

**PLANNING STAFF REPORT
VARIANCE REQUEST**

SUMMARY:

Hearing Date: July 20, 2016
Applicant: Harrison Cove, LLC.
Property Owner: Parks Family Forestry, LLC.
Case Number: 286-2016

Property Location and Description: There are two properties included in this variance request located to the south of NC 210 and to the east of Harrison Creek Road (SR 1573) in the Topsail Township. There are two (2) tracts associated with this request with a total of ± 112.7 acres and may be further identified by Pender County PINs: 3273-10-0849-0000 and 3273-33-1459-0000.

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

Variance Requested: Harrison Cove, LLC., applicant, on behalf of Parks Family Forestry LLC., owners, is requesting a Variance for relief from the Pender County Unified Development Ordinance standards outlined in Section 7.5.1.A.1; specifically the variance request is to seek relief from the provision of street design as for layout of streets as to arrangement, width, grade, character, and location shall conform to the Pender County Collector Street Plan.

BACKGROUND

The subject properties were rezoned on October 26, 2015 from RA, Rural Agricultural zoning district to RP, Residential Performance zoning district (Case 11440). At the time of the zoning map amendment the subject properties were part of two larger pieces of property (Exhibit 1).

Staff held a pre-application with Mr. Coleman Parks regarding the preliminary design of a residential subdivision project titled Corbett Tract on December 11, 2015. (Exhibit 2). At this pre-application meeting Staff discussed the required connection to Harrison Creek Road (SR 1573) based on the proposed Pender County Collector Street Plan and Unified Development Ordinance standards.

On March 21, 2016 the Pender County Collector Street Plan was adopted by the Pender County Board of Commissioners. The subject properties are within the planning bounds of this transportation plan. (Exhibit 3).

On April 18, 2016, the subject properties were subdivided through State Exemption in accordance with GS 153A-335; *the division of land into parcels greater than 10 acres if no street right of way dedication is involved*. This exempt division created new parcel identification numbers, which the tax office has assigned to the properties. The new PINs will be updated and effective to exist beginning on January 1, 2017. PINs: 3273-10-0838-0000, 3273-10-7328-0000 & 3273-33-4865-0000 are included in the exempt division (Exhibit 4). Specifically, PIN: 3273-10-0838-0000 and 3273-10-7328-0000 will be the valid identification for the property with the variance requested but will be active January 1, 2017 and appears different on this variance application.

A Master Development Plan and Major Subdivision Preliminary Plat was submitted on April 20, 2016 (Exhibit 5). On May 3, 2016 the Technical Review Committee reviewed the residential subdivision known as Harrison Cove.

Through the review of these plans, Staff identified discrepancies between the submittal and the Unified

Development Ordinance requirements. The Harrison Cove site plan as submitted does not meet the Ordinance requirements, therefore the applicant has requested a variance to seek relief from street design standards.

DESCRIPTION OF VARIANCE:

The request for Master Development Plan approval for the residential subdivision known as Harrison Cove was submitted and reviewed in accordance with Section 3.5 Master Development Plan of the Pender County Unified Development Ordinance. According to Section 3.5.2 Master Development Plan decision authority in the RP, Residential Performance zoning district is the Administrator of the Ordinance. Staff may only approve Master Development Plan submittals granted all requirements are met. Master Development review criteria 3.5.4.C specifies that: *The Master Development Plan must meet all the requirements prescribed in Section 6.1, Master Development Plan Contents.*

In conducting the review of Master Development Plan Section 6.1.2 Master Development Plan Contents-Residential Districts, the submitted site plan does not meet Ordinance requirements specified in Section 6.1.2.A.24; *Street layout and access shall conform to Section 7.4, Access and Section 7.5, Street Design.* Specifically, Section 7.5.1 Public and Private Street Design states;

7.5.1 Public and Private Street Design

A. *Layout of streets as to arrangement, width, grade, character, and location shall conform to the following:*

- 1) *Pender County Collector Street Plan, Pender County Transportation Plan or other approved State of Federal Transportation Improvement Plan.*

The Pender County Collector Street Plan identifies two (2) collector roadways within the bounds of the submittal. The arrangement and location of the collector roadway recommendations can be seen in Exhibit 2. As the site plan does not include these roadways as public collector streets, as identified in the Pender County Collector Street Plan, the Administrator cannot approve the submitted Master Development Plan.

Additionally, if the roadways are designated as a public collector road as identified in the Pender County Collector Street Plan then, no individual driveway access for residential lots may be approved, this provision is located within Section 7.2.7 of the Unified Development Ordinance; *Major subdivisions shall not be approved that provide for individual residential lots to access Minor Collector roads or streets as shown on the Pender Collector Street Plan, Pender County Transportation Plan or other approved State of Federal Transportation Improvement Plan.* As submitted, the right of ways on the site plan are not identified as public collector roadways and the applicant has submitted for individual residential driveway access, not in conformance with the Unified Development Ordinance (Exhibit 5).

Bypass Corridor

The project bounds as submitted are within the Corridor Official Map for the NCDOT Transportation Improvement Project R-3300, commonly known as the Hampstead Bypass. The Corridor Official Map for this project was filed by the Wilmington Urban Area Metropolitan Planning Organization (WMPO) on November 22, 2011 with the Pender County Register of Deeds. Pursuant to NCGS 136-44.51, "after a transportation corridor official map is filed with the register of deeds, no building permit shall be issued for any building or structure or part thereof located within the transportation corridor, nor shall approval of a subdivision, as defined in G.S.153A-335 and G.S. 160A-376, be granted with respect to property within the transportation corridor." to NCGS 136-44.51 can be viewed in Exhibit 6.

Pender County has forwarded this request to the WMPO for consideration of a variance for this development. On May 2, 2016, Pender County staff forwarded the development request to the WMPO. Currently, the WMPO has not rendered a decision regarding this potential variance. Exhibit 6 includes the Pender County policy regarding variances from the Corridor Official Map for NCDOT Transportation Improvement Project R-3300.

Should a variance be granted by the WMPO, the project may proceed with the development in accordance with local, state, and federal regulations. Should a variance be denied by the WMPO, the three (3) year period prescribed in NCGS 136-44.51 will begin from the date of application submission.

Currently, there is pending legislation HB 959 which could change the identified transportation corridor on the subject property. The Bill was presented to the Governor on July 1, 2016 for final approval (Exhibit 7).

ZONING ADMINISTRATOR'S CONCLUSION:

Harrison Cove, LLC., applicant, on behalf of Lawrence Parks and Coleman Parks, owners, is requesting a variance for relief from the Pender County Unified Development Ordinance standards outlined in Section 7.5.1.A.1; specifically the variance request is to seek relief from the provision for street design as to the layout of streets as to arrangement, width, grade, character, and location shall conform to the Pender County Collector Street Plan.

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 FOR VARIANCE:

MOVED _____ SECONDED _____

APPROVED _____ DENIED _____ UNANIMOUS _____

YEA VOTES: Ferrante ___ Pullen ___ Newton ___

Alternates:

Godridge: _____ Peters: _____