

IN THE MATTERS OF THE APPLICATIONS OF

CHRIS AND TANGI BROWN, Applicants,

to the

HENDERSON COUNTY ZONING BOARD OF ADJUSTMENT,
Permit Authority,

Regarding

“Flex 4 Fitness”

The Henderson County Zoning Board of Adjustment held a quasi-judicial hearing February 22, 2017, to consider the application SUP-17-01, seeking a special use permit to allow use of certain property for office space and storage. The application was submitted by property owner. Having heard all of the evidence and arguments presented at the hearing, the Zoning Board of Adjustment makes the following findings of fact:

1. A quasi-judicial hearing was held by the Henderson County Zoning Board of Adjustment on the special use permit application SP-17-01. A quorum of members of the Zoning Board of Adjustment was present. The members present and participating were:

Ronald S. Kauffman, Chair
Tony Engel
David Sandler
Anne Pouch
Hilliard Staton

2. All members of the Zoning Board of Adjustment affirmed their ability to make an impartial decision in this matter, and no party or member objected to any other member's participation in this hearing.

3. Notice of the quasi-judicial hearing, pursuant to the Henderson County Code (“the Code”) was duly and timely given in accord with the provisions of §42-371. This included certified mailing to the applicants and all adjacent property owners to the boundary of the subject property, published notice, and the posting of notice on the subject property.

4. This application was filed by Chris and Tangi Brown (the “Applicant”). Applicant is the future owner of the property to be included in the special use, which property consists of Henderson County PIN 9579957041 and 9579946219. The Applicant's obligation to purchase the property is contingent on getting this SUP Order. An attorney for the owner, Upward and Others LLC, was present at the hearing to represent the Owner's interest.

5. This property is currently zoned Residential Two Rural.

6. At the commencement of this hearing, the Chair stated that the Board recognized the Applicants and the Henderson County Planning Department as parties to this hearing, and inquired whether any person or entity sought to become a party to this action. The following people were made parties to this action in addition to the Applicant and Owner:

Phyllis Fitzsimmons

Michael Bridges

Neal Reed

7. In order to grant any special use, the Board must find that the proposed use will:

- a. Not materially endanger the public health, safety or welfare;
- b. Not substantially injure the value of property or improvements in the area; and
- c. Be in harmony with the surrounding area.

8. In addition, the Board must find that the proposed use meets the specific standards for each specific special use set out in the Henderson County Land Development Ordinance, Chapter 42 of the Henderson County Code. The use proposed here is "Recreational Facility (Indoor/Outdoor)". The use proposed is a potential special use in Residential Two zones. The specific standards for the proposed use are set out in Supplemental Regulation SR 14.4 of the Land Development Ordinance, found at Section 42-63 thereof. The standards are as follows:

- a. Site Plan. Major Site Plan required in accordance with §42-331 (Major Site Plan Review)
- b. Lighting. Adequate lighting shall be placed in areas used for vehicular/pedestrian access including, but not limited to: stairs, sidewalks, crosswalks, intersections, or changes in grade. Lighting mitigation is required.
- c. Perimeter Setback. One hundred (100) feet (equipment, machinery and /or mechanical devices shall not be placed within 200 feet of a residential zoning district. All structures shall be 100 feet from a residential zoning district property).
- d. Structure. For activities which present potential safety hazards (betting cages, baseball fields, driving tees, etc.) fencing, netting or other control measures shall be required.
- e. Solid Waste Collection. The facility shall provide a suitable method of solid waste disposal and collection consisting of either private collection from individual uses or the use of dumpsters (installed and /or operated to meet all local and state states, ordinances and regulation (including Chapter 95 of the Henderson County Code, Solid Waste) and thereafter certified by the Department of Public Health). Where dumpsters are used, Screen Class One (1), Two (2), or Three (3) shall be provided consistent with the requirements of §42-182 (Screen Classification).
- f. Public Address/Loud Speakers. Public address and loud speaker systems shall not be operated before 8:00 a.m. or 12:00 midnight.
- g. Hours of Operation. For outdoor uses, 6:00a.m. Till 12:00 midnight

9. Pursuant to §42-356H, "[t]he concurring vote of four-fifths (4/5) of the members" of the Board is required to grant the special use permit.

10. A motion was made by Ron Kaufman to grant the special use, all standards having been met, subject to certain conditions. All members voted aye.

From the foregoing, the Zoning Board of Adjustment concludes as follows:

1. All parties were properly before the Board, 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.
2. The Zoning Board of Adjustment has jurisdiction to hear this matter.
3. All parties, and all persons entitled to notice, have been given proper notice of this hearing and afforded the right to be heard.
4. The application for the special use permit should be granted.

IT IS THEREFORE ORDERED by the Henderson County Zoning Board of Adjustment that Henderson County special use permit amendment application number SP-17-01 is hereby 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. Applicant must agree to in writing the provisions of this order.
2. Applicant must comply with all the requirements in Supplemental Requirement 4.14.
3. Applicants are bound to the site plan as presented except for the conditions in this Order.
4. Applicant may not use a sound system; Applicant may use a public announcement system for the outdoor structures but only during the hours the pool is open.
5. Any Amendments, changes or modifications of this Order must be approved by this Board.
6. Failure to comply with the conditions in this order may result in the revocation of this Permit.

Announced February 22, 2017, and approved in final form, this the ____ day of _____, 2017.

THE HENDERSON COUNTY ZONING BOARD OF ADJUSTMENT

By: _____
RON KAUFMAN, Chair

Attest:

TOBY LINVILLE, Secretary to the Zoning Board of Adjustment