

STATE OF NORTH CAROLINA
COUNTY OF HENDERSON

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
FILE NO. 15 CVS 2084

STANLEY RAY SHELLEY and
ELIZABETH J. SHELLEY,

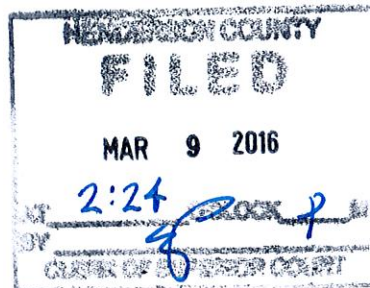
Petitioners,

v.

ORDER

COUNTY OF HENDERSON, of the
State of North Carolina and WILLIAM
CRANE and TAMRA CRANE,

Respondents.



THIS CAUSE came on before the undersigned Superior Court Judge on the 7th day of March, 2016. The Petitioner appeared by and through counsel, B.B. Massagee, III and Sara R. Massagee. The Respondents Crane appeared by and through counsel, Christopher S. Stepp. The Respondent County of Henderson appeared by and through counsel, Charles Russell Burrell. This Court reviewed the record and considered the arguments of counsel. This Court makes the following:

FINDINGS OF FACT:

1. The Petitioners are citizens and residents of Henderson County, NC.
2. The Respondents, (hereinafter "Applicants") Crane are citizens and residents of Henderson County, NC.
3. The Respondent, County of Henderson (hereinafter "County") is a county of the State of North Carolina.
4. The Applicants are owners of real property located within the County's zoning jurisdiction, as more particularly described in Deed Book 710, Page 378, Henderson County Registry.
5. The Applicants want to build, on their 15-acre homestead, a "small place of assembly for receptions", essentially a 3000 sq. ft. barn. On August 18, 2015 the Applicants submitted to the County a Special Use Permit Application, seeking a permit to construct a "small place of assembly" consisting of an

“event barn” intended to house wedding and other commercial events of up to 150 attendees.

6. The Applicants submitted to the County a Major Site Plan indicating the location of the “event barn” in the far rear portion of the Applicant’s property with parking for up to 150 people located along the rear property line of the Applicant’s property, adjoining the real property of Petitioners.
7. The Henderson County Technical review Committee reviewed the Application and prepared a staff report for presentation to the Henderson County Zoning Board of Adjustment (hereinafter “ZBA”) that recommended approval of the Application.
8. On September 30, 2015, the Henderson County ZBA held a quasi-judicial public hearing.
9. The Henderson County ZBA voted 5-0 to approve the Special Use Permit, resulting in the Order Granting Special Use Permit SUP 15-04 on October 28th, 2015.
10. The ZBA received evidence in the form of documents, photographs, maps, reports and testimony. The ZBA issued an order with 46 findings of fact, and 12 “conclusions.” The Petitioners argued that the ZBA failed to consider substantial competent evidence to support the finding that “the project is in harmony with the surrounding area.” The ZBA received substantial competent evidence and made detailed findings of fact supporting its conclusions. The ZBA found the following pertinent facts:

#19 that “The surrounding uses are mixed residential and educational uses. Rugby middle school, West Henderson High School and Johnson Farm are in the area of the subject property.”

#20 that “The property is currently used for residential and agricultural uses.”

#21 that “There is currently a house, two garages and an existing barn on the property.”

#22 that “This proposed use will be conducted in a new barn that will be constructed on the property. The barn will be approximately 3000 square feet.”

#23 that “The event space will be used for weddings, receptions, and birthday parties with a maximum occupancy 150 people. Applicants will be onsite during all of events.”

#24 that “The Applicants have a residence on the subject property and will continue to reside there.”

#25 that "The application stated events will not go past 10:00 PM. Applicant agreed that they would accept that as a condition if the Board determined it was appropriate."

#26 that "NCDOT will approve the driveway permit for the entrance off of Bradley road. The existing drive on Haywood Road will be for the Applicant's personal use and will not be used by the event space."

#27 that "Property lines are buffered by a wooden fence on the southern boundary and the northern boundary has a buffer of mature pine trees."

#28 that "The property is in the Upper French Broad River WS-IV Water Supply Watershed district."

#29 that "The property is not in the Special Flood Hazard Area."

#30 that "The property currently has private water and private septic. Public water is available to the subject property but is not connected."

#31 that "The 2020 County Comprehensive Plan (2020 CCP) designates the property as Urban Service Area."

#32 that "The main entrance for the small place of assembly is proposed off of Bradley Road."

#33 that "Impervious surfaces on the property will be increased for the new barn construction and the proposed parking lots."

#34 that "Outdoor lighting will be aimed at the parking lots."

The ZBA made detailed "CONCLUSIONS", set forth in the ORDER.

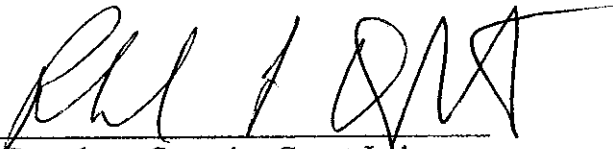
Those conclusions are as follows:

- a. The project does not materially endanger the public health, safety or welfare because the driveway on Haywood Road will be personal use only.
- b. The project will not substantially injure the value of property or improvements in the area because it is zoned Residential 2 and surrounding uses included a middle school, high school and the educational form. Applicants will continue to reside on the subject property.
- c. The project is in harmony with the surrounding area because it is zoned Residential 2 and in the Urban Service Area 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.

BASED UPON THE FORGOING FINDINGS OF FACT AND CONCLUSIONS OF LAW IT IS HEREBY ORDERED, ADJUDGED AND DECREED AS FOLLOWS:

1. The Order of the Henderson County Zoning Board of Adjustment, granting the Applicants a Special Use Permit is AFFIRMED.
2. Each Party shall bear their own cost and fees.

This the 9 day of March, 2016



Richard L. Doughton Superior Court Judge

CERTIFICATE OF SERVICE BY HAND DELIVERY: This is to certify I have this day served all parties listed below with the foregoing Order by Hand Delivery.

Mr. B.B. Massagee, III
Attorney for the Petitioners
240 Third Avenue West
Hendersonville, NC 28739

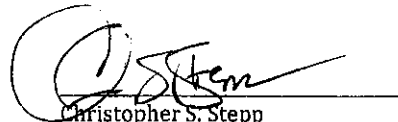
And

Ms. Sarah R. Massagee
Attorney for the Petitioners
240 Third Avenue West
Hendersonville, NC 28739

And

Mr. Charles R. Burrell
Attorney for the County of Henderson
1 Historic Courthouse Sq., Suite #5
Hendersonville, NC 28792

This the 9th day of March, 2016.


Christopher S. Stepp
Attorney for the Respondents,
William and Tamra Crane