

Pender County Planning and Community Development

Planning Division

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MINUTES

**Pender County Board of Adjustment Meeting
November 16, 2011 9:00 a.m.
Pender County Public Meeting Room
805 S. Walker Street, Burgaw, North Carolina**

Call to Order: Chairman Kane called meeting to order at 9:00 am.

Prayer: Administered by Board member Luther.

Roll Call: Chairman Kane

Pender County Board of Adjustment Members:

Kane: Thompson: Ferrante: Newton: Pullen:

Alternates:

Luther: Peters:

Adoption of the Agenda: Motion to approve agenda made by Board member Newton; seconded by Board member Pullen. Vote unanimously passed.

- 1. Approval of Minutes (September 21, 2011):** Motion to approve minutes by Board member Ferrante; seconded by Board member Pullen. Vote unanimously passed.
- 2. Public Comment:** None
- 3. Swearing In of Witnesses:** Director Breuer swore in all witnesses who wished to speak during the Public Hearing.

** Public Hearing**

- 4. Variance:** Applicant and owner, James Starr, is requesting a four and a half (4.5') foot variance from the minimum rear yard setback requirement of fifteen (15') feet in the PD, Planned Development District; as prescribed by the Pender County Unified Development Ordinance, Section 5.3.3.A.2, Accessory Uses and Structures. The property is located at 101 South Belvedere Drive, Hampstead NC, and may be identified by Pender County PIN #4203-57-8763-0000. Planner Frank presented and gave background information regarding the Variance case before the Board. Board member Newton asked if the applicant applied for a building permit in 2009 for a smaller structure; Planner Frank answered yes and that the building permit was issued under the Pender County Zoning Ordinance which was replaced by the Pender County Unified Development Ordinance in July 2010. Board members held a brief discussion with staff to clarify what was allowed when the original building permit was issued. Planner Frank stated that if the applicant would decrease the width of the planned structure by 599 ft² or less, the requirements of the Pender County Unified Development Ordinance would be met and there would be no need for a variance. Board member Newton asked if the applicant would be willing to reduce the size of his structure; James Starr, applicant, responded that he would prefer to keep the structure as planned. Glen Piver, resident, stated to the Board that

he was concerned with what kind of precedence this variance would set if it was approved, he felt that if it was approved the door would be open for these types of structures to appear throughout the neighborhood. Board member Ferrante recused himself due to the close friendship he shared with Mr. Piver. Chairman Kane asked Board member Luther to step in as a full Board member. Board members discussed the finding of facts regarding the case and came to the following conclusions:

Board of Adjustment: Finding of Facts

1. It is the Board's CONCLUSION that the hardship of which the applicant complains **does not** result from 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. This conclusion is based on the following FINDINGS OF FACT: *The structure could be relocated on the parcel of land; this would allow the structure to adhere to district requirements for setbacks as prescribed in the Pender County Unified Development Ordinance (UDO) § 5.3.3.A.2.a, Accessory Uses and Structures. –Or- The size of the structure could be altered; a reduction in square footage would allow the applicant to meet the setback requirements as outlined in the Pender County Unified Development Ordinance (UDO), § 5.3.3.A.1.a, Accessory Uses and Structures.*
2. It is the Board's CONCLUSION that, granting the variance requested **will** confer upon the applicant any special privileges that are denied to other residents of the zoning district in which the property is located. This conclusion is based on the following FINDINGS OF FACT: *The surrounding areas are zoned PD, Planned Development, consistent with the subject property. All accessory structures in the PD district must meet the prescribed district setback requirements as outlined in the UDO, § 5.3.3.A.1.a and § 5.3.3.A.2.a, Accessory Uses and Structures.*
3. It is the Board's CONCLUSION that a literal interpretation of the provisions of this ordinance **would not** deprive the applicant of rights commonly enjoyed by other residents of the zoning district in which the property is located. This conclusion is based on the following FINDINGS OF FACT: *The UDO prescribes in § 5.3.3.A.2.a, Accessory Uses and Structures, accessory buildings 600-1199 ft² shall adhere to district requirements for setbacks and separation and must be ten (10') feet from any other structure and access easements located on the property.*
4. It is the Board's CONCLUSION that the requested variance **will not** be in harmony with the purposes and intent of this ordinance and will be injurious to the neighborhood or to the general welfare. This conclusion is based on the following FINDINGS OF FACT: *The addition to the existing structure will increase the total square footage of the structure; causing the encroachment into the required district yard setback as outlined § 5.3.3.A.2.a, Accessory Uses and Structures.*
5. It is the Board's CONCLUSION that, the special circumstances **are** the result of the actions of the applicant. This conclusion is based on all of the FINDINGS OF FACT listed above, as well as the following: *The applicant could have met the required district setbacks when the structure was initially constructed in 2009; instead the applicant opted for using the minimum setback which did not allow for the possibility to expand the structure in the future.*

Board member Newton made the motion to approve the variance request based on the safety of access; Motion died due to no second. Board member Pullen made the motion to deny the variance request; seconded by Board member Luther. Vote was 4 in favor of denial and 1 no vote.

5. Discussion Items

- a. Planning Staff:** Director Breuer announced that there were no hearings scheduled for the month of December, but the Board would have cases to hear in January.
 - b. BOA Members:** Board member Newton applauded staff on their work, stating that the Board's notebooks are well organized to include all needed information.
- 6. Adjournment:** Motion to adjourn by Board member Pullen; seconded by Board member Luther
Meeting adjourned at 9:50 am.