

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
JANUARY 19, 2012
7:00 P.M.

Members Present

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

Absent Members

None

Staff/Others Present

Patricia Speicher
Pier Varner
Melodie Robinson
Jeff Barnhill
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. CHAIR QUIGLEY SWORE IN THE STAFF

3. ADJUSTMENTS TO THE AGENDA

There were none.

4. APPROVAL OF THE NOVEMBER 17, 2011 MINUTES

A motion was made by Mr. Donaldson and seconded by Mr. Humphrey 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. POLICY STATEMENTS REGARDING APPEAL PROCESS

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

9. PUBLIC HEARING(S)

Opened Public Hearing

- A. P10-14-C: RECONSIDERATION 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; THOMAS AND NANCY POULOS (OWNERS) AND GREEN POND INC (AFFECTED OWNER).**

MRS. VARNER: Presented the zoning, land use and photos of the site to the Board.

MRS. VARNER: Mr. Chairman, the Poulos' case was sent back for the Board to receive evidence as to whether or not the portion of the existing storage building has been removed from the portion located on the part belonging to Green Pond. The court ordered that the Poulos' were entitled to a zero lot line with the Green Pond property. Since your October 21, 2010 hearing on this request, the Poulos' have removed that portion of the structure that extends over the common property line with Green Pond. I am going to ready the court order. The court ordered: 1. That this matter is remanded back to the Board of Adjustment. 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 Adjustment shall grant the subject variance requested by the Petitioners and entitling the Petitioners to a zero lot line. This order was made on October 20, 2011.

MR. MOOREFIELD: I spoke with the attorney for the Petitioners prior to the hearing and I have seen a new survey with the seal of the surveyor which I believe he was going to put into evidence. Do you have that evidence? I believe that alone is a sufficient finding. I don't know if they have removed that portion of the subject building from the adjoining property. I suggest that without too much depth into the ordinance, because there are a lot more findings and facts that are a lot more involved than what we had in the beginning but, just find that the judge has ordered the Board to proceed as long as the petitioners have presented evidence they have removed that portion of the subject building. Upon doing that the Board of Adjustment will grant the subject variance as long as the petitioners meet those criteria.

MR. DONALDSON: There is only one fact to find and that is that they removed it, right?

CHAIR QUIGLEY: If you will introduce that as evidence. [Is handed a survey submitted by the attorney Mr. Neville – Exhibit 1]

MR. MOOREFIELD: I believe Mr. Neville intended to do that. Is that correct sir?

CHAIR QUIGLEY: Swore in Thomas Neville.

MR. NEVILLE: My name is Thomas Neville. I'm the attorney for the Poulos' and my office is located at 115 E. Russell Street, Fayetteville.

CHAIR QUIGLEY: Are you introducing this as evidence?

MR. NEVILLE: Yes, I will formally present the survey of the Poulos property at this time.

CHAIR QUIGLEY: Does anyone have any questions?

MR. MOOREFIELD: Mr. Chairman, is there anyone here from Green Pond?

MS. SPEICHER: There is no one here signed up in opposition.

Public Hearing Closed

CHAIR QUIGLEY: It is the findings of the Board and based on the evidence presented tonight, that the portion of the building that was encroaching has been removed, and therefore; we would like to order the variance be granted in this case.

MS. SPEICHER: Do we need to vote on that?

MR. HUMPHREY: I motion to approve the variance.

MR. DYKES: I second the motion.

The motion was unanimous.

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

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.

MR. BARNHILL: On April 21, 2011, Mr. Andrews got the high density approval for the 70%. Since that time, Mr. Andrews decided to downgrade this project to meet the low density standards, which would be under 24% impervious surface for this site. He is requesting the Board revoke the high density so that we can proceed with the low density which would be approved at staff level and not require Board approval.

CHAIR QUIGLEY: Does any member of the Board have questions for Mr. Barnhill? Do I have a motion?

MR. DONALDSON: I move to grant the revocation.

MR. HUMPHREY: I second the motion.

CHAIR QUIGLEY: Are there any questions? Does staff have any other comments to make? All in favor of granting the revocation of the high density development signify by saying aye.

The motion was unanimous.

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

Opened Public Hearing

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.

MRS. VARNER: Mr. Chairman, this variance request came from one of the conditions of a preliminary site plan approval for a veterinary clinic, Case No. 11-108 approved on 10/24/2011. If the variance is approved, the applicant will not have to comply with condition No. 2 of the

preliminary site plan approval. A copy of the site plan approval is attached to your packets. If you would like to read the condition, it is No. 2.

MRS. VARNER: Presented the zoning, land use and photos of the site to the Board.

MRS. VARNER: Mr. Chairman, I would like to make a correction for the record. On the location for sewer there is PWC available for sewer.

CHAIR QUIGLEY: Does anyone have questions for the staff?

CHAIR QUIGLEY: Swore in Shelby Townsend.

MS. TOWNSEND: My name is Shelby Townsend, 7132 Sam Cannady Road, Hope Mills, NC 28348. I am founder and director of Unchained Cumberland County. We assist pet families in crisis; usually the poorest, least educated in the county. I would like to open the Big Fix which is a non-profit veterinary clinic on this piece of property that I inherited from my family. Our mission is to make basic veterinary care affordable and available to every pet owner in Cumberland County. We are already doing this, but so far we have Rusty Long from Urban Ministry who has helped us with our big group massive neutering clinic and Sue from In As Much. They have been extremely kind to us by letting us use their facility. We really need our own place to register our families to use for recovery. At this time in order to keep our expenses so low that it will still be affordable, we would like to contract our spay and neuter surgeries with Affordable Animal Care out of Durham. We have been doing business with them since December 2009 and we have subsidized more than 700 spay and neuter surgeries. This office that I would like to put on my lot would be like a processing center. We would have vaccinations. We have affordable vaccination once a month when the weather is good. We just need our own place. In making your decision, I hope you will consider two documents that I have here. One is a contract I have with Barnhill Contracting in 2002. They leased my property for their mobile unit which is very much like this one during the process to do the construction and they used the existing septic tank which I would like to use if at all possible. Another one is my statement regarding our contracting with Affordable Animal Care. It shows pictures of the unit with us actually using it, pictures of the veterinary and it tells exactly what we will be doing there. May I please submit this to you for your consideration?

CHAIR QUIGLEY: Yes, one at a time. Thank you.

CHAIR QUIGLEY: Ms. Townsend, you said this was initiated with Barnhill in 2002. How long did they use that septic tank on that site?

MS. TOWNSEND: For two years until completion of the project.

CHAIR QUIGLEY: Does anyone have questions for Ms. Townsend?

MR. DONALDSON: There is no throat on the mobile home on the property now is there?

MS. TOWNSEND: No sir, but I have purchased one.

MR. DONALDSON: The mobile home that was on there is one that Barnhill put on?

MS. TOWNSEND: Yes sir.

MR. DONALDSON: Before that the land was vacant?

MS. TOWNSEND: Yes sir.

MR. DONALDSON: Did they install the septic tank or was that there?

MS. TOWNSEND: No sir, that was there.

MR. DONALDSON: Do you know how long it has been there?

MS. TOWNSEND: I have no idea.

MR. DONALDSON: I assume there was a mobile home at some point in time?

MS. TOWNSEND: It was my family home which was acquired by the Department of Transportation and destroyed for the bypass.

MR. DONALDSON: This piece of land is what was left?

MS. TOWNSEND: Yes sir.

MR. DONALDSON: Was the home there where the septic tank was?

MS. TOWNSEND: Yes.

CHAIR QUIGLEY: Is there any intent to make this a kennel operation?

MS. TOWNSEND: No sir, absolutely not. We do not get into that.

CHAIR QUIGLEY: It is strictly an outpatient sort of treatment facility?

MS. TOWNSEND: We assist pet families in crisis. We are not rescue, we do not foster.

MR. DONALDSON: You don't do overnight?

MS. TOWNSEND: No sir. We have a veterinarian already. Dr. Jack Hill has agreed to handle any emergencies or overnights that we might have.

MR. DONALDSON: I have a question for staff. This is a permitted use, isn't it? We are not changing anything on the permitted use?

MRS. VARNER: Yes sir, it is a permitted use which has been approved through the site plan review.

MRS. TART: When Barnhill was there, were they allowed to place a mobile home there and use the septic tank for their use?

MS. TOWNSEND: Yes, and they did hook up to public water.

MRS. TART: So we do have public water on that lot.

MR. DONALDSON: All you are asking is to avoid having to connect to the sewer?

MS. TOWNSEND: Yes sir, but I certainly plan to do that at the time our neighbors do or at the time we can afford to become a full service veterinary clinic.

MR. DONALDSON: Barnhill is on this list? Did they not have to have a variance for use?

MS. TOWNSEND: I hope they had to stand here just like I am doing and ask you to please....

MS. SPEICHER: There is different standards, different criteria for temporary construction trailers than for permanent structures.

MR. DONALDSON: Did they have to get a permit though?

MS. SPEICHER: They would have had to get some type of permit through permitting.

CHAIR QUIGLEY: Does any board member have any questions?

CHAIR QUIGLEY: How many people would be working there in any given period of time?

MS. TOWNSEND: We will have no staff. We will not pay people. We will be run by volunteers. I am the director. I will be there more than anyone else and I might hire some part-time help to help us with some events or a vet tech to help with recovery, but there will never be more than three people at any one time.

CHAIR QUIGLEY: Your water service is provided now by PWC? It is the sewer line that is the issue?

MS. TOWNSEND: Yes sir, just the septic tank.

CHAIR QUIGLEY: There would never be more than how many people at one time using the facility?

MS. TOWNSEND: Now when we have an event such as a spay and neutering event, the half bath would be available to the staff, to Dr. Bullock and her technician; maybe six during the day of an event. It would be a one day event, maybe twice a month if we could afford it.

CHAIR QUIGLEY: Thank you.

MS. TOWNSEND: Thank you so much.

MRS. VARNER: Mr. Chairman, would you please for the record, introduce the exhibit numbers of the pictures submitted by Mrs. Townsend.

CHAIR QUIGLEY: The agreement is Exhibit 1, the letter with frequently asked questions are Exhibits 2 and 2a, the pictures in sequence are Exhibits 3, 4, & 5, the second message of two pages is Exhibit 6.

MRS. VARNER: Thank you sir.

CHAIR QUIGLEY: Does anyone have any questions?

MRS. VARNER: Mr. Joe Glass is here from PWC if you have questions for PWC.

CHAIR QUIGLEY: Does anyone want to question PWC concerning the sewer?

CHAIR QUIGLEY: Swore in Joe Glass.

MR. GLASS: My name is Joe Glass, I'm a Water Resources Engineer Manager at the Public Works Commission, my residence is 136 Highgrove Court, Fayetteville.

CHAIR QUIGLEY: Thank you very much. Your interest in the case is that you are the public utility provider for this part of Cumberland County?

MR. GLASS: That is correct.

CHAIR QUIGLEY: Can you assist us with any speculation on the cost of putting the sewer line in that would satisfy code in that area.

MR. GLASS: As a minimum, and understand this is just an estimate, you don't know the true cost until you do a detailed design. As a minimum it is probably \$60 - \$70 thousand dollars. If you did it by PWC policy and our policy is to extend it to the far corner of your property if other properties could be served; and that would be the case here. Then get it across the property initially would be about 300 feet. To get it across the property to serve other people would be about another 450 feet, and about another \$90 thousand dollars. You are talking about probably \$100 - \$150 thousand dollars to get the sewer to this property. The sewer that you saw on George Owen Road, 190 feet away, that is gravity sewer. The picture of the sewer from the property going downhill from there, that would be this sewer right here [pointing to the power point presentation] if you extended that up to the property, that has got to go downhill. If you look at the topography, the highpoint in the road is somewhere along here [pointing to the power point presentation] then the road starts dropping off. If you extend the sewer up and then

the property drops down, you will end up with a sewer that is too shallow for our specifications and eventually will be out of the ground.

CHAIR QUIGLEY: Is it possible to put a pump in?

MR. GLASS: Gravity sewer is available through the sewer on Hope Mills Road. We have sewer down here [pointing to the power point presentation] and that is just to get it from where our last man hole is, then you would have to come between two property lines and get at least one maybe two easements, depending on if you split the property line or put it all on one property. What the cost of that easement is, I don't know, depending on the value of that property. Just to get it from where the last man hole is to the backside of the property, would be about 300 feet and our policy is to come across the property and there are other properties that could be served, so we would have to come across the front of the other properties and that is about 150 feet. So, that is about \$150 thousand dollars; again that is a rough estimate. It is about \$200 dollars a foot. By the time you do engineering, get all the easements, get a bid and get it constructed, an estimate is about \$200 thousand dollars. Hopefully, that is on the high side, but it is probably pretty close.

MR. DONALDSON: I would say it is probably about right. I don't know if you remember the case we had last year right up the road about 800 feet and they estimated about 170 thousand dollars.

MR. GLASS: The prices are going up daily and monthly on the pipe and the materials.

CHAIR QUIGLEY: Does anyone have any questions for Mr. Glass? Thank you very much.

Public Hearing Closed

MR. HUMPHREY: I am in favor of the variance. It seems like a very worthy cause. [the rest of Mr. Humphrey's voice is inaudible]

MR. DONALDSON: It is very similar to the one we did last summer.

MRS. TART: On Cumberland Road.

MR. DONALDSON: Yes, on Cumberland Road where they were going to have to go 800 feet either through the apartments which he didn't want because they would have had to cut through the apartments or go all the way up to the road and extend it down about 800 feet. They said it would cost I think between \$165 - \$170 thousand dollars. That was for a Quick Stop and they had no septic tank. The difference here is the septic tank. Financially it is the same burden on the owner, but they have a septic tank in place, which apparently works because it was used as recently within the last couple of years for an extended period of time. This is actually a more focused case than the one we did last year. Not just this organization, which is a quasi-charitable organization but anybody and to impose that kind of financial burden, I don't think that is really what the County Commissioners had in mind when they came up with the zoning.

CHAIR QUIGLEY: Mr. Dykes?

MR. DYKES: I'm in favor of the variance.

MRS. TART: I have no problems with it at all.

MR. DONALDSON: I move we grant the variance.

CHAIR QUIGLEY: Based on?

MR. DONALDSON: 1. The existing septic tank is there. 2. The minimum use being imposed by the intended use right now.

MR. DONALDSON: I do have a question for staff. Is there an inspection of the septic tank system?

MRS. VARNER: Yes sir, we have some comments from the Health Department.

MS. SPEICHER: If the variance is granted, we will change that condition to reflect that they must get a permit from the County Health Department and provide it to Code Enforcement.

CHAIR QUIGLEY: There are definitely extraordinary and exceptional conditions pertaining to this piece of property and those conditions are the distances in order to connect to the existing sewer line. Granting the variance requested will not confer on this applicant any special privileges that are denied to other residents in the district. The literal interpretations of the provision of the ordinance would deprive the applicant of the use of this property that would be commonly enjoyed by other residents in the district who have access to adequate sewer.

MS. SPEICHER: Excuse me Chair, would that be because other properties in the immediate area are also using septic currently?

CHAIR QUIGLEY: Is that true, is that fact:

MS. SPEICHER: Yes, there are no sewer lines right there.

CHAIR QUIGLEY: The other properties within the district are in fact using septic?

MS. SPEICHER: Yes sir.

CHAIR QUIGLEY: The granting of the variance requested will be in harmony with the purpose and intent of the ordinance and will not be injurious to the neighborhood based on the fact that other commercial and other operations in the area are using septic systems. The special circumstances are not the result of any action of the applicant. The septic system has been used in the very recent past. The variance is the minimum necessary to make the legal use of the 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. It is the conclusion of the

Board that the variance is not a request to permit a use of land or structure that is not permitted by right or by special exception in the district involved and will not constitute any change in district boundaries. There does not appear to be the existence of any nonconforming use of neighboring land, buildings or structures in the same district.

THEREFORE, on the basis of all the foregoing, IT IS ORDERED that the application for a VARIANCE be GRANTED subject to the conditions outlined by staff in the variance documents.

MS. SPEICHER: If I could, those conditions that pertain to the site plan approval, if you could run through items 1-5 on your example sheet. Those would all pertain and then the Board may want to consider entertaining the condition that if the existing septic tank fails, then connection to the Public Utility System would be required.

CHAIR QUIGLEY: In the variance?

MS. SPEICHER: If you wish, it is at the bottom of your example sheet.

MR. MOOREFIELD: Ms. Speicher, that pertains to the operations permit from the Department of Health. They would not have to be required to hook to sewer but that would be a condition of the permit and that would be with the Health Department. What we have adequately covers the Boards concern with the variance.

MS. SPEICHER: Did we want to get the standard information?

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; and
5. The applicant is responsible for obtaining all required permits prior to proceeding with any development.

MR. DONALDSON: I have one query. You were saying that you wanted in this Order that if the septic tank failed, they would be required to hook up to the sewer system?

MS. SPEICHER: Yes sir, but the attorney doesn't think it is necessary because it is apparently a County Health Department matter.

MR. DONALDSON: They also have the option to repair the system too.

MR. MOOREFIELD: Again, that would be the County Health Department.

MR. DONALDSON: Yes, and they also can't mandate it unless you can't repair the system. Okay, that was my question. I didn't think that belonged in the Order either.

MR. DONALDSON: I motion to grant the variance.

MR. DYKES: I second the motion.

The motion passed unanimously.

	IN FAVOR	OPPOSED
QUIGLEY	YES	None
DONALDSON	YES	
TART	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 topography between the nearest existing gravity sanitary sewer and the subject property prevents the extension of the line and the alternate nearby sanitary sewer line would require extension across other individuals' properties thus causing the applicant to expend an inordinate amount of money for the benefit of many private property owners;

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:**

All properties in the immediate surrounding area of the subject property are currently served by private individual septic tanks;

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:**

All properties in the immediate surrounding area of the subject property are currently served by private individual septic tanks;

4. It is the Board's **CONCLUSION** that, if granted, the requested variance will be in harmony with the purpose and intent of the County Zoning 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 primary purpose of the zoning ordinance – protecting the public safety, health and welfare – will be assured through the permitting process for private commercial septic systems as regulated by the County Environmental Health Department;

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:

The existing private septic system on the subject property was installed within the past five years and was properly permitted at that time;

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 subject property must have an approved and functioning wastewater system to be useable and all other ordinance requirements are being complied with;

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**:

The proposed use of the subject property is permitted and the site plan approval has been granted;

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**:

Any possible neighboring nonconformities was not considered by the board and is not a factor in this decision to grant the variance;

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 provisions of the County Zoning Ordinance shall be complied with;
4. All Federal, State, and local regulations are complied with; and
5. The applicant is responsible for obtaining all required permits prior to proceeding with any Development.

Opened Public Hearing

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).

MRS. VARNER: Presented the zoning, land use and photos of the site to the Board.

MR. DYKES: Would there be anyone working on the weekend?

MRS. VARNER: No sir, the days will be only Monday through Friday.

CHAIR QUIGLEY: I noticed when you went over the site, you mentioned an abandoned or out of service day care facility down the street?

MRS. VARNER: Yes, it was a day care, now it is a vacant building. According to graphics, it was built for a day care. Graphics is the section that takes the pictures for the cases.

CHAIR QUIGLEY: What does the code say on proximity of day cares to each other?

MRS. VARNER: We don't have a regulation that requires a minimum distance between day cares. There use to be but we don't have that requirement anymore.

MS. SPEICHER: If I could for the Board, the former day care down the street was also the same the applicant, so they could address that better.

CHAIR QUIGLEY: Are there any questions for the staff?

MRS. TART: On the application I noticed that they marked through item #2.

MS. SPEICHER: She marked those out Mrs. Tart because of the reference to the residence. It was referring to a residential structure as opposed to a day care.

MRS. TART: Okay.

CHAIR QUIGLEY: Swore in Gordon Williams.

MR. WILLIAMS: My name is Gordon C. Williams and my address is 1463 Garner Street, Fayetteville, NC. I own several pieces of property in Fayetteville. My current address is 200 Lakewood Drive, Sumpter, SC 29150. [Mr. Gordon pointed to his property on the power point presentation] I am across the street. I came up here tonight and I was going to say “yes” approve this measure, however, approve it but some things you’ve got to know. From where this picture is taken you are standing in the front yard of this potential business. I was stationed here from 1994 – 1998 and lived right down the road there for a short amount of time. This is a dangerous intersection. Several accidents have occurred there over the years that I’ve lived here as a child. I joined the military, came back and it is the same thing, a dangerous intersection. On the fourth slide of your presentation, you can see the entry to the road to that potential business. This business is the first business from the intersection of Stacey Weaver and McArthur Road. This will also be the first business on the left as the new outer loop I-95 as it crosses McArthur Road. There will be an off-ramp that will lead to Ft. Bragg off this intersection as you can see [pointing to the presentation]. Keep in mind the speed at which traffic will be traveling up this highway. There has already been a lot of stuff taken out by the new development to support this highway on both sides of the road, East and West. This was a thriving business before. I’m in favor of that, people need day cares, so I have no problem with that, but I foresee with the hours as discussed, more traffic. This intersection from what I’ve been told, the eastern side of this won’t be developed for another two years. At this time they have leveled an apartment complex and this road will be widened and it is basically going to be in the front yard. My first question for this business is where do they plan on parking and how do they plan on entering the property, from the front or from the rear? I didn’t get that, maybe I misunderstood.

MRS. VARNER: From the front.

MR. WILLIAMS: From the front, it is just straight in parking. You’ve got two residences that are side by side, so where does all of this parking go? What is the structure? You are saying it is going to be straight across the front?

MRS. VARNER: Yes sir.

MR. WILLIAMS: The space at the pole where the right of way is, is literally in that front yard and there is no front yard.

MS. SPEICHER: If I could clarify for the speaker, sir. The driveway is in the front yard. The parking is behind the structure, not in front.

MR. WILLIAMS: Okay the parking is in the rear of the structure. How do they get to the rear of the structure?

MRS. VARNER: Through this proposed driveway, right here [pointing to the presentation].

MR. WILLIAMS: The easement between these two buildings?

MRS. VARNER: No, there is no easement; the applicant is proposing a driveway in her property right here, [pointing to the presentation].

MR. WILLIAMS: A driveway between two structures that will go through it and then park in the back.

MR. DONALDSON: Please show the front view of the house.

MS. SPEICHER: Originally, when she came in all of her parking was in the front. The state is requesting a 25 foot reservation, so we cannot have any required improvements in the reservation. Her driveway is shifting over to the side of her house with the parking to the rear.

MR. WILLIAMS: This road that you see here, [pointing to the presentation] once the highway finishes doing what it is going to do, it is going to move approximately 15 feet towards the house. I just want to make it clear, I am in favor of it, but take a look at this intersection of what the impact is going to do on this business. I implore that we have to do this right. What do we as the residents gain from this? I saw that there is city county water but no sewer line. So for that particular piece, what was it about the septic? Does that mean that city sewer will be imminent? The occupants of that building with almost 24-hour operation; how big is the sewer? With the parking that is going to be in the backyard for the repair, I don't think there is enough land. If there is great, but if there isn't, there isn't. I'm looking for maybe city sewer.

CHAIR QUIGLEY: Essentially Mr. Williams, you are speaking opposed.

MR. WILLIAMS: I'm still in favor, but I want to make sure that everything is done right because it affects me because I'm right across the street.

MR. DONALDSON: Well, as staff stated earlier because it is going to be a commercial venture, the septic tank system is upgraded and to a different capacity. As far as when they are going to get city sewerage, we don't have anything to do with that, we don't know. It's not that we don't care, but that is something between the city and PWC. We don't have any control over that. As I've said, and to my understanding, it is a commercial property and the septic tank system will have to meet those requirements which the Health Department won't approve until it does.

MR. WILLIAMS: To make sure I understand this; although this is residential, but it is being upgraded for light commercial use?

MR. MOOREFIELD: For special use.

MR. DONALDSON: For special use, but because as I understand it the Health Department is going to look at the use there and determine what type of septic tank it has and if it has to be upgraded or not.

MR. MOOREFIELD: The current state regulations are for a residence you have to have a system that will maintain 240 gallons of flow per bedroom per day. For commercial, I think 3000 gallons a day is the minimum. That is substantially different from a 3-bedroom home.

MR. WILLIAMS: With the number of personnel that are proposed to be in that building.

MR. MOOREFIELD: They will need a water, septic tank and a much larger drain field. The lot may or may not accommodate a commercial building, I don't know. The Health Department will determine that.

MS. SPEICHER: For the speaker, she does have to get approval of her plans from the Health Department before she can apply for any zoning and new construction and she has to have the zoning permit to get her state permit to run her day care. The first step and it is condition #4 on your draft conditions of approval is that the County Health Department has to approve the sewer plans prior to application for permits.

MR. WILLIAMS: It is proposed as a day care and not an assisted living facility?

MRS. VARNER: It is proposed as a day care.

MR. WILLIAMS: I hate to be the devil's advocate and say "what if" it became that, would they have to come back down here or does a complaint get filed? I happened to be in the yard and I went by and talked to some of the workers and I was told that it was an assisted living facility.

MR. DONALDSON: If that happens, you want to file a complaint with the Zoning Board and Inspections and they will go out and inspect it.

MS. SPEICHER: Mrs. Perrier will cite them for violation and shut them down.

MR. DONALDSON: They would go out and inspect them, if it is true, they would cite them.

MR. WILLIAMS: Lastly, I know that we've talked about the intersection. It is at that point of the intersection there is going to be three lanes; one turning lane in the middle, a northbound lane and a southbound lane. I don't believe that there is enough room to support it unless they are going to use both buildings. That might be an issue to be addressed. If one building, the one furthest to the north that is the facility and the second one is not used at all, then you have it. I can't guarantee the status of this. My biggest concern is making sure that there is city sewer.

CHAIR QUIGLEY: Essentially, you have spoke in opposition to the granting of the Special Use Permit for this facility. Are you aware that is the case?

MR. WILLIAMS: I didn't mean to, I'm still in favor of it, so long as they meet the requirements.

CHAIR QUIGLEY: Is there anyone here that wants to speak at this time.

CHAIR QUIGLEY: Swore in Mabel C. Williams.

MRS. WILLIAMS: My name is Mabel C. Williams; my address is 1463 Garner St., Fayetteville, NC 28311.

CHAIR QUIGLEY: Your interest is in the property obviously Garner Street, the street opposite to this building?

MRS. WILLIAMS: Yes sir.

CHAIR QUIGLEY: Please point out where you live. [referring to the power point resentation].

MRS. WILLIAMS: At the corner where the white fence is the house where the lots adjoin. We are on the east side of McArthur Road. The property in question is on the west side of McArthur Road. I am not a mean person. We helped this family in the day care business before and the building that is not presently being used for the day care and it is was very severe problem. Not what is inside; the problem that we as neighbors encountered was outside debris and that included waste that was generated from the day care it was placed on the back of a pickup truck and left open. As delicately as I can say, that includes used diapers that were left without any protection to the neighbors. I got it off my property and threw it back across the fence. That was a constant problem. We only know what happened in the past. The parking where the fence is now was commandeered by the entire lot. If the property owner deemed it was necessary for them to park there, they took it over. When I came home at night, the whole area was taken over by the automobiles of the clients without any question, no warning and this happened several times. For a few years ago, I sat in your seat; I've served on a board. It was a constant problem.

CHAIR QUIGLEY: That was property that was adjacent to your property on the east side of McArthur Road. This property is on the west side of McArthur Road.

MRS. WILLIAMS: Yes, it was the same family.

CHAIR QUIGLEY: Your are speculating that you may have the same unsanitary conditions, is this what we are listening to?

MRS. WILLIAMS: Yes.

CHAIR QUIGLEY: But you have no proof?

MRS. WILLIAMS: Where it was, I just assumed it was tidy in the inside, but when you got ready to get rid of the garbage and diapers and other stuff.....

CHAIR QUIGLEY: But at this time you have no evidence, and they are not in operation in that facility now? Is that correct Mrs. Williams?

MRS. WILLIAMS: Thankfully not, but you would think that might advance their demise.

CHAIR QUIGLEY: I understand what you are saying. You are speculating the conditions might exist in the future.

MRS. WILLIAMS: Yes, my son would rather I not say this but, he was in junior high school and I came home one day and the owner had him and was disputing that she could just come over and park any place she wanted to on my property. The neighbor that was on the east side was the one that had to summon the police, not me. You cannot just go over and take over the property and park where you please without permission. Thank you for your time.

MR. DONALDSON: Is there a picture that shows where the other day care was?

MR. WILLIAMS: In relation to the picture that you just had [referring to the power point slide] the area in blue. The picture that was up previously when you saw the white fence, if you move that arrow up a little to the north and to the left, that is where that white fence is, come back down to the south is where the day care was before.

MRS. TART: Why did they leave that location?

MR. WILLIAMS: Due to the outer loop, I've been affected by it and that is why I'm speaking in favor. The highway is going to widen. It is a good thing, progress, I got that. When that happens, that highway from the west side is going to be in this businesses front door. The first question I had was where was the parking and how do they get to it? With the three lanes and a van full of kids sitting in the middle with the left turn signal trying to go into a driveway, now the septic tanks are going to be enlarged and I know about septic tanks and how much space they need, where is the parking because you can't park over a septic tank unless the other house or property is used.

CHAIR QUIGLEY: Your testimony is not germane to what we are discussing here which is the specific property in question. We can't speculate on proposed uses of other properties that may or may not occur. We appreciate your testimony though.

MR. WILLIAMS: Thank you.

MRS. WILLIAMS: There was another owner after these people, before the situation I spoke about, there was another owner that came in after they had gone and it was a completely different situation.

CHAIR QUIGLEY: Thank you.

MRS. PERRIER: I wanted to say to Mrs. Williams that if you have problems in the future with parking and diapers, etc., you can contact the Zoning Office and the Health Department.

CHAIR QUIGLEY: That was the original day care location?

MRS. PERRIER: Yes, we would go out and inspect to make sure everything met zoning conditions.

CHAIR QUIGLEY: Are there any questions?

Public Hearing Closed

MR. DONALDSON: Does anybody know why the petitioners are not here? Were they told that they had to be here?

MRS. VARNER: They did not tell me that they would not be here.

MS. SPEICHER: Just for the Board's knowledge, they also signed the application that they are aware if they are not here the Board can go ahead and hear their case. We have two addresses for them, we did have one return mail, but we had two that were received.

MR. DONALDSON: I move to dismiss because they failed to appear.

CHAIR QUIGLEY: I think what we can dismiss is the special use permit request based on some of the factors.

MR. DONALDSON: They can reapply?

MS. SPEICHER: Not without a substantial material change.

MR. DONALDSON: If we dismiss the petition for failing to appear, they can reapply, can't they?

CHAIR QUIGLEY: Is that an option for us?

MR. MOOREFIELD: If the Board makes no findings with respect to the conditions or site plan.

MS. SPEICHER: Such as leave it open?

MR. DONALDSON: No, just dismiss it because they didn't appear. They didn't present any evidence for us to consider.

MR. MOOREFIELD: I believe they could reapply if you don't make any findings about the particulars.

CHAIR QUIGLEY: We don't have any real testimony as to why we shouldn't approve it.

MR. HUMPHREY: I read somewhere in the application as long as the application is filed, you can be asked to appear, but you don't have to appear. Once you file the application, the application stands alone by itself, so you don't have to appear. It is recommended that you

appear, but you do not have to. So if you do not have to appear, I do not see how we can vote against it.

MR. DONALDSON: In other words, we are just going off the basis of the application.

MR. HUMPHREY: Yes. I think there is a great need for day cares out there; a tremendous need for day cares and they said it was a day care previously out there and they had to give it up due to roads. That need is still there for that day care. I know there is a great need for day care and there was an existing day care on McArthur Road but they had to give up due to construction.

CHAIR QUIGLEY: The question Mr. Humphrey is, has any evidence been presented that would indicate that would be endangering public health or safety?

MR. HUMPHREY: Are you referring to item #1?

CHAIR QUIGLEY: Yes.

MR. HUMPHREY: There has been speculation. No evidence has been presented and I'm also basing that on the proper permits from the Health Department and Codes will be met if this Special Use Permit is granted pending whatever conditions they put on. Item #2, the use meets all required conditions and specifications: again I refer back to these permits they would have to obtain if we went forward.

CHAIR QUIGLEY: They have to comply to all federal and state and local laws.

MR. HUMPHREY: With day care situations, they have some very stringent requirements for the number of people, the personnel that have to be there, the parking spaces; it is quite extensive of what they require.

CHAIR QUIGLEY: Based on the site plan the staff has. Is that right Mrs. Varner?

MRS. VARNER: Yes sir, they are complying with the 25 foot reservation and after that they are meeting the setbacks in the front. They changed the layout of the parking in the rear. At first they were proposing it in the front.

MS. SPEICHER: Chair, they are meeting everything except the one, they still need one loading space which we have requested for staff review and approval if the Board considered approving that request for us to review and approve the revised site plan meeting that standard.

CHAIR QUIGLEY: That's a requirement they would have to meet?

MS. SPEICHER: Those are required by ordinance; they are short one loading space.

MR. MOOREFIELD: If they can't use their front yard because of this street widening how will they meet that? You've talked about their entrance still being in the front and just the parking in the back.

MR. DONALDSON: As I see the 25 foot right-of-way, you said there is only 17 feet from the edge of that to the front of the house.

MR. MOOREFIELD: That would be the proper thing for you to advise the Board, can they meet that ordinance requirement and can they still meet the two points of pick-up and drop-off?

MS. SPEICHER: Yes, we believe they could, sir. They are showing one and they would have room for the notch on the front of the structure coming off the driveway. We looked at that for the same reason, thinking the same thing, could they do it?

MR. DONALDSON: Do you have the instructions that are given to the petitioners that say they have to appear or they don't have to appear?

MRS. VARNER: It is on the application, in the packet, the statement of acknowledgement.

CHAIR QUIGLEY: On item #3, there is nothing that indicates any change in the value of the property in that area. We have heard no testimony of it. Case fact #4 – the location and character of use is in general harmony with the area, it is not detrimental to the area. We have heard all of the evidence and argument we have had our discussion. I'll ask for a motion.

MR. HUMPHREY: Mr. Chairman, I offer a motion that we grant the Special Use Permit for this day care based on the facts we have previously discussed.

MR. DYKES: I second the motion.

CHAIR QUIGLEY: All in favor signify by saying aye. All opposed signify. The vote is 3 to 2. Mr. Quigley, Mr. Humphrey and Mr. Dykes voted in favor. Mr. Donaldson and Mrs. Tart voted in opposition.

	IN FAVOR	OPPOSED
QUIGLEY	YES	TART
HUMPHREY	YES	DONALDSON
DYKES	YES	

Having heard all the evidence and arguments presented at the hearing, the Board finds that the application is complete, that the application complies with all of the applicable requirements of the Cumberland County Zoning Ordinance for the development proposed, and that therefore the application to make use of the property described within this case for the purpose indicated is hereby approved, subject to all applicable provisions of the Zoning Ordinance and the following conditions:

1. The applicant shall complete the development strictly in accordance with the application and site plan submitted to and approved by this Board, a copy of which is filed in the Cumberland County Planning & Inspections Office.
2. The applicant/property owner is the responsible party for the information contained within the site plan, including but not limited to the property boundaries, easement locations, and right-of-way boundaries.
3. The applicant/property owner is the responsible party to ensure compliance with all other related Federal, State, and local regulations, including but not limited to the NC Building Code.

10. DISCUSSION

None

11. UPDATES(S)

None

12: ADJOURNMENT

There being no further business the meeting adjourned at 8:40 pm.