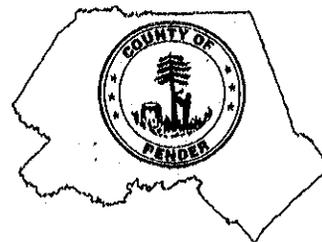


# PLANNING AND COMMUNITY DEVELOPMENT

PLANNING • CODE ENFORCEMENT • BUILDING INSPECTIONS • CENTRAL PERMITTING



## AGENDA

Pender County Board of Adjustment

November 18, 2009

9:00 a.m.

Pender County Public Meeting Room

805 S. Walker Street, Burgaw, North Carolina

*NOTE: Board Members are reminded to bring their Zoning Ordinances to the Meeting.*

**Call to Order:** Chairman Erwin Kane

**Prayer**

**Roll Call:** Chairman Erwin Kane

Pender County Board of Adjustment Members:

Kane: \_\_\_\_\_ Thompson: \_\_\_\_\_ Ferrante: \_\_\_\_\_ Loughlin: \_\_\_\_\_ Pullen: \_\_\_\_\_ Luther: \_\_\_\_\_

1. **Approval of Minutes:** October 21, 2009
2. **Administrative Appeal- (TABLED, Please bring packet)** Glen Lewis, applicant and owner, is requesting an Appeal of Administrative Review, as prescribed under Sections 3.5 C and 6.2 C of the Pender County Zoning Ordinance. The applicant is appealing a Notice of Violation for Inoperable Motor Vehicles and Junk/Salvage issued on July 20, 2009 by the Pender County Code Enforcement Officer. The property is zoned R-20, Residential District and is located at 153 Lewis Road in Hampstead, NC. The property consists of 15.03 acres and may be identified as PIN 4214-83-8898-0000

*\* Public Hearing\**

3. **Variance – Side Yard Setback**– Mark Ather, applicant and owner, is requesting a 15' side yard variance from the required 20 foot side yard setback as prescribed in the Pender County Zoning Ordinance, § 8.9 Table of Permitted Uses. The property is zoned R-20, Residential District, and is located at 1073 Factory Road, Hampstead, NC. The property contains 0.48 acres and is identified as PIN # 3292-45-4370-0000.
4. **Items for Discussion**
5. **Adjournment**

### BURGAW

PHONE: 910.259.1202  
FAX: 910.259.1295

PO BOX 1519  
BURGAW, NC 28425

### HAMPSTEAD

PHONE: 910.270.2505  
FAX: 910.270.5021

248 TRANSFER STATION RD.  
HAMPSTEAD, NC 28443

#3

**PLANNING STAFF REPORT**  
**Variance Request**

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**SUMMARY:**

**Hearing Date:** November 18, 2009

**Applicant:** Mark Ather

**Property Owner:** Same

**Property Location and Description:** The property is located at 1073 Factory Road, Hampstead, NC. The property contains 0.48 acres and is identified as PIN # 3292-45-4370-0000 (See attached vicinity map).

**Zoning District of Property:** The property is zoned R-20, Residential District.

**Variance Requested:** The applicant is requesting a fifteen (15') foot side yard variance from the required 20' foot side yard setback as prescribed in the Pender County Zoning Ordinance, § 8.9 Table of Permitted Uses for the R-20 Residential District.

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**BACKGROUND AND DESCRIPTION OF VARIANCE:**

On September 11, 2009, the applicant was cited through the Pender County Division of Code Enforcement for the construction of an attachment that linked a primary structure (house) to an accessory structure resulting in one (1) primary structure, without obtaining necessary permits. The applicant contacted the Division of Planning to alleviate the violation by obtaining proper permitting where it was found that the attachment of the primary structure to the accessory structure caused the structure to not meet zoning regulations set forth in the Pender County Zoning Ordinance.

Prior to the construction of the attachment between the primary and accessory structures, the accessory structure was considered by the Pender County Zoning Ordinance to be a legal non-conforming use. The accessory structure which is approximately 720 square feet was built prior to the adoption of the Pender County Zoning Ordinance. Only after the applicant attached the structure with a breezeway did the accessory structure need to meet the district requirements of a primary structure for the R-20, Residential District of 20 feet for the side yard. The accessory structure, which was constructed approximately 30 years ago, is five (5) feet from the side property line. On August 15, 2007 the Pender County Board of Adjustment found in Administrative Review Case # 29, that if the accessory structure is attached to the principal building, then it should be considered a part of the principal building and all district requirements prescribed in the Pender County Zoning Ordinance would apply to the principal structure as a whole.

The applicant did not move or alter the accessory building, he connected it to the primary structure creating the side yard setback violation, and currently the project has been stopped until the outcome of this hearing. As situated currently, the variance request is for 15' along the side property line.

**APPLICABLE ZONING ORDINANCE PROVISIONS:**

**8.10 Schedule of District Requirements - R-20**

PERMITTED USES	R-20
Lot Size (Sq. Ft. or noted)	20,000
Min. Front Yd.-Ft.	30
Min. Side Yard-Ft	20
Min. Rear Yard-Ft	25

## **SECTION 2 - DEFINITIONS**

### **Accessory Structure and Use\*\***

#### **Accessory Structure**

A structure or an attached portion of the principle building (or structure) which is ancillary to the principle structure, on the same lot, and/or used for purposes customarily associated with the principle (excluding signs). In no instances shall an accessory structure be located in a right-of-way.

#### **Accessory Use**

Those uses of land found on the same zoning lot as the primary use; and that are ancillary to, and/or associated with the primary use.

#### **Accessory Structures and uses are subject to all the following requirements:**

- a) Conducted or located on the same lot as the principal building or use served, or on any lot contiguous to it under common ownership, except as may be specifically provided elsewhere in the ordinance.
- b) Clearly incidental, subordinate purpose and serving the principal use.
- c) Is clearly operated and maintained solely for the comfort, convenience, necessity, or benefit of the occupants, employees, customers, or visitors of the principal use.
- d) Garages and/or detached "Dwellings as Accessory Uses" as defined and less than or equal to 1200 Sq. Ft., maybe either attached to the principal structure or connected to the principal structure by a covered breezeway no less than (10) feet in length.
- e) Decks, open and covered porches, gazebos as accessory structures maybe attached to a principal dwelling.
- f) All other accessory structures must comply with requirements a,b,c above

#### **Building, Principal (Main)**

A building in which is conducted the principal use of the plot on which it is situated.

#### **Setback**

The required distance between every structure and the lot lines of the lot on which it is located.

#### **2.79 Variance**

A variance is a relaxation of the terms of the Zoning Ordinance where such variance will not be contrary to the public interest and where, owing to conditions peculiar to the property and not the result of the action of the applicant a literal enforcement of the ordinance would result in unnecessary and undue hardship. As used in this ordinance, a variance is authorized only for height, area, and size of a structure or size of yards and open spaces; establishment or expansion of a use otherwise prohibited shall not be allowed by a variance, nor shall a variance be granted because of the presence of non-conformities in the zoning district or uses in an adjoining zoning district.

### **6.4 Powers and Duties of the Board of Adjustment**

#### **B. Variances**

To authorize upon appeal in specific areas variance from the terms of this ordinance as will not be contrary to the public interest where, owing to special conditions, a literal enforcement of the provisions of this ordinance will result in undue hardship, so that the spirit of this ordinance shall be observed and substantial justice done.

#### **A public hearing shall be heard at which the following conditions are found to exist:**

- (1) There are extraordinary and exceptional conditions pertaining to the particular piece of property in question because of its size, shape, or topography that are not applicable to other lands or structures in the same district.
- (2) Granting the variance requested will not confer upon the applicant any special privileges that are denied to other residents of the zoning district in which the property is located.

- (3) A literal interpretation of the provisions of this ordinance would deprive the applicant of rights commonly enjoyed by other residents of the zoning district in which the property is located.
- (4) The requested variance will be in harmony with the purposes and intent of this ordinance and will not be injurious to the neighborhood or to the general welfare.
- (5) The special circumstances are not the result of the actions of the applicant.
- (6) The variance requested is the minimum variance that will make possible the legal use of the land, building or structure.

In considering all proposed variances from this ordinance the Board shall, before making any finding in a specified case, first determine that the proposed variance will not constitute any change in the zone shown on the zoning map and will not impair an adequate supply of light and air to adjacent property, or materially increase the public danger of fire and safety, or materially diminish or impair established property values within the surrounding area, or in any other respect impair the public health, safety, morals, and general welfare.

In granting a variance the Board may attach thereto such conditions regarding the location, character, and other features of the proposed building, structure, or use, as it may deem advisable in furtherance of the purposes of this ordinance. Violation of such conditions and safeguards when made a part of the terms under which the variance is granted, shall be deemed a violation of this ordinance and punishable under Section 4 of this ordinance.

**SECTION 12 - NONCONFORMING USES**

**12.1. A**

**Nonconforming Situation**

A situation that occurs when on the effective date of this ordinance or any amendment hereto, an existing lot or structure does not conform to one or more of the regulations applicable to the district in which the lot or structure is located.

**Board of Adjustment**

**Board Action:**

**Motion:** \_\_\_\_\_ **Seconded:** \_\_\_\_\_

**Approved:** \_\_\_\_\_ **Denied:** \_\_\_\_\_ **Unanimous:** \_\_\_\_\_

**Kane** \_\_\_\_\_ **Thompson** \_\_\_\_\_ **Ferrante** \_\_\_\_\_ **Loughlin** \_\_\_\_\_ **Pullen** \_\_\_\_\_

**Alternates:** **Luther** \_\_\_\_\_

# PLANNING AND COMMUNITY DEVELOPMENT

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## APPLICATIONS COVER SHEET

Date Application Filed: 9/29/2009

VA-09-11-18-06

### I. REQUIRED NAMES:

Applicant <u>Mark Ather</u>	Owner _____
Address <u>1073 Factory Rd</u>	Address _____
<u>Hampstead N.C.</u>	_____
Phone <u>538 4099</u> Fax _____	Phone _____ Fax _____
Email <u>same</u>	Email _____

Legal Relationship of Applicant to Property Owner: \_\_\_\_\_

Consultant Name/Company N/A

Address " N/A

Phone N/A Fax \_\_\_\_\_

Email N/A

### II. AFFIDAVIT REGARDING OWNER - APPLICANT RELATIONSHIP:

I Mark Ather (owner) and Same (applicant) hereby affirm that an appropriate contractual relationship permitted by the appropriate NC State Codes exists between said Owner and Applicant. Owner and Applicant also affirm that if the owner requests that the application be terminated, staff with comply with Owner's request.

[Signature]  
(Signature of Applicant)

\_\_\_\_\_  
(Signature of Owner)

### III. TYPE OF APPLICATION:

(Please check one)

#### Board of Adjustment:

- Variance  
 Appeal

#### Zoning:

- Text Amendment  
 Map Amendment  
 Home Occupation  
 Special Use Permit  
 Vested Rights Determination

#### Plans:

- Planned Development Master Plan  
 Subdivision Preliminary Plat  
 Final Plat

# PLANNING AND COMMUNITY DEVELOPMENT



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## FEE SCHEDULE

Board of Adjustment:	Applicable Fees:	Fee Calculation:
Variance	\$250.00	\$ 250.00
Appeal	\$250.00	
<b>Zoning:</b>		
Zoning Determination Letter	\$15.00	
Text Amendment	\$250.00	
Map Amendment	\$500.00 for first 5 acres; \$10/acre thereafter up to 1,000 acres; \$5/acre thereafter	
Vested Rights Determination	\$250.00	
Home Occupation	\$25.00	
Special Use Permit	\$300.00 & \$10.00 per acre over 5 acres; max of \$5,000.00	
SUP, Part of AEC	\$300.00 & \$10.00 per acre over 5 acres	
SUP, Tower over 75 ft.	\$500.00	
SUP, Mining Borrow Pit	\$750.00 & \$10.00 per acre over 5 acres	
SUP, Mining other	\$1,000.00 plus \$5.00 per acre	
<b>Plans:</b>		
Planned Development Master Plan	\$500.00 plus \$10/acre for the first 100 acres; \$5/acre thereafter	
Preliminary Plat	\$500.00 & \$10/lot/residential unit for the first 100 lots/units; \$5 per lot/unit thereafter	
Final Plat	\$250.00 & \$10/lot/residential unit for the first 100 lots/units; \$5/lot/unit thereafter	
<b>Total Fees Due:</b>		\$ 250.00

**Attachments Included with Application:**

(Please include # of copies)

CD  
  Plan Sets  
  Other Documents/Reports

**Method of Payment:**

Cash  
 Credit Card, We accept VISA \_\_\_ and MasterCard \_\_\_ only.  
 Check, Ck. # ( 1115 )

**For Office Use Only:**

Receipt # 091752

Received By: Ashley D. Frank

Date: 9/29/09

PLANNING AND COMMUNITY DEVELOPMENT



PLANNING • CODE ENFORCEMENT • BUILDING INSPECTIONS • CENTRAL PERMITTING

VARIANCE APPLICATION

Date 9/29/2009 Application No. V A07-11-18-06 Ag  
 Application Fee \$ 250.00 Ather

**I. PROPERTY INFORMATION:**  
 Record #: 0007 / 0030 Lot #: L18A & L18B  
 Parcel ID #: 3292.45.4370 Zoning District: R-20  
 Property Location/Address: 1073 Factory Rd, Hampstead, NC  
 Describe Variance & Reason for Request:  
15ft Side-Set back variance - for

**II. A complete submission must be in the Planning and Community Development Department office 45 days prior to the scheduled Board of Adjustment public hearing date. All of the information listed below must be included for the submission to be considered complete:**

- Application Fee
- A self addressed business envelope for each adjacent property owner(s) and an additional envelope for the applicant/owner and their agent
- Fifteen scaled maps, no smaller than 8 1/2" x 11" at a readable scale, clearly showing the following:
 

<input type="checkbox"/> Property Location	<input type="checkbox"/> Existing Buildings
<input type="checkbox"/> Building Separation Distances	<input type="checkbox"/> Acreage
<input type="checkbox"/> Dimensions of Property	<input type="checkbox"/> Proposed Buildings
<input type="checkbox"/> Proposed Building Height*	
<input type="checkbox"/> Building Distances from Property Lines (front, side, rear)	
<input type="checkbox"/> Location of well and septic system	
<input type="checkbox"/> Additional Info Pertinent to the variance request (Pictures, Septic Tank Permits, etc)	

\*All Building Height Variance requests must supply elevation of property at curb and at an established building grade and must be provided by a Licensed Surveyor or Engineer.

- The applicant/owner must submit a detailed letter describing the request and stating why the request is being made and provide other information that is pertinent to the case.

**III. SIGNATURE OF OWNER & APPLICANT:**

[Signature] \_\_\_\_\_  
 Applicant Owner

Planning and Community Development  
805 S. Walker Street  
Burgaw, NC

September 24, 2009

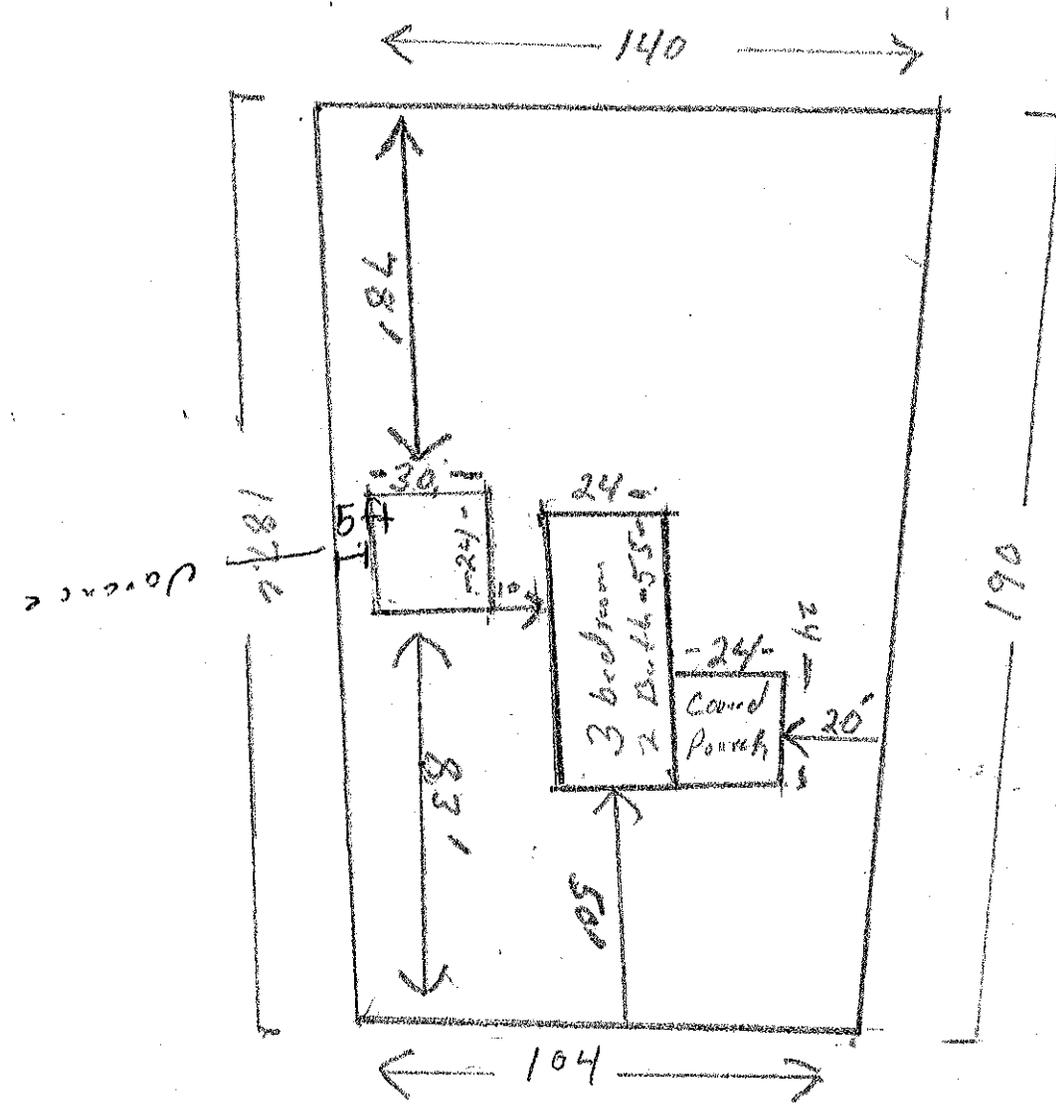
I would like to ask the board for a fifteen (15) foot variance for my garage on 1073 Factory Road. The garage was built about 30 years ago. I am remodeling the house and would like to connect the garage to the house before I finish putting the vinyl siding on. It would be nice if my wife and I could walk to the car from the house to the garage without getting into the rain or any other weather conditions.

Sincerely Yours,

Mark Ather

A handwritten signature in black ink, appearing to read 'Mark Ather', with a long horizontal flourish extending to the right.

1 = 40'  
SCALE



Factory Rd



**Applicant/Owner**  
Mark Ather

VA 09-11-18-06

**Ather**  
Side Yard Variance

**Legend**



Subject Property



**VICINITY MAP**

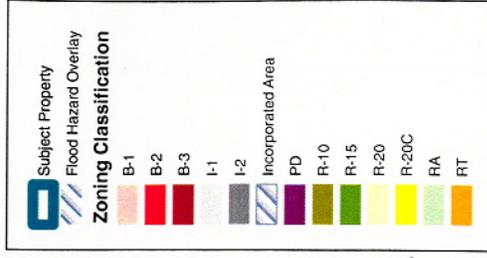




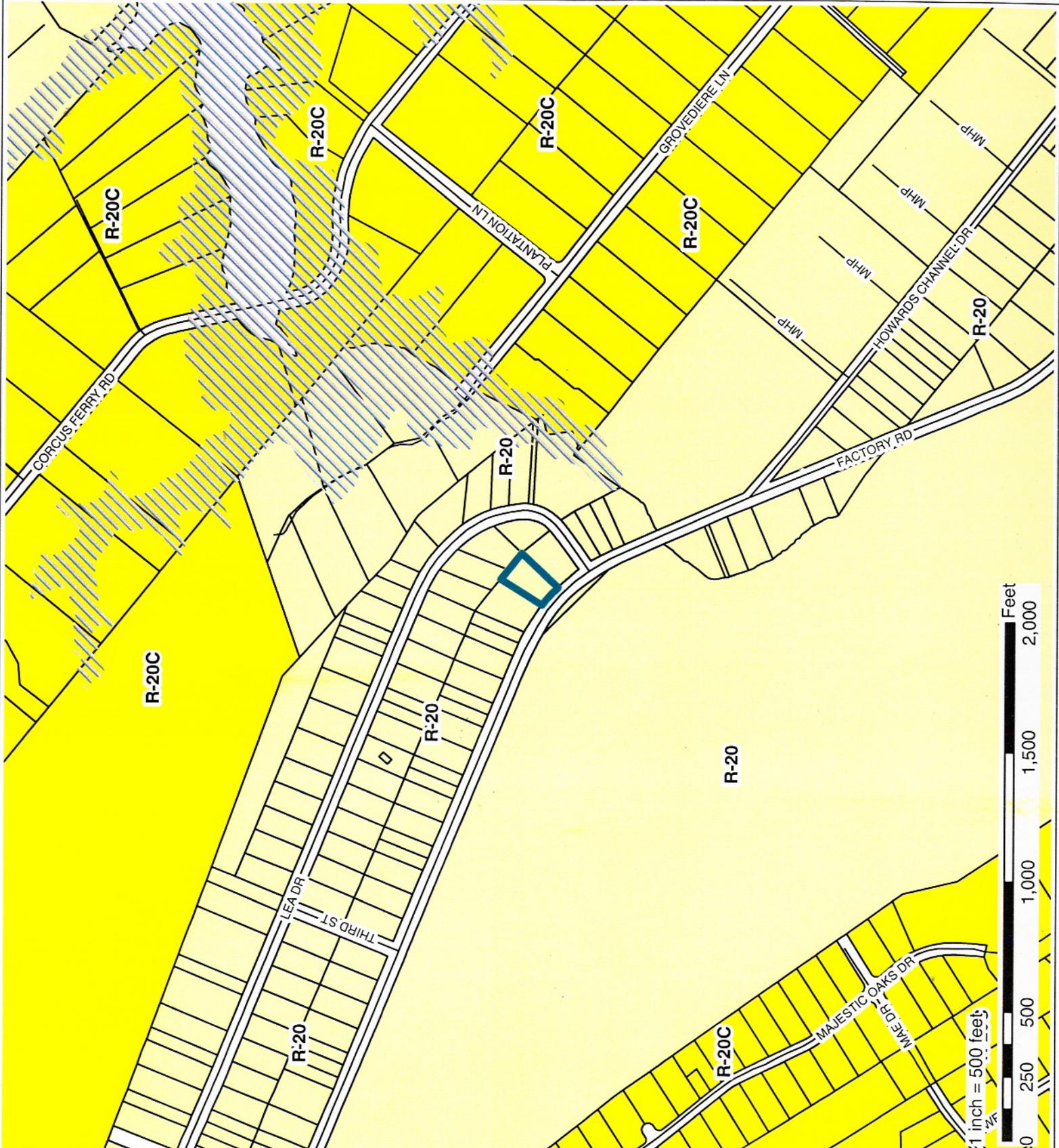
**Applicant/Owner**  
**Mark Ather**

**VA 09-11-18-06**

**Ather**  
**Side Yard Variance**



**ZONING MAP**





**Applicant/Owner**  
Mark Ather

VA 09-11-18-06

**Ather**  
Side Yard Variance

**Legend**

- Subject Property



**Aerial Map**



