

In the Matter of the Appeal of the)
Zoning Administrator Regarding an)
On-Site Sign Owned by)
William A. Burch)
_____)

ORDER

THIS MATTER came on to be heard by the Zoning Board of Adjustment of Henderson County (the "Board") on the appeal by William A. Burch from the decision of Henderson County's Zoning Administrator. The matter was heard by the Board on November 29, 2017. From the record in this matter, and from the evidence presented to the Board, the Board makes the following findings:

1. This matter is an appeal of the decision of Henderson County's Zoning Administrator. Pursuant to Henderson County Code §42-379, Table 12.1, appeals from the Zoning Administrator are to the Board.

2. For this hearing, the Board was made up of the following of its members:
Ron Kauffman, Chairman
Tony Engel
Ann Pouch
David Sandler
Hilliard Staton

3. Notice of this hearing was duly given as required by N.C. Gen. Stat. §160A-388, which is applied to Henderson County pursuant to N.C. Gen. Stat. §153A-345.1(a).

4. Hearing procedures were pursuant to N.C. Gen. Stat. §160A-388(b1). Other than William A. Burch (the "Appellant"), no person was found by the Board to have standing to be a party to this hearing.

5. The appeal to the Board was timely filed by the Appellant.

6. Appellant was represented at this hearing by Betsey Flack Matthews, Attorney at Law.

7. This appeal involves an advertising sign (the "sign") located on the premises of the Appellant.

8. Insofar as it involves the County, the history of the sign is as follows:

A. On or about March 29, 2016, a complaint was received by the Henderson County Zoning Administrator's office regarding the sign.

B. The property upon which the sign is located is zoned "Office, Institutional and Commercial". In such zones freestanding signs are permitted as follows:

(1) Off-premise signs, called “Outdoor advertising signs” are regulated by Henderson County Code §42-224.

(2) On-premise signs are regulated by Henderson County Code §42-221.

C. At the time, the sign was an “off-premise sign” (that is, it advertised a business that was not located on the same property upon which the sign was located). At that time, after the investigation by the Zoning Administrator, it was found that the sign met all the requirements under the Henderson County Code for an off-premise sign, and after an application was made by the Appellant a permit was granted for an off-premise sign, effective with a final inspection on or about August 1, 2016. The permit was granted notwithstanding that the sign had been completed prior to the application for the permit.

9. Subsequent to the granting of the permit for an off-premise sign by the County, the North Carolina Department of Transportation determined that the sign was of a type not permitted by its applicable laws and regulations, and notified the Appellant of the same.

10. Without notifying Henderson County, Appellant then modified the sign, converting it into an “on-premise sign”, advertising the business located on the same property upon which the sign was located.

11. Under the applicable laws and regulations of the North Carolina Department of Transportation, on-premise signs such as that of the Appellant are not regulated.

12. No permit was or has been applied for by or granted to the Appellant for an on-premise sign.

13. On or about September 5, 2017, another complaint was received regarding the sign. Upon investigation, the County’s Zoning Administrator found:

A. The sign was now an “on-premise” sign, advertising the business (“HipHen Uniques”) located on the same property upon which the sign was located.

B. The dimensions of the sign, (twelve feet by sixteen feet, or 192 square feet), is larger than that permitted by Henderson County Code §42-221 for on-premise signs. §42-221 limits on-premise signs in the Office, Institutional and Commercial zoning district to 72 square feet.

14. The Appellant presented no evidence which would tend to show that this sign as it exists is a permitted use in the Office, Institutional and Commercial zoning district.

From the foregoing, the Board concludes as a matter of law that it has jurisdiction over the subject of this appeal, and that the decision of the Zoning Administrator of Henderson County should be affirmed.

WHEREFORE, IT IS ORDERED, ADJUDGED and DECREED that the decision of the Zoning Administrator in this matter is hereby affirmed.

HENDERSON COUNTY ZONING BOARD OF ADJUSTMENT

By: _____
RON KAUFFMAN, Chairman