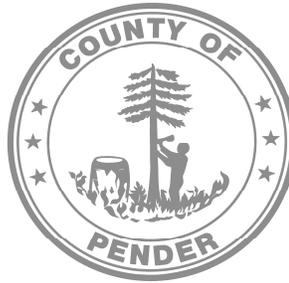


PENDER COUNTY BOARD OF ADJUSTMENT

Joey Raczkowski, Planning Director
 Walter Hansley, Chairman
 Jeremy Strong, Vice-Chairman
 Ken Just
 Larry Johansen
 Erwin Kane
 Horace Thompson
 Charles Wilson



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Minutes May 16, 2007

1. Call to Order by Chairman Walter Hansley.
2. Prayer By Board of Adjustment Member Erwin Kane.
3. Introduction of Board Members by Chairman Walter Hansley.

Member Name	Vote	Member Type	Member Name	Vote	Member Type
Walter Hansley	P	Regular	Horace Thompson	P	Regular
Jeremy Strong	P	Alternate	Ken Just	P	Regular
Larry Johansen	P	Alternate	Erwin Kane	P	Regular
			Charles Wilson	P	Regular

4. Approval of the April 18, 2007 Board of Adjustment Minutes

Motion to approve as presented by Charles Wilson, seconded by Jeremy Strong. Votes in favor 7-0.

Member Name	Vote	Member Type	Member Name	Vote	Member Type
Walter Hansley	For	Regular	Horace Thompson	For	Regular
Jeremy Strong	For	Alternate	Ken Just	For	Regular
Larry Johansen	For	Alternate	Erwin Kane	For	Regular
			Charles Wilson	For	Regular

Ken Just commented he would like to have more detail, not an abbreviated version of the minutes.

5. Public Hearing
 - A. **Swearing in of Witnesses** by Attorney Trey Thurman

Chairman Hansley introduced the first case to the board.

Planning Director Joey Raczkowski reviewed the case with the board and public.

- B. **Variance – Rear Yard Setback Requirements** – Brett Ulisnik, applicant and owner, is requesting the following variance:
 - a. Variance of 5 ft from the 10 ft minimum rear yard setback requirement for an accessory structure less than 600 square feet in area.
 The property is zoned PD, Planned Development District, and is located at 301 Tall Ships Lane in Hampstead, NC.

Chairman Hansley asked if there had been any opposition to the variance request.

Ken Just asked Director Raczkowski if anyone in the Planning Department had a copy of the layout of the current septic line and drainfield.

Director Raczkowski answered they did not.

Brett Ulisnik, applicant and owner stated that he had a copy of the site plan. He stated that there is no room for him to move any of the existing lines in order to place the building closer to the house.

Ken Just asked the Planning Director to make it a part of the packet a copy of the septic and drain lines from the health department.

Charles Wilson made the motion to grant the request for the five feet variance. Horace Thompson seconded the motion and the vote was unanimous. The hardship was because of the existing septic fields and the inability to put the building any place else on the property. Votes in favor of motion 7-0.

	Vote	Member Type	Member Name	Vote	Member Type
Walter Hansley	For	Regular	Horace Thompson	For	Regular
Jeremy Strong	For	Alternate	Ken Just	For	Regular
Larry Johansen	For	Alternate	Erwin Kane	For	Regular
			Charles Wilson	For	Regular

Chairman Hansley introduced the next case.

Director Raczkowski gave an overview of the case for Dorothy Shivers

- C. Variance – Structure Separation Requirements** – Pender County Community Development Block Grant Program, applicant, on behalf of Dorothy Shiver, owner, is requesting the following variance:
 - a. Variance of 18.8 ft from the 30 ft minimum structure separation requirement for principal structures. The property is zoned R-20, Residential District and is located at 4065 US Highway 117 near Burgaw, NC.

There have been four (4) surveys done trying to determine the proper property lines. This is the only location on the property that this home can go given the input of the health department.

Attorney Trey Thurman explained the history of why this situation has come about.

Citizens asked why there was no notification of when there was a possible change in lot lines and if the structure for Ms. Shivers was going to remain where it is.

Erwin Kane made the motion to grant the variance due to the hardship of the existing house on lot 22 being placed across the property line; neither house can be moved. This was seconded by Ken Just and the vote was 7-0 in favor and was therefore GRANTED.

Member Name	Vote	Member Type	Member Name	Vote	Member Type
Walter Hansley	For	Regular	Horace Thompson	For	Regular
Jeremy Strong	For	Alternate	Ken Just	For	Regular
Larry Johansen	For	Alternate	Erwin Kane	For	Regular
			Charles Wilson	For	Regular

Chairman Hansley introduced the third case to the board and public.

BOA Member Erwin Kane recused himself from this case because of personal conflict.

Planning Director Joey Raczkowski addressed the board and public with the next case.

D. Variance – Side Yard Setback Requirements – Kimberly Edmonds, applicant and owner, is requesting the following variance:

- a. Variance of 7.5 ft from the 10 ft minimum side yard setback requirement for nonconforming lots of record on or before July 5, 1988.

The property is zoned RT, Rural Transition District and is located at 2000 Green Sharpless Road near Surf City, NC.

He stated that this house was started with no permits, no checks on zoning. This was done prior to zoning and Ms. Edmonds now has ownership of the house and is trying to finish the structure. When she tried to obtain permits this is when it was discovered the fact about the house being too close to the property line.

Kimberly Edmonds is asking for a variance in order to complete the structure that was started some years ago. It is the shell of a house sitting on a solid foundation which needs to be completed. She has contacted Pender County concerning purchasing the adjoining property.

Ken Just replied that when she purchased the house the zoning ordinance was in affect and that does not give her an excuse for not checking to see what the current setbacks were. There is a hardship but it is self-inflicted because she purchased the property as it existed and its moveable and if the lot next door is purchased no variance would be needed.

Ralph Kays, Code Enforcement Officer, stated that he had visited the site and it is a stick built home.

Charles Wilson made the motion to grant the variance due to the hardship given the history of the property and the cost of moving the house in light of the fact that it is in place. Horace Thompson seconded the motion and the votes were four (4) against; two (2) for. The variance was therefore DENIED.

Member Name	Vote	Member Type	Member Name	Vote	Member Type
Walter Hansley	Against	Regular	Horace Thompson	For	Regular
Jeremy Strong	Against	Alternate	Ken Just	Against	Regular
Larry Johansen	Against	Alternate	Erwin Kane	Recused himself	Regular
			Charles Wilson	For	Regular

Mr. Kane rejoined the board.

Chairman Hansley introduced the case for Jesse Barbour.

E. Variance – Side Yard Setback Requirements – Jesse Barbour, applicant and owner, is requesting the following variance:

- a. Variance of 3 ft 4 in from the 10 ft minimum side yard setback requirement for an accessory structure less than 600 square feet in area.

The property is zoned R-20, Residential District, and is located at 105 Pond View Circle in Hampstead, NC.

The Planning Director stated that this case was tabled from last month in order for staff to clarify questions that Mr. Just had as to whether or not the carport which was open and attached to the structure would be at the correct setback. He has verified that this would be the correct setback to measure from; as far as what the ordinance requires. The setback request is for 3.4 ft from the sideyard; none of the other facts in the case have changed.

Ken Just stated that he was still confused because in an R20 the sideyard setback is twenty (20) feet. Is that correct? This is not a structure. This is not a stand alone; this is an attachment to a house which extends the house and puts it thirteen feet out of barrens. It is not a freestanding 600 sq ft building it is attached. He is concerned with the definition of the word freestanding and has read the zoning several times trying to understand the definition.

Joey Raczkowski stated that the staff was going on was the definition of accessory structure on page 7 that states “(insert for zoning ordinance)“. This is labeled as an accessory structure which can be 10 feet.

Attorney Thurman swore in Planner Kenneth Vafier to testify.

Planner Kenneth Vafier stated that the staff had determined that the open carport that Mr. Barbour proposes to attach to his structure does in fact met the definition of accessory structure, accessory use as well as the requirements a, b, and c. listed in the definitions.

Ken Just asked how the planning department makes a definition that an accessory structure is not a freestanding structure. What is basically being said is he could add a carport to his house and be in violation of the twenty foot setback just because it was attached to his house and someone in the planning department made the determination that it is an accessory structure and not part of the existing dwelling. He had a real problem with this.

Joey Raczkowski stated that the planning department did not make the determination it is what the ordinance says.

Ken Just asked who made that determination.

Joey Raczkowski replied that is what the county ordinance states. The Staff is not making a determination. He asked Attorney Thurman to speak further on this matter.

Attorney Trey Thurman stated that the zoning administrator does interpret the ordinance and make determinations based on the ordinance, they are saying that they are just going by the plain language of the ordinance. There is a provision in the ordinance that says that if a term is not defined it is to be used ... go to the most recent edition of Webster’s Dictionary The problem is Webster’s can be anything which is not a clear definition in and of itself. He asked Planner Kenneth Vafier to take him through the sections that he was referring too.

Ken Just asked where in the zoning ordinance are you reading this?

Ken Vafier stated Section 2, Definitions, page 7, number 3 Accessory Structures. He read the definition structure into the record. When he and the Planning Director went through this in consultation with Jesse Barbour they made a determination that the open carport as being attached to his principal dwelling and did in fact meet not only the definitions but all the requirements a, b, c and d & e in the requirements are not applicable.

Ken Just asked what the date of his zoning ordinance.

Ken Vafier stated that this was a most current copy with codified changes dating September 2006.

Ken Just stated that he did not have the most recent copy of changes.

Charles Wilson replied that Ken’s observation was a good one. Doesn’t this open the flood gates for most things would have a ten foot setback instead of a twenty foot from the property line? There is a gapping hole in the code.

Joey Raczkowski answered there could possibility be; but, we’re applying it to this particular situation.

Ken Just asked isn’t it also a definition that is an interpretation of the Planning Department which does not necessarily mean that it is the proper interpretation.

Kenneth Vafier stated it's not the role of the Board of Adjustment to say to clarify or amendment interpretations.

Ken Just reiterated if we say in this board that a carport is an accessory structure when it is fully attached to the house then every builder in the county could all of a sudden tomorrow morning start putting carport on houses and be ten foot from the building line and it would be legal and the board couldn't stop it. I have a problem with that. That is not what the zoning ordinance clearly states. There is a 20' setback in R20 and that is not opened for interpretation.

Attorney Thurman replied you can have a determination as to whether; this board is entitled to review the zoning administrator's determination that this meets the definition but with the definition itself the ordinance has to be amended. This board does not have the power to amend the ordinance; that goes to the Planning Board and to the board of Commissioners and if the board's position was to be that "we think that an interpretation that is being made based on the definition that is being made then the board has the right to review the administrator's determination. But if it's the issue with the definition and there is a loop hole which is a deduction that the board can take and that needs to be addressed as an amendment to the ordinance. The zoning administrator is limited to what is in the ordinance. He is properly doing this if it's what the ordinance says.

Ken Just stated that he is questioning the *interpretation* of the ordinance not the ordinance.

Joey Raczkowski stated that there are two issues and the board has just created another case. There is a variance in front of the board for the applicant that built a carport without permits. He is trying to understand what direction the board needs to go in.

Ken Just replied what I'm trying to get to is in my interpretation of the zoning ordinance the applicant does not have a 3.4 foot violation but a 13.4 foot violation. That makes an enormous difference to the board when it comes to granting a variance. I think that 13.4 is a very large number on a twenty (20) foot setback. I'm not suggesting that 3.4 is good but there is a huge difference between the two and that's why its critical and that is why he is questioning the interpretation of the definition.

Jesse Barbour, applicant stated that house was built in 1983. He wants to have a drive through carport for his cars. He was told previously that he did not have to have a permit.

Ken Just stated that there were places in the back yard where this carport can be located because it is fairly large.

Jesse Barbour stated that because of the drain field off the septic tank and two existing storage buildings he would not have enough room.

Larry Johansen asked how close the neighbors were.

Mr. Barbour stated that they were eighty-two feet.

Ken Just stated that he was in agreement with Mr. Wilson that he looks at it as a 13.4 ft variance to the ordinance. 13.4 ft. variance is an enormous variance and there are other places on the property, a little more than ½ acre, to locate the 24' x 24' carport as a freestanding unit that meets the guidelines. I would be opposed to this and make a motion that the variance be denied. Jeremy Strong seconded the motion and the vote was 3-3 to DENY. Three in favor (Just, Wilson, Strong) of the motion and three against (Thompson, Johansen, & Kane). The chairman did not have to vote because it is treated as being in favor of the motion which requires a 4/5 majority to pass.

Member Name	Vote	Member Type	Member Name	Vote	Member Type
Walter Hansley		Regular	Horace Thompson	Against	Regular
Jeremy Strong	For	Alternate	Ken Just	For	Regular
Larry Johansen	Against	Alternate	Erwin Kane	Against	Regular
			Charles Wilson	For	Regular

The request was DENIED.

The chairman opened the floor for the last case.

F. Variance – Height Requirements – David Greer Construction, applicant and owner, is requesting the following variance:

a. Variance of 12 ft above the 35 ft maximum building height requirement.

The property is zoned FA, Flood Hazard Area District, and is located at 599 Lewis Road in Hampstead, NC

The Planning Director stated that at the last meeting he was given some direction to negotiate with the property owner. He was not comfortable with this outside of public hearing. The matter was turned over to the county attorney to facilitate.

Attorney Thurman stated that he had met with Mr. Greer about possibilities of looking at things, such as where he was measuring from. He had a discussion concerning the general natural of hardship and Mr. Greer will address that.

David Greer, applicant, stated that the building was located on the north side of Lewis Road. He is asking for a commercial building that functions as a storage facility which requires additional ceiling height in order to accommodate a lift truck with a 46’ two stage mass and space for housing of the fire suppression system in the interior overhead along with overhead lightening and sprinklers.

Mr. Greer addressed the hardship of the property itself. The property were the building is located is 570’ long and 169’ wide. He has enough room to do multiple buildings but the consensus from the Board of Commissioners was they wanted everything on the north side of Lewis Road. He feels this is an extreme hardship giving him one place to put the building when he has land multiple acres of land. Eight acres across the street is not to be used at this time. It will be used for parking and future development.

He listed as is hardships with the project as: (1) type of equipment going in and out of the building needs the necessary height for fire protection; (2) he can only put it on one part of his ten acre parcel; and (3) the overall project was designed to enhance availability for water access for the people of Pender County to be able to rent wet and dry slips.

Charles Wilson asked for clarification on the public access to the water being free. He stated that Mr. Greer could have a lower lift not requiring the higher stacking and that would eliminate the need for the height variance. He asked David Greer if he could not build onto his building by making it longer.

David Greer stated that public access wouldn’t necessarily be free. The public should consider it as a service with fees to overset insurance, liability and etc. He could not make the building longer because he is trying to keep it out of the 100 year flood area.

Mr. Wilson stated he was concerned about the precedent. There will be homes built there in the future and it does impact on other homes. He could have a lift of three stories high boat facility.

Ken Just stated that his concerns were he is on a deep water lot. It is not the concern of this board to provide boat access to the people of Pender County. Last month Mr. Greer stated that there were other things he could do with the property besides putting a storage facility there. He purchased the property in

September 2005; if the facility is not buildable there is no hardship on the lot because someone will be willing to purchase it. He read some examples of cases from the Board of Adjustment Handbook.

Mr. Strong asked if there were any plans for future development in front of the proposed structure closest to the water.

Building a small outside restaurant is considered in the long range planning. The biggest problem with this is to figure out how the sewer will be taken care of.

Jeremy Strong indicated that this building is a natural continuation of what is already there in the area.

Attorney James Brandon made reference too many of the issues that had already been addressed.

Horace Thompson asked the Planning Staff if Mr. Greer didn't put a roof on his building, and put an open fourth floor, would he still be in violation.

Director Raczkowski stated that the ordinance does not address this type of situation.

Jeremy Strong made a motion to grant the variance of eight feet for the proposed dry stack storage using the letter that Mr. Greer gave as a hardship into evidence. There was more discussion concerning the points of hardship issues (1) location of the building, and (2) location of the 100 year flood zone. Larry Johansen seconded the motion and the votes in favor of the motion were Thompson, Johansen, Hansley, Strong, and Kane; Wilson and Just voting against.

The motion to approve the variance was DENIED.

Member Name	Vote	Member Type	Member Name	Vote	Member Type
Walter Hansley	For	Regular	Horace Thompson	For	Regular
Jeremy Strong	For	Alternate	Ken Just	Against	Regular
Larry Johansen	For	Alternate	Erwin Kane	For	Regular
			Charles Wilson	Against	Regular

G. No Items for Discussion

6. Adjournment

This meeting is on tape.

Voting block for approval of minutes:

Member Name	Vote	Member Type	Member Name	Vote	Member Type
Walter Hansley		Regular	Horace Thompson		Regular
Jeremy Strong		Alternate	Ken Just		Regular
Larry Johansen		Alternate	Erwin Kane		Regular
			Charles Wilson		Regular