

August 31, 2005
4:00 PM

MINUTES OF THE HENDERSON COUNTY
ZONING BOARD OF ADJUSTMENT

The Henderson County Zoning Board of Adjustment held its regularly scheduled August meeting on Wednesday, August 31, 2005, 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, Ann Pouch, Alternate Member Suzanne Holbert, Planner Autumn Radcliff, Development and Enforcement Director Toby Linville, Zoning Administrator Natalie Berry, and Secretary to the Board Joyce Karpowski.

Chairman Bonessi called the meeting to order at 4:04 PM. Chairman Bonessi welcomed everyone and explained the quasi-judicial procedure that would be followed today and the appeal process. He introduced the members of the Board. Chairman Bonessi presented the minutes of the meeting from July 27, 2005. There were no corrections or changes. Mrs. Pouch moved to approve the minutes as written, Mr. Engel seconded, and all members voted to approve the minutes as presented.

He called forward anyone wishing to testify today to be sworn in. Sworn in were: Planner Autumn Radcliff, Zoning Administrator Natalie Berry, Jim Kirkpatrick, and Donald Brewer.

Case CU-05-09, – Jim Kirkpatrick

Chairman Bonessi called Case CU-05-09, Jim Kirkpatrick, requesting a Conditional Use Permit to construct an addition to existing shopping center. The proposed site is located at 2000 Spartanburg Highway and is zoned C-4.

Chairman Bonessi opened the public hearing and asked for a summary of the issues. Ms. Berry said that a large blueprint of the parcel is hanging behind the Board and there is also one in everyone's packet. This was originally three parcels of land and Mr. Kirkpatrick has combined them to form 1 parcel. See deed provided by Mr. Kirkpatrick in your packages. The current shopping center consists of 6 units, 3 upper level and 3 lower level units. The expansion would provide for 2 additional upper units for a total of 5 upper units facing the street. To access the 3 units on the bottom level, you have to go around to the back of the parking lot. The property is located within the C-4 zoning district. The approximate size of the property in question is 1.019 acres. The front setback is 75 feet from the centerline of a major street (Spartanburg Highway). The applicant has two streets adjoining the parcel: Spartanburg Highway and Mt. Airy Street. Mt. Airy Street is a minor street with a setback of 60 feet from the centerline to the side of the building. "Off Street Parking" states that shopping centers are required to have 1 parking space per each 300 square feet of gross floor area. The entire project's square footage is 13,861. The existing building has 10,858 SF of gross floor space. One proposed unit is 1803 SF and the other proposed unit is 1200 SF. The number of parking spaces required (new and the expansion) is 47. The site plan shows 50 parking spaces. NC Accessibility Code requires 3 handicap parking spaces with one of those spaces being denoted as a van-accessible space. The proposed site plan shows 3 spaces, with one of those spaces being van-accessible. "Off-Street Loading and Unloading" requires one off-street loading and unloading space for each 10,000 square feet of gross floor area for retail use. The site plan shows two loading and unloading zone to meet requirements. One located in the front right corner and the other in the left rear just beside Mt Airy Street. Signage will be ½" aluminum covered plywood skin on 2 X 6 frame. The overall sign size is 96" X 114" = 76 SF. The sign will provide 8 plaques. Each plaque is 14" X 43". The sign was permitted under the renovations to the existing structure. Pictures are on pages 1-7 and 1-8 of the packet. Zoning surrounding parcel: Zoning that surrounds the parcel of land is C-4 with the exception of the

east side of the property which adjoins Hendersonville City Zoning District. The zoning district in Hendersonville City is Commercial.

Ms. Berry said that the Conditional Use Permit was taken before the Planning Board this month and Mrs. Radcliff will present their recommendations.

Mrs. Radcliff said that on Tuesday, August 16, 2005, the Henderson County Planning Board reviewed the application and voted 7-0 to send the Zoning Board of Adjustment a favorable recommendation with the following recommendations. The Planning Board wanted the Zoning Board to know that Mr. Kirkpatrick was at the Planning Board meeting and, although it is not noted on the site plan, the new addition will meet the 40-foot height requirement for the C-4 zoning district. The Planning Board recommends that the ZBA specifically not recommend any lighting or hours of operation standards as a condition of the permit. The Planning Board recommends that the ZBA consider making a condition of the permit that the Zoning Administrator be notified of any changes in tenants. Also, that the applicant should make a minor correction on the site plan showing where the pavement stops and starts. The applicant can address that if he chooses or if the Board asks him. The Planning Board recommends to the applicant and the ZBA that the word buffer as shown on the site plan for the back of the property be removed, if it has not been done already. Planning Staff offers the additional comment that the ZBA specify a timeframe within which the applicant must satisfy any conditions and require that the applicant obtain from the Zoning Administrator confirmation of zoning compliance prior to receiving a Certificate of Occupancy.

Mrs. Pouch asked why the Planning Board changed the word buffer. Mrs. Radcliff said staff commented to the Planning Board that they should decide if the buffer was substantial enough or if there should be more of a buffer, especially since the Children's Resource Center was next door. After discussion, the Planning Board decided since the surrounding area was zoned commercial, buffering wasn't a requirement and should be taken off the site plan, unless it was a condition of the permit. The Planning Board didn't feel a buffer was needed. Mrs. Pouch also questioned the recommendation of no lighting or hours of operation standards. Mrs. Radcliff said that was what the Planning Board said. She said staff recommended that lighting be addressed and also hours of operation as conditions of the permit. The Planning Board felt since the zoning is highway commercial and the surrounding area commercial, that the conditions were not necessary. The Planning Board was specific on this recommendation.

Mr. Kirkpatrick said that there is an existing shopping center on the property that is more of an eyesore. They have already started gutting the building and remodeling it. He showed a picture of the building and presented a picture of the way it will look. They would like to add an 1800 square foot unit on the left side and a 1200 square foot unit on the right side. Mr. Kirkpatrick said he would answer any questions. Mr. Kirkpatrick said there is lighting on the building and the light shines down. He said the buffer on the back is existing and happens to be there along the property line and they will leave it there. Mr. Kirkpatrick said the owners behind are planning to build a commercial building and asked to take down some trees, which he agreed to, to not block visibility from the highway. Mrs. Pouch asked if there was house back there. Mr. Kirkpatrick said both houses have been torn down.

Chairman Bonessi said it seemed everything was together and he didn't have any questions. He asked for additional evidence from parties who wished to speak. Ms. Berry wanted to comment on the hours of operation in zoning district C-4. She said just about any business is allowed that can be open 24 hours a day, which is probably why the Planning Board chose not to address the hour issue. There was no one else who wished to speak.

Chairman Bonessi closed the public hearing and asked for discussion from the Board. Mrs. Pouch questioned if the Board should say that the building not be over 40 feet. The building is planned to be about 14 feet high. Ms. Berry said that in the C-4 zoning district, buildings cannot be over 40 feet high. Mr. Griffin said if he were expanding up, it might be an issue but it is not changing the roof height.

Chairman Bonessi said that lighting is indicated on the building itself. He said what is indicated is a definite improvement over what has been there. Mrs. Pouch asked if the owner has to say what tenants he will have. Ms. Berry said not really but she lets the applicant know that certain uses are allowed and that's why the Planning Board recommends a condition that each tenant is required to get a Zoning Permit. Mrs. Pouch asked if that should be included. Ms. Berry said yes. Mr. Griffin asked if they had to get a permit anyway. Ms. Berry said no, the shell would get a zoning permit and then upfit and there is not a requirement for business licenses in the County. Mrs. Pouch asked about the Planning Board's recommendation that the applicant make a correction about where the pavement stops and starts. Mr. Linville said this referred to the right side where there is a line and if people could drive around the building. There is a retaining wall on that side with a 10-foot drop, so you can't drive around that side. Mrs. Pouch said they should address the time. Ms. Berry said the building permit would address that, because the building permit expires in 6 months if no work is done and you have 1 year to finish the work once construction commences. Chairman Bonessi said the application was well done and will be a significant upgrade.

Mr. Griffin said the Henderson County Zoning Ordinance requires approval of a Conditional Use Permit if the following findings of facts are made: use for which the permit is sought will not adversely affect the health and safety of persons working or residing in the neighborhood of the proposed use and will not be detrimental to the public welfare or injurious to the property or public improvements in the area. The following are provisions that the Board should address and consider prior to granting a Conditional Use Permit: satisfying ingress and egress to the property; provisions of off street parking and loading areas; utilities; buffering; open space, landscaping; building and structures with reference to location, size and use. It should be noted that if a specific condition could be placed on a permit to cure a problem so that it meets the above findings, the Board must grant the permit with that specific condition attached. The facts that relate to the condition needed for approval: the use for which the permit is sought will not adversely affect the health and safety of persons residing or working in the neighborhood and will not be detrimental to the public welfare or injurious to property or public improvements. Mrs. Pouch said it has been an existing business there and he has met all the requirements for health and safety. She said that it is zoned business so it won't adversely affect the neighborhood. Mr. Engel said all the surrounding neighbors are businesses as well and in the same zoning district.

Mr. Griffin said with regard to the application of Jim Kirkpatrick, CU-05-09, for a conditional use permit authorizing the expansion of a shopping center 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: the applicant is required to obtain Zoning Permits for each tenant. Mr. Engel seconded the motion.

Chairman Bonessi asked for a vote by a show of hands:

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| Mr. Bonessi | - | Yes |
| Mrs. Pouch | - | Yes |
| Mr. Engel | - | Yes |
| Mr. Griffin | - | Yes |
| Ms. Holbert | - | Yes |

Chairman Bonessi said the Conditional Use Permit was granted with conditions. The Board discussed the history of the shopping center.

Case V-05-10 – Donald L. and Carolyn G. Brewer

Chairman Bonessi called Case V-05-10, Donald L. and Carolyn G. Brewer, owners, requesting a fifteen (15) foot variance from the side yard setback requirement on the west side of the property at 124 South

Rugby Road to construct an addition onto an existing single-family dwelling. The property is zoned R-40.

Ms. Berry gave a summary of the issues. She said there is a single family dwelling in existence and the owners want to do an addition. She directed the Board to page 2-4 in their packets for an overview of the property. She pointed out the house in the corner of the property with barns below the house. The addition will be on the back of the house between the house and the barns. Ms. Berry said that page 2-5 shows the issue – a property line that has a jog and puts the existing house too close to the property line and it was built before R-40 zoning was in effect in that area. If they do the addition, the addition will be 20 feet from the side yard. They need to place the addition on the back because on the right side of the house is all the utilities – cable television, electricity, the well and septic tank. Ms. Berry said she asked for documentation from environmental health, but they said they didn't have any because of the age of the house. So the only place for an addition is to the rear of the house. Ms. Berry pointed out where the driveway is and said the addition will be on their side of the driveway where it will not encroach into the next-door neighbor's property. She said they would need a 15-foot setback for the addition to be perpendicular to the house, otherwise it would not be attractive. Ms. Berry said the zoning is R-40, so the setback is 35 feet. The setback from the centerline of the street is 60 feet, which they currently meet. They need a 15-foot variance for the 35-foot side yard setback. Ms. Holbert asked if they still meet the 60-foot front yard setback and Ms. Berry said yes. Ms. Berry said that if it weren't for the jog in the property line, they wouldn't need the variance.

Mr. Brewer said that Ms. Berry covered everything. Mr. Brewer and Ms. Berry said they spoke to the neighbors and they had no problem with the variance. Mr. Brewer said that he had received the septic plans from the Environmental Health Department and they were copied for the record. Ms. Berry said that the right side of the house has all the utilities, the front is a traditional front, the left side would be much too close, so the back is the only logical place to accomplish what he is trying to do. There is a lot of property, but that is not where the house is. Ms. Berry said that there was a picture of the house and property on page 2-7. There is a small room attached to the back of the house, which will be torn down. The Board discussed the septic plan in comparison with the plan on page 2-5 and exactly where the addition would be.

Chairman Bonessi asked if there was anyone else who wanted to speak on behalf of the issue. Mr. Griffin asked why the addition could not be placed on the right side of the house. Mr. Brewer said that the septic tank and well were there. Ms. Berry said the cable TV and electricity were also there. Chairman Bonessi asked if it was a utility easement or the utilities for the house. Mr. Brewer said it was for the house. Mr. Griffin asked how far from the house the well is. Mr. Brewer said it was about 30 feet. Ms. Holbert asked what year the house was built. Mr. Brewer said 1929. Mr. Engel asked if there were any plans for the addition. Mr. Brewer said he just had a sketch drawing. Mr. Engel asked if it was just one story. Mr. Brewer said one story with a garage underneath – the garage would be where the driveway is now. Ms. Berry cited page 2-9 and explained the picture. Ms. Berry said that the sketch made everything look tight and there really was more space. Ms. Holbert asked if the house was in existence before zoning. Ms. Berry said that zoning went into that area in 1981 – 1982. Mr. Griffin asked how long Mr. Brewer owned the house. Mr. Brewer said about 20 – 23 years. So Mr. Brewer has owned the house since about the time zoning went into effect.

Chairman Bonessi closed the public hearing and asked for discussion among the Board. Mrs. Pouch asked if the addition couldn't be moved over a little bit, that it looks like it juts out from the house. Mr. Brewer said even without that 4 feet, it is still only 23 feet from the property line. Chairman Bonessi asked what the size of the addition is. Mr. Brewer said 26 feet by 39 feet. Mrs. Pouch said that the house has been there, but she doesn't see why it has to jut out. Mr. Engel said the 4-foot difference would make the variance 11 feet. Mrs. Pouch said that up to 10 feet, the zoning administrator could do. Ms. Berry said that is only if topography issues are involved and this land is flat. Mr. Griffin said that he feels it's a man's house and he should be able to do as he pleases, but on the other hand the Board is there to protect the other people from the setbacks and how much leeway do we give him and how

many variances do you give. Ms. Holbert said that Ms. Berry talked to the neighbors. Ms. Berry said yes and they asked some questions, but didn't have a problem with it as long as it was behind the house. Ms. Berry said all the parcels in the area are large and behind is a flood plain, so there won't be any subdividing. Mrs. Pouch asked how large the property was. Ms. Berry said 3.75 acres. Mrs. Pouch said he could subdivide the property. Ms. Berry said there is a flood plain behind him so he won't be able to subdivide. Mr. Brewer said the reason for the 4-foot jog is just for the looks of the house. There is a wing on the other side of the house and this would break up the long side of the house. The Board discussed this and the utilities. Chairman Bonessi said that the septic plan is not drawn to scale so it is difficult to determine the space. Ms. Holbert said that from the picture on page 2-9, it makes sense to put the garage where the driveway comes in and the 4-foot difference is not going to make a huge difference. Ms. Berry said it is consistent with the neighborhood. Mr. Griffin said if the neighbors don't object.... Chairman Bonessi said do we have facts to support it.

Mr. Engel said with regard to the application V-05-10 for a variance from the minimum side yard requirements, I move the board to make the following finding of facts: strict enforcement of the regulations would result in practical difficulties or unnecessary hardship to the applicant; the variance is in harmony with the general purpose and intent of the ordinance and will preserve its spirit; and in the granting of the variance the public safety and welfare have been secured and substantial justice has been done. Chairman Bonessi said the Board needs to supply reasons for each one of those. Mr. Engel said the utilities were in the way and the septic system. Mr. Griffin said it makes more sense to have the garage on the back of the house where the driveway is. Mr. Engel said it is in harmony because the lots are very large with buffers between them so it won't affect any surrounding neighbors. Mr. Engel said as far as public safety and welfare, there are no changes in egress and ingress to the property. Accordingly, I further move the Board to grant the requested variance in accordance with and only to the extent represented in the application. Mrs. Pouch seconded the motion. The Board spoke about if the applicant complies with the literal terms of the district, he cannot secure a reasonable return from or make a reasonable use of his property. This is a single-family site. The hardship which the applicant complains results from unique circumstances related to the applicant's land. Mr. Engel said the house was built before zoning and is closer to the property line and the location of the septic system. The hardship is not the result of the applicant's own action. Mrs. Pouch said that the house was built before zoning and does not conform now with current zoning.

Chairman Bonessi asked for a vote by a show of hands:

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|-------------|---|-----|
| Mr. Bonessi | - | Yes |
| Mrs. Pouch | - | Yes |
| Mr. Engel | - | Yes |
| Mr. Griffin | - | Yes |
| Ms. Holbert | - | Yes |

Chairman Bonessi said the variance was granted.

COMMITTEE AND STAFF REPORTS: None

OLD BUSINESS:

Ms. Berry said that all trailers have been removed from the Cely trailer park. It has been cleaned up and they are getting ready to work on the road now.

NEW BUSINESS:

Ms. Berry said that she had plans to talk about the Flood Plain Ordinance but she is uncertain what to do. She said the Ordinance is very complicated and perhaps everyone should be present to go over the Ordinance. She said she would like everyone to hear the same thing at the same time. Mrs. Pouch asked about what the Board would do to give a variance. Ms. Berry showed some slides and explained them. She gave insufficient reasons for giving a variance. She gave examples of more permissible

variances for good and sufficient cause. She explained that the 100-year flood plain and flood way are regulated and the 500-year flood plain is not regulated. She said variances significantly increase their insurance rates. The Board spoke about insurance. She said the community has to keep a record of all variances and justifications and they are reported every 2 years to FEMA in a biannual report. Basically, it says do not grant variances – they place people and property at risk and flood insurance costs skyrocket. Ms. Berry said the County has applied to participate in the flood program and are awaiting an answer. Mr. Engel asked if there were many homes in the flood plain. Ms. Berry said a lot – possibly about 400 – 500 structures.

Ms. Berry said that it looks like there may be no cases next month and would the Board like to do the Flood Plain Ordinance instead. So at the next meeting on September 28, the Board will look at the Flood Plain Ordinance and hopefully all members, permanent and alternate will be able to attend.

Ms. Berry also introduced Lyle Case, a new employee in the Zoning Department, who will be a backup for Ms. Berry in presenting cases to the Board.

There being no further business, Mr. Griffin made a motion to adjourn. Mrs. Pouch seconded the motion and all voted in favor. The Chairman adjourned the meeting at 5:15 PM.

Dean Bonessi, Vice Chairman

Joyce Karpowski, Secretary