

MINUTES OF THE HENDERSON COUNTY
ZONING BOARD OF ADJUSTMENT

The Henderson County Zoning Board of Adjustment held its regularly scheduled April meeting on Wednesday, April 25, 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, Tony Engel, Jim Phelps, Ann Pouch, Alternate Jim Crafton, Zoning Administrator Natalie Berry, Associate County Attorney Sarah Zambon, and Secretary to the Board Joyce Karpowski.

Chairman Dean Bonessi called the meeting to order at 4:04 PM. Chairman Bonessi presented the minutes of the meeting from March 28, 2007. Mrs. Pouch moved to approve the minutes, Mr. Phelps seconded, and four members voted to approve the minutes as presented.

Case N-07-01, (continued) Richard Leon Lamb (appellant), Appeal of Notice of Violation and Declaration of Public Nuisance, 500 Brookside Camp Road.

Chairman Bonessi called the continuation of Case N-07-01. Mr. Phelps made a motion to open the public hearing and Mrs. Pouch seconded. All voted in favor. Tom McGraw, Code Enforcement Officer for Henderson County, said he wished to withdraw the violation since Mr. Lamb has abated the violation to the satisfaction of the County. Mr. Phelps made a motion to accept the abatement and withdrawal of the Notice of Violation and Mr. Engel seconded the motion. All five members voted in favor of the motion.

Case N-07-02, (continued) Richard Leon Lamb (appellant), Appeal of Notice of Violation and Declaration of Public Nuisance, 655 Brookside Camp Road.

Chairman Bonessi called the continuation of Case N-07-02. Mr. Phelps made a motion to open the public hearing and Mrs. Pouch seconded. All voted in favor. Lyle Case, Code Enforcement Officer for Henderson County, said that everything had been removed except one vehicle, which is sold and would be removed within the week. Associate Attorney Zambon said that she would draft a letter to Mr. Lamb and Attorney Stepp to that effect. Mr. Lamb said he would withdraw the appeal. Mr. Crafton made a motion to accept the withdrawal of the appeal and Mrs. Pouch seconded. All five members voted in favor of the motion. Mr. Phelps made a motion to close the public hearing and Mrs. Pouch seconded. All voted in favor.

Case N-07-06, Nelson Morales (appellant), Appeal of Notice of Violation and Declaration of Public Nuisance, 726 Tracey Grove Road.

Chairman Bonessi called Case N-07-06. Chairman Bonessi said that Mr. Morales used to be a customer of his but was not anymore. Chairman Bonessi said he felt he could be fair and objective in this case. Mr. Morales and the Board members did not have any problem with Chairman Bonessi hearing the case. Mr. Phelps made a motion to open the public hearing and Mrs. Pouch seconded. All voted in favor.

Lyle Case, Code Enforcement Officer for Henderson County, said he had received a complaint of vehicles being stored there. He referred to the photographs in the Board's packet. He said there were 35 + or - vehicles on the property. The business is a repair shop for BMW vehicles. There are excessive junk vehicles in outdoor storage. He gave the Board paperwork with the definition of junkyard from the Zoning Ordinance. He also gave the Board a current picture of the property taken today.

Ms. Berry said that the zoning is open use. In open use, a junkyard needs a Special Permit.

Associate Attorney Zambon read the definition of junk vehicles from the Nuisance Ordinance. She said outdoor storage is allowed in Open Use as long as it is part of the business and in compliance with a Zoning Permit. She said vehicle graveyards are permitted whereas junkyards are by Special Permit.

Mr. Morales said it is not a junkyard, his business is repairing cars. The cars are used for parts in the repair business. Mr. Case said there were 30 cars with no tags. Mr. Morales said there were 15 customer cars with tags.

Ms. Berry said the business was in Open Use and does not need a zoning permit. She read the definition of vehicle graveyard, which is an accessory use allowed in Open Use.

Associate Attorney Zambon suggested the Board may want to consider if this is a junkyard or something else.

Mr. Morales said he services BMWs. The business is a full service facility. He sells recycled parts, but that is a very small part of the business. He buys his cars from customers.

Ms. Berry said he said he is a business, so the question is, is the storage outside related to his business or not?

Ms. Pouch asked how many cars were outside. Mr. Case said 36, 30 cars don't have tags on them.

Associate Attorney Zambon said the question before the Board is whether or not the nuisance violation is connected to his business. Ms. Berry said are the cars stored outside related to his business and, to operate his business, are they needed? Associate Attorney Zambon pointed out the definition of junkyard says it is a principal use and the definition of vehicle graveyard says it is an accessory use.

Mr. Phelps questioned the Outdoor Storage in the Nuisance Ordinance and read the prohibited and permitted and questioned if one overrode the other. The Board discussed this. Ms. Berry said it would have to be the primary use of the property.

Mr. Morales described his business and how his main business is servicing cars, sometimes with recycled parts. But he is not a junkyard.

Mrs. Pouch asked how he determines when he has no more use for a car. Mr. Morales said at the end of the month, he determines which cars to sell for scrap. But he doesn't actively look to buy scrap cars, he buys them from customers. He explained how he uses the parts.

The Board discussed how many junk cars became a junkyard.

Ms. Berry said the Board could look at the percentage of used parts versus other business. If the used parts is less, then it would be an accessory use and it can't exist without the other business. Then it would be a vehicle graveyard. Sales receipts could be checked for this information. She explained if the Board found he was a junkyard, then Staff could cite a Zoning violation.

Chairman Bonessi asked Mr. Morales to estimate what percentage of his business is used parts. Mr. Morales explained how he did his business and guessed 8 – 25%, maybe 10 – 15% in 1 month. He explained it would be higher if you took the percentage of the parts business and lower if you took the percentage of the whole business.

Mr. Phelps mentioned the prohibited outdoor storage citing it is not allowed in the front of the property. Mr. Morales said he did not have any of those cars in the front. The cars in front look like a used car

lot. Attorney Zambon said in his appeal letter, Mr. Morales said he would be putting up a security fence. Mr. Morales said his back neighbor and he were planning on together putting up a privacy fence between the properties. Although he said the vehicles were not visible from the road.

Associate Attorney Zambon read the definition of vehicle graveyard from the Zoning Ordinance. She described again the difference between junkyard and vehicle graveyard. The vehicle graveyard is a permitted use in Open Use and the junkyard requires a Special Permit.

Ms. Berry discussed the intent of the Nuisance Ordinance with relation to junk cars. She said part 1 of the question is are the cars part of the business? If the answer is yes, he's under a valid Zoning Permit. If the answer is no, he's not under a valid Zoning Permit.

Associate Attorney Zambon said her understanding and interpretation is the permitted outdoor storage refers to businesses and the prohibited outdoor storage refers more to residential.

Mr. Phelps made a motion to go into closed session and Mr. Engel seconded. Associate Attorney Zambon explained to Mr. Morales that basically meant the Board was going out of public hearing and the public would no longer have any input.

The Board discussed the violation cited on the violation notice.

Mr. Crafton made a motion to not uphold the violation and the motion was seconded by Mr. Engel. Chairman Bonessi called the vote:

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

The Board discussed clarification and text amendments.

Attorney Zambon said that she needed the Orders approved.

COMMITTEE AND STAFF REPORTS: None

OLD BUSINESS: None

NEW BUSINESS: None

There being no further business, Chairman Bonessi adjourned the meeting at 5:33 PM. The next meeting is Wednesday, May 30, 2007, at 4 PM.

Dean Bonessi, Chairman

Joyce Karpowski, Secretary