

IN THE MATTER OF THE APPLICATION OF

JOEL KALSBECK, Applicant,  
to the  
HENDERSON COUNTY ZONING BOARD OF ADJUSTMENT,  
Permit Authority, Regarding

VARIANCE FOR ACCESSORY STRUCTURE

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The Henderson County Zoning Board of Adjustment held a quasi-judicial hearing April 24, 2019 to consider the application V-19-02, seeking a variance under Chapter 42 of the Henderson County Code (“the Code”). The application was submitted by the owners of the property in question. Having heard all of 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 V-19-02. A quorum of members of the Zoning Board of Adjustment was present. The members present and participating were:

Ronald S. Kauffman, Chair  
Louise St.Romain  
Robert Pierce  
Hilliard Staton  
Bill Fishburne

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 Joel Kalsbeck (the “Applicant”), as applicant and property owner. The property to be included in the variance consists of Henderson County PIN 9539122334. This property is currently zoned Residential One (R1).

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.

6. In order to grant any variance, the Board must find the following:

- 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 “park model” units are not intended to be set up as mobile, so could not comply with the requirement for a single “central dump station” as required by S.R. 4.15(8).
  - ii. This hardship of which the applicant complains is not the result of the applicant’s own action.

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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.

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. As to the variance request regarding the provisions of 42-27(5):

9. A motion was made by to grant the variance, above, and was unanimously approved by motion by Ron Kauffman and second by Bob Pierce.

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 variance must be granted, subject to the conditions stated above.

**IT IS THEREFORE ORDERED** by the Henderson County Zoning Board of Adjustment that Henderson County variance application V-19-02 is also approved to allow an accessory structure in the front yard setback.

Announced 24 April 2019, and approved in final form, this the 29th day of May 2019.

HENDERSON COUNTY ZONING BOARD OF ADJUSTMENT

By: \_\_\_\_\_  
RONALD S. KAUFFMAN, Chairman

Attest:

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TOBY LINVILLE, Secretary to the Zoning Board of Adjustment