

Members:
George Quigley, Chairman
John R. Swanson, Vice
Chairman
Joseph M. Dykes
Horace Humphrey
Melree Hubbard Tart



Alternates:
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

JULY 15, 2010

7:00 PM

A meeting of the Cumberland County Board of Adjustment is to be held on Thursday, July 15, 2010, at 7:00 p.m. in Hearing Room #3 of the Historic Courthouse at 130 Gillespie Street, Fayetteville, North Carolina. The tentative agenda is as follows:

1. ROLL CALL
2. ADJUSTMENTS TO THE AGENDA
3. APPROVAL OF THE JUNE 17, 2010 MINUTES
4. ABSTENTIONS BY BOARD MEMBERS
5. PUBLIC HEARING DEFERRALS
6. BOARD MEMBER DISCLOSURES
7. POLICY STATEMENT REGARDING APPEAL PROCESS
8. PUBLIC HEARING(S):
 - A. **P10-10-C:** CONSIDERATION OF A SPECIAL USE PERMIT TO ALLOW A 160 FOOT TOWER IN A R10 RESIDENTIAL DISTRICT ON 11.09+/- ACRES ZONED R10 AND R6 (HOPE MILLS), LOCATED ON THE NORTH SIDE OF CHURCH STREET (SR 2996) AND WEST OF BAFFLE CIRCLE; SUBMITTED BY FORREST T. AND DARLENE HARDIN (OWNER) AND THOMAS H. JOHNSON, JR., NEXSEN PRUET, PLLC ON BEHALF OF AMERICAN TOWERS, INC.
9. ALTERNATE BOARD MEMBER VACANCY NOMINATIONS
10. DISCUSSION
11. UPDATE(S)
12. ADJOURNMENT



Members:

George Quigley, Chairman
John R. Swanson, Vice-Chair
Oscar Davis, III
Melree Hubbard Tart
Joseph Dykes

Alternates:

Horace Humphrey
Martin J. Locklear
Randy Newsome
William Lockett Tally
Carrie Tyson-Autry

Cumberland County Board of Adjustment

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

MINUTES
JUNE 17, 2010
7:00 P.M.

Members Present

John Swanson, Acting Chair
Oscar L. Davis, III
Joseph Dykes
Melree Hubbard Tart
Horace Humphrey
Randy Newsome (non-voting)

Absent Members

George Quigley, (excused)

Staff/Others Present

Patricia Speicher
Angela Perrier
Melodie Robinson
Rick Moorefield (County
Attorney)

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

1. ROLL CALL

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

2. ADJUSTMENTS TO THE AGENDA

There were none.

3. APPROVAL OF THE APRIL 15, 2010 MINUTES

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

4. ABSTENTIONS BY BOARD MEMBERS

There were no abstentions by Board Members.

5. PUBLIC HEARING DEFERRALS

There were no deferrals.

6. BOARD MEMBER DISCLOSURE

There were none.

7. POLICY STATEMENTS REGARDING APPEAL PROCESS

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

8. PUBLIC HEARING(S)

Opened Public Hearing

- **P10-08-C:** CONSIDERATION OF A SPECIAL USE PERMIT TO ALLOW A RECREATION VEHICLE PARK AND/OR CAMPGROUND IN AN A1 AGRICULTURAL DISTRICT ON 31.65+/- ACRES, LOCATED AT 6250 WADE STEDMAN ROAD, SUBMITTED BY STEVE JEWELL FOR JEWELL FAMILY ENTERPRISES, LLC (OWNER) AND LARRY KING AND ASSOCIATES.

Ms. Speicher presented the zoning, land use and photos of the site to the Board.

MS. SPEICHER: For the record, I would like to clarify this is an expansion of an existing recreation vehicle park for legal purposes because a Special Use Permit had never been issued under the terms of the current zoning ordinance. We opted to not include that in our heading as an expansion to make it all right once and for all. In your packet you have the ordinance related conditions. We have gone over these with the applicant and the applicant's agent. The applicant has agreed to these ordinance related conditions but I need to point out they are going to submit for staff approval a revised site plan showing that the relocated caretakers residence meets the 100 foot setback requirement from a public street required for the camp site. If they are going to locate a new sign on the property they will also show that on the site plan for staff review and approval for compliance and the landscaping that is required by the ordinance. The reference for the RV park begins on page 94 in your Zoning Ordinance. It's almost two full pages and I was not going to read it unless the Board so request. I am available for questions.

MR. DAVIS: I have a question. You said there was a kennel?

MS. SPEICHER: It's not a kennel, it's a dog run, a fenced area for campers to place their dogs.

MR. DAVIS: Being that there has been an issue in the past, is there an issue with the number of dogs here since this is a transitory situation?

MS. SPEICHER: It hasn't been an issue because its' been seen as a temporary type use.

MR. DAVIS: So they don't have a limit on the number of dogs that they could...

MS. SPEICHER: No, but at the board's pleasure, you could limit it with a condition.

ACTING CHAIR SWANSON: Are there any other questions? Is there any zoning requirement for paved roads?

MS. SPEICHER: Not in a RV park, no sir. They have to have some type of stabilizing surface and theirs are proposed to be gravel.

ACTING CHAIR SWANSON: Any other questions?

MRS. TART: Are these parks inspected periodically for maintenance or the upkeep of the common areas? Do they fall under any kind of inspection?

MS. SPEICHER: Just like anything else, it would be a zoning violation if they weren't kept in accordance to the standards of the Zoning Ordinance. The Health Department would have their inspections for any public health issues. This is a KOA park so I'm sure they have their own process. The applicant, the current owner and the proposed owner or the agent that proposed on our current owner are all here and could better address that for you.

ACTING CHAIR SWANSON: Any other questions? We have three individuals signed up to speak in favor, Lori Epler, Steve Jewell and Phillip Moreau. Who would like to speak first?

ACTING CHAIR SWANSON: Swore in Lori Epler.

MS. EPLER: I'm going to address since Mr. Jewell, who signed the application because he was the owner at the time the application was filed, Mr. Phillip Moreau, who has since purchased this property and he is here as well and he is the one who has agreed to the conditions. He is the current owner, he's masterminded this process from the very beginning and he can tell you more about himself whenever he comes before you, but all three of us are going to tell you about different aspects of this project. With what we do on an engineering standpoint, I'm going to speak to the technical side of things for you and they can speak to you to the entertainment side of things. First of all, on some of Patti's remarks, there are no dog kennels and those animals are not left in the dog run unsupervised. That is the only place on the property that a pet can be without a leash. So they are on a leash everywhere else on the property except within the dog run. There is no new sign proposed for this property right now, I know she [Patti] said staff didn't know that so there won't be a new sign placed outside. If and when they get ready to do that, they understand they have to apply for a sign permit.

MS. SPEICHER: And a revised Site Plan.

MS. EPLER: With reference to Section 1606 Special Use Permit, Item C, Consideration of Application, I know what it's like to sit where you are so I'm going to try and make your job a little easier tonight. That's what they've got me here to do. As to the use of this property not materially endangering the public health or safety if located according to the plan submitted and recommended. The proposed addition is a continuation of the current use. There are no noxious or dangerous consequences to the campground as it is operated today and that will not change. All water, sewer and storm water requirements are met on the current site and the proposed addition requires approval of any expansion of those services. All state and local requirements will be complied with and all permits will be obtained. The use meets all required conditions and specifications. The conditions as recommended by the Planning Department have been agreed to by the owner. The use will maintain or enhance the value of adjoining or abutting properties, or that the use is a public necessity.

While I am not an appraiser, I cannot testify to the effect this expansion will have on area property values, I would like to restate that this is an expansion of the existing facility that is there. A majority of the new expansion as you can see on the existing site plan and the proposed site plan is going to be on the back side of this property, just as the site plan calls for, it's going to be buffered. It is a matter of Public record in the official decision of the Board of Zoning Appeals in Carroll County, Maryland Case Number 5274/5275 that with regards to the expansion of an existing campground with regards to the effects on surrounding property owners, the applicant in that case presented credible expert testimony from a real estate appraiser that the proposed use in that case would not adversely affect property values in the surrounding areas. That case was like this one, an expansion of the existing facilities and campsites. That appeal was granted and the zoning permit was issued. Recently 50 acres in Carvers Creek owned by the Bryan family has been closed as a campsite for the Boy Scouts and Girl Scouts. They leased that property from them for probably 20 years. Our company surveyed that property and if you've never seen the Carver's Falls Property, it's a beautiful place. The Girl Scouts recently lost that lease and the Bryan family has recently turned that into a business. That property is now being developed for a Zip-Line Course. They are building a 30-acre Zip-Line course on that property for profit. But consequently, the Girl Scouts lost one of their camps. We hope the expansion of the current camp ground here in Wade will provide a good location for safe and enjoyable camping for these organizations not to mention church groups and families right here in our area who want to vacation a little closer to home. Personally, I've grown up in Cumberland County. I've rode by this camp site I bet a thousand times growing up because I grew up in Beaver Dam and have friends who lived in Wade and all my friends from Cape Fear High School and had seen that KOA sign. Until three weeks ago, I had never driven down that driveway to see what was back there and after this case is over you really need to drive back. If you have kids and grandkids that love camping, you can throw your stuff in the back of the car and be there in fifteen minutes and it is a great location. It is clean. Mr. Jewell has done an excellent job with that property but it's a beautiful location out there, quiet and clean. I would also like to make you aware of the economic stimulation that will take place by enlarging this facility. The businesses in this area are going to benefit from the increase of family oriented customers that will be drawn to their establishments. With the arrival of BRAC we are already seeing an influx of families relocating to our area. The expansion of this facility is going to make it as desirable and in many cases superior to other KOA campgrounds across the country. We hope it will be a destination of choice for vacationers, travelers, visiting military families and even our own residents. 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 Cumberland County's most recent Comprehensive Land use Plan. Patti told you that the Wade Land Use Plan calls for Heavy Commercial in this area, I don't think it's time for Heavy Commercial there yet so this is a good alternative to that for this property. This area is designated as a "Community Growth Area" on the 2030 Growth Strategy Map. The definition of that and I'm sure you know it, but I'll remind you that it is: *Community Growth Areas* provide for the development and redevelopment of smaller, freestanding communities in Cumberland County. These communities normally provide for a full range of urban services through a combination of municipal and county services. The use of community funds for planning, programming or providing urban services in these areas is left up to decision makers in each community in keeping with community goals. *Community Growth Areas* may be developed at a variety of development densities and land use types to meet the housing, everyday shopping and employment needs of area residents.

One last thing, the Wade Land Use Plans with reference to Parks and Recreational Facilities and Services, there are several points they mentioned in that plan, but the last one, encourage private recreation facilities and expand existing programs and activities. That's exactly what they want to do in Wade is just expand this existing site for the residents of Wade, Cumberland County and people travelling up and down I-95. If you have any questions I'll be glad to answer for you and if not I really appreciate your time and it was good to be here tonight.

ACTING CHAIR SWANSON: Any questions for Ms. Epler? I have one. You mentioned in the Maryland Case there was expert testimony that the proposed use had no adverse impact on values of adjoining properties. Do you have any expert testimony in this case?

MRS. EPLER: I do not. That was a case that is off public record and it was the expansion of an existing facility just like Mr. Moreau and Mr. Jewell are asking for tonight.

ACTING CHAIR SWANSON: Not trying to get personal, but in your line of work, do you typically do the.....to use your words, the technical stuff for recreational type parks?

MRS. EPLER: We have done recreational facilities before for playground expansions for schools.

ACTING CHAIR SWANSON: What about targeting on Commercial type work?

MRS. EPLER: I think I can better answer your question by telling you this. Mr. Moreau owns I believe twenty-three camp grounds all over the nation. He has KOA specialized site engineers who actually engineered this site for him. We're handling his permit process but these were KOA site developers and designers who designed this expansion for him. Does that answer your question?

ACTING CHAIR SWANSON: Well, I'll probably ask the same question of Mr. Moreau. Any other questions?

MS. SPEICHER: Can I add one thing for her? Her firm has also designed and developed Millstone which did include the Putt Putt Golf Course off Camden Road.

Acting Chair Swanson swore in Steve Jewell.

MR. JEWELL: We Are a KOA park, the KOA system is some 450-470 strong depending upon when this park was designed in 1973 and has been a KOA park since then to my knowledge. It was a KOA park when it first started. As Lori has said, many of you may have travelled by it many days and not have noticed it. We work closely with our Wade Fire Dept., we work closely with our Wade Founders Days and we are a good portion of the community. In the KOA system you asked about if there are other inspections? There are inspections and they are rather tedious. KOA inspectors travel the U.S. and Canada and come in and grade each of the 450 parks. We are in the absolute top numbers of the park both from the gradients there and from the customer satisfaction scores we are in the top three. We've varied between one, two and three in the last several years. We want number one, we want you to be proud of this park, to have it in your county. We are charged from trailer life which is one of the two trailer life in Woodals in both scoring people who come in such as Michelin and AAA and those types and

forms and there we are rated in the top 160 RV parks in the United States. So we are very proud of our park, it's a beautiful park, it's a pleasant, safe place to come.

ACTING CHAIR SWANSON: Any questions?

MR. DAVIS: I have one. What prompted the expansion? Did you or KOA do an assessment to realize that demand was exceeding your capacity? Do you see a move afoot that there's going to be a greater demand? Is it because of the community or because of your location on I-95 or what?

MR. JEWELL: Yes, actually we did, not official, but we have found that when we are full we need more space. We have space for dry camping out there which we use, but that's not the facilities that we want. We want to provide everyone; we don't want to let someone down with something lesser than they came for, even without a reservation. We feel the need to expand. We feel that BRAC will furnish more requirements for more people to come in temporarily, live in their RV for a 30-day period or something like that while they are buying here; while they are waiting for a home to close. We feel the expansion is necessary, otherwise we wouldn't do it.

ACTING CHAIR SWANSON: Any other questions? Thank you.

Acting Chair Swanson swore in Phillip Moreau.

MR. MOREAU: I am the current owner of the park and to reference Patti's words, I am the mastermind behind this idea to expand the park. Maybe that's an overstatement, but I do know a few things about the RV industry that I would like to share with you ever so briefly. In these times of difficult economics, the RV industry is doing quite well. We represent a family oriented business that frankly is thriving right now. There's about eight million RV enthusiasts in the United States, actually eight million owners of RV's. RV shipments have bounced back after a five year record setting pace in the early 2000's. It got hit as did every other business when the downturn came in 2008-2009. In the last eight to ten months we've seen a strong resurgence of RV sales. So today we see about thirty million RV enthusiast. Rentals of RV units are up twelve percent across the United States. KOA reservations with over 470 parks are up about eight percent. In 2009 the income of this park increased very nicely. I just ask you how many people can sit before you and say their businesses are doing good and their industry is doing very well? So we're excited. I'm a Carolina boy at heart, I went to Chapel Hill, played a little basketball with Coach Larry Brown and Coach Smith, very little, but I was there and it has always been my dream to come back to Carolina and find a way to keep some anchors and some ties to the state. When I saw this park, my eyes just about fell out of my head. It is a clean park, it is extremely well run. Steve Jewell has stolen my thunder by saying our intent is to make this the jewell of I-95, no pun intended. Our goal is to run a first class operation, build this facility out to provide state of the art facilities to our campers and really appeal to the high end RV owner. That high end RV owner is a pretty good demographic for your locale. We want those kinds of people here. They are good people, family oriented people, retirees, military people and when I came to learn what is going on in Fayetteville with BRAC and when I saw the proximity to I-95, I said this is as close to a slam dunk as I've had since I was a junior at Carolina. We are excited to be here, we ask for your support in this project. I could kind of argue that what we're doing...you saw how big that park is and all that open space and you could call all that open space camping space. What we're really trying to do is just bring state

of the art facilities to the spaces that are already there. By that I mean we're bringing water, sewer and electric. This is not complex, this is not rocket science, even I can figure this out. We're excited to be here, excited to add improvements to this park that has run very well and we appreciate your support and I am absolutely open for questions.

ACTING CHAIR SWANSON: Are there any questions? If I could ask a question that kind of gets to one of the objective standards of the Special Use Permit. I understand that you own a number of KOA's. In your personal experience has there ever been a case that you're familiar with that where a KOA campsite was expanded say in a manner proposed by the Special Permit that it had an adverse impact on adjoining property values.

MR. MOREAU: Absolutely not. I've probably been in the RV industry now for a good solid 20 years and our approach is always to enhance the properties. Often times you will see RV parks that aren't up to snuff that are run down and as those continue to deteriorate that has an adverse impact on surrounding property values because the property is going in the wrong direction. Our intent here is to take this pristine property today and make it even better with just facilities. So again, we're not expanding the park, we're just working within the thirty-one acres to add improvements to the existing area. So a short answer is, I've never seen a situation where an enhancement to an existing RV park has had an adverse effect. To the contrary I've seen situations where an RV park that is let to go downhill where you don't have an infusion of over a million dollars into this economy and into this specific property. Where that doesn't happen, then the property values can go down, when it does happen it's a win win.

ACTING CHAIR SWANSON: To use your terminology and in your personal experience, has there ever been a case where the enhancement had a positive impact on surrounding property values that you're aware of? Again, that may not be a fair question.

MR. MOREAU: I think it is a fair question and I've had personal experience with that in probably six or eight examples. I'll site just one that is extremely current. I also own a little RV park up on I-95 in Ashland, Virginia just north of Richmond and its literally right on the highway, even closer than this park. That park had sat and been bled by the previous owners for over 20 years and it went down, down, down. That park sits in the Hanover Air Park. There's a lot of development going on in the Hanover Air Park and this park and the surrounding properties were just really going in the wrong direction. We have come in and added almost the same number of sites, we're really adding eighty-one improvements to sites. So up there we're adding eighty-eight improvements to existing sites and we've seen an increase in activity, we've seen an increase in the local restaurants, we've seen an increase in the local propane distributor, so we've seen a very positive impact. That's one example, I could cite you a few more, but this is a desirable business, it's a family oriented business. We provide goods and services and really kind of drive our own little economy. This RV community, ladies and gentlemen, is very cohesive and once we get the word out as to the great enhancements we have at this park, people will come to it. There's a certain amount of starry-eyed developer in me that feel that they will come, but yet that's based on some pretty good numbers in the industry and the pretty good location that we have here and then you throw in what's happening in Fayetteville and I just think this is an exciting project. I'm excited to be a part of it.

ACTING CHAIR SWANSON: Any questions? Thank you.

MS. SPEICHER: Chair, if I could make one more clarification on your site profile, we have the hours listed as 8 am – 8:30 pm, Mon. – Sun. That’s reference the office hours.

ACTING CHAIR SWANSON: Can I ask one question of staff please? Again, this goes towards the objective requirements of the Special Use Permit. The fact that there was a satisfactory transfer of ownership would the Board members be reasonable in the inference that there are no health concerns from County health agencies concerning the operation of the camp sites?

MS. SPEICHER: As part of our normal review process, we always send to the Health Dept. to DENHR, to every agency around and we have no negative comments that came back from any agency and that includes Code Enforcement.

ACTING CHAIR SWANSON: Any Discussions?

MR. HUMPHREY: I was out to that park I guess in the late 80’s, very nice. I think it was around 87, I can’t even remember what I was doing out there, but it was clean and very well presented. I do recall, I think I went fishing at a pond. That was back in 87 or 89. I want to go back and look at it again now that they are going to enhance it, I’m sure it’s even prettier.

ACTING CHAIR SWANSON: Any motions?

MRS. TART: I have a question for staff. We have no one here in opposition and obviously the sign has been up for the required amount of time; so has the staff had any feedback from adjoining property owners?

MS. SPEICHER: We have not had any feedback with a negative connotation. We have had phone calls but just questions why was our sign there. Some people thought we were selling the property, but we have had no negative phone calls or comments from anyone.

ACTING CHAIR SWANSON: Thank you. Any other questions? Any motions?

MR. DAVIS: I have a question. Mrs. Epler presented some concise statements to the facts that we have to present, can we use those?

MS. SPEICHER: You most certainly can.

MR. DAVIS: Do we have a copy of them? Why reinvent the wheel, that was pretty well articulated and it spoke specifically to these points that we have to address, so why should I have to create it when it’s already been created for me.

MS. SPEICHER: Every time we go over the requirements of the ordinance with the applicant and tell them what the board is looking for and she did her homework.

MR. DAVIS: Mr. Chair, I’m ready to make a motion. In regards to Case P10-08-C, Recommendation for a Special Use Permit, I think that we should grant that based on the four case facts that we had presented to us by Mrs. Epler.

1. The use of this property will not materially endanger the public health or safety if located according to the plan submitted and recommended. The proposed addition is a continuation of the current use. There are no noxious or dangerous consequences to the campground as it is operated today and that will not change. All water, sewer and storm water requirements are met on the current site and the proposed addition requires approval of any expansion of those services. All state and local requirements will be complied with and all permits will be obtained.

2. The use meets all required conditions and specifications. The conditions as recommended by the Planning Department have been agreed to by the owner.

MR. DAVIS: We are expecting a revised site plan, is that correct?

MS. SPEICHER: Yes, sir.

MR. DAVIS: So the provision is with the revised site plan.

3. The use will maintain or enhance the value of adjoining or abutting properties, or that the use is a public necessity. It is a matter of Public record in the official decision of the Board of Zoning Appeals in Carroll County, Maryland Case Number 5274/5275 that with regards to the expansion of an existing campground with regards to the effects on surrounding property owners, the applicant in that case presented credible expert testimony from a real estate appraiser that the proposed use in that case would not adversely affect property values in the surrounding areas. This case was an expansion of storage spaces and campsites just as is the case before you now. The appeal was granted and the zoning permit was issued.

MR. DAVIS: We also heard testimony from their current owner of previous KOA campgrounds and how they improved or enhanced and it was already not in need of improvement or enhancing. We're just taking a good case and going better.

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 Cumberland County's most recent Comprehensive Land use Plan.

This area is designated as a "Community Growth Area" on the 2030 Growth Strategy Map. *Community Growth Areas* provide for the development and redevelopment of smaller, freestanding communities in Cumberland County. These communities normally provide for a full range of urban services through a combination of municipal and county services. The use of community funds for planning, programming or providing urban services in these areas is left up to decision makers in each community in keeping with community goals. *Community Growth Areas* may be developed at a variety of development densities and land use types to meet the housing, everyday shopping and employment needs of area residents.

MR. DAVIS: As we've heard from all three people testifying, this expansion is done so it will meet those needs. I recommend approval.

MRS. TART: Seconded the motion.

**A motion was made by Mr. Davis, seconded by Mrs. Tart to follow the staff recommendation and approve Case P10-08-C.
Unanimous approval.**

ACTING CHAIR SWANSON: Congratulations! You have your Special Use Permit.

- **P10-09-C:** CONSIDERATION OF A REQUEST FOR A VARIANCE FROM THE COUNTY ZONING ORDINANCE, SECTION 1101, LOT REGULATION, SUBSECTION D. RECORDED LOTS LESS THAN MINIMUM REQUIREMENT; TO ALLOW A FRONT YARD SETBACK OF 14 FEET WHERE 30 FEET IS REQUIRED, A SIDE YARD SETBACK OF 11 FEET WHERE 15 FEET IS REQUIRED, AND A REAR YARD SETBACK OF 9.5 FEET WHERE 35 FEET IS REQUIRED IN AN A1 AGRICULTURAL DISTRICT ON .09+/- ACRES; LOCATED AT 8983 E. REEVES BRIDGE ROAD, SUBMITTED AND OWNED BY DAVID AND TIFFANY WINSTON.

Ms. Speicher presented the zoning, land use and photos of the site to the Board. Ms. Speicher explained that there is a doublewide manufactured home existing on the site and was placed there without zoning and building tie down permits. The Health Dept. comment is that they had already issued the permit on this site for the well and septic.

MR. DAVIS: Does it have a certificate of occupancy?

MS. SPEICHER: Yes, from the Health Department.

MS. SPEICHER: It is a nonconforming use; the manufactured home was placed on the lot without the building and zoning tie down permit. The zoning violation was not issued because the applicant did come in as soon as she was aware of the problem and met with us and submitted the application. I hope I don't confuse the issue by the dates but the lot was created by deed on Nov. 1, 1980. The County Subdivision Ordinance was adopted Jul. 1, 1970, however, enforcement didn't begin until Aug. 1, 1984, which is why you'll hear us refer to 1984 on subdivision matters. The property was zoned A1 on Dec. 17, 2001. The lot itself was a legal nonconforming lot. It was the placement of the home on the lot without the permits that has caused the flak. The section of the ordinance that relates to this is Section 1101, Subsection D, on page 113 in the Zoning Ordinance and I'm going to read it for the record.

Recorded Lots Less Than Minimum Requirement. Where any lot of record on the effective date of this ordinance or amendment thereto for the zoning area in a district which allows residential uses does not contain sufficient land to permit conformance to the dimensional requirements of this ordinance, such lot may be used as a building site for a single-family residence, provided that the lot area and yard dimensions are not reduced below the minimums specified in this ordinance by more than 17 percent in the RR, R15, R7.5, R6, R6A and R5 residential districts; or below the dimensional requirements of the RR Rural Residential District in the A1 Agricultural District.

MS. SPEICHER: Are there any questions?

MR. DAVIS: You probably just answered this question, but I've got to ask it. This basically is a lot that can't sustain a residence, is that correct?

MS. SPEICHER: It cannot sustain a residence of this size and comply with the setbacks.

MR. DAVIS: I can't imagine you can put any residence on there that would meet those setbacks based on the size of the lot.

MS. SPEICHER: Maybe this can help put it into perspective for you. The square footage of the lot itself is 3920 square feet.

MR. DAVIS: How big is the house? 900 square feet maybe?

MS. SPEICHER: It's a double-wide manufactured home.

MR. DAVIS: I guess my question is how do we get a house on a lot that won't sustain a house?

MS. SPEICHER: There are other measures that we did offer. A zero lot line would allow a bigger lot area and the variance. That was the two options that my staff went over with the applicant.

MR. DAVIS: Those weren't acceptable or wouldn't work?

MS. SPEICHER: I couldn't answer that as far as the zero lot line or why the applicant opted for the variance application. The applicant is here. That would have greatly increased the building setback because with zero lot line with the adjacent property, this setback would have been five feet and the rear setback would have been five feet from the property line.

MRS. TART: When did you say they purchased this lot from the County?

MS. SPEICHER: The deed went on record April 7, 2010.

MR. DAVIS: Who sold it to them, the County?

MS. SPEICHER: Yes sir.

MR. HUMPHREY: Was that foreclosed property?

MS. SPEICHER: I did not research that. It's a good assumption.

MR. DAVIS: They bought it under the auspices of putting a house there?

MS. SPEICHER: I can't answer their stated reason at the time of purchase.

MR. HUMPHRY: But there is a dwelling, a manufactured home on the property now, it's just not hooked up, no power, no electricity, is that right?

MS. SPEICHER: It was recently put on the property and she went to the Health Department and got the well and septic permits; there is a septic easement, her drainage easement for drain lines is off-site. It is a recorded easement for that. Typically what happens especially with a manufactured home when someone tries to get their power turned on, the power company will not turn on the power because the sticker is not on the box and tells the customer they need to go to Inspections.

MR. DAVIS: Who owns that property immediately to the west or south or rear of that property?

MS. SPEICHER: This is a tract that wraps around the property and we did not research that property.

MR. DAVIS: It's not owned by the County?

MS. SPEICHER: No sir.

ACTING CHAIR SWANSON: So there's only one side of this building that meets the setback requirements, the 15 feet on the side?

MS. SPEICHER: Yes sir.

ACTING CHAIR SWANSON: If they tried to optimize, they being the owners who are seeking the variance, if they tried to average out the placement of the house so that they would have equal distance on the sides, then there would be four sides violating the setbacks, correct?

MS. SPEICHER: Yes sir

ACTING CHAIR SWANSON: Do you happen to know how close the well is to the road?

MS. SPEICHER: Excuse me, no sir, can I retract that? There is enough room on each side for the 15 feet.

MRS. TART: If the home were moved?

MS. SPEICHER: If it were moved.

ACTING CHAIR SWANSON: So the issue would be the front and rear setbacks?

MS. SPEICHER: Yes sir. If I could go back to Mr. Davis, on the survey plat that the applicant submitted with their plan, it's Kenneth Ammons, Jr. who owns the lot.

MRS. TART: This is probably a question for the applicant. I was wondering who set up the mobile home, did they hire a contractor or what?

MS. SPEICHER: That would have to come from the applicant.

ACTING CHAIR SWANSON: Could you go back to the site plan again please? The well that is there it says existing, was it there before the house was put on or was that put there after the permit?

MS. SPEICHER: According to what the Health Department told me it was there prior to this home being there, or at the same time.

MR. DAVIS: The request says the utilities were already available when they moved there.

ACTING CHAIR SWANSON: Are you aware of any Land Use Plans that would expand or widen East Reeves Bridge Road?

MS. SPEICHER: As part of our typical review, we send this to FAMPO and to the NCDOT and neither one requested right away and FAMPO stated no projects in this area.

ACTING CHAIR SWANSON: Just so that I understand it, on Attachment A of the application, I'm looking at the left side yard variance of 4 feet where 15 feet is required. I'm seeing on the site plan 9.5 feet, never mind, I see the 4 feet. Any other questions of staff?

MR. DAVIS: I'd like to ask the applicant some questions.

Acting Chair Swanson swore in Tiffany Williams Winston.

MRS. WINSTON: Just to go back over to what Patti stated, we purchased the property from Cumberland County, it was a tax sale and we purchased it because the previous home burned down and the property was for sale as a residential lot. We purchased the lot because it had mobile home utilities such as the well and the septic. We weren't aware at the time that A1 Zoning made it useless to use as a residential lot. We purchased the lot and the lot was worth about \$1200-\$1300. We paid about \$5000 because we paid Cumberland County for cleaning up after the home burned down. We invested our money into that and then we got the well inspected and the well passed inspection. The well was there previously, the septic was there since 1984 and there was an easement for it with the property behind us. As far as the zero lot line, we did go in and speak with the Zoning Department once we found out we couldn't go any further. The reason we went ahead and moved the home there is because when we went to the tax administration, we got a moving permit from Harnett County then we went to the tax administration to list the home and I spoke with someone there and they said I didn't have to, that I could move the home there after the septic was inspected. That's when we started going through the process. When we got the paperwork back, that is when we realized we were violating the zoning. Our hardship is that we've already placed our money into this property. On tax sales, you cannot get a refund, it's a final sale. If we had known that A1 Zoning was going to make it nonconforming then we would not have purchased it, we could have purchased another piece of property. We already invested in the home, a doublewide, we purchased the home before we purchased the land. When we spoke with staff, they were saying zero lot line or a Variance. We spoke with the neighboring Mr. Ammons and his mother. She owned the property and she signed it over to him. He's saying his mother was not in favor of zero lot line or we would have went that way being that it was almost guaranteed to get approved and that would have been the easiest way for the land to conform to the zoning law. We also spoke

with our neighbors to the left of us and they are here today. Also, if we had got a zero lot line from them we still would have had to get one from the neighbors behind us because we aren't meeting the setbacks on the front and the back. We placed the home further to the right because the previous home was that way and their septic tank is over that way, and the septic tank is within the distance. The septic was approved. The well is 50 feet away from the home. The company that moved our home is a professional mobile home company, C1 Mobile Home Movers moved the home for us. We aren't asking for any special privileges, it's a residential lot and we purchased a home to move it for residential, not trying to use it as Commercial or any manufacturing or cause noise to our neighbors. The A1 zoning makes our land nonconforming and useless in this district according to your Department. The staff spoke with us about the setback and why we needed the variance because we didn't have enough distance for the setbacks so we had to reduce it down to RR and even when we did that it still didn't fall within the setbacks. That's why we're here today to get a variance. We've already invested our money in the land and the home. We were planning to move in and we really weren't aware of the entire process such as the zoning and how to set up a mobile home.

MR. DAVIS: What are your future plans? Do you plan on living there for a year, three years, or the rest of your life?

MRS. WINSTON: We plan on living there as long as we can, it's going to be paid for. Our special circumstances is that our land is small, subdivided from a 5-acre lot that was in 1984, it is now 2010 so we haven't made any changes to the lot's size, it's exactly the way it was when we bought it other than our home is sitting there now.

MR. DAVIS: But when you purchased it, the intent was to put a home there?

MRS. WINSTON: Yes.

MR. DAVIS: And there had been a home there?

MRS. WINSTON: Yes. There was a home previously there.

MRS. TART: How large was the home that was previously there, was it a singlewide?

MRS. WINSTON: Yes, it was a singlewide mobile home.

ACTING CHAIR SWANSON: Your home that's there now, is it still taxed as a motor vehicle?

MRS. WINSTON: Yes.

ACTING CHAIR SWANSON: Do you have any intention of converting it to real property of anchoring hold downs in cement in the footings? Is that part of the plan?

MRS. WINSTON: Right, to brick it in on the bottom.

ACTING CHAIR SWANSON: Okay and as part of this plan is that the location, the final resting location of the home as you intend it? (Acting Chair Swanson directs everyone's attention to the power point presentation to look at pictures of the home on the property)

MRS. WINSTON: We were trying to make sure it was a certain distance from the well and septic and then we got the measurements. It can be moved if there are conditions that we have to apply, we're willing to do whatever it takes to move into our home.

ACTING CHAIR SWANSON: How long has this been going on? That you moved the house on there and seeking the permits, roughly?

MRS. WINSTON: Once we knew the septic had passed is when we moved the home onto the lot. We went to the tax administration to pay the tax and list it with Cumberland County so we could pay the taxes on it.

ACTING CHAIR SWANSON: Do you have any plans to put car ports or sheds on the property at a later date?

MRS. WINSTON: No car port, it has the dirt there to drive up on.

MRS. TART: I have a question for staff. Is it possible at this point for them to reapply for a zero lot line?

MS. SPEICHER: It would be possible, however, as the applicant indicated the neighboring property owner did not agree and that's the key thing with zero lot line, they have to agree and all parties sign the plat.

MRS. TART: How far is the house that is adjoining her on either side, how far is their structure from their property to the property line?

MS. SPEICHER: Mrs. Tart, I could only be guessing. I could run downstairs and scale it off for you real quick.

MRS. TART: No, that's okay.

ACTING CHAIR SWANSON: Any other questions?

MR. DAVIS: I'd like to get the attorney's opinion on this. I don't want to deviate from what we're trying to do and we can address this, but in my mind, this is just the tip of a bigger problem.

MR. MOOREFIELD: You're exactly right.

MR. DAVIS: Not only do I want to get this rectified, but I'd like to make sure it goes back upstream so we don't end up in this situation again. I think we could have prevented this with a little forethought.

MR. MOOREFIELD: I think part of the problem is that there would be a septic approval on a lot this size. I understand that there is an easement. The problem the County encounters with lots like this and why they are no longer legal is if there is a failure in the septic, there is no

repair room. If there is a well problem, there is nowhere else to go. Those are some issues that will come up. My office is actually responsible for surplus property that sold like this and I didn't realize we would have something like this in the inventory of stuff that sold. It's approved by Board of Commission. When a sale is made, I'm assuming it was done as a surplus sale, she may have bought it as a tax foreclosure sale and we don't do them, but if there had been a structure on the property at that time, this sale would not have been done. In other words, once that existing structure had burned and the process had to start over again, that was the safeguard that the County would have had to have kept this from happening. I understand they just moved the manufactured home on there without getting the permits. If they had tried to get the permits first like they should have done, it wouldn't have happened. It is a wider problem and it's got to be addressed.

MR. DAVIS: And they wouldn't even have bought the lot if they couldn't put the home on it.

MR. MOOREFIELD: When the County or City sells properties like that at tax sales or surplus sales, it's a non warranty deed; we don't make any inquiry into the purpose of it. Usually something like this is bought by the adjoining property owner.

MR. DAVIS: That's why I was asking if there was enough property around it, if the adjoining property owner would be willing to.....

MR. MOOREFIELD: This is a surplus property sale, it says I actually prepared the deed, but I didn't, I don't know who did. If this had been something that I had seen, I would have put more information in this deed. This says it is subject to county and city taxes. This is not in the city is it?

MS. SPEICHER: No sir.

MR. MOOREFIELD: This demonstrates a much more serious problem that we've got. We need to get a system in place to stop this from happening.

MR. DAVIS: This also begs the question, what do we do if we approve this and everything goes forward and the septic system fails, then what happens, would they get evicted?

MR. MOOREFIELD: Yes, it would be condemned by the County. We wouldn't have any information on this. These are non warranty deeds. They reported they have an easement for the septic tank and that is shown on this drawing. It's not a survey is it?

MS. SPEICHER: It's a plat plan prepared by a surveyor. It is not a recorded survey.

MR. MOOREFIELD: I couldn't give you an opinion on that easement. Sometimes those things are limited in terms, and I have to assume the Health Department checked that out and determined it was still a good valid easement, there are just issues like that. I think the Ammons' would be the owners of that easement. Are they the folks that are here? I think they can answer that question.

MRS. TART: I'm wondering even though it's in Cumberland County, is it a possibility it will be serviced by Harnett County waste water treatment facility? I know that sometimes they cross over.

MS. SPEICHER: That would be many, many years away. This actual site is halfway between Ramsey and McBride which McBride is the road that runs straight into the south side of Linden. I did check and Linden water is not here yet either.

MR. MOOREFIELD: It's a violation and I think the setback under the circumstances is not the real problem here because you don't have any adjoining property owner objecting. The real problem is what happens if one of these components fail and causes problems. Then we are put in the position, the County or the Board of Adjustment has approved the placement of this home on this lot that's by a variance, but we have to take some responsibility for it if things go wrong. That's the reason we have the subdivision ordinance and the regulations. I know people may think we're being hard to deal with, but when you have someone who has a failing septic tank and there is no way to get it repaired or a contaminated well, then those people complain even more so than folks in a situation like this. This is a tough situation and I glad I was here to see. We definitely have to get a system in place to stop this from happening any further.

MR. DAVIS: Do you see the dilemma? [addressing the applicant] We might fix the problem right now but we might make the problem worse for the future.

MRS. WINSTON: For us?

MR. DAVIS: For you.

MRS. WINSTON: So, can we still get it even if they plan to evict us later.

MR. MOOREFIELD: No, he's not saying there are plans to evict you. You have gotten an approval from the Health Department for your septic system and your well. The problem is, the reason there is a minimum lot size that's at least 20,000 square feet is that if your septic system fails and that happens all the time in this County and it's becoming more and more of a problem and you have no place to repair. Then you have even more invested in your home; you're settled there, your kids are there, but suddenly you can't live there anymore. It's not a matter that The Board of Adjustment can fix the way by giving you a variance because you physically cannot live there. That's part of the problem. That may never happen, we don't know, I hope you understand but that is the problem. There could be optional solutions worked out. Someone got an easement for the Ammons' for this septic system before because if you didn't have the easement for the system, no one could ever use this. This is not big enough to put a septic system and a well on the same piece of land. So that is why someone got an easement. If you had a failure you might be able to get another easement. This is not something that the County or the Health Department could fix for you. I realize you are caught between a rock and hard place since you've done all of this but, you really didn't go about all of this the right way. You should have got the permits and checked these things out before you took these steps. You've got to take some responsibility is what I'm suggesting. I'd advise the Board that we can't put conditions on a variance, even if they agreed to them that it should have no recourse against anybody if the well or septic system failed. We can't do that, we've got to deal with it as it is.

ACTING CHAIR SWANSON: Any more questions for Mrs. Winston?

Acting Chair Swanson swore in David Winston.

MR. WINSTON: We just moved from Alabama. We are currently renting. We are trying to make a future for our whole family. We bought the home first then we got land. If you don't know, how can you defend yourself?. We did everything that we could for research and we had high hopes that everything was going to work out because of the previous house utilities. When this situation came up, it put us in an awkward situation. Our whole intention was to move here, myself, my wife and daughter and try to make a living. Our rent is about to expire and we put up all of our life's savings. This is a new start for us. Everything but the setback, we did our best. My wife went out speaking to everybody trying to see what it is we could do with the variance and paying for the inspection. We did everything we could do in our power to try to make it work. Now we are here before you and we want to live here regardless of what the situation can be. I would rather stay here even if the septic or anything happens, I would know that all of my money hasn't been wasted. I would at least be staying there. Regardless if it fails, if we have to leave, then we have to leave. At least we could stay there and save as much money as we can for the future of our family.

MR. MOOREFIELD: Mr. Chairman, if I could ask the Board's indulgence and the property owner's too; if you folks possible had the time to hold or withdraw this until the next Board of Adjustment meeting and let me have the chance to talk with Inspections Dept. Basically, the information I have now; I'm not so certain that even if the BOA were to approve that you could live there even if you got the power on because you still have issues. I'm not looking at this as trying to help the BOA make a decision or to help you guys leave today and feel good about this. You want to live in the house and if I know there are going to be other issues that you are going to have, I would hope that you would give us the opportunity to try to work that out. Getting this approval from the BOA if they are so inclined to do, still does not give you the certificate of occupancy and you've still got problems.

MR. DAVIS: That is why I asked about the power and utilities.

MR. WINSTON: So the utilities, is it still an issue with the power company?

MR. MOOREFIELD: Yes, you are still going to have problems with getting the power on.

MR. WINSTON: We actually inquired about that.

MR. MOOREFIELD: They can't do anything about that, I can't do anything about that, but the further down this road you go, the harder it's going to be to fix it.

MR. WINSTON: To fix the utilities?

MR. MOOREFIELD: To try to work out a solution.

MR. WINSTON: Regardless of any problems that may come about, we already looked into the point that we know we've got to have utilities. Those are the main three; you've got to have water, septic and electricity. When we inquired with the utility company, they said there

was no problem with turning on the utilities. The utility pole is already set up because of the previous home. Regardless of everything, I would still rather live here because we've invested our whole life's savings. We've put everything into it and I would rather give it a chance because everything has been put into it.

MR. MOOREFIELD: Is it your understanding from your discussion with the utility company that you can have power turned on?

MR. WINSTON: Yes, we spoke to the utility company. They can go back and hook it back up. All they did was take out the little thing. Any crew that is there they just need to be called and to come and hook it back up.

MR. HUMPHREY: What utility company is supplying the power? South River?

MR. WINSTON: The Town of Linden?

MR. MOOREFIELD: What utility company did you talk to?

MR. WINSTON: I'm not 100% sure of the exact name, but I do know that the electric company we called was in Linden.

MR. MOOREFIELD: Are you folks in a position to ask the BOA to hold a decision for this variance for 30 days? When is the next meeting?

ACTING CHAIR SWANSON: Next month.

MR. WINSTON: We're in a tight position because like I was saying the rent is going up and the month is going out. You want to hold off to look into the utilities?

MR. MOOREFIELD: You understand that you have not provided a site plan that has the measurement on it the way you should have gotten it from the Health Department. I don't understand why they did what they did, but it's not clear that your well is 50 ft. from the septic tank.

MR. WINSTON: The paper should show the exact measurement. Before the guy could pass the septic tank, he had to measure the distance between the well and the septic tank. So the septic tank was passed.

ACTING CHAIR SWANSON: Any discussion from Board members as to the way forward, recommendations or motions?

MR. DAVIS: If we were to recommend or grant the approval, we would have to do it conditionally to get the certificate of occupancy and meet the standards for getting the power connected, etc. So the hurdle would be that they would get the variance, but I don't know if that puts them any closer to getting in the house.

MRS. TART: Do we need to listen to the opposition.

ACTING CHAIR SWANSON: No one signed up. Any other questions?

MR. HUMPHREY: Where are you living now Mr. Winston?

MR. WINSTON: In an apartment on Harlee Street.

MR. HUMPHREY: Is it rental property?

MR. WINSTON: Yes, that's what I was talking about before. The lease is about to expire and the lease is high and once the rent is up we've got to leave. That is why we took all of our money and put it into the home. It's our investment and we can't get it back. We just want an opportunity, we want to stay there. We won't put anything else there and I'm ready to go for it.

MR. MOOREFIELD: Mr. Winston, are you sure you talked to the power company about getting power to this place?

MR. WINSTON: Yes.

MRS. TART: I have a question for staff. What is the worst case scenario if we were to approve this variance?

MR. MOOREFIELD: For them, they could still end up not being able to use it. I don't know if that's going to happen. There are just some issues with this that are confusing.

MR. DYKES: In other words, if we approve it to a certain extent, there may be other people they have to deal with as far as the septic permit?

ACTING CHAIR SWANSON: The septic permit from the Health Department, they have met that requirement. Any other discussions?

MR. DAVIS: How do we get around #5. I can get around #1-4, but what do we do about #5? If somebody's got an idea, I'm ready to listen.

MRS. TART: I think that's an action for the County.

ACTING CHAIR SWANSON: I understand Mr. Moorefield's point about the applicant taking responsibility; but I think that if you are new to an area that you had bought a residential property a residence had been removed from, the reasonable inference is that you could put a house there. Nowhere in the testimony from staff and the lineage of the property do we have that the applicant's created the boundaries of the parcel. They tried to adapt.

MR. DAVIS: Well, it says that here. I didn't read that.

ACTING CHAIR SWANSON: That may be the answer to #5. It's just my answer as the Acting Chair.

MR. MOOREFIELD: I guess as far as an explanation to that for the Board's consideration. When we have a legal nonconforming lot because it was there at the time before the Subdivision Ordinance had began to be enforced, that use is allowed to continue for so long as it is a use. Once a building is burned or destroyed, you don't replace it.

ACTING CHAIR SWANSON: Wouldn't that legal nonconforming use continue within a reasonable amount of time? When was the house burned down?

MS. SPEICHER: If it is not destroyed by more than 50 percent of its' reproducible value and it has not been destroyed longer than one year, then you could repair it.

ACTING CHAIR SWANSON: In that one year delay of when hit, and the world worked perfectly, the structure that was destroyed more than fifty percent was moved off, the County took possession, advertised it and sold it, if everything had worked perfectly, we would not be here now would we because it would still be a legal nonconforming use? In going back to #5.....

MS. SPEICHER: I just want to make sure the Board's on the right thought. What we're looking at tonight is legal nonconforming for zoning purposes, not for the subdivision or of the lot.

MR. DAVIS: That's why I said if we just stuck to that it would be a lot easier, but the problem is so much more involved.

MR. MOOREFIELD: The best way to avoid this type of situation is when the County acquires any lots of this size that are not sufficient for residences, we should make it clear by putting a restriction in the deed that can't be built upon. I'm going to try to get a system like that in place.

ACTING CHAIR SWANSON: Do we have any motions?

MR. HUMPHREY: As to meeting all five conditions, I'm not sure, just like Mr. Moorefield said, it seems the applicant has followed the outlines given to them, followed the procedures given to them, they got the septic tank inspected and they are asking for the variance. If we grant the variance according to our attorney, they may have some other problems that wouldn't concern us. We're here strictly for the variance and based on that theory, and I don't want to preclude anybody, but it would be in my opinion to vote for the applicant.

ACTING CHAIR SWANSON: I'm willing to offer a second to the Board of any motion any member is willing to put before the Board.

ACTING CHAIR SWANSON: I think it's illegal for me to make a motion as the Chair, isn't it?

MR. HUMPHREY: Not by statue, maybe in the Board's procedure.

MS. SPEICHER: It's not written in the procedure, it's just typically a protocol that's been followed, but it is not in your procedures.

MR. MOOREFIELD: By statue, you have the same authority as every other member to vote and make motions.

ACTING CHAIR SWANSON: Would it be a parliamentary procedure for me to step outside the chair, make a motion and then assume the chair position again?

MR. MOOREFIELD: As the Chair of the Board of Adjustment, you wouldn't need to step outside the parliamentary procedures, you may do that.

ACTING CHAIR SWANSON: Would you like me to proceed with it?

ACTING CHAIR SWANSON: Board, I have a motion based on our discussion, it's a conclusion and in listening to our discussions we're all in agreement that:

1. It is the Board's **CONCLUSION** that, there are extraordinary and exceptional conditions pertaining to the particular piece of property in question because of its size, shape or topography that are not applicable to other lands or structures in the same district. This finding is based on the following **CONDITIONS**:

We saw in the chart that is before the Board that the acreage is .09 +/- square feet. We heard testimony that the property was previously legal nonconforming property.

2. It is the Board's **CONCLUSION** that granting the variance requested will not confer upon the applicant any special privileges that are denied to other residents in the district in which the property is located. This finding is based on the following **CONDITIONS**:

We have heard testimony tonight that the applicant has gone through extraordinary measures, has tried to get the right answers and is finally before the Board seeking a Variance so they can continue on and convert the property to residential use once again.

3. It is the Board's **CONCLUSION** that the literal interpretation of the provisions of this Ordinance would deprive the applicant of rights commonly enjoyed by other residents of the district in which the property is located. This finding is based on the following **CONDITIONS**:

If we don't approve the Variance, that is exactly what will happen, that because of the unusually small size of this residential property zoned A1 the applicant will not be able to use it.

4. It is the Board's **CONCLUSION** that, if granted, the requested variance will not be in harmony with the purpose and intent of this Ordinance and will not be injurious to the neighborhood or to the general welfare. This finding is based on all of the **CONDITIONS** listed above, as well as the following:

We saw from the staff's information that the surrounding uses in fact manufactured homes and we've heard no testimony and heard no opposition speakers that it would not be in keeping with the harmony and consistency of the neighborhood.

5. It is the Board's **CONCLUSION** that the special circumstances are not the result of the actions of the applicant. This finding is based on all of the **CONDITIONS** listed above as well as the following:

I think that a reasonable person of reasonable prudence would conclude that if a property was previously occupied by a residence if it was offered for sale at public sale; when they purchased the property, a reasonable person would infer that it was okay for residential use and that there were no red flags that would have been readily visible to the ordinary and prudent buyer particularly when that buyer is new to the area, unfamiliar with the laws of North Carolina and the Ordinances of Cumberland County

6. It is the Board's **CONCLUSION** that the variance requested is the minimum variance that will make possible the legal use of the land, building or structure. This finding is based on the following **CONDITIONS**:

We heard the testimony of the owner, Mrs. Winston, that is the property will be converted from now taxed as a motor vehicle under the motor vehicle laws to a real property with permanent strapping and cement foundations and that would make legal use as real property converted to real property.

7. It is the Board's **CONCLUSION** that the variance is not a request to permit a use of land, building or structure which is not permitted by right or by special exception in the district involved and will not constitute any change in district boundaries. This finding is based on the following **CONDITIONS**:

It is zoned as A1 property and not allowing the applicants use as A1 property would deprive them of that right.

8. It is the Board's **CONCLUSION** that the existence of a nonconforming use of neighboring land, buildings or structures in the same district or of permitted or nonconforming uses in other districts does not constitute a reason for approval of this requested variance. This finding is based on the following **CONDITIONS**:

The fact that there were other nonconforming uses and we've heard no other testimony as to whether or not there are legally nonconforming properties in the area nor is the applicant seeking approval of the variance based on nor are they claiming there are other legally nonconforming properties adjoining theirs.

ACTING CHAIR SWANSON: I propose to move that the motion be approved.

MR. DYKES: Seconded the motion.

**A motion was made by Mr. Swanson, seconded by Mr. Dykes to follow the staff recommendation and approve Case P10-09-C.
Unanimous approval.**

9. BOARD MEMBER VACANCY NOMINATIONS

MS. SPEICHER: First I wanted to say that Mr. Tally has been reappointed to serve a second term as an alternate. Mr. Humphrey has been appointed as a first term as a regular member. In August for appointments, Mrs. Tart, a regular member is completing her first term, and who is eligible for reappointment and Ms. Autry is completing her first term as an alternate member and eligible for reappointment. The proposed action for the Commissioners is to nominate individuals to fill the two vacancies I just named which is Mrs. Tart and Ms. Autry. If the Board would like, I could draft a memo and send it over to the Commissioners' packet to reappoint the same. We've included in your packet others that have applied that are not currently serving. The list that we got from the Deputy Clerk.

MR. DAVIS: I think it's a no brainer to put Mrs. Tart back in, she's a valuable asset.

MR. HUMPHREY: I concur.

ACTING CHAIR SWANSON: Okay.

MS. SPEICHER: This would just be your recommendation to the Commissioners for their nomination. Ms. Autry has been diligent and has showed up every time we called her as an alternate. I'll send that and I will also keep Mr. Quigley posted that the Board did vote for this. We'll send it just as a recommendation.

10. DISCUSSION

There were none.

11. UPDATE(S)

MS. SPEICHER: You saw the last page of your packet. That was the one about North Ramsey, the fourth dog Mozart passed away. They had the funeral for Mozart. He came in and let us know so he needed clarification and the reason I wrote the letter for him is because his neighbors thought that no matter what he was still subject to the Board's conditions. I told him he is no longer running a kennel. His neighbor kept telling him that he had to have someone there permanently with the dogs, so I wrote the letter for him.

No update on Mr. Williams, it's still in Environmental Court. That was the junk yard on Middle Road.

ACTING CHAIR SWANSON: Any other discussions?

MR. DAVIS: I have one comment. This is my last meeting. I just wanted to say thank you to you all as a Board and to staff in particular. I've been doing this for a few years now and the staff has always been good, that was never a question, but the progress that I've seen in the staff over the past couple of years is just been phenomenal. These meetings are getting better and easier because of what you guys are doing on a day to day basis. I think your service to the folks of Cumberland County is admirable.

MS. SPEICHER: Thank you. This is not just me, Pier, Melodie or Angela, it is the whole team, the Graphics people and everybody.

ACTING CHAIR SWANSON: You will be missed.

MS. SPEICHER: We will miss you. Just to make it clear again, Mr. Humphrey is replacing Mr. Davis. We'll keep him on the Roster for two years, he'll hear from us, isn't that right Mr. Swanson, we just went through that for Mr. Parsons. Two years off.

ACTING CHAIR SWANSON: Is that our rules?

MS. SPEICHER: The County Commissioners rules. Apparently Mr. Quigley and Mr. Lloyd talked and thought it was best not to put in a request to waive that. Both of them told me it would be like calling in a tip at a time when it wasn't really necessary; knowing he would be willing to serve in October and other positions will come up by then.

MR. DAVIS: I think that's a good rule. I think you need turnover to get fresh prospective and also to give more residents the opportunity to participate. I would never waive that.

MS. SPEICHER: I have noticed more and more citizens are starting to apply for positions on these Boards.

MR. DAVIS: Yes, people want to get involved, people want to participate and that's a good thing.

MR. DYKES: So you can only do two terms, you can't do three?

MR. DAVIS: Right.

MS. SPEICHER: Once you sit out two years then you can be reappointed. You would have to reapply but it just keeps rolling around. For anybody, when your time is up there are always other Boards that you may be interested in on the same website where the applications are. There are many Boards.

12. ADJOURNMENT:

ACTING CHAIR SWANSON: Any motions?

A motion to adjourn was made by Mr. Davis and seconded by Mr. Dykes. The vote was unanimous. The meeting adjourned at 9:00 pm.

P10-10-C
SITE PROFILE

P10-10-C: CONSIDERATION OF A SPECIAL USE PERMIT TO ALLOW A 160 FOOT TOWER IN A R10 RESIDENTIAL DISTRICT ON 11.09+/- ACRES ZONED R10 AND R6 (HOPE MILLS), LOCATED ON THE NORTH SIDE OF CHURCH STREET (SR 2996) AND WEST OF BAFFLE CIRCLE; SUBMITTED BY FORREST T. AND DARLENE HARDIN (OWNER) AND THOMAS H. JOHNSON, JR., NEXSEN PRUET, PLLC ON BEHALF OF AMERICAN TOWERS, INC.

Site Information:

Frontage & Location: 770.88'+/- on Church Street (SR 2996)

Depth: 645'+/-

Jurisdiction: Cumberland County

Adjacent Property: No

Current Use: Woodland

Initial Zoning: R10 – November 17, 1975 (Area 4); R6 – Hope Mills, 1985

Nonconformities: None

Zoning Violation(s): None

Surrounding Zoning: North: C1(P) & R10 (Hope Mills/County), O&I(P), R6 & R5 (Hope Mills), RR; West: R10 (Hope Mills/County), R6 (Hope Mills); South: R10 (Hope Mills/County), CD, R10/CU (to allow two manufactured homes), R10, R7.5 & R6A ; East: CD, C1(P), R10 & R7.5

Surrounding Land Use: Public utility substation, school, residential (including manufactured homes), and woodlands

2030 Growth Vision Plan: Urban area

Special Flood Hazard Area (SFHA): None

Soil Limitations: None

School Capacity/Enrolled: Baldwin Elementary: 790/708; Hope Mills Middle: 740/744; South View High: 1,800/1,838

Water/Sewer Availability: NA/NA

Subdivision/Site Plan: See attached “Ordinance Related Conditions”, particular attention should be paid to Condition No. 6 & 7

Average Daily Traffic Count (2008): 16,000 on NC HWY 59 (S. Main Street)

Municipal Influence Area: Town of Hope Mills

Highway Plan: There are not road improvements/constructions specified for this area. This case has no impact on the current Highway Plan or Transportation Improvement Program

Cumberland County Zoning Ordinance Reference: Section 927 Towers

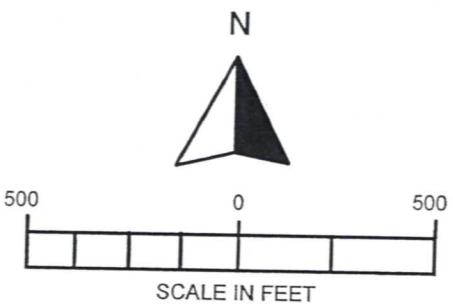
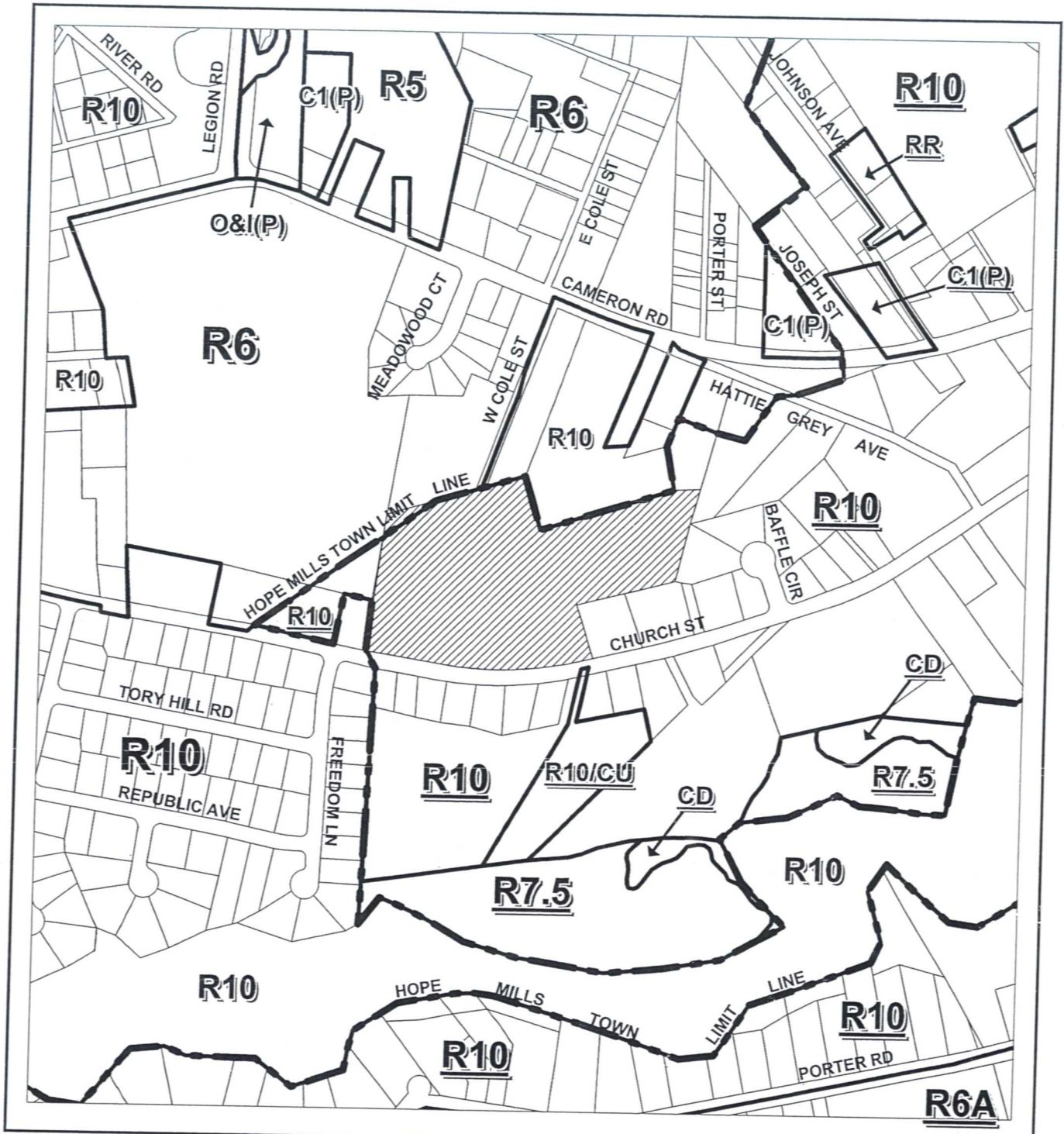
Notes:

1. Contents of the application:
 - a. Proposed tower height/type: 160' Monopole
 - b. 11.09 acre lease area
 - c. 25' access for tower site
 - d. No outside storage at the tower site
 - e. No employees on site, tower will be monitored and maintained monthly
 - f. Licensed appraiser's affidavit stating use will not be detrimental to property values
 - g. Licensed engineer's statement signed and sealed, stating tower will be structurally sound
 - h. American Tower affidavit certifying tower will meet Federal, State and local laws including FCC and FAA

2. All documentation required by the ordinance is attached to the application, contained within the case file, and is available for review upon request.

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' certified receipt of notice is also included.

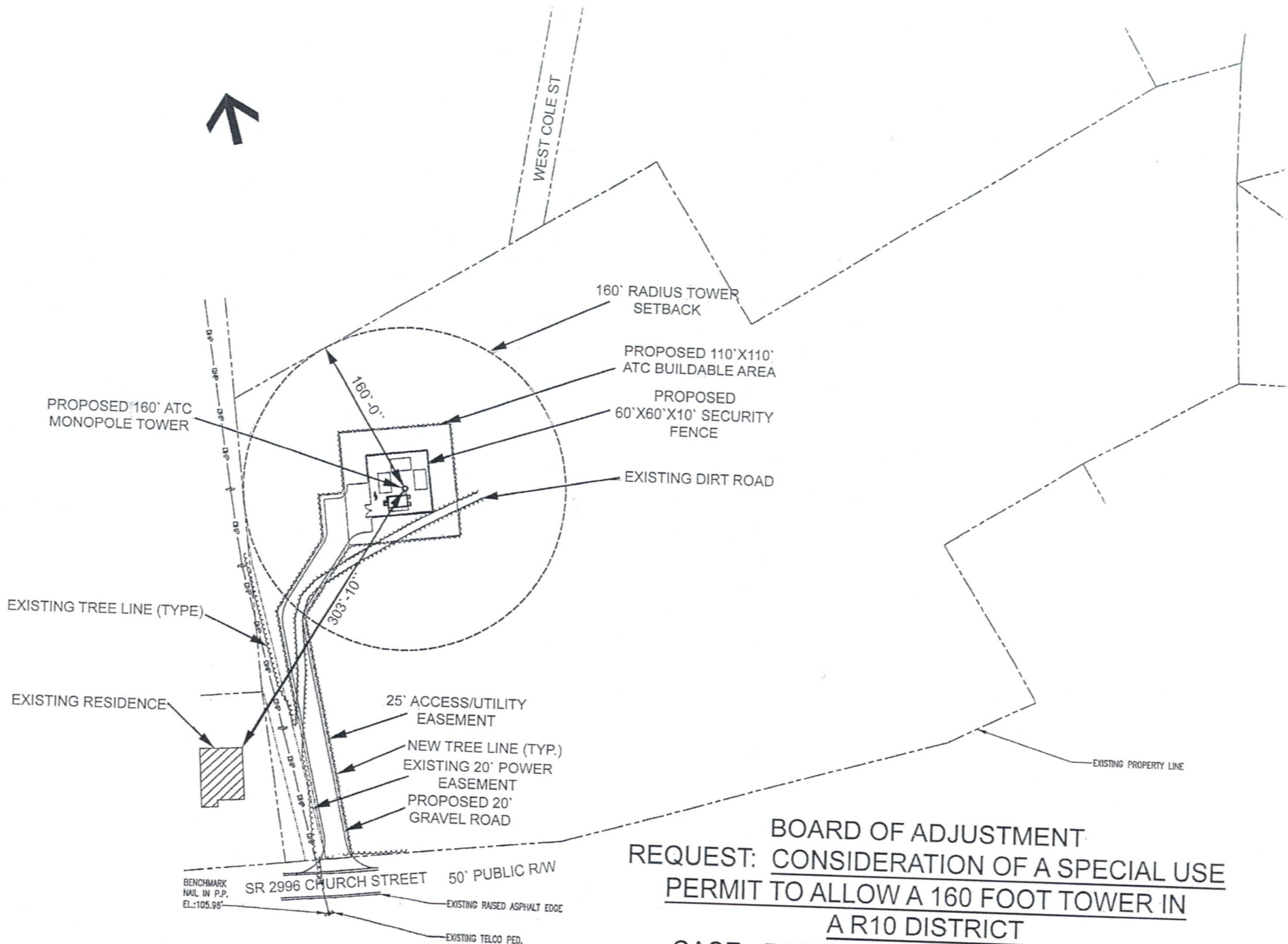


BOARD OF ADJUSTMENT SPECIAL USE PERMIT

ACREAGE: 11.09 AC.+/-		HEARING NO: P10-10-C	
ORDINANCE: COUNTY		HEARING DATE	ACTION
GOVERNING BOARD			

PIN: 0414-91-0520

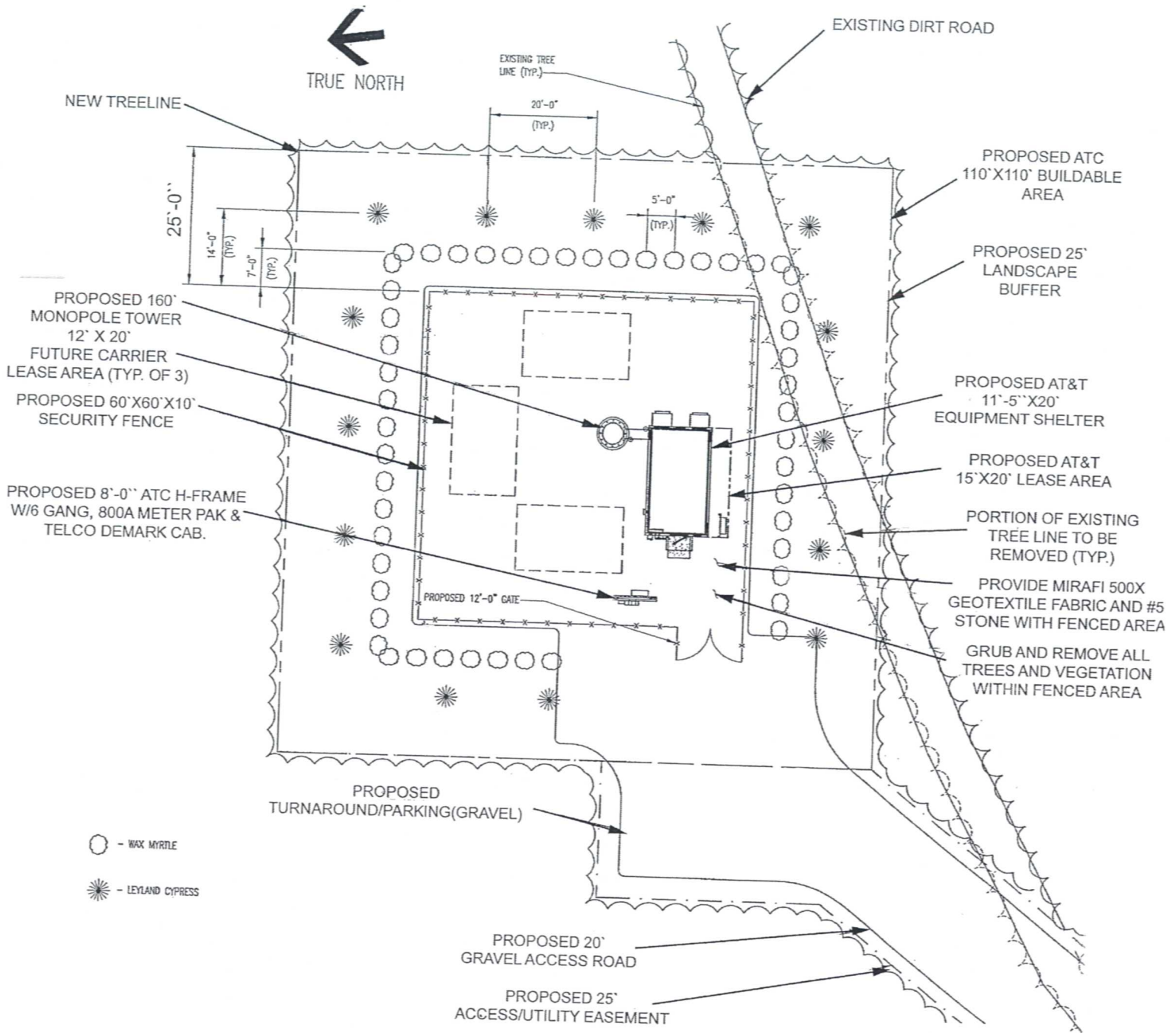
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BOARD OF ADJUSTMENT
 REQUEST: CONSIDERATION OF A SPECIAL USE
PERMIT TO ALLOW A 160 FOOT TOWER IN
A R10 DISTRICT

CASE: P10-10-C ACREAGE: 11.09 AC +/-
 ZONED: R10 SCALE: NTS

*SCALED DETAILED SITE PLAN IN FILE AVAILABLE FOR REVIEW UPON REQUEST



BOARD OF ADJUSTMENT
 REQUEST: CONSIDERATION OF A SPECIAL USE PERMIT TO ALLOW
A 160 FOOT TOWER IN A R10 DISTRICT
 CASE: P10-10-C ACREAGE: 11.09 AC +/-
 ZONED: R10 SCALE: NTS

*SCALED DETAILED SITE PLAN IN FILE AVAILABLE FOR REVIEW UPON REQUEST

6/21/10

Special Use Permit – Board of Adjustment

DRAFT

Ordinance Related Conditions

Permit-Related:

1. The owner/developer(s) of these lots must obtain detailed instructions on provisions of the County Zoning Ordinance and permits required to place any structure within this development from the County Code Enforcement Section, Room 101 in the Historic Courthouse at 130 Gillespie Street. For additional information, the developer should contact a Code Enforcement Officer.
2. Upon future development and if water or sewer services are to be provided to this site, connection to public water and sewer will be required, the Public Works Commission (PWC) must approve water and sewer plans prior to application for any permits. A copy of the PWC approval must be provided to Code Enforcement at the time of application for building/zoning permits.

Note: Due to an existing agreement between the PWC and the Town of Hope Mills, an annexation petition most likely will be required prior to the PWC's review of any utility plans.

3. New development where the developer will disturb or intends to disturb more than one acre of land is subject to the Post-Construction Stormwater Management Permitting Program (Phase II Stormwater Management Requirements) administered by the Division of Water Quality, North Carolina Department of Environment and Natural Resources. 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 State's *Post-Construction Permit* must be provided to County Code Enforcement.
4. For any new development where the developer disturbs or intends to disturb more than one acre of land, the developer must provide the Code Enforcement Section 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.
5. Prior to issuance of a building permit for the tower, the applicant/owner or developer must submit to Code Enforcement, drawings sealed by a licensed engineer and a certification letter from the licensed engineer who prepared the plans that the tower will meet all applicable Federal, State and local building codes and structural standards.
6. If the proposed lease area for the proposed cell tower is to be recorded as lease lot and split out for tax or other purposes, prior to application for any permits, the developer must submit to the Planning and Inspections Department a subdivision review to subdivide the lease lot.
7. The minimum acceptable road frontage for subdivision purposes in this area is 20' in width; if the lot is to be split out for tax or other purposes, in order to get a permit, the area shown as an "ingress/egress easement" must be made a part of the lot and must be a minimum of 20' in width.
8. The building final inspection cannot be accomplished until a Code Enforcement Officer inspects the site and certifies that the site is developed in accordance with the approved plans.

Site-Related:

9. All uses, dimensions, setbacks and other related provisions of the Subdivision and Zoning Ordinances for the R6 (Hope Mills) & R7.5 (County) zoning district must be complied with, as applicable.
10. This conditional approval is not approval of any freestanding signs. If a freestanding sign is desired, re-submittal of the site plan is required prior to application for any freestanding sign permits. Attached signage for this development must be in accordance

with the applicable sign regulations as set forth in Article XIII of the County Zoning Ordinance 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.)

11. For any new development, an adequate drainage system must be installed by the developer in accordance with the NC Department of Environment and Natural Resources' (NCDENR) *Manual on Best Management Practices* and all drainage ways must be kept clean and free of debris. (Section 2306 D, County Subdivision Ordinance)
12. For new development, all utilities, except for 25kv or greater electrical lines, must be located underground. (Section 2306 C, County Subdivision Ordinance)
13. In the event a stormwater utility structure is required by the NC Department of Environment and Natural Resources (NCDENR), the owner/developer must secure the structure with a four foot high fence with a lockable gate, and is required to maintain the detention/retention basin, keeping it clear of debris and taking measures for the prevention of insect and rodent infestation.
14. 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 Code Enforcement at the time of application for building/zoning permits.
15. All lighting is required to be directed internally within this development and comply with the provisions of Section 1102 M, Outdoor Lighting, County Zoning Ordinance.
16. If lighting for the tower is required, it shall meet or exceed the FAA standards.
17. A chain link fence a least ten feet in height and located at least ten feet from the base of the tower is required to enclose the tower base.
18. An evergreen buffer area at least 25 feet wide is required to surround the tower compound and must shield the compound area from the entire tract. No structures, including guyed wires or anchors, may be constructed within the buffer. The buffer area shall be planted in accordance with Section 927.F, County Zoning Ordinance.
19. 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.
20. In the event the tower is not used for a period of six months, the tower shall be considered abandoned and must be removed. The owner of the tower is required to remove any abandoned, unused or structurally unsound tower within 90 days of receiving notice requiring removal. The Code Enforcement Coordinator may establish a shorter period of time for removal in the event the tower is determined to be structurally unsound.
21. All notes and calculations as shown on the site plan and contained within the application and attachments are to be considered as a part of this conditional approval.

Advisories:

22. The applicant is advised to consult an expert on wetlands before proceeding with any development.
23. 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.
24. An internal street system most likely will be required by the NC Department of Transportation (NCDOT) to serve any divisions of the parent tract.

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
Code Enforcement (Permits):	Ken Sykes	321-6654
PWC:	Heidi Maly	223-4737
Town of Hope Mills:		424-4555*
Asst. Town Manager/Town Clerk:	Connie Spell	
Chief Building Inspector:	Mike Bailey	
Corp of Engineers (wetlands):	Crystal C. Amschler	(910) 251-4170
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 Hope Mills; once connected, the caller will be directed to the various departments.

BOARD OF ADJUSTMENT

LOCATION OF PROPERTY: SR 2996(Church Street) Hope Mills, NC
OWNER: Forrest T. Hardin and wife, Darlene Hardin
ADDRESS: 203 Fondern Drive, Hope Mills, NC ZIP CODE: 28348
TELEPHONE: HOME 910-308-8248 WORK _____
AGENT: Nexsen Pruet, PLLC/Thomas H. Johnson, Jr.
ADDRESS: 201 Shannon Oaks Circle, Suite 100, Cary , NC 27511
TELEPHONE: HOME 910-616-3100 WORK 919-653-7800

APPLICATION FOR A SPECIFIED/SPECIAL/CONDITIONAL USE PERMIT
As required by the Zoning Ordinance or Code

- A. Parcel Identification Number (PIN #) of subject property: 0414-91-0520
(also known as Tax ID Number or Property Tax ID)
- B. Acreage: 11.094+/- acres Frontage: 770.88 feet Depth: 645+/- feet
- C. Water Provider: N/A
- D. Septage Provider: N/A
- E. Deed Book 5999, Page(s) 838, Cumberland County Registry. (Attach copy of deed of subject property as it appears in Registry).
- F. Existing use of property: Vacant Rural Residential
- G. 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.)

Wireless Telecommunications Tower as shown on the attached Construction Drawings prepared by BC.

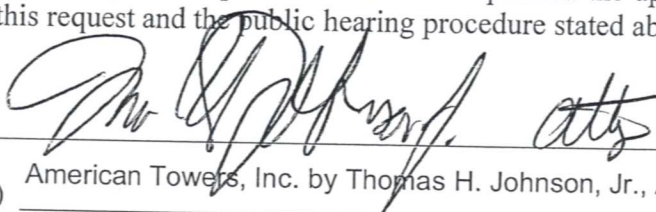
STATEMENT OF ACKNOWLEDGEMENT

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.
- If the Board's action is to deny the matter before them, the course of appeal to their decision will be that of 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 Planning and Inspections Staff has explained the application process and procedures regarding this request and the public hearing procedure stated above.

✓ SIGNATURE OF OWNER(S) _____



PRINTED NAME OF OWNER(S) _____

American Towers, Inc. by Thomas H. Johnson, Jr., Atty

DATE _____

6/8/2010

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

Appointment of Agent

The undersigned Forrest T. Hardin and wife, Darlene Hardin ("Owner") does hereby appoint Nexsen Pruet, PLLC as Owner's exclusive agent for the purpose of petitioning Cumberland County for a special use permit applicable to the property located at SR 2996 (Church Street), Hope Mills, NC 28348 for the location of a wireless telecommunications tower as described in the attached application for special use permit, including the following:

1. To submit the proper applications and the required supplemental materials.
2. To appear at public meetings to give representation and commitments on behalf of the Owner.
3. To act on the Owner's behalf without limitation with regard to any and all things directly or indirectly connected with or arising out of the application for special use permit.

This agency agreement shall continue in effect until written notice of revocation by the Owner is delivered to Cumberland County.

This the 23 day of June, 2010.

Agent's Name, Address & Telephone

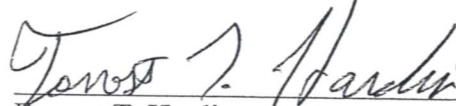
Nexsen Pruet, PLLC

201 Shannon Oaks Circle, Suite 100

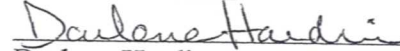
Cary, NC 27511

919-653-7800

Signature of Owner(s)



Forrest T. Hardin



Darlene Hardin

NORTH CAROLINA)
CUMBERLAND COUNTY)

I certify that the following persons personally appeared before me this day, each acknowledging to me that he or she signed the foregoing document: FORREST T. HARDIN and DARLENE HARDIN.

Date: 6/23/2010

Crissie F Burks

Notary Public
Printed Name: Crissie F Burks

My Commission Expires:
6-24-2014

[NOTARIAL STAMP OR SEAL]

