

IN THE MATTER OF THE APPLICATION OF
NC Wildlife Resources Commission for Henderson County
Applicant,

To the

FLOOD DAMAGE PREVENTION BOARD,
Permit Authority

ORDER GRANTING SPECIAL FILL PERMIT SFP-15-01

The **FLOOD DAMAGE PREVENTION BOARD** having held a quasi-judicial public hearing on September 30, 2015 to consider the application submitted by **NC Wildlife Resources Commission** hereinafter NCWRC, for Henderson County, to request a Special Fill 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 Flood Damage Prevention Board on special fill permit request SFP-15-01. A quorum of Board Members was present at the meeting.
2. This Order and the approval herein, was moved by Hilliard Staton and seconded by Morton Lazarus. The request for a special fill permit was approved by a vote of 5-0.
3. The subject property is located at off Brevard Road near Cummings Road and has a PIN of 9539430929.
4. The Applicant is Jeff Ferguson with NCWRC for Henderson County and as such he was made parties to this action.
5. Toby Linville is the Zoning Administrator with Henderson County. As an agent of Henderson County, Mr. Linville was made a party to this hearing.
6. All parties were sworn as witnesses in this proceeding.
7. Notice of a quasi-judicial public hearing, pursuant to the Ordinance, the Henderson County Code 42-371 was duly and timely given. The property was posted with notice on 9-11-15 and notice was sent by first class mail to the Applicants and the adjacent property owners.
8. The Applicant's special fill 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 fill permit request.
9. Upon inquiry by the Chairman of the Flood Damage Prevention Board, no party objected to any other persons or entities made parties to this action being a party to this action.
10. Without objection from any party, the Board received into evidence a memorandum, maps, pictures, a staff report and a French Broad River US-64 Float Fishing Access No-Rise Flood Study from NCWRC. No party disputed any of the information contained in this evidence and the Flood Damage Prevention Board finds all the information contained in the memorandum and its attachments to be credible and to be fact for the purpose of this hearing.
11. The subject property is 1.69 acres.
12. The Applicant would like a Special Fill Permit to construct a parking lot and floating dock into the French Broad River.
13. The application went to the Technical Review Committee at their September 15, 2015 meeting and was approved.
14. The property is zoned Residential 2 Rural. The adjacent properties are Industrial and Residential 1.
15. The property is currently vacant.

16. Surrounding uses are residential. Etowah-Horse Shoe Fire Department is approximately ½ mile west.
17. The property is in the Special Flood Hazard Area (Floodway and 100-year Floodplain). The property is located in the Upper French Broad River WS-IV Protected Area Water Supply Watershed District.
18. Public water is available for this property; public sewer is not available.
19. The subject property will use private well and a septic system.
20. The 2020 CCP Map places the subject property in the Conservation Area.
21. Mr. Linville testified that staff supports this application based on surrounding uses and the Comprehensive Plan.
22. The Application including the following:
 - a. Certification of hydrological and hydraulic analyses;
 - b. Technical documentation on the hydraulic analysis of the existing and proposed conditions;
 - c. An alternative method for revising the FEMA flood maps;
 - d. Any technical documentation on detailed site and construction plans regarding the Natural Resources Subpart A;
 - e. Certifications showing no net decrease in flood storage capacity on the subject property;
 - f. Information demonstrating compliance with Comprehensive Plan and demonstrate a substantial public or community purposes; and
 - g. Complete listing of names and mailing addresses of all adjacent property owners.
23. Henderson County Planning Board reviewed the application and provided a favorable review to this Board on September 24, 2015.
24. Jeff Ferguson from NCWRC stated that there will be a floating dock and the only permanent structure will be the bulkhead.
25. The fill will be used for the driveway and the parking lot.
26. The dock will be used for public access to the French Broad River.
27. The project requires 37% of the lot for the fill area to make the slope off 64 reasonable for parking.
28. The project will be built by NCWRC and maintained and operated by Henderson County.

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 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 42-355 grants the Board the jurisdiction to hear and make special fill permit decisions.
4. The special fill permit does meet all the standards of the Ordinance and the special fill permit should be GRANTED based on the reasons established below:
 - a. All requirements in the Ordinance for the Application have been included;
 - b. The project was recommended by the Technical Review Committee;
 - c. The project was recommended by the Planning Board;
 - d. The project will advance a substantial public or community purpose in providing a public access point to the French Broad River;
 - e. The proposed encroachment will not result in any increase in the flood levels during the occurrence of a base flood since the only structure will be the bulkhead;
 - f. The permit will create no net decrease in flood storage capacity based on the No-Rise report;
 - g. The project does not violate any federal, state, or County laws as it complies with the Henderson County Land Development Code;
 - h. The property will comply with the Comprehensive Plan by maintaining the Conservation Area since the only things to be constructed are the parking lot, bulkhead and floating dock.

Based on the foregoing FINDINGS OF FACT and CONCLUSIONS drawn, and it appearing to the **FLOOD DAMAGE PREVENTION BOARD** that the Special Fill permit must be **GRANTED**.

IT IS THEREFORE ORDERED by the **FLOOD DAMAGE PREVENTION BOARD** as follows:

The Applicant's Special Fill 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 Henderson County Code §42-355.
3. Failure to comply with the conditions in this order may result in the revocation of this Permit.

ORDERED this the ____ day of October 2015.

THE HENDERSON COUNTY BOARD OF AJUSTMENT

By: _____
Mike Earle, Vice-Chairman

ATTEST:

Jenny Maybin
Secretary to the Flood Damage Prevention Board

ACCEPTANCE BY APPLICANT

I, _____, Applicant, do hereby acknowledge receipt of this order which is the subject of this special fill 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 _____, 2015.

_____, Applicant