

Members:

George Quigley, Chairman
John R. Swanson, Vice-Chair
Oscar Davis, III
Melree Hubbard Tart
Joseph Dykes



Alternates:

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

Cumberland County Board of Adjustment

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

MINUTES
APRIL 15, 2010
7:00 P.M.

Members Present

John Swanson, Acting Chair
Oscar L. Davis, III
Joseph Dykes
Horace Humphrey
Randy Newsome
Carrie Tyson-Autry (non-voting)

Absent Members

George Quigley, (excused)
Melree Hubbard Tart, (excused)

Staff/Others Present

Patricia Speicher
Pier Varner
Angela Perrier
Melodie Robinson
Harvey Raynor (Deputy County Attorney)

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

1. ROLL CALL

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

2. SWEAR IN BOARD MEMBER

MS. SPEICHER administered the Oath of Office to Randy A. Newsome

3. ADJUSTMENTS TO THE AGENDA

There were none.

4. APPROVAL OF THE MARCH 18, 2010 MINUTES

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

5. ABSTENTIONS BY BOARD MEMBERS

There were no abstentions by Board Members.

6. PUBLIC HEARING DEFERRALS

There were no deferrals.

7. BOARD MEMBER DISCLOSURE

There were none.

8. POLICY STATEMENTS REGARDING APPEAL PROCESS

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

9. PUBLIC HEARING(S)

Opened Public Hearing

- **P10-07-C:** CONSIDERATION OF A REQUEST FOR A VARIANCE FROM THE COUNTY ZONING ORDINANCE, SECTION 1202, OFF-STREET PARKING, SUB-SECTION D, DESIGN, WHICH REQUIRES PAVED OFF-STREET PARKING SPACES FOR A RECREATION/AMUSEMENT OUTDOOR, CONDUCTED OUTSIDE A BUILDING FOR PROFIT IN A PND PLANNED NEIGHBORHOOD DISTRICT ON 56.32+/- ACRES, LOCATED AT 533 CARVERS FALL ROAD; SUBMITTED BY EASON BRYAN, III FOR CARVER'S FALL, LLC (OWNER).

MRS. VARNER: Mr. Chairman, I would like to make a remark that recently there has been a Special Use Permit for this recreation/amusement outdoor on January 21, 2010.

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

MRS. VARNER: Are there any questions?

ACTING CHAIR SWANSON: Are there any questions for the staff? I hate to be the one asking questions, but since you asked, could you point out at Section 1202 specifically on what page are you referring to as the controlling section of the County Code?

MRS. VARNER: Page 128. The section is 1202 Off-Street Parking, subsection D. Design, page 128 of the Zoning Ordinance.

ACTING CHAIR SWANSON: The site plan that you have up there, the area that's marked by the words "variance" with the line and arrow pointing to the parking spaces, is that what the requested variance is for?

MRS. VARNER: Yes, for the parking spaces. The ordinance requires that when an applicant is required to have four or more parking spaces, they are required to pave the parking spaces.

ACTING CHAIR SWANSON: Am I interpreting the drawings correctly that these parking spaces as the site plan as oriented are on the west side of the railroad tracks?

MRS. VARNER: Yes sir, these nine spaces are on the west side and the three other spaces are further east.

ACTING CHAIR SWANSON: But we're not concerned with them, because there are less than four, right? So we're just worried about the nine?

MRS. VARNER: Well, the applicant is requesting a variance for all twelve off-street parking spaces.

ACTING CHAIR SWANSON: OK, so the number is the total no matter how they're configured?

MRS. VARNER: Asked for clarification of the question.

ACTING CHAIR SWANSON: As long as you've got four or more, it doesn't matter how they are configured, right?

MRS. VARNER: Yes, it doesn't matter, they have to be paved.

ACTING CHAIR SWANSON: In the site plan that we're looking at now, is there any paving called for inside that loop?

MRS. VARNER: I have no knowledge of that, but you can ask the applicant who is present at this moment.

ACTING CHAIR SWANSON: Could you go back to the overhead aerial photograph please?

MS. SPEICHER: If I could for the record, I'd like to correct that. The ordinance does require the required drive that's serving the off street parking spaces to also be permanently surfaced.

ACTING CHAIR SWANSON: Okay, any other questions?

Public Hearing opened

ACTING CHAIR SWANSON: I have three individuals who have signed up to speak in favor, are the applicants present? Is it safe to say before we ask you to speak, both of you have indicated that you're going to speak tonight, is it safe to say that one would be reiterating the information presented by the other?

EASON BRYAN: I'd like to say no, we will avoid that if that's your request. My intentions are to speak for the both of us, but he might give me a gesture and tell me something else.

ACTING CHAIR SWANSON: OK, who would like to go first? If you'll approach the podium, please.

ACTING CHAIR SWANSON: Swore in Mr. Eason Bryan.

EASON BRYAN: We have a Power Point slide show [Exhibit 1] and if I can go through that and maybe address a couple of things that are new to us in the discussion. A little bit of history here whenever this January 21, 2010 issue of a Special Use Permit, the land's in the County but it's in the Municipal Influence Area. It's my understanding that because it's in the Municipal Influence Area, the surfacing requirement is there, it's not a County requirement. We understood the Special Use Permit or the parking requirement was that there is one space for four people. Now in our drawing we put spaces there as sort of a place holder. This is a brand new thing that we're doing; we don't know the capacity of people we're going to have. It's tour based, so everything's booked. We think we may only need four spaces at the time, but we just

drew it there to show we had the capacity for growth and stuff like that. So it may have been a mistake on our part to draw that many, but four is all we think we'll need at any one time because our tours are pretty small. Obviously, you've seen this, our basic site plan. We're trying to get a variance from the pavement requirement, not from the parking requirement; we're fine with that, we're trying to get a variance from the paving aspect. As I've said before, the original plan shows the parking spaces more as a place holder in the general location, not necessarily to say there will be twelve there. We've not anticipating more than sixteen people at a time and therefore we're thinking four spaces as originally needed. So our requested variance is from having to pave the anticipated four spaces due to the following hardships and conditions and I'll go over each of these in a minute. The consequences of paving, the fact that it is a solid state road, at least a former state road. There's a positive impact on the area and the neighbors by not paving, and also maintaining the natural environment. So the foreseeable consequences of paving, some increased storm water runoff and some more erosion, you'll see some photographs here in a moment. The railroad recently has created a significant surface runoff problem because of all the clear cutting they've done through there and this paving requirement is going to exacerbate that. This is looking south down the railroad and the red boxed area beyond those trees is where we anticipate our parking to be. You can see they've clear cut an enormous amount of stuff and really have done minimum to almost nothing to planting anything back and the erosion is not good on their property and therefore it drains right onto our property. This is looking north and this is after the water drains where the parking is under the railroad and you can see there is an enormous amount of sedimentation and there is no vegetation to buffer the runoff. The slide on the left is looking west toward the bend on our road before you get to the parking part and you can see the erosion there and the slide on the right is a little north of where you cross the railroad and that's what they did with all the trees, they just sort of threw them down, they had no regard for maintaining any erosion control efforts. This is where the pipe exits from underneath the railroad after it drains our road, it's a little shady, but you can see probably more on the right hand side, some of the sedimentation buildup already and it's going to get worse especially if we have more impervious surface. Now, on the positive side of this, the state road is a fifty year old state road, engineered and built to state road standards and it's a very hard packed surface; it's not just sand that you're going to tear up. It's currently pervious, so it lets ground water seep in and slows the surface water runoff. Over the last fifty years there has been no significant erosion of the road itself, it has been built very, very well and so it's worked for fifty years and we think it can work for a long, long time. This is looking north on the road and you can see as we make the left hand turn and the green grass there is where we anticipate our parking to begin and continue down towards the end of that area, so it's a solid road. This is just another picture looking north. The positive impact on the area is we believe the paving would decrease the property values. I've been in residential real estate sales for the past five years, so I have some personal knowledge and experience to be able to make a statement such as that. A lot of people live in this area for the natural beauty and having a parking lot is not going to add to that, it will probably only detract from the values of the surrounding neighbors' property. The other aspect is that it does maintain a natural area and will continue to focus on ecotourism. Our company is also a member of the International Ecotourism Society and we want to maintain the feel and the intent of the business and the membership. A natural preservation area, it's been kept this way for fifty years, paving is inconsistent with the natural themes of the land and the purpose of the business.

Not paving is also going to help showcase Cumberland County's natural beauty and also there's a big push from the state to decrease impervious surface. So this goes in line with that push as well. This is just a finishing touch to show you one of the reasons why we're doing this to showcase and share the property with people from all around and bring people to Fayetteville to show them why it's such a wonderful area. We think the paving would detract from that to some degree among all the other reasons. That's the end of my presentation. I would be happy to entertain any questions or concerns.

ACTING CHAIR SWANSON: Does anyone have any questions? During your presentation I'm not sure if I heard you right, so if I could get clarification please, I'd appreciate it.

EASON BRYAN: Yes, sir.

ACTING CHAIR SWANSON: Did you say that you weren't contesting the paving of the parking spaces, but it was the paving of the driveway into the property? Is that what the issue is?

EASON BRYAN: We're trying to get a variance from paving period.

ACTING CHAIR SWANSON: So for the driveway and the parking spaces?

Callan Bryan asked to comment but was told by Acting Chair Swanson it was not his time to speak.

ACTING CHAIR SWANSON: Can you go back to the slide that says you believe that paving would decrease property values. I see the word "believe". Do you have any evidence of this particular neighborhood where paving would cause property values to decrease?

EASON BRYAN: Very good question and valid but I think impossible to have evidence in so small area to do that because there is no other area that is paved and you would have to go outside somewhere else and to really get an actual answer, you'd have to go to an appraiser for that. The appraiser would have to go to another area and that wouldn't be relevant to this area, but in general.....

ACTING CHAIR SWANSON: If I could ask Mr. Raynor for an opinion, please? The impact of a belief without hard evidence and the weight the board should give that?

MR. RAYNOR: If the board was to find that the witness was an expert then he certainly can give an opinion.

EASON BRYAN: I've had my North Carolina Real Estate License for almost six years and I've been working residential real estate for about 5 ½ years of those six years.

ACTING CHAIR SWANSON: How many commercial property transactions have you been involved in?

EASON BRYAN: I've never been involved in a commercial property transaction, but as I see it, the relevance is residential because we're in a residential area.

ACTING CHAIR SWANSON: Can you cite an example in your six years in the area of the state where you practice real estate where paving caused an adverse impact on adjoining property values?

EASON BRYAN: I've never had a site such as this that I've dealt with, so therefore, I cannot.

ACTING CHAIR SWANSON: Any other questions?

EASON BRYAN: I just wanted to ask one more question, it might be for staff... The conditions that were on the Special Use Permit as I read them and understood them was that the paving was for the, any surfacing requirements for the parking and that was all understood before and that was the purpose of the variance. We weren't trying to eliminate all the pavement, it was the point of the request, the variance. We thought it was limited to the parking and not.... actually the drive up to it, up to the parking area basically is paved, there's a point where it stops, and then there's a dirt road and an old state road. I think that was the only thing I had to have answered.

ACTING CHAIR SWANSON: Thank you for your testimony.

ACTING CHAIR SWANSON: Swore in Callan Bryan.

ACTING CHAIR SWANSON: What would you like to tell us?

CALLAN BRYAN: I just wanted to reiterate, not reiterate, but clarify what we're here to do. The variance is asking for us not to be required to pave twelve spots. It's our belief that the rules do not require us to do twelve spots and the number twelve came from the lines that were on there and as he just mentioned, as to the paving up to that part and any paving around there. It's our understanding the rules do not require us to do that nor the permit we received originally that's why we are a little surprised to hear that that is what we're asking for. We are asking for that if that's a requirement, but it's our understanding that we were only required to pave one spot for every four people. The nature of what we're doing is very small group tours; we'll schedule a group at 9:00, we'll schedule a group at 11:00 and we'll schedule a group at 1:00. Those groups comprise of eight to ten people. It's reservation based and there will not be a ton of traffic through there like when Disney World opens up in the morning. It's just going to be a small group of people coming in at one time in regards to that. If there are any other questions regarding some of the erosion issues I want to stand by to answer that.

ACTING CHAIR SWANSON: Are there any questions from the board? I do have a question. What will the property be used for? You talked about reservations?

CALLAN BRYAN: Well, what we're using the property for is for the last forty-five years, we've leased it to the Boys Scouts and Girls Scouts for nothing. We are still leasing a portion of the property to the Okneachy Council, the Boy Scouts of America and it's our intention to continue to do that for as long as they want to be there.

So it's currently being used for weekend campouts for scouters and the council. Most of those are local troops from my understanding and that's because my brothers are all Eagle Scouts and that's important to us. That's one, the other use in regards to the reservations is that we are developing a zip line and canopy tour. This is where we run steel lines through the canopy of the trees and people can do a tour through the property, you saw a picture of the waterfall. There will be canopy bridges and other aspects that will showcase the property but will have almost no impact on it because people's feet won't touch the ground for two hours.

ACTING CHAIR SWANSON: So is it your intent to disturb the natural surroundings the least amount possible in order to create which you envision as the use of the property? Is that a fair statement?

CALLAN BRYAN: That's our current goal, yes. That's what we're doing and the parking and entrance aspect of it is part of that.

ACTING CHAIR SWANSON: Any questions;

MS. SPEICHER: Can I please clarify for the board. We do in fact show twelve parking spaces that was on the site plan when it was originally submitted. Staff has no problem whatsoever and it's allowed by the ordinance for the applicant to submit a revised plan reducing the number of parking spaces. We cannot increase the number without Board approval, but we can certainly reduce them.

ACTING CHAIR SWANSON: Called Callan Bryan back to the podium. Based on the information from the staff, were you involved in the preparation of the site plan or was it your brother?

CALLAN BRYAN: That was me.

ACTING CHAIR SWANSON: The parking spaces that were drawn there, were they just meant to be representational or were they just meant to accurately depict the requirements under the variance and you just happen to draw twelve spaces.

CALLAN BRYAN: I'm limited in computer use and there was a little icon that I think came in equal to three spots and I copied that several times to represent. I guess I should have just left a "P" there. I'm certainly not trying to say we're not interested in complying in what the rules are, but in regards and we did submit this and there are twelve spots, we don't disagree with that, but it was our intention to say this is where the parking spots are going. As far as the number of spots, we'll probably be able to put more there but in regards to paving, that was not designed to represent out intention of what we were going to be paving. So it was more representational, like Eason said, a placeholder.

ACTING CHAIR SWANSON: I got it.

CALLAN BRYAN: It certainly wasn't meant to confuse the Planning Staff, because they're relying on what they're looking at to make sense and we didn't clarify.

ACTING CHAIR SWANSON: I appreciate the clarification.

MR. DAVIS: The numbers are not important once you reach four, right?

MS. SPEICHER: Yes, sir. The ordinance requires one space for every four persons of design capacity, so it would probably be super great for the board, for the record, for the staff if we get a clarification on the design on the intended number of individuals that are going to be at the site.

ACTING CHAIR SWANSON: Called Mr. Callan Bryan to the podium. The number of individuals who will use it? You talked about reservation. The average number per reservation?

CALLAN BRYAN: Sure, we anticipate, along with staff, approximately sixteen people. There would be eight to ten people per tour, two tour guides per tour and somebody to be on site, but not a lot of staff for the tour size.

ACTING CHAIR SWANSON: Alright, thank you.

ACTING CHAIR SWANSON: We have one more individual signed up to speak in favor, Mr. Ed Badgett.

ACTING CHAIR SWANSON swore in Ed Badgett.

MR. BADGETT: On the map I'm against paving. On the map the old Carvers Falls Road, that is paved and the part parallel with the railroad tracks is the part that is not paved. That really looks nice through there, there's pines and so forth. It's aesthetically nice. The piece of property that they have, I don't know if you've ever been out there, but it's a nice piece of property. I think anything you do to, I don't know, if you pave or anything like that, I think it takes away from the value. The value of the experience and I also agree it would take away from the value of the property because it's supposed to be a natural area. It's like if you go to Raven Rock up here in North Carolina, off Hwy 421 or wherever it is, they don't have that paved, but yet they have adequate and that left over road which is what that is just as Mr. Bryan said, that used to be a road, the road used to come around and then at some point and time the state cut that loop through there and kind of abandoned that. I don't see any reason for it to be paved and I would rather it wouldn't be.

ACTING CHAIR SWANSON: Anything else, any questions?

MR HUMPHREY: How long have you lived in the area, sir?

MR. BADGETT: I've been out there twenty years.

MR. HUMPHREY: Twenty years? Thank you.

MR. BADGETT: I'm also a N.C. Broker and I agree with the belief of the assessors.

ACTING CHAIR SWANSON: Are you the residence that's closest to the proposed property?

MR. BADGETT: Probably, no, there would be one closer. There's one that's just across, there's one in that little triangle where the RR is (pointing to and referring to the slide presentation). That area in blue on the other side of the railroad tracks, that was the original road where it comes down in red and this yellow curve was not there.

ACTING CHAIR SWANSON: Any Discussions? Any Questions?

MR. HUMPHREY: I can recall I think it was in January when they were down asking for the Special Use Permit and they were talking about the natural beauty of the property and what they had over the years for the Boy Scouts and Girl Scouts and other people and how they wanted to keep it natural when we were granted that particular approval. I recall that very vividly and they had some very beautiful pictures. When I got this letter and saw this about the variance I was thoroughly kind of confused until I read it in its entirety because I thought it has been taken care of.

ACTING CHAIR SWANSON: Well, we've certainly heard testimony from one resident, from his prospective neighbor that it would not be in keeping with the harmony of the neighborhood. That being said, is there any motions?

MR. DAVIS: Mr. Chairman, in regards to Case P-10-07-C, I make a motion that we grant the variance and that we grant the variance based on the testimony we have heard based on the following conclusions:

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

That the property is currently served by unpaved roads and trails and the request will allow the developer to achieve the stated goal of keeping the area as natural as possible;

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

The general surrounding area does not have paved parking or paved private drives;

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

The general surrounding area does not have paved parking or paved private drives and the proposed use is unique to the subject property;

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

The request will allow for the proposed development to be consistent with the surrounding area;

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

The unpaved road serving the subject property has been in place and utilized for a minimum of 50 years;

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

With the revised site plan showing the minimum required four off-street parking spaces the variance is required due to only one space;

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

The Special Use Permit for the outdoor recreation has already been approved and is allowed by ordinance in the current zoning district;

MR. DAVIS: Are we going to need a change in the site plan with that statement?

MS. SPEICHER: Yes, you could put that as #6 on the second page.

MR. DAVIS: So we will have to get an updated site plan to show the proper number of spaces so we'll be in accordance with #7.

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

This decision was not based on the existence of any nonconformity in the area; only on everything we've seen and heard with the exception of an updated site plan to reflect the proper number of parking spaces and where they'll be located.

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

1. All information contained in the application;
2. All development shall be in accordance with the site plan as submitted unless otherwise specified below;
3. All other provisions of the County Zoning Ordinance shall be complied with;
4. All relevant Federal, State, and local regulations are complied with;
5. The applicant is responsible for obtaining all required permits prior to proceeding with any development;
6. The developer shall submit for staff review and approval, a revised site plan indicating the required four off-street parking spaces for a total of 16 individual on site at any given time.

ACTING CHAIR SWANSON: Any discussions? Any seconds?

MR. HUMPHREY: Seconded the motion.

ACTING CHAIR SWANSON: We have a motion and a second. Does the staff need any clarification as to the number of parking spaces before we vote or the revision of the site plan?

MS. SPEICHER: I noted it as four parking spaces, sixteen people and that includes employees.

ACTING CHAIR SWANSON: All in favor signify by saying I. All opposed. [None]
Congratulations, you have your variance, subject to the revisions of the revised site plan.

Swanson:	Yes
Davis :	Yes
Dykes :	Yes
Humphrey:	Yes
Newsome:	Yes

The motion was approved unanimously.

10. DISCUSSION

There was none.

11. UPDATES:

MS. SPEICHER: Not unless Mr. Raynor happens to know something about Mr. Williams. He was scheduled for Environmental Court but I'm not sure that it went yet.

MR. RAYNOR: No.

MS. SPEICHER: George Hatcher with Code Enforcement has been working on that one. He has it scheduled. I would like to apologize to the Board that we just went with it, [the site plan] we don't know anything about zip lines as far as how many people are going to be there.

ACTING CHAIR SWANSON: I think that's a case study of the old adage, a picture is worth a thousand words. I thought it was twelve too, when I got to twelve, I ran out of parking spaces.

12. ADJOURNMENT

A motion to adjourn was made by Acting Chair Swanson and seconded by Mr. Dykes. The vote was unanimous.