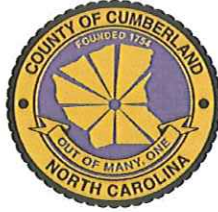


Members:
Vickie Mullins, Chairman
George Lott, Vice-Chair
George Turner
Alfonso Ferguson Sr.
Winton McHenry



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

MINUTES
February 15, 2018
7:00 PM

Members Present

Alfonso Ferguson Sr.
George Lott
Winton McHenry
George Turner
Robert E Davis, Alternate Voting

Absent Members

Vickie Mullins

Staff/Others Present

Hope Ward Page
Patricia Speicher
Dena Smith
Robert Hasty, Jr. (Assistant
County Attorney)

Chairman Lott called the meeting to order at 7:00 p.m. in Public Hearing Room #3 of the Historic Courthouse. Chairman Lott stated the procedural matters are to turn off all cell phones and other electronic devices, other than the camera, are fine and if asked to speak at the podium to please speak clearly into the microphone as the meeting is being recorded. Although there are no set time limits for any speaker addressing the board, the board asks speakers to not repeat what has been previously stated. If there is no new evidence to offer please make the board aware of your agreement with the previous speakers. If any board member wishes to speak or ask any questions please ask to be recognized by the Chairman before speaking.

1. INVOCATION

Chairman Lott.

PLEDGE OF ALLEGIANCE

Recited by all.

2. ROLL CALL

Mrs. Page called the roll and stated a quorum was present. For the audience Mrs. Page introduced, Mr. Robert Hasty, Assistant County Attorney, also alternate non-voting members of the board, Mr. Galbreath.

3. SWEAR IN STAFF

Chair Lott swore in staff.

4. ADJUSTMENTS TO THE AGENDA

There were none from staff.

5. APPROVAL OF THE SEPTEMBER 21, 2017 MINUTES

CHAIR LOTT: The motion has been made, motion of a second has been made, all those in favor of approval?

Mr. Turner made a motion to approve the minutes from the September 21, 2017 meeting, seconded by Mr. Davis. The motion passed unanimously.

IN FAVOR
LOTT YES

| | |
|----------|-----|
| FERGUSON | YES |
| MCHENRY | YES |
| TURNER | YES |
| DAVIS | YES |

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

There were none.

7. APPROVE 2018 DEADLINE/MEETING SCHEDULE

MRS. PAGE: Excuse me Chair if I may, we need the approval of the 2018 deadline meeting schedule.

Mr. Turner made a motion to approve the 2018 Deadline/Meeting schedule, seconded by Mr. Ferguson. The motion passed unanimously.

| | |
|----------|-----------------|
| | IN FAVOR |
| LOTT | YES |
| FERGUSON | YES |
| MCHENRY | YES |
| TURNER | YES |
| DAVIS | YES |

8. PUBLIC HEARING DEFERRALS/WITHDRAWALS

There were none.

8. POLICY STATEMENT REGARDING APPEAL PROCESS

Mrs. Page read the policy statement.

9. PUBLIC HEARING(S)

- A. **P18-01-C: CONSIDERATION OF A VARIANCE TO ALLOW A 1.5 FOOT SIDE YARD SETBACK WHERE 10 FEET IS REQUIRED AND TO ALLOW A 14 FOOT FRONT YARD SETBACK WHERE 30 FEET IS REQUIRED IN A R10 DISTRICT ON 0.25 +/- ACRES, LOCATED AT 4374 WUYCIK ROAD; SUBMITTED BY JAMES E AND BERNADINE A COLEMAN JR (OWNERS).**

Chair Lott read the case heading for Case No. P18-01-C.

Mrs. Page reviewed the zoning, sketch map, and land use of the area surrounding subject property. She briefly reviewed board packet material. Mrs. Page asked if the section of the zoning ordinance 11-04 district dimensional provisions which are referencing on pages 129 and 130, and if I may at this time will the board accept that section of the ordinance into the record?

CHAIR LOTT: Yes.

MRS. PAGE: Staff asks that when making a decision for the variance to either grant or deny if you would make the decision based on the findings of facts located behind the variance tab in your binder.

I am available for questions or if you would like to see any more slides and I do believe the applicant is here and we have speakers signed up to speak.

MR. TURNER: You made the statement attached?

MRS. PAGE: Yes it's going to be attached.

MR. TURNER: It's going to be attached to the house.

MRS. PAGE: Yes sir it will be part of the principal structure.

MR. TURNER: Okay.

CHAIR LOTT: Any questions from the board?

MR. FERGUSON: Let them speak and then come back and see. I don't have any right now.

CHAIR LOTT: Okay. Mr. and Mrs. Coleman do you have anything to say?

MRS. COLEMAN: No sir.

CHAIR LOTT: No sir, okay. There's no opposition.

MS. SPEICHER: Excuse me chair, there is no opposition but the property owners should state just bare bones enough for the board to be able to make their findings, if they could.

CHAIR LOTT: Okay. Mrs. Coleman would you come up?

MR. HASTY: They need to be sworn too.

CHAIR LOTT: Yes. I'd like to swear you in. Do you swear to tell the truth the whole truth and nothing but the truth so help you God?

MRS. COLEMAN: Yes.

CHAIR LOTT: Thank you. Okay from what we understand here you are planning to build a carport attached to your home as the site plan shows.

MRS. COLEMAN: Yes.

CHAIR LOTT: And it's for your convenience or what's the purpose?

MRS. COLEMAN: Okay, the purpose is our personal use to have our car and my husband's truck stored under the carport.

CHAIR LOTT: Okay. Alright, thank you.

MR. TURNER: Can I ask you a couple of things your house does have a garage?

MRS. COLEMAN: Yes, for one vehicle only. We are using it for storage.

MR. TURNER: And the carport you're interested in building, is it going to be stick built or is it one of the metal carports?

MRS. COLEMAN: It's a metal carport.

MR. TURNER: And you're still going to tie that to your house? But she made the statement it was going to be attached, and you're going to buy a metal carport somewhere and there going.

MRS. COLEMAN: Attached yes, it's going to be built, yeah; it's going to be built on our property.

MR. TURNER: So, I think there's confusion over it being attached to the house, is that, I don't know if that's even an issue but?

MRS. PAGE: No sir, it is going to be attached, the proposed carport is going to be as shown on the detail.

CHAIR LOTT: Anchored in some fashion.

MRS. PAGE: Attached right. Yes. It will be part of the principle structure.

MR. FERGUSON: Can we go back to the house please?

MRS. PAGE: Yes sir.

MR. TURNER: I'm not seeing that but.

MS. SPEICHER: While she switching slides I'll just explain that it has to be attached to the house to be considered principle structure, if it's detached, then it would be an accessory and it's not allowed in the front yard at all.

MR. TURNER: I got it.

MS. SPEICHER: And that is the reason that she would have to attach it to locate.

CHAIR LOTT: And of course that is part of the conditions that you all have set.

MS. SPEICHER: And that is what her application and her site plan indicates, yes sir.

CHAIR LOTT: So the contractor is well aware, I'm sure, that the fact that it will have to be.

MS. SPEICHER: Yes and code enforcement when they issue the permits will also be aware.

CHAIR LOTT: And will the county inspect that?

MS. SPEICHER: Yes.

MR. FERGUSON: So we're talking about the carport actually being built through an inspection.

MS. SPEICHER: Yes.

MR. FERGUSON: That's why she went thru her house and I was thinking how she going to fit a 20' by 20' between those two buildings. On a concrete slab there.

MRS. PAGE: Yes.

MR. TURNER: That's really why my question involved was it a metal carport or a stick built, I could see building a stick built carport there and finding a way to attach it to the existing structure, those metal ones are pretty well prefabbed that you just put together, I don't see how you would tie it to the house but that's not really a question, you understand you have to tie it to the house.

MRS. COLEMAN: Yes.

MR. TURNER: That's all that matters. Okay, I'm done.

MR. DAVIS: I have a question, since it's next door to another house, and since you're only going to have 1 foot left for clearance, I don't see any way you can get around the side of the building if someone would happen to get up to access a ladder or to do anything without being over on your other people's property, you wouldn't have the room to get through there but if you wanted to come straight out the sidewalk and instead of doing double you could just do straight out, couldn't you? Like the picture there. Stay straight out and that way you wouldn't be encroaching on other people's property because if you're that close and your neighbor's decide I want to be that close to then you only got 2 feet there, a fire truck couldn't get through there, no emergency vehicle could get through there, you would be endangering yourself I think if your.

CHAIR LOTT: Go back to the site plan

MR. DAVIS: and then the house beside it, there's 2 houses there.

CHAIR LOTT: I think one thing being is that the way the garage is set back from the house looks like a couple of feet and you were to move the proposed carport over to make room like you're talking about that would interfere with it being able to be attached, it would not be able to be attached. 1.5 foot would not be a problem as far as, because we do have in other neighborhoods zero lot line allowance which is the same thing so that and it being a carport I'm sure it's probably opened on the sides.

MRS. COLEMAN: Yes.

MR. TURNER: For access to your side yard would not be a problem there.

MRS. COLEMAN: It won't be closed in.

CHAIR LOTT: Any other questions? No other questions, thank you Mrs. Coleman. Hear from the board, any recommendations?

MR. FERGUSON: I make a motion that we approve it according to the variances, because there's no opposition on it anyway we use the variances and go ahead and approve it.

CHAIR LOTT: Is that a motion to be approved?

MR. TURNER: Should we not make the findings a fact that 1 through 4.

CHAIR LOTT: Yes.

MR. TURNER: Am I right?

CHAIR LOTT: Yes.

MR. MCHENRY: The one question I have is the people that are still up there, are they objecting to it?

CHAIR LOTT: No they're not here.

MRS. PAGE: No they're not here in opposition, and we had no phone calls either in regards to this case.

MS. SPEICHER: And they were notified of the meeting.

CHAIR LOTT: Then number one is it's the board's conclusion that no unnecessary hardship will result from the strict application of the ordinance thus findings based on the follow conditions.

MR. TURNER: Based on the ordinance you couldn't do this at all.

CHAIR LOTT: No.

MR. TURNER: See I mean, you, I don't know if any unnecessary hardships will result.

CHAIR LOTT: From what I understand the staff recommends this for approval under the conditions.

MS. SPEICHER: On this type of case, we don't make a recommendation.

CHAIR LOTT: I understand.

MR. FERGUSON: I don't see where it's any hardship, and if nobody in the neighborhood complained that they were going to put it there I think that, if it's something for their use of their property then we should go ahead with their right to use their property cause if I was living next door and I didn't want it I would been here and had a bunch of people here, you know?

CHAIR LOTT: Also too, a carport is open; it doesn't give you that closed in effect that, or an obstruction of view from the house.

MR. FERGUSON: They can still look over there and see what they doing.

CHAIR LOTT: Still have a motion? Any more questions?

MR. TURNER: A lot of this issue amounts to the lot is only 54 feet in the back kind of a triangle shaped lot which the size of the lot makes it impossible to put a garage anywhere where a carport.

CHAIR LOTT: That's true and the rear is – you could get cut off.

MR. TURNER: You're looking at 10 feet on either side. Comes into the back of the garage.

MS. SPEICHER: And if we could, we could add into evidence we have the plot plan for the septic in the case file, that septic tank is in the rear of the home.

MR. DAVIS: Thought it was PWC sewer.

MRS. PAGE: No sir, it was an error on the site profile it does state PWC however it is septic, I did verify that.

MR. TURNER: You shown that on here, is that what we're seeing?

MS. SPEICHER: It's not on that site plan but we do have the Health Department's site plan with the septic if you would like to see it.

MR. TURNER: No I trust you. Long as we don't park a car in it we're okay.

MS. SPEICHER: Right.

MR. MCHENRY: My primary concern is that the people didn't object so...

MR. TURNER: No, so it will not create a hardship.

MR. MCHENRY: and they're the ones next door.

CHAIR LOTT: And number 2 is that the board's conclusion that a hardship results from conditions that are particularly to this property such as location, size and topography define is based on the following conditions. That would not be a problem, I don't think in this case for number 2.

MR. TURNER: Really there is no other place to put it because of the odd size of the lot.

CHAIR LOTT: True. And number 3 is this Boards conclusion that the hardship did not result from actions taken by the applicant or property owner the finding is based on the following conditions. The lot has been that way, I'm sure a great number of years, the creation of this lot being the last one on the street?

MRS. PAGE: It's been, if I may Chair, since 1975.

CHAIR LOTT: It's our conclusion that the requested variances consistent with this hearing, purpose and intent of the ordinance, public safety is secure, substantial justice is achieved based on all the conditions listing above.

MR. TURNER: We are not affecting anyone.

CHIAR LOTT: Right.

MR. FERGUSON: Right.

MR. TURNER: No one will be affected by this except the property owner gets the benefit, no one else; no one has a negative to it.

CHAIR LOTT: No one's here to speak against it.

MR. FERGUSON: Right.

MR. TURNER: It's true.

CHAIR LOTT: Therefore

MR. TURNER: All those came together as a motion, didn't they?

MR. FERGUSON: Yes.

CHAIR LOTT: We have the motion now, are we ready for a second?

MR. TURNER: I'll second.

CHAIR LOTT: Motion's been made and accepted, all in favor? (Unanimous)

Mr. Turner made a motion to approve the application for the variance as written, incorporating the findings of facts, Mr. Davis seconded and the vote was unanimous.

| | IN FAVOR |
|----------|-----------------|
| LOTT | YES |
| FERGUSON | YES |
| MCHENRY | YES |
| TURNER | YES |
| DAVIS | YES |

B. **P97-31-C: REVOCATION OF A SPECIAL USE PERMIT (NEÉ SPECIFIED CONDITIONAL USE PERMIT) TO ALLOW A SOLID WASTE DISPOSAL FACILITY IN A RR DISTRICT ON 14.56 +/- ACRES, LOCATED WEST OF SR 2212 (DOC BENNETT ROAD), SOUTH OF I-95 BYPASS; STAFF SUBMITTAL.**

Chair Lott read the case heading for Case No. P97-31-C.

MRS. PAGE: Yes chair, this case is being presented before the board, it is a revocation. I've spoken with the present owner, and they are in agreement with this, basically it is an administrative clean-up of the files. This site was closed down by the North Carolina Department of Environmental Quality in 2017. And the site is no longer being operated as inert debris and it is to make sure all the bookkeeping and all the administrative files match. I do have a presentation prepared if the Board chooses to see it or if the Board chooses you are able to make a motion and go from there.

CHAIR LOTT: What's the pleasure of the board? I don't care about seeing it.

MR. TURNER: Let me ask you this, you're saying this wasn't operating for 20 years?

MRS. PAGE: Yes sir. It was an inter debris site and in March 16, 1997 and its no longer operating.

MR. TURNER: But it operated for 20 years and the state shut it down?

MRS. PAGE: It operated yes, November 15, 2017 and it was shut down according to Plat Book & map 0140 Page 059 recorded in the Register of Deeds. In speaking with the current owner she has been made aware that this was coming before the Board and she was in agreement with whatever the Board chooses to decide.

MR. TURNER: With the state shutting down, this Special Use Permit is kind of useless, isn't it?

MRS. PAGE: That's why we're here to revoke it just to clean up the paperwork, right.

MR. TURNER: And the present owner is the one who operated the land fill?

MRS. PAGE: The present owner was the one who operated it, she thought everything was complete and when she received the notification in the mail, I did speak with her and let her know it was primarily to make our staff records match the current records that are currently ex in the file right now. currently exist on file right now.

MR. DAVIS: So you need a motion to make revocation of the Special Permit Use?

CHAIR LOTT: Yes.

CHAIR LOTT: I make that motion.

MR. FERGUSON: Second.

CHAIR LOTT: Motion made and seconded, all in favor say, Aye.

Mr. Davis made a motion to accept the staff recommendation to revoke the special use permit, Mr. Ferguson seconded and the vote was unanimous. The motion passed unanimously.

| | IN FAVOR |
|----------|-----------------|
| LOTT | YES |
| FERGUSON | YES |
| MCHENRY | YES |
| TURNER | YES |
| DAVIS | YES |

10. DISCUSSION/UPDATES

MRS. PAGE: Yes chair. Staff did not receive any applications in by our February deadline for March. So there will be no Board of Adjustment meeting in March.

MR. HASTY: I do have an update on the Hampton Range case. It's been in the court of appeals for about a year and they finally gave us a decision in December. Their decision was a 2 to 1 decision, basically sending it back to this board for additional findings with the order. The majority said they didn't think there weren't enough findings. We disagree with that because we believe the case was very simple, they were required to have a permit, they didn't have one, they were given the citation, but in any event that was sort of a win for us if you will. They just sent it back here for a new order. The dissenting opinion agrees with the Hampton's; they should be allowed to continue use as a shooting range without the permit basically.

CHAIR LOTT: So it's coming back to us?

MR. HASTY: No not yet. There's more to the story. The Hampton's appealed that case they first had to ask the entire court of appeals, all fifteen members to hear the case, and the court of appeals as a whole, said they were not going to consider it again they were stuck with the three judge panel. And so a week or two ago the Hampton's did appeal that case to the North Carolina Supreme Court, so that's where it is now. They are meeting again at the end of March, so it is going to be seven more months before further resolution. The Court of Appeals may send it back here. That's it.

MR. TURNER: They were allowing other people to shoot?

MR. HASTY: Right, without a permit, they were operating a shooting range the planning staff gave them a notice of violation to stop that and they are allowed to shoot within the accordance to the ordinance which is property owners only, sighting the weapons, occasional target practice, turkey shoot, and so they appealed all that.

MR. TURNER: They were charging folks to go out there, weren't they?

MR. HASTY: They said they were not, that's the testimony they offered and we didn't have any proof they were charging. That was our initial understanding.

MR. TURNER: Then by not charging, it's not okay for them to do that?

MR. HASTY: The ordinance does not say anything about charging or not charging, its actual use of the land. And that was the issue. The officer who gave them the citation in the hearing testified that he thought it was commercial and wouldn't have cited them if it wasn't but that really was mistaken.

CHAIR LOTT: They never really applied for a permit to run the ground

MR. HASTY: The never applied at all.

MR. TURNER: But in light of that if I had a friend who had a couple acres of land and he was in the county, and he had a mound of dirt in the back, and I went over to his house and we went in the back and shot, is that not okay?

MR. HASTY: I don't believe so. Under the ordinance, the property owner can shoot but it doesn't say anything about friends or neighbors.

CHAIR LOTT: It seems like in reality maybe that law should be reconsidered to include something like invited

MS. SPEICHER: You have to realize in a zone violation you have to give the property owner thirty days to remedy the violation. So if you're over there every day for thirty plus days then you would be in violation and you would be in violation once logistically your friend couldn't be cited.

MR. TURNER: These folks were kind of doing it on a everyday basis?

MR. HASTY: They were teaching classes, concealed carry.

MS. SPEICHER: Facebook page, offering classes.

Mr. Lott made a motion to adjourn, seconded by Mr. Turner. The motion passed unanimously. Meeting adjourned at 8:15pm.

| | IN FAVOR |
|----------|-----------------|
| LOTT | YES |
| FERGUSON | YES |
| MCHENRY | YES |
| TURNER | YES |
| DAVIS | YES |

Dena L Smith, Clerk to the Board

George Lott, Chairman