

April 24, 2002  
4:00 PM

MINUTES OF THE HENDERSON COUNTY  
ZONING BOARD OF ADJUSTMENT

The Henderson County Zoning Board of Adjustment held a meeting on Wednesday, April 24, 2002, 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 Diane Grant, Janice Brown, Tamra Crane, Anthony Engel, Robert Fleming, Zoning Administrator Dan Gurley, Assistant County Attorney Jennifer Jackson, and Planning Director Karen Smith.

Chairman Grant called the meeting to order at 4:04 PM and introduced the members of the Board. She presented the minutes of the meetings from March 27, and April 9, 2002. For the March 27 minutes, there were no changes or corrections and the Chairman stated the minutes stand as presented. There were two corrections in the April 9 minutes and the minutes stand as corrected.

Chairman Grant called forward to be sworn in those who would be presenting testimony in the case scheduled to be heard. Sworn in were Dennis Berman, Judy Berman, Bill McKibbin, Scott Elliot, John Coulman, and Zoning Administrator Dan Gurley. Chairman Grant explained how the proceedings would be conducted today.

**Case CU-02-04, Jon A. Coulman**

Chairman Grant called case CU-02-04, requesting a Conditional Use Permit to operate a customary incidental home occupation located in an R-30 district. The property is located on Nathan Drive off of Shadow Ridge Drive. Chairman Grant opened the public hearing.

Dan Gurley gave a summary of the issues. The applicant is seeking a Conditional Use Permit in order to operate a customary incidental home occupation from their residence. The approximate size of the property in question is 0.65 acres. The parcel is zoned R-30. Section 200-14.C allows for customary incidental home occupations with a Conditional Use Permit. Section 200-55 dictates the procedure that must be followed in granting a Conditional Use Permit. Section 200-69-C(6) dictates the findings that the Board must have certified before granting a Conditional Use Permit. Mr. Gurley showed the location of the property. Mr. Gurley also showed a floor plan showing that the applicant would not be using more than 25% of the area. He also presented photographs of the site and described them. Mr. Gurley showed the location of the proposed office in the residence marked as Bedroom #3 and 10' x 12' in size. The entire house is approximately 1950 sq. ft. so the office space is less than 25% of the house. Mr. Gurley said that he believed that the business would be a wholesale type business so no customers would be coming to the house.

Chairman Grant called Mr. Coulman forward. Mr. Coulman presented photographs of home businesses in the Hooper Creek area and described them. Mr. Coulman said that the residence is on a private drive that the County does not maintain, so the business will have no adverse economic impact on the County for increased traffic due to deliveries. Mr. Coulman also showed photographs of the surrounding area and businesses and the office from which his entire business will be run. Chairman Grant asked what kind of business there would be. Mr. Coulman said that it was a wholesale custom carpet business. Mr. Coulman said that he used to work for Spinning Wheel Rugs and will buy rugs from Mountain Rug Mills and he will private label them. He described how the business works servicing the airline industry and custom interiors. Doing business this way, there are no customers coming to the property, because there is no inventory until someone buys the rugs. Mr. Coulman will always visit the clients. Mr. Coulman said that the home office is there for accounting and making phone calls. The entire business will be run by Mr. Coulman and his wife. The only traffic will be UPS and FedEx, which already deliver in the area so there will be no adverse effect to the County in terms of additional road maintenance. Mr. Coulman said that there are no windows in the office so no one will know that there is a business there.

Chairman Grant asked about signage. Mr. Coulman said that there would be none. The only way people would know the physical location would be from their letterhead. Mr. Coulman said that selling to individuals would open up taxation that he did not want to deal with. As a wholesaler, he eliminates the sales tax.

Mrs. Crane asked if he was dealing with carpets or rugs. Mr. Coulman said rugs, carpet and tapestries. Mr. Coulman said that none of the products would be delivered to the house – they would be delivered directly from the mill to the end user. Mrs. Crane asked about the UPS and FedEx deliveries. Mr. Coulman said they would be delivering small samples or checks. Mr. Coulman said that Avion is the name of the business.

Mr. Gurley said that some of the businesses cited by Mr. Coulman are not in an R-30 area. Mrs. Crane said the some of the businesses were not in the R-30 zone and has no bearing on the case at all. Mrs. Crane asked if the business would remain wholesale. Mr. Coulman said that it would remain wholesale.

Chairman Grant asked if Mr. Coulman understood that a granted application would be based on exactly what the application requests and there could be no alteration without coming before the Board again. Mr. Coulman said that he did. Mr. Coulman said that if the business needed to expand, they would lease office space.

Chairman Grant questioned if the business would be converted to retail space and Mr. Coulman said absolutely not. Mr. Coulman said that would require having inventory on hand and a showroom, which would be too much for his home. Mr. Coulman said that he was anticipating having no more than a maximum of 15 sales per month 2 years down the road. Mr. Gurley mentioned the definition of home occupation. Mr. Coulman said that he understood the definition.

Chairman Grant asked if there were any other questions of the applicant. There were none. She asked if anyone wanted to speak in regard to the application. She asked if

anyone wanted to speak in opposition to the application. There was no one. Chairman Grant closed the public hearing.

Chairman Grant asked for findings. Mrs. Crane said that with no outside activity, the business wouldn't affect the neighborhood or be detrimental to the public welfare. Chairman Grant said the Board must address some issues: ingress and egress – the driveway should provide ample parking for UPS or FedEx deliveries; utilities or buffering would have no effect since the business is inside. Chairman Grant said that since there are no problems, there should be no conditions. She asked for any special conditions. Mrs. Crane said that a condition would be that it remain a wholesale business, but the applicant has discussed that with Mr. Gurley and said that it will remain wholesale.

Chairman Grant asked for a motion. Mrs. Crane said with regard to the application of Jon A. Coulman for a Conditional Use Permit authorizing the operation of a customary incidental home occupation (wholesale rug sales) from their residence on the property in question, I move the Board to make the following findings of facts: the proposed use will not adversely affect the health and safety of persons residing or working in the neighborhood of the proposed use; the proposed use will not be detrimental to the public welfare or injurious to property or public improvements in the neighborhood. Accordingly, I further move the Board to grant the requested Conditional Use Permit with and only to the extent represented in the application. Mr. Engel seconded the motion. There was no further discussion.

The following vote was taken by a show of hands:

Mr. Fleming	-	yes
Mrs. Crane	-	yes
Mrs. Grant	-	yes
Mrs. Brown	-	yes
Mr. Engel	-	yes

Motion unanimously carried and the Conditional Use Permit was granted.

### **Case CU-02-05, Scott Elliott**

Chairman Grant called Case CU-02-05, Scott Elliott, requesting a Conditional Use Permit to use property in a C-2 district as a shopping center. The property is located at the corner of US 64 W and South Rugby Road. Chairman Grant opened the public hearing.

Mr. Gurley gave a summary of issues. The applicant is seeking a Conditional Use Permit in order to construct a shopping center and conduct a small amount of warehousing. The approximate size of the property in question is 3.1 acres. The parcel is zoned C-2, which is business-commercial. Section 200-21.B allows for shopping centers and warehousing with a Conditional Use Permit. Section 200-55 dictates the procedure that must be followed in granting a Conditional Use Permit. Section 200-69.C(6) dictates the findings that the Board must have certified before granting a Conditional Use Permit. Mr. Gurley presented photographs of the site and described them. Chairman Grant asked if it was on the south corner of South Rugby Road and 64W. Mr. Gurley said that it was the vacant lot in front of

Horse Shoe Kennels. Mr. Gurley showed an artist's depiction of what the shopping center will look like. It will contain 4 units and Mr. Gurley showed the floor plan. Chairman Grant asked if the intention was retail. Mr. Gurley said that he believed it would be retail with possibly a restaurant. Mr. Gurley said when the applicant said warehousing he believed that the applicant meant the retail stores storing their own wares, not an actual mini warehouse. Chairman Grant asked if there would be gasoline pumps. Mr. Gurley said no.

Chairman Grant called Mr. Elliott forward. Mr. Elliott said that the property is zoned commercial, but he wants to have 3 – 4 units in the building. Mr. Elliott's office (for his siding business) will be in the building using 2000 sq. ft. and he will have 4000 sq. ft. to lease for office, retail or a restaurant. He needs the tenants to help pay for the property. The building will be a country style and nice for the area. He will work with the DOT for the entrances. Chairman Grant asked how many parking spaces have been designated. Mr. Elliott said the parking spaces still needed to be calculated with Mr. Gurley, because of the floodplain restriction. Mr. Gurley said there is a watershed issue with impervious surfaces. Mr. Gurley said that the Ordinance required 1 parking space for each 300 sq. ft. of floor space. Mr. Elliott said that would be 20 spaces.

Mrs. Crane asked for the dimensions of the property. Mr. Elliott said that the building is 68 feet deep by 98 feet long. It will be within all the setbacks required. There will be parking around the building and in front of it. Mrs. Crane asked where Old Barn Road was. Mr. Elliott said the driveway for Horse Shoe Kennels is Old Barn Road. Mr. Elliott said that he would not cross the driveway or road. Mr. Elliott said that he has purchased the property and there is a restriction on the deed that he cannot sell gasoline for 40 years. Mrs. Crane asked about the floor plan. Mr. Elliott said that the office with the detail in it on the plan was his office for his siding business. Mrs. Crane asked if it was just office or if there would be trucks, deliveries and siding there. Mr. Elliott said that there might be minimal storage, but it was mainly for office retail. Mr. Elliott said that most of his product is delivered on the job site, so he has minimal storage. Mrs. Crane asked about siding storage outside. Mr. Elliott said that there would be no outside storage of anything.

Chairman Grant asked about utilities, particularly septic. Mr. Elliott said that it would have city water and there is a sewerage treatment plant across the street that they will tie into.

Mrs. Crane asked about ingress and egress to the property. Mr. Elliott said that it was marked on the site plan. Mr. Elliott said that one entrance would be off Barn Road and the other off South Rugby Road. He will need to work with the DOT about the entrance on Rugby Road because it needs to be a certain distance from a light. Mr. Elliott said the entrance could be off 64W, but it would be safer off the road by the traffic light. Chairman Grant asked if the buffer on the rear property line was natural. Mr. Elliott said that it is natural and will be kept. Mr. Elliott said that the property would be landscaped and aesthetically pleasing.

Chairman Grant asked where the flood plain is that affects the property. Mr. Gurley said that it was watersheded, not flood plain, and concerned the 24% rule and the maximum permissible lot coverage is 40% in a C-2 area. Mr. Gurley said that due to these requirements it would be impossible to subdivide the lot to build on the other side of the lot

unless the Watershed requirements change. Chairman Grant wondered if this should be made a requirement of the Conditional Use Permit if it were granted.

Mr. Elliott said that there would be paved parking with asphalt and some concrete. There will be plenty of parking, but it hasn't been calculated yet. The property behind the building, which is a kennel and a field under the same ownership, was discussed.

Chairman Grant said that testimony was given that the use of the property would not adversely affect the health and safety of persons working and residing in the neighborhood and would not be detrimental to the public welfare or injurious to the property or public improvements. The testimony given would indicate that the use of this property is of a similar use to the surrounding C-2 area. The issues of ingress and egress have been addressed in the site plan that has been submitted. Chairman Grant said that there were some conditions that should be part of the permit. Chairman Grant called for a motion for the Conditional Use Permit and then add the conditions. Mrs. Crane said that they should cover all six points before making the motion.

Mr. Gurley spoke about the site plans and perhaps differences in the lines on them. The plans were discussed. Mr. Gurley pointed out the area of the property that was zoned C-2 and the other part zoned R-40. Chairman Grant said that there would be no construction on the R-40 area or west of Barn Road.

Chairman Grant said that the site plan shows ingress and egress to the property from state maintained roads. The provision of off street parking is shown on the site plan and the required number of spaces might be made a condition. Utilities were discussed and there is no septic tank and water is available there. Buffering is optional under the Ordinance, since the property adjoins other C-2 areas. Open space and landscaping is shown on the site plan and we will cover that in the percentages required under the Ordinance. The size, location, and use of the buildings and structures have been set forth by the applicant.

Mrs. Crane asked if the permit were granted, the applicant can not go beyond the line in the diagram and join the R-40, where buffering would be an issue. Mr. Gurley said that he would have to construct the shopping center as shown on the site plan. Mrs. Crane asked about a condition for parking spaces. Mr. Gurley said that is in the Ordinance. Chairman Grant said that he also has to meet the requirements of surface water. Mr. Gurley said that to meet the 24% impervious surface area, Mr. Elliott has to include the other piece of property across Barn Road. Chairman Grant asked if a stipulation needed to be made or if that was automatic. Attorney Jackson said that the decision could acknowledge that to meet the 24% and the watershed provisions, Mr. Elliott needs to include the property as a whole, even though only a portion is being developed in accordance with the site plan.

Mr. Engel asked about the setback of 75 feet and where it was. Mr. Gurley said it was from the centerline of 64W to the building. Mr. Engel said, if you knock off 30 feet for the road, that only leaves 45 feet and the parking shown on the site plan will not fit in 45 feet. The site plan shows 2 rows of parking plus a backup area and you would need at least 60 feet, if not more for that to fit. Mr. Engel said usually there is a minimum of 63 feet – 20' parking space, 23' backup space, and 20' parking space. There is only 45 feet, so you would have to knock out one of those rows of parking. Mr. Engel asked if an architect had looked at the

rendering. Mr. Elliott said that it would meet all the requirements of setbacks. Mr. Gurley said that he would only be required to have 20 parking spaces, which he has around the building itself. Attorney Jackson said that if the DOT made him remove the parking spaces along 64W, Mr. Elliott would still meet the requirement. Mr. Engel said that it may not be exactly as drawn. Chairman Grant asked if the parking would be dictated by DOT. Mr. Gurley agreed and said that he would also review the plans and make sure there was enough required parking.

Chairman Grant asked for a motion. Mrs. Brown said with regard to the application of Scott Elliott for a Conditional Use Permit authorizing the operation of a shopping center on the property in question, I move the Board to make the following findings of facts: the proposed use will not adversely affect the health and safety of persons residing or working in the neighborhood of the proposed use; the proposed use will not be detrimental to the public welfare or injurious to property or public improvements in the neighborhood. Accordingly, I further move the Board to grant the requested Conditional Use Permit with and only to the extent represented in the application and with the following conditions: 1. the applicant must meet the parking requirements, 2. no gas sales be permitted on the property, 3. the percentages of development required by the Zoning Ordinance be met, 4. the percentages of impervious surfaces of the Watershed Ordinance must be met, 5. such portion of the applicant's property needed to meet these requirements must be part of this permit. Mr. Fleming seconded the motion. There was no further discussion.

The following vote was taken by a show of hands:

Mr. Fleming	-	yes
Mrs. Crane	-	yes
Mrs. Grant	-	yes
Mrs. Brown	-	yes
Mr. Engel	-	yes

Motion unanimously carried and the Conditional Use Permit was granted.

The Board took a short break.

### **Case V-02-06, Dennis P. and Judith M. Berman**

Chairman Grant called Case V-02-06, Dennis P. and Judith M. Berman, requesting a fourteen (14) foot side yard setback variance to construct an addition to a dwelling. The property is located at 421 Deerhaven Lane and zoned R-30.

Mr. Gurley gave a summary of the issues. The applicant is seeking a variance of fourteen (14) feet in order to construct an addition on to an existing residential structure. The approximate size of the property in question is 0.72 acres. The parcel is zoned R-30. Section 200-14.D requires a side yard setback of thirty (30) feet. The proposed structure is located sixteen (16) feet from the property line. Mr. Gurley presented photos of the property and a site plan. He showed the location of the septic system.

Mr. Gurley was contacted by a neighbor, Herman Seddig, who called to say he had no objection to the variance. Mr. Gurley told the Board that it was up to them whether to consider this information, since it is hearsay.

Chairman Grant asked if the addition was 14' x 24'. Mr. Gurley and the applicant said yes. Chairman Grant asked if it was 16' from the property line to the house. Mr. Gurley said yes. Mr. Fleming asked what the side yard setback was in R-30. Mr. Gurley said 30 feet.

Chairman Grant called the applicants forward. Mrs. Berman said that the addition was for a bedroom. She described her current bedroom, which would become a TV room. They had thought about moving but would hate to and it would be more expensive.

Mr. Gurley said that the septic permit was for 2 bedrooms. Mrs. Berman said they have 3 bedrooms, but one is an office and there is just the 2 of them. Mr. Gurley said the use should be 2 bedrooms and they will have to go through the Environmental Health Department before construction.

Mr. Berman described the construction: the basement will be block, with trusses for the first floor; they will try to match the shingles and white vinyl siding. Mrs. Berman said that they had to have some trees taken down because they were rotting.

Mrs. Crane was looking for a photo of the whole house and the slope. Mrs. Berman said they had planned to build in the back, but the septic system was there and because of the slope, the addition would have to have been on stilts.

Mr. Engel said that the addition in the back would probably be too close to the septic. Mrs. Berman said yes. Mr. Engel asked if the siding would be vertical. Mrs. Berman said they were not sure yet. Mr. Engel asked if there would be a basement. Mr. and Mrs. Berman said yes. Mrs. Berman said there were no complaints from any neighbors, particularly Herman, who is on that side.

Chairman Grant asked if there was any one who wished to speak for or against the variance. There was no one.

Chairman Grant asked for findings of fact from the Board.

Mr. Engel said, because of the size and being offset slightly, one corner will encroach. Mr. Engel said the dimension in the rear is 29.7 feet so they need to give more space so it will fit. Mr. Berman said the addition is inset 2½ feet from front to back, if that will help. Chairman Grant suggested they have a surveyor spot the addition. Mr. Berman said that the Covenants of the community require a 15-foot setback and he was surprised. Mr. Engel said it would still meet those requirements and cover the full width of the room. Chairman Grant said that there was room for play. Mrs. Crane asked if it needed to be readvertised. Chairman Grant said if they ask for 15' will that give enough (15') to the line. Mr. Berman asked if the measurement was to the house or the overhang. Mr. Gurley said, as long as the eave is not over 30", the setback is measured to the house.

Chairman Grant said the findings of fact include 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 reasonable use of his property; the hardship which the applicant complains results from unique circumstances related to the applicant's land; and the hardship is not the result of the applicant's own action. Chairman Grant said testimony given is that the slope of the land prevents development on one side, the septic tank is close on the rear of the property and the front is not an option because of the setback there.

Mrs. Crane said when considering reasonable use, the bedrooms are very small with lots of doors and windows, which is a hardship for them. Chairman Grant said that the addition would take the place of a bedroom, not be an additional one.

Chairman Grant asked for a motion including the findings of fact. Mrs. Crane said with regard to the application of Dennis P. and Judith M. Berman for a variance from the minimum side yard setback 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 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, as amended to 15 feet. Mr. Engel seconded the motion. There was no further discussion.

The following vote was taken by a show of hands:

Mr. Fleming	-	yes
Mrs. Crane	-	yes
Mrs. Grant	-	yes
Mrs. Brown	-	yes
Mr. Engel	-	yes

Motion unanimously carried and the variance was granted as amended.

This concluded the hearing of cases.

COMMITTEE AND STAFF REPORTS:

OLD BUSINESS:

Mr. Gurley distributed the order for Blue Ridge Community College drafted by Attorney Jackson. Chairman Grant said regarding the Special Use Permit, 3 members of the Board were at the hearing, Robert Fleming, Tamra Crane and herself. Those 3 people can make any changes to the order. The Board reviewed the draft order. Mrs. Crane made a change. Mrs. Crane made a motion to approve the order for the Special Use Permit. Mr. Fleming seconded the motion. All 3 seated members voted in favor of the motion.



NEW BUSINESS:

Mrs. Smith reported that the County successfully defended the Board in the Johnny Franklin case.

Mr. Gurley offered the new Zoning Ordinances to anyone that needed them.

The Board was reminded that the next regular meeting of the Board of Adjustment was scheduled for Wednesday, May 29, 2002, at 4:00 PM in the Meeting Room of the Henderson County Land Development Building.

There being no further business, Tamra Crane made a motion to adjourn, Robert Fleming seconded the motion, and all members voted in favor. The meeting was adjourned at 5:45 PM.

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Diane Grant, Chairman

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Joyce Karpowski, Secretary