

PLANNING AND COMMUNITY DEVELOPMENT

PLANNING • CODE ENFORCEMENT • BUILDING INSPECTIONS • CENTRAL PERMITTING



AGENDA

Pender County Board of Adjustment

September 16, 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: ___ James: ___ Luther: ___

Approval of Minutes: August 19, 2009

Public Hearing

1. **Administrative Appeal**– Frederick Jones, applicant, on behalf of Nora Enriquez and Celia Simpson, is requesting an appeal of administrative review, as prescribed under Sections 3.5C and 6.2C of the Pender County Zoning Ordinance. The applicant is appealing a decision made by the zoning administrator in regards to the exemption of two proposed subdivisions as described in the definition of *Subdivision* in the Pender County Zoning Ordinance. The properties are located on Stoney Road and may be identified as PINs 3236-16-3524-0000 and 3236-16-6543-0000.
2. **Variance – Side Yard Setback Requirements** – Anne Hayler, applicant, on behalf of James F. Lankford, owner, is requesting a variance from the Pender County Zoning Ordinance, §9.2, Accessory Building, Setbacks and Separation Requirements. The applicant is requesting an 8.8 ft. variance from the 10 ft. minimum setback requirement for an accessory structure less than 600 square feet in area. The property is zoned R-20C, Residential Conventional Housing District, and is located at 861 Corcus Ferry Road in Hampstead, NC.
3. **Items for Discussion Items for Discussion**
4. **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

1

PLANNING STAFF REPORT
Appeal of Administrative Review

SUMMARY:

Hearing Date: September 16, 2009
Applicant: Frederick W. Jones, PLS, Thompson & Jones Surveying Company
Property Owners: Nora Enriquez and Cella Simpson

Property Location and Description: The properties are located on Stoney Road in Burgaw, NC. Each property consists of 1.926 acres and they may be identified as PINs 3236-16-3524-0000 and 3236-16-6543-0000 (See attached vicinity map).

Zoning District of Property: The properties are zoned R-20, Residential District.

Summary of Appeal Requested: The applicant 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 decision made by the zoning administrator in regards to the exemption of the proposed subdivisions as described in the definition of *Subdivision* in the Pender County Subdivision Ordinance.

BACKGROUND AND DESCRIPTION OF APPEAL:

On June 30, 2009, Mrs. Nora Enriquez visited the Pender County Division of Planning's Burgaw office for review of the proposed family subdivisions for parcels 3236-16-6543-0000 and 3236-16-3424-0000, owned by Mrs. Cella Simpson and Mrs. Enriquez, respectfully. The proposed subdivisions plat was created by Frederick W. Jones, PLS, of Thompson and Jones Surveying Company. After review of the proposals, Planning Staff determined that the subdivisions as proposed could not be approved for several reasons and explained the denial to Mrs. Enriquez, as well as explaining the denial decision in a letter to Mr. Jones, copied to Mrs. Enriquez and Mrs. Simpson. As described in the letter, the subdivisions as proposed could not be approved for a number of reasons. First, the proposal included the divisions of two parcels, which would have required two separate plats, reviews, and fees, whereas the subdivisions as proposed were on one plat. Secondly, the divisions as proposed did not qualify for a Family Subdivision as described in the Pender County Subdivision Ordinance:

Family Subdivision Limitations

The following limitations will apply to family subdivisions:

1. *Family subdivisions will be allowed for resident households that exist in Pender County and own real property in Pender County on the effective date of this ordinance.*
2. *Family subdivisions will be allowed only on parcels that have been created and recorded in the Registry before the effective date of this ordinance.*
3. *A total of three parcels (excluding the remnant parcel, if the remnant parcel meets the requirements of this ordinance and the zoning ordinance) per qualified resident household will be allowed to be created under the family subdivision provisions.*
4. *The division does not create a new public or private street.*

Because the two parcels were created and recorded as a result of the subdivision approval of parcel 3236-16-6532-0000 on June 12, 2007, the lots are not eligible for a Family Subdivision or a Three-Lot Subdivision on an NCDOT maintained road, as prescribed on page 16 of the Subdivision Ordinance:

Three Lot Subdivision Limitations

The following limitations will apply to three lot subdivisions:

1. Three lot subdivisions located on an existing NCDOT maintained or other public road will be limited to no more than three such parcels (excluding the remnant parcel, if the remnant parcel meets the requirements of this ordinance and the zoning ordinance) being created from any parcel that had been created and recorded in the Registry before the effective date of this ordinance.
2. Three lot subdivisions located on an access easement as defined in this ordinance will be limited to three such parcels (excluding the remnant parcel, if the remnant parcel meets the requirements of this ordinance and the zoning ordinance) being created from any parcel that had been created and recorded in the Registry on the effective date of this ordinance or any parcel that has been created and approved by the Director under the provisions of this ordinance.
3. The division does not create a new public or private street.

The proposed division also would not qualify for a Three-Lot Subdivision on an access easement for several reasons. First, because "Stoney Road" is not a recorded easement, the lots do not have access to an access easement as defined in the Subdivision Ordinance, and as required for approval:

Easement, Access – an easement that is at least 30 ft. wide is recorded by map or other instrument in the Registry that specifically transfers rights to the adjacent property owners or specific property owners and their assigns, invitees, licensors and permittees for ingress, egress and utilities and for the construction and maintenance of ingress, egress and utility facilities. An access easement by designation on a recorded plat also transfers the right to construct and maintain water, sewer, electric and communication lines within the easement by any public entity or public utility.

Approval Requirements

3. The lots created have access to an access easement as defined in this ordinance

Second, in order for the proposed divisions to be approved, the access easement that provides access to a public street can be no longer than 500 feet and at least 5000 square feet of the buildable lot area of all lots in the subdivision are within 500 square feet of a public road. Regardless of whether "Stoney Road" is recorded as an access easement, proposed lots "A", "C", and "D" would not be able to meet this stipulation as required for approval in the Subdivision Ordinance:

Approval Requirements

4. The access easement that provides access to a public street is no longer than 500 ft. and at least 5000 sq. ft. of the buildable lot area of all lots in the subdivision are within 500 ft. of a public road

Third, no more than three lots may be created that are provided access by a single easement, as stated on page 32 of the Design Requirements section of the Subdivision Ordinance:

Design Requirements - Lots

4. No more than three lots may be created that are provided access by a single access easement

Again, "Stoney Road" is not a recorded access easement, but currently provides the only access route to 19 individual parcels and 10 single-family structures.

Following receipt of the letter detailing the June 30, 2009 subdivision denial, Mr. Fred Jones inquired to Planning Staff by telephone whether the proposed subdivision would be exempt to the definition of *Subdivision* in the Pender County Subdivision Ordinance, particularly exemption number 4:

Subdivision – shall mean all divisions of a tract or parcel of land into two or more lots, building sites, or other divisions for the purpose of sale or building development (whether immediate or future) and includes

all division of land involving the dedication of a new street or a change in existing streets; however, the following is not included within this definition and shall be considered exemptions to the definition of subdivision and is not subject to any regulations enacted pursuant to this ordinance, except for requirements for parcel identifiers:

4. *The division of a tract in single ownership the entire area of which is no greater than two acres into not more than three lots, if no street right-of-way dedication is involved and if the resultant lots are equal to or exceed the standards of the county as shown by its subdivision regulations.*

Following Mr. Jones's inquiry, Planning Staff determined that the proposed subdivisions would not be eligible for this exemption, and detailed the determination in a letter sent July 8, 2009 to Mr. Jones and copied to Mrs. Simpson and Mrs. Enriquez. The subdivision that was approved and recorded on June 12, 2007 divided the original parcel into four lots, and the currently proposed subdivision would divide two of those lots into two lots each, bringing the number of lots to be created from the single parcel to a proposed total of six. In addition and more importantly, the proposed lots do not meet or exceed the standards for created lots as required by the current County ordinances and regulations, particularly regarding the access issues as described above.

The applicant is appealing Planning Staff's interpretation of the definition of subdivision, as stated in the Pender County Subdivision Ordinance, specifically that the proposed subdivisions are exempt from the subdivision regulations. However, the applicant is justifying the exemption based on exemption number 4, as described above, which clearly states that for the exemption to be applicable, the lots created by such a subdivision must be "equal to or exceed the standards of the county as shown by its subdivision regulations." The resultant lots of the proposed subdivisions do not meet the subdivision regulation standards, specifically on the issues of access to an NCDOT maintained road and access easement, and exceeding the number of lots allowed on an access easement.

APPLICABLE ZONING ORDINANCE PROVISIONS:

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.

6.2 Procedure of the Board of Adjustment

C. Appeals

An appeal from the decision of the Zoning Administrator may be taken to the Board of Adjustment by any person, firm, or corporation aggrieved, or by any officer, department, board of the county. Such appeal shall be taken within thirty (30) days after the decision by the Zoning Administrator, as agent for the Board of Adjustment, a notice of appeal specifying the grounds thereof and paying the appeal fees and mailing cost. The Zoning Administrator shall forthwith transmit to the Board all the papers constituting the record upon which the action appealed from was taken. The Board of Adjustment shall fix a reasonable time for hearing of the appeal, giving notice to all participants by certified mail with return receipt requested. An appeal stays all proceedings in furtherance of the action appealed from, unless the

Zoning Administrator certifies to the Board, after notice of appeal has been filed with them, that by reason of the facts stated in the certificate a stay would, in their opinion, cause imminent peril to life or property or that because the violation charge is transitory in nature, a stay would seriously interfere with the enforcement of the ordinance, in which case, proceedings shall not be stayed other than by a restraining order, which may be granted by the Board or by a court of record to whom an appeal has been made.

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.

Board of Adjustment

Board Action:

Motion: _____ **Seconded:** _____

Approved: _____ **Denied:** _____ **Unanimous:** _____

Kane _____ **Thompson** _____ **Ferrante** _____ **Loughlin** _____ **Pullen** _____

Alternates: **James** _____ **Luther** _____

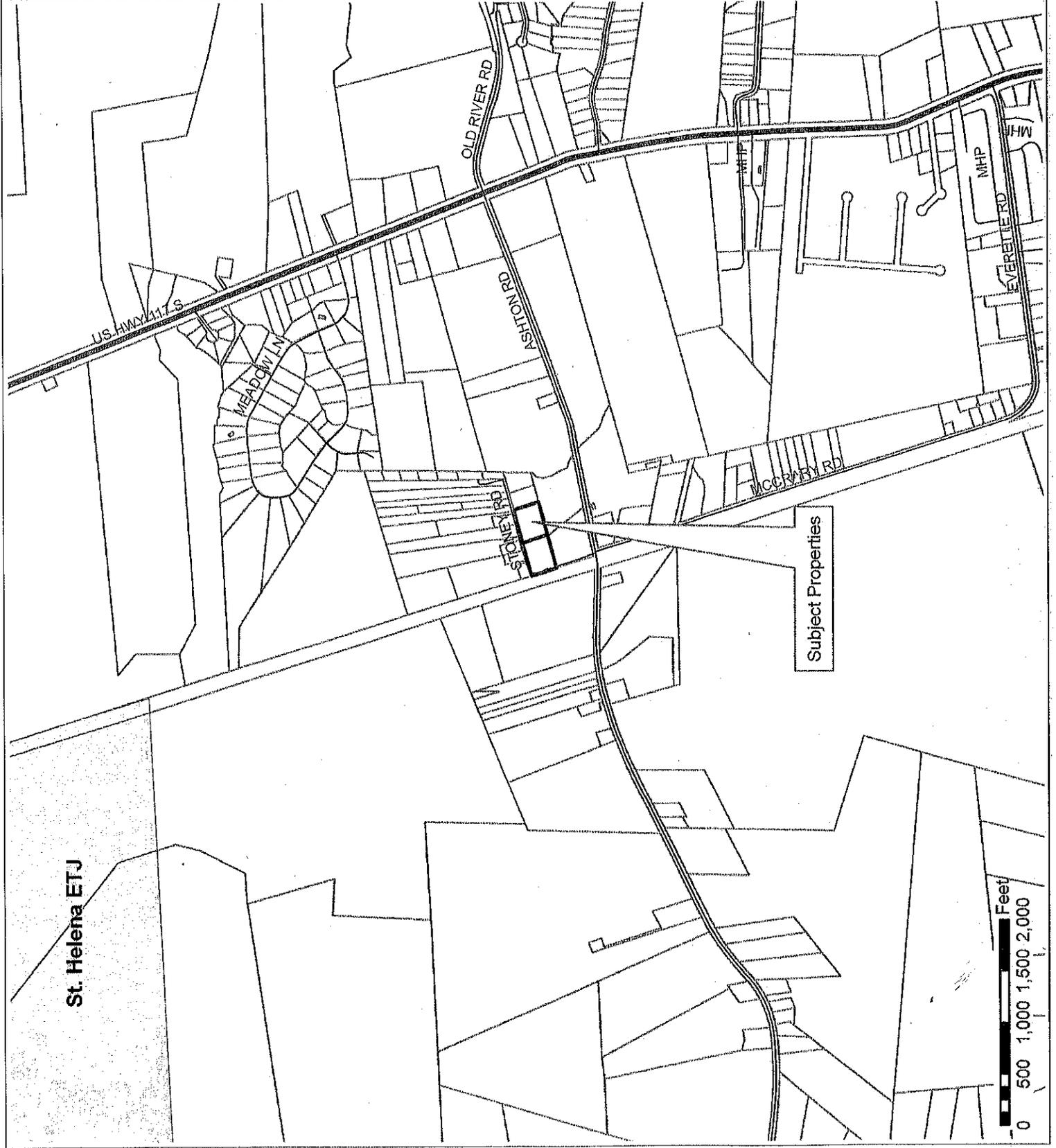


Applicant -
Frederick W. Jones
on behalf of
Celia Simpson and
Nora Enriquez

Administrative Appeal



Vicinity Map





Applicant -
Frederick W. Jones
on behalf of
Celia Simpson and
Nora Enriquez

Administrative Appeal



Aerial Map



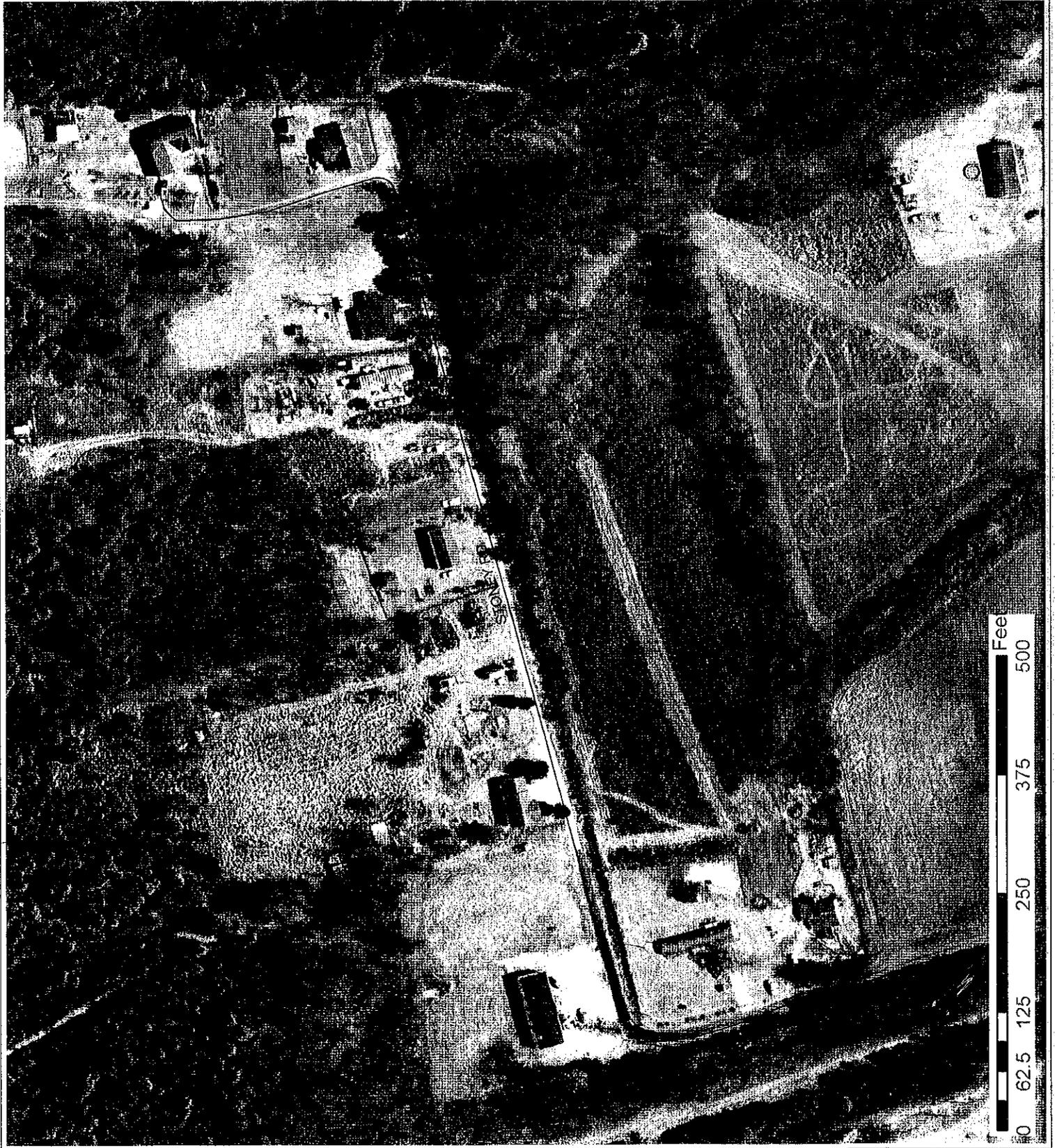


Applicant -
Frederick W. Jones
on behalf of
Celia Simpson and
Nora Enriquez

Administrative Appeal



Aerial Map



SURVEY REFERENCES:
 LOT No. 1 (REMARK) & LOT No. 2
 MAP BOOK 45 AT PAGE 005
 PENDER COUNTY REGISTRY

- NOTES:**
- CORNERS ARE MARKED AS NOTED ON MAP.
 - ALL DISTANCES ARE HORIZONTAL FIELD MEASUREMENTS.
 - AREA COMPUTED BY THE COORDINATE METHOD.
 - THIS PROPERTY IS ZONED R-20.
 - THIS PROPERTY DOES NOT LIE WITHIN A FLOOD (HAZARDOUS AREA).
 - NO KNOWN HORIZONTAL CONTROL WITHIN 2,000'.
 - LOTS "a" & "b" CANNOT BE USED FOR BUILDING DEVELOPMENT, UNLESS A NEW PLAT IS APPROVED AND RECORDED UNDER THE PENDER COUNTY SUBDIVISION ORDINANCE. LOTS "a" & "b" HAVE EXISTING SEPTIC SYSTEMS.
 - NO KNOWN CORPORATE LIMITS, TOWNSHIP BOUNDARIES OR COUNTY LINES ON SURROUNDED TRACT.
 - THERE ARE NO ADJOINING SUBDIVISIONS OF RECORD.
 - BUILDING SETBACKS REQUIRED TO BE IN ACCORD WITH THE PENDER COUNTY ZONING ORDINANCE. (Front 30' // Rear 25' // Side 20')
 - NO KNOWN AREAS OF ENVIRONMENTAL CONCERN.

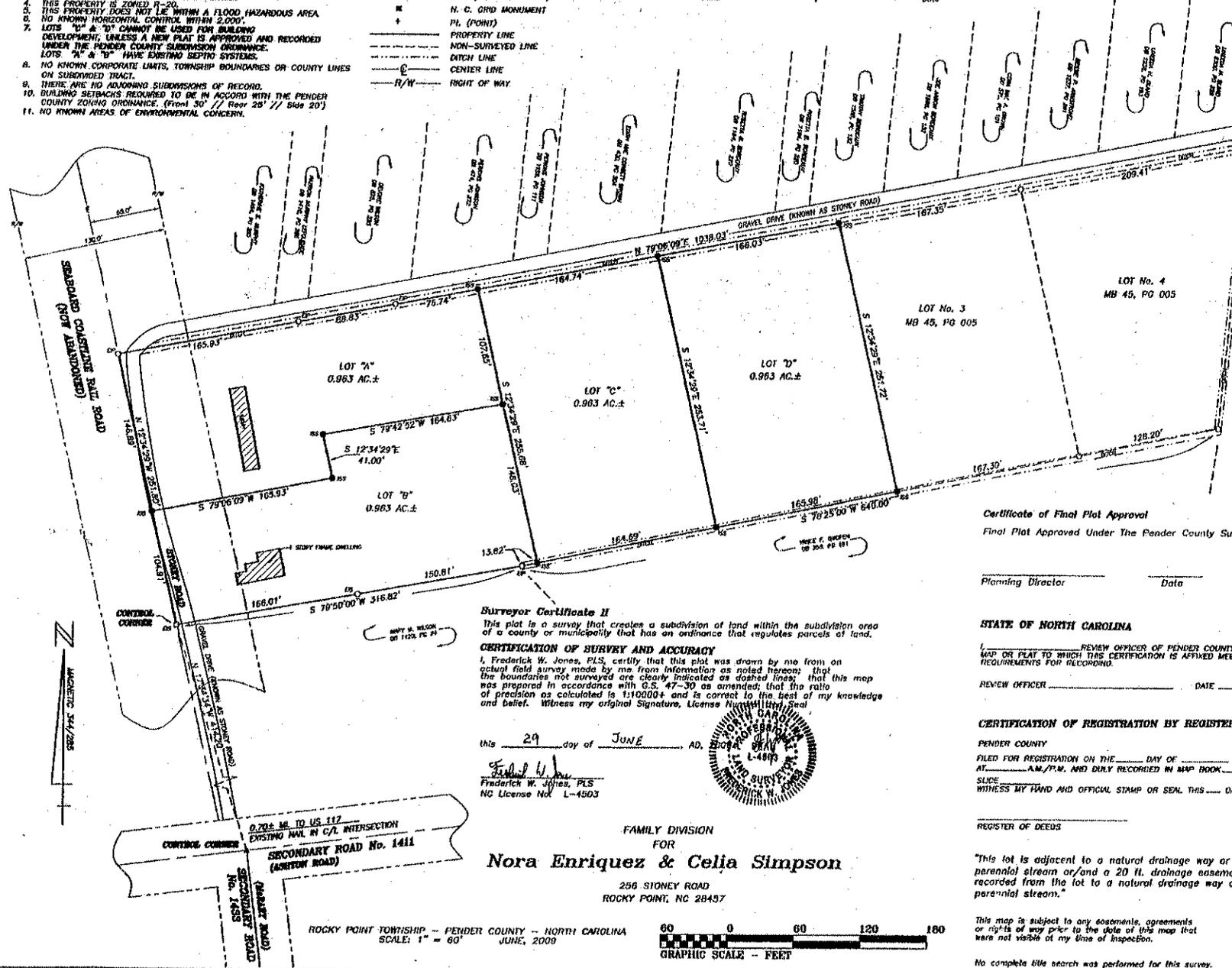
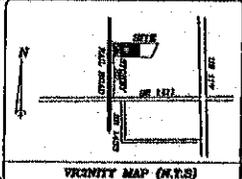
LEGEND:

□	ECM (EXISTING CONCRETE MONUMENT)
○	EIP (EXISTING IRON PIPE)
○	OR EIS (EXISTING IRON STAKE)
●	ISS (IRON STAKE SET)
▲	EDA (EXISTING OLD AXLE)
▲	E*TK* (EXISTING PARKER-KALON NAIL)
▲	OR ENC (EXISTING NAIL & CAP)
▲	SNC (SET NAIL & CAP)
+	N. C. GRID MONUMENT
+	PL (POINT)
---	PROPERTY LINE
---	NON-SURVEYED LINE
---	DITCH LINE
---	CENTER LINE
---	R/W
---	RIGHT OF WAY

Certificate of Ownership, Dedication and Jurisdiction

I hereby certify that I am the owner of the property shown and described hereon and that I hereby adopt this plan of subdivision with my free consent. I certify that the land as shown hereon is located within the subdivision jurisdiction of Pender County.

Nora Enriquez 6/30/09
 Owner Date
Celia Simpson 6/30/09
 Owner Date



Parcel Identifier Certificate

Parcel Identifiers will be issued for all parcels shown on this plat after recordation.

Tax Office	Date
PARCEL ID #	

Certificate of Final Plat Approval

Final Plat Approved Under The Pender County Subdivision Ordinance

Planning Director _____ Date _____

STATE OF NORTH CAROLINA PENDER COUNTY

I, _____ REVIEW OFFICER OF PENDER COUNTY, CERTIFY THAT THE MAP OR PLAT TO WHICH THIS CERTIFICATION IS AFFIXED MEETS ALL STATUTORY REQUIREMENTS FOR RECORDING.

REVIEW OFFICER _____ DATE _____

CERTIFICATION OF REGISTRATION BY REGISTER OF DEEDS

PENDER COUNTY NORTH CAROLINA

FILED FOR REGISTRATION ON THE _____ DAY OF _____ 2009.

AT _____ A.M./P.M. AND DULY RECORDED IN MAP BOOK _____ AT PAGE _____

SLIDE

WITNESS MY HAND AND OFFICIAL STAMP OR SEAL THIS _____ DAY OF _____ 2009.

REGISTER OF DEEDS _____

Surveyor Certificate II

This plat is a survey that creates a subdivision of land within the subdivision area of a county or municipality that has an ordinance that regulates parcels of land.

CERTIFICATION OF SURVEY AND ACCURACY

I, Frederick W. Jones, PLS, certify that this plat was drawn by me from an actual field survey made by me from information as noted hereon; that the boundaries not surveyed are clearly indicated as dashed lines; that this map was prepared in accordance with G.S. 47-30 as amended; that the ratio of precision as calculated is 1:100,000+ and is correct to the best of my knowledge and belief. Witness my original Signature, License Number and Seal.

This 29 day of JUNE, AD. 2009

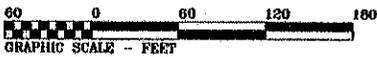
Frederick W. Jones
 Frederick W. Jones, PLS
 NC License No. L-4503

FAMILY DIVISION FOR

Nora Enriquez & Celia Simpson

296 STONEY ROAD
 ROCKY POINT, NC 28457

ROCKY POINT TOWNSHIP - PENDER COUNTY - NORTH CAROLINA
 SCALE: 1" = 60' JUNE, 2009



"This lot is adjacent to a natural drainage way or perennial stream or/and a 20 ft. drainage easement is recorded from the lot to a natural drainage way or perennial stream."

This map is subject to any easements, agreements or rights of way prior to the date of this map that were not visible at my time of inspection.

No complete title search was performed for this survey.

Thompson & Jones Surveying Company
 P.O. Box 1471
 111 East Fremont Street
 Burgaw, NC 28425
 Ph: (910) 258-2854
 Fx: (910) 258-9040
 Em: jonesurveying@earthlink.net
 FR. WILSON, FRESAW (BOOK #3)
 Reg. No. PL 12 SIMPSON CELIA

SURVEY REFERENCE:
DEED BOOK 344 AT PAGE 245
PENDER COUNTY REGISTRY

- NOTES:**
- CORNERS ARE MARKED AS NOTED ON MAP.
 - ALL DISTANCES ARE HORIZONTAL FIELD MEASUREMENTS.
 - AREA COMPUTED BY THE COORDINATE METHOD.
 - THIS PROPERTY IS ZONED R-30.
 - THIS PROPERTY DOES NOT LIE WITHIN A FLOOD HAZARDOUS AREA.
 - NO KNOWN HORIZONTAL CONTROL WITHIN 2,000'.
 - TRACT NUMBERS 2, 3 & 4 CANNOT BE USED FOR BUILDING DEVELOPMENT, UNLESS A NEW PLAT IS APPROVED AND RECORDED UNDER THE PENDER COUNTY SUBDIVISION ORDINANCE. TRACT NUMBER 1 HAS EXISTING SEPTIC SYSTEMS.
 - NO KNOWN CORPORATE LIMITS, TOWNSHIP BOUNDARIES OR COUNTY LINES ON SUBDIVIDED TRACT.
 - THERE ARE NO ADJOINING SUBDIVISIONS OF RECORD.
 - BUILDING SETBACKS REQUIRED TO BE IN ACCORD WITH THE PENDER COUNTY ZONING ORDINANCE.
 - NO KNOWN AREAS OF ENVIRONMENTAL CONCERN.

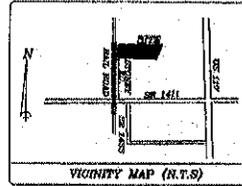
- LEGEND:**
- ECM (EXISTING CONCRETE MONUMENT)
 - EIP (EXISTING IRON PIPE)
 - OR EIS (EXISTING IRON STAKE)
 - ISS (IRON STAKE SET)
 - EOA (EXISTING OLD AXLE)
 - △ E"PK" (EXISTING PARKER-KALON NAIL)
 - △ OR EPN (EXISTING NAIL & CAP)
 - ▲ SNG (SET NAIL & CAP)
 - N. C. GRID MONUMENT
 - PL (POINT)

- PROPERTY LINE
- - - NON-SURVEYED LINE
- - - DITCH LINE
- CENTER LINE
- - - R/W RIGHT OF WAY

Certificate of Ownership, Dedication and Jurisdiction

I hereby certify that I am the owner of the property shown and described hereon and that I hereby adopt this plan of subdivision with my free consent. I certify that the land as shown hereon is located within the subdivision jurisdiction of Pender County.

Celia Simpson & Nora Enriquez 6/12/07
Owner: *Nora Enriquez Wilson* Date
Owner: _____ Date



Parcel Identifier Certificate
Parcel identifiers will be issued for all parcels shown on this plat after recordation.

NDA 6/12/07
Tax Supervisor Date
3226-16-6582-0000
PARCEL ID #
PARCEL ID #
PARCEL ID #

Certificate of Final Plat Approval
Final Plat Approved Under The Pender County Subdivision Ordinance

[Signature] 6/12/07
Planner Date

Surveyor Certificate II
This plat is a survey that creates a subdivision of land within the subdivision area of a county or municipality that has an ordinance that regulates parcels of land.

CERTIFICATION OF SURVEY AND ACCURACY
I, Frederick W. Jones, PLS, certify that this plat was drawn by me from an actual field survey made by me from information as noted hereon: that the boundaries not surveyed are clearly indicated as dashed lines; that this map was prepared in accordance with G.S. 47-30 as amended; that the ratio of precision as calculated is 1:10000+ and is correct to the best of my knowledge and belief. Witness my original Signature, License Number and Seal

this 18 day of SEPTEMBER AD, 2006.

[Signature]
Frederick W. Jones, PLS
NC License No. L-4503



FAMILY DIVISION FOR
CELIA SIMPSON & NORA ENRIQUEZ

286 STONEY ROAD
ROCKY POINT, NC 28457
ROCKY POINT TOWNSHIP - PENDER COUNTY - NORTH CAROLINA
SCALE: 1" = 80' AUGUST, 2006



STATE OF NORTH CAROLINA PENDER COUNTY
I, *[Signature]*, REVIEW OFFICER OF PENDER COUNTY, CERTIFY THAT THE MAP OR PLAT TO WHICH THIS CERTIFICATION IS AFFIXED MEETS ALL STATUTORY REQUIREMENTS FOR RECORDING.

REVIEW OFFICER: *[Signature]* DATE 6/12/07

CERTIFICATION OF REGISTRATION BY REGISTER OF DEEDS
PENDER COUNTY NORTH CAROLINA
FILED FOR REGISTRATION ON THE 12th DAY OF June, 2006
AT 1:30 P.M. AND DULY RECORDED IN MAP BOOK 45 AT PAGE 005
SLIDE 604
WITNESS MY HAND AND OFFICIAL STAMP OR SEAL THIS 12 DAY OF June, 2006.

[Signature] By *[Signature]*
REGISTER OF DEEDS Assistant

"This lot is adjacent to a natural drainage way or parental stream or/and a 20 ft. drainage easement is recorded from the lot to a natural drainage way or parental stream."

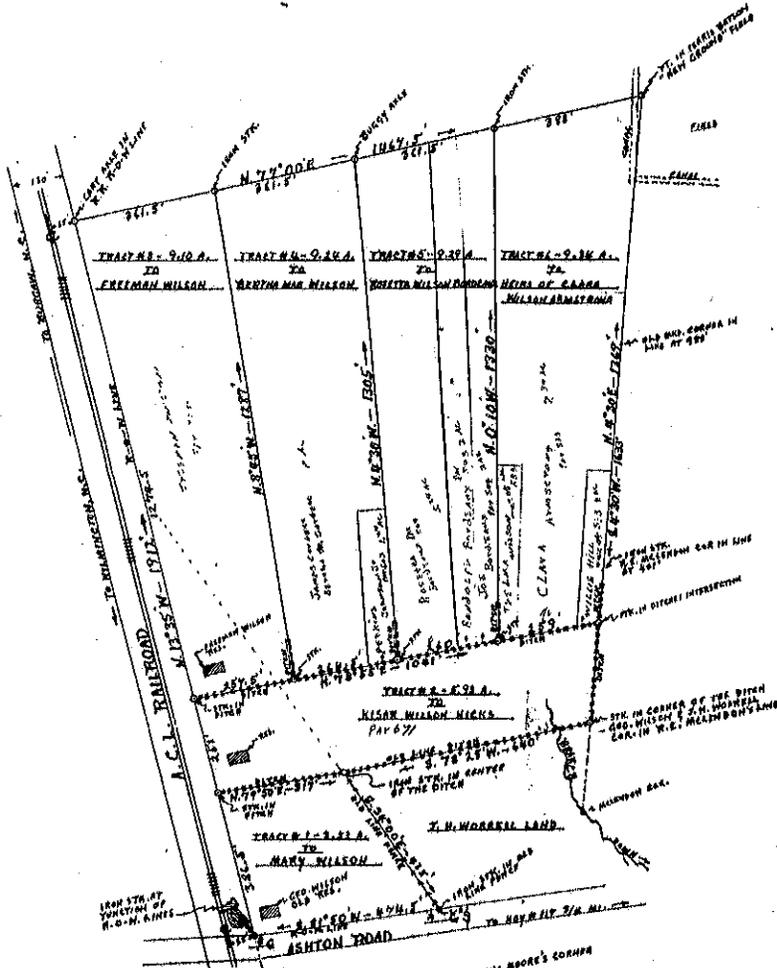
This map is subject to any easements, agreements or rights of way prior to the date of this map that were not visible at my time of inspection.

No complete title search was performed for this survey.

Thompson & Jones Surveying Company
P.O. Box 1471
111 East Fremont Street
Burgaw, NC 28426
Ph: (910) 269-2054
FAX: (910) 269-9340
Email: jon@suvy.com
FRED WILSON, FREEMAN (BOOKY PT)
Emp. No.: PJ 12 SIMPSON CELIA

MB45 pg 005 SL 604

W.C. PAGE LAND



STATE OF NORTH CAROLINA
Pender County

M.R. WALTON a surveyor being duly sworn, deposes that the foregoing and attached map was prepared from an actual survey made by him on the 22nd day of May, 1927, and that said map is correct to the best of his knowledge and belief.

Sworn to and subscribed before me this 22nd day of May, 1927.

Wm. G. Wilson
County Justice
My Commission Expires June 27, 1927.

STATE OF NORTH CAROLINA - Pender County
The foregoing certificate of *W.C. Page* a Notary Public of *Pender* County, whose official seal is attached to be correct and true instrument, and the certificate is registered this 22nd day of May, 1927.

Filed for registration on the 1st day of June, 1927, at *Wilmington, N.C.* and registered in the office of the Register of Deeds for Pender County in Book No. *725* Page *725*.

DIVISION MAP
OF
GEORGE WILSON ESTATE
SCALE 1" = 200' MARCH 22, 1927
ALL WORK DONE BY M.R. WALTON - SURV.
1927

NOTE:
THE TWO ALLEN WILSON TRACTS, SHOWN ON LOWER PORTION OF MAP, WERE DEEDED TO HIM BY HIS FATHER, GEO. WILSON, AS HIS SHARE OF THE ESTATE. THE SAID FATHER'S DEED WAS PARTIALLY LOST, AND RECOVERED, BUT NEVER DEEDED TO OTHERS BEFORE GEO. WILSON'S DEATH.

PLANNING AND COMMUNITY DEVELOPMENT

PLANNING • CODE ENFORCEMENT • BUILDING INSPECTIONS • CENTRAL PERMITTING



July 8, 2009

Mr. Fredrick W. Jones, PLS
Thompson and Jones Surveying Company
PO Box 1471
Burgaw, NC 28425

RE: Family Division for Nora Enriquez and Celia Simpson

Dear Mr. Jones,

I am writing in response to our recent conversations regarding the proposed subdivisions for the parcels identified in Pender County as 3236-16-3424-0000 and 3236-16-6543-0000. Following my July 1, 2009 letter outlining the reasons the proposed subdivisions could not be approved, you inquired by phone on July 6, 2009 whether these proposed subdivisions would be considered exempt according to the definition of *Subdivision* in the Pender County Subdivision Ordinance, particularly exemption number 4:

Subdivision – shall mean all divisions of a tract or parcel of land into two or more lots, building sites, or other divisions for the purpose of sale or building development (whether immediate or future) and includes all division of land involving the dedication of a new street or a change in existing streets; however, the following is not included within this definition and shall be considered exemptions to the definition of subdivision and is not subject to any regulations enacted pursuant to this ordinance, except for requirements for parcel identifiers:

1. The combination or recombination of portions of previously subdivided and recorded lots if the total number of lots is not increased and the resultant lots are equal to or exceed the standards of the county as shown in its subdivision regulations;
2. The division of land into parcels greater than 10 acres if no street right-of-way dedication is involved;
3. The public acquisition by purchase of strips of land for widening or opening streets; and
4. The division of a tract in single ownership the entire area of which is no greater than two acres into not more than three lots, if no street right-of-way dedication is involved and if the resultant lots are equal to or exceed the standards of the county as shown by its subdivision regulations.
5. The partition of land made for the purpose of dividing up the estate of a decedent among his or her heirs shall be exempt from the definition of subdivision and the provisions of this ordinance and shall be approved for recording by the Director under the following conditions:
 - a. The plat does not create a new road or street and

BURGAW

PHONE: 910.2591202
FAX: 910.2591295

PO BOX 1519
BURGAW, NC 28425

HAMPSTEAD

PHONE: 910.270.2505
FAX: 910.270.5021

248 TRANSFER STATION RD.
HAMPSTEAD, NC 28443

PLANNING AND COMMUNITY DEVELOPMENT

PLANNING • CODE ENFORCEMENT • BUILDING INSPECTIONS • CENTRAL PERMITTING



b. The plat contains an obvlous notatlon as follows: "THE PARCELS CREATED BY THIS PLAT CANNOT BE USED FOR BUILDING DEVELOPMENT, UNLESS A NEW PLAT IS APPROVED AND RECORDED AS REQUIRED UNDER THE PENDER COUNTY SUBDIVISION ORDINANCE."

c. The plat is titled, "Estate Division."

d. For alternative, see Design Requirements, Lots Section of this ordinance for "Special Purpose Lots."

As we discussed on the phone today, Planning Staff has determined that the proposed subdivisions would not be eligible for this exemption. First, the exemption applies for a subdivision of a parcel of single ownership into no more than three lots. The subdivision that was approved and recorded on June 12, 2007 divided the original parcel into four lots, and the currently proposed subdivision would divide two of those lots into two lots each, bringing the number of lots to be created from the single parcel to a proposed total of six.

In addition, the proposed lots do not meet or exceed the standards for created lots as required by the current County ordinances and regulations, particularly regarding the access issues I overviewed in my previous letter.

Again, please be aware of your and your clients' rights to appeal these determinations as overviewed in Sections 13.5.C and 6.3 of the Pender County Zoning Ordinance.

Thank you for your attention, and please feel free to contact me with any questions or concerns.

Sincerely,

Benjamin Andrea, Planner I
andreaab@pender-county.com

cc: Nora Enriquez
Celia Simpson

BURGAW

PHONE: 910.259.1202
FAX: 910.259.1295

PO BOX 1519
BURGAW, NC 28425

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PHONE: 910.270.2505
FAX: 910.270.5021

248 TRANSFER STATION RD.
HAMPSTEAD, NC 28443

PLANNING AND COMMUNITY DEVELOPMENT

PLANNING • CODE ENFORCEMENT • BUILDING INSPECTIONS • CENTRAL PERMITTING



July 1, 2009

Mr. Fredrick W. Jones, PLS
Thompson and Jones Surveying Company
PO Box 1471
Burgaw, NC 28425

RE: Family Division for Nora Enriquez and Celia Simpson

Dear Mr. Jones,

I am writing in response to the proposed "Family Division for Nora Enriquez and Celia Simpson" plat that was brought in to the Planning Department office on the afternoon of June 30, 2009 for review. There are a number of reasons that the division cannot be approved as proposed, and I wanted to address the reasons in writing to you and the interested parties.

To begin with, the divisions proposed do not qualify for a Family Subdivision under the Pender County Subdivision Ordinance (Ordinance). As described on page 15 of the Ordinance:

Family Subdivision Limitations

The following limitations will apply to family subdivisions:

- 1. Family subdivisions will be allowed for resident households that exist in Pender County and own real property in Pender County on the effective date of this ordinance.*
- 2. Family subdivisions will be allowed only on parcels that have been created and recorded in the Registry before the effective date of this ordinance.*
- 3. A total of three parcels (excluding the remnant parcel, if the remnant parcel meets the requirements of this ordinance and the zoning ordinance) per qualified resident household will be allowed to be created under the family subdivision provisions.*
- 4. The division does not create a new public or private street.*

Because the lots identified as PINs 3236-16-3424-0000 and 3236-16-6543-0000 were created and recorded on June 12, 2007, the lots are not eligible for a Family Subdivision or a Three-Lot Subdivision on an NCDOT maintained road, as prescribed on page 16 of the Ordinance:

BURGAW

PHONE: 910.259.1202
FAX: 910.259.1295

PO BOX 1519
BURGAW, NC 28425

HAMPSTEAD

PHONE: 910.270.2505
FAX: 910.270.5021

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Three Lot Subdivision Limitations

The following limitations will apply to three lot subdivisions:

- 1. Three lot subdivisions located on a existing NCDOT maintained or other public road will be limited to no more than three such parcels (excluding the remnant parcel, if the remnant parcel meets the requirements of this ordinance and the zoning ordinance) being created from any parcel that had been created and recorded in the Registry before the effective date of this ordinance.*
- 2. Three lot subdivisions located on an access easement as defined in this ordinance will be limited to three such parcels (excluding the remnant parcel, if the remnant parcel meets the requirements of this ordinance and the zoning ordinance) being created from any parcel that had been created and recorded in the Registry on the effective date of this ordinance or any parcel that has been created and approved by the Director under the provisions of this ordinance.*
- 3. The division does not create a new public or private street.*

The proposed division also would not qualify for a Three-Lot Subdivision on an access easement for several reasons. First, the lots do not have access to an access easement as defined in the Ordinance:

Easement, Access – an easement that is at least 30 ft. wide is recorded by map or other instrument in the Registry that specifically transfers rights to the adjacent property owners or specific property owners and their assigns, invitees, licensors and permitters for ingress, egress and utilities and for the construction and maintenance of ingress, egress and utility facilities. An access easement by designation on a recorded plat also transfers the right to construct and maintain water, sewer, electric and communication lines within the easement by any public entity or public utility.

Second, in order for the proposed divisions to be approved, the access easement that provides access to a public street can be no longer than 500 feet and at least 5000 square feet of the buildable lot area of all lots in the subdivision are within 500 square feet of a public road. Proposed lots "A", "C", and "D" would not be able to meet this requirement as stated under approval requirement number 4, page 19 under Approval Requirements for Three-Lot Subdivisions Fronting on an Access Easement. Moreover, no more than three lots may be created that are provided access by a single easement, as stated on page 32 of the Design Requirements section of the Ordinance.

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One other point of concern on the plat is the designation of the Seaboard Coastline Rail Road corridor as "abandoned." The rail corridor is not abandoned, but rather railbanked by NCDOT, meaning they retain the ownership of the corridor. You may wish to contact Patrick Simmons regarding this issue, as it is pertinent to other surveying you may perform in the future. Mr. Simmons is the Director for the NCDOT Rail Division, and he may be reached at 919-715-6580, extension 263. The rail corridor appears to be depicted incorrectly on the plat as well, as the western property line of PIN 3236-16-3424-0000 should be the edge of the rail right-of-way. The plat depicts the western property line as the center of the rail right-of-way.

Please be aware of your and your clients' rights to appeal the decision to deny the proposed subdivisions as per Section 6.3 of the Pender County Zoning Ordinance:

It is the intent of this ordinance that all questions of interpretation and enforcement shall first be presented to the Zoning Administrator or their authorized representative, and that such questions shall be presented to the Board of Adjustment only on an appeal from the decision of the Zoning Administrator or their authorized representative, and that recourse from the decision of the Board of Adjustment shall be to the courts as provided by law.

Section 3.5.C of the Zoning Ordinance further overviews appeal procedures:

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 the 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.

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Thank you for your attention, and please do not hesitate to contact me with any questions or concerns.

Sincerely,

Benjamin Andrea, Planner I
andreab@pender-county.com

cc: Nora Enriquez
Celia Simpson
Patrick Simmons

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ADMINISTRATIVE REVIEW APPLICATION

Date <u>7/17/2009</u>	Application No. <u>AAR-09-09-16-01</u> <u>SIMPSON/ENRIQUEZ</u>
Application Fee <u>\$250</u>	

I. PROPERTY INFORMATION:

Record #: <u>3236-16-6543-0000</u>	Lot #: <u>DISTRICT 3</u>
Parcel ID #: <u>3236-16-3424-0000</u>	Zoning District: <u>R-20</u>
Property Location: <u>286 STONEY ROAD BURGAW, NC 28425</u>	

II. REQUIRED INFORMATION:

The information below must be received a minimum of thirty (30) days prior to the staff setting a Board of Adjustment public hearing date.

___ Application Fee

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

III. SIGNATURE OF OWNER & APPLICANT:

<u>Celia Simpson</u> Applicant	<u>Celia Simpson</u> Owner
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Additional Information:

The Pender County Zoning Ordinance became effective on July 5, 1988 and regulated land use thereafter. The ordinance provides for a Board of Adjustment to grant variances from the strict application of the rules and regulations when hardship has been demonstrated.

The filing of an application before the Board of Adjustment does not guarantee approval. The applicant must exercise every means possible to resolve the problem prior to filing an application before the Board of Adjustment.

The Board of Adjustment meets the third Wednesday of each month and consists of five members and two alternates. For a decision made by the zoning administrator to be overturned, four sitting members must vote in the affirmative. The Board of Adjustment will advertise the hearing once in a local newspaper and will give notice to all adjacent property owners.

According to Section 6.2C of the Pender County Zoning Ordinance:

An appeal from the decision of the Zoning Administrator may be taken to the Board of Adjustment by any person, firm, or corporation aggrieved, or by any officer, department, or board of the county. Such appeal shall be taken within thirty days after the decision is made by the Zoning Administrator. The Zoning Administrator shall forthwith transmit to the board all the papers constituting the record upon which the action appealed from was taken. The Board of Adjustment shall fix a reasonable time for hearing of the appeal, advertise notice of the hearing and giving notice to all participants by certified mail with return receipt requested. An appeal stays all proceedings in furtherance of the action appealed from, unless the Zoning Administrator certifies to the Board, after notice of appeal has been filed with them, that by reason of the facts stated in the certificate a stay would, in their opinion, cause imminent peril to life or property or that because the violation charge is transitory in nature, a stay would seriously interfere with the enforcement of the ordinance, in which case, proceedings shall not be stayed other than by a restraining order, which may be granted by the Board or by a court of record to whom an appeal has been made. The zoning administrator shall give notices to the participants in the appeal of the time, date, and location by certified return receipt requested mail.

***The applicant or an agent must attend all hearings and be prepared to present facts to support their request.**

**Thompson & Jones Surveying Company
Frederick W. Jones
P.O. Box 1471
Burgaw, NC 28425
Phone: 910-259-2954 Fax: 910-259-9040**

July 16, 2009

Board of Adjustment Members
Re: Celia Simpson & Nora Enriquez

Dear Board Members:

I, Frederick W. Jones, PLS No. 4503, am acting as agent for Mrs. Nora Enriquez and Mrs. Celia Simpson.

Pender County Parcel ID's #: 3236-16-3424-0000 and 3236-16-6543-0000 were not approved for subdivision. These parcels should be exempt for the following reasons per Pender County Subdivision Ordinance (see page 11 of 35 – subdivision):

1. The division of a tract in single ownership;
2. The entire area of which is no greater than two acres into no more than three lots;
3. If no street right-of-way dedications is involved and if the resultant lots are equal to or exceed the standards of the County as shown by it's subdivision regulations.

Parcel ID # 3236-16-6543-0000

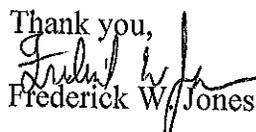
1. Single Owner: Mrs. Celia Simpson
2. Entire area is 1.926 acres divided into two lots - .963 acre each.
3. Zone R-20 – two lots exceed standard of the County.

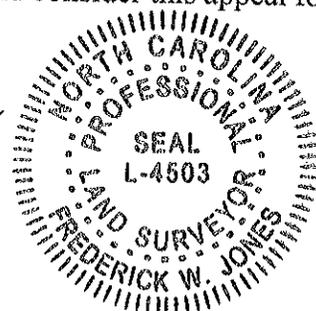
Parcel ID # 3236-16-3424-0000

1. Single Owner: Mrs. Nora Enriquez
2. Entire area is 1.926 acres divided into two lots - .963 acre each.
3. Zone R-20 – two lots exceed standard of the County.

The division of land made for the purpose of dividing up the estate of Kiazer Wilson Hicks deceased, among her living heirs.

Please review and consider this appeal for approval.

Thank you,

Frederick W. Jones



LAST WILL & TESTAMENT

OF

KAIZER WILSON HICKS

I, KAIZER WILSON HICKS, domiciled in Pender County, North Carolina, declare this to be my Last Will, hereby revoking all Wills and Codicils heretofore made by me.

ARTICLE I

PAYMENT OF DEBTS

I direct that all of my just debts, my funeral expenses, and the cost of administration of my estate be paid out of the assets of my estate as soon as practicable after my death. I also direct that my hereinafter named executor shall pay all estate taxes and inheritance taxes which are due or may become due by reason of my death from the assets of my estate as soon as may be conveniently done after my death and said taxes shall be considered as a debt of my estate to be paid as other debts and not charged against the share of any beneficiary in this will.

ARTICLE II

ENTIRE ESTATE TO CHILDREN

To my beloved children, NORA LEE HICKS ROGERS, MATTHEW HICKS, JR., STEVEN BARRIS HICKS, LOUIS UGALMES HICKS, CEILA MAE HICKS SIMPSON and GEORGE THOMAS HICKS, I will, devise and bequeath, all my estate, real and personal, tangible and intangible, whatsoever and wheresoever situated, absolutely and

(SEAL)

Kaizer Wilson Hicks

Original Document held in
Safety Deposit Box of
Harold Lee Pollock
Attorney at Law
NCNB Burgaw, NC

WITNESSES

INITIALS

HAROLD L. POLLOCK
ATTORNEY AT LAW
P.O. DRAWER 999
BURGAW, NC 28425

in fee simple, share and share alike (including the 5.93 acres located in Rocky Point Township, Pender County, North Carolina, recorded in Book 344, Page 245 on the 1st day of October 1957, with each child being given a 1/6 undivided interest in the said property).

ARTICLE III

APPOINTMENT OF PERSONAL REPRESENTATIVE

I hereby appoint my CEILA MAE HICKS SIMPSON, as executor of this my Last Will. I direct that no surety be required of my personal representative for the faithful performance of the duties herein imposed.

IN TESTIMONY WHEREOF, I sign, seal, publish and declare this instrument to be my last will this 3rd day of September, 1991, at Burgaw, North Carolina.

(SEAL)

Kaizer Wilson Hicks

WITNESSES

INITIALS

I, KAIZER WILSON HICKS, the testator, sign my name to this instrument this 3rd day of September, 1991, and being first duly sworn, do hereby declare to the undersigned authority that I sign and execute this instrument as my last will and that I sign it willingly (or willingly direct another to sign for me), that I execute it as my free and voluntary act for the purposes therein expressed, and that I am eighteen years of age or older, of sound mind, and under no constraint or undue influence.

(SEAL)

Kaizer Wilson Hicks

(SEAL)

Kaizer Wilson Hicks

We _____,

the witnesses, sign our names to this instrument, being first duly sworn, and do hereby declare to the undersigned authority that the testator signs and executes this instrument as her last will and that she signs it willingly (or willingly directs another to sign for her), and that each of us, in the presence and hearing of the testator, hereby signs this will as witness to the testator signing, and that to the best of our knowledge the testator is eighteen years of age or older, of sound mind, and under no constraint or undue influence.

WITNESS

WITNESS

STATE OF NORTH CAROLINA

COUNTY OF PENDER

Subscribed, sworn to and acknowledged before me by KAIZER WILSON HICKS, the testator and sworn to before me by

_____ and _____

witnesses, this the 23rd day of August, 1991.

Notary Public

My commission expires:
