



REQUEST FOR BOARD ACTION

ITEM NO. 19.

DATE OF MEETING: September 16, 2013

REQUESTED BY: Ed McCarthy, Planner II, Planning & Community Development

SHORT TITLE: Resolution to Approve a Modification to a Special Use Permit (SUP) for the Use of a Wholesale Trade Business.

BACKGROUND: James Faircloth, applicant, on behalf of James and Donna Faircloth, owner(s), is requesting approval for a modification of a Special Use Permit for a Wholesale Trade business. The property is located along the northern portion of US Highway 421 approximately 2,900 feet south of Bell Williams Road and may be identified as Pender County PIN 2279-54-3549-0000. The property is zoned RA, Rural Agricultural, and according to the Pender County Unified Development Ordinance §5.2.3 Table of Permitted Uses; Wholesale Trade is permitted via Special Use Permit in the RA zoning district.

SPECIFIC ACTION REQUESTED: To Hold a Public Hearing and Consider the Approval of a Modification to a Special Use Permit (SUP) for the Use of a Wholesale Trade Business.

RESOLUTION

NOW, THEREFORE BE IT RESOLVED by the Pender County Board of Commissioners that:

The Board hereby (approved, modified, denied) a special use permit for a modification to a special use permit for the use of a wholesale trade business, as described herein. The Chairman/County Manager is authorized to execute any/all documents necessary to implement this resolution.

AMENDMENTS:

MOVED _____ SECONDED _____

APPROVED _____ DENIED _____ UNANIMOUS

YEA VOTES: Brown ___ McCoy ___ Tate ___ Ward ___ Williams ___

Chairman 9/16/2013

Date

ATTEST 9/16/2013
Date

PLANNING STAFF REPORT
Special Use Permit

SUMMARY:

Hearing Date: September 16, 2013
Applicant: James Faircloth
Property Owner: James and Donna Faircloth
Case Number: 11009

Land Use Proposed: James Faircloth, applicant, on behalf of James and Donna Faircloth, owner(s), is requesting approval for a modification of a Special Use Permit for a Wholesale Trade business.

Property Record Number and Location: The property is located along the northern portion of US Highway 421 approximately 2,900 feet south of Bell Williams Road and may be identified as Pender County PIN 2279-54-3549-0000.

Zoning District of Property: The property is currently zoned RA, Rural Agricultural, and Wholesale Trade is permitted via SUP in the RA zoning district.

Project History:

On March 17, 2008, the applicant, Mr. James Faircloth, was denied a Special Use Permit (SUP) Case Number (08-03-17-08) for the operation of a scrap metal processing facility was denied on the following grounds:

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.

On January 21, 2009 (2/29/2009), the applicant, Mr. James Faircloth was approved for a Special Use Permit for a temporary storage/scrap metal processing operation on 2.5 acres of a 16.17 acre tract. This Special Use Permit approval was based on modifications from the 2008 application. The 2009 SUP (Case Number (09-01-21-01) (Case Data 10091) differed from the 2008 application in the following ways:

1. The 2009 permit was revised to ensure that the applicant (Mr. James Faircloth) would collect scrap and bring the materials back to the facility, rather than accept external deliveries of scrap. Secondly, it was estimated that this operation would generate approximately (2-3 trips) per day.
2. The vegetative buffers were increased and improved.
3. The Special Use Permit "area" was decreased from 5+ acres to 2.5 acres. (.81 acres for processing).
4. A noise study was performed by Spangler Environmental, Inc., indicating that the noise generated by the site was less than "normal traffic noise".
5. The applicant submitted evidence detailing that property values would not be negatively impacted by the operation of the use in question. (Reference Phillip G. Eakins 1/15/2009)

6. The hours of operation were changed from: 7 days per week-7:00 a.m.-7:00 p.m. to Monday-Friday – 8:00 a.m.-6:30 p.m. and 8:30 a.m.-1:00 p.m. on Saturdays.

PROJECT DESCRIPTION:

James Faircloth, applicant, on behalf of James and Donna Faircloth, owner(s), is requesting the approval of a modification to a Special Use Permit for a Wholesale Trade (NAICS 42 Wholesale Trade) business on a 16.17 acre parcel of land located along the northern portion of US Highway 421. Specifically, the operation consists of collecting scrap metal, temporarily store, process/sort and then selling material to external parties. The Special Use Permit (SUP), Case Number 09-01-21-01 was issued on February 29, 2009 for 2.5 acres (.81 acres for processing) on the tract identified by PIN: 2279-54-3549-0000.

The applicant’s current submittal requests the following three modifications to the 2009 SUP:

1. The applicant would like to accept deliveries from external parties.

a. The 2009 SUP approval was obtained, in part, on the basis that the applicant (Mr. James Faircloth) would collect scrap and bring the materials back to the facility, rather than accept external deliveries of scrap. Secondly, it was estimated that this operation would generate approximately (2-3 trips) per day.

b. Spangler Environmental, Inc’s evaluation in 2008 (10/8/2008 & 10/9/2008) measured decibel readings as they pertained to both the roadway and Mr. Faircloth’s operations. The measurements were taken to measure morning peak traffic, afternoon peak traffic and off-peak traffic. Spangler Environmental, Inc also took measurements from the “outer portions” of Mr. Faircloth’s property during “peak operations”. According to Spangler Environmental, Inc., “Results of the comparative field analyses indicate that adjacent property receptors experience significantly less sound from the operation of heavy equipment at the Faircloth facility (mean decibel range of 58 to 62 dB-A) when compared to traffic noise during peak traffic (mean range 82-84 dB-A) and non-peak traffic (mean range 79-82 dB-A) periods.

c. According to an email from Mr. Daniel F. Jones (NCDOT) August 27, 2010: “Mr. Faircloth’s d/w has been inspected and approved. The d/w was upgraded due to its commercial type of use. The upgrades were as follows, increased the pipe length and radius’, entrance was paved.” (Driveway Permit P-0995).

2. Install a 350 sq.ft weigh scale on site

3. Modify the hours of operation on Saturdays from: 8:30 a.m. - 1:00 p.m. to 8:30 a.m. - 3 p.m. This will result in an increase in operation hours on Saturday by two (2) hours.

Prior to the issuance of final zoning approval, a site development plan must be submitted and approved in accordance with applicable provisions of the Pender County Unified Development Ordinance. In addition, all other applicable permits and approvals must be obtained including inspections and health department regulation compliance.

Use Type	Ref NAICS	Zoning Districts									
		RA	RP	RM	MH	PD	GB	OI	IT	GI	EC
MISCELLANEOUS USES											
Wholesale Trade	42	S							P	P	

EVALUATION:

- A. Public Notifications:** Advertisements for the proposal have been placed in the *Pender-Topsail Post & Voice*. Adjacent property owners were notified by first class mail.
- B. Basis for Granting SUP:** See attachment A for approval procedures (§3.12.3 of Unified Development Ordinance) and revocation procedures (§3.12.4 of Unified Development Ordinance).
- C. Unified Development Ordinance Compliance:** The property is currently zoned RA, Rural Agricultural, and Wholesale Trade is permitted in the RA zoning district by Special Use Permit, as prescribed by the Pender County Unified Development Ordinance §5.2.3 Table of Permitted Uses.
- D. 2010 Comprehensive Land Use Plan Compliance:** The subject property is classified as Rural Growth in the *2010 Comprehensive Land Use Plan*. The Rural Growth land use classification defines those areas of Pender County where urban services, i.e., public water and sewer services, are not expected to be extended within the planning horizon. Rural Growth areas are where preservation of agricultural operations is a primary concern and where conflicts between agricultural and non-agricultural uses are to be discouraged.

The SUP request may be supported by a policy within the *2010 Comprehensive Land Use Plan*:

- *Policy 1A.1.5 – The County supports a pro-business/pro-growth attitude, balanced by a concern for preserving the natural assets and quality of life factors that make the area attractive to visitors and permanent residents alike.*

- E. Existing Land Use in Area:** The subject property's borders to the northwest, southeast and south all have low density single family residential structures constructed. The properties bordering the northern portion of the lot are largely wooded lots without structures. The two adjacent properties along the southwestern border appear to be deferred value tracts participating in the present value use valuation program.
- F. Site Access Conditions:** The proposed use will have direct access to US Highway 421. The access will be subject to review and approval by the NCDOT.
- G. Conditions To Consider In Issuing the Special Use Permit For This Project:**
1. The project shall comply with all requirements of the Pender County Unified Development Ordinance.
 2. 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.
 3. A separate permit must be obtained for any proposed signs in accordance with Article 9 of the Pender County Unified Development Ordinance.
 4. Any violations of the conditions of this permit, confirmed by the Zoning Administrator shall result in this permit becoming void, if not corrected within 30 days of receipt of the notice of violation.
 5. The applicant shall meet all other local, state and federal regulations.
 6. 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
 7. All other applicable portions of the 2009 Special Use Permit (SUP 09-01-21-01) shall remain in effect, unless specifically modified.
 8. Traffic increases related to Faircloth Metal's operations shall be approved, contingent upon an approved site development application and Technical Review Committee review (Including review by the North Carolina Department of Transportation NCDOT).
 9. The hours of operation on Saturdays are modified from: 8:30 a.m. - 1:00 p.m. to 8:30 a.m. - 3 p.m.

Attachment A

3.12.3 Procedures for Reviewing Applications

- A. The special uses, as specified in the various districts, may be established only after review and approval by the Board of Commissioners.
- B. The Board of County Commissioners, acting in a quasi-judicial manner and setting, shall hear evidence from the applicant and any interested members of the public.
- C. The Board of Commissioners shall hold a public hearing on the application for a Special Use Permit within sixty (60) days after the completed application is filed.
- D. The Administrator shall cause notice of the hearing to be published once a week for two successive calendar weeks. The notice shall be published for the first time not less than ten (10) nor more than twenty-five (25) days before the date fixed for the hearing.
- E. All Special Use Permit applications must be presented to the Administrator for a determination of completeness.
- F. An appeal from a completeness determination may be made to the Board of Adjustment within twenty (20) days of the determination.
- G. The Board of Commissioners shall approve, modify, or deny the application for a Special Use Permit. In approving a Special Use Permit, the Board of Commissioners, with due regard to the nature and state of all adjacent structures and uses in the district within same is located, shall make written findings that the following are fulfilled:
 - 1. The use requested is listed among the special uses in the district for which application is made, or is similar in character to those listed in that district;
 - 2. 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;
 - 3. The proposed use shall not constitute a nuisance or hazard;
 - 4. The requested use will be in conformity with the Pender County Land Use Plan and other official plans or policies adopted by the Board of County Commissioners;
 - 5. Adequate utilities, access roads, drainage, sanitation or other necessary facilities have been or are being provided;
 - 6. That adequate measures have been or will be taken to provide ingress and egress so designed as to minimize the traffic congestion in the public roads;
 - 7. That the special use shall, in all other respects, conform to the applicable regulations of the district in which it is located; and
 - 8. The proposed use shall not adversely affect surrounding uses and shall be placed on a lot of sufficient size to satisfy the space requirements of said use.

3.12.4 General Provisions Concerning Special Use Permits

- B. Revocation - In any case where the Special Use Permit or the conditions of a Special Use Permit have not been or are not being complied with, the Administrator may initiate a notice of violation for the provisions of this ordinance and the conditions of the Special Use Permit not in compliance or the Administrator, may initiate notice of a public hearing to consider revocation of the permit by the Board of Commissioners or both actions may be initiated. Procedures for notice of such hearing shall be the same as procedures for consideration of an initial application for a Special Use Permit and the permittee shall be notified.

APPLICATION FOR SPECIAL USE PERMIT

THIS SECTION FOR OFFICE USE			
Application No.	SUP	Date	
Application Fee	\$	Receipt No.	
Pre-Application Conference		Hearing Date	

SECTION 1: APPLICANT INFORMATION

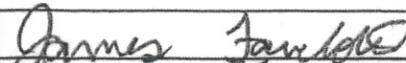
Applicant's Name:	JAMES FAIRCLOTH	Owner's Name:	JAMES & DONNA FAIRCLOTH
Applicant's Address:	16222 US HWY 421	Owner's Address:	16222 US HWY 421
City, State, & Zip	BURGAW, NORTH CAROLINA 28425	City, State, & Zip	BURGAW, NORTH CAROLINA 28425
Phone Number:	(910)-612-5079	Phone Number:	

Legal relationship of applicant to land owner: NOT APPLICABLE

SECTION 2: PROJECT INFORMATION

Property Identification Number (PIN):	2279-54-3549-0000	Total property acreage:	16.17 ACRES
Zoning Classification:	RA	Acreage to be disturbed:	NONE
Project Address :	16222 US HWY 421 - BURGAW, NORTH CAROLINA		NAICS Code:
Description of Project Location:	RESIDENTIAL MANUFACTURED HOME & COMMERCIAL BUSINESS ON SITE		
Describe activities to be undertaken on project site:	PUT IN A WEIGH SCALE AND ACCEPT SCRAP METAL FROM INDIVIDUALS FOR SCRAP METAL OPERATION BUSINESS.		

SECTION 3: SIGNATURES

Applicant's Signature		Date:	7/12/13
Owner's Signature		Date:	7/12/13

NOTICE TO APPLICANT

1. Applicant must also submit the information described on the Special Use Checklist.
2. Applicant or agent authorized in writing must attend the public hearing.
3. Once the public hearing has been advertised, the case will be heard unless the applicant withdraws the application or unless the Board of Commissioners or other authorized person agrees to table or delay the hearing.
4. Applicant may wish to review the required findings for approval of a Special Use Permit found on page 1 of this application
5. **Permit will become void after 12 months if a final zoning permit is not obtained, unless specifically requested at the time of public hearing.**

July 12, 2013
Pender County Planning Department
Attn: Board of County Commissioner's for Pender County
805 South Walker Street
Burgaw, North Carolina 28425

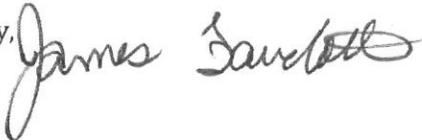
Reference: Revise Special Use Permit for James Faircloth

Dear Sir or Madam,

In January 21, 2009, I was approved to temporarily store and collect scrap metal for processing with a special use permit. At that time, it was my intent to only process metal brought to the site by myself, and not to receive any metal from outside individuals. However, since that time I have had a lot of requests to take scrap metals from individuals that wish to do business with me versus driving to other locations outside of the county. Therefore, I'm returning to request the special use permit be revised to accept scrap metal outside parties and continue the operation temporarily storing and collecting scrap metal for processing. I have to be honest by saying; I have accepted scrap metals from individuals from time to time. However, in order to remain operating by the guidelines I've had to turn some away. With that being said, I like to respectfully request that the special use permit be revised to reflect how the business will be operated.

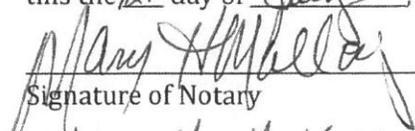
In summary, I would like to continue to operate the business in accordingly and install a weigh on site. In addition, the same condition will continue to be honored as state under the original approval. Which stated the following: *"Approved with the condition that the business is to be operated by the owner and his immediate family (wife, son, daughter) It would have to come back for Board approval if anyone else was to run it."*

Thank you for your time and have a blessed day.

Sincerely, 

James Faircloth, Property/Business Owner
Faircloth Metals

Sworn to (or affirm) and Subscribed before me
this the 12th day of July, 2013



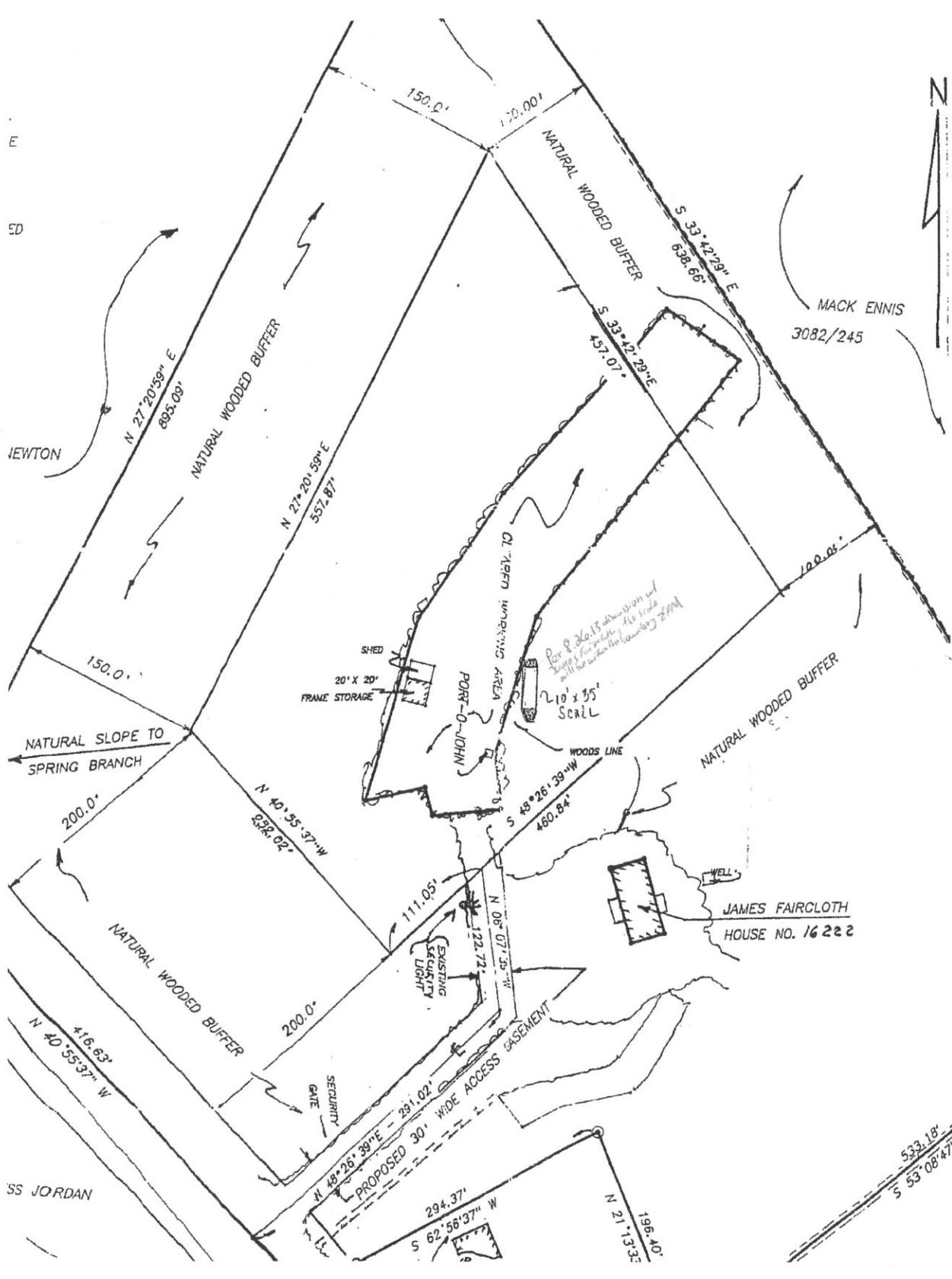
Signature of Notary

Mary H. Malloy

Printed Name of Notary

My Commission Expires: 3/4/16

(Notary Stamp or Seal)



E
ED

NEWTON

MACK ENNIS
3082/245

NATURAL SLOPE TO
SPRING BRANCH

NATURAL WOODED BUFFER

SS JORDAN

NATURAL WOODED BUFFER

JAMES FAIRCLOTH
HOUSE NO. 16222

SHED
20' X 20'
FRAME STORAGE

POUR-0-10HIN

210' X 35'
SCALL

WOODS LINE

WELL

EXISTING
SECURITY
LIGHT

SECURITY
GATE

PROPOSED 30' WIDE ACCESS BASEMENT

533.18'
S 53°08'47''



Applicant:
James Faircloth

Owner:
James and
Donna Faircloth

**Special Use
Permit
11009**

Legend

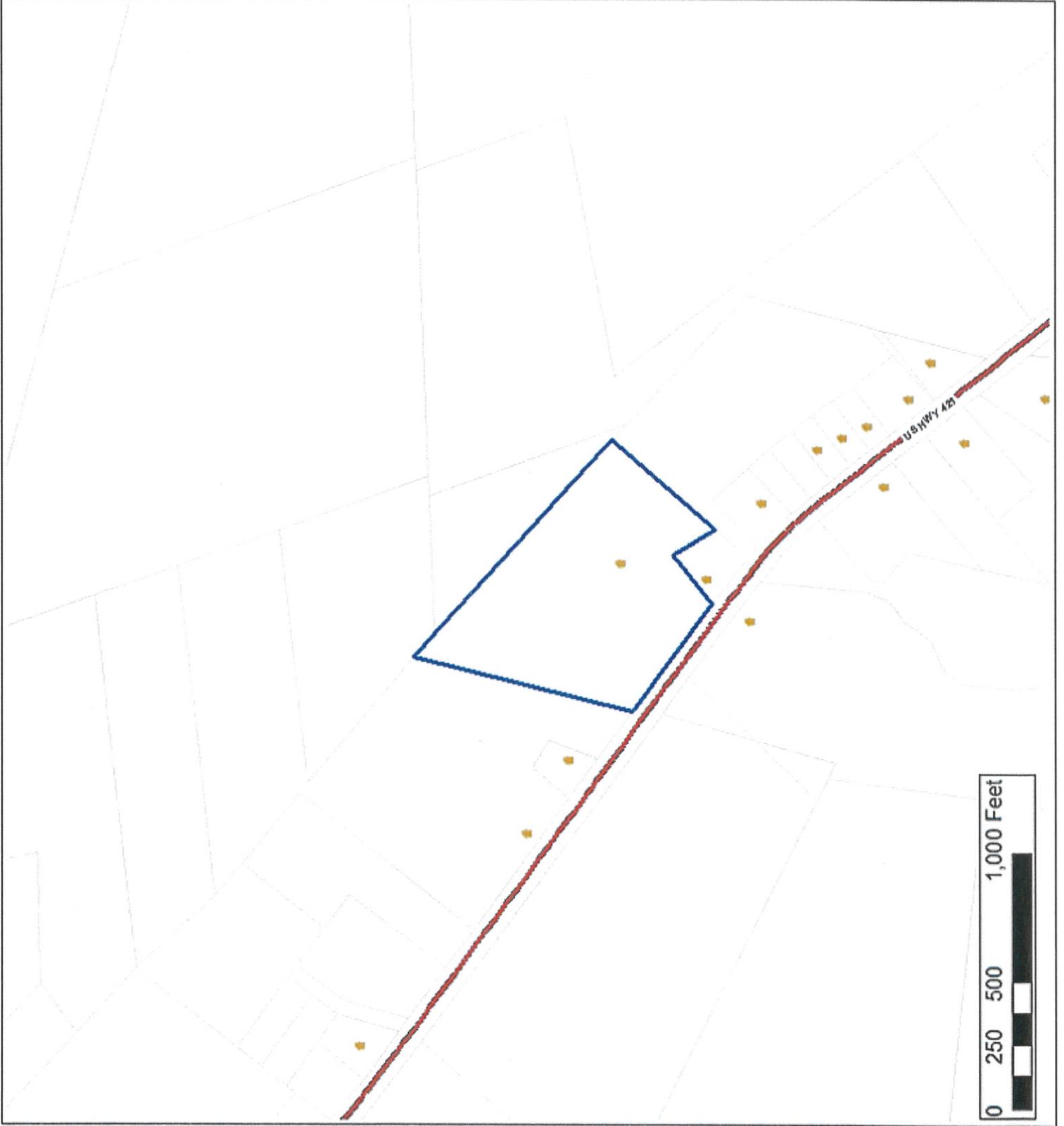
 Subject Parcel

Structure Type

-  Business
-  Church
-  Farm Use
-  House
-  Manufactured Home



Vicinity





Applicant:
James Faircloth

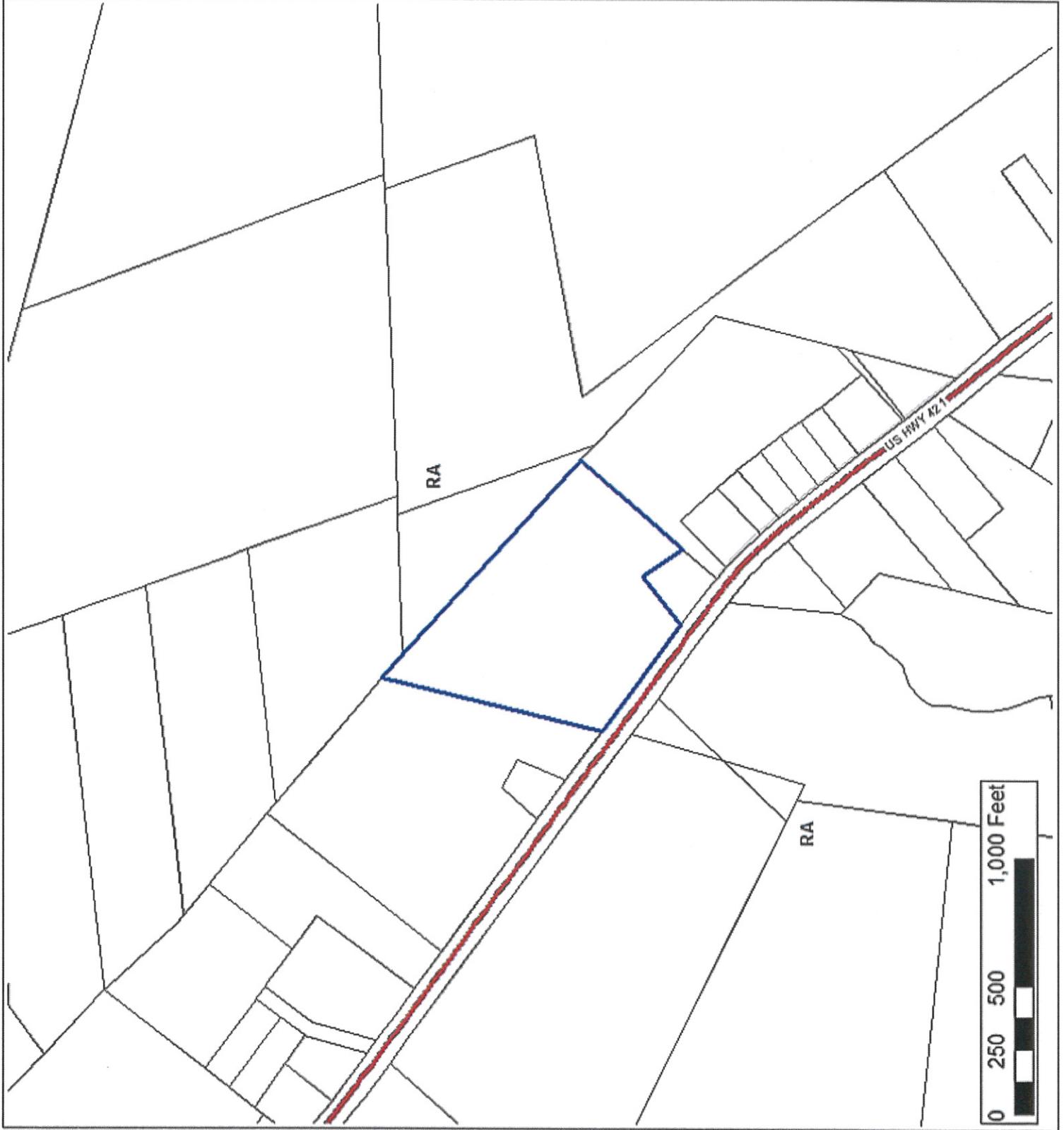
Owner:
James and
Donna Faircloth

**Special Use
Permit
11009**

- Tax Parcel selection
- Zoning Classification**
- General Business (GB)
 - General Industrial (GI)
 - Industrial/Transitional (IT)
 - Office & Institutional (OI)
 - Rural/Agricultural (RA)
 - Planned Development (PD)
 - Residential Performance (RP)
 - Environmental Conservation (EC)
 - Incorporated Areas (INCORP)
 - Manufactured Home Park (MH)
 - Residential Mixed (RMF)



ZONING





Applicant:
James Faircloth

Owner:
James and
Donna Faircloth

**Special Use
Permit
11009**

- 2010 Land Use Classification**
- Conservation
 - Industrial
 - Mixed Use
 - Office, Institutional, Business
 - Rural Growth
 - Suburban Growth



**LAND USE
CLASSIFICATION**





Applicant:
James Faircloth

Owner:
James and
Donna Faircloth

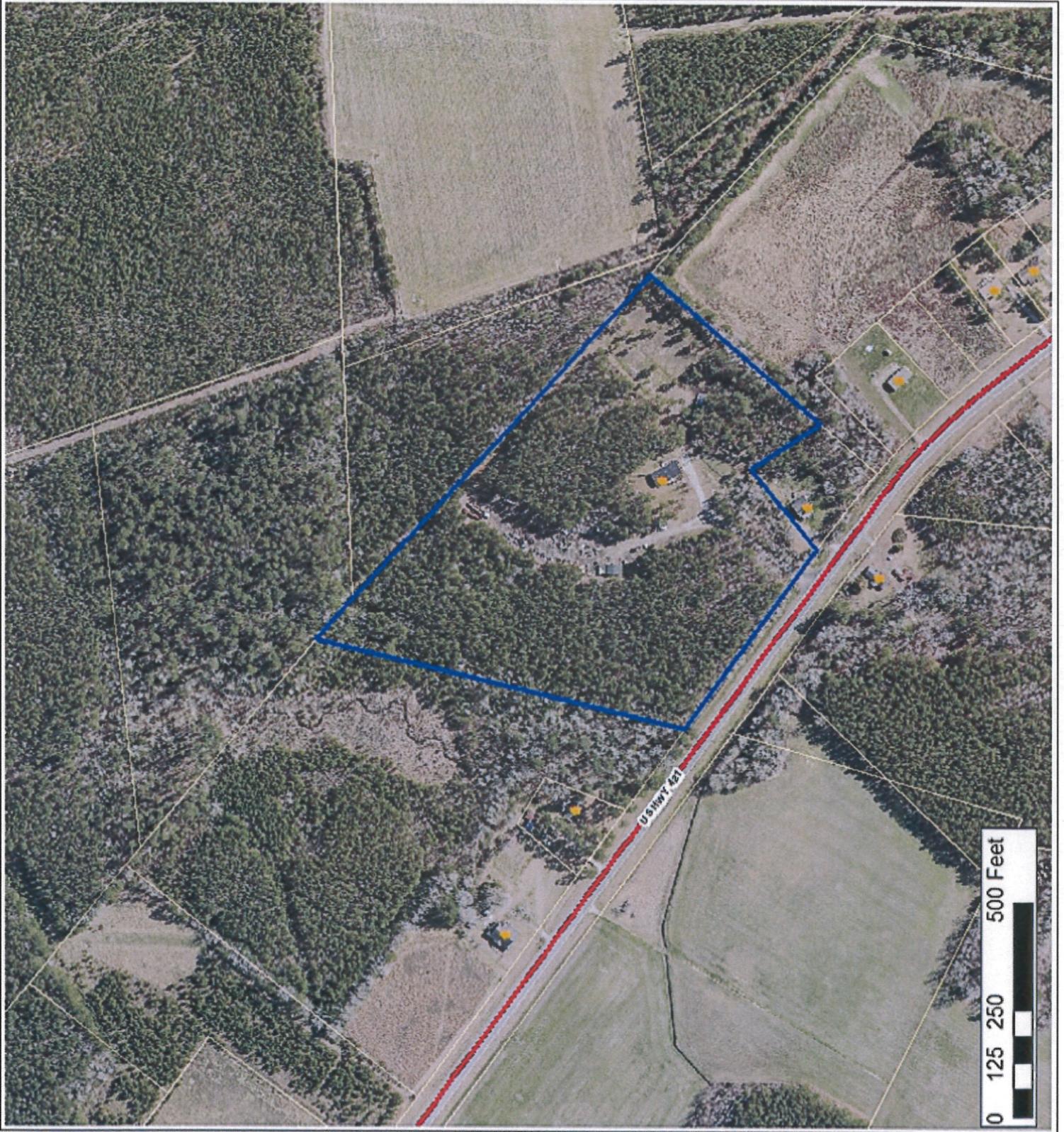
**Special Use
Permit
11009**

Legend

 Subject Parcel



2012 AERIAL



2012 vs. 2008 AERIAL COMPARISON



Applicant:
James Faircloth

Owner:
James and
Donna Faircloth

**Special Use
Permit
11009**

Legend

 Subject Parcel

