

IN THE MATTER OF THE APPLICATION OF
DUKE ENERGY CAROLINAS, LLC, Applicant,
to the
HENDERSON COUNTY ZONING BOARD OF ADJUSTMENT,
Permit Authority,

Regarding

DUKE ENERGY LAYDOWN YARD

The Henderson County Zoning Board of Adjustment held a quasi-judicial hearing May 29, 2024 to consider the application SUP-24-02, seeking a special use permit to allow use of certain property for the use “outdoor storage greater than 5,000 square feet” under the Chapter 42 of the Henderson County Code (“the Code”), and the related issue of a variance from one provision of Supplemental Requirement 2.10 of the Code for such use. The application was submitted by the owners of the property in question. Having heard all 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 SUP-20-04. A quorum of members of the Zoning Board of Adjustment was present. The members present and participating were:

Andrew Riddle, Chair
Louise St.Romain
Tony Engel
Carlos Ruiz
Lynn Freeman Bush

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 mailing to the applicants and all adjacent property owners to the boundary of the subject property and the posting of notice on the subject property.

4. This application was filed by Brian Blake (the “Applicant”), as agent for property owner. The property to be included in the special use consists of Henderson County PIN 9690-86-8883. This property is currently zoned Residential Two Rural (R2R). “Outdoor storage greater than 5,000 square feet” is a permitted accessory 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 Henderson County staff as parties to this hearing and inquired whether any person or entity sought to become a party to this action. There was no one else in attendance sworn in as parties.

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

7. The information contained in the Request for Board Action and staff report was received by the Board without objection. The statements found therein are found to be fact by this Board.

8. 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 Code, Chapter 42 of the Henderson County Code. The use proposed here is “outdoor storage greater than 5,000 square feet”. The specific standards for the proposed use are set out in Supplemental Regulation SR 2.10 of the Land Development Code, found at Section 42-62 thereof. The standards are as follows:

- a. Locational Requirements. Storage areas shall not be placed in a front yard.
- b. Screening. Screen Class Three (3) or Four (4) shall be provided consistent with the requirements of §42-182 (Screen Classification).

9. The Applicant’s plans follow the provisions of S.R. 2.10, except:

- a. The Applicant’s plans would have the outdoor storage areas encroaching into the front yard.

10. The Board determined to accept the application for this special use to include an application for a variance regarding the issue of individual hookups to a private septic system V-24-01.

11. As to the variance request regarding the provisions of S.R. 2.10(8), paragraph 8.a. regarding locational requirements:

- a. There are practical difficulties or unnecessary hardships in carrying out the strict letter of Chapter 42 of the County Code, as demonstrated by:

- i. The fact that, if the Applicant complies with the literal terms of this Chapter, the Applicant cannot make a reasonable use of the property, in that the property is surrounded by three (3) rights-of-way and contains the existing utility substation as required by S.R. 2.10(8).
- ii. This hardship of which the applicant complains is not the result of the applicant’s own action.

- b. The Variance is in harmony with the general purpose and intent of this Chapter and will preserve its spirit.

- c. The Variance will secure the public safety and welfare and will do substantial justice.

- d. The Variance is not based on the existence of a nonconforming use of neighboring land or structures in the same district, or permitted nonconforming uses in other districts.

- e. The Variance does not allow for an increase in density for the purposes of subdividing the land that would otherwise not be permitted by the applicable zoning district or subdivision regulations.

12. Tony Engel moved to approve the special use permit and variance referencing the motion provided by the Zoning Administrator with the conditions as required by the Technical Review Committee that include: NCDOT driveway permit, NCDOT utility encroachment agreement, soil erosion and sedimentation control permit, and stormwater control permit. Carlos Ruiz seconded the motion. All members voted in favor.

13. 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 and the variance must be granted, and the special use permit is subject to the express condition stated above.

IT IS THEREFORE ORDERED by the Henderson County Zoning Board of Adjustment that Henderson County special use permit application number SUP-24-02 is hereby granted on the condition stated above. V-24-01 is also approved to allow outdoor storage in front yard.

Approved the 29th day of May, 2024 and approved in final form, this the 26th day of June, 2024.

HENDERSON COUNTY ZONING BOARD OF ADJUSTMENT

By: _____
Andrew Riddle, Chairman

Attest:

Matt Champion, Zoning Administrator