

May 28, 2003  
4:00 PM

MINUTES OF THE HENDERSON COUNTY  
ZONING BOARD OF ADJUSTMENT

The Henderson County Zoning Board of Adjustment held a meeting on Wednesday, May 28, 2003, at 4:00 p.m. in the Meeting Room of the Henderson County Land Development Building, 101 East Allen Street, Hendersonville, North Carolina. Those present were: Chairman Diane Grant, Janice Brown, Anthony Engel, Robert Fleming, Zoning Administrator Brad Burton, Temporary Zoning Administrator Suzanne Godsey, Assistant County Attorney Russ Burrell, and Secretary to the Board Joyce Karpowski.

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 March 26, 2003. There were no corrections. Robert Fleming moved that the minutes be accepted and Janice Brown seconded the motion. All voted in favor.

Chairman Grant explained that, since there were only 4 members present today, all four members would have to vote in favor of the applicant's request for it to be approved. The applicant's option would be to continue the hearing until the next meeting to have 5 members present. Mr. Justus chose to proceed today.

Chairman Grant called forward to be sworn in those who would be presenting testimony in the cases scheduled to be heard. Sworn in were Tim Kriegel, Al Worley, Jeff Justus, Temporary Zoning Administrator Suzanne Godsey, and Zoning Administrator Brad Burton.

**Case CU-23-96(Amended), Jeff Justus**

Chairman Grant called case CU-23-96(Amended), Jeff Justus, requesting an amendment to CU-23-96 to allow a change of use to include machining and assembly operations along with warehousing. The request also involves an addition to an existing building in a previously approved expansion area. The property is located at 422 S. Allen Road and is zoned C-4.

Temporary Zoning Administrator Suzanne Godsey gave a summary of the issues. The approximate size of the property in question is 8.45 acres. This is a portion of a larger tract of land that is being proposed to be developed as a shopping center under an additional conditional use permit (CU-03-04). The parcel is zoned C-4. CU-23-96, a conditional use permit, was issued in 1996 for a warehouse facility by the Zoning Board of Adjustment. The conditional use permit was issued for an approximately 3-acre portion of the larger tract. Haverty's Distribution Center is currently occupying this building. They desire to sublease the property to Caraustar, Inc. This company will use the property for machining and assembly, as well as warehousing. Section 200-22.C states the dimensional requirements of the district. The front setback is 60 feet and the side and rear setbacks are

30 feet (thus following the O&I setback requirements). The existing structure meets these requirements. The approved plan accompanying the original CU-23-96 proposed an area for future expansion. The applicant is proposing a small expansion, which will be placed within this previously approved expansion area. The expansion meets these requirements. One of the conditions of CU-23-96 was that a "planted evergreen buffer strip" was to be placed along the property line adjacent to Acorn Manor Manufactured Home Park. This condition was never met. Ms. Godsey presented site plans and described them. She pointed out the approved future expansion area was about 91 feet by 150 feet. The proposed expansion area is about 49 feet by 17 feet. Mr. Justus said that the expansion will probably not be built. Ms. Godsey also showed photographs of the property and expansion area and described them.

Ms. Godsey said that the Planning Board reviewed this case at their May meeting and introduced a memorandum into the record from Karen Smith, Planning Director, with the Board's recommendations. The Board voted 7 to 1 for a favorable recommendation on the amendment subject to the following: 1) The Zoning Board look at whether or not the buffering is necessary as previously required under the original Conditional Use Permit; 2) Any lighting to be installed be done in such a way that it would not adversely affect the residential uses adjacent to the property; 3) The Zoning Board of Adjustment strongly consider noise mitigation so any possible future uses that would fall under the machining and assembly would not adversely affect any adjacent residential uses as long as they are being used for residential purposes. If the adjacent area changes from residential to commercial use then the Planning Board recommended that the noise mitigation requirement be discontinued.

Ms. Godsey said that earlier in the day, the applicant said there may be a change in the potential occupant of the building, which opens issues as to whether the conditional use permit is for a specific business or machining and assembly. She suggested that Mr. Justus speak to the Board. Ms. Godsey said that the applicant was seeking an amendment to allow machining and assembly and that was how the hearing was advertised in the newspaper, along with the small expansion.

Mr. Justus said that he is asking for an amendment to include light manufacturing. He said Caraustar, Inc. is interested in leasing the building and there probably would be no expansion (the machinery would go in the building). Selee Corporation would also like to lease the building for light manufacturing and warehousing. Both would be the same type of "clean" operations. Mr. Justus said he would like to get approval for light manufacturing and not the tenant. He would hope he does not have to come to the Board every time the tenant changes.

Chairman Grant asked for clarification from Ms. Godsey that Mr. Justus has a conditional use permit for warehousing and the use is being changed. The Board is not really concerned with the occupant of the building, just the use. Ms. Godsey said that was correct. Chairman Grant said with the expansion not happening, the Board doesn't have to be concerned with the expansion. Ms. Godsey agreed. Ms. Godsey said the building will continue as a warehouse with the additional uses of machining and assembly. Ms. Godsey wanted to clarify when Mr. Justus was speaking about light manufacturing, it is actually light

industry as defined in the Zoning Ordinance and permitted as a conditional use in the C-4 zoning district.

Chairman Grant asked Mr. Justus to explain the use of the property regardless of which tenant occupied the building. Mr. Justus said that representatives from each company were here and could better describe their uses.

Al Worley from Caraustar, Inc. came forward. Mr. Worley said they have a plant in Mountain Home Industrial Park that is approximately 110,000 square feet. It is currently shutting down this facility. The company manufactures paper tubes for the textile industry. They would like to have the larger tubes come in from other manufacturing facilities and they will be cut here to prescribed lengths for two customers. Mr. Worley said the proposed addition was for a dry kiln or oven and they have found a smaller oven that can go inside the building, so they will not need the addition. Chairman Grant asked if the size of the present building is sufficient for their use at this point. Mr. Worley said yes. Mrs. Grant asked if parking was sufficient. Mr. Worley said there were a total of 20 employees. Chairman Grant asked if outside people came to see the product and Mr. Worley said no. Chairman Grant asked about the noise level. Mr. Worley said that a few years ago OSHA had inspected the plant and did not require anyone to wear earplugs. Chairman Grant asked if the noise was constant and Mr. Worley said it comes and goes but is not constant. Mr. Worley said they would operate on a 24 hour a day/seven day a week basis. Mr. Fleming asked about waste. Mr. Worley said everything is recycled back to the paper mill. Chairman Grant asked if there were any emissions. Mr. Worley said no. Chairman Grant asked if the kiln had any emissions. Mr. Worley said no, that it was a gas-fired oven. Mrs. Brown asked if the noise was contained inside. Mr. Worley said yes, there would be nothing outside except tractor-trailer deliveries. Mr. Fleming asked how many people would be working per shift. Mr. Worley said there would be five people Monday – Friday on the day shift and then three people from 5:30 AM to 5:30 PM and three people from 5:30 PM to 5:30 AM covering 24/7. Mr. Engel asked if there would be any activity on the side of the manufactured home park. Mr. Worley said there was only an emergency exit on that side of the building. Mr. Worley said the main noise would be through the loading doors. Mr. Worley said of the nine loading doors, they would probably only be using 4. Chairman Grant asked if the doors would be open during manufacturing. Mr. Worley said probably during the summer months; there are ceiling fans to circulate air. Mr. Fleming asked about lunchroom facilities. Mr. Worley said there is a small break room inside the building and a picnic table outside. There were no further questions.

Tim Kriegel from Selee Corp. and Porvair Fuel Cells came forward. Mr. Kriegel stated they would use the building for a warehouse or light manufacturing for the Porvair Fuel Cells. They are developing a pilot line to make bipolar plates. Mr. Kriegel explained what the plates were and how they would be manufactured. Mr. Kriegel said there are some chemicals and adhesives used in their manufacture. The plates are baked and there would probably have to be a stack for the oven to let heat escape. He said they are working with the environmental people and there are no dangerous emissions. Mr. Kriegel said the doors would probably be open in the summer and it would not be a high-speed assembly line, since this is a pilot line. There would be approximately twelve people working one or two 10-hour shifts four days a week, and the other three days would be to ship product, if at all. Mr. Kriegel said that it would take six months to install the line. Chairman Grant asked

about the heat. Mr. Kriegel said it was natural gas with temperatures to 1600°F. Mr. Fleming asked if there would be storage for the fuel and Mr. Kriegel said not that he was aware of at this time, just a gas line. Chairman Grant asked about emissions and chemicals. Mr. Kriegel said carbon, water, phenolic resin, all fairly clean. Any waste goes into a drum and is hauled away, but no hazardous waste. He is not aware of any emissions; if there were they would probably recirculate them, which is done now at Selee. Chairman Grant asked if the EPA would have to approve the smokestack. Mr. Kriegel said they have been told no. Chairman Grant asked about the noise level. Mr. Kriegel said the operation was pretty quiet. Mr. Fleming asked about disposal of waste. Mr. Kriegel said they recycle water and any waste goes into drums, which would stay inside and then be hauled away. It would also be used as a warehouse and there would be shipping during the day shift. There were no further questions.

Chairman Grant asked if anyone wished to speak in regard to the application. There was no one. The Chairman closed the public hearing.

Chairman Grant asked Mr. Burton that there is a conditional use permit for warehousing and they are asking for light manufacturing; is light manufacturing permitted in C-4. Mr. Burton said it is allowed and under light manufacturing machining and assembly is allowed and that is what was advertised. He said there is no definition in the Zoning Ordinance for machining and assembly. Mr. Burton said the uses as described by Mr. Justus are within the staff interpreted parameters of machining and assembly.

Chairman Grant said the Board would have to determine whether the uses would fall under machining and assembly. Ms. Godsey said staff has determined that Caraustar, Inc. would fit under the heading of warehousing, machining and assembly and it was advertised with that specific use in mind. Chairman Grant asked if it also fits what Selee Corp. is proposing. Ms. Godsey said yes, from the testimony heard today. Chairman Grant asked about the tank. Ms. Godsey said the primary use would be warehousing, machining and assembly and the storage tank would be ancillary to the business, as long as there was no hazardous or radioactive waste. Chairman Grant said if there were any hazardous waste needing regulation by the EPA, she would take a firm stance that it would not fit. Ms. Godsey stated that instead of looking at these two companies specifically, the Board needs to look at whether they are willing to add machining and assembly operations to the warehousing use already permitted.

Assistant County Attorney Russ Burrell said that there was no hazardous waste and the only evidence he heard was burnoff of a solvent. He said that staff has determined that the use would fit and the Board must determine if the use should fit.

Chairman Grant said that a planted buffer strip was required and never put in. She asked if that should be addressed. Ms. Godsey said the Planning Board asked that the Board look at it and determine if it is necessary. Ms. Godsey said that when the Conditional Use Permit was issued, it was not under the Planning Department. Chairman Grant asked Mr. Justus to explain why it was not installed.

Mr. Justus said that trailers from the adjacent manufactured home park were on his property so he didn't know where to put the buffer strip. He left trees along the property

line. He said that he could put a buffer strip in. Chairman Grant asked if the adjacent property was still being used as a manufactured home park. Mr. Justus said yes. Chairman Grant asked how far onto Mr. Justus' property the trailers were encroaching. Mr. Justus said that some were 6 or 8 feet. Ms. Godsey said that from the original request, 17 trees and 65 shrubs should be placed as a buffer strip. Ms. Godsey showed the site plan from the original permit showing only 1 trailer over the property line. Chairman Grant asked for the reason why the Planning Board suggested the buffer strip be looked at for necessity. Mr. Burton said that the Planning Board didn't have any specific reason, other than it has gone without it for so long. Chairman Grant said that she clearly remembers the original case and the Board wanted to cut down on noise and lighting affected the residential use adjoining with the buffer strip. Chairman Grant said that the buffer strip does not have to be directly on the property line and she believes that it should have been put in before and should be put in now. Ms. Godsey said that the adjacent property is zoned C-4 so a buffer strip is not required through zoning; if it was zoned residential, then it would have been required.

Mrs. Brown asked if there would be any lighting changes. Mr. Justus said no. Mr. Fleming asked about the time usage in the original permit. Ms. Godsey said that it was not a condition of the permit, so the Board would have to check the minutes. The Board did this. Mr. Fleming asked if the advertisement in the paper addressed Caraustar, Inc. specifically. Ms. Godsey said no. Mr. Fleming asked if the Planning Board specifically addressed Caraustar, Inc. Ms. Godsey said yes. Mr. Fleming asked if the Planning Board was aware of the change in tenant for the building. Ms. Godsey said no.

Chairman Grant said there was nothing in the minutes for the original permit about the hours of the warehouse distribution use. She did speak about the concerns expressed in the original minutes. Mr. Justus said that Haverty's hours have always been 6 AM to 6 PM.

Chairman Grant asked if there was anyone to speak in opposition to the application. There was no one. Chairman Grant asked the Board for discussion and a determination of findings of fact. Mr. Engel said that his concern would be another tenant going in and creating more noise. Ms. Godsey said that a condition could be placed on the permit that a change in tenant would require a Zoning Permit and at that time the Zoning Administrator could make a determination on whether there would be substantial change to require an amendment to the permit.

Mrs. Brown was concerned with a three-shift operation and the necessity for the buffer zone next to the residential use.

Chairman Grant said that the Board must find that the proposed use would not be detrimental to the public welfare or injurious to property or public improvements. Mr. Fleming said that Selee Corporation would be a good sized manufacturing industrial operation with waste and truck traffic and the original use was for warehousing and he has concerns with it.

Chairman Grant reopened the public hearing so Mr. Kriegel could address the issue. Mr. Kriegel said that if there were air pollution requiring an air permit, they would not put the line there. Mr. Kriegel said that if permits were necessary they would only use one location

where they already have those permits. Then they would use this location for warehousing. Mr. Kriegel said waste material is hauled away and is not hazardous. Mr. Kriegel spoke about the warehousing use. There would be no outdoor storage. Chairman Grant closed the public hearing.

Chairman Grant said the Board must find whether or not the proposed use falls under the current guidelines for a Conditional Use Permit. She said the Board can place conditions on the approval. She asked for a motion to approve the application of Jeff Justus for a Conditional Use Permit authorizing the operation of warehousing, which would include machining and assembly operations on the property in question. Ms. Godsey suggested the Board discuss potential conditions to be included. Chairman Grant said that she would propose a condition that the buffering that was required in the original permit be put in place within 60 days.

Chairman Grant said that the Board has established that there is satisfactory ingress and egress to the property, offstreet parking is already in place, utilities are already there, the buffering is a requirement, landscaping is in place, and the building and structure is there. Mr. Engel spoke about a change in tenant possibly creating more noise. The Board discussed a condition saying "a change in tenant would require a zoning permit where the Zoning Administrator would make a determination whether the proposed use will substantially deviate from the Conditional Use Permit or adversely impact adjacent property owners". Ms. Godsey said that would allow the property owner some flexibility.

Mr. Engel moved that the proposed use would not adversely affect the health and safety of persons residing or working in the neighborhood of the proposed use and the proposed use will not be detrimental to the public welfare or injurious to property or public improvements in the neighborhood. Accordingly, he further moved that the Board grant the requested Conditional Use Permit with and only to the extent represented in the application and with the following conditions: a planted evergreen buffer strip as required in the original permit is to be planted within 60 days and a change in tenant would require a zoning permit where the Zoning Administrator would make a determination whether the proposed use will substantially deviate from the Conditional Use Permit or adversely impact adjacent property owners. Mrs. Brown seconded the motion. There was no discussion.

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

Mr. Fleming	-	yes
Mrs. Brown	-	yes
Mrs. Grant	-	yes
Mr. Engel	-	yes

Chairman Grant said the application was approved with the conditions.

### **Case CU-03-04 – Jeff Justus**

Chairman Grant called Case CU-03-04, Jeff Justus, requesting a conditional use permit to develop a shopping center with two buildings. The property is located on the corner of

South Allen Road and Upward Road and is zoned C-4. Chairman Grant opened the public hearing.

Ms. Godsey gave a summary of the issues. The parcel is zoned C-4. The approximate size of the property in question is 8.45 acres. This is a remaining portion of a larger tract of property (approximately 10.13 acres) that has been developed over the last seven years. A Conditional Use Permit (#CU-23-96) was issued in 1996 for a warehouse in a C-4 zoning district. This portion of the property was approximately 3.05 acres. Currently, there is a proposed amendment to #CU-23-96 (which has just been approved) to add the uses of machining and assembly to this permit. This building is labeled on the site plan as "Existing Haverty's Building". A second Conditional Use Permit (#CU-01-14) was issued for a shopping center in a C-4 zoning district in 2001. This building has been developed on approximately 1.68 acres (site plan denotes 1.77 acres+/-). This building is labeled on the site plan as "Existing Building #2". Section 200-22.B(1) allows for shopping centers with a Conditional Use Permit. Section 200-22.C states the dimensional requirements of the C-4 zoning district. The front setback is 60 feet and the side and rear setbacks are 30 feet (following the adjacent O&I zoning district setbacks). Section 200-40 states that shopping centers are required to have 1 parking space per each 300 square feet of gross floor area. The proposed square footage of the two buildings is 30,800 square feet. The number of parking spaces required is 103. The site plan shows 107 parking spaces. NC Accessibility Code requires 5 handicap parking spaces with one of those spaces being denoted as a van-accessible space. The proposed site plan shows 7 spaces, with one of those spaces being van-accessible. Section 200-41 requires one off-street loading and unloading space for each 10,000 square feet of gross floor area for retail use. Three loading and unloading spaces are required. There are three loading spaces proposed. The applicant will need to address signage issues, type, placement, lighting, size, etc. (ref. HCZO Section 200-69.C(6)(f)). There is proposed lighting for this project. Applicant will need to address lighting and how they will intend to control glare from South Allen Road and Upward Road as well as adjoining properties (ref. HCZO Section 200-69.C(6)(b)). Section 200-52 Group Development standards pertaining to this permit application: uses proposed will be those permitted in a C-4 district; the building setbacks have been met; buffers are required along the property lines adjacent to residentially zoned property. As with the previous permit, Acorn Manor Manufactured Home Park is a residential use in the C-4 district, so the buffer is not a requirement, but may be a condition. Section 200-52(B) states that a "...project will be landscaped with shrubs, grass, trees, flowerbeds, etc.". The applicant has shown landscaping in the parking lot and a five foot landscape strip in front of the building labeled "Building #3". The applicant has not shown any landscape buffers. A planted buffer strip was required along the eastern portion of the property adjacent to Acorn Manor Manufactured Home Park as a condition of the conditional use permit #CU-23-96. The site plans shows a one-way drive to access the rear of building labeled "Building #4". The drive is 12 feet wide and will have clearly marked signs and pavement striping to denote this one-way access. The applicant will need to address the traffic flow of the one-way access that is proposed. A portion of this property is to be developed at a later time. This will require an amendment to this conditional use permit, if approved. Ms. Godsey showed site plans and photographs of the property and described them. Ms. Godsey said there will be two Conditional Use Permits, if approved, on one parcel of property, which is allowed. Eastern adjacent property is zoned C-4 and northern adjacent property is zoned O&I, from which the setbacks are taken. Chairman Grant asked if the corner would be used for future

development or are they talking about the whole I-shaped piece of property. Ms. Godsey explained the buildings on the property and the corner can be used for future development. There is no property line. Chairman Grant asked if the Board would be making a commitment to future development without knowing what it would be. Ms. Godsey said that most likely any future development would have to come back as an amendment. Ms. Godsey said that the permit would be for a shopping center not for a use. Ms. Godsey said there is a good portion of property along Acorn Manor Manufactured Home Park with vegetation.

Chairman Grant asked how far from the property line the proposed improvements would be. Ms. Godsey said the side setback would be 30 from the building and the one-way 12-foot service drive is actually about 8 feet from the property line of Acorn Manor Manufactured Home Park. Chairman Grant asked how there could then be a 10 foot buffer strip. Ms. Godsey said the buffer strip is not a requirement. Ms. Godsey said if it is a condition of the permit then the site plan would have to be revised to reflect the buffer strip.

Ms. Godsey said that the Planning Board reviewed the application at their May meeting. Mr. Burton presented the memorandum into the record from Karen C. Smith, Planning Director, dated May 27, 2003, stating that the Planning Board voted 7 to 1 to send a favorable recommendation subject to a proposed condition that any lighting on proposed buildings not adversely affect residences on the eastern side of the property.

Ms. Godsey pointed out that Section 200-52.B requires landscaping and Mr. Justus shows landscaping on the plans, but not what the landscaping will be. The Board also needs to know which way the one-way drive will go.

Mr. Justus came forward. Mr. Justus said that he didn't think the pavement was 8 feet from the property line. He thinks the service drive will be closer to the building than the plan shows. Mr. Justus said that he plans on landscaping and he doesn't know what it will be. He said that he plans on lighting the property well, but there will be no lights on the back of the building to glare into the adjacent homes. He pointed out where there would be signage, and also above the doors.

Chairman Grant asked if there was 30 feet from the property line to the back of the building. Ms. Godsey said that the setbacks for the building have been met. Chairman Grant said that it looked like there was a lot of paving and building with little room left for landscaping. Mr. Justus said that he would build something nice or nobody would rent. He said that he didn't realize that he had to spec the landscaping. Ms. Godsey said that it is required and it is nice to see actual numbers of shrubs and trees, like his other site plan showed. She said the Board can request that type of information from him today. Mr. Justus asked if it could be postponed for a month to allow him to address these issues.

The Board told Mr. Justus what information they would like for the next meeting: placement of doors for loading and unloading on new buildings; room for vehicles and access to the back of building; distance between manufactured home park and parking area for buffer; lighting (non-glare on manufactured home park); landscaping (number of trees, etc.); sign (placement, size, etc.); width of entrance from Upward Road.



Mr. Justus said that he would like these buildings to be more for retail and so not have as much tractor trailer deliveries. Mr. Engel asked if access went through the whole property to other buildings. Mr. Justus said yes and he will do something (such as speed bumps) to stop traffic from cutting through. Chairman Grant asked about the different parcels of property. Mr. Justus said that he will eventually have the properties on one deed as Justus Business Center. Ms. Godsey said that was a Planning Department recommendation.

Chairman Grant continued the public hearing to June 25, 2003, at 4:00 PM. The Board was reminded that the 4 members sitting on the Board now must return for the continuation of this public hearing.

This concluded the hearing of cases.

COMMITTEE AND STAFF REPORTS: The Board welcomed Brad Burton as the new Zoning Administrator.

OLD BUSINESS: None

NEW BUSINESS: None

The Board was reminded that the next regular meeting of the Board of Adjustment was scheduled for Wednesday, June 25, 2003, at 4:00 PM in the Meeting Room of the Henderson County Land Development Building.

There being no further business, Mr. Fleming made a motion to adjourn, Mr. Engel seconded the motion, and all members voted in favor. The meeting was adjourned at 5:55 PM.

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Diane Grant, Chairman

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Joyce Karpowski, Secretary