

Renee Paschal
Interim County Manager

Sally Shutt
Assistant County Manager



Rawls Howard
Director

David Moon
Deputy Director

Board of Adjustment

MINUTES
January 19, 2023
6:00 PM

Members Present

Gregory Park-Chair
Marva Lucas-Moore
Robert Davis
Vickie Mullins

Absent Members

Linda Amos, Vice-Chair
Kenneth Turner

Staff/Others Present

David Moon
Chris Portman
Latasha Johnson
Robert Hasty (Asst County Attorney)

Alternate Members in Attendance

Gary Silverman-Alt

Chair Parks called the meeting to order at 6:00 p.m. in Public Hearing Room #3 of the Historic Courthouse.

1. INVOCATION

Vickie Mullins read the invocation.

PLEDGE OF ALLEGIANCE

Recited by all.

2. ROLL CALL

David Moon called the roll. Vice Chair Linda Amos and Mr. Kenneth Turner were absent. Mr. Moon stated we do have a quorum.

SWEAR IN OF STAFF

Chair Parks swore in staff Christopher Portman and David Moon.

3. ADJUSTMENTS TO THE AGENDA

David Moon: There were none.

4. APPROVAL OF THE November 17, 2022, MINUTES

Chair Parks asked for a motion to approve the November 2022 minutes. Vickie Mullins made a motion to approve the minutes from the November 17, 2022, meeting as written, seconded by Gary Silverman. All are in Favor.

Chair Parks: it passes.

5. ABSTENTIONS BY BOARD MEMBERS/BOARD MEMBER DISCLOSURES (SITE VISITS AND/OR PERSONAL AFFILIATIONS)

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Moon: Are there any abstentions by board members or board member disclosures (site visits and/or personal affiliations). There are none.

6. PUBLIC HEARING DEFERRALS/WITHDRAWALS

David Moon: There are none.

7. POLICY STATEMENT REGARDING APPEAL PROCESS:

David Moon read the policy statement.

8. PUBLIC HEARING(S)

David Moon: The case before you this evening is:

BOA-2022-0031: Consideration of a Special Use Permit to allow a cemetery in an RR Rural Residential District on 7.00 +/- acres, located at 7467 Camden Road; Jesus First Christian Church (owner); submitted by Gary Leviner (applicant).

DAVID MOON Chair, this evening I will give the initial presentation regarding procedural matters and then Planner Chris Portman will go through the information on the case and application. Give me a second to pull up the presentation.

Here we go. The applicant owner is the Jesus First Christian Church. The agent is Gary Leviner who is the pastor of the church. The request is a special use permit within an RR rural residential district to allow a cemetery use on a portion of a 7 acre parcel owned by the Jesus First Christian Church.

Under a special use permit, the BOA has the authority to make a final decision. You have the ability to approve, deny or approve with conditions. There are 4 basic criteria that the board considers when it is making its decision. Those fall under section 1606.C. of the zoning Ordinance. Those criteria are: The use will not materially endanger the public health or safety if located according to the plan submitted and recommended. The use meets all required conditions and specifications. The use will maintain or enhance the value of adjoining or abutting properties, or that the use is a public necessity; and 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 the Cumberland County's most recent comprehensive land use plan.

Now we do have some new members on the board, so I will briefly go through some of the definitions related to the application this evening. (0758) A Special Use, these are use that a permit is required for the activity to occur on a property. These are uses that are not permitted, they are not allowed on the property unless demonstrated that they are compatible with the character of the surrounding area and meet the criteria that I just presented to you.

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If approved, staff will prepare a special use permit based on the conditions that are approved by the board. You'll find in your packet the current list of approvals. So those would be included in your motion plus any additional conditions you may add this evening if any additional conditions.

Your decision on those 4 criteria is to base on a finding of fact. The information to determine the findings of fact are the special use site plan the applicant has submitted, the conditions of approval which are included in the staff report. The applicants response both in writing and what you hear here this evening, the staff report that you received, the staff presentation that is this evening and any substantially competent information provided by the public or others at the hearing this evening. Overall the burden of proof is placed on the applicant that demonstrates that the proposed cemetery is consistent with the code and meets those 4 criteria.

Now as you can see on the permissible use table within the zoning code, a cemetery and a church, rather a cemetery is a, got ahead of myself, a church is falls under a religious activity. Which is permitted to use under the RR Zoning district. A cemetery within a RR zoning district is allowed as a special use. This is straight from our zoning code. Under the definition of religious worship activity. (1030) Under the definition of religious worship activity it describes accessory uses. A cemetery is not listed under the accessory uses that are underscored within that definition of religious worship activity. The zoning code also, includes a definition of a cemetery which follows the general statutes of NC. Its definition is any or a combination of more than one of the following places or to be used or dedicated or designated for cemetery purposes. Burial Park or earth internment, a mausoleum, or a columbarium. All of those would be considered acceptable activities under the definition of cemetery.

Now as a special use the cemetery has to meet and subject to the requirements under section 916. It states that the minimum yard requirements shall meet or exceed those required in the C1 commercial zoning district. That information will be presented to you this evening. They are required to have paved parking for the cemetery and that it has to have a paved driveway. There is already a paved driveway leading up to the proposed area of the cemetery. Then there is buffering and landscaping requirements that must meet the requirements of section 1102, paragraph G of the zoning code. And then there's other conditions that typically aren't applicable to this use, such as noise levels exceeding a noise level of 60 so depending on the type of use under special uses that may apply but not really in this situation.

The applicant has proposed a site plan, a special use site plan and specifically the request asked for a 20,000 square foot area at the southeast corner of the property currently occupied by softball field, to be used as a cemetery. The church is located at the Central Western property line. This is the paved driveway that comes off of Camden Rd. The septic tank is located and the drainage field, located at the front of the building. There is a well that's located at that prop portion of the property here at the. Corner of the building. Current parking for the church occurs on this northeastern corner of the property, and it would not interfere with the cemetery operations. In general, this is a picture of the area where the cemetery is proposed at the Southeast corner of the property. It's within the fenced area of the current softball field and this is another photo of that same location.

So, with that, I'll turn the presentation.

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Gary Silverman

Building at the back of the ball field?

David Moon

That is a separate parcel that includes a single-family residence.

Gary Silverman

So it's not all of, not within this property.

David Moon

No, Sir, it's outside the property line.

You'll hear more information about that when Chris Portman continues with the presentation.

Are there any other questions, questions on procedural managers that you might have for me?

Right now. OKAY, Chris, I'll scoot over.

Chris Portman

Good evening. My name is Chris Portman, one of the planners in current planning. As you can see, this is the subject property. It is institutional for the church. Just north of the property is a county garbage transfer station. There's a utility substation to the left and is also surrounded by residential. This is a more up-close aerial of the subject site, outlined in blue is the proposed cemetery where the arrow is pointing site that that is the site out in front of the church, which is the building more in the left corner, the septic field. Is in front of the church and then the area next to the church on the right. That big empty field is their current parking for the church, which will be shared for the cemetery.

This is the zoning that are surrounded by the property. It's RR, R10 and R5. There are hydric soils on the property, but no hydric inclusion. There is a water line that goes along Camden Rd. This is in the suburban residential land use plan, but there is no restriction regarding cemeteries located in the plan.

This is the South view of the subject property. You can see the church there in the center. This is the Westview, looking down Camden Rd. The Northfield, looking across the street. And this is the East view, and the next pictures are just of the subject property with the baseball field. This is the driveway going to the church and to the parking area on the left. This is a picture of the ball field kind of at the end of the driveway, as it would turn around. This is inside of the ball field. There is currently, Mr. Learner's wife buried there. That is her burial site. This is a backside picture of the side actually behind home plate looking out towards ball field. This is the backside abutting the property that abuts behind it, and you can see there in the center, the current burial site.

Outlined in red, you can see this is the proposed parking area in front of the ballfield, where the cemetery would be. This is just a larger picture of that. Another picture. This is the inside of the ball field as outlined in the red diagram.

So for RR residential, the zoning that is currently assigned to this the front yard setback is 30 feet, the side is 15 and the rear is 35 and with section 916 this has to follow C1P standards and setbacks regarding that. For that, the front yard for C1P is 45 feet. The side yard is 15 and the rear yard is 20.

David Moon

The yellow highlights are to show the setbacks that would be applicable to the cemetery as it's set far back from Camden Rd.

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Chris Portman

Some of the key conditions of approval is that occur consistent with the special use site plan, the development site plan and the landscape plan, the applicable state and county agency permits to be obtained, A paved driveway and parking for the cemetery that would follow the C1P setbacks, the landscape plan must be submitted and be consistent with section 1102 G, which follows a solid opaque fence in at least 6 feet of height at vegetative buffer at 3 feet of height and planting to reach at least six feet within a three-year growth period. And expiration date to the summit site plan and to operate as a cemetery.

David Moon

Also, the cemetery is limited to a maximum of 20,000 square feet with a dimension of 200 feet wide and 100 feet deep. That's what the applicant has proposed.

Chair Gregory Parks

Total land used?

David Moon

For the cemetery, the church property itself comprises 7 acres.

Chris Portman

And this concludes my presentation.

David Moon

Chair again, your decision should be based on those four criteria, after listening to the applicant and the public comments that that will occur this evening.

Chair Gregory Parks

So the staff is saying that they do pass all the requirements to have this.

David Moon

Staff has found that the site plan meets the intent of that section. 916 of the Zoning Code subject to the applicant complying to the current conditions of approval as well as any conditions that the board may establish this evening.

There are five speakers this evening. There is one in favor and there are four that are opposed. Staff presentation is completed, so if you want to move into the public hearing, you can. If you have questions of staff, do what I can to address them.

Chair Gregory Parks

Keep this key conditions of approval up here so we can. I mean, unless they want to see something else Is that OKAY with everyone.

Gary Silverman

I do have questions. Staff on this key condition of approval, the 4th bullet paved driveway parking. Does that indicate the entire parking area must be paved?

David Moon

No, because the church right now would be a legal, nonconforming activity. Paved parking likely would be required to accommodate at least the employees and accommodate American Disability Act access requirements for handicapped or disability parking, so they currently. Do not have that, but the code does for the cemetery require

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paved parking. That can be shared parking with the church, but the church would be required to provide. Probably maybe one or two pay parking spaces for the cemetery that would be addressed at the time of the site plan review, a site plan and landscape plan with more detail will have to be submitted to the current planning division for review. If the special use is approved by the Board of adjustment.

Chair Gregory Parks

Well, let's get some speakers as staff finished. Let's proceed with the hearing. Thank you.

David Moon

Chair, the first speaker in favor is Gary Leviner.
So he would be his first speaker.

Chair Gregory Parks

Mr. Leviner. please stand to the podium up here please. Microphone and the Bible up there?

Gary Leviner

Talk to the side.

Chair Gregory Parks

Do you affirm to tell the truth, yes. The whole truth and nothing but the truth, so help you God?

Mr. Leviner

Yes.

Chair Gregory Parks

All right, state your name and your address.

Gary Leviner

Pastor Gary Leviner my home address or the church address?

Chair Gregory Parks

Whichever you would like to tell.

Gary Leviner

Church address is 7467 Camden Rd. Fayetteville, ZIP code 28306, and I'm speaking on behalf of the Congregation of Jesus. First church I noticed. Maybe there was some misconception that the whole ball field is not going to be the cemetery.00:23:22

Chair Gregory Parks

Well, that was one of my questions.

Gary Leviner

Yeah, this the I'm sorry. As well and.

Chair Gregory Parks

Yeah, go ahead.

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Gary Levinor

That's what I had turned into Chris was the. The ball field taken out the cemetery is restricted to a 200 by 100 foot permanent. Other words, we're not going to take the church property and turn it into a cemetery. This is. So I won't I didn't know whether you all were thinking that that was the whole ball field was going to be. The cemetery it's.

Vicky Mullins

Well, I have a question because I caught that because right here on this, what the site plan is here for the property, I mean the proposed cemetery, but on here it's got the whole. Okay.

Gary Levinor

That's it.

Gary Silverman

Yeah, that's.

Vicky Mullins

The picture and that and I was going to ask that question.

Gary Levinor

That's the one thing.

Vicky Mullins

So, it's just going to be the tack part next to the fence.

Gary Levinor

Yeah, the last paper, yeah. The last paper I turned to Chris at the fence took down because we have no quadrant. We have, we have, we have instructed the people that have been using the ballfield for about 30 years, that this was their last week of use. They've used it for practice.

Chair Gregory Parks

We're going to eliminate the ball field.

Gary Levinor

Well, unless they can do something with defense, they have. You saw the fence down.

Chair Gregory Parks

Yeah, that's what I was wondering. If you're gonna play ball there. You got a cemetery right there. Where does the fence go? Where does the back fence go? You got two fences there?

Vicky Mullins

Yeah, what?

Chair Gregory Parks

Separate the cemetery. So what you're going to do is alleviate the ball field?

Gary Levinor

Right. Okay. Chris had asked me to show a paper with how it would actually be without the fence. We have. Like say, we've never. The church has never got any.

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Benefit other than the community using it and it's the fence and everything is just. In such bad shape, and so that that if there was a misunderstanding, it's not, we're not going to turn the property into a cemetery. It's just that 200 by 100 foot that's going to be restricted.

Chair Gregory Parks

But you're going to put the cemetery. Back portion of the product line.

Gary Levinor

Right. And I did speak because David had told me when I talked to him yesterday to call the North Carolina Cemetery Department. See what restrictions or anything to where there's church cemeteries are operated separate than commercial. There's no permits for anything that we have to go through as far as the state is concerned, because church cemeteries are separate. We have actually in our community we have. There are three churches within our vicinity that have church cemeteries. Spring Hill. Stony Point Baptists and Whispering pine Baptists. But we're not going to. We're not turning that property into a cemetery. This therefore church. And the cemetery itself. Is being provided as part of our church for our, for our people. They want some history with our church. We believe that cemeteries provide a certain amount of history. This cemetery would not be open to the public for purchase, nor would any of the plots in this cemetery be purchased. There would be no money exchanged. We are not in this to make money. We're in this to provide a, and I know it said earlier it was not a part of the ministry, but to us it is a part of the ministry, it is a part of the church congregation..

Chair Gregory Parks

So you would not charge even your congregation to be.

Gary Levinor

No, we're not. There will be no charge whatsoever. This is this is a part.

Gary Silverman

With the I'm sorry. One question headstone are the above.

Gary Levinor

The one that I have purchased from my. Wife is above.

Chair Gregory Parks

Can you point out where your wife has been in there on the property? Is it within where, proposed cemetery is?

Gary Levinor

Oh yeah. since it's a Cemetery, yes, back. We were not expecting her to pass as fast as she did. She had been sick for four years. in the last six months or eight months. I was doing everything for and she just went anyway. Before we had applied for the permit before she passed, we did not. This we did not apply for it because she passed or was looking for her passing. This is something that our congregation had been warning for a while. And but yeah. But when she did pass, I talked to Ross. And I talked to Chris. We make for sure everything when she was placed would be in the would not interfere with anything. We went through all that process. But it will be complete for our church family. There will be no money exchange. We're, you know, we're a small church. We struggle for finances, but we're not here to figure out how to make money. We're here to establish history with our church people. We're. This is our 35th year going on 36 years established.

Gary Silverman

How large is? How large is your congregation?

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Gary Levinor

Before the pandemic, 75 to 100 since the pandemic. We may be 30-70. It's, you know, and of course going through a lot of sickness now we've not. Things have just not got back where they were because there is an issue but I had. I think that pretty much establishes the Board of Directors would determine. When we were had a, he had a question for me concerning supposing somebody would come to the church and leave the church would then they leaves their plot. We don't really have that, but. That would be established if a person was approved to plot. They would never lose it, they would be a paper contract. That it would be permanent for them.

Vicky Mullins

And that would be as long as they don't. Lose their membership?

Gary Levinor

No, no, ma'am. If they move their membership or whatever, they still have it. We're not, We're not that kind of people.

Marva Lucas-Moore

The proposed cemetery is it close to where the cemetery is there now. Or is it like it? Might be a different set back a little. Is it right in that same area?

Chair Gregory Parks

Where your wife buried?. Is that on the back part of the proposed cemetery.

Gary Levinor

No. Yeah, that, that's up more to the front.

Chair Gregory Parks

So it's on the front part of the triangle that y'all are going to make

Gary Levinor

It's actually going to be a rectangle.

Chair Gregory Parks

I'm sorry. Now say triangle. I'm sorry rectangle and that right triangle rectangle is how deep.

Gary Levinor

It's 100 foot deep.200 wide.

Chair Gregory Parks

OKAY, so she's on the front. So you got 100 foot to go past her to the back part of the cemetery.

Gary Levinor

Yeah, plus, but you've got the 30 foot.

.

Chair Gregory Parks

Y'all I don't have to worry about any easements here. You got plenty of land for easy, I believe.

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Gary Levinor

Yeah, or either we could either we could move it up. Yes, We could move it up. We could move it up. We're e open to work.

Gary Silverman

Okay.

Chair Gregory Parks

Any other questions? Excuse me. Yes, Sir Go ahead, Gary.

Gary Silverman

Could you put the slide up that shows that building? At the back of the house. The house at the back. Travis Harringtons Family room. Yeah, right there it looked like that. The fence is right up against that, that building, that home, which is. Doing a different plot. But am I seeing that correct? Is your fence right up? You know, almost right up against that home.

Gary Levinor

And now I think what these 10 foot? Whatever the easement is, the fence was there. And then Travis built his house.

Chair Gregory Parks

OKAY, so the owner of this House put that fence up.

Gary Levinor

No, we put the fence up.

Chair Gregory Parks

So that's the churches chain link fence.

Gary Levinor

Right.

Chair Gregory Parks

OKAY, so when he built his house, he just had to get the setbacks off that fence to the room.

Gary Levinor

Right. That's right. Like I said, one of the things I, when I talked to the people at the state, they said church cemeteries were handled different. Then commercial cemeteries there that they only thing they had was zoning. They say we did the what because when I talked to David he first thought we were supposed yesterday getting up to this, that we were supposed to go to the state for some permits or something. And I called them and they said no church cemeteries are different. And so I realized all this, the paving, this stuff, how these cemeteries go this way. But there is no church cemetery that I know, In this county that has wrap around pavements or you know we're willing to do whatever is feasibly that we can.

Chair Gregory Parks

Now, what do you propose to put to the back of this to the back and to the front to kind of.
And I don't want to say eliminate the viewing or you follow what I'm saying.

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Gary Levinor

Right. We've we have already got an. Estimate on the on a privacy fence that would run between.

Chair Gregory Parks

OKAY.

Gary Levinor

This is Travis.

This he through his.

This way and upfront we've already got an estimate on that.

Chair Gregory Parks

OKAY, so it's a private fence. Like they just a wood 8 foot fence.

Gary Levinor

And I would. And that, you know, we could plant, I love bushes and stuff so we could plant bushes, but it's going to. Take time for them to grow.

Chair Gregory Parks

Well, your code says you got. Three years anyhow. OKAY.

Gary Levinor

Yeah. So. But there's not going to be any buildings there. We ourselves as a congregation. Probably have. Two deaths a year, maybe in the parking situation was my thing. You know, we're only it's only going to be used once or twice a year. And like I said, the stipulation for the state. Was just zoning that we just went through the zoning. You know, we've bit we have I think been good neighbors there. Travis, remember time he was like this. We don't want to do anything to take away from the community, but within our church area there is churches that have cemetery. We're just asking that our congregation. We view this as part of doing this for our people. You know, we ask that you approve it. My wifes there. She's not going to be moved. This is one thing that we made for sure and I think there might have been some misunderstanding in our Community that we went and did this. But Chris knows we did this. Had this in the planning before she passed, we were not looking for that to take place.

Chair Gregory Parks

Any other questions?

Gary Levinor

For him, thank you all for hearing.

Chair Gregory Parks

Thank you very much Sir.

David Moon

Next.

Under speakers under opposed is Herbert Weaver, Herbert Weaver, Mr.

Herbert Weaver

Thank you board that we be able to talk.

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Chair Gregory Parks

Mr. Weaver, Could you raise your right hand?

Herbert Weaver

I'm hard of hearing.

Chair Gregory Parks

OKAY. Do you swear to tell the truth? Nothing but the truth so help you God?

Herbert Weaver

I do.

Chair Gregory Parks

Great. State your name and your address, please.

Herbert Weaver

Herbert Weaver, 6101. Ellen Lane.

Chair Gregory Parks

Yes, Sir. All right.

Herbert Weaver

I'm on the property in the.

Chris Portman

The one with the red.

Herbert Weaver

I don't see too well either right here all.

Chair Gregory Parks

Right, that's your property there.

Gary Silverman

Yes, Sir.

Chair Gregory Parks

Yes, Sir. All right. Go ahead, Sir.

Herbert Weaver

I have 5 acres there and I'm opposed to this cemetery. It's a very touchy subject. I know we all, you know, have a personal thing about our loved one. My main concern is toxic leaching. I've read on this quite a bit. Cemeteries have a history of leaching into the groundwater. Our groundwater level there and that area is high. When we have a good rain, the church's property has standing water over quite a bit of its surface. I don't know exactly how that's going to affect the bodies that are going to be in this cemetery in relation to toxic leaching. I've heard different, you know, scenarios. Some people say not so much. Some people say it is a concern. I'm really not sure gives me a little bit of anticipation about that.

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Another thing is the property value. Those of us who live around this proposed cemetery, we really don't go to the church. The church is from a different area and relocated here 30 some years ago. I don't know why they relocated. They may have tried to get a cemetery there and weren't able to. I don't know. And they're trying to do that here. One of the things that I have read is that there's a mixed feeling about that some Realtors have told me that. Not a big deal. Other Realtors have said that, well, some buyers, of course, are very hesitant to be near a cemetery, so that's a negative for us. In the future, if we want to sell our properties. The congregation doesn't live around their church. They live somewhere else, so they don't have no concern about our property value. As he had stated, he's not seeking any profits off of this. OKAY. One of the things that I know is that people haven't stopped dying. His congregation, I'm sure, will increase in time fables. Population is going to increase. I Would assume his congregation will increase, which means that this proposed cemetery will increase. I don't think that's a good thing. It ain't going to help out our property values anymore.

Other than that, if the board does decide to have this cemetery, there's a few things that I would like to have considered. It has been addressed already about the privacy fence. I have some concerns about what kind of privacy fence I would like to see. I really haven't seen minted them yet. I'm really not a big fan of above ground monuments. If they do get this approval, I would like to have nothing above the ground. Privacy fence or no privacy fence, second story homes privacy fence isn't going to obstruct that view. That's the appearance. Other than that, I believe that's about all I have to say.

Chair Gregory Parks

Any questions? Thank you very much, Sir. I appreciate it.

David Moon

Next speaker is Travis Harrington, Travis Harrington.

Chair Gregory Parks

Raise your right hand. Do you Swear to tell the truth, nothing but the truth, so help you God.

Travis Harrington

Yes, sir.

Chair Gregory Parks

State your name and your address.

Travis Harrington

Travis Harrington, 7475 Camden Road and I'm the house that y'all seen that's on that chain link fence like Pastor said here. You know, I was the kid. Me and his grandson played together, Jonathan .So there's, you know, no issues, no. City or anything but the pastor know. There's, you know, no issues, no animosity with the pass by as good friends, you know, never had no issues with anything. If we ever need to communicate, he comes to me, I'll come to him with any concerns, right? So my biggest concern is just like Mr. Weaver was saying, you know, property value. Privacy fence as I can see my house is a 2 level house, so if I'm on my second floor like I obviously can still see into the you know cemetery.

If it's approved. And then just. the view of everything of just the value of you and then, like I said, the privacy fence is really my biggest concerns on it. No issues of saying he shouldn't have it. It's just I'm kind of don't want to say it like that. I'm kind of the worst one of everything, because my house literally is sitting right there at the. Property line of everything.

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Marva Lucas-Moore

Can we go back to the slide, is that, that your house sitting right there? In front of. Think the pastors wife there over.

Travis Harrington

Yeah, that's it right now.

Marva Lucas-Moore

So that is your house.

Travis Harrington

Yes, ma'am.

Marva Lucas-Moore

And right now. It's open where you can just see the cemetery. Where it is right now.

Gary Silverman

How much Spaces between your house and fence?

Chair Gregory Parks

Actually, now probably 15 feet, probably set back with 15 feet.

Gary Levinor

This give the other form to.

Travis Harrington

Yeah, I think that's about, about about.10 feet, yeah.

Chair Gregory Parks

And that's what he's got now, the fence? Go ahead.

Vicky Mullins

I have a question.

Travis Harrington

Yes, ma'am.

Vicky Mullins

OKAY cause? Where your house is, that's the ball field? Wasn't that a lot of noise when everybody was out there playing and carrying on? And I'd be more worried about. A ball hitting my windows. And I mean, that's just me. I mean, I'm just, how close is that fence, you know, with the ball field? Right there?

Travis Harrington

You're right, you know, that was a concern for me. You know, when they out there playing ball, you know, they're hitting the balls too far. They had a couple of balls go over the fence, knock on wood. None actually hit the house or did any damage, but that always was a concern when they would be out there. The music really not too big of a concern if they were out there, you know, playing you know, their radios and stuff because they normally once it got dark, that was pretty much wrapping up. And I do work during the day, but on days off, you know I am home and

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hearing those balls go off. But I said it was never a concern where I had to go and say hey, this is an issue, but it was concerned in my head like, hey, if the balls go over the fence or hit my house or anything like that. You're welcome.

Chair Gregory Parks

Any other questions for Travis?

Chris Portman

Thank you very much.

David Moon

Next speaker is Anne McDougal or McDonald.

Anne McDonald

My questions been asked.

Chair Gregory Parks

Thank you.

David Moon

And the last speaker is Adrian Frederick Adrian Frederick.

Chair Gregory Parks

Everything good?

Adrian Frederick: Everything is good.

David Moon

That completes the list of speakers, Chair.

Go ahead. Next, you'd want to close the public hearing unless you have any questions.

Chair Gregory Parks

Sorry, no other speakers will close the public hearing tonight.

Gary Silverman

In the presentation. You can put a border. Between the House and the figure, instead of the fence, and it says. Somehow trees and the trees scrub it some. It took three years.

David Moon

To land development code would require a minimum height of three feet at the time of planting with that. Shrub species reaching a height of 6 feet within three years.

Gary Silverman

And when you continue, in other words, I'm saying, would it be like would you put like cedar trees something once they grew, it would like actually block the whole area from this two-story? And the shrubbery that could be trees.

David Moon

The code didn't describe a tree planting if I recall, that's a condition that the board could consider.

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Chair Gregory Parks

OKAY, I need to know something here. How far is the back part of the, where the fence is going to go? Where the cemetery is. Where they're going to put 6 foot, is it a six foot fence? Is that what? We said 6 foot fence on the back part.

Gary Levinor

Yeah, it would be. It would be the tallest fence we could get, which would be a six foot.

Chair Gregory Parks

You can get a 10 and 12, so Oh yeah, you get a 20 foot fence. But my question is how tall is the fence? I'm going to do some math here to see if you're.

Going to be able to see. You know the Cypress trees or what not?

David Moon

The code requires a minimum height of 6 feet for a solid or opaque fence location of the fence.

Gary Silverman

And they.

David Moon

Following the code, the fence could occur at the property line.

The doesn't say it has to be at the perimeter of the cemetery.

Chair Gregory Parks

Well, it's going to be. Better, Sir, for him to be better at the cemetery. You follow me?

David Moon

That's a condition the board could consider.

Chair Gregory Parks

You see what I'm saying? If you put the fence at the cemetery, then your eyes from your second floor are not going to see much of the cemetery at all. You follow me? Unless you back the fence up where your eyes are going. To see a lot of it. So if they put it at the outside of the of the cemetery, then where you are at, we're going to say where you are if you got 8 foot ceilings. On the 2nd floor.

Travis Harrington

You know, they are there once they announce.

Chair Gregory Parks

OKAY. So you're talking, you know, let's say 16 feet is where, you know, if you're 6 feet tall or whatever.

That's where you're going to be looking down. So if you got a six foot fence and then they're saying to put a.6 foot.

Tree there. Well, I'm thinking of Cyprus. You know how quick. Where they were. They grow so quick, so in three.

Years it might be 9 feet and reaches 6 feet. I'm just trying to. You know the conditions of y'all. I'm just trying to get a buffer. On the backside.

Gary Silverman

On that backside. Where the fence is?

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Gary Levinor
I understand.

Gary Silverman
That's the line. Right.

Chair Gregory Parks
That is, that's Travis's.

Gary Silverman
No, just churches.
Yeah, it's the church is.

Chair Gregory Parks
That's correct. Church expense but that's his.

Gary Levinor
Right.

Chair Gregory Parks
That's his property, right? Right.

Gary Levinor
No, it's right between pictures.

Marva Lucas-Moore
The church is popular version probably.

Gary Silverman
But from that fence is that where you going to have the 15 feet? Away from there. You know where you got.

Chair Gregory Parks
What do you say about it saying?

Gary Silverman
1520.

Chair Gregory Parks
Well, that's. What was the backyard?

David Moon
The set back would follow the C1 commercial of 20 feet.

Gary Silverman
26 N 2023 from there.

David Moon

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Which is less than the our residential setback which is 35.

Gary Silverman

Where the fence is. Going to go or the people will get.

David Moon

The other fence right now, if the property owner the church submitted a fence application or a site plan, the code would say they could put at the property line. They could put it closer to the cemetery, but the code would allow them to put the fence at the property line.

Gary Silverman

And then this will be on this side of the fence. Get the fencing on the problem line. Got to be on the inside of the fence, correct? So then if it was going to grow, you have to allow certain amount of growth rate between the fence and the truck. If you couldn't keep it maintained because it'd be going through the fence and this makes us pay for it, for the growth. So you have maybe 15.20 feet away from.

Chair Gregory Parks

Wouldn't for space where the trees doesn't grow and spread, but you can't figure out those food fence? Well, we just put a condition to say that we want a fence that will tear the site from anywhere back in that area. I think is what we're what we're grasping for here.

David Moon

In this park that are you saying that? The fence would wrap around the perimeter of the cemetery.

Gary Silverman

That's my next question.

Chair Gregory Parks

Is the fence, is the fence going to wrap around the perimeter of the cemetery?

Gary Levinor

The fence would come down Travis's the back and then it would wrap around, which would be away from Mr. Weaver's property. It would be, it would be.

Chair Gregory Parks

This is the opposite of Mr. Weaver's property.

Gary Levinor

Well, Mr. Weaver's property, if you're standing at the back fence.

Chair Gregory Parks

Here we got, we got it right here. So, is, okay, it's coming down in front of Mr. It's going right to left on this.

Gary Levinor

Yes there is.

Chair Gregory Parks

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And then then it's going.

Gary Levinor

Left and then it will go up, then it'll go up towards the church and that part would be also covered.

Herbert Weaver

OKAY.

Chair Gregory Parks

So you're going to have a fence on the backside and the left side, right.

Gary Levinor

And the Leyland Cypress, we have experience with them at the church that grows very fast. Yes, and I know that they do. It'll be on the plan.

Robert Davis

Last question for me was there. Any studies done on? What have you said? Leakage or whatever.

But I know. And I think that's also had a great side and they say now you can't help. I think you have to have a container that holds the coffin has to be at least two feet beneath the ground level. And it was.

You can't put a top on one now and put your name on it and leave it on top of. the coffin on top of your.

Marva Lucas-Moore

You mean the vault?

Robert Davis

On top of all the balls here have to be two feet beneath ground. So if you lay it on top of the ground, you just be like a lid laying on dirt with two feet area between it and coffee. Right. So with and then the actual the actual container itself is to be submitted in, so it wouldn't be able to, the water wouldn't be able to get through up it. The seekers or whatever since they wrote it down that deep. I'm not a very old expert. Not Fairbanks for now. So I wanted the information on this.

Gary Silverman

Okay, I do have one more.

Chair Gregory Parks

Sure, yeah, ask the pastor.

Gary Silverman

because it's something in your application and it's one of the four questions that the board must answer to, to approve or disapprove in your application. Exhibit I, item number three, it says here and this is in relation to Mr. Weaver's comments. It says the use will maintain or enhance the value and joining for a budding Properties and you answered yes.

Gary Levinor

To maintain is what we're talking about, is to build the buffers where it's not going to interfere and more than 7. And as I said, we have. We already have three churches within our area that have that have cemeteries. We value our. Property we like. We like to keep it up.

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So this we're going to beautify it. We're not going to allow anything to decrease it. We have a beautiful people piece of property there and we thank you for it. So we. We love to look at it and it would be and that's what I mean. It's not just going to be out there, just like it is right now. We're going to do whatever we need to do to enhance the landscape. And one question I would answer. Our church did not move from anywhere. This is this is our original site. We were originally planted there 35 years ago.

Gary Silverman
Thank you.

Chair Gregory Parks
Close the floor right now again.

Robert Hasty
Chairman, just follow up with Mr. Silverman Silverman had said on those findings. There weren't any specifics in the application, so if there's any other of those factors that you would need to ask questions on.

Chair Gregory Parks
OKAY.

Robert Hasty
Well, it's just something like for instance #1, you may want to address the that it would not materially endanger the public and their safety. Has that burden of John.

Gary Levinor
OKAY.

Chair Gregory Parks
Yes, Sir. If we're grant you this use, how will it not materially endanger the public health or safety?

Gary Levinor
Located the place, the place where it's at does. It holds water. The place that our which we're going to, I don't know how we're going to deal with it, but you know our the 295 is coming through there and the States and Piedmont has already took about 1/2 acre of our land. But at the front, where there was so much farm land over the years when it rains. In the front there it does, but it doesn't take but just a while it's gone, but the back the backside has drainage because when the ball fields built it was sloped to drain. But I don't see where there's any dangers as it was speaking, when you know when they bury now, you've got all of you. They're involved, everything like that. They're sealed, and if that was the case, as I said, I know where the church is, the cemeteries right up next to the church. And I don't even know whether they're away from the well or what, but we feel comfortable that this is as safe as we can be. I just don't see no issues with it. Thank you.

Chair Gregory Parks
That's your opinion. Thank you.
Those issues meet all of the required condition specifications in your situation, David?

David Moon
Our review of the site plan determined that it meets the intent of the requirements of special use.

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For a cemetery subject to the applicant obtaining subsequent permits.

Chair Gregory Parks

Attaining a permit with all the conditions met.

David Moon

May or one of those may be a permit from the Department of Environmental Health for the county at the time of the development site plan. They will be involved in the review and would look at issues such as the distance of the cemetery. To any public water sources or the distance of the cemetery to the well on the property of the church or a budding wells?

Chair Gregory Parks

OKAY. And y'all look at it because, Y'all don't have to make the thing here the use while maintaining enhance the value of joining and putting properties using public access. He's saying that by.

Gary Silverman

That's important on and it's. Not going to take away the value. And then the last, we've got the location care about according to the panel and I think. It's going to make. They have to be. Also concerned with all. Requirements that the people are going to require them to do.

Chair Gregory Parks

The different specifications that they're going to have to follow to. So we're just kind of starting the ball tonight. Actually we're putting the ball in the hands of the players. OKAY.

David Moon

If you could speak in the mic, it would help because we have to take verbatim minutes for the meeting.

Chair Gregory Parks

Speak into the mikes. Thing here you OKAY?

Vicky Mullins

And everything. Contacts the environmental He has to do all that right before. He can make the next step if we put that as a stipulation.

Chair Gregory Parks

That is correct. I've closed the floor, but I'll make an exception. What's your question? Yeah, come right up here. I need for you to raise your right. Hand and swear to tell the truth, nothing but the truth so help you God.

Adrian Fredrich

I do.

Chair Gregory Parks

Would you mind taking your mask off so. I can hear. You go ahead.

Adrian Fredrich

I just want to see how I. I know the burden of proof is on Pastor and I want to know how it's going to. I think it's going to devalue the land and there we have a lot of construction work going on Camden Road and our properties have been affected. Now I'm not on the side of Travis. I'm just right across the street from traffic. So and I

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just want to know because it's going to be a lot of traffic and I want to know if Travis or us decide to develop our properties. How is it going to affect our properties for as we see in a great site across the street and then he said he stated that there was other churches within the vicinity that have these great sites so. What do we have subdivisions sitting there? So how's that? Do we have \$300,000 homes sitting there by those churches with the grave site? So those are the things that I would like to see, you know, before you make a decision and you know the burden of proof is on him. So he has to prove those things.

David Moon

Ma'am, can you give your name and address?

Adrian Fredrich

Adrian Frederick, 430 Doolittle. Thank you. I'm.

Chair Gregory Parks

Sorry. Yes Sir Gary.

Gary Silverman

And Mr. Moon, correct me. We've heard a lot of discussion here about the evaluation of real estate values and all that, but we have no factual data to consider in that area we have no data to base, in other words. It's it may be true. It may not be true, but I don't. And correct me if I'm wrong, I don't think that's within the purview of this board to make an assessment. Of this permit in respect to the valuation of the real estate of the of adjoining real estate if we have no data in that area to consider.

Adrian Fredrich

Well, if you if you. If they would have, you know, branched out a little bit, you would see Jack bricks schools, who is about. About 10th of a mile from there. So and it's a lot of other subdivisions are there come on real estate agent. So I see all this stuff and we have been developing that that piece of property that road is getting ready to get widened. We know that PwC has been out there. The gas company has been out there and they've taken some of our land. So here's the thing I would just like to see. You know, I'm not against him totally, but there's a lot of factors that need to take in consideration before the decision is made. That's what my opinion. Okay, so.

Gary Silverman

But we don't have the data to take into consideration.

Adrian Fredrich

But we need time. Give the pastor the time. Give him time to, burden of proof is on him. So, I'm just saying.

Gary Silverman

Well, that goes back to that.3rd item in the permanent application. Where you know the issue of the use will maintain or enhance the value, will maintain or enhance the value of the bloody properties. I'd like to ask the staff. How much of that burden of proof and for that item is on the advocate to what kind of data is the applicant burdened with providing to answer that?

David Moon

Our codes do not provide any minimum criteria. That an applicant has to meet to satisfy the board's definition of the property value. Staff is not qualified. Nor are we experts in the area of property appraisal, so we could not give comment on that subject since we are not experts in that, that, that area.

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Robert Hasty

Chairman, as a quasi-judicial body and you do have to make your decision based on competent evidence presented with that cases in the past or people have brought in appraisers and Realtors with opinions on that. #3 does also state though. The second part of that is or that the uses of public necessity. So this is. Either or on those factors.

Vicky Mullins

I mean. I do agree with Mr. We don't really have the facts and on the land and the values.

Chair Gregory Parks

To try to feel like figure out if it's going to enhance the value of the property. That's come up for the last 10 years since. We've been doing that. And if they brought people here, the homeowners showing the information and factual information and that could be presented. But since they have not then you don't have anything to go by. We need to discuss what you're thinking.

Marva Lucas-Moore

Are we done with?

Chair Gregory Parks

Do you have anything else to?

Adrian Fedrick:

No. I'm good.

Marva Lucas-Moore

Start with number one, then finding the facts so. Number one states with the use. Will not materially endanger the public health or safety if loaded, located according to the submitted and recommended. I personally don't see any endangerment.

Chair Gregory Parks

Yeah, I don't see it actually health or safety of the environment?

David Moon

OKAY.

Marva Lucas-Moore

#2 states that you speaks all requirements, conditions and specification based on what's been presented by the county. It appears that it does.

Chair Gregory Parks

That is correct.

Marva Lucas-Moore

The use will maintain or enhance the value of adjoining or budding properties are that the uses of public necessity. I think I think the second is what is appropriate for this situation.

Gary Silverman

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That's correct.

Marva Lucas-Moore

Which is the public necessity.

Gary Silverman

However, well public necessity, the pastor said that the cemetery is not open to the public, so it's only for the use of the church.

Marva Lucas-Moore

That is true. Places for the church.

Gary Silverman

And I'd like to.

Also, call your mind that. For those questions, as far as.

Or at least not harming the value of the 20 properties. The burden of proof of that is on the applicant to answer that other than simply stating yes. The burden of proof is on the applicant to present the data.

That to support his answer, yes in that on that third question.

Marva Lucas-Moore

That was kind of tricky because. It's not for public. It's more for private use.

Chair Gregory Parks

Well, actually.

You would call it public because I'm a public, I'm a public person, but I'm just in his church. Do you follow me. I'm part of all you got.

Gary Silverman

To do is choose one of those 3. Either the youth will maintain if you can, sure it will maintain and you are satisfied.

If you can show that you will enhance. You gotta show you this, it maintains. We're gonna show enhanced. All you have to show that it is used for public access. Either one of the three would work because the word is joining used to work all you all you need is one part and true for those state to be true.

Marva Lucas-Moore

And I would think maintaining.

Chair Gregory Parks

Well, that's true.

And that's what's, that's what she's saying, maintaining.

Gary Silverman

Right? Right.

So which one of those three?

Chair Gregory Parks

Let's just switch stuff.

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Gary Silverman

We think, yeah.

Chair Gregory Parks

He says she's discussed and says that she wants she's the public and that's.

Gary Silverman

Public assessment, correct or it's?

Chair Gregory Parks

It is because to maintain and enhance the value of the joining property, you can't do that without evidence, cases and.

Gary Silverman

You're good.

Chair Gregory Parks

And you know, people given appraisers and information. I'm just putting it out there.

Gary Levinor

Right, right.

Chair Gregory Parks

And we'll vote in a minute. In the location of the character of the use is developed according to the plan as submitted and recommended. Will be in harmony with the area and located the general conformed to incumbent county most recent use planning plan. That's easy to do. But I think. We should put a an added requirement. David gave us. Where is that one that I asked you to keep up here? David had the six feet.

Gary Levinor

Back to the slide.

Chair Gregory Parks

This is.

Where did that come from?

David Moon

Go back to the 916. That occurred out of section 916. The special use.

Site plan conditions, development conditions it the buffering and fencing must meet the requirements of section 1102, paragraph G, that would call for a minimum height of 6 feet.

And then for shrubs. To screen the property terms of the location.

Right now the fence or shrubs would be at the property line unless the board wants to consider a location closer to the cemetery. The cemetery at minimum has to be 20 feet from the.

Rear property line. If the board feels that's too close. To the adjacent residential property.

You can establish a condition that the setback for the cemetery be further away.

Chair Gregory Parks

20 feet From the actual fence.

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From the actual fence, that's 15 feet from Travis's house because he's just set back on his side, OKAY?
So that particular.

And then a six foot fence and then put the vegetation there and it's going on the back and then up the left side, which will block this gentlemen's view.

Marva Lucas-Moore

I think we should have specific vegetation notice like, you know, said the shrubbery, maybe the Cypress.

Chair Gregory Parks

I agree with you.

Marva Lucas-Moore

We don't think they need. I would say a Cypress. To put that in the. Motion to protect the neighbors.

David Moon

If you're establishing conditions, my recommendation is that you take separate. Section vote on the conditions with a motion to 2nd and action. And then incorporate those into your. Your final decision on the four findings of fact.

Marva Lucas-Moore

I'll make the motion.

Chair Gregory Parks

You ready?

Marva Lucas-Moore

I'm ready. I'll make the motion that we add stipulation to the special use permit that.

Of course, having the shrubbery the six versus 6, that's the six feet shrubbery and also adding the Cypress trees to help with the obstruction for the neighbors to the cemetery.

Chair Gregory Parks

So the vegetable, vegetable, vegetative. You're saying you want it to be Cypress?

Marva Lucas-Moore

Correct and shrubbery.

Chair Gregory Parks

So it's a quick throne and trembling. We discussed.

01:13:43 **David Moon**

And is that only on the South side of the cemetery or wrap around?

Chair Gregory Parks

Other side too.

David Moon

So staff can write the conditions.

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Marva Lucas-Moore

We want to be able to block all the views from neighbors.

David Moon

Here, within the South and the East or the West or all four sides.

Chair Gregory Parks

I don't know which is north-south east.

Chair Gregory Parks

Or West back line.

David Moon

This is north, West.

Marva Lucas-Moore

I say block all the way around my recommendation.

Robert Davis

See the blue line at the. Bottom blue dotted line, yeah.
Is that is that is that. The is that the proposed?

David Moon

That's the general location. That's not the yet.

Robert Davis

What is your location? So down on that side where the dotted lines are. That's where the fence would go.

David Moon

The fence.

Gary Silverman

That direction.

David Moon

At this point, based on the conditions presented. My understanding from Miss Lucas Moore, you want the fence at the perimeter of the cemetery, correct? So the set back is 20 feet from the property line. So the fence then would be somewhere in here.

Gary Silverman

Right.

David Moon

This isn't measured. It's for general. Determination. It would be 20 feet from the property line. The applicant, Mr. Leviner past 11 or said and it's a condition. And the condition sheet that the depth will be 100 feet. So from that 20 feet.

David Moon

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The cemetery will continue N another 100 feet and it'll only be a maximum of 200 feet wide.

Chair Gregory Parks

I don't think this scale is what y'all are seeing. You follow me? I don't am I right, pastor? That 200 feet doesn't take over the entire field. Does it? But you see you're giving the idea that it's taking up the whole place.

Gary Levinor

It's not.

Chair Gregory Parks

What can I speak? Hold on. We got it here.

Vicky Mullins

Thank you.

Chair Gregory Parks

So what you're proposing is to the proposed cemetery. Have it go all the way around.

Marva Lucas-Moore

And I think it'll protect all the neighbors. From being able to see the cemetery of the homes that are in existence there.

Gary Levinor

The same.

Chair Gregory Parks

My question.

Gary Silverman

We're not the picture you have there. Now you see where the picture is. .Now you see the church.

Gary Levenor

Yes, yes, Sir.

Gary Silverman

You see the pavement coming up by the church. The pavement would have to continue out to where the center begins. The straight line in the parking that came out come out wherever the cemetery begins and at that point you got to have some parking that will be determined to be paved.

David Moon

That would be determined at the site plan, but since the cemetery is sharing parking with the church, if they decide to put parking next to the church or within this parking area, that still would be within close proximity to the cemetery.

Gary Levinor

Okay.

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Gary Silverman

And then that way if you come up, that's for you back. That's actually behind. The church, if you look from the road, if you had the road, the church is here, it feels us is back behind the church so if you came out from. Backside of we're talking about the bottom of the picture up here. That's about traveling house. .You put your fence there and you start back and you, then you turn right and that's going to block away from your house, right or? You were down and put up a picture of your house on it you want to.

Chair Gregory Parks

The bottom left side.

Gary Silverman

Yeah. The bottom left is where your house is, right? Right.

And you, on the other side of his house further back down, so that would. She would see either.

Chair Gregory Parks

I think she's across the street. Aren't you? Across the street, ma'am.

Adrian Fredrick

I am.

Chair Gregory Parks

So you're all the way across the street and you have trees between.

The property and your house.

Gary Levinor

There's the blue house.

Gary Silverman

There's a little dirt Rd.

Vicky Mullins

Right there, directly across the street.

David Moon

Those trees aren't there anymore.

Gary Silverman

She's up there.

Vicky Mullins

No, I'm not clear what might be.

Gary Levinor

Here on the left hand corner.

Chair Gregory Parks

Of left hand.

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Chris Portman
Over here.

Chair Gregory Parks
Oh, you're way over here.
Oh, she's going to be blocked by the fence.

Marva Lucas-Moore
Right.

Travis Harrington
On the left, yeah.

Marva Lucas-Moore
Yeah, that's what I said all around it.

Chris Portman
Up here.

Gary Silverman
In the church.

Chair Gregory Parks
Well, that's what I'm thinking. I'm thinking I'm thinking. Back and up the left.

Gary Levinor
OKAY so.

Chair Gregory Parks
Who, who was concerned about the situation?

Gary Silverman
And all that we think they've seen from out the back of churches overseas, but you can actually see it closer.
That'll be flat on the line.

Chair Gregory Parks
Right. But you, you do what you feel like you want to do. I'm just telling you, that's all that's required to kind of.

Marva Lucas-Moore
What, it was required? Just to make sure.
That, you know, the neighbors and the number of this protection.

Gary Silverman
Is it the north? The bottom? That's the north, right? The North one, we're not.

David Moon
This is South. This is north. This is the South.
This is north.

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Sally Shutt
Assistant County Manager



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Gary Silverman

So we're going east and West and at the bottom you're going a.

David Moon

So this is East West.

01:19:48 Gary Silverman

100 feet out, right?

David Moon

100 feet out.

Gary Silverman

That's up and down that way.

David Moon

No, it's 200 feet wide by a depth of 100 feet.

Gary Silverman

200 that way. So any words they wouldn't part reach the baseball field is at now.

Gary Levinor

No, no.

Gary Silverman

Because it be going up. And the basic is already back there. So all we need to do is go across East to West and then across 200 feet up 100 feet. And the motion wants in the. Government to be cleared.

That's what he's saying. From the bottom, eastern W 200 feet.

David Moon

The conditions, the condition seat sheet, already includes a condition that the cemetery will have a width no greater than 200 feet and a depth no greater than 100 feet with a maximum area of 20,000 square feet, right? Staff in terms of conditions is looking for general criteria. The site location other than that rear yard set back and the side yard setbacks. The actual location may also be determined by other departments review of the site. I don't know. For example with the well location, if there's any requirement that the cemetery has to have a certain distance from what's called the well field. That may have caused the cemetery to move forward or back, but it can't be closer than 20 feet from the rear property line unless you establish a greater setback.

Gary Silverman

You say that on one side it would be a fence of 200 feet and on other side of the fence of 100 feet regardless where those sizes are was angled or whatever one side. That's general. 200 on one side. Side unless you want to make all four sides. Then you have to get in between the trees and get to the get the cemetery back, then the branches and stuff. You put all the sides in it.

Marva Lucas-Moore

I mean there will be access to help access to get into it and you will have to have access in and out.

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Gary Silverman
Right.

Marva Lucas-Moore
I mean, so that's my recommendation. If you guys want to. Vote it down. Yes, yes.

David Moon
Miss Lucas Moore, you would need to make a motion and then we would have to have a second. So okay.

Marva Lucas-Moore
I mean, I made the motion that was my motion. I made it earlier and then he changed that was my motion.

David Moon
So based on. Miss Lucas Moore's motion to place a six foot high fence around the perimeter of the cemetery with Cypress trees planted outside the fence. Is there a second from the board?

Gary Silverman
A friend. A friendly amendment with access.

David Moon
Do you accept?

Marva Lucas-Moore
I accept that you have to have access.

Gary Levinor
Right, right.

Marva Lucas-Moore
They have to have access to get in so. Yes, with that access.

Chair Gregory Parks
All right. So that's the motion.
01:23:47 Chair Gregory Parks
Do we have a second on that motion?

Gary Silverman
You second then.

Vicky Mullins: I second.

Chair Gregory Parks
Okay. Any other discussion? All right, all in favor.

Marva Lucas-Moore
Aye, raise your hand.

Chair Gregory Parks

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123.

David Moon

We're only voting for the condition.

Chair Gregory Parks

She's her stick. Question is all four sides. Motion pass.

David Moon

That vote was unanimous. Yes, unanimous.

David Moon

Okay, chair. Now you move forward with whether there's any other conditions and then action on the four criteria to approve, deny. Or to approve with those conditions.

Marva Lucas-Moore

I would like to make a condition that it meets all the special use condition will meet all the terms regulations from the departments that they need to go through to make sure that the special permit will be appropriate for the cemetery.

David Moon

So your motion would state that they have to obtain. All necessary state and county agency permits that is already included as the condition within the condition sheet.

Chair Gregory Parks

Okay. To make the motion.
Somebody's got to go through the findings of facts just like we did.

Marva Lucas-Moore

#3 so we get #4r. Then we get past #3.

Chair Gregory Parks

Well, you put special conditions on the situation we hadn't done.
Or final action, am I correct David?

David Moon

You have not taken the final action to approve, deny or approve with conditions the special use permit.

Chair Gregory Parks

You can make the motion that we approved concerning, they've met all four.

Marva Lucas-Moore

I move, I make a motion that we approve the special use permit with the specific conditions that we approved as a board.

David Moon

Subject to.

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Marva Lucas-Moore

Subject to the findings of the county and state, and all the four facts that we state.

David Moon

Does that include the evidence and testimony that was presented to you by the applicant?

Marva Lucas-Moore

Correct evidence and testimony presented.

Robert Hasty

Provided earlier.

Marva Lucas-Moore

And Exhibit H and I think exhibit I.

Robert Hasty

As you just set forth earlier in the discussion.

Marva Lucas-Moore

Yes, yes, correct.

Chair Gregory Parks

Do we have a motion? (Marva-Lucas Moore, Motion)

We have a second.

Vicky Mullins: second

Chair Gregory Parks

All in favor? Aye. Head and 2/3.

David Moon

You have to ask if anybody is opposed. I did not see. . . .

A response from Mr. Silverman.

Chair Gregory Parks

He didn't raise his hand.

Gary Silverman

And I have no vote.

David Moon

So you'd say all those opposed. So the

Vote is 4 to 1.

In favor of the motion.

Then you would close the hearing.

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Chair Gregory Parks

As of tonight, I'll close the public hearing.

David Moon

Next item is the discussion section of the agenda.

This is a continued item that has been for the board before. There are three vacant alternate member seats to the board I presented to you this evening on the dais, a list of seven candidates that have been accepted by the county administration question was asked to me by a board of adjustment member whether there are any resumes that provide more information about the applicants and there are not. Now I know the board has had interest to find out more information. About these candidates, if you are struggling to make a selection and it's only a recommendation that goes to the board of County Commissioners. You can invite a number of the candidates, perhaps three, to attend the Board of adjustment, and you could ask some questions like they many interview. If you so choose to but we have been stalled on this issue for several months as to and it's again, it's only a recommendation to go to the board of County Commissioners.

Marva Lucas-Moore

Are we picking how many?
Just one, how?

David Moon

There are three vacant seats vacant,

After discussion by the BOA regarding the list of candidates for the BOA Alternate vacant seats, the following action occurred.

Marva Lucas-Moore

I would. like to make a motion. I want to make a motion to recommend Javon Bowser, Donald Brooks and Brenee Orozco.

David Moon

Your are making a motion to recommend to the Board of County Commission that these candidates be considered to fill the vacant Alternate seats.

Marva Lucas-Moore

Correct. Yes, Sir.

David Moon

Jovon Bowser, Donald Brooks and Brenee Orozco for an alternate position on the board of adjustments. So then we would need a second.

Chair Gregory Parks

Do we have a second? There you go, Gary. Good for you. All in favor the right hands.

Gary Silverman

Second the motion

David Moon

Okay.

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Sally Shutt
Assistant County Manager



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Vicky Mullins

Look at this.

David Moon

Do we have a motion to adjourn?

Chair Gregory Parks

We have a motion to adjourn.

Vicky Mullins

Okay. I'll do that. . . make the motion to adjourn.

Marva Lucas-Moore

Yes, we got to take care.

David Moon

Okay then Marva, will give you the second to the adjournment.

Marva Lucas-Moore

I just think it's adjourned.

David Moon

Thank you for your time and patience this evening.

We're accomplishing things.

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Interim County Manager

Sally Shutt
Assistant County Manager



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David Moon
Deputy Director

Board of Adjustment

MINUTES
April 20th, 2023
6:00 PM

Members Present

Gregory Park-Chair
Linda Amos, Vice-Chair
Vickie Mullins
Jovan Bowser-Alt
Donald Brooks

Absent Members

Kenneth Turner
Robert Davis
Marva Lucas- Moore
Gary Silverman
Brenee Orozco

Staff/Others Present

David Moon
Chris Portman
Amanda Ozanich
Robert Hasty (Asst County Attorney)
Charlene Lee: Notary

Mr. Parks called the meeting to order at 6:00 p.m. in Public Hearing Room #3 of the Historic Courthouse. Chair Parks instructed everyone to turn off all cell phones and to speak into the microphone when speaking at the podium.

1. INVOCATION

Ms. Mullins gave an invocation.

PLEDGE OF ALLEGIANCE

Recited by all.

2. ROLL CALL

Mr. Moon called the roll. Mr. Moon made note of the absence of Kenneth Turner, Robert Davis, Marva Lucas- Moore, Gary Silverman, Brenee Orozco. Mr. Moon stated we do have a quorum.

3. APPROVAL OF THE March 16, 2023, MINUTES

Mr. Moon made note there was one correction that staff identified and has been made, to the agenda, referencing an incorrect date. That date has been modified. Mrs. Mullens motioned to approve the March 16th minutes and Mrs. Amos Seconded the motion. Mr. Parks stated the motion is passed.

4. ABSTENTIONS BY BOARD MEMBERS/BOARD MEMBER DISCLOSURES (SITE VISITS AND/OR PERSONAL AFFILIATIONS)

There are none.

5. PUBLIC HEARING DEFERRALS/WITHDRAWALS

There were none.

6. POLICY STATEMENT REGARDING APPEAL PROCESS:

Mr. Moon Read Policy.

7. PUBLIC HEARING(S)

David Moon: so now we're moving on to the public hearings. This is case number:

Historic Cumberland County Courthouse | 130 Gillespie Street | P.O. Box 1829
Fayetteville, North Carolina 28301 | Phone: 910-678-7600 | Fax: 910-678-7631

cumberlandcountync.gov

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Interim County Manager

Sally Shutt
Assistant County Manager



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BOA-2023-0006: Variance from Section 1104, District Dimensional Provisions, requesting a reduction in a M(P) Planned Industrial District setback from 50 feet to 3.5 feet for the side yard setback, County Zoning Ordinance, for 2.08 +/- acres located at 3303 Camden Road; submitted by Kyle Holmes (Applicant) on behalf of Scouts, LLC (property owner).

David Moon: The Star identifies the location of the subject site on the map. It's located on the north side of. South side of Camden Rd. South of the city of Fayetteville, North Northeast of the town of Hope Mills. The applicant is scouts. Actually, the owner is Scouts LLC. The agent is Kyle B Holmes. They're requesting a decrease in the side yard setback to allow an existing storage structure to remain at 3.5 feet from the property line.

David Moon: The code requires a setback of 30 feet.50 sorry 50. It is 50 feet.

Parks: 50 or 30.

Moon: 50

The Board of Adjustment has the authority to make the final decision in the case of a variance, you have the authority to approve, approve with conditions or to deny. A variance requires a supermajority vote to approve the variance request or any modification to that request. Cases this evening we have 5 BOA members, so four out of the five would have to vote in favor of the variance. The burden of proof is placed upon the applicant the demonstrate they have a hardship based on the four. Various hardship criteria that are. Outlined within the county's zoning ordinance. Those four criteria are that a there's an unnecessary hardship would result from the strict application of the regulation. It shall not be necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property, be the hardship result. From conditions that are peculiar to the properties, such as location, size or topography, hardship resulting from personal circumstances as well as hardship resulting from conditions that are common to the neighborhood or general public, may not be the basis for granting a variance. A hardship. Did not result from the actions taken by the applicant or the property owner and finally he the requested variance is consistent with the spirit, purpose and attempt of the regulations, such that public safety is secured, and substantial justice is.

At this point, I'm going to turn the floor over to senior client Chris Portman, who will present the case for staff. And once you open the floor of the public hearing, Mr. Holmes, the applicant, is present to deliver his case.

Portman: Here is an image of the site plan that was submitted by the applicant. As you can see, the accessory structure is on the. If you're looking at the picture in the bottom right corner. You can see that the structure on the plane is showing a 4.6 distance. From the property line as well as a 5.0 in the front per the MP standards, the side yard setback is 50 feet. And first section 1002 E 4 accessory structures over 700 square feet must be located inside the building envelope. Therefore, because this structure is 1350 square feet plus or minus, it is over the seven.100 square feet. Minimum, therefore making it required to be within the building envelope. As you can see, this is the subject property. Elizabeth Caswell Elementary School is directly behind it. There's some commercial property directly to the South of it, and there's a truck shipping facility directly north across the street. As you can see, there is zone MP, C1(P), R5A and M2 zoning districts in the property. There are no hydrants or hydric inclusion soils on the property, but there is water and sewer available. Again, this is the site plan that was provided. This is the subject property. This is the Southwest view looking down Camden Rd. Northview looking directly across the street. The Northeast view looking down Camden Rd. And then these. Next few pictures are actually on the site of where the structure is. This is going into the site. These are the columns or posts that are the, I guess the essential surroundings for the structure. And this is the picture along the backside along the property line. It looks like the structure was built between 2001 and 2008 and sometime between 2013 and 2017, the roof was removed, and the applicant is here

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proposing to repair the existing infrastructure. And because of having the roof over that, that is causing the accessory structure making it to be in compliance with the current code of the 700 square feet. Since it's over that it has to be in the building envelope. And then here again is the site.

Moon: Board, the variance only applies as the variance request to the accessory structure at that southeast corner of the property. It doesn't apply to the rest of the property or any other buildings, just that storage facility and again. The request was for a side yard setback at 3.5 feet instead of the required 50 feet.

Brooks:

When was the structure built, you said?

Portman:

From what we could tell just by looking at aerial images between 2001 and 2008.

Chair Gregory Parks: OK.

So and what happened to the roof? Did it get destroyed by natural cause?

Portman: So I think the applicant can respond to that.

Moon: The applicant can give you the details, but I believe. Since the roof had not been attached since. At 2007 2008 that a new building permit was likely required for them to install the shed and it was identified at the time of the application that it did not meet the side yard setbacks standards.

Chair Gregory Parks: But they did obtain a permit before that time. To put that structure.

Moon: The applicant can address that. I believe they're in the process of getting a building permit when it was held up until the setback issue was addressed. That concludes Staff's presentation. Unless there are any other questions. If not, then Chair You can open up the public hearing.

Vickie Mullins: Chris did you say it was inside the building envelope?

Portman

No
No I didn't.

Moon:

The building envelope would imply that it meets the setback requirements. Being that that the setback lines if they were drawn along the property, so it's not inside the setback line.

Gregory Parks: Ok, Do we have anybody to speak for the board today?

Chris Portman: Yes, Sir.

Brooks

When the Building was destroyed back or because right now, there's no building there. Just the posts. Is that correct?

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Chris Portman: Essentially the posts that were there previously are still remaining just the roof is gone.

Kyle Holmes:
Yeah, the roof was the same.

Chair Gregory Parks: Sorry, come on up. To the podium here.
Let me get you sworn in. Hold your right hand up and swear to God. Doesn't tell the truth. Nothing but the. Truth, so help you God.

Kyle Holmes:
I do.

Chair Gregory Parks: And state your name please.

Kyle Holmes:
Kyle Holmes.

Moon:
OK, Kyle and your address.

Chair Gregory Parks: And your address.

Holmes:
731 McGilvery St. Fayetteville, NC.

Chair Gregory Parks: All right, so this was a building that was put up years past the hurricane blew. The roof off of it, and now y'all want to put the roof back on it.

Kyle Holmes:
Yes, essentially it didn't blow the roof off. It was just damaged to a point that they took you down, cleaned it up, and now we want to put the roof back on.

Chair Gregory Parks: OK.

Kyle Holmes
I don't know do y'all keep records from 2001 about a building permit.

Moon:
If it went back that far, probably not.

Kyle Holmes:
Because I asked, originally. I mean, I've looked into that. The owner is a friend of ours. That's why I'm helping him with this. But the columns are in place. All he wants to do. Is put a roof back on it so he can. Store his wood slash material so it's not getting warped in the sun and damage and all the above. that structure where it sits the property beside it is undeveloped, it's. Grown up 4 feet high, there's a fence running through there. I would say looking at this, the majority of the property is the non-conforming site. Based on setbacks anyways, it in the front.

Brooks: So what? What you said, Hurricane. When did you say it occurred?

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Kyle Holmes: Yes

Brooks: What year did you say.

Holmes:
2007 and eight.

Brooks:
Oh 2000 so.
It hasn't been in use since then.

Chair Gregory Parks: It hasn't had any.

Holmes:
Back, back then. They want to use it.

Chair Gregory Parks: OK, that's correct and our assumption well, not our assumption, but I'm thinking that back when he built it in 2001, he got a permit, then he probably got a variance at that particular time to put it closer to the line, that's just my comment.

Moon:
You had a comment.

Jovan Bowser:
Well, that was my question is if it wasn't in compliance then are you changing the structure of the roof so it's different because the roof is the only thing that's. Making it outside, right?

Holmes:
It's just going to be a single slope shed style roof metal panels.

Mullins:
So yeah, the previous move probably was the same.

Holmes:
Actually, the roof is not going to make the difference. It's just that they had built the building the way I hear it in the early.2000s. It got damaged back of God and now they're going to put a roof back on it. Now they are. They're closer than they ought to be to the side at 3.5 is supposed.to be 50, right?

Jovan:
Structure, the bones is still there, the bones haven't changed.

Holmes: Correct. That's correct.

Moon:
Mr. Holmes, is it correct that there will be no walls on this structure? It's just an open structure. There will be no walls on this structure?

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Holmes

It'll be an open structure. Yes, Sir.

Moon:

And if I could add, Chair, into the record, as staff did contact the Board of Education, there is an elementary school next to it. They had no objections to the variance request and the location of the shed.

Chair Gregory Parks: thank you very much.

Holmes:

Spoke to Mr. Riddle and he had no objection. I think Joe Ritland piece property right around there too, say.

Chair Gregory Parks: He didn't have an objection.

Holmes:

Surprisingly no.

Chair Gregory Parks: He wouldn't, now would he.

Holmes

No, I know.

Chair Gregory Parks: Comments from anybody here?

Brooks:

Here, there's nothing on the property adjacent to it.

Holmes:

Right.

Its just overgrown weeds.

Chair Gregory Parks: To the property is overgrown weeds owned by the riddles. Yes, Sir.

Brooks: Y'all should tell him to cut the weeds down.

Holmes:

Please don't.

Chair Gregory Parks: There you go. Yeah, I don't know. We don't know how this happened, but anyhow, that's what happened, we've gotten the existing structure built in the early 2000s or 1990 and an act of god tore the roof off. And they kept it open for this many years, and now they want to put a roof on. And they went down to get a proper permit and then the Permit people said "Listen, you're within the setbacks".

So I guess we'll see.

Moon:

The chair of the applicant did submit a written response to the four criteria on Mr. Holmes did you want to discuss any of your response to those 4 hardship criteria?

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Holmes:

Yeah, I think it's in the, it's in the packet for anybody to read it. I don't think specifically to the, you know nothing we're going to do out there is going to be affecting public safety.

I don't think if you look at the adjacent property. The Tractor trailers across the street, all those things, what we're going to do is not going to deter or detract from the appeal of any other properties in the area. Um the hardship is they need more covered storage and they're losing tremendous amount of money every month in material. They can't sell due to the fact that it happened to be outside.

So we're trying to provide cover for them in that.

We went into greater detail in the in the letter there, but I would. Say those are. The two that I would, I would really hit. Well, we intend to build. For that roof on there it will help the look of the property you know with what it is currently. And again, I don't think it will have a negative impact on anybody.

Brooks:

If the property owner decided That they want to develop that. And put a building on that property. Would we be suggesting that that that the two buildings have to be from each other. But now this is 3 and a half feet from this property line, So this will work to develop that. Can they go 3.5 feet too?

Chair Gregory Parks: No, they have to be 50. They must be 50. That's the rule.

Brooks:

50 From the line? Not the structure.

Chair Gregory Parks:

Yes, Sir. That's that's.

Brooks:

Nothing to do with any structure on the plot of land it. Goes from the the line.

Jovan Bowser:

OK, right.

Moon: The variance only applies to this accessory structure.

Chair Gregory Parks: That's correct.

Yes, ma'am. Vicky's got a Question.

Vickie Mullins:

You know what?

Holmes:

Question yes ma'am.

Vickie Mullins: Its probably a question for staff if.

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Sally Shutt
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If He already. Had this. Just you know, the roof was there. Hurricane takes the roof off. And is it just nobody caught? That it was already at 3:00..5 or?

Moon: When it was constructed back in 2002, 2003 circa that time frame may or may not have had a building permit issued. Typically, the building department keeps building permits for a limited number of years. It's six or seven. Um And then they the records could have been ah. If they had a building permit it could have been destroyed. But the foundation is there. Why they're here is they are required to get a building permit. For that accessory structure, and it was at the time of the application was caught that it did not meet the setback requirements for an accessory structure. The structure is over 700 square feet if.

It was 700 square feet or less. It would only have to be 5 feet from the property line, but since it's larger than 700 square feet, the code requires it to meet the same setback standard as a principal building. So they're asking for a variance from the code to allow a structure larger than 700 square feet of within 3.5 feet of the property line.

Vickie Mullins: So I'm probably just. The tax I mean, I know it's all tax differently, but was it not caught? A long time ago that the roof was not there or.

Moon: We have, we have no records going back 22,23 years, but according to the testimony of Mr. Holmes. The roof was not ripped off during a hurricane. It was damaged and the damage required them to replace. It replace and it requires a building permit. And that's where review of the setback occurred.

Amos: Would there? Would that be considered? To be County property, Then they'll be on.

Holmes: no ma'am. It's private property they are on.
Essentially we're requesting to put a roof on an existing. Structure that's been there for 20 years. We just want to put the roof back on.

Brooks:
But its been gone for 15 years since 2007 I.

Holmes:
Yes, I don't know if it was exactly if it was 2007 or not?

Brooks:
It's no easement required from the property line for the county to get to get down there.

Holmes:
There's no easement currently on the property there.

Brooks:
Needed no easement within that reason why I have 50 feet because an easement requirement nothing like that.

Moon:
No, there is. There is not a drainage easement or utility easement along that property line.

Chair Gregory Parks: Anybody want to make a motion?

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They can normally just make a motion.

Moon:

If you can go...if you look at the screen we had the four criteria, the board will need will need to address those four criteria. And as part of its motion.

Could we add the discussion to the public?

Vickie Mullins: OK.

Chair Gregory Parks: I can't make the motion gang.

You know that.

Vickie Mullins:

Alright, I'll make the motion that we accept them, and give them the variance to give them the roof.

Chair Gregory Parks: Give them the variance.

Vickie Mullins: Replace put the roof back is. It means all the criteria here are necessary. They needed to put/keep everything protected. To keep everything.

Hasty:

And I don't mean to interrupt, but he did have exhibit H as if the applicants address the hardships, you may or may not agree with those. If you do agree with those. You can incorporate this into.

Chair Gregory Parks: Here we go.

Moon:

Could you pull the microphone closer to you, so it'll pick up?

Vickie Mullins: Yes, hardship. Yeah, yeah.

What are the alright so.

Sorry I.

Cannot see you.

Jovan Bowser:

As far as it will improve visibility to use this property for his original intent and make sure he gives the quality product that he deserves to his cousins without losing. Money for his product being damaged so.

Moon:

Miss Mullins, do you accept that as part of your motion?

Vickie Mullins:

Yes, I guess it will be B, right? Is the next one.

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Hasty:

If You can, you can just incorporate. Exhibit H, an need you to, Just say that, and it will be part of the record, part of the motion. OK, you don't want to read the whole thing.

Vickie Mullins: OK.

Recording Stopped:

Vickie Mullins: Motioned to approve the variance incorporating exhibit H as part of the record.

Jovan Bowser:

Seconded the motion.

Chair Gregory Parks: All in Favor

In Favor:

Gregory Park

Linda Amos

Vickie Mullins

Jovan Bowser

Donald Brooks

Unanimously in favor of allowing the variance.

Vickie Mullins: Motion to Adjourn

Brooks: Second

Chair Gregory Parks: Adjourned Board at 18:42.