PLANNING STAFF REPORT
VARIANCE REQUEST

SUMMARY:

Hearing Date:	April 20, 2016 Continued June 1, 2016 Continued July 20, 2016 Continued August 17, 2016
Applicant:	Frederick W. Mahnken
Property Owner:	Frederick W. Mahnken et. al.
Case Number:	161-2016

Property Location and Description: The subject property is located at 15 Preswick Drive, Rocky Point NC 28457. There is one (1) tract associated with this request totaling ± 0.31 acres and may be further identified by Pender County PIN 3273-15-5438-0000.

Zoning District of Property: The property is zoned PD, Planned Development zoning district.

Variance Requested: Frederick W. Mahnken et al, applicant and owners, are requesting a variance for relief from the Pender County Unified Development Ordinance standards outlined in Section 5.3.3.A setback for accessory structure, specifically requesting a variance from the rear yard setback requirement of ten (10) feet for an accessory structure.

At their April 20, 2016 meeting the Board of Adjustment voted to table the request to allow for the applicant to ask the Homeowners Association to provide an easement or property on the common area in order to be compliant for the rear yard setback.

The Board of Adjustment did not meet at the regularly scheduled June 1, 2016 meeting, therefore the case has been continued to July 20, 2016.

Following the Board of Adjustment's meeting on April 20, 2016, the applicant has worked with the Avendale Homeowners Association Inc. who are the property owners of the common open space to the rear of the subject property. On July 7, 2016 the Avendale Homeowners Association Inc. voted regarding the sale of the land to the applicants regarding compliance for the rear yard setback. At this time there is no resolution from the Avendale Homeowners Association Inc. and the applicant will request additional time with the intention of becoming compliant.

At the July 20, 2016 meeting the applicant requested to table the hearing regarding this matter to be heard in August.

BACKGROUND AND DESCRIPTION OF VARIANCE:
The subject property is located in Phase IIIA of the Avendale residential subdivision, recorded on MB 50 PG 87 (Exhibit 1). The residential subdivision is currently zoned PD, Planned Development zoning district.

According to Section 5.3.3.A of the Pender County Unified Development Ordinance the setback requirement in all zoning districts is ten (10) feet from all property lines. The five (5) solar panels for which this variance is requested are considered accessory structures per Appendix A of the Pender County Unified Development Ordinance an accessory structure is defined as:

> **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.

The measurement for the setback to the rear lot line has been taken from the six (6) inch steel posts affixing the solar panels into the subject property. The rear yard setback as defined in Appendix A of the Pender County Unified Development Ordinance states:

> **SETBACK, REAR YARD:** The required distance between a building or structure and the rear lot line of the lot containing the building or structure.

In the submitted site plan the five (5) different six (6) inch steel posts are located approximately seven feet and two inches (7' 2") from the rear property line, necessitating a variance for a total of two feet ten inches (2' 10") (Exhibit 2).

The solar panel frames do encroach the setback as well, however it was determined by the Administrator that the solar panel itself would be permissible in the setback similar to an awning or roof overhang as outlined in Section 4.6.10 of the Pender County Unified Development Ordinance as seen below:

> **4.6.10** 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:

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.

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 4.14; which necessitates the rear yard setback to be in compliance with the approved Master Development Plan in the PD, Planned Development zoning district. The variance request is for seven feet ten inches from the rear yard setback.

ZONING ADMINISTRATOR'S CONCLUSION:

Frederick W. Mahnken et al, applicant and owners, are requesting a variance for relief from the Pender County Unified Development Ordinance standards outlined in Section 5.3.3.A setback for accessory structure, specifically requesting a variance from the rear yard setback requirement of ten (10) feet for an accessory structure.

At their April 20, 2016 meeting the Board of Adjustment voted to table the request to allow for the applicant to ask the Homeowners Association to provide an easement or property come to a conclusion regarding the common area to the rear of the parcel and the required setback.

The Board of Adjustment did not meet at the regularly scheduled June 1, 2016 meeting, therefore the case has been continued to July 20, 2016.

Following the Board of Adjustment's meeting on April 20, 2016, the applicant has worked with the Avendale Homeowners Association Inc. who are the property owners of the common open space to the rear of the subject property. On July 7, 2016 the Avendale Homeowners Association Inc. voted regarding the sale of the

land to the applicants regarding compliance for the rear yard setback. At this time there is no resolution from the Avendale Homeowners Association Inc. and the applicant will request additional time with the intention of becoming compliant.

At the July 20, 2016 meeting the applicant requested to table the hearing regarding this matter to be heard in August.

3.14 VARIANCE

3.14.1 Applicability

B. 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.

C. The Board of Adjustment may waive certain requirements when authorized to do so by provisions adopted as a part of this Ordinance.

D. 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.

E. 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.

F. The need for the variance cannot be a result of the owner's own actions and cannot be for strictly economic reasons.

G. 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 FOR VARIANCE:

MOVED_____ SECONDED_____

APPROVED_____ DENIED_____ UNANIMOUS_____

YEA VOTES: Ferrante___ Pullen ___ Newton___

Alternates:
Godridge: _____ Peters: _____

BOARD ACTION FOR VARIANCE: (April 20, 2016)

MOVED__Newton: Table the Request_____ SECONDED___Godridge_____

APPROVED_____ DENIED_____ UNANIMOUS_____

YEA VOTES: Ferrante_x__ Pullen __x_ Newton_x__

Alternates:
Godridge: __x___ Peters: __x___

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

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.

4.8 Mixed Use Districts

4.8.1.2.b: PD tracts that were recorded under previously adopted development regulations and are part of a platted subdivision or master planned development but lack specific standards, shall be subject to the following dimensional requirements: minimum lot width of fifty (50) feet, minimum front yard setback of twenty-five (25) feet, side yard setback of ten (10) feet, rear yard setback of fifteen (15) feet, maximum structure height of thirty-five (35) feet, and minimum required principle structure separation of twenty (20) feet. Requested changes to the dimensional standards outlined above will require submission of a Master Development Plan in accordance with Section 4.8.1.B.2.e.