

IN THE MATTER OF THE APPLICATION OF Fred Lyda
Applicant,

To the

HENDERSON COUNTY BOARD OF ADJUSTMENT,
Permit Authority

ORDER GRANTING SPECIAL USE PERMIT SUP-13-03

The **HENDERSON COUNTY BOARD OF ADJUSTMENT** having held a quasi-judicial public hearing on June 26, 2013 to consider the application submitted by **Fred Lyda**, 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-13-03. A quorum of Board Members was present at the meeting.
2. This Order and the approval herein, was moved by Anne Pouch and seconded by Tony Engel. The request for a special use permit was approved by a vote of 4-1 with Jim Clayton dissenting.
3. The subject property is located at 151 J D Hogg Lane and has a PIN of 0602-37-8235.
4. The Applicant is Fred Lyda and as such he was made a party to this action. His wife, Catherine, was a witness for Mr. Lyda.
5. Toby Linville is the Zoning Administrator with Henderson County. As an agent of Henderson County, Mr. Linville was made a party to this hearing.
6. Notice of a quasi-judicial public hearing, pursuant to the Ordinance, the Henderson County Code 200A-338 was duly and timely given. This notice was 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. All parties and all witnesses presented by any party were sworn as witnesses in this proceeding.
10. Without objection from any party, the Board of Adjustment received into evidence a memorandum and a power-point 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.
11. The subject property is 16.42 acres off Old Clear Creek Road. The property is zoned Residential 3 (R3).
12. The Applicant would like a Special Use Permit for an Outdoor Recreational Facility.
13. The application went to the Technical Review Committee at their June 4, 2013 meeting and was approved.
14. The Applicant desires to use the subject property for outdoor recreational facilities as described in Special Requirement 4.15.
15. **SR 4.15. Outdoor Recreational Facilities.** *Outdoor recreational facilities* shall include courts (basketball, tennis, etc.), playing fields (soccer, baseball, etc.), swimming pools, batting cages, shuffleboard areas and/or any other such *uses* that fit the intent of this section as interpreted by the *Zoning Administrator*.

(1) Site Plan. Major *Site Plan* required in accordance with §200A-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) Perimeter Setback. One hundred (100) feet (equipment, machinery and/or mechanical devices shall not be placed within 200 feet of a *residential zoning district*. All *structures* shall be 100 feet from a *residential zoning district* property).
- (4) Structure. For activities which present potential safety hazards (batting cages, baseball fields, driving tees, etc.) fencing, netting or other control measures shall be required.
- (5) Operations. A recreational facility may contain on-site food sales for patrons of the recreational facility only, provided they obtain all necessary permits.
- (6) Solid Waste Collection. The facility shall provide a suitable method of solid waste disposal and collection consisting of either private collection from individual *uses* or the *use* of dumpsters (installed and/or operated to meet all local and state statutes, ordinances and regulations (including Chapter 165 of the Henderson County Code, *Solid Waste*) and thereafter certified by the Department of Public Health). Where dumpsters are used, Screen Class One (1), Two (2) or Three (3) shall be provided consistent with the requirements of §200A-182 (Screen Classification)).
- (7) Public Address/Loud Speakers. Public address and loud speaker systems shall not be operated before 8:00 a.m. or after 12:00 midnight.
- (8) Hours of Operation. 6:00 a.m. to 12:00 midnight.

- 16. The subject property is surrounded by Residential 3 (R3) and Residential 2 Rural (R2R). The surrounding uses are agricultural and undeveloped property.
- 17. The property is not in the flood hazard area or the Water Supply Watershed district.
- 18. The property currently has well water and private septic.
- 19. Current structures on the property include the family home and a shed. Future growth may include a bath house and a catering kitchen.
- 20. Applicant is proposing the construction of walking and hiking trails and exercise stations. These would be for paid use by the community and tourists.
- 21. The Applicant is proposing using the property for events such as reunions, class reunions, and weddings.
- 22. Parking will be by the driveway with 68 spaces. Applicant will rent portable toilets for events and possibly tents.
- 23. There will be no indoor events.
- 24. Event location is the center of the property. There are no permanent lights proposed and there will only be temporary amplification within the hours allowed by the Supplemental Requirements.
- 25. Three possible exits from the property and Applicant will obtain a DOT driveway permit.
- 26. The 2020 County Comprehensive Plan (2020 CCP) designates the property Rural/Agricultural Area.

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 200A-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 there will only occasionally be used, the walking trails will be available to the public and there is no permanent structures proposed at this time.
 - b. The project will not substantially injure the value of property or improvements in the area because much of the surrounding property is used for agricultural or undeveloped land.
 - c. The project is in harmony with the surrounding area because the surrounding properties are residential and the events will be held in the center of the property.

- 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 will comply with the North Carolina Department of Transportation.
- 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 Rural/Agricultural Area.
- f. The project minimizes the effects of noise, glare, dust, solar access and odor on those person residing or working in the neighborhood of the proposed use because there will be minimal land disturbance, no permanent lights and the noise amplification will only be used as permitted by Supplemental Requirement.
- 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 it is not in the floodplain or Watershed.
- h. Ingress and Egress are properly met because of the three possible exits.

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**.

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. Property Owner must agree to in writing the provisions of this order.
2. Property Owner must comply with all the requirements in Supplemental Requirements 4.15.
3. Property Owner must obtain a DOT Driveway Permit.
4. Property Owner must cap event size at 350 attendees. The Applicant may come back to this Board in the future to ask for an increase in this cap.

ORDERED this the ____ day of July 2013.

THE HENDERSON COUNTY BOARD OF AJUSTMENT

By: _____
Jim Clayton, Chairman

ATTEST:

Jenny Maybin
Secretary to the Zoning Board of Adjustment

ACCEPTANCE BY APPLICANT

I, _____, Applicant, do hereby acknowledge receipt of this order which is the subject of this special use permit 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 _____, 2013

Fred Lyda, Applicant

STATE OF NORTH CAROLINA
COUNTY OF HENDERSON COUNTY

I, _____, a Notary Public for said County and State, do hereby certify that
_____ personally appeared before me this day and acknowledged the due execution of the foregoing
instrument.

Witness my hand and official seal, this the _____ of _____, 2013.

(Official Seal)

Notary Public

My Commission expires