

MINUTES OF THE HENDERSON COUNTY
ZONING BOARD OF ADJUSTMENT

The Henderson County Zoning Board of Adjustment held its regularly scheduled March meeting on Wednesday, March 30, 2005, 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 Robert Fleming, Anthony Engel, Gary Griffin, Ann Pouch, Alternate Member Suzanne Holbert, Zoning Administrator Natalie Berry, and Secretary to the Board Joyce Karpowski. Also attending was Assistant County Attorney Russell Burrell.

Chairman Fleming called the meeting to order at 4:00 PM and introduced the members of the Board.

Chairman Fleming presented the minutes of the meeting from February 23, 2005. There were no corrections or changes. Mrs. Pouch moved to approve the minutes as written, Mr. Engel seconded, and all members voted to approve the minutes as presented.

Chairman Fleming welcomed everyone. Chairman Fleming explained the quasi-judicial procedure that would be followed today to review a building envelope sketch plan for one pre-existing non-conforming vacant parcel in Henderson County. He explained that that this would be a rehearing of an application that was denied at the last meeting and read Article V, Section D, Item 4 of the Henderson County Zoning Board of Adjustment By-laws. He called forward anyone wishing to testify today to be sworn in. Sworn in were: Zoning Administrator Natalie Berry, Mary Weston (Property Owner), and Marilyn Barnwell (Ms. Weston's Realtor).

Case V-05-03, – Mary G. Weston, Petitioner

Chairman Fleming called Case V-05-03, Mary G. Weston, Petitioner, requesting a fifteen (15) foot variance from the 2 side yard setbacks of the vacant property at 130 Windham Way to construct a single-family dwelling. The property is zoned R-40.

Chairman Fleming asked for a summary of the issues. Ms. Berry said the petitioner is requesting a fifteen-foot (15) variance from the two (2) side yard setbacks of the vacant property at 130 Windham Way. The applicant is selling the subject lot as a vacant pre-existing non-conforming parcel. This parcel is located in a subdivision and is zoned R-40 residential. A future sale would be for construction of a 3 bedroom single-family dwelling to fit within the building envelope that is being requested at this zoning board hearing. The parcel is zoned R-40, with a rear and side-yard setback requirement of 35 feet. The front yard setback is 60 feet from the centerline of a minor street. The future single-family dwelling will be situated facing the street (Windham Way). If allowed, the single-family dwelling shall encroach into the two (2) side yard setback areas by fifteen foot (15) each. A pre-existing lot order granting an existing lot application was awarded on 1/25/2005. The requirements for lot size in the R-40 district is 40,000 SF, the lot as it is has 21,780 SF. The lot was put into existence in 1962 before zoning was put into place. This reduction of 18,220 SF has some bearing on the situation stated above.

Section 200-39.F states the following:

“Use of existing lot of record. Where the owner of a lot of official record in any district at the time of the adoption of this chapter or any amendment thereto, or his successor in title thereto, does not own sufficient contiguous land to enable him to conform to the minimum lot size requirements of this chapter, such lot may be used as a building site, provided that the Board of

adjustment is authorized to approve as a variance such dimensions as shall conform as closely as possible to the required dimensions.”

Ms. Berry continued saying the average side yard setbacks for the neighboring properties are approximately 16.60'. Ms. Berry cited page 1-7 in the Board's packets to follow. The setbacks vary from approximately 0', 8', 9', to 14', 17', to 33', and 35'. The average front yard setbacks for the neighboring properties are approximately 61.67'. They vary from 57', 60', to 68'. The average square footage for the neighboring properties is 2590 SF. The approximate footprints for the neighboring properties are as follows:

140 Windham Way	35' x 62'	2170 SF
120 Windham Way	35' x 72'	2520 SF
121 Windham Way	40' x 93'	3720 SF
123 Windham Way	33' x 54'	1782 SF
141 Windham Way	30' x 90'	2700 SF
151 Windham Way	50' x 53'	2650 SF

Ms. Berry said that she wanted to show the typical width of houses on the street. R-40 restricts a single family dwelling to be a stick built type home or a modular type home. It excludes placement of a mobile/manufactured home. Septic Permit #04070186063 shows a 900 square foot drain field. Mr. Seth Swift from the Environmental Health Department stated to me on the phone that the house must set back 70 foot from front yard property boundary. The site does not need a repair area due to being platted in 1962. Ms. Berry cited page 1-6 showing the building envelope that the petitioner is requesting and explained it. She said that the owner does not want to build a house but to sell the lot so the purchaser can build a house and granting this application would enhance the salability of the lot. Ms. Berry said that the septic permit was on page 1-8 and explained it. She said that page 1-9 is the existing lot determination granted. Page 1-10 is the deed map presented for Lot 21 and Ms. Weston has been the owner since 1962.

Mrs. Pouch asked if the house would be sideways. Ms. Berry said that the house would face the street and the envelope would be 67 feet wide facing the street.

Chairman Fleming said that the Board would need to decide whether to rehear the case now. Mr. Engel said that with the new additional information, he can see that the petitioner is asking for less setback than the neighbors have, which seems very reasonable. Chairman Fleming said that he felt much better about the decision making process with the additional information. Chairman Fleming made a motion to hear the case again and Mr. Engel seconded the motion. All the members voted in favor.

Chairman Fleming opened the public hearing and called forward anyone wishing to speak. Mary Weston, the applicant, came forward. Ms. Weston said that Ms. Berry had presented the case very well. Ms. Weston cited her application on pages 1-3 and 1-4. She said that if she complies with the provisions of the ordinance, the property owner can secure no reasonable return from or make no reasonable use of his property. Ms. Weston said that the house would have to sit lengthwise on the lot and not face the street. Ms. Weston continued with the hardship of which the applicant complains results from unique circumstances related to the applicant's land. She said that the lot is a pre-existing non-conforming parcel subdivided before 1962 before the zoning became R-40. Ms. Weston continued that the hardship is not the result of her actions. She said that it is not because it was pre-existing. Ms. Weston said the variance is in harmony with the general purpose and intent of the ordinance and preserves its spirit. She said yes, all other houses on the street are non-conforming. They encroach on all side yard setback, varying from 0 to 35 feet. Ms. Weston said that the granting of the variance secures the public safety and welfare and does substantial justice. She said that the house would fit in the character of the neighborhood by having similar setbacks, footprints, and orientation to the street. There were no questions for Ms. Weston.

Chairman Fleming closed the public hearing and asked for discussion. Mr. Griffin said this was much better. Mrs. Pouch said all the questions were answered. Mr. Engel said the request was very reasonable.

Mr. Engel said there are practical difficulties or unnecessary hardships in carrying out the requirements of the district, as demonstrated by: if the applicant complies with the literal terms of the district, he cannot secure a reasonable return from or make a reasonable use of his property. Chairman Fleming said that zoning came in after the formation of the lot so it is pre-existing. Mr. Engel said the hardship which the applicant complains results from unique circumstances related to the applicant's land and the hardship is not the result of the applicant's own action. Mrs. Pouch said the lot is pre-existing from before the area was zoned and the applicant should have the right to use it. Mr. Engel said the variance is in harmony with the general purpose and intent of the ordinance and will preserve its spirit. Chairman Fleming said neighboring property's side yards fit this situation and it is in harmony and doesn't hurt anyone else's property. Mr. Engel said the variance will secure the public safety and welfare and do substantial justice. Chairman Fleming said the property can now be sold and a home built on the property with no public safety and welfare issues around it.

Mr. Engel said with regard to the application V-05-03 for a variance from the minimum side yard requirements, I move the board to make the following finding of facts: 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 Board to grant the requested variance in accordance with and only to the extent represented in the application. Mr. Griffin seconded the motion. Chairman Fleming said to use the summary of issues for conditions on the order.

Chairman Fleming asked for a vote by a show of hands:

Mrs. Pouch	-	Yes
Mr. Fleming	-	Yes
Mr. Engel	-	Yes
Mr. Griffin	-	Yes
Ms. Holbert	-	Yes

Chairman Fleming said the variance was granted.

COMMITTEE AND STAFF REPORTS: Ms. Berry said that she has received 2 Conditional Use Permit applications, which she would like to send to the Planning Board for recommendation for their April meeting. Chairman Fleming has signed a letter to this effect. The Board would then hear the applications in May.

OLD BUSINESS: None

NEW BUSINESS: None

There being no further business, Chairman Fleming made a motion to adjourn. Mr. Engel seconded the motion and all voted in favor. The Chairman adjourned the meeting at 4:26 PM.

Robert Fleming, Chairman

Joyce Karpowski, Secretary