PLANNING STAFF REPORT
Variance Request

SUMMARY:

Hearing Date: November 20, 2013
Applicant: Stroud Engineering
Property Owner: Parks Family Forestry, LLC
Case Number: 11050

Property Location and Description: The subject property is located on Island Creek Road (NCSR 1002) in Rocky Point, as referenced on Deed Book 4005, Page 128 (Exhibit 1), recorded at the Pender County Register of Deeds on December 15, 2011 and may be identified by Pender County PIN: 3252-97-7356-0000. The subject property is located on the north side of Island Creek Road just east of the New Hanover County line, west of Hunter Court (Wood Cliff Estates) Rocky Point.

Zoning District of Property: The property is zoned RA, Rural Agriculture Zoning District.

Variance Requested: Stroud Engineering, applicant, on behalf of Parks Family Forestry, LLC owner, is requesting a variance from the Design Standards for Lots on Thoroughfares, as outlined in the *Pender County Unified Development Ordinance* (UDO) in Section 7.2.6.; specifically prohibiting Major or Minor Subdivisions designed with individual residential lots accessing on Principal Arterial, Minor Arterial, or Major Collector roads or streets.

BACKGROUND

Island Creek Road Classification
The Wilmington Metropolitan Planning Organization (WMPO) is responsible for regional transportation planning within the Wilmington Metropolitan Area; included in this planning area is Island Creek Road (NCSR 1002). Island Creek Road (NCSR 1002) begins in the area of Castle Hayne in New Hanover County, where it is named Holly Shelter Road and classified as a Major Collector by the WMPO. In Castle Hayne, there's full movement interchange between Holly Shelter Road and Interstate 40. The road's name changes to Island Creek Road when it crosses the bridge over Island Creek and enters Pender County. Island Creek Road ends where it merges with NC 210 about 2.7 miles northeast of the New Hanover County border. There are no controlled or signalized intersections along Island Creek Road within Pender County.

The *Thoroughfare Plan for Pender County* published by the NCDOT identified Island Creek Road as a Minor Collector Street in 1997. In May 2007, the WMPO published the *Coastal Pender County Collector Street Plan*. Island Creek Road was also classified as a Minor Collector Street (Exhibit 2). The plan recommends a reclassification study and submittal to NC Department of Transportation and the Federal Highway Administration (FHWA) for review of Island Creek Road as it may *function* as an arterial roadway, but is still classified as a Minor Collector Street. In the *Cape Fear Commutes 2035 Transportation Plan* (Appendix 8, Figure 14) also published by the WMPO, Island Creek Road is identified as a Major Collector and can be seen in Exhibit 3. Currently, Island Creek Road (NCSR 1002) is classified as a Major Collector. Pender County has adopted all aforementioned WMPO planning documents, and considers these plans recommendations for all transportation planning.

Minor Subdivision
This variance is for the creation of seven (7) driveways on for eight (8) potential new lots plus a remnant for the remainder of the subject property; nine (9) total lots, seen in Exhibit 4. Currently, this project qualifies as a Minor Subdivision. Minor Subdivisions are defined in the *Pender County Unified Development Ordinance* Section 3.9.1 as; consisting of ten (10) lots or less and shall follow the preliminary plat review process.

Environmental Concerns

Wetlands
Currently, no wetland delineation or Jurisdictional Determination (J.D.) has been submitted to Pender County Planning Staff for proof of environmental concerns on the subject property. The applicant has submitted a preliminary wetlands map for the subject property, Exhibit 4. Further investigations or these documents to identify regulated wetlands would be necessary for future action on the site.

Flood
There is a portion of the property that is located within the "Approximate Zone AE" and another portion of the property located within the "Zone X" Special Flood Hazard Area, according to the 2007 Flood Insurance Rate Maps (FIRMs), Map Number 3720325200K, Panel Number 3252 and Map Number 3720326200K, Panel, Number 3262.

CAMA
There is a potential for this property to have navigable (by canoe/kayak) inland waters. These inland waters would be required to meet CAMA standards; a necessary buffer of thirty (30) feet landward of the normal high water line for the AEC Public Trust Shoreline.

DESCRIPTION OF VARIANCE

1. Unnecessary hardship would result from the strict application of the ordinance. It shall not be necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property;

   According to the applicant in Exhibit 5; driveway access to these properties from the internal road network of a possibly future subdivision would require crossing a regulated wetland. The impacts associated with the construction of a road or driveway across the wetland are unconsidered unnecessary hardship given the existing state road frontage. This hardship would be the burden of the subdivider, as well as, the environment.

2. The hardship results from conditions that are peculiar to the property, such as location, size, topography. Hardships resulting from personal circumstances, as well as hardships resulting from conditions that are common to the neighborhood or the general public, may not be the basis for granting a variance;

   According to the applicant in Exhibit 5; this hardship is a result of the topography being challenging as proposed driveway would descend into and through the wetlands. The subdivider has compiled where possible to access lot 8 fronting Island Creek Road from a possible future subdivision road entrance location. The required fording off the wetland in other locations to accomplish the same access would be both a regulatory, as well as cost, hardship.

3. The hardship did not result from actions taken by the applicant or the property owner. The act of purchasing property with knowledge that circumstances exist that may justify granting of a variance shall not be regarded as a self-created hardship;

   According to the applicant in Exhibit 5; the prohibition of driveways along collector roads was not known at the time of the property was purchased or planned out.

4. The requested variance is consistent with the spirit, purpose, and intent of the ordinance, such that public safety is secured and substantial justice is achieved.

   According to the applicant in Exhibit 5; granting of this requested variance would result in development no different than that already existing up and down Island Creek Road. The lots created by the allowance of this request will be otherwise consistent with Pender County ordinances.

ZONING ADMINISTRATOR'S CONCLUSION

Stroud Engineering, applicant, on behalf of Parks Family Forestry, LLC owner, is requesting a variance from the Design Standards for Lots on Thoroughfares, as outlined in the *Pender County Unified Development Ordinance* (UDO) in Section 7.2.6., specifically prohibiting Major or Minor Subdivisions designed with individual residential lots accessing on Principal Arterial, Minor Arterial, or Major Collector roads or streets.

3.14 VARIANCE

3.14.1 Applicability

A. The Board of Adjustment may vary certain requirements of this Ordinance, in harmony with the general purpose of these regulations, where special conditions applicable to the property in question would make the strict enforcement of the regulations impractical or result in a hardship in making reasonable use of the property.

B. The Board of Adjustment may waive certain requirements when authorized to do so by provisions adopted as a part of this Ordinance.

C. No variance shall be permitted that would have the effect of allowing a use not permitted in the use table of Section 5.2.3.

D. No variance shall be permitted that would allow a project to exceed the maximum density as to number of dwelling units to the acre in a Zoning District. This maximum density shall be inclusive of any density bonus allowance or additional units in a planned unit development.

E. The need for the variance cannot be a result of the owner's own actions and cannot be for strictly economic reasons.

F. The Board of Adjustment may grant variances in the following special circumstances, as indicated elsewhere in this Ordinance.

3.14.7 Findings

In granting any variance, the Board of Adjustment shall make the following findings:

A. That special or unique circumstances or conditions or practical difficulties exist which apply to the land, buildings or uses involved which are not generally applicable to other land, buildings, structures, or uses in the same zoning districts;

1) Unnecessary hardship would result from the strict application of the ordinance. It shall not be necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property.

2) The hardship results from conditions that are peculiar to the property, such as location, size, topography. Hardships resulting from personal circumstances, as well as hardships resulting from conditions that are common to the neighborhood or the general public, may not be the basis for granting a variance.

3) The hardship did not result from actions taken by the applicant or the property owner. The act of purchasing property with knowledge that circumstances exist that may justify granting of a variance shall not be regarded as a self-created hardship.

4) The requested variance is consistent with the spirit, purpose, and intent of the ordinance, such that public safety is secured and substantial justice is achieved.

B. In making the findings above, the Board of Adjustment may give special weight to the number and percentage of nearby properties that share characteristics for which the variance is requested by the applicant. The Board of Adjustment may grant a variance to expand an existing structure, including the expansion of a nonconforming structure if the findings listed above can be made.

UDO DEFINITIONS

Major Subdivision: Proposed subdivisions consisting of eleven (11) lots or more are classified as Major Subdivisions and are required to follow the Master Development Plan review process found in Figure 2 and 3 at the end of Section 3.4. All major subdivisions shall include a preliminary and final plat. Upon approval of the Master Development Plan by the Planning Board, the applicant may proceed with the preparation of the preliminary plat.

Minor Subdivision: Proposed subdivisions of ten (10) lots or less, except family and three lot divisions are classified as a minor subdivision and shall follow the preliminary plat review process. Proposed minor subdivisions located in PD, Planned Development district must follow the Master Development Plan review process which requires Planning Board approval.

Arterial Highway: A street so classified by the North Carolina Division of Highways or by the standards of Pender County which collects and distributes traffic to and from collector streets.

Board of Adjustment: Finding of Facts

1. It is the Board's CONCLUSION that the hardship of which the applicant complains **does/does not** result from the strict application of the ordinance. It shall not be necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property. This conclusion is based on the following FINDINGS OF FACT:

2. It is the Board's CONCLUSION that, granting the hardship **does/ does not** result from conditions that are peculiar to the property, such as location, size, topography. Hardships resulting from personal circumstances, as well as hardships resulting from conditions that are common to the neighborhood or the general public, may not be the basis for granting a variance. This conclusion is based on the following FINDINGS OF FACT:

3. It is the Board's CONCLUSION that the hardship **did/ did not** result from actions taken by the applicant or the property owner. The act of purchasing property with knowledge that circumstances exist that may justify granting of a variance shall not be regarded as a self-created hardship. This conclusion is based on the following FINDINGS OF FACT:

4. It is the Board's CONCLUSION that the requested variance **is/ is not** consistent with the spirit, purpose, and intent of the ordinance, such that public safety is secured and substantial justice is achieved. This conclusion is based on the following FINDINGS OF FACT:

Board Action:

Motion:_____Seconded:_____

Approved:_____Denied:_____Unanimous:_____

Ferrante: _____Pullen:_____ Kane: _____ Newton:_____Thompson: _____

Alternates:
Peters: _____