

January 8, 2003  
4:00 PM

MINUTES OF THE HENDERSON COUNTY  
ZONING BOARD OF ADJUSTMENT

The Henderson County Zoning Board of Adjustment held its regular December meeting (postponed from December 25, 2002) on Wednesday, January 8, 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, Tamra Crane, Anthony Engel, Robert Fleming, Ann Pouch, Zoning Administrator Daniel Gurley, Planning Director Karen Smith, and Secretary Joyce Karpowski.

Chairman Grant called the meeting to order at 4:05 PM and introduced the members of the Board. The Chairman said that this was the regular December meeting but had been moved to this date because of the holidays. Chairman Grant presented the minutes of the meeting held on October 30, 2002. Mrs. Crane wanted the minutes on Page 2, paragraph 2 to reflect how the Board decided on the measurement of the house. It was suggested to add, "The plan submitted did not add up to the 6000 sq. ft. stated and Ms. Staton could not justify the 6000 sq. ft." Chairman Grant said that the minutes stand approved with the correction. Mr. Gurley said that the minutes from the July 31, 2002, meeting were dated July 28. Mrs. Crane moved that the July 2002 minutes be amended to reflect the correct date of July 31<sup>st</sup>. Mr. Engel seconded the motion. The motion was unanimously approved.

Chairman Grant said that there were 3 cases scheduled to be heard today. She said for the first case, CU-02-15, the Planning Board was asked for a recommendation. Mr. Gurley said that the Planning Board tabled the request due to a lack of information at their December 17<sup>th</sup> meeting. The Planning Board asked the Board of Adjustment to consider waiting to hear the case until they could provide a recommendation to the Board of Adjustment. Mr. Gurley said that the Planning Board was planning to hear the request at their January 21<sup>st</sup> meeting. Chairman Grant said that the Board should then most likely have a recommendation from the Planning Board for the Board's January 29<sup>th</sup> meeting. Mrs. Crane moved that the Board continue Case CU-02-15 until after the Planning Board hears the case. Mr. Engel seconded the motion. All approved the motion. Chairman Grant told any persons attending that the meeting would be continued until January 29<sup>th</sup> and it would not be advertised in the paper again. Mrs. Pouch moved to amend the motion to include the date of January 29, 2003, at 4:00 PM. Mrs. Crane seconded and all members approved the amendment. Mr. Gurley told meeting attendees of the dates of meetings for Case CU-02-15.

Chairman Grant called forward people who would testify in cases today. Sworn in were: Steve Kostowicz, Heather Bagwell, Douglas Swan, Ronnie Bagwell, Kurt Smith, and Dan Gurley, Zoning Administrator.

**Case V-02-16, Rodney Troy and Heather Marie Bagwell**

Chairman Grant called Case V-02-16, Rodney and Heather Bagwell, requesting a nine (9) foot variance from the rear property line and a seven (7) foot variance from the southeastern property line. The property is located at 229 Terrys Gap Road and is zoned RC. Dan Gurley gave a summary of the issues. The applicant is seeking a variance of 7 feet from the 35-foot side property line setback and a 9-foot variance from the 35-foot rear setback in a Rural Conservation (RC) district. The approximate size of the property in question is 1 (per survey) acre. The parcel is zoned RC. §200-32.D requires a 35-foot setback from the side and rear property lines. On May 7, 2001, the applicant obtained a zoning permit in order to place a manufactured home on shared property with the applicant's parents. On or around November 22, 2002, the applicants came into the Planning Department wishing to subdivide the property and at the time, the survey indicated that there was an error in placing the home originally. The property lines that were used when placing the home were thought by all adjoining property owners to be in one location and when the

property was surveyed on November 22, 2002 the correct line was found. Mr. Gurley showed maps of the area, the subdivision done by David Hill, a copy of the zoning permit, the septic system permit, and photographs of the property, which he described. Mr. Gurley said that he also had the subdivision file with the entire plat.

Chairman Grant said that with the 30-foot setback required basically on all sides, the building envelope is very small. Mr. Gurley said that this was a family subdivision and this parcel was part of a larger parcel of land. He showed the plat and described it. The subdivision occurred November 21, 2002, and the house was placed on there – the zoning permit was issued May 2, 2001. When the house was placed, the parcel contained 2.5 acres and the RC District allows placing an accessory dwelling with 1 acre per dwelling. The house was placed prior to the subdividing of the property. Mr. Gurley said that he spoke to David Hill and Mr. Hill said that when he did the survey, it was very difficult for him to find the back lot line, because the deeds all read differently. Mr. Gurley said that the applicants used a fence as the boundary and were 35 feet from the fence and thought they were placing the home correctly. Mr. Gurley said that there was no survey according to the applicants. Mr. Gurley said that in obtaining a Zoning Permit, there is no requirement for having a survey. Mr. Gurley said that the new subdividing doesn't affect the violation because the violations were off the rear and side lines that were there originally. Mr. Gurley said that David Hill said there was difficulty in interpreting the rear property line.

Chairman Grant asked the applicant to come forward. Heather Bagwell came forward. She said that she had some pictures and all the permits involved. She presented a note from Dewey & Merlene Melton saying basically they had no objection to the variance. She also gave the pictures to the Board for the record. Ms. Bagwell said that when the home was placed, they thought they were well within the setbacks, going by what they thought were the boundaries. She said everyone was surprised by what the survey showed. Ms. Bagwell said they used the center of the creek on the side and found out it is further up on the bank.

Mrs. Crane asked the purpose of the variance. Ms. Bagwell said that they just wanted to make it right. Mrs. Crane asked if they were going to build anything behind the house. Ms. Bagwell said just the driveway. Chairman Grant said that adding to the house would be impossible because of the setbacks. Ms. Bagwell said that she understood.

Chairman Grant asked if there were any questions for the applicant. There were none.

Chairman Grant asked if anyone would like to speak in favor of the application. Mr. Kurt Smith said that the property had been surveyed 12 – 14 years ago using a pin in a tree. He said that he had no problem with the house placed where it is or the granting of the variance. Chairman Grant asked if there was anyone to speak in opposition. There was no one.

Chairman Grant asked for discussion. Mrs. Crane asked if this was discovered upon a survey. Chairman Grant said yes. Mrs. Crane said that the house placement in the wrong area is a hardship, but they are trying to correct it with the variance. The neighbors also were not opposed to the variance. Mrs. Pouch said the applicants thought they were complying with the rules.

Chairman Grant said that the variance would secure the public safety and welfare and will do substantial justice to the property by granting the variance. Not granting the variance would do substantial injustice to the applicant. Mrs. Pouch said there were unique circumstances relating to this application and it would be a hardship, since it was not intended. Mrs. Crane said one hardship was the fact that there were several pins in different places and the surveyor had difficulty finding the back line. Mrs. Pouch said that the variance would be in harmony with the purpose and intent of the Ordinance and would preserve its spirit.

Mrs. Crane said that with regard to the application of V-02-16, Rodney Troy and Heather Marie Bagwell, for a variance from the minimum yard requirements, I move the Board to make the following findings of facts: strict enforcement of the regulations would result in practical difficulties

or unnecessary hardship to the applicant; the variance is in harmony with the general purpose and intent of the ordinance and will preserve its spirit; and 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. Fleming seconded the motion.

The Chairman called for the vote. The following vote was taken by a show of hands:

Mr. Engel	Yes
Mrs. Crane	Yes
Mrs. Grant	Yes
Mrs. Pouch	Yes
Mr. Fleming	Yes

Motion carried and the variance was approved.

### **Case V-02-17, Steve Kostowicz**

Chairman Grant called Case V-02-17, Steven Kostowicz, requesting a twenty-nine (29) foot side yard setback variance to construct a garage. The property is located at 92 Battle Creek Road and zoned R-40.

Mr. Gurley gave a summary of the issues. The applicant is seeking a variance of 29 feet from the 35-foot side property line setback in a R-40 district. The approximate size of the property in question is 2.53 acres. The parcel is zoned R-40. Section 200-32.D requires a 35-foot setback from the side and rear property lines. The applicant wishes to construct a detached accessory structure. The applicant claims there is no other place on the property to place the structure. Mr. Gurley described the paperwork in the Board's packets.

Mr. Gurley explained that the structure is proposed to be 5 feet from the property line. He explained that the house is constructed very close to the setback limit, 35 feet from the property line. Mrs. Crane asked if the setback was measured from the center of Old Woods Road. Mr. Gurley said that there is no indication that the road is an actual right-of-way. The photographs show that there is nothing there that looks like a road. Chairman Grant said that there is a question as to whether Old Woods Road is an actual road or not. Mr. Gurley said that in the GIS System it is not shown as a platted road. Chairman Grant asked what the general topography of the 2½ acre area was. Mr. Gurley said that the area is heavily wooded and very steep. Mr. Gurley said that the land slopes steeply where the house is. Mr. Gurley described the driveway. Chairman Grant asked what was on the property behind the house. Mr. Gurley showed where the residences are on adjoining properties, but said none are close to Mr. Kostowicz's property line. Mr. Gurley showed photographs of the site for the proposed garage. Chairman Grant asked if this was basically the only flat spot on the property. Mr. Gurley said that he didn't see any other area that was flat, but he did not walk the property.

Mr. Fleming asked where the septic was. Mr. Gurley said that it was in front of the home and showed the plan. Mr. Gurley said that he received 2 letters from adjoining property owners, Emmett Hughes and Frank Trombetta. Mrs. Pouch said that she didn't understand how to get to the house. Mr. Gurley explained using the site plan. Mrs. Pouch asked if the neighbor behind Mr. Kostowicz used the driveway. Mr. Gurley said that the driveway continues beyond Mr. Kostowicz's property to the Hart and Trombetta properties. Mr. Fleming asked if the land behind the garage looked buildable. Mr. Gurley said that it was difficult to tell because the vegetation is so dense. Mr. Fleming said that on the septic plan there is an area beside the side of the house for parking. He asked why the garage couldn't be placed there. Mr. Gurley said that the driveway shows on the septic plan but not anywhere else. Mr. Gurley said that the owner is different from the person who built the home.

Mrs. Crane asked why the site map shows Gross as the owner and the owner is someone else. Mr. Gurley said that it takes the GIS System and Land Records Department about 2 months to show current property owners. Chairman Grant asked if the Board had any objections to the 2 letters being introduced as evidence. No one had any objections.

Chairman Grant called the applicant forward and asked him for information about the application. Mr. Kostowicz said that the area for the requested garage is one of the most level places on the property near the house and the driveway ends at that area. Mr. Kostowicz said that to the left is a deep ravine and to the right is the septic drain field and it also drops off sharply. Mr. Kostowicz said that if it was placed in the front, you wouldn't be able to get into the house and would have to come back out to the road and walk around. Mr. Kostowicz said that on the left side of the house is where the electric service enters the house and possibly the well is there. Mrs. Crane said that the well is away from the house on the map. Mr. Kostowicz showed on the map which driveway he used and showed where another driveway was for adjoining property. Mrs. Crane asked why the driveway wasn't in other places and Mr. Kostowicz said that there was a ravine and the property was too steep to put the driveway anywhere else. Mrs. Crane asked if he could get a driveway to the other side of the house. Mr. Kostowicz said that anything was possible but it would take a lot of grading and fill. Mr. Kostowicz also said the entrance to the house was at the corner where the garage would be. Chairman Grant asked about the topography of a specific place and Mr. Kostowicz said that there was a 15-foot drop. Mrs. Pouch asked where Mr. Kostowicz parked and he showed on the site plan where the garage would be built. Chairman Grant asked about placing the garage beside the house. Mr. Kostowicz said the builder said he would not be able to do the foundation, that it would be a tall foundation, about 15 feet, with a lot of backfill involved. Mr. Fleming asked the size of the garage. Mr. Kostowicz said a 2 car garage, 24' x 24'. Mrs. Pouch said a 15-foot foundation for the mountains is not much. Mr. Kostowicz said that the builder didn't think it was practical, and there was the septic drainpipe coming out of the wall at that point. Mr. Kostowicz showed where the septic pipe exited the house. There was discussion about where the septic drain fields were placed. Chairman Grant said that 15 feet seemed like a very steep grade. Mr. Kostowicz said that the downstairs ceilings were about 17 feet high.

Mr. Engel asked how Mr. Kostowicz would turn around when he pulled into the garage. Mr. Kostowicz said that the drive is there and it would be tight. Chairman Grant asked if Mr. Kostowicz built the house. He said that he purchased the home already constructed and he wasn't aware of the setbacks. He has owned it since September. Mr. Kostowicz said the entrance is next to the drive and on the other side of the house there isn't an entrance. Mr. Fleming asked if the garage was freestanding, not tied to the house. Mr. Kostowicz said yes. Mrs. Crane said that it was difficult to make a decision without a picture of the area surrounding the house. Mr. Gurley said that he would try to get a topo map. Chairman Grant asked Mr. Gurley what his opinion was as to the steepness of the land next to the porch. Mr. Gurley said that the driveway was very steep and he had to use first gear. Chairman Grant asked Mr. Gurley how far the first floor of the house was from the land. Mr. Gurley said, from memory, a good 10 –15 feet. Mrs. Pouch asked if there was any way to put the garage on the other side of the house. Mrs. Crane asked if it would be possible to use the basement as a garage. Mr. Kostowicz said that it is too steep. He said that when he had his gutters cleaned, they couldn't use ladders, but had to use scaffolding. Mrs. Crane asked about using the other side underneath the deck. Mr. Kostowicz said that the drop-off was too much. He showed on the plan where the drop-off was. Mr. Kostowicz said that there was a deck off the lower level but you couldn't get to it from the upper level on the outside because it was too steep. He said the drop-off on the porch side was about 15 feet. Mrs. Crane asked about the other side where the deck is. Mr. Kostowicz said the deck is off a bedroom, there are no steps down and there is a ravine there. Mr. Fleming asked the dimensions of the house. Mr. Kostowicz said about 24 x 40. Mrs. Crane asked if he had explored having excavation done to improve the situation. Mr. Kostowicz said the builder said it would not be practical because of cost. Mr. Kostowicz said he submitted pictures with the application. The pictures were given to the Board. Mr. Gurley said that the Board could do a site visit. The Board discussed the applicant's pictures. Mrs. Pouch suggested a carport be attached to the house where the garage would be built. It was discussed if the garage could be placed beside the basement. Chairman Grant said that it would still be a

setback violation, but of different footage. The Board discussed the site. Mr. Kostowicz said if he put the garage on the lower level, he would not be able to turn around. Mr. Engel asked how he would turn around now, to go out the driveway. Mr. Kostowicz said that it takes about 4 passes to turn around. Mr. Kostowicz said that when he purchased the house he wasn't aware of the zoning.

Chairman Grant asked if there were any other questions of the applicant. There were none. Chairman Grant asked if there was anyone to speak in favor of the application. There was no one. She asked if there was anyone to speak in opposition. Mrs. Pouch said that there were the 2 letters. Douglas Swan came forward. He explained that he married Susan Maxwell Little and she was not able to attend. He said that they had refinanced their property and both names are on the current documents, if the Board wanted to see them. Mr. Swan said that he is against the variance. Mr. Swan said that when Mr. Kostowicz was remodeling the basement, his contractor placed some items on his (Mr. Swan's) property. He has spoken to the contractor twice and Mr. Kostowicz once and it has not been resolved. Mr. Swan said that Mr. Kostowicz also uses Mr. Swan's property to turn around on to get back down the driveway. Mr. Swan described problems with the previous owner about the driveway. Mr. Swan had photographs of the property, which he showed and described. Mr. Engel asked where the property line was. Mr. Swan said that the line had been moved to where the tree line is now. Chairman Grant asked if the property line was as shown on the survey. Mr. Swan said no. Chairman Grant asked Mr. Swan to show where it is now. Mr. Swan said it is where the tree line is. When Mr. Kostowicz bought the property, it was not surveyed and when Mr. Swan refinanced, it was not surveyed. Mrs. Crane asked who moved the line. Mr. Swan said he and his wife and the Grosses (the previous owners). Mr. Swan said that the area was just cleared and he still owns the property. Mr. Swan said that the pile of gravel in the picture is basically where the property line is. Chairman Grant said that the survey is correct. Mr. Engel asked if the drive was on Mr. Kostowicz's property. Mr. Swan said that the drive creeps over onto his property. Mrs. Pouch asked if the old road continues onto his property. Mr. Swan said that it does go over the hill and is access to the back of his property, which he may want to develop. Mr. Fleming asked how much land Mr. Swan owned. Mr. Swan said 4 ½ acres. Chairman Grant asked to see Mr. Swan's other photographs, which he described. Mr. Swan said that if Mr. Kostowicz puts a garage in with a 2 or 3 foot overhang, he is now within 2 to 3 feet of the property line, which leaves no access to the back property, where he goes for firewood. And if he develops the property, he needs the access.

Mr. Gurley asked Mr. Swan if there was an easement for the road. Mr. Swan said that the road was put in for access to Frank Trombetta's house and also for Mr. Wallace. Mrs. Crane asked if it was a deeded right-of-way. Mr. Swan said that he didn't know. Chairman Grant asked if Mr. Gurley had the actual survey. Mr. Gurley gave it to the Board. Mr. Fleming asked if the driveway encroaches on Mr. Swan's property. Mr. Swan yes but if he is very careful he can stay off of the property. Mr. Swan said that as he backs up to turn around, he also comes on Mr. Swan's property. Chairman Grant said that the survey says the road is a dedicated right-of-way. She said that when the survey is recorded it becomes dedicated. And it is used by others to access their property. Chairman Grant said that it is dedicated on the map when it is recorded. Chairman Grant thanked Mr. Swan.

Chairman Grant asked for discussion from the Board members and findings of facts. Mrs. Crane said that there were the letters from the 2 other property owners, Mr. Trombetta and Mr. Hughes, that are in opposition to the granting of the variance. Chairman Grant read the findings that must be found. Chairman Grant said that the request is for an accessory structure, a garage, and at this point she questions the setback of the existing house. She said that the topography of this property is not fitting to construct a garage. Mrs. Crane said that being 5 or 7 feet from a property line for a structure that is not necessary is inappropriate. Mr. Fleming said that a hardship does not pertain to money; with grading and retaining walls you could put a garage anywhere. Mr. Fleming said a 5-foot setback in an R-40 zone with 2 ½ acres is pretty tight. Mrs. Crane said that she does not think granting the variance would be in harmony with the general purpose and intent of the Ordinance and preserve its spirit. She feels it would be doing the opposite of that. Also granting the variance would also not secure the public safety and welfare. If fact, it would do just the opposite. It would be a problem if the adjoining owners decided to develop the property behind with the garage so

close to the property line.

Chairman Grant asked for a motion that with regard to the application of V-02-17, Steven Kostowicz, for a variance from the minimum yard requirements, I move the Board to make the following findings of facts: strict enforcement of the regulations would not result in practical difficulties or unnecessary hardship to the applicant; the variance is not in harmony with the general purpose and intent of the ordinance and will not preserve its spirit; and in the granting of the variance the public safety and welfare have not been secured and substantial injustice has been done. She asked that the motion be made. Mr. Fleming moved the Board to grant the requested variance in accordance with the application, the application be denied. Chairman Grant said the Board wants the motion to be in the positive, rather than in the negative, so the motion she asked be made could stand if just someone would make that motion and so moved. Mrs. Pouch so moved and Mr. Fleming seconded the motion. Chairman Grant said that if I'm understanding this correctly, the application is for approval of the variance, the findings of facts, if you vote yes you grant the variance, if you vote no you deny the variance. That way we keep all the requests in the positive and if you vote in favor of it, you vote to grant it, and if you vote against it, you vote not to put it in place.

The Chairman called for the vote, asking for all those in favor of the application signify by raising your right hand. No one voted. She asked all those opposed to the application, likewise. All members raised their hands. The following vote was taken by a show of hands:

Mr. Engel	No
Mrs. Crane	No
Mrs. Grant	No
Mrs. Pouch	No
Mr. Fleming	No

The motion was voted upon and the variance was denied.

Mr. Kostowicz asked about Old Woods Road and its existence. He said it seems to go depending on whose interest it serves and he would like to know for the record if it is an easement or not. Mrs. Crane said that the Board's decision was based on a property line not the road. Mr. Fleming said that Mr. Kostowicz should probably talk to an attorney about whether there is an easement or right-of-way on record.

#### COMMITTEE AND STAFF REPORTS

Mr. Gurley said that the next meeting would have the Board's election. Mr. Gurley said that this would be his last meeting, and he was sorry to leave. The Board was very sorry to see him leave.

OLD BUSINESS - None

NEW BUSINESS – Mrs. Smith said that the Department was trying to get Suzanne Godsey to return temporarily for at least the next meeting. The Board welcomed new alternate member Dr. Stanley to Board. Dr. Stanley asked if the members could visit the site before the meeting. Mrs. Smith said that attorneys recommend not visiting the site individually beforehand and making a Board site visit, if necessary.

The next regular meeting will be on Wednesday, January 29, 2003, at 4:00 PM. There being no further business, Tamra Crane made a motion to adjourn, Ann Pouch seconded the motion, and all members voted in favor. The meeting was adjourned at 5:45 PM.