

March 27, 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, March 27, 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, Tamra Crane, John Davis, Anthony Engel, Robert Fleming, Zoning Administrator Dan Gurley, Assistant County Attorney Jennifer Jackson, and Secretary to the Board Joyce Karpowski.

Chairman Grant called the meeting to order at 4:09 PM and introduced the members of the Board. She presented the minutes of the meeting from February 27, 2002. There was one correction and the minutes stand as corrected.

Chairman Grant called forward to be sworn in those who would be presenting testimony in the case scheduled to be heard. Sworn in were Zoning Administrator Dan Gurley and James Konarske.

Case V-02-02, James Konarske

Chairman Grant called case V-02-02, James Konarske, requesting a five-foot variance from the centerline and a 12-foot southeastern side yard variance to construct a dwelling. The property is Lot 41 in Laurel Forest Subdivision located off Forest Drive and is zoned R-40.

Dan Gurley gave a summary of the issues. The appellant is seeking a variance of Section 200.13.D, southeastern side yard setback from 35 feet to 23 feet (12 foot variance) and setback from the centerline from 60 feet to 55 feet (5 foot variance) for a single family dwelling. The approximate size of the property in question is 1.05 acres. The parcel is zoned R-40. Section 200-13.D states that side yard setbacks for a dwelling are 35 feet from the property line. Section 200-13.D states that front yard setback from the centerline of minor right of ways is 60 feet. The distance between the southeastern side property line and the footprint of the proposed structure is 23 feet. The distance between the centerline of the right of way and the footprint of the proposed structure is 55 feet. Mr. Gurley presented the site plan and described the plan. He described 2 streams that run along a side property line and the rear property line. The property is also in a Watershed IV district. Mr. Gurley also showed pictures of the property and described them. One picture showed a right of way for Hunter's Glen that was used for emergency purposes and has a locked gate.

Chairman Grant if Battle Creek ran along the property line between Battle Creek Road and the property. Mr. Gurley pointed out the creek on the rear property line.

Mr. Davis asked if the septic area and repair area were staked out on the property. A picture was shown with a stake marking the installed septic system. Mr. Gurley also showed where the area sloped down to Battle Creek and the other creek.

Chairman Grant called Mr. Konarske forward. Mr. Konarske said that his plans will maintain the rural feel of the area and pointed out how far the proposed building would be from any existing homes. The side variance is next to the back property line of the adjoining property, which is higher than Mr. Konarske's property. An easement ends at the corner of Mr. Konarske's property. Mr.

Konarske said that he would like his house higher than the road for runoff purposes. Mr. Konarske said that there was a flood plain area on the property and the placement of the septic system and repair area all pushed the placement of the house into one corner. Mr. Konarske said that the house he plans to build has factory built walls that requires the building be placed on virgin soil. This is why the house is cantilevered on the property.

Mr. Konarske also said that there is a discrepancy between his surveyor and the adjoining property owner's survey. He believes that the 5-foot variance will be the worst case. Mr. Konarske showed 3 different surveys with a 50-foot right of way. Depending on which survey pin was used, determines how much of a variance is needed with a 5-foot variance being the worst case. The right of way is between 2 developments (Hunters Glen and Laurel Forest) and is shown differently on each survey.

Chairman Grant said that regardless of the solution on the front, a side yard variance is still necessary.

Mr. Davis asked if the concrete drive accessed Lots 10 and 11. Mr. Konarske said that it didn't access either. He said that this drive extends all the way to a home in the back area of Hunters Run and this drive is used as access in emergencies and is used very little. The owner of the adjoining property said that it would never be a road.

Mr. Engel asked about the classroom in the house. Mr. Konarske said that they home school their children. Mr. Engel asked about the office. Mr. Konarske said that it is more of a retreat, not a business of any kind. Mr. Konarske said that he is in compliance with all the Laurel Forest building restrictions.

Chairman Grant asked if there were any more questions for Mr. Konarske and there were none. She opened the floor for discussion.

Mr. Davis questioned how the difference in the line due to the survey pins would be stated in the variance, if granted. Chairman Grant said that if the variance were granted as requested, then that is the distance he would have to be from the centerline. There was discussion about how the variance should be written, if granted and if needed. Mr. Konarske said that he would have the surveyor set the pins according to the variance and would then bring the survey into the Board, if requested. Chairman Grant said that measurements are from the center of the right of way and not from the existing roadbed. There was discussion about how far the house would be from the centerline of the right of way.

Chairman Grant asked for a motion including the findings of fact. Mrs. Crane said with regard to the application of James Konarske 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 (with the small area to work with because of the watershed requirements and the 65% grade drop-off in the back and the 2 creeks and the septic requirements); the variance in harmony with the general purpose and intent of the ordinance and will preserve its spirit (not severely encroaching on any properties); and in the granting of the variance the public safety and welfare have been secured and substantial justice has been done (no public safety problems seen). Accordingly, I further move the Board to grant the requested variance in accordance with and only to the extent represented in the application. Mr. Davis seconded the motion. There was no further discussion.

The following vote was taken by a show of hands:

Mr. Fleming - yes

Mrs. Crane - yes
Mrs. Grant - yes
Mr. Davis - yes
Mr. Engel - yes

Motion carried and the Variance was granted. Mrs. Grant asked Mr. Konarske to bring in the final survey to Mr. Gurley.

This concluded the hearing of cases.

COMMITTEE AND STAFF REPORTS:

OLD BUSINESS:

Mr. Gurley said that the Commissioners are getting closer to the rewrite of the Zoning Ordinance, which would soon be sent to the Board.

NEW BUSINESS:

Mr. Gurley reminded the Board that a Special Use Permit for Blue Ridge Community College will be heard on Tuesday, April 9 at 4:00 PM. Mrs. Smith, Planning Director will be filling in for Mr. Gurley. Packets for the hearing were distributed. Mr. Gurley reminded the Board that the Special Use Permit hearing was a quasi-judicial proceeding and there can be no ex parte communication between the Board and anyone concerned with the application.

The Board was reminded that the next regular meeting of the Board of Adjustment was scheduled for Wednesday, April 24 2002, at 4:00 PM in the Meeting Room of the Henderson County Land Development Building.

There being no further business, Tamra Crane made a motion to adjourn, Robert Fleming seconded the motion, and all members voted in favor. The meeting was adjourned at 4:50 PM.

Diane Grant, Chairman

Joyce Karpowski, Secretary