



**Members:**  
George Quigley, Chair  
John R. Swanson, Vice-Chair  
Oscar L. Davis, III  
Melree Hubbard Tart  
Joseph M. Dykes

**Alternates:**  
Horace Humphrey  
Martin J. Locklear  
Randy Newsome  
William L. Tally  
Carrie Tyson-Autry

## ***CUMBERLAND COUNTY BOARD OF ADJUSTMENT***

130 Gillespie Street  
Fayetteville, NC 28301  
(910) 678-7602

TENTATIVE AGENDA  
NOVEMBER 19, 2009  
7:00 P.M.

A meeting of the Cumberland County Board of Adjustment will be Thursday, November 19, 2009 at 7:00 p.m. in Hearing Room #3 of the Historic Courthouse at 130 Gillespie Street. The Tentative Agenda is as follows:

1. ROLL CALL
2. ADJUSTMENTS TO THE AGENDA
3. APPROVAL OF THE OCTOBER 15, 2009 MINUTES
4. APPROVAL OF THE 2010 DEADLINE/MEETING SCHEDULE
5. ABSTENTIONS BY BOARD MEMBERS
6. PUBLIC HEARING DEFERRALS
7. BOARD MEMBER DISCLOSURES
8. POLICY STATEMENT REGARDING APPEAL PROCESS
9. PUBLIC HEARING(S):
  - **P09-09-C:** CONSIDERATION OF A REQUEST FOR A VARIANCE FROM THE COUNTY ZONING ORDINANCE, SECTION 927, SUB-SECTION C.1, TO ALLOW YARD SETBACKS OF UP TO 33 FEET WHERE 220 FEET IS REQUIRED FOR A 220 FOOT TOWER, AND A SPECIAL USE PERMIT FOR A TOWER IN A RR RURAL RESIDENTIAL DISTRICT ON A .36+/- ACRE PORTION OF A 97.77+/- ACRE TRACT; LOCATED AT 1511 LAKE UPCHURCH DRIVE; SUBMITTED BY THOMAS H. JOHNSON, JR., NEXSEN PRUET, PLLC ON BEHALF OF AMERICAN TOWERS, INC.; OWNED BY H.D. BOWEN, JR.
10. BOARD HEARING:
  - **WS-09-01.** CONSIDERATION FOR HIGH DENSITY DEVELOPMENT WATERSHED APPROVAL FOR RIVER LANDING CENTER OFFICE PARK, IN A MXD/CUD ZONING DISTRICT, FOR UP TO 70% IMPERVIOUS AREA; CONTAINING 16.00 +/- ACRES; LOCATED ON THE SOUTH SIDE SR 1611 (ANDREWS ROAD), WEST OF SR 1612 (FARMERS ROAD); SUBMITTED BY: DOUGLAS B. COOPER WITH MOORMAN, KIZER & REITZEL; OWNED BY: RIVER LANDING CENTER, LLC.
11. DISCUSSION
12. UPDATE(S)
13. ADJOURNMENT

**Members:**  
George Quigley, Chair  
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## ***CUMBERLAND COUNTY BOARD OF ADJUSTMENT***

130 Gillespie Street  
Fayetteville, NC 28301  
(910) 678-7602

MINUTES  
OCTOBER 15, 2009  
7:00 P.M.

### **Members Present**

John R. Swanson, Acting Chair  
Oscar L. Davis, III  
Melree Hubbard Tart  
Joseph M. Dykes  
Horace Humphrey

### **Absent Members**

George Quigley, Chair  
(excused absence)

### **Staff/Others Present**

Harvey Raynor,  
County Attorney  
Patricia Speicher  
Pier Varner  
Marili Melchionne

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

#### 1. ROLL CALL

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

#### 2. APPROVAL OF THE SEPTEMBER 17, 2009 MINUTES

A motion was made by Mr. Humphrey and seconded by Ms. Tart approving the minutes as written. The motion passed unanimously.

#### 3. ABSTENTIONS BY BOARD MEMBERS

There were no abstentions by Board Members.

#### 4. PUBLIC HEARING DEFERRALS

There were no deferrals.

#### 5. BOARD MEMBER DISCLOSURE

There were no Board Member disclosures.

6. POLICY STATEMENTS REGARDING APPEAL PROCESS READ

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

7. BOARD HEARING(S)

**Opened Public Hearing**

- **P09-08-C:** CONSIDERATION OF A REQUEST FOR THE MODIFICATION OF AN APPROVED SPECIAL USE PERMIT (NÉE SPECIFIED CONDITIONAL USE) FOR A DAY CARE FACILITY IN A R10 RESIDENTIAL DISTRICT ON 0.63+/- ACRES, LOCATED AT 4820 CAMDEN ROAD, SUBMITTED AND OWNED BY WILLIAM AND ANGELA WRIGHT.

MRS. VARNER: Noted that this is a request of expansion for an existing Special Use Permit. They already have a special use permit, they are expanding it now. Mrs. Varner presented the zoning, land use and photos of the site to the Board.

She noted that the frontage and location is 254.70 feet on Camden Road and the existing use is as a Day Care facility. She stated that regarding nonconformities, there is an existing sign which is legal nonconforming since DOT took the right-of-way and that there were no zoning violations. For water they have Aqua America, and they have septic. This case has some ordinance related conditions, and staff is emphasizing conditions numbered 1 and 23.

She stated the previous case was approved with 60 children, five employees, and 17 off-street parking spaces. The hours of operation were from 5:00 am to 6:00 pm, Monday through Friday.

Mrs. Varner explained that they are proposing to add 50 more children for the before/after school program; which will make it a total of 110 children. They are increasing their employees to nine, and are proposing 11 off-street parking spaces; besides they have loading and unloading areas as well. The hours of operation will be the same as it was approved before from 5:00 am to 6:00 pm Monday through Friday.

ACTING CHAIR SWANSON: What's the applicable section in the ordinance?

MRS. VARNER: Section 906. Mrs. Varner read "Section 906, Day Care Facilities, County Zoning Ordinance" and asked if there were any questions.

ACTING CHAIR SWANSON: Asked if the Board had any questions for the staff? [There were no questions.] I understand we have some people signed up to speak in favor of the modification of the special use permit. Is Angela Wright available?

MRS. WRIGHT: Yes, I am.

ACTING CHAIR SWANSON: Would you come forward or care to be heard?  
Acting Chair Swanson swore in Mrs. Wright.

MRS. WRIGHT: I do.

ACTING CHAIR SWANSON: Would you please state your name and address for the record?

MRS. WRIGHT: My name is Angela Wright, my address is 2805 Meadow Mont Lane. I own the property at 4820 Camden Road, which now exists as a child care facility. I have been in this business for 13 years, and I'm just asking for approval for an additional building for a before and after school program.

MR. DAVIS: The request read the hours are going to be from 6:00 am to 6:00 pm, but your current hours are from 5:00 am to 6:00 pm; are you changing your hours?

MRS. WRIGHT: For the After School Program normally we have most of our school-aged children coming in around 6:00 am, so I try to keep it around that time.

MR. DAVIS: So the operating hours will be from 6:00 am to 6:00 pm?

MRS. WRIGHT: Well they would come in at 6:00 in the morning, we will take them off to school around 7:00 am, 7:15 am; then the building would not have any children in there until we pick the children up from school around 2:00 pm, 2:15 pm; and we'll bring the children back to the facility and let them stay there until 6:00 pm.

MR. HUMPHREY: So basically it's 6:00 am to 6:00 pm; basically your operating hours are from 6:00 am to 6:00 pm?

MRS. WRIGHT: Right, pretty much.

MS. SPEICHER: For the record, we would like to make it clear that the day care facility hours are 5:00 am to 6:00 pm. The before and after school-aged children hours she is requesting are from 6:00 am to 7:30 am and 2:00 pm to 6:00 pm.

MR. DAVIS: Okay, so it is not a change in the hours, it is just different hours for that different program.

ACTING CHAIR SWANSON: For the different activities?

MRS. WRIGHT: Yes.

ACTING CHAIR SWANSON: In the application I see something called a child care center, something called day care which you are approved for now, correct?

MRS. WRIGHT: Right.

ACTING CHAIR SWANSON: Then something before and after school. So, the modification that you are asking for it is to accommodate the before and after school and the child care?

MRS. WRIGHT: No, it would be a separate building from the child care.

ACTING CHAIR SWANSON: It is just the before and after school?

MRS. WRIGHT: Yes, it is.

MS. SPEICHER: If I could for the record, sir, what Mrs. Wright is referring to as far as child care center, is a state classification, Cumberland County has “day care facilities” whether it is adult day care, school-aged day care, or adolescents.

ACTING CHAIR SWANSON: I was going to ask the question for the staff later on because I see in the application something a term used “School-Age Program”, that would certainly be considered from the staff’s point of view to be in the same vein as the zoning ordinance – the spirit of the intent of the zoning ordinance.

MRS. WRIGHT: Yes, sir.

ACTING CHAIR SWANSON: Okay, thank you. Anything else?

MRS. WRIGHT: No, sir.

ACTING CHAIR SWANSON: Any questions from board members?

MRS. WRIGHT: No sir.

MRS. TART: Will you be increasing the number of employees from five to nine?

MRS. WRIGHT: Yes, ma’am.

MRS. TART: How many parking spaces will you be providing?

MRS. WRIGHT: We will be adding two additional parking spaces.

MR. DYKES: So there will be a total of 11?

MRS. WRIGHT: Yes.

MRS. VARNER: Excuse me, Mr. Chair, Mrs. Tart, she is proposing 11 parking spaces. The County requires one parking space per employee which there are nine, plus two off-street parking spaces, making it 11. So she is complying with the parking requirements.

MRS. WRIGHT: I have a letter also here from Gary Burton.

ACTING CHAIR SWANSON: If I could ask a question, while Mr. Raynor is looking at the letter, of the site plan that is up on the screen, the 11 spaces that were mentioned just a minute ago, do those include what is indicated as a handicapped space plus the loading and unloading spaces; the two parallel spaces on the front of the existing building? Are those all the 11 spaces?

MRS. VARNER: The loading and unloading are two different spaces, but the handicapped space is included in the 11 parking spaces. With the two spaces for the loading and unloading, that makes it 13, but we are not counting those.

ACTING CHAIR SWANSON: Okay.

MS. SPEICHER: Mr. Chair, could we have the record reflect that Mr. Gary Burton that Mrs. Wright referred to as the author of that document is an employee of North Carolina Department of Transportation, a local office.

ACTING CHAIR SWANSON: Actually it's from Woody Lum, and he says he got the approval from Mr. Burton.

MRS. WRIGHT: Yes.

MRS. TART: For a modification of this type, are the neighbors notified or anything like that?

MRS. VARNER: Yes ma'am, we notified the neighbors in a thousand foot radius. For the record I have received no phone calls in favor or opposition to the case.

MR. HUMPHREY: Mr. Chairman, I have a question, please. Just for my own sanity here, your proposal for 50 additional children, I believe, is there any guideline about how many people per square foot or anything like this in the code; or am I getting into something else?

MRS. WRIGHT: Yes, you must meet –

MR. HUMPHREY: It just seems like there are a lot of – children, 110.

MRS. WRIGHT: You must meet the square footage per child, it is 25 square feet per child. The ratio would be 1:25 for school-aged children.

MS. SPEICHER: If I could, Mr. Humphrey, that is a State requirement. Cumberland County, for zoning purposes, does not address the square footage per child because the State already addressed it.

MR. HUMPHREY: Because the State has already addressed it?

MS. SPEICHER: Yes.

MR. HUMPHREY: And she is operating under the State on the number of kids.

MS. SPEICHER: Under a State license, yes, sir.

MR. HUMPHREY: Okay, and this would fall – well we don't have anything to do with the State requirements.

MS. SPEICHER: Right, but the State will not issue her a license to increase the number of children until she gets local zoning approval.

MR. HUMPHREY: Okay, thank you.

ACTING CHAIR SWANSON: If I could ask a question, I don't know whether to ask the staff or Mr. Raynor. Are we modifying the existing special use permit or do we need to go through each of the conditions – the requisite conditions to find for the expansion of the Special Use Permit?

MS. SPEICHER: Yes, Chair, we still need to go through the same conditions to change the original approval of the Special Use Permit.

ACTING CHAIR SWANSON: Okay. Mrs. Wright, if I could ask a question, do you have any information, and this may not be a fair question, but do you have any information concerning the proposed expanded use, if it will have any adverse affect on values of surrounding properties?

MRS. WRIGHT: No.

ACTING CHAIR SWANSON: Have you had any complaints since you've been in operation at that location; have you had any complaints from surrounding neighbors concerning noise, either from children playing or traffic dropping children off?

MRS. WRIGHT: No, I have not.

ACTING CHAIR SWANSON: If somebody else would like to ask a question, feel free.

MS. SPEICHER: If I could, just for the Board's information, as part of the research, when an application is submitted, we send it to code enforcement. They check for any active complaints or past complaints that have been called into the County.

ACTING CHAIR SWANSON: Have there been any complaints?

MS. SPEICHER: No, sir.

MRS. TART: I have a question, will it be supervised at all times?

MRS. WRIGHT: Yes it will. The ratio is 1:25, and we are going to have three teachers employed in that building.

ACTING CHAIR SWANSON: Can I ask a question to the staff? Would it be a, and this may not be a fair question, so if it's not, please let me know. Would it be a reasonable inference that the lack of complaints would indicate that the existing use or even the proposed expanded use would be in keeping with the harmony of the surrounding community?

MS. SPEICHER: I'm sorry Chair, that is an inference the Board would have to make. It is not something we can make, but we can state, and clearly state, and we have a document in our file to back us up, that we have had no complaints whatsoever.

ACTING CHAIR SWANSON: Okay, but it would be a reasonable inference for a Board Member to make based on –

MS. SPEICHER: In my opinion, yes.

ACTING CHAIR SWANSON: Any other questions?

MRS. TART: What ages do you anticipate, and what would be the maximum age for after school kids?

MRS. WRIGHT: School-aged children between the age of five to 12.

MRS. TART: No teenagers, probably?

MRS. WRIGHT: No.

MRS. TART: They usually look after themselves.

ACTING CHAIR SWANSON: Do we have any other questions?

MR. HUMPHREY: There is a need, you have already established a need for this type of use.

MRS. WRIGHT: Oh, yes.

MR. HUMPHREY: You have got people knocking down your doors?

MRS. WRIGHT: Yes, we have been in business for 13 years. I have been at this actual facility for seven years, and there is a big need. Parents need to drop their kids off the hours that we have – that we would be operating would help accommodate the need of families that have to be at work early and they are not able to drop their children off. So we take them to school and we pick them up.



ACTING CHAIR SWANSON: Any other questions? Those are all the questions we have right now. Thank you. If I could remind you that if any of the Board members have a question that you are still subject to the oath that you took. Thank you.

MRS. WRIGHT: Thank you.

ACTING CHAIR SWANSON: Mr. Wright, I understand you signed up to speak.

MR. WRIGHT: I'm just here for support.

ACTING CHAIR SWANSON: We do not have anyone signed up in opposition of the proposed modification to the Special Use Permit?

MRS. VARNER: No, Mr. Chair.

ACTING CHAIR SWANSON: I'm going to close the public portion of the hearing for discussion amongst the board members.

**Public Hearing closed.**

MR. HUMPHREY: The questions I had are handled by the State, so that was my only concern, that there were going to be 110 kids there, but that is covered by the State, so I have no other questions.

MR. DAVIS: My only other question is, I think it's answered by the site plan; is there an additional septic being added for that building so that it will accommodate the number of people?

MRS. VARNER: Yes, sir, the applicant is going to be required to get a new permit for the other building.

ACTING CHAIR SWANSON: Is this site on well or public water?

MRS. VARNER: They have a septic right now.

ACTING CHAIR SWANSON: No, the water?

MRS. VARNER: Water – they have a connection to Aqua America.

ACTING CHAIR SWANSON: Thank you. Any other discussions? If not I will entertain a motion.

MR. DAVIS: Mr. Chair, in regards to case P09-08-C I would like to make the motion relative to the following case facts: **Case Fact 1:** The use will not materially endanger the public health or safety if located according to the plan submitted, the proposed site plan. **Case Fact 2:** The use meets all required conditions and specifications. **Case Fact 3:** The use will maintain or enhance the value of adjoining or butting properties or that the use is a public necessity. I think it was obviously stated that it is a necessity and we have had no complaints. **Case Fact 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. We had the additional document stating that NCDOT has approved the ingress/egress to Camden Road. With those being said and heard, I would say the applicant shall complete the development strictly in accordance with the application and the site plan submitted and is approved by the Board, a copy of which will be filed at the Planning & Inspections Department.

The applicant is the responsible party for the information contained within the plan, included, but not limited to the property boundaries, easement, and right-of-way boundaries. The applicant property owner is the responsible party to ensure compliance with all other Federal, State and local regulations, including but not limited to North Carolina Building Code. A maximum of 110 children will be permitted.

Do we need to set a date that this needs to be completed by? I'm sure that they are more interested in that than we are.

MS. SPEICHER: Currently with the special – the session law from the General Assembly, they have actually suspended any expiration of approvals from January 1, 2008 through December 31, 2010 concerning the development of land. So even if you set a date, you could not set it any earlier than December 31, 2011 by ordinance they are given one year, so it would be December 31, 2011.

MR. DAVIS: Okay, I think you are probably more than covered with that. So we will just leave that open. I would say that I recommend approval based on those facts and those conditions.

MRS. TART: I second that motion.

ACTING CHAIR SWANSON: We have a motion, and it's been seconded, all in favor, all opposed.

<b>Swanson:</b>	<b>Yes</b>
<b>Davis:</b>	<b>Yes</b>
<b>Tart:</b>	<b>Yes</b>
<b>Dykes:</b>	<b>Yes</b>
<b>Humphrey:</b>	<b>Yes</b>

**The motion was approved unanimously subject to the conditions that were mentioned.**

ACTING CHAIR SWANSON: Congratulations, you have got your permit.

MRS. WRIGHT: Thank you.

8. DISCUSSION

ACTING CHAIR SWANSON: There is a discussion on P09-50, Bladen Bluff Watershed.

MS. SPEICHER: I just included that in your packet trying to keep you informed. This land area is Southern Grays Creek, and the southwestern portion of Turnbull area. I know it's very hard to make out on this map. We are taking it to the Planning Board in November, then County Commissioners shortly thereafter for adoption and addition to the watershed. I just did not want you to think we lost it if we show up with a high density development watershed case on County Line Road. It has not been adopted yet. The river has been reclassified by the State, so it is just a matter of time and the process it has to go through.

I would also like to add, if it would help Mr. Humphrey, concerning the State requirements versus the County's requirements on day cares. The way I try to explain it to people, is that zoning is intended to regulate and protect the use of land and the effect of that use in the surrounding areas versus State regulations that are intended to protect the children which is why they go into the square footage and all this per child, and we do not.

For your knowledge, Mr. Newsome, Randy Newsome was appointed, and he did accept, as the Alternate on the Board in place of Mr. Swanson, he replaced Mr. Swanson's alternate position.

9. ADJOURNMENT

There being no further business, the meeting adjourned at 7:30 p.m.

**Members:**  
George Quigley, Chair  
John R. Swanson, Vice-Chair  
Oscar L. Davis, III  
Melree Hubbard Tart  
Joseph M. Dykes



**Alternates:**  
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## ***CUMBERLAND COUNTY BOARD OF ADJUSTMENT***

130 Gillespie Street  
Fayetteville, NC 28301  
(910) 678-7602

**2010**

### ***COUNTY BOARD OF ADJUSTMENT***

#### **DEADLINE/MEETING SCHEDULE**

<b><u>Application Deadline</u></b>	<b><u>Meeting Date</u></b>
Thursday, December 10, 2009	Thursday, January 21, 2010
Tuesday, January 12, 2010	Thursday, February 18, 2010
Wednesday, February 10, 2010	Thursday, March 18, 2010
Thursday, March 11, 2010	Thursday, April 15, 2010
Wednesday, April 14, 2010	Thursday, May 20, 2010
Tuesday, May 11, 2010	Thursday, June 17, 2010
Thursday, June 10, 2010	Thursday, July 15, 2010
Wednesday, July 14, 2010	Thursday, August 19, 2010
Thursday, August 12, 2010	Thursday, September 16, 2010
Wednesday, September 15, 2010	Thursday, October 21, 2010
Tuesday, October 12, 2010	Thursday, November 18, 2010
Tuesday, November 9, 2010	Thursday, December 16, 2010

**NOTE: Deadlines are set 24 working days prior to the Board meeting date.**

Created 10/19/09 (msm)

**P09-09-C**  
**SITE PROFILE**

**P09-09-C:** CONSIDERATION OF A REQUEST FOR A VARIANCE FROM THE COUNTY ZONING ORDINANCE, SECTION 927, SUB-SECTION C.1, TO ALLOW YARD SETBACKS OF UP TO 33 FEET WHERE 220 FEET IS REQUIRED FOR A 220 FOOT TOWER, AND A SPECIAL USE PERMIT FOR A TOWER IN A RR RURAL RESIDENTIAL DISTRICT ON A .36+/- ACRE PORTION OF A 97.77+/- ACRE TRACT; LOCATED AT 1511 LAKE UPCHURCH DRIVE; SUBMITTED BY THOMAS H. JOHNSON, JR., NEXSEN PRUET, PLLC ON BEHALF OF AMERICAN TOWERS, INC.; OWNED BY H.D. BOWEN, JR.

**Site Information:**

**Frontage & Location:** 880' +/- on Lake Upchurch Drive (parent tract); 125' (subject property)

**Depth:** 2,700' +/- (parent tract); 125' (subject property)

**Jurisdiction:** Cumberland County

**Adjacent Property:** Located on the west side of Robeson County line

**Current Use:** Vacant land

**Initial Zoning:** RR – February 3, 1977 (Area 7)

**Nonconformities:** None

**Zoning Violation(s):** None

**Surrounding Zoning:** North & East: RR & C1(P); South & West: RR

**Surrounding Land Use:** Residential (including 1-abandoned dwelling), farmland and woodland

**2030 Growth Vision Plan:** Urban Fringe Area

**Special Flood Hazard Area (SFHA):** None

**Soil Limitations:** Yes, hydric soils: Wo-Woodington loamy and Ra-Rains sandy loam

**Water/Sewer Availability:** Well/Septic

**Subdivision/Site Plan:** “Ordinance Related Conditions” attached-particular attention should be paid to 1 & 2

**Average Daily Traffic Count (2006):** 3,000 on Lake Upchurch Dr (SR 1116)

**Municipal Influence Area:** Town of Hope Mills

**Highway Plan:** Fayetteville Outer Loop is identified in the Highway Plan as a major thoroughfare. This proposal calls for a multi-lane facility (U-2519) with a right-of-way of 250 feet. Road improvements are included in the 2009-2015 MTIP. This property will be directly impacted by the Fayetteville Outer Loop (located inside the 1000 foot corridor)

**Cumberland County Zoning Ordinance Reference:** Section 927 Tower

**Notes:**

**1. County Zoning Ordinance, Section 927 Tower (Variance Request):**

C. Setbacks: In residential/agricultural zones, a tower less than 300 feet in height must be set back from all adjacent property lines and/or lease lines a distance not less than the height of the tower. (Tower provisions adopted January 23, 1996)

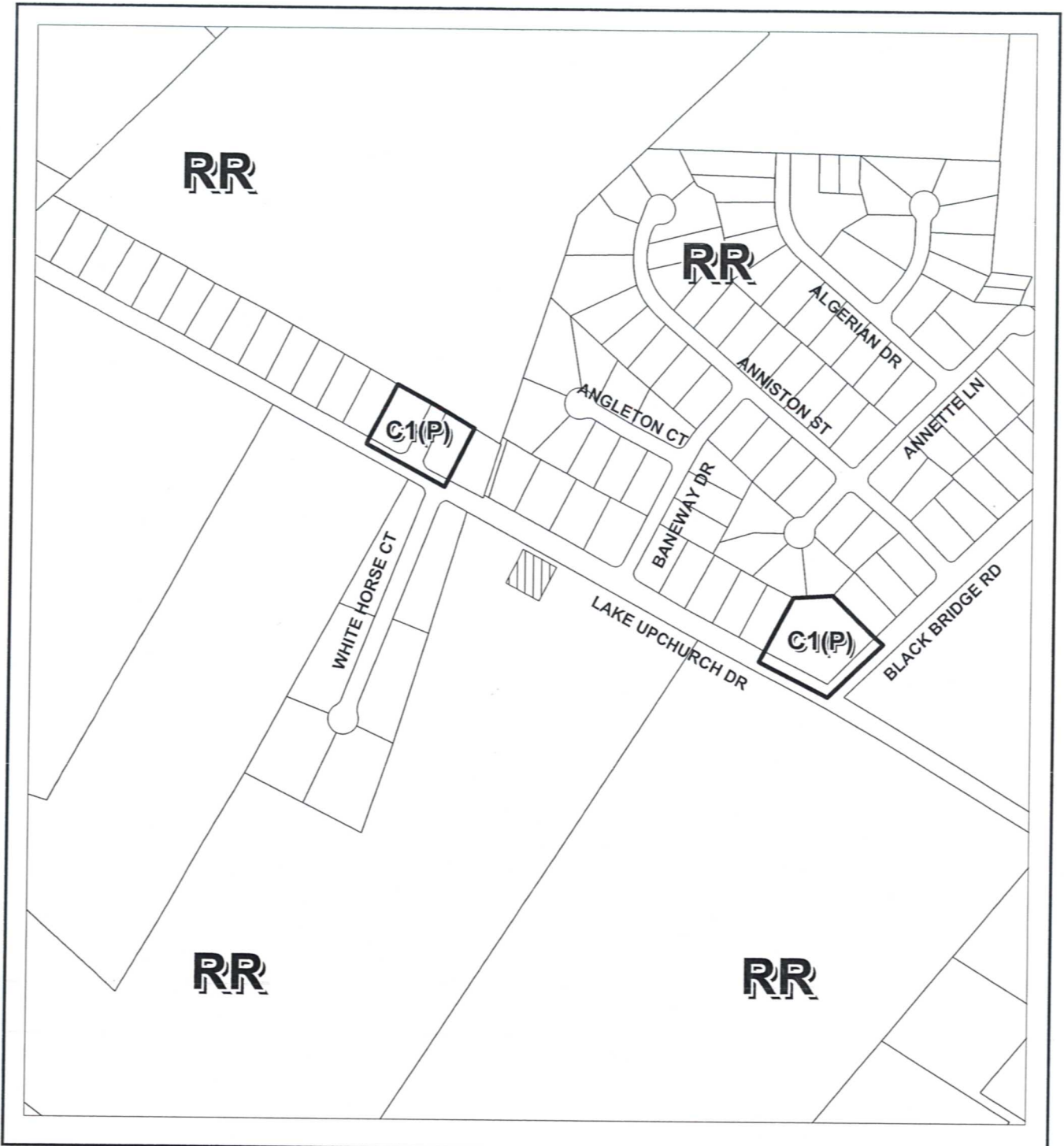
**2. Contents of the application:**

- a. Proposed tower height/type: 220' Monopole (no outside storage at the tower site)
- b. 0.36 acre lease area (excluding easements)
- c. 25' wide access & utility easement for tower site
- d. No employees on site, tower will be monitored and maintained monthly
- e. Licensed appraiser's affidavit stating use will not be detrimental to property values
- f. Licensed engineer's statement signed and sealed, stating tower will be structurally sound
- g. American Tower Affidavit certifying tower will meet Federal, State and local laws including FCC and FAA

**3. Summary of Request:** Applicant states tower cannot meet the setbacks due to the limitations created by the future Fayetteville Outer Loop. The tower will provide better wireless coverage in the area, access to emergency services and the public will benefited.

**First Class and Record Owners' Mailed Notice Certification**

*A certified copy of the tax record owner(s) of the subject and adjacent properties and their tax record mailing address is contained within the case file and is incorporated by reference as if delivered herewith. The record owners' certified receipt of notice is also included.*



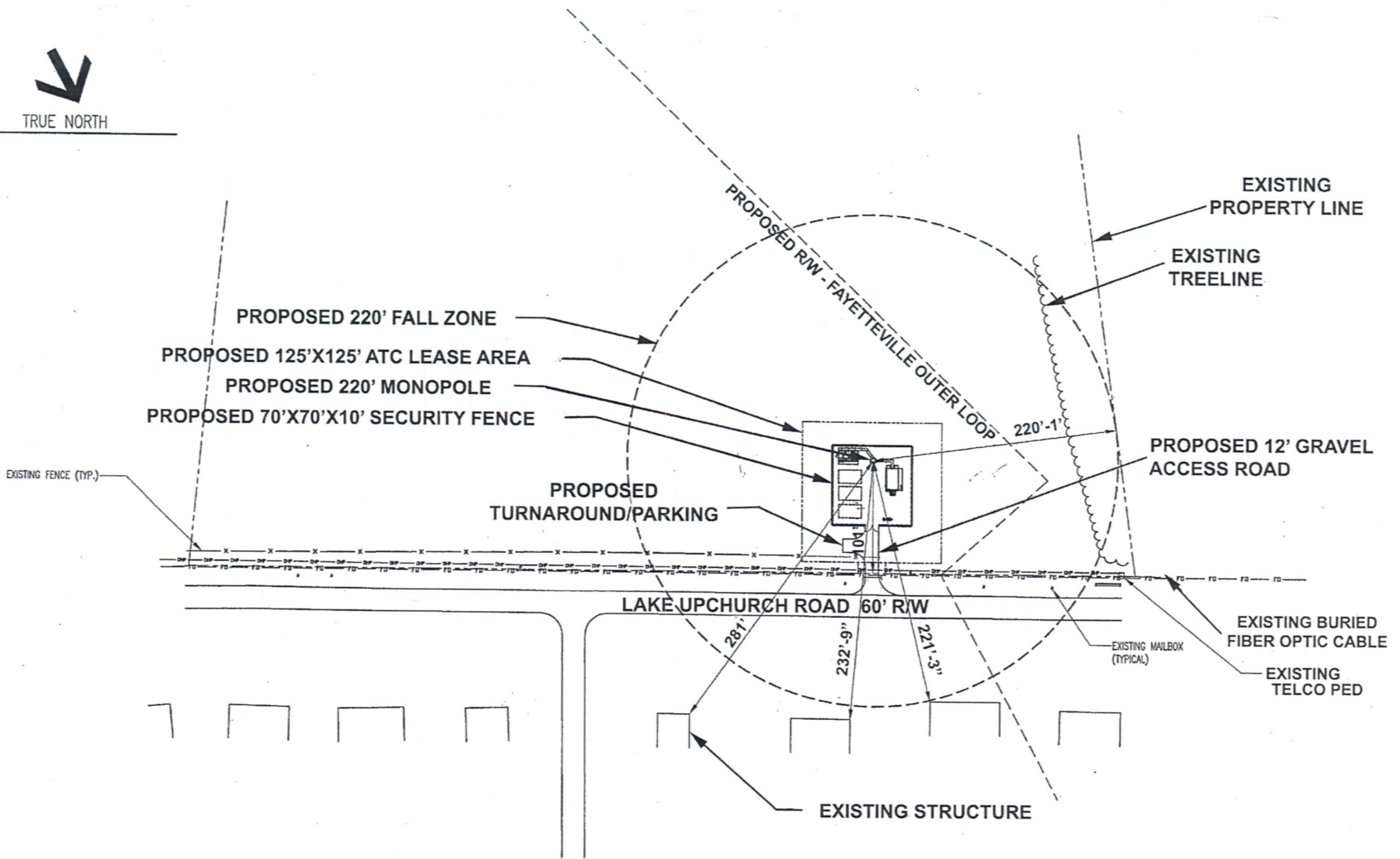
SCALE IN FEET

## BOARD OF ADJUSTMENT VARIANCE/SPECIAL USE PERMIT

<b>ACREAGE: 0.36 AC.+/-</b>	<b>HEARING NO: P09-09-C</b>	
<b>ORDINANCE: COUNTY</b>	<b>HEARING DATE</b>	<b>ACTION</b>
<b>GOVERNING BOARD</b>		



TRUE NORTH



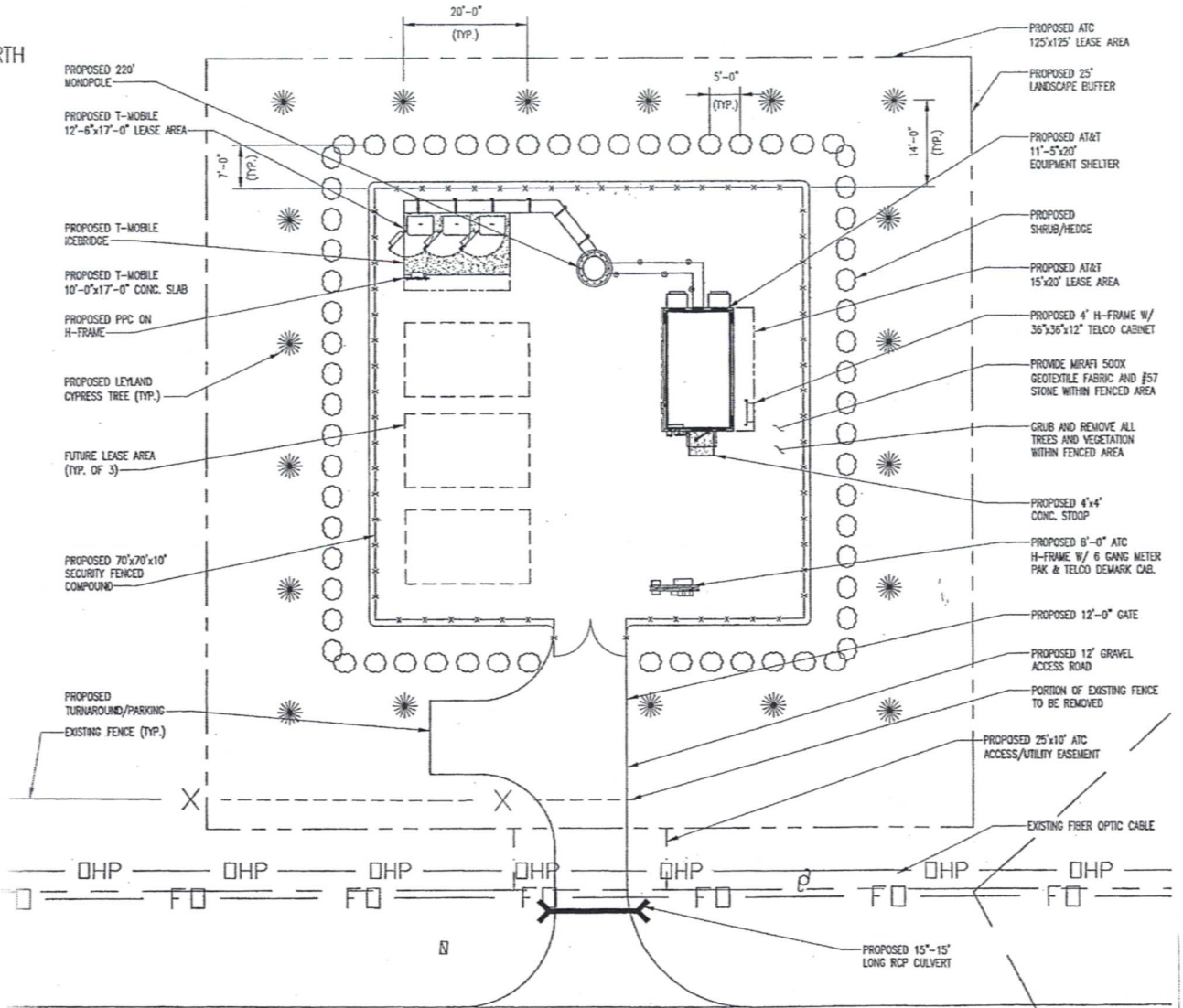
**BOARD OF ADJUSTMENT  
VARIANCE & SPECIAL USE PERMIT**

**REQUEST: TO ALLOW YARD SETBACKS OF UP TO 33 FEET WHERE 220 FEET IS REQUIRED FOR A 220 FT TOWER AND A SPECIAL USE PERMIT FOR A TOWER IN A RR DISTRICT**

**CASE: P09-09-C ACREAGE: 0.36 AC +/-**

**ZONED: RR SCALE: NTS**

\*SCALED DETAILED SITE PLAN IN FILE AVAILABLE FOR REVIEW UPON REQUEST



# P09-09-C

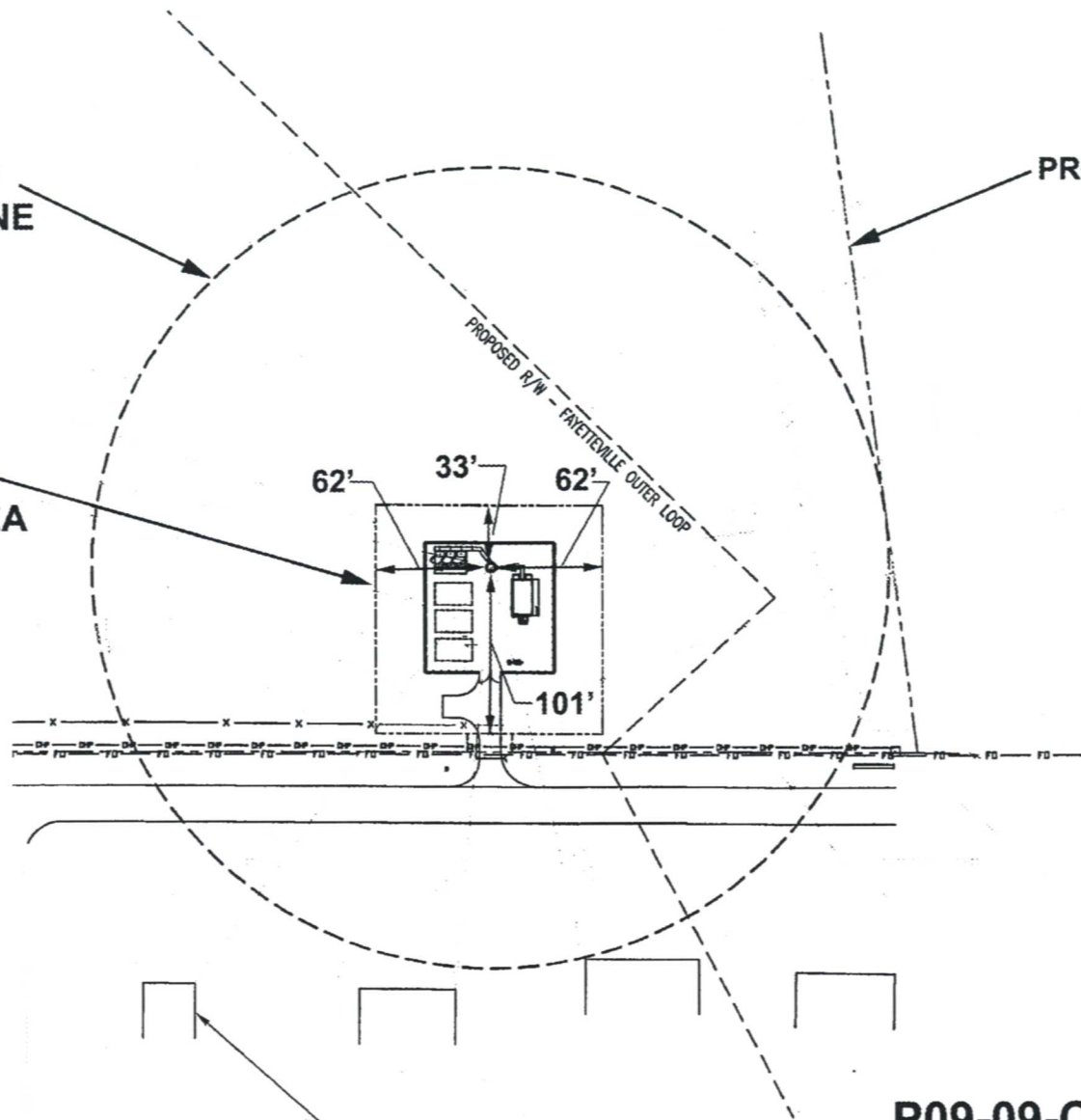
\*SCALED DETAILED SITE PLAN IN FILE AVAILABLE FOR REVIEW UPON REQUEST



**PROPOSED  
220' FALL ZONE**

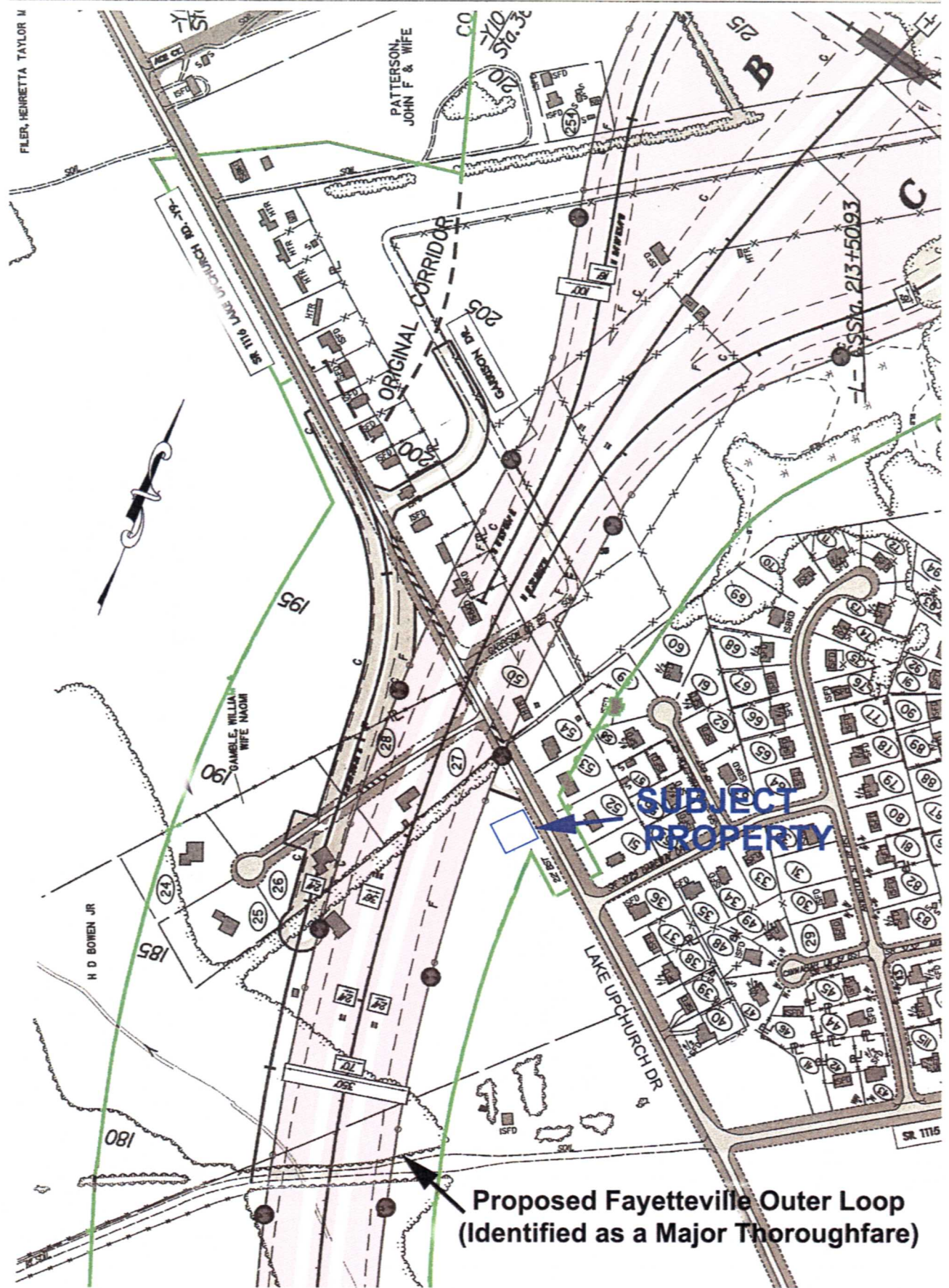
**EXISTING  
PROPERTY LINE**

**PROPOSED  
125'X125'  
ATC LEASE AREA**



**P09-09-C**

FILER, HEIRETTA TAYLOR M



**Proposed Fayetteville Outer Loop  
(Identified as a Major Thoroughfare)**

**SUBJECT  
PROPERTY**

## **Board of Adjustment – Special Use Permit**

### **DRAFT**

#### Ordinance Related Conditions

##### **Pre-Permit:**

1. Because the subject property will be directly impacted by the Fayetteville Outer Loop (located inside the 1000 foot corridor). The developer must contact the Transportation Planning Section of the Planning and Inspection Department prior application for any permits to be issued on this site – refer to project number “U-2519”. (Note: The project calls for a multi-lane facility with a right-of-way of 250 feet.)

The developer must provide the Code Enforcement Section with written verification that a NC Department of Transportation (NCDOT) variance is not required or that a variance has been approved by the NCDOT prior to the Code Enforcement Section issuing permits for this site.

2. If the proposed lease area for the proposed cell tower is to be recorded as lease lot and split out for tax or other purposes, prior to application for any permits, the developer must submit to the Planning and Inspections Department a subdivision review to subdivide the lease lot.
3. The minimum acceptable road frontage for subdivision purposes in this area is 20’ in width; if the lot is to be split out for tax or other purposes, in order to get a permit, the area shown as an “ingress/egress easement” must be made a part of the lot and must be a minimum of 20’ in width.

##### **Permit-Related:**

4. The owner/developer(s) of these lots must obtain detailed instructions on provisions of the County Zoning Ordinance and permits required to place any structure within this development from the County Code Enforcement Section, Room 101 in the Historic Courthouse at 130 Gillespie Street. For additional information, the developer should contact a Code Enforcement Officer.
5. If applicable, the County Health Department must approve water and sewer plans prior to application for any permits. Site and soil evaluations must be conducted on the property by the County Environmental Health Department prior to application for permits. A copy of the Health Department approval must be provided to Code Enforcement at the time of application for any building/zoning permits. (Note: All Health Department requirements must be met prior to issuance of final permits.) (Section 2306 A, Water and Sewer, County Subdivision Ordinance)
6. New development where the developer will disturb or intends to disturb more than one acre of land is subject to the Post-Construction Stormwater Management Permitting Program (Phase II Stormwater Management Requirements) administered by the Division of Water Quality, North Carolina Department of Environment and Natural Resources. If one acre or more of land is to be disturbed, prior to the issuance of any building/zoning permits for this site, a copy of the State’s *Post-Construction Permit* must be provided to County Code Enforcement.
7. For any new development where the developer disturbs or intends to disturb more than one acre of land, the developer must provide the Code Enforcement Section with an approved NC Department of Environment and Natural Resources (NCDENR) sedimentation and erosion control plan (S&E) prior to any application for permits. (Note: If any retention/detention basins are required for state approval of this plan, then three copies of a revised plan must be submitted and approved by Planning & Inspections prior to application for any building/zoning permits.) A copy of the NCDENR approval must be provided to Code Enforcement at the time of application for any building/zoning permits.
8. The developer must provide a site-specific address and tax parcel number at the time of building/zoning permit application.

9. The building final inspection cannot be accomplished until a Code Enforcement Officer inspects the site and certifies that the site is developed in accordance with the approved plans.

**Site-Related:**

10. All uses, dimensions, setbacks and other related provisions of the County Subdivision and Zoning Ordinances for the RR zoning district must be complied with, as applicable.
11. This conditional approval is not approval of any freestanding signs. If a freestanding sign is desired, re-submittal of the site plan is required prior to application for any freestanding sign permits. Attached signage for this development must be in accordance with the applicable sign regulations as set forth in Article XIII of the County Zoning Ordinance and that the proper permit(s) must be obtained prior to the installation of any permanent signs on the property. (Note: This conditional approval is **not** approval of the size, shape, or location of any signs.)
12. "Lake Upchurch Road" must be labeled as "SR 1116 (Lake Upchurch Road)" on all future plans.
13. For any new development, an adequate drainage system must be installed by the developer in accordance with the NC Department of Environment and Natural Resources' (NCDENR) *Manual on Best Management Practices* and all drainage ways must be kept clean and free of debris. (Section 2306 D, County Subdivision Ordinance)
14. For new development, all utilities, except for 25kv or greater electrical lines, must be located underground. (Section 2306 C, County Subdivision Ordinance)
15. This review does not constitute a "subdivision" approval by NC Department of Transportation (NCDOT). A separate submittal to NCDOT will be required prior to consideration for addition to the system of any street within this development.
16. The developer must obtain a driveway permit from the NC Department of Transportation (NCDOT). A copy of the approved driveway permit must be provided to Code Enforcement at the time of application for building/zoning permits.
17. All lighting is required to be directed internally within this development and comply with the provisions of Section 1102 M, Outdoor Lighting, County Zoning Ordinance.
18. If lighting for the tower is required by the FAA, it shall meet or exceed the FAA standards.
19. A chain link fence a least ten feet in height and located at least ten feet from the base of the tower shall enclose the tower base.
20. An evergreen buffer area at least 25 feet wide is required to surround the tower compound and must shield the compound area from the entire tract. No structures, including guyed wires or anchors, may be constructed within the buffer. The buffer area shall be planted in accordance with Section 927.F, County Zoning Ordinance.
21. The owner/developer is responsible and liable for maintenance and upkeep of this site, all structures, and appurtenances, to include ensuring that the site is kept free of litter and debris, all grass areas mowed, all buffers and shrubbery kept trim and maintained, so that the site remains in a constant state of being aesthetically and environmentally pleasing.
22. All notes and calculations as shown on the site plan are to be considered as a part of this conditional approval.

**Advisories:**

23. The applicant is advised to consult an expert on wetlands before proceeding with any development.
24. The owner/developer is responsible for ensuring easements which may exist on the subject property are accounted for, not encumbered and that no part of this development is violating the rights of the easement holder.

**Other Relevant Conditions:**

25. This conditional approval is contingent upon continued compliance with the County's Subdivision and Zoning Ordinances.

26. The owner/developer be aware that every deed created for a lot being served by an on-site water and/or sewer system must contain the following disclosure when filed with the County Register of Deeds:

“Public water and/or sewer services are not available as of the date of the recording of this deed. On-site sewer disposal systems must be approved by the County Health Department.”

**If you need clarification of any conditions, please contact Ed Byrne at 910-678-7609 or Patti Speicher at 910-678-7605; otherwise, contact the appropriate agency at the contact numbers below.**

Contact Information (Area Code is 910 unless otherwise stated):

Subdivision/Site Plan/Plat	Ed Byrne	678-7609
Code Enforcement (Permits):	Ken Sykes	321-6654
County Health Department:	Danny Soles	433-3685
Town of Hope Mills:		424-4555*
Corp of Engineers (wetlands):	Ronnie Smith	(910) 251-4829
NCDENR (E&S):	Sally McKinney	433-3300
E911 Site-Specific Address:	Ron Gonzales	678-7616
Tax Parcel Numbers:		678-7549
NCDOT (driveways/curb-cuts):	Gary Burton	486-1496
Transportation Planning:	Bobby McCormick	678 7632
N.C. Division of Water Quality:	Mike Randall	(919) 733-5083 ext. 545

\*This is the main telephone number for the Town of Hope Mills; once connected, the caller will be directed to the various departments.

cc: Mike Bailey, Town of Hope Mills

**BOARD OF ADJUSTMENT**

LOCATION OF PROPERTY: 1511 Lake Upchurch Road, Parkton, NC 28371

OWNER: H. D. Bowen, Jr.

ADDRESS: PO Box 1007, Hope Mills, NC ZIP CODE: 28348

TELEPHONE: HOME 910-423-7374 WORK \_\_\_\_\_

AGENT: Nexsen Pruet, PLLC/Thomas H. Johnson, Jr.

ADDRESS: 201 Shannon Oaks Circle, Suite 100, Cary, NC 27511

TELEPHONE: HOME 910-616-3100 WORK 919-653-7800

**APPLICATION FOR A VARIANCE**  
**As required by the Zoning Ordinance or Code**

A. Parcel Identification Number (PIN #) of subject property: 0403-02-9183  
(also known as Tax ID Number or Property Tax ID)

B. Acreage: .359 acres Frontage: 125 feet Depth: 125 feet

C. Water Provider: N/A

D. Septage Provider: N/A

E. Deed Book 5170, Page(s) 287, Cumberland County Registry. (Attach copy of deed of subject property as it appears in Registry).

F. Existing and/or proposed use of property: Vacant Rural Residential/Wireless Telecommunications Tower

G. Section and provision of the Zoning Ordinance or Code from which a Variance is requested: Section 927C.1. Setbacks: Residential/Agricultural Zones

H. Nature and extent of hardship involved in strict application of the Zoning Ordinance or Code: Reserved right-of-way for I-295 prevents moving the tower to meet the required height of the tower setback from the property line. The setback as proposed will provide a height of the tower setback from any residential structures on the northeast side of the site and will be the height of the tower from all other property lines except the setback/fall zone will encroach on the proposed right-of-way for I-295.

**BOARD OF ADJUSTMENT**

LOCATION OF PROPERTY: 1511 Lake Upchurch Road, Parkton, NC 28371

OWNER: H. D. Bowen, Jr.

ADDRESS: PO Box 1007, Hope Mills, NC ZIP CODE: 28348

TELEPHONE: HOME 910-423-7374 WORK \_\_\_\_\_

AGENT: Nexsen Pruet, PLLC/Thomas H. Johnson, Jr.

ADDRESS: 201 Shannon Oaks Circle, Suite 100, Cary, NC 27511

TELEPHONE: HOME 910-616-3100 WORK 919-653-7800

**APPLICATION FOR A SPECIFIED/SPECIAL/CONDITIONAL USE PERMIT  
As required by the Zoning Ordinance or Code**

A. Parcel Identification Number (PIN #) of subject property: 0403-02-9183  
(also known as Tax ID Number or Property Tax ID)

B. Acreage: .359 acres Frontage: 125 feet Depth: 125 feet

C. Water Provider: N/A

D. Septage Provider: N/A

E. Deed Book 5170, Page(s) 287, Cumberland County Registry. (Attach copy of deed of subject property as it appears in Registry).

F. Existing use of property: Vacant Rural Residential

G. It is proposed that the property will be put to the following use: (Describe proposed use/activity in detail including hours of operation, number of employees, signage, parking, landscaping, etc.) \_\_\_\_\_

\_\_\_\_\_ Wireless Telecommunications Tower as shown on the attached Construction

\_\_\_\_\_ Drawings prepared by BC.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Appointment of Agent

The undersigned H.D. Bowen, Jr. ("Owner") does hereby appoint Nexsen Pruet, PLLC as his exclusive agent for the purpose of petitioning Cumberland County for a special use permit and variance applicable to the property located at 1511 Lake Upchurch Road, Hope Mills, NC 28348 for the location of a wireless telecommunications tower as described in the attached applications for special use permit and variance, including the following:

1. To submit the proper applications and the required supplemental materials.
2. To appear at public meetings to give representation and commitments on behalf of the Owner.
3. To act on the Owner's behalf without limitation with regard to any and all things directly or indirectly connected with or arising out of the applications for special use permit and variance.

This agency agreement shall continue in effect until written notice of revocation by the Owner is delivered to Cumberland County.

This the 26<sup>th</sup> day of September, 2009

Agent's Name, Address & Telephone

Signature of Owner(s)

Nexsen Pruet, PLLC



201 Shannon Oaks Circle, Suite 100

H.D. Bowen, Jr.

Cary, NC 27511

919-653-7800



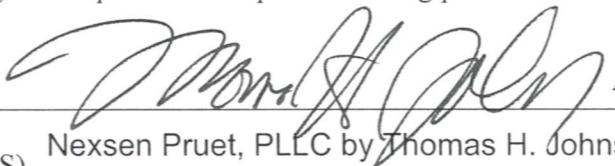
### STATEMENT OF ACKNOWLEDGEMENT

Regarding appearance before the Board of Adjustment, the undersigned owner(s), agents, or their assigns, by virtue of their signature(s) to this application, hereby acknowledge the following:

- That although appearance before the Board is not required, it is strongly encouraged;
- The Board will hear any and all arguments for and against this matter before them and such relevant facts will be given under sworn testimony;
- At the public hearing the Board has the authority to issue a final approval or denial decision on this request, or defer the request for additional information to be provided;
- If the petitioner or the representative of this application does not appear personally before the Board, whether there is opposition or not, the Board has full authority to consider the case and defer, approve, or deny the case.
- If the Board's action is to deny the matter before them, the course of appeal to their decision will be that of Cumberland County Superior Court. (Affected parties of the Board's decision have 30 days from proper notification which to serve notice of appeal).

Signed acknowledgement that the Planning and Inspections Staff has explained the application process and procedures regarding this request and the public hearing procedure stated above.

SIGNATURE OF OWNER(S)



PRINTED NAME OF OWNER(S)

Nexsen Pruet, PLLC by Thomas H. Johnson, Jr.

DATE

10/12/09

Only expressly authorized agents or assigns may sign this acknowledgement in lieu of the tax record owners' signatures.

**Thomas H. Johnson, Jr.**  
Special Counsel  
Admitted in NC

October 12, 2009

**VIA UPS**

Mr. Tom Lloyd, Director  
Cumberland County Planning and Inspections Department  
130 Gillespie Street  
Fayetteville, NC 28301

Re: American Tower Corporation  
Special Use Permit and Variance for  
Telecommunications Tower  
1511 Lake Upchurch Road, Parkton, NC 28371

Dear Mr. Lloyd:

Charleston  
Charlotte  
Columbia  
Greensboro  
Greenville  
Hilton Head  
Myrtle Beach

I represent American Tower Corporation in connection with the enclosed Applications for a Special Use Permit and Variance for a telecommunications tower at 1511 Lake Upchurch Road, Parkton, NC 28371. The owner of the property is the H.D. Bowen, Jr. Enclosed is an Appointment of Agent signed by Mr. Bowen authorizing us to pursue the special use permit and variance. I am also enclosing the signed Applications along with a check for \$400 for the necessary fees, a copy of the recorded deed, a copy of the site plan/construction drawings and all supporting materials. We request that this matter be placed on the agenda for the November 19, 2009, meeting of the Board of Adjustment.

**Raleigh**

The tower will be a monopole tower 220 feet in height on a site 125 feet by 125 feet in size immediately adjacent to Lake Upchurch Road. The site is in a wooded area which will be cleared only as necessary to construct the tower site. The site is zoned RR/Rural-Residential. The Cumberland County Zoning Ordinance (the "Ordinance") allows towers as a special use in the RR District. The variance is being requested because the site will not allow the full height of the tower setback required under Section 927 of the Ordinance because of the reserved right of way for I-295. The tower will be setback the height of the tower from any structures.

P.O. Box 30188 T 919.786.2764  
Raleigh, NC 27622 F 919.788.1104  
www.nexsenpruet.com E T.Johnson@nexsenpruet.com  
Nexsen Pruet, PLLC  
**Attorneys and Counselors at Law**

October 12, 2009

Page 2

The site plan as required under Section 927 of the Ordinance is included in the enclosed construction drawings. The construction drawings include all that is required under the Ordinance and the Applications.

Enclosed is a certification by a registered engineer that the tower will be designed to have the structural integrity and/or capacity to support or accommodate more than one user and the tower as designed will be structurally sound. The drawings show two proposed users, T-Mobile and AT&T, and space for up to three (3) additional users (Sheet A-2).

As required by Section 927B.3., a statement is enclosed with a map of the search area for the proposed tower showing that there are no existing towers, buildings or other useable structures suitable for collocation within the coverage area.

A statement by American Tower, the tower owner, is enclosed indicating its intent and willingness to permit shared use of the tower, and, as stated earlier, the construction drawings show space for up to three (3) users in addition to the initial two (2) users. American Tower also includes in its statement that it commitment to comply with all federal, state and local ordinances, including all Federal Communication Commission (FCC) and Federal Aviation Administration (FAA) rules and guidelines.

The tower as proposed will not be setback the height of the tower from the northern property line. However, the tower will be setback the height of the tower from any structures and will be setback 101 feet from the northern property line. A statement from DaVinci Engineering, Inc. is enclosed indicating that the tower is designed so that if it fails, it would bend at the 141 foot level causing it to fall within a maximum 78 foot radius, well within the existing property lines. The tower cannot be setback further than the height of the tower from the northern property line because of the proposed right of way for the I-295 outer loop. Even though buildings and structures can encroach within the setback of monopole towers, this proposed tower has no buildings or structures within the setback. A variance is being requested for the reduced setback.

As required by Section 927E., the tower base is enclosed in a chain link fence ten feet in height and the fence is a minimum of ten feet from the base of the tower. The landscape buffer required in subsection F. is detailed on Sheet L-1. The only exterior structures will be utility cabinets that typically enclose electrical or telephone equipment in residential areas. There will be no building or structure on the site that may be used as a work site for any worker. Only periodic maintenance, inspection and renovation of the facility will occur on the tower site.

As required by Section 927M., enclosed is a report prepared by Graham Herring, a licensed real estate broker. Mr. Herring states his opinion that the use will not be

October 12, 2009

Page 3

detrimental or injurious to the property values of the surrounding neighborhood. Mr. Herring supports his opinion based upon his experience with other tower sites in similar situations.

In compliance with Section 927O., enclosed is a report from AT&T that shows that its power density levels will be much less than both the federally approved and ANSI levels. Also enclosed is a statement from T-Mobile indicating that it too will operate at power density levels less than both the federally approved and ANSI levels, similar to those shown in the AT&T report.

The lighting on the site will be in compliance with FAA standards and the requirements of Section 927P. There will be no outside storage on the site.

Through compliance with the Ordinance provisions above, the site will not materially endanger the public health or safety. The power density levels are much lower than federal and ANSI standards. The tower is designed and setback from existing structures such that if it were to fail, the public will not be harmed. The tower will benefit public safety by providing better wireless coverage in the area. Many depend on their wireless devices to call public safety officials in the event of an emergency. In fact, wireless phones are often used in the home instead of traditional wireline phones.

This use as proposed meets all of the conditions and specifications of the Ordinance except the setback. However, the tower safety zone is much less than the setback set forth in the Ordinance. Based upon the proximity of the site to the I-295 corridor, a variance of the setback is justified.

The statement of Graham Herring demonstrates that the site will maintain the value of the adjoining or abutting properties. Wireless service is many times considered a public necessity because it is often the sole access that citizens have to emergency services.

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 Comprehensive Land Use Plan. The proposed tower will meet the infrastructure needs of this area of the County and will provide much needed access to emergency services, both of which are supported in the 2030 Growth Vision Plan. By virtue of this proposed tower site meeting the requirements of Section 927 for residential areas, the site is in conformity with the Comprehensive Land Use Plan as implemented by the Ordinance.

With respect to the variance being requested, there are extraordinary and exceptional conditions pertaining to the property because of the limitations created by the I-295 corridor. The I-295 corridor causes this site to be unusually shaped and restricts its

October 12, 2009

Page 4

ability to meet setback requirements. Approving the variance will not confer any special privileges on the applicant, as other residents in the district can file special use permits for a tower location. Literally following the setback requirements in this situation severely limits this owner in his ability to use his property because of the triangle created by the I-295 corridor and Lake Upchurch Road. The literal interpretation of the setback provision will deprive this owner from using his property for this use without justification. The report from DaVinci Engineering shows that the tower, if it fails, will be confined to the reduced setback being requested.

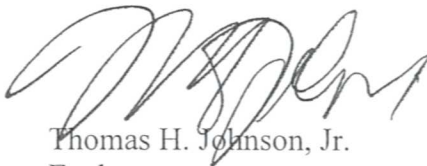
The fact that the Ordinance allows towers that comply with Section 927 in residential areas, the report of Graham Herring and the report of DaVinci Engineering support the conclusion that the proposed tower with the reduced setback is in harmony with the purpose and intent of the Ordinance and will not be injurious to the neighborhood or the general welfare. The purpose of the setback is to prevent injury if the tower fails. In this instance, even if the tower fails, the tower will be confined to a fall zone of a maximum of 78 feet in radius, well within the 125 foot by 125 foot site. Even though structures are allowed within the setback of monopole towers, there are no structures within the requested reduced setback.

The variance requested of a 101 foot setback from the northern property line is the minimum necessary to use the site as proposed. The use is permitted by special use and will not change the district boundaries.

Based upon the above, the requested variance meets the Ordinance requirements and is justified in this situation.

If you have any questions or need any additional information, please do not hesitate to contact me.

Very truly yours,



Thomas H. Johnson, Jr.  
Enclosures

Lori Epler,  
Chair  
Cumberland County

Roy Turner,  
Vice-Chair  
Cumberland County

Garland C. Hostetter,  
Town of Spring Lake  
Harvey Cain, Jr.,  
Town of Stedman  
Patricia Hall,  
Town of Hope Mills  
Charles C. Morris,  
Town of Linden



## COUNTY of CUMBERLAND

*Planning and Inspection Department*

Thomas J. Lloyd,  
Director

Cecil P. Combs,  
Deputy Director

Walter Clark,  
Sara E. Piland,  
Cumberland County

Benny Pearce,  
Town of Eastover

Donovan McLaurin  
Wade, Falcon, & Godwin

November 12, 2009

### MEMORANDUM

**TO:** County Board of Adjustment

**FROM:** Jeff Barnhill, Watershed Review Officer

**SUBJECT:** WS-09-01. CONSIDERATION FOR HIGH DENSITY DEVELOPMENT WATERSHED APPROVAL FOR RIVER LANDING CENTER OFFICE PARK, IN A MXD/CUD ZONING DISTRICT, FOR UP TO 70% IMPERVIOUS AREA; CONTAINING 16.00 +/- ACRES; LOCATED ON THE SOUTH SIDE SR 1611 (ANDREWS ROAD), WEST OF SR 1612 (FARMERS ROAD); SUBMITTED BY: DOUGLAS B. COOPER WITH MOORMAN, KIZER & REITZEL; OWNED BY: RIVER LANDING CENTER, LLC.

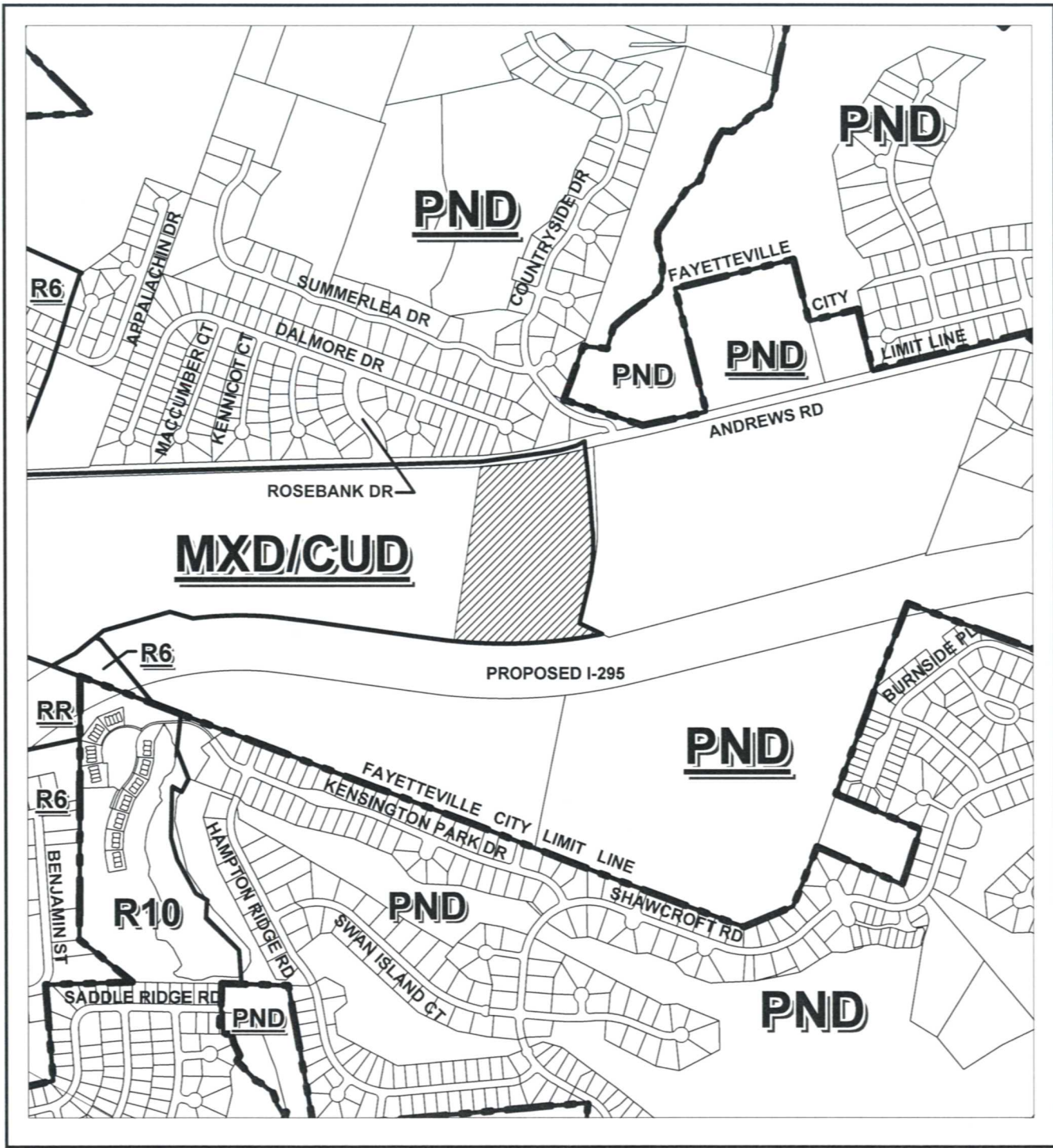
The attached documents have been submitted for your review and approval under the terms of the Cumberland County Water Supply Watershed Management and Protection Ordinance. This case is not a public hearing matter.

Please contact me at 910-678-7765 or by email: [jbarnhill@co.cumberland.nc.us](mailto:jbarnhill@co.cumberland.nc.us) if you have any questions.

Attachments:

1. Sketch Map
2. Site Plan
3. Pond Detail
4. Application
5. Draft Conditions of Approval
6. Evaluation of Application for High Density Development Proposal

cc: River Landing Center LLC, Owner/Applicant  
Douglas B. Cooper, PE, PLS w/ Moorman, Kizer & Reitzel, Inc.  
Harvey "Butch" Raynor, Interim County Attorney  
Patti Speicher, Land Use Codes



**MXD/CUD**

**PND**

**PND**

**PND**

**PND**

**PND**

**PND**

**PND**

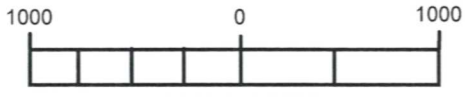
**R10**

**R6**

**R6**

**RR**

**R6**



SCALE IN FEET

# HIGH DENSITY WATERSHED

ACREAGE: 16.00 AC.+/-

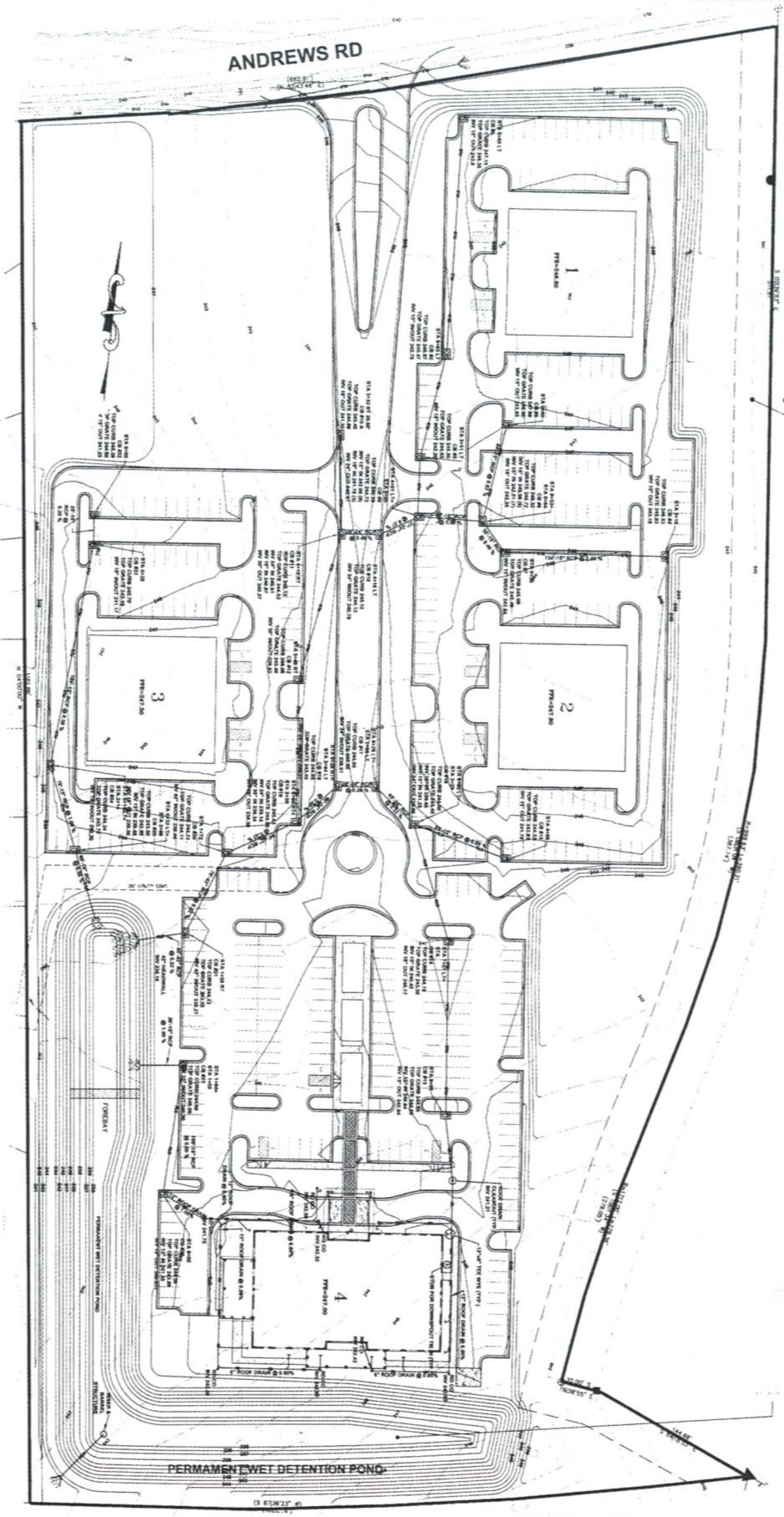
HEARING NO: WS09-01

ORDINANCE: COUNTY

HEARING DATE

ACTION

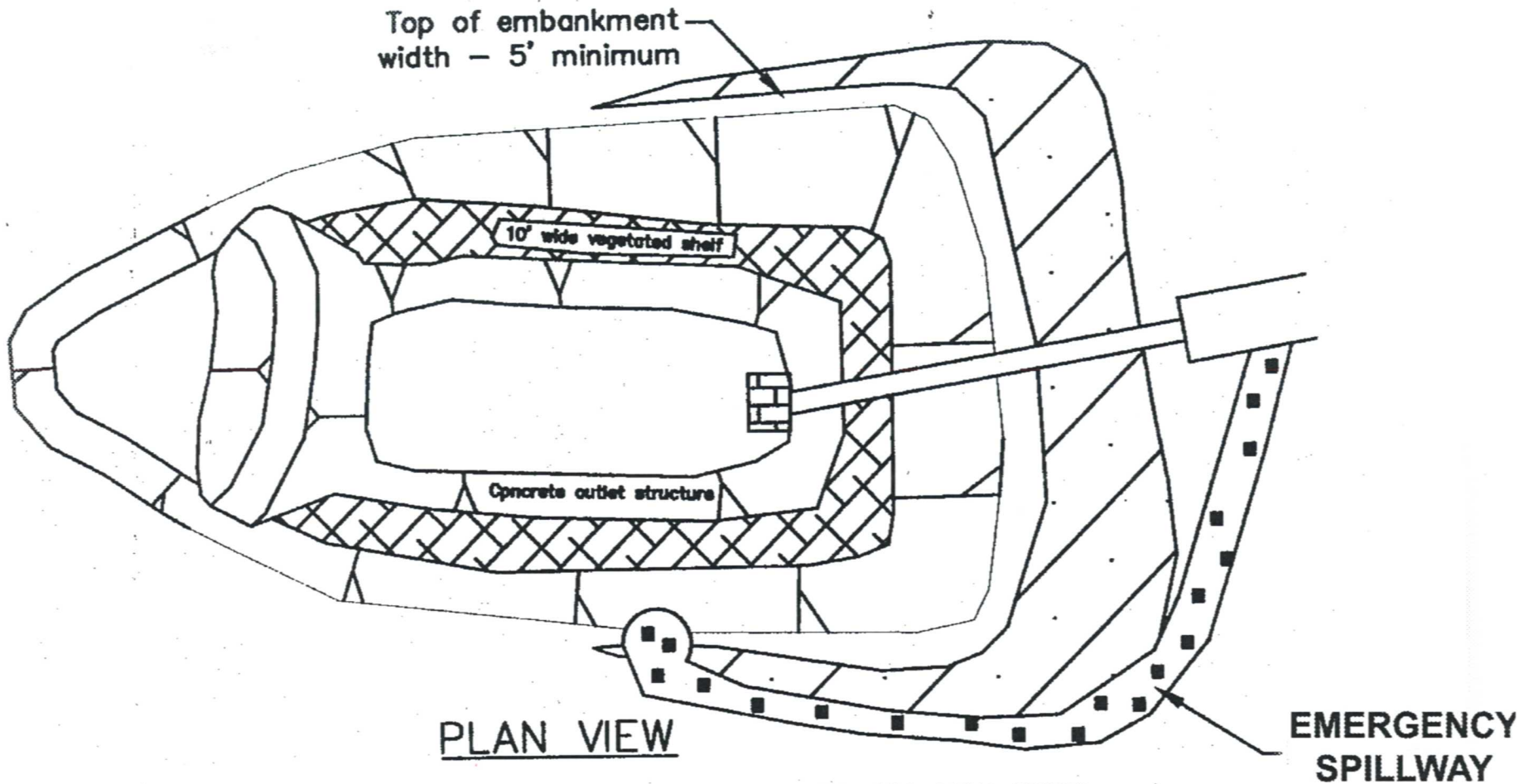
GOVERNING BOARD



**REQUEST: CONSIDERATION OF RIVER CITY LANDING FOR UP TO 70% IMPERVIOUS SURFACE HIGH DENSITY DEVELOPMENT APPROVAL - COUNTY WATERSHED PROTECTION ORDINANCE**  
**CASE NO: WS09-01 ACREAGE: 16+/-**  
**ZONING: MXD/CUD SCALE: NTS**  
 \*SCALED DETAILED SITE PLAN IN FILE AVAILABLE FOR REVIEW UPON REQUEST



PLAN VIEW



WET DETENTION BASIN ELEMENTS  
NTS

**WS09-01**

APPLICATION FOR WATERSHED APPROVAL AND PROTECTION PERMIT

DATE OF APPLICATION 10-12-09 CASE NO. WS09-01

Name of Owner/Applicant: River Landing Center LLC - Larry Walsh

Mailing Address: 6200 Ramsey Street

City/State/Zip: Fayetteville, NC 28311 E-mail: N/A

Telephone Number: 482-8084 Fax Number 482-8083

Name of Engineer/Surveyor: Moorman, Kizer & Reitzel, Inc. - Douglas B. Cooper, PE, PLS

Address: PO Box 53774 City, State, Zip: Fayetteville, NC 28305

Telephone Number: (910) 484-5191 Alternate: ( ) N/A

PARCEL INFORMATION: Use a separate sheet of paper to list the following information for each additional parcel of land.

Parcel ID (PIN) Number 0531-00-6765 Deed Book 8153 Page 0444

Size of Parcel 99.63 ac Lot # \_\_\_\_\_

Watershed (circle one) Cross Creek Little Cross Creek Cape Fear River Little River

Low Density (no fee) \_\_\_\_\_ High Density (\$200 fee) X Critical / Protected Area (circle one)

GENERAL DESCRIPTION OF WORK:

Name of Proposed Development: River Landing Center Office Park

Type of Development: Residential \_\_\_\_\_ Commercial X Industrial \_\_\_\_\_ Other \_\_\_\_\_

Total Area: 16 acres

Number of Parcels/Lots: 1 Smallest Lot: \_\_\_\_\_ acres Largest Lot: \_\_\_\_\_ acres

I certify that the information shown above is true and accurate, and is in compliance with the conditions for development under the terms of the Cumberland County Water Supply Watershed Management & Protection Ordinance.

(Seal)



Owner/Attorney in Fact

Date: \_\_\_\_\_

OFFICIAL USE

Date received: \_\_\_\_\_

Date referred to Board: \_\_\_\_\_

Notes:

PLAN CHECKLIST FOR WATERSHED DEVELOPMENT:

The plan shall be clearly and legibly drawn at a scale of not less than one inch to one hundred feet (1" = 100') (1" = 200' in extreme cases). The plan shall be prepared by a registered surveyor and shall include the following information prior to consideration by the Watershed Review Board:

Name of Development: River Landing Center Office Park

Date Submitted: \_\_\_\_\_

Location: Off of Andrews Road

Owner: River Landing Center LLC

Address: 6200 Ramsey St, Fayetteville, NC 28311 Tele: 482-8084

Surveyor: Moorman, Kizer & Reitzel, Inc.

Address: PO Box 53774, Fayetteville, NC 28305 Tele: 484-5191

Engineer: Moorman, Kizer & Reitzel, Inc.

Address: PO Box 53774, Fayetteville, NC 28305 Tele: 484-5191

a. Title Block:

X Development name, developer's name, North Arrow, scale (denoted graphically and numerically), date of plan preparation, location of subdivision (township, county and state), name of seal of registered surveyor preparing plat, deed book reference.

b. Vicinity Map:

X A sketch vicinity map showing the location of the subdivision in relation to the surrounding area. If the development/subdivision is a portion of a larger tract, the map is to show the relation of the development/subdivision to the larger tract.

c. Tract Boundaries:

X The boundaries of the tract, or portion thereof, to be subdivided, with all bearings and distances shown.

d. Property Lines:

X Property lines and owners' names of abutting properties and/or abutting subdivisions of record.

e. Natural Features:

X Significant natural features including marshes, lakes or streams, or other natural features affecting the site.

f. Existing Features:

X Existing features including structures and built-upon area and Cumberland County limit lines both on or adjacent to the land to be subdivided.

g Topographic Lines (if required by Watershed Administrator or Watershed Review Board):

  X   Topographic contour lines not to exceed ten (10) foot intervals when the area to be subdivided exceeds four (4) acres.

h Lot and Street Lines:

  X   All proposed lot and street right-of-way lines with approximate area and dimensions, lot numbers and proposed use of land.

i Drainage System:

         X   Proposed drainage facilities, including approximate location and dimensions of open drainage ways, storm sewers, culverts, retaining ponds, or areas where water is to be diverted through grading.

j Site Data:

  X   Total acreage in tract to be subdivided, smallest lot size (square feet) and total number of lots.

k The following documentation is to accompany the application:

  X   Written evidence acknowledging the submission and approval of the required soil erosion and sedimentation control plan.

PROTECTION PERMIT CHECKLIST FOR WATER SUPPLY WATERSHED DEVELOPMENT:

Applications for Watershed Protection Permits shall be accompanied by plans in duplicate and drawn to scale showing the following:

(a) Lot Dimensions.

Actual dimensions and acreage of the lot to be built upon and the location of any right of ways that may affect development on the lot.

Average lot size (in square feet).

(b) Built Upon Area.

The accurate location and use of all existing and proposed buildings and other structures, and for non-residential developments the location and size, in square feet, of all built upon areas including parking and loading facilities.

The percent of the project that will be covered with an impervious surface.

The area, in acres, to be left natural.

(c) Dwelling Units.

The total number of dwelling units proposed on the lot or tract.

(d) Streams/Rivers.

The accurate location of all perennial streams and natural drainage areas on the property.

(e) Adjacent Property Owners.

The names of adjoining property owners.

(f) Buffers.

The location of all required buffer areas.

(g) \*Storm water Control Devices (i.e., wet detention basins).

When local governments provide for a high density option, the location of any storm water control devices shall be shown and shall be designed, constructed and maintained according to the requirements as established by the Division of Environmental Management.

Storm Water Controls are used.

Lori Epler,  
Chair  
Cumberland County

Roy Turner,  
Vice-Chair  
Cumberland County

Garland C. Hostetter,  
Town of Spring Lake  
Harvey Cain, Jr.,  
Town of Stedman  
Patricia Hall,  
Town of Hope Mills  
Charles C. Morris,  
Town of Linden



# COUNTY of CUMBERLAND

Planning and Inspection Department

Thomas J. Lloyd,  
Director

Cecil P. Combs,  
Deputy Director

Walter Clark,  
Sara E. Piland,  
Cumberland County

Benny Pearce,  
Town of Eastover

Donovan McLaurin  
Wade, Falcon, & Godwin

DRAFT

## HIGH DENSITY WATERSHED CONDITIONAL APPROVAL SHEET

STAFF RECOMMENDATION: November 12, 2009

BOARD OF ADJUSTMENT DECISION: November 19, 2009

CASE NO: WS09-01

NAME OF DEVELOPMENT: River Landing Center

LOCATION: South side of SR 1611 (Andrews Road), west of SR 1612 (Farmers Road)

WATERSHED AREA: WS-IV-BW

PIN: 0531-00-6765

OWNER/DEVELOPER: River Landing Center, LLC.

ENGINEER/DESIGNER: Moorman, Kizer & Rietzel, Inc.

PLANNING STAFF RECOMMENDATION:

- PRELIMINARY
- EXTENSION
- CONDITIONAL APPROVAL
- DENIED
- REVISION

BOARD OF ADJUSTMENT:

- PRELIMINARY
- EXTENSION
- APPROVED CONDITIONALLY
- DENIED
- REVISION

### CONDITIONS OF APPROVAL:

- Prior to the granting of a *Watershed Protection Permit*, a financial security in the amount of \$102,326.25 for the maintenance and necessary repairs of the stormwater control structures as defined in Section 31A-63 of the *Cumberland County Water Supply Watershed Management and Protection Ordinance* must be posted with Cumberland County.
- In the event, the structures are to be sold as individual units (office condominiums) and prior to the granting of a *Watershed Protection Permit*, the developer must submit legal documents (owners' association incorporation, by-laws and declaration of covenants) to the Watershed Review Officer for the County Attorney's approval for legal sufficiency.
- Prior to issuance of the *Watershed Occupancy Permit*, a description of the area containing stormwater control structures along with any easements necessary for general access shall be recorded at the Cumberland County Register of Deeds. NOTE: The deed description is required to grant perpetual access to government agencies to all stormwater control systems, in order to accomplish or fulfill any service or function for which the agency is responsible to perform in their duties.

4. Prior to issuance of the *Watershed Occupancy Permit* and if the structures are to be sold as individual units (office condominiums), documentation must be submitted to the Watershed Review Officer signifying that the owners' association is in legal existence, and that the by-laws and declaration of covenants have been recorded. Prior to issuance of the *Watershed Occupancy Permit*, a recorded copy of the Operation and Maintenance Plan must be submitted to the Watershed Review Officer.
5. The detention pond will be inspected, at a minimum, annually by the Watershed Review Officer for compliance of maintenance and upkeep of the stormwater control systems; in the event, the pond is not maintained in a proper state of repair, all watershed related permits will be revoked.
6. The detention pond is required to be fenced and buffered in accordance with section 31A-23 of the *Cumberland County Water Supply Watershed Management and Protection Ordinance*.
7. The developer and the developer's engineer must demonstrate that the pond will retain water sufficient to establish the required permanent pool; upon excavation of the pond, if the existing soils are permeable and will not retain water, the developer shall be required to install a clay or synthetic liner to establish the permanent pool. In the event the
8. Building permits cannot be issued until a *Watershed Protection Permit* has been issued.
9. Prior to final building permits being issued, the Watershed Review Officer must first issue a *Watershed Occupancy Permit*. NOTE: The developer will need to contact Jeff Barnhill at 910-678-7765 to schedule an inspection of the site for compliance prior to issuance of any permits.
10. If any revisions to the approved site plan, three copies of the revised plan must be submitted to the staff for review and approval; dependent upon the extent of revision, may require final approval by the Board of Adjustment.
11. In addition to vegetative filters required for the overflow and discharge of the stormwater detention pond, all land areas outside the pond shall be provided with a ground cover sufficient to restrain erosion within 30 calendar days after any land disturbance.
12. The maximum built-upon area shall not exceed 70 percent (11.20 acres) of the entire 16 acre portion of the parent tract – initially 7.0 acres with future expansion of an additional 4.20 acres.
13. All conditions of approval of the Conditional Use District and Permit, Case No. P09-06, must be complied with.
14. The inspection and the release of the performance guarantee shall be in accordance with Section 31A-66 of the *Cumberland County Water Supply Watershed Management and Protection Ordinance*.
15. These conditions only represent the site plan accompanying this application for this specific request and presented to the Board of Adjustment, all/any future development or change in development plans for this site will require to be resubmitted for approval.

**IF YOU NEED CLARIFICATION OF CONDITION(S), PLEASE CONTACT JEFF BARNHILL AT 678-7765.**

## **Cumberland County Board of Adjustment**

### **Evaluation of Application for High Density Development Proposal**

Requirements for approval of the High Density Option for Watershed Case No. WS 09-01 by the Board of Adjustment:

1. The stormwater control system must meet the standards of the County Water Supply Watershed Management and Protection Ordinance. (Plans have been reviewed by the County Engineer's office and were approved on November 12, 2009.)
2. Cost estimate for the stormwater system must be a sufficient amount to complete the project. (County Engineer's office verified the sufficiency of the amount proposed in letter dated November 12, 2009.)
3. The *Operation and Maintenance Plan* must be to be legally sufficient and comply with the minimum standards of the County Water Supply Watershed Management and Protection Ordinance. (The *Operation and Maintenance Plan* have been found to be legally sufficient by the Interim County Attorney on November 12, 2009.)
4. The project must meet the standards of the zoning and subdivision ordinances. (The Cumberland County Board of Commissioners approved this project as a Conditional Use District and Permit rezoning case, subject to the contents of the application, site plan and *Ordinance Related Conditions*, P09-06, on April 20, 2009.)
5. The *Operation and Maintenance Plan* must be satisfactory and comply with at least the minimum standards and intent of the Ordinance. (The Watershed Review Officer has reviewed and approved this plan on October 27, 2009.)
6. The project must have an approved soil erosion and sedimentation control plan. (The North Carolina Department of Environment and Natural Resources, Land Resources Division has approved this plan on September 24, 2009.)
7. In addition to any other requirements provided by the County Water Supply Watershed Management and Protection Ordinance, the Board may designate additional conditions and requirements on the proposal to assure the use will be harmonious with the area in which the project is to be located and with the spirit of the ordinance.

#### **Example: Approval of Proposal**

A motion to approve Case No. WS09-01, subject to all Conditions of Approval, provided that it is developed according to the plan under the direction of the Watershed Review Officer in accordance with Section 31A-68 which authorizes the delegation of enforcement authority from the Board to the Planning & Inspections Director.

#### **Example: Disapproval of Proposal**

If the Board disapproves the application based on its findings, the reasons for such action shall be stated in the minutes of the Board.