

PLANNING STAFF REPORT

Variance Request

SUMMARY:

Hearing Date: November 20, 2013
Applicant: John J Burney III
Property Owner: John J Burney III
Case Number: 11043

Property Location and Description: The subject property is located at 11870 Shaw Highway, Holly Township, NC and may be identified by Pender County 3322-93-4021-0000.

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

Variance Requested: John J Burney III, applicant and owner, is requesting a thirteen foot (13') variance for the property located at 11870 Shaw Highway, Holly Township, NC, which may be identified by Pender County Pin: 3322-93-4021-0000. The applicant is applying for relief from the maximum height requirement within the Pender County Unified Development Ordinance (UDO) §4.14 Zoning District Dimensional Requirements, which states that the maximum height permitted in the RA Rural Agricultural district is thirty-five feet (35').

BACKGROUND AND DESCRIPTION OF VARIANCE:

The subject property is currently 247.61 acres in area and hosts a single family structure located near the center of the parcel. The pheasant tower is located near the eastern quarter quadrant of the tract in question, approximately 2,000 ft from the single family structure located on site. Please see Exhibit 1 (Applicant's site map).

The subject property is bound to the north by three vacant tracts participating in the State of North Carolina's Present Use Value Program. The subject parcel is bounded to the east by a tract housing a manufactured home and to the southeast by a tract housing a single-family residence. The parcels directly to the south and west are two heavily wooded 74.46 acre and 2,007.32 acre tracts owned by the State of North Carolina.

- The Pheasant Shooting Tower, constructed in the Summer of 2012, stands at approximately (48') above ground level, according to the applicant's submitted documents.
- However, the formal process to begin compliance began in April 2013 when the applicant was attempting to obtain a building permit for another structure on-site.
- According to internal staff discussion, it was determined that the tower was originally discovered by Code Enforcement around September of 2012.
- According to submitted documents, representatives of Planning, Building Inspections, Code Enforcement, Permitting and the Flood Plain Administrator convened on November 1, 2012 to discuss the subject tower.
- The applicant obtained a conditioned Special Use Permit (SUP) Case No. 10987 (Exhibit 2) approval on August 19, 2013. The approval was contingent upon an approved Variance stating, "6.Approval for the use and location of the Pheasant Tower shall be contingent upon an approved height variance for said tower." Therefore, the applicant is requesting a 13' thirteen foot variance from the maximum height requirement in the Rural Agricultural (RA) zoning district.

- 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 narrative, the applicant contends that the proposed building height is necessary due safety and the size of the cleared shooting area. The applicant's application stated that, "The birds need to be released at a certain altitude so that the shooters will not be shooting level, whatsoever."

- 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.*

The applicant's application states that, "unnecessary hardship would result from not being able to use the tower, due to it's zoning as a permitted use through the Special Use Permit (SUP) process."

- 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.*

The applicant's application further states, "The requested variance is consistent with the spirit and the intent of the ordinance due to the fact that the property is zoned RA (Rural Agricultural) and a special use permit has been approved by the Pender County Board of Commissioners allowing the shooting preserve due to the fact that Amusements and Recreation Industries are permitted via special use permit in the RA zoning district. Also, in line with the spirit and purpose is that the shooting preserve and property adjoins the Holly Shelter Game Lands, which comprises over 50,000 acres of public hunting land and opportunities."

ZONING ADMINISTRATOR'S CONCLUSION:

John J Burney III, applicant and owner, is requesting a thirteen foot (13') variance for the property located at 11870 Shaw Highway, Holly Township, NC, which may be identified by Pender County 3322-93-4021-0000. The applicant is applying for relief from the maximum height requirement within the Pender County Unified Development Ordinance (UDO) §4.14 Zoning District Dimensional Requirements, which states that the maximum height permitted in the RA Rural Agricultural district is thirty-five feet (35').

RELEVANT UDO PROVISIONS:

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 in Section 3.14.7 of 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.
 - 2) 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.
 - 3) 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. 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.
- 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.

Appendix A

ACCESSORY OR SECONDARY USE: A use of land or of a building or portion thereof customarily associated with and incidental and subordinate to the principal use of the land or building and located on the same lot with such principal use. A secondary use shall be a use not already permitted by right in a zoning district but may be permitted in conjunction with a permitted use. In no instances shall an accessory or secondary use be permitted without the presence of a primary use.

BUILDING: Any structure having a roof supported by columns or walls and intended for the shelter, housing or enclosure of any persons, animals, processes, equipment, goods or materials of any kind.

LOT: A designated parcel, tract or area of land established or to be established by plat or subdivision or previously established as a recorded lot.

1. **LOT AREA:** The total area within the lot lines of a lot.
2. **LOT, CORNER:** A lot abutting two or more streets at their intersection. (See Figure 4.1)
3. **LOT COVERAGE:** The total built upon area, including all non-pervious surface materials.
4. **LOT, INTERIOR:** A lot other than a corner lot. (See Figure 4.1)
5. **LOT LENGTH:** The distance between the front lot line and the rear lot line measured at the maximum distance.
6. **LOT LINE, FRONT:** The front of a lot shall be considered to be that side of the lot which fronts on a street. In the case of a corner lot, either side abutting a street may be considered to be the front, provided the structure to be located on the lot is situated to meet the required front, side and rear yards for the zoning district in which the lot is located. (See Figure 4.1)
7. **LOT LINE, REAR:** The lot line opposite and parallel to the front lot line or within 45° of being parallel to the front lot line. (See Figure 4.1)
8. **LOT LINE, SIDE:** Any lot line other than front or rear lot lines. (See Figure 4.1)
9. **LOT OF RECORD:** A lot for which a plat or survey description has been legally recorded with the Pender County Register of Deeds.
10. **LOT, PIPESTEM:** A residential lot fronting on a public or a private street in which access is provided by a narrow strip of land, referred to as the "pipestem driveway yard," which is less than the minimum required front yard width, and located between adjoining residential lots fronting on the same street.
11. **LOT, THROUGH:** A lot, other than a corner lot, with frontage on more than one street. These lots may also be called "double frontage lots". (See Figure 4.1)
12. **LOT WIDTH:** The horizontal distance between side lot lines measured at the front yard setback line.

SETBACK: The required distance between a building or structure and a lot line.

1. **SETBACK, FRONT YARD:** The required distance between a street right-of-way line and the front line of a building or structure.
2. **SETBACK, REAR YARD:** The required distance between a building or structure and the rear lot line of the lot containing the building or structure.
3. **SETBACK, SIDE YARD:** The required distance between a building or structure and the side lot line of the lot containing the building or structure.

STRUCTURE:

1. Any man-made object having an ascertainable stationary location on or in land or water, whether or not it is affixed to the ground. All buildings are "structures."
2. For floodplain management purposes, a walled and roofed building, including a gas or liquid storage tank, that is principally above ground, as well as a manufactured home. Structure, for insurance rating purposes, means a walled and roofed building, other than a gas or liquid storage tank, which is principally above ground and affixed to a permanent site, as well as a manufactured home on a permanent foundation. For the latter purpose, the term includes a building while in the course of construction, alteration or repair, but does not include building materials or supplies intended for use in such construction, alteration or repair, unless such materials or supplies are within an enclosed building on the premises.

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:** _____

Kane: ____ **Thompson:** ____ **Ferrante:** ____ **Newton:** ____ **Pullen:** ____

Alternates:

Peters: _____