

MINUTES OF THE HENDERSON COUNTY
ZONING BOARD OF ADJUSTMENT

The Henderson County Zoning Board of Adjustment held its regular June meeting, Wednesday, June 25, 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, Jim Phelps, Vice-chairman, Tony Engel, Ann Pouch, Alternate Board Member Janice Brown, Zoning Administrator Toby Linville, Associate County Attorney Sarah Zambon, and Secretary to the Board Karen Ann Antonucci. Jim Crafton was not present.

Chairman Bonessi called the meeting to order at 4:06 PM.
Chairman Bonessi introduced the board members to the parties present.
Chairman Bonessi reminded the board they were operating under the bylaws approved by the Board of Commissioners.

Chairman Bonessi asked if there were any changes or corrections to the June 4, 2008 minutes. There being none, he asked for a motion to accept the minutes as written.
TEngel and JPhelps simultaneously moved to accept as presented.
APouch: seconded.
All board members were in favor of accepting the minutes as presented.

Order V-08-06 , Stephen Ledbetter, Variance for setbacks
Chairman Bonessi asked for a motion to accept Order V-08-06 as written.
TEngel: Motioned.
All board members were in favor of accepting the order as written.

Order V-08-07, Anthony & Veronica Piscopo, Variance for setbacks
Chairman Bonessi asked for a motion to accept Order V-08-07 as written.
JPhelps: So moved.
All board members were in favor of accepting the order as written.

Order V-08-09, Scoggins, Variance for setback
Chairman Bonessi asked for a motion to accept Order V-08-09 as written.
TEngel: Motioned.
All board members were in favor of accepting the order as written.

Order V-08-11, George Bennett, Variance from required fencing in floodway
Chairman Bonessi asked for a motion to accept Order V-08-11 as written.
APouch: So moved.
All board members were in favor of accepting the order as written.

Order SUP-08-12, George Bennett, Recreational Motor Sports Facility
Chairman Bonessi asked for a motion to accept Order SUP-08-12 as written.
JPhelps: So moved.
All board members were in favor of accepting the order as written.

Chairman Bonessi read the quasi-judicial hearing procedures for those present. He asked that everyone sign in that was planning on speaking at the hearing. He then asked for all parties and witnesses to be sworn in and asked each one to speak into the microphone their name and address.

There being no Bible, Associate County Attorney Sarah Zambon instructed Zoning Board Secretary Karen Ann Antonucci to us the term, "do you affirm that this testimony..." and for each party and witness to raise their right hand. All parties and witnesses were sworn in, in this manner.

Case A-08-03, Donald and Lynn Burnett, appeal of Compliance Order Notice of Violation. LDC 200A-37 for 42 Walnut Cove Rd, Hendersonville (PIN 9556540765). Under the Land Development Code, R-40 zoning shall ONLY be residential uses. No businesses may be located in R-40 zones.

Chairman Bonessi recused himself from the Burnett case.

Associate County Attorney SZambon: Mr. Burnett is not here, is not even in the state. He had contacted Code Enforcement yesterday. We don't have anything in writing from him. He is not here and the burden is on the applicant to argue their side. Without Mr. Burnett here this board has three choices.

You can either hear the department's side and the testimony from the people that are here and make your decision based on the appeal on that. You can just dismiss it because Mr. Burnett is not here. Or technically you could deny the appeal because if he's not here nobody else is going to be talking about his side. I would suggest to the board, I know that three people are here to speak on that, however, since Mr. Burnett is not here I would suggest to this board that you should deny the appeal or dismiss the appeal because he's not here. I don't think it's a good use of this board's time to bother hearing anything on it since he's not here to defend his appeal.

Zoning Administrator TLinville: I would recommend hearing from the complainants on this case because they've taken time to come to this meeting and you'll have two decisions, whether to uphold or deny the appeal and you'll ultimately make that decision. If you deny the appeal then he will have the compliance order that I have given him saying he will have 15 days to remedy the violation. He has requested that he have 30 days and you can weigh that decision as you will. But it's your decision whether you want to hear it because he's not here. He is out of state and did not choose to have an attorney represent him at the hearing. That was his request, that, he's going to remedy the violation anyway, but he would request 30 days.

Associate County Attorney SZambon: He does have a rezoning request before the Board of Commissioners that is set to be heard on July 7th. Typically we don't follow through with any enforcement measures until anything they have applied for as outstanding has been dealt with. I feel comfortable saying that we're not going to proceed with anything at least until the rezoning is heard. And approved or denied might effect it that way.

JPhelps: Help me here to clarify, could we, without having to hear it deny the request and put in the 30 days, the 30 days to clear up the issue.

Associate County Attorney SZambon: It would probably be more prudent, if you were going to deny it, to hear from Toby and the people who are here. Because if you dismiss it, then I write up saying this case was dismissed because the person wasn't here. If you deny it or uphold it we need something in writing describing the reasons for denying or upholding.

JPhelps: If we dismiss it then the 15 days will hold, is that it?

Associate County Attorney SZambon: If you dismiss it the 15 days would hold, but again, nothing's going to happen until the 7th anyway. He wouldn't have 15 days after the 7th, but he would have until the 7th.

Zoning Administrator TLinville: The rezoning will happen within 15 days but then...

Associate County Attorney SZambon: So he would have, so...

JPhelps: reviewed a calendar. If he fails at the hearing on the 7th then he's got three days to clean everything up.

Associate County Attorney SZambon: If he does not get rezoned Toby and I will discuss how long is reasonable for him to comply. It might be 15 days, it might be 10 days, it might be 30 days.

JPhelps: You all could do that? You could extend the time?

Associate County Attorney SZambon: It wouldn't be extending the timeframe, what we would consider it more is that the time was tolled and stopped until the 7th and after the 7th we would start counting.

TEngel: Then there is a 50\$ fine a day.

Associate County Attorney SZambon: Technically.

APouch: We could dismiss it today.

TEngel: Well, if we dismiss it does that mean he doesn't have to do anything?

Zoning Administrator TLinville: The compliance order stands. He has 15 days to remedy the violation.

Associate County Attorney SZambon: And that you did not rule either way whether or not the appeal was valid or invalid, or rather the decision of the Zoning Administrator was valid or invalid. His appeal period is up. This is his appeal on this one thing. If we cited him on something else he would have another appeal but this is his appeal on this particular issue.

APouch: If we dismiss it then he waits till the county decides about rezoning and then he gets another 15 days, or what you say?

Associate County Attorney SZambon: I think what we would do is toll the time, stop the time until all outstanding issues are finished. However, as Toby said, there are three people here that are prepared to talk about this issue, so it's really up to this board. Again, the only issue before this board is the appeal. Is whether or not what Toby wrote the compliance order for and found Mr. Burnett violated of the Land Development Code is in fact valid. It's not up to this board to decide the rezoning request, or whether or not this is appropriate. This is not the stuff you'd look at. Even the 15 days that we give people is in the Land Development Code. That's where we came up with the 15 days. We didn't make that up so that's not up to this board to debate. The only thing that this appeal would be for is whether or not he is in violation of the land development code.

JPhelps: It seems to me we could dismiss it and say with the understanding the timeframe is suspended until July 7th. Since Mr. Burnett not here we'll just dismiss it.

Associate County Attorney SZambon: Dean is out of it. Dean is not voting. You can call the question, but you can't comment. This is out of four people.

JPhelps: Mr. Chairman, I move that in light of the fact that Mr. Burnett is not here we dismiss the case with the understanding that his timeframe will be suspended until July 7th based on the County Commissioners issuing a ruling at that time.

TEngel: Seconded.

All board members were in favor of dismissing case A-08-03.

JPhelps: Yes

APouch: Yes

TEngel: Yes

JBrown: Yes

Chairman Bonessi: We'll explain for the folks that have come. Since he has not shown up we dismissed the case which means that the order that Toby has written is enforceable and he has 15 days to get his stuff out of that property, the only catch or should I say a side note to that is he has applied for rezoning. They will not start that 15 days until the rezoning has been determined either way.

Robin Reese said she understood.

Case A-08-04, Larry Holbert & Ronnie Gray appeal of Compliance Order Notice of Violation for (PIN 9650877993).

Under the Land Development Code, Community Commercial zones may not be used for automobile sales and service business without a valid Special Use Permit.

Witnesses for the case:

Larry Holbert – land owner

David Brown – Budget Motors

Chairman Bonessi: At this time I would like a motion to open case A-08-04, Larry Holbert and Ronnie Gray, appeal of compliance order notice of violation. Under the Land Development Code, Community Commercial zones may not be used for automobile sales and service business without a valid Special Use Permit.

TEngel: So moved.

JPhelps: Seconded.

All board members were in favor of opening case A-08-04.

Zoning Administrator TLinville: If it pleases the board I will read this information into public record. Let me explain what we're doing here because we have this case twice. Because of the long meeting we had last month some items got continued and this was one of them. At the time that this compliance order was written and appealed, they had not applied for a special use permit which is what the compliance order requires. David Brown is the owner of Budget Motors which is located on property owned by Larry Holbert and Ronnie Gray. They expanded the existing business onto a separate lot. So it was in theory a new business. And it required a special use permit for that expansion. So the compliance order was written. They appealed which basically gives them a stay until they can file for special use permit. So we should have heard this appeal last month. Since that time they've applied for their special use permit. So you can uphold or deny the appeal but they have done part of the compliance order, they have done what they needed to do. So that's your...

Associate County Attorney SZambon: I would like to remind this board that the appeal and the special use will be completely separate. This appeal is based solely on whether or not it was appropriate to find they had violated the Land Development Code. Not whether or not he has complied with whatever we asked him to do in the first place. Just whether or not at the time he was in violation. That's the point of view of the appeal. Whether or not Toby made the right determination if this was allowed or wasn't allowed at the time. So the fact that we have a special use hearing on the same property should not affect your opinion on this appeal.

JPhelps: We are only hearing the appeal at this point.

Associate County Attorney SZambon: At this particular time, yes, you are only hearing the appeal. We are not dealing with the special use at all. So it is as if they haven't applied for a special use.

Zoning Administrator TLinville: I'll just reiterate – this property is zoned community commercial which allows motor vehicle sales and service with a special use permit. The business was expanded before the special use was obtained so we submitted the compliance order on April 15th. Then the question is – does this violation, is it correct in the ordinance? Is it a violation – expanding that use in community commercial without a special use permit?

Chairman Bonessi: So where did we expand to? We were already in business and then we expanded to where from where?

Zoning Administrator TLinville: If you are looking at the aerial, his building is at 3620 there at the intersection of Highway 25 and LR Smith Avenue. The property behind that is rectangular with sort of an arrow on the end, and there's an address there, 43, that's his property and currently being used for storage. The property highlighted there where you see 3650, there was a home there. The widening project took the home. That's where the cars are now. Because it's a separate piece of property from the other two it required the special use.

Chairman Bonessi: So simply because they do not connect or there're three separate parcels...

Associate County Attorney SZambon: But in the Land Development Code 200A-266 Nonconforming Uses (B-1) Enlargement or Expansion of a Use. A nonconforming outside/outdoor use shall not be enlarged or expanded to cover more of the lot that was occupied by that use when it became nonconforming.

Chairman Bonessi: That means it can't more than double its size?

APouch: But it was on a separate lot.

Associate County Attorney SZambon: I think the intent of this is if you can't expand it on one lot you certainly can't expand it on another lot.

TEngel: You can't change it to expand to any amount?

Associate County Attorney SZambon: A nonconforming use may be changed to a conforming use and thereafter may not be used for any not conforming use. It's because it's a nonconforming use not a nonconforming structure or a nonconforming lot. Again, I'm reading from the Land Development Code. I'm not trying to impede your decision in any way.

APouch: So he didn't apply for use of this property. He didn't get a special use permit when he expanded his business?

Zoning Administrator TLinville: Correct.

Associate County Attorney SZambon: This is part of the transition from the new Land Development Code from the old Land Development Code. In the old Land Development Code, which was like C2 or something, where this use was permissible. It was part of the Highway 25 N Study. This is one of those instances that people weren't aware that we were going through a substantial rezoning of the entire county and didn't understand these changes between what they were and what they now are. It is still commercial, which it was before, but it's slightly different based on the table of uses.

Chairman Bonessi: When did this expansion happen with tying in the new Land Use Development Code? How long has this...?

Zoning Administrator TLinville: I think it happened before the Land Development Code was approved. Before September.

Chairman Bonessi: That's what I'm questioning. He was running this business before the Land Use Development Code came into effect and then the Land Use Development Code came into effect and that changed the preexisting nonconforming use, or is that...

Associate County Attorney SZambon: I don't know when the expansion occurred. If it was just the use on this one lot and it wasn't expanded or was expanded to another lot. I don't know so that would be a problem. The only change you can make to a nonconforming use is to make it conforming. If you're using a parcel for a nonconforming use and didn't expand it at all even on that lot, then you would be a nonconforming use and you would be a nonconforming use permitted under the Land Development Code until such a time as you either amend the Land Development Code or it became a conforming use. I don't know when the expansion was. The expansion is the issue that we sited them for.

Zoning Administrator TLinville: The nonconformity isn't the issue, because it can be an allowed use with a special use permit. That's the whole issue, so it doesn't matter when it happened. Whether it was before or after. Under this code it needs a special use permit.

TEngel: Was it nonconforming under the old code?

Zoning Administrator TLinville: I think it was more nonconforming under the old code. I don't think it was allowed to expand at all. I think it was C2P before. I didn't research all that. I did at the time, but it's not really pertinent now because it happened before. It was illegal then it's less illegal now.

Chairman Bonessi: That's what I wanted to see, if it was legal when he did it before.

Zoning Administrator TLinville: No, not under the old code, no.

Chairman Bonessi: That answers my question.

Zoning Administrator TLinville: This is actually better, but it just requires that extra step under the new code.

Chairman Bonessi: Now when you talked about remedies, it doesn't spell anything out in here about remedies other than to call you.

Zoning Administrator TLinville: Under the actions necessary to comply, either relocate or apply for a special use permit.

Chairman Bonessi: I know we're not supposed to technically take that other part into consideration but we've done it in the past. Toby's basically said we've gone through this, this person's appealed this and he's made the necessary remedies that I've requested and basically said the person is compliant.

Associate County Attorney SZambon: You can dismiss the appeal for being mute. But I don't know that you can say...

Chairman Bonessi: It's a mute point really.

Associate County Attorney SZambon: You could dismiss it if that's ok with the applicant, I think. But this is a point in time thing. It's not – if they've complied since then – it's whether at that time, whether or not they were complying with the Land Development Code.

APouch: They've never been sited. Perhaps they've never asked for the special use permit for the new piece of property.

Associate County Attorney SZambon: And the other thing I'll say on that last point is they have applied for a special use permit. They are not technically in compliance until they have a special use permit. And you should make sure you don't approve a special use permit just so that they can comply.

JPhelps: If this was denied, saying you were in violation, we agree or disagree and then move on to the next – at the end of the agenda when you hear the appeal, that's the real critical part. At this point all we're really saying is at this point in time you were in violation.

TEngel: Whether we're agreeing with Toby or not.

JPhelps: That's all we're doing at this point.

Chairman Bonessi: Mr. Holbert, if you'd come up please. Do you have anything; you've heard what we're talking about. Do you have anything to add with regards to this appeal of this violation? We're not talking about your future application that we'll hear later today. We're talking about this appeal that you filed.

LHolbert: When I bought the property, they said we could use it for anything I wanted to. It was open use. From the state, I purchased it from the state and it was in a hole as deep as this building. We leveled it up with dirt then put stone on top of it. And the state had taken off about half of Budget's parking spaces in front of the building and to the side of his building. It's the only reason I purchased this lot – was to get him a little bit more room to park his cars. You'd have to be out there to look, but he's got a room in front of his building to park about five cars and no cars on the side right down beside the building. So that's the reason I purchased that little old lot and leveled it up and thought he could use it, but I guess the county took in the whole county to zoning so I guess he can't use it.

Chairman Bonessi: So you're stating that when you purchase it, it was zoned other than C2?

LHolbert: It was un-zoned. The county didn't have anything after a mile out of town. They didn't have jurisdiction out that far. So they took the whole county and we were in a different zoning thing. So it had to be zoned C3 or C4 I think for cars. Which it was not, I guess, after they zoned the whole county. That's the reason I bought the little old lot for Budget. Just so he could have a place to park his cars. There's other car lots right around him. Larry Hodges is just down the street 300 yards. And I can't think of the boy's got a wrecker shop - has a lot right in front of him like these cars.

Chairman Bonessi: So, I guess my question is to you now and again this is just for the compliance order is – currently do you agree that what you're operating now does not comply to the current zoning?

LHolbert: That's correct.

Chairman Bonessi: So you agree with that?

LHolbert: Yes, sir. Budget has rented off me since '83 in that same location. We own the property in back of the building and the building where the building is sitting. This lot joins the building in the back, the back lot to the side lot. If that makes sense.

Chairman Bonessi: Do you have anything else to add about this portion of our hearing?

LHolbert: No sir, I don't.

Chairman Bonessi: Do you want to call any witnesses for the board?

LHolbert: Budget may have something to say about it.

DBrown: About the only thing I'd say I understand that ignorance is no excuse, but we've had so many changes here so radically. As I understood it right after we got cited that there was not any, correct me if I'm wrong Toby, but they didn't have a – where we could change to that special use. Is that correct? When I was cited there was not a special use thing but because of the letter I wrote and somebody else wrote they decided to start using that special use for these properties. So this is one of those things, you know, everybody's fresh in this. You are and we are and everybody else is and as soon as we found out – Mr. Holbert doesn't see very well and I had to help him do the letter and everything for the appeal. But that was the only thing I said. Of course, after the road came through, and we were glad to see the road come through, I used to have 20 cars out front. Well anybody that's in the car business knows you have to have road frontage to do it. I was just gradually going away and I've been in the

location for 24 years. I made it through all the road construction, which about killed me. I'm a fair person but still it's hard to make a living when we're 20 cars, much less five. And that's where I got and Larry was kind enough buy that piece of property and fill it in and give me some room to where I could put at lease another 15 cars out there to try to sell. It's pretty tough right now for anybody that's in business for yourself. I could have moved. I'm 61 years old. It takes from 5-7 years to change a location, to get people to come to where you are. So you've had a lot of people you used to sell to. It's hard to move a location so I decided to stick it out. Larry did this on this other lot which we find is noncompliant, but I'm sorry, my fault too, but if you've got some cars out there to sell you try to do it. We're trying to get everything squared away and like I say I was ignorant of the law and I think Larry was too. But they told us we could use it then the first thing I know, the first time I found out we were out of compliance is when Toby came and cited us. But he's doing his job and I understand that. Everybody has to do their job and that's what keeps the county running. This is where we've come from y'all.

Zoning Administrator TLinville: Let me add a little bit to that. I don't know exactly how many years they've owned it – say six years- and it's been through that many steps in six to eight years. It was un-zoned. Not zoned at all, to open use. Then 25 north study was done and it was either C2 or C2P and within the last six or eight years all this has happened. 25 north was finalized July of '04 and then the new Land Development Code was September of '07. And I'd forgotten that at the time motor vehicle sales wasn't an allowed use in community commercial at all. So between the violation, and that was there first kind of appeal. The commissioners were taking up that first group of text amendments and that was one of the changes. So that's where we were hitting on the nonconformity part because at the time they couldn't expand so now community commercial is allowed with special use permit. That's where we are today so that's absolute truth. That property's been zoned every kind of different way there is. It's hard for us to keep up with.

APouch: Did he buy the piece of property that he expanded on or was that part of the original property?

DBrown: He bought the property but it, actually the back part of it joins the rest of the other two parcels of his property. So all the properties, actually is one piece of property with one slice of pie in between. But all the properties join each other.

APouch: Thank you.

Chairman Bonessi: Does anybody have any other questions for those two gentlemen? At this time I'd like for us to discuss this as a board. At this time we're not going to take any other public input. I don't believe there's anybody else to talk with regards to this matter.

APouch: I agree with Toby. He needed a special use permit and he didn't have one.

TEngel: Toby was correct. There are circumstances but who decides whether they are lenient or not? Do you decide? (question for TLinville). It's not us then. So that's pretty open and shut. He's either correct or incorrect.

JBrown: I totally agree.

APouch: I make a motion that we uphold Toby's decision in case A-08-04, that we agree with Toby's decision and deny the appeal.

JPhelps: I second.

All board members were in favor of denying the appeal.

Chairman Bonessi: Do you understand what we've just done? Basically we've said that, basically you said that you agreed that you were in violation so this is really kind of a mute thing. We'll get to the other part of this a little later this afternoon.

Chairman Bonessi: At this time I need a motion to close the hearing.

TEngel: I so motion.

All board members were in favor of closing the hearing.

Case V-08-08, Lois Schweinler, requesting a variance for front and rear setbacks. Zoned R-40. Location: 1693 Holiday Dr., Hendersonville, on approximately 0.95 acres, (PIN 9556719069).

Witnesses for case:

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Sharon Alexander – attorney for Miss Schweinler
Fred Reidinger – plan preparer / architect

Chairman Bonessi: At this time I would like to have a motion to open the hearing for case V-08-08, Miss Schweinler requesting a variance for a front yard setback, zoned R40, located at 1693 Holiday Dr, Hendersonville on approximately 0.95 acres.

JPhelps: So moved.

All board members were in favor of opening the case.

Zoning Administrator TLinville: If it pleases the board, I'll read our agenda packet into the record. This is an application for variance for rear yard setback for an existing home in an R40 district. In your packet on the first page is the memo which explains the request for variance and the text language concerning variances from the Land Development Code. The second and third page, that's duplexed is the site plan for the project showing that the proposed addition in the rear will infringe upon the 35 foot rear setback by 5 ½ feet. You also see that the home was sort of misplaced when it was built. It's actually inside the front setback – the sunroom and the corner of the home. Then the variance application form. Staff recommended denial. Although this lot is restrictive there is ample room to expand onto the northern portion of the home towards the pond by removing the deck. In this site plan, north is down. I will answer further questions.

TEngel: How old is the house? Was it built before zoning?

Zoning Administrator TLinville: I do not know. I would ask the applicant to address that.

Anybody else have any questions of staff?

SAlexander: I'm obviously not going to be giving any evidence, but if you would like I can address that last question. From the county's records it looks like the last improvement was made in 1986 or there about. That was probably the addition of the sunroom. That appears to be encroaching what is now the setback but I don't think it was, that was not added, if it was the last addition it was certainly before this area was zoned. I do have one witness that I would like to tender. He was sworn earlier. I'm at a little bit of a disadvantage because I have three plats and I'm not sure which site plan that you are looking at. If you wish I can mark the others if they would be of any assistance to you. We'll get that maybe through Mr. Reidinger's testimony. Mr. Reidinger, would you state your name for the record?

FReidinger: My name is Fred Reidinger.

SAlexander: Mr. Reidinger, what do you do?

FReidinger: I'm an architect.

SAlexander: And in that capacity have you become acquainted with Lois Schweinler?

FReidinger: Yes.

SAlexander: And Miss Schweinler owns a lot in Henderson County. Is that correct?

FReidinger: Yes.

SAlexander: Did she engage you to do something in regard to that property?

FReidinger: Yes. She would like to enlarge the house slightly in order to make it more livable so she can live in it year 'round.

SAlexander: And does this house have this appearance of being built as a second home or a summer home?

FReidinger: I think that would be fair to say. It's a very small cabin.

SAlexander: How many square feet, existing?

FReidinger: About 700 – the existing house.

SAlexander: And what kind of living area does Miss Schweinler propose to add?

FReidinger: It's about a 300 square foot addition.

SAlexander: What's the space going to be used for?

FReidinger: She wanted to increase the size of her master bedroom so that it would be a little more livable and she wanted to increase what was just a little alcove for a two person dining table into enough space to have a table she could seat six people.

SAlexander: If I could ask you, I'm showing you what the board members have in their packet, which is the first page of the site plan. And I think we understand Mr. Linville said that north was down. So I'm going to use up and down rather than north and south to help us keep oriented. If you could describe on this site plan where the current kitchen is located.

FReidinger: The current kitchen is in the lower left corner. There's a little breakfast nitch and the kitchen is just up the page from that.

SAlexander: So as it exists now there's not room for a table that would seat more than two people?

FReidinger: That's correct.

SAlexander: Where is the master bedroom?

FReidinger: The master bedroom's in the upper left corner.

SAlexander: And what is in the lower right corner of the house?

FReidinger: That's the living room.

SAlexander: Now, you've heard Mr. Linville testify recommends tearing the deck off of this house. Can you address that for the board?

FReidinger: The deck area is almost ½ the size of the existing house. It's outdoor living space. Miss Schweinler doesn't have a lot of means and so in order to tear that completely off in order to add on and then build back some exterior deck seems like a pretty serious hardship to me.

SAlexander: That would not be contiguous with either the master bedroom or the kitchen area. Is that correct? If you came down.

FReidinger: It would create space that's more additional living room than it would anything else.

SAlexander: How many bedrooms does this have?

FReidinger: Two.

SAlexander: What is Miss Schweinler's family situation?

FReidinger: She's a single woman. Has a daughter who she would like to be able to visit.

SAlexander: Is it a grown daughter?

FReidinger: She's a grown daughter – has a grandchild.

SAlexander: Is the daughter married?

FReidinger: The daughter was married and was – tragically last fall lost her husband in an accident. Which is part of the reason why this has taken eight months to show up.

SAlexander: Can you tell us why Miss Schweinler's not here today?

FReidinger: She's working full time in a nursing home trying to raise the money to close on a house she has up there.

SAlexander: Now would you describe this lot as being very narrow, north to south?

FReidinger: Yeah, it's really narrow. It's right at the smallest lot size allowed in an R40. And as you can see it's really tight side to side.

SAlexander: As an architect do you have an opinion as to the feasibility of building on to the north - on to the bottom part of the house where the deck is?

FReidinger: In order to add on where the deck is you might improve on the dining room situation that she has but you don't do anything to address the fact that the master bedroom is just a really tiny space. In order to do that under those kind of constraints you'd have to tear out the kitchen and redo the kitchen, or something would have to happen other than what's there.

SAlexander: Would that be cost effective?

FReidinger: No. Not at all. Just tearing the deck off and building another deck is pretty expensive.

SAlexander: And you described the deck as outdoor living space? So you would essentially be taking part of the existing living space which is minimal to begin with?

FReidinger: Yes. I would expect that she spends a lot of her time there. There's a pond out there to look at.

SAlexander: Can you describe the vegetation in that area, on the left side of the house?

FReidinger: It's heavily wooded. I think in your packet you might have some photographs. I submitted some. It's a wooded lot.

Zoning Administrator TLinville: It's wooded with laurel. It's very thick.

Zoning Board Secretary Karen Ann Antonucci passed around photos from the file submitted by Mr. Reidinger and photos taken by Mr. Linville.

SAlexander: For purposes of the record that would be two photographs on one sheet. We have no objection.

Chairman Bonessi: Sarah, I have a technical question. On the application we have Miss Schweinler and the applicant Mr. Reidinger. Does that legally need to be changed? Because I know we've gotten into that issue before. I would rather them saying they want to change it now.

Associate County Attorney SZambon: On the application? The application does not need to be changed but we do need is an agent form signed by the applicant and the agent. Because on the application – (to Miss Alexander, do you know what we're talking about?) - On the application it says owner or agent. What we are missing is an agent form. I feel like we are pretty clear that the intent is Miss Schweinler since she hired Miss Alexander was to get a variance. The whole reason we have this is so people don't go asking for stuff all around. So I don't have a problem with this board determining this matter now and before we have the order signed and enforced, getting an agent form. And she can just fax that back.

SAlexander: We can do that. We'll see that that's done.

Chairman Bonessi: I want to make sure we've got everything done properly.

Associate County Attorney SZambon: As long as we get that before the final order is signed, I think that's fine. We can put that in the order.

SAlexander: We'll see that that's done this week.

SAlexander: Mr. Reidinger, do these pictures fairly and accurately depict this property? Did you take these pictures?

FReidinger: I did.

SAlexander: When did you take them?

FReidinger: September of last year.

SAlexander: So the foliage is pretty much as it is from April through October, November in this area?

FReidinger: Yes.

SAlexander: Can you see any of the adjoining properties from Miss Schweinler's property?

FReidinger: Not at all.

SAlexander: Rather from her house?

FReidinger: None at all from her house.

SAlexander: Do you know whether or not any of the adjoining property owners could see her house from their property?

FReidinger: I don't know that I could say for certain.

SAlexander: I don't have any further questions, but I'll tender any to the board.

JPhelps: This addition is heavily wooded. Will it require removal of that heavily wooded area?

FReidinger: Not at all. There might be a couple of shrubs in that little 10 foot section.

JPhelps: So back toward the creek, that would be virtually undisturbed?

FReidinger: Yeah, that's true. Right up against the house where it is there's not a lot of vegetation.

JPhelps: That's what I was asking. Thank you.

FReidinger: Do you have a set of plans?

SAlexander: We have elevations. And a little more detail.

FReidinger: I don't have a floor plan layout. I do have some elevations.

Zoning Board Secretary Karen Ann Antonucci passed around the elevations from the file to the board members.

Associate County Attorney SZambon: I'm assuming you want this submitted into the record?

SAlexander: Please.

FReidinger: Some of the intent with the addition as a simple 10 foot swath was to make for a simple, pleasing roof rather something much more convoluted too. It's really straight forward. I think it's in keeping with what the house was before.

JPhelps: This bottom one is showing the addition so to the left is the proposed addition?

FReidinger: To the left is the proposed addition.

SAlexander: And Mr. Reidinger, for clarification purposes, it is an encroachment of 5 ½ feet, but that includes the roof overhang. Is that correct?

FReidinger: 5 ½ feet is measured to the furthest extent of the roof overhang.

JPhelps: So some if it would be less than that?

FReidinger: Right. The footings are not that far. They'd be 18 inches less encroachment.

Chairman Bonessi: How long has Miss Schweinler owned this home?

FReidinger: I think they closed – she engaged me last August when they closed.

SAlexander: August the 21st, 2007.

Chairman Bonessi: What is the topography of the land there on the north side there?

FReidinger: You can see in the photograph and that elevation that the deck is maybe five feet off the ground. The other side of the house you are fairly tight to the ground. It sort of slopes to that degree all the way down to the pond.

JPhelps: It appeared to be a slope to the pond. Is that true?

FReidinger: Yes.

TEngel: Where it says creek on that, is that where the pond starts?

FReidinger: The pond is at the bottom of the page.

Chairman Bonessi: When did Miss Schweinler contact you about doing remodeling?

FReidinger: Right after she closed on the house so we started in August. Then we very abruptly stopped in September.

APouch: Are the other houses in the neighborhood similar to this?

FReidinger: You know I honestly can't say much because everything is kind of back in the woods, tucked away. I couldn't give you character.

Chairman Bonessi: Do you know where the proximity of the septic system is? Or is it located on this drawing?

FReidinger: No. I'm not certain. I'm sure it's downhill. I'm sure it's far enough away from the pond to meet the requirements. It's in between.

Chairman Bonessi: My question is more around – if you were to move to the north side of it – you've got your well over here in this corner and I'd say the septic system's probably not over here.

SAlexander: Do you have some experience with those Mr. Bonessi?

Chairman Bonessi: I have a little bit of experience with those, Miss Alexander.

FReidinger: We didn't try and locate the field. So I couldn't tell you. But it has to be between the deck and the pond.

Chairman Bonessi: That's a question I guess I would have is that – looking at this lot is the location of the drain field even if they were to build – they would have to – that would effect the feasibility of making an addition to the north side.

JPhelps: To your knowledge is there any objection from the adjoining property owners concerning this addition?

FReidinger: Not at all.

SAlexander: We've heard none. I do have one other question of Mr. Reidinger. I just neglected to ask earlier. Will there be any plumbing added as part of this addition?

FReidinger: We might relocate the washer into the master bedroom. Yeah, there might be a pipe.

SAlexander: But not additional sinks or commodes?

FReidinger: No. Same number of bathrooms, same kitchen. We're not touching the kitchen if we can help it.

TEngel: Actually the only thing that counts are bedrooms. You can have 10 bathrooms, but you add a bedroom then you have to have a larger system.

JPhelps: But in this case you're only enlarging the existing bedroom.

FReidinger: That's right.

Chairman Bonessi: Does anybody else have any questions for Miss Alexander or Mr. Reidinger?

Is there anybody else here to speak with regards to this case? At this time I would like to close this from public input. We'll discuss this as a board.

APouch: Toby, can't you give a variance for like up to 10 feet?

Zoning Administrator TLinville: You can give a variance for...

TEngel: You. - That's a slope problem.

Zoning Administrator TLinville: Yeah and that's from the front yard setback, not the rear.

TEngel: The property for that size acreage is very narrow. The lot itself adds to difficulty in doing much with it and that's the reason they're asking for the variance.

APouch: And the variance, if I'm looking correctly...

JPhelps: At the biggest part...

APouch: At the largest part...

TEngel: It practically wouldn't be perceivable to see how close that was. It's such a small encroachment that it wouldn't be noticeable from the road at all. And I can understand that that's the location that the architect said. They need to add on otherwise they'd be adding all over the place. They obviously couldn't – they wouldn't even have a choice if they were adding on to the master bedroom by the lake, you know, where the deck is. They couldn't enlarge it.

Chairman Bonessi: My bigger concern about that is just looking at it and maybe shouldn't be talking about this but more than likely their septic system is in this area. You have to stay off your creek and away from your pond.

TEngel: And it wouldn't be uphill normally for a system.

Chairman Bonessi: That's what I'm saying. It's probably over in here somewhere.

JBrown: I can understand all that, but I just don't understand why she bought and closed on this knowing...

Chairman Bonessi: That's where I struggle.

TEngel: She obviously didn't hire an architect until after all that.

JPhelps: She didn't probably know the setbacks.

TEngel: Circumstances might have changed. She could have bought it and right afterwards, but that's guessing.

JBrown: And I'm guessing as to why she would do it.

TEngel: Well, what she's requesting will certainly not do any damage to the neighborhood. It will have very little effect.

APouch: I don't see it is excessive in anyway.

TEngel: It's a beautiful little house, in a very nice setting.

JPhelps: And the way he's drawn the addition it blends in.

JBrown: Well and she wanted to keep that deck.

TEngel: It's possible, if the septic system is down lower she might not be able to.

JPhelps: Toby, question. You had addressed in yours they had room on the north side but it looks like the way the setback dotted line is you could technically come out over there if you were just doing just the bedroom, right? Is the topography such that it would be prohibitive?

Zoning Administrator TLinville: To the north you mean?

JPhelps: This is the north, the pond side, right?

Zoning Administrator TLinville: Correct.

JPhelps: So I'm looking at the other side. Towards that shed, where that dotted line is, the setback.

Zoning Administrator TLinville: If you expanded that way you would encroach further into the setbacks.

JPhelps: But you could come off within that, right? If you were doing one bedroom.

Zoning Administrator TLinville: But then you're splitting a roof line which – that's undesirable.

JPhelps: It's really not a good alternative.

TEngel: This is the simplest way of doing it. And yet it'll have the least amount of change in appearance on the house itself. So I like it.

Chairman Bonessi: I struggle with what Janice was talking about too. The education of the consumer – the customer before they buy something.

TEngel: Yeah, but I could see someone falling in love with the house and then deciding to make it larger. I can't blame them for that.

APouch: It's such a small – it's truly not an excessive big master something.

TEngel: It's nearly an acre of property so it's a large piece of property for a very small addition.

JPhelps: And with the woods there you're not really disturbing anything. You're not going to be seen from anywhere and it's not like you're moving up to a road or access, you know next door to a neighbor, within that frame. I see no danger or damage in doing it this way.

SAlexander: May I address one of the concerns that's been articulated?

TEngel: I guess we could sort of open and close.

Chairman Bonessi: I'm personally ok with it.

Associate County Attorney SZambon: If you want to reopen it that's fine with me.

SAlexander: Thank you. Miss Schweinler did obtain a survey at the time she purchased this but that was in August of last year. Maybe in late July of last year and the Land Development Code changed about a month later. So I don't know at that time that it would have been consistent with the rules that the surveyors have to follow to point out setbacks that were not yet imposed.

Associate County Attorney SZambon: Isn't this R-40?

Zoning Administrator TLinville: R-40 hasn't changed.

SAlexander: It didn't change? The survey we have reflects that they did not indicate setbacks on the survey so she did do some due diligence at that time. Thank you.

Chairman Bonessi: I would like to close it from public input, again. OK, if there is no other discussion I will ask this board to make a motion.

JPhelps: Mr. Chairman I move the Zoning Board find and conclude variance application V-08-08 complies with the necessary provisions of Henderson County Zoning Ordinance for the following reasons: there are unique circumstances, I think in the building of the land, it was not the applicants fault, I think the variance is in harmony with the spirit and intent of the law. I think the variance will certainly not interfere with public safety and welfare, and should actually protect it, and I think the variance will do substantial justice and for that reason I recommend approval.

TEngel: I second.

All board members were in favor of approving the variance.

Zoning Administrator TLinville: Sarah, can I issue permits on this before the order has been approved? Can I issue a zoning permit?

Associate County Attorney SZambon: I can write one of those conditional permits that we were using before the board decided they did not want to do that anymore.

Zoning Administrator TLinville: Or I could write the permit so they could begin construction, pending approval of the order. But I don't think the intent's going to change. They can build within this space.

JPhelps: Can we have the attorney swear or affirm that they'll come in and pick up the thing.

TEngel: Who would do that? The architect would be picking it up?

Associate County Attorney SZambon: We need the agent form and we need the order signed. It's up to this board if the board wants Toby and I to do something before the July meeting or to wait.

TEngel: They've already been delayed to begin with.

Chairman Bonessi: To me it was more of a logistic issue for you all.

Associate County Attorney SZambon: I don't have one tonight to give them.

Chairman Bonessi: I know, but it was more litigious for you all to deal with.

Zoning Administrator TLinville: I'm satisfied that this board has granted a variance and I can issue a zoning permit and that's what left is legalities. Sarah focuses on legalities.

TEngel: As long as the architect promises to come in.

Associate County Attorney SZambon: I'm fine if this board is fine with giving them a conditional permit, conditioned on the order being signed and approved and getting the agent form. And they have to abide by whatever the terms of the order are. In this instance there were no conditions put on the order. In other instances there are. And that that conditional permit expires July 30th or whenever our next meeting is they can get a permanent permit. Can we do that?

Zoning Administrator TLinville: Sure. So once we get the agent form then I can issue the zoning permit so that you can get the building permit. We'll have to get the existing system – to check where the system is. I'll email that agent form to you (to Miss Alexander).

JPhelps: I move we close the hearing.

TEngel: Seconded.

All board members were in favor of closing the hearing.
Chairman Bonessi called for a 5 minute break.

Case SUP-08-10, Harold Pace, Sunrise Knoll Retirement Park, requesting special use permit for Manufactured Home Park- required in R3 zoning as defined by SR 1.13 in the Land Development Code. Location: 334 Lamb Mountain Road, Hendersonville, on 15 acres, (PIN 0600534242).

Witnesses for the case:

Sharon Alexander – attorney for Mr. Pace

Chairman Bonessi: I need a motion to open case SUP-08-10, Harold Pace, Sunrise Knoll Retirement Park, requesting special use permit for Manufactured Home Park- required in R3 zoning as defined by SR 1.13 in the Land Development Code. Location: 334 Lamb Mountain Road, Hendersonville, on 15 acres.

TEngel: Made motion.

All board members were in favor of opening the case.

Zoning Administrator TLinville: If it pleases the board I will read this agenda packet into the record. First in your packet you have the manufactured home park application form. You have the letter from our Technical Review Committee stating that the site plan was conditionally approved pending a driveway permit and an erosion control permit. Both of those are required. It's just some redundancy from the TRC. Next you have an aerial photograph and the zoning report showing that the property is 26 ½ acres. Zoned R3. Currently fields, an apple orchard and towards the southeastern end, wooded. Next you have the site plan. You'll see that the manufactured home park will be a single roadway in with 10 homes located along that roadway. Just adjacent to that, and it will be on the same property, is Mr. Pace's home, his shed, his agricultural business, there all together. The designating lines that you see there are just to show the required amount of open space has been designated to the park. He is not going to divide this. It is all going to stay as one lot. Which means, that until it is divided, he couldn't sell this park. It will be part of his property. And that is all that's in your packet. If you will remember last month's meeting we had to continue this case because of the time. And one of the adjoining property owners was there to speak and was irate because he couldn't speak. So I offered him to write a letter stating his concerns. It's here-say evidence because no one can cross examine him but take it for what it's worth. And Karen Ann has photographs of the property from this neighbor and if Miss Alexander would like to look at those first.

Chairman Bonessi: Has this letter been notarized?

Zoning Administrator TLinville: It was just signed and hand delivered. I took receipt of the letter.

JPhelps: He brought it to you personally?

Associate County Attorney SZambon: And again, this board doesn't have to follow the rules of evidence.

Chairman Bonessi: If it was hand delivered to Toby...

Zoning Administrator TLinville: I'll read this into the record. (a scanned copy of the letter is below)

My name is Sydney B. Self. My wife and I live at 232 Lone Laurel Trail and also own 214 Lone Laurel Trail. Both of these properties abut on Mr. Pace's land.

I would like to make two points.

The first is essentially a personal one. From our front porch we will look down directly on the proposed Trailer Park. Photograph number one is taken from the porch and shows the location for the proposed park. Photos two and three are also views from the porch. Photo four shows an existing Trailer Park which is located on the other side of the valley from our house. I would imagine that the proposed park will look very much like this one only the proposed park will be much closer than the one across the valley.

It is worth noting that there is an existing trailer park just on the other side of the proposed park, but the existing park has been in that location for many years and the shrubbery has grown up to hide it. Even in the winter it is hard to recognize it as a trailer park.

I am sure that Mr. Pace would make every effort to make his new park as attractive as possible, but trees and shrubs take time to grow and I would guess that it will take fifteen or twenty years for the proposed park to be as well integrated into the landscape as the existing adjacent park, and at 83, I doubt if I will live long enough to get the benefits.

Photograph five is a view of our present house. Photograph six is a view of my two neighbors' houses across the street from mine. As a guess, the average cost of these three houses is well in excess of \$300,000. A trailer park in the area proposed will undoubtedly reduce the value of all of our houses as well as the value of the other houses in the Lone Laurel development.

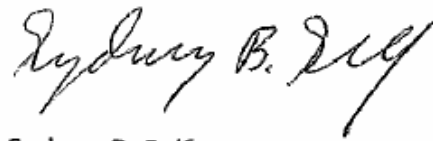
My second point is a more general one.

- ❖ We have all driven through the Mill River area and the area is obviously a more prosperous one than the area East of I-26. There isn't much anyone who lives in our area can do to correct the present situation, but we don't have to make it worse.
- ❖ It is bad enough that we have McGraw's Garage at the intersection of Ridge and Sugarloaf Roads, but we also have two trailer parks on Ridge Road just before Ridge Road becomes Lamb Mountain Road. Photographs seven and eight show these two parks. The last thing anyone living in our area needs is another trailer park such as these!

We already see the efforts that are being made along U.S. 64 in the Edneyville area to upgrade the quality of housing in our area and given an opportunity, these efforts are likely to expand into the Lamb Mountain Road area.

However, looking at the Lamb Mountain Area from the perspective of someone considering buying or building in our area, Lamb Mountain Road has some very desirable building sites, but to get to them one first has to pass these ugly trailer parks. Many people will be put off by these properties and will choose to build elsewhere. A third trailer park will not help the situation.

My wife, my neighbors and I have no objections to Mr. Pace developing his property, but we would all appreciate it if he could do it in a manner that improved the appearance and desirability of all of our properties rather than in the manner which is proposed.

A handwritten signature in black ink, appearing to read "Sydney B. Self". The signature is written in a cursive style with a large, sweeping initial "S".

Sydney B. Self

Zoning Administrator TLinville: Miss Alexander, do you need to see this letter?

SAlexander: I would like to get a copy of it.

Zoning Administrator TLinville: I'll entertain any other questions the board may have.

Associate County Attorney SZambon: Miss Alexander, do you have any objections to these pictures?

SAlexander: I do for the record I would object to any consideration of the letter and the pictures themselves simply because I haven't had a chance to cross examine Mr. Self on the use of his property and on the perspective of some of those pictures. I'll just make that objection for the record.

Associate County Attorney SZambon: Does the board want to see these pictures with Miss Alexander's objection?

JPhelps: For the record we can record her objection to it. We don't have to follow true court rules of order for evidence.

Associate County Attorney SZambon: The objection is recorded for the record. The weight in which you give the letter and pictures is up to you. Again, it is here-say, she has not gotten to cross examine the witness. We don't have the information about the validity of these pictures or any of the subjective statements in the letter so the board can take it. But that's all here-say stuff. You don't have to follow the rules of here-say so you can look at the pictures if you want and then determine how much you want to weigh them in your consideration.

JPhelps: We could consider- just as subjective and an opinion and weigh it in that light.

Associate County Attorney SZambon: You don't have anyway to validate it at all. You could think he's a crazy person, you know.

JPhelps: We can just record that it has not been validated. Toby, would you help me here with the two, I'm looking at the colored one and the drawing. And these are where the mobile homes are going to be? To the left here, to this open space shaded area? These home numbers, are they the mobile homes that he's proposing?

Zoning Administrator TLinville: On the aerial where you see Ridgestone Drive, the homes will be adjacent, and that's an existing manufactured home park. And his roadway will come in to the left side of his lot and run kind of parallel.

JPhelps: So he'll create a road coming off Lamb Mountain?

Zoning Administrator TLinville: Right.

JPhelps: And then he'll have basically – some of these mobile homes will back up to Ridgestone and then some will back up to this open space?

Zoning Administrator TLinville: There is a required 50 foot separation from his property line but yes, it will be adjacent.

JPhelps: Once you have a 50 foot setback then these will be – have a 50 foot setback. I looked at this first and now I think I'm better – I was wondering how he was getting in there. So this is where he gets to his lot, through Sierra Vista?

Zoning Administrator TLinville: This is his son. The stand alone lot in there is his son's property. And the drive is drawn from Lamb Mountain. And you can see it on the aerial through the orchard there. I'd forgotten that, one reason we specified a driveway permit on the – one reason the TRC specified a driveway permit is because there's drawn an NCDOT culvert on the property near this driveway and we didn't want to make a decision one way or the other but we wanted their decision on that – on where the driveway should be located in relation to that culvert. So that driveway may ultimately be somewhere other than there. The roadway will remain in the same place but it was a part of the record that had mentioned using the driveway as the entrance – widening it and turning.

JPhelps: It's set back from this existing, what is it Grove Drive?

Zoning Administrator TLinville: That's it. That's Gravel Drive.

JPhelps: Ok, so the letter we got was from one of these lots over here on Lone Laurel?

Zoning Administrator TLinville: Yes, he lived, there are two side streets off of Lone Laurel and I think he lives in the middle of the second section. I think that's the second cul-de-sac.

JPhelps: So he's really not that close if you look at this terrain across here. And you're going to have an open space barrier, if you would. Not sure how wide that is – 1 ½ acres where that strip is – 10 feet, 20 feet, 25 feet, I don't know. I can't tell.

APouch: And this is for a total of 10 trailers? Is that what this means?

Zoning Administrator TLinville: That's correct.

JPhelps: But it says Phase One.

Chairman Bonessi: Well I was looking at that too and the way the numbering scheme is 1A, 2A.

Zoning Administrator TLinville: Phase One, the Phase One, Phase Two, he had intended to do the first five homes or six homes on the left side first and then as those were rented do four on the other side. I can't get these architects to understand after all the trouble we had on the last manufactured home park, do not put phase anything on the map, they do it anyway.

TEngel: Is there a trailer behind the shed?

Zoning Administrator TLinville: There is.

TEngel: Is that a house.

Zoning Administrator TLinville: I assume so. I think it migrant workers since he's a farmer. But that's me guessing.

Chairman Bonessi: Does anybody else have any questions for Toby before we ask Miss Alexander?

Zoning Administrator TLinville: Do you have the photographs in the file that I took? (asked of Miss Antonucci)

The photographs taken by Mr. Linville were passed to the board members and Miss Alexander.

SAlexander: This is primarily where he lives and not where it's going to be built necessarily.

Zoning Administrator TLinville: Ok. I got sort of a pan view of where it will be but I was standing in his driveway, closer to his home.

SAlexander: I don't have any objections of them considering those.

JPhelps: Toby, did you tell me that he has met these two conditions that were in your approval?

Zoning Administrator TLinville: Yes.

SAlexander: I have copies of both of those permits if you care to see them tonight.

Zoning Administrator TLinville: Does it say what NCDOT recommended for entrance?

APouch: Where are these houses?

Zoning Administrator TLinville: They would be beyond his home. Sort of a straight diagonal shot from there.

SAlexander: I'll let you review this and see what they recommended.

Zoning Administrator TLinville: This references an attached figure 6, which I don't think is here. The culvert was an issue so they may say put it right beside where he had proposed the driveway, without seeing whatever they sketched out. But whatever it was it's been approved. And the erosion control permit – they have that.

APouch: What's the erosion control permit?

Zoning Administrator TLinville: Any land disturbance greater than a 10 foot x 10 foot area requires an erosion control permit. Those larger than an acre require a more in depth site plan and fees. He will not be disturbing more than an acre with this construction. So that was a no cost permit and just requires him to protect any disturbance so that there's no runoff. This parcel is fairly flat. It only deviates 10 feet from one end to the other, and you're talking 827 feet of land there.

Chairman Bonessi: Are there any other questions for Toby?

SAlexander: I think my primary purpose tonight is to convey Mr. Pace's apologies. He had a date at Orlando with his grandchildren and I don't think there's any doubt he'd rather be here than in Florida this time of year. I don't have any further evidence that's not already contained in the record. As I understand it at this point, the applicant doesn't have a burden other than to rebut any evidence that's been tendered to you to prove some of the positives that are stated as negatives in your ordinance. I would just submit to you that he's obviously in technical compliance. The evidence is there's three mobile home parks that predate your ordinance. When we called them mobile home parks, that are within less than ½ mile of this area. This is going to be off set quite a bit off the road. It will be done, even, I think Mr. Self in his letter, said he knew it would be done nicely. I think it is certainly consistent with that neighborhood and would make very good use of this property. As Mr. Linville said, Mr. Pace isn't going to deed this. He isn't going to sell lots. He's going to maintain ownership of it. It's just for him to make this particular use of it at this time. And I'll be happy to answer any questions that you all may have.

JPhelps: So the only letter we got is from the north side. So none of the ones down here, Mr. Britton, we've had any comments from, right?

Zoning Administrator TLinville: No.

JPhelps: Which would probably be much closer than the one on Lone Laurel Trail.

Chairman Bonessi: Something I didn't see- if have to apologize- I'm not really that familiar with manufactured home park requirements under the new code. There's not any kind of buffer- is there any kind of buffer? Because I don't see any traditional buffer stuff on the site plan.

Zoning Administrator TLinville: A B1 buffer is required and it's denoted on the site plan by the – there are two dotted lines there. It's the staggered dash line that denotes the buffer.

Chairman Bonessi: I'm sorry. I got it.

TEngel: What's the dimension of it?

Zoning Administrator TLinville: It's a 20 foot buffer and it has one large and two small deciduous trees - two large, six small evergreen trees every 100 feet.

TEngel: A little bit of green. This is going right against park.

Zoning Administrator TLinville: Correct.

JBrown: I was just saying that I'm very familiar with that area and all of those mobile home parks around there – none of them are trashy looking. They're all pretty well kept, basically. The way that Mr. Pace is proposing this, I think it would be an asset because it's going to be a retirement park and we have many retired people here that prefer a small manufactured home. I own two mobile home parks myself and one I just purchased and I'm doing a great deal of work in that. But you can make them very nice and Harold is the type that would.

APouch: Is this a retirement home or...

JBrown: It's going to be a retirement park. That's what it says right here.

APouch: But over here it says a mobile home park.

JBrown: No, they are not retired, but they are not junky. That's what I'm saying.

Associate County Attorney SZambon: I think there's a miscommunication there as to whether or not the mobile home park is meant for retired people vs. whether or not the mobile homes used in the park have been retired. Am I correct in saying that that was the miscommunication?

Zoning Administrator TLinville: It's for retired people

JBrown: For retired people.

JPhelps: It is a mobile park for retired people.

Associate County Attorney SZambon: I think technically it's HUD housing. I don't think they call them mobile home parks anymore.

SAlexander: They have to comply with some federal regulations if they do. If they limit it to retirees, but I think that his intention is to do that.

TEngel: That's his intention but he's not held to it.

SAlexander: That's correct.

Associate County Attorney SZambon: And I don't know that that's a factor necessarily. Look at your factors for a special use permit. I don't know that – I see a constitutional problem with basing it on who's going to live there.

JPhelps: So he can say this is my intent, but down the road I rent three of them to somebody else.

SAlexander: But he does live right there. As the pictures you've seen show he lives right on top of this so I'm sure he's going to be very discrete as to who he rents these homes to.

APouch: They have done the driveway permit.

Associate County Attorney SZambon: Those are the things required by the TRC, for the TRC to give technical approval. Technically the TRC just made sure that the mobile home park or the HUD housing park or whatever you want to call it met all of the requirements of the SR in the Land Development Code – SR 1.13.

APouch: And so they have done that.

Associate County Attorney SZambon: They have met everything for the Technical Review Committee, which is only the technical stuff, so the decision for this board is to look at the factors for a special use

permit, one of which is to make sure the applicant has met all the technical factors and to work through those factors for determining a special use permit and to decide whether or not this complies.

Chairman Bonessi: At this time I'd like to close this to public input and we'll discuss this as a board. Janice, we'll start with you.

JBrown: I don't really have any comments.

TEngel: It is against another park so it's not going to adversely affect the area. One more comment, if you look at the photos that Toby took, at the house, it's as neat as a pin. So if he keeps his house neat it's usually how he'll keep the park.

APouch: He's going to live there.

JPhelps: That was my point. If he's going to live there himself he certainly doesn't want trashy...

APouch: He's met all the requirements that he's been asked to. And if he applies by all the rules and regulations, you know for setbacks and buffering. I can't think what to add to this. It looks like a pretty good list of things here.

JPhelps: I've heard previous discussions of zoning in the county – discussions of trying to have appropriate places for this and it certainly seems to have met the requirements set forth and I really can't see any objection to it.

TEngel: I have one comment about the individual who wrote the letter. He knew he was moving into an area that already had this housing.

JPhelps: We've all driven through the rural parts of the county and seen nice houses and right next to it there's either mobile or junky...

JBrown: I've seen nice mobile home parks right next to a junky house.

JPhelps: That's what I'm saying, so it's not what you can't find in other areas of the county.

Chairman Bonessi: If we have a motion do we need to list what's already listed with TRC, as far as requirements?

Associate County Attorney SZambon: Other than meeting the SR you don't really need to list anything unless there are particular things you are concerned about. I don't think it's necessary to repeat the two things the TRC said because they have those.

Chairman Bonessi: That's kind of what I was asking.

Associate County Attorney SZambon: Yeah, if we already have those I don't know if it's necessary. But when you do make your motion or in your discussion remember to keep these factors in mind because this is what I have drafted an order on or otherwise I'll have to infuse what you guys have said, especially special use. These are based on the ordinance.

JPhelps: You want a motion that kind of summarizes these things?

Associate County Attorney SZambon: Yeah, I need a motion for approval or denial based on these factors and any conditions you may want to add. And if you don't want to add then you don't need to.

TEngel: Basically it's held to what we have on the site plan?

Associate County Attorney SZambon: The order will be based on the site plan.

TEngel: The site plan is to scale so we have to keep their dimensions about the same as they show – locations and so forth.

Associate County Attorney SZambon: There might be some adjustments to the site plan I'm assuming, based on environmental health stuff, you know, septic and all that stuff.

TEngel: What I was saying is that it's going to be held so far from the road.

Associate County Attorney SZambon: And they're going to have to meet the buffers and the setbacks.

TEngel: Well I'm talking about is there is no setback requiring it to be so far off the road.

Associate County Attorney SZambon: We can make that a condition if you want. That the distance from the roadway remains the same as it is on the site plan.

Zoning Administrator TLinville: It would have to be at least 50 feet from the roadway.

TEngel: It think it's more than that on this.

JPhelps: You could specify – minimum 50 feet. Look at this scale here.

TEngel: It's at least 150 feet. That's what it shows.

JPhelps: About 150 – that first home.

Chairman Bonessi: The question is though, in the driveway permit we don't really have...

TEngel: I'm talking about from the first mobile home.

Associate County Attorney SZambon: How about this?- You can make a condition that the distance from the roadway cannot be less than as it is shown on the site plan unless the special use permit is amended. Or instead of having it amended if they had to change it for some reason, a practical reason, it could be administratively approved through Toby. It's up to this board which way you want to go.

TEngel: What will it adversely affect if this were changed?

Associate County Attorney SZambon: It's up to you if you want to go through this board or through Toby or how you want to deal with this.

Chairman Bonessi: I think it would be better just to go through Toby. Just because when you're dealing with another 45 days it's potentially...

Zoning Administrator TLinville: I think he's showing it that far back for his own peace and quiet at his home.

Associate County Attorney SZambon: Miss Alexander, do you think that the applicant will have a problem with that condition?

SAlexander: I do not think that he would.

TEngel: Why don't we just make it 150 feet – that's the same that it shows.

Associate County Attorney SZambon: That's what I said – that it should not be less than shown on the site plan. It could be more. We still need a motion.

JPhelps: Mr. Chairman, I move the Zoning Board find and conclude that special use permit SUP-08-10 be approved subject to the setback being as shown on the plat approved by Toby to deviate from it. And that the application meets the type of use and size of the property requirements, meets all site standards, meets all public safety and welfare considerations. It does not appear to substantially injure the value of the property or improvements in the area. It seems to be in harmony with the surrounding area. Complies with all state, local, federal laws, statues, ordinances and regulations. And it's in accordance with the Comprehensive Plan, Long Range Transportation Plans and Comprehensive Transportation Plans of the county or municipality within the county. It seems to minimize the effects of noise, glare, dust, solar access and odor on persons residing or working in the neighborhood of the proposed use. It minimizes environmental impacts on the neighborhood such as groundwater, wetlands, endangered species, etc. It appears to provide satisfactory provisions for ingress and egress, parking, loading areas, utilities, buffering and landscaping and structures location, size and use. Therefore I recommend approval of his request.

Chairman Bonessi: All in favor?

All board members were in favor of approving SUP-08-10.

Chairman Bonessi: I need a motion to close this hearing.

TEngel: So moved.

Chairman Bonessi: All in favor?

All board members were in favor of closing the hearing.

Associate County Attorney SZambon: Toby, are we doing an additional permit on that one, or no? They are going to need building permits. Do they need it to pull their septic permits or anything?

Zoning Administrator TLinville: I doubt he'll start before the orders are approved. If so we'll cross that bridge when we get there. If he wants to do improvement permits we can issue him permits.

SAlexander: Thank you. Good night.

Case SUP-08-13, Larry Holbert & Ronnie Gray, Motor Vehicle Sales or Leasing, is requesting a special use permit – required in Community Commercial zoning as defined by SR 7.10 in the Land Development Code.
Location: 3650 Asheville Hwy, Mountain Home, on 0.36 acres, (PIN 9650877993)
Witnesses for the case:
Larry Holbert – land owner
David Brown – Budget Motors owner

Chairman Bonessi: At this time I'd like a motion to open case SUP-08-13, Larry Holbert & Ronnie Gray, Motor Vehicle Sales or Leasing, is requesting a special use permit – required in Community Commercial zoning as defined by SR 7.10 in the Land Development Code. The property is located at 3650 Asheville Hwy in Mountain Home.

TEngel: So moved.

All board members were in favor of opening the case.

Zoning Administrator TLinville: If it pleases the board I will read the agenda into the record. In the memo you'll see the SR for motor vehicle sales and leasing, which requires a major site plan, adequate lighting and dust reduction. This is approximately .36 acres of land located at 3650 Asheville Highway. The property is not in a water supply watershed or a flood plain. It is zoned community commercial, no water and sewer have been proposed. The major site plan has been reviewed and it meets all applicable requirements from the TRC. The second letter there is the TRC letter just explaining the SRs again. Then you have the special use application. The next sheet is a zoning report showing the parcel lines, then the site plan. This property will be strictly used for storage. There's no buildings proposed and the vehicles have been on this property. Just a simple driveway in and vehicles parked. And I'll entertain any questions.

TEngel: It's just a survey. Oh, it doesn't show how the cars are set up or any buffering.

Zoning Administrator TLinville: No buffering required because it adjoins other commercial property. It's all gravel so there's no parking spaces designated.

TEngel: Oh, it's just gravel.

Zoning Administrator TLinville: Correct.

TEngel: No lighting or anything?

Zoning Administrator TLinville: He's got street lighting out there.

JPhelps: You've got this *lighting*, what do you mean by that as adequate lighting been installed? In your letter it says: approval of all technical standards are met and Zoning Administrator approval if adequate lighting has been installed.

Zoning Administrator TLinville: That's just standard language that we put in these letters from the SR. The adequate lighting pertains more to buildings and walkways. Since this is just parking...

JPhelps: It's just boilerplate, it really doesn't apply.

Zoning Administrator TLinville: Right. The larger point is that he won't have huge lights there.

JPhelps: Nothing rotating?

Zoning Administrator TLinville: It won't look like Auto Advantage.

TEngel: There are no signs or anything?

Zoning Administrator TLinville: No, because this is just a continuation of the existing business.

Chairman Bonessi: Sarah, I guess another question on this applicant thing – do we need to get an applicant form?

Associate County Attorney SZambon: Mr. Holbert owns the property, right? Where's the other page?

Chairman Bonessi: Yeah. Mr. Brown signed it. I'm not sure in these cases it's an issue but I just want to make sure that...

Associate County Attorney SZambon: No. we should be having the agent sign the form. If it's not signed, then the owner filling out the thing.

Chairman Bonessi: Yeah, I just want to make sure that we're doing the right things.

Zoning Board of Adjustment Secretary KAntonucci: That's all I have.

Associate County Attorney SZambon: If the property owner is not the one filling out the application we just need an agent form.

TEngel: If he's here he could sign it.

Associate County Attorney SZambon: Yeah, I don't know that we need the agent form.

Chairman Bonessi: But we would need to add that at some point. Are there any questions for Toby? I guess then Mr. Holbert we'll ask you to come up and add anything you might have with regards to this.

Zoning Administrator TLinville: This is Ronnie Gray.

Chairman Bonessi: Oh, I'm sorry.

LHolbert: The only thing I'd like to say is it would help Budget very much if we could get this zoned to where he could sell cars. He's down to about 5 cars in front of his building and he needs highway use to sell cars. That's all.

Chairman Bonessi: Do you have anything you'd like to add?

DBrown: No I think I've said it all first time around. I think y'all got a good memory.

JPhelps: I have one question. Clarify, how do you get to this lot from your current lot?

DBrown: I walk about 50 feet across one lot to the other lot. And also there's a driveway into this lot. The state has put a right-of-way curb in there and like I said there's a curb into my business also.

JPhelps: So it has both access?

Zoning Administrator TLinville: It has direct access to Asheville Highway and it's a DOT curb cut into it.

JPhelps: I was just curious, as this other lot kind of goes behind it and connects.

DBrown: Actually I can come up from the back side of my lot, so we've got a roadway up to the – come around the back side also.

JPhelps; I was just curious.

DBrown: Ok.

Chairman Bonessi: Do we have any other questions? Anybody else? I will close the hearing to public input and we'll discuss this as a board.

APouch: I think we should give him a special use to extend his business, to expand his business, with the lot he just purchased or has purchased.

Chairman Bonessi: In my opinion that area is that type of use.

APouch: And it's been the same use. It's been no different. It's just to expand his business.

TEngel: And actually he's just trying to get back to the size of the business he had before they widened the road.

JPhelps: He was harmed, really by the road cutting down the size.

APouch: It was certainly no fault of his.

JPhelps: Kind of restoring the health, if you would.

Chairman Bonessi: Janice, do you have anything?

JBrown: Indicated she agreed with the other board members.

Chairman Bonessi: Do we have a motion?

APouch: I move that we grant the case SUP-08-13 a special use permit to expand his business. It meets all site standards; type of use, size of use, size of property, will be larger – but he needs it; public health, safety and welfare – certainly no issue; does not substantially injure the value of the property or improvement in the area; in harmony with the surrounding areas; compliances with all local, state, federal laws, statutes, ordinances, and regulations; in accordance with the Comprehensive Plan, Long Range Transportation Plans and Comprehensive Transportation Plans of the county or municipality within the county; minimizes the effects of noise, glare, dust, solar access and odor on persons residing or working in the neighborhood of the proposed use; minimizes environmental impacts on neighborhood- underground water, surface water, wetlands, endangered/threatened species, archeology sites, historic preservation, and unique natural areas – it doesn't do any of that; satisfactory provisions for ingress/egress, off-street parking and loading areas, utilities – locations, availability and compatibility; buffering and landscaping – location, type, and dimensions; structures – location, size, use.

JPhelps: Seconded.

All board members were in favor of granting the special use permit.

Chairman Bonessi: Congratulations gentlemen. We will need to get you to sign the agent form.

Zoning Administrator TLinville: Just have, Karen Ann, just have Ronnie sign the application.

Chairman Bonessi: Yeah, you could do that.

Zoning Administrator TLinville: There's no additional permits. You're not building anything that we'll need so when we get the order completed we'll need to get one of the property owners to sign that and that will official.

Chairman Bonessi: At this time I need a motion to close this hearing.

TEngel: I motion.

APouch: Seconded.

All board members were in favor of closing the hearing.

There being no further business, Chairman Bonessi asked for a motion to adjourn the meeting.

JPhelps: made first motion. TEngel: Seconded. All Board members were in favor of adjourning the meeting at 6:30 PM.

Dean Bonessi, Chairman

Karen Ann Antonucci, Secretary