

MINUTES OF THE HENDERSON COUNTY  
ZONING BOARD OF ADJUSTMENT

The Henderson County Zoning Board of Adjustment held its regular August meeting on Wednesday, August 27, 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, Robert Fleming, Ann Pouch, Zoning Administrator Brad Burton, Planning Director Karen Smith, and Secretary Joyce Karpowski. Member Tony Engel arrived late.

Acting Chairman Crane called the meeting to order at 4:04 PM and introduced the members of the Board. Chairman Crane presented the minutes of the meetings held on June 23 and July 30, 2003. There were no changes or corrections. Robert Fleming moved to accept the minutes as presented and Ann Pouch seconded. The minutes were unanimously approved as presented.

Chairman Crane explained that the Board had only 4 members present this afternoon and for a case to be granted, the applicant needed 4 affirmative votes. Chairman Crane gave the applicant the option of continuing the case for one month and a full Board. Mr. Streider said that he would go forward today. The fifth member of the Board, Tony Engel arrived. Chairman Crane called forward people who would testify in the case today. Sworn in were: William Streider, and Brad Burton, Zoning Administrator.

**Case V-3-05, William Streider III, agent on behalf of James M. and Sharon R. Ramsey**

Chairman Crane called Case V-03-05, William Streider, III, agent on behalf of James M. and Sharon R. Ramsey, requesting a twenty-seven to twenty-eight foot side yard setback variance for the southwestern side of a lot located at 90 Birchwood Views Drive in Hendersonville, NC. This request pertains to the erection of a room addition on the southeast side of the existing residential structure. The property is zoned R-30.

Brad Burton gave a summary of the issues. The approximate size of the property in question is .685 acres (per survey). The parcel is zoned R-30. Section 200-14.D requires a 30-foot setback from the side property line. The applicant wishes to construct an addition to an existing residence on the property. The applicant claims there is no other place on the property to build an addition due to topographical constraints on the east side of the home and the area dedicated to the septic system on the west side of the structure. He described the photographs presented to the Board. Chairman Crane asked about the orientation of the house in relation to the photographs, which Mr. Burton explained. Mr. Caldwell asked Mr. Burton which photograph showed the side of the house where the setback was involved, which Mr. Burton did. Mr. Burton said there were at least a 30% slope, large deciduous trees, and large rocks where the addition would be. Mr. Burton said the septic system was on the right of the house and showed where it was on the map. Mrs. Pouch asked if the septic system was new. Mr. Burton said the septic system was existing. Chairman Crane asked where the addition would be on the pictures, which Mr. Burton pointed out on several pictures.

Chairman Crane called Mr. Streider forward. Mr. Streider explained, using the survey, where the addition would be. He said they couldn't build on one side because of the septic system. And the other side has the driveway. The only place to put the addition is the rear. Chairman Crane asked about the other direction. Mr. Streider said that was the front of the house and the "flow" wouldn't be right. Mr. Caldwell asked what the addition would be. Mr. Streider said that it would bump out the kitchen and the great room. Mr. Caldwell asked the size of the house. Mr. Streider said the main level is about 1200 sq. ft. and the upper level is about 600 sq. ft. and the addition would be about 450 sq. ft. Mr. Caldwell asked what was around the property. Mr. Streider said to the left were 2 vacant lots that had been combined and it would have 1 house on it. The house would not

be near the property line. The 2 lots in area are about 1.3 – 1.5 acres. Mr. Streider said that the lots have been combined and sold with the deed stating one building site.

Mr. Fleming asked how far the addition would be from the property line. Mr. Streider said he would be 23 to 25 feet. The Board discussed what had been asked for and what Mr. Streider needs. Mr. Engel said if it was scaled off on the site plan, it looked like it was about 8 feet from the property line. Mr. Engel asked if the side porch was encroaching on the line. Mr. Streider said no. Mr. Engel said the survey has no dimensions on it and the porch scales off at about 22 feet. Mr. Fleming said there are no measurements on the kitchen side to tell how far, exactly, it would expand and how much variance is needed. Mr. Streider said that there were no numbers because he wasn't sure he could get the variance. He told his clients the best thing to do is to place the addition as far as possible from the lot line. He said every time he measured, it came within 20 feet of the lot line. Mr. Fleming explained that Mr. Streider needs to be specific.

Chairman Crane asked about the 30 feet 6 inches on his plan. Mr. Streider said that is the corner of the house from the lot line. Chairman Crane said the house is actually within 6 inches of the setback. She said if Mr. Streider builds the addition straight down from the corner of the house, he would be real close to the lot line. Mr. Streider said he would be within 10 feet. Mr. Fleming said now he is asking for a 20-foot variance. Mr. Streider said if it is a 30-foot setback, he will be 20 feet from the property line and asking for a 10-foot variance. Mr. Fleming said that he was concerned with the dimensions and footage and how far he would come out from the house, which dictates the variance necessary. Mr. Streider said he could have it resurveyed.

Mr. Caldwell said that on his diagram of the addition, there is no way that the addition is 20 feet from the line. Mr. Streider said that he pulled a string and with the grade..... Mr. Caldwell said with the slope it could be 20 feet with the tape but 3 feet as the crow flies.

Chairman Crane asked why the addition couldn't be moved over, what was in front of the air conditioning units. Mr. Streider said there was a master bath in the far corner. Mr. Streider said he tried everything, but you would have to go through the bathroom to get to the great room. Mr. Streider said they did not want to remove the fireplace. Chairman Crane suggested putting a door where the window was. Mr. Streider said that would not give the owners what they want. The owners want to open the kitchen up to the great room. The floor plan was discussed.

Mr. Fleming asked if there was a homeowners association there. Mr. Streider said it was a 4-lot development. Chairman Crane asked if the porch would be pulled off. Mr. Streider said about 6 feet of the porch would come off. Chairman Crane asked what would go where the porch was. Mr. Streider said he would have to grade that area for drainage. Mr. Streider showed on a picture where the addition would go. Mr. Streider said part of the kitchen nook and deck would come off. Mr. Engel asked if the deck wrapped around the fireplace. Mr. Streider said the deck came right up to the fireplace. Part of the deck will be removed. Part of the covered deck is on the side of the house. Mr. Engel questioned Mr. Streider's drawn plan showing the addition coming out from the house and not the deck. Mr. Streider said they were trying to pull the addition out straight. Mr. Streider had a plan that the Board did not, showing a nook and the word remove. Mr. Streider said that the nook comes off, the deck comes off, and then they go out. Mr. Engel spoke about the survey not agreeing with what Mr. Streider was saying. Mr. Streider said he did not do the survey. Mr. Engel said there are no defining setback distances on the survey. Mr. Engel said there were no dimensions to work with at all, so how can the Board approve when they don't know what they're doing. Mr. Fleming said they also need the dimensions of what Mr. Streider wants to add on.

Chairman Crane said there is still some information the Board can deal with. Mr. Streider is asking for either a 27 – 28 foot variance or a 10-foot variance. Mr. Caldwell said there could be conditions. Mr. Streider said he could accept conditions. Mr. Engel said there may be conditions and then Mr. Streider may discover that he can't build. Mr. Streider said that if the condition is to stay 20 feet off the lot line, he can make it work. He can slide the addition to the right toward the air conditioning units. Mr. Caldwell said the addition could be scaled down. Mr. Streider said he had suggested

that.

Chairman Crane asked why the owners had not presented the case themselves. Mr. Streider said they are both working in Asheville. Mr. Streider said they were going to sell their house but decided this was the best place for them to live and asked him to help them with the addition. The well and septic have been checked but they haven't done anything else until they get this Board's approval. Chairman Crane asked Mr. Streider for clarification of the photographs and Mr. Streider showed what was going to be removed. Mr. Streider said the one deck will be removed to get machinery to the back area for building and for drainage.

Mr. Engel said with the scale of the site plan, if the setback were 20 feet, the kitchen addition would be 10 feet. He asked if that would be enough. Mr. Streider said yes, because he was removing the nook. Chairman Crane asked what rooms were adjoining the decks. Mr. Streider said the side deck adjoins the dining room and the back deck adjoins the kitchen/nook. Mr. Streider explained the owners wanted the kitchen to look into the great room. Chairman Crane mentioned other options, but Mr. Streider said the owners were only comfortable with this one.

Mr. Fleming said the Board should discuss what variance the Board should look at. Mr. Caldwell said that he questions whether Mr. Streider can really do what he wants to do and stay 20 feet from the property line. Mr. Engel said, if you scale it, it appears you can. Mr. Streider said the largest part of the addition will be by the fireplace. Mr. Caldwell said, if the Board approves the 10-foot variance, Mr. Streider will have to live with it. Mr. Streider said, if he couldn't stay 20 feet from the property line, **he wouldn't build the addition.**

Chairman Crane said that she was not comfortable making a decision on the information presented. She said that she would like better diagrams, more numbers, and better dimensions. She said it had been advertised for a 27 – 28 foot variance and now it's only 10 feet. It also doesn't look like it will be 20 feet from the line. Chairman Crane said she wants Mr. Streider to be more exact.

Mr. Engel said that it looked like it would work, if the surveyor did an accurate survey to scale. Mr. Fleming said it is actually a lot less than originally asked for. The Board discussed the survey. Chairman Crane asked if there were a survey with numbers on it. Mr. Streider said this was all he had received from the owners. Chairman Crane said she would like to know exactly how far they are from the line. Mr. Streider asked if the Board wanted him to have another survey done. Mr. Engel said as long as Mr. Streider knows he has to stay 20 feet from the property line. Mr. Streider said he is clear on that. Mr. Engel said the variance is only for the side yard and the back has to be 30 feet. Mr. Streider agreed. Chairman Crane said that she would feel better if Mr. Streider put in writing that he would stay 20 feet from the property line. Mr. Streider agreed. Mrs. Pouch said, if the Board says he has to stay 20 feet from the property line, then he has to do that. Mr. Caldwell said with the combined lot of 1-½ acres next to it, there was plenty of room. Mr. Engel said there appeared to be plenty of room in the back. Mr. Engel said there should probably be a survey done showing that there'll be 20 feet or there is 20 feet submitted to the Zoning Administrator. Chairman Crane said Mr. Burton did say Mr. Streider said the addition would be going up to the (property) line. Mr. Streider said that he would hold back 20 feet or he would not do the job. Mr. Caldwell wanted the survey to make sure the owners were agreeable and could then move forward with the project.

Mrs. Smith said that she believed the Board is asking Mr. Streider to amend his application to a 10-foot sideyard setback variance. Chairman Crane asked Mr. Streider if he wanted to amend the application. Mr. Streider said yes. Chairman Crane asked if the Board wanted to have a survey done or written. Mr. Engel said the Board would want a survey done showing that there is at least a 20 foot setback off that side property line, confirmed when the surveyor sets up for the location of the pins for the foundation. That would be stated as a condition.

Chairman Crane asked if there were any more questions for the applicant. There were none. Chairman Crane said the Board needs to decide if the request fits the requirements for granting a

variance. Chairman Crane read from the list of required findings for a Variance to initiate responses from the Board; 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 already has a reasonable use of his property. Chairman Crane said the hardship of which the applicant complains results from unique circumstances related to the applicant's land. Mr. Caldwell said the topography. Mr. Engel said there was a design problem getting from one room to another. Chairman Crane said that was not unique circumstances to the land, that's just their preference. Chairman Crane continued with the hardship is not the result of the applicant's own action. Mr. Caldwell said not intentionally. Chairman Crane said they are making a choice to put it here and not on the end or anywhere else. Chairman Crane continued with the variance is in harmony with the general purpose and intent of the ordinance and will preserve its spirit. Mrs. Pouch said they will not be close to their neighbor. Mr. Engel said there will only be one small corner that will be projecting, not the whole addition. Mr. Caldwell said it is contiguous to a combined lot and the dwelling on that lot will probably be some distance away. Mr. Engel said it would not have an adverse effect to any of the neighbors. Chairman Crane continued with the variance will secure the public safety and will do substantial justice. Chairman Crane asked for further discussion.

Mr. Engel said there is only a small area projecting out and there is a lot of area around the addition. The only other place to put the addition would be behind the bedroom, which really doesn't work. Mr. Caldwell said the 10 feet would not serve as a big adverse detrimental situation. Mr. Engel agreed. Chairman Crane said that she goes back to what the ordinance was written for and the meaning of it. She said it's not like he can't build a home because of the setback; they already have a nice home. Mr. Engel said they don't have the dimensions; the rooms might be small. Chairman Crane said the house is almost 2000 sq. ft. Chairman Crane said this is a choice they are making (to add onto the house), they don't have to do it. The Board has to determine whether we are preserving the spirit and intent of the Ordinance by granting the variance and even though we are only looking at 10 feet, that is one third of the entire setback. Mr. Caldwell said if this was a more densely built R-30 subdivision, he would be more concerned about it.

Mr. Fleming said that with regard to the application of William Streider III, agent on behalf of James M. and Sharon R. Ramsey, Case V-03-05, for a variance from the minimum yard requirements, I move the Board to make the following findings of facts: 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 and with the conditions discussed, that he have a licensed surveyor survey the property line and state the structure is 20 feet from the side property line upon the approval of the Zoning Administrator. Mr. Caldwell seconded the motion.

Mrs. Smith wanted to check that the secretary got reasons for all the points to grant the variance. The Board discussed the first point, of 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. Mrs. Karpowski said she did not have a reason in support of that point. Mr. Fleming talked about the layout of the house and functional difficulty. Mr. Engel spoke about the cul-de-sac and the septic and well location dictate the house be set where it is on the lot. Mr. Caldwell said it sounds like they discovered after the fact that they had some functional pattern flow problems. Chairman Crane asked how much space is there between the front steps of the house and the property line. Mr. Streider said about 150 feet. Mrs. Karpowski said she still needed reasons for points 1 and 5. Mr. Fleming said the addition will be in harmony with the existing dwelling and neighborhood. He said the 20-foot setback will not endanger any type of public safety issues. Mrs. Karpowski said she still needed the first one. Mr. Engel said he thought that was an interpretation. They're finding the property right now is too small for them. They find the size of the house inadequate and need additional space. Mr. Caldwell said it was a size and functional problem.

Mrs. Smith wanted to clarify that the motion was for the amended application with a minimum 20-foot setback and professional (spotting) surveyor verified and approved by the Zoning Administrator.

The Chairman called for the vote. The following vote was taken by a show of hands:

Mr. Fleming	Yes
Mr. Caldwell	Yes
Mrs. Crane	No
Mrs. Pouch	Yes
Mr. Engel	Yes

Motion carried and the variance was approved as amended with conditions.

#### COMMITTEE AND STAFF REPORTS

Mr. Burton said that Mr. Josh Freeman was supposed to speak to the Board about the County Comprehensive Plan, but Mrs. Smith will present it. Mr. Burton presented a map to each member. Mrs. Smith said that they wanted to invite the Board members to the community meetings that the Planning Department is having to discuss the County Comprehensive Plan. She encouraged the Board to attend the meeting being held in their Fire District. The schedule is on the back of the map. She discussed the process of the meetings. She also asked if any members felt someone specific should be invited to the meeting to let the Planning Department know. She said the Board members would only be involved as a citizen.

#### OLD BUSINESS

Mr. Burton said that at the next meeting the Board would be reviewing the Camp Nowhere conditional use permit. Mr. Burton said the camp had not opened and there is a For Sale sign in front of the property.

Mr. Burton also said that Mr. Jeff Justus and CU-23-96 (Amended) would be before the Board for review.

#### NEW BUSINESS

Mr. Burton said that the October meeting may have to be moved because of a seminar he hopes to attend. A suggestion was to move it to Wednesday, November 12, 2003. There may be a review of John Cely's manufactured home park at the October meeting and Mrs. Smith would like Mr. Burton to be present for testimony. A definite date will be set at the next meeting.

The next regular meeting will be on Wednesday, September 24, 2003, at 4:00 PM. There being no further business, Chairman Crane adjourned the meeting at 5:14 PM.

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Tamra Crane, Chairman

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Joyce Karpowski, Secretary