

BOARD OF ADJUSTMENTS MEETING
Town of Sylva Board of Commissioners
May 10, 2018

The Town of Sylva Board of Adjustments met in a Quasi-Judicial Hearing on May 10, 2018, 5:30 p.m., Municipal Hall Board Room, 83 Allen Street, Sylva, North Carolina.

Present: Barbara Hamilton, Vice-Mayor
Mary Gelbaugh, Commissioner
Harold Hensley, Commissioner
Greg McPherson, Commissioner
David Nestler, Commissioner

Paige Dowling, Town Manager
Amanda Murajda, Town Clerk
Eric Ridenour, Town Attorney

Absent: Lynda Sossamon, Mayor

Vice-Mayor Hamilton called the meeting to order at 5:30 p.m.

VISITORS: Joel Sowers

(1) GENERAL INFORMATION: Vice-Mayor Hamilton stated that the purpose of the meeting was to have a quasi-judicial hearing, which was an evidentiary hearing where the Board of Adjustments would make a decision based solely on competent, material and substantial evidence in the record. The record was all of the materials and input that were presented to the Board, including the application, exhibits, testimony and related materials. The record may include some insufficient evidence, but the Board may not base its decision on it.

(2) OPENING THE HEARING: Vice-Mayor Hamilton opened the hearing for the variance request:
(a) Project: Nantahala Brewery.
(b) Applicant: NBC Holdings, LLC
(c) Location: 5 Grindstaff Cove Road PIN# 7641-07-3927

(3) SWEARING IN PARTIES: Vice-Mayor Hamilton inquired if there was anyone other than the Applicant and County and Town Staff that wanted to be a party to the action. All persons, including staff, who intended to present evidence were sworn in by Amanda Murajda.

(4) DISCLOSURES: Vice-Mayor Hamilton stated that Members of the Board of Adjustments shall disclose any conflicts of interest or bias related to the case.

- (a)** *Commissioner Gelbaugh acknowledged she had none.*
- (b)** *Commissioner Hamilton acknowledged she had none.*
- (c)** *Commissioner Hensley acknowledged he had none.*
- (d)** *Commissioner McPherson acknowledged he had none.*
- (e)** *Commissioner Nestler acknowledged he had none.*

(5) EVIDENCE: Manager Dowling explained the general nature of the request. The variance request is for on-site parking from NBC Holding LLC.

(5A) STAFF PRESENTATION OF REPORT: John Jeleniewski, Jackson County Senior Planner, presented the staff report. The applicant is requesting a variance for on-site parking which is required per ordinance Article III, Section 38-75.

Background: The property for this requested variance is located at 5 Grindstaff Cove Road in Sylva and is approximately 50' north of the Mill Street/Grindstaff Cove Road intersection. This property is 0.82 acres in area and is bordered by Scott's Creek to the north and Blue Ridge Southern Railroad to the south.

The applicant is seeking a variance for the on-site parking requirement (Article III) in the B2 district as existing property constraints (railroad setback and trout buffer) prohibit the construction of minimum parking standards set forth in Appendix "A" of the Town's Zoning ordinance. Handicap parking stalls (ADA) will be provided on the east side of the existing building. The proposed business "use" for this property/structure will be a brewery/restaurant which, based on the parking regulations, would require 35 total parking stalls at a minimum. Public utilities would be provided by Tuckasegee Water and Sewer Authority (water and sanitary sewer) and Duke Power.

Staff Findings: (As required by Article VII-Board of Adjustment) (Section 38-177 Variances)

- A. The Zoning Board of Adjustment shall have the power to authorize a variance from the terms of this chapter provided in so doing the action is not contrary to the public interests where, owing to special conditions, a literal enforcement of this chapter will result in practical difficulties or unnecessary hardship, so that the spirit of this chapter is observed, public safety and welfare secured, and substantial justice done.
- B. All applications for variances shall be addressed and submitted to the Zoning Board of Adjustment and shall be delivered to the office of the Zoning Administrator. Upon receipt of an application for a variance, the Board shall call a public hearing and give notice as required by law. Applications for a variance shall be made on the proper form obtainable from the Zoning Administrator. Some application requirements may be waived, such as for changes of use in existing buildings involving no expansions in building or parking areas, etc. An administrative fee, in accordance with the Schedule of Fees and Costs, shall be applied to a Variance application. Fee shall be secured upon submission of the Variance application.
- C. Before the Zoning Board of Adjustment may grant a variance, it shall make the following findings which shall be recorded in the permanent record of the case and shall include the factual reasons on which they are based:
 1. When unnecessary hardships would result from carrying out the strict letter of a zoning ordinance the Board of Adjustment shall vary any of the provisions of the ordinance upon a showing of all of the following:
 - a. Unnecessary hardship would result from the strict application of the ordinance. It shall not be necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property. According to the Jackson County tax records, the existing structure on this property was built in 1959, pre-dating the Town's zoning ordinance by 39 years. Previous business uses on this property did not require parking.
 - b. The hardship results from conditions that are peculiar to the property, such as location, size, or topography. Hardships resulting from personal circumstances, as well as hardships resulting from conditions that are common to the neighborhood or the general public, may not be the basis for granting a variance. The existing site conditions of the Blue Ridge Southern Railroad and easement to the south and the Scott's Creek and trout buffer to the north limit the opportunity of specific site and building construction such as building footprint expansion, traditional parking design, etc.

- c. The hardship did not result from actions taken by the applicant or the property owner. The act of purchasing property with knowledge that circumstances exist that may justify the granting of a variance shall not be regarded as a self-created hardship. The existing site conditions and constraints are not the actions of the applicant and were created prior to the existence of the Town's zoning ordinance.
 - d. The requested variance is consistent with the spirit, purpose, and intent of the ordinance, such that public safety is secured and substantial justice is achieved. The location of this property is directly adjacent to the B1 Business district which does not require on-site parking due to the proximity of public parking areas and the promotion of pedestrian mobility. Granting a variance for parking in this case does not deviate from the spirit and intent of the ordinance. To the contrary, creating a parking area on this property creates a public safety issue as traffic movements may present potential hazards in conjunction with the existing traffic signal on Grindstaff Cove Road and Mill Street. In addition, site conditions do not allow for parking standards as set forth in Article III (Off-street parking and loading) and Appendix A (Site layout, grading, parking lots and driveway entrances) of the ordinance.
2. The variance is in harmony with the general purpose and intent of the ordinance and preserves its spirit. That is, the applicant is not seeking to establish, to expand, or to extend in the area a nonconforming use. Moreover, the existence of a nonconforming use in the same or in any other zoning district shall not constitute a reason for granting the requested variance. The applicant is not requesting to expand a nonconforming property or use. The variance request is specific to the subject property only.
3. In granting of the variance, the public safety and welfare have been assured and substantial justice has been done. The Board shall not grant a variance if it finds that doing so would alter the essential character of the neighborhood, materially diminish or impair established property values within the surrounding area, or in any other respect impair the public health, safety or general welfare. This property is currently vacant and it assumed that future business activities would enhance the surrounding properties and downtown community.

Staff Recommendations:

- a. All final site plans and construction be reviewed for full compliance of the Town's Zoning Ordinance with exception to parking standards.
- b. To ensure safety for visitors and employees, provide minimum site lighting for the ADA parking area, pedestrian walkways and public spaces.
- c. The applicant will need to coordinate with NCDOT for the installation of a crosswalk which would connect to the existing pedestrian system.

Recommendations from Staff: Manager Dowling reported that the Planning Board recommended approval of the variance request.

Questions from other parties: None.

Questions from the Board of Adjustments or Town Attorney: None.

(5B) APPLICANT PRESENTATION OF EVIDENCE AND WITNESSES:

Joe Rowland from NCB Holdings, LLC addressed the board and explained that the business will have 25 to 40 employees on the payroll. The number will vary depending on the season. The building will have a small kitchen. Delivery truck access will be in the rear of the building. The Bryson City location has parking issues as well. Joel Sowers asked about employee parking. Rowland responded that employees would use the public parking areas as well. He also explained that employees at the Bryson City location have been trained to ask patrons where they have parked when they check in to be seated. This allows the hostess to tell them to move if necessary. Employees of the Sylva location will do the same.

Questions from other parties: *None.*

Questions from the Board of Adjustments or Town Attorney: *None.*

Vice-Mayor Hamilton noted that the following had been submitted as written evidence and should be added as exhibits:

- Exhibit A: Variance Application
- Exhibit B: Aerial Plan
- Exhibit C: Site Plan
- Exhibit D: Survey
- Exhibit E: Planning Staff Report

(5C) OTHER PARTIES PRESENTATION OF EVIDENCE AND WITNESSES: *None.*

(5D) COMMENTS FROM THE PUBLIC: Joel Sowers of Fusions Spa spoke against the variance. He owns the parking lot directly across from the applicant and he is worried that patrons will use their parking. He stated that his parking lot is posted for spa patrons only.

(6) BOARD DISCUSSION/CONDITIONS: Commissioner Nestler asked how many public parking spaces were within walking distance. Commissioner Gelbaugh replied that there were 78 in the gravel and 40 in the paved lots. Nestler believes that this is a great opportunity for the Town of Sylva and that a variance fits this location.

Being no further comment Vice-Mayor Hamilton asked for a motion to close the hearing. *Commissioner Hensley made a motion to close the hearing at 6:06p.m. The motion carries with a unanimous vote.*

(7) DECISION: Vice-Mayor Hamilton gave an overview of the Board of Adjustment meeting and asked for a motion to vote on the application. *Commissioner Nestler made a motion to vote on the conditional use application. The motion carries with a unanimous vote.*

During this Quasi-Judicial meeting, the Board must determine if the following standards are found to be true and make findings with regard to each.

(a) Standard 1: Unnecessary hardship would result from the strict application of the ordinance.

Affirmative: The Board unanimously determined this statement to be true.

Against:

(b) Standard 2: The hardship results from the conditions that are peculiar to the property, such as location, size or topography.

Affirmative: The Board unanimously determined this statement to be true.

Against:

(c) Standard 3: The hardship did not result from actions taken by the applicant or the property owner.

Affirmative: The Board unanimously determined this statement to be true.

Against:

(d) Standard 4: The requested variance is consistent with the spirit, purpose, and intent of the ordinance, such that public safety is secured and substantial justice is achieved.

Affirmative: The Board unanimously determined this statement to be true.

Against:

(e) Based on the affirmative voting of the aforementioned tenants, the variance request is approved as presented with the planning staff recommendations.

(f) Motion: *Commissioner Gelbaugh made a motion to approve the variance request with the planning staff recommendations. The motion carries with a unanimous vote.*

Vice-Mayor Hamilton stated the permit was approved and the meeting was concluded.

There being no further business, Commissioner Gelbaugh made a motion to adjourn the meeting at 6:12 p.m. The motion carries with a unanimous vote.

Barbara Hamilton
Vice-Mayor

Amanda W. Murajda
Town Clerk