

MINUTES OF THE HENDERSON COUNTY
ZONING BOARD OF ADJUSTMENT

The Henderson County Zoning Board of Adjustment held a specially called meeting to hear continued CASE SUP-09-01 from January 28, 2009 to February 4, 2009, 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, Tony Engel, Ann Pouch, Alternate Board Member JoAnne Telker, Zoning Administrator Toby Linville, Associate County Attorney Sarah Zambon, and Zoning Board Secretary Karen Ann Antonucci.

Chairman Phelps called the meeting to order at 3:55 PM. He introduced the board members to the parties present.

Old Business:

Case SUP-09-01, Carol Denski, owner / Osvaldo Lapido, applicant, requesting special use permit for Auto Sales – required in Community Commercial zoning as defined by SR 7.10 in the Land Development Code. Location: 3605 Asheville Highway, Mountain Home, on .36 acres, (PIN 9650877723).

Parties:

Carol Denski – property owner

Justin Brooks – adjoining property owner

Linda Brooks – adjoining property owner

Witnesses:

Osvaldo Lapido – applicant

Adriana Lapido – applicant

Chairman Phelps: This is a continuation of our January 28th meeting. The New Business is really a continuation of case SUP-09-01, Carol Denski, owner / Osvaldo Lapido, applicant, requesting special use permit for Auto Sales – required in Community Commercial zoning as defined by SR 7.10 in the Land Development Code. Location: 3605 Asheville Highway, Mountain Home, on .36 acres. Do I need a motion to reopen the hearing?

Associate County Attorney SZambon: Yeah, you need a motion just to go into public hearing.

Chairman Phelps: If I could have a motion.

JCrafton: I move we go into public hearing.

JCrafton: Ann seconds.

Chairman Phelps: All in favor.

All board members were in favor.

Chairman Phelps: We are now in open hearing. We need to swear in everyone or are they already been sworn from the last time?

Associate County Attorney SZambon: They have not. They need to be sworn.

Chairman Phelps: If you're going to present information before this board today or be a witness you need to come forward around the podium there and be sworn in.

JCrafton: Do we need to establish standing?

Chairman Bonessi: We will. First of all I'll do that. Give me your name, your address and...

JBrooks: My name is Justin Brooks, my address, 101 Audrey Trail. I'm an adjacent property owner.

Chairman Phelps: So you're an adjacent property owner.

JBrooks: And this is my mother, Linda Brooks. She's a co-owner with the same property.

Chairman Phelps: Co-owner? And it was Linda Brooks?

LBrooks: Linda Brooks.

Chairman Phelps: Ok. Thank you. I would think unless there's any objection that they would have standing as being adjacent property owners. That's fine. Who else is going to testify today?

CDenski: Hello. My name is Carol Denski and I own the property at 3605 Asheville Highway.

Chairman Phelps: Thank you. You obviously have standing. Anyone else, or do you intend to call any witnesses?

CDenski: No.

Chairman Phelps: You do not?

Associate County Attorney SZambon: Ma'am you're going to – the Lapidos don't have standing in and of themselves because they don't own the property. So what will happen if you want is that when it's your turn to speak you can just call them up and then you can go sit down. And then you don't have to speak anymore.

CDenski: Ok.

Associate County Attorney SZambon: But they will be your witnesses.

CDenski: Ok. They will be my witnesses. Ok. Thank you.

Chairman Phelps: So if you would all come forward around the – if you would remain standing around the podium in order to be sworn in.

Zoning Board Secretary KAAntonucci swore in all parties.

Chairman Phelps: Thank you. You may be seated. Toby will you present the case?

Zoning Administrator TLinville: Certainly. We also have the minutes from the last meeting. Let's just don't forget to do those before we adjourn today. We don't have to do them right now.

Associate County Attorney SZambon: You don't have to do them right now and you don't actually have to do them at this meeting. But Karen Ann did them so you know, you should.

Zoning Administrator TLinville: If it pleases the board, I'll read the packet into the minutes. This is a special use permit for motor vehicle sales. This is an existing business in Mountain Home. It was formerly Ronnie's Towing so the change in use requires the special use permit. There will be no site changes to the building or the grounds other than

maybe some parking grading or something. This is a .36 acre tract. It's zoned Community Commercial. In your packet, oh, and the Technical Review Committee had favorable recommendation to the site plan. Inside your packet is the letter from the TRC, then the application, then there is a zoning report showing the property. The major site plan is next and then an aerial showing the property and that's when it was Ronnie's Towing before. I'll entertain any questions.

Chairman Phelps: Questions from the board for Toby? Toby, one thing that was a little unclear to me, in your letter you say no water or sewer proposed but there is already water and sewer there, right?

Zoning Administrator TLinville: Right.

Chairman Phelps: Any other questions? Sarah, did you have anything to add?

Associate County Attorney SZambon: Just that staff would like to enter Mr. Linville's packet into evidence for this hearing.

Chairman Phelps: If no objection – so moved.

TEngel: Toby, I have a question on the site plan. You say the site plan has been approved. It shows a fenced area that goes three quarters of the way across the road.

Zoning Administrator TLinville: Yeah, that's an unopened alley way and that's existing. It's not anything new that they've proposed, it's just there. I don't know how long it's been there but it's been there for the last five years or so.

TEngel: Is there storing of cars going right into that area? So it'll actually be in the right-of-way.

Zoning Administrator TLinville: We run into that a lot in Mountain Home, where there are a lot of paper streets and alleys drawn that have, you know, un-permitted storage buildings and stuff like this. If the adjoining property owners wanted to use that they would have a legal right to it and that would have to be addressed, but it's never been used.

Chairman Phelps: Further questions?

APouch: I don't understand this picture. The color picture on the back. There're cars – the part that's blocked off in here – that's where the car lot's going to be but there are cars everywhere.

Zoning Administrator TLinville: Right. Those aerials were flown in March of 07 and that's when it was the former – that towing company and he did have a mess out there.

Chairman Phelps: Oh, that's just where vehicles were towed and basically parked?

Zoning Administrator TLinville: That's right. You can ask Mr. Lapido where he intends to keep his vehicles.

Chairman Phelps: Ms. Denski, would you like to come forward then or have – so that you can call Mr. Lapido to present the case?

CDenski: This is where I call Mr...? Thank you.

OLapido: Alright.

Chairman Phelps: Identify yourself again sir.

OLapido: Ok. Basically our business...

Chairman Phelps: Name and address.

OLapido: I'm sorry. My name is Osvaldo Lapido, I am the applicant and I live in 64B Buena Vista Lake in Marion. Basically our business is a wholesale and retail car dealer. 80% of my sales is through the internet. So basically we don't need to display cars out front. Behind the building we have enough car lot to put the cars for sales. So only what I need is just the customer and handicapped parking in front of the building. So normally we selling 80% our cars between auctions so we don't expect to create more traffic. I don't

plan to change nothing even the road and you know, I think that his worry is somebody is parking cars in front of the house. So we not going to display cars out front, basically.

Chairman Phelps: So the cars that you will be selling will be stored behind the building.

OLapido: Exactly sir. If you see in the pictures behind the building we have an old fenced car lot – capacity of what?- 20 cars. So it's good enough for us. We parking the cars just right there – for sales – behind the building. In front what I need is my customer parking front of the building. We have another area, I don't know if I can show you on that map. This is the building, this is the car lot behind the building.

Chairman Phelps: Over here?

OLapido: Exactly sir. This is the front of the building. We have the handicap ramp and everything. One handicap customer and two customer parking. Now, he's living right here. He's living right here. This is the gravel driveway. So I think it's outside the limits of the property. We don't plan parking cars here, it's outside the property. All that I need – you can see this square – this is our customer parking – this is to our two more customer parking and handicapped parking. All my cars for sale are behind the building. This is my entry. We never use this one. I don't have a problem – they can drive over here to get out. I don't have a problem with that.

Chairman Phelps: So your entrance and your egress is off 25, highway 25, you're saying?

OLapido: Right here and they have another – a second road – this is another road. But if they want to use this one, I'm ok. I have no problem.

APouch: Would it be blocked with your cars?

OLapido: My cars?

APouch: Yeah, if they are using this would there be room for...

OLapido: No I never use. I don't need it.

Chairman Phelps: His cars are here. I mean here.

OLapido: My cars are up here.

APouch: Who uses this?

OLapido: They.

APouch: Ok.

JCrafton: The neighbors.

OLapido: The neighbors, yes. I use this one but I've got no problem – they can drive in over here to...

Chairman Phelps: They can cross your property and you're saying that you really don't go this way at all.

OLapido: Never. It's the principle. I just want to keep this part inside. They can park over here. He has a driveway over here but they want to use – they want to keep this area it's outside the property so, I don't have a problem. I never plan to put cars or display outside this area. Just this little square to my customer or employee parking. I got three more here. This is the building and my cars for sale would be here, that's it.

Chairman Phelps: And you don't plan on having more than 20 cars at any one time?

OLapido: No sir. I'm a wholesaler. I got the rest of the cars in car lots but sometimes we sell retail. We have a retail and wholesale dealer license. Basically 80% of this business is to, you know, keep the cars on hold between the sale and the auction. It's storage, but sometimes I will see customer because we advertise on the internet. And sometimes we can sell it at the retail cost. So I don't need to display cars like a regular car dealer. Today in the internet the automobile business changed. So we don't depend on the local market. We do the extent of advertisement on the internet. And we do wholesale between auctions. So probably he said, Ok, this guy is going to put a lot of cars in front, and I can

sign for that to compromise to don't display cars on this side. I want customer parking right here.

APouch: How many cars can you put back here, 20?

TEngel: How are the cars delivered? When you bring the cars in how are they delivered? How are they transported? Are they – they're driven they're not brought in trucks?

OLapido: No. No. We just drive the cars. King's Auto Auction is where we sell most of the cars and King's Auction is about three miles from here. So we drive the cars between auction and here. We don't expect to – I know what you mean – huge trucks.

TEngel: Use trucks that they unload cars.

OLapido: No. it's not an auction. We just sell the cars. Even a truck can't get in. A huge truck can't get in because it's like a (indicated a steep dip and incline).

TEngel: I've seen some of the trucks and chances are they would then use the other entrance, though...

OLapido: No.

TEngel: ...were using a large truck. They can't make turns in the other area where you indicated.

OLapido: The car that we sell is driven there. We drive it. We don't bring all cars in on trucks. We move car between auctions in trucks. It's just small business here, just small wholesale.

Chairman Phelps: Maybe it's a little clearer looking at this color picture even though it was the way it was before because you can see this is the area I think he's talking about that would be access to this Audrey Trail or whatever this thing is back here. So you're not going to put any cars over here in this little triangular – except a shed and maybe have some employee parking over there?

OLapido: Exactly.

Chairman Phelps: Because your customer parking, you're telling me is this, right in front of the building here in this little dark area.

OLapido: Correct.

Chairman Phelps: And then your storage for your cars is back here.

OLapido: Correct.

Chairman Phelps: So I think looking at the color you could decipher a little better.

TEngel: The only place that any cars will be parked on 1st Street would be in the fenced in area, all the way to the back of the property.

OLapido: Behind the building, correct.

JCrafton: What is the illustration of that driveway that goes out to highway – to the end of Audrey Street? Why is there the depiction of a driveway and what is marked off to be a street? This is Audrey Trail, it originates here, right? Terminates out here?

TEngel: That's just a drive.

Zoning Administrator TLinville: That's on the site plan because it's on the ground that's the way it looks on the ground.

JCrafton: But is this – does Audrey Trail goes all the way through, technically?

TEngel: No.

Chairman Phelps: That's what I thought.

Zoning Administrator TLinville: Well, yeah, it's mapped. But there's...

JCrafton: Audrey Trail's mapped out to here.

Zoning Administrator TLinville: It's mapped all the way through to Mountain Road.

JCrafton: And right-of-ways exist for that? So this depiction of a driveway is laid out inside the roadway right-of-way. Although not used, but it is a roadway right-of-way.

Zoning Administrator TLinville: Right.

Chairman Phelps: Ok. Again, you can see that right here. I see what you're talking about, Jim, Audrey Trail is listed from Mountain Road all the way to Green Haven, right?

JCrafton: Right. And I'm just trying to understand why there's a depiction of a driveway here. Is this an operating driveway?

OLapido: That's what I used to use.

JCrafton: They use to get access to 25 to come out here. They can't go out this curve right here?

OLapido: Yes. They can go – this is another street.

JCrafton: Ok. Thank you.

Chairman Phelps: On this drawing we have that Trail - doesn't show coming on down as clearly as it does on that.

OLapido: I really don't need this entry - I never drive over there so I don't make no traffic. I don't.

Chairman Phelps: Not your intent to use that at all.

OLapido: No sir. I don't.

Chairman Phelps: Is that road gravel – that little bit there?

OLapido: Yes. I repeat got no problem letting them use that. I don't use that drive. They have two. They still have the same one.

JCrafton: Would you be willing, well if Jim – is it alright for questions from the board?

Chairman Phelps: Sure, please.

JCrafton: Would you be willing to accept as a condition of your special use permit that the only parking in front would be for customers and employees and there would be no storage or product or display of product in front of the building?

OLapido: Yes sir. I would.

JCrafton: Great. When we get to that point I would suggest we make that a condition.

TEngel: And all the storage would be within the fenced in area behind the building, as shown on your site plan.

Chairman Phelps: Other questions from the board?

Associate County Attorney SZambon: At this point, Mr. Brooks or Ms. Brooks, if you have any questions for Mr. Lapido you can ask him. Other wise you can just – Mr. Lapido can sit down and you can just tell the board whatever you want to say. Do you have any questions for him?

JBrooks: No.

Associate County Attorney SZambon: At this point, Mr. Lapido you can sit down for a minute.

Chairman Phelps: Please use the podium so we can pick up the comments through the microphone there.

LBrooks: My name is Linda Brooks. I reside at 2751 Jeter Mountain Road. I'm co-owner. This is my son Justin. Just like to preface that we have no objection to the car lot itself but we just have a couple of simple requests. Some of which may have already been addressed so it may not be that we need all these requests.

JBrooks read the following letter into evidence for the board:

Justin D Brooks
101 Audrey Trail
Hendersonville, N.C

January 27, 2009

Board of Adjustment
Henderson County 240
Second Avenue East
Hendersonville N.C. 28792

Dear Board Members,

We as property owners adjacent to proposed used car lot at 3605 Asheville Highway would like the board to consider the following- **STANDARDS FOR REVIEW:**

General requirement #1: The use will not materially endanger the public health, safety or welfare:

A new business in the neighborhood will produce increased traffic, dust and noise. The adjacent property owners have small children, pets and handicap residents. We propose in order to reduce possible community endangerment that the property owner complies with following requests:

- 1) Update survey of property lines and marked appropriately with survey pins.
- 2) Block the thru drive from Audrey Trail so as not to allow thru traffic thereby minimizing potential injury to children, pets and also decreasing dust pollution.
- 3) Erect a privacy fence along the property line to minimize noise, offensive lighting all night, and increase visual appeal for neighbors by not having to see a car lot in their front yards.
- 4) Conform to daytime business hours for maintenance of vehicles thereby reducing the possibility of late night noise.


General requirement #2: The use will not substantially injure the value of property or improvements to the area:

A used car lot will in all actuality injure the value of adjacent property however; erecting a privacy fence will reduce the offensive nature of seeing used cars in your front yard and be more visually appealing to all.


General requirement #3: The use will be in harmony with the surrounding area:

In all actuality this is a neighborhood with more homes than businesses, however if all above measures are complied with we as surrounding residents will work together to avoid any problems between all involved parties.

Sincerely,

 1/28/09

Justin D. Brooks

 1/28/09

Linda P. Brooks

Adjacent Property Owners

Chairman Phelps: Do you think that this proposed business would be more of a problem than that towing business that was previously there?

LBrooks: The towing business when he bought the house, we knew that it was going – in the process of being gotten rid of. So we knew that that eyesore would be taken care of.

Chairman Phelps: But it was used as a towing business I'm saying, so while it was in use as that...

LBrooks: But we couldn't change anything with that. It was already in existence.

Chairman Phelps: That's right. So it's a pre-existing business there?

LBrooks: Right.

Chairman Phelps: Then I'm saying with this one, proposed one, create any more traffic or problem than the towing business did when it was in operation?

LBrooks: What we're concerned with as far as like the through drive is if he has customers coming in and going around and around. But if he blocks that drive they come in and out and that wouldn't increase any car traffic. The towing guy didn't have any reason to come around. He knew how to come in and come out whereas potential buyers don't know where to come in and come out. They may use his drive.

Chairman Phelps: Off Audrey?

LBrooks: Yeah.

APouch: You use that driveway, then? The driveway.

JBrooks: In front of his building now?

APouch: Um-hm.

JBrooks: At times, yes we do. But we would like that it be blocked where his customers be restricted to come in and use the Asheville Highway entrance.

Chairman Phelps: That would block anybody's use of it. Yours or customers or anyone else.

JBrooks: Of that entrance, yes. But we have the Audrey Trail exits on Green Haven Lane at the other end there, you see. So we still have me and the, my neighbor Mr. James Hannon. We still have that entrance and exit to our property.

JCrafton: Mr. Chairman...

APouch: You would like that drive blocked?

JBrooks: Yes ma'am.

Chairman Phelps: Jim?

JCrafton: Well no, I don't have any questions. I just have some comments on – I'll just save them.

Chairman Phelps: Any board – any questions?

Associate County Attorney SZambon: Mr. Brooks, did you want to enter this into evidence?

JBrooks: Yes ma'am, please.

TEngel: Mr. Brooks the Audrey Trail entrance, do you not drive across his driveway right now in order to get to your house?

JBrooks: No sir.

TEngel: Does anyone drive across it? I look at the site plan and it looks like they do.

JBrooks: We do, we have access. We have open access right now. But...

TEngel: Isn't that open access where his driveway runs? Right now? Or the driveway...

JBrooks: See, the right-of-way originally went like you said, or we were discussing earlier, from Mountain Road to Green Haven. But it was blocked. See, you can access this Audrey Trail from Green Haven and you can access it from Mountain Road, but you get to a dead end in the middle where once before it went all the way through. So when that

was blocked by the – where that – when it was blocked by their property – their drive – they made the drive in front of their building.

Chairman Phelps: So Audrey previously went all the way through. But as of today it doesn't, it just ends right here.

JBrooks: No sir. It's already been blocked off. We'd just like it blocked to their property.

Chairman Phelps: Further questions from the board? While you're there (to Ms. Brooks and Mr. Brooks) Mr. Lapido would you come back up?

OLapido: Yes sir.

Chairman Phelps: Just stand there with the microphone so it'll be recorded. You previously said you had no problem with them using that. Now I guess the question is, do you have any problem with blocking that so that no one can use it? That entrance from...

OLapido: No. I don't want to block anybody.

Chairman Phelps: Pardon?

OLapido: I don't want to block. I think if we don't block his way at all.

Chairman Phelps: He wants it block.

OLapido: Oh. You want it blocked? Just by the property?

JBrooks: Yeah.

OLapido: I got no problem.

Chairman Phelps: So if you put up some kind of a fence or chain link.

OLapido: Chain or something like that, oh yes.

Chairman Phelps: So you would be willing?

OLapido: I really don't need that space. So I can divide it if you want.

Chairman Phelps: I was going to ask Sarah that. Is this a public street? Can we access it?

Associate County Attorney SZambon: Is it a public street?

Zoning Administrator TLinville: No. That's not their access. They have – Audrey Trail is deeded off of Green Haven. So that's how they get in and out now. The property in question has access directly to 25. So that's the property line there.

Chairman Phelps: So the entrance to this property would be considered like a driveway to Audrey Trail is that right?

Associate County Attorney SZambon: Yes. I think that's what Toby's saying, yes.

Chairman Phelps: So therefore I could block a driveway.

TEngel: Where are you - could you show us where you're talking about having him block it?

JTelker: Use the color one. Right here I think.

TEngel: I'd like to know what he's talking about.

JBrooks: Right here. This is where I live.

Chairman Phelps: On those two double lines.

JBrooks: Yes sir, right there.

Associate County Attorney SZambon: Mr. Brooks, do you want to mark that down?

JCrafton: He wants to block it right here.

TEngel: So you don't mind having this blocked?

OLapido: No sir.

Chairman Phelps: Has no one transgressed in your yard?

TEngel: Your entrance is the one next to the driveway. It actually gives you a little bit more protection.

JCrafton: Well, Mr. Chairman my only thought on that idea is the special use permit goes with the land. And so we would be restricting future owners, if they bought it, with that use with that permit condition in place that they could no longer access their property through a

deeded right-of-way roadway. Now he's willing to block it off to accommodate his neighbor, but we would be going forward for the use of this land preventing any body else from using it. Would we not, Sarah?

Associate County Attorney SZambon: Anyone who is doing the same use.

Zoning Administrator TLinville: You're also restricting them to motor vehicle sales and service when you...

Associate County Attorney SZambon: Unless they wanted to do something that was by right in Community Commercial.

TEngel: Right. So they would have to come before us again to make modifications or changes. Which they could do that.

Associate County Attorney SZambon: If they wanted to do something other than an auto sales or something allowed by right in a Community Commercial. If they were doing a use that was allowed by right, and I don't have my code book in front of me so I can't give you an example, but allowed by right in a Community Commercial then the special use permit wouldn't apply because they wouldn't be doing auto sales and wouldn't be using the special use permit.

TEngel: Does that mean it would no longer have to be blocked?

Associate County Attorney SZambon: It would no longer have to be blocked if they weren't doing auto sales. As long as they're doing auto sales, the auto sales would have to follow the special use permit.

TEngel: Ok. Well I think that's...

Associate County Attorney SZambon: If they got any other special use or if they got anything by right, they would have to do it, they wouldn't have to abide by it.

Zoning Administrator TLinville: But there's nothing, you know, one way or another restricting them from blocking that access. They have access to Asheville Highway. So they don't need that access. So blocking is fine and the Brooks' have access to Audrey Trail so it doesn't help or hurt them not having that. It's just basically a loop road.

OLapido: We can put just a, not a permanent device, like you know, just post and chains so in the future...

TEngel: Something that will show to cars so they're not driving through and not seeing it.

Chairman Phelps: Hanging something from the chain. Thank you sir, you may sit down.

Associate County Attorney SZambon: If he did something like that Mr. Brooks, would that and Ms. Brooks, would that answer your concerns? If he put two posts with a sign?

JBrooks: My only concern would be that people don't see it.

TEngel: Well that's our concern too.

JBrooks: And driving into it.

Chairman Phelps: You'd have to hang a sign from it or something.

TEngel: Something along there so that people would see it. Otherwise they'll be running into that chain. Especially at night.

Associate County Attorney SZambon: Unless there are any other questions for Mr. Brooks or Mr. Lapido or Ms. Brooks...

JBrooks: Will there be any – another concern is lighting. Is there going to be any additional lighting added to the property?

JCrafton: That's a question you should have asked Mr. Lapido when he was up at the podium.

TEngel: Well why don't we call him back up?

Zoning Administrator TLinville: There was none drawn on the site plan.

OLapido: What's the question?

LBrooks: Will there be any additional lighting?

OLapido: We have enough existing illumination so we don't plan to add more lighting for now. If it is necessary in the future I can apply for a permit. But we have two neon lights outside and it's enough for me.

Associate County Attorney SZambon: So depending on what the board decides Mr. Brooks, is if the board just chose to stay with the existing lighting like Mr. Lapido said he's fine right now. If he did want to come back and find out he'd need more lighting he'd have to have an amendment to his special use permit.

JBrooks: Ok.

Associate County Attorney SZambon: So he can't just put it in without coming back before this board.

JBrooks: Ok.

APouch: Are the lights that are there now, do they bother you?

JBrooks: No ma'am. And it will be in there that he – most of his cars will be kept in the back not out in the front, just his customer parking in the front?

TEngel: All of his cars for sale.

JBrooks: But that will be an amendment to the special use permit?

TEngel: In the fenced in area in the rear and only the parking in front would be for customers and for his use.

Associate County Attorney SZambon: Depending on what the board decides that would be a condition, yes.

JBrooks: Ok. That's it, I've...

TEngel: That's what he's requesting anyway.

Associate County Attorney SZambon: Mr. Chairman, I believe Ms. Denski has a comment.

Chairman Phelps: I was going to ask too if they have any questions.

Associate County Attorney SZambon: Yes, I'm sorry.

CDenski: Initially that gravel drive was there and left for the convenience for the residences on Audrey. The drive that goes out to the side road there is so steep that a lot of the cars scrape because the D.O.T. has raised the road up so high there. So it was just for their convenience. And if they want it closed, I mean they're more than welcome to do that. You know we will be glad to do that in fact. So you know there shouldn't have been any problem. I don't know why – you know I don't think you have more than just yourself going through there at any time. (to Mr. Brooks). I know Ronnie had a lot of people but if there's somebody going through there on a van it's usually me. So I just wanted to explain that that drive that gravel there was just for them and for them to make use of it. This was the second or the first house next to the building really enjoys that drive. But like I said we'll be more than happy to close that off because it'll be safer for the car lot anyway than having people on an in and out way. So that's all I wanted to say.

JBrooks: Could I add one more thing? Unfortunately my neighbor, Mr. James Hannan who owns the house beside me was not able to be here. But we are in agreement and share the same concerns as to our property.

Chairman Phelps: Now his house, your neighbor's house is the one that's pretty much right across from that entrance, isn't it? As shown on this last picture here?

JBrooks: Yes. The two houses to the left of that property – I'm on the left, he's on the right.

Associate County Attorney SZambon: Mr. Chairman unless the board has any questions for any of the parties or if the parties have questions for each other I would suggest that this board go into closed discussion.

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

TEngel: I move. I'll motion to close.

Chairman Phelps: Ann second. All in favor?

All board members were in favor of closing the public hearing.

Chairman Phelps: The public hearing is now closed. We are now in a closed session and we'll discuss this amongst ourselves. Comments anyone?

JCrafton: Mr. Chairman I would suggest that the application seems to be in order. The Technical Committee, Review Committee has said it meets all the requirements. I think it would be appropriate to stipulate as a condition that they limit parking in front to customers and employees and there be no product or display storage in the front of the building as he had agreed to. But a second stipulation could be that they would by some suitable means close off at their property line access to the driveway on Audrey Drive. It would not obstruct Audrey Drive and the driveway itself just the access into their property from it. The Brooks' request today of an update of a survey of property lines – I think the Technical Review Committee has approved the plot plan. I don't think it'd be appropriate for us to require that additionally to the owner. Or the erection of any additional privacy fence, since one exists which contains all their storage. Which they'll not really have any display needs. But I think that perhaps with those two conditions and the prior use of that property – I've driven out there and looked at the property, the area that it's in it seems to be suitable. There's another used car lot right across the street from it. There seems to be no opposition from neighbors to the proposed use.

Chairman Phelps: Tony?

TEngel: I agree with him as far as everything he said.

APouch: I think you covered it except the existing lighting – stay the way it is?

TEngel: Pre-existing lighting, yeah, maybe that should be added that it stays the way it now exists.

Chairman Phelps: Or it cannot be increased without an amendment to the special use permit.

JCrafton: What are our code requirements say in terms of outdoor lighting?

Zoning Administrator TLinville: It says adequate lighting for ingress and egress. And lighting mitigation is required. All that's out there now is security lighting on the building. So that's adequate to get in and out of the building.

Chairman Phelps: Would the current regulations then cover the lighting? So we really wouldn't need to address that?

JCrafton: Because he's required to mitigate means he couldn't have bright lighting that would shine into their property.

APouch: That answers my question.

Chairman Phelps: Any others? Well do we want to put this in the motion then Jim, with those two stipulations?

JCrafton: I move that the Zoning Board of Adjustment – with regard to the application of SUP-09-01 for conditional use permit authorizing the operation of a auto sales on the property in question, I move the board make the following finding of facts: Proposed use will not adversely affect the health and safety of persons residing or working in the

neighborhood of the proposed use and the proposed use will not be detrimental to the public welfare or injurious to property or public improvements in the neighborhood. Accordingly I further move to the board to grant the requested conditional use permit with only to the extent represented to in the application and with the following conditions: Condition #1 – that there would be no storage or display of products in front of the building but only employee and customer parking would be allowed in the front. Condition #2 – ...

TEngel: How about all storage within fenced area as shown on the site plan as well?

JCrafton: That's the only place he has, isn't it?

TEngel: Well I mean it could be here next to - or could it be in the right-of-way? 'Cause this is partly in the right-of-way. Do you just want to say within that closed in area? Fenced in area?

JCrafton: Well, ok.

Chairman Phelps: How bout you say to the rear of the building?

JCrafton: That all product storage and display would be to the rear of the building.

TEngel: Within the fenced in area.

JCrafton: Within the fenced in area. Alright. And Condition #2 would be that the access from the property to the driveway shown going out onto Audrey Drive, that that access be closed at the property line so that traffic cannot go between Audrey Drive and the subject property. Those are the only two conditions I think that we've spoken of. I think Mr. Lapido was indicating he was in agreement with adding those conditions to his application. That would be the motion.

Chairman Phelps: Is there a second?

TEngel: I'll second.

Chairman Phelps: Is there any discussion on the motion or questions regarding it? If not shall we call the question? All in favor of the motion please indicate by raising your hand.

All opposed, no.

All board members were in favor of the motion.

Chairman Phelps: Unanimously approved.

Chairman Phelps: Ms. Denski we have a – as you've seen, approved your application with the two conditions. Mr. Lapido do you understand those? And Sarah, would you like to tell them how the order will be signed or when available, or?...

Associate County Attorney SZambon: Technically the special use permit is not approved until the board approves the final order. The order will be approved at the board's next meeting which is February 25th I believe. And at that point they'll approve the order hopefully, unless they find some typos or something and approve the order and Toby or Karen Ann will call you. And Ms. Denski you have to sign for it just saying you got it and you understand the conditions on it. And then you're free to start doing all your business stuff.

CDenski: Thank you.

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

TEngel: I motion.

Chairman Phelps: Ann seconds.

Chairman Phelps: All in favor? The meeting is now closed. And I understand we have to approve the minutes.

Associate County Attorney SZambon: Approve the minutes from January 28th meeting.

Chairman Phelps: JoAnne you weren't here for the meeting so I guess the minutes...

JTelker: I read them because I came early to catch up on what ya'll have been up to.

JCrafton: Mr. Chairman I move approval of the minutes as presented to us.

Chairman Phelps: Second? There being no objections the minutes are adopted. Is there any other business to come before us at this time?

Associate County Attorney SZambon: Not at this time Mr. Chairman.

Chairman Phelps: Toby, have anything for us?

Zoning Administrator TLinville: No sir.

Chairman Phelps: Our next meeting will be February 25th.

Zoning Administrator TLinville: We will think about a heliport.

JCrafton: Bring supper?

Zoning Administrator TLinville: Pack a lunch. It's not a secret.

Associate County Attorney SZambon: They're not supposed to come into the hearing with any predisposed opinion.

Zoning Administrator TLinville: They know that it's going to be a heliport case.

Associate County Attorney SZambon: Ok.

JCrafton: Is that likely to be the only case?

Zoning Administrator TLinville: Yes. The deadline passed. And then March 25th if we don't have any major case we'll do the minimum housing discussion. Planning will present it.

Associate County Attorney SZambon: Mr. Chairman at this point unless this board has anything else they'd like to discuss you need a motion to adjourn.

Chairman Phelps: There being no objection we stand adjourned.

Associate County Attorney SZambon: I need a second.

TEngel: I'll second.

Associate County Attorney SZambon: Now I need a vote.

All board members were in favor of adjourning the meeting at 4:44 p.m.

Chairman Jim Phelps

Karen Ann Antonucci, Secretary