

MINUTES OF THE HENDERSON COUNTY  
ZONING BOARD OF ADJUSTMENT

The Henderson County Zoning Board of Adjustment held its regularly scheduled November meeting on Wednesday, November 29, 2006, at 4:00 p.m. in the Land Development Building Meeting Room, 101 E. Allen Street, Hendersonville, North Carolina. Those present were: Chairman Dean Bonessi, Tony Engel, Gary Griffin, Jim Phelps, Ann Pouch, Alternate Member Janice Brown, Zoning Administrator Natalie Berry, Associate County Attorney Sarah Zambon, and Secretary to the Board Joyce Karpowski.

Chairman Dean Bonessi called the meeting to order at 4:07 PM. Chairman Bonessi presented the minutes of the meeting from October 25, 2006. There was a correction on page 30 by Mr. Phelps. Mr. Phelps moved to approve the minutes with the correction, Mrs. Pouch seconded, and all members voted to approve the minutes as corrected.

Chairman Bonessi explained the procedure for a quasi-judicial proceeding being used tonight.

**Case TU-06-13, James Hannen**

Chairman Bonessi called Case TU-06-13, James Hannen, requesting a Temporary Permit to sell Christmas trees beginning 2 days before Thanksgiving and ending on Christmas day each year for a period of 5 years. Chairman Bonessi said the Board identified James Hannen and the Zoning Staff as parties to the proceedings. The Board also identified Bill Luther, as Mr. Hannen's representative and operator of the business, as a party. Associate County Attorney Sarah Zambon swore in Mr. Luther and Zoning Administrator Natalie Berry.

Ms. Berry gave a summary of the issues. The petitioner is James Hannen and Tammy Hannen being represented by Mr. Luther. The name of the business is Evergreen located at 2120 Brevard Rd. (US 64W). The applicant requests a Temporary Use Permit to sell Christmas Trees outdoors beginning two (2) days before Thanksgiving Day and ending on Christmas day each year for a period of five (5) years. The Temporary Use Application is Exhibit "A" and outdoor sales are not allowed in the zoning district. The parcel is zoned O&I, and is currently operating as a retail sales establishment with the benefit of a Conditional use permit CU-00-04, issued in 2000, with all conditions of that order being met at this time (Exhibit "C" & "D"). The applicant was granted a Temporary Use (TU) permit on October 25<sup>th</sup> 2000. That TU expired on December 26, 2005. (Exhibit "E"). Ms. Berry showed a map of where the property is located. There was another map showing the O&I district and most everything around the property residential. She also presented the Conditional Use Permit that allows the operation of the retail business. Ms. Berry read the conditions and said they were all met. She also presented the Temporary Use Permit that expired in 2005. Ms. Berry said that, if approval is given, the Board approve the order starting tomorrow, if possible, so he won't have to wait a month to approve the order. She presented a picture of the site.

Mrs. Pouch asked if they sold Christmas trees there last year. Ms. Berry said yes, their permit ran out on Christmas day last year.

Chairman Bonessi asked if Mr. Luther had anything to add. Mr. Luther said no. Chairman Bonessi asked if anyone had any questions. Chairman Bonessi asked if there were any complaints or issues, since this has been going on for 5 years. Ms. Berry said no. Chairman Bonessi asked if the Christmas tree sales were being advertised on the present sign – there are no additional signs. Ms. Berry said yes they are using the same sign.

Chairman Bonessi closed the hearing and asked for discussion. Mr. Engel and Mrs. Pouch said there were no problems.

Chairman Bonessi said can the Board make this an extension of the original order? Associate County Attorney Sarah Zambon said she can just use the other order and change the dates. Ms. Berry asked if it could be effective tomorrow. Chairman Bonessi said he didn't have a problem with that. Mr. Engel said he didn't think anyone on the Board had a problem with that. Mr. Phelps suggested that it be put into the motion. Ms. Berry said that they would never ask that for a variance or conditional use permit. Associate County Attorney Sarah Zambon said as long as the Board agrees that the language will remain the same, she didn't see a problem. She would just like it to be signed by the end of the week. Chairman Bonessi said he could do that. Associate County Attorney Sarah Zambon asked the expiration date. Five years would be December 25, 2011.

Mr. Phelps said I move that the Zoning Board find and conclude that the Temporary Use Permit, TU-06-13, has met the necessary provisions under the Henderson County Zoning Ordinance to receive a temporary use permit effective December 1, 2006, and I further move that the Temporary Use Permit be approved subject to the following conditions: which is the same that currently exist. And I move that this Temporary Use Permit shall expire on December 25, 2011. Mr. Griffin seconded the motion.

Chairman Bonessi called for a vote by show of hands.

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

Chairman Bonessi said the Temporary Use Permit has been granted and he will make arrangements to sign it by the end of the week.

#### **Case CU-06-14, Christopher Ice**

Chairman Bonessi called Case CU-06-14, requesting to operate a customary incidental home occupation (firearm sales) from his residence at 352 Crail Farm Road. The property is zoned R-40.

Chairman Bonessi said that this once again was a quasi-judicial proceeding. He asked all persons who signed the sign in sheet to come forward and state their name and what standing they had. Joe Branagin said he was a resident in Crooked Creek relatively 4 houses from the property in question. Sanford Young from Crooked Creek Board of Directors (Vice President) representing the entire membership. Steve English from Crooked Creek is President of the Crooked Creek Homeowners Association. Christopher Ice is the petitioner. Associate County Attorney Sarah Zambon explained who exactly had standing and who was a party and who was a witness.

Mr. Engel said that he was a resident of Crooked Creek. Mr. Ice said that he didn't have any problem with the residents from Crooked Creek speaking or with Mr. Engel remaining on the Board. Chairman Bonessi said if Mr. Engel felt that he could make an unbiased decision, he did not have an issue. Mr. Engel said that he didn't have any feeling one way or another. No one had a problem with it.

Mr. Griffin asked if the property adjoined Crooked Creek. Mr. Ice said that Crooked Creek was directly across the street from him – the Golf Course. Chairman Bonessi made a motion to allow the President of the Crooked Creek Homeowners Association to be considered a party and the others considered witnesses. The Board and Associate County Attorney Sarah Zambon discussed who would be parties. Chairman Bonessi moved to make all the people parties to the proceeding. Mr. Griffin seconded the

motion and all voted in favor. Associate County Attorney Sarah Zambon sworn in Mr. Branagin, Mr. Ice, Mr. Young and Mr. English.

Ms. Berry gave a summary of the issues. Ms. Berry said that we have a Conditional Use Permit application to operate a firearm sales business out of a residence as a customary incidental home occupation. She said a customary incidental home occupation is any use conducted entirely within a dwelling and carried on by the occupants thereof, which use is clearly incidental and secondary to the use of the dwelling for residential purposes and does not change the character thereof; provided, further, that no mechanical equipment is installed or used except such as is normally used for domestic or professional purposes and that not over 25% of the total floor space of any structure is used for a home occupation. No home occupation shall be conducted in any accessory building. The petitioner is the resident at 352 Crail Farm Road. The zoning district for this area is R-40, which allows for Customary Incidental Home Occupation with the granting of a Conditional Use Permit per section 200-13.C.2. The petitioner would like to use the property for an accessory use being a Conditional Use Permit for the selling of firearms. The applicant is in the process of applying for his federal license with the Bureau of Alcohol Tobacco and Firearms which requires that he follow state and local ordinances which include zoning ordinances. The Federal Code number for this requirement is 18USC923 (F). She showed the actual code to regulate it.

Ms. Berry entered her entire package into evidence.

Ms. Berry continued saying if granted the Conditional Use Permit, the store would operate in a fashion in which the applicant would use the space to store firearms and paperwork in his house. The total square footage of living area in the structure is 2100 square feet. Not more than 25% of the total floor space can be used. The home occupation will reside in the master bedroom area and office that is 186.0 square feet. This equals approximately 8.85% of the total living area. If granted a Conditional Use Permit, the applicant would primarily operate as a place to store the firearms and ammunition. All items that are firearms related would be stored in a locked safe on the premises. There would be no discharging of weapons anywhere on the property. She showed the plan of the house highlighting the area used for the business and explained the square footage. If granted the Conditional Use Permit Mr. Ice will not have customers at the business, he would hand deliver items to his clients and gun shows. The parking area will be in front of the existing garage in the driveway. She showed a picture of the front of the house and driveways. There will be no exterior signs advertising the business. As stated in Section 200-55.D Conditional Uses: "If the Zoning Board of Adjustment shall find after the public hearing the use for which the conditional use permit is sought will not adversely affect the health and safety of persons residing or working in the neighborhood of the proposed use, and will not be detrimental to the public welfare or injurious to property or public improvements in the neighborhood, it shall issue a conditional use permit. In granting such a permit, the Zoning Board of Adjustment shall designate such conditions in connection therewith as will, in its opinion, assure that the use will conform to the requirements of this chapter." She showed a picture of the closet with safe and bedroom.

Mr. Phelps asked how Ms. Berry got a figure of 2100 square feet. Ms. Berry said that it's a basement and first floor and that is the square footage the petitioner gave her. The property record card said it was smaller, but he has done some addition to the house. Mr. Phelps asked if the basement was finished. Ms. Berry said the applicant would have to answer. Mr. Engel said he's allowed 25%, so either way he would still be under 25%. Mr. Phelps asked if there were boxes of ammunition on the shelf in the picture of the closet. Mr. Ice said empty boxes.

Chairman Bonessi asked about the parking area, if it was for personal cars. Ms. Berry said the one on the right is their personal driveway and the one on the left is for someone coming to fill out paperwork or something. Ms. Berry said it was her understanding that they would be coming to do paperwork.

Chairman Bonessi asked Mr. Ice to present his evidence. Mr. Ice said he has been a law enforcement officer for 25 years and wanted to start the business with other law enforcement officers as his

customer base. Not much business will be done at the residence. He will not store firearms there. His customers will tell him what they want, he will order it and then deliver it to the customer. Ammunition may be stored as a possibility, but that is not the main deal.

Mrs. Pouch said that he really wouldn't have an inventory. Mr. Ice said no. He said ATF requires him to make a profit and he does not have enough money to keep an inventory. So he will order the firearms individually.

Mr. Engel asked if there was a little safe on top of the big safe. Mr. Ice said yes that is where he keeps his personal duty firearm. The large safe is for his rifles. He said he has another large safe. He said that the pictures were taken before this is approved, so storing the ammunition in a safe is not a requirement. If it is approved, he will meet all the guidelines required. Mr. Engel asked if the little safe was bolted to the big safe. Mr. Ice said yes.

Mrs. Pouch asked if the Federal firearms periodically check. Mr. Ice said yes. You have to have set hours for them to inspect. Chairman Bonessi asked what his hours of operation would be. Mr. Ice said basically Thursday, Friday, and Saturday. Mrs. Pouch asked if it would be by appointment. Mr. Ice said yes. Mr. Ice said the hours are flexible because his hours are flexible. Those are the hours that they can come and inspect. Chairman Bonessi asked the hours. Mr. Ice said basically 8 – 5. Mr. Ice works for the Buncombe County Sheriff's Department and those are his days off. Chairman Bonessi asked if there were any other questions. There were none.

Chairman Bonessi asked Joe Branagin to come forward. Mr. Branagin said he lives at 105 Thorngate Drive in Crooked Creek. His property is adjacent to Crail Farm Road. He pointed out approximately where he lived on the map. He said he thought R-40 was residential but it seems there's modification to that. He questioned if this was an internet business, why do we need parking, ammunition. Mr. Branagin said there have been break-ins at the Golf Course Club House and vandalism and some may possibly go after the weapons if they know they are there. He said he would prefer this not go in but, if it does, he recommends that no ammunition be stored in the house and only weapons primarily through internet sales.

Ms. Berry said that in the application under General Requirement #1, #2 says "any transaction that the petitioner personally makes, is required by ATF to be done at his place of business including all required paperwork", so he will have to have customers come to his house. Ms. Berry and Mr. Branagin discussed internet sales vs. in person sales. Mr. Ice said internet sales are possible but the transfer has to be through an FFL holder in the buyer's state and that FFL holder does the required paperwork. Mr. Griffin asked that with any sales, they have to come to the house to fill out paperwork. Mr. Ice said he still needs clarification but he understands it can be done at his place of business or the paperwork can be done in person as long as he knows the person. But he would have to clarify that. Mr. Ice said the transfer of the firearm does not but the paperwork has to be done at the place of business. This is to insure that he knows the person and does background checks. Ms. Berry said the FFL is the Federal Firearms License holder.

Mrs. Pouch asked how close Mr. Branagin was to Mr. Ice. Mr. Ice said it was about 100 yards. Ms. Berry introduced a map into evidence showing Thorngate Drive, where Mr. Branagin lives. Mr. Griffin said Mr. Branagin accesses his property through Crooked Creek. Mr. Branagin said yes, there is no access to Crail Farm Road.

Mr. Ice said he can understand Mr. Branagin's concern about the ammunition and firearms and he described the safes. They are steel safes with 3 1-inch thick stainless steel deadbolts with a combination lock. They are carriage bolted to the floor. They would need a blow torch or rip them from the floor with a hoist. He said he needs ammunition for his law enforcement job and does not intend to carry large amounts of ammunition. He wouldn't mind not selling ammunition. Mr. Engel asked if he had an alarm system in the house. Mr. Ice said no. Mr. Engel asked if he thought about it. Mr. Ice said

he has had them before but it's the cost. Mr. Branagin asked why is ammunition a part of this and that is his objection. And also that R-40 should be residential.

Chairman Bonessi called Sandy Young forward. He said Mr. Branagin covered just about everything but he is concerned about the 80 children in the 164 homes in Crooked Creek.

Chairman Bonessi called Steve English forward. He said Crail Farm Road is unpaved and generates a lot of dust. The homeowners need to go together to coat it to keep the dust down. There is not supposed to be an increase in traffic but there will be deliveries and people coming to the house for paperwork. He is concerned about an increase in traffic.

Chairman Bonessi asked if anyone has any questions for any other party. There were no questions. Chairman Bonessi called Mr. Ice forward to ask some questions. He asked Mr. Ice how many people there were with licenses in the area. Mr. Ice said he knew of 4, 3 within 2 ½ miles of his location. Chairman Bonessi asked how much business people in this situation generate. Mr. Ice said officers have asked him for weapons and if he sold 15 guns in a year he would be thrilled. He would like it to become full time, but for now he wants to try to see if he will be any good at it. Chairman Bonessi asked at what point Mr. Ice thought he would have to move to a larger location. Mr. Ice said if he were making \$10,000 to \$12,000 a year he might have to. But he really didn't know and might be out of business in a year. Mr. Engel asked how many sales per year he would have to make before he would have to relocate. Mr. Ice said a 25 – 30 every couple months and a couple hundred per year. The Board discussed how many and Mr. Ice talked about the mark-up and profit. Mr. Ice said if he sold 1 or 2 per week, he might have to do something, but he's just guessing and just doesn't know. Mr. Engel said the Board's concern is that it doesn't become a massive business with cars going in and out all the time. Mr. Ice spoke about the road issue and how he tried to get a petition to DOT signed by the homeowners in Crooked Creek to get Crail Farm Road paved. Out of 54 homeowners only 9 signed. Mr. Ice said that this basically will be a hobby. Chairman Bonessi asked how long it took for a transaction. Mr. Ice said 15 minutes for the paperwork and explained how the whole process worked. He said he would mainly sell to law enforcement. Chairman Bonessi asked what penalty Mr. Ice would incur if a weapon was stolen and used in a crime. Mr. Ice said he would have to follow all ATF requirements. If the guns were laying out, there could be federal charges and he could lose his license.

Mr. Engel asked if there was notification by the ATF at the end of the year of how many weapons were sold. Mr. Ice said ATF has paperwork for every transaction and explained how it worked and that ATF can search his property without a search warrant. Also he cannot sell silencers or automatic weapons. Bonessi asked if there was an audit system. Mr. Ice said he didn't know of any. The Board expressed their concern of the business growing and not being an incidental home business anymore and how it could be monitored. Ms. Berry said it would have to be only 25% of the home and then any conditions put on the permit by the Board, such as limiting the sales per year or that he has to give you a report every year. Chairman Bonessi asked how it could be monitored. Ms. Berry said she would check with ATF about how many were sold. Mr. Ice said the ATF requires him to make a profit in a year. Ms. Berry said that it could be approved and brought back to the Board after the first year to see how it affects the neighborhood. Mr. Ice asked about the other 4 or 5 dealers and if they have the same restrictions. Ms. Berry said she didn't know. The Board spoke about the last CUP for firearms sales but said each situation is different. Mr. Ice explained about his neighbors on his road (2 are relatives) and is questioning the restrictions.

Mr. Griffin asked if the board could speak again with Mr. Branagin, who had the most opposition. Mr. Ice explained how far Mr. Branagin was from his house (100 – 150 yards) and the trees and golf course between them. He also spoke about the cars that use the road to go from Kanuga Road to Little River Road. Mr. Ice said that he doesn't believe that his hobby will have any effect on the neighbors. The Board spoke about limiting sales to perhaps 50 per year. Mr. Ice said he has friends coming to his house, there is traffic on the road and how is his business going to affect the neighbors. He felt he was a good neighbor and is a bit offended by his neighbors. He said he would pull his petition back and so

much for neighbors. Mr. Ice left the room and the petition is considered withdrawn. It was explained to the parties that the petition had been withdrawn and it would have to be resubmitted to be considered again.

#### **Case V-06-15, Sandra D. Donaldson**

Chairman Bonessi called Case V-06-15, Sandra D. Donaldson, petitioner, requesting a 45 foot front yard setback variance to construct a single family dwelling. The proposed site is located at 459 Sandy Flat Mountain Road and is zoned RC. Chairman Bonessi said this is a quasi-judicial proceeding, as was the last one.

Chairman Bonessi asked anyone who wanted to be a party or witness to come forward and state their name and reason. Damion Brookshire said he was a party – he is a contractor representing the homeowner. Heather Donaldson Miller is the daughter of the owner and will soon be having property deeded to her to build a house. Chris Hunter is the Heather's husband and son-in-law of the owner and would be a witness because he has walked the property. Elaine Stennett is an adjacent property owner. Donald Fowler is an adjacent property owner. Associate County Attorney Zambon swore in the parties and witness.

Ms. Berry gave a summary of the issues. She entered her packet and power point presentation into evidence. The applicant is seeking to obtain a variance to place a Single Family Dwelling. The property is at 459 Sandy Flat Mountain Road. The application and appropriate fees for variance application requesting a variance was received on 10/30/2006. The owner of the property is Sandra Donaldson as stated on Henderson County Computer Automated Mass Appraisal (CAMA) system. The parcel is zoned as RC. The applicant and adjoining property owners were notified on November 15, 2006. A Legal Ad was placed in the local newspaper (Times-News) on November 10, 2006 and a display ad on November 17, 2006. The approximate size of the property in question is 1.80 acres as per Henderson County On-line Geographic Information Systems. Section 200-14.D is the dimensional requirements in an RC district which is 75 feet from the centerline of a right-of-way and that's for a major or minor road. The applicant requests a reduction of 45 feet from the front yard setback requirement. The applicant has not applied for well and septic permits at this time. The topography of the property is such that it would not be practical to place a single family dwelling 75 feet from the centerline of the right of way. The topography across the steepest portion of the property is approximately 43 %. She explained how she arrived at that figure. We have 220 feet of property width and 95' drop in vertical slope. Front yard setbacks can be reduced when the topography falls between 15 % and 35% grade. If you read the section below, RC is omitted from the zoning districts where this is allowed. If allowed, the front yard setback would only be reduced by 15 feet. The applicant is applying for a 45 foot front yard variance. On the application they say due to the severity of the slope and the rocky terrain, we are unable to position the house to comply with a 75 foot setback as dictated by the RC zoning regulations. The buildable space on the property is extremely limited due to the severity of the slope of the land and narrowness of the lot. The hardship is not the result of the applicant's own actions because she purchased this property as it is today. The variance is in harmony because placing this house per the site plan will preserve the natural beauty of the property while minimizing impact to the surrounding land. If the variance is granted we can make best use of this property with minimal damage to the environment.

Ms. Berry said Ms. Donaldson, in her application, said she purchased the property as it is today. Ms. Berry introduced a subdivision plat that was created by Ms. Donaldson and created 5 lots, one which is the subject property. She passed the plan around. She described the map showing where the property is. Ms. Berry had a topographical map of the property with lines showing for every 10 feet. She showed a site plan with the proposed septic area and proposed well site. Environmental health still needs to approve them. The next picture shows the house next door, which received a variance of 40 feet on the front yard setback in 2003. Mr. Phelps said this is a 45 foot variance. Ms. Berry said yes, 5 feet more. Ms. Berry entered the plat into evidence.

Chairman Bonessi called Mr. Brookshire forward. He said that on the site plan, the dotted line represents the drop-off of the property and beyond that line the property is unbuildable. He also cited a picture of the deck showing the drop-off and how the deck was supported. Mr. Brookshire said that without the variance Lot 1 becomes useless. He said he applied for the septic system on the 27<sup>th</sup> and 7 test holes were dug. But Environmental Health is bringing a specialist from Raleigh because of the severity of the slope. Mr. Brookshire said this is where the septic system will go. The well may move. And the deck and driveway may be turned slightly. Mr. Brookshire said that she wanted that lot for the views. He said they will minimize the number of trees cut down, and impact from runoff and grading.

Mrs. Pouch said when Mr. Brookshire said the house may be turned, would it be closer to the road? Mr. Brookshire said no, but it may just be turned for better access to the garage. Mrs. Pouch said you still don't know if you can get a permit for the septic? Mr. Brookshire said he seems to think we can and the septic could be put on another lot owned by Ms. Donaldson. Mrs. Pouch asked if the lot would be buildable. Mr. Brookshire said not necessarily because of the severity of the slope. Mr. Brookshire said the proposed area for the septic is probably the only area on her lot where they could get one in. He said even if they have to go with a non-standard septic system, he believes they can get one in. Ms. Berry said on the variance next door, they put the septic on a separate lot. Mr. Brookshire said although they asked for 45 feet, they could use a 40 foot variance. They were making sure there was enough room when asking for the 45 feet.

Mr. Fowler said he owned the property and gave it to his son. Mr. Anderson (the adjacent property with the variance) told Mr. Fowler he was going to move there and raise a family and be there permanently. Associate County Attorney Zambon said he would have a chance to make a statement, but now is the time to ask a question of Mr. Brookshire. Mr. Fowler said the place for the house is a big knoll and if it was graded down, it would be a good place. Mr. Brookshire said the more he graded down, the more of a bank was created between the house next door and this one. Mr. Fowler suggested grading the land and pushing the dirt back and setting the house further back. Mr. Brookshire said we probably could, they haven't really explored all the options yet because they haven't been granted a variance or a septic permit. Mr. Fowler said the proposed septic area looks closer to the road than 30 feet. Mr. Brookshire explained about not being able to build on fill and the greater expense involved. Mr. Brookshire said that the septic system should be within the County's rules and is yet to be determined by environmental Health. Mr. Brookshire said Ms. Donaldson had the soil tested before she bought the property and the opinion was that it would sustain a septic system without damaging the environment.

Mrs. Pouch asked if she knew the building restrictions when she bought or kept this lot. Mr. Brookshire said no, she didn't. He said she told him if she knew all the restrictions, she probably wouldn't have bought the property. But now that she owns it and is making mortgage payments, she wants to go ahead and build the house.

Heather Miller came forward and said her mother bought the property. She moved from Charlotte to be closer to her family. The bank said the property had to be subdivided for the family. They bought the property from Don Fowler's son and daughter-in-law. She and her mother each plan to build houses and maybe her brother from Knoxville. It is planned for the family. One of the lots is unbuildable and they plan to have picnic shelters there. Mrs. Pouch asked if the other lots are sold and built on. Ms. Miller said the lots are still owned by Ms. Donaldson and she will deed one to Ms. Miller, one is unbuildable and there are 2 other lots at the bottom. One is potentially for her brother or they could be sold. Mrs. Pouch said that the lots could be changed. Ms. Miller said she can't because the bank has given the loan on this particular piece of land. Ms. Miller pointed out the lots on the subdivision plat.

Chairman Bonessi questioned the site plan on the steep slope. Ms. Miller explained that Ms. Donaldson didn't know all the problems she would face. And her intentions are to be at the top with a view.

Elaine Stennett came forward and said the adjoining property owner in the Anderson house was not notified because he is a new owner of the property. She lives on Mountainside Lane which is accessed by Sandy Flat Mountain Road and she owns property at 407 Sandy Flat Mountain Road, where her daughter lives. That is adjacent to this property. Her concern is the property is Rural conservation and on a mountain. Beginning at her daughter's house, the right-of-way is on a ridgeline and the land drops off sharply on both sides. She is concerned with setting a precedent and having houses on both sides of the steep slope. She said most counties are trying to stop development on steep slopes and ridgelines. She would hate to see this happen in the Rural Conservation area. She said the hardship seems to be created by buying the steep property. The road is a 14 foot right-of-way with 4 or 5 houses and is overloading the road. There have been accidents and cars running off the road, including the UPS truck. She said she hopes the variance will not be given. If she decides to build, the dirt can be pushed over the side. They did it and made a usable play area for her grandkids. She said if they pushed the dirt back level with the right-of-way, they could probably move the house further back.

Mr. Brookshire said that the road is in pretty bad shape and they are trying to avoid heavy dump trucks. They can't afford to haul the dirt out and if they push it over the side, the run-off would be an issue with damage to the lot and land below. He cannot use fill dirt structurally. Mr. Brookshire described the area and where the slope starts 80 feet from the centerline of the road. So there is only 5 feet to place the 42 foot deep house. Mrs. Stennett said a narrower house would fit better on the site. Mr. Brookshire said Ms. Donaldson would have to decide that.

Chairman Bonessi asked about how much distance does one of the kick-outs represent? Mr. Brookshire said about 4 feet with some being 6 feet. He said they have already modified the house to suit her needs and the garage will have to be modified because of the bank. He said the bank has paperwork for this house and he has a contract for this house.

Ms. Miller said Ms. Donaldson spoke with the seller and the realtor. She told them her intentions and had she known, she could have walked away. She heard the story about the house next door, but it all worked out. She knows there are issues with the Fowlers, because the son sold the property, but that's between them. Had she known all the major problems, she could have walked away.

Mrs. Stennett said she heard that some footage had to be allowed along Sandy Flat Mountain Road in case there was any widening of the road. So any variance given could be even more if the road is ever widened. Chairman Bonessi said the variance wouldn't change because it's from the center of the road. Mrs. Stennett said it would just change the nature of the area.

Chairman Bonessi asked if Mr. Fowler had anything else. Mr. Fowler said no. Chairman Bonessi asked if Mr. Brookshire had anything to add. Mr. Brookshire said no. Associate County Attorney Zambon asked if Mr. Brookshire wanted to call Mr. Hunter as witness. Ms. Miller said he was just going to testify about the steepness of the property because he had walked it. Mr. Brookshire said he has walked the property from top to bottom recently. There aren't very many alternatives. As far as excavating large amounts of dirt, it would probably have a larger impact on the area rather than building the house and minimizing the impact on the property. They will try to minimize the impact on the road by trying to have suppliers use smaller pieces of equipment to bring materials in. He said he is a small company and does not have the large amounts of suppliers.

Mrs. Stennett said that water is very scarce on the ridge. They drilled 3 wells to get ½ gallon per minute. Don drilled 2 wells to get ½ gallon per minute. So they might want to look into that immediately.

Mr. Brookshire said he told Ms. Donaldson they needed the variance, septic and a well. Without any of those 3 things, they can't build. So if this is approved, the next step is the septic and water.



Chairman Bonessi said if there are no other questions, he would close the hearing and the Board will discuss it. Associate County Attorney Zambon pointed out on her handouts that the existence of another variance in the area is not a reason for a variance.

The Board discussed moving the dirt over the edge and the impact on the area and the steepness (almost 45 degrees) for impracticality. Mrs. Pouch said the house with all the jutouts. Mr. Griffin said if they could knock down some of the bank and narrow the house, perhaps the variance could be less.

Chairman Bonessi said it was not her own action but someone did the subdivision. Mrs. Pouch said she did the subdivision. The Board suggested ways that the variance could be lessened. The Board discussed the steepness of the lot. Chairman Bonessi said that he has heard that all possibilities haven't been explored. Mr. Engel said Mr. Brookshire said the house could be shifted back – that could save 5 or 10 feet of the variance. Mr. Engel asked how many of the houses are closer to the road. And everyone wants to build on ridges. Mr. Griffin said he dislikes zoning as much as a lot of people but when you buy property, you need to look at what you can do with it. Mr. Engel asked Ms. Berry how much could be given for the steep slope on lots. Ms. Berry said 15 feet. Mr. Engel said so instead of 75 it would be 60. Ms. Berry said that in this zoning district, she did not have authority to grant that.

Chairman Bonessi asked if the Board could change the amount of setback asked for. Associate County Attorney Zambon said the Board could grant less but it may not be worth it to the petitioner. Chairman Bonessi said that he would like them to look at more options and come back. Mr. Phelps suggested removing the steps on the house and making it narrower, that would gain 10 feet. Mr. Phelps said that it seems they are set on one design instead of what would fit on the property. Chairman Bonessi suggested that if the septic and well were fixed in place then the house might be able to be shifted and gain more space. Mr. Engel suggested reopening the meeting to ask the builder if these were feasible. Chairman Bonessi said he was okay with reopening it if it would help, rather than give a lesser variance that would not help. Associate County Attorney Zambon said the meeting could be reopened to ask the builder questions or you can continue the meeting to the next meeting, so the applicant could look at more possibilities. Ms. Berry said they might have an answer to the septic system. Chairman Bonessi said there are too many unknowns. Mr. Engel said he felt the septic would be okay, the problem was the well. The problem with the well was discussed.

Chairman Bonessi moved that the meeting be reopened and Mr. Engel seconded. Mr. Brookshire said that without septic approval, he can't do any excavating to figure out if the house can be moved back. Mr. Brookshire said that as you move the house back, it goes down. They do plan on a daylight basement in the house. Mr. Brookshire said that Ms. Donaldson has already received a bank loan and this house plan was used for the loan. Mr. Engel said he had said the house could be moved back 5 feet. Mr. Brookshire said that with 40 feet (the same as next door) they could do it. He would still try to go as far back as they could. But that would depend on how much excavation was necessary and the structural issues with the foundation of the house. If the house has to be changed, it would be necessary to go back to the bank. He feels they will get the septic system. He is concerned about the well and where they will have to get it from. Mr. Phelps asked about extending the house toward the proposed septic tank. Mr. Brookshire said they could move the house, but that goes downhill at that point also. Mr. Griffin said that Mr. Brookshire said that 5 feet could be gotten here, another 5 feet there and maybe a total of 15 feet. He feels the Board needs more specifics about where the house will be sited. Mr. Griffin said he feels getting all the information about the septic and well would be best before granting the variance and would another month really matter. Mr. Brookshire said that Ms. Donaldson has had the loan for a couple of months and there is a time constraint on the loan to build within a certain amount of time. He said time is of the essence. Chairman Bonessi asked about the timeframe for the soil information. Mr. Brookshire said the Environmental Engineer said to talk to him about this week. Mr. Brookshire said the person from Raleigh comes this week. Chairman Bonessi asked about the timeframe after that person sees it. Mr. Brookshire said he thinks if it is approved, it would be immediate. Mr. Brookshire and the Board discussed the timeframe.

Mr. Engel asked how accurate the topographical map was. Mr. Brookshire said he thinks it is relatively accurate and explained how the house couldn't be shifted too much. Mr. Brookshire said that the more dirt they excavate, the more problems they create. Mr. Brookshire explained how pushing dirt over the steep slope, rain could undermine the dirt. And pushing dirt around trees will kill the trees. The Board talked about the buildability of lots versus cost. Mr. Brookshire said that he felt that Ms. Donaldson would not have purchased the lot if she knew all the problems involved. Mr. Brookshire said that there are at least 2 other houses closer to the road on Sandy Flat Mountain Road.

Chairman Bonessi asked about the Board's thoughts. Mr. Engel said there are so many variables about moving the house and changing the configuration. Chairman Bonessi said he meant about continuing the meeting or coming up with something today. Mrs. Pouch said she'd like to come back and see what they can do. Chairman Bonessi said do we want a special meeting or go with the next meeting on January 3<sup>rd</sup>. The Board discussed when the order could be signed and it was also mentioned that there is a 30 day appeal period.

Mr. Phelps made a motion to continue this to the January 3<sup>rd</sup>, 2007 meeting. The Board discussed exactly when to come back in 1 or 2 weeks or a month. Chairman Bonessi said it really doesn't matter when, but he is uncomfortable with the information at this time. Mr. Brookshire asked about what information he would need. Chairman Bonessi said if the Board continued the meeting, they would give him the information they would like. Associate County Attorney Zambon suggested that the Board let someone speak behind her and then close the session and discuss what requirements the Board would like. She said she could write them up for the Board.

Mrs. Stennett said she wanted to clarify about the home that Mr. Brookshire said was 20 feet from the road. She said the home is over 40 years old and when it was built, the road was just a cart way, there was no traffic and no where to go, except to the top where there was a retreat.

The Board discussed how close was her house was to the road. And how close it was from the property in question. It was about a tenth of a mile. Mrs. Stennett said the traffic would impact her house.

Mr. Phelps asked for a break and Chairman Bonessi closed the hearing.

Chairman Bonessi asked the Board for discussion. Mr. Engel suggested that the Board decide what they felt the setback should be and dictate that. He didn't feel that they could do much shifting of the house in too many directions. He felt the maximum would be 5 or 10 feet more and let them see if they could work it out. Mr. Phelps said he would like to hear options. Mr. Griffin said he would like them to come back to us and say they can get 15 or 20 feet. The Board discussed an amount of variance to give him – 30, 35, or 40 feet. Ms. Berry said he asked for 45 feet and said he could live with 40 feet. Mr. Griffin said the property was zoned when it was purchased and the applicant should have known the restrictions when it was purchased. Chairman Bonessi said that is what he struggles with. Mr. Engel said they would still have the problem if they built further down. Mr. Griffin said you could build on the lot, but it would be costly. Mr. Engel said a lot of lots are unbuildable because of the cost of construction. The Board discussed this. The Board discussed minor subdivisions and their approval.

Mrs. Pouch said that she felt they would end up with a no tonight or give them a chance to improve it. Mr. Griffin said he agreed. Chairman Bonessi said he leaned toward that also. Chairman Bonessi said the Board should give them a list of things to bring back to the Board if it is continued. Mr. Engle said we need to know where the septic is. And they probably wouldn't want to start drilling a well until they get approval. Mr. Phelps said we should ask them to explore other options and they can tell us what they can do and what is totally impractical. The Board agreed to that. Associate County Attorney Zambon said in terms of other options you're talking about shifting the side of the house, narrowing the house, and reducing the size. The Board spoke about the topography and fitting the house to the topography of the land, and how accurate the topographical map is.

Chairman Bonessi asked for a motion to continue the meeting. The Board discussed a date to continue the meeting to. Mr. Griffin moved that the meeting be continued until January 3, 2007. Mr. Phelps seconded the motion. All members voted in favor.

Chairman Bonessi said he hoped the petitioners weren't too disappointed. Mr. Brookshire asked what if there were no other alternatives? Mr. Phelps said that was what the Board needed to know. Mr. Engel said if you can move the house some feet back. Mr. Brookshire explained how he would have to try to figure this out. He said if he needed fifteen more feet, he probably could figure out how to make that work, it would be more difficult to construct. Mr. Brookshire asked if he could figure out how to move the house 15 feet back, would it make that much of a difference next time? Associate County Attorney Zambon said legally the Board couldn't answer that until they have all the evidence in front of them. Mr. Brookshire said it would then be up to Ms. Donaldson. He asked if he could then get a list of things. Associate County Attorney Zambon said she could type up a list of the things spoken about tonight, but that's not to say that if he does them he will get approval. Mr. Brookshire asked if there was anything he could do to get this approved. Mr. Engel said he should have an idea of what the board is looking for. Mr. Brookshire asked if the petition was denied, is there an appeal process? Associate County Attorney Zambon explained the appeal process. Mr. Brookshire asked if the petition was approved, is there another 30 day waiting period? Ms. Berry said yes, until the next meeting. Associate County Attorney Zambon explained the Board's procedures for approving orders and signing them.

#### COMMITTEE AND STAFF REPORTS:

Associate County Attorney Zambon asked the Board to look at the order for Carriage Park. She said there was a minor change on #5 – the dates were for the newspaper and not the posting of the property. She also discussed with Mr. Bonessi about coming in to sign the Temporary Use Permit. Mr. Phelps signed the order (2 copies) for Carriage Park.

#### OLD BUSINESS:

Ms. Berry asked if the Board would like to do something for Dale Caldwell, who resigned from the Board. The Board agreed to do something at the January 31st, 2007, meeting. She also suggested having a board with all the members' names (with years) who have served on the Zoning Board of Adjustment. The Board thought that was an excellent idea.

Ms. Berry also showed the Board a picture of the picture of the church bulletin board that the Board had approved.

#### NEW BUSINESS: None

There being no further business, Mr. Phelps made a motion to adjourn and Chairman Bonessi adjourned the meeting at 7:15 PM. The next meeting is Wednesday, January 3, 2007, at 4 PM.

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Dean Bonessi, Chairman

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Joyce Karpowski, Secretary