

Members:

George Quigley, Chairman
Ed Donaldson, Vice-Chair
Horace Humphrey
Melree Hubbard Tart
Joseph M. Dykes



Alternates:

Martin J. Locklear
Randy Newsome
William L. Tally
Carrie Tyson-Autry
Yvette Carson

CUMBERLAND COUNTY BOARD OF ADJUSTMENT

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

TENTATIVE AGENDA
JANUARY 19, 2012
7:00 PM

A meeting of the Cumberland County Board of Adjustment is to be held on Thursday, January 19, 2012, 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. SWEAR IN STAFF
3. ADJUSTMENTS TO THE AGENDA
4. APPROVAL OF THE NOVEMBER 17, 2011 MINUTES
5. ABSTENTIONS BY BOARD MEMBERS
6. PUBLIC HEARING DEFERRALS
7. BOARD MEMBER DISCLOSURES
8. POLICY STATEMENT REGARDING APPEAL PROCESS
9. PUBLIC HEARING(S):
 - A. **P10-14-C:** RECONSIDERATION OF A REQUEST FOR A VARIANCE FROM THE COUNTY ZONING ORDINANCE, SECTION 1002, INCIDENTAL USES, SUB-SECTION E. ACCESSORY STRUCTURES 4; FOR A 20 FOOT SETBACK VARIANCE WHERE FIVE FEET IS REQUIRED, ALLOWING AN EXISTING STORAGE BUILDING TO ENCROACH 15 FEET ONTO THE ADJACENT PROPERTY; IN AN R15 RESIDENTIAL DISTRICT ON 1.10+/- ACRES, LOCATED AT 430 SHEP DRIVE; THOMAS AND NANCY POULOS (OWNERS) AND GREEN POND INC (AFFECTED OWNER).

- B. **WS11-01:** REVOCATION OF THE ANDREWS MINI STORAGE DEVELOPMENT'S PREVIOUS APPROVAL FOR UP TO 70% IMPERVIOUS LAND AREA UNDER THE TERMS OF THE COUNTY WATER SUPPLY WATERSHED MANAGEMENT AND PROTECTION ORDINANCE, SECTION 31A-60 FOR HIGH DENSITY DEVELOPMENTS; ZONING: C(P), C(P)/CUD AND R6; TOTAL ACREAGE: 15.74 +/-; LOCATED AT THE SOUTHEAST QUADRANT OF SR 1600 (MCARTHUR ROAD) AND SR 1611 (ANDREWS ROAD), NORTH OF SR 1613 (HONEYCUTT ROAD); OWNERS: DOROTHY M ANDREWS, CREEKWOOD HOLDINGS LLC, JACQUELINE C ANDREWS & ANDREWS STORMWATER OWNER'S ASSOCIATION.
- C. **P11-07-C:** CONSIDERATION OF A REQUEST FOR A VARIANCE FROM THE COUNTY ZONING ORDINANCE, SECTION 1403 SITE PLAN REVIEW, SUBSECTION I., WHICH REQUIRES EXTENSION AND CONNECTION TO PUBLIC SEWER; IN A C2(P) PLANNED SERVICE AND RETAIL DISTRICT ON 1.14+/- ACRES, LOCATED AT 2674 GEORGE OWEN ROAD (SR 1133); SUBMITTED AND OWNED BY SHELBY T. TOWNSEND.
- D. **P11-10-C:** CONSIDERATION OF A SPECIAL USE PERMIT TO ALLOW A DAY CARE FACILITY IN AN R6A RESIDENTIAL DISTRICT ON .46+/- ACRE, LOCATED AT 1425 MCARTHUR ROAD (SR 1600), SUBMITTED BY ANNIE HASAN ON BEHALF OF KALIM HASAN (OWNER).

10. DISCUSSION

11. UPDATE(S)

12. ADJOURNMENT

Members:

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



Alternates:

Martin J. Locklear
Randy Newsome
William Lockett Tally
Carrie Tyson-Autry
Yvette Carson

Cumberland County Board of Adjustment

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

MINUTES
NOVEMBER 17, 2011
7:00 P.M.

Members Present

George Quigley, Chair
Ed Donaldson
Horace Humphrey
Joseph Dykes
Randy Newsome

Absent Members

Melree Hubbard-Tart (excused)

Staff/Others Present

Patricia Speicher
Pier Varner
Melodie Robinson
Joan Fenley
Rick Moorefield (County Attorney)

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

1. ROLL CALL

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

2. CHAIR QUIGLEY SWORE IN THE STAFF

3. ADJUSTMENTS TO THE AGENDA

There were none.

4. APPROVAL OF THE AUGUST 18, 2011 MINUTES

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

5. ABSTENTIONS BY BOARD MEMBERS

There were none.

6. PUBLIC HEARING DEFERRALS

There were no deferrals.

7. BOARD MEMBER DISCLOSURES

There were none.

8. PROCEDURAL REVIEW – COUNTY ATTORNEY RICK MOOREFIELD

MR. MOOREFIELD: The best way to handle this request by staff is to give you an update. You will be getting an email from Patti about the Poulos' versus the Cumberland County Board of Adjustment case that was heard in Superior Court some time ago. We just got the order on October 26, 2011 and it took some time to get the order and get some of the kinks worked out. The Superior Court did order the case be remanded and that you reconsider the matter and award the granted variance that was requested by the Poulos' upon their presentation of evidence showing that the building, which was the subject of this variance, the portion of it that crossed over the property line, had been removed. I didn't handle this matter at Superior Court, but they apparently put into evidence that the portion of the building that had crossed over the property line close to the adjoining property had been removed. The reason the judge in that matter found 39 findings of fact and related to the variance request and sent it back to this Board was because your order was completely void of any findings of fact. It was and the reason for that was the statute that the Superior Court Judge used to review this case has a provision in it that if it is apparent from the record there is not necessity for findings of fact and if you recall those of you involved or who heard that case, the petition put into evidence themselves a survey, they had a boundary with a foot print of the building showing that it encroached over the property line five feet in one section and eight feet in the other section. That appeared to be reasonable evidence as the basis for your decision. That should have gotten into the record, I can't say that it did, I asked that it be put into the record, but I didn't handle the matter and really didn't follow up on it, someone else handled it. I would never have had any bearing on the decision. The best way to go about the eight things in the variance that you have to address when you talk about these eight factors and talk about whether or not they are extraordinary or exceptional conditions pertaining to this particular piece of property in question because of the size, shape or topography; what the judge is looking for and what he did himself in his findings of fact was address each one of those and found that the Board of Adjustment had not adequately addressed any of them although you did interject at least one of them into a finding of fact. The way to make sure that we avoid having to deal with these matters in court, each time you consider a variance, address each one of the eight issues with findings of fact but to just restate what the Ordinance says that you must find. The ordinance says that you must find all the following conditions exist, not one or two of them, but all of them. In most cases all of them are not applicable, but you can certainly find facts to demonstrate how they are going to apply. Keep in mind when you are finding extraordinary or exceptional conditions, such as the first one, pertaining to a particular piece of property because of size, shape or topography that are not applicable to other lands or structures in the same district, find facts that address that condition i.e., in this Poulos' case, you could have found that because it was a very large building and because the surveyor presented evidence that the building encroached onto the adjoining property in a triangular shape. That will be a finding of fact and that condition was applicable to this building in that it did not apply to other structures in this district. That is the kind of thing we are talking about when we say to find facts. Another example in the Poulos' case that should

have been addressed is that special circumstances are not the result of the actions of the applicant. The evidence was the applicant built this building himself; he didn't buy this property with it already there. It was kind of ambiguous as to whether he knew where the property line was but he had gotten it surveyed and it was clearly demonstrated that it crossed the line. So when you talk about finding these conditions, don't restate the conditions that you've got to find, find the facts and if the evidence is not presented that you are looking for in these things, it certainly is the Board's prerogative to ask for that evidence to be presented. We're in kind of a tough situation; one of the the hallmarks of a quasi-judicial hearing when you talk about variances is there has got to be procedural due process afforded to the petitioner. The Board of Adjustment has the right to have an attorney advise it and the role of the County Attorney in these instances has been somewhat ambiguous. It is clear that the County Attorney is going to advise the Board of Adjustment if you ask for advice and if it is deemed necessary with the findings of fact. The County Attorney cannot advise the Board and also help the staff present the case, that would be a violation of the procedure of due process and we have to balance the cost of getting another attorney. We really don't have that many cases where it would be that significant of an issue, but that is just one of the things we have to keep in mind. I think the Poulos' case is the only Board of Adjustment case that I've attended. I will handle this anyway the Board wants at the chairman's direction.

CHAIR QUIGLEY: I specifically remember that case outside everything you are mentioning. I recall vividly in the testimony we received.

MR. MOOREFIELD: Based on my perception of what the evidence was, it was clearly apparent from the record that the building encroached across the property line in a significant amount and it is actually a violation of the Zoning Ordinance. You don't have the authority to grant a variance in that circumstance.

CHAIR QUIGLEY: I recall that was the reason for our finding.

MR. MOOREFIELD: To avoid this sort of situation again, take a little more time. If it avoids these cases from being remanded for any further consideration and save time in the long run and certainly from my office or when we have the case being heard in Superior Court. I suggest you address each one of these eight matters. If you need help in ways to word the findings of fact, that is what we are here for. I'll help you with that. I don't like to interject into stuff like this unless you folks ask for it. It is your Board and I'm just trying to look at it in terms of as a way to circumvent some of the problems we will have if these things go to court. They had already prepared a transcript on August 18, 2011 and the guy had indicated were going to appeal that but they didn't, but I think that one was probably a lot more information. I guess one thing to keep in mind is that the scope or view of a Superior Court Judge in looking at these things when they are appealed in the procedural due process. That is why you ask if there is any potential conflict of interest and if anybody should not hear the matter, whether the decision that you made, if you are acting outside of the statutory authority that is conferred upon, that is typically not an issue, but the thing that usually falls down on us is whether or not it is supported by substantial and competent evidence in view of the entire record and competent evidence. The rules of all the actual evidence don't strictly apply but they sort of do and to the greatest extent you should try to adhere to what those rules are; the same rules apply in court. As long as the

evidence appears to be sufficiently trustworthy and was admitted under circumstances that it was reasonable for you to rely upon it, it is deemed to be competent evidence. One of the things that you hear all the time; you can hear it and you don't have to be rude to people, but you certainly can't base your decision on it. I'm talking about the main witnesses opinion about the use of the property in a particular way will affect the value of other property, is not competent evidence, main witnesses saying the increase in vehicular traffic resulting from a proposed development will propose a danger to public safety is not competent evidence. Matters about which only expert testimony would generally be admissible under the rules of evidence, you don't usually get into that sort of stuff. Although the TigerSwan case which I did see some of the records of appeal prepared and I know there were all kinds of evidence in it about the ground water being contaminated by lead from the firing ranges. That may be a factual or scientific basis for that but the people who presented it were not expert witnesses and it really was not competent. When you talk about technical, scientific evidence; the parties that are going to present need qualified experts to present it. I'm not suggesting that you did, but I'm just saying it happens and it is happening in that case. Those are some of the things to keep in mind. If any one of you has suggestions to make this work better, we certainly want to hear it. If there is anything further I can do to help; just let me know.

CHAIR QUIGLEY: Does anyone have any questions?

MR. DONALDSON: In the Poulos' Case, the one the Superior Court judge sent back, is that now mute since they removed that part of the building?

MR. MOOREFIELD: It was directed to be sent back for the Board to receive evidence as to whether or not it has been removed. I wasn't at the hearing, but my understanding is that there was evidence presented. It is not finding of fact, just a remand for you to hear....

MR. DONALDSON: I thought I heard you say that he had already removed that portion of the building that was encroaching.

CHAIR QUIGLEY: That portion of the building was not removed when we heard the case.

MR. DONALDSON: I'm talking about since that time.

MR. MOOREFIELD: Let me see if I can find the exact actual findings here. It is my understanding that was put into evidence; I'm not sure exactly how it was done because it would have been new evidence. The order is that the matter is remanded back to the Board of Adjustment and that the petition shall show evidence that the petitioners have removed that portion of the subject building being located on the part belonging to Green Pond. The Board of Adjustment shall grant the subject variance requested by the petitioners entitling the petitioners to a zero lot line. If there is no evidence that the building has actually been removed off the lot line, that is going to be another issue. My understanding is that was placed into evidence, I don't know how the judge received the new evidence on this case, but this order indicates that you are to receive evidence on it and until we get that evidence, that will be scheduled in January or February.

9. APPROVAL OF THE 2012 DEADLINE/MEETING SCHEDULE

MR. HUMPHREY: I motion to approve.

MR. DYKES: I second the motion.

CHAIR QUIGLEY: All in favor of approving the 2012 Deadline/Meeting Schedule signify by saying aye.

The vote was unanimous.

10. POLICY STATEMENTS REGARDING APPEAL PROCESS

Mrs. Varner read the Board's policy regarding the appeal process to the audience.

11. PUBLIC HEARING(S)

Opened Public Hearing

- **P11-06-C:** CONSIDERATION OF A REQUEST FOR A VARIANCE FROM THE COUNTY ZONING ORDINANCE, SECTION 1104, DISTRICT DIMENSIONAL PROVISIONS, TO ALLOW A FRONT YARD SETBACK OF 19 FEET WHERE 25 FEET IS REQUIRED FOR A MANUFACTURED HOME IN A R6A RESIDENTIAL DISTRICT ON 0.15+/- ACRES, LOCATED AT 2634 DRIFTWOOD DRIVE (SR 3611); SUBMITTED AND OWNED BY GILBERT L. HALL.

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

CHAIR QUIGLEY: How did this action come forward, was there a complaint?

MRS. VARNER: No one complained. The applicant came to our office to request this variance because he is replacing an existing manufactured home for this new one he is proposing on the site plan (pointing to the Power Point slide). The new manufactured home is a little bit larger than the old one and he is having difficulty meeting the setbacks.

CHAIR QUIGLEY: So there was no complaint about the citing of the original home?

MRS. VARNER: No sir, no complaints. He is only having difficulty meeting the setbacks on the front.

CHAIR QUIGLEY: Is this a rental location?

MRS. VARNER: I don't know sir, you can ask the applicant.

MS. SPEICHER: Excuse me Chair, just for the Board's knowledge, I would like to make sure they know that the area was initially zoned in November 1975; however, the subdivision and the lots were created on June 29, 1970. So the lots were existing prior to the current zoning.

CHAIR QUIGLEY: So essentially the standards for citing a mobile or modular home on a lot like that were established many years ago.

MS. SPEICHER: Yes sir.

CHAIR QUIGLEY: We do have a witness signed up to speak in favor of this action. Mr. Gilbert Hall, would you please come forward to the lectern.

CHAIR QUIGLEY: Swore in Gilbert Hall.

MR. HALL: My name is Gilbert Hall, 8142 King Road, Fayetteville.

CHAIR QUIGLEY: What is your interest in this action?

MR. HALL: I own this property. I just bought this not too long ago. I also have some pictures of some homes in the neighbor like the one I want to put on the lot. The pictures show the lot next door and across the street that have mobile homes on it the same way. One picture you have is the mobile home I want to put on the lot and the other picture shows the mobile home right next door to the lot and the other one is across the street and have mobile homes on them the same way.

CHAIR QUIGLEY: I've numbered them Exhibits 1, 2 & 3.

MR. HALL: I talked to the neighbors and nobody had any problems with anything I was doing there.

CHAIR QUIGLEY: What's on this lot now?

MR. HALL: That old mobile home. I want to take it off and put this nicer one there.

MR. DONALDSON: What year is the old one?

MR. HALL: I'm not sure, but I think it is a 1975.

MR. HUMPHREY: Have you already purchased the new mobile home that you plan to put there?

MR. HALL: Yes, I have and that is when I found out that I have the problem. I thought I could put it there because the lot next door has one on it. When I went to get the permit, I found out there was a problem.

MR. HUMPHREY: Where is that mobile home now?

MR. HALL: I've got it parked somewhere? One of those pictures is it.

MR. DONALDSON: The mobile home that you say is next door that is just like it, what size is it?

MR. HALL: A 14' x 76'.

MR. DONALDSON: The lot is the same size?

MR. HALL: The lot size is the same and everything.

MR. DONALDSON: Is there a variance on the other one next to it?

MRS. VARNER: No sir.

MS. SPEICHER: Mrs. Donaldson, we have a ten year case history of all surrounding property as shown on the sketch map and we have no record of any variance and also we wouldn't have record of any permits because they are only kept for six years.

MR. DONALDSON: So, somebody could have gotten a variance for that one since it would have been inside the setoff setback if it was 76 feet?

MS. SPEICHER: That could be a possibility. I wouldn't know that.

CHAIR QUIGLEY: This community is a mobile home community, right?

MR. HALL: Yes, it is a mobile home park.

MR. DONALDSON: What is the staff's position on this request?

MS. SPEICHER: We ordinarily do not issue a recommendation either for or against a variance, but one of the eight criteria that has to be made for a variance is that it cannot be based on the adjacent nonconformities, whatever your decision.

CHAIR QUIGLEY: Are there any other questions for Mr. Hall? Thank you, Mr. Hall. Is there anyone else that wanted to speak in regards to this case?

Public Hearing Closed

CHAIR QUIGLEY: I don't think there is anything extraordinary when we look at the variance requirements concerning the topography or the shape of that land. It appears to be consistent for the other lots in that development. Granting the variance will not confer upon the applicant any special privileges denied to any other resident in the district in which the property is located. That is conditional. What we have is if there are other nonconforming and we approve this one here then essentially we are opening it up to all of the other properties should someone bring the action forward to grant their status also. Any other comments on this?

MS. SPEICHER: Maybe I wasn't clear, but that is not what I meant for paragraph #2.

CHAIR QUIGLEY: I understand that, but that was introduced by the testimony. Are there any comments?

MR. HUMPHREY: I'm looking at the eight criteria and if the property that is already sitting there, that is adjacent with the same type of thing, it is difficult for me to say why this couldn't happen also. I was looking through the eight things and I can agree with just about all of them, except maybe one, but if the other three properties have the same condition, why would we deny this applicant that same right?

CHAIR QUIGLEY: Is there any real reason why we shouldn't? Is there something that detracts from the neighborhood, less of a property exposure?

MR. DONALDSON: I go back to the time from being a retired judge. The way I would do it is find out if we would do it or not, then you could always make the findings to support it or not support it. It is easier to say yes or no and then support it with the findings you need to find instead of going through and finding all the findings. Technically, that's the way you are supposed to do it. As a practical matter, it is much easier to find what you want to support yea or nae.

CHAIR QUIGLEY: What we're looking at is the exception we grant is going to be paragraph #2.

MR. MOOREFIELD: Mr. Chairman, let me suggest in line of what Mr. Donaldson said, it does not limit it to just about the lot, but also the structure itself. This is a 76 foot mobile home and he does not say what his old mobile home was, but he has said that the one beside it is a 76 foot mobile home. This looks like a closed case if you guys have an inclination as to what way you want to go, it can be addressed. There is more leeway here. It's the lot on the structure; I'm assuming that what he had there was about 76 foot long. In his testimony, the only evidence is that the trailer beside it is 76 foot long and there is no evidence that there is a variance for that or one needed for that. All the lots are the same size. Do you have there that all the lots are 100 feet?

MS. SPEICHER: All of the lots on the internal street, not on the curb or the corner.

MR. MOOREFIELD: I'm suggesting as Mr. Donaldson said; if you have an inclination one way or the other you can probably find facts to substantiate it.

CHAIR QUIGLEY: Mr. Newsome, do you have any comments?

MR. NEWSOME: I think based on the evidence presented; I'm in favor of granting the variance.

MR. DYKES: I agree with what Mr. Newsome said.

MR. DONALDSON: I'm for granting the variance also.

CHAIR QUIGLEY: It appears if we take a look at paragraph one, there is nothing extraordinary about the topography of that particular lot as opposed to the others in the development. Paragraph #2 is such that it would appear that we're granting a Special Use, but that's not in contradiction to what is apparently a mobile home park and with no one complaining about this longer trailer being placed there...

MR. MOOREFIELD: Mr. Chairman, I suggest with respect too that you find that the evidence is that there is a 76 foot mobile home on the lot adjacent to it.

CHAIR QUIGLEY: Yes, essentially that is correct, that there are already probably longer trailers located in this development and one adjacent to it, in fact. I think that in paragraph #3 if we didn't grant it, it would deprive the applicant of the rights that apparently others in the development may already be exercising.

MR. MOOREFIELD: Again, that's the conclusion we're trying to get to. The fact would be the same findings you just found, that there is a 76 foot mobile home located on the lot next to it.

CHAIR QUIGLEY: Exactly.

MR. DONALDSON: Also, the lots are equal in size of 100 feet within the subdivision.

CHAIR QUIGLEY: The granting of the variance will be in harmony with the purpose and the intent of the Ordinance is to have a uniform looking development. In paragraph #5, this is not the result of actions of the applicant who purchased a newer mobile home.

MR. MOOREFIELD: It would also behoove you to find that this subdivision was made prior to the adoption of the subdivision ordinance in 1970.

CHAIR QUIGLEY: The variance requested is the minimum necessary in order to satisfy what is required. Based on staff's information to us, it does not appear the variance would be a special exception for this particular lot that would not in the future be available to others. I don't think it is the Board's opinion that the nonconforming use of neighboring land would be a reason for approval of this but we aren't considering it.

MR. MOOREFIELD: Mr. Chairman, I don't think there was any evidence that there was nonconforming use. There was no indication of a variance. His testimony was that there is another 76 foot mobile home on the lot adjacent to it.

CHAIR QUIGLEY: We have not measured that.

MS. SPEICHER: Mr. Chairman, if we could go back to #1.

CHAIR QUIGLEY: In paragraph #1, what we heard and observed and what has been presented is that all of the properties are essentially the same dimensions and there is nothing exceptional in that particular lot relative to this action.

CHAIR QUIGLEY: I'll ask for a motion.

MR. DONALDSON: Mr. Chairman, based on those findings and conclusions I move that we grant the variance.

MR. NEWSOME: I second the motion.

CHAIR QUIGLEY: All in favor of granting the variance signify by saying aye.

	IN FAVOR	OPPOSED
QUIGLEY	YES	None
DONALDSON	YES	
NEWSOME	YES	
DYKES	YES	
HUMPHREY	YES	

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:**

The lots within this development were approved and recorded prior to being subject to zoning. With the existing lot sizes, the lots would be unbuildable to any residential zoning setback for the typical modern single wide manufactured homes;

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:**

There are already trailers of the same size and longer located in this development and the lots within the subdivision are equal size and would not grant special privileges that are not available to other people;

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:**

There is already a 76 foot long mobile home located next to it and the lots within the subdivision are basically the same size of 100 feet;

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

The granting of the variance will allow this lot to be in harmony with the appearance of the neighborhood, and the purpose and intent of the ordinance is to have a uniform looking development;

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:

This is not the result of actions of the applicant who purchased a newer mobile. This subdivision was created in 1970 prior to the adoption of the zoning ordinance;

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**:

The variance requested is the minimum necessary in order to allow for a more modern home to be on the property that is consistent with other placed homes in the subdivision;

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**:

Based on staffs' information provided to us it does not appear the variance would be a special exception for this particular lot, and that it most likely would be available to others in the future in similar situations with similar facts and;

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:

This decision was not based on the existence of any nonconformity in the area;

THEREFORE, on the basis of all the foregoing, **IT IS ORDERED** that the application for a **VARIANCE** be **GRANTED** subject to the following conditions:

1. All information contained in the application;
2. All development shall be in accordance with the site plan as submitted unless otherwise specified below;
3. All other provisions of the County Zoning Ordinance shall be complied with;
4. All relevant Federal, State, and local regulations are complied with;
5. The applicant is responsible for obtaining all required permits prior to proceeding with any development on that lot.

Opened Public Hearing

- **P11-08-C:** CONSIDERATION OF A SPECIAL USE PERMIT TO ALLOW A COMMUNITY CENTER IN A RR RURAL RESIDENTIAL DISTRICT ON 5.42+/- ACRES, LOCATED AT 6781 CAMDEN ROAD (SR 1003), SUBMITTED BY CAMDEN CHRISTIAN FELLOWSHIP INC (PREVIOUSLY IDENTIFIED AS L'VIE WORLD OUTREACH CENTER, INCORPORATED) (OWNER) AND CHAD PULLINS ON BEHALF OF CROSSROADS UNITED METHODIST CHURCH.

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

CHAIR QUIGLEY: Swore in Chad Pullins.

MR. PULLINS: My name is Chad Pullins, 3416 Lancers Drive, Fayetteville, NC 28306. I am the lead pastor of Crossroads United Methodist Church. We are a group of people, single moms, business owners, medical professionals, real estate agents, military officers, enlisted military, engineers, teachers, and construction workers. We are a three year young church out in southwest Cumberland County. Most importantly, we are a group of people that share a common vision and deep concern to make our community a better place. Tonight is a big moment for us and you can tell from the folks that showed up tonight. What is important is we want to do everything we can to help southwest Cumberland County thrive. For us, church is not a building, church is people. The second aspect for us is we exist for the community. Our heart is not to be the best church in town; we want to be the best church for our community. It really doesn't make any sense for us to build a church building, but it does make since for us to build a building, develop a piece of property that would be an asset for our community and the people that live in southwest Cumberland County. What we would like to do with the property, it is not going to endanger the public health or safety of the residents there. In fact, it is going to

add to the public health of our community. It is going to create a space for people to gather in the community where relationships can be fostered, nurtured and created. We have agreed to all the conditions posed to us by the County in regards to the property. The current building and property as you've probably saw in the pictures is a little bit of an eye sore to the community right now. When we get done with the property, it is going to be transformed into a place that will enhance the value of adjoining and abutting properties. It will be a polished contemporary building that will set the tone, we believe, for that whole community. Upon completion of the building, it will be in harmony with the area and it will add to the quality of life of all the residents there in southwest Cumberland County. The people known as Crossroads United Methodist Church are committed to fund the project, about a million dollars, specifically so the people in our community might have a better quality of life. Our desire is to be a catalyst in the profit and the non for profit environment of how people can come together, pull their resources around a common vision and work together to really transform their community. Our hope is that we would make such a positive difference for every citizen and that our region would be a better place because we exist out there. Thanks so much for your time, we appreciate it.

CHAIR QUIGLEY: Does anyone have any questions for Mr. Pullins?

MR. HUMPHRY: The majority of people here are with this project?

MR. PULLINS: Yes. [Mr. Pullins asked those in the audience who came to support this case to stand]

CHAIR QUIGLEY: Mr. Pullins, thank you very much. Is there anyone else that wanted to speak on this action?

Public Hearing Closed

CHAIR QUIGLEY: This is a Special Use Permit and there are four case facts to be determined.

1. The use will not materially endanger the public health or safety if located according to the plan submitted and proposed;

2. The use meets all required conditions and specifications;

The use meets all required conditions and specifications for a house of worship.

3. The use will maintain or enhance the value of adjoining or abutting properties;

We have heard no testimony that disputes that. No testimony was presented that would indicate to the contrary that property values would not be enhanced or maintained.

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 Land Use Plan, either comprehensive or a detailed area plan.

The location and character of these if developed according to the plan submitted and recommended would be in harmony with the rest of the properties in the area.

Having heard all of those case facts, do I have a motion?

MR. NEWSOME: Mr. Chairman, based on the finding and discussion, I recommend we grant the Special Use Permit.

MR. DONALDSON: I second it.

CHAIR QUIGLEY: All in favor signify by saying aye.

The motion passed unanimously. There was no opposition.

IN FAVOR	OPPOSED	
QUIGLEY	YES	None
DONALDSON	YES	
NEWSOME	YES	
DYKES	YES	
HUMPHREY	YES	

Opened Public Hearing

- **P10-09-C:** CONSIDERATION OF A REQUEST FOR A VARIANCE FROM THE COUNTY ZONING ORDINANCE, SECTION 1104, DISTRICT DIMENSIONAL PROVISIONS; TO ALLOW A FRONT YARD SETBACK OF 30 FEET WHERE 100 FEET IS REQUIRED, A SIDE YARD SETBACK OF 15 FEET WHERE 50 FEET IS REQUIRED, AND A REAR YARD SETBACK OF 16.74 FEET WHERE 50 FEET IS REQUIRED IN A M(P) PLANNED INDUSTRIAL DISTRICT ON 0.55+/- ACRES; LOCATED AT 1441 WILMINGTON HWY (SR 2337), SUBMITTED BY VIRGINIA WILLIAMS (OWNER) AND WILLIAM SKIPPER.

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

MR. DONALDSON: Could you go back a couple of photos. Is the trailer already out there?

CHAIR QUIGLEY: How did we become aware of this situation?

MRS. VARNER: The applicant came to obtain a permit and that is how he found out about the setback to place his trailer. The applicant can explain what happened and how he found out why he needs to go through the variance.

CHAIR QUIGLEY: Does anyone else want to look through the pictures?

CHAIR QUIGLEY: Swore in Mike Adams.

MR. ADAMS: My name is Mike Adams, 203 North Virginia Avenue, Fayetteville, NC 28305. I am the land surveyor. I surveyed the land and actually drew the site plan that you see. I am the owner of M.A.P.S Surveying, Inc. which is a local land surveying company here in Fayetteville. I'm here to represent Mr. Skipper in an effort to help present the case for a variance on this property. The first thing I wanted to share is about the form that we had allowed for the variance, Mr. Skipper and Mrs. Virginia Williams still have not signed the form. Mrs. Williams is not present and there is a reason for that. She was required to sign the form when we submitted it last month because at that time she was the current owner. Mr. Skipper resumed the process of purchasing it from her. The amount of time it took to get the legal issues resolved was unfortunate and Mrs. Williams' husband died in a plane crash. Mr. Skipper is in the process of trying to buy that and to get things straightened out. I just wanted to clarify that. That is why Mrs. Williams is not here, she is not speaking. Since that time we filed, in fact I think it was probably a week after Mr. Skipper obtained his deed and got the deed transfer finalized so the property is now completely sold in Mr. Skipper's name. There are a few reasons why we are asking for this variance. I realize when you read that thing on paper it looks like we are shooting for the moon, asking for a lot of footage to be variances. The main reason is with the current zoning, the setbacks make the property unusable. I have handouts I would like to give. (Exhibit 1 – shows the current setbacks and zoning and how they fit on the property). With the current property being zoned M(P), you can see there are no buildable areas with the setbacks that we currently have. It may be a little confusing. The left side setback comes five feet from the right side property line. We have fifty from the left and five feet from the property line on the right and vice versa with the right. The front larger area you see up front is rendered unusable due to the front setback being 100 feet. The property was officially created in October 1949 and actually was created as two separate parcels at that time. These two parcels were treated and deeded as separate pieces until Sep 2010 when Mr. & Mrs. Williams purchased the property and the two parcels were combined into one legal description. Mr. Skipper's recent deed also reflects that as being one actual piece. I have another handout that shows the separate pieces. (Exhibit 2 – shows how the lot was created in 1949 as two separate pieces.) In the initial zoning book these two properties occurred on March 15, 1979 well after the two parcels were created. Our strongest reason for this variance is by virtue of the initial zoning the property was rendered unusable at that time and actually had remained so ever since 1979. To emphasize the impact of the initial zoning of the property even more, if both parcels were still treated separately they both would be even more unusable than they are together as one piece. Another factor affecting our property is that DOT has taken 20 feet, which you can see on the original deed extended into the current right of way across the front of the property. This pushed our current front setback 20 feet back into the lot. We did not pursue asking for rezoning on the property to get a zoning to make the property reusable, due to the fact that all the properties are basically zoned M(P) and we didn't want to risk losing our zoning case due to spot zoning. We felt it would not get approved. Mr. Skipper runs a waste removal company and would like to use the property strictly as a meeting place for his employees for the mornings and afternoons; a place to get out of the cold and get a cup of coffee. This site will not be used as a permanent office for operations. He will still maintain that out of his home. Mr. Skipper has already done extensive site repairs; you can see from the pictures and has installed most of the fencing. The entire site will be fenced in and his trucks will be kept there. Since the nature of the business is waste collection during the day, his guys will be out during

the day collecting trash and the site will most likely be vacant during the days and used to store his trucks at the night. Most of Mr. & Mrs. Skipper's clients take care of paying for their services by mail, but he would like to have the option if a customer chooses to come to the site to pay their bill. It would probably be a rare occasion if that happens. This is not going to be a permanent office; it is there for the employees to come into in the morning while the trucks are warming up; a place to get a cup of coffee. That's about all I've got and I can answer any questions.

CHAIR QUIGLEY: This lends itself to a lot of questions. If you are going to use this as a place for people to congregate, even just for people to warm up, is it going to have a bathroom facility in it and if so how are you going to handle that?

MR. ADAMS: It has a port-a-john, you can see it in the pictures and that will be the only bathroom facility on this site.

CHAIR QUIGLEY: There is no running water to this location?

MR. ADAMS: No sir.

CHAIR QUIGLEY: Are there any questions for Mr. Adams?

MR. DYKES: How many employees do you have?

MRS. VARNER: Excuse me Mr. Quigley, this is just a request for a variance, I would like to remind you that the use is a permitted use in this zoning district.

CHAIR QUIGLEY: I understand, we were just curious.

MR. ADAMS: There are six employees.

MR. DONALDSON: The trailer that is on there now that we see in this picture, how long has it been there?

MR. ADAMS: About a week or two. It is not set up. It is still sitting on the wheels. He has not hooked it up; he has been waiting to see.

MS. SPEICHER: It may be better if we take these questions to the applicant rather than to his representative.

MRS. VARNER: Mr. Chairman, regarding your question about if there is a bathroom? We are addressing that issue in one of the conditions from Case #11-118 where they can use a port-a-john at the location. Those conditions are for the permitted use case. We have not attached those conditions in the packet because that is related to the site plan review case, not to the variance. Would you like to see the conditions, Mr. Quigley? It is addressed in condition #3.

CHAIR QUIGLEY: Are you going to introduce it as evidence? This is introduced as Exhibit 3.

MR. ADAMS: We also have more current pictures than what you see here.

MRS. VARNER: Mr. Chairman, there are also more pictures that the applicant is providing.

CHAIR QUIGLEY: How many?

MRS. VARNER: We have six pictures.

MR. DONALDSON: What is the name of this company?

MR. ADAMS: All American Sanitation.

CHAIR QUIGLEY: The photos are marked Exhibits 4, 5, 6, 7, 8, 9 & 10. Essentially Mr. Adams is that you use the property to park the refuge trucks?

MR. ADAMS: Yes sir.

CHAIR QUIGLEY: Are there any questions for Mr. Adams?

CHAIR QUIGLEY: Swore in Edward Cromartie.

MR. CROMARTIE: My name is Edward Earl Cromartie, Sr. and just for the record this is my wife Hilda Cromartie. We live at 313 West James Street, Mt. Olive as our primary residence and we have a vacation home here in Cumberland County at 129 Ham Road. I'm the owner with my wife of this piece of property. It is adjoined with the subject property to the right.

CHAIR QUIGLEY: It adjoins to the subject property to the north.

MR. CROMARTIE: I'm not here to speak against it. I congratulate them for wanting to put a business there and I'm glad that the surveyor is here. The reason I am here tonight is to ensure the integrity of my property. This property was purchased by my mother and my teenager brother and my teenage self in the early 1960's. It has family value and will remain so. My wife and I have children and grandchildren and I've paid taxes on this property for all of this time because I intended to keep it. Therefore you can understand my interest in making sure the integrity of my property is maintained. When I come to Cumberland County, I don't necessarily come down Highway 87, but I have relatives who travel that road all the time and one of my relatives asked me if I had put in a business on my property. I knew that if everything was done according to plan, nothing would be on my property, but in all their excitement, they insisted that I go immediately there to see and I did. I slowed up and looked and decided not to stop, but I came to the Planning Board. I have some questions that I want answered. In 1981, I have a copy of it, I got accepted to put a barber shop in and that is my trade, but I haven't practiced that in a long time. We retired from our education careers in Wayne County and live there now, but I still somewhat acknowledge that trade. Back in those years that I taught at Westover Senior High School, I said I've got a place to locate a barber shop and Ms. Jackson signed it and she put a line over it that said "until" so she told me I

would have grandfather opportunity if I ever decided to do it. I'm not here to argue that here tonight. I laid the groundwork to make sure that my property maintains its integrity. I'm glad the surveyor is here because the north side of my lot has a ditch there and I see where someone has dug five feet over onto that property and I want to make sure no one would be coming onto my property. My wife and I want to make sure that my grandson who is now aged five, won't have any problem years later should he decide to come down to use this property. I served on a couple of boards back in Wayne County and what did bring some excitement to me when I came down is I cannot tell that they had actually been out to look at that, those homes had already been put on there. I did not hear anything about it and this is not to be argumentative, but I would have like to have heard something about this prior to my coming down here. When I came to inquire about it, I then found out there was going to be a hearing on November 17th. I came down in to get my variance 1981, we talked about what I had to do to build the land up to put a building up. I was told you have to be careful how much you want to build that land up because that throws it off for the other person. I would want the Planning Department to who prepared enough activity that they would know whether or not in the land preparation that whatever they did on that lot would not render mine useless. I know it is already done, but I'm saying that I know after having lived there a long time and not to go too far back but around 1960 my mother had a talk with the County about draining that property and it never happened until all of the residents moved out. Then it got drained. That was prior to any drains being done for any industry. We were always protesting with the County about draining that area. I know certain things happened to the adjoining property. That water has got to go some place. I just want to make sure my property is not rendered useless by whatever land perks that occur down there. I don't know what it is, but I'm here tonight to raise that question. It is not to prevent or discourage use of it, only to make sure that if my grandson decides to come back to build a barber shop, the land is not rendered useless.

CHAIR QUIGLEY: I'm going to interrupt for a second. You are welcomed to say what you want to say if it is germane to what we are discussing. Right now, you are in an area that we really have no control over. It is not something that we can act on because it doesn't pertain to what we are talking about which is the location of this particular location of this trailer on that property. I think your complaint justifiably should go to the Planning Department. I'm asking this question to the staff.

MR. CROMARTIE: I would not be here tonight if I had gotten earlier notification that something like this was going to happen next to my property. I did not know any other way to bring it to your attention other than to show up here tonight. I knew sir that you would tell me that because you are dealing specifically with the variance and the setback. I had no other choice but to bring the other items to your attention in order to make them a part of the official record.

CHAIR QUIGLEY: The conditions that you just spoke of are addressed in this other action.

MS. SPEICHER: He was provided a copy of those today when he contacted me.

MR. DONALDSON: Mr. Cromartie, as I understand it, there are two main issues that you are worried about tonight. One is your property line and two is whatever property work is done on

his property, doesn't affect your property. I'm not going to give you legal advice, even though I am a retired judge. On the property line, if you have an issue with that you should hire your own surveyor. They will go out and check it and if there is an issue you can deal with the land owner himself or hire an attorney to take care of it. The second it is basically the same thing, if there is any damage to your property from what they did, you can always hire an attorney and the attorney can get an emergency restraining order or an injunction. Those are issues beyond what this board can do. Those are your two basic issues that you are concerned about and those are your two basic remedies. If you have a question about the property line I would strongly suggest that you get someone to survey it and tell you yes, it is correct or no, it is not.

MR. CROMARTIE: I looked at the surveyor's work and as long as what is supposed to be my portion of that driveway stays mine. I just thought that if you will, to make sure my concern was officially documented tonight rather than leave it for some future date.

CHAIR QUIGLEY: We understand and what I'm referring to is Mr. Donaldson's referring you to the fact that the Planning and Inspections Department does have a permit requirement that outlines what you just mentioned about things that have to be accomplished on the adjoining property to yours. I think it is pretty much covered.

MRS. VARNER: Mr. Chairman, to answer Mr. Cromartie's question concerning about why he wasn't notified. When the use is permitted in a zoning district, it doesn't require us to notify the neighbors. The reason he was notified for the Board of Adjustment case is because it is a public hearing. That is the difference Mr. Cromartie.

CHAIR QUIGLEY: He did receive notification?

MRS. VARNER: For the Board of Adjustment case, yes.

CHAIR QUIGLEY: We appreciate your comments pertaining to the issue. Does the staff have any comments?

MRS. VARNER: We cannot provide a recommendation, Mr. Quigley.

CHAIR QUIGLEY: We understand. Does anyone have any questions for Mr. Cromartie or want to talk to Mr. Adams again? Mr. Adams, do you have any comments that you want to make?

MR. ADAMS: I just want to emphasize our main reasons for the variance. When our lot was zoned because of that zoning since 1979, it has been unusable. I just want to make sure to emphasize that.

MR. DONALDSON: On the left and right side of Mr. Cromartie's land and the land on the other side, what is the nature of it, is it just wooded? No houses? Isn't the County dump located near there?

CHAIR QUIGLEY: No. This is south Wilmington.

MRS. VARNER: Mr. Donaldson, the closest residence is located approximately 280 feet from the subject property.

Public Hearing Closed

CHAIR QUIGLEY: This is a variance. Are there any comments for paragraph #1? We have an extraordinary condition in that it is a very narrow property.

MR. DONALDSON: Based upon the size and present setbacks it is unusual.

CHAIR QUIGLEY: With the size of the property and the setbacks, it would be unusual in a normal situation. Paragraph #2, is there anything that granting the variance would deny other people in the area similar use?

MR. MOOREFIELD: The fact that you found it unusable with the topography and the size takes care of all of that. If you strictly follow the Ordinance, no use could be made of it.

CHAIR QUIGLEY: In paragraph #3, if we literally interpret the provisions of the Ordinance, nothing could be done with the property. In paragraph #4, is there any reason to suspect that it would not be in harmony with other uses in the area in that particular part of town? In paragraph #5, what is being requested is not a result of the actions of the applicant. They are living with the property as it exists.

MS. SPEICHER: The County initiated the zoning of the property to M(P). Can we add that to Number 5?

CHAIR QUIGLEY: Yes.

CHAIR QUIGLEY: The requested variances are the minimum variances that grant them use. In paragraph #6, this is the minimum variance to make the property usable in some form. This variance is not giving them permission to use the property in any way that is not already allowed in that zoning configuration. There doesn't appear to be any nonconforming use of neighboring properties. No evidence of that has been presented. Based on those facts, do I have a motion?

MR. DONALDSON: I motion we grant the variance.

MR. DYKES: I second.

CHAIR QUIGLEY: All in favor of granting the variance signify by saying aye.

The motion passed unanimously. There was no opposition.

IN FAVOR	OPPOSED	
QUIGLEY	YES	None
DONALDSON	YES	
NEWSOME	YES	
DYKES	YES	
HUMPHREY	YES	

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 have an extraordinary condition based upon the size of the lot and the present M(P) zoning district setbacks. The lot would be unbuildable to any non-residential use under the M(P) zoning classification because the required setbacks overlap and due to the right-of-way taking;

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**:

Granting the variance will not confer upon the applicant special privileges denied to others. No use could be made of this property if the zoning ordinance were strictly followed due to the property's unusual size, topography and unrealistic setbacks;

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**:

We literally interpreted the provisions of the zoning ordinance; no structure could be placed on the property without requiring a variance for one or more M(P) zoning district setbacks;

4. It is the Board's **CONCLUSION** that, if granted, the requested variance will be in harmony with the purpose and intent of this Ordinance and will not be injurious to the neighborhood or to

the general welfare. This finding is based on all of the **CONDITIONS** listed above, as well as the following:

The granting of the variance will be in harmony with other uses in this neighborhood and with the intent of the zoning ordinance; the immediate adjacent lot will also be burdened when developed by the same standards;

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:

This is not the result of the actions of the applicant. The County initiated the zoning of this area to M(P) in March 1979 after creation of subject property and the right-of-way taking;

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**:

With the relatively small structure and in the current location, this is the minimum variance to make the property usable in some form;

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**:

This variance is not giving them permission to use the property in any way that is not already allowed in that zoning classification and does not change the district boundaries;
and

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**:

This decision was not based on the existence of any nonconformity in the area;

THEREFORE, on the basis of all the foregoing, **IT IS ORDERED** that the application for a **VARIANCE** be **GRANTED** subject to the following conditions:

1. All information contained in the application;
2. All development shall be in accordance with the site plan as submitted unless otherwise specified below;
3. All other provisions of the County Zoning Ordinance shall be complied with;
4. All relevant Federal, State, and local regulations are complied with;
5. The applicant is responsible for obtaining all required permits prior to proceeding with any development on that lot.

12. DISCUSSION:

There was none.

13. UPDATE(S):

There were none.

14. ADJOURNMENT:

The meeting adjourned at 8:55 pm. Motioned by Mr. Humphrey and seconded by Mr. Donaldson.

P10-14-C
SITE PROFILE

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

Site Information:

Frontage: 110.00'+/- on Shep Drive (SR 2534)

Depth: 290.00'+/-

Jurisdiction: Cumberland County

Adjacent Property: No

Current Use: Residential structure

Initial Zoning: R15 - October 28, 1997 (Area 15B)

Nonconformities: None

Zoning Violation(s): Yes, Case # ZN5957-2009 received on 05/11/2009 for erecting an accessory structure violating the set back limits on the rear and side property lines

Surrounding Zoning: North, West, and East: R15; South: A1A, RR, AND R15

Surrounding Land Use: Residential, woodlands and wetlands

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: Well/Septic

Soil Limitations: None

Subdivision/Site Plan: In the event property lines are adjusted, recombination plat required

School Capacity/Enrolled: Raleigh Road Elementary: 220/244; Long Hill Elementary: 460/485; Pine Forest Middle: 820/953; Pine Forest High: 1750/1525

Average Daily Traffic Count (2008): 3,600 on SR 1607 (Elliot Bridge Road)

RLUAC & POPE US Army Field: No objection

Highway Plan: Elliot Bridge Road is identified in the Highway Plan as a Major Thoroughfare. This proposal calls for widening to a multi-lane facility (4 lane divide). Road improvements are not included in the 2009-2015 MTIP. This is a Priority Two Project under the LRTP

Notes:

• **County Zoning Ordinance Reference: Section 1002, Incidental Uses, Sub-section E:**

Accessory Structures-4: Accessory structures shall not be erected in any required front or side yard or within 20 feet of any side street line, or within five feet of any lot line not a street line, or within five feet of any accessory building or other building. In no case, however, shall an accessory building be placed closer to a street than the minimum setback requirements for a principal structure. Any accessory structure greater than 700 square feet in floor area must be located inside the building envelope. (Amd. 11-20-06; Amd. 02-19-08)

(Underlined provision was not in effect at the time the permit was obtained on July 18, 2006.)

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.



R15

R15

R15

R15

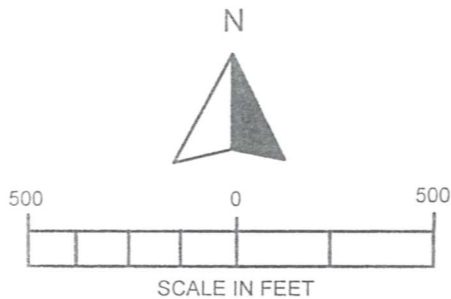
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R15

A1A

A1A

BOARD OF ADJUSTMENT VARIANCE



ACREAGE: 1.10 AC.+/-

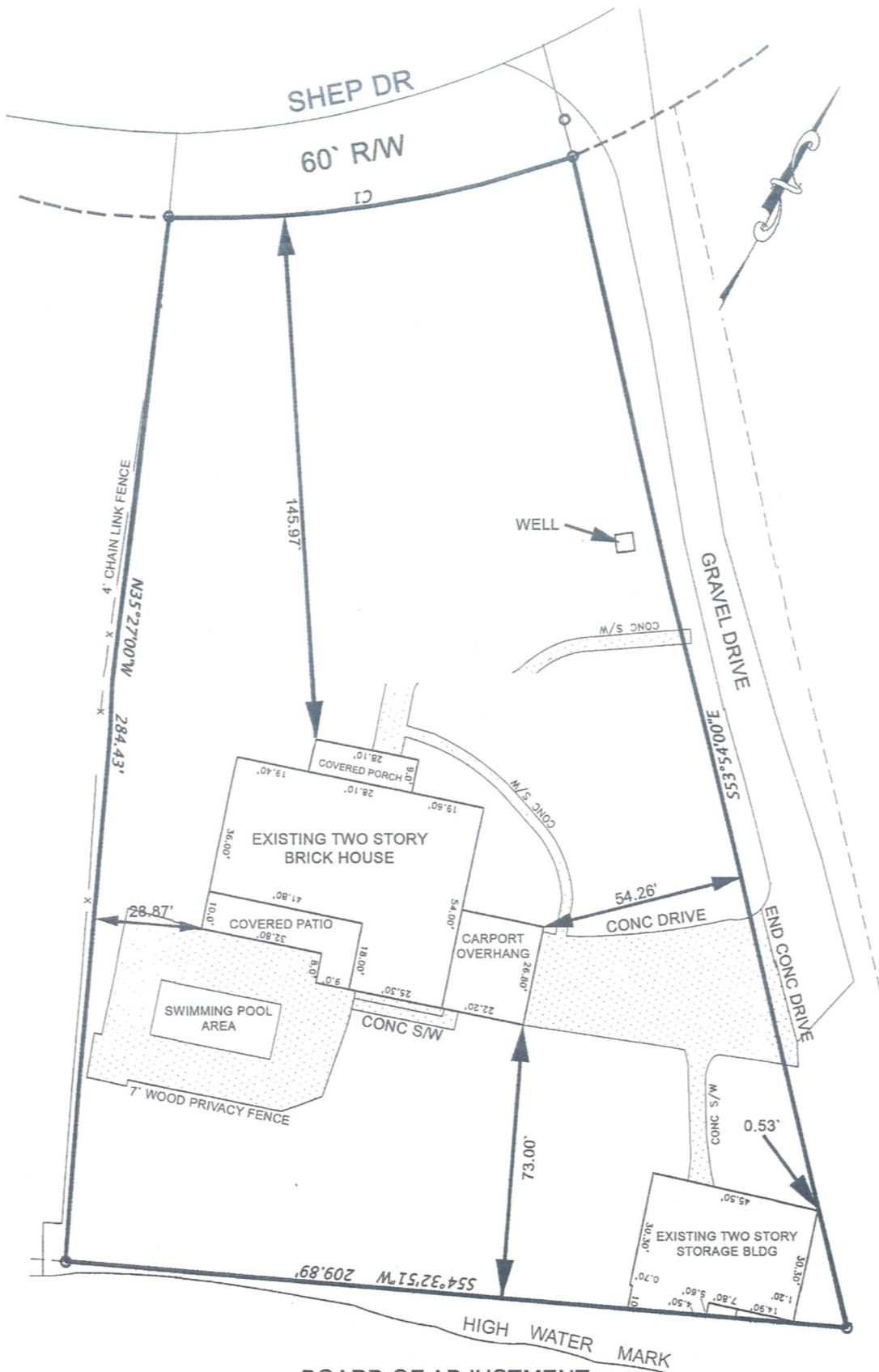
HEARING NO: P10-14-C

ORDINANCE: COUNTY

HEARING DATE

ACTION

GOVERNING BOARD



**BOARD OF ADJUSTMENT
VARIANCE**

**REQUEST: A VARIANCE FROM THE COUNTY ZONING ORDINANCE
SECTION 1002, INCIDENTAL USES SUB-SECTION E. ACCESSORY
STRUCTURES 4; FOR A 20 FOOT SETBACK VARIANCE WHERE FIVE FEET IS
REQUIRED ALLOWING AN EXISTING STORAGE BUILDING TO ENCRANCH
15 FEET ONTO THE ADJACENT PROPERTY**

CASE: P10-14-C ACREAGE 1.10 AC +/-

ZONED: R15 SCALE: NTS

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

STATE OF NORTH CAROLINA
COUNTY OF CUMBERLAND

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
FILE NUMBER: 10-CVS-10892

THOMAS W. POULOS and wife)
NANCY POULOS,)
)
) *Petitioners,*)
)
) v.)
)
)
) CUMBERLAND COUNTY BOARD OF)
) ADJUSTMENT,)
)
) *Respondent.*)

ORDER TO REMAND

FILED
11 OCT 26 PM 3:17
CUMBERLAND COUNTY, C.S.C.

THIS MATTER coming before the Honorable Thomas H. Lock, at the August 22, 2011 Civil Session of Superior Court of Cumberland County and upon Petition by the Petitioners for Judicial Review pursuant to N.C.G.S. § 160A-388, *et seq.* and N.C.G.S § 160A-393, *et seq.* and other provisions of law of the decision of the Cumberland County Board of Adjustment at its October 21, 2010 hearing which decision denied a variance for the Petitioners' property

AND THE COURT having considered the verified Petition, exhibits and arguments of counsel, and all parties having had the opportunity to present evidence and argument thereof and the Court having heard the arguments of counsel of both parties and reviewed the exhibits, the Court makes the following:

FINDINGS OF FACT

1. The Petitioners are citizens and residents of Cumberland County, North Carolina having as their residence 430 Shep Drive, Fayetteville, North Carolina ("Subject Property").
2. The Respondent is a public body authorized to hear petitions for variances as provided by the North Carolina General Statutes and as provided by the code of Cumberland County, North Carolina.
3. Since December 21, 1999 to present date, the Petitioners have owned the Subject Property as their residence.
4. The property adjacent to the Southeastern border of the Subject Property is owned by Green Pond, Inc. ("Green Pond"), a non-profit corporation having as its members, owners of the

various lots surrounding a certain pond referred to as Green Pond.

5. The Petitioners are members in good standing in Green Pond.

6. On or about July 2001, the Petitioners requested permission of the members of Green Pond to erect a certain storage building ("Subject Building") on the site on which the Subject Building which is the issue of dispute is now located, being the same said location of a certain shed erected by the Petitioner's predecessor in title.

7. On or about July or August of 2001, the annual meeting of the members of Green Pond was held and the Petitioner formally requested permission to remove the existing utility shed and replace said shed with the construction of the new Subject Building.

8. The members present at said annual meeting all agreed and gave permission for the subject construction and location of the new Subject Building.

9. Subsequently, the President of Green Pond informed the Petitioners that they had permission to build the new Subject Building at the subject site and further that it was agreed that Green Pond did not require any set back whatsoever and that the Subject Building could be built on the subject property lines existing between the Petitioners and Green Pond.

10. Construction of the Subject Building began on or about September of 2002.

11. During construction, members of Green Pond, assisted in the placement of the Subject Building and provided assistance in various portions of construction to include, but not limited to, footings and construction of the cement building pad.

12. On or about February 2005, construction of the Subject Building was completed.

13. At no time during the construction of the Subject Building did any member or neighbor of the Petitioners object to the placement of the Subject Building.

14. On or about July 2006, the local permitting office informed the Petitioners that they would need to apply for a building permit for the Subject Building.

15. On or about July 18, 2006, the Petitioners completed an Application for Building Permit.

16. On or about September 15, 2008, the Petitioners caused a survey to be performed on the Subject Property.

17. Upon receipt of the survey, the Petitioners learned that a small portion of the Subject Building was located on property belonging to Green Pond.

18. The Petitioners notified the President of Green Pond of the location of the subject boundary lines.

19. In response to the notification concerning the above described boundary lines, Green Pond informed the Petitioners that despite giving permission for the location of the Subject Building, Green Pond now desired that the Petitioners remove that portion of the Subject Building located on Green Pond's property.

20. Green Pond did not require that the Petitioners remove any portion of the Subject Building not located on Green Pond's property. In fact, Green Pond, agreed to a zero lot line boundary.

21. Members of Green Pond, to include its President, testified at the subject hearing that they had agreed to a zero lot line and that they had no objection to the Subject Building remaining on the Petitioners' property up to Green Pond's boundary lines.

22. The members of Green Pond agreed to the exact location of the Subject Building.

23. At no time prior to the obtaining of the survey occurring on or about September 15, 2008, did any member of Green Pond object to the location of the Subject Building.

24. The Petitioners presented further evidence showing that other man-made structures were erected and maintained on property belonging to Green Pond.

25. On or about August 16, 2010, the Petitioners made application for a variance of the subject zoning ordinance related to set-backs with the Respondent.

26. At the Board of Adjustment hearing conducted on October 21, 2010, the Petitioners were informed by the Respondent that the subject variance was denied.

27. The Order by the Respondent denying said variance request is completely void of any Findings of Fact.

28. The Order by the Respondent found as Conclusions of Law the following in favor of the Petitioner:

a. Whether there were extraordinary and exceptional conditions pertaining to the particular piece of property in question due to its size, shape or topography that were not applicable to other lands or structures in the same district;

b. Whether the literal interpretation of the provisions of the subject ordinance would deprive the applicant of rights commonly enjoyed by other residents of the district in which

the property is located;

c. Whether the requested variance was in harmony with the purpose and intent of the ordinance and would not be injurious to the neighborhood or to the general welfare;

d. Whether special circumstances were not the result of the actions of the petitioners;

e. Whether the variance was the minimum variance that would make possible the legal use of the land, building and structure;

f. Whether the variance was a request to permit a use which is not permitted by right or by special exception in the district involved and would not constitute any change in district boundaries;

g. Whether 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 the requested variance.

29. The Order by the Respondent found only one Conclusion of Law not in favor of the Petitioners being that “granting the variance will confer upon the applicant any special privileges that are denied to other residents in the district in which the property is located.”

30. The above Conclusion of Law was made without any Findings of Fact.

31. The Respondent found the one Conclusion of Law not in favor of the Petitioner based solely on an alleged trespass when testimony revealed that the subject building was erected on its present site with the aid of and with the permission of the adjacent land owner.

32. The Order of the Respondent draws conclusions that were not reached by the Respondent and not deliberated by the Respondent.

33. At the subject hearing, the Respondent failed to deliberate and determine Findings of Fact.

34. The Order incorrectly cites as a Conclusion of Law that the “granting the variance will confer upon the applicant any special privileges that are denied to other residents in the district in which the property is located.”

35. The above Conclusion of Law was made without any Findings of Fact.

36. The Respondent’s failing to approve the requested variance enacts an unnecessary hardship on the Petitioners as the Petitioners are not practically able to remove that portion of the

Subject Building located on the portion of the their property constituting the “set-back” area.

37. The property which is the subject matter of this dispute is unique and extraordinary and exceptional conditions exist related to the property due to its size, shape and topography. To wit, the Green Pond property consists of both a lake and a portion of land surrounding the lake. The members of Green Pond and the owners of the land surrounding the lake have no access to the lake, absent their going upon the Green Pond land. Additionally, access to the dam of the subject lake is located adjacent to the Petitioners and the Petitioners have an easement on the access land.

38. The Respondent made its ruling solely on an alleged trespass in contravention of the testimony presented at the hearing.

39. At the Board of Adjustment hearing conducted on October 21, 2010, the Petitioners provided adequate and compelling evidence validating the need and appropriateness of the grant of a variance.

CONCLUSIONS OF LAW

BASED UPON the foregoing Findings of Fact, the Court concludes as a matter of law that:

40. The costs of implementing the subject conditions is unfair and arbitrary when the Petitioners received permission from the Green Pond and its members to construct the building in its exact location.

41. The proceedings of the Respondent were procedurally flawed and its decision was arbitrary and capricious, not being supported by the facts in evidence and its prior practice.

42. The Respondent made errors of law entitling the Petitioner to the relief sought.

43. The Respondent’s decision to deny the granting of the variance was not supported by competent, material or substantial evidence.

44. The Respondent’s decision was arbitrary and capricious.

45. The Respondent committed errors of law as herein described.

46. The Petitioners, pursuant to N.C.G.S. § 160A-388, *et seq.* and N.C.G.S § 160A-393, *et seq.*, are entitled to an order issued by this Court directing the Respondent to issue said variance.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that:

1. That this matter is remanded back to the Board of Adjustments.
2. That the Petitioner shall show evidence that the Petitioners have removed that portion of the Subject Building being located on the property belonging to Green Pond.
3. That the Board of Adjustments shall grant the subject variance requested by the Petitioners and entitling the Petitioners to a zero lot line.

This is the 20th day of October, 2011.



The Honorable Thomas H. Lock, Superior
Court Judge Presiding

BOARD OF ADJUSTMENT

LOCATION OF PROPERTY: 430 Shep Drive, Fayetteville, NC

OWNER: Thomas and Nancy Poulos

ADDRESS: 430 Shep Drive, Fayetteville, NC ZIP CODE: 28311

TELEPHONE: HOME 910-487-0878 WORK _____

AGENT: J. Thomas Neville, Thorp, Clarke, Neville & Kirby, PA

ADDRESS: P.O. Box 670, Fayetteville, NC 28302

TELEPHONE: HOME _____ WORK 910-323-4111

APPLICATION FOR A VARIANCE
As required by the Zoning Ordinance or Code

A. Parcel Identification Number (PIN #) of subject property: 0543-02-9799-
(also known as Tax ID Number or Property Tax ID)

B. Acreage: 110 Frontage: 1096' +/- Depth: 299' +/-

C. Water Provider: Private well

D. Septage Provider: septic tank

E. Deed Book 5210, Page(s) 851, Cumberland County Registry. (Attach copy of deed of subject property as it appears in Registry).

F. Existing and/or proposed use of property: residential

G. Section and provision of the Zoning Ordinance or Code from which a Variance is requested: Notice of violation received by applicant does not identify said section and provision.

Said notice identifies a certain 5 foot set back. Annotated in code adopted on May 3, 1982 as articles VII lot and yard regulations § 7.7 Yard Regulations.

H. Nature and extent of hardship involved in strict application of the Zoning Ordinance or Code: _____

Strict application of zoning ordinance would require the removal of a certain storage building/shop or a significant portion thereof. The subject property was constructed and the specific site selected with the permission of the adjacent land owner. The adjacent land owner is Green Pond, Inc, which is a corporation consisting of landowners, including the applicant, having as their residence properties adjacent to the lake.

The attached survey was obtained after the construction of the subject building and only after certain members of Green Pond, Inc. complained to the county. The subject building existed in its current state for approximately 6 years absent any objection from adjacent landowners. Upon information and belief, Green Pond, Inc. has failed to properly obtain the permission of its members in complaining to the county.

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)

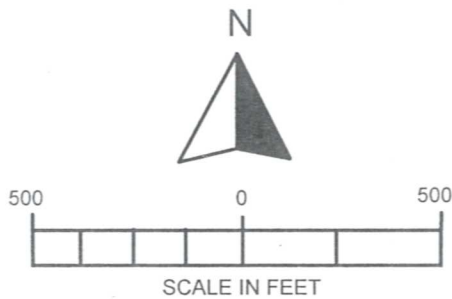
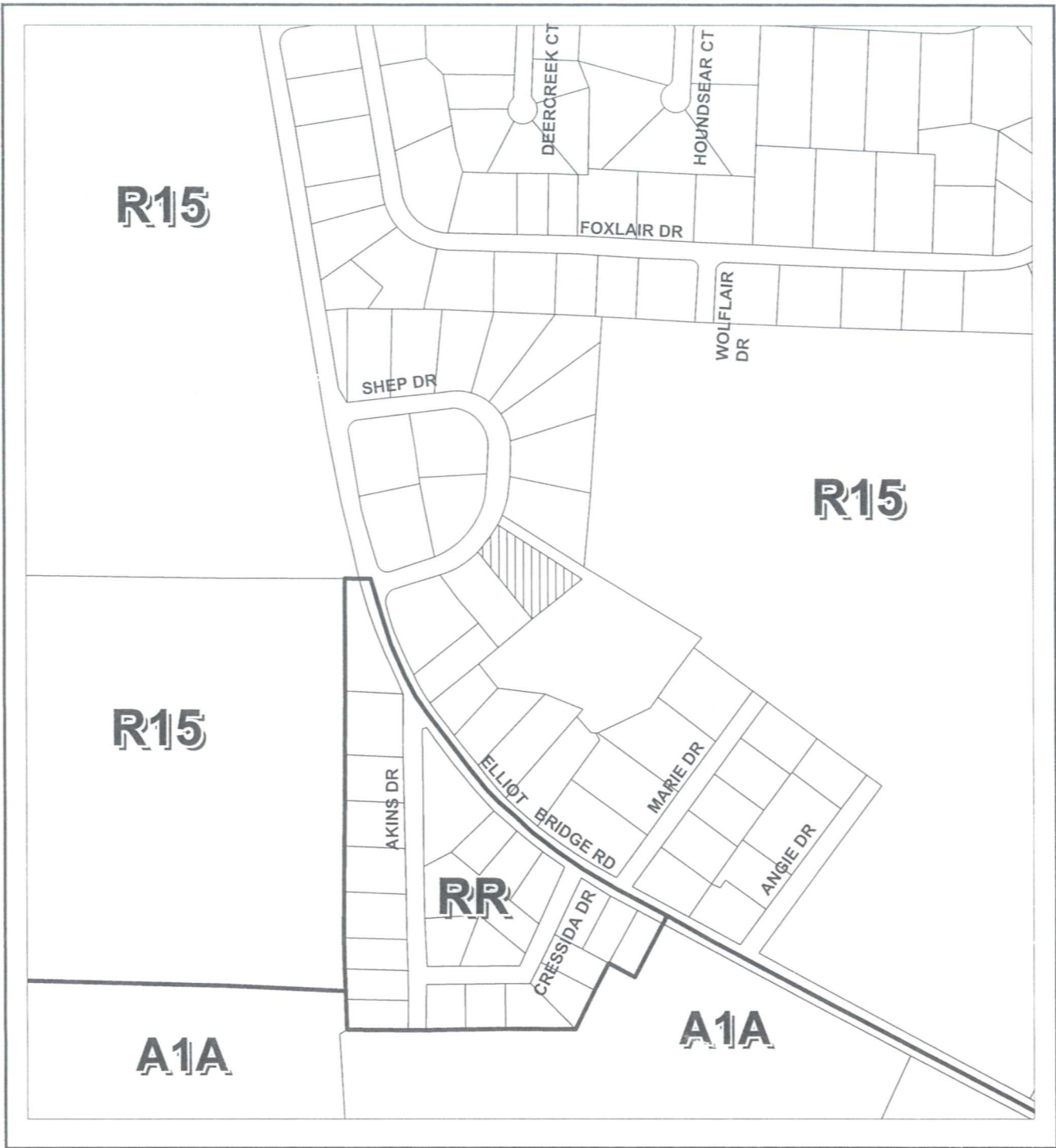
Thomas W. Poulos Nancy M. Poulos

PRINTED NAME OF OWNER(S)

THOMAS W. POULOS NANCY M. POULOS

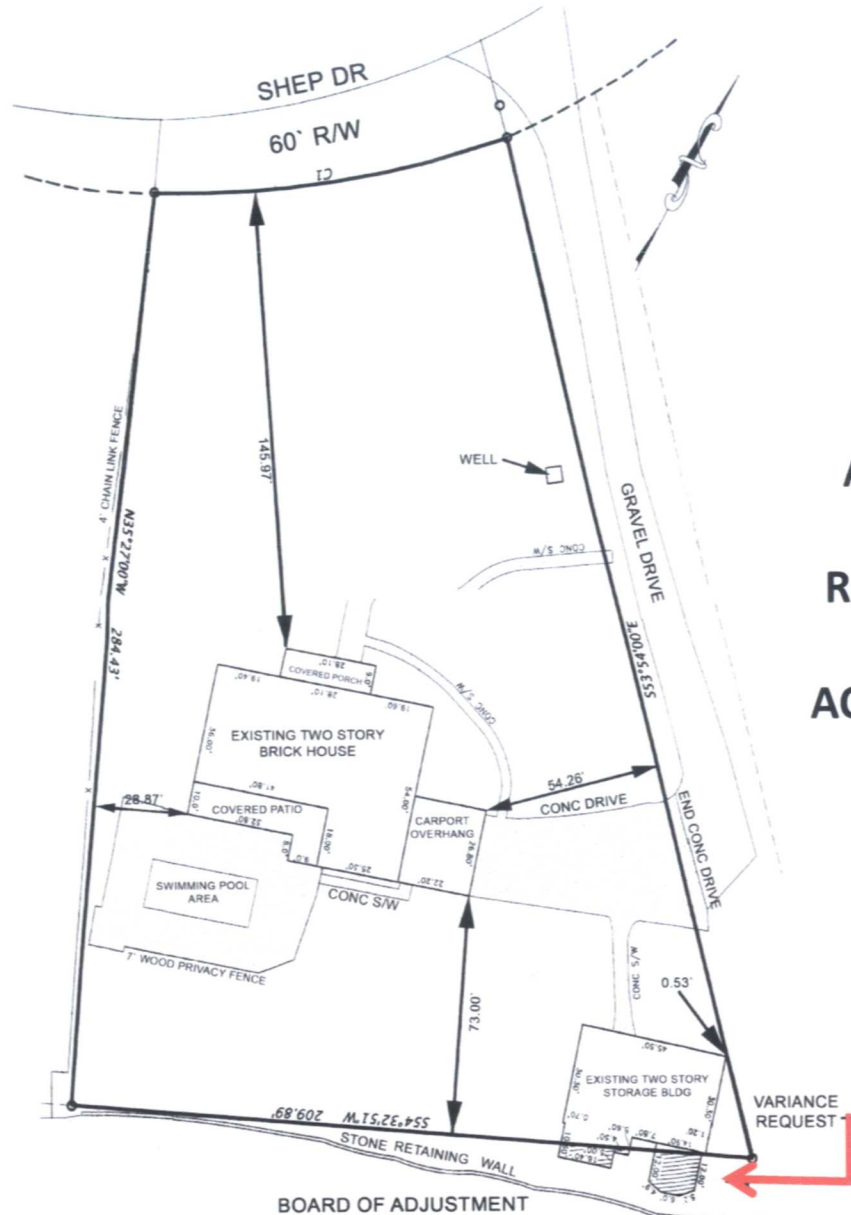
DATE 16 AUGUST 200

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



BOARD OF ADJUSTMENT VARIANCE

ACREAGE: 1.10 AC.+/-	HEARING NO: P10-14-C	
ORDINANCE: COUNTY	HEARING DATE	ACTION
GOVERNING BOARD	<i>10-21-10</i>	<i>DENIED</i>



**BOARD OF
ADJUSTMENT
VARIANCE
REQUESTED ON
10/21/2010
ACTION : DENIED**

**BOARD OF ADJUSTMENT
VARIANCE**

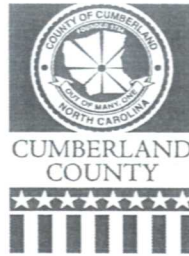
**REQUEST: A VARIANCE FROM THE COUNTRY ZONING ORDINANCE,
SECTION 1002, INCIDENTAL USES, SUB-SECTION E. ACCESSORY
STRUCTURES, FOR A 20 FOOT SETBACK VARIANCE WHERE FIVE FEET IS
REQUIRED, ALLOWING AN EXISTING STORAGE BUILDING TO
ENCROACH 15 FEET ONTO THE ADJACENT PROPERTY**

**CASE: P10-14-C ACREAGE 1.10 AC +/-
ZONED: R15 SCALE: NTS**

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

Members:

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



Alternates:

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

Cumberland County Board of Adjustment

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

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

Members Present

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

Absent Members

Horace Humphrey (excused)

Staff/Others Present

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

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

1. ROLL CALL

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

2. ADJUSTMENTS TO THE AGENDA

There were none.

3. APPROVAL OF THE SEPTEMBER 16, 2010 MINUTES

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

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

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

4. ABSTENTIONS BY BOARD MEMBERS

There were no abstentions by Board Members.

5. PUBLIC HEARING DEFERRALS

There were no deferrals.

6. BOARD MEMBER DISCLOSURE

There were none.

7. POLICY STATEMENTS REGARDING APPEAL PROCESS

Mrs. Varner read the Board's policy regarding the appeal process to the audience.

8. PUBLIC HEARING(S)

Opened Public Hearing

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

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

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

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

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

CHAIR QUIGLEY: Okay, you don't know.

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

CHAIR QUIGLEY: Okay, thank you.

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

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

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

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

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

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

MR. MOOREFIELD: By a registered surveyor?

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

MR. MOOREFIELD: I mean the survey document.

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

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

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

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

CHAIR QUIGLEY: Any other questions for Staff?

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

Chair Quigley swears in Angela Perrier.

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

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

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

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

Chair Quigley swears in Thomas Neville.

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

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

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

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

CHAIR QUIGLEY: Yes, sir.

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

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

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

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

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

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

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

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

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

CHAIR QUIGLEY: Yes.

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

Chair Quigley swears in Thomas Poulos.

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

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

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

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

CHAIR QUIGLEY: Thank you and your statement sir?

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

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

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

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

CHAIR QUIGLEY: Yes.

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

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

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

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

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

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

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

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

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

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

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

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

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

MR. POULOS: Yes, sir.

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

MR. POULOS: Yes it is.

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

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

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

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

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

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

MR. POULOS: Yes, sir.

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

MR. POULOS: That is correct.

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

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

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

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

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

MR. POULOS: No.

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

MR. POULOS: Yes, I have.

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

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

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

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

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

MR. POULOS: I am.

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

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

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

MR. POULOS: Yes.

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

MR. POULOS: Yes.

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

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

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

MR. POULOS: Yes it is.

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

MR. POULOS: I see docks.

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

MR. POULOS: Absolutely not.

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

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

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

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

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

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

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

MR. POULOS: Yes, it is.

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

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

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

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

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

MR. POULOS: Yes.

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

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

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

MR. POULOS: No.

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

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

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

MR. POULOS: That is correct.

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

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

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

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

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

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

MR. POULOS: That is correct.

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

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

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

MR. POULOS: Yes, sir.

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

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

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

MR. POULOS: Yes.

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

MR. POULOS: No.

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

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

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

MR. POULOS: Yes.

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

MR. POULOS: Yes.

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

MR. POULOS: Yes.

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

MR. POULOS: Yes.

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

MR. POULOS: Yes.

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

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

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

MR. POULOS: Yes.

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

MR. POULOS: It, is.

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

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

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

MR. POULOS: No.

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

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

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

MR. POULOS: No.

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

MR. POULOS: Yes, they are.

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

MR. POULOS: Yes, it does.

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

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

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

MR. POULOS: That is correct.

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

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

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

MR. POULOS: That is correct.

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

MR. POULOS: Yes, it is.

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

MR. POULOS: No, I have not.

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

MR. POULOS: No.

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

MR. POULOS: Before I left, yes.

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

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

MR.NEVILLE: That is Doug Stephenson?

MR. POULOS: Yes.

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

MR. POULOS: No.

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

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

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

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

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

MR.NEVILLE: I have no further questions.

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

MR.NEVILLE: Yes, Mrs. Poulos.

Chair Quigley swears in Nancy Poulos.

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

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

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

MRS. POULOS: Yes, sir.

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

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

MRS. POULOS: Yes, it is.

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

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

CHAIR QUIGLEY: Do you know the date that occurred?

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

CHAIR QUIGLEY: Thank you.

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

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

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

MRS. POULOS: Yes.

MR.NEVILLE: That was in July 2001?

MRS. POULOS: Yes, I believe so.

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

MRS. POULOS: I believe so, yes.

MR.NEVILLE: What did he tell you?

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

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

MRS. POULOS: No.

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

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

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

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

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

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

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

MRS. POULOS: Yes, it is.

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

MRS. POULOS: Yes.

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

MRS. POULOS: Yes.

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

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

MR.NEVILLE: A County employee?

MRS. POULOS: Yes.

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

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

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

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

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

MRS. POULOS: Yes, it does.

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

MRS. POULOS: Yes, it was.

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

MRS. POULOS: Yes, it was.

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

MRS. POULOS: Yes.

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

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

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

MRS. POULOS: Yes, it does.

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

MRS. POULOS: Correct.

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

MRS. POULOS: It is.

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

MRS. POULOS: No, there is not.

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

MRS. POULOS: No, there was not.

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

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

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

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

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

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

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

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

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

CHAIR QUIGLEY: They will be admitted into evidence.

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

MRS. POULOS: I believe so, yes.

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

MRS. POULOS: Yes, he does.

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

MRS. POULOS: Yes, it was.

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

MRS. POULOS: Yes, it is.

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

MRS. POULOS: Yes, it is.

MR.NEVILLE: Is it issued to Thomas Poulos?

MRS. POULOS: Yes, it is.

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

MRS. POULOS: Yes, he is.

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

MRS. POULOS: Yes, it is.

MR.NEVILLE: Have they always been accepted?

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

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

MRS. POULOS: No, I have not.

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

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

Chair Quigley swears in Sabrina Dailey.

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

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

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

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

MS. DAILEY: No, I don't.

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

MS. DAILEY: I am.

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

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

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

MS. DAILEY: Yes.

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

MS. DAILEY: No.

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

MS. DAILEY: No.

MS. NEVILLE: Chair, that is it.

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

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

Chair Quigley swears in Douglas Stephenson.

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

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

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

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

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

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

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

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

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

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

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

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

MR.NEVILLE: I object. That is hearsay.

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

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

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

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

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

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

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

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

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

CHAIR QUIIGLEY: I understand.

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

MR.NEVILLE: I object, hearsay.

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

MR. STEPHENSON: I spoke to the attorney myself.

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

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

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

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

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

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

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

Chair Quigley swears in Grace Colonair.

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

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

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

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

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

MR.NEVILLE: I object; hearsay.

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

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

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

MS. COLONAIR: I do know personally.

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

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

CHAIR QUIGLEY: I understand what you are saying.

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

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

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

Chair Quigley swears in Mike Farrell.

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

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

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

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

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

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

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

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

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

MR. STEPHESON: I object.

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

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

CHAIR QUIGLEY: What year would that have been?

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

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

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

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

Chair Quigley swears in Mark Colonair.

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

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

CHAIR QUIGLEY: Thank you.

Chair Quigley swears in Harold Schmidt

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

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

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

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

MR. COLONAIR: Are you looking for something specific?

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

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

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

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

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

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

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

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

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

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

neighborhood or to the general welfare. Again, at least two have testified that they gave permission for the very structure to be there. Trespass is not before you, the variance and setback is before you. I don't know how they can come before you today and say it's going to be injurious to them when they are the one who gave permission for it. The special circumstances are not a result of the actions of the applicant themselves; they were given permission. I think they've all testified to everyone in this room that they were relying on a survey, a plat from the late 1960's . We've heard from the opposition and those in favor who testified to that. What you have before you is simply an issue that does not need to be before the Board of Adjustment. What we have here is a classic neighborhood dispute concerning a shop with construction that started in 2002 and was completed around 2005. These are issues that should be before a Superior Court, decided by a jury in a court in North Carolina. What is attempting to happen here is that the issue of a variance for setbacks, for which they gave permission up to the line, is being placed before the County in an effort to not be in Superior Court, where this is exactly where this belongs. The case law and the statutes are very clear 1-52 says that any action for trespass.....(tape ran out)

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

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

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

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

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

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

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

CHAIR QUIGLEY: Thank you. Ms. Colonair?

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

CHAIR QUIGLEY: Mr. Dykes, any comments?

MR. DYKES: No comments.

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

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

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

MR. NEWSOME: I second the motion.

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

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

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

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

Chair Quigley swears in Betty Allee.

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

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

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

Roy Turner,
Chair
Cumberland County

Walter Clark,
Vice-Chair
Cumberland County

Garland C. Hostetter,
Town of Spring Lake
Harvey Cain, Jr.,
Town of Stedman
Patricia Hall,
Town of Hope Mills
Charles C. Morris,
Town of Lind



COUNTY of CUMBERLAND

Planning and Inspection Department

Thomas J. Lloyd,
Director

Cecil P. Combs,
Deputy Director

Lori Epler,
Sara E. Piland,
Cumberland County

Benny Pearce,
Town of Eastover

Donovan McLaurin,
Wade, Falcon & Godwin

January 9, 2012

MEMORANDUM

TO: County Board of Adjustment

FROM: Jeff Barnhill, Watershed Review Officer *JB*

SUBJECT: CASE NO: WS-11-01 REVOCATION OF HIGH DENSITY DEVELOPMENT WATERSHED.

The following watershed case is being presented for your consideration:

CASE NO. WS-11-01: REVOCATION OF THE ANDREWS MINI STORAGE FOR UP TO 70% HIGH DENSITY DEVELOPMENT APPROVAL UNDER THE TERMS OF THE COUNTY WATER SUPPLY WATERSHED AND PROTECTION ORDINANCE, ARTICLE VII; ZONING: C(P), C(P)/CUD AND R6; ACREAGE (PROPOSED & EXISTING DEVELOPMENT): 8.32 +/- ACRES (INCLUDING POND AREA); TOTAL ACREAGE UNDER CONSIDERATION: 15.74 +/- ACRES; LOCATED AT THE SOUTHEAST QUADRANT OF SR 1600 (MCARTHUR ROAD) AND SR 1611 (ANDREWS ROAD), NORTH OF SR 1613 (HONEYCUTT ROAD).

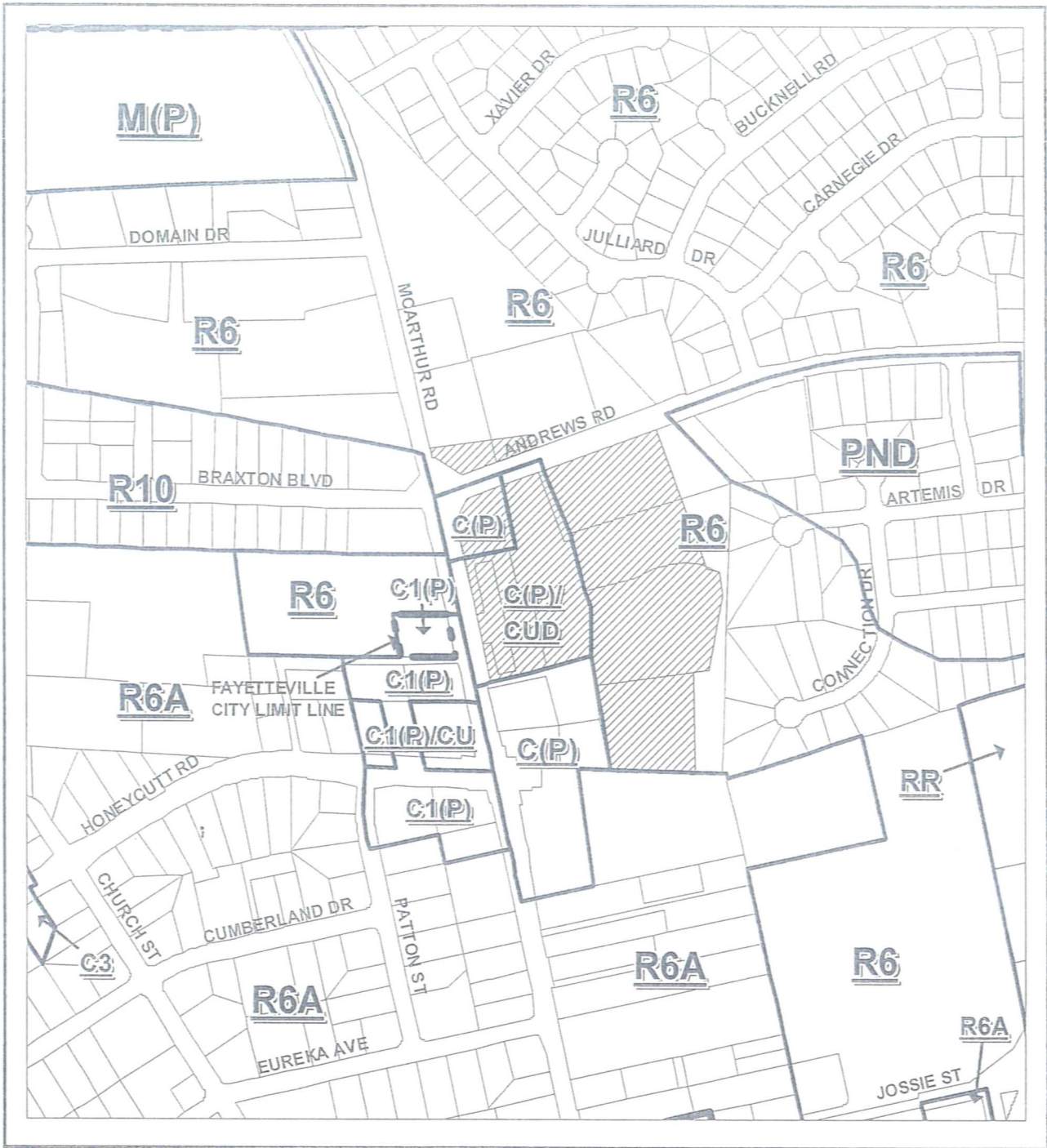
The attached documents have been submitted for your review and approval under the terms of the Cumberland County Water Supply Watershed Management and Protection Ordinance.

Please contact me at 910-678-7765 or by email: jbarnhill@co.cumberland.nc.us if you have any questions.

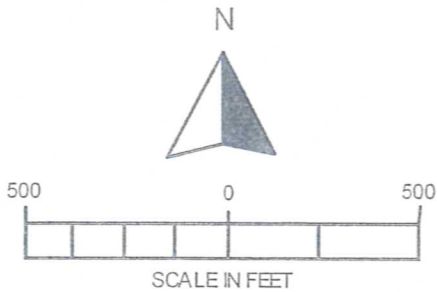
Attachments:

1. Sketch Map
2. Request for Revocation, dated September 10, 2011
3. Site Plan
4. Pond Detail
5. Application
6. Draft Conditions of Approval
7. Evaluation of Application for High Density Development Proposal

cc: Creekwood Holdings, LLC, Owner/Applicant
Dorothy Andrews, Owner
Jacqueline Andrews, Owner
Andrews Stormwater Owners Association
Neil Yarborough, Attorney
Thomas S. Speight, Jr., PE, PLS, Larry King & Associates.
Rick Moorefield, County Attorney
Patti Speicher, Land Use Codes



HIGH-DENSITY WATERSHED



ACREAGE: 15.74 AC.+/-

HEARING NO: WS11-01

ORDINANCE COUNTY

HEARING DATE

ACTION

GOVERNING BOARD

PIN: 0521-60-6335, 2396, 3345, 8324
 PORT. OF PIN: 0521-60-8185, 7812
 0521-61-4029, 1062



Larry King & Associates R.L.S., P.A.

Post Office Box 53787 • 1333 Morganton Road, Suite 201
Fayetteville, North Carolina 28305
(910) 483-4300 • Fax: (910) 483-4052
www.LKandA.com

September 10, 2011

Jeff Barnhill, Watershed Review Officer
Planning & Inspections Department
County of Cumberland
Post Office Box 1829
Fayetteville, NC 28302

Re: Andrews Mini Storage Case No. WS08-04
Low Density Application
Revocation of High Density Approval

Dear Mr. Barnhill:

The Andrews Mini Storage request revocation of High Density Approval and desires to apply for a Low Density watershed permit on the existing buildings. Any new construction shall require a new site plan submittal and new applicable watershed permit as required. The revised area is for 14.06 acres total from the Andrews Mini Storage lots and the adjoining watershed area from Jacqueline Andrews's property adjoining the existing watershed pond. All drainage pipes have been constructed to serve the existing development. Catch basin boxes and grates are permanently attached and have been installed. At this point, the drainage is complete. It is my understanding, there is no need for bonding existing storm drainage.

I have requested Andrews Mini Storage send you a signed Low Density application and \$25 review fee. The application is for the Andrews Mini Storage (**existing buildings**) and the Jacqueline Andrews property next to the Common pond area. **There is no site plan for new development or to continue development from the previously approved plan.**

The percent impervious area is as follows:

Location	Impervious Acres	Area Acres	% impervious
Andrews Mini Storage Site (Existing completed Buildings)	2.30	8.24	27.30
Jacqueline Andrews as is	0.19	5.83	3.26
Total	2.49	14.06	17.71 %



The maintenance agreement record was signed by Andrews Mini Storage and Jacqueline Andrews was reviewed by the County and recorded book 8004 page 0228. Article 3.3 on page 6 grants County access to site by easement. The said easement is also recorded on plat book 88, page 161. The Andrews shall provide the same access through another deed if requested.

I am requesting the owners of Andrews Mini Storage forward you a signed application and \$25 review fee as requested. Brian Andrews is aware you will send him a certified letter to sign for in this application process. I have enclosed a Watershed Impervious Map showing the % impervious and the existing buildings for Andrews Mini Storage.

Please look at things and let me know what you need to bring this to closure.
Thanks for getting this resolved.

Sincerely,

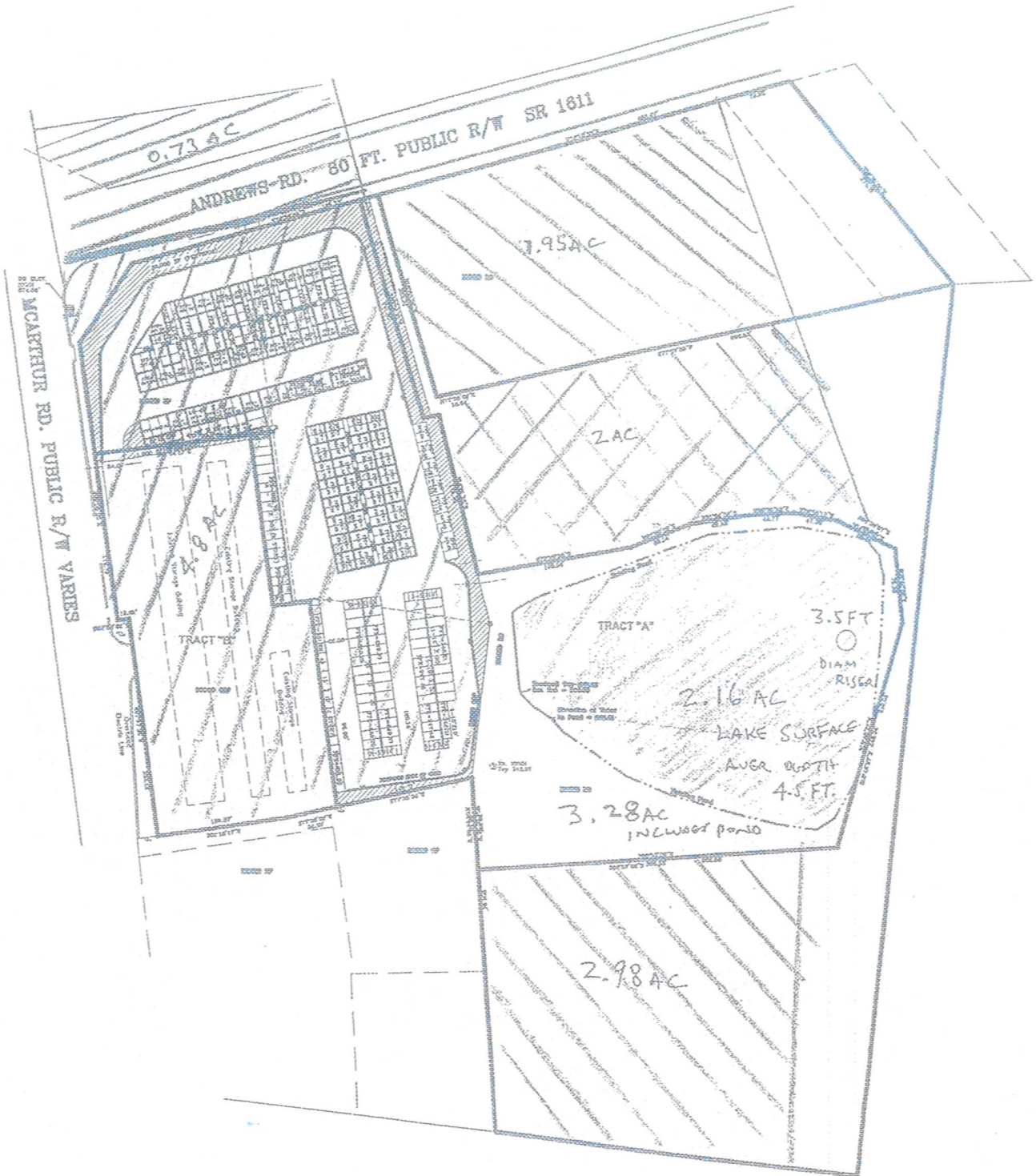


Thomas S. Speight, Jr., PE
Larry King & Associates, R.L.S., P.A.

CC. **Brian Andrews, Co-owner**
Susan Andrews, Co-owner



WATERSHED AREA FOR EXISTING POND



REVOCATION

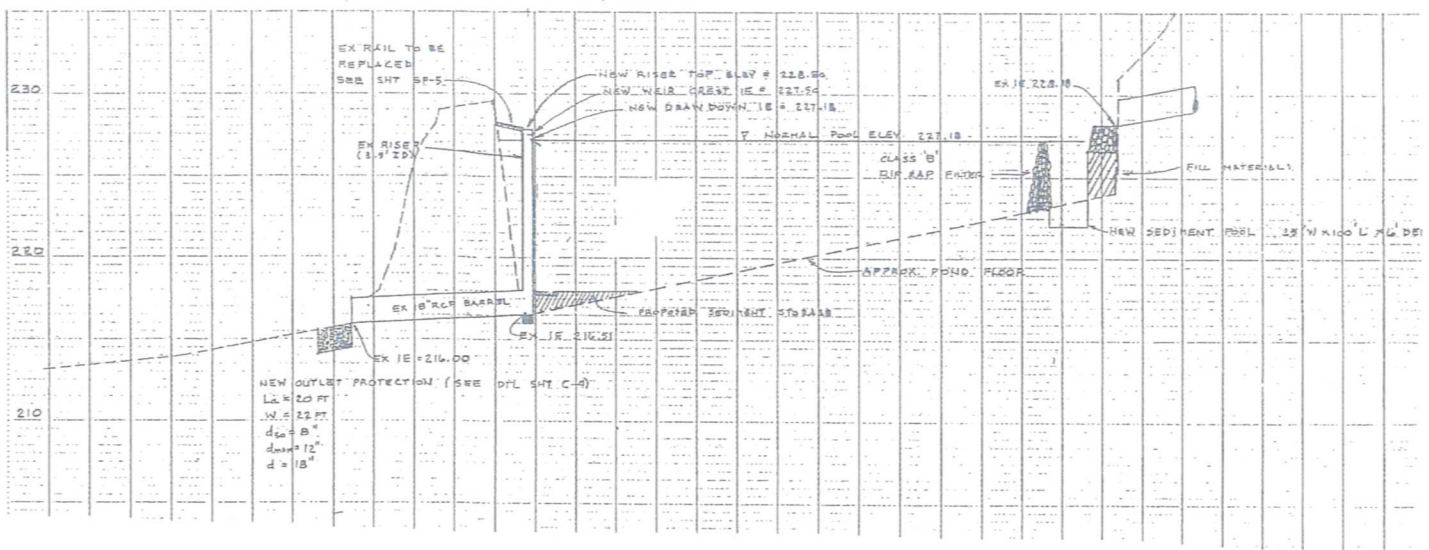
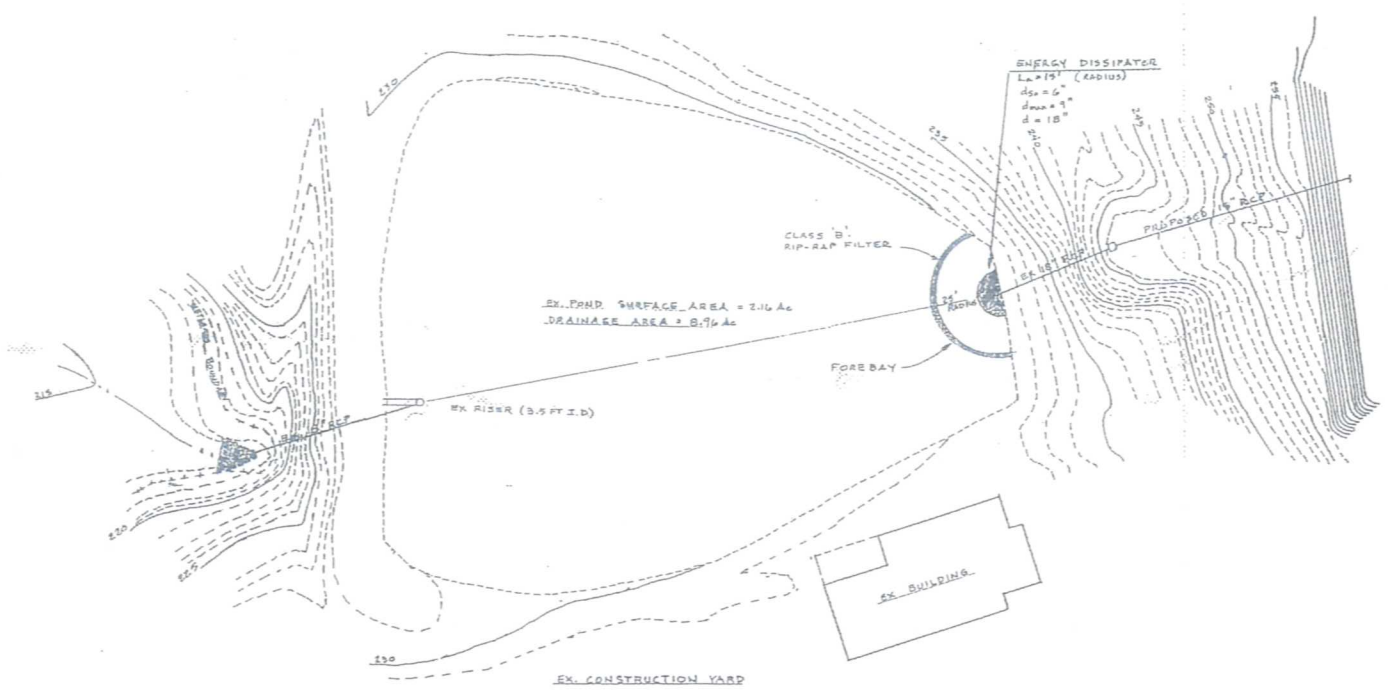
HIGH DENSITY WATERSHED

REQUEST: REVOCATION OF HIGH DENSITY DEVELOPMENT WATERSHED
FOR ANDREWS MINI STORAGE

CASE: WS11-01 ACREAGE: 15.74+/-

ZONED: C(P), C(P)/CUD & R6 SCALE: NTS

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



WS11-01

APPLICATION FOR WATERSHED APPROVAL AND PROTECTION PERMIT

DATE OF APPLICATION 10/18/11 CASE NO. WS 11-01

Name of Owner/Applicant: BRIAN ANDREWS

Mailing Address: 1630 MURKIN RD

City/State/Zip: FAYETTEVILLE NC 28311 E-mail: CREEKWOODCAPS-AGL.COM

Telephone Number: 910 822 4700 Fax Number 910 822 8263

Name of Engineer/Surveyor: LARRY KING & ASSOC. PLS, PA

Address: 1333 MURKIN RD. City, State, Zip: FAYETTEVILLE NC 28305

Telephone Number: 910 483 4300 Alternate: 910 483-4052

PARCEL INFORMATION: Use a separate sheet of paper to list the following information for each additional parcel of land.

Parcel ID (PIN) Number 0521-60-6335 Deed Book 7086 Page 244

Size of Parcel SEE ATTACHED Lot # SEE ATTACHED

Watershed (circle one) Cross Creek Little Cross Creek Cape Fear River Little River TO CUMBER FALLS

Low Density (no fee) _____ High Density (\$200 fee) Critical / Protected Area (circle one)

GENERAL DESCRIPTION OF WORK: COMMERCIAL - MINI WAREHOUSES

Name of Proposed Development: ANDREWS MINI STORAGE

Type of Development: Residential _____ Commercial Industrial _____ Other _____

Total Area: 0.32

Number of Parcels/Lots: N/A Smallest Lot: _____ acres Largest Lot: _____ acres

I certify that the information shown above is true and accurate, and is in compliance with the conditions for development under the terms of the Cumberland County Water Supply Watershed Management & Protection Ordinance.

(Seal) [Signature]
Owner/Attorney in Fact
Date: 10/18/11

OFFICIAL USE

Date received: _____ Date referred to Board: _____

Notes:

Lori Epler,
Chair
Cumberland County

Roy Turner,
Vice-Chair
Cumberland County

Garland C. Hostetter,
Town of Spring Lake
Harvey Cain, Jr.,
Town of Stedman
Patricia Hall,
Town of Hope Mills
Charles C. Morris,
Town of Linden



COUNTY of CUMBERLAND

Planning and Inspection Department

Thomas J. Lloyd,
Director

Cecil P. Combs,
Deputy Director

Walter Clark,
Sara E. Piland,
Cumberland County

Benny Pearce,
Town of Eastover

Donovan McLaurin
Wade, Falcon, & Godwin

HIGH DENSITY WATERSHED CONDITIONAL APPROVAL SHEET

STAFF RECOMMENDATION: April 15, 2010 BOARD OF ADJUSTMENT DECISION: April 21, 2011

CASE NO: WS11-01

NAME OF DEVELOPMENT: Andrews Mini Storage

LOCATION: Southeast quadrant of SR 1600 (McArthur Road), and SR 1611 (Andrews Road), north of SR 1613(Honeycut Road)

WATERSHED AREA: WS-IV-BW

PIN: 0521-60-6335-/-8324-/-3345-/-7812-/-8185-/-61-1062-

OWNER/DEVELOPER: Creekwood Holdings, LLC.

ENGINEER/DESIGNER: Larry King & Associates

PLANNING STAFF RECOMMENDATION:

- PRELIMINARY
- EXTENSION
- CONDITIONAL APPROVAL
- DENIED
- REVISION

BOARD OF ADJUSTMENT:

- PRELIMINARY
- EXTENSION
- APPROVED CONDITIONALLY
- DENIED
- REVISION

CONDITIONS OF APPROVAL:

1. Prior to acceptance of the estimated cost of maintenance and necessary repairs for the financial security amount (see Condition No. 2), the professional engineer for this project shall first submit a certification sealed by the engineer stating that the stormwater control structure is complete and consistent with the approved plans and specifications. In the event all portions of the approved stormwater control structure is not complete, then re-submittal of the cost estimate is required and the amount must be re-approved by the County Engineer – the amount in Condition No. 2 will not apply.
2. Prior to the issuance of a *Watershed Protection Permit*, a financial security in the amount of \$4,218.75 for the maintenance and necessary repairs of the existing stormwater control structures, as defined in Section 31A-63 of the *Cumberland County Water Supply Watershed Management and Protection Ordinance* must be posted with Cumberland County.
3. Prior to the granting of a *Watershed Protection Permit*, the Operation and Maintenance Plan must be corrected with the correct legal description of the entire 15.74 acres subject to this approval and the plan must be properly recorded with the County Register of Deeds within five days of the Board of Adjustment granting approval and a copy of the recorded document provided to the Watershed Review Officer.
4. Prior to the granting of a *Watershed Protection Permit*, a description of the area containing the stormwater control structure shall be prepared and filed consistent with Sec. 31A-66(A) and (B), as a separate deed with the County Register of Deeds along with any easements necessary for general access to the stormwater control structure. The deeded area shall include the stormwater control structure, vegetative filters, all pipes and water control structures, berms, dikes, etc., and sufficient area to perform inspections, maintenance, repairs and reconstruction.
5. The detention pond will be inspected bi-annually by the Watershed Review Officer for compliance of maintenance and upkeep of the storm water control systems.
6. The detention pond is required to be fenced and buffered in accordance with Section 31A-23 of the *Cumberland County Water Supply Watershed Management and Protection Ordinance* and the fencing and buffering is required to be in place prior to the issuance of any additional *Watershed Protection Permits* on this site.
7. Building permits cannot be issued until a *Watershed Protection Permit* has been issued.

8. Prior to building final building inspection, the Watershed Review Officer must first issue a *Watershed Occupancy Permit*. NOTE: The developer will need to contact Jeff Barnhill at 678-7765 to schedule an inspection of the site for compliance prior to issuance of the any permits.
9. If any revisions to the approved plan, three copies of the revised plan must be submitted to the staff for review and dependent upon the extent of revision, may require re-approval by the Board of Adjustment.
10. In addition to vegetative filters required for the overflow and discharge of the stormwater detention pond, all land areas outside the pond shall be provided with a ground cover sufficient to restrain erosion within 30 days after any land disturbance – ground cover is required to be in place prior to any new *Watershed Protection Permits* being issued for this site.
11. The maximum built-upon area shall not exceed 70 percent of the entire development. (Note: This condition is accounting for all properties delineated on the sketch labeled as “Watershed Area for Existing Pond” and consisting of a total of 15.74 +/- acres.
12. Prior to any repair or reconstruction of the stormwater control structure, the owning entity must notify the Watershed Review Officer of the plans to repair or reconstruct; upon completion of repair or reconstruction the owning entity must notify the Watershed Review Officer immediately for re-inspection of the site.
13. All applicable conditions of approval of Cases 95-171, P07-71, 08-069, and 08-110 must be complied with, to include submission of the owners’ association documents (articles of incorporation, by-laws and covenants) for approval by the County Attorney as was required by Case 08-110, but not yet accomplished. A copy of the recorded documents must be provided to the Watershed Review Officer prior to issuance of any new *Watershed Protection Permits*.
14. The inspection and the release of the performance guarantee shall be in accordance with Section 31A-66 of the *Cumberland County Water Supply Watershed Management and Protection Ordinance*.
15. Any significant revisions or changes to the approved plans must be re-approved by the County Board of Adjustment.
16. 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.

IF YOU NEED CLARIFICATION OF CONDITION(S), PLEASE CONTACT JEFF BARNHILL, CUMBERLAND COUNTY WATERSHED REVIEW OFFICER AT 910-678-7765.

COUNTY OF CUMBERLAND PLANNING DEPARTMENT	
Certificate of Approval for Recording Watershed Protection	
I certify that the plat shown hereon complies with the Watershed Protection Ordinance and is approved for recording in the Register of Deeds’ office.	
Case No. <u> WS11-01 </u>	<u> Thomas Lloyd </u> Planning Director
Watershed Area: <u> WS-IV-BM </u>	<u> January 9, 2012 </u>
NOTICE: This property is located within a Public Water Supply Watershed. Development restrictions may apply.	

Case No. WS11-01

Cumberland County Board of Adjustment

Evaluation of Application for High Density Development Proposal

Requirements for approval of the High Density Option for Watershed by the Board:

1. The storm water control system must meet the standards of the Watershed Ordinance. (Plans have been reviewed by the County Engineer's office and were reapproved on April 1, 2011.)
2. Cost estimate for the storm water system must be a sufficient amount to complete the project. (County Engineer's office verified the sufficiency of the amount proposed in a letter dated April 1, 2011.)
3. Legal documents for ownership and maintenance of the storm water control system must meet the standards of the Watershed Ordinance. (Legal documents have been found to legally sufficient by the County Attorney's office on March 29, 2011.)
4. The project must meet the standards of the zoning and subdivision ordinances. (The Planning & Inspections Staff has reviewed the project and conditionally approved the Case in Subdivision Case No. 08-069, on April 10, 2008. (Other related files: 95-171, P07-71 and 08-110).
5. The "Operation and Maintenance Plan" must be satisfactory and comply with at least the minimum standards and intent of the Ordinance. (The Watershed Review Officer for the Planning & Inspections Staff has reviewed and conditionally approved this plan on March 25, 2011.)
6. The project must have an approved soil erosion and sedimentation control plan. (The North Carolina Department of Environment and Natural Resources (NCDENR), Land Resources Division has approved the soil erosion and sedimentation control plan on April 2, 2008. (Sally Castle verified that approval still valid on April 5, 2011.)
7. In addition to any other requirements provided by the Water Supply Watershed Ordinance, the Board may designate additional conditions and requirements on the proposal to assure the use will be harmonious with the area in which the project is to be located and with the spirit of the ordinance.

Example: Approval of Proposal:

1. A motion to approve Case No. WS11-01, subject to all Conditions of Approval, provided that it is developed according to the plan under the direction of the Watershed Administrator in accordance with Section 31A-68 which authorizes the delegation of enforcement authority from the Board to the Planning & Inspections Department.

Example: Disapproval of Proposal: If the Board disapproves the application based on its findings, the reasons for such action shall be stated in the minutes of the Board.

P11-07-C
SITE PROFILE

P11-07-C: CONSIDERATION OF A REQUEST FOR A VARIANCE FROM THE COUNTY ZONING ORDINANCE, SECTION 1403 SITE PLAN REVIEW, SUB-SECTION I., WHICH REQUIRES EXTENSION AND CONNECTION TO PUBLIC SEWER; IN A C2(P) PLANNED SERVICE AND RETAIL DISTRICT ON 1.14+/- ACRES, LOCATED AT 2674 GEORGE OWEN ROAD (SR 1133); SUBMITTED AND OWNED BY SHELBY T. TOWNSEND.

Site Information:

Frontage & Location: 270' +/- on George Owen Road (SR 1133)

Depth: 260'+/-

Jurisdiction: Cumberland County

Adjacent Property: No

Current Use: Vacant land

Initial Zoning: R10 – November 17, 1975 (Area 4); rezoned to C2(P) on 10/17/2011

Nonconformities: None

Zoning Violation(s): None

Surrounding Zoning: North: C(P) & R6A (Hope Mills/County), C3 (Hope Mills) R10; West: C1(P), C3 & R6A (Hope Mills) C(P) & R10 (Hope Mills & County) CD & R6A; East: M2, RR, R10 & R6A; South: C(P), C1(P) & C3 (Hope Mills) R10

Surrounding Land Use: Strip mall, motor vehicle repair, mini-warehousing, 2-trade contractor, retail store, residential (including multiple family), and woodlands

2030 Grow Strategy Map: Urban Area

Special Flood Hazard Area (SFHA): None

Soil Limitations: None

Water/Sewer Availability: PWC/Septic

Subdivision/Site Plan: Site plan approval Case No. 11-108 on 10/24/2011, developer is required to connect to existing sewer located approximately 190 feet – see condition No. 2 on attached conditions of approval

Average Daily Traffic Count (2008): 1,600 on John Smith Road (SR 1135)

Military Influence Area: Town of Hope Mills

Highway Plan: There are no road improvements/constructions specified for this area. This case has no impact on the current Highway Plan or Transportation Improvement Program

County Zoning Ordinance Reference: Section 1403 Site Plan Review, Sub-section I

Notes:

1. County Zoning Ordinance Section 1403 Site Plan Review, Sub-section I:

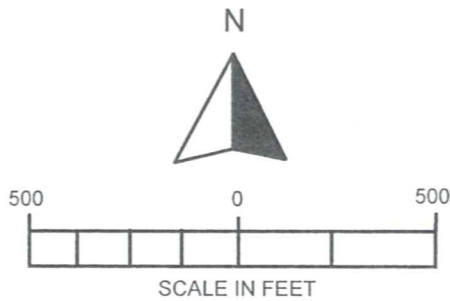
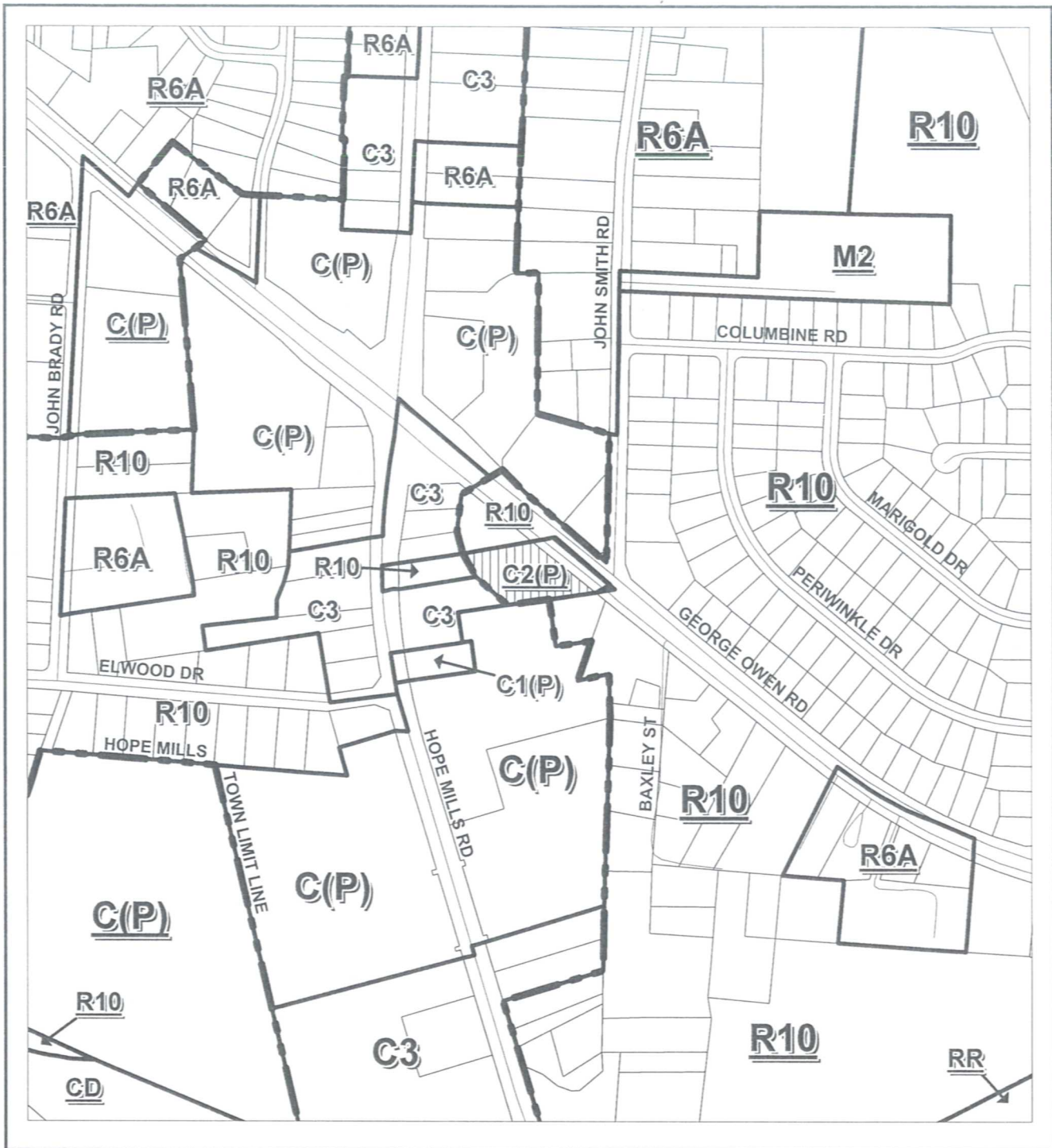
Extension and connection to public water and /or sewer is required if extension and/or connection would be required under the provisions of the County Subdivision Ordinance. If the development consists of a non-residential use or a mixed use and utilities are present within the right-of-way or if any adjacent lot is served by utilities, extension and connection is mandatory.

2. Summary of request: Applicant request to use private septic system for this development.

Note: Section 2306 of the County Subdivision Ordinance requires lots within 300 feet of public water or sewer to connect,

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.

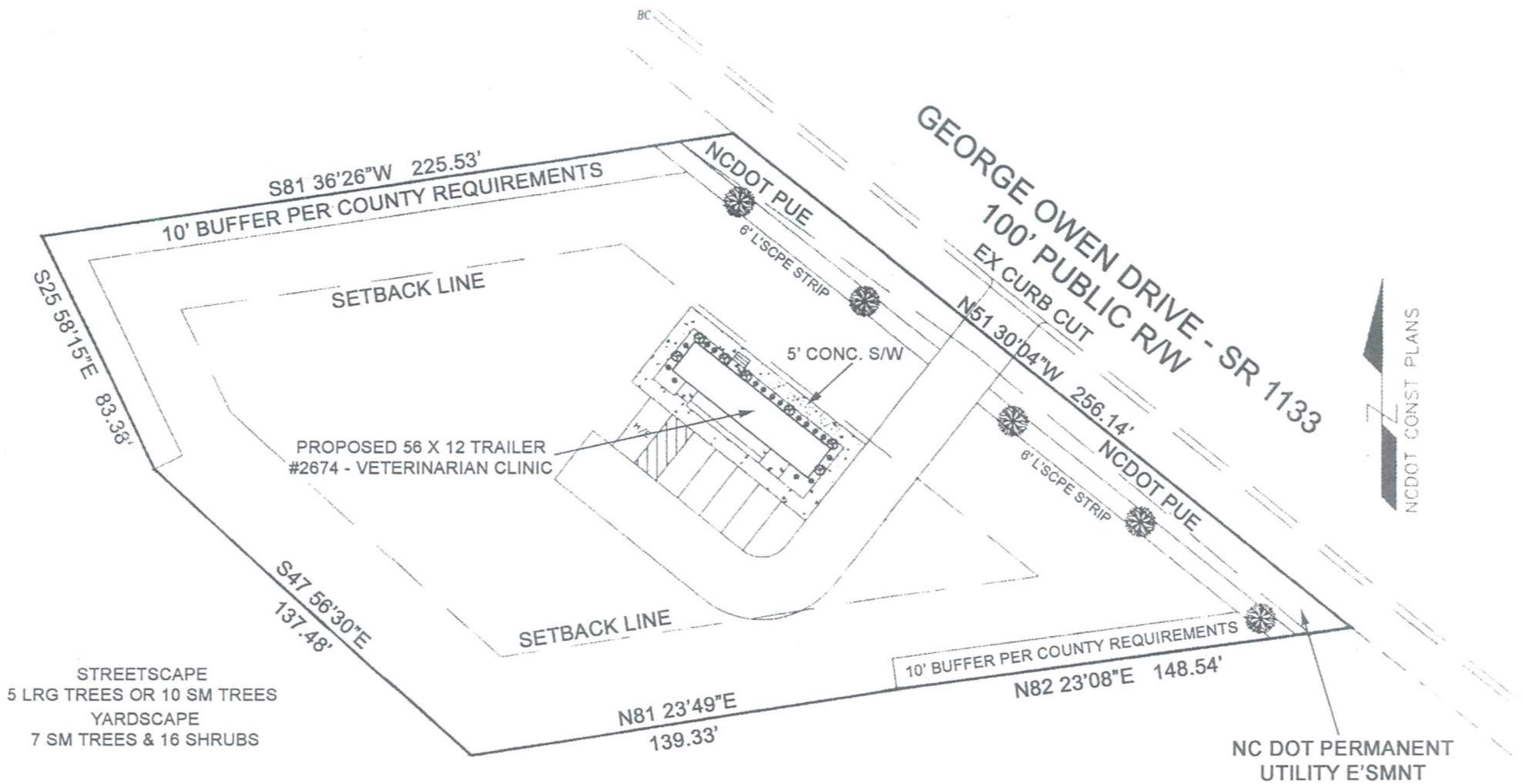


BOARD OF ADJUSTMENT VARIANCE

ACREAGE: 1.14 AC.+/-		HEARING NO: P11-07-C	
ORDINANCE: COUNTY		HEARING DATE	ACTION
GOVERNING BOARD			

PIN: 0415-02-1715

WL



STREETScape
 5 LRG TREES OR 10 SM TREES
 YARDScAPE
 7 SM TREES & 16 SHRUBS

**BOARD OF ADJUSTMENT
 VARIANCE**

**REQUEST: FOR A VARIANCE FROM THE COUNTY ZONING ORDINANCE,
 SECTION 1403 SITE PLAN REVIEW, SUB-SECTION I., WHICH REQUIRES
 EXTENSION AND CONNECTION TO PUBLIC SEWER; IN A C2(P)
 PLANNED SERVICE AND RETAIL DISTRICT
 CASE: P11-07-C ACREAGE: 1.14 AC.+/-
 ZONED: C2(P) SCALE: NTS**

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

BOARD OF ADJUSTMENT

LOCATION OF PROPERTY: 2674 George Oweard - SR1133

OWNER: Shelby T. Townsend

ADDRESS: 7132 Sim Canada Rd, Hope Mills ZIP CODE: 28348

TELEPHONE: HOME 910425-0967 WORK _____

AGENT: _____

ADDRESS: _____

TELEPHONE: HOME _____ WORK _____

shelbytd5@aol.com

APPLICATION FOR A VARIANCE

As required by the Zoning Ordinance or Code

A. Parcel Identification Number (PIN #) of subject property: 0415-02-1715
(also known as Tax ID Number or Property Tax ID)

B. Acreage: 1.17 Frontage: 256.14 Depth: 22.5 ft

C. Water Provider: PWC Hope Mills

D. Septage Provider: Existing - on site septic system

E. Deed Book see Attached, Page(s) description, Cumberland County Registry. (Attach copy of deed of subject property as it appears in Registry).

F. Existing and/or proposed use of property: VACANT -
Veterinary Clinic

G. Section and provision of the Zoning Ordinance or Code from which a Variance is requested: Section 1403 - I

H. Nature and extent of hardship involved in strict application of the Zoning Ordinance or Code: The cost to connect to PWC sewer will be at least \$100,000.00 Per PWC Eng. Dept. 223-4730.
No problems with existing septic system on property
Home Acquired by DOT for Hope Mills Bypass -
septic system used by Barnhill Contractors during road project.
only one small non-profit business on property

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)

Shelby T. Townsend

PRINTED NAME OF OWNER(S)

Shelby T. Townsend

DATE

10 - 11 - 11

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

Roy Turner,
Chair
Cumberland County

Walter Clark,
Vice-Chair
Cumberland County

Garland C. Hostetter,
Town of Spring Lake
Harvey Cain, Jr.,
Town of Stedman
Patricia Hall,
Town of Hope Mills
Charles C. Morris,
Town of Linden



COUNTY of CUMBERLAND

Planning and Inspections Department

Thomas J. Lloyd,
Director

Cecil P. Combs,
Deputy Director

Lori Epler,
Sara E. Piland,
Cumberland County

Benny Pearce,
Town of Eastover

Donovan McLaurin,
Wade, Falcon & Godwin

STAFF REVIEW: 10-24-11 PLANNING BOARD DECISION: N/A

CASE NO: 11-108 NAME OF DEVELOPMENT: THE BIG FIX - VETERINARIAN CLINIC

MIA: HOPE MILLS C2(P) SITE PLAN REVIEW

LOCATION: SOUTHWEST SIDE OF SR 2674 (GEORGE OWEN ROAD) ZONING: C2(P)
EAST OF NC HWY 59 (HOPE MILLS) PIN: 0415-02-1715

OWNERS / DEVELOPER: SHELBY TOWNSEND ENGINEER OR DESIGNER: BENNETT ENGINEERING

PLANNING & INSPECTIONS DEPARTMENT ACTION:

- PRELIMINARY
- EXTENSION REVISION
- APPROVED CONDITIONALLY
- DENIED

PLANNING BOARD DECISION:

- PRELIMINARY
- EXTENSION REVISION
- APPROVED CONDITIONALLY
- DENIED

The development plat/plan you submitted to this office is conditionally approved. Your approval is subject to the following 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. Connection to public water and sewer is 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. (Section 2306 A.1, Public Water and Sewer Systems County Subdivision Ordinance)

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. The developer must provide a site-specific address and tax parcel number at the time of building/zoning permit application.
4. 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.
5. 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.
6. Landscaping must be provided in accordance with Section 1102 N, Landscaping, County Zoning Ordinance and/as shown on the site plan. The following are the minimum standards for the required landscaping of this site:
 - a. Five large shade trees or ten small ornamental trees within the front yard setback area; and
 - b. One large shade tree and 11 shrubs are required in the building yard 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.
7. Prior to the building final inspection, a concrete sidewalk must be constructed along SR 1133 (George Owen Road). (Section 2305, Sidewalks, County Subdivision Ordinance) This sidewalk must be constructed to the Town of Hope Mills standard and comply with the *Americans with Disabilities Act* (ADA).

Note: The developer is the responsible party for contacting the Town of Hope Mills and ensuring that the appropriate representative from the town signs the NC Department of Transportation (NCDOT) encroachment agreement as the responsible party for maintenance of the sidewalk.

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 County Subdivision and Zoning Ordinances for the C2(P) 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. Turn lanes will be required by the NC Department of Transportation (NCDOT).
16. 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.
17. A 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 Section 1102 G, Buffer Requirements, County Zoning Ordinance. (Note: Chain link fencing cannot be used to satisfy the buffer requirement.) Note: The buffer requirement is not 10 feet in width; however, it must be a minimum of six feet high and opaque.
18. All dumpster, garbage, and utility areas shall be located on concrete pads and screened on a minimum of three sides.
19. All required off-street parking spaces shall be a minimum of 9' x 20'; a minimum of four spaces for each veterinarian of off-street parking spaces is required for this development.
20. 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.
21. In the event, the developer proposed dog pens, runs, fencing, shelters, etc. outside of the proposed structure, a revised site plan must be submitted and must be approved prior to commencement of installation of any outside accessory structure.
22. Noise levels shall not exceed 60 dB(A) between the hours of 10:00 pm and 7:00 am. In any event, the noise level, regardless of the time of day, shall not become a nuisance to neighboring properties and strict compliance with the County's Noise Ordinance is required.

Other Relevant Conditions:

23. This conditional approval is not approval of any kennel operations within this proposed development. If there are to be any dogs boarded overnight for any reason other than medical care, the site plan must be revised to meet the kennel requirements (Section 912, County Zoning Ordinance) and the site plan must be reviewed and approved prior to commencement of any kennel operation.
24. The applicant is advised to consult an expert on wetlands before proceeding with any development.
25. The developer is encouraged to refrain from clear cutting this property and to retain as many existing trees as possible.

26. 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.
27. An application is pending before the County Board of Adjustment and is scheduled to be heard by that board on November 17, 2011 for a variance concerning public sewer connection. (See Case: P11-07-C).

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):

Improvements Inspections:	Jeff Barnhill	678-7765
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*
Town Clerk:	Melissa P. Adams	
Chief Building Inspector:	Mike Bailey	
County Public Utilities:	Amy Hall	678-7682
Corp of Engineers (wetlands):	Crystal C. Amschler	(910) 251-4170
NCDENR (E&S):	Sally Castle	433-3300
Location Services:		
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.

cc: Mike Bailey, Town of Hope Mills
Pier Varner, Secretary, County Board of Adjustment

OFFICIAL PRELIMINARY STAMP
CUMBERLAND COUNTY
CASE NO: 11-108

THIS PLAN APPROVED BY THE CUMBERLAND COUNTY PLANNING & INSPECTION DEPARTMENT ON: 10-24-11

COMMENTS: SUBJECT TO CONDITIONS

I CERTIFY THAT THIS PLAN HAS BEEN APPROVED BY THE CUMBERLAND COUNTY PLANNING & INSPECTIONS DEPARTMENT AS DRAWN HEREON AND MAY BE USED FOR ANY OFFICIAL PURPOSE AS PERMITTED BY LAW. THIS APPROVAL IS VALID UNTIL: 12-31-13

Patricia S. Speicher **GB**
SUPERVISOR, LAND USE CODES

P11-10-C
SITE PROFILE

P11-10-C: CONSIDERATION OF A SPECIAL USE PERMIT TO ALLOW A DAY CARE FACILITY IN AN R6A RESIDENTIAL DISTRICT ON .46+/- ACRE, LOCATED AT 1425 MCARTHUR ROAD (SR 1600), SUBMITTED BY ANNIE HASAN ON BEHALF OF KALIM HASAN (OWNER).

Site Information:

Frontage: 100'+/- on McArthur Road (SR 1600)

Depth: 200.00'+/-

Jurisdiction: Cumberland County

Adjacent Property: Yes, south side of subject property

Current Use: Residential dwelling

Initial Zoning: R6A – August 21, 1972 (Area 1)

Nonconformities: None

Zoning Violation(s): None

Surrounding Zoning: North: R6/CU (manufactured home), C(P), C1(P), RR, R6A, SF-6 (Fay) & R6; South: R6/CU (office), SF-10 (Fay), R6 & R5A; East: R6/CU (day care facility), R6A & R6; West: R6A

Surrounding Land Use: Residential (including manufactured homes & multi-family), 2-manufactured home parks, substation, vacant day care facility, and military reservation

2030 Land Use Plan: Urban area

North Fayetteville Land Use Plan: Medium density residential

Special Flood Hazard Area (SFHA): None

Water/Sewer Availability: PWC/Septic Tank

Soil Limitations: None

School Capacity/Enrolled: Howard Hall Elementary: 550/686; Pine Forest Middle: 820/953; Pine Forest High: 1,750/1,525

Subdivision/Site Plan: See attached “Ordinance Related Conditions” particular attention should be paid to Condition No. 1

Municipal Influence Area: City of Fayetteville

RLUAC: Does not object to the request but suggests the use of additional insulation in any new construction as the property is located within a military aircraft high noise levels area (57-62 dbL).

US Fish & Wildlife: No objection

Average Daily Traffic Count (2008): 11,000 on McArthur Road (SR 1600)

Highway Plan: Fayetteville Outer Loop is identified in the Highway Plan as a major thoroughfare. This proposal calls for a multi-lane facility (U-2519) with a right-of-way of 250 feet. Construction is currently in progress. McArthur Road is identified in the Highway Plan as a major thoroughfare. This proposal calls for a multi-lane facility with a right-of-way of 110 feet. Road improvements are not included in the 2012-2018 MTIP. The property will be impacted by these projects

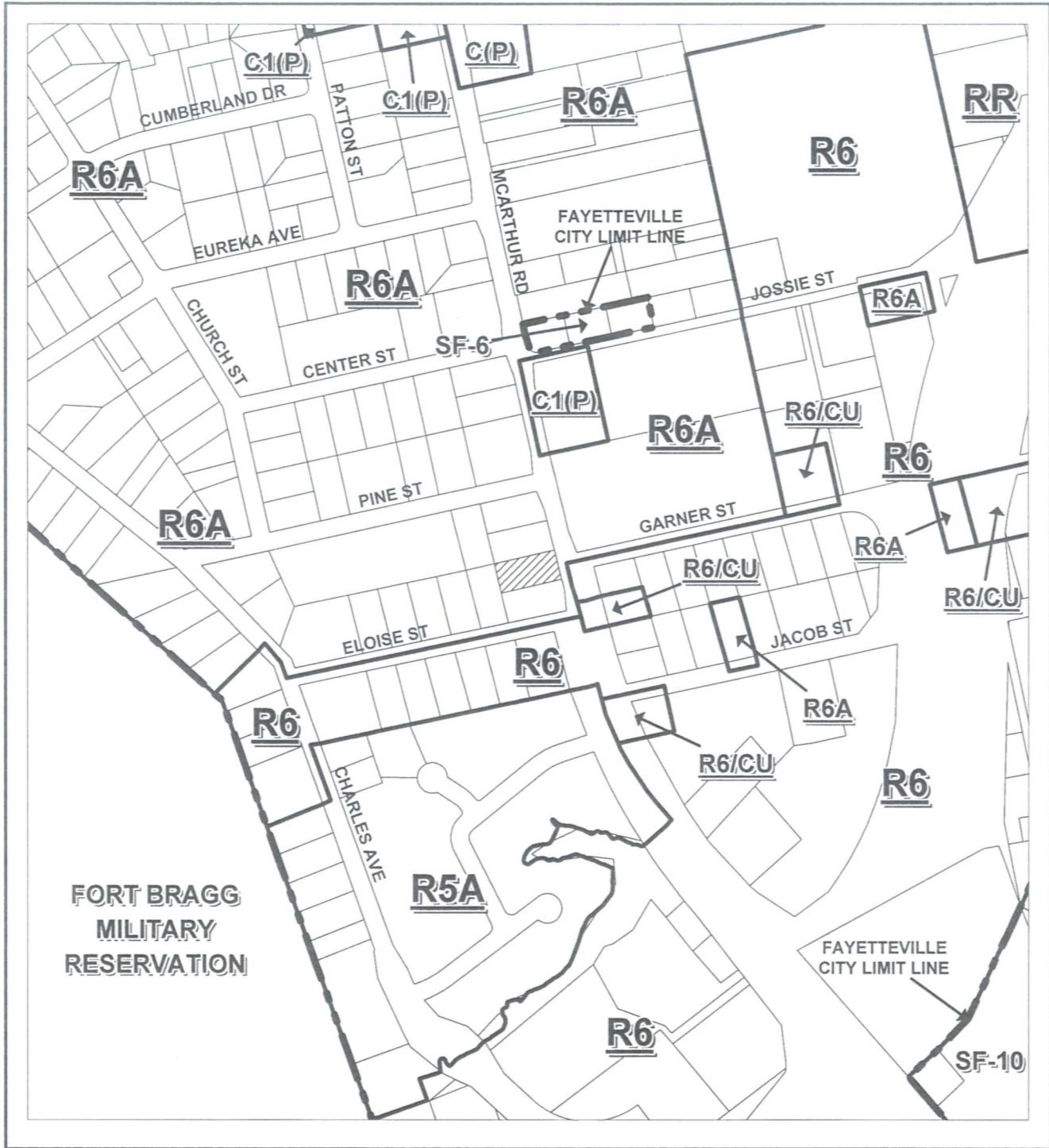
County Zoning Ordinance Reference: Section 906, Day Care Facility

Notes:

- Contents of the application
 - a. Days of operation: Monday through Friday
 - b. Hours of operation: 6:00 am to 11:00 pm (1st & 2nd shift)
 - c. Total children: 36
 - d. Employees: 6
 - e. Off-street parking spaces for day care: 8 (see site plan)
 - f. One vehicle assigned for day care business

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.

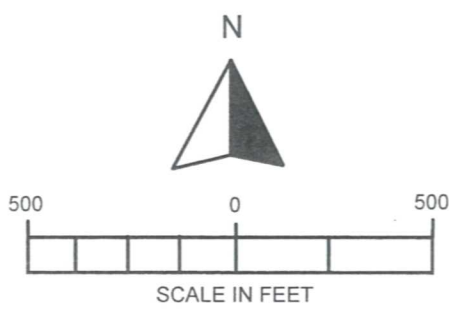


FORT BRAGG
MILITARY
RESERVATION

FAYETTEVILLE
CITY LIMIT LINE

SF-10

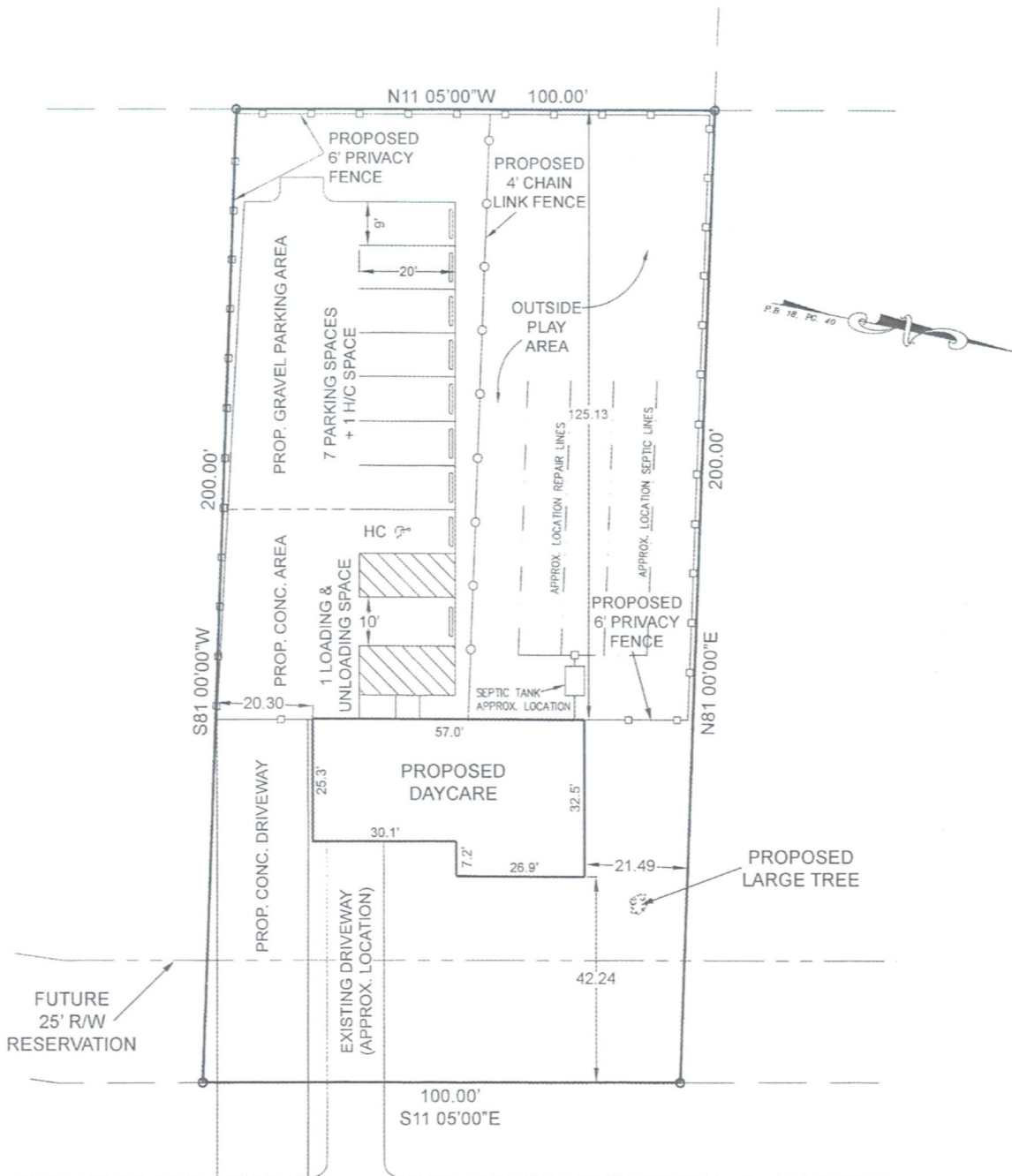
BOARD OF ADJUSTMENT SPECIAL USE PERMIT



ACREAGE: 0.46 AC.+/-		HEARING NO: P11-10-C	
ORDINANCE: COUNTY		HEARING DATE	ACTION
GOVERNING BOARD			

PIN: 0520-67-6814

WL
12/15/11



MCARTHUR ROAD (S.R. 1600)
R/W VARIES - PUBLIC

GARNER ST.

**BOARD OF ADJUSTMENT
SPECIAL USE PERMIT**

**REQUEST: CONSIDERATION OF A SPECIAL USE PERMIT
TO ALLOW A DAYCARE FACILITY IN AN R6A DISTRICT**
CASE: P11-10-C ACREAGE: 0.46 AC. +/-
ZONED: R6A SCALE: NTS

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

12/15/11

BOARD OF ADJUSTMENT

LOCATION OF PROPERTY: 1425 McArthur Road, Fayetteville, NC 28311
OWNER: Kalim Hasan
ADDRESS: 735 Carnegie Street, ZIP CODE: 28311
TELEPHONE: HOME (910) 985-0182 WORK _____
AGENT: Annie R. Hasan
ADDRESS: 1340 McArthur Road, Fayetteville, NC 28311
TELEPHONE: HOME (910) 624-6833 WORK 910-482-3513

APPLICATION FOR A SPECIAL USE PERMIT
As required by the Zoning Ordinance

- A. Parcel Identification Number (PIN #) of subject property: 052067-6814
(also known as Tax ID Number or Property Tax ID)
- B. Acreage: .47^{ARH} Acre Frontage: 100.00 Depth: 200.00
- C. Water Provider: Public Works Commission
- D. Septage Provider: Septic Tank
- E. Deed Book 7102, Page(s) 750, Cumberland County Registry. (Attach copy of deed of subject property as it appears in Registry).
- F. Existing use of property: 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.) It is proposed that the property will be put to the following use for a child care center. No more than the allowed children shall be cared for at any given time based upon the Child Development of Human Services (Dept. of Health and Human Services) requirement. The hours of operation shall be Monday-Friday, 6:00 Am - 11:00pm. The number of employees will be six based upon the number of children in attendance. ARH outside sign should be 4'x4'. Parking will be available in the front of the building. Landscaping will be compatible to the neighborhood. (see attached)
(correct info will be provided at the meeting) ARH

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.)

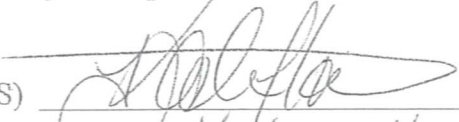
1. The proposed use/activity will be used for a child care center. ^{No more than the} ~~No more than the~~ ³⁶ ~~allowed~~ children shall be cared for at any given time based upon the North Carolina Department of Health and Human Services, Division of Child Development guidelines.. Shifts may not overlap (e.g. 1st shift-6:00 a.m. to 2:00 p.m. the 2nd shift would start @ 2:30 p.m. to 11:00 p.m., etc.)
2. One (1) off-street parking space shall be provided for each staff. The off-street parking space required for the Child Care Home shall be maintained, ~~in addition to the space~~ ^{ART H} ~~or spaces required for the residence itself. No parking areas, other than driveways, may be located in the required front yard setback or in any protective yard.~~ ^{ART H}
3. Only one (1) vehicle used in connection with the day care facility in residential zoning districts will be parked or stored on the premises, ~~or residential street.~~ ^{ART H}
4. There shall be 4' x 4' sign visible from the dwelling. The address of the property will be posted in accordance with the Cumberland County Zoning Ordinance.
5. ~~No person, other than members of the family residing on the premises, shall be engaged or employed. This shall not apply to a substitute non-resident person providing care on the premise while the owner/operator is sick or otherwise unable to provide such care.~~ ^{ART H}
6. The landscaping of the facility will adequately blend it into the area, screen its purely functional aspects from the street or absorb and deflect any excessive noise.
7. The number of employees ⁽⁶⁾ ~~will be~~ based on the North Carolina Department of Health and Human Services, Division of Child Development requirements.

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 approve, deny, or defer the request for additional information to be provided;
- If the petitioner or their representative for this application does not appear personally before the Board, whether there is opposition or not, the Board has full authority to consider the case.
- If the Board's decision is to deny the matter before them, **the aggrieved party shall file a "Notice to Intent to Appeal" with the Planning & Inspections Staff on the next business day following the meeting in which the Board's decision was made final, or the next business day following receipt of the written copy there of.**
- Any petition for review by Superior Court shall be file with the Clerk of Superior Court within 30 days after the decision of the Board is made final.

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) Katim Hasan

DATE 11-8-11

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

Special Use Permit – Board of Adjustment

DRAFT

Ordinance Related Conditions

Pre- Permit Related:

1. Prior to any permits being issued the developer must submit three copies of a revised site plan for staff review and approval with the following changes:
 - a. The revised site plan must reflect the two required unloading and loading spaces as required by the Zoning Ordinance. **(Note: The current site plan shows only one loading and unloading space. The required parking spaces cannot be counted to meet the loading space requirement.)**
 - b. The revised site plan must reflect the 4 x 4 sign referenced in the application. This conditional approval is not approval of any freestanding signs. 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.)

Watershed-Related:

2. An application for a Watershed “No Approval Required” development must be submitted to the Watershed Review Officer (WRO) and plans must be approved by the WRO prior to final plat approval and/or prior to application for any building/zoning permits, site plan approval is required. A copy of the WRO’s approval of this plat/plan must be submitted to Code Enforcement at the time of application for any permits.

Permit-Related:

3. 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.
4. The County Health Department must approve sewer plans prior to application for any permits. Site and soil evaluations must be conducted on the property by the County Environmental Health Department prior to application for permits. A copy of the Health Department approval must be provided to Code Enforcement at the time of application for any building/zoning permits. (Note: All Health Department requirements must be met prior to issuance of final permits.) (Section 2306 A, Water and Sewer, County Subdivision Ordinance)
5. The County Health Department must approve the food handling/service plans prior to application for any permits. Contact the Food and Lodging Section of Environmental Health for more information regarding this condition.
6. If there are improvements or additions which require water then connection to public water is required, the Public Works Commission (PWC) must approve water 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. (Section 2306 A.1, Public Water and Sewer Systems County Subdivision Ordinance)

Note: Due to an existing agreement between the PWC and the City of Fayetteville, an annexation petition most likely will be required prior to the PWC’s review of any utility plans.

7. The developer must provide a site-specific address and tax parcel number at the time of building/zoning permit application.
8. Landscaping must be provided in accordance with Section 1102 N, Landscaping, County Zoning Ordinance and/as shown on the site plan. The following are the minimum standards for the required landscaping of this site:

- One large shade trees or two small ornamental trees within the front yard setback area along SR 1600 (McArthur Road).

In addition:

- Required plant materials shall be maintained by the property owner, including replacing dead or unhealthy trees and shrubs; and
 - All yard and planting areas shall be maintained in a neat, orderly, and presentable manner and kept free of weeds and debris.
9. 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:

- All uses, dimensions, setbacks and other related provisions of the County Subdivision and Zoning Ordinances for the R6A zoning district must be complied with, as applicable.
- Reservation of 25 feet of right-of way along SR 1600 (McArthur Road) is required and the metes and bounds for the reservation must be reflected on any future site plans. The location of all improvements, required or otherwise, and all building setback lines are to be measured from the ultimate right-of-way line. (Section 2302 F, Planned Public Right-of-Way, County Subdivision Ordinance) [Note: SR 1600 (McArthur Road) is part of the Highway Plan project (U-2519) and the subject property will be impacted by the Fayetteville Outer Loop and McArthur Road widening projects.]
- 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)
- For new development, all utilities, except for 25kv or greater electrical lines, must be located underground. (Section 2306 C, County Subdivision Ordinance)
- 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.
- Turn lanes may be required by the NC Department of Transportation (NCDOT).
- 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.
- A 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 Section 1102 G, Buffer Requirements, County Zoning Ordinance. (Note: Chain link fencing cannot be used to satisfy the buffer requirement.)
- All dumpster, garbage, and utility areas shall be located on concrete pads and screened on a minimum of three sides.
- All required off-street parking spaces shall be a minimum of 9' x 20'; a minimum of six off-street parking spaces are required for this development. (The number of required parking spaces is based on the three employees working on each of the two shifts plus two additional required spaces. There is one additional parking space required for the proposed vehicle to be used in connection with the day care facility.)
- A minimum of two off-street unloading/loading spaces which must be have sufficient paved driveway to accommodate at least two motor vehicles at on time for the purpose of loading and unloading passengers.
- Noise levels shall not exceed 60 dB(A) between the hours of 10:00 pm and 7:00 am. In any event, the noise level, regardless of the time of day, shall not become a nuisance to neighboring properties and strict compliance with the County's Noise Ordinance is required.

22. If there is going to be a play area located in the rear of the property, it must be enclosed with a minimum of a 4 foot high fence with as gate that can be securely closed.
23. The subject property is located within a military aircraft high noise area (57 to 62 decibels); therefore, the developer is encouraged to add additional insulation in any new construction/renovation to reduce the outside to inside noise levels.

Advisories:

24. The applicant is advised to consult an expert on wetlands before proceeding with any development.
25. 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.
26. Under current standards, if the existing structure is ever removed or destroyed more than 50%, any replacement structure will be required to meet the front yard setback from the 25 foot reservation line along SR 1600 (McArthur Road).

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):

Watershed Review Officer:	Jeff Barnhill	678-7765
Subdivision/Site Plan/Plat	Ed Byrne	678-7609
Code Enforcement (Permits):	Ken Sykes	321-6654
County Health Department:		
Environmental Health (Septics):	Daniel Ortiz	433-3680
Envir. Health (Food & Lodging):	Tony Ferguson	433-3678
PWC:	Heidi Maly	223-4737
Fayetteville Planning:	Marsha Bryant	433-1416
County Public Utilities:	Amy Hall	678-7682
Corp of Engineers (wetlands):	Crystal C. Amschler	(910) 251-4170
NCDENR (E&S):	Sally Castle	433-3300
Location Services:		
Site-Specific Address:	Ron Gonzales	678-7616
Tax Parcel Numbers:		678-7549
NCDOT (driveways/curb-cuts):	Gary Burton	486-1496
Transportation Planning:	Bobby McCormick	678 7632
N.C. Division of Water Quality:	Mike Randall	(919) 733-5083 ext. 545