

MINUTES OF THE HENDERSON COUNTY
ZONING BOARD OF ADJUSTMENT

The Henderson County Zoning Board of Adjustment held its regular September meeting, Wednesday, September 24, 2008, at 4:00 p.m. in the King Street Meeting Room, 100 N. King Street, Hendersonville, North Carolina. Those present were: Dean Bonessi, Chairman, Tony Engel, Ann Pouch, Alternate Board Member JoAnne Telker, Zoning Administrator Toby Linville, Associate County Attorney Sarah Zambon, and Secretary to the Board Karen Ann Antonucci. Jim Phelps, Vice-chairman, and Jim Crafton, and Alternate Brandon Yelverton were not present. Zoning Enforcement Officer, Erin Victoria Moore was also present.

Chairman Bonessi called the meeting to order at 4:07 PM. He introduced the Board members to the parties present.

Chairman Bonessi asked if there were any comments, corrections or additions to the August 27, 2008 minutes. There being none, he asked for a motion to accept the minutes as written.

Ann Pouch moved to approve the minutes as written.

Tony Engel seconded.

All board members were in favor of accepting the minutes as presented.

Statement V-08-15, Patricia Scoggins

Chairman Bonessi asked for a motion to accept Statement V-08-15 as written.

TEngel: Motioned.

APouch: Seconded.

All board members were in favor of accepting the statement as written.

NEW BUSINESS:

Case A-08-16, Larry Cannon, appeal of a Notice of Violation for case# 1208 for 517 Oak Grove Road, Hendersonville (PIN 9587425712). The Public Health Nuisance Ordinance prohibits junked motor vehicles in section 126-2.03 G

Witnesses for case:

Larry Cannon – property owner / applicant

Steve Cannon – son

Brenda Walden – adjoining property owner

Erin Victoria Moore – Zoning Enforcement Officer

Chairman Bonessi said that he and Mr. Cannon had the same employer. Ms. Zambon said that the board could decide if Chairman Bonessi could hear the case or not, based on if he were to have some significant financial gain or personal interest in the party. After a brief discussion Tony Engel made a motion to allow Chairman Bonessi to continue with the case and allow Chairman Bonessi to be on the case. Tony Engel, Ann Pouch and JoAnne Telker were all in favor of continuing the case and allowing Chairman Bonessi to hear the case also.

Chairman Bonessi: I'll need a motion that we open our hearing.

Ann Pouch made a motion to open the hearing.

Tony Engel seconded.

All members were in favor of opening the hearing.

Ms. Zambon stated the case did not need to be heard as quasi-judicial because it is an appeal under the Nuisance Ordinance. In Section 7 of the Nuisance Ordinance it contemplates appeals. Nowhere in the ordinance does it require a quasi-judicial proceeding. It only requires a public hearing, and that only a majority vote was needed to decide the outcome. With the members present they would meet quorum and a motion could be carried by a majority of the members. All board members were in favor of hearing the case as a public hearing and not a quasi-judicial procedure.

All those prepared to speak at the public hearing were sworn in by Secretary to the Board, Miss Antonucci. The board then decided who had standing as a party or witness.

Brenda Walden of 106 Holly Avenue was allowed to speak, as she is an adjacent property owner. Steve Cannon of 48 Christy Lane, Zirconia, was allowed to speak as he was called by his father, Larry Cannon, to speak for him.

Larry Cannon was allowed to speak as the property owner.

Erin Victoria Moore, Henderson County Zoning Enforcement Officer was not called to speak.

Chairman Bonessi asked for a motion to open Case A-08-16.

Tony Engel made a motion to open the case.

All board members were in favor of opening the case.

Mr. Linville read the case material to the board which consisted of Ms. Moore's informational letter sent with the Notice of Violation, her case report, the response letter from Larry Cannon requesting a hearing, aerial view of property, Henderson County zoning information report, 7 photos: of the vehicles and garage, and the Nuisance Ordinance. Mr. Linville stated that this would be the first time he would be speaking to Larry Cannon. Mr. Linville said the way it was approved by the Board of Commissioners, if a motor vehicle does not have a current license plate on it; it is considered a junk vehicle. Those vehicles would either need to be tagged or removed. And that why the property owner was cited – because there were untagged vehicles when Mrs. Moore did her investigation. He said the board could also ask questions of Officer Moore if they needed too.

Larry Cannon stated that his son Steve would be speaking on his behalf.

Steve Cannon said they were making an appeal on the matter based on some of their findings in the ordinance. He noted page two states no junked vehicles are allowed on the property. On page three under 'definitions' - shall be set forth by the North Carolina General Statute 153-A-132. He noted that on the same page, item seven says that 'junked motor vehicle' is a motor vehicle that does not display a current license plate or vehicle registration. He said that was the condition of the vehicles on his father's property. He felt that the Henderson County Code and the North Carolina General Statute needed to agree. He said the NC General Statute 153-A-132 listed junked vehicles as an abandoned vehicle that also meets one of four conditions. He felt it was appropriate to look at the definition that stated that an abandoned vehicle is: A- one that is left on public grounds or county owned property in violation of the law or ordinance prohibiting parking. B- is left for longer than 24 hours on property owned or operated by the county or C- is left for longer than two hours on private property without the consent of the owner, occupant or lessee of the property or D – is left for longer than seven days on public grounds.

He pointed out that the vehicles in question were on private property and the owners, (his father and mother) consent to them being there. He felt that by the description on the law the vehicles on his parents' property were not classified as abandoned and therefore could not be classified as junked. He noted that his parents had intentions of removing three or four of the vehicles. He felt that the Notice of Violation did not appear to be legal.

Mr. Linville said the old junk motor vehicle definition that was in the code and the General Statutes did not have any 'teeth'. That was why the Commissioners approved the definition in the Nuisance Ordinance. He said that if the vehicle is not tagged it is junked and has to be removed or tagged and that is the current law. He noted that the state gives Code Enforcement authority to impose stricter laws and that is what the Nuisance Ordinance is. He said that it goes above and beyond the North Carolina General Statute and that it is legal and enforceable. He also said it has gone to court and has won.

Steve Cannon asked for specific times and cases where this has gone to court and won.

Mr. Linville noted that Code Enforcement did not use the General Statutes, they use the county approved Nuisance Ordinance.

Steve Cannon said he begged to differ – under section 3 definitions – it says it shall be set forth in General Statutes 153-A-132.

Ms. Zambon: Offered clarification, stating that Mr. Linville's and Mr. Cannon's points were both correct to a certain extent. She said that the Zoning Board of Adjustment does not do that for issues on private property. Part of the intent of the provision that Steve Cannon cited is to allow local government to get rid of vehicles that are in the right-of-way of public property. The county gives a bright-line rule for Code Enforcement so that they know what they are supposed to do and what they are not supposed to do. If you have a vehicle it is supposed to be tagged and licensed. If you go to an abandoned standard it would be more difficult for Code Enforcement to enforce and more difficult for people to understand. It is the role of the board to determine the interpretation of the ordinance.

The board asked Steve Cannon several questions about the vehicles in question. Mr. Cannon said all of the vehicles were owned by one family member or another. He said from a personal perspective it seemed a shame not to be able to use something personal further down the road if it was not causing any harm. Mr. Cannon said he thought that his father had contacted Mr. Linville.

Mr. Linville said that staff had never spoken to his father. He had only spoken to Mrs. Cannon to let her know that date of the hearing.

Ms. Zambon asked Mr. Linville if the restoration permit was issued by owner or what is on the property.

Mr. Linville told her it is based on what is on the property. If a vehicle is on the property it is required that they be tagged or removed or have the restoration permit. There could also be issued one restoration permit on one car that would need to 'match' the car being restored, in terms of parts that would fit or have some interchangeable parts for the car under the restoration permit. Mr. Linville pointed out that a restoration permit could potentially be in effect for a year and a half, because the permit is issued for a six month period but can be extended twice.

Mr. Engel asked Steve Cannon if some vehicles could be stored in the garage that is being completed. Mr. Cannon said that one side was for storage but one side was earmarked for a vehicle.

Brenda Walden said has not had a problem with snakes or rats or any issues with the Cannons. She felt they were not a nuisance and said that no one had complained. She had mementos of her family and said the cars were mementos and treasures to the Cannons. She had no objections to the cars staying there.

Chairman Bonessi asked Mr. Linville if the Cannon's had contacted him would he have worked with them. Mr. Linville said it is very typical for Code Enforcement to work closely with violators to resolve the issue that is beneficial to both parties.

Chairman Bonessi asked Mr. Linville that essentially the board needed to decide if Code Enforcement acted appropriately in issuing the violation.

Ms. Zambon noted the board only had to decide if Code Enforcement made an appropriate decision in issuing the violation. She said the board could come up with an action that involved conditions.

After some discussion by the board Chairman Bonessi called for a motion.

Ann Pouch: I make a motion on case A-08-16, that the board accepts the Code Administrator's opinion that this property has violated the county code.

Tony Engel seconded.

All board members were in favor of accepting the motion.
After further discussion the board decided to issue conditions and a timeframe to the applicant to resolve the case. Chairman Bonessi called for a motion.
Tony Engel motioned the following:

- Within 60 days the following would be met:
- 1- the removal of 4 vehicles
 - 2- the tagging of 1 vehicle
 - 3- issue a restoration permit on 1 vehicle
 - 4- place 1 vehicle in the garage

JoAnne Telker seconded.
All board members were in favor.

Chairman Bonessi asked for a motion to close public hearing A-08-16.
Tony Engel made the motion.
All were in favor.

Mr. Linville had one item to add to the agenda. That being the discussion of a letter received from Charlestown Place residences. They had addressed a letter and petition to Chairman Bonessi to state their disagreement with the property owner seeking rezoning for an adjacent parcel. Mr. Linville pointed out that the case may or may not go to the Zoning Board of Adjustment. Mr. Linville said he would send a response letter on behalf of Chairman Bonessi to address the issue and let the residences know what would be required should it go to the Zoning Board of Adjustment. Chairman Bonessi agreed that would be the best approach.

There being no further business, Chairman Bonessi asked for a motion to adjourn the meeting.
Tony Engel: Motioned. All Board members were in favor of adjourning the meeting at 5:03 PM.

Dean Bonessi, Chairman

Karen Ann Antonucci, Secretary