

Pender County Planning and Community Development

Planning Division

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MINUTES

Pender County Board of Adjustment Meeting March 20, 2013 9:00 a.m. Pender County Public Meeting Room 805 S. Walker Street, Burgaw, North Carolina

Call to Order: Chairman Ferrante called the meeting to order at 9:00 a.m.

Invocation: Administered by Chairman Ferrante.

Roll Call: Chairman Ferrante

Pender County Board of Adjustment Members:

Ferrante: Pullen: Kane: Newton: Thompson:

Alternates:

Peters

- 1. Adoption of the Agenda:** Motion to adopt the agenda was made by Board member Pullen; seconded by Board member Thompson. Vote unanimously approved.
- 2. Adoption of the Minutes: November 14, 2012:** Motion to adopt minutes was made by Board member Pullen; seconded by Board member Kane. Vote unanimously passed.
- 3. Public Comment:** None

It was noted that the applicant was late and would be here in about 30 minutes. The Board recessed at 9:06 a.m. and reconvened at 9:34 a.m.

** Public Hearing Opened**

County Attorney Trey Thurman swore in witnesses who wished to speak during the Hearing.

- 4. Variance:** Terra- Novo, LLC, applicant, on behalf of Hampstead Land Group, LLC, owner, is requesting a ten foot (10') variance from the required thirty foot (30') front yard setback in the RP, Residential Performance Zoning District as prescribed by the Pender County Unified Development Ordinance Section 4.14, Zoning District Dimensional Requirements. The property is located along Mason Court (Lot 33 Section 1 of Majestic Oaks) in Hampstead and may be identified by Pender County PIN: 3292-22-9265-0000. The property is zoned RP, Residential Performance Zoning District. Planner Ashley Frank presented and gave background information for Agenda Item 4. Mr. Ferrante asked if Hampstead Land Group, LLP are the same people that originally had the property. Ms. Frank responded no, Hampstead Land Group is not the original developer, and she is not sure how they acquired the property from the original developer. Mr. Kane asked when the original lot was set up and Ms. Frank said this is the original lot set up. Mr. Kane asked what year. Ms. Frank responded it was recorded in 2007 and she believes it went to the Planning Board back in 2005. A gentleman in the audience asked if the vegetative buffer is inclusive of the actual setbacks. Ms. Frank said if he is

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referring to the buffer along the rear of lot 32 that is in the property line, it is included in the setback. Mr. Ferrante said Lot 32 is not this case and we will deal with that case when it comes up. Ms. Newton asked what does Lot 28 have to do with Lot 33 and why they need a variance. Bryant Spencer of Terra- Novo said the variance will allow them to have additional separation between the existing structure located on Lot 28 and the future structure on lot 33. Mr. Pullen asked why they want the variance and will the house not fit on the lot. Mr. Spencer responded no. Mr. Pullen said the lots keep getting narrower and narrower. Ms. Newton asked what would be the rear setback and Mr. Spencer responded they are asking for variance on an empty lot, and are not dealing with a house at this time. Ms. Newton said she doesn't see anything that would say you need a variance. Mr. Spencer said the size of the lot was created by the Developer when it was set up. Ms. Newton asked who is Terra- Novo, LLC and Mr. Spencer responded Terra- Novo is one of the consultants. Mr. Ferrante asked if they were going from 30' to 20' and Ms. Frank responded it was 30' initially. Ms. Newton asked if this is permitted today, would the house on lot 28 require a 20' setback. Ms. Frank said no, it meets the RP standards which would require a 10' side yard setback. Ms. Frank verified that the front yard setback would remain the same. After more discussion the public hearing closed.

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: **Lot 33 meets the standards for the RP, Residential Performance District.**
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: **Lot 33 meets the standards for the RP, Residential Performance District, therefore, can meet the minimum yard standards of the district.**
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 applicant did not provide any evidence as to why the literal interpretation of the ordinance would deprive the applicant of rights commonly enjoyed by other residents in the RP, Residential Performance District.**
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: **Other homes in the subdivision meet the required yard setbacks, the applicant has the ability to modify the house plans to meet the required yards.**
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:

Motion to deny the requested Variance, based on the fact that nothing has changed from the original setup and no hardship exists, was made by Ms. Newton, seconded by Mr. Pullen and unanimously approved.

** Public Hearing Opened**

5. Variance: Terra- Novo, LLC, applicant, on behalf of Hampstead Land Group, LLC, owner, is requesting a ten foot (10') variance from the required thirty foot (30') front yard setback in the RP, Residential Performance Zoning District as prescribed by the Pender County Unified Development Ordinance Section 4.14, Zoning District Dimensional Requirements. The property is located along Mason Court (Lot 32 Section 1 of Majestic Oaks) in Hampstead and may be identified by Pender County PIN: 3292-22-8321-0000. The property is zoned RP, Residential Performance Zoning District. Ms. Frank presented and gave background information for Agenda Item 5. Gene Norris, an adjacent property owner, said you can't build within 75' of an easement and demonstrated the lots on a map. Mr. Norris' other comments included: The rear of his property abuts Lot 32; there is no vegetation on Lot 34; Lot 34 is completely cleared out; and that is what is going to happen to this lot. Ms. Frank said Pender County will not enforce maintenance of vegetative buffer. The Terra-Novo representative said this request is due to buffer and drainage issues on the on back of the properties, and vegetative buffer is a requirement. Mr. Ferrante said it should be clearly designated drainage and this is in the minutes. Mr. Pullen asked if anything had changed since they bought the lot and the response was no. Other discussion included the size and shape of the lots. After more discussion, the public hearing closed.

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: **Lot 32 meets the standards for the RP, Residential Performance District.**
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: **Lot 32 meets the standards for the RP, Residential Performance District, therefore can meet the minimum yard standards of the district.**
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 applicant did not provide any evidence other than an economic issue to why the variance was needed.**
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: **Other homes in the subdivision meet the required yard setbacks, the applicant has the ability to modify the house plans to meet the required yards.**
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: **Not applicable**

THEREFORE, on the basis of all the foregoing, IT IS ORDERED that the application for a VARIANCE be **DENIED**. Motion to deny the requested Variance was made by Ms. Newton, seconded by Mr. Kane and unanimously approved.

** Public Hearing Opened**

- 6. Variance:** Terra- Novo, LLC, applicant, on behalf of Hampstead Land Group, LLC, owner, is requesting a ten foot (10') variance from the required 30 foot front yard setback and a five foot (5') variance from the required 25 foot rear yard setback in the RP, Residential Performance Zoning District as prescribed by the Pender County Unified Development Ordinance Section 4.14, Zoning District Dimensional Requirements. The property is located along Weir Drive (Lot 43 Section 1 of Majestic Oaks) in Hampstead and may be identified by Pender County PIN: 3292-32-1712-0000. The property is zoned RP, Residential Performance Zoning District. Ms. Frank presented and gave background information for Agenda Item 6. Mr. Stan Hansley addressed the Board and explained: He is seeking this request on behalf of members of the Hansley family; the property is adjacent to Dan Owen Dr. and they are making the request to allow additional separation from the future structure on Dan Owen Dr.; they could be moved back toward Dan Owen Dr; the company didn't confer with them; and people used their private dirt road to access the water treatment plant and didn't maintain the road. Board members asked questions of Mr. Hansley and after more discussion, the public hearing closed.

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: **Lot 43 meets the standards for the RP, Residential Performance District.**
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: **Lot 43 meets the standards for the RP, Residential Performance District, therefore can meet the minimum yard standards of the district.**
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 applicant did not provide any evidence as to why the literal interpretation of the ordinance would deprive the applicant of rights commonly enjoyed by other residents in the RP, Residential Performance District.**
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: **Other homes in the subdivision meet the required yard setbacks, the applicant has the ability to modify the house plans to meet the required yards.**
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: **Not applicable**

THEREFORE, on the basis of all the foregoing, IT IS ORDERED that the application for a VARIANCE be **DENIED**. Motion to deny the requested variance was made by Mr. Pullen, seconded by Ms. Newton and unanimously approved.

7. Discussion Items:

a. BOA Members:

Mr. Pullen thanked staff for the training session.

b. Planning Staff:

HB 276 – Act to Clarify and Modernize Statutes Regarding Zoning Boards of Adjustments – Preliminary Review. Mr. Breuer will keep the Board updated.

Training held two weeks ago - materials in back of packets for those that couldn't attend.

Next meeting: No meeting for April

8. Adjournment: Meeting adjourned at 10:25 a.m.