

IN THE MATTER OF THE APPLICATION OF **Brian Moore**  
Applicant,  
To the  
HENDERSON COUNTY BOARD OF ADJUSTMENT,  
Permit Authority

**ORDER GRANTING SPECIAL USE PERMIT SUP-19-11**

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The **HENDERSON COUNTY BOARD OF ADJUSTMENT** having held a quasi-judicial public hearing on December 18, 2019 to consider the application submitted by **Brian Moore**, 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-19-11. A quorum of Board Members was present at the meeting.
2. The subject property is located at 3771 Brevard Road and has a PIN of 9549187705.
3. The Applicant is Brian Moore and as such he was made party to this action.
4. Toby Linville is the Zoning Administrator with Henderson County. As an agent of Henderson County, Mr. Linville was a party to this hearing.
5. All parties and all witnesses presented by any party were sworn as witnesses in this proceeding.
6. Notice of a quasi-judicial public hearing, pursuant to the Ordinance, the Henderson County Code 42-338 was duly and timely given. The property was posted with notice and notice sent by first class mail to the Applicants and the adjacent property owners.
7. 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.
8. 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.
9. Without objection from any party, the Board of Adjustment received into evidence a memorandum, maps, pictures, application and a 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.
10. The subject property is .49 acres.
11. The property is zoned Community Commercial (CC). All the surrounding property is Residential 3 (R3) and Community Commercial.
12. The Applicant would like a Special Use Permit for Motor Vehicle Sales or Leasing (SR 7.10).
13. The application went to the Technical Review Committee at their November 19, 2019 meeting and was approved subject to maintaining NCDOT median along Brevard Rd.
14. **SR 7.10. Motor Vehicle Sales or Leasing** (Including automobile, motorcycle, boat and recreational sales and rental cars)
  - (1) Site Plan. Major Site Plan required in accordance with §42-331(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) Dust Reduction. Unpaved roads, travelways and/or parking areas shall be treated to prevent dust from adverse effects to adjacent properties.

15. The surrounding uses are residential and commercial uses.
16. The property is currently vacant but was used for retail sales and has for several years including a fruit stand, consignment store, plastics manufacturing and U-haul rental.
17. Surrounding uses include other retail sales, a convenient store, gas station, concrete business, and church.
18. Applicant is not planning any additional buildings or any additional impervious surfaces.
19. The property is in the Upper French Broad River WS-IV Water Supply Watershed district.
20. The property is not in the Special Flood Hazard Area.
21. The property currently has public water and community sewer.
22. The 2020 County Comprehensive Plan (2020 CCP) designates the property as Community Services Center Area.
23. Mr. Linville testified that staff supports this application based on surrounding uses and the Comprehensive Plan.

### **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 42-323 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 the entrance at Hwy 64 will be permanently closed and no vehicles will back up into the roadway.
  - b. The project will not substantially injure the value of property or improvements in the area because it is zoned Community Commercial and surrounding uses include a convenient store, gas station, church, concrete business and other retail businesses.
  - c. The project is in harmony with the surrounding area because it is Community Commercial and in the Community Services Center 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.
  - 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 persons residing or working in the neighborhood of the proposed use because it will utilize an existing parking lot and not construct any further buildings or increase the impervious surfaces.
  - 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 no additional buildings or impervious surfaces will be added.
  - h. Ingress and Egress are properly met through an existing driveway on South Rugby Road through a structured plan outlined by DOT.

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**. This Order and the approval herein, was moved by Bill Fishburne and seconded by Jim Hysong. The request for a special use permit was approved by a unanimous vote of 4-0.

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. Applicant must agree to the provisions of this order.
2. Applicant must comply with all the requirements in Supplemental Requirement 7.10
3. Applicant must comply with all parts of the driveway permit and vehicles must be stored in the arrangement set forth on the driveway permit.
4. Applicant must maintain median along Brevard Rd.
5. Applicant may not have any more than 10 vehicles for rent at any one time.
6. Applicant will not increase the impervious area.
7. Failure to comply with the conditions in this order may result in the revocation of this Permit.

ORDERED this the 29<sup>th</sup> day of January 2019.

By: \_\_\_\_\_  
Ron Kauffman, Chairman