

**Members:**  
George Quigley, Chairman  
John R. Swanson, Vice  
Chairman  
Oscar L. Davis, III  
Melree Hubbard Tart  
Joseph M. Dykes



**Alternates:**  
Horace Humphrey  
Martin J. Locklear  
Randy Newsome  
William L. Tally  
Carrie Tyson-Autry

## ***CUMBERLAND COUNTY BOARD OF ADJUSTMENT***

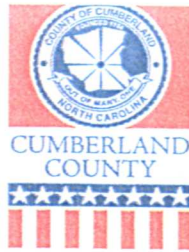
130 Gillespie Street  
Fayetteville North Carolina 28301  
(910) 678-7602

TENTATIVE AGENDA  
FEBRUARY 18, 2010  
7:00 PM

A meeting of the Cumberland County Board of Adjustment is to be held on Thursday, February 18, 2010 at 7:00 p.m. in Hearing Room #3 of the Historic Courthouse at 130 Gillespie Street, Fayetteville, North Carolina. The agenda is as follows:

1. ROLL CALL
2. ADJUSTMENTS TO THE AGENDA
3. APPROVAL OF THE JANUARY 21, 2010 MINUTES
4. ABSTENTIONS BY BOARD MEMBERS
5. PUBLIC HEARING DEFERRALS
6. BOARD MEMBER DISCLOSURES
7. POLICY STATEMENT REGARDING APPEAL PROCESS
9. PUBLIC HEARING(S):
  - **P10-05-C/SL:** CONSIDERATION OF A SPECIAL USE PERMIT TO ALLOW A MIXED USE BUILDING IN A C(P) PLANNED COMMERCIAL DISTRICT ON 1.31 +/- ACRES, LOCATED AT 2240, 2254 AND 2258 NORTH BRAGG BOULEVARD, NORTH OF MARANATHA CIRCLE; SUBMITTED BY QUALITY OIL COMPANY, LLC. AND OWNED BY JAMES C. AND NOLA L. CATOE AND MARGO PROPERTIES..
10. DISCUSSION
11. UPDATE(S)
12. ADJOURNMENT

**Members:**  
George Quigley, Chair  
John R. Swanson, Vice-Chair  
Oscar L. Davis, III  
Melree Hubbard Tart  
Joseph M. Dykes



**Alternates:**  
Martin J. Locklear  
Horace Humphrey  
Carrie Tyson-Autry  
William L. Tally  
Randy Newsome

## ***CUMBERLAND COUNTY BOARD OF ADJUSTMENT***

130 Gillespie Street  
Fayetteville, NC 28301  
(910) 678-7602

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

### **Members Present**

George Quigley, Chair  
Oscar L. Davis, III  
Melree Hubbard Tart  
Horace Humphrey  
Carrie Tyson-Autry

### **Absent Members**

John R. Swanson, Vice  
Chair (Excused)

### **Staff/Others Present**

Harvey "Butch" Raynor,  
County Attorney  
Patricia Speicher  
Pier Varner  
Angela Perrier  
Joan Fenley  
Marili Melchionne

**NOTE: The following minutes have been recreated from staff notes and memory; the meeting was not recorded and the assigned transcriber failed to produce the minutes.**

Chair Quigley called the meeting to order at 7:00 p.m. in Public Hearing Room # 3 of the Historic Courthouse at 130 Gillespie Street, Fayetteville.

#### 1. ROLL CALL

Ms. Speicher called the roll and stated a quorum was present.

#### 2. ADJUSTMENTS TO THE AGENDA

There were no adjustments to the agenda.

#### 3. APPROVAL OF THE NOVEMBER 19, 2009 MINUTES

A motion was made by Ms. Tart and seconded by Mr. Humphrey approving the minutes as written. The motion passed unanimously.

#### 4. ABSTENTIONS BY BOARD MEMBERS

There were no abstentions by Board Members.

#### 5. PUBLIC HEARING DEFERRALS

There were no deferrals.

6. BOARD MEMBER DISCLOSURE

There were no Board Member disclosures.

7. POLICY STATEMENTS REGARDING APPEAL PROCESS READ

Ms. Speicher read the Board's policy regarding the appeal process to the audience.

8. PUBLIC HEARING(S): **STAFF INITIATED WITHDRAWAL**

- **P09-09-C:** CONSIDERATION OF A REQUEST FOR A VARIANCE FROM THE COUNTY ZONING ORDINANCE, SECTION 927, SUB-SECTION C.1, TO ALLOW YARD SETBACKS OF UP TO 33 FEET WHERE 220 FEET IS REQUIRED FOR A 220 FOOT TOWER, AND A SPECIAL USE PERMIT FOR A TOWER IN A RR RURAL RESIDENTIAL DISTRICT ON A .36+/- ACRE PORTION OF A 97.77+/- ACRE TRACT; LOCATED AT 1511 LAKE UPCHURCH DRIVE; SUBMITTED BY THOMAS H. JOHNSON, JR., NEXSEN PRUET, PLLC ON BEHALF OF AMERICAN TOWERS, INC.; OWNED BY H.D. BOWEN, JR.

MS. SPEICHER: Ms. Speicher stated this case is being withdrawn due to the applicant re-submitting a request on the same parent tract but different property than what was advertised – see *Case No. P10-04-C below*.

CHAIR QUIGLEY: I will accept a motion to withdraw this case.

MR. DAVIS: Made the motion.

MS. TYSON-AUTRY: Seconded the motion.

CHAIR QUIGLEY: We have a motion and it has been seconded., Is there any discussion? All in favor of withdrawing Case P09-09-C signify by saying I.

<b>Quigley:</b>	<b>Yes</b>
<b>Davis:</b>	<b>Yes</b>
<b>Tart:</b>	<b>Yes</b>
<b>Humphrey:</b>	<b>Yes</b>
<b>Tyson-Autry:</b>	<b>Yes</b>

CHAIR QUIGLEY: Case P09-09-C has been withdrawn, now we have the public hearings. Ms. Speicher may we hear the next case, please.

- A. **P10-01-C:** CONSIDERATION OF A SPECIAL USE PERMIT TO ALLOW A CONVENIENCE CONTAINER AND RECYCLING FACILITY IN AN A1 AGRICULTURAL DISTRICT ON 1.39+/- ACRES, LOCATED AT 2331 POLLY ISLAND ROAD, SUBMITTED BY DONALD P. TEW ON BEHALF OF

CUMBERLAND COUNTY AND MICHAEL TATE, PLS.; OWNED BY CUMBERLAND COUNTY.

MS. SPEICHER: Presented the zoning, land use, and photos of the site to the Board. She explained that there is a turkey farm, a residential structure and farmland on the site. Ms. Speicher read the contents of the application: hours of operation, Sunday & Wednesday will be closed, Monday and Friday will be open from 7:00 am to 3:00 pm, Tuesday and Thursday from 10:00 am to 6:00 pm, and Saturday will be open from 8:00 am to 4:00 pm. There will be one employee who will be opening and closing the facility. The Convenience Container and Recycling Facility will have one portable toilet on site.

CHAIR QUIGLEY: Are there any questions for staff?

MS. SPEICHER: Offered a reminder that this was an amendment to Section 905.1 of the Cumberland County Zoning Ordinance.

CHAIR QUIGLEY: Are there any questions for staff? There being no questions, we have persons to speak in favor and opposition. In favor, we have Mr. Bobby Howard. Mr. Howard was asked to come forward, he was sworn in and asked to state his name and address for the record.

MR. HOWARD: My name is Bobby Howard, and my address is 3205 Davidson Drive, Fayetteville, North Carolina. Mr. Howard stated that there is a convenience center on Highway 210, but they were now having to find a new location. He assured they keep their sites clean and in good order and that these sites were a benefit to the community, providing a close accessible area for the citizens to take their waste.

CHAIR QUIGLEY: Thank you very much; I remind you that if any of the Board members have a question that you are still oath. Now in opposition we have Mr. Kevin R. West. Mr. West, was asked to come forward, he was sworn in and asked to state his name and address for the record.

MR. WEST: My name is Kevin R. West, and my address is 4656 Cedar Creek Road, Fayetteville, North Carolina.

CHAIR QUIGLEY: Thank you, please go ahead with your comments.

MR. WEST: The land to the south belongs to me and my brother and we raise livestock. We have a contract with Prestige Farms. We purchased the land in 1994 because it is isolated; there are no homes or dwellings in this general area. Livestock performs better in isolated situations for breeding and there are pests concerns when a site like the one being requested is close or adjacent to your property. We have a large investment in time and finances. We raise quality animals for Prestige Farms and if a dump site was put there, it will threaten our investment. The site will be 577 feet from the front door of the turkey house. Performance could potentially be

hindered, and we could lose the contract with Prestige Farms and our way of life. That is why I am opposed to this case.

CHAIR QUIGLEY: Do any Board members have any questions?

MR. DAVIS: Do you have any specific examples of cases where it has been known that rodents have been attracted to sites like the one being requested and affected the adjacent farms? Do you have any factual information of this occurrence?

MR. WEST: No, I do not have.

CHAIR QUIGLEY: Are there any other questions? Thank you very much; I remind you that if you do return, you are still under oath. Now we have Mr. David V. Rives. Mr. Rives was asked to come forward, he was sworn in and asked to state his name and address for the record.

MR. RIVES: My name is David V. Rives, and my address is 106 Doe Run, Clinton, North Carolina.

CHAIR QUIGLEY: Thank you.

MR. RIVES: I am the vet for Prestige Farms. An isolated site is important to bio-security program because it minimizes the chance animals will be affected by increase in traffic and other animals that are carriers of diseases.

CHAIR QUIGLEY: Do any Board members have any questions?

MR. DAVIS: Same question.

MR. RIVES: I don't have any hard and fast incidences resulting in this happening, but in general principal as traffic increases the chances of them being exposed increases and is a major concern.

CHAIR QUIGLEY: Are there any other questions? Thank you very much, I remind you that if you do return that you do remain under oath. Now we have Mr. Sidney Bullard. Mr. Bullard was asked to come forward, he was sworn in and asked to state his name and address for the record.

MR. BULLARD: My name is Sidney Bullard, my address is 2224 Cedar Creek Road, Stedman, North Carolina.

CHAIR QUIGLEY: Thank you.

MR. BULLARD: As far as health problems, I have some too. My farm is 1,000 feet down the road, isolated with no houses and when dumps are closed people throw out trash and dump it in the middle of the highway because there is no one to watch the site at night. The problem of vandalism is also increased.

CHAIR QUIGLEY: Do any Board members have any questions? Mr. Howard, if you would like the opportunity to rebut, you may.

MR. HOWARD: I don't know if it is a rebuttal, but a difficult thing is communication. The container site will have a chain link fence and sealed compactor box. It will be an upgrade Convenience Container facility. I understand the concerns but I can promise you we will keep it picked up and operate a really efficient convenience center for people in the county.

MR. DAVIS: Is there any data of other container sites attracting animals?

MR. HOWARD: Not any more than what would already be out there.

CHAIR QUIGLEY: Any other questions?

MS. TART: Is it a county policy to keep the area policed?

MR. HOWARD: Yes it is. One of my biggest fears is to fail you; I'm not going to let anyone down.

CHAIR QUIGLEY: Any other questions?

MR. HUMPHREY: Are you the one responsible?

MR. HOWARD: I'm the one you call when you have a problem. I am the Director of Solid Waste.

MS. SPEICHER: There is a standard condition of approval, #16 which puts the burden on the county to ensure the site is well maintained.

MS. TART: I think it would be wise to read standard condition #16 for the record.

CHAIR QUIGLEY: Ms. Speicher, please read it for the record.

MS. SPEICHER: The owner/developer is responsible and liable for maintenance and upkeep of this site, all structures, and appurtenances, to include ensuring that the site is kept free of litter and debris, all grass areas mowed, all buffers and shrubbery kept trim and maintained to prevent odors, rodents and any other nuisances, so that the site remains in a constant state of being aesthetically and environmentally pleasing.

CHAIR QUIGLEY: The hearing is closed and the Special Use Permit is granted, do I have a motion?

MS. TART: I move to grant the Special Use Permit in regard to case P10-01-C, following case facts:

Case Fact 1: The use will not materially endanger the public health or safety if located according to the plan submitted the proposed site plan.

Case fact 2: The use meets all required conditions and specifications.

Case Fact 3: The use will maintain or enhance the value of adjoining or butting properties or that the use is a public necessity.

Case Fact 4: The location and character of the use if developed according to the plan submitted and recommended, 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.

MR. HUMPHREY: I second that motion.

CHAIR QUIGLEY: It has been properly moved and seconded, is there any discussion? All in favor of approving the Special Use Permit, signify by saying I.

<b>Quigley:</b>	<b>Yes</b>
<b>Davis:</b>	<b>Yes</b>
<b>Tart:</b>	<b>Yes</b>
<b>Humphrey:</b>	<b>Yes</b>
<b>Tyson-Autry:</b>	<b>Yes</b>

CHAIR QUIGLEY: That is unanimous, thank you. Next case, please.

- B. **P10-02-C**: CONSIDERATION OF A SPECIAL USE PERMIT TO ALLOW AN OUTDOOR RECREATION/ AMUSEMENT, CONDUCTED OUTSIDE A BUILDING FOR PROFIT IN A PND PLANNED NEIGHBORHOOD DISTRICT ON 56.32+/- ACRES, LOCATED AT 533 CARVERS FALL ROAD, SUBMITTED BY NORWOOD EASON BRYAN, III AND GARRIS N. YARBOROUGH, ATTORNEY; OWNED BY CARVER'S FALLS, LLC.

MS. SPEICHER: Presented the zoning, land use, and photos of the site to the Board. Ms. Speicher read the contents of the application, she noted that there will be 1 full time employee and 3 part time employees; there will be a charge fee for recreational activities, and the hours of operation will be from 9:00 am to 10:00 pm Monday through Sunday. The days of operation will fluctuate with the season and weather.

CHAIR QUIGLEY: Are there any questions for staff?

MR. DAVIS: Where are the falls located?

MS. SPEICHER: Just north of the mill house (pointed to general area on the aerial map).

MS. SPEICHER: Section 920 is a recent amendment approved by the County Commissioners. She also noted that in the site profile, staff put emphasis on Condition Number 1, an application for a Watershed "No Approval Required" is a requirement; Condition Number 8 would require a flood plain development permit; RLUAC's comment, they support only very low impact development of the property,

as proposed in the Special Use Permit, that preserved the current natural values and avoids concentrating large groups of people.

CHAIR QUIGLEY: Are there any questions for staff? There being no questions, we have persons to speak in favor of this case. Mr. Garris Neil Yarborough was asked to come forward, he was sworn in and asked to state his name and address for the record.

MR. YARBOROUGH: My name is Garris Neil Yarborough, I'm with Yarborough Law Firm, my address is 115 E. Russell Street, Fayetteville, North Carolina.

CHAIR QUIGLEY: Thank you.

MR. YARBOROUGH: Showed a presentation [see Exhibit 1] and described how the Bryan family has owned the property for 50 years. Zip line is the perfect use of this property and will ensure an eco-friendly environment. This is one of the most scenic spots in Cumberland County. The Bryan family would like to preserve this in its natural state and would like to get some income of it to cover tax expenses. The heart of the Bryan family has always been in this property. The Bryan family could build condos, but they do not want to do that. Instead they want to provide a recreational facility for all ages and military families. The family is very concerned about protecting the environment but would also like approval of sustainable tourism. This development will promote economic growth, meet the environmental needs and will not initially be set up to handle large groups of people, and will be used to educate people. The County Commissioners just passed the authorization for this activity. No structures are proposed, the lines will be all clipped and hung on the trees. A professional will construct this and the family will maintain appropriate insurance. Canopy tours are gravity fed. There are two ordinances about outdoor uses, this is not under that section; it is under more natural section. An arborist would inspect the trees, give short educational films and there will be a nature trail. Historical education will be available and the family may decide to make an effort to generate electricity. The Land Use Plan calls for outdoor recreation. This project would be a low impact attraction for We will pave the roads if necessary using existing structures.

CHAIR QUIGLEY: Do any Board members have any questions?

MR. DAVIS: What about overnight use?

MR. YARBOROUGH: Overnight activities most likely will not take place. It is not our intention; we have no purpose in doing it over night or operating at night.

CHAIR QUIGLEY: Is there any plan to surface the trails?

MR. YARBOROUGH: No, we plan on keeping everything as natural as possible.



CHAIR QUIGLEY: Are there any others in favor with different information to offer? Please come forward. Mr. (unknown) Wilkins was asked to come forward, he was sworn in and asked to state his name and address for the record.

(No record of Mr. Wilkins full name and address.)

MR. WILKINS: This family for years has never interfered on the natural state of this property and has always cooperated with the community, letting the Boy Scouts and Girl Scouts using it as well.

CHAIR QUIGLEY: Do any Board members have any questions?

MR. YARBOROUGH: Mr. Baggett didn't sign in on time, but can he still speak?

CHAIR QUIGLEY: Sure, sir, come forward. Mr. Baggett was sworn in and asked to state his name and address for the record.

MR. BAGGETT: My name is Edwin Badgett, and my address is 545 Carvers Fall Road, Fayetteville, North Carolina 28311. The Bryans are wonderful people and I cannot foresee that anything bad could happen at this location.

CHAIR QUIGLEY: Do any Board members have any questions? The hearing is closed and open for discussion.

MR. DAVIS: Did anyone sign in opposition?

CHAIR QUIGLEY: There was one who signed in, but the name is marked out.

ACTING VICE-CHAIR DAVIS: I motion to approve P10-02-C and recommend we grant the Special Use Permit based on the following case facts:

Case Fact 1: The use will not materially endanger the public health or safety if located according to the plan submitted and recommended;

Case Fact 2: The use meets all required conditions and specifications;

Case Fact 3: The use will maintain or enhance the value of adjoining or abutting properties, or that the use is a public necessity; and

Case Facts 4: The location and character of the use, if developed according to the plan as submitted and recommended, will be in harmony with the area in which it is to be located and is in general conformity with the Cumberland County's most recent Comprehensive Land Use Plan.

MS. TART: I seconded the motion.

CHAIR QUIGLEY: It has been properly moved and seconded, is there any discussion? All in favor of approving the Special Use Permit signify by saying I.

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

CHAIR QUIGLEY: That is unanimous; the Special Use Permit has been approved. Next case, please.

**C. P10-03-C:** CONSIDERATION OF A SPECIAL USE PERMIT TO ALLOW A 235 FOOT TOWER IN A RR RURAL RESIDENTIAL DISTRICT ON 23.77+/- ACRES, LOCATED EAST OF BLACK BRIDGE ROAD (SR 1115) NORTHEAST OF LAKE UPCHURCH DRIVE (SR 1116); SUBMITTED BY HENRY C. PARKER JR. AND JOHN F. MAZUR, JR., LAND COM, LLC ON BEHALF OF SEQUOIA WIRELESS; OWNED BY HENRY C. PARKER JR.

MS. SPEICHER: Presented the zoning, land use, FAMPO sketch map, site plan, and photos of the site to the Board. Ms. Speicher read the contents of the application, she noted that the tower height is 235' and is a stealth flagpole, the tower will accommodate three users, and will be lighted. No employees will be at the site, and the tower will be monitored and maintained monthly. All documentation required by the ordinance is attached to the application, contained within the case file, and is available for review upon request.

MR. QUIGLEY: Is this another tower?

MS. SPEICHER: Yes, sir. Please note the Ordinance Related Conditions - Condition Number1, this site plan is not showing a 25' wide evergreen buffer area surrounding the tower compound, the applicant is aware that a revised site plan is required. Also please note Condition Number 7 requires proof of access and the noted conditions, 16 and 23 are standard conditions. Section 927 of the Cumberland County Zoning Ordinance is the applicable provision for this request.

CHAIR QUIGLEY: Do any Board members have any questions?

MR. DAVIS: Is this the one that came up at the last meeting?

MS. SPEICHER: This was brought up by the opposition at the last meeting. Each one will need to be approved or denied on their own merit.

CHAIR QUIGLEY: Are there any other questions? There being no questions, we have persons to speak in favor, but none for the opposition. In favor, we have Mr. John Mazur. Mr. Mazur was asked to come forward, he was sworn in and asked to state his name and address for the record.

MR. MAZUR: Yes, sir, my name is John Mazur, my address is 1130 Pine (unknown) Drive, Charleston, South Carolina, 29492.

CHAIR QUIGLEY: Thank you.

MR. MAZUR: Stated that what is in the package meets county criteria for a telecommunications tower at this location.

CHAIR QUIGLEY: Do any Board members have any questions?

MR. HUMPHREY: What type of buffering is required?

MS. SPEICHER: Condition Number 1 addresses the buffer requirements according to Section 927.F.

MR. DAVIS: What is the wind resistance?

MR. MAZUR: Being this far from the coast about 200 miles per hour

MR. HUMPHREY: How close is the closest residence?

MR. MAZUR: Mr. Parker can probably answer that.

MR. RAYNOR: Show it on the aerial map.

CHAIR QUIGLEY: Is there anyone else who wishes to speak? Mr. Randy Carpenter was asked to come forward, he was sworn in and asked to state his name and address for the record.

MR. CARPENTER: My name is Randy Carpenter, and my address is 6474 Windy Creek Way, Fayetteville, North Carolina.

CHAIR QUIGLEY: Thank you.

MR. CARPENTER: It is my opinion that the tower at this location will not have an negative impact on homes in this area, they would not adversely affected.

CHAIR QUIGLEY: Do any Board members have any questions?

MR. HUMPHREY: Have you talk to any neighbors?

MR. CARPENTER: No.

CHAIR QUIGLEY: Is there anyone else who wishes to speak? Mr. Clifford Parker was asked to come forward, he was sworn in and asked to state his name and address for the record.

MR. PARKER: My name is Henry Clifford Parker, Jr., and my address is 4841 Blacks Bridge Road, Parkton, North Carolina.

CHAIR QUIGLEY: Thank you.

MR. PARKER: In 2008 I was approached by T-Mobile and mine was the primary spot for tower area not readily developed.

CHAIR QUIGLEY: Do any Board members have any questions? There being no questions, the next person to speak will be Brice Swindle. Mr. Swindle was asked to come forward, he was sworn in and asked to state his name and address for the record.

MR. SWINDLE: My name is Bryce Swindle, and my address is 4769 Black Bridge Road, Parkton, North Carolina 28371.

CHAIR QUIGLEY: Thank you.

MR. SWINDLE: I think you should approve this case.

CHAIR QUIGLEY: Do any Board members have any questions?

MS. SPEICHER: To answer Mr. Humphrey's question concerning contacting the neighbors, 74 letters were sent to adjacent and surrounding property owners.

CHAIR QUIGLEY: The public hearing is closed and –

MR. JOHNSON: There is one more person to speak that came in late and did not sign up will you allow him to speak?

CHAIR QUIGLEY: We'll allow that. Mr. Groseclose was asked to come forward, he was sworn in and asked to state his name and address for the record.

MR. GROSECLOSE: My name is Jason Groseclose, and my address is 496 Long Point Road, Mount Pleasant, South Carolina 29464. I would like to address the pending application that Mr. Parker brought up; his site would not work for them.

CHAIR QUIGLEY: Do any Board members have any questions? (Mr. Swindle requested to address the board.)

MR. SWINDLE: Mr. Groseclose came to this board and wanted an offset variance for the green plot of land across the road and I don't like the insinuation that I was not truthful.

MR. GROSECLOSE: I was not insinuating that.

CHAIR QUIGLEY: Do any Board members have any questions? The hearing is closed and open for discussion.

MR. HUMPHREY: I motion to approve P10-03-C and recommend we grant the Special Use Permit based on the following case facts:

Case Fact 1: The use will not materially endanger the public health or safety if located according to the plan submitted and recommended;

Case Fact 2: applicant must follow all required conditions and specifications at 100%;

Case Fact 3: The use will maintain or enhance the value of adjoining or abutting properties, or that the use is a public necessity; and

Case Facts 4: The location and character of the use, if developed according to the plan as submitted and recommended, will be in harmony with the area in which it is to be located and is in general conformity with the Cumberland County's most recent Comprehensive Land Use Plan.

MS. TART: Seconded the motion.

CHAIR QUIGLEY: It has been properly moved and seconded, is there any discussion? All in favor of approving this case signify by saying I.

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

CHAIR QUIGLEY: That is unanimous, thank you. Next case, please.

**D.P10-04-C:** CONSIDERATION OF A SPECIAL USE PERMIT TO ALLOW A 220 FOOT TOWER IN A RR RURAL RESIDENTIAL DISTRICT ON A 3.52+/- ACRE PORTION OF A 97.77+/- ACRE TRACT; LOCATED AT 1511 LAKE UPCHURCH DRIVE; SUBMITTED BY H.D. BOWEN, JR. AND THOMAS H. JOHNSON, JR., NEXSEN PRUET, PLLC ON BEHALF OF AMERICAN TOWERS, INC.; OWNED BY H.D. BOWEN, JR.

MS. SPEICHER: Read the case heading and showed map and photos for the site and referred back to the case that was withdrawn this evening. Immediately prior to this meeting I spoke to the applicant because it was not until late today it did not include a 25' buffer completely surrounding the site and we are requesting an added condition that a revised site plan be submitted for staff review and approval; this is not currently included in the conditions in the packet.

Of the Ordinance Related Conditions, the following should be noted: No. 1, NCDOT variance was approved, but verification or documentation that the approval pertains to this site, and conditions 15 & 25 don't need to be pointed out because they are standard conditions. The parent tract will be directly impacted by the Fayetteville outer loop; however the tower site is not shown in 250' right-of-way. A variance will for setbacks is not required.

CHAIR QUIGLEY: Where would you insert your condition for the buffer?

MS. SPEICHER: In your motion. I need to state for the record – required documents are in the file for review upon request.

CHAIR QUIGLEY: We have other people to speak. Mr. Tom Johnson was asked to come forward, he was sworn in and asked to state his name and address for the record.

MR. JOHNSON: My name is Thomas H. Johnson, Jr., I am an attorney with the firm of Nexsen Pruet, PLLC. My address is 201 Shannon Oaks Circle, Suite 100, Cary, North Carolina, 27511.

CHAIR QUIGLEY: Thank you.

MR. JOHNSON: We meet the requirements under the ordinance. We are agreeable to the conditions for the Special Use Permit. Mr. Herring is with me and he can testify that no property will be impacted by American's Tower because it meets all requirements and the public needs. Mr. Herring and Mr. Lacava will incorporate what was said before.

CHAIR QUIGLEY: Do any Board members have any questions?

MR. JOHNSON: Since we have adjusted locations to take into account the required setbacks, we are ready to go. We appreciate your willingness to work with us. I would also like to thank the staff for their cooperation.

MS. TART: Why was this side preferred?

MR. JOHNSON: It matched up with the other towers we have to cover in this area.

MS. TART: These towers must be how far apart?

MR. JOHNSON: We have a power point presentation where it shows our coverage area. This is what the proposed coverage of this site will do. This is without the site, so you see the white; do you see the hole? It means the failure of adequate coverage. This is the hole we are trying to fill in. (Exhibit 2)

MS. TART: If it was a half mile away, it wouldn't fill in the hole?

MR. JOHNSON: We go for the best site we can for American Tower and its customers' needs.

CHAIR QUIGLEY: Do any Board members have any questions? Thank you very much, I remind you that you do remain under oath.

MR. JOHNSON: Thank you. Mr. Herring would like to say something?

MS. SPEICHER: Suggested that due to time that both of the next speakers be sworn in at the same time.

CHAIR QUIGLEY: Mr. Herring was sworn in and asked to state his name and address for the record.

MR. HERRING: My name is Graham Herring, 8052 Grey Oak Drive, Raleigh, NC 27615.

CHAIR QUIGLEY: Thank you. Do you wish to incorporate all previous testimony that you gave on this property?

MR. HERRING: Yes.

MS. TART: Are you a licensed appraiser?

MR. HERRING: I am a commercial real estate developer and have been in business for 17 years.

MS. TART: Then you are not a licensed appraiser?

MR. HERRING: No.

MR. JOHNSON: A licensed real estate broker can also provide his opinion that the use will not be detrimental to the property values of the surrounding neighborhood.

CHAIR QUIGLEY: Thank you. The other testimony, Mr. Lacava was asked to come forward, and was sworn in and asked to state his name and address for the record.

MR. LACAVA: My name is David Lacava, my address is 1130 Situs Court, Suite 100, Raleigh, North Carolina, 27606.

CHAIR QUIGLEY: Thank you.

MR. LACAVA: I wish to re-state my previous testimony regarding support for this project. In addition, I would like to add that this site is the best option for American tower – AT&T and T-mobile to cover this area.

CHAIR QUIGLEY: Thank you, we will add that to your other testimony.

MR. RAYNOR: What is your purpose for testifying?

MR. LACAVA: I am a design engineer for AT&T.

MR. RAYNOR: We needed it on the record.

CHAIR QUIGLEY: Do any Board members have any questions? The hearing is closed and open for discussion.

MR. DAVIS: I motion to approve P10-04-C and recommend we approved it per staff recommended conditions, including the requirement to resubmit a revised site plan and recommend we grant the Special Use Permit base on the following case facts:

Case Fact 1: The use will not materially endanger the public health or safety if located according to the plan submitted and recommended;

Case Fact 2: applicant must follow all required conditions and specifications at 100%;

Case Fact 3: The use will maintain or enhance the value of adjoining or abutting properties, or that the use is a public necessity; and

Case Facts 4: The location and character of the use, if developed according to the plan as submitted and recommended, will be in harmony with the area in which it is to be located and is in general conformity with the Cumberland County's most recent Comprehensive Land Use Plan.

MR. HUMPHREY: Seconded the motion.

CHAIR QUIGLEY: It has been properly moved and seconded, is there any discussion? All in favor of approving this case signify by saying I.

<b>Quigley:</b>	<b>Yes</b>
<b>Davis:</b>	<b>Yes</b>
<b>Tart:</b>	<b>Yes</b>
<b>Humphrey:</b>	<b>Yes</b>
<b>Tyson-Autry:</b>	<b>Yes</b>

CHAIR QUIGLEY: Is there any other discussion? That is unanimous, thank you.

8. DISCUSSION

There was no discussion.

9. UPDATE(S)

A. Board member books to be updated.

MS. SPEICHER: Mentioned that she had made a decision not to update the books until the most recent version of the County Zoning Ordinance was finalized, but assured the Board that they will be updated by next month's meeting.

B. Watershed violations closed out:

1. WS00-02 and WS02-02, Inverness Subdivision
2. WS08-05, Progress Energy – Cape Fear Operations Center



MS. SPEICHER: Just to keep you posted on the watershed cases, we have what we need for both cases and have closed out the violations.

ACTING VICE-CHAIR DAVIS: What happened to the gentleman, Isaac Williams on Middle Road, the 11 acre tract.

MS. SPEICHER: I asked Code Enforcement and it is my understanding that his case is going to Environmental Court.

10. ADJOURNMENT

A motion was made by Mr. Davis and seconded by Ms. Tyson-Autry, there being no further business; the meeting was adjourned at 8:43 p.m.

**P10-05-C/SL**  
**SITE PROFILE**

**P10-05-C/SL:** CONSIDERATION OF A SPECIAL USE PERMIT TO ALLOW A MIXED USE BUILDING IN A C(P) PLANNED COMMERCIAL DISTRICT ON 1.31 +/- ACRES, LOCATED AT 2240, 2254 AND 2258 NORTH BRAGG BOULEVARD, NORTH OF MARANATHA CIRCLE; SUBMITTED BY QUALITY OIL COMPANY, LLC. AND OWNED BY JAMES C. AND NOLA L. CATOE AND MARGO PROPERTIES. (SPRING LAKE/COUNTY)

**Site Information:**

**Frontage:** 390.00' +/- on North Bragg Boulevard (NC HWY 87)

**Depth:** 210.00' +/-

**Jurisdiction:** Spring Lake and Cumberland County

**Adjacent Property:** Yes, north of subject property

**Current Use:** Vacant non-residential structure

**Initial Zoning:** RR – January 7, 1977 (Area 11); rezoned to C1 on November 15, 2004

**Nonconformities:** Existing non-residential structure does not meet C(P) setbacks

**Zoning Violation(s):** None

**Surrounding Zoning:** North: C1(P), RR & R6A; South: C(P) (Spring Lake), C1 (Spring Lake), R10 (Spring Lake), R6 (Spring Lake) & R5 (Spring Lake); East: R10 (Spring Lake); West: n/a

**Surrounding Land Use:** Residential, woodlands & Fort Bragg Military Reservation

**Spring Lake Area Detailed Land Use Plan:** Low density residential

**Municipal Influence Area (County portion):** Town of Spring Lake

**Special Flood Hazard Area (SFHA):** None

**Water/Sewer Availability:** Spring Lake/Spring Lake

**Soil Limitations:** None

**School Capacity/Enrolled:** Manchester Elementary: 340/331; Spring Lake Middle: 700/430; Pine Forest High: 1,750/1,503

**Subdivision/Site Plan:** See attached “Ordinance Related Conditions” – particular attention should be paid to conditions numbered: 1, 2, 4, 18 and 21

**Average Daily Traffic Count (2006):** 24,000 on North Bragg Boulevard (NC HWY 87)

**POPE AFB:** No objection, property not located within an Accident Potential Zone (APZ) or critical noise area.

**US Fish & Wildlife:** No objection

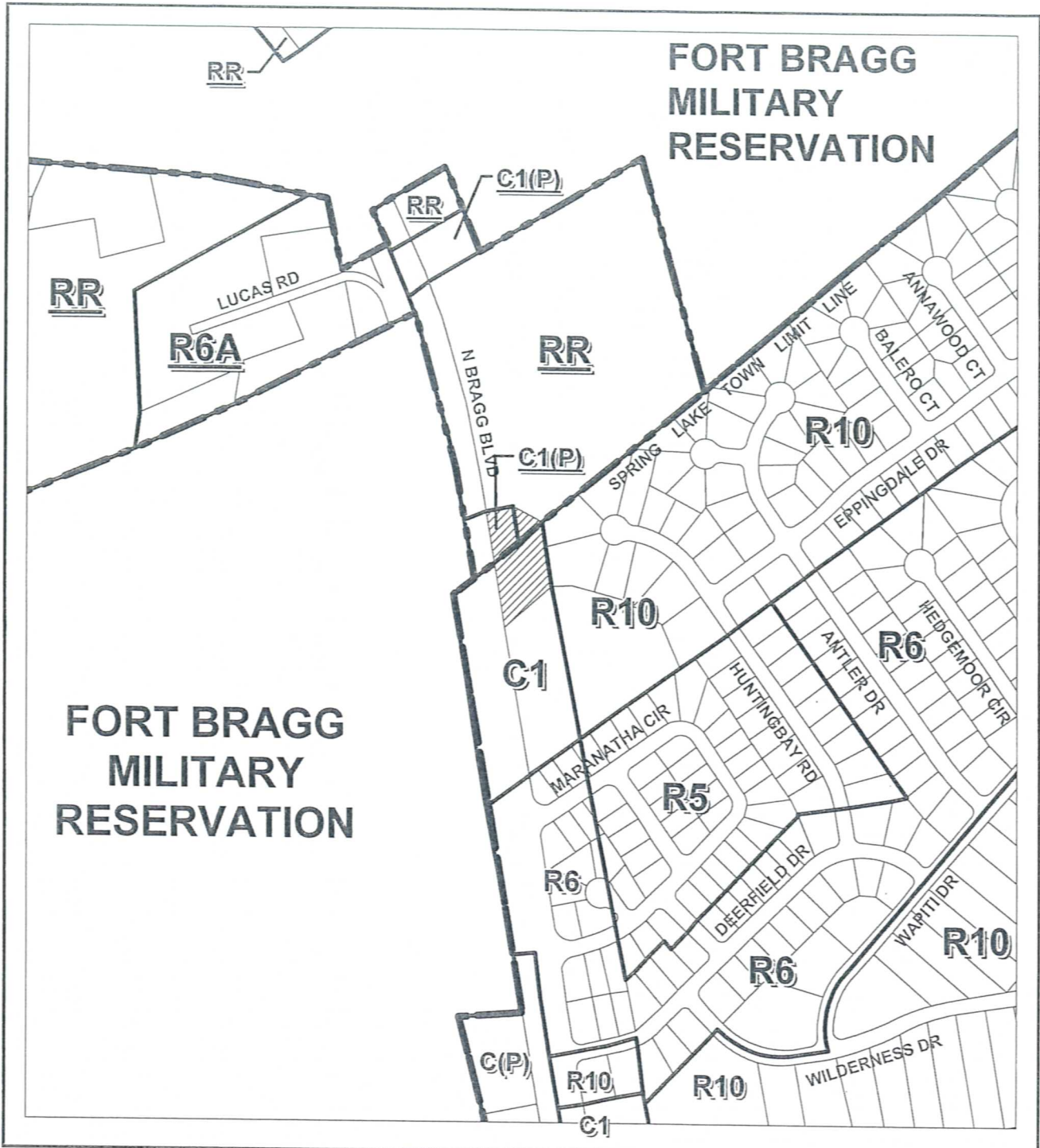
**Highway Plan:** This portion of North Bragg Boulevard is identified as an existing expressway that needs improvements. It is part of the NC Strategic Highway Corridors network. The corridor is not included in the Transportation Improvement Program.

**Notes:**

1. Contents of the application:
  - a. The subject property will be used as a retail gasoline facility and a residence
  - b. Hours of operation: 6:00 am to 10:00 pm (daily)
  - c. Employees: One employee

**First Class and Record Owners' Mailed Notice Certification**

*A certified copy of the tax record owner(s) of the subject and adjacent properties and their tax record mailing address is contained within the case file and is incorporated by reference as if delivered herewith. The record owners' acknowledgement of notice is also included in the case file.*



**FORT BRAGG  
MILITARY  
RESERVATION**

**FORT BRAGG  
MILITARY  
RESERVATION**

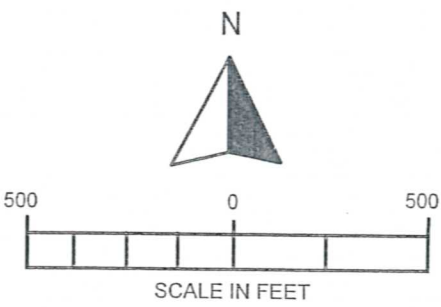
**BOARD OF ADJUSTMENT  
SPECIAL USE PERMIT**

PENDING APPROVAL OF REZONING CASE P10-04

ACREAGE: 1.31 AC.+/-      HEARING NO: P10-05-C-SL

ORDINANCE: COUNTY/SPRING LAKE      HEARING DATE      ACTION

GOVERNING BOARD



PIN: 0502-29-8483  
 PIN: 0502-29-8528  
 PORT. OF PIN: 0503-30-0138

AF  
 1/6/09



## **Special Use Permit - Board of Adjustment**

DRAFT

### Ordinance Related Conditions

#### **Revision Required:**

1. The developer must provide five copies of a revised site plan indicating compliance with the following for staff approval:
  - a. The revised site plan must reflect the required off-street parking spaces for the development. The proposed convenience store and residence is required to have a total of 17 off-street parking spaces.
  - b. The revised site plan must reflect one loading space for the proposed convenience store.
  - c. The revised site plan must reflect lateral access to the commercial property to the south and a lateral access easement to the residential property to the north. (Note: The reservation of the lateral access easement to the residential property must be reflected on the recombination plat.

#### **Pre-Permit Related:**

2. A recombination plat (also known as a "No Approval Required" or "NAR") must be submitted to Land Use Codes and the Town of Spring Lake for review and approval for recording with the County Register of Deeds, and the plat must be recorded prior to any permit application for any structure and/or prior to the sale of any lot or unit within this development.

#### **Permit-Related:**

3. The owner/developer(s) of these lots must obtain detailed instructions on provisions of the Spring Lake Zoning Code and permits required to place any structure within this development from the Spring Lake Inspections Department in Town Hall at 300 Ruth Street. For additional information, the developer should contact a Spring Lake Inspector.
4. The existing structure on the subject property must be completely removed and properly disposed of prior to any building permit application.
5. Prior to application for any permits, the developer must comply with any/all conditions of approval from the Spring Lake Planning Review Committee; in the event changes to the site plan are required, these changes must be reflected on the revised site plan required by Condition No. 1 above.
6. No more than 40 % (303.128 square feet) of the total square footage (757.82 square feet) of the proposed building can be used for residential. The developer must provide to the Spring Lake Inspection Department detailed building plans which show the residential and non-residential areas of the proposed building.
7. The façade for the entire building must be constructed as a commercial design.
8. The proposed storage building must be for the commercial use only and no portion of any accessory or incidental structure can be used for residential purposes.
9. Connection to public water and sewer is required, the Town of Spring Lake must approve water and sewer plans prior to application for any permits. A copy of the Town's approval must be provided to the Spring Lake Inspections Department at the time of application for building/zoning permits.
10. New development that will disturb one acre or more of land or is part of a larger plan that will disturb at least an acre of land is subject to the Post-Construction Stormwater Management Permitting Program (Phase II Stormwater Management Requirements) administered by the Spring Lake Stormwater Department. If one acre or more of land is to be disturbed, prior to the issuance of any building/zoning permits for this site, a copy of the Town's *Post-Construction Permit* must be provided to Town's Inspections Department.

11. For any new development, the developer must provide the Spring Lake Inspections Department with an approved NC Department of Environment and Natural Resources (NCDENR) sedimentation and erosion control plan (S&E) prior to any application for permits. (Note: If any retention/detention basins are required for state approval of this plan, then three copies of a revised plan must be submitted and approved by Planning & Inspections prior to application for any building/zoning permits.) A copy of the NCDENR approval must be provided to Code Enforcement at the time of application for any building/zoning permits.
12. The developer must provide a site-specific address and tax parcel number at the time of building/zoning permit application.
13. Landscaping must be provided in accordance with Section 156.088, Landscaping Requirements, Spring Lake Zoning Code and/as shown on the site plan. The following are the minimum standards for the required landscaping of this site:
  - a. Eight large shade trees or 16 small ornamental trees within the six wide perimeter planting strip adjacent to the right-of-way of NC HWY 87 (N Bragg Blvd.);
  - b. One large shade trees or 3 small ornamental trees are required within the parking area.

In addition:

- a. Required plant materials shall be maintained by the property owner, including replacing dead or unhealthy trees and shrubs; and
  - b. All yard and planting areas shall be maintained in a neat, orderly, and presentable manner and kept free of weeds and debris.
14. The building final inspection cannot be accomplished until a Town Inspector inspects the site and certifies that the site is developed in accordance with the approved plans.

**Site-Related:**

15. All uses, dimensions, setbacks and other related provisions of the Spring Lake Subdivision and Zoning Chapters for the C(P) zoning district must be complied with, as applicable.
16. This conditional approval is not approval of the permit for any freestanding signs. Attached signage for this development must be in accordance with the applicable sign regulations as set forth in Section 156.110 – 156.121 of the Spring Lake Zoning Chapter and that the proper permit(s) must be obtained prior to the installation of any permanent signs on the property. (Note: This conditional approval is **not** approval of the size, shape, or location of any signs.)
17. For any new development, an adequate drainage system must be installed by the developer in accordance with good engineering practices and all drainage ways must be kept clean and free of debris with the standards of the Town of Spring Lake, Section 155.66(G), Spring Lake Subdivision Chapter.
18. A concrete, or other approved surface material, sidewalks are required to be constructed along NC HWY 87 (N Bragg Blvd.); the sidewalk must be fully constructed prior to the building final inspection of the last building within this development. [Section 155.67(E), Sidewalks, Spring Lake Subdivision Chapter] Contact a Town Inspector for exact sidewalk dimensions required and location.
19. All utilities, except for 25kv or greater electrical lines, must be located underground.
20. The developer must obtain a driveway permit from the NC Department of Transportation (NCDOT). A copy of the approved driveway permit must be provided to Spring Lake Inspections Department at the time of application for building/zoning permits.
21. Turn lanes will be required by the NC Department of Transportation (NCDOT).
22. All lighting is required to be directed internally within this development.
23. A 6 foot high solid buffer must be provided and maintained along the side and rear property lines where this tract/site abuts residentially zoned properties in accordance with the provisions of Chapter 156.088.6, Buffers, Spring Lake Zoning Code.

24. All dumpsters shall be buffered by an opaque fence a minimum of one foot higher than the trash receptacle with a lockable fence as required by the Solid Waste Ordinance.
25. All required off-street parking spaces shall be a minimum of 8 1/2' x 20'. A minimum of 17 off-street parking spaces are required for this development.
26. A minimum of one off-street loading space is required to be provided for the convenience store portion of this development. The loading space must measure 12' x 25' (with 14' overhead clearance)
27. The owner/developer is responsible and liable for maintenance and upkeep of this site, all structures, and appurtenances, to include ensuring that the site is kept free of litter and debris, all grass areas mowed, all buffers and shrubbery kept trim and maintained, so that the site remains in a constant state of being aesthetically and environmentally pleasing.
28. All notes and calculations as shown on the application and the site plan are to be considered as a part of this conditional approval.

**Plat-Related:**

29. Lateral access must be provided to the residential property to the north and the recombination plat must reflect a reservation of a "lateral access" easement along NC HWY 87 (N Bragg Blvd).
30. Prior to the Town of Spring Lake's approval of the recombination plat, the developer is required to submit a check or cash in the amount of \$90.78 payable to "Town of Spring Lake". This condition is in accordance with Chapter 155.67.(H), Parks, Recreation and Open Space, Spring Lake Subdivision Code, which requires every residential dwelling unit to provide a portion of land, in certain instances, or pay a fee in lieu of dedication, for the purposes of providing park, recreation and open space areas. (Park District # Spring Lake)
31. Any/All easements must be reflected on the NAR recombination plat and labeled as to type of easement, reference number for document creating the easement, and the name of the agency, individual, etc. who holds the easement.
32. The notarized signature(s) of all current tax record owner(s) and notary certifications appear on the recombination plat when submitted for final approval.
33. The recombination plat must be submitted to Land Use Codes and the Town of Spring Lake for review and approval for recording with the County Register of Deeds, and the plat must be recorded prior to any permit application for any structure and/or prior to the sale of any lot or unit within this development.

**Advisories:**

34. The applicant is advised to consult an expert on wetlands before proceeding with any development.
35. The owner/developer is responsible for ensuring easements which may exist on the subject property are accounted for, not encumbered and that no part of this development is violating the rights of the easement holder.

**If you need clarification of any conditions, please contact Ed Byrne at 910-678-7609 or Patti Speicher at 910-678-7605; otherwise, contact the appropriate agency at the contact numbers below.**

Contact Information (Area Code is 910 unless otherwise stated):

Subdivision/Site Plan/Plat	Ed Byrne	678-7609
Town of Spring Lake:		436-0241*
Town Clerk	Rhonda Webb	
Planning Director	Tom Spinks	
Building Inspector	Paul Hoover	
Stormwater	Byron Blumenfeld	
NCDENR (E&S):	Sally McKinney	433-3300
E911 Site-Specific Address:	Ron Gonzales	678-7616
Tax Parcel Numbers:		678-7549
NCDOT (driveways/curb-cuts):	Gary Burton	486-1496
N.C. Division of Water Quality:	Mike Randall	(919) 733-5083 ext. 545

\*This is the main telephone number for the Town of Spring Lake; once connected, the caller will be directed to the various departments.



BOARD OF ADJUSTMENT

LOCATION OF PROPERTY: HWY 87 / N. BRAGG BLVD SPRING LAKE, NC

OWNER: JAMES C. & NOLA L. CATOE & MARGO PROPERTIES, LLC

✓ ADDRESS: SEE ~~PAGE 4~~ PAGE 4 ZIP CODE:

TELEPHONE: HOME WORK

EMAIL:

AGENT: QUALITY OIL COMPANY, LLC - c/o RON SUTPHIN

✓ ADDRESS: PO BOX 2736 WINSTON SALEM, NC 27102

TELEPHONE: HOME WORK 336. 714. 5164

EMAIL: rsutphin@qocnc.com

APPLICATION FOR A SPECIAL USE PERMIT

As required by the Zoning Code

- 1 | 0502-29-8483 - ALL
- 2 | 0502-29-8528 - ALL
- 3 | 0503-30-0138 - PORTION

A. Parcel Identification Number (PIN #) of subject property: (also known as Tax ID Number or Property Tax ID)

B. Acreage: 1.31 TOTAL Frontage: 385' +/- Depth: 210' +/-

C. Water Provider: Spring Lake (proposed)

D. Septage Provider: Spring Lake (proposed)

E. Deed Book <sup>1-00374</sup> 2-4597 <sup>3-4597</sup>, Page(s) <sup>1-00196</sup> 2-142 <sup>3-142</sup>, Cumberland County

F. Registry. (Attach copy of deed of subject property as it appears in Registry).

G. Existing use of property: VACANT / WOODED

H. It is proposed that the property will be put to the following use: (Describe proposed use/activity in detail including hours of operation, number of employees, signage, parking, landscaping, etc.) The proposed use of the newly created, recombined parcel as described in the attached preliminary plat will be used as a retail gasoline facility. The facility will include a single structure made up of 60% commercial and 40% residential to allow for an on-site caretaker. The hours of operation will be 6AM - 10pm daily and typically only require one employee. Please note the attached site plan for an accurate description of what the property will look like.

**STATEMENT OF ACKNOWLEDGEMENT**

Regarding appearance before the Board of Adjustment, the undersigned owner(s), agents, or their assigns, by virtue of their signature(s) to this application, hereby acknowledge the following:

- That although appearance before the Board is not required, it is strongly encouraged;
- The Board will hear any and all arguments for and against this matter before them and such relevant facts will be given under sworn testimony;
- At the public hearing the Board has the authority to issue a final approval or denial decision on this request, or defer the request for additional information to be provided;
- If the petitioner or the representative of this application does not appear personally before the Board, whether there is opposition or not, the Board has full authority to consider the case and defer, approve, or deny the case.
- For any party aggrieved by the Board's decision, the course of appeal to the decision is to the Cumberland County Superior Court. (Affected parties of the Board's decision have 30 days from proper notification which to serve notice of appeal).

Signed acknowledgement that the County Planning Staff has explained the application process and procedures regarding this request and the public hearing procedure stated above.

SIGNATURE OF OWNER(S) James C. Catoe Nola L. Catoe

PRINTED NAME OF OWNER(S) JAMES C. CATOE \* NOLA L. CATOE

DATE December 15, 2009 4812 BRIARFIELD RD ✓  
COLUMBIA, SC 29266

Only expressly authorized agents or assigns may sign this acknowledgement in lieu of the tax record owners' signatures.

**§ 156.149 FEES.** (A) Each applicant for Special Use Permits shall pay a nonrefundable fee in accordance with the proposed fee schedule set out below, recommended by the Planning Board and adopted by the Board of Aldermen. This fee shall be waived for cases initiated and requested by the Board of Aldermen.

**Fee Schedule**

ZONING DISTRICT	LESS THAN 5 ACRES	5 TO 50 ACRES	50 TO 100 ACRES	100 + ACRES
RR, R-15, R-10, R-6A, R-6, R-5A, R-5, PND	130	260	300	400
O&I, C-1, HS(P), CB, C(P), C-3, M-1, M(P), M-2	260	260	300	400

(Fees are in accordance with the schedule adopted by the Board of Aldermen.)

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Signed acknowledgement that the County Planning Staff has explained the application process and procedures regarding this request and the public hearing procedure stated above.

SIGNATURE OF OWNER(S) Rebecca G. DelSavio

PRINTED NAME OF OWNER(S) Rebecca G. Del Savio

DATE 12/15/09 MILGO PROPERTIES ADDRESS: 10417 STREAM PARK CT CENTERVILLE, OH 45458

Only expressly authorized agents or assigns may sign this acknowledgement in lieu of the tax record owners' signatures.

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(Fees are in accordance with the schedule adopted by the Board of Aldermen.)

mandated the closure of a previously approved or pre-existing nonconforming manufactured home park provided that the Class C pre-1976 manufactured home is owner-occupied and shall only be relocated to an approved manufactured home park or a pre-existing nonconforming manufactured home park.

For purposes of this section, "properly set up" means:

- A. In actual use for residential purposes;
- B. Lawfully connected to electricity, water and sewer or septic service;
- C. In compliance with the County's Minimum Housing Ordinance Code; and
- D. Listed for property taxes and having property taxes paid as of the most recent listing period and the previous five calendar years.

#### SECTION 914. MINI-WAREHOUSING IN RESIDENTIAL DISTRICTS.

For all mini-warehousing units constructed in residential districts, the following standards shall apply:

- A. The units shall only be constructed in conjunction with multi-family housing units and the number of individual storage units shall not exceed the number of multifamily dwelling units within the development;  
(Amd. 02-19-08)
- B. The façade of the mini-warehousing site shall be constructed with decorative and permanent material, such as brick, stone, etc., and be of the same type of material as the exterior of the multi-family units; and
- C. The sides and rear perimeter of the mini-warehousing site shall be buffered and landscaped in such a manner as to blend in with the surrounding development and to not be visible to adjacent residential areas.

#### SECTION 914.1. MIXED USE BUILDING.

- A. Mixed use buildings are allowed uses in the O&I(P) Planned Office & Institutional, C1(P) Planned Local Business, C2(P) Planned Service and Retail and C(P) Planned Commercial districts ~~with the ground floor non-residential use determining the method of approval, as specified in Section 403, required for the entire structure (i.e., site plan review, Special Use or Conditional Use District and Permit);~~

B. Residential uses within a mixed use building shall not exceed 40 percent of the total floor area, with a minimum of 60 percent of the floor area of all structures devoted to the non-residential use(s) as are restricted to the second floor and above with the ground floor use being an allowed non-residential use within the specific zoning district of the property;

C. All "for sale" residential units are subject to the provisions governing Unit Ownership developments in the County Subdivision Ordinance;  
(Amd. 02-19-08)

D. The development must be served by public or community water and sewer;

E. The subject property must have direct vehicular access to a paved public right-of-way;

F. Off-street parking shall be provided in accordance with Article XII for the non-residential use, and one and one-half spaces for each residential unit. Shared parking shall be encouraged and permitted when it can be substantiated that the hours of operation of the non-residential use are restricted to daylight hours and will not adversely affect the residential parking needs;

G. The minimum lot area per residential unit shall be 1,000 square feet not including the lot area utilized by the non-residential use. The site plan must provide the calculations indicating compliance with this provision;

H. Sidewalks are required in accordance with the standards of the County Subdivision Ordinance;

I. A fee in lieu of dedication of on-site parks, recreation, and open space is mandatory. This fee is to be calculated in the same manner as established in the provisions governing parks, recreation and open space in the County Subdivision Ordinance;  
(Amd. 3-1-06)

J. The façade of the buildings approved for mixed use in a non-residential district shall be of a commercial design; and

K. There shall be no ancillary, accessory or incidental residential use of the property outside the mixed use building.