

March 31, 2004  
4:00 PM

MINUTES OF THE HENDERSON COUNTY  
ZONING BOARD OF ADJUSTMENT

The Henderson County Zoning Board of Adjustment held its regularly scheduled March meeting, on Wednesday, March 31 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, Anthony Engel, Gary Griffin, Ann Pouch, Zoning Administrator Brad Burton, 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 January 28, 2004. There were no corrections or changes. Chairman Fleming said 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, Robert Justus, Greg Lemke, and Jim Vance.

**Case V-04-01 – Robert and Linda Justus**

Chairman Fleming called Case V-04-01, Robert and Linda Justus, petitioners, requesting a side-yard setback variance of fifteen (15) feet from the southwest side of an existing house. The petitioners seek compliance with the Zoning Ordinance prior to subdividing the parcel where the house is located. The house is located at 370 Crail Farm Road and the parcel it is located upon is currently zoned R-40.

Mr. Burton gave a summary of the issues. He made sure everyone was looking at the current plan, since three plans had been submitted. Mr. Justus said that Plan #3 was the correct plan. The applicant's application does not cite the section numbers of the Zoning Ordinance where he is requesting a variance, but after discussion with the applicant, it was understood to be Section 200-13.D—a variance of a side yard setback. There are two proposed lots to be created by a subdivision of the parcel identified as PIN 00956725169455. Mr. Burton explained the plan and where the proposed subdivision was. This action will also involve a recombination of land by means of a "swap" of land as described below. The two proposed lots are identified on the plan (stamped "preliminary") as "Tract C" and "Tract D". There is to be a "swap" and recombination of land (illustrated as "Tracts A and B") in an attempt to achieve the required R-40 lot area of 40,000 ft<sup>2</sup>. "Tract A", currently a section of the parcel owned by the applicant is proposed for recombination with the adjacent Maxwell parcel. "Tract B," currently a section of the parcel owned by the adjacent Maxwell family, is proposed for recombination with the applicant's parcel. The acreage notes, as provided on the plan, indicate that the proposed subdivision of the applicant's parcel, after the recombinations as already described, will yield sufficient lot area for the R-40 zoning district. After these recombinations of land are accomplished, the applicant proposes to subdivide his parcel between the two houses that already exist on the parcel; the boundary line is proposed to the right of the existing gravel drive that services the southern most house. Such boundary line, as described above, will not allow for the required 35-foot side yard setback, as required by R-40 zoning. (The plan illustrates the distance between the homes as 22.1 feet, requiring a setback variance of 12.9 [13] feet - the Zoning Administrator elected to advertise this variance request as 15 feet, due to conversations with the applicant concerning accuracy-related questions about the plan.

The applicant will need to amend, if necessary, this distance at the hearing with the understanding that no amendment greater than the fifteen feet as advertised, will be acceptable without re-advertising and rehearing the application). R-40 is the zoning designation applicable to this proposed subdivision. Section 200-13.D requires a 35-foot side yard setback between a structure and a parcel boundary line. He said essentially the applicant has two non conforming structures on the property right now that cannot make the setback distance between one another. He wants to subdivide between the two homes and do a recombination of land with the neighbor to get the required 40,000 sq. ft. Mr. Burton said there was also some encroachment by one house onto the neighbor's property and the land swap would solve that. Mr. Burton said the issue before the Board was a Variance for a side yard setback of 22.1 feet instead of 35 feet. This application was duly advertised as required in Section 200-55 of the Henderson County Zoning Ordinance.

Chairman Fleming asked if the driveway was gravel or paved. Mr. Burton said it was gravel. Mr. Bonessi asked if the variance was for "Tract D". Mr. Burton said yes it was for "Tract D". Mr. Bonessi asked if they were considering "Tract C" at all. Mr. Burton said no. Mr. Bonessi said that even with the land swap, the home on "Tract C" would not meet all building setbacks. Mr. Burton explained that the home is in non-conformance now, and the land swap will make the home less non-conforming than it is now.

Chairman Fleming called the applicant forward. Robert Justus said the original tract of land was around 2 acres. He said the property has been in the family for 60 years with the 2 houses being there since 1946. He said on "Tract D" there is 22 feet on the southwest corner of the house to the power pole (property line). Mr. Justus said from the power pole to the other house is approximately 39 feet. He wanted to keep the gravel drive on "Tract C" so there would not be a problem with a right of way. He will probably sell one house now and the other later. His mother is in a nursing home and his wife is disabled. He said all parties concerned agree with it.

Mrs. Pouch asked if the property was one piece or two. Mr. Justus said presently it is one lot, about 2 acres, with 2 houses on it. Mr. Bonessi asked how old both houses were. Mr. Justus said 60 years old. Mr. Bonessi said probably prior to zoning. Mr. Justus said yes, probably by about 35 years. Mr. Engel asked if he could legally divide the pieces from English Hills; some subdivisions have deed restrictions. Mr. Justus said the southwest side does adjoin English Hills, but is not a part of the subdivision. Mr. Engel said he meant could a person in the subdivision trade a piece of his property in the subdivision to someone out of the subdivision. Mr. Burton said he did not know if the Board could address that issue.

Chairman Fleming asked if there was anyone to speak in favor of the variance. Mrs. Justus wanted to speak and Chairman Fleming swore her in. Mrs. Justus said that the property cannot even be seen from English Hills.

Chairman Fleming asked if there was anyone to speak opposing the variance. There was no one. He asked if the Board had any further questions. There were none and he asked for discussion from the Board.

Mr. Engel said that there is a home over the property line and this variance would help. Mr. Engel said that they are large parcels of land from before zoning and would not affect the neighborhood at all.

Mrs. Pouch said does the Board know that the land swap will take place or do we give him the variance subject to. Mr. Bonessi said subject to. Mr. Justus said he didn't know if the land swap would be pertinent to the variance, since the variance is for "Tract D". Mrs. Pouch said he would have to do the land swap before "Tract C" was sold or would he be back for a variance. Mr.

Bonessi said he would probably be back for a variance. Chairman Fleming said it looks like the Board is trying to clean up some out parcels so there are 2 marketable pieces of property.

Chairman Fleming asked Mrs. Pouch to go through the findings of facts and requirements for approval of the variance. She read, if the applicant complies with the literal terms of the district, he cannot secure a reasonable return from or make a reasonable use of his property. Mr. Engel said that was true because he wouldn't have marketable properties at all. The land swap and encroachment was discussed. The variance on "Tract D" was discussed. Mrs. Pouch said the property cannot be subdivided without the variance.

Mrs. Pouch said the hardship which the applicant complains results from unique circumstances related to the applicant's land. Mr. Engel said the houses were built prior to zoning and there were no requirements for setbacks.

Mrs. Pouch continued the hardship is not the result of the applicant's own action. Mr. Engel said the house was there before zoning and the hardship was created when zoning went into effect.

Mrs. Pouch said the variance is in harmony with the general purpose and intent of the ordinance and will preserve its spirit. Mr. Engel said the houses have been there for 60 years so there will be no change in the neighborhood. There will just be two lots instead of one.

Mrs. Pouch said the variance will secure the public safety and welfare and will do substantial justice. Mr. Engel said everything stays the same. Mr. Bonessi said there is no change in the property.

Chairman Fleming asked for any other discussion on the matter. There was none. Chairman Fleming called the question. Mr. Engel said with regard to the application of Robert and Linda Justus, Case V-04-01, for a variance from the minimum side yard requirements, I move the Board to make the following findings of facts: 1) strict enforcement of the regulations would result in practical difficulties or unnecessary hardship to the applicant; 2) the variance is in harmony with the general purpose and intent of the ordinance and will preserve its spirit; and 3) in the granting of the variance the public safety and welfare have been secured and substantial justice has been done. Accordingly, I further move the Board to grant the requested variance in accordance with and only to the extent represented in the application. Chairman Fleming asked Mr. Bonessi if he wanted to put a condition on the order. Mr. Bonessi said he didn't think it would apply to the side setback on "Tract D". Mrs. Pouch seconded the motion. Chairman Fleming asked for a vote by a show of hands:

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

Chairman Fleming said the variance has been granted.

### **Case V-04-02, Gregory R. Lemke**

Chairman Fleming called Case V-04-02, Gregory R. Lemke, petitioner, requesting a side yard setback variance of ten (10) feet from the west property boundary line and eleven (11) feet from the east property boundary line to locate a proposed house site. The proposed house site is located at 24 Nelson Road, and the parcel it is located upon is currently zoned R-40.

Mr. Burton gave a summary of the issues. He directed the Board to page 2-7 of their packets for the survey of the property. The applicant's parcel is 47,480 ft<sup>2</sup> in size, which exceeds the minimum lot area required for the R-40 zoning district in which it located (40,000 ft<sup>2</sup>). The parcel is extremely narrow and long, with 96' (per County GIS) of road frontage along Nelson Road. He directed the Board to page 2-8 of their packets for photographs of the property. The parcel side boundary lines are 415' in length to the west and 524' in length to the east (again, per County GIS). Where the applicant wishes to site the home, there are no structures of any significance directly adjacent to the site on adjoining parcels; this is also true for the parcel to the rear of the applicant's parcel. He described the photos on page 2-8. He said the parcel existed before zoning and conforms to zoning for square footage, but is very long and narrow. R-40 is the zoning designation applicable to this parcel of land. Section 200-13.D requires a 35-foot side yard setback between a structure and a parcel boundary line. This application was duly advertised as required in Section 200-55 of the Henderson County Zoning Ordinance.

Chairman Fleming asked the size of the home. Mr. Lemke said 28' x 40'.

Mr. Lemke came forward and said they have lived across the road from the property for about 20 years. They purchased the property several years ago with a mobile home on it. It was an eyesore and was demolished last year. The proposed home would be for his mother-in-law. Mr. Lemke said his neighbor on the east side, Mr. Vance, moved the shed that encroached on the property to the 10-foot setback. Mr. Lemke said the neighbors on the west side are enthusiastic because they like his mother-in-law. The septic system has been approved. Natural gas lines will be run to the home. The property was platted by Howard Smith in the 1950's. There were several narrow lots there. The only house they would be able to build would be a 20' wide house.

Chairman Fleming asked if there was city water. Mr. Lemke said no, there is a shared well as per the deed.

Chairman Fleming asked if there was anyone who would like to speak. Jim Vance, property owner to the east of Mr. Lemke's property, came forward. He said that, with the narrowness of the lots, it is difficult to build a house 20 feet wide. His house was built 6 years ago and he has expanded to the rear, not the side. He feels that if he wanted to build on one of the lots, he would be here for a variance. He is in total agreement with Mr. Lemke for what he is asking. He feels that any house Mr. Lemke built would be tasteful and enhance the property value in the neighborhood.

Mrs. Pouch asked how many lots that size were there. Mr. Lemke said there was a short section of those sites and the property owner on the west side purchased 3 lots, so there are none left to build on.

Chairman Fleming asked if there was anyone else wishing to speak. There was no one.

Chairman Fleming called for discussion among the Board members. Chairman Fleming said the long narrow lots were hard to function with. Mrs. Pouch said that as long as there were no more narrow lots there to deal with. Chairman Fleming said that with zoning in place, this probably wouldn't happen now. Mr. Burton said this would be difficult to get through the Subdivision Ordinance. There were no further questions.

Mrs. Pouch said if the applicant complies with the literal terms of the district, he cannot secure a reasonable return from or make a reasonable use of his property. Mr. Bonessi said that basically the lot is unbuildable. Chairman Fleming added with a reasonable size house.

Mrs. Pouch read the hardship which the applicant complains results from unique circumstances related to the applicant's land. Mr. Engel said that the lot is so narrow and with the setback requirements, the house would be unduly small in width. The narrowness of the land creates the problem.

Mrs. Pouch read the hardship is not the result of the applicant's own action. Chairman Fleming said that the land was purchased as someone laid it out.

Mrs. Pouch said the variance is in harmony with the general purpose and intent of the ordinance and will preserve its spirit. Chairman Fleming said that having a home on such a narrow lot will preserve the spirit.

Mrs. Pouch continued the variance will secure the public safety and welfare and will do substantial justice. Mrs. Pouch said that he removed an eyesore and plans to build an attractive house that will enhance the neighborhood.

Chairman Fleming asked for any more discussion. There was none. He called the question. Mrs. Pouch said with regard to the application of Gregory R. Lemke, Case V-04-02, for a variance from the minimum side 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. Bonessi	-	Yes
Mr. Griffin	-	Yes
Mr. Fleming	-	Yes
Mrs. Pouch	-	Yes
Mr. Engel	-	Yes

Chairman Fleming said the variance has been granted.

#### **Case V-04-04, George and Tamala V. Bryson**

Mr. Burton said that he and county attorneys were able to come to an administrative decision and the application was withdrawn.

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 and they will meet tomorrow. Mrs. Pouch asked if they followed through with what had to be done by May when the Board revoked the Conditional Use Permit. Mr. Burton said he will probably tour the facility within the next week or two. Mr. Burton spoke about Mr. Cely having to comply with newer regulations for Manufactured Home Parks when he reapplies. Mr. Burton reported that Mr. Cely asked for an extension of time after the review and revocation of the permit, but the opinion of the County Attorney was that the appeal period had run out and there was nothing more to be addressed. Mr. Burton explained the procedure Mr. Cely will have to follow in a new application.

NEW BUSINESS: Mr. Burton reported that the Board has 3 variance applications for next month. Mrs. Karpowski said that she probably will not attend the meeting in April but will try to get all the information together for the Board. Mr. Burton said he still wants to have the in-service education for the Board, but will wait a little while before scheduling another session.

There being no further business, Chairman Fleming made a motion to adjourn, Mrs. Pouch seconded the motion, and all members voted in favor. The meeting was adjourned at 5:02 PM.

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Robert Fleming, Chairman

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Joyce Karpowski, Secretary