

May 29, 2002
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 29, 2002, 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, Dean Bonessi, Dale Caldwell, Robert Fleming, Ann Pouch, Zoning Administrator Dan Gurley, Assistant County Attorney Jennifer Jackson, Planning Director Karen Smith, and Secretary to the Board Joyce Karpowski.

Chairman Grant called the meeting to order at 4:00 PM and introduced the members of the Board. She presented the minutes of the meeting from April 24, 2002. There were no corrections and the minutes stand as presented.

Chairman Grant called forward to be sworn in those who would be presenting testimony in the case scheduled to be heard. Sworn in were Scott Hamilton, Steve Cannon, Jay Hopkins, John Brown, Dave Krantz, Bob Williford, Dave Green, Keith Love, and Zoning Administrator Dan Gurley. Chairman Grant explained how the proceedings would be conducted today.

Case CU-02-07, Larry and Celestia Cannon

Chairman Grant called case CU-02-07, requesting a ten (10 foot) side yard setback Variance to construct an accessory structure. The property is located at 517 Oak Grove Road and zoned R-20. Chairman Grant opened the public hearing. Mr. Bonessi stated that he works with Mr. Cannon and should probably recuse himself. Chairman Grant said that if Mr. Bonessi feels that he can hear the matter and make a decision without prejudice, he would be able to and would have to make that decision. Mr. Bonessi said that he felt that he could. Chairman Grant asked if there were any objections from the applicant or anyone concerned with the application. There were none.

Dan Gurley gave the Zoning Administrator's report. The applicant is seeking a Variance of ten (10) feet from the northern side yard setback in order to construct an accessory structure. The approximate size of the property in question is 0.48 acres. The parcel is zoned R-20. Section 200-15.D requires a side yard setback of twenty-five (25) feet. The proposed structure would be located fifteen (15) feet from the north side yard property line. Section 200-69 allows the Zoning Board of Adjustment to grant a variance only on the basis of affirmative finds of fact for all of the criteria listed in Section 200-69.B(1)(a). Mr. Gurley showed the location of the property. Mr. Gurley said that there was a letter from Mr. Owens, whose property is being encroached upon and showed the location of Mr. Owens property. Mr. Gurley showed a site map from the applicant and described it. He also presented photographs of the site and described them. Chairman Grant asked if the large

trees would be removed and which direction the building would be going. Mr. Gurley showed how the building would be going. Mr. Cannon said that the tree closest to the stake would be removed. Chairman Grant asked if there was anything different in Section 200-69.B(1)(a). Mr. Gurley said that the findings of fact are the same that the Board uses on their "cheat sheets".

Chairman Grant called Mr. Cannon forward. Mr. Cannon said that the accessory building will be a one-car garage with a storage area on the side. It will have similar siding as the house and is primarily for vehicle storage and other storage. Chairman Grant asked why the building could not come closer to the house. Mr. Cannon said that there is a current storage building, which will be removed, after the new one is built. One side of the proposed garage is next to the current building. Chairman Grant asked if the current building could be removed and the proposed building put in its place. Mr. Cannon said that it contains the stuff that will be put into the new garage when it is complete. Mr. Caldwell asked large the current storage shed is. Mr. Cannon said 10' x 14'.

Mrs. Pouch said that the proposed building seemed large for a one-car garage. Mr. Cannon said there would be a one-car garage and the other 24' would be the storage area. Mr. Caldwell asked if the present shed was open sided. Mr. Cannon said that it was closed in and constructed of aluminum siding and wood with wood flooring.

Chairman Grant asked what the topography was between the house and the proposed garage. Mr. Cannon said it was relatively flat with drainage to the property line on the north side. Mr. Cannon pointed out the existing structure on the site plan. Chairman Grant asked why the proposed garage couldn't go closer to the house. Mr. Gurley said that the back setback was fine at 10' but the side setback was 15', 10 feet less than required.

Mrs. Pouch asked how the driveway would get back to the garage. Mr. Cannon said that there is a carport attached to the house and they would drive through that. Chairman Grant asked what the distance was from the well house to the proposed building. Mr. Cannon said that it was roughly 35 – 40 feet.

Mr. Caldwell said that the only reason for the variance is to accommodate Mr. Cannon so that he doesn't have to remove the existing shed. Mr. Cannon said yes, and so they have a usable backyard later. Mr. Cannon said that the property beside theirs has a garage and is grandfathered commercial. Chairman Grant said that is not the question. The Board is concerned with the setback. Mr. Caldwell said that the existing building does not constitute a hardship. Chairman Grant asked where the septic tank is located. Mr. Cannon said that it is in the front yard.

Mr. Bonessi asked if there was anything between the well house and the proposed garage, beside the existing storage shed. Mr. Cannon said no. Mrs. Pouch said that it was really the side that the Board was concerned with, not the back. Mr. Cannon agreed.

Chairman Grant said that the variance was 10 feet because the required setback was 25 feet. Mrs. Pouch said that if the shed was not there, the proposed garage could be moved over. Mr. Cannon said yes. Mr. Fleming asked the size of the shed. Mr. Cannon said 10' x 14'. Chairman Grant asked what other storage Mr. Cannon had on the property. Mr.

Cannon said the carport. Mr. Caldwell asked what was in the storage shed. Mr. Cannon said that there was outside tools and items from school and other miscellaneous items. Mr. Cannon said that there was no electricity to the building.

Chairman Grant asked if the David Owen property was located to the north. Mr. Cannon said yes. Mr. Cannon said that the property was grandfathered commercial and there is currently a boat shop there. Chairman Grant asked the height of the proposed building. Mr. Cannon said a simple one story, with attic storage. Mr. Gurley said that the height restriction on accessory structures was 15 feet.

Chairman Grant asked if anyone else wanted to speak in regard to the application or in opposition to the application. There was no one. Chairman Grant said that the Board needs to find findings of fact, and read the necessary findings. The Chairman asked for discussion.

Mr. Caldwell said that he sympathized with the applicant but felt that it failed to meet the requirement, in the literal sense. Chairman Grant said that she had difficulty relating the hardship to the land. Mrs. Pouch asked if the present shed was torn down, the applicant could move the building back 10 feet and comply. Chairman Grant said exactly. Chairman Grant said that there was enough distance between the well house to do that; there is 43 feet between the house and the proposed garage to enter it. Chairman Grant said that if the proposed garage were moved closer to the well house, you have to be able to drive a car between the well house and the garage to enter the garage. She asked if that was feasible. Mr. Caldwell asked if there were 35 – 40 feet between the well house and the proposed structure. Mr. Cannon said that it would be tight. Mr. Cannon said that the distance between the well house and the shed is roughly 12 feet and then 14 feet for the storage shed, for a total of about 30 feet. So if the garage moved back 15 feet, there wouldn't be room to enter the garage. Mr. Fleming asked why the proposed building couldn't go closer to the house with 43 feet there. Mr. Cannon said that it would take up a lot of yard space and have to be moved 15 feet closer because of the current storage shed. Mr. Caldwell said that the well house would present substantial difficulty, even if it were closer to the house.

Mr. Cannon said that there is a grease pit in the back yard from before the house was built. Mr. Bonessi asked if the County had any regulations about the proximity of buildings to well houses. Mr. Gurley said Environmental Health regulates that for new buildings and if the well is in use there is a distance that has to be kept, but he's not sure what it is. So the garage would have to meet that distance. Chairman Grant asked if the well was the water source for the house. Mr. Cannon said no, that they have city water. Mr. Caldwell asked what the well house was built of. Mr. Cannon said concrete. Mr. Cannon said that they cannot abandon the well, that it was part of the GE...and the water rights were never given up when GE had the water problem. Mr. Cannon said that they still do testing in the area. Chairman Grant said that he would not be able to make use of the back of the property. And the circumstances are unique to the property because of the well situated there is the problem. If the well weren't there, the proposed structure could be moved back and used without any variance. And the hardship (the well house) is not of his own doing, it was already existing. Mr. Caldwell said that the proposed structure couldn't be moved closer to the well house, even if the existing shed wasn't there. Chairman Grant said that the

proposed structure couldn't be moved closer to the house because of the angle of the side lot line, which would make the setback closer than the 15 feet. Chairman Grant asked for a motion.

Ann Pouch said with regard to the application of Larry and Celestia Cannon for a variance from the minimum side yard setback 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. Mr. Caldwell seconded the motion. Chairman Grant said that the findings of fact had been discussed and asked the Secretary if she had them all down. Mrs. Karpowski asked that the Board go over the first finding – about making reasonable use of the property. The Board said that the applicant would not be able to put a functionally accessible garage on the property without the variance. There was no further discussion.

The following vote was taken by a show of hands:

Mr. Fleming	-	yes
Mrs. Pouch	-	yes
Mrs. Grant	-	yes
Mr. Caldwell	-	yes
Mr. Bonessi	-	yes

Motion unanimously carried and the variance was granted.

Case V-02-08, Nancy and David Green

Chairman Grant called Case V-02-08, Nancy and David Green, requesting a twenty-two (22) foot front yard setback Variance to construct an accessory structure. The property is located at 6 Lands End Drive and is zoned R-40.

Mr. Gurley gave the Zoning Administrator's report. The applicant is seeking a Variance of twenty-two (22) feet from the southern front yard centerline setback in order to construct an accessory structure. The setback in the R-40 district is 60 feet from the centerline. The approximate size of the property in question is 1.13 acres. The parcel is zoned R-40. Section 200-13.D requires a front yard setback of sixty (60) feet. The proposed structure is located thirty-eight (38) feet from the south front yard centerline of Lands End Drive. Section 200-46 allows for the construction of accessory structures in front yards. Section 200-46.C(2) states that accessory structures cannot be located any closer to the centerline of an abutting road than otherwise permitted for in this Chapter. Section 200-51 states that where a side yard abuts a street, the setback requirement for said side yard shall be the same as the front yard setback requirements for the district. Mr. Gurley showed a site map of the property with adjoining property owners. He also showed a site map of the property with the structures and described it. Mr. Gurley said that the existing structure is located 21 feet from the centerline and the new structure will be 38 feet from the centerline. He

believes the existing structure will be removed. The new structure will be 18 from the house and 49 feet from the rear lot line. Mr. Gurley presented photographs of the site and described them. Chairman Grant asked if any of the trees would be lost with the proposed construction. Mr. Gurley said that he didn't think so. Mr. Caldwell said that the proposed structure would be more in compliance with existing zoning than the existing structure. Mr. Gurley agreed. Chairman Grant asked if she understood that the only way Mr. Green could build a garage without a variance would be to put it behind the house, bypassing the well and trees. Mr. Gurley agreed.

Chairman Grant called Mr. Green forward. Mr. Elliott said that he considers this the side of his house because his house faces Rugby Road. The Board explained that his lot is called a double-fronted lot. Therefore he needs a 60-foot setback from both roads. Mr. Green said that he just wants to build a 2-car garage, which will be further away from the centerline. He said that he was told that he could build in the exact same spot and build as high as he wanted. Mr. Gurley said that he could replace the structure but use the exact same footprint. Mr. Green said that he would have to build a 2-story garage for the storage, which doesn't make sense. Mr. Green said that all his neighbors signed a paper that they did not mind the new garage. Mr. Gurley said that Mr. Green could offer the signatures for acceptance by the Board. The neighbors and where they adjoined Mr. Green's property were discussed. Chairman Grant said that if there were no objections by anyone on the Board, it would be accepted as part of the record. There were no objections.

Chairman Grant asked if the proposed construction would necessitate taking down any trees. Mr. Green said no trees would be going down. Mr. Green said that to be in compliance with the setback, he would need to place the garage in the center of his backyard, take down some trees, and the well would probably be in the center of the driveway. He would also have to be 35 feet from the back property line because of the double front yards. Mr. Green said that the siding will match the house siding. Mr. Green said that the garage would be 2-car, 1 story, and wood frame construction. Chairman Grant asked if there were any more questions. There were none. Chairman Grant asked if there was anyone who wished to speak for or against the application. There was no one.

Chairman Grant asked for discussion from the Board for findings of fact. Mrs. Pouch said that if he is going to tear down the old one and replace it further from the road, that is reasonable. Mr. Fleming said that the well placement presents a hardship. Chairman Grant said that to comply with the Ordinance, the garage would have to be built to the rear of the existing house, with the well in the way and cutting existing trees, which would not be practical. The configuration of the lot pertains to this lot only. Chairman Grant that this is not of the owner's making, but due to the lay of the land and existing structures. Mrs. Pouch said the double front lot affects the hardship. Mr. Bonessi said that getting the structure further from the road would be safer. Chairman Grant asked how many houses were on the gravel lane. Mr. Green said he believed 10 houses.

Chairman Grant asked for a motion. Mrs. Pouch said with regard to the application of David and Nancy Green for a variance from the minimum front yard setback 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 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. Fleming seconded the motion. There was no further discussion.

The following vote was taken by a show of hands:

Mr. Fleming	-	yes
Mrs. Pouch	-	yes
Mrs. Grant	-	yes
Mr. Caldwell	-	yes
Mr. Bonessi	-	yes

Motion unanimously carried and the variance was granted.

Case V-02-09, Printpack, Incorporated

Chairman Grant called Case V-02-09, Printpack, Incorporated, requesting a twenty-five (25) foot front yard setback Variance from the centerline of US 25 North to construct an addition to an existing structure. The property is located at Mountain Home Industrial Park and is zoned I-2.

Mr. Gurley gave the Zoning Administrator's report. The applicant is seeking a Variance of twenty-five (25) feet from the southwestern front yard centerline setback in order to construct an addition to an existing structure. The approximate size of the property in question is 7.57 acres. The parcel is zoned I-2. Section 200-24.D requires a front yard setback of seventy-five (75) feet from the centerline of major ROWs. The proposed structure is located fifty (50) feet from the southwestern front yard centerline. Mr. Gurley showed a site map of the property with adjoining property owners. He also showed a site map of the property with the structures and described it. Mr. Gurley said that the existing structure would be expanded 16'6" bringing it even with the outer wall. Mr. Gurley presented photographs of the site and described them.

Chairman Grant called a representative of the applicant forward. Keith Love, Plant Manager of the Hendersonville plant, introduced himself. Mr. Love said that with him are Jay Hopkins, Senior Process Engineer, Dave Krantz, Maintenance Manager, and John Brown, Architect and Engineer for the project, who can answer technical questions. Mr. Love said that the company wants to put in a new machine, which will not fit in the current space in the plant. Mr. Love said that the building was originally laid out for 5 – 6 of these machines and the machines have gotten larger over the years. Looking at options, the best one was to expand the building 16 feet, but it gets into the setback.

Mr. Love said that looking at point #1 that the Board must consider, about providing a reasonable return for the assets, this is production space and should be filled with production space to generate the return that they need from that space. He said that it is not good space for other uses. Mr. Love said that the second point, the hardship, comes from unique circumstances, in that they are bordered on two sides – the railroad tracks in

the back and the highway in front. The highway converges toward the railroad tracks where the plant is, and makes the property narrower where the expansion is necessary. Mr. Love said that the original plant was built in 1975 and there have been 3 expansions since then. When the plant was built, the zoning setbacks were not the same as today – today is stricter. Mr. Love said that in terms of the hardship not being their own action, they feel that they are confined by the railroad, the highway and changing zoning requirements. Mr. Love said that in terms of the variance being in harmony with the general purpose and intent of the ordinance and preserving its spirit, he believes that the variance will not change the way the property looks. Mr. Love submitted a photo of the property and computer enhanced the photo to make it look as it will with the expansion. Mr. Love said that the same panels will be used, so the building will look the same, just be a little closer to the road. Mr. Love said that the building is only about 12 - 15 feet higher than the road. Mr. Love said that they know that they are landlocked and that this is the last expansion that they can do in this plant for production. They feel if they can do this, the plant will work for another 10 – 15 years. Mr. Love said that they do not feel that denying the variance would benefit the public. They do not feel there is an effect to the public, one way or the other. However, if it is denied, it would cause great hardship for the company, which has been explained. Equipment would have to be moved and it takes 2 months to move equipment and costs \$300,000 - \$400,00, and would cause longterm inefficiency. Their production space would be set up more efficiently with more options for upgrades later on. He described their production space.

Chairman Grant asked if the number of employees would be affected. Mr. Love said that the net effect short term would be even. The long-term effect may be more employees because of more efficiency. Chairman Grant asked about the retaining wall. Mr. Love said that the retaining wall would change and referred the question to the architect.

Mr. Brown gave some background about US 25 expanding to the other side is because of a sewer main on the plant side of the road. Mr. Brown pointed out where there is a retaining wall now, and where they would be putting in a cement retaining wall. Mr. Brown did not believe the retaining wall would be visible from the road, just from the back door of the plant. It will be 13 feet high. The existing retaining wall will be removed and a transformer will be relocated. Storm drains and sprinklers in that area will also be relocated. Mr. Brown said that in speaking with DOT, he found that they will begin work on the road in September (moved back from August) and the elevation of the road would not change, because the sewer main is not that deep.

Chairman Grant asked where employee parking was. Mr. Love pointed out the parking in front of the plant. They have 180 employees. Mr. Caldwell asked what was made. Mr. Love said that they make packaging for the food industry, specifically the confectionery business and their major customer is Hershey. The plant has been there since 1975.

Mr. Love introduced Scott Hamilton with the Committee of 100, the economic and development arm of the Chamber, and Bob Wilford, President of the Chamber of Commerce. Mr. Hamilton described the economic impact that Printpack has on the County. Mr. Wilford described the company's philanthropic help to non-profit agencies in the area.

Chairman Grant asked if there were any questions for the applicant. Assistant County Attorney Jennifer Jackson told the Board that, although they have heard a good deal of great information about the company, the findings and order really need to be based on the land and the hardships on that land. Mrs. Pouch asked if anyone objected to this addition. Mr. Gurley said that no one has contacted him.

Chairman Grant asked if anyone wanted to speak in favor or in opposition to the application. There was no one. Mr. Caldwell asked if there would be any changes to utilities or other peripheral structures, other than the physical structure of the manufacturing building. Mr. Love said that was correct.

Chairman Grant asked to discuss the findings of fact. Mr. Fleming said that the company cannot expand anywhere else. Mrs. Pouch said that their return would be hurt if they had to move the machine to another place. Chairman Grant said that the new machine would provide a reasonable return by using the space more efficiently. The topography of the property squeezes the plant between the highway and the railroad tracks, so there is no other room for them to expand. Chairman Grant said that the retaining walls proposed would appear to increase the public safety. Chairman Grant said that the unique circumstances of the road have been discussed, that they are topographical and not of the applicant's own actions. The Chairman asked if there were any other findings of fact for the record. There were none.

Chairman Grant called the question for the application as requested.

The following vote was taken by a show of hands:

Mr. Fleming	-	yes
Mrs. Pouch	-	yes
Mrs. Grant	-	yes
Mr. Caldwell	-	yes
Mr. Bonessi	-	yes

Motion unanimously carried and the variance was granted.

This concluded the hearing of cases.

COMMITTEE AND STAFF REPORTS: None

OLD BUSINESS:

Mr. Gurley reported that an appeal, A-00-17, an appeal of the Zoning Administrator's decision was withdrawn by the applicant, Robert Fleming.

NEW BUSINESS:

The Board was very sorry to hear that Jennifer Jackson would be leaving the area and thanked her for her years of service to the County and wished her much enjoyment in her new position.

The Board was reminded that the next meeting will be on June 26, 2002 at 4:00 PM. There being no further business, Mr. Caldwell made a motion to adjourn, Mrs. Pouch seconded the motion, and all members voted in favor. The meeting was adjourned at 5:25 PM.

Diane Grant, Chairman

Joyce Karpowski, Secretary