

IN THE MATTER OF THE APPLICATION OF

JOHN TURCHIN COMPANIES, Applicant,

to the

HENDERSON COUNTY ZONING BOARD OF ADJUSTMENT,
Permit Authority,

Regarding

PLACE OF ASSEMBLY, SMALL

The Henderson County Zoning Board of Adjustment held a quasi-judicial hearing August 30, 2017, to consider the application SUP-17-03, seeking a special use permit to allow (1) “dwelling, multifamily, five (5) or more units”, and (2) “recreational vehicle park” on certain property under the Chapter 42 of the Henderson County Code (“the Code”). The application was submitted by owners of the property in question. 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-17-03. A quorum of members of the Zoning Board of Adjustment was present. The members present and participating were:

Ronald S. Kauffman, Chair
Anthony Engel
Ann Livingston Pouch
David Sandler
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 Code was duly and timely given in accord with the provisions of §42-371. This included first class mailing to the applicants and all adjacent property owners to the boundary of the subject property and the posting of notice on the subject property.

4. This application was filed by John Turchin Companies (the “Applicant”), as agent for the property owners, John Thomas Hammond, James William Hammond, Annette P. Hammond Revocable Trust. The subject property consists of Henderson County PINs 9529838232, 9539037259 and 9529916743 (together, the “property”). This property is currently zoned residential (R1). Both the special uses sought, “dwelling, multifamily, five (5) or more units”, and “recreational vehicle park” can be permitted by this Board in that zoning district.

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5. 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. No such person sought to become a party. However, additional witnesses testified: Mary Jane Pell, Blake Kehoe, Kim Kehoe, Susan Pfeiffer, Mary Katherine Riddle, David Timmerman, Douglas Dwyer, Mark Beasley and Pat Wheeler.

6. 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.

7. The information contained in the Request for Board Action and staff report, consisting of 26 pages, was received by the Board without objection. The statements found therein are found to be fact by this Board, and the staff report is incorporated herein by reference.

8. The witnesses listed above testified in opposition to the grant of the special use permit. They testified to concerns with traffic, utilities, RVs on narrow roadways, stormwater runoff affecting their (surrounding) properties, general environmental impacts, the lack of care for long term value of structures where such structures are rented (as opposed to owner-occupied), access to and use of Ewbank Rd, noise, light pollution from the project, air pollution from the construction of the project, the effect of the project on surrounding property values, emergency access and onsite management of rental units.

9. In order to grant the special uses sought, the Board must find that the proposed uses meet the specific standards for each specific special use set out in the Henderson County Land Development Ordinance, Chapter 42 of the Henderson County Code.

10. The first use proposed here is “dwelling, multifamily, five (5) or more units”. As proposed there would be multiple eight-plex structures. The specific standards for the proposed use are set out in Supplemental Regulation SR 1.6 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 §42-33 I (Major Site Plan Review).
- b. Multifamily dwellings of five (5) or more units:
 - i. May be developed in phases.
 - ii. 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.
 - iii. Shall have a maximum building length of 150 feet.
 - iv. May increase the building height to 50 feet where a BI Buffer is provided as detailed in §42-1 68 (Buffer Determination).
 - v. Shall be required pervious pavement for a minimum of 25 percent of all paved surfaces (roads, parking areas, drives, sidewalks, etc.).
 - vi. Shall adhere to the road standards required for a major subdivision in accordance with Article 111, 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).

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vii. Shall have subsurface utilities.

c. 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.

d. **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 95 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 (I), Two (2), or Three (3) shall be provided consistent with the requirements of §42-182 (Screen Classification).

e. **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:

- i. Include more than 50 percent in primary conservation areas; and
- ii. Be composed entirely of secondary conservation areas.

f. **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.

g. **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.

- i. See Article III for information on road design and construction standards, pedestrian facility standards, water and sewer requirements, and fire protection.
- ii. See Article IV for traffic impact study and emergency services impact report requirements.
- iii. See Article V for landscaping and buffering requirements.
- iv. See Article VI for off-street parking and loading requirements.
- v. See §42-63 (Supplemental Requirements) for each land use.
- vi. See Article VII for sign requirements.
- vii. See Article XI for permitting procedures.

11. The second use proposed here is “recreational vehicle park”. As proposed there would be multiple year-round parks for various recreational vehicles. The specific standards for the proposed use are set out in Supplemental Regulation SR 4.15 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.** Lighting mitigation required.

c. **Perimeter Setback.** Fifty (50) feet.

d. **Recreational Vehicle Spaces.** Recreational vehicle spaces shall be a minimum of 2,000 square feet and shall have dimensions no less than 40 feet by 50 feet. A recreational vehicle space may contain up to four (4) campsites for tent set-up. No recreational vehicle space is permitted in the 100-year floodplain.

e. **Common Area.** A common area shall be provided, that is equivalent in square footage to 25 percent the total square footage in: recreational vehicle/park model home spaces, structures on site, parking areas and driveways. Common area shall be accessible for the use and enjoyment of recreational vehicle park occupants, located as to be free of traffic hazards and maintained in good condition by the applicant.

f. **Operations.** The recreational vehicle park:

- i. Shall provide rental spaces:

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1. For the location of recreational vehicles, park model homes and/or tent set-up,
2. Which may contain an open or covered porch not exceeding 15 feet in height and not to exceed 400 square feet in area, and
3. Which have no point of direct access not indicated on the site plan;
 - ii. May contain structures ancillary to the use;
 - iii. Shall be permitted one (1) store, exclusively for the sale of incidental gifts and foodstuffs; and
 - iv. Shall provide, at the time of application, an evacuation plan for a natural disaster event.

g. **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 statutes, ordinances and regulations (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 (I), Two (2) or Three (3) shall be provided consistent with the requirements of §42-182 (Screen Classification).

h. **Sewage System.** Recreational vehicle/park model home spaces shall not be provided individual hookups to a septic tank, approved public or community sewage disposal system or municipal sewage disposal system; instead, a central dump station shall be provided for the use of all occupants. A recreational vehicle park shall connect to a municipal sewage disposal system when the system is located within a distance equal to the product of 50 feet multiplied by the number of spaces proposed for the recreational vehicle park. If a park is located more than 2,500 feet from an existing municipal sewage disposal system, such connection shall not be required.

i. **Common Area Recreation and Service Facilities.** Those facilities within the recreational vehicle park shall be for the sole purpose of serving the overnight guests in the park, and shall adhere to the development standards established in SR 4.6 (Common Area Recreation and Service Facilities).

12. 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, pursuant to Code Section 42-356.H(2). The requisite majority of the Board found that the proposed use would not materially endanger the public health, safety or welfare, would not substantially injure the value of property or improvements in the area; and would be in harmony with the surrounding area, so long as the following condition was added: all recreational vehicles in the recreational vehicle park shall be kept in condition such that operation on North Carolina highways is legal, and may not be permanently affixed to the ground.

13. A motion was made by David Sandler to grant the special use, all standards having been met, and was unanimously approved.

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 must be granted, with the additional condition stated above.

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IT IS THEREFORE ORDERED by the Henderson County Zoning Board of Adjustment that both special uses sought in Henderson County special use permit amendment application number SP-17-03 are hereby granted, with the condition that all recreational vehicles in the recreational vehicle park shall be kept in condition such that operation on North Carolina highways is legal, and may not be permanently affixed to the ground.

Announced 30 August 2017, and approved in final form, this the ____ day of September, 2017.

HENDERSON COUNTY ZONING BOARD OF ADJUSTMENT

By: _____
RONALD S. KAUFFMAN, Acting as Chair

Attest:

TOBY LINVILLE, Secretary to the Zoning Board of Adjustment