

**PLANNING STAFF REPORT**  
**Variance Request**

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**SUMMARY:**

**Hearing Date:** October 15, 2014  
**Applicant:** Thomas Smith  
**Property Owner:** Darrell Register  
**Case Number:** 10269

**Property Location and Description:** The subject property, Lot 24 of Mallard Bay Subdivision, is located on the south side of Mallard Bay Road (SR 1566) in Hampstead, as referenced in Map Book 10 Page 62 (Exhibit 1), recorded at the Pender County Register of Deeds on May 22, 1969 and may be identified by Pender County 4213-35-2444-0000.

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

**Variance Requested** Thomas Smith, applicant, on behalf of Darrell Register, owner, is requesting a five foot (5') variance from the required ten foot (10') side yard setback from the northeast and southwest property lines as prescribed in the Pender County Unified Development Ordinance, Section 4.14, Zoning District Dimensional Requirements.

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**BACKGROUND AND DESCRIPTION OF VARIANCE:**

The applicant would like to construct a single family home on Lot 24 of Mallard Bay Subdivision. The subject property was subdivided in 1969 prior to the adoption of zoning within Pender County, as shown on Map Book 10, Page 62 (Exhibit 1). The property is ±0.34 acres (14,810 ft<sup>2</sup>) and is zoned RP, Residential Performance District. The current provision for the RP District of the Pender County UDO requires the following:

Dimensional Standards	RP
Lot Size	15,000 ft <sup>2</sup>
Lot Size Duplex	22,000 ft <sup>2</sup>
Min. Lot Width-Ft	80
Min. Chord Length at ROW line for "cul de sac's"	30
Min. Front Yd.-Ft.	30
Min. Side Yard-Ft	10
Min. Corner Yard Ft (10)	15
Min. Rear Yard-Ft	25
Max. Height-Ft	35
Min. Req. Structure Separation	30

According to § 10.2.1 of the Pender County Unified Development Ordinance (UDO); Lot 24 of Mallard Bay Subdivision is a non-conforming single lot of record as the lot was created prior to the adoption of zoning in Pender County and does not meet the minimum lot width of 80 feet for the RP, Residential Performance District or the required minimum lot size of 15,000ft<sup>2</sup>. § 10.2.2.A.1 of the UDO, specifically addresses:

a single lot that is nonconforming as to area or width requirements may be built upon if compliance is achieved with regard to all other Ordinance requirements.

As stated in the applicant's narrative (Exhibit 2), the proposed building envelope is unable to meet the Ordinance requirement of ten feet (10') for the side yard setback for both the left and right yards. The applicant proposal (Exhibit 3) illustrates a building envelope of 40' by 140'. This dimension would require a 5 foot variance from the required 10 foot side yard setback in the RP, Residential Performance district as prescribed by the Pender County Unified Development Ordinance, Zoning District Dimensional Requirements § 4.14.

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**ZONING ADMINISTRATOR'S CONCLUSION:**

Thomas Smith, applicant, on behalf of Darrell Register, owner, is requesting a five foot (5') variance from the required ten foot (10') side yard setback from the northeast and southwest property lines as prescribed in the Pender County Unified Development Ordinance, Section 4.14, Zoning District Dimensional Requirements. .

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**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.

**4.6.10 Permitted Obstruction in Required Yards**

In all districts, the following shall not be considered obstructions when located within a required yard, except that these items shall not be located within any required clear site triangle.

- A. In any Required Yard:
  - 1. Sidewalks, uncovered steps and handicapped access ramps.
  - 2. Off street parking facilities may be located in the required front yard. Off-street parking and loading facilities may not be located in a required buffer.
  - 3. Plantings and vegetation, arbors and trellises, open terraces, including natural plant landscaping.
  - 4. Awnings or canopies projecting up to six (6') feet from a building wall, provided that the awning has no supports other than provided by the wall or its integral part.
  - 5. Cornices, eaves, and awnings may extend up to five (5') feet into any required yard, but shall remain at least two (2') feet from the property line, except on zero lot line homes.

6. Bay windows, entrances, balconies, and similar features that are less than ten (10') feet wide may extend up to one and one-half (1 ½') foot into any required yard, but shall remain at least six (6') feet from the property line.
  7. Chimneys projecting not more than three (3') feet into the required yard.
  8. Fire escapes or staircases may project no more than eight (8') feet into the required yard.
  9. Directional signs may be installed in conformance with the Article 10, Signs.
  10. Driveways.
  11. Flagpoles having only one structural ground member.
  12. Mailboxes.
  13. Project boundary buffers and street buffers.
  14. Fountains, sculpture or other similar objects of art.
  15. Street furniture such as, but not limited to benches, drinking fountains, and light standards.
  16. Retaining walls or bulkhead no more than six (6') feet in height.
  17. Security gates and guard stations.
  18. When screened from adjacent residential dwellings, at-grade patios, decks or uncovered terraces may extend up to eight (8') feet into any required front yard.
- B. In any Required Side or Rear Yard:
1. When screened from adjacent residential dwellings, at-grade patios, decks or uncovered terraces may extend up to four (4') feet into any required side yard, or within ten (10) feet of a rear property line.
  2. Recreational equipment, such as play houses, swings, etc.
  3. Off street parking and loading facilities may be located in the required side or rear yard. Off-street parking and loading facilities may not be located in a required buffer.

#### **4.7.2 RP: Residential Performance**

The Residential Performance District is intended to allow a variety of residential uses and densities and also limited commercial activities as well as agritourism. Existing or new agricultural and farm uses shall be allowed on undeveloped land prior to development.

- A. Residential Performance District (RP) shall meet the following general standards:
- 1) Buildings on the periphery of a Residential Performance Development shall be setback no less than twenty (20') feet from the adjoining property line. Additional buffers may be required based on the adjacent land use. See buffer chart in Section 8.2.6.
  - 2) All undivided areas within the development (other than street rights-of-way, parking, and structures) shall be designated as open space as defined in Appendix A Definitions and Article 8. Such open space shall be offered to the public or encumbered for the perpetual benefit of the residents.
  - 3) Private streets will be permitted in Performance Residential Developments; however, dedication of public streets and utility easements shall be required if such are indicated on the official plans as adopted by Pender County or any municipality if it is determined by the County Planning Board.
  - 4) When a development proposal is submitted under this Article, it shall be processed as a Master Plan.
  - 5) Projects proposing less than ten (10) lots shall be submitted as one phase and must be contiguous when submitted for final plat.
  - 6) A homeowners association shall be established and kept continuously active, for the maintenance of open and private spaces and stormwater runoff, along with any private water, sewer or roads, when warranted.
  - 7) All requirements of Article 9 Flood Damage Prevention must be met.
  - 8) Any land designated as usable open space shall be used in calculating the density for a proposed development.
  - 9) Buffer strips shall be required and maintained by the Homeowner's Association.
  - 10) All preliminary plans shall provide the approximate delineation of Corps of Engineers Section 404 and Section 10 Wetlands.

**4.14 Zoning District Dimensional Requirements**  
Dimensional Requirements Table

Dimensional Standards <sup>(9)</sup>	RA	RP	RM	MH	GB	OI	IT	GI	PD	EC
Lot Size	1 Acre <sup>(8)</sup>	15,000 <sup>(5)</sup> Sq. Ft.	(1)	(7)	15,000 Sq. Ft. <sup>(8)</sup>	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 <sup>(8)</sup>	80 <sup>(6)</sup>	(1)	(7)	80 <sup>(8)</sup>	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 <sup>(8)</sup>	30	(1)	(7)	25 <sup>(8)</sup>	25	40	50	(1)	50
Min. Side Yard-Ft	15 <sup>(8)</sup>	10	(1)	(7)	10 <sup>(8)</sup>	10	25	25	(1)	25
Min. Corner Yard Ft (10)	15	15	(1)	(7)	12	12	20	25	(1)	25
Min. Rear Yard-Ft	30 <sup>(8)</sup>	25	(1)	(7)	10 <sup>(8)</sup>	10	25	25	(1)	25
Max. Height-Ft	35 <sup>(2)</sup>	35 <sup>(2)</sup>	45	35	40	40	50	50	(1)	40
Min. Req. Structure Separation	40 <sup>(8)</sup>	30	(1)		50 <sup>(8)</sup>	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.

**10.2 Nonconforming Lots**

**10.2 Definition**

A lot existing at the effective date of this Ordinance or any amendment hereto that cannot meet the minimum standards or requirements of the district in which the lot is located.

**10.2.1 Continuation**

A. Nonconforming Single Lot

- 1) A single lot that is nonconforming as to area or width requirements may be built upon if compliance is achieved with regard to all other Ordinance requirements.

B. Nonconforming Contiguous Lots of Record

- 1) If two or more contiguous vacant lots of record established prior to the effective date of this Ordinance are in single ownership and are nonconforming to the dimensional requirements of the district where located, such lots, at the owner's option, may be combined to form a single or several lots which reduce the degree of nonconformity with regards to lot area and width requirements of the district, provided compliance is achieved with regard to all other requirements of this Ordinance.

**Appendix A**

**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. (See Figure 4.1)
3. **LOT COVERAGE:** The total built upon area, including all non-pervious surface materials.
4. **LOT, INTERIOR:** A lot other than a corner lot. (See Figure 4.1)
5. **LOT LENGTH:** The distance between the front lot line and the rear lot line measured at the maximum distance.
6. **LOT LINE, FRONT:** The front of a lot shall be considered to be that side of the lot which fronts on a street. In the case of a corner lot, either side abutting a street may be considered to be the front, provided the structure to be located on the lot is situated to meet the required front, side and rear yards for the zoning district in which the lot is located. (See Figure 4.1)
7. **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. (See Figure 4.1)
8. **LOT LINE, SIDE:** Any lot line other than front or rear lot lines. (See Figure 4.1)
9. **LOT OF RECORD:** A lot for which a plat or survey description has been legally recorded with the Pender County Register of Deeds.
10. **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.
11. **LOT, THROUGH:** A lot, other than a corner lot, with frontage on more than one street. These lots may also be called "double frontage lots". (See Figure 4.1)
12. **LOT WIDTH:** The horizontal distance between side lot lines measured at the front yard setback line.

**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.

**STRUCTURE:**

1. Any man-made object having an ascertainable stationary location on or in land or water, whether or not it is affixed to the ground. All buildings are "structures."
2. For floodplain management purposes, a walled and roofed building, including a gas or liquid storage tank, that is principally above ground, as well as a manufactured home. Structure, for insurance rating purposes, means a walled and roofed building, other than a gas or liquid storage tank, which is principally above ground and affixed to a permanent site, as well as a manufactured home on a permanent foundation. For the latter purpose, the term includes a building while in the course of construction, alteration or repair, but does not include building materials or supplies intended for use in such construction, alteration or repair, unless such materials or supplies are within an enclosed building on the premises.

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

1.