

January 26, 2005
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 26, 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, Anthony Engel, Ann Pouch, Alternate Members J. Eric Goodman and Dr. Phillip Stanley, Zoning Administrator Natalie Berry, and Secretary to the Board Joyce Karpowski.

Chairman Fleming called the meeting to order at 4:00 PM and introduced the members of the Board.

Chairman Fleming and Ms. Berry presented a plaque to Keith Shelley and thanked him for his years of service on the Board of Adjustment.

Chairman Fleming welcomed everyone and explained the procedure for the meeting with a quasi-judicial procedure and said that 4 affirmative votes are necessary for approval of any application. He called forward anyone wishing to testify today to be sworn in. Sworn in were: Zoning Administrator Natalie Berry, Bruce Borgersen, and Ridgeway Lynch.

Chairman Fleming presented the minutes of the meeting from January 5, 2005. There were no corrections or changes. Chairman Fleming moved to approve the minutes as written, Mrs. Pouch seconded, and all members voted to approve the minutes as presented.

Case CU-01-91A, – Kanuga Conference Center, Ridgeway T. Lynch, petitioner

Chairman Fleming called Case CU-01-91A, Kanuga Conference Center, Ridgeway T. Lynch, petitioner and opened the public hearing.

Chairman Fleming asked for a summary of the issues. Ms. Berry said this case is requesting an amendment to a current conditional use permit, CU-1-91. Ms. Berry said that a legal notice had been published in the newspaper on January 10 and 17, 2005 with a display ad on January 24, 2005. She said the reason this was before the Board today is that the original permit (page 1-12 in the packet) has a condition that says any improvements or expansions, other than those listed in the application, would require an amendment to the application. The original permit was issued on January 30, 1991. The petitioner wants to build a 102' x 50' new program building on the site. This is a camp with lots of camp cottages. People come for a period of time but do not reside there permanently. There is enough room for 425 people and there is now one program building that accommodates half the amount of people. They would like to have 2 program buildings so everyone could attend at one time. She pointed out on a map where the property is (of between 1100 and 1300 acres) and where the program building is located on the property. Part of the property (where the building will be placed) is in R-40 and part in Open Use district. Ms. Berry said that Section 200-14.C of the Henderson County Zoning Ordinance allows for Parks, camps, tennis and racquet clubs and golf courses as a Conditional Use in the R-40 zoning district. The R-40 zoning district requires side and rear setbacks of thirty (30) feet, which he meets. There is also a sixty (60) foot front yard setback, which has also been met. She also said that a condition was to get an amendment to the original conditional use permit.

Mrs. Pouch asked about the R-40 part of the property and if it is developed, does it have to have the 40,000 square feet. Ms. Berry said yes but it is still one whole piece of property.

Mr. Lynch came forward and said that Ms. Berry presented the case very well. He noted the letter with his application and said he couldn't add much more. Ms. Berry said the letter was page 1-4. Mr. Lynch said their capacity was 425 people and their present building will seat 425 people. They would like to have the capability of having 2 groups of 200 at the same time.

Chairman Fleming asked if there was a designated parking area. Mr. Lynch said their guests parked at their cabins and then walked, so there is not a parking issue at the program building. He said photographs in the packets show the cars at the cabins. Chairman Fleming asked about delivery trucks around the building. Mr. Lynch said it would not be an issue at this building.

Chairman Fleming asked if there were any other questions. There were none.

Ms. Berry said with the Conditional Use Permit there are 6 provisions that should be met and Mr. Lynch addressed them in his letter.

Chairman Fleming asked if there was anyone else who wished to speak about the case. There was no one. He closed the public hearing.

Mrs. Pouch said that Mr. Lynch did a very thorough job in answering all the requirements.

Mr. 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. Mr. Bonessi said this was well thought out. Chairman Fleming said there was plenty of land and they have a very well organized organization and there will not be a problem affecting the health and safety of persons residing in the neighborhood. Mr. Bonessi said this project will not be detrimental to the public welfare or injurious to property or public improvements. Mrs. Pouch said there won't be any extra traffic, they are already there and walk safely and it would be an improvement and help to their property. Chairman Fleming said there's no problem with ingress and egress.

Mr. Bonessi said with regard to the application CU-01-91A for a conditional use permit authorizing the operation of second conference building on the property in question, I move the board to make the following finding of facts: the proposed use will not adversely affect the health and safety of persons working and residing 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 with the following conditions. This permit is subject to the first conditional use permit. Mr. Engel seconded the motion.

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

Mr. Engel	-	Yes
Mrs. Pouch	-	Yes
Mr. Fleming	-	Yes
Mr. Bonessi	-	Yes
Mr. Goodman	-	Yes

Chairman Fleming said the conditional use permit has been granted.

Case V-05-01, Bruce A. and Jeannette Borgersen

Chairman Fleming called Case V-05-01, Bruce Borgersen and opened the public hearing.

Chairman Fleming asked for a summary of issues. Ms. Berry said that Mr. Borgersen owns a piece of property at 4 Snow Drive. The property is unusual and pointed it out on a drawing. It is a corner lot and has a 128-foot Duke Power Transmission Line right-of-way behind the property. He is restricted by this and 2 front yard setbacks. She pointed out a 30-foot side yard setback that can be met between his neighbor and himself. He cannot meet the 60-foot setback from the centerline of the 2 streets. He needs it to be 45 feet to situate a 28' x 48' house on the site. Section 200-50.B.(1).(a) states where the average slope is greater than 18% but less than 25%, the minimum front yard setback may be reduced by 10 feet. The sloping of the property does fall within the 18% to 25% but does not give enough relief to construct the home. The petitioner needs an additional 5 feet relief from what the Ordinance provides. Ms. Berry showed pictures 2-8 to 2-10 and described the slope as pictured.

Mrs. Pouch asked if the septic could be put on the Duke Power right-of-way. Ms. Berry said that according to the permit from Environmental Health 2-6, there are notes saying they have to be 10 feet off all property and water lines and 15 feet off any basement cut or cut bank of 2 feet or more. She said there is a very steep slope in the back and that's why the septic can't go back there. Mrs. Pouch asked if the land were flat, if it could go back there. Ms. Berry said she doubted that it would be allowed.

Chairman Fleming said that actually under the Board's jurisdiction, it would only be a 5-foot variance on the 2 front yards. Ms. Berry said yes. Chairman Fleming asked if there was any opposition that she was aware of. Ms. Berry said no.

Ms. Berry said there was sketch on page 2-7 which shows the placement of the house and septic system and was done by a surveyor. Chairman Fleming asked what the zoning was. Ms. Berry said R-30, which requires a 60-foot setback from the centerline of a minor street. Ms. Berry said that the property is in a watershed but he does have the required 20,000 square feet for a single-family home. It is Watershed IV and he has 25,700 square feet. Chairman Fleming asked if there were any other questions for Ms. Berry. There were none.

Mr. Engel questioned the five-foot vs. fifteen-foot reduction. Ms. Berry said through the Zoning Ordinance she has authority to give him a ten-foot reduction, but without the Board's five-foot variance, the ten feet don't work. So it has to be a joint effort for a total fifteen feet.

Chairman Fleming asked Mr. Borgersen to come forward. Mr. Borgersen said Ms. Berry said most of the information. He showed on the survey that the building area was pie shaped and difficult to fit the house on. He said Eric from the Health Department mapped out the septic field and has to stay fifteen feet from the Duke Power right-of-way. The septic field cannot go on the Duke Power right-of-way.

Mr. Bonessi asked what type of septic system it was. Mr. Borgersen said a 35% reduction. Mr. Borgersen pointed out the septic tank and field and said it was a 25% reduction process.

Mrs. Pouch asked if Mr. Borgersen knew the property had the problems when he purchased the property. Mr. Borgersen said he didn't realize it since they didn't try to fit the house on it.

Chairman Fleming asked how many square feet the house was. Mr. Borgersen said it was around 1300 square feet. It was a 2-bedroom house.

Mr. Bonessi asked how long he owned the property. Mr. Borgersen said about 3 – 4 months. He said the house would be a very nice house with a basement with a garage and family room in the

basement. He said his son and he were building it. He said they were also building one on Eldon Street; they built one at 214 Mansfield which they sold last summer. The houses aren't big, but they are nice and affordable. He explained how it was sold on the Internet. Chairman Fleming said he was not building it for himself but as a spec house.

There were no more questions and the Chairman closed the public hearing.

Mrs. Pouch said if took five feet off of each side....The Board discussed the size of house to fit on the building area. Chairman Fleming asked the Board members if they saw a hardship to the land. He said he understands the slope of the land and the Duke Power right-of-way, but the house could be cut down. Mr. Engel referred to the septic permit saying it had to be 10 feet off any line but 15 feet off any cuts in the banks and that is what is really holding the septic system closer to the house.

Mr. Borgersen wanted to say something and Chairman Fleming reopened the public hearing. Mr. Borgersen said that the cut bank was practically on the Duke Power line, so they are practically one and the same. Chairman Fleming closed the public hearing.

Mr. Bonessi said this probably should have been investigated up front and it is not for personal use but a spec built house. He said the Ordinance already gives a 10-foot leniency for the grade issues. Mr. Bonessi said he could reduce his house size by 5 feet.

Chairman Fleming asked again the exact size of the house. Mrs. Pouch said that it was 28' x 48'. That is 1344 square feet. There will be a lower level with a garage downstairs. Mr. Goodman read from the application that if he couldn't get a variance, the petitioner could place a modular home there. He asked if that was allowed. Ms. Berry said a modular was allowed in the zoning district. Mr. Engel said there are other alternatives, one would be not a full basement in the back of the house and reducing the setback to the septic tank to 5 feet and the house could be moved 5 feet more from the front property lines. The septic tank setback is 5 feet from a crawl space. Mr. Engel said the crawl space would just have to be at the back of the house next to the septic tank and there could be a full basement under the rest of the house. Chairman Fleming asked if there was a homeowners association there. Ms. Berry said she didn't know. Mrs. Pouch said that he could get the 10 feet from the Zoning Administrator and then redesign the house to make it work. Mr. Engel said the house could be 28 feet deep except for one little corner and then adjust the downstairs so he doesn't have a full basement running to the back of the house. Mr. Engel said there are alternatives.

Mrs. Pouch said if the applicant complies with the literal terms of the district, he couldn't secure a reasonable return from or make a reasonable use of his property. Chairman Fleming said that if he complies with the zoning district and receives the 10 feet from the Zoning Administrator, he can still get reasonable use of his property. Mrs. Pouch continued that the hardship which the applicant complains results from unique circumstances related to the applicant's land. Mrs. Pouch said it is unique but he can still build a house and make it work. Chairman Fleming said that he has a permit to put in a septic tank. Mrs. Pouch said the hardship is not the result of the applicant's own action. Mrs. Pouch said in a way it is because he wants more space and he could make the house conform to the R-30 regulations. Mrs. Pouch said the variance is in harmony with the general purpose and intent of the ordinance and will preserve its spirit. Mrs. Pouch said that he could make use of the property in an attractive way and still comply with the R-30 zoning. Mr. Griffin said the variance will secure the public safety and welfare and will do substantial justice.

Mrs. Pouch said with regard to the application of V-05-01, for a variance from the minimum front yard requirements, I move the Board to make the following findings of facts: 1) strict enforcement of the regulations would result in practical difficulties or unnecessary hardship to the applicant; 2) the variance is in harmony with the general purpose and intent of the ordinance and will preserve its

spirit; and 3) in the granting of the variance the public safety and welfare have been secured and substantial justice has been done. Accordingly, I further move the Board to grant the requested variance in accordance with and only to the extent represented in the application. There was no second to the motion. Mrs. Pouch said, accordingly, I further move the Board does not grant the requested variance. Mr. Bonessi seconded the motion. The Board discussed the motion.

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

Mr. Engel	-	Yes
Mrs. Pouch	-	Yes
Mr. Fleming	-	Yes
Mr. Bonessi	-	Yes
Mr. Goodman	-	Yes

Chairman Fleming said the variance has been denied.

ELECTIONS: Mr. Engel nominated Mr. Fleming for Chairperson and Mrs. Pouch seconded the nomination. All voted in favor. Mrs. Pouch nominated Mr. Bonessi for Vice Chairperson. Mr. Engel seconded and all voted in favor. Chairman Fleming nominated Mrs. Karpowski for Secretary and Mr. Engel seconded the nomination. All voted in favor.

COMMITTEE AND STAFF REPORTS: Ms. Berry said that she has started to invite one Alternate member of the Board to each meeting and she put together a calendar, at Mr. Goodman's suggestion, so the Alternates know ahead of time when to attend. The Board discussed this and thought it was a good idea. The calendar will be sent out next month.

Ms. Berry distributed copies of the appeal of the cell tower case, where the Court ruled in the County's favor.

OLD BUSINESS: Ms. Berry said that she had copies of the training course for the Board of Adjustment that the Board attended in Asheville, if anyone needs a copy. It was suggested to send a copy to the Alternates that didn't attend the seminar.

The Board discussed the previous case and how the applicant could have modified the house to fit on the property.

NEW BUSINESS: Chairman Fleming asked how the Board felt with the new script that he was using today. Mr. Bonessi asked to simplify the format for making motions and decisions. The Board discussed the paperwork and how it could be modified. The Board also discussed the wording for denying an application. Ms. Berry said she would check with Rich ? and get suggestions from him. The Board discussed whether the vote should be by voice or a show of hands.

There being no further business, Chairman Fleming made a motion to adjourn. Mr. Engel seconded the motion and all voted in favor. The Chairman adjourned the meeting at 5:10 PM.

Robert Fleming, Chairman

Joyce Karpowski, Secretary