

MINUTES OF THE HENDERSON COUNTY  
ZONING BOARD OF ADJUSTMENT

The Henderson County Zoning Board of Adjustment held its regularly scheduled September meeting on Wednesday, September 27, 2006, at 4:00 p.m. in the Henderson County Board of Commissioners Meeting Room, 100 N. King Street, Hendersonville, North Carolina. Those present were: Chairman Dean Bonessi, Tony Engel, Jim Phelps, Ann Pouch, Alternate Member Suzanne Holbert, Zoning Administrator Natalie Berry, Assistant County Attorney Sarah Zambon, and Secretary to the Board Joyce Karpowski.

Chairman Dean Bonessi called the meeting to order at 4:00 PM. Chairman Bonessi presented the minutes of the meeting from August 30, 2006. There were no corrections or changes. Mrs. Pouch moved to approve the minutes as written, Mr. Phelps seconded, and all members voted to approve the minutes as presented.

**Case A-06-11, Carriage Park Associates, LLC**

Chairman Bonessi called case A-06-11, Carriage Park Associates, LLC, requesting an appeal of the order denying approval for the Section 7 development parcel in Carriage Park. Chairman Bonessi said that they have requested a continuance until next month's meeting, so that will be held at next month's meeting on October 25, 2006.

**Case V-06-09, Catherine Nicholson**

Chairman Bonessi called Case V-06-09, Catherine Nicholson and Julia Jill Nicholson, petitioners, requesting a twenty one and one half (21.5) foot variance from the front yard setback requirement of an existing structure at 1 Country Road to construct a single car carport. The property is zoned R-30.

Chairman Bonessi said that he needed to swear people in who were going to speak tonight on any case. Sworn in were Nancy Chisholm, Charles Wooten, Skip Dillingham, and Natalie Berry Zoning Administrator.

Ms. Berry said some of the audience was mistakenly here for a rezoning hearing and had left the room.

Chairman Bonessi explained the quasi-judicial proceeding.

Ms. Berry gave a summary of the issues involved. She said the owner of the property is Catherine Nicholson and Julia Jill Nicholson, Catherine's daughter. Their agent here tonight is Charles Wooten, their contractor, who will present for her. She said the location is 1 Country Road and the Board can follow along by matching the Exhibits in parentheses with the papers in their packets. Exhibit K is NC General Warranty Deed Legal document associated with this parcel of land and shows that Ms. Nicholson owns the property. She explained where the property is located. She said the nature of the request is the applicant is seeking to obtain a variance to place a carport within the designated area reserved for setbacks. The application and appropriate fees for variance application requesting a variance was received on 8/30/2006 (Exhibit "A" and "B"). Exhibit A is the application and Exhibit B is the site plan. The owner of the property is Catherine Nicholson and Julia Jill Nicholson as stated on Henderson County Computer Automated Mass Appraisal (CAMA) system. The zoning is R-30 for this parcel (Exhibit "F"). The applicant and Adjoining property owners were notified on September 14, 2006 (Exhibit "E"). She explained Exhibit E. A Legal Ad was placed in the local newspaper (Times-News) on September 18, 2006 and a display ad on September 25, 2006 (Exhibit "C"). The approximate size of

the property in question is 0.86 acres as per Henderson County On-line Geographic Information Systems (Exhibit "G"). Section 200-14.D "Dimensional requirements" (Exhibit "M") (red and yellow highlights). She said the requirements of R-30 are highlighted in the yellow box and explained the setback requirements and the front yard setback would be 60 feet. The applicant is requesting a reduction of 21.5 feet from the front yard setback requirement. The reason for that is the well is in the side yard to the right of the existing single family dwelling (Exhibits "B" and last page of "D"). She explained the septic tank is in the rear/side yard on the left side of the existing single family dwelling (Exhibit "B"). The applicant did try to obtain a copy of the permit for the septic system. Environmental Health said it was too old to be on file and they don't have a record. He has located it by getting an existing septic permit from them and they did come out and locate the septic system. The topography of the property is such that it would not be practical to place a carport on the sides or rear of the existing single family dwelling (Exhibit "H") The applicant has a 30 foot drop in 135 feet which equates to a 22.2 % slope of almost the entire yard (Exhibit "D"). Ms. Berry explained the pictures. Ms. Berry cited Exhibit H, which shows the topography of the parcel and the 30 foot drop.

Mrs. Pouch asked if the garage is over where the car is parked.

Ms. Berry said it is a carport and it will be right where the car is parked and Mr. Wooten can clarify anything for you.

Mr. Phelps said it looks like it's about 10 feet from the edge of the drive to the road. It shows 28 feet but that seems to be to the house.

Ms. Berry said it is 38 feet 5 inches from the centerline of the road to the edge of the carport. The house is located close to the road. Ms. Berry said the house is 48 feet 5 inches from the centerline on this side. She said the road is probably 20 feet wide so it's probably about 38 feet from the edge of the house to the edge of the road. On the other side the house sits back further from the road.

Ms. Holbert asked if the pavement is already existing and this carport would go over the existing pavement. Ms. Berry said yes.

Mrs. Pouch asked if the house was built before it was zoned. Ms. Berry said yes.

Mr. Engel asked if there were any sketches of what is going to be installed. Ms. Berry said Mr. Wooten could answer that.

Chairman Bonessi said the house already encroaches on the 60 foot setback.

Mr. Phelps said we're asking for a variance for a further encroachment. Ms. Berry said yes.

Chairman Bonessi asked what is the topography on the well side. Ms. Berry said it is flat where the well is but when you get behind the well it goes down. This can be seen on the topography map. She explained where the house was on the topography map and where the property dropped.

Chairman Bonessi asked if anyone had any more questions for Ms. Berry. No one did.

Chairman Bonessi called Mr. Wooten forward. He gave his name, Charles Wooten, and said he has a business out of Asheville called Wooten Home Improvement and has been doing work for Ms. Nicholson. He said he submitted the request for the Variance for Ms. Nicholson. He said there is no other place for the carport on the property.

Chairman Bonessi asked if he had any design specifications, what it was going to be built of. Mr. Wooten said the materials would match the house as much as possible. It will actually be a shed type roof and the shingles will match the roof of the house. It will be supported by 4 x 4 posts 8 feet on center.

Underneath it will be covered by 3/8 inch rough sawn plywood, which will be painted to match the house trim. He said he has sketches for Mrs. Nicholson, but when he asked about bringing them he was told that was not necessary. We have submitted the plans and actually have the permit. We got the permit before we realized they were inside the setback.

Chairman Bonessi asked if he had a copy of the sketches with you. Mr. Wooten said no.

Mrs. Pouch asked if all the sides would be open, it won't be enclosed. Mr. Wooten said yes it would be open.

Mr. Engel said except where the storage shed is. Mr. Wooten said it would be a 4 x 10 foot storage room on the left part of the carport as you face the house. It will have the same siding and windows so that it will match the house.

Chairman Bonessi asked if he said the roofline would follow the same pitch all the way down to the end of this carport. Mr. Wooten said it will not be the same pitch but it will be continuous. It will be a little bit flatter coming up to the house and then match the house shingles. This carport will actually be pretty much below road level so when you look at the house from the road, you won't actually see it much.

Mr. Phelps said so the roof will pretty much block the whole view in front of the house from the road, cause you're looking sort of down.

Mr. Wooten said there is a good drop there and she has a fence and plantings along the front.

Chairman Bonessi asked when the house was built. Mr. Wooten said he thought it was built around 1970. Mr. Wooten said that the houses all along Country Road and Mountain Road were built much closer to the road.

Mr. Phelps said that what he is saying is that in that area there are many houses that are this close or closer to the road. Mr. Wooten said as you come up Mountain Road going to Country Road off of Highway 25, there are a lot of houses in there that are closer and have structures that are closer. Mr. Phelps said so this would not deviate that greatly from others in the area. Ms. Berry said all of Country Road is that way because the back yards all slope down. Mr. Phelps said it would not stick out and be dramatically different from the ones around. Ms. Holbert said that's because the topography is pretty similar all through there, the back yards drop off so much. Ms. Berry said that's correct. Country Road does go downhill and turns and goes downhill again and turns and then you're at Highway 191. And there's a huge topography difference between Mountain Road and Highway 191 on Country Road.

Chairman Bonessi asked how close to the road is this going to be. I see the centerline of the road. Mr. Wooten said the centerline to the edge of the pavement is 9 feet.

Mrs. Pouch asked if the driveway would be any wider or will you use that as the base of the carport. Mr. Wooten said the carport would end at the end of the asphalt. It would come to the edge of the asphalt. Ms. Berry said the existing driveway is asphalt. Mr. Wooten said you really can't tell from the picture but between this asphalt and her driveway, it goes up and then there's a flat area of property 12 feet wide before the edge of the pavement and then the pavement itself to the centerline is 9 feet. Ms. Berry showed the first picture. Mr. Wooten said from the fence to the road is 10 – 12 feet. He said the end of the house in this picture is closest to the road. The carport will be more to the other side of the house which is further from the road. Mr. Wooten said the storage area would be beyond the asphalt about 4 or 5 feet.

Chairman Bonessi asked if anyone had any more questions for Mr. Wooten. There were none. He closed the meeting and asked for discussion by the Board.

Mr. Engel said you can see on the picture the slope on this side. This is the only place on the site that would really work. Unfortunately pictures don't show slopes well, but it appears that it couldn't be done anywhere else. Mrs. Pouch said the house was built before zoning and it wasn't unusual for the homes to be that close to the road and others are even closer. Mr. Engel said if it was approved, it wouldn't change the character of the neighborhood. Ms. Holbert said even the closest point in the driveway is about 12 to 15 feet and this slopes up and the carport is going to be below the slope. It doesn't seem like it will change the look that much from the road except for that one close point where you'll see it. Chairman Bonessi said he was looking at the scaling on some of this and maybe the scaling is off to make it look actually closer than it is. Mr. Engel said I think it shows to the centerline of the right-of-way, not really the road. So the road is only 10 feet closer to the line, so that would cut it considerably. Ms. Holbert said this makes it look a lot closer than what the picture makes it appear. Chairman Bonessi said if that was 38 feet and it was to scale it might be 8 or 10 feet. Ms. Holbert said especially in an area like that and there were no choices when that house was built and it was long before zoning appeared, it doesn't seem fair to penalize somebody that needs protection from the weather for their car.

Mr. Phelps said does it really meet 1a. The other things he can see - the hardship is not theirs, the topography's all a part of it, but won't make a reasonable use of his property. That's the only one I have a problem with. Chairman Bonessi said that's the one that he always struggles with, there's wants and there's needs. Does this fall in the wants or the needs category? Ms. Holbert asked how old the person was. Mr. Wooten said 91 and her daughter is in her 60's. Mr. Engel said if you want to be very strict about that one, no variance would be approved. Mr. Phelps said he understood that's probably the case. Chairman Bonessi said if that's the centerline of the road and the road right-of-way, if that's only paved 20 feet, it could be paved wider in the future. Mr. Engel said in some cases the state doesn't own it at all. It's owned to the centerline by the people there, so I don't know how you'd define that. Chairman Bonessi said this drawing is to scale. Mr. Engel said you have to read the deed to see who owns this property, whether this particular road is owned by the State or the people living in the neighborhood. The Board discussed the road and the drawing. Ms. Berry said she had a larger drawing which was shrunk to fit in the Board's packets. She showed them the original drawing. Chairman Bonessi asked if it was a scaled drawing. Ms. Berry said yes, it has the scale on the bottom.

Chairman Bonessi asked if anyone wanted to make a motion and do we feel we can answer the questions and feel comfortable with the answers. Mrs. Pouch said she feels comfortable with giving the variance because of the neighborhood and where the house is located. The existing houses are located on their lots and because this was built before zoning. Mr. Engel said the zoning has created some of the problems and the slope has created the rest. Mrs. Pouch said the slope and the septic tank. Chairman Bonessi said he was looking at the front yard setback and trying to get a good idea of what that actually is. Mrs. Pouch said the carport is not a necessity but would be helpful I'm sure to the ladies that live there. Mr. Engel said especially when you have sloping areas and have to walk in ice.

Ms. Berry said that due to the topography she is allowed to reduce the setback a certain amount but she didn't have 21 feet of leeway. Mr. Engel asked how much leeway she had. Ms. Berry said 15 feet. Mr. Engel said, so we're basically 6 feet just on the one corner. Chairman Bonessi said the house actually is a pre-existing non-conforming use by 12 feet.

Mrs. Pouch said with regard to the application CU-06-09. Ms. Berry said that she made a mistake and that should be a V for variance. Mrs. Pouch said with regard to the application of V-06-09 for a variance from the minimum yard requirements, I move the Board to make the following findings of facts: strict enforcement of the regulations would result in practical difficulties or unnecessary hardship to the applicant. Mr. Engel said the slope of the property, location of the septic tank and well and being it was non-conforming and before zoning existed. So it leaves very little as far as location goes. Mrs. Pouch said the variance is in harmony with the general purpose and intent of the ordinance and will preserve its spirit. Mr. Engel said it matches basically a lot of the other homes in the area. A lot of them are close to the road so it will fit in with the neighborhood in that location. Mrs. Pouch said in the granting

of the variance the public safety and welfare have been secured and substantial justice has been done. She said she doesn't see that it's a safety hazard. The driveway is already there. Mr. Engel said the traffic patterns would be the same as they now exist, so it doesn't appear that it would cause any hazards. Accordingly, I further move the Board to grant the requested variance in accordance with and only to the extent represented in this application. Mr. Engel seconded the motion

Chairman Bonessi called for a vote by show of hands.

Mr. Engel	Yes
Ms. Holbert	Yes
Mr. Bonessi	No
Mrs. Pouch	Yes
Mr. Phelps	Yes

Chairman Bonessi said that the variance has been granted. Chairman Bonessi directed staff to bring findings of fact and conclusions consistent with the decision and the Board's discussion back to the Board's next meeting. Mr. Engel said that basically he cannot do anything until after the next meeting. Ms. Berry said that's correct. Assistant County Attorney Zambon said he has to wait for it to be officially approved by the Board. Mr. Engel asked if the Board would be doing this now with each case. Ms. Berry said yes.

#### **Case CU-06-10, Nancy Chisholm**

Chairman Bonessi called Case CU-06-10, Nancy Chisholm, petitioner, requesting a Conditional Use Permit to operate a customary incidental home occupation. The proposed site is located at 858 Crab Creek Road and is zoned R-40. Chairman Bonessi said this is a quasi-judicial proceeding, as was the last one.

Ms. Berry said that she did not have a power point presentation for this meeting because it would be difficult for the Board to see in this room. Ms. Berry said to please speak into the microphone to make it easier for the secretary to hear what is being said.

Ms. Berry gave a summary of the issues. The applicant is Nancy Chisholm and the owner is Nancy W. Chisholm (Exhibit "R"). The location is 858 Crab Creek Road (Exhibit "C"). The nature of the request is the applicant is seeking to obtain a Conditional Use Permit in order to operate a Pottery Studio. This request developed from a complaint received on June 23, 2006, by Darryl Johnson (Exhibit "S"). A Zoning Enforcement Officer made a site visit on June 28, 2006, and verified the complaint. The Zoning Code Enforcement Officer sent a notice of violation letter on July 3, 2006, to the owner of property. The Zoning Code Enforcement Officer then updated Mr. Johnson (complainant) about the situation on July 3, 2006. The Zoning Code Enforcement Officer spoke with Attorney Walt Carpenter (representing Nancy Chisholm) on July 7, 2006. Ms. Chisholm didn't realize she needed a permit to operate the business. The Application and appropriate fees for a conditional use permit requesting to operate a pottery studio were received on August 31, 2006 (Exhibit "L" and "M"). The owner of the property is Nancy W. Chisholm as stated on Henderson County Computer Automated Mass Appraisal (CAMA) system (Exhibit "R"). Legal documents associated with this parcel of land are enclosed. They consist of a General Warranty Deed, a Memorandum of Trust, and a Warranty Deed (Exhibit "G", "H", and "I"). Ms. Berry said the property was first in the name Nancy Chisholm Revocable Living Trust and then transferred to Nancy W. Chisholm. She hoped she was correct and trusted Mr. Carpenter would correct her if not. The parcel is split zoned as R-40 and Open Use (Exhibit "P"). The house is the little dot on Exhibit P and the driveway is on the left of the house in the open use part and the house is in R-40.

Mr. Phelps asked how it got to the open use area. Ms. Berry said it comes out through the open use area. Mr. Phelps said that it doesn't go direct, it curves around? Ms. Berry said it curves around and you'll see it in some of the pictures.

Ms. Berry continued saying the applicant and adjoining property owners were notified on September 14, 2006 (Exhibit "Q" and Exhibit "N"). She notified everyone around the property plus one more because she owns the parcel next to her residential property. Legal Ads were placed in the local newspaper (Times-News) on September 11, 2006, September 18, 2006 and a display ad on September 25, 2006 (Exhibit "K"). The approximate size of the property in question is 2.84 acres as per Henderson County On-line Geographic Information Systems (Exhibit "D"). She said there is a mistake on this in that it says 3.15 acres. That is to the center of the road and the 2.84 acres is just the property and that is what she used. Mr. Engel said the survey shows 3.24 acres. Ms. Berry said the discrepancy between GIS and the survey depends on where the surveyor started, but we're going to use the 2.84 acres.

Ms. Berry continued saying Section 200-13.C(2) "Conditional Uses" [added 5-16-2001] – (Exhibit "A") (red highlights) allows for customary incidental home occupations including artistry. Section 200-22.C "Dimensional Requirements" – (Exhibit "B") (orange outlined box) does not apply because she meets all the specifications, but you should have all information. Section 200-7.B "Word Usage and Definitions" (Exhibit "U") (red highlights), which is the definition of customary incidental home occupation and she read the red highlighted section.

Mr. Phelps said the definition excludes sales. He said he could sew dresses or do art but it doesn't say he could operate a sales outlet. Ms. Berry said she didn't know how to address that except that it's a business sales. Mr. Phelps read the included uses but this goes beyond those uses and includes goods for sale. He said that is different and he doesn't see anything in here that says he can conduct sales activities. If he were an accountant he would be doing bookkeeping and not having traffic in and out selling goods. That's his question – he doesn't see that in this description. Assistant County Attorney Zambon said that is correct but for most of these items (dressmaking, cooking, and baking and woodworking and arts and crafts) you can make them there and take them somewhere else. And the others that do, like music instruction that would be in the residence are considered low traffic. I don't think this conditional use was considered for selling things out of the home. Ms. Holbert said it goes on to say the practice of such professions as insurance, medicine, artistry, architecture and accounting – you can't practice if you're not selling. Mr. Phelps said you can sell it somewhere else. Mr. Engel said but they don't. Ms. Holbert said she thinks it's an assumption. Mr. Phelps said they don't. Mr. Engel said no, architects quite often have people come to their home. Ms. Holbert said accountants do too. Mr. Phelps said but it's not goods being carried away. That's a service, just like I do tax returns in my home. I take it to the client and collect the.... Ms. Holbert said you're right, a lot of people do it both ways, but it's the way this reads though, it's the assumption of the practice of professions or not defining that. Mr. Phelps said this doesn't prevent the practice of it, just have another place to sell the goods. Assistant County Attorney Zambon said, because of the zoning, these professions would not have a lot of people in there at one time like a store. Ms. Berry said the way to address that is by the hours of operation. Chairman Bonessi said these are all good points but let's let Ms. Berry finish because I've got some questions that are highlighted that I don't think she's gotten to yet.

Ms. Berry continued that floor usage is limited to 25% of floor space as per definition of "Customary Incidental Home Occupation" outlined in #11 above (Exhibit "E", "F", & "M" (page 3 of exhibit "M"). The total square footage of the single family dwelling is 2133 SF. Twenty five (25) percent of the total 2133 square feet is 533.25 square feet. The applicant is using 441 square feet of interior space for making the pottery and for the sale of pottery (Exhibit "J" shows room used for pottery). The kiln that is used for curing the pottery is located in an "Accessory Building". The location of the kiln is due to safety concerns of operating a kiln in the main structure. The definition of "Customary Incidental Home Occupation" does not allow for the business being operated out of an accessory structure. If ZBA does not allow the kiln to be in the accessory structure the applicant is willing to connect the accessory

structure to the main structure as outlined in the definition of a building (Exhibit "V"). She read the red highlighted section.

Chairman Bonessi said he wanted to question the total square footage used and you can't exceed 25% - did you include the kiln area? Ms. Berry said yes you would. Chairman Bonessi said will that exceed the 25%? He said 533.25 is the potential for the house. Ms. Berry said what is the kiln? Chairman Bonessi they are currently showing 441 square feet and you would have to include the kiln in the calculation. Ms. Berry said we'd have to ask the applicant.

Ms. Berry showed and explained the pictures included in the packet. She explained that the applicant has 2 driveways and the sign saying "Pottery Next Right" would be at the first driveway and the sign saying "Pottery Studio" would be at the second driveway entrance. The site plan shows both driveways.

Chairman Bonessi asked about Exhibit T where it is highlighted "where a district boundary line divides a lot of single ownership, the district requirements for the least restricted portion of such lot shall be deemed to apply to the whole thereof, provided that such extensions shall not include any part of such lot more than 35 feet beyond the district boundary". Ms. Berry said, if you go to the next page, it shows the extension of 35 feet. Chairman Bonessi said, theoretically a structure could be built in that area that would be allowed to be there. Ms. Berry said yes. Mrs. Pouch said you could put a sign there too. Ms. Berry said yes, that's where the sign is on the driveway and the other sign in the residential district.

Mrs. Pouch asked if the gentleman who had the complaint is here. Ms. Berry said she has never talked to him, he spoke with the Zoning Enforcement Officer.

Ms. Holbert said since she is an alternate and not here all the time, she sees a discrepancy that she doesn't understand. She sees it referred to R-40 in several different places but then we're looking at R-30 on Exhibit B and the complaint letter refers to R-40 and several other places refer to R-40. Ms. Berry said it is R-40. Chairman Bonessi said Exhibit A refers to R-30. Ms. Berry said for the record that section needs to be changed to Section 200-13.C(2).

Chairman Bonessi asked if there were any more questions for Ms. Berry. There were none.

Ms. Chisholm and Attorney Walter Carpenter came forward. Assistant County Attorney Zambon questioned if Attorney Carpenter had been sworn in. Attorney Carpenter said he is a practicing attorney in Hendersonville and he doesn't plan to give any testimony. He will ask some questions to my client, but he won't be testifying.

Attorney Carpenter asked if Ms. Chisholm had been open selling pottery since she got the letter from Mr. Case. Ms. Chisholm said she had not. Attorney Carpenter said there had been some discussion with Ms. Berry relative to the 2 driveways into your property. I'm going to call the first driveway the one towards town, which is the old driveway and is paved blacktop - is that accurate? Ms. Chisholm said that's the word. Attorney Carpenter said do you know how wide that road is, that driveway? Ms. Chisholm said I really don't. Attorney Carpenter said is it wider or narrower than the concrete driveway that you put in that's in the unzoned area? Ms. Chisholm said it is narrower and the purpose of the new driveway is I had added onto the house to create a better driveway to get to the new front door. Attorney Carpenter said is it wider where it comes into Crab Creek Road? Ms. Chisholm said yes, enough for 2 cars to sit there or somebody to pull off. People are always wanting someplace to turn around, I figured they might as well use me. Attorney Carpenter asked if you also designed it with some parking area. Ms. Chisholm said yes, there is a large parking area and turn around, where the other one is quite tight. Attorney Carpenter said I think that's shown on.... It says 20 foot right-of-way on the old drive, does it not? Ms. Chisholm said that's right. Attorney Carpenter said but the pavement is shown as being inside the right-of-way, in other words it doesn't take up the whole 20 feet of the right-of-way. Ms. Chisholm said oh no. Attorney Carpenter said one of the things that we've heard

some testimony about is the size of the house. Is it fair to say that the area of the house in the basement that you use as a studio is about a third or a little less than the entire basement? Ms. Chisholm said yes, the size of one of the bedrooms, really is what it's designed to be. Attorney Carpenter said and then there's an entire upstairs that's the same size square footage as the basement. Ms. Chisholm said yes. Attorney Carpenter said so you're not talking about anything that's anywhere near a fourth of the entire square footage of the house, are you? Ms. Chisholm said no, sir. Attorney Carpenter said if there's bad weather, are you planning on being open at all? Ms. Chisholm said no, I don't go anywhere on bad roads, so I don't want anyone else to come out. Attorney Carpenter said is there a gate on the second drive down near Crab Creek Road? Ms. Chisholm said yes, there is. Attorney Carpenter said and is that a gate that can be closed from your house? Ms. Chisholm said yes I even had it closed when I wasn't allowed to sell pottery and some people actually opened it and came up and tried to buy pottery. I try to keep it closed all the time unless I want to have company. Attorney Carpenter said is there a pool located on the property? Ms. Chisholm said yes there is. Attorney Carpenter said let me direct your attention then again to Exhibit M. Y'all have the copy of the map. If people were to come up the old driveway, how do they get around to the part of the house where the studio is? Ms. Chisholm said it wouldn't be very good. It's danger to all, fenced off area, they would have to come in a gate, and have to walk right next to the house that's pretty narrow. There wasn't much room for anything else and they would have to walk along the edge of the pool which I would not want them to do. Attorney Carpenter said presently if people come up and park on the concrete parking lot, do they have access to the pool? Ms. Chisholm said not unless they open up a closed gate, that could be locked if necessary. It's a fenced area. I tried to do everything to make it safe for myself and safe for anybody else or anybody that would come up and have children whether they're visiting me or unannounced. I wanted to make a separate safe area. Attorney Carpenter said there's a gazebo out there that is where the kiln is. Is that something that will be open to the public? Ms. Chisholm said no, I would be the only one to use it and it's not for people to look at or get into. Attorney Carpenter said how big is the actual kiln. Ms. Chisholm said it's a little bigger than this (the podium). Attorney Carpenter said only slightly bigger than this. Ms. Chisholm said yes. Attorney Carpenter said and about that tall. Ms. Chisholm said not quite as tall but a little bit fatter. You can bend over and reach the bottom, not very big. Attorney Carpenter said other than that what else is in the gazebo? Ms. Chisholm said the shelves for the kiln, the ?? furniture that you use in the kiln, discarded pieces of pottery, a broom, not much. You can't sit down, there's no where. You kind of walk in, do what you have to do and that's it. I think you could squeeze around, but it looks nice, it looks like a gazebo. Attorney Carpenter said is that door lockable to the gazebo. Ms. Chisholm said yes. Attorney Carpenter said it's enclosed on all sides. Ms. Chisholm said yes. Attorney Carpenter said it's not open. Ms. Chisholm said no. It has lattice work up high but it's not something you can see in. Attorney Carpenter said how difficult would it be to connect a roof from this gazebo over to the house. Ms. Chisholm said my builder was out there the other day and I asked him about it and he said it would actually be pretty difficult. The door to the house and the side walk which is about 10 feet to the gazebo, they don't line directly up, so that would make it a little bit difficult. Then you would have to join it in above under a window – it would be difficult and it would be pretty ugly, honestly. I believe that I have done a nice job in adding on and remodeling my house. It's not for people – it wouldn't be that easy. It's not impossible, but it wouldn't be very easy. Attorney Carpenter said is the gazebo on a deck, part of a deck around the house. Ms. Chisholm said the gazebo itself does not sit on the deck. There is a deck up to it. Attorney Carpenter said but it's part of the deck. Ms. Chisholm said yes, well there's dirt underneath it. Attorney Carpenter said those are the questions that I have and I would tend to occur to whoever else wants to ask questions, Natalie or y'all, as to what exactly is going on out here. Ms. Chisholm said that she wanted to add that she was only open about 15 days and she does not know Mr. Johnson. You can't see any houses from my house.

Chairman Bonessi said it looks to be a very nice home – it looks like you've done a lot of work to make it very attractive. I guess the question I have is more concerning your clientele – what type of clientele, what kind of hours of operation. Ms. Chisholm said like I said I had only been open a very short time but as you know there's a lot of traffic going out to Dupont and Holmes Forest and I had a lot of people who came at 3 or 4 o'clock who had seen it on the way and decided to stop on the way back. And they



were for the most part tourists, they were happy to see art for sale. There's a stained glass studio down the road next to Holmes and he had told some people about it, so people came from there. I did have a few repeat customers. I did have some people come from the conference center. But mostly people enjoying Hendersonville and the area and I enjoyed talking to them – it was pretty fun.

Attorney Carpenter asked about given numbers at any time. Ms. Chisholm said if you had 2 sets of people at once it was a big deal. You know, 2 carloads of people at once. It might have been 4 people. But that's just kind of the way it is. I like for people to look and ask questions. Whether they buy something or not, I think it's nice to see the way things are made.

Chairman Bonessi said so you strictly sell pottery, you do not teach pottery. Ms. Chisholm said no, and I don't sell anybody else's pottery. Chairman Bonessi said if you had to have hours of operation, what would they be? Ms. Chisholm said that's a tough one. I hadn't really thought about it. I'm not going to be open every day – I have another life. On Sunday I wouldn't be open before noon. And I'm not going to be open after dark. Summer, spring and fall are the best times of the year. Winter is probably not going to be much of an issue. I hadn't really gotten it worked out yet. Chairman Bonessi said Ms. Berry has your house square footage at 2133 square feet. Is that a correct statement? Are you getting that from the tax system? Ms. Berry said right and it hasn't been updated since she built the addition. They are doing the appraisal this year. Ms. Chisholm said before she added on there were 3 bedrooms, a small kitchen, 2 bathrooms and a laundry room. I added on a big kitchen, a living room, another bedroom and like an ell – it's a big house. Ms. Berry said the room she's proposing to use is a bedroom. Chairman Bonessi said if he had glasses he could probably read the writing on the map. Ms. Berry said she didn't know if the numbers were right, but she could show you where they came from. Chairman Bonessi said to Ms. Chisholm, if you did the addition, do you know what size it was? Ms. Chisholm said she didn't. Attorney Carpenter said, when he was trying to look at the pictures in the tax office, he couldn't make heads nor tails of them. He said he turned them every which way. Assistant County Attorney Zambon asked Attorney Carpenter to try not to testify since he hadn't been sworn in, or he can be sworn in. Attorney Carpenter said you're right. Ms. Berry said to look at Exhibit E and that is where the information and numbers came from. She said "A" is the only one she is sure of, the rest of them she doesn't know what they stand for. Chairman Bonessi said it looks like the 2133 is directly from this tax map. He said he wanted to make sure the Board was within the boundaries that they were even permitted to discuss this. Ms. Berry said, if necessary, she could get the building permit. She said the next valuation would be January 2007 and she didn't know when this was previously done. Mrs. Karpowski pointed out that in the bottom left corner it said this information was current as of January 2005.

Ms. Chisholm presented the Board a picture of the house before the addition and remodel. Mrs. Karpowski asked that she get the picture back for the record.

Chairman Bonessi asked about how large the gazebo is. Ms. Chisholm said 10 feet. Chairman Bonessi repeated 10 feet? Ms. Chisholm said about as big as that area (pointing to the semi-circle made by the raised desks the Board was sitting at). Chairman Bonessi said about 10 feet in diameter. So we'll say it's approximately 75 square feet. Ms. Berry said that's about right – it's only large enough for the kiln and you can barely walk around it – it's not large at all.

Ms. Chisholm said her neighbor across the road does not object. Ms. Berry said there was a letter in the Board's packet. Chairman Bonessi said he believes he is in the open use area according to the zoning map. That is something we have to struggle with, when you have these areas next to one another. According to this application, we are using 441 square feet of the house. He asked Ms. Berry where that number came from. Ms. Berry said the size of the room is 21 x 21, that's where the 441 comes from. Ms. Berry asked what he said the square footage of the gazebo was. Chairman Bonessi said he did the square footage of a circle, since the gazebo is kind of a circle. He came up with 25, which is pi times radius squared, which is (in my head) about 75 square feet. This comes up to 516 square feet, which is still within that 25% range. We still have to struggle with it's not connected to the

house and an outbuilding. Ms. Chisholm said it's that form of artistry. Chairman Bonessi said he's not disagreeing with her, that it's not the right place for a kiln, is outside. Our guidelines give us certain things to look for and whether I agree with them or disagree with them we've got some guidelines that we should adhere to.

Attorney Carpenter said maybe I can argue this. From my point of view, what she's asking for is to sell this pottery and, I may be wrong. Maybe you need an incidental home occupation just to make pottery. But I would have thought I could make all the pottery I wanted to in my house, I just can't sell it as an incidental home occupation. So I didn't really include the kiln and wasn't thinking about that as a part of the customary incidental home occupation. That's not where anybody's going to go. It's excluded from the area where customers are allowed, like the rest of the house is. And I may be wrong on that, I'm not positive I'm right. But that's where I was coming from – that's not part of the process. If I'm making wood in my basement, then I've got an area to sell it. But I don't let people in where the saws and things are which would be – you know I could have that at my house now, where I'm zoned. But I don't think I could have people come in and buy stuff there. And I would think I could make pottery and put a kiln outside without any problems. I can't quote you any statutes on that. And I can't find it in this home occupation, that's just how I thought through it beforehand.

Chairman Bonessi said as far as the testifying if we get into this gray area, we may need to swear you in. Attorney Carpenter said he is arguing. Chairman Bonessi said his question is it's essentially part of the manufacturing process – the kiln or drying. Ms. Chisholm said if someone were making clothes, do they have to show them the washing machine that they wash the fabric in or their ironing board. Chairman Bonessi said if it was in the house, that's the biggest question, is being part of the structure. That's where there's some gray area there and we need to consider. Ms. Berry said, when she put the package together as Zoning Administrator, her interpretation was the kiln would be mechanical equipment that's installed for use "normally used for domestic or professional purposes". That's where she was coming from on that. Chairman Bonessi said it says you can't install mechanical equipment. Ms. Berry said it says you can if it's used normally for domestic or professional purposes. I interpret that as it's okay for the kiln because it's used for professional. I don't know that I'm correct on that but, as Zoning Administrator, that's how I interpreted it. Chairman Bonessi said he thought it was the outbuilding portion of it. Attorney Carpenter questioned the mechanical portion. He didn't think anything moved – it's like an oven. So when he was talking to Lyle Case early on, he didn't see that as being a mechanical thing. It doesn't have any moving parts. It just simply sits there and heats up. Chairman Bonessi asked if it had a fan. Attorney Carpenter said he suspects, but he's assuming. Ms. Chisholm said it doesn't. Attorney Carpenter said if it was mechanical we would have to have it inside, but it's not mechanical

Attorney Carpenter wanted to address another issue – whether you could have sales in an incidental customary home occupation. He didn't think about it until it was brought up. He was on the Planning Board a long time and just assumed that was in there. And it isn't. What it does though, if you analogize that to the amount of noise, traffic, smells, all those kind of things, which I think is where the customary incidental home occupation came from, was trying to allow things that were not burdensome to the neighbors, is the general idea of that. And you've got insurance, medicine, artistry, architecture and accounting. And you look at noises, is that going to generate people number and that kind of things. A pottery area with no more area than she's got to sell things, I would say isn't going to bring in any where near the number of people that insurance or medicine or accounting. Architecture, I don't know how many people go to that, but I would think it's less per day than a physician or an accounting firm, especially around April, and insurance. Those are going to generate a lot of traffic. But they have no sounds, smells, bad looking things around them. I would say and argue to you that the sales in a small area, if you had a big pottery area that may be a different situation. But 400 square feet of pottery area has not got a lot of display area, not a lot of these things, so you wouldn't anticipate that you're going to have a lot of people. I would say less than probably any of those others in terms of vehicles, in terms of smells, sounds, sights. So in thinking through it seems the basic idea of the statute is followed in this case with these, but I can't point you to anything specifically that they can sell.

Mr. Engel asked if Ms. Chisholm has any employees. Ms. Chisholm said no. Mr. Engel asked if she was going to have any employees. Ms. Chisholm said no.

Mrs. Pouch asked if she had a business license. Ms. Chisholm said no, she has a tax number. Ms. Berry said she doesn't have to have one in the County. Mrs. Pouch asked, if in the summer with tourists riding around and seeing pottery for sale, she would have a lot of traffic. A lot of people looking for things to do that will come by and you will be busy, especially with all the campers going to Blue Star, the people going up to Dupont Forest. Ms. Chisholm said she thought that would be nice. She would like to have that problem, but the phrase starving artist is because a lot of people think they want to see it but don't want to pay for things that are handmade, they want a bargain. I don't foresee that. If that were the case, I'd probably move someplace else. If I were that popular an artist. She didn't think that would happen. I've known people that were potters for years, and you've sold some stuff today. She really doesn't think so. I do it because I love doing it and I didn't want to harm anybody. I don't foresee a big traffic problem. Mrs. Pouch said but you do own property in open use and could put your kiln there and a sign there.

Mr. Engel said we're trying to determine if that's even necessary, to have the kiln in another location. It might not be. It might be fine where it is. Ms. Chisholm said she didn't want to relocate. Mrs. Pouch said but it is a possibility. Ms. Chisholm said no, ma'am, it is not. Plus the open use is very narrow and she has a lovely home there and she doesn't want to do anything to destroy the property value. She doesn't want anything else on the property. That's why the kiln is not in the shed. It's in the gazebo with matching hardiplank materials that the house has on it. She said she is concerned about her value and everybody else's value, too. She said she wants it to look nice. Mr. Engel said we all agree, it does look very nice.

Ms. Holbert said, as she reads this, it doesn't change the character of her property and if she were just an artist she would have her kiln and she wouldn't be conducting business in that gazebo. So I'm not sure I agree that the gazebo is a part of the business property. She would have that whether there were sales or not. Chairman Bonessi said he was just making sure the Board is within its bounds. Ms. Holbert said the last sentence says no occupation shall be conducted in an accessory building. She would have that as an artist, one way or another.

Chairman Bonessi asked for other questions. Mrs. Pouch said without the kiln, she couldn't have the pottery to sell. It's a part of the business. In a way it does. Ms. Holbert said she is an artist and would have it anyway. Chairman Bonessi said that point could probably be argued both ways. You could say it's a part of manufacturing. If I'm a woodworker, I'm going to have saws in my basement, even if I don't sell them. Mrs. Pouch said there is nothing that she has read there that says she can't have business in her home to sell. Mr. Engel said he didn't see anywhere either. Assistant County Attorney Zambon said, if you look at the other conditional uses that are for this area, beside the one that we keep talking about, the other conditional uses are parks, camps, tennis and racquet clubs, and golf courses; the customary incidental home occupation which was discussed; libraries and bed and breakfast inns. Just to give you something to compare. Mr. Engel said all have heavier traffic. Assistant County Attorney Zambon said yes, all have heavier traffic, so just to compare the other conditional uses. Ms. Holbert said we are an area that attracts artists and there are plenty of artists who work out of their homes and may sell it in a gallery on Main Street. But then they'll say, well come to my house and I'll show you what I have. So it's not unusual to encourage or have the artists. Ms. Chisholm said she thought encouraging artists was what Hendersonville was all about.

Chairman Bonessi asked if there were any other questions or statements. Attorney Carpenter said they didn't have anything further. Chairman Bonessi closed the meeting and asked for discussion from the Board.

Mr. Phelps said would it be appropriate to ask the Zoning Board for their interpretation of this sales. To him, if you have product for sale, that goes beyond the intent. That's his personal interpretation. It'd be one thing if he carved pink flamingoes in his home. It's another thing altogether if he put them on the lawn with a for sale sign. If he carried them somewhere else to sell to them... Ms. Berry said saying they were on the front lawn, not in the house. Mr. Phelps said well on the front porch. Ms. Berry said it has to be inside the building. Mr. Phelps said what about a screened porch. Ms. Berry said she would agree with Attorney Carpenter about the sales with a small business that would not generate a lot of traffic and you wouldn't know it was there - no flashing lights. Mr. Phelps spoke about a product such as a seamstress making one dress, not having 500 dresses hanging in there. Ms. Berry said to her this was just a small scale business, but nobody defined the word small. Mr. Phelps said that's why he wanted to question the Zoning Board, if that falls within their definition. Mr. Engel said does an architect sell plans. Ms. Holbert said how would you put a number to that, if it simply says doesn't change the character thereof. Ms. Berry said that's why they call it the Zoning Board of Adjustment, where you have 5 people to discuss it and come up with a consensus, instead of just one person making an interpretation. Ms. Berry said her interpretation all along was that it would include sales. Ms. Berry pointed out the last conditional use permit the Board granted. Mr. Phelps said that was receiving treatment. Ms. Berry said she was selling products. Mrs. Pouch said but she didn't manufacture them. Mr. Engel said that's even worse. Ms. Berry said she was just throwing that out there. Mr. Phelps said she was coming because she was providing a service, granted she was also selling. Mr. Phelps said he can see the neighborhood with a for sale sign up front, but you are generating traffic, who knows how much. Peak tourist season it could be more than off season. These are just questions that he is struggling with. Ms. Berry said the other Conditional Use had sales. Mr. Phelps said it was adjacent to a commercial area. Ms. Berry said this is adjacent to open use. Ms. Berry pointed out the property next to Ms. Chisholm is totally open use, which makes no sense. Everybody around them is R-40, but they (the open use property) could put anything they want. Mr. Phelps said on Exhibit N, it looks like the open use goes into an all residential area. Ms. Berry said right, but why isn't that one piece residential, since there's nothing there - it's an empty lot. Ms. Berry said on that small strip they could put a convenience store.

Mr. Phelps said the other thing said was that connecting the roof would be difficult and unsightly. Mr. Engel said is that even required - he didn't think so. Ms. Berry said it all depends on how you look at accessory structure and if you look at it as being part of the business.

Mrs. Pouch said she really thinks it's going to be busier than everybody thinks it's going to be. She was involved with the manufacturing and people just look for something to do. She said when she has company, they love to go up Jeter Mountain and go to the MacIlhaney's Glass Blowing place and they take carloads to watch them. So I think it's going to be a lot busier than she thinks. Mr. Engel said sometimes you drive by pottery places and only see one or two cars there, for years and years, and never see a crowd. Mr. Engel said we can make a part of it, she said there'd be no employees, and she'd be the only one. That keeps the operation small. Ms. Berry said she said she wouldn't sell anyone else's pottery. Chairman Bonessi said these are good for conditions. Mr. Engel said a wonderful part of Henderson County is all the craftspeople and it adds to the character of the area. Certainly it's wonderful to keep it if we can. Mrs. Pouch said if you're in a residential area, you don't want your neighbor doing it. Mr. Engel said that right across the street is a camp. Mr. Phelps said which is zoned differently. Mr. Engel said but it is still right across the street. So the neighbors across the street are not going to complain. They even put a letter in here that they don't object. Mr. Engel said there is a lot of space around this property, it is a fairly large piece of property, it won't be encroaching on neighbors. Ms. Berry said that Ms. Chisholm owns the parcel next door so it's almost 5 acres. Mr. Engel said she owns the property on the right and on the left is the open use property, so both sides are fairly clear. Mr. Engel said his neighbor teaches piano and sometimes on a Sunday she will have a group there, when they all play and there might be 15 cars. But it's not very often.

Mr. Engel said with the large drive, cars won't be piling up in the road. Ms. Berry said with the concrete drive, she believes there is room for 2 cars to pass. Mrs. Pouch said that is an issue - is it large

enough for someone to go out. Mr. Engel said it looks pretty wide from the pictures. Ms. Berry said it is wide, she has been there and 2 cars can pass each other. If somebody is pulling in, someone can pull out at the same time.

Ms. Holbert said the more she reads this she thinks the more it flows and it's not about the character of the property, it's the character of the property. She's an artist, she's going to have a kiln. I don't have any issues with it.

Mr. Phelps said he sees the artist end of it, it's just the sales. I just don't see the definition, we've got different opinions on whether it's in that ruling or not. But right now I don't feel comfortable. Ms. Holbert said we just gave a conditional use to someone doing medicine out of their home, selling products out of their home. Mr. Engel asked Chairman Bonessi what his thoughts were. He said he certainly sees all the questions that Mr. Phelps has. He also thinks it's a good fit for the community. It's unfortunate that Hendersonville is growing and things like this are going away and he thinks it's part of the charm that attracts people to this County. Mr. Engel said that the person who put the objection in didn't even come. Chairman Bonessi said he questions that. Mr. Phelps said that was probably to make sure that approval was gotten. Ms. Holbert said neither did anyone else – if there was an objection in the community.

Chairman Bonessi said the question about the square footage – he thinks it falls within the boundaries of the square footage. He said provided that we put the right conditions, he doesn't feel he would have any objections. He certainly wouldn't want it to become a manufacturing process where we've got employees. Mr. Engel said we could put in there that there will be no employees. Chairman Bonessi said the other thing he questioned was the hours of operation. Some people hold certain times pretty sacred. He wished she had been more clear on the hours of operation that she would have preferred. Mr. Engel said we could require it to be daylight hours for safety, cars pulling in and out. During the winter, of course, the hours would be shorter. Chairman Bonessi said that's a good point. He said she had done a nice job, there is nothing unsightly by any means. Ms. Berry said in conversation with Ms. Chisholm, she would like daylight hours. Mr. Engel said if we allowed her to open after dark, then we would have to require lighting for the parking and for the turn. It would make sense to eliminate nighttime hours. Chairman Bonessi said she mentioned not before noon on Sunday. Mr. Engel said that we could make that part of it too. Chairman Bonessi said he understands where Mr. Phelps is coming from, but he looks between some of the lines with the medicine and stuff like that. He considers sales of a service and sales of goods pretty much the same thing.

Ms. Berry asked Assistant County Attorney Zambon about precedent. Assistant County Attorney Zambon said similar cases would be persuasive but not binding. Mr. Engel said even the location – it's not as though it's inside a subdivision. There's a lot of traffic around with the camp across the road. It's not as though this is going to draw a lot of cars into this neighborhood. He thinks that should be considered as well. Mrs. Pouch said every time we have a case it is different, whether it's conditional use or variance. She doesn't think we set precedence because everything's different. Everyone has a different read on what they want.

Chairman Bonessi said a 5 minute break has been requested.

Ms. Berry said that she wanted to make a couple of points. There is retail sales and then an incidental home occupation where products are incidentally sold. It is not like a convenience where products are being sold out of the house. It is not retail sales, but something incidental to the home occupation. That is the difference between the two.

Chairman Bonessi asked for further discussion, or a motion, or holding it over. Mrs. Karpowski asked if the Board wanted to go over the provisions to address before granting a Conditional Use Permit. Chairman Bonessi said the first one was satisfactory ingress and egress to the property. Mr. Engel said the driveway is wide. He asked Ms. Berry if there were any problems when she pulled in and out

of the driveway there. Ms. Berry said no and she was driving a larger SUV. Chairman Bonessi read provisions for off-street parking and loading areas. That's depicted in the site plan. He continued with utilities, buffering and open space. Mr. Engel said those are not applicable with all the land around it. Chairman Bonessi agreed. Chairman Bonessi read building and structures with reference to location, size and use. Again they are not building anything here. Me. Engel said it is under the 25%. Mr. Phelps said that it is not connected. Chairman Bonessi said that we've got the kiln and that is the question that we've gone back and forth on. What part of the process is the kiln and that's what I was questioning earlier. Ms. Holbert said it also is a safety issue – you wouldn't want to connect a building that has a kiln in it for safety reasons. Mrs. Pouch said we have a case for a permit to add a garage and they said it was connected cause there were rocks between the garage and house. Ms. Berry said a wall. Mr. Engel said this is connected to the deck. Chairman Bonessi said there is a definition of connection. Ms. Berry said is it part of the business or not. Mr. Phelps said it certainly is an integral part of the finished product. Chairman Bonessi said there are several different ways to look at that. Mr. Engel said if there was a way not to put the covered area – it looks nice the way it is right now. Ms. Holbert said can't we say for safety reasons. Mr. Engel said that we need advice of the attorney. Mrs. Pouch asked if that would be a reason. Assistant County Attorney Zambon said she thought safety would be a reason and as Ms. Holbert said if she was just a potter and not selling it, she could have the kiln in the outside structure. The problem is no home occupation shall be conducted in an accessory building. This is an accessory building but it is within the discretion of the Board, in a quasi-judicial setting, to a certain extent, you get to interpret the language of the statute just like judges do all the time. So especially for a reason a good as safety she didn't think it was a problem. Ms. Holbert said in the first item it's adversely affect the health and safety of persons working and residing which the connection would affect the safety. Ms. Berry said it is on a separate circuit out there. Mr. Engel said the siding is fireproof – it's a concrete base. Mr. Engel said he thought they had covered everything.

Chairman Bonessi said if the Board was going to make a motion they should consider the conditions that they would impose. We've discussed them but should formally give Mrs. Karpowski conditions. Mrs. Karpowski said she had 3 so far: the owner is the only employee; she will sell only her own pottery; and the hours of operation will be daylight hours only and not before noon on Sunday. Mr. Engel asked if there should be a restriction on the sign that is in the property. The other sign isn't in the area. Ms. Berry said one sign is on the parcel in R-40 and the other is on the parcel in open use. Mr. Engel said maybe we should keep it to just the one small sign. Chairman Bonessi said he didn't think we could restrict the sign on the open use portion. Mr. Engel said he's not talking about the open use portion, he's talking about the first sign. Chairman Bonessi agreed. Ms. Holbert said what is it now 2 x 2? Mr. Phelps said to limit it to that. Ms. Berry said it is just sitting up against a tree now, so it would go down into the ground further. Mrs. Pouch said so what did we decide about the sign. Mr. Engel said just the one sign within the zoned area and maintain the size that it is now (2 x 2) and no lighting on it. Ms. Holbert said do we need to say anything about the kiln being an exception for safety reasons and not included as an accessory. Ms. Berry said you should definitely state it because if you don't it would look like you missed it. Assistant County Attorney Zambon said she would agree and say that you are not considering for the home use permit part, that it's an accessory structure and that it's exempted for safety per the first part of conditional use. Mr. Phelps said that it should not be altered or enlarged. Chairman Bonessi said that we do need a limit that the structure, the gazebo, can be enlarged as it currently exists, that we don't want a larger kiln placed. Ms. Berry said it is restricted to what's in the application. Mr. Engel said she would have to reapply if she were going to start using more area and enlarge the home occupation. Ms. Berry said it would be as presented in the application. The Board discussed the size and area. Ms. Berry suggested saying that the gazebo and the kiln need to stay the same size as in the application. Mrs. Karpowski asked if the Board wanted it limited to the current owner. Chairman Bonessi said yes.

Mrs. Karpowski read the conditions. The owner is the only employee. She will sell only her own pottery. The hours of operation are daylight hours only and not before noon on Sunday. There's one sign restricted to the size in the application (2' x 2') with no lighting in the zoned district. The kiln is in an accessory building for safety reasons. The gazebo and kiln are limited to the size stated in the

application. The conditional use permit is to go only with the current owner. And it always has as in the present application. Mr. Engel said about the one sign – she’s allowed the other sign on the other property. Ms. Berry said it’s not part of the application. Mr. Phelps said 1 sign not in the open use. Mr. Engel said that the Board didn’t have to address the open use sign. Chairman Bonessi said we didn’t have a definition of the gazebo other than a picture. Ms. Berry said you’re going to bring it back to the Board for approval and in the meantime I can go out and measure it. Assistant County Attorney said that was fine – that’s the exact reason that you look over the decision before it’s signed. Mr. Engel said you could pretty much see it, if it’s worth all that work. Chairman Bonessi said it was covering bases.

Mrs. Pouch said with regard to the application of CU-06-10, Nancy Chisholm, for a Conditional Use Permit authorizing the operation of a pottery studio on the property in question, I move the Board to make the following findings of facts: the proposed use will not adversely affect the health and safety of persons residing or working in the neighborhood of the proposed use; and the proposed use will not be detrimental to the public welfare or injurious to the property or public improvements in the neighborhood. Accordingly, I further move the Board to grant the requested Conditional Use Permit in accordance with and only to the extent represented in the application and with the following conditions; the conditions that Mrs. Karpowski just read plus we need the measurement of the gazebo that houses the kiln. Mr. Engel seconded the motion.

Chairman Bonessi called for a vote by show of hands.

Mr. Engel	Yes
Ms. Holbert	Yes
Mr. Bonessi	Yes
Mrs. Pouch	Yes
Mr. Phelps	Yes

Chairman Bonessi said the Conditional Use Permit was granted with the stated conditions. He explained that Ms. Berry would bring the order back to the Board at the next meeting for approval and signature.

COMMITTEE AND STAFF REPORTS: None

OLD BUSINESS:

Chairman Bonessi reported to the Board on the Dorn litigation and the decision of Judge Guice said that Mr. Dorn made the application as the owner instead of as agent for the company that actually owns the property. The Board discussed this and what the next step would be. Ms. Berry spoke about the deadlines for getting items on the agenda. Assistant County Attorney Zambon said that she would have to discuss with County Attorney Burrell who would be representing the Board in future cases.

NEW BUSINESS:

Chairman Bonessi asked if the Board could get some formal direction on the conduct of meetings. Assistant County Attorney asked for what the Board wanted. The Board discussed this. Assistant County Attorney Zambon discussed who had standing in cases. The Board also discussed the continuation of the Carriage Park hearing.

There being no further business, Mr. Phelps made a motion to adjourn and Chairman Bonessi adjourned the meeting at 7:00 PM. The next meeting is Wednesday, October 25, 2006, at 4 PM.

---

Dean Bonessi, Chairman

---

Joyce Karpowski, Secretary