

MINUTES OF THE HENDERSON COUNTY
ZONING BOARD OF ADJUSTMENT

The Henderson County Zoning Board of Adjustment held a regularly scheduled meeting on Wednesday, September 24, 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: Vice Chairman Tamra Crane, Dale Caldwell, Anthony Engel, Ann Pouch, Zoning Administrator Brad Burton, Planning Director Karen Smith, and Secretary Joyce Karpowski. Assistant County Attorney Russ Burrell arrived later.

Acting Chairman Crane called the meeting to order at 4:10 PM and introduced the members of the Board. She presented the minutes of the meeting from August 27, 2003. There were no changes or corrections. Mrs. Pouch made a motion to approve the minutes as presented and Mr. Engel seconded the motion. All members voted in favor of the motion.

Chairman Crane explained that, since there were only 4 Board members present today (a full Board is 5 members), all 4 members would have to vote favorably for a variance to be approved. She gave the applicants the opportunity to have their case continued until there was a full Board when their case was called.

Mr. Burton asked the Board if the agenda could be changed to hear Case V-03-07 first. He said that Mrs. Smith wanted to get some legal clarification on the first matter on the agenda. No one had any objections.

Chairman Crane called forward anyone who would give testimony in the cases before the Board today. Sworn in were Allen Combs, Gregory Strickland, Georgina Holmes, Jeff Justus, and Zoning Administrator Brad Burton.

Case V-03-07, Allen Combs, agent for Jack Oechslin

Chairman Crane called Case V-03-07, Allen Combs, agent for Jack Oechslin, seeking a variance of twenty four (24) feet from the 60-foot front yard setback in the R-30 zoning district. Mr. Burton presented photographs of the property to the Board and gave a summary of the issues. The approximate size of the property in question is 2.6 acres (per Henderson County GIS). The parcel is zoned R-30. Section 200-14.D requires a 60-foot front yard setback from the centerline of a road. The property is somewhat unique in that it is almost encircled by a road—the majority of the parcel fronts N. Hills Drive. The applicant wishes to construct an external garage on the property. The applicant claims there is no other place on the property to build this garage due to topographic restraints. Mr. Burton described the photographs presented. He said the top right photo actually showed where the actual encroachment would be. The garage would be 37.4 feet from the road. Chairman Crane asked where North Hills Drive was. Mr. Burton showed on the site plan where it almost totally encircled the property.

Mr. Caldwell asked what the problem was with all the property behind the house within the building envelop on the site plan. Mr. Burton said that there is a retaining behind the house and the topography begins to slope dramatically. Mr. Burton said there was about a 20% grade from the back of the house.

Chairman Crane called Mr. Combs forward. Mr. Combs presented the actual survey to the Board. He said the house was 24 feet wide with a basement. He said the land drops off quickly from the back of the house. He said the building shown in the back yard on the plan probably sits 25 feet below the house. Mr. Combs said that the driveway is existing and North Hills Drive is a one-lane road. Mr. Combs said the only properties affected would be the Walters' and the Heeman's and he

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presented letters, signed and notarized, from them saying they were okay with the building.

Chairman Crane asked why the garage couldn't go in a different place she pointed out. Mr. Combs said there was an oil tank in the ground which would be removed. Mr. Combs said there was a huge clump of trees there and he wanted to maintain his circular driveway. Where they would like the garage, only 5 trees need to be removed. Chairman Crane asked about another area and Mr. Combs said it was very steep there and the garage would need a basement there. Different areas were discussed. Chairman Crane said that the Board can't grant a variance because the applicant doesn't want to take down trees. Mr. Combs said the applicant doesn't want to move his circular driveway over his septic system.

The Board accepted into the record the 2 notarized letters and new site plan.

Mrs. Pouch said she did not understand about the oil tank. Mr. Combs said they would totally remove. Mrs. Pouch asked to be shown exactly where it was and why it was an issue. Mr. Combs pointed it out on the map, inside the circular driveway on the edge of the driveway. Mr. Combs said it was there for years. Pointing out on the map, Mr. Combs said if the garage were in one place the circular driveway would have to be moved and on another side the septic system was in the way. Chairman Crane asked if there were no circular driveway, how would Mr. Oechslin enter and exit the property. Mr. Combs said he would have to back out into the road. Chairman Crane asked about a turn-around. Mr. Caldwell said it would break up the functional layout of access. Mr. Combs said that North Hills Road looked more like a driveway and serves 2 properties at this point. Chairman Crane said if the garage were moved to the right, it would encroach on the septic system and without the circular driveway, there would be no ingress and egress.

Chairman Crane asked who the red house in the photograph belonged to. Mr. Combs said Mr. Heeman, who is present. Mrs. Pouch asked if the garage were moved over, there would still be room to go around and come out. Mr. Combs said he didn't think so, without moving some trees, not when the garage is there. Mrs. Pouch said trees would be removed. Mr. Combs said trees would be removed only where the garage was going.

Chairman Crane asked the size of the proposed garage. Mr. Combs said 26 feet by 24 feet. Chairman Crane asked what the existing house looked like. Mr. Combs said it has been there since 1957 and the garage will match the siding and shingles of the house.

Mr. Caldwell asked how large the parcels of property across the street were and how close those residences were. Mr. Combs said that it should be on the large house. Mr. Heeman's property is 1.33 acres and the Walters' property is 8 ½ - 9 acres. Mr. Combs said there is a hedgerow along North Hills Road between the property and the proposed garage and they will not remove the hedgerow. Chairman Crane asked who the fence belonged to. Mr. Combs said it belonged to Mr. Heeman.

Mr. Caldwell asked if there was a garage there presently. Mr. Combs said no. Chairman Crane asked how far the garage would be from the house. Mr. Combs said 40 feet. Mrs. Pouch asked if the garage could be moved closer to the house. Mr. Combs said if the garage were moved closer to the house, part of the circular drive would have to be removed and the other side of the circle would have to be pushed away so a car could still turn. He said a 30-foot radius is needed to turn a car. Mr. Combs said that would impede the septic field. Chairman Crane said it would probably be difficult to back out into the road.

Mr. Combs said the repair area and drain field of the septic system is in front of the house next to the driveway. Mr. Caldwell said that the property is 2.6 acres and about ¾ acre is usable property. Mr. Combs agreed and said the rest of the property is terraced gardens.

There were no more questions and the Board discussed the variance requirements. Mrs. Pouch read the requirements for findings of fact: there are practical difficulties or unnecessary hardships in Minutes Sept. 24, 2003

carrying out the requirements of the district, as demonstrated by: if the applicant complies with the literal terms of the district, he cannot secure a reasonable return from or make a reasonable use of his property. Mr. Engle said there is no garage and there is no other usable place for the garage because of the septic. Mrs. Pouch continued the hardship of which the applicant complains results from unique circumstances related to the applicant's land and the hardship is not the result of the applicant's own action. Chairman Crane said that the hardship is not a result of the applicant's own action and, as for unique circumstance to the land, obviously the house is positioned where it is because of the topography in the back and with the septic system and drain fields out from, it couldn't be put anywhere else. Mr. Engel said the steepness of area where it drops off and the way the road wraps around, requiring front yard setbacks. Mrs. Pouch continued the variance is in harmony with the general purpose and intent of the ordinance and will preserve its spirit and the variance will secure the public safety and welfare and will do substantial justice. Chairman Crane said if the variance were not granted, they would be backing out into the road, so it would be a positive impact for public safety.

Mrs. Pouch said with regard to the application of V-03-07 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 has been done. Accordingly, I further move the Board to grant the requested variance in accordance with and only to the extent represented in the application. Mr. Engel seconded the motion.

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

Mrs. Crane	-	yes
Mr. Caldwell	-	yes
Mrs. Pouch	-	yes
Mr. Engel	-	yes

Chairman Crane said the application was approved unanimously as requested.

Mr. Burton requested a five-minute break.

The Board reconvened.

Case #V-03-06, Gregory Keith Strickland

Chairman Crane called Case #V-03-06, Gregory Keith Strickland seeking a variance of 15 feet from the 20 foot side yard setback in the RM-2 Zoning district.

Mr. Caldwell said that he had not planned on being on the Board today. Mr. Caldwell said that he was the real estate agent for the seller who sold Mr. Strickland his lots and also involved with the sale of Lot 3 which is involved in the variance. He said that is the extent of his involvement and he feels he can sit on the Board and make an impartial judgment. No one on the Board had any problem with Mr. Caldwell's involvement.

Chairman Crane continued with the case and asked Mr. Burton to give a summary of Issues. Mr. Burton said the property is located at 70 Peaceful View Trail in Hendersonville. The applicant is requesting a variance of 15 feet in the RM-2 Zoning district. This is how it was advertised, although he actually only needs a variance of 4 feet. He said he will explain later in the presentation. The approximate size of the property in question is .96 acres (per Henderson County GIS). The parcel is zoned RM-2. Section 200-28.D requires a 20-foot setback from side property lines. A Zoning Permit (Z-03-177) was issued to Mr. Strickland on 06/19/2003. The applicant wishes to (*and in actuality, already has*) placed] a modular home on the site. The applicant claims there is no other

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place on the property to place this home because due to the lot shape, size and topography, other areas on the property have been designated for septic drain field and repair area. Mr. Burton drew the Board's attention to page 1-4 in their packets showing the location of the property. Page 1-5 is an aerial view showing the approximate location of the home. Page 1-6 was submitted with the variance application and explained the placement of the home based on Mr. Burton's measurements, not a professional survey. Mr. Burton and Mr. Strickland agreed to the measurements and placement of the home on page 1-6 in the field.

Mr. Caldwell asked if he was correct in reading the plan as the home being 4 feet from Lot #3 and 31 feet from Lot #1. So the problem is how the footers were placed. Mr. Burton said that was what Mr. Strickland told him.

Mr. Burton showed the zoning permit on page 1-7 that was issued on June 19, 2003, and endorsed by Mr. Strickland. Page 1-7a is the plot plan that accompanied the zoning permit. This does not coincide with the information before us. Page 1-8 is the permit from the health department and page 1-9 is the site plan from the Health Department, both of which conflict with what is before us today. Mr. Burton said the home does not sit today where page 1-9 says.

Chairman Crane asked if the rest of the information on page 1-9 was correct. Mr. Burton said yes. Mr. Caldwell there was a swale that necessitated moving the septic toward the back of the lot. Mr. Burton described the photographs presented in the packet. Mr. Burton wanted to emphasize that there was no accurate survey, so he and Mr. Strickland measured from the property line to the best of Mr. Strickland's knowledge.

Mr. Caldwell said he is familiar with the most recent survey and those ribbons are from the most recent survey.

Chairman Crane called Mr. Strickland forward. Mr. Strickland said that he owned Lot #1 and had to increase the size of the house to get the appraisal value. He said the house was pushed back to the narrow spot on the land. Mr. Caldwell said he recalled the septic system and the swale pushed the house back into the neck of land. Mr. Strickland said yes, the septic couldn't be too close to the well area and had to go below. Chairman Crane asked if the house could have gone closer to Lot #1, where there is 31 feet. Mr. Strickland said that was the original plan. Mr. Strickland said if it was going to encroach, he wanted it to encroach on Lot #1. Mr. Strickland presented a notarized letter from the owner of Lot #3, Lillian Stafford, stating she had no objection to the granting of a 4-foot variance. Mr. Caldwell said her home sits away from the subject home.

Mrs. Pouch asked if Mr. Strickland owns Lot #1, why doesn't he move the property line over to make room for this house. Mr. Strickland said that he didn't actually own Lot #1 until last week. Mr. Caldwell said he thought the plan was to have it over near Lot #1. Mr. Strickland said yes and within the year he wants to combine the lots, but it would take that long. Mrs. Pouch said the house was toward the other lot and asked if he could move it. Mr. Strickland said he couldn't move it. Chairman Crane asked if he was saying that whoever measured and poured the footings made a mistake. Mr. Strickland said yes. Chairman Crane asked if the mistake was discovered after the footings were poured and the house set up. Mr. Strickland said yes. He said he thought it was going to encroach on Lot #1, so he went ahead and applied for the variance. Mr. Strickland said after the house was up, he realized if they had put the footers in right, he wouldn't have had to apply. Mrs. Pouch asked if Mr. Strickland had anything from the people who put in the footers that it was their mistake. Mr. Strickland said no. Chairman Crane asked what Mr. Strickland planned to do on the end of the house encroaching on the line, such as a deck or garage. Mr. Strickland said nothing would go there. Mr. Caldwell asked if he would work toward Lot #1 and Mr. Strickland said yes. Mr. Caldwell said there was a workshop on Lot #1.

Mr. Caldwell said that he was present when the Health Department laid out the septic system and pushed it back toward the neck of the lot. Chairman Crane said it was sad to have an acre of land and it is so tight. The Board discussed the combining of the lots and the time required. Mr. Minutes Sept. 24, 2003

Strickland said if the footers were correct, he wouldn't be here today. Mrs. Pouch asked who the problem was with and Mr. Strickland said Oakwood Homes.

Mr. Caldwell asked if the roof were collapsible. Mr. Strickland said yes. Mr. Caldwell said if the home were moved, the roof would have to be collapsed and basically take it down again. Mr. Strickland agreed. Mr. Caldwell said that's expensive.

Chairman Crane spoke about the change of the variance from 15 feet to 4 feet and asked Mr. Burton if the request should be amended. Mr. Burton said yes. The Board discussed how much of a variance Mr. Strickland would need. It was decided Mr. Strickland needed a 4-foot variance on the northeast property line.

Mr. Burton said that when he made his site visit, he didn't think he was in the correct area because the home was already there. He said he advised Mr. Strickland that everything he was doing was at his own risk. He said at another visit, they were laying water lines and putting up decks. Chairman Crane said that Mr. Strickland knew he might have to move it, but went ahead anyway. Mr. Strickland said that it wasn't his scheduling. He said that he doesn't own the home until it's closed and all the permits are sealed. Chairman Crane asked if he went ahead with the work anyway. Mr. Strickland said it was in process. Chairman Crane asked if he could have stopped it. Mr. Strickland said he think Mr. Burton was talking about Duke Power putting in a transformer for his home and a neighbor's home and Duke Power was digging lines. Mr. Burton said he saw a plumbing truck and assumed it was a water line. Mr. Caldwell said the only pro-party affected was Lot #3 and Mr. Strickland agreed.

Mrs. Pouch said he did sign the zoning permit saying where he was building the house. Mr. Caldwell said he thought when Mr. Strickland signed the zoning permit, he intended to have the house encroaching against Lot #1, not Lot #3. Mr. Strickland agreed. Mr. Caldwell said the footers were then put in wrong. Mr. Strickland agreed. Mr. Burton said by signing the zoning permit, Mr. Strickland agreed to comply with all the requirements of the setbacks. Mrs. Pouch said she feels it is the owner's responsibility. Mr. Caldwell said there was 31 feet on one side. Mr. Engel said that means there was plenty of room. Mrs. Pouch said he could have moved the house. Mr. Caldwell said had the footers been placed 4 feet in the other direction, Mr. Strickland wouldn't be here today. Chairman Crane asked if it was Oakwood Homes that put the footers in the wrong place. Mr. Strickland said yes, it was a subcontractor, but Oakwood Homes is the contractor. Mrs. Pouch asked when Mr. Strickland was aware of the non-compliance. Mr. Strickland said he wasn't aware of it until the house was there. Chairman Crane asked if they poured the footings, put the blocks in and put the house in all the same day. Mr. Strickland said he thought the footings had to be there before the house. Chairman Crane asked if he didn't realize the footings were in the wrong place until the house went up. Mr. Strickland said yes. Mr. Caldwell said that Mr. Strickland traveled and asked if he was there every day. Mr. Strickland said no, he travels a lot. Mr. Caldwell asked if when he came back and saw the house, was it what he anticipated. Mr. Strickland said no, not at all what he expected. Mr. Caldwell said it wasn't something he did by design. Mr. Strickland said he did not intentionally put the house in its present location. Mrs. Pouch asked if he knew nothing was wrong until the house was placed in its location. Mr. Strickland said yes. Mr. Caldwell said that was the point; he didn't design it to do this. Chairman Crane said there was room. Mr. Caldwell said obviously not; he wouldn't come in here asking for 4 feet, when he had 31 feet on the other side.

Chairman Crane read from Mr. Strickland's application, "If the variance is denied substantial financial damage will occur to myself. As I will have to continue to make payments on my house and land, I will not be able to secure another residence therefore becoming part of N.C. homeless." Chairman Crane said that goes a little to far. Mr. Strickland said actually not because he's been bouncing around from this house to this house. Chairman Crane said that if it is Oakwood Homes' problem, then they would have to move the home for you. Mr. Strickland said he's not sure how it would go. Chairman Crane said she doubted he would become homeless if he just purchased another home next to this lot. So she's not going to take that as a fact. Mr. Caldwell said it would

become a financial burden. Mr. Strickland agreed and said he wouldn't be able to secure another residence. Mr. Engel said this doesn't become his residence until it is approved. Mr. Strickland agreed. Mr. Engel asked if they are responsible for placing the home, aren't they responsible for locating it in the correct location. Mr. Strickland said yes. Mr. Engel asked if they should not move it to the right location at their expense. Chairman Crane asked if there were anyone present from Oakwood Homes. Mr. Strickland said yes. Chairman Crane asked if they would like to speak to the issue.

Brad Parson came forward and was sworn in. Mr. Parson said he was the sales manager for Oakwood Homes. Chairman Crane asked him to tell the Board how the error occurred. Mr. Parson said that Mr. Strickland had been trying to get a home since February. The original home was to be 52 feet long, but Mr. Strickland required a more valuable home to get a home loan. So they had to make a larger floor plan. The Nixes did the grading and Oakwood Homes was responsible for subcontracting the footers to Donald Pressley. The day the footers were done, Mr. Parson went to the property because they were planning on putting it 5 – 10 feet from Lot #1. Mr. Parson when he went to look at the footers, he didn't use a tape measure, he just walked it off. Chairman Crane asked if he was aware of the 20-foot side setback on both sides. Mr. Parson said yes, Mr. Strickland had given him the Zoning Permit. Mr. Parson said the day the footers were put in, he was the only other person there. Mr. Parson said he walked it off and said it looked about fine. The house was delivered 2 days after the footers were poured. Mr. Parson said the process is fast; manufactured homes can be put up in a week. Chairman Crane asked if he was eyeballing 20 feet from Lot #3 and 10 feet from Lot #1. Mr. Parson said yes, he wanted to make sure he was 20 feet or less. Chairman Crane asked if he actually told them to dig here. Mr. Parson said the Nixes graded and didn't mark the 4 corners. The person who put the footers in called Oakwood Homes and then just estimated where the footer should be. Mr. Parson said when he checked he didn't think about Lot #3, he just wanted to make sure they were close to Lot #1. Chairman Crane said that Mr. Strickland didn't own Lot #1 yet so they should have been trying to be 20 feet from both lot lines. Chairman Crane said that Mr. Parson and his contractors should not eyeball any measurements, but always use a tape measure. She said that he was doing a great injustice to the homeowner by doing business that way.

Mrs. Pouch asked if Mr. Parson would move the house. Mr. Parson said if made to, they would have to. Mrs. Pouch said who pays for it. Mr. Parson said Oakwood Homes would pay for it. Chairman Crane asked how it would be done. Mr. Parson explained how they would move the home and then set it back up. He said the decks were on the home, but he did not know about the water and sewer line. Chairman Crane asked who was responsible for putting the decks on. Mr. Parson said Oakwood Homes is responsible for everything. Chairman Crane asked if once Oakwood was aware of the encroachment and continued. Mr. Parson said, to his knowledge, once Oakwood was aware of the encroachment, Dave Roberts, the general manager, stopped work. Chairman Crane said the picture taken September 10 has no decks and there have been decks put on since that time. Mr. Parson said that decks go up the same day the house is leveled. Chairman Crane questioned the dates at the bottom of the variance application. Mr. Burton said he probably made a mistake putting 08 when it should have been 09. The Board and Mr. Parson discussed when they actually knew of the encroachment, yet work did not stop.

Mr. Caldwell asked what delay would be caused by dismantling the home and resetting it up. Mr. Parson said probably about 2 ½ months because of scheduling, which he explained. Mrs. Pouch asked if he knew there was a problem before adding the decks. Mr. Parson said he personally did not. He said he was notified after the home was delivered. Mr. Parson said when he became aware, the general manager in corporate was notified. Mr. Caldwell said when the workers get a set of work orders they probably just go ahead. Mr. Parson said that if the graders had marked the 4 corners of the home.... But it will be a beautiful site when finished. He explained again what happened, but they just missed it. The Chairman Again said a tape measure should be used and the contractors should know that.

Mr. Caldwell said it was an error that impacts one property, Lot #3 on the left, and really doesn't

impact anything else for 4 feet. He said that the Board could make a point and make them move the home, but he's not sure that's the prudent thing to do. Mrs. Pouch said that Mr. Strickland knew, yet they continued. Mr. Strickland said as soon as he knew, he let Oakwood homes know, and spoke to the Zoning Administrator. Mr. Burton said that Mr. Strickland has been very cooperative throughout.

Chairman Crane said hearing from Oakwood Homes was very helpful, but she was disappointed in the way they and their contractor did business. Basically it's their fault that Mr. Strickland is here before the Board in this predicament. She said that the Board does have the power to make them move the home. But Mr. Strickland and his family are the ones who would be hurt by that outcome. Mr. Caldwell said that he didn't think 4 feet would justify all that. Chairman Crane said if the adjoining property owner had a problem with it, that would make a bigger issue. Mr. Caldwell said he sold Lot #3 and spoke to the owner, who said she did not have a problem with it. Mr. Caldwell said those are the only homes on a 3-acre parcel with an orchard behind the lots. There is nothing else around the area. There is just a 4-foot error.

Mr. Engel asked how they knew it was 4 feet. Mr. Burton said that it was not a professional survey, but he and an assistant used a tape measure from a tree with the ribbon on it. Mr. Engel asked if he ran a string along the property line from stick to stick. Mr. Burton said no, he relied on the surveyor's ribbons. Mr. Engel asked how many there were. Mr. Burton said several. Mr. Caldwell said at least 4 on that line. Mr. Strickland said that the line was straight.

Chairman Crane if anyone thought we needed a surveyor to come out and check the distance. Mr. Caldwell said he didn't think so. He didn't think the owner of Lot #3 would have a problem with it being 15 feet. Chairman Crane for any other questions of the applicant. There were none. She asked for discussion.

Mrs. Pouch said the Board has to decide if the hardship was the applicant's own action or someone else's. Mr. Caldwell said he didn't think it was a result of his own action. He said it looks like a comedy of errors. Chairman Crane said that it seems Mr. Strickland was out of town and had given them a copy of the Zoning Permit. Mr. Caldwell said the house was pushed back into the narrow part of the lot by the placement of the septic. Chairman Crane said a licensed contractor should have been more diligent in pulling a tape to make sure they were in the right spot.

Mr. Engel read from the Board's fact finding sheet: there are practical difficulties or unnecessary hardships in carrying out the requirements of the district, as demonstrated by – if the applicant complies with the literal terms of the district, he cannot secure a reasonable return from or make a reasonable use of his property. Chairman Crane said he will have to move the home and even though Oakwood Homes said they would do that, it would take at least 2 months. Mr. Engel continued reading the hardship which the applicant complains results from unique circumstances related to the applicant's land and the hardship is not the result of the applicant's own actions. Chairman Crane said the unique circumstance is due to the topography of the land and the septic layout, where the house must be placed on the narrow piece of the lot. Also a contractor being paid made a mistake. Mr. Engel continued reading the variance is in harmony with the general purpose and intent of the ordinance and will preserve its spirit. The variance will secure the public safety and welfare and will do substantial justice. Chairman Crane said the variance was only 4 feet although if the variance were larger Oakwood would be moving the home. She feels that because it is a small area and because it's not the homeowners fault, she doesn't feel that any of this was done intentionally – it was a mistake, but one that could have been corrected had protocol been followed. She said if she would see one again, she would not feel the same way. Mr. Engel agreed.

Mr. Engel said with regard to the application of V-03-06 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 has been done. Accordingly, I further move the Board to grant the requested variance in accordance with and only to the extent represented in the application. Mr. Caldwell seconded the motion. Mrs. Smith reminded the Board that this was an amended application. Chairman Crane said that it was amended to a 4-foot variance on the northeast side. Mr. Caldwell seconded the amendment.

Chairman Crane called for a vote on the amended application and the following vote was taken by a show of hands:

Mrs. Crane	-	yes
Mr. Caldwell	-	yes
Mrs. Pouch	-	yes
Mr. Engel	-	yes

Chairman Crane said the application was approved unanimously as amended.

Review of Case CU-23-96 (Amended), Jeff Justus

Chairman Crane opened the public hearing and called a review of Case CU-23-96 (Amended), Jeff Justus, for compliance. The property is located at 422 S. Allen Road and is zoned C-4.

Mr. Burton gave a summary of the issues. He said the property in question is located at 422 South Allen Road. This is a compliance review for Mr. Justus' amended Conditional Use Permit granted May 28, 2003. Pursuant to item 5b of the amended Conditional Use Permit (page 3-4 in the Board's packet): "A planted evergreen buffer strip as required in the original Conditional Use Permit (CU-23-96) must be installed within 60 days from the date of this order." The order was dated May 28, 2003. The expiration date for the installation of the buffer was July 28, 2003. The Zoning Administrator made a site visit on 08/15/2003, at which time it was observed that white pine trees and Jermyn's Globe viburnum shrubbery had been sporadically planted in areas along the top of the bank bordering the Acorn Manor Manufactured Home Park. The foliage, in the opinion of the Zoning Administrator, does not meet the requirements of an evergreen buffer strip, per Section 200-7 of the Zoning Ordinance: BUFFER STRIP -- Unless otherwise stated in this chapter, a buffer strip consists of a planted strip at least 10 feet in width, composed of evergreen trees, spaced not more than 20 feet apart and not less than one row of dense shrubs, spaced not more than five feet apart. [Amended 5-16-2001] On August 25, 2003, the Zoning Administrator sent Mr. Justus a notice of non-compliance (page 3-2 in the packet) concerning the buffer foliage that was planted and notified Mr. Justus of this matter to be calendared for review by the Henderson County Zoning Board of Adjustment at its regular September, 2003 meeting. Mr. Burton described the photographs presented to the Board. Mr. Burton questioned if the viburnum was evergreen. Mr. Burton said that there were some white pine trees but the spacing was not there. There were some gaps. It seems he was using the deciduous cover that was there and trying to incorporate that into the buffer. There was an attempt, but in the true spirit of the evergreen buffer strip, when the trees defoliate, there will be no evergreen buffer strip.

On the last page of pictures, on September 15, 2003, there is a row of evergreens planted in a manner that he felt would be sufficient to be categorized as a buffer strip. Mr. Burton said that he was there this morning and he feels that the buffer strip is sufficient. Chairman Crane asked the difference in the pictures on 8/15 and 9/15. Mr. Burton said that you can barely see the trees and shrubs planted in the September pictures. Chairman Crane asked if he had planted the buffer strip. Mr. Burton yes and they were spaced per the order. Chairman Crane asked if there were more today than on 9/15. Mr. Burton said it was the same. Mr. Justus said that on 9/15 the landscaper hadn't finished, but now had installed about the last 20 plants. Mr. Burton said the contractor requested that he make a site visit this morning prior to the meeting today. Mr. Burton said that it now meets the buffer requirements. Chairman Crane asked about the buffer being evergreen. Mr.

Burton said yes.

Chairman Crane asked about the proper procedure now that the permit is in compliance. Mr. Russ Burrell, Assistant County Attorney said that the Board could make a finding that as of the date of the hearing Mr. Justus is in compliance and do not need to go further with revocation of the permit.

Chairman Crane said that it is the Board's decision that due to given testimony by Mr. Burton and photographs that, even though Mr. Justus was not in compliance by the specified date, he is in compliance as of today's date.

Mr. Justus asked if he could speak to the Board. Mr. Justus said that he understands the intent to buffer neighbors, but as a developer leaving a strip of trees as a buffer, he gets no credit for that buffer. He said he could bulldoze all the trees and then plant 3-foot tall evergreens. There was discussion about the buffer strip. Mrs. Smith said that Mr. Justus should have talked about it at his hearing when the Board imposed the condition. Mr./ Justus said the big word was evergreen, because of all the other trees there. Mrs. Smith said He should have brought it up at the original hearing. Now he would have to go through the process and amend his permits. Mr. Justus said that he had another 600 feet to buffer. Mr. Burton said that was another permit, not the one being discussed today.

Mr. Caldwell said that if he is reading the definition of buffer correctly, deciduous trees are not considered buffer material. Mrs. Smith said that if the Board put a condition on a permit saying buffer strip, staff has to use the definition in the Ordinance. Mr. Justus said that he feels the wording should change to keep large oak trees. Chairman Crane said that Mr. Justus should take that up with someone else because the Board just enforces the Ordinance, not writes it.

Chairman Crane asked if anyone wanted to speak in opposition of the review. There was no one and the Chairman closed the hearing. Chairman Crane again stated that according to Mr. Burton's testimony and photographs, Mr. Justus is now in compliance with the Ordinance and no further action needs to be taken by the Board. The members of the Board were in agreement.

Review of Case CU-02-15, Richard Hallberg and Kath Harshman

Chairman Crane opened the public hearing and called Case CU-02-15, a review for compliance.

Mr. Burton gave a summary of the issues. Mr. Burton wanted to check to see where the lady was who was present. Mr. Burton said that she was gone and the front door is open. And she had been sworn in. Mr. Burton said that the property is on South Lakeside Drive and we are here to review for compliance Mr. Hallberg and Ms. Harshman's Conditional Use Permit granted April 01, 2003.

Pursuant to item 5h of the Conditional Use Permit: "Eight (8) pole lights shown on the Official Site Plan must be installed within one hundred and twenty (120) days of the date of issuance of this permit. New pole lights shall be low density lights issued by Duke Power with automatic "dusk to dawn" operation and none are to shine onto and disturb neighboring property." The expiration date for the installation of the pole lights was August 1, 2003. The Zoning Administrator made a site visit on August 1, 2003 and was unable to discern the placement of any pole lights from the vantage point of Lakeside Drive, which runs in front of the residence. Mr. Burton said that the property was locked and appeared as in the photographs presented to the Board. Chairman Crane asked if the "Camp Nowhere" sign was gone. Mr. Burton said yes. On August 12, 2003, the Zoning Administrator sent Mr. Hallberg and Ms. Harshman a notice of apparent violation concerning the lack of pole light installation (page 4-2 of the packet) and notified Mr. Hallberg and Ms. Harshman of this matter to be calendared for review by the Henderson County Zoning Board of Adjustment at it's regular September, 2003 meeting. This application was duly advertised as required in Section 200-55 of the Henderson County Zoning Ordinance. Mr. Burton said the notification to the Applicants was by certified mail and we have not received the return receipt from the parties. Mr. Burton said he tried this morning to contact the camp and the phone number has been disconnected. The property was posted and the hearing was advertised. Mr. Burton said he has received numerous phone calls from neighbors wanting to know what was happening and he gave them the information

about what was being heard here today. Mr. Burton said he has had no contact with Mr. Hallberg or Ms. Harshman. Mr. Burton said that he did not enter the property because the gate was locked.

Mrs. Pouch asked if Mr. Burton knew if they did any of the improvements on the property. Mr. Burton said that he believed they moved the boat. Chairman Crane asked about the pile in the photograph from 08/01/2003. Mr. Burton said he thought it had been there for a long time.

Karen Smith, Planning Director, was sworn in. Mrs. Smith said that she had a conversation with Mr. Hallberg well before the date on the light pole expiration, because she wanted to find out when he would be ready to discuss some of the scheduling of items that Building Inspections would be involved with. At that point Mr. Hallberg said the camp had not had any registrations and it looked like financially they would not make the camp work.

From his notes Mr. Burton said on 5/20/2003 he met with Mrs. Smith to discuss Camp Nowhere. Mrs. Smith spoke with Mr. Hallberg while he was in the office. Mrs. Smith said Mr. Hallberg seemed depressed, was getting light response to his advertisements, and those responding wanted sponsorships for their children. Mr. Hallberg said he has stopped all work and didn't have the funds to continue.

Mrs. Pouch asked what happened now – didn't we give the permit to the property. Mrs. Smith said yes, and now there is no one at the property to meet the condition. Chairman Crane said since Mr. Hallberg has not met the conditions of the permit, doesn't it now become invalid. Mrs. Smith said it is a subject for the Board to consider for revocation. Chairman Crane said she would like to consider that very seriously. Chairman Crane said there were a lot of conditions to be done before the camp opened and since a lot of them have not been done, she would like to see the Board revoke the permit. Mrs. Pouch agreed. Mr. Caldwell seconded.

Chairman Crane called for a vote to revoke the permit by a show of hands.

Mrs. Crane	-	yes
Mr. Caldwell	-	yes
Mrs. Pouch	-	yes
Mr. Engel	-	yes

The decision was unanimous to revoke the permit CU-02-15, Richard Hallberg and Kathy Harshman.

Chairman Crane asked Mr. Burrell if they could revoke the permit with a 4-member board. Mr. Burrell said as long as you can conduct business, you can conduct all business. Chairman Crane said the permit is officially revoked so the property has no permit to operate a camp as of today.

Mrs. Smith said she consulted with Mr. Burrell about the statement in this permit that all former permits were void, and he believes that those permits will still be void. Chairman Crane asked whose responsibility it is to notify the seller of the property that no camping facilities are available with a current permit. Mrs. Smith said staff will make an attempt to get in touch with the former property owner. Chairman Crane said, since there is no one to speak for or against the applicant, she closed the public hearing.

COMMITTEE AND STAFF REPORTS – None

OLD BUSINESS

Mr. Burton said the Board needs to discuss moving the October meeting because he will be attending a seminar on October 29, 2003. The Board looked at the November meeting also. The Board discussed meeting dates. They decided to move the October meeting to November 12, 2003, and move the November meeting to December 10, 2003. Mrs. Smith said at the next Minutes Sept. 24, 2003

meeting the Board can discuss the December meeting.

NEW BUSINESS – None

The Board was reminded that the next regular meeting of the Board will be on Wednesday, November 12, 2003, (rescheduled from October 29, 2003) at 4:00 PM in the Meeting Room of the Henderson County Land Development Building. There being no further business, Chairman Crane adjourned the meeting at 6:10 PM.

Tamra Crane, Acting Chairman

Joyce Karpowski, Secretary