

**Members:**

Ed Donaldson, Chairman  
Melree Hubbard Tart, Vice-Chair  
Horace Humphrey  
Joseph M. Dykes  
(Vacant)



**Alternates:**

William L. Tally  
Carrie Tyson-Autry  
Yvette Carson  
Vickie Mullins  
George Lott

***CUMBERLAND COUNTY BOARD OF ADJUSTMENT***

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

**TENTATIVE AGENDA**

**JULY 18, 2013**

**7:00 PM**

A meeting of the Cumberland County Board of Adjustment is to be held on Thursday, July 18, 2013, 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. OATH OF OFFICE
3. SWEAR IN STAFF
4. ADJUSTMENTS TO THE AGENDA
5. APPROVAL OF THE MAY 16, 2013 MINUTES
6. CORRECTION OF THE APRIL 18, 2013 MINUTES – PAGE 19
7. ABSTENTIONS BY BOARD MEMBERS / BOARD MEMBER DISCLOSURES
8. PUBLIC HEARING DEFERRALS
9. POLICY STATEMENT REGARDING APPEAL PROCESS
10. PUBLIC HEARING(S):

- A. P13-04-C: CONSIDERATION OF A SPECIAL USE PERMIT TO ALLOW A 250 FOOT TOWER IN A RR RURAL RESIDENTIAL DISTRICT ON 16.00+/- ACRES, LOCATED ON THE SOUTH SIDE OF MUSCAT ROAD (SR 1119) AND WEST OF EARP COURT; SUBMITTED BY JOHN MCNEILL, JR. AND BETTY GAINEY RAY (OWNERS) AND THOMAS H. JOHNSON, JR., NEXSEN PRUET, PLLC ON BEHALF OF AMERICAN TOWERS, INC.**

11. RECOMMENDATION FOR NOMINATION(S)

Regular member Mr. Randy Newsome (Resigned June 5, 2013)

Regular member Mrs. Melree Hubbard Tart (Term expires August 31, 2013)

Alternate member Mrs. Carrie Tyson-Autry (Term expires August 31, 2013)

12. NEW ALTERNATE BOARD MEMBER

Mr. George Lott – appointed by the BOC effective June 2013

13. DISCUSSION

14. UPDATE(S)

15. ADJOURNMENT

**Members:**  
Ed Donaldson, Chairman  
Melree Hubbard Tart, Vice-Chair  
Horace Humphrey  
Joseph Dykes  
Randy Newsome



**Alternates:**  
Carrie Tyson-Autry  
Yvette Carson  
Vickie Mullins  
Winton McHenry  
(Vacant)

## *Cumberland County Board of Adjustment*

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

MINUTES  
MAY 16, 2013  
7:00 P.M.

### **Members Present**

Ed Donaldson, Chairman  
Melree Hubbard Tart  
Joseph Dykes  
Horace Humphrey  
Vickie Mullins

### **Absent Members**

Randy Newsome

### **Staff/Others Present**

Pier Varner  
Melodie Robinson  
Ken Sykes  
George Hatcher  
Rick Moorefield (County  
Attorney)

Chair Donaldson 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. CHAIR DONALDSON SWORE IN THE STAFF

#### 3. ADJUSTMENTS

**There were no adjustments.**

#### 4. APPROVAL OF THE JULY 10, 2012 SPECIAL MEETING MINUTES AND APRIL 18, 2013 MINUTES

**A motion was made by Mrs. Tart and seconded by Mr. Humphrey to approve the July 10, 2012 minutes as submitted. The motion passed unanimously.**

**A motion was made by Mr. Humphrey and seconded by Mr. Dykes to approve the April 18, 2013 minutes amended with corrections on pages 13-14 as follows: "Grape Arbor Drive" and "split-rail". The motion passed unanimously.**

#### 5. ABSTENTIONS BY BOARD MEMBERS

There were none.

6. PUBLIC HEARING DEFERRAL(S)

There were none.

7. BOARD MEMBER DISCLOSURES

There were none.

8. POLICY STATEMENTS REGARDING APPEAL PROCESS

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

9. PUBLIC HEARING(S)

**Opened Public Hearing**

**A. P97-36-C:** REVOCATION OF A SPECIAL USE PERMIT (NEÉ SPECIFIED CONDITIONAL USE PERMIT) OF AN AUTOMOBILE REPAIR AND/OR BODY WORK, IN AN A1 AGRICULTURAL DISTRICT ON 7.11+/- ACRES, LOCATED AT 1921 JOE HALL ROAD (SR 2246); SUBMITTED AND OWNED BY SAMUEL W. AND ELENE WEST.

CHAIR DONALDSON: This is the matter that we dealt with two months ago, isn't it?

MRS. VARNER: Yes, it was deferred by the board on March 21, 2013.

CHAIR DONALDSON: Is there anybody here today for this case?

MRS. VARNER: Yes, the applicant and his son are here.

CHAIR DONALDSON: Please give us an update on this case.

MRS. VARNER: This case was presented on March 21, 2013 because George Hatcher from Code Enforcement sent in a notice of violation. Currently, there is a Special Use Permit for an automobile repair and body work but the applicant has additional stuff on his property and he was not following the county regulations for that specific use. The board gave the applicant a couple of months to clean up his property. George Hatcher can provide you with additional information up to this date.

MRS. VARNER: Presented the zoning, land use and photos of the site to the Board. Mrs. Varner showed photos of the property the way it looked before, so the board could see the way the property previously looked. Mrs. Varner stated that Mr. Hatcher will present new photos of the property and he can answer questions the board has about the new pictures.

CHAIR DONALDSON: Mr. Hatcher, would you please come up and state your name and your position.

MR. HATCHER: My name is George Hatcher and I'm a Code Enforcement Officer of Cumberland County.

CHAIR DONALDSON: Mr. Hatcher, have you been out there since we had the last hearing two months ago?

MR. HATCHER: I was out there this morning sir.

CHAIR DONALDSON: Is that the only time you've been out there?

MR. HATCHER: No.

CHAIR DONALDSON: How many times in the last two months?

MR. HATCHER: I was out there a week ago.

CHAIR DONALDSON: Okay, can you tell us what you have seen so far?

MR. HATCHER: On my visit today, all the inoperable vehicles, parts, boxes, tools, batteries, construction, demolition debris from the mobile homes that were out there have been removed.

CHAIR DONALDSON: How about that motor home camper, has that been removed?

MR. HATCHER: It's been removed. [Mr. Hatcher presented a slide show of photos of the property] Mr. Hatcher stated Mr. West was going to remove a structure, which was one of the two existing buildings that were permitted on the property originally. He informed me he was going to demolish this and a small shed behind the doublewide. There has been a great deal of clean-up on this property and it is a huge lot. Everything in the back, the cars, the stuff, has all been removed. Behind the workshop, he is able to mow the grass back there now and it is clear enough to get a lawn mower in there and maintain the property. If I understand the conditions of this permit where it says there is no outside storage. This is the only outside storage I saw outside on the property; a few tires and a neatly stacked rack of pipes.

CHAIR DONALDSON: From the Code Enforcement side, are you all satisfied that he has made a good faith effort?

MR. HATCHER: Yes, he has made an outstanding effort.

CHAIR DONALDSON: Any recommendation?

MR. HATCHER: I do have some recommendations. There are three options available here; the materials will have to be removed or stored in an enclosed building so it will not be in violation of this condition of outside storage.

CHAIR DONALDSON: Are you talking about the pipes that are stacked there?

MR. HATCHER: Yes, I don't know if the Board could approve that outside storage. I'm being black and white about this.

MRS. TART: The building that he is planning to destroy, could he use that for storage? Would it be legal for it to remain there and he could put his tires and pipes in there?

MR. HATCHER: Then they would probably get into the conditions of those buildings and they would have to be repaired; the roofs and I don't know if they are serviceable.

MRS. VARNER: These are the two buildings that he is planning to remove. [pointed to the photos of the buildings on the PowerPoint Presentation]

CHAIR DONALDSON: Are there any questions? Thank you Mr. Hatcher. Mr. West or whoever is going to speak, please come up.

CHAIR DONALDSON: What is your name sir?

KENNETH WEST: I am Kenneth West. He [Samuel West] is going to speak, but he can't hear well.

CHAIR DONALDSON: Swore in Kenneth West and Samuel West.

SAMUEL WEST: It is not a problem to put the tires inside. I didn't know it was going to be a problem. When you have a garage, you can't put every tire that you have inside. How many tire stores do you drive by, like the one down on Person Street, they must have 5000 tires stacked outside. They are not in a storage area. I tried to go about this the right way, but it looks like the first mistake I made was trying to do it legally. If I had done it without getting permission..... They came out there to check for one thing and started jumping on me for another; that didn't make any sense. I called them myself, they didn't just pop up. The report that I asked about said somebody turned me in. I took a notebook and went to every house on both sides of the street. Somebody told a story because there was not a person on that road who signed that paper who said anything against me about my yard. They didn't even know the shop was there. George rode through there the other day and had to turn around and come back; he missed the place altogether.

CHAIR DONALDSON: Because it looked so good?

SAMUEL WEST: It looks fantastic. I think I went way beyond what I was asked to do. If he wanted me to roll those tires under the shelter, I could have done that in five minutes.

CHAIR DONALDSON: Are there any questions? This is all for the revocation of the original permit, right?

MRS. VARNER: It came as a revocation.

CHAIR DONALDSON: We have three choices. 1. Revoke it. 2. Leave it in effect and modify it. 3. Dismiss the petition from the staff.

MRS. VARNER: From what I understand, Mr. West does not want to revoke his Special Use Permit, he wants to keep it. That is what the applicant stated.

CHAIR DONALDSON: It came in originally as a revocation of the Special Use Permit. That was initiated by the staff, right?

MRS. VARNER: No, Mr. West signed a statement. [The revocation was initiated by staff]

CHAIR DONALDSON: That's right; he was going to just revoke it, which was kind of unusual. He came in and said revoke it and then he came in and said, no, don't revoke it.

MRS. VARNER: Yes sir. I was not at the meeting on March 21, 2013, but I understand that he does not want the revocation. The application was originally approved for automotive repair and body work and not for storage of things outside. It is up to the Board; if you see the progress he has made, and make some kind of adjustment. Like Mrs. Tart said; he can use one of those structures to store his things in there or leave it as it is right now and don't store any more than that. It is up to the Board.

MR. HUMPHREY: As I recall and I remember this case very well, didn't we give him a couple of months to clean up and then come back to us.

CHAIR DONALDSON: We are actually here on his petition to revoke it and then he changed his mind. He wanted time to get it straightened out, which is what he did. All we really have to do is dismiss this petition to revoke it at this point in time. The other option is not to dismiss it and remain it in effect with some modifications. Does anybody else have a comment or opinion? Does any board member want to make a motion?

MRS. TART: I have a question. Maybe I couldn't see something, but the storage building looked fairly stable to me. I see places everywhere that are much worse looking than this.

MRS. VARNER: Showed the photos of the structure again.

MR. HATCHER: He has already started the demolition project.

CHAIR DONALDSON: You can't have a garage without having some tires and stuff stacked around. He is right, if you go by any tire dealership, they have tires stacked around all the time.

MRS. TART: I think the problem is that he is operating under a Special Use Permit rather than a Zoning, so there were special conditions placed upon him and that is what has brought this action.

MRS. VARNER: Mrs. Tart, at that time when the application was approved, there were no additional conditions; it was approved as the application states. If you see the application, he never mentioned anything about storing stuff outside in his yard.

MR. HUMPHREY: Could we hear from the Code Enforcement Officer again?

CHAIR DONALDSON: Mr. Hatcher, please come up. Mr. Humphrey has some questions.

MR. HUMPHREY: You did say they had made substantial progress. From what I recall from last time, it does look like substantial progress. The last thing you said about the two buildings, I wasn't quite sure how we tied that into it. It seemed like you hesitated there a bit. You said he had made good progress, but.....

MR. HATCHER: Well, these buildings are still there and in the process of being demolished. Looking at it as a Code Enforcement Officer, what a violation of a standing for a structure is, they would be in violation, but they were permitted and originally allowed to be on the property. He is taking them down on his own will; nobody has told him to take those buildings down. He has decided by himself, which is a good thing.

CHAIR DONALDSON: Actually, they are deteriorated to the point where they are starting to rot, right?

MR. HATCHER: Right. I don't know if I should give my opinion about this or not. It is like ordering someone to clean up a dump site and then there are six bags of garbage left when you go out there; no, it is not cleaned up, but I think the effort was made on this property. Like I said, if there is a way that you can approve some outside storage for him, I would suggest that.

CHAIR DONALDSON: Any other discussion? I don't know of any garage where you don't have stuff stored outside. He put up a privacy fence and cleaned it up. I don't know how you could avoid, at least on a temporary basis, of storing stuff outside. Most of them have someone come in every few months and get the stuff out. Some of them go years before cleaning it up.

MR. MOOREFIELD: Mr. Chairman, I want to point out that in his original application, he indicated a privacy fence would be put up where no cars would be exposed. They are not visible from the road?

MR. HATCHER: No sir, they are not visible from the road.

CHAIR DONALDSON: To my way of thinking, a garage inherently comes with stuff being stored outside; I've never seen one where it wasn't, except for a NASCAR garage or maybe Rick Hendrick Toyota. They all do it; but he's got a privacy fence. As I understand, we have two choices: dismiss it and let it go or we can modify it to allow some outdoor storage. The question is, how much?

MR. MOOREFIELD: Another option is what Mr. Hatcher just said; his application was for a privacy fence where no cars are exposed. As I understood Mr. Hatcher, there is nothing exposed to the road anymore, is that correct Mr. Hatcher?

MR. HATCHER: Yes sir.

MR. MOOREFIELD: I think there is a good argument here that he is in compliance.

CHAIR DONALDSON: Do I hear a motion to dismiss?

MRS. TART: I motion to dismiss.



MR. HUMPHREY: I second the motion.

CHAIR DONALDSON: All in favor signify by saying aye.

The motion passed with a unanimous vote.

	IN FAVOR	OPPOSED
DONALDSON	YES	NONE
TART	YES	
HUMPHREY	YES	
DYKES	YES	
MULLINS	YES	

**B. P13-01-C: CONSIDERATION OF A REQUEST FOR A VARIANCE FROM THE COUNTY ZONING ORDINANCE, SECTION 1104, DISTRICT DIMENSIONAL PROVISIONS, TO ALLOW FRONT YARD SETBACKS FOR TWO EXISTING STORAGE BUILDINGS OF 1.86' FOR BUILDING "A" AND 2.35' FOR BUILDING "B" FROM JOSEPH STREET (SR 3080) WHERE 30 FEET IS REQUIRED AS IT WAS APPROVED FOR CASE No. P03-25-C, IN A C3 HEAVY COMMERCIAL AND C(P) PLANNED COMMERCIAL DISTRICTS ON 9.9+/- ACRES, LOCATED AT 2346 GILLESPIE STREET; SUBMITTED BY CARLOS VIZCARRA ON BEHALF OF AMERCO REAL ESTATE COMPANY (OWNER).**

MRS. VARNER: Presented the zoning, land use and photos of the site to the Board.

CHAIR DONALDSON: Swore in Samantha Keating.

MRS. KEATING: My name is Samantha Keating and I am a planner for Amerco Real Estate Company which is the parent company of U-Haul. Just to give a little background, we purchased this property last year and were planning on doing some site improvements to the property. So, in applying for our site plan approval, it was brought to our attention that the buildings were built within a close proximity to the Joseph Street property line. We did some research and got a new survey done and contacted the former surveyor to kind of see where the inconsistency was and it looked like there was a marker that was in the street that was an incorrect survey. That seems to be where the discrepancy was. We also started the process of trying to close the northern portion of Joseph Street so we can keep the existing drive and fence where it is located. We don't think that granting the Variance will harm the neighbors in any way. This building has existed since 2005 and has existed without any problems. What we are trying to do is to make this legal and to be able to operate the way that the property was intended.

CHAIR DONALDSON: Did I hear you correctly, that you are trying to close Joseph Street?

MRS. KEATING: Correct.

CHAIR DONALDSON: How do you intend to go about that?

MRS. KEATING: Right now we have started the process. We have gotten the information from

the County and we have talked to the two northern property owners and got them to sign the petition. We are working with our surveyor to get the legal descriptions done and submit that within the next few weeks.

CHAIR DONALDSON: Are there any questions. So you are only asking for 1.86 feet and 2.35 feet on the other one, right?

MRS. VARNER: Those are the closest points where they are requesting the variance. Unit A will be 28.14 and Unit B will be 27.65.

MRS. TART: I'm assuming initially when the occupancy permit was issued back in 2003, the surveyor made a mistake and then inspections was relying upon his information to approve.

MRS. VARNER: That is what I understand. I don't know, Mrs. Tart. I have not found any record about this case. We are working with what we have found in the file from 2003. That is how it was approved so we are trying to be fair to the applicant by requesting the Variance from what was approved originally.

CHAIR DONALDSON: Is there anybody here that wants to speak in opposition?

[A man in the audience starts speaking but does not identify himself and is talking back and forth with the applicant Mrs. Keating]

CHAIR DONALDSON: What is your name sir?

[The man states his name but is sitting in the audience so the microphone does not pick up his voice]

CHAIR DONALDSON: All they are doing is correcting a survey error; that is all it is. We are not doing anything with closing any street, they relied upon one survey and the survey was off by about a foot and a half on one and about two feet on another one. All we are saying is so they don't have to tear the building down and start over and move it.

MRS. VARNER: Mr. Chairman, should he be sworn in to answer these questions?

CHAIR DONALDSON: I'm just asking if he had any objection to it. He's talking about something that we are not dealing with anyway. He's talking about the closing of the street and we are not dealing with that anyway. I saw him here and I just wanted to make sure he didn't have any objection to what was going on as far as this.

[Mrs. Keating is talking to the man in the audience and standing away from the microphone, her voice is not being picked up by the microphone]

MRS. TART: My understanding is, if you are successful in closing Joseph Street because it abuts your property, then you are going to do some landscaping, some buffering, is that what I understood?

MRS. KEATING: Yes, we will leave the existing improvement as is.

MR. MOOREFIELD: Mr. Chairman, I don't think anyone has indicated, but will the necessity for the Variance go away if they close Joseph Street, will they be in compliance then? How much will it be off then?

MRS. KEATING: It will be +25 feet.

MRS. VARNER: If they close the road, they will only be short approximately 2.3 feet or 2.5 feet. Their Variance will be from 28.14 feet to approximately 2 feet.

MRS. TART: So they will inherit half of the street?

MRS. VARNER: Twenty-five feet.

MR. MOOREFIELD: As I understand, what you are saying is they really would only need a couple of feet, not 25 feet.

MRS. VARNER: Yes, because they need to meet this 30 feet. Right now, all that they meet is 1.86 feet and if they get the extra 25 feet on Joseph Street, their Variance will be no more than approximately 3 feet.

MRS. KEATING: One of the reasons why we are looking forward to the Variance at this point in time is because the closing of the street is a somewhat lengthy process. We do have plans to improve the site with some additional buildings and recreation vehicle storage and we need to rectify this issue with the building and make it legal before we move forward.

CHAIR DONALDSON: Do I hear a motion to approve the request? Any discussion about it? Mr. Humphrey, what is your opinion about it?

MR. HUMPHREY: Mixed. It seems like such a small area, but then a rule is a rule. I have mixed emotions, but I think that I would grant the Variance.

MRS. TART: I'm just wondering, what kind of hardship it would place upon you if you just waited to see if the street is going to be closed?

MRS. KEATING: I think the hardship would be that we would like to move forward with the development of the property. We have plans to do that and the longer that this process goes on where we don't make the building legal, it makes it difficult for us to continue site improvements and improve the property for the rest of the community.

CHAIR DONALDSON: Mr. Dykes? Mr. Moorefield, do you have any input from the legal side of it?

MR. MOOREFIELD: As suggested about the closing, I'm sure they are not trying to do any more expansion of these two buildings, these building will be locked.

MRS. TART: You just don't want to advance any more money into something until you are sure everything is kosher with it?

MRS. KEATING: Correct. In just moving forward, we would like to make sure everybody is happy and everything is done correctly. To answer your question, we don't have any plans to expand on the buildings; the buildings will remain as is.

MR. MOOREFIELD: How did we get here? Did you get notice of the violation or did you just bring it here yourselves?

MRS. KEATING: I was not involved in the case at that particular time, but I believe it was when we submitted our site plan for approval for the improvements, it was noticed, and when we got the new survey, the building was located much closer than the actual property line.

MR. MOOREFIELD: Did staff determine that everything else that you want to add to this site will be in compliance?

MRS. VARNER: The only reason they could not continue was because of this Variance and that is why they are coming with the Variance tonight and at the same time they are working with the closing of the road.

CHAIR DONALDSON: As I see it, first of all, we are talking about an extremely minute amount, about a foot and a half of road, about 1.86 feet and 2.5 feet in one area. Secondly, apparently, the builder relied on an incorrect surveyor, who I assume would have been a certified surveyor. Somehow they made a mistake and all we are doing is correcting it. I'll allow the correction so that they are in compliance so that they can proceed in developing the rest of the business. We have granted Variances for setbacks to homes in the past on numerous occasions at least in the last 2-3 years that I've been on the board. This is really not going to affect anybody other than to clear up the situation so that they can proceed with their business. It's not like they are asking for a tremendous amount. I know the legal principle is the same all the way around but it is such a small amount to punish the business for it. I make a motion that we approve the request for the Variance.

MRS. VARNER: Mr. Chairman, if you could you make it clear that this Variance will be only for these two specific buildings, not for any future buildings.

CHAIR DONALDSON: Yes, those are the only two before us.

MRS. TART: I second the motion.

CHAIR DONALDSON: All in favor signify by saying aye.

	IN FAVOR	OPPOSED
DONALDSON	YES	NONE
TART	YES	
HUMPHREY	YES	
DYKES	YES	
MULLINS	YES	

MRS. VARNER: Mr. Chairman, can we go through the eight Findings of Fact.

MRS. TART: They have already given us the conditions.

MR. MOOREFIELD: You could just adopt their additional Findings of Fact.

CHAIR DONALDSON: We will adopt them. All in favor signify by saying aye.

	IN FAVOR	OPPOSED
DONALDSON	YES	NONE
TART	YES	
HUMPHREY	YES	
DYKES	YES	
MULLINS	YES	

On May 16, 2013 the Board of Adjustment found the Findings of Fact drafted in a narrative report by Samantha Keating (property owner's agent) to be accurate, and adopted it as the following conditions below)

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

**There are extraordinary conditions relating the sitting of this property in relation to the Joseph Street right-of-way. Due to non-use of Joseph Street, at the time of the previous survey for building construction, incorrect property boundaries were determined and relied upon.**

**In the same sense, exceptional conditions relate to the approval of the property improvements at the time they were constructed. Because of the unique condition of this particular property with its adjacency to the unimproved right-of-way, no interested parties were made aware of the survey inconsistency until years after the site improvements were completed.**

**While not directly related to the physical condition of the property, there are exceptional circumstances related to the property that are not applicable to other surrounding properties. Building improvements were constructed wholly on the subject property and within the setbacks prescribed by the approved site plan, albeit from an incorrect property line. The building improvements were approved and have continued to be occupied without issue since that time. The granting of this variance will allow the properties to function as they have since their original construction.**

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

**The rare nature of this situation would not grant any special privileges that have been denied to others. If the requested variance were granted, the property would continue to function in the same fashion as it has since 2005, when the buildings in question were constructed. Because Joseph Street is unimproved and rarely traveled, decreasing the street yard setback**

**to accommodate storage buildings A and B would not create any hardship for neighboring properties. In addition, granting of the variance would not give U-Haul any special privileges that the previous owner did not enjoy.**

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

**U-Haul would like to operate the existing buildings as the previous owner did. To alleviate any concerns, U-Haul will be adding and maintaining additional landscaping around the perimeter of the property, including the rear portion where the buildings are built up to the property line to improve the aesthetics of the project for the community. Literal interpretation of the current setback provisions would unfairly preclude U-Haul, as the new business owner, from utilizing the current operation as constructed and approved by Cumberland County.**

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

**Granting of the variance will be in harmony with the Cumberland County Zoning Ordinance because of the width of the Joseph Street right-of-way, the storage buildings will continue to remain a respectable distance away from neighboring properties, as is the intent of the setback regulations prescribed in the zoning ordinance. In addition, this variance would not hamper the general welfare of the neighborhood in any fashion. The property and the buildings that we are requesting the reduced street yard setback variance for were constructed over eight years ago and have operated without any issues since their completion.**

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

**This problem was blindly inherited by AMERCO from the previous owner. AMERCO did not create the current problem, but instead is trying to work with Cumberland County to come to a mutually agreeable solution.**

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

**The variance requested is to allow the property to remain as is. At this time we are requesting the minimum variance needed without the approval of the Joseph Street closure. The requested variance is to reduce the Joseph Street side yard setback to 1.86 feet as opposed to the approved setback of thirty (30) feet. If the street vacation were to be approved an additional twenty-five (25) feet of property would be gained, thereby reducing the needed variance to 3.14 feet or approximately 3 feet 1 ¾ inches.**

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

**We are not proposing to change anything in regard to the current building uses or construction makeup. We are seeking to utilize the buildings as is and in the same fashion as they have been since built. Granting of the variance would not change district boundaries as all buildings are located within the boundaries of the subject property. Currently, the storage use and building construction type are permitted within the base zoning district.**

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

**This variance request is not based upon any nonconforming use of neighboring lands or properties within other zoning districts. The building improvements were built assuming incorrect property lines and were approved by Cumberland County officials during both plan review and upon granting of a certificate of occupancy. However, once AMERCO purchased the property, it inherited the mistaken Joseph Street yard setback as an existing nonconformity that now is being addressed via this variance process.**

**THEREFORE**, on the basis of all the foregoing, **IT IS ORDERED** that the application for a **VARIANCE** be **GRANTED / DENIED**. If **GRANTED**, subject to the following conditions:

1. All information contained in the application;
2. All development shall be in accordance with the site plan as submitted unless otherwise specified below;
3. All other provisions of the County Zoning Ordinance shall be complied with;
4. All relevant Federal, State, and local regulations are complied with; and
5. The applicant is responsible for obtaining all required permits prior to proceeding with any Development.

10. ALTERNATE BOARD MEMBER/REAPPOINTMENT

CHAIR DONALDSON: Mr. McHenry has been appointed to replace Mark Locklear. Does anybody know Mr. McHenry? Mr. Humphrey is up for reappointment? Do you want to be reappointed?

MR. HUMPHREY: Yes, I enjoy it.

CHAIR DONALDSON: I move that we approve Mr. Humphrey as a nominee to be reappointed.

MR. DYKES: I second.

CHAIR DONALDSON: All in favor signify by saying aye.

	IN FAVOR	OPPOSED
DONALDSON	YES	NONE
TART	YES	
HUMPHREY	YES	
DYKES	YES	
MULLINS	YES	

MRS. VARNER: He's already been nominated and reappointed.

CHAIR DONALDSON: He's already been reappointed?

MRS. VARNER: He will be reappointed, yes.

CHAIR DONALDSON: I thought it had to go back over to the Board of Commissioners. We had to make a recommendation, right?

MRS. VARNER: Based on what the board said before, that you will let the Board of Commissioners make their own nomination and reappoint their own applicant.

CHAIR DONALDSON: That was pertaining to one person because nobody knew the people. Nobody had any idea of who the people were.

MRS. VARNER: So you still would like to make a recommendation?

CHAIR DONALDSON: That is what we just voted on, a unanimous vote to recommend Mr. Humphrey to be reappointed. That was that one particular appointment where Mr. McHenry was listed and nobody knew any of the nominees, none whatsoever. That is when we said we would let the Board of Commissioners choose. There might be other exceptions when we might say we won't do anything and let the Board of Commissioners decide. At that time, nobody knew the persons and didn't have any information about them. It's not that we were opposed.

MRS. VARNER: At the next meeting we will present you with a list of applicants to replace Mr. Lockett Talley.

#### 11. DISCUSSION

There was none.

#### 12. UPDATE(S)

There were none.

#### 13. ADJOURNMENT

The meeting adjourned at 8:00 p.m. motioned by Mr. Humphrey and seconded by Mr. Dykes.



**Members:**  
Ed Donaldson, Chairman  
Melree Hubbard Tart, Vice-Chair  
Horace Humphrey  
Joseph Dykes  
Randy Newsome



**Alternates:**  
William Lockett Tally  
Carrie Tyson-Autry  
Yvette Carson  
Vickie Mullins  
(Vacant)

## *Cumberland County Board of Adjustment*

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

MINUTES  
APRIL 18, 2013  
7:00 P.M.

### Members Present

Melree Hubbard Tart, Acting Chair  
Joseph Dykes  
Horace Humphrey  
Yvette Carson  
Carrie Tyson-Autry

### Absent Members

Ed Donaldson  
Randy Newsome

### Staff/Others Present

Patricia Speicher  
Pier Varner  
Melodie Robinson  
Ken Sykes  
Robert Hasty, Jr. (Assistant  
County Attorney)

Acting Chair Tart 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 with four members. Mrs. Varner stated that it would be the applicant's decision to proceed with the meeting with the four members but the vote would have to be unanimous; or the applicant can choose to wait until a later meeting with five members present which would allow a majority vote.

ACTING CHAIR TART: Four members do represent a quorum for the Board of Adjustment and we have four members present this evening, but for a Special Use Permit, you would have to have a unanimous vote of four members. Normally we have five members present and that would require four out of five votes. It is up to the applicant to defer this hearing to a later meeting or to proceed with the knowledge that tonight's vote would have to be unanimous.

REGINALD KIRBY: Stated that he wanted to go forth.

MR. HASTY: Stated that Mr. Kirby's answer is sufficient to proceed with the hearing.

### 2. ACTING CHAIR TART SWORE IN THE STAFF

### 3. ADJUSTMENTS/APPROVAL TO THE AGENDA

There were no adjustments. Mr. Humphrey motioned to approve the agenda as submitted, seconded by Mr. Dykes. Unanimous approval.

4. The location and character of the use, if developed according to the plan as submitted and recommended, will be in harmony with the area in which it is to be located and is in general conformity with Cumberland County's most recent Land Use Plan.

**The applicant (property owners) testified, showing specific property locations on a map, that a minimum of five other ranges (albeit *makeshift*) also exist in the immediate area. The application meets or exceeds the minimum standards of the County Zoning Ordinance, which was drafted and adopted based on the policies and actions adopted in the 2030 Growth Vision Plan and the 2030 Growth Strategy Map.**

**ACTING CHAIR TART:** You have heard the motion. Could you repeat that motion? I want to ask staff to repeat his motion that we approved based on the four conditions. Do I have a second on that?

**MR. DYKES:** I second.

**ACTING CHAIR TART:** Mr. Dykes has seconded. Is there any discussion? For the benefit of the audience, Cumberland County has Ordinances that as the Board of Adjustment, we have to abide by the Ordinance as they are written. We have to present Findings of Fact in approving a Special Use Permit. Those four Findings of Fact have been stated by Mr. Humphrey and those were the things that he went through. We have a motion to approve the Special Use Permit as presented with changing the hours from 8:00 am to 5:00 pm and by appointment only. That will be written into this; that will be part of the permit.

**ACTING CHAIR TART:** All those in favor, let it be known by raising your hand. Any opposed?

**The motion passed with four board members in favor and one opposed.**

	IN FAVOR	OPPOSED
TART	NO	YES
HUMPHREY	YES	
DYKES	YES	
CARSON	YES	
AUTRY	YES	

Having heard all the evidence and argument presented at the hearing, the Board finds that the application is complete, that the application complies with all of the applicable requirements of the Cumberland County Zoning Ordinance for the development proposed, and that therefore the application to make use of the property described within this case for the purpose indicated is hereby approved, subject to all applicable provisions of the Zoning Ordinance and the following conditions:

**1. The applicant shall complete the development strictly in accordance with the application and site plan submitted to and approved by this Board, a copy of which is filed in the Cumberland County Planning & Inspections Office.**

**P13-04-C**  
**SITE PROFILE**

**P13-04-C:** CONSIDERATION OF A SPECIAL USE PERMIT TO ALLOW A 250 FOOT TOWER IN A RR RURAL RESIDENTIAL DISTRICT ON 16.00+/- ACRES, LOCATED ON THE SOUTH SIDE OF MUSCAT ROAD (SR 1119) AND WEST OF EARP COURT; SUBMITTED BY JOHN MCNEILL, JR. AND BETTY GAINNEY RAY (OWNERS) AND THOMAS H. JOHNSON, JR., NEXSEN PRUET, PLLC ON BEHALF OF AMERICAN TOWERS, INC.

**Site Information:**

**Frontage & Location:** .60+/- on Earp Court

**Depth:** 1,440'+/-

**Jurisdiction:** Cumberland County

**Adjacent Property:** Yes, one tract located on the west side of subject property

**Current Use:** Woodlands & existing abandoned dwelling

**Initial Zoning:** RR – February 13, 1977 (Area 7)

**Nonconformities:** None

**Zoning Violation(s):** None issued, existing dwelling will be removed prior to final permits

**Surrounding Zoning:** North, West and South: RR; East: RR & R15

**Surrounding Land Use:** Residential (including manufactured homes), vacant land and woodlands

**2030 Growth Vision Plan:** Urban fringe area

**Proposed Southwest Cumberland Land Use Plan:** Farmland

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

**Soil Limitations:** None

**School Capacity/Enrolled:** Gallberry Farms Elementary: 900/828; Gray's Creek Middle: 1,000/999; Gray's Creek High: 1,270/1,227

**Water/Sewer Availability:** NA/NA

**Subdivision/Site Plan:** See attached "Ordinance Related Conditions"; particular attention should be paid to Conditions No. 8 & 9

**Average Daily Traffic Count (2010):** 1,600 on Muscat Road (SR 1119)

**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

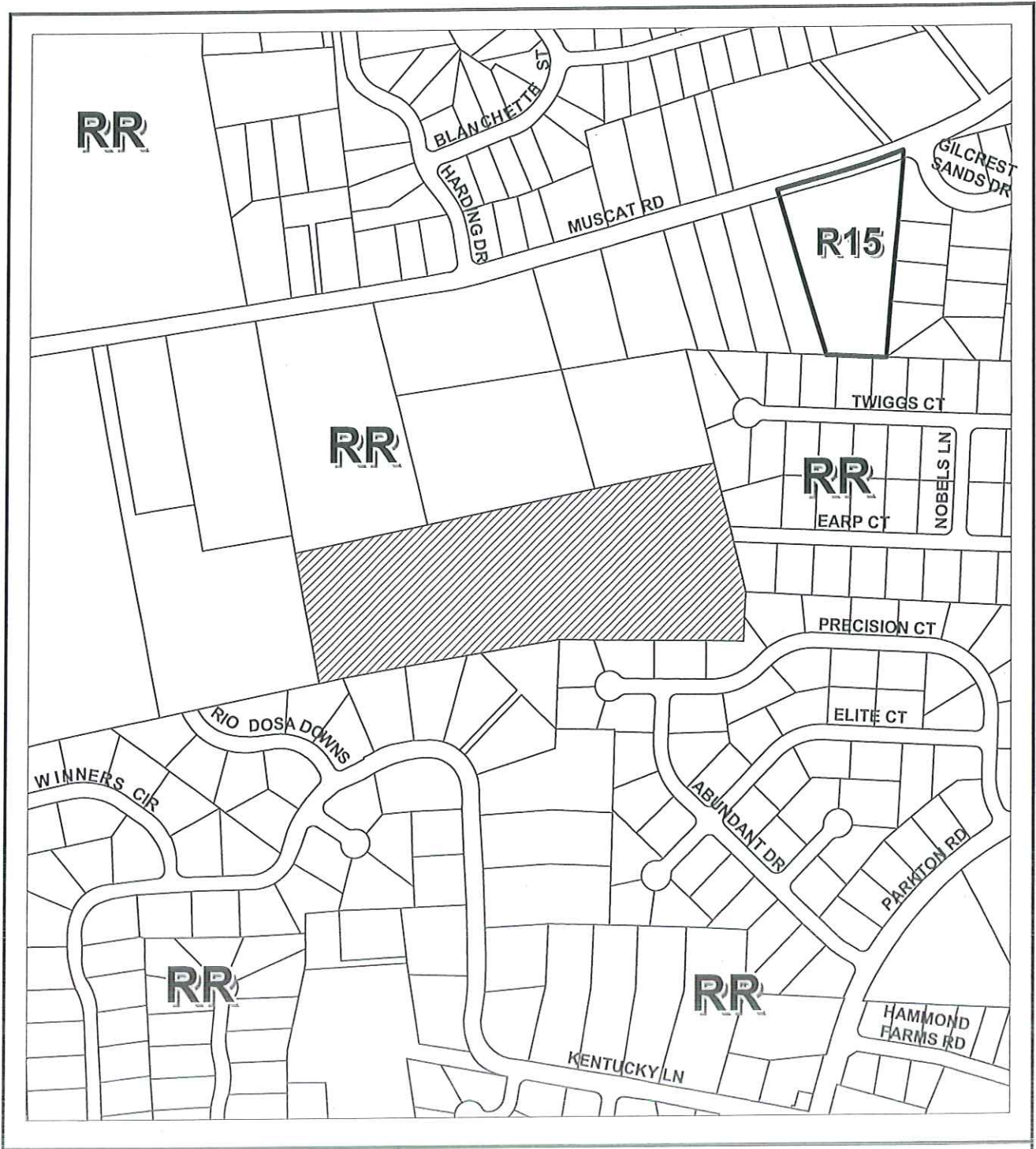
**Cumberland County Zoning Ordinance Reference:** Section 927 Towers

**Notes:**

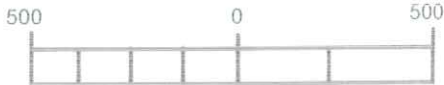
1. Contents of the application:
  - a. Proposed 250' self support tower
  - b. Proposed 100x100 (10,000 sq ft) acre lease area
  - c. Proposed 30' access/utility easement for tower site
  - d. Proposed 20' gravel access road for tower site
  - e. No outside storage at the tower site
  - f. No employees on site, tower will be monitored, inspected and maintained monthly
  - g. American Tower's statement indicating its willing to share the tower with three other users
  - h. AT&T report stating its power density levels meets the federally approved and ANSI levels
  - i. Licensed appraiser's affidavit stating use will not be detrimental to property values
  - j. Licensed engineer's statement signed and sealed, stating tower will be structurally sound
  - k. 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, 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.*



N



SCALE IN FEET

## BOARD OF ADJUSTMENT SPECIAL USE PERMIT

ACREAGE: 16.00 AC.+/-

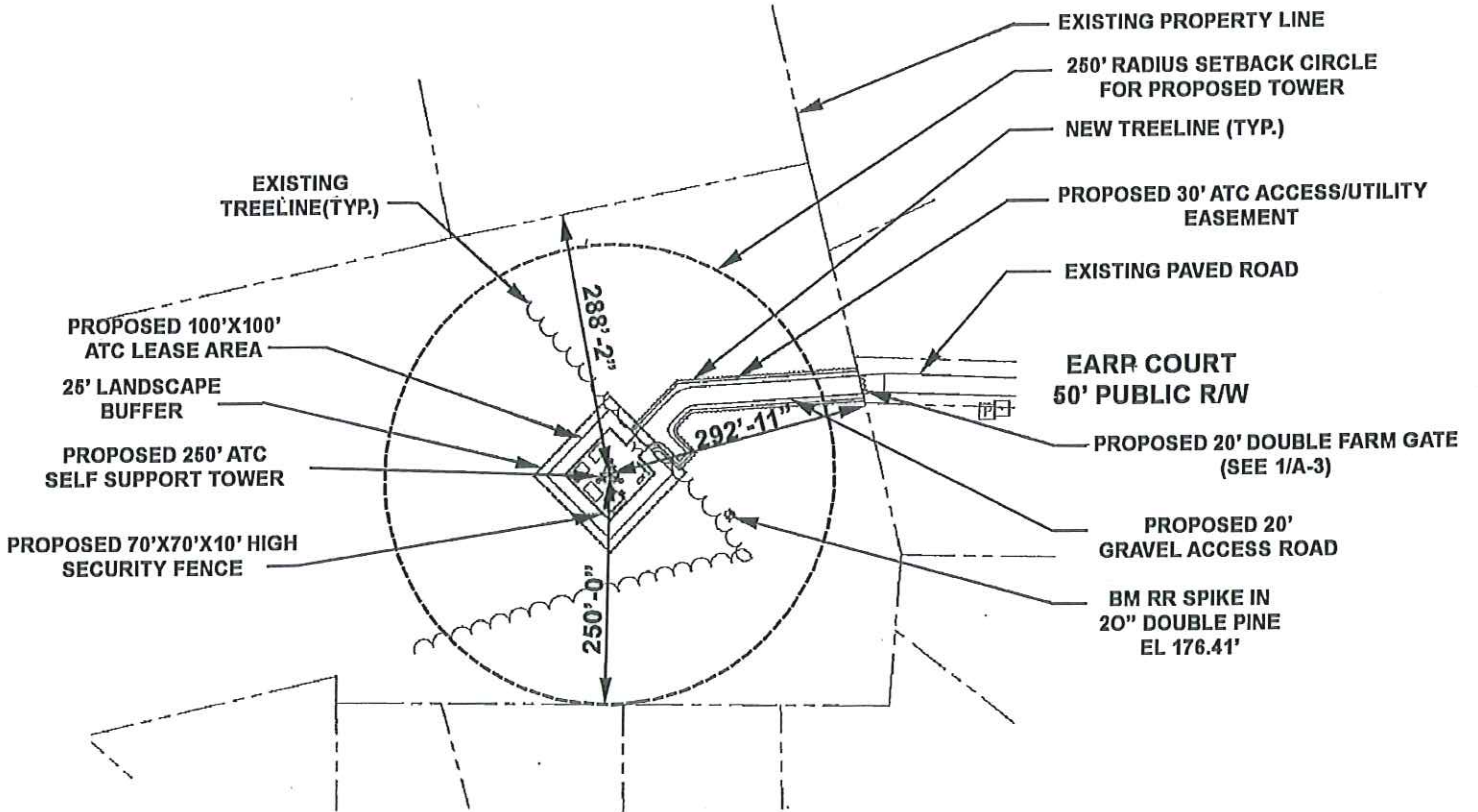
HEARING NO: P13-04-C

ORDINANCE: COUNTY

HEARING DATE

ACTION

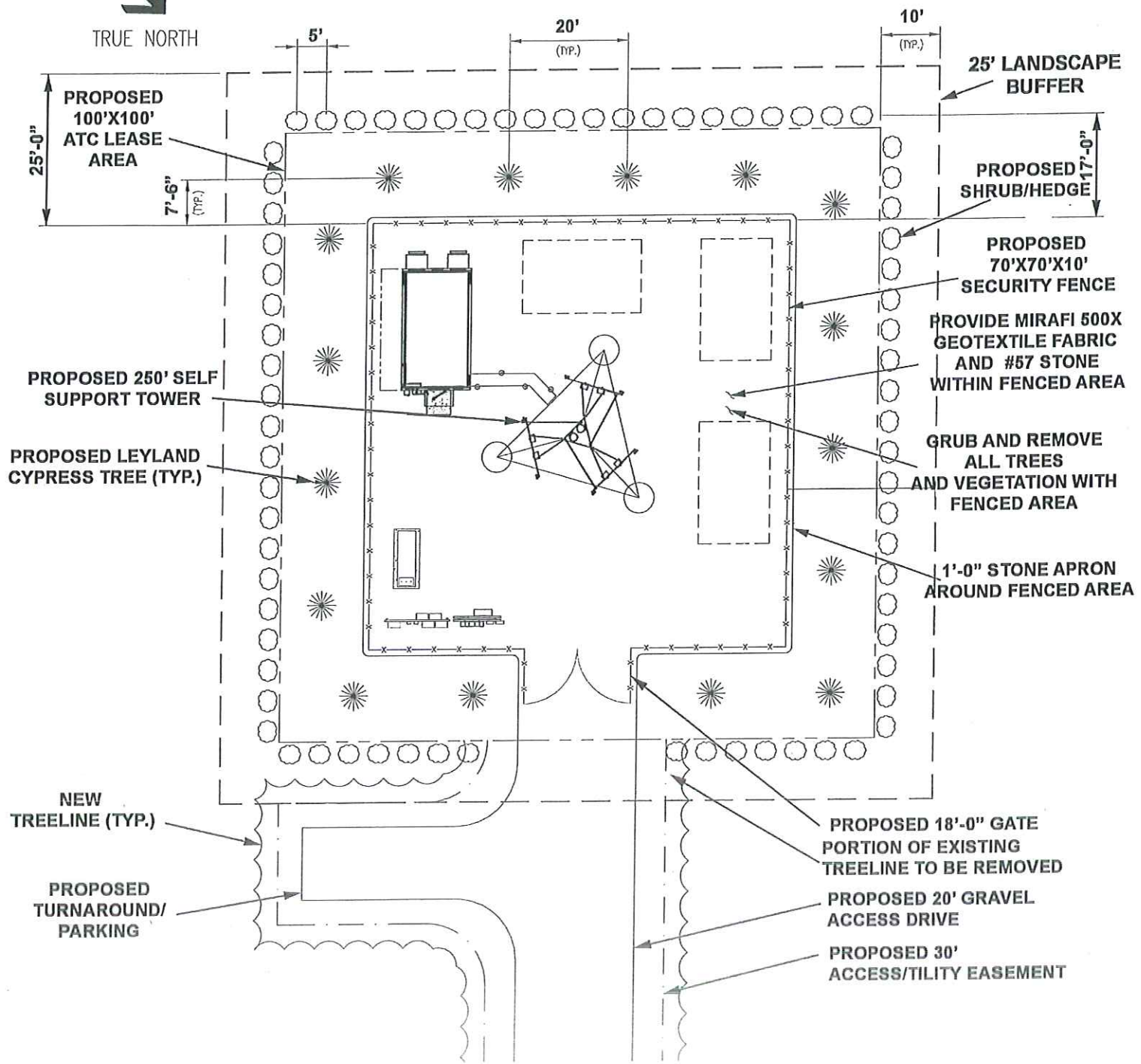
GOVERNING BOARD



**BOARD OF ADJUSTMENT  
SPECIAL USE PERMIT  
REQUEST: TO ALLOW A 250 FOOT TOWER IN A  
RR RURAL RESIDENTIAL DISTRICT  
CASE: P13-04-C ACREAGE: 16.00AC+/-  
ZONED: RR SCALE: NTS  
\*SCALED DETAILED SITE PLAN IN FILE AVAILABLE FOR REVIEW UPON REQUEST**



TRUE NORTH



**BOARD OF ADJUSTMENT  
SPECIAL USE PERMIT**

**REQUEST: TO ALLOW A 250 FOOT TOWER IN A  
RR RURAL RESIDENTIAL DISTRICT  
CASE: P13-04-C ACREAGE: 16.00AC+/-  
ZONED: RR SCALE: NTS**

\*SCALED DETAILED SITE PLAN INTITLE AVAILABLE FOR REVIEW UPON REQUEST

**BOARD OF ADJUSTMENT**

LOCATION OF PROPERTY: 6091 Muscat Road, Hope Mills, NC 28348

OWNER: John M. & Betty G. Ray

ADDRESS: 6091 Muscat Road, Hope Mills, NC ZIP CODE: 28348

TELEPHONE: HOME \_\_\_\_\_ WORK \_\_\_\_\_

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

ADDRESS: 4141 Parklake Avenue, Suite 200, Raleigh, NC 27612

TELEPHONE: HOME \_\_\_\_\_ CELL 910-616-3100 WORK 919-653-7807

E-MAIL: tjohnson@nexsenpruet.com

**APPLICATION FOR A SPECIAL USE PERMIT**

**As required by the Zoning Ordinance**

A. Parcel Identification Number (PIN #) of subject property: 0413-14-3743  
(also known as Tax ID Number or Property Tax ID)

B. Acreage: 100' x 100' Frontage: \_\_\_\_\_ Depth: \_\_\_\_\_

C. Water Provider: N/A

D. Septage Provider: N/A

E. Deed Book 2979, Page(s) 590, Cumberland County Registry. (Attach copy of deed of subject property as it appears in Registry).

F. Existing use of property: \_\_\_\_\_

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.) \_\_\_\_\_  
unmanned radio telecommunications facility consisting of a 250' self support tower

The undersigned hereby acknowledge that the County Planning Staff has conferred with the petitioner or assigns, and the application as submitted is accurate and correct.

\_\_\_\_\_  
NAME OF OWNER(S) (PRINT OR TYPE)

\_\_\_\_\_  
ADDRESS OF OWNER(S)

\_\_\_\_\_  
E-MAIL

\_\_\_\_\_  
HOME TELEPHONE #

\_\_\_\_\_  
WORK TELEPHONE #

↓ \_\_\_\_\_  
Thomas H. Johnson, Jr., Esq., Nexsen Pruet, PLLC  
NAME OF AGENT, ATTORNEY, APPLICANT (PRINT OR TYPE)

\_\_\_\_\_  
4141 Parklake Avenue, Suite 200, Raleigh, NC 27612  
ADDRESS OF AGENT, ATTORNEY, APPLICANT

\_\_\_\_\_  
tjohnson@nexsenpruet.com  
E-MAIL

\_\_\_\_\_  
CELL 910-616-3100  
HOME TELEPHONE #

\_\_\_\_\_  
919-653-7807  
WORK TELEPHONE #

\_\_\_\_\_  
SIGNATURE OF OWNER(S)

  
SIGNATURE OF AGENT, ATTORNEY  
OR APPLICANT

\_\_\_\_\_  
SIGNATURE OF OWNER(S)

The contents of this application, upon submission, become "public record."



Appointment of Agent  
Muscat Road, AT&T #141-245

The undersigned John M. Ray, Jr. and wife, Betty G. Ray (collectively, "Owner") hereby appoints Nexsen Pruet, PLLC as their exclusive agent for the purpose of petitioning Cumberland County for a special use permit and variance applicable to the property located at 6091 Muscat Road, Hope Mills, North Carolina for the location of a wireless telecommunications tower as described in the attached applications for special use permit and variance, including the following:

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

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

This the 5<sup>th</sup> day of June, 2013

Agent's Name, Address & Telephone

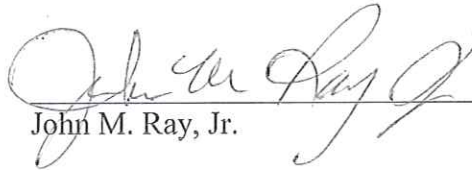
Nexsen Pruet, PLLC

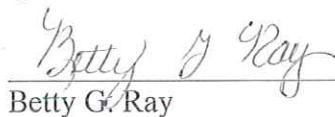
4141 Parklake Avenue, Ste. 200

Raleigh, NC 27612

919-786-2764

Signature of Owner(s)

  
John M. Ray, Jr.

  
Betty G. Ray

**Thomas H. Johnson, Jr.**  
Member  
Admitted in NC

June 11, 2013

**VIA HAND DELIVERY**

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

Re: Proposed Telecommunication Tower located at 6091 Muscat Road,  
Hope Mills, North Carolina 28348; ATC Site Number 281152;  
AT&T Number 141-245 ("Tower")

Dear Ms. Varner:

As you know, I represent American Towers LLC ("American Tower") in connection with the enclosed Application for a Special Use Permit for the telecommunications tower located at 6091 Muscat Road, Hope Mills, NC 28348. The owner of the property is John M. Ray and wife, Betty G. Ray.

I am enclosing the signed Application along with a check in the amount of \$200.00 and .50 for the necessary fees, a copy of the recorded deed, a copy of the site plan/construction drawings and all supporting materials. We request that this matter be placed on the agenda for the July 18, 2013 meeting of the Board of Adjustment.

The tower will be a self support tower 250 feet in height on a 16 acre site. The building area will be 100 feet by 100 feet in size approximately 292'94' from Earp Court. The site is in a wooded area which will be cleared only as necessary to construct the tower site. The site is zoned RR. The Cumberland County Zoning Ordinance (the "Ordinance") allows towers as a special use in the RR 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 drawings. The construction drawings include all that is required under the Ordinance.

Ms. Pier Varner  
June 11, 2013  
Page 2

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 A-2).

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

A statement by American Tower, the tower owner, is enclosed indicating its intent and willingness to permit shared use of the tower, and, as stated earlier, the construction drawings show space for up to three (3) users in addition to the initial user. American Tower also includes in its statement that it commitment to comply with all federal, state and local ordinances, including all Federal Communication Commission (FCC) and Federal Aviation Administration (FAA) rules and guidelines. The tower as proposed will 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., enclosed is a report prepared by Graham Herring, a licensed real estate broker. Mr. Herring states his opinion that the use will not be detrimental or injurious to the property values of the surrounding neighborhood. Mr. Herring supports his opinion based upon his experience with other tower sites in similar situations.

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

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

Ms. Pier Varner  
June 11, 2013  
Page 3

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.

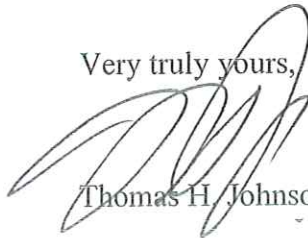
The statement of Graham Herring demonstrates that the site will maintain the value of the adjoining or abutting properties. Wireless service is many times considered a public necessity because it is often the sole access that citizens have to emergency services.

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

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.

cc: Greg Csapo (via email, w/encl.)



1130 Situs Court  
Suite 100  
Raleigh, NC 27606

Cumberland County Planning Department,  
Historic Courthouse  
130 Gillespie Street,  
Fayetteville, NC 2830.

RE: ATC/AT&T Proposed Project, "141-245"  
6091 Muscat Rd,  
Hope Mills, NC 28348

Dear Sir or Madam:

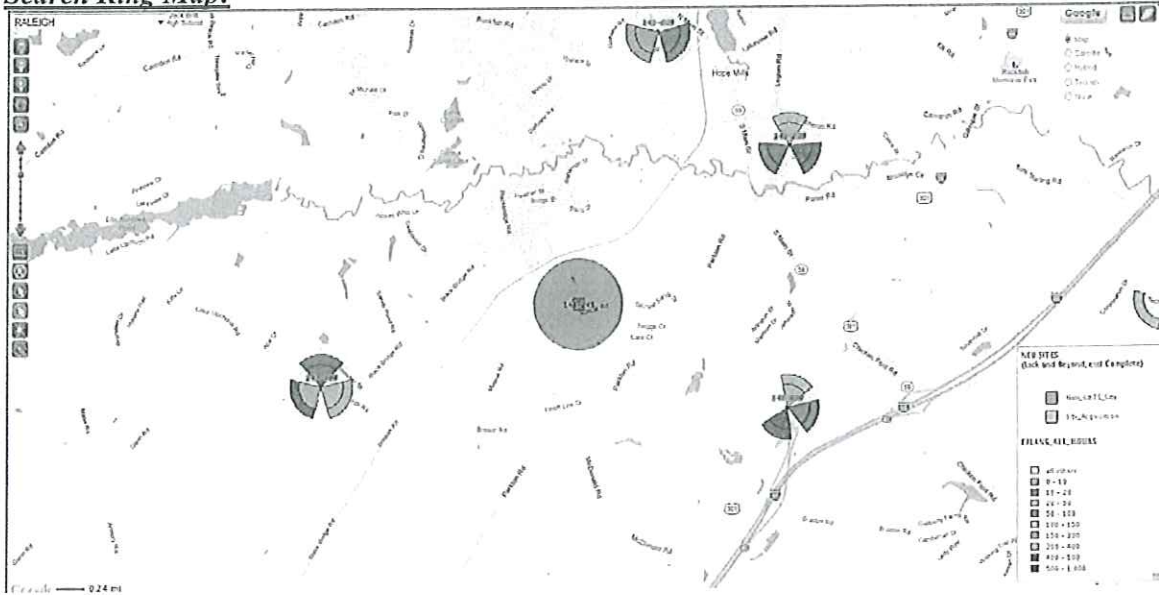
In accordance with the requirements in the Cumberland County zoning ordinance AT&T conducted a thorough search of the area to be served by the proposed ATC tower project "141-245" for an existing tower, building or other useable structure on which AT&T could locate its antennae. A map of the search ring for the required service area is attached for your reference. AT&T's search did not reveal any existing tower, building or other useable structure within the service area. Therefore, it is necessary for AT&T to build a new tower at the Proposed Site in order to meet its coverage objectives.

Very truly yours,

A handwritten signature in cursive script that reads "Shohel Chowdhury".

Shohel Chowdhury  
RF Design Engineer  
AT&T Mobility  
Raleigh Market  
Tel: 919-852-2721  
E-mail: [sc3730@att.com](mailto:sc3730@att.com)

**Search Ring Map:**



**Satellite Zoomed Map:**





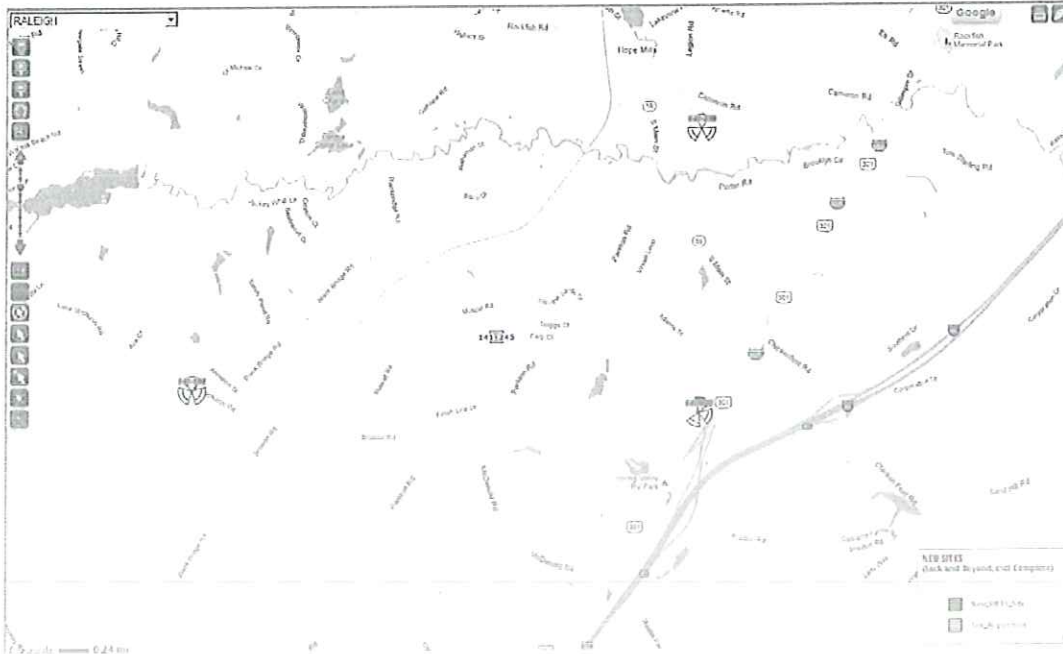
1130 Situs Court, Suite 100  
Raleigh, NC 27606

**DATE:** May 9, 2013  
**SUBJECT:** RF Justification for AT&T Mobility Site "141-245" (ATC Tower Project # 281152)

AT&T Mobility has been requested to provide justification for our proposed site "141-245". AT&T Mobility is currently in the process of enhancing its coverage in Cumberland County. AT&T conducted a thorough search of the area to be served by the proposed ATC / AT&T tower project "141-245" for an existing tower, building or other useable structure on which AT&T could locate its antennae. AT&T's search did not reveal any existing tower, building or other useable structure within the service area. Therefore, it is necessary for AT&T to build a new tower at the Proposed Site in order to meet its coverage objectives.

The attached maps detail the location of the new tower facility "141-245" and expected propagation of emissions from the proposed design. Figure 1 shows the general area within Cumberland County that the new site will be located. In Figure 1 blue text and corresponding icons indicate the location of all existing sites and center in the map location of the proposed site.

**Figure 1: Map of AT&T Existing and Proposed Sites**

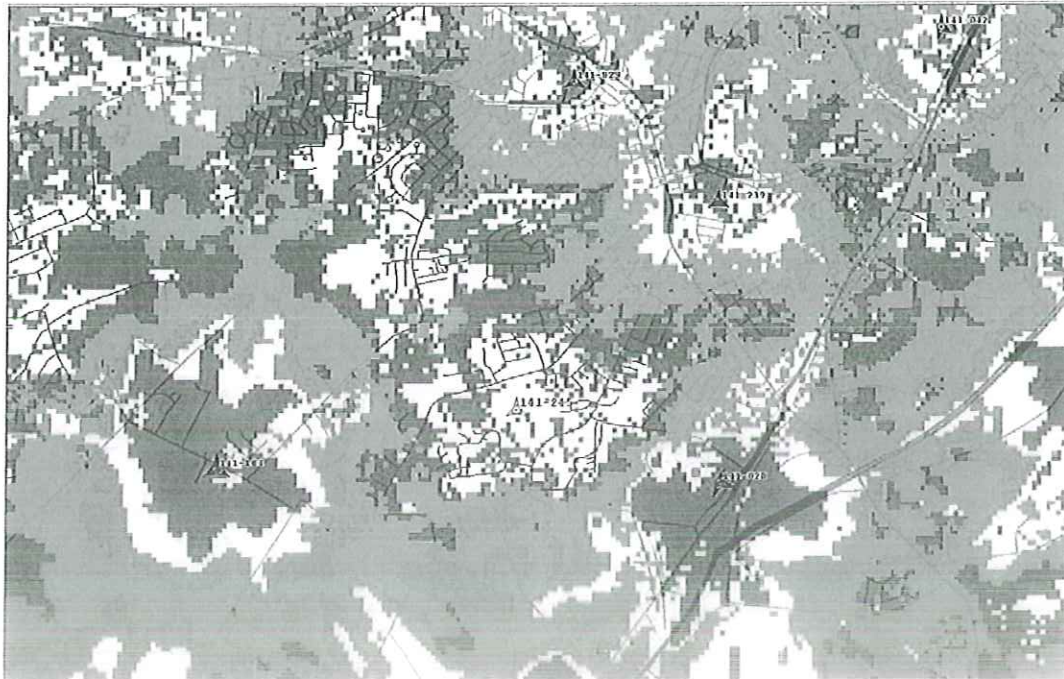


Currently AT&T Mobility does not have adequate network coverage around Parkton road. This new AT&T site will fill up the coverage hole in residential and commercial areas SW of Hope Mill. Refer to Figure 2, which shows coverage without the proposed site "141-245".

Figure 2: Map of AT&T Coverage without "141-245"

**RSCP (dBm)**

- Best Signal Level (dBm)  $\geq -72$
- Best Signal Level (dBm)  $\geq -80$
- Best Signal Level (dBm)  $\geq -85$
- Best Signal Level (dBm)  $\geq -92$
- Best Signal Level (dBm)  $\geq -98$





With the addition of proposed site "141-245" AT&T Mobility will improve its network coverage in this area. Refer to the Figure 3 which shows coverage with the proposed site "141-245".

Figure 3: Map of AT&T Coverage with "141-245"

**RSCP (dBm)**

- Best Signal Level (dBm)  $\geq -72$
- Best Signal Level (dBm)  $\geq -80$
- Best Signal Level (dBm)  $\geq -85$
- Best Signal Level (dBm)  $\geq -92$
- Best Signal Level (dBm)  $\geq -98$



If there are any further questions regarding this data I can be reached at (919) 852-2721.

Shohel Chowdhury  
RF Design Engineer  
AT&T Mobility  
Raleigh, NC



June 10, 2013

Ms. Pier A. Varner  
Cumberland County Planning and Inspections  
130 Gillespie Street  
Fayetteville, NC 28301

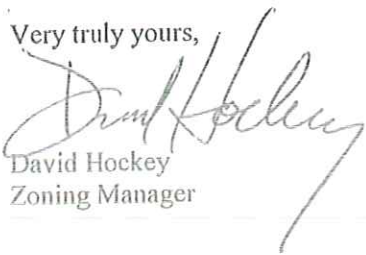
RE: American Tower Site No. 281152  
ATC Muscat Rd NC  
6091 Muscat Rd  
Hope Mills, NC 28348

Dear Ms. Varner

American Towers, LLC ("American Tower") will be the owner of the proposed 250 foot telecommunications tower ("Tower") located on the site referenced above. On behalf of American Tower, I certify as follows:

1. American Tower will permit the shared use of the tower. As shown on the construction drawings submitted with the Application for Special Use Permit, the Tower will accommodate three users, which will be AT&T, T-Mobile and Verizon.
2. The Tower will be constructed and operated in accordance with all applicable Federal, State and Local laws and ordinances, including but not limited to all Federal Communications Commission (FCC) and Federal Aviation Administrations (FAA) rules and guidelines.
3. Pursuant to Section 9270. of the Cumberland County Zoning Ordinance ("Ordinance"), the power density levels for AT&T will be well below both the federally approved levels and the levels set forth by the American National Standards Institute (ANSI).
4. The Tower will be lighted in accordance with FAA requirements and American Tower will provide documentation of the lighting requirements from the FAA prior to the issuance of the building permit.

Very truly yours,

  
David Hockey  
Zoning Manager

# *IMPACT STATEMENT*



**AMERICAN TOWER®**

*SITE #281152*

*“MUSCAT ROAD NC”*

*TO BE LOCATED SOUTH OF MUSCAT ROAD  
AND NORTH OF PARKTON ROAD, HOPE MILLS, NC*

*As per submitted plans*

PREPARED BY:  
GRAHAM HERRING COMMERCIAL REAL ESTATE  
GRAHAM HERRING GRI  
8052 GREY OAK DRIVE, RALEIGH, NORTH CAROLINA 27615

## **IMPACT STATEMENT**

This report addresses whether the proposed use is in compliance with the purpose and intent of the plan of development of The Cumberland County, Land Use and Zoning Ordinance, and is a compatible use in the area where it is to be located. In preparing this report, I inspected the site and surrounding areas in the district and reviewed the site plans for the facility provided by BC Architects Engineers, Inc. for The American Towers', application for a Special Use Permit. I have also consulted and reviewed with area appraisers, developers, tax authorities, planners and reviewed the public records in recent zoning cases in various jurisdictions in Fayetteville and Cumberland County, and prior applications in Fayetteville, Hope Mills and Cumberland County.

### **PROPOSED FACILITY**

The proposed facility will consist of a Two Hundred Fifty Foot (250.0~') Self Support. The site will be comprised of a developed area as described in the site plans and engineering plans that were submitted. The fencing surrounding the site will be a chain link fence at least ten (10.0') feet in height, with three strands of barbed wire at the top comprising an additional height of one foot three inches, around the sixty foot by sixty foot compound (70.0' by 70.0') within the (100.0' x 100.0') lease area, located in the developed area as described in the plans that were submitted. There will be a four (4) inch thick gravel weed barrier inside the fenced area and extending one (1) inch outside the fenced area. Landscaping will meet or exceed the County Ordinance requirements for this project. The area is zoned RR. The parent tract is shown in the County Records as Tax Parcel # 0413-14-3743, DB 2979, PG 590; The lease area to be developed will be some 12,100~ SF in size, as per the revised plans that were submitted.

## BACKGROUND

In general we have found that the factors that primarily affect property values are use, zoning, topography, and market demand. As the factors change, so do the current market value and development potential of any parcel of real estate.

While the value of a parcel of real property may be affected by the use of adjoining or surrounding property, that use must be significant in its intrusiveness or lack of compatibility in order to override the primary factors that affect property values. Uses which generate significant traffic, noise, odor, or dangerous conditions are generally the types of uses which are so intrusive as to override the normal factors affecting property values, and result in a material adverse impact on surrounding properties. For example, hog farms, rock quarries, paper mills, manufacturing plants, adult entertainment establishments, and similar uses, are generally believed to have a negative impact on the value of surrounding properties. In addition, development of property in a manner, which is significantly incompatible with existing or planned use of surrounding property, can result in a negative impact on property immediately adjacent to the incompatible use.

Our examination of the effects of the existing transmission tower and broadcast tower sites on surrounding properties, and our examination of other studies on this subject and available data, indicates that, in general, these type towers are not the type of use, which is so intrusive as to have an inherently negative impact on surrounding properties so long as the set backs are sufficient as to not cause an adjoining property to not be able to be used or developed for its highest and best use under the jurisdictions zoning restrictions.

## SUMMARY

My personal inspection of the site and surrounding areas, and public records revealed the following:

1. Located immediately to the north of the proposed site and parent tract are single family residential modular homes, north of Muscat Road, and RR, uses separated from the parent tract by mature trees, vegetation and cultivated land.
2. Located immediately to the west of the proposed site are cultivated and uncultivated farmlands, pastures, mature timber, and rural agrarian uses.
3. Located to the south of the proposed site are single and multi-family homes and mixed uses.
4. Located south and west of the proposed site are single family homes separated from the parent tract by mature trees and vegetation.
5. That the visibility of the facility will be very limited at ground level due to the existing vegetation, placement and separation from the existing developed uses around the parent tract. The areas outside fenced compound will be left undisturbed in order to maintain the existing wooded areas near the site.

In Summary, my personal inspection of this proposed site and other tower locations in North Carolina, in the jurisdictions of Cumberland, Robeson, Johnston, Wilson, Hoke, Moore, Sampson, Cities of Lumberton, Raleigh, Wilmington and many others, my personal Expert Witness Testimony in over 1,700 one thousand seven hundred zoning hearings for the record in these and many other jurisdictions across the southeast, my review of industry data regarding all types of wireless transmission towers, indicates that, in general, wireless telecommunication tower facilities do not have a inherently deleterious affect on surrounding properties. Our review of the Facility to be constructed at the Site, and personal inspection of the Site and surrounding area, indicate that the planned facility is generally compatible with the area's existing and proposed uses, and developed as proposed it will have no substantial negative impact on existing or planned development of the surrounding properties.

Moreover, this Telecommunications Facility, built as planned, will have no detrimental or injurious effect on the property values of the surrounding neighborhood or other improved or unimproved properties in the general vicinity. Finally, the nature of this location, with its separation from the residential arterials located around the proposed site, the unimproved areas and mixed uses nearby, heavily wooded areas, is such that the proposed development will not create any negative aesthetic effects on scenic roadways or other unique natural features.

DISCLAIMER

*This document is not to be construed as an appraisal of real property; developed or undeveloped. It is an assessment of empirical data and written expression of opinion of impact of this particular planned project, based on the experience of the author of this document. This document is not to be reproduced in whole or in part, disseminated to the public, nor is it to be used for any purpose other than the reason intended. No opinions of value or opinions of the correctness or accuracy of the engineering designs or plans submitted for this project are expressed, implied or intended by the author.*

Graham B. Herring, GRI  
NC Brokers License #30791  
SC Brokers License #13554

 - GRI Date: 6/6/2013  
Graham B. Herring, GRI

OVERVIEW OF THE CREDENTIALS OF GRAHAM HERRING, LICENSED NORTH CAROLINA AND SOUTH CAROLINA REAL ESTATE BROKER, AND GRADUATE OF THE UNIVERSITY OF NORTH CAROLINA REALTORS INSTITUTE.

GRAHAM B. HERRING, GRI  
8052 Grey Oak Drive  
Raleigh, North Carolina

**Experience:**

Licensed Real Estate Broker in North Carolina for 38 years  
Licensed South Carolina Real Estate Broker

Mortgage Lending and Appraising, 6 Years (Single Family Residential)  
Land Development (Commercial and Residential)  
Shopping Center development, leasing and sales  
Industrial, Office and Institutional, Commercial properties; development, leasing and sales.  
Specialized Computer enhanced photography (Photo Simulations)  
Site Acquisition, Telecommunications, Radio, Television, and EMS/911 Facilities  
SHPO North and South Carolina/ remediation work  
Residential/Builder Construction lending  
Certificate of Completion, United States Savings and Loan League Single Family Residential Appraising Course.

Past Executive Director of the Nash County, and Rocky Mount Homebuilders Association  
Graduate of the North Carolina Homebuilders Institute  
Graduate of the North Carolina Insurance Institute  
Graduate of the International Shopping Center Institute School of Management and Leasing  
Graduate of the University of Pennsylvania/Wharton School Of Investment Real Estate  
Consulted with City Municipalities and County Governments. Concerning Potential Impact of Telecommunications Facilities, in planning and study meetings.  
Appeared as an expert witness in over 1700 Zoning Hearings, in 67 counties, and 65 jurisdictions in North Carolina, Virginia, Georgia, Florida and South Carolina  
Consulted with developers concerning planning and placement of telecommunications facilities in planned developments, i.e.: Weston, and Wakefield.  
Testified as an expert witness regarding impact on surrounding properties of Telecommunications Facilities in Board of Adjustment and Commissioners hearings throughout North Carolina, Virginia, Georgia, Florida and South Carolina.  
Conducted Market and Tracking Studies in several counties including Wake and Orange counties, on the development of telecommunications facilities, and the sale of improved residential properties in developments that are surrounding such facilities, and comparison studies of such.





1130 Situs Court, Suite 100  
Raleigh, NC 27606

**DATE:** May 17, 2013  
**SUBJECT:** FCC Compliance Assessment for Proposed AT&T Mobility Site 141-245 "Muscat Road NC-281152"

AT&T Mobility has been requested to evaluate the radio frequency emissions of our proposed site 141-245. In addition; AT&T Mobility has been requested to address other RF related topics such as transmitter operation and maximum permissible output power levels. The remainder of this report will address all RF related items requested by Cumberland County Zoning/Planning for proposed site 141-245 "Muscat Road NC-281152"

#### Transmitter Operation

AT&T Mobility owns the C LTE Bands and B Band PCS license in Cumberland County. The transmitters being used on the proposed site are authorized to operate in the 740-745 and 1950-1965 Megahertz (MHz) frequency range. The Ericsson Node B base station transmitters AT&T Mobility utilizes have a maximum output level of 40 Watts. AT&T Mobility utilizes the LTE and UMTS digital technology. As a result our transmitters utilize 64-State Quadrature Amplitude (64 QAM) and Quadrature Phase Shift Keying (QPSK) modulation. Precision filters limit unwanted and spurious emissions to levels below the FCC specification. The signals being transmitted will not interfere with the operation of commercial radio, cellular radio, television, telephone or other FCC approved communication equipment.

#### Maximum Permissible Output Power

The maximum permissible power spectral density is 3280 Watts/MHz from the antennas in rural areas and 1640 Watts/MHz in urban area. . The proposed site 141-245 "Muscat Road NC-281152" is only transmitting 540 Watts/MHz.

#### RF Exposure (NIER levels)

The FCC states in 47 CFR 1.1310 that the maximum permissible exposure (MPE) level from **non-ionizing electromagnetic radiation (NIER)** to the general population at cellular and PCS frequencies is 1.0 milli watt per centimeter squared ( $mW/cm^2$ ). MPE is a measure of the RF power density at or below which there are no potential harmful effects from the exposure.

Power density calculations are based on guidelines given by the ANSI Standard C95.1-1992 and are based on a worst case scenario. For analysis purposes, worst case conditions were chosen for all output power levels. The site is being deployed initially with 9 transmitters. For analysis purposes, 15 transmitters were used. A summary of the results of the power density calculations for site 141-245 "Muscat Road NC-281152" is listed below in **Table 1**.

Distance From Tower (Feet)	Power Density ( $mW/cm^2$ )	%FCC Standard
1	0.0000206	0.002057555
25	0.0000204	0.002036039
50	0.0000104	0.001035977
75	0.0000211	0.002107859
100	0.0000376	0.003761958

Table 1: Power Density Summary for Site 141-245 "Muscat Road NC-281152"

As shown in **Table 1**, the maximum power density will not exceed  $0.0000376 mW/cm^2$  at ground level. Moreover, the average energy expected near ground level is less than 1% of the MPE level. This

level does not exceed the MPE limit set by the Federal Communications Commission or the American National Standards Institute.

Based upon the ANSI/FCC standard and the predicted levels of electromagnetic energy emitted by the site 141-245 "Muscat Road NC-281152" installation will be of no safety concern to the general public.

If there are any further questions regarding the information provided I can be reached at (919) 852-2721.

Sincerely

A handwritten signature in black ink that reads "Shohel Chowdhury". The signature is written in a cursive style with a large initial 'S'.

Shohel Chowdhury  
RF Design Engineer  
AT&T Mobility LLC.  
Raleigh Market  
Tel: 919-852-2721  
E-mail: [sc3730@att.com](mailto:sc3730@att.com)

June 11, 2013

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

RE: American Tower Site: Muscat Rd. NC - 281152  
Location: 6091 Muscat Rd. Hope Mills, NC 28348  
Jurisdiction: Cumberland County

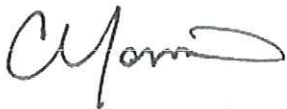
Ms. Varner:

I am an engineer registered in the State of North Carolina. In connection with the above site, I certify as follows:

1. The tower will be designed to have the structural integrity and/or capacity to support or accommodate more than one use or user.
2. The tower will be designed to be structurally sound.

Sincerely,

BC ARCHITECTS ENGINEERS, PLC



Printed Name: Christopher D. Morin, PE

Registration No. 22082

SEAL



## Special Use Permit – Board of Adjustment

(Tower)

DRAFT

### Ordinance Related Conditions

#### Permit-Related:

1. The owner/developer(s) of these lots must obtain detailed instructions on provisions of the County Zoning Ordinance and permits required to place any structure within this development from the County Code Enforcement Section, Room 101 in the Historic Courthouse at 130 Gillespie Street. For additional information, the developer should contact a Code Enforcement Officer.
2. Applicable to any future development of subject property: The County Health Department must approve water and sewer plans prior to application for any permits. Site and soil evaluations must be conducted on the property by the County Environmental Health Department prior to application for permits. A copy of the Health Department approval must be provided to Code Enforcement at the time of application for any building/zoning permits. (Note: All Health Department requirements must be met prior to issuance of final permits.) (Section 2306 A, Water and Sewer, County Subdivision Ordinance)
3. The developer must provide a site-specific address and tax parcel number at the time of building/zoning permit application.
4. New development where the developer will disturb or intends to disturb more than one acre of land is subject to the Post-Construction Stormwater Management Permitting Program (Phase II Stormwater Management Requirements) administered by the Division of Water Quality, North Carolina Department of Environment and Natural Resources. If one acre or more of land is to be disturbed, prior to the issuance of any building/zoning permits for this site, a copy of the State's *Post-Construction Permit* must be provided to County Code Enforcement.
5. For any new development where the developer disturbs or intends to disturb more than one acre of land, the developer must provide the Code Enforcement Section with an approved NC Department of Environment and Natural Resources (NCDENR) sedimentation and erosion control plan (S&E) prior to any application for permits. (Note: If any retention/detention basins are required for state approval of this plan, then three copies of a revised plan must be submitted and approved by Planning & Inspections prior to application for any building/zoning permits.) A copy of the NCDENR approval must be provided to Code Enforcement at the time of application for any building/zoning permits.
6. 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.
7. 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.
8. The certificate of completion cannot be issued until such time that a demolition permit for the abandoned dwelling is obtained, the abandoned dwelling is demolished, properly disposed of and all extrinsic debris removed from the subject property.
9. If the proposed lease area for the proposed cell tower is to be recorded as lease lot and split out for tax or other purposes, prior to application for any permits, the developer must submit to the Planning and Inspections Department a subdivision review to subdivide the lease lot. (Note: The current size of the lease area shown on the site plan – not capable of supporting setbacks – and not including the minimum of 20 foot of road frontage, a subdivision cannot be approved as designed. The entire drive area and the fall zone area around the tower would need to be part of any division if the lease area is to be recorded as a lease lot.)
10. 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.

**Site-Related:**

11. All uses, dimensions, setbacks and other related provisions of the County Subdivision and Zoning Ordinances for the RR zoning district must be complied with, as applicable.
12. 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.)
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. An internal street system will be required to serve any divisions of the subject property.
17. All lighting is required to be directed internally within this development and comply with the provisions of Section 1102 M, Outdoor Lighting, County Zoning Ordinance.
18. The 25 foot wide solid buffer area surrounding the tower compound must be planted with evergreens unless there is sufficient existing vegetative growth as determined by Code Enforcement that can satisfy this ordinance provision; and the buffer must be provided and maintained in accordance with the provisions of Section 927 F, Tower, County Zoning Ordinance
19. All required off-street parking spaces shall be a minimum of 9' x 20'; a minimum of one off-street parking spaces are required for this development.
20. 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.
21. 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.

**Other Related Conditions:**

22. The applicant is advised to consult an expert on wetlands before proceeding with any development.
23. Because the subject property is within the Voluntary Ag District (VAD), the property owner(s) are encouraged to contact the County Tax Office and the NC Extension Office prior permit application to ensure the owner(s) clearly understand the effect of this development approval as related to any tax exemptions currently applied to the subject property.
24. The owner/developer is responsible for ensuring easements which may exist on the subject property are accounted for, not encumbered and that no part of this development is violating the rights of the easement holder.
25. Any minor modifications or changes to the site must follow the requirements set out in Section 506, County Zoning Ordinance.

*Thank you for doing business in Cumberland County!*

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

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

Subdivision/Site Plan/Plat	Ed Byrne	678-7609
Code Enforcement (Permits):	Ken Sykes	321-6654
County Health Department:	Daniel Ortiz	433-3680
County Public Utilities:	Amy Hall	678-7637
Corp of Engineers (wetlands):	Crystal C. Amschler	(910) 251-4170
Town of Hope Mills:	Mike Bailey	424-4555
County Tax Office, Exempt Property:	Diana Lyman	678-7559
NC Cooperative Extension:		321-6880
Voluntary Ag District Staff Rep:	Deloma "Shawn" West	678-7611
NC DENR (E&S):	Sally Castle	433-3300
Location Services:		
Site-Specific Address:	Ron Gonzales	678-7616
Tax Parcel Numbers:		678-7549
NCDOT (driveways/curb-cuts):	Gary Burton	486-1496
N.C. Division of Water Quality:	Mike Randall	(919) 733-5083 ext. 545

cc: Mike Bailey, Town of Hope Mills  
Diana Lyman, County Tax Administration, Exempt Property