

November 12, 2003  
4:00 PM

## MINUTES OF THE HENDERSON COUNTY ZONING BOARD OF ADJUSTMENT

The Henderson County Zoning Board of Adjustment held a regularly scheduled meeting on Wednesday, November 12, 2003 at 4:00 PM in the Meeting Room of the Henderson County Land Development Building, 101 East Allen Street, Hendersonville, North Carolina. Those present were: Chairman Diane Grant, Vice Chairman Tamra Crane, Ann Pouch, Robert Fleming, Anthony Engel, Zoning Administrator Brad Burton, Planner/Assistant Zoning Administrator Josh Freeman, Assistant County Attorney Russ Burrell and Deputy Clerk to the Board Amy Brantley serving as Acting Secretary. Planning Director Karen Smith arrived at approximately 4:35 PM.

Chairman Grant called the meeting to order at 4:10 PM and introduced the members of the Board. She presented the minutes of the meeting from September 24, 2003. There were no changes or corrections, and the minutes stood as presented.

Chairman Grant called forward anyone who would give testimony in the cases before the Board today. Sworn in were Zoning Administrator Brad Burton, Jon Blatt, Bill Dobson, John Cely, Doug Climenhaga, John Cely Jr., Josh Freeman, Abant Gist, Kenneth Mills, Shelby Nace, John Swain.

Chairman Grant stated that since there is a full Board present, the method used for these hearings will be to call for testimony, ask for the Administrator to give a brief outline and synopsis of the case, ask for the applicant to come forward and give testimony and answer any questions, and then have any witnesses come forward. The opposition will then be given a chance to be heard.

### **Case V-03-08(a) and V-03-08(b), John Swain (Agent Kenneth Mills) – petitioner**

Chairman Grant called Case V-03-08(a) and V-03-08(b). John Swain, Agent for Kenneth Mills is the petitioner. He is requesting a front yard setback variance of 37½ feet on two proposed lots within a proposed land subdivision and currently addressed as 100 Mountain Ridge Lane, Fletcher. The parcel is zoned RC.

Brad Burton explained the strange numbering system used. The proposed subdivision of land is on the entire parcel. A plat was presented showing the proposed lots in the proposed subdivision. There are essentially two variance applications because variance setback requests are being requested on two parcels of land for locating a home. They will be treated individually but will carry a similar number.

Chairman Grant confirmed that the Board would be voting on these individually rather than as one application. Tamra Crane confirmed that they were both asking for the same variance on each parcel.

### **Case V-03-08(a), John Swain (Agent Kenneth Mills) – petitioner**

Brad Burton gave a Summary of Issues for Case V-03-08(a), proposed lot #2 on the plat. He stated that the proposed lot is in a proposed subdivision. The proposed lot is to be 1.14 acres in size. The applicant wishes to construct a single family dwelling on the lot. The Henderson County Subdivision Administrator has not approved the subdivision application because the location of the proposed house on the site plan illustrated a front yard setback encroachment. RC is the zoning designation applicable to the proposed subdivision. §200-32.D requires a 75 foot front yard setback from the centerline of a road. The applicant claims there is no other place on the property to build the house due to topography. Mr. Burton drew the Board's attention to the applicant's application which he had photocopied and titled 08(a) or Lot #2, and attached as 1b of the packet. There were also attachments to the application, also entitled 1b, Attachment A and Attachment B respectively.

Mr. Burton discussed a group of photographs distributed to the Board. Photograph #1 looks south showing the stobs in between those trees where the corners of the house are actually to be. Photograph #4 looks north, and has been enhanced to show where the footprint of the house will be. He did not indicate where the 75 feet is, but stated that Mr. Mills is a professional surveyor and he would stipulate Mr. Mills' survey. There is a topography issue, as there is a slope which can be seen well in Photograph #4.

Chairman Grant asked Mr. Burton to address further the topography issue because on the photographs it is hard to tell what they are looking at and what the degree of slope is. Mr. Burton asked Mr. Mills what he felt the degree of slope was. Mr. Mills answered that once it starts to drop off, probably a 20% slope. Mr. Burton stated that he would stipulate Mr. Mills assessment and would say 20%. He stated that Photograph #5 was better, as the gully could be seen behind the proposed residence. Chairman Grant asked how deep the gully is, and Mr. Mills answered about 15 to 20 feet down. Mr. Burton stated that it should be noted for the record that the house being looked at in Photographs #4 and 5 was the subject of a setback variance based upon topography.

Tamra Crane asked Mr. Burton to point out on the large map where the gully is located, which he did. She questioned whether it went all the way across. Mr. Burton answered that it did go all the way across, and that there was an issue with the sewer drain field where it will have to be pumped up the hill to be located on the bank shown in Photograph #1.

Chairman Grant asked whether Mr. Burton would like to address the issues for V-03-08(b) now or keep them separate. Mr. Burton replied that he would like to keep them separate.

Kenneth Mills stated that he was the surveyor that designed the subdivision. He said that Mr. Burton had covered everything clearly and asked if the Board had any questions. Ann Pouch asked if it was or was not a subdivision. Mr. Mills answered that it was, Freemont Subdivision. Lot #1 is the existing house at the rear of the property, at the end of the proposed right-of-way. Lot #2 is the one currently being discussed. Tamra Crane stated that the Board's information says the Henderson County Subdivision Administrator has not approved the subdivision application. Mr. Burton stated that the subdivision process has begun, but it is not a subdivision yet because this issue came to light and following procedure, has arrived here today. Ms. Crane stated that it sounds like it is not a subdivision yet because the application has not been approved, and Mr. Burton confirmed that it is not a subdivision yet.

Chairman Grant stated that when laying out the development, she saw that one lot was considerably larger than the others and was sure topography had a great deal to do with that as well. There is about 75 feet between the houses. She asked if it was not anticipated when laying out the subdivision that they would not be able to build on those lots as they were configured. Mr. Mills answered that when it was originally laid out, the owner wanted to build a house on Lot #2, which is 08(a), and once he built that house and moved in, sell the house that is existing on the property currently. The idea was to put the house down in a similar position as the adjoining house, shown on photograph #4, as far as the distance back from the street. Also the depth of the house, with the garage on the front of the house staggered forward, needed to be brought forward to keep the house out of the center of the gully. If the house was moved behind the 75 foot line the house would be sitting in the gully and moisture and mildew problems would develop in the future. Ms. Crane asked if there was water in the gully. Mr. Mills answered no, it was dry currently, but it would collect runoff from rain.

Ms. Crane asked if the garage was going to stick out, because the diagram showed a rectangular house with no jut outs. Mr. Mills answered that the diagram on the map was just the rectangular footprint, not the actual design of the house. Ms. Pouch questioned whether the garage could be put around and under the house. Mr. Mills stated while that probably could be done, the plans have the garage on the same level as the main floor. Ms. Crane confirmed that even with the footprint being rectangular, the garage would not stick any further out than the footprint. Mr. Mills stated that the front of the footprint was the front of the garage and the house would sit behind it. The setback violation would be the same regardless of the placement of the garage.

Ms. Crane asked where the existing house in photograph #4 was located on the plat. Mr. Mills located the house on the plat. Ms. Pouch asked if there was a water problem, or if they just didn't want a damp basement. Mr. Mills stated that if he were building the house for himself he would not want it down in that hole, but would try to keep it out to maintain the natural flow of the drainage during storm runoff because there are a couple of acres that will drain into there when it does rain. Ms. Pouch expressed concern that if the setback variance was granted, everyone building there might require a setback. Mr. Mills stated that this property was in the back corner of the subdivision and everything else had already been developed.

Chairman Grant asked if anyone had any questions for the applicant. There being none she asked if anyone else wished to testify in regard to the application. John Swain presented letters from the owners of the house in figure #4, Mr. and Mrs. Dave Hildebrand, and owners of the property adjoining Mr. Swain along the back side of the property, Duane and Marna Duckett. Mr. Swain pointed these properties out on the map. Chairman Grant stated that if there was no objection the letters would be allowed as part of the record. No objections were stated.

Chairman Grant asked for discussion from the Board in this regard. There was none. She asked if there was anyone present to speak in opposition to the application. There was none.

Tony Engel asked if it would be possible to see the plans of the house. The plans were then distributed for the Board's review. Chairman Grant questioned how many square feet

the proposed drawings were for. Mr. Swain answered that it was a one story with a full basement, and was 1884 square feet. He stated too that one reason for pulling it up out of the gully was because Mark Jones, from the Health Department, considered the gully as drainage and required that two tanks be put in the gully with a pumping system for the septic system. Mr. Swain showed on the map where the septic tanks and drain field would be in relation to the house.

Chairman Grant asked for the findings of facts from the Board. She moved that there are practical difficulties or unnecessary hardships in carrying out the requirements of the district, as demonstrated by: the requirement of the septic field to have a pumping station and the fact that the topography lends itself to drainage there rather than construction. Those are difficulties and hardships that the applicant has no control over. She did not see from the testimony given that it made sense to try to put the house down in the gully because the difficulties of the septic would still be present and probably prohibitive which would render the property unusable for residential. That being the case those circumstances and hardships are specific to this piece of property and the applicant's land, and not a result of his own doing. Ann Pouch stated that the only solid argument in her opinion was that the Health Department representative felt that it would be hazardous. Chairman Grant asked the Board if they felt that the variance is in harmony with the general purpose and intent of the ordinance and will preserve it's spirit. Ms. Crane noted that there had been testimony that there was a variance granted for the house next door and it would be in line with that, so it would be more ascetically pleasing for the subdivision if granted. Chairman Grant asked if there was any question about the safety or welfare of the property or surrounding area with granting the variance. Ms. Crane did not see any problems that would address public safety.

Chairman Grant called for a motion on the variance application. Ms. Crane stated "I make the motion with regard to Application ... V-03-08(a) Kenneth Mills, Agent for John Swain, for a variance from the minimum yard requirements I move the Board to make the following findings of fact: 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 had 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." Mr. Engel seconded the motion.

Chairman Grant called for a vote and the following vote was taken by a show of hands:

Ms. Crane	-	yes
Ms. Pouch	-	yes
Ms. Grant	-	yes
Mr. Fleming	-	no
Mr. Engel	-	yes

Chairman Grant stated the application had been approved as requested for V-03-08(a).

**Case V-03-08(b), John Swain (Agent Kenneth Mills) – petitioner**

Brad Burton gave a Summary of Issues for Case V-03-08(b). He stated that much of this information was similar to the previous issue. The proposed lot is in a proposed subdivision. The proposed lot is to be 1.23 acres in size. The applicant wishes to construct a single family dwelling on the lot. The Henderson County Subdivision Administrator has not approved the subdivision application because the location of the proposed house on the site plan illustrated a front yard setback encroachment. RC is the zoning designation applicable to the proposed subdivision. §200-32.D requires a 75 foot front yard setback from the centerline of a road. The applicant claims there is no other place on the property to build the house due to the desire to preserve existing trees located on the lot. Mr. Burton referenced the full sized plans, showing the Board the parcel in question and the proposed house location. Mr. Burton drew the Board's attention to Photograph #6, looking toward the road from the southeast corner looking southwest, in which he had tried to illustrate where the lot line would be. Photograph #7 is looking from north to south illustrating the southeast corner as portrayed in #6. The trees behind the southwest corner were the ones in question. Photograph #8 tried to show where the footprint of the house would be. Mr. Burton showed the location of the tree line on the large map. Chairman Grant asked how far behind the proposed house the tree line stood. Mr. Mills stated 10 to 15 feet.

Chairman Grant asked Mr. Mills to speak to the size and configuration of the house he planned to build and why it couldn't be turned to face the road like the other houses so that it would fit in the allowed box. Mr. Mills stated that it could be turned. He did not know what size the house proposed to go on Lot #3 was going to be. The outline that he put on the map was a bit smaller as a footprint because when he went out to put up the stakes, he realized that the trees were inside the area where the setbacks say you can put a house using the 75 foot line. He would like to preserve some very large oak trees to maintain the ascetics of the area, rather than clear-cutting the area. The size of the house, as far as staking a house out in the current setbacks, 75 feet on the front and 35 feet on the rear, is possible. It can be mathematically designed to fit. The main issue is that it would clear off the top of the ridge in Photograph #7. Those trees are at the top of a knoll. To the rear, which is the south boundary line, the ground slopes off and drops at a 15% – 20% slope as you approach the southern boundary line of Lot #3. It is relatively level going east and west in that area, and there is a slight grade coming down to the north end of Lot #3 where the proposed sewer drain field is located.

Ms. Crane asked how much the corner of the proposed house fell outside the 75 foot setback. Mr. Mills answered along the front side about 12-15 feet, and toward the back about 8–10 feet. Ms. Pouch questioned whether the house would comply if a few trees were cut down or if the house was turned. Mr. Mills stated that maybe rather than a single story, a two story house would fit. There was not a house plan currently in mind. Chairman Grant stated that the Board would ask what size house was proposed to be built and exactly what amount of setback they were looking at. From the information given, the setback would have to be guessed at. Mr. Mills stated that when he laid out the plat, in order to keep it uniform on both sides of the drive, he put in 37 ½ foot setbacks for Lot #2 and #3. That would keep them uniform as far as setbacks, would give a little more latitude in being able to position a house and would maintain the standing trees. The proposed house location can be rotated counter-clockwise, and moved up closer toward the drain field so the front of the house faces move toward the road. The reason it was positioned the way it was, was to take advantage of the views toward the north. Chairman Grant pointed out that that was not a hardship. Mr. Mills stated that if they take the house and

twist it, face it more toward the street and move it toward the north end of the lot, they would still run into the 35 foot rear setback and 75 foot front setback.

He also pointed out that on Lot#7, the adjoining lot owned by Calvin Petticrew, the garage sits close to the rear boundary line, about 20 feet away. That house faces in a northwesterly direction, toward the proposed drain field, and the driveway comes around the rear of the house close to the property line. Mr. Mills' idea was to allow positioning of this house toward the front of the lot, as opposed to hugging the 35 foot rear setback. Chairman Grant didn't see where turning the house would have any bearing on the 35 foot setback, it was close to 35 feet regardless. Ms. Crane stated there was plenty of room in the area to build a house without a variance. Anthony Engel questioned how large the box showing the house was. Mr. Mills wasn't sure, but stated that he tried to do something like 24-30 feet deep, and 42 feet wide. Ms. Crane confirmed though that that was not a realistic footprint, there are no plans to build that exact house and in fact there are no building plans. Mr. Mills stated that the eventual house could be smaller or it could be a two story building, but it would be difficult to fit a ranch style in the space.

Chairman Grant asked if there were additional questions for the applicant. There were none. She then asked if there was anyone else to testify in regards to the application. John Swain stated that the way the house had been laid out, would not face the house on the first lot directly. This would make it more private, it wouldn't be sitting right in front of the other house, the view is better, and it wouldn't sit in front of the Petticrew's property. He stated that it is a thin strip of land through there, and to put a house in the middle of the land, it would have to be a very narrow house to meet the setbacks.

Chairman Grant acknowledged there was a small envelope available in which to build. The question however, is why is it not possible to construct a house in that envelope that meets the setbacks without any real difficulty. Mr. Swain answered that it would be a real narrow house if he moved 75 feet off the front line and 35 feet off the back line, and it would be directly in front of the other house. Ms. Crane reminded Mr. Swain that Mr. Mills stated that with the existing footprint, he was only encroaching at most 15 feet on the very front corner. Chairman Grant stated that when looking at the corner where it was going to encroach, if the footprint was turned, no trees would have to be cut down and the house would face the road like the other house faced the road. She did not see that there was any real difficulty in doing that. The Board didn't know the dimensions of the proposed house, but turning it slightly should allow plenty of room for construction. Anthony Engel stated that the area proposed for the house looks to be about the same depth as the rear yard setback which means about 35 feet roughly. Chairman Grant pointed out the only envelope to build in, and stated that the options were to turn it around to face the street more so that it would fit into that envelop, or create a differently designed house. Mr. Swain stated that he was just trying to make it look as nice as possible, and make it fit in with the zoning.

Ms. Crane asked how much space Mr. Swain thought he had between the 35 foot setback on the sides and rear and the 75 foot line on the front. Mr. Swain answered that there was not a lot. Chairman Grant stated that it looked like a good 40 – 45 feet. Ms. Crane stated that it looked like there was room, but since there were no figures and no footprint of a house plan that was intending to be built, she couldn't see why the Board would grant a 37 ½ foot variance on a maybe. Mr. Swain discussed the clearing of the trees again. Ms.

Crane stated that the Board had been instructed that according to the Henderson County Planning Ordinance, they could not consider not cutting a tree down as a hardship and a reason for a variance.

Chairman Grant asked if there was anything else Mr. Swain wished to add, and he stated there was not. She asked if anyone else wished to give testimony with regards to the application. There was none. She asked if anyone wished to give testimony in opposition to the application. Hearing none, she asked the Board to discuss and have findings of fact.

Robert Fleming asked Karen Smith if anyone had ever come and tried to get a variance without an approved subdivision. Ms. Smith answered yes, but it was a bit of an awkward procedure because they could not approve anything that violated the Zoning Ordinance. Chairman Grant stated that it would appear that the property could be usable and there is not an unnecessary hardship based on the testimony given. It sounded like it would be a matter of it being ascetically more pleasing to be able to have the variance, but she did not find where it created an unnecessary hardship on the property to require it to meet the setback regulations.

Ms. Crane asked Mr. Burton if once someone applied for a variance, if it were not granted would they be able to apply again? She stated that she was asking that because she felt that if Mr. Swain had brought the Board a house plan, given the exact dimensions and explained why he could not build it within the setbacks, it would be a different matter than asking for a blanket 37 ½ foot variance for a house that there are not yet plans for. Such a request put the Board in a bad position, and she questioned whether he could withdraw the application. Chairman Grant stated that Mr. Swain could withdraw the application, and resubmit it with a more definite, defined plan, with the specific amount of footage needed, which would preclude his being barred from making such application within a year period. Ms. Pouch asked if he could decline at this point since they had gone this far. Ms. Crane answered that the applicant could withdraw the application before the Board makes their decision. Chairman Grant stated that the option was Mr. Swain's as far as what he preferred to do. Mr. Swain stated that he guessed the best thing would be to withdraw Case V-03-08(b) until he could get the plans and the exact layout of the house. Chairman Grant stated that that would allow him to determine whether he in fact needed a variance, and once he had specifics the Board would know exactly what they were looking at. She asked Mr. Swain if he was officially withdrawing the application. He answered that he was officially withdrawing the application.

Karen Smith noted that the subdivision could still be approved if he showed the proper setbacks and any other subdivisions were met. That being the case, the application was withdrawn.

#### **Case V-03-09, Ernest and Nancy Williams (agent Jon Blatt) - petitioners**

Chairman Grant called Case V-03-09, Ernest and Nancy Williams (agent Jon Blatt). Petitioners are requesting a rear yard setback variance of 13 feet on a proposed lot within a proposed land subdivision. A private residence located at 106 Mills Street occupies the approximate center of the proposed lot. The parcel is zoned C-4.

Brad Burton gave a Summary of Issues for Case V-03-09. He stated that the applicant is seeking a variance of 13 feet from a 30 foot rear yard setback in the C-4 Zoning district. The proposed lot, containing a private residence, is to be subdivided from a larger parcel containing a group development (shopping center) which is under the administration of Conditional Use Permit CU-02-14, an amendment to which is also on the agenda for today. The proposed lot is to be 0.2643 of an acre in size. C-4 is the zoning designation applicable to the proposed subdivision area. §200-22.D requires a setback the same as the side yard requirements to which the district is contiguous, which in this case will be 30 feet, per the rear yard requirement for the contiguous O & I zoning district. The applicant desires a variance to be granted so the house and property can be sold as the house and proposed lot are "not feasible for C-4 use" as per the application.

Mr. Burton noted that he had rounded up to 13 feet, pointing out that the proposed distance would actually be 17.2 feet. Rather than take into consideration the .2, he rounded to 17 and called it a 13 foot setback. He drew the Board's attention to a series of photographs. The top left photograph was the rear of the existing structure, which containing a fence line. To the left of the fence line was a significant drop-off. The same thing was indicated in the top right photograph. The bottom left photo was taken by Mr. Burton, standing directly beside the fence post, turning left and looking straight down the hill. This photograph showed Mr. Burton's shadow, and was taken to give an idea of the height and slope of the hill. The lower right photograph illustrated the house, the corner in question and the fence from Mills Street.

Chairman Grant questioned if basically, the applicant was looking to cut off the quarter acre piece with the house so that it may be kept as a house rather than being included in the C-4 zoning district. Mr. Burton stated that was correct. The only setback in question was the 17.2 feet between the house and the fence which was the proposed boundary line. Mr. Burton stated that to move the property line over far enough to encompass the 30 foot setback, you would literally be in space over the bank.

Ms. Crane stated that she was confused about Summary Issue #5 – The applicant desires a variance to be granted so the house and property can be sold as the house and proposed lot are "not feasible for C-4 use", but they would remain C-4 use. Mr. Burton stated that was correct, and he reported that simply as the application stated.

Chairman Grant asked Mr. Burton "starting at the Control Corner A.M.S. and coming out with a pie shaped angle 15 or so feet to get you past that point, in other words this line would come down and back over just enough to meet that setback requirement there, is there, does it go for any period here before it would, in other words how far is it from here to here in terms of how much land they would usually need to not have a requirement of a setback." Mr. Burton stated he would prefer to let the applicant answer that to get more on those specifics. Mr. Burton then pointed out on the map the location of the fence, the bank, the parking lot at the bottom of the bank, and the shopping development already in existence. He confirmed that the use of the property would be residential.

Jon Blatt was present, speaking for Ernest Jean Williams who was out of town. He stated that Doug Climenhaga, the potential buyer, was ready to buy the property but the sale was on hold pending resolution of this matter. He confirmed that the bank was indeed quite steep and of limited value to anyone. Mr. Climenhaga does not wish to own the bank, and



to strictly comply with the 30 feet in that rear corner he would own a wedge of bank and 10 – 15 feet of fence which would be surrounded on both sides by the portion of the fence and bank owned by Mr. Williams. Mr. Blatt agreed that the setback could be met, with the property line coming out near the toe of the bank, but that it provided no practical purpose and Mr. Climenhaga had stated he did not want it. Mr. Blatt felt it could be viewed as a hardship on Mr. Climenhaga to have to maintain the bank that's on the outside of the existing fence, as he would have no way to get to that bank. Mr. Blatt stated again that there would be no practical reason to extend the property line down that 13 feet, and that it would be a hardship to do so when the buyer does not even want it. He felt the bottom left photo did a good job showing the problem, but that there were some erosion problems already existing that would continue to be a problem in the future. Mr. Williams is prepared to continue to own the corner, as he has in the past.

Tamra Crane restated that someone wanted to buy the house and live in it. Ann Pouch pointed out that when the Zoning Board had the hearing on the conditional use permit, they asked about the property and were told that the house would never be used, there were no problems with it, and it would be torn down. Mr. Blatt stated that the tenant of the house at that time had said he wished to stay in the house for a long time. He did not recall anyone talking about tearing down the house but if so it would have been speculation. There really is not enough land where the house is sitting due to the drop-off to put in a building of any size and still maintain the setback. Mr. Climenhaga wishes to buy the house and refurbish it, which Mr. Blatt felt made more sense than tearing down the house and putting up a small commercial building.

Mr. Climenhaga felt the fence was a pretty nice addition, but to maintain it and maintain the hillside was not something he wanted to be involved in. The 17 feet was not a problem from his standpoint. Chairman Grant asked if his basic intention for the property was to leave it as residential and fix it up to keep it as a residence. Mr. Blatt pointed out that there were several other residences on Mills Street and it's across from the fairground area so keeping it residential is in keeping with uses on Mills Street. Since the property is on the second tier, it is separate from the commercial activities on the lower tier.

Tamra Crane asked Mr. Burton if the Board granted this application and the section was taken out, would the lower property still meet the requirements as far as percentage of land and parking spaces and all of their setbacks and their buffering requirements. Mr. Burton answered that there is a pre-existing non-conforming structure located in C-4 which has no dimension requirements because it doesn't allow for residential application. Ms. Crane asked if the removal of the 0.2643 acres would effect the requirements that the conditional special use permit was granted under. Mr. Burton stated that was a question for the Board, and the next issue before them. The conditional special use permit was established for the group development down below, and this was an accessory function. Ms. Crane stated that the minutes on page 3 of 6, labeled 2F and 4 of 6, labeled 2F explain what is existing presently and read from the minutes "Ms. Crane asked if the proposed parking spaces cover all three new buildings and the existing building. Mr. Williams said yes. Mr. Engel asked if the existing house would be removed. Mr. Williams said they would remove it eventually, with the third or fourth building." Ms. Crane stated she felt the conditional use permit was granted on those facts. Mr. Blatt stated that this building was off by itself and did not effect the parking or commercial area in anyway.

Chairman Grant stated that she felt Mr. Burton was saying this was a request for a variance to the setback. The next issue then would be does the Board want to allow the 0.26 acre tract to be removed from the conditional use. The granting of this variance does not mean the Board would have to grant the removal of it from the conditional use. The issue is the setback, and then question of the conditional use permit and whether the Board wishes to allow this property to come out of it. It is related but only after the fact.

Chairman Grant if there were additional questions of the applicant. There were none. She asked if anyone else wished to give testimony in regard to the application. There was no one. Chairman Grant asked if there was anyone to speak in opposition. There was no one.

Chairman Grant asked for discussion and findings of facts in the matter. She stated that the Board needed to find facts based on the outline. Number one, there are practical difficulties or unnecessary hardships in carrying out the requirements of the district, as demonstrated by: the testimony that the topography, the back of the property, is such that it drops off significantly and creates a topographical hardship. Ann Pouch stated that she felt the hardship would be to the owner of the property who wants to sell it. Chairman Grant stated that they are looking at whether or not the setback can be met without practical difficulties such as topography. Anthony Engel stated that applicant is dividing their own land. Chairman Grant stated that that is part of what the Board is making a determination on, whether or not the hardship is a result of the applicant's own actions. In this case the applicant is the owner of the property and owns more than just this piece of property. The question before the Board however, is, is there a topographical hardship that would make their request unusual or create a hardship if not granted. Her thoughts were that the topography of that, and the way it drops down, adding that additional land to it is no man's land. That drop-off makes it unusable, so is it reasonable or feasible to add that to it. The other part is, is the hardship unique to this land. The question is, if the applicant complies with the literal terms of the ordinance, can he secure a reasonable return from or make a reasonable use of the property.

Tamra Crane asked if the reason the applicant was seeking a variance of 13 feet was because the potential buyer does not want to own the bank. Mr. Blatt stated there was a lot of truth in that, but also because it creates a dual ownership of the bank and the fence. He asked what purpose was provided by meeting the 30 foot setback, when it creates a dual wedge ownership. He did not feel it was practical, and did not accomplish anything of any use to anyone. Chairman Grant stated the Board had to decide if the variance is in harmony with the general purpose and intent of the ordinance and will preserve it's spirit. Ms. Crane noted that it seemed more practical for the owners of the commercial buildings to own that bank rather than it being owned by the people in the house. Chairman Grant stated that if this weren't being divided off it would be a non-issue, and though it is still a C-4 piece of property it is being used as residential, and has been used as residential. There also exists the issue of the fence as a dividing buffer.

Mr. Burton pointed out that in that same vein, the house is going to remain in C-4 and the use could change. Mr. Blatt stated that indeed Mr. Climenhaga had considered using the property in the future as a small office or a small shop. Currently though, it is still a residence. Mr. Williams will continue to own the fence if the variance is granted. Tamra Crane stated that she could understand why it would be more practical to have the property line where the fence is rather than at the edge of the parking lot. Chairman Grant

agreed that it would be contrary to the spirit and intention of the ordinance to require the property line to jutted in such a manner.

Chairman Grant asked for a finding of fact from the Board in regard to the issues. Robert Fleming asked if it created a problem to have the property line jutted out improperly. Chairman Grant stated that hardship results from unique circumstances related to the applicant's land in that the topography is such that it is not reasonable just to extend the property line to cover that area so that there would not be a requirement of a variance. The hardship is not a result of the applicants own actions in that the topography is the problem there, although the line could be changed it is not a reasonable use and is not in harmony with the purpose and intent of the ordinance. She stated there is not an issue of public safety and welfare other than the fact that with the drop-off the potential owner could experience a hazard with trying to maintain both sides of the fence.

Chairman Grant called for a motion on the variance application. Mr. Fleming stated "With regard to the Application of Case V-03-09 with Ernest and Nancy Williams, John Blatt as a petitioner requesting a rear setback variance of 13 feet on a proposed property lot within a proposed land subdivision, I move the Board to make the following findings of fact: 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 had 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. And as far as, there wasn't anything that we had to add to it". Ann Pouch seconded the motion.

Tamra Crane asked if a conditional use permit runs with the land. Chairman Grant answered yes. Ms. Crane asked if this piece of property would still be under the jurisdiction of the conditional use permit. Chairman Grant answered yes and asked if there were additional questions. There were none.

Chairman Grant called for a vote and the following vote was taken by a show of hands:

Ms. Crane	-	yes
Ms. Pouch	-	yes
Ms. Grant	-	yes
Mr. Fleming	-	yes
Mr. Engel	-	no

Chairman Grant stated the application had been approved as requested for V-03-09.

**Case CU-02-14 (Amended), Ernest and Nancy Williams (agent Jon Blatt) - petitioners**

Chairman Grant opened the hearing to the public and called Case CU-02-14 (Amended). Ernest Williams (Agent Jon Blatt) is requesting a review of the Conditional Use Permit (CU-02-14) for a potential loss of acreage from the parcel's originally permitted state. The parcel is located on the corner of Highway 176 and Mills Street and is zoned C-4.

Mr. Burton noted two things with regards to the last variance for the record. "The application, when I received it by the applicant, I labeled it V-03-10. That is incorrect. It should be V-03-09. And on the Conditional Use Permit...on the Conditional Use Permit that we're speaking of now, on the, what I received from the applicant was, I labeled it CU-03-09 as a new application when in fact we're dealing with an amendment to a previous Conditional Use Permit, CU-02-14. I just wanted to clarify that." The application itself was labeled incorrectly. Mr. Burton referred to a rough photocopy of the original site plan to the best of his knowledge as was issued by the Zoning Board of Adjustment. He then passed out another plan which was the most recent permutation of that group development. The first plan was what had originally been approved. Mr. Burton then gave the summary of the issues involved. The applicant is seeking a review of the Conditional Use Permit for a loss of acreage, which affected the Permit as it was originally granted by the Zoning Board of Adjustment. The parcel was granted a Conditional Use Permit (CU-00-18) in September 2000 for a warehousing operation. Conditional Use Permit (CU-02-14) was granted on October 2002 (superseding CU-00-18) for the construction of a shopping center – the current status of the property. The applicant proposes to subdivide the parcel and create a lot on the southwest corner of the parcel – where a private residence already exists. The proposed lot is to be 0.2643 of an acre in size, an intended reduction in the group development acreage to 2.16 acres. The current size of the parcel before subdivision is 2.43 acres. C-4 is the zoning designation applicable to this proposed subdivision area.

Mr. Burton called the Board's attention to the original site plan. As it was approved and as Ms. Crane pointed out a moment ago from the minutes, it was the intention of the developer to lose the house and develop the area as shown in Phase II of the development phases. In the second plan distributed, the house is shown in the plan and some of the Phase II area has been lost. Chairman Grant stated the first question was the fact that in the original proposal the building was going to be quite sizable, for shops and a fair amount of parking was required. Is there sufficient parking now, according to the ordinance, and does it meet the ordinance requirement for parking for what area and property is there if in fact the quarter acre is cut out. Mr. Burton stated that he could not answer that question, he had not looked at it from that perspective. Chairman Grant stated that would probably be the determining factor. The ordinance obviously calls for specific numbers of parking spaces per square footage, and what we have now is a 60 x 150 foot building.

Mr. Blatt stated that what had ended up being built was 55 x 150, and was actually further up than it showed on the map. He stated that the first map showed parking in the back corner where the house actually sits. Part of that parking is shown right on the straight up and down bank discussed earlier. That does not seem overly feasible, yet there it is. On the second drawing which shows Building #4, which ended up being 55 x 150 and further up to the road has double sided parking which was not shown on the map. He pointed out several parking locations to the Board. He was unable to state the exact number of spaces, but was able to state that parking had not been an issue. There are five units in the new building and two in Building #2. Ms. Crane asked the square footage of all the buildings. Mr. Blatt answered 6,500 in Building #4 and 1,500 in Building #2. There is no Building #3, and there will no be a Building #3. When this was originally presented to the Board of Adjustment, before the two buildings were built, there was a lot of speculation about what would go in as building is often dictated by what tenants want. Since then the two buildings had been built, everyone is pleased and parking had not been a problem.

Ms. Crane noted that the ordinance called for one parking space per 300 square feet of gross floor space. There are 6,500 square feet in Building #4 and 1,500 in Building #2. There was discussion about whether the square footage of Building #1 counted toward this total. Tamra Crane stated that the total acreage is 2.43 acres and asked if Building #1 was counted in that. Mr. Blatt stated that did include Building #1. Ms. Crane stated that she was pretty sure that that was included in the Conditional Use Permit, it covers that building and all comes under one Conditional Use Permit. Mr. Blatt stated that there is 7,500 square feet in Building #1, and would require 25 parking spaces.

There was a total of 15,500 square feet of building divided by 300. This total came out to 51 and a fraction, so 52 rounded up. Chairman Grant stated then that the Board needed to have testimony that there were in fact 52 parking spaces available on the property in order to meet the requirements. Mr. Burton agreed, and stated that he would feel much better if he had a full scale, ready to go, as built site plan before this was ruled on. Chairman Grant stated she agreed the Board had to have that, because at this point they didn't have the information before them to determine whether or not it was in compliance. Obviously the Board could not rule on anything until they knew if the plan was in compliance and what the requirements were. Mr. Blatt stated there was no question that there were enough parking spots available, but that it would be a stretch to say that the parking spaces were on the upper tier. Ms. Crane asked if Mr. Blatt could take one of the plats and mark it as an official document and make a notation that Building #3 has not been built and will not be built, mark parking spaces and come up with 52 so the Board could address it as such because the way it currently stands, the Conditional Use Permit is operating under the okay that they can build Building #3. Mr. Blatt stated that they were happy to take that out. Chairman Grant proposed that the Board make their determinations, let the Administrator go verify that there are sufficient parking spaces, and make those determinations subject to verification of sufficient parking. There should also be verification that Building #3 will not be built. Mr. Burton stated they must meet off-street loading and unloading as required per square footage, be able to have the parking spaces and not effect the ingress and egress requirements. Mr. Blatt stated that the loading areas are between the buildings, not taking up any of the front area.

Chairman Grant stated that would have the plan cleaned up, and they would have a site plan that would show that it does meet the ordinance requirements. Mr. Blatt stated again that he knew there was no concern about parking. Tamra Crane stated that the Board had to state and make sure that Mr. Blatt understood as part of the permit, that they have to maintain the parking area and nothing else can be placed there. Mr. Blatt asked that the Board go on that premise of verification as soon as possible. Mr. Burton stated that would be based upon submission of an up to date site plan and his physical presence on the property. Tamra Crane noted that it was also based on the fact that nothing else had changed from the original Conditional Use Permit, such as lighting, ingress, egress, and that Mr. Burton verify parking spaces.

Chairman Grant stated there were two ways to proceed, either vote on the application with the requirement that the applicant submit to and prove to the Zoning Administrator that in fact all of the requirements of the Conditional Use Ordinance are met, or table the matter until it is brought back with proof that those things have been done. Mr. Blatt asked that the Board take the step of verification, but act today as the buyer is anxious to get going. Tamra Crane questioned the buffering requirements for the district. Karen Smith stated

that a C-4 designation does not automatically negate buffering, and that it could be imposed. Mr. Blatt stated that the fence was put up for a buffering purpose.

Chairman Grant asked if anyone else wished to speak at the public hearing. There was no one. She asked if there were additional questions of the applicant. There were none. She asked if anyone else wished to speak at the public hearing. There was no one. Hearing none, Chairman Grant closed the public hearing and asked the Board to make a determination about whether to make a decision today or table the matter until documents could be updated. Tamra Crane saw no point in tabling it if the Board could make a condition that Mr. Burton make sure the issues are met. If they are not met he will not issue a permit.

Chairman Grant asked for discussion and findings of facts in the matter. She stated that the Ordinance requires the approval of the Conditional Use Permit if the following findings of fact are made: the use for which the permit is sought will not adversely affect the health and safety and will not be detrimental to the public welfare. The following are provisions the Board should address, which they have done: satisfactory ingress and egress to the property is available, it abuts on a public street and there is no issue of safety, there is no issue of off-street parking for this particular piece of property, it does have utilities, and buffering is not an issue or was not an issue in the prior matter. Tamra Crane questioned whether the Board wished to make it a condition that the existing buffer is to remain. Chairman Grant stated they could do that, could make the stipulation that the fence currently situated on the property would be maintained and kept in place for as long as the property is used for residential purposes.

Chairman Grant called for a motion on the application. Ann Pouch stated "With regard to the Application of Case CU-02-14 for Conditional Use Permit removal"...authorizing the removal of .2643 of an acre to be removed from said property. The proposed use will not adversely affect the health and safety of persons residing or working in the neighborhood, or the proposed use, and, the proposed use will not be detrimental to the public welfare or injurious to the property or public improvements in the neighborhood. Accordingly, I further move the Board to grant the request, Conditional Use Permit, and only to the extent represented in the application and with the following conditions, and the conditions would be: that the fence be maintained, that he show exactly on the property...providing an as built site survey...showing adequate parking..." Chairman Grant stated "and that all other conditions of the Conditional Use are met ". Robert Fleming seconded the motion.

Chairman Grant called for a vote and the following vote was taken by a show of hands:

Ms. Crane	-	yes
Ms. Pouch	-	yes
Ms. Grant	-	yes
Mr. Fleming	-	yes
Mr. Engel	-	yes

Chairman Grant stated the application had been approved with the conditions.

### **Case CP-86-02, John Franklin Cely II**

Chairman Grant opened the hearing to the public and called Case CP-86-02, John Franklin Cely II, granting 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. Chairman Grant called on Brad Burton to present the issues in the case.

Brad Burton stated that Mr. Cely had an extensive and significant history with the Zoning Administrator and the Zoning Board of Adjustment based on compliance and lack of compliance over a period of about 17 years. It was Mr. Burton's opinion that Mr. Cely was currently in a non-compliant state pursuant to Conditional Use Permit CP-86-02. Mr. Burton provided a chronological breakdown of all correspondence contained in his file and essentially what has transpired in this matter. Mr. Burton inherited this matter receiving three complaints concerning open sewage and burning trash on March 11, 2003, March 19, 2003 and March 24, 2003. On April 24, 2003 Mr. Burton made a site visit with Suzanne Godsey, former Zoning Administrator, and stated that there were underpinning issues, safety of playground issues, and questions about the status of homes on the west side of the park and down the hill. On June 2, 2003 Mr. Burton made another site visit, took photographs and noted the same issues as mentioned above. He stated that the Board could read the issues prior to the March 11<sup>th</sup>, and that he was testifying on what he had personal knowledge of and what was in the file.

On June 12, 2003 Mr. Burton sent Mr. Cely a letter specifying items that requiring attention and requesting an interview to review the history of Sleepy Hollow Manufactured Home Park. That letter was provided to the Board for their review. Mr. Burton stated that Mr. Cely was initially abrasive, but that they had come to an agreement and had spoken amicably since then. On June 17, 2003 Mr. Burton made a site visit to the park and took photographs of each home and each lot in the park. On that same day Mr. Cely and John Cely III came to Mr. Burton's office for an interview. At that time they talked about each lot and discussed conditions and requirements per the 1986 Conditional Use Permit, which was included in the Zoning Board's packet for review. After discussing these matters Mr. Burton asked the Cely's if they thought they could come into compliance, and the Cely's stated they thought they could. Mr. Burton reviewed with them each lot and each home and asked them if they could come into compliance with the issues discussed within 90 days. Mr. Burton stated that he based the interview on photos previously taken, and told the Cely's that those photos would be the benchmark for improvements from that point forward. Both gentlemen stated that they understood those conditions.

On July 23, 2003 Mr. Burton made a site visit and took photographs. At that time there was no obvious progress. On August 12, 2003 Mr. Burton made a site visit and took photographs, there was no obvious progress. On August 25, 2003 Mr. Burton made another site visit and took photographs, there was no obvious progress. Mr. Burton noted at this point in the meeting that the deadline for compliance was September 17, 2003. On September 3, 2003 Mr. Burton made a site visit and took photographs. At this time some progress had been made, but there was still plenty to be done. On September 18, 2003, the day after the deadline had passed, Mr. Burton made a site visit and noted that while some items had been addressed, many deficiencies remained. On October 7, 2003 Mr. Burton sent notice to the Cely's of compliance review with the Zoning Board of Adjustment based on his position that they were still in violation of their Conditional Use Permit.

Mr. Burton included some additional history, and noted that Chairman Grant had given authority to the Zoning Administrator to check on the park periodically and report back to the Board. As evidenced in the chronology, recent checks of the park had been regular and illustrated deficiencies. Mr. Cely and his son had met with the Zoning Administrator at length on June 17, 2003 and discussed the non-compliance issues applicable to the Conditional Use Permit. Mr. Cely was given 90 days to comply with the requests of the Zoning Administrator to rectify areas of non-compliance and was told that the Zoning Administrator would work with them as to extensions of time or other exigent factors, as long as substantial progress was being made toward compliance that could be evidenced by routine checks. Mr. Burton noted that he had sent a letter to Mr. Cely which stated that there were things that needed to be taken care of, that Mr. Cely had 90 days to do it, outlined corrective measures and the basis for requirement for the lots and the homes and stated the source of authority for that requirement. Mr. Burton also noted that Mr. Cely had made no effort to solicit an extension of time for compliance from the Zoning Administrator. He made one phone call on August 11, 2003 stating that he was behind because a trailer had burned down the previous night, but made no formal request to move the deadline date of September 17, 2003.

Mr. Cely stated that he didn't know he could do that. Mr. Burton stated that it was in the letter, but they would deal with that in a moment. Chairman Grant stated that the Board would call on the applicant momentarily to make any presentation.

Mr. Burton then presented a PowerPoint presentation. He showed the Board how the photographs were laid out on each page, with the following dates represented: June 17, 2003, July 23, 2003, August 12, 2003, August 25, 2003, September 3, 2003 and September 18, 2003. He gave information about the following lots:

Lot #1 – "Home has been stored since 04/24/2003 – no attempts have been made to repair septic system – either make home available for occupancy by repairing septic system, or MOVE home off the premises by 07/24/2003. Remove lumber and building materials, clean up miscellaneous trash. Replace skirting where required. [1986 Conditional Use Permit – Paragraph 3 and Paragraph 4(3)(c)(1)]"

Mr. Burton noted that when the home burned down, they had been trying to fix it. Still on the lot however, were some solid waste issues on the ground. On Mr. Cely's behalf, he had quickly gotten in touch with the Environmental Health Department following the initial interview. Despite a lot of rain, he had been able to make effective repair prior to the house burning down.

Lot #2 – "Generally OK; if residents are using underneath the home for storage, advise them they need to replace skirting after retrieving/storing items. Clean up surrounding area, remove miscellaneous trash on ground. Replace skirting where required. [1986 Conditional Use Permit – Paragraph 3]"

He pointed out on the photograph some children's toys, a large hole, and solid waste issues.



Lot #3 – “Generally OK, with exception of automotive equipment (jack, oil-changing container, trash can, oil containers, TRASH, etc.) needs to be removed immediately. Clean up surrounding area, remove miscellaneous trash on ground. Potential hazards for children. Replace skirting where required. [1986 Conditional Use Permit – Paragraph 3]”

Chairman Grant asked if a business was being run from this lot. Mr. Burton stated that he did not know that to be the case, but that every time he had been there, there is present a jack and oil-changing container.

Lot #4 – “Generally OK, pick up and dispose of miscellaneous trash and replace skirting where required. [1986 Conditional Use Permit – Paragraph 3]”

Lot #5 – “Unoccupied – during the meeting (on June 17<sup>th</sup>) it was stated that there was to be a home on the lot soon (from Southern Showcase – contact is “Mike”). Currently there is a detached porch, building materials, wire, and a 200 + gallon oil tank on the space. Such debris holds a high potential to injure children, especially as it is located adjacent to the Playground. It was agreed upon that the tank would be removed. As to the other materials, that were anticipated to be used soon for the new home, **I will require their removal or employment on the new home within the time period already established – ninety days.** To protect yourself in the interim, I would **strongly suggest** that you disable a access to the porch and organize the materials; stack and cover them with a tarp. [1986 Conditional Use Permit – Paragraph 2, Paragraph 3]”

Lot #6 – “Playground. Shocking conditions, extremely high potential for child injury. The “boxes,” as I indicated in the photos, must be removed. The pile of dirt (that has been in place since 04/24/2003) must be removed. There is a large amount of trash ranging from paper to jagged sheet metal and couch cushions on the ground that needs to be picked up and disposed of. **This area, as designated on the Conditional Use Permit is for a RECREATION AREA – a safe area for children to play, and it MUST be constantly maintained with that in mind.** [1986 Conditional Use Permit – Paragraph 2, Paragraph 3]”

Mr. Burton discussed some of the issues on the playground lot including solid waste issues, standing water and an unsafe structure called a “box.”

Lot #7 – “Generally OK, pick up and dispose of miscellaneous trash and replace skirting where required. Assure the deck/porch is in good repair. [1986 Conditional Use Permit – Paragraph 3]”

Lot #8 – “Generally OK, pick up and dispose of miscellaneous trash and replace skirting where required. Assure the deck/porch is in good repair. [1986 Conditional Use Permit – Paragraph 3]”

Lot #9 – “Dead set-up permit #37166. I consider this unit as being stored, which is not allowed per your Conditional Use Permit. Either have the unit permitted and available for rent or have it removed by September 17, 2003. Stack and cover building materials beside unit. Pick up and dispose of misc. trash and replace skirting where required. [1986 Conditional Use Permit – Paragraph 3 and Paragraph 4(3)(c)(1)]”

Lot #10 - "Generally OK, pick up and dispose of miscellaneous trash and replace skirting where required. Assure the deck/porch is in good repair. [1986 Conditional Use Permit – Paragraph 3]"

Lot #11 – Trailer tongue assembly in back yard must be removed. Permit #42390 is active for the unit. Pick up and dispose of miscellaneous trash and replace skirting where required. Assure the deck/porch is in good repair. [1986 Conditional Use Permit – Paragraph 3]"

Mr. Burton asked the Board to remember Lot #11, because he would be coming back to Lot #11.

Lot #12 - "Dead set-up permit #34634. I consider this unit as being stored, which is not allowed per your Conditional Use Permit. Either have the unit permitted and available for rent or have it removed by September 17, 2003. Stack and cover building materials beside unit. Pick up and dispose of miscellaneous trash and replace skirting where required. Assure the deck/porch is in good repair. [1986 Conditional Use Permit – Paragraph 3 and Paragraph 4(3)(c)(1)]"

Lot #13 - "Generally OK, pick up and dispose of miscellaneous trash and replace skirting where required. Assure the deck/porch is in good repair. Remove stove and any other appliances from decks/porches and yards. [1986 Conditional Use Permit – Paragraph 3]"

Lot #14 - "Generally OK, pick up and dispose of miscellaneous trash and replace skirting where required. Assure the deck/porch is in good repair. Remove any appliances or plumbing fixtures from porches or yards; remove furniture from the road. [1986 Conditional Use Permit – Paragraph 3]"

This is the property where Mr. Cely III lives. Mr. Burton noted issues of solid waste in the road, skirting issues, a toilet in the yard, and equipment of all kinds.

Lot #15 - "Dead set-up permit #37165. I consider this unit as being stored, which is not allowed per your Conditional Use Permit. Either have the unit permitted and available for rent or have it removed by September 17, 2003. Stack and cover building materials beside unit. Pick up and dispose of miscellaneous trash and replace skirting where required. Remove appliances from porches/decks. Remove chairs, furniture and the pickup truck bed liner from the street in front of the unit or dispose of the items properly. Assure the deck/porch is in good repair. [1986 Conditional Use Permit – Paragraph 3 and Paragraph 4(3)(c)(1)]"

This unit is located next to the dumpster. On the first day Mr. Burton went out, the road was blocked by a bed liner, a couch and a vehicle had the road blocked. He noted solid waste issues, and the fact that the home is being used for storage.

Lot #16 - "Generally OK, pick up and dispose of miscellaneous trash and replace skirting where required. Assure the deck/porch is in good repair. [1986 Conditional Use Permit – Paragraph 3]"

Lot #17 - "Generally OK, pick up and dispose of miscellaneous trash and replace skirting where required. Assure the deck/porch is in good repair. [1986 Conditional Use Permit – Paragraph 3]"

Lot #18 - "Dead set-up permit #37164. I consider this unit as being stored, which is not allowed per your Conditional Use Permit. Either have the unit permitted and available for rent or have it removed by September 17, 2003. Pick up and dispose of miscellaneous trash and replace skirting where required. Remove appliances from porches/decks. [1986 Conditional Use Permit – Paragraph 3 and Paragraph 4(3)(c)(1)]"

Lot #19 – "Unoccupied. Currently, there is a detached porch, building materials, wire, a toilet, a satellite dish and 200 + gallon oil tank on the space. Such debris holds a high potential to injure children. It was agreed upon that the tank would be removed. As to the other materials, **I will require their removal or employment on the new home within the time period already established – ninety days.** To protect yourself in the interim, I would **strongly suggest** that you disable a access to the porch and organize the materials; such as stacking and covering them with a tarp. [1986 Conditional Use Permit – Paragraph 2, Paragraph 3]"

Lot #20 - "Generally OK, pick up and dispose of miscellaneous trash (especially the large pile at the front of the home) and replace skirting where required. Assure the deck/porch is in good repair. [1986 Conditional Use Permit – Paragraph 3]"

Lot #21 – Generally OK. Mr. Burton stated that he did not venture too far back onto this property and he could not comment on the property other than to say he had not ever seen anyone in it, He did not know it's status.

Lot #22 - "Remove appliance from yard, repairs required to the porch/deck. Pick up and dispose of miscellaneous trash and replace skirting where required. [1986 Conditional Use Permit – Paragraph 3]"

Lot #23 - "Generally OK, pick up and dispose of miscellaneous trash and replace skirting where required. Assure the deck/porch is in good repair. [1986 Conditional Use Permit – Paragraph 3]"

Lot #24 - "Generally OK, pick up and dispose of miscellaneous trash and replace skirting where required. Assure the deck/porch is in good repair – cut down weeds growing through deck area. [1986 Conditional Use Permit – Paragraph 3]"

Mr. Burton asked that the Board note the power cord running from this home, to another home. He stated that was an inspections issue, but wanted to bring the Board's attention to it.

Mr. Burton also showed the Board a series of photographs taken on October 23, 2003 during a routine check of the park. He stated that conditions appeared to have deteriorated. He noted in particular: a pile of trash in the playground that contained an appliance, skirting issues on Lot #11, building materials on the lot in photograph #8, a logging chain around the foundation of the trailer attaching it to a tree in photograph #10, a piece of wood in photograph #12, debris in the woods in photograph #13, a continuous

skirting issue in photograph #14, and a continuous skirting issue and trash in photograph #15. Photograph #16 was taken from the top of the hill at the park looking down toward the playground area.

Regarding Lot #11, Mr. Burton showed a copy of a building permit and a Certificate of Occupancy awaiting final inspection. Lot #11 has not been issued a Certificate of Occupancy, but is occupied at this time by Ms. Penny Dobson. That fact was stated to Mr. Burton today, and could be corroborated by Mr. Josh Freeman who was present. Mr. Burton called the Board's attention to the Certificate of Compliance, which is analogous to the Certificate of Occupancy in North Carolina. It states that no new building or any part thereof should be occupied or altered or moved. Any building that has been altered or moved may not be occupied until the Inspection's Department has issued a Certificate of Compliance. Mr. Burton stated that according to Ms. Dobson's statement to him today, people have been living there for three weeks. He noted several photographs which showed a car, and some pots and flowers above the window over the sink. He stated that he had gone to the home, introduced himself to Ms. Dobson, looked in the home and the home was fully furnished. Ms. Dobson stated that they did not have any power. Mr. Burton stated he did not know the use of the drop cord seen in the second photograph. One of the conditions of the conditional use permit is the violation of no laws. Mr. Burton stated that he felt there was a criminal offense here. He stated that was all the first hand testimony and facts that he had, and asked if the Board had any questions. There were none.

Chairman Grant called for anyone else who wished to testify at the public hearing. Abant Gist stated that he lives in the trailer on Lot #2. He stated that he understood what Mr. Burton was talking about, it needed to be cleaned up. He referred to photograph #2, and stated that "everything here is gone, there's a brand new door." He then spoke to Lot #9, which had an issue with building materials, stating that is now covered in brand new vinyl siding, all the material is gone, and everything is clean. He did not know about the time limits, but spoke from a resident's point of view. He stated that if the place was a pig sty he wouldn't want to live there. It needed a lot of work, but in his opinion it had come up a long way, has improved greatly. He then spoke to the mobile home chained to the tree, stating that it is not actually chained to the tree, but was in the process of being set up and during that process you take every safety precaution you can.

Chairman Grant asked if it was still chained. Mr. Gist stated there was a chain still up, but there was no tension on the chain, it was just a safety precaution. Tamra Crane asked if there were photographs of Lot #2 and Lot #9. Mr. Burton stated that Lot #9 was illustrated in photograph #8, he did not have a photograph of Lot #2. The photographs were taken about a month after the deadline, on October 23<sup>rd</sup>. Ms. Crane asked Mr. Gist if Lot #9 was his. Mr. Gist stated that he lived on Lot #2. Ms. Crane asked if he was just observing that they had put new vinyl siding on Lot #9. He stated that he was, and that on Lot #2 the underpinning had been fixed, the lawnmower was gone, all the trash was gone and there was new door with a new lock. Ms. Crane asked if Mr. Gist or Mr. Cely had made the repairs. Mr. Gist answered that Mr. Cely III had repaired the hole and put the new door on. As far as the toys were concerned, they had organized them better and made it look nicer. Chairman Grant asked if there was additional testimony he wished to give. Mr. Gist stated that all he could say was that there was a lot of work to be done, but that everybody who lives there can see the improvements being made and that they see it as their home and it feels like a community. Tamra Crane asked if he had children. Mr. Gist stated that he did

not have children, but his nieces live with him on Lot #2. Ms. Crane asked how he felt about the current condition of the playground. He stated that the playground had been cleaned up, and his nieces do play there. He stated that the dirt had been moved and a lot of the trash hauled away. He felt it was currently safe for his niece to play there. Mr. Burton asked how long Mr. Gist had lived there. Mr. Gist answered since about February.

Bill Dobson wished to clarify the statement made by his wife to Mr. Burton. He stated that their belongings had been in the residence for three weeks. They did not know how bad the inspection was going to be because they had fixed the roof and the floor, which was why the drop cord was there. Mr. Dobson had asked Mr. Cely if he could move things in rather than putting them in storage, and Mr. Cely had stated that was fine. His wife is currently trying to get the residence set up, and the only thing holding them up is an inspection. He stated that an inspector had been out three times, and he felt he had gotten different stories. He felt the inspection should have already passed. They had been staying with his mother-in-law, and he had been staying at a motel. He stated that the pictures were all alien to him, because he had been there three weeks. He had never seen the park look anything like it did in the photos. He acknowledged that it was past the deadline, but Mr. Cely could not make miracles happen. Even since he had been there, there had been great improvement. He stated that it was not just a trailer park, there were families involved. He has two children and a wife and needs a place to live. There are a lot of families in the park that need the place, and that the Cely's have been working on the place. He spoke about the inspection, and stated again that the drop cord was there because you have to have electricity to do construction and they had redone the roof and the floor. Chairman Grant stated that was why you get a temporary permit, and asked if anyone had spent the night in the home. Mr. Dobson stated that no one had spent the night there. He and his wife drop the kids off and go there and work on the place. Chairman Grant asked if his testimony was that no one had spent the night in that home from his family. Mr. Burton reminded Mr. Dobson that he was under oath. Mr. Dobson stated that to his knowledge no one had spent the night there. Chairman Grant asked if he had spent the night there at all, or if anyone in his family had. Mr. Dobson stated that to his knowledge, no. Tamra Crane pointed out that the Board did have photographs dated October 23<sup>rd</sup>, just under three weeks old. Mr. Dobson stated that he had moved his things in for storage because he did not want to rent a storage space. Chairman Grant thanked Mr. Dobson for his testimony.

Mr. Burton confirmed that Mr. Dobson had testified that neither he nor his wife were residing at the residence. Mr. Dobson stated that they were only there during the day. Mr. Burton confirmed that there was no power to the residence. Mr. Dobson stated that there was only the drop cord. Mr. Burton asked if they owned a kerosene heater, and noted that there was a strong smell of kerosene. Mr. Dobson stated that if it was cold during the day he didn't want his wife to freeze in there. Mr. Burton then asked if they were storing clothing there as well. Mr. Dobson stated that they were storing clothes there. Tamra Crane asked if he had an application for the permit. Mr. Burton stated that he had a copy of the permit and would enter it in the record.

Chairman Grant asked if anyone else wished to give testimony. John Cely III came forward, and noted that Mr. Burton had stated that they had made no attempts to get an extension on the 90 days. Mr. Cely stated that he had left two messages on Mr. Burton's voice mail asking him to call, but that Mr. Burton had never called. Mr. Cely stated that he

had even called Mr. Burton's house, but got no answer. Mr. Cely assumed that since Mr. Burton did not return his calls everything was okay. Chairman Grant asked if he had been to the office to make a visit to make any determination of the status of the complaint against them. Mr. Cely stated no, that he had called to do that over the phone. He did not know that he needed to come in. Mr. Burton asked the following questions of Mr. John Cely III:

Brad Burton – "Did you see me at the park today Mr. Cely?"

John Cely III – "Yes sir."

Brad Burton – "Did I speak to you when we drove in?"

John Cely III – "Yeah."

Brad Burton – "Did I ask you if there was anyone living in Lot #11?"

John Cely III – "Um hum."

Brad Burton – "What was your response to me sir?"

John Cely III – "That they were waiting to get it inspected. The electrical inspection, they were having problems with it."

Shelby Nace came forward, and stated that she had the property next door to John (Mr. Cely). She stated they had had their property there for over 20 years. She stated that her property value had gone down \$60,000 due to the mobile home park. She stated that she had tried to talk to John about this, she had made calls to John, he wouldn't answer his phone, it is not up for discussion, and reason this all got started was because the plumbing was loose from trailer #1 and everything was going on the ground. Ms. Nace's granddaughter lives across the fence next door, and when she would go out on her porch she could see people doing business in the back of the trailer. She stated that was not for a five year old to see. She stated that she had tried to talk to John about the sewer problems, the mess and the trash. She stated that on her way here today, there was a mattress laying out, all the garbage had not been picked up. She stated that she would like to see John make the park look the way it looked when he first owned it. At that time it was a family park, but it is not now.

Chairman Grant asked if Ms. Nace had any proof of her value loss. Ms. Nace answered that it was not with her. Chairman Grant asked what that proof would be, how she determined that the property had been devalued \$60,000. Ms. Nace stated that about three years ago the tax assessor sent her a notice stating that her property had been assessed at approximately \$120,000. She asked the Assessor's to look at her property again, look at what was next to her, and tell her it was valued at that much. They reduced it down to \$69,000 and it is an acre and three quarters.

Chairman Grant called Mr. Cely to the stand and asked him to give testimony only to the facts. Mr. Cely stated that he had cleaned up the park. He had spent \$12,000 for four more

trailers. He had one out there now. It took him a week to break it down and Johnny Franklin three weeks to move it, and he charged him \$500.00.

Chairman Grant asked Mr. Cely to please testify to specifics, not generalities, and anything that he testifies to, to please give the unit or lot numbers that he's speaking to so the Board can tie them together. Mr. Cely then stated that Mr. Burton said he had some broken windows, and he had spent about \$175 on glass. Chairman Grant asked if there were any units that currently had broken glass in them. Mr. Cely answered that he had three windows that have b-b holes in them. He then stated that he had someone come out and show him where to put a septic tank because several people had moved into a unit and overflowed the septic tank. Chairman Grant asked which unit that was, and Mr. Cely answered #2. Chairman Grant asked if there is currently any lot that has malfunctioning septic. Mr. Cely answered no. Chairman Grant asked if any units currently have holes or openings in the underpinning. Mr. Cely answered that there were one or two that don't have doors on yet, but they are skirted all the way around. Chairman Grant asked if there were any units on any of the lots that are unoccupied other than the unit already discussed which is waiting for the power to be turned on. Mr. Cely answered that there are empty trailers there. Chairman Grant asked if they were totally empty and habitable or if they were used for storage. Mr. Cely stated they were habitable. They are wired in and the water and sewer is hooked up. He stated that because the Inspections Department changed the code, they have to go down four inches in the ground to the cap blocks and go from there. There are a couple of units where they have to do that.

Tamra Crane asked about Lot #9, which Mr. Burton showed as having a dead set-up permit, asking if he had a current permit on it. He stated that he had an old one, not a current one for #9. He had one for #11. Ms. Crane asked about Lot #12, and Mr. Cely answered that it was dead, after six months they go dead. Chairman Grant asked if the unit was still there, and Mr. Cely answered that it was. Tamra Crane asked if it was habitable and ready to be lived in. Mr. Cely answered that it was set up and wired in. He had paid an electrician \$1,500 to wire five trailers. Ms. Crane asked if since the last photo was taken in September, it had been upgraded and was now livable, but had no current permit. Mr. Cely answered that it was dead. Chairman Grant asked if the debris shown in the lower right hand corner was still there. Mr. Cely answered that it was gone. Chairman Grant asked if everything was cleaned and gone and ready. Mr. Cely asked Mr. Burton if it was gone. Mr. Burton stated that he had been there today, but only to look at Lot #11.

Chairman Grant asked if Mr. Cely realized that he had been given a deadline for all these things to be done, again. Mr. Cely stated that he didn't know someone was going to set his trailer on fire at four in the morning. Chairman Grant pointed out that they were talking about violations that are page after page after page, not one isolated incident. She asked if Mr. Cely realized and understood that this had been an ongoing problem since 1986. Mr. Cely stated that everything was cleaned up now. Tamra Crane asked if there was a current permit on Lot #15. Mr. Cely answered that it was dead. Ms. Crane asked if Lot #18 was still dead. Mr. Cely answered that it was wired up, but was dead.

Chairman Grant asked if Mr. Cely realized that his Conditional Use Permit does not permit or allow uses of that property that he is making of it, meaning anytime a unit is there and the permit goes dead that is a violation of the Conditional Use Permit. She asked if he was aware of that. Mr. Cely answered yes, he guessed he did now. He thought that when he

got a deposit on one, then he would go ahead and get everything ready, but the phone hadn't been ringing off the hook. Chairman Grant asked if Mr. Cely understood that his Conditional Use Permit requires him to keep the park in very presentable condition and does not permit units to remain on premises that are not ready to be rented. They are not ready to be rented if they are not habitable, and they are not habitable if they haven't got doors that close, windows that are complete, and underpinning that is complete. The reason the permits are dead is because at least a six month period of time had passed since that was the case.

Mr. Cely stated that they are ready to rent, he is just waiting for someone to give him a deposit and he'll start on them. Chairman Grant stated that they can not be ready to rent if they don't have a permit for people to occupy them. Mr. Cely stated that was just another \$150, and he had wasted \$800 or so on permits. Chairman Grant asked how many units were on the property that he did not have Certificates of Occupancy for. Mr. Cely stated that the one he just moved in he guessed. Chairman Grant stated it was not a guess, he knew whether or not he had permits for them. Mr. Cely stated the one he just moved in, #19, and #1, he didn't have a permit for that because he didn't have a trailer there. Chairman Grant asked how many units were on the property that did not have a Certificate of Occupancy to allow him to rent them. Out of the 24 lots, how many of them have dead permits. Mr. Cely answered he guessed about five. Chairman Grant asked how long they had been dead. Mr. Cely answered he didn't know, they just ran out after six months. Chairman Grant asked again how long they had been dead. Mr. Cely answered more than six months. Chairman Grant asked how long they had been sitting there that the permit had been expired. Mr. Cely answered that he did not know. Chairman Grant asked if he had no idea. Mr. Cely answered that all he knew was that the electrician had come out and wired all five of them, and he went and got the permits. Chairman Grant asked when that was, what year. Mr. Cely answered he guessed it was 2002.

Tamra Crane asked what lot number picture #10 was, where the chain is. Mr. Burton answered it was Lot #19. Mr. Cely stated that they had left the porches there. There was no use to haul them off if you're going to haul them back. Ms. Crane asked how long the unit had been on the lot, the one that was chained to the tree. Mr. Cely stated it had been moved about three weeks ago, but it had taken three weeks to get it moved. He discussed a call he had gotten from someone else who had been waiting over two months to have a mobile home moved. Chairman Grant stated that was not the question, the question was how long it had been since it had been put on the property. Mr. Cely answered three weeks. Chairman Grant asked what the status of it was now. Mr. Cely answered that it was being set up. Chairman Grant asked what the status of it was now, does it have power, does he have the Certificate of Occupancy. Mr. Cely answered no, but he had the Health Department Permit if they wanted to see that. Chairman Grant asked how long it took to set up a unit and get it ready to rent. Mr. Cely answered that it depended on how busy he was. He had it almost level. He stated that the Health Department had come out, and he had #19 and Lot #5. Tamra Crane asked about Lot #19 which had the satellite dish, toilet, building materials, a detached porch and a 200 + gallon oil tank. Mr. Cely stated it was gone. Ms. Crane asked if everything was gone but the porch. Mr. Cely stated that he had two porches there, and everything else was gone except the blocks to set it up with. Ms. Crane asked if they had been moved from Lot #19 to somewhere else on the property, or if they had been removed from the property. Mr. Cely answered "from, gave them away." Ms. Crane asked if any of the couches or toilets in the pictures were still sitting around. Mr.



Cely answered there were no couches, and the mattress was gone. Ms. Nace asked when he had moved it, because it was still there when she came off the hill. Mr. Cely stated it is in the dumpster.

Chairman Grant stated that participants needed to give testimony only, rather than discussing with each other. She asked if it was his testimony that there were no mattresses on the premises. Mr. Cely stated there are no mattresses, the kids found the mattress and put it on the playground, but it is gone, in the dumpster. Chairman Grant asked as of what time. Mr. Cely answered about 2:00.

Chairman Grant asked what provision Mr. Cely had for keeping grass mowed in the park and keeping it cleaned up. She stated that the photographs they had been shown would indicate that it is not mowed on a regular basis and is in terrible disarray. Mr. Cely stated that the grass is mowed every week. Chairman Grant stated that it wasn't in the photographs from October, and she needed Mr. Cely's testimony. Mr. Cely stated that they have two riding lawnmowers, and they try to keep them running. He stated that it had been a bad summer, every time they started something it would rain. He just rents to low income people, \$250 to \$400 rent. Chairman Grant asked what that had to do with the fact that he had to keep it all clean. Mr. Cely answered that he guessed nothing, but people come in and throw stuff out and he didn't know where the couch came from. Chairman Grant asked if he had rules that he enforced that do not allow tenants to trash the place. Mr. Cely stated he has a lease they sign. Chairman Grant asked if he had rules in place. Mr. Cely answered just the lease. Chairman Grant stated that she believed it was a yes or no answer. Mr. Cely stated that he just has a lease that states put your trash in the dumpster, but a lot of them let their kids bring their trash up there.

Chairman Grant asked Mr. Cely if he understood that every time a violation of the Conditional Use occurs it put him in jeopardy of losing the Conditional Use. Mr. Cely answered yes. Chairman Grant asked if he realized that these violations had occurred ongoing, continuously, on and on since 1986. Mr. Cely stated that everything had been cleaned up. Chairman Grant stated that the patience of the Board had more than been tried. Mr. Cely stated that he had gotten a dump truck and tractor to haul the pine tress and stuff away. Chairman Grant stated that all of this only takes place when Mr. Cely gets to the point of coming before the Board and losing the Conditional Use permit, and that this has been a habitual problem. Mr. Cely stated that he did not know he could get a small extension. Chairman Grant stated that it was not a matter of an extension, as he had been given a very specific deadline to meet the violations of the Conditional Use Permit. Mr. Cely stated that it had taken them three weeks to tear that trailer down by hand.

Chairman Grant asked if there was any additional testimony Mr. Cely wished to give. He stated that they had put new water lines in the trailers and all that. Chairman Grant asked if there were any existing violations today of the Conditional Use Permit. Mr. Cely answered no, all the trash is gone, he didn't have a permit for #19 yet but he had the Health Department where he could get a permit for it. He did not know what was going on with #11. Chairman Grant asked if there were any holes in the underpinning of any unit in the park. Mr. Cely stated that there are a couple trailers that don't have doors with hinges on. Chairman Grant stated that those are violations. Mr. Cely stated that he likes to put hinges on them. Chairman Grant stated that those are violations. Mr. Cely stated two trailers then.

Tamra Crane asked out of twenty four lots, how many had units on them. Mr. Cely answered twenty three. Ms. Crane asked how many of those were rented. Mr. Cely answered eight or nine. Ms. Crane asked if the rest were not storage units, but were ready for occupancy other than that some of them did not have a current permit. Mr. Cely answered that there were five, but the permits ran out. The others are ready, and all he would have to do would be call Duke Power and have the power turned on. Ms. Crane asked if any of the unoccupied units were used for storage. Chairman Grant asked what was in the unoccupied units. Mr. Cely answered basically a stove and a refrigerator, thought one of them contains two stoves, two refrigerators, two water heaters and one commode. Chairman Grant asked if that was storage. Mr. Cely stated that was just somewhere to put it. Chairman Grant stated that was called storage. Tamra Crane asked which lot that was. Mr. Cely answered #15. Chairman Grant asked if there were any furnishings in any of the other units. Mr. Cely answered a stove and a refrigerator. Chairman Grant asked if his testimony was that he didn't provided furnishings, those were strictly appliances. Mr. Cely answered yes. Chairman Grant asked if there was storage of anything other than appliances in those units. Mr. Cely answered that was it. Chairman Grant confirmed that there was nothing else stored in any of the units. Mr. Cely stated no.

Chairman Grant asked if there was any additional testimony. There was none. Chairman Grant asked if there were any additional questions of the applicant. Ann Pouch asked Mr. Cely why he only cleaned up when he had to. The Board went through this time and time again, and he cleans up briefly. Mr. Cely stated that he cleans up, but the next week it's a mess again. Chairman Grant thanked Mr. Cely for his testimony.

Chairman Grant stated that Mr. John Cely III could come forward and speak. Mr. Cely stated that he had come to work for his dad about a year and a half ago. His dad is unable to do all the work himself, and Mr. Cely is trying his best to make the place look nice again. He stated that they are trying. He had not seen the Conditional Use Permit, and did not know the rules and regulations about underpinning and the like. He stated that he is trying to come in and run the park, and he is trying to make it look like when they first opened. He stated that when they first built the park it was real nice, with flowers around the trailers, and he would like to get it to that state again. He stated that was his home too, and he didn't want to have to go somewhere else to live. Chairman Grant asked if he understood that the Conditional Use Permit was something that he would have access to by coming to the office and asking for it. Mr. Cely stated that he did not know that, and wasn't even aware of what a Conditional Use Permit was until Mr. Burton told him what it was. Chairman Grant stated that was his father's obligation.

Tamra Crane asked Mr. Burton who he had sat down with and gone over the park lot by lot. Mr. Burton answered it was with John Franklin Cely II and John Cely III. Ms. Crane asked when that was. Mr. Burton answered June 17, 2003. Ms. Crane read over a document which stated "John Cely and John Cely III in office for interview. Talked about each lot and discussed conditions and requirements per the 1986 Conditional Use Permit. Told them they had 90 days to come into compliance. Based interview upon photos ... Both gentlemen stated they understood." Ms. Crane stated that on June 17<sup>th</sup> Mr. Cely was pretty well aware of what a Conditional Use Permit was and what the Conditional Use Permit was for Sleepy Hollow. Mr. Cely stated not the whole thing, but he got the general idea. Regarding the dead set-up permits, Mr. Cely stated all they had to do was go right over to the corner of the building and pay money to have them reinstated. They also have

to jack them up and dig the block work four inches into the ground to meet code, and they weren't aware of that. But all it would take is paying money to have the permits reinstated. Ms. Crane asked if in June, when Mr. Burton went over that with him, was he not aware that that needed to be done before the 90 days was up. Mr. Cely stated that Mr. Burton did mention that they needed to get them inspected and ready to go. Ms. Crane asked why they did not do that. Mr. Cely stated that it had slipped their minds. Chairman Grant stated that at this point it had slipped their minds for several years, since 1986. Mr. Cely stated that he had just come into the picture about a year and a half ago. Chairman Grant asked if there was any testimony he wished to give. Mr. Cely referred to a sheet listing all the violations Mr. Burton had given them. Mr. Cely stated that he had just gotten it from his father two days ago. He had gone over everything, highlighted everything that had been done, and about 95% of it had been done. The main thing is getting the permits reinstated. Chairman Grant asked if Mr. Cely if he realized that every time they get to this point, things are brought up to date, but a few months later it's a continual problem again because he doesn't have anything in place to require anyone to keep the place cleaned up. Mr. Cely stated that he could make a rule list. Chairman Grant asked if he understood that this was a continuous problem since 1986. Mr. Cely answered yes, but that he was in the picture now and this was his home and how he made a living. Chairman Grant asked if he had anymore testimony. Mr. Cely answered no.

Tamra Crane stated that she had a question for Mr. Cely II. She asked if anyone was living in the park that was running a business with the automotive stuff laying around. Mr. Cely answered no, that the tenant goes to the auction on Thursday night and buys a vehicle about once a month or so to fix up and sell to friends. Ms. Crane confirmed that the tenant buys the vehicles, brings them to the park to fix them and then sells them from there. Mr. Cely stated it is not every month, it's just every so often. Chairman Grant stated that was not the question and asked if he was using the vehicles for his personal use or if he sells them. Mr. Cely stated that he drives some of the stuff he buys, it's not a business. Ms. Crane asked if he had cleaned up the things seen in the photographs. Mr. Cely stated it is all grass, nothing there. Mr. Cely then stated that the electrician that wired the five home in, he and his wife had separated and he took off so Mr. Cely had to use another electrician to call it in. Chairman Grant thanked Mr. Cely for his testimony.

Chairman Grant asked if there was any additional testimony that had not already been given. There was none. Chairman Grant closed the Public Hearing and stated there would be no more public testimony. She stated that at this point the Board needed to make a determination as to whether or not there are any violations of the ordinance currently in existence, any violations of the Conditional Use Permit based on the testimony that had been given.

Russ Burrell asked the Chairman if he could make a suggestion. Chairman Grant stated yes. Mr. Burrell stated that given the length and complexity of all the evidence in this case, he suggested that the Board direct staff to make proposed findings that the Board could then vote on separately or all at one time, depending on how they choose to do it. But to direct staff to make a proposed set of findings for the Board involving the evidence heard today and then at their next meeting the Board could vote one finding at a time or all findings at one time however the Board chooses to do that. There is a lot of evidence, and Mr. Burrell thought the Board would want to be pretty thorough in addressing it one way or another. Tamra Crane agreed. Chairman Grant stated that at this point they would direct

that Staff prepare findings of facts in the matter, present them to the Board at the next meeting for their disposition and continue the case until that time. Robert Fleming seconded that. Chairman Grant asked if that was the consensus of Board, or if anyone had any objections to that course of action. Tamra Crane asked if staff was to go out and update and get current information on the mobile home park. Russ Burrell stated that they would have to reopen the hearing if they wished to do that, but it was up to the Board. Chairman Grant stated that at this time they were asking for a finding of fact based on the testimony that had been given. Chairman Grant stated that if that was the consensus of the Board, that case would be continued to the following meeting. Karen Smith stated that the next meeting date was Wednesday, December 10<sup>th</sup> at 4:00. Chairman Grant stated that December 10<sup>th</sup> at 4:00 was when this matter would be presented again. No further testimony will be given, all testimony has been given and they will have finding of facts based on that testimony.

STAFF OR COMMITTEE REPORTS – None

OLD BUSINESS - None

NEW BUSINESS - None

Ann Pouch made the motion to adjourn at 7:28 PM.

---

Diane Grant, Chairman

---

Amy Brantley, Acting Secretary