



Asheboro Planning Board
Monday, December 1, 2014
7:00 PM
AGENDA

- I. Call to Order
- II. Approval of Minutes from November 3, 2014 meeting
- III. Review of Cases
- IV. Planning Board Functioning as Board of Adjustment in Appeal of Decision of Zoning Administrator concerning status of Vehicle Towing Operation and Storage Facility located at 217 NC Hwy. 49 South.
- V. Review of Proposed Non-Residential Building Maintenance Code
- VI. Adoption of 2015 Meeting Dates
- VII. Items Not on the Agenda
- VIII. Adjournment

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**MEETING OF THE ASHEBORO PLANNING BOARD
COUNCIL CHAMBERS, 146 N. Church St.
MONDAY, NOVEMBER 3, 2014
7:00 p.m.**

This being the time and place for meeting of the Planning Board, a meeting was held with the following officials and members present:

Van Rich) - Chair
James Lindsey) - Vice Chair

Ritchie Buffkin)
Lynette Garner)
David Henderson) - Members Present
Thomas Rush)
Dave Whitaker)

John Evans, Assistant Community Development Division Director
Justin Luck, Zoning Administrator/Planner
Trevor Nuttall, Community Development Division Director
Jeff Sugg, City Attorney

One (1) citizen was present at this meeting.

I. CALL TO ORDER

Mr. Van Rich called the Asheboro Planning Board to order. At this time, with general consent of the board, he appointed Mr. Justin Luck as Acting Secretary.

II. CONSENT AGENDA ITEMS

a. Approval of Minutes from October 6, 2014 meeting

Mr. Henderson made a motion to approve the minutes. Mr. Buffkin seconded the motion and the motion carried unanimously.

b. Approval of Finding of Face for Board of Adjustment Case Number BOA-14-01 (Variance from setbacks in Table 200-1: 237 N. Fayetteville St.)

Mr. Whitaker made a motion to approve the Findings of Fact. Mr. Lindsey seconded the motion and the motion carried unanimously.

III. REVIEW OF CASES

Mr. Justin Luck informed the board of the zoning related cases that went before the City Council in October.

IV. RZ-14-14: Walker Eye Care, LLC (c/o Attorney Ben C. Morgan): 520 Greensboro Street (Rezone from R7.5 (Medium-Density Residential and RA6 High-Density Residential) to O&I (Office & Institutional)

Mr. Evans gave a presentation on the rezoning request, including property details, photos and maps. He stated that the Land Development Plan (LDP) called for Primary Growth on the Growth Strategy Map and Neighborhood Residential on the Proposed Land Use Map. He stated that the Comprehensive Transportation Plan, adopted earlier this year, recommends a sidewalk at this location. He listed seven (7) supporting goals and policies of the LDP and three (3) that were not supported. He stated that staff's recommendation was to deny the request due to lack of ability to review a site specific development plan ensuring compatibility with the adjoining residential uses and adequate pedestrian infrastructure. There were questions asked about sidewalk requirements as well as concerns with parking and driveways. Mr. Rush asked if he should be excused from hearing the case due to his third cousin owning the property. Mr. Sugg, through a series of questions of Mr. Rush and determined that a conflict of interest requiring

disqualification was not present because Mr. Rush did not have a personal interest in the request. Attorney Barron L. Thompson, acting on behalf of Attorney Ben C. Morgan in support of the request, as well as the board, agreed that Mr. Rush should not be disqualified from hearing the request. Mr. Thompson then spoke in support of the request, mentioning that the property is in a transitional area from commercial to residential, including dental offices for Dr. Walsh, whose property is zoned as a straight O&I zoning district. He stated that the rezoning is consistent with the neighborhood as it is. He stated that the request is also consistent with growth that the neighborhood is experiencing. General questions were asked regarding the sidewalk. Mr. Henderson felt that O&I was appropriate in the area, but if the objective was to have sidewalks, then conditions should be applied.

Mr. Whitaker made a motion to deny the request based on staff's recommendation and concurred with the consistency statement provided by Mr. Evans in the staff report. Mr. Rush seconded the motion. The motion carried six (6) to one (1) with Ms. Lynette Garner being the dissenting vote.

V. Consideration of 2015 Meeting Dates

Mr. Nuttall presented the list of 2015 meeting dates. He asked the board to look over the dates and stated that they would be finalized at next month's regular meeting.

VI. Items Not on the Agenda

Mr. Luck stated that there would be an appeal at next month's meeting and urged all members to be present.

VII. Adjournment

There being no further business to discuss, Mr. Rich adjourned the meeting.

Bradley W. Morton, Secretary, Planning Board

Van Rich, Planning Board Chairman



**Item IV: Planning Board Functioning as Board of Adjustment in Appeal of
Decision of Zoning Administrator concerning status of Vehicle Towing
Operation and Storage Facility located at 217 NC Hwy. South.**

Board of Adjustment Staff Report

Case: BOA 14-02

Date: December 1st, 2014

Requested Action: Reversal of a final zoning decision that a Vehicle Towing Operation & Storage Facility is not a continuing legal nonconforming use at 217 NC Hwy 49 South (PIN# 7750048965).

GENERAL INFORMATION:

Applicant: Richard & Wanda Lyda

Address: 3046 Bethel Lucas Rd.

Phone: (336) 381-0751

Location of Affected Property: 217 NC Hwy 49 South

Size: 0.75 Acres **Existing Zone:** B2

Existing Land Use: Vehicle Towing Operation & Storage Facility (Lyda Towing)

Surrounding Land Use:

North: Commercial

East: Commercial

South: Commercial

West: Nonconforming Residential

Land Development Plan: Primary Growth/Commercial

ANALYSIS

The Asheboro zoning ordinance has three classifications for a towing business: "Vehicle Towing Operation", "Vehicle Storage Facility" & "Vehicle Towing Operation and Storage Facility". Only a "Vehicle Towing Operation" is permitted in the B2 zoning district. The only possible exception to this prohibition would be through the continuation of a legal nonconforming use. Staff records indicate that the previous use before Lyda Towing was Rental/Sales of Domestic Vehicles. A copy of this permit is included. Utilizing building permit, fire inspection, phone book records, aerial photography and other methods, staff have been unable to obtain any compelling evidence to suggest that towing, storage or any combination of towing and storage existed as part of the previous Rental/Sales of Domestic Vehicles use. Please see included zoning determination letter for more information. The Lydas are appealing this determination, stating that both towing operation and storage have continuously occurred at 217 NC Hwy 49 S. and should be allowed to continue as a legal nonconforming use.

Maps



City of Asheboro Zoning Compliance Permit

Date 7/9/1997

Expiration Date 1/5/1998

Number 97 1192

<u>Applicant</u>	<u>Don</u> 496 Friendly Acres Rd Asheboro NC 27203	<u>Goins</u>	Phone 629-7340												
<u>Property Owner</u>	<u>Bobby</u> 1528 Manor Circle Asheboro NC 27203	<u>Amner</u>	Phone 629-1786												
<u>Contractor</u>	Asheboro NC 27203		Phone												
<u>Location</u>	<u>Corner of Mack Road and NC Hwy 49</u>		<u>Pin # (s)</u> 7750048965												
<u>Subdivision</u>		<u>Lot #</u>													
<u>Census Tract</u> 306		BG 2													
<u>Zone</u> B-2	<u>Flood Zone</u> No	<u>Within Balance Watershed</u> No													
<u>Lot Area Sq. ft.</u> 32,670.00		<u>Within Corporate Limit</u> Yes													
<table style="width:100%; border-collapse: collapse;"> <tr> <td style="border-bottom: 1px dotted black;"><u>Front Yd. Setback</u> (44 also Set. 305)</td> <td style="border-bottom: 1px dotted black;"><u>Min. Side Yd. Setback</u></td> <td style="border-bottom: 1px dotted black;"><u>Rear Yd. Setback</u></td> <td style="border-bottom: 1px dotted black;"><u>Max. Height ft.</u></td> </tr> <tr> <td style="border-bottom: 1px dotted black;">25 feet</td> <td style="border-bottom: 1px dotted black;">0 or 5 feet each side</td> <td style="border-bottom: 1px dotted black;">0 or 5 feet</td> <td style="border-bottom: 1px dotted black;">35</td> </tr> </table> <p style="color: red; font-weight: bold; margin-top: 5px;">NOTE: See Section 305 regarding front yard averaging. All property abutting a street is considered front yard for setbacks. On Major and Minor Thoroughfares setbacks are from the Ultimate R/W.</p> <table style="width:100%; border-collapse: collapse;"> <tr> <td style="border-bottom: 1px dotted black;"><u>Floor Area Ratio</u></td> <td style="border-bottom: 1px dotted black;">33</td> <td style="border-bottom: 1px dotted black;"><u>Max. Floor Area - Sq Ft</u></td> <td style="border-bottom: 1px dotted black;">10,781.10</td> </tr> </table>				<u>Front Yd. Setback</u> (44 also Set. 305)	<u>Min. Side Yd. Setback</u>	<u>Rear Yd. Setback</u>	<u>Max. Height ft.</u>	25 feet	0 or 5 feet each side	0 or 5 feet	35	<u>Floor Area Ratio</u>	33	<u>Max. Floor Area - Sq Ft</u>	10,781.10
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<u>Type Construction</u> Commercial		<u>Class of Work</u> Change of Use													
<u>Proposed Bldg. Area-Sq ft</u>	1,800	<u>#Structures</u> 1	<u># of Units</u> 1												
<u>Site Plan Required</u>	No	<u>Buffer/ Screen Required</u>	No												
<u>Area Uncovered - Sq ft</u>	0.00	<u># Parking Spaces Required</u>	1												
<u>Driveway Permit Approval</u>		<u>Soil EC Permit issued</u>	No												
<u>BOA#</u>	na	<u>CUP #</u>	na												
		<u>SUP #</u>	na												
Additional Information															
<p>This is a change for a service station to a motor vehicles sales office and lot. There will not be any additions to the footprint of the building.</p> <p>This zone allows the sale of Domestic vehicles.</p>															
<p>No building, structure, or zoning lot for which a Zoning Compliance Permit has been issued shall be used or occupied until a Certificate of Zoning Compliance has been issued, after final inspection, indicating compliance with all provisions of the Zoning Ordinance.</p>															

Approved by: _____



October 17th, 2014

Richard H. Lyda
217 NC Hwy 49 South
Asheboro, NC 27205

RE: Notice of Decision as to the permissibility of the use of 217 NC Hwy 49 South (Randolph County PIN 7750048965) for a Vehicle Towing Operation and Storage Facility

Dear Mr. Lyda,

In response to your discussion on October 10, 2014 with Community Development Director Trevor Nuttall, I have researched the issue of whether 217 NC Hwy 49 South can be used as a location for a Vehicle Towing Operation and Storage Facility under the rules and regulation of the Asheboro Zoning Ordinance. The answer is no.

I have made this final decision on the basis of some key factors. First, Section 211 of the Asheboro Zoning Ordinance (the "Ordinance") provides that, unless a use is scheduled in the ordinance as permitted or permissible in a zoning district, the use is prohibited and may not be established. Table 200-2 of the Ordinance, which lists the permitted or permissible uses in each zoning district, makes it clear that a Vehicle Towing Operation and Storage Facility is not permitted in the B2 zoning district.

217 NC Hwy 49 South is located in a B2 zoning district. Thus the answer to the question about locating a Vehicle Towing Operation and Storage Facility on the property is no, such use is not permitted.

The only possible exception to the prohibition of the location of a Vehicle Towing Operation and Storage Facility at 217 NC Hwy 49 South would be if the use of the property for the establishment of a Vehicle Towing Operation and Storage Facility could be classified as the continuation of a legal nonconforming use. Determination as to whether a use is a legal nonconforming use is controlled by Article 800 of the Ordinance.

Our records indicate that Mr. Don Goins lawfully operated a Rental/Sales of Domestic Vehicles use at 217 NC Hwy 49 South until 2011. With respect to any claim that Mr. Goins' Rental/Sales of Domestic Vehicle use may have included an accessory use of Vehicle Towing Operation and Storage Facility, our staff has been unable to obtain any compelling evidence to suggest that towing, storage or a combination of towing and storage existed. Therefore, Article 800 is not applicable.

For all the above stated reasons, I have reached the conclusion and final decision, in my capacity as the Zoning Administrator for the City of Asheboro, that the establishment of a Vehicle Towing Operation and Storage Facility at 247 NC Hwy 49 South is not a permitted use.

Appeal Rights

You have a right to file an appeal of this decision to the Board of Adjustment of the City of Asheboro. An application for an appeal to the Board of Adjustment has been included in this letter.

The deadline to file an appeal of decision with the Board of Adjustment is 30 days after the receipt of this notice. The application must be delivered to the City Clerk at 146 N. Church St. Asheboro, NC 27203, or mailed to the City Clerk at P.O. Box 1106 Asheboro, NC 27204.

Should you have any questions please feel free to give me a call at (336) 626-1201 x 292.

Respectfully,

Justin T. Luck, AICP
Zoning Administrator/Planner

Cc: Trevor L. Nuttall, AICP, Community Development Director

Enclosures



Item V: Review of Proposed Non-Residential Building Maintenance Code

Item V: Proposed Non-Residential Building Maintenance Code

Planning Board: December 1, 2014

Purpose: This Code sets forth standards with respect to structures and premises, establishes minimum maintenance standards for the exterior of all premises, fixes the responsibility of owners and occupants or premises, provides for remedial actions and penalties, and is intended to be enforced to protect the values of adjacent properties, health and safety standards and to maintain the aesthetics of the City.

Status: The proposed Non-Residential Building Maintenance Code will be reviewed by City Council during a public hearing that will be held during the regular City Council meeting on Thursday, December 4, 2014, at 7:00 p.m. at Asheboro City Hall, located at 146 North Church Street. If adopted, the proposed effective date of the Code is January 1, 2015. Additional information will be presented during the December 1, 2014 Planning Board meeting.



Item VI: Adoption of 2015 Meeting Dates

Planning Board Proposed 2015 Meeting Dates

Monday, January 5, 2015

Monday, February 2, 2015

Monday, March 2, 2015

Monday, April 6, 2015

Monday, May 4, 2015

Monday, June 1, 2015

Monday, July 6, 2015

Monday, August 3, 2015

Monday, August 31, 2015 or Monday, September 14, 2015*

Monday, October 5, 2015

Monday, November 2, 2015

Monday, December 7, 2015

*August 31, 2015 was the meeting date proposed during the November 2014 Planning Board meeting in lieu of the September meeting date due to Labor Day. Since the November Planning Board meeting, staff has received information that the City Council is proposing to hold its September meeting on September 17, 2015. Therefore, September 14, 2015 is an alternative meeting date for the Planning Board's September meeting.