

HAYWOOD COUNTY
NORTH CAROLINA

In the matter of the appeal and request
for variance of County ordinance to
permit a wrecker service at 3039 Crabtree
Road

NOV 8 2019

ORDER

This matter came on for hearing before the Haywood County Board of Commissioners at the 21 October 2019 meeting upon the appeal of the denial of the permit for a Wrecker Service to be located at 3039 Crabtree Road and a request for a variance for that permit. After hearing sworn evidence and considering the matters in the application file, the commissioners made the following

FINDINGS OF FACT

1. Applicant Doyle Sutton made application for a permit to operate wrecker service and associated storage yard at 3039 Crabtree Road in Haywood County. The property is described as Parcel Identifier Number 8628-33-4271 on the land records/GIS system of the county.
2. The application consisted of a color aerial photograph from the county GIS system with the boundaries of the property shown, with notations made by the applicant showing a proposed fence around the site, plantings on the perimeter, and a proposed enclosed storage yard for vehicles towed to the business. The photograph was displayed by the county enforcement officer to the board members at the hearing and referred to by various witnesses throughout the proceeding.
3. The application photograph showed an arc depicting 500 feet from a residence on Yates Cove Road, which distance is the minimum separation from a residence for a vehicle storage yard, pursuant to the ordinance.
4. The application for permit was made pursuant to County Ordinance Section 114.11 and submitted to the Enforcement Officer.
5. After the receipt of the application, the Enforcement Officer issued a letter which denied the application, citing the proximity of residences within 500 feet of the proposed wrecker service, as prohibited by Section 114.04(a)(3) of the ordinance.
6. Within 10 days of the receipt of the denial letter, applicant Doyle Sutton sent a letter, dated 6 August 2019, appealing the denial and requesting a variance from the County Commissioners.
7. The county administration scheduled the hearing on the appeal and variance request for 21 October 2019 at its regular meeting.

8. Copies of the notice of the county commissioners' hearing were sent by first-class mail to the applicant and adjoining property owners on 8 October 2019. A poster describing the hearing date and time was placed by the Enforcement Officer on the property on 7 October 2019.

9. A copy of the application (GIS photo), and letter requesting appeal and variance were posted on 18 October 2019 on the county's website as an attachment to the agenda for the meeting of 21 October 2019.

10. When the matter was reached at the meeting on 21 October 2019, the county attorney was called upon to supervise the proceedings. All persons desiring to testify were sworn to tell the truth by the county clerk before any evidence was received.

11. The county Enforcement Officer appeared, presented the documents recited and answered questions of the Board members. He testified that the wrecker service would be located within about 150 feet of several residences adjoining the site and that his denial of the permit was based on the ordinance requirement for a 500-foot separation of the site from a "residence, school or business."

12. The applicant, Doyle Sutton, appeared and stated his desire for a variance and a permit to operate a wrecker service on the property. He answered questions posed by Board members about the request for the variance.

13. Various persons owning property in the vicinity of the property testified about the effect of the granting of the variance on their properties and the properties in the neighborhood.

14. After hearing the testimony of the witnesses and examining the exhibits presented (which included the application, the denial letter and the application for appeal and variance), the commissioners, by a show of hands, answered the following issues (which are set out in the ordinance as the exclusive bases for a variance):

(1) There are extraordinary and exceptional conditions pertaining to the particular place or property in question because of its size, shape or topography, that are not applicable to similar facilities governed by this chapter.

Finding: [0] Yes
 [5] No

(2) Granting the variance requested will not confer upon the applicant any special privileges that are denied to operators of similar facilities governed by this chapter.

Finding: [0] Yes

[5] No

(3) A literal interpretation of the provisions of this chapter would deprive the applicant of rights commonly enjoyed by other operators of similar facilities governed by this chapter.

Finding: [0] Yes

[5] No

(4) The requested variance will be in harmony with the purpose and intent of this chapter and will not be unduly injurious to the neighborhood or to the general welfare.

Finding: [0] Yes

[5] No

(5) The variance requested is the minimum variance that will make possible a reasonable legal use of the land in question.

Finding: [1] Yes

[4] No

15. By the terms of the ordinance (Section 114.14 (B)) a variance may be granted upon a finding by the Board that all five conditions exist. The Board found that none of the five conditions existed.

WHEREFORE, based on the foregoing Findings of Fact and the application of the standards set out in the ordinance, the Board makes the following

CONCLUSIONS OF LAW

1. The matter is properly before the board and all persons entitled to notice of the hearing have received it.

2. From the evidence presented and the application of the terms of the ordinance, the applicant is not entitled to a variance for the ordinance's requirement for a 500 foot setback from a residence.

3. Because the variance is not granted, the appeal of the denial of the permit to operate a wrecker service is denied. The applicant is not entitled to a permit to operate a wrecker service on the site.

WHEREFORE, the Board issues the following

ORDER

1. The application for a variance is DENIED.
2. The appeal of the denial of the permit to operate a wrecker service on the site is DENIED.

Signed this 29th day of October, 2019.

Haywood County Commissioners

by: L. Kevin Ensley
L. Kevin Ensley, Chair

Attested:

Candace Way
Candace Way, Clerk to the Board

CERTIFICATE OF SERVICE

I, Clerk to the Board of Commissioners of Haywood County, hereby certify that a copy of this decision was mailed by first-class mail to the applicant, this 29th day of October, 2019, contained in a first-class postage-paid wrapper, addressed as follows:

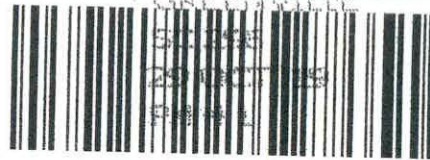
Doyle Sutton
1691 S. Main Street
Waynesville NC 28786

Candace Way
Candace Way, Clerk



Haywood County Manager
215 North Main Street
Waynesville, North Carolina 28786

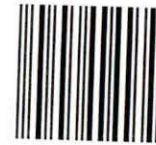
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1691 South Main Street
Waynesville, NC 28786

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