

Members:
George Quigley, Chair
Oscar L. Davis, III, Vice-Chair
Steve Parsons
Melree Hubbard Tart
Joseph Dykes



Alternates:
Martin J. Locklear
John Swanson
Horace Humphrey
Carrie Tyson-Autry
William Lockett Tally

Cumberland County Board of Adjustment

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

MINUTES
MARCH 19, 2009
7:00 P.M.

Members Present

George Quigley, Chair
Oscar Davis, III, Vice-Chair
Joseph Dykes
Steve Parsons
Melree Hubbard Tart

Present/Non-Voting

John Swanson

Staff/Others Present

Patricia Speicher
Rita Perry
Johnny Scott
Grainger Barrett,
County Attorney
Pier Varner

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

1. ROLL CALL

Ms. Speicher called the roll and a quorum was present.

2. APPROVAL OF THE FEBRUARY 19, 2009 MINUTES

A motion was made by Mr. Parsons and seconded by Mr. Dykes approving the minutes as written. The motion passed unanimously.

3. ABSTENTIONS BY BOARD MEMBERS

There were no abstentions by Board Members

4. PUBLIC HEARING DEFERRALS

There were no public hearing deferrals

5. BOARD MEMBER DISCLOSURE

There were no Board Member disclosures

6. POLICY STATEMENTS REGARDING APPEAL PROCESS READ

Ms. Speicher read the Board's policy regarding the appeal process to the audience.

7. BOARD HEARING(S)

Opened Public Hearing

A. **P09-03-C:** CONSIDERATION OF AN APPEAL FROM THE ZONING OFFICER'S DECISION REGARDING THE ILLEGAL OPERATION OF A MOTOR VEHICLE WRECKING YARD AND JUNKYARD IN AN A1 AGRICULTURAL DISTRICT ON 11.5+/- ACRES, LOCATED AT 950 MIDDLE ROAD, SUBMITTED AND OWNED BY ISAAC R. AND HELEN WILLIAMS.

Ms. Speicher presented the zoning, land use and photos of the site to the Board.

VIOLATION NOTIFICATION DATES:

- March 20, 2008
- July 31, 2008
- January 7, 2009 – (Civil Penalty Citation - \$4,000)

MS. SPEICHER: Mr. Williams did not give a written detailed explanation of his justification for the appeal, opting to address the Board.

CHAIR QUIGLEY: Mr. Jimmy Williams please come to the podium. (Swore in Mr. Williams)

MR. JIMMY WILLIAMS: I am Mr. Isaac Williams' son. The property is not intentionally being used as a wrecking yard. My father has owned the property since the 50s. There is a collection of things lined up on the property. Most of the cars were his over the years that have broke down. There is junk that needs to be removed. You are dealing with a person up in age, challenged by this situation and with limited resources. This is going to require hiring people to help clean up. He has lived on this property all of his life and is a good neighbor. This land is wooded; therefore, it does not look like a junkyard. I intend to get involved because he does not have the resources to pay these big penalties. I do not want him to lose his property because of these fines. I would ask the Board to stop the penalties and fines and give me time to hire professionals to clean up the property to meet the criteria of County Ordinance. I could periodically meet with Mr. Scott on the property to assess the clean up progress. I am requesting approximately six months to clean up. The inspector can come by and document the progress. This property is zoned as a farm; I do not know how that plays into this situation. I do know that farms generally have a more liberal amount of items that can be on the property. There has been about eight cars towed away; therefore, there has been progress. You are dealing with an 85 year-old man who may not understand what is expected of him to be in compliance. I am appealing for some time to clean up the area and stop the penalties. We do not want my father to lose the property due to penalties. I think he deserves every consideration you can give him. I will see to it that it is done and help him with resources.

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

VICE-CHAIR DAVIS: Do you live in Fayetteville?

MR. JIMMY WILLIAMS: Yes, I live three miles down the road from the subject property.

CHAIR QUIGLEY: Does your father live on the property?

MR. JIMMY WILLIAMS: He lives there some of the time. He still has a dwelling residence there and goes there daily, but he also resides with me.

MR. PARSON: Have any neighbors approached you about the condition of the property?

MR. JIMMY WILLIAMS: Nobody has complained directly to us.

CHAIR QUIGLEY: Mr. Isaac Williams please come to the podium. (Swore in Mr. Williams)

MR. ISAAC WILLIAMS: I started to clean it up. I had been a backhoe operator with 20 years experience. I can take any building there down. One thing that caused the build up was items that I moved from my rental properties in Massey Hill. I do have some boats on the property. I can do everything a person that I can hire can do. If you hire a man, he will charge \$200 an hour to get everything off the land. Some of the cars have new motors costing \$1,700. Some of the cars are classics. I am connected with the Planning Department in Sampson County. My sister's son, who is a general contractor, has all the equipment needed to move anything. It is mixed up as to what I can leave as a farm or not. That is what is mixing me up. I worked with D R Reilly & Son and sometimes when they would have something left on the job, I would haul it to my property. I do not know of anybody complaining.

CHAIR QUIGLEY: Are the vehicles on the property registered?

MR. ISAAC WILLIAMS: I am still paying taxes on some of the vehicles as they are fixed.

MR. BARRETT: You stated that some of the material on your property is farm equipment. Is there any active farming going on?

MR. ISAAC WILLIAMS: I have farmed on it and am going to change it back to farming. I check with the farm office and they said I could put it under farming trees. They said it would not pay to take them out at this time.

MR. BARRETT: Have you had any crops in the last two or three years?

MR. ISAAC WILLIAMS: No, you can have different pieces of crops of land under the same farmer. I worked in the mill and always worked two jobs. (Inaudible) Mills had a retirement profit sharing that built up every year, but it stopped growing and began to be worth less.

CHAIR QUIGLEY: There is no active farming on the subject property at this time?

MR. ISAAC WILLIAMS: Not right now, but there is going to be farming. I have a timber man who has already paid me \$1,000 in advance to cut the trees. He is a forester. He stated I could pay \$70 an acres to plant trees on the property. I told him that there are not any mailboxes in heaven. In other words, I cannot grow oak trees. It would have to be

something quick. I can plant Christmas trees on the property. There is a government fishpond and wildlife. I am going to put it into something that will benefit my children as well as me.

CHAIR QUIGLEY: You are aware that you do not comply with the Zoning Ordinance requirements for agricultural property.

MR. ISAAC WILLIAMS: Do you mean A1?

CHAIR QUIGLEY: Yes

MR. ISAAC WILLIAMS: All that stuff is going to be removed. I had a trailer I rented on the property and they left about five vehicles, which helped create this situation. I would not give anybody credit for working more than I have in their life. I had a tobacco lot.

CHAIR QUIGLEY: The issue today is that your property does not comply with the Zoning Ordinance. Something must be done regarding this situation.

MR. BARRETT: The specific issue before the Board is whether the Code Enforcement Officer's determination is correct.

MR. ISAAC WILLIAMS: I am willing to do anything to bring it up to code. I need time to clean up and not be penalized. Is it lawful to have a \$400 a day fine?

MR. BARRETT: Yes sir

MR. ISAAC WILLIAMS: How did that law come into effect? That is what I call organized crime. I do not look up or down to anybody.

CHAIR QUIGLEY: We are straying off the subject. I think your son, Jimmy Williams, would like to make a comment.

MR. ISAAC WILLIAMS: I was in the army. I was a little country boy that was scared to say anything to anybody. I do not look up or down to anybody.

MR. JIMMY WILLIAMS: (Requested permission to address the Board)

CHAIR QUIGLEY: (Recalled Mr. Jimmy Williams and reminded the him that he is still under oath)

MR. JIMMY WILLIAMS: There is timber growing on this property. We do have a timber contact. In that aspect, it is agricultural timber.

CHAIR QUIGLEY: The Board is not disputing that point. The issue is the appearance of the property.

MR. JIMMY WILLIAMS: The property was never a junk yard. It just happened over of period of years. Some things on the property are agricultural. He does have a contact to be timbered.

CHAIR QUIGLEY: That is not the issue. The issue is the noncompliance situation and the appeal to determine whether the Code Enforcement Officer's decision is correct.

MS. SPEICHER: (Reiterated to the Board that the zoning purpose is that of public health, safety and welfare)

CHAIR QUIGLEY: Thank you

MR. BARRETT: Was there another witness?

CHAIR QUIGLEY: There are two more witnesses. The Board would like to hear from the Code Enforcement Officer.

CHAIR QUIGLEY: Mr. Johnny Scott please come to the podium. (Swore in Mr. Scott)

VICE-CHAIR DAVIS: Did this come about through observation or a complaint?

MR. SCOTT: It came by way of an anonymous complaint in February 2008 and reiterated in January 2009.

CHAIR QUIGLEY: Please convey to the Board your observation of the condition of the subject property which you based your opinion.

MR. SCOTT: In February 2008, I met on site with Mr. William's grandson who was there in an attempt to help his grandfather. Approximately 20 junk vehicles and an excess of 1,000s of square feet of miscellaneous storage, of which 80% - 90% had nothing to do with farming, were cited. There were trash containers, batteries, refrigerators, pipes, boats, etc. It was a violation of over 200 square feet of open storage in addition to being in violation of the junk vehicle ordinance.

MR. SWANSON: (Requested to view the slide showing a dilapidate shed) Are the objects shown on the outside of the building what you are citing as a violation or is it the structure itself?

MR. SCOTT: The violations were not based on any of the structures. In February, I met on site with the Minimum Housing Inspector. At that time, we determined that there were more zoning violations than minimum housing violations; therefore, it was decided that zoning handle the situation. I do have photographs taken which show the appearance of the subject property in February as well as the clean progress made throughout the year. (Exhibit 1)

MS. SPEICHER: For the record, although Mr. Scott is commonly referred to as a Zoning Officer, his official title is County Code Enforcement Officer.

CHAIR QUIGLEY: Ms. Perry, please make that correction.

(NOTE: All official title references, within these minutes, pertaining to Mr. Scott were corrected per Chair Quigley's instructions.)

MR. BARRETT: For legal purposes, you stated you took the photographs. Do these photographs accurately and fairly represent the conditions that are reflected in the photographs at the time you were present?

MR. SCOTT: Yes sir, I met on site with Mr. and Mrs. Williams several times throughout the year. They did make some progress. I do not think they understood the gravity of what needed to be done to rectify the situation. It would be a cavalier effort to get this property cleaned up.

MR. PARSONS: Specifically, what are the health and safety issues that caused these citations?

MR. SCOTT: There were no citations issued based on health and safety concerns. I am not qualified to do that type of inspection.

MR. PARSONS: Do you see a possible adverse impact on public health or safety?

MR. SCOTT: Not environmentally, there are sharp edges and things that could possibly cut or harm children if they were on the property. There are also falling hazards regarding some of the dilapidated buildings. These are my observations as a private citizen not an official observation.

MR. PARSONS: The applicant was specifically cited for an illegal operation of one of two things either a motor vehicle wrecking yard or a junk yard. The junk yard classification is very specific per Page 16 of the Zoning Ordinance. Which part(s) of the junk yard definition contributed to the subject property to be classified as a junk yard?

MR. SCOTT: From my interpretation of the Zoning Ordinance's definitions of motor vehicle wrecking yard and junk yard this property fit both descriptions.

MR. PARSONS: What specific criteria was this based on? Which function, for example, they are not buying, selling exchanging, etc.

MR. SCOTT: The specific category would be storage. He is not operating a junk yard or wrecking yard. He has accumulated these vehicles over the years.

MR. PARSONS: Given the volume of items observed on the property, would it be a task for a typically health person to be in compliance within a six month period without extraordinary external resources?

MR. SCOTT: They would need some exterior resource, for example, a container for debris otherwise yes.

MR. PARSONS: From your description, it sounds like lots of square feet of debris.

MR. SCOTT: It is thousands of square feet of debris in the bushes and back roads.

MR. BARRETT: Is it your observation that you found residential storage of the above items to include scrap iron and other metals, paper, rags, vehicles, rubber tires and bottles?

MR. SCOTT: Yes sir

MR. BARRETT: Did the area of this storage exceed 200 square feet?

MR. SCOTT: Yes sir, by far

MR. PARSONS: The issue is the outside storage; therefore, in order to be in compliance the debris needs to be removed or placed inside.

MR. BARRETT: When was this property zoned?

MS. SPEICHER: The subject property was zoned December 14, 1979.

MR. BARRETT: At that time, was there some outside storage?

MR. SPEICHER: Mr. Williams did not present any information regarding that question. Staff did check the aerial photographs where visibility was limited because of trees. It can be stated with certainty that the area of storage has grown because clean areas were shown on the photographs.

MR. BARRETT: If the aerial photographs tended to show more likely than not that there was outside storage at the time of the zoning would that area, which existed in 1979 with outside, be a nonconforming use.

MS. SPEICHER: It would be nonconforming; however, at the time of initial zoning the property owners would have been given a chance to request the proper zoning district, if the intent was to operate a junk yard or motor vehicle wrecking yard.

MR. BARRETT: You stated they would have been given the opportunity; however, I believe part of what Mr. Parsons was addressing was the effort that would need to be made to comply with the ordinance. If this storage had existed in 1979, is it correct to state that it would have been grandfathered nonconforming use?

MS. SPEICHER: Quite possible or most likely

MR. SWANSON: On Page 16, what is the interpretation of the word “stored”?

MR. BARRETT: That is best addressed by Staff because over the years they have by administrative action and enforcement given need to their interpretation of the word “stored” in that context.

MR. SWANSON: Could somebody explain what the word “stored” means in the definition of a junk yard?

MS. SPEICHER: My interpretation would be the common definition, which is keeping things (items) in one location for whatever reason.

MR. SWANSON: Is there a time period associated with your understanding of the definition?

MS. SPEICHER: No sir

MR. SWANSON: If I lived in the County and put out trash, would that be storage?

MS. SPEICHER: Taking the definition literally, yes, it would; but it would not be under this specific definition because it surely would not be 200 square feet or more of trash.

MR. SWANSON: I am focusing on the word “stored”.

MS. SPEICHER: There is no definitive time associated with the word “stored” in the Zoning Ordinance.

MR. BARRETT: The evidence in this case is that the items that caused the Code Enforcement Officer to cite the property owner have been there for at least one year.

MR. SWANSON: Is it possible that some of the vehicles were there before the property was zoned A1?

MR. SCOTT: Some of the vehicles are models prior 1979; therefore, yes, they could have been there; however, I was one of the staff members that looked at the aerial photographs taken in 1980 which showed a more heavily wooded lot with some open space and if there was storage it was not to the degree which it is presently.

MR. PARSONS: How would you characterize the efforts made to come into compliance? Were they reasonable?

MR. SCOTT: They were reasonable. Approximately 10-15 cars were towed away. If the photographs are compared the Board will see that some piles have been cleaned up. I think Mr. Williams did the best he could.

MR. PARSONS: If they were making reasonable progress, why did the Code Enforcement Officer decide to impose a fine?

MR. SCOTT: I am the one who fined the property owner. I would go to the subject property twice a month to review the progress. From the time of the second Notice of Violation on July 31, 2008, they made progress each month until early November 2008 where upon no additional progress was made through January 2009. Based on the complaint I was required to impose a penalty.

MR. BARRETT: The Board’s determination is whether the Code Enforcement Officer’s determination is correct. It is not a question of giving the property owners time. The citation is not a lien on the property. It is a fine that would not be collected unless an action is brought forth. These matters are of some administrative discretion. My understanding is that the exercise of discretion by the staff is always proportionately related to the degree of effort.

VICE-CHAIR DAVIS: If the same amount of progress had been made from November 2008 through January 2009, the Board would not be hearing this case.

MR. SCOTT: No sir

MR. DYKES: Is it a possibility that the property owners had every intention to continue but a resource factor became an issue?

MR. SCOTT: I do not know whether it was resource, weather or possibly health concerns.

MR. SWANSON: Did you have any contact with the property owners or did they offer any explanation?

MR. SCOTT: No sir, I spoke with the grandson informing him that time had expired prior to sending the civil penalty whereupon he stated he would inform his grandfather.

CHAIR QUIGLEY: Are there any other questions for Mr. Scott. (Chair Quigley informed Mr. Scott that he is subject to recall and that he was still under oath; reiterated Mr. Scott officer title, Code Enforcement Officer, to the Board)

MR. JIMMY WILLIAMS: The two to three month of delay was due to illness and weather.

MR. BARRETT: Is it not correct that your father stated he had pneumonia?

MR. JIMMY WILLIAMS: Yes, I am going to get involved in the clean up because he is physically unable to complete this task.

CHAIR QUIGLEY: Ms. Lynn Willowford please come to the podium. (Swore in Ms. Willowford)

MS. WILLOWFORD: I have known Mr. & Mrs. Williams and Jimmy Williams for most all of my life because I am their neighbor. My family has owned the residence I live in since 1912. I know the property has been in disarray for a long time but they have never bothered anybody. There has not been a junkyard or wrecking yard service to my knowledge. I do know that the Williams' health has been poor. On March 8, 2009, Mr. Diamond and I took pictures of the area for my sister, who lives in California, and has ownership in our property. As sick as they are, Mr. And Mrs. Williams were trying to make an effort to clean the property. Now that I know what is happening, I am going to do my best to help them clean up the property because they have always been good to us.

CHAIR QUIGLEY: Do you have any reason to disbelieve the opinion of the Code Enforcement Officer?

MS. WILLOWFORD: I know it is a mess, which has happened over the years. Mr. Isaac Williams does not always understand what is going on.

MR. PARSONS requested Ms. Willowford to show where her property is located on the map, which she did.)

MS. WILLOWFORD: It is overgrown in front of their house but it has never bothered anybody.

MR. PARSONS: The overgrowth is not the issue.

MS. WILLOWFORD: I think most of the problem is further into the property. There is stuff you can see from the road.

CHAIR QUIGLEY: Mr. David Domina, do you wish to address the Board? (Mr. Domina declined to address the Board)

Closed Public Hearing

VICE-CHAIR DAVIS: Therefore, this is just a matter of the Board voting yes or no.

MR. BARRETT: Yes Sir

MR. SWANSON: Does the Board have a third alternative?

VICE-CHAIR DAVIS: Can the Board implement conditions?

MR. SWANSON: Or suspend?

MRS. TART: When land is zoned and grandfathered, how do we know this accumulation has expanded since the initial zoning?

MR. BARRETT: The staff looked at aerial photographs after the property was zoned, the aerial photographs clearly show more storage than from the prior period.

VICE-CHAIR DAVIS: Is there any more weight given to a signed complaint versus an anonymous complaint?

(Ms. Speicher referred the question to the Code Enforcement Officer.)

MR. SCOTT: No sir, they are treated equally. We allow citizens to make complaints anonymously because they would deal directly with Code Enforcement whereas they have to live with their neighbor for many years.

MR. SWANSON: Did you take the complaint?

MR. SCOTT: No sir, George Hatcher, the Minimum Housing Officer, took the initial complaint. I did receive a secondary complaint in January, which I assume was the same person calling to inquire why nothing had been done.

MR. PARSONS: Do you know the objective of the complaint? Do they want it cleaned or want the property?

MR. SCOTT: I think their concern was to have it cleaned; however, the Minimum Housing Officer posted an Abatement Sign (stating no alcohol, drugs and weapons). Once the sign was posted, we received numerous calls. We assume the calls were from people who want the property.

MR. PARSONS: In other words, find a way to own the property.

MR. SCOTT: Yes sir, to create a situation where there would be a lien or something attached to the property requiring it to be cleaned making a way to buy the property.

MR. BARRETT: You can reverse, affirm or modify the decision. You cannot impose conditions but the Board can modify the decision.

MR. PARSONS: Are there any resources the County might have to assist in this matter? The State has abatement funds. For example, if there was a problem with hazardous materials. Do we have any such resource?

MR. BARRETT: Not officially, there are no funds.

MR. PARSONS: We do have large trucks and personnel with material handling experience.

MR. BARRETT: That is not official, perhaps Staff could reflect on your question.

MR. PARSONS: My reason for this line of questioning is if we are asking a property to do something and they do not have the resources we might as well start fining them on day one.

MR. BARRETT: Financial impracticality is not a defense in the area of zoning.

MR. PARSONS: Is achieving the goal or objective?

MR. BARRETT: Legally, finance is not a defense.

MR. PARSONS: Mr. Scott is a very astute observer and communicator. The issues and pictures being painted are unsettling. Some of the influences on the process are not very constructive to the ultimate goal, which I think everybody is dedicated.

MR. BARRETT: You can directly address his comments. For instance, I am not making or recommending this suggestion, the Board has the authority to affirm the Code Enforcement Officer's decision but not to abate all of the fines. This is an example of modifying the Code Enforcement Officer's decision. If the Board delays the fines, there are no bases for imposing a lien on the property. To reiterate, simply assessing civil penalty does not impose a lien. A lien is imposed when action is taken by using the County's contracting authority or if the County officially accomplished the goal by using its resources to abate the nuisance.

A motion was made by Vice-Chair Davis, second by Mrs. Tart to deny the appeal requested for Case No. P09-03-C with the stipulation that all fines be suspended for six months to allow the applicant time to clean the subject property. The County will forego all fines if the County Code Enforcement Officer determines reasonable progress of clean up is continuous; otherwise, all fines will be reinstated.

Quigley: Yes

Davis: Yes

Dykes: Yes

Parsons: Yes

Tart: Yes

The motion was approved unanimously.

Opened Public Hearing

B. P07-05-C: CONSIDERATION OF A REQUEST FOR THE MODIFICATION OF AN APPROVED SPECIAL USE PERMIT FOR A KENNEL OPERATION IN A RR RURAL RESIDENTIAL DISTRICT ON 1.58+/- ACRES, LOCATED AT 6559 FAIRCLOTH BRIDGE ROAD, SUBMITTED AND OWNED BY LINDEN AND PATRICIA D. HONEYCUTT.

Ms. Speicher presented the zoning, land use and photos of the site to the Board.

Ms Speicher summarized the original Special Use Permit approved on April 19, 2007 as follows:

- 20 dogs over the age of five months
- Kennel area dimensions 13' x 53'
- 5' x 10' dog runs
- 6' high chain link fence
- 3 sided plastic dog houses for each run
- Buffering was proposed vegetative buffer
- Included in the packet is a letter that is sent to the applicant and given to Code Enforcement, which states the standard conditions, compliance with State, Federal and Local rules, etc.

MS. SPEICHER: The applicant had begun construction of the addition. When she realized she was in violation of her approved Special Use Permit, she stopped construction and submitted her application for the modification. Mrs. Honeycutt is here to present her case. I would like to add to the "Ordinance Related Conditions" as Condition No. 19, renumbering all other conditions, that a vegetative buffer be in place and maintained along the side and rear property line in accordance with Section 1102G of the County Zoning Ordinance.

VICE-CHAIR DAVIS: The approved kennel was built and the applicant was adding to it during which time they realized the addition would exceed what was permitted; therefore, they have to request a modification to the existing Special Use Permit.

MS. SPEICHER: Yes sir, upon submitting for a permit the applicant found out they had to come back before the Board. I would like to bring to the Board's attention the criteria, which required a solid concrete floor within 18 months. This criteria was included in the April 19, 2007 Special Use Permit approval by the Board and on the attached letter.

MR. PARSONS: Was the added Condition #19 part of the original conditions?

MS. SPEICHER: Yes it was.

MR. PARSONS: Are you saying that condition was never done?

MS. SPEICHER: It is my understanding and the applicant can better testify that there were many attempts at planting a vegetative buffer. The applicant did present receipts showing that she tried to get the buffer going but was not successful in her attempts. Those were her words to me.

CHAIR QUIGLEY: Mrs. Patricia Honeycutt please come to the podium. (Swore in Mrs. Honeycutt)

MRS. HONEYCUTT: Originally, my conditions were to have a cement floor and a roof, which I did install within the timeframe. The conditions also stated that the applicant should contact Cumberland County Health Department regarding the waste. I spoke to Mr. Soles, who has since retired, and showed him what I planned to do (Exhibit 1: in-ground pet waste disposal). I told him that it would not hold to capacity and asked him about a septic tank and whether a permit was needed. He stated I did not need a permit since it was dog waste but I could not mix the human and dog waste. Because the in-ground pet waste disposal would not hold the capacity for the dog waste; therefore, I did install a septic tank, which was cleared without needing a permit because it is dog waste. I have planted buffers but they have died. I have receipts (Exhibit 2: Receipts). This is what is currently planted (Exhibit 3: pictures of vegetation). I have gone beyond the buffer requirements just to be neighbor friendly. The shrubs still in the pots, which are shown in the pictures, will be planted. I planted a rapid grower, which is suppose to grow like a solid fence to prevent visibility. I have never met the capacity of 20 adult dogs. The only reason I am proposing more dogs is due to the economy in case I have litters what go beyond the age limitation. At no point am I looking to have 40 adult dogs. I just want to have some leeway just in case I have puppies that I cannot sell. I might have about 25 adult dogs but I am not looking to have many adult dogs. I just do not want to violate the code in case I have puppies that I cannot sell. Thus far, this has not happened. At this time, I have 3 puppies and 16 adult dogs. I have a letter from my veterinarian regarding the care of my dogs (Exhibit 5: Letter from veterinarian). He was unable to be here. My dogs have all their shots, which are given by the vet not me. I have only given one shot because it was an emergency. There is not one doghouse in every run. Every dog I own has his or her own doghouse and food bowl. I have the license from the County to have the dogs and have paid taxes for the dogs. My business is listed with the Tax Office and I have a Federal Identification Number. I do have liability insurance in case something happens. Mr. Ratcliff and Mr. Ortiz, with Environmental Health, stated everything was fine. I needed to add-on to my kennel to have a room making it easier to handle the puppies. I asked the contractor whether I needed a permit and he stated no. I found out it was in violation upon trying to get an electrical permit. I then filed my application. The shelter portion has passed inspection. I was told I needed to pull a second permit for the addition after it was approved. The contractor would not show up tonight. I have no employees.

MR. BARRETT: Did you take the photographs?

MRS. HONEYCUTT: Yes

MR. BARRETT: Approximately, when did you take the photographs?

MRS. HONEYCUTT: About one week ago, maybe 2 - 3 days from the receipt date.

MR. BARRETT: The photographs fairly and accurately reflect the conditions that are shown on them at the time they were taken.

MRS. HONEYCUTT: Yes sir

MR. BARRETT: Are you familiar with the requirement for kennels in the County's Animal Control Ordinance?

MRS. HONEYCUTT: Yes

MR. BARRETT: Do you comply with them?

MRS. HONEYCUTT: Yes, I sent in applications to Raleigh, the USDA and AHPIS. My checks were sent back to me. I was informed that unless I was boarding dogs or selling to pet stores or research that I was in compliance.

MR. BARRETT: The Cumberland County Ordinance has specific requirements for kennels.

MRS. HONEYCUTT: I have the formula at home requiring so many square feet per dog. My dog runs are 5' x 10' and 6' in height. I am aware of a Proposed Commercial Breeders' Bill, which I am already in compliance.

CHAIR QUIGLEY: We are not discussing that subject tonight. The issue is a modification of an existing Special Use Permit.

MR. PARSONS: What breeds are your dogs?

MRS. HONEYCUTT: I have bred Scottish Terriers and Cairn Terriers. I have some Yorkie Terriers but they have yet to be bred.

MR. SWANSON: The cement block portion of the structure shown in the subject property photograph, was that built over the existing slab of the kennel?

MRS. HONEYCUTT: That is a new slab.

MR. SWANSON: How close is that improvement to the property line?

MRS. HONEYCUTT: It is off the setback, approximately 30 feet – 35 feet. It is shown on the site plan.

MS. SPEICHER: 25 feet

MR. SWANSON: What are the setbacks?

MS. SPEICHER: The sideyard setback is 15 feet and rear setback is 35 feet in the RR District.

(Chair Quigley asked Mr. Honeycutt if he wished to speak and he declined.)

CHAIR QUIGLEY: Mr. Kenneth Page please come to the podium. (Swore in Mr. Page and requested him to show where his property was located in proximity to the subject property, which he complied.)

MR. PAGE: My issue is the noise. Every afternoon they are making noise. There is a lot of noise. My father is directly beside the property and hears them all night long. Forty adult dogs with three puppies a piece total 160 animals would be too much.

CHAIR QUIGLEY: Your testimony is concerned with the noise that would be emanating from the property if they were allowed more dogs.

MR. PAGE: If they were all mute dogs, I would not have a problem.

CHAIR QUIGLEY: Mr. Rubin McLaurin please come to the podium. (Swore in Mr. McLaurin and requested him to show where his property was located in proximity to the subject property, which he complied.)

MR. MCLAURIN: When they first put up the zoning sign I asked around the neighborhood and was informed that they were going to raise puppies. That was fine. The barking is all night long sometimes. I have never filed a complaint. I should have done so when they started zoning. Now this has come up where they are asking to have 40-50 dogs. The noise is going to get unreal. We are living with the noise but I do not think we can handle more noise. There is no buffer on the left side. There is one row of trees on the left side between Mr. Page's and their property. That is the only buffer.

CHAIR QUIGLEY: By the left side do you mean to the east or west?

MR. MCLAURIN: West

CHAIR QUIGLEY: Mrs. Denise Nunnery please come to the podium. (Swore in Mrs. Nunnery and requested her to show where her property was located in proximity to the subject property, which she complied.)

MRS. NUNNERY: Our area is rural and everyone keeps to their self but it is very close knit. The buffer is not adequate. The problem is the noise. I have two kids that are awoken by the dogs in the middle of the night. If I just shut my back door, not slam, it sets the dogs off. It does not take much for the dogs to start barking. They are small yappy dogs. With the close properties and so many dogs, the noise is unreal. It is not just during the daytime it is sporadically around the clock Adding to the number of dogs allowed would add to the noise problem. It is already intolerable. When it interferes with older people, children and the working class sleep, on a regular basis, it is something that should be considered.

MR. SWANSON: (Requested photograph showing kennel) Has that roof always been there or did the noise get louder and it was added?

MRS. NUNNERY: I have no recollection of having seen or not seen the roof. I do not remember. The noise has always been a problem after there were approximately 5 to 6 dogs. The noise has been ongoing. I should have come to the first zoning hearing to oppose the request.

CHAIR QUIGLEY: Are there any questions for staff? Does any witness want to come back to the podium?

(Mrs. Honeycutt requested to speak)

CHAIR QUIGLEY: Recall Mrs. Patricia Honeycutt please come to the podium. (Reminded her that she was still under oath)

MRS. HONEYCUTT: I admit my dogs bark sometime. It is not 24/7. Many times they start barking when Mrs. Nunnery returns home from work and lets her dogs loose. There is a leash law. We do have some neighbors who shoot their shotguns, which set the dogs off. There are other kennels. It is not just my dogs. I am not asking for 40 adult dogs.

Closed Public Hearing

CHAIR QUIGLEY: Please remind the Board of the code pertaining to a kennel and the quantity of dogs allowed.

MR. BARRETT: The County regulation has two different limitations. In Zoning Ordinance it is more than three dogs; therefore, if you are in a district, which allows kennels, and have more dogs, a Special Use Permit would be required. In Chapter 3 - Article V of Cumberland County Animal Control Ordinance there are kennel licensing and facilitating standards which states 5 or more than 5 dogs. For the County's Land Use purposes it is more than three and for the County's Animal Control Licensing and Sanitary standards purposes it is more than five.

MS. SPEICHER: That is four or more five months of age or older.

MR. SWANSON: Is there any information of deviation by the applicant of the original Special Use Permit?

MS. SPEICHER: No sir, we checked with the Sherriff Department, Animal Control Department and Code Enforcement.

VICE-CHAIR DAVIS: How does this relate to the County's noise regulations?

MS. SPEICHER: This kennel is subject to the noise regulations. (Referred the Board to Page 71; Section 901) The Noise Ordinance is enforced by the Sheriff Department.

MR. BARRETT: I have had to deal with Noise Ordinance. Dog barking requires non-stop barking of 15 minutes or more. It is very difficult to bring a violation action of County Noise Ordinance regarding dog barking for a number of reasons. Most of which are practical such as being able to present evidence into court.

MR. PARSONS: This is a separate issue than the impact of the harmony in the neighborhood by allowing additional dogs.

MR. DYKES: I live in a neighborhood where the noise from dogs barking is an issue.

MS. SPEICHER: I would like to inform the Board that Condition #18 of the draft condition addresses the noise issue.

MR. PARSONS: Twenty dogs seems to be a reasonable number. This is not a typical economic time. Typically, businesses do not expand or make provisions to expand during bad economic times. Given the preponderance of the evidence the Board has heard against this request, allowing additional dogs would adversely affect the harmony of the neighborhood.

INITIAL MOTION: A motion was made by Mr. Parsons, seconded by Mr. Dykes to deny the request for a modification of an approved Special Use Permit for Case No. P07-05-C. The location, character and use, if developed in accordance to the plan submitted and recommended, will not be in harmony with the area in which it is located by virtue of the substantial testimony presented to the Board from neighbors who are supportive of the kennel operation but have given evidence that the noise is adversely affecting the harmony in the neighborhood. Their opinion is that additional dogs would make matter worse.

MR. BARRETT: What is the request for modification? Is it comprised of two components, one is the modification of the facility and secondly, a request for modification of the number of dogs allowed?

MS. SPEICHER: Yes sir

MR. PARSONS: The Board had previously approved the site plan. Does a new site plan require a new Special Use Permit?

MS. SPEICHER: Yes sir, the Ordinance would allow Staff approval if it did not exceed 10% of the approved structure, this structure does exceed the 10% limitation.

MODIFIED MOTION: Mr. Parsons made a motion, seconded by Mr. Dykes, in regards to case P07-05-C, a request for a modification of an approved Special Use Permit for a kennel operation at 6559 Faircloth Bridge Road, submitted and owned by Linden and Patricia D. Honeycutt, the following case facts were determined:

1. The use will not materially endanger the public health or safety if located in accordance to the plan submitted and recommended as revised in accordance with the staff's permit and site related conditions. This facility will not endanger the public health or safety.
2. The use meets all required conditions [see Ordinance Related Conditions in case file] and specifications with the exception of the increase of the number of dogs allowed.
3. The use will maintain or enhance the value of adjoining or abutting properties.
4. The location and character of the use, if developed according to the plan, will be in harmony with the area in which it is to be located because the facility will be improved, along with an enhanced buffer and the number of dogs allowed will not be increased.

Having heard all the evidence and argument presented at the hearing, the Board finds that the application is complete, and complies with all of the applicable requirements of the County Zoning Ordinance for the development proposed, and that therefore the application to make use of the property described within this case for the purpose indicated is hereby approved subject to all applicable provisions of the Zoning Ordinance and the following conditions:

1. The applicant shall complete the development strictly in accordance with the application and revised site plan submitted to and approved by Staff, which meets the pre-permit, permit, and site-related conditions, a copy of which is filed in the Cumberland County Planning & Inspections Department.

2. The applicant/property owner is the responsible party to ensure compliance with all other related Federal, State and local regulations including Chapter 3 - Article V of the Animal Control Ordinance.

3. All the [Ordinance Related] conditions presented in the proposed draft Special Use Permit be complied with the exception of the number of adult dogs permitted which will remain at 20.

Therefore, based on the foregoing, a motion was made by Mr. Parsons seconded by Mr. Dykes, ordering that the application for the modification of an approved Special Use Permit for a kennel operation be granted in an RR Residential District on 1.58 +/- acres, located at 6559 Faircloth Bridge Road, submitted and owner by Linden and Patricia D. Honeycutt.

Quigley:	Yes
Davis:	Yes
Dykes:	Yes
Parsons:	Yes
Tart:	Yes

The motion was approved unanimously.

VICE-CHAIR DAVIS: Since the site plan can be staff approved up to 10%, is there any latitude for the number of dogs? For example, a dog has 10 puppies and they become six months of age before they are sold.

MS. SPEICHER: Not with staff

VICE-CHAIR DAVIS: What about temporary permits?

MS. SPEICHER: I can address temporary, which would be Code Enforcement.

MR. BARRETT: Would staff work with somebody addressing conditions that are temporary in nature.

MS. SPEICHER: There is an amendment in the Ordinance, which allows the Planning Director to allow up to six dogs.

8. DISCUSSION

VICE-CHAIR DAVIS: I would like to thank Mr. Johnny Scott for all his good work.

Ms. Speicher informed the Board regarding the following Notice of Violation:

A. NOTICE OF VIOLATION - **VIOLATION CASE # WS02-02 & WS00-01:**
INVERNESS ON ANDREWS HOMEOWNERS ASSOCIATION, INC.
3534 ROSEBANK DRIVE
FAYETTEVILLE, NC 28311

Ms. Speicher updated the Board regarding the above Notice of Violation:

MS. SPEICHER: Andrews Homeowners Association is in the process of finding someone to maintain the ponds.

B. AMENDMENT UPDATE – **P09-05: OPERATED CONVENIENCE CONTAINER AND RECYCLING FACILITIES**

MS. SPEICHER: the Board of Commissioners approved P09-05 on Monday, March 16, 2009.

9. ADJOURNMENT

There being no further business, the meeting adjourned at 9:05 p.m.