

Members:

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



Alternates:

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

Cumberland County Board of Adjustment

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

MINUTES
AUGUST 18, 2011
7:00 P.M.

Members Present

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

Absent Members

Staff/Others Present

Pier Varner
Melodie Robinson
Angela Perrier
George Hatcher
Harvey Raynor (Deputy County
Attorney)

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

1. ROLL CALL

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

2. Chair Quigley swore in the staff.

3. ADJUSTMENTS TO THE AGENDA

There were none.

4. APPROVAL OF THE JULY 21, 2011 MINUTES

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

5. ABSTENTIONS BY BOARD MEMBERS

There were none.

6. PUBLIC HEARING DEFERRALS

There were no deferrals.

7. BOARD MEMBER DISCLOSURES

There were none.

8. POLICY STATEMENTS REGARDING APPEAL PROCESS

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

9. PUBLIC HEARING(S)

Opened Public Hearing

- **P10-16-C:** CONSIDERATION OF A SPECIAL USE PERMIT TO ALLOW A 195 FOOT TOWER IN A R6A RESIDENTIAL DISTRICT ON 83.37+/- ACRES; LOCATED AT 1388 LILLINGTON HIGHWAY (NC HWY 210); SUBMITTED BY DONNA LANGLEY BROWN ET AL (OWNERS) AND THOMAS H. JOHNSON, JR., NEXSEN PRUET, PLLC ON BEHALF OF AMERICAN TOWERS, INC.

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

MRS. VARNER: Particular attention should be paid to Conditions No. 1, 3, 22, 23, 27 & 34. For the record, please delete Condition No. 2.

CHAIR QUIGLEY: Does any board member have questions for staff?

MR. DONALDSON: Where exactly on Hwy 210 is this? Do you have a map showing what it is in relation to? What area on Hwy 210 is it on?

MR. HATCHER: It is about a mile and a half from Overhills Subdivision – Manchester Road.

MR. DONALDSON: I think you all need to have another map that is a larger view so we can look at it in prospective when we see those things. That is just a little birds eye view there. An aerial map will make it easier.

Chair Quigley swore in Thomas Johnson.

MR. JOHNSON: My name is Thomas Johnson; I'm with the law firm of Nexsen Pruet at 4141 Parklake Avenue, Ste. 200, Raleigh, NC 27612. Thank you very much. I appreciate the opportunity to be in front of you tonight. I know you have a copy of the violation letter that Mrs. Varner passed out. I will tell you that Mr. Hatcher and the staff have been very good in working with us to resolve some problems as a whole, not just on the tower location. There were several code violations that overtime we've really worked hard to get done. My client, American Tower spent a lot of money removing some of the violations, the abandoned mobile homes and other things that we spent a significant amount of money on to try to get resolved before we came to the hearing. Unfortunately, it is such a large piece of property that there were actually some portions that us and Mr. Hatcher missed on some of the property. There are some items that remain to be resolved, but we have worked out a plan to do that prior to final inspection, which is Condition No. 1 that was included on the list of conditions. Specifically, those violations that remain are some old cars. Some of them have already been removed and

any that aren't, we've arranged with Mr. Hatcher that those can be hauled off at no expense to the County or to us, because the towing companies keep the cars in exchange for the cost of towing. That takes care of the cars. There are some minimum housing code violations that Mr. Hatcher says he will handle through the minimum housing code process. Anything else that remains, it is our intention to bid that work out as part of the project. When the contractor is onsite doing the project they will take care of that. We've also agreed with Ms. Speicher that the final inspection, meaning the power will not be turned on until all of that is complete. We concur with that. If you could Mrs. Varner, pull up our presentation. Some of this may be repetitious for some of you because you may have seen this before, but I want to make sure for the public and everyone else that we go over the details of the application. I do ask that our application and all associated materials be admitted into evidence in support of our application. Why are we here? We are here because of customer demand and the need to provide good service to the customer, both voice and data. Most important of all is emergency use of wireless devices and these are national figures. Fifty to seventy percent of all calls to 911 are from mobile phones. Twenty-five percent of those calls are from indoors. That is approximately 300,000 of those a day. Eighty seven percent of Americans have a mobile phone that they take with them. It could be even more now, but most people have them. More than twenty percent of the homes are wireless only. People have chosen not to pay two bills for a landline phone and a wireless phone so they've dropped their landline phone and are using their wireless phone. Even those that keep their landline phones; a third of those rely on their mobile phones primarily instead of the landline phones. Mainly because the mobile phone is with you and is more convenient to use, especially in the event of an emergency, you may not be next to your landline phone, so you will grab what is with you, which is your wireless device. Also wireless devices are depended upon by emergency services providers, fire, police; they all have them and use them on a regular basis. Every time we come before Boards, there is typically the question about exposure to radio frequency and how does that affect us. We comply with the FCC rules. I did want to give this chart to show how little frequency comes from this tower. Police and mobile radio on this scale is in microwatt per square centimeter is at 250. An FM radio transmitter is at 100. A cordless phone you may have in your home is at 15. A wireless baby monitor is at a level of 1. A Wi-Fi router is at .13. A tower site is at .1, just a fraction of that. Towers are so safe from a radio frequency prospective and because they are governed by the FCC, a federal agency, State law recognizes that when matters come before this Board about towers, they are so safe because the federal government controls it; that is not part of your decision making here. That is in 153A-349.52 which reads "Public safety shall not include requirements related to radio frequency emissions of wireless facilities." Ms. Samar Qubain is here from AT&T. She is the RF engineer that tells American Tower where to go help us find a tower. This is the search range that was in place to try to find a tower [referring to the slide on screen]. It is the area that AT&T said needed service.

MR. DONALDSON: Is this just for AT&T or is it going to be one of those multi-use towers?

MR. JOHNSON: At this point, it is for AT&T, but we have space for three more carriers. Basically, American Tower is the applicant because they have a contract with AT&T to build the tower, but American Tower is in the business of leasing space on the tower.

MR. DONALDSON: American Tower owns the tower?

MR. JOHNSON: Yes sir.

MR. JOHNSON: This is the site plan that Mrs. Varner showed earlier. It will be at the end of this path that is shown on the maps and other maps you've seen as Langley Road, but we're putting it at the end of that road. This is an aerial photo of the road, it's somewhat harder to see but if you come to the end, it's up here [pointing to the presentation], this is the road and we're putting it up here sort of in the wooded area. We're building a new access road off of that existing road. I'll explain the next slide and have Mrs. Qubain explain any questions you may have. This is the current coverage without this site. Basically, the best signal you have is the pinks/reddish color for in building coverage/commercial. Then the yellow represents in building/residential. The greens represent outdoor coverage. The blues are marginal coverage and the white is no coverage. You can see right here where the tower is going and you can see the improvement in service that matches up between the existing towers. As you can see, AT&T is on many different sites in the area. Here is a photo simulation of what the tower would look like on the site, taken from Hwy 210. As you can see, there are already existing, other things on the landscape. There is a power pole, the power lines and a bill board. It really will not stand out among the other things that are there and as Mrs. Varner stated, there is already another radio tower in the general area. I would like to ask Graham Herring come up. He did an impact statement, which part of your ordinance and part of the decision making process, is that we have no adverse impact on the surrounding properties.

Chair Quigley swore in Graham Herring.

MR. HERRING: My name is Graham Herring, 8052 Gray Oak Drive, Raleigh, NC 27615; Graham Herring Commercial Real Estate. American Tower employed me to evaluate this site and make determinations regarding my opinion of the impact if any that this tower would create on the existing property or any surrounding area properties. In looking at this site and the proximity of it to developed properties that are in the area, a church to the south, multi-family to the northwest and limited residential development with multiple mixed uses in the area; it is my opinion if this tower is built in the proposed location would have no adverse influence or diminution of value on any of the surrounding area, the existing properties or any future development properties that are anticipated at this time. The proximity to the military reservation and the criticality of this service to not only the general public but to the military users that would be there; it is my determination after looking at it with the data that you have in your package as back up in the analysis, it would have no adverse influence whatsoever.

CHAIR QUIGLEY: Does anyone have any questions?

MR. JOHNSON: Mr. Herring, please state your qualifications for the record and your years of experience and other qualifications.

MR. HERRING: I'm licensed in North and South Carolina and have been for over forty-five years. The greatest amount of my work has been in development, commercial throughout the United States, not just North and South Carolina. I have evaluated over 1700 towers in the past eighteen years and this is very well situated based on topography and the timber growth and things of this nature, it is a very well sited property.

CHAIR QUIGLEY: Any questions for Mr. Herring? Thank you Mr. Herring.

MR. JOHNSON: I would like Mrs. Qubain to come up just to verify that she prepared the maps that I explained earlier. That she prepared the maps that are in your files that showed the coverage of this tower where it is not covered now, but plan to cover in the future. Just to verify that she prepared those and that they are accurate and to be available for any questions you may have.

Chair Quigley swore in Samar Qubain.

MRS. QUBAIN: My name is Samar Qubain and I live at 7357 Circlebain Drive, Raleigh, NC 27619. I have been a Radio Frequency Engineer for the last twenty years. I also prepared the maps. I work for AT&T. I'm the one who actually produces those sketches you saw earlier. I determine where AT&T does not have service and where we need service. Where you see the pink [pointing to the on screen presentation] is where we already have power, that is where the concentration of the energy is and we have good service right here. As you go further away from the tower the service kind of degrades. The areas shaded in blue, even if you are in a car, you would probably not be able to make a phone call. The white area means no service at all. That is why we are proposing the tower. The next slide shows the color is not white anymore, it is going pink and yellow which means we will be able to provide in-car service and residential service. This virtual tour shows how the tower would provide in-car service, better home service and better overall coverage.

CHAIR QUIGLEY: Does anyone have any questions? Thank you very much.

MR. JOHNSON: I don't have anything further at this point. I know Mr. Groseclose signed up but I won't have him speak unless you have some follow-up questions for American Tower.

CHAIR QUIGLEY: I have no one signed up to speak in opposition. Is there anyone that wants to testify and provide any factual information? Thank you very much.

MR. RAYNOR: Mr. Chair, did you admit the evidence as requested by Mr. Johnson?

CHAIR QUIGLEY: Yes, any evidence that is introduced will have to be signed in and properly introduced. I rule that it is admitted.

Public Hearing Closed

CHAIR QUIGLEY: Do we have any discussion. This is a Special Use Permit with one significant requirement and that is Condition No. 1 on the permit draft; that they have to satisfy clearing the violations that exist on the property.

MR. DONALDSON: The property that you are putting the tower on, are you leasing the property or purchasing it?

MR. JOHNSON: We're leasing it.

MR. DONALDSON: Were any of the code violations on that particular piece of property?

MR. JOHNSON: No, but according to your Ordinance, we have to comply with the whole parcel. The violations are on other portions of the property and that is what makes it so difficult. It's a very large tract with pockets of things that have been dumped and left there that we thought we found it all, but we did not. I understand this has been a longstanding problem in that area and we are happy to do that and get it resolved.

CHAIR QUIGLEY: Have you re-inspected the property Mr. Hatcher?

MR. HATCHER: Yes and there has been improvement since I've been out there.

CHAIR QUIGLEY: In your opinion, the plan they have for completing the cleaning up of the property, is it a satisfactory plan?

MR. HATCHER: Yes.

MR. HUMPHREY: That was also my question, but it was answered when you said you were pretty confident it would be completed to the codes satisfaction.

Mr. Raynor talked about protecting the wildlife in the construction of this project. [Mr. Raynor's voice is inaudible]

MR. DONALDSON: This falls under the protected area for the woodpecker.

MR. JOHNSON: We have to go through the Fish & Wildlife Service each time we put up a tower to make sure there isn't any conflict with any Fish & Wildlife including woodpecker species and we couldn't get permission to begin until all of that was done.

MR. DONALDSON: I didn't know if you knew whether there was actually an area designated. If they find a woodpecker somewhere, they designate the surrounding area.

MR. JOHNSON: We have not received notice of any issues with wildlife.

CHAIR QUIGLEY: Does anyone have a motion?

MR. DONALDSON: I motion to approve the request.

CHAIR QUIGLEY: We have to read it.

MR. DONALDSON: No you don't. We can incorporate it. You can incorporate it, just like a courtroom. You can introduce it and accept it into the record.

CHAIR QUIGLEY: I'll defer to staff on that.

MR. DONALDSON: Well, your attorney says yes on that. I'm telling you it is just like a courtroom. You can accept it into the record and accept it as it is.

[Mr. Raynor is speaking but his voice is inaudible]

MR. DONALDSON: I'm here to help the Board out and as a retired judge, I know these things. It quickens the process. You can have him sign an affidavit and accept it and that would be all you would need, you wouldn't need any testimony if nobody is opposed to it.

CHAIR QUIGLEY: I'm deferring to staff on this one.

[Mr. Raynor is speaking but his voice is inaudible]

CHAIR QUIGLEY: Just make sure that staff agrees with this.

MR. DONALDSON: It is not up to the staff, it is up to the Board and the Chairman.

CHAIR QUIGLEY: Just to make sure that they understand what you are doing.

MR. DONALDSON: What I'm doing is...you can accept in... well, the attorney can explain it.

MR. RAYNOR: You make the motion and I'll make sure that it gets in the minutes.

MR. JOHNSON: I was going to say, to make it easier on you, we accept all conditions as read and if you want to make your motion and just incorporate the conditions as read; that will be fine.

MR. DONALDSON: However you want to do it, it is up to you Mr. Chairman, I'm just trying to say there is an easier way.

CHAIR QUIGLEY: I'm deferring to our staff.

MR. DONALDSON: We've already accepted the affidavit as evidence. I move to approve the motion for the Special Use Permit based on the affidavits, the record before the Board and that it meets all necessary requirements.

CHAIR QUIGLEY: Do I have a second?

MRS. TART: I second the motion.

CHAIR QUIGLEY: It has been properly moved and seconded that we grant the Special Use Permit based on exception. All in favor signify by saying aye.

	IN FAVOR	OPPOSED
QUIGLEY:	YES	None
DONALDSON:	YES	
HUMPHREY:	YES	
DYKES:	YES	
TART:	YES	

The motion was approved unanimously.

- **P11-03-C:** CONSIDERATION OF A SPECIAL USE PERMIT TO ALLOW A DAY CARE FACILITY IN AN RR RURAL RESIDENTIAL DISTRICT ON 4.63+/- ACRES, LOCATED AT 6501, 6505 & 6509 CAMDEN ROAD (SR 1003), SUBMITTED BY LEWIS WILSON ON BEHALF OF NEW LIFE BAPTIST CHURCH OF FAYETTEVILLE (OWNER) AND CYNTHIA WILSON.

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

MRS. VARNER: Mr. Chairman, presently there is a day care facility operating at this property. This day care was approved before 2005 when the day care was a permitted use and it was not a requirement to go through the Board of Adjustment to acquire the permit. After the revision of the Zoning Ordinance in 2005, it became a Special Use Permit. That is the reason why they are before the Board because they are expanding the day care and they have to go through the new standards which is the Special Use Permit. The site plan you see is showing 100 parking spaces, but there are actually 117 parking spaces on site. In one of the conditions, the applicant is required to submit a revised site plan showing the amount of parking spaces and the layout. The applicant is aware and agrees. The applicant is not required to meet the buffer requirement for the existing day care center because the building is internal within the religious worship facility campus. However, a buffer is required on the east side of the property because it is located on the side yard which is facing a residential zoning district. We encouraged the applicant that they need to meet the buffer requirement for the day care because they are expanding the day care in the Family Life Center and in the Administrative Building.

MRS. VARNER: I'm open for questions.

CHAIR QUIGLEY: Does anyone have questions for staff?

MR. DYKES: You mentioned they will be operating Monday through Friday and closed on weekends?

MRS. VARNER: Yes. No interference of the church operation with the day care. For your information, the required parking spaces for the church are 70. They currently have 117 parking spaces.

Chair Quigley swore in Cynthia Wilson.

MRS. WILSON: My name is Cynthia Wilson and my address is 2444 Lull Water Drive, Fayetteville, NC.

CHAIR QUIGLEY: Would you tell us your relationship to this project.

MRS. WILSON: I am one of the directors at the day care center. I do have the revised site plan that I was required to submit as one of the pre-conditions and that has the current markings of the parking lots. There were questions because the parking lots had been repaved and restriped. In order for it to be matched up to what it currently is, we had new site plans drawn up.

MRS. VARNER: Mr. Chairman, that is addressed in Condition No. 1. She would like to introduce this revised site plan.

CHAIR QUIGLEY: The revised site plan is accepted [Exhibit 1]. Have you had an opportunity to read the draft conditions subject to this?

MRS. WILSON: Yes, I have.

CHAIR QUIGLEY: Do you have any problems with this?

MRS. WILSON: I don't. I do have one question of concern. One of the things we were told is that we would be required to have installed a 150 foot privacy fence between the church property and the residence next door.

CHAIR QUIGLEY: That is on the west side?

MRS. WILSON: Yes sir, that is correct. The property owner, Ms. Bonnie Mangum is with us this evening and she objects to that and we do as well. She has concerns for her safety and she indicated she feels safer for people at the church in the parking area to be able to see the property and so she objects and she feels like she would be at a greater risk and cause her to be more secluded if that 150 foot privacy fence were put in.

CHAIR QUIGLEY: How does Code Enforcement feel about that?

MRS. PERRIER: It is required. For the church it is not required, but for the day care, it is required.

CHAIR QUIGLEY: This would be an exception to code, wouldn't it?

MRS. VARNER: I was advised it is the Board's decision if you accept that or the applicant will have to apply for a variance. The variance cannot be heard tonight because we have to advertise it and send notification to the neighbors. It would be at the next meeting. We can hear the Special Use Permit tonight, but if that is the issue and the neighbor is present to speak and she is requesting, then the variance will be the option.

CHAIR QUIGLEY: You say your neighbor is present?

MRS. TART: Does she own the entire property that is shown in this footage?

MRS. WILSON: Yes.

MR. HUMPHREY: When we say privacy fence, are we talking about a wood fence, chain link fence, or height?

MRS. WILSON: I was instructed that it had to be a solid privacy fence, it could not be a chain link, it couldn't be those where you put the slats in; but rather it had to be where the view was totally obstructed.

MRS. VARNER: Mr. Humphrey, the applicant has two options to either propose a solid fence or a natural buffer. In this case, the reason she cannot propose a nature buffer is because of the paving [pointing to the presentation] and the proximity is so close to the property line. Her only choice was the solid fence. The regulations are when it is a solid fence; the height has to be 6 feet high.

MR. DONALDSON: What if it is a natural fence?

MRS. VARNER: Three feet at the time of planting and it has to grow up to 6 feet.

MRS. WILSON: There is currently a wire fencing up between the church property and Mrs. Mangum's property and there are some natural live trees and those kinds of things. We want to be good neighbors.

MR. DONALDSON: What type of fence is up there now?

MRS. WILSON: It is a wire fence.

MR. DONALDSON: How tall?

MRS. WILSON: About 4 or 5 feet.

MR. DONALDSON: Like a cattle fence? Does it run the entire length?

MRS. WILSON: Yes, it does.

MRS. PERRIER: That is not allowed. There is only a privacy fence or a vegetation fence which can start at 3 feet and in three years it grows to 6 feet. That is required.

CHAIR QUIGLEY: It is certainly not a barrier in your opinion? The existing fence is not a barrier fence or a buffer?

MRS. PERRIER: No, it would not be suitable.

Chair Quigley swore in Bonnie Mangum.

MRS. MANGUM: My name is Bonnie Mangum, 6529 Camden Road, Fayetteville, NC. [Mrs. Mangum pointed to her property on the presentation.] The wire fence that I have now goes to the road. My concern is that I live by myself and I do go to church at night when coming home, I feel comfortable because I know there is somebody over there when I come in at night. If you put a privacy fence up there I would not be able to see anything over that way and that concerns me because I feel like I would be cut off from that side and not be able to see anything as I went in my house and I don't feel I would be as safe as I am now.

CHAIR QUIGLEY: You feel that by having a buffer or barrier fence would be detrimental to your safety?

MRS. MANGUM: Yes, to me it would. I do have an alarm system, but when I go in at night, I do go in through the garage, but I can see people over there and I feel safe by going up my driveway and going in through my garage. If there is a six foot fence I cannot see over the top of it. On that side I would be cut off completely.

MR. HUMPHREY: How long have you lived there?

MRS. MANGUM: Since 1979. They [the church] have been there for 13 years. In fact, I sold the land to them. I have no problem with them, I have never had a problem with them and they were so nice when they built the Family and Life Center. They came and asked me if it was alright to build it there because it was right beside my place. I don't have any problem with them, I never hear them, I just feel like I would be cut off if a six foot fence were up there.

MR. HUMPHREY: Did I hear you say the wire link fence there now is yours and you put it up?

MRS. MANGUM: Yes.

MR. DONALDSON: The recommendation was that they put in a fence on that one side of the property. Go back to the color map you just had up, the aerial map. Was there no requirement for a barrier fence on the other two sides, on the back side and the side next to the wooded area?

MRS. VARNER: The buffer is only a zoning requirement, not a day care requirement. The reason why we are advising the applicant to meet this requirement is, when a non residential use abuts a residence zoning district, they have to meet those requirements. The reason why we advise her to propose the buffer in this particular area is because of the proximity of where the day care will be operating.

MR. DONALDSON: I understand that, but my question is there is no requirement for a fence on the back end of the property or on the other side?

MRS. VARNER: No sir.

MR. RAYNOR: No requirement for a non-residential structure. That is the problem.

MRS. VARNER: Because the day care is a non-residential use, there is no requirement in the rear or this side, it would just be on this side because of the non-residential use.

MRS. PERRIER: There is no requirement for churches. Churches do not require a buffer.

MRS. TART: My understanding is if we approve this and she wishes to not place the fence there, she has to go through the full process of requesting a variance?

MRS. VARNER: Yes, we can continue with the special use permit and she will have to apply for the variance. If the board wishes, they don't have to comply with the buffer at this moment until the next meeting.

Chair Quigley swore in Lewis Wilson.

MR. WILSON: Lewis Wilson, 2444 Lull Water Drive, Fayetteville, NC. I'm the pastor. Ms. Mangum lives here. They were going to tell us to put a fence all the way down this side. [pointing to the presentation]. The Fayetteville Life Center shields her to the right. The main reason that fence is there is because she's got a big dog over there and it keeps the dog in. It does have trees spasmodically along there and she can see through there to the property. Because of the building being there, they said it sufficed as a fence.

CHAIR QUIGLEY: Does anyone have any question or need clarification? Thank you very much.

MR. HUMPHREY: Is this the case that was deferred sometime ago and came back?

MRS. VARNER: Yes, it was going to be heard in July, but we deferred it.

MR. HUMPHREY: I just want to be clear. If we approve this with or without the fence, they would have to come back for a variance? So whatever we do here tonight will not matter about the fence.

MR. DONALDSON: Except we can exempt that requirement.

MRS. VARNER: Yes, we can exempt that requirement to be heard at the next meeting.

CHAIR QUIGLEY: Until they can apply for the variance.

MRS. VARNER: The board has to do the interpretation of this buffer requirement and decide.

MRS. WILSON: Will this be another application and fee?

MRS. VARNER: Yes, another application and fee because of the advertisement of the case.

MRS. WILSON: Another \$200.00 fee?

MRS. VARNER: Yes, unless you talk to my supervisor. According to what I know it will be another application unless the board decides to proceed in a different way.

CHAIR QUIGLEY: We're going to stand in recess for a few minutes, just to get some clarification from staff so that we can do this correctly. Mr. Raynor and Mrs. Varner, if you can approach.

[Chair Quigley calls a recess]

CHAIR QUIGLEY: What we are doing Mrs. Wilson is examining options available to us.

[Chair Quigley calls the meeting back to order]

MR. DONALDSON: Mrs. Mangum, I have a question for you. You are in favor of a variance so they will not have to put up the fence?

MRS. MANGUM: Yes.

MR. DONALDSON: Do you understand what that means? Under the rules, they have to apply and go to another hearing to get this variance and you would have the opportunity to be heard at that time to say yea or nae. Do you understand that?

MRS. MANGUM: Yes I do and I don't understand that.

MR. DONALDSON: The way the code is written, they would have to get a variance. They are in here today just for the Special Use Permit to expand the day care. We've got this other problem which has come up about the fence. You have said before and testified that you don't want the fence there. They have testified that they don't want to have to go through the cost of putting up the fence. The code requires the fence unless they go through another legal process of going back to the Board to request a variance from the code; where we say, you don't have to put the fence up; there is good, sufficient reason for you not to have to do that. Now do you understand what I am saying?

MRS. MANGUM: Yes, I understand.

MR. DONALDSON: Are you opposed to them putting the fence up?

MRS. MANGUM: A six feet privacy fence, yes.

MR. DONALDSON: That is all I wanted to know. So you are opposed to the fence being placed?

MRS. MANGUM: Yes.

MR. DONALDSON: So you have no objection to them obtaining a variance from the Board of Adjustment to avoid that requirement?

MRS. MANGUM: Not if they have to do that.

MR. DONALDSON: So you are ok with it if the Board determines they don't have to put the fence up, that is ok with you?

MRS. MANGUM: That is fine. I haven't had one since 1979 and they have been there for thirteen years and I haven't had a fence. I'm fine with that.

MR. DONALDSON: Do you understand that you have a right under the rules to be heard on that at a subsequent hearing if we make them go through the process of getting a variance?

MRS. MANGUM: Yes.

MR. DONALDSON: Do you want to waive that right to be heard at that future hearing, at any future hearing that might be held? In other words, you are not objecting to them getting the variance, are you?

MRS. MANGUM: No.

MR. DONALDSON: You are entitled to certain rights to be heard and certain notice rights in the length of time to prepare. Do you have any objection to us waiving that and doing the variance here and now?

MRS. MANGUM: No.

MR. DONALDSON: Are you sure?

MRS. MANGUM: Yes.

MR. DONALDSON: You don't want any outside advice or legal advice or legal attorney?

MRS. MANGUM: I've already talked to my son about it and we are happy if I don't have to put a fence, we're happy.

MR. DONALDSON: Do you have anything else you would like to say?

MRS. MANGUM: No.

MR. DONALDSON: Thank you.

Public Hearing Closed

CHAIR QUIGLEY: We are closing the public hearing. Do I have a motion?

MR. DONALDSON: The first motion is: based on the interest of justice and the efficiency of the Board and all parties present; that we record the Board on its own motion and grant the variance as required by the staff to avoid having to put up the privacy fence. Based on the record and all parties have agreed upon and waive any further notice of hearing.

CHAIR QUIGLEY: No opposition?

MR. DONALDSON: Incorporating all the necessary findings and documents signed and submitted by the parties. This is for the variance.

Mr. Donaldson made the motion and it was seconded by Mrs. Tart.

CHAIR QUIGLEY: It has been properly moved and seconded. Is there any other discussion on granting the variance? All in favor signify by saying aye.

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

TART YES

The motion was approved unanimously.

MR. DONALDSON: The second motion is: based on the evidence presented before us and documents presented before us; that we grant the Special Use Permit as requested, recognizing all conditions are accepted except for the fence.

CHAIR QUIGLEY: Do I have a second?

MR. DYKES: I second the motion.

CHAIR QUIGLEY: Is there any other discussion on granting this Special Use Permit? All in favor signify by saying aye.

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

The motion was approved unanimously.

CHAIR QUIGLEY: Does the staff have any questions? Thank you very much.

MRS. VARNER: We are now going to do the Special Use Permit or everything is being approved?

CHAIR QUIGLEY: We have granted the variance and the Special Use Permit.

MRS. VARNER: The findings for the Special Use Permit, we need to incorporate it. In the variance, it is my understanding there is always findings. Do we need to incorporate it?

MR. RAYNOR: Just as they read it off. [The rest of Mr. Raynor’s talking is inaudible]

MRS. VARNER: As they read it? Okay.

[Mrs. Varner says instead of going through each one, the Board is incorporating it but we still have to write it in the minutes and that Mr. Raynor would explain it further after the meeting]

P11-05-C: CONSIDERATION OF A SPECIAL USE PERMIT TO ALLOW A KENNEL OPERATION IN A R40A RESIDENTIAL DISTRICT ON 3.00+/- ACRES, LOCATED AT 111 BERRYPATCH COURT, SUBMITTED BY JAMES H. BERRY (OWNER) AND JULIO HERNANDEZ.

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

MRS. VARNER: Please pay particular attention to Conditions No. 2 and No. 18.

MR. DYKES: What is a buffer? I've heard that in previous meetings that we've had, and I have an idea what it is, but I just want to make sure I know what it is.

MRS. PERRIER: A buffer is any kind of evergreens that last through the year and they have to be planted three feet tall and grow to a maximum growth of six feet tall in three years. They have to be spaced three feet apart.

MRS. VARNER: Or it can also be a solid fence?

MRS. PERRIER: Yes. Well, if it is a lot of noise from these dogs, it will require a solid fence.

MR. DONALDSON: Where exactly is this located? How far north of Pine Forest Middle School is it?

MR. HERNANDEZ: Four miles.

Chair Quigley swore in Julio Hernandez.

MR. HERNANDEZ: My name is Julio Hernandez, my address is 111 Berrypatch Court, Linden, NC.

CHAIR QUIGLEY: You want to have fifty dogs kenneled on this property?

MR. HERNANDEZ: That is actually a maximum number. I'm definitely not starting with fifty dogs if approval is granted, but it is a number that I would max out at. That is the reason why I submitted that number and as a guide from the County also. I want to start with a little bit of history with myself as far as experience with animal husbandry. My personal experience expands over eighteen years in animal husbandry. I was a vet tech for three years. I've worked in high kennel, high kill ratio shelters in Rochester, New York. I've been showing and exhibiting and training dogs through that timeframe. I've exported dogs to Germany, Kuwait and Argentina as well as many other states; as well as imported. As far as animal husbandry goes, I've also been an assistant vet tech, assisting actual specialist in the field when it comes to orthopedics and internal medicine, and this was in Pittsburgh, New York, quite some time ago before the Army. That is my experience.

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

MRS. TART: Mr. Hernandez, how long have you been living at this site?

MR. HERNANDEZ: I've been at this site for approximately five months.

MRS. TART: In the pictures I noticed there are several pens and various things, how many animals do you have now?

MR. HERNANDEZ: Three dogs and the pens are actual breakable, moveable pens; nothing is fixed, housing three personal animals.

MRS. TART: You do not own this property?

MR. HERNANDEZ: No ma'am.

MR. DONALDSON: Did you say you do or do not own it?

MR. HERNANDEZ: I do not sir.

CHAIR QUIGLEY: Who is the owner of the property?

MR. HERNANDEZ: Mr. James Berry.

CHAIR QUIGLEY: What is the status of that, Mr. Raynor? Does the owner of the property have a voice in this?

MR. RAYNOR: He certainly has a voice in this. [Mr. Raynor is talking but his voice is inaudible]

MR. HERNANDEZ: The owner of the property did sign the requested forms to submit the application. Also I wanted to touch on the topic of permits. The whole kennel operation is going to consist of actual welded wire removable kennels. I'd like to show you pictures. I do have examples of what is going to be going up.

MRS. VARNER: Mr. Chairman, would you like to see the pictures?

MR. HERNANDEZ: I'd like to introduce that as part of evidence for my case.

CHAIR QUIGLEY: We accept them as evidence. Exhibits 1, 2, 3, & 4.

MR. HERNANDEZ: I wanted to say that due to my experience with animal husbandry throughout the years I've experienced that 1. security is always an issue and 2. hygiene. I'd like to address the security issue with the containment of each individual animal and what they are actually going to be contained in. You are looking at 8-gauge wire welded with slam latch. Animals cannot open it, you need human help. Also there is a secondary device on there where you can use a pad lock or a natural snap lock to incorporate a second security measure. As far as hygiene goes and pending your approval, I also would have to answer to a higher entity and that being the State. I'm going to fall under the Animal Welfare Act. They do have certain requirements. I'm looking to conform with 6 inches of a gravel bed, minimal, to be able to filter any type of urine into the soil. It is also going to be cleaned daily, at least a minimal of twice a day. I'm also going to use similar Quatricides that I submitted as evidence for day to day use. That's how I plan on addressing those two issues. As far as fecal matter goes, it is going to be double bagged, picked up, put in one bag, dropped off and put into a second one and into an actual commercial grade container.

CHAIR QUIGLEY: What is your solid waste disposal plan?

MR. HERNANDEZ: Actually sir, I just went through it. It would be actually picking up solid waste, putting it in an actual plastic doggie bag, tying it and also putting it into a contractor grade bag, which is contained on an actual commercial grade can. It will be sealed and covered. It will be out in the elements; however, it will not be open to any other animal to tamper with.

MRS. VARNER: That is addressed in Condition No. 2.

MR. DONALDSON: Is this pursuant to the North Carolina Act?

MR. HERNANDEZ: Yes it is sir.

MR. RAYNOR: He would have to comply.

CHAIR QUIGLEY: You are on a water line now?

MR. HERNANDEZ: Yes sir, the Town of Linden water.

CHAIR QUIGLEY: You are not on a sewer line?

MR. HERNANDEZ: No sir, it is septic.

CHAIR QUIGLEY: Do you have any other information for us?

MR. HERNANDEZ: Yes, I do. I have a background in real estate brokerage here in North Carolina. I wanted to hit on a few things on adverse impact in the area. As far as adverse impact relating to visual, the area is pretty much nonexistent due to natural buffer. We've got extensive buffer all around the property as well as adjoining lots headed in the direction of Ramsey Street. Not to mention the salvage yard and horse stable to the rear of the property. As far as values to properties in the area, it is definitely a service that is being provided to the community. The next closest boarding kennel is approximately seven miles from 111 Berrypatch Court. From that point on the next closest kennel is approximately fourteen miles from 111 Berrypatch Court. Due to the growth in the area, due to the new subdivisions being put up in the area, I do feel this is a service that would be provided for the community.

CHAIR QUIGLEY: Does anyone have any questions for Mr. Hernandez? We do have people scheduled to speak in opposition. Is there anyone who wanted to be the principal spokesperson? Everyone will have an opportunity if they choose, but sometimes it is easier if one person steps forward to give the case.

Chair Quigley swore in Carolyn Cannady.

MRS. CANNADY: My name is Carolyn Cannady and my address is 8861 Coats Road, Linden, NC. My house is here and my property is here. [pointing to her residence on the map]

CHAIR QUIGLEY: You are on the west side of Coats Road?

MRS. CANNADY: Yes. I'm here to represent myself, my husband and several neighbors that have been talking with us for the last few days. Some could not be here tonight because they work nights, one is on vacation and some have child care issues, so we are hoping to speak for them.

CHAIR QUIGLEY: Let me just explain that this is quasi-judicial. Your testimony we will accept, anything else that you present would of course be hearsay and would not have the same weight. Just be advised that if the person is not here to testify, then you could say what they might think, but we don't have to accept that as fact.

MRS. CANNADY: Yes, I understand. My husband and I have lived on these five acres since 1995 and according to Google Map, we are about 600 feet from our property line to the proposed site. When we sit on our porch in the afternoon, we can hear the kennel dogs that are already on the property, that he says are three dogs. We can hear them barking very loudly in the afternoon. My husband and I are avid campers, hikers and nature lovers and we have made it a point to try to make our property conducive to the animals and the natural habitat. We have a lot of bird feeders, we have a small pond in our backyard and we have a lot a shrubbery, plants and grapevines to bring the birds and the animals into our yard so they will have a place to be protected. It is a very tranquil environment, including that red headed woodpecker. We have well water and our pond and our well are both spring fed as are our neighbors. I do have a neighbor who is here who can attest to the fact that his well is almost right on the road, just a few feet from the road. It is only twenty three feet deep and all of our property runs downhill from the site that we are talking about. We are very concerned about our water being contaminated. It is great water, it taste great, it is clear and we don't want anything to happen to that because it is a rarity in these days. We are concerned about the animal waste and the chemical used to treat the animal waste. We are also concerned about the effects of the noise, potentially, fifty barking dogs in one enclosed environment. The buffer proposed of three feet bushes obviously is not going to protect us from having to listen to that. There is a lot of research, noise pollution and what it does to people's health and their stress levels. I actually have a chart with a lot of references on here including the World Health Organization, that I would like for you to look at about the negative effects of short and long term noise. Our homes are our sanctuaries and so are our yards and we want to protect that for ourselves, for our children, for the animals that are natural habitats to that area. We would like to ask the board to ensure that we get answers to some questions that we have. We already know there could be fifty animals in the kennel, but what kind of breeds of dogs would there be? The environmental buffers that are in place; that entire property to my knowledge is not completely enclosed by trees. If I stand on my front porch, I can look across the street through my neighbors' backyard and I can see the landowner has another business on that property. There is a bulldozer that goes back and forth where they burn trash and it is often polluting our air so we have air pollution from this same area, now noise pollution from this area. We can stand on our porch and clearly see this in the afternoon when we can go out there and breathe. We would like to know what other barriers could be put up if it is permitted, and we are hoping that it is not. We would like to ask the Board if you recognize that the noise of barking dogs is a potential health hazard to people. It does promote a high level of stress and it is documented by the World Health Organization and a number of other organizations. We would respectfully like to ask you to deny this permit and to keep the zoning at an R40A. Thank you.

Mrs. Cannady submits a document to the Board [Exhibit #5].

CHAIR QUIGLEY: We will receive this document as something that is not verified.

Chair Quigley swore Patricia Davis-Mullins.

MRS. MULLINS: I live at 8825 Ramsey Street, right besides Mr. Berry's property. I have two ponds. [Mrs. Mullins points to her property] You can see Mr. Berry's property goes this way and we have the ten acres right beside him. My house and his house face Ramsey Street. Our houses are back here and also back here they have the double wide manufactured houses. The pictures that showed the foliage, there is limited foliage. For Mrs. Cannady and her family to be able to see it from about 600 feet away, it is right in my face. With our two ponds in the back, they are within less than ten feet from the property line. I'm really concerned about the noise. I didn't understand the waste thing because if you put it in a can and leave it out. Where does it get disposed at? I don't understand that because I would think that somewhere it gets disposed of like a hospital, the garbage goes to a certain disposal area and I would assume that dog waste would be handled the same way. I have lived at 8825 Ramsey Street since 1998 and we have had barking dogs out there and I think there are about seventeen families that live within about 1000 feet of this property. I am really concerned about the noise. For fifty dogs, there are two parking spaces for this business, so where does that mean that other people are going to be parking? That is really stupid in my mind, to have two parking places for a dog kennel of fifty. I just don't see it as being a viable option to put a kennel in there right now and I would request you to please not approve it. This is Mr. Berry's property, and facing Mr. Berry's property, our property is to the left. What does the "1" mean? [pointing to the presentation] The "1" that is on this property, what does that mean?

MRS. VARNER: It means an open storage of salvage. That is the kind of use on that property.

MRS. MULLINS: The horse stable is right over here.

MRS. VARNER: Mr. Chairman, every time we have a Board of Adjustment case, Graphics goes to the subject property to recognize the area and take pictures to let us know what kind of uses are going on in those lots and the surrounding properties.

CHAIR QUIGLEY: Put the other one up. The subject property in the clearing is essentially where that double wide and the existing three animal kennel is located, is that correct, Mrs. Varner?

MRS. VARNER: Yes, this is the property for the kennel operation [pointing to the presentation].

MR. DONALDSON: The proposal is where the clearing area is. Do you own the property next to that ma'am?

MRS. VARNER: She owns this property right here [pointing to Mrs. Mullins' property on the presentation].

MRS. MULLINS: We have ten acres.

MR. DONALDSON: You said there is an open salvage in there now?

MRS. VARNER: Graphics says there is an open salvage in there.

MR. DONALDSON: Do you have a salvage yard on your property?

MRS. MULLINS: No.

CHAIR QUIGLEY: I don't think that is her property where you are indicating. I think he's closer to Ramsey Street

MRS. VARNER: She mentioned #1 is her property. Is #1 your property?

MRS. MULLINS: It goes from Ramsey Street back to the horse farm.

[Mrs. Varner points to all of Mrs. Mullins' property as shown in the presentation]

MRS. TART: Where is the salvage yard?

MRS. CANNADY: My husband is building up the land. He recently got about thirty or more truck loads of dirt put in there and it's around two ponds back there.

MR. DONALDSON: How many vehicles?

MRS. MULLINS: Probably about seven or eight.

MR. DONALDSON: Are they junk vehicles?

MRS. MULLINS: A couple of them are and then we have a box car and a vehicle to carry cars on and a back hoe.

CHAIR QUIGLEY: Thank you Mrs. Mullins.

MRS. PERRIER: We got a complaint today about the property she was talking about so we have not had time to investigate, but we are going out to investigate.

CHAIR QUIGLEY: So you have received complaints about that open storage area?

MRS. PERRIER: Yes, we received it today.

MR. DONALDSON: Who initiated that?

MRS. PERRIER: It is unknown. A lot of people don't give their names.

MRS. TART: But you received it today?

MRS. PERRIER: Yes, this afternoon.

CHAIR QUIGLEY: Is there anyone else who wishes to introduce something?

Chair Quigley swore in Franklin Sinclair Clark

MR. CLARK: My name is Franklin Sinclair Clark; I live at 9135 Coats Road, Linden, NC. [Mr. Clark pointed to his property]. My property extends down this property line and also beside the horse barn.

MR. DONALDSON: How many acres?

MR. CLARK: Over six hundred. The case I would like to present concerns the safety as well as the property value and increase in traffic. We currently have four employees that work on the farm as well as two different family residents that rent houses on our property. One has four kids and the other that rents on the other side is just a husband and wife. The concern we have obviously is the dogs getting out of their kennels. We would like to say it would never happen, but I have to worry about liability purposes about the dogs coming in and harming one of my employees, myself, my father or any other residents on that property as well as the cleanliness of the waste from this kennel. As the others have stated they use well water as well as we do because there is no sewer. She said she had ponds on her lake. There is also water running along back behind this property line and worry about contamination of the water for the wells and a health risk for the people we have on our property, for our renters. The increase of traffic and Ramsey Street is only a two lane road. As Mr. Hernandez mentioned, the other kennels such as pet stores is seven miles down the road, have four lanes with sufficient parking. As far as traffic and blocking traffic and parking spaces, it is not apparent to me what would happen if something disastrous would happen. The decrease of property value from noise or odor produced from the animals is at risk. The hours of operation from the kennel stated is from Saturday 5:30, starting again on Monday at 8:00. My question would be, for that 38 ½ hours, would it be an unsupervised kennel operation? It doesn't say that operation continues through those hours. Also, the twice a day cleanings, would those also happen during their hours of off time operation on Sundays? The county does not collect garbage as far as there. The waste bins that he would store his animal waste in could not be picked up by the county because they do not offer such programs that extend out that far. Thank you.

MRS. VARNER: Mr. Chairman, I have the comments from Daniel Ortiz, from the Health Department, if you would like to read them. I also have the comments from Gary Burton, from the Department of Transportation.

CHAIR QUIGLEY: Would you pass them through Mr. Raynor.

MR. DONALDSON: Does the applicant know about these requirements?

MRS. VARNER: Yes sir, he spoke with the Health Department representative. After Mr. Ortiz sent me the comments, I advised Mr. Hernandez to talk to the Health Department and he spoke with him.

CHAIR QUIGLEY: You can accept those as Exhibits #6, #7, and #8.

MRS. VARNER: It is part of the file; it is just for your information.

CHAIR QUIGLEY: I want to ask Mr. Hernandez to come back up and address some of the questions that were posed by the other residents in the area. Essentially, can you explain in a little more detail what the disposal of solid waste is really going to be.

MR. HERNANDEZ: Disposal of solid waste will consist of picking up solid waste, putting it in, for lack of better words, a doggie bag, sealing that doggie bag, then putting that into a contractor heavy grade garbage bag, which is the actual liner for a heavy duty garbage can, the same one I showed in the exhibit.

CHAIR QUIGLEY: What happens to it?

MR. HERNANDEZ: I'd like to do this daily; pick it up and take it and haul it away myself. We don't have any service coming into that area, that is correct, but I can dispose of it myself at the actual dump, the county dump.

CHAIR QUIGLEY: How frequently would your plan include removing it from the premises to some sanitary location?

MR. HERNANDEZ: I would like to do it daily, at the most, maybe every two days. It's something I'm going to have to deal with directly. I plan on being a hands-on owner. I'm not just putting this on somebody else to do. My thing here is just my experience, I want to do it and I want to comply. I want to have a good facility which is why I'm going through the process to actually have that. I do want to address something that was already addressed by Mr. Daniel Ortiz, we did speak in regards to run-offs and whatnot. He didn't have an issue with gravel. The state doesn't have an issue with gravel either. I understand they are another entity. I'm not trying to compare the two, but it is something that was considered. As far as barking dogs are concerned and noise, I heard a comment that somebody called in a noise complaint. For the record, that was not myself or anybody on my property. However, that consisted of actually, the past week or so a gentleman next door has been moving 20 or 30 truckloads of dirt with a bulldozer. I have no issue with that. That is pretty much a salvage yard next door. I'm fine with that. There is a horse stable behind me, I'm fine with that. I would like to comply and keep the area looking as rustic as possible to conform to the surrounding areas. I wanted to address dog noise and barking. I'm allowed apparently a 60 dB(A) between the hours of 10:00 pm – 7:00 am. Sixty dB(A) at about 500 feet is almost nonexistent. That is the distance that I have with the residents surrounding the property. I feel that is not going to be an issue as far as nuisance barking, I can keep that under control. As far as traffic is concerned, that was addressed and as far as safety, I believe I've addressed safety enough as far as what the animals are going to be kept in and just overall experience with that animal husbandry. I can't say I've never had a dog run away from me, but I'm pretty well experienced. I believe I have a good sufficient amount of information for you to make a good decision and I'm willing to comply with any extras that you may imply.

CHAIR QUIGLEY: There was an issue of parking in the provision of two parking spaces, I'm asking staff. What is the provision for parking at a kennel?

MRS. PERRIER: It would come under much like child care because you would be dropping the dogs off. So that would be two spaces and then for each employee after that it would be another space or two. If he has going to have one employee and a part-time employee, I would recommend four.

CHAIR QUIGLEY: He would need four spaces?

MRS. PERRIER: That is what I would recommend. It is like a day care. Instead of dropping off kids, it would be dogs. They are not staying; they are just dropping them off. Also, if the noise became too much, too loud, and it was determined that it is too noisy, then he would be required to install a privacy fence as well as the buffer.

MRS. VARNER: The buffer is mentioned in Condition #15 if that is what is needed, then a solid buffer must be provided.

CHAIR QUIGLEY: What is actually the height of the buffer?

MRS. PERRIER: Six feet.

MR. DONALDSON: Are you talking about a solid fence?

MRS. PERRIER: Yes sir.

CHAIR QUIGLEY: Or foliage.

MRS. VARNER: At the time of planting it has to be three feet and in three years it has to grow to six feet. If it is a solid buffer, a solid fence, the height must be six feet.

CHAIR QUIGLEY: Could you cover again your security of the cages that the animals will be confined in.

MR. HERNANDEZ: Sure sir. It will be welded wire professional grade kennels. We're talking 8-gauge wire; the actual latch is a slam latch which means once the door closes it can't open outwards or inwards unless each latch is opened. It also has a second security measure which is basically just a hole drilled in between both latches where you can secure it with a lock or a snap link or something that can be easily removed. I haven't had a dog get out of these yet. They are expensive kennels and they are not something you would see at Home Depot. It's made by Tarter Company; they actually make equine equipment to contain horses. That is basically what the animals are going to be contained in. I'd also like to state, as far as buffer goes, I'm surrounded by forty foot trees and dense vegetation. I'm willing to comply with anything that the county imposes; however, I've got almost 500 feet of it going towards the rear of the property. Also, to address one issue we talked about earlier, as far as home ownership or

property ownership. I do have a vested interest in this property. I do have an extended lease agreement with this property. It is not just something I said, hey I'm going to sit here and move

six months down the road. I do want to comply and I do have an interest in this property for the long haul.

CHAIR QUIGLEY: Does any member of the Board have questions for Mr. Hernandez?

MR. HUMPHREY: In your opinion, if you had the maximum of fifty dogs, the barking would not offend the neighbors?

MR. HERNANDEZ: I don't want to keep jumping forward with this thing but, once I do have growth, I do plan to implement certain things. For instance a no bark detector, as soon as dogs bark, you got a high emission audible sound to them that they can only hear and they stop barking. If needed, I can do that, but I don't feel that even with fifty dogs, you can't get fifty dogs to bark at once.

MR. HUMPHREY: What is your estimation where your kennel is to the next closest residence?

MR. HERNANDEZ: I would say about 500 feet.

CHAIR QUIGLEY: Do any other residents own dogs?

MR. HERNANDEZ: I've seen dogs running loose in this area. I believe Mr. Berry owns a dog, he lives up front, his company is based here. Other than that, I know my neighbor has maybe three dogs as far as I know.

MRS. TART: Does Mr. Berry live on the property there beside Ramsey Street?

MR. HERNANDEZ: I believe so, his company is based here. He does have a trailer where he runs his business out of and I believe he does live on the property at times. I can't account for Mr. Berry, but I do see him there.

MRS. TART: So you rent from him but you don't know whether he lives there?

MR. HERNANDEZ: No, I know he may possibly be living with his girlfriend. It's one of those things, I don't know. I don't get into his personal business. I don't know.

MR. DONALDSON: Is there a noise ordinance for the County?

MR. RAYNOR: Yes.

MR. DYKES: The city doesn't have one, correct? This is Linden, correct?

MR. DONALDSON: No, this is not Linden, it's just near it.

CHAIR QUIGLEY: It is County.

MRS. VARNER: Condition #17 addresses the noise levels according to the County Noise Ordinance.

CHAIR QUIGLEY: Does anyone who has spoken in opposition want to respond to any comment that was made?

MR. CLARK: With the gradual development of the area, Fayetteville is gradually moving out here so my concern with a kennel with fifty plus dogs and developing real estate, my question to you all is; would you want to move into any of these properties or even a property where you could hear the kennel?

CHAIR QUIGLEY: I thank you for your comment, however, absent real property evaluation, your testimony is great, but it is not what a real estate person would be telling us based on sales that are going on right now.

MR. CLARK: I'm not educated enough in that of course, my question was.....

CHAIR QUIGLEY: We do thank you.

Chair Quigley swore in Wayne Taylor.

MR. TAYLOR: My name is Wayne Taylor and I live at 8891 Coats Road, Linden, NC. I live on the corner of Grimble Drive and Coats Road. [Mr. Taylor points to his property on the presentation] My house is very close to the front and my well is the well that Mrs. Cannady spoke of that is 23 feet deep. Quite frankly, I had not considered the fact of runoff. Having six inches of gravel is good for urine purification, but where is it going to run to? My well is at the front corner of the road and my mother-in-law lives right beside me with a double wide. There is a stream that runs somewhere and the Cannady's do have a pond. There are other multiple ponds around the area. As recent as last week, at the double wide here [pointing to the presentation]; the gentleman has two dogs that run loose. There are people all over that have dogs and I called animal control last week for the second time this year for his dogs running loose. My mother-in-law's mail box is on this side of the street and their dogs come over and scare the daylights out of my mother-in-law. She is seventy-one years old. Slam locks could be good, but accidents do happen, things get out. That neighbor will tell you and he will swear on the Bible that his dogs do not get out and yet they chase my mother-in-law, they chase my kids. My sons ride their bikes up and down the road and I'm very concerned about that. All those things aside, I'm also even more concerned about the noise level because if you get a fire truck or ambulance that is going up or down Ramsey Street and one siren will get one dog going and it is like a domino effect. It gets all the dogs going, they go crazy and you can hear it. I don't know about this decibel thing but, it's a lot louder and if you were to advance to fifty dogs it would be unbelievable out there. I've lived there since 1998 and my mother-in-law has lived next door for about twelve years and my sister-in-law lives right behind us, she just moved in two months ago. The Cannady's mother lives right down the road from her and I think they have a sister there, and there is another family that has three houses there. It is a very tight-knit community and I think we speak for the community that we are long term residents and we like having our families there and the families like it enough to where they'd like to build, live and feel secure there. It is a very tranquil community. I appreciate you letting me come up and speak and that is all I have to say unless anyone has any questions for me.

CHAIR QUIGLEY: Does anyone have any questions? Thank you very much.

Public Hearing Closed

CHAIR QUIGLEY: Discussion for Special Use Permit - materially endanger public health? Has everyone read the conditions they will have to comply with? Maintain the value of adjoining properties?

MR. HUMPHREY: I don't think it will enhance the value.

CHAIR QUIGLEY: It doesn't have to enhance.

MRS. VARNER: Mr. Chairman, I remember we had a kennel case and the applicant was proposing a septic tank for animal disposal. I don't know if that may be a solution.

MR. DONALDSON: That seems to be what Mr. Ortiz is recommending. He talked about a septic system for animal disposal.

CHAIR QUIGLEY: His plan seems to be removing it from the premises and not trying to do that on site, which is an alternative.

MR. DONALDSON: On the 60 dB(A), whose suggestion was that?

MR. RAYNOR: That is County Ordinance.

MR. DONALDSON: My dog barks in the back yard and that is 60 dB(A) right there. Normally the County Ordinance says you have to be "x" amount of feet away from where the sound originates from and the police have to walk around with their sound meters and have to stand 100 feet back to take the reading. It has to be a certain level before they can do anything about it. I'm just saying, almost any dog, particularly a small dog with those short barks will hit 60 dB(A).

MR. RAYNOR: It has to be for a sustained period of time.

MR. DONALDSON: I understand that it has to be for a sustained period of time. To me it seems it's almost impossible to comply with.

MRS. TART: I didn't understand. Even though testimony by an expert was not presented for those who are against the special use permit, the applicant did not produce expert testimony saying that it would not hurt the value of adjoining properties. Isn't the burden of proof on him in that situation? When the tower people come, they always bring an expert and he is the one who says and that is what we rely on. In this case, the applicant did not present that.

MR. RAYNOR: May I asked Mr. Hernandez a question about that issue?

CHAIR QUIGLEY: We're back in session. Mr. Hernandez, will you take the stand please.

MR. RAYNOR: You made some reference to having some real estate experience, are you a licensed real estate broker?

MR. HERNANDEZ: That is correct sir.

MR. RAYNOR: I don't think you actually said that before. The fact that he is a licensed real estate broker; he will qualify as expert testimony.

MRS. TART: Are you licensed in the state of North Carolina?

MR. HERNANDEZ: Yes ma'am.

MR. RAYNOR: To address your question, you can consider him as expert testimony.

MRS. TART: Even though it is coming from the applicant himself?

MR. RAYNOR: Even though it is coming from the applicant, he is a licensed real estate broker.

CHAIR QUIGLEY: Is anyone prepared to make a motion?

MRS. TART: Mr. Chairman, in reference to the Special Use Permit, Case # P11-05-C, I move that we deny the Special Use Permit.

CHAIR QUIGLEY: Based on?

MRS. TART: If you are denying it, my understanding is you don't have to give a reason.

CHAIR QUIGLEY: Which case fact is it based on Mrs. Tart?

MRS. TART: That it would not enhance or maintain the value of adjoining or abutting properties.

MR. HUMPHREY: I second the motion.

CHAIR QUIGLEY: It's been properly moved and seconded to deny the Special Use Permit for the kennel operation. Are there any other comments? All in favor signify by saying aye. All opposed signify. The vote is 3 to 2.

IN FAVOR		OPPOSED
TART	YES	QUIGLEY
DYKES	YES	DONALDSON
HUMPHREY	YES	

MRS. VARNER: My question would be, is this a failed motion?

CHAIR QUIGLEY: It is not granted. Three people voted not to grant. We have reviewed our decision and the request for the Special Use Permit is denied. You have the right to appeal and that will be explained to you.

MRS. VARNER: We have the form to provide to the applicant.

CHAIR QUIGLEY: You understood that we denied the request for a Special Use Permit?

MR. HERNANDEZ: That is correct, sir.

CHAIR QUIGLEY: You have the right to appeal that decision.

UPDATES:

None.

ADJOURNMENT:

There being no further business, at 9:45 pm, a motion was made by Mr. Dykes to adjourn, seconded by Mr. Humphrey.