

PLANNING STAFF REPORT

Variance Request

SUMMARY:

Hearing Date: August 20, 2014

Applicant: J.C. Hearne, II Attorney

Property Owner: Hampstead Community Building, Inc. (Hampstead Womens Club, Incorporated)

Case Number: 11213

Property Location and Description: The subject property is located at 14335 US HWY 17 in Hampstead, NC. There is one (1) tract associated with this request totaling \pm 2.01 acres. The property may be identified by Pender County PIN 3282-86-0228-0000.

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

Variance Requested: J.C. Hearne, II, applicant, on behalf of Hampstead Community Building Inc., owner, is requesting four separate variances for the property located at 14335 US HWY 17 in Hampstead.

- Variance 1: a six foot, six inch variance from the ten foot requirement between existing accessory structure “1” and existing principle structure;
- Variance 2: a one foot variance from the ten foot requirement between existing principle structure and accessory structure “2”;
- Variance 3: a five foot variance from the ten foot requirement between existing accessory structure “2” and accessory structure “3”;
- Variance 4: a three foot variance from the ten foot requirement between existing accessory structure “3” and “Accessory Structure “4”.

These variances are for relief from the requirement of *Pender County Unified Development Ordinance Section 5.3.3.A*. Specifically, the applicant is requesting a variance from the required ten (10) foot building separation and setback requirements as outlined in the *Pender County UDO 5.3.3.A* for accessory buildings of 50-599 square feet in area.

BACKGROUND AND DESCRIPTION OF VARIANCE:

The subject property is currently 2.01 acres and hosts the Hampstead Community Building, Inc. The property contains five (5) accessory structures on the northern corner.

On Wednesday, March 5th, 2014, two complaints were received by the Pender County Code Enforcement Officer. The first complaint concerned the placement of a trailer on the subject property. The second complaint concerned the placement of storage buildings, or accessory structures, on the subject property, and whether they conform to ordinance standards (Exhibit 1- Complaint Investigation Report).

On Monday, March 10, 2014 the Pender County Code Enforcement Officer conducted a site visit and measured all accessory structures, separation, and setbacks. All structures meet setbacks as required by *Pender County Unified Development Ordinance Section 5.3.3.A*.

5.3.3 Accessory Uses and Structures

A. Accessory Building Setbacks and Separation Requirements

1) Accessory Buildings 50-599 Square Feet In Area:

- a) Setback of ten (10) feet from all property lines, access easements, and any other structures located on the property.

2) Accessory Buildings 600-1,199 Square Feet In Area:

- a) Setbacks shall adhere to zoning district requirements and separation must be ten (10) feet from any other structure and access easements located on the property.
- 3) Accessory Buildings 1,200 Square Feet in Area or Greater:
 - a) Same setback and separation requirements as principal buildings per zoning district regulations

Four accessory structures do not meet the minimum ten (10) foot separation requirement of *Pender County Unified Development Ordinance Section 5.3.3.A*. (Exhibit 2- Applicant Map). The Code Enforcement Officer was advised by the store manager within the Hampstead Community Building, Inc. that the trailer would be removed from the subject property within the week (Exhibit 3- Photos).

On Friday, March 14, 2014, the Pender County Code Enforcement Officer contacted Ms. Patricia Truscello, President of Hampstead Womens Club, Incorporated (Hampstead Community Building, Inc.). The Code Enforcement Officer advised Ms. Truscello that the site visit on March 10, 2014 was to determine if any code violations existed on the property. An application to begin the permitting process was given to Ms. Truscello.

A first Notice of Violation was sent to Hampstead Womens Club, 14435 US HWY 17, Hampstead, NC 28443 on March 27, 2014 (Exhibit 4- First NOV).

Pender County Code Enforcement Officer observed that the trailer in violation had been removed from the property as of April 16, 2014. A second Notice of Violation was sent to Hampstead Womens Club, 14435 US HWY 17, Hampstead, NC 28443 on April 28, 2014 (Exhibit 5- Second NOV), as there had been no action to permit the accessory structures on site. The Pender County Planning Department requested a conference call on May 5, 2014 with J.C. Hearne, II Attorney to discuss a potential variance for the accessory structures. On July 1, 2014, a stay was enforced by the Pender County Code Enforcement Officer as a completed variance application had been received for the property.

ZONING ADMINISTRATOR'S CONCLUSION:

J.C. Hearne, II, applicant, on behalf of Hampstead Community Building, Inc., owner, is requesting four (4) separate variances for relief from the requirement of *Pender County Unified Development Ordinance Section 5.3.3.A*. Specifically, the applicant is requesting a variance from the required ten (10) foot building separation and setback requirements as outlined in the *Pender County UDO 5.3.3.A* for accessory buildings of 50-599 square feet in area. The subject property is located at 14335 US HWY 17 in Hampstead, NC, and is zoned GB, General Business District, and may be identified by Pender County PIN 3282-86-0228-0000.

- Variance 1: a six foot, six inch variance from the ten foot requirement between existing accessory structure "1" and existing principle structure;
- Variance 2: a one foot variance from the ten foot requirement between existing principle structure and accessory structure "2";
- Variance 3: a five foot variance from the ten foot requirement between existing accessory structure "2" and accessory structure "3";
- Variance 4: a three foot variance from the ten foot requirement between existing accessory structure "3" and accessory structure "4".

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 elsewhere in 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.

5.3.3 Accessory Uses and Structures

- B. Accessory Building Setbacks and Separation Requirements
 - 1) Accessory Buildings 50-599 Square Feet In Area:
 - b) Setback of ten (10) feet from all property lines, access easements, and any other structures located on the property.
 - 2) Accessory Buildings 600-1,199 Square Feet In Area:
 - a) Setbacks shall adhere to zoning district requirements and separation must be ten (10) feet from any other structure and access easements located on the property.
 - 3) Accessory Buildings 1,200 Square Feet in Area or Greater:
 - a) Same setback and separation requirements as principal buildings per zoning district regulations

Appendix A

ACCESSORY STRUCTURE (Appurtenant Structure): a structure located on the same parcel of property as the principal structure and the use of which is incidental to the use of the principal structure. Garages, carports and storage sheds are common urban accessory structures. Pole barns, hay sheds and the like qualify as accessory structures on farms, and may or may not be located on the same parcel as the farm dwelling or shop building.

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:** _____