

Members:
George Quigley, Chairman
Ed Donaldson, Vice Chair
Horace Humphrey
Melree Hubbard Tart
Joseph M. Dykes



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

CUMBERLAND COUNTY BOARD OF ADJUSTMENT

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

TENTATIVE AGENDA

APRIL 21, 2011

7:00 PM

A meeting of the Cumberland County Board of Adjustment is to be held on Thursday, April 21, 2011, at 7:00 p.m. in Hearing Room #3 of the Historic Courthouse at 130 Gillespie Street, Fayetteville, North Carolina. The agenda is as follows:

1. ROLL CALL
2. SWEAR IN STAFF
3. ADJUSTMENTS TO THE AGENDA
4. APPROVAL OF THE JANUARY 20, 2011 MINUTES
5. ABSTENTIONS BY BOARD MEMBERS
6. PUBLIC HEARING DEFERRALS
7. BOARD MEMBER DISCLOSURES
8. POLICY STATEMENT REGARDING APPEAL PROCESS
9. PUBLIC HEARING(S):
 - **P11-01-G/C:** CONSIDERATION OF A SPECIAL USE PERMIT TO ALLOW PUBLIC RECREATION/AMUSEMENT IN AN RR RURAL RESIDENTIAL AND A1 AGRICULTURAL DISTRICTS ON A 12.20+/- ACRE PORTION OF A 34.86+/- ACRE TRACT; LOCATED ON THE SOUTH SIDE OF MAIN STREET (NC HWY 82) AND THE WEST SIDE OF ROYAL STREET (SR 1802), SUBMITTED BY DEBORAH TEW GODWIN, MAYOR, ON BEHALF OF THE TOWN OF GODWIN (OWNER). (GODWIN/COUNTY)
10. BOARD HEARING(S):
 - **WS-08-04.** REVOCATION OF THE ANDREWS MINI STORAGE DEVELOPMENT'S PREVIOUS APPROVAL FOR UP TO 70% IMPERVIOUS LAND AREA UNDER THE TERMS OF THE COUNTY WATER SUPPLY WATERSHED

MANAGEMENT AND PROTECTION ORDINANCE, SECTION 31A-60 FOR HIGH DENSITY DEVELOPMENTS; ZONING: C(P), C(P)/CUD AND R6; TOTAL ACREAGE: 15.74 +/-; LOCATED AT THE SOUTHEAST QUADRANT OF SR 1600 (MCARTHUR ROAD) AND SR 1611 (ANDREWS ROAD), NORTH OF SR 1613 (HONEYCUTT ROAD);

- **WS-11-01.** CONSIDERATION OF ANDREWS MINI STORAGE REQUEST FOR UP TO 70% HIGH DENSITY DEVELOPMENT APPROVAL UNDER THE TERMS OF THE COUNTY WATER SUPPLY WATERSHED MANAGEMENT AND PROTECTION ORDINANCE, SECTION 31A-60; ZONING: C (P), C (P)/CUD AND R6; ACREAGE (PROPOSED & EXISTING DEVELOPMENT): 8.32 +/- ACRES (INCLUDING POND AREA), TOTAL ACREAGE UNDER CONSIDERATION: 15.74 +/- ACRES; LOCATED AT THE SOUTHEAST QUADRANT OF SR 1600 (MCARTHUR ROAD) AND SR 1611 (ANDREWS ROAD), NORTH OF SR 1613 (HONEYCUTT ROAD); OWNERS: DOROTHY M ANDREWS, CREEKWOOD HOLDINGS LLC, JACQUELINE C ANDREWS & ANDREWS STORMWATER OWNER'S ASSOCIATION.

11. RECOMMENDATION TO FILL VACANT ALTERNATE BOARD MEMBER POSITION
12. DISCUSSION
13. ADJOURNMENT

Members:

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



Alternates:

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

Cumberland County Board of Adjustment

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

MINUTES
JANUARY 20, 2011
7:00 P.M.

Members Present

George Quigley, Chair
Ed Donaldson
Melree Hubbard Tart
Horace Humphrey
Carrie Tyson-Autry

Absent Members

Joseph Dykes (excused)

Staff/Others Present

Patricia Speicher
Pier Varner
Melodie Robinson
Joan Fenley
Harvey Raynor (Deputy County
Attorney)

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

1. ROLL CALL

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

2. ADJUSTMENTS TO THE AGENDA

Ms. Speicher administered the Oath of Office to Ed Donaldson.

3. APPROVAL OF THE OCTOBER 21, 2010 MINUTES

A motion was made by Mrs. Tart and seconded by Mr. Humphrey to approve the minutes as submitted. The motion passed unanimously.

4. ABSTENTIONS BY BOARD MEMBERS

There were no abstentions by Board Members.

5. PUBLIC HEARING DEFERRALS

There were no deferrals.

6. BOARD MEMBER DISCLOSURES

There were none.

7. POLICY STATEMENTS REGARDING APPEAL PROCESS

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

8. PUBLIC HEARING(S)

Opened Public Hearing

- **P86-16-C:** REVOCATION OF A SPECIAL USE PERMIT (NEÉ CONDITIONAL USE PERMIT) OF A MANUFACTURED HOME USED AS A MOTOR VEHICLE SALES OFFICE AND A NIGHT WATCHMAN QUARTER, IN A C3 HEAVY COMMERCIAL DISTRICT ON 2.28+/- ACRES, LOCATED AT 634 WEST MANCHESTER ROAD (SR 1451); DONALD MOSS (OWNER)

MRS. VARNER: Mr. Chairman, Case#P86-16-C was approved on May 22, 1986. Tonight the staff is requesting a revocation of this approved Conditional Use Permit due to a violation of the zoning ordinance; a motor vehicle wrecking yard and junk yard, a motor vehicle repair garage and a grading company and an office business are operating on subject property.

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

MS. SPEICHER: Excuse me Chair, for the record, could I have you swear Mrs. Varner in for her testimony?

Chair Quigley swore in Pier Varner.

MRS. VARNER: Mr. Chair, I have a site profile in the packet. Would you like me to go over it?

CHAIR QUIGLEY: Yes, you can cover the important details.

Mrs. Varner reads the site profile.

CHAIR QUIGLEY: Please point to the encroachment.

Mrs. Varner points to the encroachment on the presentation.

CHAIR QUIGLEY: Does anyone have any questions for staff? Who brought the violations to the attention of the Board?

MRS. VARNER: Our Code Enforcement Officer, Joan Fenley is here and she can answer any questions regarding the violations.

CHAIR QUIGLEY: Does anyone have any questions for staff? Do you wish to talk to the Code Enforcement Officer relative to the violations? Is there anyone here to speak on this matter? It looks like all we've got is the Code Enforcement Officer. Would you please take the lectern and discuss what your opinion is on this.

Chair Quigley swore in Joan Fenley.

MS. FENLEY: My name is Joan Fenley and my address is 4 Briar Circle, Fayetteville, NC 28306.

CHAIR QUIGLEY: What sort of information did you determine by examining this property when you visited it?

MS. FENLEY: I originally received a complaint regarding the property. We did an inspection of the property and at the time it was determined it was not in compliance with the conditional use permit as stated. Subsequently, we received another complaint about the property. We revisited the property and determined that they had in fact, opened a junk yard in the timeframe from the first visit and noted them on the first violation and noticed them on the second violation.

CHAIR QUIGLEY: Did you bring those violations to the attention to whoever the owner was or to the occupants?

MS. FENLEY: I still have had no contact with the owner of the property. There was a gentleman there running the vehicle repair yard at the time. I spoke to him and he contacted the property owner, but I have not heard from the property owner. He subsequently moved out. There was a "for rent" sign on the property and another tenant has moved in opening a vehicle yard. They are currently storing vehicles on site in different states of dismantle and repair. The manufactured home does not have the correct underpinning that was required. On the adjoining side of the property they are running a salvage yard ...a grading yard. I was out there as of today and all violations still exist.

CHAIR QUIGLEY: You have no response from the owner or the property owner. It appears the people you are talking to are the renters of the property?

MS. FENLEY: Correct.

CHAIR QUIGLEY: Does anyone have any questions?

MR. DONALDSON: Are the owners now still the owners that asked for the variance in 1986?

MS. FENLEY: Junie Moss was the one who submitted at the time and currently Junie D. Moss submitted the application for the special use condition. The current owner is Donald A. Moss and parties of interest.

MRS. VARNER: Excuse me Chair, for the record, we sent a certified letter to the owner and it was received on January 8, 2011, at 402 Harrell Street, Spring Lake, NC 28390.

CHAIR QUIGLEY: That was the address of record you had for that owner?

MRS. VARNER: Yes sir.

CHAIR QUIGLEY: That was certified mail?

MRS. VARNER: Yes sir.

CHAIR QUIGLEY: You got a receipt back?

MRS. VARNER: Yes. If you would like, the certified mail document is available in the file.

CHAIR QUIGLEY: I understand. You do have the evidence present?

MS. FENLEY: Yes, Betsy Hobson signed for the letter. I have a copy of the delivery notice.

CHAIR QUIGLEY: Does anyone on the Board want to see that document?

MRS. TART: They were informed by this letter that this would be brought before this Board on this particular date and time?

MRS. VARNER: Yes, the owner was notified about this meeting day.

CHAIR QUIGLEY: Thank you. Does anyone have any questions for the Code Enforcement Officer?

CHAIR QUIGLEY: I'll accept a motion.

MR. DONALDSON: I have a question. How can they go from 1986 to 2010 with the Special Permit saying it had to be 120 feet setback when it was only 68 feet? I was just wondering how it went 24 plus years.

MR. RAYNOR: That is because nobody complained.

MRS. TART: If this permit were revoked, what are the procedures following our vote tonight? What will happen?

CHAIR QUIGLEY: The question was: What procedure will you follow to ensure that the revocation is enforced?

MS. FENLEY: We currently have two notices of violations existing and each has a penalty clause. The penalty on the first violation is a Class III misdemeanor and it is a \$500.00 a day fine with a maximum fine of \$40,000. The other fine carries the same penalty. We would move forward with enforcement of those.

CHAIR QUIGLEY: Do we need any more clarification, Mrs. Tart?

MR. RAYNOR: If they don't come into compliance then they will be brought before Environmental Court.

MS. SPEICHER: If I could also add, not for this specific case, but for every case that is typical of this. We work real hard and will continue to work hard to talk to Mr. Moss and get him in to explain to him what it would take to be able to do what he wants to do with this property. We won't just drop it and say "you are fined". We will continue trying.

MR. DONALDSON: When the code violation first came up, has anybody talked to Mr. Moss since that time? Has anybody had any contact with him other than the renter?

MS. FENLEY: We have a Deputy Sheriff that works with us and we have requested him to go out and try to attempt to deliver the letter and make contact with him [Mr. Moss] and the deputy was never able to make contact with him. However, they did sign for their letters.

MR. DONALDSON: The question is: Is the person who signed for it authorized to sign for him? Is that in fact his residence?

MS. SPEICHER: If I could be sworn in, I could help with this.

Chair Quigley swore in Patricia Speicher.

MS. SPEICHER: I spoke to Mr. Moss on several occasions. He did return my phone calls. His parents were the ones who got the conditional use approved. When they passed away, he didn't understand that was the only use that he could do without further approvals. I've explained the process to him several times; even on how to get the junk yard approved would take a rezoning for the property. We could process that, there is a lot of industrial out on Manchester Road. At that point, Jeff, in my office, explained to Mr. Moss the site plans and how to draw them. Mr. Moss has never returned our calls or contacted us since.

MR. DONALDSON: Okay, thanks.

CHAIR QUIGLEY: Did we get a motion on the floor? Do we have a motion?

MR. DONALDSON: I motion.

CHAIR QUIGLEY: It's been moved that we revoke the Special Use Permit previously issued on May 22, 1986. Do I have a second?

MS. AUTRY: Seconded.

CHAIR QUIGLEY: Is there any additional discussion on this issue? All in favor of this motion say aye.

The motion passed unanimously. There was no opposition.

IN FAVOR		OPPOSED
<u>QUIGLEY:</u>	YES	None
<u>DONALDSON:</u>	YES	
<u>TART:</u>	YES	
<u>HUMPHREY:</u>	YES	
<u>AUTRY:</u>	YES	

- **P11-01-C:** CONSIDERATION OF A REQUEST FOR A VARIANCE FROM THE COUNTY ZONING ORDINANCE, SECTION 1403 SITE PLAN REVIEW, SUBSECTION I., WHICH REQUIRES EXTENSION AND CONNECTION TO PUBLIC SEWER; IN A C1(P) PLANNED LOCAL BUSINESS AND C(P) PLANNED COMMERCIAL DISTRICTS ON 1.14+/- ACRES, LOCATED AT 4958 CUMBERLAND ROAD (SR 1141); SUBMITTED BY TIMOTHY HOLZER (OWNER) AND GEORGE BIJU.

MRS. VARNER: Mr. Chairman, this variance request came up from one of the conditions of the preliminary site plan approval for a convenience store, Case# 10-132, approved on December 6, 2010. If this variance is approved then the applicant will not have to comply with the condition, which is #4.

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

MR. DONALDSON: All the blue lines are sewer lines?

MRS. VARNER: The blue lines are water and the beige color are sewer lines.

MR. DONALDSON: Oh, I see, they are running side by side.

MRS. VARNER: Yes sir.

Mrs. Varner continues presenting the zoning, land use and photos of the site.

MRS. VARNER: I'm available for questions, Mr. Chairman.

CHAIR QUIGLEY: Does anyone have any questions for staff?

MR. DONALDSON: As I understand, they are asking for the sewer line to be extended to 22 buildings that exist out there.

MRS. VARNER: No sir.

MR. DONALDSON: I was reading the PWC letter dated December 13, 2010. It says there are several ways this could be resolved. Show me on the map which one they are asking for.

Mrs. Varner points to the on screen presentation.

MR. DONALDSON: Do they want that short extension right there? [referring to what Mrs. Varner pointed out]

MS. SPEICHER: We can't testify to that, Mr. Donaldson. The applicant can better testify to that, but we also have a representative from the PWC here this evening.

MR. DONALDSON: Okay, thank you.

Chair Quigley swore in David Averette.

MR. AVERETTE: My name is David Averette and I'm with Averette Engineering Company, 712 E Lake Ridge Road in Raeford, North Carolina.

CHAIR QUIGLEY: What is your relationship to this?

MR. AVERETTE: I'm the engineer on the project. I'll probably be speaking for everybody, but they will be here in case there are any questions asked they need to answer directly, but my presentation should be for everybody. As I said before, my name is David Averette and I'm with Averette Engineering Company. Just to give you a little background; I've served on the Board of Adjustment for the City of Fayetteville and the Zoning Commission, I've served on the Planning Commission, I've worked for the Public Works Commission, I've worked for Fayetteville Engineering Department. I've got a consulting business that has been in practice for over forty years. I know that these procedures have to be done and I can assure you that everything that I say will be factual. To make sure you understand; our request is that we are allowed to put in a septic tank and drain field in lieu of extending the sewer. The reason for it is because the ordinance calls for it to be along the right-of-way or on an adjacent lot. The sewer manhole was right there [pointing to the on screen presentation]. The property has been subdivided. We stated in our application that the distance from the property to there was 472 feet. It's actually more like 560 feet to the site plan that we're asking for. There is also a lot of problems construction wise in doing it that way. The sewer has got to be run; all of this is in your package that we submitted to you. The sewer has got to be run along the right-of-way between the back of the curb and the right-of-way which is a lot of utilities including one of PWC's water mains. We would have to get closer than ten feet to the waterline with our sewer line, which PWC doesn't like, but that is the way they want us to go if we have to go. Of course, my contention is it is over 300 feet, so no variance is really required. If you think I've got to prove other reasons why a variance is needed, we'll go into that in detail. What I've have done is gone down the eight items you have assigned as facts. In the second item, it says: "Granting the variance requested will not confer upon the applicant any special privileges". The other residents are greater than 300 feet; I don't think they should be required to do it as we should not be required to do it. The literal interpretation says you must connect to a sewer system if a property is 300 feet or less from a sanitary sewer system. Ours is greater than that. The second thing that we want in there is really more feasible for this particular area than spending that much money on infrastructure, effort and time and getting out in that road. A sanitary sewer, septic tank system with drain fields is better for that particular area. As far as the environment is concerned, look at all of the stuff we will have to tear up on Cumberland Road or any other route that we would have to go through. We've got to tear up asphalt and different areas that would cost a tremendous amount of money. We've only got two restrooms in this store, that's basically it and a septic tank will serve well. Of course we'll have to get a permit from the Health Department to do that. The other thing I want to point out is if it's so much that we should have a sanitary sewer system out on Cumberland Road; PWC or DOT, whoever did the improvements on Cumberland Road; PWC elected to improve the water system out there so why didn't they improve and put sanitary sewer systems in at the same time before construction? That would have been a lot cheaper. No disadvantage will be changed by our request. We're asking that you grant us the variance which I don't think is really a variance, but letting us do what we need to do and that is to put in a septic tank and drain field in lieu of extending something over 300 feet. That is our request and all the rest of them are here to answer any question that you may have or if I can answer any more questions, I'd be glad to do it. All we're asking for is that we don't have to put this in because it's over 300 feet from the sewer on the right-of-way.

CHAIR QUIGLEY: Does anyone have any questions?

MR. DONALDSON: If you don't need us to do it, why did you ask?

MR. AVERETTE: Because they said I did. We've got the condition sheet and the condition sheet said I have to put in the sanitary sewer and the water.

MR. DONALDSON: Oh, you are talking about when you got permission.....

MR. AVERETTE: When we got the site plan approved. If you look on the condition sheet, one of the conditions is that we've got to tie on the water and sewer. I pointed out to them it was over 300 feet and they said you've still got to do it. So if we do need a variance, grant it to us. I hope I've made myself clear.

MR. DONALDSON: You did, I understand now, I'm just wondering....I looked at this and read through it.... if it says over 300 feet, why did you all put a condition on it? Do you see what I'm saying? You've got a conflict between what the rules say and you all have put a condition on this in conflict with that.

MS. SPEICHER: Yes sir, we did, but the Ordinance says if the public sewer exists within 300 feet of the property line, it doesn't say it has to be.....

MR. DONALDSON: So, you all are going off that 130 foot gap?

MS. SPEICHER: Yes sir.

MR. DONALDSON: But, it's not feasible to build from that point, is it, according to PWC?

MS. SPEICHER: Well, technically it's about 165-170 feet going between the buildings.

MR. DONALDSON: So in other words, they made a right turn, then a left turn; a 90° turn to get over there?

MS. SPEICHER: Yes sir.

MR. AVERETTE: Let me respond. What happened when they said we had to have sewer. Quite honestly, I've always advised my clients, if sewers are available and it's not too much more expensive than putting in a septic tank; if it's feasible, let's do it. We went and did a feasibility study and figured out how many different ways we could come in with the sewer and that's been pointed out on the map and PWC took our information that we gave them and they wrote the letter. There are other ways you can go through there. To go through where it shows 130 feet to the building.

MR. DONALDSON: She [Ms. Speicher] just said it's actually about 165 if you make some 90° turns.

MR. AVERETTE: But you can't go through the building, you've got to go around the building; and the distance to get to the property, turns out to be about 175 feet. But, you have to tear out

asphalt within the apartment complex, tear out street lights, curb and gutter. PWC doesn't want us to go that way. They want us to go down the road; that is what they said in their letter. That was their preferred way to go. A couple of other routes we considered, PWC and we all agreed that were not feasible at all, was to go through between the apartments is going to be very costly. PWC has a rule that when you extend sewer to your property, you've got to extend it all the way across to the other side. So, if we came down from the road in there, we're not talking about a 560 foot extension, we're talking about close to 700 foot extension that we would have to put in at approximately \$100.00 a foot. That is about \$70,000. To go the other way and go across the property is about \$80,000 to do what PWC would want us to do which is to run across that piece of property. It wouldn't be deep enough going through the apartments. I could possibly serve that one little corner lot there; it would be 5 ½ feet deep, I've run the numbers on it [pointing to the presentation]. If I brought the sewer around there, carried it over and carried it over to this lot here. I'd be able to sewer that one lot I'd be about 4 ½ feet deep. Now, I doubt if you'd be able to get over to these lots right here [pointing to the presentation]. So, that is not the way to go, even if I go that way and put in the sewer, I shouldn't have to go that way. But, you don't have the authority to tell PWC that I don't have to follow their policy. We need to get out of this thing of trying to tie everything into the sewer plants all over the county. We need to put in a decentralized sewer systems and of course the septic tank and drain field is one way to do it. We don't have to have a sewer system that works forever. A centralized sewer system doesn't work forever either.

MR. DONALDSON: How much did you say the cost was going to be if they ran it around the apartment building to your client?

MR. AVERETTE: Well, if I do it like PWC wants to see it, up the road, it is about 700 feet and it would pretty deep.

MR. DONALDSON: One hundred dollars a foot, is that what you are saying it would cost you?

MR. AVERETTE: Yes, that would be \$70,000. PWC uses the figures that it would be \$100 to \$200 so that is \$140,000. If I go the other way, I've got the drawings showing that if I go in through the apartments, showing the depth, I believe it is about \$200 a foot and about \$80,000 to do that. Let me point out one other thing on these condition sheets. They put conditions on us not only for the sewer but for the sidewalk. We've got to put sidewalks in there to be in compliance with the Hope Mills Ordinance. We've got to do it or get a waiver from Hope Mills, which they will never do. If they wanted sidewalks on that road, why didn't they do it when the improvements were made? They would rather some developer pay for it, especially somebody that is going to be making money in a commercial area. If it were a homeowner doing that, they would drop the whole front division and not do it at all. They couldn't afford it. Not only that, when DOT did divide in there, they put on the right hand side [asked to see the site drawing] put the driveway in. When we go to get the permit for the convenience store, we have to get a driveway permit, we were going to have one here and make another one over here [pointing to the presentation]. DOT said we could not do that; we would have to put it in the middle to serve this whole area. We have to tear this out. This one, if we could use it, doesn't have turning lanes. If they make us move it over here, we'd have to go back and put in turning lanes. Even if we use that one, DOT was going to make us do turning lanes. My point is, if people wanted sidewalks when that road was improved, why didn't they put them in? If people wanted turning lanes on that project, why didn't they put them in when Cumberland Road was done? If PWC wants sewer there, up that road, why didn't they put it in when they put in the

water system? That was not done so we are requesting that we don't have to put in a sewer line there that we can just use our septic tanks and drain fields that as an engineer, I can state, it will work and be adequate.

MR. DONALDSON: Have you all perked the land to see if it will perk?

MR. AVERETTE: No, but there were septic tanks on there before. Now, if we can't get it to perk, we'll be at the mercy of PWC and we'll have to go wherever they tell us and put as much money in there as we want to. If you don't give me a septic tank permit, give me a variance or say I don't need a variance; then I am at PWC's mercy and they can tell me to go anywhere I want to get that sewer because I won't have any alternatives.

MRS. TART: Mr. Averette, will there be any kind of food service in this store?

MR. AVERETTE: I can't answer that. He can answer that. I don't think so. He has told me on several occasions that all he's got is two bathrooms. So, my request again is either say we don't need a variance or if we do need a variance in your opinion, then grant us a variance that would allow us to put a septic tank and drain field in lieu of extending the sewer.

CHAIR QUIGLEY: I understand. Does anyone have any question?

MR. DONALDSON: If we don't grant you the variance, you are at the mercy of PWC and they get to choose which way the pipe runs?

MR. AVERETTE: No, they won't give me the sewer unless I do it exactly like they want to.

MR. DONALDSON: They will choose the route?

MR. AVERETTE: They will choose the route and tell me how deep to put it in so I can serve that one lot below there. That's all I can do if I go through the apartment. Now I can go through and put the sewer line that is in the application. We'd be 10-15 feet deep in that line going down Cumberland Road. If we've got to do it, the most economical way would be to go through the apartments. I don't get to make that call if I have to do it. For this, all we need is somewhere to dispose of the affluence and two bathrooms.

CHAIR QUIGLEY: Any other question? Is there someone here from PWC?

Chair Quigley swore in Chris Rainey.

MR. RAINEY: My name is Chris Rainey, 1708 Johnsey Street, Eastover, North Carolina. I work for PWC.

CHAIR QUIGLEY: Can you give us any clarification on the issues that have been posed?

MR. RAINEY: We have met with the engineer for the developer and the developer several times to discuss this location. As the letter outlines, there were three options looked at early on as far as sewerage the site. One of those was pretty much ruled out from the start due to existing apartments, retaining walls and some steep slopes. The other option which was discussed coming between the apartment buildings, the shortest route, that one is obviously an option; not

PWC's preferred option and the option that PWC prefers would be to come down the right-of-way of Cumberland Road from the entrance road into the apartment site, which will be the one delineated to be roughly 500 feet away. [pointing to the presentation] Coming from this location and coming to the site is PWC's preferred route; although the shorter route; that was roughly 170 feet between the apartment building is an option as well, it's just not PWC's preferred route.

CHAIR QUIGLEY: So essentially what you've just said is your preferred route exceeds what the requirement is in the code?

MR. RAINEY: That is correct. As Mr. Averette was saying earlier the PWC extension policy calls for the sewer to be extended to the far side of the developed property if it can serve others, which in this case, there are other lots which could be served. So the roughly 700-800 foot extension from this location [pointing to the presentation] coming across the front of their proposed site would be PWC's preferred route.

CHAIR QUIGLEY: Essentially, PWC would prefer that a private developer fund that installation, is that correct?

MR. RAINEY: Right, the PWC development extension policies call for the developer to pay for the cost of said extension.

CHAIR QUIGLEY: That would exceed the 590 feet that is indicated?

MR. DONALDSON: The property is 225 across the front, I believe?

MRS. VARNER: The frontage? It is 278 feet.

MR. DONALDSON: So that would be 778 feet across if it has to go to the other property line.

MR. RAINEY: If I may, the route coming from between the buildings is not undoable, there are obviously some obstacles you would have to contend with there and the parking lot existing services for the folks in the apartments and being able to traverse between the buildings and something that would be constructed. Also, that we could maintain in the future, so there are obstacles with going that route, but it is a doable option.

CHAIR QUIGLEY: Is there anyone here from that apartment complex?

MR. DONALDSON: If we don't grant the variance, which route is PWC going to insist on, the one along the road?

MR. RAINEY: That is obviously the preferred route, but

MR. DONALDSON: He won't have any choice in the matter, you all would dictate to him, am I right?

MR. RAINEY: Well, I would not say we would dictate to him.

MR. DONALDSON: If you are going to be the one to make the decision, it would be the one that PWC wants, right?

MR. RAINEY: It would be a collaborative effort to determine which route we would go. We would have to see a lot more information, detailed design before we could really make that call.

MR. DONALDSON: Looking at the upper right where the sewer line ends [pointing to the presentation] is there a main sewer line that comes all the way down Cumberland Road?

MR. RAINEY: Are you talking about right there?

MR. DONALDSON: No, go further; move up Cumberland Road to your right. There is a sewer line indicated on what I'm looking at. Is that a main sewer route that comes down from Cumberland Road?

MR. RAINEY: There is another main and it is roughly the same distance, 700 feet, somewhere in that neighborhood. That was a fourth option that the grade really won't allow it. It will just barely get there, so the other option we looked at early on pretty much ruled that one out.

MR. DONALDSON: So, there is actually about a 1300 or 1400 foot gap between that sewer line up there and the sewer line down here. This gentleman here would have to pick up about half of it, is that what you are telling me?

MR. RAINEY: If he extends either one of the routes, coming from either direction, he would have to go half way to tie them together.

MR. DONALDSON: Okay, thank you.

MRS. TART: I have a question about the adjoining property owners. If he goes down Cumberland Road, these people who do not now have access to public sewer, suppose they would have failing septic tanks; then they would tie into that sewer line in the future? Are they just going to benefit from his investment or what would happen at that point?

MR. RAINEY: At such time that the line is installed, if they wanted to either install a tap if he didn't install taps for them as an agreement with them as he passed them, they would just pay the proper fees in order to tie into it.

MRS. TART: So they would benefit from the cost of the line?

MR. RAINEY: Right.

MR. DONALDSON: How much is the per foot cost?

MR. RAINEY: On my estimate, I used \$200 a foot to include engineering and easements.

MR. DONALDSON: So we're talking 768 feet, roughly \$150,000, right?

MR. RAINEY: One thing to add with the folks who don't have sewer service currently. If a developer extends a line past those folk's properties, the developer does receive credits for making sewer available to those folks if they don't currently have availability of sewer.

MRS. TART: What kind of credit would that be?

MR. RAINEY: It is a per foot basis and it can be applied to the fees the developer would owe to PWC for facility impact.

MRS. TART: I don't know if you would have this information or if it would be something for Environmental Health. Are there problems with any of the septic tanks now on the properties facing Cumberland Road?

MR. RAINEY: I'm not aware, I don't know.

CHAIR QUIGLEY: Thank you.

Chair Quigley swore in Tim Evans.

MR. EVANS: My name is Tim Evans, I live at 2256 Cypress Lakes Road and I am the broker who represents the buyer and the seller. There are a couple of things I would like to stipulate that I don't think has been addressed. First of all, I have met with Little and Young, the property managers of Cumberland Towers on three different occasions because I felt like at one time we were probably going to have to go between the apartments as Public Works had wanted and naturally they frowned upon it from the standpoint of the inconvenience to the people that live in Cumberland Towers by having to rope off the parking area and things of this nature. The second thing is being familiar with Cumberland Road and being a broker; a lot of those lots left on Cumberland Road that was a mill village. What I see is that entire area in the future going commercial. My client here, which was a commercial paint business; he initially lost his building in the right-of-way and I met with Gary Burton in DOT. When the State settled with him, this driveway was part of the settlement knowing this property was already zoned commercial. So when I approached Gary, who I know personally, I said "Gary, we do need access for the convenience store, clarify the other driveway". In a nice way, he told me there was a mistake made by DOT and that we really couldn't use that driveway for the rest of the property because the State couldn't determine the traffic flow that would be coming in and out of that driveway. So in essence, the driveway was useless to the owner of the property. So we are really not declaring any hardship here, I think my clients would really want him to tie in the sewer. I've been to meetings, I've been to John Allen's office three different times; I hear everything that everybody is saying and I understand PWC has to protect their best interest, but what they are saying in a nice way is that it is going to be a hard transaction and anyway you decide to go there are obstacles. I think with the people living in the apartments there, if you tear up the sidewalks, if you tear up the place where they park and rope it off, I don't know how long this would take, but I think it would be a major inconvenience to them. Thank you.

CHAIR QUIGLEY: Thank you.

MS. SPEICHER: Mr. Chair, we have something that may help in Mrs. Tart with her question regarding the Health Department; it's the Health Department's comment as part of our normal review process and it is part of the record, if you would like to see it.

CHAIR QUIGLEY: Would you read that into the record.

MS. SPEICHER: It's from Daniel Ortiz, Environmental Health Supervisor, Cumberland County Health Department in his email he sent to Pier on January 20, 2011. Daniel stated this office recommends the extension of public sewer and water.

CHAIR QUIGLEY: Would you pass that up here for us to see, please. Also, let Mr. Averette take a look.

MS. SPEICHER: If I could help, the bottom portion of the email is where Pier sends out the distribution to all the agencies and other departments requesting their comments concerning specific cases. She attaches the maps and the site plans along with it and sends it out by email. Most respond back by email.

CHAIR QUIGLEY: Okay.

MR. EVANS: Mr. Chair, we couldn't hear what it was that Patti was saying.

CHAIR QUIGLEY: Essentially what the Environmental Health supervisor provided was that their office recommends the extension of the public sewer and water.

MR. EVANS: Well, don't you think that is a natural response from them? Don't you think they would side with the County?

MS. SPEICHER: I don't think staff could answer that, the Board would have the option to defer the meeting and we could certainly make sure we do everything we can to make sure Mr. Ortiz is here. We can't promise that he will be here, but we could make sure of that.

CHAIR QUIGLEY: We don't have anyone here obviously from the Health Department. When they recommend the extension, what is their intent in that statement?

MS. SPEICHER: Generally, they look and see the proximity of the existing lines, proximity to the proposed development and almost always if it's within with whatever he has determined is within a reasonable distance, it will say that. All other times and other parts of the County, it typically always says "approval of septic is required".

CHAIR QUIGLEY: Okay, thank you.

MR. AVERETTE: Can I respond to a couple of things that PWC said in that letter? You noticed he said the water and sewer will be extended. That indicates to me that he doesn't know what the situation is or how far the sewer is. The water's there, there is no water extension. He doesn't know how far the sewer is when he makes that statement and if I was sitting there at the Health Department and I've been on the Board of Health, and I've work with them a whole lot of times; if somebody asked me do you want to put in a septic tank and drain field or do you want to extend the sewer? I'd say extend the sewer? PWC will take care of that. Some of the things that Chris said about this being their preferred route; their preferred route is way over 300 feet. So, if we've got to go that route, you should allow the use of the septic tank and drain field. If you don't allow those, then we've got to put in one that is way over that in order to get sewer because we can't put in the septic tank. You are putting us in a real tight squeeze. They

won't even say they will accept it the other way and they said that in the letter that they did not want that. The other thing is if we extend that sewer all the way up to the piece of property, he said we would get some credits, I'm not sure what those credits would amount to, but when those people tie on to that sewer line that we put in up there, we don't get a dime of it back, it goes all into PWC's pocket. I don't know what they call it now, but when I was down there, they charged tap in fees and lateral charges and connection fees and all of these different types of things. Those things mount up to a whole lot of money and PWC puts that directly back into their pocket.

CHAIR QUIGLEY: Thank you. Is there anyone else that wishes to introduce some new information relative to this? Are there any questions?

MR. HUMPHREY: If the variance is not granted, then it will automatically fall to PWC? Is that right? It's cut and dry; either the variance goes or it goes to PWC.

CHAIR QUIGLEY: Essentially, that is correct.

MR. DONALDSON: The site conditions where they wanted them to hook up to that and they've asked for a variance from the site approval, is that to the point?

CHAIR QUIGLEY: Yes.

MR. DONALDSON: So, if we don't grant the variance, they've got to comply with the site approval plan which means they've got to go to PWC, which means that PWC is going to choose the route.

CHAIR QUIGLEY: Right.

MRS. TART: Basically, what we are considering is strictly financial consideration.

MR. DONALDSON: Among other things.

CHAIR QUIGLEY: I think also, there is the question about how the code is written and what the implication is of this particular action is relative to the 300 feet written into the code.

MR. EVANS: Mr. Chair, can I say one thing?

CHAIR QUIGLEY: Sir, the hearing is closed.

MR. DONALDSON: I agree that the 300 or 175 feet is, but PWC and everybody says that is not really feasible. If you drew a straight line, yes it is within 300 feet, that is the technical compliance with the regulation.

MR. RAYNOR: You will have to make a factual determination as to whether or not the testimony you heard complies with the statute and if you do find that it does, whether or not you can grant a variance from that statute. There is an issue here.....

MR. DONALDSON: Well, as a rule, I'm always in favor of sewers over septic tanks, given this day and age, but at some point in time it becomes an unreasonable financial burden on people to

comply with. My opinion is whatever that short distance is, that straight line distance which runs through a building, though technically within the requirement of the statute, is not feasible. It's just not sustainable to me. I'm for granting the variance as opposed to not granting the variance and making him pay to fill in half that gap that PWC wants filled in on Cumberland Road.

MRS. TART: I have a question for staff. Is there any way it could be written into the conditions that if we approve a septic tank, that there could not be food service in that convenience store, it could only be for the two restrooms?

MS. SPEICHER: Yes.

CHAIR QUIGLEY: If we grant the variance, you want that condition specified?

MRS. TART: Yes.

MR. DONALDSON: Do we actually have to make the findings of fact now on the record? Why can't we do them in writing and then submit them.

MS. SPEICHER: All debate has to be at the public forum.

MR. DONALDSON: I'm not talking about the debate; I'm talking about the findings. It's sort of like, if I rule for this person here and I will enter a written order backing that up and get it submitted.

CHAIR QUIGLEY: They write it up based on the fact findings.

MR. DONALDSON: Okay, so we have to do it now instead of some subsequent time.

CHAIR QUIGLEY: Yes.

MR. RAYNOR: You have to find the findings, they do the writing up.

MR. DONALDSON: I understand, but I was just going on the basis of when I was a judge. A lot of times I would enter the ruling and say I would have an order in three or four days with the findings.

CHAIR QUIGLEY: If you can, determine as you look at the case facts which way it goes.

MR. DONALDSON: I understand, but you want to fine tune them sometimes.

MR. RAYNOR: You can fine tune them in terms of how we do? Generally, we have got to have the facts done here.

CHAIR QUIGLEY: I think some of the facts, as already stated, is the code states 300 feet and essentially an interpretation could be that if we don't grant the variance, then PWC might order them to follow this process which may be 700 feet for them to be responsible for. So that would exceed what the code says.

MR. DONALDSON: I would only disagree with the one point. I think it is a foregone conclusion that PWC is going to order them to go up the road. They are not going to go through that apartment complex. One for probably cost, and second it doesn't really tie in to those lots on the front side that are adjoining this particular piece of property.

CHAIR QUIGLEY: It wouldn't have long range impact.

MR. DONALDSON: Plus, I don't think it is within what they would call their feasibilities for expanding the line. At some point in time, if we grant the variance, that line is going to be there and he is going to be required to hook in.

MS. SPEICHER: The Board could consider as conditions that, at the point in time that public sewer is there, if the septic fails than connection is required. You could add that as a condition.

MR. DONALDSON: That will be less of a burden on him because the costs will not be nearly as much on the assessment.

MRS. TART: Well, isn't that automatic with the Environment Health if you have a failing system and public sewer is available, you have to tie in?

MS. SPEICHER: I cannot state it is automatic, I have heard people make that statement, but I don't know that to be a fact.

CHAIR QUIGLEY: Let's make a motion.

MR. DONALDSON: I make a motion to grant the variance.

MS. AUTRY: I second the motion.

CHAIR QUIGLEY: In regard to Case# P11-01-C, findings reveal

MR. DONALDSON: I have a question. Do you have to find specifics under each one or can you find that particular item does not apply to this particular case?

MR. RAYNOR: The statute says you must find all the following conditions exist on the individual case. That's what the ordinance says and it lists those eight terms and also the case law says it.

MRS. TART: I have a problem with #6.

MR. RAYNOR: The fact I think you are finding there is because of its practical distance from the existing sewer?

MR. DONALDSON: Yes, that's what I was missing.

MRS. TART: How does the practicality of the ordinance play into this Mr. Raynor?

MR. RAYNOR: I think Mrs. Tart has a problem with #6 and we need to address that.

MRS. TART: If it doesn't meet one condition, we can't approve it.

MS. SPEICHER: The agent for the applicant has offered his handwritten form if the Board would like to see it. [Exhibit I]

CHAIR QUIGLEY: Sure.

MR. DONALDSON: Mrs. Tart, I think #6 can be handled simply because the fact is, this is the minimum variance that will make possible the legal use of the land. If we don't grant the variance, he can't comply with the condition the Board has put on him to put sewer in to hook up to something that is outside of what the regulation says. As they have stated, they have chosen the closest point which is not even a feasible point based on what PWC says because they'd have to run through the apartment complex. So, if we don't grant it he won't have any legal use to his property, short of stating he will have to pay the \$150,000 + to PWC.

MRS. TART: My question is can we just consider financial consideration only?

MR. RAYNOR: In that sense, you can't just consider financial just based on finances, but I think what you said correct. If there is a question here, it is whether or not it comes under the ordinance.

MRS. TART: Whether the variance is even needed?

MR. RAYNOR: Right.

MR. DONALDSON: Whether it comes under the ordinance about the 300 feet?

MR. RAYNOR: Right.

MR. DONALDSON: If you look at it from a purely technical point of view, it does come under the ordinance because it is 130 feet, but I don't think that is the spirit of what was intended by the ordinance because it is not feasible. If you do the literal interpretation, then he is not entitled to the variance. If you look at the actual interpretation of what is going to happen, I think he is entitled to the variance based on the fact that even though it's within the 300 feet, which is not feasible. With no disrespect to the Board, it is not reasonable to expect someone, even though it is within the 300 feet, to go through a building or through an apartment complex.

MS. SPEICHER: If I could offer this to help the Board. Regardless of the use that was proposed on that site, whether it was a home, a convenience store, a produce stand, or any use, that same condition would be placed upon that property.

MR. DONALDSON: Because they interpreted it within 300 feet and it technically is within 300 feet. So, if you said it was going to be a house, you just added \$150,000 to the cost of the house.

MS. SPEICHER: I offered that thinking it may help you with #6. To help you with #2, two different phrases that I heard Mr. Donaldson say that are kind of put together is "the preferred

PWC route exceeds the ordinance standards” and then if we add the word “and” and then put “no long range impact for the public good” which is the intent of the ordinance. That would solve #2 and #3 if the Board pleases.

CHAIR QUIGLEY: That fits.

MR. DONALDSON: I have a question? Are we putting the cart before the horse before we decide if he’s entitled to it, how we are going to vote on it? We can vote on it and decide what the findings are going to be based on that. If it didn’t pass, then we’d have to go back and find different findings. Do you see what I am saying? I’m just saying if we go through this process and all of a sudden we vote and it doesn’t pass; we’ve got to go back again and do the order over to say it doesn’t pass, right?

MR. RAYNOR: You only have to get to one, if you are going to deny it.

MR. DONALDSON: I know we are all talking about all the reasons, but do we have consensus on each one of these reasons that is valid for the variance.

CHAIR QUIGLEY: Does any Board member see any one of the conditions that would warrant disapproving the variance?

MR. RAYNOR: Mrs. Tart, are you okay with #6?

MRS. TART: If you make it financially impossible, then they can’t make legal use of the land and it is not reasonable to expect them to go through existing apartment complexes.

MR. RAYNOR: It’s the facts that are not before you that I think are significant on the ideal of this thing going this shorter route. There has not been any testimony that there are any easements. Just because you can take a piece of paper and draw a line and get from point A to point B. If you are going across somebody else’s property; what you draw on that paper is all you can do.

MR. DONALDSON: Mr. Averette, do you know if there is an easement from the apartment? I’m sure there is probably one along the road.

MR. RAYNOR: We’ve closed the hearing. But, what I’m saying to you is the evidence that is not before you is something that you can consider as well in coming to a reason with this shorter route. There has been no evidence presented....

CHAIR QUIGLEY: No evidence that there are no problems with the shortest route.

MR. RAYNOR: We’re trying to make some kind of engineering decision about it being feasible and the preferred method, but there is no evidence that this is legally doable. There was testimony that along the right-a-way on the highway, so there is some testimony that there is a right-a-way there.

MR. DONALDSON: Mr. Averette testified that they would have to be within ten feet along that easement.

MR. RAYNOR: I would just look at this with the idea of that 750+ price being the alternate.

Mr. Donaldson made a motion to approve the variance.

Ms. Autry seconded the motion.

CHAIR QUIGLEY: I don't see any dissenting opinion? The motion is that we grant the variance.

1. It is the Board's **CONCLUSION** that, there are extraordinary and exceptional conditions pertaining to the particular piece of property in question because of its size, shape or topography that are not applicable to other lands or structures in the same district. This finding is based on the following **CONDITIONS**:

The location of the existing lines in relation to the proposed development and based on the shape of the subject property, the distance for sewer line extension is much greater than the 300 feet as required by the ordinances;

2. It is the Board's **CONCLUSION** that granting the variance requested will not confer upon the applicant any special privileges that are denied to other residents in the district in which the property is located. This finding is based on the following **CONDITIONS**:

The preferred PWC route exceeds the ordinance standards and extension from the nearest existing line would serve only the subject property with no long range impact for the public good.

3. It is the Board's **CONCLUSION** that the literal interpretation of the provisions of this Ordinance would deprive the applicant of rights commonly enjoyed by other residents of the district in which the property is located. This finding is based on the following **CONDITIONS**:

Other property owners are not required to connect when one development is proposed that exceeds 300 feet in distance from the existing public sewer line;

4. It is the Board's **CONCLUSION** that, if granted, the requested variance will be in harmony with the purpose and intent of this ordinance and will not be injurious to the neighborhood or to the general welfare. This finding is based on all of the **CONDITIONS** listed above, as well as the following:

Restatement of and special emphasis placed on Condition No. 3 above;

5. It is the Board's **CONCLUSION** that the special circumstances are not the result of the actions of the applicant. This finding is based on all of the **CONDITIONS** listed above as well as the following:

During the recent road widening and utility relocation, public sewer lines were extended in this area at tax payer expense a distance of approximately 560 feet to the northeast of the subject

property and 500 feet to the southwest of the subject property, leaving an unexplainable gap in the public sewer line of approximately 1,200 feet;

6. It is the Board's **CONCLUSION** that the variance requested is the minimum variance that will make possible the legal use of the land, building or structure. This finding is based on the following **CONDITIONS**:

Regardless whether the variance is granted for the current proposed use as a convenience store, or any other use to include residential use of the subject property, the requirement for the public sewer extension and connection remains the same;

7. It is the Board's **CONCLUSION** that the variance is not a request to permit a use of land, building or structure which is not permitted by right or by special exception in the district involved and will not constitute any change in district boundaries. This finding is based on the following **CONDITIONS**:

This variance request is not related to the use of the subject property, building or structure, and will not change any district boundaries; and

8. It is the Board's **CONCLUSION** that the existence of a nonconforming use of neighboring land, buildings or structures in the same district or of permitted or nonconforming uses in other districts does not constitute a reason for approval of this requested variance. This finding is based on the following **CONDITIONS**:

The use of neighboring property, nonconforming or not, had no bearing on the board's decision for this case.

CHAIR QUIGLEY: What we want to discuss now is, are there any special conditions that we want to introduce, I think I heard there should be a condition that they will not have food preparation as a function of the convenience when it is established, is that your condition?

MRS. TART: I don't want to include that because if there were problems, the Health Department would take care of that.

CHAIR QUIGLEY: Thank you. That is not included. What other special conditions did we have that we wanted to introduce, other than the fact they have to comply with whatever regulations they need in order to install a septic system, is that right Ms. Speicher?

MS. SPEICHER: Yes, if the Board approves the variance, then I will modify their conditional approval to reflect that. They have to get Health Department permits.

CHAIR QUIGLEY: Right now I've got a motion that has been properly seconded to grant the variance. Is there any other discussion? All in favor signify by saying aye.

The motion passed unanimously. There was no opposition.

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

- **P11-02-C:** CONSIDERATION OF A SPECIAL USE PERMIT TO ALLOW A 150 FOOT TOWER IN AN R10 RESIDENTIAL DISTRICT ON 15.26+/- ACRES, LOCATED AT 5870 COLUMBINE ROAD (SR 3065); SUBMITTED BY DRL ENTREPRISES, INC., (OWNER) AND THOMAS H. JOHNSON, JR., NEXSEN PRUET, PLLC ON BEHALF OF AMERICAN TOWERS, INC.

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

CHAIR QUIGLEY: Mrs. Varner, please put the map that shows the vegetation. It appears that this site that they are going to develop is in that wooded area.

MRS. VARNER: Yes sir.

CHAIR QUIGLEY: Okay, I'll discuss that with the testimony. Thank you. Does anybody have question for staff?

MR. DONALDSON: I need to disclose that I drove by that piece of property.

Mrs. Varner continued with presenting the zoning, land use and photos of the site to the Board.

CHAIR QUIGLEY: Thank you. Does anyone have any questions for Mrs. Varner or staff?

Chair Quigley swore in Tom Johnson.

MR. JOHNSON: My name is Tom Johnson of the law firm of Nexsen/Pruet, 4141 Park Lake Avenue, Suite 200, Raleigh, NC 27612. I'll try to keep this short and certainly respond to any question. I've been before you before with another tower recently. I know you have got a new member now, so I will briefly go over my presentation. As was stated by staff, we meet the requirements of the ordinance and I ask that the application and the documentation that we previously submitted be admitted into evidence in support of our Special Use Permit. We submitted the required documentation and we meet the standards. We have no objections that have been placed on the site by staff. We are in agreement with those and agree with those completely. If you could, Mrs. Varner, go to the maps. This is the wooded area [pointing to the presentation] where we are putting it. It will be surrounded by woods in the area. We are putting the tower in this location and our goal is to have the magenta or the pink color here which provide good building coverage in this area. As you can see, we have very little coverage in the area we are trying to cover. This is where the tower will fill in, so we get the magenta color as opposed to what you see here which eventually at some point will probably have to be filled in, but right now this is what we're targeting right here [pointing to the presentation] to match up with these existing sites we have in the area.

MR. DONALDSON: What's the distance between those sites and the one proposed?

MR. JOHNSON: Approximately two miles. All of that changes with usage. Everybody doesn't want to just talk on their phone anymore. They want a Blackberry or an I Phone or something like that. My daughter and son don't talk to me, they text me. That takes more usage of the system. AT&T will be the first carrier on this tower. AT&T's focus is to improve their coverage.

MR. DONALDSON: I just wanted to know. It used to be that you took notice every time you passed by one, now there are so many of them, you don't notice them anymore.

MR. JOHNSON: That's true. It is infrastructure, like water and sewer and like you were just talking about on that variance and that's what we're doing is to provide that service for the usage of the customers and to provide access to public safety when somebody needs it and for the emergency use of wireless. As you can see from the map, there is a demonstrated need and we meet the ordinance conditions and requirements. If there are any questions that you have, I do have with me a Radio Frequency Engineer from AT&T. I have Mr. Herring, who prepared the appraisers report that was submitted, Samar Qubain is with AT&T and she assisted with the preparation of the maps that I just showed you as well as the certification that we are well within the FCC guidelines in terms of the emissions from this tower, which is the requirement of the law. I have Mr. Leach, the property owner, and he can speak as well if you have any questions for him. Aside for that, since we meet the requirements and staff agrees that we meet with the requirements of the ordinance, I would ask that you approve the Special Use Permit.

CHAIR QUIGLEY: Who is the property owner present?

MR. JOHNSON: Mr. Dan Leach. He is listed on there. It actually is a corporation in which Mr. Leach is the president.

CHAIR QUIGLEY: Thank you. Does anyone have any questions for Mr. Johnson?

Chair Quigley swore in Mr. Leach.

MR. LEACH: My name is Daniel R. Leach, 2179 Crystal Springs Road.

CHAIR QUIGLEY: Where is that located in proximity to where the tower is going to be placed?

MR. LEACH: The tower is on the Columbine Side and my land goes... Mr. Leach points to his land on the map.

CHAIR QUIGLEY: Do you reside on that property?

MR. LEACH: Yes sir, I do.

CHAIR QUIGLEY: You don't have a problem with the citing of this tower?

MR. LEACH: No sir. We discussed it where it would be back out of the way in the tree line.

CHAIR QUIGLEY: Does anyone have questions for Mr. Leach? He is the property owner who resides on the property. Thank you.

CHAIR QUIGLEY: Does anyone have any questions on the valuation of the property? I've heard no argument, but we do have Mr. Herring, right? Would you like to tell us about the valuation of the property, Mr. Herring?

Chair Quigley swore in Mr. Herring.

MR. HERRING: My name is Graham Herring, 8052 Gray Oak Drive, Raleigh, NC. As indicated in the documentation that was submitted with the application package, I reviewed this proposed tower and site plan and looked at not only the specific area that it is to be located in, but the surrounding properties, neighborhoods and uses. This location, I would term is excellent, from the standpoint of its separation from any residential or other commercial industrial usage. Site line and visibility to the arterial service to the area and this is not dissimilar in many ways to many other existing towers that are located within Fayetteville and within Cumberland County. Not only cell towers but electric transmission towers, water towers, radio towers, television towers, microwave towers, public service towers, just all types of vertical structures and with the placement of this, this telecommunications facility built as planned, would have no detrimental or injurious effect on the property values of the surrounding neighbor or other unimproved or improved properties in the general vicinity. Finally, the nature of this location with the separation from the residential arterial located to the north of the proposed site, the unimproved area and mixed uses nearby heavily wooded area, vegetation such that the proposed development will not create any negative aesthetic affects on the scenic roadways or other unique natural features of the area. That is my conclusion.

CHAIR QUIGLEY: Does anyone have any questions for Mr. Herring? He's been here before and seems to have a lot of credibility. There is no one here who wants to speak in opposition of this tower. Has anyone indicated any interest in doing this? We have a case where they are asking for a Special Use Permit and no one is opposing. This is rare especially with a Special Use Permit and the sighting of a tower. Obviously you've found a good location, Mr. Johnson.

CHAIR QUIGLEY: I'll accept a motion.

MR. HUMPHREY: I'll offer a motion that we approve the Special Use Permit based on there being no opposition to it and based on the testimony that we heard and if we need to go through the case facts, we can do that.

1. The use will not materially endanger the public health or safety if located according to the plan submitted and recommended;
2. The use meets all required conditions and specifications as outlined by the Cumberland County Code for Towers;

The staff will set the conditions of this so they will agree to all the condition of the staff.

3. The use will maintain or enhance the value of adjoining or abutting properties, or that the use is a public necessity.

It will maintain, I'm not sure if a cell phone tower will enhance, but at least it will maintain it.

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.

I don't think we have any problem with the character use of the land. It seems to be ideally located. The application will meet all the conditions of the Planning Department.

MR. HUMPHREY: I offer a motion that we approve the Special Use permit.

MR. DONALDSON: I second.

CHAIR QUIGLEY: Is there any discussion on it? All of the conditions have been agreed to by the person putting in the application?

MS. SPEICHER: Yes sir.

CHAIR QUIGLEY: All in favor of approving the Special Use Permit for Case# P11-02-C signify by saying aye.

The vote was unanimous. There was no opposition.

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

9. REVISED RULES OF PROCEDURES

MS. SPEICHER: It's up to the Board if you want to vote on it or not.

CHAIR QUIGLEY: In August we received copies of the Rules of Procedure, updated. In my reading of them, I had no problem, they were significantly clear. Has everyone had an opportunity to look at them?

MS. SPEICHER: I did make a simple change. Notice the ones you have now are October 26th? What that is on page 3, close to the bottom, highlighted in yellow with the strikeout, instead of the four-fifths vote required for Special Use Permit, the State Statute allows a majority vote. We are also changing that terminology in the Zoning Ordinance. It would just be a majority. If we only have four members show up and the vote was 3-1 then we could still move along. That was the only change from the August version to the October version.

CHAIR QUIGLEY: Does anyone have any questions for staff? I'll accept a motion to approve the Rules of Procedure as modified in the document provided dated August 30, 2010 and modified October 26, 2010.

MRS. TART: I motion we approve.

MR. DONALDSON: I second.

All in favor of approving the Rules of Procedure signify by saying aye.

The vote was unanimous. There was no opposition.

IN FAVOR		OPPOSED
<u>QUIGLEY</u> :	YES	None
<u>DONALDSON</u> :	YES	
<u>TART</u> :	YES	
<u>HUMPHREY</u> :	YES	
<u>AUTRY</u> :	YES	

10. RECOMMENDATION FOR NOMINATION OF VACANT ALTERNATE BOARD MEMBER

MS. SPEICHER: If you would like, this is not mandatory to the Board. We thought you would like to offer a recommendation to the Commissioners

CHAIR QUIGLEY: This has no real bearing on who is going to get it. Actually it is the County Commissioners' decision, but we can recommend, is that correct?

MS. SPEICHER: That is correct. Typically, in the past the County Commissioners have gone with you.

CHAIR QUIGLEY: We do have one person who has served for a long period of time on the Board in the past, Mrs. Waddle. Is there anyone of the other candidates who have been on the Board before?

MS. SPEICHER: Not to my knowledge.

CHAIR QUIGLEY: Does anyone want to make a proposal?

MR. DONALDSON: Well, given her experience and her knowledge of the community and her position within the community, I would recommend Mrs. Waddle.

CHAIR QUIGLEY: It is the consensus of the Board that Mrs. Roberta Waddle be nominated as the alternate Board member.

11. ADOPT 2011 DEADLING/MEETING SCHEDULE

MS. SPEICHER: You also have in your handout this evening the 2011 Deadline/Meeting Schedule. Nothing is changed, our meeting dates are on Thursdays and the deadline schedule is consistent with the Planning Board's which is generally twenty-four days prior to the meeting. If we could, get a motion to make it official.

CHAIR QUIGLEY: I'll accept a motion to approve the County Board of Adjustment Deadline/Meeting Schedule that was provided.

MR. HUMPHREY: I motion to approve the County Board of Adjustment 2011 Deadline/Meeting Schedule.

MS. AUTRY: I second.

CHAIR QUIGLEY: Is there any discussion on it or request for changes? All in favor signify by saying aye.

The motion passed unanimously. There was no opposition.

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

12. DISCUSSION:

There were none.

13. UPDATE(S)

CASE NO. WS08-04

MS. SPEICHER: We do have an update on the Andrews Mini-Storage which the Board approved as a high density watershed. Jeff worked real diligently trying to keep him in compliance but he let his bond expire. We're at the point now that we have had to have the Sheriff in Florida serve him with the fine notice. We have scheduled in our processing for your next meeting the revocation of the high density watershed approval so the Board can revoke it. However I did send Jeff out to the site and have him approximate how much land has been covered versus how much is left undisturbed. It looked like, if we could get Mr. Andrews to return our calls, we could probably approve it as a low density, which is a staff approval, not a Board approval, for only what he has built now. He couldn't build or do anything else with the property if you revoke the high density approval without coming back and resubmitting. I've sent him a certified letter and a regular letter basically stating you can still be okay with what you have now, but you can't get anymore.

14. ADJOURNMENT

CHAIR QUIGLEY: I'll ask for a motion to adjourn.

MR. HUMPHREY: I offer a motion to adjourn.

MS. AUTRY: I second.

There being no other business, the meeting adjourned at 9:30 pm.

P11-01-G/C
SITE PROFILE

P11-01-G/C: CONSIDERATION OF A SPECIAL USE PERMIT TO ALLOW PUBLIC RECREATION/AMUSEMENT IN AN RR RURAL RESIDENTIAL AND A1 AGRICULTURAL DISTRICTS ON A 12.20+/- ACRE PORTION OF A 34.86+/- ACRE TRACT; LOCATED ON THE SOUTH SIDE OF MAIN STREET (NC HWY 82) AND THE WEST SIDE OF ROYAL STREET (SR 1802), SUBMITTED BY DEBORAH TEW GODWIN, MAYOR, ON BEHALF OF THE TOWN OF GODWIN (OWNER).

Site Information:

Frontage & location: 1420.00'+/- on Main Street (NC HWY 82)

Depth: 1020.00'+/-

Jurisdiction: Godwin and County

Adjacent Property: Yes, three lots on the east side of subject property

Current Use: Farmland

Initial Zoning: RR (Godwin portion) & A1 (County portion) – November 25, 1980 (Area 14)

Nonconformities: None

Zoning Violation(s): None

Surrounding Zoning: North: RR (Godwin), A1; West: A1; South: RR (Godwin/County), A1; East: R6A, RR & O&I(P) (Godwin)

Surrounding Land Use: Religious worship facility, retail store, government office, residential (including a manufactured home), farmlands, and woodlands

Northeast Cumberland Study Area: Low density residential (Godwin); one acre residential (County)

Special Flood Hazard Area (SFHA): None

Water/Sewer Availability: Town of Godwin/NORCRESS

Soil Limitations: Yes, hydric soils: Co-Coxville Loam, and Gr-Grantham Loam

School Capacity/Enrolled: District 7 Elementary: 300/269; Mac Williams Middle: 1270/1208; Cape Fear High: 1425/1555

Subdivision/Site Plan: See attached “Ordinance Related Conditions”

Average Daily Traffic Count (2008): 200 on SR 1802 (Royal Street)

Highway Plan: There are no road improvements/constructions specified for this area. This case has no impact on the current Highway Plan or Transportation Improvement Program

Cumberland County Zoning Ordinance: Section 920, Recreation or Amusement Public/Private & Indoor/Outdoor (not for profit)

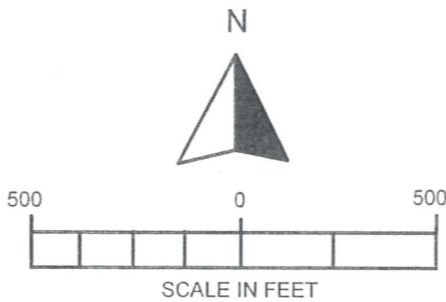
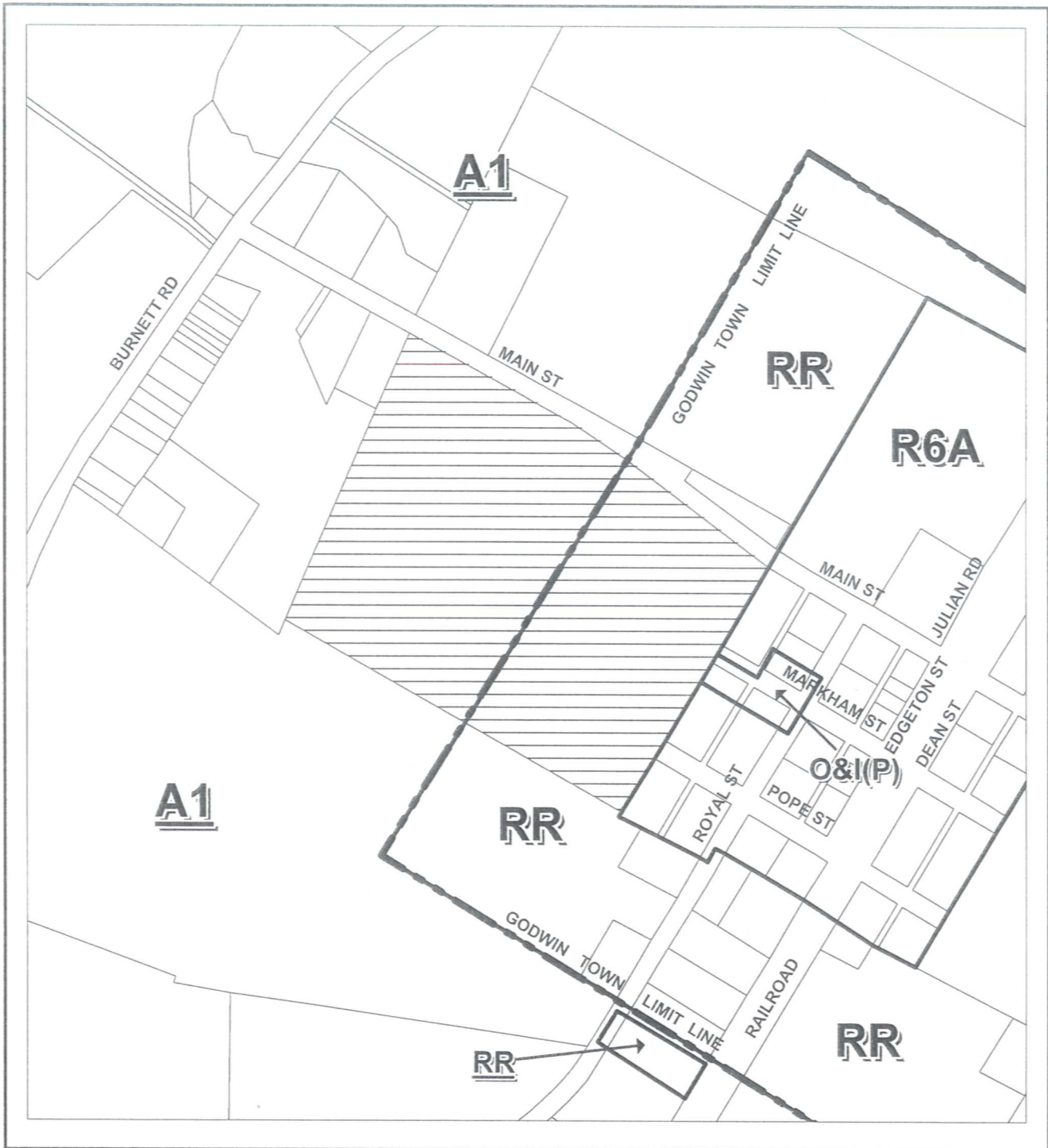
Notes:

Contents of the application

- Pertinent pages from the application along with the site plan are attached

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' acknowledgement of notice is also included in the case file.







BOARD OF ADJUSTMENT SPECIAL USE PERMIT

ACREAGE: 34.86 AC.+/-	HEARING NO: P11-01-G/C	
ORDINANCE: GODWIN/COUNTY	HEARING DATE	ACTION
GOVERNING BOARD		

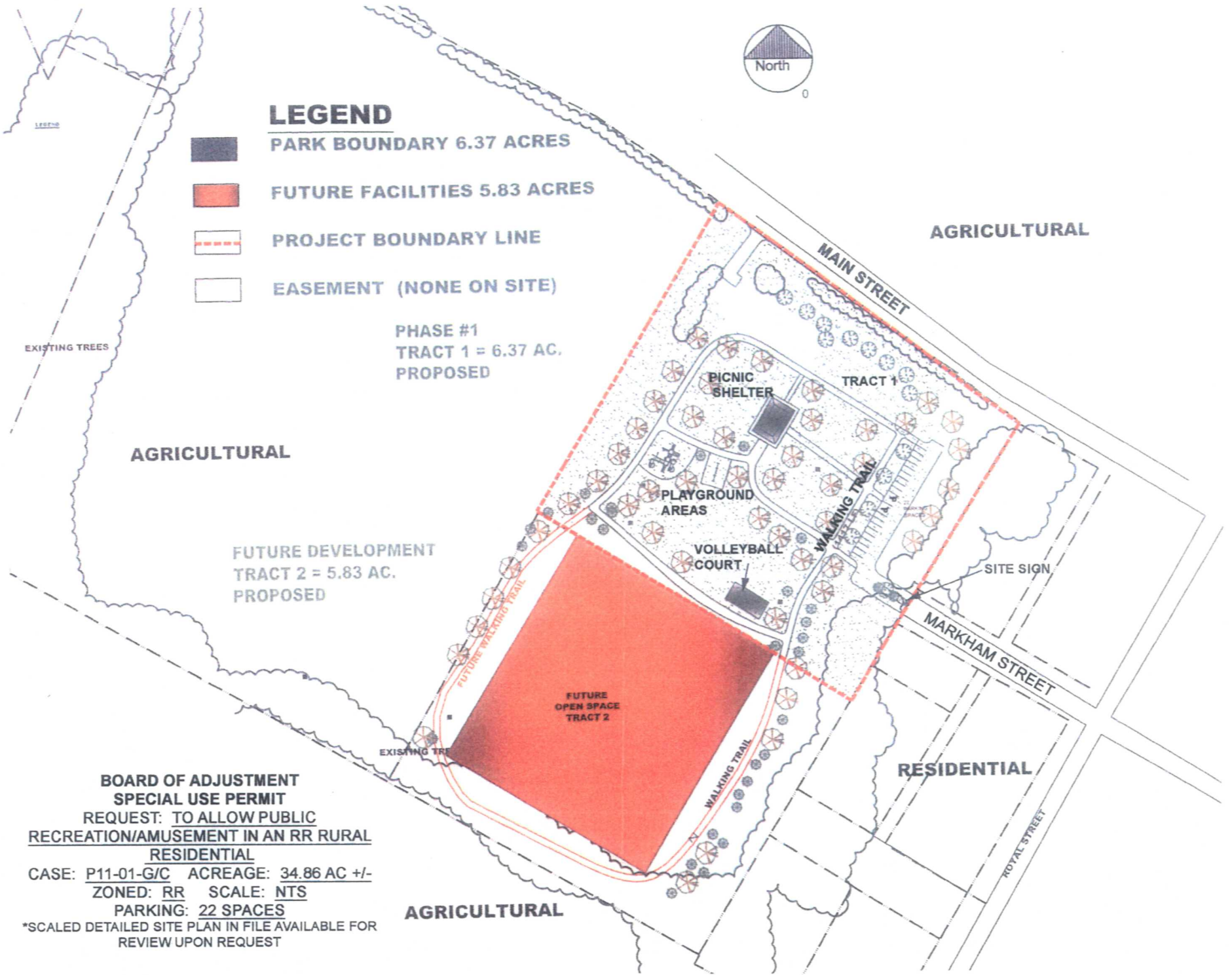


LEGEND

-  **PARK BOUNDARY 6.37 ACRES**
-  **FUTURE FACILITIES 5.83 ACRES**
-  **PROJECT BOUNDARY LINE**
-  **EASEMENT (NONE ON SITE)**

PHASE #1
TRACT 1 = 6.37 AC.
PROPOSED

FUTURE DEVELOPMENT
TRACT 2 = 5.83 AC.
PROPOSED



**BOARD OF ADJUSTMENT
SPECIAL USE PERMIT
REQUEST: TO ALLOW PUBLIC
RECREATION/AMUSEMENT IN AN RR RURAL
RESIDENTIAL**

CASE: P11-01-G/C ACREAGE: 34.86 AC +/-
 ZONED: RR SCALE: NTS
 PARKING: 22 SPACES

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

AGRICULTURAL

AGRICULTURAL

AGRICULTURAL

RESIDENTIAL

EXISTING TREES

EXISTING TREE

PICNIC SHELTER

PLAYGROUND AREAS

VOLLEYBALL COURT

MAIN STREET

TRACT 1

WALKING TRAIL

SITE SIGN

MARKHAM STREET

ROYAL STREET

FUTURE WALKING TRAIL

WALKING TRAIL

FUTURE OPEN SPACE
TRACT 2

BOARD OF ADJUSTMENT

LOCATION OF PROPERTY: In Town of Godwin along Main St. east of Royal St.

OWNER: Town of Godwin

ADDRESS: P.O. Box 10 Godwin, NC ZIP CODE: 28344

TELEPHONE: HOME WORK 980-1000 Monday only 9-5pm

AGENT: Deborah Tew Godwin, Mayor

ADDRESS: P.O. Box 23 Godwin, NC 28344

TELEPHONE: HOME (910) 584-3015 WORK (910) 980-1000

APPLICATION FOR A SPECIAL USE PERMIT
As required by the Zoning Ordinance

A. Parcel Identification Number (PIN #) of subject property: 0593-34-9611
(also known as Tax ID Number or Property Tax ID)

B. Acreage: 34.86 Total
12.2 for Park Frontage: 1,420' ± Depth: 1,030' ±

C. Water Provider: Town of Godwin

D. Septage Provider: NORCRESS

E. Deed Book 8344, Page(s) 347, Cumberland County Registry. (Attach copy of deed of subject property as it appears in Registry).

F. Existing use of property: Farmland

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.) Utilize 12.2 acres of the 34.86 acre total for the development of a Town Park. This 12.2 acres is the portion that is located within the Town Limits.

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 approve, deny, or defer the request for additional information to be provided;
- If the petitioner or their representative for this application does not appear personally before the Board, whether there is opposition or not, the Board has full authority to consider the case.
- If the Board’s decision is to deny the matter before them, **the aggrieved party shall file a “Notice to Intent to Appeal” with the Planning & Inspections Staff on the next business day following the meeting in which the Board’s decision was made final, or the next business day following receipt of the written copy there of.**
- Any petition for review by Superior Court shall be file with the Clerk of Superior Court within 30 days after the decision of the Board is made final.

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) Deborah L. Godwin, Mayor

PRINTED NAME OF OWNER(S) DEBORAH L. GODWIN

DATE 2-28-2011

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

Special Use Permit – Board of Adjustment

DRAFT

Ordinance Related Conditions
(Town of Godwin and County Jurisdictions)

Permit-Related:

1. 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.
 2. Connection to public water and sewer is required, the Town of Godwin must approve water plans and NORCRESS approve sewer plans prior to application for any permits. A copy of the Town of Godwin & NORCRESS approval must be provided to Code Enforcement at the time of application for building/zoning permits. (Section 2306 A.1, Public Water and Sewer Systems County Subdivision Ordinance)
 3. The developer must provide a site-specific address and tax parcel number at the time of building/zoning permit application.
 4. 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.
 5. 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.
 6. Landscaping must be provided in accordance with Section 1102 N, Landscaping, County Zoning Ordinance and/as shown on the site plan. The following are the minimum standards for the required landscaping of this site:
 - a. Twelve large shade trees or 24 small ornamental trees within the front yard setback area;
 - b. One large shade trees and eight shrubs are required in the building yard area;
 - c. One large shade trees or two small ornamental trees are required within the parking area.
- In addition:
- a. Required plant materials shall be maintained by the property owner, including replacing dead or unhealthy trees and shrubs; and
 - b. All yard and planting areas shall be maintained in a neat, orderly, and presentable manner and kept free of weeds and debris.
7. 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:

8. All uses, dimensions, setbacks and other related provisions of the County Subdivision and Zoning Ordinances for the A1 & RR zoning district must be complied with, as applicable. Note: This conditional approval is for the 6.37+/- acres labeled as "Park Boundary" on the site plan; future development and/or expansion into the land area currently in the County's jurisdiction will require, under current standards, a new Special Use Permit application.
9. This conditional approval is not approval of the permit for the freestanding sign. In addition, the freestanding sign must be located no closer than five feet from the right-of-way/property line. 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.)
10. "Main St" must be labeled as "NC HWY 82 (Main Street)" on all future plans.
11. 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)
12. For new development, all utilities, except for 25kv or greater electrical lines, must be located underground. (Section 2306 C, County Subdivision Ordinance)
13. In the event a stormwater utility structure is required by the NC Department of Environment and Natural Resources (NCDENR), the owner/developer must secure the structure with a four foot high fence with a lockable gate, and is required to maintain the detention/retention basin, keeping it clear of debris and taking measures for the prevention of insect and rodent infestation.
14. Prior to installation of the driveway on NC HWY 82 (Main Street), 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.
15. 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.
16. One male and one female restroom and one water fountain is required to be provided for this development.
17. All dumpster, garbage, and utility areas shall be located on concrete pads and screened on a minimum of three sides.
18. All required off-street parking spaces shall be a minimum of 9' x 20' and shall be surfaced, with a permanent material such as asphalt or concrete, and striped prior to application for the building final inspection. A minimum of one space for each four persons in design capacity of off-street parking spaces are required for this park.

Note: A County Zoning Ordinance text amendment is pending public hearing and expected final approval before the County Board of Commissioners on April 18, 2011 that repeals the provision requiring permanent surfacing of off-street parking and drive areas. In the event this text amendment is approved the spaces will be required to be provided; however, they will not have to be permanently surfaced or striped.

19. Fencing, netting, or other control measures must be provided around the perimeter of any areas used for hitting, flying, or throwing of objects to prevent the object from leaving the designated area.

Advisories:

20. The applicant is advised to consult an expert on wetlands before proceeding with any development.
21. 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.

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
CCP&I Godwin Representative:	Denise Sykes	678-7629
Town of Godwin:	Deborah Godwin, Mayor	980-1674
County Public Utilities/NORCRESS:		678-7682
Corp of Engineers (wetlands):	Crystal C. Amschler	(910) 251-4170
NCDENR (E&S):	Sally Castle	433-3300
Location Services:		
Site-Specific Address:	Ron Gonzales	678-7616
Tax Parcel Numbers:		678-7549
NCDOT (driveways/curb-cuts):	Gary Burton	486-1496
N.C. Division of Water Quality:	Mike Randall	(919) 733-5083 ext. 545



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 & Inspections 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

April 15, 2011

MEMORANDUM

TO: County Board of Adjustment
FROM: Jeff Barnhill, Watershed Review Officer, Land Use Codes
SUBJECT: CASE WS08-04 REVOCATION OF HIGH DENSITY DEVELOPMENT WATERSHED

The following watershed case is being presented for your consideration:

CASE NO. **WS-08-04**. REVOCATION OF THE ANDREWS MINI STORAGE DEVELOPMENT'S PREVIOUS APPROVAL FOR UP TO 70% IMPERVIOUS LAND AREA UNDER THE TERMS OF THE COUNTY WATER SUPPLY WATERSHED MANAGEMENT AND PROTECTION ORDINANCE, SECTION 31A-60 FOR HIGH DENSITY DEVELOPMENTS; ZONING: C(P), C(P)/CUD AND R6; TOTAL ACREAGE: 15.74 +/-; LOCATED AT THE SOUTHEAST QUADRANT OF SR 1600 (MCARTHUR ROAD) AND SR 1611 (ANDREWS ROAD), NORTH OF SR 1613 (HONEYCUTT ROAD); OWNERS: DOROTHY M ANDREWS, CREEKWOOD HOLDINGS LLC, JACQUELINE C ANDREWS & ANDREWS STORMWATER OWNER'S ASSOCIATION.

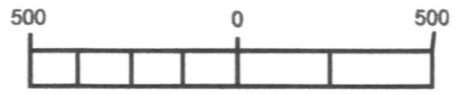
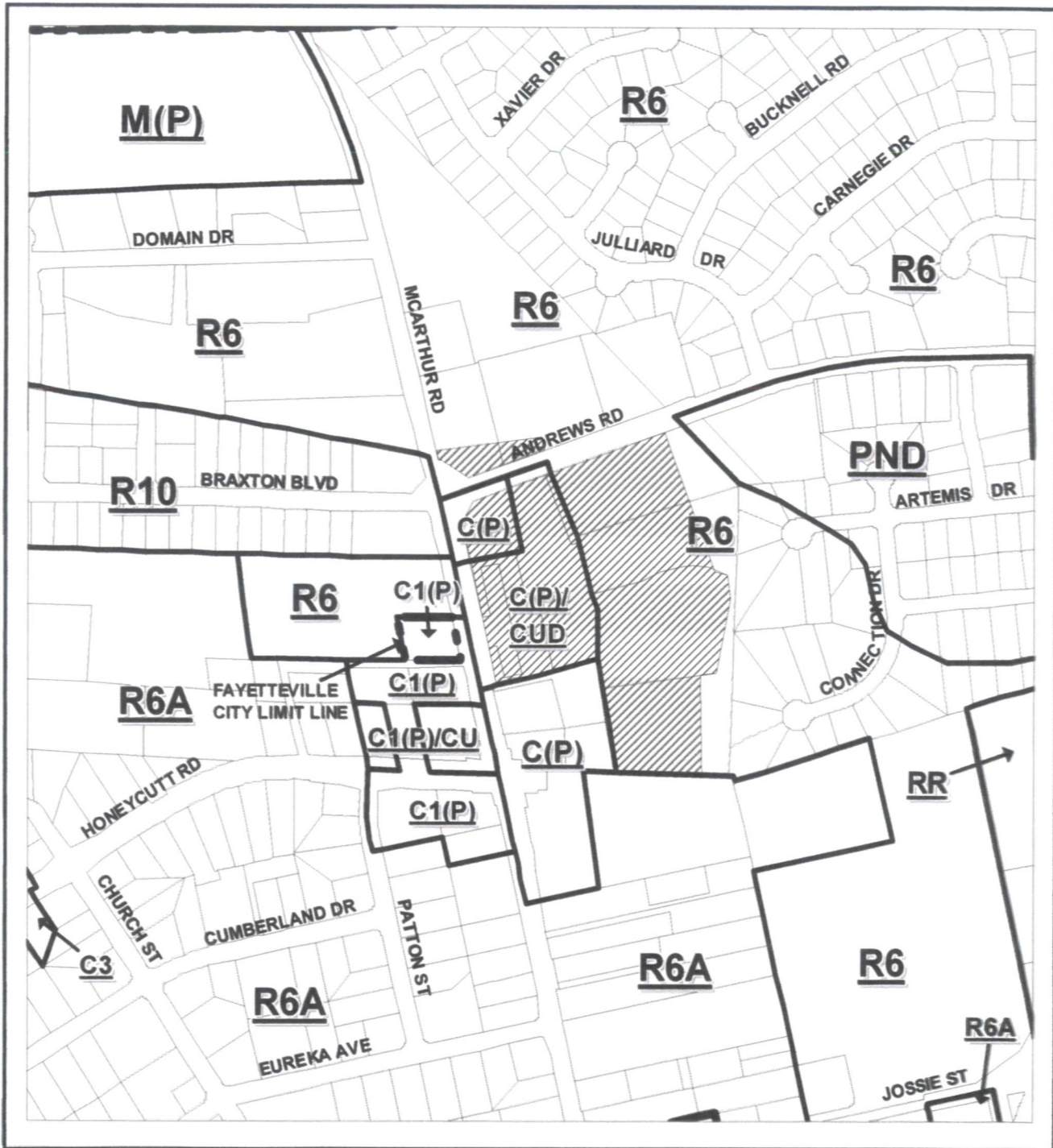
The developer for the above mentioned case has not complied with the conditions of approval and attached is a letter dated 1/26/2011 That was sent to Neil Yarborough outlining what the violation is and what steps need to be taken to get this project back into compliance.

The attached documents are for your review. If you have any questions regarding this packet material, please contact me at 678-7765, email: jbarnhill@co.cumberland.nc.us.

Attachments:

1. Sketch Map
2. Site Plan
3. Pond Sketch
4. Application
5. Checklist
6. Minutes from May 15, 2008
7. Letter to Neil Yarborough, dated 1/26/11 with conditions attached
8. Condition Sheet

cc: Creekwood Holdings, LLC. Owner/Applicant
Dorothy Andrews, Owner
Jacqueline Andrews, Owner
Andrews Stormwater Owners Association
Neil Yarborough, Attorney
Tom Speight, Engineer, Larry King & Associates, RLS, PA
Rick Moorefield, County Attorney
Patti Speicher, Land Use Codes



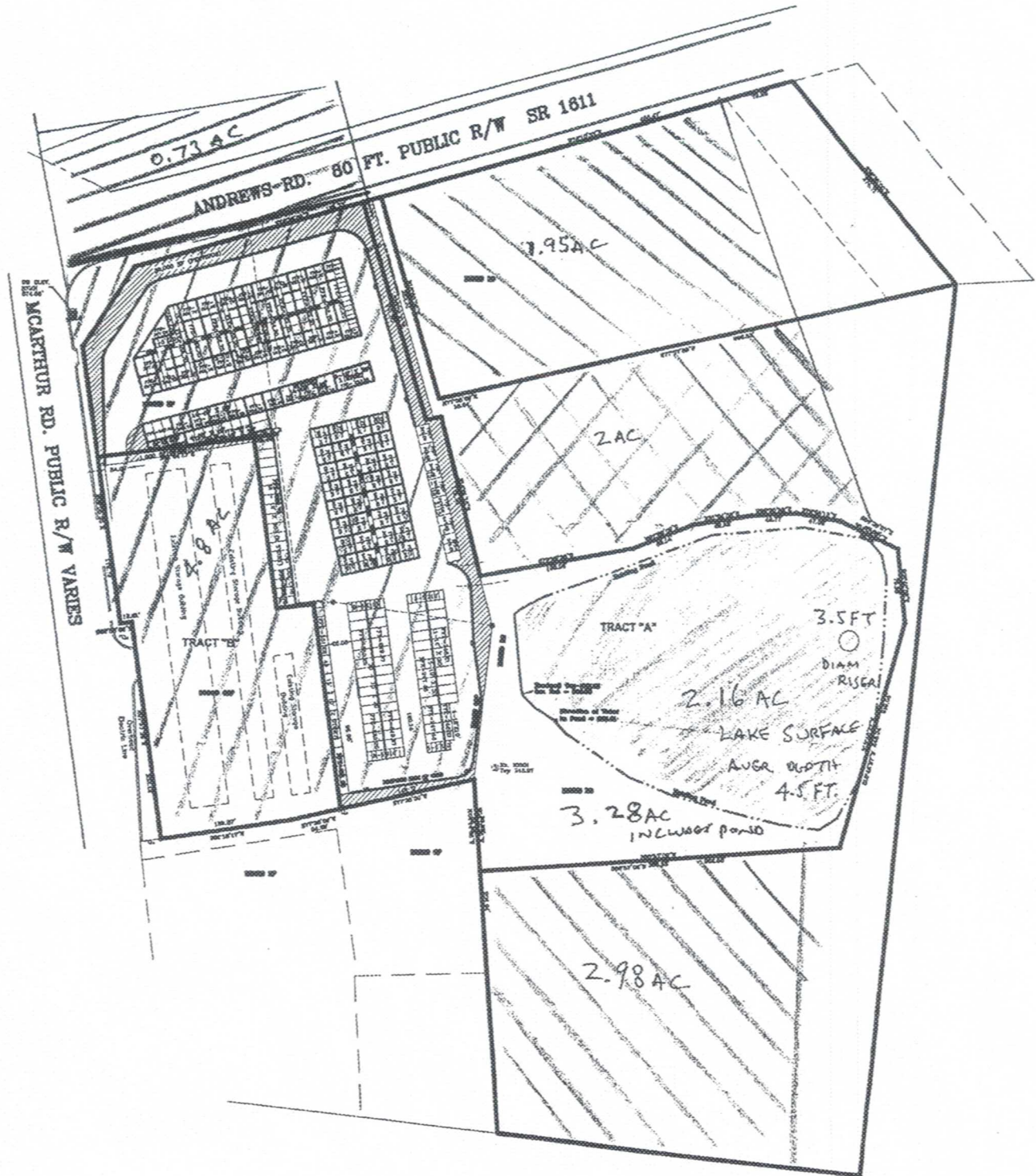
SCALE IN FEET

WATERSHED REVOCATION

ACREAGE: 15.74 AC.+/-		HEARING NO: WS08-04	
ORDINANCE: COUNTY		HEARING DATE	ACTION
GOVERNING BOARD			

PIN: 0521-60-6335, 2396, 3345, 8324
 PORT. OF PIN: 0521-60-8185, 7812
 0521-61-4029, 1062

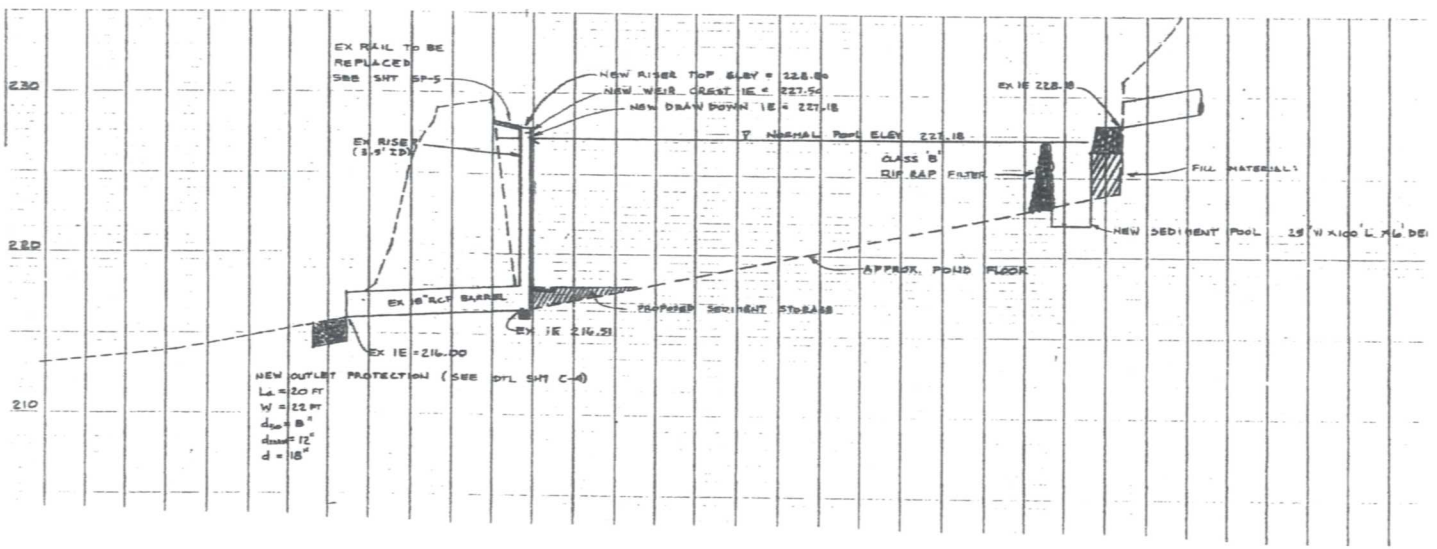
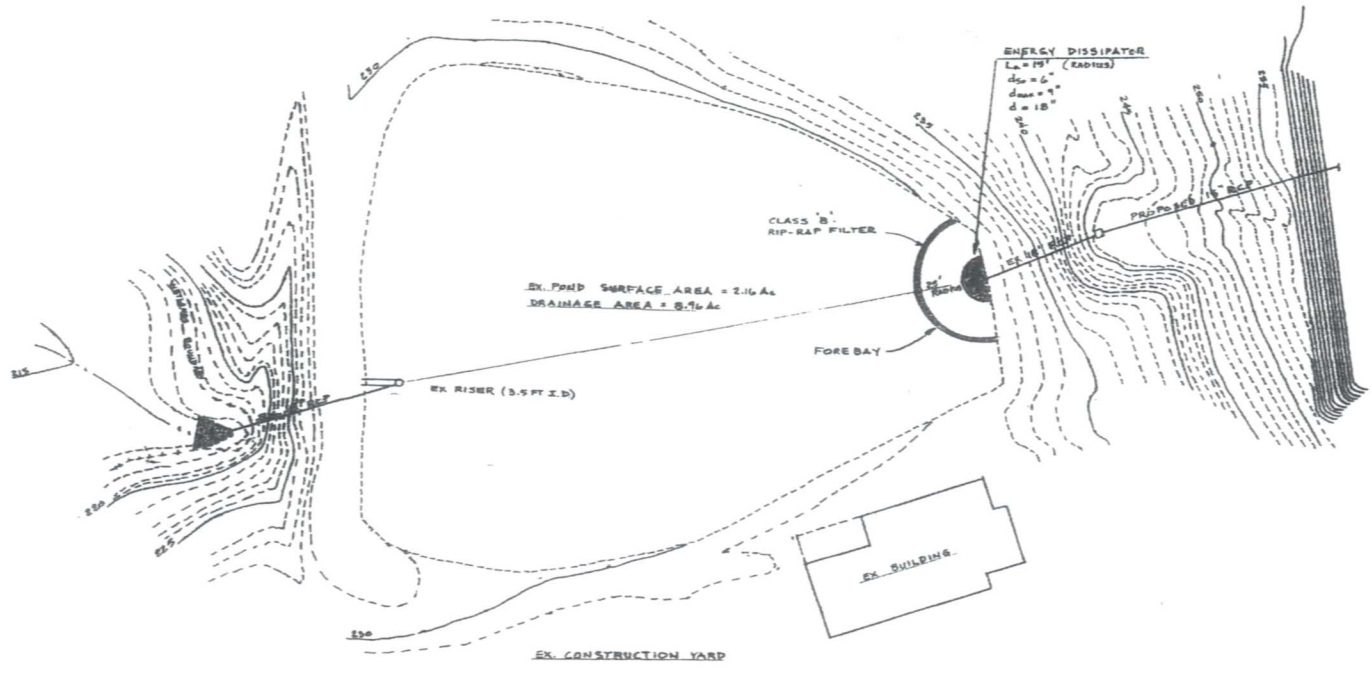
WATERSHED AREA FOR EXISTING POND



REVOCATION OF WATERSHED ANDREWS MINI STORAGE

CASE: WS08-04 ACREAGE: 15.74+/-
ZONED: C(P), C(P)/CU & R6 SCALE: NTS

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



WS08-04

a) Greyhouse LLC

1023 W Manatee Avenue
Bradenton, Florida 34205
Deed Book 7695, Page 214
Plat Book 88, Page 161
Tax Pin 0521-60-2656
0.83 Acres
Lot 2

b) Jacqueline C. Andrews

6512 Burnside Place
Fayetteville, N.C. 28311
Deed Book 4282, Page 225
Tax Pin 0521-60-4650
2.33 Acres

c) Creekwood Car Co. LLC

1279 Andrews Road
Fayetteville, N.C. 28311
Deed Book 7086, Page 244
Plat Book 88, Page 161
Tax Pin 0521-60-6335
5.87 Acres
Lot 1

APPLICATION FOR WATERSHED HIGH DENSITY OPTION

- I. Completed application for a Watershed Subdivision Approval.
- II. Submission of plans, specifications and documents which answer the requirements of Section 31A-62

(SEAL)



Owner/Attorney in Fact

4/2/08

Cumberland County Board of Adjustment
Andrews Mini Storage
Evaluation of Application for High Density Development Proposal

Requirements for approval of the Watershed High Density Option by the Board:

1. The storm water control system must meet the standards of the Watershed Ordinance. (Plans have been reviewed by the County Engineer's office and were approved on April 14, 2008.)
2. Cost estimate for the storm water system must be a sufficient amount to complete the project. (County Engineer's office verified the sufficiency of the amount proposed in letter dated May 7, 2008.)
3. Legal documents for ownership and maintenance of the storm water control system must meet the standards of the Watershed Ordinance. (Operation and Maintenance Plan found to be legally sufficient by the County Attorney's office on April 30, 2008.)
4. The project must meet the standards of the zoning and subdivision ordinances. (The Planning & Inspections Staff has reviewed the project and conditionally approved the case in Subdivision Case No. 08-069, on April 10, 2008.)
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 April 28, 2008.)
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 April 2, 2008.)
7. In addition to any other requirements provided by the Water Supply Watershed 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.

Note: All documents and confirmation of approvals referenced above are contained within the case file and are available upon request.

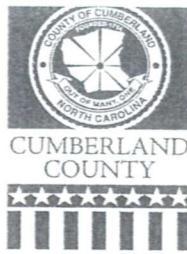
Example: Approval of Proposal

A motion to approve Case No. WS 08-04, subject to all Conditions of Approval, provided that it is developed according to the plan under the direction of the Watershed Administrator in accordance with Section 31A-68 which authorizes the delegation of enforcement authority from the Board to the Planning & Inspections Department.

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.

Members:
George Quigley, Chair
Oscar L. Davis, III, Vice-Chair
Steve Parsons
Melree Hubbard Tart
Joseph Dykes



Alternates:
James Ingram
Martin J. Locklear
John Swanson
Horace Humphrey

CUMBERLAND COUNTY BOARD OF ADJUSTMENT

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

MINUTES
MAY 15, 2008
7:00 P.M.

Members Present

George Quigley, Chair
Steve Parsons
Melree Hubbard Tart
Joseph Dykes
John Swanson

Members Absent

Horace Humphrey
Martin J. Locklear
James Ingram

Staff/Others Present

Patricia Speicher
Angela Perrier
Rita Perry
Jeff Barnhill
Grainger Barrett,
County Attorney
Pier Varner

1. ROLL CALL

Chair Quigley called the meeting to order at 7:00 p.m. in Public Hearing Room Number 3 of the Historic Courthouse. Ms. Speicher called the roll and a quorum was present.

2. APPROVAL OF THE APRIL 17, 2008 MINUTES

Correction: Page 3 of 24; 5th paragraph from the bottom; replace "pervious" with "impervious" (twice)

A motion was made by Mr. Parsons and seconded by Mrs. Dykes to approve the minutes with corrections. The motion passed unanimously.

3. ABSTENTIONS BY BOARD MEMBERS

There were no abstentions by Board members.

4. PUBLIC HEARING DEFERRALS

There were no public hearing deferrals.

5. BOARD MEMBER DISCLOSURE

Mrs. Tart and Mr. Davis visited the site of Case No. WS-08-04
Mr. John Swanson is present.

6. POLICY STATEMENTS REGARDING APPEAL PROCESS READ

Ms. Speicher read the Board's policy regarding the appeal process to the audience.

7. APPLICANT REQUESTED PUBLIC HEARING WITHDRAWAL

- A. **P08-01-C:** REQUEST FOR A VARIANCE TO ALLOW A SETBACK OF 50 FEET WHERE 200 FEET IS REQUIRED, IN AN A1 AGRICULTURAL DISTRICT, ON 166 +/- ACRES, LOCATED ON THE SOUTHWEST SIDE OF NC HWY 53 (CEDAR CREEK ROAD), NORTHWEST OF SR 2217 (CLARK-WEST ROAD), OWNED BY DORIS B. AUTRY, TRUSTEE.

A motion was made by Mr. Davis and seconded by Mr. Dykes to approve the applicant's request for withdrawal. The motion passed unanimously.

- B. **P08-02-C:** CONSIDERATION OF A VARIANCE AND SPECIAL USE PERMIT TO ALLOW A DAY CARE FACILITY WITH ACCESS TO A STREET OTHER THAN A MAJOR OR MINOR THOROUGHFARE IN A R40A RESIDENTIAL DISTRICT, ON 5.79 +/- ACRES, LOCATED AT 2716 CUSTER AVENUE, SUBMITTED BY ANDREA BOATMAN, OWNED BY DOLPHUS WILLIAMS.

A motion was made by Mrs. Tart and seconded by Mr. Davis to approve the applicants request for withdrawal. The motion passed unanimously.

8. BOARD HEARING:

- **WS-08-04.** CONSIDERATION FOR HIGH DENSITY DEVELOPMENT WATERSHED REVIEW FOR ANDREWS MINI STORAGE, IN A C(P)/CUD ZONING DISTRICT, CONTAINING 8.32 +/- ACRES, LOCATED AT THE SOUTHEAST QUADRANT OF SR 1611(ANDREWS ROAD), AND SR 1600(MCARTHUR ROAD). SUBMITTED BY: LARRY KING & ASSOCIATES, RLS, PA.

Mr. Jeff Barnhill presented the zoning, land use, site plan, application and photos of the site to the Board.

MR. DAVIS: This came to us as a request?

MR. BARNHILL: Yes, the applicant submitted for a site plan approval which included watershed application.

MR. DAVIS: NCDENR said it was good to go?

MR. BARNHILL: Yes sir. The stormwater control system plans have been revised and was approved by the County Engineer on April 14, 2008. The cost estimate for the stormwater system was submitted to the County Engineer's office and was verified to be sufficient. The legal documents for the operation and maintenance plan were found to be legally sufficient. The Planning & Inspections Staff has reviewed the project and conditionally approved the case in Case No. 08-069 on April 10, 2008. The Soil and Erosion Sedimentation Control Plan was submitted to the NCDENR and approved on April 2, 2008.

CHAIR QUIGLEY: What is the surface of the mini-storage? Is that impervious surface?

MR. BARNHILL: Yes sir. There is 30.97% on the existing portion. With the addition it changed to 52.25% impervious.

MR. BARRETT: The Ordinance states it can not exceed 70%.

MR. SWANSON: 52.25% includes and accounts for the 30.97%.

MR. BARNHILL: Yes

MR. PARSONS: The applicant is asking to be approved for up to 70%?

MR. BARNHILL: Yes

MRS. TART: The total area includes the existing storage facility?

MR. BARNHILL: Yes

MRS. TART: The total area is 8.32 acres and the pond consumes 3.28 acres?

MR. BARNHILL: Yes, but that is included in the 8.32 acres.

MS. SPEICHER: To clarify, the pond is 2.16 acres; the land area immediately around the pond is 3.28 acres.

CHAIR QUIGLEY: There are two people signed up to speak.

MR. ANDREWS: I am the owner of the property and the facilitator of the project. I would like to thank Patti and her Staff who worked very closely with Tom Speight and his staff at Larry King & Associates.

I would like to clarify the issue about the impervious use. As you can see by the development around the pond, there is simply no more area to develop in that project. The only usable real estate around it is zoned R6 which would be residential. Currently, north of the body of water is a nonconforming 20,000 square foot office and shop facility. We asked for C(P)/CUD zoning on the back of the property which runs up to the existing developed portion. There is not going to be anymore

commercial development in or around the area the Board was questioning. I would like to defer any technical questions to Mr. Speight.

MR. PARSONS: Should the uses change from mini-storage to something else would they be required to come back? Does the permitting to go up to 70% impervious apply to any use as long as it meets the zoning requirement?

MS. SPEICHER: For this particular site the property is zoned C(P)/CUD. The property owner got a Conditional Use District and Permit specifically for mini-storage. Any change of use would have to go the Planning Board and Board of Commissioners before the use could change. Staff would have the opportunity to get conditions on the permit for it to come back for watershed approval.

MR. PARSONS: Is this something we consider in our forming the motion?

MR. BARRETT: May I clarify, if the use changes, basically the site plan did not change, would there be a requirement to come back to the Board if it did not exceed 70%?

MS. SPEICHER: If the site plan did not substantially change. Again, it would be up to the staff and the Board of Commissioners' recommendation on the Conditional Use Permit. One of the conditions of approval for the permit was that the applicant has to have watershed approval before he takes any steps toward this development.

MR. PARSONS: Mini-storage is one of the most useful interim uses of a property if you are thinking of further commercial development.

MR. BARRETT: The type of change in the use of property that might require coming back to the Board is something that would alter drainage, the handling of stormwater or the way in which it was managed, in a substantial way?

MS. SPEICHER: The Staff practice would be and is, if the site plan changes substantially we would bring it back to the Board. Zoning revision rules allows 10% revision on structures (shape, size, setbacks). We would apply those same standards to a watershed case.

A motion was made by Mrs. Tart and seconded by Mr. Davis to approve Case No. WS-08-02 for up to 70% on the 15 acres, 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 Department.

Quigley: Yes
Parsons: Yes
Davis: Yes

Tart: Yes

Dykes: Yes

The motion was approved unanimously.

9. PUBLIC HEARING(S):

The Public Hearing was opened

- A. **P08-01-E:** CONSIDERATION OF A SPECIAL USE PERMIT FOR A NURSING HOME FACILITY IN A R6A RESIDENTIAL DISTRICT, ON 2.86 +/- ACRES, LOCATED AT 3017 DUNN ROAD, SUBMITTED BY JOHN A. WEEKS, OWNED BY NUBBING HILL HEALTH CARE, INC. AND JOHN A. & JANICE C. WEEKS (EASTOVER)

Ms. Speicher presented the zoning, land use and photos of the site to the Board. She also noted Condition #18: The staff is recommending a recombination plat (also known as a "No Approval Required" or "NAR") because this site is actually two separate lots. Quite often we have applicants trying to get their permit the next day.

MR. DAVIS: If this was already granted previously why are we hearing it again?

MS. SPEICHER: Because our ordinance contradicts itself, stating special use (the original approval was specified conditional use) runs with the land if you exercise the right within one calendar year, which they did. The next sentence states that if it ceases for one year they have to come back for approval. This particular property was in foreclosure. In 2001 the property was sold. Apparently from 2001 on, the property has been tied up with one issue or another. The applicant did state they are doing extensive renovations during the process of the foreclosure and negotiations. They are removing the one story frame on the northwestern side of the property. The existing home on the property is going to be an on-site supervisor's residence.

MR. BARRETT: There is a specific provision of the ordinance that has additional requirements for nursing homes, Section 917 (Nursing Home/Convalescent Home/Hospital/Sanitarium/Retirement Home, etc.). Ms. Speicher please read the following record:

A. The facility shall not cover more than 50 percent of the tract. It calculated to approximately 16%.

B. Must meet all requirements for licensing by the State of North Carolina. The applicant is aware of the requirement. The applicant is and has done his renovations following those State standards. The applicant can not get a CO [Certificate of Occupancy] from Inspections until everything else is completed.

C. In addition to basic requirements for site plans as required in Article XIV, the plan shall include proposed points of access, ingress and egress, the pattern of internal circulation, and the layout of parking spaces. This is evidenced on the site plan.

Lori Epler,
Chair
Cumberland County

Roy Turner,
Vice-Chair
Cumberland County

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



COUNTY of CUMBERLAND

Planning & Inspections Department

Thomas J. Lloyd,
Director

Cecil P. Combs,
Deputy Director

Walter Clark,
Sara F. Piland,
Cumberland County

Benny Pearce,
Town of Eastover

Donovan McClaurin
Wade, Falcon, & Godwin

January 26, 2011

Mr. Neil Yarborough
Attorney, Yarborough Law Firm
115 East Russell Street
Fayetteville North Carolina 28301

SUBJECT: Andrews Mini Storage - Possible Resolution to Revocation of High Density Watershed Approval, Case No. WS08-04

Dear Attorney Yarborough,

This letter is being sent to you at your request and because it is my understanding that you are representing Mr. Brian Andrews regarding the above referenced case. Any assistance you could provide in resolving the issues with this development would be greatly appreciated.

As you are aware, the previously issued Watershed Protection Permit (September 2, 2009) and the Watershed Occupancy Permit (February 10, 2010) for this site were both revoked on November 18, 2010. At your request I could provide you with copies of all related documents to the revocations. Based on the communications between Jeff Barnhill, County Watershed Review Officer, and Mr. Andrews, it appears that the posting of the performance bond is the primary "road block" for continued compliance.

After a site visit and visual inspection by Jeff, it has been determined that the current existing structures and other impervious surfaces on the site may very likely qualify for "low density watershed" approval. In order to confirm this and as is necessary for issuance of the low density approval, three copies of a detailed site plan with all pervious and impervious calculations contained thereon is required to be submitted to his office.

Low density approval is a much less stringent type of watershed approval with no performance bond required and typically can be obtained within a couple of days. The ordinance allows the staff to review and conditionally approve low density developments; therefore, there would be no board hearing. The conditional approval generally could be granted if the impervious area does not exceed 24% of the total land area of the project.

Please note that if your client cooperates and is successful in obtaining the low density watershed approval, the civil penalty previously assessed would be waived for this bond posting noncompliance issue. Because of the requirement for NC Department of Environment and Natural Resources' (NCDENR) approval prior to our acceptance of any high density development application, notice of the

revocation will be provided to that office. I do not know what if any effect this may have on their approval of this site in its current state or for future approvals by that office. This revocation will have no effect on any low density staff approval.

The revocation of the County Board of Adjustment's high density development approval is tentatively scheduled for the board's March 17, 2011 regular meeting. Mr. Andrews and you will be formally notified of the meeting when the date is confirmed.


The board's revocation of the high density approval will be cause for re-submittal to the Board of Adjustment for any newly proposed development or to seek re-approval of the same approved site plan for any high density development approval on the subject properties. This re-submission requirement applies to the entire 15.74 acres (several tracts) that were previously approved.

Please remind your client that the conditions of the Zero Lot Line Subdivision & C(P) CUD Site Plan approval by the staff (Case No. 08-069) still apply and the site must remain in compliance with those conditions. I have attached to this letter a copy of the approved conditions. The watershed-related conditions will be adjusted appropriately if your client submits a new site plan and receives low density approval as well as an added condition clarifying exactly what portion of the development has received approval.

This development must be brought into compliance or Jeff will be required to refer the matter to the County Attorney's office, which most likely result in the issue being resolved in Environmental Court. In order to make the most effective use of staff time, notice of your client's intent must be received by this office prior to February 11, 2011 and in the event your client opts to submit for the low density approval, site plans must be submitted to us no later than February 28, 2011.

Thank you again for your assistance with this matter and please contact me with any questions you or your client may have or for any additional information that we may be able to provide in resolving this matter.

Sincerely,


Patricia Speicher
Land Use Codes

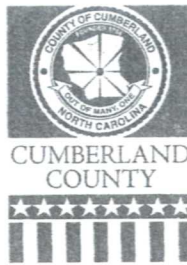
Attachment: Case No. 08-069, Zero Lot Line Subdivision & C(P) CUD Site Plan Conditions of Approval

cc: Brian Andrews, 6506 Butlers Crest Drive, Bradenton FL 34203
Tom Speight, Engineer, Larry King & Associates
Butch Raynor, Deputy County Attorney
Tom Lloyd, Director
Cecil Combs, Deputy Director
Ken Sykes, Code Enforcement Coordinator
Jeff Barnhill, Watershed Review Officer

Donovan McLaurin,
Chair
Wade, Falcon & Godwin

Lori Epler,
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 & Inspections Department

CERTIFIED MAIL

Thomas J. Lloyd,
Director

Cecil P. Combs,
Deputy Director

Clifton McNeill, Jr.,
Roy Turner,
Sara E. Piland,
Cumberland County

Benny Pearce,
Town of Eastover

May 16, 2008

Brian Andrews
Andrews Mini Storage
1630 McArthur Road
Fayetteville, North Carolina 28311

Dear Mr. Andrews:

This is to inform you that the Cumberland County Board of Adjustment met on May 15, 2008 and approved the high density development watershed review requested for the below noted case.

WS-08-04. CONSIDERATION FOR HIGH DENSITY DEVELOPMENT WATERSHED REVIEW FOR ANDREWS MINI STORAGE, IN A C(P)/CUD ZONING DISTRICT, CONTAINING 8.32 +/- ACRES, LOCATED AT THE SOUTHEAST QUADRANT OF SR 1611(ANDREWS ROAD), AND SR 1600(MCARTHUR ROAD). SUBMITTED BY LARRY KING & ASSOCIATES, RLS, PA.

The high density development watershed review requested was approved subject to the following conditions:

1. Prior to the granting of a *Watershed Protection Permit*, a financial security in the amount of \$15,625.00 for the maintenance and necessary repairs of the existing storm water 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.
2. Prior to issuance of the *Watershed Occupancy Permit*, a description of the area containing the storm water control structures along with any easements necessary for general access shall be recorded at the Cumberland County Register of Deeds. NOTE: The deed description shall grant perpetual access to government agencies to all storm water control systems, in order to accomplish or fulfill any service or function for which the agency is responsible to perform in their duties.
3. The detention pond will be inspected annually by the Watershed Review Officer for compliance of maintenance and upkeep of the storm water control systems.
4. 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*.
5. Building permits cannot be issued until a *Watershed Protection Permit* has been issued.


file

6. 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 678-7765 to schedule an inspection of the site for compliance prior to issuance of the any permits.
7. If any revisions to the approved plan, three copies of the revised plan must be submitted to the staff for review and dependant upon the extent of revision, may require final approval by the Board of Adjustment.
8. 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 days after any land disturbance.
9. The maximum built-upon area shall not exceed 70 percent of the entire development. (Note: This condition is accounting for all properties delineated on the sketch labeled as "Watershed Area for Existing Pond" and consisting of a total of 15.74 +/- acres.
10. All conditions of approval of the site plan, Case No. 08-069, must be complied with.
11. 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*.

IF YOU NEED CLARIFICATION OF CONDITION(S), PLEASE CONTACT JEFF BARNHILL AT 910-678-7765.

If you have any questions, please call me at 678-7605.

Sincerely,



Patricia Speicher
Land Use Codes Section

cc: Code Enforcement Section
Tom Speight, Larry King & Associates

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

April 15, 2011

MEMORANDUM

TO: County Board of Adjustment

FROM: Jeff Barnhill, Watershed Review Officer

SUBJECT: CASE NO: WS-11-01 CONSIDERATION FOR HIGH DENSITY
DEVELOPMENT WATERSHED (NEW SUBMITTAL)

The following watershed case is being presented for your consideration:

CASE NO. WS-11-01: CONSIDERATION OF THE ANDREWS MINI STORAGE FOR UP TO 70% HIGH DENSITY DEVELOPMENT APPROVAL UNDER THE TERMS OF THE COUNTY WATER SUPPLY WATERSHED AND PROTECTION ORDINANCE, ARTICLE VII; ZONING: C(P), C(P)/CUD AND R6; ACREAGE (PROPOSED & EXISTING DEVELOPMENT): 8.32 +/- ACRES (INCLUDING POND AREA); TOTAL ACREAGE UNDER CONSIDERATION: 15.74 +/- ACRES; LOCATED AT THE SOUTHEAST QUADRANT OF SR 1600 (MCARTHUR ROAD) AND SR 1611 (ANDREWS ROAD), NORTH OF SR 1613 (HONEYCUTT ROAD).

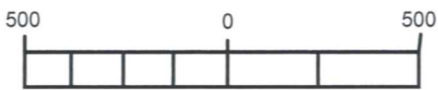
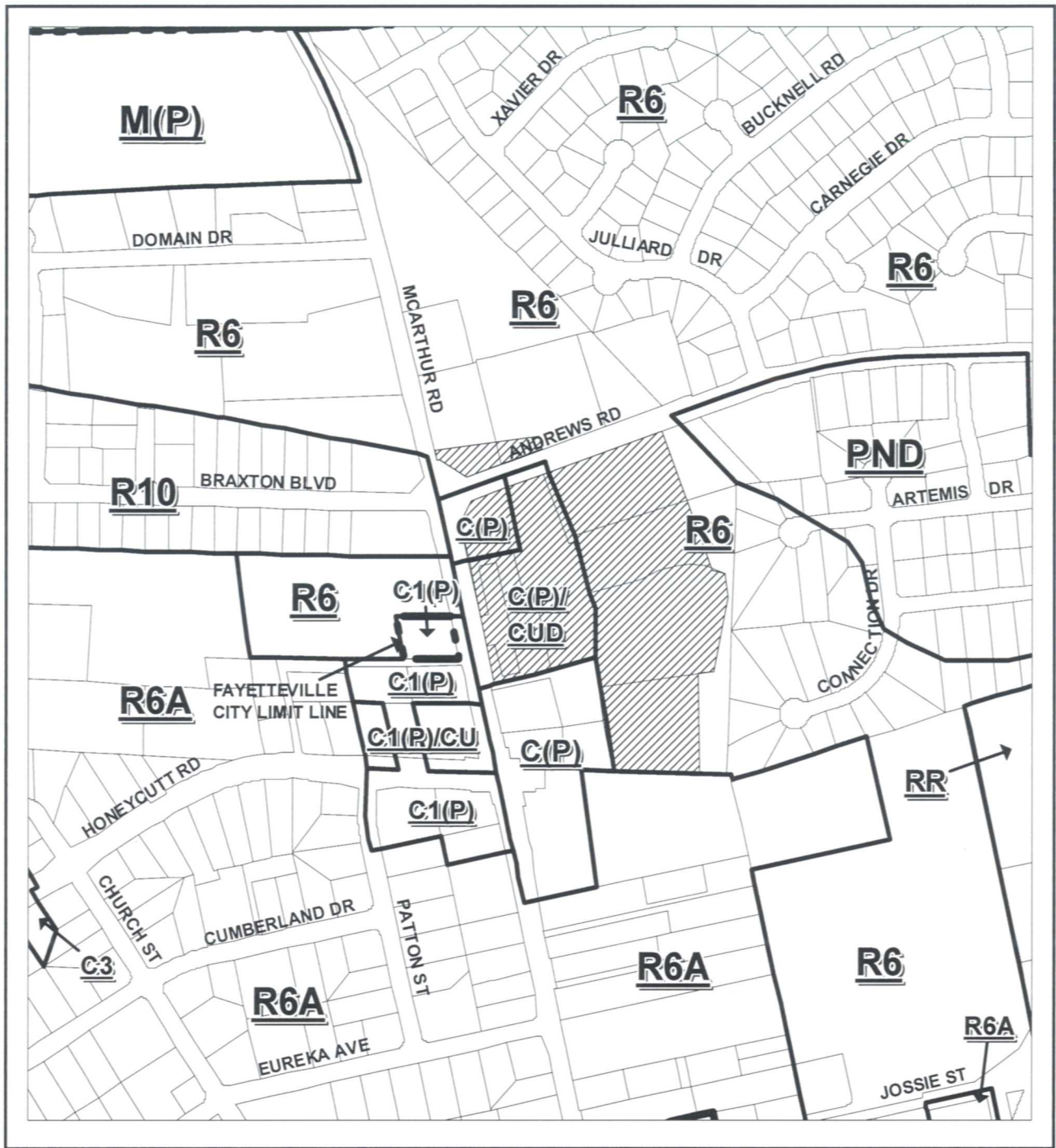
The attached documents have been submitted for your review and approval under the terms of the Cumberland County Water Supply Watershed Management and Protection Ordinance.

Please contact me at 910-678-7765 or by email: 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: Creekwood Holdings, LLC, Owner/Applicant
Dorothy Andrews, Owner
Jacqueline Andrews, Owner
Andrews Stormwater Owners Association
Neil Yarborough, Attorney
Thomas S. Speight, Jr., PE, PLS, Larry King & Associates.
Rick Moorefield, County Attorney
Patti Speicher, Land Use Codes



SCALE IN FEET

HIGH-DENSITY WATERSHED

ACREAGE: 15.74 AC. +/-

HEARING NO: WS11-01

ORDINANCE COUNTY

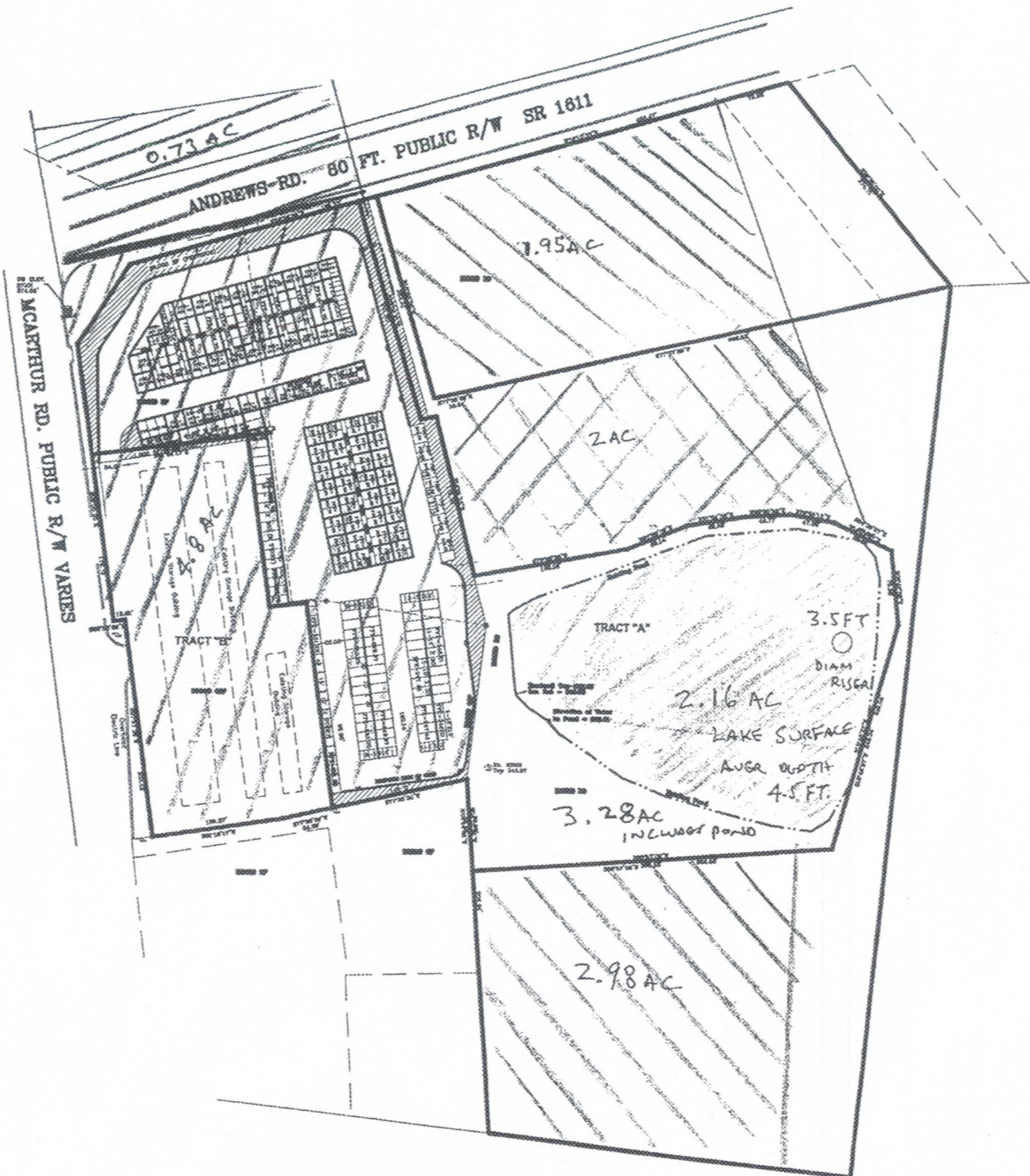
HEARING DATE

ACTION

GOVERNING BOARD

PIN: 0521-60-6335, 2396, 3345, 8324
 PORT. OF PIN: 0521-60-8185, 7812
 0521-61-4029, 1062

WATERSHED AREA FOR EXISTING POND



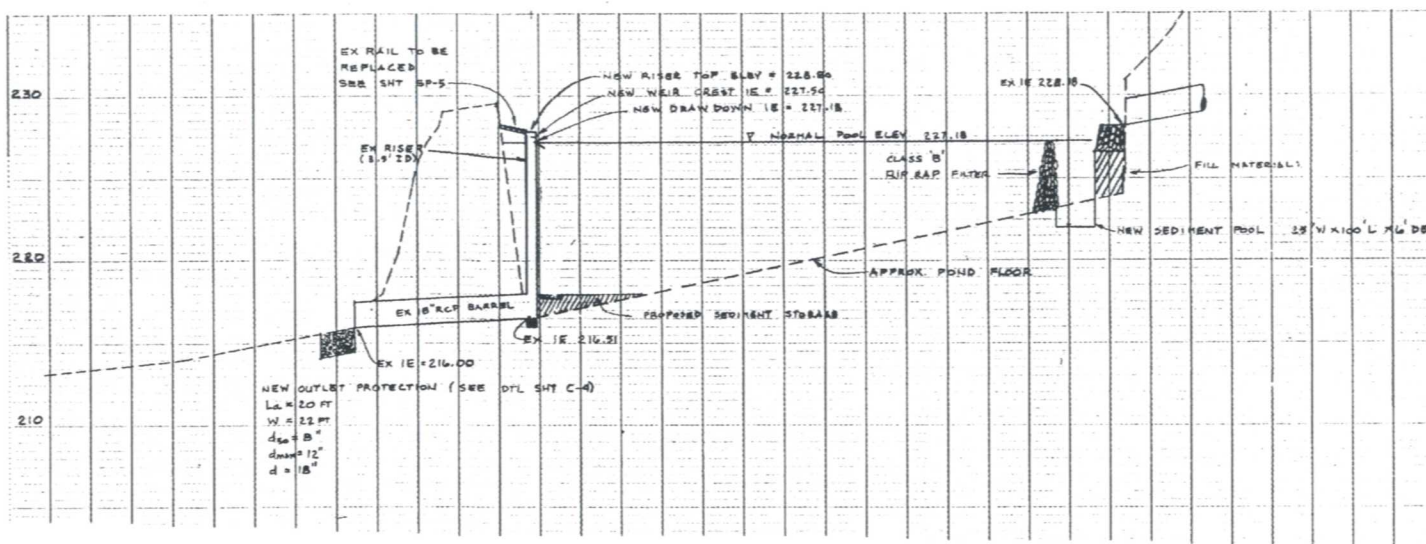
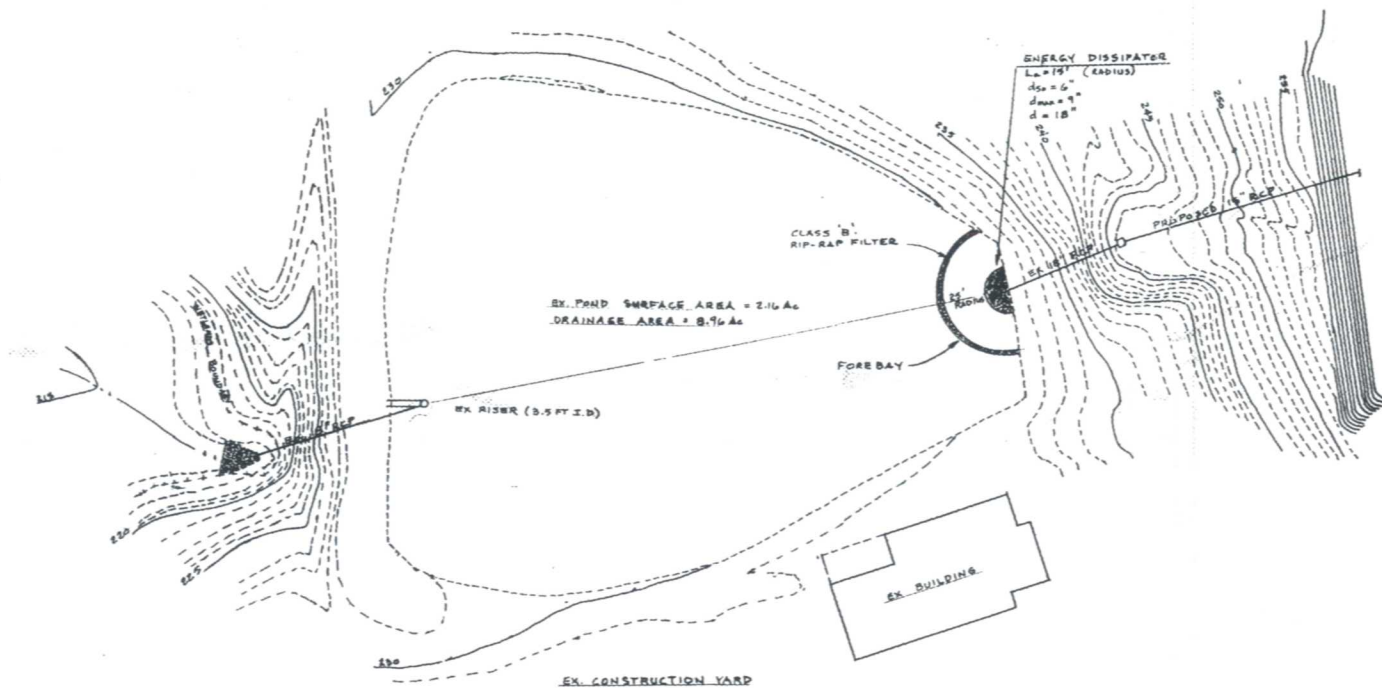
HIGH DENSITY WATERSHED

REQUEST: HIGH DENSITY DEVELOPMENT WATERSHED FOR ANDREWS MINI STORAGE

CASE: WS11-01 ACREAGE: 15.74+/-

ZONED: C(P), C(P)/CUD & R6 SCALE: NTS

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



WS11-01

PART I. WATERSHED SUBDIVISIONS

APPLICATION FOR A WATERSHED SUBDIVISION APPROVAL
PARCEL IDENTIFICATION NUMBER _____

DATE OF APPLICATION: MAR 11-2011 APPLICATION NUMBER: _____

On a separate sheet of paper, list the Deed Book and Page Number, the parcel size and the tax map and lot number for each parcel of land (if one parcel, list here).

Watershed, Cross Creek, Little Cross Creek, Cape Fear River, Little River

Critical area: Y(N) UN NAMED TO CARRIERS FALL

Name of Owner/Applicant: BRIAN ANDREWS, SUSAN ANDREWS

Mailing Address: 6506 BUTLERS CREST DR.

Street Address: BRADENTON, FLA 34203 EMAIL ANDREWSMINISTORAGE@

Telephone Number: BRIAN 941-447-8003 SUSAN 941-483-6660 NCRR.COM

Name of Engineer/Surveyor: THOMAS S. SPEIGHT, PE

Street Address: _____ City, State, Zip: LARRY KING ASSOC
1333 MORGANTOWN RD
FAYETTEVILLE, NC 28305

Telephone Number: _____ Alternate: _____
910 483 4300

General description of work under, this application:

COMMERCIAL - MINI-WAREHOUSES

Name of Proposed Subdivision: ANDREWS MINI STORAGE

Type of Subdivision: Residential _____ Commercial Industrial _____ Other _____

Total Area: 8.32 15.74

Number of Parcels/Lots: NA (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 a subdivision of land as defined in the Watershed Protection Ordinance.

(Seal)

[Signature] Co-Manager
[Signature] Co-Manager
Owner/Attorney in Fact
Creekwood Holdings, LLC 3/11/11
OFFICIAL USE

Date received: _____

Date referred to Board: _____

Notes:

RECEIPT # 63838 - \$ 200⁰⁰ BOA FEE WATERSHED HIGH DENSITY



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,
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Thomas J. Lloyd,
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Deputy Director

Walter Clark,
Sara E. Piland,
Cumberland County

Benny Pearce,
Town of Eastover

Donovan McLaurin
Wade, Falcon, & Godwin

COUNTY of CUMBERLAND

Planning and Inspection Department

DRAFT

HIGH DENSITY WATERSHED CONDITIONAL APPROVAL

PLANNING STAFF RECOMMENDATION: April 15, 2010 BOARD OF ADJUSTMENT DECISION: April 21, 2011

CASE NO: WS11-01

NAME OF DEVELOPMENT: Andrews Mini-Storage

LOCATION: At the southeast quadrant of SR 1600 (McArthur Road) and SR 1611(Andrews Road), North of SR 1613 (Honeycutt Road).

WATERSHED AREA: WS-IV-BW

PIN: 0521-60-6335-/-8324-/-3345-/-7812-/-8185-/-61-1062-

OWNER/DEVELOPER: Creekwood Holdings, LLC et al

ENGINEER/DESIGNER: Larry King & Assoc., RLS, PA

PLANNING DEPARTMENT RECOMENDATION:

- PRELIMINARY
- EXTENSION
- CONDITIONAL APPROVAL
- DENIED
- REVISION

BOARD OF ADJUSTMENT:

- PRELIMINARY
- EXTENSION
- APPROVED CONDITIONALLY
- DENIED
- REVISION

DRAFT

CONDITIONS OF APPROVAL:

1. Prior to acceptance of the estimated cost of maintenance and necessary repairs for the financial security amount (see Condition No. 2), the professional engineer for this project shall first submit a certification sealed by the engineer stating that the stormwater control structure is complete and consistent with the approved plans and specifications. In the event all portions of the approved stormwater control structure is not complete, then re-submittal of the cost estimate is required and the amount must be re-approved by the County Engineer – the amount in Condition No. 2 will not apply.
2. Prior to the issuance of a *Watershed Protection Permit*, a financial security in the amount of \$4,218.75 for the maintenance and necessary repairs of the existing 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.

3. Prior to the granting of a *Watershed Protection Permit*, the Operation and Maintenance Plan must be corrected with the correct legal description of the entire 15.74 acres subject to this approval and the plan must be properly recorded with the County Register of Deeds within five days of the Board of Adjustment granting approval and a copy of the recorded document provided to the Watershed Review Officer.
4. Prior to the granting of a Watershed Protection Permit, a description of the area containing the stormwater control structure shall be prepared and filed consistent with Sec. 31A-66(A) and (B), as a separate deed with the County Register of Deeds along with any easements necessary for general access to the stormwater control structure. The deeded area shall include the stormwater control structure, vegetative filters, all pipes and water control structures, berms, dikes, etc., and sufficient area to perform inspections, maintenance, repairs and reconstruction.
5. The detention pond will be inspected bi-annually by the Watershed Review Officer for compliance of maintenance and upkeep of the storm water control systems.
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* and the fencing and buffering is required to be in place prior to the issuance of any additional *Watershed Protection Permits* on this site.
7. Building permits cannot be issued until a *Watershed Protection Permit* has been issued.
8. Prior to building final building inspection, the Watershed Review Officer must first issue a *Watershed Occupancy Permit*. NOTE: The developer will need to contact Jeff Barnhill at 678-7765 to schedule an inspection of the site for compliance prior to issuance of the any permits.
9. If any revisions to the approved plan, three copies of the revised plan must be submitted to the staff for review and dependent upon the extent of revision, may require re-approval by the Board of Adjustment.
10. 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 days after any land disturbance – ground cover is required to be in place prior to any new *Watershed Protection Permits* being issued for this site.
11. The maximum built-upon area shall not exceed 70 percent of the entire development. (Note: This condition is accounting for all properties delineated on the sketch labeled as “Watershed Area for Existing Pond” and consisting of a total of 15.74 +/- acres.
12. Prior to any repair or reconstruction of the stormwater control structure, the owning entity must notify the Watershed Review Officer of the plans to repair or reconstruct; upon completion of repair or reconstruction the owning entity must notify the Watershed Review Officer immediately for re-inspection of the site.
13. All applicable conditions of approval of Cases 95-171, P07-71, 08-069, and 08-110 must be complied with, to include submission of the owners’ association documents (articles of incorporation, by-laws and covenants) for approval by the County Attorney as was required by Case 08-110, but not yet accomplished. A copy of the recorded documents must be provided to the Watershed Review Officer prior to issuance of any new *Watershed Protection Permits*.
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. Any significant revisions or changes to the approved plans must be re-approved by the County Board of Adjustment.
16. 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.

IF YOU NEED CLARIFICATION OF CONDITION(S), PLEASE CONTACT JEFF BARNHILL, CUMBERLAND COUNTY WATERSHED REVIEW OFFICER AT 910-678-7765.

Case No. WS11-01

Cumberland County Board of Adjustment

Evaluation of Application for High Density Development Proposal

Requirements for approval of the High Density Option for Watershed by the Board:

1. The storm water control system must meet the standards of the Watershed Ordinance. (Plans have been reviewed by the County Engineer's office and were reapproved on April 1, 2011.)
2. Cost estimate for the storm water system must be a sufficient amount to complete the project. (County Engineer's office verified the sufficiency of the amount proposed in a letter dated April 1, 2011.)
3. Legal documents for ownership and maintenance of the storm water control system must meet the standards of the Watershed Ordinance. (Legal documents have been found to legally sufficient by the County Attorney's office on March 29, 2011.)
4. The project must meet the standards of the zoning and subdivision ordinances. (The Planning & Inspections Staff has reviewed the project and conditionally approved the Case in Subdivision Case No. 08-069, on April 10, 2008. (Other related files: 95-171, P07-71 and 08-110).
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 for the Planning & Inspections Staff has reviewed and conditionally approved this plan on March 25, 2011.)
6. The project must have an approved soil erosion and sedimentation control plan. (The North Carolina Department of Environment and Natural Resources (NCDENR), Land Resources Division has approved the soil erosion and sedimentation control plan on April 2, 2008. (Sally Castle verified that approval still valid on April 5, 2011.)
7. In addition to any other requirements provided by the Water Supply Watershed 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:

1. A motion to approve Case No. WS11-01, subject to all Conditions of Approval, provided that it is developed according to the plan under the direction of the Watershed Administrator in accordance with Section 31A-68 which authorizes the delegation of enforcement authority from the Board to the Planning & Inspections Department.

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.