

## PLANNING STAFF REPORT

### Variance

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#### SUMMARY:

**Hearing Date:** December 18, 2013

**Applicant:** Stephanie Todd

**Property Owner:** Robert Holley

**Case Number:** 11073

**Property Location and Description:** The subject property is located at 17990 NC Highway 210, Rocky Point, as referenced on Deed Book 462, Page 002.001 (Exhibit 1), recorded at the Pender County Register of Deeds on September 25, 2009, Map Book 6, Page 84 (Exhibit 2), and may be identified by Pender County 3214-58-9462-0000.

**Zoning District of Property:** The property is zoned RP, Residential Performance District.

**Variance Requested:** Stephanie Todd, applicant, on behalf of Robert Holley, owner, is requesting a variance for the property located at 17990 NC Highway 210 in Rocky Point. The applicant is requesting relief from Section 6.6, Family Division, of the Pender County Unified Development Ordinance, which requires lots created by a Family Division of property to have either direct access to a public street, private street, or a private access easement that is 45 feet in width. Specifically, the applicant is requesting an 18.5 foot variance for a length of 58.9 feet to allow her to record a 45 foot private access easement on the east side of the property, from Highway 210 to Lot "A".

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#### BACKGROUND AND DESCRIPTION OF VARIANCES:

The subject property totals 4.4 acres and hosts two single family residential structures—one located on the southeastern portion of the property and one on the northeastern portion. On the east side of the property, a paved driveway runs from Highway 210 to the northern structure, providing access to both structures on the property (Exhibit 3). The subject property is bound to the east and west by single family structures, cleared land to the north, and Highway 210 on the south.

The applicant currently lives in the northern structure. Her grandfather, Robert Holley, is the owner of the property and lives in the southern structure. Mr. Holley wishes to subdivide the land, deeding Lot "A", a 0.96 acre of land on the northeast corner of the property, to the applicant (Exhibit 3).

The requirements of Section 6.6, Family Division, of the Pender County UDO govern this particular land subdivision. Among other requirements, Section 6.6.2 requires that "the lots created have either direct access to a public street, private street, or a private access easement as defined in this Ordinance" (§ 6.6.2.K). In this case, once the property is subdivided, Lot "A" will not have access to a public or private street. Therefore, a private easement, providing access to a public or private street, is required (§ 6.6.2.I) and that easement must be 45 feet in width with a minimum passable travel way 20 feet wide (§ 6.6.2.L).

The applicant would like to have the required private access easement to Lot "A" recorded on the east side of the property, where the existing paved driveway is located. However, there is not enough room on the east side of the property to record an access easement 45 feet in width all the way from Highway 210 to Lot "A." The

applicant is restricted by the eastern property line and the location of the southern structure, which would encroach into the proposed easement approximately 8.5 feet, for a length of 28.2 feet. Therefore, if an access easement were to be recorded on the east side of the property, a variance would be required.

For the easement to be property recorded, all setback requirements for the RP district must be met. Therefore, in addition to the encroachment of the structure, additional distance must be added to meet the setback requirements. In the RP district, the Pender County UDO requires a side setback of 10 feet (§ 4.14). As such, the total side encroachment would be a total of 18.5 feet (8.5 feet plus the 10 foot side setback).

In her narrative (Exhibit 4), the applicant asserts that she has looked for other ways to provide an access easement to Lot “A,” but that other existing accessory structures on the property prevent her from being able to record a 45 foot easement elsewhere on the property.

Without an access easement, the property may not be subdivided as proposed. Therefore, the applicant is requesting an 18.5 foot variance for a length of 58.9 feet to allow her to record the required access easement on the east side of the property, from Highway 210 to Lot “A”. As proposed, the access easement would be recorded at the required 45-foot width, except for the portion of the easement around the southern structure, where the easement width would be reduced to 26.5 feet.

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**ZONING ADMINISTRATOR’S CONCLUSION:**

Stephanie Todd, applicant, on behalf of Robert Holley, owner, is requesting a variance for the property located at 17990 NC Highway 210 in Rocky Point. The applicant is requesting relief from Section 6.6, Family Division, of the Pender County Development Ordinance, which requires lots created by a Family Division of property to have direct access to a public street, a private street, or a private access easement that is 45 feet in width. Specifically, the applicant is requesting an 18.5 foot variance for a length of 58.9 feet to allow her to record a 45 foot private access easement on the east side of the property, from Highway 210 to Lot “A”.

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**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.
  - 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.

### **3.14.9 Action by the Board of Adjustment**

- A. Each decision shall be accompanied by a finding of fact by the Board of Adjustment which specifies the reasons for the decision.
- B. A decision of the Board of Adjustment to approve a variance or reverse an interpretation requires an affirmative vote by four-fifths of the members present and voting.
- C. The Board of Adjustment may approve the request, deny the request, or continue the request. In approving the variance, the Board of Adjustment may prescribe reasonable and appropriate conditions which will ensure that the use will be compatible with neighboring properties and will not alter the character of the neighborhood.

## **6.6 FAMILY DIVISION**

### **6.6.1 Limitations**

- A. Family subdivisions are permitted on parcels that have been created and recorded in the Registry before March 29, 2004.
- B. A total of three parcels (excluding the remnant parcel, if the remnant parcel meets the requirements of this Ordinance) per qualified resident household will be allowed to be created under the family subdivision provisions.
- C. The division does not create a new public or private street.

### **6.6.2 Requirements**

- A. The plat shall be clearly designated “Family Subdivision” in bold letters,

- B. Grantor and Grantee statement, located in Appendix D, shall appear on the plat and be signed by the Grantor(s) and Grantee(s) prior to approval.
- C. Certification by the Licensed Professional preparing the plat that each lot is adjacent to a natural drainage way or perennial stream or a 20 ft. drainage easement is recorded from each lot toward a natural drainage way or a perennial stream or if the lot or lots front on a NCDOT maintained road, approval from NCDOT for such lots to drain to the public road,
- D. The plat shows any designated Special Flood Hazard Areas located within the subdivision,
- E. The plat shows any designated Areas of Environmental Concern located within the subdivision
- F. An Improvement Authorization Permit from Environmental Health for each lot to be created, a soil suitability analysis for each lot to be created or approval to connect to existing public sewer
- G. The lots, other than those restricted for building development, shown on the plat meet the requirements of this Ordinance.
- H. The lots created have access to an access easement as defined in this Ordinance.
- I. The access easement must provide access to a public street.
- J. Waste water disposal requirements – One of the following must be met:
  - 1) An Improvement Authorization Permit has been issued for each of the parcels,
  - 2) The soil suitability analysis shows that at least 5,000 sq. ft. of each lot is suitable for traditional on site waste disposal and the required 5000 sq. ft. is not within 10 ft of any lot boundary,
  - 3) Approval has been granted to connect to public sewer or community sewer or
  - 4) Lots not meeting the requirements of 1, 2, or 3 are indicated by the following note: “THIS PARCEL CANNOT BE USED FOR BUILDING DEVELOPMENT, UNLESS AN APPROVED WASTE WATER DISPOSAL METHOD HAS BEEN APPROVED AND PERMITTED BY THE PENDER COUNTY ENVIRONMENTAL HEALTH DEPARTMENT OR APPROPRIATE STATE AGENCY OR UNLESS A NEW PLAT IS APPROVED AND RECORDED AS REQUIRED UNDER THIS ORDINANCE.”
    - a) For alternative, see Design Requirements, Lots Section of this Ordinance for “Special Purpose Lots”
- K. The lots created have either direct access to a public street, private street or private access easement as defined in this Ordinance.
- L. A minimum passable travel way 20 feet wide shall be provided within a forty five (45’) foot easement at time of zoning approval.
- M. Clearing and grubbing shall be completed five feet of each edge of the travel way;
- N. Maintenance. Upon determination by the Administrator that such travel way as approved are not passable, the Administrator may, in addition to other remedies, prevent issuance of any further development approvals until such travel ways are in a proper state of maintenance as determined by the Administrator.
- O. The Administrator shall review the subdivision to insure that the development will not block future access to properties that are adjacent to the lots.
- P. The plat contains the following note: “All new access easements shown or designated on this plat, include the transfer of an easement to public entities and public utilities for the purpose of installation and maintenance of water, sewer, electric and communication lines.”
- Q. The plat must contain the following note: “All new access easements shown or designated on this plat include the transfer of an easement to Pender County, its employees and agents for access for emergency personnel (police, fire & rescue) and Pender County and its employees for administration of all Pender County Ordinances.”

**Appendix A:**

**ACCESS EASEMENT:** An easement that is at least forty five (45') feet wide and is recorded by map or other instrument in the Registry that specifically transfers rights to the adjacent property owners or specific property owners and their assigns, invitees, licensors and permittees for ingress, egress and utilities and for the construction and maintenance of ingress, egress and utility facilities. An access easement by designation on a recorded plat also transfers the right to construct and maintain water, sewer, electric and communication lines within the easement by any public entity or public utility.

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**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:** \_\_\_\_\_ **Newton:** \_\_\_\_\_ **Thompson:** \_\_\_\_\_

**Alternates:**

**Peters:** \_\_\_\_\_