

**MINUTES**  
**Pender County Board of Adjustment**  
**August 19, 2009**  
**9:00 a.m.**  
**Pender County Public Meeting Room**  
**805 S. Walker Street, Burgaw, North Carolina**

**Call to Order:** Chairman Erwin Kane

**Prayer:** Donald Luther

**Roll Call:** Chairman Erwin Kane  
Pender County Board of Adjustment Members:

Kane:   X   Thompson:   X   Ferrante:   X   Loughlin:   X   Pullen:   X   James:      Luther:   X  

**Approval of Minutes:** June 17, 2009

**Motion** to approve: Ed Pullen; **Seconded** by: Monica Loughlin; **Vote:** 5-0

**Swearing in of witnesses** for Agenda Item 1 was done by the County Attorney.

**Planner Ashley Frank** presented Administrative Appeal case to Board.

***Public Hearing***

- 1. Administrative Appeal -** Waterway Outdoor, LLC-Grey Vick, applicant on behalf of Roger Allen Stilley owner, is requesting an Appeal of Administrative Review, as prescribed under Sections 3.5 C and 6.2 C of the Pender County Zoning Ordinance, pursuant of §3.2 B. 3. The property is zoned property is zoned RT, Rural Transitional District, property is located south of Wind Ridge Road on US Highway 17, Hampstead, North Carolina. The property contains 0.78 acres and is identified as PIN # 4215-33-6819-0000

Planner Frank explained that an Administrative Appeal was being sought for the revocation of Zoning Permit # 028765. Planner Frank explained that the permit was issued in error due to the proximity of another off-premise outdoor advertising sign; which was less than 1000' distance between the two signs. Planner Frank made the Board aware that Planning staff did confirm that the sign issued under Zoning Permit # 80604 had approximately 724' the two signs. Planner Frank explained that this distance was determined by utilizing GIS mapping and a site visit. Planner Frank commented that at the request of Planning staff, the Central Permitting Administrator revoked Zoning Permit # 082765. Planner Frank explained to Board that Mr. Vick (applicant) was notified by certified on March 13, 2008 in accordance with Section 3.2.3.b of the Pender County Zoning Ordinance.

Board member Ed Pullen questioned how the distance between the sign locations were measured.

Planner Frank explained that the measurements were taken utilizing the car trip and pinpointing the sign location on GIS based on site plan give by Mr. Vick (applicant).

Board member Nicholas Ferrante questioning the revocation dates and the time period in which the permits were received.

Planner Frank commented that at the time these permits were issued, there was not a way to track sign permits accurately. Mrs. Frank explained that in May 2008, a hold was placed on all signs. This gave Planning staff the opportunity to take accurate counts of what signs had been permitted and an inventory of signs erected.

Mr. Ferrante questioned which sign was issued first.

County Attorney Trey Thurman clarified revocations dates due to a typing error. Attorney Thurman explained that the revocation took place in 2009 not 2008 as shown in agenda packet.

Grey Vick (applicant) explained that he applied for his permit (#82675) on December 18, 2007 and the other sign permit (#80604) was issued in March 8, 2008; which meant his permit should have been valid. Mr. Vick commented that he applied for the Administrative Appeal based on the dates. Mr. Vick expressed that he was aware that the county did not want anymore signs; therefore, Mr. Vick suggested upgrading an existing sign in lieu of erecting another sign.

Attorney Thurman made Board aware that this is not a case for a variance, but solely whether or not Planning staff properly revoked this permit.

Board member Pullen questioned Attorney Thurman how should record-keeping procedures and which permit was issued first be considered in this matter.

Attorney Thurman questioned Mr. Vick regarding evidence that he has to show that he applied for his sign first.

Mr. Vick commented that he only has his application.

Planner Frank confirmed that Mr. Vick signed his Final Zoning permit on March 19, 2008 and the Final Zoning for the other sign in question (owned by Brett Steiner) was signed on March 6, 2008.

Board member Monica Loughlin questioned the date differential between the signed application and the issuance of the Final Zoning permit.

Planner Frank clarified date discrepancy for Board member Loughlin.

Alternate Board member Donald Luther wanted an understanding of what question is being put before the Board.

Attorney Thurman commented that the Board is deciding whether or not the revocation of the permit was proper.

Mr. Vick commented that he assumed that applying for the permit first gave him priority.

General discussion continued between Board members and Attorney Thurman regarding this agenda item.

Attorney Thurman reiterated what question was being placed before the Board.

**Motion to uphold revocation was given by Board member Ferrante; seconded by Board member Pullen. Vote unanimously passed.**

- 2. Variance – Side Yard Setback Requirements** – Anne Hayler, applicant, on behalf of James F. Lankford, owner, is requesting a variance from the Pender County Zoning Ordinance, §9.2, Accessory Building, Setbacks and Separation Requirements. The applicant is requesting an 8.8 ft. variance from the 10 ft. minimum setback requirement for an accessory structure less than 600 square feet in area. The property is zoned R-20C, Residential Conventional Housing District, and is located at 861 Corcus Ferry Road in Hampstead, NC.

Chairman Erwin Kane questioned whether or not Mrs. Hayler’s attorney had arrived.

Mrs. Hayler explained that her attorney is not present due to a scheduling conflict. Therefore, Mrs. Hayler asked that her case be continue until the next Board meeting.

Attorney Thurman validated Mrs. Haylers’ response as Mr. Thurman had spoken to her attorney on the previous Monday.

**Motion made by Board member Loughlin to continue case to next meeting; seconded by Board member Horace Thompson. Vote unanimously passed.**

Swearing in of witnesses for Agenda Item 3 was done by the County Attorney.

Planner Ashley Frank presented Administrative Appeal case to Board.

- 3. Administrative Appeal-** Topsail Humane Society applicant, on behalf of owner, Glenn Lewis is requesting an Appeal of Administrative Review, as prescribed under Sections 3.5 C and 6.2 C of the Pender County Zoning Ordinance. The properties are zoned R-20, Residential District, properties are located at 117 & 153dLewis Road, Hampstead, North Carolina. The properties are identified as PIN # 4214-83-8736-0000 and 4214-83-8898-000L.

Code Enforcement Officer Ralph Kays explained that his involvement with the property began in July 2008 as a result of two zoning complaints received about this property. Mr. Kays made the board aware that he had made twelve visits to the property from July 29, 2008 – March 27, 2009. Mr. Kays commented that at no time during these visits did he observe anything that indicated an outdoor kennel was being operated on the property.

Board member Ed Pullen questioned whether there was evidence of any administrative work being conducted on site or was the property completely abandoned.

Mr. Kays explained that the property was abandoned. Mr. Kays commented that the objectives when he went to property were not in reference to the kennels, but to other complaints.

Board member Ferrante questioned if the kennels were there, but not being used.

Mr. Kays commented that there were some kennels on site, but were being used for other things e.g. storage. Mr. Kays explained that his first observance of animals was on March 31, 2009.

Mr. Steven Thromberg (Pender County Animal Control Supervisor) explained that Pender County has not used the property on Lewis Rd. to house animals from October 2008 – April 2009.

Attorney Thurman explained that Mr. Thromberg's testimony was intended to resolve contentions that the county had used the site as an overflow to house animals.

Mr. Ray Blackburn (attorney for Topsail Humane Society and Glenn Lewis) gave a brief summary of how Topsail Humane Society operated on Lewis Rd. as an adjunct use to the Becky's Creek location; therefore, the use was never discontinued.

Attorney Blackburn generalized his interpretation of Section 12 of the Pender County Zoning Ordinance and how this section of the ordinance did or did not apply to this property.

Attorney Thurman explained the nature of the violation to the Board, whether or not the operation of an outdoor kennel was improper.

Attorney Blackburn reviewed and discussed the contents of the violation for the Board.

Board member Ferrante questioned whether indoor and outdoor kennels are operated separately.

Attorney Thurman explained that both are subject to separate permits.

Mrs. Kathy Lewis, Executive Director of Topsail Humane Society, explained that the county did use the facility on Lewis Rd. as an overflow facility from July 2008 – April 2009. Mrs. Lewis also explained that the facility on Lewis Rd. was used as an isolation area because the Becky's Creek facility did not have an isolation area. Mrs. Lewis explained the number of dog runs at the Lewis Rd. location and the kennel usage observed by Mr. Kays.

Attorney Thurman reviewed medical documents submitted into evidence with Mrs. Lewis.

Attorney Thurman questioned Mrs. Lewis about the number dogs kept at the facility and the state inspection requirements.

Mrs. Lewis explained that there were at least 2-3 dogs at the facility. Mrs. Lewis commented that the main facility required inspections and acknowledgement of an isolation area.

Mr. Glenn Lewis, property owner/applicant, verified that the contents of the affidavit were true and correct.

Dennis Block, residence of 194 Lewis Rd., commented that there was no observed activity at or around kennels since January, 10, 2007.

Roberta Bennett, ex-manager for Topsail Humane Society, reviewed her employment dates (February 2008 – May 2008) for the Board. Mrs. Bennett explained that during this time period, there were no animals responsible for on Lewis Rd.

Rick Reuter, residence on Moore's Landing Court, explained that no animals housed or dog activities had taken place since January 2007. Mr. Reuter commented that the first evidence of restoration activities began in April 2009.

Lisa Owens, former employee of Topsail Humane Society, commented that no animals were housed at Lewis Rd. during both tenures of her employment. Ms. Owens explained that she was employed for Topsail Humane Society on two separate occasions; March 2008 – September 2008 and February

2009 – April 2009. Ms. Owens commented that there was a quarantine area at the Becky's Creek facility.

Christie Halligan, Vice-President for Cat Adoption Team commented that she was a rescuer of cats. Mrs. Halligan explained that she did some rescue work for dogs and had worked closely with Pender County Animal Control. Mrs. Halligan explained that at no time was she aware that there was another shelter location other than the shelter located New Savannah Rd.

Attorney Blackburn questioned whether Mrs. Halligan had visited the facilities in the Hampstead area.

Mrs. Halligan reiterated that no one ever made mention of another location in Hampstead to her.

Ryan Dion, residence of Moore's Landing Court, commented that he had relocated to this around April 2008 and there was no noise or observance of an outdoor kennel.

Attorney Thurman explained to the Board that the testimony of Mrs. Jean Luther (Board of Adjustment alternate's wife) and Mr. Don Luther (Board of Adjustment alternate member) should not be given any more or less consideration.

Don Luther, residence of 690 Lewis Rd., explained that he exercised the dogs housed at Topsail Humane Society on Lewis Rd. from 2004-2006. Mr. Luther explained that because of his interest in the Topsail Humane Society, he was happy when they relocated in January 2007 to the Canine Beach Club. Mr. Luther commented that he observed no activity, dogs, or continued resident occupancy on 117 Lewis Rd., from the Spring 2007 – Spring 2009.

Board member Pullen asked Mr. Luther to define "continually".

Mr. Luther explained that there may have been cars at the residence; which may have indicated someone was living there, but he never saw this over an extended period of time.

Attorney Blackburn questioned whether Mr. Luther looked in the house or spoke to someone at the house during the two year period.

Mr. Luther's responded "no" to the question.

Ami McArthur, resides at 117 Lewis Rd., explained that she currently lives and care for the dogs at this location.

Attorney Blackburn explained that Ms. McArthur was one of the persons submitting her testimony by affidavit and wanted to show that this is a true person.

Attorney Thurman asked Ms. McArthur if the contents of the affidavit were true and correct.

Ms. McArthur's response was yes.

Ms. McArthur explained that there were small breed dogs kept inside and the larger breeds were kept outside. Ms. McArthur commented that because they never housed cats at this location, Mrs. Halligan was never used as a resource.

Attorney Blackburn questioned Ms. McArthur's length of residency at 117 Lewis Rd.

Ms. McArthur explained she's been at 117 Lewis Rd. for at least one year and has had numerous dogs since she's been there.

Board member Loughlin questioned Ms. McArthur's length of stay at 117 Lewis Rd. and whether the outdoor kennels were utilized.

Ms. McArthur confirmed that the outdoor kennels were used during the past six months, but could not recall whether the outdoor kennels were used prior to those six months. Ms. McArthur recalled at least six dogs being at the facility at one time.

Chad Davis, current employee of Topsail Humane Society, explained that he has only been employed for four months. Mr. Davis verified that 4-5 dogs were the most he's seen in the outdoor kennels.

***\*End of Public Hearing***

Board recessed for five minutes.

Chairman Kane called the meeting back to order.

Planner provided documentation for the record to show that cats were kept at the Lewis Rd. location. Mrs. Frank submitted pictures for evidence of the property taken by herself and Mr. Kays.

Attorney Thurman recalled Mr. Kays to verify and validates dates on pictures being submitted into evidence.

Mr. Kays verified that the photos taken and the dates noted on the picture were true and correct.

Attorney Thurman submitted photos into evidence with no objections.

Attorney Thurman submitted two pages of the Animal Welfare Inspection report into evidence with no objection.

Board member Ferrante wanted to know from Mrs. Frank what "triggers" and inspection.

Mrs. Frank explained that there may be an initial inspection and from then on the inspections are random. Mrs. Frank commented that the better person to answer this question would be someone from the State agency.

Attorney Blackburn recalled Ms. Lisa Owens.

Attorney Blackburn questioned the time period, office duties and location assignments for Ms. Owens when she was employed with the Topsail Humane Society.

Ms. Owens reviewed her employments and explained that her duties varied. Ms. Owens explained that she was the weekend adoptions manager, kennel manager, and kennel attendant. Ms. Owens commented that she was only responsible for the assignment of dogs at the Becky's Creek location.

Attorney Blackburn recalled Mrs. Roberta Bennett.

Attorney Blackburn questioned Mrs. Bennett's visits to Lewis Rd. and the conditions she left under when she departed from the Topsail Humane Society.

Mrs. Bennett explained that she didn't have a need to visit the abandoned building on 117 Lewis Rd. Mrs. Bennett commented that she parted ways with Mrs. Lewis and Topsail Humane Society because gas prices had gone up and the visions she had for the organization differed from Mrs. Lewis.

Attorney Blackburn recalled Mrs. Kathy Lewis.

Attorney Blackburn reviewed the previous testimonies with Mrs. Lewis for clarification.

Mrs. Lewis clarified that the isolation room was a grooming room and the number of kennels on site.

Discussion with Board members, Attorney Blackburn, Mrs. Frank, Mrs. Lewis and Mr. Kays took place regarding the number of dog kennels that he viewed during his visits and how the kennels were constructed as well as kennel locations.

Attorney Blackburn recalled Mr. Luther to clarify location of kennels during the time he was a volunteer with the Topsail Humane Society.

Mr. Luther recalled some of that some of the kennels were there in 2004.

Attorney Thurman questioned if the fencing was there for the kennels after they moved to Becky's Creek.

Mr. Luther reponse was yes (as far as he could remember).

Discussion continued between Board member Loughlin and Planner Frank regarding kennel placement.

Attorney Thurman discussed with Board members how “grandfathering” may or may not apply. Attorney Thurman and Board members continued to recall witnesses for clarification of individual testimonies.

Director Patrick Davenport defined what a kennel is as shown in the Pender County Zoning Ordinance.

Attorney Blackburn gave summarization of testimonies and closing argument.

Attorney Thurman responded to closing argument and re-addressed that content of the violation.

After continued discussion between attorneys, Board members, Mrs. Lewis, and Planning staff, motion to grant appeal to applicant finding that applicant did not abandon the facility on Lewis Rd. was made by Board member Pullen; seconded by Board member Thompson. Vote 4-1. Board member Loughlin casting descending vote.

1. Items for Discussion.

*Attorney Thurman explained that Board member Pullen had been contacted by Mr. Haler; if any other Board member gets such a call please notify himself or Director Davenport.*

2. Adjournment: Motion to adjourn meeting made by Board member Loughlin; seconded by Board member Pullen. Vote unanimously passed.

**Board Action for August 19, 2009 Minutes:**

Motion: \_\_\_\_\_ Seconded: \_\_\_\_\_

Approved: \_\_\_\_\_ Denied: \_\_\_\_\_ Unanimous: \_\_\_\_\_

Kane \_\_\_ Thompson \_\_\_ Ferrante \_\_\_ Loughlin \_\_\_ Pullen \_\_\_ James \_\_\_ Luther \_\_\_\_\_