PLANNING STAFF REPORT
Variance Request

SUMMARY:

Hearing Date: July 16, 2014
Applicant: Loretta Pierce
Property Owner: Same
Case Number: 11201 Pierce

Property Location and Description: The subject property, Tract 2, Map Book 46, Page 102, (Exhibit 1) is located at 6079 Bell Williams Road (SR1121) in Currie, NC. There is one (1) tract associated with this request totaling ± 5.004 acres and the property may be identified by Pender County PIN 2276-17-6035-0000.

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

Variance Requested: Loretta Pierce, applicant and owner, is requesting a Variance to allow the subdivision of a previously recorded lot pursuant to Section 6.6.1 A – B of the Pender County Unified Development Ordinance.

BACKGROUND AND DESCRIPTION OF VARIANCE:

On January 23, 2008 a Three Lot Division on a NCDOT Road was recorded in the Pender County Resister of Deeds (Map Book 46, Page 102) for L. Thomas Garner, Jr. and Catherine S. Garner; creating the subject property, Tract #2 (Exhibit #1). The map was subsequently revised for the expansion of the off-site nitrification field, Map Book 47, Page 028 (Exhibit #2).

Fred Jones of F.W. Jones Surveying submitted a Family Division to Pender County Planning and Community Development on April 28, 2014 via email. The initial submittal was for the further subdivision of Tract A creating a 1.407 acre tract as well as a 45 foot access easement (Exhibit #3). Staff determined that due to the creation of Tract 2 in Map Book 46, Page 102 on January 23, 2008, the applicant is not eligible to use the Family Division as described in the Pender County Unified Development Ordinance, Section 6.6 Family Division. The UDO specifies that all Family Division meet the required limitations as outlined in Section 6.6.1.

<u>6.6 Family Divisions</u>

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.

Staff contacted Mr. Jones on April 29, 2014 (Exhibit #4) to review the other options of subdivision that the subject property qualified for.

A complete Minor Subdivision Application was submitted on May 15, 2014. The minor division was reviewed by staff; however the submittal did not meet the requirements of 6.4 and 6.5 of the Pender County UDO (Exhibit 5). Specifically the proposed access easement did not meet the requirements outlined in Section 7.5 Street Design, specifically 7.5.3.A "All designated private streets shall be designed and constructed in compliance with the current NCDOT Subdivision Roads Minimum Construction Standards."

Four staff members met with Mr. Jones and/or the Pierces' on six (6) different occasions to discuss options of subdivisions to facility the property owners' desire to subdivide the property; as well as the different variance options.

In summary, due to the creation of Tract 2 on January 23, 2008 the applicant is not eligible to use the Family Division described in the Pender County Unified Development Ordinance, Section 6.6 Family Divisions. The UDO specifies that all Family Division must meet the required limitations as outlined in Section 6.6.1. Tract 2 was created on January 23, 2008, therefore created after the March 29, 2004 date. The applicant is applying for a variance to offer relief from the prescribed date (Exhibit 6).

ZONING ADMINISTRATOR'S CONCLUSION:
Loretta Pierce applicant and owner, is requesting a Variance to allow the subdivision of a previously recorded lot pursuant to Section 6.6.1 A – B of the Pender County Unified Development Ordinance.

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.

4.7 Residential Zoning District

4.7.1 RA: Rural Agricultural

The Rural Agricultural District is intended to accommodate non-residential agricultural uses and very low density residential development (minimum of 1 du/ac), as well as limited non-residential uses, in rural areas adjacent to agricultural operations. Development in this District should rely predominantly on individual wells and septic tank systems for domestic water supply and sewage disposal.

4.14 Zoning District Dimensional Requirements

Dimensional Requirements Table

Dimensional Standards (9)	RA	RP	RM	MH	GB	OI	IT	GI	PD	EC
Lot Size	1 Acre(8)	15,000(5) Sq. Ft.	(1)	(7)	15,000 Sq. Ft.(8)	15,000 Sq. Ft.	1 Acre	1 Acre	(1)	1 Acre
Lot Size Duplex	60,000 Sq. Ft.	22,000 Sq. Ft.	(1)						(1)	
Min. Area Rezoning(3)	NA	5 Acres	10 Acres	5 Acres	1 Acre	1 Acre	5 Acres	5 Acres	100 acres	NA
Min. Lot Width-Ft	100(8)	80(6)	(1)	(7)	80(8)	80	100	100	(1)	100
Min. Chord Length at ROW line for "cul de sac's"	45	30	(1)	20	30	30	45	45	(1)	45
Min. Front Yd.-Ft.	30(8)	30	(1)	(7)	25(8)	25	40	50	(1)	50
Min. Side Yard-Ft	15(8)	10	(1)	(7)	10(8)	10	25	25	(1)	25
Min. Rear Yard-Ft	30(8)	25	(1)	(7)	10(8)	10	25	25	(1)	25
Max. Height-Ft	35(2)	35(2)	45	35	40	40	50	50	(1)	40
Min. Req. Structure Separation	40(8)	30	(1)		50(8)	50	50	100	(1)	30

5.3.2 Residential Uses

A. Residential Principal Structure

1) In any residential district, up to three residential structures are permitted, on a single lot provided a plat drawn to scale by a licensed registered surveyor is submitted showing that all yards and other requirements of this Ordinance have been met for each structure.

6.6 FAMILY DIVISION

6.6.1 Limitations

B. Family subdivisions are permitted on parcels that have been created and recorded in the Registry before March 29, 2004.

C. 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.

D. 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:

   A. An Improvement Authorization Permit has been issued for each of the parcels,

   B. 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,

   C. Approval has been granted to connect to public sewer or community sewer or

   D. 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 APPROPRATE 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."

7.5 STREET DESIGN

7.5.1 Public and Private Street Design

A. Layout of streets as to arrangement, width, grade, character, and location shall conform to the following:
   A. Coastal Pender Collector Street Plan, Pender County Transportation Plan or other approved State of Federal Transportation Improvement Plan.
   B. adjoining street systems,
   C. existing, planned and proposed streets, topographic, drainage and other natural features of the property,
   D. to provide for continuity in existing streets and proposed streets,
   E. provide adequate right-of-way for collector streets,
   F. reasonable access will be provided to adjacent properties for development.

B. Spite strips along development boundaries preventing access to streets from adjacent properties are prohibited.

C. Street Alignment – local residential street intersections should be directly aligned if possible.

D. When such intersections cannot be aligned, they shall be offset centerline to centerline by not less than 125 ft. Intersections of Collector streets as defined herein or shown on the Coastal Pender Collector Street Plan, Pender County Transportation Plan or other approved State Transportation Improvement Plan.

E. Streets should intersect as nearly as possible at right angles.

F. Permanent dead end streets (cul-de-sacs) or temporary dead end (stub) streets shall be no longer than 1,000 ft. unless it is demonstrated by the developer that the configuration of the property prevents its development without longer streets to provide access to the lots and common area to be subdivided. Temporary dead end or stub streets shall provide turn around capabilities to meet NCDOT requirements. The Cul-de-sac end shall be a bulb type with minimum radii as follows: Curb & Gutter Section: RW = 45’, Pavement = 37’ to gutter edge, Shoulder Section: RW =50’, Pavement = 35’.

G. Applicants for subdivision approval shall obtain approval for street names from the Pender County Addressing Coordinator. A copy of the approved preliminary plat with approved street names must be submitted to the Administrator within 30 days of approval of the preliminary plat and prior to final plat submission.

H. Sight triangles as required in the NCDOT Secondary Roads Standards shall be provided at all street intersections.

7.5.2 Public Streets

All designated public streets shall be designed and constructed in compliance with the current NCDOT Subdivision Roads Minimum Construction Standards.

7.5.3 Private Streets

I. All designated private streets shall be designed and constructed in compliance with the current NCDOT Subdivision Roads Minimum Construction Standards. However, variations to right-of-way widths and geometric design may be permitted upon Planning Board review and approval where certain features such as topography, environmental features, low impact development design or unique needs of a development exist at the Master Development Plan approval.

J. Developments with private streets shall make provisions for immediate access for Pender County Emergency Service (Law Enforcement, Fire & Rescue) vehicles and employees to the development and shall provide for an easement for such services and an easement shall be provided to Pender County and its employees for administration of Pender County Ordinances.

K. Subdivisions with private streets will be subject to requirements to construct public collector streets under any of the following conditions:
   A. When the subdivision contains streets that have any dimension of more than 5280 ft.,
   B. When any street in the subdivision has the potential to serve more than 200 residential or commercial units,

C. When access to any lot or unit in the subdivision is more than 5280 ft. by a private street to a public street,

D. When existing public streets have been dedicated or constructed to the property line of the subdivision,

E. When access to adjacent properties will be hindered as a result of private streets being allowed in the subdivision.

L. All subdivisions that have any private streets must meet the minimum qualifying requirements contained in the Required Improvements section of this Ordinance.

M. All subdivisions proposing new construction of streets must provide a Certificate of Disclosure: Private Roads found in Appendix D

Appendix A

ACCESS: A way or means of vehicular or pedestrian approach to provide physical entrance to a property.

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 permitters 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.

ALL WEATHERED ROAD: An unpaved road that is constructed of a material that does not create mud, or sedimentation runoff during rainfall, which allows emergency and typical passenger vehicles to pass at all times.

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.
3. **LOT COVERAGE:** The total built upon area, including all non-pervious surface materials.
4. **LOT LENGTH:** The distance between the front lot line and the rear lot line measured at the maximum distance.
5. **LOT LINE, FRONT:** The line separating a lot from a street right-of-way.
6. **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.
7. **LOT LINE, SIDE:** Any lot line other than front or rear lot lines.
8. **LOT OF RECORD:** A lot for which a plat or survey description has been legally recorded with the Pender County Register of Deeds.
9. **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.
10. **LOT WIDTH:** The horizontal distance between side lot lines measured at the front yard setback line.

PARCEL: A lot or tract of land.

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.

Board of Adjustment: Finding of Facts

1. It is the Board's CONCLUSION that the hardship of which the applicant complains **(results/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 (**results/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 **(results/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 **(consistent/ 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 all of the FINDINGS OF FACT:

Board Action:

Motion:_____Seconded:_____

Approved:_____Denied:_____Unanimous:_____

Ferrante: _____ Pullen: _____ Newton: _____Thompson:_____ Walton:_____

Alternates:
Godridge:_____ Peters: _____