

Pender County Planning and Community Development

Planning Division

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MINUTES

Pender County Board of Adjustment Meeting July 16, 2014 9:00 a.m. Pender County Public Meeting Room 805 S. Walker Street, Burgaw, North Carolina

Call to Order: Chairman Pullen called the meeting to order at 9:15 a.m.
Due to the absence of Chairman Ferrante, Vice-Chairman Pullen acted as Chairman

Invocation: Administered by Chairman Pullen.

Roll Call: Chairman Pullen
Pender County Board of Adjustment Members:
Ferrante: Pullen: Newton: Thompson: Walton:

Alternates:
Godridge: Peters:
Alternate member Godridge served as a full Board member

- 1. Adoption of the Agenda:** Motion to adopt the agenda was made by Board member Thompson; seconded by Board member Godridge. Vote unanimously approved.
- 2. Adoption of the Minutes: May 7, 2014:** Motion to adopt the minutes was made by Board member Godridge; seconded by Board member Thompson. Vote unanimously passed.
- 3. Public Comment:** None

Director Breuer reminded the Board that with a four member Board all members would have to vote in favor of the request Variance in order for it to be approved; Chairman Pullen asked if the applicant was aware of the requirement and if they wished to move forward or table the hearing; Senior Planner Frank stated that the applicant was aware and wished to proceed with the hearing.

** Public Hearings Opened**
Chairman Pullen swore in witnesses who wished to speak during the Hearing.

- 4. Variance:**
Loretta Pierce applicant and owner, is requesting a variance to allow the subdivision of a previously recorded lot pursuant to § 6.6.1 A – B of the Pender County Unified Development Ordinance; specifically all Family Divisions must meet the required limitations as outlined in Section 6.6.1. The subject property, Tract 2, is zoned RA, Rural Agricultural District and 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 may be identified by Pender County PIN 2276-17-6035-0000. Ashley Frank, Senior Planner, presented and gave back ground information for agenda item 4. Chairman Pullen asked if the applicant wrote the narrative; Ms. Frank answered yes. Board member Thompson asked if the road had to be constructed to NCDOT standards; Ms. Frank answered that at this time Pender County has

five different subdivision types, three of those are considered Limited Subdivisions which are; Three Lots on a NCDOT road, Three Lots on an Access Easement, and Family Division; which all have separate requirements that must be met to be considered a Limited Subdivision, one requirement that all three share is the date that the parcel was created cannot be later than March 29, 2004; if the creation of the lot occurs after the stated date the other subdivision options are Minor Subdivision (less than 10 lots) or Major Division (more than 10 lots), both of these types of divisions require that road construction meet or exceed NCDOT minimum standards. Chairman Pullen asked for clarification; that it was the dates and road types that were the reason for the request; Ms. Frank answered that staff had met with the applicant and survey to suggest other options and the applicant choice the option to request relief from the date requirement. Ms. Frank explained that if the 2004 date was not in the Ordinance, staff could have pursued either an Access Easement, Limited Subdivision or a Family Subdivision; due to the lot being created in 2008, the requirements for those options could not be met. Board member Newton asked who did the original survey in 2004; Ms. Frank answered that it was 2008 and the surveyor that signed the map was Fred Jones; Board member Newton stated that in the Variance request it stated that the original survey was performed in May 2004 for Mr. L. Thomas Garner, who performed that survey; Ms. Frank answered that staff did not have any records of that survey, the only record they found was from 2008. Chairman Pullen stated that if there were no other questions for staff at this time the Board would hear from the applicant. Loretta Pierce, applicant and owner, explained that she purchased the property without knowing anything about the restrictions, nor did the previous owner have any knowledge of the restrictions; that she has worked on the property since it was purchased, preparing it for a home, a ditch, septic and well system have been put in on the property for the purpose of a modular home, that it is just unaffordable to build a road to meet the NCDOT's requirements. Chairman Pullen asked to hear from anyone who had signed up to speak. Clara Hansley, 6076 Bell-Williams Rd. Currie, stated that she would like to comment that Mrs. Pierce and her husband were really nice people, that they have built a nice solid road, she was in favor of the requested Variance and hoped that they would be their neighbors. Fred Jones, Surveyor, commented that the applicant was only trying to set up a modular home to live in and due to the strict regulations of the Ordinance it was financially out of their range, that several options were looked at, but the only feasible options was to request a Variance. Ivy Simpson, 6051 Bell-Williams Rd. Currie, stated that he was an adjoining property owner and during the whole time the Pierces have been working on the property there have been no problems, that he worked thirty miles away and would not have come to the meeting to speak on their behalf if they had been unwelcomed neighbors, that he was in favor of the Variance and hoped the Board would approve it so that the Pierces could place a home on the property they had worked so hard on. Mr. Jones commented that in 2012 the Board did grant a Variance in a similar case; Chairman Pullen asked if staff had the facts of that approval. Attorney Thurman advised that Board that all cases should be treated on their own merits, that the Board can certainly base their ruling on any facts they choose, but they are not bound by previous rulings. Ms. Frank provided the facts of the previous case to the Board. Chairman Pullen stated that if there were no further questions or comments, he would open the floor for the Board's discussion. Board member Godridge asked if everything would be permissible if the date requirement didn't exist; Ms. Frank answered yes and explained that the date existed because it was when the original Subdivision Ordinance of Pender County was adopted.

Board of Adjustment: Finding of Facts

1. It is the Board's CONCLUSION that the hardship of which the applicant complains **does 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: The property **was original subdivide in January of 2008; the further subdivision of the property would require the construction of a road designed and built to NC DOT Minimum Construction Standards. The applicant**

constructed a driveway based on the approved Special Use Permit issued in 2008; the driveway will be used/recorded as the access easement.

2. It is the Board's CONCLUSION that the hardship **does 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: **The existing driveway was constructed prior to the subdivision of the property; the conditions would not warrant the construction of a road to NC DOT Minimum Construction Standards.**
3. It is the Board's CONCLUSION that 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. This conclusion is based on the following FINDINGS OF FACT: **The previous property owners and current property owners were not aware of the regulation restricting the property to one Limited Subdivision on a tract of land. The property owners did not know road construction would required to further subdivide the property.**
4. It is the Board's CONCLUSION that 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. This conclusion is based on the following FINDINGS OF FACT: **The intent of the ordinance is being met, as a limited subdivision is permissible on assess easement.**

THEREFORE, on the basis of all the foregoing, IT IS ORDERED that the application for a VARIANCE be GRANTED. Motion to approve the requested Variance as presented was made by Board member Newton, seconded by Board member Godridge. The vote was unanimous.

5. Discussion Items:

a. Planning Staff:

- i. Director Breuer introduced Andy Christy, the new Planner I, to the Board and commented that Mr. Christy came from the Concord area and that staff was happy to have him. The Board welcomed Mr. Christy.
- ii. Limited Subdivisions: Ashley Frank, Senior Planner, commented that staff prepared a memo based of the information requested by the Board at the February 19, 2014 meeting regarding Limited Subdivisions. Ms. Frank commented that there was a typo, that there were only three attachments not four and gave a detailed over view of the provided memo. Ms. Frank explained that the definition for subdivision was taken from the NC General Statute; Board member Thompson commented that a fifth requirement needed to be added regarding heir property; Ms. Frank replied that court ordered property is an exemption in itself. Following Ms. Frank's explanation of the memo; it was the Board's request to continue the discussion item until the next meeting, so that the Board may have time to review the information.

b. BOA Members: None

6. Next meeting: August 20, 2014

7. Adjournment: Meeting adjourned at 10:00 a.m.