

February 23, 2005  
4:00 PM

MINUTES OF THE HENDERSON COUNTY  
ZONING BOARD OF ADJUSTMENT

The Henderson County Zoning Board of Adjustment held its regularly scheduled February meeting on Wednesday, February 23, 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, Dean Bonessi, Anthony Engel, Ann Pouch, Alternate Member J. Eric Goodman, Zoning Administrator Natalie Berry, and Secretary to the Board Joyce Karpowski. Board Member Gary Griffin arrived later, but did not participate.

Chairman Fleming called the meeting to order at 4:05 PM and introduced the members of the Board.

Chairman Fleming presented the minutes of the meeting from January 26, 2005. There were no corrections or changes. Chairman Fleming moved to approve the minutes as written, Mrs. Pouch seconded, and all members voted to approve the minutes as presented.

Chairman Fleming welcomed everyone. He called forward anyone wishing to testify today to be sworn in. Sworn in were: Zoning Administrator Natalie Berry, Jerry Sain, Laura Molton (?), Robert Wilson, and Marilyn Barnwell.

**Case CU-05-02, – Mary G. Weston, Petitioner and Jerry G. Sain, Potential Buyer**

Chairman Fleming called Case CU-05002, Mary G. Weston, Petitioner and Jerry G. Sain, Potential Buyer, requesting a twenty three (23) foot side yard setback variance from the east and west sides 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 that Mary G. Weston is the applicant for this property which she owns and has been in the subdivision since 1963. Ms. Berry said that the lot is non-conforming and not large enough for the R-40 district. She did a pre-existing lot determination for Ms. Weston, and since it has been in existence since 1963 as is and has not had any adjoining property in the same ownership, Ms. Berry issued a Pre-existing Lot Order. The lot is for sale now and Mr. Sain would like to buy it and build a house on the property, but needs a reduction in the side yard setbacks to fit the house. The requirement for the side yard setback in R-40 is 35 feet. The lot is 97.6 feet wide. They are proposing a single family dwelling which would be situated parallel to the street. If allowed, the dwelling would encroach on both sides 23 feet each. The pre-existing lot order was granted January 25, 2005. The requirement for lot size in R-40 is 40,000 square feet. The lot is 21,780 square feet, which is a reduction of approximately 18,000 square feet. So they will need some sort of side yard reduction to put a house in place. The Ordinance gives the Board some leeway in granting the variance and cited Section 200-39.F, which says the Board is authorized to approve as a variance such dimensions as shall conform as closely as possible to the required dimensions. The house size is 44' x 27' and with the lot being 97' wide, that leaves about 53' with 26' feet on each side, if you just had the house. But they are proposing a future garage on the left side of the house that is 28' wide. So the house and garage is 72' wide, which leaves 25', which would be 12.5' on each side of the house to the property line. They are requesting 23 foot variances on each side, because the setback should be 35 feet.

Chairman Fleming asked if the parcel is in an existing subdivision. Ms. Berry said yes. The subdivision name is Hewitt. Chairman Fleming said there was a proposed septic plan and asked if

there was an approved septic plan. Mr. Sain said it perked and everything is in the front, but he may get that changed. Ms. Berry said there were some yellow flags placed at the site yesterday. Chairman Fleming asked if the house conformed with the rest of the subdivision. Ms. Berry said she really could not say.

Mrs. Pouch said that it looked like half of the lot was not being used. Ms. Berry said the lot was long and narrow - 97 feet wide and 220 feet long.

Chairman Fleming opened the public hearing. Mr. Sain came forward and presented a sketch of the proposed home. He said it would be similar to the sketch. Mr. Sain said the lot is one of the few empty lots in the existing neighborhood. Chairman Fleming asked if he had a septic tank approval from Henderson County. Mr. Sain said yes. Mr. Sain said that the home would be a modular home. He said he didn't think that A.1 in the R-40 District of the Zoning Ordinance applied to modular housing. Chairman Fleming asked if there was a homeowners association in the subdivision. Mr. Sain said he was not aware.

Mrs. Pouch asked, with the deep lot, if he could put the garage behind the house and move the house to the middle of the lot and he wouldn't need such a drastic variance. Mr. Sain said that he was trying to keep his driveway a reasonable length. He said the houses next door are close and the only reasonable view is out the back and he wouldn't like to see the garage out the back. He would be reluctant to do that.

Chairman Fleming asked if the house was for himself. Mr. Sain said yes, it was for himself and his family.

Mrs. Pouch asked if he didn't want to move the garage because of the looks. Mr. Sain said he didn't want an extra long driveway (eventually he would want to pave it). He said he could do it if he had to, but it is not his wish. He said he didn't know if it would keep him from buying the property, but he would have to discuss it with his wife, who is not in town yet.

Mr. Engel said there is the option to put the garage in the front of the house if it is attached. There are a lot of L-shaped houses with the garage attached to the front that look very nice and then you could go up to a 50' wide home and still have 25' on each side. Mr. Engel said he realizes you can't have required 35' side yards because the lot is just not wide enough. Mr. Sain said that R-40 was designed for 40,000 square foot lots. Mr. Engel said he would have a lot more lot by attaching the garage to the front and wouldn't have to worry about a long driveway. Mr. Sain said he is limited by the designs the company has. He said there is another plan with 15 feet on each side that he could deal with, if that could be approved.

Mr. Bonessi asked if there were any restrictive covenants on the property. Mr. Sain said he did not know about that. Ms. Berry said some of the other witnesses may know.

Ms. Berry said that she has given the Board pictures of the property taken yesterday to pass around. Mr. Engel asked if there was a little pond on the property in the back. Ms. Berry said that it was shrubs. Ms. Berry also passed around the Zoning Ordinance showing Section 200.39.F about granting variances on pre-existing lots.

Chairman Fleming asked for anyone speaking in favor of the variance to come forward. There was no one. He asked for anyone to speak in opposition of the variance.

Robert Wilson came forward. He said that he lives (120 Windham Way) to the right side of the property. Mr. Wilson said that he does not want the variance granted because a realtor friend said it would decrease the value of his property. He also said that he has a dog in his back yard that would be right in his (Mr. Sain's) bedroom and he wouldn't want to listen to that every night.

Mrs. Pouch asked how far Mr. Wilson was from his property line. Mr. Wilson said that he had no idea. He said he is close enough to his property line that he couldn't put a boat shed next to his house. Mrs. Pouch said that the houses here are already right up against the property line.

Mr. Bonessi asked when Mr. Wilson's house was built. Mr. Wilson thinks it was in 1975.

Laura Molton came forward and said she lives (140 Windham Way) to the left of the subject property. She said that the homes in the neighborhood are stick built and brick and her home was built in 1961. Some were built prior to 1961 and some built since. Her home is 2 levels and the garage is around the back and underneath the house. The total square footage is 2100 sq. ft. Ms. Molton said that she hopes the Board will think about the people who live in the neighborhood and their investment and would not like to see something built that would bring down the value of her and her neighbors property. Ms. Molton said that her husband has taken care of the property for 8 years and when Mr. Wilson moved in 3 years ago he has done half along with her husband.

Mrs. Pouch asked what her side yard setbacks were. Ms. Molton said that she wasn't sure. Ms. Molton said their driveway goes all the way to the back of the home and is on the edge of the property. She said on the right it is maybe 20 feet from the property line. Ms. Molton said the property is slanted. There were no other questions.

Marilyn Barnwell came forward and said that in reading the restrictive covenants of the neighborhood when it was developed, the best she could tell there were no side setbacks. So there were no requirements until zoning.

Chairman Fleming asked Mr. Sain if there was any possibility to place the house in the center of the lot and move the garage to the back. Mr. Sain said that he could look into it. He discussed the size and said maybe he could make the garage 22 feet wide with 15 feet on each side. Chairman Fleming said that he would also like to see where Henderson County Health Department said to place the septic system. He showed the same sketch that was in the Board's packet.

Mr. Bonessi asked where the house would be in relation to the other houses. Mr. Sain said that it would be 70 feet back from the centerline of the road.

Chairman Fleming closed the public hearing. Mr. Bonessi asked what the setback is for a half acre lot even though this is R-40. Mr. Engel said 25 feet. Mr. Engel said the lot is relatively narrow, there wouldn't be enough room for a decent house. Mr. Engel said if the garage were made narrower to get 15 foot setbacks, that seems comparable to the neighborhood. He could use the modular system and still have it look fairly nice.

Chairman Fleming said his concern is the septic system and not having a permit. Mr. Bonessi said the sketch plan says it is not a permit and the septic system would be under the driveway.

Chairman Fleming reopened the public hearing. Mr. Sain said that the perk test was done before he even wanted to purchase the property. Chairman Fleming closed the public hearing.

Mrs. Pouch asked if the septic could be under the driveway. Mr. Bonessi said no. Mr. Engel said there is lots of room in the backyard and it looks like a relatively level lot from the pictures. Chairman Fleming said that his concern is that because of the placement of the septic system, he may have to come back for another variance. The Board discussed repair area requirements for septic systems. Mr. Engel said the concern is the side setback where 35 feet is too much and the question is how much to reduce it, where he can still get a decent home. Mrs. Pouch said that the house would fit. The Board discussed the other setbacks in the neighborhood that are so close to the property line. The Board discussed the 25 foot setback for a half acre lot (R-20).

Mrs. Pouch asked Ms. Berry about her being able to give a 10 foot variance at the last meeting. Ms. Berry said that related to sloping land.

Mr. Engel said that 25 foot setbacks would leave 46 feet for the house. And the question is the garage. Mrs. Pouch suggested 20 foot setbacks. Mr. Engel said it still wouldn't be enough to get that house on the lot with the garage. Mr. Engel said 15 foot setbacks would get the house and a 22 foot wide garage. Mr. Bonessi said do you have to have a 2-car garage or a garage at all to make reasonable use of the lot.

Ms. Berry said that a detached garage in the rear yard would only require 10 foot setbacks for an accessory structure. Mrs. Pouch asked if an accessory building could be closer to the property line. Ms. Berry said yes, as long as it was in the rear yard. She said any detached garage would qualify as an accessory structure. Ms. Berry said there is a 15 foot height restriction on the structure.

Chairman Fleming reopened the public hearing to ask Mr. Sain some questions. Chairman Fleming asked about a different floor plan that would fit better on the lot. Mr. Sain that this floor plan is one of the smaller Cape Cod houses available. The house is 1900 sq. ft. Chairman Fleming asked if the upstairs was finished. Mr. Sain said no but he would finish it immediately. Mr. Sain said that he could get the most square feet for the money. Mr. Engel said the wider house would enhance the neighborhood more than a narrow house. Mr. Engel said that with a modular house you can't even tell it's a modular house. Chairman Fleming closed the public hearing.

Chairman Fleming said what type dimension should the Board give or dictate. Mrs. Pouch said that is the Board's job. Ms. Berry said that's why she cited Section 200-39.F in the Zoning Ordinance, which allows giving a variance to the extent practical. Chairman Fleming said in keeping with the harmony of the neighborhood. Ms. Berry said yes. Mr. Bonessi said the neighborhood or the Ordinance. Mr. Engel said a combination. Mr. Bonessi said that's the balance. Ms. Berry said you want to stay within the intent of the Ordinance.

Mr. Goodman said he didn't see that this would be any different than what is there now. Mr. Goodman said he didn't see any harm in the proposal. Mr. Engel said he would like to see a bit of a compromise with 15 feet on each side, he could still get a decent size garage and make it a little deeper, and complies with some of the surrounding side yards of houses. Mrs. Pouch agreed with Mr. Engel. Mr. Bonessi said he is torn between what everyone is saying and reasonable use of the property. He said we all want a lot of things. Mr. Engel asked if the Board should go to 35 foot side yards. Mr. Bonessi said that was not practical either, that's what he was having trouble with. Mrs. Pouch mentioned the garage. Mr. Engel said in this day and age most people like attached garages. Mr. Engel said with a modular it is not as easy to attach something to the front. Mr. Bonessi said that 35 feet is unrealistic for this lot, but 12 feet is very close. Mrs. Pouch asked about 15 feet. Mr. Bonessi said that he is still thinking about that. Mr. Goodwin asked about half of 35 feet. Mr. Engel said the problem with that is the house and 2-car garage would not fit. Mr. Engel said the 22 foot garage could still work. Ms. Berry said that would be 66 feet total. Mr. Engel said if that all adds up, they should be able to have 15 foot side yards. Ms. Berry said there would be 15.8 feet on each side. Mr. Engel asked if the side property lines were exactly parallel to each other. Ms. Berry said that one side is 214 feet and the other 220 feet. Mr. Engel asked if there was a survey for the property. Ms. Berry said no. The Board discussed this.

Ms. Berry said that anything done outside the application would need to be amended by the applicant. Mr. Bonessi said that right now the Board could only give him 12 feet or nothing.

Chairman Fleming reopened the public hearing. Chairman Fleming explained the compromise of 15 feet on each side which would still allow the garage with the house plan. Chairman Fleming said that if this was agreeable, Mr. Sain could amend the application to 15 feet. Mr. Sain asked if that

was to the wall or included the eaves and overhang. It was explained that the 15 feet was to the wall as long as the overhang wasn't over 30 inches wide. Mr. Sain amended his application to read a 20 foot variance on each side yard setback. Chairman Fleming closed the public hearing.

Mrs. Pouch said 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. Mr. Engel said that the applicant would only have a 25 foot wide house which would not match the rest of the houses in the neighborhood and the side yard would be greater than the other homes in the area. Mrs. Pouch said the hardship which the applicant complains results from unique circumstances related to the applicant's land. Mrs. Pouch said the lot is pre-existing. Mrs. Pouch said the hardship is not the result of the applicant's own action. Mrs. Pouch said that the lot size is small and pre-existing. Mrs. Pouch said the variance is in harmony with the general purpose and intent of the ordinance and will preserve its spirit. Mr. Engel said the side yards would match the side yards existing in the neighborhood and having a wider house will maintain the value of other houses. Mrs. Pouch said the variance will secure the public safety and welfare and do substantial justice. Mr. Engel said there are no hazards. Mrs. Pouch said it will be an attractive house and add to the neighborhood.

Mrs. Pouch said with regard to the application V-05-02 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. Engel seconded the motion.

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

Mr. Bonessi	-	No
Mr. Fleming	-	No
Mrs. Pouch	-	Yes
Mr. Engel	-	Yes
Mr. Goodman	-	Yes

Chairman Fleming said the variance had been denied.

The Board discussed the application and Chairman Fleming said that he was very uncomfortable with the application missing a septic permit and survey of the property. The Board discussed the variance and reasons for a variance.

COMMITTEE AND STAFF REPORTS: None

OLD BUSINESS: None

NEW BUSINESS: None

There being no further business, Chairman Fleming made a motion to adjourn. Mrs. Pouch seconded the motion and all voted in favor. The Chairman adjourned the meeting at 5:15 PM.

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Robert Fleming, Chairman

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Joyce Karpowski, Secretary