

PLANNING STAFF REPORT
Variance

SUMMARY:

Hearing Date: May 7, 2014
Applicant: Rocky Point Development Group, LLC
Property Owner: TCB Rocky Point, LLC
Case Number: 11170

Property Location and Description: The subject property is located approximately 460' west of the intersection of US Highway 117 and Porters Lane Road in Rocky Point, and may be identified by Pender County PIN: 3235-63-9839-0000.

Zoning District of Property: The property is zoned GB, General Business District.

Variance Requested: Rocky Point Development Group, LLC applicant, on behalf of TCB Rocky Point, LLC, owner, is requesting a variance for the property located approximately 460' west of the intersection of US Highway 117 and Porters Lane Road in Rocky Point. The applicant is requesting relief from Section 7.4.4 Cross Access Corridors, of the Pender County Development Ordinance, which is a service drive between two or more contiguous sites providing direct access to properties and limiting travel on the public street system. Specifically, the applicant is requesting a variance to waive the requirement that their development install a cross access corridor linking to either of the two adjacent eastern commercial parcels. The subject property is zoned GB, General Business District and may be identified by Pender County PIN: 3235-63-9839-0000.

BACKGROUND AND DESCRIPTION OF VARIANCE:

The subject property totals 3.58 acres and is currently vacant. The subject parcel B1-R2 (Exhibit 4) is bound to the east by two vacant and commercially zoned tracks in common ownership, to the west by a Church, and the southern boundary is bound by a commercially zoned parcel being utilized for stormwater management. The properties to the north include a number of residential and commercial properties, including the Rocky Point Volunteer Fire Department.

Cross Access Corridor: A service drive between two or more contiguous sites providing direct access to properties and limiting travel on the public street system.

As detailed on (Exhibit 3), the subject parcel has an ongoing development proposal for a 19,097 sq. ft Tractor Supply Store with 15,000 sq. ft of outdoor display area. In referencing (Exhibit 4), Family Dollar is currently being developed on Tract B2-R2 of the two adjacent eastern parcels. A formal application has not been submitted for the northern tract, Tract A-R2.

The applicant is requesting a variance to waive the requirement that their development install a cross access corridor linking to either of the two adjacent eastern commercial parcels, specifically, Section 7.4.4 Cross Access Corridors, of the Pender County Development Ordinance. As required, the cross access corridor is required to be 20' in width and provide ingress and egress between adjacent commercial developments. To date, the applicant will have three access points including two driveways onto Porters Lane Road and one cross access connection along the southern boundary which will connect to Food Lion and Arlington Lane.

In lieu of the cross access connection, the applicant has proposed constructing a 5' wide pedestrian pathway to connect the Tractor Supply Company parcel to the adjacent eastern properties. The applicant has addressed the four Variance criteria within their narrative, attached.

ZONING ADMINISTRATOR'S CONCLUSION:

Staff's review of the applicant's proposal has determined that any pedestrian walkway should reasonably connect pedestrians to equivalent pedestrian routes on adjacent sites. The circulation should be unified and not reach a terminus at a point where a pedestrian may be unsafe or unable to safely traverse the terrain.

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.

7.4.4 Cross Access Corridors

A. Definition

- 1) Cross access corridors are driveways constructed between adjoining properties to provide an alternative passageway to access adjoining developments without entering and exiting the roadway. These cross access corridors are intended to link parking areas on adjoining developments

B. Applicability

- 1) Cross access corridors shall be required for all nonresidential adjacent properties.
- 2) Cross access corridors are encouraged for all other developments.
- 3) The administrator may modify or waive these requirements of this Section if it can be proven that strict compliance would be impractical due to unique site conditions such as environmental concerns, safety concerns, extreme slope, or similar characteristics.

C. Requirements

- 1) Cross access corridors shall be designed to provide unified circulation and access between sites
- 2) The minimum width for a cross access corridor is 20 feet to accommodate two way travel.
- 3) Cross access corridors must be set at least 20 feet from any paved public roadway.

- 4) If a site is developed adjoining to an undeveloped parcel, it shall be designed so that its parking, access, and circulation are easily tied together to create a unified system at a later date. If the building site abuts an existing developed property, it shall tie into the abutting parking, access, and circulation to create a unified system when possible. This shall be accomplished by requiring the applicant to:
- a) Construct a cross access future connection to the property line to allow for future connection or dedicate an easement of sufficient width to accommodate a future cross access corridor.

D. Maintenance and Operation

- 1) Where a cross access is developed, the owners/developers of the affected properties shall provide for mutually coordinated parking, access, and circulation systems, and shall provide design features as necessary to make it visually obvious that abutting properties shall be tied together for create a unified system.
- 2) In order to maintain a clear passage for emergency and non-emergency travel, no parking shall be allowed in a cross access corridor.

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.

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 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: Walton** _____

Peters: _____ **Godridge** _____