

**CURRITUCK COUNTY
BOARD OF ADJUSTMENT REGULAR MEETING
June 14, 2012**

REGULAR MEETING

The Currituck County Board of Adjustment met on June 14, 2012 at 7:30 p.m. in the Historic Currituck County Courthouse. The following members were present: Bryan Bass, David Palmer, Christian Conner, Cameron Tabor, and Theresa Dozier. The following member was absent: Vivian Simpson. Brad Schuler, Planner; Tiffany Sanders, Planning Technician; and Benjamin Gallop, Board of Adjustment Attorney; were also present.

APPROVAL OF MAY 10, 2012 MINUTES

Mr. Palmer motioned to approve the May 10, 2012 minutes with no changes. Ms. Dozier seconded the motion and the motion passed unanimously.

BOA 12-10 DANIEL CLAY CARTWRIGHT: Appeal of administrator's decision that PB 12-06, a Special Use Permit application, is classified as a Junkyard/Salvageyard and is subject to the requirements of Section 3.8.1 of the UDO. Located at 128 Station Lane in Shawboro, Parcel 0033-000-0050-0000, Crawford Township.

Mr. Fred Etheridge, Mrs. Mary Etheridge, and Mr. Schuler appeared before the board and were sworn in.

Mr. Schuler reviewed the following memo to the Board:

To: Board of Adjustment
From: Brad Schuler, Planner I
Date: June 7, 2012
Subject: BOA 12-10 Daniel Clay Cartwright Appeal

Daniel Clay Cartwright is appealing staff's determination regarding his application for a Special Use Permit for a Junk Yard/Salvage Yard at 128 Station Lane in Shawboro. Below are details on the background of the case, letter of determination, and staff's position.

Background

In the fall of 2011, Mr. Cartwright met with planning staff to inquire about using property at 128 Station Lane in Shawboro for sorting scrap metal and storage of landscaping materials. Staff

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determined the use sought by Mr. Cartwright would be classified as a Junk Yard/Salvage Yard and was not allowed in the Agricultural (A) zoning district in which the property was zoned. A rezoning to the Heavy Manufacturing (HM) zoning district would be required.

Mr. Cartwright applied for a conditional rezoning of the property from Agricultural to a Conditional District – Heavy Manufacturing. Conditional zoning allows additional conditions and use limitations be placed on the district with the agreement of the applicant. Mr. Cartwright requested uses be limited to the scrap metal operation and storage of landscaping materials, and to have the condition of screening the site with fencing. The Board of Commissioners approved the application on December 5, 2011.

After the rezoning, Mr. Cartwright still required a Special Use Permit for the Junk Yard/Salvage Yard as listed in the Unified Development Ordinance (UDO). During the review process for the SUP, Mr. Cartwright verbally stated he disagreed with some of the requirements of the UDO. Currin & Currin Attorneys at Law, representing nearby property owners, requested a letter of determination from staff clarifying the application's use classification and its impact on the review process and UDO requirements.

Letter of Determination

The letter of determination prepared by staff made the following three determinations:

1. Mr. Cartwright's proposal is a Junk Yard/Salvage Yard and thus, the application is being processed as one, including requiring all standards listed in Section 3.8.1 Junkyards and Salvage Yards.
2. Since the use is classified as Junk Yard/Salvage Yard, that the proposal is subject to all requirements of Section 3.8.1.
3. A "salvage yard" and "junk yard" are the same use as classified in the UDO and are subject to the same requirements.

Mr. Cartwright has appealed each determination. The Board may reverse or affirm (wholly or partly) or may modify the determinations with a four-fifths vote.

Staff's Position

In regards to the above determinations:

- 1. Mr. Cartwright's proposal is a Junk Yard/Salvage Yard and thus, the application is being processed as one, including requiring all standards listed in Section 3.8.1 Junkyards and Salvage Yards.**

Section 2.5.2.G of the UDO states:

"If a use is not listed in the Permitted Uses Table, the administrator shall classify it with that use that is most similar to it. In doing so, the administrator shall primarily rely upon similarity of operational characteristics and similarity of impacts on adjacent properties. If the administrator determines that a use is not listed and is not similar to a use in the Permitted Uses Table, then such use is prohibited."

It is staff's responsibility to classify proposed uses with a use listed in the Permitted Uses Table. In doing so, determinations on review processes and requirements of the UDO, including but not limited to parking and landscaping, can be made.

Per Mr. Cartwright’s SUP application:

“The property will be used for the purposes of recycling (receiving, processing and distributing) metals as well as other materials such as, but not limited to, mulch, stone, concrete, plastic, etc.”

Section 17.2 Definitions of the UDO states:

“Junkyard or Salvageyard

A lot, land or structure or part thereof, used primarily for the collecting, processing, storage and/or sale of salvage paper, animal hides, rags, rubber, glass, scrap metal, lumber, or other building or other building materials, or for the dismantling of parts thereof. Any lot with vehicles stored without current registration plates or having an amount of trash, either burnable or non-burnable, considered as excessive in the judgment of the administrator, shall be classified as a junkyard and will require the appropriate zoning and permits.”

Both the proposed use and Junkyard or Salvageyard definition contain the language of receiving (collecting) and processing scrap metal. It is staff’s position that Mr. Cartwright’s proposal is most similar to the definition of Junkyard or Salvageyard than any other use listed in the Permitted Uses Table. It also does not meet the definition of any other use listed in the Permitted Uses Table. If Mr. Cartwright’s proposal is found not be similar to a use in the Permitted Uses Table, then such use is prohibited, and a text amendment to the UDO would be required to establish such use in the county.

Staff also notes that the determination of the proposed use to Junk Yard/Salvage Yard was made during the rezoning process. Mr. Cartwright specifically applied for a rezoning to the Heavy Manufacturing zoning district as this is the only district to allow a Junk Yard/Salvage Yard. The subsequent requirements of a Junk Yard/Salvageyard are also noted in the Technical Review Committee comments and Case Analysis of the rezoning application.

2. Since the use is classified as Junk Yard/Salvage Yard, that the proposal is subject to all requirements of Section 3.8.1.

Chapter 3: Special Requirements list requirements for specific uses allowed in the county. These special requirements must be met along with all other applicable requirements in the UDO. The Permitted Uses Table also lists the special requirements section with the use. The table states:

Use	LUC	Zoning Districts											Special Requirements	
		A	RA	R	RO1	RO2	RR	GB	C	LBH	LM	HM		
Industrial, Manufacturing, Warehousing, Wholesaling, & Solid Waste Uses														
Junk Yards & Salvage Yards	IV											S	3.8.1	

Section 3.8.1 Junkyards and Salvage Yards states:

3.8.1 Junkyards and Salvage Yards (Special Use Permit only)

- A. A junkyard may not be placed within 1000 feet of a primary highway right-of-way.
- B. Junkyards shall be screened so as not to be visible from (i) any state maintained road using a minimum six foot privacy fence; (ii) screening from adjacent residential or non-residential properties is also required.
- C. Burning of non-vegetative matter shall not be permitted.

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- D. Disposal of garbage unrelated to motor vehicles shall be in an approved container and regularly maintained. Open dumping of garbage shall be prohibited.
- E. Disposal of toxic/hazardous matter is prohibited anywhere in the county without a state permit, and a conditional use permit from the county, in an approved site.
- F. Stock piling of tires and batteries is prohibited.
- G. Drainage of junkyards shall be adequate to assure that no standing water shall exist.
- H. Weeds and vegetation shall be kept at a height not to exceed 12 inches.
- I. Storage of vehicles shall be so arranged as to permit easy access to all such junk for fire fighting purpose.
- J. A Soil Erosion and Sedimentation Control Plan shall be submitted according to the North Carolina Erosion and Sedimentation Control Act and a copy must be kept on file in the administrator's office.

It is staff's position that all requirements of this section are applicable to Mr. Cartwright's SUP application. This is due to the third determination, that the UDO classifies a junk yard and salvage yard as the same use.

3. A "salvage yard" and "junk yard" are the same use as classified in the UDO and are subject to the same requirements.

To determine what a salvage yard and junk yard is, and if a proposed use meets that use classification, one would reference Chapter 17: Definitions. This chapter defines all uses permitted in the county. As listed above, there is a single definition for "Junkyard or Salvageyard":

"Junkyard or Salvageyard

A lot, land or structure or part thereof, used primarily for the collecting, processing, storage and/or sale of salvage paper, animal hides, rags, rubber, glass, scrap metal, lumber, or other building or other building materials, or for the dismantling of parts thereof. Any lot with vehicles stored without current registration plates or having an amount of trash, either burnable or non-burnable, considered as excessive in the judgment of the administrator, shall be classified as a junkyard and will require the appropriate zoning and permits."

Both terms, junkyard and salvage yard, which are listed together in Chapter 17 and the Permitted Uses Table, have the same definition. This means both terms as listed in the UDO are the same and interchangeable. Whenever the term junkyard is mentioned in the UDO, a salvageyard is subject to the same requirement, because they are the same use.

It is also staff's position that the definition is whole, and can not be separated to give different meanings to the words junkyard and salvageyard. The applicant may argue that since the second sentence of the definition expressly states "junkyard", that only a junkyard, and not a salvageyard, is a lot with excessive unregistered vehicles or trash, and only a salvageyard is a lot used primarily for collecting and processing scrap metal. However, the first sentence of the definition does not expressly state junkyard or salvageyard, and therefore is both a junkyard and salvageyard.

In conclusion:

- Mr. Cartwright's application for using the property for "purposes of recycling (receiving, processing and distributing) metals" is most similar to the definition of Junkyard or Salvageyard in the UDO.
- A "junkyard" and "salvageyard" are the same use as defined in the UDO, and therefore;
- Mr. Cartwright's application is subject to all requirements of Section 3.8.1 Junkyards and Salvage Yards.

In reference the information above, the county submits the following:

1. Attachment 1: Appeal Application.
2. Attachment 2: Determination Request from Robin T. Currin of Currin & Currin Attorneys at Law dated April 18, 2012.
3. Attachment 3: Letter of Determination from Brad Schuler, Planner I dated April 30, 2012.
4. Attachment 4: Application and narrative of use from Mr. Cartwright's Special Use Permit Application.
5. Attachment 5: Section 2.5: Permitted Uses Table, of the UDO.
6. Attachment 6: Chapter 17: Definitions, Page 17-25 the UDO stating the definition of "Junkyard or Salvageyard."
7. Attachment 7: Section 3.8.1 Junkyards and Salvage Yards, of the UDO.
8. Attachment 8: Conditional Rezoning application.
9. Attachment 9: Technical Review Committee comments of the conditional rezoning application dated October 13, 2011.

Attachment 10: Case analysis of the conditional rezoning application.

DISCUSSION

Mr. John Morrison stated he was representing the appellant. He handed out a copy of page 17-25 and pages 3-32 through 3-32.1 from the Currituck County Unified Development Ordinance (See Exhibit 1 and 2). He also handed out two copies of prior North Carolina Supreme Court cases (See Exhibit 3 and 4). He reviewed the two cases that he provided and suggested that the wording for the junkyard/salvageyard section of the UDO was ambiguous. He stated that the words should be used separately and not collectively so therefore the words should not be subject to the same requirements. He stated the words were used separately in 3 occasions in the ordinance, where some of the requirements only referenced the work junkyard. He felt that if the 1,000-yard setback was intended for a salvageyard then the ordinance would have so stated.

Mr. Connor asked if Mr. Cartwright was the property owner.

Mr. Morrison

Mr. Bass questioned the clarification of what Mr. Morrison presented.

Mr. Morrison....

Mr. Bass questioned the definition of junkyard or salvageyard and if the last section of the definition applied to both residential and commercial properties.

Mr. Schuler said that section is for any lot in the County and not specific to a commercial business.

Mr. Bass

Mr. Morrison

Mr. Palmer asked

Mr. Gallop

Mr. Morrison

Mr. Gallop

Mr. Bass

Ms. Robin Currin

Mr. Gallop

Mr. Morrison

Ms. Currin

Mr. Morrison

ACTION

Mr. Connor moved to uphold the administrators decision based on the following of fact , Mr. Tabor seconded the motion and the motion passed unanimously.

OLD BUSINESS

ADJOURNMENT

There being no further business to discuss Ms. Connor motioned for adjournment. Mr. Connor seconded the motion and the motion passed unanimously. The meeting adjourned at 9:14 p.m.

Respectfully Submitted,

Tiffany B. Sanders/s/

Planning Technician