



MINUTES

Pender County Board of Adjustment

May 20, 2010

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: X Luther (A): X

- 1. Adoption of Agenda:** Chairman Kane requested to move Item 6 to Item 4; interpreter for applicant needed to return to work at Department of Social Services. Motion made by Board member Ferrante to approve agenda with modification to agenda order; seconded by Board member Loughlin. Vote unanimously passed.
- 2. Approval of Minutes:** Motion to approve minutes from April 21, 2010 was made by Board member Ferrante; seconded by Board member Loughlin. Vote unanimously approved.
- 3. Public Comment:** None given.
- 4. Administrative Appeal- (TABLED from April 21, 2010)** William S. Mueller, applicant, on behalf of Old Point Property Owners Association, Inc., owner, is appealing an administrative review and denial of the subdivision of one tract labeled "Tennis Courts Lot" depicted in Section 4-A, Old Point, recorded in Map Book 15, Page 15. The property is zoned PD, Planned Development, and is located on the southwest corner of Old Point Road and Old Point Loop Road, Hampstead. The property contains 1.67 acres and is identified as PIN # 4202-27-3864-0000.

Board members Ed Pullen and Nick Ferrante recused themselves from participation on this agenda item.

Planner Kyle Breuer re-presented case number AAR 10-04-21-01 Old Point Property Association, Inc. to the Board.

Board members Luther and Thompson needed clarity as to the designation of the property and where this information could be located i.e. common area, tennis court area. Planner Breuer explained that the designation was done through the recorded plat and within the deed conveyed to the property owner's association. Board member Luther questioned whether the board of Old Point Property Association approved the rezoning of these lots to make these buildable lots. Planner Breuer clarified that the property is not up for rezoning, but for a subdivision to create buildable lots. Director Davenport explained that this not a hardship case, but a challenge to the interpretation of the ordinance. Board

member Thompson referenced the state subdivision exemptions. Planner Breuer explained that this subdivision does not meet the zoning district requirements for the zoning district.

Terry Peters, president of Olde Point Property Owner's Association, explained that he was there representing a twelve member for Olde Point. Mr. Peters shared with the Board that the homeowner's association consists of 22 roads (16 which are private) and the roads are failing. Mr. Peters provided background information on litigation that transpired between the original developer and the property owner's association. Chairman Kane requested that Mr. Peters move forth with the matter that was before the Board. Mr. Peters explained that the board members of Old Point Property Association were trying to determine financial options to fix the road; one option being to potentially sell the lots that would be subdivided. Mr. Peters explained that the lot is currently being used to walk animals, parking cars and boats, etc.

Board member Thompson commented that this proposed subdivision does not meet subdivision requirements, because the proposed division has not gone through the proper channels.

Charles Askey, homeowner in Olde Point, explained that this lot is the only recreational area that belonged to property owners of Olde Point. Mr. Askey made the Board aware that he had a petition signed by 50 people from Olde Point, which were against the subdivision. Mr. Askey provided calculations that demonstrated lack of open space for Olde Point, if the subdivision had to meet current zoning ordinance.

Paul Saarie, 104 White Heron Cove Rd., member of property owner's association in Old Point, commented that because of lack of open space, there is minimal opportunity to do anything to benefit the community in regards to recreational activities. Mr. Saarie explained that the acreage in question could be used beneficially for the community, but is currently used for parking in inclement weather. Mr. Saarie agreed that using the acreage in question for means other than open space would be a travesty and should be denied.

Mr. Sam Thompson, 365 Olde Point Loop, identified the property in question was located behind his lot. Mr. Thompson explained that when he purchased his lot in 1989, that it was his understanding that this lot could not be built upon and wished that it remain the same. Board member Luther questioned whether or not Mr. Thompson voted for the rezoning. Mr. Thompson commented that he is a board member on the Olde Point Property Owner's Association and he did vote for the rezoning, but it was only to be exploratory. Mr. Thompson clarified that he really did not understand the concept, but if the intent was to explore options, that what he was voted for.

Board member Thompson made the motion to uphold the decision made by Planning staff; seconded by Board member Loughlin. Vote passed 4-0.

5. **Variance** – Milton and Denise Packard, applicant and owners, are requesting a 4.5' side yard setback variance from the required 20' minimum side yard setback as prescribed in the Pender County Zoning Ordinance, §8.10, Schedule of District Requirements. The property is zoned R-20C, Residential Conventional Housing District, and is located at 518 Hughes Road, Hampstead, NC. The property is ±0.46 acres and may be identified as PIN # 3282-90-4588-0000.

Planner Kyle Breuer presented case number VA 10-05-20-02 Packard to the Board.

Board member Thompson needed clarification as to why the 10' side yard setback had been granted to neighboring properties. Planner Breuer explained that during past administration, Permitting staff was directed to use the 10' side yard setbacks based on lots created prior to a specific map book and/or deed

book and page number. Board member Thompson questioned whether these setbacks were considered "grandfathered" setbacks. Director Davenport clarified the reason why Permitting staff approved site plans with 10' side yard setbacks. Director Davenport explained that the practice was incorrect, but has since been rectified. Board member Ferrante questioned the intent of Section 12.2.a. Planner Breuer and Director Davenport reviewed the intent of Section 12.2.a with the Board.

Mrs. Denise Packard, owner, explained the reason for the request. Mrs. Packard reiterated that the house was built with 10' setbacks. Mrs. Packard shared with the Board that because of the current design of the home, the variance being requested would only affect a small area of the house i.e. to break out kitchen area not the entire wall. Mrs. Packard discussed the aesthetics of the property i.e. privacy fence and decks. Board member Pullen questioned whether the applicant has explored other design options or simply continue addition length of the house. Mrs. Packard commented that would put a crooked wall on the home. Chairman Kane questioned whether the addition could be shifted. Matt Esteves, contractor for property owner, explained that it's not feasible nor does it physically work to shift the addition.

Board members reviewed conditions needed to be met in order to approve/deny variance. Upon completion of review, Board member Ferrante made the motion to deny variance; seconded by Board member Thompson. Vote passed 5-0.

6. **Variance** – Abigail Lagunas, applicant and owner, is requesting a 2.7' and 8.4' side yard setback variance from the required 20' minimum side yard setback as prescribed in the Pender County Zoning Ordinance, §8.10, Schedule of District Requirements. The property is zoned R-20, Residential District, and is located at 60 Faithful Lane, Burgaw, NC. The property is ±0.89 acres and may be identified as PIN # 2279-23-4425-0000.

Planner Ashley Frank presented case number VA 10-05-20-03 Lagunas to the Board.

Board member Pullen needed clarity as to what type of structure was presently located on site. Planner Frank verified that the structure on site is a relocated house. Board member Ferrante questioned whether the previously destroyed home met required setbacks. Planner Frank responded yes. Board member Ferrante questioned the adjustment made to the permit regarding the type of structure. Planner Frank explained that due to miscommunication between Permitting staff and Ms. Lagunas, the permit was actually issued based on what was presumed to be a manufactured home being replaced in the previous homes' footprint. Board member Thompson questioned whether or not the existing structure was in place at the time of the survey. Board member Thompson wanted to know how the previous structure was surveyed, if the existing structure was already placed on site. Planner Frank explained that the surveyor could have possibly used GIS, but the surveyor would be the one to answer that question. Director Davenport requested the translator to ask Ms. Lagunas whether the information submitted was true and adequate; Ms. Lagunas responded yes. Board member Pullen made the motion to approve requested variance; seconded by Board member Thompson. Vote passed 5-0.

7. **Items for Discussion:** No meeting for the month of June.
8. **Adjournment:** Motion to adjourn made by Board member Pullen; seconded by Board member Loughlin. Vote passed 5-0.