

MINUTES OF THE HENDERSON COUNTY  
ZONING BOARD OF ADJUSTMENT

The Henderson County Zoning Board of Adjustment held its regularly scheduled September meeting on Wednesday, September 26, 2007, at 4:00 p.m. in the Board of Commissioners Meeting Room, 100 King Street, Hendersonville, North Carolina. Those present were: Tony Engel, Jim Phelps vice-chairman, Ann Pouch, Gary Griffin, Zoning Administrator Toby Linville, and Secretary to the Board Natalie Berry. Associate County Attorney Sarah Zambon. Chairman Dean Bonessi arrived late.

**Acting Chairman Jim Phelps** called the meeting to order at 4:10 PM. He said the Board is waiting for the fifth member of the Board to arrive. In the interim, **Acting Chairman Phelps** presented the minutes of the meeting from August 29, 2007.

**Acting Chairman Jim Phelps** explained to the applicants if they wanted to wait for a fifth member to arrive so that their case would have a 4/5<sup>th</sup>'s vote in lieu of 4/0 vote for approval. Applicants agreed to wait and have the agenda modified for such.

The agenda was adjusted to address the Old Business first while waiting on the fifth member to arrive.

OLD BUSINESS: **Associate County Attorney Zambon** reviewed hypothetical cases and the board discussed them in depth.

**Chairman Dean Bonessi** arrived at 4:33 PM.

**Chairman Bonessi** asked that **Acting Chairman Phelps** remain as the Chairman for the rest of the meeting.

**Acting Chairman Phelps** agreed.

The Board introduced themselves to the audience.

**Acting Chairman Phelps** started back at the beginning of the Agenda, first item is to approve the minutes and orders of the last months meeting.

**Acting Chairman Phelps** asked if everyone had read the minutes from August 29<sup>th</sup> meeting prior to this meeting? Are there any corrections or additions to be made? If not, I will entertain a motion to adopt the minutes as written?

**Ann Pouch** moved to adopt the minutes as written,

**Tony Engel** seconded and all four members voted to approve the minutes as presented.

**Acting Chairman Phelps** said the minutes were approved and he would now sign them and provide the signed copy to the secretary. He also asked if there were any orders to approve?

**Associate County Attorney Sarah Zambon** said there were not any orders since we did not have any cases last month.

**Acting Chairman Phelps** called the first case **TUP-05-06A** to order, opened hearing.

**Associate County Attorney Sarah Zambon** reminded Acting Chairman Phelps that the temporary use permit application was not quasi-judicial.

**Case TUP-05-06A, Carriage Park Subdivision, Petitioner Ransom Jackson:**

**Acting Chairman Phelps** called **Case TUP-05-06A**, Carriage Park Subdivision, Ransom Jackson, petitioner requests an extension of time for existing Temporary Use Permit to place a sign at the entrance of subdivision at Haywood Road entrance for sale of remaining parcels within the development. The parcel is located at 2827 Haywood Road (Hwy 191) and is zoned R-20.

**Acting Chairman Phelps** Will the petitioner please come forward. If you would speak into the microphone, state your name, and occupation.

**Ransom Jackson, petitioner** My name is Ransom Jackson and I am the project manager for carriage park. Everything else you stated is correct. We are asking for an extension from the two years that was granted before to an additional five years to advertise parcels for sale.

**Toby Linville, Zoning Administrator** reads the Zoning Administrator Officials Report on the case.

**Acting Chairman Phelps** is there anything else you would like to add? Is there any other information that is not already in the packet that you would like to give us?

**Ransom Jackson, petitioner** No Sir, that is everything and it is correct.

**Acting Chairman Phelps** does Mr. Linville's presentation need to be entered into evidence.

**Associate County Attorney Sarah Zambon** stated no since this was not quasi-judicial.

**Ann Pouch** how long was the last temporary use?

**Ransom Jackson, petitioner** stated for two years.

**Ann Pouch** two years?

**Ransom Jackson, petitioner** yes ma'am.

**Dean Bonessi** asks if this sign replaces the big thermometer?

**Ann Pouch** asked if you changed the sign that you were given a permit to put up?

**Natalie Berry, acting secretary** said that Ransom Jackson was not the project manager at the time of the first application and that he does not know what the first sign looked like, Israel Lanning was and yes the sign has changed it's appearance. If you look at the picture in the back of Mr. Linville's presentation you will see a photograph of what the sign looks like now and how the petitioner would like it to continue to look.

**Ransom Jackson, petitioner** stated that is correct.

**Gary Griffin**, how many lots do you have to sell?

**Ransom Jackson, petitioner** states we have probably 120.

**Ann Pouch** so if we gave you a permit to keep the sign up until you sell all the lots, that might never happen.

**Ransom Jackson, petitioner** that is why I am only asking for an extension of five years or until all lots are sold whichever comes first.

**Dean Bonessi** asks if it is five years from the original date so that would be?

**Ransom Jackson, petitioner** no that would be five years from the expiration date of the last permit.

**Acting Chairman Phelps** from 2007 we are asking for five more years?

**Ransom Jackson, petitioner** correct.

**Natalie Berry, acting secretary** said that carriage park does operate under a special use permit, so the new zoning applied to the county does not affect this application.

**Tony Engel** at the maximum outside date of five years from now the sign would have to come down or he would have to come back to the board?

**Acting Chairman Phelps** Did it not say or until sold?

**Natalie Berry, acting secretary** That is what he has asked for but a temporary use permit has to have an expiration date.

**Acting Chairman Phelps** So you would have to come back for another extension?

**Associate County Attorney Sarah Zambon** if it went past the five years?

**Associate County Attorney Sarah Zambon** so if he sells all the lots prior to the five years he can take down the sign and this board does not care.

**Tony Engel** so we do not care if you take it down.

**Ann Pouch** did someone complain about the sign still being up without a permit or did you come get an extension on your own?

**Ransom Jackson, petitioner** I was notified that the current permit had expired.

**Acting Chairman Phelps** are there further questions? If not, you can be seated we will vote to close the hearing

**Associate County Attorney Sarah Zambon** you do not have to vote to close the hearing since it is not quasi-judicial.

**Acting Chairman Phelps** good, comments from the board members?

**Ann Pouch** I think two years is long enough, personally.

**Gary Griffin**, yes, but it is going to cost another \$200.00 if they do not sell out and why penalize him?

**Acting Chairman Phelps** I have a question since we did not close the hearing? Do you have an estimated time, do you think it would be more than five years based on present conditions in the market?

**Ransom Jackson, petitioner** with the present conditions no longer than five years, some weeks are better than others. That is why I am asking for the maximum of five years.

**Acting Chairman Phelps** OK, thank you.

**Tony Engel** actually that is a lot of lots.

**Gary Griffin**, yes that is a lot of lots and considering how things are selling now..a year ago that would not mean anything.

**Dean Bonessi** I remember when we did the first application. They presented a big thermometer and they thought two years was ample time. The um....

**Gary Griffin** I just hate to see them to have to come back, you know we are going to have to grant them a sign to sell the lots and they don't sell out and if you do it any less than five years and they don't sell out they are going to have to come back and that is \$200.00 more dollars which is not big deal for carriage park but still.

**Natalie Berry, acting secretary** If I am not mistaken the new zoning district allows for the sign for advertising selling of properties in subdivisions during construction and generally we never go over five years but that does not mean you can't.

**Gary Griffin** I think five years is plenty. I mean this should be..

**Tony Engel** considering it is now allowed. That seems pretty reasonable.

**Dean Bonessi** What is the difference in a new subdivision and an existing subdivision?

**Natalie Berry, acting secretary** a new one starts from scratch and are getting ready to build a new subdivision, they are allowed a signage and temporary trailers for sales.

**Dean Bonessi** My question is why do we not extend this to old subdivisions?

**Natalie Berry, acting secretary** because this subdivision is operating under a special use permit and that overrides the new zoning.

**Associate County Attorney Sarah Zambon** Carriage Park is under it's own thing.

**Dean Bonessi** Oh yeah, thats ok?

**Natalie Berry, acting secretary** if they were not it would be ok.

**Gary Griffin** I make a motion that we grant them a five year extension.

**Tony Engel** I will second that.

**Acting Chairman Phelps** motion has been made and seconded that we grant the permit, there being no further discussion all those we will call a vote, no objection, all those in favor raise your hand, that is unanimous no opposition.

**Associate County Attorney Sarah Zambon** conditions?

**Dean Bonessi** Other than the five years?

**Tony Engel** It is going to be the same sign that is up now?

**Dean Bonessi** I mean that is what was said in the last permit conditions and they changed it.

**Natalie Berry, acting secretary** it should have never been changed.

**Tony Engel** I mean they will not put up anything ugly.

**Dean Bonessi** I guess the thing is...

**Natalie Berry, acting secretary** you could put a condition that the advertisement relate to carriage park.

**Dean Bonessi** another thing I guess

**Gary Griffin** I would not want them to advertise garage sales.

**Acting Chairman Phelps** do you want to amend the motion to say the sign must be related to carriage park projects?

**Gary Griffin** something about shouldn't it meet the sign ordinance?

**Associate County Attorney Sarah Zambon** it does not have to because it is under the special use permit for carriage park but you could ask if would agree that the sign fall under the new zoning but you could not require that of them.

**Tony Engel** He has already called out a size for the sign, just reiterating.

**Dean Bonessi** we just need to make sure the size stays the same. I would think in five years the sign is going to look pretty rough and they probably want to change it.

**Acting Chairman Phelps** how do you want to amend the motion?

**Gary Griffin** that uh, I make a motion that, do we make a second motion, is that how we do it?

**Associate County Attorney Sarah Zambon** yes.

**Gary Griffin** I make a motion that we grant them their five years extension with the stipulations the sign stays the same size, kept in good repair, they can change the lettering whatever and it is to pertain to carriage park lots that remain for sale and for no other purpose.

**Acting Chairman Phelps** is there a second to this motion?

**Tony Engel** I will second that.

**Acting Chairman Phelps** any objection, all those in favor raise your hand, oppose none. Vote carries, we have a clear understanding. Sir, if you want to wait, Sarah is writing the order right now.

**Associate County Attorney Sarah Zambon** I will print it and you can sign it and take it with you. Just so you know after discussion with Ms. Berry we will not be issuing temporary orders, since the owners never show up to get the permanent order once it has been approved.

After further discussion, Associate County Attorney and the Zoning Administrator said they would get together and figure out a fair way to issue the orders at the same meeting.

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**Case V-07-15, Brenton F. and Diane M. Sedgwick, Owner(s), 102 Tartana Court:**

**Acting Chairman Phelps** explained the quasi-judicial procedure being used in the next case.

**Acting Chairman Phelps** called everyone forward who would be testifying in cases today.

**Toby Linville**, said to put your left hand on the Bible and raise your right hand and repeat after me. I swear that the testimony that I am about to give is the truth, the whole truth and nothing but the truth so help me God.

Sworn in were:

My name is Diane M. Sedgwick 102 Tartana Court, Hendersonville NC, My name is Brent Sedgwick at 102 Tartana Court, Hendersonville NC, and my name is George Pendleton and my address is POB 457 Naples NC.

**Acting Chairman Phelps** at this time I would like to have a motion we go into open public hearing?

**Dean Bonessi** I make a motion we go into open public hearing.

**Tony Engel** I will second that.

**Acting Chairman Phelps** all in favor say aye, opposes none. Motion carries at this time we will begin our first hearing.

**Acting Chairman Phelps** explained the quasi-judicial procedure being used in the next case again.

**Acting Chairman Phelps** called Case V-07-15, Brent Sedgwick (owner), is requesting a four (4.00) foot variance from the rear yard setback as stated in Special Use permit 93 and subsequent amendments on a parcel to construct an addition to the rear of the existing residence. The property is zoned R-30 and is located at 102 Tartana Court. . Toby you can go first.

**Toby Linville, Zoning Administrator** read the Zoning Administrator Officials Report on the case. Toby entered the Report into evidence.

**Acting Chairman Phelps** Ok, lets proceed, if the applicant would like to come forward and state your case you may do so at this time.

**Brent Sedgwick, petitioner**, I have only been here a couple of years and we bought in an old section we purchased it in 1988, and the master bedroom....

**Diane Sedgwick, petitioner**, the house was built in 1988.

**Brent Sedgwick, petitioner**, yes, the house was built in 1988, uh we have a very small master bedroom, bathroom it is uh, 6 x 8 that includes the shower. And so, last year we added an addition to the garage and we just want to extend that out and add an area we can use much more effectively. The problem is the angled property boundary, we have the builder with us and he is the one who did the addition to the garage, if you would like him to, he could give you any thoughts.

**Diane Sedgwick, petitioner**, our contractor is George Pendleton and we request to call him to speak for us at this hearing.

**Acting Chairman Phelps** as a witness?

**Diane Sedgwick, petitioner**, yes sir.

**Brent Sedgwick, petitioner**, do you have any questions for us?

**Acting Chairman Phelps** What is the size of this room you are adding?

**George Pendleton, Contractor** This room is uh, total of in answer to your question sir the total is 12 x 17 = 204 Square Feet. The affected area that will encroach upon the setback is about 48 square feet.

**Acting Chairman Phelps** Which is the backside?

**George Pendleton, Contractor** Yes, it is the backside.

**Acting Chairman Phelps** And this will be a bathroom?

**George Pendleton, Contractor** This will be an extension of the back of the garage; it will be used for master bathroom and closet area, yes. To the best of our understanding this house was, just a couple of things I want to call to the boards attention. This house was built in 1988 and my clients purchased it in 2005. The original conditions for the special use permit number 87-2, dated March 7, 1988 required a fifty five foot front yard setback and a twenty foot building separation. There were no side or rear setbacks requirements at that time. So that was the time which the house was built, uh, as I have looked into this the amended conditions were put in place, uh and dated January 6, 1992 and according to number 43.F, that changed the requirements replaced the minimum setback for a single family dwelling to have a no less than forty foot front yard setback, and a rear and side yard setback of ten feet. Uh, in 2005, we obtained a zoning permit to make what has become a two phase renovation project for my client's home. Certain upgrades and improvements to the property, uh they discovered renovations are required for the home to meet their needs currently. As we have stated, we propose to add a master bathroom addition to the rear northwest corner, um, we are asking that the rear yard setback be reduced to six feet, in an area to have a total affected square footage of forty eight as previously stated, and um, this property has some unique features that have been a real challenge from a design standpoint to overcome. One is I would like to point out the small lot size of 0.22 acres, it is real small, this lot is situated at the end of a cul-de-sac and just a shape of the lot makes it particularly challenging because when the special use permit was amended in 1992, that put the rear two corners of the house sitting practically on top of that setback line. So with the rear property boundary not being parallel with the back of the house, it, the only are we could expand it directly in the middle and we have a site plan that shows that. I might also point out that what people might say is a smaller home by the standards even with those being built in carriage park currently, um, the bathroom area is certainly not adequate for what people are desiring in a master bath today. And uh, we feel like our request in no way compromises the original intent of the special use permit which regard to building separation, because we have very generous, with this green area, very generous building separation, the uh, I guess it will be the uh, northeast corner, we have got fifty eight to seventy feet depending on how you measure and then the two houses directly behind is over one hundred feet between them, so that area is heavily wooded as you can see in your photograph and we just feel that it won't compromise, um, anyone's living conditions up there. We feel like this project is going to have very low impact and the two trees that needing to be cut or small bushes are hemlocks that are planted on the corner of the house and we just don't feel like we will encroach or create a hardship for anyone up there. Is there any questions at this point that the board might have?

**Ann Pouch**, When this house was bought, they knew this restrictions, I mean they did not own it before, when....they knew about the ten feet back yard setback when they bought the home.

**George Pendleton, Contractor**, Well I don't know that when someone purchases a home that they go out and researches what the setback requirements so...

**Gary Griffin**, You usually get your lot lines when buying a home, setbacks, ...

**George Pendleton, Contractor**, Well in this case from my perspective as a contractor, they can build something there, um, they can lop the corner off, there becomes some architectural challenges to do that and have it harmonious to what is already built, uh, I think there is an argument that being able to do something with an architectural and the aesthetic standpoint, blends well with what has already been built. And you know not just build something because you only have nine feet to work with on the corner that works with and makes it look good and meets the needs of the client.

**Acting Chairman Phelps** Can I ask you about this exhibit "D", the site plan, this rough drawing, and you have got out to the side there does that mean it will extend out to this area too that would be less than the ten feet. I am assuming this is the outside part of the heat pump, is that what you are referring too.

**George Pendleton, Contractor**, let me find that drawing please, I think our plan would be to relocate; I have got it here,

**Gary Griffin**, Got your gas and electric on that side too?

**Acting Chairman Phelps** So everything will have to be moved as far as gas, electric and heat pump is that what I am understanding?

**George Pendleton, Contractor**, correct.

**Acting Chairman Phelps** My question is, is that the side that needs a ten foot variance

**George Pendleton, Contractor** My feeling is that that could be on either on the side my preference would be located right to the garage that was constructed, where it would not be heard from the master bedroom.

**Gary Griffin** So it would be brought down to the black spot?

**George Pendleton, Contractor** Correct.

**Dean Bonessi** So I am looking at this same drawing exhibit "D", I am assuming the shaded area is the garage is that correct?

**George Pendleton, Contractor** Correct.

**Dean Bonessi** Then behind that, there is nothing there currently is that correct or is it..

**George Pendleton, Contractor** That is correct. It is approximately about a twelve by thirteen foot area, if you fill in that box in the corner and extended an additional four feet that would be the proposed addition.

**Dean Bonessi** So none of that is there now, correct?

**George Pendleton, Contractor** Correct.

**Ann Pouch**, How large is the whole addition you are putting there?

**George Pendleton, Contractor** It is 204 square feet.



**Acting Chairman Phelps** So if you did not have the portion, the addition, the part that extends four foot into the setback, what size would the room be without that additional four feet?

**George Pendleton, Contractor** It would be twelve by thirteen.

**Acting Chairman Phelps** Which is still a good size room.

**Tony Engel**, Not if you are trying to get a closet in it.

And you are wanting to make it how big?

**George Pendleton, Contractor** 12 x 17. and I might also add that the way this house is constructed, I have looked at this thing about every which way I can and there is a hip roof on the back side of the garage and if we build this addition to get it to look like the rest the four foot offset will enable us to get enough gutter on that side to catch a large amount of water that is going to be collected when you tie those two roofs together. So there is a need to overcome several needs by being able to project that gable roof out and go out an additional four feet for collecting water on that back corner.

**Acting Chairman Phelps** You raise an interesting question there, with the roof, you say it is a gable roof now.

**George Pendleton, Contractor** it is a hip roof now.

**Acting Chairman Phelps** So what will you do, will you extend it from the peak or will you have two hip roofs?

**George Pendleton, Contractor** The house, if you look at your photographs of the house, exhibit "f", the house is a series, the main body of the house is a hip roof and then it has what I call a Boston gables located at various places. I think a gable coming off the back will be in harmony with the architecture as you can see when we built the garage we were able to without by looking at that photo, really may or may not have an appreciation of done in such a way that you can not tell it is being done. And our hope would be to accomplish that same goal in the rear.

**Acting Chairman Phelps** That picture certainly indicates that you did an excellent job, very compatible with you would not know.

**Ann Pouch** How many bedrooms are in the house?

**Brent Sedgwick, petitioner** Three bedrooms.

**Ann Pouch** how many?

**Brent Sedgwick, petitioner** Three bedrooms

**Ann Pouch** How may baths?

**Brent Sedgwick, petitioner** We have one other bath on the other side of the house by a bedroom over there. Actually two bedrooms, one is in the front, if you view to the left that is my wife's office and there is a bath and there is another bedroom. And our master bedroom is behind this area here which is the kitchen area. The bath we have now is tiny, it is 6 x 8. It is a shower included in that dimension. Also, with two of us in there it gets a little congested.

**Gary Griffin**, Just a question? Does carriage park have a review board for adding on additions?

**George Pendleton, Contractor** Yes, they do.

**Gary Griffin,** Have you been through that yet?

**George Pendleton, Contractor** No, it has been quiet a process to get here, carriage park is unique as most of you know, when we went through this process in 2005, we actually got approval from them first, and then we were issued a zoning permit based on that approval. In this particular case, when we went to them, and we indicated we would be requesting a variance, and a lot of different ways trying to make it work and they suggested that we contact Natalie or the zoning and we ended up, Natalie helped me two years ago with this project and so whether we are doing it backwards or we are doing it the way it should be, when we get this decision, we will know how to proceed with carriage park.

**Brent Sedgwick, petitioner** I went to Dale and spoke with him before I came to yaw and he said that he did not see any problem with it. I guess we will change something because the other, one we did not have to get a variance. We are eighty feet or so from the neighbor.

**George Pendleton, Contractor** And the thing of it, this property is one of the inquests is that it does adjoin this green area. It is heavily wooded, and in the backyard, as rare as this may seem in carriage park, can not see the three houses on the adjoining property through the woods, so we feel like this would be a very low impact to the community and certainly would not encroach on the neighbors space or anything. And if you consider the original intent of the special use permit that calls for twenty foot building separation and we have fifty eight to one hundred feet.

**Acting Chairman Phelps** Further questions? Thank you sir.

**George Pendleton, Contractor** Thank you.

**Acting Chairman Phelps** Do you have anything else sir?

**Brent Sedgwick, petitioner** No, thank you for your consideration.

**Acting Chairman Phelps** Do I have a motion to close the public hearing at this time?

**Tony Engel,** I make a motion we close the public hearing?

**Acting Chairman Phelps** is there a second?

**Ann Pouch,** Yes, I will second.

**Acting Chairman Phelps** all in favor say aye? Oppose Nay. The motion carries unanimous, we are in closed hearing now and we will discuss the case.

**Ann Pouch,** It sounds like four feet is not much but we are so emphatic about lot lines and the fact that they knew this when they bought the house. I just think it is pretty clear.

**Gary Griffin,** in the start carriage park was approved, with the master plan and the lot lines laid out and open space behind and we have ten feet off the lot line, so that gave it that tree barrier we are seeing.

**Dean Bonessi,** I think my personal opinion, is that it is pretty cut and dry, this exhibit "C", the expectation was, the uh, they bought the house, and if we look at the questions we have to answer, I mean I have a hard time saying that they can not make a reasonable return. I do not know.

**Ann Pouch** They have certainly improved the property when they built the garage.

**Gary Griffin** But, I am sure it would be a big improvement if they added this addition.

**Ann Pouch** But you know people keep adding on the back, then why have this open space that is suppose to be green if you are just going to encroach closer to that.

**Tony Engel** It actually only looks like it encroaches on the one side.

**Gary Griffin** I do not think it is a huge encroachment. But, it is like Ann said, if you encroach an inch here and an inch there.

**Ann Pouch** i mean four feet does not sound like much but they are pretty emphatic about the lot lines.

**Dean Bonessi** Well that is forty percent.

**Tony Engel** When you consider the land in the back is all open land where nothing can be built on.

**Ann Pouch** Well I don't think we are suppose to consider that.

**Associate County Attorney Sarah Zambon** And they do not own that land. It is technically recorded open space. They could re record it something else.

**Tony Engel** i thought it was owned by everyone there?

**Associate County Attorney Sarah Zambon** It is common area. It would depend on, they could re record it.

**Natalie Berry, acting secretary** Not necessarily, the Water Supply Watershed ordinance requires the open space to be recorded and remain open space indefinite.

**Acting Chairman Phelps** But, we could grant less than the four feet, like two feet, that would give an eight foot clearance to the back. I do not know if that would make any difference. No, no granted, but it would be less than forty percent.

**Tony Engel** But, it would not be even noticeable. Having built and design many houses, I know to go from that large area to a small area is a drastic change to what they can do with the closet.

**Acting Chairman Phelps** I was just saying that that was an option. We have that option.

**Ann Pouch** i think our only decision is to honor that ten foot setback or not.

**Gary Griffin**, Yes, that is a big thing.

**Tony Engel**, But, that is why we have a board, to be able to decide if we should stick to it. Otherwise, there would not be variances.

**Ann Pouch**, Well, you know me, I am all in favor of variances. But, this is cut and dry with carriage park and this. It's um, to me...

**Tony Engel**, It is nice to have a carriage park variance without three hundred people here.

**Gary Griffin**, They are almost asking for half.

**Tony Engel** Originally when it was built, there was no required setback in the rear? I thought...

**Gary Griffin**, With them backing up on the setbacks it might not be such a big deal for the back of the houses. I don't know.

**Acting Chairman Phelps** Does anyone care to make a motion? We have two suggestions, one approve or disapprove. Are there any practical difficulties or hardships meeting the letter of the law? I don't see any. Can a reasonable return from the use be gotten from the property if the applicant complies with the literal terms of the law? Yes

**Associate County Attorney Sarah Zambon** What would that be?

**Acting Chairman Phelps** Existing structure, there is a bathroom and they could build within the setbacks and still expand. Is there unique hardship to the land, Yes. wouldn't you say.

**Tony Engel**, The land is very small. Normally, you would have a lot of room to do this addition if you did not have this PUD.

**Gary Griffin**, yes, but you would also have a thirty foot setback instead of the ten.

**Tony Engel**, Yeah, but you would not have a lot that was 0.22 acres.

**Gary Griffin** They would have a larger lot to work with.

**Tony Engel** Then they would have had lots of setback area, it is not that big a house.

**Gary Griffin** They bought into a PUD by choice.

**Acting Chairman Phelps** So, yes, no??

**Dean Bonessi**, I do not think it is more unique than anything else there.

**Acting Chairman Phelps** OK, No. Is the hardship the applicants fault?

**Tony Engel**, Not really.

**Ann Pouch**, Not really.

**Acting Chairman Phelps** is the variance in the harmony with the spirit of the intent of the law?

**Tony Engel** Yes. It would not change the neighborhood at all if they came out four foot. It would hardly be noticeable.

**Gary Griffin**, It would be a forty percent reduction. I agree it would hardly be noticeable.

**Acting Chairman Phelps** But, is that the over riding criteria?

**Ann Pouch** I think if we give them the variance what would stop everyone coming in to get a four foot variance.

**Tony Engel** Yeah, but you do not set a precedent. Because each case is an individual. So that should not even be a concern.

**Acting Chairman Phelps** Then No. Does the variance protect public safety and welfare?

**All members in unison** No effect.

**Tony Engel** So it protects it if it does not harm it.

**Acting Chairman Phelps** Will the variance to substantial justice? Yes. We are not to consider no conforming uses in the neighborhood, which answers Ann's question. And we do not know the feelings about the home owners association and their covenants.

**Gary Griffin**, That should make it work, if Carriage park does not have a problem, maybe that is what we should look at?

**Associate County Attorney Sarah Zambon** Restrictive covenants is a private right of action, so we can not make a condition telling people to meet the restrictive covenants because we do not have a dog in that fight for lack of a better term. When you review this variance I would suggest you review it under this special use permit and under what we are looking for in a variance regardless of what the home owners association would want. I mean so they could say we want your house blue. You may want to consider, but not a condition. it would be tricky to be legally binding.

**Toby Linville, Zoning Administrator**, This is a unique situation in that it falls being carriage park and we make sure the occupants get a approval from the home owners association before we issue a zoning permit but you do not have to make that a condition of your approval. If you give them the variance, then carriage park says no, they do not get a zoning permit, so it is null and void. There standing is it would be helpful to the association if we made our decision first. We are at a stand off.

**Acting Chairman Phelps** Anything else? would anyone like to make a motion? I see things on both sides. But if you read this thing literally. But, it is clearly stated ten feet right here. No doubt, No question, no argument.

**Tony Engel** Consider if this is approved the only people that it will effect are the Home owners and if it is not approved the only people it would have an adverse effect is the Home owners.

**Dean Bonessi**, With me the biggest thing is, if we look at it as a whole in being consistent with what we are asked to be I mean I have a hard time answering these questions in favor of the variance but that is just me I do not want, I mean....

**Tony Engel** In just about everyone we have, you have a hard time answering some of these questions, I mean you can say people have use of their property even if they can only put a fifteen foot wide house on it.

**Dean Bonessi** Yeah, but that is unreasonable.

**Tony Engel** Unreasonable is interpretation.

**Dean Bonessi** To me it is already conforming to the neighborhood, it was purchased after zoning, it was purchased after all this done and we do not investigate these things before we buy a house shame on us.

**Gary Griffin**, Yeah, the setbacks would have been noted

**Dean Bonessi** So that is where I struggle, I mean you could always, there is usually one or two of those that I can usually say well yes or no to but.

**Ann Pouch** When the garage was built, it seemed to me to be adequate room to add something.

**Gary Griffin** So he could build a 12 x 13 now.

**Tony Engel** Well they could come out further than the house but they would have to come out some bazaar angle along the property line. It would have to parallel to the rear property line. It would have been a very modern addition.

**Acting Chairman Phelps** Alright if we do not have any more discussion we have a motion from Ann.

**Ann Pouch** I am right here, I move that the zoning board find and conclude the variance V-06-15 fails to comply with standards established in the Henderson County Zoning Ordinance.

**Associate County Attorney Sarah Zambon** It is actually 07-15.

**Acting Chairman Phelps** Yes, 07 someone typed it wrong.

**Ann Pouch** and I further move that the variance application be rejected for the following reasons: It does not meet the conditions, the applicant could get reasonable return on his property, I don't know how.

**Acting Chairman Phelps** A Motion has been made and seconded. Is there any discussion on the motion? Any further comments or questions. Is there any objection to calling the motion? If not let me see a show of hands in favor of the motion, oppose. The motion carries with a vote of 4 to 1. Let's get back over here to get to the closing of the hearing. Ok, we the board has voted 4 to 1 to deny your request, if you heard any of the discussion there were some ways that perhaps that you could reconsider to comply with the existing conditions. The board has 45 days to make the determination in writing is that correct?

**Associate County Attorney Sarah Zambon** That is correct. I will bring back an order to you at your next meeting.

**Acting Chairman Phelps** Is there any further thing on this action that we need to?

**Associate County Attorney Sarah Zambon** No, if you just want to close the public hearing and then close the meeting.

**Acting Chairman Phelps** Ok, so we are good. Motion to close the public hearing.

**Dean Bonessi** I will make a motion to close the public hearing.

**Ann Pouch**, I second.

**Acting Chairman Phelps** The motion has been made and seconded to close the public hearing. The motion carries that we out of public hearing. Is there any Old Business?

**Associate County Attorney Sarah Zambon** No but I do have some new business.

**Acting Chairman Phelps** Ok, we will now entertain new business.

#### COMMITTEE AND STAFF REPORTS:

OLD BUSINESS: **Associate County Attorney Sarah Zambon** None

NEW BUSINESS: **Associate County Attorney Sarah Zambon** I just wanted to tell the board you should have your new land development code (LDC), so prior to the next meeting you should read the

whole land development code and I will give you a quiz and all the applications from this point on will be under the new land development code. All applications accepted after the adoption of the LDC will be heard under the LDC. So I do not know how it worked out for the next meeting but hypothetically some of the applications could be heard under the old ordinance and some may be heard under the new ordinance. So we will work on it.

**Natalie Berry, acting secretary** No applications have been received for the next meeting prior to the new LDC.

Further discussion on what ordinances are in the new LDC. Basically all but the nuisance ordinance.

There being no further business, Dean Bonessi made a motion to adjourn and Jim Phelps seconded. The meeting was adjourned at 5:36 PM. The next meeting is Wednesday, October 31, 2007, at 4:00 PM.

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Jim Phelps, Acting Chairman

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Natalie Berry, Acting Secretary