

MINUTES OF THE HENDERSON COUNTY
ZONING BOARD OF ADJUSTMENT

The Henderson County Zoning Board of Adjustment held its regular meeting, Wednesday October 28 at 4:00 p.m. in the King Street Meeting Room, 100 N. King Street, Hendersonville, North Carolina. Those present were: Jim Phelps, Chairman, Jim Crafton, Vice-chairman, Ann Pouch, Tony Engel, Alternate Board Member JoAnne Telker, Zoning Administrator Toby Linville, Deputy County Attorney Sarah Zambon, and Zoning Board Secretary, Karen Ann Antonucci. Regular Board Member Dean Bonessi did not attend.

Chairman Phelps: Called the meeting to order at 4:00 PM. He introduced the board. Under the old business we have to review our minutes from the September meeting. Hopefully everybody's had a chance to read and review those. Are there any adjustments or comments or corrections to be made?

JCrafton: I move we approve.

APouch: Second.

Chairman Phelps: All in favor say aye. Opposed, no. Unanimously approved and accepted. All board members were in favor of approving the September 30th minutes.

Chairman Phelps: We have one item of new business. Case 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. They utilize the property for product processing and storage. Location: 51 St. Pauls Road, Edneyville. Would I remind everyone that wants to speak or who wants to appear before this hearing to please sign in if you haven't already done so, there's a sign-in sheet up front.

Chairman Phelps: It's a variance hearing so are we in quasi-judicial?

Deputy County Attorney SZambon: You are in quasi-judicial. You'll have to read the long script.

Chairman Phelps: Ok. If everyone has signed in we'll read this Opening Statement for the Zoning Board of Adjustment regarding this case and the hearing.

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.

Please come forward to the podium. State your name and address and why you're a party to the case.

SStepp: My name is Stuart Stepp. I'm the architect for Mr. Thom on the Mona Lisa project. My office is the Singleton Center in Flat Rock, North Carolina.

Chairman Phelps: Anyone else?

Zoning Administrator TLinville: Mr. Thom, read your name and address into the record, please.

PThom: I'm Peter Thom, owner of Mona Lisa Foods. And the address is 51 St. Pauls Road, Hendersonville.

Chairman Phelps: You are the applicant?

PThom: Yes.

Chairman Phelps: And you will be calling your architect as a witness?

PThom: Yeah, I mean it's pretty straight forward. He has all the information.

Chairman Phelps: Everyone who is going to testify will please be sworn in at this time.

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'll motion.

Chairman Phelps: Do I have a second?

APouch: Second.

Chairman Phelps: All in favor, aye. Opposed, no. Unanimous.

All board members were in favor of opening the hearing.

Chairman Phelps: We are now open for hearing. Toby, would you like to open this with staff comments?

Zoning Administrator TLinville: Please. Let me go through the packet for you folks so you know what items you have. First is the memo that went to our Technical Review Committee. They approved, they both recommended the variance and the site plan on their October 6th meeting. They made the following statement with the recommendation with the variance: that the existing building was there when Open Use was in place and therefore there were no setbacks at that time. There are site limitations with the septic system preventing them to move this loading area to the other side of the building and still maintain the required fire code access standards. And there's no platted right-of-way along St. Pauls Road. It is a common law maintained right-of-way with a ditch-line. And DOT is comfortable with this type of configuration. Next you have your variance application. Then there is an aerial of the existing building and they are proposing an addition that will line up with that existing building. And you'll see in the site plan in a moment, where the rear loading dock will be located. And that's where the variance request is. The next page is the zoning report showing the aerial again. Then the next page is the site plan. You see the existing building and then the new building is split into two sections. One will be processing and then the back will be storage. You can see in the notebook very busy. Karen Ann, can you hand out those large plans so the board can see it a little easier? But you'll see at the back of the building along St. Pauls Road the new loading dock. And the applicant or Stuart can speak to this in further detail. But right now Mona Lisa does their shipping and receiving from the same loading dock up front. So they're walking on top of each other all the time. So this will allow them to have a true separate shipping and receiving area. That's all I have in your packet. If you don't have any questions I'd ask that you accept this into the minutes.

Chairman Phelps: If there's no objection we'll accept them into the minutes. But I do have a question. Help me to understand this lay out here because St. Pauls Road, is that going beside the building?

Zoning Administrator TLinville: Yes sir.

Chairman Phelps: Ok. So then the new addition, although it's in the back of the building still has one side facing the St. Pauls Road?

Zoning Administrator TLinville: Right.

Chairman Phelps: And the back of it is what we call, what? The new road?

Zoning Administrator TLinville: That is a un-built subdivision. That roadway is not there. That will be or it could be a subdivision, but it's not built at this time.

Chairman Phelps: And this red line in this one, that's the extent of his property?

Zoning Administrator TLinville: Right.

JCrafton: Are there any buffering requirements between his property and the subdivision?

Zoning Administrator TLinville: No, it's all the same zoning district surrounding. You can't all see this but there is a great elevation change and you can see the, kind of the bare earth around there. And the septic system is on the upper portion of this. You can see above that aerial, you can see the drain lines there, the green slope lines there. So that's a big obstacle aside from the amount of grading it takes to get the ground flat. That's his septic area as well. In order to keep the building lined up and the line of traffic movement that they need it's going to require a variance. What the trucks will do, will be back - these come in now and spin around. And these trucks will pull in and back to this point. DOT was happy with using the current entrance they have and not having to do another curve cut along St. Pauls and create turning traffic. Have you had any luck with the driveway permit yet? (to Mr. Stepp).

SStepp: We have the permit application and the check and the revised plans to them. The last word I heard from Carl Owensby with DOT last week was that he thinks they will let Peter leave that driveway like it is. But I don't have a final word yet, Toby.

Zoning Administrator TLinville: They wanted to review that driveway because it's a little wider than what they would normally approve today.

SStepp: We plan no changes to it but the last word I have from them is that they think they'll let us keep it like it is.

Zoning Administrator TLinville: Either you or Peter or whoever fill in the blanks that I left out there. What did I miss?

SStepp: I don't think you missed anything, Toby. Just the two things I would point out to you is the existing building – the new addition will be in line with the existing building. And the existing building we do not need a variance for, nor do we need a variance for the main addition. It's ten feet away from the setback line. The variance is for the little tiny dock that you see up at the top of the page, because it does stick out into the setback line. But we need to remember that that's to the claimed right-of-way is why we're getting a variance. The actual right-of-way is the ditch line. And if we were to stay 25 feet away from the ditch line we wouldn't be asking for a variance either. So we're sort of asking for a variance from an imaginary line because it's the claimed right-of-way, not the real right-of-way.

Chairman Phelps: So how much in feet, how far does it really encroach?

SStepp: The dock itself will encroach 14 feet into the setback from the 60 foot claimed right-of-way.

Chairman Phelps: Is that the only thing that would be into...

SStepp: That's the only thing that will be in there. And the tall – the main portion of the building is 30 something feet tall. The dock enclosure will match his existing dock enclosure which is only 18 feet tall. So it's just a small piece of the building that sticks out for the shipping dock.

Chairman Phelps: But really the bulk of the building...

SStepp: The bulk of the building is ten feet away from the setback line. And it'll be in line with the main building that's there already. So I think that's an important part. And then the other important part to us was the setback is to the claimed right-of-way and actually the real right-of-way on St. Pauls is the ditch line. So we're trying to do this properly and go through this process. But if the setback was to the real right-of-way then we wouldn't be asking for a variance either because even this new dock is farther away than 25 feet from the ditch line.

Zoning Administrator TLinville: Do you remember what the distance would be from the center line?

SStepp: On the claimed right-of-way according to the survey, the center line is – it would be 30 feet from the 60 feet claimed right-of-way on each side. And that ditch line varies, Toby, but I think at the worst case is where I cut those sections for you and DOT. At the worst case where their ditch is closest to the road, the center of that ditch is only seven feet from the pavement.

Zoning Administrator TLinville: How far would the new dock, would the edge of the new dock be?

SStepp: The new dock would still be ten feet – would still be 25 feet and another ten feet.

Zoning Administrator TLinville: So it would be 35 feet from the center line?

SStepp: From 30 to 35 feet because it's on an angle so I can't tell you if that's exactly right but it's at least five feet or seven feet away from the setback line, if the setback line was to the ditch. I know it's a little confusing. Now I can't talk without drawing so if I had a board here I could draw for you.

Deputy County Attorney SZambon: Mr. Chairman, with your permission I'd like to ask Mr. Stepp some questions.

Chairman Phelps: I was going to ask you, Sarah.

Deputy County Attorney SZambon: Do you have questions before I start?

Chairman Phelps: No. I was going to call on you, right now.

Deputy County Attorney SZambon: Mr. Stepp, if Mr. Thom does not get this variance how will his business be affected?

SStepp: If he doesn't get this variance he would – well we wouldn't be allowed to have the shipping dock so the whole point of the addition wouldn't really work. I mean the point of the addition is to change the configuration of the flow of his business right now. Where he has one dock where he has to do both shipping and receiving – what the addition does is give us one additional factory line and then a warehouse line behind that. So his end product comes in the front that would be facing the bottom of your sheet. And then the flow would go up through the building to the warehouse. Then the finished product would come out the shipping line. So if he does not get the shipping dock I'm not sure if the project would even go ahead. I don't know.

Deputy County Attorney SZambon: But he would still be able to do business in that facility?

SStepp: He could still do the business he does right now in his facility. I'm not sure he would build the addition or not. I don't want to speak for him.

PThom: I can say something to that. What would really happen is we would have to completely look at what we want to do, was expanding our shipping because today it's very important for us to have a lot of product in stock so we can react to our customers quickly so that's why there is this large storage. What we do today is when we get orders in, they're almost made to order. And the larger customers won't wait two weeks. So we want to have more storage and then obviously the flow has to be right. It wouldn't really increase a lot of employees, maybe two. Mainly off of shipping and handling part, but it would make us much more compatible to ship much quicker than what we do right now. And not having that extra loading dock makes the whole flow not really work. Unfortunately we ended up having to have that variance and that's really what it is that tiny little loading dock. What would it mean? I don't know. Obviously I don't want to move to a different location but with what we have there, our business plan would probably be good for the next ten years. Nothing is forever, but right now it's not adequate enough. Our business has actually grown quite a lot. I mean in the recession that people are saying that we are in we in the chocolate business did not get any of this. We're blessed with that. Our business is actually up about 22% from last year. It has a lot to do with the things that we make. I import it from overseas and we're actually making this product here, this chocolate product. Now with the dollar being so weak a lot of customers are looking for an alternative producer for this product and we're that producer. It is a niche market, I mean, you can find our product, for example at Sam's Club or Wal-Mart too, which would be our larger customer. It goes to cake plants and they use all those chocolate pieces to decorate cakes. That's really what it is. And that's what we do at Mona Lisa, is to make products for the cake industry.

And then the smaller part is so very nice to be in, is basically convention businesses and hotels that may use a chocolate product to decorate for brunches and so on. So it's an added product that chefs may use or – I don't know if you knew what was going on but now you know.

Deputy County Attorney SZambon: Mr. Stepp, why does the dock have to be on the side of the addition that it's on, where it's in the setback?

SStepp: As opposed to?

Deputy County Attorney SZambon: As opposed to the back side or this – is it because of the flow of traffic?

SStepp: Well a truck couldn't get to the back, to what you're calling the back. On the left hand side of the building that's just a gravel parking lot right now. And if you'll look at the upper left hand picture portion of that we're creating a new roadway for the Fire Marshal that's 12 feet wide. We're supposed to have a 20 foot wide drive around the building. The Fire Marshal has allowed us for 150 feet of that area that we can decrease to 12 feet because they can reach 150 feet with their fire hoses. So all we can get is a 12 foot driveway around that corner. And that's for the fire trucks but it would not be enough for a tractor and trailer to back up to a dock on that upper end.

Deputy County Attorney SZambon: And this side has a slope on it, correct?

SStepp: That's where the – that's what I'm talking about. Because of that slope we've got enough room to get the fire trucks around the entire building in a 12 foot lane. But we don't have enough room to turn a tractor and trailer truck around in there and back up to a new shipping dock on that upper end.

Deputy County Attorney SZambon: Will this have any effect on public safety?

SStepp: The variance?

Deputy County Attorney SZambon: The variance, well the variance with the dock.

SStepp: I don't think – I think this is helping.

Deputy County Attorney SZambon: Will it change at all traffic on St. Pauls Road?

SStepp: No.

Deputy County Attorney SZambon: For better or, I mean will it be easier for the trucks to get in and out of Mona Lisa with this change in flow of traffic?

SStepp: It's not going to affect it one way or the other. The thing that would affect it is if DOT made Peter decrease the width of his existing drive because the trucks do have to come in St. Pauls and make a pretty sharp turn. And because the roadway on St. Pauls is one of the old County roads, that's pretty narrow, the trucks have to use that wider driveway. So the owner's willing to decrease his driveway width if the road was wider, which would allow the trucks to still make that turn. As far as this variance is concerned there's no issue. There's no change in that so it's not less safe at all. The trucks are able to make the same turn.

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

Chairman Phelps: Any questions from board members? What effect, if any, would it have if they did widen St. Pauls Road?

SStepp: If St. Pauls Road was widened I think Mr. Thom would be more inclined to decrease the width of the existing driveway if DOT was to say that we needed to. Because again, it's just a matter of how much room it takes for a tractor and trailer to make a 90 degree turn or a 180 degree turn. So if the road was wider then they could use part of the road instead of having to use his driveway entrance. But since the road is one of the narrower roads that you see in our County, then he needs that wider entrance which was allowed at the time that he built his original building.

Chairman Phelps: But then by the trucks getting off that actually helps the flow of the traffic right, by coming off wider rather than doing all this?

SStepp: Yeah, the main thing is to get the trucks off of St. Pauls as quickly as possible. And right now that works. This new dock is not going to affect that.

Chairman Phelps: But it would make the dock closer to the road though if they widened it, right?

SStepp: The rear dock would be closer to the road if they widened the road. Well, yeah but we wouldn't need the road widened on that portion of the building. The only place the road would need to be widened is at the front entrance. They wouldn't have to widen the road.

Deputy County Attorney SZambon: But if DOT decided to widen the road it would make the dock closer to the road.

SStepp: Yeah, and then they would probably buy new right-of-ways which they currently don't have.

Chairman Phelps: Additional questions?

JCrafton: I have a couple of questions. Stuart, what is in the facility right across the street on St. Pauls Road from this?

SStepp: Well that's where Peter used to be. I'm not sure what's in there now. What's in the building across from you, Peter?

PThom: There's a basically like a machine shop.

SStepp: Precision Machine Shop, yes.

JCrafton: Ok. And did I understand that this addition, other than allowing for better flow of material, is it expanding his operation? And does that mean there would be increased truck traffic?

SStepp: I don't know.

PThom: Well yeah. It would probably increase our business. That's what we hope for and so there would probably be more truck traffic. But I don't think that we have excessive truck traffic. And keep in mind that once they actually drive off the road into our property, it's all happening on our property. But it's as easy as a car or truck pulling in and all the turning around or the driving to the dock is happening within our property. It's not happening on the road itself, so I don't think it really...

JCrafton: How frequently does a truck leave your property?

PThom: I don't know. We may have five trucks a day. And to you it may sound like a lot. I mean how long does a truck – he pulls into the driveway, that transfer takes minutes and then he's on our property.

JCrafton: Well the question is how much new traffic your business brings to the area traveling those roads to enter your property and your site, is the question that I was trying to get at. So if you're doing five trucks a day now what would you anticipate your increase in business would generate?

PThom: You would think if we would double our business which that we could do out of our new facility we would have ten trucks a day.

JCrafton: Stuart, can you give us any sense of, I mean we all travel out to Edneyville, but can you give us any sense of the road's ability to handle that added traffic?

SStepp: I'm not sure you would, I mean again we're only talking about the first few hundred feet of St. Pauls. Everything else is on 64 and there's a lot more trucks than that on 64. I think it's just a short portion of St. Pauls, you know, the whole portion of St. Pauls the trucks would be on is on my site plan. Because that angle gets you back to 64.

JCrafton: And the added traffic on 64, you're saying, would be insignificant?

SStepp: Well I'm thinking during apple season, I mean I'm from Dana, so I know, you know, I've seen 24 tractor and trailers lined up at my grandfather's store before on Dana Road. So I don't think that ten trucks a day is a big deal, you know.

PThom: There's plenty of trucks on 64 especially during apple season. And there's plenty of trucks that drive in the back of St. Pauls Road which extends who knows where – all the way to Bearwallow and so on. So there's plenty of traffic on these roads regardless. It's not like a residential neighborhood, especially right there on the intersection. It's definitely not as bad a Four Seasons Boulevard.

SStepp: The Justice Center is just right down from the piece that you asked about in the beginning, what's across the road from him. So that's just right adjacent to the Justice Center Academy.

Zoning Administrator TLinville: One thing related to traffic, the Land Development Code requires traffic impact studies for certain uses. And it's any subdivision with 100 or more lots or expansions of residential and non-residential development that would generate an additional 1,000 plus vehicle trips

per day or 100 plus trips during peak traffic. So this expansion did not require that. Those are the thresholds where we start to look at that and require turning lanes and road improvements by the property owner to the public roadways. This one doesn't generate that amount of traffic.

Chairman Phelps: Anything else? Thank you.

PThom: Thank you.

Chairman Phelps: If there are no other comments shall we have a motion to go out of public hearing?

JCrafton: So moved.

TEngel: Second.

Chairman Phelps: All in favor, aye. Opposed, no. Ayes have it. We are now in closed to public hearing and we're open to discussion among the board members. Comments?

TEngel: I feel it's very little impact on the area. There's no negative impact. It's nice to have a business doing well at this time.

APouch: I agree.

Chairman Phelps: Happy to hear of one that is.

TEngel: I'm all for it.

Chairman Phelps: JoAnne? (indicated yes) Ann? (indicated yes) Jim? (indicated yes). Well then do I have a motion? Would you help us with the wording, Sarah?

Deputy County Attorney SZambon: You can just say I move to approve variance application V-09-07. That would be quicker.

TEngel: I'll say that

Chairman Phelps: Alright, Tony said that. Jim has seconded it.

JCrafton: I did.

Chairman Phelps: Ok. Any discussion on the motion? If not shall we come to a vote? All those in favor of the motion say aye. Opposed no. It's unanimously passed.

All board members indicated by stating aye they were in favor of granting the variance.

Chairman Phelps: Thank you very much. Gentlemen you heard vote of the board. Sarah we will have the written order at our next meeting?

Deputy County Attorney SZambon: We should talk about that because your next meeting is the Wednesday before Thanksgiving. I will not be here.

Chairman Phelps: So we need to decide.

TEngel: Is there any way to approve it before-hand where we don't have to all come in?

Zoning Administrator TLinville: We talked about that. By doing it by email or phone call, get you a copy of it if you're all in agreement then we have Jim sign it and we have Mr. Thom sign it.

Deputy County Attorney SZambon: But the only problem with that is that is rarely a problem in general but for example, if someone didn't like some of the wording or something, like, you know with conditions we've had in the past, then I have to redo it but then it has to go out to all of you again.

TEngel: When you say someone, someone from our board?

Deputy County Attorney SZambon: Yes. One of you, not me.

Chairman Phelps: Don't we have to set a meeting date anyway for our November meeting, which is probably...?

Zoning Administrator TLinville: Well, yeah we should because I've got at least one case. Who else do we have on TRC? We got a variance?

Secretary KAAntonucci: Two variances.

Deputy County Attorney SZambon: Two variances so you'll have two variances.

Chairman Phelps: So December the 2nd would be the following Wednesday, right?

Zoning Administrator TLinville: Let's move to that date.

Deputy County Attorney SZambon: Yeah, because you'll have to have this approved no later than the 13th or whatever would be within 45 days.

Chairman Phelps: So that would still fall within our 45 days if we agree on the December 2nd date?

JCrafton: I will not be here then. You can get a substitute, I mean one of the alternates. But I can't be here.

Chairman Phelps: Could you be here? (asking JoAnne Telker)

JTelker: Yes.

Chairman Phelps: Ann? Tony? I can be here. December 2nd. That's the first Wednesday.

Deputy County Attorney SZambon: And we'll also have to check on the availability of the room.

Zoning Administrator TLinville: And you all don't have to be here (to Mr. Thom and Mr. Stepp) but after that point...

SStepp: I'm just saying if you're having trouble getting together we still have time. There's no rush.

Chairman Phelps: No. We just wanted you to know when the signed document would be available.

PThom: As long as we can go ahead with the planning.

Zoning Administrator TLinville: We have to comply though. We have to approve that within 45 days of this meeting.

PThom: Thank you very much.

Chairman Phelps: Do we have agreement on the 2nd then for the most part on four people that we know? And you can see if we've got a fifth, right?

Secretary KAAntonucci: Yes.

Chairman Phelps: So the next meeting will be December the second. And I need a motion to close the hearing.

TEngel: I'll motion to close.

Chairman Phelps: Tony. Ann seconds. All in favor, aye. Opposed, no. Unanimously carried.

TEngel: Now we're finished?

Chairman Phelps: I see no other business unless someone on this board has anything else to bring before us?

Zoning Administrator TLinville: We also have in front of you next year's 2010 calendar year calendar for your meetings.

There was a brief discussion on the 2010 and early 2011 meeting dates. It was agreed to move the November 24, 2010 meeting to December 1, 2010. It was also agreed upon to move the December 29, 2010 meeting to January 5, 2011.

Chairman Phelps: I'll entertain a motion to adjourn.

TEngel: I'll motion to adjourn.

APouch: Second.

Chairman Phelps: All in favor, aye. Alright.

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


Chairman, Jim Phelps


Karen Ann Antonucci, Secretary