

IN THE MATTER OF THE APPLICATION OF **Chris Frady**  
Applicant,

To the

HENDERSON COUNTY BOARD OF ADJUSTMENT,  
Permit Authority

**ORDER GRANTING SPECIAL USE PERMIT SUP-12-03**

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The **HENDERSON COUNTY BOARD OF ADJUSTMENT** having held a quasi-judicial public hearing on July 25, 2012 to consider the application submitted by **Chris Frady**, 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-12-03. A quorum of Board Members was present at the meeting.
2. This Order and the approval herein, was moved by Hunter Marks and seconded by Tony Engel. The request for a special use permit was approved by a vote of 5-0.
3. The subject property is located at the corner of Howard Gap and Upward Road and has a PIN of 9597094920. The Property owners are Albert and Valudia Jackson who are both deceased and the property has passed through estate law to Mr. Frady, his wife and his daughter. Mr. Frady is the applicant and the proposed operator of the kennel. As such Mr. Frady was made a party to this action.
4. Peter Knowland is the project's architect and he is a witness for Mr. Frady.
5. Toby Linville is the Zoning Administrator for 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 included legal advertisements in The Times-News newspaper on July 12th and July 19th, 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. All parties and all witnesses presented by any party were sworn as witnesses in this proceeding on July 25, 2012.
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 17.91 acres, located at the corner of Upward and Howard Gap. It is zoned Community Commercial (CC) and Residential Two Rural (R2R).
12. The Comprehensive Plan lists the parcel as "Community Services Center" defined as follows:  
*Community Service Centers* are intended to be intensive, efficient, defined concentrations of mixed services that meet the needs of the surrounding community and defined service areas. *Community*

*Service Centers* are appropriate for a mixture of commercial uses scaled to the service area in question; residential uses of varying densities depending upon available services; and *Community Facilities* such as schools, parks, community centers, and other similar *Community Facilities*. The mixture and intensity of land uses contained within *Community Service Centers* are intended to be appropriate within the context of the surrounding community and intended service area. *Community Service Centers* should also be properly controlled by appropriate aesthetic standards, access management standards, and other appropriate development control measures.

13. The Applicant would like a Special Use Permit for a Commercial Kennel.
14. The application went to the Technical Review Committee at their July 3, 2012 meeting and was approved with conditions:
  - a. Draw screening and dumpster location on site plan
  - b. Apply for NCDOT Driveway permit
  - c. Coordinate Waterline Installation/ Encroachment Permit with NCDOT and City of Hendersonville
  - d. Apply for Erosion Control permit
  - e. Provide Backflow Prevention for City of Hendersonville
  - f. Obtain an Upward Road Address
15. The Applicant desires to use the subject property for multifamily residential as described in Supplemental Requirement 6.7:
  - (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) Separation. A Kennel shall not be constructed or newly located within 200 feet of an existing dwelling unit (Located in a residential zoning district and not located on the same property as the use).
  - (4) Structure. The Kennel shall provide pens which are enclosed and adequately ventilated.
  - (5) Operations. Limited outdoor exercise runs/facilities shall be permitted, however, hours of use shall be restricted to from 8:00 am to 8:00 pm. Food and animal refuse shall be kept in airtight containers.
  - (6) Screening. Screen Class three (3) shall be provided consistent with the requirements of §200A-182 (Screen Classification)).
  - (7) 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 states, 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)).
16. The Applicant proposed public water and individual sewer. The proposed site is on a public road.
17. The Kennel is proposed to initially be a canine day-care for up to 20 dogs and may be expanded to do over-night boarding for up to 6 dogs.
18. The subject property is surrounded by commercial, agricultural and residential uses.
19. The project fronts the expanding Upward Road. It is near Interstate-26.
20. The design of the structure will be in a barn style to stay in keeping with the rural character of the area.
21. The parcel has 2 residences on it, owned by the Applicant and his family, and an apple orchard.
22. Kennels are indoors and the outdoor area will be fenced, screened and landscaped. There will be limited security lighting.
23. The property is not in the floodplain or in an environmentally sensitive area.
24. The property has an existing driveway and parking area.
25. The applicant's home is adjacent to dog kennel.

## 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 sworn before the Board of Adjustment and all evidence presented herein was under oath, and was not objected 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 a kennel is consistent with the Comprehensive Plan, and a kennel is in keeping with the agricultural nature of the area.
  - b. The project will not substantially injure the value of property or improvements in the area because the use and design will blend in with the surrounding areas and bring another service to the expanding area.
  - c. The project is in harmony with the surrounding area because the surrounding properties are commercial, agricultural and residential and this project is a limited commercial endeavor where residences and apple orchard will remain on 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, will meet the conditions established by the Technical Review Committee, and will comply with all state regulations regarding kennels.
  - e. The project is in accordance with the Comprehensive Plan, long-range transportation plans and comprehensive transportation plans of the County because it meets the zoning of the Community Commercial District with the Special Use Permit and is consistent with the Comprehensive Plan description of Community Services Center.
  - f. The project minimizes the effects of noise, glare, dust, solar access and odor on those people residing or working in the neighborhood of the proposed use because the outdoor play area will be landscaped, fenced, and screened, there will be limited outdoor lighting, and indoor boarding.
  - 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 by meeting all requirements by the County regarding environmental health.
  - h. Provision/arrangement has been made by the Applicant concerning: ingress and egress to property and proposed structures thereon because there is an existing driveway and parking lot. Also with the expansion of Upward and the proximity to I-26 there should not be an issue with traffic or noise.

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. The project must meet the conditions established by the Technical Review Committee at its July 3, 2012 meeting as stated above.

ORDERED this the \_\_\_\_ day of August 2012.

THE HENDERSON COUNTY BOARD OF AJUSTMENT

By: \_\_\_\_\_  
Jim Phelps, Chairman

ATTEST:

\_\_\_\_\_  
Todd Taylor  
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 \_\_\_\_\_, 2012

\_\_\_\_\_  
\_\_\_\_\_, Applicant

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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 \_\_\_\_\_, 2012.

(Official Seal) \_\_\_\_\_  
Notary Public

My Commission Expires \_\_\_\_\_