

Members:

Vickie Mullins, Chairman
George Lott, Vice-Chair
George Turner
Alfonso Ferguson Sr.
Winton McHenry



Alternates:

Robert E Davis
Nathan Galbreath
Stacy Michael Long
Alberta Ortiz
Gregory Parks

CUMBERLAND COUNTY BOARD OF ADJUSTMENT

130 Gillespie Street
Fayetteville North Carolina 28301
(910) 678-7602

**TENTATIVE TRAINING AGENDA
MARCH 16, 2017
7:00 PM**

A meeting of the Cumberland County Board of Adjustment is to be held on Thursday, March 16, 2017, at 7:00 p.m. in Hearing Room #3 of the Historic Courthouse at 130 Gillespie Street, Fayetteville, North Carolina. The agenda is as follows:

1. INVOCATION & PLEDGE OF ALLEGIANCE
2. ROLL CALL
3. ADJUSTMENTS TO THE AGENDA
4. APPROVAL OF THE FEBRUARY 16, 2017 MINUTES
5. TRAINING SESSION
6. DISCUSSION/UPDATE(S)
7. ADJOURNMENT

Members:
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CUMBERLAND COUNTY BOARD OF ADJUSTMENT

130 Gillespie Street
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MINUTES

February 16, 2017
7:00 PM

Members Present

Vickie Mullins
George Lott
Alfonso Ferguson Sr.
Winton McHenry
George Turner
Gregory Parks, Alternate, Non-Voting
Robert Davis, Alternate, Non-Voting
Stacy Long, Alternate, Non-Voting
Nathan Galbreath, Alternate, Non-Voting

Absent Members

None

Staff/Others Present

Betty Lynd
Hope Ward Page
Robert Hasty, Jr. (Assistant
(County Attorney)
Rick Moorefield County Attorney)

Chair Mullins called the meeting to order at 7:00 p.m. in Public Hearing Room #3 of the Historic Courthouse. Chair Mullins stated the procedural matters are to turn off all cell phones and other electronic devices and if asked to speak at the podium to please speak clearly into the microphone as the meeting is being recorded. If any board member wishes to speak or ask any questions please ask to be recognized by the Chair before speaking. Chair Mullins asked Mr. Lott to do the invocation.

1. INVOCATION

Mr. Lott

PLEDGE OF ALLEGIANCE

Recited by all

2. ROLL CALL

Mrs. Lynd called the roll and stated a quorum was present. For the audience Mrs. Lynd introduced the alternates, Mr. Galbreath, Mr. Davis, Mr. Parks, Mr. Long, Assistant County Attorney Mr. Hasty and County Attorney Mr. Moorefield.

3. OATHS OF OFFICE

There were none.

4. SWEAR IN STAFF

Chair Mullins swore in Mrs. Lynd.

5. ADJUSTMENTS TO THE AGENDA

There were none.

6. APPROVAL OF THE OCTOBER 20, 2016 MINUTES

Mrs. Lynd stated before a motion is made Mr. Turner alerted us of a few errors in the minutes. Mr. Turner's name was placed in the place of voting for a few of the motions when it was actually Mr. Parks. Hope has taken care of that for the final copy. Motion should be made subject to the corrections that needed to be made.

MR. TURNER: Madam Chair.

CHAIR MULLINS: Yes sir?

MR. TURNER: Can we point out; this was actually the October 20th minutes and not the August 18th minutes?

CHAIR MULLINS: Okay.

MRS. LYND: Yes that's correct.

Mr. Ferguson made a motion to approve October 20, 2016 minutes with the changes to be made seconded by Mr. Lott. The motion passed unanimously.

	IN FAVOR	OPPOSED
MULLINS	YES	NONE
MCHENRY	YES	
LOTT	YES	
FERGUSON	YES	
TURNER	YES	

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

There were none.

8. PUBLIC HEARING DEFERRALS/WITHDRAWALS

There were none.

9. POLICY STATEMENT REGARDING APPEAL PROCESS

Mrs. Lynd read the policy statement.

10. PUBLIC HEARING(S)

- A. **P17-01-C**: CONSIDERATION OF A SPECIAL USE PERMIT TO ALLOW A NURSING HOME (ASSISTED LIVING) IN AN RR RURAL RESIDENTIAL DISTRICT ON 7.00+/- ACRES, LOCATED ON THE SOUTH SIDE OF ROCKFISH RD, WEST OF WIPPERWILL DR; SUBMITTED BY BARBARA M. JOHNSON (OWNER) AND SMITH-PACKETT MED-COM, LLC (AGENT).

Chair Mullins read the case heading for Case No. P17-01-C

Mrs. Lynd reviewed the zoning, sketch map, and land use of the area surrounding subject property. She briefly reviewed board packet material.

Mrs. Lynd asked the board to include the Cumberland County Zoning Ordinance Section 917; located on Page 92, to be included in to the record it is pertinent to the nursing home standards.

**SECTION 917
NURSING HOME/CONVALESCENT HOME/HOSPITAL/
SANITARIUM/RETIREMENT HOME, ETC.**

- A. The facility shall not cover more than 50 percent of the tract.
- B. Must meet all requirements for licensing by the State of North Carolina.
- C. In addition to basic requirements for site plans as required in Article XIV, the plan shall include proposed points of access, ingress and egress, the pattern of internal circulation, and the layout of parking spaces.
- D. All facilities shall be solely for the use of residents and their guests.
- E. Facilities for administrative services and limited medical services for the exclusive use of the residents may be located on the site.

MR. HASTY: You will need to just tell her that you accept that as part of the record.

CHAIR MULLINS: We'll just accept that as part of the record.

Mrs. Lynd continued to review the case information. Mrs. Lynd stated all documentation required by the ordinance is attached to the application and the property owners have agreed to all the conditions listed in the packet. Mrs. Lynd directed the board that if they want to make a motion, we ask that you use the findings of fact behind the special use tab in your binder and also make the motion subject to all ordinance related conditions placed upon the property.

MRS. LYND: I am available for any questions.

CHAIR MULLINS: Do we have speakers?

MRS. LYND: Yes ma'am. There are some speakers listed.

CHAIR MULLINS: Aubury Holmes.

MS. HOLMES: Good evening.

CHAIR MULLINS: Good evening.

MR. MOOREFIELD: They all gotta be sworn.

CHAIR MULLINS: Do you wish to swear or be affirmed?

MS. HOLMES: Swear.

CHAIR MULLINS: Swear, okay. Raise your right hand and place your left hand on the Bible. Do you swear to tell the truth, the whole truth and nothing but the truth, so help you God?

MS. HOLMES: Yes.

CHAIR MULLINS: Please state your name and address for the record.

MS. HOLMES: Aubury Holmes, 34 Broad Street, Charleston, SC. I'm with Smith-Packett, the applicant and we; I just want to give you a quick, really brief background on who we are. We have been in business, we're a private company, development company in business for about thirty-five years and we have a sister company who's been operating for about nine years or so called, *Harmony Senior Services* and we're excited to be developing this building for our sister company *Harmony*. It'll be about fifty-six assisted living units and thirty-two memory care. We'll have a dedicated wing all for memory care with a dedicated courtyard and then we'll have the assisted living and they'll also have their own courtyard. We'll have a central kitchen that will serve both of them; assisted living will have their own dining room. We have amenities like a bistro, library, beauty barber, exercise room, physical therapy; all those amenities for assisted living and memory care folks. Memory care, we have some dedicated activity spaces like art therapy and that sort of thing focuses solely for memory care folks will have life stations and that sort of thing for them. I think that's a pretty brief overview of our building and some of the amenities that we're offering for folks. We also have van transportation and that sort

of thing. Especially memory care folks will not be driving. Some assisted living folks like to bring their cars and leave them but we provide van transportation for folks to go to the doctor, grocery store, be out, be part of the community. We're really excited to be here and if I can give any background let me know.

CHAIR MULLINS: Anybody any questions?

MR. LOTT: Do you have any here in town?

MS. HOLMES: We do not have any here. I worked on one for another operator close by but not for our specific sister company. We have one in North Carolina though, our latest one was in Asheville and that was an independent living, assisted living and memory care.

MR. LOTT: Okay. Thank you.

MS. HOLMES: The majority of them are in Virginia that are open and operating at the moment. Our company is headquarters in Roanoke, Virginia. So we've kind of started with what was close to home and branching out. But we've been building for third party operators in North Carolina for probably thirty years at least so.

MR. LOTT: Thank you.

MS. HOLMES: Thank you.

CHAIR MULLINS: Thank you. Lori Epler. Okay you want to be sworn in or affirm?

MRS. EPLER: Sworn.

CHAIR MULLINS: Okay. Raise your right hand and place your left hand on the Bible. Do you swear to tell the truth, the whole truth and nothing but the truth, so help you God?

MRS. EPLER: I do.

CHAIR MULLINS: Okay. Please state your name and address.

MRS. EPLER: I am Lori Epler. My business address is: 1333 Morganton Rd., Fayetteville, NC. I'm with Larry King and Associates; we're the surveyors and engineers, civil engineers on this site. I want to talk to you a little bit about the findings that you have to find in order to approve this special use permit. As to whether or not the use will be of any danger to the public health or safety if located according to the plan. This facility is planned for, it's planned on current farm land and it's surrounded by the parent tract almost completely except for the right-of-way of Rockfish Road and up on the Northeast corner there's one residential single family lot there and this, the structure on the site has been set as far as we can away from that lot to ensure them of their privacy. There won't be any undesirable activities that'll take place on this project. The facility will be overseen twenty-four seven, night and day with on-site personnel. The building and grounds are going to be maintained on a daily basis. Any impact that they'll have on traffic, the North Carolina Department of Transportation is

definitely watching out for you in that area. They've pulled their entrance off of an access drive that'll be pulled off of Rockfish Road. That is of significant size, sufficient size to supply the parent tract with some access for any future development they might try to do. As to whether or not it meets all the required conditions and specifications first of all I'd like to say this use itself does meet all the qualifications of the ordinance in that it is an allowed special use in this zoning. So the commissioners have already established that for us. Our proposed the site meets all the county development standards with regards to use, dimensional requirements, sign requirements, site plan, landscaping buffers, ingress, egress and you can see our site plan, you know what the product is. I'm not at retirement age yet and I hope when I do get that age my children will be able to take care of me if I can't, but we need more things like this in Cumberland County because right now, I know my mother is eighty-nine years old and we are probably soon gonna be faced with a decision that's gonna be hard to make because we don't have very much to choose from where we can put our family and our loved ones and know that they're being taken care of and that they can still live as independent people. So obviously we ask you tonight to grant the special use permit. I'll answer any questions I can with regards to the site, the site plan, also I have our engineer here Jeff Nobles if you have any questions for him he'll be glad to help us too. Thank you.

MR. LOTT: Thank you.

CHAIR MULLINS: Okay. Thank you. Any questions?

MR. MCHENRY: My question would have to do with fire protection. Is it the City of Fayetteville Fire department or will it be Hope Mills?

MRS EPLER: No Sir. This piece of property will utilize public sewer. And as part of interlocal agreement they will have to petition for annexation into the town of Hope Mills. It will be Hope Mills Fire Department and because of our past experience in dealing with parcels that need to be in, that will be annexed into Hope Mills. Hope Mills will also receive plans regarding our fire place, our fire hydrant placement we've already been in touch with them. They will review our plans before the site is ever permitted.

MR. MCHENRY: Okay.

CHAIR MULLINS: Anybody else? Okay. Thank you Ms. Epler. Mr. Grant.

MR. GRANT: Sworn in.

CHAIR MULLINS: Okay. Do you swear to tell the truth, the whole truth and nothing but the truth, so help you God?

MR. GRANT: I do.

CHAIR MULLINS: Please state your name and address for the record please.

MR. GRANT: Neil Grant. I live at 1844 Morganton Road, Fayetteville, NC. My position here is I work with Grant-Murray Real Estate. I was one of the initial brokers involved in helping Smith-Packett locate property. You would think it's easy but it's not. I feel like we located the right site and the right place. Lori took a little bit of my thunder so I struck through some things. I'm a broker I don't have nearly the details that Lori or other folks would have other than it just seems like an excellent asset for that community. With the school, the grocery store, a shopping center and then to have an assisted living facility, you know, to me it's a great asset. Another thing that's important, there is a tremendous need. I'm not sure of all the details that Smith-Packett goes through, but before they can even move forward they actually have to get a certificate of need. Which is something that's sort of is already highlighted that there is a need. Just to give you an idea of the facility and I don't know if this includes all the details, but they're planning on spending sixteen million dollars to build the facility. So, I hope they know there's a need, which I know they do. The other thing I wrote with the eighty employees and the folks visiting their loved ones, you've got the grocery store with the restaurants and all that over there. I feel like, well I know the impact of eighty employees and the people visiting will have good impact on those restaurants over at the Harris Teeter and the Food Lion, try to build their revenues and keep that going well. See what else, the obvious thing the purposes of these families living out there to be able to have a place for a loved one that maybe was living in the home, can now live in an apartment or if need be, the memory care unit. It's a big plus instead of having to drive maybe deeper into town or out of town. My father ended up moving out of town. See if I put down anything, oh I did want to note that area out there is...it's an interesting area because you got the buildup of the commercial; of course Jack Britt is an extremely popular area. One thing about this facility I wanted to note, it is one story. So, even though you have it, you've got, you know it's a little rural but you've got major development this is a one story facility and I felt like the look of it, kept...you know kept in line with everything else out there. So, those are kind of my comments I hope you guys find a favorable decision.

CHAIR MULLINS: Okay. Any questions?

MR. GRANT: Any questions?

MR. MCHENRY: I have a question concerning, is there any room left over for any sort of expansion or is this more or less the size it's going to be from now in perpetuity?

MS. HOLMES: I can help answer that. With the certificate of need we are limited to a hundred beds. So the likelihood of having additional beds is very limited. If we do find the need, we some folks in like some two bedrooms and that sort of thing so we could actually increase our capacity within our current building footprint. I don't know based on storm water or anything, I do know Ms. Johnson still has some other property out there, so that might be the possibility if we wanted to expand to purchase more property from her. But our current plan is not to expand at this time.

MR. MCHENRY: Okay. Thank you.

CHAIR MULLINS: Okay. Thank you. The next speaker will be Chuck Maxwell. Swear or affirm? Swear. Do you swear to tell the truth, the whole truth and nothing but the truth, so help you God?

MR. MAXWELL: I do.

CHAIR MULLINS: Okay. Please state your name and address for the record.

MR. MAXWELL: My name is Chuck Maxwell. I live at 771 Chickenfoot Road. I am with Grant-Murray Real Estate also; I'm on the other side of Neil. Neil is with the buyer. I represent Barbara Johnson, that's why I'm here tonight. I just want to touch on a couple of things a little background on me. I was a dentist for thirty years in Hope Mills. I'm sorry I'm not use to talking so I'm a little nervous let me get over that. Barbara Johnson was a patient of mine for just about all that time, she and Steve. Pat Hall was a patient of mine, I've known Pat and her ex-husband was my high school football and wrestling coach at Terry Sanford, so I've known these people a long time. Talked to Barbara today she is totally in favor of this. She stays out of the lime-light but you know when you talk about Jack Britt, everybody knows about Jack Britt so pretty much you know, number one school district in the county you aren't supposed to talk about that but that's pretty much that's the way it is. That was her land. That was a hundred acres of her land. She was involved with that when Food Lion came, they wanted to put a road in Waldo's Beach Road she was financially involved in that in a large way, helped kind of connect that area. You know when those roads split all of a sudden, if you didn't have Waldo's Beach, then you would go around and everybody would congest at the intersection which is now like unbelievable, y'all know that. So anyway she stays out of all that but she's been involved. Thing is she lives on the property, her son lives on the property, her daughter in law. Her son passed away recently, her daughter in law lives across the street. They are farmers. I mean I talked to her today, I did not realize all the stuff she did. Her husband died at an early age, I think he was forty-nine. She took over the farm, over a thousand acre farm, hundred acres of tobacco, all the people involved with that, y'all know what I'm talking about. Also, she worked at Fort Bragg where she was the contract person from everything from roads, to building buildings and everything and cost analysis accepting bids and all that then she went home and worked on her farm. So I mean it, I mean the lady is pretty impressive no doubt. But the thing is she thinks it's a really good idea and she thinks it will fit on the property. She's gonna stay on the property. She's in her eighties she might move to the property and also this on a personal note, my dad's ninety-nine, was a resident here forever, he was at *Heritage Place* got married to a lady twenty-two years younger, in his eighties, married a lady twenty-two years younger, both of them have developed dementia they were at *Heritage Place* and it turned out that she began to wander to the point that she walked out of *Heritage Place* at night and knocked on the front door at eleven o'clock at night and knocked on the front door wanting to get in. So we got twenty-four hour around care for them at ten – twenty thousand dollars a month and we couldn't do that but like for one month. And I said we have to find another place what Lori's talking about, I don't know about how many of you people have folks that great that he lived to ninety-nine but when you have to find a place you got to move'em quick or you're paying twenty thousand dollars a month for round care, for twenty-four hour care it's hard to find a place. It's hard to find memory care places, it's hard to find memory care place when you go in that you want to put them, okay. Very nice facility here, I would've loved to have something in Hope Mills. Luckily I found *Caroline* on Seventy-First School Road. Guess what they had one opening so I did it. I wrote them a check, wrote them a check for eight hundred dollars for them to hold it, 'til I could get my wife, daughter from Greenville, SC to take a look, because it won't going to be held for about ten days, because they had other people that were gonna come. She came she liked it, she got it, guess what, if she didn't like it you know where my dad was going, Greenville, SC. So y'all look around here we're not getting

younger, know a lot of us, y'all know that. We need places like this and we need more places like this. So I hope you look affirmative about this and one thing I'll say too is that yes this will increase the property values, sure it will. I've already had some people call me because this is going there, it's a nice facility it's a great transition from a totally residential to something like this and then you go right totally commercial. We've already had people call me because I've got all of her land listed behind there talking about doing stuff and yes it does increase values and I think that's great for Ms. Johnson who's been so influential in getting Jack Britt area like it is today. Thank you. Any questions?

CHAIR MULLINS: Board any questions? Mr. Turner? Mr. Lott?

MR. LOTT: No.

MR. MAXWELL: Okay. Thank you.

CHAIR MULLINS: Thank you. Pat Hall. Okay. You wanna swear right? Okay. Do you swear to tell the truth, the whole truth and nothing but the truth, so help you God?

MRS. HALL: I do.

CHAIR MULLINS: Okay. Please state your name and address for the record.

MRS. HALL: I'm Pat Hall. I live at 3511 Beachwood Street, in Hope Mills. I'm here to represent my sister Barbara Johnson, who's the owner of this property. We are really excited about this facility. We think it would be a really beautiful addition to that street. And as Chuck said it's a good transition from residential moving into the commercial aspect that is at the corner of where Jack Britt school is located. We've toured another facility that is very similar to the plans that you see here and it is a beautiful place. It's a place that you would not hesitate to put a loved one in if you needed to. We, Chuck stated that they are farmers. They were farmers. Her oldest son was the one who really farmed the land and he died recently during this Hurricane Matthew. They don't have any plans to farm anymore. They're going the way of all small farmers. We hope that you will find in favor of this because it is a beautiful facility it is certainly needed in that area, particularly. You have to go to Raeford on this side, on that side, on this side of town to find any such facility. And there is a dire need for such a thing as that. I thank you.

CHAIR MULLINS: Thank you Mrs. Hall, questions?

MR. FERGUSON: One question I have, I worked in the mental unit. I want to ask a question on that. Do you have a lock unit on your memory unit for the Alzheimer patients or how do you handle that side? Because my biggest problem, my memory unit, my Alzheimer patient wandered all over the place and we instrumented a lock unit, we had a lot of protest from the community when we implemented that so what're you doing about that for your facility?

MS. HOLMES: The smaller square back here (referencing site plan) is a secured unit. So any resident who wants to leave will be...this area here. Any resident who leaves will be accompanied by staff. The courtyard also will have sensors. The nurse station will be notified if people go in and out of the courtyard. So anyone can walk around that square, wherever they want to within that square. They can go to the activities, the crafts, dining room, but they cannot leave that area without being accompanied by staff or a family member, of course. Does that help?

MR. FERGUSON: Yes.

CHAIR MULLINS: Okay. Is there anything else? Any other questions?

MR. LOTT: I have visited several of the places lately, visiting friends and family and in reference to the security, signing in and signing out. But also, the, I have noticed on all of my visits, several, that the security, I call it security. The people looking after the people inside, and there's virtually, most of them virtually you cannot leave by walking through a door that somebody's got to unlock it for you. There's a sign in and sign out at most of these places for visitors but I mean we're talking sixteen million dollar investment. I'm sure that with that kind of money invested in you're going to look after your investment and also the people that are in this facility. And I'm in complete agreement number one that the county needs the revenue and that's certainly going to provide quite a tax increase on our tax base.

CHAIR MULLINS: And plus job opportunities.

MR. LOTT: Yes the job opportunities. Any discussion?

CHAIR MULLINS: Any discussion?

MR. TURNER: Is that all the speakers?

CHAIR MULLINS: Yes it is.

MR. TURNER: There's no one in opposition?

MR. LOTT: No.

CHAIR MULLINS: No. No opposition.

MR. LOTT: Motion. I make a motion that we approve this application.

CHAIR MULLINS: All in favor.

MRS. LYND: Excuse me. If you'll just address all the findings of facts before you all make a motion.

MR. LOTT: Okay. Do I need to read the top part up here or just...?

MRS. LYND: You can read each fact out and then give the boards finding for each one, two, three, four.

MR. LOTT: Number one concern is the use will not materially endanger the public health or safety if located according the plan submitted and recommended. Case facts, I think case facts are the plan submitted. Would that be correct?

MR. FERGUSON: She said that 917 also, that has to be in there also, 917.

CHAIR MULLINS: Yes, we have to add that one.

MR. LOTT: A recombination plat also known as a no approval required or NAR must be submitted to the land use codes for review; nursing homes, convalescent home, hospital, and sanatorium, retirement homes etc. The facility shall not cover more than fifty percent of the tract.

MR. HASTY: I think on the ordinance you already made that part of your record and think the staff has reviewed that and they've met the ordinance requirements, correct?

MRS. LYND: Yes, their site plan and application as submitted meets all the required ordinance standards.

MR. HASTY: So you just need these under the special use permit those findings of fact to support the items that they usually do.

CHAIR MULLINS: Okay. You said this already.

MR. LOTT: Okay. Number two: that the use meets all required conditions and specifications also by the plans. Could that not suffice?

MR. TURNER: Could I offer something while you're right on that?

MR. LOTT: Sure.

CHAIR MULLINS: Yes.

MR. TURNER: That this submission, of the ordinance related conditions for what they're doing, that they be required to follow this specifically.

MR. LOTT: Certainly they are. They've already agreed to that. Special Use Permit Board of Adjustments the draft related and conditions.

MR. TURNER: I was just suggesting we include that as part of the special use permit that it be followed specifically. You kind of said it anyway.

MR. LOTT: Number three: that the use will maintain or enhance the value of the adjoining or abutting properties or that the use is a public necessary also is my understanding as submitted by the plans and approved by the board. Or by the staff and they've agreed to the conditions

CHAIR MULLINS: Also it meets all the requirements

MR. LOTT: It does meet all the requirements. Number four: the location and character of the use is developed according to the plans as submitted and recommended will be in harmony with the area in which it is to be located and is in general conformity with the Cumberland County most recent land use plan.

CHAIR MULLINS: I would say.

MR. LOTT: Which also I refer back to the plan submitted and approved by the staff.

CHAIR MULLINS: It is in harmony and it's a nice facility, it has everything, it would be nice.

MR. LOTT: Not only do Cumberland County and this board have to approve it the State of North Carolina also I believe will be permitting this facility.

MR. MOORFIELD: Madam Chair just for the record.

CHAIR MULLINS: Yes.

MR. MOOREFIELD: Consistent with that, you did hear evidence that this was a good transition from residential to commercial down the road and that would make it harmonious with the neighborhood. You have evidence of that in the record.

MR. LOTT: We do.

CHAIR MULLINS: Yes. Okay. Is there anything else?

MR. LOTT: No.

CHAIR MULLINS: Make a motion.

MR. LOTT: I go back to my motion that the permit be permitted.

MRS. LYND: Subject to the ordinance related conditions. Just say the motion is subject to the ordinance related conditions as well.

MR. LOTT: Yes.

Mr. Lott made a motion to approve the permit subject to the ordinance related conditions, seconded by Mr. Turner. The motion passed unanimously.

	IN FAVOR	OPPOSED
MULLINS	YES	NONE
MCHENRY	YES	
LOTT	YES	
FERGUSON	YES	
TURNER	YES	

MRS. LYND: You can excuse them. Madam Chair they can leave before the next case if they desire.

MR. LOTT: Thank y'all and good luck.

CHAIR MULLINS: Have a good day. Okay the next case is P83-16-C.

Chair Mullins read the case heading for Case No. P83-16-C

B. P83-16-C: REVOCATION OF A SPECIAL USE PERMIT (NEE SPECIFIED CONDITIONAL USE PERMIT) FOR A DAY CARE IN A R6A RESIDENTIAL DISTRICT ON 0.70 +/- ACRE, LOCATED AT 6302 ROCKFISH ROAD, CHRISTIAN TABERNACLE OUTREACH MINISTRY (OWNER)/STAFF SUBMITTAL.

MRS. LYND: Yes Madam Chair the property owners recently came in and had a site plan review submitted and approved for a religious worship facility on this tract. There was a special use permit previously approved for a daycare. So staff and the church is asking for you all to revoke the special use permit for the daycare so that the church can operate on the lot without any administrative, we're just cleaning up administrative records, cleaning up our map. I have the presentation prepared if you'd like me to go through it. If not you all can discuss and but I can go through it if you want me to.

MR. TURNER: There's no one to speak against this?

MRS. LYND: No sir. I've had no phone calls. The applicant is not here, but he, because we were handling this on his behalf and he has his site plan review for the church we're just presenting it for you and he'll be sent the letter notifying that the special use permit was revoked once, if you revoke it.

MR. TURNER: Would it be proper just to simply say that based on staff recommendation we make a motion, I'll make a motion that we revoke the permit.

MR. LOTT: I'll second that motion.

Mr. Turner made a motion to approve the revocation of P83-16-C. Seconded by Mr. Lott. The motion passed unanimously.

	IN FAVOR	OPPOSED
MULLINS	YES	NONE
MCHENRY	YES	
LOTT	YES	
FERGUSON	YES	
TURNER	YES	

MRS. LYND: Thank you.

MR. LOTT: Thank you.

11. DISCUSSION/UPDATE(S)

CHAIR MULLINS: Any other discussions?

MRS. LYND: Staff has one. We have not had any cases submitted. So we will not have a meeting in March. I do have a couple leads on possible cases in April, so I may see you in Easter, we'll see.

CHAIR MULLINS: Okay.

MRS. LYND: Mr. Hasty I don't know if you have any updates.

MR. HASTY: I don't have anything. We have argued the Hampton case in the Court of Appeals in January. So we are waiting on the decision, could come as early as next Tuesday. We're just waiting on that.

CHAIR MULLINS: Anything else?

12. ADJOURNMENT:

CHAIR MULLINS: Okay. Adjourn?

Mr. Lott made motion to adjourn. Seconded by Mr. Ferguson. The motion passed unanimously. Meeting adjourned at 7:45pm.

	IN FAVOR	OPPOSED
MULLINS	YES	NONE
MCHENRY	YES	
LOTT	YES	
FERGUSON	YES	
TURNER	YES	

ARTICLE XVI BOARD OF ADJUSTMENT

SECTION 1601. ESTABLISHMENT.

The Board of Commissioners, pursuant to N.C. GEN. STAT. §153A-345, does establish a Board of Adjustment. Such Board shall consist of at least five members appointed by the Commissioners, with membership providing for a means of proportional representation of the County's territorial jurisdiction. The appointments shall be for staggered terms. Subsequent or new reappointments shall be for three-year terms; all appointments to fill vacancies shall be for the unexpired term. The Commissioners shall also appoint five alternate members at large to serve in the absence of any regular member. Alternate members shall be appointed in the same manner as regular members and at the regular times for appointment. Each alternate member, while attending any regular or special meeting of the Board and serving in the absence of any regular member, shall have and exercise all the powers and duties of any regular member absent from the meeting.

SECTION 1602. PROCEEDINGS.

The Board shall elect a Chairman and Vice-Chairman from among its members. The Director shall assign a staff member to fill the secretary position. Meetings of the Board shall be held at the call of the Chairman and at such other times as the Board may determine. The Chairman is authorized in his official capacity to administer oaths and compel the attendance of witnesses in any matter coming before the Board. Any member of the Board while temporarily acting as Chairman has and can exercise like authority. All meetings of the Board shall be open to the public. The Board shall keep minutes of its proceedings, showing the vote of each member upon every question, or if absent or failing to vote, indicating such fact. The Board shall also keep records of its examinations and official action.

(Amd. 04-18-11)

SECTION 1603. POWERS AND DUTIES.

The Board of Adjustment shall have the powers, authority and duty to:

A. Act in all matters relating to the administrative review of any order, requirement, decision or determination made by the Director or other administrative official regarding enforcement of this ordinance (see Section 1604 below)

(Amd. 01-19-10);

B. Vary or modify any of the regulations or provisions of this ordinance related to the construction or alteration of buildings or structures, dimensional requirements and minimum standards of individual uses, in accordance with Section 1605, where there are unnecessary hardships in carrying out the strict letter of this ordinance, so that the spirit of the ordinance shall be observed, public safety and welfare secured and substantial justice done;
(Amd. 01-19-10)

C. Grant permit exceptions, called "Special Uses," in the classes of cases or situations and in accordance with the principles, conditions, safeguards and procedures specified in Section 1606;
(Amd. 01-19-10)

D. Interpret the official zoning maps and pass upon disputed questions of lot lines or district boundary lines and similar questions as they arise in administration of this ordinance;

E. Rule on matters concerning nonconforming uses as to their continuance or discontinuance, expansion, reconstruction and, in general, compliance with Sections 1003 and 1004;

F. Rule on matters related to the County's Water Supply Watershed Management and Protection Ordinance regarding High Density developments, appeal of the Watershed Review Officer's decision, and hear request for variance from the County Water Supply Watershed Management and Protection Ordinance;
(Amd. 01-19-10)

G. Hear and rule on appeals and variance requests from the County's Flood Damage Prevention Ordinance; and

H. *Repealed.*
(Amd. 01-19-10)

SECTION 1604. ADMINISTRATIVE REVIEW.

Appeals may be taken to the Board of Adjustment by any person aggrieved or by an officer, department, board or bureau of the County affected by any decision of an administrative official charged with the enforcement or interpretation of this ordinance thought to be in error. Such appeals shall be filed with the Board of Adjustment by notice specifying the grounds for appeal. Appeal shall be filed within 30 calendar days from the date of the action being appealed. The officer from whom the appeal is taken shall forthwith transmit to the Board of Adjustment all the papers constituting the record upon which

the action appealed from was taken, together with any additional written reports or documents, as the administrative official deems pertinent. The Board of Adjustment may after public hearing, so long as such action is in conformity with the terms of this ordinance, reverse or affirm, wholly or in part, or may modify any order, requirement, decision or determinations as ought to be made, and to that end shall have the powers of the administrative official from whom the appeal is taken.

(Amd. 01-19-10)

SECTION 1605. VARIANCE.

The Board of Adjustment may authorize in specific cases such variances from the terms of this ordinance upon request of a property owner or his authorized agent and may require any evidence necessary to make a determination of the case. Before the Board may grant any variance, the Board must find that all of the following conditions exist for an individual case:

A. There are extraordinary and exceptional conditions pertaining to the particular piece of property in question because of its size, shape or topography that are not applicable to other lands or structures in the same district;

B. Granting the variance requested will not confer upon the applicant any special privileges that are denied to other residents in the district in which the property is located;

C. The literal interpretation of the provisions of this ordinance would deprive the applicant of rights commonly enjoyed by other residents of the district in which the property is located;

D. The requested variance will be in harmony with the purpose and intent of this ordinance and will not be injurious to the neighborhood or to the general welfare;

E. The special circumstances are not the result of the actions of the applicant;

F. The variance requested is the minimum variance that will make possible the legal use of the land, building or structure;

G. The variance is not a request to permit a use of land, building or structure which is not permitted by right or by special exception in the district involved and will not constitute any change in district boundaries; and

H. The existence of a nonconforming use of neighboring land, buildings or structures in the same district or of permitted or nonconforming uses in other districts does not constitute a reason for approval of the requested variance. In granting a variance, the Board may attach and the record shall reflect such conditions regarding the location, character and other features of the proposed building, structure or use as it may deem advisable. The record shall also state in detail any exceptional difficulty or unnecessary hardship upon which the request was based and which the Board finds to exist.

Any variance granted becomes null and void if not exercised within the time specified in such approvals, or if no date is specified, within one calendar year from the date of such approval. The Board of Adjustment is not authorized to grant variances to any use approved in a Conditional Zoning district or to the specific conditions or other performance criteria imposed upon such use. If the board denies the variance request, it shall enter the reason for its action in the minutes of the meeting at which the action is taken. In the event of a denial, the Board of Adjustment shall not consider resubmission of the application for the same variance request on the same property without a substantial material change concerning the property and the application.

(Amd. 02-19-08; Amd. 04-18-11)

SECTION 1606. SPECIAL USE PERMITS.

The various Special Uses set forth in the Use Matrix in Article IV, because of special site or design requirements, operating characteristics or potential adverse effects on surrounding property and neighborhoods, shall be permitted only upon approval by the Board of Adjustment in accordance with the standards and conditions as set forth in this section.

A. Purpose. Permitting Special Uses adds flexibility to this ordinance. Subject to high standards of planning and design, certain property uses are allowed in the several districts where these uses would not otherwise be acceptable. By means of controls exercised through the Special Use Permit procedures, property uses that would otherwise be undesirable in certain districts can be developed to minimize any negative effects they might have on surrounding properties.

B. Procedure. Special Use Permits shall be granted by the Board of Adjustment as permitted for only those uses enumerated in Section 403, Use Matrix, as Special Uses. Uses specified as a Special Use in Section 403 shall be permitted only upon the issuance of a Special Use Permit by the Board of Adjustment.

The owner or owners of all property included in the petition for a Special Use Permit shall submit a complete application and a detailed site plan (drawn in accordance with the specifications listed in Section 1402) to the Planning and Inspections Staff. The Staff will schedule the application to be heard by the Board of Adjustment in accordance with the adopted time schedule. The Planning and Inspections Staff shall also notify the Commanders of Fort Bragg, Pope Air Force Base, and Simmons Army Airfield of any application affecting the use of property located within five miles or less of the perimeter boundary of said bases in accordance with N.C. GEN. STAT. § 153A-323.

Developers are encouraged to discuss their Special Use plans with the Planning and Inspections Staff before submission. The staff shall assist the developer upon request by reviewing Special Use plans to ensure that the technical requirements of this ordinance are met before submission to the Board of Adjustment.

All applications and site plans shall provide information indicating compliance with the development standards for individual uses as listed in Article IX of this ordinance, as applicable, and the height and area regulations for the zoning district in which they are located, unless the provisions for the Special Use provide to the contrary.

C. Consideration of Application. The Board of Adjustment shall consider the application, site plan and any other evidence presented in accordance with this article and may grant or deny the Special Use Permit requested. In granting a Special Use Permit, the Board shall find that:

1. The use will not materially endanger the public health or safety if located according to the plan submitted and proposed;
2. The use meets all required conditions and specifications;
3. The use will maintain or enhance the value of adjoining or abutting properties, or that the use is a public necessity; and
4. The location and character of the use, if developed according to the plan as submitted and recommended, will be in harmony with the area in which it is to be located and is in general conformity with Cumberland County's most recent Land Use Plan, either comprehensive or a detailed area plan.

(Amd. 02-19-08)

D. Final Disposition. In granting approval of a Special Use Permit, the Board of Adjustment shall impose such reasonable terms and conditions as it

may deem necessary for the protection of the public health, general welfare and public interest. In granting a Special Use Permit, the Board of Adjustment shall give due consideration to:

1. The compatibility of the proposal, in terms of both use and appearance, with the surrounding neighborhood;

2. The comparative size, floor area and mass of the proposed structure in relationship to adjacent structures and buildings in the surrounding area and neighborhood;

3. The frequency and duration of various indoor and outdoor activities and special events, and the impact of these activities on the surrounding area;

4. The capacity of adjacent streets to handle increased traffic in terms of traffic volume, including hourly and daily levels and weight-bearing limitations;

5. The added noise level created by activities associated with the proposed use;

6. The requirements for public services where the demands of the proposed use are in excess of the individual demands of the adjacent land uses, in terms of police and fire protection, and the presence of any potential or real fire hazards created by the proposed use;

7. Whether the general appearance of the neighborhood will be adversely affected by the location of the proposed use on the parcel;

8. The impact of night lighting in terms of intensity, duration and frequency of use, as it impacts adjacent properties and in terms of presence in the neighborhood;

9. The impact of the landscaping of the proposed use, in terms of maintained landscaped areas, versus areas to remain in a natural state, as well as the openness of landscaped areas, versus the use of buffers and screens;

10. The impact of a significant amount of hard-surfaced areas for buildings, sidewalks, drives, parking areas and service areas, in terms of noise transfer, water runoff and heat generation;

11. The availability of public facilities and utilities;

12. The harmony in scale, bulk, coverage, function and density of the proposed development and compliance with the development standards of the individual uses; and

13. The reasonableness of the request as compared to the purpose and intent of the most recent Land Use Plan, this ordinance, and adopted policies, for the physical development of the district, and protection of the environment.

(Amd. 02-19-08)

All such additional conditions shall be entered in the minutes of the meeting at which the Special Use Permit is granted, on the Special Use Permit itself, and on the approved plans submitted therewith. The specific conditions shall run with the land and shall be binding on the original applicants for the Special Use Permit, their heirs, successors and assigns. The applicant for the Special Use Permit is responsible for the recordation of the "Notice of Special Use Permit" with the Cumberland County Register of Deeds prior to application for any zoning permit.

If the Board denies the Special Use Permit, it shall enter the reason for its action in the minutes of the meeting at which the action is taken. In the event of a denial, the Board of Adjustment shall not consider resubmission of the application for the same Special Use Permit on the same property without a substantial material change concerning the property and the application.

E. Expiration of Permits. Any Special Use granted becomes null and void if not exercised within the time specified in such approval, or if no date is specified, within one calendar year from the date of such approval. Furthermore, once the Certificate of Occupancy has been issued for a Special Use and then the Special Use ceases to exist for a time period of one calendar year or more, a re-submittal of the Special Use application for the same use may be required if there has been a material change in the ordinance standards *(Amd. 08-18-08)*

F. Modifications to Plans. The Board of Adjustment shall review any change, enlargement or alteration in site plans submitted as a part of a Special Use application, and new conditions may be imposed where findings require. The Planning and Inspections Staff may approve minor modifications of the approved plans in the same manner as authorized in Section 506 for Conditional Zoning districts, provided that the changes do not materially alter the original plan as approved, and the intent and objectives of the original approval are not deviated from.

(Amd. 02-19-08; Amd. 04-18-11)

G. Noncompliance. If for any reason any condition imposed pursuant to this section is found to be illegal or invalid, the Special Use Permit shall be null and void and of no effect, and the Planning and Inspections Staff shall institute proceedings for the case to be reheard by the Board of Adjustment.

Compliance with all the conditions of a Special Use Permit is an essential element of the Special Use Permit's continued validity and effectiveness. If the Coordinator shall determine that a permittee has failed to comply with a condition of an approved Special Use Permit, he shall so notify the permittee or the permittee's successor in interest and shall place the matter on the Board of Adjustment's agenda for the Board's decision whether or not to revoke the Special Use Permit. Such hearing shall be on reasonable written notice to the permittee or the permittee's successor in interest and shall be a quasi-judicial proceeding according to quasi-judicial procedures. The decision of the Board of Adjustment shall be a final decision, and a decision to revoke the Special Use Permit may be appealed to the Superior Court of Cumberland County within 30 days after the permittee or the permittee's successor in interest has been served with written notice of the Board of Adjustment's decision. Service by personal delivery or certified mail, return receipt requested, of a certified copy of the Board of Adjustment's approved minutes for its meeting at which such decision is made, may constitute written notice and service of the Board of Adjustment's decision hereunder.

(Amd. 04-18-11)

H. Appeals. No appeal may be taken from the action of the Board of Adjustment in granting or denying a Special Use Permit except through the Cumberland County Superior Court in the same manner as set forth in this article for appeal of any Board of Adjustment decision.

SECTION 1607 HEARINGS

Any variance or Special Use Permit application considered by the Board of Adjustment requires a quasi-judicial hearing. All other applications considered by the board shall be considered in the manner in which the governing regulation establishes. The Board shall fix a reasonable time for hearing and give public notice as well as due notice to the parties in interest. Each quasi-judicial hearing shall follow quasi-judicial requirements including sworn testimony, the reliance on competent evidence, the right to question witnesses, avoiding ex parte contact and bias and matching up evidence to findings of fact. At the hearing, any person or party may appear in person or by agent or attorney. The board shall take action on all matters within a reasonable time after the termination of the proceedings.

(Amd. 08-18-08)

SECTION 1608. REQUIRED VOTE.

The concurring vote of four-fifths of the members of the Board of Adjustment shall be necessary to reverse any order, requirement, decision or determination of any administrative official charged with the enforcement of this ordinance and to decide in favor of an applicant on any matter, except relating to Special Use Permits, which the board is required to pass, including granting variances from the provisions of this ordinance. Decisions for issuance of a Special Use Permit shall be made by the majority vote of the board members present at the meeting in which the request is heard.

(Amd. 02-19-08; Amd. 04-18-11)

SECTION 1609. REVERSAL OF DECISION.

After a public hearing has been held and approval granted, the Board of Adjustment may reverse any decision without a public hearing upon finding that:

- A. The approval was obtained by fraud;
- B. The use for which such approval was granted is not being executed;
- C. The use for which such approval was granted has ceased to exist or has been suspended for one calendar year or more;
- D. The permit granted is being, or recently has been, exercised contrary to the terms or conditions of such approval;
- E. The permit granted is in violation of an ordinance or statute; or
- F. The use for which the approval was granted was so exercised as to be detrimental to the public health or safety, or so as to constitute a nuisance.

SECTION 1610. APPEAL OF FINAL DECISION.

Any decision of the Board of Adjustment is subject to review by the Superior Court by proceedings in the nature of certiorari. The aggrieved party shall file a "Notice of Intent to Appeal" with the Planning and Inspections Department on the next business day following the meeting in which the board's decision was made final, or the next business day following receipt of the written copy thereof and delivery is made to every aggrieved party, whichever is later. Any petition for review by the Superior Court shall be filed with the Clerk of Superior Court within 30 calendar days after the decision of the Board is

made final. The decision of the board may be delivered to the aggrieved party either by personal service or by registered mail or certified mail, return receipt requested.

(Amd. 01-19-10; Amd. 04-18-11)