

IN THE MATTER OF THE APPLICATION OF Ernest Williams
Applicant,

To the

HENDERSON COUNTY BOARD OF ADJUSTMENT,
Permit Authority

ORDER GRANTING SPECIAL USE PERMIT SUP-12-01

The HENDERSON COUNTY BOARD OF ADJUSTMENT having held a quasi-judicial public hearing on April 25, 2012 to consider the application submitted by Ernest Williams, to request a Special Use Permit, makes the following FINDINGS OF FACTS and draws the following CONCLUSIONS:

FINDINGS OF FACT

1. A quasi-judicial public hearing was held by the Henderson County Board of Adjustment on special use permit request SUP-12-01. A quorum of Board Members was present at the meeting.
2. This Order and the approval herein, was moved by Anne Pouch and seconded by Hunter Marks. The request for a special use permit was approved by a vote of 5-0.
3. The subject property is located at the corner of Howard Gap and Sugarloaf and has a PIN of 9579868263. The Property owner and Applicant is Ernest Williams. His son, Michael Williams attended the hearing as a co-owner. Mr. Williams was made a party to this action.
4. Toby Linville is the Zoning Administrator for Henderson County. As an agent of Henderson County, Mr. Linville was made a party to this hearing.
5. Notice of a quasi-judicial public hearing, pursuant to the Ordinance, the Henderson County Code 200A-338 was duly and timely given. This notice included legal advertisements in The Hendersonville Tribune newspaper on 4/5/12 and 4/12/12, notice sent by first class mail to the Applicants and the adjacent property owners.
6. The Applicant's special use permit request is not inconsistent with the Notice of Public Hearing produced, published, and posted for the quasi-judicial proceeding in that the notice contemplated the size and scope of the special use permit request.
7. Upon inquiry by the Chairman of the Zoning Board of Adjustment, no party objected to any other persons or entities made parties to this action being a party to this action.
8. All parties and all witnesses presented by any party were sworn as witnesses in this proceeding on April 25, 2012.
9. Without objection from any party, the Board of Adjustment received into evidence a memorandum and a powerpoint presentation from Toby Linville. No party disputed any of the information contained in this evidence and the Zoning Board of Adjustment finds all the information contained in the memorandum and its attachments to be credible and to be fact for the purpose of this hearing. Mr. Linville also entered the Applicant's application and site plan into evidence.
10. The subject property is 3.8 acres, located at the corner of Sugarloaf Rd. and Howard Gap Rd. It is zoned Local Commercial (LC).
11. The application went to the Technical Review Committee at their April 3, 2012 meeting and was approved with conditions.
12. The Applicant desires to use the subject property for multifamily residential as described in Supplemental Requirement 1.6.
13. SR 1.6. *Dwelling, Multifamily, Five (5) or More Units*

- (1) Site Plan. Major *Site Plan* required in accordance with §200A-331 (Major Site Plan Review).
- (2) Multifamily dwellings of five (5) or more units:
 - a. May be developed in *phases*.
 - b. Shall have a minimum spacing between *buildings* of 20 feet, with an additional one (1) foot of separation for each one (1) foot of *building* height in excess of 30 feet.
 - c. Shall have a maximum *building* length of 150 feet.
 - d. May increase the building height to 50 feet where a B1 *Buffer* is provided as detailed in §200A-168 (Buffer Determination).
 - e. Shall be required pervious pavement for a minimum of 25 percent of all paved surfaces (*roads*, parking areas, drives, sidewalks, etc.).
 - f. Shall adhere to the *road* standards required for a *major subdivision* in accordance with Article III, Subdivision Regulations, and shall be organized:
 - 1. To provide increased internal mobility;
 - 2. To provide safe and convenient access;
 - 3. In intersecting/grid patterns where possible; and
 - 4. Without cul-de-sacs (except where topographical considerations/restrictions are submitted by the *applicant*).
 - g. Shall have subsurface utilities.
- (3) Where a multifamily dwelling of five (5) or more units development is located along any *road* with current public transit access and such public transit authority approves the addition of a stop, such development shall provide a minimum of one (1) public transit access shelter for the *use* of occupants/patrons.
- (4) Solid Waste Collection. Solid waste collection systems must be installed and/or operated to meet all local and state statutes, ordinances and regulations and shall thereafter be certified by the Department of Public Health. Each development shall provide a suitable method of solid waste disposal (in accordance with Chapter 165 of the Henderson County Code, *Solid Waste*) and collection consisting of either private collection from individual *uses* or the *use* of dumpsters. Where dumpsters are used concrete pads shall be designed to drain to a bio-retention area to filter *stormwater* before the water reaches a larger drainage system, and Screen Class One (1), Two (2), or Three (3) shall be provided consistent with the requirements of §200A-182 (Screen Classification).
- (5) Open Space. *Open space* shall be provided in perpetuity (perpetual *easements* or deed restrictions are required) equivalent to 20 percent of all lands within the development. This designated *open space* area shall not:
 - a. Include more than 50 percent in primary conservation areas; and
 - b. Be composed entirely of secondary conservation areas.
- (6) Common Area Requirements. A *common area* shall be provided that is equivalent to 10 percent of the total area. *Common area* shall be accessible for the *use* and enjoyment of the multifamily occupants/patrons, located as to be free of traffic hazards and maintained in good condition by the *applicant*.
- (7) Other Requirements. Due to the comprehensive nature of a multifamily project, there are several sections that must be consulted. Please refer to the following sections for more information on each facet of a multifamily project.
 - a. See Article III for information on *road* design and construction standards, pedestrian facility standards, water and sewer requirements, and *fire protection*.
 - b. See Article IV for traffic impact study and emergency services impact report requirements.
 - c. See Article V for landscaping and buffering requirements.
 - d. See Article VI for off-street parking and loading requirements.
 - e. See §200A-63 (Supplemental Requirements) for each land *use*.
 - f. See Article VII for *sign* requirements.
 - g. See Article XI for permitting procedures.

- 14. The Applicant's soil erosion plan is currently under review by the County.
- 15. The revised site plan includes planting strips as required by the TRC.
- 16. The Applicant has been in contact with NCDOT and has resolved the driveway concerns brought up in the TRC.
- 17. The Applicant is proposing a total of 4 duplexes and 1 single family home. There is one existing duplex that could be built as of right under the Land Development Code.
- 18. The project will have public water and private septic.
- 19. The subject property is surrounded by commercial and residential uses.

20. The Applicant is proposing this project to bring in rental income. He stated that this project will create jobs, create affordable housing, and increase the tax base.
21. The project will result in cleaning up the subject property and adding new construction.
22. All Driveways will be paved and each unit will have garages.
23. The property is not in the floodplain or watershed.
24. The project is consistent with the Comprehensive Plan where the area is labeled Urban Services Area and is suitable for high density residential or commercial.

CONCLUSIONS

1. All parties, and all persons entitled to notice, have been given proper notice of this hearing and afforded the right to be heard.
2. All parties were properly before the Board of Adjustment and all evidence presented herein was under oath, and was not objected to by any party. All evidence relied upon in this Order was credible and reliable.
3. Henderson County Code 200A-323 grants the Board of Adjustment the jurisdiction to hear and make special use permit decisions.
4. The special use permit does meet all the standards of the Ordinance and the special use permit should be GRANTED based on the reasons established below:
 - a. The project does not materially endanger the public health, safety or welfare because multifamily is consistent with the Comprehensive Plan Urban Services Area.
 - b. The project will not substantially injure the value of property or improvements in the area because the project will improve the property by cleaning it up and adding in new construction.
 - c. The project is in harmony with the surrounding area because the surrounding properties are commercial and residential.
 - d. The project complies with all applicable local, state and federal statutes, ordinances and regulations because it meets the Supplemental Requirements of the Land Development Code, will meet the conditions established by the Technical Review Committee, meets NCDOT requirements for driveways, is working to comply with the Henderson County Soil Erosion Ordinance and will apply for septic permits from Environmental Health.
 - e. The project is in accordance with the Comprehensive Plan, long-range transportation plans and comprehensive transportation plans of the County and/or long-range transportation plans and comprehensive transportation plans of any municipality of the County because it meets the zoning of a LC with the Special Use Permit and is consistent with the Comprehensive Plan description of Urban Services Area.
 - f. The project minimizes the effects of noise, glare, dust, solar access and odor on those people residing or working in the neighborhood of the proposed use because the driveways will be paved and there will be landscaping throughout the property.
 - g. The project minimizes the environmental impacts on the neighborhood, including the following groundwater, surface water, wetlands, endangered/threatened species, archeological sites, historic preservation sites and unique natural areas by meeting all requirements by the County regarding soil erosion and environmental health.
 - h. Provision/arrangement has been made by the Applicant concerning: ingress and egress to property and proposed structures thereon; off-street parking and loading areas; utilities; buffering and landscaping.

Based on the foregoing FINDINGS OF FACT and CONCLUSIONS drawn, and it appearing to the HENDERSON COUNTY BOARD OF ADJUSTMENT that the Special Use Permit must be **GRANTED**.

IT IS THEREFORE ORDERED by the HENDERSON COUNTY BOARD OF ADJUSTMENT as follows:

The Applicant's Special Use Permit has been GRANTED. The Applicant must adhere to the conditions established in this Order:

- 1. The project must meet the conditions established by the Technical Review Committee at its April 3, 2012 meeting

ORDERED this the ____ day of May 2012.

THE HENDERSON COUNTY BOARD OF AJUSTMENT

By: _____
Jim Phelps, Chairman

ATTEST:

Toby Linville
Zoning Administrator

ACCEPTANCE BY APPLICANT

I, _____, Applicant, do hereby acknowledge receipt of this order which is the subject of this special use permit request. I further acknowledge that no work may be done pursuant to this permit except in accordance with all of its conditions and requirements and that this restriction shall be binding on the owner and his successors in interest.

This the ____ day of _____, 2012

_____, Applicant

STATE OF NORTH CAROLINA
COUNTY OF HENDERSON COUNTY

I, _____, a Notary Public for said County and State, do hereby certify that _____ personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and official seal, this the ____ of _____, 2012.

(Official Seal) _____
Notary Public

My Commission Expires _____