

December 10, 2003
4:00 PM

MINUTES OF THE HENDERSON COUNTY
ZONING BOARD OF ADJUSTMENT

The Henderson County Zoning Board of Adjustment held its scheduled November meeting, rescheduled to Wednesday, December 10, 2003, 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 Diane Grant, Anthony Engel, Robert Fleming, Ann Pouch, Zoning Administrator Brad Burton, Planning Director Karen Smith, and Secretary to the Board Joyce Karpowski.

Chairman Grant called the meeting to order at 4:03 PM and introduced the members of the Board. She presented the minutes of the meeting from November 12, 2003. Chairman Grant said that the only member at the November meeting who is not here today is Tamra Crane. There were no corrections or changes. Chairman Grant said the minutes stand approved as presented.

Case CP-86-02 – John Franklin Cely II, Continuation from November 12

Chairman Grant said the only case before the Board is the continuation of John Franklin Cely II, a review for compliance of a Conditional Use Permit allowing the operation of a manufactured home park, specifically, the Sleepy Hollow Manufactured Home Park, located on Holbert Road (SR 1367) in Mountain Home, NC. The parcel containing the park is zoned T-15. She said at the last meeting the Board had testimony presented, a public hearing and the Board heard evidence and testimony from any number of people at that time. The public hearing was then closed and at the end the Board asked Henderson County Assistant Staff Attorney Burrell to give the Board findings of facts for consideration based on the testimony heard. She said the Board's packets contained written documentation, the previous order granting the permit, and the draft of the order for compliance. Chairman Grant said she wanted each member to have the opportunity to go over the draft for their input and then have conclusions to the matter.

The Board took time to review the draft findings of fact and order.

Chairman Grant recapped the findings of fact in the draft. She said it basically sets forth all the statistics and dates as to the original issuance of the Conditional Use Permit and the fact that Mr. Cely is the sole owner of the property and solely responsible for compliance with the terms of the permit. The permit was originally issued on June 30, 1986 and as early as March of 1987 was requested to appear before the Zoning Board of Adjustment and asked to resubmit the plat pursuant to the permit. A memo for the record was submitted by the Zoning Administrator citing that there were problems already with compliance, including storing unoccupied mobile homes within the park, improper mobile home layout, and uncollected trash within the park. The remainder of the findings indicate that at least on an annual basis, if not more often, since the permit was issued, there have been violations and it was necessary to have Mr. Cely before the Zoning Board of Adjustment to answer to the violations and get the park cleaned up again to bring the park into compliance. Any time there is a violation of the conditional use permit, the permit is subject to revocation. The Board must determine if there were violations of the conditional use permit when the Zoning Administrator gave notice to the owner and gave him a specific period of time to come into compliance and at the end of that specific period of time, which in this case the record indicates from September 18 and on October 7, 2003, the Zoning Administrator sent Mr. Cely a Notice of

Compliance Review for him to respond to the allegations. At the next Board of Adjustment meeting scheduled for October 23 and actually held November 12, 2003, the Zoning Administrator presented testimony that determined that the conditions had not been met and there still existed violations of the conditional use permit. The photographs, testimony and everything that was presented by the Zoning Administrator indicated that there were violations. Testimony given by the owner of the property (Cely) as of the actual meeting indicated there were still violations of the permit. Mr. Cely confirmed there were dead set-up permits in the park which were units that were not habitable and did not have Certificates of Occupancy. He also testified that there were units used to store appliances. He also stated that whenever he cleans up the park "the next week it's a mess again". Testimony was given that it was impossible for him to keep it cleaned up because he had nothing in place to keep the park in compliance. The Board would need to reach conclusions that either there were no violations of the Ordinance at the time the Board had the hearing or that there were violations - basically did the Board determine that there were violations or there were not violations. If you determine there were violations, there is no choice but to revoke and terminate the conditional use permit. If you find there were no violations then the only choice is to allow the conditional use permit to continue. Chairman Grant made sure the Board members understood the determination.

Chairman Grant asked for discussion from members of the Board. She asked for any additions or anything in the draft of the findings that the Board members want to discuss or don't find accurate. Mrs. Pouch said she had none and it was very detailed.

Chairman Grant wanted the Board to discuss whether or not they find, as of the final date that Mr. Cely was given to make the repairs and come into compliance, if he was or was not in compliance. Mrs. Pouch said that at the last meeting she felt he was not in compliance, supported by the photographs and testimony. Mr. Engel said there were a number of violations. Mr. Fleming said this has been going on a long time and the Zoning Administrator, Planning Director, and Board have tried to work with the situation and it is obvious that findings of fact and conclusions are present that he has not done what he needs to comply with the conditional use permit. Mr. Fleming said it has been a long time that the Board has been dealing with the situation and his position is that Mr. Cely is in complete violation of the permit. He said Mr. Burton has done an excellent job in providing the information necessary to make a concrete decision on whether or not the permit needs to be revoked.

Chairman Grant said the findings of facts that the Board has and the testimony given would support these findings that there are and were in existence at the deadline time given by the Zoning Administrator to Mr. Cely to come into compliance; there were still violations and even on the date of the hearing there were violations. The owner of the property admitted to violations still in existence at that time. The findings of fact before the Board support that.

Chairman Grant said a motion to approve the findings of facts before the Board indicated as Paragraphs 1-59 is in order. Mr. Fleming so moved and that they be adopted. Mr. Engel seconded the motion. All members voted in favor of the motion by raised hands. Chairman Grant said the findings of facts #1-59 are adopted as proposed.

Chairman Grant read the conclusions, Paragraphs 1-4, as proposed in the draft order and the order to revoke and terminate the permit, plus Paragraph 3 and Paragraph 4 if revoked. Mr. Cely asked to speak. Chairman Grant said the public hearing had been closed at the last meeting and the Board could not hear testimony. Chairman Grant said if the Board finds that those are the findings of fact, then that is the conclusions of law for those findings of facts. She asked the Board to adopt those conclusions of law. Mrs. Pouch moved to adopt the conclusions of law. Mr. Fleming seconded the motion. All members voted in favor of the motion by raised hands. Chairman Grant said that the Board has adopted the findings of facts and conclusions of law. She said the case

before the Board is whether or not the Board upholds the Zoning Administrator's finding that the conditional use permit was in violation. She called for a vote on the matter and an affirmative vote is to agree that the Administrator was correct in his finding of violations of the conditional use permit. A negative vote would be to disagree with his findings. Mrs. Pouch asked if the Board did that before. Mrs. Smith said that the Board would be making the final determination on the order as to whether it is revoked or terminated. Chairman Grant said it is a review of the compliance. Mrs. Smith read Section 200-69.C(3) of the Zoning Ordinance. So this would be a final vote. Chairman Grant said that she would like a final vote of the matter, being do you find that there were violations of the conditional use permit and terminate the permit. She called for a vote by raised hands. All members voted in favor. Chairman Grant stated the conditional use permit, as issued to Mr. John Cely II, was revoked.

Mr. Burton asked about a time frame for families occupying the property. Chairman Grant said the order says he must discontinue the use and no longer has a permit. She said the Board could establish a reasonable period of time for the discontinuance of the use. The Board discussed a reasonable period of time taking into consideration that it is winter and there are a number of families that will need to relocate. Mr. Burton discussed the court eviction process with owners given 90 days and renters given 30 days. Chairman Grant said that she hates it has come to this point for the families, but it has come to this point over a number of years of continual abuse of the conditional use permit. She said the permit was conditioned under specific guidelines and if those guidelines were not met the use is not permitted. The Board has not been harsh in its judgment; there has been continual abuse of this permit for a number of years as evidenced by the testimony given and the findings of facts. The Board discussed dates and suggested that as of May 1, 2004, all occupants must be moved and the use of the premises as a residential manufactured home park cease.

Mr. Burton said that this past week Mr. Cely has pulled 3 more permits for 3 more homes, which were issued with the proviso written on the forms that they were being issued at the applicants own risk, based upon the decision today. The Board also said no further occupancy of homes shall be permitted and those homes which are presently occupied must be completely unoccupied and removed from the premises no later than May 1, 2004. The Board discussed the date saying it gave a lot of warm weather time for the units to be moved and the units must be physically removed from the premises. Mr. Burton repeated for the secretary what the Board said; no further occupancy of homes from this date forward and all homes unoccupied by May 1, 2004; no more homes occupied and no more manufactured home park, which means that those units must be removed. Mr. Burton said other than what would be allowed by the Zoning Ordinance, which would be one manufactured home on a parcel of land in T-15 zoning.

Chairman Grant asked if there were any other stipulations on the order. Mr. Burton said he was trying to anticipate if someone moved into a unit after today, how it would be handled. Mr. Burrell is not here and he can't answer that. It would be a violation, but probably not come back to the Board. Chairman Grant suggested, should any of the currently unoccupied units be newly occupied after today, December 10, that it would accelerate the termination date for removal of all residences to immediate. Chairman Grant asked if Mr. Cely understood that. Mr. Cely wanted to ask a question. Chairman Grant asked if he understood. Mr. Cely asked if he had the option to sell. Chairman Grant said not as a manufactured home park.

Chairman Grant asked if there were any other conditions or stipulations to be added. There were none. She asked for the adoption of the stipulations set forth. Mr. Fleming so moved. Mr. Engel seconded. There was no discussion. All members voted in favor. Chairman Grant stated that the stipulations would become part of the order.

Chairman Grant reviewed what had been agreed to. From this date forward the conditional use permit is revoked; there is no conditional use permit for a manufactured home park. There is a period of time up to, and not beyond, May 1, 2004, in which to have all the units there moved from the property. One can remain on the property if it conforms to the Zoning regulations. No new residences can be brought in. No one can move into the park from now on. Everyone currently living in the park must vacate by May 1, 2004.

Mr. Cely III asked if they could appeal the decision. Mr. Burton said yes, to Henderson County Superior Court. He said they have 30 days to appeal the decision with the clerk of the Henderson County Superior Court. Chairman Grant suggested Mr. Cely hire counsel to advise him.

Chairman Grant adjourned the matter.

The Board took a short break, then reconvened.

COMMITTEE AND STAFF REPORTS: None

OLD BUSINESS: None

NEW BUSINESS: Mr. Burton said that Mrs. Grant would be leaving the Board and Staff gave her a small token of appreciation for many years of dedicated service. Mr. Burton explained the gift and everyone thanked her for her service. Mrs. Smith said that Dean Bonessi would become a regular member. The Board regrets the recent resignation of Tamra Crane. The Board of Commissioners would need to appoint another member. Chairman Grant suggested if anyone knows someone who would be interested to suggest they apply. Mrs. Smith said the Board's next meeting in January would be the organizational meeting, so members need to think about Chair and Vice Chair.

The Board was reminded that the December meeting has been canceled and the next regular meeting of the Board of Adjustment was scheduled for Wednesday, January 28, 2004, at 4:00 PM in the Meeting Room of the Henderson County Land Development Building.

There being no further business, Mr. Engel made a motion to adjourn, Mr. Fleming seconded the motion, and all members voted in favor. The meeting was adjourned at 5:00 PM.

Diane Grant, Chairman

Joyce Karpowski, Secretary