

STATE OF NORTH CAROLINA
COUNTY OF HENDERSON

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION PM12:1
FILE NO: 23 CVS 288

HENDERSON COUNTY, C.C.

KIRK A. HALL and KONNIE F. HALL,
INDIVIDUALLY, and as CO-
TRUSTEES OF THE KIRK A. HALL and
KONNIE F. HALL JOINT LIVING TRUST
DATED MARCH 6, 2015, KIRK A. HALL
TRUSTEE OF THE KIRK A. HALL and KONNIE
F. HALL JOINT LIVING TRUST, DATED
MARCH 6, 2015, HANNAH HALL,
LUCINDA A HEMENWAY, and NANCY
ALLISON HULL,

Petitioners

Vs.

ORDER ON:

1. Petitioners Rule 60(a) Motion
Dated 4 April 2024
2. First Contact's Motion for a
Stay Pending Appeal and
Alternative Motion for
Reconsideration dated
2 April 2024

HENDERSON COUNTY and FIRST
CONTACT MINISTRIES, Inc.,
Respondents

THIS MATTER came on to be heard upon the Petitioners' Rule 60(a) Motion dated 4 April 2024, First Contact's Motion for a Stay Pending Appeal dated 2 April 2024, and First Contact's Alternative Motion for Reconsideration dated 2 April 2024. Having considered the arguments of counsel with respect thereto along with the Motions submitted, this Court hereby clarifies, under Rule 60(a), that the ALR Ruling finally and completely resolves First Contact's application for a special-use permit for an Assisted Living Residence, and that the Evidentiary Ruling will govern any proceedings on remand after the completion of First Contact's appeal. Further,

this Order is entered for the purposes of ensuring, under N.C.G.S. § 160D-1402(1), that First Contact's appeal of the ALR Ruling is not mooted by voluntary compliance with the Court's Order. As a result, the Court orders as follows:

1. The Court's previous Order on Petition for Writ of Certiorari, which was erroneously dated "February 22, 2023," is hereby corrected under Rule 60(a) to reflect that the order was issued on February 22, 2024, nunc pro tunc.
2. The Court's previous Order concluded that:
 - a. The subject permit was wrongfully issued as a matter of law in that under Land Development Code of Henderson County, § 42-391, First Contact's use is a "Mental Health Facility," rather than an "Assisted Living Residence" (the "ALR Ruling"). See N.C.G.S. 160D-1402(k)(3)(b).
 - b. The Board's consideration of the application was affected by errors of law relating to the evidence that was considered and excluded (the "Evidentiary Ruling"). See N.C.G.S. § 160D-1402(k)(3).
3. Because the ALR Ruling finally and completely resolved First Contact's application for a special-use permit for an Assisted Living Residence, no further Board proceedings (other than the revocation of the permit) are required with respect to First Contact's application. However, if not for the ALR Ruling, the Evidentiary Ruling would have required remand to the Board for further evidentiary proceedings.
4. Petitioners' Rule 60(a) Motion is GRANTED, and First Contact's Alternative Motion for Reconsideration is DENIED. The Court hereby and corrects the February 22, 2024 Order to direct as follows:
 - a. This matter is remanded to the Board with instructions to revoke First Contact's permit. Any future special-use permit application for First Contact's proposed use must comply with paragraph 1 of the February 22, 2024 Order.
 - b. If the ALR Ruling is not affirmed on appeal, this matter will be remanded to the Board with instructions to proceed under the terms set out in paragraphs 2 and 3 of the February 22, 2024 Order.

5. Respondent's Motion for Stay Pending Appeal is GRANTED. Under N.C.G.S. § 160D-1402(1), and to prevent First Contact's appeal of this Court's February 22, 2024 Order from becoming moot, this Court stays the effect of that Order until such time as further review of said Order is complete and enjoins Respondents from conducting further proceedings under the terms of that Order. See *Estates v. Chapel Hill*, 130 N.C. App. 664 (1998). This stay and injunction may be lifted by consent of all Respondents or by further Order of this Court.

It is so Ordered.

This the 17th day of April, 2024



The Honorable Steve Warren
Superior Court Judge Presiding

STATE OF NORTH CAROLINA
HENDERSON COUNTY

SUPERIOR COURT DIVISION
FILE NO. 23-CVS-288

Kirk A. Hall and Konnie F. Hall,
individually and as co-trustees of
The Kirk A. Hall and Konnie F.
Hall Joint Living Trust; Hannah
Hall; Lucinda A. Hemenway; and
Nancy Allison Hull,

Petitioners,

vs.

Henderson County and First
Contact Ministries, Inc.,

Respondents.

**First Contact's Notice of Appeal
to the Court of Appeals
of North Carolina**

Respondent First Contact Ministries, Inc. hereby gives notice of its appeal to the Court of Appeals of North Carolina from the following orders of this Court:

- The "Order on Petition for Writ of Certiorari" issued by Judge Steve Warren February 22, 2024 and filed February 27, 2024.

Under N.C.G.S. § 1-278, First Contact also appeals from any intermediate order involving the merits and necessarily affecting the appealed-from order.

This the 26th day of March, 2024.

ROBERTS & STEVENS, PA



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Counsel for First Contact

Certificate of Service


I hereby certify that I served the foregoing document on all parties by USPS mail to the address(es) listed below.

Brian Gulden
Jonathan Dunlap
The Van Winkle Law Firm
PO Box 7376
Asheville, NC 28802
Counsel for Petitioners

Charles Burrell
1 Historic Courthouse Square,
Suite 5
Hendersonville, NC 28792
*Counsel for Respondent Henderson
County*

This the 26th day of March, 2024.

ROBERTS & STEVENS, PA



David Hawisher

DEFINITIONS

(Words are important especially in the context of this hearing so we need to define them.)

Area (Not defined in relation to value of property. E.g does not define it as only adjoining property)

-A particular geographic region.

Compatability (Not defined by Henderson County)

-capable of existing together in harmony

-speaks to relational harmony between people

Harmony (Not defined by Henderson County. See Matt Champion Email)

-Agreement, accord

-Tranquility

-A relationship characterized by a lack of conflict or by agreement.

-Agreement in action, opinion, feeling, etc.

-Disharmony=lack of harmony, discord, incongruity

-Note it is not defined as being best friends with Craig and his organization but it does require communication. Nor is it defined as in this situation as someone who cuts their grass or otherwise maintains their property.

Public

-of, relating to, or affecting all the people or the whole area of a nation or state

-of or relating to people in general

Safety

-Freedom from risk or danger; safety, or injury

-Freedom from doubt, anxiety, or fear; confidence

-Something that gives or assures safety.

-The condition of being safe from undergoing or causing hurt, injury or loss both real and perceived.

Security

-The quality or state of being secure

-Freedom from danger

-Freedom from fear or anxiety

Transparency

-Fine or sheer enough to be seen through

-Free from pretense or deceit

-Readily understood

-Honesty and openness

-Transparency implies openness, communication and accountability



42-355. Special Use Permits

- A. Purpose. Special Use Permits are required where individual consideration of location, design, configuration and/or operation of a use at a proposed site are necessary to ensure site appropriateness, compatibility with surrounding uses and the protection of the public health, safety and welfare. Development standards shall be used as the basis for developing conditions for a permit; however, individualized conditions may also be imposed throughout the application process. Any use identified which requires a permit shall not be permitted without the approval of the Zoning Board of Adjustment (ZBA) in accordance with the requirements and procedures set forth in this subsection.
- B. Permit Issuance. The ZBA shall grant permits. The Zoning Administrator shall issue permits.
- C. Application.
1. Pre-application Conference. Each applicant for a permit shall meet with the Zoning Administrator in a pre-application conference no later than two (2) calendar weeks prior to the date the application is due. The purposes of this conference are to provide information to the applicant regarding the review process and assist in the preparation of the application.
 2. Application. Each application for a permit shall be submitted along with the appropriate fee(s) and site plan, to the Zoning Administrator on or before the first business day of the month. Applications may be modified by Zoning Administrator as necessary, who may require the applicant to supply additional information pertaining to the permit.

presented that the site standards would not be met or that a condition is necessary. The applicant may be required, in his/her rebuttal, to show 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.

Additionally the applicant may be required, in his/her rebuttal, to show that the proposed use shall be located and developed in such a manner as to:

- a. Comply with all applicable local, state and federal statutes, ordinances and regulations;
- b. Be 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;
- c. Minimize the effects of noise, glare, dust, solar access and odor on those persons residing or working in the neighborhood of the proposed use; and
- d. Minimize 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.

Finally, the applicant may be required, in his/her rebuttal, to show that satisfactory provision/arrangement has been made (where applicable or required) concerning:

- a. Ingress and egress to property and proposed structures thereon (with particular reference to automotive/pedestrian safety/convenience and traffic flow/control);
 - b. Off-street parking and loading areas;
 - c. Utilities (with particular reference to locations, availability and compatibility);
 - d. Buffering and landscaping (with particular reference to type, location and dimensions); and
 - e. Structures (with particular reference to location, size and use).
2. Conditions. The ZBA may, in granting a permit, prescribe: (1) additional conditions; (2) additional safeguards; (3) a time limit within which the use



Kirk Hall <khallolc@gmail.com>

4353 Fork Creek Road

Matt Champion <mchampion@hendersoncountync.gov>

Wed, Nov 9, 2022 at 7:59 AM

To: Kirk Hall <khallolc@gmail.com>

Cc: Russ Burrell <rburrell@hendersoncountync.gov>

Hi Kirk,

Henderson County does not define "Harmony" in the Land Development Code. I don't believe North Carolina General Statutes does either.

The Henderson County Land Development Code can be found at this link (Land Development Code | Henderson County North Carolina (hendersoncountync.gov)).
Special Use Permits are found in Section 42-355 Special Use Permits.

Craig was denied a special use permit at the Mud Creek location for a different project. The applicant was attempting to construct a new facility and not occupy an existing structure. The meeting recordings from the hearings are on the link the County Attorney sent out.

[Quoted text hidden]

*11-16-22 Matt reviewed this in person on 11-16-22
@ the Board of Commissioners meeting.
Matt also suggested we look it up in Websters.*

*Kirk Hall
11-17-22*