

# REQUEST FOR BOARD ACTION / CONTRACT CONTROL FORM

Tracking Number: 15

Date of Request: April 25, 2008

Date Request Received: April 25, 2008

Board Meeting Date Requested: May 5, 2008

Board Meeting Date Assigned: May 5, 2008

**Short Title:** Discussion To Reconsider Findings Of Fact On Special Use Permit That Was Denied At The March 17, 2008 Board Meeting.

**Request Status:**  
 Request is proceeding to Board of Commissioners  
 More information is needed – see attached  
 Request on hold – no further information needed  
 Other:

**Background:** Due to the Special Use Permit being denied by the Board, pursuant to Subsection 15.3(b), the resolution was amended to list the findings of fact.

A copy of the minutes pertaining to the Special Use Permit is attached.

*(Administrative Use Only)*

**Specific Action Requested:** The Board is requested to reconsider the findings of fact.

## CONTRACT TYPE

Requested by: Trey Thurman  
Department:  
Title: County Attorney  
Contact Phone: 910-259-1200  
Contact Fax:

Renewal  
 For Service(s)  
 Intergovernmental – County as Grantee  
 County as Grantor  
 County Funds  
 Other Funds:  
 Revision  
 For Equipment  
 Federal Grantor  
 State Grantor  
 Grant or

**PURCHASING** Budgeted Item:  Yes  No  
Date Rec'd:  Reviewed and Approved  
 Comments on Reverse

Date Sent:

Signed:

**ATTORNEY**  Reviewed and Approved  
Date Rec'd:  Legal Problem(s)  
 Comments on Reverse

Date Sent:

Signed:

**FINANCE** Sufficient Funds  Available  
Date Rec'd  Not Available  
 Budget Amendment Necessary  
 Budgeted Amendment is Attached  
 Comments on Reverse

Date Sent:

Signed:

**CLERK** Signature(s) Required:  
 Board Chairman/County Manager  
 Other:

Date Rec'd Approved by Board:  Yes  No  
At meeting on

**Special Use Permit for Salvage Yard/Scrap Processing**

**SUBJECT:** CASE NO: 08-03-17-08  
**PROPERTY RECORD NO:** 2279-54-3549-0000  
**APPLICANT:** James R. Faircloth  
**OWNER:** Same

**ACTION REQUESTED:** Approval of Special Use Permit for the operation of salvage and scrap metal processing.

**HISTORY/BACKGROUND:**

**Project Location:** The property is located approximately 1.6 miles northwest of the intersection of NC Highway 53 W and US Highway 421. The property address is 16222 US 421 N, Burgaw, NC. (See attached vicinity map).

**Project Description:** The project consists of the operation of salvage and scrap metal processing. The proposed project is located on 16.17 acres. Currently there is a single-family dwelling located on the south side of the property which will be utilized for restrooms. The project will utilize the homeowners as the only employees. According to the site plan, a separate area (northwest) will be utilized for the accumulation of the metal to be processed. Large collection bins will be located on the working site for collection and sorting of the goods. When these bins are full, the applicant will place them on a truck and haul them away. Access will be provided to the site via US Hwy 421, and according to the applicant's narrative, two (2) – three (3) truck loads will be brought in or hauled off on an average working day. The hours of operation are proposed to be seven days a week from 7:00 a.m. – 7:00 p.m.

**EVALUATION:**

- A) Public Notifications:** Advertisements for the proposal have been placed in the Topsail Voice and Pender Post. Adjacent property owners were notified by first class mail. Special Use Permit signs were posted on or near the proposed site.
- B) Basis for Granting SUP:** See attachment A for approval procedures (15.3, Zoning Ordinance) and revocation procedures (15.4, B, Zoning Ordinance).
- C) Zoning Ordinance Compliance:** This property is zoned RA, Rural Agricultural District, and *Salvage Yard, Junkyards, Scrap Processing* are permitted via Special Use Permit.
- D) Land Use Plan Compliance:** This property is classified as Rural Area. *The Pender County Future Land Use Plan* describes Rural Area to allow home-based businesses. The northwest corner of the property is classified as Conservation Area I. The placement of bins will be crucial for the protection of this area from any deposits that may leak from the accumulation of scrap metal (See attached CAMA Land Use map).
- E) Existing Land Use in Area:** The property is in a rural area. There are some single family homes to the south, there is farmland to the north and west, across from US Highway 421.
- F) Site Access Conditions:** The property has direct access to US Highway 421 for ingress and egress.
- G) Conditions To Consider In Issuing A Special Use Permit For This Project:**
1. Unless approved otherwise as a condition of the permit, a Special Use Permit shall expire and become void, if a final zoning permit has not been issued for the project within 12 months.
  2. The following shall be submitted prior to issuance of the zoning permit as contained in the Commercial Site Plan Review Standards:
    - a. Approval of a current Sediment & Erosion Control Plan by NC Land Quality, if applicable.
    - b. Approval of a current Stormwater Management Plan by NC Water Quality, if applicable.
    - c. Certification of a drainage plan by licensed professional on a form provided by the County.
  3. The project shall comply with all requirements of the Commercial Development Standards and Site Plan Review, Section 9.14 of the Pender County Ordinance. This will include parking and landscaping requirements that will be in compliance with Sections 13 and 14 of the Pender County Zoning Ordinance.

4. A separate Permit must be obtained for any proposed signs. Signs shall be in accordance with Section 16 of the Pender County Zoning Ordinance.
5. Hours of operation, all seasons:
  - 7:00 a.m. – 7:00 p.m. Seven days a week.
6. Any flood or spotlights shall be oriented away from the street. Such lights shall also be oriented away from adjacent properties or shielded to prevent direct light from shining on such properties. This provision does not apply to normal area lights (non-directional).
7. No junk, debris, trash or inoperable vehicles, recycled or salvaged materials shall be stored on the site outside an approved bin.
8. All access areas leading into the development shall be constructed and maintained to NCDOT secondary road standards.
9. The obligations imposed by this permit will be the responsibility of the property owner and operator and shall continue in affect for the duration of this permit.
10. The project shall be developed and maintained in accord with the applicant's final revised site plan as approved by the Zoning Administrator, the Zoning Ordinance and the conditions contained in this permit.

**RESOLUTION:** NOW, THEREFORE, BE IT RESOLVED, that on March 17, 2008, the Pender County Board of Commissioners (~~approved, modified, denied~~) a Special Use Permit for James R. Faircloth as described herein and James David Williams, Jr., Chairman, is authorized to execute the order implementing this resolution and provide notice to the applicant of the action taken herein.

**AMENDMENTS:** Special Use Permit denied pursuant to Subsection 15.3(b) based upon the following findings of fact:

1. The proposed SUP would result in loud and piercing noise inconsistent with the rural and residential neighborhood.
2. The use of heavy vehicles on the roadway given the limited sight distance would create a risk to the safety of the community.
3. The proposed buffers would be inadequate to prevent sight pollution inconsistent with the rural residential nature of the community and immediate neighbors of the property.

MOVED Tate SECONDED Brown

APPROVED \_\_\_\_\_ DENIED X UNANIMOUS \_\_\_\_\_

YEA VOTES: Williams X Tate X Blanchard \_\_\_\_\_ Brown X Rivenbark X



James David Williams, Jr.,  
CHAIRMAN

3/17/08  
DATE



ATTEST

3/17/08  
DATE

stated she was told not to discuss exactly what the project is, only to discuss the request for the change. Mr. Thurman asked if they have a contract on the property and Ms. Lewis responded affirmatively. The public hearing closed at 8:27 p.m. Mr. Blanchard made a motion to approve the zoning map amendment as RT, Rural Transition, Mr. Brown seconded the motion and it was approved by a three-to one vote, with Mr. Rivenbark voting against it.

\* 20. **Public Hearing & Special Use Permit – James R. Faircloth, Applicant, Requesting Approval of Operation of Salvage and Scrap Metal Processing Located on US 421 N., Burgaw, NC.**

Planner Ashley Frank explained that the special use permit request is for salvage yard/scrap processing; that it is zoned RA, Rural Agricultural District; that the property is located approximately 1.6 miles northwest of the intersection of US Highway 421 and NC Highway 53; that the conditions include 7:00 a.m. – 7:00 p.m. hours of operation; and that no junk, debris, trash or inoperable vehicles, recycled or salvaged materials shall be stored on the site outside an approved bin. The public hearing opened at 8:45 p.m. Mr. Thurman swore in the witnesses. Attorney Rick Biberstein spoke on behalf of the applicant. He said the applicant had been engaged in the collection of metals and taking it down to sell, but now wants to have three bins at his home to separate the metal before he takes it to sell, which will make it more profitable. He said the woods provide 100' buffers on three sides and the applicant's house is on the fourth side; that there will be no employees, minimal noise, and no light or chemical pollution. Mr. Biberstein distributed pictures for the Board to see. Mr. Williams asked is it fairly consistent to have 100' buffers on all sides and Mr. Faircloth responded affirmatively. Mr. Biberstein asked that the application and pictures be introduced for the record. Mr. Thurman asked if the pictures accurately identify Mr. Faircloth's property and Mr. Faircloth responded affirmatively. Mr. Faircloth said that it will not be a junkyard, that he had talked to the neighbors and that he won't take anything in there that's going to cause any problems. Mr. Williams asked Mr. Faircloth if he is familiar with all the conditions and Mr. Faircloth said he's not familiar with all but he's willing to do what he's told to do. Ms. Julia Nixon of Highway 421 said that her property across the road from the site is not all farmland as had been previously stated and said she sells the lots for her income. She said they don't need any more noise and she has a problem with dump trucks turning around in her driveway. Ms. Nixon also had concerns about polluting Moores Creek. Mr. Jeremy Rodgers said the driveway comes right by his house, that there's a school bus stop there, that trucks will be coming and going at all times, and that there is no fire access. Ms. Autumn Rodgers said there are already three to four entrances a day. Ms. Armentha Bryant said she lives directly behind the site and she is concerned about the noise, that she agrees with Ms. Nixon about Moores Creek and that she doesn't want to have to wake up and have to look at a junkyard. Mr. Tate asked if he puts in a buffer will that appease her and Ms. Bryant said her main concern is drinking water and rodents. Mr. Tate asked can staff require a buffer and Mr. Vafier said that can be a condition to put in a fence/buffer. Mr. Tate asked if environmental soil testing can be required periodically and Mr. Thurman said it can be done as a conditional requirement. Ms. Jaki Pace said that she didn't come to speak tonight but she is speaking on behalf of her aunt who has a chronic disease. She said that there are women ages 62-68 living alone in four houses next to the site; that there is a dead man's curve right there that you can't see around, that there is noise and that there is natural vegetation around the site but it is not heavily wooded. Mr. Thurman said he wants to disclose that Ms. Pace is a County employee that works in Planning and Inspections and that she is a good employee. Mr. Biberstein said they shouldn't consider Ms. Pace's testimony any more or less for the fact that she is a County employee. Mr. Tim Jordan said he has nothing against Mr. Faircloth but he is concerned about the impact on the environment. He said he's concerned about the noise and he has heard an excavator sound there before. He asked the Board members to consider how they would feel about it if it was next door to them and said this is not a good place for this type business. As a rebuttal Mr. Biberstein asked Mr. Faircloth if he has an excavator, about contamination and how far the creek is from his property, and about traffic. Mr. Faircloth said he does have an excavator but he hardly ever runs it, that the creek is not on his property – it is 100' and that he doesn't have traffic all the time but he does have an occasional dump truck. Mr. Tate asked Mr. Faircloth to define "occasional" and Mr. Faircloth said two to three times a day. Mr. Tate said he is all for small businesses but he has heard from the citizens. Mr. Biberstein requested a reason the Board would have for not approving the application. Mr. Williams read Number 15.3(B) of the Procedures for Reviewing Applications, ie. "The requested use will not impair the integrity or character of the surrounding or adjoining districts, nor adversely affect the safety, health, morals, or welfare of the community or of the immediate neighbors of the property." The public hearing closed at 9:18 p.m. Mr. Tate made a motion to deny the special use permit, Mr. Brown seconded the motion and it was approved by a four-to-one vote, with Mr. Blanchard voting in opposition.

21. **Public Hearing & Special Use Permit – Donald & Sandra O'Neil, Applicant, Requesting Approval for a Single Office (Real Estate) Located at the Intersection of Peanut Rd. Hwy 210, Hampstead, NC.**