

PLANNING STAFF REPORT

Variance Request

SUMMARY:

Hearing Date: November 20, 2013

Applicant: Coleman Parks

Property Owner: Washington Acres Inc.

Case Number: 11048

Property Location and Description: The subject property is located on Washington Acres Road (NCSR 1582) in Hampstead, as referenced on Deed Book 3996, Page 0299 (Exhibit 1), recorded at the Pender County Register of Deeds on December 01, 2011 and may be identified by Pender County PIN 3282-71-0479-0000. The subject property is located on the east side of Washington Acres Road, near the intersection of Thomas Lane and Washington Acres Road.

Zoning District of Property: Coleman Parks, applicant, on behalf of Washington Acres Inc., owner, is requesting two separate variances to allow for the construction of two individual residential driveways to be located on proposed Lots 92 and 93 (Exhibit 2), of the conditionally approved Master Plan Community of Hampstead Landing. Specifically, the applicant is requesting relief from §7.2.6 and 7.2.7 of the Pender County Unified Development Ordinance which addresses individual lot access on Throughfares and Collector Streets.

BACKGROUND

The subject property was approved as part of a major subdivision known as Hampstead Landing on July 10, 2012. The Pender County Planning Board granted conditional Master Plan approval for a subdivision not to exceed 100 plus lots.

The Final Preliminary Plat for Hampstead Landing was submitted to Pender County Planning and Community Development on August 6, 2013(Exhibit 3); the submittal was considered incomplete, however, staff completed a cursory review of the submittal. As prescribed by the Pender County Unified Development Ordinance Planning Section 3.10.1 Major Subdivisions, specifically 3.10.3.D; “Major subdivision plans must meet all the requirements prescribed in Section 6.4, Preliminary Plat Contents and Section 6.5, Final Plat Contents.” The proposal submitted to Planning Staff did not meet the criteria establish in Section 6.4, Preliminary Plat Contents. Staff provided the applicant’s engineer with all outstanding items that needed to be addressed prior to the Final Preliminary Plat approval (Exhibit 4). Staff noted that lots 82-91 and 92-93 would need an alternative access point.

A revised Preliminary Plat was submitted to staff on October 4, 2013 (Exhibit 5), which specifically addressed the accessing of lots 82-91were now utilizing an internal road network and no longer accessing directly off of Washington Acres Road and showing Lots 92 and 93 as future development.

Washington Acres Road Classification

Washington Acres Road is approximately 3,200 feet south of the NC Highway 210/US Highway 17 intersection in Hampstead. Washington Acres Road is located within the Wilmington Metropolitan Planning Organization (WMPO) boundary. Currently Washington Acres Road is full movement intersection; there is no controlled or signalization on Washington Acres Road.

The Wilmington Metropolitan Planning Organization (WMPO) is responsible for regional transportation planning within the Wilmington Metropolitan Area; included in this planning area is the Coastal Pender Area, including Washington Acres Road (NCSR 1002). According to the Cape Fear Commutes 2035 Transportation Plan, the functional classification of Washington Acres Road is a collector road (Exhibit 6).

Functional classification is the process by which roads, streets, and highways are grouped into classes according to the character of service they provide. Individual roads and streets do not serve travel independently but as part of a network of roads through which the traffic moves. Collector street systems are defined by the Federal Highway Administration as; providing land access service and traffic circulation within residential neighborhoods, commercial and industrial areas. It differs from the arterial system in that facilities on the Collector Street System may penetrate residential neighborhoods, distributing trips from the arterials through the area to the ultimate destination. In rural areas, the collectors are further divided into Major and Minor Collectors

According to the Pender County Unified Development Ordinance, Section 7.2.6 Lots on Throughfares;

“Major or minor subdivisions shall not be approved that provide for individual residential lots to access Principal Arterial, Minor Arterial or Major Collector roads or streets as shown on the Coastal Pender Collector Street Plan, Pender County Transportation Plan or other approved State Transportation Improvement Plan.”

According to the Pender County Unified Development Ordinance, Section 7.2.7 Lots on Collector Streets;

“Major subdivisions shall not be approved that provide for individual residential lots to access Minor Collector roads or streets as shown on the Coastal Pender Collector Street Plan, Pender County Transportation Plan or other approved State of Federal Transportation Improvement Plan.”

DESCRIPTION OF VARIANCE (Exhibit 7- Applicant’s Narrative)

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; driveway access to these properties from an internal road network of Hampstead Landing would require crossing a regulator wetland. The impacts associated with the construction of a road or driveway across the wetland is considered an unnecessary hard given the existing state road frontage. The 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; the hardship is a result of the topography being challenging as a proposed driveway would descend into and through the wetlands. The subdivider has complied where possible to access other lots fronting Washington Acres Road from the subdivision road network. The required fording off the wetland in this location to accomplish the same access would be both a regulatory as well as a 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; 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; granting of this requested variance would result in development no different than that already existing up and down Washington Acres Road. The lots created by the allowance of this request will be otherwise consistent with Pender County ordinances.

ZONING ADMINISTRATOR'S CONCLUSION:

Coleman Parks, applicant, on behalf of Washington Acres Inc., owner, is requesting two separate variances to allow for the construction of two individual residential driveways to be located on proposed Lots 92 and 93 of the conditionally approved Master Plan Community of Hampstead Landing. Specifically, the applicant is requesting relief from §7.2.6 and 7.2.7 of the Pender County Unified Development Ordinance which addresses individual lot access on Thoughfares and Collector 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.

3.10 MAJOR SUBDIVISION

3.10.1 Intent

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.

3.10.2 Pre-application Conference

- A. Applicants proposing a major subdivision site plan shall request a pre-application conference with the Administrator prior to submitting the documents for review.
 - 1) The purpose of the pre-application conference shall be to discuss the proposal in relation to the requirements of all adopted Land Use Plans and Unified Development Ordinance and to obtain advice on the preparation of the preliminary plan.
 - 2) If applicable, the applicant shall provide a copy of the approved Master Development Plan for discussion at the pre-application conference.

3.10.3 Review

- A. Completed plats, application, fees and other required data must be submitted 45 days before a scheduled Planning Board meeting.
- B. When required submission material is submitted as noted above, it shall be placed on the next scheduled Planning Board agenda, if applicable.
- C. The Administrator will forward the Major Subdivision application and site plan to the Technical Review Committee for review. The TRC shall make recommendations concerning whether the plan meets the requirements and or plans of their particular state agency, county department or utility authority
- D. Major subdivision plans must meet all the requirements prescribed in Section 6.4, Preliminary Plat Contents and Section 6.5, Final Plat Contents.
- E. The preliminary plat must be submitted in digital format to the Administrator within the time frame indicated above. The digital submission of the plat will be considered proprietary information. The digital layout will be made available to the Tax Supervisor for parcel update and the digital submission may be returned to the person submitting it.
- F. The plat will be reviewed for compliance with this Ordinance.
- G. Due to the subdivision of land for residential purposes a portion of land must be dedicated to open space by means of providing recreational area to the residents or payments in lieu of dedication to the County. Open space requirements may be referenced in Section 7.6, Open Space.
- H. Planning Board will take action on the plat submission within 65 days after completed submission.
- I. Planning Board Master Development Plan approval shall be valid for two years. If all conditions of preliminary plat are met and a phase of the final plat is recorded, the preliminary plat status shall remain valid perpetually for all remaining phases.
- J. Preliminary plat approval constitutes approval of the layout and authorizes the developer to proceed with construction of the subdivision and improvements in accord with the approved plat, conditions attached to the approval, and submittal of required permits.
- K. All conditions of preliminary plat approval must be completed and submitted within two (2) years of the approval date.
- L. If a preliminary plat is not approved, the reasons for disapproval must be specified and provided to the developer in writing. Disapproval of a preliminary plat may be appealed to the Pender County Board of Commissioners.
- M. A preliminary plat will not be scheduled for review that is incomplete or does not have the required documents submitted with it.

6.4 PRELIMINARY PLAT CONTENTS

Preliminary plats not illustrating or containing the following data shall be returned to the developer or his authorized agent for completion and resubmission.

- A. The preliminary plat shall be prepared in accordance with the following specifications:
- 1) The plat must be prepared by an authorized Licensed Professional.
 - 2) The name of the subdivision.
 - 3) The name(s), address(es), and telephone number(s) of the owner(s), registered land surveyor(s), land planner(s), architect(s), landscape architect(s), and professional engineer(s) responsible for the subdivision and the registration number(s) and seal(s) of the registered land surveyor(s).
 - 4) A sketch vicinity map at an appropriate scale, showing the relationship between the subdivision and the surrounding area.
 - 5) The exact boundary lines of the tract to be developed fully dimensioned by bearings and distances, and the location of intersecting boundary lines of adjoining lands.
 - 6) Scale at 1" = 50' or larger, denoted both graphically and numerically.
 - 7) North arrow in accordance with the Standards of Practice for Land Surveyors.
 - 8) Approved road names.
 - 9) Landscaping and Buffers shall be shown on the site plan and adhere to the landscaping standards set forth in Article 8, Landscaping and Buffers.
 - 10) All subdivided land and parcels shall comply with Section 7.2, Lot Design.
 - 11) Homeowners Association shall be required for all major residential subdivisions with privately maintained streets, open space, and any other dedicated land as stated in Section 7.3, Homeowners Association Requirements.
 - 12) Street layout and access shall conform to Section 7.4, Access and Section 7.5, Street Design.
 - 13) Calculated open space requirements must adhere to Section 7.6, Open Space.
 - 14) The location, purpose, and dimensions of areas to be used for purposes other than residential;
 - 15) The names of current owners of adjacent landowners along with PIN, current uses, other legal reference where applicable, shall be shown.
 - 16) The location and measurements of all proposed minimum building setback lines.
 - 17) The location and dimensions of all proposed and existing rights-of-way, utility or other easements, riding trails, pedestrian or bicycle paths, natural buffers, and areas if any to be dedicated to public use with the purpose of each stated.
 - 18) Existing traffic counts for road(s) and intersection(s) studied and dates/times counts were conducted.
 - 19) Estimated AM and PM Peak Hour Trips per the Institute of Transportation Engineers Trip Generation Manual.
 - 20) Based on estimated traffic counts, a Traffic Impact Analysis may be required stating the dates and times counts were conducted for the proposed development.
 - 21) Right-of-way lines and pavement widths of all roads and the location and width of all adjacent roads and easements.
 - 22) Property lines, buildings or other structures, water courses, railroads, bridges, culverts, storm drains, and corporate limits, township boundaries, and county lines.
 - 23) Sufficient survey to determine readily and reproduce on the ground every straight or curved boundary line, road line, lot line, right-of-way line, easement line, and setback line, including dimensions, bearings, or deflection angles, radii, central angles, and tangent distances for the center line of curved roads and curved property lines that are not the boundary of curved roads. All dimensions shall be in accordance with the Standards and Practices of Land Surveyors.
 - 24) The accurate locations and descriptions of all monuments, markers, and control points.

- 25) The blocks lettered alphabetically throughout the entire subdivision and the lots numbered consecutively throughout each block.
- 26) The date of the survey and the plan preparation; with spaces per subsequent revision.
- 27) The name of the township, county, and state in which the subdivision is located.
- 28) Deed book and reference of ownership acquisition.
- 29) Certificate of approval by the Pender County Addressing Coordinator for proposed road names.
- 30) Compliance with all applicable requirements of this Ordinance.
- 31) Agreement with the most recently adopted CAMA Land Use Plan and any other applicable adopted land use document(s). Reference of recently approved MDP.
- 32) For non-residential and multifamily projects, the location of trash handling, recycling, grease bins, and other waste-related facilities employed in the normal operation of the use.
- 33) The location and design of parking areas and pedestrian and vehicular access points.
- 34) That the design of traffic patterns, traffic control measures and street pavement areas, including plan profiles and cross section views, and with provisions for maintaining traffic flows for both public use as well as emergency management services are consistent with the requirements of this Ordinance.
- 35) Compliance with site construction specifications.
- 36) Stormwater facilities, water supply, sanitary sewer service, fire protection and hydrants, street signs, and street lighting designed in conformance with department standards, specifications and guidelines; Plan profile and cross section of drainage and utility services and
- 37) Other proposed easements or dedications as required.

B. Additional materials to be submitted with the preliminary plat:

- 1) Soil suitability analysis indicating the suitability of the property for individual septic tanks or an Improvement Authorization Permit for each lot unless community sewer is available and a conditioned approval for connection is submitted. The soil suitability analysis of the property shall also indicate the suitability of the soil for the type structures proposed.
- 2) Sufficient information shall be provided so that a corner of the property can be located on the ground and found with a measurement from the intersection of two state maintained roads.
- 3) A copy of the Preliminary Plat with the street names as approved by the Pender County Addressing Coordinator or his/her designee.
- 4) Verification of receipt of the preliminary plat of the development by the Pender County Health Department.
- 5) Verification of receipt of the preliminary plat of the development by the NCDOT District Engineer or his designee.
- 6) General description and map of the proposed drainage for the subdivision shall include the following:
 - a) The boundaries of all drainage basins that flow through the property from upstream.
 - b) All drainage facilities that flow through the property and receive any stormwater discharge from upstream.
 - c) The boundaries of all drainage basins that receive discharge from the property that is located from the discharge point on the property to the recipient perennial stream.
 - d) All drainage facilities that receive stormwater discharge from the property from the discharge point to the recipient perennial stream.
 - e) This information can be described in a narrative submission and shown on a copy of a USGS 7.5 Minute Quad or other similar topographical map (11 X 17 map submission).
 - f) Detailed description of any proposed waste water system and system maintenance arrangements and procedures to serve lots that are not suitable for traditional onsite septic systems, along with a map showing the proposed location of the offsite components of the system, including lines.
 - g) When any development proposes private streets a description of the method to provide Pender County Emergency Service personnel and vehicles immediate access shall be submitted.

- h) When any street layout or geometric design does not specifically meet the NCDOT Secondary Road Standards or the adopted Pender County Private Street Standards, a narrative explanation, justification detailed drawing of the design shall be submitted for review.
 - i) When the subdivision entrance does not connect to a NCDOT maintained road, recorded documents shall be submitted that confirm the property and the proposed lots have access to a NCDOT maintained road by a public or private street that meets the standards of this Ordinance.
 - j) The Administrator or the Planning Board may request additional information be submitted that is pertinent to review of the proposed subdivision for compliance with the provisions of this Ordinance or other Pender County Ordinances.
- C. The Following Material May Be Submitted As a Condition of Approval of the Preliminary Plat, When Approved By the Planning Board or Administrator
- 1) Approval by NCDOT of connection of subdivision roads with DOT maintained roads (Driveway Permit).
 - 2) Street construction & street drainage plans as approved by DOT District Engineer with letter of approval (for public streets).
 - 3) Street construction & street drainage plans in accord with DOT submittal requirements, design and construction standards or in accord with Section 7.5, Street Design, private street standards. The plans must be signed and sealed by a registered surveyor or engineer. A letter from the design professional will accompany the plans certifying that they meet the NCDOT submittal requirements, design and construction standards or Private Street Standards, Pender County (for private streets).
 - 4) One or both of the following items will be required for any development utilizing a community water or wastewater system:
 - a) Water System:
 - i) Construction plans sealed by a registered engineer, as approved by DENR,
 - ii) Acceptance of operation and maintenance of the system by a Public or Community Water system as defined in this Ordinance,
 - iii) Certification that the system will be owned by a Public or Community Water system as defined in this Ordinance with conditional acceptance of ownership or certification that the system will be owned by a homeowners association established under the provisions of this Ordinance.
 - b) Wastewater system
 - i) Construction plans sealed by a registered engineer, as approved by DENR, acceptance of operation and maintenance of the system by a Public or Community Water system as defined in this Ordinance
 - ii) Certification that the system will be owned by a Public or Community Water system as defined in this Ordinance with conditional acceptance of ownership or certification that the system will be owned by a homeowners association established under the provisions of this Ordinance.
 - c) Approval from the Division of Coastal Management when the development is located in an Area of Environmental Concern.
 - d) Sediment & Erosion Control Plans as approved by Land Quality (with letter of approval).
 - e) Stormwater management plan as approved by the Water Quality Division (with letter of approval).
 - f) Approval of Wetlands Delineation by the Army Corps of Engineers (USACE) (if wetlands in development).
 - g) Wetlands fill authorization or permit if construction in wetlands is involved.
 - h) A drainage plan that will include all portions of the development shall be submitted. This plan shall be prepared and sealed by a registered engineer. The plan and facilities shall provide for a drainage system for these areas that will accommodate the ten-year storm event without flooding or substantial ponding of water in the areas included in the plan. The plan must also accommodate any discharge from properties in upland portions of the drainage basin that flows through the property for the same storm event for the type development for which that property is zoned. The boundary

of any drainage area on a portion of the site and/or upland from the site and drainage areas between stormwater discharge points from the site to the recipient perennial stream shall be shown on a map (copy of 7.5 min. USGS Quad or similar map). Any drainage facility receiving stormwater discharge from the development shall have the capacity to carry the anticipated stormwater flow from areas that discharge through them for the 10 year storm event from the point of discharge at the development to the recipient perennial stream without overflowing their banks. The location, size and/or capacity of all structures included in the drainage system and receiving discharge from the development to the recipient perennial stream shall be shown on the plan and calculations used in designing the drainage system shall be submitted in a legible format. This plan may be included in the street and drainage plan, stormwater management plan or on the preliminary plat, as long as the design professional certifies that the specific drainage plan submitted complies with these requirements and the information required is shown or submitted.

- i) When any proposed subdivision of land with lots or areas other than open space where structures are prohibited is located in a "Designated Floodway," a "No Rise Certification" prepared by a Registered Engineer shall be submitted for the development.
- j) When a proposed subdivision is located in a SFHA the Base Flood Elevation (BFE) shall be determined and shown along with the SFHA boundary on the Preliminary Plat. In SFHA's where the BFE has not been previously determined, the Developer shall be responsible for providing the BFE as determined by a Registered Professional in the manner prescribed by FEMA Regulations.
- k) When a proposed subdivision is located within a SFHA and any water or sewer systems are not located on the site of the structure served, a statement from the Registered Professional responsible for design of the offsite system shall be provided that "all public or community (offsite) sewer and water systems and drainage facilities are designed to minimize flood damage and reduce exposure to flood hazards in accord with FEMA Guidelines."

7.2.6 Lots on Thoroughfares

Major or minor subdivisions shall not be approved that provide for individual residential lots to access Principal Arterial, Minor Arterial or Major Collector roads or streets as shown on the Coastal Pender Collector Street Plan, Pender County Transportation Plan or other approved State Transportation Improvement Plan.

7.2.7 Lots on Collector Streets

Major subdivisions shall not be approved that provide for individual residential lots to access Minor Collector roads or streets as shown on the Coastal Pender Collector Street Plan, Pender County Transportation Plan or other approved State of Federal Transportation Improvement Plan.

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: _____