

May 26, 2004
4:00 PM

MINUTES OF THE HENDERSON COUNTY
ZONING BOARD OF ADJUSTMENT

The Henderson County Zoning Board of Adjustment held its regularly scheduled May meeting, on Wednesday, May 26, 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, Dean Bonessi, Janice Brown, Dale Caldwell, Gary Griffin, Zoning Administrator Brad Burton, Planning Director Karen Smith, and Secretary to the Board Joyce Karpowski. Also in attendance were alternate member Dr. Phillip Stanley and Assistant County Zoning Administrator Autumn Radcliff.

Chairman Fleming called the meeting to order at 4:05 PM and introduced the members of the Board. He presented the minutes of the meeting from April 28, 2004. There were no corrections or changes. Janice Brown moved that the minutes be approved and Mr. Bonessi seconded the motion and all voted in favor of the motion. The minutes stand approved as presented.

Chairman Fleming explained the procedure today. He called for anyone wishing to testify in today's proceedings to come forward to be sworn in. Those sworn in were: Zoning Administrator Brad Burton, Planning Director Karen Smith, John Cely, Lathe Brogden. Some speakers had been sworn in last month and remained under oath.

Case V-04-07 (Continuation) – Peter Hanley, agent for James Wilson

Chairman Fleming called Case V-04-07, Peter Hanley, agent for James Wilson, requesting three (3) front yard setbacks: 15 feet on the east. He requested Mr. Burton finish the request.

Mr. Burton gave a summary of the issues. He said this is a continuation of V-04-07. Mr. Burton asked to see the legal advertisement. He explained there was a question about the advertising last month but this month's ad is correct. Mr. Burton said there is an additional setback request to the north for 10 feet. The petitioner has submitted an application for 3 front yard setback variances: 15 feet on the east side, 15 feet on the west side, 40 feet on the south side and 10 feet on the north side. The parcel has been granted the status as a pre-existing/non-conforming lot by the Henderson County Zoning Administrator on 03/10/2004. The parcel has three front yards: one side fronts Sunrise Drive, one side fronts Laurel Circle, and the other fronts Laurel Ivy Lane. The applicant proposes to site a house on the parcel, encroaching front yard setbacks as stated above.

Mr. Burton directed the Board's attention to pages 1-3 and 1-4 in the packet. He said the Board felt the petitioner was trying to do a blanket variance and the board wanted more information.

Chairman Fleming said that now the petitioners have located exactly the footprint of the house and garage. Mr. Burton said it appears they have. He said that he would let Mr. Hanley explain the site plan.

Peter Hanley, agent for James Wilson came forward. He said the Board requested a more specific location for the home. Mr. Wilkinson looked at the property in conjunction with the Health Department's requirements for the septic system, so there could be the minimal amount of impact on the surrounding area. This is the plan submitted. Mr. Hanley said the builder is a well-known,

respected builder who has built in the area and this specific neighborhood and lives in the area also.

Chairman Fleming asked if they had a septic permit. Mr. Hanley said they had a permit previously. The Health Department has agreed to alter the lay of the lines to accommodate the particular location of the house. He has contacted the Health Department about that. Mr. Hanley said that what is on the site plan does work for the Health Department. He said that it will maintain as much of the natural vegetation as possible.

Mr. Caldwell asked if it was about an 1800 square foot house. Mr. Hanley said approximately, it probably would be a little smaller than that. Chairman Fleming asked if that included the garage. Mr. Hanley said yes, the house is small, about 1500 square feet. Mr. Caldwell discussed the measurements on the site plan.

Chairman Fleming asked if there were any more questions for Mr. Hanley. There were none.

Chairman Fleming asked if there were anyone else who would like to testify on this matter.

Gary Freeman came forward (he was sworn in last month). He said the lot is small, $\frac{3}{4}$ acre, and zoned R-30. He presented the Board with a petition signed by all the people on the road. No one on the Board objected to the petition being entered into evidence. Chairman Fleming said that it seemed the petitioners were concerned about water runoff. Mr. Freeman explained about the problems with water runoff.

Mr. Caldwell said he was not here the last session. Mrs. Smith said that she just realized that Mr. Caldwell was not at the last meeting and should not be participating in the hearing. It was explained to Mr. Hanley that 4 affirmative votes were needed to grant the variance, so all 4 members would have to vote in the affirmative. Mr. Hanley wished to proceed. The Board apologized for the problem.

Mr. Griffin asked which road was private and Mr. Freeman said all the roads were private. Mr. Freeman said that the land had a slope and the lot was not square.

Mrs. Brown asked about the last meeting when Mr. Freeman said other builders had let runoff come onto other properties. She asked if they had done anything to get the problem fixed. Mr. Freeman said they had trouble with the builders. Mrs. Brown asked if Earl Wilkinson was the builder. Mr. Freeman said he was a builder.

Ronald Rhodes came forward to answer Mrs. Brown. He said the homeowners had experience with this builder one time before. Mr. Rhodes said that Mr. Wilkinson tore up the road and left it for a year before it was corrected. Mr. Rhodes said they can control the water now with the individuals on the road keeping the ditches open. But with the new building, it will cause more problems. Mr. Rhodes said that the runoff should be taken care of by the builder. Mr. Rhodes said most of the homeowners work together on the roads, but this owner has never spent anything on the road. Mr. Rhodes said that this will be a spec house and sold, so if it isn't done right, they will be left with the burden of whatever is done. He said that is their main concern.

Chairman Fleming asked if anyone else wanted to speak. Mr. Burton called the Board's attention to Section 200-39.F of the Henderson County Zoning Ordinance titled use of existing lot of record. He read the section into the record. This concerned his finding of the lot as pre-existing nonconforming.

Chairman Fleming closed the public hearing and asked for discussion from the Board.

Mrs. Brown said that she didn't think this Board controlled what the builders did as far as grading, but when she had a problem she mentioned the EPA and the builder did everything he was supposed to do. Chairman Fleming said the Board is here to work through the setbacks so a house can be built and then set parameters around how to deal with public safety and concerns of the neighbors.

Mr. Griffin said it seems the biggest concern is the water and messing up the roads.

Chairman Fleming said the Board should put parameters around the runoff and there is a septic permit, and they should work with the homeowners to deal with erosion problems in the subdivision. Mr. Bonessi said the erosion problems seem to be in the whole subdivision, not just this one lot. He said he didn't know if building on this lot would change much of the erosion.

There was no further discussion. Chairman Fleming said the Board needed to find findings of fact. He 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 a small house would be built on the small lot. Mr. Bonessi said that it is a pre-existing nonconforming use. Chairman Fleming continued that the hardship which the applicant complains results from unique circumstances related to the applicant's land. Chairman Fleming said the land is still in a subdivision and the way it is laid out and it is grandfathered in the R-30 zoning. Chairman Fleming said the hardship is not the result of the applicant's own action. He said he's building on this particular lot, we live in the mountains and he does have a septic tank approval. Mr. Bonessi said that the applicant did not zone the property. 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 there are a lot of homes there and is in harmony with the rest of the subdivision and previous homes built. Chairman Fleming said the variance will secure the public safety and welfare and will do substantial justice. He said building a house will improve the land and the house will be built according to the specifications of the building department and it will not harm the neighborhood.

Chairman Fleming said that he would like to add a condition that the Zoning Administrator receive a copy of the septic system permit that is issued by the Henderson County Health Department. He also said the house must be built according to the site plan dated May 3, 2004. Chairman Fleming said that even though the house is on a private road, he would like a condition that the applicant receive a valid permit for a driveway from the DOT with follow up by the Zoning Administrator. Mr. Burton said that he is not qualified as an engineer. It was clarified that the applicant secure a valid driveway permit from the North Carolina Department of Transportation.

Mrs. Brown said she felt the Board should make sure that the builder's grading does not cause any runoff on other people's property and/or down the road because of previous problems. Mr. Bonessi suggested a drainage site plan. The Board discussed what the Board should do. Mrs. Brown said that something should be stated that after building is finished, the road should remain intact or something to that effect and that if the builder does any damage, he is to fix it. Mr. Griffin asked if there was a department that handles erosion control. Mrs. Brown said the EPA does that. Mr. Burton said someone generating runoff is liable and such matters traditionally have been privately litigated. Mr. Griffin asked if there was nothing to do about the runoff, just approve the variance to build or not build the house. Mrs. Smith said the Board is approving the setbacks. She said if the Board wanted to consult with an attorney, they would need to continue the hearing. Mr. Burton said that the Board's obvious concern with this is being entered into a record that is available to the public. The Board can encourage best management building practices by the developer and express their concern about the runoff. Chairman Fleming said that we all live in the mountains

with a lot of rain and runoff problems and it would be difficult to put conditions for runoff. Mrs. Brown said that there are laws in place that make the builder responsible and the neighborhood has the option to enforce it.

Chairman Fleming said with regard to the application as amended of Case V-04-07, continuation, Peter Hanley, 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 plus the previous conditions: 1 – The Zoning Administrator will require that a septic system permit is issued; 2 – The dwelling is to be built according to the plan dated May 3, 2004; 3 – A valid driveway permit is required from the North Carolina Department of Transportation. Mr. Bonessi seconded the motion. Chairman Fleming asked for a vote by a show of hands:

Mr. Bonessi	-	Yes
Mr. Griffin	-	Yes
Mr. Fleming	-	Yes
Mrs. Brown	-	Yes

Chairman Fleming said the variance, as amended, has been granted with conditions.

The Board took a few minutes for Dale Caldwell to rejoin the Board and for Dr. Phillip Stanley to take Janice Brown's place.

Case CU-04-08, Crestview LLC/Crestview Estates, Christopher Stepp, Esq. agent

Chairman Fleming called Case CU-04-08, Crestview LLC/Crestview Estates, Christopher Stepp, Esq. agent, requesting a Conditional Use Permit to expand (internally) a pre-existing Manufactured Home Park. The park is located on Crest Road and zoned T-15. Chairman Fleming opened the public hearing.

Mr. Burton gave a summary of the issues. Mr. Burton said this could be a somewhat complex situation, but is a situation that is an attempt by the County as well as the current owners of Crestview LLC to come to terms on a dispute over 20 lots currently in this park that the County has taken a position that were built without valid governmental approval. He called the Board's attention to the summary of issues. Crestview Estates was originally given a vested right by Henderson County for a 93 space Manufactured Home Park. This occurred when the area was not zoned. There were rumors that zoning was coming. Crestview's owners at that time, Capital Six, retained counsel that pursued the granting of the vested right and that was issued in letter format by the then County Attorney and also confirmed by the Code Administrator. Copies are in the packets as Exhibits 1, 2, and 3. The County's position is that Crestview still enjoys this 93 space vested right by transfer of ownership. Around 1998, when the Planning Department took over responsibility for the zoning, it was determined, based upon issuance of zoning permits, that, at some point in time, 20 spaces were built without valid governmental approval. There is exhaustive correspondence between previous Zoning Administrators, County Officials, and Planning Director to try to rectify the situation. Mr. Caldwell asked for clarification. Mr. Burton said there are 20 sites past the 93, bringing the total sites to 113. Mr. Caldwell asked if they were already built. Mr. Burton said yes. Mr. Caldwell asked on whose authority it was done. Mr. Burton said the County's position is it was not done with valid governmental approval. This has been an ongoing situation. Lawyers for the County and Manufactured Home Park have worked to try to comply with the Manufactured Home Park Ordinance with a Conditional Use Permit. Basically the Applicants are here today to present a new phase of the park. This is unique in the sense that it is already there. Mr. Burton

feels that this may be the best fix to insure that this section complies with the Manufactured Home Park Ordinance and is a new phase of development, even though it is already there. Mr. Burton says he will stipulate that it does comply. He said he brought some site plan issues before the Planning Board. There has been an amended site plan adequately addressing those issues. Mr. Caldwell asked why the 20 lots were not included in the original 93 lot plan. Mr. Burton said he assumed it was the change of ownership, but he would let Mr. Stepp address that. Mr. Burton said the lots shaded on the plan are the proposed expansion but they are already there. This is to comply with Henderson County Manufactured Home Park Ordinance, Article 4. Mr. Burton said they could have chosen any 20 lots as a remedy and meets the requirements.

Chairman Fleming said basically they have already added 20 spaces and are trying to bring the park into compliance now. Mr. Burton agreed. He said the County has not written zoning permits for more than 93 manufactured homes in the park. The Conditional Use Permit would remedy the situation.

Mr. Burton said that they had presented the proposal to the Planning Board and received a favorable recommendation. He presented a memorandum from Planning Director Karen Smith with the Planning Board's recommendation.

Mr. Caldwell asked Mr. Burton if he were reviewing this plan today as a 113 unit park, would it meet the requirements. Mr. Burton said this phase of internal expansion would meet current requirements. He said the other 93 would meet requirements, based on the vested right. He said in total, it is completely legal. Mrs. Smith said the difference was it is legal, as opposed to complying with current regulations. Mr. Burton said the County's position is that the 93 do not need to comply, because they have vested rights as per the original plan. Mr. Caldwell asked if he picked any 20 sites out of the plan, would they be in compliance with today's standards. Mr. Burton and Mrs./ Smith said they could not answer that. But the 20 shaded sites would. Mr. Griffin said that these 20 units comply, others may not but are grandfathered. Mr. Burton said the County gave the petitioners the option to provide 20 sites that would comply. Mr. Burton said this is agreeable to all parties as a fix to bring the park into compliance with the Conditional Use Permit.

Mrs. Smith said that the Planning Board in making the favorable recommendation specifically noted that no buffering should be required. Buffering is a standard in Article 4 of the Manufactured Home Park Ordinance and the applicant's agent indicated there was a gas line in the area proposed for buffering. Mr. Burton pointed out the area on the site plan.

There were no further questions for Mr. Burton.

Christopher Stepp, Esq. Came forward representing Crestview LLC. He said they are trying to do the right thing. They want to bring the existing very nice mobile home park into conformity with the rules of the County. He said that he feels the problem is because the park existed before zoning applied. As the County rules changed, there was some confusion how to bring it into compliance with the rules that were developed. Mr. Stepp said his clients took title in 1996 and in 1997 water and sewer was available and eliminated well sites in the original plan. That provided more land internally and constructed all interior roads and provided all the spaces. They're calling it an expansion because they have worked with the County to find the best remedy and bring it into legal conformity. The County suggested it be done this way, so they have. They are really asking the Board to approve something already in place. All pavement and utilities are already in place. There will be no disturbance to affect any neighbors. He said it is a very nice clean park on Crest Road and operated by responsible citizens of the community. He said it is the best use for this property. Mr. Stepp said that he asks the Board to consider this and grant the Conditional Use Permit so they can officially be in compliance with the County code.

Chairman Fleming asked for any questions for Mr. Stepp. There were none. Chairman Fleming asked if anyone would like to speak for or against the request.

Norman Allen came forward and was sworn in. Mr. Allen said he was part of the partnership of Crestview LLC. He said that they have upgraded the standards of the park – it is not the typical mobile home park. He said they have changed gravel roads to paved roads, have a compactor system with a fence around it – not just dumpsters, and grass is cut every 2 weeks. They have a good community that provides assets to the County. This will enlarge the tax structure. He said they changed the wells to city water, where there was an apple orchard next door and possible contamination. They made the park better than what it was. He said they have done more than what was required. The park is well cared for.

There were no questions for Mr. Allen. There was no one else to speak. Chairman Fleming moved to close the public hearing and Mr. Bonessi seconded the motion.

Mr. Caldwell asked Mrs. Smith about the no buffering recommendation from the Planning Board. Mrs. Smith that Staff had raised questions for the buffering requirement in Article 4 (density requirement of more than 4 units per acre). There is a small area where the park boundary touches exterior boundary properties and Staff had suggested buffering in that area. Mr. Stepp indicated to the Planning Board there was a gas line there and buffering probably would not be possible in the easement. So the Planning Board specifically noted this Board should probably not require buffering in that area.

Chairman Fleming said it looks like the applicants have done everything to remedy the situation and the County has given their blessing. Mr. Caldwell said he feels they have more than adequately tried to remedy the problem. Chairman Fleming said he would like to add that they can't add any more units. Mr. Griffin said that the use for which the permit is sought will not adversely affect the health and safety of persons working and residing in the neighborhood and will not be detrimental to the public welfare or injurious to property or public improvements in the neighborhood. Chairman Fleming said the park has been in existence since 1997 and it was grandfathered at that time and approved by the necessary steps. Mr. Griffin asked if they are adding 20 more spaces, what about the roads. Mr. Burton said the roads are in place right now. Mr. Griffin said there are 20 more families coming out, that doesn't make a difference. Mr. Burton said it existed as it is and the roads meet Article 4 of the Manufactured Home Park Ordinance. Mr. Griffin said that would not be detrimental to the public welfare.

Mr. Griffin read the provisions that the Board should address or consider prior to granting a Conditional Use Permit: satisfactory ingress and egress to the property. Chairman Fleming said it has been in existence a long time and no problem. Mr. Griffin read provisions of off-street-parking and loading areas (if required). That's not required. Mrs. Smith said they have to provide 2 spaces per unit and the plan shows that. Mr. Griffin read utilities and said it is already operable. Chairman Fleming said there is water and sewer. Mr. Griffin read buffering and said that was talked about because of the gas line, they can't really buffer. Mr. Griffin read open space and landscaping (if applicable). Chairman Fleming said again they have probably done adequate landscaping and probably put bushes out and it has been there awhile. Mr. Griffin read building and structures with reference to location, size and use. Chairman Fleming said that it was grandfathered in and approved already. Mr. Griffin read it should be noted that if a specific condition could be placed on the permit to cure a problem so that it meets the above findings, the Board must grant the permit with that specific condition attached.

Mr. Griffin said that the use for which the permit is sought will not adversely affect the health and safety of persons working and residing in the neighborhood and will not be detrimental to the public

welfare or injurious to property or public improvements. Mr. Griffin said it shouldn't – it's been for working for how long. Chairman Fleming said quite a while.

Mr. Griffin said with regard to the application for a conditional use permit authorizing the operation of Crestview Mobile Home Park on the property in question, I move the board to make the following finding of facts: the proposed use will not adversely affect the health and safety of persons working and residing in the neighborhood of the proposed use; and the proposed use will not be detrimental to the public welfare or injurious to property or public improvements in the neighborhood. Accordingly, I further move the Board to grant the requested Conditional Use Permit with and only to the extent represented in the application with the following conditions. Mr. Griffin said that a condition be no more units added. Mrs. Smith said they would have to come back and amend the Permit to do that. Mr. Bonessi seconded the motion.

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

Mr. Bonessi	-	Yes
Dr. Stanley	-	Yes
Mr. Fleming	-	Yes
Mr. Griffin	-	Yes
Mr. Caldwell	-	Yes

Chairman Fleming said the conditional use permit has been granted.

Case V-04-09, Lathe Brogden

Chairman Fleming called Case V-04-09, Lathe Brogden, petitioner, and opened the public hearing.

Mr. Burton gave a summary of the issues. The petitioner has submitted an application for two front-yard setback variances: 27 feet on the south side toward Brogden Lane, and 38 feet on the east side, toward Nelson Lane. Mr. Burton said that Mr. Brogden will be amending the request down, so it was sufficiently advertised. It will be a significantly less variance request. The parcel appears to have been in its present configuration since October of 1958. Mr. Burton said he has verified that with the Registry of Deeds office and the parcel is in the same shape as it was prior to zoning. It has not been granted pre-existing nonconforming lot status because the lot size conforms with R-40. The placement of the house is the problem. The parcel has two front yards, one side fronts Brogden Road, and one side fronts Nelson Road. The applicant proposes to construct a 34'x26' attached garage and a 8'x16' covered (under roof) front porch onto his existing residence. This can be seen on page 3-7 of the packet. Page 3-8 shows the floor plan with the second story that will go on the existing house. He has already secured a zoning permit for this – it will not change the existing footprint of the home. The areas of concern for the variance are the location of the proposed garage, specifically, the proposed east and south corners. The proposed front porch, as staked out when visited by the Zoning Administrator, will comply with setback requirements. There was a question about the front porch, but it is well within the 60-foot setback requirement of the front yard on Brogden Road. Mr. Burton addressed the photographs on page 3-9 and described them. This is an expansion of a pre-existing nonconforming house. Mr. Brogden provided a plan on page 3-6. The edge of the garage is 37 feet to the center line of Nelson Road. The other part of the garage is 50 feet to the center of Brogden Road. So Mr. Brogden will amend his variance request to a 23-foot variance on the Nelson Road side and a 10-foot variance on the Brogden Road side based on the plan on page 3-6. Mr. Burton said that it was advertised high and the amendment is lower than advertised, so there should not be an issue with that. There were no questions.

Chairman Fleming called the petitioner forward. Lathe Brogden came forward. He said that now the house is 1500 square feet and built in 1959. He and his wife have 2 children. It has always had the carport and he would like to have a 2-car garage on the end and 2 bedrooms upstairs with a

family room for more room. Now there are 1½ baths and he would like to have 3 bathrooms. He will add 4 feet to the carport toward Nelson Lane for the garage and will stay back 4 feet from the front of the house. In the 2 car garage is the existing utility and a small office – desk area. Both of these will be made slightly larger.

Mr. Caldwell asked how long Mr. Brogden has lived there. Mr. Brogden said 10 years. There were no more questions. Mr. Brogden officially amended the application to 23 feet on the Nelson Road side and 10 feet on the Brogden Lane side.

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

Chairman Fleming asked for discussion from the Board. Mr. Griffin said it was almost an acre. Dr. Stanley said it was built before zoning and is the original size.

Mr. Bonessi 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 the house has been there a long time since 1959 and with the R-40 zoning he has ample room to add on to the existing dwelling. Mr. Bonessi 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. Chairman Fleming said the house is old and has been there since 1959 with no improvements for the 10 years he has owned it. Mr. Bonessi said the variance is in harmony with the general purpose and intent of the ordinance and will preserve its spirit. Chairman Fleming said that any upgrades to the house improve values of the homes around it and it will be in harmony with the houses around it. Mr. Bonessi said the variance will secure the public safety and welfare and will do substantial justice. Chairman Fleming said it would give an opportunity to add on to the house and will not be detrimental to the public safety or welfare in the area.

Mr. Bonessi said with regard to the application of Lathe Brogden, Case V-04-09, for a variance from the minimum yard setback or lot 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. Dr. Stanley seconded the motion. Chairman Fleming asked for a vote by a show of hands:

Mr. Bonessi	-	Yes
Dr. Stanley	-	Yes
Mr. Fleming	-	Yes
Mr. Griffin	-	Yes
Mr. Caldwell	-	Yes

Chairman Fleming said the variance, as amended, has been granted.

Case CU-04-10, John F. Cely III, Don Elkins, Esq. agent

Chairman Fleming called Case CU-04-10, John Cely III, Don Elkins, Esq. Agent.

Mr. Burton gave a summary of the issues. Mr. Burton said that Mr. Cely is making a new application for a new Manufactured Home Park. There are some issues that need to be discussed, but this is a new application. In the summary of issues, numbers 1 and 2 basically describe the use

of the parcel prior to Mr. Cely's application today. It was used as a Manufactured Home Park under a Conditional Use Permit for 17 years. There were continuous problems and the Zoning Board of Adjustment revoked the permit in December of 2003. There were conditions on that permit about removing some homes from the property and some other things that we will discuss later. Mr. Cely III inherited the parcel after qualifying as executor on January 14, 2004, after the death of his father. Mr. Jon Laughter, a professional surveyor, submitted a site plan titled Cely Trailer Park on April 5, 2003. On April 30, 2003, Don Elkins, Esq. submitted a Conditional Use application for the property. Section 200-34 of the Henderson County Zoning Ordinance allows for location of Manufactured Home Parks in a T-15 zoning District, subject to a finding by the Board of Adjustment, and on the advice and recommendation of the Planning Board subject to the conditions as found in Section 200-34.A(1-5). He addressed Article IV of the Henderson County Manufactured Home Park Ordinance in reference to Mr. Elkins' application. He received new information from Mr. Laughter this afternoon, an amended site plan, which he distributed to the Board. When this was brought before the Planning Board, the original site plan that Mr. Laughter had drawn, we'll go through Article 4 here, I'm going to go ahead and state on the first phase here where the road frontage and off-site access and common area, they appear to be in compliance with Article 4 of the Manufactured Home Park Ordinance per the site plan that has been submitted. Mr. Caldwell asked if it was Phase 1. Mr. Burton said it was all, everything that was drawn.

Mr. Burton spoke about Section 114-17, Separation and Setback requirements on the third page of the summary of issues. He said he goes through each phase with some separation and encroachment issues. Based upon the new site plan from today, it appears to be complying with separation between homes, between roads, between boundary lines. Mr. Burton said there was no detail drainage plan. He said he would let Mr. Laughter address this – there is one low-lying area with a drainage issue.

Mr. Burton spoke about Section 114-33.1 on page 5 of the summary of issues – unit type. Per the Ordinance, no more than 25% of the spaces in a new manufactured home park shall be occupied by mobile homes, as defined by the Ordinance. Mr. Cely has indicated to the Zoning Administrator that he intends to utilize the homes currently located on the property as those to populate the new Park. He called the Board's attention to Exhibit 4; there is a list from Henderson County Tax Assessor's Office of the models and makes of homes that are currently on the property. Mr. Cely is proposing 20 homes for the park and 14 current homes are pre-1976 category. During the Planning Board meeting Mr. Elkins described which homes he planned to remove and Mr. Burton will ask him to do that again today. It appears they have addressed this as well.

Mr. Burton said the only other issue that needs to be discussed is and he has photographs which correspond to the Tax Assessor's list of the homes that are currently there. Mr. Caldwell asked about the list of encroachments in the summary of issues and if they all meet the requirements on the amended plan. Mr. Burton said, based on Mr. Laughter's amended plan, everything does appear to meet separation and setback requirements. Mr. Caldwell asked if Mr. Burton would be required to make a physical check of that. Mr. Burton said a condition could be placed on the permit that it be built as per the site development plan. Mr. Burton said that last year John Cely III introduced himself to Mr. Burton as a resident/manager and on site caretaker, prior to his father's passing. Mr. Cely, at that time, did assume a role of responsibility. So there is some history with the applicant, but the application is new. When the applicant assumed the role as executor of this parcel of land, he had been present at the revocation hearing and he was aware of the requirement to remove the homes from the property. Mr. Burton said Mr. Cely had discussed with him what had to be done and Mr. Burton said the homes had to be removed from the property. The deadline was May 1, 2004, which fell on a Saturday. On May 3, 2004, Mr. Elkins applied for the Conditional Use Permit. The Conditional Use Permit is, if granted, and could be considered a remedy to the homes still there.

Mr. Burton asked if anyone had any questions. Dr. Stanley asked if the homes would be in the same positions as in the previous park. Mr. Burton said he didn't think there was anything that would stay where it is. Mr. Cely will still have to secure a new zoning permit and building permit for all of them. Chairman Fleming said that everyone on the Board has to consider this a brand new application.

Planning Director Karen Smith said that on May 18, 2004, the Henderson County Planning Board considered the application but did not have the benefit of the amended plan. However, after hearing from the applicant and the applicant's representatives, they discussed the application and voted 6 to 1 to send a favorable recommendation to the Board of Adjustment on the condition that it comply with all new and current requirements for a conditional use permit under T-15 zoning regulations.

Don H. Elkins, Esq. came forward representing the applicant. He said with him today is John F. Cely III, the applicant, and surveyor Jon Laughter. Mr. Elkins said he would like to comment about the Zoning Official's report and the pictures attached to the report. Mr. Burton said that he did not include those pictures in the Boards' packets so it would not appear prejudicial. Mr. Burton said for the record that the pictures were included for the Planning Board to correspond with the Assessor's Office list.

Mr. Elkins said that they have some numbered lots and are trying to start anew. Mr. Cely III inherited the property from his father. Mr. Elkins said the park was in a state of disrepair at the time of his death. The order was entered in December and the father died a couple weeks later. Mr. Elkins said his client inherited the estate, which was substantial and provided handouts to verify that. Mr. Elkins said that Mr. Cely has the ability, financially, to do what he proposes to do, in his opinion. The funds are deposited in Mr. Elkins trust account and are being held for the purpose of developing the park. Mr. Elkins said he wants to show some financial ability to carry through on the project of this size to replace the homes and start anew and to develop a park that he and the County will be proud of and the adjacent neighbors.

Mr. Elkins addressed the map and on Lot #1, the mobile home will be removed and put a playground. Lot #2, the home will be removed. Lots #3 & #4, the homes removed. Lot #5 is now vacant. Lot #6 will be removed. They plan to keep the homes on Lots #7, #12, #8, and #11. Lot #8 will be removed. Lot #9 will be kept. Lot #10 home will be removed. Keep home on Lot #13. Remove home on Lot #20. Keep home on Lot #19, #14, #18, and #15. Move the home on Lot #17. Keep the home on Lot #16. Substantial removal of older homes. Mr. Elkins said that this has been Mr. Cely's whole life, he worked for his dad. He said the park has been there for 17 – 18 years and they think it is the best use of the property. They feel the application meets the minimum requirements. Mr. Elkins said the Zoning Officer has indicated a list of conditions which Mr. Elkins will let him speak to, but he will assure the Board that they are in agreement completely with his proposed conditions, except #7, when we get there. Mr. Elkins said they ask the Board to consider all the things presented to them and ask for a positive vote on the issues. Mr. Elkins asked for questions.

Mr. Burton handed out the suggested conditions for the Board. Mr. Burton said that he would like to add a condition for the common area playground, which borders Holbert Road. He said he would like to see some fencing there to keep children out of the road, at least an 8-foot fence. He said he would like to add the condition of a secure 8-foot fence along the boundary to the north and along the parcel boundary line of the common area playground.

Mr. Caldwell asked since the dumpster lot is identical in size to the playground lot and away from the street, could they be interchanged. Mr. Burton said he did not know but the playground lot is in

a lower area. Mr. Burton said if they moved the playground, it would be fine with him, but if it remains where it is, he would like the condition in place.

Mr. Elkins said they had a problem with condition #7. Mr. Elkins said that 2 weeks would be a very short time to try to remove those mobile homes in that time frame. He would ask some consideration as to what is practical.

Mr. Burton said he would like to clarify condition #1 for the Board. He said that he meant to say "all pre-1976 units, over the allowed 25%," Mr. Burton said that he can have 5 pre-1976 homes out there. He currently has 14, so 9 units must go, it is not addressing all the homes.

Mrs. Smith asked about the list of homes they are keeping, were any of those in Phase Two. Mr. Elkins said that they were in all phases. Mrs. Smith asked if the applicant would be able to provide the improvements to serve those units so they won't be stored on the property. Mr. Cely said he thinks they decided to get rid of them all and just start with Phase One. Mr. Elkins said they would take them all off. There will be none stored. Mrs. Smith said if he was going to leave some in Phase Two, he would probably have to build the roads to serve Phase Two and get the permits for those. Mr. Elkins said whatever is required to meet the law, they will do. Mr. Elkins said he would like Mr. Laughter to address that, if he desires.

Chairman Fleming asked if there were any other questions for Mr. Elkins. There were none. Mr. Elkins said if there were adverse testimony, he would like the right of rebuttal. Chairman Fleming said yes.

Mr. Laughter came forward and was sworn in. He said he would answer any questions. Mrs. Smith said she wasn't sure if the question about building roads to keep older units in Phase Two was applicable to Mr. Laughter. Mr. Laughter said Mr. Cely intended to build in phases but to get to Phase One you have to build Phase Three. You have to build the road in there. Mrs. Smith asked if he would be able to continue the road into Phase Two. Mr. Laughter said from a technical standpoint, it's no problem to grade and crown the road. Mr. Laughter addressed the standing water issue and said on the site plan there is provision to convey the water from the south side of the road to the north side, which is the way the natural drainage occurs. Mr. Laughter said they would crown the roads to prevent water from standing in the road. Construction of the road shouldn't be a problem. Mr. Burton pointed out the area between Lots #1 and #2. Mr. Laughter said you could see the contour lines and shape of the drainage area. There were no further questions.

Chairman Fleming asked if anyone wanted to speak for or against this application. There was no one.

Mr. Burton said that he wanted to make sure the applicant knows that new zoning permits must be issued for each home as it goes into place. He also wanted to resolve the issue of condition #7 and the two weeks. Chairman Fleming said that he would agree to 45 days to get all the things out of there, if that is sufficient. Mr. Bonessi asked what the idea was behind #7 – was it bringing new homes in or getting rid of old ones. Mr. Burton said he meant it in the context of bringing a new home into the park and getting it set up as rental property. Mr. Burton said when the mover brings it onto the lot, the clock starts there to give two weeks to get it set up and call inspections. Mr. Elkins said even the two weeks would be a short period of time. Mr. Burton asked what would be a comfortable time frame. Mr. Elkins said the Chairman mentioned 45 days. Mr. Burton said if the Board feels that is adequate. Mr. Caldwell asked if the petitioners have seen all the proposed conditions and agree with them. Mr. Elkins said they would stipulate and agree that could be part of any order.

Mr. Bonessi wanted to know about the removal of the older trailers. Mrs. Smith said condition #1 spoke to removing pre-1976, but if he is leaving some on the property in a phase not completed, how do you avoid that. The Board may want to address that. Mr. Bonessi said he wanted to clarify, if the homes are not moved, when does it become a violation. Mrs. Smith said this applied to the homes he is keeping and leaving not set up. Chairman Fleming said that applied to 5 homes. Mr. Bonessi said he was not going to keep any. Mrs. Smith said that he offered that. Mr. Burton asked if the applicant was planning on removing all. Mr. Elkins said that the 45 days would apply to condition #1 and #7. And the applicant has agreed to remove all prior... Mr. Cely said he didn't know where it says all pre-1976, he didn't know that meant after the 5 he is allowed to have on there. Mr. Elkins asked if he wanted the 5. Mr. Caldwell said he would remove 9 of them, right. Mr. Cely said that 9 of them are already gone. Chairman Fleming said the Board needs to know if he wants the 5. Mr. Cely said actually he probably wouldn't need all 5. Mr. Caldwell said that he wouldn't exceed 5. Mr. Cely said no. Mr. Burton said that he can't exceed 5. Mr. Cely said that he plans on having newer trailers brought in and making a better looking community. Mr. Elkins said he would amend condition #1 to 45 days to remove all pre-1976 and ask that the Board allow them to keep 25%.

Chairman Fleming asked for any other discussion. There was none and he closed the public hearing. He asked for discussion among the Board.

Chairman Fleming said he didn't see any problems with it. Mr. Griffin said if it meets the new regulations.... Mr. Caldwell said he thinks that Mr. Cely understands what has to be done and he is satisfied with that. Mrs. Smith wanted to clarify the 25% that they are going to keep have 45 days to set them up. Mrs. Smith said she doesn't want units left standing there while Phases One and Three are being built. Mr. Burton said if any of the 5 units that they are going to keep are in Phase Two, do we need to require them to improve the road to Phase Two as well. Mrs. Smith said they can't get any setup permits or zoning permits until they have built the improvements. Chairman Fleming said Staff is concerned with those 5 units just sitting there. Mrs. Smith said with any of them just sitting there. Mr. Elkins said if he is going to keep 5, then he would have to park them there until he built the improvements. Mrs. Smith said that's what she means. Chairman Fleming suggested a period of time until the 5 need to be set up and have certificates of occupancy issued. Mrs. Smith said they could do that, but that is putting it on Mr. Cely to build the improvements first. Mrs. Smith said she didn't know if it is a reasonable amount of time to get a road built. Mr. Griffin said 45 days wouldn't be enough time. Chairman Fleming suggested 90 days. Mr. Caldwell suggested the time strictly for that purpose – for the 5 units. Mr. Caldwell asked what he would have to do there. Mr. Griffin said that he needs to put the road and water system in before he sets up those 5 units. Mrs. Smith said before he can pull the permits. Mr. Griffin asked if he has to run all new water lines. Mr. Burton said some configurations have changed significantly. Chairman Fleming said a realistic time would be 6 months to have the 5 set up. Mr. Griffin said that was generous. Chairman Fleming said he would like to add the condition that within a 6-month period the 5 pre –1976 units that are being kept need to be set up and Certificates of Occupancy issued. Mr. Caldwell asked if they were located in Phase Two. Chairman Fleming said he thought they were all over. Someone said they were in Phases One and Two. Mr. Cely asked if that were 6 months from today. Mr. Burton said yes.

Mr. Griffin said the Henderson County Zoning Ordinance requires approval of a Conditional Use Permit if the following findings of facts are made: that the use for which the permit is sought will not adversely affect the health and safety of persons working and residing in the neighborhood of the proposed use and will not be detrimental to the public welfare or injurious to property or public improvements in the neighborhood. Mr. Griffin said it would be an improvement. Dr. Stanley agreed.

Mr. Griffin read the provisions that the Board should address or consider prior to granting a Conditional Use Permit: satisfactory ingress and egress to the property; provisions of off-street-parking and loading areas (if required); utilities; buffering; open space and landscaping; building and structures with reference to location, size and use. Mr. Griffin said he shows the setbacks and road. Chairman Fleming said that the parties did a great job outlining what the plans are. He said with the conditions from Mr. Burton put in should be sufficient.

Mr. Griffin said facts that relate to the conditions needed for approval. The use for which the permit is sought will not adversely affect the health and safety of persons working and residing in the neighborhood. Mr. Griffin said it would improve the neighborhood. Mr. Bonessi said it would greatly improve the neighborhood. And will not be detrimental to the public welfare or injurious to property or public improvements in the neighborhood. Chairman Fleming said it would definitely make an improvement in everything being done here.

Mr. Griffin said with regard to the application of Mr. Cely for a conditional use permit authorizing the operation of a mobile home park on the property in question, I move the board to make the following finding of facts: the proposed use will not adversely affect the health and safety of persons working and residing in the neighborhood of the proposed use; and the proposed use will not be detrimental to the public welfare or injurious to property or public improvements in the neighborhood. Accordingly, I further move the Board to grant the requested Conditional Use Permit with and only to the extent represented in the application with the following conditions. Mr. Griffin said that would be the list from Mr. Burton and the amendments made to the conditions.

Mrs. Karpowski said on #1 you said 45 days to remove all pre-1976 and keep 25%. Number 7 was changed to 45 days. Then you added a 6-month period for the 5 pre-1976 units being kept need to be set up and Certificates of Occupancy issued. Mr. Burton said if the playground is located as illustrated on the site plan, an 8-foot secure fence to the north and west boundary that is Holbert Road must be installed. Chairman Fleming asked if the Board should address any type of lighting. He asked if anyone asked. The Board discussed this. Chairman Fleming asked if there was anything in the Ordinance about lighting. Mrs. Smith said not specifically. Mr. Burton said the Board could make a condition. Mr. Bonessi said there isn't one for mobile home parks. Mrs. Smith said in previous hearings, the Board talked about shielding, but there was no testimony about lighting today. Mr. Burton said the site plan illustrates 2 signs at the entrance to the park. Someone said there are 3 streetlights in the park. Chairman Fleming added a condition that the 3 streetlights remain intact and are functional. Accordingly, I further move the Board to grant the requested Conditional Use Permit with and only to the extent represented in the application with the following conditions. Mr. Griffin said the ones they just spoke about. Dr. Stanley seconded the motion.

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

Mr. Bonessi	-	Yes
Dr. Stanley	-	Yes
Mr. Fleming	-	Yes
Mr. Griffin	-	Yes
Mr. Caldwell	-	Yes

Chairman Fleming said the conditional use permit has been granted with conditions.

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

Mr. Burton presented the Board with a letter from J. Michael Edney, Esq. received on May 25, 2004 requesting to continue this matter until the July 28, 2004 session of the Zoning Board of Adjustment. Mr. Edney has a scheduling conflict next month as well. Mr. Burton said his counsel

expressed interest in joining this request, if need be. Mr. Burton said he recommend that the matter not be heard today but heard on July 28, 2004.

Chairman Fleming asked all those in favor of postponing consideration of Case A-04-11, George Bennett, J. Michael Edney, agent please raise their right hand. All members voted in favor.

COMMITTEE AND STAFF REPORTS: Mr. Burton handed out amendments to the RM-1 Rural Mixed Use 1 District. Mrs. Smith said that this is a correction for an error that the code company made. Mrs. Smith said that there are no RM-1 districts in the County yet, but with the new central permitting process, a new table had to be created and the error was discovered and corrected.

Mrs. Smith said, in regard to one of the cases tonight, this new Permit and Inspections Program will help avoid some of the issues and require applicants to obtain their zoning permit prior to getting the septic approvals.

OLD BUSINESS: None

NEW BUSINESS: None

There being no further business, Chairman Fleming made a motion to adjourn, Mr. Caldwell seconded the motion, and all members voted in favor. The meeting was adjourned at 6:20 PM.

Robert Fleming, Chairman

Joyce Karpowski, Secretary