

PLANNING STAFF REPORT
Variance Request

SUMMARY:

Hearing Date: June 17, 2015
Applicant: Hilary Maready and James Lane
Property Owner: Harlan T. Pickard
Case Number: 11378

Property Location and Description: The subject property is located at 15811 US Highway 17, Hampstead, NC 28443. There is one (1) tract associated with this request totaling \pm 0.34 acres and the property may be further identified by Pender County PIN 3293-21-8659-0000.

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

Variance Requested: Hilary Maready and James Lane, applicants, on behalf of Harlan T. Pickard, owner, are requesting a variance for relief from Pender County Unified Development Ordinance standards outlined in Section 8.2.8, Project Boundary Buffer, specifically requesting a variance from buffers required for the commercial districts along all other boundaries in the GB, General Business zoning district.

BACKGROUND AND DESCRIPTION OF VARIANCE:

On April 21, 2015 Planning Staff received an inquiry regarding the operation of a motor vehicle sales office at the subject property addressed at 15811 US Highway 17, Hampstead, NC 28443. After Planning Staff explained the Landscaping and Buffering standards required in Section 8 of the Pender County Unified Development Ordinance, the applicant determined that the required buffering would greatly limit the amount of display area for vehicles.

Section 8.2.4 of the Pender County Unified Development Ordinance states that a buffer area shall not be used for any building or use, accessory building or use, parking or loading area, storage area, or other principal or accessory uses except as specifically permitted in the Ordinance.

The subject property, with fifty (50) feet of road frontage according to Map Book 691, Page 239 in the Pender County Register of Deeds (Exhibit 1), would require a Type A Buffer along the front property line and a Type B Buffer with a minimum of ten (10) feet wide along both the rear and side property lines due to the General Business zoning district properties to the east and west. The uses on the adjacent properties include a full-service restaurant to the east and a car wash to the west. The minimum required side yard buffer would leave an approximately thirty (30) feet wide piece of property useable for ingress, egress, and display of vehicles.

If a variance is granted by the Board of Adjustment; the applicant must still meet all other building setbacks and requirements in Pender County's Unified Development Ordinance. At current the applicant is seeking relief solely from the standards outlined in Section 8.2.8 Project Boundary Buffer; which necessitates a Type B Buffer for all other property lines in the GB, General Business Zoning District.

ZONING ADMINISTRATOR'S CONCLUSION:

Hilary Maready and James Lane, applicants, on behalf of Harlan T. Pickard, owner, are requesting a variance for relief from Pender County Unified Development Ordinance standards outlined in Section 8.2.8, Project Boundary Buffer, specifically requesting a variance from side yard buffer requirements for the commercial districts along all other boundaries in the GB, General Business zoning district.

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 in Section 3.14.7 of 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.
- B. In making the findings above, the Board of Adjustment may give special weight to the number and percentage of nearby properties that share characteristics for which the variance is requested by the applicant. The Board of Adjustment may grant a variance to expand an existing structure, including the expansion of a nonconforming structure if the findings listed above can be made.

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/does 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:

MOVED _____ SECONDED _____

APPROVED _____ DENIED _____ UNANIMOUS

YEA VOTES: Ferrante ___ Pullen ___ Newton ___ Thompson ___ Walton ___

Alternates:

Godridge: _____ Peters: _____

Excerpt 1

8.2.4 Prohibited Use of Buffer Area

A buffer area shall not be used for any building or use, accessory building or use, parking or loading area, storage area, or other principal or accessory uses except as specifically permitted in this Ordinance.

8.2.6 Buffer Descriptions and Options

The following descriptions list the specifications of each buffer. The requirements reflect the minimum and the developer may increase the buffer at his/her option. Buffer requirements are stated in terms of width of the buffer and the number of plant units required per one hundred (100) linear feet of buffer. The requirements of a buffer may be satisfied by any of the options under each letter designation or existing equivalent vegetation. All mathematical rounding shall be upward and shall be applied to the total amount of plant material required in the buffer, not to each one hundred (100) foot length. The required canopy and understory trees shall generally be spread uniformly along the buffer. Shrubs may be clustered when a 98% grass cover is provided in all areas of the buffer other than within 4 ft. of the base of any tree or shrub.

Buffer A

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| Buffer "A" This buffer is designed primarily for road frontage areas and should run parallel to the street to provide a continuous, aesthetically pleasing streetscape. The requirements for buffer "A" shall be met by any one of the following: |
| A-1) 15 foot wide strip with 3 canopy trees, 2 understory trees and a grass cover of at least 98 % coverage (except within 4 feet of the base of any tree), per 100 linear feet (width may be reduced to 10' for existing developed lots that are subject to new buffer requirements), or |
| A-2) 20 foot wide strip with 3 canopy trees, 2 understory trees and either a grass cover of at least 98 % coverage (except within 4 feet of the base of any tree or shrub) or 18 shrubs per 100 linear feet, or |
| A-3) 25 foot wide strip with 1 canopy tree, 2 understory trees and either a grass cover of at least 98 % coverage (except within 4 feet of the base of any tree or shrub) or 21 shrubs per 100 linear feet, or |
| A-4) 30 foot wide strip with 1 canopy tree, 2 understory trees and either a grass or other approved vegetative ground cover of at least 98 % coverage (except within 4 feet of the base of any tree or shrub) or 32 shrubs per 100 linear feet. |

Buffer B

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| Buffer "B" This buffer is a medium density planting area to be used primarily along non street boundary lines to provide spatial separation between similar types of uses. The requirements for buffer "B" shall be met by any one of the following: |
| B-1) 10 foot wide strip with 3 canopy trees, 4 understory trees and a grass cover of at least 98 % coverage (except within 4 feet of the base of any tree), per 100 linear feet, or |
| B-2) 15 foot wide strip with 3 canopy tree, 2 understory trees and a grass cover of at least 98 % coverage (except within 4 feet of the base of any tree), per 100 linear feet, or |
| B-3) 20 foot wide strip with 1 canopy tree, 2 understory tree and either a grass cover of at least 98 % coverage (except within 4 feet of the base of any tree or shrub) or 15 shrubs per 100 linear feet, or |
| B-4) 25 foot wide strip with 0 canopy trees, 5 understory trees and either a grass cover of at least 98 % coverage (except within 4 feet of the base of any tree or shrub) or 21 shrubs per 100 linear feet. |

Buffer C

Buffer "C" This buffer is designed to provide a high density screen primarily along non street boundary lines to provide buffer and separation between different categories of uses such as commercial adjacent to residential uses or other non-residential uses adjacent to high density single family residential uses. The requirements for buffer "C" shall be met by any one of the following:

C-1) 10 foot wide strip with a 6 foot high wood stockade, basket weave, or other solid wood fence and 2 canopy trees and a grass cover of at least 98 % coverage (except within 4 feet of the base of any tree), per 100 linear feet, or

C-2) 15 foot wide strip with a 6 foot high wood stockade, basket weave, or other solid wood fence or an evergreen hedge* that will provide a continuous screen at least 6’ high within 4 years and 1 canopy tree, 4 understory trees and a grass cover of at least 98 % coverage (except within 4 feet of the base of any tree), per 100 linear feet, or

*Reference spacing requirements in plant list for specific species and spacing to achieve evergreen hedge

C-3) 20 foot wide strip with an evergreen hedge that will provide a continuous screen at least 6’ high within 4 years and 1 canopy tree or 3 understory trees and a grass cover of at least 98 % coverage (except within 4 feet of the base of any tree), per 100 linear feet, or

C-4) 25 foot wide strip with an evergreen hedge that will provide a continuous screen at least 6’ high within 4 years, 2 understory trees and a grass cover of at least 98 % coverage (except within 4 feet of the base of any tree), per 100 linear feet.

Buffer D

Buffer "D" This buffer is a low density planting area to be used along boundary lines in rural areas between large lots or tracts with substantial buffer width and setbacks to provide spatial separation between uses that are developed at very low density. The requirements for buffer "D" shall be met by any one of the following:

D-1) 15 foot wide strip with 3 canopy trees and a grass or other approved vegetative ground cover of at least 98 % coverage (except within 4 feet of the base of any tree) per 100 linear feet, or

D-2) 20 foot wide strip with 2 canopy trees, 2 understory trees and a grass or other approved vegetative ground cover of at least 98 % coverage (except within 4 feet of the base of any tree) per 100 linear feet, or

D-3) 25 foot wide strip with 1 canopy tree, 3 understory trees and a grass or other approved vegetative ground cover of at least 98 % coverage (except within 4 feet of the base of any tree) per 100 linear feet.

8.2.8 Project Boundary Buffer

The following are the buffering requirements of listed permitted uses in each district and certain special types of development. Special uses may be required to meet additional buffer requirements, but shall in all cases be required to have at a minimum the same buffer as permitted uses. Existing vegetation that meets or exceeds the requirements of the specific buffer is desired and allowed instead of any required new plantings.

Buffers Required for the Commercial Districts - All uses in the General Business and Office & Institutional Districts shall be required to have the following buffers:

| Location of Buffer for GB and OI Districts | Type Buffer |
|---|-------------|
| Along all boundaries adjacent to street right-of-ways | Buffer A |
| Along all non-street boundaries adjacent to Residential Districts and adjacent to single family residential uses or residential lots with a parcel size of less than 1 acre and when a single family structure is within 50’ of the boundary of the development | Buffer C |
| Along all other boundaries | Buffer B |

BUFFER: An open area used to separate one use from another.