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Chair
Wade, Falcon & Godwin

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Vice-Chair
Cumberland County

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Town of Spring Lake
Harvey Cain, Jr.,
Town of Stedman
Patricia Hall,
Town of Hope Mills
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Town of Linden



COUNTY of CUMBERLAND

Planning & Inspections Department

Thomas J. Lloyd,
Director

Cecil P. Combs,
Deputy Director

Walter Clark,
Roy Turner,
Sara E. Piland,
Cumberland County

Benny Pearce,
Town of Eastover

DATE: MAY 14, 2009

MEMO TO: CUMBERLAND COUNTY BOARD OF ADJUSTMENT

FROM: CUMBERLAND COUNTY PLANNING & INSPECTIONS DEPARTMENT

SUBJECT: TENTATIVE AGENDA

A meeting of the Cumberland County Board of Adjustment will be Thursday, May 21, 2009 at 7:00 p.m. in Hearing Room #3 of the Historic Courthouse at 130 Gillespie Street. The Tentative Agenda is as follows:

1. ROLL CALL
2. APPROVAL OF THE MARCH 19, 2009 MINUTES
3. ABSTENTIONS BY BOARD MEMBERS
4. PUBLIC HEARING DEFERRALS
5. BOARD MEMBER DISCLOSURE
6. POLICY STATEMENTS REGARDING APPEAL PROCESS READ
7. PUBLIC HEARING(S):

- A. **P09-04-C:** CONSIDERATION OF AN ADMINISTRATIVE REVIEW FROM THE ZONING OFFICER'S DECISION REGARDING THE COUNTY ZONING ORDINANCE, SECTION 1102 YARD REGULATION, SUB-SECTION G, BUFFER REQUIREMENTS, CONCERNING THE APPLICATION OF THE BUFFER PROVISIONS FOR A DAY CARE FACILITY IN AN A1 AGRICULTURAL & RR RURAL RESIDENTIAL DISTRICTS ON 6.33+/- ACRES, LOCATED AT 2514 & 2530 SAND HILL ROAD, SUBMITTED BY RICHARD LEWIS - LEWIS, DEESE & NANCE ATTORNEYS; OWNED BY DAVIS FOUR FAMILY LIMITED PARTNERSHIP.
- B. **P09-5-C:** CONSIDERATION OF AN ADMINISTRATIVE REVIEW FROM THE CUMBERLAND COUNTY PLANNING & INSPECTIONS DIRECTOR'S DECISION REGARDING THE COUNTY ZONING ORDINANCE, SECTION 912 KENNEL OPERATIONS, SUB-SECTION G, FOR TEMPORARY HOUSING/BOARDING OF FOUR OR MORE DOGS; IN A R15 RESIDENTIAL DISTRICT ON 1.25+/- ACRES, LOCATED AT 849 FOXCROFT DRIVE; SUBMITTED AND OWNED BY JONATHAN E. TUGMAN AND PAULA KYLE.

8. DISCUSSION

A. REAPPOINTMENT CONFIRMATION TO THE BOARD

- GEORGE QUIGLEY
- JOSEPH DYKES

B. UPDATE: NOTICE OF VIOLATION - **VIOLATION CASE # WS02-02 & WS00-01:**
INVERNESS ON ANDREWS HOMEOWNERS ASSOCIATION, INC.
3534 ROSEBANK DRIVE
FAYETTEVILLE, NC 28311

9. ADJOURNMENT

Members:
George Quigley, Chair
Oscar L. Davis, III, Vice-Chair
Steve Parsons
Melree Hubbard Tart
Joseph Dykes



Alternates:
Martin J. Locklear
John Swanson
Horace Humphrey
Carrie Tyson-Autry
William Lockett Tally

Cumberland County Board of Adjustment

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

MINUTES
MARCH 19, 2009
7:00 P.M.

Members Present

George Quigley, Chair
Oscar Davis, III, Vice-Chair
Joseph Dykes
Steve Parsons
Melree Hubbard Tart

Present/Non-Voting

John Swanson

Staff/Others Present

Patricia Speicher
Rita Perry
Johnny Scott
Grainger Barrett,
County Attorney
Pier Varner

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

1. ROLL CALL

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

2. APPROVAL OF THE FEBRUARY 19, 2009 MINUTES

A motion was made by Mr. Parsons and seconded by Mr. Dykes approving the minutes as written. The motion passed unanimously.

3. ABSTENTIONS BY BOARD MEMBERS

There were no abstentions by Board Members

4. PUBLIC HEARING DEFERRALS

There were no public hearing deferrals

5. BOARD MEMBER DISCLOSURE

There were no Board Member disclosures

6. POLICY STATEMENTS REGARDING APPEAL PROCESS READ

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

7. BOARD HEARING(S)

Opened Public Hearing

A. **P09-03-C:** CONSIDERATION OF AN APPEAL FROM THE ZONING OFFICER'S DECISION REGARDING THE ILLEGAL OPERATION OF A MOTOR VEHICLE WRECKING YARD AND JUNKYARD IN AN A1 AGRICULTURAL DISTRICT ON 11.5+/- ACRES, LOCATED AT 950 MIDDLE ROAD, SUBMITTED AND OWNED BY ISAAC R. AND HELEN WILLIAMS.

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

VIOLATION NOTIFICATION DATES:

- March 20, 2008
- July 31, 2008
- January 7, 2009 – (Civil Penalty Citation - \$4,000)

MS. SPEICHER: Mr. Williams did not give a written detailed explanation of his justification for the appeal, opting to address the Board.

CHAIR QUIGLEY: Mr. Jimmy Williams please come to the podium. (Swore in Mr. Williams)

MR. JIMMY WILLIAMS: I am Mr. Isaac Williams' son. The property is not intentionally being used as a wrecking yard. My father has owned the property since the 50s. There is a collection of things lined up on the property. Most of the cars were his over the years that have broke down. There is junk that needs to be removed. You are dealing with a person up in age, challenged by this situation and with limited resources. This is going to require hiring people to help clean up. He has lived on this property all of his life and is a good neighbor. This land is wooded; therefore, it does not look like a junkyard. I intend to get involved because he does not have the resources to pay these big penalties. I do not want him to lose his property because of these fines. I would ask the Board to stop the penalties and fines and give me time to hire professionals to clean up the property to meet the criteria of County Ordinance. I could periodically meet with Mr. Scott on the property to assess the clean up progress. I am requesting approximately six months to clean up. The inspector can come by and document the progress. This property is zoned as a farm; I do not know how that plays into this situation. I do know that farms generally have a more liberal amount of items that can be on the property. There has been about eight cars towed away; therefore, there has been progress. You are dealing with an 85 year-old man who may not understand what is expected of him to be in compliance. I am appealing for some time to clean up the area and stop the penalties. We do not want my father to lose the property due to penalties. I think he deserves every consideration you can give him. I will see to it that it is done and help him with resources.

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

VICE-CHAIR DAVIS: Do you live in Fayetteville?

MR. JIMMY WILLIAMS: Yes, I live three miles down the road from the subject property.

CHAIR QUIGLEY: Does your father live on the property?

MR. JIMMY WILLIAMS: He lives there some of the time. He still has a dwelling residence there and goes there daily, but he also resides with me.

MR. PARSON: Have any neighbors approached you about the condition of the property?

MR. JIMMY WILLIAMS: Nobody has complained directly to us.

CHAIR QUIGLEY: Mr. Isaac Williams please come to the podium. (Swore in Mr. Williams)

MR. ISAAC WILLIAMS: I started to clean it up. I had been a backhoe operator with 20 years experience. I can take any building there down. One thing that caused the build up was items that I moved from my rental properties in Massey Hill. I do have some boats on the property. I can do everything a person that I can hire can do. If you hire a man, he will charge \$200 an hour to get everything off the land. Some of the cars have new motors costing \$1,700. Some of the cars are classics. I am connected with the Planning Department in Sampson County. My sister's son, who is a general contractor, has all the equipment needed to move anything. It is mixed up as to what I can leave as a farm or not. That is what is mixing me up. I worked with D R Reilly & Son and sometimes when they would have something left on the job, I would haul it to my property. I do not know of anybody complaining.

CHAIR QUIGLEY: Are the vehicles on the property registered?

MR. ISAAC WILLIAMS: I am still paying taxes on some of the vehicles as they are fixed.

MR. BARRETT: You stated that some of the material on your property is farm equipment. Is there any active farming going on?

MR. ISAAC WILLIAMS: I have farmed on it and am going to change it back to farming. I check with the farm office and they said I could put it under farming trees. They said it would not pay to take them out at this time.

MR. BARRETT: Have you had any crops in the last two or three years?

MR. ISAAC WILLIAMS: No, you can have different pieces of crops of land under the same farmer. I worked in the mill and always worked two jobs. (Inaudible) Mills had a retirement profit sharing that built up every year, but it stopped growing and began to be worth less.

CHAIR QUIGLEY: There is no active farming on the subject property at this time?

MR. ISAAC WILLIAMS: Not right now, but there is going to be farming. I have a timber man who has already paid me \$1,000 in advance to cut the trees. He is a forester. He stated I could pay \$70 an acres to plant trees on the property. I told him that there are not any mailboxes in heaven. In other words, I cannot grow oak trees. It would have to be

something quick. I can plant Christmas trees on the property. There is a government fishpond and wildlife. I am going to put it into something that will benefit my children as well as me.

CHAIR QUIGLEY: You are aware that you do not comply with the Zoning Ordinance requirements for agricultural property.

MR. ISAAC WILLIAMS: Do you mean A1?

CHAIR QUIGLEY: Yes

MR. ISAAC WILLIAMS: All that stuff is going to be removed. I had a trailer I rented on the property and they left about five vehicles, which helped create this situation. I would not give anybody credit for working more than I have in their life. I had a tobacco lot.

CHAIR QUIGLEY: The issue today is that your property does not comply with the Zoning Ordinance. Something must be done regarding this situation.

MR. BARRETT: The specific issue before the Board is whether the Code Enforcement Officer's determination is correct.

MR. ISAAC WILLIAMS: I am willing to do anything to bring it up to code. I need time to clean up and not be penalized. Is it lawful to have a \$400 a day fine?

MR. BARRETT: Yes sir

MR. ISAAC WILLIAMS: How did that law come into effect? That is what I call organized crime. I do not look up or down to anybody.

CHAIR QUIGLEY: We are straying off the subject. I think your son, Jimmy Williams, would like to make a comment.

MR. ISAAC WILLIAMS: I was in the army. I was a little country boy that was scared to say anything to anybody. I do not look up or down to anybody.

MR. JIMMY WILLIAMS: (Requested permission to address the Board)

CHAIR QUIGLEY: (Recalled Mr. Jimmy Williams and reminded the him that he is still under oath)

MR. JIMMY WILLIAMS: There is timber growing on this property. We do have a timber contact. In that aspect, it is agricultural timber.

CHAIR QUIGLEY: The Board is not disputing that point. The issue is the appearance of the property.

MR. JIMMY WILLIAMS: The property was never a junk yard. It just happened over of period of years. Some things on the property are agricultural. He does have a contact to be timbered.

CHAIR QUIGLEY: That is not the issue. The issue is the noncompliance situation and the appeal to determine whether the Code Enforcement Officer's decision is correct.

MS. SPEICHER: (Reiterated to the Board that the zoning purpose is that of public health, safety and welfare)

CHAIR QUIGLEY: Thank you

MR. BARRETT: Was there another witness?

CHAIR QUIGLEY: There are two more witnesses. The Board would like to hear from the Code Enforcement Officer.

CHAIR QUIGLEY: Mr. Johnny Scott please come to the podium. (Swore in Mr. Scott)

VICE-CHAIR DAVIS: Did this come about through observation or a complaint?

MR. SCOTT: It came by way of an anonymous complaint in February 2008 and reiterated in January 2009.

CHAIR QUIGLEY: Please convey to the Board your observation of the condition of the subject property which you based your opinion.

MR. SCOTT: In February 2008, I met on site with Mr. William's grandson who was there in an attempt to help his grandfather. Approximately 20 junk vehicles and an excess of 1,000s of square feet of miscellaneous storage, of which 80% - 90% had nothing to do with farming, were cited. There were trash containers, batteries, refrigerators, pipes, boats, etc. It was a violation of over 200 square feet of open storage in addition to being in violation of the junk vehicle ordinance.

MR. SWANSON: (Requested to view the slide showing a dilapidate shed) Are the objects shown on the outside of the building what you are citing as a violation or is it the structure itself?

MR. SCOTT: The violations were not based on any of the structures. In February, I met on site with the Minimum Housing Inspector. At that time, we determined that there were more zoning violations than minimum housing violations; therefore, it was decided that zoning handle the situation. I do have photographs taken which show the appearance of the subject property in February as well as the clean progress made throughout the year. (Exhibit 1)

MS. SPEICHER: For the record, although Mr. Scott is commonly referred to as a Zoning Officer, his official title is County Code Enforcement Officer.

CHAIR QUIGLEY: Ms. Perry, please make that correction.

(NOTE: All official title references, within these minutes, pertaining to Mr. Scott were corrected per Chair Quigley's instructions.)

MR. BARRETT: For legal purposes, you stated you took the photographs. Do these photographs accurately and fairly represent the conditions that are reflected in the photographs at the time you were present?

MR. SCOTT: Yes sir, I met on site with Mr. and Mrs. Williams several times throughout the year. They did make some progress. I do not think they understood the gravity of what needed to be done to rectify the situation. It would be a cavalier effort to get this property cleaned up.

MR. PARSONS: Specifically, what are the health and safety issues that caused these citations?

MR. SCOTT: There were no citations issued based on health and safety concerns. I am not qualified to do that type of inspection.

MR. PARSONS: Do you see a possible adverse impact on public health or safety?

MR. SCOTT: Not environmentally, there are sharp edges and things that could possibly cut or harm children if they were on the property. There are also falling hazards regarding some of the dilapidated buildings. These are my observations as a private citizen not an official observation.

MR. PARSONS: The applicant was specifically cited for an illegal operation of one of two things either a motor vehicle wrecking yard or a junk yard. The junk yard classification is very specific per Page 16 of the Zoning Ordinance. Which part(s) of the junk yard definition contributed to the subject property to be classified as a junk yard?

MR. SCOTT: From my interpretation of the Zoning Ordinance's definitions of motor vehicle wrecking yard and junk yard this property fit both descriptions.

MR. PARSONS: What specific criteria was this based on? Which function, for example, they are not buying, selling exchanging, etc.

MR. SCOTT: The specific category would be storage. He is not operating a junk yard or wrecking yard. He has accumulated these vehicles over the years.

MR. PARSONS: Given the volume of items observed on the property, would it be a task for a typically health person to be in compliance within a six month period without extraordinary external resources?

MR. SCOTT: They would need some exterior resource, for example, a container for debris otherwise yes.

MR. PARSONS: From your description, it sounds like lots of square feet of debris.

MR. SCOTT: It is thousands of square feet of debris in the bushes and back roads.

MR. BARRETT: Is it your observation that you found residential storage of the above items to include scrap iron and other metals, paper, rags, vehicles, rubber tires and bottles?

MR. SCOTT: Yes sir

MR. BARRETT: Did the area of this storage exceed 200 square feet?

MR. SCOTT: Yes sir, by far

MR. PARSONS: The issue is the outside storage; therefore, in order to be in compliance the debris needs to be removed or placed inside.

MR. BARRETT: When was this property zoned?

MS. SPEICHER: The subject property was zoned December 14, 1979.

MR. BARRETT: At that time, was there some outside storage?

MR. SPEICHER: Mr. Williams did not present any information regarding that question. Staff did check the aerial photographs where visibility was limited because of trees. It can be stated with certainty that the area of storage has grown because clean areas were shown on the photographs.

MR. BARRETT: If the aerial photographs tended to show more likely than not that there was outside storage at the time of the zoning would that area, which existed in 1979 with outside, be a nonconforming use.

MS. SPEICHER: It would be nonconforming; however, at the time of initial zoning the property owners would have been given a chance to request the proper zoning district, if the intent was to operate a junk yard or motor vehicle wrecking yard.

MR. BARRETT: You stated they would have been given the opportunity; however, I believe part of what Mr. Parsons was addressing was the effort that would need to be made to comply with the ordinance. If this storage had existed in 1979, is it correct to state that it would have been grandfathered nonconforming use?

MS. SPEICHER: Quite possible or most likely

MR. SWANSON: On Page 16, what is the interpretation of the word “stored”?

MR. BARRETT: That is best addressed by Staff because over the years they have by administrative action and enforcement given need to their interpretation of the word “stored” in that context.

MR. SWANSON: Could somebody explain what the word “stored” means in the definition of a junk yard?

MS. SPEICHER: My interpretation would be the common definition, which is keeping things (items) in one location for whatever reason.

MR. SWANSON: Is there a time period associated with your understanding of the definition?

MS. SPEICHER: No sir

MR. SWANSON: If I lived in the County and put out trash, would that be storage?

MS. SPEICHER: Taking the definition literally, yes, it would; but it would not be under this specific definition because it surely would not be 200 square feet or more of trash.

MR. SWANSON: I am focusing on the word “stored”.

MS. SPEICHER: There is no definitive time associated with the word “stored” in the Zoning Ordinance.

MR. BARRETT: The evidence in this case is that the items that caused the Code Enforcement Officer to cite the property owner have been there for at least one year.

MR. SWANSON: Is it possible that some of the vehicles were there before the property was zoned A1?

MR. SCOTT: Some of the vehicles are models prior 1979; therefore, yes, they could have been there; however, I was one of the staff members that looked at the aerial photographs taken in 1980 which showed a more heavily wooded lot with some open space and if there was storage it was not to the degree which it is presently.

MR. PARSONS: How would you characterize the efforts made to come into compliance? Were they reasonable?

MR. SCOTT: They were reasonable. Approximately 10-15 cars were towed away. If the photographs are compared the Board will see that some piles have been cleaned up. I think Mr. Williams did the best he could.

MR. PARSONS: If they were making reasonable progress, why did the Code Enforcement Officer decide to impose a fine?

MR. SCOTT: I am the one who fined the property owner. I would go to the subject property twice a month to review the progress. From the time of the second Notice of Violation on July 31, 2008, they made progress each month until early November 2008 where upon no additional progress was made through January 2009. Based on the complaint I was required to impose a penalty.

MR. BARRETT: The Board’s determination is whether the Code Enforcement Officer’s determination is correct. It is not a question of giving the property owners time. The citation is not a lien on the property. It is a fine that would not be collected unless an action is brought forth. These matters are of some administrative discretion. My understanding is that the exercise of discretion by the staff is always proportionately related to the degree of effort.

VICE-CHAIR DAVIS: If the same amount of progress had been made from November 2008 through January 2009, the Board would not be hearing this case.

MR. SCOTT: No sir

MR. DYKES: Is it a possibility that the property owners had every intention to continue but a resource factor became an issue?

MR. SCOTT: I do not know whether it was resource, weather or possibly health concerns.

MR. SWANSON: Did you have any contact with the property owners or did they offer any explanation?

MR. SCOTT: No sir, I spoke with the grandson informing him that time had expired prior to sending the civil penalty whereupon he stated he would inform his grandfather.

CHAIR QUIGLEY: Are there any other questions for Mr. Scott. (Chair Quigley informed Mr. Scott that he is subject to recall and that he was still under oath; reiterated Mr. Scott officer title, Code Enforcement Officer, to the Board)

MR. JIMMY WILLIAMS: The two to three month of delay was due to illness and weather.

MR. BARRETT: Is it not correct that your father stated he had pneumonia?

MR. JIMMY WILLIAMS: Yes, I am going to get involved in the clean up because he is physically unable to complete this task.

CHAIR QUIGLEY: Ms. Lynn Willowford please come to the podium. (Swore in Ms. Willowford)

MS. WILLOWFORD: I have known Mr. & Mrs. Williams and Jimmy Williams for most all of my life because I am their neighbor. My family has owned the residence I live in since 1912. I know the property has been in disarray for a long time but they have never bothered anybody. There has not been a junkyard or wrecking yard service to my knowledge. I do know that the Williams' health has been poor. On March 8, 2009, Mr. Diamond and I took pictures of the area for my sister, who lives in California, and has ownership in our property. As sick as they are, Mr. And Mrs. Williams were trying to make an effort to clean the property. Now that I know what is happening, I am going to do my best to help them clean up the property because they have always been good to us.

CHAIR QUIGLEY: Do you have any reason to disbelieve the opinion of the Code Enforcement Officer?

MS. WILLOWFORD: I know it is a mess, which has happened over the years. Mr. Isaac Williams does not always understand what is going on.

MR. PARSONS requested Ms. Willowford to show where her property is located on the map, which she did.)

MS. WILLOWFORD: It is overgrown in front of their house but it has never bothered anybody.

MR. PARSONS: The overgrowth is not the issue.

MS. WILLOWFORD: I think most of the problem is further into the property. There is stuff you can see from the road.

CHAIR QUIGLEY: Mr. David Domina, do you wish to address the Board? (Mr. Domina declined to address the Board)

Closed Public Hearing

VICE-CHAIR DAVIS: Therefore, this is just a matter of the Board voting yes or no.

MR. BARRETT: Yes Sir

MR. SWANSON: Does the Board have a third alternative?

VICE-CHAIR DAVIS: Can the Board implement conditions?

MR. SWANSON: Or suspend?

MRS. TART: When land is zoned and grandfathered, how do we know this accumulation has expanded since the initial zoning?

MR. BARRETT: The staff looked at aerial photographs after the property was zoned, the aerial photographs clearly show more storage than from the prior period.

VICE-CHAIR DAVIS: Is there any more weight given to a signed complaint versus an anonymous complaint?

(Ms. Speicher referred the question to the Code Enforcement Officer.)

MR. SCOTT: No sir, they are treated equally. We allow citizens to make complaints anonymously because they would deal directly with Code Enforcement whereas they have to live with their neighbor for many years.

MR. SWANSON: Did you take the complaint?

MR. SCOTT: No sir, George Hatcher, the Minimum Housing Officer, took the initial complaint. I did receive a secondary complaint in January, which I assume was the same person calling to inquire why nothing had been done.

MR. PARSONS: Do you know the objective of the complaint? Do they want it cleaned or want the property?

MR. SCOTT: I think their concern was to have it cleaned; however, the Minimum Housing Officer posted an Abatement Sign (stating no alcohol, drugs and weapons). Once the sign was posted, we received numerous calls. We assume the calls were from people who want the property.

MR. PARSONS: In other words, find a way to own the property.

MR. SCOTT: Yes sir, to create a situation where there would be a lien or something attached to the property requiring it to be cleaned making a way to buy the property.

MR. BARRETT: You can reverse, affirm or modify the decision. You cannot impose conditions but the Board can modify the decision.

MR. PARSONS: Are there any resources the County might have to assist in this matter? The State has abatement funds. For example, if there was a problem with hazardous materials. Do we have any such resource?

MR. BARRETT: Not officially, there are no funds.

MR. PARSONS: We do have large trucks and personnel with material handling experience.

MR. BARRETT: That is not official, perhaps Staff could reflect on your question.

MR. PARSONS: My reason for this line of questioning is if we are asking a property to do something and they do not have the resources we might as well start fining them on day one.

MR. BARRETT: Financial impracticality is not a defense in the area of zoning.

MR. PARSONS: Is achieving the goal or objective?

MR. BARRETT: Legally, finance is not a defense.

MR. PARSONS: Mr. Scott is a very astute observer and communicator. The issues and pictures being painted are unsettling. Some of the influences on the process are not very constructive to the ultimate goal, which I think everybody is dedicated.

MR. BARRETT: You can directly address his comments. For instance, I am not making or recommending this suggestion, the Board has the authority to affirm the Code Enforcement Officer's decision but not to abate all of the fines. This is an example of modifying the Code Enforcement Officer's decision. If the Board delays the fines, there are no bases for imposing a lien on the property. To reiterate, simply assessing civil penalty does not impose a lien. A lien is imposed when action is taken by using the County's contracting authority or if the County officially accomplished the goal by using its resources to abate the nuisance.

A motion was made by Vice-Chair Davis, second by Mrs. Tart to deny the appeal requested for Case No. P09-03-C with the stipulation that all fines be suspended for six months to allow the applicant time to clean the subject property. The County will forego all fines if the County Code Enforcement Officer determines reasonable progress of clean up is continuous; otherwise, all fines will be reinstated.

Quigley: Yes

Davis: Yes

Dykes: Yes

Parsons: Yes

Tart: Yes

The motion was approved unanimously.

Opened Public Hearing

B. P07-05-C: CONSIDERATION OF A REQUEST FOR THE MODIFICATION OF AN APPROVED SPECIAL USE PERMIT FOR A KENNEL OPERATION IN A RR RURAL RESIDENTIAL DISTRICT ON 1.58+/- ACRES, LOCATED AT 6559 FAIRCLOTH BRIDGE ROAD, SUBMITTED AND OWNED BY LINDEN AND PATRICIA D. HONEYCUTT.

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

Ms Speicher summarized the original Special Use Permit approved on April 19, 2007 as follows:

- 20 dogs over the age of five months
- Kennel area dimensions 13' x 53'
- 5' x 10' dog runs
- 6' high chain link fence
- 3 sided plastic dog houses for each run
- Buffering was proposed vegetative buffer
- Included in the packet is a letter that is sent to the applicant and given to Code Enforcement, which states the standard conditions, compliance with State, Federal and Local rules, etc.

MS. SPEICHER: The applicant had begun construction of the addition. When she realized she was in violation of her approved Special Use Permit, she stopped construction and submitted her application for the modification. Mrs. Honeycutt is here to present her case. I would like to add to the "Ordinance Related Conditions" as Condition No. 19, renumbering all other conditions, that a vegetative buffer be in place and maintained along the side and rear property line in accordance with Section 1102G of the County Zoning Ordinance.

VICE-CHAIR DAVIS: The approved kennel was built and the applicant was adding to it during which time they realized the addition would exceed what was permitted; therefore, they have to request a modification to the existing Special Use Permit.

MS. SPEICHER: Yes sir, upon submitting for a permit the applicant found out they had to come back before the Board. I would like to bring to the Board's attention the criteria, which required a solid concrete floor within 18 months. This criteria was included in the April 19, 2007 Special Use Permit approval by the Board and on the attached letter.

MR. PARSONS: Was the added Condition #19 part of the original conditions?

MS. SPEICHER: Yes it was.

MR. PARSONS: Are you saying that condition was never done?

MS. SPEICHER: It is my understanding and the applicant can better testify that there were many attempts at planting a vegetative buffer. The applicant did present receipts showing that she tried to get the buffer going but was not successful in her attempts. Those were her words to me.

CHAIR QUIGLEY: Mrs. Patricia Honeycutt please come to the podium. (Swore in Mrs. Honeycutt)

MRS. HONEYCUTT: Originally, my conditions were to have a cement floor and a roof, which I did install within the timeframe. The conditions also stated that the applicant should contact Cumberland County Health Department regarding the waste. I spoke to Mr. Soles, who has since retired, and showed him what I planned to do (Exhibit 1: in-ground pet waste disposal). I told him that it would not hold to capacity and asked him about a septic tank and whether a permit was needed. He stated I did not need a permit since it was dog waste but I could not mix the human and dog waste. Because the in-ground pet waste disposal would not hold the capacity for the dog waste; therefore, I did install a septic tank, which was cleared without needing a permit because it is dog waste. I have planted buffers but they have died. I have receipts (Exhibit 2: Receipts). This is what is currently planted (Exhibit 3: pictures of vegetation). I have gone beyond the buffer requirements just to be neighbor friendly. The shrubs still in the pots, which are shown in the pictures, will be planted. I planted a rapid grower, which is suppose to grow like a solid fence to prevent visibility. I have never met the capacity of 20 adult dogs. The only reason I am proposing more dogs is due to the economy in case I have litters what go beyond the age limitation. At no point am I looking to have 40 adult dogs. I just want to have some leeway just in case I have puppies that I cannot sell. I might have about 25 adult dogs but I am not looking to have many adult dogs. I just do not want to violate the code in case I have puppies that I cannot sell. Thus far, this has not happened. At this time, I have 3 puppies and 16 adult dogs. I have a letter from my veterinarian regarding the care of my dogs (Exhibit 5: Letter from veterinarian). He was unable to be here. My dogs have all their shots, which are given by the vet not me. I have only given one shot because it was an emergency. There is not one doghouse in every run. Every dog I own has his or her own doghouse and food bowl. I have the license from the County to have the dogs and have paid taxes for the dogs. My business is listed with the Tax Office and I have a Federal Identification Number. I do have liability insurance in case something happens. Mr. Ratcliff and Mr. Ortiz, with Environmental Health, stated everything was fine. I needed to add-on to my kennel to have a room making it easier to handle the puppies. I asked the contractor whether I needed a permit and he stated no. I found out it was in violation upon trying to get an electrical permit. I then filed my application. The shelter portion has passed inspection. I was told I needed to pull a second permit for the addition after it was approved. The contractor would not show up tonight. I have no employees.

MR. BARRETT: Did you take the photographs?

MRS. HONEYCUTT: Yes

MR. BARRETT: Approximately, when did you take the photographs?

MRS. HONEYCUTT: About one week ago, maybe 2 - 3 days from the receipt date.

MR. BARRETT: The photographs fairly and accurately reflect the conditions that are shown on them at the time they were taken.

MRS. HONEYCUTT: Yes sir

MR. BARRETT: Are you familiar with the requirement for kennels in the County's Animal Control Ordinance?

MRS. HONEYCUTT: Yes

MR. BARRETT: Do you comply with them?

MRS. HONEYCUTT: Yes, I sent in applications to Raleigh, the USDA and AHPIS. My checks were sent back to me. I was informed that unless I was boarding dogs or selling to pet stores or research that I was in compliance.

MR. BARRETT: The Cumberland County Ordinance has specific requirements for kennels.

MRS. HONEYCUTT: I have the formula at home requiring so many square feet per dog. My dog runs are 5' x 10' and 6' in height. I am aware of a Proposed Commercial Breeders' Bill, which I am already in compliance.

CHAIR QUIGLEY: We are not discussing that subject tonight. The issue is a modification of an existing Special Use Permit.

MR. PARSONS: What breeds are your dogs?

MRS. HONEYCUTT: I have bred Scottish Terriers and Cairn Terriers. I have some Yorkie Terriers but they have yet to be bred.

MR. SWANSON: The cement block portion of the structure shown in the subject property photograph, was that built over the existing slab of the kennel?

MRS. HONEYCUTT: That is a new slab.

MR. SWANSON: How close is that improvement to the property line?

MRS. HONEYCUTT: It is off the setback, approximately 30 feet – 35 feet. It is shown on the site plan.

MS. SPEICHER: 25 feet

MR. SWANSON: What are the setbacks?

MS. SPEICHER: The sideyard setback is 15 feet and rear setback is 35 feet in the RR District.

(Chair Quigley asked Mr. Honeycutt if he wished to speak and he declined.)

CHAIR QUIGLEY: Mr. Kenneth Page please come to the podium. (Swore in Mr. Page and requested him to show where his property was located in proximity to the subject property, which he complied.)

MR. PAGE: My issue is the noise. Every afternoon they are making noise. There is a lot of noise. My father is directly beside the property and hears them all night long. Forty adult dogs with three puppies a piece total 160 animals would be too much.

CHAIR QUIGLEY: Your testimony is concerned with the noise that would be emanating from the property if they were allowed more dogs.

MR. PAGE: If they were all mute dogs, I would not have a problem.

CHAIR QUIGLEY: Mr. Rubin McLaurin please come to the podium. (Swore in Mr. McLaurin and requested him to show where his property was located in proximity to the subject property, which he complied.)

MR. MCLAURIN: When they first put up the zoning sign I asked around the neighborhood and was informed that they were going to raise puppies. That was fine. The barking is all night long sometimes. I have never filed a complaint. I should have done so when they started zoning. Now this has come up where they are asking to have 40-50 dogs. The noise is going to get unreal. We are living with the noise but I do not think we can handle more noise. There is no buffer on the left side. There is one row of trees on the left side between Mr. Page's and their property. That is the only buffer.

CHAIR QUIGLEY: By the left side do you mean to the east or west?

MR. MCLAURIN: West

CHAIR QUIGLEY: Mrs. Denise Nunnery please come to the podium. (Swore in Mrs. Nunnery and requested her to show where her property was located in proximity to the subject property, which she complied.)

MRS. NUNNERY: Our area is rural and everyone keeps to their self but it is very close knit. The buffer is not adequate. The problem is the noise. I have two kids that are awoken by the dogs in the middle of the night. If I just shut my back door, not slam, it sets the dogs off. It does not take much for the dogs to start barking. They are small yappy dogs. With the close properties and so many dogs, the noise is unreal. It is not just during the daytime it is sporadically around the clock. Adding to the number of dogs allowed would add to the noise problem. It is already intolerable. When it interferes with older people, children and the working class sleep, on a regular basis, it is something that should be considered.

MR. SWANSON: (Requested photograph showing kennel) Has that roof always been there or did the noise get louder and it was added?

MRS. NUNNERY: I have no recollection of having seen or not seen the roof. I do not remember. The noise has always been a problem after there were approximately 5 to 6 dogs. The noise has been ongoing. I should have come to the first zoning hearing to oppose the request.

CHAIR QUIGLEY: Are there any questions for staff? Does any witness want to come back to the podium?

(Mrs. Honeycutt requested to speak)

CHAIR QUIGLEY: Recall Mrs. Patricia Honeycutt please come to the podium. (Reminded her that she was still under oath)

MRS. HONEYCUTT: I admit my dogs bark sometime. It is not 24/7. Many times they start barking when Mrs. Nunnery returns home from work and lets her dogs loose. There is a leash law. We do have some neighbors who shoot their shotguns, which set the dogs off. There are other kennels. It is not just my dogs. I am not asking for 40 adult dogs.

Closed Public Hearing

CHAIR QUIGLEY: Please remind the Board of the code pertaining to a kennel and the quantity of dogs allowed.

MR. BARRETT: The County regulation has two different limitations. In Zoning Ordinance it is more than three dogs; therefore, if you are in a district, which allows kennels, and have more dogs, a Special Use Permit would be required. In Chapter 3 - Article V of Cumberland County Animal Control Ordinance there are kennel licensing and facilitating standards which states 5 or more than 5 dogs. For the County's Land Use purposes it is more than three and for the County's Animal Control Licensing and Sanitary standards purposes it is more than five.

MS. SPEICHER: That is four or more five months of age or older.

MR. SWANSON: Is there any information of deviation by the applicant of the original Special Use Permit?

MS. SPEICHER: No sir, we checked with the Sherriff Department, Animal Control Department and Code Enforcement.

VICE-CHAIR DAVIS: How does this relate to the County's noise regulations?

MS. SPEICHER: This kennel is subject to the noise regulations. (Referred the Board to Page 71; Section 901) The Noise Ordinance is enforced by the Sheriff Department.

MR. BARRETT: I have had to deal with Noise Ordinance. Dog barking requires non-stop barking of 15 minutes or more. It is very difficult to bring a violation action of County Noise Ordinance regarding dog barking for a number of reasons. Most of which are practical such as being able to present evidence into court.

MR. PARSONS: This is a separate issue than the impact of the harmony in the neighborhood by allowing additional dogs.

MR. DYKES: I live in a neighborhood where the noise from dogs barking is an issue.

MS. SPEICHER: I would like to inform the Board that Condition #18 of the draft condition addresses the noise issue.

MR. PARSONS: Twenty dogs seems to be a reasonable number. This is not a typical economic time. Typically, businesses do not expand or make provisions to expand during bad economic times. Given the preponderance of the evidence the Board has heard against this request, allowing additional dogs would adversely affect the harmony of the neighborhood.

INITIAL MOTION: A motion was made by Mr. Parsons, seconded by Mr. Dykes to deny the request for a modification of an approved Special Use Permit for Case No. P07-05-C. The location, character and use, if developed in accordance to the plan submitted and recommended, will not be in harmony with the area in which it is located by virtue of the substantial testimony presented to the Board from neighbors who are supportive of the kennel operation but have given evidence that the noise is adversely affecting the harmony in the neighborhood. Their opinion is that additional dogs would make matter worse.

MR. BARRETT: What is the request for modification? Is it comprised of two components, one is the modification of the facility and secondly, a request for modification of the number of dogs allowed?

MS. SPEICHER: Yes sir

MR. PARSONS: The Board had previously approved the site plan. Does a new site plan require a new Special Use Permit?

MS. SPEICHER: Yes sir, the Ordinance would allow Staff approval if it did not exceed 10% of the approved structure, this structure does exceed the 10% limitation.

MODIFIED MOTION: Mr. Parsons made a motion, seconded by Mr. Dykes, in regards to case P07-05-C, a request for a modification of an approved Special Use Permit for a kennel operation at 6559 Faircloth Bridge Road, submitted and owned by Linden and Patricia D. Honeycutt, the following case facts were determined:

1. The use will not materially endanger the public health or safety if located in accordance to the plan submitted and recommended as revised in accordance with the staff's permit and site related conditions. This facility will not endanger the public health or safety.
2. The use meets all required conditions [see Ordinance Related Conditions in case file] and specifications with the exception of the increase of the number of dogs allowed.
3. The use will maintain or enhance the value of adjoining or abutting properties.
4. The location and character of the use, if developed according to the plan, will be in harmony with the area in which it is to be located because the facility will be improved, along with an enhanced buffer and the number of dogs allowed will not be increased.

Having heard all the evidence and argument presented at the hearing, the Board finds that the application is complete, and complies with all of the applicable requirements of the 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 revised site plan submitted to and approved by Staff, which meets the pre-permit, permit, and site-related conditions, a copy of which is filed in the Cumberland County Planning & Inspections Department.

2. The applicant/property owner is the responsible party to ensure compliance with all other related Federal, State and local regulations including Chapter 3 - Article V of the Animal Control Ordinance.

3. All the [Ordinance Related] conditions presented in the proposed draft Special Use Permit be complied with the exception of the number of adult dogs permitted which will remain at 20.

Therefore, based on the foregoing, a motion was made by Mr. Parsons seconded by Mr. Dykes, ordering that the application for the modification of an approved Special Use Permit for a kennel operation be granted in an RR Residential District on 1.58 +/- acres, located at 6559 Faircloth Bridge Road, submitted and owner by Linden and Patricia D. Honeycutt.

Quigley: Yes

Davis: Yes

Dykes: Yes

Parsons: Yes

Tart: Yes

The motion was approved unanimously.

VICE-CHAIR DAVIS: Since the site plan can be staff approved up to 10%, is there any latitude for the number of dogs? For example, a dog has 10 puppies and they become six months of age before they are sold.

MS. SPEICHER: Not with staff

VICE-CHAIR DAVIS: What about temporary permits?

MS. SPEICHER: I can address temporary, which would be Code Enforcement.

MR. BARRETT: Would staff work with somebody addressing conditions that are temporary in nature.

MS. SPEICHER: There is an amendment in the Ordinance, which allows the Planning Director to allow up to six dogs.

8. DISCUSSION

VICE-CHAIR DAVIS: I would like to thank Mr. Johnny Scott for all his good work.

Ms. Speicher informed the Board regarding the following Notice of Violation:

A. NOTICE OF VIOLATION - **VIOLATION CASE # WS02-02 & WS00-01:**
INVERNESS ON ANDREWS HOMEOWNERS ASSOCIATION, INC.
3534 ROSEBANK DRIVE
FAYETTEVILLE, NC 28311

Ms. Speicher updated the Board regarding the above Notice of Violation:

MS. SPEICHER: Andrews Homeowners Association is in the process of finding someone to maintain the ponds.

B. AMENDMENT UPDATE – **P09-05: OPERATED CONVENIENCE CONTAINER AND RECYCLING FACILITIES**

MS. SPEICHER: the Board of Commissioners approved P09-05 on Monday, March 16, 2009.

9. ADJOURNMENT

There being no further business, the meeting adjourned at 9:05 p.m.

P09-04-C
SITE PROFILE

P09-04-C CONSIDERATION OF AN ADMINISTRATIVE REVIEW FROM THE ZONING OFFICER'S DECISION REGARDING THE COUNTY ZONING ORDINANCE, SECTION 1102 YARD REGULATION, SUB-SECTION G, BUFFER REQUIREMENTS, CONCERNING THE APPLICATION OF THE BUFFER PROVISIONS FOR A DAY CARE FACILITY IN AN A1 AGRICULTURAL & RR RURAL RESIDENTIAL DISTRICTS ON 6.33+/- ACRES, LOCATED AT 2514 & 2530 SAND HILL ROAD, SUBMITTED BY RICHARD LEWIS - LEWIS, DEESE & NANCE ATTORNEYS; OWNED BY DAVIS FOUR FAMILY LIMITED PARTNERSHIP.

Site Information:

Frontage & Location: 480'+/- on Sand Hill Road (includes both lots)

Depth: 920'+/-

Jurisdiction: Cumberland County

Number of Parcels: 2 (Lot 2, 1.64 acres & Lot PT1, 4.69 acres)

Adjacent Property: Yes, 8 tracts on the west and 1 tract on the south of subject properties

Current Use: Day care facility, residential (2-single family dwellings), and community well

Initial Zoning: A1 – June 25, 1980 (Area 13) for the two parcels

Nonconformities: Yes, the breezeway crosses the property line to connect the two structures

Zoning Violation(s): None

Surrounding Zoning: North: A1, R40A, RR, RR/CU (video store), R6A & C(P)/CUD (mini warehousing with commercial storage of vehicles & retail); South: A1 & RR; West: A1, R40A & RR; East: A1, RR, R6A & C(P)

Surrounding Land Use: Retail store, public utility substation, manufactured home park, shopping center, residential (including manufactured homes) and woodlands

2030 Growth Vision Plan: Urban area

Special Flood Hazard Area (SFHA): None

Water/Sewer Availability: PWC/Septic

Soil Limitations: None

Subdivision/Site Plan: The two lots need to be recombined into one lot or the breezeway needs to be removed

Sewer Service Area: Yes

Average Daily Traffic Count (2006): 4,100 on Sand Hill Road

Highway Plan: Sand Hill Road is identified in the Highway Plan as a major thoroughfare. This proposal calls for adding a turning lane. Road improvements are not included in the 2009-2015 MTIP. This is a Priority Two Project under the LRTP

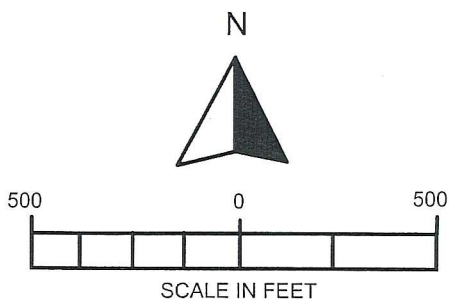
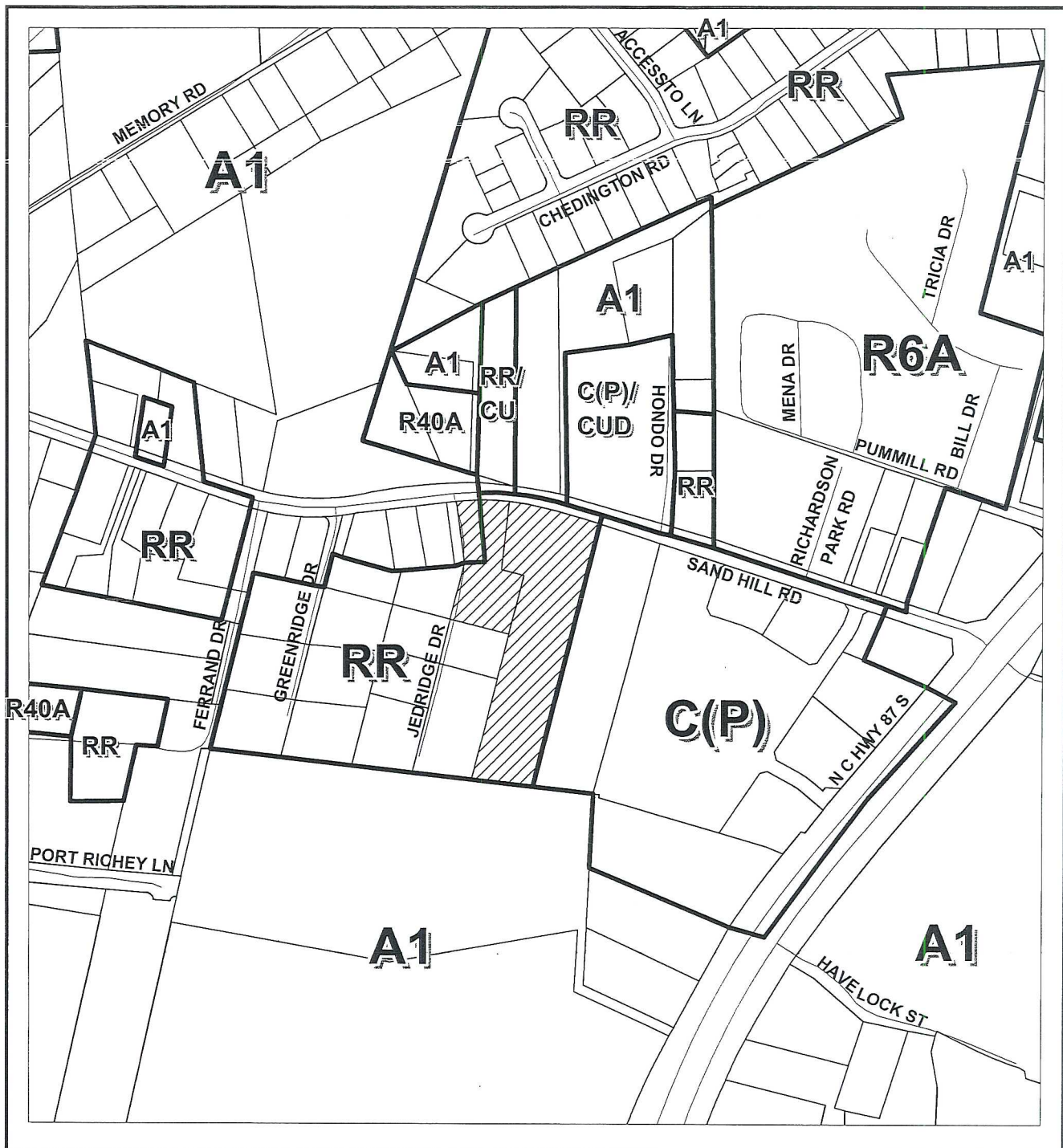
County Zoning Ordinance Reference: Section 1102 Yard Regulation, Subsection (G) Buffer Requirements

Notes:

1. Day Care Facility opened on April 1997 with one structure located on Lot #2; June 1999 second structure added on lot PT1.
2. Buffer is required along the property lines abutting the rural residential and agricultural zoning districts (see photo aerial map). Also see attached pending amendment (P09-20)
3. Summary of Request: Application for an Administrative Review appealing the Code Enforcement Officer's decision regarding determination that the day care facility is a governmental use and therefore exempt from buffer provisions.

First Class Mailed Notice Certification

A certified copy of the tax record owner(s) and their tax record mailing address is contained within the case file and is incorporated by reference as if delivered herewith.



BOARD OF ADJUSTMENT ADMINISTRATIVE REVIEW

ACREAGE: 6.33 AC.+/-

HEARING NO: P09-04-C

ORDINANCE: COUNTY

HEARING DATE

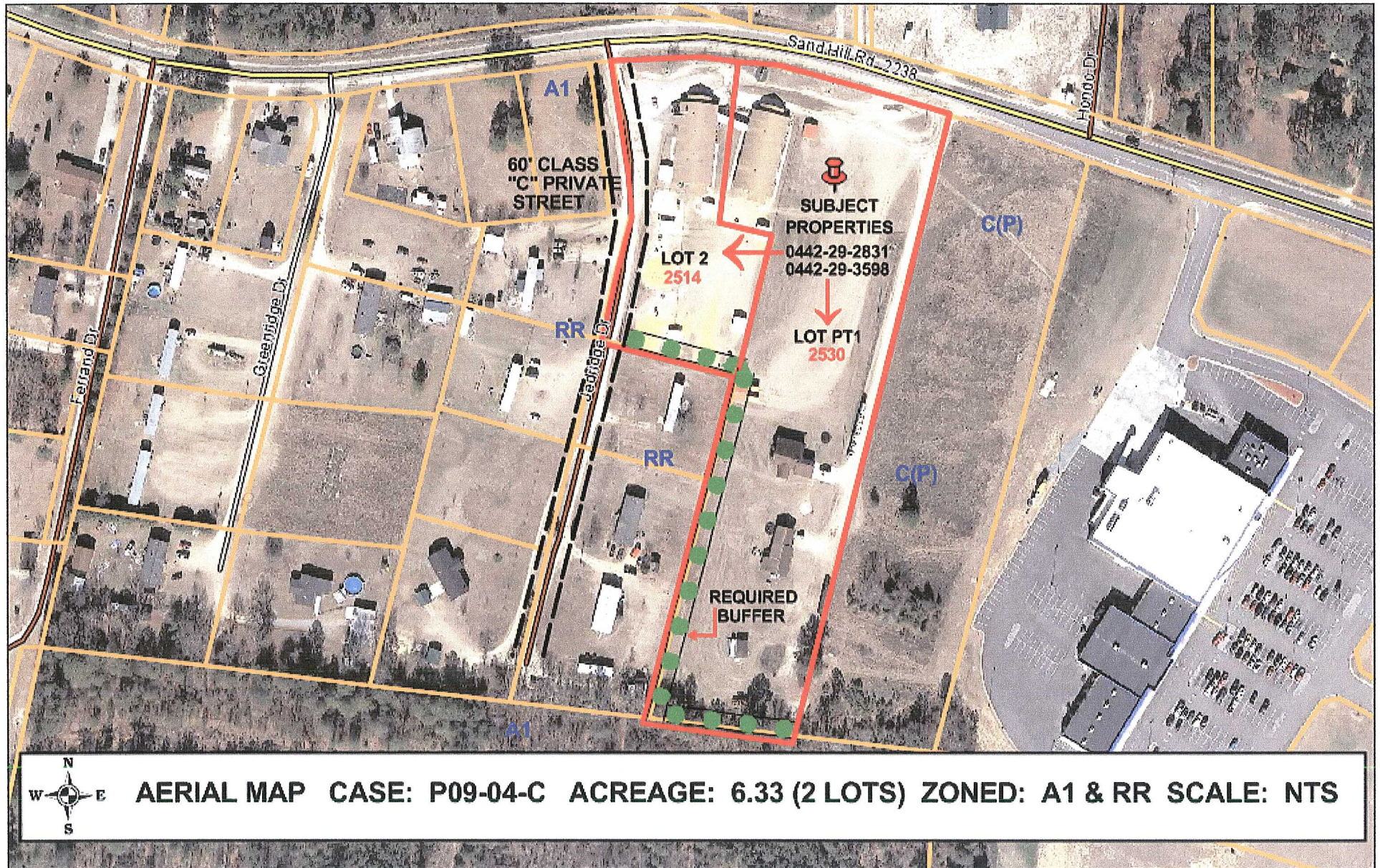
ACTION

GOVERNING BOARD

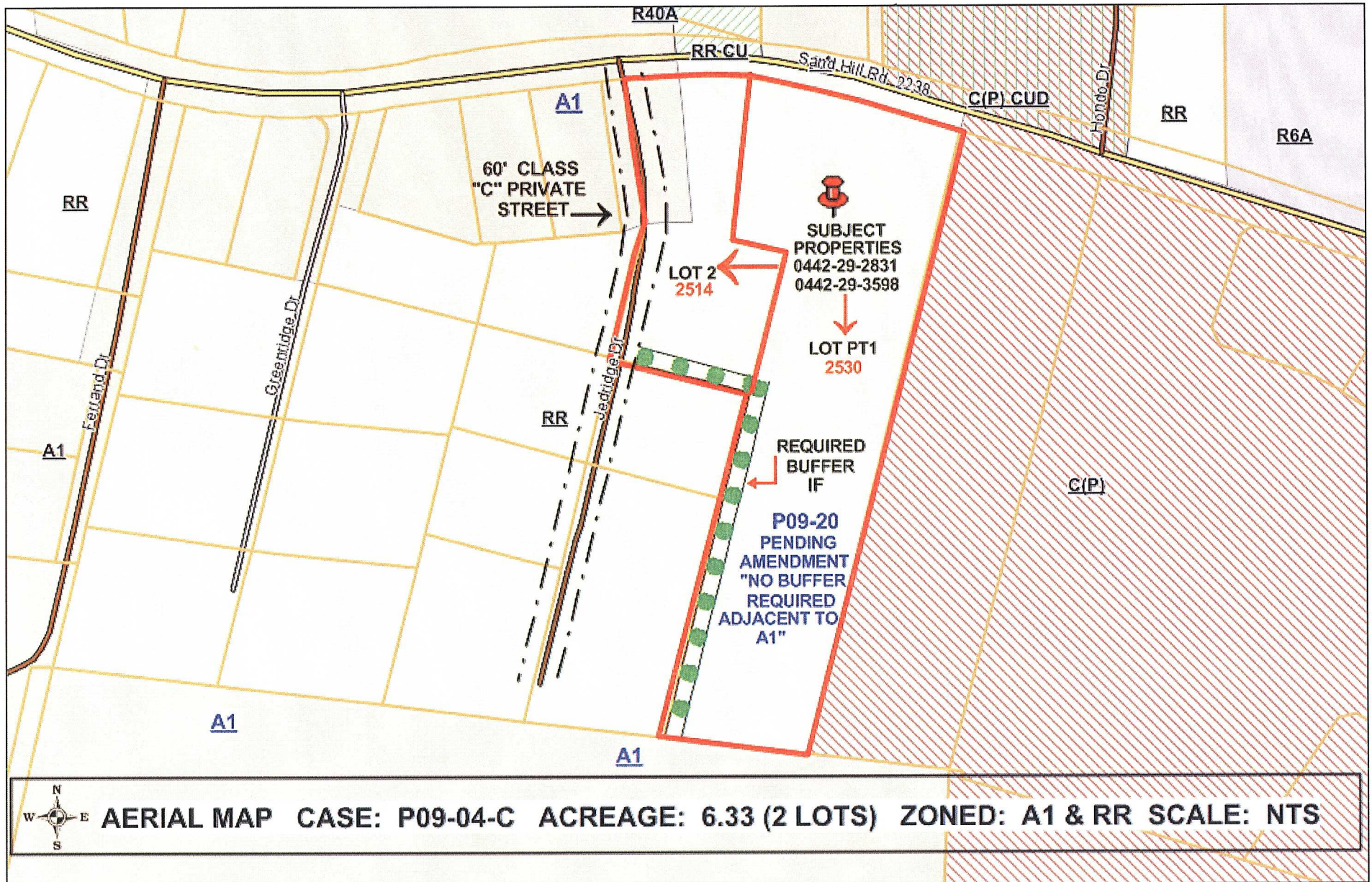
PIN: 0442-29-2831,3598

AF

ADMINISTRATIVE REVIEW FROM THE ZONING OFFICER'S DECISION



ADMINISTRATIVE REVIEW FROM THE ZONING OFFICER'S DECISION



CUMBERLAND COUNTY BOARD OF ADJUSTMENT

LOCATION OF PROPERTY: 2514 Sandhill Rd.

OWNER: PAUL W Davis

ADDRESS: 4793 NC 87 S. Fayetteville NC 28306

TELEPHONE: HOME: 910 483 3766 WORK: 910 484 1060

AGENT: Dick Lewis

ADDRESS: Lewis, Deese & Nance Attorneys

TELEPHONE: HOME: _____ WORK: 323-3500

APPEAL FROM DECISION OF ZONING OFFICER

Relating to the Enforcement of the Zoning Ordinance

Decision of the Zoning Officer appealed from: Number _____ Date _____

Provision of the Zoning Ordinance of district boundary in question: 1102 (g)

(*Please attach a copy of the Zoning Violation Letter to Application.)

Section 12.42. Appeal. Appeals may be taken to the Board of Adjustment by any person aggrieved, or by an officer, department, board or bureau of the county affected by any decision of an administrative official charged with the enforcement or interpretation of this ordinance thought to be in error. Such appeals shall be filed with the Board of Adjustment by notice specifying the grounds for appeal. Appeal shall be filed within six (6) months from the date of the action being appealed. The officer from whom the appeal is taken shall forthwith transmit to the Board of Adjustment all the papers constituting the record upon which the action appealed from was taken together with any additional written reports or documents as he deems pertinent. The Board of Adjustment may, after public hearing, so long as such action is in conformity with the terms of this ordinance, reverse or affirm, wholly or in part, or may modify any order, requirement, decision or determination as ought to be made, and to that end shall have the powers of the administrative official from whom the appeal is taken.



COUNTY of CUMBERLAND

Cumberland County Joint Planning Board

* STATEMENT OF ACKNOWLEDGEMENT regarding appearance before the Cumberland County 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 relative facts will be given under sworn testimony;
- 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 request;
- If the Board's action is to deny the matter before them, the course of appeal to their decision will be that of Superior Court. (Affected parties of the Board's decision have 30 days from proper notification in which to serve notice of appeal.)

Signed acknowledgement that the Secretary to the Cumberland County Board of Adjustment has conferred with the petitioner of this application on matters pertaining to the request and the understanding of course of the public hearing stated above at which time the Board will make a decision on this matter.

SIGNATURE OF OWNER(s) Paul W. Davis

PRINTED NAME OF OWNER(s) PAUL W. DAVIS

DATE..... CASE NO.

(If authorized by the owner(s), their agents or assigns may sign this acknowledgement.)

P09-20
County Zoning Ordinance Text Amendment

REVISION AND AMENDMENT TO THE CUMBERLAND COUNTY ZONING ORDINANCE, AMENDING ARTICLE II, INTERPRETATIONS, CALCULATIONS, AND DEFINITIONS, SECTION 203, DEFINITIONS OF SPECIFIC TERMS AND WORDS, SPECIFICALLY: RELIGIOUS WORSHIP ACTIVITY; AMENDING ARTICLE XI, LOT AND YARD REGULATIONS, SECTION 1102, YARD REGULATIONS, SUB-SECTION G. BUFFER REQUIREMENTS; AND AMENDING THE TABLE OF CONTENTS AS APPROPRIATE.

AMEND County Zoning Ordinance, Article II Interpretations, Calculations, and Definitions, Section 203, Definitions of Specific Terms and Words, specifically: *Religious Worship Activity*, as indicated below:

Religious Worship Activity: Any premises, the principal purpose of which is religious worship and in which the principal structure is the principal place of worship. Accessory uses may include without charge religious education classrooms, assembly rooms, kitchen, library room or reading room, recreation hall and a one-family dwelling unit (parsonage) but excluding day care facilities, food sales, second hand shops, festivals, bazaars and facilities for residence or training of religious order, unless otherwise authorized by this Ordinance.
(Amd. 02-19-08)

AMEND County Zoning Ordinance, Article XI Lot and Yard Regulations, Section 1102 Yard Regulations, sub-section G. Buffer Requirements, as indicated below:

G. Buffer Requirements.

1. A solid buffer shall be installed:
 - a. When a non-residential use abuts a residential~~ly-~~ ~~or-agricultural~~ zoned property along the side and/or rear property lines;
 - b. When any commercial off-street parking or loading space abuts a residential ~~or-agricultural~~ district along the side or rear property lines;
 - c. When any use permitted in a residential or agricultural district other than a single- or multi-family dwelling abuts a residential ~~or-agricultural~~ district along the side or rear property lines;
 - d. When any multi-family development of more than three residential units abuts a residential district or an existing single-family dwelling along the side or rear property lines; and

e. When any outside storage of materials, equipment or products is visible and/or abutting any residential district and/or public street.
(Amd. 02-19-08)

2. "Governmental uses" as defined herein and including public and private elementary, junior high/middle, and high schools, accredited by the State of North Carolina, and "religious worship activity" as defined herein shall be exempt from the buffer requirements of this Ordinance.
(Amd. 11-20-06)

3. All uses existing at the time of the adoption of this Ordinance and classified under "a – e" above shall provide and maintain a solid buffer ~~completely surrounding the development~~ within two calendar years of said use being subject to this Ordinance in accordance with the standards of this sub-section and the County Subdivision Ordinance.
(Amd. 02-19-08)

4. When required by this Ordinance and/or the County Subdivision Ordinance, the following standards shall apply:

a. A vegetative buffer shall be a minimum of three feet in height at time of planting to reach a height of six feet within three calendar years;

b. Solid non-vegetative fencing shall have a minimum height of six feet;

c. Buffer vegetation shall be located between any fence and the common property line.

d. Chain link fencing shall not be permitted as a screening alternative, regardless of type of modifications made to the chain link fence.
(Amd. 11-20-06; Amd. 02-19-08)

P09-05-C
SITE PROFILE

P09-05-C: CONSIDERATION OF AN ADMINISTRATIVE REVIEW FROM THE CUMBERLAND COUNTY PLANNING & INSPECTIONS DIRECTOR'S DECISION REGARDING THE COUNTY ZONING ORDINANCE, SECTION 912 KENNEL OPERATIONS, SUB-SECTION G, FOR TEMPORARY HOUSING/BOARDING OF FOUR OR MORE DOGS; IN A R15 RESIDENTIAL DISTRICT ON 1.25+/- ACRES, LOCATED AT 849 FOXCROFT DRIVE; SUBMITTED AND OWNED BY JONATHAN E. TUGMAN AND PAULA KYLE.

Site Information:

Frontage & Location: 174.50' +/- on Foxcroft Drive

Depth: 310'+/-

Jurisdiction: Cumberland County

Adjacent Property: No

Current Use: Residential

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

Nonconformities: Yes, kennel operation (6 dogs)

Zoning Violation(s): Yes, Case # ZN5748-2008 received on 01/21/2009 for harboring more than three dogs five months of age or older where a maximum of three are allowed in a R15 Rural Residential District

Surrounding Zoning: North: A1 & R15; South & West: R15; East: R30

Surrounding Land Use: Residential and woodlands

2030 Growth Vision Plan: Urban fringe

Special Flood Hazard Area (SFHA): None

Municipal Influence Area: Spring Lake

Water/Sewer Availability: Harnett County Department of Public Utilities/Septic

Soil Limitations: None

Subdivision/Site Plan: Lot platted 08/16/1988, Plat Bk. 66, Pg. 82

Average Daily Traffic Count (2006): 3,700 on Elliot Bridge Road

Highway Plan: No impact on the current Highway Plan or Transportation Improvement Program

Military Impact Area: Yes

RLUAC: No objections

Accident Potential Zone: No objections

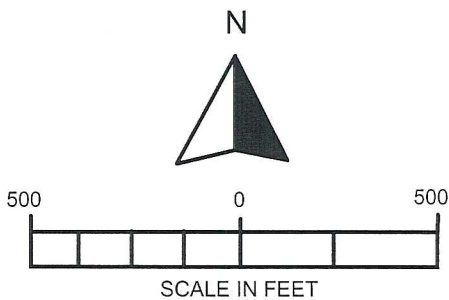
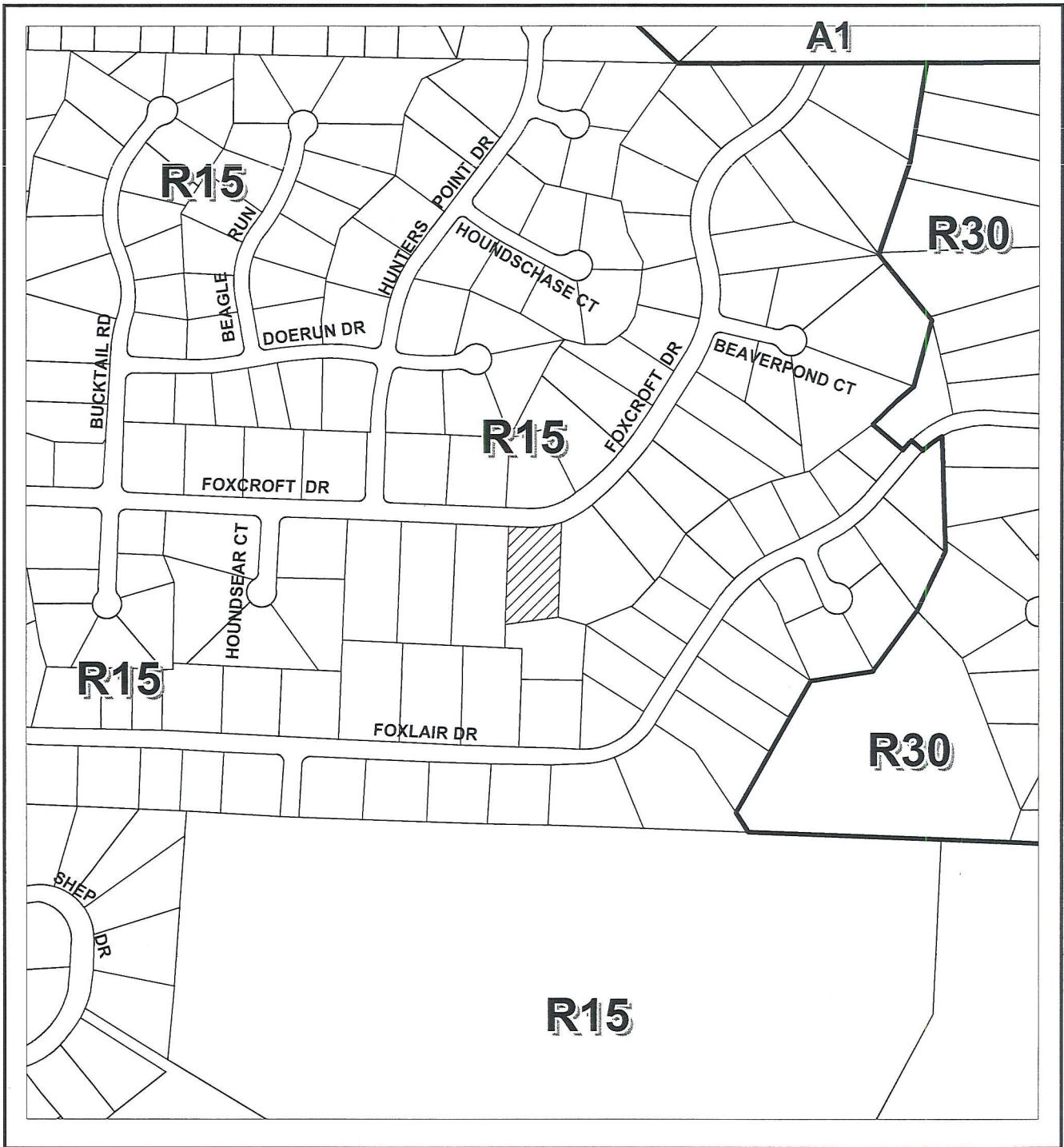
County Zoning Ordinance Reference: Section 902 Kennel Operations, Subsection (G) for Temporary Housing /Boarding of Four or More Dogs

Note:

Application "For Temporary Housing/Boarding of Four or More Dogs" was submitted by applicant on March 10, 2009 and it was denied on March 30, 2009.

First Class Mailed Notice Certification

A certified copy of the tax record owner(s) and their tax record mailing address is contained within the case file and is incorporated by reference as if delivered herewith.



BOARD OF ADJUSTMENT ADMINISTRATIVE REVIEW

ACREAGE: 1.25 AC.+/-

HEARING NO: P09-05-C

ORDINANCE: COUNTY

HEARING DATE

ACTION

GOVERNING BOARD

175

179

65

11294

Foxcroft Dr 2553

J

SUBJECT PROPERTY
PIN #
0543-24-3471

N
W E
S

AERIAL MAP CASE: P09-05-C ACREAGE: 1.25 ZONED: R15 SCALE: NTS

CUMBERLAND COUNTY BOARD OF ADJUSTMENT

LOCATION OF PROPERTY: 849 Foxcraft Drive, Fayetteville, NC 28311

OWNER: Jonathan E & Paula K Tugman

ADDRESS: 849 Foxcraft Dr

TELEPHONE: HOME: (910) 922-6575

WORK: ~~(910) 922-6575~~

AGENT: _____

ADDRESS: _____

TELEPHONE: HOME: _____

WORK: _____

APPEAL FROM DECISION OF ZONING OFFICER

Relating to the Enforcement of the Zoning Ordinance

Decision of the Zoning Officer appealed from: Number _____ Date _____

Provision of the Zoning Ordinance of district boundary in question: _____

Sec 912.6 Temp. Kennel

(*Please attach a copy of the Zoning Violation Letter to Application.)

1604 Administrative Review
Section ~~12.42~~ 1604 Appeal. Appeals may be taken to the Board of Adjustment by any person aggrieved, or by an officer, department, board or bureau of the county affected by any decision of an administrative official charged with the enforcement or interpretation of this ordinance thought to be in error. Such appeals shall be filed with the Board of Adjustment by notice specifying the grounds for appeal. Appeal shall be filed within six (6) months from the date of the action being appealed. The officer from whom the appeal is taken shall forthwith transmit to the Board of Adjustment all the papers constituting the record upon which the action appealed from was taken together with any additional written reports or documents as he deems pertinent. The Board of Adjustment may, after public hearing, so long as such action is in conformity with the terms of this ordinance, reverse or affirm, wholly or in part, or may modify any order, requirement, decision or determination as ought to be made, and to that end shall have the powers of the administrative official from whom the appeal is taken.



COUNTY of CUMBERLAND

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* STATEMENT OF ACKNOWLEDGEMENT regarding appearance before the Cumberland County 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 relative facts will be given under sworn testimony;
- 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 request;
- If the Board's action is to deny the matter before them, the course of appeal to their decision will be that of Superior Court. (Affected parties of the Board's decision have 30 days from proper notification in which to serve notice of appeal.)

Signed acknowledgement that the Secretary to the Cumberland County Board of Adjustment has conferred with the petitioner of this application on matters pertaining to the request and the understanding of course of the public hearing stated above at which time the Board will make a decision on this matter.

SIGNATURE OF OWNER(s).....*Jonathan E. Tugman, Paula K. Tugman*.....

PRINTED NAME OF OWNER(s).....*Jonathan E. Tugman, Paula K. Tugman*.....

DATE.....*15 Apr 2009*..... CASE NO.

(If authorized by the owner(s), their agents or assigns may sign this acknowledgement.)

April 14, 2009

Cecil P Combs
130 Gillespie Street
PO Box 1829
Fayetteville, NC 28302

SUBJECT: Appeal of Denial

Dear Mr. Combs:

This correspondence is in reference to the notification of denial for case No. TK09-01 dated March 30 2009, to serve as an addition to our original application and formal request that this issue be appealed to Cumberland County Board of Adjustment.

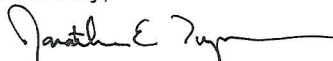
In response to the second paragraph that alleged that more dogs resided at our premises than was on the original application is incorrect. There are only four dogs that reside at our residence. Mozart, Rosario, Katona, and Wenny. The two small dogs that you referenced do not permanently reside at our property. The two small dogs, "Oscar and Mia" belong to Mrs. Paige Haney (Paula's sister) and are registered and reside in Wilmington NC (New Hanover County). They are only at this location when she is here visiting, which she does often, or when we are pet sitting for her, as boarding fees in Wilmington are very expensive. See Encl. 1-3, Attached proof of registrations for Oscar and Mia and the accompanying photo.

In our conversations about this issue you stated that one of the neighbors voiced concerns about the dogs being vicious. Absolutely not true! Though that comment should have no bearing on the case, as we are being persecuted for the number of dogs we own and not their level of aggressiveness, I have included with this letter two additional signed letters from individuals who have taken care of the German Shepherds for us in the past as signed testimony stating that they gentle, well behaved, and not aggressive. Encl 4,5. Wenny has been in my possession since I gained her as a puppy and as such myself or my family has always been available to care for her. She is a gentle dog and really just a big baby. She is always great around children and strangers alike and is no danger to anyone. To date, the Cumberland County Sheriffs department has never received any calls or complaints about noise, sanitation, aggressiveness, or any other type complaint regarding our residence. As stated in the original application, the dogs have never been off the lot except when leashed or when traveling with us.

Our animals are no threat to anyone. We have six-foot high fence that surrounds the lot that encloses the area where the dogs reside. Three sides are privacy fence and one side is metal fence with a thick vegetative buffer. For the dogs to even know anyone is there they would have to stand on a ladder looking into our back yard or by making some type of noise on the fence to draw the dogs attention.

We ask that the Cumberland County Board of Adjustment grant us the wavier to the zoning ordinance. Our dogs are healthy, clean, groomed, well cared for, and very much a part of our family. They in no way interfere with the public health, safety, and welfare of anyone in our neighborhood.

Sincerely,

x 

x 

Jonathan E & Paula K Tugman

End 1

Receipt Number: R09-126094

Receipt Date: Wednesday, April 01, 2009

Person Information: PAIGE HANEY

PID: 0110007

1307 BAR HARBOR DR
WILMINGTON NC 28403

Received From: PAIGE HANEY

Check No:

Phone: (910) 286-9753

Item:	Animal ID:	Reference No:	Price:	Each:	Amount:
LIC CF1N	A219815	L09-315807	\$10.00	1	\$10.00
LIC CFNO	A211100	UD8-034498	.00	1	.00

Total Fees Due: **\$10.00**

Payments:	Cash:	\$10.00
-----------	-------	---------

Check: \$0.00

Debit:	\$0.00
Credit Card:	\$0.00

Total Payments Received: \$10.00

Thank You!

Change: \$0.00

Balance Due.	\$0 00
--------------	--------

Animal Information:

A211100 BAILEY - OF AGE, NEUTERED, CAVALIER SPAN, TRICOLOR DOG

A211100 BAILEY - OF AGE, NEUTERED, CAVALIER SPAN, TRICOLOR DOG
A219815 OSCAR - 3 YEARS OF AGE, NEUTERED, YORKSHIRE TERR, BLACK AND TAN DOG

License information:

Tag Number:	Expires:	Animal#	Vacc Date:	Term:	Expires:	Amount:	Type:
U08-034498	08/07/08	A211100	08/07/08	36	08/07/11	\$0.00	LIC CPNO
L09-315807	03/31/10	A219815	03/31/09	12	03/31/10	\$10.00	LIC CP1N

ITAL LICENSE FEES: \$10.00

Spitzer Hours:

Monday - Friday 9:30AM - 4:45PM *Saturday 9:00am-1:45pm

Shoppers CLOSED Sundays and Holidays

Transaction Date: 04/01/09

Print Date: 04/01/09

Copyright Files (Name: rpt)

C-4-RNEALEY

Encl 2

New Hanover County Animal Control Services

180 Division Drive, Wilmington, NC 28401

(910) 798-7500 (910) 341-4349 FAX

Receipt Number: R09-124734

Receipt Date: Tuesday, March 10, 2009

Person Information: PAIGE HANEY

PID: P118987

1307 BAR HARBOR DR

WILMINGTON, NC 28403

Received From: PAIGE HANEY

Check No:

Phone: (910) 256-9753

Item:	Animal ID:	Reference No:	Price:	Each:	Amount:
LIC CF1N	A218391	L09-313066	\$10.00	1	\$10.00

Total Fees Due: **\$10.00**

Payments: Cash: \$0.00

Check: \$10.00

Credit Card: \$0.00

Total Payments Received: **\$10.00****Thank You!**

Change: \$0.00

Balance Due: \$0.00

Animal Information:

A218391 MIA - OF AGE, SPAYED, POMERANIAN/YORKSHIRE TERR, BROWN DOG

License Information:

Tag Number:	Expires:	Animal#	Vacc Date:	Term:	Expires:	Amount:	Type:
L09-313066	05/29/10	A218391	05/29/08	24	05/29/10	\$10.00	LIC CF1N
TOTAL LICENSE FEES:						\$10.00	

Shelter Hours

Monday - Friday 8:00AM - 4:45PM *Saturday 10:00am-1:45pm

Shelters CLOSED Sundays and Holidays

Clerk: SASMITH

Transaction Date: 03/10/09

Print Date: 04/09/09

C:\Program Files\Champion
Software\Champion\Print\Prints\Receipts\rcp

Paige Haney with her two dogs Oscar and Mia.



Date: 3-31-09

From: Richard A Rohr Jr.

Buckhannon WV

Phone 304-472-6560

To: Whom it may concern:

I have been around Paula Kyle's German Shepherd dogs off and on for several years now and I've always been impressed with their good temperament. I have used Paula's Mozart male for several breeding's with a female of mine especially for his good temperate traits. On my visits to drop off my female at Paula's home Mozart was curious yet friendly

This past summer I kept Katona, a sable colored male at my home for about three months. He was well behaved and I did not hesitate to let him play with my children of 12 and 16 years of age. Katona actually appeared to me to even be some what timid.

A handwritten signature in black ink, appearing to read "Richard A Rohr Jr.", with a stylized, flowing script.

-----Original Message-----

From: Kristen Basham <kristen_basham@yahoo.com>

To: pkkyle2@aol.com

Sent: Tue, 17 Mar 2009 9:26 pm

Subject: Dogs

To whom it may concern,

I'm writing to you to explain my experience of taking care of Mozart, Rosar, and Katona for over a year. I was in close contact with all three dogs both by myself, and with a friend or friends whom the dogs had never seen before. I walked in and out of their kennels while they were eating and all three let me pet them. As for barking, I witnessed no more than any other average dog and I had no complaints made to me. I would like you to please take my experience with these dogs into consideration because I feel I've spent a large amount of time with them both in their normal and new surroundings. Thank you.

Sincerely,

Kristen Basham

A handwritten signature in cursive script that reads "Kristen Basham". The signature is written in dark ink and is positioned below the printed name.

Donovan McLaurin,
Chair
Wade, Falcon & Godwin

Lori Epler,
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 & Inspections Department

March 30, 2009

Thomas J. Lloyd,
Director

Cecil P. Combs,
Deputy Director

Walter Clark,
Roy Turner,
Sara E. Piland,
Cumberland County

Benny Pearce,
Town of Eastover

Jonathan E. & Paula K. Tugman
849 Foxcroft Drive
Fayetteville, NC 28311

SUBJECT: Notification of Denial, Case No. TK09-01, Temporary Kennel Application

Dear Mr. & Mrs. Tugman:

This correspondence is in reference to your application for the temporary housing/boarding of four or more dogs pursuant to the Cumberland County Zoning Ordinance, Section 912. (g).

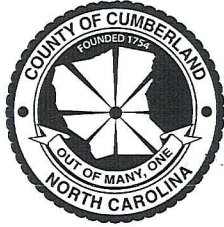
Upon investigation into this matter, I do hereby find that the evidence presented does not warrant the issuance of a permit to allow this activity at this location. There are several factors that contributed to this decision. First and foremost, I have reason to believe that your application did not include all dogs residing at this address. The application specifically states to include all dogs in your possession at this address. Our investigation has substantiated the existence of two small dogs that were not included in this application. Further, I cannot find any evidence that the two dogs not listed as part of this application has been listed with the Cumberland County Tax Department nor have their vaccination records been included as required by the County's ordinance.

A meeting with your neighbors, whose property abuts 849 Foxcroft Drive, resulted in their voicing concerns about the issuance of this permit and they have gone on record opposing the same. The administrative provisions of the County's Zoning Ordinance are to provide for the public health, safety, and welfare as well to determine the affects of certain uses on the character of the surrounding property. It is my opinion that the surrounding property as well as its residents will be unduly affected with the issuance of this permit and the public good would not be served. Therefore you are requested to bring your property into compliance with the applicable County codes within 30 days from this notification. You do have the right to appeal this decision to the Cumberland County Board of Adjustment pursuant to Section 1604 of the County's Zoning Ordinance.

If there are any questions pertaining to this matter please feel free to call me at 910-678-7606 or email: ccombs@co.cumberland.nc.us.

Sincerely,

Cecil P. Combs
Deputy Director



COUNTY of CUMBERLAND

Planning & Inspections Department

DATE OF APPLICATION SUBMITTED: <u>3/10/09</u>
RECEIVED BY: <u>[Signature]</u>
DECISION DATE: <u>3/20/09</u>
BY: <u>[Signature]</u>
APPLICATION DECISION APPROVED / DENIED
PERMIT #: _____
EXPIRATION DATE: _____ (if approved)

**APPLICATION
FOR THE
TEMPORARY HOUSING/BOARDING OF FOUR OR MORE DOGS**
(County Zoning Ordinance, Section 912.G)

TO THE DIRECTOR OF THE CUMBERLAND COUNTY PLANNING AND INSPECTIONS DEPARTMENT, CUMBERLAND COUNTY, NC:

I (We), the undersigned, hereby submit this application, and petition you (the Director or the Director's designee), for approval of the temporary housing/boarding of one to three dogs that are more than five months of age or older, in addition to three dogs, which are currently in my possession. I(We) understand that in the event this application is approved, this approval is specific to the address and the dogs listed on this application and is not transferrable to another address or to other dogs.

I(We) understand that this application, if approved, is approved for the dogs to be temporarily housed/boarded for a maximum of 12 calendar months. I (We) further understand that in the event the situation warrants, I (we) may apply for an extension of this request for a maximum of 12 additional months and that it is our responsibility to submit the application for an extension prior to expiration of the original 12 month period.

The following items must be attached to this application at the time of submission and is incorporated herewith:

1. A sketch of the property where the dogs are to be temporarily housed/boarded, include outside pens, shelters, etc;
2. Verification of vaccinations of all dogs in my possession located at the subject address; and
3. Verification that all dogs in my possession at this address are listed with the County Tax Department.

* The contents of this application, upon submission, become "public record."

In support of this application, as hereinafter requested, the following facts are submitted:

1. APPLICANT: Jonathan E and Paula K Tugman
ADDRESS: 849 Foxcroft Dr, Fayetteville, NC ZIP CODE: 28311
2. PROPERTY OWNER(S) (if different than applicant):
Same as 1
ADDRESS: _____ ZIP CODE: _____
(NOTE: Property owner(s) must sign page 4 of this application)
3. ADDRESS OF PROPERTY where dogs are to be housed/boarded (if same as item "1" above, state "Same as Item #1"): Same as 1
4. PARCEL IDENTIFICATION NUMBER (PIN #) of property where the dogs are to be housed/boarded: 0543-24-3471
(also known as Tax ID Number or Property Tax ID)
5. ACREAGE of property where the dogs are to be housed/boarded: 1.25 Acre
6. TYPE OF UTILITIES: Water: Harnett County Sewer: septic tank
METHOD OF DISPOSAL OF DOG WASTE: Picked up, bagged and disposed of in trash
7. EXISTING USE(S) OF PROPERTY other than residential where the dogs are to be housed/boarded:
N/A
8. NUMBER, NAME and BREED OF DOGS (include all dogs) to be housed/boarded at the address and indicate which dogs are to be temporarily housed/boarded at this address:
1 Wenny: Tosa Inu — "Wenny" Age 8
2 ~~German Shepherds~~ Briarcliff's Amadeus Mozart — "Mozart" : German Shep. Age 27
3 Briarcliff's Grand Rosario — "Rosar" : German shep Age 7
4 Briarcliff's Katona — "Katona" : German shep Age 3

(You may attach additional paper if more space is necessary.)

1. Explain the nature of the hardship and purpose of the request:

2. What is the expected length of time that the dogs are to be housed/boarded at this address?

3. Describe the accommodations available for housing/boarding the dogs to be temporarily housed/boarded, and existing accommodations for the dogs permanently housed at this address. (address both indoor and outdoor accommodations):

4. Are the dogs to be temporarily housed/boarded spayed/neutered? _____ (If yes, attached evidence of procedure)

5. To the best of your knowledge, has the applicant and/or property owner been notified of any violation of County Codes, other than zoning, that are related to the dogs addressed on this application, including but not limited to noise, sanitation, animal control ordinances, animal cruelty laws, etc.? If yes, explain:

6. Do the dogs to be housed/boarded have a history of aggressive behavior towards other pets or towards people? _____ If yes, explain:

7. In your opinion, what effect, if any, will the housing/boarding of the dogs have on the residents of the neighboring properties or the surrounding community?

8. If this application is being submitted because of a notice of violation relating to the dogs which are the subject of this application and the dogs are currently present at this address, have there been any negative or detrimental effects on the surrounding community?

The undersigned hereby acknowledge that all information contained within this application and attached hereto is true to the best of my (our) knowledge and understanding. The undersigned also understands that failure to disclose the true, complete facts on this application for the temporary housing/boarding of four to six dogs, will result in the immediate revocation of the permit and any dogs previously approved under this application must be removed from the property within 15 days of the revocation of the permit:

Jonathan Tugman, Paula Tugman
NAME OF APPLICANT(S) (PRINT OR TYPE)

849 Foxcroft Dr, Fayetteville, NC 28311
ADDRESS OF APPLICANT(S)

(910) 922-6575 / (304) 619-6120
HOME TELEPHONE #

910 243 2247 / ext. _____
WORK TELEPHONE #

Same as above
MOBILE #

rngrtug@aol.com / pkkyle2@aol.com
E-MAIL ADDRESS

Jonathan E. Tugman
SIGNATURE OF APPLICANT(S)

SIGNATURE OF APPLICANT(S)

DATE SIGNED: _____

N/A
PROPERTY OWNER SIGNATURE

N/A
PROPERTY OWNER SIGNATURE

DATE SIGNED: 9 March 09

NAME OF AGENT/ATTORNEY(if different than applicant) (PRINT OR TYPE)

MAILING ADDRESS OF AGENT/ATTORNEY

TELEPHONE #

ALTERNATE TELEPHONE #

MOBILE #

E-MAIL ADDRESS

SIGNATURE OF AGENT/ATTORNEY

DATE SIGNED: _____

* **ALL** record property owners must sign this petition.

* The contents of this application, upon submission, becomes "public record."

1. The four dogs are and have been a part of our respective families for years. My wife and I met two years ago and were married this past November 24th 2008. Joining our two households together. We wish to maintain all four of our dogs, as they are very much a part of our new family.

I have one dog (Wenny) that I adopted as a puppy when I was stationed in the Republic of Korea 2000-2002. I have cared for and raised her as part of my family. She has been there for both of my two children, current ages 6 and 4 respectively, who absolutely love her and care for her, and she does for them. She is part of my family.

My wife has three dogs. All three are pure breed AKC registered German Shepherd's that she hand whelped, raised, and trained (See enclosure 1). All three are from the same Bloodline. Pedigree's available upon request. Mozart, the oldest, is the father of Rosario who is the mother of Katona. All were breed years ago to be show dogs. Mozart has won 9 American championship points and 8 Canadian championship points (See enclosure 2), and had numerous offspring that have won show through the years. Rosario has been shown several times (See enclosure 3) and has had 3 offspring that have won shows through the years. One that recently finished his Canadian championship: Briarcliff's Jonah. Katona has never been shown due to an injury that he sustained as a very young puppy that has prevented his left ear from standing up. Numerous handlers have handled the dogs over their years and all have been well behaved and obedient both while in the show ring and on the show ground. All have long since been retired and are now very much family pets and are part of the family. My children are around these dogs often and they love all three. They are all big furry playmates.

All four dogs interact well together and well behaved. They only bark when strangers approach their fence line or if they are engaged by any of the stray dogs that roam the neighborhood.

2. We expect to retain these dogs for the rest of their lives. Mozart, the oldest, is almost 12 and based on average Shepherd life expectancy of 14 has about two years left. Rosario and Wenny are about both about 8 years. Katona is just now getting out of the puppy stage and is nearly 3. We are not going to get any additional dogs over the years but we will probably always maintain two. These dogs are an important part of our family.
3. These dogs reside both inside and outside.
 - a. Inside accommodations: The dogs are fed and sleep inside the garage every night. They are usually inside by 8pm for feeding and then bedding down for the night. They each have an individual dog crate with padding that they sleep in. Each have fresh water in their crates nightly for their use. The garage is heated in the winter and cooled in the summer. The dogs have only remained outside overnight during the last seven months three times. Each one was for a single night and it was due to unexpected absences. On that note when we, together, have been out of town and could not take all of them with us, we have a pet sitting service (Carolina Pet care

services 910-987-3141) that attends the dogs. The dogs are never abandoned or neglected.

- b. Outside accommodations: The dogs have access and use a 37,625sqft (175x 215) completely enclosed fenced in lot. The lot is surrounded on two sides by 4ft high privacy fence(left and right sides); six ft high metal fence panels the butt against 15-20ft Pines in the back; and a 4ft high decorative privacy fence in the front. Additionally the left side privacy fence is being raised to the height of 6ft. (See enclosure 4 for recent purchase receipt). The lot has areas of both ample sunshine and shade depending on where the dogs want to play or lay. With regard to outside shelter for inclement weather when we are not present during the day, the dogs currently have a 40sqft (5x8) insulated dog house that sits upon a 8in raise platform floor. This summer there are plans to expand their house by an additional 24sqft (8x8 total). If weather is bad and we are here the dogs come inside. The dogs have two 5gal buckets of fresh water daily to drink from (One bucket is electric and heated in the winter so water can not freeze) (See enclosure 5)

- 4. Yes/No. Mozart and Wenny have been spayed/neutered for medical reasons a few years ago. Rosario was spayed about a years two years ago so we would not have to worry about puppies. Katona has not been neutered yet as there is no medical requirement at this time. (See Enclosure 6)
- 5. Yes, once. Animal control came out one time to check on an anonymous report of animal cruelty and abandonment. They observed the accommodations for the animals, said that they obviously were very well cared for and dismissed the report and bogus and inaccurate. Cumberland county sheriffs department have never received any calls or complaints about noise, sanitation, cruelty or any other type complaint for that matter. (See enclosure 7)
- 6. No. They get no more excited to bark at other animals than would any normal dog that sees an unfamiliar animal around. They might bark at a cat if they see one. But that is usually only Rosario or Kotona. Mozart is too old to care and Wenny is too cross-eyed to guess which one is the real one. Wenny and Katona, when not frolicking and playing with each other have been know to chase a few squirrels a time or two in our woods, but as of this date they have never caught one. The attached statement from the shepherd's previous Vet, further confirms that the dogs are not aggressive towards people or other animals (See Enclosure 8). With regard to Wenny, due to recent changes in Vets ant Wenny's vet clinic, her routine Vet is no longer there and the current vet has yet to have an opportunity to observe her behavior. The dogs are great around all children and I feel very safe with my children around the dogs (See enclosure 9). Additionally, I feel with all the degenerates that seem to molest children these days, my children are much safer when outside playing with these animals.
- 7. No impact on our neighbors at all. When our dogs are outside they reside in "their area" and have no visibility of anyone from the sides of the property unless they walk up the fence and look over into their area. Waste is picked up weekly at a minimum if not more. There are no fowl odors emitting from our property and the dogs are not out barking all hours of the night

and into the mornings. I know from fact that there are many other houses in the neighborhood that can't make that same claim.

8. No. As stated before, the dogs have never ever been off our property except when they have been traveling with us or we have walked them on a leash. They are bathed and groomed regularly, well cared for and clearly do not smell bad. They are all great dogs and very much a part of our family.

Enclosure: 1

BRIARCLIFF'S AMADEUS MOZART
NAME

DL734646/05
NUMBER

GERMAN SHEPHERD DOG
BREED

MALE
SEX

BLACK & TAN
COLOR

NOV 10 1997
DATE OF BIRTH

HOGAN VOM KRAUZBERG
SIRE DL567097/01 (2-97)

SENECA'S BREYANDRA
DAM DL486712/02 (5-95)

PAULA K ELLISON & VALERIE SCHWENDEMAN
BREEDER

PAULA K ELLISON
PO BOX 264
CANVAS, WV 26662-0264

MAY 20 1998
CERTIFICATE ISSUED



IF A DATE APPEARS AFTER THE NAME AND NUMBER OF THE SIRE AND DAM, IT INDICATES THE ISSUE OF THE STUD BOOK REGISTER IN WHICH THE SIRE OR DAM IS PUBLISHED.

THIS CERTIFICATE ISSUED WITH THE RIGHT TO CORRECT OR REVOKE BY THE AMERICAN KENNEL CLUB

See Transfer Instructions on Back of Certificate

REGISTRATION CERTIFICATE

NAME
BRIARCLIFF'S GRAND ROSARIO

NUMBER
DN00658501

BREED
GERMAN SHEPHERD DOG

SEX
FEMALE

COLOR
BLACK & TAN

DATE OF BIRTH
APRIL 7, 2002

SIRE
BRIARCLIFF'S AMADEUS MOZART
DL73464603 09-00 OFA33G

DAM
BRIARCLIFF'S DARDEN ELLE
DL79709601 10-00 OFA29G OFEL29

BREEDER
PAULA K ELLISON

CERTIFICATE ISSUED
APRIL 21, 2003

OWNER

PAULA K ELLISON
PO BOX 264
CANVAS, WV 26662-0264



If a date appears after the name and number of the sire and dam, it indicates the issue of the Stud Book Register in which the sire or dam is published.

For Transfer Instructions, see back of Certificate.

This Certificate issued with the right to correct or revoke by the American Kennel Club.

REGISTRATION CERTIFICATE

AMERICAN KENNEL CLUB

NAME
BRIARCLIFF'S KATONA

NUMBER
DN14167801

BREED
GERMAN SHEPHERD DOG

SEX
MALE

COLOR
SABLE

DATE OF BIRTH
APRIL 5, 2006

SIRE
CH MARQUIN'S BICARDI GOLD RN
DL91522801 06-05 OFA42G OFEL42 AKC DNA #V378503

DAM
BRIARCLIFF'S GRAND ROSARIO
DN00658501 09-04

BREEDER
PAULA K ELLISON

OWNER

PAULA K ELLISON
PO BOX 264
CANVAS, WV 26662-0264



AMERICAN
KENNEL CLUBSM

CERTIFICATE ISSUED
OCTOBER 13, 2008

This certificate invalidates all previous certificates issued.

If a date appears after the name and number of the sire and dam, it indicates the issue of the Stud Book Register in which the sire or dam is published.

For Transfer Instructions, see back of Certificate.

This Certificate issued with the right to correct or revoke by the American Kennel Club.

REGISTRATION CERTIFICATE

Enclosure 2



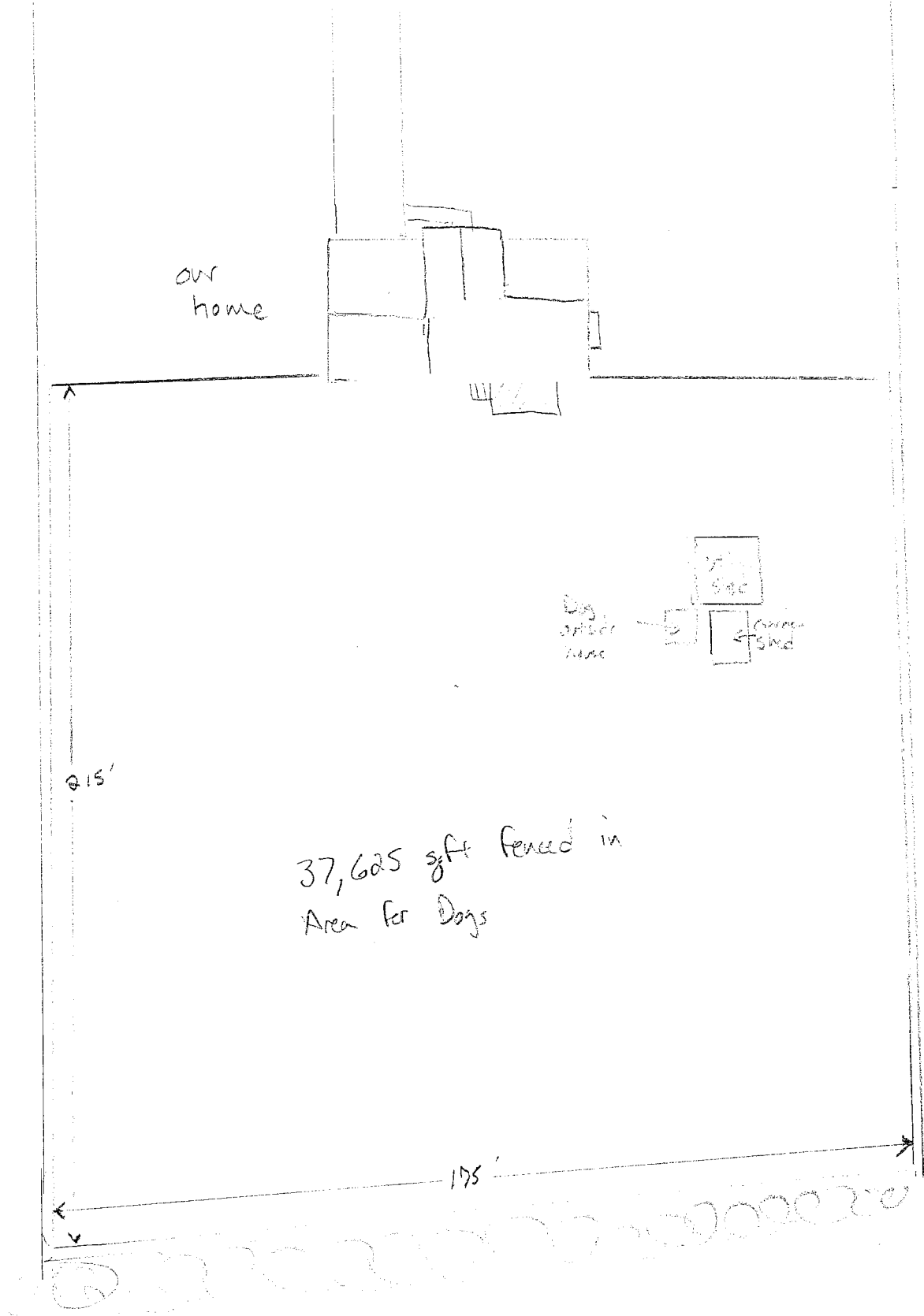
Briarcliff's
Amadeus
Mozart

Enclosure 3

Briarcliff's
Grand
Rosario



Enclosure 5



37,625 sqft fenced in
Area for Dogs

increasing
fence height
to 6'

All sides have 4' high Privacy fence
except back that has 6' high metal fence
panels with a vegetative Buffer behind that.

Nicholas Animal Hospital
325 Fairview Heights Rd
Summersville, WV 26651
(304) 872-5030

Enclosure 6

Rabies Certificate

Client ID: 521
Client Name: PAULA KYLE
Address: 849 FOXCROST DRIVE

FAYETTEVILLE, NC 28311

Phone: (304)872-0202,ext.

Patient ID: 521V
Patient Name: MOZART
Species: CANINE
Breed: GERMAN SHEPHERD
Sex: Neutered Male
Color: BLACK/BROWN
Markings:
Birthday: 11/10/1997
Weight: 94.30 pounds on 5/22/2008

Tag Number: 002026
Lot Number: 12262
Producer: RHONE MERIEUX
K / MLV: Killed Virus

Vaccination Date: 12/5/2007
Expiration Date: 12/5/2009

Staff Name: DVM Joseph G. Krese
License Number:

Print at: Monday, February 23, 2009 10:41:52

Host: LEC-33

User: ananney

Enclosure: 7

Refresh Rpt Only Loc Chk Ph. Dir Ev Hist Advisories Units Out Delayed Monitor Tile New Map Map Link Exit

Link Event ID - Call Recv // : : Report

Event Inf Notes Times R/E Log Other Anl/All Patients Employees Vehicles

Rpt # EMS Fire Law Resc Othr

Loc 849 FOXCROFT DR FAY

BEAVERPOND CT CCS Ser Agcy

X-ST HUNTERS POINT DR SUBeat District RA

Bust Ph# () - Group

Nature Alarm Level Priority QA --

Caller PQA Hist Alarm

Addr Ph# () -

Tow

☒ Include Cancelled Events ☒ Include Delayed Events View Exit Srch

No match found

OK

no calls

start Visual CAD Admin Mapview PISTOL Records Mailbox Desktop Omnivox Force 10:41 AM

To Whom It May Concern,

My name is James W. Gragg, and I am writing in regards to the temperament of Ms. Rita Kyle's dogs. I am one of two veterinarians at Nicholas Animal Hospital. Nicholas Animal Hospital has been seeing Ms. Kyle's animals for a number of years. I personally have treated her German Shepherds over the last four years. During this time, her dogs have seemed to be well mannered and obedient to Ms. Kyle. I have never witnessed any aggressive behavior at the clinic. However, I must say that dogs are territorial animals, and any dog may become aggressive if its territory is invaded by another animal. I cannot comment on how Ms. Kyle's dogs act at home, but I have not witnessed any aggressive tendencies at the clinic. Dogs that are aggressive toward other dogs at the clinic tend to be very aggressive any time. If I can be of any further assistance, I can be contacted by phone at Nicholas Animal Hospital (304) 872-5030.

Respectfully,

A handwritten signature in black ink, appearing to read "J. W. Gragg". The signature is fluid and cursive, with a long horizontal stroke extending from the end.

James W. Gragg DVM



Mozart and
Rosario with
Arthur (Age 4)



Wenny and
Darby (age 6)

Katona with
Darby and
Arthur



CUMBERLAND COUNTY ANIMAL CONTROL

P.O. Drawer 1829, Fayetteville, NC 28306

(910) 321-6852

LICENSE RECEIPT

Receipt #: 00011334

Date: 01/31/09

Received From: JONATHAN TUGMAN

Address: 849 FOXCROFT DR, FAYETTEVILLE NC, 28311

Phone: (910) 922-6575

DL Number: 6260761

DL Exp Date: 04/29/15

Fees: PRIVILEGE LICENSE - ALTERED ANIMAL 21.00

PRIVILEGE LICENSE - NON-ALTERED ANIMAL 25.00

License Number(s): 104131 104128 104129 104130

Total: 46.00

Cash: 46.00

Check: 0.00

Money Order: 0.00

Received una AC 28

Nicholas Animal Hospital
325 Fairview Heights Rd
Summersville, WV 26651
(304) 872-5030

Enclosure 6

Rabies Certificate

Client ID: 521
Client Name: PAULA KYLE
Address: 849 FOXCROST DRIVE

FAYETTEVILLE, NC 28311

Phone: (304)872-0202,ext.

Patient ID: 521V
Patient Name: MOZART
Species: CANINE
Breed: GERMAN SHEPHERD
Sex: Neutered Male
Color: BLACK/BROWN
Markings:
Birthday: 11/10/1997
Weight: 94.30 pounds on 5/22/2008

Tag Number: 002026
Lot Number: 12262
Producer: RHONE MERIEUX
K / MLV: Killed Virus

Vaccination Date: 12/5/2007
Expiration Date: 12/5/2009

Staff Name: DVM Joseph G. Krese
License Number:

RABIES CERTIFICATE

2061 Skibo Road
Fayetteville, NC 28314-
(910) 864-1337

Client

Paula, jon Kyle, tugman
849 Foxcroft Dr
Fayetteville, NC 28311
Home Phone: (910) 922-6575

Certificate Date

October 23, 2008
Thursday 5:23 pm

Pet Information

Name: Katona Kyle, tugman

Species: Canine

Breed: Shepherd, German

Sex: Male

Color: Sable

Age: 2y/7m

Weight: 71.30 Lbs



Rabies Tags

○
Banfield
National Pet ID#
8308947

County & Tag #
Cumberland
v370640

Microchip ID:

Manufacturer:

Microchip ID:

Manufacturer:

Vaccine Information

Vaccine Name: Rabies Virus Vaccine (Type: Killed)

Producer: Fort Dodge

Administered: 10/23/2008 Route: Subcutaneous Site: Right rear

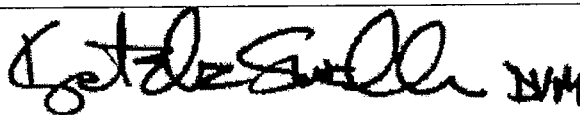
Due Date: 10/23/2009

Lot #: 873169A

Lot Expires: 01/27/2010

I hereby certify that I have vaccinated this Pet in accordance
with all state and federal laws and regulations on this date.

Administered by:



Federally Accredited Veterinarian: Dr. Kyra Tehve-swallow
DVM License Number: 5359

Nicholas Animal Hospital
325 Fairview Heights Rd
Summersville, WV 26651
(304) 872-5030

Rabies Certificate

Client ID:	521	Patient ID:	521SS
Client Name:	PAULA KYLE	Patient Name:	ROSAR
Address:	849 FOXCROST DRIVE	Species:	CANINE
	FAYETTEVILLE, NC 28311	Breed:	GERMAN SHEPHERD
Phone:	(304)872-0202,ext.	Sex:	Spayed Female
		Color:	BLK/TAN
		Markings:	
		Birthday:	04/12/2002
		Weight:	84.30 pounds on 5/29/2008

Tag Number:	002473	Vaccination Date:	5/29/2008
Lot Number:	12262	Expiration Date:	5/29/2009
Producer:	RHONE MERIEUX		
K / MLV:	Killed Virus		

Staff Name: DVM Joseph G. Krese
License Number:

CERTIFICATE OF VACCINATION

Date of Rabies Vaccination: 09-22-06
Next Rabies Vaccination On: 09-21-09

Certificate No: 0
Previous Rabies Vaccination: <oldtag>

VETERINARY CLINIC

Animal Medical Centers of Fayetteville, Inc.
2147 Skibo Rd.
Fayetteville, NC 28314
910-868-1164

OWNER OF ANIMAL

Jonathan Tugman
6358 Hawfield Dr.
Fayetteville, NC 28303
County: Cumberland

This is to certify...

THAT I HAVE VACCINATED AGAINST RABIES THE ANIMAL DESCRIBED BELOW.

Patient information...

PATIENT: Wenny
SPECIES: Canine
SEX: Spayed Female
Color and markings: Brown

TAG NO: 1816
WEIGHT: 85.00
AGE: 7y

CROSS CREEK ANIMAL HOSPITAL

2147 SKIBO RD

Signed _____
FAYETTEVILLE NC 28314

Dr. SS

License:

Vaccinations done...

09-22-06	SS	Rabies Canine, 3yr, #1816	09-21-09
09-22-06	SS	DA2PPv - w/ Corona Lepto	
		09-22-07	
09-07-05	TJ	Rabies Canine 1 year, #1664	

Rabies Vaccine Information...

MFG BY: MERIE
LOT EXP: 050307

SER.NO: 12502A
ADM: SubQ

4704 Corporation Drive
Fayetteville, NC 28306
Phone: (910) 321-6852
Fax: (910) 223-3357
ccac@co.cumberland.nc.us

**Cumberland County
Animal Control**

Fax

To: Cecil Combs From: Cliff Spiller
Fax: 678 7631 Pages: 3 incl. cover sheet
Phone: 321 6856 Date: 3/17/09
Re: 849 Foxcroft Dr. cc:

☐ Urgent ☐ For Review ☐ Please Comment ☐ Please Reply ☐ Please Recycle

• Comments:

14:22:01 Tuesday, March 17, 2009

ACMCMP1
ACPCMP01Cumberland County
Animal Control
Complaint Browse

Complnt No: 158593	Date Entered: 12/16/08	Rcvd By: LMORRISO
Comp Date: 12 / 16 / 08	Date Updated:	Updt By:
Call Time: 02:10 AM	Zone: 1	Impnd No:

Complainant Information

Last Name: WALTERS	First Name:	MI:
Home Phone: (910) 818 - 4887	Work Phone: (999) 999 - 9999	
Address: StNo:	St. Name: FOXCROFT DR	
City: FAYETTEVILLE	State: NC Zip:	
Complaint: ABD	Spes: A	DOG
Direction: NEIGHBORS NOTICE THAT OWNERS LEAVE DOGS FOR SEVERAL DAYS UNATTENDED, ALSO ADVISE OF NUISANCE/LIABILITIES		

Owner Information

Owner id:		
Last Name: UNKNOWN00158593	First Name:	MI:
Home Phone: (999) 999 - 9999	Work Phone: (999) 999 - 9999	
Address: StNo: 849	St. Name: FOXCROFT DR	
City: FAYETTEVILLE	State: NC Zip:	

Action Taken

Officer: AC-13 SULLIVAN, RONNIE	Time Disp: 08 : 30 AM
First Act: ABD ABANDONMENT	Date: 12 / 17 / 08 / Time Arrv: 00 : 00 AM
Second Act: LNOT LEFT NOTICE	Date: 12 / 17 / 08
Note: HUNTER'S RIDGE SPOKE TO NEIGHBOR STATED THAT THERE DOG AR OK	

F1:Date F2:Name F3:Phone F4:St No/Name F5:St Name F6:Officer F7:Owner
F8:Owner St No/Name F9:Owner St Name CLR:Exit

14:22:17 Tuesday, March 17, 2009

ACMCMP1
ACPCMP01Cumberland County
Animal Control
Complaint Browse

Complnt No: 162123	Date Entered: 03/12/09	Rcvd By: DBROWN
Comp Date: 03 / 12 / 09	Date Updated:	Updt By:
Call Time: 01:05 AM	Zone: 1	Impnd No:

Complainant Information

Last Name: ANSCHUETZ	First Name: WALTER/KARLA	MI:
Home Phone: (910) 480 - 0801	Work Phone: (999) 999 - 9999	
Address: StNo: 853	St. Name: FOXCROFT DR	
City: FAYETTEVILLE	State: NC Zip:	
Complaint: LIA LIABILITIES	Spes: A DOG	
Direction: A SCHNAUSER THAT WAS LOOSE YESTERDAY CAME INTO THEIR YARD MAKING THE NEIGHBORS DOGS VERY AGITATED & AGGRESSIVE JUMPING O		

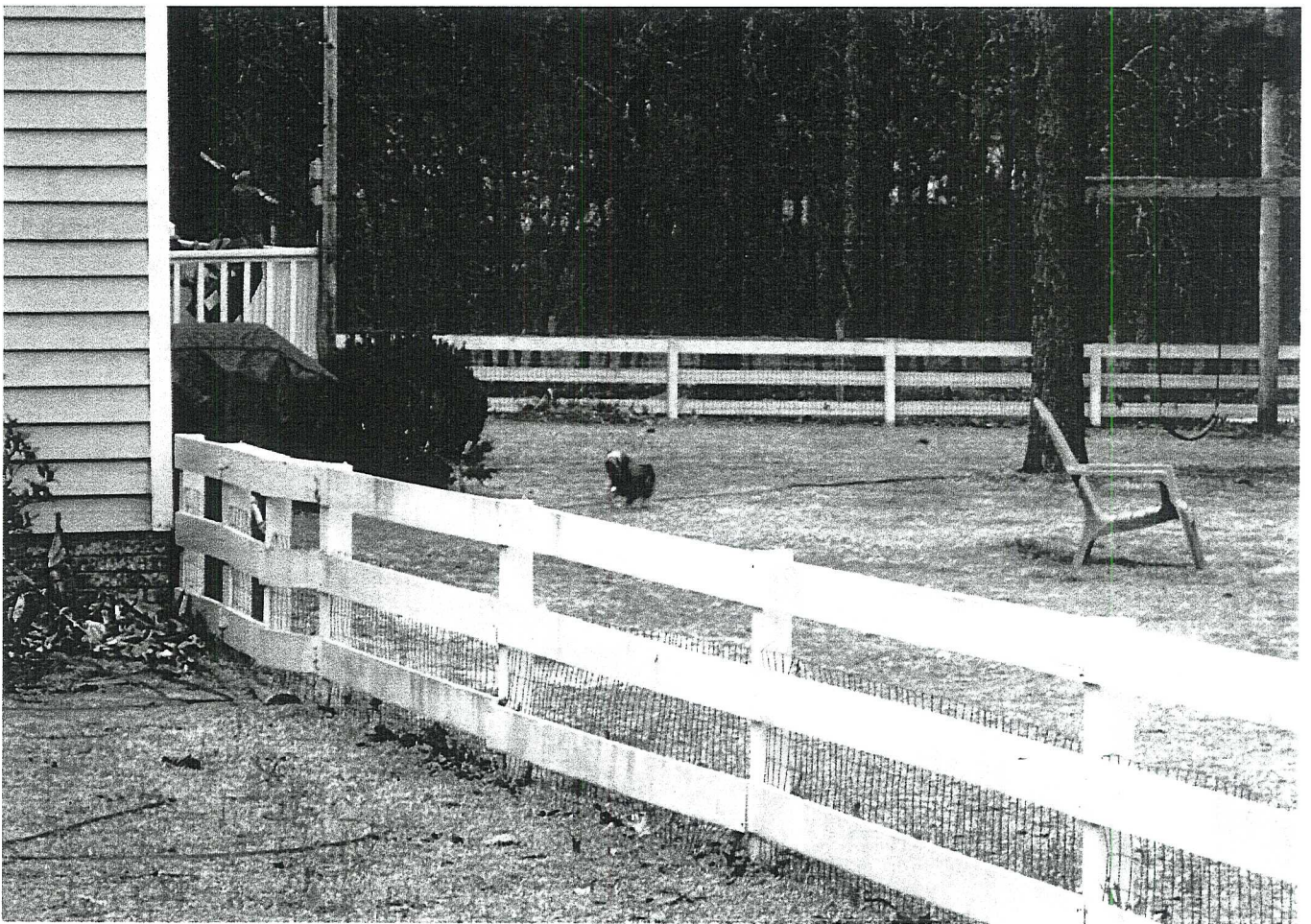
Owner Information

Owner id:		
Last Name: OWNER00162123	First Name:	MI:
Home Phone: (999) 999 - 9999	Work Phone: (999) 999 - 9999	
Address: StNo: 849	St. Name: FOXCROFT DR	
City: FAYETTEVILLE	State: NC Zip:	

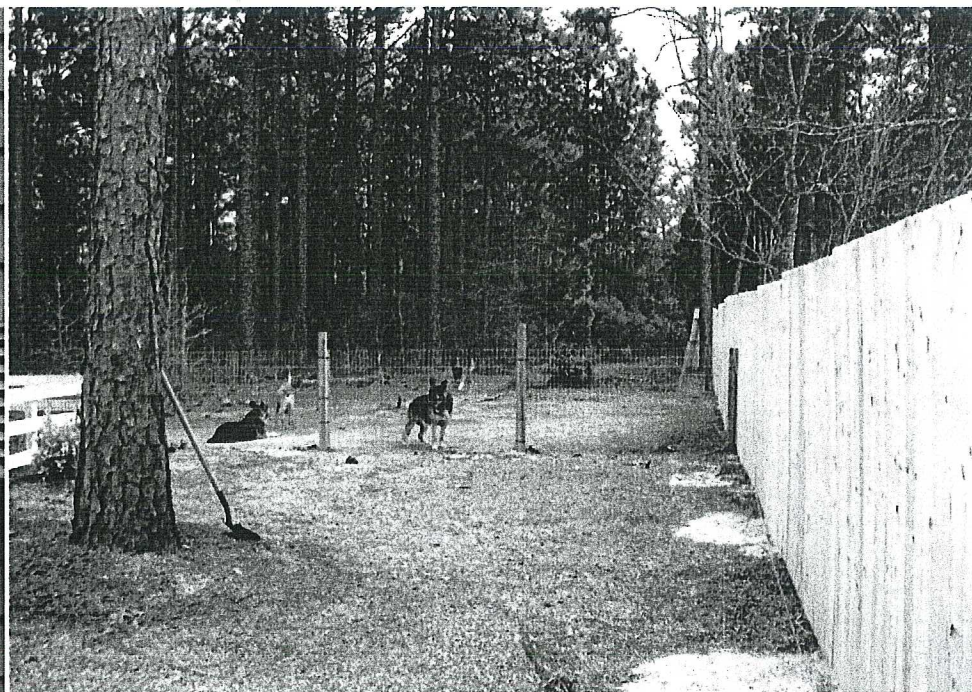
Action Taken

Officer: AC-04 GILBERT, WILLIAMS	Time Disp: 02 : 00 PM
First Act: NOH NO ONE HOME	Date: 03 / 13 / 09 Time Arrv: 00 : 00 AM
Second Act: CM COMPLETED	Date: 03 / 13 / 09
Note: N THE FENCE AND BARKING/4 G SHEP & JAPANESE TYPE OF DOG	

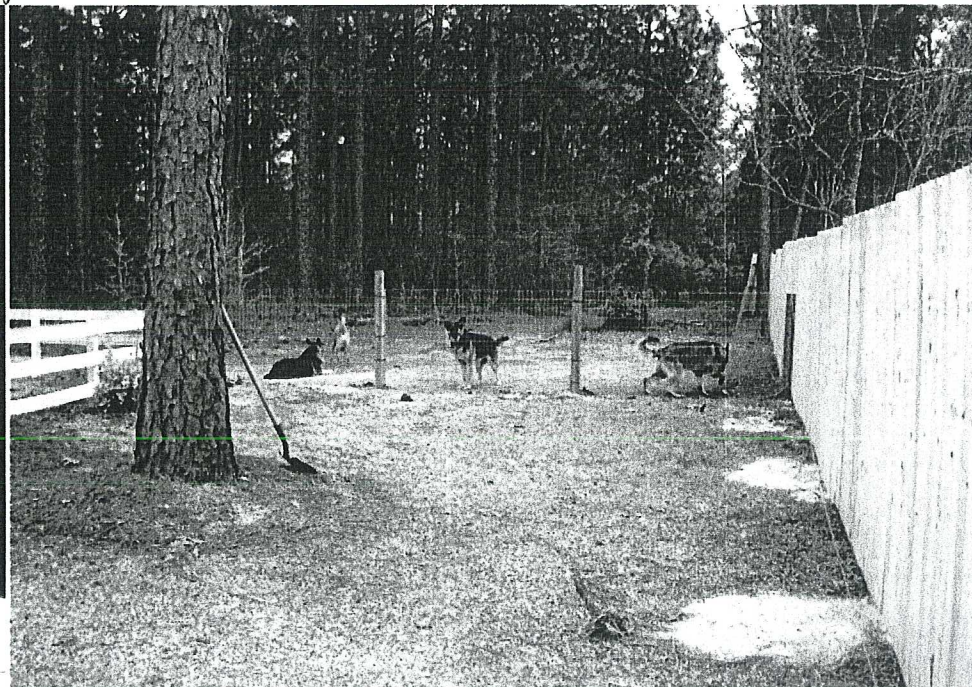
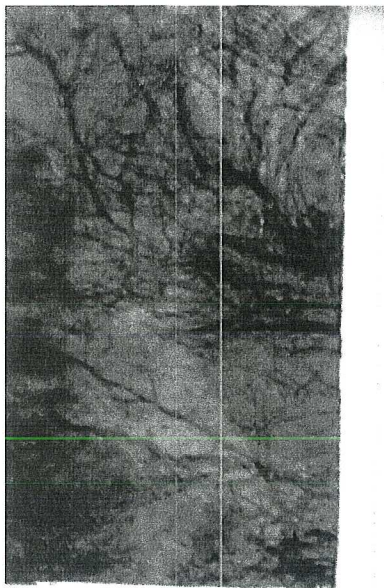
F1:Date F2:Name F3:Phone F4:St No/Name F5:St Name F6:Officer F7:Owner
F8:Owner St No/Name F9:Owner St Name CLR:Exit



3-26-09 Jot

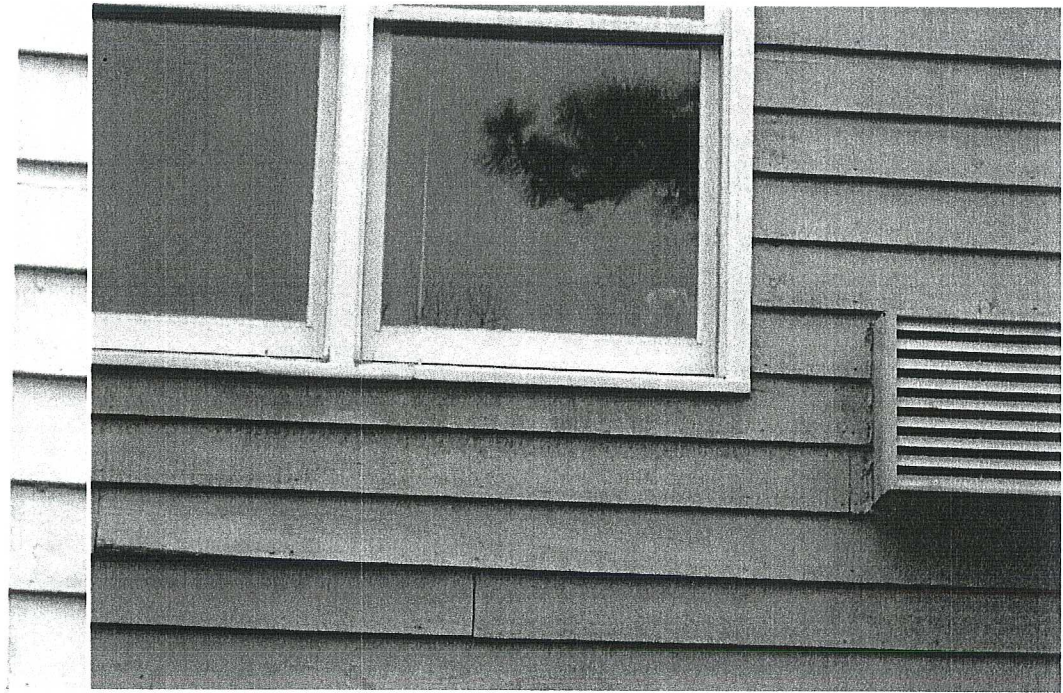


3-26-09 JDL





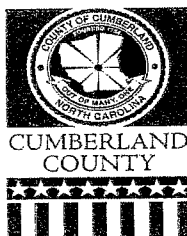
3-26-09
Joe



Donovan McLaurin,
Chair
Wade, Falcon & Godwin

Lori Epler,
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 & Inspections Department

Thomas J. Lloyd,
Director

Cecil P. Combs,
Deputy Director

Walter Clark,
Roy Turner,
Sara E. Piland,
Cumberland County

Benny Pearce,
Town of Eastover

February 23, 2009

MEMORANDUM

TO: Cecil Combs, Deputy Director

FROM: Tom Lloyd, Director *TL*

SUBJECT: Delegation of Authority – County Zoning Ordinance
Section 912.G, Temporary Housing/Boarding of Four or More Dogs

This memorandum is to be considered official notice of the delegation of my authority to you concerning final decisions regarding applications for the temporary housing/boarding of four or more dogs in the residential districts that do not allow for kennel operations.

When making decisions on this type of application, ensure you consider all relevant County Codes and fully investigate the facts surrounding the individual cases. In addition, please remain cognizant of the effect of the granting or denying these applications on the applicant as well as the surrounding property owners/occupants.

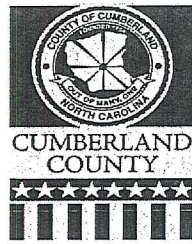
Inherent in this delegation of authority is also the authority to revoke any temporary permits that are granted under this provision of the Zoning Ordinance if the permit is found to be issued in error, due to fraud or changing circumstances of the situation.

Thanks for taking on this additional task and for all of your hard work. If you have any questions, please contact me at 910-678-7618 or email: tlloyd@co.cumberland.nc.us.

Donovan McLaurin,
Chair
Wade, Falcon & Godwin

Lori Epler,
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



Thomas J. Lloyd,
Director

Cecil P. Combs,
Deputy Director

Walter Clark,
Roy Turner,
Sara E. Piland,
Cumberland County

Benny Pearce,
Town of Eastover

COUNTY of CUMBERLAND

Planning & Inspections Department

91 7108 2133 3935 9471 1746 Paula

91 7108 2133 3935 9471 1739 Jonathan

NOTICE OF VIOLATIONS

January 21, 2009

TO: Jonathan E. & Paula Kyle Tugman & Parties of Interest
849 Foxcroft Drive
Fayetteville, NC 28311


CASE #ZN 5748-2008

You are hereby issued a Notice of Violation of the Cumberland County Code, Appendix A, Zoning.

1. Nature of Violation(s): You are permitting more than 3 dogs that are five months older, or older, on a lot that you own and are therefore operating a kennel in a R15 zoned district.
2. Code Reference: Zoning Ordinance, Cumberland County, North Carolina, Article III, Zoning Districts, Section 304(H), Rural Residential District, Article IX, Section 912, Kennel Operations, and Article XVII, Legal Provisions, Section 1703, Violations
3. Action to Correct Violations(s): Remove all but 3 dogs that are over five months old from your property or rezone the property.
4. Property Location: On or about 849 Foxcroft Drive, Fayetteville, NC. Being that property as listed under Cumberland County, NC Tax Parcel Number 0543-24-3304.
5. Property Owner: Jonathan E. & Paula Kyle Tugman; Inspection Date: 1/5/2009

You are hereby advised that the above listed violation is a Class 3 Misdemeanor, under the provisions of North Carolina General Statute 14-4, and must be corrected within thirty (30) days of receipt of this notification. Failure to correct this violation will subject you to a civil penalty of \$500 dollars per day (each day being a separate violation) and prosecution for a misdemeanor violation in Environmental Court. Also be advised of your right to appeal this decision in accordance with Article XVII., Section 17.03(E), Appeal, Zoning Ordinance, Cumberland County, North Carolina.

If you have any questions, please contact the undersigned at (910) 321-6650.


Angela Perrier
Code Enforcement Officer

Donovan McLaurin,
Chair
Wade, Falcon & Godwin

Lori Epler,
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



Thomas J. Lloyd,
Director

Cecil P. Combs,
Deputy Director

Walter Clark,
Roy Turner,
Sara E. Piland,
Cumberland County

Benny Pearce,
Town of Eastover

COUNTY of CUMBERLAND

Planning & Inspections Department

April 15, 2009

Vera Claude, President.
Inverness Association, Inc.
3501 Arrondale Ct,
Fayetteville, NC 28311

SUBJECT: Extension of Time
Notice of Violation, Case #WS02-02 & WS00-01

Dear Ms. Claude,

Regarding your request for an extension of time to remedy the above referenced notice of violation, this letter is to serve as official notice that the 120 day extension requested is granted.

Please note that as a condition of approval of the extension, a representative from your association must keep me informed of the progress on the status of the corrective action taken in regard to the stormwater structures. In addition, notice must be provided to this office no later than **August 14, 2009** that the repair of the structures is complete and that the Inverness Association, Inc. will perform the inspections and reports to this office as required by the approved Operation and Maintenance Agreement for the Inverness Subdivision.

If you have any questions or for clarification of this letter, please contact me.

Jeff Barnhill

Jeff Barnhill
Watershed Review Officer
910-678-7765
e-mail: jbarnhill@co.cumberland.nc.us

Patricia S. Speicher

Patti Speicher
Land Use Codes Supervisor
910-678-7605
e-mail: pspeicher@co.cumberland.nc.us

cc: Jimmy Kizer, Engineer
Cumberland County Board of Adjustment
Ken Sykes, County Code Enforcement Coordinator
Bob Stanger, County Engineer