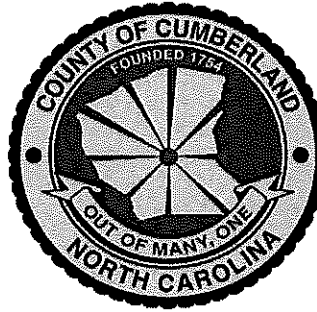


Members:
George Turner, Chair
Alfonso Ferguson Sr., Vice-Chair
Winton McHenry
Gregory Parks
Marva Lucas-Moore



Alternates:
Robert E Davis
Stacy Michael Long
Linda Amos
Quinsentina James

CUMBERLAND COUNTY BOARD OF ADJUSTMENT

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

MINUTES
December 17, 2020
6:00 PM

Members Present

George Turner
Gregory Parks
Linda Amos
Stacy Long

Absent Members

Marva Lucas-Moore
Winton McHenry
Alfonso Ferguson

Staff/Others Present

David Moon
Dena Barner
Rob Hasty
(County Attorney)

Chair Turner called the meeting to order at 6:05 p.m. in Public Hearing Room #3 of the Historic Courthouse.

Chair Turner 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

Mr. Long

PLEDGE OF ALLEGIANCE

Recited by all.

2. ROLL CALL

Mr. Moon called the roll. For the audience, Mr. Moon stated a quorum was present.

3. SWEAR IN STAFF

Chairman Turner swore in staff.

4. ADJUSTMENTS TO THE AGENDA

There were none.

5. APPROVAL OF THE NOVEMBER 19, 2020 MINUTES

Mr. Parks made a motion to approve the minutes from the November 19, 2020 meeting with any necessary corrections, seconded by Mr. Long. The motion passed unanimously.

	IN FAVOR
TURNER	YES
PARKS	YES
LONG	YES
AMOS	YES

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

There were none.

7. PUBLIC HEARING DEFERRALS/WITHDRAWALS

There were none.

8. POLICY STATEMENT REGARDING APPEAL PROCESS

Presented by Mr. Moon.

9. PUBLIC HEARING(S)

P20-05-C: CONSIDERATION OF A SPECIAL USE PERMIT TO ALLOW A BORROW SOURCE OPERATION IN AN A1 AGRICULTURAL DISTRICT ON 201.50+/- ACRES, LOCATED ON THE SOUTH SIDE OF SR 2221 (GAINEY ROAD), EAST OF SR 2223 (MCFAYDEN ROAD) AND WEST OF THE CAPE FEAR RIVER, SUBMITTED BY SCOTT DICKSON ON BEHALF OF HANSON AGGREGATES SOUTHEAST, LLC (OWNER) AND MICHAEL BLAKLEY ON BEHALF OF DRAFTING AND DESIGN SERVICES, INC. (AGENT).

Chairman Turner read the case heading for Case No. P20-05-C.

Mr. Moon reviewed the zoning, sketch map, and land use of the area surrounding subject property. He briefly reviewed board packet material. Mr. Moon stated findings of facts is being requested by staff and is included in the packet.

CHAIR TURNER: First speaker is Russ Patterson, is Russ here? Michael Blakely? Would you come forward and let me swear you in? Do you swear or affirm the testimony you are about to give is the truth, the whole truth and nothing but the truth so help you God?

MR. BLAKELY: I do. Michael Blakely, Drafting and Design services, I am the authorized agent/applicant for the project and I can run through it. Mr. Moon did a good job of outlining the information and in some of the questions that y'all have for the staff about the time of operation. Typically, we do 7 to 6 just because of the daylight savings time but if it's the wishes of the board we can comply to the requirements of dawn to dusk. We have no issue with changing that condition.

CHAIR TURNER: What would be the advantage for you in putting those specific times?

MR. BLAKELY: Typically we do 7 to 6 just because of getting trucks on the road, its kind of a industry standard. But with this operation, its solely going to be used, not for the public, its going to be for one identity, that 7 to 6 is soft and we can change that if we need to. It's just to get them an extra load on the road basically. To give them an extra hour in the morning and in the afternoon

MR. PARKS: With daylight savings time you can get an extra 2 and half or three hours.

MR. BLAKELY: Yes sir and most codes do not define a time so we feel like we need to set one and say hey Monday thru Friday from 7 to 6 because that's a common question that we get. We can do dawn to dusk, that is no issue for us.

CHAIR TURNER: Okay. Go ahead and keep going.

MR. BLAKELY: This project was previously had a mine permit on it and it was released and reclaimed in 2019. It was by Hanson Aggregates and basically they did not need, they have other sites and did not need the particular material on this site. Our client that is looking at potentially buying this property from Hansen does have a use for the material and basically has an option on the properties so Hansen is willing to re-permit the project otherwise it would have been grandfathered in with it already having an existing permit on free zoning. These properties have been mined since the 50's, so this actually has had a mine permit on it, I think the last time it was mined was in the late 80's. And if you'll notice on the map, we're showing some areas to the left side of the page, which would be the north that have already been reclaimed and we will leave those areas alone. They will be buffer trees, what they've already grown into. We have 99 acres proposed for the ultimate pit and we've shown the initial pit and pit expansion lines on here to just kind of illustrate that we're not going to go dig 99 acres at once, we'll dig 10 acre plots at a time, as we move out towards Gainey Road in the pit. So just to give the detail, we aren't going out there and disturb 100 acres, we will only be disturbing 10 acres at a time. And as we continue out to Gainey Road, obviously we'll be building a pond, essentially is what we're doing. One of the questions we got for one of the other projects, the project we did last month, was life of this project. We're looking at 15 to 25 years based on demand. Obviously construction materials depend on the economy and demand so at the time we are going to dig this out you kind of have to range it, so 15 to 25 for this size borrow source. We are showing a total 100 foot buffer with 50 feet of that buffer being undisturbed and then 50 feet will be a berm, that will be vegetative. That's 50 foot wide at the base and then goes up a little of 6 feet tall. Initially seeded with grass and then trees, it will be allowed to grow, it won't be maintained. It will undisturbed also once that mound is in place. We are required to get a mine permit from the state, we are also required to get do a NCDOT driveway permit for the access even though there was an access there previously, we'll have to resubmit for this new access since the site has been dormant since the late 80's. Are there any questions? Or anything that I missed that you guys would like more detail on?

CHAIR TURNER: Board members have any questions? I think last month you talked about the water table in this area, are you going to have the same situation here? Same depth?

MR. BLAKELY: Yes sir. And we will be mining it wet. There won't be any dewatering of the pit.

CHAIR TURNER: Okay. Any questions from anyone? If you'll stand down, we may call you back. Our next speaker is Franklin Johnson. Franklin to you swear or affirm the testimony you are about to give this board will be the truth, the whole truth and nothing but the truth so help you God?

MR. JOHNSON: So help me God. I'm Franklin Johnson, a local commercial real estate broker that represents Hansen and I am here to state that I do not feel that there will be any negative impact on the surrounding property values or loss of value. This property is pretty much tucked in the woods and joins an old pit. I spoke

to all the property owners out there and nobody has any problem with it or that have not spoken to me if they have a problem with it. I do not see any negative impact it would have on any of the adjoining properties.

CHAIR TURNER: I did notice on the first map you do have a body shop and a home very close to it, are they aware?

MR. JOHNSON: There's one home that's very close that almost abuts the old driveway permit. I talked to him and he said 'Franklin I would rather it be that than a hog operation or a mobile home park.' He said I have no problem with the lake. I talked to Palmer Williams that owns the other huge track which is the previous mining operation. He was not happy with us because he was afraid we were going to steal his ducks away where he hunts because he was just joking. He's totally fine with it. But he didn't want anymore water or lakes out there.

CHAIR TURNER: Now who is this?

MR. JOHNSON: The Williams, they own the eleven hundred acres, but he's totally fine with this.

CHAIR TURNER: Is he here tonight?

MR. JOHNSON: No he's not here, he's not in opposition. He was just joking, you're going to dig a lake and steal my ducks.

CHAIR TURNER: Okay, anything else?

MR. JOHNSON: That's it.

CHAIR TURNER: Any questions from board members? Stand down, we may call you back. Next speaker is Tracy Davis. Ok. There are no other speakers to speak for or against, I'll close the public hearing or the hearing. And open it up to the board. Do y'all have any questions or would you like to call anybody back? Discussions.

MR. LONG: I just have a comment. I think I would rather see the time of 7 to 6 than dawn to dusk because in the summer time the sun comes up like at 4:30 in the morning and could give an excuse to be there really really early or really really late so they could have longer hours in the summer and shorter in the winter but I think the 7 to 6 makes more sense not being an early morning or late night nuisance to any residences around there.

CHAIR TURNER: Well we have four findings of fact, have you read those? I'm assuming from staff that everyone was notified, the body shop, that staff notified, there's no one who doesn't know what we're doing?

MR. MOON: Staff received copies of plans from the Fire Marshall's office, the Engineer's office, to the planners with planning and inspections as well as some others based on the comments that our department received the site plan that's part of the staff report is consistent with the zoning code and standards that are required by a borrow source operation subject to them complying with the requirements outlined within the special use permit.

CHAIR TURNER: I think my simple question was exhibit C-1 shows nine properties owners within 1,000 feet, they were all properly notified and mailed to and they got everything they needed?

MR. MOON: Yes sir and the property was also posted, out there off of Gainey Road, with a notice of hearing.

CHAIR TURNER: Okay, any further discussion? Is there a motion?

MR. PARKS: I'll make a motion that we approve with the Special Use Permits complied with. Also, if they want to 7 to 6, I think that is fine. What other specifications did you tell me besides the Special Use Permit?

MR. MOON: Acknowledge the site plan as well as the Special use Permit and a motion to accept the findings of fact.

CHAIR TURNER: So just go through the four findings of fact based on testimony by everyone. You've got those on page 3.

MR. HASTY: Also they've submitted their exhibit H, they have responses to those and you could, if you agree with those, incorporate those in your motion.

MR. PARKS: So I'm not a professional at making a motion but we're going to

CHAIR TURNER: So far so good.

MR. PARKS: Ok, I don't see the use will not materially endanger the public health or safety, do you want me to read through these, attorney?

MR. HASTY: Yes sir and then whatever back support is needed.

MR. PARKS: the public health or safety if located according to the plan submitted and recommended. The use meets all required conditions and specifications. With the compliance with the special, do I say Special use permit in that particular case? The use will maintain or enhance the value of adjoining or abutting properties, or that the use is a public necessity, and not going to change any of that. The location and character of the use, if developed according to the plan as submitted and recommended, will be in harmony with the area in which it is to be located and is in general conformity with the Cumberland County's most recent Comprehensive Land Use Plan. I make a motion we accept that with the compliance with the special use permit and the other conditions that were set forth. Will that work? Thank you.

CHAIR TURNER: Do we need to add anything to that?

MR. HASTY: No you could, if you wanted to incorporate the specific findings to support the general findings. Just say I incorporate Exhibit H.

MR. PARKS: I incorporate Exhibit H into that motion.

CHAIR TURNER: Got a complete motion, is everybody good with that?

MR. HASTY: That's a good motion, needs a second.

CHAIR TURNER: Do we have a second?

Mr. Parks made a motion in case P20-05-C to approve that the Special Use Permits complied with, also if they want to 7 to 6 that is fine with allow a borrow source operation, incorporated exhibit H, seconded by Ms. Amos. The motion passed unanimously.

IN FAVOR

TURNER	YES
PARKS	YES
LONG	YES
AMOS	YES

P20-06-C: CONSIDERATION OF A VARIANCE TO ALLOW A ZERO FOOT FRONT YARD SETBACK FOR A SHED, POOL AND FENCE INSTEAD OF A REQUIRED MINIMUM FIFTY FEET SETBACK FOR PROPERTY LOCATED IN AN A1 AGRICULTURAL DISTRICT AND CONTAINING 0.50+/- ACRES, LOCATED AT 7607 DOCUMENTARY DRIVE, SUBMITTED BY LESLIE WILLIFORD KELLY & WESLEY KELLY (OWNERS).

Chairman Turner read the case heading for Case No. P20-06-C.

MR. HASTY: Mr. Chair before you begin, a variance does require 4/5 of a vote to pass and since there are only four board members present it means you would have to be unanimous I am just reminding you.

Mr. Moon reviewed the zoning, sketch map, and land use of the area surrounding subject property. He reviewed board packet material. Mr. Moon stated findings of facts is being requested by staff and is included in the back of your packet.

MR. PARKS: Can you go back a couple of pictures and let me look? Keep going. Hold right there. Above ground pool, moveable storage building, trampoline, so all those are moveable.

CHAIR TURNER: Did I understand you to say the applicant is here?

MR. MOON: Correct.

CHAIR TURNER: The applicant is not signed up to speak. You're the applicant, did you wish to speak, or intend to speak? It's your call. If you want to speak we will find a way to make it work but if you have nothing to say, that will be alright. Okay, stand down and I will call you in just a minute. I have a question. You know you had sent me the, and I do know the area, probably more so than the one's we normally look at. On Rufus Johnson Road behind this house, is another house that looks like it's a mirror image of it. I've always noticed these houses, being in real estate, because both of them are odd to me because there's truly a front entrance on the one behind it on Rufus Johnson and there's is on approach and it looks like the front of the house is what you called it on the side for both of them. The applicant, behind their house, installed a fence. It appears to be new and I know that house sold about six months ago and I'm going to assume based on county's GIS that the fence wasn't there, in 2017 it wasn't there. Are they affected by what happens tonight? I want to be sure that we don't single out somebody and give them a hard time if the neighbor behind them did the same thing? How does that work David?

MR. MOON: Staffs not prepared tonight to address the conditions on abutting or nearby property related to the structure that occurred on the site. We would only do that if it occurred during our normal inspections or if complaint was filed by a property owner. So that situation on an adjacent property would not be considered as part of the case this evening.

CHAIR TURNER: Well I'm not thinking it would be part of the case, just looking at it, I'm thinking did the folks in the back get a permit and if they did to install their fence, then they installed it in line with the fence that we say is in violation. So, I don't want to pick on somebody and that's what it looks like.

MR. MOON: I can't tell you this evening whether that property owner, different property owner, obtained a permit for that fence. Staff would have to do the research on that.

CHAIR TURNER: I understand. Okay.

MR. MOON: If its not fronting the street, their allowed to locate it along the property, on the property line.

CHAIR TURNER: It's the mirror image of this. Long before any of this I always noticed when you turned in that little neighborhood these two houses there that are back to back versions of each other, its just something in real estate you just notice that. You know, we're funny. Any questions of the staff?

MR. PARKS: I don't have any questions. I have questions of the applicant.

CHAIR TURNER: Let me ask the board, I think we would need a motion, is that right, to allow them to speak? They did not sign up.

MR. HASTY: Yes it would need to be motioned and voted by the board.

Mr. Long made a motion in case P20-06-C to allow the applicants/owners to speak on behalf of this case, since they failed to sign up, seconded by Ms. Amos. The motion passed unanimously.

IN FAVOR

TURNER	YES
PARKS	YES
LONG	YES
AMOS	YES

CHAIR TURNER: Anything else from staff?

MR. MOON: No sir.

CHAIR TURNER: Okay, let me get situated here. Who wants to go first? Before we start talking, give me your name.

MRS. KELLY: Leslie Kelly.

CHAIR TURNER: Leslie Kelly, and you are one of the owners?

MRS. KELLY: Yes sir.

CHAIR TURNER: Okay. Do this for me, can I swear you in?

MRS. KELLY: Yes sir.

CHAIR TURNER: Do you swear or affirm the testimony you give this board will be the truth, the whole truth and nothing but the truth so help you God?

MRS. KELLY: Yes sir.

CHAIR TURNER: Alright, tell us your story.

MRS. KELLY: I actually purchased the home before we were married, I purchased the home, I was the first owner in 2007. My stepfather actually paid for the fence and he and my brother built it for me. Because I had a young son at the time and a little dog so they built the fence. So, the fence has actually been there since 2007. I don't know what process my stepfather went thru with permitting or anything. Honestly I'm not sure that he knew that a permit was required for a fence. My brother lived at the house next store at the time and we just lined my fence up with my brother's fence, so that's how the fence got there.

CHAIR TURNER: The one behind you?

MRS. KELLY: If you're looking at the picture it would be the one next door. The house closest to the road, that fence is brand new. Those people haven't lived there but a few months. And my brother, he doesn't live next door anymore but anyways.

CHAIR TURNER: Just so we don't lose track of what you're saying, so you're saying you've owned the house since 2007 and the house was new at that time? And your stepfather, as a gift to you, decided to give you the fence and we have no knowledge that he got a permit or called the county to say what do I do? He didn't do anything, he just put up a fence? Wonder how he picked the line?

MRS. KELLY: I just remember just knowing that it had to be ten feet off of the road, that's all I remember. He passed away a couple of years ago so there's no way I can ask him about that.

CHAIR TURNER: Where does the ten feet come from?

MRS. KELLY: The measurement off of the road.

CHAIR TURNER: Where did we decide it was ten feet? Somebody said it?

MRS. KELLY: That's just what we were under the impression that was the rule when you built a fence in a neighborhood. And at the time I had no idea that the house would be considered to have two front yards, you know that was definitely news to me. We got married in the following year then he lived there. Since then, this past summer, we got the pool, that came from my mom's house so it was a gift from my mom. We had a crew put that up and they told us the measurements off of the fence and made sure the measurements off of the fence were in accordance with what they normally do.

CHAIR TURNER: Define crew. What do you mean by crew?

MRS. KELLY: It was someone, that's a contractor that puts up pools. I will have to let my husband answer that question because he's the one that found them. But it's a company that has a website and everything, I want to say they're, I don't want to say anything wrong so I'll let you ask him.

CHAIR TURNER: Nothing's wrong, just tell us the truth.

MRS. KELLY: So I'm going to let you talk to him because I don't know for sure because he dealt with that. But then the buildings, they're not permanent structures, they're storage sheds that can be moved and so therefore, we did not ask for a permit for those because they weren't built so we didn't know that you had to have a permit for a storage shed until this came about so we got the storage sheds because of the pool. So we would have space to store things for the pool so that's where this came about.

CHAIR TURNER: And you have a trampoline.

MRS. KELLY: Yes it's right there.

CHAIR TURNER: Okay, you want to add anything else?

MRS. KELLY: I think that's about all, that's the background.

CHAIR TURNER: Do we have any questions from board members?

MR. LONG: Where's your septic lines and septic tank located on the property, do you know?

CHAIR TURNER: We have that in here.

MRS. KELLY: And that's another reason why the pool and the sheds are where they are. Because that would be the absolute only location in our entire yard where they could go and not interfere with the septic lines. That was another reason for our decision to put it there.

CHAIR TURNER: Well, I'm not a contractor but it appeared to me, looking at what was there, you've got a septic tank in place all the way to the inner fence and there's a repair area which does not have any lines in it at

this time but everything here is temporary so it looks as though you could use that repair area until you needed it and then you may have to move a building, that's what I thought.

MR. LONG: It looks like from the drawings here the setback of the front of house is fifty-one feet so the pool would actually be probably on one of those lines. Because it has to be fifty feet setback from the road, correct? For a pool?

MR. MOON: Correct.

MR. LONG: So it would be the edge of that pool would be lined up with the edge of the house basically right over that number four would be the front edge so it would be on lines but I don't know if that really matters with an above ground pool over leach line.

CHAIR TURNER: Would it be over a line or a repair?

MR. LONG: No it would be over a line. An active line.

MRS. KELLY: The septic tank is at the back of the house. The septic tank is right outside the kitchen window, the actual septic tank, so if you're looking at the picture here over to the left, right outside the kitchen window. So its on the opposite side of the pool and the shed that's on the right.

MR. MOON: Mr. Long, you're referring to exhibit C of the site plan review?

MR. LONG: Yes, I am looking at the driveway length, fifty-one feet, so it looks like if you put the edge of the pool right at the fifty foot mark it would put it right around that number four.

CHAIR TURNER: Number four now those aren't septic lines, that's a designated repair area.

MR. LONG: Right, but the pool, so that would be the edge of the pool, cause its got to be at the edge of the house basically and back towards the back fence so it would probably be over one of those leach lines. Cause there's three leach lines there?

CHAIR TURNER: Appears to be.

MR. LONG: It seems to me, unless I'm imagining the pool to be much bigger than it actually is that it will be sitting over a leach line but I don't know if that matters in an above ground pool.

MR. PARKS: It doesn't make any difference, just drain the water and move the pool and fix the leach line. I mean in that particular case. I wouldn't think but there again that's not our issue.

CHAIR TURNER: That's not our issue.

MR. LONG: Yeah not really.

CHAIR TURNER: Did you want to add anything?

MRS. KELLY: No not that I can think of. Thank you.

CHAIR TURNER: Well if you'll stand down, we may call you back. Sir you're next. Give me your name sir.

MR. KELLY: Wesley Kelly

CHAIR TURNER: Wesley Kelly. Okay I got you all signed up. Do you swear or affirm the testimony you are about to give this board will be the truth, the whole truth and nothing but the truth so help you God?

MR. KELLY: I do, so help me God.

CHAIR TURNER: Okay, Mr. Kelly tell us your story.

MR. KELLY: She pretty much filled you in pretty well. I main issue, other than ignorance of what we did was not exactly proper. Once I started talking to the planning board about it, and they started looking at it, especially the printout where it shows the sewer lines, there is just no room back there hardly for us to have anything. A whole lot of anything, so that is why we applied for a variance.

CHAIR TURNER: Okay, anything else? The folks that put the pool in, she said you would tell us about them, is that possible?

MR. KELLY: It's a company that I hired off the internet, I looked them up, called them, they came to my mother-in-law's house, took the pool down, took it to my house, and basically we just went over the yard to figure out where we wanted to put it. And the only place where I thought it made sense so it wouldn't be near the septic line was right there where we put it. It's a twenty-seven foot pool, so it's one of the larger above ground pools on the market, so it takes up quite a bit of space and a half acre there is only so much space to be had, and when your whole backyard is eaten up by septic lines then

MR. PARKS: Did they say anything about, or did you ask them anything about do I need to get a permit to put this pool in the backyard?

MR. KELLY: They didn't say a whole lot about it, they said if y'all are going to do a pool it always needs to be ten feet off the property line. So they made sure it was well over ten feet off the fence. So once we got the pool built and moved in a couple of sheds, next thing you know, I get a letter in the mail.

MR. PARKS: Was it a local company?

MR. KELLY: Yes.

CHAIR TURNER: It was, okay.

MR. PARKS: Very touchy. I've been involved with a hundred different things that people can't do because their on a corner lot.

CHAIR TURNER: Half acre lot on a corner lot is not much land. That's the problem, the way the setbacks are. I'm trying to understand the ten foot. Is that a city ordinance, by chance?

MR. PARKS: I have no idea about that.

CHAIR TURNER: I've never heard ten feet, I've never heard that. Want to add anything?

MR. KELLY: That's all I got.

CHAIR TURNER: Okay, any questions from anybody? Did you see the findings of fact that we have to come up with to make this work? Did you read those by chance?

MR. KELLY: Yes.

CHAIR TURNER: You did. Okay.

MR. MOON: Exhibit G is the applicant's written response to the variance criteria.

MR. PARKS: Exhibit G?

MR. MOON: Should be on page seven.

MR. PARKS: Thank you for the number.

MR. LONG: Is that something you've introduced because I don't remember that from before?

CHAIR TURNER: What's that?

MR. LONG: The applicants actually answering the four findings of facts.

CHAIR TURNER: Yes we always have that.

MR. LONG: Really, I guess I'm not paying attention.

CHAIR TURNER: The reason I ask for those, is to help us with the four findings of fact. Number three is the difficulty. We had this last month and we kind of have it very often, it says we have to find that the special circumstances are not the result of the actions of the applicant, see the problem?

MR. KELLY: I understand, the way I look at it, is the septic lines are where they are so it limits us on what we can do.

MR. PARKS: That's the problem with buying a corner lot.

MR. KELLY: That's the hardship. We would have no problem if our septic lines were in the front yard, if that's the way it had been setup. The problem with that is we're on a well and the well is in the front and you can't put septic where the well is.

CHAIR TURNER: Well of the four findings of fact, the reason I keep harping on it is because C is the problem for us, you do have a hardship based on the fact that you do have a lot of things that you do want to have in your yard and you only have half an acre of land and its on a corner, your setbacks are tighter than what they would be if it wasn't on the corner but it's the special circumstances are not the result of the actions of the applicant, that's the finding of fact problem that we have. That's our problem, I think. Does that mean you do have a hardship, there isn't anything about the location, size or topography that's peculiar, it's a standard platted lot. I'm not sure what you do. Do you want to add anything before we stop?

MR. KELLY: I can just say that our current setup doesn't endanger anyone. All of our neighbors like it. Kids came and swam all summer. We can enclose, we can shut up the kids in the backyard, they don't have to be worried about, they can play all day, there in no danger and I just hate to see that go away.

MR. LONG: The fence has been up for how many years?

MR. KELLY: Since 2007.

MR. LONG: So thirteen years but the pool has been in there for how long?

MR. KELLY: Just since April.

MR. LONG: April, okay.

MR. KELLY: We just had it moved, its an eighteen-year-old pool. But we had it moved from my mother-in-law's home because when my wife's stepdad passed she didn't want to have to take care of it anymore, it was just too much for her. She didn't want the kids to not have it so we moved it to our house.

CHAIR TURNER: Is there anyone in your neighborhood who has even complained about it or said anything to you?

MR. KELLY: No, quite the opposite.

CHAIR TURNER: Really? It isn't an issue for us but I am familiar with it and I've seen your house and been by a number of times. This looks like something that could only be before us today because someone complained. I don't know that we'll have that but.

MR. KELLY: Oh I can tell you how that came up.

CHAIR TURNER: Okay, tell me.

MR. KELLY: Gosh I don't know why I didn't think to tell you. When we bought those sheds, they're prewired, and you can just run a drop cord to them. We didn't really want to do that so we called a company that came out and quoted what it would cost to hook up the electrical, \$3,500. So we said no thank you. However, they went and applied for permits. That's how it came up. So nobody complained.

CHAIR TURNER: They applied for a permit before you hired them?

MR. KELLY: Yes they did. They sure did. And I was like, why did they do that. It didn't make any sense but.

CHAIR TURNER: I mean something has to raise the flag

MR. KELLY: I guess they were trying to get ahead of, I guess they really thought I was going to pay them but \$3500 for a hundred feet of wire, is a lot.

CHAIR TURNER: Okay, anybody else have any questions? If you want to stand down sir, we may call you back. Alright, there is no one else to speak for or against so I'll close that hearing and open it up for discussion.

MR. PARKS: The same scenario we had.

CHAIR TURNER: This is the same that we had last month. I mean the names have changed but the situation is exactly the same.

MR. LONG: Wasn't that guy over the setback though? There was something that I remember that he was like really really far.

CHAIR TURNER: His request was for zero and this request is for zero. Basically, the same setback.

MR. LONG: I remember how we ruled in that one but I guess my question, the hang up on number 3, if they were here today with no fence, and no pool and no shed and were asking for a zero foot setback would we be saying yes?

MR. PARKS: The answers no. You can't give it to one person and not give it to everyone. That's what happens with a corner lot. And this has been coming up forever.

CHAIR TURNER: It is the same and secondly when all this started even with the fence, if they had properly gone and tried to get a permit to put up the fence, the fence wouldn't be there. The fence would be somewhere else. So its an after the fact, I messed up, what do I do now, and that's what C is all about, the actions of the applicant have brought us here today. That's the problem. I can understand, if it was me I probably would've done it too, it doesn't mean that as a quasi-judicial board that we can ignore the findings of fact and try to make them something they're not. The applicants or someone has done that. What do you think Linda?

MS. AMOS: I think we are back in the same situation that we were last month. Same where they seek permission from the county to get a permit.

CHAIR TURNER: Any advice Mr. Attorney?

MR. HASTY: I think you understand the issue. Don't see any advice to give.

CHAIR TURNER: I'm open to a motion.

MR. LONG: We need to go through the findings of fact first right? Or is that good enough?

CHAIR TURNER: Well I think based on this.

MR. HASTY: Well I don't think you need to find facts, but its depends on what your motion is. If its to approve yes if not you just need to state the reason.

MR. LONG: I motion that we deny the special use permit because it violates the setbacks.

CHAIR TURNER: And this is actually a variance this isn't a special use permit.

MR. LONG: Okay, variance. I motion that we deny the variance.

CHAIR TURNER: Based on the fact that the circumstances are the direct result of the applicant.

MR. LONG: Correct and also the fact that even if this stuff wasn't here we still wouldn't be able to say yes. Based on setbacks.

CHAIR TURNER: There's a motion, is there a second?

MS. AMOS: Second.

Mr. Long made a motion in case P20-06-C to deny the variance to allow a zero foot front yard setback for a shed, pool, and fence, seconded by Ms. Amos. The motion passed unanimously.

IN FAVOR

TURNER	YES
PARKS	YES
LONG	YES
AMOS	YES

P20-07-C: CONSIDERATION OF A SPECIAL USE PERMIT TO ALLOW RECREATION OR AMUSEMENT PUBLIC/PRIVATE NOT OPERATED AS A BUSINESS FOR PROFIT IN AN A1 AGRICULTURAL DISTRICT ON 2.83+/- ACRES, LOCATED AT 2105 WADE STEDMAN ROAD, SUBMITTED BY STEVE CORE ON BEHALF OF THE BETHANY HISTORICAL SOCIETY (OWNER) AND THE CITY OF FAYETTEVILLE (AGENT).

Chairman Turner read the case heading for Case No. P20-07-C.

CHAIR TURNER: Let me ask you right up front, how does the city fall into this?

MR. MOON: The applicant can explain that in more detail but my understanding is they assist in the operation of the park. If you want more detail regarding the relationship, the ownership and the operation of the park, there is a representative here with the city of Fayetteville that can explain that.

Mr. Moon reviewed the zoning, sketch map, and land use of the area surrounding subject property. He reviewed board packet material. Mr. Moon stated findings of facts is being requested by staff and is included in the back of your packet.

CHAIR TURNER: Let me ask you then if things changed through the way and they've been there for fifty years and nothing that their doing is any different, why are they not grandfathered?

MR. MOON: Because they're expanding. They had been grandfathered in for the existing recreation facility.

CHAIR TURNER: They're expanding, I missed that. I got it. Any questions from staff?

MR. LONG: I was just wondering why the city or the county, I guess the county zoning requires a special use permit for a park in an agricultural area? If the county says hey we want to put this here

CHAIR TURNER: Because of the expansion, they're expanding that park in the town of Bethany.

MR. LONG: If they were going to just put a brand new park here, it still says according to the sentence on the front page, that county zoning requires a special use approval for a public park to operate within the A1 zoning. I understand why we're here today but I guess I don't understand why that's a special use permit and not just hey the county decided to do it.

MR. MOON: At the time the zoning code went to an update either staff or others felt there was a need to protect adjacent land uses, and residence land use with an A1 category. That criteria or rather definition for recreation included private amusement parks. It could be a business, it would have to be non profit but it could be anywhere from a corn maze type thing

MR. LONG: Oh okay, I got that. That makes sense. Thank you.

CHAIR TURNER: Any other questions from staff? Alright, let me open the hearing, James McMillan. I think we do, we're pretty confused up here. I guess the situation is that there is a city and county parks and recreation, is that how that is? Okay, do this for me. Do you swear or affirm he testimony you are about to give our board will be the truth, the whole truth and nothing but the truth so help you God?

MR. MCMILLAN: Yes sir.

CHAIR TURNER: And you sir are James McMillan and you work for the city?

MR. MCMILLAN: I work with the Fayetteville – Cumberland parks and recreation department. It is a joint department. I can only reiterate what Mr. Moon said. It's been a park for the last fifty years. Bethany Historical Society took over ownership, from the local churches when they did that they approached the parks and recreation department and asked if we could help enhance the facility, so we went through the process of checking with our commissioners and management etc found the money to help them out and we've entered a local agreement where the two have a written agreement between the two that will help to improve the facility and it will remain free to the public to use. That's the short version.

MR. PARKS: Bethany Historic Society?

MR. MCMILLAN: Yes sir.

CHAIR TURNER: There's a lot of history down there.

MR. PARKS: I know there is, I'm playing with you honestly and you're not even a part of it. What do you plan on doing there? When you say expand it?

MR. MCMILLAN: We have to have the building permit to put up a picnic shelter, that's what brought this about.

MR. PARKS: Okay, you answered my question, you want to put up a picnic shelter.

MR. MCMILLAN: It's just that simple.

MR. MOON: The staff site plan is approved with the special use approval, before it goes that direction, it is also special use permit that has zoning conditions, and other agencies they'll have to go through regarding the driveway improvements. If there is some major expansions at the site in the future there would have to be an amendment to this special use site plan, to address that change.

MR. PARKS: Your wearing us out. We can accept it but then you're going to have say that if later down the road, they will have to comply with everything. I'll get this motion stuff down pat before long.

CHAIR TURNER: Well this is basically an expansion of a long existing park that's been there. I've got property down in that area and the parks been there as long as I can remember. Is there any further questions? Alright, I'll close the hearing. Open it for discussion.

MR. PARKS: Great now I got some pictures. You didn't pull these up before did you David?

MR. MOON: Sorry.

MR. PARKS: Yeah. Now I can see. Just curious, let's go back to the pictures please. I'm a picture kind of guy.

CHAIR TURNER: Steve Core's house is right near there, across the street I think. I thought he would be here tonight.

MR. PARKS: I didn't know where that was. Is that the Core boy who's daddy was in the automobile accident?

CHAIR TURNER: Yeah, ML was his brother. Any further discussion? We are open to a motion.

MR. LONG: I'll do it again if you guys want.

MR. PARKS: Come on with it, it's your turn. You gotta figure out how to make these motions now. Come on now.

CHAIR TURNER: On page three is the findings of fact.

MR. LONG: I motion that we approve this special use permit based on the finding of facts and according to the Bethany park special use site plan and the conditions set forth in the special use permit. And I motion that we approve this special use plan, that it includes the special use permit and the Bethany Community park special use site plan, I guess I said that. Is that good enough?

CHAIR TURNER: And that the use will not materially endanger public health according to the plan, they have submitted a plan and if they follow this plan as expected it will not do that. The use meets all the required conditions and specifications from the special use permit plan that they have submitted and the use will maintain or enhance the value of adjoining properties and in this case the use would be considered a public necessity in that area; and the location and character of the use, if developed according to the plan as submitted will be in harmony with the area in which it is to be located and is in conformity with the County's most recent Comprehensive Land Plan and truly an improvement to the city of Bethany.

MR. LONG: I agree.

CHAIR TURNER: Which doesn't exist. A lot of history down there. Ron Matthews grew up there.

MR. LONG: So is that a proper motion?

MR. HASTY: If you accept the chairs motion.

MR LONG: Yes I accept the Chair's additions.

Mr. Long made a motion in case P20-07-C to approve the consideration of the Special Use Permit to allow recreation or amusement public/private not operated as a business for profit in an A1 district, seconded by Mr. Parks. The motion passed unanimously.

	IN FAVOR
TURNER	YES
PARKS	YES
LONG	YES
AMOS	YES


10. DISCUSSION/UPDATES

MR. MOON: I have one piece of information for the board, staff has not received any applications for variances or special uses or any appeals so at this point there will not be a BOA meeting for January.

11. ADJOURNMENT

Mr. Parks made a motion to adjourn, seconded by Ms. Amos. The motion passed unanimously. Meeting adjourned at 7:28pm.

	IN FAVOR
TURNER	YES
PARKS	YES
LONG	YES
AMOS	YES


Yolanda Bennett, Clerk to the Board

George Turner, Chairman