

**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  
MARCH 18, 2010  
7:00 P.M.

**Members Present**

George Quigley, Chair  
Oscar L. Davis, III  
Melree Hubbard Tart  
Horace Humphrey (voting)  
William Lockett Tally (voting)

**Absent Members**

Joseph Dykes, (excused)  
John R. Swanson, (excused)

**Staff/Others Present**

Patricia Speicher  
Pier Varner  
Angela Perrier  
Laverne Howard

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

1. ROLL CALL

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

2. ADJUSTMENTS TO THE AGENDA

There were none.

3. APPROVAL OF THE FEBRUARY 18, 2010 MINUTES

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

4. ABSTENTIONS BY BOARD MEMBERS

There were no abstentions by Board Members.

5. PUBLIC HEARING DEFERRALS

There were no deferrals.

6. BOARD MEMBER DISCLOSURE

MRS. TART: We own some property approximately four tenths of a mile from the subject property. I wanted to make the Board aware of that.

CHAIR QUIGLEY: Do you have any financial interest in any of the property in question?

MRS. TART: No sir.

CHAIR QUIGLEY: Thank you for that disclosure.

7. POLICY STATEMENTS REGARDING APPEAL PROCESS

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

8. PUBLIC HEARING(S)

**Opened Public Hearing**

- **P10-06-C**: CONSIDERATION OF A SPECIAL USE PERMIT TO ALLOW A KENNEL OPERATION IN A RR RURAL RESIDENTIAL DISTRICT ON 5.61+/- ACRES; LOCATED ON THE EAST SIDE OF BAYWOOD ROAD (SR 1831), SOUTH OF SWINDON DRIVE; SUBMITTED BY CARL AND TEMPIE A. BOWDEN HEIRS (OWNERS) BY DANIEL G. SEAMAN, POA.

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

MRS. VARNER: For the record the application also includes 20 cats; however cats are not regulated by the zoning ordinance.

MR. DAVIS: How many parking spaces did you say?

MRS. VARNER: Three, at the front of the main building. They are 9feet by 20feet.

MR. DAVIS: That's adequate for the number of employees?

MRS. VARNER: The kennel operations doesn't have specific number of parking spaces, but the applicant spoke with Ken Sykes in the Code Enforcement Section and he was advised to do it by square footage, I don't remember the other advice, but you could ask Mr. Seaman when he speaks.

MR. HUMPHREY: How close is the subject property to the nearest residential structure?

MRS. VARNER: Indicated on aerial photo where the closest residence was to the subject property.

CHAIR QUIGLEY: It looks like that site is pretty heavily forested. (looking at the aerial photo of subject property)

**Public Hearing opened**

CHAIR QUIGLEY: We have people signed up to speak in opposition; there is no one to speak in favor, called Mr. Frank Singletary to the podium. (Swore in Mr. Frank Singletary)

MR. SINGLETARY: My name is Frank Singletary, I reside at 2048 Baywood Road.

CHAIR QUIGLEY: Where is this property in relation to the subject property?

MR. SINGLETARY: Next door (Indicated on the map).

CHAIR QUIGLEY: How far is that house from the proposed location of the actual kennel?

MR. SINGLETARY: I'm going to say 150-200 feet or less. I would say less than 200 feet. That is my best guess. I want to thank you for allowing me to speak tonight and I will be very brief. I have lived on that property for 20 years, it's been a nice quiet neighborhood, never had any problems, but my objection to the kennel is I think it would create a lot of traffic in and out, disrupt the neighborhood, barking dogs, there would also be a problem with the smell. The feces from all these animals, they have to do something with it. My main objection is that someone comes in on the weekend to feed and water these boarded dogs, and inadvertently leave a gate or kennel open. Let's say they have a dog that is prone to bite people and the gate or kennel is left open inadvertently, I'm in the yard or a child is in the yard, next thing you know you get bitten. I have been bitten by dogs before; I worked for the North Carolina Forest Service and have been bitten by a pit bull. Taken to the ground by this dog, required a day in the hospital, so I know about a dog bite, it was no fault of my own. I object for those reasons. The reason I know a little bit about dog barking is my sister worked for a veterinarian in Bladen County for 30 years. I would frequently go down there with her on the weekends because she had to feed and water the dogs. It was constant barking, she was getting calls all during the night from the folks around the veterinarian's office asking "can't you stop the barking". That was a problem for those folks down there, and he was a veterinarian. I can see the same problems for myself. If I was down the road a mile or two I wouldn't have any objection, but I stay next door, and I can't move. My place is paid for, I own it and I'm not going to move. This might be thrust upon me and I may have to live with it. You have given me the opportunity to speak and I'm voicing my concern. I know places have got to go somewhere, but I don't think this is a good location. My second point is my father-in-law bought this property 20 years ago, we were going to buy the subject property when it was up for sale, but he said you don't want that property, you can't do anything with it, its swamp wetlands, so we bought the hill next door. We bought the hill next door, I'm on the highest hill that there is, and I'm having problems now with my septic tank. Where this place is proposed, you need your rubber boots today. I've lived there for 20 years, I know. There is nowhere for the water to go back there to the creek. If it had proper ditching and enough money you could move the water, but that is swamp wetlands. I will say this to this panel tonight, and I know this is not the panel for this to be addressed, but if you allow a septic tank to be put on that property, if Cumberland County should, they should never deny anyone else in Cumberland County to have any piece of land perked, because it is so wet. If they can perk that, I can perk the middle of the Cape Fear River.

CHAIR QUIGLEY: Swore in Mr. David Williford.

MR. WILLIFORD: My name is David Williford and I live at 2539 Mirrorlake Dr. I own property just south of the subject property (indicated on map). The reason that I am objecting to this case is because my family put a development out there called Stone Creek and we put about 95 homes in there. It's our plan to bring sewer, we already have water, and our plan is to put 163 homes on this property. Probably starting in the next year or year and a half, and I would



object to having a kennel there because of the noise and the smell. That's my main concern. Some of the property that I have, that abuts against the subject property is unbuildable, it's wetlands. Except for the piece that was sectioned near the barn, the other part of the land can be developed on. We've already got it platted and ready to go. We are waiting for the market to turn around a little bit before getting started on it. The petitioner is related to me, I'm a champion of property rights, believe me, but I would object for those reasons. It would be tough to sell houses with that behind your backyard.

MR. DAVIS: What size and price range are you looking for?

MR. WILLIFORD: We are going to be putting anywhere from 1800 – 2400 square foot homes, very similar to phase 2 of Stone Creek.

CHAIR QUIGLEY: Called Mr. Goodrich to the podium. (Swore in Mr. Goodrich)

MR. GOODRICH: My name is Robert Goodrich, 4308 Swindon Drive. (Indicated on the map where his property is located in relation to the subject property).

CHAIR QUIGLEY: How far do you think your property is from the proposed location of this kennel?

MR. GOODRICH: From my house to where the structure would be less than 300 feet. Actually it would be convenient for me, the lady who will be running this operation has groomed my dogs before, I could walk across Frank's yard. My biggest objection is the noise issue. I'm here with Frank on his behalf because it wouldn't affect me as bad as it would him. But I know there are serious issues with the hydric soils in this area. Even though I'm further uphill than Frank is, like he said, when you go across my yard to his yard after it's rained you are walking through water. If I flush my commode it drains slowly, if we do a load of laundry it bubbles up in the commode, and we hadn't had any problems with the septic tank yet, we've been fortunate. Yes, there are a lot of issues with this property. Also, Shelby Tart, who owns all the rentals in that area, is not able to be here tonight, she asked me to read a letter from her, if possible.

CHAIR QUIGLEY: No, that is not permissible, but, you may present the letter to our clerk and she will let us read the letter.

MR. GOODRICH: That's all I have.

CHAIR QUIGLEY: Does anyone have any questions for Mr. Goodrich?

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

MR. GOODRICH: 20 years, I moved in about the same time Frank did.

MS. SPEICHER: For the record Chair, could we get Mr. Goodrich to specify that the Frank he is referring to is Frank Singletary?

CHAIR QUIGLEY: For the record the Frank that Mr. Goodrich is referring to is Frank Singletary.

MR. DAVIS: So the Health Department hasn't determined is this is suitable for septic.

MRS. VARNER: According to the Health Department we recommend on conditions #4 where it specifically referring to the smell and the feces of the animals, the Health Department comments were, well and septic permits required, dog waste cannot be connected septic system. So in the conditions we made a note that the animal waste cannot be connected to the same system as used for human waste. A separate system will be required for the disposal of the animal waste.

MR. DAVIS: Is that proposed, I don't see anything in the site plan for that?

MRS. VARNER: The applicant will have to submit a revised site plan.

MS. SPEICHER: It's all conditional on the Health Department's approval. So at this time it hasn't been worked out yet and he has not had his perk test yet as far as we know.

MR. DAVIS: So we are kind of putting the cart before the horse again.

MS. SPEICHER: Well this is quite often. Most cases they don't want to go through the expense of all the different fees and perk tests and everything, without knowing that their requested use is approved.

CHAIR QUIGLEY: But they would be conditioned in our special use permission.

MRS. VARNER: Yes sir, if the case is approved the applicant will have to comply with this requirement.

MS. SPEICHER: And they cannot get their zoning or building permit without showing that they have the Health Department permit. That's the way the condition is written.

CHAIR QUIGLEY: Understand. Does anyone have any questions of staff? Has anyone shown up to speak in favor of this action?

MR. SEAMAN: May I speak without having signed up?

CHAIR QUIGLEY: Yes, (swore in Mr. Seaman)

MR. SEAMAN: My name is Daniel Seaman, my address is 4001 Final Approach Drive in Eastover. I'm the one that submitted this paperwork, I'm not an owner of the property yet, but if we get the approval from the Board of Adjustment to do this, I plan on buying the property and setting up this kennel. The only thing that I have to say is that we want to be good neighbors in Eastover, because I live in Eastover, and obviously the neighbors, I want to please them. We've tried to design this whole operation to minimize noise, for one thing it is a heavily wooded area, and that should cut down on noise, but most of the dogs will be enclosed in a building. The only time they would ever be out would be to exercise. That would minimize the noise. Also, everyone talks about the smell; you actually can't get away with the smell anymore because you have to do the proper thing with the disposal of waste. So if you do that there should be no smell. But obviously we want to be good neighbors and if we can work this out we will, but if we can't then I don't want to be a bad neighbor.



MR. DAVIS: Can you address the security concern.

MR. SEAMAN: We're not quite finished with the design, but we are talking about that, animals do escape, I have three dogs myself, and if you open the door a little bit too wide they scamper out, then I'm running all over the neighborhood trying to catch them. So more than likely everything will be double fenced so that if they escape out of one area they actually have to escape out of two areas. I do know that's a concern and nobody wants their pet out running around loose, especially in the proximity of the road. So we are addressing that and we're going to make sure they can't escape very far. That's an issue, and we don't want anyone to be hurt, that's for sure, especially the animals, because they are a part of your family. That's what we're trying to do. We are trying to run a real nice operation and I think it's something that's needed in that area and it also employs people, which is the name of the game these days.

MR. DAVIS: What's the nature of the training?

MR. SEAMAN: Initially it's just going to be basic training for the dogs-housebreaking and that sort of thing. Eventually we'd like to get into maybe a little better training; there are military contracts out there. But basically it's just housebreaking, come to and that sort of thing.

CHAIR QUIGLEY: Does anyone have any questions for Mr. Seaman?

MR. TALLEY: You said most of the dogs would be kept inside at night? Would any of them be kept outside at night?

MR. SEAMAN: Not at night. I know barking is an issue, and I don't like barking dogs either, so that's why we would keep them in-house.

CHAIR QUIGLEY: Are there any other questions for Mr. Seaman? (there were none) Does anyone speaking in opposition have rebuttal? (there was none)

**Public Hearing closed**

MR. DAVIS: We've addressed this issue before it seems like, and numbers always come into play, I don't remember any of the numbers. This proposal says they can have up to fifty dogs, in the past do we have a ceiling of numbers, or some expectation when we get to a certain number of dogs?

MRS. VARNER: We had a previous kennel case; I think the maximum number of dogs was twenty.

MS. SPEICHER: That was on that particular case, the ordinance does not have a maximum number.

MR. DAVIS: There is no expectation relative to any particular number?

MS. SPEICHER: Not as far as the zoning ordinance is concerned. I'm certain that the animal services ordinance would address space per animal.

MR. DAVIS: Kind of like a child care?

MS. SPEICHER: Right.

CHAIR QUIGLEY: Are there any other questions? (there were none) May I remind you that the purpose of the special use permit is to comply with a requirement that there are other uses for some of the other areas in RR zoning that will allow a special use permit, so we're guided by the four criteria for that; not materially endangering public health and safety, the use meets all required conditions and specifications as outlined in the permit related items, the use will maintain the value of adjoining properties, and that the location and character will be in harmony with the neighborhood. Those are the conditions we have to satisfy.

MR. HUMPHREY: I have a little problem with #3; the use will maintain or enhance the value of adjoining or adjacent property. I just don't see a kennel enhancing the value of residential property.

MR. DAVIS: I'm going to state a question or comment. We could actually grant the special use permit make it relative to all of the contingencies and it could still not happen.

CHAIR QUIGLEY: That's true, because they have to satisfy physical items on the property.

MR. DAVIS: Right, and the reason we're doing this instead of those being satisfied is because if they satisfy those and we didn't grant the permit, they would have spent money to no avail.

CHAIR QUIGLEY: Essentially that's what we were told. That's right.

MR. DAVIS: Okay, I just wanted to be sure.

MRS. TART: Mr. Chairman, in relationship to item #3, as Mr. Humphrey mentioned, I believe the burden of proof is upon the applicant that the use will maintain or enhance the value of adjoining or abutting properties. I think we as a board, we need to seriously consider that particular item. That is required by us, by law.

CHAIR QUIGLEY: Essentially Mrs. Tart, you're right. What the implication is there, is that there would be testimony provided that would indicate that it would create a problem with the actual value of adjoining properties. But you're right, that's something we have to think about very carefully. Are there any other comments? (there were none) Is anyone prepared to make a motion?

MR. DAVIS: It sounds to me that Mrs. Tart was asking for more information to be provided to whether we could say it did or did not. Is that what you were saying?

MRS. TART: Actually, I have a question for staff. According to the North Carolina law, the burden of proof must be on the applicant, in other words, those who are opposed to a special use permit, it is not up to them to prove that it would diminish the value of the property, but it's up to the applicant to prove that it would not diminish, that it would not hurt the value of that property, the burden of proof is on the applicant.

MS. SPEICHER: You're correct Mrs. Tart.

CHAIR QUIGLEY: We have received no testimony to establish the value of the property before or after this action. Is anyone prepared to make a motion?

**Mr. Humphrey made a motion, seconded by Mrs. Tart, that Case P10-06-C be denied based on the following facts for your consideration, there is no testimony to establish that the use will maintain or enhance the value of adjoining or abutting properties.**

<b>Quigley:</b>	<b>Yes</b>
<b>Davis :</b>	<b>Yes</b>
<b>Tally :</b>	<b>Yes</b>
<b>Tart :</b>	<b>Yes</b>
<b>Humphrey:</b>	<b>Yes</b>

**The motion was approved unanimously.**

9. DISCUSSION

There was none.

10. UPDATES

MS. SPEICHER: On March 30, 2010 in this room at 6 pm, David Owens from the Institute of Government is going to be here again the Board is more than welcome to attend. He is expected to go over quasi-judicial proceedings. The intent of the meeting was set up as a joint meeting between the City Planning Commission and County Planning Board but we really would appreciate it if anyone wants to come. The new Zoning Ordinance has been placed in your books. I have started working on the Rules of Procedure to try and update them.

11. ADJOURNMENT

There being no further business; the meeting adjourned at 7:47 p.m.