

Members:
George Turner, Chair
Alfonso Ferguson Sr., Vice-Chair
Winton McHenry
Gregory Parks
Marva Lucas-Moore



Alternates:
Robert E Davis
Stacy Michael Long
Linda Amos
Quinsentina James

CUMBERLAND COUNTY BOARD OF ADJUSTMENT

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

MINUTES
November 19, 2020
6:00 PM

Members Present

George Turner
Alfonso Ferguson
Gregory Parks
Marva Lucas-Moore
Linda Amos

Absent Members

Winton McHenry

Staff/Others Present

Betty Lynd
Dena Barner
Rick Moorefield
(County Attorney)
David Moon

Chair Turner called the meeting to order at 6:00 p.m. in Public Hearing Room #3 of the Historic Courthouse.

Chair 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

Chair Turner

PLEDGE OF ALLEGIANCE

Recited by all.

2. ROLL CALL

Mr. Moon called the roll. For the audience, Mr. Moon stated a quorum was present.

3. SWEAR IN STAFF

Chairman Turner swore in staff.

4. ADJUSTMENTS TO THE AGENDA

Request to move Case P20-03-C into Public Hearing instead of deferral.

Ms. Lucas-Moore made a motion to move case P20-03-C to Public Hearing on this agenda, seconded by Mr. Parks. The motion passed unanimously.

IN FAVOR

TURNER	YES
FERGUSON	YES
PARKS	YES
LUCAS-MOORE	YES
AMOS	YES

5. APPROVAL OF THE OCTOBER 22, 2020 MINUTES

Mr. Ferguson made a motion to approve the minutes from the October 22, 2020 meeting with any necessary corrections, seconded by Mr. Parks. The motion passed unanimously.

IN FAVOR

TURNER	YES
FERGUSON	YES
PARKS	YES
LUCAS-MOORE	YES
AMOS	YES

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

There were none.

7. PUBLIC HEARING DEFERRALS/WITHDRAWALS

Moved to Public Hearing.

8. PUBLIC HEARING(S)

P20-03-C: CONSIDERATION OF A VARIANCE TO ALLOW A ZERO FOOT FRONT YARD SETBACK FOR A GARAGE, STORAGE SHED AND FENCE INSTEAD OF A REQUIRED MINIMUM THIRTY FEET SETBACK FOR PROPERTY LOCATED IN AN A1 AGRICULTURAL DISTRICT AND CONTAINING 0.74+/- ACRES, LOCATED AT 1062 PALESTINE ROAD, SUBMITTED BY CHARLES & SHEENA ANNAN (OWNERS).

Chairman Turner read the case heading for Case No. P20-03-C.

CHAIR TURNER: Can I ask a question before you start? Last month it said fifty foot now it says thirty foot, why is that?

MR. MOON: Okay, if I could explain. To go back to the October Board of Adjustments meeting, the Board asked us, that is staff, to meet with the applicant, that is Mr. Annan, to see if there was any zoning alternatives to accommodate the circumstances with his property and buildings at the zero property line, in this case the new garage and a shed as well as a fence. On November the 2nd, myself the current planning manager, the code enforcement manager and the building official met with Mr. Annan, the applicant and property owner to discuss what zoning options were available to him. At that time, we had discovered based on policies within the zoning code that the RR setbacks could apply to A1 situation. The only change that makes is the setback for the front yard changes from fifty feet to thirty feet. It does not help the situation because the structures are at the edge of the right of way at the zero lot line.

CHAIR TURNER: That doesn't change the side yards setback?

MR. MOON: He doesn't have a side yard, as you recall he has two front yards because it's a corner lot.

CHAIR TURNER: So both of those became thirty feet instead of fifty feet?

MR. MOON: Correct, we also looked at the zoning categories available that are consistent with that area of the county and we didn't find any that would accommodate the setback needs. So he's at a situation where he's subject to the A1 zoning requirements with the conditions set forth in section 101 – lot regulations that's states that an A1 zoning district that's an RR rural residential setback requirements will apply based on the timing of when his plat and lot were recorded.

CHAIR TURNER: Okay. If I recall this is the one where there was no zoning in that area when the plat was recorded, is that correct?

MR. MOON: I believe that was the case and there likely was a regional wide administrative zoning event that occurred after the plat was approved and recorded. I do believe the applicant has a presentation, this is a quasi-judicial processing so he has the option to present his case to you and discuss with you his arguments for any hardship that may exist. We have a slide show presentation that Mr. Annan has prepared.

CHAIR TURNER: Does the county have a presentation again?

MR. MOON: That is up to the board, we can pull up the presentation from last month however we've already put our case into the record, the information. What has occurred is that it is continued to this evening but if you open it up for public hearing I believe the applicant can present this additional information.

CHAIR TURNER: Okay, would anyone want to hear last month's again? Are we still familiar with it? It appears we are all good. What I'll do is call Mr. Annan, are you here sir? Can I swear you in again? Do you swear or affirm the testimony you are about to give our board is the truth, the whole truth and nothing but the truth so help you God?

MR. ANNAN: Yes sir.

CHAIR TURNER: Mr. Charles Annan, am I saying that right? Well we remember you from last month so go ahead and give us what you got.

MR. ANNAN: Good evening board members, last month there was some miscommunication in the presentation I believe so this month I have some new photos of the property.

CHAIR TURNER: Pull that mic up closer to you, I don't believe they're picking that up, are you? Are you getting that folks?

MR. ANNAN: Next slide please. I'm sure you guys are familiar with the site map from last month requesting a variance for the fence which is currently actually over the property line, highlighted in red. If the variance is granted I will move the fence up to the green line and the shed in the far right corner will also be moved inside the property line. Next slide. There is the picture of what we discussed as you can see on the far left, that's the original garage that was built with the house. The white building is pretty much what I'm trying to get a variance for and of course the fence. Next slide. Alright pretty much I guess I'm here to try and convince the board members to grant the variance and request a variance because of this dirt road that's what makes it a secondary front yard. Dirt road starts on Palestine Rd, next slide please, and ends right there. Literally its about

from here, Russell Street to the new courthouse, that's how long the road is. Next slide. Here what is I guess considered a two story structure, as you can see the original metal building is right there and I added the structure to it because I have a car lift that I use to work on my cars. Next slide. And this is pretty much what it currently looks like, closed in and the main reason why I added the additional structure pretty much just to keep the lift out of the element. Next slide please. I know the question came up last meeting as to whether the building could be put somewhere else on the property? The county code enforcement, the inspections section and I believe the supervisor, they came to my house, we walked the property and pretty much we came to the conclusion that, next slide, if there was any alternative, as to where to locate the structure, this would have been the only other site that we could've possibly put the building. However, when it rains this area right here gets wet. As you can see, next slide, there's a pond right behind my property obviously it doesn't take much rain for the pond to overflow onto my property. Next slide. This picture was taken the day that the county folks came to the house, prior to that it had been raining. Two weeks since the last rain activity and you can see on the bottom of the fence, two weeks later its still wet. So basically this side as well as the other, I couldn't put the structure. Next slide. Pretty much what I'm asking is if the variance is approved, as you can see the fence will end and be in line with the building, and all this right here would go back towards the road which I maintain because it's a private road so all the residents on there maintain that road. Next slide. Currently this is what I have in the building. I'm retired military, and right now I just restore cars so inside the building/shop is to have a place to work on the cars, as it was I was working outside. That's the main reason the building was put up. Next slide please. I know last time the question was asked, how the addition was constructed, obviously you can see it was stick built, addition to the other building. Next slide. I have a lot of equipment in the shop right now. I hope that the board members would take that into consideration. I don't know if its going to effect your decision or not. Basically I have close to one acre and then was the only place on the property that I could put that building because of the wetland but this is the only spot that I could put a structure on. The county toured the site and basically there is no other place on my property to put a structure. Next slide. Basically this is it, nothing else to add to what was already briefed from last time and hopefully today these pictures will help you guys visualize what's really going on at the property. I hope you guys will take that into consideration when you make your decision. Next slide please. Just like I stated, to sum it up, I hope that you will consider this a hardship being that there's no other place on the property that I could put a structure. I know you guys were kind of struggling last time so hopefully this will make a difference. Thank you.

CHAIR TURNER: Okay. Anybody have any questions?

MR. FERGUSON: I do. Is this a car repair shop or are you just restoring cars? Is this a business?

MR. ANNAN: No sir, this is my personal collection.

MR. FERGUSON: Okay. Now when you said you should've removed the fence, that one right there, when you move the fence would that not put him back in compliance, when that fence is moved back to right there?

MR. MOON: Set back of fifty feet would apply to the fence, rather thirty feet would apply to the fence as well because that's a front yard.

CHAIR TURNER: Just for clarity, looking at the pictures you went through, if you could back up to thirteen maybe that's what I was looking at, here it shows there was an existing building and you poured an additional pad and built an area there for you to have a car lift to do the repairs in, but if I recall correctly you did that without any permits. You just went out and did it.

MR. ANNAN: Yes sir.

MR. MOON: If the variance is approved by the board, Mr. Annan will still have to obtain building permits for the fence and the garage, as well as the shed that he is proposing to relocate.

CHAIR TURNER: Okay, any other questions? I'm not sure where the board wants to go with this but if you recall last month one of the problems is we have four findings of fact that we have to make factual conclusions of not just personal opinions and number three is the one that stops it for me because it's the board's conclusion that the hardships did not result from actions taken by the applicant or the property owner. I think if you had, I mean I hate this but I think if you had attempted to get a permit and done what you probably should've done up front then you wouldn't have got this far, and it appears that you've created the problem for yourself. That's the problem I have here, but that doesn't mean the board has that problem. Anybody have anything else for him? No, did you want to add anything?

MR. MOON: Just to refer back to the October Board of Adjustments meeting the variance would only apply to the southern one hundred twenty-five feet along the Dreamland Drive private easement.

CHAIR TURNER: And with that he can move the fence and the small building and you still have the garage issue, what really needs to happen for the garage to be in compliance?

MR. MOON: To reach the thirty-foot set back line it would have to be relocated to a location that's thirty feet minimum from the Dreamland Drive easement line.

MR. FERGUSON: We know that part. What we are concerned about is if we make that variance work, will he be able to get a permit to do whatever he needs to get done? But we know that building can't be moved, it's already constructed there. So are we to look at making a decision to or to we just agree with what's there is there and he has to take care of or are we to say okay this shouldn't be there and just cancel, that's what I'm trying to find out for what we are saying here.

CHAIR TURNER: It's just my opinion, I respect y'all's but I don't see how this can be approved based on the findings of fact number three. I don't see how we can do it. I mean if you can find a way to overcome the fact that he did it himself, that's the problem. He did it to himself. And I hate that for him but I don't know how you fix that. What do you think David, is there anything you can add to that?

MR. MOON: Based on the role of the BOA, you're evaluating this request based on the four criteria's – Unnecessary hardship that would result from the strict application of the ordinance, there are conditions that are peculiar to the properties such as location, size or topography, the special circumstances are not the result of the actions of the applicant, requested variance will be consistent with the spirit, purpose and intent of the ordinance, such that the public safety is secured and substantial justice is achieved. So based on the information that Mr. Annan presented to you this evening I believe his argument was that because of flooding that occurs on the eastside of his property that forced him to place the building on the west side regardless of whether he

constructed the building without permit, he's stating that's the only place he could've put it. That's my interpretation of the case he presented.

CHAIR TURNER: That was mine too.

MR. MOON: But it's the decision of the BOA based on the information he submitted this evening and those criteria as to whether you believe a variance is warranted.

CHAIR TURNER: The four findings of fact that we have to make are not one out of the four, we have to make all four of those findings, don't we?

MR. MOON: Correct.

MS. LUCAS-MOORE: I have a question, have you pulled the permit, or necessary permits to have this building constructed on the property? Will a variance be considered based on the fact that there's wetlands and he couldn't put it in that particular spot? Would that have been considered?

MR. MOON: At the time of the building permit application for the garage, staff would've required as part of the application that he present evidence that the soils or soil types on that side of the property were wet or not suitable to accommodate that structure. Then we would look at the setbacks to make sure if there was an area on the site where the structure could be relocated. That information was not available to us, so we could not make that determination.

CHAIR TURNER: But I think the question you're asking is if when he decided to build this addition, had he first come down to get a permit, I think he would've ended up here to get a variance before he would've built anything. And that's the procedure. As it was he didn't do any of that, he just went and built it and that's how we ended up here tonight.

MS. LUCAS-MOORE: That's correct.

CHAIR TURNER: Anybody have anything else? I'll close the hearing for discussion. We'll call you if we need you sir. Thank you, thanks for coming out again. What do we think? What does Mr. Parks think?

MR. PARKS: We are hand tied.

CHAIR TURNER: Absolutely. What do y'all think? What do you think?

MS AMOS: There's no hardship. I just don't see a hardship because their permits weren't pulled, based on the county's findings.

MR. FERGUSON: We understand that part but what we are right now doing is reaching a decision, we understand a permit was not pulled so what we've got to do is discuss those four factors and then vote on it to find out where we are at. Because I'm waying in the middle of this so let's just discuss this and I'll make a decision as we discuss it.

CHAIR TURNER: Well the problem at hand is simply that if we have to make a finding of fact on these four, the conclusion has to be that the problems at hand were not actions taken by the applicant or the property owner and we can't overcome that.

MR. FERGUSON: We knew that was his action.

CHAIR TURNER: Well that stops us. That's the problem by the law that stops us. Am I right or wrong? I don't like it but am I right or wrong?

MR. HASTY: Under the language that is correct, I mean if that was some creative way to get around that.

CHAIR TURNER: I don't know what that creative way would be unless it was done wrong. Two wrongs don't make a right. I don't know what you do. What else do you think?

MR. FERGUSON: I'm not going to argue with that part.

MR. PARKS: We're trying our best to try and help, there's just nothing we can do.

CHAIR TURNER: I think its beyond this board unless by some chance he goes to get the permit and they send him back and we start and create this again based on the fact that it doesn't exist somehow. I don't know how we do that.

MR. PARKS: If he went for a permit on this they would have turned him down period and it wouldn't have gotten that far.

CHAIR TURNER: They would've sent him to us probably.

MR. PARKS: Right and then it was nothing that we could do because the situation is what it was and is now.

CHAIR TURNER: Do I have a motion?

Chair Turner made a motion based on the findings of fact number three, it's the boards conclusion that the hardships are from actions taken by the applicant/property owner, therefore, motion to deny the variance, seconded by Mr. Parks. The motion passed 4 – 1.

	IN FAVOR
TURNER	YES
FERGUSON	NO
PARKS	YES
LUCAS-MOORE	YES
AMOS	YES

CHAIR TURNER: We need the policy statement regarding appeals, who's giving that? David's giving that.

POLICY STATEMENT REGARDING APPEAL PROCESS - Mr. Moon read the policy statement.

P20-04-C: CONSIDERATION OF A SPECIAL USE PERMIT TO ALLOW A BORROW SOURCE OPERATION IN AN A1 AGRICULTURAL DISTRICT ON 33.69 +/- ACRES, LOCATED AT 3778 GAINNEY ROAD, SUBMITTED BY MICHAEL HARRIS ON BEHALF OF MURDOCK, LLC (OWNER) AND MICHAEL BLAKLEY ON BEHALF OF DRAFTING AND DESIGN SERVICES, INC. (AGENT).

Chairman Turner read the case heading for Case No. P20-04-C.

Mr. Moon reviewed the zoning, sketch map, and land use of the area surrounding subject property. He reviewed board packet material. Mr. Moon stated findings of facts is being requested by staff and is included in the back of your packet.

CHAIR TURNER: Can you clarify are they allowed to have those two within a mile and a half of each other?

MR. MOON: Based on the information presented to you by the applicant and any experts that he brings then that's the decision of the BOA based on the findings of fact. If you feel there issues since they both impact Gainey Road and McFadden Road that's something you may consider, so you can address them as separate applications or you could address them at the same hearing. That's the decision of the BOA.

CHAIR TURNER: Any questions from anyone?

MR. PARKS: Why are they asking for a special permit? Is it because of the houses near that property?

CHAIR TURNER: They have to have the permit in order to do the operation in A1, is that correct?

MR. MOON: Correct.

CHAIR TURNER: One statement that caught me funny was the issue of removing the house because of the zoning, we're not going to be altering the zoning. A special use permit would follow with the land but it could, assuming that the pit closed in five years, could they not continue to reuse the house?

MR. MOON: Looking at the site plan they don't propose a residential use where the residential structure is currently is likely going to be location for either the permanent buffer or the stockpile area.

CHAIR TURNER: I'm not saying they can do it, I just saying you made it as a requirement, does it need to be a requirement? It seems to me that it would be their business if they wanted to keep the house or not. It's nothing to argue about then. Do you have anything else?

MR. MOON: No sir.

CHAIR TURNER: Anybody have any questions? I'll open the hearing, are you Mr. Hayner? You're Blakely, I'm sorry I have Terry Hayner signed up first, is he here? Would you like to speak first? I have Mr. Harris to speak second, I don't want to miss one of you.

MR. PARKS: Are they opposed to it?

CHAIR TURNER: That's the thing with these sheets, they don't tell me who's for it or against. That's the problem. Who do you want to go first?

MR. HASTY: I think the applicant should go first and present their case.

CHAIR TURNER: Mr. Blakely so you would be the applicant. Okay, you're going to go first so let me swear you in. Sir do you swear or affirm the testimony you will give our board will be truth, the whole truth and nothing but the truth so help you God?

MR. BLAKELY: I do.

CHAIR TURNER: And you're Michael Blakely and you're the applicant, I got you so go ahead.

MR. BLAKELY: And if its okay with the board once the opposition states their points, I will be glad to get back up and answer any questions that they have.

CHAIR TURNER: We may call you.

MR. BLAKELY: Anytime. David did a good job of outlining the basics of the project. What we're looking at here is a 14.8 acre pit that is going to be a borrow source. We are excavating sand from this source to be used for fill material, asphalt, concrete, local construction projects basically like a DOT borrow pit, like they do for roads basically there's no processing, if there is any processing of material it will be wide screening any organics out of that material just to clean that material but it's not a per say processing of the material. What we have presented is, if you'll look, I don't know if everybody has a copy of C4, its actually our mine map.

CHAIR TURNER: I think we do, we had a lot here. Do you have that, that you can pull up David?

MR. MOON: No, you don't have that presentation?

MR. BLAKELY: We have 14.8 acres but we're not going to strip and mine the entire property at one time, what we'll do is start in sections and with the wet mining this material because the ground water elevations are like

four to five feet in this area so there's no way to dewater the pit and excavate dry. What we'll actually do is excavate in the water and pile the material up in the pit area for it to drain off back into the pit and once we get into the ground they'll be no discharge from the site. From an erosion control perspective, it's a nonpoint source of discharge so the possibility of getting any sediment laden material offsite is impossible. Because we are basically just building a pond and using that material for construction materials. What we've got shown here is you can see a berm that is right below where the pit 14.8 is labeled and what we'll do is start in phases in that pit and excavate and throw the material, for lack of better words, behind us and let it dry on the higher ground and then once its completed, you'll have a lake. Now while we're excavating that material, we will also be reclaiming the pit as we go. And part of the requirements for the UDO required that there be a three to one slope into the water and then for ten feet below the water elevation we would have a three to one slope. Our final depth for the pond, once its reclaimed, would be 25-30 feet. We have done exploration work to see how much material is there and the max depth we would go is 45 feet getting that material and then as part of our reclamation plan, we would backfill, there obviously will be some unsuitable soils in there, we'll backfill those back in which would result in a 25 – 30 foot pond or lake, whichever one you want to call it, about 14 acres. One question that we had early on from David was about the number of trucks and the impact on Gainey Road. With the type of material that's here, and the process that the owner wants to do we're looking at a maximum of thirty trucks per day. So you have one truck in and out and there will be thirty per day to sustain the operation. DOT will require driveway permit. We had previously come to you before for a project and DOT required a concrete apron onto the public road so to mitigate any sediment or material actually getting out on the road, to make the access safer for anyone passing down Gainey Road, cause obviously everything on the site will be sand it won't be gravel or pavement. The plant site we have shown more than likely it will not have scales and a scale house. The plan for the owner is to use all the material his self, for his business, but as part of the special use permit since it is a site plan specific approval, in the event that he needs scales or a scale house, we have those shown on the plan but essentially what will be on site will be an excavator, a haul truck, possibly a portable screen and stock piles. So whenever you look at these you're not looking at a mining operation like a quarry type mining organization. It's a very similar operation that's been done a lot in this area because of the sand and gravel that's available. Actually, David you have that map, the one with the radius. One thing that I kind of wanted to play on, with this map is this type operation's been going here since the 40's. And you can see the areas that we have shown past or previous mines that have been reclaimed. Some of them are lakes, some of them are wetlands. To give you an example of what will be left here with this site once the excavation is complete. Part of our mine permit requires, which we'll have to submit to the state, anytime you do any type of excavation like this you have to submit a bond permit and put up the bond for the reclamation cost. In the event and I'm not saying it will, our owner for some reason financially or whatever could not reclaim the site, he had to put a bond up in order to get his permit and the state will take that bond to reclaim the site. You wouldn't end up with a site, if someone walked away from it, with a big hole in the ground and no way to fix it. It wouldn't be the county's responsibility, its still the owners responsibility to fix it and he's being held accountable by the state by providing a reclamation bond. Basically whenever the site is complete, there is

reclamation requirements that the state and NC wildlife require that we have to meet and it will be inspected by the state before that bond is released and we've done a few of those and they're picky. It's not well you just moved a little dirt around, that's good. They want it to be there for the environment, and not a sore on the earth but look like something that was naturally there. I would like to touch on the buffers. I do not think there is any requirements on the adjacent property's buffers for the UDO. The state requires a minimum of 50 foot undisturbed buffer and what we have shown here in some areas is 50 feet at the minimum and then much more than that we have some that our 100, 100 plus, 200 and then we have a 6 foot tall berm that will also be vegetative. Basically, there will be an opaque screen around all the operations and like I mentioned before you know we will be 25 – 30 feet in the ground so we won't be above that buffer and those existing buffers and part of our site plan submittal, Cumberland county requires street scape plantings which we have shown here on this map that he has, every 50 foot we have trees planted and this area will not be groomed or maintained, it will naturally revegetate. The impressive part to me is I work in this industry and I have rode by sites and didn't even know they were there, and I knew what to look for. If there wasn't a sign or a gate I could see through, you know they do a really good job of screening this from the neighbors, from the road, I've spoken with somebody in the quarry industry and it was a compliment when somebody said I didn't even know y'all were there. There is a lot of thought and care taken into protecting the neighbors and being good neighbors. One thing I always like to throw out there is, we have a special use permit and we will have to get a state mining permit if your on this property and don't have a permit on it, people can still come and complain to you guys if their not happy with what's going on with the site but with the mine permit they are suppose to drop whatever they are doing and go and inspect the site. So these sites are under scrutiny all the time and it's really a great opportunity for the neighbors to have some type of protection. We're not putting something here that we think would harm somebody and that's one of the great parts about state regulation and them monitoring and being available for the public if they feel like there's something done outside of that mine permit. And to me that would give me a piece of mine versus sometime of development that has individual owners, you don't have one person you can go to. I always think that's a good selling point for type projects. Do y'all have any questions?

CHAIR TURNER: Any questions for him?

MR. PARKS: How long is it going to take you to finish this site? Do you have a period of time it's going to take with the amount of material you need?

MR. BLAKELY: Sixty to seventy years. I mean six or seven. This is our geologist, if you have any questions.

CHAIR TURNER: So six to seven just to be clear?

MR. BLAKELY: yes sir. And to add to what David said, the other site that we're looking at because of the six or seven years our client is going to have more demand than that. He's in this type business. This other site that we're looking at is a reserve site. We are not planning on both sites being active at the same time. Once he starts here and its complete then he would move to this other site.

MR. PARKS: If he needs it.

MR. BLAKELY: If he needs it, correct. He may not need it.

CHAIR TURNER: With that being said, why would he go through the process of another hearing like this in December for a site you don't know you will need?

MR. BLAKELY: There is value in having the sites permitted in special use, he's not going to sell it.

CHAIR TURNER: So you may not need it but if, one minute Frank. I know, he'll sell anything. I mean it is possible then by doing that he could lease it or sell it to someone or something like that.

MR. BLAKELY: Right.

CHAIR TURNER: Is there a reason why we didn't wait to do both of these at the same time?

MR. BLAKELY: Well we did not know about this second project until after we had submitted this. This project was for sale but there were some stipulations with it so we did not know that they were both going to come in, not at the same time but within the same project.

CHAIR TURNER: Is there anyone else to speak in favor? Would that be you Frankie? Do this for me – do you swear or affirm the testimony you will give our board will be the truth, the whole truth and nothing but the truth so help you God? You're Franklin Johnson.

MR. JOHNSON: I'm Franklin Johnson with Franklin Johnson commercial real estate, I have been representing this buyer who is also my in-laws for years looking for sand deposits. The reason they are doing both is they plan long long long term, everything they do is long term. We did not know the other site was going to become available until, he was correct on that, until after we had already started this one or we would've probably done both at the same time. But I am here just to answer any questions y'all need. I know we are going to have some opposition. Personally I grew up in the country, I lived in the country, I had rather see a lake on a finished product next to me as a development, I know my secretary lives right next door to this piece of property, just east and I asked her, I said, I want to ask you something, are you going to have a problem with this? And she said, heavens no, I would rather that than what else you can do in A1. So that's my take on it.

CHAIR TURNER: Okay, any questions for him? We may call you back. Was there anyone else to speak in favor? I'll say no. Let me go back to Mr. Hayner. So you're not going to speak? Okay, Mr. Harris you want to come forward? Sir do you swear or affirm the testimony you will give our board will be the truth, the whole truth and nothing but the truth so help you God? And you are Norman Harris?

MR. HARRIS: Yes sir.

CHAIR TURNER: And how does this apply to you?

MR. HARRIS: I live at 3654 Gainey Road, this is adjoining property. All this used to be property owned by the Harris Brothers and farmed for decades out there. I still live on the old Gainey property

CHAIR TURNER: So you're the neighbor?

MR. HARRIS: I'm one of the neighbors, the part that blunts up to this the old farm was actually purchased by Josh Jackson who couldn't be here. Although he was intending to build a rather nice house but it would be adjoining this and he talked to me just a little bit ago and said he can't move forward. The plan he was looking to do is at least doubtful

CHAIR TURNER: Let me stop you so we don't lose anything. You're speaking on behalf of someone else?

MR. HARRIS: Well I just verified that information since that was contiguous to this RR Borrow source.

CHAIR TURNER: And this other person, who is he?

MR. HARRIS: He is the owner of the field that is adjacent to the first line.

CHAIR TURNER: Okay, so this is another neighbor.

MR. HARRIS: This is. It's another neighbor, he borders me. These are two fields separated by, on your hydrology map you can see that the underwater crosses and goes among several pieces of contiguous property. Mine is the piece right behind the old Gainey house on Gainey road. And I've been there about thirty years. Among the concerns that I have with respect to this project, to start with there are certain sands, and particulate matter and things I'm concerned with particular are it would be placed into the air.

CHAIR TURNER: Could you do one thing for me?

MR. HARRIS: I'll try.

CHAIR TURNER: Pull that thing down, we're really not hearing you clearly.

MR. HARRIS: I'm sorry. I appreciate it.

CHAIR TURNER: I don't like them either and we're six feet apart so you're okay.

MR. HARRIS: Again I've lived out there since 1977 largely in one or more of the houses that the Harris brothers had at one time or another. My residence we built there in the early 80's and have been there for getting close to thirty years. My wife has lost half of her lung capacity off of blood clots from medication she was given. Breathing is very hard for her. So particulate matter is something I am very concerned with, because those minute quantities coming through the air can basically put her in the hospital or possibly cumulate into something worse than that. The hydrology, since I don't know how extensive and the different depths, there are people in that area that have wells ten foot deep, and it won't take a whole lot of change there and that water's gone. This is largely, as you can see on the map, you've got a lot of housing there whether it is mobile homes, manufactured as well as the stick built that's home to them, as well the wetlands surround this area, what effect that has on it, I don't know. I just know how interconnected the hydrology is and certainly deserves a little more clarification prior to approving this request. While I appreciate that he's anticipating only thirty trucks a day, obviously the old sand operations that have been conducted there, you had trucks ran that way, the only repair they realistically did was spray tar and put a little crushed rock onto of it. So it's not the best of roads here to start with. So this time, one of the concerns, is you have a number of houses with small children, that they're adjacent to the roadway, you've got a number of people walking as well as bicycling on a regular basis up and down these roads and you're seeing more of this foot traffic as well which is a concern. I don't see anyway this is an increase in property value, I don't see this as anything but a decrease. Like I said I was aware of at least one residence that was set to go up, with everything approved that's ended, don't know how many others are potentially there. I know there are some homeowners that are present that also live in that area with quite expensive houses and the concern is there. Again, I just don't see how this is going to increase the value of property, I just see this as something that will reduce it, in the terms of resale. My concern is leaving the pond that's there, you've got an attractive nuisance. You've got something that's going to temp people to come in because it's a pond, there's standing water, whether it's to wet a line, whether its swimming. I don't care what you build around it they'll find a way to get in because they always do. And I'm concerned for, typically I think

they tend to be younger individuals, that see this as an opportunity looking for clamorous results that they can find in that. I don't see that it fulfills all the requirements that it needs for approving the permit. Again, I don't see that it improves the value of the area, it may prove, at least in theory, a potential recreation for somebody but at this point it's going to be in process for a number of years then any subsequent use I don't think is a consideration. It will reduce the property value of the people I think, my understanding as opposed to what current evaluations are. I'll be glad to answer any questions I can.

CHAIR TURNER: You say you've been there since the 70's?

MR. HARRIS: I moved in, my daddy moved into old Gainey house in 1977, when I was wrapping up college. I was in the old Gainey house until after I got married, after a year in an apartment, I moved across the street into the old rental house until we built our house behind the old Gainey home.

CHAIR TURNER: Okay, so you've been there a while. The statement has been made by more than one I think, that this has been in operation before?

MR. HARRIS: Not here. They have done sand and gravel back to the end of the road on the river. This place has never been anything but farmland. It has been farmed by the Harris family.

CHAIR TURNER: Did you have any problems with the other one that was there, that you were aware of?

MR. HARRIS: Well you had some distance obviously for one thing and the proximity here is much closer than the physical proximity of the other one.

CHAIR TURNER: How close would you say this is to your house? A thousand feet?

MR. HARRIS: Not that far.

CHAIR TURNER: It's not that far?

MR. HARRIS: No sir, no sir. I can show you on the map, that's my house right here. That's where the pit area is going to be.

CHAIR TURNER: Any other questions?

MR. FERGUSON: You talked about well water over there, is complete well water or do you get county water?

MR. HARRIS: Most of us have well water, there is not a water system through that area. Everybody's on a well. Now there may be some sharing a well.

MR. FERGUSON: Okay so when you spoke about the other area before, did they make a lake area or a swimming area when they got through with that area?

MR. HARRIS: The areas that I've lived were previously mined out which are further down towards the river, ah do people go back there and swim? That is my understanding, I never went.

CHAIR TURNER: Might be more than one snake there. Do you know anybody who's had well issues out there? You said there were people with ten-foot wells, I didn't know you could have a well with only ten feet.

MR. HARRIS: Some older housing there, that all depends on the time it was constructed, how far they had to go to get, certainly in areas where they've been testing for the other counties, that may have made some change. But all that is certain filtration at this point.

CHAIR TURNER: But you're not aware of anybody that has well issues? Like running out of water?

MR. HARRIS: No, not that they've told me. I know that some of the wells people have indicated to me were ten feet down, which is of course, a shallow well, and I certainly haven't measured flows or anything like that.

CHAIR TURNER: Any other questions here?

MR. FERGUSON: What about the property values? Did the property value decrease from the other mining area? How did the property value do there?

MR. HARRIS: Property value I think went up because we built the house, you know and it's valued at \$380,000 dollars. I don't believe it will hold that when this goes in. Because you operate and folks see the gravel trucks coming in and out whether its got sand or whatever they're toting in it, that makes a difference. If it stops construction of a new home there nearer than my house because he just can't do it, putting his family right there. There's others who have built houses of \$400,000 plus dollars just pass this and have expressed frustration, disgust because it changes the community for them.

CHAIR TURNER: We haven't been to the site so estimate something for me, if I stood on this at Gainey road in the middle of this land and looked around, how many houses would I find in 1500 feet away from it? I mean five or six or ten?

MR. HARRIS: Obviously if you stand staring up north towards the river, that's still agriculture, so there are none looking straight ahead that way.

CHAIR TURNER: So you are the closest neighbor.

MR. HARRIS: I'm the closest as well as the old Gainey house that has a family with young children that live in it. And there some others here that have houses that are close by but if you further down Gainey Road on the other side.

CHAIR TURNER: We're really just trying to get a number for the board members to say there's five houses within 1500 feet, is that reasonable?

MR. HARRIS: There is a least five.

CHAIR TURNER: Okay, would there be ten?

MR. FERGUSON: She said seven.

CHAIR TURNER: Seven, okay. You want to add anything else? We may call you back.

MR. HARRIS: You may call me back but that's all I have.

CHAIR TURNER: Thank you. Next speaker is Russ Patterson. How about Tracy Davis. Then I'm going to turn this around and Mr. Blakely would you like to come back for just a minute? You've heard the issues at hand, do you want to address those?

MR. BLAKELY: Yes sir. One of the first points he made was about air quality, as you noticed before in the presentation, that we are wet mining. Your going to get a lot more dust off of those agricultural fields than you will here. And as part of the mine permit we have to have air quality permit, which is monitored. We can't make dust. The permit actually reads that no, and I may get Tracy to say for sure, no dust or nothing leaves the permit boundary which is the property boundary in this case.

CHAIR TURNER: Are there control measures on site to control any dust that is generated?

MR. BLAKELY: Water.

CHAIR TURNER: Just water.

MR. BLAKELY: Yeah.

CHAIR TURNER: Okay. Even if you mined it, I'm just thinking you got thirty trucks going in and out, there's dust.

MR. BLAKELY: Right. Well a lot of times if you notice when sand leaves most of these borrowed sources there's water dripping out of the back of these trucks. 99% of the time its wet. Now its not sopping wet, but its got a moisture content. It's not going to fly out of the truck.

CHAIR TURNER: Well I don't mean that I mean they're stirring up dust on the road.

MR. BLAKELY: It's a paved road. The other question that he had was about hydraulics. The water table is like four to five feet, and there has been extensive studies if you have more questions, I can have Russ answer them. Extensive studies especially in this region, we are not dewatering the pit so there's not going to be any fluctuation in that water table. Now that's part of the reason why we are doing the process wet is because we could never pump, the ground water is so high we could never pump it all out. We would never win.

CHAIR TURNER: The thought process if its four to five feet deep for a water table if you go in and dig a hole is not the four and five feet go down in the hole?

MR. BLAKELY: No the hydraulic pressure will stay the same. It will stay the same. What's in the ground will disperse to what's in that hole. Just the same as it would if it was still dirt in it.

MR. PARKS: Pressure from the water will keep the water from going into the water, you see.

MR. BLAKELY: The only other question I have is or the only other comment we got the house shown and the distances shown on our maps, to answer that question about the number of houses. And then I'll let Franklin answer the question on value. Thank you.

CHAIR TURNER: Thank you.

MR. JOHNSON: I want to say this, to the best of my knowledge, I do not see how it would have a negative impact on property values. Most people in the country move out because they don't like neighbors to begin with, there won't be a neighbor, there will be a lake. There's no difference than all the solar farms that have popped up all over the county, it hasn't really affected values at all. Do I see an increase in value? No but do I see a decrease, no. I just don't think it will have any effect as far as the value.

CHAIR TURNER: And that's your opinion.

MR. JOHNSON: That's my professional opinion.

CHAIR TURNER: Okay, want to add anything else? Just to be fair, Mr. Haynes you did not speak, is there anything you wanted to say? No. Mr. Patterson, no. Mr. Davis, no. Everyone's satisfied. Was there any questions the board had for staff or anyone? Okay, then I'm going to close the hearing. Open for discussion. You see we have three findings of fact no there's four here actually. There's four.

MR. PARKS: Do we need all four Mr. Chairman?

CHAIR TURNER: Yes.

MR. HASTY: You need all four, the applicant did prepare their opinion of what those four would be and it's obvious the board can prepare your own.

CHAIR TURNER: Did we get that?

MR. MOON: Yes, its part of the package. It's at the end within the application.

CHAIR TURNER: I don't know if its me or not but these packets keep getting bigger and bigger

MR. PARKS: Where did you say it was?

CHAIR TURNER: The next to the last page. Some of these are basically statements. They are not actually findings of fact. Any questions on those opinions? What do you think?

MS. AMOS: I was wondering if there's any official recommendations on here because these are opinions or how would they know its not going to create or endanger the public health?

CHAIR TURNER: I think they're just basically making the statement in their opinion they feel that. I don't think they have any way to enforce that until it happens, am I correct sir? Did you get the question?

MR. MOON: Are you asking me or are you asking the applicant?

CHAIR TURNER: We're asking anybody that will answer.

MS. AMOS: The question is whether or not there is anyone officially that can say that its not going to be a health and safety issue to any of these four statements here?

MR. MOON: There are experts in different fields that can address each of these findings of facts, much of these findings were addressed within the site plan that was presented to you this evening to meet the finding of facts. There are also numerous conditions that are placed in the draft special use permit conditions that are part of your packet as well. There are three pages of 45 conditions starting on page 23 all the way through page 27. That's five pages of conditions many of those also reference different agencies that are part of the review process, additional permits that they have to obtain from state agencies to address hydrology, drainage, access to the roads - other government agencies come into play to determine that this site not going to have a detrimental impact on the surrounding area, if the harmony of the area, that's the BOA's role. Do they satisfy the information you need in their presentation or materials they submitted for you to make a determination of the findings of fact.

CHAIR TURNER: Sir, I've closed the hearing, if we need you we'll call you. Let's don't. I'll call you. So basically if we look through this, the draft of the special use permit, that's here, the multiple pages, it appears if you read through this even very quickly, there's no one in government that's not going to be watching them. I mean literally everyone. And if the issues do arise that there's someone there to, a simple complaint, a phone call, is all it takes for it to make this the proper folks in compliance. Yes. Based on this. Which means that if this was approved it would have to be approved based on them accepting this draft. That they would comply with all of these. What do you think Mr. Parks?

MR. PARKS: I think they've done everything they need to do.

CHAIR TURNER: Want to make a motion?

MR. PARKS: I make a motion we approve it with the conditions that are listed in the applicants form.

CHAIR TURNER: Do you have your book to go through the findings of facts?

MR. MOON: On the screen before you is a list of the four criteria for the findings of fact.

CHAIR TURNER: We have them in the here under Special use permits, read through those and we'll answer why we think so and move from there.

MR. PARKS: Okay, the use will not materially endanger the public health or safety if located according to the plan submitted and recommended.

CHAIR TURNER: And that would be based on them accepting the draft of the conditions.

MR. PARKS: That's correct. The use meets all required conditions and specifications. The use will maintain or enhance the value of adjoining or abutting properties, or that the use is a public necessity.

CHAIR TURNER: And we have a professional opinion of a professional real estate broker who says he expects it not to have any effect positive or negative. There's some consideration as to where this might be a public necessity but I would say that in my opinion it is not.

MR. PARKS: Correct.

MR. HASTY: Backup to number two, I don't think you stated the facts under the required conditions and specifications.

CHAIR TURNER: Based on the application and the special use permit that they have agreed to accept, is that what you meant?

MR. PARKS: Yes.

CHAIR TURNER: That is pages 23, 24, 25, 26, 27 and 28 of our packet.

MR. PARKS: Thank you Mr. Chairman. Number 4 The location and character of the use, if developed according to the plan as submitted and recommend ed, will be in harmony with the area in which it is to be located and is in general conformity with Cumberland County's most recent Land Use Plan.

CHAIR TURNER: Does this fall within the Land Use plan? In your opinion?

MR. MOON: Correct, staff did not find any consistency with the comprehensive plan, any inconsistency.

Mr. Parks made a motion in case P20-04-C to approve the consideration of the Special Use Permit to allow a borrow source operation, seconded by Ms. Lucas-Moore. The motion passed unanimously.

CHAIR TURNER: Motion has been made and properly seconded, is there any further discussion?

MR. MOON: Yes chair, your action approved the special use for a borrow source operation at the site presented, for the record, I would like the BOA also to make a motion to take action to approve the Gainey Road special use site plan and the special use permit that's part of the package.

CHAIR TURNER: I thought we were doing that. What did I miss? Are we not? Okay was that some special terminology there we needed?

MR. HASTY: I think it just needs to incorporate all the conditions that are in there.

CHAIR TURNER: Okay so the motion at hand to approve and the findings of fact that Mr. Parks has presented include that the petitioner will follow the draft of the conditions required and that the approval of this borrow site will be approved based on those conditions being followed?

MR. MOON: Correct. For the record I would prefer that there's a motion to approve the special use site plan and a special use permit that contains those conditions, so that we have that in the record.

CHAIR TURNER: Okay, do we need to repeat that or can we add that in?

MR. HASTY: You can add that in.

CHAIR TURNER: Let's just add that in then. The verbiage that he's saying. I'm not sure how that changes things but that's fine. Any further discussion?

	IN FAVOR
TURNER	YES
FERGUSON	YES
PARKS	YES
LUCAS-MOORE	YES
AMOS	YES

9. DISCUSSION/UPDATES

MR. MOON: We will have a December meeting.

CHAIR TURNER: Anything else?

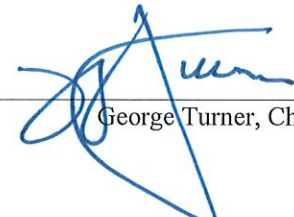
MR. MOON: No sir. We will have a meeting December 17th, 2020 at 6:00 pm

10. ADJOURNMENT

Mr. Ferguson made a motion to adjourn, seconded by Ms. Amos. The motion passed unanimously. Meeting adjourned at 7:31pm.

	IN FAVOR
TURNER	YES
FERGUSON	YES
PARKS	YES
LUCAS-MOORE	YES
AMOS	YES


Dena L Barner, Clerk to the Board


George Turner, Chairman