

# PLANNING AND COMMUNITY DEVELOPMENT

PLANNING • CODE ENFORCEMENT • BUILDING INSPECTIONS • CENTRAL PERMITTING



## MINUTES

**Pender County Board of Adjustment**

**October 21, 2009**

**9:00 a.m.**

**Pender County Public Meeting Room  
805 S. Walker Street, Burgaw, North Carolina**

**Call to Order:** Chairman Erwin Kane

**Prayer:** Donald Luther

**Roll Call:** Chairman Erwin Kane

Pender County Board of Adjustment Members:

Kane:   X   Thompson:   X   Ferrante:   X   Loughlin:   X   Pullen:        James:    Luther:   X  

**Approval of Minutes:** September 16, 2009

**Motion to approve:** Mr. Ferrante was the only one who received minutes in his packet mailing. It was determined to continue with the meeting until such time as the minutes could be presented.

**Swearing in of witnesses** by the County Attorney, Trey Thurman.

### *Public Hearing*

- 1. Administrative Appeal Presented by Planner, Ken Vafier** - 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

Mr. Vafier explained the applicant's legal representative had contacted Mr. Kays 10/20/09 and identified an unfortunate oversight in the notification of the participants. The application form for an appeal did not contain a block for the applicant to submit the required envelopes and postage to notify the participants. Therefore, it wasn't sent out. Review of the ordinance supported the requirement of notification to the board and therefore, the staff is requesting the case be continued due to a technicality until the next meeting 11/18/09 to fulfill the notification requirement.

Attorney Thurman clarified that a motion to continue was not required.

- 2. Variance – Side and Rear Yard, Accessory Building, Setbacks and Separation Requirements** – Claudia S. Willett, applicant and owner, is requesting a 17' rear yard and a 4' separation variance from § 9.2.B, Accessory Buildings Greater than 600 Sq. Ft. and Less than

1,200 Sq. Ft. The property is zoned R-20C, Residential Conventional Housing District, and is located at 204 Abbey Lane, Wilmington, NC (Scott's Hill). The property contains 0.49 acres and is identified as PIN # 3280-05-8505-0000.

Mr. Breuer described the property as stated above and presented a case history stating on 7/7/2009, the applicant was cited via Pender County Division of Code Enforcement for construction of an addition to an accessory structure. Permits were not obtained. When the applicant attempted to rectify the violation and obtain the proper permits through the Planning Department, it was found the addition onto the current accessory building did not meet the county zoning regulations. Prior to the addition of the carport, the structure was approximately 440' (aerial attached with agenda packet) which requires a 10' separation requirement from both the primary structure and the property lines. The addition is currently 792' requiring compliance with § 9.2B, Accessory Buildings Greater than 600 Sq. Ft. and Less than 1,200 Sq. Ft. Indicating the same 10 foot separation requirements; however with the additional square footage added to the structure, the overall accessory structure would need to meet the principle structure setbacks in that zoning district. As built the structure sits approximately 8' 8" off the rear property line and separated from the house by approximately 6' 6". Therefore, the variance request from § 9.2.B is for 16' 4" along the rear property line and a variance of 3'6" to meet the building separation requirements.

Mr. Ferrante questioned if the current structure prior to the addition was in conformance with the ordinance.

Mr. Breuer explained that it was a legal non-conforming 8' 8" off the property line prior to the addition; however, with the addition it caused a reversion requiring adherence to the current setbacks for the property lines indicated in § 9.2.B, as well as the 10 Ft. separation requirements.

Mr. Ferrante restated the issue asking if the carport created one large structure requiring greater setbacks.

Mr. Breuer answered in the affirmative.

Mr. Kane invited the applicant to step forward and speak.

Ms. Willett stated the house was built 19 years ago when the setbacks were 5' on the back and 10' on the side and was in compliance; however, the setback requirements have increased to 10' on the back and 20' on the side. The garage cannot be moved. The objective of the addition/carport was to allow coverage while working on the cars, etc. Ms. Willett offered pictures of the incomplete addition describing how the carport roof, if cut back to conform to the ordinance for structures less than 600 Sq. Ft. would not allow for adequate coverage. Permits were not obtained because Ms. Willett believed they were only for closed in living areas. Ms. Willett reintegrated her request to allow the structure to remain as is and not have to cut off 6' of the front of the roof.

Mr. Kane called for questions.

Mr. Ferrante posed a question to Mr. Breuer wondering if there were enough cut off of the structure to satisfy the ordinance, would the structure be big enough to leave the back alone.

Mr. Breuer explained the square footage was the main problem; if enough was cut off to maintain the "600 Square Ft. or less" requirement and maintain the 10 foot separation, then the structure would be in compliance with all ordinance standards.

Mr. Kane asked if anyone would like to make a motion.

Mr. Ferrante motioned to reject the variance saying he didn't see a claim for hardship that could create a special situation to honor the request saying "you just can't keep adding on".

The motion was seconded by Mr. Luther.

Motion carried, 4 – 1; Mr. Thompson denied the motion.

Mr. Luther requested Mr. Thurman to explain the permit aspect so this unfortunate issue didn't come up again. Mr. Luther would like to see information published in the paper that permits are required for everything.

Mr. Thurman explained that there had been previous discussions with the board about notifying the public and possibly posting it on the website, however there wasn't much else to do. He cited an example of someone purchasing a utility building from Home Depot which issues a disclaimer regarding permits needing to be obtained; however, most people don't read the fine print. He further stated, it is not the permitting of accessory use, but it is the placement and the location of the structure which becomes an issue.

Attorney Thurman asked Mr. Davenport if there was a need to get better information to the public.

Mr. Davenport said while the planning department could issue an announcement, the public was on the honor system to come in and get the proper permits. Chairman Kane responded saying there was a time when you could build anything you wanted without a permit as long as it wasn't livable. He further stated that laws change over time; however, they are not circulated to the general public.

Ms. Willett questioned the difference between her property and her neighbor's two-story garage with a closed in area above which sits right on the property line. She wanted to know how her neighbors were able to get a permit for that structure and she couldn't get one for the carport.

Mr. Breuer questioned whether the building was properly permitted, however, Ms. Willett did not know. Mr. Breuer said that was something that could be reviewed.

Attorney Thurman reminded the applicant the county had an obligation to respond to a complaint. In addition, he cited an example of being stopped by a trooper and trying to explain that you were speeding less than everyone else was speeding. The trooper will still write you a ticket. He suggested that if Ms. Willett felt there was an issue, she was welcome to file a complaint which would be followed up with the county.

Ms. Willett asked who had made the complaint. After reviewing the case, Mr. Breuer explained the complaint had come in via a NC State Building Inspector who sent an email to Code Enforcement saying the carport setback appeared to be less than 10 Ft. This prompted the Code Enforcement Officer to investigate and verify there were no permits issued.

Chairman Kane questioned if there were any options to bring the structure into compliance.

Mr. Breuer described the only options available were decreasing the footage to be 600 Ft. or less, removal of the structure or Ms. Willett could appeal the decision.

Ms. Willett referred to the pictures citing a John boat sticking out of the carport area stating if the roof were reduced, there would not be sufficient coverage of any vehicle.

Mr. Thompson addressed the Chairman stating the board's job is not to change the ordinances nor work out all the possibilities even though he too found this an unfortunate situation. Mr. Thompson said the board's position was to rule according to what was presented.

Attorney Thurman identified another issue of the building separation being less than the ordinance requirement of 10 Ft. which was enacted as a safety issue. He also stated the issues of public notification have always been a problem, but it was more difficult to get it into people's consciousness.

Mr. Kane asked if there were further items.

The minutes from September 16, 2009 were made available for the board's review and approval. Mr. Luther identified several errors which were noted and will be corrected.

Chairman Kane asked for a motion for the minutes to be accepted.

Mr. Luther made a motion to accept the minutes subject to corrections.

Motion was seconded by Ms. Loughlin.

Motion carried 5-0; unanimously.

### **3. Items for Discussion**

Adoption of Findings of Fact submitted by Attorney Thurman for review and approval describing a "few tweaks" to the document to make it expedient and reader friendly.

Mr. Ferrante questioned whether there was any value to point out in the document that the applicant was not there for the hearing.

Attorney Thurman explained that technically whether someone was there or not, the board's decision is based on the evidence. If someone attends, then they may testify and ask questions, but Mr. Thurman didn't see a need to include it in the document saying it may come up in discussion as a part of the document submitted.

Ms. Loughlin asked if the applicant was aware of the board's decision.

Mr. Thurman was not sure, however, he said the document would be served and act as notification. He also explained that the board's decision was based on prior transcript which was sufficient evidence. He mentioned how the applicant requested the case be continued and then did not appear.

Ms. Loughlin wondered if the applicant could appeal the board's decision again.

Attorney Thurman responded yes.

Chairman Kane asked for a motion to accept the Finding of Facts.

Motion to accept by Ms. Loughlin

Motion seconded by Mr. Ferrante

Motion passed 5-0; unanimously

Mr. Kane asked if there were any other comments. No other comments mentioned.

- 4. **Adjournment** - Mr. Kane entertained a motion to adjourn.  
Motion was made by Mr. Thompson to adjourn.  
Motion was seconded by Mr. Luther with all assenting.  
Motion passed unanimously 5-0.

**Board Action September 16, 2009 Minutes:**

Motion: Mr. Ferrante Seconded: Mr. Luther

Approved: X Denied: \_\_\_\_\_ Unanimous: X

Kane X Thompson X Ferrante X Loughlin X Pullen \_\_\_\_\_ James \_\_\_\_\_ Luther X