

Monroe A. Miller, Jr.  
2200 Camp Branch Road  
Waynesville, NC 28786  
December 3, 2019

The Grievance Committee  
**The North Carolina State Bar**  
208 Fayetteville Street  
PO Box 25908  
Raleigh, NC 27611  
(919) 828-4620

**Subject:** Complaint against Frank G. Queen and James Weaver “Kirk” Kirkpatrick the III, update.

Please find enclosed additional information to add to my original grievances against both Frank Queen and James Weaver “Kirk” Kirkpatrick the III.

ID 7275  
Frank G. Queen  
154 North Main Street, Ste 2  
Waynesville, NC 28786  
(828) 452-3336  
frank@queenmountainlaw.com

Bar File # 19G1101

and

ID 21711  
James W. Kirkpatrick III  
37 Branner Avenue  
Waynesville, NC 28786  
(828-452-0801  
kirk@wklaw.net

Bar File # 19G1101

Enclosed first are your acknowledgments of my complaint for both lawyers, your file numbers 19G1101 and 19G1111.

Secondly, find enclosed a WRIT OF CERTIORARI, an appeal from Doyle Sutton v. the COUNTY OF HAYWOOD, acting by and through its Development Services Department (that would be Kris Boyd), and all five (5) county commissioners, which include county commissioner James Weaver “Kirk” Kirkpatrick the III, and also the County Attorney, Frank Queen.

This action was acknowledged by the Haywood County Clerk of Superior Court, Hunter Plemmons, on 11/27/2019. This action where Frank Queen and James Weaver “Kirk” Kirkpatrick the III sandbagged Doyle Sutton will now come before Superior Court in Haywood County. Please reserve your judgment on this case on whether to revoke the licenses of these two lawyers until this plays out in court.

Thank you,

Monroe A. Miller, Jr.



**The North Carolina State Bar**  
Office of Counsel

217 E. Edenton Street (27601)  
Post Office Box 25908  
Raleigh, North Carolina 27611  
Telephone (919) 828-4620  
Fax: (919) 834-8156  
Web: www.ncbar.gov

October 30, 2019

Mr. Monroe A. Miller Jr.  
2200 Camp Branch Rd.  
Waynesville, NC 28786

NOV 4 2019

Re: Grievance Received against Frank G. Queen, Attorney  
Our file number: 19G1101

Dear Mr. Miller:

The grievance you filed against the above-named attorney was received on October 29, 2019 and has been assigned the file number listed above. Please refer to the file number in any correspondence regarding the grievance and direct any additional information or questions you may have to me.

The State Bar will review the grievance. As part of that review, the Bar may refer the grievance to a local grievance committee. If this happens, you will be notified in writing. In either case, you or other witnesses may be contacted. We may also contact the respondent for a response. You should not be concerned that the grievance is being ignored if you are not contacted, however. We assume that you have explained the grievance on the grievance form and generally will not contact you unless we need more information. After the review is completed a decision will be made and you will be notified in writing.

The N.C. State Bar's authority is restricted to determining whether a lawyer violated the Rules of Professional Conduct and, if so, imposing appropriate professional discipline. The State Bar cannot advise you or assist you concerning any legal matters in which you may be involved. **You should not wait until the grievance at the State Bar is resolved before seeking legal advice concerning any claims you may have or any lawsuit in which you are involved.**

Sincerely,

Susannah B. Cox  
Deputy Counsel

SBC/dp

Katherine E. Jean, Counsel

A. Root Edmonson, Fern Gunn Simeon, David R. Johnson, Jennifer A. Porter, Margaret T. Cloutier, Carmen Hoyme Bannon, Barry S. McNeill, Mary D. Winstead, G. Patrick Murphy, Susannah B. Cox, Joshua T. Walthall, Maria J. Brown, Alex G. Nicely, Savannah B. Perry, J. Cameron Lee - Deputy Counsel  
Leonor Bailey Hodge - Trust Account Compliance Counsel/Deputy Counsel



**The North Carolina State Bar**  
Office of Counsel

217 E. Edenton Street (27601)  
Post Office Box 25908  
Raleigh, North Carolina 27611  
Telephone (919) 828-4620  
Fax: (919) 834-8156  
Web: [www.ncbar.gov](http://www.ncbar.gov)

October 31, 2019

Mr. Monroe A. Miller Jr.  
2200 Camp Branch Rd.  
Waynesville, NC 28786

NOV 4 2019

Re: Grievance Received against James W. Kirkpatrick, Attorney  
Our file number: 19G1111

Dear Mr. Miller:

The grievance you filed against the above-named attorney was received on October 30, 2019 and has been assigned the file number listed above. Please refer to the file number in any correspondence regarding the grievance and direct any additional information or questions you may have to me.

The State Bar will review the grievance. As part of that review, the Bar may refer the grievance to a local grievance committee. If this happens, you will be notified in writing. In either case, you or other witnesses may be contacted. We may also contact the respondent for a response. You should not be concerned that the grievance is being ignored if you are not contacted, however. We assume that you have explained the grievance on the grievance form and generally will not contact you unless we need more information. After the review is completed a decision will be made and you will be notified in writing.

The N.C. State Bar's authority is restricted to determining whether a lawyer violated the Rules of Professional Conduct and, if so, imposing appropriate professional discipline. The State Bar cannot advise you or assist you concerning any legal matters in which you may be involved. **You should not wait until the grievance at the State Bar is resolved before seeking legal advice concerning any claims you may have or any lawsuit in which you are involved.**

Sincerely,

Susannah B. Cox  
Deputy Counsel

SBC/dp

Katherine E. Jean, Counsel

A. Root Edmonson, Fern Gunn Simeon, David R. Johnson, Jennifer A. Porter, Margaret T. Cloutier, Carmen Hoyne Bannon, Barry S. McNeill, Mary D. Winstead, G. Patrick Murphy, Susannah B. Cox, Joshua T. Walthall, Maria J. Brown, Alex G. Nicely, Savannah B. Perry, J. Cameron Lee - Deputy Counsel  
Leonor Bailey Hodge - Trust Account Compliance Counsel/Deputy Counsel

STATE OF NORTH CAROLINA. — — IN THE GENERAL COURT OF JUSTICE  
COUNTY OF HAYWOOD 3815 NOV 27 PM 3:37 SUPERIOR COURT DIVISION  
FILE NO. 19051282

BURNETTE DOYLE SUTTON, HAYWOOD COUNTY, C.S.C. )

Plaintiff, )

BY \_\_\_\_\_ )

v. )

COUNTY OF HAYWOOD, acting by )  
and through its Development Services )  
Department and Board of )  
Commissioners, )

Defendant. )

WRIT OF CERTIORARI

DEC 2 2019

This matter is before the Court upon the Petition of Plaintiff Burnette Doyle Sutton ("Plaintiff") seeking a Writ of Certiorari for the Superior Court's review of the decision by the County of Haywood, acting by and through its Developmental Services Department and Board of Commissioners, in denying Plaintiff a permit to operate a wrecker service and his request for a variance from the requirements of Chapter 114 of the Haywood County Ordinances.

Pursuant to Rule 19 of the General Rules of Practice for the Superior and District Courts Supplemental to the Rules of Civil Procedure and § 160A-393(f) of the North Carolina General Statutes, the County of Haywood is hereby ordered to prepare and certify to this Court, within thirty (30) days, the entire record of the proceedings below, which relate to Plaintiff's appeal of the Violation Notices. Plaintiff is directed to serve the Petition and this Writ upon each Defendant named in this action in the manner provided for service of a complaint under Rule 4(j) of the Rules of Civil Procedure and to file an executed copy of this Writ with the Court.

This the <sup>27<sup>th</sup></sup> day of November, 2019.

  
Clerk of Superior Court  
Haywood County

STATE OF NORTH CAROLINA  
COUNTY OF HAYWOOD

FILED

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION  
FILE NO. 19CV91282

2019 NOV 27 PM 3:27

BURNETTE DOYLE SUTTON,  
BY \_\_\_\_\_  
Plaintiff,

HAYWOOD COUNTY, C.S.C.

v.

PETITION FOR WRIT OF  
CERTIORARI

COUNTY OF HAYWOOD, acting by  
and through its Development Services  
Department and Board of  
Commissioners,  
Defendant.

NOW COMES Plaintiff Burnette Doyle Sutton ("Defendant"),  
complaining of Defendant County of Haywood, acting by and through its  
Development Services Department and Board of Commissioners, alleges and  
avers as follows:

**JURISDICTION, VENUE, AND PARTIES**

1. Plaintiff is a citizen of resident of Waynesville, Haywood County, North Carolina.
2. Plaintiff is the owner and sole proprietor of Doyle's Garage and Wrecker Services, a business in Waynesville, NC.
3. Defendant County of Haywood ("County") is organized and existing under the laws of the state of North Carolina. The County, through its Development Services Department, acts upon applications for permits to establish, operate, or maintain a wrecker service under Chapter 114 of the Haywood County Ordinances. The County also acts through its Board of Commissioners to hear appeals for a variance from the requirements of Chapter 114 of the Haywood County Ordinances.

4. Venue is proper in this Court.
5. This Court has personal jurisdiction over the parties and subject matter jurisdiction over this case.

#### FACTUAL BACKGROUND

6. Plaintiff is the sole owner of a property located at 3039 Crabtree Road (PIN 8628-33-4271), Waynesville, NC, 28785 (the "Property").

7. Plaintiff has owned the Property since February 2019 as shown on that general warranty deed recorded with the Officer of the Register of Deeds of Haywood County, North Carolina in Book 968, Page 1138. A true and accurate copy of the deed is attached hereto as Exhibit A and incorporated herein by reference as if fully set forth.

8. The Property is located within Haywood County.

9. In or about the summer of 2019, Plaintiff informed Haywood County Development Services that it planned to operate a wrecker service at the Property.

10. On or about August 22, 2019, the County sent Plaintiff a letter stating that the planned facility did not comply with Section 114.04 of the Haywood County Ordinances. A copy of that letter is attached hereto as Exhibit B, and incorporated herein by reference as if fully set forth.

11. Plaintiff contested that determination in September 2019 by appealing to the County and requesting a variance of the ordinance.

12. Plaintiff was not informed prior to the hearing that the hearing on his variance request would be quasi-judicial in nature and that he could be represented by counsel.

13. On October 21, 2019, the Haywood County Board of Commissioners, acting as a quasi-judicial body, held a hearing on Plaintiff's requested variance.

14. Plaintiff was not represented by counsel at the hearing or prepared to present evidence beyond his own testimony in support of a variance.

15. At the conclusion of the hearing, the Haywood County Board of Commissioners denied the request for a variance.

16. Board of Commissioners Chairman Ensley voted against the variance application despite the fact that he lives in the neighborhood where the Property is located.

**FIRST CAUSE OF ACTION**  
**PETITION FOR WRIT OF CERTIORARI**

17. The allegations set forth in Paragraphs 1 through 16 of this Petition are hereby incorporated by reference and realleged in this claim for relief as if set out herein in their entirety.

18. The County, acting by and through its Department of Development Services and Board of Commissioners, violated the Plaintiff's rights and erred in denying the Plaintiff's permit and request for a variance for the following reasons:

- a. The official who made the decision that Plaintiff appealed to the Board of Commissioners failed to provide Plaintiff with a copy of all documents and exhibits constituting the record upon which Plaintiff's appeal was taken in violation of N.C. Gen. Stat. § 160A-388(b1)(5).
- b. Plaintiff was prejudiced at the hearing by the presentation of matters that he was not aware would be presented, and the Board of Commissioners should have continued the hearing.



- c. Plaintiff was prejudiced at the hearing because he was not aware or informed that the hearing would be quasi-judicial in nature and that he had the right to be represented by counsel and present evidence in support of his variance application.
- d. Plaintiff was prejudiced at the hearing because the decision-making body was not sufficiently impartial to comply with due process principles.
- e. The Board of Commissioners, upon information and belief, erred and acted arbitrarily or capriciously because it is contrary to the available evidence that was presented at the hearing but not accepted by the Board of Commissioners and is not supported by the competent, material, and substantial evidence in the whole record.
- f. Upon information and belief, the standards set forth by the County in Chapter 114 of the Haywood County Ordinances are selectively enforced and therefore the County has acted unfairly towards Plaintiff.

19. Pursuant to N.C. Gen. Stat. § 153A-340(c1), § 160A-388(e), and Haywood County Ordinances Section 114.14(C), appeals of the decisions of the Board of Commissioners may be appealed by filing a petition for a writ of certiorari with the County Clerk of Court.

20. Plaintiff has standing to challenge the decision of the Board of Commissioners because he has an interest in the Property that is subject to the decision being appealed and because the Board of Commissioner's decision to deny him a variance is likely to have significantly adverse and destructive impacts on Plaintiff's business and on Plaintiff's use and enjoyment of the Property.

21. Plaintiff seeks a writ of certiorari from the Superior Court of Haywood County, North Carolina, to review the County's decision to deny him a permit to operate a wrecker service and/or a variance from the requirements of Chapter 114 of the Haywood County Ordinances.

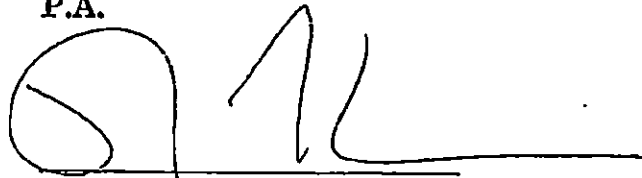
**PRAYER FOR RELIEF**

WHEREFORE the reasons herein set forth, Plaintiff respectfully prays:

1. That the Court reverse the decision and remand the case with appropriate instructions to the County to grant Plaintiff a permit under Chapter 114 of the Haywood County Ordinances and/or a variance from the requirements of Chapter 114 of the Haywood County Ordinances;
2. And, for such other relief as the Court deems fair and just.

This the 21<sup>st</sup> day of November, 2019.

**ALLEN STAHL & KILBOURNE,  
P.A.**



Jeffrey K. Stahl  
N.C. State Bar No. 32937  
Derek J. Allen  
N.C. State Bar No. 24091  
20 Town Mountain Rd. Suite 100  
Asheville, NC 28801  
828-254-4778  
828-254-6646 fax  
[jestahl@asklawnc.com](mailto:jestahl@asklawnc.com)  
[dja@asklawnc.com](mailto:dja@asklawnc.com)

PENDING REVIEW FOR TAX LISTING

DATE 02/25/2019 BY [Signature]



2019001553  
HAYWOOD CO, NC FEE \$26.00  
STATE OF NC REAL ESTATE EXTX  
\$500.00

PRESENTED & RECORDED  
02-25-2019 04:42:25 PM  
SHERRI C. ROGERS  
REGISTER OF DEEDS  
BY: HAVEN MUSE  
DEPUTY

BK: RB 968  
PG: 1138-1141

HAYWOOD COUNTY TAX CERTIFICATION

There are no delinquent taxes due that are a lien against parcel number(s) 8628 334271

Greg West, Haywood County Tax Collector

Date: 2-26-19 By: [Signature]

NORTH CAROLINA GENERAL WARRANTY DEED

Excise Tax: \$ 500.00

Parcel Identifier No. 8628-33-4271 Verified by \_\_\_\_\_ County on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_  
By: \_\_\_\_\_

Mail/Box to: John C. Kersten, Esq., 95 Depot St., Waynesville, NC 28786

This instrument was prepared by: John C. Kersten, Esq., 95 Depot St., Waynesville, NC 28786

Brief description for the Index: \_\_\_\_\_

THIS DEED made this 21 day of February, 2019, by and between

GRANTOR

GRANTEE

STEVE BAGBY and wife  
DONNA BAGBY  
610 Lost Cove  
Waynesville, NC 28785

BURNETT DOYLE SUTTON, single  
474 Balsam Ridge Road  
Waynesville, NC 28786

Enter in appropriate block for each Grantor and Grantee: name, mailing address, and, if appropriate, character of entity, e.g. corporation or partnership.

The designation Grantor and Grantee as used herein shall include said parties, their heirs, successors, and assigns, and shall include singular, plural, masculine, feminine or neuter as required by context.

WITNESSETH, that the Grantor, for a valuable consideration paid by the Grantee, the receipt of which is hereby acknowledged, has and by these presents does grant, bargain, sell and convey unto the Grantee in fee simple, all that certain lot, parcel of land or condominium unit situated in the City of \_\_\_\_\_ Iron Duff \_\_\_\_\_ Township, \_\_\_\_\_ Haywood \_\_\_\_\_ County, North Carolina and more particularly described as follows:

SEE EXHIBIT "A", ATTACHED HERETO AND MADE A PART HEREOF BY REFERENCE FOR A COMPLETE PROPERTY DESCRIPTION

The property hereinabove described was acquired by Grantor by instrument recorded in Book 946 page 1471

All or a portion of the property herein conveyed \_\_\_\_\_ includes or X does not include the primary residence of a Grantor.

A map showing the above described property is recorded in Plat Book C page 6284



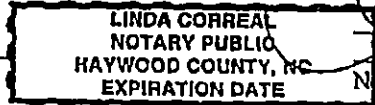
TO HAVE AND TO HOLD the aforesaid lot or parcel of land and all privileges and appurtenances thereto belonging to the Grantee in fee simple.

And the Grantor covenants with the Grantee, that Grantor is seized of the premises in fee simple, has the right to convey the same in fee simple, that title is marketable and free and clear of all encumbrances, and that Grantor will warrant and defend the title against the lawful claims of all persons whomsoever, other than the following exceptions:

IN WITNESS WHEREOF, the Grantor has duly executed the foregoing as of the day and year first above written.

By: \_\_\_\_\_ (Entity Name) \_\_\_\_\_ Print/Type Name: Steve Bagby (SEAL)  
 \_\_\_\_\_ Print/Type Name: STEVE BAGBY  
 By: \_\_\_\_\_ (SEAL)  
 Print/Type Name & Title: \_\_\_\_\_ Print/Type Name: DONNA BAGBY  
 \_\_\_\_\_ (SEAL)  
 By: \_\_\_\_\_ (SEAL)  
 Print/Type Name & Title: \_\_\_\_\_ Print/Type Name: \_\_\_\_\_

State of NC - County or City of Haywood  
 I, the undersigned Notary Public of the County or City of Haywood and State aforesaid, certify that STEVE BAGBY personally appeared before me this day and acknowledged the due execution of the foregoing instrument for the purposes therein expressed. Witness my hand and Notarial stamp or seal this 25 day of February, 2019.

My Commission Expires: 6-13-21 (Affix Seal)  Linda Correal Notary Public  
 \_\_\_\_\_ Notary's Printed or Typed Name

State of \_\_\_\_\_ - County or City of \_\_\_\_\_  
 I, the undersigned Notary Public of the County or City of \_\_\_\_\_ and State aforesaid, certify that DONNA BAGBY personally appeared before me this day and acknowledged the due execution of the foregoing instrument for the purposes therein expressed. Witness my hand and Notarial stamp or seal this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

My Commission Expires: \_\_\_\_\_ (Affix Seal) \_\_\_\_\_ Notary Public  
 \_\_\_\_\_ Notary's Printed or Typed Name

State of \_\_\_\_\_ - County or City of \_\_\_\_\_  
 I, the undersigned Notary Public of the County or City of \_\_\_\_\_ and State aforesaid, certify that \_\_\_\_\_ personally came before me this day and acknowledged that \_\_\_\_\_ he is the \_\_\_\_\_ of \_\_\_\_\_, a North Carolina or \_\_\_\_\_ corporation/limited liability company/general partnership/limited partnership (strike through the inapplicable), and that by authority duly given and as the act of such entity, \_\_\_\_\_ he signed the foregoing instrument in its name on its behalf as its act and deed. Witness my hand and Notarial stamp or seal, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.


My Commission Expires: \_\_\_\_\_ (Affix Seal) \_\_\_\_\_ Notary Public  
 \_\_\_\_\_ Notary's Printed or Typed Name

TO HAVE AND TO HOLD the aforesaid lot or parcel of land and all privileges and appurtenances thereto belonging to the Grantee in fee simple.

And the Grantor covenants with the Grantee, that Grantor is seized of the premises in fee simple, has the right to convey the same in fee simple, that title is marketable and free and clear of all encumbrances, and that Grantor will warrant and defend the title against the lawful claims of all persons whomsoever, other than the following exceptions:

IN WITNESS WHEREOF, the Grantor has duly executed the foregoing as of the day and year first above written.

By: \_\_\_\_\_ (Entity Name) \_\_\_\_\_ Print/Type Name: STEVE BAGBY (SEAL)

Print/Type Name & Title: \_\_\_\_\_  \_\_\_\_\_ Print/Type Name: DONNA BAGBY (SEAL)

By: \_\_\_\_\_ (SEAL)

Print/Type Name & Title: \_\_\_\_\_ Print/Type Name: \_\_\_\_\_

By: \_\_\_\_\_ (SEAL)

Print/Type Name & Title: \_\_\_\_\_ Print/Type Name: \_\_\_\_\_

State of \_\_\_\_\_ - County or City of \_\_\_\_\_

I, the undersigned Notary Public of the County or City of \_\_\_\_\_ and State aforesaid, certify that STEVE BAGBY personally appeared before me this day and acknowledged the due execution of the foregoing instrument for the purposes therein expressed. Witness my hand and Notarial stamp or seal this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.


My Commission Expires: \_\_\_\_\_ Notary Public

(Affix Seal) \_\_\_\_\_ Notary's Printed or Typed Name



State of Florida - County or City of Duval

I, the undersigned Notary Public of the County or City of Duval and State aforesaid, certify that DONNA BAGBY personally appeared before me this day and acknowledged the due execution of the foregoing instrument for the purposes therein expressed. Witness my hand and Notarial stamp or seal this 21<sup>st</sup> day of February, 2019.

My Commission Expires: 3/14/2023  Angela V. Scarborough  
 (Affix Seal) NOTARY PUBLIC  
 STATE OF FLORIDA  
 Comm# GG278185  
 \_\_\_\_\_ Notary's Printed or Typed Name

State of \_\_\_\_\_ - County or City of \_\_\_\_\_ Expires 3/14/2023

I, the undersigned Notary Public of the County or City of \_\_\_\_\_ and State aforesaid, certify that \_\_\_\_\_ personally came before me this day and acknowledged that \_\_\_\_\_ he is the \_\_\_\_\_ of \_\_\_\_\_ a North Carolina or \_\_\_\_\_ corporation/limited liability company/general partnership/limited partnership (strike through the inapplicable), and that by authority duly given and as the act of such entity, \_\_\_\_\_ he signed the foregoing instrument in its name on its behalf as its act and deed. Witness my hand and Notarial stamp or seal, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

My Commission Expires: \_\_\_\_\_ Notary Public

(Affix Seal) \_\_\_\_\_ Notary's Printed or Typed Name

EXHIBIT 'A'

BEING all of Lot Y-3, containing 7.285 acres, as per survey by L. Kevin Ensley, RLS, dated February 20, 2013, referred to as Yates Cove Tract for BG&W, LLC, drawing number B-002-13, and recorded in Plat Cabinet C at Slot 6284, Haywood County Registry.

BEING the identical property described in deed dated February 26, 2018 from John C. Kersten, Substitute Trust to Steve Bagby and wife, Donna Bagby recorded in Book 946, page 1471, Haywood County Registry.

Sutton pf Bagby  
19-210.95 lc



**Haywood County  
Development Services**

157 Paragon Parkway, Suite 200  
Clyde, NC 28721  
Phone: 828-452-6632  
Fax: 828-452-6798

August 22, 2019

Mr. Burnette Doyle Sutton  
1691 South Main Street  
Waynesville, NC 28786

Mr. Sutton,

I am in receipt of your plan submission for a wrecker service permit at 3039 Crabtree Road (8628-33-4271) as required by Haywood County Code of Ordinances: Chapter 114 Junkyards and Other Facilities section 114.11.

After review for compliance, it is determined the facility does NOT comply with Section 114.04 General Standards A (3) "not be located closer than 500 feet of a residence, school, or business". Your proposed facility is located closer than 500 feet of residences owned by David L. Harp (PIN 8628-33-0607 & 8628-33-2658).

Your request for a permit to operate a wrecker service at 3039 Crabtree Road is denied based on the above paragraph.

Pursuant to Chapter 114 Junkyards and Other Facilities section 114.14 Appeals and Variances, you may appeal this decision to the Haywood County Board of Commissioners within 10 days of receipt of this action. I have included a copy of Chapter 114 Junkyards and Other Facilities for your convenience.

The attached original letter was mailed certified to the address listed in the tax records because the submitted plan did not have names or addresses as required by the Ordinance. The new mailing address was provided by Randy Best on August 21<sup>st</sup>, 2019.

Kris R. Boyd

A handwritten signature in black ink, appearing to read "Randy Best".

Development and Facilities Services Director

cc: Bryant Morehead  
Frank Queen  
Randy Best  
Kevin Ensley  
Jodie Ferguson





**Haywood County  
Development Services**

157 Paragon Parkway, Suite 200  
Clyde, NC 28721  
Phone: 828-452-6632  
Fax: 828-452-6798

August 16, 2019

Mr. Burnette Doyle Sutton  
474 Balsam Ridge Road  
Waynesville, NC 28786

Mr. Sutton,

I am in receipt of your plan submission for a wrecker service permit at 3039 Crabtree Road (8628-33-4271) as required by Haywood County Code of Ordinances: Chapter 114 Junkyards and Other Facilities section 114.11.

After review for compliance, it is determined the facility does NOT comply with Section 114.04 General Standards A (3) "not be located closer than 500 feet of a residence, school, or business". Your proposed facility is located closer than 500 feet of residences owned by David L. Harp (PIN 8628-33-0607 & 8628-33-2658).

Your request for a permit to operate a wrecker service at 3039 Crabtree Road is denied based on the above paragraph.

Pursuant to Chapter 114 Junkyards and Other Facilities section 114.14 Appeals and Variances, you may appeal this decision to the Haywood County Board of Commissioners within 10 days of receipt of this action. I have included a copy of Chapter 114 Junkyards and Other Facilities for your convenience.

Kris R. Boyd

Development and Facilities Services Director

cc: Bryant Morehead  
Frank Queen  
Randy Best  
Kevin Ensley  
Jodie Ferguson



## CHAPTER 114: JUNKYARDS AND OTHER FACILITIES

### Section

- 114.01 Definitions
  - 114.02 Findings, Purposes and Objectives
  - 114.03 Geographic Coverage
  - 114.04 General Standards
  - 114.05 Additional Standards
  - 114.06 Exemptions
  - 114.07 Fencing and Screening Requirements
  - 114.08 Maintenance
  - 114.09 Registration and Permitting of Pre-Existing Junkyards, Service Stations, Garages, Used Car Lots, Wrecker Services, and Motor Vehicle Storage Areas
  - 114.10 Non-Conforming Pre-Existing Junkyards, Service Stations, Garages, Used Car Lots, Wrecker Services, and Motor Vehicle Storage Areas
  - 114.11 Permit Required
  - 114.12 Enforcement Provisions
  - 114.13 Penalties and Remedies for Violations
  - 114.14 Appeals and Variances
  - 114.15 Severability
- (Ord. passed 10-06-97; Am. Ord. passed 05-01-00)

### § 114.01 DEFINITIONS.

For the purposes of this Chapter, certain terms and words are hereby defined; words used in the present tense shall include the future; words used in the singular number shall include the plural number, and the plural the singular; and the word "shall" is mandatory and not directory.

**ACTIVITY.** The use of a land parcel or facility for a service station, garage, used car lot, wrecker service, junkyard, or motor vehicle storage area.

**AUTOMOBILE GRAVEYARD.** More than 10 vehicles meeting the definition of junk motor vehicle as defined in this chapter located upon a land parcel that has not been issued a permit as a service station, garage, used car lot, wrecker service, junkyard, or motor vehicle storage area.

**BUILDING.** Any structure having a roof supported by columns or walls, and designated or intended for the shelter, support, enclosure or protection of persons, animals or chattels.

## Haywood County – Business Regulations

**ENCLOSED BUILDING.** A permanent structure located on a parcel of land configured so as to prevent its contents from being visible from the public road or adjacent land parcel of another.

**ENFORCEMENT OFFICER.** Duly sworn employees of the Planning Office and Haywood County Sheriff's Office and such other persons as may be authorized by the Haywood County Board of Commissioners. The Enforcement Officer is also referred to as the "Officer" in this chapter.

**ESTABLISHMENT.** Any real property on which, or in which, there is operated or maintained any commercial, industrial, or service business or activity.

**FACILITY.** A structure used for a service station, garage, used car lot, wrecker service, junkyard, or motor vehicle storage area.

**FARM OR BONAFIDE FARM.** One or more contiguous land parcels under common or separate ownership on which agricultural operations are conducted as the primary use and which meets the definition of agricultural land or horticultural land under G.S. § 105-277.2 (1) and (3). For the purposes of this chapter, farm operations include the cultivation of crops, forest products, or the husbandry of livestock, poultry, or fish.

**FENCE.** A continuous, opaque, unperforated barrier extending from the surface of the ground to a uniform height of not less than six feet from the ground at any given point, constructed of dirt, wood, stone, steel or other metal, or any substance of a similar nature and strength.

**GARAGE.** An establishment which is maintained and operated for the primary purpose of making mechanical and/or body repairs to motor vehicles.

**GATE.** A door or other device attached to a fence which, when opened, provides a means of ingress and egress of persons and things for which it was intended, and which, when closed, forms a continuous barrier as a part of the fence to which it is attached.

**HEALTH NUISANCE OR SAFETY HAZARD VEHICLE.** A motor vehicle, used machinery or other used materials may be declared to be a health nuisance or safety hazard when it is found to be:

- (1) A breeding ground or harbor for mosquitoes or other insects, snakes, rodents or other pests; or
- (2) A point of collection of pools or ponds of water; or
- (3) A point of concentration of quantities of gasoline, oil or other flammable or explosive materials as evidenced by odor; or

(4) One which has areas of confinement which cannot be operated from the inside such as trunks, hoods, etc. or is a source of danger from exposed surfaces of metal, glass or other rigid materials; or

(5) So located that there is a danger of the vehicle falling or turning over; or

(6) A point of concentration of car radiators, batteries or other materials that pose either immediate or long-term danger of environmental degradation.

**HOUSING UNIT.** A house, an apartment, a group of rooms, or a single room occupied or intended for occupancy as separate living quarters.

**JUNK.** Scrapped copper, brass, rope, rags, batteries, paper, trash, rubber, debris, waste, iron, steel, or other scrap ferrous or non-ferrous materials; or wrecked, dismantled or uninhabitable mobile homes.

**JUNK MOTOR VEHICLE.** A motor vehicle or other motorized equipment or parts thereof that:

(1) Is fully or partially dismantled or wrecked; or

(2) Cannot be self-propelled in its present condition; or

(3) Does not display a current license plate.

**JUNKYARD.** Any land parcel which is maintained, operated, or used for storing, keeping, buying or selling junk, or junk motor vehicles. The term "junkyard" shall not include any county-operated landfills, collection, or recycling facilities.

**JUNKYARD CONTROL ACT.** G.S. § 136-141 through 155 (Article 12) which delegates to the N.C. Department of Transportation the responsibility to regulate "junkyards" and "automobile graveyards" located on interstate and federal-aid primary system highways.

**LAND PARCEL.** A tract of land which is separately described by the Haywood County Land Records/GIS Office.

**MOTOR VEHICLE.** Any machine designed or intended to travel over land by self-propulsion or while attached to any self-propelled vehicle.

**MOTOR VEHICLE STORAGE AREA.** One or more contiguous land parcels under common or separate ownership where junk motor vehicles are stored.

**OPAQUE.** Impervious to light.

**RECYCLING FACILITY.** A temporary or permanent site at which glass, aluminum cans, paper, plastic, clothes or similar materials commonly collected for recycling are collected and

## Haywood County – Business Regulations

moved off site or kept on site in enclosed buildings, storage bins, solid waste containers, truck trailers or other rolling stock.

**SERVICE STATION.** An establishment which is maintained and operated for the purpose of making mechanical repairs, servicing and/or washing of motor vehicles.

**USED CAR LOT.** An establishment which is maintained and operated for the purpose of selling used automobiles under a license issued by North Carolina Division of Motor Vehicles.

**VECTOR.** An organism that carries pathogens from one host to another.

**VEGETATION.** All season or evergreen vegetation including evergreen trees with leaves or foliage at all seasons of the year. Examples are white pine, southern yellow pine, hemlock and spruce trees.

**WIRE FENCE.** A continuous, translucent, perforated barrier extending from the surface of the ground to a uniform height of not less than six feet from the ground at any given point, constructed of wire, steel or nylon mesh, or any substance of a similar nature and strength, but which perforations or openings are no larger than 16 square inches.

**WRECKER SERVICE.** A land parcel which is used for the purpose of storing motor vehicles.  
(Ord. passed 10-06-97; Am. Ord. passed 05-01-00)

### § 114.02 FINDINGS, PURPOSES AND OBJECTIVES.

It is hereby found that automobile graveyards and health nuisance or safety hazard vehicles are inherently dangerous and should be prohibited and that junkyards, service stations, garages, used car lots, wrecker services, or motor vehicle storage areas should be regulated.

The purposes and objectives of this chapter include the following:

- (1) To promote the health, safety and welfare of the citizens of Haywood County;
  - (2) To protect citizens and residents;
  - (3) To promote or enhance the protection of property values throughout the county;
  - (4) To attract tourists and promote the prosperity, economic well-being and general welfare of the county;
  - (5) To protect surface and groundwater quality; and
  - (6) To preserve and protect the natural environment in Haywood County.
- (Ord. passed 10-06-97; Am. Ord. passed 05-01-00)

**§ 114.03 GEOGRAPHIC COVERAGE.**

These regulations shall be in effect in all unincorporated portions of Haywood County which are not under the jurisdiction of any municipality.  
(Am. Ord passed 08-21-06)

**§ 114.04 GENERAL STANDARDS.**

(A) All junkyards which are established from and after the effective date of this chapter (November 1, 1997) and any service station, garage, used car lot, wrecker service, or motor vehicle storage area shall meet the following standards:

(1) A minimum setback of 30 feet from any public or private road surface and outside the right of way of any public or private road; and

(2) Screened as herein provided, or not visible from the main-traveled way and adjacent properties at any season of the year, or fenced, or fenced and screened and maintained as provided for in § 114.07, subsection (B); and

(3) Not be located closer than 500 feet of a residence, school or business; and

(4) Have a 50 foot vegetative buffer from all perennial streams or water bodies as shown on the U.S.G.S. topographic map.

(B) The following criteria shall be applicable to pre-existing junkyards which are registered within 180 days of November 1, 1997, the original effective date of this chapter and service stations, garages, used car lots, wrecker services, or motor vehicle storage areas that are registered within 30 days of May 1, 2000 and no portion of any such junkyard, service station, garage, used car lot, wrecker service, or motor vehicle storage area shall be operated, maintained or expanded, except those meeting at least one of the following conditions:

(1) Those which are screened by natural land features or vegetation, berms, plantings, fences or other appropriate means which sufficiently preserves the policy and intent of this chapter, or are screened and/or fenced in accordance with § 114.07; or

(2) Those which are located where the topography and terrain of adjacent lands is such that screening would be ineffective or useless. In these instances, the Enforcement Officer may waive all or part of the fencing or screening requirements, but shall require fencing and screening insofar as is practical and feasible, at all points where such fencing and/or screening shall be necessary to screen or partially screen the view of the property or a health nuisance or safety hazard vehicle as defined by this chapter.

(C) Automobile graveyards are prohibited.  
(Ord. passed 10-06-97; Am. Ord. passed 05-01-00)

**§ 114.05 ADDITIONAL STANDARDS.**

All junkyards, service stations, garages, used car lots, wrecker services, and motor vehicle storage areas which are established from and after the effective date of this chapter (November 1, 1997), or that have been issued a current valid permit to establish, operate or maintain a junkyard, as provided in § 114.10 hereof shall meet the following additional standards:

- (1) **JUNKYARDS** that store more than ten junk motor vehicles, for more than thirty days, shall meet the fencing and screening requirements of § 114.07 and registration and permit requirements of § 114.09.
- (2) **SERVICE STATIONS** that store more than three junk motor vehicles, for more than thirty days, shall meet the fencing and screening requirements of § 114.07 and registration and permit requirements of § 114.09.
- (3) **GARAGES** that store more than three junk motor vehicles, for more than thirty days, shall meet the fencing and screening requirements of § 114.07 and registration and permit requirements of § 114.09.
- (4) **USED CAR LOTS** that store more than three junk motor vehicles, for more than thirty days, shall meet the fencing and screening requirements of § 114.07 and registration and permit requirements of § 114.09.
- (5) **WRECKER SERVICES** that store more than three junk motor vehicles, for more than thirty days, shall meet the fencing and screening requirements of § 114.07 and registration and permit requirements of § 114.09.
- (6) **MOTOR VEHICLE STORAGE AREAS** that store more than three junk motor vehicles, for more than thirty days, shall meet the fencing and screening requirements of § 114.07 and registration and permit requirements of § 114.09.  
(Ord. Passed 10-06-97; Am. Ord. passed 05-01-00)

**§ 114.06 EXEMPTIONS.**

The following are exempted from regulation by this chapter:

- (1) Recycling facilities using enclosed structures or solid waste containers, bins, truck trailers and rolling stock to store materials and equipment; or
- (2) Any bona fide farm; or
- (3) Motor vehicles that are not visible from outside an enclosed building and are listed as taxable personal property in the Haywood County Tax Assessors Office; or
- (4) Abandoned vehicles as defined in G.S. § 153A-132.

(Ord. Passed 10-06-97; Am. Ord. passed 05-01-00)

**§ 114.07 FENCING AND SCREENING REQUIREMENTS.**

All new and pre-existing facilities, land parcels, or activities regulated in accordance with this chapter shall be operated subject to the following fencing and screening conditions:

(A) New land parcels created, activities commenced or facilities established after the effective date of this chapter shall comply with the chapter by registering, obtaining a permit, meeting the requirements of § 114.04 (A) and meeting the following fencing and screening requirements of this section:

- (1) The facility, parcel, or activity shall be entirely surrounded by:
  - (a) an opaque fence at least six feet in height; or
  - (b) by either a woven or welded wire (14 gauge minimum) fence at least six feet in height; or
  - (c) chain link fence a minimum of six feet in height.

With respect to (b) and (c) above, there shall be vegetation that is at least three feet high and no more than six feet apart when planted. The vegetation shall be planted at the time the facility begins operation, or at the next appropriate planting time. The fence and vegetation shall surround the minimum area necessary for the facility to not be visible from a point at the same elevation as the facility. The vegetation shall be planted on the outbound side of the fence, contiguous to, and not more than eight feet from the fence. The vegetation shall be maintained as a continuous, unbroken hedgerow for the period the property is used as a regulated facility. Each owner, operator, or maintainer of a facility shall utilize good horticultural techniques such as pruning, mulching and proper fertilization, so that the vegetation will have maximum density and foliage. Dead or diseased vegetation shall be replaced at the next appropriate planting time.

(2) All operations, equipment, junk and/or junk motor vehicles shall be kept within the confines of the fence or enclosed building at all times.

(B) Pre-existing activities regulated and operating with a proper business license or valid tax number from the North Carolina Department of Revenue on the effective date of this chapter (November 1, 1997) shall comply with this chapter by obtaining a permit as provided in § 114.09 and meeting the requirements for pre-existing service stations, garages, used car lots, wrecker services, junkyard, or motor vehicle storage areas, as set forth in § 114.04, General Standards, subsections B(1) or B(2), or meeting one of the following conditions:

- (1) Remove all junk, vehicles or equipment that may be located within 15 feet of a public or private road surface to an area further than 15 feet from the road surface; and install a fence with an all-season vegetation screening between junk materials and property lines; or

**Haywood County – Business Regulations**

(2) Screen and fence the junkyard in accordance with the screening and fencing provisions of § 114.07 (B) for new junkyards; provided, however, if topography renders fencing and screening useless and ineffective, the Enforcement Officer may waive all or part of the fencing and screening requirements as provided in § 114.04 (B)-(3) of this chapter; or

(3) Place in an enclosed building all items regulated by this chapter.  
(Ord. passed 10-06-97; Am. Ord. passed 05-01-00)

**§ 114.08 MAINTENANCE.**

All junkyards, service stations, garages, used car lots, wrecker services, or motor vehicle storage areas shall be maintained to protect the public from health nuisances and safety hazards. The Enforcement Officer shall inspect each facility once each year to determine that the chapter provisions are being followed. The Enforcement Officer may call upon the health department for advice and consultation as needed regarding vector or rodent problems. Should vectors be identified, the owner/operator/maintainer shall be notified of a violation in writing. Within 30 days of the receipt of the letter, the owner/operator/maintainer shall submit satisfactory evidence to the health department that vectors have been eliminated. Failure to comply with this section may result in revocation of the permit as well as other penalties and remedies for violation as provided for in § 114.13.

(Ord. passed 10-06-97; Am. Ord. passed 05-01-00)

**§ 114.09 REGISTRATION AND PERMITTING OF PRE-EXISTING JUNKYARDS, SERVICE STATIONS, GARAGES, USED CAR LOTS, WRECKER SERVICES, AND MOTOR VEHICLE STORAGE AREAS.**

All owners, operators or maintainers of junkyards existing on the effective date of this chapter (November 1, 1997) shall register same with the Enforcement Officer within a period of 180 days beginning with the effective date of this chapter. All owners, operators or maintainers of service stations, garages, used car lots, wrecker services, and motor vehicle storage areas shall register same with the Enforcement Officer within 30 days from May 1, 2000. All existing junkyards, service stations, garages, used car lots, wrecker services, and motor vehicle storage areas that have not been registered within the stated time shall be in violation of this chapter. Following registration, a permit shall be applied for and obtained as provided for in § 114.11.

(Ord. passed 10-06-97; Am. Ord. passed 05-01-00)

**§ 114.10 NON-CONFORMING PRE-EXISTING JUNKYARDS, SERVICE STATIONS, GARAGES, USED CAR LOTS, WRECKER SERVICES, AND MOTOR VEHICLE STORAGE AREAS.**

(A) All existing junkyards at the effective date of this chapter, registered in accordance with the preceding section, shall be granted a compliance period of 12 months from the effective date of registration to conform to the chapter. All existing junkyards that have not registered



within this period shall be in violation of this chapter. The Enforcement Officer shall monitor such facility at least annually.

(B) All service stations, garages, used car lots, wrecker services, and motor vehicle storage areas existing at the effective date of this chapter, registered in accordance with § 114.09, shall be granted a compliance period of 90 days from the effective date of registration to conform to the chapter. All existing facilities that have not registered within this period shall be in violation of this chapter. The Enforcement Officer shall monitor each facility at least annually. (Ord. passed 10-06-97; Am. Ord. passed 05-01-00)

#### § 114.11 PERMIT REQUIRED.

No person, firm or business entity shall establish, operate or maintain a junkyard, service station, garage, used car lot, wrecker service, or motor vehicle storage area at any single location without obtaining a permit for that location. Application for the permit shall be made to the Enforcement Officer, on such forms as he shall prescribe. A plan prepared by the applicant shall be submitted as part of the permitting process.

The plan shall indicate setbacks, location of road rights-of-way, all proposed or existing structures, driveways, entrances, fencing, screening, types of fencing, types of screening, dimensions, gross acreage, owner(s) names(s), address(es), preparer of plan name(s) and address(es). Plans may be drawn to scale or freehand with distances marked, on paper large enough to show details. Three (3) copies shall be submitted.

No expansion, whether pre-existing or newly permitted, may be undertaken until a permit as a new facility is first obtained in accordance with this Section. (Ord. passed 10-06-97; Am. Ord. passed 05-01-00)

#### § 114.12 ENFORCEMENT PROVISIONS.

This chapter shall be enforced by the Enforcement Officer. The Officer may call upon other agencies, departments, or offices as necessary to assist in the enforcement of this chapter.

In addition, whenever the Officer receives a written complaint alleging a violation of this chapter, the Officer shall investigate the complaint, take whatever action is warranted, and inform the complainant in writing what actions have been or will be taken. The complainant shall provide their name, address, and telephone number upon making a written complaint.

The owner, tenant or occupant of any building or land or part thereof and agent or other person who participates in, assists, directs, creates, or maintains any junkyard, service station, garage, used car lot, wrecker service, junkyard, or motor vehicle storage area that is contrary to the requirements of this chapter, shall be held responsible for the violation of this chapter and shall suffer the penalties and be subject to the remedies herein provided.

The following procedure shall apply upon discovery of a violation:

(1) If the Officer finds that any provision of this chapter is being violated, he shall send a written notice to the person responsible for such violation, indicating the nature of the violation, ordering the action necessary to correct it, and advising the violator of the number of days within which the violation shall be corrected. The violator shall be informed of his right to appeal to the Board of Commissioners.

(2) Notwithstanding the foregoing, in cases when delay would seriously threaten the effective enforcement of this chapter or pose a danger to the public health, safety or welfare, the Enforcement Officer may seek enforcement without prior written notice by invoking the penalties authorized in this section.

(Ord. passed 10-06-97; Am. Ord. passed 05-01-00)

#### § 114.13 PENALTIES AND REMEDIES FOR VIOLATIONS.

Violations of the provisions of this chapter or failure to comply with any of its requirements, including violations of any conditions and safeguards established, shall constitute a misdemeanor, punishable by a fine of up to \$50.00 or a maximum 30 days imprisonment as provided in G.S. § 14-4.

Any act constituting a violation of the provisions of this chapter or a failure to comply with any of its requirements shall subject the offender to a civil penalty of \$25.00 per violation. Each day shall constitute a separate violation. If the offender fails to pay this penalty within 10 days after being served with a notice of violation, the penalty may be recovered by the county in a civil action in the nature of a debt.

This chapter may also be enforced by appropriate equitable action. Such remedy may include court order of abatement as part of a judgment in the cause. The abatement order may include actions required to make the facility, land parcel or activity comply with the provisions of this chapter at the owner's expense.

Any one, all, or any combination of the foregoing penalties and remedies may be used to enforce this chapter. In addition to the foregoing enforcement provisions, this chapter may be enforced by any remedy provided in G.S. § 153A-123, including, but not limited to, all appropriate equitable remedies provided in G.S. § 153A-123(d) and particularly the remedy of injunction and order of abatement as allowed in G.S. § 153A-123(e).

Any building permit(s) associated with property that has a permit may be revoked by the permit-issuing authority (in accordance with the provisions of this section) if the permit holder fails to develop or maintain the property in accordance with the plans submitted, the requirements of this chapter, or any additional requirements lawfully imposed.

Before such other permit(s) may be revoked, the permit holder shall be given 10 days written notice of intent to revoke a permit. The notice shall inform the holder of the reasons for

the revocation and of his right to obtain an informal hearing on the allegations before the County Manager. If any permit is revoked, the Enforcement Officer shall provide to the permittee a written statement of the decision and the reasons why the action has been taken.

(Ord. passed 10-06-97; Am. Ord. passed 05-01-00)

#### § 114.14 APPEALS AND VARIANCES.

(A) Unless otherwise provided, appeals from any action taken by the Enforcement Officer shall be filed with the Board of Commissioners within 10 days of receipt of notice of such action. The Board of Commissioners may authorize relief from these provisions when, in its opinion, undue hardship may result from strict compliance.

(B) The Board of Commissioners may authorize upon appeal in specific cases such variance from the terms of this chapter as will not be contrary to the public interest where, owing to special conditions, a literal enforcement of the provisions of this chapter will result in practical difficulty or unnecessary hardship. Such variance may be granted in individual cases upon a finding by the Board of Commissioners that the following conditions exist:

(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;

(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;

(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;

(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; and

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

A copy of the decision by the Board of Commissioners shall be prepared and furnished to the applicant within 10 days of its rendition. In granting any variance, the Board of Commissioners may prescribe appropriate conditions and safeguards to insure conformity with this chapter. Violation of such condition and safeguards, when made a part of the terms under which the variance is granted, shall be deemed a violation of this chapter.

(C) Decision of the Board of Commissioners may be appealed. A petition for a writ of certiorari may be filed with the County Clerk of Court within 30 days after the later of the following occurrences:

**Haywood County – Business Regulations**

(1) A written copy of the Board of Commissioners decision has been filed in the office of the Enforcement Officer; and

(2) A written copy of the Board of Commissioners decision has been delivered, by personal service or certified mail, return receipt requested, to the applicant or appellant and every other aggrieved party who has filed a written request for such copy prior to or at the hearing of the case.

A copy of the petition for writ of certiorari shall be served upon the county through the office of the County Manager.

(Ord. passed 10-06-97; Am. Ord. passed 05-01-00)

**§ 114.15 SEVERABILITY.**

Should any section or provision in this ordinance be declared invalid or unconstitutional by any court of competent jurisdiction, such declaration shall not affect the validity of the ordinance as a whole or any part thereof which is not specifically declared to be invalid or unconstitutional.

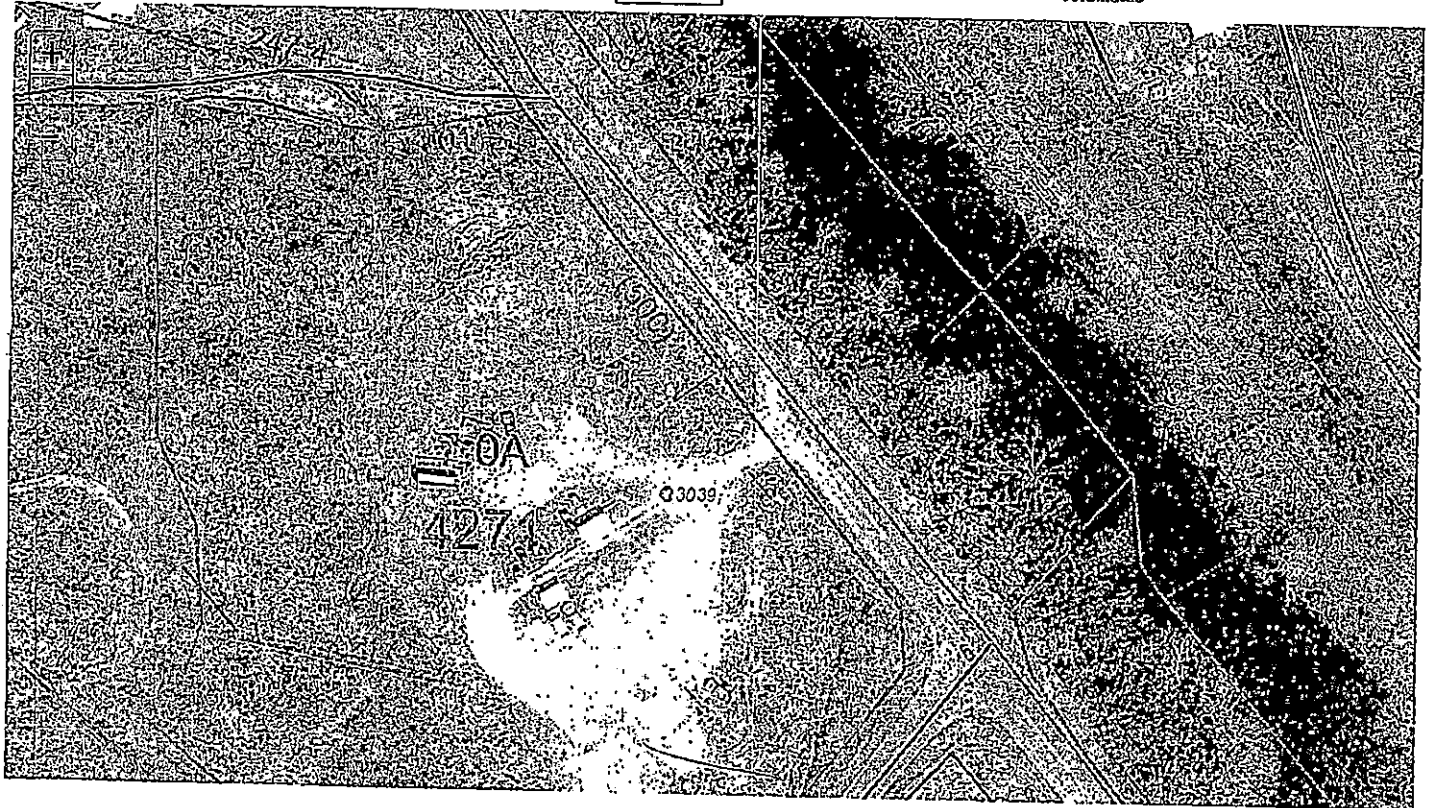
(Ord. passed 10-06-97; Am. Ord. passed 05-01-00)

8628-33-4271

# Haywood County

North Carolina

- Zoom IN
- Zoom Out
- Full Extent
- Pan
- Last View
- Next View
- Identify
- Select
- StreetView
- Measure
- Zoom To Coordinates
- Draw Tool
- Clear
- Print



## CHAPTER 114: JUNKYARDS AND OTHER FACILITIES

### Section

- 114.01 Definitions
  - 114.02 Findings, Purposes and Objectives
  - 114.03 Geographic Coverage
  - 114.04 General Standards
  - 114.05 Additional Standards
  - 114.06 Exemptions
  - 114.07 Fencing and Screening Requirements
  - 114.08 Maintenance
  - 114.09 Registration and Permitting of Pre-Existing Junkyards, Service Stations, Garages, Used Car Lots, Wrecker Services, and Motor Vehicle Storage Areas
  - 114.10 Non-Conforming Pre-Existing Junkyards, Service Stations, Garages, Used Car Lots, Wrecker Services, and Motor Vehicle Storage Areas
  - 114.11 Permit Required
  - 114.12 Enforcement Provisions
  - 114.13 Penalties and Remedies for Violations
  - 114.14 Appeals and Variances
  - 114.15 Severability
- (Ord. passed 10-06-97; Am. Ord. passed 05-01-00)

### § 114.01 DEFINITIONS.

For the purposes of this Chapter, certain terms and words are hereby defined; words used in the present tense shall include the future; words used in the singular number shall include the plural number, and the plural the singular; and the word "shall" is mandatory and not directory.

**ACTIVITY.** The use of a land parcel or facility for a service station, garage, used car lot, wrecker service, junkyard, or motor vehicle storage area.

**AUTOMOBILE GRAVEYARD.** More than 10 vehicles meeting the definition of junk motor vehicle as defined in this chapter located upon a land parcel that has not been issued a permit as a service station, garage, used car lot, wrecker service, junkyard, or motor vehicle storage area.

**BUILDING.** Any structure having a roof supported by columns or walls, and designated or intended for the shelter, support, enclosure or protection of persons, animals or chattels.

**ENCLOSED BUILDING.** A permanent structure located on a parcel of land configured so as to prevent its contents from being visible from the public road or adjacent land parcel of another.

**ENFORCEMENT OFFICER.** Duly sworn employees of the Planning Office and Haywood County Sheriff's Office and such other persons as may be authorized by the Haywood County Board of Commissioners. The Enforcement Officer is also referred to as the "Officer" in this chapter.

**ESTABLISHMENT.** Any real property on which, or in which, there is operated or maintained any commercial, industrial, or service business or activity.

**FACILITY.** A structure used for a service station, garage, used car lot, wrecker service, junkyard, or motor vehicle storage area.

**FARM OR BONAFIDE FARM.** One or more contiguous land parcels under common or separate ownership on which agricultural operations are conducted as the primary use and which meets the definition of agricultural land or horticultural land under G.S. § 105-277.2 (1) and (3). For the purposes of this chapter, farm operations include the cultivation of crops, forest products, or the husbandry of livestock, poultry, or fish.

**FENCE.** A continuous, opaque, unperforated barrier extending from the surface of the ground to a uniform height of not less than six feet from the ground at any given point, constructed of dirt, wood, stone, steel or other metal, or any substance of a similar nature and strength.

**GARAGE.** An establishment which is maintained and operated for the primary purpose of making mechanical and/or body repairs to motor vehicles.

**GATE.** A door or other device attached to a fence which, when opened, provides a means of ingress and egress of persons and things for which it was intended, and which, when closed, forms a continuous barrier as a part of the fence to which it is attached.

**HEALTH NUISANCE OR SAFETY HAZARD VEHICLE.** A motor vehicle, used machinery or other used materials may be declared to be a health nuisance or safety hazard when it is found to be:

(1) A breeding ground or harbor for mosquitoes or other insects, snakes, rodents or other pests; or

(2) A point of collection of pools or ponds of water; or

(3) A point of concentration of quantities of gasoline, oil or other flammable or explosive materials as evidenced by odor; or

(4) One which has areas of confinement which cannot be operated from the inside such as trunks, hoods, etc. or is a source of danger from exposed surfaces of metal, glass or other rigid materials; or

(5) So located that there is a danger of the vehicle falling or turning over; or

(6) A point of concentration of car radiators, batteries or other materials that pose either immediate or long-term danger of environmental degradation.

**HOUSING UNIT.** A house, an apartment, a group of rooms, or a single room occupied or intended for occupancy as separate living quarters.

**JUNK.** Scrapped copper, brass, rope, rags, batteries, paper, trash, rubber, debris, waste, iron, steel, or other scrap ferrous or non-ferrous materials; or wrecked, dismantled or uninhabitable mobile homes.

**JUNK MOTOR VEHICLE.** A motor vehicle or other motorized equipment or parts thereof that:

- (1) Is fully or partially dismantled or wrecked; or
- (2) Cannot be self-propelled in its present condition; or
- (3) Does not display a current license plate.

**JUNKYARD.** Any land parcel which is maintained, operated, or used for storing, keeping, buying or selling junk, or junk motor vehicles. The term "junkyard" shall not include any county-operated landfills, collection, or recycling facilities.

**JUNKYARD CONTROL ACT.** G.S. § 136-141 through 155 (Article 12) which delegates to the N.C. Department of Transportation the responsibility to regulate "junkyards" and "automobile graveyards" located on interstate and federal-aid primary system highways.

**LAND PARCEL.** A tract of land which is separately described by the Haywood County Land Records/GIS Office.

**MOTOR VEHICLE.** Any machine designed or intended to travel over land by self-propulsion or while attached to any self-propelled vehicle.

**MOTOR VEHICLE STORAGE AREA.** One or more contiguous land parcels under common or separate ownership where junk motor vehicles are stored.

**OPAQUE.** Impervious to light.

**RECYCLING FACILITY.** A temporary or permanent site at which glass, aluminum cans, paper, plastic, clothes or similar materials commonly collected for recycling are collected and



moved off site or kept on site in enclosed buildings, storage bins, solid waste containers, truck trailers or other rolling stock.

**SERVICE STATION.** An establishment which is maintained and operated for the purpose of making mechanical repairs, servicing and/or washing of motor vehicles.

**USED CAR LOT.** An establishment which is maintained and operated for the purpose of selling used automobiles under a license issued by North Carolina Division of Motor Vehicles.

**VECTOR.** An organism that carries pathogens from one host to another.

**VEGETATION.** All season or evergreen vegetation including evergreen trees with leaves or foliage at all seasons of the year. Examples are white pine, southern yellow pine, hemlock and spruce trees.

**WIRE FENCE.** A continuous, translucent, perforated barrier extending from the surface of the ground to a uniform height of not less than six feet from the ground at any given point, constructed of wire, steel or nylon mesh, or any substance of a similar nature and strength, but which perforations or openings are no larger than 16 square inches.

**WRECKER SERVICE.** A land parcel which is used for the purpose of storing motor vehicles.

(Ord. passed 10-06-97; Am. Ord. passed 05-01-00)

#### § 114.02 FINDINGS, PURPOSES AND OBJECTIVES.

It is hereby found that automobile graveyards and health nuisance or safety hazard vehicles are inherently dangerous and should be prohibited and that junkyards, service stations, garages, used car lots, wrecker services, or motor vehicle storage areas should be regulated.

The purposes and objectives of this chapter include the following:

- (1) To promote the health, safety and welfare of the citizens of Haywood County;
- (2) To protect citizens and residents;
- (3) To promote or enhance the protection of property values throughout the county;
- (4) To attract tourists and promote the prosperity, economic well-being and general welfare of the county;
- (5) To protect surface and groundwater quality; and

(6) To preserve and protect the natural environment in Haywood County.  
(Ord. passed 10-06-97; Am. Ord. passed 05-01-00)

### § 114.03 GEOGRAPHIC COVERAGE.

These regulations shall be in effect in all unincorporated portions of Haywood County which are not under the jurisdiction of any municipal zoning ordinance.

### § 114.04 GENERAL STANDARDS.

(A) All junkyards which are established from and after the effective date of this chapter (November 1, 1997) and any service station, garage, used car lot, wrecker service, or motor vehicle storage area shall meet the following standards:

(1) A minimum setback of 30 feet from any public or private road surface and outside the right of way of any public or private road; and

(2) Screened as herein provided, or not visible from the main-traveled way and adjacent properties at any season of the year, or fenced, or fenced and screened and maintained as provided for in § 114.07, subsection (B); and

~~(3)~~ (3) Not be located closer than 500 feet of a residence, school or business; and

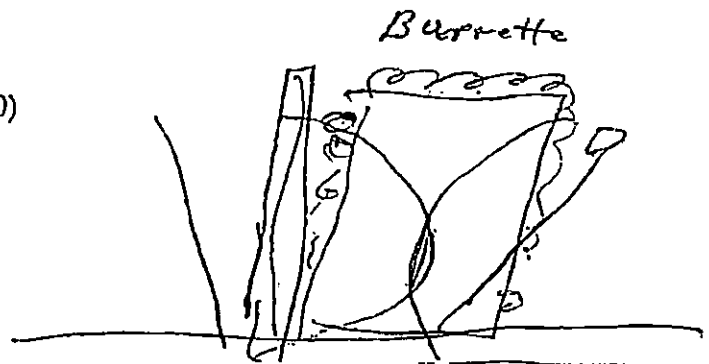
(4) Have a 50 foot vegetative buffer from all perennial streams or water bodies as shown on the U.S.G.S. topographic map.

(B) The following criteria shall be applicable to pre-existing junkyards which are registered within 180 days of November 1, 1997, the original effective date of this chapter and service stations, garages, used car lots, wrecker services, or motor vehicle storage areas that are registered within 30 days of May 1, 2000 and no portion of any such junkyard, service station, garage, used car lot, wrecker service, or motor vehicle storage area shall be operated, maintained or expanded, except those meeting at least one of the following conditions:

(1) Those which are screened by natural land features or vegetation, berms, plantings, fences or other appropriate means which sufficiently preserves the policy and intent of this chapter, or are screened and/or fenced in accordance with § 114.07; or

(2) Those which are located where the topography and terrain of adjacent lands is such that screening would be ineffective or useless. In these instances, the Enforcement Officer may waive all or part of the fencing or screening requirements, but shall require fencing and screening insofar as is practical and feasible, at all points where such fencing and/or screening shall be necessary to screen or partially screen the view of the property or a health nuisance or safety hazard vehicle as defined by this chapter.

(C) Automobile graveyards are prohibited.  
(Ord. passed 10-06-97; Am. Ord. passed 05-01-00)



**§ 114.05 ADDITIONAL STANDARDS.**

All junkyards, service stations, garages, used car lots, wrecker services, and motor vehicle storage areas which are established from and after the effective date of this chapter (November 1, 1997), or that have been issued a current valid permit to establish, operate or maintain a junkyard, as provided in § 114.10 hereof shall meet the following additional standards:

(1) **JUNKYARDS** that store more than ten junk motor vehicles, for more than thirty days, shall meet the fencing and screening requirements of § 114.07 and registration and permit requirements of § 114.09.

(2) **SERVICE STATIONS** that store more than three junk motor vehicles, for more than thirty days, shall meet the fencing and screening requirements of § 114.07 and registration and permit requirements of § 114.09.

(3) **GARAGES** that store more than three junk motor vehicles, for more than thirty days, shall meet the fencing and screening requirements of § 114.07 and registration and permit requirements of § 114.09.

(4) **USED CAR LOTS** that store more than three junk motor vehicles, for more than thirty days, shall meet the fencing and screening requirements of § 114.07 and registration and permit requirements of § 114.09.

(5) **WRECKER SERVICES** that store more than three junk motor vehicles, for more than thirty days, shall meet the fencing and screening requirements of § 114.07 and registration and permit requirements of § 114.09.

(6) **MOTOR VEHICLE STORAGE AREAS** that store more than three junk motor vehicles, for more than thirty days, shall meet the fencing and screening requirements of § 114.07 and registration and permit requirements of § 114.09.  
(Ord. Passed 10-06-97; Am. Ord. passed 05-01-00)

**§ 114.06 EXEMPTIONS.**

The following are exempted from regulation by this chapter:

(1) Recycling facilities using enclosed structures or solid waste containers, bins, truck trailers and rolling stock to store materials and equipment; or

(2) Any bona fide farm; or

(3) Motor vehicles that are not visible from outside an enclosed building and are listed as taxable personal property in the Haywood County Tax Assessors Office; or

(4) Abandoned vehicles as defined in G.S. § 153A-132.

(Ord. Passed 10-06-97; Am. Ord. passed 05-01-00)

#### § 114.07 FENCING AND SCREENING REQUIREMENTS.

All new and pre-existing facilities, land parcels, or activities regulated in accordance with this chapter shall be operated subject to the following fencing and screening conditions:

(A) New land parcels created, activities commenced or facilities established after the effective date of this chapter shall comply with the chapter by registering, obtaining a permit, meeting the requirements of § 114.04 (A) and meeting the following fencing and screening requirements of this section:

(1) The facility, parcel, or activity shall be entirely surrounded by:

(a) an opaque fence at least six feet in height; or

(b) by either a woven or welded wire (14 gauge minimum) fence at least six feet in height; or

(c) chain link fence a minimum of six feet in height.

With respect to (b) and (c) above, there shall be vegetation that is at least three feet high and no more than six feet apart when planted. The vegetation shall be planted at the time the facility begins operation, or at the next appropriate planting time. The fence and vegetation shall surround the minimum area necessary for the facility to not be visible from a point at the same elevation as the facility. The vegetation shall be planted on the outbound side of the fence, contiguous to, and not more than eight feet from the fence. The vegetation shall be maintained as a continuous, unbroken hedgerow for the period the property is used as a regulated facility. Each owner, operator, or maintainer of a facility shall utilize good horticultural techniques such as pruning, mulching and proper fertilization, so that the vegetation will have maximum density and foliage. Dead or diseased vegetation shall be replaced at the next appropriate planting time.

(2) All operations, equipment, junk and/or junk motor vehicles shall be kept within the confines of the fence or enclosed building at all times.

(B) Pre-existing activities regulated and operating with a proper business license or valid tax number from the North Carolina Department of Revenue on the effective date of this chapter (November 1, 1997) shall comply with this chapter by obtaining a permit as provided in § 114.09 and meeting the requirements for pre-existing service stations, garages, used car lots, wrecker services, junkyard, or motor vehicle storage areas, as set forth in § 114.04, General Standards, subsections B(1) or B(2), or meeting one of the following conditions:

(1) Remove all junk, vehicles or equipment that may be located within 15 feet of a public or private road surface to an area further than 15 feet from the road surface; and install a fence with an all-season vegetation screening between junk materials and property lines; or

(2) Screen and fence the junkyard in accordance with the screening and fencing provisions of § 114.07 (B) for new junkyards; provided, however, if topography renders fencing and screening useless and ineffective, the Enforcement Officer may waive all or part of the fencing and screening requirements as provided in § 114.04 (B)-(3) of this chapter; or

(3) Place in an enclosed building all items regulated by this chapter.  
(Ord. passed 10-06-97; Am. Ord. passed 05-01-00)

#### **§ 114.08 MAINTENANCE.**

All junkyards, service stations, garages, used car lots, wrecker services, or motor vehicle storage areas shall be maintained to protect the public from health nuisances and safety hazards. The Enforcement Officer shall inspect each facility once each year to determine that the chapter provisions are being followed. The Enforcement Officer may call upon the health department for advice and consultation as needed regarding vector or rodent problems. Should vectors be identified, the owner/operator/maintainer shall be notified of a violation in writing. Within 30 days of the receipt of the letter, the owner/operator/maintainer shall submit satisfactory evidence to the health department that vectors have been eliminated. Failure to comply with this section may result in revocation of the permit as well as other penalties and remedies for violation as provided for in § 114.13.

(Ord. passed 10-06-97; Am. Ord. passed 05-01-00)

#### **§ 114.09 REGISTRATION AND PERMITTING OF PRE-EXISTING JUNKYARDS, SERVICE STATIONS, GARAGES, USED CAR LOTS, WRECKER SERVICES, AND MOTOR VEHICLE STORAGE AREAS.**

All owners, operators or maintainers of junkyards existing on the effective date of this chapter (November 1, 1997) shall register same with the Enforcement Officer within a period of 180 days beginning with the effective date of this chapter. All owners, operators or maintainers of service stations, garages, used car lots, wrecker services, and motor vehicle storage areas shall register same with the Enforcement Officer within 30 days from May 1, 2000. All existing junkyards, service stations, garages, used car lots, wrecker services, and motor vehicle storage areas that have not been registered within the stated time shall be in violation of this chapter. Following registration, a permit shall be applied for and obtained as provided for in § 114.11.

(Ord. passed 10-06-97; Am. Ord. passed 05-01-00)

#### **§ 114.10 NON-CONFORMING PRE-EXISTING JUNKYARDS, SERVICE STATIONS, GARAGES, USED CAR LOTS, WRECKER SERVICES, AND MOTOR VEHICLE STORAGE AREAS.**

(A) All existing junkyards at the effective date of this chapter, registered in accordance with the preceding section, shall be granted a compliance period of 12 months from the effective date of registration to conform to the chapter. All existing junkyards that have not registered

within this period shall be in violation of this chapter. The Enforcement Officer shall monitor such facility at least annually.

(B) All service stations, garages, used car lots, wrecker services, and motor vehicle storage areas existing at the effective date of this chapter, registered in accordance with § 114.09, shall be granted a compliance period of 90 days from the effective date of registration to conform to the chapter. All existing facilities that have not registered within this period shall be in violation of this chapter. The Enforcement Officer shall monitor each facility at least annually. (Ord. passed 10-06-97; Am. Ord. passed 05-01-00)

#### § 114.11 PERMIT REQUIRED.

No person, firm or business entity shall establish, operate or maintain a junkyard, service station, garage, used car lot, wrecker service, or motor vehicle storage area at any single location without obtaining a permit for that location. Application for the permit shall be made to the Enforcement Officer, on such forms as he shall prescribe. A plan prepared by the applicant shall be submitted as part of the permitting process.

The plan shall indicate setbacks, location of road rights-of-way, all proposed or existing structures, driveways, entrances, fencing, screening, types of fencing, types of screening, dimensions, gross acreage, owner(s) names(s), address(es), preparer of plan name(s) and address(es). Plans may be drawn to scale or freehand with distances marked, on paper large enough to show details. Three (3) copies shall be submitted.

No expansion, whether pre-existing or newly permitted, may be undertaken until a permit as a new facility is first obtained in accordance with this Section. (Ord. passed 10-06-97; Am. Ord. passed 05-01-00)

#### § 114.12 ENFORCEMENT PROVISIONS.

This chapter shall be enforced by the Enforcement Officer. The Officer may call upon other agencies, departments, or offices as necessary to assist in the enforcement of this chapter.

In addition, whenever the Officer receives a written complaint alleging a violation of this chapter, the Officer shall investigate the complaint, take whatever action is warranted, and inform the complainant in writing what actions have been or will be taken. The complainant shall provide their name, address, and telephone number upon making a written complaint.

The owner, tenant or occupant of any building or land or part thereof and agent or other person who participates in, assists, directs, creates, or maintains any junkyard, service station, garage, used car lot, wrecker service, junkyard, or motor vehicle storage area that is contrary to the requirements of this chapter, shall be held responsible for the violation of this chapter and shall suffer the penalties and be subject to the remedies herein provided.

The following procedure shall apply upon discovery of a violation:

(1) If the Officer finds that any provision of this chapter is being violated, he shall send a written notice to the person responsible for such violation, indicating the nature of the violation, ordering the action necessary to correct it, and advising the violator of the number of days within which the violation shall be corrected. The violator shall be informed of his right to appeal to the Board of Commissioners.

(2) Notwithstanding the foregoing, in cases when delay would seriously threaten the effective enforcement of this chapter or pose a danger to the public health, safety or welfare, the Enforcement Officer may seek enforcement without prior written notice by invoking the penalties authorized in this section.

(Ord. passed 10-06-97; Am. Ord. passed 05-01-00)

#### **§ 114.13 PENALTIES AND REMEDIES FOR VIOLATIONS.**

Violations of the provisions of this chapter or failure to comply with any of its requirements, including violations of any conditions and safeguards established, shall constitute a misdemeanor, punishable by a fine of up to \$50.00 or a maximum 30 days imprisonment as provided in G.S. § 14-4.

Any act constituting a violation of the provisions of this chapter or a failure to comply with any of its requirements shall subject the offender to a civil penalty of \$25.00 per violation. Each day shall constitute a separate violation. If the offender fails to pay this penalty within 10 days after being served with a notice of violation, the penalty may be recovered by the county in a civil action in the nature of a debt.

This chapter may also be enforced by appropriate equitable action. Such remedy may include court order of abatement as part of a judgment in the cause. The abatement order may include actions required to make the facility, land parcel or activity comply with the provisions of this chapter at the owner's expense.

Any one, all, or any combination of the foregoing penalties and remedies may be used to enforce this chapter. In addition to the foregoing enforcement provisions, this chapter may be enforced by any remedy provided in G.S. § 153A-123, including, but not limited to, all appropriate equitable remedies provided in G.S. § 153A-123(d) and particularly the remedy of injunction and order of abatement as allowed in G.S. § 153A-123(e).

Any building permit(s) associated with property that has a permit may be revoked by the permit-issuing authority (in accordance with the provisions of this section) if the permit holder fails to develop or maintain the property in accordance with the plans submitted, the requirements of this chapter, or any additional requirements lawfully imposed.

Before such other permit(s) may be revoked, the permit holder shall be given 10 days written notice of intent to revoke a permit. The notice shall inform the holder of the reasons for

the revocation and of his right to obtain an informal hearing on the allegations before the County Manager. If any permit is revoked, the Enforcement Officer shall provide to the permittee a written statement of the decision and the reasons why the action has been taken. (Ord. passed 10-06-97; Am. Ord. passed 05-01-00)

§ 114.14 APPEALS AND VARIANCES:

(A) Unless otherwise provided, appeals from any action taken by the Enforcement Officer shall be filed with the Board of Commissioners within 10 days of receipt of notice of such action. The Board of Commissioners may authorize relief from these provisions when, in its opinion, undue hardship may result from strict compliance.

(B) The Board of Commissioners may authorize upon appeal in specific cases such variance from the terms of this chapter as will not be contrary to the public interest where, owing to special conditions, a literal enforcement of the provisions of this chapter will result in practical difficulty or unnecessary hardship. Such variance may be granted in individual cases upon a finding by the Board of Commissioners that the following conditions exist:

*Amended  
V.C.C.*

(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;

*M (N) K (N) KE (N) BR (N) T (N) (N)*

(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;

*M (N) K (N) KE (N) BR (N) T (N)*

(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;

*M (N) K (N) KE (N) BR (N) T (N)*

(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; and

*M (N) K (N) KE (N) BR (N) T (N)*

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

*M (N) K (N) KE (N) BR (N) T (N)*

A copy of the decision by the Board of Commissioners shall be prepared and furnished to the applicant within 10 days of its rendition. In granting any variance, the Board of Commissioners may prescribe appropriate conditions and safeguards to insure conformity with this chapter. Violation of such condition and safeguards, when made a part of the terms under which the variance is granted, shall be deemed a violation of this chapter.

(C) Decision of the Board of Commissioners may be appealed. A petition for a writ of certiorari may be filed with the County Clerk of Court within 30 days after the later of the following occurrences:

STATE off of Rd,  
Yates Cove R/W



(1) A written copy of the Board of Commissioners decision has been filed in the office of the Enforcement Officer; and

(2) A written copy of the Board of Commissioners decision has been delivered, by personal service or certified mail, return receipt requested, to the applicant or appellant and every other aggrieved party who has filed a written request for such copy prior to or at the hearing of the case.

A copy of the petition for writ of certiorari shall be served upon the county through the office of the County Manager.

(Ord. passed 10-06-97; Am. Ord. passed 05-01-00)

#### **§ 114.15 SEVERABILITY.**

Should any section or provision in this ordinance be declared invalid or unconstitutional by any court of competent jurisdiction, such declaration shall not affect the validity of the ordinance as a whole or any part thereof which is not specifically declared to be invalid or unconstitutional.

(Ord. passed 10-06-97; Am. Ord. passed 05-01-00)