

MINUTES OF THE HENDERSON COUNTY
ZONING BOARD OF ADJUSTMENT

The Henderson County Zoning Board of Adjustment held its regularly scheduled May meeting on Wednesday, May 30, 2007, at 4:00 p.m. in the Board of Commissioners Meeting Room, 100 King Street, Hendersonville, North Carolina. Those present were: Chairman Dean Bonessi, Gary Griffin, Jim Phelps, Ann Pouch, Zoning Administrator Natalie Berry, Associate County Attorney Sarah Zambon, and Secretary to the Board Joyce Karpowski. Alternate Janice Brown came later in the meeting.

Chairman Dean Bonessi called the meeting to order at 4:05 PM. Chairman Bonessi presented the minutes of the meeting from April 25, 2007. Mrs. Pouch moved to approve the minutes, Mr. Griffin seconded, and four members voted to approve the minutes as presented. Mr. Phelps wanted to make sure that the approval was only for the minutes and not for the minutes and orders as written in the agenda.

Chairman Bonessi asked to move the agenda around because he felt that he had a conflict in two of the cases and wanted to get Attorney Zambon's opinion. He said that for Case V-07-07 he was on the Board at Heatherwood Subdivision and helped rewrite the covenants and had previously recused himself in a prior case involving the subdivision. He questioned where that left the Board, being short one member today. Attorney Zambon gave options that the Board could continue the 2 cases, give the applicant and parties in interest the option of Chairman Bonessi not voting and his vote being counted as a yes vote, or there not being a quorum. Chairman Bonessi said the other case was Case V-07-10. He worked with the applicant, Mr. McFalls. Ms. Berry said the Board should get the applicant's opinion. Chairman Bonessi asked Ms. Telker. She spoke about her property being useless because of her septic system, and she has waited since April and then this would drag on into June and July. Ms. Telker said she didn't understand how the covenants of Heatherwood would affect her case today. Chairman Bonessi said it wasn't the covenants themselves, but being consistent with his previous actions. Attorney Zambon asked Ms. Telker if she was okay with the fact that there were only 4 Board members present and all would have to vote yes to approve the Variance. Ms. Telker said yes. Attorney Zambon said that the Board wants to make Ms. Telker aware that the Chairman lived in Heatherwood and also that if he recuses himself and it is accepted by the Board, then because he is present his vote will be counted as an approving vote. Mr. Griffin said the Board should hear the case, she has waited and asked how the chairman felt. Chairman Bonessi said he would rather recuse himself because it was consistent with what has been done in the past. He said if the Board was not okay with that, then the only option is to continue the case. Attorney Zambon read the regulations that Henderson County uses for quasi-judicial proceedings. There was nothing that applied. The Board discussed what would happen if he recused himself. Mr. McFalls said that he would not want to wait until next month. While Attorney Zambon and Ms. Berry were looking at the Zoning Ordinance, Chairman Bonessi explained the quasi-judicial proceeding which would be used for the Variance and Conditional Use hearings.

Chairman Bonessi called everyone forward who would be testifying in Cases V-07-07, V-07-08, CU-07-09, and V-07-10. Sworn in were: Natalie Berry, Zoning Administrator; Maurice (Moe) McFalls; Elizabeth Luce; Damien Luce; Eddie Heriberto Patino; Linda Cagle; David Cagle; Rachel Capps; and JoAnne Telker.

Chairman Bonessi asked if there was any more information on his recusing himself. Attorney Zambon said that the book "Zoning Board of Adjustment in North Carolina" said that the Board should adopt a rule, which we currently do not have, that says no member shall be excused from voting except when immediate personal or financial issues preclude impartial consideration of the issues involved. Therefore you could not be excused because Chairman Bonessi does not have immediate personal or financial interest involved. This rule is precisely for this reason today, where there is a problem with

quorum if Chairman Bonessi recuses himself. Attorney Zambon said if Chairman Bonessi feels that he does have a personal or financial interest with these cases, she recommends that the Board continue the cases until there is a full Board because the 4/5ths voting rule is pretty strict. Chairman Bonessi said he felt that he can be impartial in both these cases. He said if the Board and the people involved in the cases feel comfortable with him sitting on the Board, then we can go forward. Ms. Berry said to ask each one to come up and state if they are okay with it. Ms. Telker said it was fine with her. Mr. McFalls said he felt Chairman Bonessi would be impartial.

Case V-07-07, Telker, JoAnne M. Trustee, Revocable Trust (petitioner), requests a fifteen (15) foot variance from the side yard setback requirement of an existing structure at 2401 Glenheath Drive to construct a 15 x 25 foot swimming pool and the zoning is R-30.

Chairman Bonessi called Case V-07-07. Ms. Berry said that she would like to place both the power point presentation and the Zoning Official's report into evidence. She continued, "The zoning in this case is R-30, that is a low density residential district. The district is intended to be a quiet, low-density neighborhood consisting of single-family residences. The setbacks for that district: the front yard is 60 foot from the centerline of the minor roads and Glenheath is a minor road and so is Rugby. Side and rear yards are 30 foot setback from the property boundary. Maximum height is unlimited. There is a note that this property has two (2) front yard setback requirements. If you look at Exhibit A, you'll see a red square right about Rugby Drive, North Rugby Road rather, you'll notice there's 2 roads, one on each side of the lot. In the current zoning ordinance, you have to apply front yard setbacks when there is a right of way butting up against the property. That's the reason for the 2 front yards. In this, that doesn't even play into the problem. What we're looking at is the side yard but I just wanted to explain that. The lot size - the minimum lot size is 30,000 square feet. In this case we have 31,000, so we have a large enough lot. The reduction requested is 15 feet. There is a total of approximately 50 feet from the edge of existing house to the side yard property line. There is a 15 foot setback required by the North Carolina State Building Code department from edge of the building to any structure (to keep from the foundation being undermined when excavation occurs). So when you're doing any excavating you don't want the foundation wall to cave in. Then there is another 15 foot setback required by the Environmental Health department from the edge of septic system (to protect the lines from being disturbed when excavation occurs). It has a relatively large septic system in the backyard and due to landscaping, the pool is going to be constructed at a slight angle." Ms. Telker said "It is going to be straight."

Ms. Berry said, "If that's an issue, we'll talk about that in a few minutes. This is a drawing I put together. Can everybody see? You see the 2 circles, the one from the edge of the house is for the North Carolina building code to keep from undermining the foundation. The other one is from the edge of the septic system and you see that leaves 15 foot left from the edge of the swimming pool to the edge of the property boundary and the requirement is 30 feet. If you look on the opposite side of the house, you're going to see the sewerage pump and then, of course, the front yard is where I say front of home, so you wouldn't want to put the swimming pool in the front yard. So that doesn't leave much space left to be able to place the swimming pool. If you look at your next photograph here, you'll see the flags that we have out and the fourth one is in the shrubs. That's why you can't see it. But I put red circles around the other three, just to kind of show you where the layout is. And that's all I have. So if you have any questions for me, I'll be glad to answer them."

Mrs. Pouch asked, "Will there be a fence around this pool?" Ms. Telker said, "Yes, Ma'am."

Chairman Bonessi said, "Do you have any questions for Natalie at this time? Ma'am, do you have anything to add to what Natalie just said?" Ms. Telker said, "Just that the pool, we were going to put it at an angle in an effort to save our Dogwood tree, but we will put it straight if we have to and take that part of the landscaping out. The only other suggestion the gentleman (Toby Linville, Code Enforcement Services Director) made when he came out to look at the yard was to put it in the back corner. And that was taking down 6 trees and that was not acceptable to me. That's the only other place he said it might

be able to go. I won't do that. In other words my yard has woods on one corner and what he said was we possibly could put it there because the way the septic was configured. But that would necessitate taking down 6 mature trees and I'd sacrifice the Dogwood." Chairman Bonessi said, "So the way you have this layout now, this does the least amount of, this disturbs the vegetation the least that it would?" Ms. Telker said, "Well as far as the trees are concerned, the side yard is planted with all kinds of perennials and things. The woman who owned the house initially 30 years ago did a tremendous job and we didn't realize we were going to be restricted on the side yard and then when we found that out, we started playing with. The gentleman was out with the pool, from the pool company, a gentleman was out from their office and they were playing with, you know, 15 x 21, 12 x 25, 14 x 30, trying to figure out because of the angle. I'd just as soon get rid of the angle." Ms. Berry said, "If you straightened it out, it would probably reduce the need for 15 foot, down maybe to 13 foot. That's about the most you could make - about 2 foot of difference, once you turn it and get it straight." Ms. Telker said, "Actually, if we could get the fifteen set offset from the neighbors."

Mrs. Pouch said, "Did you say that there is a place to put the pool, but you didn't want to cut down trees." Ms. Telker said, "No we said there could not be a possibility." Ms. Berry said, "Toby (Linville) was the one thinking there might have been a possibility." Ms. Telker said, "At one point he thought that, but he said this was the only thing because when we got into it, we found out that the septic lines on the plat were put at an angle like this and they're actually put at an angle like that. So that they went further back into the woods than we thought. We thought we found the last line and then we found one more." Ms. Berry said, "Toby spent several hours trying to come up with a good answer and this is the best answer they could come up with. And you couldn't place it in the front yard. So this is about the only place where it would be allowed."

Chairman Bonessi asked, "What type of pool is this? Is it an in-ground?" Ms. Telker said, "Fiberglas pool." Chairman Bonessi said, "Fiberglas." Ms. Telker said, "I thought about an above-ground pool, but I'm 60 and Janna is 61 and maintenance on a deck and that kind of thing would be much more than this. And we just really didn't want to get into that ten years down the road. We looked at all pool options and this seemed to be the least maintenance once it's initially installed." Ms. Berry said, "I think Toby drew this one for you, what's in your package, but I don't have it on power point. And the reason I don't is it's too dark to see. That's why I drew the way I did in red. I was trying to make it so it could be seen. But he spent a good amount of time trying to come up with a place that would work out. Outside of the front yard, it doesn't go anywhere. And we wouldn't allow it in the front yard." Ms. Telker said, "I wouldn't want it in the front yard. The reason I had thought it could go into this spot, (she walked away from the microphone)." Ms. Berry said, "And the other issue there is you still have your 15 foot away from the septic lines, so that would eat into it quite a bit." Ms. Telker said, (still not speaking into the microphone) there's a septic line virtually everywhere but at the house in that one corner. And the whole side yard is septic fields on this side." Several people spoke at once.

Mr. Griffin said, "What about your neighbors on the side that you're going to put the pool? How close is it to their house?" Ms. Telker said, "Everyone was notified and nobody said anything." Ms. Berry said, "If you look at the photograph, Exhibit E, look at Exhibit E in your thing. I think you can see it. In your book. You can see the next door neighbor's house." Mr. Phelps said, "Oh I see the bird house." Chairman Bonessi said, "You can see it right." Several people spoke at once. Mr. Griffin said, "It's probably the best place you can put it." Ms. Berry said, "If you look at Exhibit F, you'll see the right hand side where the, I said well in your exhibit, then I found out later it was the sewage pump. It was my mistake. And I corrected it on mine, but I had already printed these for you. So she doesn't have a well, she does have a septic pump." Ms. Telker said, "The septic pump and there are lines on that side also."

Mrs. Pouch said, "Where your fence will be, will that be 15 feet from your property line?" Ms. Telker said, "I had it planned, I had planned on, from what I understood from reading the thing, that." Ms. Berry said, "The fence is not, the fence can be in the setback without any issues. Just to go ahead and clarify that, it doesn't matter. It's considered an ornamental enhancement." Mr. Phelps asked, "Will it

be a solid fence?" Ms. Telker said, "No, sir, it will be a, there's a fence out that's called a pool safety fence. It's designed to take an impact so you can't get into it once it's locked." Someone said, "It's solid." Ms. Telker said, "No it's not solid. It would be whatever is required by Henderson County which would be something on the lines of whatever the county requires the fence to be made out of. I don't know what alternatives I have. I know that we're going to try to do something (she moved away from the microphone) to keep it invisible from the road. I know it's an attractive nuisance and we're trying to make it as unattractive as possible." Mr. Phelps said, "Unattractive?" Ms. Telker said, "Well, so that people can't drive by and see it. I had a 150 foot pond at my house and it was considered an attractive nuisance. And I had to block it from general view so that someone wouldn't say oh, gee, there's water back there – let's go play. And I'm assuming that, since my neighborhood is full of young children, teenagers. The immediate neighbors will know about it, but I don't want kids walking by late at night saying oh, look a pool. Not that I, you know, again, my concern is they'll drown. If we put it straight, we would have, the land slopes slightly, so we build it up there, we plant something on this side, so when you drive by, all you see is a bunch of trees like you see now."

Mr. Phelps said, "So I understand, what you tell me is that you're asking for a variance but you haven't checked out what all the requirements would be for having this pool as far as restrictions and fences." Ms. Telker said, "No, the only requirement that I know in Henderson County is a 4 foot fence and I have been doing research on it – it can be solid, it can be chain link, it can be, it just is the height seems to be the only requirement. The one fence that I thought I'd put in, because again safety is my first concern, is that they make a special pool fence. And it is see-through, but it is, there's something about it that it's a child proof safety fence and that's what I was leaning towards." Ms. Berry said, "And our zoning code doesn't require any fence for swimming pools." Mr. Phelps said, "But doesn't North Carolina law require." (Several people spoke at once.) Ms. Telker said, "Well, no your insurance agent, your insurance company requires a 4 foot pool, a 4 foot fence. There's no – my neighbor has an above the ground and he put a fence around the top of it because his insurance agency required it. And that's how I got involved with it – called my insurance agency and they said yes. So it will be something substantial that can be locked."

Chairman Bonessi said, "All right, do we have anything else?" Mr. Phelps said, "Did you consider putting in a lap pool that would be narrower and that wouldn't need." Ms. Telker said, "A lap pool is virtually the same, I'd still need a variance, it's the only place, a lap pool is 8 foot wide and I'd still need a variance based on the way the house sits and the configuration. I would prefer not to have a lap pool. I mean I've considered an above the ground pool, but a house in our neighborhood just pulled their above the ground pool because they couldn't sell the house. It just went out in the dumpster. So, I really don't want to go into that. And the reason I picked an in the ground pool, quite frankly, is I have arthritis and Janna has arthritis and it's easier to get in and out of. I mean I really would have preferred to put it right in the center of the back yard, where it would be symmetrical with the house. But, of course, I have major septic pipes there."

Chairman Bonessi said, "All right, if there are no other questions, I would suggest that we discuss this as a Board. If we make a motion to close the hearing." Attorney Zambon said, "You can just go into discussion and not take public comment anymore." Chairman Bonessi said, "Okay, so at this time, the Board is no longer taking input from the public or the applicant and we will discuss this as a Board." Ms. Berry said, "We didn't have anyone else in the audience that wanted to speak on this?" Chairman Bonessi said, "Not that I'm aware of." Ms. Berry said, "I don't know, I'm just asking." Chairman Bonessi said, "Was there anyone else that wanted to speak with regards to this variance application?" Ms. Berry said, "Okay." Chairman Bonessi said, "At this time, I'd like to again discuss this as a Board with no other input. We have our cheat sheets."

Ms. Pouch said, "I guess the hardship issue couldn't have the pool because of the septic tank. But then it doesn't really hurt the property if it's not a hardship, not (couldn't hear)." Chairman Bonessi said, "Um-hm. It's the kind of stuff we talked about (couldn't understand)." Ms. Berry said, "That is considered a hardship. The septic is considered a hardship. The septic lines being placed there." Mr.

Phelps said, "But it was in existence when she bought the property." Ms. Berry said, "Yes, but it's spelled out in that book she's got over there." Mr. Phelps said, "But it was in existence when she bought the property so it was known or should have been known to her. What was existing condition and what the Ordinances were at the time. Is that not correct?" Ms. Berry said, "You're correct, but I'm saying in the book it says that that is one of the things that is recognized as a hardship. That's what I was trying to say." Mr. Phelps said, "Can a reasonable return, a reasonable use be gotten from the property if the applicant complies with the literal terms of the law. Obviously, you can because it's a residential lot. It's not essential to have a pool." Ms. Berry said, "No, I was just answering your question about the septic part. That was all I was." Mr. Phelps said, "So that is you're telling me, even so, nothing has changed. They didn't reconstruct the house."

Chairman Bonessi said, "Gary, what are your thoughts and feelings. I know we've discussed several issues like this in the past." Mr. Griffin said, "My thoughts on a pool are a lot different than a building. Even though it's recreational, whatever. I mean I don't really look at it as somebody building a garage say. I just don't include these more or less, she might want to put in a wading pond or one of these decorative trout ponds or something. I don't see a pool actually as a building cause it's going in the ground. It's covered in the winter. It's fenced in, you're landscaping it. I just don't see it as a detraction to the neighbors. We don't have any neighbors here objecting. That's my thought on it. I think a pool should be allowed unless it's in the homeowner's association or something. I just don't see it, she's got a problem with her septic tank, it's real big. Yea she knew it going in, but still I couldn't see not letting the lady have a pool. That's my thoughts. Somebody wanting to build a house that close to the line or something, I could see putting a little harder take on it. But a swimming pool, I just."

Ms. Berry said, "The other thing you can look at, just from another point of view, is generally your setbacks are there for like fire safety to get between buildings and you can drive across. It's not a structure. That's just something I'm throwing out. You can drive across it, I mean, not the pool, but the sides of it." Mr. Griffin said, "If it was a house or a garage that couldn't fit anywhere else, I think we'd look at it harder but with it just being a swimming pool, I don't see. Nobody's complaining, so I don't see any problem." Chairman Bonessi said, "Unfortunately though, we don't have conditional variances, right." Mr. Griffin said, "You've got a hardship because of the septic system. That's the way I look at it. And I wouldn't want to cut down the trees either." Ms. Pouch said, "I think they said that wouldn't have mattered." Ms. Berry said, "It didn't matter because of the 15 foot she had to be away from the septic lines, so that would put her right up against the fence so she wouldn't even be able to have a front yard setback back there. She'd need a variance there as well."

Chairman Bonessi said, "Well, does anybody else have anything to add or do we want to go ahead and somebody want to make a motion?" Mr. Phelps said, "I move that the Zoning Board find and conclude that Variance application V-07-07 complies with the necessary provisions of Henderson County Zoning Ordinance. And I further move that the Variance be approved subject to the following conditions: that the required fence will be constructed." Chairman Bonessi said, "But I don't think we'll require that." Mr. Griffin said, "I think shrubbery maybe or you could do something to shield it from the road or from her neighbors, which she's already got. I believe there's already shrubs there between you and your neighbors. I think that would be something to maintain those shrubs." Mr. Phelps said, "So we have no conditions." Chairman Bonessi said, "Yea, we can't." Mr. Griffin said, "I second." Chairman Bonessi said, "Can we, I mean I'm just thinking." Attorney Zambon said, "You were supposed to, when you look at the variance, you're supposed to look what is in the public safety and welfare. So under that you may be able to write a condition regarding the fence - that it comply with state requirements, be 4 feet tall like the applicant said." Mr. Griffin said, "But isn't that just redundant. She's going to have to have it for her insurance anyway." Mrs. Pouch said, "She doesn't have to buy insurance." Ms. Berry said, "I would state it as a fact." Mr. Griffin said, "If you're going to put a pool in, I'm sure you're going to have insurance liability." Mrs. Pouch said, "But you don't have to." Ms. Berry said, "I would still put it as a condition to cover the bases. And to meet all state requirements period." Mr. Phelps said, "State and insurance requirements. And there may be some (couldn't understand) but at least it's clear."

Chairman Bonessi said, "Cover all your bases. Okay, so we have a motion and we have a second. All in favor."

Mr. Griffin - Yes
Mr. Bonessi - Yes
Mrs. Pouch - Yes
Mr. Phelps - Yes

Chairman Bonessi said, "Congratulations, your variance has been granted." Ms. Berry said, "Let me ask a quick question on the orders, we're going to set a special meeting between now and next month. Can we approve the orders at that meeting?" Attorney Zambon said, "Depending on if it's next Monday, no." Ms. Berry said, "I mean if it's sufficient time for us to write the orders." Attorney Zambon said, "Yes." Ms. Berry said, "If we do that we'll contact you and let you know they're ready sooner." Attorney Zambon said. "And the variance was for the full 15 feet, right?" Chairman Bonessi said, "Yes."

Chairman Bonessi asked if the Board needed to motion to go in and out of hearing now. Attorney Zambon said yes because you're opening another hearing. Ms. Berry suggested speaking to the applicant about only having 4 members.

Chairman Bonessi explained to the applicant, Mr. Patino that he has the option of waiting for a full Board and continue until next month. Mr. Patino said he understood and to go ahead with it today.

Case V-07-08, Lara, Heriberto Patino (owner), requests a twenty (20) foot six (6) inch variance from the front yard setback requirement at 117 East King Street for a constructed single family dwelling and adjoining deck and the zoning is T-15.

Chairman Bonessi asked for a motion to go into public hearing for Case V-07-08. Chairman Bonessi made the motion, Mrs. Pouch seconded and all voted in favor.

Ms. Berry said, "This variance is for a constructed single family dwelling and associated deck. And I did say constructed. We have a house that's already been built. And I'm going to present all the facts that I have of the case and then Mr. Patino will answer all your questions with regard to anything that I might have missed. The zoning is T-15 which is medium density residential with manufactured home district. It's intended to be a medium density neighborhood consisting of single-family, two-family, limited multifamily and manufactured home residences. It's expected that public water facilities will be generally available to each lot, providing a healthful environment, although the residential development may be dependent upon individual septic systems. The setbacks - we've got 50 foot for the minor road and East Blue Ridge Drive is a minor road. We have a side yard and rear yard of 15 foot from the property boundary. And we have a height, which maximum is 35 feet. The property has 2 front yard setbacks again. We've got several cases tonight that have 2 front yard setbacks. Your lot size - the minimum is 15,000 square feet. In this case we have 17,000, so our lot size is good. The reduction requested is 21 foot 6 inch setback reduction. The property has the constraint of having two front yard setbacks being applied to this structure. If the side yard setback of 15 feet were applied to this, let me explain that a little bit better. The structure itself, you have the front door on one road and then you have the side yard on another road. So what I'm saying here, is if you apply the side yard setback on the side of the house it would be 15 foot and we wouldn't have an issue. It would be in compliance, is what I'm getting at here. And then under the proposed Land Development Code, this parcel would be zoned R-1. And the reason I'm bringing this up is we're so close to it, I just want you to know what it would allow versus what we're doing now. R-1 setbacks are 10 foot from the property line or the edge of the designated right of way. In this case the designated right of way is 18 foot. I called DOT today and they don't have a designated right of way for East Blue Ridge Road, so it's considered to be edge of pavement to edge of pavement. So in this case the 10 foot setback in the R-1 district would be taken from the edge of pavement and we would still be in compliance, is where I'm going with this. The Land Development Code saw a problem with having 2 front yard setbacks being applied to lots because it puts a hardship on the property owner. And you've seen in the past, we had 3 front yard setbacks on people, where they've had 3 roads fronting their property, which really eats into their property a good

bit. So in the proposed Land Development Code, they dropped it down to being a side yard or a rear yard or whatever it happened to be. Wherever their front door is, is the front yard setback, and that's the reason I'm explaining that. In this case we've had a little bit of miscommunication on this particular permit. And I wanted to explain where it came from and what happened. I have 2 code enforcement officials that issue permits and in the beginning, I had told them if you have ingress and egress, it did not, it could be in the setback. Your ingress and egress of your home can be within the setbacks. And I was asked at one point, well if I have a small porch at that door to get down to the steps to go out, is that okay? Yes, it's okay. So, what I've got up here now is the definition for structure. That's what I want to explain where this came from. It says, 'anything constructed or erected, the use of which requires permanent location on the ground or which is attached to something having permanent location on the ground; however, anything constructed or erected solely to provide ingress and egress to the site, ornamental enhancement of the property (exclusive of buildings), site stabilization, on-site utilities and lighting or property fencing shall not be considered a structure for the purposes of this chapter.' So what it's saying is that stuff can be in the setback. So if you read the next definition that's talking about building setback lines. It says, 'a line measured horizontally delineating the minimum allowable distance between the property line and a building on a lot, within which no building or other structure shall be placed except as otherwise provided.' So with that being said, I wanted to explain the permit process to you. Our Ordinance does not require that someone bring in a set of house plans to tell us it's going to be 3,000, 5,000 square feet house with a 2-story deck, 1-story deck, 24 x 30 deck, it just says here's your building envelop – can you stay within them? That's all our code says, so what I've put in front of you is the picture on the left is the drawing that my Code Enforcement did saying 50 feet on the front yard, 50 feet on the other front yard and 15 feet on the side and rear. And then he typed it out on the permit and signed it. So that's all we see when someone comes in to get a permit. Now what we did not know at the time of the permit, if we had known it was a 2-story deck or rather large home with a very large deck, we would have known right then to say this is not ingress – egress. But it was miscommunicated, that's what it was. So Mr. Patino felt that he was following the rules because he thought that that was ingress-egress to the home, the decks. And the decks are what most of the problem is. And I'm going to show you some pictures of the deck. Look at your Zoning Official report, if you will, and look at your Exhibit D. This will give you a better example while I talk. This is a single family home, it's been permitted as such and I have been inside it and it is a single family home. I know it looks more like an apartment complex, but it's not. He's been given a single family permit from the Building Inspection Department and he's required to live in the home for a year because he's his own contractor. But it's all been done as a single family dwelling, including the septic system. But you see the decks, that's the biggest issue we have is the decks. We do have a minor issue on the back corner of the home. And I've got a drawing I'm going to show you in just a second that'll really clear it up and make it a lot easier to understand. But the first miscommunication was Larry had told him as the permitting person that was ingress-egress because he didn't know what the size was and didn't know it was a double deck or anything. But that is not considered ingress-egress. That's considered a deck because it has to be the sole purpose of it is to get in and out of the home. And you've got a front door and if you take the decks down you still have the stairs cause they're set inside and you'll see that in just a second. They're recessed back a little bit. But anyway this is the top floor, this picture I have up right now, this is the top floor if you were on top of the deck on the opposite side of the picture you're looking at. Go ahead and go to the next page, where you're looking at the deck head on. This will make more sense if you do. You see where I'm at yet? It should be Exhibit D, the second picture. Okay. This picture is the left hand corner – the picture that you're looking at right now. And what I wanted to explain here was the other form of miscommunication that was going on between Mr. Patino and not really my staff as much as just his interpretation of what the building was. Okay. If you look at this picture I have up on the wall, and in your power point presentation, you'll notice he stepped the house down as he went. This end is closest to East King and it's out and then he went back about 8 foot, went out and then he went back again. What his interpretation was, was this is the wall that you measured to. Because this is the corner that I have a problem with, right here. This one little corner is what I have a problem with of the house. It's got a 6, it's 6 foot into the setback. If you look at the picture I have right here, while I talk about the other picture, I think it'll make more sense. You see my dash line across the bottom left of the single family dwelling going here, that is where the

problem is. Everything to the left of that dash line is in the setback. Everything on the right is fine. So if you look at this picture now, it would be just like my plat's drawn – this corner is what we're talking about. He set the corner back far enough that that wall is behind the 50 foot setback. His misunderstanding was this is a wing wall and that's all it is. It's just a wall out on a porch. What his mistake was, was putting the roof over it. If he would have cut the roof back with the house, you know, had the roof go back with the angles of the house, he would not have a problem with the house being in the setback at all. So do you all understand what I'm trying to explain? Okay. That is all I have, outside of what I presented in my Zoning Official report. And I did put it into evidence didn't I? I should have, I tried to read it off my front page." Attorney Zambon said, "You're putting this and your staff report into evidence now?" Ms. Berry said, "Yes, in case I didn't do it, that's what I'm doing. I have a lot of pictures in your Zoning Official report, if you want to look through them. You can see in Exhibit E, looks like."

Chairman Bonessi said, "There's one shot that looks real close there." Ms. Berry said, "But, on the other hand, I can understand how he misunderstood, but I can understand the other side, too, on this. But if you look at it, it's a side yard, even though it's got to be treated as a front yard. It's not the front door of the house, and like I said, the new proposed Land Development Code has chosen to fix that problem, so now you'll only have one front yard and any other yard that has a street on it will be considered a side yard and then you'll just go from the edge of the right of way to your structure." Chairman Bonessi said, "Right."

Mr. Griffin said, "If we were using the new code, would he have a problem?" Ms. Berry said, "No, it would be in compliance. That's really what I was trying to explain. They saw that that was a problem, and you'll see it on another case we're having tonight. We've got another double front yard. We've had triple front yards before in the past and that really puts a hardship on the landowner, because they've got 50 foot setbacks where everybody else has got 15 or 10 and it really does eat into the property." Chairman Bonessi said, "What is the official status of that? I realize it's a proposed ordinance." Ms. Berry said, "Oh, I don't know. Gary?" Mr. Griffin said, "What is it – the County Commissioners now have it." Attorney Zambon said, "They've finished their public input sessions and currently it is they're going into their second workshop on June 12. Where they've made some comments to Staff on things they wanted to change or alternatives to Planning Staff is bringing those things back and then they're going to have the workshop on it and, depending on how many more workshops they need, the next step would be to have a public hearing on it and then after the public hearing they would vote on it." Ms. Berry said, "Do you recall if any of the changes were putting the front yards back to double front yards?" Attorney Zambon said, "No, I, no, not as far as I recall none of the changes had to do with front yard setbacks, specifically."

Ms. Pouch said, "So where is the front door?" Ms. Berry said, "It's on East King Street. Let me see if I can find a picture. If you look at your first Exhibit D." Mrs. Pouch said, "Well, I mean, do you go under the decks?" Ms. Berry said, "No, no look at your first Exhibit D, you'll see them. D as in doggie. It's the steps right there in front. It's like a circle set of steps." Chairman Bonessi said, "Here, the first D. We got 2 D's." Ms. Berry said, "This is the front door. It's right between the column right there." Mrs. Pouch said, "So it's like mills step there." Ms. Berry said, "This is the side and that's why I was saying." Mr. Griffin said, "Now how do they get on the deck." Ms. Berry said, "They come from inside the house. But there is also a set of stairs you can see the bottom of. But most of it is doorways out onto the deck." Mr. Phelps said, "So, Natalie, none of these double deck decks, none of that's a problem, even though on one of these pictures, it looks like it's right up against the road." Ms. Berry said, "What I said was, there was a miscommunication when he got the permit, that it was an ingress-egress which it is obviously not. That's what I was just stating that there was some miscommunication between my zoning official and Mr. Patino when he came in to get the permit. My zoning official led him to believe that that was ingress-egress because he didn't know the size or anything about the deck." Mr. Phelps said, "So he didn't fully disclose about the deck?" Ms. Berry said, "No, that's not true. That's what I stated on my permit process, it's not part of the permit process. You can come in and tell me you're going to build a single family home, but you don't have to tell me what architectural style, how big it is,

how many decks, or anything. You just have to stay within the setbacks. And then when Mr. Patino asked Larry about the steps coming out the side, Larry told him it was ingress-egress. Not knowing how big the decks were. It wasn't, he wasn't trying to mislead Larry, is what I was getting at. It was just a big misunderstanding on that part. It doesn't make it right, I'm just explaining how it happened. I'm not saying that's an excuse. But it has since." Mr. Phelps said, "It's still right up against the road here." Ms. Berry said, "Right, but if that was a side yard it would be in compliance." Mr. Phelps said, "It looks like it's within 10 feet." Ms. Berry said, "No, it's not. If you look at your last page, it's 29 foot 8 from the centerline of the road. The road's 18 foot." Mr. Phelps said, "I'm talking the edge of the road." Ms. Berry said, "It's 20 foot 8 inches then. Because the road's 18 foot, so half of it would be 9 foot."

Chairman Bonessi said, "This might be a question for Sarah." Ms. Berry said, "And like I said, I'm not trying to say anything's right, I'm just explaining what happened on the situations." Chairman Bonessi said, "I guess my question is to Sarah is if the code is one thing, or the proposed code." Ms. Berry said, "And I'm just bringing it up because it's so close. I'm not saying that's that, I just want you to know what each ones say." Chairman Bonessi said, "My question is, is it if we were to reject this variance application, and the code came in 2 months from now, that would essentially overturn everything that we've said. Correct? What would his actions have to be?" Attorney Zambon said, "Well, if this board decided not to approve this variance and the new Land Development Code stayed as proposed, where this problem would be fixed, then at that time he would be in compliance with the Henderson County Zoning Ordinance. Until that point, however, he cannot build on it, he can't do any." Ms. Berry said, "He understands that, he's ceased any construction." Attorney Zambon said, "I think there's currently a stop work order in effect." Ms. Berry said, "Yes." Attorney Zambon said, "There's a stop work order on the property. He can not do any further construction or anything on this property because he is currently not compliant with the code. Now, there's a lot, his district can change on the map, they could change the setbacks, there's no guarantee that this would comply under the new code at this point. It's still relatively up in the air. Or the Commissioners could not approve it at all. And the time frame is also up in the air." Ms. Berry said, "And I did tell Mr. Patino if he wanted to do any interior work, he was doing it strictly on his own and at his own risk. Because I don't see an issue with the rest of the house, if he fixes the corner, like if he did have to cut the corner off and fix it, it doesn't affect the rest of the house. So I did state that to him, if he chose to do anything inside that was on his own."

Mr. Phelps said, "What about you say in here maximum height is 35 feet? There's one notation here that it's above that." Ms. Berry said, "Right. That's because the landscaping's not there yet. Once the landscaping's there." Mr. Phelps said, "That's going to build it up?" Ms. Berry said, "It's going to have landscaping around the front steps and our Ordinance says that it's from the highest adjacent grade to the top, so that's not going to be an issue." Mr. Phelps said, "You're going to build up the steps." Ms. Berry said, "They're on Exhibit D. See the Ordinance is very vague on the height. It just says from the highest adjacent grade of the structure. It doesn't say it has to be at the front door or the side door. And if you look to the right, you'll see a retaining wall at the edge of the house and the dirt is up behind the retaining wall. So I can't cite him for that. He's in compliance as far as the way the code's written." Mr. Phelps said, "I mean it's got to be above 37 feet." Ms. Berry said, "Not according to the code." Mr. Phelps said, "I measure from here straight down where that was." Ms. Berry said, "That's not what the Ordinance says though." Chairman Bonessi said, "But she's saying that they can." Mr. Phelps said, "But you're taking the lowest elevation." Ms. Berry said, "No, the highest elevation. The Ordinance states you go from the highest adjacent grade to the top of the building." Mr. Phelps said, "But wouldn't that still mean the peak up here?" Attorney Zambon said, "Yeah, I think she's measuring it from this point on the property, cause this is the highest point in this picture to here." Ms. Berry said, "It just says highest adjacent grade." Attorney Zambon said, "From the highest point, that would be the measurement." Mr. Phelps said, "It seems like throughout we stretch the envelop in meaning." Ms. Berry said, "I'm not stretching it. I'm doing what the Ordinance says. I mean, I can't change the definition if that's what it says. I would personally say from the front door to the top is what I would say, the entrance of the front door. This is what most Zoning Officials say at Chapel Hill, but our Ordinance doesn't say that, so I have to go with what our Ordinance says which says highest adjacent grade. I mean I can't necessarily agree with it, but that's what it says." Attorney Zambon said, "And I think that's

also changed.” Mr. Griffin said, “Yes we talked about that and I think it’s from the front door.” Ms. Berry said, “You’ve got to look at it from an enforcement point of view. I’ve just got to go with what I’ve got. I can’t say, well I interpret that to mean the front door cause it doesn’t say that.” Mr. Griffin said, “But even if we went from the front door, he’d still be in compliance, right?” Ms. Berry said, “Right. That’s correct.” Mr. Griffin said, “Cause he’d be from the top of those steps.” Ms. Berry said, “But that’s the whole reason we do need the proposed Land Development code, cause we have a lot of issues with this code. And I would like to see them fixed for that very reason so that I don’t have to make these determinations that don’t seem right, but that’s just the way the code is.” Mr. Phelps said, “I wasn’t referring to you.” Ms. Berry said, “I know you weren’t, I was just trying to explain where I got it.” Mr. Phelps said, “If you read every page and piece of this, it looks like you’re doing.”

Chairman Bonessi said, “Let’s do this. I need to take about 3 or 4 minutes for break. Let’s do that right quick. I know Gary’s got to get going, but let’s take a few minutes before, because I think we have other folks that want to speak.” Attorney Zambon said, “And the applicant.” Chairman Bonessi said, “And the applicant, he’ll need to speak. So let’s take 5 minutes and.”

The Board came back from break and Mr. Patino came forward to speak. He said, “I didn’t know this was a problem. You know this is the first house I ever built and I didn’t even have an idea how that was going to be done. And I just had the person who makes the trusses, I had them to come in and help me to figure that, you know. That’s what they figure on these and I never thought, you know, and I’m going back (noise on the tape) I never thought that. I didn’t even know about what’s a problem and they find out the overhang was a problem and that’s it. On the deck, two more ideas that I be tried to I can and check to make sure everything was good on the back, you know. And I ask and make sure I was doing everything right but then the problem came on the roof. That’s when they looked at the deck and that’s when they find all these problems.”

Chairman Bonessi said, “That’s all you have? Does anybody have any questions for Mr. Patino before he sits back down? Okay. Is there anybody else in the audience that would like to speak? I think we have a few that are signed up to speak about this variance application.” Attorney Zambon said, “Mr. Chairman, has the Board decided all those people have party extract????” Chairman Bonessi said, “We have definitely the first 2 and the other one we had, yea, according to her address, I think that’s East King Street.” Ms. Berry said, “I think they all live within a block.” Chairman Bonessi said, “I have signed up to speak right now, David and Linda Cagle, and Rachel Capps about this matter. Is there anybody else who needs to speak or wants to speak with regards to this? Okay, at this time, Mr. Cagle if you’d like to come up and.”

Mr. Cagle came to the podium and said, “My name’s David Cagle. I live at 411 East Blue Ridge Road in East Flat Rock, which is a block and a half from where this house is. And in my opinion asking for a 21 foot variance is ridiculous. Ignorance of the law is no excuse. If you walk up to a cop and say is it all right if I rob that bank and he says yes and you go rob it, is he gonna turn you loose? No he’s not. In my opinion you don’t do something like this, you don’t build it and then ask for a variance. As far as the right of way goes, on my deed it calls for a 30 foot right of way on Blue Ridge Road.” Chairman Bonessi said, “That’s on Blue Ridge Road?” Mr. Cagle said, “Um-hmm.” Mr. Griffin said, “What’s the biggest objection? Is it too close to the road?” Mr. Cagle said, “Yes, it is.” Mr. Griffin said, “You can’t see around it or what?” Mr. Cagle said, “Well, it’s not so much you can’t see around it, it’s just, in my opinion, it’s an eyesore of a house.” Mr. Griffin said, “Too big for the neighborhood?” Mr. Cagle said, “Right, it’s way too big for the neighborhood. I mean every house surrounding it is single level housing and, like I said, building it as close to the road as they did.” Mr. Griffin said, “But I think the way I understood it if the decks were down, the house fits, doesn’t it?” Chairman Bonessi said, “There’s the issue of the overhang. But without the deck, it sounds like it does.” Mr. Cagle said, “I mean we can do nothing about the size of the house, I know that, I mean the height and all that. But for a 21 foot variance, to me, that just shouldn’t be done.” Ms. Pouch said, “I thought Natalie said the decks didn’t matter.” Mr. Griffin said, “Well, they do because it’s not egress or ingress. I guess technically they really are because they do some stairs that go to them but really they really don’t.” Mr. Cagle said,

"They come straight out of the inside of the house onto the deck, so there's no steps going to my knowledge going from the house side down to the ground." Mr. Griffin said, "I thought she pointed out these steps in the middle and said they were a staircase going to." Mr. Cagle said, "There are steps on the inside of the house." Mr. Griffin said, "On the inside of the house?" Mr. Cagle said, "Yeah. From outside?" Mr. Griffin said, "That's what I thought she showed me in this picture." Mr. Cagle said, "I've never seen them." Mr. Griffin said, "She pointed it out, cause I asked her. That's the reason I was asking. Exhibit D, and it's right in the middle, there's a ??? going under or something. Yeah, it's hard to see. No, it's the next exhibit going backwards, figure 3 or something. Right there, that's where Natalie told me they were." Mr. Phelps said, "You're saying these are steps here?" Chairman Bonessi said, "That might be an opening for stairs. It actually, cause it looks like." Mr. Griffin said, "These are the ones that Natalie pointed out to me." Mr. Phelps said, "That's what I'm saying, is that it?" (Everybody spoke at once.) Mr. Griffin said, "They're set back into the house." Chairman Bonessi said, "Yeah. Sir, we'll give you another chance to speak here just after everybody's spoken, you'll get to come up here one more time and you can speak and show us any questions with regard to that. Okay? Mr. Cagle, do you have anything else? Does anybody else have anything for Mr. Cagle? Thank you, sir. Mrs. Cagle, are you going to speak?"

Mrs. Cagle said, "It's odd in the neighborhood because we don't have anything like that anywhere else. And the safety fact, if there's going to be kids on those decks, that's a long way for them to fall. And too, asking for 21.6 feet is quite a lot, in my opinion. But we do have a deed that shows a 30 foot right of way by the State." Ms. Berry said, "I called DOT and that's just what they told me." Mrs. Cagle said, "When they came through and widened the road, we had our bank to where we could mow it, and now it's really dangerous to try to mow it because they took part of it off. And they said they could because they had a 30 foot right of way." Ms. Berry said, "Cause I did call them to verify that just to make sure it was accurate information and that's what they told me. They said they didn't have any dedicated right of way at all, so it's from the edge of bank, I mean edge of pavement to edge of pavement." Chairman Bonessi said, "That's not uncommon in some of these side roads." Ms. Berry said, "Yes, there's a whole lot of roads that are like that throughout the County. But I would call the DOT office in Mills River and talk to them about that." Chairman Bonessi said, "Does anybody else have anything for Mrs. Cagle? Thank you, very much. The only other person I have is Rachel Capps."

Ms. Capps said, "I'm Rachel Capps and I live at 118 East King Street. That Exhibit D, where the mailbox is, there's a picture of a mailbox, that's my mailbox. I just want to let you know how close I live to this house. I mean, it's right on top of me. Once again, this same thing, I think 21 foot is very much to ask. I don't think that necessarily the house is an eyesore, I just believe that, it is hard to see around the house. It is very close to the road, there's a 5-way stop there already, cause I live right on the corner of it. And it's very dangerous. It's very dangerous to have a house that you can not see around. Starting like I said 5-way stop. That's already putting it up, way up there. I've seen so many accidents just from my front porch. So I think that's something you need to consider to, it is quite dangerous. And there's no other house in the neighborhood that are like that. I live in a very small house, all the houses around me are 1 level, you know that kind of thing, and I just. Like I said, I think that's a lot to ask for in the neighborhood. I mean, they're going to be my neighbors, so I don't want to say that he doesn't deserve to build a house or anything like that – that's not. But in my opinion it's a really, really dangerous place to have a house. So something needs to be done as far as that safety issue for that, with the variances." Mr. Griffin said, "I think the only question is, are the decks, right?" Ms. Berry said, "It's just the back corner of the deck. Even if he was to correct that problem, it wouldn't fix the problem you're talking about." Ms. Capps said, "Well, right. I'm just stating my opinion. I just live close to this house, I mean every day." Ms. Berry said, "I just don't know how we can address that point." Ms. Capps said, "Yeah, I mean doing construction and stuff like that, it's been. Like I said, I don't want to keep him from building the house, but I want these issues to be known that it is, it's a very unsafe road anyway, already, before, with it being 5-way. So I just think 21 foot is a lot to ask for as far as that goes. That's really cutting in to the road, that's cutting into the other things in the neighborhood, you know. That's just my opinion. So that's just what I got to say." Chairman Bonessi said, "Anybody have any questions for Ms. Capps? Okay."

Ms. Berry said, "I guess I need to clarify just a tad just in case there is any misunderstanding. If you look at your Exhibit D, your first picture, and you count your columns, you've got 6 columns. At most, the back 2 columns would be all that would have to be removed. I just want to make sure that I made that clear. It's not the whole deck, because the road's going one direction and the house is going in a different direction." Mr. Griffin said, "It would just be 2 columns." Ms. Berry said, "2 columns and then about 6 foot. That's why I put this drawing together for you with the dash line going across it. It's that corner that's the problem." Mr. Phelps said, "That would still leave 4, I mean you still." Ms. Berry said, "Yeah, you've still got the house that's got, right, but if you cut across it at that line I've got drawn, the rest of the deck is back inside the setback." Mr. Phelps said, "It would leave a pretty huge deck." Ms. Berry said, "But it's still a huge deck, I'm just saying that would be back inside the 50 foot. I just wanted to make sure everybody understood that. I had a hard time with this one because I can't fly above it and show you what it looks like." Mr. Griffin said, "He just missed it by a little bit, right?" Ms. Berry said, "He did on the decks, and then on the corner of the house it was like a 6 foot going back at an angle. That's just the overhang, yes. And we did talk about him taking the roofline back, but that doesn't correct the decks. So that's why we're here. We had a bigger issue than we started out with."

Chairman Bonessi said, "At this time I'd like to ask Mr. Patino to come back up. There were some questions about some stairs and stuff. And if we had any other questions, the Board had any other questions of Mr. Patino. What were you saying about the stairs, sir?" Mr. Patino said, "Oh, the stairs, we agree to have the stairs on the outside going up." Chairman Bonessi said, "The stair between the decks." Ms. Berry said, "If you look at your picture Exhibit D, you can see the risers on the deck right below the first floor, you'll see a piece of wood going back down towards it. That's what that is." Chairman Bonessi said, "But that comes from the inside of the house." Mr. Patino said, "No." Ms. Berry said, "No. That's in the, they're coming up right here in that corner. You know that setback and the stairs are coming." Chairman Bonessi said, "Oh, okay that's why it looks, I see what you're saying. Because of the offset makes it look like it's coming from the inside of the house." Ms. Berry said, "But it's not." Chairman Bonessi said, "And that goes to both levels? The first and the second level of the deck?" Mr. Patino said, "We haven't finished the one on the top, we have a few more steps to finish." Ms. Berry said, "That's why you don't see them. Because he stopped." Mr. Phelps said, "It looks solid in the picture." Ms. Berry said, "It's not, see if I can find a picture here and it shows you. It's not solid. He just stopped on his stairs once we gave him a stop-work order and he just hasn't gone any further. That's why he's still got the opening on the balcony at the top. Just cause that's where he was loading his material. If you look at Exhibit E, where you see the ladder leaning against the roof, look back in the corner and you can see where the deck stops and then there's a hole. You see where I'm talking about, Exhibit E? Yeah. It's to the left of the window, let me see if I can show you. But if you look at your Exhibit E here, it shows you, you see where the deck stops, it's just an empty space there, that's where they're coming up. You can see the wall back here, that's where they're coming up." Chairman Bonessi said, "So actually this part of the retaining wall, or this part of the wall encroaches upon." Ms. Berry said, "That's what's encroaching into the 6 foot." Chairman Bonessi said, "So it's not just the roof overhang, it's actually part of this wall too." Ms. Berry said, "It would go back to maybe that right there. And then that roof would have to come at an angle."

Chairman Bonessi said, "Mr. Patino, have you spoken with the company that makes the trusses about the possibility of having to cut those trusses back in that one area?" Mr. Patino said, "No, I haven't. We went with the inspector to look at the trusses to see if we can cut them back and he told me no, I would have to replace those. Still cutting them back, I have to take them down and get some new ones or we might have to get a new engineer to." Ms. Berry said, "He has to have engineered trusses because of the cantilever is what the problem was. He was willing to cut the roof back when that was the only issue and then we ran into the deck issue and he thought he would at least pursue getting a variance first." Chairman Bonessi said, "So overall, how has he been working with you all?" Ms. Berry said, "Very cooperative. He's quit work and he's done everything that I've asked him to do. Like I said, he was willing to cut the roof back originally, when that was the only issue. He was just going to cut it back and go ahead and go with it from there. We called Sam Laughter out from the Building and that

got into engineered trusses so he thought, well I'll at least ask for the variance. If I don't get it, then we'll cut it back, and do that. But that got quite costly to get an engineered truss. So that's why he's here. I told him he had a right to ask for a variance."

Chairman Bonessi said, "Does anybody else have any questions? Does anybody else have any other questions before we decide to discuss this as a Board with either Natalie or Mr. Patino or anybody else that's testified so far? At this time, I'd like us to go ahead and, thank you, Mr. Patino. At this time. I'd like to go ahead and discuss this as a Board with no other input and come up with a decision."

Mrs. Pouch said, "If he takes down those first 2 columns and that part of the deck, does that interfere with the door going into the house - the steps?" Ms. Berry said, "He does have a door on the first floor of the deck that would be interfered with, but he would just have to take the door out and replace it with windows or something. He has a double door I think on that first level in that corner. I don't believe I have a picture of that that I put in here. But it's something that you could replace it with windows, if you had to. I think you could probably see it in the first Exhibit D. If you look on that first floor looking back, you'll see some white back in that left corner and that's the edge of the door doorframe. And then there's another one on the right hand side and then on the second floor, you'll see another door at the top. Most of the doors are on the right hand side, but that first floor did have a door on the left." Mrs. Pouch said, "If he took 2 columns down, he'd lose this whole deck or part of this, wouldn't he? That would leave him with 4?" Ms. Berry said, "Maybe 4½, he could possibly move that 1 column to the right out of the setback back where he's supposed to be. I would have to go out there and measure to get the exact spot that he would have to cut it back to. If that winds up being the order, then we'll go out and measure it exact and tell him this is right where it's gotta go. I didn't get that technical on it as far as where exactly I'd have to cut it, but it's approximately the second column." Mr. Phelps said, "Looking at it if I'm looking at Figure 2, those columns are not equidistant apart and so of those 4 on the left hand side those 2 are the ones we are talking about." Ms. Berry said, "Right. That's the 2 I'm talking about." Mr. Phelps said, "If that comes off, you have the setback, you're in compliance. So that's really all that's required. He's got the back of the roof there."

Mr. Griffin said, "What would be the setback on the roof? 5 feet? 6 feet?" Ms. Berry said, "It's 6 foot straight back but then coming at an angle, so it would be a triangle piece off the roof." Mr. Griffin said, "And it would just be the roof. It wouldn't be the building." Ms. Berry said, "It would be the wing wall, but no, it wouldn't be the structure itself. That's why I didn't see a problem with him doing any interior work, because no matter what the solution is, it's not going to change the inside of the house. But I did say it's at his own risk." Mr. Griffin said, "But if he waits until whenever the Land Development Code's passed, he's in compliance, if it stays as it is." Ms. Berry said, "Yes, sir." Chairman Bonessi said, "My personal opinion on that is since it's proposed, I hate to rely." Ms. Berry said, "And the only reason I'm bringing it up is because we're so close to it and I just want you to know that there was a problem with having 2 front yard setbacks on lots and they chose to fix the problem. That's really my whole point in bringing it up. It's because you'll never find any other jurisdiction that uses 2 front yards. If you look at the city of Hendersonville, it's one front yard. If you look at Mills River, it's one front yard. We're the only one that does and it does put a hardship on people."

Mr. Phelps said, "But if you look at Exhibit E, figure 5, and you look to the left, that's a house, right?" Ms. Berry said, "Let me look. Yes. It's to the left. It's not as close as it looks. I've got the picture, this picture has been stitched together with me turning every few feet and then stitching it together. So it's like a panoramic shot. It's not as close as it appears, but it is next door and it is further back off the road. I'm not sure. Are you talking about how close it was to this property?" Mr. Phelps said, "This one and the fact that it was set back." Ms. Berry said, "Well it is set back but if you notice, it is the only house set back on the whole road. Like 204 is up closer to the road and then 309 over here is. But anyway." Mr. Phelps said, "Closer to the street?" Ms. Berry said, "No, well actually yeah, 309 was. I didn't bring pictures of that one. I did take them, but then I decided that it really wasn't the same situation, so I didn't bring it. But it's a brown house with a front porch and they set right on the corner of 2 streets and they are sitting closer than 50 foot in each direction. That's number 309, I believe,

because I set on that side road and took a picture of the house and if you look where they put the dot, it's on Exhibit F where I've got my proposed zoning. If you look at that picture, you'll see 309 in the top right hand corner and it's setting up against 2 roadways. That house is setting within the 50 foot in both directions. So there are some situations down the road, it's sitting closer than 50 foot in both directions. I mean there are some situations."

Mr. Griffin said, "The biggest problem we have is the decks? Is that what we're saying?" Ms. Berry said, "Yes." Mr. Griffin said, "Do we always consider decks, though?" Ms. Berry said, "Not if it's a small enough deck." Mr. Griffin said, "So it's the size of this though." Ms. Berry said, "Well it's because the stairs could be there without the deck. This is the problem." Mr. Griffin said, "The stairs could be there without the deck." Ms. Berry said, "Right, so it's not the sole purpose of the deck, for ingress – egress. That's the difference. Like you may have a mobile home that has steps, but it has to have a platform, you have a building code. Well that's ingress – egress. That's where the misrepresent came in." Mr. Phelps said, "You're saying the second story steps are egress?" Ms. Berry said, "No I'm saying that this is not ingress – egress but if you had like a mobile home and you had your steps, the building code requires you to put a landing or a platform, well that's ingress – egress. Do you see the difference? That's where the miscommunication came into play. We didn't know the size of it. It wasn't done with any malice at all, it was just a miscommunication on that part." Mr. Griffin said, "The only thing that we can really make him do is take down 2 columns and part of the deck and cut back the roof line." Mr. Phelps said, "Just by design, it would do that." Mr. Griffin said, "Just by design. I mean he's got to take down 2 columns and cut the roof back a little bit." Mrs. Pouch said, "Could you leave the roof and take down the 2 columns?"

Mr. Griffin said, "We could do whatever, I guess, here. I would like to ask the neighbors again what they think. I mean cause we can't do a whole lot. We can't stop the house from being built." Chairman Bonessi said, "We probably need just to confirm if we're wanting to get public input I know." Attorney Zambon said, "We technically don't get public input during quasi-judicial, but since you've made her a party, you can talk to her. But not really during discussion. Yeah, you can open it back up." Chairman Bonessi said, "I know we've talked about this in the past. Let's go ahead and we'll open it back up to all the parties involved again and just ask a few questions and then we'll ask Mr. Patino again at the end. Then we'll wrap this up. Gary would you want to talk to?"

Mr. Griffin said, "Mr. Cagle, if you would come to the mike, we could ask you a few. Maybe you could give us some suggestions, I guess I'm looking at. The only thing we can really do here is make him be in compliance which is taking down 2 columns and cutting his roof back 6 feet." Mr. Cagle said, "That's all we're asking for is that he be in compliance." Mr. Griffin said, "And that makes everybody happy?" Mr. Cagle said, "Legally that would make everybody happy." Mr. Griffin said, "But, I mean, that's all we can do. We can't." Mr. Cagle said, "I understand that. Now you were talking about the 309 East Blue Ridge Road?" Ms. Berry said, "Isn't that the brown house with the porch?" Mr. Cagle said, "Right, that house has been there over a hundred years." Ms. Berry said, "Right, but I'm just saying there's other structures there that be in the setback. That's all I was pointing out. Our code actually says in it, if you have something that's already there within a hundred feet, you can say that it's okay. In this case, his next door neighbor happened to be set back really far on the lot so you couldn't use that as a rule. But that's why I didn't put pictures in it, in my presentation. But I did look at it as a possibility, but I decided that it didn't play into it. That was the purpose of bringing it up." Mr. Griffin said, "The biggest problem with the house is the decks. Is that right?" Mr. Cagle said, "Yes." Mrs. Pouch said, "Would you object that the roof, we could give the 6 feet there instead of him having to take down the whole corner of the roof on the second floor?" Mr. Cagle said, "Now that's a decision you'll have to make. I'm just saying as long as he's in compliance and he's agreed with it, you know, we got to go with that." Mr. Griffin said, "We're just trying to keep the neighborhood where we're fair to everybody and their concerns. He's went ahead for whatever reasons, he's built the house, he's a little out of compliance. We got a hard decision to make to tear part of it down. And then, if he waits 2 months, it may be where he's in compliance, which is another hard call." Chairman Bonessi said, "That's the hardest call." Mr. Griffin said, "He could be in compliance. He could just wait." Attorney Zambon said, "I don't know if Natalie

told him what the proposed Land Development Code, but he could have waited to bring this application, too. The facts we are considering are the variance factors, hardship, spirit and intent of the law, health, safety and welfare, and substantial justice. You know, you can't consider what other houses in the neighborhood look like." Mr. Griffin said, "Let's just take it the hardship's going to be put on him. The variance is being miscommunication between because he came to you and asked and he got misinformation or misunderstood. So where do you put the blame there? It is what it is." Ms. Berry said, "Just because we told him wrong, I know it doesn't make it right, but it does take some of the blame off of him. Cause he tried to do it right and that's what he was told. I know it still doesn't make it right. I'm just explaining that. I thought you needed to know that information because one of our code enforcement did tell him that. So he didn't go out there and maliciously put it out there and say now I'll ask for a variance. He did ask numerous times from what I was told, he came in 3 or 4 times and kept talking to him about it. And he kept telling him it was okay and I wasn't involved in any of the conversations. So I can't speak for him. That's all hearsay, I know. Cause he doesn't work here anymore. If he did, I would bring him here and let him explain what he did. It's just a matter of miscommunication on that part. Interpretations get really sticky whenever you have to come up with an interpretation. They basically should all be in writing and that's my fault that that one wasn't. It should have been put in writing but it wasn't." Chairman Bonessi said, "What would."

Attorney Zambon said, "Mr. Chairman, are you still in?" Mr. Griffin said, "Are you going to close it now?" Chairman Bonessi said, "Well let's get a few more inputs and if we don't have any questions for Mr. Cagle." Mr. Griffin said, "I have to go." Ms. Berry said, "I guess you all need to either wrap it up or continue it." Chairman Bonessi said, "I don't see us resolving this in the next 5 minutes." Ms. Berry said, "You can continue it to the special meeting, you could go ahead and set the special meeting and continue it to it, cause if you have a specific date I don't have to readvertise. Everybody here would be told when it is." Attorney Zambon said, "Right, the problem is we don't have the book for this room to know when this room is available." Ms. Berry said, "Pick a date and I'll find a room if I have to. Can I do that? I mean if you have the date, can I just?" Attorney Zambon said, "The same way you have to state the day, you have to state the place." Ms. Berry said, "I'll just go get the book. I know where it is." Mr. Phelps said, "We can always post a notice if we." Chairman Bonessi said, "You have to readvertise." Ms. Berry said, "Let me get the book real quick." Attorney Zambon said, "If Natalie can't get the book, what you can do is whatever meeting establish to continue it again to, what date is available, whatever." Mr. Phelps said, "Or if we know a room that is available, we can go and sit in it. You don't know of any room?" Attorney Zambon said, "Un-uh." Chairman Bonessi said, "I think to be fair to both parties let's just go ahead, we'll continue this. Gary, if you need to leave, we'll call you." Mr. Griffin said, "I'm sorry that I have to leave." Attorney Zambon said, "You just have to vote to continue it. I'll be all right with voting to continue it if Gary can just vote to a date decided by the Board in the next 5 minutes." Mr. Griffin said, "I vote." Ms. Berry said, "The best way is to continue it to the next meeting because we know it's here. So that's what I would do." Mrs. Karpowski said, "And that meeting is June 27." Chairman Bonessi said, "So at this time I we're going to have to go ahead and continue this meeting or we need to vote to continue this meeting as a Board to June 27 which is the regular scheduled meeting." Ms. Berry said, "The last Wednesday of June, if anybody doesn't know what date that is. It's just the last Wednesday. And it'd be right back in this room at 4 o'clock and it'll be the first thing on the agenda."

Chairman Bonessi said, "We had a Board member that had to leave and that's why we're having to do this. So you need to make a motion for that." Attorney Zambon said, "You should just vote. Gary's already voted." Chairman Bonessi said, "So we're going to vote to continue this meeting to June 27. All in favor." All members voted in favor. Ms. Berry said, "You understand Eddie, it'll be next month at 4 o'clock. Janice is on her way so, if you want to take a 10 minute break, she should be here at the end of that 10 minutes." Mr. Phelps said, "I have somewhere I have to be at 7. So I don't know how much we can do." Attorney Zambon suggested doing the nuisance. Chairman Bonessi said to wrap up at 7.

Ms. Berry said that she had asked for guidance about the length of the agenda, which didn't happen. She asked for guidance now so this wouldn't happen again in the future. The Board discussed this.

Attorney Zambon said the Board's meetings are mandated under General Law and applicants have to be heard in a reasonable amount of time. She suggested having meetings twice a month. Ms. Berry would see if Mr. Goodman is available to come tonight and the Board would continue in the meantime with the Nuisance application. Chairman Bonessi said the Board would adjust the agenda until another Board member, who is on the way, arrives.

Case N-07-11, Appeal of Notice of Violation and Declaration of Public Nuisance, Martin Arias-Cornejo (appellant), 280 Bell Mountain Road.

Chairman Bonessi called Case N-07-11, Martin Arias-Cornejo. Michael Wagner, Code Enforcement Officer presented a memorandum and pictures to the Board. Mr. Wagner received a complaint about the property and photographs of the property were taken and a Notice of Violation was issued on April 30, 2007. The original photographs are in the Board's packet. A timely appeal was filed. Mr. Wagner took current photographs yesterday, which were just presented to the Board.

Chairman Bonessi asked if the status was currently unchanged and Mr. Wagner said yes. The appeal was received on May 9, 2007.

Chairman Bonessi asked Mrs. Cornejo to explain the appeal. Mrs. Cornejo said this is her home and property that they worked for. She said the mobile home is damaged and would cost \$5000 to get it moved. She said her husband is out of work and has had 3 surgeries on his feet. They'll have to wait until they get the money. They want to have it moved and put a single wide on the property. Mrs. Cornejo presented electric, water and septic permits to the Board. She said the power pole and electric was put up for the recreational vehicle. Mrs. Cornejo said it is messy, but they don't have rats and there is nothing unsafe about it. Chairman Bonessi asked what their plans for the mobile home were. Mrs. Cornejo said to have it demolished. Chairman Bonessi asked about the vehicles. Mrs. Cornejo said they were for sale. She said the purple truck is her son's and it's for sale. It's advertised in the "I Wanna" paper.

Mrs. Pouch asked if it was registered and had a license. Mrs. Cornejo said no. Chairman Bonessi asked if they were living in the recreational vehicle. Mrs. Cornejo said yes. Mrs. Pouch asked how many cars were on the property. Mrs. Cornejo said 5. Mrs. Cornejo said they talked to an attorney and now know they are in the wrong. She said they need restoration permits for 2 vehicles. Mrs. Cornejo said they had damage to the mobile home from storms and they were not insured.

Chairman Bonessi asked if there was anyone else who wanted to speak about this case. Ms. Berry asked Mr. Wagner if you could live in a recreational vehicle in Open Use District if it's hooked up properly. Mr. Wagner said yes with the proper permits. Ms. Berry said if she got rid of the mobile home and the vehicles, she could live in the recreational vehicle if it's hooked up properly. Mrs. Cornejo said the attorney said with the permits and everything inspected, the light pole was put in for the RV, that it would be legal. Mr. Wagner said there was no building permit for the RV listed. There was one for the mobile home, not the RV.

Chairman Bonessi asked if Mr. Cornejo owned the property and Ms. Berry said yes, she had checked that. He asked if it was a bona fide farm as defined in Henderson County Code and the answer is no. He said are the materials in question in an enclosed building. He said if motor vehicles are part of the alleged violation, does the defendant have a Vehicle Restoration Permit and the Board has been told they do not. He said are the materials in question part of a business and the Board hasn't received any testimony. Ms. Berry said they are not. Chairman Bonessi asked if the Board wanted to discuss the case further or to take a vote. Mrs. Pouch said she thought they could agree it is in violation. Mrs. Pouch made a motion to reject the appeal of the Notice of Violation and Mr. Phelps seconded. All three members voted in favor of the motion.

Mrs. Brown is in attendance and will sit on the remaining cases.

Case CU-07-09, Luce, Elizabeth L. and Damien S. (owners), requesting a Conditional Use Permit to operate a customary incidental home occupation at 24 Greg Court and the zoning is R-15.

Chairman Bonessi made a motion to go into public hearing and Mrs. Pouch seconded and all voted in favor.

Ms. Berry said, "This is a case where they would like to do a customary incidental home occupation in a residential district as a day care. R-15 zoning is a medium density residential district. It's just intended to be a medium density neighborhood consisting of single-family and two-family residences and small multifamily residences. The definition for customary incidental home occupation basically says that you have to stay within 25 percent of the total floor space. You have to use the existing heating - cooling systems. And they're permitted by right but with a Conditional Use Permit. Typically it's dressmaking, cooking, baking, music instruction, woodworking, arts and crafts and the practice of such professions as insurance, medicine, artistry, architecture and accounting. I put her whole application to the State in your Zoning Official report, which I do want to place all this into evidence, now that I realize that I missed it – my power point and my Zoning Official report. But in the Zoning Official report, you have the whole application to the State. That's in your book and that's about the third tab over. Let's see, for Janice, you found her section. And then the application is about the second thing in the package. You'll see the application for the Conditional Use, and then you'll see the State Division of Child Development application. She has to apply to the State to run a day care and I believe they've delegated that to the Henderson County Health Department. I talked to a lady named Vicki, I don't remember her last name, but just to verify all this. And she has asked for children from 6 weeks to 5 years old. Her hours of operation she had was 7:30 to 5 PM Monday through Friday. It was 5 preschool children and 3 school age children in that timeframe. So it'd be no more than 8 children. What she wanted to do was enclose the garage and make a place out of the garage for the daycare. And she hasn't done that yet, she wants to see whether or not she gets it first before she spends the money. But it's basically a 500 square foot area and I believe the house was, let's see, 3128, so 3000 square foot house. And this 500 square feet would be in addition to that, so we're well below the 25%. She was going to cut a door from the garage into an existing bathroom on the other side of the wall. That way it would all be contained in the same room. She has 2 driveways at the home for the traffic. She has, well she doesn't have it yet, she's gonna fence in the play area, right outside the garage door. And she doesn't want any signage at all. She's just strictly all indoors. And this is another one where I'm telling you what the proposed Land Development Code says. And it says that it's permitted by right in the future without a Conditional Use. It's just something that's allowed. It's considered a customary incidental home occupation and it had in parentheses daycare, specifically. And it said p – permitted by right. If that stays in it, it would be permitted. But this is the play area, or actually the play area for her children now. She hasn't set up the play area for this yet. But I would assume it's most likely gonna be right around the same area, cause this outside the garage door. This is one driveway and this is the other driveway. So you've got 2 driveways and there's the garage on this bottom driveway that she's going to enclose for the daycare. That's all I have."

Chairman Bonessi said, "Does anybody have any questions for Natalie before we move forward? Mrs. Luce, am I saying that correctly?" Ms. Berry said, "Come up to the podium." Chairman Bonessi said, "Do you have anything to add to what Natalie has." Mrs. Luce said, "I don't think so."

Mrs. Pouch said, "How many children do you have?" Mrs. Luce said, "I have 2." Mrs. Pouch said, "Two. So that would be your 2 plus the." Mrs. Luce said, "No, ma'am. It's 8 altogether so it would be including my 2. And I will say that the school age is after school. So the bus would basically drop them off and they would stay until their parent came and picked them up at 5. So that's the 3 school age children after school care." Mrs. Pouch said, "Thank you."

Chairman Bonessi said, "I should ask if there's anybody else that has anything to say. Mr. Luce, do you have anything to contribute? I don't see anybody else in the room that might have anything else to

say. Do you have any questions?" Mr. Phelps said, "Could this be a nuisance? I mean you're gonna have kids playing outside. How close other houses are?" Ms. Berry said, "Where the play area is, there's a right of way for DOT on that side. So there's not any houses on the side where she's got the designated play area. And she has to fence it in for the State, so that's where it will stay. It won't move around the yard." Mr. Phelps said, "And the traffic going in and out." Ms. Berry said, "She has 2 driveways and other cases where we've had daycare, they've only had one driveway. And the 2 driveways are relatively large where 2 vehicles can pass each other, at least on the upper driveway. I felt like she had adequate driveway and turnaround space to not cause a problem. Not for 8 children anyway, when 2 of them are her own. That would be just 6 additional. It's the first house in the neighborhood, is what he was saying. And it's on a cul-de-sac, there's probably 4 homes. I think there's 4 homes on the cul-de-sac, maybe 5, I'm trying to remember. 5 homes. You got one existing, one before they did the subdivision, and then 4 new ones."

Mr. Phelps said, "So if we reject it, in the later zoning changes, they could do it under new zoning." Ms. Berry said, "Yes, sir. Yes, what they're trying to do with the new Land Development Code is to get away from having conditional uses for any customary incidental home occupation because it's getting to be. Yes, right now you have to have it, but it's just getting to be where that's more of a commonplace thing." Mr. Phelps said, "Right now though, this is not one of the common uses, the daycare." Ms. Berry said, "Yes it is." Mr. Phelps said, "But under this definition we just read." Ms. Berry said, "Well that definition is just giving you examples, but, yes it is a generally. At the zoning school I took in Chapel Hill, that is one of the main ones." Mr. Phelps said, "Okay I just didn't see it." Ms. Berry said, "It's not listed particularly, but a lot of things aren't really listed there. But, yeah, it is a common customary incidental home occupation." Mr. Phelps said, "Any objections from the neighbors?" Mrs. Pouch said, "A license so this will all be inspected before they open?" Ms. Berry said, "That's correct and she needs to bring me a copy of the license when she gets it. It's kind of an after the fact, but to get one you gotta have the other. To get the other, you gotta have one." Chairman Bonessi, "We would have to put that as a condition that she comply with all local, federal and state regulations around this type of use. Well, if we don't have any other questions, we can go discuss this as a Board and then go from there. At this time we'll discuss this as a Board and."

Mrs. Pouch said, "I don't see a problem with it." Mrs. Brown said, "Neither do I. She has to go through all these strict rules from the state, oh I'm sorry. I know you do have to go through strict rules for the state because I went through this with my niece. And it looks like everything's pretty much in shape here." Mr. Phelps said, "As long as they get all the required, I think we need to put that in there." Chairman Bonessi said, "That's the next thing is conditions. I agree. I'm sure that it would have to fall within the guidelines of their neighborhood. I'm not sure what their restrictive covenants are as well. They have to be in compliance with that." Ms. Berry said, "We checked on that and they don't have a homeowners association set up. It's like a lot of neighborhoods. No one really wants to set one up. They've got the basics but they just don't want to form one or set one up or pay dues because it's such a small neighborhood."

Chairman Bonessi said, "I guess the one thing I'm looking at is conditions as far as local, state and federal guidelines with regards to opening or running a child care facility in the home." Ms. Berry said, "You can use my fact sheet as part of a basis because I got off of their application. That might give you a little bit of information, at least what the state asks for. And the state application's in there as well, if you just want to look at it." Chairman Bonessi said, "I'd rather just say it has to comply with all the codes and let somebody else figure out what the codes are." Ms. Berry said, "As long as they're meeting the state for it, there's really not that much else we can do." Chairman Bonessi said, "That's right, I'm fine with that. So do we go ahead and somebody want to make a motion."

Mrs. Pouch said, "I make a motion that we grant the Conditional Use for a daycare for Elizabeth Luce and this is Case CU-07-09 to operate a daycare center in their residence and with provisions of the Henderson County Zoning Ordinance and that they receive all the proper licenses that are required by the state and the county for operating a daycare center in their home, and a copy of your state license

to the Zoning Administrator before you get your license.” Mrs. Karpowski asked if they wanted it to comply with the homeowners association. Chairman Bonessi said, “I would do that, now or, I don’t know if you can do it in the future.” Ms. Berry said, “No, you couldn’t do the future restrictive covenants once she’s in place. Anything that’s present of course.” Chairman Bonessi said, “I’ll go ahead and second. All in favor.”

Mrs. Brown - Yes

Mr. Bonessi - Yes

Mrs. Pouch - Yes

Mr. Phelps - Yes

Chairman Bonessi said, “Congratulations, ma’am.”

Case V-07-10, McFalls, Maurice W. and Monekia R., (owners), requesting an eight (8) foot variance from the front yard setback requirement at 172 Pine Valley Road to construct an attached double garage to existing single family dwelling and the zoning is R-10.

Chairman Bonessi made a motion to go into public hearing and Mrs. Pouch seconded. All voted in favor. He said it will be a quasi-judicial proceeding.

Ms. Berry said, “I have a couple of corrections to make. It’s an attached garage. I misunderstood when I did this. So it’s an attached garage to the structure. I would like to place power point and all my zoning official’s report into evidence. It’s an R-10 district, which is a high density residential district, which consists of single family, two family, small multifamily residences. The setbacks – we have front yard setbacks that are 50 feet from the centerline of the minor road. South Hillandale Drive, no yours actually says E. Blue Ridge. That was a mistake. I cut and pasted a whole lot this afternoon. The side and rear yard is 10 foot from the property boundary. And the maximum height is 35 feet. And the note is this has two front yards again. So we’ve got 2 roadways against this property. The lot size is 15,000 square feet minimum. They have 15,681, so the lot size is good. They asked for an 8 foot variance. The property has the constraint of having 2 front yard setbacks being applied to this structure. If the side yard setback were applied, it would be 10 foot and it would be from the edge of the pavement. Under the proposed Land Development Code, we’re going over the same thing again, where it would be a side yard not a front yard, so we won’t beat that to death. We’ve already discussed it on other cases. But this last page, I kind of made a little drawing here to try to show you what we have. See if everybody can see that. It’s basically 42 feet from the centerline of the street to one edge of the proposed garage and 49 foot on the other end to the corner of the garage. So he needs an 8 foot variance to satisfy the lesser of the 2, which is 42 foot. I put some pictures in the official zoning report that tell a little bit of the story. If you look at Exhibit E South Hillandale Drive Figure 1, that is Hillandale Drive. Wait until everybody gets there. It’s a gravel road. Right now it does provide access to 3 lots. There’s only one home back there at this time. The guy that lives there owns all 3 lots. And he will develop that out one day, I’m sure. But for some reason this road has never been maintained by the state, even though it’s a dedicated right of way. It is nothing but a gravel road. I don’t really know how to explain it. I’ll let Mr. McFalls explain what DOT told him when he talked to them. They’re not maintaining this end of the cul-de-sac. If you look at your overview, let’s see where I put it. I think it’s your first Exhibit A, right here. You’ll see, right beside the red square, you’ll see a cul-de-sac going up to the right hand side with a dedicated right of way. For some reason DOT stopped maintaining at that intersection, so it’s pretty much turned into nothing but a driveway to these 3 house. That’s the only street side that will be affected with this. And what he’s trying to do is he will have a driveway come off onto that and go out into the road from this garage. If you notice, I put 2 little, looks like garage doors on my drawing, just so you know which way the garage will be oriented. The carport is oriented toward Pine Valley Road. That’s why I put the driveway over there, so you could kind of see what I was doing. And the reason I didn’t think it was attached is it was a carport and I didn’t see how it could be attached. But I guess it can. I just really didn’t pay a whole lot of attention to it. The next picture, Figure 2, shows sitting on South Hillandale looking back at the carport. And that’s Exhibit E, figure 2. You can see his house there with the carport and that’s where he’s going to attach coming out straight towards me. Exhibit G just shows it from setting at the corner of South Hillandale and Pine Valley. Just giving you

another angle. You see the carport and he's gonna attach to the carport and come out to the right, kind of behind the woodpile there. Exhibit G just shows the garage, I mean the carport from a straight on angle." Mr. Phelps said, "Is this going to be an add on to the carport?" Ms. Berry said, "It's going to attach to the, the carport is right here. It's going to attach." Mr. Phelps said, "What does that say? You're going to extend out the carport?" Ms. Berry said, "I'll let Mr. McFalls explain, but yes, that's what he's told me. He's coming out towards South Hillandale, which is behind the woodpile to your right." Mr. Phelps said, "I'm just looking at these 2 trucks in front of the carport." Ms. Berry said, "Okay, while you're looking at the 2 trucks, it's going to be behind those trucks next to the carport going out continuing to the right. In other words, it's going to." Mr. Phelps said, "He's gonna come in from a different direction." Ms. Berry said, "Right, it's going to face South Hillandale and there'll be another driveway." Mr. Phelps said, "Now we have 2 driveways." Ms. Berry said, "Correct. That's correct." Mr. Phelps said, "I'm just trying to get oriented." Ms. Berry said, "No, I understand. I'm trying to explain it without dragging it out really long. Whatever you need, I will be glad to explain it. I tried to take the best pictures I could to show but it was really kind of hard to get a good angle on it. I know Mr. McFalls can fill in some of the blanks for you on how he plans to attach it and everything."

Chairman Bonessi said, "Is that all you have, Natalie." Ms. Berry said, "That's all I have." Chairman Bonessi said, "Anybody else have any questions for Natalie? Mr. McFalls would you. Do you have anything else to add from what Natalie has said?"

Mr. McFalls said, "No, basically we have a, just kind of a, rough hand drawing to give you an idea of how the garage will look." Chairman Bonessi said, "Okay, we can go ahead. Do we have to have that as evidence?" Mr. Phelps said, "So it looks like with the roofline you're to kind of balance it to look like the existing one on the other end. Is that right as far as the roofline?" Chairman Bonessi said, "Yes, that kind of what it looks like." Mr. McFalls said, "We just kinda need to get some vehicles out of the driveway. It would look a lot better, you know, as far as the neighborhood. I have an old classic car and an antique truck and I'd like to get them."

Chairman Bonessi said, "Anybody else have any questions for Mr. McFalls. Okay, if we don't have any questions, I guess we will discuss this as a Board." Mr. Phelps said, "Close the public hearing." Chairman Bonessi said, "Close the public hearing and let's discuss it and then we can make a motion. Does anybody have any concerns, objections?" Mrs. Pouch said, "Does this ???? bother any neighbors or be harmful to the neighborhood or?" Mr. McFalls said, "We did have 3 of the neighbors that received letters come and talk to us and they didn't have any objections." (Couldn't hear the rest.) Chairman Bonessi said, "Janice you want to." Mrs. Brown said, "I have no problem with it at all."

Mr. Phelps said, "I move that the Zoning Board find and conclude that Variance application V-07-10 complies with the necessary provisions of Henderson County Zoning Ordinance and I further move that the Variance be approved subject to the following, that he get all the proper building permits." Mrs. Pouch seconded the motion.

Mrs. Brown - Yes
Mr. Bonessi - Yes
Mrs. Pouch - Yes
Mr. Phelps - Yes

Chairman Bonessi said the Variance was approved.

COMMITTEE AND STAFF REPORTS: Proposed nuisance ordinance text amendment - Mr. Phelps moved that this discussion be moved to the special meeting for education. Attorney Zambon said it was on the Board of Commissioners agenda June 4. Mr. Phelps said it needs to be removed.

OLD BUSINESS: Ms. Berry asked if the Board wanted to set an expiration time of 7 o'clock for meetings. The Board discussed this and agreed.

NEW BUSINESS: Legal staff requests the Board schedule a special meeting for education – Ms. Berry asked the Board to set a special meeting for education. The Board suggested June 6, 13, or 20 and staff will check for availability of the Meeting Room and advise all members of the Board.

The Board discussed the problem with having 5 members at meetings and a thought was to increase the regular members to 8. Chairman Bonessi suggested writing a letter to all Board members asking if they wanted to remain on the Board. He said this should be discussed with more than the 3 members present now. Attorney Zambon said all members and the alternates should be invited to the Special Meeting and it could be discussed then.

There being no further business, Chairman Bonessi adjourned the meeting at 7:15 PM. The next meeting is Wednesday, June 27, 2007, at 4 PM.

Dean Bonessi, Chairman

Joyce Karpowski, Secretary