

January 25, 2006  
4:00 PM

MINUTES OF THE HENDERSON COUNTY  
ZONING BOARD OF ADJUSTMENT

The Henderson County Zoning Board of Adjustment held its regularly scheduled January meeting on Wednesday, January 25, 2006, at 4:00 p.m. in the Meeting Room of the Henderson County Land Development Building, 101 East Allen Street, Hendersonville, North Carolina. Those present were: Vice Chairman Dean Bonessi, Tony Engel, Gary Griffin, Alternate Members Janice Brown and Dr. Philip Stanley, Assistant Zoning Administrator Lyle Case, Zoning Administrator Natalie Berry, and Secretary to the Board Joyce Karpowski.

Vice Chairman Dean Bonessi called the meeting to order at 4:05 PM. Chairman Bonessi introduced the members of the Board. He presented the minutes of the meeting from November 30, 2005. There were no corrections or changes. Ms. Brown moved to approve the minutes as written, Mr. Engel seconded, and all members voted to approve the minutes as presented.

Ms. Berry reported to the Board that Robert Fleming had resigned from the Board, and she has asked Dr. Stanley to sit in for a couple of months until someone else is appointed. So the Board decided to wait for the Board elections until there were at least the 4 permanent members of the Board present and, hopefully next month there would be a replacement for Mr. Fleming.

Ms. Berry told Mr. Whitaker, the applicant, that Mr. Griffin recused himself from the Board because he had heard the case as a Planning Board member. Because an affirmative vote of 4 members is required to grant a Conditional Use Permit, Mr. Whitaker has the option of waiting until next month to have his case heard by a full member Board. Mr. Whitaker agreed to have the case heard today.

Chairman Bonessi explained the quasi-judicial procedure being used today. He called anyone involved in today's case to come forward to be sworn in. Sworn in were Assistant Zoning Administrator Lyle Case and Petitioner Neal Lee Whitaker.

**Case CU-05-11, Neal Whitaker (owner)**

Chairman Bonessi called case CU-05-11, Neal Whitaker (owner), requesting a Conditional Use Permit to operate a customary incidental home occupation. The proposed site is located at 51 Jericho Ridge Road and is zoned R-15.

Mr. Case gave a summary of the issues. Section 1 in the packet gives a definition of customary home occupation. The petitioner is the resident at 51 Jericho Ridge Road Hendersonville, NC in the Beth Eden subdivision. The zoning district for this area is R-15, which allows for Customary Incidental Home Occupation with the granting of a Conditional Use Permit per section 200-16.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). This section of the Federal Code is attached and labeled "Attachment A-1". If granted the Conditional Use Permit, he would operate in a fashion in which the applicant would use the space to store firearms and paperwork in his house. There would be no customers coming to the house. All sales would be delivered by Mr. Whitaker or done at Gun Shows. The total square footage of living area in the structure is 2095 square feet. Not more than 25% of the total floor space can be used for the home occupation as per the definition stated in item 1. The home occupation will reside in an office area that is 93.75 square feet and in a safe located in the laundry room that would occupy 16.5 square feet. This equals

approximately 5% of the total living area. See attachment A-2 for photographs of the structure and attachment A-3 for floor plans of the proposed business. 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. If granted the Conditional Use Permit Mr. Whitaker 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. The driveway itself is more than 20' feet wide (a typical passenger vehicle is 9' feet wide) and allows ample room for parking and as a loading area per "Off Street Parking" Section 200-40A. Mr. Whitaker will address how he will receive packages and deliveries. There will be no exterior signs advertising the business. "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." Mr. Case said that he would like to place the packet into evidence.

Mr. Whitaker came forward and said that the ATF has already inspected the home and they said it was fine and told him where to place the safe and they are waiting for him to receive this permit. Mr. Whitaker said he was not planning on having any traffic to affect the subdivision. Most of his deliveries will be delivered to another address. This will be a part time business and no customers will come to the subdivision so it will not affect the subdivision – they will not know it is there. Chairman Bonessi asked if 100% of the deliveries will be made to another address. Mr. Whitaker said yes or pick them up at UPS himself. He may get an occasional delivery like anyone else in the subdivision. Chairman Bonessi asked about outgoing deliveries. Mr. Whitaker said he would take them from the safe into the vehicle and then to the gun shows. Mr. Whitaker said most of his business will be going to gun shows. The ATF requires him to have a place of business to do paperwork, keep records and store firearms. Mr. Engel asked if there was anything really large coming. Mr. Whitaker said the only large thing would be the safe. Mr. Engel said that would only be a one-time thing like a piece of furniture. Mr. Whitaker agreed. Mr. Whitaker said long barrel weapons would be the biggest things.

Mr. Case came forward to present the Planning Board recommendations. He said on Tuesday, December 20, 2005, the Henderson County Planning Board reviewed this application. The Planning Board voted 6-1 to send the Zoning Board of Adjustment (ZBA) a favorable recommendation for conditional use permit application #CU-05-11 and offers the following recommendations:

1. The application information from the Crimes and Criminal Procedure provide that the Applicant certifies that secure gun storage or safety devices will be available at any place in which firearms are sold. The Applicant indicated that the guns would be stored in a gun safe in the residence. The Board recommends that a condition of the permit, if granted, state that the guns are required to be locked in a locked gun safe at all times.
2. During the Planning Board meeting, the Applicant indicated that he would be selling firearms and ammunition, and that the ammunition would also be stored in a locked gun safe. The Board suggests that a condition of the permit, if granted, state that the Applicant intends on selling ammunition on site and that the ammunition will also be stored in a locked safe.
3. Although the Applicant indicated that no firearms would be fired on the premises, the Board recommends that the ZBA state as a condition of the permit, if granted, that no weapons will be fired on the premises or outside of the residence at any time.
4. The Board suggests that a condition of the permit, if approved, be that the applicant should supply the Zoning Administrator with the approved federal license prior to operating the business, and the Zoning Administrator should be allowed to conduct a site visit to insure that the conditions of the permit have been met.
5. The Zoning Department Staff stated that they had received a copy of the Subdivision Covenants and were verifying that the Applicant would be allowed to operate an in-home business of this

nature before moving forward with the business. The Board recommends that the ZBA confirm that the applicant has verified that the Subdivision Covenants will allow for a business to sell firearms and ammunition prior to granting the conditional use permit.

Mr. Case entered the Planning Board's recommendations into evidence. Mr. Case had copies of the covenants for the Board and pointed out Section 1 and read "Residential Use. All Lots shall be known and described as residential lots, and no part of the Lots shall be used for any type of business or store. This restriction shall not prohibit a home occupation which does not have customers, suppliers, or clients coming to the Lot and which does not violate any other provision of these restrictions." Mr. Case said that was the only thing in the covenants about a business run out of the home in the subdivision.

Mr. Case said the second piece of paper is a letter from Mr. Whitaker saying he would not have customers coming into the subdivision because most of his business would come from gun shows in other towns. Any other customers he will be delivering the products to them. He also states he will be having products ordered delivered to him at another address and picking them up himself, so there would be no increase of traffic in the subdivision because of the business. Mr. Case said that he would like to submit these 2 documents into evidence.

Chairman Bonessi said there was no one else at the meeting to speak.

Dr. Stanley questioned the recommendation saying the firearms had to be locked at all times. Transporting the firearms from the safe to his vehicle would violate that. Chairman Bonessi suggested saying they had to be stored at all times in the safe.

Chairman Bonessi said that Mr. Whitaker seems to be taking all the right steps and doing the right things. He said his concern with home occupations is the traffic and Mr. Whitaker has stated there will be no traffic issues.

Chairman Bonessi said that the use for which the permit is sought will not adversely affect the health and safety of persons working and residing 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. Ms. Brown said that there will be no additional traffic and everything will be locked up unless transporting to and from the vehicle. Ms. Brown said the conditions recommended by the Planning Board should be included, with some modification to the first.

The Board discussed the provisions to be addressed prior to granting a permit. Chairman Bonessi said there will be no public or shipping traffic shows there is satisfactory ingress and egress to the property. Mr. Engel said there is plenty of parking because of the width of the driveway. Mr. Engel said utilities, buffering, open space and landscaping were not applicable. Mr. Engel said it would be located within the existing structure so it would have no effect on the neighborhood.

Chairman Bonessi spoke about the conditions to be placed on the permit if granted taken from the Planning Board's recommendations. First is that the guns are to be in a locked safe at all times unless being transported. Next is that ammunition is to be stored in a locked gun safe unless being transported to and from. No firearms will be discharged on the premises at any time. Zoning Permit would be required. The Board suggested using the Planning Board's suggestions using # 4. There will be no deliveries..... The Board discussed this and said he must comply with the subdivision covenants. The Board discussed how much explosives could be stored. Ms. Berry said the condition could check with the local building code. Chairman Bonessi said that it could say it must conform to all local, state and federal codes, covenants, and ordinances. Mr. Engel said that the permit should be limited to the applicant only. The Board suggested if the license expires or is not renewed, the permit is null and void.

Chairman Bonessi asked the secretary to read the conditions, which she did:

1. The guns are to be locked in a locked gun safe at all times unless being transported.

2. Any ammunition on site will also be stored in a locked safe unless being transported.
3. No weapons will be fired on the premises or outside of the residence at any time.
4. The applicant should supply the Zoning Administrator with the approved federal license prior to operating the business, and the Zoning Administrator should be allowed to conduct a site visit to insure that the conditions of the permit have been met.
5. A Zoning Permit is required.
6. He must comply with subdivision covenants and all local, state and federal codes and ordinances.
7. This Conditional Use Permit is limited to the applicant only. If the license expires or is not renewed, the Conditional Use Permit is null and void.

The Board agreed with the conditions.

Chairman Bonessi closed the hearing and asked for a motion.

Dr. Stanley said with regard to the application of Neal Whitaker for a conditional use permit authorizing the operation of a customary incidental home occupation 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 property or public improvements in the neighborhood. Accordingly, I further move the Board to grant the requested Conditional Use Permit with and only to the extent represented in the application and with the following conditions: as read by the secretary. Mr. Engel seconded the motion.

Chairman Bonessi called for a vote by show of hands.

Dr. Stanley	Yes
Mr. Engel	Yes
Chairman Bonessi	Yes
Ms. Brown	Yes

Chairman Bonessi said the permit was granted with the stated conditions.

COMMITTEE AND STAFF REPORTS: Ms. Berry had given a list of acronyms and terms applicable to the Flood Damage Prevention Ordinance to the Board and asked if the Board had any questions. Some are only applicable to coastal regions. She read over and explained many of them. She said she would make a map and highlight the different things: flood fringe, flood plain, flood way, and put it in next month's packet for the members to see at their leisure to become familiar with it. Then each month she will go through a section of the flood ordinance. Next month Judy Francis will be going over the new Land Development Code. Ms. Berry would like all members to attend, permanent and alternate members, if possible, to hear Ms. Francis' presentation. Dr. Stanley asked how all the changes would affect this Board. Ms. Berry said this Board started doing only the Zoning Ordinance. Now this Board will be doing the Flood Plain, possibly the Erosion Control Ordinance, and Storm Water Ordinance, and Housing Code. They are rolling them all into one, the Land Development Code. So there will be more duties but some will be taken away at the same time, so it will balance. There will be a transition period of about 6-8 months.

OLD BUSINESS: None

NEW BUSINESS: Ms. Berry spoke about sending the Conditional Use Permit applications to the Planning Board for review. This process makes it hard on the applicant. It takes 2 months and some applicants just go ahead and do what they want. Right now the Zoning Ordinance says this Board **may** ask for the Planning Board's recommendations on any Conditional Use. Ms. Berry likes this for some things like large projects but perhaps it isn't necessary for customary incidental home occupations. She would like the Board's input on this. Chairman Bonessi asked how she would arrive at a number. She said she would come back with numbers, but would like to know if the Board would look at this idea.

Mr. Griffin said the Planning Board should be involved on the larger projects but he does think it's a good idea. Mr. Griffin said he didn't know why this permit application today was before the Planning Board. Ms. Berry said the previous Planning Director decided all Conditional Use Permits should be sent to the Planning Board. Mr. Engel said the Planning Board did a lot of this Board's work. Ms. Berry said that this Board would have caught everything the Planning Board did.

The Board's secretary asked if the Board would like to have their packets sent out to them earlier. She mails them the Thursday before the meeting and they serve as a reminder of the upcoming meeting. The Board decided they would like to receive their packets closer to the meeting. Mr. Engel said if there is no meeting in a month, he would like to know as soon as possible.

Ms. Berry read the by-laws of the Zoning Board of Adjustment, which says, "no Board member may be excused from voting except when immediate personal or financial interests preclude him to". So Ms. Berry feels Mr. Griffin could have heard and voted on this evening's case. Mr. Griffin said the previous Planning Director said he should vote on one Board or the other. Ms. Berry said she will check into it further with Chapel Hill because of the dual role. Ms. Berry said in the future Mr. Griffin should recuse himself from the Planning Board, because this is the voting Board.

There being no further business, Mr. Engel made a motion to adjourn, Mr. Griffin seconded, and all approved. Chairman Bonessi adjourned the meeting at 5:29 PM. The next meeting is Wednesday, February 22, 2006, at 4 PM.

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Dean Bonessi, Vice Chairman

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Joyce Karpowski, Secretary