

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
JANUARY 20, 2011
7:00 PM

A meeting of the Cumberland County Board of Adjustment is to be held on Thursday, January 20, 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. ADJUSTMENTS TO THE AGENDA
3. APPROVAL OF THE OCTOBER 21, 2010 MINUTES
4. ABSTENTIONS BY BOARD MEMBERS
5. PUBLIC HEARING DEFERRALS
6. BOARD MEMBER DISCLOSURES
7. POLICY STATEMENT REGARDING APPEAL PROCESS
8. PUBLIC HEARING(S):

A. 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)

B. 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.

C. **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.

9. REVISED RULES OF PROCEDURE
10. DISCUSSION
11. UPDATE(S)
CASE NO. WS08-04
12. ADJOURNMENT

Members:

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



Alternates:

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

Cumberland County Board of Adjustment

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

MINUTES
OCTOBER 21, 2010
7:00 P.M.

Members Present

George Quigley, Chair
Melree Hubbard Tart
Joseph Dykes
Randy Newsome
William Lockett-Tally

Absent Members

Horace Humphrey (excused)

Staff/Others Present

Patricia Speicher
Cecil Combs
Pier Varner
Melodie Robinson
Angela Perrier
Rick Moorefield (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

There were none.

3. APPROVAL OF THE SEPTEMBER 16, 2010 MINUTES

A motion was made by Mr. Newsome and seconded by Mr. Dykes to approve the minutes as submitted. The motion passed unanimously.

Mrs. Tart asked for a correction to the minutes as follows: To have her name added as an excused absent member and to correct the motion to adjourn from her name to the correct individual.

CHAIR QUIGLEY: If you should go through the minutes and find a correction, you have up to two years to make the correction.

4. ABSTENTIONS BY BOARD MEMBERS

There were no abstentions by Board Members.

5. PUBLIC HEARING DEFERRALS

There were no deferrals.

6. BOARD MEMBER DISCLOSURE

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

- **P10-14-C:** CONSIDERATION OF A REQUEST FOR A VARIANCE FROM THE COUNTY ZONING ORDINANCE, SECTION 1002, INCIDENTAL USES, SUBSECTION E. ACCESSORY STRUCTURES 4; FOR A 20 FOOT SETBACK VARIANCE WHERE FIVE FEET IS REQUIRED, ALLOWING AN EXISTING STORAGE BUILDING TO ENCROACH 15 FEET ONTO THE ADJACENT PROPERTY; IN AN R15 RESIDENTIAL DISTRICT ON 1.10+/- ACRES, LOCATED AT 430 SHEP DRIVE; SUBMITTED BY J. THOMAS NEVILLE, THORP, CLARKE, NEVILLE & KIRBY, PA ON BEHALF OF THOMAS AND NANCY POULOS (OWNER), AND GREEN POND INC.(AFFECTED OWNER)

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

MRS. VARNER: A copy of the permit for a 24 x 36 foot, 864 square foot storage building was issued on July 18, 2006. Angela Perrier, a Code Enforcement Officer, is here to address the permitting. Are there any questions, Mr. Chairman?

CHAIR QUIGLEY: Does any member of the staff have questions? How long has this building been erected on the property? How old is that structure?

MS. SPEICHER: That would be a better question for the applicant, sir.

CHAIR QUIGLEY: Okay, you don't know.

MS. SPEICHER: The staff presentation is not completely finished; if we could have the code enforcement officer.

CHAIR QUIGLEY: Okay, thank you.

MR. MOOREFIELD: Mr. Chairman, in discussing some of these documents, let me get one matter clarified because the survey, the document that has been submitted, does not indicate it is a survey and that has some legal significance.

MS. SPEICHER: We have a survey that was prepared by Mike Adams, registered land surveyor.

MR. MOOREFIELD: Does the Board of Adjustment have that document?

MS. SPEICHER: No, they do not have that document. Our normal process is to have the Graphic Services reduce the document to save tax payer money on copy cost. But we do have the full survey in the case file in the event anyone would like to see it.

MR. MOOREFIELD: The document says Board of Adjustment variance, it looks like a survey, you say that is in fact a reduction of an actual survey?

MS. SPEICHER: It's a reduction of an actual survey.

MR. MOOREFIELD: By a registered surveyor?

MS. SPEICHER: The reduction is prepared by the staff.

MR. MOOREFIELD: I mean the survey document.

MS. SPEICHER: The survey document was prepared by Mike Adams, registered land surveyor.

MR. MOOREFIELD: Mr. Chairman, if that document is to be submitted as part of the application, it sets a point that if anyone wants to discuss that or move the evidence, I recommend the Board give stipulation to the parties that it is an actual survey and not just a copy

CHAIR QUIGLEY: Essentially, what we're saying is that the representation shown on the screen now is accurate based on the survey.

MR. MOOREFIELD: My understanding is that is a reduction of a actual 24 x 30 survey document, prepared by a registered land surveyor. There is just nothing on the face of this document to indicate that.

CHAIR QUIGLEY: Any other questions for Staff?

MS. SPEICHER: This is Angela, the Code Enforcement Officer.

Chair Quigley swears in Angela Perrier.

CHAIR QUIGLEY: Please state your name, address and place of occupation for the record.

MS. PERRIER: Angela Perrier, 7445 Coolridge Drive, Fayetteville, NC 28304. I work as a Code Enforcement Officer in the Inspections Department. Based on the site plan I had at the time and the discussion I had with the property owner, I determined that the structure was at least five feet off the rear property line and then I issued the building permit. I just went off the survey and the discussion with the owner on the setbacks. There were three permits issued but they haven't been finalized yet. That's all I have to say.

CHAIR QUIGLEY: Any questions? We are accepting the representation as is. I would like to start hearing what is to be presented. A number of people have signed up to speak in favor of this proposition. There are five people signed up. Everyone will have an opportunity to present the information that's germane to this particular issue. What I ask though is that if the people are going to present exactly the same information as someone who precedes them, then it may be more expeditious not to present, but they will be offered that opportunity, should they choose to do that.

Chair Quigley calls Thomas Poulos. Mr. Poulos stated he is represented by council and would like for his attorney to speak first.

Chair Quigley swears in Thomas Neville.

CHAIR QUIGLEY: Would you please state your name, address and your representation for the record.

MR.NEVILLE: My name is Thomas Neville, I'm a local attorney here in Cumberland County. My office is at 150 N. McPherson Church Rd., Fayetteville. I reside at 3610 Linden Rd, Linden. I represent the Poulos' and everyone else who has signed up to speak with the exception of one additional speaker.

CHAIR QUIGLEY: Would you like to present your information for the benefit of the Board?

MR.NEVILLE: If it pleases the Board, I would just give a very short brief overview and then allow my clients to testify as to the facts and with a separate request, be allowed to cross examine the other witnesses and then a short summary.

CHAIR QUIGLEY: Yes, sir.

MR.NEVILLE: I do have copies of the actual survey, full sized copies that may be helpful as we get into those. When we come to the testimony part, I could probably admit them into evidence, but at this point for demonstrative purposes, I will pass these out. In order to understand the situation, I think you have to start with the original plat of the neighborhood, which is what I have here. Then the full size copy of the survey that you actually have showing on your monitor right now, is this document right here. I didn't look carefully, but I think you will see the surveyor's seal on that document. If I could ask the staff to please go back to the aerial photo; I think to really understand what is going on here, you have to start with the aerial photo. It's a lake front property [pointing to the on screen presentation] and in fact, the adjacent land owner is actually Green Pond Incorporated. Green Pond Incorporated is a very small corporation which is made up of the lake front owners. The share owners of Green Pond are the actual land owners who own lake front property. If you look at the monitor to the subject area, that is the lake and my client's property is in the blue, which is lot 8 and the lot backs up to the lake itself. This is real important because even though in the staff's introduction, you heard the words encroachment onto the adjacent property, there certainly is an encroachment; but the encroachment is onto Green Pond, Incorporated's property. You must know it is not officially a home owners association or a lake front association, but it is solely comprised of the lake front home owners of which my client is one of those owners. My client is a share holder in Green

Pond, Incorporated also. I think you have to understand that to grasp what is going on here. There certainly is an encroachment of a portion of this building that's larger than the green house attachment on the building which will come clear in testimony, onto Green Pond Incorporated's property and that becomes significant. I would also say a couple of housekeeping type issues. Number one, certainly everyone who signed up tonight has a right to speak and I don't for one minute oppose that, but I want to be very clear that Green Pond, Incorporated is a corporation and up until this evening or until I received a phone call on Monday, they have council, Mr. James McLean III of Cumberland County is their record attorney who have represented them in this matter up until tonight. He told me he was instructed not to appear tonight. Well that has some consequences because they are a corporation. This is a Quasi-judicial body and certainly they have a right to speak. They have no right to represent the corporation. In the absence of some resolution to that effect, they have the authority to speak on behalf of the corporation, I would object to that. Certainly they have the right to speak for themselves as neighbors, they have no right to speak as Green Pond, Incorporated, absent some resolution, some declaration; something giving them that authority. So I would object to that, I don't object to them testifying, I only object to them voicing their concern as Green Pond officially. What the facts will show and Mr. & Mrs. Poulos will testify to, is that the adjacent land owners is Green Pond, Incorporated and they indeed are shareholders of Green Pond, Incorporated. It's a very small corporation. They'll also testify that they obtained permission to erect this building in it's present location back in 2001/2002 and at no time until they applied for a building permit in 2006 is there any evidence of opposition or objection of this building. They will also testify that when they purchased the property, there was an existing greenhouse on this very location on the back corner of this property. They will also testify that president of Green Pond helped my client lay out the foundation of the actual physical site for the building and that he participated in a large facet of the construction in the very initial part. They'll testify construction began in 2002 under permission with no objection and that construction finished in 2005 and there was still no objection to the building. The reason why there was no objection is because they had already given their permission to do so. The issue of the setback only came up probably when my clients applied for the permit in 2006 or when the survey that you see was actually produced. There are many equitable issues in this case. You'll also see from some testimony and some photographs that my clients aren't the only ones in this neighbor who are not within the setback ordinance. There is at least one other outside shot adjacent to the length. This is a technical argument, I realize, but most of the land owners have docks, piers that go out into the lake and technically every last one of those is a violation of the setback ordinance and we've seen no written proof of permission for those. We don't oppose them, we think it's find, but we do believe, and my clients will testify, there is an element of being singled out here for ulterior purposes. There's also pump houses that are within or trespasses as you would say. The reason why this becomes important is because there is a maximum law that you can't do otherwise with the law prevents you from doing. The statute of limitation on a continuing trespass, and I would argue that's what this is, is three years. The time to object to the building being located on the Green Pond, Incorporated property is already passed and the statute of limitations are gone. Now, if the law doesn't allow you to raise that defense, certainly the law is not going to allow you to also raise the defense that you can't build a building on your own property. I want to be clear that the alleged trespass is not before this Board for simply the setback. It's before the Board, and I would argue to and I will present evidence to you that's properly in a different court, the Superior Court, and if I could use the words, I think the County has been drug into this and is being pushed to do someone else's dirty work. This is not an issue that should be

before the Board of Adjustment; this is a neighborhood dispute that should be before the Superior Court in trial, not in a backdoor attempt to enforce a setback ordinance. That's all I have as an introduction and I would like to call my first witness.

CHAIR QUIGLEY: Thank you. Let me just ask one or two questions. So you are saying that this structure was actually put in in 2002?

MR. NEVILLE: My clients will testify in 2002 construction began and it took almost 2 ½ years to complete it.

CHAIR QUIGLEY: So, they knew the dimensions of the structure as early as 2002, is what you are testifying to?

MR. NEVILLE: I think you'll have to ask if they knew the exact dimensions, I don't have that answer.

CHAIR QUIGLEY: Does any member of the Board have questions? I want to remind you that you will remain under oath and the rule for cross examination is to indicate when you want to ask the question, please don't just blurt it out as it gets disruptive. Yes, you will be allowed to cross examine on any issue that you want as it comes up.

MR. NEVILLE: Just for clarity sir, do the same rules apply for direct examination of my own witness?

CHAIR QUIGLEY: Yes.

MR. NEVILLE: We also have packets to pass out to make it easier.

Chair Quigley swears in Thomas Poulos.

CHAIR QUIGLEY: Would you please state your name and address for the record.

MR. POULOS: Thomas Poulos, I reside at 430 Shep Drive, Fayetteville, NC.

CHAIR QUIGLEY: Please point out your residence on the aerial map.

MR. POULOS: That's my property [points to his property on the map] and the adjacent easement which also serves as our driveway and then we also own this property on the other side.

CHAIR QUIGLEY: Thank you and your statement sir?

MR. POULOS: Well, sir, I was in the Army and came to Fayetteville on orders back in 1999. We bought the property and moved in two day before Christmas in 1999. It was Feb 2001 when I received orders and deployed to Bosnia and just prior to that I asked my wife if it would be nice to put something out there. There was an existing greenhouse that was very dilapidated, It was made from windows that were removed from house that we had and those windows were all single pane, pretty nasty looking structure. So I told my wife if would be nice if we could

get that building replaced and put another building there. What I wanted to do is get permission from the Green Pond Association because I read the deed and I thought Green Pond had the right to give me permission to build to the property line. Because I was in Bosnia, I asked my wife to attend the meeting in July. When I came back, I asked her if she got permission and she said yet. On September 14, 2001, I remember that distinctly because it was three days after 9/11. That fall and spring of 2002, I started excavation and started excavating the land back there and at some point in time, I don't remember what month it was, but Doug Stevenson, it was not the president of the association at the time, who is my neighbor right across the way, who resides in that property right there [pointing to the on screen presentation] came across the dam and asked me [I don't remember the exact term; he works in construction and offered to help] I was having trouble laying out my line, so he taught me what's called the 3-4-5-rule just to get square corners. Then I laid out my foundation. He came out later after I put my foundation up and he gave me some pointers. He felt I had not raised it enough for the weight of the concrete. On the day of the pour, I had two friends from work come out and he also operated as the supervisor helping us pour the concrete and helping us place the rebar; he was a great help at the time. This was a monolithic pour; after the concrete started to set he showed me how to operate what is called the helicopter. He helped me learn to operate that to smooth out the concrete; so he was a great help. He was actively involved in the size and the placement of the building from the start. Shortly thereafter my wife asked me if I would put the greenhouse up, so I put it up and it is based on the 1968 survey where there is a stake very close to the corner of the property. I put the greenhouse up to remain inside our perceived property line and it was only shortly thereafter that we found out the property line was not where it was on the 1968 survey but was actually shifted 11 feet towards Shep Drive. So virtually, it made our greenhouse not our property, but at the time we felt it was all done all above board, there was no subterfuge at all. I retired in 2004 and after I told my wife I would never have to go overseas again, in February 2005 I left for Iraq. Basically four out of the last five years I've been in the Middle East. All of the construction was completed by the time I left in 2005, every single bit.

CHAIR QUIGLEY: Does any member of the Board have questions for Mr. Poulos? So essentially from 1999 to 2005 was the timeframe you conceived you needed a structure and then erected the slab in place. When did you actually get the vertical part of the structure in place?

MR. POULOS: Are you talking about the outside walls and such?

CHAIR QUIGLEY: Yes.

MR. POULOS: Probably that year, in 2002. We probably took a good two years. I had it wrapped in pink so it had pink wrap on it for a good year before I got the siding on it. I finished all the siding and got all the stuff done by the time I left in 2005. It took a good two years of weekend work, because I was in the military, to finish it up.

CHAIR QUIGLEY: And to the best of your knowledge, your neighbors were witnesses to the construction that was going on at your property?

MR. POULOS: Absolutely, all they had to do was look out their property in the back and no one ever complained.

CHAIR QUIGLEY: Thank you very much. Did you have any other comment?

MR. POULOS: I don't, but I think Mr. Neville had some questions for me.

CHAIR QUIGLEY: Mr. Neville, did you have some questions for your witness?

MR. NEVILLE: Mr. Poulos, if you would please, explain to the Board, what markers, what signs, what happened as far as the existing boundary lines when you began construction of the building.

MR. POULOS: As I stated earlier, there was a wooden stake in the ground, approximately right there [pointing to the on screen exhibit] there was some plants, there was a wooden stake there and when we walked the property with our real estate agent back in 1999, she indicated to me that was one of the property lines. There was also a stake in the ground up here [pointing to the on screen exhibit]. I don't think there was a stake on this property, we always assumed the fence was our property line.

CHAIR QUIGLEY: When you moved in, was the existing fence on the west side of the property?

MR. POULOS: The only fence that has ever been there is the fence on this property line right here sir [pointing to the on screen presentation].

MR. NEVILLE: If I could Mr. Poulos, let me show you the original plat to the property.

MR. NEVILLE: It is exhibit 3 in your packets [addressing the Board and Staff]

MR. NEVILLE: Mr. Poulos is this the original plat you received when you purchased the property?

MR. POULOS: Yes, sir.

MR. NEVILLE: Is this in fact that plat that you were going by when you began construction on the property.

MR. POULOS: Yes it is.

MR. NEVILLE: Mr. Poulos, you didn't actually have a survey plan other than this plat, is that right?

MR. POULOS: No, it was kind of unique to North Carolina when we bought the property. When we bought our home in Washington State it was a requirement to have a survey, which the seller usually paid for but, I was surprised that it wasn't a requirement here. If I wanted a surveyor, they told me I had to pay for it, so I didn't.

MR. NEVILLE: Did you believe your property line went to the lake?

MR. POULOS: Yes. Well, I believed it went from this point here to the stake you saw in the ground [pointing to the on screen presentation]. It was in the middle of the Bayonet plants and I

was not willing to risk my body against those plants to see if there was another stake in the ground.

MR.NEVILLE: Is it fair to say that you believed your property line was much closer to the lake than the actual survey is showing?

MR. POULOS: Yes, sir.

MR.NEVILLE: You stated that prior to your leaving for Bosnia in 2001, you asked your wife to obtain permission to construct south on the present location, is that correct?

MR. POULOS: That is correct.

MR.NEVILLE: What did your wife tell you upon your return.

MR. POULOS: That she had received permission from all present at the July 2001 Green Pond meeting.

MR.NEVILLE: Did she tell you that permission was to build up to the property line or was there any mention of a setback?

MR. POULOS: No mention of a setback to the property line.

MR.NEVILLE: At any time prior to construction, during construction or subsequent to it becoming a dispute, did anyone from Green Pond or any of your neighbors inform you that you needed to adhere to a setback ordinance.

MR. POULOS: No.

MR.NEVILLE: Mr. Poulos, have you ever attended a membership meeting of Green Pond, Incorporated?

MR. POULOS: Yes, I have.

MR.NEVILLE: Do you recall what years you may have attended?

MR. POULOS: I believe I attended the last one. I remember distinctly it was in July 2008.

MR.NEVILLE: In July of 2008, was there any discussion concerning adherence to a setback ordinance?

MR. POULOS: No. The discussion if I remember correctly was about the chemical composition of the pond. No mention of my property at all.

MR.NEVILLE: Mr. Poulos, I'm going to show you a photograph, are you familiar with that photograph?

MR. POULOS: I am.

MR.NEVILLE: So we don't lose track, I'm going to label this photo #20. If you would please tell me what that photograph is.

MR. POULOS: That's a picture of our residence and the building in question from across the pond. Basically, what our neighbors would see.

MR.NEVILLE: This is what your neighbors would see across from you standing in his yard.

MR. POULOS: Yes.

MR.NEVILLE: And that's photograph #20, is that correct?

MR. POULOS: Yes.

MR.NEVILLE: I'm going to put #21 on this one. Mr. Poulos I've now handed you what I've marked as exhibit #21. Is this also a photo of your property?

MR. POULOS: It's essentially the same picture.

MR.NEVILLE: I'm going to put #23 on this one. Is that also a photograph taken from your neighbor's property.

MR. POULOS: Yes it is.

MR.NEVILLE: Mr. Poulos, we're looking at photo #23, if you look to the left of this photograph what do you see?

MR. POULOS: I see docks.

MR.NEVILLE: Do you have any objection to anyone in this neighborhood having a dock on their property?

MR. POULOS: Absolutely not.

MR.NEVILLE: Is it your understanding though, that by clear definition of the setback ordinance that these were violations of the setback ordinance?

MR. POULOS: That's my understanding. I'm just being singled out.

MR.NEVILLE: Now I'm going to hand out exhibit #24. Mr. Poulos, in looking at exhibit #24 to the right hand side, what is that?

MR. POULOS: It appears to be a pump house on the neighbors' property.

MR.NEVILLE: Is it fair to say that there are many pump houses around this lake?

MR. POULOS: I believe anybody who is a member of the association has the right to pump water from the pond to their property.

MR.NEVILLE: In fact, isn't your pump house located on Green Pond's property also?

MR. POULOS: Yes, it is.

MR.NEVILLE: Have you ever sought permission for that?

MR. POULOS: No, it was there when we bought the property.

MR.NEVILLE: Do you know of anyone seeking permission to build a structure or pump house on the corporation's property?

MR. POULOS: No, not that I'm aware of.

MR.NEVILLE: Now, I'm handing out exhibit #25 and #26. Mr. Poulos, exhibits #25 and #26, do they not depict the neighbors shed?

MR. POULOS: Yes.

MR.NEVILLE: Is it your belief that this shed is also within the setback ordinance?

MR. POULOS: I believe it does not meet the setback requirements.

MR.NEVILLE: Do you have any knowledge of any complaints against this shed from members of Green Pond, Incorporated.

MR. POULOS: No.

MR.NEVILLE: Do you have any knowledge of the county inspecting the shed to see if it was within the setback limits?

MR. POULOS: Not that I'm aware of.

MR.NEVILLE: If it pleases the Board, I have two more photographs. I will now hand out exhibits #27 and #28. Mr. Poulos, exhibit #27 is a photo of the eastern portion of your building, is that right?

MR. POULOS: That is correct.

MR.NEVILLE: Isn't it true that running along that eastern portion, Green Pond actually has access to a dam running across the lake?

MR. POULOS: Yes, it's not on that photo, but yes, that's true.

MR.NEVILLE: If you would, use the pointer to show which side of the building we're looking at [pointing to the on screen presentation].

MR. POULOS: [pointing to the on screen presentation] The dam goes out this way, you can see the dam. If you look at #27 you will see a large post sticking up two inches in from the center

of the picture. That post has been there since we moved there. It's to stop any kind of traffic going down to do any work on that dam. Essentially, what I'm saying is there has been no requirement to use our driveway or the dam for the last ten years.

MR. NEVILLE: Mr. Poulos, let's start with the last photograph. This is #28 and just to be certain we're all on the same photo, we should be looking at a photograph of the lake to the left and a retaining wall running down the center of the photograph. On the right hand side, that is the green house portion of the building, is that correct?

MR. POULOS: That is correct.

MR. NEVILLE: If you could, please tell the Board when the green house was constructed, where did you believe the markers present on the property showing that your boundary lines existed.

MR. POULOS: It would be outside of the picture. If you were to follow the line of the retaining wall to the foreground of the picture, it would be along that line there, somewhere to the right of it a little bit. So I wanted to make sure that the green house stayed within what I felt was our property line.

MR. NEVILLE: And that was pursuant to the stakes that was in the middle of the Bayonet flowers.

MR. POULOS: Yes, sir.

MR. NEVILLE: Mr. Poulos, do you have any thoughts as to why your neighbors are opposing your seeking of this variance?

MR. POULOS: Yes I do. I believe it stems from the dock that was on our property. There was a dock that extended out from the corner of our property on this side right here [pointing to the on screen presentation]. Very shortly after we bought the property, I went out and repaired the dock, basically the pions and some rotted lumber. I replaced all that, in fact at the time I was doing it, Mr. Schmidt, who was the president of the association at the time; he rode out his boat at the time and said I couldn't use it unless I became a member of the association. I immediately said: "sure, where do I sign up?" My wife can go over the membership material and such. At some point, a couple years back, my daughter became wheelchair bound and we made the decision to use that lumber and move the dock more centered to our property where we had a better shot at her going straight out onto the dock; as opposed to the current location because with her wheelchair, she couldn't access the dock at all.

MR. NEVILLE: Do you believe that is some of the impetus for the opposition to the setback variance?

MR. POULOS: Yes.

MR. NEVILLE: Do you believe the corporation is being fairly represented by all shareholders?

MR. POULOS: No.

MR.NEVILLE: Have the actual shareholders been allowed to vote as related to the setback variance?

MR. POULOS: As per the bylaws, as I understand them, everybody that is a shareholder is supposed to be given notice of a meeting. We have not received a notice for a meeting this year. We wrote a check which was due in July and they still have not cashed it, which was the same case last year. We wrote them a check in June and it wasn't cashed until October, so I guess clearly they feel if they don't cash out money, we become non-members in good standing. That is the only qualification to be a member is to be paid up in dues.

MR.NEVILLE: Mr. Poulos, let me show you exhibit #18, this is a letter from me, your attorney, is that correct?

MR. POULOS: Yes.

MR.NEVILLE: To James McLean, the attorney for Green Pond.

MR. POULOS: Yes.

MR.NEVILLE: It was written in August 16, 2010, is that correct?

MR. POULOS: Yes.

MR.NEVILLE: Does it not say, "Dear Fred, Please find enclosed a check for my client's dues for Green Pond, Incorporated?"

MR. POULOS: Yes.

MR.NEVILLE: Did you and your wife not cash a check for your dues to be taken to me.

MR. POULOS: Yes.

MR.NEVILLE: Have you been informed as to whether that check has been negotiated?

MR. POULOS: It has not been negotiated as of this date.

MR.NEVILLE: I'll mark this as exhibit #20; this is a check written by your wife in 2009 for dues. Is this the check you said was cashed a month ago?

MR. POULOS: Yes.

MR.NEVILLE: Let me also show you now, exhibit #16. This is a letter written October 20, 2009. Mr. Poulos what was to be from Trey McLean, the attorney from Green Pond, to me, is it not?

MR. POULOS: It is.

MR.NEVILLE: Does not the second paragraph state, “as I have told you, I have been retained by Green Pond, Incorporated”. Is that the way it reads?

MR. POULOS: That’s exactly what it says.

MR.NEVILLE: Have you ever had any input, any vote, any saying as to whether Green Pond would retain an attorney and use your dues to pay for an attorney in this matter?

MR. POULOS: No.

MR.NEVILLE: Let’s mark this exhibit #17. This is another letter from Mr. Trey McLean dated April 16, 2010. The second paragraph Mr. Poulos, does it not say, “To my knowledge, the Green Pond, Incorporated has met and discussed the issue and has voted to formally ask the County to begin to proceed with the enforcement of the previous notice of violation with a full understanding that the County will be scrutinizing all of the parties who live on this place? Mr. Poulos, are you aware of any meeting that ever occurred as to this matter.

MR. POULOS: As I said, in the by-laws, it is my understanding that we should have received a notice of a meeting, but we did not.

MR.NEVILLE: Did you ever receive a notice of any meeting?

MR. POULOS: No.

MR.NEVILLE: This is marked Exhibit #8. Mr. Poulos, these are the by-lays of Green Pond, Inc., are they not?

MR. POULOS: Yes, they are.

MR.NEVILLE: Does it not state on the first page, Section 1, Annual Meetings – The annual meeting of the shareholders for the election of directors and for the transaction of such other business as may properly come before the meeting shall be held at 6:30 pm on the second Friday of July in each year, commencing with the year 1997?

MR. POULOS: Yes, it does.

MR.NEVILLE: Have you received notice of each and every meeting?

MR. POULOS: You would have to ask my wife on the ones when I was not present. I did attend the last meeting in July 2008. That is the last meeting I attended.

MR.NEVILLE: Also, looking at the by-laws on page 8, Purpose of Corporation, Section 1 Purpose – The purpose of The Green Pond, Incorporated is to maintain the Green Pond and its dam in optimal condition for the use and enjoyment of all shareholders. Is that correct?

MR. POULOS: That is correct.

MR.NEVILLE: To your knowledge is the corporation empowered with any other authority or commerce?

MR. POULOS: Not that I'm aware of.

MR.NEVILLE: Mr. Poulos, going back to exhibit# 18, this is a letter from your attorney, me, dated August 16, 2010, addressed to Trey McLean, attorney for Green Pond. In this letter do you not demand, a full accounting of all of Green Pond's monies? Do you not demand a complete disclosure as to all resolutions? In fact, let me read it. It says, "My clients now demand that Green Pond make available a full accounting and examination of the corporate records of Green Pond, Incorporated. As is my clients' right, my clients further demand that the corporation afford them the opportunity to inspect and copy all corporate books, documents, and records including the following:" Mr. Poulos, the reason why you requested this is because you suspect the corporation is moving without having meetings with notice in which you are allowed the opportunity to speak, is that right?

MR. POULOS: That is correct.

MR.NEVILLE: And then you are question as to how they are paying an attorney? Is that right?

MR. POULOS: Yes, it is.

MR.NEVILLE: And you go on to demand copies articles of incorporation and all amendments, by-laws and amendments, resolutions adopted by Board of Directors; the minutes of any and all meetings; any and all written communication, a list of names and business address of current directors and officers; all annual reports; all account reports, including but not limited to financial statements; a current record of members. Have you ever received a response to this, Mr. Poulos?

MR. POULOS: No, I have not.

MR.NEVILLE: Just to be clear Mr. Poulos, at any time prior to your completion of the construction of this building, did anyone, meaning a neighbor or someone from Green Pond, object to construction of the building?

MR. POULOS: No.

MR.NEVILLE: This began in 2002 and you said you completed it on or about 2005?

MR. POULOS: Before I left, yes.

MR.NEVILLE: In fact, you testified that one of your neighbors, a member of Green Pond, assisted in the construction of the building?

MR. POULOS: He is now the president of that corporation.

MR.NEVILLE: That is Doug Stephenson?

MR. POULOS: Yes.

MR.NEVILLE: At any time, did anyone ever raise the issue of a setback with you?

MR. POULOS: No.

MR.NEVILLE: At this time, members of the Board, I request that exhibits 3, 4, 8, 19, 18, 20 be admitted into evidence.

CHAIR QUIGLEY: Does any member of the Board have any objections to those items being introduced into evidence?

CHAIR QUIGLEY: Hearing none, they are introduced and accepted as evidence.

MR.NEVILLE: Also, exhibits 20-28, the photographs be admitted into evidence.

CHAIR QUIGLEY: Are there any objections to that by any member of the Board?
Accepted as evidence.

MR.NEVILLE: I have no further questions.

CHAIR QUIGLEY: Mr. Poulos, I just want to remind you that as you step away from the lectern, you remain under oath should you be recalled. Did you have another witness that will speak in favor of this proposition?

MR.NEVILLE: Yes, Mrs. Poulos.

Chair Quigley swears in Nancy Poulos.

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

MRS. POULOS: My name is Nancy Marie Poulos, I live at 430 Shep Drive, Fayetteville, NC 28311.

CHAIR QUIGLEY: That's the same property we're discussing?

MRS. POULOS: Yes, sir.

MR.NEVILLE: We're trying not to be repetitive, if I could just direct Mrs. Poulos' testimony.

MR.NEVILLE: Mrs. Poulos, your husband testified you informed him that you obtained permission to build this building on your property, is that correct?

MRS. POULOS: Yes, it is.

MR.NEVILLE: If you would speak to that please.

MRS. POULOS: When I went to the meeting, I asked Mr. Farrell if we could build a building where the existing greenhouse was up to the property line because the easement. He said he would talk to the other members and he got back to me and said nobody objected to it. When my husband got home, he rendered an excavator and started digging a great big hole and started laying the foundation for it.

CHAIR QUIGLEY: Do you know the date that occurred?

MRS. POULOS: He came home after 911 or just after returning from Bosnia. I don't know the exact dates, but it was a couple of days after 911. It took several years for us to build it, but at no time did anyone ever call or come over to object to the size. Since it took several years, I remember going to one meeting and actually apologizing that it took so long for us to complete it; that he was actually sent away for another year, either Afghanistan or Iraq.

CHAIR QUIGLEY: Thank you.

MR.NEVILLE: Mrs. Poulos, you said you spoke with Mike Farrell to get permission, is that correct?

MRS. POULOS: Yes, he was the president at the time.

MR.NEVILLE: Did you ask for permission at a shareholders meeting, is that correct?

MRS. POULOS: Yes.

MR.NEVILLE: That was in July 2001?

MRS. POULOS: Yes, I believe so.

MR.NEVILLE: Does Mr. Farrell call you later on the phone?

MRS. POULOS: I believe so, yes.

MR.NEVILLE: What did he tell you?

MRS. POULOS: That he had no objection when he called the other members.

MR.NEVILLE: Were there any objections during the entire time the building was being constructed?

MRS. POULOS: No.

MR.NEVILLE: Mrs. Poulos, let me show you exhibit #9, which is the permit. Do you recognize that document?

MRS. POULOS: Yes, it is the building permit.

MR.NEVILLE: Can you tell me when you applied for the building permit.

MRS. POULOS: I applied for it in 2006. It looks like July 18, 2006.

MR.NEVILLE: Do you recall why you applied for the permit?

MRS. POULOS: Yes, Mr. Stephenson said I needed a building permit, that someone had complained to the county and that I needed a building permit. I went down and applied for one.

MR.NEVILLE: Did you in fact see the building permit. I will now hand you exhibit #10, marked as the building permit. Is that the building permit?

MRS. POULOS: Yes, it is.

MR.NEVILLE: Let's go back to exhibit #9. There is a sketch attached to exhibit #9, is that correct?

MRS. POULOS: Yes.

MR.NEVILLE: That is the third page of the building permit?

MRS. POULOS: Yes.

MR.NEVILLE: I want to be real clear here. This sketch is your house and it shows the building. Who drew the shop on this sketch?

MRS. POULOS: The person that came out and measured it.

MR.NEVILLE: A County employee?

MRS. POULOS: Yes.

MR.NEVILLE: So, it's fair to say when you submitted your application, you did not provide any drawing of the building?

MRS. POULOS: No, I did not. When they asked me how big it was, I told them it was really big and I didn't know how big it was and that I was taking care of my mother-in-law and my disabled daughter and I also had a full-time job. They said they would come out and help me measure it and that's when they came out; Angela came out and she had someone else with her and they came and measured it.

MR.NEVILLE: Did anyone from the County tell you there was a concern about setbacks?

MRS. POULOS: No, because we were going off the old 1968 survey or the plat, so we were well within our setback.

MR.NEVILLE: In fact, if we look at the second page of that application, down at the very bottom, does it not say to be cited as per plot plan?

MRS. POULOS: Yes, it does.

MR.NEVILLE: Is that not where the building is constructed?

MRS. POULOS: Yes, it was.

MR.NEVILLE: Let me also show you exhibits #11 and #12. These are for plumbing and electrical. They were applied for much later, is that correct?

MRS. POULOS: Yes, it was.

MR.NEVILLE: Back in August 25, 2008, is that right?

MRS. POULOS: Yes.

MR.NEVILLE: Tell me why there was a delay from the application to the day you applied for the permit.

MRS. POULOS: They were done because when I applied for the first building permit, it did not say on here that I had to apply for plumbing and electricity. When I was handed this, she said to put this in my windows. I did and I also took one of these to the meeting and handed it to Mr. Farrell and said I have no building permit. Several years went by and apparently someone from Green Pond Association went digging into the County Permits and said I did not have my electrical and plumbing permits. They came to me and basically called me a liar and said I didn't have these; well I didn't know I needed them because nowhere on this does it say I have to have them. I went down to the County and told them I needed to have them so they issued them. I had the inspectors come out and they went over everything, gave me a sheet showing what I needed to have repaired. I had them all done. When they came out for final inspection, they said they could not give us a final inspection until this zoning thing was complete. So, we're still waiting on final inspection. That was a year ago.

MR.NEVILLE: Mrs. Poulos, let me hand you exhibit #14, dated April 20, 2009. This is a letter from Douglas Stephenson of Green Pond Incorporated. It actually says Green Property, LLC, does it not?

MRS. POULOS: Yes, it does.

MR.NEVILLE: It should be Green Pond, Incorporated, correct?

MRS. POULOS: Correct.

MR.NEVILLE: The letter reads, "Dear Tom & Nancy, This letter is to serve as a formal request from Green Pond, LLC that you immediately remove all personal buildings and structures that you have erected on Green Pond property." Is that correct?

MRS. POULOS: It is.

MR.NEVILLE: Is there any mention in that letter as to setbacks or removing your property beyond the setbacks?

MRS. POULOS: No, there is not.

MR.NEVILLE: Was there discussion whatsoever related to you not being able to build your building up to the property line.

MRS. POULOS: No, there was not.

MR.NEVILLE: Mrs. Poulos, let's talk about the new survey. The Board has the large version and the smaller version is exhibit #13. Mrs. Poulos, why was this new survey performed?

MRS. POULOS: I had the new survey done because they kept saying – I don't know if harassment is the correct word or not – they kept saying our shed was built on the easement or the driveway. To basically say that it was not ever built on the easement that we built on our property, I had the survey done. When it was done and this showed the survey was improper since 1968. We immediately offered to rectify the situation which with purchasing this 11 ½ feet down to six inches back when we first did the survey and they declined to us purchasing this sliver of land.

MR.NEVILLE: Once you had the survey completed, that was September 15, 2008.

MRS. POULOS: Yes, we had a meeting and I took the survey to them. I never tried to hide the fact that it was mis-surveyed and let everyone see it.

MR.NEVILLE: When you showed them the survey, did anyone demand that you remove the building away from the setback also?

MRS. POULOS: No, they just made a comment that I should sue the person who surveyed the land in the first place. It was done in 1968 and the person who probably did that is no longer with us I'm sure, but there's no reason to go there. Everybody's been using it since then, what's done is done. We never built this out of malice and once we learned the error, we offered to purchase it.

MR.NEVILLE: Mrs. Poulos, has anything been said to you to enlighten you as to why the neighbors are opposing this issue?

MRS. POULOS: No. No one has ever called us, talked to us, face-to-face, on the phone, sent us a letter or anything, besides the one you read us. Everybody has stuff on Green Pond property; docks, pump houses, structures, so no, I have no idea.

MR.NEVILLE: Ladies and gentlemen, I want to make sure I have all of the exhibits entered as evidence. I may repeat some of the same ones and I apologize. I've got exhibit #3, #4, #19, #18, #17, #16, #20, #14, #13, #12, #11, #10, #9. I am requesting they all be entered into evidence.

CHAIR QUIGLEY: They will be admitted into evidence.

MR.NEVILLE: I have three more I would like to admit. Mrs. Poulos, exhibit #6, the Shareholders of Green Pond list, with eight different shareholder families, is that correct?

MRS. POULOS: I believe so, yes.

MR.NEVILLE: Does not Thomas Poulos appear on the bottom right hand side?

MRS. POULOS: Yes, he does.

MR.NEVILLE: Is this not a document you all first received when you purchased the property and entered into the Green Pond, Incorporated?

MRS. POULOS: Yes, it was.

MR.NEVILLE: Let me show you exhibit #7. Is this not your stock certificate?

MRS. POULOS: Yes, it is.

MR.NEVILLE: Is it from Green Pond, Incorporated?

MRS. POULOS: Yes, it is.

MR.NEVILLE: Is it issued to Thomas Poulos?

MRS. POULOS: Yes, it is.

MR.NEVILLE: That's your husband, correct?

MRS. POULOS: Yes, he is.

MR.NEVILLE: Is it a true statement that you have tendered your dues timely every year?

MRS. POULOS: Yes, it is.

MR.NEVILLE: Have they always been accepted?

MRS. POULOS: Yes, they have, except last year they were cashed late by several months and this year they have not been cashed at all.

MR.NEVILLE: Have you been given any explanation at all as to why your dues have not been accepted?

MRS. POULOS: No, I have not.

MR.NEVILLE: Sir, I request exhibits #6 and #7 be admitted into evidence.

CHAIR QUIGLEY: Does any member of the Board have a question for Mrs. Poulos. I want to remind you Mrs. Poulos as you step away from the lectern that you remain under oath should you be recalled.

Chair Quigley swears in Sabrina Dailey.

CHAIR QUIGLEY: Ms. Dailey, please state your name and address for the record.

MS. DAILEY: My name is Sabrina Dailey, I live at 420 Shep Drive, Fayetteville, NC 28311.

[Ms. Dailey points to her home on the on screen presentation].

MR.NEVILLE: Ms. Dailey, to be forthright, you don't live on the lake, do you?

MS. DAILEY: No, I don't.

MR.NEVILLE: You are a couple a lots down from the lake?

MS. DAILEY: I am.

CHAIR QUIGLEY: So you are a property owner, but not a resident of the property?

MS. DAILEY: I'm a property owner, but I have no ownership as far as the pond.

MR.NEVILLE: Just to clarify, she is a resident, she has no interest in Green Pond. You live about two lots down from the Poulos', is that fair?

MS. DAILEY: Yes.

MR.NEVILLE: Do you have any objection to them being granted a variance for a setback?

MS. DAILEY: No.

MR.NEVILLE: Do you have any objection whatsoever to a variance?

MS. DAILEY: No.

MS. NEVILLE: Chair, that is it.

CHAIR QUIGLEY: Ms. Dailey, I remind you that as you leave the lectern, you remain under oath should you be recalled by anyone wishing to ask you a question about your testimony. Does any member of the Board have any questions for any of the witnesses that you've heard so far? Thank you very much.

CHAIR QUIGLEY: We will now move on and allow a presentation by those people who speak in opposition and I just ask that should anyone have any questions that they want to ask anyone that's already presented testimony that you refer the question to me and to them so that we can clarify any request you have for cross examination of any witness you've already heard. Is there any principle spokesman for the people in opposition?

Chair Quigley swears in Douglas Stephenson.

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

MR. STEPHENSON: Douglas W. Stephenson, Jr., 7525 Marie Drive. [Mr. Stephenson points to his residence on the on-screen presentation]. I'd like to begin by saying while I have a plethora of information this evening, I'll begin with an introduction. We are not actually owners, a member is not an owner of that pond. It is the ownership of a corporation and you purchase a share. When you move from this property, you give a letter of intent back to the association that transfers back into the Green Pond, Incorporated, so you do not own anything. There are by-laws that govern that were written by the attorney and we are recognized as a S corporation; we are a non-profit organization. We set that up to benefit the share holders and protect their interest with insurance and to be organized and to protect the property. Some of the allegations, it's going to be hard to cover them in a timely manner and I'd like to give some of the other people a chance to speak. I'm going to run down from the beginning with the knowledge that I have. Some of these date conflict with the attorney. Back in 2004 and I don't have any documents to produce into evidence, we do have an attorney who has been helping us communicate with the Poulos'. I spoke with Mr. McLean and he assured me this was not a forum that was going to turn into a court case, just merely a presentation of violation of property. He did not wish to come here tonight to represent us. In 2004 Mike Farrell contacted Douglas Maxwell because this building was being erected. Let me back up. We were asked if the Poulos' could place a shed zero tolerance of the property line. The association has no governing power over the other side of that property line and we were introduced to the structure as a shed, which defined by Cumberland County code as 400 square feet. It was very misleading when we saw the structure that was being built and there was some concerns about property lines because of how close they appeared to be. The president at that time did act and has the right to do so. The by-laws that they have put into evidence that you have before you clearly states that the president of the corporation can act without consulting the members, the shareholder. He merely reports what he has done, he represents the shareholders best interest of Green Pond, Incorporated. Mike, at that time, felt it was a concern that would affect our interest and affect the value of our property if there were truly a violation that crossed over the property line, that's where the interest comes in. This was back in 2004, Douglas Maxwell was hired to contact the Cumberland County Inspections Department to question and see if the proper permits been pulled on a building that size. Construction started, there was some question about the property line, but, at that time the building was not on the associations property. I refer to Green Pond, Incorporated as the Association. We were not affected at that time. There was some time that passed and as they clearly stated.... [Mr. Stephenson asks for the survey to be shown on the on-screen presentation] right there is the property line, this was the first structure built. There was some timber being cut that defined our easement which we have allowed the Poulos' to use since before they became members, we have no problem with that as long as it's maintained by the Poulos'. This property line did not seem to be infringed. Once we realized that they were not on the easement, we lost interest in that matter and no longer had a concern, that was a county issue at that point, not a Green Pond, Incorporated problem. Then they came in after the fact and built these two additional structures. Again, we had contacted the Cumberland County Zoning Department to following up on the initial calls made to them. They said there were no permits that had been taken out. The County expedited the permit process. I believe I spoke with Ken Sykes and Cecil Combs about this issue and they said a representative was sent to the house and placed a notice that permits were needed to be taken out. This was 2006, the building was already completed and the two additional structures added to the building before the permit was ever issued. This building was almost completed in its entirety

at the time of the permit. We don't have any knowledge of whether it is a conforming or nonconforming building; we have not followed that up. There was an attempt to buy the easement. There was a concern from the Poulos' that maybe they were too close, maybe they were infringing and they did get a survey. We did not wish to sell as a membership, sell any property

MR.NEVILLE: I have to enter an objection. He cannot speak for Green Pond. He can speak for himself, he can't speak for Green Pond.

MR. STEPHENSON: I'm speaking as a member of Green Pond. I'm not here trying to represent us legally, I'm just merely stating the facts that I have been aware of.

CHAIR QUIGLEY: I understand, Mr. Stephenson, but he's saying you can only speak for what you have knowledge of personally and not what you assume about the group collaboratively.

MR. STEPHENSON: I also had concerns when these other two buildings were erected. We knew at that time that there was a property line violation, we never agreed for anybody to build across the property line. While we were consulted and asked to build a shed on their property, we've got no say in that. Now that it has come across the property line; that is a concern. There are drains that come out of the building that discharge and we don't know what those lines are. The attorney stated, the purpose of the pond, is to protect the health of the pond, the water quality, the structure of the dam, the integrity. When we see drain lines that are unaccountable, and we know that the process of permits have not been followed correctly, that is a concern that the water quality is being jeopardized by something coming from that structure into that body of water which is used by all members. We encourage all members to use it, but there are by-laws that all members are to follow by-laws. You do have to ask permission. If you are going to build a permanent structure and I'm probably the newest member into the Association, actually the second to the last. I have complete knowledge of all of these rules and regulations, there is nothing hidden. There have been some amendment to the by-laws along the way. After an attempt of the easement was denied, there was some contact. At that time is when I was voted as president of the Association. I had conversation with Nancy about the whole permit process. We didn't mean to beat them up. This is not a lynching or anything. This was merely protecting the property. We don't want to sell property. We don't want to negotiate easements, but we're being forced into it. We were in negotiations. Things were not favoring the Poulos'. We had some other issues. There was a retaining wall also built on that property without proper authorization. They stated that the wood that was taken from the boat dock was used for other purposes. There has been no other structures built or asked to be built on that lake since the removal of that. Now the Association has pylons at the edge of the lake. We haven't disassembled boat docks that some other members were using as well; and members just don't have the right to destroy others' property without permission from the Green Pond, Incorporated. After negotiations got difficult, we wanted to secure a little more money because if the Poulos' were to sell their property, we still had some on-going issues. We have a retaining wall on this property and boat dock that we either have to replace, repair or remove at cost. They have replaced this retaining wall a couple of times in an attempt to keep it erected. It is failing and becoming an eye sore. They did not reflect that with the plethora of pictures they presented tonight; I did not get an opportunity to see any of them. After the negotiations went bad, we were asked not to contact them anymore, to contact their attorney. At that time,

we did not contact them anymore, we went through attorneys. We had also talked to Attorney Yarborough about where this could potentially go for us and one of his associates advised us on how to handle this situation. The Poulos' retained that same attorney and they contacted me and spoke to me that they were going to take this property by adverse possession.

MR.NEVILLE: I object. Any communication between my client and their attorney; which I believe is a different attorney, has nothing to do with whether a setback variance is granted.

MR. STEPHENSON: This meeting to us is not about the setback, it's about the property that is crossed our property line. We're merely here to protect that interest. The other issues are County issues.

CHAIR QUIGLEY: I just want to remind you that you can only address those things that you have personal knowledge about.

MR. STEPHENSON: Beyond that, there really has not been a lot happen. There's been the adverse possession. I am aware of that personally. I was sent a letter that it was being done that way and I later received another letter saying it was a conflict of interest. Another attorney to my knowledge was hired, the one who is representing them this evening. We really weren't prepared for this whole presentation tonight. We're trying to keep it simply to what the issues are and that is the violation, the encroachment onto this property. That's what we're here to oppose. We really don't, again, I can't stress it enough. Once we realized they were not on the property with the original structure [asked to see the survey on screen] this was built first [pointing to the screen] and these two [pointing to the screen] were built after the fact. All of this was built before the building permit was ever taken. We're only concerned about this right here [pointing to the screen]. There are some other things I would like to respond to tonight. Mr. Poulos did come over prior to building and we did talk. I do build for a living; I'm a superintendent for a commercial building. I do have the knowledge of what it takes. We did discuss permit issues and things of that nature. I did help him. I did not lay his building out, but I was making him aware of property lines. He knew where that building was because he asked to build it zero tolerance of the property line and that's where it's at. When the two additional buildings went up, this survey was done by George Lott, the second one that they presented. I had an opportunity to speak with George on a personal basis. George told me it was a mathematical error, the iron stakes are in place.

MR.NEVILLE: I object. That is hearsay.

CHAIR QUIGLEY: What is your question, Mr. Neville?

MR.NEVILLE: I don't have a question, I have an objection. He's telling you what George Lott said and it is hearsay.

CHAIR QUIGLEY: Thank you. You can't present what George Lott's opinion was.

MR. STEPHENSON: I apologize, my mistake. Again, I'm not an attorney and I didn't know that this forum tonight was going to be so rigid and court like. I was not presented with that information and we apologize if I make a few mistakes along the way. There are iron stakes and the iron stakes that are in the ground have never changed. They are still there, they've

always been there, that has never changed. The testimony in favor of this variance grant from Mrs. Dailey, I don't see how that has any affect. She is not a.....

CHAIR QUIGLEY: Sir, don't comment on her testimony.

MR. STEPHENSON: Okay. I do have a question that I would like to present to you, so you could present to them. Is the building now compliant in all areas other than the zoning and do they have a permit saying it is compliant? There are some other issues that I would like to address. This makes us liable. This corporation is now liable if somebody was to get injured or something was to be damaged, this is on Green Pond, Incorporated's property. We have liability concerns. We just want that off, we just want some kind of agreement to where we don't have the obligation to maintain or be liable for something that happens. There's drainage that comes from these building into this water and we have swimmers and fishermen in our Association. I heard the Poulos' mention that they feel like they are being singled out. All the structures except for one existed prior to the inception of the Association itself, Green Pond. These structures existed before Green Pond. They've been the only ones to erect anything on the property permanently and I asked for permission and I was given a set of guidelines that I was to be restricted to in size and materials of the boat dock. I was granted to do so and I complied and I have not had a problem. We've not had a lot of issues in the Association. These are unique to this particular problem and a lot of things seem to have arose from that. They felt that they were being treated unfairly.

CHAIR QUIGLEY: Sir, I wish you wouldn't comment on what you think their opinion is.

MR. STEPHENSON: It's difficult for me to understand that because I'm in meetings where this is being discussed, so I do have knowledge of what's being said by all members.

CHAIR QUIIGLEY: I understand.

MR. STEPHENSON: It's difficult for me to get my point out with all these restrictions. The violation exists. We don't wish to give our property away. We have attempted to negotiate this and again the Association was not interested in selling. As far as their opportunity to see the books, our attorney did tell me that.....

MR.NEVILLE: I object, hearsay.

CHAIR QUIGLEY: No, sir, that is hearsay evidence.

MR. STEPHENSON: I spoke to the attorney myself.

CHAIR QUIGLEY: He is not here to tell us that is what he said.

MR. STEPHENSON: I instructed him, sir. I received a letter saying that they were wishing to see the books and all we merely said was, "that's fine, can you make an appointment and make arrangements." They wish to have copies of it all which is quite numerous, time consuming and expensive to produce those documents, but we granted them an opportunity to see everything they wanted to see. We have over the past years, adopted and defined the by-laws; made them more clearly and easily read. It's just merely one page. We have not completely typed that up

and presented that to the Poulos' or to their attorney yet. We no longer have contact by their request. Let me go back to being singled out. The Association, I feel like they have had special accommodations made. We allowed them to come into the Association into a payment plan. That's something that no other member was granted that privilege. I myself asked for that privilege when I came into the Association and was denied. It's a new corporation, we don't produce a product, we don't do business, we're a non-profit organization set up to protect our interest so we can have insurance and we pay no road tax, we only pay state tax. I believe that covers everything that I wish to say. Again, I'm not singling the Poulos' out, they're still our neighbors, they will be for many years, I don't have any personal issues with them. Thank you for your time.

CHAIR QUIGLEY: Does any member of the Board have questions for Mr. Stephenson?

MR. DYKES: Mr. Stephenson, was there any direct reason why Attorney James McLean couldn't be present tonight?

MR. STEPHENSON: Well, actually sir, he advised me that he didn't feel the need to be here. He felt that this forum was going to be a situation where we merely could present our information. The biggest part of their testimony and complaint tonight was all dealing with Cumberland County Inspections and Zoning. We're not here for that, we're here for the piece of property that's being infringed on.

CHAIR QUIGLEY: I remind you as you step away from the lectern that you remain under oath should you be asked any questions or return to the lectern. Is there any other person speaking in opposition who can contribute different testimony, would you please approach the lectern.

Chair Quigley swears in Grace Colonnair.

CHAIR QUIGLEY: Would you please state your name and address for the record.

MS. COLONAIR: My name is Grace Colonnair, the address is 424 Shep Drive, Fayetteville, NC 28311. [Ms. Colonnair points to her residence on the on screen presentation] I am right next to the Poulos'.

CHAIR QUIGLEY: Are you the property immediately to their west?

MS. COLONAIR: I am. I am here just because of the things people stating and as the Poulos' were stating their case; their memory seems to be very different than with mine. To address why Mr. McLean is not here this evening, I spoke to his secretary today personally and was advised also we don't feel there is a need for Trey to go there. You guys have your facts and you can represent yourselves as property owners. This is about a building that is on your property or on the Association's property. The thing that I heard first today that sparked my interest was the timeline of the building being built. I cannot tell you when the land was cleared, but I can tell you that my husband and I purchased the property next door in 2002. That building was not erected nor was the cement foundation laid at that time. The building was begun after 2002. At that time the Poulos' had a small tin shed on their property that my husband and I happen to purchase from them for \$100.00 and had a bunch of football players carry it over to our property. That's why I'm very clear of when that structure began being

built. I do recall them asking permission for building with no setback and they referred to it as a shed. Their definition of a shed or their vision of a shed and mine are totally different. What I see on that structure is a two story, very large building, almost as large as my 4000 square foot home. That wouldn't be classified as a shed in any book that I look at. We don't know exactly when it was built because the permits were not pulled. I was one of the first people to question and say that doesn't look like a shed to me. Has the County given them permission to build this building? I personally am the one who started the issue with were permits pulled for that. I personally spoke to the County and was told by Ken Sykes that we have no record of this building being built, we'll look into it. I personally kept in touch with Ken Sykes and with Cecil and with Johnny Scott and was told we're looking into it, your fine, we're doing what we need to do as a County. I was told also by the County, this a variance of a setback, so that would be a county issue, they are not on your property. This became an issue as Mr. Stephenson stated, when the two additional buildings were erected and it came over onto the Association property. The reason why this is an issue is because it holds us liable. I personally spoke with our insurance agent, State Farm, and we would be liable. If someone went into one of the buildings that they erected that is on Green Pond Association property and was hurt, our insurance agent has advised us that they could sue us.

MR.NEVILLE: I object; hearsay.

CHAIR QUIGLEY: I just want to remind you that I understand exactly what you are saying, but if your insurance agent man were here, he could testify to that.

MS. COLONAIR: I understand that, I feel I know have the knowledge and I would be liable if something happened in one of those two buildings because I am part of the Association that owns the property that those buildings exist on.

CHAIR QUIGLEY: I wish you would confine to what you know personally.

MS. COLONAIR: I do know personally.

CHAIR QUIGLEY: You can't speak for a corporation, which is your corporation.

MS. COLONAIR: I'm speaking for myself. I would be part of being in that liability.

CHAIR QUIGLEY: I understand what you are saying.

MS. COLONAIR: So, that's my personal issue. I act as a secretary of the Association and I can tell you that I write the minutes for the Association meetings and I can tell you in the meeting of July 2008 that Mr. Poulos attended, there was a discussion of these buildings being infringed upon. At that meeting, Mr. Poulos stated that Nancy would be getting with us because they were having a survey done and they would come up with some compensation from infringing on our property. That compensation was offered to us and we declined. We do not wish to sell our property. In 2009, they were invited to the meeting. Nancy handed me a check personally over the fence and told me she could not attend the meeting because of personal issues that were going on with her daughter Shyla. I did take the check on their behalf. The only other thing I can say is when I became a property owner, all of the other structures that were there, were in place and had been in place for years and my personal opinion is we are

comparing apples to oranges. We're talking about a 2000 square foot minimum structure versus a two foot watering tank or a five foot dock, so I don't think that is a fair comparison. That's all I have to say.

CHAIR QUIGLEY: Does any member of the Board have questions for Ms. Colonair? I remind you as you set away from the lectern that you remain under oath should you be called back to the lectern for any questions. Is there any other person who wishes to speak in opposition who has new evidence they wish to present?

Chair Quigley swears in Mike Farrell.

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

MR. FARRELL: My name is Mike Farrell, I live at 662 Elliot Bridge Road, Fayetteville, NC. [Mr. Farrell points to his property on screen] The property faces Elliot Bridge Road and backs up to the pond. Let me make a few comments. I'm the past president of the Corporation and I have a problem that was stated by the lawyer in regards to somebody showing me a permit for this building. Could that be brought back to the floor?

CHAIR QUIGLEY: You can give whatever testimony you have personal knowledge of germane to the issue we're discussing.

MR. FARRELL: Well, this was said about me and it's not true, so how do you go about talking about that situation?

CHAIR QUIGLEY: Present your testimony and we'll decide.

MR. FARRELL: I'm going to make some comments. What I'd like you to know is I'm CEO and president of Sudan Shriners. My office is in New Bern, NC. We deal with over fifty pieces of property in North Carolina. We have buildings on properties, we're building new buildings and remodeling old buildings. My point is, you're going to ask for consideration of variance for the County Zoning Ordinance, Section 1002. We do this asking for variances before the structure is set in place. This is unacceptable in my way of thinking about this. That's just my way of thinking about it. No plan was submitted to the Cumberland County Inspection Department. Our floor plans, our elevations for the construction of this building. This building is over 2000 square feet. If I go out in my backyard and was going to build something that large, the first thing I would have to do is take a plot plan and a layout down to the Inspection Department to get approval to put this building in place. That wasn't done when this building was first started to be built. That to me is a violation, you can't do that, but it was done. Why it was done, I don't know. The buildings that we're concerned about are exceeding the property line. Those are the buildings we are concerned about. We don't want those buildings to encroach on the property of The Green Pond. In my way of thinking, that being said and that being done, we need to give consideration why it was done without permission of some type or talk it over with the association and try to reflect can we do it or can we not do it. It was just done. I have no personal interest or anything against the Poulos'; they are a good family, I respect them. They have been nothing but the finest people you can deal with, but my problem is if you are going to do something of that nature, then let's do it like it should be done. That's all I've got to say. Thank you.

CHAIR QUIGLEY: Does any member of the Board have any questions for Mr. Farrell? Is there any rebuttal testimony from those in favor of this action?

MR. NEVILLE: I do have one question for Mr. Poulos. Mr. Poulos, if you would just speak to when what's being referred to as the distance to the building the green houses portion of the building, if you would just tell us when that portion of the shed was constructed.

MR. POULOS: Because of timelines from being in the military, I left the state for basically four out of the last five years and February 2005, so I know they were completed before then. The survey that you see up there was done just recently in the last couple of years and as my wife indicated, she took that immediately to the Association and told the members that those two buildings, the green house and the little annex were now on Green Pond land. At the time we built them, the old point was further south.

MR. STEPHESON: I object.

MR. QUIGLEY: Please, you can't speak from the audience. If you have a question, you can direct the question to me and I'll refer it to Mr. Poulos for you in cross examination. Thank you very much. You will have the opportunity to ask your question.

MR. POULOS: So, like I said, the buildings were complete in basically the last four out of five years.

CHAIR QUIGLEY: What year would that have been?

MR. POULOS: I left in February 2005 and came back in July 2007. I spent one year here in Fayetteville and left in July 2008 for assignments in Cairo and places in the Middle East.

CHAIR QUIGLEY: What was your question, Mr. Stepheson?

MR. STEPHESON: I apologize, sir. It was not a question.

CHAIR QUIGLEY: Does anyone have any questions? Do you have a question for Mr. Poulos? Do you wish to testify? Please come forward.

Chair Quigley swears in Mark Colonair.

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

MR. COLONAIR: Mark Colonair, 424 Shep Drive, Fayetteville, NC. I just wanted to have the opportunity to say I am against this variance.

CHAIR QUIGLEY: Thank you.

Chair Quigley swears in Harold Schmidt

MR. SCHMIDT: My name is Harold Schmidt and I live at 640 Elliot Bridge Road [pointing to his residence on the screen presentation]. I've been there since 1985, a charter member of The

Green Pond. I was the initial secretary of treasure when the Poulos' requested entrance into The Green Pond. I persuaded the membership to accept partial payment which was a violation of the by-laws at that time but we did agree that it could be done. One of the things that I do know as a member of The Green Pond; I am bound by the by-laws of that pond. My docks which I built prior to the existence of Green Pond, is now the property of Green Pond because it is on Green Pond property. Anything built on Green Pond property is the property of Green Pond. That is stated in the by-laws. There are no ifs, ands or buts about that. I bought a shed; my neighbor, Mike Farrell was going to erect a fence. My shed was encroaching on his property line. I had to move my shed and I moved it six feet to be assured that I was not within zero tolerance of the property line. I know that when I bought my property, there was a survey of it and I knew where the corners were. I think anyone buying property does that. That's all I have to say. Thank you.

CHAIR QUIGLEY: Does anyone have any questions for Mr. Schmidt? Thank you, Mr. Schmidt. Would Mr. Colonnair please come back up to the lectern.

MR. DYKES: Mr. Colonnair, do you have any reason why you are opposed and object to this variance?

MR. COLONNAIR: Are you looking for something specific?

MR. DYKES: Why you are not in favor of it? Why you are totally against it?

MR. COLONNAIR: If there is something that has come into your mind, I'd be more than happy to address it. I'm against the variance.

MR. DYKES: Okay, so you don't have anything else to say, you're just totally against the whole thing.

MR. COLONNAIR: I'm willing to answer any questions you have; I'm against the variance, sir.

MR. DYKES: Okay, no further questions. Thank you.

CHAIR QUIGLEY: Does anybody else wish to testify? Is there any rebuttal? Thank you very much. I'm closing the public hearing for a moment. I want to remind the members of the Board that you've heard a lot of testimony relative to a lot of issues.

MR. NEVILLE: I did want to make a closing statement.

CHAIR QUIGLEY: I'm reopening the public hearing. Please come forward Mr. Neville.

MR. NEVILLE: I'd like to first call attention to what wasn't said by the opposition. I think it's very clear, very important, at least if my account is right, at least two members of the opposition, if not more stated that they and Green Pond agreed to zero lot tolerance. Mr. Stepheson stated that my clients were given permission to build to the line. That they weren't concerned about building up to the line, they were only concerned about the encroachment; that is exactly what he said. They've admitted that permission was given to my clients to build to the property line then he said he's only concerned about the part over the line. That's not before

you all tonight, what's over the line. You're not here tonight to decide if there's been a trespass, you're only here to decide if a setback variance should be granted. They've already stated in their own testimony they agreed, they gave permission for the building to be built up to the line. That's all that you're deciding, whether you should allow the setback beyond the line. You used the words specifically zero tolerance. They admitted they gave permission, they were asked for permission. They admitted that they didn't object at least until 2006 when the application was applied for. Ms. Colonair said this is about the building that was built on the property. Again, the issue is the variance setback. They seem to be mostly concerned about a trespass. Well, you're not the court to decide if there's been a trespass or not, that's not before you. Ms. Colonair testified that in fact, yes, there was a shed in that spot prior to because she bought it from the Poulos'. She testified there was a pre-existing shed there. In fact she bought the shed. You were shown photographs showing that exact shed and how that is not within the setback variance or not within the setback also. That's another example of a violation of the County's Ordinance. She remembers them specifically asking permission for a zero lot line. She remembers accepting the check for dues, yet they don't explain why my clients weren't given notice of membership meetings and why they aren't given copies of documents related to the corporation. I would suggest this issue of liability for this building is nothing more than a red herring. I would be a lot more concerned about liability for children on docks and the lakes than for someone's green house a few feet across the line. They've provided no evidence that they would incur any personal liability. Copies owned by a corporation I would submit to you, that if there is any liability here it is only on behalf of the corporation, not the individuals. Mr. Farrell said that he had no idea why they had not applied for a building permit and it is unacceptable for him to build a building. He had no idea the reason why they were in this situation because they were given permission to be there. Mr. Farrell gave no testimony as to whether or not as acting president he gave permission to the Poulos'. He didn't even address the subject. Both my clients, Mrs. Poulos testified that Mr. Farrell gave her permission verbally, twice. Mr. Farrell said he's only concerned about the building encroaching. Again, that's an issue of trespass; that's not before you all tonight. Mr. Schmidt said anything built on Green Pond is Green Pond's property. That's not quite the law. They may have an action for trespass, but I know of no clear law that says if you build on my property it's mine. In fact, I have some cases that says just the opposite and the statute of limitation is three years for trespass and it's well beyond three years. I think they are out of luck for a court of law maintaining a trespass action. He referred to the by-laws but, but didn't show us anything specific in the by-laws and if the by-laws are in opposition to the North Carolina state law, the state law would certainly take precedent over any by-laws that were illegal. Before you, you have seven factors you must consider tonight in order to determine if the variance should be granted. The first is exceptional circumstances related to the lot itself. What you have before you is a very unique situation where you have a corporation owning a pond or a lake and they actually also own a sliver of land around that lake. That's not normal. In normal you would have an Association who has common area designated as the lake or the pond and then the homeowners are members of that Association, that's what you would typically see. You typically see that the lot owners onto the lake itself, it's extremely rare to have the corporation actually own the land around the lake. It is distinct from other lots; other pieces of property in the district. Second, granting the variance request will not confer upon the applicant any special privileges that are denied to other residents. Well, certainly anyone can seek a variance in this neighborhood to do the same thing. The literal interpretation would deprive my clients of rights commonly enjoyed by others. Certainly they would. 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. Again, at least two have testified that they gave permission for the very structure to be there. Trespass is not before you, the variance and setback is before you. I don't know how they can come before you today and say it's going to be injurious to them when they are the one who gave permission for it. The special circumstances are not a result of the actions of the applicant themselves; they were given permission. I think they've all testified to everyone in this room that they were relying on a survey, a plat from the late 1960's. We've heard from the opposition and those in favor who testified to that. What you have before you is simply an issue that does not need to be before the Board of Adjustment. What we have here is a classic neighborhood dispute concerning a shop with construction that started in 2002 and was completed around 2005. These are issues that should be before a Superior Court, decided by a jury in a court in North Carolina. What is attempting to happen here is that the issue of a variance for setbacks, for which they gave permission up to the line, is being placed before the County in an effort to not be in Superior Court, where this is exactly where this belongs. The case law and the statutes are very clear 1-52 says that any action for trespass.....(tape ran out)

At least two of these people have testified as a real issue and that issue needs to be before the court, not before the Board of Adjustment. My clients have testified they gave permission, the opposition has testified they were given permission. My clients have testified that there was no intent to gain land from Green Pond, there still is not. Green Pond is the proper party here tonight to object to this. They had an attorney and I don't know what occurred between them and their attorney but certainly he is still their attorney. I spoke to him as recently as Monday and he's not here tonight on their behalf. They chose to not have an attorney represent them. The only evidence of any objection that is solely related to the trespass, and that issue simply is not before you tonight. For that reason I ask you to do simply both the right thing and the legal thing and that is to grant the variance, being that this issue needs to proceed, it can proceed in the proper court where it belongs and as to whether there was a trespass or otherwise can be determined by Superior Court. Thank you for your patience.

CHAIR QUIGLEY: Mr. Stepheson, please come up to the lectern.

MR. STEPHESON: I have just a couple more things. I'd like to start off with a question.

CHAIR QUIGLEY: Pardon, but we're in summary now.

MR. NEVILLE: [addressing Chair Quigley] Sir, no new evidence can be presented at this time, only a summary.

MR. STEPHESON: Yes, sir that's why I'm up here, to just ask a couple of questions. He keeps referring back to other properties around and about the lake and they keep talking about violations. I'm wondering is there any proof or surveys that reflect any other violations around that lake? We did not bring the situation before you all tonight, this was a request on their behalf, we're just merely here defending our interest. They keep stating it was not a problem until 2005 or 2006 at some point. There was enough concern in 2004 that Douglas Maxwell was retained to look into this. He referred to a not normal situation with the corporation. I don't think that has a consideration. It was a piece of land purchased by a group of people and incorporated to allow other members in and out of usage as people coming by the houses. They do not retain the certificate. The structure, again, they keep talking about this building, it was a shed that was asked of the Association to prove again, to find this 400 square feet, by the

County of Cumberland. This concludes everything I have and I appreciate your time. Thank you.

CHAIR QUIGLEY: Thank you. Ms. Colonair?

MS. COLONAIR: I just want to make a couple of statements and replies to what Mr. Neville said also. Yes, the shed that my husband and I purchased was on the property but it did adhere to the setbacks. It was a very small 10 x 12 shed, 100 inch square feet. So again, we're comparing apples to oranges. We're talking about 120 square feet versus over 2000 square feet. When they talk about permission, correct me if I'm wrong, I couldn't give anyone of the people that are in this room permission to build illegally. That would be my statement. What they presented to me as a member is not what they did. They came and said we'd like to put a shed on the property. Maybe I was wrong to think that a shed was a small building, not this huge monstrosity of a building.

CHAIR QUIGLEY: Thank you. I'm closing the public hearing.

CHAIR QUIGLEY: Mr. Schmidt, what is your question for Mr. Neville?

MR. SCHMIDT: What is his definition of a shed?

CHAIR QUIGLEY: You can choose to answer that or not answer that, sir.

MR. NEVILLE: My response would be, if it didn't fit their definition of a shed, why did they watch it being built in 2002 to 2005; watch the layout and assist in the foundation and not object? I guess my definition of a shed is not germane.

CHAIR QUIGLEY: Thank you. Before I close the public hearing, I want to call Ms. Perrier back up. Angela, I want to ask you a couple of questions. You are under oath.

CHAIR QUIGLEY: To the best of your knowledge, when did Code Enforcement get involved in this?

MS. PERRIER: July 2006, that was our first time we went to visit.

CHAIR QUIGLEY: And the definition of the problem then was what, Ms. Perrier?

MS. PERRIER: That the storage building was built without permits.

CHAIR QUIGLEY: Okay, does any Board member have any questions relative to that. I'm closing the public hearing again. The issue is a variance. It's what we've been asked to decide. You've heard a lot of testimony and some of it pertained to the variance and some of it was peripheral. So what is your discussion relative to this?

MR. TALLY: Our issue is as to the variance and in relation to the property line not as to whether there is trespass or any regards to any structure being built over the property line. Any discussion as to a trespass or any testament we've heard as to structures over the property line would not be before us tonight as far as to factor whether a variance should be issued or

not. We've heard testimony in opposition to the variance as more to the issue of a trespass. Speaking in my own opinion, I don't feel like that is the issue that we're deciding, so it's hard for me to factor in that in my decision as far as a variance.

MRS. TART: I have a question for the County Attorney. In reference to correspondence dated May 11, 2009 from Mr. Scott to Mr. & Mrs. Poulos, on the second page, he says that they have an option of applying with the Cumberland County Land Use Planning for a variance of setback requirements. This option is only available if you are not encroaching on adjacent property owners. Could you give us some advice?

MR. MOOREFIELD: The reason for that explanation is that as the Chairman and Mr. Tally just pointed out, the only issue before the Board of Adjustment is whether or not to grant a variance to the code that's in place which is a five foot setback requirement. You have a building that already exists well past five feet in the property line. If you grant a variance and waive the five feet in this instance, you still have a building that's still there.

MRS. TART: My question is how can you have variance.....

MR. MOOREFIELD: You don't have an exterior wall, you typically measure the variance from the exterior wall or the foundation and that just doesn't work in a situation where you've got an existing building. There are eight issues for the Board of Adjustment to determine. You can't find one of those; you've got to find all eight of those. That's what you've got to address and how the evidence that's been presented tonight, whether or not you can make that determination from all eight of those factors is the issue for the Board of Adjustment. All the talk about the trespass, what everybody said is right, that should and looks like it ultimately will be into Superior Court; but that's not what the variance is about.

CHAIR QUIGLEY: Does that answer your question, Mrs. Tart?

MRS. TART: Yes, it does. But it makes no sense how you can issue a variance when it's all in one building and it's encroaching on the adjoining property owners. That's why I was questioning Mr. Scott's statement in the letter to the Poulos'.

CHAIR QUIGLEY: Are there any other question? Mr. Newsome?

MR TALLY: I think it's important too, to understand the way that I feel as well as that everybody understands that whatever decision we're making here in regards to the variance has no bearing. I'm not speaking as to whether Mr. Neville or the other side is correct in talking about an issue of trespass and being heard in Superior Court; we're not making a decision as to that and obviously I would prefer your opinion on it, but whatever your decision has no bearing on that issue as far as that legal issue.

MRS. TART: Actually, my question was, how can you even request a variance in a situation like this?

MR. MOOREFIELD: Obviously you can because it's been done and the Ordinance doesn't really contemplate this situation. If you make a measure from the exterior wall or foundation here, it's meaningless.

CHAIR QUIGLEY: Mr. Dykes, any comments?

MR. DYKES: No comments.

CHAIR QUIGLEY: Essentially what we're looking at is you've got eight elements that you have to consider and if you can't find favorably for each of those elements, then the motion would have to be considered under that rule. Is anyone prepared to make a motion?

MRS. TART: Mr. Chairman, I move that we deny the variance in regard to Case #P10-14-C, based upon the fact it does not meet the criteria outlined in #2 that is a requirement. It would grant the petitioner special privileges that are not available to other people.

CHAIR QUIGLEY: Absent approval of all of the conditions in this, on the basis of the fact that we can't satisfy all of them, it is ordered the variance be denied subject to appeal. Do we have a second to the motion?

MR. NEWSOME: I second the motion.

IN FAVOR		OPPOSED	
TART:	Yes	TALLY:	No
NEWSOME:	Yes		
DYKES:	Yes		
QUIGLEY:	Yes		

The motion to deny Case #P10-14-C passed with Mr. Tally voting in opposition.

- **P10-15-C:** CONSIDERATION OF A REQUEST FOR A VARIANCE FROM THE COUNTY ZONING ORDINANCE, SECTION 1102 YARD REGULATION, SUBSECTION G. BUFFER REQUIREMENTS 1-A, WHICH REQUIRES A SOLID BUFFER WHEN A NON-RESIDENTIAL USE ABUTS A RESIDENTIALLY-ZONED PROPERTY ALONG THE SIDE AND/OR REAR PROPERTY LINES FOR A DAY CARE FACILITY; AND THE ADDITION TO AND MODIFICATION OF AN APPROVED SPECIAL USE PERMIT (NEE SPECIFIED CONDITIONAL USE) FOR A DAY CARE FACILITY IN AN R10 RESIDENTIAL DISTRICT ON 1.42+/- ACRES, LOCATED AT 3230 LEGION ROAD; SUBMITTED BY BETTY ALLEE ON BEHALF OF CHURCH OF GOD OF PROPHECY (OWNER).

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

Chair Quigley swears in Betty Allee.

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

MS. ALLEE: My name is Betty Allee, and I live at 4018 Village Drive, Fayetteville, NC 28304.

CHAIR QUIGLEY: Thank you, and what's your relationship to this property?

MS. ALLEE: I belong to this church, The Church of God of Prophecy, and I now serve as the president of the Daycare Board. I serve as a board member of our church and I help oversee the changes of the daycare. I've worked there for forty years and saw it from beginning to now.

CHAIR QUIGLEY: Do you understand the non-conforming issues here relative to the property? The fact that you are required to have a buffer and off-street parking rights of way?

MS. ALLEE: I was not aware that we had to have a six foot buffer. We have had our properties fenced in from the beginning of our daycare center which was in 1971. Because of bringing in sand and filling up our yards, the fence had become too short, because we have to go by the guidelines of the daycare license in Raleigh. We recently, in May of this year, we installed a new fence. It is five foot; there is one section of the fence [pointing to the on screen presentation], for some reason that section is six foot, the rest is five foot. A new chain link fence. We did not know that we were required to have a solid buffer. Had we known that at the time, we would have installed a privacy fence which would have been cheaper than the nice chain link fence that we have. That's why we're asking for the variance tonight, because we were not aware that it had to be six feet. We were going by the guidelines to comply with daycare licensing, which if you run a daycare center and you are licensed, they have strict rules.

CHAIR QUIGLEY: Yes, it's a security issue; I understand.

MS. ALLEE: Absolutely. If we had known that at the time, we could have just increased it a little bit more to six foot. I did not know that and I've worked there all these years and for some reason I did not know that. I'm sorry I didn't because like I said, we could have built a privacy fence, probably cheaper than we did this one. We do want to comply with whatever we have to comply with and we're asking at this time if we could have a variance from the six foot.

CHAIR QUIGLEY: Thank you. Do you have any other comments? In other words, your interest is in complying with what is now in nonconformity, is that correct, Ms. Allee?

MS. ALLEE: Well, the reasons I'm asking for the variance tonight is that if we could proceed with licensing this one other building there that we had used for a sanctuary; we have moved out of that and this is a nice big building for our daycare. The daycare has been here [pointing to the on screen presentation] and this section here was our sanctuary and we want to license that at this time so our after school children will have a nice big building to enjoy as well. So, I'm asking for the variance so we would not have to install a new fence at this time.

CHAIR QUIGLEY: I understand, in other words what we've got here Ms. Speicher is two issues; a variance and a special use permit, is that where we are?

MS. SPEICHER: Yes, chair and the Board should consider the variance first as a separate distinct issue.

CHAIR QUIGLEY: Ms. Allee, I remind you that you remain under oath. I do have some questions for staff. What do we need to do here to see where we go with this issue? Do we grant the variance and if we grant the variance, does that open up the door for the special use permit if we decline the variance or deny the variance, then the Special Use Permit is moot?

MS. SPEICHER: In this particular case because we're talking about a buffer that is tied to the certificate of occupancy, not the operation or beginning of a business, that regardless what the ruling on the buffer is, the Board can still move on to hearing the Special Use Permit. In your draft conditions on condition #17, staff had noted the requirement for compliance with the buffer.

CHAIR QUIGLEY: Okay, essentially what I want to introduce now is the fact that we need to talk about the Special Use Permit for this and that's obviously a different set of criteria.

MS. SPEICHER: Excuse me Chair, I hope I haven't confused things, but while I was out of the room, Pier explained to me she only presented enough for the Board to address the buffer; so before the Board does anything with the Special Use, she would like to finish her presentation. You're more than welcome to decide the buffer and then she can finish or whichever way you want to do that.

MR. MOOREFIELD: Mr. Chairman, may I ask staff a question? Is there any other way under the Ordinance to accommodate and comply with the buffer requirement other than through a solid fence. Are plantings or some other type of buffer mechanism available?

MS. SPEICHER: Yes, sir, vegetation.

CHAIR QUIGLEY: It can be a green buffer.

MR. MOOREFIELD: Have you all talked to her about that?

MS. SPEICHER: Yes, we did.

CHAIR QUIGLEY: When we talk about the variance, the conditions in the variance could include the fact that they have to install a buffer. The buffer can be either a landscaped buffer or a hardscaped buffer. A hardscaped buffer would be the palisade fence that they talked about and the landscaped buffer would be plantings, but they would eventually have to be at a height of six feet. Is that correct?

MS. SPEICHER: If the variance is denied.

CHAIR QUIGLEY: And that could be a condition of the variance, that they do that?

MS. SPEICHER: Well, that's the standard in the Ordinance then the variance would be denied, if that was the condition.

MR. MOOREFIELD: If the Variance were granted, the buffer requirement goes away, right?

MS. SPEICHER: If they grant it.

CHAIR QUIGLEY: But, it could be reinserted in the Special Use Permit, have we discussed that?

MS. SPEICHER: Because you have a variance before you, you could modify the buffer requirements to what you felt protected the neighborhood and was in line with the intent of the Ordinance. Such as, if you felt a five foot chain link fence with modifications or something like that would be adequate for this particular property and this particular area in use and still meet the intent of the Ordinance.

CHAIR QUIGLEY: I don't want to trample all over code on this. Does anybody have any discussion on this issue?

MRS. TART: I was just wondering if we approved the variance for the five foot fence, could we then require a five foot vegetation buffer inside the fencing for the privacy issue?

MS. SPEICHER: Yes, you certainly could.

MS. ALLEE: Can I say something? All the years that we've been here, we have had excellent relations with our entire neighborhood. I've been here several times since we've grown and increased and I've never had anyone to come and object to what we were doing there because they knew we were doing it for a good cause; for the children. We own [pointing to the on screen presentation] everything in this block except this house and another one across the street. That is Buie Street, we own all of these lots that the daycare is joining. We use this for church, but the daycare center, even though we own those lots, we still have our fence, our buffer there. In this entire block at Buie Street and Myrtle Drive, we own everything in this block except two houses. So, we've had really good relations with our neighbors and we haven't had anyone complain through the years. In fact, some of the neighbors, we've kept their children in our daycare, so it's been a really good relationship with all the neighbors. We've never had any complaints. If we did, I'm sure that you would know it down here, but we have not. If we could get this Special Use approved tonight, we'd go forward with our plans and if you would grant the variance of our six foot fence versus the five foot and six foot. Thank you.

CHAIR QUIGLEY: Does anybody have any questions for Ms. Allee? Thank you. With an accommodation, I see here to grant the variance with the condition that they do the buffer and then discuss the Special Use Permit with any requirements that are there. Is that an accommodation?

MS. SPEICHER: Yes, that's fine.

MRS. TART: Since they own all the properties that actually abut this fence, I believe one property she pointed out was on the corner line.

CHAIR QUIGLEY: Yes, the one house to the west.

MRS. TART: It actually doesn't border the fencing that much.

CHAIR QUIGLEY: It's sort of within easy view of it, Mrs. Tart.

MRS. TART: It's in view but...maybe I misunderstood...basically they own everything but one lot.

MRS. VARNER: They own these properties [pointed out on the on screen presentation the properties owned by Church of God of Prophecy].

CHAIR QUIGLEY: Do you have a suggestion, Mrs. Tart?

MRS. ALLEE: Can I speak, I did make a mistake, there are two houses from Myrtle Drive and Buie. There are two home owners there that we don't own. But then across the street, there is one. So we're not really dealing with this side anyway, but over here there are two home owners [pointing to the on screen presentation]. We own all the lots except those two.

CHAIR QUIGLEY: Thank you. I'll close the public hearing on this one. Since we are faced with denying the variance which would then make moot the Special Use Permit, is that correct?

MS. SPEICHER: That is not correct in this instance. You're used to most of the time dealing with the setback of a new building or something that would stop effectively the Special Use Permit. In this case, because the buffer is a requirement to the certificate.....

CHAIR QUIGLEY: Essentially, the denial of the variance would then require them to install the buffer?

MS. SPEICHER: That's exactly right.

CHAIR QUIGLEY: Is there anything unique about this Special Use Permit request? Do you want to get into that Mrs. Varner?

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

CHAIR QUIGLEY: Do they have adequate parking there for that many employees?

MS. SPEICHER: Condition #19 addresses the parking. They were required to have a minimum of sixteen off-street parking. The parking that is located on Buie Avenue that causes motor vehicles to back out onto the street and the first four spaces on Legion Road were not counted in the staff calculation for compliance; so yes, they meet.

Mrs. Varner completes her presentation.

CHAIR QUIGLEY: An accommodation to this could be that we deny the variance and approve the Special Use Permit if that is the desire of the Board and that would accomplish the fact that they would have to put the buffer in which would satisfy that requirement and give them the day care facility that they are anxious to have, I assume.

MRS. TART: Mr. Chairman, are you saying we could approve the Special Use Permit and then deal with the variance after the fact?

CHAIR QUIGLEY: No. Essentially, we would have to deny the variance, so that would lead us to the Special Use Permit. We don't have to do that but I think that would open up the fact that by denying the variance, they would have to put the buffer in and comply with the code on that, if I'm not mistaken; and satisfy that, which would then satisfy provision #2 of the variance;

which would be granting them a special privilege that may not be available to others and then the Special Use Permit, I don't see any problems with that and then they would have to satisfy 28 conditions, right Mrs. Varner?

MRS. VARNER: There are 28 conditions and the buffer is addressed on condition #17.

CHAIR QUIGLEY: Denying the variance does not deny then the use of the facility for their intended purpose and the conditions in that require the buffer to be built which would satisfy code. So, we're not trampling over what Planning has done.

MR. NEWSOME: I make a motion that we deny the buffer variance.

CHAIR QUIGLEY: I'll accept your motion, based on what?

MR. NEWSOME: Based on #2, that it would grant special privileges.

CHAIR QUIGLEY: Okay that motion is on the floor, do I have a second?

MR. DYKES: Seconded.

CHAIR QUIGLEY: All in favor of the motion to deny the variance, signifying by saying aye.

IN FAVOR		OPPOSITION
<u>NEWSOME:</u>	Yes	None
<u>DYKES:</u>	Yes	
<u>QUIGLEY:</u>	Yes	
<u>TART:</u>	Yes	
<u>LOCKETT-TALLY:</u>	Yes	

There were no oppositions and the motion to deny the variance passed unanimously.

CHAIR QUIGLEY: The decision of the Board is that it is ordered that the variance be denied based on the fact that granting it would confer upon the applicant a privilege denied to other residents in other areas that are ruled by the code.

CHAIR QUIGLEY: We will now discuss the Special Use Permit. Anybody prepared to issue a motion on that?

MR TALLY: I make a motion that we approve the Special Use Permit.

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 with this draft of conditions #1 through #28.

CHAIR QUIGLEY: Having heard the evidence, the Board finds that the application is complete and that the Special Use Permit is permitted recognizing that all 28 conditions must be met.

CHAIR QUIGLEY: We do have a motion, do we have a second?

MR. NEWSOM: Seconded.

CHAIR QUIGLEY: It has been properly moved and seconded. Is there any additional discussion on this? Is there any clarification that staff needs? All in favor of the motion to grant the Special Use Permit, signify by saying aye?

IN FAVOR		OPPOSITION
<u>NEWSOME:</u>	Yes	None
<u>DYKES:</u>	Yes	
<u>QUIGLEY</u>	Yes	
<u>TART</u>	Yes	
<u>LOCKETT-TALLY</u>	Yes	

There were no oppositions.

CHAIR QUIGLEY: We grant the Special Use Permit subject to the 28 conditions that have to be satisfied.

9. MEMBERSHIP

CHAIR QUIGLEY: We need to elect a Vice-Chairman. I will ask for a nomination for a Vice-Chairman. I think everybody's familiar with who is available.

MS. SPEICHER: Would you like for me to read the current regular member names and then the current alternate names?

CHAIR QUIGLEY: Yes.

MS. SPEICHER: Joseph Dykes, Melree Hubbard Tart, George Quigley and Horace Humphrey. That is our four current regular members. Our alternates are: Carrie Tyson-Autry, William Lockett-Tally, Martin Locklear, Randy Newsome and Ed Donaldson.

CHAIR QUIGLEY: The Vice-Chairman should be selected from the regular members?

MS. SPEICHER: Yes.

MRS. TART: When will we get a new member, not an alternate?

MS. SPEICHER: The Board of Commissioners would very much appreciate if this Board would make a nomination tonight for a recommendation on the nomination to fill the vacancy left by Mr. Swanson.

CHAIR QUIGLEY: How many regular members do we need?

MS. SPEICHER: Five.

CHAIR QUIGLEY: And we only have four?

MS. SPEICHER: Right, because of Mr. Swanson.

MRS. TART: Could we wait until we have a full five member board to elect the Vice-Chairman?

MS. SPEICHER: The only issue that would be a problem is if for some reason Chair Quigley couldn't make the meeting, then it would be a vote among the members that were there on who was Chair. If it's the Board's pleasure, you can but, I know the Commissioners would still appreciate a recommendation from the Board.

CHAIR QUIGLEY: I would like to have a Vice-Chairman.

MS. SPEICHER: Do you have your applicant list up there?

CHAIR QUIGLEY: Do I have nomination for Vice-Chairman?

MR. DYKES: I have a suggestion, Mr. Ed Donaldson.

MS. SPEICHER: Mr. Donaldson would only qualify as vice-chair if he was also nominated and if he accepts to be a regular member.

MRS. TART: That was my reasoning in waiting until we had a full board.

MS. SPEICHER: Well, at the Board's direction, I can work on that tomorrow and if he confirms and that's what the Board agrees to, I can write it up with Mr. Quigley's name and send it on with a recommendation.

CHAIR QUIGLEY: I don't have a problem. I heard no nominations. Absent of nominations on the floor so that means no argument. What's your recommendation for a regular member?

MS. SPEICHER: It's going to have to be Mr. Donaldson if he's also going to be vice-chair. Right now he's an alternate. Is that good? Next month, we'll have a vacancy left by Mr. Donaldson.

CHAIR QUIGLEY: Does everybody agree?

All members present agreed.

10. DISCUSSION

MS. SPEICHER: As a reminder, please read the revised Rules of Procedure.

11. UPDATE(S)

MS. SPEICHER: The Watershed on Andrews Road, the high density, we did not get a new bond or anything so we did have to in fact send out the notice of violation letter and he has 30 days to come into compliance.

MR. DYKES: Have we heard any more about the TigerSwan case?

MS. SPEICHER: Mr. Dykes, that is still in court and I cannot talk about that case right now.

MR. MOOREFIELD: They just now got the record together and there's been no further action taken. This is likely not to be heard before next spring.

12. ADJOURNMENT

CHAIR QUIGLEY: There being no other business, I'll ask for a motion to adjourn.

MRS. TART: Motion to adjourn.

MR. DYKES: Seconded.

There being no further business; the meeting adjourned at 10:15 pm.

P86-16-C
SITE PROFILE

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)

Site Information:

Frontage: 390.00'+/- on West Manchester Road (SR 1451)

Depth: 260.00'+/-

Jurisdiction: Cumberland County

Adjacent Property: Yes, one lot on the west side of subject property

Current Use: Motor vehicle wrecking yards and junkyard, motor vehicle repair garage & grading company

Initial Zoning: C3 – January 7, 1977 (Area 11)

Nonconformities: Existing manufactured home was approved to be used as a motor vehicle sales office. Existing structure on subject property encroaches neighboring property on the west side; structure doesn't meet the front and left side yard setback

Zoning Violation(s): Yes, Case # ZN6305-2010 received on 09/03/2010 for a dilapidated manufactured home and two inoperable vehicles on subject property; ZN6347-2010 received on 10/14/2010 for operating a motor vehicle wrecking yard and junkyard use in a zoning district that does not allow it

Surrounding Zoning: North: R6A, R10, RR & CD; West: R10; South: RR, C(P), M(P); East: RR, C(P), M(P)

Surrounding Land Use: 2-manufactured home parks, religious worship activities, 2-bars, hardware, industrial operation, residential (including manufactured homes and multi-family) military reservation, and woodlands

Spring Lake Area Detailed Land Use Plan: Planned commercial

Special Flood Hazard Area (SFHA): No flood

Water/Sewer Availability: Spring Lake/Septic

Municipal Influence Area: Town of Spring Lake

Soil Limitations: None

School Capacity/Enrolled: Manchester Elementary: 340/354; Spring Lake Middle: 700/402; Pine Forest High: 1,750/1,542

Subdivision/Site Plan: Review required prior to any non-residential use

Average Daily Traffic Count (2008): 22,000 on Lillington HWY 210 (NC HWY 210)

POPE AFB: No objection, property not located within an Accident Potential Zone (APZ)

RLUAC/US Fish & Wildlife: No objection

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

Notes:

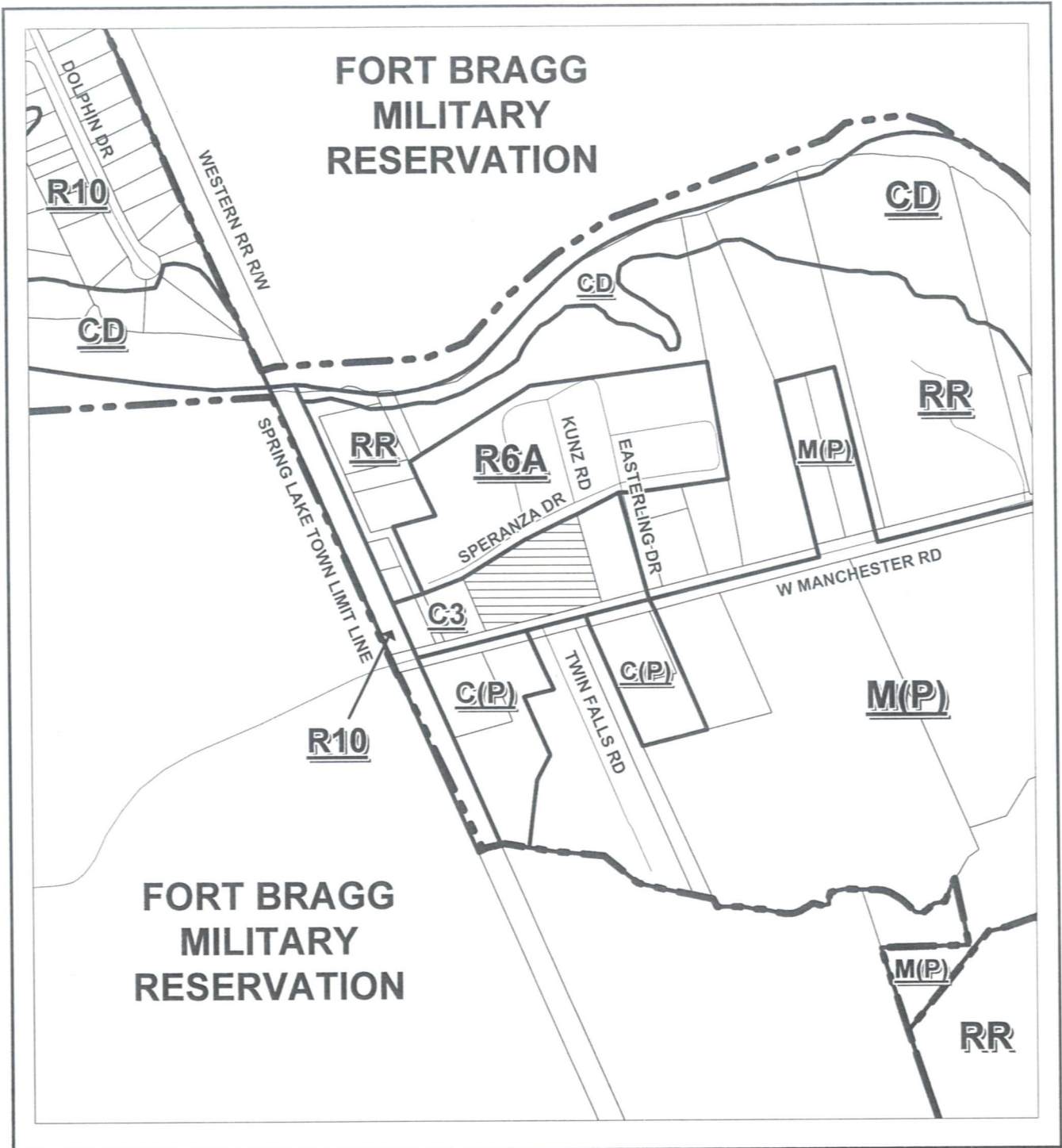
1. Conditional Use Permit Case No. P86-16-C approved on 5/22/1986 subject to conditions:
 - a. That all local and state regulations be complied with at all times
 - b. That the underpinning be done prior to occupancy and be maintained at all times

Contents of the application:

- c. Requested by Junie D. Moss on 04/21/1986
- d. Applicant proposed a 12'x50' manufactured home to be used as an office for Continental Auto Supply, Inc, and as a night watchman quarter
- e. The manufactured home was projected to be setback 130' from the right of way (presently, manufactured home is setback at 68 feet approximately from right-of-way)
- f. Applicant proposed 33 off-street parking spaces

First Class and Record Owners' Mailed Notice Certification

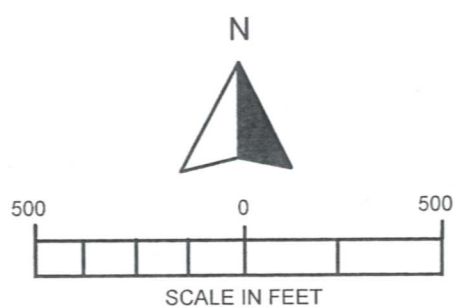
A certified copy of the tax record owner(s) of the subject and adjacent properties and their tax record mailing address is contained within the case file and is incorporated by reference as if delivered herewith. The record owners' acknowledgement of notice is also included in the case file.



**FORT BRAGG
MILITARY
RESERVATION**

**FORT BRAGG
MILITARY
RESERVATION**

**BOARD OF ADJUSTMENT
REVOCATION
CONDITIONAL USE PERMIT**



ACREAGE: 2.28 AC. +/-		HEARING NO: P86-16-C	
ORDINANCE: COUNTY		HEARING DATE	ACTION
GOVERNING BOARD			

PIN: 9592-93-0833

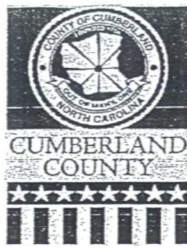
AF
12/17/10

Thomas J. Lloyd,
Director

Cecil P. Combs,
Deputy Director

Ken Sykes,
Inspections Coordinator

Carol M. Post
Planning and Inspections
Office Support



Kim Reeves,
Inspector
Angela Perrier,
Inspector
George Hatcher,
Inspector
Joey Lewis,
Inspector
Joan Fenley,
Inspector

COUNTY of CUMBERLAND

Planning & Inspections Department

NOTICE OF VIOLATIONS

September 3, 2010

TO: Donald A. Moss & Parties of Interest
402 Harrell Street
Spring Lake, NC 28390

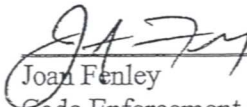
CASE #ZN 6305-2010

You are hereby issued a Notice of Violation of the Cumberland County Code, Appendix A, Zoning.

1. Nature of Violation(s): The manufactured office space and two (2) junked/inoperable vehicles need to be removed from the premises.
2. Code Reference: Zoning Ordinance, Cumberland County, North Carolina, Article III, Zoning Districts, Section 306, Planned Commercial Districts, and Article XVII, Legal Provisions, Section 1703, Violations
3. Action to Correct Violations(s): Remove the manufactured office space and the two (2) junked/inoperable vehicles from the premises.
4. Property Location: On or about 634 W. Manchester Road, Spring Lake, NC. Being that property as listed under Cumberland County, NC Tax Parcel Number 9592-93-0833.
5. Property Owner: Donald A. Moss Inspection Date: 8/31/2010

You are hereby advised that the above listed violation is a Class 3 Misdemeanor, under the provisions of North Carolina General Statute 14-4, and must be corrected within thirty (30) days of receipt of this notification. Failure to correct this violation will subject you to a civil penalty of \$500 dollars per day (each day being a separate violation) and prosecution for a misdemeanor violation in Environmental Court. Also be advised of your right to appeal this decision in accordance with Article XVII., Section 17.03(E), Appeal, Zoning Ordinance, Cumberland County, North Carolina.

If you have any questions, please contact the undersigned at (910) 321-6670.

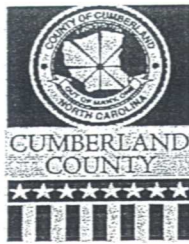

Joan Fenley
Code Enforcement Officer

Thomas J. Lloyd,
Director

Cecil P. Combs,
Deputy Director

Ken Sykes,
Inspections Coordinator

Carol M. Post
Planning and Inspections
Office Support



Kim Reeves,
Inspector
Angela Perrier,
Inspector
George Hatcher,
Inspector
Joey Lewis,
Inspector
Joan Fenley,
Inspector

COUNTY of CUMBERLAND

Planning & Inspections Department

NOTICE OF VIOLATIONS

October 14, 2010

TO: Donald A. Moss & Parties of Interest
402 Harrell Street
Spring Lake, NC 28390

CASE #ZN 6347-2010

You are hereby issued a Notice of Violation of the Cumberland County Code, Appendix A, Zoning.

1. Nature of Violation(s): You have permitted land that you own, located in an CP (Commercial District), to be used as a junk yard/salvage yard, per definition in the Cumberland County Zoning Ordinance.
2. Code Reference: Zoning Ordinance, Cumberland County, North Carolina, Article IX, Individual Uses, Section 915, Motor Vehicle Wreckin Yard and Junk Yard, and Article XVII, Legal Provisions, Section 1703, Violations
3. Action to Correct Violations(s): Remove all open storage from this property or rezone the property to a commercial zoning classification that permits junk yards/salvage yards and obtain a Specified Conditional Use Permit from the Cumberland County Board of Adjustment.
4. Property Location: On or about 634 W. Manchester Road, Spring Lake, NC. Being that property as listed under Cumberland County, NC Tax Parcel Number 9592-93-0833.
5. Property Owner: Donald A. Moss Inspection Date: 10/13/2010

You are hereby advised that the above listed violation is a Class 3 Misdemeanor, under the provisions of North Carolina General Statute 14-4, and must be corrected within thirty (30) days of receipt of this notification. Failure to correct this violation will subject you to a civil penalty of \$500 dollars per day (each day being a separate violation) and prosecution for a misdemeanor violation in Environmental Court. Also be advised of your right to appeal this decision in accordance with Article XVII., Section 17.03(E), Appeal, Zoning Ordinance, Cumberland County, North Carolina.

If you have any questions, please contact the undersigned at (910) 321-6670.


Joan Fenley
Code Enforcement Officer



Cumberland County Planning Department
 130 Gillespie Street · Post Office Box 1829 · Fayetteville, North Carolina 28302-1829 · (910) 678-7600 · Fax: (910) 678-7631



634 W. Manchester Rd Scale 1 in. = 80
 Printed June 24, 2010

1 - ~~Junkyard~~
 2 - ~~Business source~~

Maps can also be viewed online at www.ccmmaps.org

All data is compiled from recorded deeds, plats and other public records and data. Primary sources from which this data was compiled must be consulted for verification of information contained in the data. All information contained herein was created for the County's internal use. Cumberland County, its agents and employees shall not be held liable for any errors in the data. This includes errors of omission, commission, errors concerning the content of the data, and relative and positional accuracy of the data. This data cannot be construed to be a legal document. Any resale of this data is strictly prohibited in accordance with North Carolina General Statute 132-10

Auto Garage
 Bar
 Condo Bus



CUMBERLAND COUNTY JOINT PLANNING BOARD

P86-16-C



130 GILLESPIE STREET P.O. DRAWER 1829 FAYETTEVILLE, NORTH CAROLINA 28302-1829
919/483-8131

June 6, 1986

MEMORANDUM

TO: CUMBERLAND COUNTY INSPECTIONS DEPARTMENT

FROM: GORDON ALLEN MITCHELL, SECRETARY
CUMBERLAND COUNTY BOARD OF ADJUSTMENT *GAM*

SUBJECT: CASE NO. P86-16-C. AN APPLICATION BY JUNIE D. MOSS FOR A
CONDITIONAL USE PERMIT AS PROVIDED FOR BY THE CUMBERLAND
COUNTY ZONING ORDINANCE, ARTICLE III, SECTION 3.2, ITEM 1-H TO
USE A MOBILE HOME AS AN OFFICE IN A C3 HEAVY COMMERCIAL
DISTRICT FOR AN AREA LOCATED AT 902 MANCHESTER ROAD. (COUNTY
ORDINANCE)

This memorandum is to inform you that the Cumberland County Board of Adjustment met May 22, 1986 and voted unanimously to approve the application subject to the following conditions:

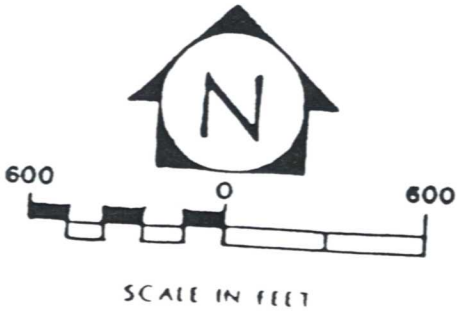
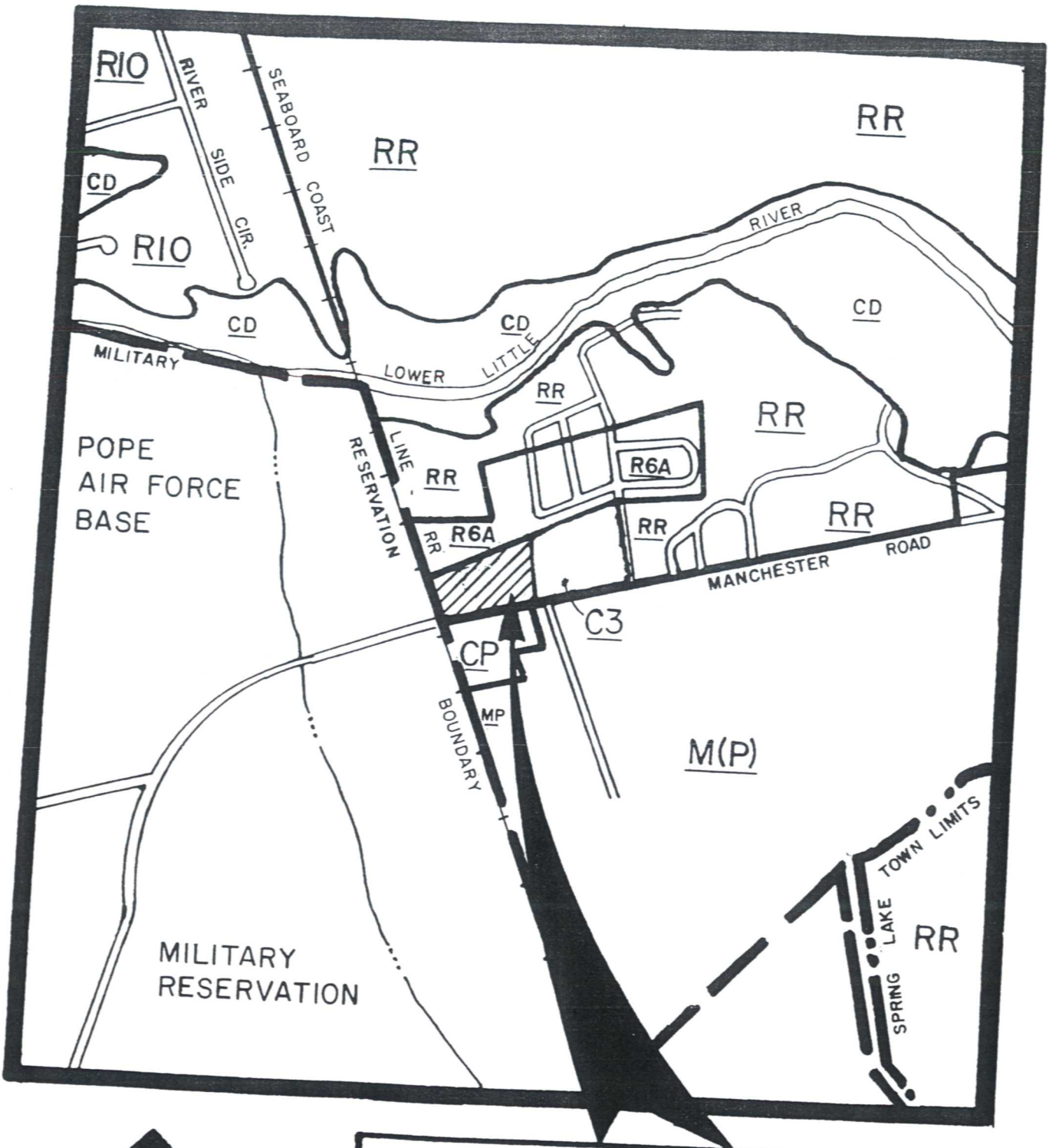
1. That all local and state regulations be complied with at all times.
2. That the underpinning be done prior to occupancy and be maintained at all times.

(See attached maps.)

GAM:bjc

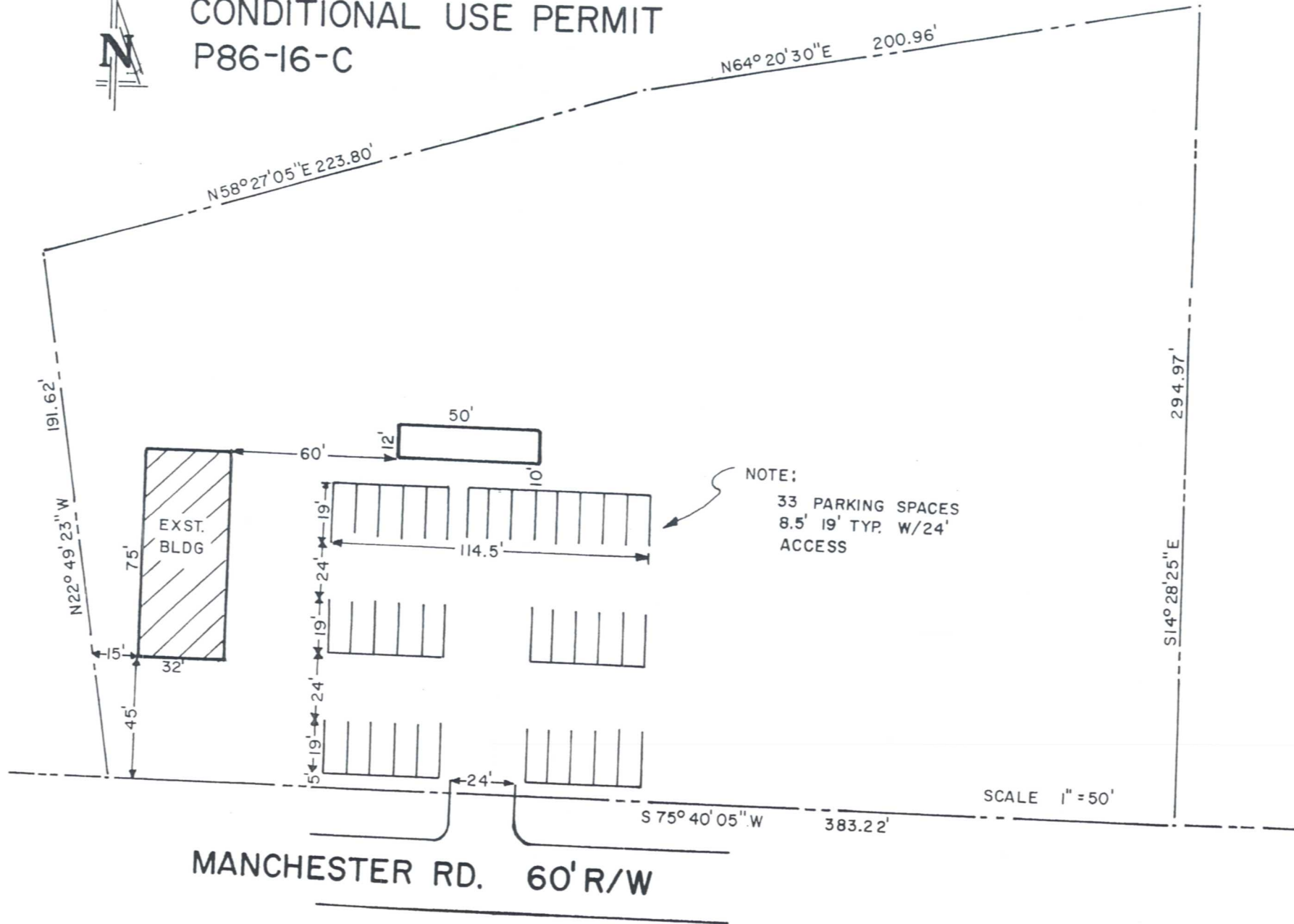
cc: Mr. Junie D. Moss
1116 N. Bragg Blvd.
Spring Lake, NC 28390

Print 9592-93-0833

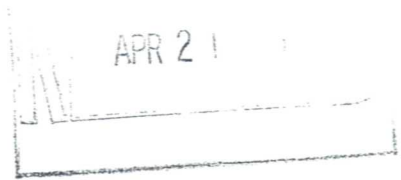


CONDITIONAL USE PERMIT		
ACREAGE: 2.28 AC	HEARING NO: P86-16-C	
ORDINANCE: COUNTY	HEARING DATE	ACTION
PLANNING BOARD		
GOVERNING BOARD		

BOARD OF ADJUSTMENT
CONDITIONAL USE PERMIT
P86-16-C



NOTE:
33 PARKING SPACES
8.5' 19' TYP. W/24'
ACCESS



APPLICATION FOR CONDITIONAL USE PERMIT

Application No.: _____ Date: _____

P86-16-C

To the Planning Board and the Board of Adjustment of Cumberland County, I (We), the undersigned, do hereby respectfully make application and petition to the Board of Adjustment to grant a Conditional Use Permit as required in the Zoning Ordinance. In support of this application, the following facts are shown:

1. The property sought for Conditional Use Permit is located at 902 Manchester Rd. between Highway 87N and Fort Bragg Boundary on the right side of the street and known as lot(s) number(s) _____. It has a frontage of 383.22 feet and consists of an acreage of 2.28 acres.
2. The area sought for Conditional Use is described as follows:
See attached description

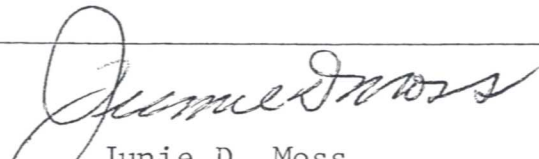
3. The property sought for Conditional Use is owned by Continental Auto Supply, Inc as evidenced by deed from W. E. Easterling, Jr. recorded in Book No. 2865 Page 181, Registry of Cumberland County.

4. The following are all of the individuals, firms, or corporations owning property adjacent to both sides and rear, and the property in front of (across the street from) the property sought for Conditional Use.

NAME	ADDRESS	ZIP CODE
William Ledbetter	Riverside Circle, Spring Lake, NC	28390
Bessie Horton	905 Manchester Rd. Spring Lake, NC	28390
Billy Hardison	910 Manchester Rd. Spring Lake, NC	28390
Lydiel Spranza	1700 Easterling Dr., Spring Lake, NC	28390
W. E. Easterling, Jr.	904A Manchester Rd., Spring Lake, NC	28390

5. It is proposed that the property will be put to the following use: Install
a 12' x 50' mobilehome to be used as a office for a used car
sales lot, and a office for a night watchman

6. It is proposed that the following setbacks and offstreet parking provisions will be made:
Mobile unit will be installed 130' from state right-of-way see attached
plat for parking.


Junie D. Moss
Printed Name of Applicant or Agent

Signature of Applicant or Agent

1116 N. Bragg Blvd., Spring Lake, NC
Address of Applicant or Agent 28390

497-1191
Telephone Number(s)

P11-01-C
SITE PROFILE

P11-01-C: CONSIDERATION OF A REQUEST FOR A VARIANCE FROM THE COUNTY ZONING ORDINANCE, SECTION 1403 SITE PLAN REVIEW, SUB-SECTION 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.

Site Information:

Frontage & Location: 278' +/-

Depth: 205' +/-

Jurisdiction: Cumberland County

Adjacent Property: Yes, north side of subject property

Current Use: Vacant land

Initial Zoning: R6A – August 1, 1975 (Area 3). Rezoned lot 0.22 acs from R6A to C1(P) 7/26/1994, and lots MAJ PT 1&2 for 2.84 acs from R6A to C(P) 8/16/2004

Nonconformities: None

Zoning Violation(s): None

Surrounding Zoning: North: R6A & C(P) (Hope Mills/County), PND (Fayetteville/County), & RR; West: C(P) (Hope Mills/County), R6A, PND, M2; South: R10 & R6A (Hope Mills/County), R6 & C3 (Hope Mills), C1(P) & CD; East: R6A (Hope Mills/County), CP & C3 (Hope Mills);

Surrounding Land Use: Club, day care facility, 2-office use (a medically oriented and services), school, religious worship activities, retail, manufactured home park, repair, residential (including manufactured homes and multi-family) and woodlands

2030 Growth Vision Plan: Urban area

Special Flood Hazard Area (SFHA): No flood

Soil Limitations: None

School Capacity/Enrolled: Cumberland Mills Elementary: 630/626; Ireland Drive Middle (6): 340/365; Douglas Byrd Middle (7-8): 600/706; Douglas Byrd High: 1425/1301

Water/Sewer Availability: PWC/PWC

Subdivision/Site Plan: Lots created 9/23/1994; a recombination plat approved 12/23/2010; preliminary site plan approval Case No. 10-132 12/06/2010

Average Daily Traffic Count (2008): 21,000 on Cumberland Road (SR 1141)

Municipal Influence Area: Town of Hope Mills

Highway Plan: Cumberland Road is identified in the Highway Plan as a Major Thoroughfare. This is a multi-lane facility (U-2304) with an adequate right-of-way of 90 feet. Road improvements have been completed

Notes:

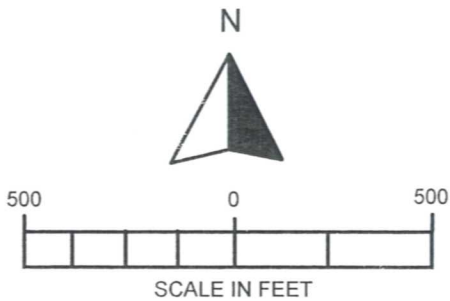
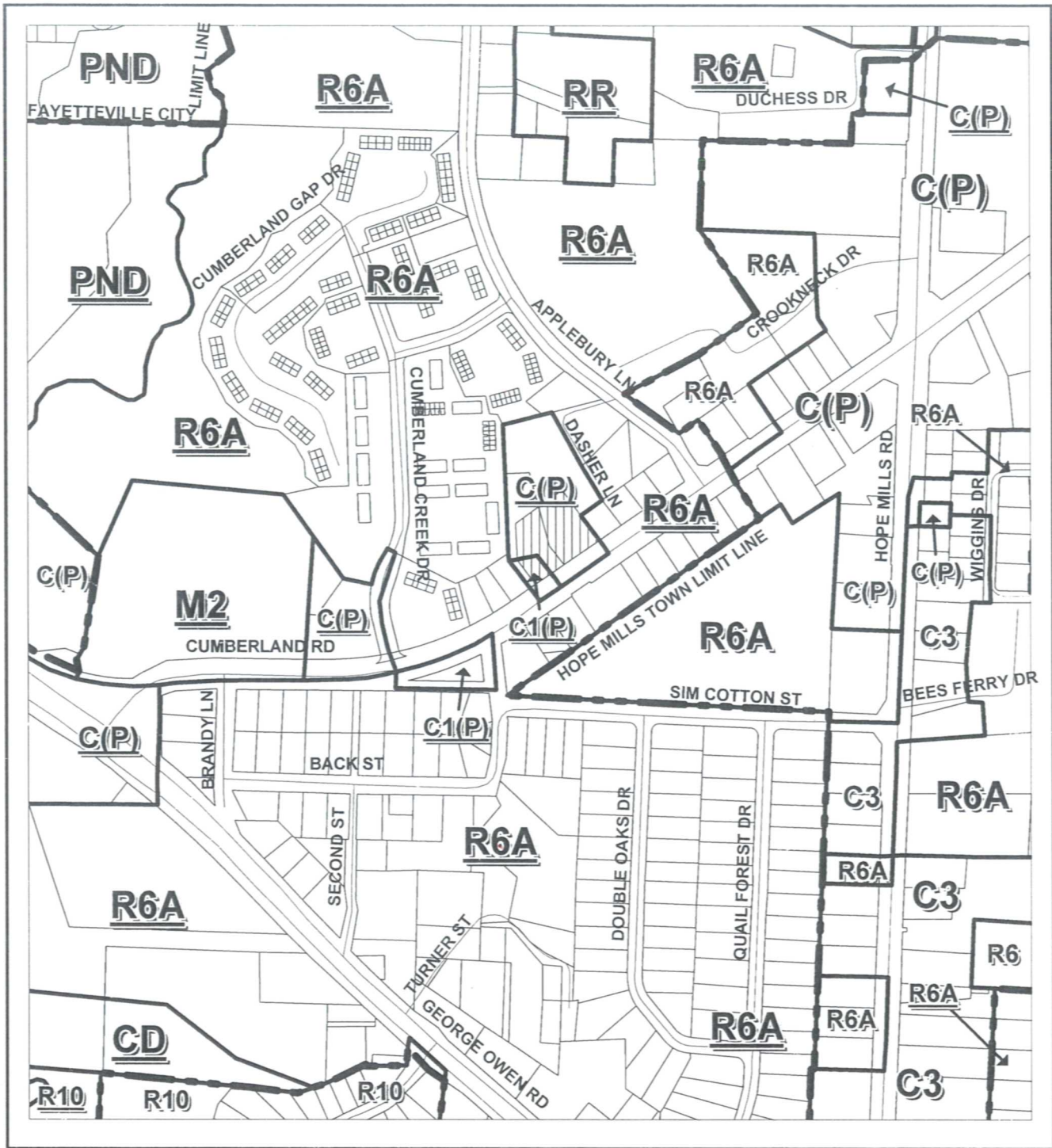
1. County Zoning Ordinance Section 1403 Site Plan Review, sub-section:

I. Extension and connection to public water and /or sewer is required if extension and/or connection would be required under the provisions of the County Subdivision Ordinance. If the development consists of a non-residential use or a mixed use and utilities are present within the right-of-way or if any adjacent lot is served by utilities, extension and connection is mandatory.

2. Summary of request: The County Subdivision and Zoning Ordinances require lots within 300 feet of public water or sewer to connect, applicant states this does not apply to subject property due to sewer manhole is at a distance of 472 feet from the project site—see condition No. 4 of the attached conditions of approval.

First Class and Record Owners' Mailed Notice Certification

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



BOARD OF ADJUSTMENT VARIANCE

ACREAGE: 1.15 AC.+/-

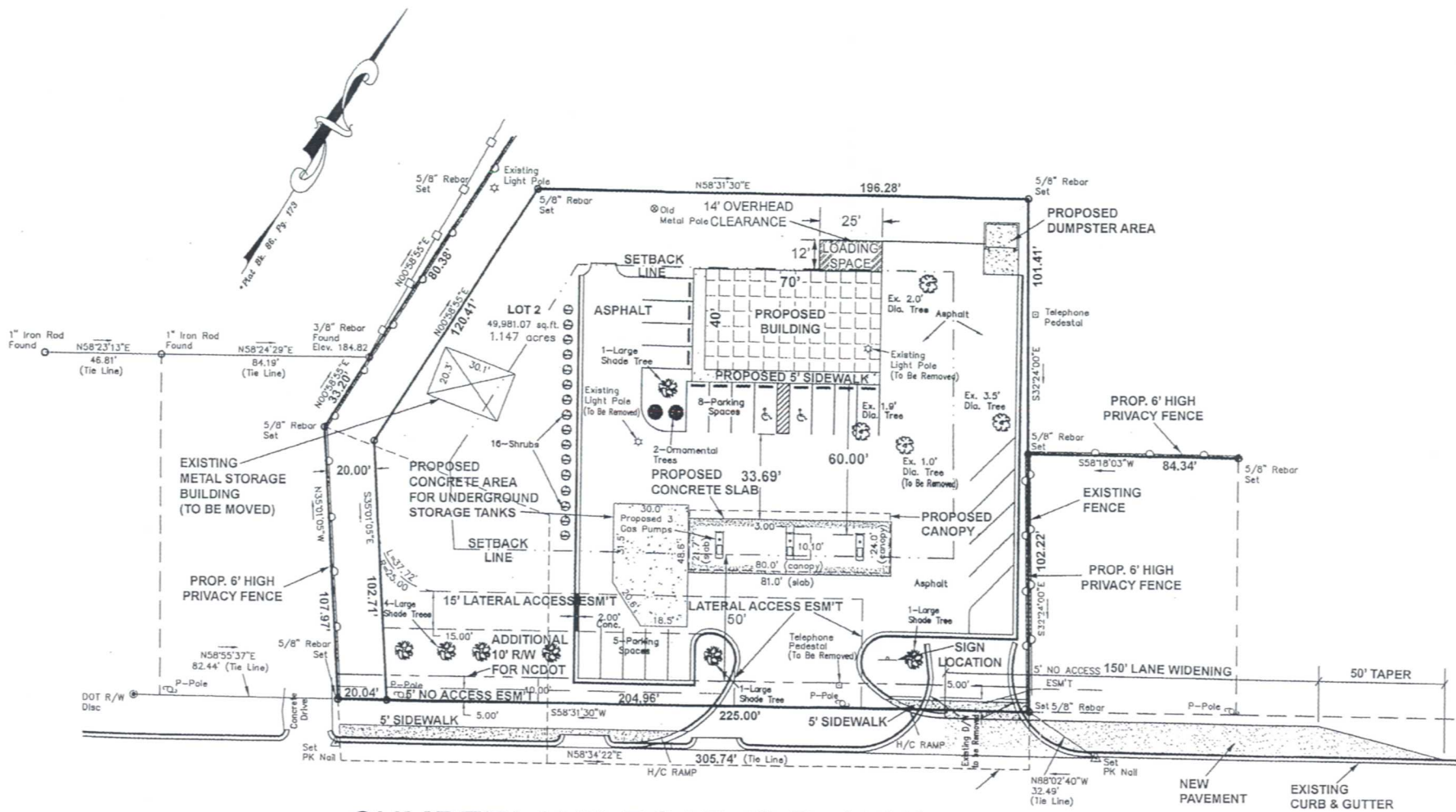
HEARING NO: P11-01-C

ORDINANCE: COUNTY

HEARING DATE

ACTION

GOVERNING BOARD



CUMBERLAND ROAD (S.R. 1141)
 RIGHT-OF-WAY VARIES - PUBLIC

**BOARD OF ADJUSTMENT
 VARIANCE**

REQUEST: EXTENSION AND CONNECTION TO PUBLIC SEWER
 CASE: P11-01-C ACREAGE: 1.15+/-
 ZONED: C(P) & C1(P) SCALE: NTS PARKING: AS SHOWN

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

BOARD OF ADJUSTMENT

LOCATION OF PROPERTY: 4958 Cumberland Rd.

✓ X OWNER: Timothy Holzer

ADDRESS: P.O. Box 117, Hope Mills ZIP CODE: 28348

TELEPHONE: HOME _____ WORK _____

✓ AGENT: George Biju

ADDRESS: 5604 Shady Pines, Hope Mills, 28348

TELEPHONE: HOME 910 574 0278 WORK SAME

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

A. Parcel Identification Number (PIN #) of subject property: 0405-86-5166
(also known as Tax ID Number or Property Tax ID) 0405-86-5081
0405-86-6269

B. Acreage: 1.147 Frontage: 257.0' Depth: 204'

C. Water Provider: Public Works Commission

D. Septage Provider: SEPTIC TANK

E. Deed Book 6221 5353, Page(s) 230 679, Cumberland County Registry. (Attach copy of deed of subject property as it appears in Registry).

F. Existing and/or proposed use of property: CONVENIENCE
↳ VACANT. 55

G. Section and provision of the Zoning Ordinance or Code from which a Variance is requested: Section 4.3 (d.) (2) 1403-I

H. Nature and extent of hardship involved in strict application of the Zoning Ordinance or Code: SEE ATTACHED SHEET

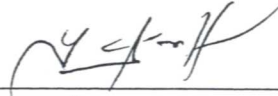
Joby Jessy @ yahoo.com

STATEMENT OF ACKNOWLEDGEMENT

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

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

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

↓ * SIGNATURE OF OWNER(S) 
PRINTED NAME OF OWNER(S) Thosly R. Hobbs
DATE 12-7-10

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

APPLICATION FOR A WAIVER (VARIANCE)

H. cont'd. The closest sanitary sewer manhole that can be accessed is in excess of 472' away from the project site along Cumberland Road. The Cumberland County Ordinance states that if it is more than 300' away, it does not have to be extended. We also know it is in the Hope Mills (MIA) for future development.

There is also a water line in the back of the curb, running the entire length of the project area that will only allow the sanitary sewer to be less than the required distance, at best, off of it to the project site instead of the mandatory 10' requirement.

Also, at 4982 Cumberland Road, there is a house that is too close to the curb that will be critical to the extension of the sewer with no easement provided.

There are only small public utility easements that are not continuous across 4976 and 4966 Cumberland Road that extend to the project site.

The project, contour-wise, will produce, at 0.40%, a cut of 10.83' at the existing house with minimal clearance to get by. The house is 19.96' from the back of curb, and as mentioned above, a water main and other obstacles, such as electrical, reside there, producing a critical and costly situation to deal with.

We have met with PWC several times with proposals. One in particular is to go between Buildings 2569 and 2573 at the Cumberland Towers apartment complex. There is a sanitary sewer manhole 111.0', as the crow flies, from the project. We would have to travel approximately 171.0' to get to our project, open-cut 43.31' of asphalt in the parking lot, burdening the public for several days, and go between the buildings, which PWC does not want to do due to the "high maintenance", even though ductile iron pipe and a narrow 6' asphalt-cut was suggested.

Several other options were also suggested which would require getting easements from property owners, extending the length of travel among other obstacles, which in our opinion, would put a heavy burden on our client and the public.

We all need to remember that, as professionals and public servants dedicated to maintaining the health and welfare of the public, we sometimes need to adjust our strict rules and regulations that often times put a heavy burden on the public and stop development with a loss of revenue to the City.

The project site is to be a convenience store having only two (2) restrooms. Having to extend the sewer to the project and beyond for 2 restrooms and a cost in excess of \$100,000, in our opinion, is a heavy burden and not feasible.



WILSON A. LACY, COMMISSIONER
TERRI UNION, COMMISSIONER
LUIS J. OLIVERA, COMMISSIONER
MICHAEL G. LALLIER, COMMISSIONER
STEVEN K. BLANCHARD, CEO/GENERAL MANAGER

PUBLIC WORKS COMMISSION
OF THE CITY OF FAYETTEVILLE
ELECTRIC & WATER UTILITIES

955 OLD WILMINGTON RD
P.O. BOX 1089
FAYETTEVILLE, NORTH CAROLINA 28302-1089
TELEPHONE (AREA CODE 910) 483-1401
FAX (AREA CODE 910) 829-0207

December 13, 2010

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

Subject: Proposed Cumberland Road "C" Store (Planning Board Case P10-44)

Dear Mr. Lloyd:

The Public Works Commission (PWC) has had several meetings with the developers for the proposed "C" Store on Cumberland Road. The discussions have been centered on getting sanitary sewer service to the proposed development. Sanitary sewer is located within the Cumberland Towers apartment complex that is adjacent to the proposed development. This sewer is available and can be extended to the subject parcels.

There are several routes that can be used to serve this proposed development. Each of the routes has been given a cursory review by PWC staff. Based on that review, it appears that the routes can be extended to and across the proposed development, in accordance with PWC's sewer extension policies. Additionally, based upon our initial review, it appears that each route has challenges, for both initial construction and operation and maintenance.

One of the proposed routes would require the sewer main to be installed between existing buildings. While this is not PWC's preferred route, it is an acceptable option. If this route is selected, PWC would require certain provisions in the sewer design to ensure that future operations and maintenance activities would not damage the existing buildings.

Another option would require the sewer to be installed underneath an existing retaining wall. PWC is not in favor of this option. There is concern about maintaining the integrity of the retaining wall during construction and for future operations and maintenance.

A proposed route along Cumberland Road is another option, although it may not be feasible, due to a building encroaching into the existing right-of-way. While this route is PWC's preferred route, the issue with the structure may prevent this route from being selected. This route is also the longest, but should be able to serve additional parcels beyond those within the proposed development.

It should be noted that PWC has not completed any engineering, surveying, or design as part of our review of the alternate routes. Our review has been based on GIS information and a cursory site visit. Please note that it is the developer's responsibility to retain the services of a licensed professional engineer to perform in-depth survey and design, in order to determine the best route to provide sanitary sewer service. This in-depth survey and design information needs to be obtained by the developer's

engineer prior to PWC approving any sewer routing. The PWC will continue to work with the developer and their engineer to select a route that meets both parties' needs.

We appreciate your cooperation in this matter. Should you have any questions or require additional information, please contact me at 223-4734.

Sincerely,
PUBLIC WORKS COMMISSION

A handwritten signature in black ink, appearing to read "John P. Allen". The signature is written in a cursive style with a large initial "J".

John P. Allen, P.E.
Senior Engineer
Water Resources Engineering

cc: Chris Rainey
Jim Autry
Project File

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 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

Revision: 12-14-10

STAFF REVIEW: 12-06-10 PLANNING BOARD DECISION: N/A

CASE NO: 10-132 NAME OF DEVELOPMENT: CUMBERLAND ROAD "C" STORE

MIA: N/A C1(P) & C(P) SITE PLAN REVIEW

LOCATION: NORTH SIDE OF SR 1141 (CUMBERLAND ROAD) ZONING: C1(P) & C(P)

SOUTHWEST OF SR 1138 (APPLEBURY LANE) PIN: -0455-86-5081- & -5166- & -6269-

OWNERS / DEVELOPER: GEORGE BIJU ENGINEER OR DESIGNER: DENVER MCCULLOUGH

PLANNING & INSPECTIONS DEPARTMENT ACTION:

- PRELIMINARY
- EXTENSION REVISION
- APPROVED CONDITIONALLY
- DENIED

PLANNING BOARD DECISION:

- PRELIMINARY
- EXTENSION REVISION
- APPROVED CONDITIONALLY
- DENIED

The development plat/plan you submitted to this office is conditionally approved. Your approval is subject to the following conditions:

Pre-Permit Related:

1. The developer must submit five copies of a revised site plan to provide a lateral access drive to the Property identified by PIN: 0405-86-8117- (Strickland Property). The parking spaces along the eastern property line will need to be shifted up to allow for the access drive.
2. A recombination plat (also known as a "No Approval Required" or "NAR") must be submitted to Land Use Codes for review and approval for recording with the County Register of Deeds, and the plat must be recorded prior to any permit application for any structure and/or prior to the sale of any lot or unit within this development.

Permit-Related:

3. 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.
4. Connection to public water and sewer is required, the Public Works Commission (PWC) must approve water and sewer plans prior to application for any permits. A copy of the PWC 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)

Note: Due to an existing agreement between the PWC and the Town of Hope Mills, an annexation petition most likely will be required prior to the PWC's review of any utility plans.

5. The developer must provide a site-specific address and tax parcel number at the time of building/zoning permit application.
6. New development where the developer will disturb or intends to disturb more than one acre of land is subject to the Post-Construction Stormwater Management Permitting Program (Phase II Stormwater Management Requirements) administered by the Division of Water Quality, North Carolina Department of Environment and Natural Resources. If one acre or more of land is to be disturbed, prior to the issuance of any building/zoning permits for this site, a copy of the State's *Post-Construction Permit* must be provided to County Code Enforcement.
7. For any new development where the developer disturbs or intends to disturb more than one acre of land, the developer must provide the Code Enforcement Section with an approved NC Department of Environment and Natural Resources (NCDENR) sedimentation and erosion control plan (S&E) prior to any application for permits. (Note: If any retention/detention basins are required for state approval of this plan, then three copies of a revised plan must be submitted and approved by Planning & Inspections prior to application for any building/zoning permits.) A copy of the NCDENR approval must be provided to Code Enforcement at the time of application for any building/zoning permits.

8. 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. Six large shade trees or eleven small ornamental trees within the front yard setback area along SR 1141 (Cumberland Road);
 - b. Two large shade trees and 16 shrubs are required in the building yard area;
 - c. One large shade tree 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.
9. The building final inspection cannot be accomplished until a Code Enforcement Officer inspects the site and certifies that the site is developed in accordance with the approved plans.

Site-Related:

10. All uses, dimensions, setbacks and other related provisions of the County Subdivision and Zoning Ordinances for the C1(P) & C(P) zoning district must be complied with, as applicable.
11. This conditional approval is not approval of the permit for the freestanding signs. Attached signage for this development must be in accordance with the applicable sign regulations as set forth in Article XIII of the County Zoning Ordinance and that the proper permit(s) must be obtained prior to the installation of any permanent signs on the property. (Note: This conditional approval is **not** approval of the size, shape, or location of any signs.)
12. Curbs and gutters must meet the NC Department of Transportation's (NCDOT) standards and specifications. Rolled concrete curb, if required, must not be less than 24 inches in width. (Section 2304 B.4, Curbs and Gutters, County Subdivision Ordinance)
13. For any new development, an adequate drainage system must be installed by the developer in accordance with the NC Department of Environment and Natural Resources' (NCDENR) *Manual on Best Management Practices* and all drainage ways must be kept clean and free of debris. (Section 2306 D, County Subdivision Ordinance)
14. For new development, all utilities, except for 25kv or greater electrical lines, must be located underground. (Section 2306 C, County Subdivision Ordinance)
15. 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.
16. The NC Department of Transportation (NCDOT) must approve the street plans and the street(s) are required to be constructed to the NCDOT standards for secondary roads.
17. Turn lanes may be required by the NC Department of Transportation (NCDOT).
18. 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.
19. A solid buffer must be provided and maintained along the side and rear property lines where this tract/site abuts residentially zoned properties in accordance with the provisions of Section 1102 G, Buffer Requirements, County Zoning Ordinance. (Note: Chain link fencing cannot be used to satisfy the buffer requirement.)
20. All dumpster, garbage, and utility areas shall be located on concrete pads and screened on a minimum of three sides.
21. 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 10 off-street parking spaces are required for the convenience store.
22. A minimum of one off-street loading spaces(s) measuring 12' x 25' with 14' overhead clearance must be provided for this development.

Plat-Related:

23. The developer is required to provide a lateral access easement to the Strickland property on the eastern side of this development and the lateral access easement must be reflected on the final plat. This easement, if provided, could facilitate traffic movement in the event the Strickland property is ever developed as a commercial site. **(Note: The lateral access easement must be located along the proposed drive as shown on the approved revision.)**
24. Prior to submission of the recombination plat for approval for recording, a fire hydrant must be installed along SR 1141 (Cumberland Road); hydrants must be located no further than 1,000 feet apart and at a maximum of 500 feet from any lot. (Section 2306 B, Fire hydrants, County Subdivision Ordinance)
25. Prior to submission of the recombination plat for approval for recording, a concrete sidewalk must be constructed along SR 1141 (Cumberland Road) and such sidewalks shall meet the specifications of the Town of Hope Mills in accordance with good

engineering practice. [Co. Subdivision Ord., Sec. 2302, Area Specific Standards, A. Municipal Influence Area & Hope Mills Subdivision Ord., Sec. 86A-405 Sidewalks].

26. Any/All easements must be reflected on the recombination plat and labeled as to type of easement, reference number for document creating the easement, and the name of the agency, individual, etc. who holds the easement.
27. All lots within this development must be served by a joint driveway/lateral access easement and a "no access" easement must be reflected on the recombination plat along SR 1141 (Cumberland Road) except at the location of the proposed drive.
28. The NC Department of Transportation (NCDOT) will not allow a driveway for each individual lot. Lots 1 & 2 will be required to be served by a joint driveway and the joint driveway must be reflected on the recombination plat.
29. The NC Department of Transportation (NCDOT) stamp must be affixed to the recombination plat prior to submission to Land Use Codes for approval for recording.
30. The notarized signature(s) of all current tax record owner(s) and notary certifications appear on the recombination plat when submitted for approval for recording. (Section 2503 D, Certificate of Ownership and Dedication, County Subdivision Ordinance)
31. The developer is reminded that the improvements must be in place or that recombination plat approval for recording will only be granted in accordance with Section 2502 B, C, or D, Final Plat – Guarantees of Improvements, Subdivision Ordinance. (Note: Once the improvements are in place, the developer is responsible for contacting Jeff Barnhill to schedule an inspection of the improvements.)

Plat-Required Statements:

32. All structures shall be shown on the recombination plat or the recombination plat must reflect the following statement (Section 2504 D, County Subdivision Ordinance):

"Nonconforming structures have not been created by this subdivision."

Advisories:

33. The applicant is advised to consult an expert on wetlands before proceeding with any development.
34. 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):

Improvements Inspections:	Jeff Barnhill	678-7765
Subdivision/Site Plan/Plat	Ed Byrne	678-7609
Code Enforcement (Permits):	Ken Sykes	321-6654
PWC:	Heidi Maly	223-4737
Town of Hope Mills:		424-4555*
Asst. Town Manager/Town Clerk:	Connie Spell	
Chief Building Inspector:	Mike Bailey	
Corp of Engineers (wetlands):	Crystal C. Amschler	(910) 251-4170
NCDENR (E&S):	Sally McKinney	433-3300
E911 Site-Specific Address:	Ron Gonzales	678-7616
Tax Parcel Numbers:		678-7549
NCDOT (driveways/curb-cuts):	Gary Burton	486-1496
N.C. Division of Water Quality:	Mike Randall	(919) 733-5083 ext. 545

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

cc: Mike Bailey, Town of Hope Mills

OFFICIAL PRELIMINARY STAMP
CUMBERLAND COUNTY
CASE NO: **10-132**

THIS PLAN APPROVED BY THE CUMBERLAND COUNTY PLANNING &
INSPECTION DEPARTMENT ON: **12-06-10**

COMMENTS: SUBJECT TO CONDITIONS

I CERTIFY THAT THIS PLAN HAS BEEN APPROVED BY THE CUMBERLAND
COUNTY PLANNING & INSPECTIONS DEPARTMENT AS DRAWN HEREON
AND MAY BE USED FOR ANY OFFICIAL PURPOSE AS PERMITTED BY LAW.
THIS APPROVAL IS VALID UNTIL: **12-31-13**



SUPERVISOR, LAND USE CODES **GB**

P11-02-C
SITE PROFILE

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.

Site Information:

Frontage & Location: 78'+/- on Columbine Road (SR 3065)

Depth: 1020'+/-

Jurisdiction: Cumberland County

Adjacent Property: No

Current Use: Woodland

Initial Zoning: R6A & R10 – November 17, 1975 (Area 4)

Nonconformities: None

Zoning Violation(s): None

Surrounding Zoning: North: R6A(Hope Mills/County), C3 & R6 (Hope Mills), R10, R10/CU(to allow placement of residential mobile home), CD & M1(P); West: R6A (Hope Mills/County), R6 & C3 (Hope Mills) & C(P); South: R10 (Hope Mills/County), C1(P) & C3 (Hope Mills), RR & M2; East: R6A & R10

Surrounding Land Use: Trade contractor, retailing, cabinet making, vacant commercial, wholesale sales, residential (including manufactured homes), and woodlands

2030 Growth Vision Plan: Urban and conservation area (Special Flood Hazard Area)

Special Flood Hazard Area (SFHA): Yes, northeast and southeast side of subject property

Soil Limitations: Yes, hydric soils: JT-Johnston loam (along the east side of subject property)

School Capacity/Enrolled: Cumberland Mills Elementary: 630/626; Ireland Drive Middle (6): 340/365; Douglas Byrd Middle (7-8): 600/706; Douglas Byrd High: 1425/1301

Water/Sewer Availability: PWC/PWC

Subdivision/Site Plan: See attached “Ordinance Related Conditions”, particular attention should be paid to Conditions No. 1 & 2

Average Daily Traffic Count (2008): 1,600 on SR 1135 (John Smith Road)

Municipal Influence Area: Town of Hope Mills

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 Reference: Section 927 Tower

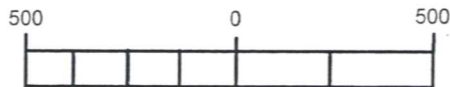
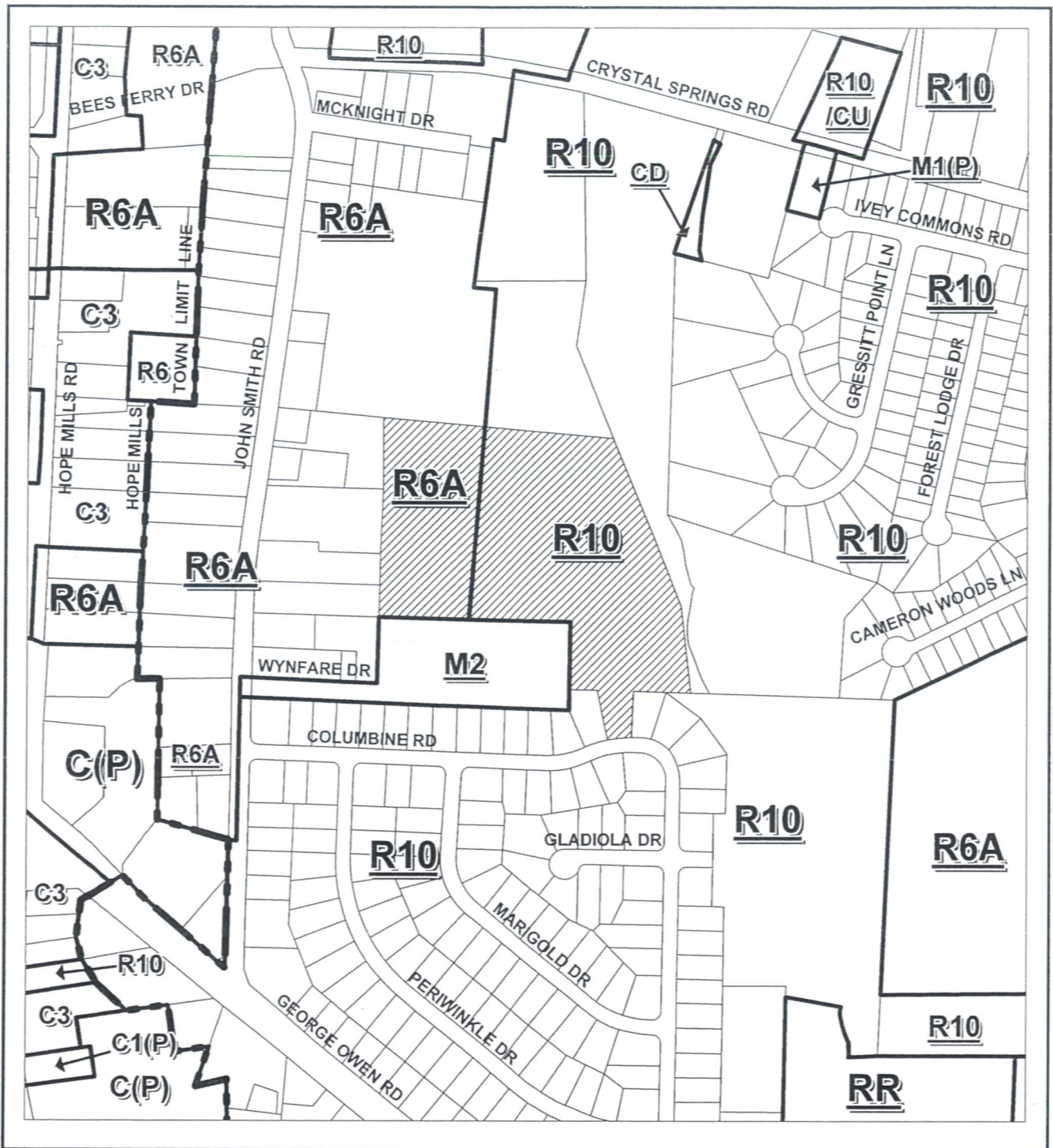
Notes:

1. Contents of the application:
 - a. Proposed tower height/type: 150' Monopole
 - b. 15.26 acre lease area
 - c. 30' access for tower site
 - d. No outside storage at the tower site
 - e. No employees on site, tower will be monitored and maintained monthly
 - f. Licensed appraiser's affidavit stating use will not be detrimental to property values
 - g. Licensed engineer's statement signed and sealed, stating tower will be structurally sound to accommodate more than one user, AT & T, and space for up to three additional users
 - h. American Tower affidavit certifying tower will meet Federal, State and local laws including FCC and FAA

2. All documentation required by the ordinance is attached to the application or contained within the case file, and is available for review upon request.

First Class and Record Owners' Mailed Notice Certification

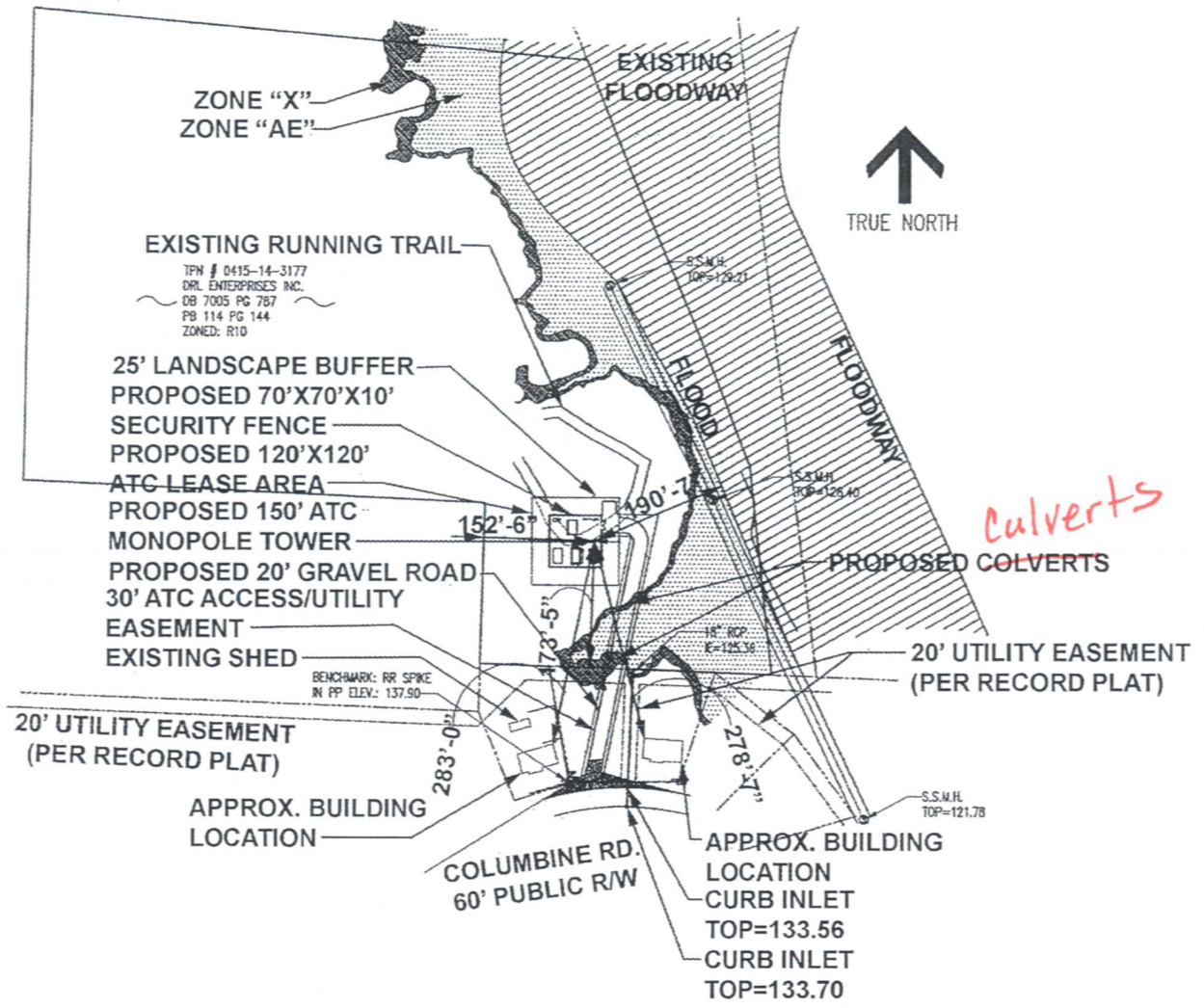
A certified copy of the tax record owner(s) of the subject and adjacent properties and their tax record mailing address is contained within the case file and is incorporated by reference as if delivered herewith. The record owners' certified receipt of notice is also included.



SCALE IN FEET

BOARD OF ADJUSTMENT SPECIAL USE PERMIT

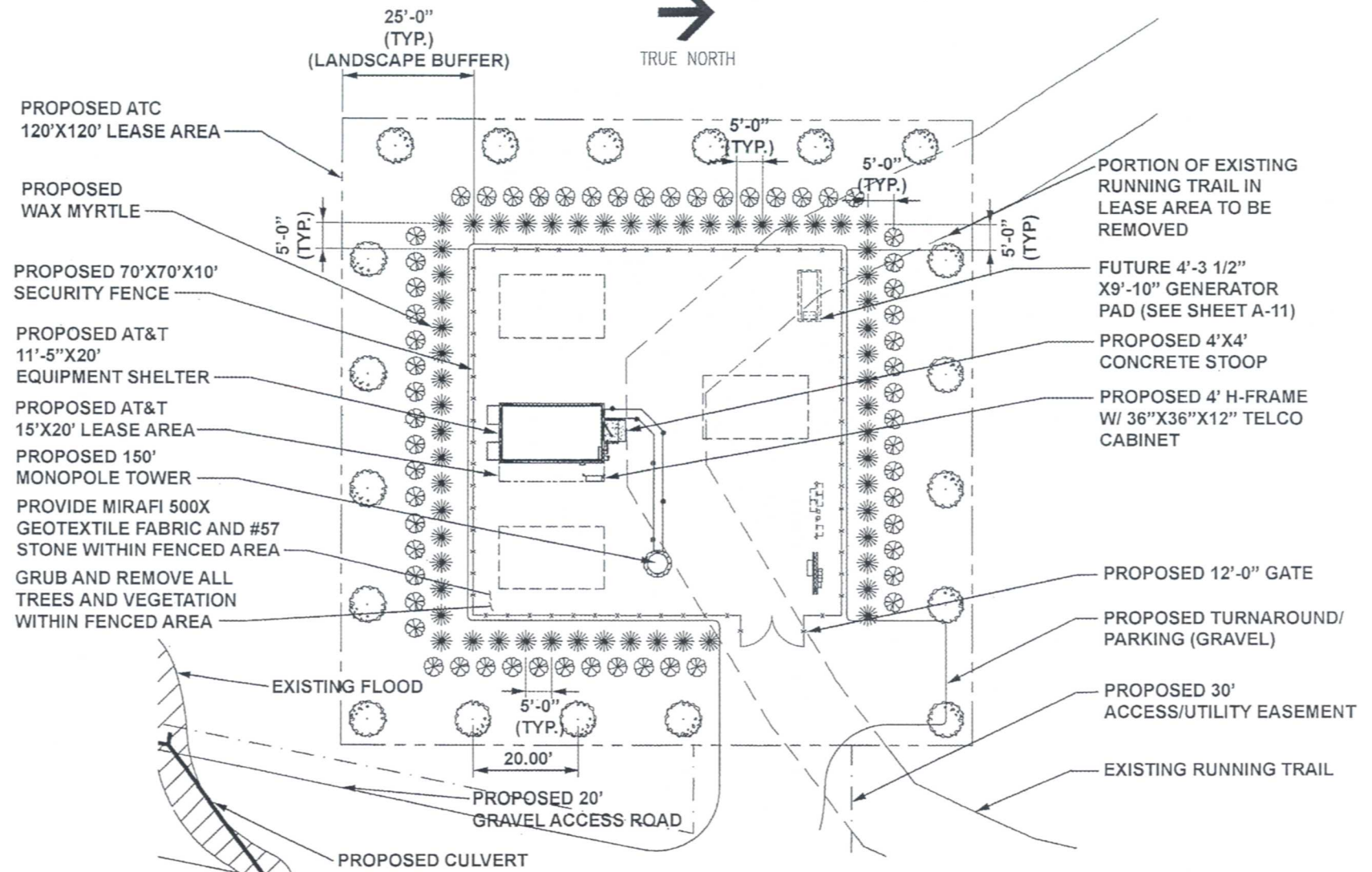
ACREAGE: 15.26 AC.+/-	HEARING NO: P11-02-C	
ORDINANCE: COUNTY	HEARING DATE	ACTION
GOVERNING BOARD		



**BOARD OF ADJUSTMENT
SPECIAL USE PERMIT**

REQUEST: ALLOW A 150 FOOT TOWER
IN A R10 RESIDENTIAL DISTRICT
CASE: P11-02-C ACREAGE: 15.26+/-
ZONED: R10 SCALE: NTS

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



**BOARD OF ADJUSTMENT
SPECIAL USE PERMIT
REQUEST: ALLOW A 150 FOOT TOWER
IN A R10 RESIDENTIAL DISTRICT
CASE: P11-02-C ACREAGE: 15.26+/-
ZONED: R10 SCALE: NTS**

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

BOARD OF ADJUSTMENT

LOCATION OF PROPERTY: 5870 Columbine Road, Fayetteville, NC 28306

↓ OWNER: DRL Enterprises, Inc.

ADDRESS: 2179 Crystal Springs Road, Fayetteville, NC ZIP CODE: 28306

TELEPHONE: HOME 910-423-4230 WORK _____

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

ADDRESS: PO Box 30188, Raleigh, NC 27622

TELEPHONE: HOME 910-616-3100 WORK 919-786-2764

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

A. Parcel Identification Number (PIN #) of subject property: 0415-14-3177
(also known as Tax ID Number or Property Tax ID)

B. Acreage: 15.263+/- acres Frontage: 78 feet Depth: 1007+/- feet

C. Water Provider: N/A

D. Septage Provider: N/A

E. Deed Book 7005, Page(s) 787, Cumberland County Registry. (Attach copy of deed of subject property as it appears in Registry).

F. Existing use of property: Vacant R-10

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

Wireless Telecommunications Tower as shown on the attached Zoning

Drawings prepared by BC Architects/Engineers.

STATEMENT OF ACKNOWLEDGEMENT

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

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

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

↓

SIGNATURE OF OWNER(S)



PRINTED NAME OF OWNER(S)

American Towers, Inc. & AT&T by Thomas H. Johnson, Jr., Atty

DATE

12/10/10

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

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

December 10, 2010

HAND DELIVERED

Pier Varner
Cumberland County Planning and Inspections Department
130 Gillespie Street
Fayetteville, NC 28301

Re: American Towers, Inc. and AT&T
Columbine, ATC Site No. 274592, AT&T Site No. 141-208B
5870 Columbine Road, Fayetteville, NC 28306

Dear Ms. Varner:

I represent American Towers, Inc. and AT&T ("American Tower") in connection with the enclosed Application for a Special Use Permit for a telecommunications tower at 5870 Columbine Road, Fayetteville, NC 28306 ("Application"). The owner of the property is DRL Enterprises, Inc. Enclosed is the recorded Memorandum of Lease showing that American Towers, Inc. has an Option to Lease the property and therefore is authorized to file the Application.

I am also enclosing the signed Application along with a check for \$200 for the necessary fee, a copy of the recorded deed, a copy of the site plan/construction drawings and all supporting materials. We request that this matter be placed on the agenda for the January 20, 2011, meeting of the Board of Adjustment.

The tower will be a monopole tower 150 feet in height on a 15.263 acre site. The buildable area will be 120 feet by 120 feet in size approximately 300 feet from the Columbine Road. The site is in a wooded area which will be cleared only as necessary to construct the tower site. The site is zoned R-10. The Cumberland County Zoning Ordinance (the "Ordinance") allows towers as a special use in the R-10 District. The tower will be setback the height of the tower from any structures.

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

P.O. Box 30188 T 919.786.2764
Raleigh, NC 27622 F 919.890.4553
www.nexsenpruet.com E TJohnson@nexsenpruet.com
Nexsen Pruet, PLLC
Attorneys and Counselors at Law

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

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

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

The tower as proposed will be setback the height of the tower from all property lines and no structures are located within the tower setback. As required by Section 927E., the tower base is enclosed in a chain link fence ten feet in height and the fence is a minimum of ten feet from the base of the tower. The landscape buffer required in subsection F. is detailed on Sheet L-1. The only exterior structure will be an equipment shelter that will be built to resemble structures in residential areas. There will be no building or structure on the site that may be used as a work site for any worker. Only periodic maintenance, inspection and renovation of the facility will occur on the tower site.

As required by Section 927M., Graham Herring, a licensed real estate broker, is preparing a report regarding the impact of the tower on adjoining properties. This report will be provided within the next few days. Mr. Herring's report will state his opinion that the use will not be detrimental or injurious to the property values of the surrounding neighborhood. Mr. Herring will support his opinion based upon his experience with other tower sites in similar situations.

In compliance with Section 927O., enclosed is a report from AT&T that shows that its power density levels will be much less than both the federally approved and ANSI levels. The lighting on the site will be in compliance with FAA standards and the requirements of Section 927P. There will be no outside storage on the site.

Through compliance with the Ordinance provisions above, the site will not materially endanger the public health or safety. The power density levels are much lower than federal and ANSI standards. The tower is designed and setback from existing structures such that if it were to fail, the public will not be harmed. The tower will

Pier Varner
December 10, 2010
Page 3

benefit public safety by providing better wireless coverage in the area. Many depend on their wireless devices to call public safety officials in the event of an emergency. In fact, wireless phones are often used in the home instead of traditional landline phones. This use as proposed meets all of the conditions and specifications of the Ordinance.

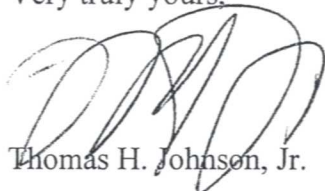
The statement of Graham Herring will demonstrate that the site will maintain the value of the adjoining or abutting properties. Wireless service is many times considered a public necessity because it is often the sole access that citizens have to emergency services.

The location and character of the use, if developed according to the plan as submitted and recommended, will be in harmony with the area in which it is to be located and is in general conformity with Cumberland County's most recent Comprehensive Land Use Plan. The proposed tower will meet the infrastructure needs of this area of the County and will provide much needed access to emergency services, both of which are supported in the 2030 Growth Vision Plan. By virtue of this proposed tower site meeting the requirements of Section 927 for residential areas, the site is in conformity with the Comprehensive Land Use Plan as implemented by the Ordinance.

The fact that the Ordinance allows towers that comply with Section 927 in residential areas and the report of Graham Herring support the conclusion that the proposed tower is in harmony with the purpose and intent of the Ordinance and will not be injurious to the neighborhood or the general welfare. The use is permitted by special use and will not change the district boundaries.

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

Very truly yours,



Thomas H. Johnson, Jr.

THJ/thj
Enclosures

cc: Jason Groseclose

Special Use Permit – Board of Adjustment

DRAFT

Ordinance Related Conditions

Pre- Permit Related:

1. The Town of Hope Mills has tree preservation provisions in their ordinance; this development is located within the Hope Mills' Municipal Influence Area (MIA). The developer is strongly encouraged to refrain from clearing cutting the property and to retain as many of the existing trees as possible.
2. A 25 foot wide evergreen buffer area surrounding the tower compound is required – though stated on the plans, the buffer shown on the site plan does not adequately scale to a width to comply with this requirement; therefore three copies of a revision to either Sheet A-1 or Sheet L-1 of the site plan must be submitted for staff review and approval prior to application for any permits. This buffer must shield the compound area from the entire remaining tract. No structures, including guyed wires or anchors, may be constructed within the buffer. The buffer area shall be planted in accordance with Section 927.F, County Zoning Ordinance.

Permit-Related:

3. 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.
4. If applicable, connection to public water and sewer is required, the Public Works Commission (PWC) must approve water and sewer plans prior to application for any permits. A copy of the PWC 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)

Note: Due to an existing agreement between the PWC and the Town of Hope Mills, an annexation petition most likely will be required prior to the PWC's review of any utility plans.

5. 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.
6. 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.
7. The *Special Flood Hazard Area* (SFHA) exists on this tract; any development within SFHA must have first flood elevations, including all mechanical and electrical equipment above base flood elevation (BFE) plus two feet of freeboard. Proper flood plain development permits are required, issued by the County Engineer, prior to any building/permit application for any development in the SFHA. A copy of the approved flood plain permit, if required, must be provided to Code Enforcement at the time of building/zoning permit applications.
8. Prior to issuance of a building permit for the tower, the applicant/owner or developer must submit to Code Enforcement, drawings sealed by a licensed engineer and a certification letter from the licensed engineer who prepared the plans that the tower will meet all applicable Federal, State and local building codes and structural standards.

9. The 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.
10. A review of the data available to the Army Corp of Engineers indicates that jurisdictional waters are likely to be present on this property and therefore are likely to be impacted by the proposed project. However, without an official Jurisdictional Determination at the property, these findings cannot be confirmed.

A permit will be required for this project if construction will involve the temporary and/or permanent placement of fill in waters of the United States including wetlands. If a permit is required, the applicant will be required to avoid and minimize impacts to wetland/waters of the United States and may need to provide compensatory mitigation for unavoidable impacts.

11. If the lease area for the proposed cell tower is to be recorded as lease lot and split out for tax or other purposes, prior to application for any permits, the developer must submit to the Planning and Inspections Department for subdivision review and approval to subdivide the lease lot.

Site-Related:

12. All uses, dimensions, setbacks and other related provisions of the County Subdivision and Zoning Ordinances for the R6A & R10 zoning district must be complied with, as applicable. Note: Tower construction is proposed within the R10 Residential district.
13. This conditional approval is not approval of any freestanding signs. If a freestanding sign is desired, re-submittal of the site plan is required prior to application for any freestanding sign permits. Attached signage for this development must be in accordance with the applicable sign regulations as set forth in Article XIII of the County Zoning Ordinance and that the proper permit(s) must be obtained prior to the installation of any permanent signs on the property. (Note: This conditional approval is **not** approval of the size, shape, or location of any signs.)
14. "Columbine Road" must be labeled as "SR 3065 (Columbine Road)" on all future plans.
15. 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)
16. For new development, all utilities, except for 25kv or greater electrical lines, must be located underground. (Section 2306 C, County Subdivision Ordinance)
17. 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.
18. 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.
19. If lighting for the tower is required by the FAA, the lighting must comply with the FAA standards. 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.
20. A chain link fence a least ten feet in height and located at least ten feet from the base of the tower shall enclose the tower base – indicated on site plan.
21. The owner/developer is responsible and liable for maintenance and upkeep of this site, all structures, and appurtenances, to include ensuring that the site is kept free of litter and debris, all grass areas mowed, all buffers and shrubbery kept trim and maintained, so that the site remains in a constant state of being aesthetically and environmentally pleasing.
22. In the event the tower is not used for a period of six months, the tower shall be considered abandoned and must be removed. The owner of the tower is required to remove any abandoned, unused or structurally unsound tower within 90 days of receiving notice requiring removal. The Code Enforcement Coordinator may establish a shorter period of time for removal in the event the tower is determined to be structurally unsound.

23. All notes and calculations as contained within the application (including attachments) and as shown on the site plan are to be considered as a part of this conditional approval.

Advisories:

- 24. The applicant is advised to consult an expert on wetlands before proceeding with any development. There may be wetlands located in the project area that are subject to the permit requirements of Section 404 of the Clean Water Act. To avoid a violation of federal and/or state law, it is recommended the developer contact the Office of the Army Corp of Engineers or hire an environmental consultant to identify and delineate any wetlands in the project area prior to construction. A Section 404 permit will be required if the applicant needs to fill wetlands and the permit must be obtained prior to any construction on this site.
- 25. 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.
- 26. An internal street system most likely will be required by the NC Department of Transportation (NCDOT) to serve any future divisions of the tract.
- 27. The developer/property owner is encouraged to re-consider the location of the 30' access easement; the design as proposed severely limits the possibility of any future development of the property.
- 28. The minimum acceptable road frontage for subdivision purposes in this area is 20' in width; if the lot is to be split out for tax or other purposes, in order to get a permit, the area shown as an "ingress/egress easement" must be made a part of the lot and must be a minimum of 20' in width.

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

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

Subdivision/Site Plan/Plat	Ed Byrne	678-7609
Code Enforcement (Permits):	Ken Sykes	321-6654
County Engineer's Office:	Wayne Dudley	678-7636
County Health Department:	Daniel Ortiz	433-3680
Ground Water Issues:	Matt Rooney	678-7625
PWC:	Heidi Maly	223-4737
Town of Hope Mills:		424-4555*
Chief Building Inspector:	Mike Bailey	
Corp of Engineers (wetlands):	Crystal C. Amschler	(910) 251-4170
NCDENR (E&S):	Sally McKinney	433-3300
E911 Site-Specific Address:	Ron Gonzales	678-7616
Tax Parcel Numbers:		678-7549
NCDOT (driveways/curb-cuts):	Gary Burton	486-1496
NCDOT (subdivision roads):	David Plummer	486-1496
N.C. Division of Water Quality:	Mike Randall	(919) 733-5083 ext. 545

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

cc: Mike Bailey, Town of Hope Mills

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

SEVICE BY SHERIFF

(Mailed to Manatee County Florida Sheriff on December 22, 2010)

MAILED
12-22-10 91 7108 2133 3937 1188 5817

CERTIFIED MAIL

(Notice Left – Unclaimed)

November 18, 2010

Brian Andrews
Andrews Mini Storage
6506 Butlers Crest Drive
Bradenton FL 34203

SUBJECT: Citation for Civil Penalty - Violation Case No. WS08-04

Dear Mr. Andrews,

YOU ARE HEREBY ASSESSED A CIVIL PENALTY IN THE AMOUNT SET FORTH BELOW FOR THE FOLLOWING VIOLATION OF THE CUMBERLAND COUNTY CODE, APPENDIX C, WATER SUPPLY WATERSHED MANAGEMENT AND PROTECTION ORDINANCE IN ACCORDANCE WITH 31A-67.

CODE REFERENCE FOR VIOLATIONS: Appendix C, Cumberland County Water Supply Watershed Management and Protection Ordinance, Article VII, High Density Requirements, specifically Sections 31A-60(A)(2) & (B); 31A-61(D)(1) & (E); 31A-62; 31A-63; and 31A-64.

This letter is to serve as official notice that the conditions of approval for the Andrews Mini Storage site have not been complied with and is in violation of the Cumberland County Board of Adjustment's May 9, 2008 approval of Case No. WS08-04. The engineered stormwater control structures have not been constructed as approved and the performance bond guaranteeing such construction has expired without a new performance guarantee being posted.

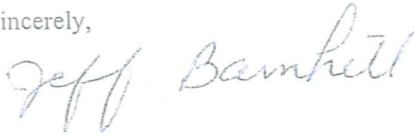
You are hereby issued a citation in the amount of **\$500 per day for each and every day** that the violation continues. If the noncompliance is not rectified and the penalty not paid within 72 hours of your receipt of this notice, a civil proceeding in the nature of a debt may be initiated against you in a court of the appropriate jurisdiction. Each and every day's violation constitutes a separate offense.

Payment can be made to the Cumberland County Finance Director, P.O. Drawer 1829, Fayetteville, NC 28302. The Finance Director's office hours of operation are 8:00 am to 5:00 pm, Monday thru Friday, excluding holidays. Payment may be made in cash, cashier's or certified check, or money order.

In addition, the **Watershed Protection Permit** issued for this project on September 2, 2009 and the **Watershed Protection Occupancy Permit** issued on February 10, 2010 **are hereby revoked** – see attached. No further development shall be permitted on this site until a new application is submitted for review and receives approval from the Cumberland County Board of Adjustment.

If you have any questions, please contact me at 910-678-7765 or email: jbamhill@co.cumberland.nc.us.

Sincerely,



Jeff Barnhill
Watershed Review Officer

Attachment

Endorsed by Tom Lloyd, Director, this 18th day of November, 2010:



cc: Tom Speight, Larry King & Associates
Sally McKinney, NCDENR Land Quality,
Cumberland County Board of Adjustment
Cecil Combs, Deputy Director
Patti Speicher, Land Use Codes Supervisor
Ken Sykes, Code Enforcement Coordinator

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

CERTIFIED MAIL

Thomas J. Lloyd,
Director

Cecil P. Combs,
Deputy Director

Walter Clark,
Sara E. Piland,
Cumberland County

Benny Pearce,
Town of Eastover

Donovan McLaurin
Wade, Falcon, & Godwin

November 18, 2010

Brian Andrews
Andrews Mini Storage
6506 Butlers Crest Drive
Bradenton FL 34203

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Dear Mr. Andrews,

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This letter is to serve as official notice that the conditions of approval for the Andrews Mini Storage site have not been complied with and is in violation of the Cumberland County Board of Adjustment's May 9, 2008 approval of Case No. WS08-04. The engineered stormwater control structures have not been constructed as approved and the performance bond guaranteeing such construction has expired without a new performance guarantee being posted.

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In addition, the **Watershed Protection Permit** issued for this project on September 2, 2009 and the **Watershed Protection Occupancy Permit** issued on February 10, 2010 **are hereby revoked** – see attached. No further development shall be permitted on this site until a new application is submitted for review and receives approval from the Cumberland County Board of Adjustment.

If you have any questions, please contact me at 910-678-7765 or email: jbarnhill@co.cumberland.nc.us.

Sincerely,

Jeff Barnhill
Watershed Review Officer

Attachment

Endorsed by Tom Lloyd, Director, this 18th day of November, 2010:

A handwritten signature in cursive script, appearing to read "Thomas J. Lloyd", is written over a horizontal line.

cc: Tom Speight, Larry King & Associates
Sally McKinney, NCDENR Land Quality,
Cumberland County Board of Adjustment
Rick Moorefield, County Attorney
Butch Raynor, Deputy County Attorney
Amy Cannon, Assistant County Manager
Cecil Combs, Deputy Director
Patti Speicher, Land Use Codes Supervisor
Ken Sykes, Code Enforcement Coordinator

Donovan McLaurin,
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Town of Hope Mills
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Town of Linden



CUMBERLAND
COUNTY



COUNTY of CUMBERLAND

Planning and Inspections Department

Thomas J. Lloyd,
Director

Cecil P. Combs,
Deputy Director

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

WATERSHED PROTECTION PERMIT

PROPERTY IDENTIFICATION NUMBER: 0521-60-6335-, 0521-60-2656-, 0521-60-4650-

DEVELOPMENT NAME: Andrews Mini Storage Property.

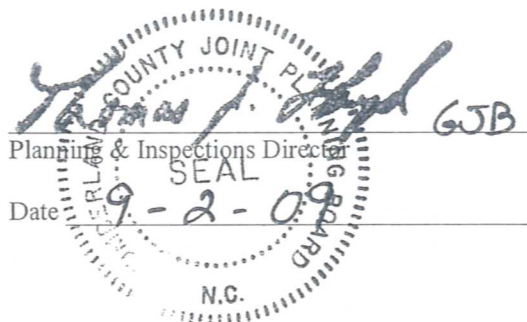
PROPERTY LOCATION: Southeast quadrant of SR 1600 (MCARTHUR ROAD), and SR 1611(ANDREWS ROAD),North of SR 1613(HONEYCUT ROAD).

PROPERTY OWNER'S/AGENT'S ADDRESS: Brian Andrews
1630 McArthur Road.
Fayetteville, NC 28311

CASE NUMBER: WS 08-04

WATERSHED AREA : WS-IV-PA

This Development meets the provisions of Chapter 31A of the Cumberland County Code of Ordinances, also known as the "Watershed Protection Ordinance". The applicant may now be issued the Watershed Protection Occupancy Permit. The Watershed Protection Permit shall expire if a Building Permit or Watershed Occupancy Permit for such use is not obtained by the applicant within twelve (12) months from the date of issuance.



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



CUMBERLAND
COUNTY



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

WATERSHED PROTECTION OCCUPANCY PERMIT

PROPERTY IDENTIFICATION NUMBER 0521-60-2656-, 0521-60-4650-, 0521-60-6335-

DEVELOPMENT NAME Andrews Mini Storage north bldg lot-3,

PROPERTY LOCATION Southeast quadrant of SR
1611(Andrews Road), and SR 1600(McArthur Road).

PROPERTY OWNER'S/AGENT'S ADDRESS Brian Andrews
21630 McArthur Road
Fayetteville, NC 28305

CASE NUMBER : WS 08-04 WATERSHED AREA : WS-IV-PA

This Development meets the provisions of Chapter 31A of the Cumberland County Code of Ordinances, also known as the "Water Supply Watershed Management and Protection Ordinance". Necessary permits may now be applied for through the appropriate agencies.

Thomas J. Lloyd
COUNTY JOINT PLANNING BOARD
SEAL
Planning Director
N.C.
2-10-10
GJB

Date