

**BOARD OF ADJUSTMENTS MEETING
Town of Sylva Board of Commissioners
August 9, 2018**

The Town of Sylva Board of Adjustments met in a Quasi-Judicial Hearing on August 9, 2018, 5:00 p.m., Municipal Hall Board Room, 83 Allen Street, Sylva, North Carolina.

Present: Lynda Sossamon, Mayor
Mary Gelbaugh, Commissioner
Barbara Hamilton, Commissioner
Harold Hensley, Commissioner
Greg McPherson, Commissioner
David Nestler, Commissioner

Amanda Murajda, Town Clerk
Eric Ridenour, Town Attorney

Absent:

Mayor Sossamon called the meeting to order at 5:00 p.m.

STAFF PRESENT: John Jeleniewski (County Planner), Rick Bryson (Asst. Police Chief) and Tammy Hooper (Police Chief).

VISITORS: David Ginn, Robert Kincaid, Virginia Kincaid, Wayne Smith and Phil Haire.

CONDITIONAL USE PERMIT—SYLVA TIRE

(1) GENERAL INFORMATION: Mayor Sossamon 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: Mayor Sossamon opened the hearing for the conditional use permit:

- (a)** Project: Tire Service Business.
- (b)** Applicant: Ricky Cook (Sylva Tire)
- (c)** Location: 608 East Main Street PIN# 7641-66-9098

(3) SWEARING IN PARTIES: Mayor Sossamon 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 Mayor Sossamon.

(4) DISCLOSURES: Mayor Sossamon 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 withdrew from voting based of family interest.*
- (d)** *Commissioner McPherson acknowledged he had none.*
- (e)** *Commissioner Nestler acknowledged he had none.*

(5) EVIDENCE: Amanda Murajda explained the general nature of the request. The conditional use permit request is for a tire service business at 608 East Main Street. The owner would like to reopen the business Sylva Tire after a reorganization process. The B3 zoning district requires a conditional use permit for manufacturing and repair activities. Murajda added that the Planning Board voted unanimously to recommend approval of the application.

(5A) STAFF PRESENTATION OF REPORT: John Jeleniewski, Jackson County Senior Planner, presented the staff report. The applicant is requesting a conditional use permit for a tire service business at 608 East Main Street.

Background: The property is 0.35 total acres and is bordered by a carwash to the west, a parking lot to the east and a public road right-of-way (Path Finder Lane) to the south. The applicant has maintained a lease on the property and had to close early 2017 for reorganization before reopening this tire business. The existing 5,000 square foot building was previously used as a tire service for several years prior to its closing in 2017. The proposed tire service business would be housed within the existing structure.

Staff Findings:

A. A Site Plan: The attached survey sketch, concept site plan, floor plans and building elevations show building locations, parking, driveways, ingress/egress to the property, type of unit and exterior building materials.

B. Call for a Public Hearing

C. The Zoning Board of Adjustment shall grant and issue the Conditional Use Permit by a majority vote if it finds the following:

1. *The use will not materially endanger the public health or safety if located where proposed and development according to the plan as submitted and approved.*
2. *The use meets all required conditions and specifications.*
3. *The use will not substantially injure the value of adjoining or abutting property or, in the alternative; the use is a public necessity.*
4. *The location and character of the proposed use will be in harmony with the area in which it is to be located and in general conformity with the development of the Town and its environs.*

Staff Review: Planning Department review. Jeleniewski read the following requirements for public purpose and the corresponding response.

Section 38-153 Required Public Purpose for Assigning Conditions to Conditional Use Permits:

- 1) *Traffic safety, congestion and visibility:*
The proposed “use” would be a tire service business. This business type is expected to have deliveries and removal of products associated with vehicle tire installation and repair as well as related customer traffic. The location of this property and ingress/egress of the driveway would not appear to burden local traffic or vehicle movements.
- 2) *Parking consistent with Section 38-77:*
The existing property does have in excess of 12 parking stalls for patrons and employees.

- 3) *Adequate vegetative or structural buffers between residential uses and all other uses:*

The proposed commercial “use” of a tire business will be adjacent to other commercial uses to the west, north and east of the subject property. There is a residential neighborhood to the south; however, it is separated by Path Finder Lane. This property does have some existing landscaping along the east property line, however, the Board may consider additional landscaping to be planted along the southerly property line.

- 4) *Adequate space for traffic ingress and egress:*

An existing driveway currently provides ingress/egress, approximately 36’ in width, to the existing property.

- 5) *Adequate stormwater drainage:*

There does not appear to be any stormwater issues on the existing property as it appears that the building and impervious surface stormwater flows to the existing stormwater collection system located at Highway 107 (Main Street).

- 6) *Adequate landscaping along all public roads:*

Due to the existing ingress/egress location relative to the parking area, additional street side landscaping would be unpractical.

- 7) *That signs, consistent with Article IV, are designed, placed, illuminated and landscaped in harmony with the adjoining properties:*

Any proposed signs would be in compliance with the Town’s sign regulations.

- 8) *That outside lighting is screened, turned off or directed away from residential neighborhoods:*

Lighting per NC building code would be required. Parking lot lighting is not proposed.

- 9) *That commercial machinery or activities producing noise are conducted within the confines of an enclosed building:*

The applicant has stated that all business activities would be conducted within the existing building.

- 10) *That the design of the proposed building and its use shall be consistent with the surrounding character of the neighborhood and purposes of the zoning district:*

There are no new buildings proposed for this subject property.

Recommendations from Staff:

- 1) All overnight storage of vehicles shall be within the existing building only.
- 2) No outdoor storage of materials (new or used tires, equipment and other materials) shall be allowed on this property unless the applicant screens the storage area with an opaque fence and not visible to the public.

- 3) The storage of new and used tires shall be in accordance with the NC fire code.
- 4) All required landscape buffers be planted in accordance with the Town's ordinance.
- 5) All proposed signage be accordance with the Town's sign regulations.

Questions from other parties:

Questions from the Board of Adjustments or Town Attorney: Commissioner McPherson asked about limiting the repair of large trucks that would not fit in the building while being repaired as well as loud tools used. Jeleniewski said he did not have an answer for that. Commissioner Nestler asked about the regulation of tire storage relating to fire code. Jeleniewski clarified that the fire inspectors would look at that. Mayor Sossamon asked if landscaping was being recommended back entrance and Jeleniewski responded no.

(5B) APPLICANT PRESENTATION OF EVIDENCE AND WITNESSES: None.

Questions from other parties: David Ginn, who owns apartments near this location, asked if mosquitos could be managed since tires would be stored outside. He added that the problem with mosquitos was made worse because of standing water in old tires.

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

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

- Exhibit A: Conditional Use Application
- Exhibit B: Planning Staff Report
- Exhibit C: Site Map

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

(5D) COMMENTS FROM THE PUBLIC: None.

(6) BOARD DISCUSSION/CONDITIONS: None.

Being no further comment Mayor Sossamon asked for a motion to close the hearing. *Commissioner Nestler made a motion to close the hearing at 5:25 p.m. The motion carries with a unanimous vote.*

(7) DECISION: Mayor Sossamon 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 amend condition #2 assigned by the Planning Staff and by adding "covering" to the fence requirement. The motion carries with a unanimous vote. Commissioner McPherson 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 tenants are found to be true and make findings with regard to each.

(a) Tenant 1: The use will not materially endanger the public health or safety if located where proposed and developed according to the plan as submitted and approved.

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

Against:

(b) Tenant 2: The use meets all required conditions and specifications.

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

Against:

(c) Tenant 3: The use will not substantially injure the value of the adjoining or abutting property or, in the alternative, the use is a public necessity.

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

Against:

(d) Tenant 4: The location and character of the proposed use will be in harmony with the area in which it is to be located and in general conformity with the development of the Town and its environments.

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

Against:

(e) Based on the affirmative voting of the aforementioned tenants, the conditional use permit application for Ricky Cook (Sylva Tire) is approved as presented with conditions.

(f) Motion: *Commissioner McPherson made a motion to approve the conditional use permit application with conditions assigned by the Planning Staff and Board of Adjustments. The motion carries with a unanimous vote.*

Mayor Sossamon stated the permit was approved and the meeting for Sylva Tire was concluded at 5:30 p.m.

CONDITIONAL USE PERMIT—VALLEY TOWING

(1) GENERAL INFORMATION: Mayor Sossamon 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: Mayor Sossamon opened the hearing for the conditional use permit at 5:30 p.m.:

(a) Project: Valley Towing.

(b) Applicant: Christy Smith

(c) Location: 123 Harold Street PIN# 7641-39-8489

(3) SWEARING IN PARTIES: Mayor Sossamon 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 Mayor Sossamon.

(4) DISCLOSURES: Mayor Sossamon 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: Amanda Murajda explained the general nature of the request. The conditional use permit request is for a tow and storage yard business at 123 Harold Street for wrecked vehicles during the insurance investigation process. The B2 zoning district requires a conditional use permit for manufacturing and repair activities. Murajda added that the Planning Board voted unanimously to recommend approval of the application.

(5A) STAFF PRESENTATION OF REPORT: John Jeleniewski, Jackson County Senior Planner, presented the staff report. The applicant is requesting a conditional use permit for a tow and storage yard for wrecked vehicles during the investigation process at 123 Harold Street.

Background: The subject property is 1.38 total acres and is bordered by Scotts Creek to the west, Webster Enterprises (manufacturing) to the east and a vacant property to the south owned by Blue Ridge Acquisition. The current business use on this property is Republic Services (trash collection and containers) which will be relocating. The nearest residential property is located 350' to the east on Harold Street and is also in the B2 District. The proposed tow and storage yard would be located on the south side of Harold Street and an existing fenced "yard" would secure the site.

Staff Findings:

- A. A Site Plan: The attached survey sketch, concept site plan, floor plans and building elevations show building locations, parking, driveways, ingress/egress to the property, type of unit and exterior building materials
- B. Call for a Public Hearing
- C. The Zoning Board of Adjustment shall grant and issue the Conditional Use Permit by a majority vote if it finds the following:
 1. *The use will not materially endanger the public health or safety if located where proposed and development according to the plan as submitted and approved.*
 2. *The use meets all required conditions and specifications.*
 3. *The use will not substantially injure the value of adjoining or abutting property or, in the alternative; the use is a public necessity.*
 4. *The location and character of the proposed use will be in harmony with the area in which it is to be located and in general conformity with the development of the Town and its environs.*

Staff Review: Planning Department review. Jeleniewski read the following requirements for public purpose and the corresponding response.

Section 38-153 Required Public Purpose for Assigning Conditions to Conditional Use Permits:

1) *Traffic safety, congestion and visibility:*

The proposed "use" would be a tow/storage yard for wrecked vehicles during insurance investigation. With this business type it is expected that deliveries and removal of damaged vehicles would occur during all hours of the day including non-business hours.

2) *Parking consistent with Section 38-77:*

The proposed “use” will not require parking for business operations.

3) *Adequate vegetative or structural buffers between residential uses and all other uses:*

The proposed “use” of a tow/storage yard will not be directly adjacent to residential uses.

4) *Adequate space for traffic ingress and egress:*

An existing gravel/soil driveway currently provides ingress/egress to the existing property.

5) *Adequate stormwater drainage:*

There does not appear to be any stormwater issues on the existing property.

6) *Adequate landscaping along all public roads:*

A proposed 10’ wide evergreen landscape buffer shall be required along the public right-of-way of this proposed tow/storage yard.

7) *That signs, consistent with Article IV, are designed, placed, illuminated and landscaped in harmony with the adjoining properties:*

Signs are not proposed for this business use.

8) *That outside lighting is screened, turned off or directed away from residential neighborhoods:*

Lighting for security purposes only is proposed.

9) *That commercial machinery or activities producing noise are conducted within the confines of an enclosed building:*

The proposed business use of tow/storage yard will not include operations within an enclosed building with exception of an office.

10) *That the design of the proposed building and its use shall be consistent with the surrounding character of the neighborhood and purposes of the zoning district:*

There are no buildings proposed for this proposed tow/storage yard.

Recommendations from Staff:

- 1) All required landscape buffers be planted in accordance with the Town’s ordinance.
- 2) All proposed signage be in accordance with the Town’s sign regulations.
- 3) A 5’ wide sidewalk shall be constructed along Harold Street.

Questions from other parties: None.

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

(5B) APPLICANT PRESENTATION OF EVIDENCE AND WITNESSES: None.

Questions from other parties: None.

Questions from the Board of Adjustments or Town Attorney:

Commissioner Nestler asked if there were additional setbacks for the purpose of preventing oil leaks and other fluids from vehicles. Jeleniewski responded that things of that nature were not in their scope.

Wayne Smith, property owner, responded that it was in the tenant lease that tenant shall take all precautions necessary to prevent the spillage from vehicles.

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

- Exhibit A: Conditional Use Application
- Exhibit B: Planning Staff Report
- Exhibit C: Site Map
- Exhibit D: Emails from Mike Trull- adjoining property owner

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

(5D) COMMENTS FROM THE PUBLIC: None.

(6) BOARD DISCUSSION/CONDITIONS: None.

Being no further comment Mayor Sossamon asked for a motion to close the hearing. *Commissioner Gelbaugh made a motion to close the hearing at 5:54 p.m. The motion carries with a unanimous vote.*

(7) DECISION: Mayor Sossamon gave an overview of the Board of Adjustment meeting and asked for a motion to vote on the application. *Commissioner Gelbaugh made a motion to add a condition stating that no salvage vehicles shall be kept in lot for the dismantling and selling of parts. The motion carries with a unanimous vote. Commissioner Nestler made a motion to add a condition stating that no fluids be allowed to spill and that vehicles be kept 25 feet from edge of bank. The motion carries with a unanimous vote. Commissioner Hamilton 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 tenants are found to be true and make findings with regard to each.

(a) Tenant 1: The use will not materially endanger the public health or safety if located where proposed and developed according to the plan as submitted and approved.

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

Against:

(b) Tenant 2: The use meets all required conditions and specifications.

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

Against:

(c) Tenant 3: The use will not substantially injure the value of the adjoining or abutting property or, in the alternative, the use is a public necessity.

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

Against:

(d) Tenant 4: The location and character of the proposed use will be in harmony with the area in which it is to be located and in general conformity with the development of the Town and its environments.

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

Against:

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(e) Based on the affirmative voting of the aforementioned tenants, the conditional use permit application for Valley Towing is approved as presented with conditions.

(f) Motion: *Commissioner Hamilton made a motion to approve the conditional use permit application with conditions assigned by the Planning Staff and Board of Adjustments. The motion carries with a unanimous vote.*

Mayor Sossamon stated the permit was approved and the meeting for Valley Tire was concluded.

There being no further business, Commissioner Hensley made a motion to adjourn the meeting at 6:00 p.m. The motion carries with a unanimous vote.

Lynda Sossamon
Mayor

Amanda W. Murajda
Town Clerk