

IN THE MATTER OF THE APPLICATION OF **Boyd Hyder**
Applicant,

To the

HENDERSON COUNTY BOARD OF ADJUSTMENT,
Permit Authority

ORDER GRANTING SPECIAL USE PERMIT SUP-12-04

The **HENDERSON COUNTY BOARD OF ADJUSTMENT** having held a quasi-judicial public hearing on July 25, 2012 to consider the application submitted by **Boyd Hyder**, 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-12-04. A quorum of Board Members was present at the meeting.
2. This Order and the approval herein, was moved by Tony Engel and seconded by Hunter Marks. The request for a special use permit was approved by a vote of 5-0.
3. The subject property is located on Clear Creek Road and has a PIN of 9660929834. The Property owner is Boyd Hyder. As such Mr. Hyder was made a party to this action and is represented at this hearing by his attorney Bill Alexander
4. Greg Bellini will be the operator of the facility and was a witness for the Applicant.
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 4.18 acres, located on Clear Creek Road. It is zoned Industrial (I)
12. The Comprehensive Plan lists the parcel as "Industrial" defined as follows:
Most defined industrial areas should lie within the Urban Services Area, and in other areas on a very limited basis. Most industrial uses should be segregated from other uses with the exception of Regional Commercial uses. Industrial areas depicted on Map # 24 *Future Land Use Map* are derived from existing industrial zoning districts, as well as from those area depicted upon Map #

8, “Committee of 100” Recommended Industrial Development Zones. It is intended that the Countywide Industrial / Commercial Zoning Study and Community Plans will further refine the location, extent, and intensity of future industrial areas.

13. The Applicant would like a Special Use Permit for an Asphalt Plant.

14. The application went to the Technical Review Committee at their July 3, 2012 meeting and was approved with conditions:

- a. Calculate Impervious Surface on site plan
- b. Draw screening, dumpster and existing vegetation on site plan
- c. Add berm note and size back on plan
- d. Correct spelling for Gregg Bellini on site plan
- e. Add type of project (Asphalt Plant) to Title block on site plan
- f. Apply for Stormwater and Erosion Control Plan
- g. Apply for Septic Permit and secure area before land disturbance begins
- h. Apply for NCDOT Driveway permit with paved entrance apron

15. The Applicant desires to use the subject property an asphalt plant and outdoor storage as described in Special Requirement 10.1 and Special Requirement 2.9.

SR 10.1. Asphalt Plant

(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) Dust Reduction. Unpaved *roads, travelways* and/or parking areas shall be treated to prevent dust from adverse affects to adjacent properties.

(4) Separation. An *asphalt plant* shall not be constructed or newly located within:

- a. One-half (½) mile of an existing *school, library, day care facility, healthcare facility and/or religious institution*; and
- b. Five hundred (500) feet of an existing *dwelling unit* (located in a *residential zoning district* and not located on the same property as the *use*).

(5) Perimeter Setback. One hundred (100) feet.

(6) Security. The operations of an *asphalt plant* shall be totally enclosed by: (1) a security fence or wall at least eight (8) feet in height; or (2) a fireproof *building*. Entrances and exits should be secured and locked during non-operating hours.

SR 2.9. Outdoor Storage greater than 5,000 square feet

(1) Locational Requirements. Storage areas shall not be placed in a *front yard*.

(2) Screening. Screen Class Three (3) or Four (4) shall be provided consistent with the requirements of §200A-182 (Screen Classification).

16. The Applicant proposed private water and individual sewer. Public utilities are not available on this parcel. The proposed site is on a public road.

17. The subject property is surrounded by commercial, industrial and residential uses. There is a garage across the street and a quarry and asphalt plant north of the proposed site.

18. The zoning south of the project is in Hendersonville’s ETJ and is zoned C-3 Highway Business.

19. The project fronts Clear Creek Road.

20. The property is not in the floodplain or water supply watershed.

21. The asphalt operation is subject to state and federal laws including regarding water drain-off.

22. Noise from the asphalt plant will be no louder than that of the adjacent quarry.

23. Loading, parking and bathroom may be outside of the setbacks of 100 feet for the project as is permitted by the Land Development Code.

24. The Applicant will apply for a septic permit.

25. Approximately 15 to 20 trucks will enter the property a day but could be up to 10 trucks an hour.

26. Driveway will be permitted by NCDOT and will allow for stacking of up to 15 trucks on the property.

27. Applicant may request a reduction in setback at a later time but it is not the subject for this hearing.

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 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 it is consistent with the Comprehensive Plan, and is surrounded by a quarry and another asphalt plant.
 - b. The project will not substantially injure the value of property or improvements in the area because the use is industrial and is adjacent to industrial and commercial uses.
 - c. The project is in harmony with the surrounding area because the surrounding properties are commercial, industrial and residential and this project is near a quarry, asphalt plant, and garage.
 - 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 and federal regulations regarding asphalt plants.
 - 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 zoning of the Industrial District with the Special Use Permit and is consistent with the Comprehensive Plan description of Industrial.
 - f. The project minimizes the effects of noise, glare, dust, solar access and odor on persons residing or working in the neighborhood of the proposed use because the asphalt operations will be set back from the road.
 - 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, State, and Federal government regarding asphalt plants and the project is not in the floodplain or water supply watershed.
 - h. Provision/arrangement has been made by the Applicant concerning: ingress and egress to property and proposed structures thereon because the driveway allows stacking of up to 15 trucks.

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. Any substantive changes to the site plan not herein contemplated or a change to the setbacks will require an amendment to this permit.

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

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 _____