

**PLANNING STAFF REPORT
APPEAL OF ADMINISTRATIVE DECISION**

SUMMARY:

Hearing Date: September 21, 2016
Applicant: Double B Farms, Inc.
Property Owner: Double B Farms, Inc.
Case Number: Appeal 318-2016

Property Location and Description: The subject property is located approximately 350 feet west of the intersection of Cape Fear Drive (private) and Riverbend Drive (private) in the Holly Township, NC. There is one (1) tract associated with this request totaling ± .44 acres and the property may be further identified by Pender County PIN: 3331-86-0080-0000.

Zoning District of Property: The subject property is zoned RA, Rural Agricultural zoning district.

Summary of Appeal Requested: Double B Farms, LLC., applicant and owner, is requesting an appeal to the administrative decision issued on June 8, 2016 regarding a violation of the Pender County Unified Development Ordinance Section 5.3.3.E.3, Manufactured Home, Recreational Vehicle & Trailer Parking and Storage.

Administrator Determination:

A detailed history regarding the subject property can be found in Exhibit 1. Staff began the investigations regarding this parcel related to the permitting of a dock on the property in Spring 2016. As defined by the Ordinance;

RECREATIONAL VEHICLE: *A vehicle which is:*

1. *Built on a single chassis;*
2. *Four hundred (400) square feet or less when measured at the largest horizontal projection;*
3. *Designed to be self-propelled or permanently towable by a light-duty truck; and*
4. *Designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational camping, travel or seasonal use.*

In the letter dated June 8, 2016 (Exhibit 2), the subject property was found in violation of the Pender County Unified Development Ordinance Section 5.3.3.E.3 as listed below;

3) *Manufactured Home, Recreational Vehicle & Trailer Parking and Storage*

- a) *It shall be unlawful to park or otherwise store for any purpose whatsoever any mobile home or trailer within any zoning district except as follows:*
 - i) *At a safe and lawful location on a street, alley, highway, or other public place, provided that the trailer or mobile home shall not be parked overnight.*
 - ii) *Within an approved location in a mobile home park.*
 - iii) *On any other lot or plot provided that:*
 - a. *A storing permit for any mobile home to be parked or stored for longer than seven (7) days shall be obtained from the Administrator.*
 - b. *A mobile home shall not be parked and used other than in an approved mobile home park, or unless obtaining a temporary occupancy permit.*
 - c. *Trailers and recreational vehicles shall be parked in a driveway, garage, or carport, or in the rear or side yard of an established primary or principal lot or parcel for the purpose of storage only.*
 - iv) *No mobile home or camper shall be used for the purpose of storing materials.*

- v) **Only operable recreational vehicles intended for personal use shall be parked or stored on any property used for residential purposes in any Zoning District.**
- vi) A permit to store a mobile home may be issued by the Administrator for a term not to exceed six (6) months. Such permit may be renewed for one six (6) month term, at the discretion of the Administrator.

Specifically, 5.3.3.E.3.iii.c outlines; *Trailers and recreational vehicles shall be parked in a driveway, garage, or carport, or in the rear or side yard of an established primary or principal lot or parcel for the purpose of storage only.* On this parcel, there is no principal structure or use of the subject property.

It is the Administrators determination that this parcel does not have an established principle use. In order to lawfully store a RV on a parcel of land as the principal use of the land the property. The principal use would have to be established and located within a residential zoning district or within an area approved for recreational vehicle storage;

RECREATIONAL VEHICLE STORAGE: *An area provided within a residential recreational community for its residents to store recreational vehicles such as boats, campers, RV's and travel trailers.*

An accessory or secondary use of the land is defined by the Unified Development Ordinance as;

ACCESSORY OR SECONDARY USE: *A use of land or of a building or portion thereof customarily associated with and incidental and subordinate to the principal use of the land or building and located on the same lot with such principal use. A secondary use shall be a use not already permitted by right in a zoning district but may be permitted in conjunction with a permitted use. In no instances shall an accessory or secondary use be permitted without the presence of a primary use.*

In order to come to the conclusions regarding the violation of the Pender County Unified Development Ordinance, the Code Enforcement Officer made site visits on June 6, August 31 and September 6, 2016. Photos of the RV located on the subject property can be seen in Exhibit 3.

Exhibits

1. Parcel History
2. Violation Letter
3. Site Photos
4. Property Plat Map
5. NC NFIP Letter
6. Zoning Permit Dock
7. CAMA Permit Dock
8. Flood Permit Dock
9. Building Permit Dock
10. Inspection Report Dock
11. Environmental Health Permits 1988 and 1991

BOARD ACTION FOR APPEAL:

MOVED _____ SECONDED _____

APPROVED _____ DENIED _____ UNANIMOUS _____

YEA VOTES: Ferrante ___ Pullen ___ Newton ___

Alternates:

Godridge: _____ Peters: _____

3.16 APPEAL OF ADMINISTRATIVE DECISION

3.16.1 Applicability

As specified in N.C.G.S. 153A-345(b), an appeal by any person aggrieved by a final order, interpretation or decision of the Administrator or other administrator in regard to the provisions of this Ordinance may be taken to the Board of Adjustment.

3.16.2 Application Requirements

- A. An appeal of an administrative decision shall be taken by filing a written notice of appeal specifying the grounds for the appeal with the Administrator and the Board of Adjustment within thirty days after the decision by the Administrator.
- B. An application for appeal of an administrative decision shall be submitted in accordance application requirements, Section 3.1.2.
- C. A notice of appeal of an administrative decision shall be considered filed when a complete application is delivered to the Administrator. The date and time of filing shall be entered on the notice.

3.16.3 Deadline for Submission of Application

An appeal of an administrative decision shall be filed with the Administrator and Board of Adjustment within thirty (30) days of receipt of the decision.

3.16.4 Notice and Public Hearings

The County shall hold all required public hearings and give notice in accordance with Section 3.14.5.

3.16.5 Action by Administrator

The Administrator shall transmit to the Board of Adjustment all the papers constituting the record upon which the action appealed from was taken.

3.16.6 Action by Board of Adjustment

- D. The Board of Adjustment may reverse or affirm (wholly or partly) or may modify the order, requirement, decision, or determination appealed from and shall make any order, requirement, decision or determination that in its opinion ought to be made in the case before it. To this end, the Board of Adjustment shall have all the powers of the officer from whom the appeal is taken.
- E. A motion to reverse, affirm, modify the order, requirement, decision, or determination appealed from shall include, insofar as practicable, a statement of the specific reasons or findings of fact that support the motion.
- F. If a motion to reverse or modify is not made, or fails to receive the affirmative vote of a majority of members present, the appeal shall be denied.
- G. Any motion to overturn a decision shall state the reasons or findings of fact that support the motion.

3.16.7 Effect of Appeal

- H. An appeal shall stay all proceedings in furtherance of the action appealed, unless the administrative official from who the appeal is taken certifies to the Board of Adjustment that, because of facts stated in the certificate, a stay would, in their opinion, cause imminent peril to life or property or that because the violation is transitory in nature a stay would seriously interfere with the effective

enforcement of this Ordinance. In that case, proceedings shall not be stayed except by order of the Board of Adjustment or a court, issued on application of the party seeking the stay, for due cause shown, after notice to the administrative official.

- I. An appeal shall not stop action lawfully approved (including construction activities authorized by a building permit); only actions presumed in violation of this Ordinance are stayed.

3.16.8 Appeals from the Board of Adjustment

Appeals to the Superior Court may be taken by any person, firm or corporation aggrieved, or by any office, department, board, of the county affected by any decision of the Board of Adjustment, provided such appeals shall be taken within thirty (30) days after the decision of the Board of Adjustment is filed in the office of the Administrator, or after a written copy thereof is delivered to the applicant, whichever is later. The decision of the Board shall be delivered to the applicant by certified mail.