

IN THE MATTERS OF THE APPLICATIONS OF

JAMES T. WOODS, III, Applicant,

to the

HENDERSON COUNTY ZONING BOARD OF ADJUSTMENT,
Permit Authority,

Regarding

PLACE OF ASSEMBLY, SMALL

The Henderson County Zoning Board of Adjustment held a quasi-judicial hearing April 27, 2016, to consider the application SUP-16-02, seeking a special use permit to allow use of certain property for the use “place of assembly, small” under the Chapter 42 of the Henderson County Code (“the Code”). The application was submitted by owners of the property in question. Having heard all of the evidence and arguments presented at the hearing, the Zoning Board of Adjustment makes the following findings of fact:

1. A quasi-judicial hearing was held by the Henderson County Zoning Board of Adjustment on the special use permit application SP-16-02. A quorum of members of the Zoning Board of Adjustment was present. The members present and participating were:

Ronald S. Kauffman, Chair
Ann Livingston Pouch
Hilliard Staton
Jim Clayton
Anthony Engel

2. All members of the Zoning Board of Adjustment affirmed their ability to make an impartial decision in this matter, and no party or member objected to any other member’s participation in this hearing.

3. Notice of the quasi-judicial hearing, pursuant to the Code was duly and timely given in accord with the provisions of §42-371. This included first class mailing to the applicants and all adjacent property owners to the boundary of the subject property, published notice, and the posting of notice on the subject property.

4. This application was filed by James T. Woods, III, (the “Applicant”). Applicant is owner of the property to be included in the special use, which property consists of Henderson County PIN 9681976750. This property is currently zoned residential (R2R). “Place of Assembly, Small” is a permitted use in this district with a special use permit.

5. At the commencement of this hearing, the Chair stated that the Board recognized the Applicants and the Henderson County Planning Department as parties to this hearing, and inquired

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whether any person or entity sought to become a party to this action. The following persons sought to become parties opposing the grant of this application, and were found to have standing to so act on account of the proximity of their parcels to the subject property: Robin Casto, Irma Fisher, Daniel Casto, Joseph Heatherly, Sandra Heatherly, Marilyn Ryan, Billie Sue Johnson, Hal Edney, Frances Edney, Kevin Lyda, Lori Gonce, and Doug Gonce.

6. In order to grant any special use, the Board must find that the proposed use will:
 - a. Not materially endanger the public health, safety or welfare;
 - b. Not substantially injure the value of property or improvements in the area; and
 - c. Be in harmony with the surrounding area.

7. In addition, the Board must find that the proposed use meets the specific standards for each specific special use set out in the Henderson County Land Development Ordinance, Chapter 42 of the Henderson County Code. The use proposed here is “Motor Vehicle Sales or Leasing”. The use proposed is a potential special use in Residential Two Rural zoning district. The specific standards for the proposed use are set out in Supplemental Regulation SR 5.17 of the Land Development Ordinance, found at Section 42-63 thereof. The standards are as follows:

- a. A major Site Plan is required in accordance with §42-331 (Major Site Plan Review).
- b. Lighting mitigation is required.
- c. A structure must be constructed designed to accommodate a minimum of 40 and maximum of 499 persons.
- d. The perimeter setback is fifty (50) feet.

8. Pursuant to §42-356H, “[t]he concurring vote of four-fifths (4/5) of the members” of the Board is required to grant the special use permit, pursuant to Code Section 42-356.H(2). The requisite majority of the Board did not find that the proposed use was in harmony with the surrounding area.

9. A motion was made by Jim Clayton to deny the special use with second by Ron Kauffman, no standards having been met. This motion failed to get the requisite majority, and thus the permit application cannot be granted.

From the foregoing, the Zoning Board of Adjustment concludes as follows:

1. All parties were properly before the Board, 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.
2. The Zoning Board of Adjustment has jurisdiction to hear this matter.
3. All parties, and all persons entitled to notice, have been given proper notice of this hearing and afforded the right to be heard.
4. The application for the special use permit must be denied.

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IT IS THEREFORE ORDERED by the Henderson County Zoning Board of Adjustment that Henderson County special use permit amendment application number SP-16-01 is hereby denied.

Announced 27 April 2016, and approved in final form, this the ____ day of May, 2016.

THE HENDERSON COUNTY ZONING BOARD OF ADJUSTMENT

By: _____
RONALD S. KAUFFMAN, Acting as Chair

Attest:

TOBY LINVILLE, Secretary to the Zoning Board of Adjustment