

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

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**SUMMARY:**

**Hearing Date:** October 15, 2014

**Applicant:** Jamie Flynn

**Property Owner:** Mildred Phillips

**Case Number:** 11254

**Property Location and Description:** The subject property (Map Book 452, Page 104 [Exhibit 1]) is located at 101 Circle Drive (SR 1064) in Hampstead. There is one tract associated with this request. The property may be identified by Pender County PIN 3281-99-2291-0000.

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

**Variance Requested:** Jamie Flynn, applicant, on behalf of Mildred Phillips, owner, is requesting a variance for relief from the requirement of the definition of *Accessory Structure* in *Appendix A* of the *Pender County Unified Development Ordinance* that an accessory structure be located on the same parcel of property as the principle structure.

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**BACKGROUND AND DESCRIPTION OF VARIANCE:**

On April 1, 2014, the Pender County Code Enforcement officer received a complaint regarding an unpermitted storage building located on the property at 101 Circle Drive (SR 1064) in Hampstead. After conducting a site visit on April 2, 2014, the Code Enforcement officer sent an information letter to the owner of the subject property with notification of the complaint and the placement of the unpermitted structure on the property. A second information letter was sent on May 29, 2014, followed by a 1<sup>st</sup> Notice of Violation on June 30, 2014 (Exhibit 4).

Accessory structures are permitted within the RP, Residential Performance district. However, by definition, an accessory structure is 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. In this case, a principle structure does not exist on the parcel. The applicant lives in the single-family residence on the adjacent lot.

Pender County Planning staff met with the applicant on July 14, 2014. A completed variance application was received by Pender County Planning staff on September 2, 2014.

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**ZONING ADMINISTRATOR'S CONCLUSION:**

Jamie Flynn, applicant, on behalf of Mildred Phillips, owner, is requesting a variance for relief from the requirement of the definition of *Accessory Structure* in *Appendix A* of the *Pender County Unified Development Ordinance* that an accessory structure be located on the same parcel of property as the principle structure. The subject property is located at 101 Circle Drive (SR 1064) in Hampstead, is zoned RP, Residential Performance district, and may be identified by Pender County PIN 3281-99-2291-0000.

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**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**

- 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

## **Appendix A**

- 1) **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:** \_\_\_\_\_