

Members:

George Quigley, Chairman
Vacant, Vice-Chair
Joseph Dykes
Horace Humphrey
Melree Hubbard Tart



Alternates:

Martin J. Locklear
Randy Newsome
William Lockett Tally
Carrie Tyson-Autry
Ed Donaldson

Cumberland County Board of Adjustment

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

MINUTES
OCTOBER 21, 2010
7:00 P.M.

Members Present

George Quigley, Chair
Melree Hubbard Tart
Joseph Dykes
Randy Newsome
William Lockett-Tally

Absent Members

Horace Humphrey (excused)

Staff/Others Present

Patricia Speicher
Cecil Combs
Pier Varner
Melodie Robinson
Angela Perrier
Rick Moorefield (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

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

2. ADJUSTMENTS TO THE AGENDA

There were none.

3. APPROVAL OF THE SEPTEMBER 16, 2010 MINUTES

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

Mrs. Tart asked for a correction to the minutes as follows: To have her name added as an excused absent member and to correct the motion to adjourn from her name to the correct individual.

CHAIR QUIGLEY: If you should go through the minutes and find a correction, you have up to two years to make the correction.

4. ABSTENTIONS BY BOARD MEMBERS

There were no abstentions by Board Members.

5. PUBLIC HEARING DEFERRALS

There were no deferrals.

6. BOARD MEMBER DISCLOSURE

There were none.

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

- **P10-14-C:** CONSIDERATION OF A REQUEST FOR A VARIANCE FROM THE COUNTY ZONING ORDINANCE, SECTION 1002, INCIDENTAL USES, SUBSECTION E. ACCESSORY STRUCTURES 4; FOR A 20 FOOT SETBACK VARIANCE WHERE FIVE FEET IS REQUIRED, ALLOWING AN EXISTING STORAGE BUILDING TO ENCROACH 15 FEET ONTO THE ADJACENT PROPERTY; IN AN R15 RESIDENTIAL DISTRICT ON 1.10+/- ACRES, LOCATED AT 430 SHEP DRIVE; SUBMITTED BY J. THOMAS NEVILLE, THORP, CLARKE, NEVILLE & KIRBY, PA ON BEHALF OF THOMAS AND NANCY POULOS (OWNER), AND GREEN POND INC.(AFFECTED OWNER)

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

MRS. VARNER: A copy of the permit for a 24 x 36 foot, 864 square foot storage building was issued on July 18, 2006. Angela Perrier, a Code Enforcement Officer, is here to address the permitting. Are there any questions, Mr. Chairman?

CHAIR QUIGLEY: Does any member of the staff have questions? How long has this building been erected on the property? How old is that structure?

MS. SPEICHER: That would be a better question for the applicant, sir.

CHAIR QUIGLEY: Okay, you don't know.

MS. SPEICHER: The staff presentation is not completely finished; if we could have the code enforcement officer.

CHAIR QUIGLEY: Okay, thank you.

MR. MOOREFIELD: Mr. Chairman, in discussing some of these documents, let me get one matter clarified because the survey, the document that has been submitted, does not indicate it is a survey and that has some legal significance.

MS. SPEICHER: We have a survey that was prepared by Mike Adams, registered land surveyor.

MR. MOOREFIELD: Does the Board of Adjustment have that document?

MS. SPEICHER: No, they do not have that document. Our normal process is to have the Graphic Services reduce the document to save tax payer money on copy cost. But we do have the full survey in the case file in the event anyone would like to see it.

MR. MOOREFIELD: The document says Board of Adjustment variance, it looks like a survey, you say that is in fact a reduction of an actual survey?

MS. SPEICHER: It's a reduction of an actual survey.

MR. MOOREFIELD: By a registered surveyor?

MS. SPEICHER: The reduction is prepared by the staff.

MR. MOOREFIELD: I mean the survey document.

MS. SPEICHER: The survey document was prepared by Mike Adams, registered land surveyor.

MR. MOOREFIELD: Mr. Chairman, if that document is to be submitted as part of the application, it sets a point that if anyone wants to discuss that or move the evidence, I recommend the Board give stipulation to the parties that it is an actual survey and not just a copy

CHAIR QUIGLEY: Essentially, what we're saying is that the representation shown on the screen now is accurate based on the survey.

MR. MOOREFIELD: My understanding is that is a reduction of a actual 24 x 30 survey document, prepared by a registered land surveyor. There is just nothing on the face of this document to indicate that.

CHAIR QUIGLEY: Any other questions for Staff?

MS. SPEICHER: This is Angela, the Code Enforcement Officer.

Chair Quigley swears in Angela Perrier.

CHAIR QUIGLEY: Please state your name, address and place of occupation for the record.

MS. PERRIER: Angela Perrier, 7445 Coolridge Drive, Fayetteville, NC 28304. I work as a Code Enforcement Officer in the Inspections Department. Based on the site plan I had at the time and the discussion I had with the property owner, I determined that the structure was at least five feet off the rear property line and then I issued the building permit. I just went off the survey and the discussion with the owner on the setbacks. There were three permits issued but they haven't been finalized yet. That's all I have to say.

CHAIR QUIGLEY: Any questions? We are accepting the representation as is. I would like to start hearing what is to be presented. A number of people have signed up to speak in favor of this proposition. There are five people signed up. Everyone will have an opportunity to present the information that's germane to this particular issue. What I ask though is that if the people are going to present exactly the same information as someone who preceeds them, then it may be more expeditious not to present, but they will be offered that opportunity, should they choose to do that.

Chair Quigley calls Thomas Poulos. Mr. Poulos stated he is represented by council and would like for his attorney to speak first.

Chair Quigley swears in Thomas Neville.

CHAIR QUIGLEY: Would you please state your name, address and your representation for the record.

MR.NEVILLE: My name is Thomas Neville, I'm a local attorney here in Cumberland County. My office is at 150 N. McPherson Church Rd., Fayetteville. I reside at 3610 Linden Rd, Linden. I represent the Poulos' and everyone else who has signed up to speak with the exception of one additional speaker.

CHAIR QUIGLEY: Would you like to present your information for the benefit of the Board?

MR.NEVILLE: If it pleases the Board, I would just give a very short brief overview and then allow my clients to testify as to the facts and with a separate request, be allowed to cross examine the other witnesses and then a short summary.

CHAIR QUIGLEY: Yes, sir.

MR.NEVILLE: I do have copies of the actual survey, full sized copies that may be helpful as we get into those. When we come to the testimony part, I could probably admit them into evidence, but at this point for demonstrative purposes, I will pass these out. In order to understand the situation, I think you have to start with the original plat of the neighborhood, which is what I have here. Then the full size copy of the survey that you actually have showing on your monitor right now, is this document right here. I didn't look carefully, but I think you will see the surveyor's seal on that document. If I could ask the staff to please go back to the aerial photo; I think to really understand what is going on here, you have to start with the aerial photo. It's a lake front property [pointing to the on screen presentation] and in fact, the adjacent land owner is actually Green Pond Incorporated. Green Pond Incorporated is a very small corporation which is made up of the lake front owners. The share owners of Green Pond are the actual land owners who own lake front property. If you look at the monitor to the subject area, that is the lake and my client's property is in the blue, which is lot 8 and the lot backs up to the lake itself. This is real important because even though in the staff's introduction, you heard the words encroachment onto the adjacent property, there certainly is an encroachment; but the encroachment is onto Green Pond, Incorporated's property. You must know it is not officially a home owners association or a lake front association, but it is solely comprised of the lake front home owners of which my client is one of those owners. My client is a share holder in Green

Pond, Incorporated also. I think you have to understand that to grasp what is going on here. There certainly is an encroachment of a portion of this building that's larger than the green house attachment on the building which will come clear in testimony, onto Green Pond Incorporated's property and that becomes significant. I would also say a couple of housekeeping type issues. Number one, certainly everyone who signed up tonight has a right to speak and I don't for one minute oppose that, but I want to be very clear that Green Pond, Incorporated is a corporation and up until this evening or until I received a phone call on Monday, they have council, Mr. James McLean III of Cumberland County is their record attorney who have represented them in this matter up until tonight. He told me he was instructed not to appear tonight. Well that has some consequences because they are a corporation. This is a Quasi-judicial body and certainly they have a right to speak. They have no right to represent the corporation. In the absence of some resolution to that effect, they have the authority to speak on behalf of the corporation, I would object to that. Certainly they have the right to speak for themselves as neighbors, they have no right to speak as Green Pond, Incorporated, absent some resolution, some declaration; something giving them that authority. So I would object to that, I don't object to them testifying, I only object to them voicing their concern as Green Pond officially. What the facts will show and Mr. & Mrs. Poulos will testify to, is that the adjacent land owners is Green Pond, Incorporated and they indeed are shareholders of Green Pond, Incorporated. It's a very small corporation. They'll also testify that they obtained permission to erect this building in it's present location back in 2001/2002 and at no time until they applied for a building permit in 2006 is there any evidence of opposition or objection of this building. They will also testify that when they purchased the property, there was an existing greenhouse on this very location on the back corner of this property. They will also testify that president of Green Pond helped my client lay out the foundation of the actual physical site for the building and that he participated in a large facet of the construction in the very initial part. They'll testify construction began in 2002 under permission with no objection and that construction finished in 2005 and there was still no objection to the building. The reason why there was no objection is because they had already given their permission to do so. The issue of the setback only came up probably when my clients applied for the permit in 2006 or when the survey that you see was actually produced. There are many equitable issues in this case. You'll also see from some testimony and some photographs that my clients aren't the only ones in this neighbor who are not within the setback ordinance. There is at least one other outside shot adjacent to the length. This is a technical argument, I realize, but most of the land owners have docks, piers that go out into the lake and technically every last one of those is a violation of the setback ordinance and we've seen no written proof of permission for those. We don't oppose them, we think it's find, but we do believe, and my clients will testify, there is an element of being singled out here for ulterior purposes. There's also pump houses that are within or trespasses as you would say. The reason why this becomes important is because there is a maximum law that you can't do otherwise with the law prevents you from doing. The statute of limitation on a continuing trespass, and I would argue that's what this is, is three years. The time to object to the building being located on the Green Pond, Incorporated property is already passed and the statute of limitations are gone. Now, if the law doesn't allow you to raise that defense, certainly the law is not going to allow you to also raise the defense that you can't build a building on your own property. I want to be clear that the alleged trespass is not before this Board for simply the setback. It's before the Board, and I would argue to and I will present evidence to you that's properly in a different court, the Superior Court, and if I could use the words, I think the County has been drug into this and is being pushed to do someone else's dirty work. This is not an issue that should be

before the Board of Adjustment; this is a neighborhood dispute that should be before the Superior Court in trial, not in a backdoor attempt to enforce a setback ordinance. That's all I have as an introduction and I would like to call my first witness.

CHAIR QUIGLEY: Thank you. Let me just ask one or two questions. So you are saying that this structure was actually put in in 2002?

MR.NEVILLE: My clients will testify in 2002 construction began and it took almost 2 ½ years to complete it.

CHAIR QUIGLEY: So, they knew the dimensions of the structure as early as 2002, is what you are testifying to?

MR. NEVILLE: I think you'll have to ask if they knew the exact dimensions, I don't have that answer.

CHAIR QUIGLEY: Does any member of the Board have questions? I want to remind you that you will remain under oath and the rule for cross examination is to indicate when you want to ask the question, please don't just blurt it out as it gets disruptive. Yes, you will be allowed to cross examine on any issue that you want as it comes up.

MR.NEVILLE: Just for clarity sir, do the same rules apply for direct examination of my own witness?

CHAIR QUIGLEY: Yes.

MR.NEVILLE: We also have packets to pass out to make it easier.

Chair Quigley swears in Thomas Poulos.

CHAIR QUIGLEY: Would you please state your name and address for the record.

MR. POULOS: Thomas Poulos, I reside at 430 Shep Drive, Fayetteville, NC.

CHAIR QUIGLEY: Please point out your residence on the aerial map.

MR. POULOS: That's my property [points to his property on the map] and the adjacent easement which also serves as our driveway and then we also own this property on the other side.

CHAIR QUIGLEY: Thank you and your statement sir?

MR. POULOS: Well, sir, I was in the Army and came to Fayetteville on orders back in 1999. We bought the property and moved in two day before Christmas in 1999. It was Feb 2001 when I received orders and deployed to Bosnia and just prior to that I asked my wife if it would be nice to put something out there. There was an existing greenhouse that was very dilapidated, It was made from windows that were removed from house that we had and those windows were all single pane, pretty nasty looking structure. So I told my wife if would be nice if we could

get that building replaced and put another building there. What I wanted to do is get permission from the Green Pond Association because I read the deed and I thought Green Pond had the right to give me permission to build to the property line. Because I was in Bosnia, I asked my wife to attend the meeting in July. When I came back, I asked her if she got permission and she said yet. On September 14, 2001, I remember that distinctly because it was three days after 911. That fall and spring of 2002, I started excavation and started excavating the land back there and at some point in time, I don't remember what month it was, but Doug Stevenson, it was not the president of the association at the time, who is my neighbor right across the way, who resides in that property right there [pointing to the on screen presentation] came across the dam and asked me [I don't remember the exact term; he works in construction and offered to help] I was having trouble laying out my line, so he taught me what's called the 3-4-5-rule just to get square corners. Then I laid out my foundation. He came out later after I put my foundation up and he gave me some pointers. He felt I had not raised it enough for the weight of the concrete. On the day of the pour, I had two friends from work come out and he also operated as the supervisor helping us pour the concrete and helping us place the rebar; he was a great help at the time. This was a monolithic pour; after the concrete started to set he showed me how to operate what is called the helicopter. He helped me learn to operate that to smooth out the concrete; so he was a great help. He was actively involved in the size and the placement of the building from the start. Shortly thereafter my wife asked me if I would put the greenhouse up, so I put it up and it is based on the 1968 survey where there is a stake very close to the corner of the property. I put the greenhouse up to remain inside our perceived property line and it was only shortly thereafter that we found out the property line was not where it was on the 1968 survey but was actually shifted 11 feet towards Shep Drive. So virtually, it made our greenhouse not our property, but at the time we felt it was all done all above board, there was no subterfuge at all. I retired in 2004 and after I told my wife I would never have to go overseas again, in February 2005 I left for Iraq. Basically four out of the last five years I've been in the Middle East. All of the construction was completed by the time I left in 2005, every single bit.

CHAIR QUIGLEY: Does any member of the Board have questions for Mr. Poulos? So essentially from 1999 to 2005 was the timeframe you conceived you needed a structure and then erected the slab in place. When did you actually get the vertical part of the structure in place?

MR. POULOS: Are you talking about the outside walls and such?

CHAIR QUIGLEY: Yes.

MR. POULOS: Probably that year, in 2002. We probably took a good two years. I had it wrapped in pink so it had pink wrap on it for a good year before I got the siding on it. I finished all the siding and got all the stuff done by the time I left in 2005. It took a good two years of weekend work, because I was in the military, to finish it up.

CHAIR QUIGLEY: And to the best of your knowledge, your neighbors were witnesses to the construction that was going on at your property?

MR. POULOS: Absolutely, all they had to do was look out their property in the back and no one ever complained.

CHAIR QUIGLEY: Thank you very much. Did you have any other comment?

MR. POULOS: I don't, but I think Mr. Neville had some questions for me.

CHAIR QUIGLEY: Mr. Neville, did you have some questions for your witness?

MR. NEVILLE: Mr. Poulos, if you would please, explain to the Board, what markers, what signs, what happened as far as the existing boundary lines when you began construction of the building.

MR. POULOS: As I stated earlier, there was a wooden stake in the ground, approximately right there [pointing to the on screen exhibit] there was some plants, there was a wooden stake there and when we walked the property with our real estate agent back in 1999, she indicated to me that was one of the property lines. There was also a stake in the ground up here [pointing to the on screen exhibit]. I don't think there was a stake on this property, we always assumed the fence was our property line.

CHAIR QUIGLEY: When you moved in, was the existing fence on the west side of the property?

MR. POULOS: The only fence that has ever been there is the fence on this property line right here sir [pointing to the on screen presentation].

MR. NEVILLE: If I could Mr. Poulos, let me show you the original plat to the property.

MR. NEVILLE: It is exhibit 3 in your packets [addressing the Board and Staff]

MR. NEVILLE: Mr. Poulos is this the original plat you received when you purchased the property?

MR. POULOS: Yes, sir.

MR. NEVILLE: Is this in fact that plat that you were going by when you began construction on the property.

MR. POULOS: Yes it is.

MR. NEVILLE: Mr. Poulos, you didn't actually have a survey plan other than this plat, is that right?

MR. POULOS: No, it was kind of unique to North Carolina when we bought the property. When we bought our home in Washington State it was a requirement to have a survey, which the seller usually paid for but, I was surprised that it wasn't a requirement here. If I wanted a surveyor, they told me I had to pay for it, so I didn't.

MR. NEVILLE: Did you believe your property line went to the lake?

MR. POULOS: Yes. Well, I believed it went from this point here to the stake you saw in the ground [pointing to the on screen presentation]. It was in the middle of the Bayonet plants and I

was not willing to risk my body against those plants to see if there was another stake in the ground.

MR.NEVILLE: Is it fair to say that you believed your property line was much closer to the lake than the actual survey is showing?

MR. POULOS: Yes, sir.

MR.NEVILLE: You stated that prior to your leaving for Bosnia in 2001, you asked your wife to obtain permission to construct south on the present location, is that correct?

MR. POULOS: That is correct.

MR.NEVILLE: What did your wife tell you upon your return.

MR. POULOS: That she had received permission from all present at the July 2001 Green Pond meeting.

MR.NEVILLE: Did she tell you that permission was to build up to the property line or was there any mention of a setback?

MR. POULOS: No mention of a setback to the property line.

MR.NEVILLE: At any time prior to construction, during construction or subsequent to it becoming a dispute, did anyone from Green Pond or any of your neighbors inform you that you needed to adhere to a setback ordinance.

MR. POULOS: No.

MR.NEVILLE: Mr. Poulos, have you ever attended a membership meeting of Green Pond, Incorporated?

MR. POULOS: Yes, I have.

MR.NEVILLE: Do you recall what years you may have attended?

MR. POULOS: I believe I attended the last one. I remember distinctly it was in July 2008.

MR.NEVILLE: In July of 2008, was there any discussion concerning adherence to a setback ordinance?

MR. POULOS: No. The discussion if I remember correctly was about the chemical composition of the pond. No mention of my property at all.

MR.NEVILLE: Mr. Poulos, I'm going to show you a photograph, are you familiar with that photograph?

MR. POULOS: I am.

MR.NEVILLE: So we don't lose track, I'm going to label this photo #20. If you would please tell me what that photograph is.

MR. POULOS: That's a picture of our residence and the building in question from across the pond. Basically, what our neighbors would see.

MR.NEVILLE: This is what your neighbors would see across from you standing in his yard.

MR. POULOS: Yes.

MR.NEVILLE: And that's photograph #20, is that correct?

MR. POULOS: Yes.

MR.NEVILLE: I'm going to put #21 on this one. Mr. Poulos I've now handed you what I've marked as exhibit #21. Is this also a photo of your property?

MR. POULOS: It's essentially the same picture.

MR.NEVILLE: I'm going to put #23 on this one. Is that also a photograph taken from your neighbor's property.

MR. POULOS: Yes it is.

MR.NEVILLE: Mr. Poulos, we're looking at photo #23, if you look to the left of this photograph what do you see?

MR. POULOS: I see docks.

MR.NEVILLE: Do you have any objection to anyone in this neighborhood having a dock on their property?

MR. POULOS: Absolutely not.

MR.NEVILLE: Is it your understanding though, that by clear definition of the setback ordinance that these were violations of the setback ordinance?

MR. POULOS: That's my understanding. I'm just being singled out.

MR.NEVILLE: Now I'm going to hand out exhibit #24. Mr. Poulos, in looking at exhibit #24 to the right hand side, what is that?

MR. POULOS: It appears to be a pump house on the neighbors' property.

MR.NEVILLE: Is it fair to say that there are many pump houses around this lake?

MR. POULOS: I believe anybody who is a member of the association has the right to pump water from the pond to their property.

MR.NEVILLE: In fact, isn't your pump house located on Green Pond's property also?

MR. POULOS: Yes, it is.

MR.NEVILLE: Have you ever sought permission for that?

MR. POULOS: No, it was there when we bought the property.

MR.NEVILLE: Do you know of anyone seeking permission to build a structure or pump house on the corporation's property?

MR. POULOS: No, not that I'm aware of.

MR.NEVILLE: Now, I'm handing out exhibit #25 and #26. Mr. Poulos, exhibits #25 and #26, do they not depict the neighbors shed?

MR. POULOS: Yes.

MR.NEVILLE: Is it your belief that this shed is also within the setback ordinance?

MR. POULOS: I believe it does not meet the setback requirements.

MR.NEVILLE: Do you have any knowledge of any complaints against this shed from members of Green Pond, Incorporated.

MR. POULOS: No.

MR.NEVILLE: Do you have any knowledge of the county inspecting the shed to see if it was within the setback limits?

MR. POULOS: Not that I'm aware of.

MR.NEVILLE: If it pleases the Board, I have two more photographs. I will now hand out exhibits #27 and #28. Mr. Poulos, exhibit #27 is a photo of the eastern portion of your building, is that right?

MR. POULOS: That is correct.

MR.NEVILLE: Isn't it true that running along that eastern portion, Green Pond actually has access to a dam running across the lake?

MR. POULOS: Yes, it's not on that photo, but yes, that's true.

MR.NEVILLE: If you would, use the pointer to show which side of the building we're looking at [pointing to the on screen presentation].

MR. POULOS: [pointing to the on screen presentation] The dam goes out this way, you can see the dam. If you look at #27 you will see a large post sticking up two inches in from the center

of the picture. That post has been there since we moved there. It's to stop any kind of traffic going down to do any work on that dam. Essentially, what I'm saying is there has been no requirement to use our driveway or the dam for the last ten years.

MR.NEVILLE: Mr. Poulos, lets start with the last photograph. This is #28 and just to be certain we're all on the same photo, we should be looking at a photograph of the lake to the left and a retaining wall running down the center of the photograph. On the right hand side, that is the green house portion of the building, is that correct?

MR. POULOS: That is correct.

MR.NEVILLE: If you could, please tell the Board when the green house was constructed, where did you believe the markers present on the property showing that your boundary lines existed.

MR. POULOS: It would be outside of the picture. If you were to follow the line of the retaining wall to the foreground of the picture, it would be along that line there, somewhere to the right of it a little bit. So I wanted to make sure that the green house stayed within what I felt was our property line.

MR.NEVILLE: And that was pursuant to the stakes that was in the middle of the Bayonet flowers.

MR. POULOS: Yes, sir.

MR.NEVILLE: Mr. Poulos, do you have any thoughts as to why your neighbors are opposing your seeking of this variance?

MR. POULOS: Yes I do. I believe it stems from the dock that was on our property. There was a dock that extended out from the corner of our property on this side right here [pointing to the on screen presentation]. Very shortly after we bought the property, I went out and repaired the dock, basically the pions and some rotted lumber. I replaced all that, in fact at the time I was doing it, Mr. Schmidt, who was the president of the association at the time; he rode out his boat at the time and said I couldn't use it unless I became a member of the association. I immediately said: "sure, where do I sign up?" My wife can go over the membership material and such. At some point, a couple years back, my daughter became wheelchair bound and we made the decision to use that lumber and move the dock more centered to our property where we had a better shot at her going straight out onto the dock; as opposed to the current location because with her wheelchair, she couldn't access the dock at all.

MR.NEVILLE: Do you believe that is some of the impetus for the opposition to the setback variance?

MR. POULOS: Yes.

MR.NEVILLE: Do you believe the corporation is being fairly represented by all shareholders?

MR. POULOS: No.

MR.NEVILLE: Have the actual shareholders been allowed to vote as related to the setback variance?

MR. POULOS: As per the bylaws, as I understand them, everybody that is a shareholder is supposed to be given notice of a meeting. We have not received a notice for a meeting this year. We wrote a check which was due in July and they still have not cashed it, which was the same case last year. We wrote them a check in June and it wasn't cashed until October, so I guess clearly they feel if they don't cash out money, we become non-members in good standing. That is the only qualification to be a member is to be paid up in dues.

MR.NEVILLE: Mr. Poulos, let me show you exhibit #18, this is a letter from me, your attorney, is that correct?

MR. POULOS: Yes.

MR.NEVILLE: To James McLean, the attorney for Green Pond.

MR. POULOS: Yes.

MR.NEVILLE: It was written in August 16, 2010, is that correct?

MR. POULOS: Yes.

MR.NEVILLE: Does it not say, "Dear Fred, Please find enclosed a check for my client's dues for Green Pond, Incorporated?"

MR. POULOS: Yes.

MR.NEVILLE: Did you and your wife not cash a check for your dues to be taken to me.

MR. POULOS: Yes.

MR.NEVILLE: Have you been informed as to whether that check has been negotiated?

MR. POULOS: It has not been negotiated as of this date.

MR.NEVILLE: I'll mark this as exhibit #20; this is a check written by your wife in 2009 for dues. Is this the check you said was cashed a month ago?

MR. POULOS: Yes.

MR.NEVILLE: Let me also show you now, exhibit #16. This is a letter written October 20, 2009. Mr. Poulos what was to be from Trey McLean, the attorney from Green Pond, to me, is it not?

MR. POULOS: It, is.

MR.NEVILLE: Does not the second paragraph state, “as I have told you, I have been retained by Green Pond, Incorporated”. Is that the way it reads?

MR. POULOS: That’s exactly what it says.

MR.NEVILLE: Have you ever had any input, any vote, any saying as to whether Green Pond would retain an attorney and use your dues to pay for an attorney in this matter?

MR. POULOS: No.

MR.NEVILLE: Let’s mark this exhibit #17. This is another letter from Mr. Trey McLean dated April 16, 2010. The second paragraph Mr. Poulos, does it not say, “To my knowledge, the Green Pond, Incorporated has met and discussed the issue and has voted to formally ask the County to begin to proceed with the enforcement of the previous notice of violation with a full understanding that the County will be scrutinizing all of the parties who live on this place? Mr. Poulos, are you aware of any meeting that ever occurred as to this matter.

MR. POULOS: As I said, in the by-laws, it is my understanding that we should have received a notice of a meeting, but we did not.

MR.NEVILLE: Did you ever receive a notice of any meeting?

MR. POULOS: No.

MR.NEVILLE: This is marked Exhibit #8. Mr. Poulos, these are the by-lays of Green Pond, Inc., are they not?

MR. POULOS: Yes, they are.

MR.NEVILLE: Does it not state on the first page, Section 1, Annual Meetings – The annual meeting of the shareholders for the election of directors and for the transaction of such other business as may properly come before the meeting shall be held at 6:30 pm on the second Friday of July in each year, commencing with the year 1997?

MR. POULOS: Yes, it does.

MR.NEVILLE: Have you received notice of each and every meeting?

MR. POULOS: You would have to ask my wife on the ones when I was not present. I did attend the last meeting in July 2008. That is the last meeting I attended.

MR.NEVILLE: Also, looking at the by-laws on page 8, Purpose of Corporation, Section 1 Purpose – The purpose of The Green Pond, Incorporated is to maintain the Green Pond and its dam in optimal condition for the use and enjoyment of all shareholders. Is that correct?

MR. POULOS: That is correct.

MR.NEVILLE: To your knowledge is the corporation empowered with any other authority or commerce?

MR. POULOS: Not that I'm aware of.

MR.NEVILLE: Mr. Poulos, going back to exhibit# 18, this is a letter from your attorney, me, dated August 16, 2010, addressed to Trey McLean, attorney for Green Pond. In this letter do you not demand, a full accounting of all of Green Pond's monies? Do you not demand a complete disclosure as to all resolutions? In fact, let me read it. It says, "My clients now demand that Green Pond make available a full accounting and examination of the corporate records of Green Pond, Incorporated. As is my clients' right, my clients further demand that the corporation afford them the opportunity to inspect and copy all corporate books, documents, and records including the following:" Mr. Poulos, the reason why you requested this is because you suspect the corporation is moving without having meetings with notice in which you are allowed the opportunity to speak, is that right?

MR. POULOS: That is correct.

MR.NEVILLE: And then you are question as to how they are paying an attorney? Is that right?

MR. POULOS: Yes, it is.

MR.NEVILLE: And you go on to demand copies articles of incorporation and all amendments, by-laws and amendments, resolutions adopted by Board of Directors; the minutes of any and all meetings; any and all written communication, a list of names and business address of current directors and officers; all annual reports; all account reports, including but not limited to financial statements; a current record of members. Have you ever received a response to this, Mr. Poulos?

MR. POULOS: No, I have not.

MR.NEVILLE: Just to be clear Mr. Poulos, at any time prior to your completion of the construction of this building, did anyone, meaning a neighbor or someone from Green Pond, object to construction of the building?

MR. POULOS: No.

MR.NEVILLE: This began in 2002 and you said you completed it on or about 2005?

MR. POULOS: Before I left, yes.

MR.NEVILLE: In fact, you testified that one of your neighbors, a member of Green Pond, assisted in the construction of the building?

MR. POULOS: He is now the president of that corporation.

MR.NEVILLE: That is Doug Stephenson?

MR. POULOS: Yes.

MR.NEVILLE: At any time, did anyone ever raise the issue of a setback with you?

MR. POULOS: No.

MR.NEVILLE: At this time, members of the Board, I request that exhibits 3, 4, 8, 19, 18, 20 be admitted into evidence.

CHAIR QUIGLEY: Does any member of the Board have any objections to those items being introduced into evidence?

CHAIR QUIGLEY: Hearing none, they are introduced and accepted as evidence.

MR.NEVILLE: Also, exhibits 20-28, the photographs be admitted into evidence.

CHAIR QUIGLEY: Are there any objections to that by any member of the Board?
Accepted as evidence.

MR.NEVILLE: I have no further questions.

CHAIR QUIGLEY: Mr. Poulos, I just want to remind you that as you step away from the lectern, you remain under oath should you be recalled. Did you have another witness that will speak in favor of this proposition?

MR.NEVILLE: Yes, Mrs. Poulos.

Chair Quigley swears in Nancy Poulos.

CHAIR QUIGLEY: Please state your name and address for the record.

MRS. POULOS: My name is Nancy Marie Poulos, I live at 430 Shep Drive, Fayetteville, NC 28311.

CHAIR QUIGLEY: That's the same property we're discussing?

MRS. POULOS: Yes, sir.

MR.NEVILLE: We're trying not to be repetitive, if I could just direct Mrs. Poulos' testimony.

MR.NEVILLE: Mrs. Poulos, your husband testified you informed him that you obtained permission to build this building on your property, is that correct?

MRS. POULOS: Yes, it is.

MR.NEVILLE: If you would speak to that please.

MRS. POULOS: When I went to the meeting, I asked Mr. Farrell if we could build a building where the existing greenhouse was up to the property line because the easement. He said he would talk to the other members and he got back to me and said nobody objected to it. When my husband got home, he rendered an excavator and started digging a great big hole and started laying the foundation for it.

CHAIR QUIGLEY: Do you know the date that occurred?

MRS. POULOS: He came home after 911 or just after returning from Bosnia. I don't know the exact dates, but it was a couple of days after 911. It took several years for us to build it, but at no time did anyone ever call or come over to object to the size. Since it took several years, I remember going to one meeting and actually apologizing that it took so long for us to complete it; that he was actually sent away for another year, either Afghanistan or Iraq.

CHAIR QUIGLEY: Thank you.

MR.NEVILLE: Mrs. Poulos, you said you spoke with Mike Farrell to get permission, is that correct?

MRS. POULOS: Yes, he was the president at the time.

MR.NEVILLE: Did you ask for permission at a shareholders meeting, is that correct?

MRS. POULOS: Yes.

MR.NEVILLE: That was in July 2001?

MRS. POULOS: Yes, I believe so.

MR.NEVILLE: Does Mr. Farrell call you later on the phone?

MRS. POULOS: I believe so, yes.

MR.NEVILLE: What did he tell you?

MRS. POULOS: That he had no objection when he called the other members.

MR.NEVILLE: Were there any objections during the entire time the building was being constructed?

MRS. POULOS: No.

MR.NEVILLE: Mrs. Poulos, let me show you exhibit #9, which is the permit. Do you recognize that document?

MRS. POULOS: Yes, it is the building permit.

MR.NEVILLE: Can you tell me when you applied for the building permit.

MRS. POULOS: I applied for it in 2006. It looks like July 18, 2006.

MR.NEVILLE: Do you recall why you applied for the permit?

MRS. POULOS: Yes, Mr. Stephenson said I needed a building permit, that someone had complained to the county and that I needed a building permit. I went down and applied for one.

MR.NEVILLE: Did you in fact see the building permit. I will now hand you exhibit #10, marked as the building permit. Is that the building permit?

MRS. POULOS: Yes, it is.

MR.NEVILLE: Let's go back to exhibit #9. There is a sketch attached to exhibit #9, is that correct?

MRS. POULOS: Yes.

MR.NEVILLE: That is the third page of the building permit?

MRS. POULOS: Yes.

MR.NEVILLE: I want to be real clear here. This sketch is your house and it shows the building. Who drew the shop on this sketch?

MRS. POULOS: The person that came out and measured it.

MR.NEVILLE: A County employee?

MRS. POULOS: Yes.

MR.NEVILLE: So, it's fair to say when you submitted your application, you did not provide any drawing of the building?

MRS. POULOS: No, I did not. When they asked me how big it was, I told them it was really big and I didn't know how big it was and that I was taking care of my mother-in-law and my disabled daughter and I also had a full-time job. They said they would come out and help me measure it and that's when they came out; Angela came out and she had someone else with her and they came and measured it.

MR.NEVILLE: Did anyone from the County tell you there was a concern about setbacks?

MRS. POULOS: No, because we were going off the old 1968 survey or the plat, so we were well within our setback.

MR.NEVILLE: In fact, if we look at the second page of that application, down at the very bottom, does it not say to be cited as per plot plan?

MRS. POULOS: Yes, it does.

MR.NEVILLE: Is that not where the building is constructed?

MRS. POULOS: Yes, it was.

MR.NEVILLE: Let me also show you exhibits #11 and #12. These are for plumbing and electrical. They were applied for much later, is that correct?

MRS. POULOS: Yes, it was.

MR.NEVILLE: Back in August 25, 2008, is that right?

MRS. POULOS: Yes.

MR.NEVILLE: Tell me why there was a delay from the application to the day you applied for the permit.

MRS. POULOS: They were done because when I applied for the first building permit, it did not say on here that I had to apply for plumbing and electricity. When I was handed this, she said to put this in my windows. I did and I also took one of these to the meeting and handed it to Mr. Farrell and said I have no building permit. Several years went by and apparently someone from Green Pond Association went digging into the County Permits and said I did not have my electrical and plumbing permits. They came to me and basically called me a liar and said I didn't have these; well I didn't know I needed them because nowhere on this does it say I have to have them. I went down to the County and told them I needed to have them so they issued them. I had the inspectors come out and they went over everything, gave me a sheet showing what I needed to have repaired. I had them all done. When they came out for final inspection, they said they could not give us a final inspection until this zoning thing was complete. So, we're still waiting on final inspection. That was a year ago.

MR.NEVILLE: Mrs. Poulos, let me hand you exhibit #14, dated April 20, 2009. This is a letter from Douglas Stephenson of Green Pond Incorporated. It actually says Green Property, LLC, does it not?

MRS. POULOS: Yes, it does.

MR.NEVILLE: It should be Green Pond, Incorporated, correct?

MRS. POULOS: Correct.

MR.NEVILLE: The letter reads, "Dear Tom & Nancy, This letter is to serve as a formal request from Green Pond, LLC that you immediately remove all personal buildings and structures that you have erected on Green Pond property." Is that correct?

MRS. POULOS: It is.

MR.NEVILLE: Is there any mention in that letter as to setbacks or removing your property beyond the setbacks?

MRS. POULOS: No, there is not.

MR.NEVILLE: Was there discussion whatsoever related to you not being able to build your building up to the property line.

MRS. POULOS: No, there was not.

MR.NEVILLE: Mrs. Poulos, let's talk about the new survey. The Board has the large version and the smaller version is exhibit #13. Mrs. Poulos, why was this new survey performed?

MRS. POULOS: I had the new survey done because they kept saying – I don't know if harassment is the correct word or not – they kept saying our shed was built on the easement or the driveway. To basically say that it was not ever built on the easement that we built on our property, I had the survey done. When it was done and this showed the survey was improper since 1968. We immediately offered to rectify the situation which with purchasing this 11 ½ feet down to six inches back when we first did the survey and they declined to us purchasing this sliver of land.

MR.NEVILLE: Once you had the survey completed, that was September 15, 2008.

MRS. POULOS: Yes, we had a meeting and I took the survey to them. I never tried to hide the fact that it was mis-surveyed and let everyone see it.

MR.NEVILLE: When you showed them the survey, did anyone demand that you remove the building away from the setback also?

MRS. POULOS: No, they just made a comment that I should sue the person who surveyed the land in the first place. It was done in 1968 and the person who probably did that is no longer with us I'm sure, but there's no reason to go there. Everybody's been using it since then, what's done is done. We never built this out of malice and once we learned the error, we offered to purchase it.

MR.NEVILLE: Mrs. Poulos, has anything been said to you to enlighten you as to why the neighbors are opposing this issue?

MRS. POULOS: No. No one has ever called us, talked to us, face-to-face, on the phone, sent us a letter or anything, besides the one you read us. Everybody has stuff on Green Pond property; docks, pump houses, structures, so no, I have no idea.

MR.NEVILLE: Ladies and gentlemen, I want to make sure I have all of the exhibits entered as evidence. I may repeat some of the same ones and I apologize. I've got exhibit #3, #4, #19, #18, #17, #16, #20, #14, #13, #12, #11, #10, #9. I am requesting they all be entered into evidence.

CHAIR QUIGLEY: They will be admitted into evidence.

MR.NEVILLE: I have three more I would like to admit. Mrs. Poulos, exhibit #6, the Shareholders of Green Pond list, with eight different shareholder families, is that correct?

MRS. POULOS: I believe so, yes.

MR.NEVILLE: Does not Thomas Poulos appear on the bottom right hand side?

MRS. POULOS: Yes, he does.

MR.NEVILLE: Is this not a document you all first received when you purchased the property and entered into the Green Pond, Incorporated?

MRS. POULOS: Yes, it was.

MR.NEVILLE: Let me show you exhibit #7. Is this not your stock certificate?

MRS. POULOS: Yes, it is.

MR.NEVILLE: Is it from Green Pond, Incorporated?

MRS. POULOS: Yes, it is.

MR.NEVILLE: Is it issued to Thomas Poulos?

MRS. POULOS: Yes, it is.

MR.NEVILLE: That's your husband, correct?

MRS. POULOS: Yes, he is.

MR.NEVILLE: Is it a true statement that you have tendered your dues timely every year?

MRS. POULOS: Yes, it is.

MR.NEVILLE: Have they always been accepted?

MRS. POULOS: Yes, they have, except last year they were cashed late by several months and this year they have not been cashed at all.

MR.NEVILLE: Have you been given any explanation at all as to why your dues have not been accepted?

MRS. POULOS: No, I have not.

MR.NEVILLE: Sir, I request exhibits #6 and #7 be admitted into evidence.

CHAIR QUIGLEY: Does any member of the Board have a question for Mrs. Poulos. I want to remind you Mrs. Poulos as you step away from the lectern that you remain under oath should you be recalled.

Chair Quigley swears in Sabrina Dailey.

CHAIR QUIGLEY: Ms. Dailey, please state your name and address for the record.

MS. DAILEY: My name is Sabrina Dailey, I live at 420 Shep Drive, Fayetteville, NC 28311.

[Ms. Dailey points to her home on the on screen presentation].

MR.NEVILLE: Ms. Dailey, to be forthright, you don't live on the lake, do you?

MS. DAILEY: No, I don't.

MR.NEVILLE: You are a couple a lots down from the lake?

MS. DAILEY: I am.

CHAIR QUIGLEY: So you are a property owner, but not a resident of the property?

MS. DAILEY: I'm a property owner, but I have no ownership as far as the pond.

MR.NEVILLE: Just to clarify, she is a resident, she has no interest in Green Pond. You live about two lots down from the Poulos', is that fair?

MS. DAILEY: Yes.

MR.NEVILLE: Do you have any objection to them being granted a variance for a setback?

MS. DAILEY: No.

MR.NEVILLE: Do you have any objection whatsoever to a variance?

MS. DAILEY: No.

MS. NEVILLE: Chair, that is it.

CHAIR QUIGLEY: Ms. Dailey, I remind you that as you leave the lectern, you remain under oath should you be recalled by anyone wishing to ask you a question about your testimony. Does any member of the Board have any questions for any of the witnesses that you've heard so far? Thank you very much.

CHAIR QUIGLEY: We will now move on and allow a presentation by those people who speak in opposition and I just ask that should anyone have any questions that they want to ask anyone that's already presented testimony that you refer the question to me and to them so that we can clarify any request you have for cross examination of any witness you've already heard. Is there any principle spokesman for the people in opposition?

Chair Quigley swears in Douglas Stephenson.

CHAIR QUIGLEY: Please state your name and address for the record.

MR. STEPHENSON: Douglas W. Stephenson, Jr., 7525 Marie Drive. [Mr. Stephenson points to his residence on the on-screen presentation]. I'd like to begin by saying while I have a plethora of information this evening, I'll begin with an introduction. We are not actually owners, a member is not an owner of that pond. It is the ownership of a corporation and you purchase a share. When you move from this property, you give a letter of intent back to the association that transfers back into the Green Pond, Incorporated, so you do not own anything. There are by-laws that govern that were written by the attorney and we are recognized as a S corporation; we are a non-profit organization. We set that up to benefit the share holders and protect their interest with insurance and to be organized and to protect the property. Some of the allegations, it's going to be hard to cover them in a timely manner and I'd like to give some of the other people a chance to speak. I'm going to run down from the beginning with the knowledge that I have. Some of these date conflict with the attorney. Back in 2004 and I don't have any documents to produce into evidence, we do have an attorney who has been helping us communicate with the Poulos'. I spoke with Mr. McLean and he assured me this was not a forum that was going to turn into a court case, just merely a presentation of violation of property. He did not wish to come here tonight to represent us. In 2004 Mike Farrell contacted Douglas Maxwell because this building was being erected. Let me back up. We were asked if the Poulos' could place a shed zero tolerance of the property line. The association has no governing power over the other side of that property line and we were introduced to the structure as a shed, which defined by Cumberland County code as 400 square feet. It was very misleading when we saw the structure that was being built and there was some concerns about property lines because of how close they appeared to be. The president at that time did act and has the right to do so. The by-laws that they have put into evidence that you have before you clearly states that the president of the corporation can act without consulting the members, the shareholder. He merely reports what he has done, he represents the shareholders best interest of Green Pond, Incorporated. Mike, at that time, felt it was a concern that would affect our interest and affect the value of our property if there were truly a violation that crossed over the property line, that's where the interest comes in. This was back in 2004, Douglas Maxwell was hired to contact the Cumberland County Inspections Department to question and see if the proper permits been pulled on a building that size. Construction started, there was some question about the property line, but, at that time the building was not on the associations property. I refer to Green Pond, Incorporated as the Association. We were not affected at that time. There was some time that passed and as they clearly stated.... [Mr. Stephenson asks for the survey to be shown on the on-screen presentation] right there is the property line, this was the first structure built. There was some timber being cut that defined our easement which we have allowed the Poulos' to use since before they became members, we have no problem with that as long as it's maintained by the Poulos'. This property line did not seem to be infringed. Once we realized that they were not on the easement, we lost interest in that matter and no longer had a concern, that was a county issue at that point, not a Green Pond, Incorporated problem. Then they came in after the fact and built these two additional structures. Again, we had contacted the Cumberland County Zoning Department to following up on the initial calls made to them. They said there were no permits that had been taken out. The County expedited the permit process. I believe I spoke with Ken Sykes and Cecil Combs about this issue and they said a representative was sent to the house and placed a notice that permits were needed to be taken out. This was 2006, the building was already completed and the two additional structures added to the building before the permit was ever issued. This building was almost completed in its entirety

at the time of the permit. We don't have any knowledge of whether it is a conforming or nonconforming building; we have not followed that up. There was an attempt to buy the easement. There was a concern from the Poulos' that maybe they were too close, maybe they were infringing and they did get a survey. We did not wish to sell as a membership, sell any property

MR.NEVILLE: I have to enter an objection. He cannot speak for Green Pond. He can speak for himself, he can't speak for Green Pond.

MR. STEPHENSON: I'm speaking as a member of Green Pond. I'm not here trying to represent us legally, I'm just merely stating the facts that I have been aware of.

CHAIR QUIGLEY: I understand, Mr. Stephenson, but he's saying you can only speak for what you have knowledge of personally and not what you assume about the group collaboratively.

MR. STEPHENSON: I also had concerns when these other two buildings were erected. We knew at that time that there was a property line violation, we never agreed for anybody to build across the property line. While we were consulted and asked to build a shed on their property, we've got no say in that. Now that it has come across the property line; that is a concern. There are drains that come out of the building that discharge and we don't know what those lines are. The attorney stated, the purpose of the pond, is to protect the health of the pond, the water quality, the structure of the dam, the integrity. When we see drain lines that are unaccountable, and we know that the process of permits have not been followed correctly, that is a concern that the water quality is being jeopardized by something coming from that structure into that body of water which is used by all members. We encourage all members to use it, but there are by-laws that all members are to follow by-laws. You do have to ask permission. If you are going to build a permanent structure and I'm probably the newest member into the Association, actually the second to the last. I have complete knowledge of all of these rules and regulations, there is nothing hidden. There have been some amendment to the by-laws along the way. After an attempt of the easement was denied, there was some contact. At that time is when I was voted as president of the Association. I had conversation with Nancy about the whole permit process. We didn't mean to beat them up. This is not a lynching or anything. This was merely protecting the property. We don't want to sell property. We don't want to negotiate easements, but we're being forced into it. We were in negotiations. Things were not favoring the Poulos'. We had some other issues. There was a retaining wall also built on that property without proper authorization. They stated that the wood that was taken from the boat dock was used for other purposes. There has been no other structures built or asked to be built on that lake since the removal of that. Now the Association has pylons at the edge of the lake. We haven't disassembled boat docks that some other members were using as well; and members just don't have the right to destroy others' property without permission from the Green Pond, Incorporated. After negotiations got difficult, we wanted to secure a little more money because if the Poulos' were to sell their property, we still had some on-going issues. We have a retaining wall on this property and boat dock that we either have to replace, repair or remove at cost. They have replaced this retaining wall a couple of times in an attempt to keep it erected. It is failing and becoming an eye sore. They did not reflect that with the plethora of pictures they presented tonight; I did not get an opportunity to see any of them. After the negotiations went bad, we were asked not to contact them anymore, to contact their attorney. At that time,

we did not contact them anymore, we went through attorneys. We had also talked to Attorney Yarborough about where this could potentially go for us and one of his associates advised us on how to handle this situation. The Poulos' retained that same attorney and they contacted me and spoke to me that they were going to take this property by adverse possession.

MR.NEVILLE: I object. Any communication between my client and their attorney; which I believe is a different attorney, has nothing to do with whether a setback variance is granted.

MR. STEPHENSON: This meeting to us is not about the setback, it's about the property that is crossed our property line. We're merely here to protect that interest. The other issues are County issues.

CHAIR QUIGLEY: I just want to remind you that you can only address those things that you have personal knowledge about.

MR. STEPHENSON: Beyond that, there really has not been a lot happen. There's been the adverse possession. I am aware of that personally. I was sent a letter that it was being done that way and I later received another letter saying it was a conflict of interest. Another attorney to my knowledge was hired, the one who is representing them this evening. We really weren't prepared for this whole presentation tonight. We're trying to keep it simply to what the issues are and that is the violation, the encroachment onto this property. That's what we're here to oppose. We really don't, again, I can't stress it enough. Once we realized they were not on the property with the original structure [asked to see the survey on screen] this was built first [pointing to the screen] and these two [pointing to the screen] were built after the fact. All of this was built before the building permit was ever taken. We're only concerned about this right here [pointing to the screen]. There are some other things I would like to respond to tonight. Mr. Poulos did come over prior to building and we did talk. I do build for a living; I'm a superintendent for a commercial building. I do have the knowledge of what it takes. We did discuss permit issues and things of that nature. I did help him. I did not lay his building out, but I was making him aware of property lines. He knew where that building was because he asked to build it zero tolerance of the property line and that's where it's at. When the two additional buildings went up, this survey was done by George Lott, the second one that they presented. I had an opportunity to speak with George on a personal basis. George told me it was a mathematical error, the iron stakes are in place.

MR.NEVILLE: I object. That is hearsay.

CHAIR QUIGLEY: What is your question, Mr. Neville?

MR.NEVILLE: I don't have a question, I have an objection. He's telling you what George Lott said and it is hearsay.

CHAIR QUIGLEY: Thank you. You can't present what George Lott's opinion was.

MR. STEPHENSON: I apologize, my mistake. Again, I'm not an attorney and I didn't know that this forum tonight was going to be so rigid and court like. I was not presented with that information and we apologize if I make a few mistakes along the way. There are iron stakes and the iron stakes that are in the ground have never changed. They are still there, they've

always been there, that has never changed. The testimony in favor of this variance grant from Mrs. Dailey, I don't see how that has any affect. She is not a.....

CHAIR QUIGLEY: Sir, don't comment on her testimony.

MR. STEPHENSON: Okay. I do have a question that I would like to present to you, so you could present to them. Is the building now compliant in all areas other than the zoning and do they have a permit saying it is compliant? There are some other issues that I would like to address. This makes us liable. This corporation is now liable if somebody was to get injured or something was to be damaged, this is on Green Pond, Incorporated's property. We have liability concerns. We just want that off, we just want some kind of agreement to where we don't have the obligation to maintain or be liable for something that happens. There's drainage that comes from these building into this water and we have swimmers and fishermen in our Association. I heard the Poulos' mention that they feel like they are being singled out. All the structures except for one existed prior to the inception of the Association itself, Green Pond. These structures existed before Green Pond. They've been the only ones to erect anything on the property permanently and I asked for permission and I was given a set of guidelines that I was to be restricted to in size and materials of the boat dock. I was granted to do so and I complied and I have not had a problem. We've not had a lot of issues in the Association. These are unique to this particular problem and a lot of things seem to have arose from that. They felt that they were being treated unfairly.

CHAIR QUIGLEY: Sir, I wish you wouldn't comment on what you think their opinion is.

MR. STEPHENSON: It's difficult for me to understand that because I'm in meetings where this is being discussed, so I do have knowledge of what's being said by all members.

CHAIR QUIIGLEY: I understand.

MR. STEPHENSON: It's difficult for me to get my point out with all these restrictions. The violation exists. We don't wish to give our property away. We have attempted to negotiate this and again the Association was not interested in selling. As far as their opportunity to see the books, our attorney did tell me that.....

MR.NEVILLE: I object, hearsay.

CHAIR QUIGLEY: No, sir, that is hearsay evidence.

MR. STEPHENSON: I spoke to the attorney myself.

CHAIR QUIGLEY: He is not here to tell us that is what he said.

MR. STEPHENSON: I instructed him, sir. I received a letter saying that they were wishing to see the books and all we merely said was, "that's fine, can you make an appointment and make arrangements." They wish to have copies of it all which is quite numerous, time consuming and expensive to produce those documents, but we granted them an opportunity to see everything they wanted to see. We have over the past years, adopted and defined the by-laws; made them more clearly and easily read. It's just merely one page. We have not completely typed that up

and presented that to the Poulos' or to their attorney yet. We no longer have contact by their request. Let me go back to being singled out. The Association, I feel like they have had special accommodations made. We allowed them to come into the Association into a payment plan. That's something that no other member was granted that privilege. I myself asked for that privilege when I came into the Association and was denied. It's a new corporation, we don't produce a product, we don't do business, we're a non-profit organization set up to protect our interest so we can have insurance and we pay no road tax, we only pay state tax. I believe that covers everything that I wish to say. Again, I'm not singling the Poulos' out, they're still our neighbors, they will be for many years, I don't have any personal issues with them. Thank you for your time.

CHAIR QUIGLEY: Does any member of the Board have questions for Mr. Stephenson?

MR. DYKES: Mr. Stepheson, was there any direct reason why Attorney James McLean couldn't be present tonight?

MR. STEPHENSON: Well, actually sir, he advised me that he didn't feel the need to be here. He felt that this forum was going to be a situation where we merely could present our information. The biggest part of their testimony and complaint tonight was all dealing with Cumberland County Inspections and Zoning. We're not here for that, we're here for the piece of property that's being infringed on.

CHAIR QUIGLEY: I remind you as you step away from the lectern that you remain under oath should you be asked any questions or return to the lectern. Is there any other person speaking in opposition who can contribute different testimony, would you please approach the lectern.

Chair Quigley swears in Grace Colonair.

CHAIR QUIGLEY: Would you please state you name and address for the record.

MS. COLONAIR: My name is Grace Colonair, the address is 424 Shep Drive, Fayetteville, NC 28311. [Ms. Colonair points to her residence on the on screen presentation]
I am right next to the Poulos'.

CHAIR QUIGLEY: Are you the property immediately to their west?

MS. COLONAIR: I am. I am here just because of the things people stating and as the Poulos' were stating their case; their memory seems to be very different than with mine. To address why Mr. McLean is not here this evening, I spoke to his secretary today personally and was advised also we don't feel there is a need for Trey to go there. You guys have your facts and you can represent yourselves as property owners. This is about a building that is on your property or on the Association's property. The thing that I heard first today that sparked my interest was the timeline of the building being built. I cannot tell you when the land was cleared, but I can tell you that my husband and I purchased the property next door in 2002. That building was not erected nor was the cement foundation laid at that time. The building was begun after 2002. At that time the Poulos' had a small tin shed on their property that my husband and I happen to purchase from them for \$100.00 and had a bunch of football players carry it over to our property. That's why I'm very clear of when that structure began being

built. I do recall them asking permission for building with no setback and they referred to it as a shed. Their definition of a shed or their vision of a shed and mine are totally different. What I see on that structure is a two story, very large building, almost as large as my 4000 square foot home. That wouldn't be classified as a shed in any book that I look at. We don't know exactly when it was built because the permits were not pulled. I was one of the first people to question and say that doesn't look like a shed to me. Has the County given them permission to build this building? I personally am the one who started the issue with were permits pulled for that. I personally spoke to the County and was told by Ken Sykes that we have no record of this building being built, we'll look into it. I personally kept in touch with Ken Sykes and with Cecil and with Johnny Scott and was told we're looking into it, your fine, we're doing what we need to do as a County. I was told also by the County, this a variance of a setback, so that would be a county issue, they are not on your property. This became an issue as Mr. Stephenson stated, when the two additional buildings were erected and it came over onto the Association property. The reason why this is an issue is because it holds us liable. I personally spoke with our insurance agent, State Farm, and we would be liable. If someone went into one of the buildings that they erected that is on Green Pond Association property and was hurt, our insurance agent has advised us that they could sue us.

MR.NEVILLE: I object; hearsay.

CHAIR QUIGLEY: I just want to remind you that I understand exactly what you are saying, but if your insurance agent man were here, he could testify to that.

MS. COLONAIR: I understand that, I feel I know have the knowledge and I would be liable if something happened in one of those two buildings because I am part of the Association that owns the property that those buildings exist on.

CHAIR QUIGLEY: I wish you would confine to what you know personally.

MS. COLONAIR: I do know personally.

CHAIR QUIGLEY: You can't speak for a corporation, which is your corporation.

MS. COLONAIR: I'm speaking for myself. I would be part of being in that liability.

CHAIR QUIGLEY: I understand what you are saying.

MS. COLONAIR: So, that's my personal issue. I act as a secretary of the Association and I can tell you that I write the minutes for the Association meetings and I can tell you in the meeting of July 2008 that Mr. Poulos attended, there was a discussion of these buildings being infringed upon. At that meeting, Mr. Poulos stated that Nancy would be getting with us because they were having a survey done and they would come up with some compensation from infringing on our property. That compensation was offered to us and we declined. We do not wish to sell our property. In 2009, they were invited to the meeting. Nancy handed me a check personally over the fence and told me she could not attend the meeting because of personal issues that were going on with her daughter Shyla. I did take the check on their behalf. The only other thing I can say is when I became a property owner, all of the other structures that were there, were in place and had been in place for years and my personal opinion is we are

comparing apples to oranges. We're talking about a 2000 square foot minimum structure versus a two foot watering tank or a five foot dock, so I don't think that is a fair comparison. That's all I have to say.

CHAIR QUIGLEY: Does any member of the Board have questions for Ms. Colonair? I remind you as you set away from the lectern that you remain under oath should you be called back to the lectern for any questions. Is there any other person who wishes to speak in opposition who has new evidence they wish to present?

Chair Quigley swears in Mike Farrell.

CHAIR QUIGLEY: Please state your name and address for the record.

MR. FARRELL: My name is Mike Farrell, I live at 662 Elliot Bridge Road, Fayetteville, NC. [Mr. Ferrell points to his property on screen] The property faces Elliot Bridge Road and backs up to the pond. Let me make a few comments. I'm the past president of the Corporation and I have a problem that was stated by the lawyer in regards to somebody showing me a permit for this building. Could that be brought back to the floor?

CHAIR QUIGLEY: You can give whatever testimony you have personal knowledge of germane to the issue we're discussing.

MR. FARRELL: Well, this was said about me and it's not true, so how do you go about talking about that situation?

CHAIR QUIGLEY: Present your testimony and we'll decide.

MR. FARRELL: I'm going to make some comments. What I'd like you to know is I'm CEO and president of Sudan Shriners. My office is in New Bern, NC. We deal with over fifty pieces of property in North Carolina. We have buildings on properties, we're building new buildings and remodeling old buildings. My point is, you're going to ask for consideration of variance for the County Zoning Ordinance, Section 1002. We do this asking for variances before the structure is set in place. This is unacceptable in my way of thinking about this. That's just my way of thinking about it. No plan was submitted to the Cumberland County Inspection Department. Our floor plans, our elevations for the construction of this building. This building is over 2000 square feet. If I go out in my backyard and was going to build something that large, the first thing I would have to do is take a plot plan and a layout down to the Inspection Department to get approval to put this building in place. That wasn't done when this building was first started to be built. That to me is a violation, you can't do that, but it was done. Why it was done, I don't know. The buildings that we're concerned about are exceeding the property line. Those are the buildings we are concerned about. We don't want those buildings to encroach on the property of The Green Pond. In my way of thinking, that being said and that being done, we need to give consideration why it was done without permission of some type or talk it over with the association and try to reflect can we do it or can we not do it. It was just done. I have no personal interest or anything against the Poulos'; they are a good family, I respect them. They have been nothing but the finest people you can deal with, but my problem is if you are going to do something of that nature, then let's do it like it should be done. That's all I've got to say. Thank you.

CHAIR QUIGLEY: Does any member of the Board have any questions for Mr. Farrell? Is there any rebuttal testimony from those in favor of this action?

MR. NEVILLE: I do have one question for Mr. Poulos. Mr. Poulos, if you would just speak to when what's being referred to as the distance to the building the green houses portion of the building, if you would just tell us when that portion of the shed was constructed.

MR. POULOS: Because of timelines from being in the military, I left the state for basically four out of the last five years and February 2005, so I know they were completed before then. The survey that you see up there was done just recently in the last couple of years and as my wife indicated, she took that immediately to the Association and told the members that those two buildings, the green house and the little annex were now on Green Pond land. At the time we built them, the old point was further south.

MR. STEPHESON: I object.

MR. QUIGLEY: Please, you can't speak from the audience. If you have a question, you can direct the question to me and I'll refer it to Mr. Poulos for you in cross examination. Thank you very much. You will have the opportunity to ask your question.

MR. POULOS: So, like I said, the buildings were complete in basically the last four out of five years.

CHAIR QUIGLEY: What year would that have been?

MR. POULOS: I left in February 2005 and came back in July 2007. I spent one year here in Fayetteville and left in July 2008 for assignments in Cairo and places in the Middle East.

CHAIR QUIGLEY: What was your question, Mr. Stepheson?

MR. STEPHESON: I apologize, sir. It was not a question.

CHAIR QUIGLEY: Does anyone have any questions? Do you have a question for Mr. Poulos? Do you wish to testify? Please come forward.

Chair Quigley swears in Mark Colonair.

CHAIR QUIGLEY: Please state your name and address for the record.

MR. COLONAIR: Mark Colonair, 424 Shep Drive, Fayetteville, NC. I just wanted to have the opportunity to say I am against this variance.

CHAIR QUIGLEY: Thank you.

Chair Quigley swears in Harold Schmidt

MR. SCHMIDT: My name is Harold Schmidt and I live at 640 Elliot Bridge Road [pointing to his residence on the screen presentation]. I've been there since 1985, a charter member of The

Green Pond. I was the initial secretary of treasure when the Poulos' requested entrance into The Green Pond. I persuaded the membership to accept partial payment which was a violation of the by-laws at that time but we did agree that it could be done. One of the things that I do know as a member of The Green Pond; I am bound by the by-laws of that pond. My docks which I built prior to the existence of Green Pond, is now the property of Green Pond because it is on Green Pond property. Anything built on Green Pond property is the property of Green Pond. That is stated in the by-laws. There are no ifs, ands or buts about that. I bought a shed; my neighbor, Mike Farrell was going to erect a fence. My shed was encroaching on his property line. I had to move my shed and I moved it six feet to be assured that I was not within zero tolerance of the property line. I know that when I bought my property, there was a survey of it and I knew where the corners were. I think anyone buying property does that. That's all I have to say. Thank you.

CHAIR QUIGLEY: Does anyone have any questions for Mr. Schmidt? Thank you, Mr. Schmidt. Would Mr. Colonair please come back up to the lectern.

MR. DYKES: Mr. Colonair, do you have any reason why you are opposed and object to this variance?

MR. COLONAIR: Are you looking for something specific?

MR. DYKES: Why you are not in favor of it? Why you are totally against it?

MR. COLONAIR: If there is something that has come into your mind, I'd be more than happy to address it. I'm against the variance.

MR. DYKES: Okay, so you don't have anything else to say, you're just totally against the whole thing.

MR. COLONAIR: I'm willing to answer any questions you have; I'm against the variance, sir.

MR. DYKES: Okay, no further questions. Thank you.

CHAIR QUIGLEY: Does anybody else wish to testify? Is there any rebuttal? Thank you very much. I'm closing the public hearing for a moment. I want to remind the members of the Board that you've heard a lot of testimony relative to a lot of issues.

MR. NEVILLE: I did want to make a closing statement.

CHAIR QUIGLEY: I'm reopening the public hearing. Please come forward Mr. Neville.

MR. NEVILLE: I'd like to first call attention to what wasn't said by the opposition. I think it's very clear, very important, at least if my account is right, at least two members of the opposition, if not more stated that they and Green Pond agreed to zero lot tolerance. Mr. Stepheson stated that my clients were given permission to build to the line. That they weren't concerned about building up to the line, they were only concerned about the encroachment; that is exactly what he said. They've admitted that permission was given to my clients to build to the property line then he said he's only concerned about the part over the line. That's not before

you all tonight, what's over the line. You're not here tonight to decide if there's been a trespass, you're only here to decide if a setback variance should be granted. They've already stated in their own testimony they agreed, they gave permission for the building to be built up to the line. That's all that you're deciding, whether you should allow the setback beyond the line. You used the words specifically zero tolerance. They admitted they gave permission, they were asked for permission. They admitted that they didn't object at least until 2006 when the application was applied for. Ms. Colonair said this is about the building that was built on the property. Again, the issue is the variance setback. They seem to be mostly concerned about a trespass. Well, you're not the court to decide if there's been a trespass or not, that's not before you. Ms. Colonair testified that in fact, yes, there was a shed in that spot prior to because she bought it from the Poulos'. She testified there was a pre-existing shed there. In fact she bought the shed. You were shown photographs showing that exact shed and how that is not within the setback variance or not within the setback also. That's another example of a violation of the County's Ordinance. She remembers them specifically asking permission for a zero lot line. She remembers accepting the check for dues, yet they don't explain why my clients weren't given notice of membership meetings and why they aren't given copies of documents related to the corporation. I would suggest this issue of liability for this building is nothing more than a red herring. I would be a lot more concerned about liability for children on docks and the lakes than for someone's green house a few feet across the line. They've provided no evidence that they would incur any personal liability. Copies owned by a corporation I would submit to you, that if there is any liability here it is only on behalf of the corporation, not the individuals. Mr. Farrell said that he had no idea why they had not applied for a building permit and it is unacceptable for him to build a building. He had no idea the reason why they were in this situation because they were given permission to be there. Mr. Farrell gave no testimony as to whether or not as acting president he gave permission to the Poulos'. He didn't even address the subject. Both my clients, Mrs. Poulos testified that Mr. Farrell gave her permission verbally, twice. Mr. Farrell said he's only concerned about the building encroaching. Again, that's an issue of trespass; that's not before you all tonight. Mr. Schmidt said anything built on Green Pond is Green Pond's property. That's not quite the law. They may have an action for trespass, but I know of no clear law that says if you build on my property it's mine. In fact, I have some cases that says just the opposite and the statute of limitation is three years for trespass and it's well beyond three years. I think they are out of luck for a court of law maintaining a trespass action. He referred to the by-laws but, but didn't show us anything specific in the by-laws and if the by-laws are in opposition to the North Carolina state law, the state law would certainly take precedent over any by-laws that were illegal. Before you, you have seven factors you must consider tonight in order to determine if the variance should be granted. The first is exceptional circumstances related to the lot itself. What you have before you is a very unique situation where you have a corporation owning a pond or a lake and they actually also own a sliver of land around that lake. That's not normal. In normal you would have an Association who has common area designated as the lake or the pond and then the homeowners are members of that Association, that's what you would typically see. You typically see that the lot owners onto the lake itself, it's extremely rare to have the corporation actually own the land around the lake. It is distinct from other lots; other pieces of property in the district. Second, granting the variance request will not confer upon the applicant any special privileges that are denied to other residents. Well, certainly anyone can seek a variance in this neighborhood to do the same thing. The literal interpretation would deprive my clients of rights commonly enjoyed by others. Certainly they would. 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. Again, at least two have testified that they gave permission for the very structure to be there. Trespass is not before you, the variance and setback is before you. I don't know how they can come before you today and say it's going to be injurious to them when they are the one who gave permission for it. The special circumstances are not a result of the actions of the applicant themselves; they were given permission. I think they've all testified to everyone in this room that they were relying on a survey, a plat from the late 1960's . We've heard from the opposition and those in favor who testified to that. What you have before you is simply an issue that does not need to be before the Board of Adjustment. What we have here is a classic neighborhood dispute concerning a shop with construction that started in 2002 and was completed around 2005. These are issues that should be before a Superior Court, decided by a jury in a court in North Carolina. What is attempting to happen here is that the issue of a variance for setbacks, for which they gave permission up to the line, is being placed before the County in an effort to not be in Superior Court, where this is exactly where this belongs. The case law and the statutes are very clear 1-52 says that any action for trespass.....(tape ran out)

At least two of these people have testified as a real issue and that issue needs to be before the court, not before the Board of Adjustment. My clients have testified they gave permission, the opposition has testified they were given permission. My clients have testified that there was no intent to gain land from Green Pond, there still is not. Green Pond is the proper party here tonight to object to this. They had an attorney and I don't know what occurred between them and their attorney but certainly he is still their attorney. I spoke to him as recently as Monday and he's not here tonight on their behalf. They chose to not have an attorney represent them. The only evidence of any objection that is solely related to the trespass, and that issue simply is not before you tonight. For that reason I ask you to do simply both the right thing and the legal thing and that is to grant the variance, being that this issue needs to proceed, it can proceed in the proper court where it belongs and as to whether there was a trespass or otherwise can be determined by Superior Court. Thank you for your patience.

CHAIR QUIGLEY: Mr. Stepheson, please come up to the lectern.

MR. STEPHESON: I have just a couple more things. I'd like to start off with a question.

CHAIR QUIGLEY: Pardon, but we're in summary now.

MR. NEVILLE: [addressing Chair Quigley] Sir, no new evidence can be presented at this time, only a summary.

MR. STEPHESON: Yes, sir that's why I'm up here, to just ask a couple of questions. He keeps referring back to other properties around and about the lake and they keep talking about violations. I'm wondering is there any proof or surveys that reflect any other violations around that lake? We did not bring the situation before you all tonight, this was a request on their behalf, we're just merely here defending our interest. They keep stating it was not a problem until 2005 or 2006 at some point. There was enough concern in 2004 that Douglas Maxwell was retained to look into this. He referred to a not normal situation with the corporation. I don't think that has a consideration. It was a piece of land purchased by a group of people and incorporated to allow other members in and out of usage as people coming by the houses. They do not retain the certificate. The structure, again, they keep talking about this building, it was a shed that was asked of the Association to prove again, to find this 400 square feet, by the

County of Cumberland. This concludes everything I have and I appreciate your time. Thank you.

CHAIR QUIGLEY: Thank you. Ms. Colonair?

MS. COLONAIR: I just want to make a couple of statements and replies to what Mr. Neville said also. Yes, the shed that my husband and I purchased was on the property but it did adhere to the setbacks. It was a very small 10 x 12 shed, 100 inch square feet. So again, we're comparing apples to oranges. We're talking about 120 square feet versus over 2000 square feet. When they talk about permission, correct me if I'm wrong, I couldn't give anyone of the people that are in this room permission to build illegally. That would be my statement. What they presented to me as a member is not what they did. They came and said we'd like to put a shed on the property. Maybe I was wrong to think that a shed was a small building, not this huge monstrosity of a building.

CHAIR QUIGLEY: Thank you. I'm closing the public hearing.

CHAIR QUIGLEY: Mr. Schmidt, what is your question for Mr. Neville?

MR. SCHMIDT: What is his definition of a shed?

CHAIR QUIGLEY: You can choose to answer that or not answer that, sir.

MR. NEVILLE: My response would be, if it didn't fit their definition of a shed, why did they watch it being built in 2002 to 2005; watch the layout and assist in the foundation and not object? I guess my definition of a shed is not germane.

CHAIR QUIGLEY: Thank you. Before I close the public hearing, I want to call Ms. Perrier back up. Angela, I want to ask you a couple of questions. You are under oath.

CHAIR QUIGLEY: To the best of your knowledge, when did Code Enforcement get involved in this?

MS. PERRIER: July 2006, that was our first time we went to visit.

CHAIR QUIGLEY: And the definition of the problem then was what, Ms. Perrier?

MS. PERRIER: That the storage building was built without permits.

CHAIR QUIGLEY: Okay, does any Board member have any questions relative to that. I'm closing the public hearing again. The issue is a variance. It's what we've been asked to decide. You've heard a lot of testimony and some of it pertained to the variance and some of it was peripheral. So what is your discussion relative to this?

MR. TALLY: Our issue is as to the variance and in relation to the property line not as to whether there is trespass or any regards to any structure being built over the property line. Any discussion as to a trespass or any testament we've heard as to structures over the property line would not be before us tonight as far as to factor whether a variance should be issued or

not. We've heard testimony in opposition to the variance as more to the issue of a trespass. Speaking in my own opinion, I don't feel like that is the issue that we're deciding, so it's hard for me to factor in that in my decision as far as a variance.

MRS. TART: I have a question for the County Attorney. In reference to correspondence dated May 11, 2009 from Mr. Scott to Mr. & Mrs. Poulos, on the second page, he says that they have an option of applying with the Cumberland County Land Use Planning for a variance of setback requirements. This option is only available if you are not encroaching on adjacent property owners. Could you give us some advice?

MR. MOOREFIELD: The reason for that explanation is that as the Chairman and Mr. Tally just pointed out, the only issue before the Board of Adjustment is whether or not to grant a variance to the code that's in place which is a five foot setback requirement. You have a building that already exists well past five feet in the property line. If you grant a variance and waive the five feet in this instance, you still have a building that's still there.

MRS. TART: My question is how can you have variance.....

MR. MOOREFIELD: You don't have an exterior wall, you typically measure the variance from the exterior wall or the foundation and that just doesn't work in a situation where you've got an existing building. There are eight issues for the Board of Adjustment to determine. You can't find one of those; you've got to find all eight of those. That's what you've got to address and how the evidence that's been presented tonight, whether or not you can make that determination from all eight of those factors is the issue for the Board of Adjustment. All the talk about the trespass, what everybody said is right, that should and looks like it ultimately will be into Superior Court; but that's not what the variance is about.

CHAIR QUIGLEY: Does that answer your question, Mrs. Tart?

MRS. TART: Yes, it does. But it makes no sense how you can issue a variance when it's all in one building and it's encroaching on the adjoining property owners. That's why I was questioning Mr. Scott's statement in the letter to the Poulos'.

CHAIR QUIGLEY: Are there any other question? Mr. Newsome?

MR TALLY: I think it's important too, to understand the way that I feel as well as that everybody understands that whatever decision we're making here in regards to the variance has no bearing. I'm not speaking as to whether Mr. Neville or the other side is correct in talking about an issue of trespass and being heard in Superior Court; we're not making a decision as to that and obviously I would prefer your opinion on it, but whatever your decision has no bearing on that issue as far as that legal issue.

MRS. TART: Actually, my question was, how can you even request a variance in a situation like this?

MR. MOOREFIELD: Obviously you can because it's been done and the Ordinance doesn't really contemplate this situation. If you make a measure from the exterior wall or foundation here, it's meaningless.

CHAIR QUIGLEY: Mr. Dykes, any comments?

MR. DYKES: No comments.

CHAIR QUIGLEY: Essentially what we're looking at is you've got eight elements that you have to consider and if you can't find favorably for each of those elements, then the motion would have to be considered under that rule. Is anyone prepared to make a motion?

MRS. TART: Mr. Chairman, I move that we deny the variance in regard to Case #P10-14-C, based upon the fact it does not meet the criteria outlined in #2 that is a requirement. It would grant the petitioner special privileges that are not available to other people.

CHAIR QUIGLEY: Absent approval of all of the conditions in this, on the basis of the fact that we can't satisfy all of them, it is ordered the variance be denied subject to appeal. Do we have a second to the motion?

MR. NEWSOME: I second the motion.

IN FAVOR		OPPOSED
TART:	Yes	TALLY: No
NEWSOME:	Yes	
DYKES:	Yes	
QUIGLEY:	Yes	

The motion to deny Case #P10-14-C passed with Mr. Tally voting in opposition.

- **P10-15-C:** CONSIDERATION OF A REQUEST FOR A VARIANCE FROM THE COUNTY ZONING ORDINANCE, SECTION 1102 YARD REGULATION, SUBSECTION G. BUFFER REQUIREMENTS 1-A, WHICH REQUIRES A SOLID BUFFER WHEN A NON-RESIDENTIAL USE ABUTS A RESIDENTIALLY-ZONED PROPERTY ALONG THE SIDE AND/OR REAR PROPERTY LINES FOR A DAY CARE FACILITY; AND THE ADDITION TO AND MODIFICATION OF AN APPROVED SPECIAL USE PERMIT (NEE SPECIFIED CONDITIONAL USE) FOR A DAY CARE FACILITY IN AN R10 RESIDENTIAL DISTRICT ON 1.42+/- ACRES, LOCATED AT 3230 LEGION ROAD; SUBMITTED BY BETTY ALLEE ON BEHALF OF CHURCH OF GOD OF PROPHECY (OWNER).

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

Chair Quigley swears in Betty Allee.

CHAIR QUIGLEY: Please state your name and address for the record.

MS. ALLEE: My name is Betty Allee, and I live at 4018 Village Drive, Fayetteville, NC 28304.

CHAIR QUIGLEY: Thank you, and what's your relationship to this property?

MS. ALLEE: I belong to this church, The Church of God of Prophecy, and I now serve as the president of the Daycare Board. I serve as a board member of our church and I help oversee the changes of the daycare. I've worked there for forty years and saw it from beginning to now.

CHAIR QUIGLEY: Do you understand the non-conforming issues here relative to the property? The fact that you are required to have a buffer and off-street parking rights of way?

MS. ALLEE: I was not aware that we had to have a six foot buffer. We have had our properties fenced in from the beginning of our daycare center which was in 1971. Because of bringing in sand and filling up our yards, the fence had become too short, because we have to go by the guidelines of the daycare license in Raleigh. We recently, in May of this year, we installed a new fence. It is five foot; there is one section of the fence [pointing to the on screen presentation], for some reason that section is six foot, the rest is five foot. A new chain link fence. We did not know that we were required to have a solid buffer. Had we known that at the time, we would have installed a privacy fence which would have been cheaper than the nice chain link fence that we have. That's why we're asking for the variance tonight, because we were not aware that it had to be six feet. We were going by the guidelines to comply with daycare licensing, which if you run a daycare center and you are licensed, they have strict rules.

CHAIR QUIGLEY: Yes, it's a security issue; I understand.

MS. ALLEE: Absolutely. If we had known that at the time, we could have just increased it a little bit more to six foot. I did not know that and I've worked there all these years and for some reason I did not know that. I'm sorry I didn't because like I said, we could have built a privacy fence, probably cheaper than we did this one. We do want to comply with whatever we have to comply with and we're asking at this time if we could have a variance from the six foot.

CHAIR QUIGLEY: Thank you. Do you have any other comments? In other words, your interest is in complying with what is now in nonconformity, is that correct, Ms. Allee?

MS. ALLEE: Well, the reasons I'm asking for the variance tonight is that if we could proceed with licensing this one other building there that we had used for a sanctuary; we have moved out of that and this is a nice big building for our daycare. The daycare has been here [pointing to the on screen presentation] and this section here was our sanctuary and we want to license that at this time so our after school children will have a nice big building to enjoy as well. So, I'm asking for the variance so we would not have to install a new fence at this time.

CHAIR QUIGLEY: I understand, in other words what we've got here Ms. Speicher is two issues; a variance and a special use permit, is that where we are?

MS. SPEICHER: Yes, chair and the Board should consider the variance first as a separate distinct issue.

CHAIR QUIGLEY: Ms. Allee, I remind you that you remain under oath. I do have some questions for staff. What do we need to do here to see where we go with this issue? Do we grant the variance and if we grant the variance, does that open up the door for the special use permit if we decline the variance or deny the variance, then the Special Use Permit is moot?

MS. SPEICHER: In this particular case because we're talking about a buffer that is tied to the certificate of occupancy, not the operation or beginning of a business, that regardless what the ruling on the buffer is, the Board can still move on to hearing the Special Use Permit. In your draft conditions on condition #17, staff had noted the requirement for compliance with the buffer.

CHAIR QUIGLEY: Okay, essentially what I want to introduce now is the fact that we need to talk about the Special Use Permit for this and that's obviously a different set of criteria.

MS. SPEICHER: Excuse me Chair, I hope I haven't confused things, but while I was out of the room, Pier explained to me she only presented enough for the Board to address the buffer; so before the Board does anything with the Special Use, she would like to finish her presentation. You're more than welcome to decide the buffer and then she can finish or whichever way you want to do that.

MR. MOOREFIELD: Mr. Chairman, may I ask staff a question? Is there any other way under the Ordinance to accommodate and comply with the buffer requirement other than through a solid fence. Are plantings or some other type of buffer mechanism available?

MS. SPEICHER: Yes, sir, vegetation.

CHAIR QUIGLEY: It can be a green buffer.

MR. MOOREFIELD: Have you all talked to her about that?

MS. SPEICHER: Yes, we did.

CHAIR QUIGLEY: When we talk about the variance, the conditions in the variance could include the fact that they have to install a buffer. The buffer can be either a landscaped buffer or a hardscaped buffer. A hardscaped buffer would be the palisade fence that they talked about and the landscaped buffer would be plantings, but they would eventually have to be at a height of six feet. Is that correct?

MS. SPEICHER: If the variance is denied.

CHAIR QUIGLEY: And that could be a condition of the variance, that they do that?

MS. SPEICHER: Well, that's the standard in the Ordinance then the variance would be denied, if that was the condition.

MR. MOOREFIELD: If the Variance were granted, the buffer requirement goes away, right?

MS. SPEICHER: If they grant it.

CHAIR QUIGLEY: But, it could be reinserted in the Special Use Permit, have we discussed that?

MS. SPEICHER: Because you have a variance before you, you could modify the buffer requirements to what you felt protected the neighborhood and was in line with the intent of the Ordinance. Such as, if you felt a five foot chain link fence with modifications or something like that would be adequate for this particular property and this particular area in use and still meet the intent of the Ordinance.

CHAIR QUIGLEY: I don't want to trample all over code on this. Does anybody have any discussion on this issue?

MRS. TART: I was just wondering if we approved the variance for the five foot fence, could we then require a five foot vegetation buffer inside the fencing for the privacy issue?

MS. SPEICHER: Yes, you certainly could.

MS. ALLEE: Can I say something? All the years that we've been here, we have had excellent relations with our entire neighborhood. I've been here several times since we've grown and increased and I've never had anyone to come and object to what we were doing there because they knew we were doing it for a good cause; for the children. We own [pointing to the on screen presentation] everything in this block except this house and another one across the street. That is Buie Street, we own all of these lots that the daycare is joining. We use this for church, but the daycare center, even though we own those lots, we still have our fence, our buffer there. In this entire block at Buie Street and Myrtle Drive, we own everything in this block except two houses. So, we've had really good relations with our neighbors and we haven't had anyone complain through the years. In fact, some of the neighbors, we've kept their children in our daycare, so it's been a really good relationship with all the neighbors. We've never had any complaints. If we did, I'm sure that you would know it down here, but we have not. If would could get this Special Use approved tonight, we'd go forward with our plans and if you would grant the variance of our six foot fence versus the five foot and six foot. Thank you.

CHAIR QUIGLEY: Does anybody have any questions for Ms. Allee? Thank you. With an accommodation, I see here to grant the variance with the condition that they do the buffer and then discuss the Special Use Permit with any requirements that are there. Is that an accommodation?

MS. SPEICHER: Yes, that's fine.

MRS. TART: Since they own all the properties that actually abut this fence, I believe one property she pointed out was on the corner line.

CHAIR QUIGLEY: Yes, the one house to the west.

MRS. TART: It actually doesn't border the fencing that much.

CHAIR QUIGLEY: It's sort of within easy view of it, Mrs. Tart.

MRS. TART: It's in view but...maybe I misunderstood...basically they own everything but one lot.

MRS. VARNER: They own these properties [pointed out on the on screen presentation the properties owned by Church of God of Prophecy].

CHAIR QUIGLEY: Do you have a suggestion, Mrs. Tart?

MRS. ALLEE: Can I speak, I did make a mistake, there are two houses from Myrtle Drive and Buie. There are two home owners there that we don't own. But then across the street, there is one. So we're not really dealing with this side anyway, but over here there are two home owners [pointing to the on screen presentation]. We own all the lots except those two.

CHAIR QUIGLEY: Thank you. I'll close the public hearing on this one. Since we are faced with denying the variance which would then make moot the Special Use Permit, is that correct?

MS. SPEICHER: That is not correct in this instance. You're used to most of the time dealing with the setback of a new building or something that would stop effectively the Special Use Permit. In this case, because the buffer is a requirement to the certificate.....

CHAIR QUIGLEY: Essentially, the denial of the variance would then require them to install the buffer?

MS. SPEICHER: That's exactly right.

CHAIR QUIGLEY: Is there anything unique about this Special Use Permit request? Do you want to get into that Mrs. Varner?

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

CHAIR QUIGLEY: Do they have adequate parking there for that many employees?

MS. SPEICHER: Condition #19 addresses the parking. They were required to have a minimum of sixteen off-street parking. The parking that is located on Buie Avenue that causes motor vehicles to back out onto the street and the first four spaces on Legion Road were not counted in the staff calculation for compliance; so yes, they meet.

Mrs. Varner completes her presentation.

CHAIR QUIGLEY: An accommodation to this could be that we deny the variance and approve the Special Use Permit if that is the desire of the Board and that would accomplish the fact that they would have to put the buffer in which would satisfy that requirement and give them the day care facility that they are anxious to have, I assume.

MRS. TART: Mr. Chairman, are you saying we could approve the Special Use Permit and then deal with the variance after the fact?

CHAIR QUIGLEY: No. Essentially, we would have to deny the variance, so that would lead us to the Special Use Permit. We don't have to do that but I think that would open up the fact that by denying the variance, they would have to put the buffer in and comply with the code on that, if I'm not mistaken; and satisfy that, which would then satisfy provision #2 of the variance;

which would be granting them a special privilege that may not be available to others and then the Special Use Permit, I don't see any problems with that and then they would have to satisfy 28 conditions, right Mrs. Varner?

MRS. VARNER: There are 28 conditions and the buffer is addressed on condition #17.

CHAIR QUIGLEY: Denying the variance does not deny then the use of the facility for their intended purpose and the conditions in that require the buffer to be built which would satisfy code. So, we're not trampling over what Planning has done.

MR. NEWSOME: I make a motion that we deny the buffer variance.

CHAIR QUIGLEY: I'll accept your motion, based on what?

MR. NEWSOME: Based on #2, that it would grant special privileges.

CHAIR QUIGLEY: Okay that motion is on the floor, do I have a second?

MR. DYKES: Seconded.

CHAIR QUIGLEY: All in favor of the motion to deny the variance, signifying by saying aye.

IN FAVOR		OPPOSITION
<u>NEWSOME:</u>	Yes	None
<u>DYKES:</u>	Yes	
<u>QUIGLEY:</u>	Yes	
<u>TART:</u>	Yes	
<u>LOCKETT-TALLY:</u>	Yes	

There were no oppositions and the motion to deny the variance passed unanimously.

CHAIR QUIGLEY: The decision of the Board is that it is ordered that the variance be denied based on the fact that granting it would confer upon the applicant a privilege denied to other residents in other areas that are ruled by the code.

CHAIR QUIGLEY: We will now discuss the Special Use Permit. Anybody prepared to issue a motion on that?

MR TALLY: I make a motion that we approve the Special Use Permit.

1. The use will not materially endanger the public health or safety if located according to the plan submitted and recommended;
2. The use meets all required conditions and specifications as outlined with this draft of conditions #1 through #28.

CHAIR QUIGLEY: Having heard the evidence, the Board finds that the application is complete and that the Special Use Permit is permitted recognizing that all 28 conditions must be met.

CHAIR QUIGLEY: We do have a motion, do we have a second?

MR. NEWSOM: Seconded.

CHAIR QUIGLEY: It has been properly moved and seconded. Is there any additional discussion on this? Is there any clarification that staff needs? All in favor of the motion to grant the Special Use Permit, signify by saying aye?

IN FAVOR		OPPOSITION
NEWSOME:	Yes	None
DYKES:	Yes	
QUIGLEY	Yes	
TART	Yes	
LOCKETT-TALLY	Yes	

There were no oppositions.

CHAIR QUIGLEY: We grant the Special Use Permit subject to the 28 conditions that have to be satisfied.

9. MEMBERSHIP

CHAIR QUIGLEY: We need to elect a Vice-Chairman. I will ask for a nomination for a Vice-Chairman. I think everybody's familiar with who is available.

MS. SPEICHER: Would you like for me to read the current regular member names and then the current alternate names?

CHAIR QUIGLEY: Yes.

MS. SPEICHER: Joseph Dykes, Melree Hubbard Tart, George Quigley and Horace Humphrey. That is our four current regular members. Our alternates are: Carrie Tyson-Autry, William Lockett-Tally, Martin Locklear, Randy Newsome and Ed Donaldson.

CHAIR QUIGLEY: The Vice-Chairman should be selected from the regular members?

MS. SPEICHER: Yes.

MRS. TART: When will we get a new member, not an alternate?

MS. SPEICHER: The Board of Commissioners would very much appreciate if this Board would make a nomination tonight for a recommendation on the nomination to fill the vacancy left by Mr. Swanson.

CHAIR QUIGLEY: How many regular members do we need?

MS. SPEICHER: Five.

CHAIR QUIGLEY: And we only have four?

MS. SPEICHER: Right, because of Mr. Swanson.

MRS. TART: Could we wait until we have a full five member board to elect the Vice-Chairman?

MS. SPEICHER: The only issue that would be a problem is if for some reason Chair Quigley couldn't make the meeting, then it would be a vote among the members that were there on who was Chair. If it's the Board's pleasure, you can but, I know the Commissioners would still appreciate a recommendation from the Board.

CHAIR QUIGLEY: I would like to have a Vice-Chairman.

MS. SPEICHER: Do you have your applicant list up there?

CHAIR QUIGLEY: Do I have nomination for Vice-Chairman?

MR. DYKES: I have a suggestion, Mr. Ed Donaldson.

MS. SPEICHER: Mr. Donaldson would only qualify as vice-chair if he was also nominated and if he accepts to be a regular member.

MRS. TART: That was my reasoning in waiting until we had a full board.

MS. SPEICHER: Well, at the Board's direction, I can work on that tomorrow and if he confirms and that's what the Board agrees to, I can write it up it up with Mr. Quigley's name and send it on with a recommendation.

CHAIR QUIGLEY: I don't have a problem. I heard no nominations. Absent of nominations on the floor so that means no argument. What's your recommendation for a regular member?

MS. SPEICHER: It's going to have to be Mr. Donaldson if he's also going to be vice-chair. Right now he's an alternate. Is that good? Next month, we'll have a vacancy left by Mr. Donaldson.

CHAIR QUIGLEY: Does everybody agree?

All members present agreed.

10. DISCUSSION

MS. SPEICHER: As a reminder, please read the revised Rules of Procedure.

11. UPDATE(S)

MS. SPEICHER: The Watershed on Andrews Road, the high density, we did not get a new bond or anything so we did have to in fact send out the notice of violation letter and he has 30 days to come into compliance.

MR. DYKES: Have we heard any more about the TigerSwan case?

MS. SPEICHER: Mr. Dykes, that is still in court and I cannot talk about that case right now.

MR. MOOREFIELD: They just now got the record together and there's been no further action taken. This is likely not to be heard before next spring.

12. ADJOURNMENT

CHAIR QUIGLEY: There being no other business, I'll ask for a motion to adjourn.

MRS. TART: Motion to adjourn.

MR. DYKES: Seconded.

There being no further business; the meeting adjourned at 10:15 pm.