

IN THE MATTER OF THE APPLICATION OF **John Murias**
Applicant,

To the

HENDERSON COUNTY BOARD OF ADJUSTMENT,
Permit Authority

ORDER GRANTING SPECIAL USE PERMIT SUP-13-02

The HENDERSON COUNTY BOARD OF ADJUSTMENT having held a quasi-judicial public hearing on March 27, 2013 to consider the application submitted by **John Murias**, 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-13-02. A quorum of Board Members was present at the meeting.
2. This Order and the approval herein, was moved by Ann 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 134 Princess Place and has a PIN of 9587-02-2642.
4. The Applicant is John Murias and as such he was made a party to this action.
5. Ana Catanzaro is the property owner and the Applicant sister and she signed the original SUP application.
6. Toby Linville is the Zoning Administrator with Henderson County. As an agent of Henderson County, Mr. Linville was made a party to this hearing.
7. The Applicant had several witnesses: Mike Cervini, J. Crit Harley, and Irene Van Hoff. All witnesses were sworn in.
8. Posting of a quasi-judicial public hearing, pursuant to the Ordinance, the Henderson County Code 200A-338 was duly and timely given. This notice was posted on March 15, 2013 and notice was sent by first class mail to the Applicants and the adjacent property owners.
9. 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.
10. 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.
11. All parties and all witnesses presented by any party were sworn as witnesses in this proceeding.
12. 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.
13. The subject property is .94 acres, located in East Flat Rock. The property is zoned Community Commercial (CC).
14. The Applicant would like a Special Use Permit for a Dog Kennel.
15. The application went to the Technical Review Committee at their March 5, 2013 meeting and was approved with no additional conditions.
16. The Applicant desires to use the subject property for kennel as described in Special Requirement 6.7.

SR 6.7. Kennel (A kennel shall adhere to the standards outlined for such in Chapter 66A of the Henderson County Code, *Animal Control Ordinance*.)

(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) Separation. A kennel shall not be constructed or newly located within 200 feet of an existing *dwelling unit* (located in a *residential zoning district* and not located on the same property as the *use*).

(4) Structure. The kennel shall provide pens which are enclosed and adequately ventilated.

(5) Operations. Limited outdoor exercise runs/facilities shall be permitted, however, hours of use shall be restricted to from 8:00 a.m. to 8:00 p.m. Food and animal refuse shall be kept in airtight containers.

(6) Screening. Screen Class Three (3) shall be provided consistent with the requirements of §200A-182 (Screen Classification)).

(7) 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)).

17. The subject property is surrounded by commercial and residential property.
18. The property is not in the flood hazard area or the Water Supply Watershed district.
19. The property currently has public water and private septic. Public sewer is not available.
20. The Animal Welfare Section of the North Carolina Department of Agriculture has inspected the property and approved it.
21. Under the CCP, the property is in the Urban Services Area and the Industrial Area.
22. The surrounding area is Industrial and Residential. The nearest residence is about 130 ft away.
23. There is a 6ft wood fence and additional wire fencing.
24. The road to the property is gravel and is maintained by the Applicant. He also installed a turnaround in his driveway.
25. Animal waste is picked up and kept in a separate container that is disposed of once a week. The gravel is sanitized at least once a week.
26. Witnesses stated the animals are well cared for, quiet down quickly, and there is no smell.
27. The general public is not allowed beyond the entrance walkway.
28. The Applicant has added landscaping to the property.

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, it is not open to the general public, and the property is sanitized routinely.
 - b. The project will not substantially injure the value of property or improvements in the area because the Applicant maintains the gravel road, has fencing and has provided landscaping.
 - c. The project is in harmony with the surrounding area because the surrounding properties are industrial and residential and the use is kept inside or within the fenced in area.

- 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 will comply with the North Carolina Department of Agriculture.
- 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 animal waste is disposed of quickly and the gravel is sanitized weekly.
- 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 it is not in the floodplain or Watershed.
- h. Ingress and Egress are properly met because of the maintained gravel road.

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. Property Owner must agree to in writing the provisions of this order.
- 2. Property Owner must comply with all the requirements in Supplemental Requirements 6.7.

ORDERED this the ____ day of April 2013.

THE HENDERSON COUNTY BOARD OF AJUSTMENT

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

John Murias, 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 _____, 2013.

(Official Seal) _____
Notary Public

_____ My Commission expires