

Pender County Planning and Community Development

Planning Division

805 S. Walker Street
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Burgaw, NC 28425



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AGENDA

**Pender County Board of Adjustment Meeting
June 17, 2015 9:00 a.m.
Pender County Public Meeting Room
805 S. Walker Street, Burgaw, North Carolina**

Call to Order: Chairman

Invocation:

Roll Call: Chairman

Pender County Board of Adjustment Members:

Ferrante: _____ Pullen: _____ Goble: _____ Newton: _____ Walton: _____

Alternates:

Godridge: _____ Peters: _____

1. Adoption of the Agenda:

2. Adoption of the Minutes: March 18, 2015

3. Public Comment:

Public Hearing Opened

4. Variance:

Hilary Maready and James Lane, applicants, on behalf of Harlan T. Pickard, owner, are requesting a variance for relief from Pender County Unified Development Ordinance standards outlined in Section 8.2.8, Project Boundary Buffer, specifically requesting a variance for relief from the side yard buffers requirements for commercial districts in the GB, General Business zoning district. The subject property is located at 15811 US Highway 17, Hampstead, NC 28443. There is one (1) tract associated with this request totaling \pm 0.34 acres and the property may be identified by Pender County PIN 3293-21-8659-0000.

** Public Hearing Closed**

5. Discussion Items:

a. Planning Staff:

b. BOA Members:

6. Next Meeting: No cases for July; August 19, 2015, as applicable

7. Adjournment:

PLANNING STAFF REPORT
Variance Request

SUMMARY:

Hearing Date: June 17, 2015
Applicant: Hilary Maready and James Lane
Property Owner: Harlan T. Pickard
Case Number: 11378

Property Location and Description: The subject property is located at 15811 US Highway 17, Hampstead, NC 28443. There is one (1) tract associated with this request totaling ± 0.34 acres and the property may be further identified by Pender County PIN 3293-21-8659-0000.

Zoning District of Property: The property is zoned GB, General Business zoning district.

Variance Requested: Hilary Maready and James Lane, applicants, on behalf of Harlan T. Pickard, owner, are requesting a variance for relief from Pender County Unified Development Ordinance standards outlined in Section 8.2.8, Project Boundary Buffer, specifically requesting a variance from buffers required for the commercial districts along all other boundaries in the GB, General Business zoning district.

BACKGROUND AND DESCRIPTION OF VARIANCE:

On April 21, 2015 Planning Staff received an inquiry regarding the operation of a motor vehicle sales office at the subject property addressed at 15811 US Highway 17, Hampstead, NC 28443. After Planning Staff explained the Landscaping and Buffering standards required in Section 8 of the Pender County Unified Development Ordinance, the applicant determined that the required buffering would greatly limit the amount of display area for vehicles.

Section 8.2.4 of the Pender County Unified Development Ordinance states that a buffer area shall not be used for any building or use, accessory building or use, parking or loading area, storage area, or other principal or accessory uses except as specifically permitted in the Ordinance.

The subject property, with fifty (50) feet of road frontage according to Map Book 691, Page 239 in the Pender County Register of Deeds (Exhibit 1), would require a Type A Buffer along the front property line and a Type B Buffer with a minimum of ten (10) feet wide along both the rear and side property lines due to the General Business zoning district properties to the east and west. The uses on the adjacent properties include a full-service restaurant to the east and a car wash to the west. The minimum required side yard buffer would leave an approximately thirty (30) feet wide piece of property useable for ingress, egress, and display of vehicles.

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 8.2.8 Project Boundary Buffer; which necessitates a Type B Buffer for all other property lines in the GB, General Business Zoning District.

ZONING ADMINISTRATOR'S CONCLUSION:

Hilary Maready and James Lane, applicants, on behalf of Harlan T. Pickard, owner, are requesting a variance for relief from Pender County Unified Development Ordinance standards outlined in Section 8.2.8, Project Boundary Buffer, specifically requesting a variance from side yard buffer requirements for the commercial districts along all other boundaries in the GB, General Business zoning district.

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:

MOVED _____ SECONDED _____

APPROVED _____ DENIED _____ UNANIMOUS

YEA VOTES: Ferrante ___ Pullen ___ Newton ___ Thompson ___ Walton ___

Alternates:

Godridge: _____ Peters: _____

8.2.4 Prohibited Use of Buffer Area

A buffer area shall not be used for any building or use, accessory building or use, parking or loading area, storage area, or other principal or accessory uses except as specifically permitted in this Ordinance.

8.2.6 Buffer Descriptions and Options

The following descriptions list the specifications of each buffer. The requirements reflect the minimum and the developer may increase the buffer at his/her option. Buffer requirements are stated in terms of width of the buffer and the number of plant units required per one hundred (100) linear feet of buffer. The requirements of a buffer may be satisfied by any of the options under each letter designation or existing equivalent vegetation. All mathematical rounding shall be upward and shall be applied to the total amount of plant material required in the buffer, not to each one hundred (100) foot length. The required canopy and understory trees shall generally be spread uniformly along the buffer. Shrubs may be clustered when a 98% grass cover is provided in all areas of the buffer other than within 4 ft. of the base of any tree or shrub.

Buffer A

Buffer "A" This buffer is designed primarily for road frontage areas and should run parallel to the street to provide a continuous, aesthetically pleasing streetscape. The requirements for buffer "A" shall be met by any one of the following:

A-1) 15 foot wide strip with 3 canopy trees, 2 understory trees and a grass cover of at least 98 % coverage (except within 4 feet of the base of any tree), per 100 linear feet (width may be reduced to 10' for existing developed lots that are subject to new buffer requirements), or

A-2) 20 foot wide strip with 3 canopy trees, 2 understory trees and either a grass cover of at least 98 % coverage (except within 4 feet of the base of any tree or shrub) or 18 shrubs per 100 linear feet, or

A-3) 25 foot wide strip with 1 canopy tree, 2 understory trees and either a grass cover of at least 98 % coverage (except within 4 feet of the base of any tree or shrub) or 21 shrubs per 100 linear feet, or

A-4) 30 foot wide strip with 1 canopy tree, 2 understory trees and either a grass or other approved vegetative ground cover of at least 98 % coverage (except within 4 feet of the base of any tree or shrub) or 32 shrubs per 100 linear feet.

Buffer B

Buffer "B" This buffer is a medium density planting area to be used primarily along non street boundary lines to provide spatial separation between similar types of uses. The requirements for buffer "B" shall be met by any one of the following:

B-1) 10 foot wide strip with 3 canopy trees, 4 understory trees and a grass cover of at least 98 % coverage (except within 4 feet of the base of any tree), per 100 linear feet, or

B-2) 15 foot wide strip with 3 canopy tree, 2 understory trees and a grass cover of at least 98 % coverage (except within 4 feet of the base of any tree), per 100 linear feet, or

B-3) 20 foot wide strip with 1 canopy tree, 2 understory tree and either a grass cover of at least 98 % coverage (except within 4 feet of the base of any tree or shrub) or 15 shrubs per 100 linear feet, or

B-4) 25 foot wide strip with 0 canopy trees, 5 understory trees and either a grass cover of at least 98 % coverage (except within 4 feet of the base of any tree or shrub) or 21 shrubs per 100 linear feet.

Buffer C

Buffer "C" This buffer is designed to provide a high density screen primarily along non street boundary lines to provide buffer and separation between different categories of uses such as commercial adjacent to residential uses or other non-residential uses adjacent to high density single family residential uses. The requirements for buffer "C" shall be met by any one of the following:

C-1) 10 foot wide strip with a 6 foot high wood stockade, basket weave, or other solid wood fence and 2 canopy trees and a grass cover of at least 98 % coverage (except within 4 feet of the base of any tree), per 100 linear feet, or

C-2) 15 foot wide strip with a 6 foot high wood stockade, basket weave, or other solid wood fence or an evergreen hedge* that will provide a continuous screen at least 6' high within 4 years and 1 canopy tree, 4 understory trees and a grass cover of at least 98 % coverage (except within 4 feet of the base of any tree), per 100 linear feet, or

*Reference spacing requirements in plant list for specific species and spacing to achieve evergreen hedge

C-3) 20 foot wide strip with an evergreen hedge that will provide a continuous screen at least 6' high within 4 years and 1 canopy tree or 3 understory trees and a grass cover of at least 98 % coverage (except within 4 feet of the base of any tree), per 100 linear feet, or

C-4) 25 foot wide strip with an evergreen hedge that will provide a continuous screen at least 6' high within 4 years, 2 understory trees and a grass cover of at least 98 % coverage (except within 4 feet of the base of any tree), per 100 linear feet.

Buffer D

Buffer "D" This buffer is a low density planting area to be used along boundary lines in rural areas between large lots or tracts with substantial buffer width and setbacks to provide spatial separation between uses that are developed at very low density. The requirements for buffer "D" shall be met by any one of the following:

D-1) 15 foot wide strip with 3 canopy trees and a grass or other approved vegetative ground cover of at least 98 % coverage (except within 4 feet of the base of any tree) per 100 linear feet, or

D-2) 20 foot wide strip with 2 canopy trees, 2 understory trees and a grass or other approved vegetative ground cover of at least 98 % coverage (except within 4 feet of the base of any tree) per 100 linear feet, or

D-3) 25 foot wide strip with 1 canopy tree, 3 understory trees and a grass or other approved vegetative ground cover of at least 98 % coverage (except within 4 feet of the base of any tree) per 100 linear feet.

8.2.8 Project Boundary Buffer

The following are the buffering requirements of listed permitted uses in each district and certain special types of development. Special uses may be required to meet additional buffer requirements, but shall in all cases be required to have at a minimum the same buffer as permitted uses. Existing vegetation that meets or exceeds the requirements of the specific buffer is desired and allowed instead of any required new plantings.

Buffers Required for the Commercial Districts - All uses in the General Business and Office & Institutional Districts shall be required to have the following buffers:

Location of Buffer for GB and OI Districts	Type Buffer
Along all boundaries adjacent to street right-of-ways	Buffer A
Along all non-street boundaries adjacent to Residential Districts and adjacent to single family residential uses or residential lots with a parcel size of less than 1 acre and when a single family structure is within 50' of the boundary of the development	Buffer C
Along all other boundaries	Buffer B

BUFFER: An open area used to separate one use from another.

APPLICATION FOR VARIANCE

THIS SECTION FOR OFFICE USE

Application No.	VA 11378	Date	4/30/15
Application Fee	\$ 250.00	Receipt No.	

SECTION 1: APPLICANT INFORMATION

Applicant's Name:	Hilary Maready + James Lane	Owner's Name:	HOLLAN T. PICKARD AND WIFE, MARY L. PICKARD
Applicant's Address:	2878 Scotts Hill Loop Rd	Owner's Address:	8720 MANDALE RD.
City, State, & Zip	Wilmington, NC 28411	City, State, & Zip	GRAHAM, NC 27253
Phone Number:	919-539-7579	Phone Number:	910-232-9798

Legal relationship of applicant to land owner: **None**

SECTION 2: PROJECT INFORMATION

Property Identification Number (PIN):	3293-21-8659-0000	Total property acreage:	.34
Zoning Classification:	GB, General Business	Variance Size:	10 ft.
Variance Location & Address	15811 U.S. HIGHWAY 17, HAMPSHIRE, NC 28443		

Describe Variance and amount or type requested: **Relief from the 10ft Buffers required on the size of the property at 15811 Hwy 17 Hampshire, NC 28443 Please see attached Document for more detail**

SECTION 3: SIGNATURES

Applicant's Signature	Hilary Maready James Lane	Date:	28 APR 2015
Owner's Signature	Hollan T. Pickard - Mary L. Pickard	Date:	4-28-15

NOTICE TO APPLICANT:

- 1 The Board of Adjustment shall review applications for a variance and shall be the approving authority for all requirements.
- 2 All applicants seeking a variance shall schedule a pre-application conference with the administrator to discuss the procedures, standards, and regulations required for variance approval.
- 3 An application for a variance shall be submitted in accordance with application requirements.
- 4 Once the application has been determined complete, the Administrator shall schedule a public hearing and give notice to adjoining/abutting property owners and aggrieved parties in the form of applicant supplied #10 envelopes with paid first class postage.
- 5 The applicant seeking the variance shall have the burden of presenting evidence sufficient to allow the Board of Adjustment to reach the conclusions set forth below (Findings), as well as the burden of persuasion on those issues.
- 6 Applicant must also submit the information described in the Variance Checklist provided below.
- 7 Applicant or agent authorized in writing must attend the public hearing.
- 8 Once the public hearing has been advertised, the case will be heard unless the applicant withdraws the application or unless the Board of Adjustment agrees to table or delay the hearing.

OFFICE USE ONLY

<input checked="" type="checkbox"/> VA Fees \$250	Total Fee Calculation \$			
Payment Method:	<table style="width: 100%; border: none;"> <tr> <td style="width: 33%;">Cash: <input type="checkbox"/> \$</td> <td style="width: 33%;">Credit Card: <input type="checkbox"/> Master Card <input type="checkbox"/> Visa</td> <td style="width: 34%;">Check: <input checked="" type="checkbox"/> Check # 2024</td> </tr> </table>	Cash: <input type="checkbox"/> \$	Credit Card: <input type="checkbox"/> Master Card <input type="checkbox"/> Visa	Check: <input checked="" type="checkbox"/> Check # 2024
Cash: <input type="checkbox"/> \$	Credit Card: <input type="checkbox"/> Master Card <input type="checkbox"/> Visa	Check: <input checked="" type="checkbox"/> Check # 2024		
Application received by: [Signature]	Date: 4/30/15			
Application completeness approved by:	Date:			
Date scheduled for public hearing: 6/17/15				

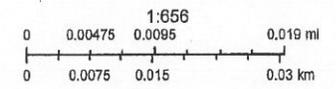


PIN: 3293-21-8659-0000
 Owner: PICKARD HARLAN T
 8720 MANDALE RD
 GRAHAM, NC 27253
 Deed Ref: 687/259
 Property
 Address: 15811 US HWY 17
 Description: OFF RD 17 ON RR 16

Sale Price: \$0
 Sale Date: 1987-03-09
 Plat: NOPLAT
 Account No: 30308
 Township: TOPSAIL
 Subdivision:
 Tax Codes: G01 F22 R40

Acres: 0.34
 Land Value: \$73,750
 Building Value: \$0
 Total value: \$73,750
 Deferred Value: \$0
 Exempt Amount:
 PCL Class: R
 Heated Sq Feet:

Pender County



1 inch = 55 feet
 April 30, 2015



U

Variance Description:

We are requesting that the 10 ft buffer required on both sides of the property at 15811 US Hwy 17 be eliminated. The property is substantially smaller than the surrounding properties. The property measures only 50 ft wide. The buffer would reduce the amount of usable land from side to side to only 30 ft. We are trying to purchase this property for our small car lot. We wanted to display our inventory along the sides of the property near the front so they would be visible from the highway. While performing our due diligence we were made aware of the 10 ft buffers that are required on all sides of the property. We were informed that parking or placing anything on the buffers was prohibited. If the buffers remain we will have to reconsider the purchase of the lot as the intended use will no longer be possible.

Findings:

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;

- The unnecessary hardship that would occur if the variance is not removed is that the amount of usable land would be greatly reduced and the intended use for the land would not be possible.

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;

- The hardship results from the size of the property.

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;

- The size of the property is the cause of the hardship and neither the applicant or the property owner created that 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.

- If the variance is granted public safety and justice will not be affected.

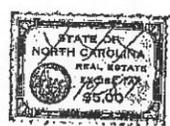
5-2 WSA
NORTH CAROLINA PENDER COUNTY 691-237

This Deed, made and entered into this, the Ninth day of April 1987, by and between Marion F. Barnhill, Sr., Executor of the estate of Grace Darling Barnhill party of the first part, and William T. Pickard party of the second part, WITNESSETH:

That for and in consideration of the sum of Ten and No/100 Dollars to him in hand paid, the receipt of which is hereby fully acknowledged, said party of the first part has given, granted, bargained and sold and do by these presents, give, grant, bargain, sell and convey unto the said party of the second part and his heirs and assigns, the following lot or parcel of land, lying and being in TOPSAIL Township, in said County and State bounded and described as follows, to-wit: Beginning at a concrete monument in the NORTHERN right-of-way line and 62.5 feet from the centerline of the A.C.L. Railroad and 294 feet measured in a Northeasterly direction along the railroad and 294 feet measured A. Congleton's crossing, thence North 41 degrees West 200 feet; thence parallel with the railroad tracks South 46 degrees 55 minutes West 50 feet; thence South 41 degrees East 200 feet to the railroad right-of-way; thence with the railroad right-of-way North 46 degrees 55 minutes East 50 feet to the point of beginning, containing approximately 1/4 acre.

For a more complete history, see Book 193 Page 555, Book 330 Page 587 and Book 479 Page 136 of the Pender County Registry.

This deed was prepared by Marion F. Barnhill, Sr., Executor of the estate of Grace Darling Barnhill.



To Have and To Hold said lot or parcel of land, together with all privileges and appurtenances thereon and thereto belong- ing unto the said party of the second part and his heirs and assigns forever in fee simple. And said Marion F. Barnhill, Sr., Executor for himself and other heirs covenants to and with said party of the second part and his heirs and assigns that he is seised of said premises in fee, and has good right to convey the same in fee simple; that the same are free and clear of all encumbrances, except NOLS and that he will forever warrant and defend the said title to the same against the claims of all persons whatsoever. In Testimony Whereof, The said party of the first part set hand and seal the day and year first above written.

Marion F. Barnhill, Sr. (SEAL)
(SEAL)
(SEAL)

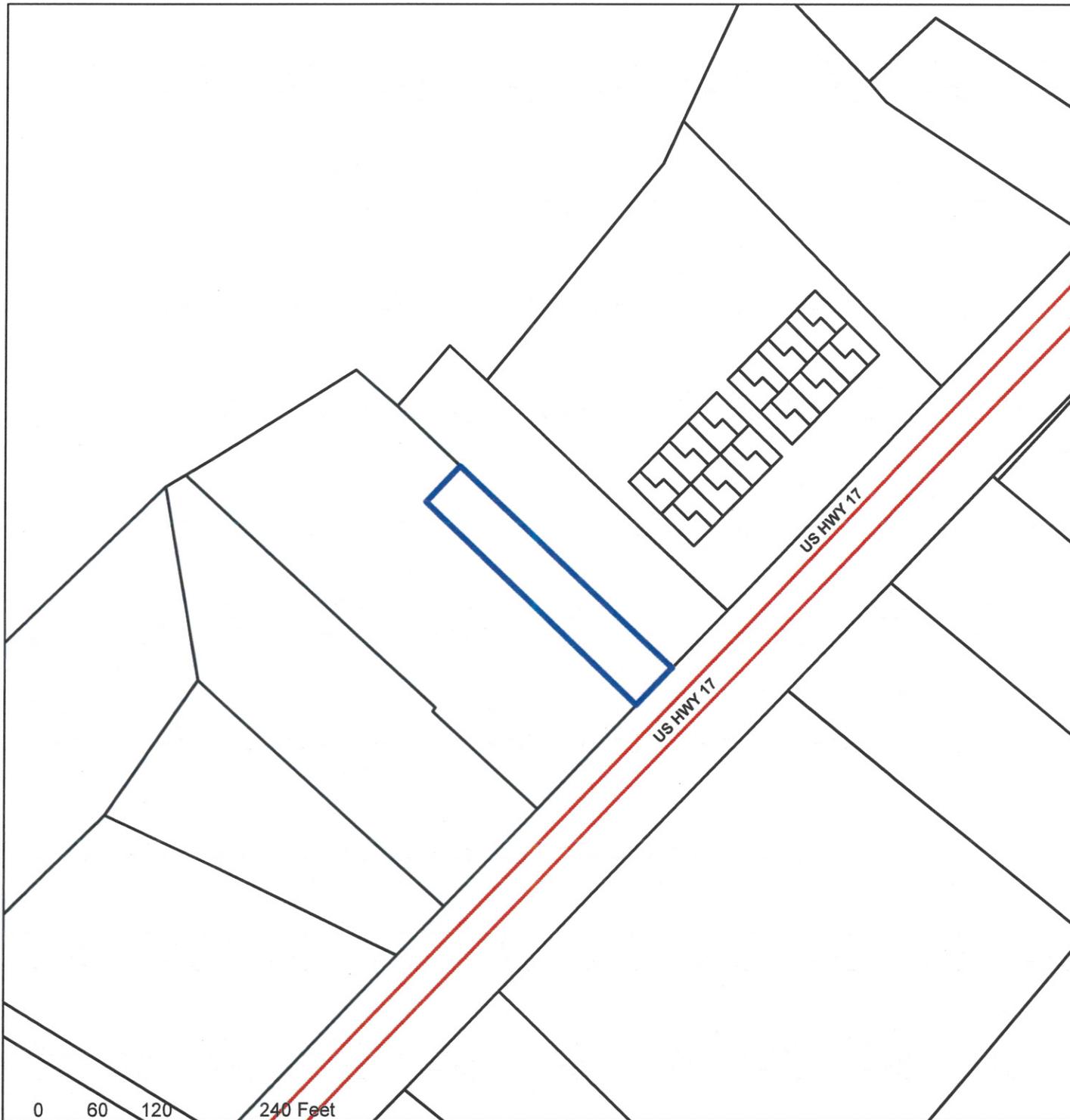


I, Violet G. Eubank, a Notary Public of Pender County, N. C. do hereby certify that Marion F. Barnhill, Sr. appeared before me this day and acknowledged the due execution of the foregoing deed, which he and notarial seal this the 19th day of May 1987.

NORTH CAROLINA County, Notary Public
North Carolina, certify that personally appeared before me this day and being duly sworn stated that, in his presence signed the foregoing instrument. WITNESS my hand and notarial seal this day of 1987. My commission expires 1988.

NORTH CAROLINA County, Notary Public
The foregoing certificate of Violet G. Eubank, a Notary Public of Pender County, N. C. is adjudged to be correct. Let the said deed, with all certificates, be witnessed. Witness my hand this 19th day of May 1987. By Appointment of the State of North Carolina, My Notary Seal, Violet G. Eubank, Notary Public.

Filed for registration in my office on the 19th day of May 1987 at 11:00 o'clock A. M. and recorded on the 19th day of May 1987.



Applicant:
Hilary Maready
&
James Lane

Owner:
Harlan T. Pickard

Special Use Permit:
#11378

Legend

 Subject Property



Vicinity



Applicant:
Hilary Maready
&
James Lane

Owner:
Harlan T. Pickard

Special Use Permit:
#11378

Legend

UDO Zoning

-  EC, Environmental Conservation
-  GB, General Business
-  GI, General Industrial
-  Incorporated
-  IT, Industrial Transition
-  MH, Manufactured Housing
-  O&I, Office & Institutional
-  PD, Planned Development
-  RA, Rural Agricultural
-  RA-Conditional Zoning 1
-  RP, Residential Performance
-  Subject Property



Current Zoning





Applicant:
**Hilary Maready
&
James Lane**

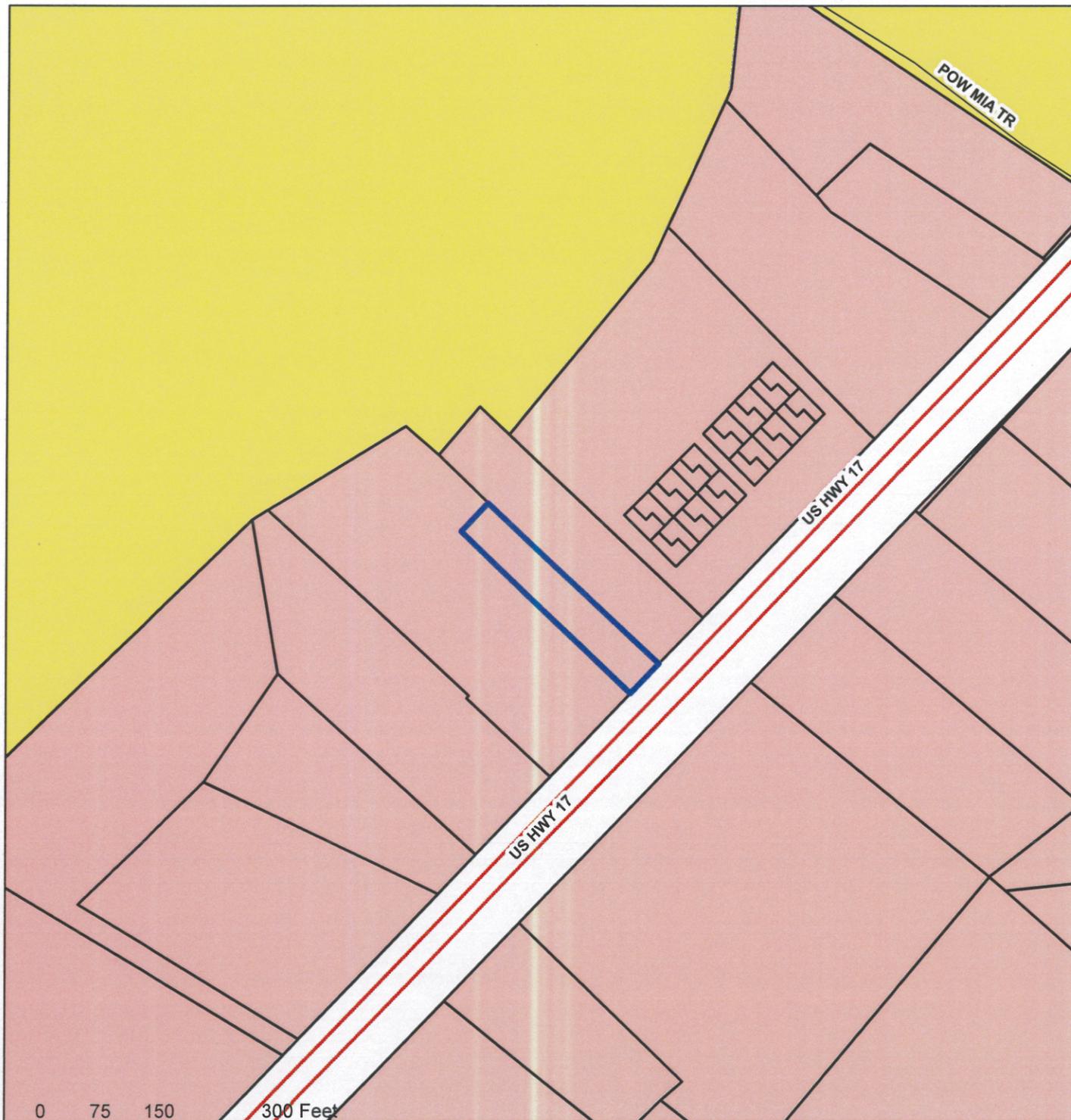
Owner:
Harlan T. Pickard

Special Use Permit:
#11378

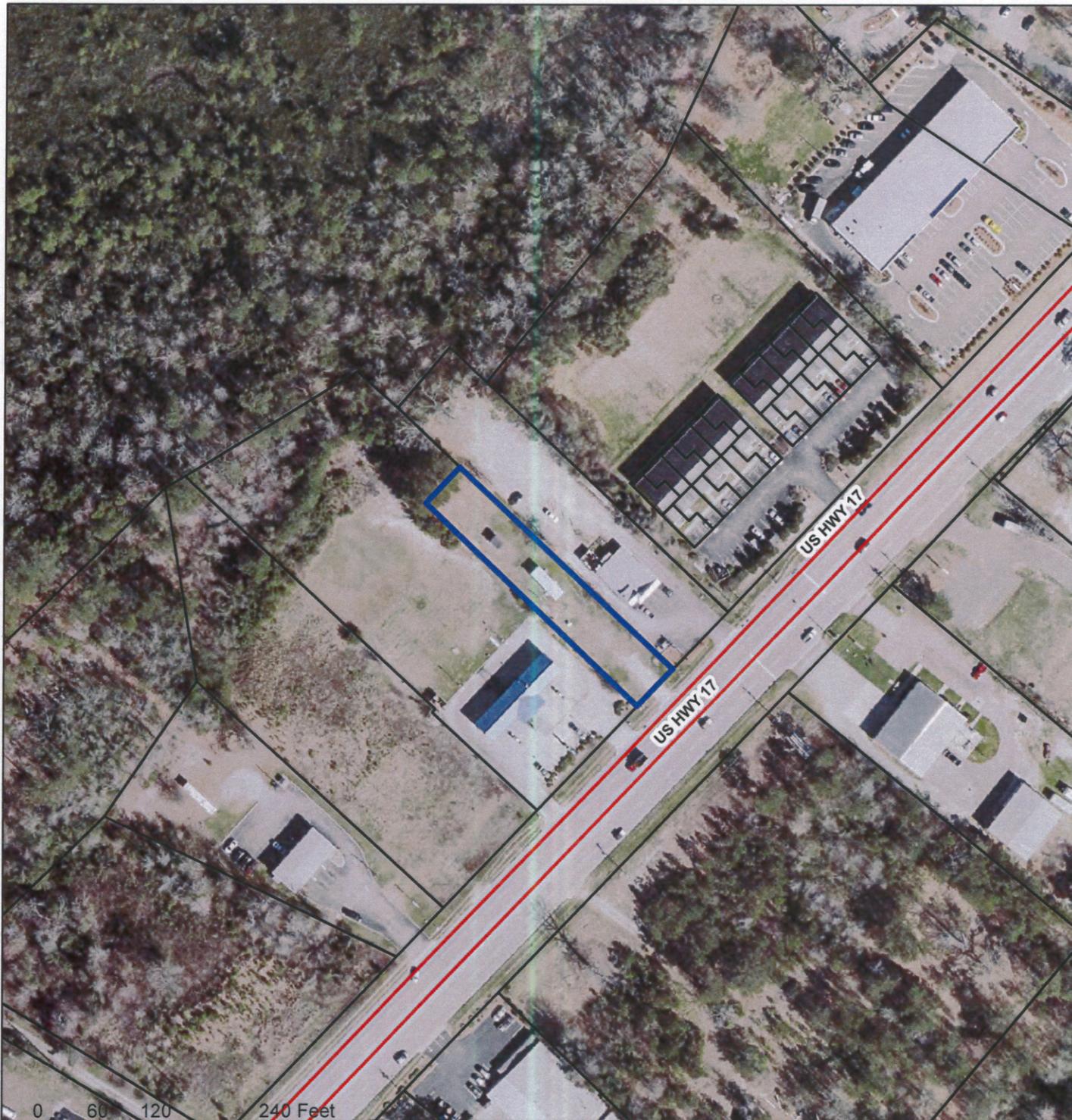
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Future Land Use

-  Industrial
-  Mixed Use
-  Office, Institutional, Business
-  Rural Growth
-  Suburban Growth
-  Subject Property



Future Land Use



Applicant:
Hilary Maready
&
James Lane

Owner:
Harlan T. Pickard

Special Use Permit:
#11378

Legend

 Subject Property



Aerial