

Members:

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



Alternates:

Martin J. Locklear
John Swanson
Horace Humphrey
Carrie Tyson-Autry
William Lockett Tally

Cumberland County Board of Adjustment

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

MINUTES
MAY 21, 2009
7:00 P.M.

Members Present

George Quigley, Chair
Oscar Davis, III, Vice-Chair
Melree Hubbard Tart
Horace Humphrey
John Swanson

Absent Members

Joseph Dykes
Steve Parsons

Staff/Others Present

Cecil Combs, Deputy Director
Patricia Speicher
Rita Perry
Grainger Barrett, County Attorney

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

1. ROLL CALL

Ms. Speicher called the roll and a quorum was present. (Mr. Parsons & Mr. Dykes excused absences)

2. APPROVAL OF THE MARCH 19, 2009 MINUTES

A motion was made by Vice-Chair Davis and seconded by Mrs. Tart approving the minutes as written. The motion passed unanimously.

3. ABSTENTIONS BY BOARD MEMBERS

There were no abstentions by Board Members

4. PUBLIC HEARING DEFERRALS – STAFF INITIATED

- **P09-04-C:** CONSIDERATION OF AN ADMINISTRATIVE REVIEW FROM THE ZONING OFFICER'S DECISION REGARDING THE COUNTY ZONING ORDINANCE, SECTION 1102 YARD REGULATION, SUB-SECTION G, BUFFER REQUIREMENTS, CONCERNING THE APPLICATION OF THE BUFFER PROVISIONS FOR A DAY CARE FACILITY IN AN A1 AGRICULTURAL & RR RURAL RESIDENTIAL DISTRICTS ON 6.33+/- ACRES, LOCATED AT 2514 & 2530 SAND HILL ROAD, SUBMITTED BY RICHARD LEWIS - LEWIS, DEESE & NANCE ATTORNEYS; OWNED BY DAVIS FOUR FAMILY LIMITED PARTNERSHIP.

A motion was made by Mrs. Tart and seconded by Vice-Chair Davis to approve the staff's request for deferral of Case No. P09-04-C rescheduled to be heard at the July 16, 2009 meeting. The motion passed unanimously.

5. BOARD MEMBER DISCLOSURE

There were no Board Member disclosures

6. POLICY STATEMENTS REGARDING APPEAL PROCESS READ

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

7. BOARD HEARING(S)

Opened Public Hearing

- **P09-05-C:** CONSIDERATION OF AN ADMINISTRATIVE REVIEW FROM THE CUMBERLAND COUNTY PLANNING & INSPECTIONS DIRECTOR'S DECISION REGARDING THE COUNTY ZONING ORDINANCE, SECTION 912 KENNEL OPERATIONS, SUB-SECTION G, FOR TEMPORARY HOUSING/BOARDING OF FOUR OR MORE DOGS; IN A R15 RESIDENTIAL DISTRICT ON 1.25+/- ACRES, LOCATED AT 849 FOXCROFT DRIVE; SUBMITTED AND OWNED BY JONATHAN E. TUGMAN AND PAULA KYLE.

Ms. Speicher presented the zoning, land use and photos of the site to the Board.

TIMELINE SUMMARY:

- January 21, 2009: Violation Letter was issued in response to a complaint
- February 23, 2009: The authority to decide this case was delegated to the Deputy Director
- March 10, 2009: Applicant submitted the Temporary Permit Application
- March 30, 2009: The application was denied
- April 15, 2009: Applicant submitted the appeal

MR. BARRETT: Is there a copy of the Violation Notice in the record?

MS. SPEICHER: Yes sir and it is included in the packet.

MR. BARRETT: Was that appealed?

MS. SPEICHER: That was appealed by the applicant submitting the application for approval of a temporary kennel. I am not sure that "appeal" is the appropriate word, but it would have been a remedy to the violation, if it had been approved.

MR. BARRETT: The Notice of Violation issued in January 2009 was not appealed to the Board of Adjustment?

MS. SPEICHER: No sir, it was not.

MR. BARRETT: That Notice of Violation was for having more three adult dogs?

MS. SPEICHER: Yes sir (Introduced Cecil Combs, Deputy Director)

(Chair Quigley asked if the Board had any questions of Mr. Combs at this time) – NO RESPONSE

CHAIR QUIGLEY: Mr. Jonathan Tugman please come to the podium. (Swore in Mr. Tugman) **(Applicant)**

MR. TUGMAN: We have 4 dogs. Mr. Comb's Letter of Denial stated we have more than four dogs, my wife's three shepherds and my one mutt. The three shepherds are retired show dogs. When we were married in November we joined the two households. The animals have been in our respective families between 9-12 years. They are no harm to anybody. I am not sure what the issue is. We installed a privacy fence on three sides of our property and a six-foot high wire fence in the back, which keeps the dogs from seeing anybody and anybody from seeing the dogs. Our animals are kept inside at night. In the last nine months since we have lived there our dogs have stayed outside approximately a total of six nights. They are not out all night barking like a lot of dogs in the neighborhood. They have never been off the property unleashed. We do not breed dogs. They are our pets. We do not plan on getting anymore dogs. We do not want to get rid of the ones we have. We have done no harm to anybody in the entire neighborhood. Personally, I feel like we are being persecuted. I have had people trespass on my property, taking pictures into my windows and making up lies. These are separate issues.

CHAIR QUIGLEY: You are aware that the County limit of the number of adult dogs in a household is three?

MR. TUGMAN: No sir, we did not know that at the time. There are at least two other households in the neighborhood that have more than three dogs. We feel like this is a personal issue.

CHAIR QUIGLEY: This is not relevant to this case. You have the prerogative of requesting a temporary kennel operation that would allow more animals, up to six.

MR. BARRETT: That is what this appeal is regarding. The applicant applied for a temporary permit which was subsequently denied.

MR. TUGMAN: Wenny and Rosario are 8 years old, Katona is 3 years old and Mozart is 12 years old. The average life span of shepherds is about 13 years. The reality is Mozart will probably pass away within 1 - 2 years. Two of the 3 shepherds have been in multiples shows. They are gentle dogs.

MR. SWANSON: Have the dogs been breed?

MR. TUGMAN: Yes sir, it has been over 3 years. The oldest, Mozart, is the father of Rosario, who is the mother of Katona. Both female dogs and Mozart have been fixed. The only reason Katona has not been fixed because there is no medical reason to do so and we know there will not be anymore puppies.

CHAIR QUIGLEY: Three of the four have been fixed.

MR. TUGMAN: Both females and oldest male, Mozart

MR. SWANSON: Is there any need for this temporary application to continue after the future death of Mozart?

MR. TUGMAN: No sir, we have decided we will not get anymore dogs. We do not want to get rid of the ones we have. We will probably always keep two dogs. We occasionally watch my wife's sister's dogs. Approximately three weeks ago we watched her dogs while she was in the process of moving. Those are not our dogs and are registered in New Hanover County.

MR. SWANSON: What is the length of time the New Hanover dogs are at your home visiting?

MR. TUGMAN: They are there for maybe a week or sometimes only on weekends. In the fall they were there for about a three week time frame.

MR. SWANSON: What is the gender of the dog that is not fixed?

MR. TUGMAN: Male

MR. BARRETT: I would like to set the legal and procedural context. (Requested the Board refer to definition of kennel) The applicant was cited for being in violation of kennel ordinance which is as follows:

Kennel: Any premises where four or more dogs which are five months old or older are kept permanently commercially or as pets or temporarily if approved under Section 912 G, excluding pet grooming shops, veterinary clinics and veterinary hospitals.

If a temporary permit is granted up to six dogs are allowed for duration of 12 months and can be renewed for an additional 12 months - a maximum of two years. The amendment requires an Administrator, in this case Mr. Combs, to consider, but shall not be limited to the following factors: (Section 9.12 §G)

1. The nature of the hardship and purpose of the request;
2. Duration of housing/boarding the dogs;
3. The accommodations available for housing/boarding the dogs to be temporarily housed;
4. Whether the dogs to be temporarily housed/boarded are neutered;
5. Any history the applicant has of being cited for violations of the County's noise, zoning or animal control ordinances or of animal cruelty laws;

(Mr. Barrett informed the Board that the citation was not a violation of the County Animal Control Ordinance but a violation of the County Zoning Ordinance)

6. Any history the dog(s) to be temporarily housed/boarded have of aggressive behavior towards other pets or towards people, and
7. The effect on and character of surrounding property.

MR. BARRETT: On the basis of their application, Mr. Combs' letter dated March 30, 2009 stated his ground for denying the Temporary Permit. This public hearing is in regards to an administrative appeal requesting the Board to overturn the denial decision. The provision of the ordinance states that with the appeal of an administrative decision, the Board stands in place of the Administrator, i.e. the Board has the power to potentially take any action the Administrator could or could not have taken. This is not variance or special use permit issue. The matter simply requires a majority vote by the Board. It would be fair to the Tugmans to have Mr. Combs state the basis for denial for the record allowing them the opportunity to address them and the neighbors present in opposition can present evidence in support of the denial.

(Chair Quigley informed Mr. Tugman that he is still under oath and is subject to recall or can request to address the Board in rebuttal to any testimony.)

MR. SWANSON: Can I have an interpretation of the meaning of the word "kept" in the definition of kennel?

MR. BARRETT: The word is not defined in the Ordinance. By the law's standards it is given its common and ordinary meaning. In the Animal Control Ordinance, which is a separate ordinance, the word "kept" is interpreted as to provide up keep, essentially being a custodian and having custody of an animal. The administrative regulations have a slightly different word in the temporary application, where it mentions "possessing animals". The dictionary definition of "possessing" is having actual control of, the definition of the word "permanent" is lasting and the definition of "kept" is to maintain or retain in ones possession.

CHAIR QUIGLEY: Any other questions of Mr. Barrett?

MR. SWANSON: By the reasonable definition, the New Hanover dogs would not fall within the definition of the six dogs?

MR. BARRETT: One of the powers of the Board in the status is to provide interpretations of the meaning of provision in the Zoning Ordinance. It is within the power of the Board to interpret the word "kept" to include or not include those dogs if the Board finds the dogs are there not on a continuous basis but a regular routine basis.

CHAIR QUIGLEY: Not withstanding that dogs 4, 5 and 6 are super numerate to the 3 allows dogs?

MR. BARRETT: The application is a request to allow 4 dogs. Mr. Combs' conclusion is they are keeping dogs 5 and 6. The Board has the power to interpret Mr. Combs' decision; Mr. Combs should present to the Board the basis for his denial.

CHAIR QUIGLEY: Mr. Cecil Combs, Deputy Director, please come to the podium. (Swore in Mr. Combs) Please explain the basis of your letter dated March 30, 2009.

MR. COMBS: As part of our investigation, Code Enforcement visited the subject property and took photographs. Our department received calls from adjacent property owners of the subject property stating 6 dogs were at the premises not four. The Code Enforcement Officers obtained photographic evidence showing 2 dogs which were not included in the application. Additionally, I had a meeting with three of the property owners that abutted the subject property. Therefore, based on the stated information, I had reason to believe that more than 4 dogs resided at the subject property resulting in a falsification of the application in addition, to the adverse effect on the surrounding properties.

MR. BARRETT: The phrase in the letter states, “unduly affected”. Please specify.

MR. COMBS: The quality of life for the surrounding neighbors.

MR. BARRETT: Please elaborate.

MR. COMBS: In my communications with the neighbors, I was informed by three neighbors whose properties abut the subject property that they were frightened of the dogs and complained about the excessive barking (noise).

VICE-CHAIR DAVIS: Hypothetically, if the request had been approved and a complaint was made whereby requiring a Code Enforcement Officer to visit the subject property and he observed six dogs at the site, what would be the consequences?

MR. COMBS: More than likely, we would investigate the other two dogs. If it were found that they were kept on the premises permanently, the permit would be voided. However, the applicant would have the right to appeal.

MR. SWANSON: From your investigation, were you able to determine the length of time the two dogs in question had been at the subject property?

MR. COMBS: No, I was not. Code Enforcement did visit the subject property on two consecutive days and observed the two additional dogs on the premises.

MR. SWANSON: Do you have any first hand observation of the disturbance, the dog barking?

MR. COMBS: Yes sir, the dogs would bark. I am a dog person; therefore, it does not bother me, but I do not live in the neighborhood. The neighbors can testify to the noise.

CHAIR QUIGLEY: The basis of your denial was primarily the fact that the application listed four dogs and upon further investigation it was found to be six dogs present.

MR. COMBS: Yes sir, along with the effect on the surrounding properties.

MR. SWANSON: Can I clarify my question? Your finding was that there were 6 dogs on premises but the length of time of their presence was undeterminable.

MR. COMBS: Correct. It is my experience in this line of work, which I have been doing for over 20 years; you do not contact the applicant and question why there are two additional dogs present. The applicant must provide the proof.

MRS. TART: In the ordinance it states the applicant must provide verification that the dogs are listed with the County Tax Department. Are we to interpret that as “Cumberland County” Tax Department?

MR. COMBS: Yes, the 4 dogs in question. The dogs have to be listed with the Cumberland County Tax Department for the permit to be considered.

MS. SPEICHER: We do have verification that the 4 dogs are listed with the Cumberland County Tax Department.

MRS. TART: But the other 2 are not.

MS. SPEICHER: We have documentation from New Hanover County regarding the other 2 dogs.

MR. BARRETT: The legal significance goes to the questions, where they reside? Are they kept regularly enough in Cumberland County to be deemed “kept” in Cumberland County?

MR. DAVIS: If 4 dogs had been at the site and not 6 dogs, would you have felt more favorably in granting the request? Are all 6 dogs a nuisance or problem?

MR. COMBS: Based on the information I received, my observation and abutting neighbors’ opposition, which was the overriding factor.

MR. SWANSON: Application date was 1/21/09?

MS. SPEICHER: The Temporary Permit Application was 3/10/09.

MR. SWANSON: What date did you go out there? Was it during the routine course of the application process?

MR. COMBS: It was part of my investigation to speak to property owners that abutted the subject property to find out how they were affected.

MR. SWANSON: There were 6 dogs there?

MR. COMBS: At that time there were 4 dogs.

MR. BARRETT: Mr. Combs’ testimony was when he sent Code Enforcement Officers to the subject property they observed 6 dogs.

MR. COMBS: In the course of determining whether this appeal would be granted or denied, during the 10 day period when the applicant submitted the application for the temporary permit is when we received calls from the neighbors that there were more than 4 dogs at the premises.

MR. SWANSON: Therefore, it was two consecutive days between 3/10/09 and 3/30/09.

MR. COMBS: Correct

(Chair Quigley informed Mr. Combs he was still under oath and may be subject to recall to the podium)

CHAIR QUIGLEY: Mrs. Paula Kyle Tugman please come to the podium. (Swore in Mrs. Tugman) (**Applicant**)

MRS. TUGMAN: Mr. Combs stated one of the reasons for denial was because we have 6 not 4 dogs. The other 2 dogs are registered in New Hanover County to my sister, who also has one other small dog. We both just moved to North Carolina last summer. We puppy sit for each other as we did in West Virginia. Besides her dogs that visit, my husband's parents each have a dog of their own that they bring to visit and my husband's sister brings her dog to visit and my parents have a Saint Bernard that visit. Ironically, they did not take pictures when they were there or perhaps I would of had 8 or 10 dogs. The second reason for denial was three neighbors who voiced opposition; therefore, the last couple of days after work I walked around to the neighbors on Foxcroft only, and explained the situation. I have a signed petition from 15 Foxcroft residences who are not opposed to us receiving a temporary permit. As my husband mentioned, we only need a temporary permit. Mozart is not going to be around very long. Since we have joined our two families how can we choose one of our dogs to throw away. It is temporary. It is not something we want to do permanently. I do not want to have a lot of dogs. I do not have the time to take care of a lot of dogs. I am very busy. I teach in Dunn and coach gymnastics in Fayetteville. My husband is gone all day at work. I do not expect or plan ever to get more than what would be allowed in Cumberland County. We were unaware that we could only have 3 dogs. After being married in November, we had been house hunting and found the one on Foxcroft. We moved in the house in September. We were ecstatic because the lots in the area are over an acre. That was a primary concern, because we needed a place for our 4 dogs. We immediately began putting fencing up so the dogs could not run around. The dogs are absolutely not vicious. Mozart has been showing since he was 6 months old, with 9 championship points and 8 in Canada. You cannot put a dog in a showroom with a bad disposition. I showed his daughter, Rosario, a few times. She has no disposition problems because I could not have continued to have her in the room. She just..... I show better with males. There are pictures in your packet showing my husband's young children playing with the dogs. Any dog with a slight temperament problem would not let a 4 or 5 year old hang on his back. The other issue was that the dogs bark. My dogs do not bark. That is just her versus him saying that. I can understand you do not know unless you went to my house and looked. Just like any dog, if you come to their house and stand there at their fence they are going to bark at you. That is their job. They are going to bark at the stranger. They do not just sit around and bark for no reason. I have Katona and Winny who love to play with each other. The only barking I would hear would be them when they are playing. They go inside at night in their kennels. I have always done that. Being from West Virginia, I do not know what types of critters are outside at night. I have kennels for everybody when I bring them in. I cannot stand a barking dog. I would greatly appreciate the opportunity to have a temporary permit so I can keep my dogs until Mozart is not with me anymore.

CHAIR QUIGLEY: Any questions for Mrs. Tugman?

MR. SWANSON: You said your father comes to visit and brings dogs?

MRS. TUGMAN: My father has a Saint Bernard. Anywhere he goes that dog goes with him. When he is visiting he brings his dog. My husband's mother has a small dog that will not leave

her side. So wherever she goes her dog is there. My husband's father has a big brown dog, a yellow lab. He cannot be away from his dog. He brings his dog when he is here. This dog stays in the background. As shown in the pictures, we kind of have two backyards, an initial one where the swing set is and a larger shaded lot in the back. When they bring their dogs they all play together in either the front or back yard. My husband's sister has a little tiny dog. She brings her dog when she comes to visit. My husband's father often brings the sister's dog as well.

MR. SWANSON: I was struck by one of your statements. Depending on who is there from the family you could have 8 or 10 dogs.

MRS. TUGMAN: Who ever happens to be visiting.

MR. SWANSON: What is the length of time the dogs would be there?

MRS. TUGMAN: Maybe a long weekend.

MR. SWANSON: Meaning what?

MRS. TUGMAN: Three to 4 days. We did watch my sister's dogs for a longer period of time because she was moving from one house to another in Wilmington.

MR. SWANSON: What is a typical visit?

MRS. TUGMAN: Typically, a weekend maybe once a month.

MR. SWANSON: By the definition of weekend, when do they arrive and depart?

MRS. TUGMAN: Friday evening and return to their home Sunday night. We have a meeting point. I cannot recall what county it is in.

MR. SWANSON: You stated none of the dogs stay outside at night they all come in at night.

MRS. TUGMAN: They come in at night. If we are out of town for a night because I still have my house in West Virginia or just visiting family, I have a pet sitter who will come and take care of the dogs but I do not want them left in the kennel when she comes in once a day. The only time they are out at night in the backyard is when we are completely out of town.

MR. SWANSON: How often is that?

MRS. TUGMAN: Not very often. I am a school teacher. I can't just go away.

MR. SWANSON: Once a month, once every two months, once every six months?

MRS. TUGMAN: In the nine months, my husband mentioned it was 6 nights, Christmas and a couple of times this spring. Normally, if I am gone, he is here and vice versa.

(Chair Quigley informed Mrs. Tugman she was still under oath and may be subject to recall to the podium)

CHAIR QUIGLEY: (Recalled Mr. Jonathan Tugman and reminded the him that he is still under oath)

MR. TUGMAN: In the last nine months we have been out of town 6 times during which time the dogs stayed outside overnight. Two of the 6 times were the past two weekends because of an emergency in West Virginia and bike week in Myrtle Beach at which time we had a pet sitter. Every time we are not going to be home, a pet sitter always comes. The animals are never abandoned. Additionally, we have kennels in the garage for each dog which is heated during the winter and cooled in the summer. The dogs also have accommodations outside. There is a 40 square foot dog house with a solid floor, insulated sides and heated in the winter. There is shelter for inclement winter. In December there was an anonymous call to Animal Control that we had abandoned the dogs for weeks. Animal Control came out and saw that the dogs weren't and it was a bogus call. Animal Control actually talked to some of the neighbors and said people are there all the time. I think of the 15 individuals who signed the petition saying they had no issues with the zoning, there has only been one complaint from one particular entity. This makes us think this is of a personal nature as a way to get to us. The dogs are part of our family. When family is visiting on Saturday they will have dogs with them. My sisters and my wife's sister will be leaving Saturday evening. My dad may stay the night and my mom will stay the night. We are going to have animals there over the weekend.

MR. SWANSON: Does the pet sitter stay at the house while you are gone?

MR. TUGMAN: No, they do not reside there. They have a key to the house to feed the dogs, let them out, visit and leave.

MR. SWANSON: If the dogs bark, you have no feedback from the sitter because they would not be there?

MR. TUGMAN: Correct, I have a 6 foot privacy fence.

MR. SWANSON: Have you had any complaints from the neighbors concerning barking during time you were out of town?

MR. TUGMAN: The only time we actually had a no kidding complaint was when we first moved there before I had a chance to put the fence up. This was also during the time we were watching Oscar and Mia. She was staked outside of the house and was barking because the neighbors were walking up to the edge of fence and were just standing there staring at her. When we heard her barking we went to see what the problem was, talked to the neighbors and we moved her. A 6 foot high privacy fence is expensive, about \$3,000 worth of fence line. The 6 foot high privacy fence is what Mr. Combs and zoning staff recommended I put up to limit visibility.

CHAIR QUIGLEY: There are several people who want to speak in opposition to this request for an appeal. Please refrain from repetitive testimony. Everyone will be allowed to speak. You can have one spokesman to present a comprehensive presentation.

PERSONS IN OPPOSITION: (8)

Lisa Hlavnicka
John P. Hlavnicka
Steven G. Gordon
Marcia Engel

Thomas D. Poston
Janice Engel
Doug Carron
Walter Anschuetz

CHAIR QUIGLEY: Mrs. Paula Lisa Hlavnicka please come to the podium. (Mrs. Hlavnicka declined to speak) (**Opposition**)

CHAIR QUIGLEY: Mr. John P. Hlavnicka please come to the podium. (Swore in Mr. Hlavnicka and requested him to show where his property was located in proximity to the subject property, which he complied.) (**Opposition**)

MR. HLAVNICKA: I think the dogs 5 and 6 visit with some regularity, not leashed and defecate in my yard. As for the docility of the other animals, personally I believe the “mutt” is a Japanese fighting dog/Japanese Mastiff. I do not know for sure, but it appears to be. Occasionally, there is vicious fighting when the dogs are playing. Any time I approach the fence, which is right against my fence when the dogs are in the back yard they bark at me. When I am at the rear of my property where the wire fence is the dogs come over, growl, bark and snarl at me which makes it very difficult to be back there. I am concerned with sanitation. Where I am situated the prevailing winds are from the southwest. The statement was that the dog droppings collected weekly and sometimes more often. There is a hot summer coming; therefore, we are concerned about flies. I do not know how neatly all of the excrement is removed, but I am concerned about having a sanitary situation. We moved to Hunters Ridge because of the openness of the area, size of the lots and for peace and quiet. We feed birds and garden. This issue has caused us a great deal of anxiety. We vehemently oppose the approval of the appeal. Of course the dogs are going to be docile around family members because they are familiar with them. But strangers do not get that reaction and people are frightened. The visiting dogs, numbers 5 and 6, are not contained. We are concerned about our property values being affected by this situation and our quality of life.

CHAIR QUIGLEY: Are there any questions for Mr. Hlavnicka?

MR. BARRETT: During what period of time would there be dog feces in your yard and could you specify the dogs?

MR. HLAVNICKA: Dogs 5 and 6, which I stated have been there with some regularity. Every time they visited that I know of they come into our yard. They are running loose.

CHAIR QUIGLEY: Mr. Steven G. Gordon please come to the podium. (Swore in Mr. Gordon and requested him to show where his property was located in proximity to the subject property, which he complied.) (**Opposition**)

MR. GORDON: I am under the understanding that the law allows 3 dogs. That is the way I have always understood it. I am sorry that they have 4 dogs but I see no reasons whatsoever that the law should be changed simply to please an individual. We need to take care of the people as a whole. If the law states 3 dogs, it needs to be 3 dogs. By their own admission, they have had multiple dogs up to 8 – 10. It sounds like they are already running a kennel.

I bought my house to retire in and live comfortable. I do not want to have to deal with a massive group of dogs, which can go out. If the dogs get loose and children are outside, a child could do the wrong thing and get mauled by the friendliest of dogs. We all know that. In addition, they leave the dogs unattended. When they go on vacation they have a dog-sitter who comes to the property to let the dogs out. I have 154 stitches in my right hand from neighbor's dogs which was a German Sheppard. My personal opinion is that this would be detrimental to the neighborhood.

CHAIR QUIGLEY: Are there any questions for Mr. Gordon?

MR. HUMPHREY: Is your house occupied at the present time? Are you going to be moving back?

MR. GORDON: Currently, I rent to an Army chaplain who has 5 children.

MR. HUMPHREY: Has he voiced any complaints regarding the dogs?

MR. GORDON: He is currently deployed to Iraq. His wife and 5 children are there alone. She is afraid of dogs. This is an issue I have discussed with her.

CHAIR QUIGLEY: Mrs. Marcia Engel please come to the podium. (Swore in Mrs. Engel and requested her to show where her properties were located in proximity to the subject property, which she complied.) **(Opposition)**

MRS. ENGEL: For the record, if the petition includes the property on 879 Foxcroft Drive, please cross that off the list because I am the property owner. I have only been back from Europe for 5 days and am just finding out about this hearing. This is the first occasion I have had to find out anything about it. I am telling the Board this because I have not had the opportunity to check the Restrictive Covenants. But, if I recall the Restrictive Covenants limits the height of a fence to 4 feet. It is my understanding and from the applicant's testimony, that their fence is 6 feet in height. I would like to state that I concur with previous speakers.

CHAIR QUIGLEY: Mr. Thomas D. Poston please come to the podium. (Swore in Mr. Poston and requested he to show where his property was located in proximity to the subject property, which he complied.) **(Opposition)**

MR. POSTON: The Ordinance limits the number of adult dogs of three. If all the dogs were registered in Cumberland County through the Tax Office, why wasn't this violation automatically detected? This issue should have been addressed long before a neighbor complained. I do oppose the request for a temporary kennel.

CHAIR QUIGLEY: To whom are you addressing your question?

MR. BARRETT: The registration of the animal(s) is with the Animal Services Department. The three dog limit is a zoning issue; therefore, Code Enforcement addresses zoning violation issues. They are different departments. At the present time, there is not an administrative mechanism to merge this situation.

MR. POSTON: If the Board approves this request, what happens in two years when all four dogs are still around? You never know how long the dogs will live.

MR. BARRETT: This is a new provision of the ordinance that was adopted last year. It was brought about due to a situation where the father was keeping dogs for his son who is deployed to Iraq. I point that out because we do not have a lot of experience administrating this particular provision of the ordinance. But the way it reads, it does not allow renewal of over 24 months. I am not suggesting that the Board should or should not grant the permit. Twenty-four months is the maximum time allowed.

VICE-CHAIR DAVIS: Do you want to address the Restrictive Covenants issue?

MR. BARRETT: The board is authorized by law to administer and interpret the provisions of the Zoning Ordinance. It does not act as a body that enforces private Restrictive Covenants. Basically, your Restrictive Covenants are a matter of contract amongst the property owners in that subdivision. There is a way in which the Restrictive Covenants can have some relevance to the Board's considerations, which is that the Board has to consider the harmony of the neighborhood and its surroundings in cases of Special Use Permits and Variance requests.

CHAIR QUIGLEY: Mr. Gordon do you wish to comment?

(Mr. Gordon returned to the podium at which time Chair Quigley reiterated that he was still under oath.)

MR. GORDON: The current covenants do state the fence is not to exceed 4 feet in height and not to go forward from the rear of the house toward the street.

CHAIR QUIGLEY: As Mr. Barrett stated, "the Board will not act on Restrictive Covenants".

MR. GORDON: I just wanted to point this out. To build a fence above four feet one has to go to Mr. Beltwell, who wrote the covenants, and get a written waiver from him. According to the terms of the covenants, if Mr. Beltwell granted the waiver it would make the fence legal.

CHAIR QUIGLEY: We do not act on covenants.

CHAIR QUIGLEY: Mr. Doug Carron please come to the podium. (Swore in Mr. Carron and requested he to show where his property was located in proximity to the subject property, which he complied.) **(Opposition)**

MR. CARRON: I am treasurer of the Homeowners Association. I do not want to misrepresent myself and tell you that the whole association asked me to represent them. One member of the association did ask me to speak about the neighborhood. People live in Hunter's Ridge because it is very quiet, has large lots and is very harmonious. The mission of the Homeowners Association is to preserve the value of our property, the harmony of the neighborhood and to protect the front entrance. I feel it is our job to voice our concerns. We received our tax statement in January or March and everybody was unhappy. The fear is a neighborhood on decline results in loss in values of the homes. We look to the County Ordinance to help enforce and maintain the value of our neighborhood as is. My neighbor does have one german shepherd with a privacy fence.

Every time I go out to work on my garden the dog is barking to high heavens. One stipulation was the affect on the adjacent properties. I did drive by the subject property and notice the privacy fence was erected with the framing boards facing towards the outer side. I was under the assumption that the facing side of the boards should be outside to provide the better appearance facing the neighbors.

MR. SWANSON: If that one individual would not have asked you to be here tonight would you still have made a statement?

MR. CARRON: Yes I would.

CHAIR QUIGLEY: Therefore, you share in the opinion which you have stated?

MR. CARRON: Yes I do.

CHAIR QUIGLEY: Do you have any evidence that indicates that property values are suffering?

MR. CARRON: No sir

MR. BARRETT: The Board of Commissioners, unlike the City Council, has committed to a revenue neutral property tax regulator. They adopted the budget in June. Therefore, you might see a slight increase in your property taxes.

CHAIR QUIGLEY: Mr. Walter Anschuetz please come to the podium. (Swore in Mr. Anschuetz and requested he show where his property was located in proximity to the subject property, which he complied.) **(Opposition)**

MR. ANSCHUETZ: When the applicants first moved in they told us they had 6 dogs. They did not specify that 2 of the dogs were just visiting. Statements about being gentle dogs, I can tell you that the 6 foot privacy fence has only been up for a maximum of 3 months. Prior to that time there was a 4 foot field fence. Anytime that we would go near that field fence the dogs were directly up against the fence and barking in an aggressive manner. As a result, my wife was unable to use that portion of our yard. Last fall, one of the shepherds and a mixed dog got into a fight. Their daughter was bitten while trying to break up the fight. My wife had to go over and help break the dogs apart. Therefore, I do not see these as gentle dogs. You do not have to get anywhere near their fence for the dogs to bark. I walk out my back door, which is at least 60 feet away from the fence, and they will bark. If we go on the southwest corner section of our lot at least 2 of the dogs are back there barking at us. I want to reiterate the prime reason we are in opposition of this permit is because it is against the County Ordinance. We believe false statements have been made on the application due to the dogs being gentle. They do not appear to be gentle or nonaggressive. The dogs have disrupted our lifestyle. We believe if we should try to sell the house the dogs would be a negative factor.

CHAIR QUIGLEY: Do you have any evidence of that statement?

MR. ANSCHUETZ: No sir

(Chair Quigley recalled Mrs. Tugman to the podium and reiterated that she was still under oath.)

MRS. TUGMAN: Firstly, one gentleman stated there were feces in his yard. He has a dog of his own. Unless he does a DNA test, I do not know how he would know whose dog it belongs to. When we first put up the privacy fence, it is a lot more difficult to secure the bottom part. When my sister's dogs were there that is the only way we would know that there was a spot they could get out. We continually fixed the little holes. They did get out a couple of times but they would come back to the front door. Secondly, they do not just run loose. We currently have a 6 foot privacy fence everywhere. We are trying to contain our dogs. Dogs get out everywhere in the neighborhood. Homeowners Association had a meeting about that. One gentleman said we should not change the law. We are not changing the law. We are asking for a temporary permit. Unattended, people have to go away. We do not leave them abandoned. We do the best we can. We hire a pet-sitting service to check on our animals. What else can I do? That is the best we can do. One gentleman, who does not currently live here, but is going to come back and live here two houses down from us stated the people who live there are afraid of dogs. I was at their house with my German shepherd 2 days ago explaining to her the situation. All 4 or 5 of her kids were outside on the front porch with my dog, which does nothing but lie down on the ground. I took my dog all around the neighborhood with me to everyone's house on the front porch. One gentleman said he already has a history of disliking German shepherds. That is an opinion. We do not need to go into the covenants; everyone else has a 6 foot privacy fence. The one gentleman said he lived behind us, but he pointed out a lot 2 houses behind us. So, I am not sure who owns the lot in the center. It seems to be a vague issue. The people who live next to us say that when they come to our fence the dogs bark. Yes, if you come to someone's fence and they have a dog, they are going to bark. I went to the property to the east of mine to speak to the wife and to introduce myself. I reach out my hand and told her my name. She would not even shake my hand. She just looked at me. All the while her dog barks at me. She apologized for the dog barking. The people to the west of us, who complained adamantly that they could not approach their fence to do anything, garden continuously. We put the privacy fence up; she cannot see our dogs and we cannot see her. I do not know how a 90 pound German shepherd is going to get over a 6 foot privacy fence. Initially, when we first moved there, she saw all four big dogs and offered to take care of them and feed them while we were gone, as we offered as good neighbors to take care of hers. She was not in fear of our dogs. If the property values go down it is not because I have four dogs.

(Chair Quigley asked the audience if there was anyone who had signed to speak in opposition that wants to introduce any statement and/or evidence. There was no response from the audience)

Closed Public Hearing

VICE-CHAIR DAVIS: The amendment states 4 to 6 dogs.

MR. HUMPHREY: I am concerned about 8 – 10 dogs during the summer time regarding feces. I can foresee a problem regarding the smell/odor during the summer time unless there is routine cleaning.

VICE-CHAIR DAVIS: There are two compelling sides.

MR. SWANSON: I cannot recall this many people speaking in opposition where the testimony was not repetitive. I am also troubled by the statement made by the applicant that on the weekends there could be 8 – 10 dogs on the property. This is a serious situation. Under why the application should be denied, it is about the harmony of the neighborhood as I listen to the neighbors speaking in opposition.

CHAIR QUIGLEY: In this particular matter, the requirement is simply a majority vote on whether or not we approve the appeal? Can conditions be applied?

VICE-CHAIR DAVIS: Does that mean either aye or nay?

MR. BARRETT: You may reverse or affirmed completely or in part; or may modify any order requirement decisions or determinations. To that end, shall have the powers of the administrative official, in this case Mr. Combs, for whom the appeal is taken.

CHAIR QUIGLEY: What conditions could the Board introduce?

MR. BARRETT: I want to take it step by step to ensure that Vice-Chair Davis' question is addressed which was either aye or nay. The correct answer is no. It is yes, no or yes with conditions. One of the ambiguities that I see in this case is, and please do not interpret that I am suggesting any decision, let's assume that there is a permit in place for 4 dogs; the question then becomes if they have dog 5 or 6, would that be a violation of the Ordinance or not be covered by the Ordinance because it is not permanent keeping of those dogs. You should not address cases that are not before you. Do not give advisory opinions. On the other hand, there is a concept of judicial conformity. The Board can affirm, deny or uphold with conditions.

CHAIR QUIGLEY: We can levy conditions?

MR. BARRETT: As long as they are reasonably related to the goal of that section of the ordinance.

VICE-CHAIR DAVIS: Can the Board approve with a specific number?

MR. BARRETT: Yes sir, any time a permit is approved it not only has to be for a specific number but also for specific dogs, which are listed within the application.

MRS. TART: According to the Ordinance, in no circumstance can there be more than 6 dogs?

MR. BARRETT: Correct

CHAIR QUIGLEY: That does not pertain to transient dogs.

MR. SWANSON: Now we are getting back to my first question, which was the definition of the word "kept". If the dogs arrive on Friday and leave Sunday is that considered "kept" within the common meaning of the word?

MR. BARRETT: I am reasonably confident that it is not. However, it comes into play in these ways: One situation is if you have 3 dogs and 1 or 2 dogs stay for a night or two. Another situation is if you have 4, 5 or 6 dogs and an additional number of dogs come to stay for a

temporary visit that may be a problem because dogs are not pack animals. This is a relatively complicated situation.

MR. SWANSON: That is my concern, when Mr. Tugman stated there would be 8-10 dogs there this weekend.

MR. BARRETT: I think those dogs are not relevant to the Board's discussion because they are not being kept. If dogs come every month and stay for a week or 10 days or come regular then you get into the arena of whether they are being kept.

MR. SWANSON: If I go away for the weekend, we are going to kennel our dog at a local kennel by dropping it off on a Friday and retrieving it on a Sunday, why is that different from dogs arriving on Friday and departing on Sunday?

MR. BARRETT: Because Ordinance refers to dogs that are permanently kept.

VICE-CHAIR DAVIS: Based on the testimony, they are part of the problem.

MR. BARRETT: That is the point I was trying to get at, if you start with a lower number of permanently kept animals you may have less of a problem when other animals come to visit. If you have a higher number of permanently kept animals you might consider that when other animals come to visit there is more potential for problems.

VICE-CHAIR DAVIS: Part of the testimony is that those numbers are members of a family.

MS. SPEICHER: The Zoning Ordinance specifies temporary event as no more than 30 days within one calendar year. (Section 1001 – Page 95) It addresses temporary events not dogs or kennels.

Temporary Events. A temporary occupancy permit may be issued for bazaars, carnivals, religious revivals, sports events, circuses, festivals and similar uses for a limited fixed period of time not to exceed 30 days in any one calendar year, and as the Coordinator may impose based on the character of the district affected.

CHAIR QUIGLEY: This means the transient animals have a 30 day window in a calendar year?

MS. SPEICHER: That is the general rule for a temporary event.

VICE-CHAIR DAVIS: Unless they register the transient animals when they come and go, how will we know when it is 30 days? There is no way to enforce this rule.

MR. BARRETT: Inspectors will do periodic checks.

MRS. TART: The ordinance reads that temporary housing can never exceed more than 6 dogs. What is temporary housing in relationship to the word "kept"?

MS. SPEICHER: I would like to clarify, that this is in a residential district that does not otherwise allow a kennel.

VICE-CHAIR DAVIS: If the appeal is approved without conditions it would not be subject to that rule unless it was stipulated.

MR. BARRETT: If the appeal is approved it would be for a temporary housing permit for the 4 specific dogs in the application. There is still some ambiguity because if dogs 5 and 6 keep coming back on some intermittent but periodic basis, Code Enforcement will have to decide whether they are being kept.

MR. SWANSON: If the application is approved, given your interpretation of the word “kept”, when Code Enforcement goes out there and the relatives’ dogs are present, they are only looking to see if they are dogs that are being permanently kept.

MR. BARRETT: Essentially, yes. Although the temporary boarding permit itself only addresses being kept, the Ordinance restriction on the number of animals is the one that has the word “permanently”, which effectively limits the number of adult dogs to 3.

MS. SPEICHER: The definition of kennel has the word permanently. That does not apply to the temporary housing permit.

MR. SWANSON: The Code Enforcement Officer made his determination based on the New Hanover dogs.

MR. BARRETT: Mr. Combs’ letter states that in addition to “surrounding property, as well as residents, will be unduly affected with the issuance of this permit and the public good would not be served”, which clearly references the factor by which he is to consider.

VICE-CHAIR DAVIS: Mr. Combs did state that there were numerous complaints from neighbors regarding the noise.

MR. SWANSON: You stated the Board can approve a temporary permit up to a year. Can the permit be approved for a period of time less than 12 months?

MR. BARRETT: It can be less than 12 months.

MS. SPEICHER: It states, “Not to exceed 12 months”.

VICE-CHAIR DAVIS: Can it be tied to an event, which would be the demise of one of the dogs?

MR. BARRETT: It would have to be because if one of the dogs passes then they would be in conformity with the underlined Ordinance provision. The initial period of the permit is not to exceed 12 calendar months and the renewal is for a maximum period of 12 additional calendar months.

VICE-CHAIR DAVIS: We are dealing with the 4 dogs. Can we address the other dogs, dogs 5 - 10? From the testimony that I heard, there are some issues with the 4 dogs. And there was other testimony that there were problems with the visiting dogs.

MR. BARRETT: There was very clear testimony that neighbors are troubled by the four dogs. The ordinance does not address temporary visits. The provision for temporary housing permits is a safety valve for a provision in the ordinance. Therefore, I am uneasy with a condition that goes beyond or directly ties to the ordinance. The Board could interpret "keeping" to refer to dogs being at the subject property for 7 or more continuous days. This would give the neighbors the opportunity to call Code Enforcement.

VICE-CHAIR DAVIS: Even if the Board denies the permit the applicant can keep 3 dogs; therefore, we would not be greatly improving the scenario for the neighbors but just eliminating a dog.

MR. BARRETT: There is an additional level to that. The Board can address dogs 5 and 6 as they continue to visit.

MRS. TART: The ordinance does state that the Board can consider how easily the accommodation available for housing or boarding the dogs to be temporarily housed. I am speaking in reference to the 2 dogs from New Hanover County. We all know that housing is available for dogs if you want to go away for the weekend. The dogs can be boarded. That is not an undue hardship. We do not need to accommodate a relative.

A motion was made by Chair Quigley, seconded by Vice-Chair Davis to overturn the Administrative Review of the Deputy Planning Director's decision denying a Temporary Housing/Boarding application (TK09-01).

The Temporary Housing/Boarding application (Case No. TK09-01) is approved subject to following conditions:

1. The four dogs named/identified in the application and registered in Cumberland County are allowed for a period of 12 calendar months, or less time in the event one of the dogs dies prior to May 22, 2010;
2. At no time can any dogs be left unattended overnight when the owners are not present at the subject property, i.e. a care-provider must temporarily reside at the subject property or the dogs must be boarded at an appropriate facility during the owners' absence;
3. Any dogs, either permanently kept or visiting, reported unsecured from the subject property resulting in two or more Notice of Violations will be deemed just cause for revocation of this application and revocation of the zoning permit;
4. Continuous disharmony in this matter will be reviewed by the Board which could ultimately result in permit revocation;
5. The Planning & Inspections Department Director has the authority to refer any renewal request to this Board, in addition to referring any circumstance found to be in contradiction to the factors established in Sec. 912, G. County Zoning Ordinance;

6. The contents of the application are considered to be incorporated into this conditional approval; and
7. The applicant must obtain a zoning permit from the County Code Enforcement Office, Room 101, Historic Courthouse, within ten days of receipt of this notice.

Quigley: Yes
Davis: Yes
Tart: Yes
Humphrey: Yes
Swanson: Yes

The motion was approved unanimously.

8. DISCUSSION

A. REAPPOINTMENT CONFIRMATION TO THE BOARD

- GEORGE QUIGLEY
- JOSEPH DYKES

B. UPDATE: NOTICE OF VIOLATION - **VIOLATION CASE # WS02-02 & WS00-01:**
INVERNESS ON ANDREWS HOMEOWNERS ASSOCIATION, INC.
3534 ROSEBANK DRIVE
FAYETTEVILLE, NC 28311

Ms. Speicher updated the Board regarding the above Notice of Violation:

MS. SPEICHER: Andrews Homeowners Association is in the process of finding someone to maintain the ponds.

Board requested update on P09-03-C (Isaac Williams)

MS. SPEICHER: The Board of Commissioners also approved P09-20 (Buffer Amendment) on Monday, March 16, 2009.

9. ADJOURNMENT

There being no further business, the meeting adjourned at 9:15 p.m.