

MINUTES OF THE HENDERSON COUNTY  
ZONING BOARD OF ADJUSTMENT

The Henderson County Zoning Board of Adjustment held its regularly scheduled May meeting on Wednesday, May 25, 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: Chairman Robert Fleming, Gary Griffin, Ann Pouch, Alternate Members Dale Caldwell and Dr. Philip Stanley, Zoning Administrator Natalie Berry, Planner Autumn Radcliff, and Secretary to the Board Joyce Karpowski.

Chairman Fleming called the meeting to order at 4:05 PM and introduced the members of the Board.

Chairman Fleming presented the minutes of the meeting from March 30, 2005. There were no corrections or changes. Chairman Fleming moved to approve the minutes as written, Mr. Griffin seconded, and all members voted to approve the minutes as presented.

Chairman Fleming welcomed everyone. Chairman Fleming explained the quasi-judicial procedure that would be followed today and the appeal process. He called forward anyone wishing to testify today to be sworn in. Sworn in were: Zoning Administrator Natalie Berry, Akram Khan, Jim Roberts, Rebecca Grooms, Stuart Steppe, Henry Denski, and Planner Autumn Radcliff.

**Case CU-05-04, – Akram Khan, Petitioner**

Chairman Fleming called Case CU-05-04, Akram Khan, Petitioner, requesting a Conditional Use Permit to operate a customary incidental home occupation at his single-family residence at 44 Cedar Creek Drive. The property is zoned R-15. The applicant is requesting to set up an in home childcare service.

Chairman Fleming asked for a summary of the issues. Ms. Berry said that she has taken both conditional use applications to the Planning Board as the Henderson County Zoning Ordinance says can be done and the Planning Board recommendations will be presented to the Board. She said the parcel is zoned R-15 and allows for incidental home occupations with the granting of a conditional use permit as per Henderson County Zoning Ordinance Section 200-16.C. Section 200-16.C.2 Customary incidental home occupations includes, but is not limited to, dressmaking, cooking, baking, music instruction, the practice of such professions as insurance, medicine, artistry, architecture, accounting, permitted as accessory uses in a residence. The definition of "Customary Incidental Home Occupation" as per Henderson County Zoning Ordinance Section 200-7.B states

"Customary Incidental Home Occupation – Any use conducted entirely within a dwelling and carried on by the occupants thereof, which use is clearly incidental and secondary to the use of the dwelling for residential purposes and does not change the character thereof; provided, further, that no mechanical equipment is installed or used except such as is normally used for domestic or professional purposes and that not over 25% of the total floor space of any structure is used for a home occupation. No home occupation shall be conducted in any accessory building. Customary incidental home occupations permitted as accessory uses in a residence include, but are not limited to, dressmaking, cooking, baking, music instruction, woodworking, arts and crafts and the practice of such professions as insurance, medicine, artistry, architecture and accounting."

Ms. Berry said the petitioner intends to use the property for an accessory use as an in home childcare service. The applicant is in the process of applying for state permitting to operate an in home childcare service. The petitioner intends to operate this business with the assistance of Rebecca Grooms. If

granted the state license, they will be approved to care for no more than 8 children ranging from the ages of 2 years to 5 years old. The total square footage of living area in the structure is 2108 Square Feet. Not more than 25% of the total floor space can be used for the home occupation as per the definition of "Customary Incidental Home Occupation". The home occupation will reside in the basement portion of the structure and will not use more than 527 Square Feet of floor area. The petitioner is the resident at 44 Cedar Creek Drive. The petitioner will provide a 7.5 Square Foot sign not to exceed 5 feet in height to identify the service that resides at the residence. Ms. Berry described the pictures included in the Board's packets, showing the fence, gate, driveway and parking.

Chairman Fleming said that Mr. Griffin said that he had sat on the Planning Board and if he voted on one Board he couldn't vote on the other Board. Mrs. Radcliff said that he had recused himself on both Conditional Use Permits at the Planning Board meeting and the minutes of the Planning Board reflect this.

Ms. Berry continued describing the pictures. There is a picture of the house, from the house to the street, the 2 rooms in the basement used for the childcare.

Mrs. Pouch asked if they would get their license before they get the Conditional Use Permit. Ms. Berry said it should be a condition of the Permit that they have to get their license. Mr. Caldwell asked the hours of operation. Ms. Berry said that Mr. Khan could answer that. Dr. Stanley asked if they could use 25% of the square footage for the use, how large are the 2 rooms downstairs. Ms. Berry said that it just falls within the 25%. Chairman Fleming said it was zoned R-15 and Ms. Berry said yes. Chairman Fleming asked if it was in a subdivision and the name of the subdivision. Ms. Berry said Cedar Creek. Dr. Stanley asked if there was only 1 exit from the basement. Ms. Berry said there were 2 – one exit going upstairs and one exit going directly outside. Dr. Stanley asked what the fence material was. Ms. Berry said it was not a chain link fence but looked more like a garden fence – the petitioner could answer that. Chairman Fleming asked if there were any zoning requirements about the fence. Ms. Berry said the customary incidental home occupation is supposed to be entirely within the dwelling. Daycare has been allowed in the past if the yard is fenced. There were no more questions for Ms. Berry.

Akram Khan came forward. He explained that Rebecca Grooms, Mr. Khan's wife and himself wanted to start the daycare here. Perhaps in the future they could move to a larger place. He said there would be a maximum of 8 children. Chairman Fleming asked if he has applied for his state license. Mr. Khan said after they receive the Conditional Use Permit they will apply. Mr. Caldwell asked the hours of operation. Mr. Khan said 7 AM to 6 PM. Mr. Caldwell asked if staffing meets requirements. Mr. Khan said yes. There were no more questions for Mr. Khan.

Chairman Fleming asked if anyone else would like to speak. Rebecca Grooms came forward. She said that she would be working with Mr. Khan and his wife. Ms. Grooms addressed the fence and said that is the outline of where a chain link fence will be going. She said there will be no way children will be able to get out of the fence with 2 people supervising. She said they will be inside in the morning and outside once or twice, depending on the weather. She said the state requires the children to be outside so many minutes of the day and have a chain link fence to protect the children. Mrs. Pouch asked if the facilities are checked when the state grants a license. Ms. Grooms says there is an inspection of the whole house before issuing the license and every 6 months. Mr. Caldwell asked if the ages were 2 – 6. Ms. Grooms said 2 – 5. Mr. Caldwell asked if it were mandated by the state. Ms. Grooms said it was their choice. Ms. Grooms said it was their choice on the age and the state's choice as to how many children are allowed. Dr. Stanley asked about deliveries. Ms. Grooms said there wouldn't be any. Dr. Stanley asked about food preparation. Ms. Grooms said that would be inside, upstairs in the kitchen.

Chairman Fleming asked if anyone else would like to speak. Henry Denski came forward. He said he lives directly across from the property. Mr. Denski said he was concerned about using the same entrance and exit to the property. He said he was concerned about the fence – there is no shade and it

is not a cyclone fence. He said this house is the second residence from Howard Gap Road. Dr. Stanley asked if Mr. Denski were opposing the application. Mr. Denski said he had concerns about hours and for the children but he was not opposed to it. Mr. Denski also asked how many children lived at the residence. The answer was 4. Mr. Denski said with another 8 – he also didn't know the square footage of the residence. But that is 12 children in about 2100 square feet. Dr. Stanley asked if the other neighbors were aware of the plan. Ms. Berry said she had received quite a few phone calls with most comments about Howard Gap Road. Mr. Denski said that there is quite a lot of traffic going down the street.

Chairman Fleming asked Mr. Khan to come forward again. Chairman Fleming asked about the total number of children. Mr. Khan said that he had 4 children who go to school, but they are not part of the daycare and will be upstairs. Mr. Griffin asked about the driveway and if the clients would have to back out of the driveway. Mr. Khan said the driveway will be circular with an exit onto the street. Mr. Griffin asked how big the lot was. The lot is 150' x 120'. It was asked where the septic field was. Ms. Berry said it was on the front right side of the house. The size of the septic field was discussed and if the Health Department was involved. Ms. Berry said that could be made a condition. Mr. Kahn said the house was built in 1991. Mrs. Pouch asked if the licensing people would check into it. Ms. Berry said she wasn't sure, but it could be made a condition.

Mrs. Radcliff handed out information from the Planning Department concerning the Planning Board's recommendations about the application and the minutes from their meeting. At their meeting on April 19, 2005, the Planning Board voted 5 to 0 to send the Zoning Board of Adjustment a favorable recommendation on granting the Conditional Use Permit subject to the following: 1) Verification that the applicant's subdivision covenants allow a daycare center to operate; 2) That the applicant provide a fenced-in area adequate for the children to play outdoors and safe enough to keep them out of traffic and other people's property; 3) That the hours of operation be Monday through Friday, from 7:00 AM to 6:00 PM; 4) Unless it is required by the State, that no sign or sign lighting or anything of that nature advertising the business be erected on the property; 5) That the applicant demonstrate approval of all State licensing requirements before beginning operation. Mrs. Pouch asked that they not have a sign. Mrs. Radcliff said that the Planning Board recommended that they not have a sign. Chairman Fleming asked if the Planning Board said anything about the maximum amount of children. Mrs. Radcliff said it was discussed and is in the minutes, which is included, but it was understood the State would allow them the maximum amount of children. She said the Planning Board wanted all licensing in place and demonstrated to the Zoning Administrator before beginning operation. Mrs. Pouch asked the maximum amount of children. Mrs. Radcliff said 8 children. There were no other questions.

Chairman Fleming said, if there were no further comments, he would close the public hearing and the Board would discuss the application. Chairman Fleming said that he felt the applicant was doing due diligence and he was okay with the conditions from the Planning Department. Mr. Caldwell said they must follow the regulations from the State. Mr. Griffin was concerned with fence and if it would be chain link. Mrs. Pouch said that was required. Mrs. Pouch asked if that should be a condition. Ms. Berry said that anything the Board wants as a condition should be made a condition, whether the State requires it or not. Chairman Fleming asked if the height needs to be specified. Ms. Berry said she thought it would a typical (4 foot) height seen in a residential neighborhood. Dr. Stanley said only one neighbor came and did not seem opposed, just concerned about the road and traffic. Dr. Stanley said he was concerned about the amount of children and yet childcare is necessary and need to be encouraged. Chairman Fleming said that the neighbors are all notified and the Hearing is advertised in the newspaper. Dr. Stanley said that he was willing to follow the recommendation of the Planning Board.

Mr. Griffin asked about the subdivision covenants, if there are any. Ms. Berry said Mr. Khan didn't know if there were any, and Mr. Denski said he didn't know of any. Ms. Berry said that could be a condition also – subject to the subdivision restrictive covenants. Dr. Stanley suggested using the Planning Board conditions. Ms. Berry said they could be added to the Board's conditions. Chairman Fleming said that since he will be looking for a larger building and not be here for a long time, there isn't

any reason to put up a sign. Mrs. Pouch said unless the State requires it. Mr. Caldwell said the less commercial appearing in the residential area, the better. He said no one should be depending on the sign to find the place. The Board discussed the septic and said it should fall under the Health Department.

Mr. Griffin said with regard to the application of Akram Khan for a conditional use permit authorizing the operation of a customary home occupation (in home daycare) on the property located at 44 Cedar Creek Drive, 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: 1) The applicant demonstrate approval of all State licensing requirements before beginning operation; 2) No sign or sign lighting be erected on the property unless it is required by the State; 3) The applicant provide a 4 foot chain link fenced enclosure adequate for the children to play outdoors and safe enough to keep them out of traffic and other people's property; 4) The applicant complete a circular drive providing a separate entrance and exit for vehicles before opening; 5) Verification that the applicant's subdivision covenants allow a daycare center to operate; 6) Hours of operation be Monday through Friday, from 7:00 AM to 6:00 PM; 7) The applicant obtain a Henderson County Zoning Permit. Mrs. Pouch seconded the motion.

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

Mrs. Pouch	-	Yes
Mr. Fleming	-	Yes
Mr. Griffin	-	Yes
Mr. Caldwell	-	Yes
Dr. Stanley	-	Yes

Chairman Fleming said the Conditional Use Permit was granted with conditions.

#### **Case CU-05-05, – Jim Roberts, Petitioner**

Chairman Fleming called Case CU-05-05, Jim Roberts petitioner, requesting a conditional use permit to construct a shopping center on his commercial property at 1890 – 1900 Spartanburg Highway in the C-4 zoning district.

Chairman Fleming opened the public hearing and asked for a summary of issues. Ms. Berry said the applicant is seeking a Conditional Use Permit in order to construct a shopping center at 1890 – 1900 Spartanburg Highway, consisting of two proposed and one existing building in a C-4 district. The parcel is zoned C-4. The approximate size of the property in question is 1.91 acres. §200-22.B(1) "Conditional Uses" [added 5-16-2001] allows for shopping centers with a Conditional Use Permit in the C-4 zoning district. §200-22.C "Dimensional Requirements" states the dimensional requirements of the district. The front setback is 75 feet from a major street; side and rear yard setbacks are same as R-10 zoning district, which are 10 feet from adjoining property boundaries. (The same as the side yard requirements to which the district is contiguous). §200-40 "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 23,444. One existing building is 5,422 SF, One proposed building is 9,000 SF and the other proposed building is 3600 SF. The number of parking spaces required (new construction only) is 60. The site plan shows 63 parking spaces, so he meets that requirement. 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, so he meets that requirement. §200-41 "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. Each building has less than 10,000 square feet. Each building shows one loading and unloading zone to meet requirements. § 200-52 Group Development standards do apply and the requirements are met. The application was duly advertised as required in Section 200-69.C(1) of the Henderson County Zoning Ordinance and the property has been posted. Ms. Berry cited page 2-5 of the Board's packet, Minutes – May 25, 2005

which is the new site plan after the Planning Board's recommendations. She pointed out Dotson Half Loop Road (a private road) going around the back of the property to one or two dwellings. There is buffering shown in the back corner as the Zoning Ordinance requires between residential and commercial uses. Ms. Berry read the buffer as printed on the site plan. She pointed out the loading zones shown at each building. Mrs. Pouch asked which was the existing building. Ms. Berry said it was the one on the left, which will remain and the use will not change. Ms. Berry pointed out the dumpster in the back corner. The new back building will possibly be warehouse use and the new front building will be for stores or restaurants. Chairman Fleming asked the distance between the existing building and the new building. Ms. Berry said it will be 30 feet. Originally the 2 buildings were connected with an awning, but they are no longer connected since comments at the Planning Board meeting about fire safety. So now there are 3 separate buildings. That's the reason the Group Development standards will apply.

Jim Roberts and Stuart Stepp, Architect, came forward. Mr. Roberts said they are asking to build a shopping center, which will improve the area and bring more business to the area. Ms. Berry said there was a picture of the property behind the Board. Mr. Stepp said that was what it looks like now. Ms. Berry said the yellow building will remain and the building on the right is already gone. Dr. Stanley asked for the exact location. Mr. Roberts mentioned some of his neighbors. Dr. Stanley asked about buffer. Mr. Stepp said there was a small portion of the property that abuts R-10 zoning in the back corner. Ms. Berry pointed out the portion and there is a natural buffer there now. Mr. Stepp said the land also drops off. Mr. Stepp said that Mr. Roberts wants to bring this piece of property up to the new standards that are happening on Spartanburg Highway with new development.

Mrs. Pouch asked about the large equipment being kept behind the present building. She was wondering if the 30 feet between the buildings was enough for the large trucks to get by. Mr. Roberts said yes that a 2-lane highway is nineteen feet wide, so there is sufficient room. Mr. Stepp said the 30 feet is by fire code. Mr. Stepp said that some equipment is kept to the left of the present existing building. Mr. Roberts said that he doesn't have to keep all the equipment there because he owns other nearby property, but he likes to keep most of the equipment there. Mr. Roberts said that he did not foresee a problem with the equipment and the 30-foot space between buildings.

Chairman Fleming asked about the signage for the shopping center. Mr. Roberts said that Mr. Stepp had drawn a sign with the name and 8 small panels, one for each tenant (page 2-12 in the packet). Mrs. Pouch asked if Mr. Roberts would keep his sign. Mr. Roberts said they currently have 2 signs, one (looking like a muffler), which will stay, and the other (square sign) will be replaced by the new sign.

Mr. Griffin asked if there were sidewalks there. Ms. Berry said yes, a sidewalk/swale. Mr. Stepp described the sign. Mr. Caldwell asked how many tenants there will be. Mr. Stepp said the front building will have 6 tenants and the back building 2 tenants, for a total of 8 tenants. Mrs. Pouch asked how many entrances there were to the property. Mr. Stepp there are currently 4 entrances. Dr. Stanley asked about the amount of impervious surface left after construction. Mr. Stepp said they would keep the areas shown, but there is not a percentage. Mr. Stepp said there would be new paving, but the existing drainage is there already with a concrete swale. Chairman Fleming asked about the design of the buildings. Mr. Roberts said it will be the same color as the building across the road with a tan bottom and green roof.

Mrs. Radcliff handed out information from the Planning Department concerning the Planning Board's recommendations about the application and the minutes from their meeting. At their meeting on April 19, 2005, the Planning Board voted 5 to 0 to send the Zoning Board of Adjustment a favorable recommendation on granting the Conditional Use Permit, with the revised site plan, subject to the following: 1) That the Board of Adjustment make a determination as to the size, lighting, etc., of the proposed new sign, 2) That the Planning Board specifically noted that the covered walkway is being eliminated, 3) That there be no direct access to the site off of Dotson Half Loop Road, 4) That any lighting on the property be confined to the property, 5) That adequate buffering, parking and removal of

existing storage vehicles, trailers, etc., be done, and 6) That the Zoning Board of Adjustment consider a condition of the permit to require the owners to notify the Zoning Administrator of any change of occupancy so that the required permits can be applied for. This would be for individual tenants of the shopping center. Mrs. Radcliff said it is required but the Planning Board felt it should also be a condition. Dr. Stanley asked about the lighting and if it was specified. Mrs. Radcliff said the plan was not specific. Lighting was discussed. Mr. Roberts said the larger amount of lighting would be toward the front (highway side) of the buildings. He said there is only a small building to the rear and any lighting shouldn't bother the neighbors with the large tree buffer. He said Duke Power already has 2 existing large lights on the property.

Dr. Stanley asked about the public using the road to behind the property. Mrs. Radcliff said the Planning Board suggested there not be access from the shopping center to the road. Mr. Caldwell asked if Mr. Roberts planned to use access to Dotson Half Loop Road. Mr. Roberts said that there is no practical access to the road because it is about 20 feet straight down from the property. Ms. Berry said the Planning Board wanted to keep the residential and commercial separate. The sign was discussed.

Chairman Fleming closed the public hearing and asked for discussion from the Board. Chairman Fleming asked Ms. Berry to explain where the covered walk was. Ms. Berry said it was between the present building and new front building, but will not be there now. There was no further discussion.

Mrs. Pouch said with regard to the application of Jim Roberts for a conditional use permit authorizing the operation of a shopping center on the property located at 1890 – 1900 Spartanburg Highway, 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: 1) That any lighting on the property be confined to the property and not affect the residential property; 2) The sign be erected as designed in Attachment 2-12; 3) Buffering between the residence and project be retained and as on the plan; 4) Each tenant would need to apply for a zoning permit before occupying the structure; 5) Only tenants that are allowed under C-4 designation be allowed; 6) That there be no direct access to the site off of Dotson Half Loop Road. Mr. Griffin seconded the motion.

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

Mrs. Pouch	-	Yes
Mr. Fleming	-	Yes
Mr. Griffin	-	Yes
Mr. Caldwell	-	Yes
Dr. Stanley	-	Yes

Chairman Fleming said the Conditional Use Permit was granted with conditions.

COMMITTEE AND STAFF REPORTS: None

OLD BUSINESS: Update on CU-04-10, Cely Trailer Park, Flintwood Lane off Holbert Road

Ms. Berry said that she wanted to bring the Board up to date on the park. She passed out a copy of the plan approved with the granted Conditional Use Permit. She reviewed the history of the park. The permit was granted with conditions on June 30, 2004. Ms. Berry said there is a potential new general manager that wants to take over the park. He will not buy the park, but rent it from Mr. Cely. The land will stay in Mr. Cely's name. Ms. Berry asked the Board for some direction on how to proceed. She told the new manager that there is a conditional use permit that Mr. Cely is currently in violation of. Ms. Berry passed out a packet to Board members with the conditional use order. Within this copy of the order, Ms. Berry highlighted in red the conditions agreed to by the manager. She wants to know if the Board wants the new manager to come before the Board or if the Board would give Ms. Berry leeway to

give the manager 60 days or so to get started. If that fails, then she could bring it back before the Board. Ms. Berry explained that right now there are 19 – 23 vacant trailers all in some state of disrepair. Ms. Berry said that Mr. Cely hasn't done anything since the permit was issued, so he is in violation and the permit could be revoked. Ms. Berry said the new manager has borrowed enough money to remove every trailer and start from scratch. He has agreed also to put the dumpster in. The new manager has said he wants to take all the mobile homes off the site, grade the road and build the road with curb and gutter, put the dumpster in place, put the playground in place, and then start bringing units in for Phase I. Ms. Berry said he couldn't occupy anything until the road was built and the dumpster and playground put in. She said the new manager was agreeable to that. Ms. Berry suggested the Board allow her to work with the new manager for 6 months. She asked the Board if they thought they might want to revisit the conditional use permit, although he was using the same plan. Chairman Fleming asked if Ms. Berry would monitor the progress over the next 6 months time period, then if he doesn't do what he's supposed to, the Board could review the permit. The Board discussed this. Chairman Fleming asked if Ms. Berry would give the Board updates periodically. Ms. Berry agreed. The Board agreed to Ms. Berry's request.

NEW BUSINESS: None

There being no further business, Chairman Fleming made a motion to adjourn. Mr. Caldwell seconded the motion and all voted in favor. The Chairman adjourned the meeting at 5:30 PM.

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Robert Fleming, Chairman

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Joyce Karpowski, Secretary