

**PLANNING STAFF REPORT
VARIANCE REQUEST**

SUMMARY:

Hearing Date: August 17, 2016
Applicant: Lynnlee Properties, LLC.
Property Owner: Lynnlee Properties, LLC.
Case Number: VAR 308-2016

Property Location and Description: The subject properties are located approximately 1,900 feet south of the intersection of North Chubb Road (SR 1646) and US HWY 117, on the west side of US HWY 117 in Union Township, NC. There are two (2) tracts associated with this request totaling \pm 2.8 acres and the property may be further identified by Pender County PINs 3314-08-6454-0000 & 3314-08-7516-0000.

Zoning District of Property: The subject properties are zoned RA, Rural Agricultural zoning district.

Variance Requested: Lynnlee Properties, LLC., applicant and owner, is requesting a variance for relief from the Pender County Unified Development Ordinance standards outlined in Section 5.3.2.B, Structures to Have Access, specifically requesting a variance from the minimum access easement width requirement of twenty feet (20') for a residential principal structure. The variance request is for twelve feet (12') of relief along lots 1 and 2 and five feet (5') of relief along lots 9 through 14 from the required minimum access easement width of twenty feet (20').

BACKGROUND AND DESCRIPTION OF VARIANCE:

The subject properties are located down an existing access easement, recorded on MB 7 PG 114 in the Pender County Register of Deeds. Access is provided from US HWY 117 to Lots 13 and 14 through an existing access easement which measures eight feet (8') wide between lots 1 and 2 and widens to fifteen feet (15') wide along lots 9 through 14. The properties are currently zoned RA, Rural Agricultural zoning district.

According to Section 5.3.2.B of the Pender County Unified Development Ordinance, when the lot is not adjacent to the public road and access is provided by an access easement to the public road, the easement must be a minimum of twenty (20') feet wide. Residential access requirements are outlined in Section 5.3.2.B of the Pender County Unified Development Ordinance below:

5.3.2.B. Structures To Have Access

- 1) Every structure hereafter erected or moved shall be on a lot adjacent to or having access to a public right-of-way, street or road not less than thirty (30') feet in width. When the lot is not adjacent to the public road and access is provided by an access easement to the public road, the easement must be a minimum of twenty (20') feet wide.

The existing access easement and the properties for which this variance is requested are part of a subdivision recorded prior to current zoning regulations on February 8, 1961 on Map Book 7, Page 114 of the Pender County Register of Deeds.

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, including acquiring necessary building permits and zoning approvals. At current, the applicant is seeking relief solely from the standards outlined in Section 5.3.2.B; which necessitates a twenty feet (20') minimum access easement width for the placement of any new residential structure on Lots 13 and 14. The variance request is for twelve feet (12') of relief along lots 1 and 2 and five feet (5') of relief along lots 9 through 14 from the required minimum access easement width of twenty feet (20').

ZONING ADMINISTRATOR'S CONCLUSION:

Lynnlee Properties, LLC., applicant and owner, is requesting a variance for relief from the Pender County Unified Development Ordinance standards outlined in Section 5.3.2.B, Structures to Have Access, specifically requesting a variance from the minimum access easement width requirement of twenty feet (20') for a residential principal structure on Lots 13 and 14. The variance request is for twelve feet (12') along lots 1 and 2 and five feet (5') along lots 9 through 14 from the required minimum access easement width of twenty feet (20').

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 FOR VARIANCE:

MOVED _____ SECONDED _____

APPROVED _____ DENIED _____ UNANIMOUS _____

YEA VOTES: Ferrante ___ Pullen ___ Newton ___

Alternates:

Godridge: _____ Peters: _____

5.3.2 Residential Uses

B. Structures To Have Access

1) Every structure hereafter erected or moved shall be on a lot adjacent to or having access to a public right-of-way, street or road not less than thirty (30') feet in width. When the lot is not adjacent to the public road and access is provided by an access easement to the public road, the easement must be a minimum of twenty (20') feet wide.

Appendix A: Definitions

ACCESS: A way or means of vehicular or pedestrian approach to provide physical entrance to a property.