

**IN THE MATTER OF THE APPLICATION OF Rod and Brenda Johnson
Applicant,**

To the

**HENDERSON COUNTY BOARD OF ADJUSTMENT,
Permit Authority**

ORDER GRANTING SPECIAL USE PERMIT SUP-12-05

The **HENDERSON COUNTY BOARD OF ADJUSTMENT** having held a quasi-judicial public hearing on November 28, 2012 to consider the application submitted by **Rod and Brenda Johnson**, to request a Special Use 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 Henderson County Board of Adjustment on special use permit request SUP-12-05. A quorum of Board Members was present at the meeting.
2. This Order and the approval herein, was moved by Hunter Marks and seconded by Tony Engel. The request for a special use permit was approved by a vote of 5-0.
3. The subject property is located at 54 Kanuga Falls Lane, Hendersonville, NC and has a PIN of 9557-20-3215. The Property owners and applicants are Rod and Brenda Johnson and as such they were made a party to this action.
4. Several people from the community asked to be witnesses and parties to this action:
 - a. Kayla Tadsen is an adjacent property owner and was made a party to this action.
 - b. Lou Magrish lives in a subdivision within 1 mile from the subject property and is witness for Ms. Tadsen.
 - c. Carl McKenzie is a witness for the Applicant, Mr. Johnson.
 - d. Rick McGraw is a nearby property owner who shares an easement with the Applicant and as such he was made a party to this action.
 - e. Brett Fiora lives in the neighborhood and is Mr. McGraw's witness.
5. Toby Linville is the Zoning Administrator for Henderson County. As an agent of Henderson County, Mr. Linville was made a party to this hearing.
6. Posted Notice of a quasi-judicial public hearing, pursuant to the Henderson County Land Development Code 200A-371 was duly and timely given. This notice included the date and time of the public hearing and was posted at the intersection of Crab Creek Rd and Thomas Rd and at the subject property along Kanuga Falls Ln.
7. The Applicant's special use 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 use permit request.
8. Upon inquiry by the Chairman of the Zoning Board of Adjustment, no party objected to any other persons or entities made parties to this action being a party to this action.
9. All parties and all witnesses presented by any party were sworn as witnesses in this proceeding on November 28, 2012.
10. Without objection from any party, the Board of Adjustment received into evidence a memorandum and a power-point presentation from Toby Linville. No party disputed any of the information contained in this evidence and the Zoning Board of Adjustment finds all the information contained in the memorandum

and its attachments to be credible and to be fact for the purpose of this hearing. The Applicant's application and site plan were also entered into evidence.

11. The subject property is 1.77 acres, located at 54 Kanuga Falls Lane. It is zoned Residential 40 (R-40).
12. The Applicant would like a Special Use Permit for a "Home Occupation General".
13. The application went to the Technical Review Committee at their November 6, 2012 meeting.
14. The Applicant desires to use the subject property for "home occupation general" as described in Special Requirement 2.8.
15. Special Requirement for this project:
SR 2.8. Home Occupation, General
 - (1) Site Plan. A *home occupation* shall require the submittal of a minor *site plan* only if the *home occupation* requires the:
 - a. Building of an *accessory structure* to house the occupation;
 - b. Building of outdoor play areas as required for in-home *childcare facilities*;
 - c. Placement of additional parking; and/or
 - d. Need for *outdoor storage*.
 - (2) Development Size Restrictions. A *home occupation* shall either:
 - a. Take up no more than 25 percent of the *gross floor area* of the principal dwelling; or
 - b. Be housed completely in one (1) *accessory structure* (with the exception of any *outdoor storage* requirements).
 - (3) Retention of Residential Character. A *home occupation* shall be:
 - a. Conducted entirely within the principal dwelling or one (1) *accessory structure*; and
 - b. Clearly incidental and secondary to the *use* of the dwelling or *structure* for residential purposes.
 - (4) Operations. A *home occupation* shall:
 - a. Be conducted by a resident of the principal dwelling;
 - b. Engage no more than two (2) on-site employees (other than those residing in the home) in the occupation;
 - c. Not incorporate on-premise retail sales as the primary function of the *home occupation*; and
 - d. Not involve equipment or processes used that shall create noise, vibration, glare, fumes, odor or electrical interference off the premises.
 - (5) Parking. A *home occupation* generating any additional need for parking shall:
 - a. Meet any additional parking needs off-street (but not in the required *front yard*); and
 - b. Be permitted a maximum of two (2) additional standard parking spaces and one (1) handicapped parking space.
 - (6) Outdoor Storage. A *home occupation* which requires *outdoor storage* shall:
 - a. Identify the storage requirements at the time of permit application;
 - b. Locate the storage in the *rear yard* (not in the *front* or *side yard*);
 - c. Cover no more than 10 percent of the property on which the *home occupation* is located with *outdoor storage*; and
 - d. Adhere to any additional standards for *outdoor storage*
16. The Applicant proposed individual well and septic system. The proposed site is on a private road.
17. Staff recommends no parking be permitted on Kanuga Falls Lane.
18. The home occupation is planned to be in the single family home and that is the only permanent structure on the property.
19. The applicant shares a gravel driveway with his neighbor and snow is removed from the driveway by the Applicant.
20. The home occupation has one additional employee in addition to the owners and all spend most of the day outside of the office. There is no customer traffic.
21. The 2020 CCP classifies the parcel as Rural/Urban Transition Area (RTA).
22. The subject property is surrounded by residential and undeveloped land.
23. The property is not in the floodplain or watershed.
24. The Applicant has been using this property for the home occupation since 2001 but he did not know it was illegal until a complaint was filed against him in 2012. No complaints were made about the home occupation prior to 2012.
25. No customers come to the subject parcel and he currently has 1 employee. UPS deliveries are also made at the home approximately 3-5 times a week. The Applicant and his employees make a maximum of 5 round trips per day.
26. All vehicles are parked on the property and not on the street.
27. Mr. McKenzie lives on his street and he said he doesn't notice any additional traffic from the home occupation.

28. Kayla Tadsen lives adjacent to the subject property since 2006 and complained about too much traffic from the home occupation.
29. Tadsen said that it was a private road that the Applicant uses and he doesn't have sole ownership of it.
30. Mr. Magrish said that if the business did not grow and create more traffic in the neighborhood, he had no problem with the existing home occupation.
31. Mr. McGraw said the Applicant has been a good neighbor and clears snow from the road. He has no complaint with the size of the existing home occupation but wouldn't want it to grow and generate more traffic because there is no required upkeep on Kanuga Falls Rd.
32. Mr. Fiora has lived there since 2005 and didn't want the business to get bigger than it was but otherwise had no complaints against the Applicant's application.
33. The Board spoke to the Applicant about the proposed conditions and the Applicant agreed to them at the hearing.

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 of Adjustment 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 200A-323 grants the Board of Adjustment the jurisdiction to hear and make special use permit decisions.
4. The special use permit does meet all the standards of the Ordinance and the special use permit should be granted based on the reasons established below:
 - a) The project does not materially endanger the public health, safety or welfare because the home occupation does not do work onsite.
 - b) The project will not substantially injure the value of property or improvements in the area because there are no visible signs of a home occupation on the property.
 - c) The project is in harmony with the surrounding area because the surrounding areas are residential and the home occupation does not have customers come to the home.
 - d) The project complies with all applicable local, state and federal statutes, ordinances and regulations because it meets the Special Requirements of the Land Development Code and was approved by the Technical Review Committee.
 - e) The project is in accordance with the Comprehensive Plan, long-range transportation plans and comprehensive transportation plans of the County and/or long-range transportation plans and comprehensive transportation plans of any municipality of the County because it meets the zoning of an R-40 with the Special Use Permit and is consistent with the Comprehensive Plan description of Rural/Urban Transition Area.
 - f) The project minimizes the effects of noise, glare, dust, solar access and odor on those people residing or working in the neighborhood of the proposed use because the number of trips is limited by the number of vehicles and employees and no work is done on the property.
 - g) The project minimizes the environmental impacts on the neighborhood, including the following groundwater, surface water, wetlands, endangered/threatened species, archeological sites, historic preservation sites and unique natural areas by meeting all requirements by the County and because the project is not in any environmentally sensitive areas.
 - h) Provision/arrangement has been made by the Applicant concerning: ingress and egress to property and proposed structures thereon because there is an existing driveway and parking on the subject property.

Based on the foregoing FINDINGS OF FACT and CONCLUSIONS drawn, and it appearing to the HENDERSON COUNTY BOARD OF ADJUSTMENT that the Special Use Permit must be **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 may only have one commercial vehicle no larger than his current commercial vehicle. If the Applicant would like to have a second service vehicle, he must have this permit again reviewed by this Board and amended.**
- 2. Applicant must comply with Supplemental Requirement 2.8.**
- 3. No customers may come to the subject property as part of this home occupation.**

ORDERED this the 2nd day of January 2013.

THE HENDERSON COUNTY BOARD OF AJUSTMENT

By: _____
Jim Phelps, Chairman

ATTEST:

Toby Linville
Zoning Administrator

ACCEPTANCE BY APPLICANT

I, _____, Applicant, do hereby acknowledge receipt of this order which is the subject of this special use 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 _____, 2012

_____, Applicant

STATE OF NORTH CAROLINA
COUNTY OF HENDERSON COUNTY

I, _____, a Notary Public for said County and State, do hereby certify that _____ personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and official seal, this the ____ of _____, 2012.

(Official Seal) _____
Notary Public

My Commission Expires _____