

IN THE MATTER OF THE APPLICATION OF Steven Galloway
Applicant,
To the
HENDERSON COUNTY BOARD OF ADJUSTMENT,
Permit Authority

ORDER GRANTING SPECIAL USE PERMIT SUP-15-02

The **HENDERSON COUNTY BOARD OF ADJUSTMENT** having held a quasi-judicial public hearing on June 24, 2015 to consider the application submitted by **Steven Galloway**, 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-15-02. A quorum of Board Members was present at the meeting.
2. This Order and the approval herein, was moved by Hillard Staton and seconded by Ann Pouch. The request for a special use permit was approved by a unanimous vote of 4-0.
3. The subject property is located at 3771 Brevard Road and has a PIN of 9549187705.
4. The Applicant is Steven Galloway 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. The following nearby property owners were also made parties to this action: Matt Matteson, Steve Torcise, Sandra Fuller, and Jeri Peterson.
7. The following people were called as witnesses by one of the parties: Perry Everett and Peter Zimring.
8. All parties and all witnesses presented by any party were sworn as witnesses in this proceeding.
9. Notice of a quasi-judicial public hearing, pursuant to the Ordinance, the Henderson County Code 42-338 was duly and timely given. The property was posted with notice on 6-12-15 and notice sent by first class mail to the Applicants and the adjacent property owners.
10. 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.
11. 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.
12. Without objection from any party, the Board of Adjustment received into evidence a memorandum, maps, pictures, application 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.
13. The subject property is .49 acres.
14. The property is zoned Community Commercial (CC). All the surrounding property is Residential 3 (R3) and Community Commercial.
15. The Applicant would like a Special Use Permit for Motor Vehicle Sales or Leasing (SR 7.10).
16. The application went to the Technical Review Committee at their June 2, 2015 meeting and was approved subject to a NCDOT driveway permit and the project cannot increase the impervious surfaces.
17. **SR 7.10. Motor Vehicle Sales or Leasing** (Including automobile, motorcycle, boat and recreational sales and rental cars)
 - (1) Site Plan. Major Site Plan required in accordance with §42-331(Major Site Plan Review).
 - (2) 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 required.
 - (3) Dust Reduction. Unpaved roads, travelways and/or parking areas shall be treated to prevent dust from adverse effects to adjacent properties.

18. The surrounding uses are residential and commercial uses.
19. The property is currently used for retail sales and has for several years including a fruit stand, consignment store, and plastics operation.
20. Surrounding uses include other retail sales, a convenient store, gas station, concrete business, and church.
21. Applicant is not planning any additional buildings or any additional impervious surfaces.
22. The property is in the Upper French Broad River WS-IV Water Supply Watershed district.
23. The property is not in the Special Flood Hazard Area.
24. The property currently has public water and private septic.
25. The 2020 County Comprehensive Plan (2020 CCP) designates the property as Community Services Center Area.
26. Mr. Linville testified that staff supports this application based on surrounding uses and the Comprehensive Plan.
27. Mr. Matteson raised concerns about traffic on South Rugby Road, property values and environmental impact and entered photos of the site into evidence. There were no objections to the photos.
28. NC Department of Transportation issued a driveway permit to the applicant but required that the entrance on Hwy 64 be permanently closed, that nothing can be parked in the driveway circle and nothing can be backed into South Rugby Rd.
29. Ms. Fuller was concerned with environmental impact and aesthetics and stated there was too much equipment on that size parcel. Ms. Fuller owns a farm near the subject property.
30. Mr. Zimring was called by Ms. Fuller and testified that he was worried the project would affect property values.
31. Mr. Torcise stated that the trucks were kept in a disorderly manner and were going to hurt property values.
32. Ms. Peterson stated she was on the small area plan committee for Etowah and wanted less intense commercial uses in the location.
33. Mr. Everett was called as a witness by the Applicant and stated that the subject property would have fewer trucks and trailers than there are currently out there.

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 42-323 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 entrance at Hwy 64 will be permanently closed and no vehicles will back up into the roadway.
 - b. The project will not substantially injure the value of property or improvements in the area because it is zoned Community Commercial and surrounding uses include a convenient store, gas station, church, concrete business and other retail businesses.
 - c. The project is in harmony with the surrounding area because it is Community Commercial and in the Community Services Center of the Comprehensive Plan.
 - 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 the requirements of the NC Department of Transportation driveway permit.
 - 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 Land Development Code with the Special Use Permit and is consistent with the Comprehensive Plan.
 - f. The project minimizes the effects of noise, glare, dust, solar access and odor on those person residing or working in the neighborhood of the proposed use because it will utilize an existing parking lot and not construct any further buildings or increase the impervious surfaces.
 - 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 because no additional buildings or impervious surfaces will be added.

- h. Ingress and Egress are properly met through an existing driveway on South Rugby Road through a structured plan outlined by DOT.

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 must agree to the provisions of this order.
2. Applicant must comply with all the requirements in Supplemental Requirement 7.10
3. Applicant must comply with all parts of the driveway permit and vehicles must be stored in the arrangement set forth on the driveway permit.
4. Applicant can only rent or lease U-Haul vehicles.
5. Applicant cannot sell cars.
6. Applicant must permanently close off the entrance on Hwy 64.
7. Applicant may not have any more than 15 vehicles for rent at any one time.
8. Applicant will not increase the impervious area.
9. Failure to comply with the conditions in this order may result in the revocation of this Permit.

ORDERED this the ___ day of July 2015.

By: _____
Mike Earle, Vice-Chairman

ATTEST:

Jenny Maybin
Secretary to the Zoning Board of Adjustment

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 _____, 2015.

_____, Applicant