

MINUTES OF THE HENDERSON COUNTY
ZONING BOARD OF ADJUSTMENT

The Henderson County Zoning Board of Adjustment held its regular July meeting on Wednesday, July 30, 2003, at 4:00 PM in the Meeting Room of the Henderson County Land Development Building, 101 East Allen Street, Hendersonville, North Carolina. Those present were: Chairman Diane Grant, Anthony Engel, Robert Fleming, Ann Pouch, Dr. Philip Stanley, Zoning Administrator Brad Burton, Assistant County Attorney Russell Burrell, and Secretary Joyce Karpowski. Planning Director Karen Smith arrived later.

Chairman Grant called the meeting to order at 4:33 PM and introduced the members of the Board. She also offered condolences to Ann Pouch on the loss of her spouse.

Chairman Grant called forward people who would testify in the case today. Sworn in were: Terence Wetton and Zoning Administrator Brad Burton.

Chairman Grant explained the procedure used in the hearing of the case today.

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

Chairman Grant called Case CU-99-01 Amended, Terence and Melanie Wetton, requesting an amendment to Conditional Use Permit CU-01-99 to operate a bed and breakfast inn as originally permitted, despite a loss of acreage to the parcel after the issuance of the original permit. Further, the petitioners are requesting permission to hold private functions such as weddings and small meetings on the property. Chairman Grant opened the Public Hearing.

Brad Burton gave a summary of issues involved: The parcel is zoned R-40. Section 200-13.C(3) of the Zoning Ordinance allows bed and breakfast inns with a Conditional Use Permit. A Conditional Use Permit (#CU-99-01) was issued in 1999 for a bed and breakfast inn, at which time the parcel comprised approximately 7.23 acres. The size of the subject parcel at present is approximately 4.93 acres. The primary structure is in compliance with all dimensional requirements for the district, and the petitioners plan no additions to the residence in the immediate future. The petitioners are requesting permission to hold private functions such as weddings and small meetings on the property. "Bed and Breakfast Inns" are defined in Section 200-7 of the Henderson County Zoning Ordinance. Addressing the previous, the owners shall reside on premises, and the primary structure, designated as the guesthouse, has historical significance in the community. The dimensional requirement for lot area versus number of guest rooms is easily met. The compatibility with adjacent property uses and the statement "...used primarily as overnight guest quarters and providing meals only for such guests..." will require discussion and interpretation by the Board. Section 200-40 of the Zoning Ordinance addresses off street parking for bed and breakfast inns as one space for each accommodation, plus 2 additional spaces for employees. The petitioners have presented a "wedding scenario" (Attachment 2 in the Board's packets) that refers to 250 guests as a maximum capacity crowd. The petitioners shall address parking plans to accommodate vehicles that will be arriving and leaving at a close proximity in time. Also, the petitioners need to address potential impacts of parking vehicles along property lines and how such impacts, if any, will be mitigated. As the residence is located in a residentially zoned area, the petitioners shall address whether noise associated with private functions will affect neighbors, what are the proposed hours for private functions, and what is the petitioner's definition of "occasionally host[ing]" such private functions. Per North Carolina General Statute, the State of North Carolina exercises jurisdiction over bed and breakfast sanitary requirements (including food service) and these regulations are enforced locally through the Henderson County Department of Public Health. The petitioners need to be aware that they must comply with all requirements of these agencies for the operation of a bed and breakfast inn. Section 200-7 of the Zoning Ordinance states that bed and breakfast inns

may have two on-premises signs, "...but neither can exceed four square feet in area in accordance with an approval design and where buffering may be required." The residential nature of the area should be considered during discussion of lighting for the grounds and signage. Mr. Burton discussed and described photographs that had been presented to the Board members.

Chairman Grant clarified that the property was originally 7.23 acres and is now 4.9 acres. Mr. Burton explained that the original acreage was shown on Attachment 7 and the present acreage is shown on Attachment 4. Mr. Burton said there is a home on the property that was sold. Mrs. Pouch asked if the neighbors had anything to say about the application. Mr. Burton said yes and he would let the Wettons offer correspondence from a neighbor as evidence, if acceptable.

Chairman Grant asked the applicant to come forward. Mr. Wetton presented handouts for the Board and a letter from W.B.Chisholm Leonard. Chairman Grant asked if there was any objection to this being entered into evidence. There was none. Mr. Wetton said that he and his wife had just moved here from California, where they had run a bed and breakfast for 3 years. He explained they had been searching for another property to run as a bed and breakfast and had purchased this property last Wednesday. He explained this property had belonged to the Pardee family and has fallen into disrepair over the past 7 years. He said they are passionate about restoring the home to its original condition. There will be 4 guest rooms and the cottage on the property will be used as their home. The property will be luxurious and comfortable. He said that it is becoming increasingly common to have weddings at a bed and breakfast such as this. There is a survey by American Express that states 30% of bed and breakfast inns in the United States are now doing weddings and small meetings. Mr. Wetton said that it would not be advertised for weddings, as the inn is the main business, but it could be available for weddings. Mr. Wetton wanted to address some of the concerns. As far as the reduction in acreage, they believe 4.9 acres is adequate for the inn. Concerning compatibility with neighboring property, the house sits about 400 feet from the road and is hidden from view. No property is near the house. Mr. Wetton cited the American Express survey which said that a bed and breakfast typically has less traffic than a typical 4-bedroom house. Also the nearest neighbor, Mr. Leonard has sent the letter to the Board with no objections and has also planted hemlock trees along their common property line. Chairman Grant asked where the property was and Mr. Wetton pointed it out and said that Mr. Leonard is using the property as a vacation home. Mr. Wetton showed 2 areas for parking behind the house for guests. Mr. Wetton went on to the wedding portion of the petition. He said weddings would not be their main business. They estimate doing 12 weddings per year and don't feel they would want to handle more. Mr. Wetton said there would be a limit of 250 guests. Typically 4 people would be in a car, which would be approximately 65 cars, which could easily be accommodated (they could probably accommodate up to 90 cars). The cars would be parked on the north and northwest part of the property, and also in the wooded area. Mr. Wetton said there is a visibility issue on exiting the property particularly with the foliage which has been let go. He said landscapers are coming on Monday, to remove any offending landscaping for visibility. Mr. Wetton said at any weddings, they would have a member of their staff at the entrance to direct traffic into the property to the main house where there would be valet parking. Chairman Grant asked if the proposed parking area would be left natural or have gravel put down. Mr. Wetton said it is uncertain, but if it needs gravel, they would do that. He said there is a paved driveway to the parking area.

Mr. Engel asked if the entranceway were wide enough for more than one car. Mr. Wetton said he believed it was only one car wide. Mr. Wetton said they want to make it safe by having signs for oncoming traffic and someone directing traffic. Chairman Grant asked if the entrance were wide enough for emergency vehicles to enter. Mr. Wetton said yes, it is 16 feet wide.

Mr. Wetton addressed the noise issue. He said he covered "occasionally" by only having about 12 weddings per year. He plans not to have any event beyond 10:00 PM and there would be no amplified music outside. They will be considerate of their neighbors and have met most of them. He said most of the neighbors are excited about their plans. Mr. Wetton said they will comply with all the Health regulations. They did in their previous bed and breakfast, so they will here also. He said they will bring in portable toilets for weddings. They have contacted the Health Department

and they say there is no set number for toilets per number of people. They plan to have one sign on one of the stone pillars at the entrance. They have not designed the sign yet, but will meet all the zoning regulations for signs. If there is to be an additional sign, Mr. Wetton said they will tell the Board. Mr. Wetton said they have no plans for obtrusive lighting, just tasteful landscape lighting. Chairman Grant asked about overhead lighting in the parking area for the guests. Mr. Wetton said because it is valet parking, they did not feel it would be necessary. In the front of the property, they feel the landscape lighting will be adequate to enter and exit the property. Mrs. Pouch asked if there would be tents for the weddings. Mr. Wetton said yes. Mr. Wetton said they would not prepare food for the wedding guests, only breakfast for their bed and breakfast guests. The wedding meals would be catered from the building labeled pavilion. Mr. Wetton added that there is security lighting on the house and pavilion that comes on automatically by sensors.

Chairman Grant asked if there was anyone to speak in favor of the application. There was no one. Chairman Grant asked if there was anyone to speak in opposition to the application. Carol Eicholtz came forward and was sworn in.

Ms. Eicholtz said her address was 2708 Kanuga Road. She said that the home is beautiful. She said that ambulances come down Kanuga Road about twice a day and after the Pardee house there is a curve. When the Pardee house was for sale, she had many people, even realtors, at her house. She feels the house is difficult to find and there is no place to turn around on Kanuga Road. She feels this is a dangerous situation. Ms. Eicholtz said the speed limit changes from 35 to 45 just before the Pardee driveway. She said she feels that the Zoning Board of Adjustment meeting at 4:00 PM on a working day is why more people are not here. She said the residence sold from the property is a vacation home, or not a full time residence. She said the home across the street from the subject parcel is empty with the sale pending. She said the Hayden residence is in litigation, so her house is the only nearby home occupied. Ms. Eicholtz mentioned the failure of an in-town bed and breakfast inn. Chairman Grant said the Board is here to discuss weddings at the bed and breakfast. Ms. Eicholtz said that the 12 weddings per year would negate the American Express survey Mr. Wetton previously mentioned. Also, with the inn serving only breakfast, the guests will be leaving the property for lunch and dinner. She feels this will add a lot of traffic to the residential area. Ms. Eicholtz said her main objection is the traffic on the narrow road.

Chairman Grant asked if there was anyone else to speak in opposition to the application. There was no one. Mr. Wetton asked to speak in response to Ms. Eicholtz. Mr. Wetton said the property across the street was sold and the closing was last week. Mr. Wetton said they met the new owners yesterday and they are completely in favor of the Wettons' plans. Mr. Wetton read a portion of the American Express survey regarding the traffic.

Zoning Administrator Burton said that he had placed a memo at everyone's place regarding the recommendation of the Planning Board, which he read.

Chairman Grant closed the Public Hearing. Chairman Grant said that the Board had to address some issues for their findings of fact: that the proposed use would not adversely affect the health and safety of persons working and residing in the neighborhood. She reminded the Board that the bed and breakfast use had already been granted in the previous permit and the Board's concern is with the amendment to permit weddings. The Board should make an interpretation whether weddings should be a use permitted under the conditional use permit. Mr. Burton said the wedding use could be considered an accessory use, which is defined as a use customarily incidental and subordinate to a principal use or building and located on the same lot with such principal use or building. Chairman Grant said that the testimony given by the applicant indicates that the proposed use would definitely be subordinate to, an accessory to, the current use. She recalled a previous permit for Tenerife included a proposal to hold weddings and other social functions.

Chairman Grant proposed a condition that foliage around the entrance be removed and a sight distance be maintained at the street level for safety. And to keep it clear for sight distance, she said

there is a definition in the Zoning Ordinance for the sight triangle. Chairman Grant said the road is dangerous and it would seem the slower people go, the better.

Mr. Engel spoke about the entrance not being wide enough for 2 cars to enter and exit at the same time. His concern is traffic backing up on Kanuga Road while waiting for a car or cars to exit. He suggests the opening be wide enough for 2 cars to pass.

Chairman Grant reopened the Public Hearing to hear from Mr. Wetton. Mr. Wetton said the only time it would be an issue is during a wedding, and someone would be there directing traffic. He said if the actual driveway needed to be widened, they would do that. He would prefer not to move the rock. He said there is room for 1 car between the gate and the road. Chairman Grant suggested a condition that past the gate and onto the property the road be widened for 2-lane traffic and during a wedding that it be mandatory for a person to be posted to direct traffic. Dr. Stanley suggested a shuttle for bringing guests. Mr. Wetton said that is feasible. Mr. Engel said the opening is now 16 feet and if it were 19 feet, he could have an 18 foot entrance. He said there are many stonemasons in the County that could duplicate the entrance, even using the same stone. It could be duplicated and the addition of 3 feet in width would not dramatically change the appearance. Mr. Engel said it should not be tremendously expensive. Mr. Wetton was concerned with the gate as an historic part of the property.

Chairman Grant suggested a condition for lighting be placed on the permit such as any outside overhead lighting should be shielded from neighbors. Mr. Fleming wanted to address the sign. Mr. Burton said the sign is determined by the Zoning Ordinance. Chairman Grant said if the sign is lighted it must be shielded from traffic on Kanuga Road. Mr. Fleming suggested that the sign (after it is designed) should be approved by the Zoning Administrator prior to placement.

Chairman Grant asked the Board for discussion on the entrance. They are saying they would hold only 12 weddings a year with a maximum of 250 people. The numbers were discussed and what was reasonable. Mr. Engel asked if there would be a requirement that someone be out on the road 1 hour before the wedding until 1 hour after. Chairman Grant said the Board could specify anything. Mr. Engel said the traffic is terrible on Kanuga Road and said sometimes he has to wait for 40 cars to pass when he is exiting Crooked Creek. He feels there should be a restriction on the permit. Mr. Engel said sometimes the traffic is going 55 miles per hour. Mr. Burton was concerned about enforcement of any condition requiring a person directing traffic. Chairman Grant said that if any condition was not complied with, Mr. Wetton could lose the permit. Dr. Stanley asked if the person had to be a policeman or could it be a 17-year-old kid out there. Mr. Engel said having anyone in the road directing traffic could be dangerous. The visibility was discussed. Mr. Burton suggested warning signs, although nothing is supposed to be placed in the road. Chairman Grant asked what the Board would like to do. Dr. Stanley suggested that anytime a private function is conducted on the property, 1 hour prior, all during and 1 hour after the event, the road entrance will be manned with a person directing traffic. Mr. Fleming asked if the Board would have any liability by requiring someone to be out there. Mrs. Smith said that she couldn't answer, it was a legal question. This was discussed by the Board. Chairman Grant said that the property owner would have to make sure whoever he had there was competent and capable so he (the property owner) didn't have any liability in that regard. Mr. Engel said it would be easier to widen the entrance and there would be no necessity to hire someone. Mr. Engel said that it was quite a safety issue, since it was no longer a private residence. Mr. Wetton said that even if the entrance were widened, he would still want someone directing traffic. Mr. Engel said that because of the speed of the traffic, it could be a hazard. Moving the entrance posts was discussed. Chairman Grant said that in lieu of the previous condition, the entrance way be widened so the columns are 20 feet apart, and so there are 2 marked lanes of traffic for ingress and egress. The Board clarified that the 2 lanes of traffic was just at the entrance and beyond the property owner could do whatever he wanted.

Mr. Engel suggested a restriction of 12 wedding per year. Chairman Grant said there could be other private functions. This was discussed. Mr. Wetton said he would not like the restriction, because he may want to have 13 weddings. It is his home and he does not want to have more than

12 weddings but there are also private functions that could be there. Mr. Burton said this use is an accessory use, and if the permit is granted, and if the private function use becomes more than the bed and breakfast use, then the primary use could change in status to a conference center. Mrs. Smith said it would then be interpretation. After discussion, Chairman Grant said that it should be the discretion of the Zoning Administrator if the accessory use becomes more than the primary use. Mrs. Smith suggested several options. The Zoning Administrator would make the call and the owners could appeal it. Or the Board could have the limitation, and the owners could come back to the Board if they felt it wasn't enough. Mr. Engel said the second option would be good, because if they came back to the Board, then if there were any problems, the neighbors would be there also. Mr. Fleming said if there was any concern of the neighbors, they would be here now. Notification of the neighbors, advertising in the paper, and the posting of the property was discussed. It was agreed that the private function use is an accessory use and if, in the Zoning Administrator's opinion, the accessory use exceeds the primary use, the Zoning Administrator would issue a notice of violation.

Chairman Grant closed the Public Hearing. She asked for any further discussion. Mr. Engel asked about the parking close to the property line. Chairman Grant said the parking was shown on the plan. Mr. Burton said there are pines, small ones, along the property line. Chairman Grant said that it shouldn't be an issue, since it wasn't the primary use. Mr. Burton said that the pictures of the property, where the parking would be, showed no improvement to the property in quite some time.

Chairman Grant asked for a motion. Mr. Fleming said with regard to the application of Terence and Melanie Wetton for an amendment to the existing conditional use permit authorizing the operation of the accessory use of weddings and special events to be held on the property and a reduction of size in the property, I move the Board make the following finding of facts: 1) the proposed use will not adversely affect the health and safety of persons residing and working in the neighborhood of the proposed use, and 2) 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 amendment to the existing Conditional Use Permit with and only to the extent represented in the application and with the following conditions (read by the Secretary): 1. Require the foliage around the entrance be removed and site distance be maintained in accordance with the site triangle in the Zoning Ordinance. 2. Any outside overhead lighting should be shielded from neighbors and streets. 3. Any lighting on the sign must be shielded from traffic on Kanuga Road. 4. The sign must be approved by the Zoning Administrator prior to placement. 5. The entryway must be widened so the columns are 20 feet apart and so there are 2 lanes of traffic, one for ingress and one for egress. 6. The private function is an accessory use and if, in the Zoning Administrator's opinion, the accessory use exceeds the primary use, the Zoning Administrator would issue a notice of violation. Mrs. Pouch seconded the motion. Chairman Grant asked for further discussion. Mr. Engel asked if the limit of 250 people should be included. This was discussed. Mr. Engel made an amendment to the motion for a condition that there be a maximum of 250 guests per private function. Mrs. Pouch seconded the amendment. Dr. Stanley asked if the permit was transferable. Chairman Grant said the Conditional Use runs with the land. There was no further discussion.

The following vote was taken by a show of hands:

Mr. Fleming	Yes
Dr. Stanley	Yes
Mrs. Grant	Yes
Mrs. Pouch	Yes
Mr. Engel	Yes

Motion carried and the Amended Conditional Use Permit was granted as amended with the stated conditions.

COMMITTEE AND STAFF REPORTS: None

OLD BUSINESS: None

NEW BUSINESS: Mrs. Smith reported that the Board may hear about amendments to the Zoning and other Ordinances, but they are only minor and related to the incorporation of Mills River to allow the County to enforce the Ordinances there. Mills River will be contracting with the County to enforce the Ordinances.

The Board was reminded that the next regular meeting of the Board of Adjustment was scheduled for Wednesday, August 27, 2003, at 4:00 PM in the meeting room of the Henderson County Land Development Building.

There being no further business, Mr. Fleming made a motion to adjourn, Mr. Engel seconded the motion, and all members voted in favor. The meeting was adjourned at 6:10 PM.

Diane Grant, Chairman

Joyce Karpowski, Secretary