

April 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 April meeting, on Wednesday, April 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, Dean Bonessi, Janice Brown, Anthony Engel, Gary Griffin, Zoning Administrator Brad Burton, and Acting Secretary to the Board Amy Brantley.

Chairman Fleming called the meeting to order at 4:30 PM and introduced the members of the Board. He presented the minutes of the meeting from March 31, 2004. There were no corrections or changes. Chairman Fleming moved that the minutes be approved and Mr. Engel seconded 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, Terence Wetton, Zachary Allen, Barbara Ward, Peter Hanley, Gary Freeman, James Wilson, Ronald Rhodes, Earl Wilkinson, and Pat Alma.

Case CU-99-01 Amended, Rehearing – Terence and Melanie Wetton

Chairman Fleming called Case CU-99-01, Amended, Rehearing, Terence and Melanie Wetton, petitioners, requesting a rehearing. The permit was originally granted on August 14, 2003. The property is located at 2701 Kanuga Road, is 4.93 acres in size and is zoned R-40.

Mr. Burton gave a summary of the issues. Mr. Burton presented the Board members with a copy of the Henderson County Zoning Ordinance section pertaining to rehearings. He said the Wettons feel they have substantial new evidence to present to the Board in relation to the permit CU-99-01 as amended. The first thing to do is ascertain if there is new evidence in the Board's opinion. If the Board deems there is new evidence, in the Board's packet on page 1-4, is a copy of the original issued permit. Mr. Burton read into the record the section on Rehearings from the Institute of Government. Basically, the application is to change a condition as stated in the original conditional use permit. Mr. Burton said there is case law in this matter, Little vs. Board of Adjustment 195 NC793 143 Se 87 and NC Supreme Court case Inray Brotman state 210 NC 62 185 Se 434. Mr. Burton said he will say what the new evidence is and the petitioners can present the evidence to the Board. If the Board deems this is new and substantial evidence, then the Board can open it for discussion and ask questions. Mr. Burton said there is a blue line on the site plan representing a new driveway leading from the rear of the property to Nelson Lane. Mr. Burton also presented photographs. This is for Condition 4 e (the widening of the columns so the driveway is 20 feet wide). Mr. Wetton basically will have one way in and one way out utilizing the new driveway. Mr. Fleming asked how wide the driveway is. Mr. Burton said he did not know, but his car had no trouble negotiating. Mr. Fleming asked for any questions from the Board for Mr. Burton. There were none.

Chairman Fleming called Mr. Wetton forward. Mr. Wetton said the condition for 2 way traffic between the stone columns necessitated the widening from 14 to 20 feet. Mr. Wetton said the columns are an historical item, verified by the Flat Rock Historical Society. Another problem the

Board addressed at the original hearing was vision turning onto Kanuga Road. Mr. Wetton felt they could solve both problems by continuing the driveway on the property onto Nelson Lane. So for wedding functions, ingress would be from Kanuga Road and egress would be onto Nelson Lane. Mr. Wetton said they would still have traffic control as well, to make sure the exit was used.

Chairman Fleming said that this is new evidence. Mr. Engel agreed. Mr. Engel said it had significant bearing on why the condition was placed on the permit. Mr. Engel said his original major concern was people coming out at the same time people are entering through the columns. Mr. Fleming asked if Nelson Lane were a state maintained road. Mr. Burton said yes to the best of his knowledge. Mr. Burton said he told Mr. Wetton to check with the Department of Transportation to see if he needs a driveway connection permit, which he has done and was told is not necessary.

Chairman Fleming moved that the Board hear the new evidence in regard to Condition 4e in the original Condition Use Permit. All members voted in favor.

Mr. Burton said he would continue, dealing specifically with the new evidence and the old conditional use permit as it applies to condition 4e. He read into the record Section 4 of the Permit, which outlines the Conditions in which the Permit was granted states: Therefore, because the Board concludes that all of the general and specific conditions precedent to the issuance of a conditional use permit have been satisfied, it is ordered that the application for the issuance of a conditional use permit be GRANTED with and only to the extent represented in the application and site plan dated 6-27-03, attached, subject to the following conditions:

- a. The foliage around the Entrance to the property must be trimmed and site distance be maintained in accordance with the site triangle in the Henderson County Zoning Ordinance. Mr. Burton called the Board's attention to attachment 1-8 and 1-9 in the Board's packet and described the photographs and said the applicants have met this condition.
- b. Any outside overhead lighting should be shielded from neighbors and the street. Mr. Burton said no lighting has been installed.
- c. Any lighting on the sign must be shielded from traffic on Kanuga Road. Mr. Burton said any lighting will be turned from the road back onto the sign.
- d. The sign must be approved by the Zoning Administrator prior to placement.
- e. The entryway must be widened so the columns are 20 feet apart, so there are two lanes of traffic, one for ingress and one for egress. Mr. Burton said this is the one that has the new evidence. He said there is no gravel on the new driveway yet.
- f. The private function use is an accessory use and if, in the Zoning Administrator's opinion, the accessory use ever exceeds the primary use, the Zoning Administrator shall issue a Notice of Violation pursuant to Sections 200-13.C(4) and 200-7 of the Henderson County Zoning Ordinance. Mr. Burton said this accessory use has not been used yet because all the conditions have not been met.

Mr. Burton again addressed the site plan with the new driveway shown. He said there was not a substantial grade.

Chairman Fleming asked for any questions for Mr. Burton. There were none.

Chairman Fleming called Mr. Wetton forward. Chairman Fleming asked if Mr. Wetton would be putting a culvert in where the driveway met the road. Mr. Wetton said an engineer will be coming to look at it and whatever is necessary will be done. Chairman Fleming asked how wide the drive was. Mr. Wetton said approximately 13 feet.

Mr. Engel asked if the back of the entrance would be labeled "Do Not Enter" so people would not exit. Mr. Wetton said this would be just for weddings and people would not be allowed to drive back down the drive from the circle near the house. He said it would be posted that the exit is to

Nelson Lane. Mr. Engel asked about regular traffic for guests. Mr. Wetton said there are 4 guest rooms, so there would be a maximum of 4 cars, which was not seen as a problem by the Board before. Mr. Wetton said they are considering making this permanent. There were no more questions.

Chairman Fleming asked if there were anyone else who would like to testify on this matter. There was no one. Chairman Fleming closed the rehearing.

The Board discussed the issues. Mr. Engel said he favored making the ingress and egress one way permanently. Mr. Griffin felt there were not that many cars other than for weddings. The Board discussed the issue. The Board also discussed the frequency of weddings.

Chairman Fleming asked the Board to consider conditions for the permit. Chairman Fleming suggested that there be approval by the Department of Transportation for the driveway connection to Nelson Lane with followup by the Zoning Administrator. Mr. Engel suggested that there be regulatory signs indicating one way traffic during private functions.

Mr. Fleming said with regard to the reapplication of the Conditional Use Permit CU-99-01 Amended that was granted August 14, 2003, he moved to strike the Condition 4e and add 2 more conditions: that the tie-in to Nelson Lane be State approved and there be one way signs during private functions for egress and ingress. Chairman Fleming addressed the findings of facts and that the additions to the request will not adversely affect the health and safety of persons residing or working 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, he further moved the Board to grant the conditional use permit with and only to the extent represented in the application and with the previous conditions. Chairman Fleming said having the new driveway and one way traffic will address the safety issue.

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

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

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

Case V-04-03, W. Montgomery Oates

Chairman Fleming called Case V-04-03, W. Montgomery Oates, petitioner, requesting a twenty two (22) foot Variance from a front yard setback to the north to accommodate an existing addition to a boathouse located at 1484 North Lake Summit Road. The property, located southeast of the junction of Smyre Road and N. Summit Lake Road, is zoned WR.

Mr. Burton said that at each Board member's place was a letter from Mr. Oates that he hand delivered yesterday to withdraw his variance application. Mr. Burton said the process had involved an illicit addition to a boathouse, which had received a notice of violation. Mr. Burton said that the letter says Mr. Oates will dismantle the addition to the boathouse and restore the boathouse to its pre-existing non-conforming state. Mr. Burton said that he sent a letter to Mr. Oates saying that he was in receipt of the letter and the issue has been resolved.

Case CU-04-05, Zachary Allen

Chairman Fleming called Case CU-04-05, Zachary Allen, petitioner, requesting a Conditional Use Permit to operate a customary incidental home occupation, to wit: music instruction, in his residence located at 1134 North Rugby Road. The property is 1.99 acres in size and is zoned R-30.

Mr. Burton gave a summary of the issues. The petitioner has submitted an application for a Conditional Use Permit to operate a customary incidental home occupation, to wit: music instruction, at his residence located at 1134 North Rugby Road. The parcel where the home is located is zoned R-30. Mr. Allen desires to teach classical guitar (music instruction) from his residence, a use which would be defined as a customary incidental home occupation per the Henderson County Zoning Ordinance:

CUSTOMARY INCIDENTAL HOME OCCUPATION -- Any use conducted entirely within a dwelling and carried on by the occupants thereof, which use is clearly incidental and secondary to the use of the dwelling for residential purposes and does not change the character thereof; provided, further, that no mechanical equipment is installed or used except such as is normally used for domestic or professional purposes and that not over 25% of the total floor space of any structure is used for a home occupation. No home occupation shall be conducted in any accessory building. Customary incidental home occupations permitted as accessory uses in a residence include, but are not limited to, dressmaking, cooking, baking, **music instruction**, woodworking, arts and crafts and the practice of such professions as insurance, medicine, artistry, architecture and accounting. This definition shall not be used to regulate home schools in any way. [Amended 6-5-1995; 5-16-2001]

A customary incidental home occupation requires a Conditional Use Permit in an R-30 Zoning District pursuant to Section 200-14.C(2). Mr. Allen states in an addendum to his application entitled 'Zachary Allen Guitar Studio' (item 3-5 in the packet) that the circular drive is paved and will accommodate 8-10 cars. The Henderson County Zoning Ordinance requires 300 square feet of floor space for "professional offices"—Mr. Allen's parking situation is adequate in this regard. The site plan (items 3-7 and 3-8) provided illustrates two points where students can enter and exit the home, and the area where instruction is to occur compromises less than 25% of the total floor space of the residence. Mr. Allen wishes to place an on-premises advertising sign on his property near the road. The desired location for this sign is along a narrow strip of Mr. Allen's land that is parallel to Whisperwood Drive. Mr. Allen's application and request for a Conditional Use Permit is a direct result of a Notice of Violation issued by the Zoning Administrator for a non-permitted customary incidental home occupation in operation in a R-30 Zoning District and for an off-premises advertising sign located in a R-30 Zoning District. Mr. Burton presented the Board with a photograph of the petitioner's sign, which also advertises "Stained Glass". Mr. Burton said the stained glass will no longer be done there. Mr. Burton also presented a site plan dated March 24, 2004, and explained that although the petitioner owned both lots, the home occupation was not operating on the same lot as the sign. The proposal gives a thin parcel of property from Lot 1 to Lot 2, for an on premises sign. Mr. Burton said the house is secluded, ingress and egress is good, bathrooms are available, parking is fine, and everything seems to be compliant with the Zoning Ordinance.

Chairman Fleming asked for any questions from the Board. There were none.

Chairman Fleming called the petitioner forward. Zachary Allen came forward. He said Mr. Burton summed up his proposal and he had no additional information.

Chairman Fleming asked if anyone else wanted to speak about the matter before the Board. There was no one. There being no further questions, Chairman Fleming closed the public hearing.

Chairman Fleming called for discussion from the Board. Gary Griffin said that he had a problem with the off-premise sign, in that it could be setting a precedent. Mr. Burton said that traditionally the Board has allowed a nondescript sign for home occupations, but on the premises. It appears the applicants have tried to correct this and have the sign on premises. Mr. Fleming asked if the sign was there now. Mr. Burton said no, it was removed. Mr. Bonessi said that essentially the strip of land will be retained just for the sign. Mr. Burton said that strip of land was designed for nothing but the sign. Mr. Engel asked the dimensions of the sign. Mr. Burton showed the size of the sign, by demonstrating the approximate dimensions of the sign with his hands.

Chairman Fleming spoke about a condition for the permit. He suggested that the sign that the applicants had, be the sign that they continue to use with no changes or additions except the removal of the "Stained Glass" portion and that it be confined to the approved location.

Mr. Griffin said the Henderson County Zoning Ordinance requires approval of a conditional use permit if the following findings of facts are made: 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. He said the sign didn't do anything to that. And will not be detrimental to the public welfare or injurious to property or public improvements in the neighborhood. Mr. Fleming said the sign wouldn't hurt anything as long as it is maintained as it is now. Mr. Griffin said the following are provisions that the Board should address or consider prior to granting a Conditional Use Permit. Mr. Burton said the Board should not get hung up on the sign but also consider the use. Mr. Griffin said the use would not be detrimental to the neighborhood because it is a small business with only a few students during the week, so there is not much added traffic. Mr. Fleming said the students were spaced one hour apart. Mr. Burton said that he had received no previous complaints about the home occupation. Mr. Griffin said it is not detrimental because there is not enough traffic. Mr. Fleming said there are only 10 students per week. Mr. Engel said the instruction is inside with a large piece of property for a buffer. Mr. Griffin said he moved the Board to grant the requested Conditional Use Permit with and only to the extent represented in the application with the following conditions: place the sign as indicated and leave it the same as is with no additions or changes, the removal of the "Stained Glass" portion, and confined to the narrow as illustrated on the site plan submitted. Mr. Engel 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
Mr. Engel	-	Yes

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

Case V-04-06, Barbara Stepp Ward

Chairman Fleming called Case V-04-06, Barbara Stepp Ward, petitioner, requesting a twenty seven (27) foot Variance from front yard setback requirements on two sides, the west and south respectively, (lot is double-fronted) to construct a dwelling. The property, located on Old Spartanburg Highway, is 0.24 acres in size and is zoned R-15.

Mr. Burton gave a summary of the issues. First, he said it was advertised as 2 27-foot front yard variances. It should actually be 2 (two) 7-foot front yard variances. The petitioner has submitted an application for a twenty-seven (27) foot Variance from front yard setback requirements on two sides, the west and south, respectively (lot is double-fronted). The parcel is in a R-15 Zoning District. The parcel has been granted the status as a pre-existing/non-conforming lot by the Henderson County Zoning Administrator on 02/12/2004 (item 4-6 in the packet). The parcel has two front yards, one side fronts Old Spartanburg Highway, and the other side fronts North Mapleton Drive. The applicant proposes to site a 28' x 52' house on the parcel; encroaching both front yard

setbacks by approximately 7 feet. Mr. Burton described where the property was. Mr. Burton noted that on item 4-5 there is a right of way to an adjacent parcel. The owner questioned if the measurements took the right-of-way into consideration. Mr. Burton said he assured him it did. Mr. Burton said that item 4-8 and 4-9 showed placement of the septic system. He said item 4-10 showed photographs of the property with yellow flags indicating the front of the house. Mr. Burton said the proposed site of the house is further back from the road than adjacent houses in the area. Chairman Fleming asked for questions for Mr. Burton. There were none.

Chairman Fleming called the petitioner forward. Barbara Ward came forward. She stated that the property has been in her family since 1956 before zoning.

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

Mr. Engel said the request was very reasonable and the house will be set back further than the existing houses. Mr. Engel said that the lot was there before there was any zoning. Mr. Fleming said that there was a septic permit also.

Chairman Fleming asked if there was any other discussion. Mr. Burton asked the chairman to consider reopening the hearing to allow Ms. Ward to formally amend the application to two 7-foot front yard setbacks.

Chairman Fleming reopened the hearing. Barbara Ward said that she would like to amend the application to two 7-foot front yard setbacks. Chairman Fleming closed the public hearing and called for discussion from the Board. There was none.

Mr. Engel said that the Henderson County Zoning Ordinance requires approval of a variance if the following findings of facts are made: 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. Mr. Engel said the size of the property and the requirements for a decent size house and where the septic system is....you cannot make the house much smaller and the lot was there before zoning. 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. Mr. Engel said the property did not have zoning when they originally bought the parcel. Mr. Fleming said it has been in the family since 1956. Mr. Engel said that it is grandfathered in and they are asking for a minimum and other homes in the area are actually closer to the road, so it will not affect the neighborhood at all. Mr. Engel said the variance is in harmony with the general purpose and intent of the ordinance and will preserve its spirit. The variance will secure the public safety and welfare and will do substantial justice. Mr. Engel said they had discussed that.

Mr. Engel said with regard to the application of Barbara Stepp Ward, Case V-04-06, 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. 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

Mr. Engel - Yes
Chairman Fleming said the variance, as amended, has been granted.

Case V-04-07, Peter Hanley, agent for James Wilson

Chairman Fleming called Case V-04-07, Peter Hanley, agent for James Wilson, requesting three front yard setback variances: fifteen (15) feet on the east side, fifteen (15) feet on the west side, and forty (40) feet to the south side (lot is triple fronted, to construct a dwelling. The property, located at the corners of Sunrise Drive, Summer Place Lane and Laurel Ivy Lane, is 0.34 acres in size and is zoned R-30.

Mr. Burton gave a summary of the issues. He said the agent in this matter is Peter Hanley. It is located at the corners of Sunrise Drive, Summer Place Lane and Laurel Ivy Lane. The petitioner has submitted an application for three front-yard setback variances: 15 feet on the east side, 15 feet on the west side, and 40 feet to the south side (lot is triple-fronted). There is a state maintained road on one side and 2 public right-of-ways on the other (or one that curves around). The parcel has been granted the status as a pre-existing/non-conforming lot by the Henderson County Zoning Administrator on 03/10/2004 (item 5-5 in the packet). The parcel has three front yards, one side fronts Sunrise Drive, one side fronts Laurel Circle, and the other fronts Laurel Ivy Lane (item 5-6 site plan in packet). Laurel Ivy Lane on the GIS is not shown on the site plan – it is an extension of Laurel Circle. The applicant proposes to site a house on the parcel, encroaching front yard setbacks as stated above: 15 feet on the east side, fifteen feet on the west side, and 40 feet to the south side. Mr. Burton said there is no specific house size stated, they just have the dimensions where a house could be located.

Chairman Fleming asked for questions for Mr. Burton. He asked what the zoning was. Mr. Burton said R-30. Mr. Burton said R-30 requires 60 foot front yard setbacks and 30 feet front and rear. Mr. Burton said that it was his interpretation that the lot has 3 front yards. He cited item 5-7 in the packet with photographs. He described the photographs. Chairman Fleming asked how you could ask for a variance without particular dimensions or a proposed house. Mr. Burton said that was a good question. Chairman Fleming said that it also did not have a septic permit. Mr. Burton agreed. Mr. Burton said these were concerns that he had raised with Mr. Hanley. Mr. Hanley told Mr. Burton this was a blanket variance. Mr. Burton told Mr. Hanley he didn't believe that the Board had ever given a variance for blanket setbacks as a contingency for construction.

Chairman Fleming asked for anyone in favor of the variance to come forward. Peter Hanley came forward saying that he represented the owner of the property, who was an out of state resident. He was a real estate broker and in an attempt to sell the property has gotten a septic permit and is hoping to get a variance to build a house on the property. The lot is currently under contract to Mr. Wilkenson, who intends to speak, also. The purchase is subject to the variance being granted. Mr. Hanley said the septic permit was acquired earlier but they may be able to shift things around, depending on the situation of the variance. Mr. Hanley spoke about item 5-6 in the packet and explained that using the existing zoning setbacks, there is a very small footprint on which to build. Mr. Hanley said the property has been in the Wilson family for decades. The property is overgrown and has some trash on it. Building on the property would improve the neighborhood. Mr. Wilkenson has proposed a relatively small house, but has left the window larger to site it relative to the septic permit. The Health Department and Mr. Wilkenson have discussed how the siting of the house could shift the septic system on the property. The house will not be over 1200 sq. ft. The large footprint is to allow the septic system to be shifted according to the Health Department. The land has been perked and there is an existing permit. Mr. Hanley also said there is a lot of natural vegetation (rhododendron) on the property that has been there a long and Mr. Wilkenson would like to maintain as much as possible. Also the property line abutting the neighbor has a lot of pine trees

which would be maintained as a buffer. Chairman Fleming asked if there were any questions. There were none.

Mr. Wilkenson came forward and said he was a builder who has built in the subdivision before and had to get variances. He said virtually every lot in the subdivision is in non-compliance. He said when he reapplied for the septic permit, he was given some leeway, which is unusual, but based on the Board, he would like to center the house as much as he could. He said the septic permit had the septic system on one side and the house all the way to the back, which he felt was undesirable for ingress and egress. He had a plan for a house of less than 1000 sq. ft. but wants to expand it to between 1100 and 1200 sq. ft. He said this house would not be closer to the road than the other houses. Mr. Engel asked if Mr. Wilkenson would show the Board the permit for the septic system. Mr. Wilkenson showed the original permit with the house in the back. He pointed out where he wanted to move the house and conversation between himself and the Health Department allowed that. Mr. Wilkenson said that he has applied for a second permit and the Health Department is waiting for this Board's decision. He described where buildings were on the plan. He said the proposed house was only 10 feet from the property line on the plan. He would like to leave a buffer of laurels and pines, but with the house that close to the property line, they would have to be destroyed. Mr. Engel asked the size of the house. Mr. Wilkenson said about 28' x 40', which is less than 1200 sq. ft. Mr. Engel said the side yards would then be much larger. Mr. Wilkenson said yes. Mr. Engel wanted to figure the size of the side yards. Mr. Wilkenson said that he was afraid to commit because of the Health Department – he might have to shift it one way or the other. He said if it was approved exactly, he may get in a jam with the Health Department. Mr. Engel asked if the Health Department dug more test holes and if everything perked okay. Mr. Wilkenson said yes, the Health Department didn't have a problem with what he proposed to them. Mr. Engel said that the side yards would then be larger than shown. Mr. Wilkenson said yes – the plan showed the envelope that the house would be in, but the house wouldn't be that size. Mr. Engel asked if the house would be 28 feet wide instead of the 63 feet on the plan, which would make the yards considerably larger. Mr. Wilkenson agreed, but didn't know the exact placement (maybe 5 – 10 feet one way or the other). Mr. Wilkenson said that he is proposing a split septic system with one line on each side of the house, so it can be centered. They discussed the lines being 10 feet from the property line and a certain amount from the foundation. Mr. Engel asked if there would be a basement. Mr. Wilkenson said no, a crawl space. Mr. Engel said then he could be 5 feet from the septic system. The Board looked at the septic plan. There were no other questions.

Chairman Fleming asked if there was anyone in opposition to the variance. Gary Freeman came forward and said he had property right next to the proposed site. He said the property has a pretty good grade on it and there has been a problem with drainage. He said the road is not publicly maintained and water comes across the pavement. He said the property is very small. Mr. Engel asked if Mr. Freeman objected to building anything on the property. Mr. Freeman was concerned with the setbacks and that there wouldn't be room to park. Mrs. Brown asked if his main concern was that drainage would be worsened. Mr. Freeman said yes, the property was steep. There were no more questions.

Pat Alma came forward and said she owned the house to the north of the property. Mrs. Alma addressed the pine trees saying they were small 10 – 12 foot trees crowded together that actually need to be removed. She said they intend to do that in the future and most of them are on her property. She said the setback they are asking for is actually her driveway into her house. She said Mr. Freeman owns the one on the south side that curves around and she is to the north. Chairman Fleming asked if her road goes across the subject property. Mrs. Alma said it would go across the variance. Mrs. Alma said if he gets a 40 foot variance on the south side, it would take in the whole road that is the driveway that goes to her house. She said Sunrise Drive is not state maintained – they pay for all road maintenance. Chairman Fleming asked if there was a homeowner's association there. Mrs. Alma said no. She said there was a problem with Laurel Ivy

Lane with the grade on it. Mr. Engel said the house and driveway would have to be located on the property. Chairman Fleming asked if all the property lines go to the center of the road. Mrs. Alma said she believed so. There were no more questions.

Ronald Rhodes came forward to speak about the road (Sunrise Drive) and problems with getting people to pay for the paving of it. He spoke of one house with the septic system under the road. Mr. Rhodes said the overflow of the water from the upper road comes onto the subject lot. He said if this lot is cleared, there will be a problem there. He said drainage and water run-off was a problem. Mr. Engel asked if there was a road maintenance agreement with anyone. Mr. Rhodes said several people have signed but there is no paying road agreement. Mr. Rhodes said a lot of the lots don't go to the center of the road. Mr. Rhodes discussed problems with roads and septic systems. Mr. Rhodes said that he would restrict anyone from building on that property. He said if it was done right, with culverts to take care of the water, he wouldn't have a problem with it.

Mr. Wilkenson said that one objection was the small setbacks and he will be exceeding the setbacks of the existing structures. Mr. Wilkenson said state law dictates that he has to put in culverts and sedimentation is highly illegal – he said drainage will be handled according to state law. Mr. Engel said that it is not a state road. Mr. Wilkenson said that state law says he has to control drainage on a construction site. He said that he does not want to affect anybody else's property. He said when he built in the area before, he repaired a leaking dam, repaved a road and graveled another road, all at his expense. Chairman Fleming asked for any other questions. Chairman Fleming closed the public hearing.

Mrs. Brown addressed some of the problems saying legal action could be taken for drainage problems, a homeowner's association could be formed, property lines would remain the same whether the property was built upon or not. She doesn't understand how a variance could infringe on a road. She said past problems should not affect this property if it is handled correctly by the builder.

Mr. Bonessi said he had never seen a lot with 3 front yards before with the setback requirements and the blanket variance. Mr. Griffin said he didn't understand the blanket setback and would like more definite placement of the house and septic system. He would like to know where the variance would be given to. Mr. Bonessi said that even if they don't put the house there now, a blanket variance would allow expansion into that blanket envelope.

Mr. Engel said the 45 feet for the front was not too bad because the house next door is 37 feet and another is 52 feet. So the 45 feet looks fairly reasonable. The only objection he would have is for the side yards. He said the rear yard is not too bad, but the side yards are rather small.

Mr. Burton said with the side yard to the north, the plan says 15 feet proposed by the applicant. He said the setback should be 30 feet and nothing was advertised for that side yard setback.

Chairman Fleming said he believed the position of the Board, and his recommendation is that the applicant come back to the Zoning Administrator with the site located for the house with the septic tank permit and the Board would do their best to accommodate him with the variances. The house should be located properly.

Mr. Burton asked if Chairman Fleming wanted to continue the hearing or reschedule it. Mr. Burton said there was no advertisement for a side yard variance at all. Chairman Fleming said he thought the Board should revisit the whole thing and start all over, run it in the paper, and put it on the agenda for next month. Mr. Wilkenson asked if the Board wanted a plot plan. Chairman Fleming said yes. Mr. Engel said it would show much better than this plan. Chairman Fleming said the Board would try to work with everyone, but the house must be sited and the septic system must be located.

Mr. Burton said he had made an interpretation calling Laurel Circle, Laurel Ivy Drive and Sunrise Drive as public right of ways, therefore subject to 60 foot front yard setbacks. If he had deemed Laurel Circle and Laurel Ivy Drive to be boundaries, the setbacks would be 30 feet. The applicant did not oppose the interpretation. Mr. Burton still feels it is public access.

Mr. Engel asked if the property was platted before zoning. Mr. Burton said yes, it is a pre-existing non-conforming lot. Chairman Fleming said that the Board cannot restrict anyone from building on a particular lot, but the Board would do their best to make sure it is in harmony with the rest of the subdivision and put in place things around the erosion to accommodate the whole neighborhood.

There was discussion about whether to deny or continue the matter. Mr. Burton said he believed that the Board does have the authority to restrict development of a parcel of land if the Board deems it appropriate. Mr. Wilkenson asked if he could amend the application for a more restrictive setback to help the Board. Mrs. Brown said the Board needs to know where the house and septic system will be. Mr. Burton said that a variance runs with the land and it will always be there. Mr. Engel said the side yard without any road on it would have to be 30 feet.

Mr. Burton said the applicant could request a continuance to provide the Board with more information and possibly an amended application. Mr. Wilkenson said that the Board wanted a plot plan with a drawing of everything. Mr. Burton said yes. Mr. Wilkenson said he was confused with someone saying they are not requesting a side setback. Mr. Griffin said it had not been advertised. Mr. Burton said he would take responsibility for the oversight. Mr. Wilkenson said when he came back he would be asking for some sort of variance on the side yard.

Mr. Hanley said that he formally requests a continuance on this matter so it can be amended for the next meeting. All members voted by a show of hands to continue the application to the next meeting.

COMMITTEE AND STAFF REPORTS: None

OLD BUSINESS: Mr. Burton reported that John Cely III will probably be pursuing a Conditional Use Permit for reopening the Sleepy Hollow Manufactured Home Park, represented by Don Elkins, Esq., at the next meeting. Mr. Burton said there was an application for a Conditional Use Permit from Crestview Estates, represented by Christopher Stepp, Esq., for an expansion of an existing Manufactured Home Park. Mr. Engel asked if the same Board was needed for the continuance. Mr. Burton said yes.

NEW BUSINESS: None

There being no further business, Chairman Fleming made a motion to adjourn, Mrs. Brown seconded the motion, and all members voted in favor. The meeting was adjourned at 6:15 PM.

Robert Fleming, Chairman

Amy Brantley, Acting Secretary