

Amy H. Cannon
County Manager

Tracy Jackson
Assistant County Manager



CUMBERLAND
COUNTY
NORTH CAROLINA

Rawls Howard
Director

David Moon
Deputy Director

Board of Adjustment

MINUTES
June 17, 2021
6:00 PM

Members Present

George Turner
Gregory Parks
Marva Lucas-Moore
Stacy Michael Long - Alternate
Linda Amos - Alternate

Alternate Members in Attendance

Robert Davis

Absent Members

Vickie Mullins-Alternate

Staff/Others Present

David Moon
Yolanda Bennett
Nikia Charles
Rob Hasty
(Asst. County Attorney)

Chair Turner called the meeting to order at 6:04 p.m. in Public Hearing Room #3 of the Historic Courthouse.

Chair Turner stated the procedural matters are to turn off all cell phones and other electronic devices, other than the camera, are fine and if asked to speak at the podium to please speak clearly into the microphone as the meeting is being recorded.

1. INVOCATION

Stacy Long

PLEDGE OF ALLEGIANCE

Recited by all.

2. ROLL CALL

Mr. Moon called the roll. Mr. Moon stated based on roll call, we have a quorum. Mr. Moon also mentioned present for the meeting was Mr. Hasty, from the attorney's office, Mrs. Yolanda Bennett who was present at the last Board Meeting and Nikia Charles who will serving as our clerk in the Board of Adjustment meetings moving forward.

3. SWEAR IN STAFF

Chairman Turner swore in staff.

4. ADJUSTMENTS TO THE AGENDA

Mr. Moon stated case P21-02-C that was continued from May 20, 2021 be relocated on the agenda to number 7 for Deferrals/Withdrawals based on the applicant submitting in writing his request to withdraw his application for a variance.

5. APPROVAL OF THE MAY 20, 2021 MINUTES

Ms. Marva Lucas-Moore made a motion to approve the minutes from the May 20, 2021 meeting as written, seconded by Mr. Gregory Parks. The motion passed unanimously.

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	IN FAVOR
TURNER	YES
LONG	YES
AMOS	YES
PARKS	YES
LUCAS-MOORE	YES

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

There were none.

7. PUBLIC HEARING DEFERRALS/WITHDRAWALS

The Board accepted the withdrawal of case P21-02-C.

8. POLICY STATEMENT REGARDING APPEAL PROCESS

Mr. Moon read the policy statement.

9. PUBLIC HEARING(S)

Chairman Turner read the case heading for Case No. P21-01-C.

P21-01-C: CONSIDERATION OF A SPECIAL USE PERMIT TO ALLOW A CAMPGROUND IN AN A1 AGRICULTURAL DISTRICT ON 40.58+/- ACRES, LOCATED ON THE NORTH SIDE OF SR 2026 (7715 CONCORD CHURCH ROAD), EAST OF CASHWELL ROAD, SUBMITTED BY MICHEAL AND MARIE JOYAL AND JUDITH MURACH (OWNER)

CHAIR TURNER: Stated this was a continuance from the last two meetings. He asked to hear about the case.

Mr. Moon stated, following the history of the case for special use. The applicant, Mr. Joyal, who is sitting behind me, had requested a continuance of the hearing as of April 15th Board of Adjustments hearing so that he could have a plat made to separate the campground area from the majority of his property. He has prepared a plat and had that recorded in the records of the county. On May 20th, staff requested a continuation because we did not have adequate time to review a revised special use site plan, that was based on the change in the lot area to the property in conjunction with that plat. That brings us to an amended site plan as well as an amended application. The reason the application was for special use for a campground, which is not a permitting use within the assigned zoning district of A1. The new site is 19.0 acres. This case when previously reviewed before the Board of Adjustments so our report stands from the previous meeting. I'll go through the revised site plan and explain the changes on that to you. If the Board would prefer me to go back to the beginning of the case and give a description of its location and character, I can do that. If not, then we'll go straight into the revisions of the site plan.

CHAIR TURNER: Is everyone aware of this, we've seen it twice I think now. We may have to go back just to refresh our memory. Just to clarify, is there a new site plan?

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MR. MOON: There is, Mr. Moon went on to show a slide that represented the plat that has been recorded with the county. He said the center lot shaped like a pork chop was the campground site. It is 19 acres of the original site. He showed the revised site plan with changes that included the existing building as the designated campground office and campground manager residential structure. The site also identifies a 20-foot buffer around the campground. The site plan shows the building closest to the campground as a storage facility now and the location of the buffer on the north. Mr. Moon pointed out the building that would be the campground office. He said the octagon shape on the site is the caretaker resident. The building along the roadway can not be used for a caretaker home unless a variance is obtained as the building is closer than 100 feet from the right-of-way. Part of the staff report recommendations addresses the this word “waiver”, which has to change to “variance”, but the building can be used for storage for the campground. That’s the only use that can occur in this structure.

CHAIR TURNER: What is that building, is it a house or a storage building?

MR. MOON: It’s a house.

CHAIR TURNER: It is a house.

MR. MOON: It’s currently not occupied. Mr. Joyal can explain some of the other details. Mr. Moon showed a slide and said it showed a summary of what had occurred in the site plan. Mr. Moon went on to say that the campground is now limited to this parcel in the center. That parcel also includes these buildings and buffers. Staff reviewed the site plan and found that it meets the requirements for the special use site plan and is consistent with the zoning code as well the County develop regulations. Further review or consistency with the code and the conditions of the special use site plan will occur at that time a site plan is submitted for the development of the site. That concludes my presentation. If you have any questions, I will be glad to address them.

CHAIR TURNER: Based on what’s here, does the county have any issue with this?

MR. MOON: We do not. As long as the conditions for special use permit are followed.

CHAIR TURNER: The county has no issues. Anyone have any questions in the staff?

There were none.

Chair Turner opened the public hearing and swore in Mr. Michael Joyal, the only speaker.

CHAIR TURNER: Is there anything you want to add to what the staff has told us?

MR. JOYAL: I just want to thank him (referring to Mr. Moon) for his input from the last meeting. I got what we got and he gave me some pointers and I’ve incorporated them because I thought they were great ideas. I just had to change one word apparently. The waiver word.

CHAIR TURNER: What is that David?

MR. MOON: On the plan, this call out right here, states that if he wants to use the storage building as a caretaker home, he would have to apply for a variance.

MR. PARKS: Not a waiver.

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MR. JOYAL: Correct. This isn't going to be happening in the next two weeks. This is a project that is going to take some time.

CHAIR TURNER: Is that house livable? You said it was small, I think, but is it livable?

MR. JOYAL: It's really small but yeah you could.

CHAIR TURNER: I mean you own the house right?

MR. JOYAL: Yes.

CHAIR TURNER: You have no purpose in mind for it?

MR. JOYAL: Well, rather than have my kids stay in my house, I might put them over there when they come to visit.

CHAIR TURNER: How big of a house is it?

MR. JOYAL: I don't think its 900 sq. ft. The bedroom is about the size of your desk. It's small. I mean it's a nice little place for what it is.

CHAIR TURNER: Just for general use, you may want to get a variance and go get it approved in case you ever decide to make use of it. You may want to add on it and build a garage in the back or something.

MR. MOON: Variance is based on the setbacks.

CHAIR TURNER: Does it not have that?

MR. MOON: If used as a caretaker residence it has to be a setback 100 feet from the road right of way.

MR. PARK: That's not going to work.

MR. MOON: Right now it's about 80 feet. So you would need a variance.

CHAIR TURNER: What if he uses it as guest quarters for his children?

MR. MOON: As a guest quarters it falls under the campground special use. (Mr. Moon begins pointing at the slide) this language here states that it would be used as a shed or as a caretaker residence. If it's used as a caretaker residence, there only can be one at the campground. It could be this building or it could be this building if the variance is obtained from the setbacks for the right of way. For a campground site any building can't be closer than 100 feet to the right-of-way.

CHAIR TURNER: Well just to clarify that, I think what he's saying is if he uses it for any use it would be as guest quarters for his children possibly. Is that allowed without him doing anything?

MR. MOON: That would not be my interpretation of the zoning code in special use for a campground. He would only be able to use that building as a storage shed, for storage for the campground. Or if he gets the variance for caretaker residence.

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CHAIR TURNER: And he doesn't need it for a caretaker residence, he's already got one. Okay I understand. Anybody have any questions?

There were none.

MR. JOYAL: Just so that all of you know, we've talked to our neighbors, they have that as well. Their concern was we were going to pack campers in there along our property line by their yard. I'm not building a KOA here. 20 sites. It's going to be back in the woods. They don't care. As long as it's nobody next to their property line and it's as you can see, a long way from their property line.

MR. PARKS: Is there a body of water back in there I remember?

MR. JOYAL: Way back in the northwest corner, where I've never even walked yet. There was one marker that the survey guy, Maps Incorporated or whatever his company's name is, he couldn't get to it because it's under water. Like I said, I haven't been back that far into the property and I don't think anybody else ever will. I don't know why there's that big chunk sticking up like that. We're surrounded by City of Fayetteville property which I don't know why Fayetteville owns all of that stuff out there but they do. Or you do or whoever it is.

CHAIR TURNER: The city owns it? The city itself you mean? The City of Fayetteville itself owns the property?

MR. JOYAL: Yes. The city owns 750ish acres and it surrounds about maybe almost half of my property. The rest is privately owned. And they have a big chunk there. I don't know why.

CHAIR TURNER: They don't do anything with it?

MR. JOYAL: I think somebody uses some of it to farm but there's nothing going on out there. I always wondered why, why did Fayetteville build it, I mean it's on the other side of Stedman.

CHAIR TURNER: We usually get those I thought in tax foreclosures or something like that. But then the county would have some interest in it too. I don't know. Well our records would reflect that there's no one here in opposition of you so that's a good thing. Any questions of the Board Members at all?

There were none.

MR. MOON: Chairman as a reminder, for a special use application, there are four criteria that the application must comply with. So as part of the motion the Board needs to address compliance with those four criteria.

ROB HASTY: The applicant has submitted Exhibit I where he's responded to these four criteria. You can look at it and then if you do you can prepare this in the motion.

CHAIR TURNER: Ok if there's no further discussion is there a motion.

MR. PARKS: I make a motion to approve.

MR. LONG: We have to do a finding of facts.

CHAIR TURNER: We have to do a finding of facts. Basically Mr. Park's motion to approve is based on 1. The use will not materially endanger the public health or safety of located according to the plan submitted and recommended.

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MR. PARKS: What page are you on?

ROB HASTY: It starts in your packet under exhibit I. Address each one of those. You don't have to read them all but you can incorporate, you just say you incorporate exhibit I in the motion.

CHAIR TURNER: Based on the findings of fact, we'll incorporated exhibit I that was filled out by the applicant as part of his requirements for a special use permit. All of those he has agreed to.

MR. PARKS: We will do that. 1. The use will not materially endanger the public health or safety if located according to the plan submitted and recommended. 2. The use meets all required conditions and specifications. 3. The use will maintain or enhance the value of adjoining or abutting properties, or that the use is a public necessity; and 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 the Cumberland County's most recent Comprehensive Land Use Plan.

CHAIR TURNER: Is that good Mr. Hasty?

ROB HASTY: Yeah all it is, is responding to his part of the motion to exhibit I.

CHAIR TURNER: There is a motion on the floor is there a second?

Mr. Parks made a motion to approve based on including exhibit I which states 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. 3. The use will maintain or enhance the value of adjoining or abutting properties, or that the use is a public necessity; and 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 the Cumberland County's most recent Comprehensive Land Use Plan. Mr. Long seconded the motion. The motion passed unanimously.

	IN FAVOR
TURNER	YES
LONG	YES
AMOS	YES
PARKS	YES
LUCAS-MOORE	YES

CHAIR TURNER: P21-02-C has been withdrawn so item 10 was our Board of Adjustments Membership Recommendations.

STACY LONG: Is that close of public hearing?

CHAIR TURNER: Yes we close the public hearing. You're approved, you're good.

MR. JOYAL: Could I just ok say maybe two things to everyone here. First, I already thanked him (referring to Mr. Moon) when I first came in but I wanted you to know. Since the last meeting he provided some tips and pointers and help to me, and I thank you for that, it worked out well. Except for that one word, "waiver" needs to be "variance".

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Second, and this one is a biggy, it is very refreshing to come to a government meeting and hear the pledge and an invocation. I can not tell you how strongly I support that action.

CHAIR TURNER: We're going to keep doing it.

MR. JOYAL: Don't succumb to whatever forces are out there. Continue doing this because it's the right thing to do.

CHAIR TURNER: We're going to keep doing it to the best of our ability.

10. BOA MEMBERSHIP RECOMMENDATIONS

MR. MOON: The next thing on the agenda is the Board Membership Recommendations. Based on a request from the Board of County Commissioners and past practices and traditions, vacancies of positions on the Board of Adjustments, either alternate or regular members, the current members of the BOA are asked to make a recommendations for citizens who are interested in participating as a member or an alternate on this board. Within your package you'll find a staff report that list the current members, former members that are no longer on the board and the positions that are vacant, so you can make the connection between the member that created the vacancy or will create the vacancy. In this case Mr. Turner, in terms of Chairman, he is termed out at the end of August.

CHAIR TURNER: This says September.

MR. MOON: The end of September.

MR. PARKS: Where is that information in our packet?

MR. LONG: They mailed it to us.

CHAIR TURNER: Well certainly I think the two vacant position we have now, this board should recommend Mr. Davis for one of those seats. Is that good?

MR. MOON: So Mr. Chair it's up to you as to how you want to conduct the proceedings. There are, based on the staff report, two current vacancies. One upcoming vacancy for regular members and there's one vacancy of an alternate. My suggestion is you handle the two separately. You have options. You could just recommend a list of members for consideration for either regular or alternate. Or you could breakdown the recommendations to a seat as a regular member and then second address the candidate or candidates for the alternate member.

CHAIR TURNER: It would seem to me that we have two vacancies right now Mr. Ferguson and Mr. McHenry's seats. I would make a motion to the board that we make Mr. Davis, ask the County Commissioners to appoint him to one of those vacant seats. Am I understanding that, Linda, I thought you were a regular member now. Are you an alternate?

MS. AMOS: I'm still an alternate.

CHAIR TURNER: I would make a motion that we change that. In that motion that she be appointed to a regular seat. That would fill the two that are vacant. That's a motion on the floor.

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Chair Turner made a motion to appoint Mr. Davis and Ms. Amos as regular Board Members to fill the current vacancies. Mr. Long seconded the motion. The motion passed unanimously.

	IN FAVOR
TURNER	YES
LONG	YES
AMOS	YES
PARKS	YES
LUCAS-MOORE	YES

CHAIR TURNER: Now we would have one seat vacant for an alternate member?

MR. MOON: Correct.

CHAIR TURNER: Ok. We have a list of folks that have applied here. Is there any there that

MR. PARKS: Mr. Chairman I see one here that's been in the business a long time that I would recommend. A fellow by the name of Kenneth Turner, for the alternate position.

CHAIR TURNER: Ok. Does anybody want to know about him? He's my cousin. He has been to a number of our meetings if you've not met him. He was in the banking business for years. He's a developer. He develops mostly in Hoke County. He puts together lots and then sell the lots to builders is the way he's been doing. He has a real interest in this.

MS. LUCAS-MOORE: I second the motion.

Mr. Parks made a motion to appoint Kenneth Turner as the alternate seat on the Board. Ms. Lucas-Moore seconded the motion. The motion passed unanimously.

	IN FAVOR
TURNER	YES
LONG	YES
AMOS	YES
PARKS	YES
LUCAS-MOORE	YES

CHAIR TURNER: Will that work David?

MR. MOON: That will work.

CHAIR TURNER: What about the minimum housing code?

11. DISCUSSION/UPDATES: MINIMUM HOUSING CODE

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MR. MOON: Next on the agenda is discussion and updates. At the last Board of Adjustment meeting I mentioned that the Board of County Commissions adopted an ordinance that assigns responsibility of the Housing Appeal Board to the Board of Adjustments. So any new housing appeals would appear on your agendas. So this previous board which seldom met, they added some of the hearings but we do have an upcoming case that will appear on the August hearing. Short beyond tonight they have to request a delay for two months. You'll be addressing those cases that are on your agenda. I will be sending out to you the description and responsibilities of the Housing Board cause it is now this Board's responsibilities. I'll provide you with a current version of the Linden Housing Code. So you'll have those two documents to review to find out what responsibilities or additional responsibilities you'll have as Board of Adjustment Members. When you receive the package if you have any questions, please give me a call. I'll get back with you.

CHAIR TURNER: Are you going to send out information on that specific case too? So we can at least get a reading on some idea what we're doing?

MR. MOON: When the agenda is prepared, remember this Board serves under quasi-judicial function and has ex parte communication responsibilities. So information about this case can only be discussed here. I don't want to provide that information to the Board until we distribute the entire agenda to the June package and have prepared the public notices for that meeting.

CHAIR TURNER: Its interesting how this Board has changed through the years. I was on this in the 90's and we got all the information well ahead of time and in many cases we took a county owned vehicle with Board Members and went out to the site to see what was going on. That's the way we operated. I hate to say it but it works a lot better. Sometimes you just got to see it. It really helps. Did that change legally?

RON HASTY: We don't recommend that Board Members, unless you go as a group, and kinda want to do it that way. It causes a problem if two people go out there and look and then you got a hearing and those people start telling you well I went out there and this is what I saw, and also you're a witness in the case. You're testifying and the other Board Members who didn't go they don't really know. So our recommendation is just base all your decisions on what you hear in this hearing on evidence, just as like you very would in a courtroom. And there may be a situation, there may be a case where a site visit is perhaps necessary. With all the technology, maps, and photographs that you're shown hopefully that will answer any questions that you may have during a hearing.

CHAIR TURNER: I think most of ours they'd send the packet out a couple of weeks ahead of time and after a few days if you felt like you needed to go see it, seem like we would call and line up some kind of county vehicle and all the Board Members would go in one vehicle. And we didn't get out and mess around but we'd go out and see a situation. Back then we had a lot of cell towers and you kinda want to go see what's around it and you know is this going in somebody's corn field or something. Maybe it's not necessary but it sure did seem to add a lot. Anybody else have anything? Is there a motion to adjourn?

Mr. Parks made a motion to adjourn. Mr. Long seconded the motion. The motion passed unanimously.

	IN FAVOR
TURNER	YES
PARKS	YES
LUCAS-MOORE	YES
LONG	YES
AMOS	YES

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Board of Adjustment

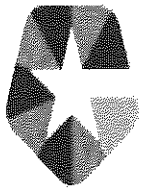
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Meeting adjourned at 6:44pm.

Nikia Charles, Senior Admin. Support Spec.

George Turner, Chairman



CUMBERLAND
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BOARD OF ADJUSTMENT (BOA) HEARING
July 15, 2021

Agenda Section 4

SUBJECT: ANNUAL SELECTION OF THE CHAIRMAN AND VICE-CHAIRMAN FOR THE BOARD OF ADJUSTMENT

REQUEST: Nominate and Select a Chairman and a Vice-Chairman for the upcoming calendar year

EXPLANATION OF THE REQUEST

As set forth in the Board of Adjustment Rules of Procedures, Section II.A and II.B., the Board of Adjustment appoints a Regular member to serve as the chairman and vice-chairman for one calendar year. Per the Rules of Procedures, the terms for the chairman and vice-chairman "shall be for one calendar year beginning July 1 and ending on June 30, and until the successor is qualified."

MOTION

The chairman position should be selected first, and the vice-chairman selected second.

Attachment: Rules of Procedures, Board of Adjustment

**Cumberland County, North Carolina
Board of Adjustment**

Rules of Procedure

I. GENERAL RULES

The Board of Adjustment shall be governed by the terms of the *General Statutes of North Carolina*, § 153A-~~345~~, including subsequent amendments, and by the *Cumberland County Zoning Ordinance*, adopted June 20, 2005 as it may be amended from time to time. All members of the board shall thoroughly familiarize themselves with these regulations.

II. OFFICERS AND DUTIES

- A. *Chairman.* The chairman shall be elected by majority vote of the membership of the board from among its regular members. The chairman's term of office shall be for one calendar year beginning on July 1 and ending on June 30, and until the successor is qualified. The chairman shall be eligible for reelection provided that the individual remains qualified as a regular member and the term limit has not expired. Subject to these rules, the chairman shall rule upon all points of order and procedures, unless overruled by a majority of the board in session at the time.
- B. *Vice-Chairman.* A vice-chairman shall be elected by the regular board members in the same manner and for the same term as the chairman. The vice-chairman shall serve as acting chairman in the absence of the chairman and at such times when so acting, the vice-chairman shall have the same powers and duties as the chairman.
- C. *Secretary.* The individual fulfilling the duties as secretary shall be a County Planning and Inspections staff member and shall be assigned to serve the board by the County Planning and Inspections Director (hereinafter *director*) or the director's designee. The secretary shall act in this capacity so long as the staff member assigned is performing in an acceptable manner as determined by the director or the director's designee. The secretary, subject to the direction of the chairman and the board, shall keep all records, shall conduct all correspondence of the board, shall arrange for all public notices required to be given, shall notify members of pending meetings and their agenda, shall notify parties to cases before the board of its decision on such cases, and shall generally supervise and ensure the administrative work of the board is properly and efficiently accomplished. The secretary shall ensure that a complete set of minutes of the record for every board meeting is kept in a permanent volume in a secure location. The minutes shall show the record of all material facts pertaining to each meeting and hearing, every resolution acted on by the board, and all votes of members of the board on any resolution or on the final

determination of any question, indicating the names of members who are absent or fail to vote. The secretary shall not be eligible to vote on any matter coming before the board.

III. MEMBERS

160A-388

- A. Membership on the Board of Adjustment shall be governed by the terms of the *General Statutes of North Carolina*, § ~~153A-345~~, as in effect, and by the *Cumberland County Zoning Ordinance* adopted June 20, 2005, and as amended from time to time.
- B. Individual board members, whether appointed as a regular member or an alternate, may be removed for cause, including violation of these rules, by majority vote of the County Board of Commissioners.
- C. Faithful attendance at all meetings of the board and conscientious performance of the duties required of members of the board shall be considered a prerequisite of continuing membership on the board. Regular members missing three consecutive meetings without good cause shall be requested to resign immediately, and if a resignation is not submitted may be removed by the County Board of Commissioners.
- D. Board members shall not take part in the hearing, consideration or determination of any case in which the board member is personally or financially interested or as to which the board member may have a bias making it inappropriate for the board member to participate in consideration of such case.
- E. Board members shall not vote on any matter deciding an application or appeal unless the board member attended the meeting in which the hearing on the application or appeal occurred.
- F. Board members shall not discuss any case with any parties or independently investigate any case prior to the hearing on that case. While prior knowledge or modest communications prior to a hearing does not automatically disqualify a board member from participating in a case, board members must not enter the hearing with a fixed opinion about the case and each board member must disclose on the record at the start of the hearing any personal prior knowledge and/or communications.
- G. Members of the board shall not express individual opinions on the proper judgment of any case with any parties thereto prior to its determination of that case. Violations of this rule will be reported to the County Board of Commissioners and could be cause for removal from the board.

IV. MEETINGS

- A. *Regular Meetings.* Regular meetings of the board shall be held monthly on the third Thursday of the month, except that if no application is filed by the application deadline schedule prior to a meeting date, the secretary shall notify all members that no meeting will be held for that month. The meetings shall be held in Public Hearing Room #3 at the Historic Courthouse, 130 Gillespie Street at 7:00 p.m., except as specified for special meetings below.
- B. *Special Meetings.* Special meetings of the board may be called at any time by the chairman. At least 48 hours written notice of the time and place of special meetings shall be given by the secretary or the chairman, to each member of the board, and notice shall also be given in compliance with the *North Carolina Open Meetings Law*. Special meetings can only be called if it is pre-determined that a quorum of the board members can be present.
- C. *Quorum and Voting.* A quorum shall consist of four members of the board. However, the concurring vote of four-fifths of the members of the board for the hearing of a particular case shall be necessary to: reverse any order, requirement, decision, or determination of any administrative official charged with the enforcement of any County ordinance in which the Board of Adjustment has been designated as the appeals board; to grant any variance from any County ordinance that the board has the authority to vary; to rule on matters concerning nonconforming uses; to interpret the official zoning maps; and pass upon disputed questions of lot lines or district boundary lines as they arise in the administration of the *County Zoning Ordinance*. A simple majority vote is required to find in favor of an application for a Special Use Permit and for matters subject to approval as high density developments under the provisions of the *Cumberland County Water Supply Watershed Management and Protection Ordinance*.
- D. *Conduct of Meetings.* All Board of Adjustment meetings shall be open to the public. Except for consideration of high density development applications subject to the provisions of the *County Water Supply Watershed Management and Protection Ordinance*, all board meetings shall follow quasi-judicial protocol. The order of business at regular meetings generally shall be as follows:
1. Roll call;
 2. Adjustments to the agenda;
 3. Approval of the minutes of the previous meeting;
 4. Abstentions by board members;
 5. Public hearing deferrals;

6. Board member disclosures;
7. Board policy statement regarding appeal process read to audience;
8. Hearing of cases;
9. Discussion by board members and staff;
10. Updates on previously heard cases; and
11. Adjournment.

V. APPLICATIONS

- A. *Type of Applications.* The board shall hear and decide all matters referred to it and as enumerated in Section 1603 of the *County Zoning Ordinance*.
- B. *Procedure for Filing Applications.* All applications for hearings shall be filed with the secretary, or with the administrative official, acting as secretary for the board for purposes of receiving this notice. All applications shall be made upon the form furnished for that purpose, and all required information shall be provided thereon before an application shall be considered as complete and having been filed.
- C. *Fees.* Applications shall not be considered as having been submitted until there has been paid to "Cumberland County" a filing fee as set forth in the *Cumberland County Fee Schedule*.
- D. *Hearings:*
 1. *Date and Time of Hearing.* Upon receipt of a completed application, the secretary will schedule the case to be heard in accordance with the board's adopted *Deadline/Meeting Schedule*.
 2. *Notice.* The secretary shall ensure public notice of the hearing by publishing or advertising in a newspaper of general circulation within the County the date, time and location of the hearing along with specific information from the application to afford the public actual notice of the matter applied for. The notice of the hearing is to be published a minimum of ten days and not more than 25 days prior to the meeting in which the case is to be heard.
 3. *Conduct of Hearing.* Any party may appear in person or by attorney at the hearing. The order of business for hearing each case shall be as follows: (a) the chairman, or such person as he shall direct, shall give a preliminary statement of the case, (b) after being sworn in by the chairman, the applicant

will present evidence relevant to this application together with his/her contentions as to why the application shall be granted; (c) persons opposed to granting of the application will be allowed to present relevant evidence and contentions against the granting of this application; (d) both sides if desired, will be allowed to present rebuttal evidence and arguments; (e) following presentation of a case, the board shall make its decision setting forth its findings of fact, its conclusions, and any conditions of approval. Witnesses may be questioned following presentation of their testimony by board members, and thereafter by any other interested persons.

4. *Rehearings.* An application for a rehearing may be made in the same manner as provided for an original hearing. Evidence in support of the application shall initially be limited to that which is necessary to enable the board to determine whether there has been a substantial material change in the facts, evidence, or conditions of the case. A rehearing shall be denied by the board if in its judgment there has been no substantial material change in the facts, evidence, or conditions of the case. If the board finds that there has been such a change, the request for rehearing shall thereupon be scheduled and heard in the same manner as any other application.

E. *Decisions:*

1. *Time.* Decisions by the board shall generally be rendered at the same meeting in which the case was heard. In the event, the board has requested additional information or by consensus among its members agree that additional time is warranted for the applicant or opponents, the case may be rescheduled for a date certain, typically should be set for the following month regularly scheduled board meeting.
2. *Form.* The final decision of the board for each case shall be shown in the record of the minutes of the meeting in which the case is heard. The formal approval of the minutes shall be ascertained in the minutes following the month in which a case is heard. The record shall show the reasoning for the decision, with a summary of the evidence introduced and the findings of fact, if required, and conclusions made by the board.
3. *Public Record of Decisions.* The decisions of the board, as filed in the board's record book shall be a public record, available for inspection at all reasonable times.

VI. ANNUAL REPORT TO BOARD OF COUNTY COMMISSIONERS AND COUNTY JOINT PLANNING BOARD

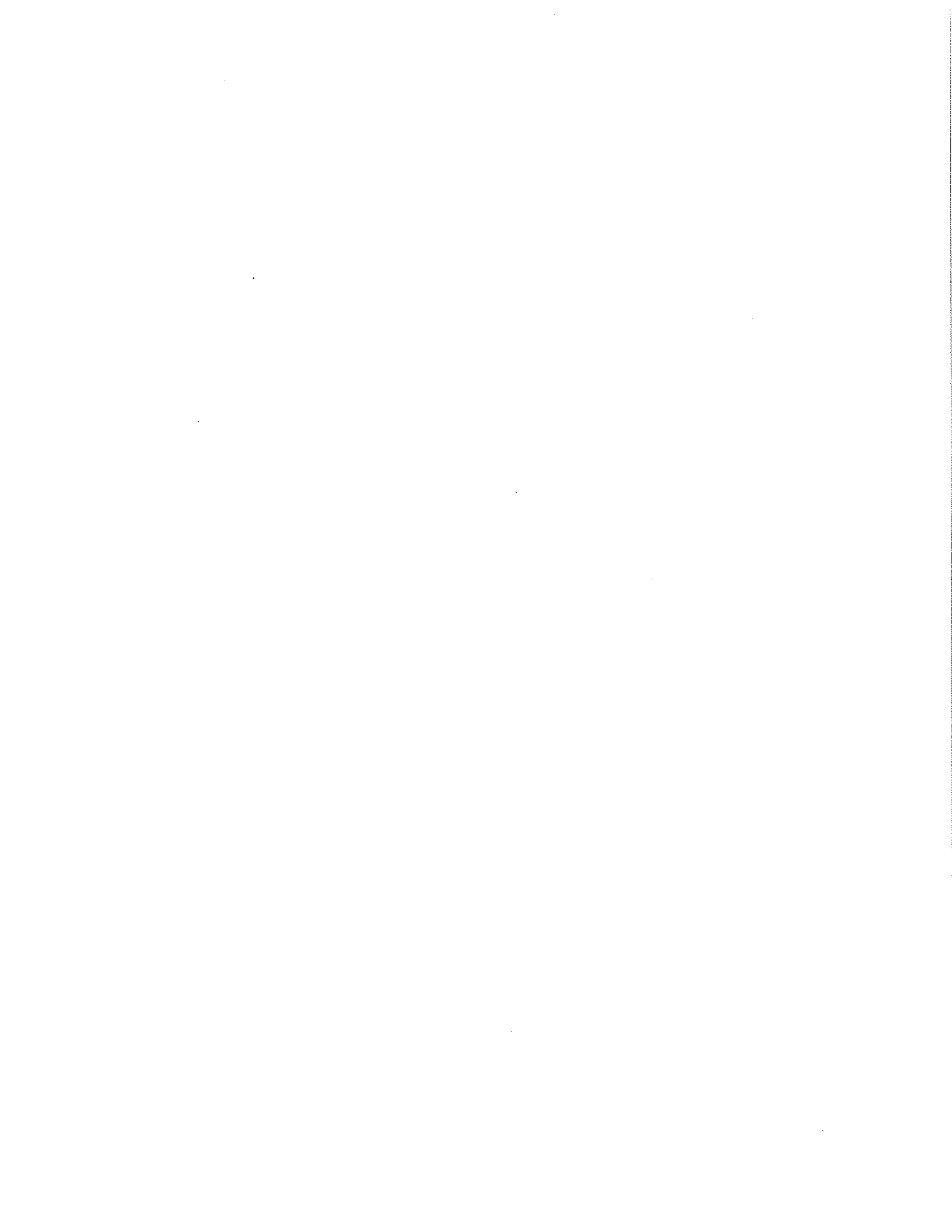
The secretary shall prepare and submit in July of each calendar year to the Board of County Commissioners and County Joint Planning Board a summary of the Board of Adjustment's activities for the preceding fiscal year. Such report shall contain a statement of the cases heard and a summary of the actions taken, along with any other matters which the board deems appropriate for inclusion in such report.

VII. AMENDMENTS

These rules may be amended at any time by an affirmative vote of not less than four members of the board, provided that such amendment be presented in writing at a regular meeting preceding the meeting at which the vote is taken.

Read, approved, and adopted by the Board of Adjustment on this 26th day of September, 1972, the following board members voting AYE: Chairman Hill, Vice-Chairman Lytton, Mr. Averitte, Mr. Huggins, and Mr. Starling.

Amended on this 16th day of July, 1987.
Amended on this 19th day of July, 2007.
Amended on this 20th day of January, 2011.



**CUMBERLAND COUNTY
BOARD OF ADJUSTMENT HEARING
July 15, 2021**

SUBJECT: BOA CASE # P21-06-C - Variance

REQUEST: Variance from Section 1104 of the County Zoning Ordinance to allow a reduction of 2,800 sq. ft. from the Minimum Lot Size Standard for property zoned R30 Residential District, located at 3618 Gabe Smith Road.

Exhibits

- A. Zoning and Location
- B. Site Survey (attached)
- C. Existing and Surrounding Uses
- D. Site Pictures
- E. Soils and Utilities
- F. Eastover Land Use Plan
- G. Sec.1104 District Standards (attached)
- H. Variance Application (attached)

EXPLANATION OF THE REQUEST

The Property Owner of a parcel assigned an R30 zoning district (Refer to Exhibit "A") requests a variance to allow a smaller lot size than that required for the R30 zoning district. The current lot contains approximately 27,007 sq. ft. or .62 acres, while the minimum lot size standard requires a 30,000 sq. ft. for the R30 zoning district. The site was recently rezoned through Case P21-22 from A1 (two-acre minimum lot size) to R30 to bring the site into compliance with the minimum lot size standard. A more recent property survey discovered that the subject parcel is still smaller than the minimum 30,000 sq. ft. required by the R30 zoning district. Therefore, a variance from the code provision under Section 1104 of the is requested to assure that development may occur on the property consistent with the Zoning Code.

PROPERTY INFORMATION

Owner/Applicant: Louretha K. McKethan

Address/Location: 3618 Gabe Smith Road
(Refer to Exhibit "A")

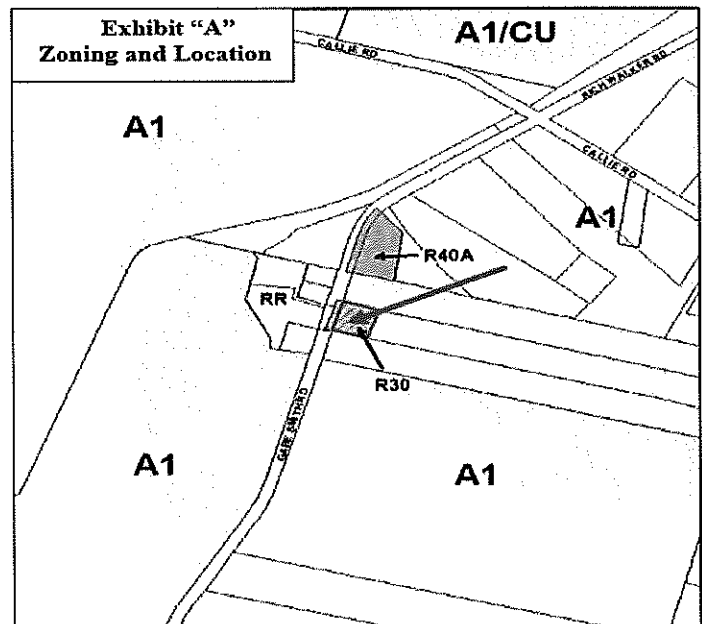
REID #: 0550-45-8316

Parcel Size: 0.62 acres within one parcel. The property has approximately 169' of street frontage along Gabe Smith Road. The property is 166'+/- in depth. Exhibit "B" Site Survey (attached) illustrates the parcel size, dimension, and current building and structure locations.

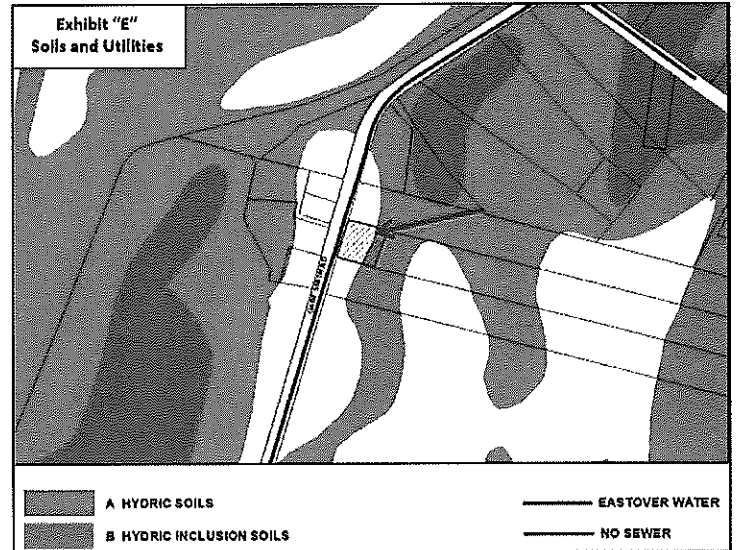
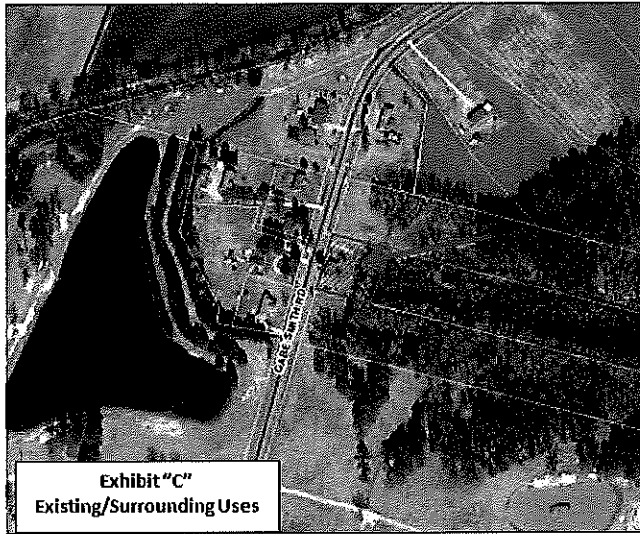
Existing Land Use: The subject property is currently developed with a single-family dwelling unit, as illustrated in Exhibit "C", as well as pictures provided in Exhibit "D" (attached).

SURROUNDING LAND USE: Farmland is the predominate land use occurring in the area surrounding the subject property. Single family homes also occur along Gabe Smith Road. Exhibit "C" illustrates the surrounding uses.

Zoning: R30 (Refer to Exhibit "A")



Other Site Characteristics: The property is located within a watershed area, but not over an acre; thus, an approval letter may not be required before permits are issued. The site is not located within the Special Flood Hazard Area. The eastern side of the property has presence of hydric soils, as shown in Exhibit "E".



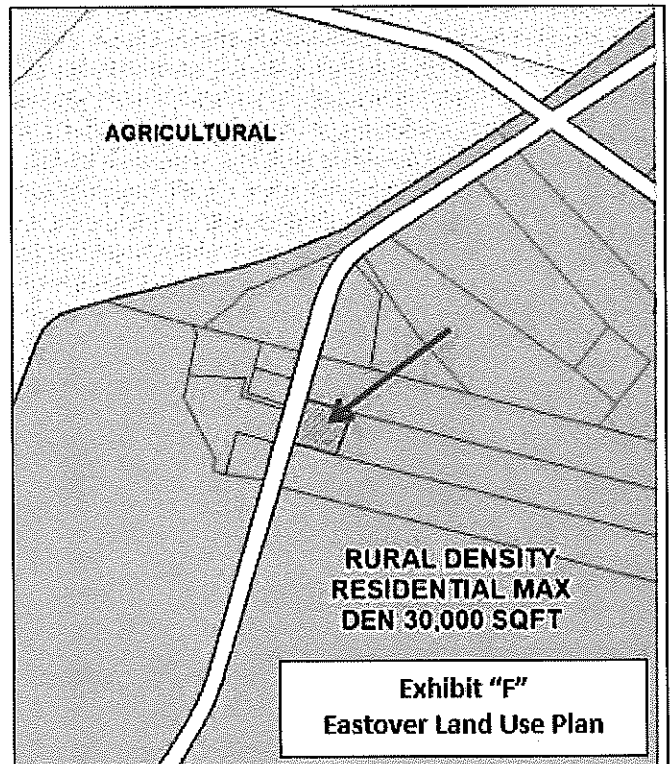
Development Review: This lot subdivided inconsistent with current codes many years ago. The current lot size is too small to conform to the A1 zoning standards but remains closer to the R30 lot size standard. Thus, the R30 zoning reduces the extent of the nonconforming situation from a larger parcel. Applicant cannot plat the current lot and correct an illegal subdivision without a successful variance application. The variance is needed to allow the property owner to plat the lot, which will allow it to document its correct lot size.

Utilities: The property is served by septic and Eastover water. There are no public sewer lines available. Exhibit "E" shows the location of adjacent utilities.

Comprehensive Plans: The Eastover Area Land Use Plan – Adopted 2018, as shown with Exhibit "F", designates this parcel for Rural Density Residential. This Land Use Plan classification allows a Maximum Density of 30,000 square feet.

The Rural Density Residential Maximum Density 30,000 sq. ft. classification has a minimum lot size of 30,000 square feet. The zoning districts associated with this type of development include: R30, R30A, R40 and R40A. The existing parcel is not compliant with an existing lot area of 27,204 sq. ft with the minimum size requirements of the Rural Density Residential designation.

Applicable Zoning Codes: Section 1104, R30 Zoning District Standards (Refer to Exhibit "G" attached) .



IMPACTS ON LOCAL INFRASTRUCTURE AND/OR FACILITIES

Traffic and Streets: The subject property sits on Gabe Smith Road and is identified as a local road in the Metropolitan Transportation Plan. There are no construction projects planned, and the subject property will have no impact on the Transportation Improvement Plan.

SCHOOLS CAP/ENROLL:

School Type	Capacity	Enrollment
Eastover Central Elem	540	334
Mac Williams Mid	1270	1076
Cape Fear High	1425	1400

The variance does not generate any impacts on public school enrollment.

EMERGENCY SERVICES: This request has been reviewed by the Cumberland County Fire Marshal's Office. The County Fire Marshall had no comment on any concerns at this time.

SPECIAL DISTRICTS: The property is not located within the Fayetteville Regional Airport: Airport Overlay District, and is not situated within five miles of Fort Bragg Military Base.

FINDINGS OF FACT

Criteria that must be addressed for evaluation of a variance application originate from Section 1605 of the Zone Code and are listed below.

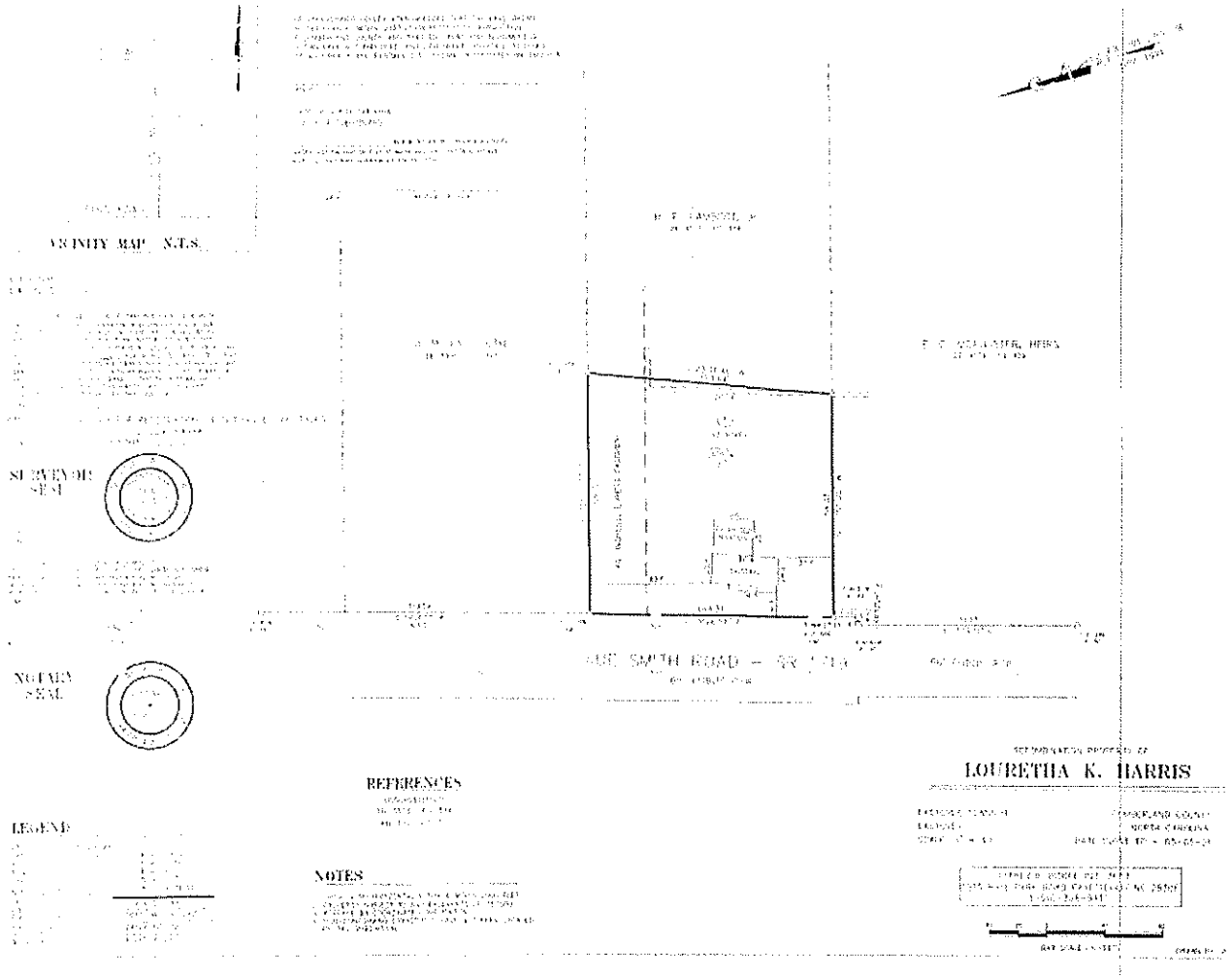
1. Unnecessary hardship would result from the strict application of the ordinance.
2. There are conditions peculiar to the property, such as location, size, or topography.
3. The special circumstances are not the result of the actions of the applicant.
4. The requested variance will be consistent with the spirit, purpose, and intent of the ordinance, such that public safety is secured, and substantial justice is achieved.

Applicant's Response to the above criteria was submitted with the application and is provided below under page 3 of 6 H. of the Application for a Variance (Refer to Exhibit H):

"Land was surveyed incorrectly years ago. DOT took right-of-way."

Attachments:
Notification Mailing List

EXHIBIT B SITE SURVEY



**EXHIBIT D
SITE PICTURES**

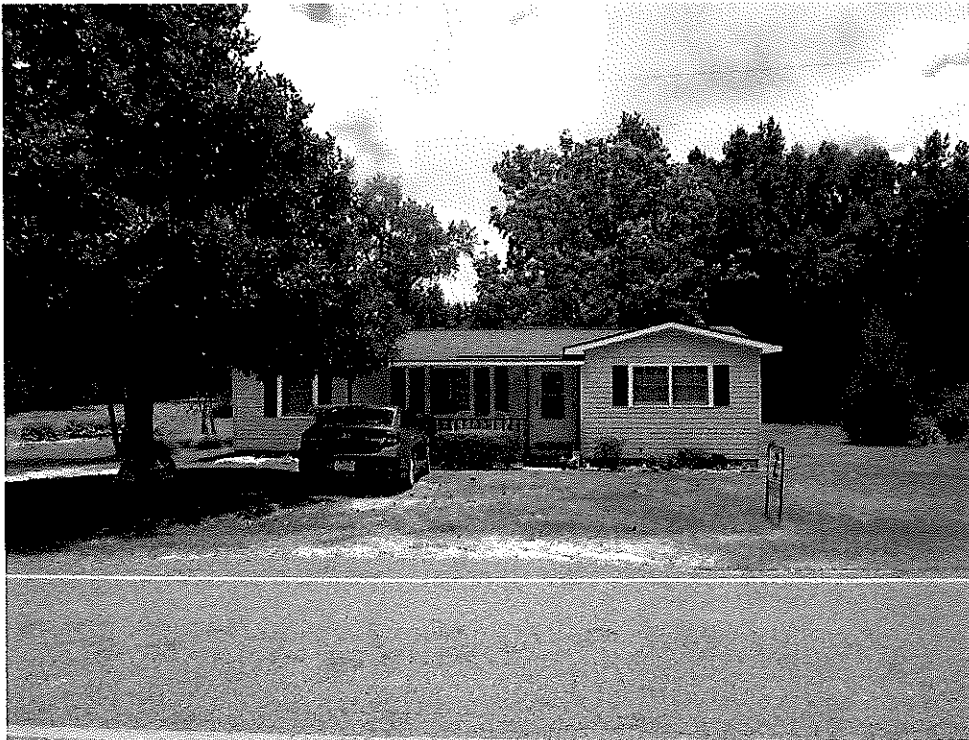




EXHIBIT G

SECTION 1104, ZONING CODE

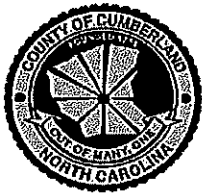
SECTION 1104. DISTRICT DIMENSIONAL PROVISIONS.¹

Except for the special provisions as previously noted in this article and any special provisions provided for elsewhere within this ordinance, the following district dimensional requirements shall be complied with:

DISTRICT	DENSITY ² (SQ FT PER DWELLING)				WIDTH (in feet)	FRONT ³ YARD (measured from R/W line X 1 story) (2 story)	SIDE YARD (each side greater than 2 stories)	REAR YARD (in feet)	
	MINIMUM LOT SIZE (square feet unless otherwise stated)	1 st DU	2 nd DU	3 rd DU					4 th DU
A1 ¹	2 acres	2 acres	2 acres	2 acres	100	50	25	25ft/story	50
A1A ⁴	1 acre	1 acre	1 acre	1 acre	100	50	25	25ft/story	50
R40	40,000	40,000	40,000	40,000	100	30	15	10ft/story	35
R40A	40,000	40,000	40,000	40,000	100	30	15	10ft/story	35
R30	30,000	30,000	30,000	30,000	100	30	15	10ft/story	35
R30A	30,000	30,000	30,000	30,000	100	30	15	10ft/story	35
R20	20,000	20,000	20,000	20,000	100	30	15	10ft/story	35
R20A	20,000	20,000	20,000	20,000	100	30	15	10ft/story	35
RR	20,000	20,000	20,000	20,000	100	30	15	10ft/story	35
R15	15,000	15,000	15,000	15,000	75	30	10	10ft/story	35
R7.5	7,500	7,500	7,500	7,500	75	30	10	8ft/story	35
R6	6,000	6,000	6,000	6,000	60	25	10	6ft/story	30
R6A ²	6,000	6,000	6,000	6,000	60	25	10	6ft/story	15 ⁵
R5A	5,000	5,000	5,000	5,000	60	25	10	4ft/story	30
R5	5,000	5,000	5,000	5,000	60	25	10	4ft/story	30

¹ All signs are regulated by Article XIII.
² Exceptions. See Section 1103 for special exceptions to this chart.
³ Minimum lot size for non-residential uses is one acre.
⁴ Maximum district size for rezoning request is 10 acres.
⁵ Exception: Annapolis, Baltimore, Baltimore Viewshed Frontage (Section 1102 L).
⁶ See Section 1102 K for Rear Yard Exception for Manufactured Homes in the R6A District.
 (Amd. 3-21-16, Amd. 11-30-06)

EXHIBIT H
VARIANCE APPLICATION



County of Cumberland
◆
BOARD OF ADJUSTMENT

CASE #: P21-05⁶-C

CUMBERLAND COUNTY BOA
MEETING DATE: 7-15-21

DATE APPLICATION
SUBMITTED: 6-9-21

RECEIPT #: 77830

RECEIVED BY: _____

**APPLICATION FOR
VARIANCE REQUEST**

The Cumberland County Board of Adjustment meetings are held on the third Thursday of each month in the Historic Courthouse, 130 Gillespie Street – Hearing Room 3. The Planning and Inspections Department will advertise the public hearing and a notice will be mailed or delivered to surrounding residents or property owners that may be affected by the proposed Variance request.

The Board of Adjustment is a quasi-judicial review board and all persons wishing to appear before this Board should be prepared to give sworn testimony on relevant facts. Applicants for Variances are encouraged to read Section 1605 “Variance” of the Zoning Ordinance to establish whether or not their case merits further consideration by the board (see next page).

The following items are to be submitted with the complete application:

1. A copy of the recorded deed and/or plat, or an accurate written legal description of only the area to be considered;
2. A copy of a detailed site plan drawn to an engineer scale; and
3. Cash or check payable to “Cumberland County” in the amount of \$ _____ (see attached Fee Schedule)

NOTE: Any revisions, inaccuracies or errors to the application or site plan may cause the case to be delayed and will be scheduled for the next available Board of Adjustment meeting according to the board’s meeting schedule. Also, the application fee is *nonrefundable*.

The Planning and Inspections Staff is available for advice on completing this application; however, they are not available for completion of the application or preparation of the site plan.

**EXCERPT FROM
THE CUMBERLAND COUNTY ZONING ORDINANCE**

(PENDING ADOPTION)

Section 1605 VARIANCE

The Board of Adjustment may authorize in specific cases such variances from the terms of this Ordinance upon request of a property owner or his authorized agent and may require any evidence necessary to make determination of the case. Before the board may grant any Variance, the board must find that all of the following conditions exist for an individual case:

- A. Unnecessary hardship would result from the strict application of the ordinance.
- B. There are conditions peculiar to the property, such as location, size, or topography.
- C. The special circumstances are not the result of the actions of the applicant.
- D. The requested variance will be consistent with the spirit, purpose, and intent of the ordinance, such that public safety is secured, and substantial justice is achieved.

In granting a variance, the board may attach and the record shall reflect such conditions regarding the location, character and other features of the proposed building, structure or use as it may deem advisable. The record shall also state in detail any exceptional difficulty or unnecessary hardship upon which the appeal was based and which the Board finds to exist.

Any variance granted becomes null and void if not exercised within the time specified in such approvals, or if no date is specified, within one calendar year from the date of such approval. The Board of Adjustment is not authorized to grant variances to a Special Use Permit or to a Conditional Zoning Permit allowed in Conditional Zoning Districts or to the specific conditions or other performance criteria imposed upon such uses.

BOARD OF ADJUSTMENT

LOCATION OF PROPERTY: 3618 Gabe Smith Rd.

OWNER: Louretta K. McKethan

ADDRESS: 3618 Gabe Smith Rd, Waddell ZIP CODE: 28395

TELEPHONE: HOME 910-483-1428 WORK 910-920-8461

AGENT: _____

ADDRESS: _____

TELEPHONE: HOME _____ WORK _____

E-MAIL: _____

APPLICATION FOR A VARIANCE
As required by the Zoning Ordinance

A. Parcel Identification Number (PIN #) of subject property: 0550-45-8316
(also known as Tax ID Number or Property Tax ID)

B. Acreage: .62 Frontage: 169 Depth: 160

C. Water Provider: Eastover Sanitation District

D. Septage Provider: Septic

E. Deed Book 5503, Page(s) 524, Cumberland County

F. Existing and/or proposed use of property: Residential

G. Section and provision of the Zoning Ordinance or Code from which a Variance is requested: section 1104 District Dimensional Provision

H. Nature and extent of hardship involved in strict application of the Zoning Ordinance or code: land was surveyed incorrectly years ago. DOT took right of way

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.

Louretta K. McKethan
NAME OF OWNER(S) (PRINT OR TYPE)

3618 Gabe Smith Rd, Wade, NC 28395
ADDRESS OF OWNER(S)

Louretta.McK1945@gmail.com
E-MAIL

910-483-1428 HOME TELEPHONE # Cell 910-920-8461 WORK TELEPHONE #

NAME OF AGENT, ATTORNEY, APPLICANT (PRINT OR TYPE)

ADDRESS OF AGENT, ATTORNEY, APPLICANT

HOME TELEPHONE # _____
WORK TELEPHONE #

Louretta K McKethan
SIGNATURE OF OWNER(S)

SIGNATURE OF AGENT, ATTORNEY
OR APPLICANT

SIGNATURE OF OWNER(S)

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

STATEMENT OF ACKNOWLEDGMENT

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 argument 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 acknowledgment that the County Planning Staff has explained the application process and procedures regarding this request and the public hearing procedure stated above.

SIGNATURE OF OWNER(S) *Louretta K. McKeithan*

PRINTED NAME OF OWNER(S) Louretta K. McKeithan

DATE 6-9-21

5583
0524

BK5503PG0524

27068

DRAFTED BY/RETURN TO: Benner Jones, III, Attorney at Law, P. O. Box 749, Fayetteville, NC 28302

QUIT CLAIM DEED REVENUE: 0

NORTH CAROLINA, CUMBERLAND COUNTY

THIS DEED, made this 26 day of June, 19 2001, by

EDGAR RUDOLPH HARRIS here in called Grantor,
to LOURETHA K. HARRIS here in called Grantee,

WITNESSETH THAT: Grantor, for ten dollars and other valuable considerations hereby acknowledged as paid and received, has bargained and sold, and by these presents does grant, bargain, sell and convey to Grantee, his heirs, successors and assigns, certain land described as follows:

.....EASTOVER.....Township

SEE SCHEDULE A

TITLE REF: 2544-605 (entire tract); front part: 4596-889, 3942-840

Mail To: Louretha K. Harris

GRANTEES ADDRESS: 3618 Gabe Smith Road
Wade, NC 28395

RECEIVED
6-27-2001 AM 9:39:15
GEORGE E. TATUM
REGISTER OF DEEDS
CUMBERLAND CO., N.C.

TO HAVE AND TO HOLD said land and all privileges and appurtenances thereto belonging, to Grantee, his heirs, successors and assigns, forever.

Whoever used herein, the singular shall include the plural, the plural the singular, and the use of any gender shall be applicable to all genders as the context may require.

IN TESTIMONY WHEREOF, Grantor has signed and sealed this deed.



Edgar R. Harris (SEAL)
EDGAR RUDOLPH HARRIS

..... (SEAL)
..... (SEAL)

NORTH CAROLINA, Cumberland COUNTY
I, *Wendy Teresa Butler*, a Notary Public of Said County and State
do hereby certify that EDGAR RUDOLPH HARRIS

personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

WITNESS my hand and Notarial Seal, this the 27th day of June, 2001

My commission expires: 09-09-2001

Wendy Teresa Butler
Notary Public

The foregoing Certificate(s) of *Wendy Teresa Butler*

is/are certified to be correct. This instrument and this certificate are duly registered at the date and time and in the book and page shown on the first page hereof.

By *George E. Tatum* REGISTER OF DEEDS FOR CUMBERLAND COUNTY,
Deputy/Assistant - Register of Deeds

NO REVENUE

5503
0525

BK5503PG0525

SCHEDULE "A"

Eastover Township

BEGINNING at a point located on the Western right-of-way of State Road 1719, which is the common corner of the property owned by Estella Robinson (formerly Estella Smith) (See Deed recorded in Book 907, Page 497) and Lovdia Murphy and running thence between the dividing line of said properties South 72 East 180.29 feet to the Northwest corner of the 1.29 acre tract of land conveyed to Glen Nash and running thence with his Western line South 23 degrees 33 minutes East 170.37 feet to a point in the Southern property line of which this is a part and the Southwest corner of the 1.29 acre tract and thence North 72 West 167.26 feet to the Western right-of-way of State Road 1719; which is the Southwest corner of the property of which this is a part; and running thence North 19-10 East 169.67 feet to the point of beginning, and being the Eastern portion of a tract of land described in Book 907, Page 497.

Excepted from this conveyance is a 40 foot right-of-way to Glen T. Nash along the Northern property line as recorded in Book 2295, Page 245.

"RECORD OF POOR QUALITY
DUE TO CONDITION OF
ORIGINAL DOCUMENT"

ATTACHMENTS

FOUNDATION FOR FEEDING HUNGRY
CHILDREN

COOPER, MARIAN J LIFE ESTATE
NORTH CAROLINA DIVISION SONS OF
CONFEDERATE VETERANS

SHIVA REAL ESTATE LLC

WILLIAMS, ROBERT KEVIN; WILLIAMS, TAMMY

P

BELL, MARIE W

5953 MCCOLLUM LN
6124 ALLIE COOPER RD

805 COOL SPRINGS RD
6569 WADE STEDMAN RD

5980 GORDON WILLIAMS RD
6263 PERCY STRICKLAND RD

GODWIN, NC 28344
GODWIN, NC 28344

SANFORD, NC 27330
WADE, NC 28395

GODWIN, NC 28344
GODWIN, NC 28344