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PENDER COUNTY BOARD OF ADJUSTMENT
STAFF CASE REVIEW

SOUTHERN OUTDOOR LIVING CENTER, LLC.– APPEAL OF ADMINISTRATIVE REVIEW #
329

APPLICANT: Southern Outdoor Living Center, LLC. – Gary Poirier

PROPERTY OWNER: Betty M. Smith

PROPERTY LOCATION: The property is located at 19240 U.S. Highway 17 N in Hampstead, NC (See location maps attached).

PROPERTY DESCRIPTION: The property contains 9.19 acres and is identified as PIN # 4204-63-5656-0000.

ZONING ON SITE: PD- Planned Development District.

TYPE OF APPEAL: Applicant is requesting an Appeal of Administrative Review as prescribed by Section 3.5 C of the Pender County Zoning Ordinance. The applicant was cited pursuant to Section 8.9, Table of Permitted Uses in the Pender County Zoning Ordinance (See attached applicable Zoning Ordinance provisions).

BACKGROUND AND DESCRIPTION OF APPEAL: The applicant is appealing an Administrative Review of a zoning violation given on August 7, 2007. Code enforcement determined the property to be out of compliance on this date on the basis of selling prefabricated buildings in a PD, Planned Development Zone. The applicant received the notice of zoning violation and his appeal was filed with Pender County Planning within 30 days. The applicant met with Pender County’s Planning Director, Code Enforcement and Planning Staff to discuss the notice of violation that was issued. The issue of whether or not Southern Outdoor Living Center, LLC’s products were indeed classified as ‘Mobile Home Dealers & Prefabricated Buildings’ was discussed. The conclusion was brought that these are to be classified as such, resulting in a violation of the Pender County Zoning Ordinance.

APPLICABLE ZONING ORDINANCE PROVISIONS:

8.9 Table of Permitted Uses

PERMITTED USES	PD	R-20C	R-20	R-15	R-10	B-1	B-2	B-3
Hardware	P					P	P	P
Livestock Sales							S	
Mobile Home Dealers & Prefabricated Buildings							S	
Miscellaneous Retail (SIC Major Group 59. Excluding 593, 596, 598, 5999)							P	P

“P” = Permit required

“S” = Special Use Permit

“Blank space” = Not Permitted.

3.5 C APPEALS TO BOARD OF ADJUSTMENT

Appeals may be taken to the Board of Adjustment by any person, firm, or corporation aggrieved, or by an officer, department or board of the county affected by any decision of an administrative official charged with enforcement or interpretation of this ordinance thought to be in error. Such appeals shall be filed with the Board of Adjustment by notice specifying the grounds for appeal. Appeal shall be filed within thirty (30) days from the date of the action being appealed. The officer from whom the appeal is taken shall forthwith transmit to the Board of Adjustment all papers constituting the record upon which the action appealed was taken together with any additional written reports or documents as he deems pertinent. The Board of Adjustment may, after a public hearing, so long as such action is in conformity with the terms of this ordinance, reverse or affirm, wholly or in part, or may modify any order requirement, decision, or determination as ought to be made, and to that end shall have the powers of the administrative official from whom the appeal is taken.

6.4 POWERS AND DUTIES OF THE BOARD OF ADJUSTMENT

A. ADMINISTRATIVE REVIEW

To hear and decide appeals where it is alleged there is error in any order, requirements, decisions, or determination made by the Zoning Administrator in the enforcement of this ordinance. The Board may, so long as such action is in conformity with the terms of this ordinance, reverse or affirm wholly or partly, or may modify the order, requirement, decision or determination and to that end shall have powers of the Zoning Administrator from whom appeal is taken.



Pender County Planning Department

805 South Walker Street
Burgaw, North Carolina 28425

Phone (910) 259-1202
Fax (910) 259-3735

BOARD OF ADJUSTMENT APPLICATION APPEAL OF ADMINISTRATIVE REVIEW

Date <u>9/5/2007</u>	Application No. <u>329</u>
Application Fee <u>\$150.00</u>	Receipt No. <u>077053</u>

I. PROPERTY INFORMATION:

Record #: <u>38501/302 17586</u>	Lot #: _____
Tax Map #: <u>4204-63-5656-0000</u>	Zoning District: <u>PD</u>
Property Location: <u>19240 US. Highway 17N Hampstead NC 28443</u>	

II. REQUIRED NAMES:

Applicant <u>Southern Outdoor Living Center LLC</u>	Owner <u>Betty M. Smith</u>
Address <u>132 Holly Tree Ln Hampstead NC 28443</u>	Address <u>Po Box 7 Hampstead NC 28443</u>
Phone <u>910-409-1212</u> Fax _____	Phone <u>910-270-3485</u> Fax _____
Email <u>GMP12@aol.com</u>	Email _____
Legal Relationship of Applicant to Property Owner: <u>Tenant</u>	Person Authorized to Act for Applicant: <u>Gary Poirier</u>

III. SIGNATURE OF OWNER & APPLICANT:

[Signature] Betty M. Smith

(If owner is different from applicant, both signatures are required)

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Southern Outdoor Living Center®

PO Box 835, Hampstead, NC 28443
(910) 409-1212 Email: gmpoir@aol.com
www.southernoutdoorliving.com

August 28, 2007

Board of Adjustment Appeal of Administrative Review

This serves as the detailed letter describing the decision being appealed and stating why the request is being made as required and stated on the "Board of Adjustment Application Appeal of Administrative Review."

The property owner, Mrs Betty Smith as well as the tenant, Southern Outdoor Living Center were served a "Notice of Zoning Violation" stating the conditions that create the violation are: "the Placement for sale, of prefabricated accessory structures on property zoned as (PD) Planned Development) where such activities are prohibited under Pender County Zoning Ordinance." A meeting between Gary Poirier, General Manager of Southern Outdoor Living Center, and Mr. Joey Raczkowski, Planning Director, along with members of the Planning Dept. staff was held to discuss the situation. The meeting concluded with Mr. Raczkowski determining Southern Outdoor Living Center was in violation of the zoning ordinance as stated in the Notice. Both Mrs. Smith and Southern Outdoor Living Center disagree with that decision.

The Property: After speaking with the lot tenant, we were under the impression that our business would fit within a "Special Use Permit" governing the property. We then cleaned up our portion of the lot and constructed a tasteful, attractive display of storage sheds. We have received many, many compliments from towns people regarding our attractive display with many stating we have improved the look of the lot significantly. We take great pride in the quality of our products and appearance of our display. The lot is maintained very well.

Products: Southern Outdoor Living Center is a retailer of high quality, attractive, storage sheds, gazebos, pool houses, barns, garages, outdoor playscapes and related accessories such as bird houses, ramps, porches and outdoor furniture. We sell our products fully assembled or as raw building materials and plans to be built on a customer site. Our storage buildings are engineer certified to withstand 130 mph winds. That designation is somewhat rare in our industry. We are partnering with other retailers in the area such as pool and spa, landscaping, irrigation, deck building, and fence companies to offer a complete back-yard package to homeowners in the middle, upper middle and upper class demographics.

SIC/NAICS Codes: Portions of Southern Outdoor Living Centers business fits within (3) distinct SIC codes. SIC # 5211 Building Materials, SIC # 526 Lawn and Garden Supply Stores and SIC #571 Furniture, outdoor play equipment . The County has chosen to group

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our business along with mobile and manufactured homes. Mobile and Manufactured homes fit within SIC 527. Our business clearly does not interpret our business as fitting into only (1) of those SIC codes along with manufactured and mobile homes which fall under SIC #527 and is prohibited in a PD zone. The classification is wrong.

Our current display does indeed consist mainly of pre-fabricated storage sheds. However, the County refuses to recognize the fact that we could sell our product as building materials which does fit within a PD zone as a permitted use. The US Dept of Labor definition for SIC # 5211 is " Establishments engaged in selling primarily lumber, or lumber and a general line of building materials to the general public, While these establishments may sell primarily to construction contractors, they are known as retail in the trade. The lumber which they sell may include rough and dressed lumber, flooring, molding, doors, sashes, frames, and other millwork. The building materials may include roofing, siding, shingles, wallboard, paint, brick, tile, cement, sand, gravel, and other building materials and supplies. Included: Brick and tile dealers-retail, Building materials dealers-retail, **Buildings Prefabricated-retail**, , cabinets, kitchen to be installed-retail, doors-retail, fencing dealers-retail, flooring wood -retail, ,,,,"Gazebo's are also commonly sold as garden accessories and would also fit as a permitted use. Prefabricated buildings are grouped under NAICS code 444190 "Other Building Materials Dealers" which are defined as "primarily engaged in retailing specialized lines of new building materials, such as lumber, fencing, glass, doors, plumbing fixtures and supplies, electrical supplies, **prefabricated buildings** and kits and kitchen and bath countertops and cabinets to be installed. This is not the same as Home Center classification." As stated earlier, the Building Materials Retailer is a permitted use in a PD area. For those reasons, we respectfully request the Board of Adjustment to overturn the Planning Director's ruling.

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POIRIER & SMITH 8-7-07

Notice Form Zoning: 08/06/07



Pender County Code Enforcement

805 Walker Street
Post Office Box 1395
Burgaw, North Carolina 28425

Phone (910) 259-1202
Fax (910) 259-3735

DATE: August 3, 2007

TO: Betty M. Smith
P.O. Box 7
Hampstead, NC 28443

NOTICE OF ZONING VIOLATION:

You are hereby given notice that a violation or violations of the Pender County Code (Zoning Ordinance) exist at the property described below and owned/occupied by you.

LOCATION AND DESCRIPTION OF PROPERTY WHERE VIOLATION EXIST:

Property located at 19240 US Hwy. 17 and identified by the Pender County Tax Office as Tax Record Number 4204-63-5656-0000.

CONDITIONS THAT CREATE VIOLATION:

The Placement for sale, of prefabricated accessory structures on property zoned as (PD) Planned Development where such activities are prohibited by the Pender County Zoning Ordinance.

SECTIONS OF COUNTY ORDINANCE VIOLATED:

SECTION 8 - ZONING DISTRICTS AND REGULATIONS

8.9 Table of Permitted Uses

PERMITTED USES	PD	R-20C	R-20	R-15	R-10	B-1	B-2	B-3
Hardware	P					P	P	P
Livestock Sales							S	
Mobile Home Dealers & Prefabricated Buildings							S	
Miscellaneous Retail (SIC Major Group 59. Excluding 593, 596, 598, 5999)							P	P

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"S" = Special Use Permit

"Blank space" = Not Permitted.

CORRECTIVE ACTIONS THAT MUST BE TAKEN BY PROPERTY OWNER/VIOLATOR:

Discontinue the storage and/or sales of the Prefabricated Accessory Structures and remove the structures from the premises to a location zoned to permit such activity.

DATE BY WHICH CORRECTIVE ACTION MUST BE COMPLETE:

This violation must be corrected within thirty (30) calendar days of receipt of this notice. If the violations are not corrected within this period, you will immediately there after be subject to the penalties noted herein.

PROPERTY OWNER/VIOLATOR'S RIGHT TO APPEAL:

You are hereby given notice that you have the right to appeal the determination made by the Code Enforcement Officer to the Pender County Board of Adjustment. If you elect to appeal this determination, you must file a written request for appeal, specifying the reason for the appeal and paying the associated fees for appeal within thirty (30) days of receipt of this notice. The appeal shall be filed with the Pender County Planning Department, Zoning Administrator, 805 South Walker Street Burgaw, NC 28425. An appeal will stay all required proceedings under this notice until the Board of Adjustment acts upon the appeal.

PENALTIES FOR VIOLATIONS NOTED:

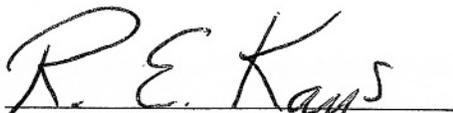
When corrective action is not taken as prescribed in the notice, the property owner/violator shall upon conviction be guilty of a misdemeanor punishable by fine of up to \$50.00, or imprisoned for not more than thirty (30) days, for each offense. In addition, the property owner/violator will be subject to a civil penalty of \$100.00 for each offense. Each day the violation continues after the time specified for it to be corrected shall constitute a separate and distinct offense.

REMEDIES IF CORRECTIVE ACTION NOT TAKEN:

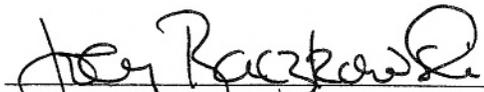
The County shall through its County Manager and County Attorney initiate legal action to insure compliance through court action and the violator may be subject to paying the cost of this action, pursuant to G.S. 153A-123, in addition to any penalties noted above.

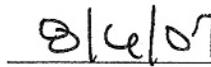
DATE OF NOTIFICATION:

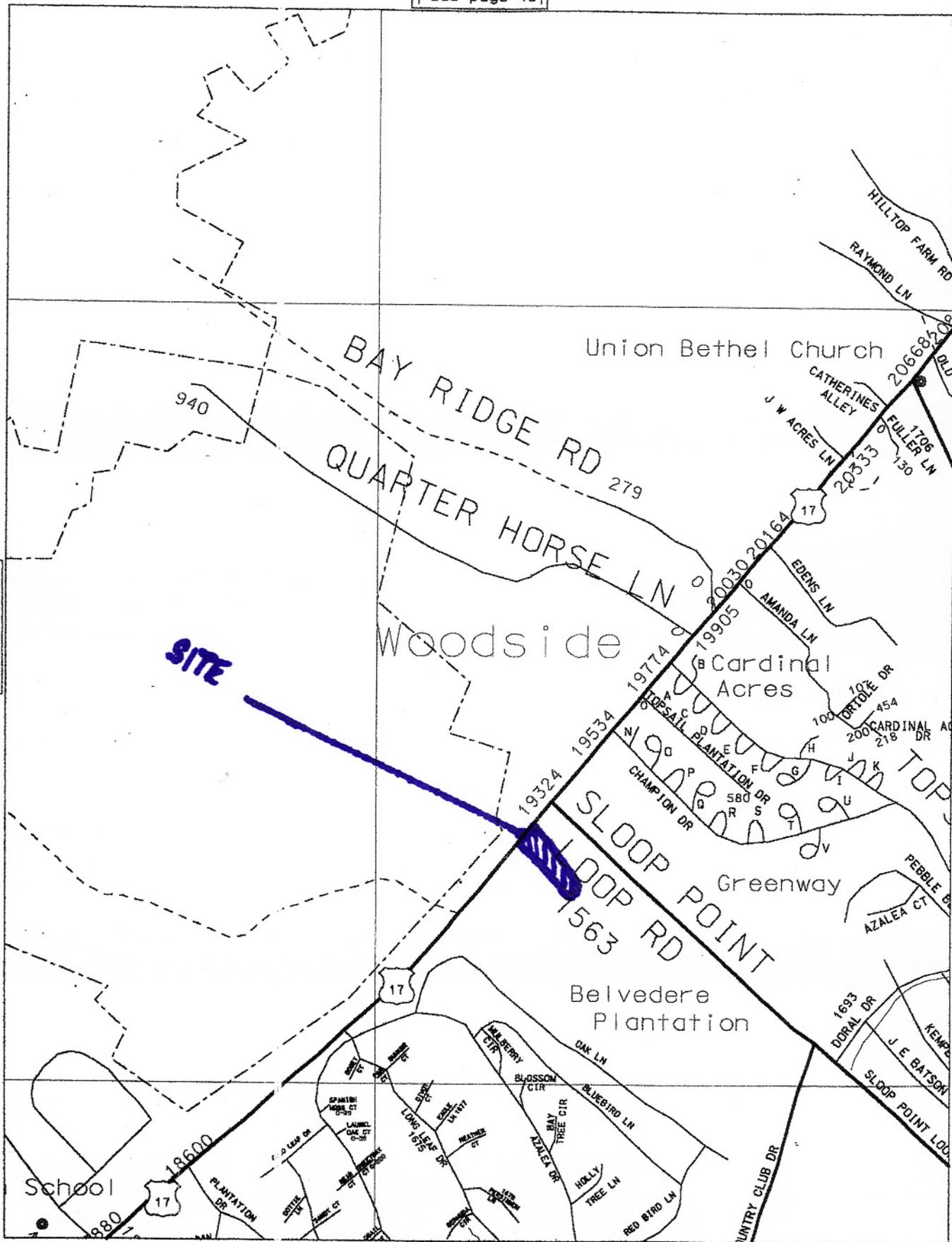
This determination of violation made on the 3rd day of August 2007 by the Pender County Code Enforcement Officer, after inspection of the property and the conditions. Please feel free to contact this office at any time. We will be happy to discuss this issue with you.


Code Enforcement Officer

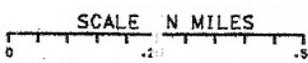
APPROVED:


Planning Director


Date

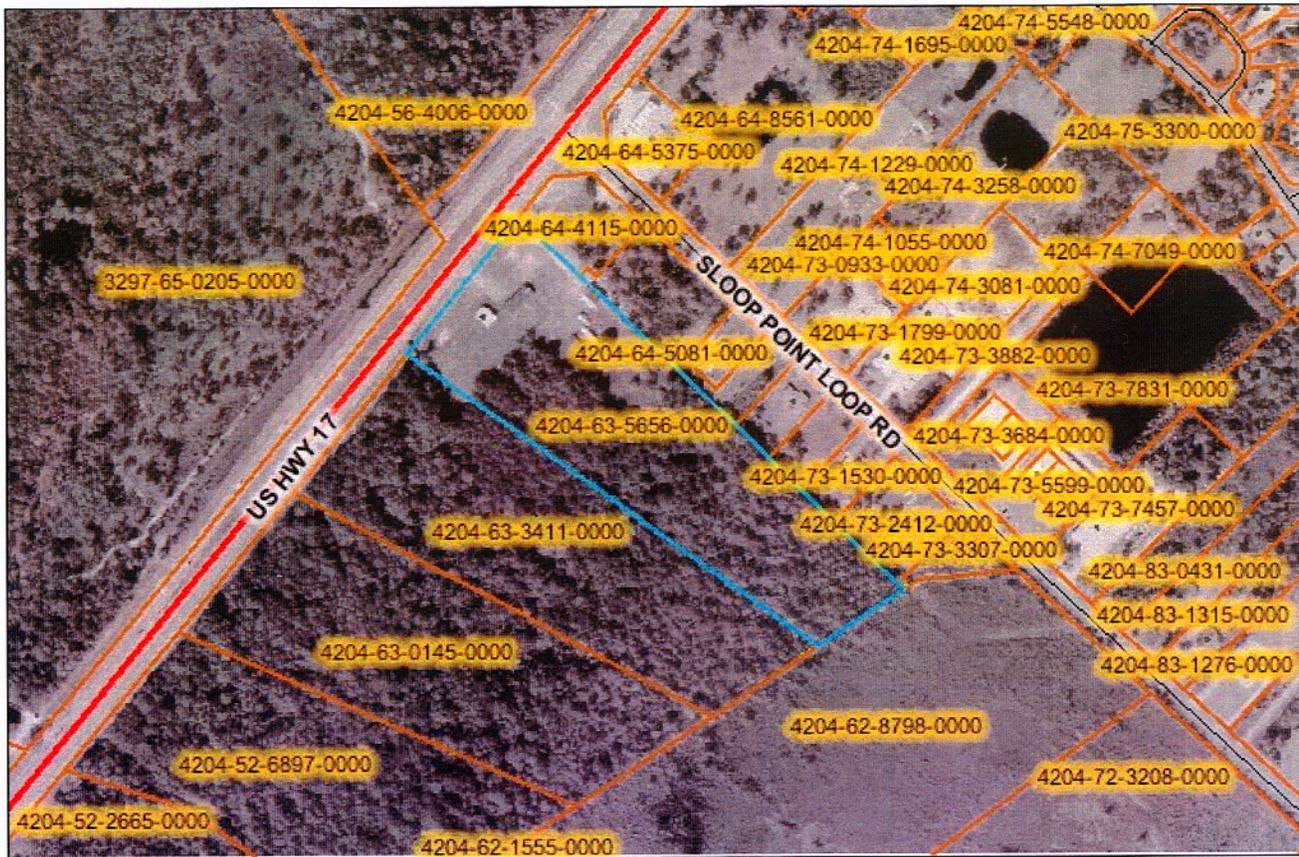


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Prepared by
 Address Conversion Technologies, Inc.
 Roswell, GA 30170

June, 2000
 770-947-4272

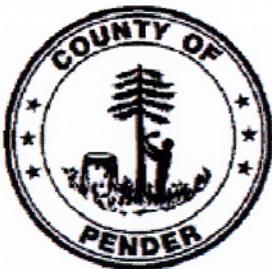


Parcels

PIN:	4204-63-5656-0000	Name:	SMITH BETTY M ET AL	Subdivision :	
Address:	P O BOX 7	City:	HAMPSTEAD	State:	NC
Zip:	28443	Deed Date:	6/18/2007	Acres:	9.19
Land Value:	100239	Deferred Value:	0	Building Value:	28904
Total Value:	129143	Property Location:	19240 US HWY 17	Property Description:	TR 3 PB 19/19 LT D ON S/E SIDE 17
Sale Price:	0	Deed Book:	3253/322	Township:	102
Zoning:	SEEMAP	Siding:	DBL SDNG	Square Feet:	720
Building Type:	TYPICAL OFFICE	Year Built:	1901	Roof:	FLAT
Construction Style:	COMMERCIAL	Grade:	D10	Plat BK/PG:	00190019
Tax Codes:	G01 F22 R40 S64				

1:312 feet

Pender County GIS



This map is prepared for the inventory of real property found within this jurisdiction, and is compiled from recorded deeds, plats, and other public records and data. Users of this map are hereby notified that the aforementioned public primary information sources should be consulted for the verification of the information contained on this map. Pender County assumes no legal responsibility for the information contained on this map.