

Pender County Planning and Community Development

Planning Division

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MINUTES

Pender County Board of Adjustment Meeting October 15, 2014 9:00 a.m. Pender County Public Meeting Room 805 S. Walker Street, Burgaw, North Carolina

Call to Order: Chairman Ferrante called the meeting to order at 9:03 a.m.

Invocation: Administered by Vice-Chairman Pullen.

Roll Call: Chairman Ferrante

Pender County Board of Adjustment Members:

Ferrante: Pullen: Newton: Thompson: Walton:

Alternates:

Godridge: Peters:

Alternate member Peters served as a full Board member

- 1. Adoption of the Agenda:** Motion to adopt the agenda was made by Board member Peters; seconded by Vice-Chairman Pullen. Vote unanimously approved.
- 2. Adoption of the Minutes: August 20, 2014:** Motion to adopt the minutes was made by Vice-Chairman Pullen; seconded by Board member Peters. Vote unanimously passed.
- 3. Public Comment:** None

** Public Hearings Opened**

Director Breuer swore in witnesses who wished to speak during the Hearing.

4. Variance:

Thomas Smith, applicant, on behalf of Darrell Register, owner, requested 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. The subject property is zoned RP, Residential Performance District and contains ± 0.34 acres. There is one (1) tract associated with this request and may be identified as Lot 24 of Map Book 10 Page 62 and is located on the south side of Mallard Bay Road (SR 1566) in Hampstead. The tract may be further identified by Pender County PIN 4213-35-2444-0000. Director Breuer presented and gave background information for agenda item 4. Thomas Smith, applicant, explained that there was only one location on the lot for a septic, which was in the middle of the lot towards the back so the only way to build a house would be sideways, that was the reason why he was requesting a variance. Board member Thompson asked if the lot had ever been built on; Mr. Smith answered no, not to his knowledge. The Board asked for verification that the lot was created prior to any County zoning ordinances; Director Breuer confirmed. Chris Gibson, 1209 Mallard Bay Road, stated that he was against the variance request and gave examples to support his disagreement, such as fire safety and the fact that other homes in the area were built on similar lots

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and met all requirements. James Metts, 1175 Mallard Bay Road, stated that he was also against the variance request and echoed Mr. Gibson's concerns. William Register, 1184 Mallard Bay Road, stated that he was against the variance request that all the other homes in that area were built by meeting the requirements. The Board held their discussion and reviewed the finding of facts as follows:

Board of Adjustment: Finding of Facts

1. It is the Board's CONCLUSION that the hardship of which the applicant complains **results** 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 RP, Residential Performance District requires a side yard setback of at least ten (10') feet. The applicant requested a setback of five (5') feet.**
2. It is the Board's CONCLUSION that 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. This conclusion is based on the following FINDINGS OF FACT: **The property is considered non-conforming by the definition of the Pender County Unified Development Ordinance in that it does not meet minimum lot width or size.**
3. It is the Board's CONCLUSION that the hardship **results** 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 applicant, in whom the hardship was being sought, could construct a single-family dwelling on the property in which the Variance is being requested. The building envelope could be reduced to meet the standards of the Unified Development Ordinance.**
4. It is the Board's CONCLUSION that the requested variance **is 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 the following FINDINGS OF FACT: **The applicant could construct a single family dwelling within the building envelope of the property meeting the side yard setbacks of the district. Testimony was provided that other structures in the immediate vicinity have all met the prescribed standards in the Unified Development Ordinance. Safety concerns were expressed in regards to close proximity to other structures and the potential for fire to spread between.**

Motion to deny the requested Variance was made by Board member Newton based on the facts the hardship is created by the applicant, safety concerns, and that a different designed home could be built on the lot meeting the setback requirements, seconded by Board member Peters. The vote was 3 in favor of the motion; Vice-Chairman Pullen and Board member Thompson abstained from voting. THEREFORE, on the basis of all the foregoing, IT IS ORDERED that the application for a VARIANCE be **Denied.**

5. Variance:

Lindsey Hess, applicant, on behalf of Hampstead Medpro Partners, LLC, owner, requested a ten foot (10') variance from the required twenty foot (20') setback requirement for a pylon/free-standing sign as prescribed in the Pender County Unified Development Ordinance, Section 9.9.1.A(3), Pylon/Free-Standing Sign. The subject property is zoned GB, General Business District and contains ± 2.79 acres. The property is located at 14057 US HWY 17 in Hampstead and may be further identified by Pender County PIN 3282-64-5881-0000. Planner Christy presented and gave background information for agenda item 5. Beth Caveness, representative on behalf of applicant, stated that she owned the Pharmacy located in the Beacon Building and gave a brief background on a previous variance requested for the same purpose. Ms. Caveness explained that due to the design of the parking lot it is impossible for them to meet the setback requirements for a sign, that there is no visibility of the building from either direction on US Hwy 17 so there have been vehicle accidents due to customers pulling in and out of the drive and motorist not realizing that the building is even there. Ted Piekut,

adjoining property owner, stated that he was not against the variance request, however it was not stated where the applicant proposed to put their sign if approved, he did not want the sign located on the north end of the property due to the possible impact on his future plans for the property he owned. Ms. Caveness explained the planned location of the sign, if approved and stated that there was no intent to place a sign at the north end of the property where the properties adjoined. The Board held their discussion and reviewed the finding of facts as follows:

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: **A pylon/free-standing sign on the subject property will be significantly less visible by on-coming traffic if a twenty foot setback is required from the road right-of-way. Visibility of the subject property by on-coming traffic from the north and the south is limited due to dense vegetation on adjacent lots to the north and south.**
2. It is the Board's CONCLUSION that the hardship **does** result from conditions that are peculiar to the property, such as location, size, and 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: **Visibility of the subject property by on-coming traffic from the north and the south is limited due to dense vegetation on adjacent lots to the north and south.**
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 limited visibility of the property is caused by conditions outside of the control of the applicant/property owner. In addition to dense vegetation on adjacent property, the width of the road right-of-way in front of the property causes a lack of visibility into the site.**
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 pylon/free-standing signs for multi-unit commercial offices are allowed in the GB, General Business zoning district.**

Motion to approve the requested Variance as 10 feet from the DOT right away and 20 feet side setbacks from adjoining properties was made by Vic-Chairman Pullen, seconded by Board member Thompson. The vote was unanimous. THEREFORE, on the basis of all the foregoing, IT IS ORDERED that the application for a VARIANCE be **GRANTED.**

6. Variance:

Jamie Flynn, applicant, on behalf of Mildred Phillips, owner, requested a variance for relief from the requirement of the definition of Accessory Structure in Appendix A, specifically that an accessory structure be located on the same parcel of property as the principal structure as prescribed in the Pender County Unified Development Ordinance. The subject property is zoned RP, Residential Performance District and contains ± 0.67 acres. The property is located at 101 Circle Drive (SR 1064) in Hampstead and may be further identified by Pender County PIN 3281-99-2291-0000. Planner Christy presented and gave background information for agenda item 6. Jamie Flynn, applicant, explained that her and her husband were purchasing the lots from her grandmother, that they have always used the lot behind their home as their backyard, they need the storage building to store items in their garage while they closed the garage in for another room to fit the needs of their growing family. Ms. Flynn stated that they were unaware of the need for a permit and at this time they cannot recombine the lots to one due to there being two different bank loans. Greg Bertwell,

161 Circle Drive, stated that he supports his neighbors request for a variance and that he was sure they didn't intentionally place the storage building without permits. Chairman Ferrante stated that he was not comfortable making a decision on the request without the County Attorney being present and asked the Board how they felt.

Motion to table the requested Variance until the County Attorney was present was made by Vic-Chairman Pullen, seconded by Board member Peters. The vote was 4 in favor of the motion; Board member Newton abstained from voting. THEREFORE, on the basis of all the foregoing, IT IS ORDERED that the application for a VARIANCE be **TABLED**.

7. Discussion Items:

a. BOA Members: None

b. Planning Staff: None

8. Next meeting: November 19, 2014

9. Adjournment: Meeting adjourned at 10:55 a.m.