

MINUTES OF THE HENDERSON COUNTY  
ZONING BOARD OF ADJUSTMENT

The Henderson County Zoning Board of Adjustment held its regularly scheduled July meeting on Wednesday, July 25, 2007, at 4:00 p.m. in the Board of Commissioners Meeting Room, 100 King Street, Hendersonville, North Carolina. Those present were: Vice Chairman Jim Phelps, Tony Engel, Ann Pouch, Alternates Jim Crafton and Eric Goodman, Zoning Administrator Natalie Berry, Associate County Attorney Sarah Zambon, and Secretary to the Board Joyce Karpowski.

Vice Chairman Phelps called the meeting to order at 4:04 PM. Vice Chairman Phelps presented the minutes of the meeting from June 27, 2007. Mr. Crafton moved to approve the minutes, Mrs. Pouch seconded, and all members voted to approve the minutes as presented. The Board decided to approve the orders at the end of the meeting.

Chairman Phelps explained the quasi-judicial procedure being used today.

Chairman Phelps called everyone forward who would be testifying in cases today. Sworn in were: Mary Coram, Erich Leatham, Robert Collins, and Natalie Berry, Zoning Administrator.

**Case V-07-13, Coram, Mary W., (owner)**, requests a fourteen (14) foot variance from the front yard setback requirement on Erkwood Drive and a thirty eight (38) foot six (6) inch variance from the front yard setback requirement on Hood Heights and a twenty one (21) foot six (6) inch variance from a rear/side yard setback requirement for an addition to an existing single family dwelling. The property is located at 125 Erkwood Drive and the zoning is R-40.

Mrs. Pouch made a motion to go into public hearing for Case V-07-13. Mr. Goodman seconded the motion and all voted in favor. Chairman Phelps asked if there was anyone else who wanted to participate in this action. There was no one. He asked Ms. Berry for her presentation.

Ms. Berry said, "The first case is Mary W. Coram, 125 Erkwood Drive. If you look at Exhibit A of my staff report that I handed out, it's not in your book, it's the one I handed out, you'll see a vicinity map just to give you an idea of where we're talking about. For those of you who's familiar with the area, it's right on the corner of Hood Heights and Erkwood Drive. The applicant is seeking to obtain a variance for an addition to an existing single family dwelling, approximately 20' x 30' addition and it's within the designated area reserved for the front yard setback as well as the side yard setback too. I didn't write it at the top. I did write it in the summary of issues. The application and appropriate fees were given to me on July 2. The zoning is R-40 for this particular parcel. The applicant requests a reduction of fourteen (14) foot from one front yard setback requirement; a thirty-eight and one-half (38.5) foot from the other front yard setback; and a sixteen and one-half (16.5) foot side yard setback. The dimensional requirements in an R-40 district are sixty (60) feet from the centerline of the roadway or right of way, thirty-five (35) feet from the side and rear property boundaries. The maximum height is unlimited and the minimum lot size of 40,000 square feet, which is 0.92 acres. The approximate size of this property is 0.22 acres. The Ordinance has a section in it where an applicant can apply for a pre-existing lot of record before the Zoning Ordinance went into effect. And in this case, she was granted that. If you look in your notebook, just behind her application, you'll see an order granting an existing lot application. The reason it was granted is the lot was subdivided in 1927 and the Zoning Ordinance went into effect in 1981. So that explains the reason the lot was a lot smaller than the district that it's in. The property has two front yard setbacks. Section 200-39.F - use of existing lot of record – where the owner of a lot of official record in any district at the time of the adoption of this chapter or any amendment thereto, or his successor in title thereto, does not own sufficient contiguous land to enable him to conform to the minimum lot size requirements of this chapter, such lot may be used as a building site, provided that the Board of Adjustment is authorized to approve as a variance such dimensions as

shall conform as closely as possible to the required dimensions. Pre-Existing Lot determination, which is what I read, I granted it July 2nd, 2007. The site plan showing the location of proposed addition is in the petitioner's application in your book. It's just behind the order you looked at. If you pull it out, you'll see the location of the addition. It's a 20 x 30 addition and it's going to be the same depth as the house, just extend out. The existing structure has 914 square feet of heated space according to the tax assessors office. And Exhibit "B" is photographs of the property in question. That's in the handout. The first one is a panoramic view that I put together to try to give you an overview of where we're at. Where you see the white van sitting, that is Hood Heights street and Erkwood is the one where you see the mailbox on it. Everybody with me? And then the second picture I'm just standing behind the house on Hood Heights taking the picture toward Erkwood. And now if you flip over to figure 3, that's the left hand side of the house just showing how close it is to the property line right now. The existing property line is just to the right of the picture where the bushes are. Figure 4 is the front of the existing structure. I'm standing on Hood Heights almost at the intersection of Hood Heights and Erkwood Drive. And if you look at your vicinity map while looking at the picture, you'll kind of get an idea of where I was standing when I took them. The last picture is figure 5, and that's, I'm in a neighboring driveway east of her house looking back, just showing you basically the front yard setback is heavily vegetated is what I'm showing here, because you can see the same white van sitting through the vegetation." Chairman Phelps said, "And that's the rooftop I'm seeing?" Ms. Berry said, "Yes, it is. And while I'm thinking about it, I would like to place this into evidence because Sarah is staring at me. Sorry I forgot. I'll try to remember that next time. That's about all I have other than I have one comment I would like to make on the side. If you look at your site plan in your notebook, the way our ordinance is written. Let's say this front yard setback off of Erkwood Drive was going to be met with 60 foot from the centerline, the only problem you would have is the 2 sides, the side and the other Hood Heights, I would be allowed to give that to them myself, because they're not encroaching any more than they already were with the house. That's only if they met the front yard setback, but since they couldn't meet it, that's why we're here. We have a problem with 3 sides on this. I was just giving you a little background. Normally if Erkwood Drive setback was met at 60 foot, I would have permitted it at my desk, is what I'm getting at because the house is already encroaching that much. And that's really all I have to explain."

Chairman Phelps said, "Well this is another case where we have 2 front yards." Ms. Berry said, "Yes, sir." Chairman Phelps said, "Okay, just for clarification." Ms. Berry said, "It's another one where we have that. I'm available for questions, if you have any. There are some pictures in the applicant's package, if you would like to see them. She's got her water and sewer letter in front. I believe they're on city water and city sewer. So we don't have a septic issue, is what I'm saying. That's all I have."

Chairman Phelps said, "Okay, Ms. Coram, would you like to address the Board? Provide any additional comments." Attorney Zambon said, "Ma'am, please could you come up and speak into the microphone?" Ms. Berry said, "If you have anything for your contractor to say, you need to call him as a witness. Once you get up here, call him as a witness and he can answer the questions, if you like." Ms. Coram said, "Okay, I would like to call Erich as a witness." Attorney Zambon said, "Could you spell your name please?" Mr. Leatham said, "Erich, last name is Leatham." Attorney Zambon said, "L-A-T-H-A-M?" Mr. Leatham said, "It's L-E-A." Attorney Zambon said, "L-E-A-THAM?" Mr. Leatham said, "Yes, and the first name is E-R-I-C-H." Attorney Zambon said, "E-R-I-C-H. Thank you."

Ms. Coram said, "Well we would just like to add on so I could have a large enough bathroom and bedroom area because eventually I will be in a wheelchair. And I would like to have the bathroom shower big enough so I could put a wheelchair in. This is not right soon, but I know it's to come." Chairman Phelps said, "Are you already on city water and sewer and this application is just for the addition?" Ms. Coram said, "I am on city water. We have applied for the sewer. I'm not currently on the sewer. We will be putting in sewer when we do the addition." Ms. Berry said, "So you do have a septic tank right now?" Ms. Coram said, "Yes." Ms. Berry said, "Okay, I didn't know that."

Mrs. Pouch said, "Would you have to get a permit? Could you add on, would the new part of your building interfere with your septic tank, is what I'm trying to say?" Mr. Leatham said, "Will it interfere?"

Ms. Berry said, "Where is the septic system at?" Mr. Leatham said, "Well the drain field, I believe, is on the other side." Chairman Phelps said, "The other side by the carport, that side?" Mr. Leatham said, "Yes." Chairman Phelps said, "So it's not a problem where you're building now?" Mr. Leatham said, "No." Mrs. Pouch said, "Is this house for you? There were several names down here as owners of the house. Was it an investment or your home?" Ms. Coram said, "No, it's my home. I put it in my son's, Scott Treadway, name with me as a life estate. I want him to have it when I cross over the river."

Chairman Phelps said, "Do you see any construction problems with lot? Would this addition be of any significance?" Mr. Leatham said, "It'll actually be a great improvement to the area. We'll make some elevation changes and it'll be very attractive to the area." Chairman Phelps said, "And it'll blend with the existing structure, as far as roof, colors, etc.?" Mr. Leatham said, "It will improve it." Ms. Berry said, "I did have one question that I didn't get to ask. Is the vegetation going to stay out at Erkwood?" Mr. Leatham said, "Yes, we really don't encroach into the vegetation." Ms. Berry said, "Right. They've got a fairly flat yard between the vegetation and the house itself." Mr. Goodman said, "Is the house screened from the road?" Ms. Berry said, "Yes, heavily screened, that's why I was asking is it going to be taken down or." Mr. Leatham said, "Yes, and the addition will be screened as well." Ms. Berry said, "That was one thing I meant to ask and I didn't get to ask it."

Mr. Crafton said, "This lot is smaller than R-40 and it predates zoning. How are the other lots in that area? Are they smaller than R-40 or are many of them R-40 sized lots?" Mr. Leatham said, "The original plat, they're all very small." Ms. Berry said, "The original plat was most of that neighborhood. It was 1927." Mr. Crafton said, "And how are the setbacks for the other houses in that area?" Mr. Leatham said, "Well the one directly across the street on Hood Heights is close to Hood Heights, closer than this property. The one on the other side on Erkwood, I think I put the dimensions somewhere in the map. It's very close also. It doesn't conform – I'm thinking it was 35 feet. It's very close also." Mr. Crafton said, "The reason that I ask is because one of the things that we have to find is that one, your request is in line with the intent of the ordinance and that it's in line with what's appropriate within the area. It wouldn't by itself stand out and wasn't in violation of the ordinance." Mr. Leatham said, "No, I don't believe it would stand out. It would really blend in with the surroundings."

Chairman Phelps said, "Okay. Are there any additional questions?" Ms. Berry said, "I didn't read the last part of my zoning official's report because it's just the powers and duties of the Zoning Board of Adjustment and it goes to explain when you can do a variance. If you just want to read it at your convenience, in case you need it to look at or follow with, you know on the hardships. It's just an outline on the back side of the front page. Just give you some guidance." Chairman Phelps said, "You can be seated then." Mr. Leatham said, "Thank you." Chairman Phelps said, "Thank you, very much, for your testimony. At this time then I'll ask if there's a motion that we go out of public hearing to discuss this matter." Mr. Engel made the motion, Mr. Goodman seconded, and all voted in favor. Chairman Phelps said that they were now out of public hearing and now open for Board discussion.

Chairman Phelps read the affirmative findings of fact necessary to grant a variance from the Zoning Official's report. The Board agreed with #1, about securing a reasonable return from or making reasonable use of his property. The hardship results from unique circumstances related to the applicant's land. The lot was smaller in 1927 than the new zoning and is pre-existing. The hardship is not the result of the applicant's action. The Board said it was nothing she did. The variance is in harmony with the general purpose and intent of this chapter and will preserve its spirit. The Board agreed and said it was in harmony with the rest of the neighborhood and wouldn't have an adverse effect of the neighborhood. They said it was screened and not right on the edge of the road. The variance will secure the public safety and welfare and do substantial justice. The Board said it seems to and there have been no objections from any neighbors. The existence of a nonconforming use of neighboring land, buildings or structures shall not constitute a reason for the requested variance. The Board felt that was not the case.

Mr. Crafton said that because other homes in the area were close to the road, that is not justification for a new one. He spoke about reasonable use but not increase the value of the property. He said that her lot is too small to sustain the addition in the R-40 area. He said that he felt that this variance would not be in line with the intent for the R-40 district and the setbacks for the R-40 area. Mr. Engel said that the atmosphere existed in the neighborhood before it was zoned. He said with the size of the lot, you couldn't meet the R-40 setbacks and, to get reasonable use, the Board should go along with it. Mr. Crafton suggested modifying the home instead of adding on to the home. Mr. Engel said the home was very small. Mrs. Pouch said the Board's job is to look at each individual request and if they went by the letter of the law, they wouldn't be giving any variances at all. She said the Board needs to be flexible and reasonable. Chairman Phelps said, under the proposed new land development code, the 2 front yards would not be an issue but she might need a 1 or 2 foot variance for the side yard. The Board discussed the 2 front yard issue and the possible future change.

Mrs. Pouch made a motion to approve the variance and Mr. Engel seconded the motion. There was no further discussion and Chairman Phelps called the vote.

Mr. Crafton	-	Yes
Mr. Goodwin	-	Yes
Mrs. Pouch	-	Yes
Mr. Phelps	-	Yes
Mr. Engel	-	Yes

Chairman Phelps said the variance has been approved.

**Case V-07-014, Collins, Sr., Robert L. (owner),** requests a two (2) foot variance from the side and rear yard setback requirement at 105 Mine Gap Road to construct an accessory building in the rear yard. The zoning is R-10.

Chairman Phelps called the next case and asked for a motion to go into public hearing. Mr. Engel made the motion, Mr. Crafton seconded the motion and all voted in favor. Chairman Phelps asked Mr. Collins if he understood the quasi-judicial proceedings from the earlier explanation. Mr. Collins said yes.

Ms. Berry said, "I would like to enter my zoning report into evidence. Variance V-07-14, the applicant is Robert Lee Collins. He is also the owner and he resides at 105 Mine Gap Road, East Flat Rock, North Carolina. The applicant is seeking to obtain a variance for an already placed accessory structure. The dimensions of the structure are 18' wide by 20' deep by 9' high. And it's within the designated area reserved for the side and rear yard setback. The application and appropriate fees requesting the variance were received on July 2, 2007. The zoning, the parcel is zoned R-10. The size of the lot is 0.53 acres. Section 200-46.A in the Zoning Ordinance says accessory structures and buildings shall be permitted in rear yards, provided that they are located not less than 10 feet from any property line. Section 200-46.D, in no case shall an accessory structure or building be permitted in any front, side or rear yard if it exceeds 15 feet in height or if it occupies more than 30% of the required yard area; however, height restrictions do not apply on lots of one acre or more. The applicant requests a reduction of two (2) feet from the rear and two (2) feet from the side yard setback requirements. If you look at Exhibit A first, it will give you a vicinity map of where the parcel is. And it's right off of West Blue Ridge Road. You would turn left if you were coming from Spartanburg Highway onto Roper Road and then right onto Mine Gap road. And it's the second lot on your right. If you look at Exhibit "B" you'll see some photographs. Figure 1 is a photograph of the accessory structure."

Chairman Phelps said, "And how tall is that?" Ms. Berry said, "9 foot. And that's according to the applicant. I didn't have the means to be able to measure it myself. Figure 2 is the rear of the accessory structure. And my purpose of that picture is to show you the tree right behind it. Figure 3 is the right front corner of the accessory structure and it's the same reason showing you the tree that's right in front it. Figure 4 is just going across the front of the accessory structure looking back toward his home. That's the home that this property is on and you'll see a fenced yard and a swing set between

the 2 trees on the right hand side. Figure 5 is a view from the house going back to the accessory structure. You'll see a swimming pool and a swing set and the accessory structure in the background."

Chairman Phelps said, "So that's an above ground pool?" Ms. Berry said, "Yes. If you look at your application in your package, I believe he provided a sketch just behind the application showing you what the property looks like from a bird's eye view and the accessory is in the back corner. Then the 10 feet is to each of the property lines. In this particular zoning district, your side and rear yard setbacks are 10 feet anyway. But when you have an accessory structure, no matter what district you're in, they go back 10 feet if it's the rear yard. But this case, it's 10 feet either way. It didn't really matter."

Mr. Goodwin said, "Even in an unzoned area?" Ms. Berry said, "Well in an unzoned area – it doesn't even matter in an unzoned area. The next sheet of paper in the application was a notice of a possible violation on the property. We had received a complaint about the accessory structure and Mr. Case went out, one of our officers, and checked it out. And indeed the cement slab had been poured within 8 foot of the property line on 2 sides. So he instructed Mr. Collins to either remove it or he could request a variance. And that's what he did. So he turned in a variance request and the next sheet of paper Mr. Case issued a stop work order just in case to let him know that he couldn't proceed any further until this was resolved."

Mrs. Pouch said, "He thought he hadn't put the building up?" Ms. Berry said, "Yes he did, but my understanding when he talked to Mr. Case about that he said the day he was there, the slab was poured and an appointment was made for it to be set the next day. And he did go ahead and set it. That's the only information I have on that. The slab was poured, which the slab itself would not have been a violation if there hadn't been an accessory structure sitting on it. Because it wouldn't be a structure at that point. It would just be like a patio would be."

Chairman Phelps said, "You mean if you hadn't put a structure on it?" Ms. Berry said, "Right." Chairman Phelps said, "Just the concrete is okay?" Ms. Berry said, "Yes. And I guess when you're buying something from Lowe's or Home Depot and they've made you an appointment, I guess he didn't want to cancel that since he had already had it set. And he had a request in for a variance but there is no guarantee that it would be granted. And I think he understood that. So I think he proceeded at his own risk is what I'm getting at, knowing that. But I'll let him speak for that."

Chairman Phelps said, "Any questions for Natalie from the Board? Mr. Collins would you like to come up to the podium and address the Board and present your case please. State your name and address again for the record."

Mr. Collins came to the podium and said, "I'm Robert Collins and I live at 105 Mine Gap Road. The only reason I set that building back is you notice on that one picture you see that big white oak tree right there. And if I'd have moved that building 3 foot forward and 3 foot the other way, it would have been dead foot on that tree. Really close and I didn't want it that close to that tree. And as far as them big trees like that, them big roots go almost back to the building where it sits right now. And I would have had to pour the slab right on top of the tree roots if I'd have moved it up farther. And that's one reason I set it back, because I want to leave that big tree. So I did set the building even though they told me not to but, as she said, I had that building coming and I didn't have no choice but to set the building. These people work off of dates and when they bring it, it's, you know they either sit it in your yard and you put it up or let them put it up."

Chairman Phelps said, "And this is on the very back." Mr. Collins said, "Right at the very back corner, yes. Right off in the corner of my lot." Ms. Berry said, "This little site plan gives you a little better." Chairman Phelps said, "Yea, I was trying to relate that to picture of." Several people spoke at once. Mr. Collins said, "It's right on the corner of the lot back there." Ms. Berry said, "And the fence in the first picture, not the first picture. Let's see the fourth picture in his application shows a fence and some fire wood, if you look at his site plan, you'll see a number 2, right below the site for the accessory structure."

That's where that fence is. And the woodpile is on number 5, just behind where the accessory structure is." Mr. Collins said, "And that woodpile, I don't know what it's not the plastic behind the building. Those trees is on the other guy's property, right there. I own that tree right there too. He put those trees up about 5 or 6 years ago to keep from seeing me." Mr. Engel said, "So that shed is on his property?" Mr. Collins said, "Right, the one behind the tree." Mrs. Pouch said, "All those trees behind the play set and everything are on your neighbor's property?" Someone said, "That's the neighbor's property." Mr. Collins said, "Well, he actually set them dead on the line. I'm going to have to talk to him about them." Mrs. Pouch said, "I mean these trees." Several people spoke at once. Mr. Collins said, "That one big tree there is mine, the little trees is his." Mrs. Pouch said, "This is his tree." Chairman Phelps said, "That ??? patch, is that his?" Mr. Collins said, "That's the other neighbors." Chairman Phelps said, "So, okay." Mr. Collins said, "That's the neighbors right beside where the building is in the corner. That's his property." Chairman Phelps said, "I was trying to get." Mr. Engel said, "The other property runs deeper than yours." Mr. Collins said, "Right." Mrs. Pouch said, "What is this? It looks like another shed, a white building. That's his?" Mr. Collins said, "Yes." Chairman Phelps said, "So it's really close. There's 2 sheds there in close proximity. So really he has a shed as well." Mr. Collins said, "Right." Chairman Phelps said, "And we're talking a grand total of 2 feet?" Mr. Collins said, "Two, right." Ms. Berry said, "Yes, sir, 2 each. 2 on one side." Chairman Phelps said, "Two and two on the other. Did you say you had received a complaint?" Mr. Collins said, "Well, it's the same guy with the white shed. He came and asked me where I was going to put it. I told him I was going to put the building there and he wants me to put it way up in the yard. And I said no, buddy, I'm not going to do that. He just don't want to look at my building. And I spent a lot of money on that building to make it look nice, you know. As nice as the house and everything. I spent extra money to buy the soffit at the top you know and I put a bigger garage door in it. And I got it trimmed out the same color as the house. You know, and I know it looks really nice there." Mr. Engel said, "At the time he complained, did he have his shed there?" Mr. Collins said, "Yeah, I mean he bought that place with the little shed there." Chairman Phelps said, "So this appears to be a nicer building than his shed, right?" Mr. Collins said, "Yes." Chairman Phelps said, "In your opinion." Mr. Collins said, "Well I'm sure of it."

Mrs. Pouch said, "But if you had cut your tree, you'd have plenty of room to move it over." Mr. Collins said, "Yeah. I really don't want to cut that tree because there's a lot of pine trees in there that I have to cut. And I have to cut them down because several of them fell on houses around here. And I only have 3 hardwood trees in that whole yard that I'm going to be able to keep." Mr. Goodman said, "He wants to save his trees." Mrs. Pouch said, "It costs a lot of money." Mr. Crafton said, "The one tree that you want to save is the reason you couldn't move the building back further appears to be in front of part of your overhead door. Is that not going to be a problem?" Mr. Collins said, "It would have been if I'd have moved it over. That tree, it would have been right against the door, if I'd have moved it over." Chairman Phelps said, "It's close now." Mr. Collins said, "Right. It's close now, yeah." Chairman Phelps said, "And it is in the back corner away from the public street." Mr. Collins said, "Right, it's all the way in the back of the lot." Chairman Phelps said, "And is this general storage or vehicular storage or?" Mr. Collins said, "No I'm. So, it's just tools." Chairman Phelps said, "Tools, yard utensils." Mr. Collins said, "Tools. There's no electric or anything to it." Mr. Goodman said – (couldn't understand). Ms. Berry said, "Well one's out toward the street further." Mr. Collins said, "But all the neighbors around there like it. You know, they thought it was a real nice looking building."

Chairman Phelps said, "The trees that have been added by the neighbor, this is all gonna be just a." Mr. Collins said, "In five years of growth, he won't see it." Chairman Phelps said, "Growth area. I mean it's just gonna be, look at some of those trees, they are a very fast growing type." Mr. Collins said, "Right."

Mrs. Pouch said, "Why didn't you get a permit?" Mr. Collins said, "Well, I actually didn't know I had to get one for that type of building. You know, years ago you didn't have to get a permit for that type of building. You could just set them up. But now, what I found about all this stuff, anything over a 12 x 12, you have to get a permit." Mr. Goodman said, "How big's that building?" Mr. Collins said, "It's actually 18 x 20." Mr. Goodman said, "Does it have any utilities to it?" Mr. Collins said, "No, no electric, no

nothing.” Chairman Phelps said, “So if you’re going to ??? a building. Well there’s a lot of other stuff in the general area, as far as that place head and the above the ground pool.” Ms. Berry said, “That was one reason, I think, the applicant chose the corner is because he didn’t want to have to move the swing.” Several people spoke at once. Mr. Collins said, “I didn’t want to have to set that fill any farther up than I have to. You know I wanted to leave the yard for the kids.” Mr. Goodman said, “It would have been so much easier to build with just a permit.” Ms. Berry said, “A zoning permit and a building permit.” Mr. Goodman said, “Right, right, but that’s what I’m saying – there’s no electrical, no plumbing, no heat.” Ms. Berry said, “It would’ve been a straight building permit.” Mr. Crafton said, “Did you grant him that, what he’s asking us for? If he’d come for a building permit, would he have gotten one?” Ms. Berry said, “No.” Mrs. Pouch said, “He would have had to ask us for a variance.” Ms. Berry said, “He would have been instructed to either ask for a variance or shift the building. And if he were granted the variance, he still has to get his building permit. He still has to go through the proper channels, even though it’s already set up.” Mr. Engel said, “Do you know that your slab meets the requirements of the building department?” Mr. Collins said, “Oh, yeah. It’s a monolithic slab, it’s good. It’s 8 inches on the side and it’s 4 inches thick. Yeah, I pulled my ??? I’m a mason.” Mr. Engel said, “Oh, okay. How come it’s not a brick building you put up?” Mr. Collins said, “Too expensive.”

Chairman Phelps said, “And it does not occupy more than 30% of the yard, right?” Ms. Berry said, “No.” Chairman Phelps said, “And the height of the overall percentage.” Ms. Berry said, “What I did was I underlined what I really thought applied in the sentence was the 15 feet in height and when I was out to the site, I failed to measure the height of it. So I called the applicant and he told me it was 9 foot high and I’m not tall enough to measure that on my own.” Mr. Engel said, “You can see from the door, it’s not over the fifteen.” Ms. Berry said, “I don’t feel it’s over 15. I was out there and I don’t feel like it overshadowed me that far. I’m not 15 foot tall.”

Mr. Goodman said, “It’s kind of like a well meaning mistake.” Mrs. Pouch said, “You said you’re a mason. Then you’ve built with people having to get permits to build.” Mr. Collins said, “No. I don’t get no permits.” Mrs. Pouch said, “You don’t.” Mr. Collins said, “The contractor does all that. You see I work for ??? Construction, building the schoolhouse up there.” Mr. Crafton said, “Is he in violation of any other ordinances for the fact that he erected the building without any permit?” Ms. Berry said, “The building department. But if he gets a variance, and he gets a building permit, they’ll go out and make sure it sets right and that’ll clean the slate for him. But he is in violation at this point, yes.” Mr. Crafton said, “The reason I asked the question is to be sure that there’s nothing else that’s going to affect him outside of what we choose to do.” Ms. Berry said, “Not to my knowledge. The only other, well he would have to get, he would come into the office, get a zoning permit. From that point he’d go to the septic environmental health and they’ll make sure that it’s not sitting on the septic system and I would assume you knew where that was?” Mr. Collins said, “Yes.” Ms. Berry said, “And then once they approve that, then the building permit would be issued. And they would go out and make sure it was constructed correctly. And that would be the end of it. From that point, he got all approvals, he would be done.”

Mr. Crafton said, “How long have you been doing masonry work?” Mr. Collins said, “All my life. About 25 years. I had my own business for 17.”

Chairman Phelps said, “Natalie, when we make a motion could we make a condition that the building permit would be had?” Ms. Berry said, “Yes.” Mr. Goodman said, “He’d have to do that anyway, right?” Ms. Berry said, “Yes.” Chairman Phelps said, “Technically yes. But I just think if you really want to get.” Ms. Berry said, “It’d be a good idea.” Attorney Zambon said, “Do you want the condition to be that he has to bring proof that the zoning permit has been issued to Natalie?” Chairman Phelps said, “Yes.” Attorney Zambon said, “That just seems the easiest way for us to ask.” Ms. Berry said, “You could say to bring the certificate of compliance, not the building permit.” Chairman Phelps said, “Do you think we ought to put the certificate of completion?” Ms. Berry said, “That way it says everything’s fine, the other doesn’t mean it was done right.”

Chairman Phelps said, "Any other questions of Mr. Collins? If not, do you have any other comments to the Board?" Mr. Collins said, "No I don't. Just thank you." Chairman Phelps said, "Thank you. And I will now entertain a motion that we go out of public hearing." Mr. Crafton said, "So moved." Mr. Goodman said, "Second." Chairman Phelps said, "All in favor." All voted in favor of the motion. Chairman Phelps said they were now out of public hearing.

Chairman Phelps asked for discussion from the Board. Mr. Crafton said that Mr. Collins has spent a good deal of money for this building, but he has been a contractor for 25 years and should know that you need building permits. He questions which is more important – saving a tree or abiding by the ordinances. He feels this is more of a problem because the building is in place, although there was a stop work order in place. He feels the hardship was brought on by the applicant himself by not seeking a permit or variance. He spoke about, if the variance was denied, what the applicant would have to do to move the building 2 feet in each direction. He said the Board is faced with being compassionate based on the applicant's errors.

Mr. Engel said if the building were moved the required 2 feet, you really wouldn't be able to tell any difference from the street or by the neighbors. He said the building where it is, 8 feet from the property lines, doesn't have any significant impact on the neighborhood. Mr. Goodman said the only difference would be the tree missing.

The Board discussed if this was changing the Ordinance or making an exception.

Mrs. Pouch said she had a problem with the applicant putting the building up after he was told not to.

Chairman Phelps said that the building will be screened off as the trees grow. Mr. Engel said there were no neighbors here complaining. Ms. Berry spoke about the original complaint and that she did not know who that was.

Mr. Crafton asked about placing conditions on the variance if granted. Chairman Phelps asked about placing a fine for having violated the ordinance. Attorney Zambon said that Code Enforcement could impose fines for being in violation of the stop work order.

Chairman Phelps asked about one of the pictures with yellow stakes in it. He said it looked like it was at an angle. Ms. Berry said the stakes were where the property line was and it is at an angle being further away at one point. Mr. Engel asked where the 8 feet was measured from. Ms. Berry said from the closest point and the farthest point was probably 8.25 feet. The Board asked Ms. Berry to be more specific next time in the measurement.

The Board suggested it was probably better having the storage inside the building as opposed to everything outside.

Mr. Crafton said that he would be more comfortable granting the variance with conditions. The Board discussed not being able to replace the building if something happened to it, but the Ordinance allows this as long as it is in the same footprint.

The Board spoke about fines and Attorney Zambon said it is not within the Board's authority to apply fines. She said the Board could suggest to Zoning Enforcement about fines but the Board can't do any more than that.

Ms. Berry spoke about more accessory structures and said the Ordinance states that 30% of the area can be accessory structures, but does not state any number as a limit of structures.



Mr. Crafton said that there weren't any conditions that could be placed. Mr. Engel said just the recommendation to the Zoning Administrator. Attorney Zambon said the condition to bring a certificate of completion to Natalie.

Chairman Phelps said he just noticed the dog on the site plan and asked if the dog lot and the accessory building could have been swapped. Ms. Berry said that could have been an option. But we don't know where the septic system is and it could be there.

Mr. Goodman asked what would happen if environmental health found the building on the septic system? Ms. Berry said that he would have to take it down or get a variance from environmental health. The Board decided that by requiring the certificate of completion, all the proper steps would have been taken and the building would meet all building requirements. The Board spoke about giving a time limit to get the certificate of completion. Ms. Berry said to just be reasonable about a time limit. The Board decided on 60 days and Attorney Zambon said that she could put in the variance if the conditions were not met within 60 days the variance is null and void unless the Zoning Administrator found extenuating circumstances.

Mr. Crafton made a motion to approve the variance with the following conditions: that the applicant provide to the Zoning Administrator all the following documentation: all approvals and a certificate of completion; and that this variance expire within 60 days failing that proof of documentation with discretion being given to the Zoning Administrator for any extension. Mr. Goodman seconded the motion. Chairman Phelps asked for further discussion. Mr. Engel asked about Natalie looking into fines. Ms. Berry said that she can only fine \$50 per day, so the Board decided against that. The Board just recommended that Natalie, Sarah and Toby look into a fine. Chairman Phelps called the question.

Mr. Crafton	-	Yes
Mr. Goodwin	-	Yes
Mrs. Pouch	-	No
Mr. Phelps	-	Yes
Mr. Engel	-	Yes

Chairman Phelps said the variance has been approved with the conditions stated.

COMMITTEE AND STAFF REPORTS: Attorney Zambon suggested the Board review the hypothetical cases at each meeting, perhaps 5 to 10 per meeting. Chairman Phelps said not to exceed 30 minutes. Attorney Zambon told the Board the schedule for the new Land Development Code, when workshops and hearings were being held. She suggested having a workshop at the next Board meeting after the Commissioners approve the Code. Ms. Berry suggested setting a special meeting of the Board because of possible applications to the Board. The Board discussed this. Chairman Phelps suggested the alternates also attend these meetings.

OLD BUSINESS: Orders – Attorney Zambon said she felt comfortable with all members of the Board voting on the Orders because all the material was in the Board's notebooks for the members to read beforehand. Mr. Engel made a motion to accept the orders as written and Mrs. Pouch seconded. Mr. Goodman, Mrs. Pouch, Mr. Phelps and Mr. Engel approved the motion.

NEW BUSINESS: None

There being no further business Chairman Phelps adjourned the meeting at 5:37 PM. The next meeting is Wednesday, August 29, 2007, at 4 PM.

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Jim Phelps, Vice Chairman

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Joyce Karpowski, Secretary