

January 5, 2005
4:00 PM

MINUTES OF THE HENDERSON COUNTY
ZONING BOARD OF ADJUSTMENT

The Henderson County Zoning Board of Adjustment held its regularly scheduled December meeting rescheduled to Wednesday, January 5, 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, Janice Brown, Anthony Engel, Gary Griffin, Ann Pouch, Zoning Administrator Natalie Berry, Planning Director Karen Smith, and Secretary to the Board Joyce Karpowski.

Chairman Fleming called the meeting to order at 4:00 PM and introduced the members of the Board. He presented the minutes of the meeting from December 1, 2004. There were no corrections or changes. Chairman Fleming moved to approve the minutes as written, Mr. Engel seconded, and all members voted to approve the minutes as presented.

Chairman Fleming welcomed everyone and explained the procedure for the meeting and said that 4 affirmative votes are necessary for approval of any application. He called forward anyone wishing to testify today to be sworn in. Sworn in were: Zoning Administrator Natalie Berry, Dick Knothe, David Papoff, and Carrie Griffin.

Case V-04-28, – Richard and Cathy Knothe

Chairman Fleming called Case V-04-28, Richard and Cathy Knothe.

Chairman Fleming asked for a summary of the issues. Ms. Berry said that a legal notice had been published in the newspaper on December 27, 2004 and January 3, 2005. The petitioners are requesting a Variance of six feet from a side yard setback on the northeast corner of an existing structure to add a pool enclosure to the structure at 68 Stone House Road. The parcel is zoned R-20, with a side-yard setback requirement of 25 feet. The proposed pool addition is 50'-6" x 32'-0". If allowed, the pool enclosure addition shall encroach the setback area by six feet. Ms. Berry cited Page 1-7 as a plan of the property and described it. Page 1-8 shows how the pool is built underground, which is part of the reason for encroaching on the setback. Pages 1-9 and 1-10 are drawings of how Mr. Knothe plans to enclose the pool with an elevation view.

Chairman Fleming asked Mr. Knothe to come forward. Mr. Knothe said that the pool is existing with a concrete apron all around the pool. He would like to enclose it on the periphery of the concrete apron. He said they will put a family room between the house and pool. He said, if they put a wall within the setback, there would be about 30 inches between the pool and the wall. The real problem is the construction of the pool underground and the foundation would be interfering with the construction of the pool wall braces. So he wants to build the wall at the end of the concrete apron approximately 19'10" from the property line. Mr. Knothe said they recently purchased the house and want to enclose the pool to use the pool year round. He said his wife has arthritis and does water aerobics. She cannot use the YMCA pool because of the harsh chlorine. Since the pool is existing, they did not create the problem, it came with the property. If the enclosure is allowed, it would be kept locked and would be safer than it is now for preventing unauthorized use. Mr. Knothe presented pictures of the pool and described them. He said there is a 6-foot high fence all around the property with mature pine trees to screen the property from neighbors.

Mrs. Pouch asked for clarification on the side that would encroach the setback. Mr. Knothe explained and showed the side of the pool involved. Mrs. Smith asked if Mr. Knothe would submit his documents as part of the record, which Mr. Knothe did.

Chairman Fleming asked if there was anyone to speak for or against the application. There was no one. He closed the public hearing.

Mrs. Pouch asked if he just couldn't build it there or is it just an inconvenience? Mr. Engel said the pool is already there and he can't move the pool. Mrs. Pouch said that he could move the wall. Mr. Engel said he could only move it so far because of the structure of the pool underneath and they looked at page 1-8. He said digging the foundation could affect the anchors of the pool and could undermine the structure of the pool. Mr. Griffin asked what kind of foundation there would be.

Chairman Fleming reopened the public hearing. Mr. Griffin asked about foundation and if this would be like a sunroom enclosure or a concrete foundation dug down. Mr. Knothe said it would be standard construction and match the existing house. He said it will be wood frame with 6 x 6 posts going around the perimeter of the pool enclosure and need footings down at the posts. Mr. Griffin asked if it would be a regular foundation. Mr. Knothe said he would have to put concrete footings down. Mr. Griffin asked for just at the posts or the whole perimeter. Mr. Knothe said for just the posts, he is hoping, depending on what the County code is. He said the columns will be carrying the load of the doors and windows with just a minimum amount of weight on the concrete slab. Mr. Griffin asked if it couldn't be set on the concrete already there. Mr. Knothe said no, there would be too much load on it. Mr. Knothe said they are putting a regular roof structure over the pool, so it will look just like the house. Chairman Fleming asked if the enclosure would have big windows. Mr. Knothe said there would be sliding doors and windows in the corners and be pretty much glass on three sides. Chairman Fleming asked with the doors would there be a patio outside. Mr. Knothe said he didn't know – the doors were for ventilation. Mr. Engel asked if he would use scissor trusses on this. Mr. Knothe said yes. Mr. Engel said the requirements would be for a foundation under it of a certain depth. Chairman Fleming closed the public hearing.

Chairman Fleming asked Ms. Berry if there were any problems with the neighbors. Ms. Berry said no, there was one neighbor who came in today just to look at it but he was on the opposite side of the encroachment. Chairman Fleming asked if this would be visible from the road. Ms. Berry said yes, the whole subdivision is visible.

Mr. Griffin 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. Chairman Fleming said that he will have to put in a new foundation and needs the 6 feet in order to adhere to the County building codes in order to put the foundation in and can't secure a reasonable return as far as dealing with this situation around the pool. Mr. Griffin continued that the hardship which the applicant complains results from unique circumstances related to the applicant's land. Mr. Griffin said the pool was already there and, if he wants to enclose it, he really doesn't have a choice. Mrs. Pouch said because of the concrete around the side of the pool. Mr. Griffin said the hardship is not the result of the applicant's own action. Chairman Fleming said he purchased the house with the pool existing. Mr. Griffin said the variance is in harmony with the general purpose and intent of the ordinance and will preserve its spirit. Mrs. Pouch said that it will be attractive and look like the house and there were no objections. Mr. Griffin said the variance will secure the public safety and welfare and will do substantial justice. Chairman Fleming said with the pool enclosed it will protect the children of the neighborhood from getting into the pool.

Mr. Griffin said with regard to the application of Richard and Cathy Knothe, V-04-28, for a variance from the minimum front yard requirements, I move the Board to make the following findings of facts: 1) strict enforcement of the regulations would result in practical difficulties or unnecessary hardship to the applicant; 2) the variance is in harmony with the general purpose and intent of the ordinance

and will preserve its spirit; and 3) 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. Chairman Fleming said he would like to add a condition that the submitted plans must be adhered to. Mr. Engel said that the large buffer of evergreen trees should be maintained along the side as shown in the photographs. Mrs. Pouch seconded the motion.

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

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

Chairman Fleming said the variance has been granted.

Case V-04-29, Sarah Ovakit

Chairman Fleming called Case V-04-29, Sarah Ovakit.

Chairman Fleming asked for a summary of issues. Ms. Berry said that the parcel is under a current Notice of Violation for encroaching into the designated setback for the parcel. She said that she would give a history of the events leading to today. She said that David Papoff (Ms. Ovakit's husband) received a zoning permit, page 2-10, and under the conditions, says 60 foot setback from the centerline of the street and 35 foot setbacks from side and rear boundary lines. He started construction on the site and Staff received a complaint from a neighbor that he had encroached on the side yard setback by seventeen feet. She visited the site and spoke to the applicant and followed up with a Notice of Violation, page 2-11. The Notice of Violation was dated November 8, 2004, and it gave the applicant 3 options. The options are as follows:

- 1) Appeal my decision to the board of adjustments,
 - 2) Apply for a variance to the setback requirements,
- OR

- 3) Reconstruct the site in a manner that meets the requirements.

She said he came in with the Variance application on November 29, 2004. Ms. Berry called the Board's attention to page 2-14, a survey done in 1998. The property is Lot # 5 and there is an existing gravel drive through the property with a 20 foot supposed easement. She said she is not sure if it is legal or just been there for years. She said page 2-13, by the same surveyor, is another plat with recombined lots. The property is Lot # 3 and the gravel drive is no longer shown and she doesn't know what the discrepancy is. She asked the Board to look at page 2-7. Ms. Berry said that Pinnacle Mountain is terraced, probably from being farmed for years, and this lot situation is on top of one of the terraces. Page 2-7 shows the layout of the property and the placement of the septic field about 20 feet below the house site. The 20 feet easement is in the same area with the septic system. She showed the photographs on pages 2-16 to 2-18 and described them. Ms. Berry said she was trying to show the hill behind the house site and the hill in front of the house site and the terrace the house site is on. Chairman Fleming asked where the encroachment was. Ms. Berry pointed that out page 2-17. Mrs. Smith said that the Board could make a site visit and continue the meeting. Chairman Fleming asked what the encroachment was. Ms. Berry said 17 feet. Chairman Fleming said 17 feet from the back property line in an R-40 zone. Ms. Berry said yes. Ms. Berry cited page 2-16 and said that the encroachment started where you could see the foundation supports to the end of the foundation.

Chairman Fleming asked if he went through the proper procedure with the Zoning Administrator as far as getting a site location and approval for a permit. Ms. Berry said yes, she was not sure what caused the construction to fall within the setback. She said he came in and got the permit, was given the setbacks, and then she got the complaint about it. Ms. Berry said building was stopped

until it is resolved. Mrs. Pouch said he was building it not where he had the permit to build. Ms. Berry said yes.

Chairman Fleming called the applicant forward. David Papoff, Sarah Ovakit's husband, gave some background on the situation. He said his wife and brother inherited the property 8 years ago. After they were married, they purchased the brother's share of the property and lived out of state visiting here for about 4 days at a time. He said the house is situated because of a fault of his. Mr. Papoff said he was unable to schedule a surveyor in and could only find 2 stakes on the upper hill and relied on information of approximately where the property lines were, which indicated the property lines were much further away from where he was building, so it wasn't a concern when he designed the home. They moved here last September and started construction, still not getting a survey. So now there is the situation of the encroachment on the zoning. Some of the hardships involved are shown on the photographs. Seven Springs is named because of actual existing springs on the property. That's why the original subdivision of 10 lots was denied and is now 4 lots. There is active standing water on many lots, so there are restrictions as to where the septic can be placed and where a home can be placed to secure a stable foundation without altering the natural flow of the streams. When he decided to build the home, he went to all the departments and was advised of the extreme conditions as far as perc and was advised he would have to build the home to the septic. Mr. Papoff said they put the septic system in 3 years ago, because the Health Department wanted to assure that it would be placed in an exact location. He wanted to place the home above the septic system. He said there is some confusion with the easement with the 2 different plats. He said, although the easement is not shown on the final plat, it was used to access the lot his adjacent neighbor, the Griffins, own and for 2 previous owners. He said there is another right-of-way that says subject to that road. So for the home placement, he has to consider if that is a valid easement and for future owners. Mr. Papoff said, when he designed the home, he tried to design as low a profile as possible. He said he tried to consider the view of the mountains and privacy that most people want. He tried to make the home invisible to any neighbors. He said all the other lots are owned by family or his wife and her brother. He said there is only one neighbor and the home was designed to assure them their privacy and views of the mountains, so the house would be below them and out of sight. He said the closer he could get to the property line the less likely the home would be visible in line of sight. He said he could redesign the home. He said on page 2-16, the far side is 40 feet wide. The home would have to be moved 17 feet off the hill and the cost to build the foundation off the hill would be prohibitive. The house would have to be redesigned which he feels would be out of the spirit of the community. He said he works out of his home and that corner is his office downstairs. He could take the office out and move the house forward, if necessary. Chairman Fleming asked Mr. Papoff if he realized that he would need a conditional use permit for the office in R-40 zoning. Mr. Papoff said that no public comes to the office and he deals with clients out-of-state by phone and computer. There is no commercial activity on the site. He said he is a telemarketer. Mr. Papoff said that section of the home could be placed on a third level and he wouldn't need a variance, but he didn't think it would be in the spirit. The present home design at the highest is 29 feet. The fence line and severe hill behind the home is at 27 feet (by a surveyor recently brought in), which would be out of sight of the neighbors. A third floor would raise the height to 38-39 feet, which would start obstructing the view or make the view less desirable. The design of the home was to be neighborly and in the spirit.

Mrs. Pouch asked if he was aware of his property lines. Mr. Papoff said he was not aware of the property lines when he designed the home and started. He knew of 2 markers on the property line in question and was led to believe the property line was near the upper fence. The 2 property points in question were placed after construction started.

Chairman Fleming said that he wanted to suggest to the Board and Mr. Papoff that he start from square one and have the property surveyed and locate the house by the surveyor and come back to the Board if there is still a hardship at that time. Mr. Papoff said the property has been surveyed and that is where the 17 feet came from. Chairman Fleming said he is talking about locating the

house where it will work on the lot as far as being in the R-40 zone. He said to design a house that will fit on the lot and if he has a hardship then come back before the Board. Chairman Fleming said that there are strict laws for zoning in the County and the government has done the right thing to stop the encroachment. He said he would like Mr. Papoff to adjust his house plan and then come back before the Board, if necessary. Mr. Papoff asked if he wanted him to move the house or an actual survey of where the pins would be if he were in compliance. Mr. Engel asked if Mr. Papoff had a survey showing the house spotted on it or where the house is located on the property. Mr. Papoff said there are pins in the ground that the surveyor put in. Mr. Engel said that is how he got the dimensions. Mr. Papoff said yes. Mr. Engel asked if there was anything on paper. Mr. Papoff said no. Chairman Fleming asked if he had a survey by a licensed North Carolina surveyor showing the house location on his particular property. Mr. Papoff said no. Chairman Fleming said he couldn't see the Board giving a variance until Mr. Papoff got his house location on the survey and if there is a right-of-way. Mr. Papoff asked, if he moved the foundation of the home and is outside the 35 feet, and do not need a variance is there any issue. Ms. Berry said that she would issue a letter of compliance once the house is outside the 35-foot setback. Mr. Papoff said that it would be easier to redesign the home, move it forward, and go with the 3-story home. He asked if there were height restrictions. Mrs. Smith said no. Mr. Engel said there are setback requirements on the right-of-way. Ms. Berry said he was a good distance from that. Chairman Fleming said that as long as the Zoning Administrator was satisfied that there was no encroachment on setbacks in R-40, there wouldn't be a problem. Ms. Berry said there may be a problem with the home occupation, which they would have to discuss. The Board said there were three options for this case: withdraw the application, deny the variance or continue the case. Mr. Papoff said that he would comply with the setbacks and then not need the variance. Mr. Papoff said that he would withdraw the application.

Chairman Fleming closed the public hearing.

Mrs. Smith said that she spoke to Assistant County Attorney Russell Burrell and the Board had to either approve or deny it or he had to withdraw it. Mr. Engel said that continuing it would have allowed the applicant to study what he had and come back without paying additional fees. The Board discussed this and the need for a survey.

COMMITTEE AND STAFF REPORTS: Mrs. Smith said that Eric Goodman has been appointed an alternate Board member, replacing Keith Shelley who had been a Board member for a long time. She had hoped Mr. Shelley would attend today to thank him for his service, but he was unable to at the last minute.

Ms. Berry said that she would like to know if there is any interest in the Board riding together in a van to next week's training session at the NC Arboretum. The Board should meet at 9:00 AM in the parking lot and will leave at 9:15 AM. She asked anyone to call the office if they would not be riding with the Board.

OLD BUSINESS: None

NEW BUSINESS: None

There being no further business, Chairman Fleming adjourned the meeting at 4:58 PM.

Robert Fleming, Chairman

Joyce Karpowski, Secretary