
In the Matter of
REQUEST FOR REVOCATION OF
SPECIAL USE PERMIT 15-04

ORDER

This matter came on for hearing before the Henderson County Zoning Board of Adjustment (the "ZBA") at the request of numerous persons seeking the revocation of Special Use Permit 15-04, previously granted by the ZBA. The following members constituted the ZBA for the hearing of this matter:

Ronald S. Kauffman (Chair); James Barton Hysong, Ann Livingston Pouch,
David N. Sandler and Hilliard Staton.

The hearing was begun before the ZBA on June 28, 2017, continued with a visit to the Site on July 5, 2017, and concluded on July 26, 2017.

Background

1. This matter comes before the ZBA pursuant to the provisions of Section 42-356 of the Henderson County Code (the "Code"), which among other things grants the ZBA the sole authority to issue "Special Use Permits" under the Henderson County Land Development Ordinance (Chapter 42 of the Code).

2. Code Section 42-356I.(1) states as follows:

Permit Revocation. The Zoning Administrator and/or the ZBA may revoke a permit if, at any time after the issuance of the permit, it is found that the conditions imposed on/agreements made with the applicant have not been or are not being fulfilled by the holder of the permit.

3. In ZBA case SUP-15-04, a Special Use Permit (the "Permit") was granted to the applicants, William and Tamra Crane, for a "place of assembly, small" as delineated in Code Section 42-63 ("Supplemental Requirements", S.R. 5.17, to be located on property (the "Site") owned by the applicants bordered in part by North Carolina Highway 191 and Bradley Road. The Site is also bounded by several parcels along Country Drive and several parcels along Tradition Way.

4. S.R. 5.17 sets the following requirements for a place of assembly, small:

- (1) Site Plan. Major Site Plan required in accordance with §42-331 (Major Site Plan Review).
- (2) Lighting. Lighting mitigation required.

- (3) Structure. A structure shall be designed to accommodate a minimum of 40 and a maximum of 499 persons.
 - (4) Perimeter Setback. Fifty (50) feet.
5. In addition, the ZBA imposed additional conditions on the applicants:
1. Applicant must agree to in writing the provisions of this order.
 2. Applicant must comply with all the requirements in Supplemental Requirement 5.17.
 3. Applicants are bound to the site plan as presented except for the conditions in this Order.
 4. There must be a 50 foot setback from the property line. There can be no parking in this setback. The only things permitted in the setback are the existing barn and any vegetative buffer, trees, or fence.
 5. All designated parking needs to be physically buffered by vegetation or fencing.
 6. No events can take place outside the hours of 10 am to 10 pm.
 7. No event may have more than 150 people.
 8. Any Amendments, changes or modifications of this Order must be approved by this Board.
 9. Failure to comply with the conditions in this order may result in the revocation of this Permit.

6. Numerous individuals caused to be filed documents seeking revocation of the Permit. Only one, Stan Shelley, whose property abuts the site along Country Drive, actively participated in this matter by not only presenting testimony but also questioning witnesses and arguments (through counsel). The applicants also participated in this matter by testimony and by questioning witnesses and arguments (through counsel). Other persons also presented testimony in this matter.

7. No party raised any issue of the ability of the ZBA or its members as constituted for this hearing to fairly and impartially decide this matter.

Facts

8. Use of the Site as a place of assembly, small, has not yet begun.

9. The bulk of the “violations” alleged in this matter do not, even if allegations are accepted as true, constitute violations at present, as use of the facility has not yet begun. For example, without making any finding on the actual height of the fencing on the property, the height of fencing at present may or may not be a violation once use of the facility begins. But until such use begins, the height of the fencing could not constitute a violation of the provisions of the Permit.

10. One alleged violation is of a nature that a determination at present is required, due to the substance of the undertaking and due to the nature of the violation alleged. The Barn is under construction at present. The original site plan accompanying the permit request in this matter (the “Site Plan”) showed a “barn” (the “Barn”) as the “principal structure” for the use applied for. The Barn was not an actual working barn, but a to-be constructed structure. The Site Plan indicated dimensions for the Barn of forty-eight feet by sixty-four feet.

11. As it exists on the Site, the Barn's dimensions are actually forty-eight feet by seventy-two feet, a twelve and one-half percent increase in dimension square footage. In addition, between one-fourth and one-third of the area of the Barn has an upstairs "loft" area nowhere reflected on the Site Plan.

12. The changes in the dimensions in the Barn, while important, do not substantially intensify the use of the Site resulting from the permit, as the condition limiting the number of participants to any gathering held on the Site are limited as stated in the Permit.

From the foregoing, the Board concludes as follows:

1. It is jurisdiction to hear this matter.
2. It has the ability to revoke special use permits when it finds that "the conditions imposed on/agreements made with the applicant have not been or are not being fulfilled by the holder of the permit". It is not, however, compelled to revoke in such circumstances ("may revoke").
3. There has been no violation shown of the terms of the permit sufficient substantial for the revocation of the Permit at this time.

IT IS THEREFORE ORDERED that the request for the revocation of Special Use Permit SUP-15-04 is denied.

The denial of the revocation was agreed by a majority of the Board, with members Pouch, Sandler and Staton voting to deny the revocation, and members Kauffman and Hyson voting to revoke.

The foregoing was adopted by the Board upon motion of _____ as the Board's official Order in this matter.

This the _____ day of August, 2017.

HENDERSON COUNTY ZONING BOARD OF ADJUSTMENT

By: _____
RONALD S. KAUFFMAN, Chair, for the Board