

**Members:**

George Turner, Chair  
Alfonso Ferguson Sr., Vice-Chair  
Winton McHenry  
Gregory Parks  
Nathan Galbreath



**Alternates:**

Robert E Davis  
Stacy Michael Long  
Marva Lucas-Moore  
Quinsentina James  
Linda Amos

***CUMBERLAND COUNTY BOARD OF ADJUSTMENT***

130 Gillespie Street  
Fayetteville North Carolina 28301  
(910) 678-7602

**MINUTES**

October 17, 2019

7:00 PM

**Members Present**

George Turner  
Alfonso Ferguson  
Stacy Long  
Nathan Galbreath  
Marva Lucas-Moore

**Absent Members**

Winton McHenry  
Gregory Parks

**Staff/Others Present**

Betty Lynd  
Dena Barner  
Robert Hasty  
(Asst. County Attorney)

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

Chairman Turner stated the procedural matters are to turn off all cell phones and other electronic devices, other than the camera, are fine and if asked to speak at the podium to please speak clearly into the microphone as the meeting is being recorded. Although there are no set time limits for any speaker addressing the board, the board asks speakers to not repeat what has been previously stated. If there is no new evidence to offer please make the board aware of your agreement with the previous speakers. If any board member wishes to speak or ask any questions please ask to be recognized by the Chairman before speaking.

1. INVOCATION

Stacy Long

PLEDGE OF ALLEGIANCE

Recited by all.

2. ROLL CALL

Chair Turner called the roll. For the audience Mrs. Lynd stated a quorum was present.

3. SWEAR IN STAFF

Chair Turner swore in staff.

4. ADJUSTMENTS TO THE AGENDA

There were none from staff.

5. APPROVAL OF THE SEPTEMBER 19, 2019 MINUTES

Mr. Ferguson made a motion to approve the minutes from the September 19, 2019 meeting with any necessary corrections, seconded by Ms. Lucas-Moore. The motion passed unanimously.

	<b>IN FAVOR</b>
TURNER	YES
FERGUSON	YES
GALBREATH	YES
LONG	YES
LUCAS-MOORE	YES

6. APPROVAL 2020 DEADLINE MEETING SCHEDULE

Mr. Long made a motion to approve the 2020 Deadline/Meeting Schedule, seconded by Mr. Ferguson. The motion passed unanimously.

	<b>IN FAVOR</b>
TURNER	YES
FERGUSON	YES
GALBREATH	YES
LONG	YES
LUCAS-MOORE	YES

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

There were none.

8. PUBLIC HEARING DEFERRALS/WITHDRAWALS

There were none.

9. POLICY STATEMENT REGARDING APPEAL PROCESS

Mrs. Lynd read the policy statement.

10. PUBLIC HEARING(S)

**P19-04-C:** CONSIDERATION OF A VARIANCE TO ALLOW A 40 FOOT BY 60 FOOT ACCESSORY STRUCTURE LARGER THAN THE PRINCIPAL STRUCTURE IN AN A1 AGRICULTURAL DISTRICT ON 2.50+/- ACRES, LOCATED 5409 J. T. MATTHEWS ROAD, SUBMITTED BY ZACHARY S. LAPENE (OWNER).

Chair Turner read the case heading for Case No. P19-04-C.

Mrs. Lynd reviewed the zoning, sketch map, and land use of the area surrounding subject property. She briefly reviewed board packet material. Mrs. Lynd entered section of the zoning ordinance reference Section 203 on Definitions of specific terms and words referencing on page 7. According to Cumberland County zoning ordinance Accessory Building or Use: A building or use, not including signs, which is:

- A. Conducted or located on the same zoning lot as the principal building or use, or off-street parking, as specifically provided for in this ordinance;
- B. Clearly incidental to, subordinate in area and purpose to, and serving the principal use; and
- C. Either in the same ownership as the principal use or clearly operated and maintained solely for the comfort, convenience, necessity or benefit of the occupants, employees, customers or visitors of or to the principal use. The application submitted by the owner is complete. The applicants are here and staff

asked when making a motion if you could make the motion subject to the findings of facts tab located behind the variance tab in your binder.

CHAIR TURNER: You know in some ways this seems fairly simple, but when you read the findings of fact that actually becomes kind of difficult, I think.

MRS. LYND: We just ask that you do your best.

CHAIR TURNER: Do what?

MRS. LYND: We just ask that you do your best.

CHAIR TURNER: Okay. We'll do all that we can even if we do it wrong. I will open the public hearing, first speaker, and I'll need you to be sworn in sir, Zachary Lepene, am I saying that right?

MR. LEPENE: Yes sir.

CHAIR TURNER: Do you swear or affirm the testimony you'll give the board will be the truth, the whole truth and nothing but the truth so help you God?

MR. LEPENE: Yes sir, I do.

CHAIR TURNER: You sir are Zachary Lepene and you live on the site don't you?

MR. LEPENE: Yes sir.

CHAIR TURNER: Have you had a chance to read the requirements we have?

MR. LEPENE: Yes sir, whenever I did the application I read through them, yes sir.

CHAIR TURNER: Okay. Alright we'll let you tell us everything. If you could speak into the mic too, we're being recorded.

MR. LEPENE: So basically what happened is I had some storm damage to the shed that's on the property from, I believe, was Hurricane Matthew and some of the roof was damaged and some of the stuff inside was damaged also. So as I go to replace that building I want to do a larger structure because that's gotten too small with lawn equipment. I also have some personal stuff like motorcycles and stuff like that. I also enjoy exercising so I wanted a little bit more room so I have that and also my vehicles, somewhere to park those to get those out of the elements. I also enjoy working on vehicles. So that would also give me an area to be outside of the elements whenever it's too cold or whenever it's raining. Give me a concrete pad to work on and it meets all the setbacks to allow for building requirements. I believe that's everything,

CHAIR TURNER: Let me ask you this, the building that's damaged, how big is it?

MR. LEPENE: It's a 12 x 24.

CHAIR TURNER: 12 x 24 okay. Were there any questions? Board members?

MRS. LUCAS-MOORE: And you want to extend it and make it a 40 x 60 versus a 12 x 24 correct?

MR. LEPENE: That is correct. Whenever I do the new building I will be removing that 12 x 24 building, that'll no longer be there. The reason I'm wanting something this size is for 1 – I've got to put my vehicles in it and also the use since I'll be replacing it. What I don't want to do is a 20 x 20 and then put the vehicles in it and I don't have room for nothing else and then do another building. I just want to do one building and be done with it at that point. We do have a child and as he gets older obviously he'll want more things and that takes up more



space obviously and I see how people end up with multiple buildings. I don't like how that looks and I would rather avoid it if I can.

MRS. LUCAS-MOORE: Okay. Gotcha.

CHAIR TURNER: Anything else?

MRS. LUCAS-MOORE: No.

CHAIR TURNER: I'm not sure that when you filled everything out that you saw what we have to do and I don't even know if this is appropriate, if it's not, stop me. We have four findings of fact that we have to make to grant this that's why I said on the surface I'm with you I want a big building, it's a guy thing, but the board has to make findings of fact and we have four things we have to look at. 1 – is that it's in the board's conclusion that an unnecessary hardship would result from strict application of the ordinance. 2 – is that in the board's conclusion that the hardship results from conditions that are particular to your property, something unique about your property which is the location, size or topography. The other is that we have to conclude that the hardships did not result from actions taken by the applicant or the property owner. The last is that it's the board's conclusion that the requested variance consistence with the spirit, purpose and intent of the ordinance, public safety is secured, substantial justice is achieved. That was a lot for you to take in at once I guess but I don't have any problem with number four. We're out in the country, that kind of having a barn in the country seems pretty normal to me. How about the other three, could you address those?

MR. LEPENE: With the first one, something unique about the property, in my opinion, would be that

CHAIR TURNER: The first one would be that you would suffer a hardship from the strict application of the ordinance. How would you suffer a hardship from that ordinance?

MR. LEPENE: I really don't know how to answer that. I think you mentioned something about a unique application and one of the unique applications in my opinion would be that on Percy Strickland Road there's a hog farm and there's a unique odor that comes from that hog farm, so whenever I'm outside exercising or working on vehicles I'm subject to that unique smell. That's the biggest thing I could think of - a unique application.

MR. LONG: I'm not sure that this is appropriate either but I can think of a hardship that he mentioned, strict, I'm assuming that the one rule that this is breaking is that the proposed building is bigger than his house and if he does have to follow the letter of the law here he would have to build more than one shed, which would probably increase his cost a lot and you would probably have to get other permits and other things like that and he would have to build multiple sheds instead of just one and that is a hardship.

MR. LEPENE: I'm also under the impression that there's actually a limit on how many buildings you can have within the county.

MR. LONG: Is there?

CHAIR TURNER: There is.

MR. LEPENE: So as far as that goes, I know there's a lot of people who have multiple buildings but there probably not doing permits. I'm trying to do it the right way so in 10 years I don't have somebody come knocking on my door telling me there's an issue.

CHAIR TURNER: I can understand that. And like I said personally we're out in the country seems like having a big barn right in order to me. Item number 3 that I mentioned is that the hardship did not result from actions taken by the applicant. How would you address that?

MR. LEPENE: As far as having to replace the building that came from the damage from the Hurricane Matthew, I don't really feel like that was caused by me. Outside of that, I'm not really sure exactly how to

CHAIR TURNER: Have you ever considered maybe a smaller building than 40 x 60?

MR. LEPENE: I mean I could go a 30 x 49 and it's still bigger than my house. Honestly, I have considered smaller buildings but the problem is, if I go too small, down to like a 20 x 20 which would fall in the same size as the house, by the time I put 2 cars in it, it's full. In reality it would be really quick to fill up.

CHAIR TURNER: Yep, I understand.

MR. LEPENE: But I don't know if that's a good answer either.

CHAIR TURNER: No I understand completely, as I said, I see this kinda normal but when you look at what you have to come up with here, to me it's very difficult. Anybody have anything they want to add here?

MR. FERGUSON: It would cause him a hardship if he had to build more than one shed. So we can use that in that part to make our decision on. This is not anything commercial for you? It's just totally for you?

MR. LEPENE: It's totally for me. It's not commercial. It's just lawn equipment, tools. Somewhere to work to be out of the elements. It's not nothing commercial.

MRS. LYND: If he were to turn it into a commercial building he would have to go through a site plan review and all that and there are few non-residential uses that would be allowed in their current zoning district.

CHAIR TURNER: Did you read us the ordinance that requires this issue? Is that what you read earlier?

MRS. LYND: I did, yes sir. It's the definition section of the zoning ordinance and under the definition for an accessory use or building, item B underneath that says that accessory buildings are clearly incidental to subordinate an area and purpose to/in serving the principle use which in this case the principle use is their home.

MR. GALBREATH: So a subordinate area has to be less than the square footage of the home?

MRS. LYND: Right. Correct. Their home is 1,440 square feet so any accessory structure that they desire to put on there in order to meet the ordinance requirements would have to be subordinate to that.

CHAIR TURNER: We are still in the public hearing. Anything? Any questions?

MR. LONG: You are replacing the current one?

MR. LEPENE: Correct. Whenever the new one's built and I'm able to move everything in, I'll take that other one down. I have no interest in having it after everything else is stored safely.

MR. LONG: okay.

CHAIR TURNER: Anybody else? Do you want to add anything sir before you leave?

MR. LEPENE: No sir.

CHAIR TURNER: Thank you, we may call you back. There is no one else signed up to speak for or against, so I'll close the public hearing and open it for discussion or a motion.

MR. FERGUSON: If there is no other discussion, I'll make a motion that we approve on the 40 x 60 with the contingencies of the board with all we have on there. You said all was passed right?



MRS. LYND: Right. So what I'm going to need you to do is make a motion to approve and then state finding fact number 1, what you all are stating supports finding of fact number 1, 2, 3, 4.

CHAIR TURNER: You're going to have to go those four, and that's the problem I had.

MR. FERGUSON: So in Fact 1 - the boards conclusion that an unnecessary hardship would result from the strict application of the ordinance the only thing we came up with that would happen is that he would have to build more than one. But the Hurricane caused the fact of the structure to be damaged, so the hardship came from the hurricane, no him. Fact 2 – the board concludes that the hardship results from conditions that are peculiar to the property, such as location, size, or topography, in our ordinance it says that it has to be no larger than the structure there so we're doing a variance so that he may build it on the size that he's needing to accommodate his home size and what he needs it for there. So that should be granted. Fact 3 - And the board concludes that the hardship did not result in any action from him, like we said it came from the hurricane and the building of two or three of those would be an enormous cost to him and his family so we won't require that. Fact – 4 And the board concludes that the requested variance is consistent with the spirit, purpose and intent of the ordinance, no one is here to speak against that what he's offering and the sign was posted so it would cause him to be consistent with the spirit and community for him and his family to use therefore on the basis going forward I say that we approve it. Anything else?

MRS. LYND: Just a second.

**Mr. Ferguson made a motion to approve Case P19-04-C Consideration of a variance to allow a 40 ft by 60 ft accessory structure in an A1 Agricultural District, Ms. Lucas-Moore seconded. The motion passed with a vote of four to one.**

	<b>IN FAVOR</b>
<b>TURNER</b>	<b>NO</b>
<b>FERGUSON</b>	<b>YES</b>
<b>GALBREATH</b>	<b>YES</b>
<b>LONG</b>	<b>YES</b>
<b>LUCAS-MOORE</b>	<b>YES</b>

## 11. DISCUSSION/UPDATES

MRS. LYND: Staff has a discussion. There will be a meeting November 21<sup>st</sup>, a case was received before the November deadline. We have had the joy of meeting our new planning director, Rawls Howard. He has been a great addition to our building. He comes to us from Mooresville. With that being said, it's a great time to discuss, and it's been proposed to whether or not you all would like to see the meeting time potentially changed to something like 5:30 or 6:00. And before we offer it up as a suggestion for him to maybe consider, I wanted to confirm that would not conflict with most of you all's schedules so that we could continue to have a quorum present here.

CHAIR TURNER: Would anybody have an issue if we meet at some other time? My suggestion was that if we have it earlier, I don't think they need to stay half the night. This is the only board I've ever served on that starts at 7 at night. Most all of them are earlier than that and I would like to see it changed if I could.

MRS. LYND: Right. So I'll definitely bring that up with him and suggest it and see what avenue he wants to pursue. I did invite him tonight but obviously he just started Monday and he's trying to get his house that he goes to in order and all that. Especially since we are going to have a meeting in November, he said he would love to meet you all then. So do expect him to be there as well. I'll make the suggestion and we will see what we can do from here on out. I don't know if we can change it for November or December only because that meeting schedule has already happened and we may have you all approve an adopted deadline schedule cause I don't know if addresses, it doesn't seem to address time, so we should be okay with that.

MRS. LYND: We've got kids we've got to get home to also.

MR. HASTY: The only update I have is the Hampton case we did get a decision of sorts from the Supreme Court, that Mr. Ferguson was the only one on the board then, and they basically said they shouldn't have heard the case so the Court of Appeals ruling stands. The Court of Appeal ruling mandated to send it back to you. So what will happen next, I don't know. I will be discussing the case with Mr. Yarborough next week. And go from there.

CHAIR TURNER: So based on what was said, it is expected to come back to this board? Start all over.

MR. HASTY: Yes, unless it is resolved somehow in the meantime.

MR. LONG: Is this the gun range one? That is still going?

MR. FERGUSON: Yeah and we were here until 11:00 pm.

CHAIR TURNER: And I don't see after it's already been done this far how you can. Their going to come in and know what to say and what not to say and I don't know that any of us could actually make a reasonable decision unless we could hide in the trees out there and watch what they do. Isn't this really based on the fact of whether they are paying people?

MR. HASTY: No it's based on whether they had a permit or not. Which they did not, to whether they need a permit or not. Which they argued they didn't.

CHAIR TURNER: That was based on whether they charged people. Wasn't it?

MR. HASTY: Yes and no. That came up but I don't think that was relevant because the ordinance doesn't discuss charging at all. One way or the other. Use of the land not charging, it kinda got thrown in the mix.

MRS. LYND: Right, The outdoor firing range standards state that if anybody other than the person who owns the property is doing the firing, then its considered an outdoor firing range.

CHAIR TURNER: I think their land is too small too, isn't it?

MRS. LYND: It would be if it is considered an outdoor firing range.

MR. HASTY: It is now. At the time if they had applied for a permit at the time they may have gotten one but since there is a new ordinance that requires 200 acres. I don't know yet exactly what's going to happen.


CHAIR TURNER: I know I heard a lot of talk. I know this board was scrutinized pretty heavily for what they did or didn't do. It was one of the things that made me think we really need to get this down. We should operate this like a courtroom, in my opinion. And we need to tighten it up so we don't end up with situations. You get a bulldog like Neil Yarborough, you cannot mess up. He's not going to let you mess up and walk away from it. Anybody have anything else

12. ADJOURNMENT

Mr. Long made a motion to adjourn, seconded by Mr. Ferguson. The motion passed unanimously. Meeting adjourned at 7:32pm.

	IN FAVOR
TURNER	YES
FERGUSON	YES
GALBREATH	YES
LONG	YES
LUCAS-MOORE	YES

  
Dena L Barner, Clerk to the Board

  
Alfonso Ferguson, Sr. Vice-Chairman