

MINUTES OF THE HENDERSON COUNTY  
ZONING BOARD OF ADJUSTMENT

The Henderson County Zoning Board of Adjustment rescheduled its November 25<sup>th</sup> meeting to Wednesday, December 2, 2009 (due to the Thanksgiving Holiday) at 4:00 p.m. in the King Street Meeting Room, 100 N. King Street, Hendersonville, North Carolina. Those present were: Jim Phelps, Chairman, Ann Pouch, Tony Engel, Alternate Board Members JoAnne Telker and Eric Goodman, Zoning Administrator Toby Linville, Deputy County Attorney Sarah Zambon, and Zoning Board Secretary, Karen Ann Antonucci. Regular Board Members Dean Bonessi and Jim Crafton did not attend.

Chairman Phelps: Called the meeting to order at 4:05 PM. He introduced the board.

We'll call to order, actually the November meeting of the Henderson County Board of Adjustment.

First item of business is review and approve the minutes. And I assume everybody has gotten copies and had a chance to peruse them. Are there any additions, deletions or corrections to be made? If not I'll entertain a motion to approve.

TEngel: I move.

APouch: Second.

Chairman Phelps: All in favor say aye. Opposed, no. Unanimously approved.

All board members were in favor of approving the October 28<sup>th</sup> minutes.

Chairman Phelps: Now the next thing is the order that we had from the last meeting. Order V-09-07 Mona Lisa Foods/Peter Thom and Stuart Stepp agent, request a 14 foot variance from the front yard setback along St. Pauls Road. Ok, has everybody had a chance to review these? And are there any comments, corrections or additions to? If not-

APouch: I move we approve.

Chairman Phelps: Ann moves, Eric seconds. All in favor say aye. Opposed, no. Unanimously approved.

Chairman Phelps: Ok, new business. We have two cases today. And the first case – do I need to read part of this before we swear anyone in or determine who has standing or-?

Deputy County Attorney SZambon: You can read the whole thing first if you want. And then just say that you're going to read the scripts for both hearings now. And then you won't have to read it again.

Chairman Phelps: There's a statement I need to read regarding these cases which is the Opening Statement for the Zoning Board of Adjustment regarding these hearings. I'm going to read it one time and it will apply to both cases. I hope all parties understand that so I won't have to reread this. And I'm going to read the entire thing and then we will determine the people who have standing and swear them in.

A quasi-judicial proceeding is much like a court proceeding where an individual's rights and interests are being decided under specific rules of procedure. Parties to this case have the right to present evidence and cross examine witnesses. The burden of proof in these cases typically lies with the Applicant. The extent to which the Rules of Evidence used in courts apply is up to the discretion of the board. Quasi-judicial proceedings are different than other public hearing in that not everyone has the right to present evidence before the board and to become a party to this proceeding. Only those who can demonstrate that they will be affected by the outcome of the hearing may become parties. After a description of the person's interest in this case, the board will determine whether they will be allowed to present evidence as a party. Please note you do not have to be a party to testify if someone who is a party calls you as a witness. All parties and witnesses who intend to present evidence or testify before this board must be sworn in.

Chairman Phelps: Do we need to do it case by case or both cases and swear them in?

Zoning Administrator TLinville: Case by case.

Chairman Phelps: Ok. So let's do the first case which is V-09-08, Robert Benton, requesting a variance of 15 feet in side yard setback for erection of metal building to protect existing water supply. Zoned Residential 3. Location: 93 Tierra Trail, Hendersonville. (PIN 0621228061). So if there are parties in this case who intend to

testify before us today would you please come forward. Come to the podium and I will need for you to state your name and address.

**Case V-09-08 Robert Benton**, requesting a variance of 15 feet in side yard setback for erection of metal building to protect existing water supply. Zoned Residential 3. Location: 93 Tierra Trail, Hendersonville. (PIN 0621228061).

**Parties:**

Robert Benton, property owner

Melissa Connell, adjoining property owner

**Witness:**

Cameron Baker, surveyor, Associated Land Surveyors (called by Zoning Administrator, Toby Linville)

RBenton: Robert Bruce Benton, 114 Larchmont Drive, Hendersonville, 28791.

Chairman Phelps: And you are the applicant?

RBenton: I am the applicant, yes.

Chairman Phelps: Ok. Are there others?

MConnell: Melissa Connell, 313 Karppe Road, Plant City, Florida. I am the property owner to the property adjacent to Mr. Benton that this variance will affect.

Chairman Phelps: Adjacent property, ok. Are there any others?

Deputy County Attorney SZambon: If you want to do the parties for the next case now and then you can swear them all in at once. That might be easier.

Chairman Phelps: Would you stand aside and then we'll get the second case which is V-09-09 Case V-09-09 Gerald & Fonda Haskins, requesting a variance of 2 feet 4 inches side yard setback for purposes of subdividing the property located at 209 Shepherd Street, Hendersonville. Zoned Residential 1. (PIN 9577284785). If the parties that are going to testify in this case please come forward. Come up to the podium and give your name and address please and your interest in the case.

GHaskins: I'm the owner, Gerald Haskins, my home address: 120 Resort Street. The address that we got this variance on is 207 that we want to be considered.

CBaker: Cameron Baker with Associated Land Surveyors, Mr. Haskins' surveyor. 345 Eade Road, Etowah, North Carolina 28729.

CRogers: Charlene Rogers, 215 Shepherd Street. The property adjoins mine that Mr. Haskins is trying to get this setback on.

JReid: I'm Joan Reid, 213 Shepherd Street. And his property adjoins mine.

Chairman Phelps: Ok. All these people seem to meet the criteria for – ok, if you will gather there Karen Ann will swear you all in.

Zoning Board of Adjustment Secretary KAAntonucci: Do you swear or affirm that the testimony you shall give to the Zoning Board of Adjustment shall be the truth, the whole truth and nothing but the truth: so help you, God? All parties were sworn in.

Chairman Phelps: (continuing with the Opening Statement). At this time we will begin our first hearing. Decisions of this board are based upon the Henderson County Code. After we hear all the evidence, the board will discuss the matter and may either vote on the case or continue the case to another date. The board may direct staff to bring back a draft order for the board to review at our next meeting. The board's decision must be made in writing within 45 day of the conclusion of the hearing.

Chairman Phelps: Do I have a motion to open the hearing?

TEngel: I motion that we open the hearing.

Chairman Phelps: Do I have a second?

EGoodman: Second.

Chairman Phelps: Eric seconds. All in favor, raise your hand. Opposed, no. Unanimous.

All board members were in favor of opening the hearing.

Chairman Phelps: The hearing is now open. Toby, if you would like first to present the case from the County's standpoint.

Zoning Administrator TLinville: Thank you. If you will follow along in your packet I have included the variance application form, signed by Mr. Benton. Then the staff report to the Technical Review Committee. And TRC gave unanimous approval for the variance application. Next is a zoning report showing an aerial photo of the property. Then on the next page is a pictometry view of the same property and you can see sort of in the center there the water supply storage container there.

Chairman Phelps: Which one is that for sure? On this picture, is it the little one on the right here where the two structures are?

Zoning Administrator TLinville: Right.

Chairman Phelps: Ok.

Zoning Administrator TLinville: Then, next is a photo of the container and the well. Next is an example of the type of metal structure that he wishes to construct around this. And then there are two copies of the survey showing those properties. And if it pleases the board, have that read into the record, please.

Chairman Phelps: Objections to make it part of the record? Do any board members have any questions at this time for Toby? Sarah, do you have anything at this time of him? At this time Mr. Benton if you would come forward and present your case.

RBenton: Here are some handouts if you'd like with some additional information. It'll help edify the situation. If I can direct you to the second page it shows a photograph of the area that I wish to cover with a prefabricated building. It shows the proximity to the driveway that services 65 Tierra Trail. It shows the location of the house at 65 Tierra Trail behind it. That storage tank, the pumps, the old well, they were all installed in the side setback area and they weren't in violation then because that is not a structure done prior to my purchase. When I bought the property it was like that. The tank had been added because the well went dry. And they had no other source of water and they were having water trucked in by the volunteer fire department. They were filling that up every other week, a thousand gallons to service a home with a couple of kids for two weeks. That went on until the baby developed E-coli poisoning. At the point they threw up their hands. They couldn't make a go of it. They had tried everything to make the old well work and they just walked away from the mortgage and everything. The house went into foreclosure, stayed on the market for almost a year and I bought it at a very reasonable price because the owner next door said that I could find water on his land and he would guarantee it. So if I couldn't find water I wouldn't have to go ahead and buy the lot. So we entered into an agreement. I sunk a well and I found two gallons a minute. If you look at the second attachment it's a letter from Hamilton Corporation who did the well drilling. And he certified that the well delivered two gallons a minute. If you go to the third attachment, these are the HUD guidelines for residences on a shared well. If you look down in the middle of the page it says here the mortgage lender requirement for residences on a shared well, that each residence has to have at least three gallons a minute or storage of at least 720 gallons. So the storage tank as it exists for this house ever to be financed by Fannie Mae or Freddie Mac or FHA or anybody because they follow the guidelines of HUD. The storage tank, if you'll notice, it's translucent. Because of that sunlight can get inside the water. If you have any foreign material it can encourage the growth of algae and microbes. And the tank top, you can see there's a hatch at the back, that can't be locked so if somebody wants to pull a dirty trick and drop a dead animal in there they can poison the water supply of the house. The pumps and the piping are exposed to freezing temperatures that threatens the reliable drinking water to the residence unless protection from the elements is provided. The tank and piping need to be protected by a sturdy covering to block sunlight to the tank and minimize the freezing threat to the pipes. Proposed is a sturdy and good looking, insulated, self supporting, prefabricated metal building. The building will match the roof angle and color scheme of the main dwelling, which is light grey on the sides and charcoal on the top. Also the building will have the shortest post size, 6 foot post size. So it will have the lowest profile. And you can see the manufacture's picture of a mechanical shop. It's going to look very similar to that except on the side where you see the doors there'll be two windows to allow light to get in so at least you can work in there. It won't be on the side where the tank is so I don't have to worry about sunlight getting to the water. The building does not require a foundation. It is to be anchored to the soil with 36" long anchors and is to be placed on the footprint of the concrete curbing provided to contain the gravel layer that reduces erosion and mudding. The corner of the building will be angled to clear the property line. When I put in this curbing I was unaware since I was 39 feet away from the driveway, I was unaware that I was that close to the property line. I've since had to jack-hammer that corner away. And when the building is set the sheet metal will be tailored so that it is short of the property line. I will not encroach upon the neighbor's property. And that's pretty much my case. It's going to be a prefab building. It can be taken down quickly. If it needs to be

taken down it can be taken down in an afternoon. It's held together with screws. It's not going to be anchored to a foundation. It's going to be screwed into the soil. All it is – the purpose of it is to protect the water supply and make this area of the lot more attractive not only for the residence but for the neighbors.

Chairman Phelps: You sank it into the soil so will be just outside where this-

RBenton: No it will be on the inside edge of that curbing with the anchors going down inside the curb.

Chairman Phelps: Inside of that?

RBenton: Yeah. It's an 18 by-

Chairman Phelps: So it won't be any larger than the-

RBenton: It won't be any larger than the footprint. In fact it will be a little bit, that you see there, in fact it will be a little bit smaller than that.

APouch: Does your neighbor use this water now? I mean, does anyone use this?

RBenton: No. I bought, I got a shared well permit because when I bought the lot next door I wanted to make sure that that well, because it is hard to get water out there, it really is. I don't know if you're familiar with that area. A lot of dry wells in that area. In fact the person that's going to speak had a dry well on the home she purchased. She drilled another well and it went dry. And I offered to sell her access to that shared well. She thought I wanted too much. And she also thought that a shared well is not as attractive as a private well, and I agree with that. The shared well has its own set of issues. But if you don't have any other water a shared well's better than no water. She didn't want that and her attempt at drilling unfortunately was unsuccessful. She has other areas on her property that she might try. But anyway, I wanted \$10,000 because it cost me \$40,000 for the lot, drilling the well and running the pipes over. She thought that was excessive. She offered me \$5,000. I said, "Ok five, but I want an easement for that building so I don't have to cut the corner off". She didn't want to do that. So I said, "Fine", and I figure I go to solve my problem myself.

Chairman Phelps: Questions from the board? Sarah, I assume you have some questions?

Deputy County Attorney SZambon: I only have a few. Mr. Benton, is it?

RBenton: Yeah. One of the provisions of a variance is that it protects the public safety and welfare. How do you think getting this variance will protect the public safety and welfare?

RBenton: Well, clean drinking water is pretty important to anyone in the public. And this house is not going to be able to be lived in unless it has a safe source of drinking water. The subdivision was platted and this was before I know we've gone through this a little bit, the platted subdivisions that can't get water. We had one where they had to run water lines out to it. We're trying to make due without having to run water lines.

Deputy County Attorney SZambon: How far are you from the water lines?

RBenton: Oh gosh, I don't know. We're way up on Spicer Cove Road off of Sugarloaf Mountain Road. I don't think there's a, I think you have to probably Gilliam Mountain Road. Probably four miles.

Deputy County Attorney SZambon: I'm assuming you researched these structures when you decided to put, decided to apply for this variance and try to get this structure. Are there other alternatives to this type of building?

RBenton: Well, yeah. I could move the whole complex to the other side of the lot. Move it far enough from the property line but that would mean that the existing well, that's the old well, would be a back up well. That piping would have to be added. The tank would have to be moved. The tank is where it is because it's some distance away from the slope. It weighs over 8,000 pounds when it's full so it can't be right on the edge. So if I move that tank I have to be very careful where I put it on the lot. The lot has a steep slope behind it, then it terraces out just for the building and then it has a steep slope running away to the lot edge. There's not too many flat places to put that tank. I think that's why they put it there. It was probably the only – and it was near the abandoned well.

Deputy County Attorney SZambon: Is this property on septic?

RBenton: Yeah, yeah. The septic is up above. It's a pump up system. So there's a flat that comes from Tierra Trail then it slopes down to the terrace that the house is on. And then breaks down again to the end of the lot line.

Deputy County Attorney SZambon: So besides moving the whole tank thing which seems difficult, are there other ways to cover the existing tank besides this?

RBenton: Yeah. I can put a tarp over it. That would really look awful but that's a possibility.

Deputy County Attorney SZambon: What is the capacity of the tank?

RBenton: Twelve hundred gallons.

Deputy County Attorney SZambon: And is there any point in the future where you would need to make a bigger tank and thus a bigger external structure?

RBenton: No. According to the HUD Guidelines I only need 720 gallons. This thing at 1,000 gallons looks right. The additional 200 really starts to crowd above the float controls and everything else. The float's set at 1,000.

Deputy County Attorney SZambon: Ok. For us, HUD says you need 720 gallons.

RBenton: For each residence.

Deputy County Attorney SZambon: Per residence so what is the occupancy of the residence?

RBenton: It doesn't say. But the average person uses, according to the figures I've seen, 70 gallons of water a day. The septs are usually designed for 60 gallons of water per day assuming you're going to take ten with you or you're going to sweat off those ten gallons. But that's the way all systems are designed for the maximum, the worse case so that you don't have to worry about it. But 70 gallons a day if you think about it, four people in that house using 280 gallons, they only have four days supply in that tank. And that tank is a wonderful feature because if you do loose your pump you've got four days to get it fixed before you run out of water.

Deputy County Attorney SZambon: The home, what is the expected occupancy of the home?

RBenton: Six people.

Deputy County Attorney SZambon: Six people.

RBenton: It's a three bedroom. The septic is permitted for a three bedroom.

Deputy County Attorney SZambon: Mr. Chairman, I don't have any further questions.

Chairman Phelps: From the board? Are there questions then from any of the other parties?

Deputy County Attorney SZambon: Do you have any questions for him? (to Melissa Connell) Now is not the time to make a statement for you. It's just that if you have any questions for him.

MConnell: No. I just have one question. When you purchased the property did it have the pea gravel and the concrete curbing around the tank at the time that you purchased it or did you put that there after you purchased the home?

RBenton: The curbing was added later. The pea gravel was there. The pea gravel was already under the tank. That is the preferred way of setting that tank on the ground because pea gravel being very rounded will tend to slide and shift and give a nice level base for the tank. The curbing I added so that, that thing was going to be nothing but mud. It was going to take that mud and spill over down the slope. It seemed to me logical to put gravel there so I wouldn't have a muddy mess and then to keep the gravel from migrating and moving around I put curbing around it.

Chairman Phelps: Ok. Thank you. Are there other parties that would like to present evidence at this time?

MConnell: Hi. My name is Melissa Connell. I own the property at 65 Tierra Trail. I did bring you guys each a copy of the survey showing that the current structure does encroach onto my property by a foot, eight inches. Do you have a copy of the plat?

Deputy County Attorney SZambon: Ms. Connell, has Mr. Benton seen these? Yes he has. He's aware of it. He's aware of the encroachment.

RBenton: I'm aware of what?

Deputy County Attorney SZambon: Have you seen what she is submitting?

RBenton: Yes. And I have had surveyors out there and they re-staked it and drew a line. None of my structure touches on her property.

Deputy County Attorney SZambon: Well you can talk in a minute but I just want to make sure you've seen it.

MConnell: The first thing I'd like to say is that, yes I did purchase a distressed property that according to the listing agent had water issues. It was rumored that the well had problems. So I did purchase the property. The well was dry. I did drill another well. I ended up having to go down 1,000 feet. I did not get a lot of water. We let it sit. There was an opening at the bottom of the well. I'm now getting a pint a minute which is, when I add a reservoir tank to my own property, will be plenty for the homeowner that I sell the property to. So that just squashes that whole situation. Here's my problem; I'm a licensed real estate agent in the state of Florida. Mr. Benton is also a licensed broker in the state of North Carolina. He's fully aware of when he purchased the property of what the setbacks are for the property. He knows the rules of this state and the county. It's setting a precedence if you allow him to maintain this variance. First of all he knew that the property encroached. It was something that was addressed to him by me. The first thing I did when I purchased my property is I got a survey. And you can clearly see on this survey where his curbing and pea gravel was a foot and eight inches

onto my property. Since forth he approached me when I first came to North Carolina to see the home, to start work, to get contractors, he wanted an easement. He wanted a lot of things. At his failed attempt to strong arm me because of my water issues he wanted me to sign an agreement that if I went onto a shared well system, because I was concerned that if this well did not open up I would not have enough to sustain putting homeowners into this property. He wanted \$14,000 for me to share his well. That was ridiculous. I could drop a new well for that amount of money. That wasn't anything that I could do for \$14,000. It was going to be cheaper for me to just drill somewhere else. So I said, 'Listen, for \$5,000 I'll share a well with you. We'll do a shared well agreement.' That was it. There was no other provisions or anything like that. He would gain \$5,000 which is the cost of what it was going to take him to complete his structure and some other things that he wanted to do on his property. And then I would connect to it with a reservoir tank on my property. And then my new homeowners would have plenty enough water. We were leaving to go to the airport. He wanted me to sign an agreement. Right there and then he wanted to drive it to the airport. I wasn't comfortable with it. I questioned him again on the variance. He argued with me that this was not a permanent structure. His curbing has concrete footers. What is there right now is a permanent structure. He knew it when he laid the curbing. It was supposed to be not only not encroaching on my property but 15 feet for a setback. And he knows that when he did it. So it's unsettling to me. I didn't want to sign the document. I wanted to at least read it, have an attorney look over it. I'm not just going to blindly sign something, you know, I don't know what I'm locking myself into. He got very loud and angry with me that I questioned him because I had contacted the County to find out what the setbacks were and what needed to be done about this structure not only being on my property but being right up to the property line, which is going to negatively impact my new homeowner. If they want to fence it, if they want to plant, if they want to do things it's their property. Not only is he encroaching but he butts up right to the property. And I actually have pictures for you guys to see. So he hung up on me – said he was going to do what he needed to do. That was on October 19<sup>th</sup>. When I came back this month for this hearing I went out to the property. And he had done more work to this contraption that he has out here. Here are some pictures. My house is the house in the rear. This is the structure. You can see he's attempted to chisel away at pieces of the curbing to try and get it off my property line and get it to the property line. He's still encroaches. And knowing full well that he was either going to have to apply for a variance or move his structure. He did not care. He still continued to add things. The brown box in the back of the structure was not here in October. So it's unsettling to me that here we have a licensed broker in the state of North Carolina who is aware of the rules, the regulations, the setbacks, and what he is supposed to be doing with this property. Yet he feels like he can do it 'if I don't get caught, great. If I do get caught, well I'll just come to the board and ask for a variance'. That's where I stand. I strongly oppose this variance. There is ample space on the opposite side of his property for him to move this structure. He should have never pea graveled it. He should have never curbed it when he knew full well that it was in violation. He could at that time have it moved. The other well according to his own testimony is abandoned. The current water system that he has other than the reservoir is on an adjacent property that he owns. And he pumps that water from that well to this home into this reservoir system. So it's not a matter of the building that he's going to put there to cover it. That's great but he needs to move it to the opposite side of his property and cover it over there.

APouch: I have a question.

MConnell: Yes, ma'am.

APouch: It does have water but it's on another piece of property?

MConnell: Yes, ma'am. The well that he has, where this reservoir is, apparently gave the previous homeowner's children E-coli and the people ended up having to move. It was not a safe well and according to him it was abandoned. When he bought the property he bought an adjacent lot and drilled a well on the adjacent lot and is pumping that water to this home. He got a shared well permit because his original idea was that not only would he the property that we're talking about today, but he would purchase the lot that he currently has the well on and he would purchase the property that I purchased. However, I bought it before him. And he was going to develop that and then sell it off. I kind of threw a little monkey wrench into his plan apparently because it has been a huge, huge battle since I purchased this property. But his well that is pumping water to that reservoir that gives this address water is not on this property. It is on another property opposite my property. So if you can see, I'll show you this, here's and extra copy, this is actually the plat of the property. This is a plat of the property here. Mr. Benton's property is 7 and 6. My property is 8 so I'm actually pie shaped adjoining both of his properties. His well that is servicing his home here at lot 7 is being pumped

from lot 6. So what he's trying to protect is the reservoir because it's going to cost him more to move it. So he's continued to work on it and to curb it and pea gravel it and cover his piping knowing that it was in violation because he simply didn't want to spend the money to move it to this side. And it sits here and also it's encroaching onto my property. So, I mean at some point when do you put your foot down and say enough is enough? And he should know better, shame on him.

APouch: Do you have water on your property?

MConnell: Yes I do. I do have water now. Yes I do. Now mind you I'm only getting a pint a minute but I'm also installing a reservoir on my property right next to my well. They're just not completed with it yet. It's taking them a while. But I have a pint a minute currently. My well is 1,000 feet. This particular mountain does have water issues. A lot of wells have gone dry. It's hit or miss whether or not you get water. But his current well that services this particular property is a good viable well at two gallons a minute. It can service both if he builds a home on that property, it can service that property and lot 7, the property that's in discussion today.

Chairman Phelps: And you're saying you're getting a pint a minute.

MConnell: I get a pint a minute without a reservoir.

Chairman Phelps: And that's current?

MConnell: Current, yes.

Chairman Phelps: That's after we've had a good bit of rain, at least average or above average in these last few weeks? And you're getting a pint a minute now?

MConnell: That's when it was dry. That wasn't since the rain fall-

Chairman Phelps: You just told me *now*. So now you're saying *earlier*?

MConnell: The last time, well, November 10<sup>th</sup> was the last check on the well. When he actually did the final pump test to tell me-

Chairman Phelps: We've had some good rain since the 10<sup>th</sup>. Let me ask- go ahead (to Eric Goodman)

EGoodman: Does the subdivision have covenants and setbacks?

MConnell: I don't know if they do or not to be honest. I'm not aware of any homeowner's association and I did not receive or I did not find any covenants that went to my property when I purchased it, according to the title company or the attorney that I dealt with.

TEngel: The attorney didn't find any covenants on it?

MConnell: No.

TEngel: So there were none on file.

MConnell: And my property, nobody lives at my property right now. I'm still in the process of fixing up my property. It was in pretty bad shape when I got it. So it was a foreclosure that had been sitting for a long time. So I've actually owned it since the end of August, beginning of September. So I've been working on it since September. And my home's not finished yet, but...

Chairman Phelps: This survey that you presented us is dated the 25<sup>th</sup> of September of this year.

MConnell: Yes, sir.

Chairman Phelps: Is that before or after you bought the property?

MConnell: No, this was after I purchased the property.

Chairman Phelps: So you didn't get it surveyed until after you bought it?

MConnell: Correct.

Chairman Phelps: Had you walked the property and examined it prior to buying it?

MConnell: I had a real estate agent that represented me that did walk the property.

Chairman Phelps: But you didn't have a survey done.

MConnell: Sure did not. It was a foreclosure auction. There was not a survey available when I purchased the property and we bought it as is.

Deputy County Attorney SZambon: Miss Connell, you've talked about the curbing and the gravel but the well was there when Mr. Benton, to the best of your knowledge, when he bought it.

MConnell: Yes. That is what he as told me. Yes.

Deputy County Attorney SZambon: It was there when you bought it?

MConnell: Yes.

Deputy County Attorney SZambon: Ok.

TEngel: It's an abandoned well? It's a non-operating well?

MConnell: Yes. From what he has told me, yes.

Deputy County Attorney SZambon: And the storage system was there when he bought it?

MConnell: The tank was there when he bought it, just the tank itself.

Deputy County Attorney SZambon: And the tank was there when you bought it?

MConnell: Yes. But to the surveying issue, I did not have an opportunity because of the type of sale that it was when I purchased the property to survey it prior. Immediately after closing on the property I hired a survey company who is actually, he's not here for me but this gentleman was my surveyor. I hired him immediately and surveyed my property. I wanted to make sure that I didn't have anything on anybody else's property. I wanted to know exactly what I had purchased and what my lines were when I bought it.

Chairman Phelps: Other questions from the board? Mr. Benton, do you have questions of her, for Miss Connell?

Deputy County Attorney SZambon: You'll get a chance to...

RBenton: Do we get a chance to comment on some of the points that have been made?

Chairman Phelps: You may ask questions.

Deputy County Attorney SZambon: You will. Right now it's just to ask questions. You will get a rebuttal.

RBenton: No, I don't. As long as I have a chance to rebut.

Deputy County Attorney SZambon: You will. ~

Chairman Phelps: Sarah, do you have additional question?

Deputy County Attorney SZambon: I do not.

Zoning Administrator TLinville: I have a couple of questions. And I ask Mr. Baker to come forward. You might have answered this question today if I had called you back. I'm sorry.

Mr. Baker: I didn't know this was happening today.

Zoning Administrator TLinville: So this photo, did you, who placed these stakes? Is that the property line?

Mr. Baker: We didn't place those stakes.

MConnell: Mr. Benton placed those stakes.

RBenton: No I did not. That was placed there by my surveyor, Laughter, Austin and Associates.

Deputy County Attorney SZambon: Mr. Benton, you will have a chance to respond. Please do not respond until you are on the microphone.

Zoning Administrator TLinville: And I'll ask Mr. Benton a question when he rebuts.

Chairman Phelps: Some of those photos that you presented as evidence there, it does not appear that there is any encroachment from the way those lines are and the flags.

TEngel: Since he's cut away.

MConnell: Right, he's tried. And it was hard for me and in the picture I was trying to get the best shot I could at the best angle I could. But there's still portions of what he didn't chisel away still on my property line. Not to mention that's it's not 15 feet off, but it still is over. And I wish you guys had an opportunity to actually walk the property and actually take a look at it. I tried my best to photograph it in a way that you guys could see it.

EGoodman: Your main concern is the encroachment?

MConnell: Well, it's not only the encroachment, it is the encroachment, yes. But my other concern is the fact that I try my best to do things the right way and to do them right the first time. And the way that the man has treated me has put a very sour taste in my mouth. And most people wouldn't admit to that but I will. I've been talked to very nasty, belittled and it just doesn't sit well with me to know that you guys will give him a variance when he knew full well, didn't care, and continued to add things to what was just a reservoir, not all of this other stuff that is around it and the brown box that is there wasn't there when he purchased it. That big brown box wasn't even there in October. And he knew it was in violation. But until I pushed the issue because I wasn't going to sign his document then he said, "Well, I'll just go to the County and they'll give me a variance." And that's exactly what he's done. So he knew full well he was wrong. He knew full well he was in violation. He pitched a fit and now he's here talking to you and wants a variance. And if you give it to him it sets a precedence that sometimes the laws don't matter. And he should know better and shame on him.

Deputy County Attorney SZambon: Mr. Chairman, if I may I have some questions for Toby and then we should let Mr. Benton do his rebuttal, unless Ms. Connell has anything else to add.

MConnell: I'm done.

Deputy County Attorney SZambon: Does anybody on the board have anything else to ask her?



Chairman Phelps: Yes, I would like to ask; on this survey here on your property isn't it the case, a well cover which appears to be a soil road bed, right at the edge of the property line?

MConnell: Let me look at it and I'll see. There was, when I purchased the property, there was an abandoned well already on the property.

Chairman Phelps: That's an abandoned well?

MConnell: Then they had drilled again. It's right kind of at the switch-back.

EGoodman: It's in the corner?

Chairman Phelps: Right past the gravel area?

MConnell: Yes, sir. The way that the road comes down, the drive comes down and then you have a switch-back that turns back and goes into the home and into the garage.

EGoodman: Next to an iron pin?

MConnell: I'm sorry?

EGoodman: Near and iron pin, right?

MConnell: The center of the well cover that looks down this roadway here, that is the well that went dry.

EGoodman: Yeah, you're adjacent to an iron pin there.

MConnell: I don't know what that is.

EGoodman: E.I.P.

MConnell: I guess.

EGoodman: Existing Iron Pin.

MConnell: Yeah, I guess. So that is where the well that went dry is. That well has not yet been abandoned as of yet.

EGoodman: You mean abandoned according to the Health Department standards?

MConnell: Right. What I have to do is he has to – because I've had to drill another well because that well was not viable. Apparently they had hydro fractured it. That well's just not viable. I guess it was Crissy Red, we found out from her what had to be used in order to fill it. To abandon it I guess it's like a sand, concrete combination. So the well man that's drilled my current well is abandoning that one. He just hasn't made it to that point yet. There was an old logging road but this doesn't sit on it, it sits away from it, that runs down the side of the property. If you continue the driveway all the way down it cuts back all the way to the back of my property. And that well sits right there in that corner. But it's not in the actual driving path. And that is also the well that's going to be abandoned. My current well is not on here because I had it surveyed before I started doing any well work.

Chairman Phelps: Any others before we have Sarah proceed? Ok.

Deputy County Attorney SZambon: Ms. Connell, you can sit down. Toby, I just had a few questions for you. The TRC approved this, yes?

Zoning Administrator TLinville: Correct.

Deputy County Attorney SZambon: And at the time there was no questions about any encroachment or anything like that at the TRC?

Zoning Administrator TLinville: Well, just that none of that structure can be across the property line for requesting for the variance.

Deputy County Attorney SZambon: Right. If this board approved the variance none of the structure could be across the – a variance does not change the property line.

Zoning Administrator TLinville: Right.

Deputy County Attorney SZambon: How close would the structure then be to the property line with the variance?

Zoning Administrator TLinville: It would basically be on the property line.

Deputy County Attorney SZambon: It would be on the property line. With the TRC did you go out and visit this property?

Zoning Administrator TLinville: Yes.

Deputy County Attorney SZambon: Did you view where this storage thing was?

Zoning Administrator TLinville: Yes.

Deputy County Attorney SZambon: Did you observe the property line, or was it staked out at all when you were there?

Zoning Administrator TLinville: These stakes were here and I don't know if that is the property line or not.

Deputy County Attorney SZambon: Right, you're not a surveyor. And the recommendation of the TRC was what?

Zoning Administrator TLinville: To approve the variance.

Deputy County Attorney SZambon: And you as the Zoning Administrator do you have any problem with approving this variance?

Zoning Administrator TLinville: (indicated no)

Deputy County Attorney SZambon: That's all I have. So Toby walked the property. That's what I wanted to get out of that.

TEngel: Toby, there's no problem with that box that's been added to it, whatever that is?

Zoning Administrator TLinville: That's just insulation so that the pipes wouldn't freeze. It doesn't require a permit.

TEngel: That's not considered a structure?

Zoning Administrator TLinville: No. It's insulation board with the plastic wrapped around it. None of what's there now we would regulate. The curb, the gravel, the tank, the pump, we don't regulate any of that. I'm involved because he wants to put a structure over that facility. Unfortunately zoning rules don't line up with Health Department rules. The Health Department doesn't care where you put the well. You can put it right on the property line. You've got two, her old one was on the property line. His is on the property line.

EGoodman: So the whole reason we're here is approval of the building?

Zoning Administrator TLinville: Right.

Chairman Phelps: So if he was to put a tent over it we wouldn't be here?

Zoning Administrator TLinville: That's right.

Deputy County Attorney SZambon: Mr. Chairman, unless you have any further questions for Toby, Mr. Benton should do his rebuttal. Just to keep this moving along.

Chairman Phelps: Mr. Benton, come forward then for additional comments.

RBenton: Yeah, I'm a pretty bad guy apparently. I did buy the two pieces of property. A lot's been made of the fact that the well is on a different piece of property. That's what a shared well is. Somebody has the well and another person on a different piece of property is sharing the water from that well. That's what a share well does. It distributes water to more than one property, more than one lot. So that's not – I don't know how that even factors in. My plan was that if I could get the house at 93 Tierra Trail up and running and I'd have a lot on the adjacent to it that I could build on or sell it as a building lot. And then I fully intended to make an offer on 65 Tierra Trail. I knew it was online at an auction. And I put in a bid on it. It was pretty low and boom, somebody hit it right away. So I said, "Somebody's on this. I'm not going to take this all the way to the top." The reserve on it was the list price, \$119,000 which was excessive because it didn't have water. I wasn't going to pay \$119,000. I thought 80 would be good because I had water to put into that house. Melissa put in an offer of 65. She didn't get it and a couple of weeks later they called her up and asked if she still wanted to buy it for 65 and she said, "Yes", and she bought it. She came up to visit the property and I was called by her realtor to come out and meet with her. So I did. She wanted to know about the well. There was a guy by the name of Chester Levi who was helping me with piping and he was there. And we began to tell her everything we knew about that well. It is a famous well on her property. Pictures of that well are now part of the Well Diggers Continuing Education Package because somebody pumped water down in that well in order to defraud the buyers that it was a good well. We told her everything we knew about it. I also offered her access to mine for \$10,000 we admitted that she would probably have additional expenses to have a storage tank, supply pump and other stuff. But never did I say I wanted 14. I also wanted what I thought, I need an easement to the bottom of the lot to make it easier to get into my lot because it's pretty sloped. That didn't go anywhere. She had resolved that she would drill her own well, that would be more advantageous to resell. That's fine with me. I missed out on one, I'll get the next one. This went on and again there was some back and forth, several different phone calls. And yes, I did get impatient with her once because it seemed like no matter what I offered she wanted more. I said, "Ok \$5,000 and give me an easement for the corner of my building". No, wouldn't do that. Well I found out from a neighbor that the curbing was on her property. She had it surveyed and said to my neighbor, or her aunt said to my neighbor, "But nobody told me". Her aunt was there, I was there. "Nobody told me". I had to find it out from Ray Napp, the guy that sold me the lot that I drilled the well on. When I found it out I got with Laughter, Austin and he came out and he put those posts. And I got Chester Levi out there with a jackhammer and I jacked away all the curbing that was on her property. Because there's no way I want to have to worry about that. And it's going to cost me quite a little bit to angle that building so it

looks decent after that corner's cut off but I can do it. She said that the well that's on 93 Tierra Trail is abandoned. It's not abandoned, it's not viable. It's one of those pint a minute wells that gradually fill up. It's a good reserve if you fill up 800 gallons of drinking water it's a good reserve for that. But a pint a minute is not a viable well. I don't care if you've got a tank. The box structure that was added to the back, I mean you could call it a glorified dog house for what it is. It's a ply wood structure that's insulated and has tar paper over the top and a tarp on it to keep the rain out, just to keep my pipes from freezing. And that's what I don't understand is why someone would begrudge a neighbor a structure like this to protect his property, to protect his piping. Why would anybody be upset about that? I don't think it's that handsome but it's certainly better than busted pipes and no water to the house. That's not a permanent structure. That's a cover and it's about as - I can take that edge of it and flip it off in a minute. But that's what it's come down to. To this disagreement is not about the building. And it's not about that wooden box. And it's not about the gravel. By the way that gravel's  $\frac{3}{4}$  washed. It's not pea gravel so anybody that doesn't know pea gravel from  $\frac{3}{4}$  washed maybe shouldn't be talking about gravel. But anyway-

Deputy County Attorney SZambon: Mr. Benton, can I ask you a few questions?

RBenton: Sure.

Deputy County Attorney SZambon: Ms. Connell talked a lot about how you own this other lot and that is where the other well - the well is, is that correct?

RBenton: Sure. Absolutely.

Deputy County Attorney SZambon: Why can't you move this storage thing to that other lot?

RBenton: You could do anything.

Deputy County Attorney SZambon: You could, yes.

RBenton: You know, I could do anything, at what cost? The first thing is that when you look at where it's situated, what would you rather have? This tank sitting on another lot where you could see it, or let it be where it was designed to be, where it ended up, with all the piping already in the ground to it. It will all have to be dug up or capped, and just put a handsome prefabricated structure that matches the color and the pitch of the house that it services. I don't understand that. That to me, the most logical thing would be to put the building there.

Deputy County Attorney SZambon: Do you have any plans to recombine those two lots?

RBenton: No. There's going to be another - that's why it's a shared well. There's going to be another structure on there.

Deputy County Attorney SZambon: There's going to be another structure there or owner when you sell it?

RBenton: Yes. And it will have to have a tank too.

Deputy County Attorney SZambon: So you're already planning on putting another tank on that lot?

RBenton: There will have to be. I don't know if I'll ever get to that. If I sell that lot it will be with full disclosure. And that's what is a little bit upsetting is because I have never hid anything about my position, what I was trying to do, what I thought my rights were. And when I encroached over that property line no one was more shocked than I was, because this property line is 39 feet away from the edge of her driveway. I couldn't believe it that they had made such a huge neck going down that lot for the driveway. It really caught me by surprise and when I found out about it I had the surveyor jackhammer it off the corner. I wish I didn't because the building's going to look a little funny on that corner, but I had to eliminate the encroachment.

APouch: I have a question. Did you have it surveyed before you-

RBenton: No. That was my problem.

APouch: So you had no -

RBenton: I surveyed the adjoining lot because I had to make sure for the septic, when I got the septic permit. He wanted to know where the lot lines were and everything before he would grant me a septic permit. So I got a three bedroom septic permit and I got a three party shared well permit, and I had to know that. I didn't think I needed it on the other because I wasn't moving anything. I wasn't changing anything. I thought that tank surely had to be four or five feet away from the property line when they did it. Adding the metal building, frankly if you tell me I can't do it, I'll put a tent over it to protect it from sunlight and that's the end of it.

TEngel: I have a question.

RBenton: Yes, sir.

TEngel: Why 18 x 21? That's a pretty big building.

RBenton: It is but the next size – it's a standard garage size. If you look at R&B structures they build them for either one car or two car. And a one car wouldn't fit over it.

TEngel: You could have a shed over it. I mean they make sheds of every size going. And you could have a lot smaller structure that would be less obtrusive.

RBenton: The reason why the structure is, I just got the next standard size. I didn't go with the one car. I went with the two car, with full size is because the house has no storage. There's no basement. The crawl space is small and I figured anybody that would buy a house would like to have a place for his lawn furniture, bicycles and things like that. So I said, "Ok that'll be a little bigger and I'll go with that".

EGoodman: You could stick build it though.

RBenton: I could stick build it but I still would need a variance to stick build.

Chairman Phelps: You could make it a smaller size.

RBenton: A 12 x 12 won't go over it.

EGoodman: Most wells you see, the building's just big enough for the well. There's nothing else.

RBenton: But if you look at the previous picture you'll see that there is a supply pump on one, just behind the tank, not the package I gave you but the package that you were given prior.

TEngel: The supply pump now is in that box? –

RBenton: The supply pump's in the box, the well pump's in the box, the pipes that connect the tank to the house and allow the well, the old well to be a reserve. A hot reserve. If you really need another 700 gallons you've got it right there in the well.

TEngel: But if you just covered these items it would be a much smaller building. It would look like a shed.

EGoodman: It looks like you could cut it in half.

RBenton: And I could do it that way. I could – I haven't yet. If this variance is denied I'll have to go back and scratch my head. In the short term I'm not going to remove that box because I don't want my pipes to freeze. And I don't see that that falls into a structure.

TEngel: This well, it's active too?

RBenton: It's viable. It's not been abandoned. When it's abandoned that's a technical term and you know that. It's got to be filled up and so forth.

APouch: It really is doing anything.

RBenton: This is a viable well. It's about a pint a minute but it won't serve a house.

Chairman Phelps: It's not being used at this point?

RBenton: No. It could be turned on if it's needed.

EGoodman: So there's really no water in the pipes to freeze at this point, right?

RBenton: Oh yeah, there's water from the tank to the house. It all runs down and connects with the pipe that used to go from the old well to the house.

EGoodman: Ok, sorry.

TEngel: So actually now there's a new pipe running from the well to this?

RBenton: Yeah, it comes all the way up the driveway, down the driveway, up through here and connects here so.

TEngel: And your reason for wanting a larger shed, a larger building is for storage?

RBenton: Yeah, it was the next prefabbed size that I could get.

TEngel: But you could always go to storage or anyone can within the 15 foot –

RBenton: I haven't researched that. The smallest size that they offer wouldn't fit that footprint. Not the footprint of the curbing the footprint of the pumps.

TEngel: There are many outfits that make them or you could –

RBenton: I know, I went to the one there on Duncan Hill Road and I started there. Yeah, I could get it custom made and if I have to I will. I haven't thought that far ahead. What I'm working on now is on my, you know the first prototype, if you will, because I've never done one of these before.

TEngel: Because they make all different size sheds. You can even go to Lowe's and pick up different sheds to cover it.

RBenton: Well, yeah, but I would still need a variance if I made this thing.

TEngel: You will need a variance but then it wouldn't be for storage it would just be to cover these units. And then anything additional, if you wanted storage or anyone wants storage you could always go to one that would be ok with zoning, the setbacks.

RBenton: And instead of one building I have two.

TEngel: Yeah, the setbacks will be ok though.

RBenton: That's true but as long as I've got to get a variance for a building having one that will – it was the smallest one I could get that went over the tank and the pump system and pipe. And it had the additional benefit of storage. It seemed like a no-brainer. But it's turned out to be a brainer.

Chairman Phelps: And again that seems redundant, but it's within this concrete thing here, this double one that you're talking about and fits inside this –

RBenton: Yeah, and the curbing and the gravel, all that stuff is at grade level. That doesn't constitute a structure. You don't need a permit to put in a driveway.

Chairman Phelps: But the size you get will fit inside the foundation that you've laid around that.

RBenton: I would prefer give the new homeowners not only protection for their water supply and also a place to store their lawn furniture and bicycles. And I'm willing to pay \$3,800 to do it because that's the cost of an insulated metal building with insulated doors, \$3,800. This is not a cheap thing.

APouch: There's nothing built, I mean you don't have a house here. It says proposed dwelling.

RBenton: No, no. There's a house there.

Deputy County Attorney SZambon: There's a house there. That's on the other lot.

APouch: Oh, this is the lot where you have your water.

RBenton: No. This is the lot where the tank is.

Deputy County Attorney SZambon: This is the lot I think that we're talking about.

TEngel: The proposed is where the well is.

Deputy County Attorney SZambon: The proposed is where the well is, yes.

RBenton: Yeah, the well's on the vacant lot next door, adjacent. And I own both pieces of property.

APouch: So you have a lot of options of where to put this.

Deputy County Attorney SZambon: Does the board have any further questions for Mr. Benton?

RBenton: May I make one comment? I heard one that there's lots of options. There are not lots of options because of the topography. When you look at the flatness on a piece of paper it looks like you have lots of space to put a well. If you go out there you see that it is quite sloped and undulating and there's not too many places that – you'd have to scrape away a terrace. If I put it over on the other one I'd have to scrape away a terrace.

Chairman Phelps: Thank you, Mr. Benton. Ms. Connell, would you please come back to the podium.

MConnell: Without beating a dead horse over this whole issue I'll say two last things. The curbing that he has is considered a permanent structure according to the County. I called – it has concrete footers which they considered a permanent structure. The building is not so much the issue. If he wants to protect the viable E-coli ridden well that at the beginning of this meeting, that he didn't need because that's why he has a storage tank, but that now he needs because he wants to protect it, that well can be covered with a little rock looking thing like they do everybody else's well. And his reservoir tank can be moved with his little curbing to the opposite side of this property. He has a huge flat piece of property on the opposite side. And then it would be in compliance. And he could cover the well and piping and he could move his reservoir to the other side. And then he could cover it with whatever he wanted to or he could put a shed for storage. So he does have options. But those options are going to cost more than coming here and crying like a baby to get his variance when he knew that he was wrong in the first place.

Chairman Phelps: Ms. Connell that was there when you bought the property and when he bought the property, correct?

MConnell: The reservoir tank was there. All of the additional items he has added after the fact.

Chairman Phelps: We're talking specifically the tank here. That was there when you bought the property.

MConnell: Yes.

Chairman Phelps: It was there when he bought his property.

MConnell: Yes. And had it been just the reservoir tank he wouldn't have had any problems.

TEngel: Basically you want it to look nice so that you can sell your property.

MConnell: Correct. And I don't want-

TEngel: Aren't there other things that would make you happy? For instance if he put a brown, do it a dark brown building, like I say it comes in dark colors that will not stick out so much.

MConnell: It's not the building itself. Included in the \$14,000 he was going to charge me was the \$4,000 for the building to cover this.

Deputy County Attorney SZambon: Mr. Chairman, if I can refocus this because this is turning a little bit too 'peoples court' for me. All this board can do, you cannot make him move the well, I mean he can if he wants but a lot of the testimony we've heard here is a dispute between property owners that doesn't have to do with you.

MConnell: I'm sorry. Can I interject one second? It's not about the well. He's not protecting his well. He has a reservoir that can be moved.

Chairman Phelps: We're not here to determine that. We are here strictly for a variance.

Deputy County Attorney SZambon: We are not here to determine where the well goes or where the reservoir goes that there's been testimony stated that that reservoir's been there. You can't make people move the reservoir. You don't have that power.

Deputy County SZambon:

TEngel: We have the power to say, on as far as the size of the building?

Deputy County SZambon: Yes. You can make a condition regarding the size of the building. You can make a condition regarding the color of the building. You can make a condition whether or not he gets the building. I mean that's the 'why' you are here. You can't make him move the reservoir because that's already there. And Toby's testified that that is not anything he regulates. And so nothing this board regulates. So the question before this board is simply whether or not he gets this structure, regardless of size and aesthetic quality and all that stuff. You guys can talk about in terms of conditions. The whole point of this is whether or not he can put a building over this reservoir. And the only things you can consider of the testimony that's been given to you today are the factors for a variance which I'll go over real quickly:

- Are there practical difficulties and unnecessary hardships?

- Can a reasonable return or reasonable use be gotten from the property if he complied to the literal use of the law?

- Are there unique circumstances?

- Is the hardship the applicant's fault?

- Is the variance within the spirit and intent of the law?

- Will it protect public safety and welfare?

- Will it do substantial justice?

And again, we've talked about this before that this board does not have to consider it necessarily a precedent because each case is unique in and of itself. And a lot of the other testimony that's been presented to you today about how much, who's well, sharing wells, none of that really matters. All that matters is the factors for a variance and whether or not he can get a variance for this structure. With that I would urge this board to close this hearing to testimony and discuss it amongst yourselves.

Chairman Phelps: Thank you, Ms. Connell. You may sit down. I'll entertain a motion now to close the hearing.

APouch: I so move.

TEngel: I'll second.

Chairman Phelps: All in favor. Unanimous. We are now closed to public hearing and we are now amongst ourselves as a board. Comments?

TEngel: This is supposed to be a well house, a well building just to cover the well and tanks?

EGoodman: Yeah.

TEngel: Ok. I suggest that if we are considering giving it to him, we give it to him as a smaller building to cover the tank and the existing well. Not for storage or anything else just for to cover the well. And I suggest we pick a dark, ask him to use a dark color so that it won't stick out and won't effect her property.

APouch: I agree but how do we, I mean should we tell him what size to build? Should we say just large enough to cover it? Or should he come back and show us what he wants to put over it?

Deputy County Attorney SZambon: If I may make a recommendation. Since Toby has been out there and Toby can go out there again and instead of making Mr. Benton, again, if you decide to give him the structure I can write the conditions so that Toby has to approve the size, in terms of you've given him the general thing and it has to just cover the well area. Toby, do you feel comfortable with that?

Zoning Administrator TLinville: We can do that.

Deputy County Attorney SZambon: And then in terms of a dark color-

TEngel: I suggest that we call out brown because it just won't show as much if it's brown.

Deputy County Attorney SZambon: Yeah, I would say pick a color or pick several colors. I don't think you should put Toby in charge of aesthetics.

APouch: Brown.

Deputy County Attorney SZambon: Brown. You want brown, ok.

Zoning Administrator TLinville: You get two color choices. I just bought one of these buildings. You have to pick two colors.

TEngel: Brown and charcoal grey. I don't know.

Chairman Phelps: What are all the other colors?

EGoodman: Are you saying he's got to use a prefab metal building?

Zoning Administrator TLinville: He doesn't have to.

TEngel: He doesn't have to if they build something else over it.

Deputy County Attorney SZambon: Here are the colors. You got red, light grey, charcoal, blue, green, brown, white, ivory, tan.

Chairman Phelps: Well brown or green. That's a dark green so say dark green, it's foliage color.

JTelker: But you're talking about a small building.

APouch: Well it may not be metal.

Deputy County Attorney SZambon: Here is the pamphlet. I will pass it around.

JTelker: It may not be metal. What if you tell him the size and let him go with it.

TEngel: Yeah, because he doesn't have to use a prefab. He might find it cheaper to build something.

Deputy County Attorney SZambon: Or you might just want to say a dark color or a earth tone color. And then you don't have to have this discussion. That would be my suggestion. Or say what colors you don't want.

TEngel: A dark earth tone color.

Chairman Phelps: A dark earth tone color. That's the same color that you've got right there.

TEngel: Ok. And smaller possibly even lower.

Deputy County Attorney SZambon: The way I'm going to write it is; small-

APouch: As possible.

Deputy County Attorney SZambon: -To fit the existing equipment.

Chairman Phelps: I would say practical.

APouch: You have to get in it.

Deputy County Attorney SZambon: Alright. I'll use the word practical. And then I'll put under the discretion of the Zoning Administrator.

TEngel: And he understands what we're talking about as far as small, low, not to dominate the site.

APouch: should he have to move the site? It sits on her property.

Zoning Administrator TLinville: Six foot is the lowest height.

TEngel: And it's set in a little hole anyway, as it is so it will be low. So it doesn't affect her property.

Chairman Phelps: But not encroach.

Deputy County Attorney SZambon: In a variance we can't move property lines.

Chairman Phelps: But we can say 'can abut but not encroach'.

APouch: And he should remove whatever this is on her property.

Chairman Phelps: Well he says that the corner has already been angled back, so-

EGoodman: Who verifies that?

TEngel: Toby can take a look at that and just make sure nothing is encroaching on her property. That you can tell anyway that's encroaching.

Chairman Phelps: Right. Anything else?

Deputy County Attorney SZambon: Just make sure I have this right. The conditions are:

-A smaller, lower structure to fit the existing equipment as practical under the discretion of the Zoning Administrator

-The color has to be a dark earth tone color

-It can abut but not encroach on the adjoining properties

Deputy County Attorney SZambon: Is that correct?

Chairman Phelps: That's good.

TEngel: Or we say 'abut' it'll be a few inches in, I guess if it's just abutting.

Zoning Administrator TLinville: Encroach means it crosses the property line. Abut is up to the property line.

Deputy County Attorney SZambon: But you still haven't actually made a decision. You've made conditions.

Chairman Phelps: We're just listening so it's open for further discussion on what we have said and what Sarah has summarized that we have said. Are there any additional comments, conditions or whatever anyone would like to propose or discuss? Tony?

TEngel: That seems fair, I mean if he's allowed to have his tank there, to cover the tank I can understand that. It will actually look better covered than it would be if it was exposed.

JTelker: We have a neighborhood that's all septic. I don't live on this side of Hendersonville and everybody has those pipes people put little things over them all the time. I mean not the fake rocks but little structures.

TEngel: This is a big tank.

JTelker: But what I'm saying, this to me, I would rather see it covered than sticking out of the ground like that.

Chairman Phelps: Ok. Would somebody like to make a motion and, Eric want to read this? Refer to her suggested motion.

EGoodman: Ok. The zoning board action suggested approval motion is I move that the Zoning Board find and conclude that variance application V-09-08 complies with the necessary provisions of the Henderson County Zoning Ordinance for the following reasons:

- Are there practical difficulties or unnecessary hardships in meeting the letter of the law?

- Can a reasonable return or reasonable use be gotten from the property if the applicant complies with literal terms of law?

- What are the unique circumstances related to the land?

- Is the hardship the applicant's fault?

- Is the variance in harmony with the spirit and intent of the law?

- Will the variance protect public safety and welfare?

- Will the variance do substantial justice?

- Do not consider nonconforming uses in the neighborhood or other districts - they are not a reason for a variance.

EGoodman: Do I need to read the conditions?

Deputy County Attorney SZambon: I can read the conditions if you want.

EGoodman: Ok. And I further move the variance be approved subject to the following conditions:

Deputy County Attorney SZambon:

- That the structure be small, only as large as necessary to fit the existing equipment as practical under the discretion of the Zoning Administrator. It has to be lower so as not to obstruct the view of adjoining properties.

- And the color must be in a dark earth tone color to blend in with the surrounding area.

- In addition it can abut but cannot encroach on adjoining property.

Deputy County Attorney SZambon: Now we need a second.

TEngel: Second.

Chairman Phelps: Tony seconds. Is there any discussion on the motion? If not shall we come to a vote? All those in favor raise your right hand. Opposed, none. Unanimously approved. Mr. Benton, if you would approach the podium again please. You heard the actions of this board. You will meet with Toby and make the necessary arrangements and we will have the formal order at our next meeting. Do you have any questions?

RBenton: No. I'll get with Toby and arrange a meeting out there. I'd like to be when you walk it off and tell me what I have to do. It won't be this afternoon I hope.

Deputy County Attorney SZambon: No. And you can't do anything to the property until this board signs the order next month.

RBenton: In that regard.

Deputy County Attorney SZambon: Yes. In the regard as what your variance is for.

RBenton: I understand. I haven't done anything wrong yet I don't think, by putting that box in the back.

Deputy County Attorney SZambon: Not as far as I know.

RBenton: I don't think so. Thank you very much.

Chairman Phelps: Do I have a motion that we close this hearing?

TEngel: I motion we close.

EGoodman: Second.

Chairman Phelps: The motion has been made and second to close the hearing. All in favor raise your hand. Opposed, no. The hearing is now closed. I'm going to use chairman's discretion and we'll have a five minute recess here to stretch our legs before we hear the next case.



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**Case V-09-09 Gerald & Fonda Haskins**, requesting a variance of 2 feet 4 inches side yard setback for purposes of subdividing the property located at 209 Shepherd Street, Hendersonville. Zoned Residential 1. (PIN 9577284785)

**Parties:**

Gerald Haskins, property owner

Charlene Rogers, adjoining property owner

**Witness:**

Cameron Baker, surveyor, Associated Land Surveyors

Chairman Phelps: Ok. We're back and all here. Please remember that I read the opening statement and it applies to this case as well. I will entertain a motion at this point in time to open the hearing of case V-09-09.

JTelker: So moved

EGoodman: Second.

Chairman Phelps: JoAnne motions. Eric seconds. All in favor raise your hand. Unanimous. We are now in open hearing. Toby, would you like to begin? ~

Zoning Administrator TLinville: Yes, sir.

Chairman Phelps: Everybody has this behind the green page in their book.

Zoning Administrator TLinville: This is also a variance application. This property currently has two homes on it and the property owner wishes to subdivide the property so that each home is on a separate lot. In order to accommodate the Subdivision Ordinance, which requires a 30 foot setback, I'm sorry, a 30 foot right-of-way to the back property, they are requesting a variance because the side yard of this existing home will be too close. It will be 2 ½ feet too close to that 30 foot right-of-way. So you've got two existing homes and they want to subdivide. So that's what the variance request is.

Chairman Phelps: Is the division we're talking about in the middle, between the two homes?

Zoning Administrator TLinville: Yes, sir.

EGoodman: Yeah, there's a survey right here.

Zoning Administrator TLinville: I'll step you through the packet. You're variance application is first, signed by Mr. Haskins. Then the memo from TRC. The Technical Review Committee did give approval for this variance as well. Next you'll see a zoning report of the property with aerial, and you see that it's currently a single piece of property, and it's rectangular shaped. Both 209 and 207 are on the same property. You've got another view, another aerial view. And next you have a survey from Associated Land Surveyors. And you can see the new line there, and the dotted line is the proposed 30 foot right-of-way. Our Subdivision Ordinance does not allow a flag lot to be created, which is what this would be if you had a narrow piece of property back to the back piece. We do require a right-of-way. It must be 30 feet and the existing porch on this house will be too close to that right-of-way to meet the side yard setback. And you have just a larger copy of that same survey. And that's it. If it pleases the board I'll make that part of the record.

Chairman Phelps: We will accept that if there be no objection, we'll accept that into the record. Was there a committee meeting on this?

Zoning Administrator TLinville: Yes, sir, and they approved this variance.

Chairman Phelps: Now, I remember before, recently, we had a case slightly different where we were talking about subdividing a lot, so this is not in anyway-

TEngel: Is it the same one?

Zoning Administrator TLinville: That was, no, it was, the variance request there was that those two properties would not meet -- if that property were subdivided it would not meet the minimum density. The lot size was too small basically. That's not an issue here. You can have basically quarter acre lots, so this is point seven acres (0.7) so each lot will be larger than that quarter acre. So lot size isn't an issue. You're only looking at a variance because the existing home, the front one will be too close to that right-of-way.

APouch: By two and a half feet?

Zoning Administrator TLinville: Correct.

Chairman Phelps: Just by two and a half feet?

Zoning Administrator TLinville: Right. It's probably, without measuring 10 to 12 feet, just the right-of-way itself will be 10 to 12 feet from the driveway, the existing drive that's there. Probably have a 12 foot gravel drive within that 30 foot right-of-way.

Chairman Phelps: Questions of Toby, from the board? Sarah? If not is Mr. Haskins here? Would you please come forward to the podium, sir? State your name again and present whatever evidence you would like.

GHaskins: Ok, well my name is Gerald Haskins and we are requesting this variance. Now let me ask a question. There's two people here from Shepherd Street. I'm not sure, they may be talking about a setback or something. And I'm not sure that the surveyor can't answer all those questions right away.

Chairman Phelps: You'll be happy to call him as your witness and let him go ahead and explain it.

GHaskins: Ok. Let me call him.

Chairman Phelps: And too again, sir if you'll state your name.

CBaker: Cameron Baker with Associated Land Surveyors. Our company also surveyed the property back in '96. The houses and the driveway was existing then, they just never followed through with the division. But it was basically the same scenario, they wanted to subdivide it. Mr. Haskins now has a buyer for the back parcel and he's just wanting to get it cleaned up to be able to close on that property. Other than that everything else was pretty self explanatory from what Toby had stated before on the property.

Chairman Phelps: Questions? And your survey confirmed then all that has been said here?

CBaker: Yes, sir.

Chairman Phelps: So it's just the 2 ½?

CBaker: Yes, sir, just the 2 ½. All other structures seemed to be fine when we did the field work out there.

EGoodman: Looks like everything else is in compliance.

CBaker: Yeah, everything else, all the other outbuildings and everything were far enough outside the ten foot setback there.

Chairman Phelps: Alright. Thank you, sir. Mr. Haskins is there anything else that you wanted to present?

GHaskins: No, sir.

Chairman Phelps: Thank you. Are there others then that would like to present evidence before this board?

Deputy County Attorney SZambon: Ma'am, you were here earlier and you were sworn in, yes?

CRogers: Yes. I would just like to see this plat.

Chairman Phelps: Please state your name again.

CRogers: Charlene Rogers. My property goes up against the property you're talking about. My property is on the bottom side of the property he's going to sell.

Zoning Administrator TLinville: (to Ms. Rogers.) Here you go. This is the propose property line. This is the 30 foot right-of-way to access the back of the piece. And here's where the variance will be, between the corner of that front lawn is the new right-of-way.

CRogers: I have had a survey done and that building was not ten feet off the line. But I was told it didn't have to be ten feet off the line since it was just an outbuilding, but it had to be built to code and it was not built to code. But that's on the opposite side of the property that he, I mean it's on the property that he's wanting to subdivide, that goes up against my property.

Zoning Administrator TLinville: She's referring to the wood shed on what would be the back piece of the property.

TEngel: And the one that shows 13-

CRogers: It shows 13 feet but I had it surveyed and it was not 13 feet.

Chairman Phelps: How could you survey someone else's property?

CRogers: I surveyed my property. I go up against that property.

Chairman Phelps: Right, but the shed is not on your property.

CRogers: The shed is on his property, but it's not ten feet off my line.

TEngel: And you had that surveyor to onto your property, or his property to survey the distance?

CRogers: Excuse me?

Deputy County Attorney SZambon: How did – the board's question is; how do you know if your surveyor didn't go on his property, how far the shed is from your property line?

CRogers: Because my surveyor put stakes down through there and we measured. To start with, let me back up, to start with he had a renter in that property. And the renter built the shed. The renter was with the understanding that Mr. Haskins owned all the way to the creek, which he does not. There's a corner out there, if you see that little pie shape that is not owned by Mr. Haskins. It's owned by the Whitmire's that were not able to attend today. And to start with his renter was building it on Mr. Whitmire's property. Mr. Whitmire went and talked to him and told him he was building it on his property and he moved it some. But when he moved it some he moved it back toward my property. Do you see where I'm talking about?

Chairman Phelps: Excuse me ma'am, but this affects our case how?

Deputy County Attorney SZambon: It does not. There's nothing this board can do about the placement of the shed because that is not what is the subject of this hearing tonight. If you have a problem with the placement of the shed-

CRogers: I did, I called the board. I've heard nothing from them.

Deputy County Attorney SZambon: You called which board?

CRogers: I called the Zoning Board. I've talked to Susan Frady.

Zoning Administrator TLinville: You've talked to Brenda Miller.

CRogers: I've talked to three different people.

Deputy County Attorney SZambon: You've talked to Code Enforcement and perhaps Building Inspections. There's nothing this board can do.

CRogers: And I have heard nothing from anybody.

Deputy County Attorney SZambon: All we're only dealing with right now is this driveway right-of-way area but not the other side of the property.

CRogers: But you're dealing with subdividing that piece of property.

Deputy County Attorney SZambon: They are not sub dividing it. They are only dealing with the variance. Subdivision is handled by our Planning Department.

CRogers: Ok.

Chairman Phelps: Is there anyone else that would like to present evidence to this board at this time? If not Mr. Haskins, is there anything else you would like to inform the board?

GHaskins: No, sir. Of course the surveyor's already put that shed on there and has the setbacks so I don't – in all the surveys I've had I don't – that building was built by the other renter but it was never encroached on anybody's line, based on the survey I have.

Deputy County Attorney SZambon: Again, there's, you know.

GHaskins: Yeah, I understand so I have no other questions.

Chairman Phelps: Thank you very much. Any other questions from any of the other board members? Sarah, Toby? If not I'll entertain a motion that we close the hearing.

TEngel: I motion that we close the hearing.

EGoodman: Second.

Chairman Phelps: And a second. All in favor raise your hand. Passed unanimous, we are now closed and are free to discuss this amongst ourselves, open to any comments or questions anyone might have.

JTelker: I think it's a viable request. If you don't grant it it's going to be a tremendous hardship. You're talking about moving a house 2 ½ feet, I mean, a porch. It doesn't seem to me that it's going to be, you know, that – it's 2 ½ foot porch that sticking out basically. And if you're talking about – it would definitely be a hardship for the –

TEngel: Most people couldn't even see the 2 ½ feet.

EGoodman: Right. Yeah.

TEngel: It won't have any effect on the neighborhood. It's existing anyway there.

EGoodman: It's not hurting anybody.

JTelker: He's got a buyer. He's got a, you know.

Chairman Phelps: Yeah, go right ahead JoAnne, happy to entertain that. Are there any other comments? If not we'll entertain a motion.

JTelker: Do I have to read this whole thing?

Chairman Phelps: Just the bottom part, the 'Suggested Motion'.

JTelker: Let me get my number.

Zoning Administrator TLinville: V-09-09.

JTelker: I move that the Zoning Board find and conclude that variance application V-09-09 complies with the necessary provisions of Henderson County Zoning Ordinance for the following reasons:

-It complies in all ways, really.

-And I move that it be approved.

EGoodman: I second her motion.

Chairman Phelps: And Eric seconds. Is their motion satisfactory Sarah?

JTelker: Do we need more Sarah?

Deputy County Attorney SZambon: Yes, clear.

JTelker: I have to do the factors?

Chairman Phelps: No, just say enough for the – did you read this last part?

Deputy County Attorney SZambon: Yeah, and just the 'and I further'.

JTelker: And I further move that the variance be approved subject – variance be approved – there is no 'subject to conditions'.

Deputy County Attorney SZambon: No, you guys didn't make any conditions.

JTelker: I just move it be approved.

Chairman Phelps: Approved as submitted, I guess.

EGoodman: Yeah, is that the condition, approved as submitted?

Deputy County Attorney SZambon: There is no condition. It's just approved or denied.

Chairman Phelps: Approved, period.

TEngel: Are we ready to vote?

Chairman Phelps: Ready to vote, then we'll call-

Deputy County Attorney SZambon: We need a second.

TEngel: Second.

Chairman Phelps: Moved and seconded. There being no further discussion on the motion we will come to a vote. All in favor indicate by raising your right hand. Opposed, no. Unanimously approved. Mr. Haskins, if you would come forward please to the podium one more time. You heard what the action of this board was. We'll have our formal order at our next meeting.

GHaskins: Ok. So the closing should be set after you've had your formal meeting?

Deputy County Attorney SZambon: Yeah, you cannot even subdivide the property until this order is in place.

GHaskins: Right, I understand that.

Chairman Phelps: And our next meeting date is what, January the 6<sup>th</sup>.

Deputy County Attorney SZambon: Sixth, right?

EGoodman: That'll be your Christmas present after Christmas.

GHaskins: Ok. But after January 6<sup>th</sup> there can be a closing?

Deputy County Attorney SZambon: After January 6<sup>th</sup> then you have to take this order to the Planning Department and <sup>have</sup> it subdivided. Then they approve the subdivision. Then you have to have the subdivision recorded and then you can close.

GHaskins: But it's all almost a rote thing from now on, just a time delay.

Deputy County Attorney SZambon: Right. Basically it depends on if the Planning Department finds any other reason not to let you subdivide it. But this board is not in charge of that.

GHaskins: Ok. Thank you.

Chairman Phelps: I need a motion to close the hearing.

TEngel: I motion we close.

JTelker: I second.

Chairman Phelps: And JoAnne seconds. We are closed. Any other business? As I understand it we will not meet in December for a December meeting, right? We will meet January 6<sup>th</sup>.

Zoning Administrator TLinville: Correct.

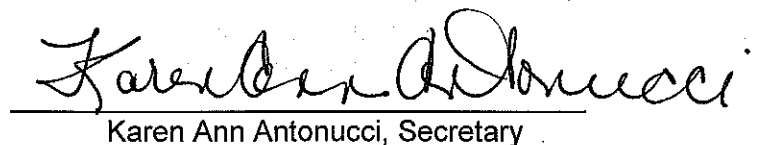
TEngel: I look forward to coming in between Christmas and New Years.

Deputy County Attorney SZambon: I don't think it's a good idea.

Chairman Phelps: To clarify, our next meeting is January 6<sup>th</sup> same time, same place. There being no objection I hereby declare the meeting adjourned.

The meeting was adjourned at 4:34 p.m.

  
Chairman, Jim Phelps

  
Karen Ann Antonucci, Secretary