may have asked for examples of what roads should be what types.

Ann Pouch said "this falls between the cracks".

Jim Phelps said no other businesses asked for reclassification of roads, but they are different from a Motorcross Park. Phelps asked Starr how the roads were classified.

Planning Director, Anthony Starr said their department used data from emergency services to classify zones. He said the intent was to be descriptive.

Chairman Bonessi asked if the speed is a determining factor.

Tony Engel asked if the board can make a decision with the information they have. He offered a motion to deny application of accept with a 4 out of 5 vote in this quasi judicial hearing.

Jim Crafton asked to raise a point of order.

Associate County Attorney Sara Zambon stated that he could.

Jim Crafton asked if the board is considering Bennett's appeal that was already decided.

Associate County Attorney Sara Zambon explained the board is not to appeal staff decision because the decision was based on how it was classed.

Planning Director, Anthony Starr responded that the Board of Commissioners approved the definitions and the Planning staff classified roads based on those definitions.

Jim Phelps asked does the board agree or disagree.

Associate County Attorney Sara Zambon stated the board needs to decide if the staff classification was correct.

Ann Pouch moved to uphold the Planning Department's decision on case A-07-16 and agree that N. Egerton Road be classified as a Local Road.

Tony Engel seconded the motion.

Chairman Bonessi asked for the vote. A 3 approval to 2 disapproval vote was reached. Bennett's appeal was denied.

Chairman Bonessi told Bennett he was sorry his appeal was denied and that he had other avenues to explore.

Bennett asked what avenues there were. He stated he was out of resources, time and everything.

Associate County Attorney Sara Zambon suggested to Bennett that he set up an appointment with Zoning or Planning staff to discuss his options.

Jim Phelps made a motion to close the public hearing.

Tony Engel offered a second to the motion. The board took a 5 minute break.

CLOSE HEARING

OLD BUSINESS

Chairman Bonessi asked to approve the minutes and orders of the last months meeting.

Ann Pouch moved to adopt the minutes as written.

Gary Griffin offered a second to the motion and all board members voted to approve the minutes as presented.

Jim Phelps signed the minutes and said they must be presented to Natalie Berry for her signature.

Chairman Bonessi asked for a motion to approve Denial Order V-07-15

Jim Phelps offered a motion to approve the order with a second from Tony Engel. The board voted 5-0 to approve the order.

Zoning Administrator, Toby Linville introduced Karen Ann Antonucci as the new Zoning Board of Adjustment Secretary. The board welcomed her.

Zoning Administrator, Toby Linville informed the board of a training on December 6 from 9 a.m. to 4 p.m. at AB Tech and that if anyone was interested to tell him by November 30th to register.

Zoning Administrator, Toby Linville Discussed the Land Development Code and what information it contained. He briefly gave an overview on the (P) Permit, (S) Special Use, (Blank) Not Allowed, and (SR) Supplemental Requirements sections. He also reviewed the other sections of the Land Development Code.

Chairman Bonessi said the board needed to discuss not having a December meeting on the normal day and time if there are no cases. He proposed a meeting on Wednesday, January 2, 2008.

Zoning Administrator, Toby Linville stated the meeting space is open on January 2, 2008 and reminded the board that the next meeting is on Wednesday, November 28th.

Chairman Bonessi offered a motion to approve having December's board meeting on January 2, 2008.

Gary Griffin offered a motion to hold the December meeting on January 2, 2008 with a second from Jim Phelps. The board voted 5-0 to hold the December meeting on January 2, 2008.

There being no further business, **Chairman Bonessi** made a motion to adjourn the meeting and Jim Phelps offered a second. The meeting was adjourned at 6:02 p.m. The next meeting will be on Wednesday, November 28th, 2007 at 4:00 p.m.

Dean Bonessi, Chairman

Karen Ann Antonucci, Secretary