

MINUTES OF THE HENDERSON COUNTY
ZONING BOARD OF ADJUSTMENT

The Henderson County Zoning Board of Adjustment held its regular March meeting on Wednesday, March 26, 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, Tamra Crane, Anthony Engel, Robert Fleming, Ann Pouch, Temporary Zoning Administrator Suzanne Godsey, Planning Director Karen Smith, Assistant County Attorney Russell Burrell, and Secretary Joyce Karpowski.

Chairman Grant called the meeting to order at 4:00 PM and introduced the members of the Board.

Chairman Grant called forward people who would testify in cases today. Sworn in were: Anthony Fowler, Sophia Fowler, Don Fowler, Don Rhodes, Charles Anderson, and Suzanne Godsey, Temporary Zoning Administrator.

Chairman Grant explained the procedure used in the hearing of the case today.

Case V-03-02 – Charles Anderson

Chairman Grant called Case V-03-02, Charles Anderson, requesting a forty (40) foot front yard setback variance and a fifteen (15) foot side yard setback variance to construct a residence. The property is located at 575 Sandy Flat Mountain Road, is approximately 2.87 acres, and is zoned RC.

Suzanne Godsey gave a summary of the issues. The approximate size of the property in question is 2.87 acres (per survey). The parcel is zoned RC. Section 200-32.D requires a 75-foot setback from the front property line and a 35-foot side setback from the side property line. The applicant wishes to construct a residence on the property. The applicant claims there is no other place on the property to site a home due to topographical constraints and septic system requirement. Mrs. Godsey showed site plans and described them. She said that Sandy Flat Mountain Road has a 14-foot right of way and paved 10 feet wide. She explained that the septic system would be placed on an adjacent piece of property. She showed the septic permit with the drain field and repair area on the adjacent piece of property. Mrs. Godsey showed photos of the subject property and described them. Mrs. Crane asked how far the drop-off was from his foundation. Mrs. Godsey said the basement was on the edge of the drop-off. Mrs. Grant asked how far it was from the road to the building site. Mrs. Godsey said the entire lot was gently sloping to the drop-off. Mrs. Grant asked how much of the 2+ acres was in the flat area. Mrs. Godsey said the property was flat for about 45 feet, then gently slopes until the drop-off. Mrs. Pouch asked if the septic was included in the 2+ acres. Mrs. Godsey said no, it's on another lot.

Chairman Grant asked if the placement of the septic system was required by the Health Department because there was no other place on the property for it. Mrs. Godsey said that because he already owned the adjacent piece of property, the Health Department used that. Mrs. Godsey said that she did not have a topographical map, but the property is very steep. Mrs. Pouch asked if he could move his house on the property. Mrs. Godsey suggested that he potentially could have moved the house to the right, but he would still need at least one variance. Mrs. Grant said that along the road frontage there is not enough room for the 75-foot setback and a house. Mrs. Godsey agreed.

Chairman Grant asked the applicant to come forward. Mr. Anderson said that Mrs. Godsey had done an excellent job in presenting the case. He said that the property is so steep, there is no other

location for the house. He said the "buildable area" is triangular, so as he moves to the right, he gets closer to the street. He said that at one point the 75 foot setback is off the drop-off. He said that the house is roughly in the only buildable portion of the upper lot. Mr. Anderson said the septic system is on an adjoining lot, and he had to get an easement for that. He said the well is also on the adjacent lot. He said there is no other buildable site on the 2.87 acres. He said the land is very rocky and in digging the basement, there was a very large rock and he will have to raise the basement by 2 feet. Mr. Anderson said that the slope is about 90 feet from the centerline of the street. Mr. Anderson said that the well is about 1000 feet from the house and the septic field is about 500 feet to the house. He said they will have to put a 90-degree angle in the septic piping from the house to the drain field to slow the water down because the slope is so steep. Mr. Anderson said basically he has a very steep slope and a small buildable portion of the lot to contend with.

Chairman Grant asked the size of the proposed house. Mr. Anderson said the portion of the house closest to the street is the garage, roughly 24' x 24'. He explained the garage will be on grade and the longer portion of the L shaped house will have a basement, 32 feet deep. Mr. Anderson said the garage would be entered from the side.

Mr. Anderson explained that the well permit is shared with a house off of Buckner Drive. His septic system will be on a portion of that property, but not shared with that house. He had to grant himself an easement for the septic field to be placed there. Mr. Anderson explained exactly where the septic would be.

Chairman Grant asked about the topography between his property and the property to his left, where there would be 20 feet to the property line. Mr. Anderson said the area is gently sloping between the lots.

Mrs. Godsey described Sandy Flat Mountain Road as having major drop-offs as it literally climbs the mountain. She said most property owners on Mr. Anderson's side of the road have little flat areas. The other side of the road has flatter areas.

Mrs. Pouch asked about Mr. Anderson's driveway and if there would be room to turn around. Mr. Anderson said he would have enough room to turn around, but will have a driveway for a front yard.

Mrs. Crane asked about the size of the L-shaped house. Mr. Anderson said the garage is 24' x 24'. Mr. Anderson said the house is approximately 1400 square feet on the main level with 600 square feet in an upper level and the dimensions of the house are 50 feet long (side facing the slope) and 30 feet deep.

Mr. Fleming asked if Sandy Flat Mountain Road was state maintained. Mr. Anderson said no. He said it is a 14-foot right of way. Mrs. Crane asked who maintains it. Mr. Anderson said he believes there is a maintenance agreement with the property owners.

Chairman Grant asked how close other homes were to Sandy Flat Mountain Road. Mr. Anderson said there are about 8 homes on the road and he guessed over half were within 30 feet of the road. Mrs. Crane asked if any were 75 feet from the road. Mr. Anderson said probably 3.

Mr. Anderson said that he plans to use this house as his residence and this will be the only house on this property. He will retain the other property also, and has used all the rest of that property for his septic system. Mr. Anderson said that the severe slope goes from side property line to the other side property line, so he could not build there. Mr. Fleming asked if he tried to perk anyplace else on the property. Mr. Anderson said the only place would be the house site and he couldn't put both there. He said it is a very rocky site with a lot of subsurface rock.

Chairman Grant asked the size of his lower property. Mr. Anderson said he guessed it was 2 acres. He has no plans to do anything else with the property.

Chairman Grant asked if there was anyone to speak in favor of the application. There was no one. She asked if there was anyone to speak in opposition to the application.

Anthony Fowler came forward and explained that he owned the property adjoining Mr. Anderson's property and pointed it out on the site plan. Mrs. Godsey said that Mr. Fowler's property was subdivided but the division had not made it into the County GIS system. Mr. Fowler said the property was family property and would not be developed. Mr. Fowler showed where his property was on the site map. Mr. Fowler said he wants to build a house in the future and is concerned about Mr. Anderson's house being close to his property.

Chairman Grant asked Mr. Fowler to describe the topography of his property. Mr. Fowler showed where his property drops off and he has only one buildable area next to Mr. Anderson's property. Mrs. Crane asked if Mr. Fowler thought he could be 75 feet from Sandy Flat Mountain Road. Mr. Fowler said that he didn't know. Mr. Fowler said that his main concern is Mr. Anderson building 15 feet from his property line. Mrs. Crane asked if Mr. Fowler could be 35 feet from the same property line. Mr. Fowler said he did not know because he doesn't have a house plan, he is planning for the future. Chairman Grant asked if there were any screening trees between the properties. Mr. Fowler said there were some small trees, but no screening. There were no more questions for Mr. Fowler.

Sophia Fowler came forward and said that Mr. Anderson had cut trees up to the property line. She would like to know if he could shorten the garage or find another house plan to accommodate the layout of the land, so he could be the full 35 feet from their land. Mrs. Fowler said they have no problem with the front yard variance but she and her husband object to the side yard variance.

Chairman Grant asked if anyone else wished to speak. There was no one. The Chairman called for discussion among the Board.

Mr. Anderson said he would like to address the concerns of the property owners. He said that he would probably be able to move the house and avoid the side yard variance, but he would still need the front yard setback variance. Chairman Grant asked if he had any plans for a buffer or screening between his house and the adjacent property. Mr. Anderson said that he would be glad to plant evergreens on the property for a buffer. Chairman Grant said that the Ordinance describes what a buffer is. Mr. Anderson said that he will not develop the property, he just wants to build the house for himself. He also said that he intends to keep the adjacent house and property.

Mrs. Crane asked if Mr. Anderson thought that he could meet the side yard setback. Mr. Anderson said yes and that the building site was triangular so he could move the house a little as long as he had the front yard variance. He said the house site is actually 22 feet from the side yard property line so he thinks he can pick up the extra 12 –13 feet. Mrs. Grant asked if he had a surveyor who could spot the location for him. Mr. Anderson said that the bank required one, so he would have to get one. He said that he would have the surveyor set the corners of the house on the survey so that the Board could see that it complied with the variance.

Don Fowler, who owns the property across the road, came forward to ask a question. Mr. Fowler said that he feels Mr. Anderson could meet the side yard requirement and he doesn't have a problem with the front yard variance. Mr. Fowler was interested in the septic system and how close that could come to the property line, since his son owns the property next to Mr. Anderson. Chairman Grant said that the septic permit looked like it had the requirement of 10 feet minimum off the property line. That requirement is from the Health Department.

Mrs. Crane asked if there were any extra room on the front yard setback. Mr. Anderson said no. Mr. Fleming asked if Mr. Anderson knew of any existing homeowners association in the area. Mr. Anderson said not that he was aware of. Mrs. Crane asked if Mr. Anderson could move the house

over some, could he put the garage on the end of the house to increase the front yard setback. Mr. Anderson said that by shifting to the other side, he actually gets closer to the road on the other side.

Diane Maxwell came forward and was sworn in. She said her property was at the top of the mountain. She said that she and her husband paved the road and all the neighbors help to maintain the road. She said that the construction would cause wear and tear on the road. Chairman Grant asked if there was a road maintenance agreement for the road. Mrs. Maxwell said no. Chairman Grant said that the Board wouldn't have any jurisdiction over that.

Mr. Fleming asked Mrs. Godsey to help him with the RC zoning. Mrs. Godsey explained how many homes could be on the property.

Chairman Grant said that the applicant has agreed to amend the application to request the variance only on the front yard setback and not the side yard setback. Mr. Anderson agreed.

Chairman Grant asked for findings of fact for the variance. She said there are difficulties and hardships because of topography that have nothing to do with the applicant. She said that because of the topography, the front yard setback would be practically impossible to meet. Mrs. Crane said that changing the house plan probably wouldn't help any. Mr. Fleming said there are such problems that the well and septic system have to be located so far from the house. Chairman Grant said the granting of the front yard variance is in harmony with the general purpose and intent of the ordinance and will preserve its spirit. The other homes in the area are similar distances from the center of the road. The variance will secure the public safety and welfare and will do substantial justice. She said there was no evidence that granting the variance would create any kind of public safety issue.

Mrs. Pouch said with regard to the application of V-03-02, Charles Anderson, for a variance from the minimum front yard setback, 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 40-foot variance for the front yard setback in accordance with and only to the extent represented in the application as amended. Mr. Engel seconded the motion. Mr. Fleming asked that a survey showing the location of the residence be provided to the Planning Department for Zoning Permit approval. This was included as a condition to the variance by the Board.

The following vote was taken by a show of hands:

Mr. Fleming	Yes
Mrs. Crane	Yes
Mrs. Grant	Yes
Mrs. Pouch	Yes
Mr. Engel	Yes

Motion carried and the Variance was granted as amended.

Chairman Grant said that the Board would take a break and change members for the next case. She asked if there were any committee or staff reports before changing. Mrs. Smith wanted to let the Board know that beginning April 7 there will be a new Zoning Administrator, Brad Burton.

Case CU-02-15, Richard Hallberg and Kathy Harshman

Acting Chairman Tamra Crane called the continuation of Case CU-02-15 to order at 5:05 PM. to review the order granting a Conditional Use Permit. Members present in addition to Chairman Crane were Robert Fleming, Philip Stanley, Ann Pouch and Tony Engel. The Board discussed the minutes from the previous 3 meetings on January 29, February 17, and March 5, 2003. There was a small change on page 10 of the February 17th minutes. Mr. Fleming moved to accept the minutes of January 29, February 17 (with the change), and March 5, 2003. Mr. Engel seconded the motion. All voted in favor.

Chairman Crane said the Board would review the Order drafted by staff. Chairman Crane said there were suggested conditions in the Board's packets. Mrs. Smith said the suggested conditions were written after the draft order was sent. Mrs. Smith said #4 of the suggested conditions has 2 choices, so the Board needs to decide which to choose. The Board decided, with the applicants' agreement, to use 1 camp counselor for each 15 children. The next condition, number 10, the minutes will be Exhibit 2. Mrs. Smith then said that on page 2, finding 10a, needs "sports" inserted after "various" and parentheses around "such as...soccer". On page 3, finding 13, the applicant said the plans showed they were going to rebuild Building 6 as a house. So on bullet 5, Mrs. Smith suggested striking the word "not" in front of "proposed" and change the sentence to read "The Applicants have proposed to replace Building 6 with another house in the future" to be used as a residence for the owners. Mrs. Smith said this was based on testimony from the minutes. Mrs. Smith spoke about page 9, Condition 5A, adding "Building 6, the former main house, which has been demolished, may be replaced with another house to be used as a residence for the owners of the property in the future". Also in the same paragraph, she suggested inserting the word "courts" after "tennis". On the same page, Condition 4D, she proposed adding "until such time as a dining hall is completed sufficient for the number of day campers at the facility". The Board discussed providing water. Mrs. Smith said that was all Staff had at this time.

Chairman Crane spoke about page 4, finding 13, second bullet, and suggested inserting "with" after "associated". Chairman Crane spoke about finding 19 on page 5 and needing a time limit to replace the wire fence. Mr. Hallberg said it was already replaced. So "intend to replace" was changed to "have replaced". On page 7, finding 29, "subject to" is repeated. On page 8, paragraph 2, after "in this hearing" add "as recorded in the minutes". And 3 B and C will be added to the conditions from the suggested conditions. There was discussion about 3 B and who exactly would be present on the property. The minutes will be checked for what was stated.

Chairman Crane spoke about Condition 10 to be added and asked Mr. Burrell if all parts of the 3 sets of minutes were enforceable. Mr. Burrell said the minutes become part of the order and everything in the minutes was enforceable. Mrs. Crane wants the applicants to understand that everything said in the minutes are an enforceable part of the order. Mr. Hallberg said that he understood. She spoke about Condition 11 to be added to the permit.

Mrs. Pouch said that some things were changed during the hearing. Chairman Crane said the last thing stated would be the enforceable one.

Chairman Crane went on to page 9, Condition 4B, and added "or any other possible solutions per discussion on page 8 of the February 17 minutes".

Chairman Crane asked if all the conditions would be inspected by the Zoning Administrator. Mrs. Smith said yes, but it could be stated, if the Board wants. Mrs. Crane went on to page 10, Condition 5G, and would like to delete "to attempt". Mr. Burrell said they would never insure. Mrs. Crane discussed condition 5K and wanted to make sure the quiet time applied to both summer and day campers. Mrs. Smith said that was a part of Condition 5, which applied to both summer camp and day camp. On page 11, Condition 7, the next to the last bullet should be Condition 5G.

Chairman Crane said that she wanted to discuss the lake. On page 15 and 16 of the February 17, 2003 minutes, where the Board discussed whether the lake should be used by campers, and the Board wanted a sentence stricken from the Applicant's amendment to the application, nothing to this effect is stated in the conditions. Mr. Burrell said that finding 12 addressed the issue.

Chairman Crane spoke about Section 200-69.C(3) and asked if that was covered. Mr. Burrell said that it was Condition 9 on page 12 of the order.

Chairman Crane said that she understood it was a condition of the permit that Mr. Hallberg get his Health Department permits. Mrs. Smith said that on page 11, Condition 5R addresses that issue and also Condition 8 covers that.

Chairman Crane wanted to speak about Condition 3B. Mrs. Smith said they were still looking in the minutes. The Board and Mr. Hallberg discussed whether he would be there at all times. Mr. Hallberg said if there were summer campers on the property, he would be there, but is concerned if there were an emergency that would take him away. Mr. Burrell said the Board could make reasonable conditions and he didn't feel the Board had to track them. The Board discussed this. Chairman Crane said she was concerned with only an employee being on the property and not being fully knowledgeable about the permit. Mr. Engel said in the end Mr. Hallberg is responsible for the permit being adhered to.

Mr. Burrell had to leave the meeting at this time.

Chairman Crane said the Board should discuss 3 B. The Board decided to use "or their designee" after "Applicants".

Chairman Crane asked if any Board members had anything else to add. There was no one. She asked if Staff had anything to add. Staff had nothing to add.

Chairman Crane asked for a motion to approve the Order granting application CU-02-15 for a day camp and a summer camp and its related functions per the application of Richard Hallberg and Kathy Harshman as indicated in the draft with the changes and additions made today. Mr. Fleming so moved. Mr. Engel seconded. All members voted in favor of the motion.

Mrs. Smith said Staff would get the Order revised, get signatures of the Chair and Applicants, and then the department can start issuing zoning permits.

The Board discussed preparation for cases and how the Board could get all the information that it needs before hearing a case.

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 6:05 PM.

Tamra Crane, Acting Chairman

Joyce Karpowski, Secretary