

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 26, 2006, at 4:00 p.m. in the Meeting Room of the Henderson County Land Development Building, 101 East Allen Street, Hendersonville, North Carolina. Those present were: Chairman Dean Bonessi, Tony Engel, Jim Phelps, Ann Pouch, Alternate Members Janice Brown and Dr. Philip Stanley, Zoning Administrator Natalie Berry, and Secretary to the Board Joyce Karpowski.

Chairman Dean Bonessi called the meeting to order at 4:05 PM. Chairman Bonessi introduced the members of the Board. He presented the minutes of the meeting from March 29, 2006. There were no corrections or changes. Mrs. Pouch moved to approve the minutes as written, Mr. Phelps seconded, and all members voted to approve the minutes as presented.

Chairman Bonessi called anyone involved in today's cases to come forward to be sworn in. Sworn in were Zoning Administrator Natalie Berry and Petitioner Kenny Davenport and Evelyn Uhrlass. He explained the quasi-judicial procedure being used today.

**Case V-06-01, Connie Rayfield, agent, for Covenant Presbyterian Church**

Chairman Bonessi called case V-06-01, Connie Rayfield, agent, for Covenant Presbyterian Church, requesting a Variance from the maximum square footage of a bulletin board to be erected on site. The proposed site is located at 2101 Kanuga Road and is zoned R-40. Chairman Bonessi opened the continuation of the hearing.

Ms. Berry reviewed summary of the issues. The application is for a Variance to the bulletin board regulations in an R-40 zoning district. Churches and church bulletin boards are allowed up to 12 square feet surface area on the sign. The request is for a 25 square foot bulletin board. Legal notices were properly placed in the Hendersonville Times-News on March 20, 2006 and a display ad on March 27, 2006. Ms. Berry had a Power Point presentation and showed the map of the location of the property. The church is located in an R-40 zoning district. Next door is an R-20 zoning district with a church. Across the street is a gas station. Behind the church are residences. There is a corridor of commercial area, although it is zoned residential. She showed where the new sign would be placed. She showed where the current sign is and parking on each side of the church. Ms. Berry showed a picture of the sign for the church across the street which is larger than the requested sign and 42 square feet in size.

Ms. Berry said that at the last hearing the Board had asked how she calculated the size of signs. She passed out a paper with a drawing explaining how the size of signs is calculated. She also distributed photographs of the current signs with the size on the bottom. One sign is just on a retaining wall. The current sign is 6' x 9' and made of brick with just the name on it. The other sign is on a retaining wall.

Ms. Berry said, in reply to a question asked at the last meeting, the area was zoned in 1981 as R-40. The Zoning Department does not have anything on file that the church across the street has approval for the 42 square foot sign. She does not know if it was just put up or if it was put up before 1981. One of the Inspectors tried to speak with them but they were never there.

Ms. Berry cited Attachment 5 from the sign company which shows the size of letters which can be read safely at certain speeds. Between 25 and 45 miles per hour, the letters need to be between 4 and 6 inches high. That is where the size of the sign comes from. She showed a picture of what the sign would look like and showed the area that was used to calculate the size – basically just the letter area, not the poles or wood around the sign. R-40 allows a bulletin board but not to exceed 12 square feet in size. Setbacks do not apply to the sign because it is not a structure. The only setback of concern is Department of Transportation right-of-way. On Kanuga Road the right-of-way is 60 feet, 30 feet on each side of the centerline. Price Road is 25 feet, 12 ½ feet each side of the centerline. The proposed sign is outside of the right-of-way.

Ms. Berry said that she needs to answer some questions that the Board asked. The Board asked what the Land Development Code said, but the Code has not been accepted. The Board asked how long it took to do a text

amendment and that is about 4 months. It has to go to the Planning Department, then the Planning Board, then the Board of Commissioners for a hearing and then the Board of Commissioners would vote to pass or reject it. She's not sure that a text amendment is the right thing to do at this time. Ms. Berry said that she talked to the City of Hendersonville. She had handouts for the Board of a request from a church for a variance in 2000. Their Ordinance says that bulletin boards cannot exceed 15 square feet. The Board of Adjustment granted their request for a 30 square foot sign. The only difference is the sign is not backlit. Ms. Berry said she spoke to the Planning Department and asked them to change the size of church bulletin boards in the future ordinance. She said, if the Land Development Code had been passed, the proposed sign would have been allowed. She said church signs were allowed to 50 square feet.

Chairman Bonessi said that he believed the Ordinance allowed for 1 sign. Ms. Berry said the Ordinance does not say just one sign, but that the sign cannot exceed 12 square feet.

Ms. Berry said the Board had asked if the gas station could modify their sign. She said they couldn't unless they modified in between the framing, because they are considered a non-conforming use.

Mr. Engel asked if it was a one sided sign. Ms. Berry said it is a two-sided sign, that is lit and the Church had agreed to turn the light off at 10:00 PM. Ms. Uhrlass said all the lights in the church go out at 10:00 PM. Mr. Engel asked if the overall area was one side or both sides. Ms. Berry explained that if the sign has one flat face with both sides used, only one side is counted. If the sign has 2 faces and is V-shaped, then both sides are counted. The side has to share a common back for it to be one sided. Ms. Berry said the City of Hendersonville calculates signs the same way.

Chairman Bonessi asked if there was any other testimony. Ms. Berry said that Evelyn Uhrlass was here tonight in place of Connie Rayfield. Ms. Uhrlass had nothing to add at this time.

Mrs. Pouch said her concern in granting the variance is that every other church will want a larger sign. Ms. Berry said the new Ordinance will change that anyway. Mrs. Pouch said shouldn't the church wait until it is changed. Ms. Berry said the reason for the sign is a safety reason, to be more easily read while in a moving car. Other communities have granted variances for the same situation. Hendersonville has granted 2 or 3 over the years. And the County is in the process of changing the Ordinance to allow it. She feels that supports the variance. If the County wasn't changing the Ordinance, she would suggest a text amendment, but that is her opinion. She also said that the sign will be on a knoll so that it will not be in the sight triangle and block views. Also no trees will be removed, and the grade will remain the same. She said instead of the text amendment, she has already brought it to the Planning Department's attention that it needs to be changed. They have agreed to make the changes.

Mr. Engel asked if the nearby church's sign is larger than the proposed sign. Dr. Stanley said it is almost twice as big. Mr. Engel said it looked so small while driving by it. Chairman Bonessi asked when Ms. Berry brought it to the Planning Department. Ms. Berry said right after the last meeting. She said they had already changed it in the Land Development Code. Chairman Bonessi asked what the Code actually said. Ms. Berry said she didn't bring the section but she thinks it's 50 square feet. She said the City of Hendersonville allows 70 square feet and ours is less than that. Chairman Bonessi asked if the City's is currently 15 square feet. Ms. Berry said it is 70 square feet in the commercial districts and 15 square feet otherwise. The County's new Code will be 50 square feet for this type of sign. Chairman Bonessi asked in all districts. Ms. Berry said churches were allowed in all districts. Mr. Phelps asked for churches in any district. Ms. Berry said yes. Mrs. Pouch said she thought there were restrictions on the size of church signs per zoning district. Ms. Berry said that is in the current Zoning Ordinance, but they are working on changing that in the new Code, but only the size of the sign, not the setbacks or buffering, etc. She said the Planning Department has asked her for flaws in the current Zoning Ordinance and this is one she has told them about. Chairman Bonessi asked if she had anything from the Planning Department saying this was a flaw. Ms. Berry checked to see if there was anyone in the Planning Department that could talk to the Board. She came back and since it was after 4:30 PM everyone had left.

Chairman Bonessi closed the hearing and asked for discussion among the Board. Mr. Engel said that he did not feel the sign could be much smaller if they wanted people to be able to read it along Kanuga Road. He said there is a controlled traffic light on the corner, so hopefully people will be going slow enough to be able to see the sign. He felt the sign would be conducive with the area – the church is a nice looking church and the sign is also nice looking and residential looking in appearance, different than the service station across the street. He didn't feel it would adversely affect any neighbors because most of the house are set back further or around the bend where they wouldn't even see the sign.

Chairman Bonessi said he didn't disagree but had trouble interpreting or essentially changing the Ordinance. Dr. Stanley said how are you changing the Ordinance? You're just granting a variance and Hendersonville has already granted several. There is precedence and, if the neighbors were concerned, they would be here. Dr. Stanley said it is not really a commercial sign. Dr. Stanley felt if the variance were not granted, they would not have the same opportunity their neighbor has. Perhaps the sign might not even have been permitted when it was installed. Chairman Bonessi said that we are using that to justify... Dr. Stanley said no. Mr. Phelps said it could have been pre-existing. Ms. Berry said she looked through all the permits and couldn't find one and had an Inspector go to the church and never found anyone. Mr. Phelps said their office is downtown. Ms. Berry said that's why they never caught anyone. Mr. Engel said that the church is not that old and it was sold a while back. Ms. Berry said she thought the church was there before 1980. Mr. Engel said yes the building was there, but what about the sign. Mr. Engel said that is irrelevant to this proposed sign. Mr. Phelps said he has no objection but has a problem with not being able to secure reasonable use of the property and he feels that is not the case. Mr. Engel said it depends on the interpretation of reasonable use. If you want it to pull people in and tell what activities are happening there. That's affects reasonable use and depends on the interpretation. Mr. Engel said if we followed it so strictly, we'd never have any variances. Chairman Bonessi said he could go with the public safety aspect of it. Mrs. Pouch said, if you have a sign, you should be able to read it. Chairman Bonessi said the variance is in harmony with the general purpose and intent of the ordinance – he would struggle there. Mr. Engel said it is in harmony with the neighborhood. Ms. Berry said variances are allowed for technical things like setbacks, height and size. Mr. Phelps said that would be like the second one – unique circumstance to the land.

The Board talked about the hardship to the land. Mr. Phelps said the land was high so you need a larger sign to be seen. Mr. Engel said it was on a major road with faster traffic and you need larger letters to be read. Chairman Bonessi said the Board would go through the list and then ask for a vote. Chairman Bonessi read the first one about not securing a reasonable return on the use of their property. Dr. Stanley said it was to pass on information and inform the public of their activities. The Board is not a result of the applicant's own action. Chairman Bonessi said the elevation and Dr. Stanley said the topography of the land. Chairman Bonessi said the variance is in harmony with the general purpose and intent of the ordinance and will preserve its spirit. Mr. Engel said the purpose of the ordinance is to not have unsafe situations, which we will not have with the size. The sign is a tasteful, attractive sign in harmony with the surrounding area. Chairman Bonessi said the variance will secure the public safety and welfare and will do substantial justice. Mr. Engel said the sign will be set back far enough to not block views and will be outside the sight triangle. It will be outside the Department of Transportation right-of-way. Mr. Engel said the neighborhood and values will be unaffected.

Mr. Engel said with regard to the application of Covenant Presbyterian Church for a variance from the minimum bulletin board surface area requirements, I move that the Zoning Board of Adjustment make the following findings of fact: Strict enforcement of the regulations would result in practical difficulties or unnecessary hardship to the applicant; The variance is in harmony with the general purpose and intent of the ordinance and will preserve its spirit; and in the granting of the variance the public safety and welfare have been secured and substantial justice has been done. Accordingly, I further move the ZBA to grant the requested variance in accordance with and only to the extent represented in the application. Mr. Engel asked if the lights would be a part of this. Ms. Berry said you could make it a condition.

Ms. Berry asked if she could interrupt to answer the question about substantial justice. She read from the Zoning Board of Adjustment book "In the granting of a variance the public safety and welfare have been assured and substantial justice has been done. The third finding required by the statute is that the public safety and welfare have been assured and substantial justice done. The inquiry into whether these conditions have been met is likely to be as slippery as the determination of whether the 'spirit' of the ordinance is observed. The Rhode Island Supreme Court has attempted to state a rule to be followed by the Board of Adjustment in the following terms: As the provisions of the ordinance represent a declaration of public interest, any variance would in some measure be contrary thereto. In this connection, the words 'contrary to the public interest' should be interpreted to mean what in the judgment of a reasonable man would unduly and in a marked degree, conflict with the ordinance provisions." She said she didn't know if that would be helpful.

Mr. Engel continued with a condition that the light on the sign go out at 10:00 PM. Dr. Stanley seconded the motion.

Chairman Bonessi called for a vote by show of hands.

Jim Phelps                    Yes  
Chairman Bonessi        Yes  
Mrs. Pouch                Yes  
Mr. Engel                 Yes  
Dr. Stanley                Yes

Chairman Bonessi said the Variance was granted with the stated condition.

Chairman Bonessi turned the meeting over to the Vice Chairman Ann Pouch.

**Case V-06-02, Kenny and Tabea Davenport, petitioners**

Chairman Pouch called Case V-06-02, Kenny and Tabea Davenport, petitioners, requesting an eleven (11) foot variance from side yard setback requirement on the west side of the property at 2089 Glenheath Drive to construct a single door garage (18' x 24'). The property is zoned R-30.

Chairman Pouch opened the hearing and asked Ms. Berry for a summary of the issues. The applicant is proposing to construct an 18' x 24' attached garage to the existing structure. The required notices were published in the paper March 21 and March 27, 2006. The parcel is zoned R-30 and is 0.82 acres.

She pointed out the parcel on a map. Ms. Berry pointed out where the garage will be placed and attached to the house by a retaining wall. Mr. Phelps reiterated that a wall will connect the garage to the house. Ms. Berry said, if you read our building definition, it allows that to be considered one building; that's why she pointed out it was attached with a wall. She said the garage will be on the left side of the driveway and pointed out the location. She showed a sketch of the garage with one door 16 feet wide. She showed a picture of the existing dwelling and where the white vehicle is parked is where the garage will be placed. Ms. Berry said that Attachment 5 showed the topography of the land and how it goes uphill quite a bit. There would have to be a substantially steep driveway to get to the back of the house if the garage were placed there. On the left side of the house is an air conditioner and a gas line. She showed the Environmental Permit and apparently the system failed and they had to use the repair field. So part of the side yard and the entire back yard is taken up with the septic system. Another picture is an overview of the lot from the street to show the topography. The setbacks are 30 feet for side and rear yards. He is asking for an 11-foot reduction making the garage 19 feet from the property line. Ms. Berry said the size of the garage was changed a few times because it started out bigger. They made it as small as possible to suit his purpose to encroach the least possible. Mr. Phelps pointed out that the existing house is 28 feet 3 inches from the property line. Ms. Berry said the house is pre-existing because it was built before zoning was in effect. She said it was built in the mid 70's. Mr. Phelps asked if there were any objections from neighbors. Ms. Berry said no. Mr. Phelps asked about Homeowner Association rules not allowing this. Ms. Berry asked Mr. Davenport to address that.

Mr. Davenport said that neighborhood setback is 15 feet, so the County is more stringent. Mr. Davenport said the main reason they want the garage is that the Covenants state that boats, campers, etc. be out of public eye in a screened in area. They want to be good neighbors and keep the boat stored out of the elements and out of the public eye. They will also keep a riding mower in there as well.

Chairman Pouch asked what kind of boat it is. Mr. Davenport said it is a bass fishing boat – 22 feet long with the trailer and about 8 ½ wide. They have a riding mower and a workbench that they would like to put in there also. Chairman Pouch asked if they used the existing garage. Mr. Davenport said they use it for their 2 cars. Mr. Davenport said the new garage is for the boat. Mr. Engel asked if there was any other location to put the garage. Mr. Davenport said there is really not. Ms. Berry said that the utilities sheet shows the front yard, side yard and most of the back yard, with the septic system. The septic system starts at his front door then goes around the right side of the house. Mr. Engel asked if the septic system in the front yard is used anymore. Mr. Davenport said it is used. Mr. Engel asked if both septic systems were used. Mr. Davenport said yes. Mr. Davenport said the second septic system is a backup that is used and switched over during the rainy season to compensate for the extra moisture. Ms. Berry said on the left side of the house there is a gas line that runs from the house almost to the property line then down the property line to the street. Mr. Engel said he would still need a variance if the garage was located on the side. Ms. Berry said he would need a greater variance. Mr. Davenport said he would have to pave up the side and that would detract. Ms. Berry said it is also steeper on the side of the house. Dr. Stanley said he assumes his neighbor knows. Mr. Davenport said both neighbors know. Dr. Stanley said they are not here so they must have no objections. Ms. Berry said Mr. Davenport talked to his neighbors before he started the process to make sure they had no problems with it.

Dr. Stanley asked if there would be bathrooms or bedrooms in there. Mr. Davenport said no living space, just for storage. Chairman Pouch said there are storage places for boats. Mr. Davenport said they considered that but use the boat a lot and would like to keep it on the premises for the convenience.

Mr. Phelps asked if the garage door would match the house. Mr. Davenport said yes. Dr. Stanley asked if the distance between the property line and the proposed garage would allow fire engines and emergency vehicles to go between buildings. Ms. Berry said typically fire equipment needs 20 feet between buildings as far as building codes go. As far as setbacks go, that is to keep buildings away from property lines in case of property line disputes. The Board discussed emergency vehicle access in the area. Ms. Berry said setbacks were probably to keep neighbors from being crowded. That's why there are height restrictions on lots less than 1 acre.

Mr. Davenport said that he had said the boat was 8 ½ feet wide but then the width of the trailer (about 1 ½ feet) has to be added to that to make the width more like 10 feet.

Chairman Pouch asked about the house being 28 feet from the property line and then the garage being 11 feet from the property line, then it will be 17 feet from the property line. The Board discussed the angle of the property line so that the garage will be 19 feet from the property line at the back of the garage. Dr. Stanley asked how close the other side of the house was to the property line. Mr. Davenport said it was very close to the 30-foot setback.

Mr. Engel asked if the garage was considered an attached garage because it was attached to the retaining wall or a detached garage. Ms. Berry said it was considered an attached garage because of the definition of building in the Ordinance. There was discussion about this. Mr. Engel spoke about a garage in the front yard not being allowed. Ms. Berry said unless there is topography issues. Ms. Berry said they had tried to position the garage everywhere they could think of and this way is the most workable. Ms. Berry said she doesn't necessarily agree with the way it is worded, but she has to work with it. The Board discussed the retaining wall and its height and length.

Mr. Phelps said that the distance from the house to the road is a pretty good distance. Ms. Berry said it is about 200 feet back from the road. Ms. Berry said the right property line is 304 feet and it's about ¾ of the way back.

Mr. Davenport said that the garage will be the same style as the house to make it flow nicely.

Ms. Berry said that if the Board felt more comfortable they could call it a detached garage. Mr. Phelps said that it didn't change anything. Ms. Berry said because of the topography and if the side yard variance is granted, a permit can be issued.

Chairman Pouch asked if there were any more questions. There were none. She closed the hearing and asked for comments from the Board. Dr. Stanley said there was no one else here so the neighbors had no objections. He said it is in the middle of nowhere. He can't put it in the back yard because of the utilities.

Chairman Pouch said that the attitude that it is out in the middle of nowhere is where we have gotten into so much trouble in the County, with people building what they want to build. Dr. Stanley said that the house was built before and they came in and remade the rules. Chairman Pouch said she appreciates that but why did they remake the rules. Dr. Stanley said for new construction. Ms. Berry said this one needs the variance because the house was built before zoning, so the house wasn't centered on the property. If it had been centered, he wouldn't need the variance. Chairman Pouch said do we give a variance because of a boat. Mr. Engel said there is a problem with the property in that he can't place the boat in a screened in area because he can't get it into the back yard because of the septic system there. You can't get it on the wider side because of the septic system. The only side he can pull it into where the garage is can't be screened. You can't drive over the septic system. Mr. Engel said there has been a lot of problems with ground water in that area so people have septic problems there. When the original builder did the homes, he only put in a 2 line septic system for 2 bedrooms and this house has 4 bedrooms and he says when they replaced it they ran 4 lines. Dr. Stanley asked if he put the septic system in. Mr. Davenport couldn't answer the question. Mr. Engel showed on a map where the boat could be stored. Chairman Pouch said he could put it in a storage facility. Mr. Engel said, if a person uses something a lot, it would be in his front yard more than in the storage place.

Chairman Pouch read if the applicant complies with the literal terms of the district, he cannot secure a reasonable return from or make reasonable use of the property. Dr. Stanley said this is the only place to put the garage and there is no other alternative other than a storage facility. Mr. Phelps asked if he put a 6-foot fence around that

area, would he need a variance. Ms. Berry said no. Mr. Phelps said it would not be covered, just screened. Mr. Phelps said from an appearance standpoint, the garage would be more enhanced. Mr. Engel said the road is higher than the fenced area and you would be looking down into the area and probably need about a 10-foot fence. Mr. Phelps said so it really wouldn't be screened. The Board discussed the height of the road and the impracticality of screening. Mr. Phelps said the structure will meet the Homeowners Association Covenants. Chairman Pouch read the hardship which the applicant complains results from unique circumstances related to the applicant's land. Dr. Stanley said the utilities and topography. Mr. Engel said the utilities definitely and the topography eliminates screening as far as a fence goes. Chairman Pouch read the hardship is not the result of the applicant's own action. Ms. Brown said the house was built before zoning and is not in the center of the property. Mr. Engel said the topography of the land will not let him use other areas. Chairman Pouch read the variance is in harmony with the general purpose and intent of the ordinance and will preserve its spirit. Ms. Brown said it will match the house and keep storage under cover to keep it in harmony. Mr. Engel said it will meet the requirements of the homeowners association. Chairman Pouch read the variance will secure the public safety and welfare and will do substantial justice. Mr. Engel said being set back so far there is no adverse effect on the area and adjacent properties. Mr. Phelps said the indoor storage is more attractive and harmonious.

Dr. Stanley said with regard to the application of Kenny and Tabea Davenport for a variance from the minimum side yard setback requirements, I move that the Zoning Board of Adjustment make the following findings of fact: Strict enforcement of the regulations would result in practical difficulties or unnecessary hardship to the applicant; The variance is in harmony with the general purpose and intent of the ordinance and will preserve its spirit; and in the granting of the variance the public safety and welfare have been secured and substantial justice has been done. Accordingly, I further move the ZBA to grant the requested variance in accordance with and only to the extent represented in the application. Ms. Brown seconded the motion.

Mr. Engel asked if there should be any condition so the Board knows that what is in the picture is what is being built. Ms. Berry said that by saying what is in the motion according to the application you won't have to. The Board discussed wording for the condition and said the brick and siding should match the existing house as in the plans presented. Mr. Engel also questioned the porch on the front of the house. Ms. Berry said that Mr. Davenport could build a porch without any variance. Mr. Phelps said one of the letters said something about it might encroach on the septic tank. Ms. Berry said that Mr. Davenport would have to address that through the Environmental Health Department. That is a separate issue from the variance.

Chairman Pouch called for a vote by show of hands.

Jim Phelps	Yes
Mrs. Pouch	Yes
Mr. Engel	Yes
Ms. Brown	Yes
Dr. Stanley	Yes

Chairman Pouch said the Variance was granted with the stated condition.

COMMITTEE AND STAFF REPORTS: None

OLD BUSINESS: None

NEW BUSINESS: None

There being no further business, Ms. Brown made a motion to adjourn, Mr. Engel seconded, and all approved. Chairman Pouch adjourned the meeting at 5:35 PM. The next meeting is Wednesday, May 31, 2006, at 4 PM.

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Dean Bonessi, Vice Chairman

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Joyce Karpowski, Secretary