

MINUTES OF THE HENDERSON COUNTY  
ZONING BOARD OF ADJUSTMENT

The Henderson County Zoning Board of Adjustment held its regularly scheduled June meeting on Wednesday, June 27, 2007, at 4:00 p.m. in the Board of Commissioners Meeting Room, 100 King Street, Hendersonville, North Carolina. Those present were: Chairman Dean Bonessi, Tony Engel, Jim Phelps, Ann Pouch, Alternate Janice Brown, Zoning Administrator Natalie Berry, Associate County Attorney Sarah Zambon, and Secretary to the Board Joyce Karpowski. Mr. Griffin came later in the meeting.

Chairman Dean Bonessi called the meeting to order at 4:04 PM. Chairman Bonessi presented the minutes of the meeting from May 30, 2007. Mr. Engel moved to approve the minutes, Mrs. Pouch seconded, and five members voted to approve the minutes as presented. Chairman Bonessi presented the minutes of the special meeting from June 13, 2007. Mr. Phelps moved to approve the minutes, Mr. Engel seconded, and four members voted to approve the minutes as presented.

Chairman Bonessi presented the orders from the May 30, 2007, meeting. The Telker order required Mr. Griffin's vote, so that was put off until later in the meeting. Chairman Bonessi presented the McFalls (V-07-10) order from the meeting on May 30, 2007. Mr. Phelps moved to approve the order, Mrs. Pouch seconded, and four members voted to approve the order as presented. Chairman Bonessi presented the Luce (CU-07-09) order from the meeting on May 30, 2007. Mr. Phelps moved to approve the order, Mrs. Pouch seconded, and four members voted to approve the order as presented.

Chairman Bonessi explained the quasi-judicial procedure being used today.

Chairman Bonessi called everyone forward who would be testifying in cases today. Sworn in were: Scott Bartholomew; Walter M. Cart, Jr.; Linda Cagle; Eddie Heriberto Patino; and Natalie Berry, Zoning Administrator.

Chairman Bonessi reversed the order of the cases so that Mr. Griffin would be able to hear the Patino variance.

**Case V-07-12, Cart, Jr., Walter M. (owner)**, requests a twenty five (25) foot variance from the front yard setback requirement at 1699 N Lake Summit Road to construct a single family dwelling and the zoning is WR.

Chairman Bonessi made a motion to go into public hearing for Case V-07-12. Mrs. Pouch seconded the motion and all voted in favor. Ms. Berry said that the application was in the Board's books but she is passing out her Zoning Official's report now. She continued, "This is a variance request, V-07-12, and I would like to enter my staff report that I just sent around into evidence. The applicant's name is Walter M. Cart, Jr. and he is the owner of the property. The location of the property is 1699 N. Lake Summit Road. And, if you look at Exhibit "C", which is your last page, it's a vicinity map of where you're at. And it's the purple outlined parcel. The nature of the request - the applicant is seeking to obtain a variance to place a Single Family Dwelling within the designated area reserved for the front yard setback. The summary of issues involved - The application and appropriate fees for variance application requesting a variance were received on 05/31/2007. The zoning - the parcel is zoned as WR, which is waterfront residential. The size - the approximate size of the property is 1.00 acre as per Henderson County On-line Geographic Information Systems (GIS). The dimensional requirements are forty five (45) foot front yard setback measured from the centerline of the right of way to the front of the structure, twenty-five (25) foot rear yard setback measured from the adjoining property boundary, and a zero (0) foot side yard setback. The maximum height requirement of thirty-five (35) foot. Applicant requests a reduction of twenty-five (25) feet from the front yard setback requirement. The topography

of the property is such that it would not be practical to place a single family dwelling 45 feet from the centerline of the right of way. The topography across the steepest portion of the property is approximately forty percent (40%). And I did that with the deepest part of the property. The deepest portion of the property is one hundred fifty (150) foot. If you look at Exhibit A, which is the first drawing with contour lines on it that are green, you'll see the property is kind of oval. The best way to describe it that it's more oval on one side than the other. I took the measurement right through the deepest point of the property, just to give you an idea of where I did that at. Section 200-50.B gives the Zoning Administrator the authority to reduce the front yard setback due to topography issues. So I was able to do that. I gave Mr. Cart fifteen (15) foot reduction, but that wasn't enough. So out of the 25 foot that he's requesting right now, he's really just requesting 10 foot from you. I gave him the 15 foot already with my authority because of the topography issues. So I just wanted to explain that issue. I assume if it is granted, it has to be granted with the full 25, though, even though I can give him 15. Is that correct Sarah?"

Attorney Zambon said, "I mean I can put a note in the order." Ms. Berry said, "Okay. I just wanted it not to get confusing when you try to write an order that it's 10 feet when it's really 25. Exhibit "B" is three photographs of the property in question. The first one, I'm sitting on Lake Summit looking at it directly. The fence here is just to keep people from parking here. There's a large cut-out in the property where I believe is parking for the boathouse across the street. So now they've decided that they want to build on this property, so the fence would come down and they'd put the house where the cut-out is. It's my assumption, but I'll let them address that when it's their turn to speak. On Figure 2, which is the next page, this is just from the east side of the property showing you how steep the grade is. And then Figure 3 is from the left side showing you the same thing. In the west side you can kind of see the cut-out right below the telephone pole. Section 200-69 is to authorize, upon appeal, variations or modifications of any regulation or provision of this chapter relating to the dimensional requirements, construction or alteration of buildings or other provisions, so that the spirit of this chapter is observed, public safety and welfare secured and substantial justice done; however, the Zoning Board of Adjustment shall not permit a use of land, building or structure which is not permitted by right of conditional use in the district involved. That's just right out of the Ordinance saying that this is things you can get variances on and these are things that you cannot get variances on. The Zoning Board of Adjustment authority to issue a variance only on the basis of affirmative findings of fact for all of the following criteria: A. There are practical difficulties or unnecessary hardships in carrying out the strict letter of this chapter, as demonstrated by: 1. If the applicant complies with the literal terms of this chapter, he cannot secure a reasonable return from, or make a reasonable use of, his property. 2. The hardship of which the applicant complains results from unique circumstances related to the applicant's land. 3. The hardship is not the result of the applicant's own action. B. The variance is in harmony with the general purpose and intent of this chapter and will preserve its spirit. C. The variance will secure the public safety and welfare and will do substantial justice. The existence of a nonconforming use of neighboring land, buildings or structures in the same district or permitted or nonconforming uses in other districts shall not constitute a reason for the requested variance. The legal ad ran in the Hendersonville Times News on June 18, 2007 and the Commercial Display Ad ran on June 25, 2007 as required by the Henderson County Zoning Ordinance. And that is all I have for my stack of work, unless you have some questions. Now the application has some additional information that I did not. Can I see that folder please? Can you send that back around here? There is drawing in there and it did not get in there. Sorry about that. I'll make sure that it's been seen, now that. I had a drawing and I had worked on one drawing and then Mr. Cart mailed me a different one and it's in this folder, but I did not get it in the package. So I'm going to send it around for you to see. And it's a better layout for you to see and how it all goes together. Look at it and pass it around. Does your copy machine do 11 x 17, Sarah?"

Attorney Zambon said, "I have no idea. I can take it over there if you want." Ms. Berry said, "I thought it might be better, they can study it, instead of just passing it around." Mr. Cart had 2 more copies that he gave the Board.

Mr. Griffin said, "Is this the house? Is this what we're doing?" Ms. Berry said, "That's where the cut-out is. There's an application in your package, if you'll look in your notebook there. There's an application, it's about halfway back behind your cases tab. It's where the tape is. See that little yellow tape? And this application has a lot more additional information. If you look at the picture right behind his application, you'll see in red where it says 15 foot setback. That would be the complete, I believe that's the complete reduction setback they're requesting. But I'll let them address that to make sure, but that is what that line is. He has some soil reports, but I'll let him explain all that information to you."

Chairman Bonessi said, "Now do we need this information entered into evidence?" Ms. Berry said, "The application is automatically, I believe, isn't it Sarah?" Chairman Bonessi said, "But I mean the drawing." Ms. Berry said, "It's part of the application. Oh, oh, you're right. That drawing. The drawing that I just gave out, the 11 x 17, I need to enter it into evidence. You're correct. I'm sorry. I was thinking the application is what you were asking. In his application though, you'll see a letter from me in the back where I had granted the 15 foot. That would be the red 25 foot, oh it's 15 foot. I believe that is the additional 15, no he's asking for 10 more. I'm going to have to let him address whether that 15 foot, his red line, includes it or not. I just don't know."

Chairman Bonessi said, "Does anybody else have any questions for Natalie? If not, we'll have Mr. Cart come up here and speak. Mr. Cart." Ms. Berry said, "This one's been done through the mail because he lives in Virginia, so it's not as easily done as it would have been." Chairman Bonessi said, "Do you have anything else to add to what Natalie has already presented?"

Mr. Cart said, "I have just a little bit. I won't bore you with all the nuts and bolts. We've owned the lot for 20 something years and we're wanting to build a house on it. Most all of the neighbors around are relatives of mine around the lake anyway. We looked at the property and went to the Health Department to start the process and they tested the soil. It's pretty difficult soil to get perked and finally we found a site over on one side – it's an alternative system, I think it's called nowadays and in talking to the Health Department, they were concerned about how we were going to site the house because of the way the land was and the other items involved in it. And that's when I went to Bill Ashe, Architect, out of Asheville to talk to them cause I thought they could make it work as far as the house goes. It was a wonderful opportunity once they came down cause they saw the topography and they saw the cut-out in the bank, which by the way has been since I was a little boy in the fifties. It had something to do with supporting the railway that was built behind there. With the cutout in the bank, he saw a great opportunity to come in and build a house with very little impact on the environment of the whole lot, and not having to put road systems up on the top of it and that kind of thing. And I'm going to let him explain about how they assess the whole lot, if I could."

Ms. Berry said, "Does he have to call him as a witness?" Attorney Zambon said, "I feel that he can speak cause this is for our purposes." Ms. Berry said, "I just want to make sure, since we're in new territory there."

Mr. Bartholomew said, "Hello, I'm Scott Bartholomew and I work for Bill Ashe Architect. I'm a licensed architect here in North Carolina. I did put together this site plan for the project. To clarify your earlier issue about the 15 foot setback listed over on, I think, the left side of that page." Ms. Berry said, "That's the original 15 that I gave you?" Mr. Bartholomew said, "That is not. That is a bit of information that was referenced by the septic field designer for that end of the property. And that way only extends down a portion of the property. If you look down along the base of, around the curve of the property at the southern edge of the property, there is a markation there for a 20 foot setback. Okay? Figuring the 45 minus the 25, that is the 20 foot setback off the center of the road and that's what we're asking for, if you can see that."

Ms. Berry said, "Are you talking about the big 11 x 17." Mr. Bartholomew said, "It's on the 11 x 17, the southernmost portion of the lot." Ms. Berry said, "It's on the bottom right corner near seal, near the site

plan.” Mr. Bartholomew explained where it was. Mr. Bartholomew said, “Those setbacks are measured off the center of the road so our building footprint has to be behind that.”

Chairman Bonessi said, “So we’re talking about this dash line here?” Mr. Bartholomew said, “Correct. This is the original dash line further back” (not close enough to the microphone to hear). Chairman Bonessi said, “That’s the one that Natalie could do for you.” Mr. Bartholomew said, “Um-hm.” Ms. Berry said, “It’s 45 minus 15 so it’s 30 on this drawing. But it was 15, right.” (Could not hear what was being said.)

Mr. Cart said, “As we looked at the lot, and you can see it from the photos Natalie provided, this is a very steep lot. Looking at the way we could take advantage of the existing cut-out, with the footprint of our house there, we basically use that as our garage area. So therefore we are not having to get onto the site with vehicular traffic. That in turn is the major drawback in trying to go up onto the site with the entire house staying behind that 40 foot setback or 35 foot setback or 30 foot setback. In getting the vehicle up onto the site, turning the vehicle around to come back down, we end up taking this really steep lot and having to level a very large portion of it. This is very environmentally unfriendly, taking out many trees, that kind of thing. So looking at the way the lot is organized, we have a proposed septic field on the left edge of the property. The existing septic and repair area for the boathouse itself and our new proposed footprint there. So you can kind of get a sense of, it is an acre but it is very much taken up between the railroad right of way and the electric line right of way and the existing improvements.”

Ms. Berry said, “Can you go into how the house is situated with the bottom level, which is parking.” Mr. Bartholomew said, “The bottom level will be parking, basically a garage at road level. We would then be going up with the living levels. That we think would be the bedroom level. The third level above grade or above road level would then be our main living level with our master suite and we then start to take it, by that point we then get high enough that we can start to take it up the hill. Again not dig into the bank and not level the property out.”

Chairman Bonessi said, “So I’m looking at the footprint of the house that you have here and I see essentially 2 elements. The first element here which has a crosshatch in there is 36 x 24. Is that the garage area that you’re speaking of?” Mr. Bartholomew said, “That’s where we’re talking about a garage as well as stair and elevator to get us into the house.” Chairman Bonessi said, “Okay. And then the other outline is actually the house.” Mr. Bartholomew said, “Conceptually, yes. It’s actually the third level.” Chairman Bonessi said, “So the garage entrance is essentially just basically from the road into the front of the house.” Mr. Cart said, “We’re obviously into the very early preliminary designs of the house and this idea that we have is we would try to step back, I might be speaking too soon, the second and third story away from that garage level away from the road.” Chairman Bonessi said, “I guess the concern, or potential concern that I see, I don’t know this piece of property or this road, so maybe somebody else can chime in here, are we backing out of the garage here into the road?” Mr. Cart said, “Which is what we’re doing now.” Ms. Berry said, “That’s all of Lake Summit. It’s a very narrow winding road around the lake, but Ann can speak to that better than I can.” Mrs. Pouch said, “You back out into the road from a lot of houses.”

Ms. Berry said, “I would like to ask one question that wasn’t addressed in the application. What is the height of the structure if you go three levels?” Mr. Bartholomew said, “That’s a very good question. Have to get into exactly how that height is measured. Obviously if you’re measuring from ground level, depending on what you’re calling a basement and whatnot.” Ms. Berry said, “It’s the highest adjacent grade around the foundation.” Mr. Bartholomew said, “The highest adjacent grade around the foundation?” Ms. Berry said, “Yes.” Mr. Bartholomew said, “We’re really looking at a one story house on the backside of this house.” Ms. Berry said, “That’s the reason I asked. There’s a 35 foot height limit and you didn’t ask for a variance on that. When I heard you say third floor, it got me thinking that we might have a problem.” Mr. Bartholomew said, “If you can picture that steep embankment, you’re going up 2 levels before we get to that. That sort of the back retainage of our house. That would be

the highest grade at foundation.” Ms. Berry said, “Okay. I just want to clear that up that it’s not a problem or is a problem.” Mr. Bartholomew said, “I appreciate that.”

Chairman Bonessi said, “Now you say you’ve owned this property for how long?” Mr. Cart said, “About 20 years. Since 88.” Mrs. Pouch said, “That was before it was zoned.” Chairman Bonessi said, “How long has the boathouse been here and the septic system and everything for the boathouse?” Mr. Cart said, “Eight years, seven years, something in the neighborhood.” Mrs. Pouch said, “Would your septic system accommodate your house and the boathouse?” Mr. Cart said, “No, the boathouse is on a septic system and we have designed another system, we were fortunate to have enough room over in the far corner just for the house.” Ms. Berry said, “Mr. Cart, can you speak into the microphone when you talk? Thank you.” Mr. Cart said, “We have a septic system for the boathouse, but the new house will be on its own system.”

Chairman Bonessi said, “What is the overall square footage of the proposed house we’re looking at here?” Mr. Bartholomew said, “Again we, like I said before, are very much into the schematic design phase of looking for the feasibility of the footprint before we get too much into that. I’m thinking we’re probably in the neighborhood of a 3000 square foot house finished heated area.” Chairman Bonessi said, “On all three levels?” Mr. Bartholomew said, “On all 3 levels, not per level, no.”

Chairman Bonessi said, “The scaling on this drawing – is it fairly well accurate when it comes to, I guess, one thing I’m working is the corners of the house with respect to the road, the actual road itself? Well I don’t see a scale on the drawing.” Mr. Bartholomew said, “The scale was actually done on a larger piece of paper, 24 x 36, with a 1 to 20 scale. So, it is to scale, it’s not a measurable scale. Natalie has a copy of that also.” Ms. Berry said, “You can pass that around.” Chairman Bonessi said, “I guess the question, concern I have with this building is (couldn’t hear).” Ms. Berry said, “Dean could you get your microphone?” Chairman Bonessi said, “Oh, I’m sorry. Sorry about that.”

Mr. Cart said, “I’m going to add a few things, if I could while we’re sitting here.” Chairman Bonessi said, “Okay.” Mr. Cart said, “I think you’re correct about the feasibility and the sight part of it. Unfortunately that’s just the way the lake road is for almost all the residents. Fortunately most people that do travel it are very low speeds and careful going around corners because actually it’s more of a one lane road than it is a two lane road.” Chairman Bonessi said, “Right. I’m looking at something very narrow.” Mr. Cart said, “What we’re really trying to avoid was two things. And that was having to put the house up on the top of the lot because of all the site work and road cutting that would be involved with that and have it really destroy the property. And we’re left with having that cutout in the bank. Our other alternative besides putting it on the top would be putting it in the cutout. And if we had to, if we couldn’t get the variance that we’re asking for, we would have to go back into the bank and basically dig that same footage out of the back, which we wanted to avoid doing. That’s the main reason we’re in here to avoid having to create all that dirt.” Mr. Griffin said, “So you can’t cut back into the bank another 10 feet? It’s not a problem of the septic system behind the house? You’ve got enough there?” Mr. Cart said, “Yes, there’s 70 feet.” Mr. Bartholomew said, “You start to approach the repair area, but there is room to go an additional 10 feet. The reason for avoiding it is one of environmental, just really that’s a very large cut already, just to sort of limit the impact we have.” Chairman Bonessi said, “Anybody else want to see this drawing?” Mr. Bartholomew said, “There’s a steep grade, I mean you can’t avoid it, drainage, the aspect to the road, gravel road. If you notice on Natalie’s package, third page, you can kind of get a sense of the topography of this lot, that it is very steep. And as we start to create this house, this proposed footprint on this lot, the water is sloping away, this cut (can’t understand) wasn’t cut directly into this ridge that was coming down. So the water will naturally run along the house without any additional swales put in. We will obviously put in a small breakwater, excuse me, a small swale to divert the water around. As in all current environmental design, we take care of our water – small catch ponds to get the water back into the water table, versus just dumping it on the roadside.” Mrs. Pouch said, “And I think that would be better where you’re talking about putting the house rather than digging out that whole bank and having all that water come down in the lake, always a problem.”

Mr. Phelps said, "It seems like it's not the best lot to try to build on." (Everyone spoke at once.) Mr. Cart said, "I couldn't agree with you more. There's unfortunately not a whole lot of options that I have." Mr. Phelps said, "You don't own a whole lot of property out there?" Mr. Cart said, "Not solely, not myself." Mr. Phelps said, "Since you've owned it 20 years, I was just wondering why at this particular point, it looks like such a difficult situation to build a residence on. And by making this garage 10 feet from the edge of the road, and it is a very narrow road. So if the road was ever widened at all." Mr. Cart said, "So why am I doing it now." Mr. Phelps said, "Well it just seems, if you look at all the difficulties involved." Mr. Cart said, "Well, I've owned it for 20 years but I've got family members around the lake and I have use of some other property occasionally. But I have a very young and growing family, believe it or not at my advanced age. My children are still pretty young. So that's why we need our own place, because of family issues. And that just happened in the last 8 or so years."

Mr. Engel said, "Natalie, when you did the topo, you didn't take into account the cut." Ms. Berry said, "That's the latest the County has." Mr. Engel said, "Okay, that was before the cut." Ms. Berry said, "Yes, I should have addressed that. I knew somebody would pick up on it. Yes, that was done prior to him doing the cut out of it. Our topos are like 1980 or prior to that. They're very old. But that's the best available data I have. It's just giving you a generality of the part that's still there and how steep it is. That's what I was trying to show you with that." Mr. Engel said, "When you put the garage in, are you going to have to cut even further in down or will the garage floor level be the height of the cut?" Mr. Bartholomew said, "Yes, right now." Mr. Engel said, "You can do that then?" Mr. Phelps said, "Now the back of the house, as I'm looking at this exhibit you indicated, it just kind of goes up the side, the very back, right up against the back of the cut as it rises up, then you've got a view." Mr. Bartholomew said, "Not only do we capture a view above the boathouse and down the cove of the lake, as well, once we get above that existing cut, we have this idea that we will then venture out on to the existing grade. So we're again trying to environmentally impact this lot as little as possible. And still give Walter the house he's looking for." Mr. Phelps said, "So what I understand you're saying, is you're using the least disruptive approach to building there on this particular lot as far as doing additional grading or digging out." Mr. Bartholomew said, "In my professional opinion, correct." Mr. Phelps said, "It would disturb the least amount. It would leave the greatest number of trees." Mr. Bartholomew said, "Absolutely."

Mr. Griffin said, "Could you narrow the garage? You've got 24 deep or, how deep is your garage?" Mr. Bartholomew said, "We're looking at a 24 x 36 footprint. That would be a 3 bay garage but we also have to take into account that in the back of that we have an elevator and stairs so we can get out of the garage. So it is deeper than an extended cab truck typically is around 20 feet. By the time you get inside the wall the garage door, we have very little inside beyond a very large vehicle, a smaller vehicle would allow us to get our elevator, our stairs on the back side of the garage up against the bank." Mr. Griffin said, "My truck is 16 feet, it's an extended cab. I was doing a parking lot today so I, 18 feet's the parking spaces. If you could just go 5 more feet back then you're not, it gives you 5 more feet off the road is what I was looking at. Just for the garage, cause the only thing we got a problem with really is the garage. Once your house gets up, you can back it up forever off that garage. Right? I mean into the bank and not disturb the whole lot." Mr. Bartholomew said, "You have to go 2 stories before we get out of, off of, the bank." Mr. Griffin said, "You have to go 2 stories. You have to go 2 stories and then it will spread out on the top floor." Mr. Bartholomew said, "Correct." Ms. Berry said, "It's a very deep cut."

Chairman Bonessi said, "So, Natalie we're saying that in this picture here this is the cut out that – what is this?" Ms. Berry said, "Go to the other picture. Flip it over one more. That one you can see the cut out beside the telephone pole. You see the darker?" Chairman Bonessi said, "Yea." Ms. Berry said, "That's the cut out. The other side you can't see it, I don't believe. The other side you're too far around the curve to be able to see that. So I guess if you use this topography the first picture I'm sitting over here, so you'd never be able to see the cut out. In the other picture I'm sitting here so you can see it better. So I hope my west and east was right. I kind of figured if north was up, I had to be. I was taking a stab at that." Chairman Bonessi said, "Yea, it's really hard to decipher." Ms. Berry said, "Like I said the first figure 2 you can't see the cut out at all, cause I'm too far around the curve. And then in figure 3

you can see just below the telephone pole, you'll see a dark color right below the tree. That's one side of the cut, I believe. I may be wrong about it, but I believe it is. You see that dark spot." Mr. Phelps said, "It didn't go all the way down? Or you just can't see it?" Ms. Berry said, "You just can't see it. It's a huge bank. It's a very deep cut, like we said. If you look at figure 1 on exhibit B, that really doesn't do the bank justice but I'm setting to the right hand side of the cut out more east than west." Mr. Bartholomew said, "You're just looking at one side as you look up this bank. We're not looking at the back wall of this bank in this picture." Ms. Berry said, "And the reason for this, is the road is so narrow, I didn't want to set in a blind curve taking pictures. And with this fence there, I can't really get off the road. So I took them as best I could without getting rear ended or anything. Like you said, most people that ride the road, including me, you ride at a very slow pace. It's a very rocky, gravel, dirt road and everybody is very good about not speeding through there. Because there are so many turns and twists, you wouldn't want to go through there very fast, you'd wind up in the lake." Mr. Phelps said, "In fact too, it's a one lane road in some portions of it, you've got to back up." Ms. Berry said, "That's the way I look at it. I wouldn't want to meet somebody without having to be able to pull over and let them by. It might be a little over one lane but it's not 2 lane. It might be like 1½ where you can squeeze by. But that's the reason the pictures aren't the best in the world." Mr. Phelps said, "But, it is a state road?" Ms. Berry said, "I don't know. Ann can probably answer that. It's pretty constricted." Ms. Pouch said, "They wanted to pave our road. Everybody protested so the highway person said he'd never had a case where everyone voted no we don't want our road paved." Ms. Berry said, "Instead of yes, we do. It's pretty constricted, Jim. The lake's on one side, so they obviously can't go that way. I didn't know if you'd ever been there or not. It's a pretty constricted road." Ms. Pouch said, "Most people are cautious, most of them."

Mr. Phelps said, "But there's no problem with any neighbors. Everybody's, I mean if there's other houses, to me having driven through there, it seems to be just as close." Ms. Berry said, "That's correct." Mr. Bartholomew said, "If you take into account the boathouses on the other side, absolutely." Mr. Phelps said, "Some of them are really tight. If I remember correctly."

Chairman Bonessi said, "Does anybody else have anything for?" Mrs. Pouch said, "I don't have any questions." Chairman Bonessi said, "So now I'm going to go ahead and we'll discuss this as a Board and take no other public input. I guess one thing from a logistics question is, Sarah, since Gary came in, is he okay to." Ms. Berry said, "He came in within about 2 seconds of us starting." Chairman Bonessi said, "I want to make sure the right group is talking about this." Attorney Zambon said, "Yea, I mean, he can vote on it." Chairman Bonessi said, "Okay, I just want to make sure that the right group is here and is discussing it and so forth. Gary, anybody else?" Mr. Griffin said, "I'm not familiar down there. Ann's the one that's the big expert." Mrs. Pouch said, "I think they've done a very creative job, figuring out how to put a house on this property." Chairman Bonessi said, "Tony?" Mr. Engel said, "I'll ask Ann. A 3 story house would really not affect the area at all?" Mrs. Karpowski asked Mr. Engel to speak up please. Mrs. Pouch said, "The 3 story, not where he's going to be because he's in this deep curve. It's just a mountain behind him and the railroad tracks on top of it. No one's going to be behind him. He won't block any views. It's sort of separate – he doesn't have real close neighbors on either side." Ms. Berry said, "If you look at the topography sheet, you can see the road and then on the other side, it goes back down." Mr. Engel said, "This property practically runs to the railroad property on the sides." Mrs. Pouch said, "Now if the train starts running again." Ms. Berry said, "Might wake him up." Mr. Engel said, "At least he'll be further away from it than he would if he moved it back further." Mrs. Pouch said, "True. Actually, we miss the train."

Chairman Bonessi said, "If we have no other discussion, I guess we need to look at our facts." Mr. Phelps said, "I think it's very obvious you've got practical difficulties with this particular lot. Certainly have unique circumstances. Do I have to answer all this?" Chairman Bonessi said, "Yea, for each factor tell how it relates to each. Let's go through these one by one. The practical difficulties and unnecessary hardships." Mrs. Pouch said, "I think these are due to the steepness of the lot and existing right of way deeded to the railroad and Duke Power. And the environmental impact required, I think it's very difficult to build any other structure on this site." Mr. Griffin said, "I mean, he could build

his house there, but he would just be tearing up the land. I think if we don't give him the variance and he still wants to build, he can go in there and tear the bank out more and build his house anyway. So, you know, if we give him a variance maybe he won't tear the trees up." Chairman Bonessi said, "Natalie's asked that we speak a little more into our microphones." Ms. Berry said, "Our recording machine only picks up if you speak into the mike and we have a lot of dead space. You notice when you read the minutes, it says couldn't hear, couldn't hear. That's the reason for that. So, if you don't mind."

Chairman Bonessi said, "One of the big concerns I had with this project or this property is how close you are to the road. But as we look at these drawings and stuff the bank is pretty much there already. I don't know that putting the house there would make it any more dangerous than it already is."

Mrs. Pouch said, "I think the variance is in harmony with the spirit and intent of the law. You want us to go down all of them?" Chairman Bonessi said, "Yeah, we're going to have to, Joyce is going to ask us for these, what they are, so we need to make Joyce's life as easy as possible." Mrs. Karpowski said, "Well it's Sarah now." Ms. Berry said, "Sarah writes the orders now." Chairman Bonessi said, "So we want to make Sarah's life very easy." Ms. Berry said, "Speaking into the mikes makes Joyce's life easy." Chairman Bonessi said, "Okay. Sarah where are you at? Do you have, we've discussed a lot of things." Attorney Zambon said, "I've been taking notes. You're up to the variance is in the spirit and intent of the law. That's what Ann just said." Mr. Griffin said, "I think it's in the spirit because we wouldn't be tearing up the land any more than it's already messed up. So that would be in the spirit of the law, wouldn't it? Reason for that?" Mrs. Pouch said, "Um-hm." Mr. Griffin said, "As far as public safety and welfare, I don't think we're making a whole lot of difference. The bank's there anyway, so we're not, nothing we can change either way on that." Mrs. Pouch said, "And there's already cars parked where the garage will be so that wouldn't make a difference in the safety issue." Mr. Griffin said, "Substantial justice – yeah, he should be able to build a house. I mean he can, but if we give him a variance he won't tear the bank up anymore." Mrs. Pouch said, "He won't, plus he's owned this property since before it was zoned." Mr. Griffin said, "So he should be able to. Okay, so we really haven't considered the other lots or other nonconforming structures in the neighborhood. So, we haven't done that."

Chairman Bonessi said, "So do we have a motion?" Mrs. Pouch said, "I move that the Zoning Board find and conclude that Variance application V-07-12 complies with the necessary provisions of Henderson County Zoning Ordinance and I further move that the variance be approved subject to the following conditions: the ones that are stated in this application." Mr. Phelps said, "Does that include the swales for the drainage?" Attorney Zambon said, "No, I don't think that's in the application." Mr. Engel said, "I don't think we have to include that because they'll want it. They'll do what's necessary." Chairman Bonessi said, "I don't think that's pretty much required, too." Attorney Zambon said, "So, just so I'm clear, are there any conditions?" Chairman Bonessi said, "Just what is stated in the application, I think." Mrs. Pouch said, "Yeah, the conditions that they implied with their application."

Mrs. Berry said, "Can I bring up something, sir?" Attorney Zambon said, "You're going to add a condition?" Ms. Berry said, "Well, I just want to expand on that one just a tad." Attorney Zambon said, "Okay." Ms. Berry said, "That it's not a substantial change from the application. Cause if you say, it's got to be exactly like the application and he changes the higher floors, does he have to come back and ask for an amendment?" Mr. Engel said, "If he changes the what now?" Ms. Berry said, "Well, like he's got footprint that he's not going to change, but he was saying that he hasn't really got his top floors designed exactly yet." Mr. Engel said, "Does he show that here?" Chairman Bonessi said, "But we're talking setback." Ms. Berry said, "I just want to make sure that we're not." Attorney Zambon said, "So, if you make a condition that says he has to comply with everything in the application, then he has." Chairman Bonessi said, "The setback requirements in the application." Ms. Berry said, "That's why I brought it up. I don't want to see him get caught in a corner." Attorney Zambon said, "No substantial changes to the application, from the application." The Board agreed with that. Mr. Cart asked a



question and the Board said the hearing was closed and if he needed clarification that could be done later.

Chairman Bonessi said, "The motion is to give you the variance, the setback as you requested, is what the motion is being said." Mr. Engel said, "So do we want to actually hold them to the letter of the law with the application. What happens if he wants to put up a deck on the side or something like that?" Chairman Bonessi said, "Well, we're just, we don't have a dimensional footprint." Mr. Engel said, "But he showed us that." Mr. Griffin said, "Didn't we say without substantial changes?" Ms. Berry said, "That's why I said that." Mr. Griffin said, "Didn't Natalie say without substantial changes." (Everyone spoke at once.) Attorney Zambon said, "And besides the setback stuff are there things in the application that you're particularly concerned with? Cause otherwise, you may not want to make it a condition in general, depending on how confusing it gets." Mr. Engel said, "Well I was thinking just to let them be as creative as they want to with the home." Mr. Griffin said, "As long as they don't go and double the size of it or something. As long as they're pretty close to the plans we saw." Chairman Bonessi said, "We don't really even have a dimension on the house." Mr. Griffin said, "What do you think, Natalie. We need guidance here." Ms. Berry said, "I would say, just the setback period is 25 feet and let it go at that." Mr. Phelps said, "What we're really saying is don't move another 5 feet." Ms. Berry said, "As long as he stays behind what you granted him, it's not really a problem." Mr. Engel said, "Whether he came 10 or 15 feet wider with the house, would that really matter?" Ms. Berry said, "You have a zero lot line and he's above the septic tank, so he'd be able to do that, if he chose to. Anyway under the Zoning Ordinance as it's written. The only thing that you have to issue is just the front yard setback." Mr. Phelps said, "So there'd really be no conditions." Attorney Zambon said, "Would it be possible to have, Ann could you reread the motion then?" Mrs. Pouch said, "Don't confuse me. Now where am I? I move the Zoning Board find and conclude that Variance application V-07-12 complies with the necessary provisions of Henderson County Zoning Ordinance and that they adhere to the setback that they have applied for." Mr. Griffin seconded the motion. Chairman Bonessi said, "All in favor."

Mr. Griffin	-	Yes
Mr. Engel	-	Yes
Mr. Bonessi	-	Yes
Mrs. Pouch	-	Yes
Mr. Phelps	-	Yes

Chairman Bonessi said, "Congratulations, Mr. Cart, your variance has been approved." Chairman Bonessi asked for a 5 minute break.

The Board came back from break and Chairman Bonessi called the next case.

**Case V-07-08, Lara, Heriberto Patino (owner) continuation**, requests a twenty (20) foot six (6) inch variance from the front yard setback requirement at 117 East King Street for a constructed single family dwelling and adjoining deck and the zoning is T-15.

Ms. Berry asked who would be sitting on the Board for this case so she would know who to give more information to. The 5 regular members would be hearing the case and Ms. Berry passed paperwork to the members. Chairman Bonessi asked about information for Mr. Engel, who wasn't at the last hearing. Attorney Zambon said Mr. Engel had received all the information about the case and had the minutes from the previous hearing. Chairman Bonessi said the Board was in deliberation at the last meeting.

Ms. Berry said she entered a letter just now into evidence. It was a letter from DOT backing up what she stated at the last hearing. It just states there is no recorded right of way for the road. She read the letter from Steve Cannon, Henderson County maintenance engineer.

Chairman Bonessi asked the Board if they were comfortable continuing with deliberation or if they wanted a brief review. Ms. Berry said that Mr. Patino has brought some pictures to clarify some things for the Board.

Mr. Phelps suggested opening the public hearing for new evidence. Chairman Bonessi said he would open the public hearing for input from the applicant, the Zoning Administrator, and the public for new information.

Ms. Berry said, "I don't have any additional information, but I know the applicant does."

Chairman Bonessi said, "Mr. Patino, if you have any new information for us, we would like to see it at this time."

Mr. Patino said, "I just had some pictures showing how far is the back and the house, everything from the stop signs. Just so you can see everything around them." Ms. Berry said, "If you want to hand them to this lady right here, she'll pass them around for you."

Mr. Patino said, "Let me say something else. I do have another, some other pictures from my neighbor right in front of me. It was the lady that was here at the other meeting. She didn't come today. I don't know why." Ms. Berry said, "I believe it's 118 East King Street, I believe that is who he's referring to." Mr. Patino said, "Yes, she's right in front of me. The reason I took some pictures of her house is because her house on one side is probably only 5 foot away from the edge of the road. Her house. And just to show you." Chairman Bonessi said, "That's fine. We'd like to see the pictures." Ms. Berry said, "And if you look in your packet on the Zoning Official's report the third page, you'll get to see just a bird's eye view of the street. It's in the front of the cases." Chairman Bonessi said, "So we need to enter this as evidence?" Ms. Berry said, "Yes." Chairman Bonessi said, "How about the letter that Natalie." Ms. Berry said, "Already got it, that one right there." Mrs. Pouch said, "The neighbor's house is this?" Ms. Berry said, "I believe it's 118, if you look at the map I told you about, the third page in your packet. 118 East King is the one he's showing you. Just to tell you where you're at. It's the stone house." Chairman Bonessi said, "I guess something with this is this house was probably built prior to zoning." Ms. Berry said, "Yes, I believe it probably was." Chairman Bonessi said, "We can't really consider that as precedence if it was done before zoning."

Attorney Zambon said, "Mr. Patino, did you have anything else you wanted to add?" Mr. Patino said, "Not right now, I don't think for now." Chairman Bonessi said, "Stay there for a few minutes cause I might have a question. I know I've got a question. This is taken from the top of the deck?" Mr. Patino said, "That was from the top of my house, from the deck."

Mr. Griffin said, "I've got a question for Natalie. In this picture, is this the corner we're talking about right here?" Ms. Berry said, "Yes." Chairman Bonessi said, "Does anyone else have any questions for Mr. Patino?"

Ms. Berry said, "Pass the pictures back around to Joyce for me so they can be put in the file. Thank you." Chairman Bonessi said, "I need to send these back to Joyce as well. Tell her to put them in the last case's file. How are we on stuff? Do we need to? We don't have any other questions for Mr. Patino? I'll ask for if there's any new public comment. Jim, you all right? Tony? Gary? All right, Mr. Patino, thank you. We're going to ask for some other input from. You can sit down now. I guess it looks like I've got Mrs. Cagle. Do you have anything new that you would like to add at this time?"

Mrs. Cagle said, "I called the district engineer for DOT in Sylva and he stated that any state road does have a maintenance right of way. It can vary. And it's based on what he called the cow path law of years ago. There are 2 concrete markers in the yard and I don't know whether that picture he just gave you or not, shows it. But there's 2 concrete right of way markers in the yard right across from his house. We pulled a tape before we got here and it was 30 foot from the post in her yard to the center of the road on King Street. We didn't pull a tape the other way because I didn't feel like getting run over

today. Traffic's murder out there. But the district engineer, Mr. Ted Green, told me that there'd have to be a deed research for every plat and deed from back in the last century in order to find out exactly what to make this right of way was. But he said every state road with a highway number does have a maintenance right of way. And if they come in there to widen the road or whatever, that they could tear down whatever was in their right of way." Chairman Bonessi said, "Was this just a conversation you had on the phone with him?" Mrs. Cagle said, "Yes, but I have his number if somebody'd like to call and talk to him. Cause he was very upset." Chairman Bonessi said, "And that was from, who was that from?" Mrs. Cagle said, "Ted Green." Chairman Bonessi said, "Ted Green." Mrs. Cagle said, "Out of Sylva and he's the district engineer for North Carolina. But I don't know whether those pictures he gave you shows the concrete markers. But I told him they were in the yard. Those people have mowed around them. That house has been there, I know, for thirty years. My husband says longer. So I don't see how you can compare that house being that close to the road when there was no zoning ordinance back then to now when there is."

Chairman Bonessi said, "Anyone have any questions for Mrs. Cagle? And you were saying that the marker that you measured from the centerline of the road was 30 feet?" Mrs. Cagle said, "Um-hm. From the post in front of her house to the center of the street was 30 feet. And we didn't measure the one on East Blue Ridge because traffic is pretty bad out there. But there is one there for that side too. This guy from Sylva, Mr. Green, said that they had been a lot of them had been pulled up with backhoes. This one is still there. I know it's been there. I know I've lived out there for 30 years. My husband and his family, his mother and father, lived there for longer than that. So I know they've been there for years."

Chairman Bonessi said, "Thank you. Anybody else want to speak in regard to this application? I guess from the Board, do we have any questions of anybody before we go ahead and discuss this as a Board with no other input?" Mr. Phelps said, "I'd like to ask Natalie, when you were out there did you see any markers? Were you aware of markers?" Ms. Berry said, "No, sir. I wasn't there to look for markers though." Mr. Phelps said, "And you don't recall seeing any?" Ms. Berry said, "I didn't look so they could be there. I didn't look to see that." Mrs. Pouch said, "Natalie is the major problem here that he has 2 front yards?" Ms. Berry said, "Yes, ma'am." Mrs. Pouch said, "Wouldn't the front yard be where his address is?" Ms. Berry said, "Under the proposed LDC, that's a true statement. But under the current one, if you have a front yard or if you have a road adjoining your property, it's a front yard no matter whether it's the side of the house or the front of the house." Mrs. Pouch said, "That does make it complicated." Mr. Griffin said, "If we considered it under the new ordinance, we wouldn't need to grant a variance, would we?" Ms. Berry said, "Correct." Mr. Engel said, "And all future houses that would be able to do what he's done." Ms. Berry said, "Correct."

Chairman Bonessi said, "I know I've asked this and just from an update, where are we at with that new." Attorney Zambon said, "There's more public or they're having more Board of Commissioner meetings and I know there's one at the end of July through August. So they're hoping to pass it at somewhere at the beginning of September, hopefully. That they don't put more, they have a last public workshop I see planned is September 11." Chairman Bonessi said, "We're still looking 2 -3 months minimum." Attorney Zambon said, "2 to 3 months." Mr. Griffin said, "It's going to be the first of the year." Chairman Bonessi said, "Yeah, realistically." Attorney Zambon said, "Hopefully not."

Mr. Phelps said, "I'd like to ask Natalie another question. On this exhibit H, you have here?" Ms. Berry said, "Wait a minute." Mr. Phelps said, "I understand it correctly, it says he signs it saying he understands all the setbacks and restrictions and everything that he must comply with by signing that document. Is that correct?" Ms. Berry said, "Let me catch up with you. Are you talking about the application? Zoning Permit?" Mr. Phelps said, "Henderson County Planning Zoning Permit, yeah, permit number and so forth. You know big words up here says that's what it says." Ms. Berry said, "Right, I agree with you but if you recall some of my testimony was the code enforcement that issued the permit and Mr. Patino had a conversation about ingress egress. That's the reason for the problem. It's not that he was defying it. You know what I'm saying. I think it was a matter of misunderstanding."

Mr. Phelps said, "As a result of an informal discussion?" Ms. Berry said, "Yeah, it was an informal discussion at the permit signing. I'm just trying to explain what I've been told now. I wasn't at that meeting so I don't know what took place. And the gentleman doesn't work here. So I can't get him here to say yes this is what took place. So it's all hearsay." Mr. Phelps said, "But he was building it and in North Carolina as I understand it, it's not did you know, but should you have known." Mr. Griffin said, "But he did go to ask am I doing this right?" Ms. Berry said, "He came back several times to ask. My understanding he came back 3 different times talking to Larry. Was it right to try to clarify it." Mr. Phelps said, "Every single part of it is right to the edge of the envelop. So it's like (couldn't understand)." Mr. Engel said, "That happens in a lot of new construction so you can't fault him for that part." Mr. Phelps said, "I'm just saying, you sign this, you say you understand." Mr. Engel said, "How many things do people sign and we think we understand." Mr. Phelps said, "And get in trouble?" Mr. Griffin said, "All the time." Mrs. Pouch said, "Well if he went back to ask questions to make sure he was doing it properly 3 times, it doesn't sound like he was doing all of this intentionally. That it was a misunderstanding." Mr. Griffin said, "I've learned to go back all the time. How many of times are in somebody else's office when I'm building stuff. I mean I go back all the time and say." Ms. Berry said, "I think in his current project, he's been in there about 5 times asking the same question." Mr. Griffin said, "Am I doing this right and I just want to make sure." Mr. Phelps said, "Did you sign and date this?" Mr. Griffin said, "Give them money and it's filed, but you do go back. When you're not building every day. Now Tony may not have to but somebody building his own house or when I'm doing stuff, I go back all the time to get clarification. You know to make sure that it's right."

Mrs. Pouch said, "I understand about the 2 front, don't really understand about the 2 front yards. I think that's silly. But because we say he does, is that what makes him violating?" Ms. Berry said, "Un-un. Yeah and we're one of the few ordinances that have more than one front yard. And I suppose that is why they're trying to correct that. But until they correct it, this is what we have to work with, unfortunately." Mr. Griffin said, "I believe the 2 front yards are a hardship. And that's why it's being changed in the new ordinance. Because we saw quite a few of them that came up here and asked for variances because they are 2 front yards." Ms. Berry said, "Last month alone, I think we had 3." Mr. Griffin said, "So they come to us all the time because of that." Chairman Bonessi said, "Yeah, I struggle, there's several things I do struggle with on this." Mrs. Pouch said, "Could we say it's a hardship?" Mr. Engel said, "Due to the property being on a corner?" Attorney Zambon said, "You've done that before." Mr. Griffin said, "It is a hardship when you've got to meet 2 front yard setbacks." Mr. Phelps said, "If he built a smaller house. This thing is big enough for 3 apartments." Mr. Griffin said, "It's a big house but we can't restrict how big people build their houses." Mr. Phelps said, "No, but that would have been an option." Mr. Engel said, "But we don't take into account design or anything like that. A person has a right to have a house the size they'd like especially if he thought he was complying." Chairman Bonessi said, "Ultimately in this situation the house size itself is really not changing. It's the deck." Mr. Griffin said, "I think it's the decks that come out." Chairman Bonessi said, "The deck is the biggest thing and we kind of discussed that last time that the deck could be modified to put it more in compliance. That's another issue we needed." Mr. Phelps said, "I wouldn't call it a hardship if he can modify the deck and be in compliance. That's not a hardship." Mr. Engel said, "Well if you can't step out from your house." Chairman Bonessi said, "Actually he could, the way this was." Mr. Griffin said, "I think he built a 30 foot deck." Chairman Bonessi said, "Yeah, it's fairly large. It's really if you look at this drawing here, Tony, this is the part in question." Mr. Griffin said, "But if he wasn't being handicapped by having 2 front yards, his deck would be fine." Chairman Bonessi said, "He would be in compliance, yeah." Mr. Griffin said, "He would be in his envelop if he didn't have that."

Chairman Bonessi said, "I think this is pretty much where we were last time discussing this. Certainly somebody correct me if I misspeak here. There were 2 issues. We had the overhang issue that there was part of his overhang that doesn't fit and then part of the deck as well." Mr. Griffin said, "Didn't we have wall there, too." Chairman Bonessi said, "Yeah, we had a wall that went this way. But it wasn't really, I mean that was part of a stairway, wasn't it?" Ms. Berry said, "It is a supporting wall. It's a wing wall, but it does support that roof that's above it. So if you take it away, that roof's going to collapse. You would have to cut it back and then cut the structural back to support the new roofline." Chairman

Bonessi said, "Natalie are you aware, has work actually ceased on this house or is work still going on?" Ms. Berry said, "No he hasn't done anything since the day I put the stop, well I didn't put it. One of my inspectors put a stop work order on him and he hasn't done a thing since that I'm aware of. Let me clarify that. I'm not out there at midnight, but I haven't seen any evidence of any work."

Mr. Griffin said, "How about the height? Is he okay on the height for this house?" Ms. Berry said, "Yeah, we discussed that last time and a lot of people don't agree but our ordinance says the highest adjacent grade against the structure. And to the right back of the house he's got a retaining wall with fill built up to it. So he does fall under the 35 foot. It's already filled in. It's actually shown in one of the pictures here. You can see. I'd have to look for that picture." Mrs. Pouch said, "Yeah, we saw it." Mr. Griffin said, "He's asking for what – 20 feet?" Chairman Bonessi said, "20 feet, 6 inches, I believe it was." Ms. Berry said, "Yeah, and that would make the deck and the corner of the roof okay. Now if you just went to the corner of the roof, I believe it's 20 foot 6 inches minus 8 foot 8 inches." Mr. Phelps said, "You get 12 feet to allow for the roof." Ms. Berry said, "Let's see." Chairman Bonessi said, "And that would be, I mean, that's my first thought, my personal opinion." Mr. Griffin said, "We could do it to the roof and then when the code's passed he can go back and build his deck, if he wanted to." Mr. Engel said, "What a shame to have to tear it down for a short time, for 2 months. Or not to be able to work on the job." Chairman Bonessi said, "Yeah, that is a question. How much time would he have to actually, if we rejected his application totally, how much time would he have to get that thing torn down? I don't know how that works." Ms. Berry said, "I would say you would have to tell me." Chairman Bonessi said, "We would have to tell you?" Ms. Berry said, "You would have to say 30 days, 60 days, 90 days." Mr. Engel said, "A year." Ms. Berry said, "You would have to be the one to tell me that." Mr. Engel said, "We could do a year. By then maybe it would be." Chairman Bonessi said, "I mean that's not right either." Ms. Berry said, "If you just deny the variance he would be in notice of violation and I think the ordinance states you have to give him no more than, I'm not sure if it says 60, 30 or 15 days. I've got too many ordinances in my head. Whichever one it says, that would fall into place. Then I would write him a letter that says you've got this amount of time to remove it. And then fines would begin to accumulate." Chairman Bonessi said, "I guess the question is if, that's a big if, he was rejected, or we gave him a partial setback and he had 30 or 60 days or whatever it was before fines accrued and he waited and fines started accruing and then this new land use development code went into effect, would he still be responsible for the fines?" Ms. Berry said, "That's a Miss Sarah question. That's why she's the attorney." Attorney Zambon said, "Legally he would be responsible for the fines whether or not the zoning department felt like enforcing the fines is a Natalie Berry issue." Ms. Berry said, "We would be forced to enforce the fines." Mr. Engel said, "You can't do it on some people and not on others." Attorney Zambon said, "Yes, you can't do it on some people and not on others. In certain departments in the county, they tend to have more of a pattern of putting in fines and not enforcing them or you know stuff like that." Ms. Berry said, "Now we would treat everybody fairly." (Several people spoke at once.) Attorney Zambon said, "True, that's what I told them." Ms. Berry said, "We would treat everybody fairly so yes, they would have to be enforced. We wouldn't be able to waive them in any way. We really don't have that ability." Chairman Bonessi said, "That's fine, that's just a question."

Mrs. Pouch said, "Do we have the authority, can we say that the second front yard is a hardship?" Mr. Griffin said, "We have before. We've used it before." Ms. Berry said, "Since I've been the Zoning Administrator for 2 ½ years, we've had at least 10 cases, maybe more, due to double front yards." Mr. Engel said, "A lot of them have been approved as well." Ms. Berry said, "I think all of them actually have but we're talking 3 just last month and this is one of the 3. So 2 last month." Mr. Phelps said, "Have they been as many as 20 ½ feet? That's way big." Chairman Bonessi said, "The magnitude is the other thing." Ms. Berry said, "That, no they haven't been quite that large. I think the biggest one might have been McFalls last month." Mrs. Pouch said, "What about (couldn't hear)?" Ms. Berry said, "His was 8. I think we've had one up to 15. I was thinking his was. But we've not had one up as high as 20." Chairman Bonessi said, "How would we find out how long he would have to comply?" Ms. Berry said, "I'm not following your question." Chairman Bonessi said, "How would we find out for sure what the rule is on how long he would have to tear that down?" Mr. Griffin said, "We could basically give him a time, couldn't we?" Chairman Bonessi said, "Well it sounds like it's not our decision." Ms.

Berry said, "Well I think if it's extenuating circumstances they can be given more time, but I don't know where you would define extenuating circumstances." Attorney Zambon said, "What section are you looking under?" Ms. Berry said, "It's let me, I think it's in that 1-14." Chairman Bonessi said, "I personally think that the draft of the possibility of a new land use development code that would negate anything that we're doing right now, would be an extenuating circumstance. I mean that's my personal opinion." Ms. Berry said, "Well see, that's for the Board to decide and that's one reason it's better to do this here because you've got 5 people instead of just one trying to make a decision." Chairman Bonessi said, "That's fine." Ms. Berry said, "I really think that's the best way to go about it." Mr. Engel said, "Would there be a way of postponing this whole thing until after." (Several people spoke at once.) Mr. Engel said, "No I mean to allow him to continue on the inside of the house." Ms. Berry said, "Did you find it?" Attorney Zambon said, "The compliance order." Ms. Berry said, "Yeah, it's under 1-14, I believe." Attorney Zambon said, "Yeah, civil penalties?" Ms. Berry said, "Yes, ma'am." Chairman Bonessi said, "That's kind of what I'm saying. My thought process on this is okay." Ms. Berry said, "Yeah, here it is. I found it." Chairman Bonessi said, "Keep the variance on the, this is just me thinking out loud, on the." Ms. Berry said, "See under the compliance order the last sentence, not to exceed 15 days. If circumstances exist such that the violator cannot come into compliance." Mr. Engel said, "Might drag on the whole thing. So you can't count on that." Chairman Bonessi said, "We can't count on them passing it period." Mr. Phelps said, "I don't think we should consider that." Mr. Griffin said, "But you have to consider it because if they pass in like 60 days, we've made him tear down his deck that he can come back and build back." Mr. Phelps said, "He has that option to wait anyway." Mr. Engel said, "But the house is sitting there unfinished. That's a hardship for him." Mrs. Pouch said, "Could he finish the house and just not do anything to the decks?" Chairman Bonessi said, "Well the big thing here again to me is also, I mean he may have been pushing the envelop, but he's been getting feedback and he got some wrong feedback here too. I mean that's another thing I weigh in, too. I mean it's one thing is." Mr. Engel said, "Is that part of the circumstances?" Chairman Bonessi said, "That was part of the issue. There was a gap in communication it sounds like between our department and him. And we don't have all the people here to verify what was said or what was not said there." Mr. Griffin said, "What was the decks considered as ingress and egress?" Chairman Bonessi said, "That was the, was that where the foul-up came?" Ms. Berry said, "Yeah, that's where it came." Mr. Griffin said, "Cause if he used it for ingress and egress the decks would be okay." Ms. Berry said, "No. In this case the ingress egress can be there without the deck. That's the problem with this one. It's not quite, you know like you have some houses, like even a manufactured home you have to have the steps up to it, and that's considered ingress egress. And this just got way out of hand. Cause that was what they were intending to be ingress egress. But whenever you apply for a Zoning Permit in Henderson County, you're not required to tell us what size house or anything like that. You just show them the setbacks and explain ingress egress is okay. That's where the miscommunication came in." Mr. Engel said, "Which is understandable actually." Ms. Berry said, "Right." Chairman Bonessi said, "I get, you know, you need 30 feet for ingress egress." Me. Engel said, "Well there isn't a regulation on it if that was true ??? ingress egress." Ms. Berry said, "The only thing the ordinance says is it has to be used solely for ingress egress. That's where." Mr. Engel said, "That large for just." Ms. Berry said, "That's why I say the ingress egress here could be there without the deck. It's not coming, you know the deck doesn't have to be there to get him into the house. But that was where the miscommunication, I believe, came into play."

Chairman Bonessi said, "The, I'm trying to remember, I know we've done this several times. Do we have to ask him? Can we grant him a variance of less than what he's asked for? Or do we just?" Attorney Zambon said, "Yes, you can." Chairman Bonessi said, "So we can put that on the table and then discuss that as a Board." Attorney Zambon said, "You could. You might want to ask the applicant if it's worth it to him." Chairman Bonessi said, "Well I just want to make sure we can do it before we actually put it on the table as that being an option. Mr. Patino, could you come forward for just a second. I don't know if you've been paying attention to what we've been talking about, and this is a question we're not saying we would grant this now or not, but it's something that we would like to put on the table, or at least I would like to put on the table as far as changing the amount of space or the amount of the variance that you are requesting. You're requesting a 20 foot 6 inch variance. We would

like to know if that is all you're open to or if you would be open to a variance that is less than that, which would enable you to keep your retaining wall and the roofline, but modify the deck to accommodate the smaller variance. Would you be open to that?" Mr. Patino said, "Yeah, I believe that work because it be better for me instead of not getting anything. I'm okay with that." Chairman Bonessi said, "I want to get my measurements correct, make sure we're talking the same thing. You're currently asking for a 20 foot 6 inch variance and this overhang here is 8 feet 8 inches." Mr. Patino said, "I believe that is right." Chairman Bonessi said, "So that would be a reduction, what would that give us? That'd give us 11 feet, how much would that be?" Mr. Phelps said, "11 foot 8 inches." Chairman Bonessi said, "About 11 foot 8 inches instead of a 20 foot variance. We'd be giving an 11 8 foot variance or 12 foot. Hang on, I'm not." Mr. Phelps said, "That's what I'm saying. Trying to interpret the map over here." Chairman Bonessi said, "8 feet 8 inches is what he's saying that the overhang." Ms. Berry said, "It's 60 minus 44." Mr. Phelps said, "Talking about from the edge of the deck to that roofline, right?" Ms. Berry said, "Yeah, it'd be 60, isn't it 60 the setback, so it'd be 60 minus 44, so the leftover is what he'd be needing." Mr. Griffin said, "16 feet?" Ms. Berry said, "Yeah, I believe that's right." Chairman Bonessi said, "16 foot variance?" Ms. Berry said, "Yeah." Mr. Griffin said, "Are we sure?" Chairman Bonessi said, "No, that's seems too." Ms. Berry said, "That can't be right though. Hang on a second." Chairman Bonessi said, "It amazes me, I have to have glasses to see but anytime I need to do something, I take them off." Ms. Berry said, "The 44 is not to the edge, that's to the inside, that's right, I'm sorry. That 44 is not to the edge of that. That's my mistake. Let me tell you what it would be then. If it was 20.5, 20 foot 6 inches, is what he needs to go to the back wall. And the front edge is 8 foot 8 inches out. The only problem I have here is you're on an angle. So we're going to have to do trigonometry to be able to figure it out. I guess you could, if you chose to go that route, you could state it to the edge of the existing roofline on the house, whatever that figure may be. And then I can go out and verify it in the morning and give it to Sarah." Chairman Bonessi said, "Can we do that legally without a." Ms. Berry said, "Because you've got a stable point. It can't move – the edge of the roofline." Attorney Zamboni said, "Yeah, that's fine. And they won't be able to do the temporary permit tonight then." Ms. Berry said, "Yeah. And I think Mr. Patino would be all right with that as far as us having an order ready or anything, I think he would be all right waiting another day." Chairman Bonessi said, "So we're not going to give him an actual dimension. We're going to say to the edge of the roofline." Ms. Berry said, "The existing roofline." Chairman Bonessi said, "The potential thing that I want to put out on the table is to the existing roofline." Mrs. Pouch said, "You're saying from here to this way he's going to have to." Chairman Bonessi said, "He would basically, this part here would be have to cut out." Mrs. Pouch said, "Okay. So he could keep this?" Chairman Bonessi said, "Yeah."

Mr. Engel said, "Is this blocking any view for people to be able to see around the corner?" Mr. Patino said, "No." Chairman Bonessi said, "No." Mr. Engel said, "It's going to make the place look. It would look better as it is, certainly a lot better than the way it would look after it's cut off." (Several people spoke at once.) Ms. Berry said, "It'd be at least 2 columns." Mr. Engel said, "If not more." Mr. Phelps said, "So 2 columns." Ms. Berry said, "It's close to 2. I did measure that part. It's kind of on the inside of the second." Mr. Engel said, "This would be allowed to be redone like it is as soon as that new ordinance goes into effect." Ms. Berry said, "If it was approved as it's written now." Mr. Engel said, "And the reason that they put that in is because most areas do not have 2 front yard setbacks and they find that it is a hardship?" Ms. Berry said, "That's correct." Mr. Engel said, "Which means that there are grounds then if we wanted to approve it as it is due to the hardship. There are grounds to do that." Ms. Berry said, "And Gary can speak for a lot of the draft of the land development code as to what the intent was because he's on the Planning Board. He had a lot of input to it." Mr. Griffin said, "It was to eliminate the 2 front yards." Ms. Berry said, "I mean we're not guessing what it was. We do have a gentleman here." Mr. Engel said, "He's an expert." Ms. Berry said, "And I went to a lot of meetings as well." Mr. Griffin said, "When you do have 2 front yards, it does make hardships." Mr. Engel said, "So we do have grounds." Chairman Bonessi said, "My only problem with that part though again, and let's say we discussed it, is that's not a done deal yet." Mr. Griffin said, "There will be, this is just my opinion. I think they'll be some things changed in the land development code but this one of them that probably won't be tinkered with. It's just something that needs to be fixed." Chairman Bonessi said, "Right." Ms. Berry said, "Now the Board can initiate a text amendment and ask for that to be looked at"

by the Planning Board.” Mr. Engel said, “But that doesn’t help him.” Ms. Berry said, “No, I’m just saying if we feel like this is a continuing issue, and we don’t know if the land development code will ever be approved, you can initiate that as something to be looked at to be changed in the current code. Like I say, I know it won’t help this gentleman, but if we’ve had so many cases up to this point, it must be an issue.”

Chairman Bonessi said, “Did we find out for sure that we could under certain circumstances is there a hardship that we could put a timeline?” Attorney Zambon said, “The ordinance says 15 days.” Chairman Bonessi said, “And that’s it?” Ms. Berry said, “Well it says.” Attorney Zambon said, “I’ll read it.” Ms. Berry said, “Yeah. I was going to say it goes on to say a little bit more but not much.” Attorney Zambon said, “Such notification shall state the violation, if the violator does not comply within a reasonable amount of time, subject to civil penalties. If circumstances exist such as the violator cannot come into compliance within 15 days, Henderson County may grant an extension of time commensurate with the magnitude of the violation.” Mr. Engel said, “Actually the code would be coming into compliance with him.” Attorney Zambon said, “I know and I don’t think that that is what the code contemplates by this particular provision. If he had to tear down a whole house or something and it was clearly going to take more than 15 days to get it, you know.” Chairman Bonessi said, “Who’s the one to make that determination?” Attorney Zambon said, “Henderson County.” Chairman Bonessi said, “Who’s that in the County that makes that determination?” Attorney Zambon said, “I think it’s probably Toby and Natalie. And then they’d come ask me. And then we would all evaluate whether or not circumstances existed where you know.” Mr. Griffin said, “See, that’s why you have to keep going back and forth to get those committees to meet to give you an answer.” Mr. Engel said, “Maybe we should postpone this until.” Ms. Berry said, “Now you see why Gary asks 5 or 6 times, am I doing this right? These things change.” Chairman Bonessi said, “Mr. Patino, I guess we didn’t come up with an actual measurement but one of the things that we’ve talked about is we would actually have Natalie go out and measure the edge. If we approved another variance, we would have Natalie come out and measure where the corner of that overhang would be. And then determine that number at that time. That’s an option that we could put out there and, if you’d be willing to accept that, we’ll consider that.” Mr. Patino said, “That’d be good.” Chairman Bonessi said, “Okay.” Mr. Griffin said, “I got a question. Does that mean he has to tear down that part of the deck?” Chairman Bonessi said, “Well, that’s what I was trying to figure out what the time would be. And again you’ve got that code that you guys have been working on that would essentially put this in compliance. If we had some leeway there, which it doesn’t look like we do have. I struggle with this whole thing because there are a lot of elements that are going on here at the same time.” Mr. Griffin said, “You know one of the things that I look at is we had somebody wanting to build a house, they came and they ask, something happened and he ended up building his house not in compliance. He’s having to ask for a big variance that we don’t normally grant that size. But then we’ve got the land development code that’s coming in that’ll make him in compliance, cause he’s got 2 front yards.” Chairman Bonessi said, “Yeah, I know.” Mr. Phelps said, “Well, it’s pretty clear. Setbacks are as follows, 50 feet off the centerline of the road, 15 feet off the side and rear property. Now that’s pretty clear.” Mr. Griffin said, “Yup, but define the front yard. You should only have one front yard.” Mr. Engel said, “And if you only have 1 front yard.” Mr. Phelps said, “If you only have one front yard too, then he’s got to be 50 feet from 2 directions.” Mr. Engel said, “That’s all in the interpretation though.” Mr. Griffin said, “But now has he got 2 front yards?” Mr. Phelps said, “Well, I mean that’s the way it exists today. He’s building the way it exists today. He got a permit on the way it exists today, not the way it may exist.” Mr. Griffin said, “But when he got his permit he was told he was okay.” Mr. Phelps said, “He came back and asked and they were a difference of opinion on what was an egress, an ingress, or whatever.” Mr. Griffin said, “But he was told he was okay and was granted a permit on his plans.” Mr. Phelps said, “Well the permit though was with this understanding. What he was trying to say is if I do this am I still within the guidelines and I think if you look at it, you think about it, this is an adjunct, you know a deck is really an adjunct, it’s really now a central part of the structure. And where your entrances and exits, if you look at the pictures, they’re obviously well set back.”

Mr. Patino said, “Can I say something?” Chairman Bonessi said, “Yes, sir.” Mr. Patino said, “Like when I came to the, you know, the inspection department to ask about the deck to see if I was able to



do it like I got it, I didn't know anything about ingress and outgress, you know. The person I speak up there to, he didn't tell me anything about ingress outgress, you know. When I went to ask to see if I can do the deck, they tell me, yeah. It was okay. And I didn't know nothing about ingress or outgress, you know. On that we just find out now when this happened, but I never know on the back or you have to have just a small deck or something, you know." Chairman Bonessi said, "All right, I guess at this time, let's go ahead and decide if we don't have any other questions for anybody we'll close it to any other input and let's discuss this as a Board." Ms. Berry said, "I think what Mr. Patino is trying to say just then was, I think Jim made a statement that there was some disagreement in what ingress egress was. That didn't happen until he got a stop work order. And that wasn't during him asking when he got his permit. I think that's what he was trying to clarify." Mr. Phelps said, "I thought you said he came and asked." Ms. Berry said, "He came and asked Larry and Larry and him agreed that everything was fine. And then when I put a stop work order on him is when it was." Mr. Phelps said, "He learned it wasn't fine." Ms. Berry said, "Right, I think he was just trying to clear that up." Mr. Phelps said, "Oh I understood that." Ms. Berry said, "Okay. I just wanted to make sure that we understood what he was trying to say there."

Chairman Bonessi said, "Thank you, Mr. Patino. We're going to discuss this amongst the Board and we'll make a decision." Mrs. Pouch said, "I really don't understand what you suggest." Chairman Bonessi said, "My thought was make the corner of the house okay. Right there. And then that would open up the visibility to the road and that would make it." Mr. Engel said, "I thought there was nothing blocking the visibility to the road. So if there isn't." Chairman Bonessi said, "It's this point right here. It could be, I mean it would certainly increase the visibility. You've only got, the way this deck is, you've got 29 feet to the center of the road." Mr. Engel said, "Those pictures that he just showed look like there's a lot of visibility around." Chairman Bonessi said, "We may have been looking here." Ms. Berry said, "Look at exhibit E figure 1. That's in my staff report. It's in the staff report not the power point. Go back, backwards. You're in the power point." Mr. Engel said, "What does that block? It's not blocking the road. I mean that's so far away that it's not blocking the road." Mr. Griffin said, "Yeah, I don't see it blocking anything." Mr. Engel said, "I don't think that's blocking the road at all. So I don't know what the point of that is. To tear that down for something that will probably comply within a period of time or seen as a hardship to begin with, the reason they're changing it. Seems to me not to be doing justice." Chairman Bonessi said, "Like I say, the only thing I struggle with that is that it's not in stone yet, it's not. If it was, we wouldn't be here today." Mr. Engel said, "No, but they are making that there is a problem with it. And most, a lot of other municipalities do not interpret 2. Or most municipalities don't interpret 2 front yards. So therefore a lot of areas have found that same problem. And as far as appearance goes, for the building itself, to cut that corner off is not going to change this front appearance at all. I mean, it's not as if it's going to have any, all it is is creating a hardship for him." Mr. Griffin said, "It's still going to be a huge house." Mr. Engel said, "Yeah, it's not going to change any of that. If they do modify it, it would have been allowed anyway if he had built the house later." Mrs. Pouch said, "But would you remove the one corner and round it off?" Mr. Engel said, "Why? I mean, why? What's the reason for it? It's not going to change the appearance. And it's not blocking any views. I mean if there was reasoning behind it that made any sense, I'd say, well sure, that's one way. But just to cut it off without any reasoning behind it seems rather." Mrs. Pouch said, "Ridiculous." Mr. Engel said, "Ridiculous. Yes, thank you for filling in my words." Mrs. Pouch said, "I've been thinking that just trying to figure out how to do this." Mr. Engel said, "And it's not just a little tiny deck. I mean the way he's done it's a very substantial deck with the stone columns." Chairman Bonessi said, "That's part of the whole problem there." Mr. Engel said, "Well, that's my feeling about it." Chairman Bonessi said, "I like input, like everyone's opinions. Well, Jim?" Mr. Phelps said, "Like I said it's very clear and I think it's a very clear violation. I'm willing to compromise, but I just do not see granting this great 20 ½ feet variance. (Papers were rattling) reasonable and I don't think it's justified. You know the deck could have been recessed from this end and this end a ways, this house is constructed. Not all decks run the entire length, mine certainly doesn't. There's no reason that it can't end right there. And this whole corner aspect, if you looked at that, that is a curve in the road there, it is very close at this point." Mr. Engel said, "It's not blocking view though. It's not creating a hazard." Mr. Phelps said, "Well, does it track the building up out there? So you're saying did they have out

tomorrow. You know, rules are rules, and I understand we wouldn't have rules that weren't exceptions. But I don't think." Mr. Engel said, "That's what we're here for." Mr. Phelps said, "But I don't think we need to be looking for ways to create exceptions." Mr. Engel said, "In granting any variance we're making exceptions to the rules. So every single variance makes exceptions and this is." Mr. Phelps said, "But I don't think we don't need to search out a reason." Mr. Engel said, "There are a number of reasons." Mr. Griffin said, "We just granted the guy on Lake Summit what was it 35 feet? You know we just granted that because he didn't want to dig more into the bank. I mean he had plenty of room." Mr. Engel said, "And he didn't have anything built." Mr. Griffin said, "And he didn't have anything built. But we gave him 35 feet just to try to preserve the bank is basically the reason I voted for it. I don't know about you but that was my thoughts. This guy came to the Planning Board, misinformation, he built his house a little bit wrong. In 6 months it won't be wrong and he's asking for 20 feet. Rules are rules. If we had went by the rules in Lake Summit they'd been tearing down a bank." Mr. Engel said, "If rules were rules, we would not pass anything that we have." Mr. Phelps said, "I understand, but I said, I don't think it's our job to try to create an exception." Mr. Engel said, "Well every one of our rulings is an exception. Every single ruling." Mr. Phelps said, "If we deviate." Mr. Engel said, "We do deviate." Mr. Phelps said, "I said if we, when we deviate." Mr. Engel said, "We do." Mr. Phelps said, "But I'm saying, most of the time though there's a very logical, it's very straightforward. We don't have to think, gee can we create a way to create an exception that we can approve." Mrs. Pouch said, "I don't think that we create." Chairman Bonessi said, "And that's the other element, that Lake Summit might be different than this, too." Mr. Engel said, "But Lake Summit wouldn't be legal later on. This would be." Chairman Bonessi said, "We think. That's the only thing I struggle with." Mr. Engel said, "But then, even if it didn't become legal, chances are we might even do something like see whether they would modify that because most other building departments have done that in different counties." Mr. Griffin said, "I mean, that is a hardship on corner lots to have 2 front yards." Chairman Bonessi said, "Yeah, I don't disagree with that." Mr. Phelps said, "I know how that goes, but I'd certainly triple check you know all the ordinances too." Mr. Engel said, "Well you wouldn't be before the Board." Mr. Phelps said, "No, get it in writing that I'm in compliance that way." Mr. Engel said, "Each time we approve anything, if we turned everything down then we wouldn't deviate from the regulations and this is someone asking for us to do that. And then we find that they're going to modify." Mr. Phelps said, "But is it a reasonable request? 20 ½ feet is pretty (couldn't hear)." Mr. Engel said, "Well considering." Mrs. Pouch said, "And we just gave 35?" Mr. Engel said, "And that if these proposals go through, it would even be legal. It wouldn't be that he was asking any tremendous amount more." Mr. Griffin said, "He wouldn't be having to ask." Mr. Engel said, "He wouldn't even have to ask. So I don't think we should have to stick exactly to rules, because we don't. That's why the Board is here." Mr. Phelps said, "But I think that there should be good reason and justification." Mr. Engel said, "Well we just have, that they're considering modifying it. That's one justification. They're thinking of modifying it because it creates so many hardships, so there was a hardship there to begin with. Even if you figure he didn't make a mistake and he did make this mistake. I think he built it feeling he was doing the correct thing. So it's not as if he violated any." Mr. Phelps said, "Well I think we've all had to pay for mistakes so and now he comes in here saying well I shouldn't have to, cause I made a mistake, pay for it. That's what you're saying." Mr. Engel said, "No, no, I'm just saying here it's done if people ask for variances and you're trying to take all this down. Well I just feel that's our job is to decide which one to right and wrong, but we do modify, we're continually changing it and this is just another change he's asking for. And as I said if this, this wouldn't even be coming before us if the proposal goes through for the modifications." Mr. Griffin said, "I don't think it would be before us either if the understanding had been when he was coming back and forth." Mr. Phelps said, "Well it wouldn't have been built, hopefully." Chairman Bonessi said, "I would have been different. I guess the thing I look at you know it also is you know the part of hardship is not the applicant's fault. How do we interpret that in this case? I mean we got to look at these." Mr. Engel said, "Well, it's a corner which is creating some of the hardship, creating all of the hardship." Mr. Griffin said, "Well no wait a minute. In Jim's defense it was a corner lot when he bought the lot so he knew he had 2 front yards, basically. But then on his part, he did go to and say what can I build here and they said okay. So he put his house there and then he went back and said can I put a deck. Yes you can put a deck and he put a deck. It was his, you know, I mean, I think he complied as far as building his house." Chairman Bonessi said, "The house is pretty, it's close, it's not

perfect, there's some issues there. Yeah there is a hardship there. The corner lot is a hardship period. But we know that going into it."

Ms. Berry said, "I don't believe that he created the hardship totally himself. I think we played a lot into that. Our staff played into his hardship by misleading. You know, not getting enough clarification to give the accurate answer. I mean I wish I could bring Larry up here so he could explain, but I can't do that." Mrs. Pouch said, "Did he put the stop work order on it?" Ms. Berry said, "No, no he's the one that issued the actual zoning permit." Mrs. Pouch said, "Well, I guess what we must decide is do we give him a variance and leave it be or go ziggy zagging around about what part of the deck you want to tear down." Chairman Bonessi said, "Basically we've got 3 options. We deny it, don't give him anything. We give him everything or give him part of it that we discussed." Mr. Engel said, "We can't vote on A, B, or C." Attorney Zambon said, "No, you can't." Mr. Engel said, "Can you approve it in pieces? Can you vote for one, then go a little further and vote for another?" Attorney Zambon said, "Joyce and I would be very mad at you when she has to do the minutes and I have to do the order. But remember it does take a four fifths vote." Mr. Engel said, "And I guess luckily we have 5 people here." Attorney Zambon said, "Right. So it doesn't need to be unanimous." Chairman Bonessi said, "And I guess the other part of it is, if he takes the decking down, are the columns ornamental?" Mr. Engel said, "Substantial ornamental." Ms. Berry said, "Well a retaining wall is ornamental, so." Mr. Engel said, "I thought you said that was structural." Ms. Berry said, "No the retaining wall, you weren't here at the last meeting, but the retaining wall. He has a retaining wall on the other side of the house that comes out into the setback, but when you read the definition, that's ornamental, is what they call that so it doesn't count in the setbacks. For setback purposes, it's considered ornamental. But yes, that's a whole another argument we had." Mr. Griffin said, "So we could make him take the wooden decking down and leave those posts?" Ms. Berry said, "I hadn't thought about that, but how would that differ from the retaining wall. I don't know." Mr. Phelps said, "Well, because we didn't go (couldn't hear) instead of 20 ½. That would reduce the amount of the deck to maybe one column." Chairman Bonessi said, "The biggest thing that I'm leery about giving a number is I would hate for us to get that number wrong. There's already been enough problems with this case and he's having to jump through some hoops that maybe if things were done a little more clearly in the beginning he wouldn't have to. So I don't feel good enough about saying 12 ½ feet is the right number." Mr. Phelps said, "Well, I agree with part 1 of the roofline obviously trying to find a way to." Mr. Griffin said, "If we go to the roofline tonight and he can leave these columns up because he could call them ornamental." Mr. Engel said, "Yeah, but that's a pretty tall column not to have any support holding it up." Mr. Griffin said, "I'm just saying, this is an if. Then when they pass the land development code, he could put it back." Mr. Engel said, "Or the other alternative would be if we were voting to approve it and approved it, he (people spoke together)." Mrs. Pouch said, "Well he wouldn't have to take all the decking off the deck. Just part of it up where it was and then put it back on later." Chairman Bonessi said, "The whole thing is, it's really frustrating because." Mr. Griffin said, "Let's vote on something." Mr. Engel said, "What would you recommend?" Mr. Griffin said, "I recommend we grant him his variance." Mr. Engel said, "Okay, I second that recommendation." Ms. Berry said, "Be careful with what you're saying. We've done that before and actually approved something that wasn't meant to be approved." Attorney Zambon said, "Yes, is everybody clear on what the motion on the table is." Chairman Bonessi said, "Okay, the motion on the table, I'll let Gary make his motion. Make your motion."

Mr. Griffin said, "I'll make a motion, I move the Zoning Board find and conclude the variance application V-07-08 complies with the necessary provisions of Henderson County Zoning Ordinance and I further move that the variance be approved subject to the following conditions, and I don't have any conditions." Mr. Engel said, "I second." Chairman Bonessi said, "All in favor."

Mr. Griffin	-	Yes
Mr. Engel	-	Yes
Mr. Bonessi	-	Abstain
Mrs. Pouch	-	Yes
Mr. Phelps	-	No

The Board discussed the abstaining vote and the fact that it is a yes vote. Chairman Bonessi congratulated Mr. Patino.

Ms. Berry reminded the Board that there is an order to be approved. Ms. Berry spoke with the Chairman about signing orders tomorrow.

The Board needed to approve the order for Mrs. Telker, V-07-07. Mr. Griffin made a motion to approve the order and Mrs. Pouch seconded. The members who were at the hearing (Mr. Griffin, Chairman Bonessi, Mrs. Pouch, and Mr. Phelps) voted to approve the order.

Mr. Griffin apologized for being late and asked if 4 o'clock was a good time for everybody else. Chairman Bonessi spoke about the need for promptness and commitment, especially with the new land development code coming. He suggested the Board discuss changing the day and time if everyone could agree. Attorney Zambon reminded the Board that the room has to be available also. The Board also agreed again that the meetings should be 3 hours in length and not much longer.

Ms. Berry said her concern was with the new code and Special Permits and stopping the meeting at 3 hours, some cases might not be heard for 4 months. The Board would have to face that when and if it happens. Ms. Berry said waiting 1 meeting may not be a problem but more that that probably would. The Board may have to have special meetings.

Chairman Bonessi wanted to discuss the day and time of the meeting. Mrs. Karpowski reminded the Board of the By-laws with the set day. The Board discussed options. The Board decided to keep it for the last Wednesday of the month at 4:00 for now.

COMMITTEE AND STAFF REPORTS: None

OLD BUSINESS: None

NEW BUSINESS: None

There being no further business, Mr. Griffin made a motion to adjourn, Mr. Engel seconded and all voted in favor. Chairman Bonessi adjourned the meeting at 6:43 PM. The next meeting is Wednesday, July 25, 2007, at 4 PM.

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Dean Bonessi, Chairman

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Joyce Karpowski, Secretary