

Monroe A. Miller, Jr.
2200 Camp Branch Road
Waynesville, NC 28786
November 9, 2019

Subject: Notices sent to Doyle Sutton, re: Junkyard Variance.

The following four (4) notices were sent to Doyle Sutton, either by **Kris Boyd**, Development and Facilities Services Director, and/or the County.

1. 8/22/2019 - **Kris Boyd**, rejecting plan submission for a wrecker service permit.
Sent by Certified Mail.
2. 9/10/2019 - **Kris Boyd**, notifying Sutton that commissioners will review a variance request on 10/7/2019.
Sent by Certified Mail.
3. 10/8/2019 - No signature, sent by county, notifying applicant and adjacent property owners of a hearing on 10/21/2019.
Sent by USPS, regular First Class Mail.
4. 11/29/2019 - Order, signed by **Kevin Ensley**.
Sent by Certified Mail.

No where, in any of these notices, was there any indication that this “hearing” was going to be, or was, a Quasi-Judicial Hearing. There was no mention of a “hearing” indicated in the 10/21/2019 County Commission meeting agenda. I found out that commissioners were going to hold a Quasi-Judicial Hearing fifteen (15) minutes before the meeting was called to order. Doyle Sutton had no indication from anyone that he would have to be represented by a lawyer at this “hearing”. This was the first Quasi-Judicial Hearing that I can remember county commissioners ever having spanning over the last ten (10) years.

Doyle Sutton never received the third notice, dated 10/8/2019. It is up to the county to prove that he received it. The previous notice, sent by **Kris Boyd**, falls outside the limits an applicant must receive a notice for a Quasi-Judicial Hearing - must receive a notice at least ten (10) days prior to the hearing, and no greater than twenty-five (25) days before the meeting. The notice Doyle Sutton received was 42 days before the hearing was eventually brought before county commissioners on 10/21/2019.

Doyle Sutton has grounds to appeal the decision of the “hearing” based on the following grounds:

- Doyle Sutton was not properly noticed,
- The oath was not administered properly during the Quasi-Judicial Hearing,
- **Kevin Ensley** should have not been allowed to vote - Conflict of Interest.

Doyle Sutton may appeal to the Clerk of Superior Court within thirty (30) days of the order.

Let's see where this goes...

Monroe A. Miller, Jr.
Haywood County Taxpayer



**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 21st, 2019.

Kris R. Boyd

A handwritten signature in black ink, appearing to read "Kris R. Boyd".

Development and Facilities Services Director

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

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

1691 S. Main St
Waynesville NC 28787



9590 9402 4648 8323 2948 09

2. Article Number (Transfer from service label)

PS Form 3811, July 2015 PSN 7530-02-000-9053

COMPLETE THIS SECTION ON DELIVERY

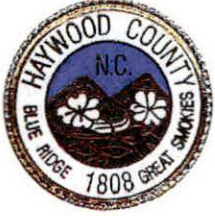
A. Signature
 Doyle Sutton Agent
 Addressee

B. Received by (Printed Name) *Doyle Sutton* C. Date of Delivery *9-5-19*

D. Is delivery address different from item 1? Yes
If YES, enter delivery address below: No

3. Service Type
- | | |
|--|---|
| <input type="checkbox"/> Adult Signature | <input type="checkbox"/> Priority Mail Express® |
| <input type="checkbox"/> Adult Signature Restricted Delivery | <input type="checkbox"/> Registered Mail™ |
| <input type="checkbox"/> Certified Mail® | <input type="checkbox"/> Registered Mail Restricted Delivery |
| <input type="checkbox"/> Certified Mail Restricted Delivery | <input type="checkbox"/> Return Receipt for Merchandise |
| <input type="checkbox"/> Collect on Delivery | <input type="checkbox"/> Signature Confirmation™ |
| <input type="checkbox"/> Collect on Delivery Restricted Delivery | <input type="checkbox"/> Signature Confirmation Restricted Delivery |
| <input type="checkbox"/> Insured Mail | |
| <input type="checkbox"/> Insured Mail Restricted Delivery (over \$500) | |

Domestic Return Receipt



Haywood County Development Services

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

NOV 8 2019

September 10, 2019

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

Mr. Sutton,

Haywood County is in receipt of your appeal pursuant to section 114: 14 of Haywood County Code of Ordinances: Chapter 114: Junkyards and Other Facilities.

The Board of Commissioners are being made aware of your request. This request will be scheduled for a Board of County Commissioners regular meeting on or after October 7, 2019 at the Board Chairman's discretion.

Kris R. Boyd

A handwritten signature in blue ink, appearing to read "Kris R. Boyd".

Development and Facilities Services Director

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



215 North Main
Waynesville, North C

LN
9/12

CERTIFIED MAIL



7016 3010 0000 4048 0723

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

NEOPOST

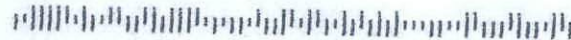
09/10/2019

US POSTAGE \$006.80⁰⁰



ZIP 28786
041M11290633

20786-002101



BOARD OF COMMISSIONERS

L. KEVIN ENSLEY, CHAIRMAN
BRANDON C. ROGERS, VICE CHAIRMAN
J. W. "KIRK" KIRKPATRICK, III
TOMMY LONG
MARK PLESS



COUNTY MANAGER
BRYANT MOREHEAD

COUNTY ATTORNEY
FRANK G. QUEEN

NOTICE OF HEARING

TAKE NOTICE that the Haywood County Board of Commissioners will hold a hearing on Monday, October 21, 2019 at 5:30 p.m. in the Historic Courtroom of the Haywood County Courthouse located at 215 N. Main Street, Waynesville, North Carolina 28786. The purpose of the hearing is consideration of a variance request received pertaining to the Junkyards and Other Facilities Ordinance for the real property located at 3039 Crabtree Road, Waynesville, North Carolina.

Persons wishing to be heard at the hearing are asked to be present.

This 8th day of October, 2019.

Pursuant to the terms of North Carolina General Statute § 160A-388(a2), this notice is sent to the person whose appeal, application, or request is the subject of the hearing and all adjoining property owners by first class mail, and a notice of the hearing has been posted on the property.

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

CERTIFIED MAIL®



7016 3010 0000 4048 1065



1000



28786

U.S. POSTAGE
FCM LETTER
WAYNESVILLE
28786
OCT 29, 2019
AMOUNT

\$6

R2304M1

LM
10/31

Burnette Doyle Sutton
1691 South Main Street
Waynesville, NC 28786

NOV 8 2019