

**IN THE MATTER OF THE APPLICATION OF Henderson County Soccer Association
Applicant,**

To the

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

ORDER GRANTING SPECIAL USE PERMIT SUP-13-01

The **HENDERSON COUNTY BOARD OF ADJUSTMENT** having held a quasi-judicial public hearing on February 27, 2013 to consider the application submitted by **Henderson County Soccer Association (HCSA)**, 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-13-01. A quorum of Board Members was present at the meeting.
2. This Order and the approval herein, was moved by Anne Pouch 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 5423 Asheville Highway and has a PIN of 9651-55-6603.
4. The Applicant is the Henderson County Soccer Association (HCSA) and as such they, through their agent, were made a party to this action.
5. Tom Jones was the engineer for the Applicant and was presented as a witness.
6. Parker Sloan is a planner with the Henderson County Planning Department. As an agent of Henderson County, Mr. Sloan was made a party to this hearing.
7. Notice of a quasi-judicial public hearing was posted on the property on 2/18/13. Notice was sent by first class mail to the Applicants and the adjacent property owners.
8. 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.
9. 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.
10. All parties and all witnesses presented by any party were sworn as witnesses in this proceeding.
11. Without objection from any party, the Board of Adjustment received into evidence a memorandum and a power-point presentation from Parker Sloan. 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.
12. The subject property is 20.78, located on Asheville Highway. The property is split-zoned Residential Commercial (RC) and Residential-1 (R1).
13. The Comprehensive Plan lists the parcel as "Conservation" defined as follows:
 - This category includes land areas that are intended to remain largely in their natural state, with only limited development. Such areas should be targeted for protection through regulations and incentives. Conservation areas are lands that generally exhibit any of the following characteristics:
 1. Sensitive natural areas such as steep slopes, floodplains, major wetlands, forest reserves and wildlife conservation areas, and key watersheds
 2. Areas of historic and archeological significance

3. Local, state or federally-managed natural areas
4. Areas managed for agricultural or forestry land uses
5. Other areas yet to be defined

14. The Applicant would like a Special Use Permit for an Outdoor Soccer Facility.
15. The application went to the Technical Review Committee at their February 5, 2013 meeting and was approved with conditions:
 - a. Soil Erosion Permit
 - b. NCDOT Driveway Permit
 - c. Flood Permit
16. The Applicant desires to use the subject property for outdoor recreation as described in Supplemental Requirement 4.15.

SR 4.15. Outdoor Recreational Facilities. *Outdoor recreational facilities* shall include courts (basketball, tennis, etc.), playing fields (soccer, baseball, etc.), swimming pools, batting cages, shuffleboard areas and/or any other such *uses* that fit the intent of this section as interpreted by the *Zoning Administrator*.

(1) Site Plan. Major *Site Plan* required in accordance with §200A-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) Perimeter Setback. One hundred (100) feet (equipment, machinery and/or mechanical devices shall not be placed within 200 feet of a *residential zoning district*. All *structures* shall be 100 feet from a *residential zoning district* property).

(4) Structure. For activities which present potential safety hazards (batting cages, baseball fields, driving tees, etc.) fencing, netting or other control measures shall be required.

(5) Operations. A recreational facility may contain on-site food sales for patrons of the recreational facility only, provided they obtain all necessary permits.

(6) 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 165 of the Henderson County Code, *Solid Waste*) and thereafter certified by the Department of Public Health). Where dumpsters are used, Screen Class One (1), Two (2) or Three (3) shall be provided consistent with the requirements of §200A-182 (Screen Classification)).

(7) Public Address/Loud Speakers. Public address and loud speaker systems shall not be operated before 8:00 a.m. or after 12:00 midnight.

(8) Hours of Operation. 6:00 a.m. to 12:00 midnight. The Applicant proposed public water and individual sewer. Public sewer is not available on this parcel. The proposed site is on a public road.

17. The subject property is surrounded by commercial and undeveloped land. The property was formerly used as a driving range and logging operation. There are no residences close to the property.
18. The property lies in the flood hazard area but is not in the Water Supply Watershed district.
19. The property currently has private water and septic. Mr. Jones stated that public water and sewer would be possible on the property as the project grows.
20. According to the Applicant, there isn't a lot of additional noise from soccer games as they are typically not amplified and the complex is surrounded by commercial uses.
21. Mr. Sloan stated that conservation area and flood plain area were good locations for recreation. Mr. Jones stated that the project protects the environment because it will be grass and gravel and there will be no fill.
22. The entrance to the property has a traffic signal and Asheville Highway is a 5 lane road.
23. Proposed lighting will be shielded from adjacent properties.
24. Additions to the property during the growth of the project may include concessions, office use, playgrounds, walking trails, picnic area, and retail for soccer related merchandise.
25. No buffering is proposed because the surrounding properties are commercial in nature.
26. There is an existing structure on the property that will be used for office space and concession/retail sales.
27. The Applicant's lease permits the auto sales to continue until February 1, 2014. The lease has an option to buy.
28. The HCSA proposes to use the property for soccer practices, games, and tournaments.

29. They anticipate the property will be used no earlier than 8 am and no later than 8 pm and will be used year-round.
30. Predominantly the property will be used during the week after 4:30 and all day on Saturday and Sunday.
31. The games and practices are staggered on different fields and they anticipate holding about 3 tournaments a year.
32. The project will be phased over several years to give time for the fields to grass over and stabilize.
33. If private septic system fails, the HCSA would connect to public sewer.
34. Board members commented that this project meets recreation needs for the County and would bring business to the surrounding area for food, fuel, and lodging.

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 it is consistent with the Comprehensive Plan, and is surrounded by commercial and undeveloped land. There are no residences near the subject property.
 - b. The project will not substantially injure the value of property or improvements in the area because the soccer complex will bring people and business to the area.
 - c. The project is in harmony with the surrounding area because the surrounding properties are commercial, and undeveloped land and former use for the property was a golf range, auto sales, and logging.
 - 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, will meet the conditions established by the Technical Review Committee, and will comply with all state and federal regulations.
 - 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 its split zoning with the Special Use Permit and is consistent with the Comprehensive Plan description of Conservation because they are not proposing any additional structures, there will be no fill, the turf will be grass and the parking area will be gravel.
 - 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 is in a commercial area, there will be no significant sound amplification, and the lights are shielded from adjacent properties.
 - 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 they are using grass and not putting any fill in the flood area.
 - h. Ingress and Egress are properly met because the subject property is off Asheville Highway, a five lane road, and the entrance to the property has a traffic light.

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. The project must meet the conditions established by the Technical Review Committee at its February 5, 2013 meeting as stated above.
2. Both the auto sales and the logging operations may not continue on the subject property after February 1, 2014 and the lease term permitting these activities may not be extended. No use not related to the operations of the HCSA may take the place of auto sales and logging after they expire.

ORDERED this the ___ day of March 2013.

THE HENDERSON COUNTY BOARD OF ADJUSTMENT

By: _____
Jim Clayton, 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 _____, 2013

Henderson County Soccer Association, Applicant

ACCEPTANCE BY PROPERTY OWNER

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 _____, 2013

Carey Michael Justice, Property Owner