

July 28, 2004
4:00 PM

MINUTES OF THE HENDERSON COUNTY
ZONING BOARD OF ADJUSTMENT

The Henderson County Zoning Board of Adjustment held its regularly scheduled July meeting, on Wednesday, July 28, 2004, 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, Zoning Administrator Brad Burton, 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 June 30, 2004. There were no corrections or changes. All members voted to approve the minutes as presented.

Chairman Fleming asked Mr. Burton to explain the procedure today. Mr. Burton explained that a 4/5ths vote was necessary to approve any applications and gave the applicants the option to continue their cases to the next meeting because only 4 members of the Board were present today. Mr. Moore and Mr. Sprowls chose to have their applications heard today. The Appellants chose to continue their appeal to next month. The Key's asked if they had any say in the matter. Mrs. Smith left the room to get legal opinion. In the meantime the Board decided to hear the Bennett Appeal.

Case A-04-11, – **George Bennett, petitioner, J. Michael Edney, agent**

Mr. Burton reported that Mr. Bennett has a new attorney, Mr. Robert Dungan. Mr. Dungan has formally withdrawn the appeal, so this is no longer on the agenda.

Case A-04-18: David Greenwood, Case A-04-19: Dwight and Gail Lynch, Case A-04-20: Charles D. Maxwell, Case A-04-21: Robert Merrill, Case A-04-22: Cloyd and Mary Levi

Mrs. Smith said that Assistant County Attorney Russ Burrell said that the meeting could be continued to a date sooner than next months meeting, so no one would be delayed. Or the Board could determine, after hearing from the Key's, how they want to proceed. There was discussion about how many Board members there would be. Chairman Fleming asked the Board members if they could attend a meeting next Wednesday. All members said they could. Mrs. Key said they would like to have it resolved today. They had pending surgery on Friday and have delayed building for 3 weeks. Chairman Fleming said that to be fair to everyone concerned, the meeting would be continued until next week. Chairman Fleming made a motion to continue Cases 04-18, 04-19, 04-20, 04-21, and 04-22 until Wednesday August 4, 2004 at 4:00 PM. Mrs. Pouch seconded the motion. All members voted in favor.

Chairman Fleming called forward anyone wishing to testify in the next cases. Sworn in were Zoning Administrator Brad Burton, Jonathon Moore, and William Sprowls.

Case V-04-16, Jonathon Moore

Chairman Fleming called Case V-04-16, Jonathon Moore.

Mr. Burton gave a summary of the issues. Mr. Burton said the location of the parcel was at 114 Foster Hill Drive. The petitioner has submitted an application for a Variance of twelve feet from a rear yard setback to site a house at 114 Foster Hill Drive. The parcel is zoned R-40. The applicant

proposes to construct a 38' x 50' home on the property. The applicant's parcel was granted pre-existing, non-conforming lot status by the Zoning Administrator on July 1, 2004. A copy was not in the packets and Mr. Burton got copies and distributed them to the Board. The parcel increases in elevation from the road bed (Foster Hill Drive) to the rear boundary line of the parcel. Mr. Burton cited Exhibit 2-7, Mr. Moore's site plan, and also Exhibit 2-6, the well and septic system plan. Mr. Moore's plan complies with all setback requirements except for 12 feet in the rear. Exhibit 2-8 is photographs, which Mr. Burton described and pointed out the slope. Mr. Burton said the lot is pre-existing and non-conforming.

Mrs. Pouch asked what the pre-existing, non-conforming lot was. Mr. Burton explained.

Chairman Fleming called Mr. Moore forward. Mr. Moore said that he was here for a variance of 12 feet in the rear of the lot. Chairman Fleming asked if there was septic system approval for the lot. Mr. Moore said he has a septic and well permit. This permit is subject to where the house is staked out. There were no more questions.

Chairman Fleming asked if there was anyone to speak for or against the case. There was no one. There were no further questions and Chairman Fleming closed the public hearing. He asked for discussion among the Board.

Mrs. Pouch 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 the lot was platted before 1981 and before the Zoning Ordinance was adopted. He said it restricts his use of the property because it is a smaller lot in R-40 zoning. Mrs. Pouch said he was granted pre-existing non-conforming lot status by the Zoning Administrator. Mrs. Pouch continued that the hardship which the applicant complains results from unique circumstances related to the applicant's land. Mr. Engel said that to fit a septic system and well on the property, which is smaller, it requires the house to encroach on the rear yard. Mrs. Pouch said the hardship is not the result of the applicant's own action. Chairman Fleming said that this lot was platted before the zoning ordinance in 1981 and when he purchased the lot he realized there was not enough room for the well and septic system – it was not the result of his own actions. 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 that the way it is laid out, from the road you wouldn't even know the rear yard was smaller. Chairman Fleming said it is in harmony with the existing homes in this particular R-40 area. Mrs. Pouch said the variance will secure the public safety and welfare and will do substantial justice. Chairman Fleming said this is an unusable lot without the variance and doesn't hurt anyone.

Mrs. Pouch said with regard to the application of Jonathon Moore 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. Mr. Engel seconded the motion.

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

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

Chairman Fleming said the variance has been granted.

Case V-04-17, William and Heidi Sprowls

Chairman Fleming called Case V-04-17, William and Heidi Sprowls. Mr. Burton gave each Board member photographs provided by the petitioner with his application.

Mr. Burton gave a summary of the issues. He said the petitioners are William and Heidi Sprowls and the location is 333 Kendale Court. The petitioner has submitted an application for a Variance of eight feet, six inches for an accessory building to be located in the western side yard on a parcel located at 333 Kendale Court. The parcel is zoned R-10. The accessory building has already been constructed and finished on the site. No zoning compliance permit was issued for the structure in question. No building permit can be found for the structure in question. The structure in question is fifteen feet, two inches tall, using a laser-measuring device. Per Section 200-46.D of the Henderson County Zoning Ordinance:

“In no case shall an accessory structure or building be permitted in any front, side or rear yard if it exceeds 15 feet in height or if it occupies more than 30% of the required yard area; however, height restrictions do not apply on lots of one acre or more. Height for boathouses is restricted as provided for in § 200-30A(1)(d). [Amended 11-16-1994; 5-16-2001]”

Mr. Burton said he had contact with a neighbor who registered a complaint about the structure. He had been to the property and photographed the structure when Mr. Sprowls arrived with the variance application. Exhibit 3-6 is the location of the property. Mr. Sprowls also provided Exhibit 3-7, a site plan of structures on the property. There is another accessory building on the property. Mr. Sprowls also provided Exhibit 3-8 from the Henderson County Health Department. Mr. Burton described Exhibits 3-9 and 3-10, photographs of the parcel. Chairman Fleming asked how close Mr. Burton felt the building was to the side property line. Mr. Burton said he would stipulate that what the applicant is asking for (8' 6") with the setback of 10 feet. Chairman Fleming asked how many people complained. Mr. Burton said just the folks next door. Mr. Burton said he didn't know when the structure went up. Mrs. Pouch asked about the Zoning and Building Permits. Mr. Burton said he could not find any. Mr. Burton said it was in an R-10 zoning district. Chairman Fleming asked if all the houses around there are R-10 zoned and a subdivision. Mr. Burton said he believed it to be a subdivision.

Chairman Fleming called Mr. Sprowls forward. He said that it was just ignorance. All the other structures are less than 10 feet from the property line; the house next door and his own house. Then he found out all the houses were built before the Zoning Ordinance came into effect. He said that is no excuse to do what he did. He said he asked the people he bought the building from and no one seemed to have a clear answer. He thought it was a temporary building, and he was wrong and didn't realize it. Mr. Sprowls said it complies with everything except the setback. He said there is no other reasonable place to locate it on the property. He said he asked the Board to consider giving him the variance.

Chairman Fleming asked if there was a homeowners association for the subdivision. Mr. Sprowls said there was at one time but doesn't exist anymore. Chairman Fleming asked how long Mr. Sprowls owned the home. Mr. Sprowls said he has been there nine years and his wife has been there nineteen years. Chairman Fleming asked if Mr. Sprowls was aware he needed a permit. Mr. Sprowls said he did not know that he was doing the wrong thing. Chairman Fleming asked if any neighbors complained. Mr. Sprowls said no one said a thing. Mr. Sprowls said that he has never met the lady that complained to Mr. Burton. Mr. Sprowls said the neighbors inherited the property and no one was there for 1½ years. He mowed the yard then. Mr. Sprowls said the building was constructed the beginning of December 2003. Chairman Fleming asked with all the zoning issues in the County, if Mr. Sprowls thought that might be a problem. Mr. Sprowls said he didn't and so many buildings were so close to the property line. He said it was negligence on his part. Chairman

Fleming asked the size of the other accessory building and when it was constructed. Mr. Sprowls said it's approximately 12' x 12', a utility building and was built about 10 years ago.

Mrs. Pouch asked if Mr. Sprowls had some concern about getting a permit because he said he couldn't get a clear answer. She asked if he built it himself. Mr. Sprowls said all he did was tell them what he wanted. Mrs. Pouch said this was a brand new building built about 2 feet from the property line without a permit. Mr. Sprowls agreed and said he was wrong. Mr. Sprowls said it is not an eyesore and not bothering anything other than being close to the property line at that one place. He said it is of great benefit to him to get the use of the property to have it to protect a huge investment that he has.

Chairman Fleming said that he sympathizes with him but the Board has to think of the surrounding neighbors and the harmony of the whole scenario and having this type of building 2 feet off the property line with the lots this tight, could cause issues with people. Mr. Sprowls said he talked to his neighbors after the lady talked to him. Chairman Fleming asked how far he felt the retaining wall was from the property line. Mr. Sprowls said it was about 2 feet.

Mrs. Pouch asked if his neighbor put something up 2 feet from his property line, would it bother him. Mr. Sprowls said the house on the other side of his house is 6 feet from his house and he doesn't complain about it.

Mr. Engel said the structure is 10 feet from his house. Why didn't he move it closer? Mr. Sprowls said the septic system is there. Mr. Engel said the plan shows the septic system 13 feet from the house. Mr. Sprowls said the driveway was built 3 years ago and he just had the carport set up on the driveway. Mr. Griffin asked if the driveway was built 2 – 3 years before the top. Mr. Sprowls said yes. Mr. Griffin asked why he put the driveway that close. Mr. Sprowls said he didn't know there was a setback on the driveway – is there one. The Board said there is no setback for driveways. Mr. Engel said that he could have put the building closer to his house. Mr. Sprowls said that he has to be a certain distance from his septic system. Mr. Sprowls said he would have only gained a couple of feet and would have had to tear down the retaining wall and start over again. Mr. Sprowls said that he just purchased the carport and it was put over the existing driveway.

Mr. Burton asked Mr. Sprowls if he ever offered to purchase the Lafean property. Mr. Sprowls said no. There were no more questions. Chairman Fleming closed the public hearing.

Mrs. Pouch said she thought he should have gotten a permit. Mr. Griffin said he thought it was really detrimental to the house beside it. Mr. Engel said it is nearly a \$200,000 mobile home. Mrs. Pouch said they have places to park them. Chairman Fleming said he has concerns with the whole thing. Mrs. Pouch said to do it without a permit, and it doesn't enhance the property. Chairman Fleming said it is a nice piece of equipment but it is a residential subdivision and it is right on top of the line, only 1' 6" in. He said there wasn't a permit pulled. He said everyone knows in this County now there are zoning issues everywhere.

Mr. Engel said the motor home can be parked there but the structure is quite high. Mr. Griffin said if he moved the structure a couple of feet, then he would comply. The Board said it would have to be moved 8 feet. Mr. Engel said it was very close, if the septic system is not too close. It looks like it might work.

Chairman Fleming said, as far as application V-04-17, 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 there is no hardship here as far as carrying out the requirements of the district and that the necessary zoning permits should have been dealt with properly. Mr. Engel said that they can get reasonable use of the property as a

residence but not for storing the motor home under cover. Chairman Fleming continued that the hardship which the applicant complains results from unique circumstances related to the applicant's land. Chairman Fleming said there is an existing driveway there and no unique circumstances here in order to put a building up. Mr. Engel said the lot is small and it is hard to put a building up like this. Chairman Fleming said the hardship is not the result of the applicant's own action. Chairman Fleming said that unfortunately it is the result of his own action due to the fact that some homework should have been done through the Zoning Administrator as far as a building on a small lot is concerned. Chairman Fleming said the variance is in harmony with the general purpose and intent of the ordinance and will preserve its spirit. Chairman Fleming said it is not in harmony with the rest of the subdivision as far as this particular building is concerned and he didn't see where it's preserving anybody's spirit as far as the lady's land next door. Chairman Fleming said the variance will secure the public safety and welfare and will do substantial justice. Chairman Fleming said they have had some complaints on this and doesn't do justice.

Chairman Fleming said with regard to the application V-04-17 for a variance from the minimum front yard requirements, based on the findings of facts that have been presented today, I move the Board to deny the variance. Mrs. Pouch seconded the motion. Chairman Fleming said in addition that they go through the Zoning Administrator.

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

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

Chairman Fleming said the variance has been denied.

Chairman Fleming said he was sorry about the denial but Mr. Sprowls should get together with Mr. Burton to try to get it squared away as best he can.

Mr. Sprowls said he appreciated the Board listening. Mr. Engel said he thought Mr. Sprowls was very misled by the person who installed the structure. Mr. Sprowls said it was his fault and he should have found out what was going on before it was constructed. Now he is out a great expense.

Mr. Burton said he would get a letter within the next 48 hours to Mr. Sprowls to let him know what his options are and what the requirements are in the district. Mr. Sprowls asked if the motor home was allowed to be parked there. Mr. Burton said absolutely. Mrs. Sprowls asked about a fence. Mr. Burton said fences are not regulated.

COMMITTEE AND STAFF REPORTS: Mr. Burton said just the continuation of this meeting to next Wednesday, August 4, 2004, at 4 PM.

OLD BUSINESS: None

NEW BUSINESS: None

There being no further business, Chairman Fleming made a motion to continue the meeting to Wednesday August 4, 2004 at 4 PM, Mr. Engel seconded the motion, and all members voted in favor. The meeting was adjourned at 5:00 PM.

Robert Fleming, Chairman

Joyce Karpowski, Secretary