

IN THE MATTER OF THE APPLICATION OF **Boyd Hyder,**
Applicant,

To the

HENDERSON COUNTY BOARD OF ADJUSTMENT,
Permit Authority

ORDER GRANTING VARIANCE V-12-02

The HENDERSON COUNTY BOARD OF ADJUSTMENT having held a quasi-judicial public hearing on August 29, 2012 to consider the application submitted by **Boyd Hyder**, to request a Variance, 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 variance V-12-02. A quorum of five members of the Board was present.
2. This order and the variance request herein were approved by a vote of 5-0. Ann Pouch made the motion and Hilliard Staton seconded it.
3. Boyd Hyder, hereinafter referred to as the "Applicant" is the owner of the subject property. The subject property is located between Nix and Clear Creek Roads with a PIN of 9660929834. As a result, the Applicant was made a party to this action.
4. Toby Linville is the Zoning Administrator for Henderson County. As an agent of Henderson County, Mr. Linville was made a party to this hearing.
5. Notice of a quasi-judicial public hearing, pursuant to the Ordinance, the Henderson County Code 200A-338 was duly and timely given. This notice included legal advertisements in The Hendersonville Tribune newspaper on August 16th and August 23rd, notice sent by first class mail to the Applicant and the adjacent property owners.
6. The applicant's variance 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 variance request.
7. 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.
8. Greg Bellini will be operating Mr. Hyder's facility and as such was made a witness to this action.
9. Mr. Bill Harper is an adjacent property owner and as such was made a witness.
10. All parties and all witnesses presented by any party were sworn as witnesses in this proceeding on August 29, 2012.
11. Without objection from any party, the Board of Adjustment received into evidence a memorandum 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. Mr. Linville also entered the Applicant's application and site plan into evidence.
12. The subject property is 4.18 acres, located between Nix and Clear Creek roads and has a PIN of 966092834.
13. The property is zoned Industrial (I).
14. The variance application is for reduction in the rear yard setback by 80 feet as shown on the site plan that was submitted by the Applicant.

15. The application had gone to the Technical Review Committee at their August meeting and was approved.
16. Toby Linville testified the reduction in setback makes the setback equal to the Industrial district setback.
17. Mr. Linville testified that staff supported the reduction because it pushes the project away from the road, increases usable space on the property to pull trucks in out of the roadway, and because the property to the rear of the subject property is a quarry.
18. The property previously received a special use permit for the subject property to be used as an asphalt plant.
19. Under the previous site plan, there was insufficient room for dumpsters and parking.

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 sworn in 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-334 grants the Board of Adjustment the jurisdiction to hear and make variance decisions.
4. The variance does meet all the standards of the Ordinance and the variance should be granted based on the reasons established below:
 - a. This does not extend physically a nonconforming use.
 - b. The variance does not change the district boundaries from the Official Zoning Map.
 - c. The reason for the request is not to make the property more profitable because the income from the project will not vary based on the setback.
 - d. There are no practical difficulties or unnecessary hardships in meeting the letter of the law in that the setback does not make it more difficult to get trucks going to the plant off the roadway and ensures there is adequate space for dumpsters and parking.
 - i. A reasonable return on the property can be made without a variance;
 - ii. The unique circumstances related to the land are that the property is adjacent to a quarry.
 - e. The variance is in harmony with the spirit and intent of the law because it reduces the setback to those in the Industrial District and this is an industrial use.
 - f. The variance will protect public safety and welfare by moving the asphalt operations further away from the road and provide room for the trucks on the subject property.
 - g. The variance will do substantial justice by presenting less of a burden to adjacent property owners by moving the plant away from the road.

Based on the foregoing FINDINGS OF FACT and CONCLUSIONS drawn, and it appearing to the HENDERSON COUNTY BOARD OF ADJUSTMENT that the Variance must be **GRANTED**.

IT IS THEREFORE ORDERED by the HENDERSON COUNTY BOARD OF ADJUSTMENT as follows:

1. The Applicant may have an 80-foot variance in the rear setback so that the setback will be 20 feet.
2. The Applicant is vested to the setback as drawn on the site plan submitted to the Applicant and approved by this Board and the TRC.

The Applicant's Variance has been GRANTED. The Applicant must adhere to the conditions established in this Order:

1. Violations of this order or the Land Development Code shall be brought to the Zoning Administrator and reviewed by the Zoning Board of Adjustment. If the violations are upheld this order shall be revoked by the Zoning Board of Adjustment and the metal building must be removed.

ORDERED this the 29th day of August 2012

THE HENDERSON COUNTY BOARD OF AJUSTMENT

By: _____
Jim Phelps, Chairman

ATTEST:

Todd G. Taylor
Secretary to the Zoning Board of Adjustment

ACCEPTANCE BY APPLICANT

I, Boyd Hyder, Applicant, do hereby acknowledge receipt of this order as the owner of subject property which is the subject of this variance 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

Boyd Hyder, Applicant

STATE OF NORTH CAROLINA
COUNTY OF HENDERSON COUNTY

I, _____, a Notary Public for said County and State, do hereby certify that Boyd Hyder 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 _____