

Members:

George Quigley, Chairman
Ed Donaldson, Vice-Chair
Horace Humphrey
Melree Hubbard Tart
Joseph Dykes



Alternates:

Martin J. Locklear
Randy Newsome
William Lockett Tally
Carrie Tyson-Autry
Yvette Carson

Cumberland County Board of Adjustment

130 Gillespie Street
Fayetteville, NC 28301
(910) 678-7603

MINUTES
NOVEMBER 17, 2011
7:00 P.M.

Members Present

George Quigley, Chair
Ed Donaldson
Horace Humphrey
Joseph Dykes
Randy Newsome

Absent Members

Melree Hubbard-Tart (excused)

Staff/Others Present

Patricia Speicher
Pier Varner
Melodie Robinson
Joan Fenley
Rick Moorefield (County
Attorney)

Chair Quigley called the meeting to order at 7:00 p.m. in Public Hearing Room # 3 of the Historic Courthouse.

1. ROLL CALL

Mrs. Varner called the roll and stated a quorum was present.

2. CHAIR QUIGLEY SWORE IN THE STAFF

3. ADJUSTMENTS TO THE AGENDA

There were none.

4. APPROVAL OF THE AUGUST 18, 2011 MINUTES

A motion was made by Mr. Humphrey and seconded by Mr. Donaldson to approve the minutes as submitted. The motion passed unanimously.

5. ABSTENTIONS BY BOARD MEMBERS

There were none.

6. PUBLIC HEARING DEFERRALS

There were no deferrals.

7. BOARD MEMBER DISCLOSURES

There were none.

8. PROCEDURAL REVIEW – COUNTY ATTORNEY RICK MOOREFIELD

MR. MOOREFIELD: The best way to handle this request by staff is to give you an update. You will be getting an email from Patti about the Poulos' versus the Cumberland County Board of Adjustment case that was heard in Superior Court some time ago. We just got the order on October 26, 2011 and it took some time to get the order and get some of the kinks worked out. The Superior Court did order the case be remanded and that you reconsider the matter and award the granted variance that was requested by the Poulos' upon their presentation of evidence showing that the building, which was the subject of this variance, the portion of it that crossed over the property line, had been removed. I didn't handle this matter at Superior Court, but they apparently put into evidence that the portion of the building that had crossed over the property line close to the adjoining property had been removed. The reason the judge in that matter found 39 findings of fact and related to the variance request and sent it back to this Board was because your order was completely void of any findings of fact. It was and the reason for that was the statute that the Superior Court Judge used to review this case has a provision in it that if it is apparent from the record there is not necessity for findings of fact and if you recall those of you involved or who heard that case, the petition put into evidence themselves a survey, they had a boundary with a foot print of the building showing that it encroached over the property line five feet in one section and eight feet in the other section. That appeared to be reasonable evidence as the basis for your decision. That should have gotten into the record, I can't say that it did, I asked that it be put into the record, but I didn't handle the matter and really didn't follow up on it, someone else handled it. I would never have had any bearing on the decision. The best way to go about the eight things in the variance that you have to address when you talk about these eight factors and talk about whether or not they are extraordinary or exceptional conditions pertaining to this particular piece of property in question because of the size, shape or topography; what the judge is looking for and what he did himself in his findings of fact was address each one of those and found that the Board of Adjustment had not adequately addressed any of them although you did interject at least one of them into a finding of fact. The way to make sure that we avoid having to deal with these matters in court, each time you consider a variance, address each one of the eight issues with findings of fact but to just restate what the Ordinance says that you must find. The ordinance says that you must find all the following conditions exist, not one or two of them, but all of them. In most cases all of them are not applicable, but you can certainly find facts to demonstrate how they are going to apply. Keep in mind when you are finding extraordinary or exceptional conditions, such as the first one, pertaining to a particular piece of property because of size, shape or topography that are not applicable to other lands or structures in the same district, find facts that address that condition i.e., in this Poulos' case, you could have found that because it was a very large building and because the surveyor presented evidence that the building encroached onto the adjoining property in a triangular shape. That will be a finding of fact and that condition was applicable to this building in that it did not apply to other structures in this district. That is the kind of thing we are talking about when we say to find facts. Another example in the Poulos' case that should

have been addressed is that special circumstances are not the result of the actions of the applicant. The evidence was the applicant built this building himself; he didn't buy this property with it already there. It was kind of ambiguous as to whether he knew where the property line was but he had gotten it surveyed and it was clearly demonstrated that it crossed the line. So when you talk about finding these conditions, don't restate the conditions that you've got to find, find the facts and if the evidence is not presented that you are looking for in these things, it certainly is the Board's prerogative to ask for that evidence to be presented. We're in kind of a tough situation; one of the the hallmarks of a quasi-judicial hearing when you talk about variances is there has got to be procedural due process afforded to the petitioner. The Board of Adjustment has the right to have an attorney advise it and the role of the County Attorney in these instances has been somewhat ambiguous. It is clear that the County Attorney is going to advise the Board of Adjustment if you ask for advice and if it is deemed necessary with the findings of fact. The County Attorney cannot advise the Board and also help the staff present the case, that would be a violation of the procedure of due process and we have to balance the cost of getting another attorney. We really don't have that many cases where it would be that significant of an issue, but that is just one of the things we have to keep in mind. I think the Poulos' case is the only Board of Adjustment case that I've attended. I will handle this anyway the Board wants at the chairman's direction.

CHAIR QUIGLEY: I specifically remember that case outside everything you are mentioning. I recall vividly in the testimony we received.

MR. MOOREFIELD: Based on my perception of what the evidence was, it was clearly apparent from the record that the building encroached across the property line in a significant amount and it is actually a violation of the Zoning Ordinance. You don't have the authority to grant a variance in that circumstance.

CHAIR QUIGLEY: I recall that was the reason for our finding.

MR. MOOREFIELD: To avoid this sort of situation again, take a little more time. If it avoids these cases from being remanded for any further consideration and save time in the long run and certainly from my office or when we have the case being heard in Superior Court. I suggest you address each one of these eight matters. If you need help in ways to word the findings of fact, that is what we are here for. I'll help you with that. I don't like to interject into stuff like this unless you folks ask for it. It is your Board and I'm just trying to look at it in terms of as a way to circumvent some of the problems we will have if these things go to court. They had already prepared a transcript on August 18, 2011 and the guy had indicated were going to appeal that but they didn't, but I think that one was probably a lot more information. I guess one thing to keep in mind is that the scope or view of a Superior Court Judge in looking at these things when they are appealed in the procedural due process. That is why you ask if there is any potential conflict of interest and if anybody should not hear the matter, whether the decision that you made, if you are acting outside of the statutory authority that is conferred upon, that is typically not an issue, but the thing that usually falls down on us is whether or not it is supported by substantial and competent evidence in view of the entire record and competent evidence. The rules of all the actual evidence don't strictly apply but they sort of do and to the greatest extent you should try to adhere to what those rules are; the same rules apply in court. As long as the

evidence appears to be sufficiently trustworthy and was admitted under circumstances that it was reasonable for you to rely upon it, it is deemed to be competent evidence. One of the things that you hear all the time; you can hear it and you don't have to be rude to people, but you certainly can't base your decision on it. I'm talking about the main witnesses opinion about the use of the property in a particular way will affect the value of other property, is not competent evidence, main witnesses saying the increase in vehicular traffic resulting from a proposed development will propose a danger to public safety is not competent evidence. Matters about which only expert testimony would generally be admissible under the rules of evidence, you don't usually get into that sort of stuff. Although the TigerSwan case which I did see some of the records of appeal prepared and I know there were all kinds of evidence in it about the ground water being contaminated by lead from the firing ranges. That may be a factual or scientific basis for that but the people who presented it were not expert witnesses and it really was not competent. When you talk about technical, scientific evidence; the parties that are going to present need qualified experts to present it. I'm not suggesting that you did, but I'm just saying it happens and it is happening in that case. Those are some of the things to keep in mind. If any one of you has suggestions to make this work better, we certainly want to hear it. If there is anything further I can do to help; just let me know.

CHAIR QUIGLEY: Does anyone have any questions?

MR. DONALDSON: In the Poulos' Case, the one the Superior Court judge sent back, is that now mute since they removed that part of the building?

MR. MOOREFIELD: It was directed to be sent back for the Board to receive evidence as to whether or not it has been removed. I wasn't at the hearing, but my understanding is that there was evidence presented. It is not finding of fact, just a remand for you to hear....

MR. DONALDSON: I thought I heard you say that he had already removed that portion of the building that was encroaching.

CHAIR QUIGLEY: That portion of the building was not removed when we heard the case.

MR. DONALDSON: I'm talking about since that time.

MR. MOOREFIELD: Let me see if I can find the exact actual findings here. It is my understanding that was put into evidence; I'm not sure exactly how it was done because it would have been new evidence. The order is that the matter is remanded back to the Board of Adjustment and that the petition shall show evidence that the petitioners have removed that portion of the subject building being located on the part belonging to Green Pond. The Board of Adjustment shall grant the subject variance requested by the petitioners entitling the petitioners to a zero lot line. If there is no evidence that the building has actually been removed off the lot line, that is going to be another issue. My understanding is that was placed into evidence, I don't know how the judge received the new evidence on this case, but this order indicates that you are to receive evidence on it and until we get that evidence, that will be scheduled in January or February.

9. APPROVAL OF THE 2012 DEADLINE/MEETING SCHEDULE

MR. HUMPHREY: I motion to approve.

MR. DYKES: I second the motion.

CHAIR QUIGLEY: All in favor of approving the 2012 Deadline/Meeting Schedule signify by saying aye.

The vote was unanimous.

10. POLICY STATEMENTS REGARDING APPEAL PROCESS

Mrs. Varner read the Board's policy regarding the appeal process to the audience.

11. PUBLIC HEARING(S)

Opened Public Hearing

- **P11-06-C:** CONSIDERATION OF A REQUEST FOR A VARIANCE FROM THE COUNTY ZONING ORDINANCE, SECTION 1104, DISTRICT DIMENSIONAL PROVISIONS, TO ALLOW A FRONT YARD SETBACK OF 19 FEET WHERE 25 FEET IS REQUIRED FOR A MANUFACTURED HOME IN A R6A RESIDENTIAL DISTRICT ON 0.15+/- ACRES, LOCATED AT 2634 DRIFTWOOD DRIVE (SR 3611); SUBMITTED AND OWNED BY GILBERT L. HALL.

Mrs. Varner presented the zoning, land use and photos of the site to the Board.

CHAIR QUIGLEY: How did this action come forward, was there a complaint?

MRS. VARNER: No one complained. The applicant came to our office to request this variance because he is replacing an existing manufactured home for this new one he is proposing on the site plan (pointing to the Power Point slide). The new manufactured home is a little bit larger than the old one and he is having difficulty meeting the setbacks.

CHAIR QUIGLEY: So there was no complaint about the citing of the original home?

MRS. VARNER: No sir, no complaints. He is only having difficulty meeting the setbacks on the front.

CHAIR QUIGLEY: Is this a rental location?

MRS. VARNER: I don't know sir, you can ask the applicant.

MS. SPEICHER: Excuse me Chair, just for the Board's knowledge, I would like to make sure they know that the area was initially zoned in November 1975; however, the subdivision and the lots were created on June 29, 1970. So the lots were existing prior to the current zoning.

CHAIR QUIGLEY: So essentially the standards for citing a mobile or modular home on a lot like that were established many years ago.

MS. SPEICHER: Yes sir.

CHAIR QUIGLEY: We do have a witness signed up to speak in favor of this action. Mr. Gilbert Hall, would you please come forward to the lectern.

CHAIR QUIGLEY: Swore in Gilbert Hall.

MR. HALL: My name is Gilbert Hall, 8142 King Road, Fayetteville.

CHAIR QUIGLEY: What is your interest in this action?

MR. HALL: I own this property. I just bought this not too long ago. I also have some pictures of some homes in the neighbor like the one I want to put on the lot. The pictures show the lot next door and across the street that have mobile homes on it the same way. One picture you have is the mobile home I want to put on the lot and the other picture shows the mobile home right next door to the lot and the other one is across the street and have mobile homes on them the same way.

CHAIR QUIGLEY: I've numbered them Exhibits 1, 2 & 3.

MR. HALL: I talked to the neighbors and nobody had any problems with anything I was doing there.

CHAIR QUIGLEY: What's on this lot now?

MR. HALL: That old mobile home. I want to take it off and put this nicer one there.

MR. DONALDSON: What year is the old one?

MR. HALL: I'm not sure, but I think it is a 1975.

MR. HUMPHREY: Have you already purchased the new mobile home that you plan to put there?

MR. HALL: Yes, I have and that is when I found out that I have the problem. I thought I could put it there because the lot next door has one on it. When I went to get the permit, I found out there was a problem.

MR. HUMPHREY: Where is that mobile home now?

MR. HALL: I've got it parked somewhere? One of those pictures is it.

MR. DONALDSON: The mobile home that you say is next door that is just like it, what size is it?

MR. HALL: A 14' x 76'.

MR. DONALDSON: The lot is the same size?

MR. HALL: The lot size is the same and everything.

MR. DONALDSON: Is there a variance on the other one next to it?

MRS. VARNER: No sir.

MS. SPEICHER: Mrs. Donaldson, we have a ten year case history of all surrounding property as shown on the sketch map and we have no record of any variance and also we wouldn't have record of any permits because they are only kept for six years.

MR. DONALDSON: So, somebody could have gotten a variance for that one since it would have been inside the setoff setback if it was 76 feet?

MS. SPEICHER: That could be a possibility. I wouldn't know that.

CHAIR QUIGLEY: This community is a mobile home community, right?

MR. HALL: Yes, it is a mobile home park.

MR. DONALDSON: What is the staff's position on this request?

MS. SPEICHER: We ordinarily do not issue a recommendation either for or against a variance, but one of the eight criteria that has to be made for a variance is that it cannot be based on the adjacent nonconformities, whatever your decision.

CHAIR QUIGLEY: Are there any other questions for Mr. Hall? Thank you, Mr. Hall. Is there anyone else that wanted to speak in regards to this case?

Public Hearing Closed

CHAIR QUIGLEY: I don't think there is anything extraordinary when we look at the variance requirements concerning the topography or the shape of that land. It appears to be consistent for the other lots in that development. Granting the variance will not confer upon the applicant any special privileges denied to any other resident in the district in which the property is located. That is conditional. What we have is if there are other nonconforming and we approve this one here then essentially we are opening it up to all of the other properties should someone bring the action forward to grant their status also. Any other comments on this?

MS. SPEICHER: Maybe I wasn't clear, but that is not what I meant for paragraph #2.

CHAIR QUIGLEY: I understand that, but that was introduced by the testimony. Are there any comments?

MR. HUMPHREY: I'm looking at the eight criteria and if the property that is already sitting there, that is adjacent with the same type of thing, it is difficult for me to say why this couldn't happen also. I was looking through the eight things and I can agree with just about all of them, except maybe one, but if the other three properties have the same condition, why would we deny this applicant that same right?

CHAIR QUIGLEY: Is there any real reason why we shouldn't? Is there something that detracts from the neighborhood, less of a property exposure?

MR. DONALDSON: I go back to the time from being a retired judge. The way I would do it is find out if we would do it or not, then you could always make the findings to support it or not support it. It is easier to say yes or no and then support it with the findings you need to find instead of going through and finding all the findings. Technically, that's the way you are supposed to do it. As a practical matter, it is much easier to find what you want to support yea or nae.

CHAIR QUIGLEY: What we're looking at is the exception we grant is going to be paragraph #2.

MR. MOOREFIELD: Mr. Chairman, let me suggest in line of what Mr. Donaldson said, it does not limit it to just about the lot, but also the structure itself. This is a 76 foot mobile home and he does not say what his old mobile home was, but he has said that the one beside it is a 76 foot mobile home. This looks like a closed case if you guys have an inclination as to what way you want to go, it can be addressed. There is more leeway here. It's the lot on the structure; I'm assuming that what he had there was about 76 foot long. In his testimony, the only evidence is that the trailer beside it is 76 foot long and there is no evidence that there is a variance for that or one needed for that. All the lots are the same size. Do you have there that all the lots are 100 feet?

MS. SPEICHER: All of the lots on the internal street, not on the curb or the corner.

MR. MOOREFIELD: I'm suggesting as Mr. Donaldson said; if you have an inclination one way or the other you can probably find facts to substantiate it.

CHAIR QUIGLEY: Mr. Newsome, do you have any comments?

MR. NEWSOME: I think based on the evidence presented; I'm in favor of granting the variance.

MR. DYKES: I agree with what Mr. Newsome said.

MR. DONALDSON: I'm for granting the variance also.

CHAIR QUIGLEY: It appears if we take a look at paragraph one, there is nothing extraordinary about the topography of that particular lot as opposed to the others in the development. Paragraph #2 is such that it would appear that we're granting a Special Use, but that's not in contradiction to what is apparently a mobile home park and with no one complaining about this longer trailer being placed there...

MR. MOOREFIELD: Mr. Chairman, I suggest with respect too that you find that the evidence is that there is a 76 foot mobile home on the lot adjacent to it.

CHAIR QUIGLEY: Yes, essentially that is correct, that there are already probably longer trailers located in this development and one adjacent to it, in fact. I think that in paragraph #3 if we didn't grant it, it would deprive the applicant of the rights that apparently others in the development may already be exercising.

MR. MOOREFIELD: Again, that's the conclusion we're trying to get to. The fact would be the same findings you just found, that there is a 76 foot mobile home located on the lot next to it.

CHAIR QUIGLEY: Exactly.

MR. DONALDSON: Also, the lots are equal in size of 100 feet within the subdivision.

CHAIR QUIGLEY: The granting of the variance will be in harmony with the purpose and the intent of the Ordinance is to have a uniform looking development. In paragraph #5, this is not the result of actions of the applicant who purchased a newer mobile home.

MR. MOOREFIELD: It would also behoove you to find that this subdivision was made prior to the adoption of the subdivision ordinance in 1970.

CHAIR QUIGLEY: The variance requested is the minimum necessary in order to satisfy what is required. Based on staff's information to us, it does not appear the variance would be a special exception for this particular lot that would not in the future be available to others. I don't think it is the Board's opinion that the nonconforming use of neighboring land would be a reason for approval of this but we aren't considering it.

MR. MOOREFIELD: Mr. Chairman, I don't think there was any evidence that there was nonconforming use. There was no indication of a variance. His testimony was that there is another 76 foot mobile home on the lot adjacent to it.

CHAIR QUIGLEY: We have not measured that.

MS. SPEICHER: Mr. Chairman, if we could go back to #1.

CHAIR QUIGLEY: In paragraph #1, what we heard and observed and what has been presented is that all of the properties are essentially the same dimensions and there is nothing exceptional in that particular lot relative to this action.

CHAIR QUIGLEY: I'll ask for a motion.

MR. DONALDSON: Mr. Chairman, based on those findings and conclusions I move that we grant the variance.

MR. NEWSOME: I second the motion.

CHAIR QUIGLEY: All in favor of granting the variance signify by saying aye.

	IN FAVOR	OPPOSED
QUIGLEY	YES	None
DONALDSON	YES	
NEWSOME	YES	
DYKES	YES	
HUMPHREY	YES	

1. It is the Board's **CONCLUSION** that, there are extraordinary and exceptional conditions pertaining to the particular piece of property in question because of its size, shape or topography that are not applicable to other lands or structures in the same district. This finding is based on the following **CONDITIONS**:

The lots within this development were approved and recorded prior to being subject to zoning. With the existing lot sizes, the lots would be unbuildable to any residential zoning setback for the typical modern single wide manufactured homes;

2. It is the Board's **CONCLUSION** that granting the variance requested will not confer upon the applicant any special privileges that are denied to other residents in the district in which the property is located. This finding is based on the following **CONDITIONS**:

There are already trailers of the same size and longer located in this development and the lots within the subdivision are equal size and would not grant special privileges that are not available to other people;

3. It is the Board's **CONCLUSION** that the literal interpretation of the provisions of this Ordinance would deprive the applicant of rights commonly enjoyed by other residents of the district in which the property is located. This finding is based on the following **CONDITIONS**:

There is already a 76 foot long mobile home located next to it and the lots within the subdivision are basically the same size of 100 feet;

4. It is the Board's **CONCLUSION** that, if granted, the requested variance will be in harmony with the purpose and intent of this Ordinance and will not be injurious to the neighborhood or to the general welfare. This finding is based on all of the **CONDITIONS** listed above, as well as the following:

The granting of the variance will allow this lot to be in harmony with the appearance of the neighborhood, and the purpose and intent of the ordinance is to have a uniform looking development;

5. It is the Board's **CONCLUSION** that the special circumstances are not the result of the actions of the applicant. This finding is based on all of the **CONDITIONS** listed above as well as the following:

This is not the result of actions of the applicant who purchased a newer mobile. This subdivision was created in 1970 prior to the adoption of the zoning ordinance;

6. It is the Board's **CONCLUSION** that the variance requested is the minimum variance that will make possible the legal use of the land, building or structure. This finding is based on the following **CONDITIONS**:

The variance requested is the minimum necessary in order to allow for a more modern home to be on the property that is consistent with other placed homes in the subdivision;

7. It is the Board's **CONCLUSION** that the variance is not a request to permit a use of land, building or structure which is not permitted by right or by special exception in the district involved and will not constitute any change in district boundaries. This finding is based on the following **CONDITIONS**:

Based on staffs' information provided to us it does not appear the variance would be a special exception for this particular lot, and that it most likely would be available to others in the future in similar situations with similar facts and;

8. It is the Board's **CONCLUSION** that the existence of a nonconforming use of neighboring land, buildings or structures in the same district or of permitted or nonconforming uses in other

districts does not constitute a reason for approval of this requested variance. This finding is based on the following CONDITIONS:

This decision was not based on the existence of any nonconformity in the area;

THEREFORE, on the basis of all the foregoing, **IT IS ORDERED** that the application for a **VARIANCE** be **GRANTED** subject to the following conditions:

1. All information contained in the application;
2. All development shall be in accordance with the site plan as submitted unless otherwise specified below;
3. All other provisions of the County Zoning Ordinance shall be complied with;
4. All relevant Federal, State, and local regulations are complied with;
5. The applicant is responsible for obtaining all required permits prior to proceeding with any development on that lot.

Opened Public Hearing

- **P11-08-C:** CONSIDERATION OF A SPECIAL USE PERMIT TO ALLOW A COMMUNITY CENTER IN A RR RURAL RESIDENTIAL DISTRICT ON 5.42+/- ACRES, LOCATED AT 6781 CAMDEN ROAD (SR 1003), SUBMITTED BY CAMDEN CHRISTIAN FELLOWSHIP INC (PREVIOUSLY IDENTIFIED AS L'VIE WORLD OUTREACH CENTER, INCORPORATED) (OWNER) AND CHAD PULLINS ON BEHALF OF CROSSROADS UNITED METHODIST CHURCH.

Mrs. Varner presented the zoning, land use and photos of the site to the Board.

CHAIR QUIGLEY: Swore in Chad Pullins.

MR. PULLINS: My name is Chad Pullins, 3416 Lancers Drive, Fayetteville, NC 28306. I am the lead pastor of Crossroads United Methodist Church. We are a group of people, single moms, business owners, medical professionals, real estate agents, military officers, enlisted military, engineers, teachers, and construction workers. We are a three year young church out in southwest Cumberland County. Most importantly, we are a group of people that share a common vision and deep concern to make our community a better place. Tonight is a big moment for us and you can tell from the folks that showed up tonight. What is important is we want to do everything we can to help southwest Cumberland County thrive. For us, church is not a building, church is people. The second aspect for us is we exist for the community. Our heart is not to be the best church in town; we want to be the best church for our community. It really doesn't make any sense for us to build a church building, but it does make since for us to build a building, develop a piece of property that would be an asset for our community and the people that live in southwest Cumberland County. What we would like to do with the property, it is not going to endanger the public health or safety of the residents there. In fact, it is going to

add to the public health of our community. It is going to create a space for people to gather in the community where relationships can be fostered, nurtured and created. We have agreed to all the conditions posed to us by the County in regards to the property. The current building and property as you've probably saw in the pictures is a little bit of an eye sore to the community right now. When we get done with the property, it is going to be transformed into a place that will enhance the value of adjoining and abutting properties. It will be a polished contemporary building that will set the tone, we believe, for that whole community. Upon completion of the building, it will be in harmony with the area and it will add to the quality of life of all the residents there in southwest Cumberland County. The people known as Crossroads United Methodist Church are committed to fund the project, about a million dollars, specifically so the people in our community might have a better quality of life. Our desire is to be a catalyst in the profit and the non for profit environment of how people can come together, pull their resources around a common vision and work together to really transform their community. Our hope is that we would make such a positive difference for every citizen and that our region would be a better place because we exist out there. Thanks so much for your time, we appreciate it.

CHAIR QUIGLEY: Does anyone have any questions for Mr. Pullins?

MR. HUMPHRY: The majority of people here are with this project?

MR. PULLINS: Yes. [Mr. Pullins asked those in the audience who came to support this case to stand]

CHAIR QUIGLEY: Mr. Pullins, thank you very much. Is there anyone else that wanted to speak on this action?

Public Hearing Closed

CHAIR QUIGLEY: This is a Special Use Permit and there are four case facts to be determined.

1. The use will not materially endanger the public health or safety if located according to the plan submitted and proposed;

2. The use meets all required conditions and specifications;

The use meets all required conditions and specifications for a house of worship.

3. The use will maintain or enhance the value of adjoining or abutting properties;

We have heard no testimony that disputes that. No testimony was presented that would indicate to the contrary that property values would not be enhanced or maintained.

4. The location and character of the use, if developed according to the plan as submitted and recommended, will be in harmony with the area in which it is to be located and is in general conformity with Cumberland County's most recent Land Use Plan, either comprehensive or a detailed area plan.

The location and character of these if developed according to the plan submitted and recommended would be in harmony with the rest of the properties in the area.

Having heard all of those case facts, do I have a motion?

MR. NEWSOME: Mr. Chairman, based on the finding and discussion, I recommend we grant the Special Use Permit.

MR. DONALDSON: I second it.

CHAIR QUIGLEY: All in favor signify by saying aye.

The motion passed unanimously. There was no opposition.

IN FAVOR	OPPOSED	
QUIGLEY	YES	None
DONALDSON	YES	
NEWSOME	YES	
DYKES	YES	
HUMPHREY	YES	

Opened Public Hearing

- **P10-09-C:** CONSIDERATION OF A REQUEST FOR A VARIANCE FROM THE COUNTY ZONING ORDINANCE, SECTION 1104, DISTRICT DIMENSIONAL PROVISIONS; TO ALLOW A FRONT YARD SETBACK OF 30 FEET WHERE 100 FEET IS REQUIRED, A SIDE YARD SETBACK OF 15 FEET WHERE 50 FEET IS REQUIRED, AND A REAR YARD SETBACK OF 16.74 FEET WHERE 50 FEET IS REQUIRED IN A M(P) PLANNED INDUSTRIAL DISTRICT ON 0.55+/- ACRES; LOCATED AT 1441 WILMINGTON HWY (SR 2337), SUBMITTED BY VIRGINIA WILLIAMS (OWNER) AND WILLIAM SKIPPER.

Mrs. Varner presented the zoning, land use and photos of the site to the Board.

MR. DONALDSON: Could you go back a couple of photos. Is the trailer already out there?

CHAIR QUIGLEY: How did we become aware of this situation?

MRS. VARNER: The applicant came to obtain a permit and that is how he found out about the setback to place his trailer. The applicant can explain what happened and how he found out why he needs to go through the variance.

CHAIR QUIGLEY: Does anyone else want to look through the pictures?

CHAIR QUIGLEY: Swore in Mike Adams.

MR. ADAMS: My name is Mike Adams, 203 North Virginia Avenue, Fayetteville, NC 28305. I am the land surveyor. I surveyed the land and actually drew the site plan that you see. I am the owner of M.A.P.S Surveying, Inc. which is a local land surveying company here in Fayetteville. I'm here to represent Mr. Skipper in an effort to help present the case for a variance on this property. The first thing I wanted to share is about the form that we had allowed for the variance, Mr. Skipper and Mrs. Virginia Williams still have not signed the form. Mrs. Williams is not present and there is a reason for that. She was required to sign the form when we submitted it last month because at that time she was the current owner. Mr. Skipper resumed the process of purchasing it from her. The amount of time it took to get the legal issues resolved was unfortunate and Mrs. Williams' husband died in a plane crash. Mr. Skipper is in the process of trying to buy that and to get things straightened out. I just wanted to clarify that. That is why Mrs. Williams is not here, she is not speaking. Since that time we filed, in fact I think it was probably a week after Mr. Skipper obtained his deed and got the deed transfer finalized so the property is now completely sold in Mr. Skipper's name. There are a few reasons why we are asking for this variance. I realize when you read that thing on paper it looks like we are shooting for the moon, asking for a lot of footage to be variances. The main reason is with the current zoning, the setbacks make the property unusable. I have handouts I would like to give. (Exhibit 1 – shows the current setbacks and zoning and how they fit on the property). With the current property being zoned M(P), you can see there are no buildable areas with the setbacks that we currently have. It may be a little confusing. The left side setback comes five feet from the right side property line. We have fifty from the left and five feet from the property line on the right and vice versa with the right. The front larger area you see up front is rendered unusable due to the front setback being 100 feet. The property was officially created in October 1949 and actually was created as two separate parcels at that time. These two parcels were treated and deeded as separate pieces until Sep 2010 when Mr. & Mrs. Williams purchased the property and the two parcels were combined into one legal description. Mr. Skipper's recent deed also reflects that as being one actual piece. I have another handout that shows the separate pieces. (Exhibit 2 – shows how the lot was created in 1949 as two separate pieces.) In the initial zoning book these two properties occurred on March 15, 1979 well after the two parcels were created. Our strongest reason for this variance is by virtue of the initial zoning the property was rendered unusable at that time and actually had remained so ever since 1979. To emphasize the impact of the initial zoning of the property even more, if both parcels were still treated separately they both would be even more unusable than they are together as one piece. Another factor affecting our property is that DOT has taken 20 feet, which you can see on the original deed extended into the current right of way across the front of the property. This pushed our current front setback 20 feet back into the lot. We did not pursue asking for rezoning on the property to get a zoning to make the property reusable, due to the fact that all the properties are basically zoned M(P) and we didn't want to risk losing our zoning case due to spot zoning. We felt it would not get approved. Mr. Skipper runs a waste removal company and would like to use the property strictly as a meeting place for his employees for the mornings and afternoons; a place to get out of the cold and get a cup of coffee. This site will not be used as a permanent office for operations. He will still maintain that out of his home. Mr. Skipper has already done extensive site repairs; you can see from the pictures and has installed most of the fencing. The entire site will be fenced in and his trucks will be kept there. Since the nature of the business is waste collection during the day, his guys will be out during

the day collecting trash and the site will most likely be vacant during the days and used to store his trucks at the night. Most of Mr. & Mrs. Skipper's clients take care of paying for their services by mail, but he would like to have the option if a customer chooses to come to the site to pay their bill. It would probably be a rare occasion if that happens. This is not going to be a permanent office; it is there for the employees to come into in the morning while the trucks are warming up; a place to get a cup of coffee. That's about all I've got and I can answer any questions.

CHAIR QUIGLEY: This lends itself to a lot of questions. If you are going to use this as a place for people to congregate, even just for people to warm up, is it going to have a bathroom facility in it and if so how are you going to handle that?

MR. ADAMS: It has a port-a-john, you can see it in the pictures and that will be the only bathroom facility on this site.

CHAIR QUIGLEY: There is no running water to this location?

MR. ADAMS: No sir.

CHAIR QUIGLEY: Are there any questions for Mr. Adams?

MR. DYKES: How many employees do you have?

MRS. VARNER: Excuse me Mr. Quigley, this is just a request for a variance, I would like to remind you that the use is a permitted use in this zoning district.

CHAIR QUIGLEY: I understand, we were just curious.

MR. ADAMS: There are six employees.

MR. DONALDSON: The trailer that is on there now that we see in this picture, how long has it been there?

MR. ADAMS: About a week or two. It is not set up. It is still sitting on the wheels. He has not hooked it up; he has been waiting to see.

MS. SPEICHER: It may be better if we take these questions to the applicant rather than to his representative.

MRS. VARNER: Mr. Chairman, regarding your question about if there is a bathroom? We are addressing that issue in one of the conditions from Case #11-118 where they can use a port-a-john at the location. Those conditions are for the permitted use case. We have not attached those conditions in the packet because that is related to the site plan review case, not to the variance. Would you like to see the conditions, Mr. Quigley? It is addressed in condition #3.

CHAIR QUIGLEY: Are you going to introduce it as evidence? This is introduced as Exhibit 3.

MR. ADAMS: We also have more current pictures than what you see here.

MRS. VARNER: Mr. Chairman, there are also more pictures that the applicant is providing.

CHAIR QUIGLEY: How many?

MRS. VARNER: We have six pictures.

MR. DONALDSON: What is the name of this company?

MR. ADAMS: All American Sanitation.

CHAIR QUIGLEY: The photos are marked Exhibits 4, 5, 6, 7, 8, 9 & 10. Essentially Mr. Adams is that you use the property to park the refuge trucks?

MR. ADAMS: Yes sir.

CHAIR QUIGLEY: Are there any questions for Mr. Adams?

CHAIR QUIGLEY: Swore in Edward Cromartie.

MR. CROMARTIE: My name is Edward Earl Cromartie, Sr. and just for the record this is my wife Hilda Cromartie. We live at 313 West James Street, Mt. Olive as our primary residence and we have a vacation home here in Cumberland County at 129 Ham Road. I'm the owner with my wife of this piece of property. It is adjoined with the subject property to the right.

CHAIR QUIGLEY: It adjoins to the subject property to the north.

MR. CROMARTIE: I'm not here to speak against it. I congratulate them for wanting to put a business there and I'm glad that the surveyor is here. The reason I am here tonight is to ensure the integrity of my property. This property was purchased by my mother and my teenager brother and my teenage self in the early 1960's. It has family value and will remain so. My wife and I have children and grandchildren and I've paid taxes on this property for all of this time because I intended to keep it. Therefore you can understand my interest in making sure the integrity of my property is maintained. When I come to Cumberland County, I don't necessarily come down Highway 87, but I have relatives who travel that road all the time and one of my relatives asked me if I had put in a business on my property. I knew that if everything was done according to plan, nothing would be on my property, but in all their excitement, they insisted that I go immediately there to see and I did. I slowed up and looked and decided not to stop, but I came to the Planning Board. I have some questions that I want answered. In 1981, I have a copy of it, I got accepted to put a barber shop in and that is my trade, but I haven't practiced that in a long time. We retired from our education careers in Wayne County and live there now, but I still somewhat acknowledge that trade. Back in those years that I taught at Westover Senior High School, I said I've got a place to locate a barber shop and Ms. Jackson signed it and she put a line over it that said "until" so she told me I

would have grandfather opportunity if I ever decided to do it. I'm not here to argue that here tonight. I laid the groundwork to make sure that my property maintains its integrity. I'm glad the surveyor is here because the north side of my lot has a ditch there and I see where someone has dug five feet over onto that property and I want to make sure no one would be coming onto my property. My wife and I want to make sure that my grandson who is now aged five, won't have any problem years later should he decide to come down to use this property. I served on a couple of boards back in Wayne County and what did bring some excitement to me when I came down is I cannot tell that they had actually been out to look at that, those homes had already been put on there. I did not hear anything about it and this is not to be argumentative, but I would have like to have heard something about this prior to my coming down here. When I came to inquire about it, I then found out there was going to be a hearing on November 17th. I came down in to get my variance 1981, we talked about what I had to do to build the land up to put a building up. I was told you have to be careful how much you want to build that land up because that throws it off for the other person. I would want the Planning Department to who prepared enough activity that they would know whether or not in the land preparation that whatever they did on that lot would not render mine useless. I know it is already done, but I'm saying that I know after having lived there a long time and not to go too far back but around 1960 my mother had a talk with the County about draining that property and it never happened until all of the residents moved out. Then it got drained. That was prior to any drains being done for any industry. We were always protesting with the County about draining that area. I know certain things happened to the adjoining property. That water has got to go some place. I just want to make sure my property is not rendered useless by whatever land perks that occur down there. I don't know what it is, but I'm here tonight to raise that question. It is not to prevent or discourage use of it, only to make sure that if my grandson decides to come back to build a barber shop, the land is not rendered useless.

CHAIR QUIGLEY: I'm going to interrupt for a second. You are welcomed to say what you want to say if it is germane to what we are discussing. Right now, you are in an area that we really have no control over. It is not something that we can act on because it doesn't pertain to what we are talking about which is the location of this particular location of this trailer on that property. I think your complaint justifiably should go to the Planning Department. I'm asking this question to the staff.

MR. CROMARTIE: I would not be here tonight if I had gotten earlier notification that something like this was going to happen next to my property. I did not know any other way to bring it to your attention other than to show up here tonight. I knew sir that you would tell me that because you are dealing specifically with the variance and the setback. I had no other choice but to bring the other items to your attention in order to make them a part of the official record.

CHAIR QUIGLEY: The conditions that you just spoke of are addressed in this other action.

MS. SPEICHER: He was provided a copy of those today when he contacted me.

MR. DONALDSON: Mr. Cromartie, as I understand it, there are two main issues that you are worried about tonight. One is your property line and two is whatever property work is done on

his property, doesn't affect your property. I'm not going to give you legal advice, even though I am a retired judge. On the property line, if you have an issue with that you should hire your own surveyor. They will go out and check it and if there is an issue you can deal with the land owner himself or hire an attorney to take care of it. The second it is basically the same thing, if there is any damage to your property from what they did, you can always hire an attorney and the attorney can get an emergency restraining order or an injunction. Those are issues beyond what this board can do. Those are your two basic issues that you are concerned about and those are your two basic remedies. If you have a question about the property line I would strongly suggest that you get someone to survey it and tell you yes, it is correct or no, it is not.

MR. CROMARTIE: I looked at the surveyor's work and as long as what is supposed to be my portion of that driveway stays mine. I just thought that if you will, to make sure my concern was officially documented tonight rather than leave it for some future date.

CHAIR QUIGLEY: We understand and what I'm referring to is Mr. Donaldson's referring you to the fact that the Planning and Inspections Department does have a permit requirement that outlines what you just mentioned about things that have to be accomplished on the adjoining property to yours. I think it is pretty much covered.

MRS. VARNER: Mr. Chairman, to answer Mr. Cromartie's question concerning about why he wasn't notified. When the use is permitted in a zoning district, it doesn't require us to notify the neighbors. The reason he was notified for the Board of Adjustment case is because it is a public hearing. That is the difference Mr. Cromartie.

CHAIR QUIGLEY: He did receive notification?

MRS. VARNER: For the Board of Adjustment case, yes.

CHAIR QUIGLEY: We appreciate your comments pertaining to the issue. Does the staff have any comments?

MRS. VARNER: We cannot provide a recommendation, Mr. Quigley.

CHAIR QUIGLEY: We understand. Does anyone have any questions for Mr. Cromartie or want to talk to Mr. Adams again? Mr. Adams, do you have any comments that you want to make?

MR. ADAMS: I just want to emphasize our main reasons for the variance. When our lot was zoned because of that zoning since 1979, it has been unusable. I just want to make sure to emphasize that.

MR. DONALDSON: On the left and right side of Mr. Cromartie's land and the land on the other side, what is the nature of it, is it just wooded? No houses? Isn't the County dump located near there?

CHAIR QUIGLEY: No. This is south Wilmington.

MRS. VARNER: Mr. Donaldson, the closest residence is located approximately 280 feet from the subject property.

Public Hearing Closed

CHAIR QUIGLEY: This is a variance. Are there any comments for paragraph #1? We have an extraordinary condition in that it is a very narrow property.

MR. DONALDSON: Based upon the size and present setbacks it is unusual.

CHAIR QUIGLEY: With the size of the property and the setbacks, it would be unusual in a normal situation. Paragraph #2, is there anything that granting the variance would deny other people in the area similar use?

MR. MOOREFIELD: The fact that you found it unusable with the topography and the size takes care of all of that. If you strictly follow the Ordinance, no use could be made of it.

CHAIR QUIGLEY: In paragraph #3, if we literally interpret the provisions of the Ordinance, nothing could be done with the property. In paragraph #4, is there any reason to suspect that it would not be in harmony with other uses in the area in that particular part of town? In paragraph #5, what is being requested is not a result of the actions of the applicant. They are living with the property as it exists.

MS. SPEICHER: The County initiated the zoning of the property to M(P). Can we add that to Number 5?

CHAIR QUIGLEY: Yes.

CHAIR QUIGLEY: The requested variances are the minimum variances that grant them use. In paragraph #6, this is the minimum variance to make the property usable in some form. This variance is not giving them permission to use the property in any way that is not already allowed in that zoning configuration. There doesn't appear to be any nonconforming use of neighboring properties. No evidence of that has been presented. Based on those facts, do I have a motion?

MR. DONALDSON: I motion we grant the variance.

MR. DYKES: I second.

CHAIR QUIGLEY: All in favor of granting the variance signify by saying aye.

The motion passed unanimously. There was no opposition.

IN FAVOR	OPPOSED	
QUIGLEY	YES	None
DONALDSON	YES	
NEWSOME	YES	
DYKES	YES	
HUMPHREY	YES	

1. It is the Board’s **CONCLUSION** that, there are extraordinary and exceptional conditions pertaining to the particular piece of property in question because of its size, shape or topography that are not applicable to other lands or structures in the same district. This finding is based on the following **CONDITIONS**:

We have an extraordinary condition based upon the size of the lot and the present M(P) zoning district setbacks. The lot would be unbuildable to any non-residential use under the M(P) zoning classification because the required setbacks overlap and due to the right-of-way taking;

2. It is the Board’s **CONCLUSION** that granting the variance requested will not confer upon the applicant any special privileges that are denied to other residents in the district in which the property is located. This finding is based on the following **CONDITIONS**:

Granting the variance will not confer upon the applicant special privileges denied to others. No use could be made of this property if the zoning ordinance were strictly followed due to the property’s unusual size, topography and unrealistic setbacks;

3. It is the Board’s **CONCLUSION** that the literal interpretation of the provisions of this Ordinance would deprive the applicant of rights commonly enjoyed by other residents of the district in which the property is located. This finding is based on the following **CONDITIONS**:

We literally interpreted the provisions of the zoning ordinance; no structure could be placed on the property without requiring a variance for one or more M(P) zoning district setbacks;

4. It is the Board’s **CONCLUSION** that, if granted, the requested variance will be in harmony with the purpose and intent of this Ordinance and will not be injurious to the neighborhood or to

the general welfare. This finding is based on all of the **CONDITIONS** listed above, as well as the following:

The granting of the variance will be in harmony with other uses in this neighborhood and with the intent of the zoning ordinance; the immediate adjacent lot will also be burdened when developed by the same standards;

5. It is the Board's **CONCLUSION** that the special circumstances are not the result of the actions of the applicant. This finding is based on all of the **CONDITIONS** listed above as well as the following:

This is not the result of the actions of the applicant. The County initiated the zoning of this area to M(P) in March 1979 after creation of subject property and the right-of-way taking;

6. It is the Board's **CONCLUSION** that the variance requested is the minimum variance that will make possible the legal use of the land, building or structure. This finding is based on the following **CONDITIONS**:

With the relatively small structure and in the current location, this is the minimum variance to make the property usable in some form;

7. It is the Board's **CONCLUSION** that the variance is not a request to permit a use of land, building or structure which is not permitted by right or by special exception in the district involved and will not constitute any change in district boundaries. This finding is based on the following **CONDITIONS**:

This variance is not giving them permission to use the property in any way that is not already allowed in that zoning classification and does not change the district boundaries;
and

8. It is the Board's **CONCLUSION** that the existence of a nonconforming use of neighboring land, buildings or structures in the same district or of permitted or nonconforming uses in other districts does not constitute a reason for approval of this requested variance. This finding is based on the following **CONDITIONS**:

This decision was not based on the existence of any nonconformity in the area;

THEREFORE, on the basis of all the foregoing, **IT IS ORDERED** that the application for a **VARIANCE** be **GRANTED** subject to the following conditions:

1. All information contained in the application;
2. All development shall be in accordance with the site plan as submitted unless otherwise specified below;
3. All other provisions of the County Zoning Ordinance shall be complied with;
4. All relevant Federal, State, and local regulations are complied with;
5. The applicant is responsible for obtaining all required permits prior to proceeding with any development on that lot.

12. DISCUSSION:

There was none.

13. UPDATE(S):

There were none.

14. ADJOURNMENT:

The meeting adjourned at 8:55 pm. Motioned by Mr. Humphrey and seconded by Mr. Donaldson.