

IN THE MATTER OF THE APPLICATION OF Robert Haynes
Applicant,

To the

HENDERSON COUNTY BOARD OF ADJUSTMENT,
Permit Authority

ORDER GRANTING SPECIAL USE PERMIT SUP-15-01

The HENDERSON COUNTY BOARD OF ADJUSTMENT having held a quasi-judicial public hearing on February 25, 2015 to consider the application submitted by **Robert Haynes**, 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-15-01. 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 David Sandler. The request for a special use permit was approved by a unanimous vote of 4-0.
3. The subject property is located at 373 Kerr Rd and has a PIN of 0611910275.
4. The Applicant is Robert Haynes and as such he was made parties to this action. He called Janet Haynes and Michael Haynes as witnesses.
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 42-338 was duly and timely given. This notice included posting the property on 2-10-15 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. 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, maps, pictures 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 43.49 acres in Edneyville. Of the 43.49 acres, approximately 2 acres will be used for this use.
12. The property is zoned Residential 3 (R3). All the surrounding property is R3.
13. The application went to the Technical Review Committee at their February 3, 2015 meeting. The site plan was approved and a favorable recommendation for the Special Use Permit was given.
14. The Applicant would like a Special Use Permit for Recreational Facilities (SR 4.14) for a snow-tubing park.
15. **SR 4.14. Recreational Facilities (Indoor/Outdoor)**
 - Site Plan. Major *Site Plan* required in accordance with §42-331 (Major Site Plan Review).
 - 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.
 - 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).

- Structure. For activities which present potential safety hazards (batting cages, baseball fields, driving tees, etc.) fencing, netting or other control measures shall be required.
 - 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 §42-182 (Screen Classification)).
 - Public Address/Loud Speakers. Public address and loud speaker systems shall not be operated before 8:00 a.m. or after 12:00 midnight.
 - Hours of Operation. For outdoor *uses*, 6:00 a.m. to 12:00 midnight.
16. The surrounding uses are residential, agricultural, and undeveloped parcels.
 17. The property is not in the Water Supply Watershed district nor in the special flood hazard area.
 18. The property currently has private well and septic.
 19. The property is currently vacant and the applicant is proposing a 40x28 ft office with handicapped restrooms for participants. The office will be used to sell tickets and there may be limited concessions.
 20. A septic permit for the site has already been approved.
 21. The facility will include equipment such as snow blowers and lifts to get the tubes to the top of the hill.
 22. The park will open late December until early March and will be open winter break and weekends. The proposed hours are from 10 am to 9pm.
 23. Applicant proposes a gravel parking lot with approximately 40 spaces.
 24. The park will have 3-4 runs and will serve about 100-150 people at a time.
 25. Participants will have to sign a liability waiver to participate.
 26. Site is heavily wooded and 1000 feet from adjacent residential area.
 27. All lighting will be aimed to reduce lighting leakage.
 28. All equipment on the will be installed and used according to the Original Equipment Manufacturer guidelines.
 29. Mr. Linville testified that staff supports this application based on surrounding uses and the Comprehensive Plan.
 30. The 2020 County Comprehensive Plan (2020 CCP) designates the property as Rural/Open Space/Agricultural and Conservation.
 31. Several adjoining property owners contacted the County to say that they did not object to use.

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 it is in a remote location and participants will sign a liability waiver to participate.
 - b. The project will not substantially injure the value of property or improvements in the area because the surrounding areas are residential and undeveloped parcels and the subject property is a remote wood parcel.
 - c. The project is in harmony with the surrounding area because it is Residential 3 and the use is limited in the duration to keep with the rural character of the adjacent properties.
 - 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 for a septic 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 person residing or working in the neighborhood of the proposed use because it will only be open 3 months of the year, mainly on weekends and it will use lighting mitigation to keep it on the park.
- 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 only 1 structure will be built and there will be a gravel parking lot.
- h. Ingress and Egress are properly met through a road as seen on the Site Plan and because it is R3 and adjacent parcels are undeveloped, there is very little traffic concerns..

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 Requirement 4.14.

ORDERED this the ____ day of March 2015.

THE HENDERSON COUNTY BOARD OF AJUSTMENT

By: _____
Mike Earle, 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 _____, 2015.

Robert Haynes, Applicant