

# Pender County Planning and Community Development

## Planning Division

805 S. Walker Street  
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## AGENDA

**Pender County Board of Adjustment Meeting  
December 18, 2013 9:00 a.m.  
Pender County Public Meeting Room  
805 S. Walker Street, Burgaw, North Carolina**

**Call to Order:** Chairman Ferrante

### Invocation:

**Roll Call:** Chairman Ferrante

Pender County Board of Adjustment Members:

Ferrante: \_\_\_\_\_ Pullen: \_\_\_\_\_ Newton: \_\_\_\_\_ Thompson: \_\_\_\_\_

Alternates:

Peters: \_\_\_\_\_

### 1. Adoption of the Agenda:

2. **Adoption of the Minutes:** November 20, 2013

### 3. Public Comment:

*\*Public Hearing Opened\**

### 4. Variance:

John J Burney III, applicant and owner, is requesting a thirteen foot (13') variance from the required thirty five foot (35') maximum building height in the RA, Rural Agricultural Zoning District as prescribed by the Pender County Unified Development Ordinance Section 4.14, Zoning District Dimensional Requirements. The subject property located at 11870 Shaw Highway, Holly Township, NC. The property is zoned RA, Rural Agricultural District and may be identified as PIN 3361-13-7426-0000.

### 5. Variance:

Stephanie Todd, applicant, on behalf of Robert Holley, owner, is requesting a variance from Section 6.6, Family Division, of the Pender County Development Ordinance, which requires lots created by a Family Division of property to have direct access to a public street, a private street, or a private access easement that is 45 feet in width. Specifically, the applicant is requesting a variance to record a private access easement on the east side of the property at the required 45 foot width, except for the portion of the easement around the residential structure located on the southeastern side of the property, where the easement would be reduced to 26.5 feet in width for a length of 58.9 feet. The subject property is located at 17990 NC Highway 210, Rocky Point. The property is zoned RP, Residential Performance District and may be identified as PIN 3214-58-9462-0000.

*\* Public Hearing Closed\**

**6. Adoption of the 2014 Meeting Dates:**

**7. Discussion Items:**

**a.** BOA Members:

**b.** Planning Staff:

**8. Next Meeting:** January 15, 2014

**9. Adjournment:**

**PLANNING STAFF REPORT**  
**Variance Request**

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**SUMMARY:**

**Hearing Date:** December 18, 2013  
**Applicant:** John J Burney III  
**Property Owner:** John J Burney III  
**Case Number:** 11043

**Property Location and Description:** The subject property is located at 11870 Shaw Highway, Holly Township, NC and may be identified by Pender County 3361-13-7426-0000.

**Zoning District of Property:** The property is zoned RA, Rural Agricultural District.

**Variance Requested:** John J Burney III, applicant and owner, is requesting a thirteen foot (13') variance for the property located at 11870 Shaw Highway, Holly Township, NC, which may be identified by Pender County Pin: 3361-13-7426-0000. The applicant is applying for relief from the maximum height requirement within the Pender County Unified Development Ordinance (UDO) §4.14 Zoning District Dimensional Requirements, which states that the maximum height permitted in the RA Rural Agricultural district is thirty-five feet (35').

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**BACKGROUND AND DESCRIPTION OF VARIANCE:**

The subject property is currently 247.61 acres in area and hosts a single family structure located near the center of the parcel. The pheasant tower is located near the eastern quarter quadrant of the tract in question, approximately 2,000 ft from the single family structure located on site. Please see Exhibit 1 (Applicant's site map).

*The subject property is bound to the north by three vacant tracts participating in the State of North Carolina's Present Use Value Program. The subject parcel is bounded to the east by a tract housing a manufactured home and to the southeast by a tract housing a single-family residence. The parcels directly to the south and west are two heavily wooded 74.46 acre and 2,007.32 acre tracts owned by the State of North Carolina.*

- The Pheasant Shooting Tower, constructed in the Summer of 2012, stands at approximately (48') above ground level, according to the applicant's submitted documents.
  - However, the formal process to begin compliance began in April 2013 when the applicant was attempting to obtain a building permit for another structure on-site.
  - According to internal staff discussion, it was determined that the tower was originally discovered by Code Enforcement around September of 2012.
  - According to submitted documents, representatives of Planning, Building Inspections, Code Enforcement, Permitting and the Flood Plain Administrator convened on November 1, 2012 to discuss the subject tower.
  - The applicant obtained a conditioned Special Use Permit (SUP) Case No. 10987 (Exhibit 2) approval on August 19, 2013. The approval was contingent upon an approved Variance stating, "6.Approval for the use and location of the Pheasant Tower shall be contingent upon an approved height variance for said tower." Therefore, the applicant is requesting a 13' thirteen foot variance from the maximum height requirement in the Rural Agricultural (RA) zoning district.
- 1) *Unnecessary hardship would result from the strict application of the ordinance. It shall not be necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property.*

According to the narrative, the applicant contends that the proposed building height is necessary due safety and the size of the cleared shooting area. The applicant's application stated that, "The birds need to be released at a certain altitude so that the shooters will not be shooting level, whatsoever."

- 2) *The hardship results from conditions that are peculiar to the property, such as location, size, topography. Hardships resulting from personal circumstances, as well as hardships resulting from conditions that are common to the neighborhood or the general public, may not be the basis for granting a variance.*

The applicant's application states that, "unnecessary hardship would result from not being able to use the tower, due to it's zoning as a permitted use through the Special Use Permit (SUP) process."

- 3) *The hardship did not result from actions taken by the applicant or the property owner. The act of purchasing property with knowledge that circumstances exist that may justify granting of a variance shall not be regarded as a self-created hardship.*

The applicant's application states, "The hardship that would be placed on my property would be due to the fact that back in 2003; my property was enrolled in the Coastal Land Trust and NC Water Quality Conservation Easement Programs. There is dedeed easement on entire Tract. In doing so, that placed severe restrictions on the property. It can only be used for Farming and Hunting."

- 4) *The requested variance is consistent with the spirit, purpose, and intent of the ordinance, such that public safety is secured and substantial justice is achieved.*

The applicant's application further states, "The requested variance is consistent with the spirit and the intent of the ordinance due to the fact that the property is zoned RA (Rural Agricultural) and a special use permit has been approved by the Pender County Board of Commissioners allowing the shooting preserve due to the fact that Amusements and Recreation Industries are permitted via special use permit in the RA zoning district. Also, in line with the spirit and purpose is that the shooting preserve and property adjoins the Holly Shelter Game Lands, which comprises over 50,000 acres of public hunting land and opportunities."

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#### **ZONING ADMINISTRATOR'S CONCLUSION:**

John J Burney III, applicant and owner, is requesting a thirteen foot (13') variance for the property located at 11870 Shaw Highway, Holly Township, NC, which may be identified by Pender County 3361-13-7426-0000. The applicant is applying for relief from the maximum height requirement within the Pender County Unified Development Ordinance (UDO) §4.14 Zoning District Dimensional Requirements, which states that the maximum height permitted in the RA Rural Agricultural district is thirty-five feet (35').

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#### **RELEVANT UDO PROVISIONS:**

##### **3.14 VARIANCE**

###### **3.14.1 Applicability**

- A. The Board of Adjustment may vary certain requirements of this Ordinance, in harmony with the general purpose of these regulations, where special conditions applicable to the property in question would make the strict enforcement of the regulations impractical or result in a hardship in making reasonable use of the property.
- B. The Board of Adjustment may waive certain requirements when authorized to do so by provisions adopted as a part of this Ordinance.
- C. No variance shall be permitted that would have the effect of allowing a use not permitted in the use table of Section 5.2.3.
- D. No variance shall be permitted that would allow a project to exceed the maximum density as to number of dwelling units to the acre in a Zoning District. This maximum density shall be inclusive of any density bonus allowance or additional units in a planned unit development.

- E. The need for the variance cannot be a result of the owner's own actions and cannot be for strictly economic reasons.
- F. The Board of Adjustment may grant variances in the following special circumstances, as indicated in Section 3.14.7 of this Ordinance.

### **3.14.7 Findings**

In granting any variance, the Board of Adjustment shall make the following findings:

- A. That special or unique circumstances or conditions or practical difficulties exist which apply to the land, buildings or uses involved which are not generally applicable to other land, buildings, structures, or uses in the same zoning districts;
  - 1) Unnecessary hardship would result from the strict application of the ordinance. It shall not be necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property.
  - 2) The hardship results from conditions that are peculiar to the property, such as location, size, topography. Hardships resulting from personal circumstances, as well as hardships resulting from conditions that are common to the neighborhood or the general public, may not be the basis for granting a variance.
  - 2) The hardship did not result from actions taken by the applicant or the property owner. The act of purchasing property with knowledge that circumstances exist that may justify granting of a variance shall not be regarded as a self-created hardship.
  - 3) The requested variance is consistent with the spirit, purpose, and intent of the ordinance, such that public safety is secured and substantial justice is achieved. In making the findings above, the Board of Adjustment may give special weight to the number and percentage of nearby properties that share characteristics for which the variance is requested by the applicant. The Board of Adjustment may grant a variance to expand an existing structure, including the expansion of a nonconforming structure if the findings listed above can be made.
- B. In making the findings above, the Board of Adjustment may give special weight to the number and percentage of nearby properties that share characteristics for which the variance is requested by the applicant. The Board of Adjustment may grant a variance to expand an existing structure, including the expansion of a nonconforming structure if the findings listed above can be made.

## Appendix A

**ACCESSORY OR SECONDARY USE:** A use of land or of a building or portion thereof customarily associated with and incidental and subordinate to the principal use of the land or building and located on the same lot with such principal use. A secondary use shall be a use not already permitted by right in a zoning district but may be permitted in conjunction with a permitted use. In no instances shall an accessory or secondary use be permitted without the presence of a primary use.

**BUILDING:** Any structure having a roof supported by columns or walls and intended for the shelter, housing or enclosure of any persons, animals, processes, equipment, goods or materials of any kind.

**LOT:** A designated parcel, tract or area of land established or to be established by plat or subdivision or previously established as a recorded lot.

1. **LOT AREA:** The total area within the lot lines of a lot.
2. **LOT, CORNER:** A lot abutting two or more streets at their intersection. (See Figure 4.1)
3. **LOT COVERAGE:** The total built upon area, including all non-pervious surface materials.
4. **LOT, INTERIOR:** A lot other than a corner lot. (See Figure 4.1)
5. **LOT LENGTH:** The distance between the front lot line and the rear lot line measured at the maximum distance.
6. **LOT LINE, FRONT:** The front of a lot shall be considered to be that side of the lot which fronts on a street. In the case of a corner lot, either side abutting a street may be considered to be the front, provided the structure to be located on the lot is situated to meet the required front, side and rear yards for the zoning district in which the lot is located. (See Figure 4.1)
7. **LOT LINE, REAR:** The lot line opposite and parallel to the front lot line or within 45° of being parallel to the front lot line. (See Figure 4.1)
8. **LOT LINE, SIDE:** Any lot line other than front or rear lot lines. (See Figure 4.1)
9. **LOT OF RECORD:** A lot for which a plat or survey description has been legally recorded with the Pender County Register of Deeds.
10. **LOT, PIPESTEM:** A residential lot fronting on a public or a private street in which access is provided by a narrow strip of land, referred to as the "pipestem driveway yard," which is less than the minimum required front yard width, and located between adjoining residential lots fronting on the same street.
11. **LOT, THROUGH:** A lot, other than a corner lot, with frontage on more than one street. These lots may also be called "double frontage lots". (See Figure 4.1)
12. **LOT WIDTH:** The horizontal distance between side lot lines measured at the front yard setback line.

**SETBACK:** The required distance between a building or structure and a lot line.

1. **SETBACK, FRONT YARD:** The required distance between a street right-of-way line and the front line of a building or structure.
2. **SETBACK, REAR YARD:** The required distance between a building or structure and the rear lot line of the lot containing the building or structure.
3. **SETBACK, SIDE YARD:** The required distance between a building or structure and the side lot line of the lot containing the building or structure.

### **STRUCTURE:**

1. Any man-made object having an ascertainable stationary location on or in land or water, whether or not it is affixed to the ground. All buildings are "structures."
2. For floodplain management purposes, a walled and roofed building, including a gas or liquid storage tank, that is principally above ground, as well as a manufactured home. Structure, for insurance rating purposes, means a walled and roofed building, other than a gas or liquid storage tank, which is principally above ground and affixed to a permanent site, as well as a manufactured home on a permanent foundation. For the latter purpose, the term includes a building while in the course of construction, alteration or repair, but does not include building materials or supplies intended for use in such construction, alteration or repair, unless such materials or supplies are within an enclosed building on the premises.

**Board of Adjustment: Finding of Facts**

1. It is the Board's CONCLUSION that the hardship of which the applicant complains **does/does not** result from the strict application of the ordinance. It shall not be necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property. This conclusion is based on the following FINDINGS OF FACT:
  
2. It is the Board's CONCLUSION that, granting the hardship **does/ does not** result from conditions that are peculiar to the property, such as location, size, topography. Hardships resulting from personal circumstances, as well as hardships resulting from conditions that are common to the neighborhood or the general public, may not be the basis for granting a variance. This conclusion is based on the following FINDINGS OF FACT:
  
3. It is the Board's CONCLUSION that the hardship **did/ did not** result from actions taken by the applicant or the property owner. The act of purchasing property with knowledge that circumstances exist that may justify granting of a variance shall not be regarded as a self-created hardship. This conclusion is based on the following FINDINGS OF FACT:
  
4. It is the Board's CONCLUSION that the requested variance **is/ is not** consistent with the spirit, purpose, and intent of the ordinance, such that public safety is secured and substantial justice is achieved. This conclusion is based on the following FINDINGS OF FACT:

**Board Action:**

**Motion:** \_\_\_\_\_ **Seconded:** \_\_\_\_\_

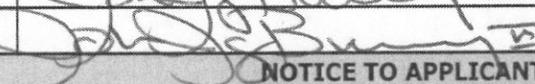
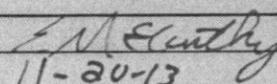
**Approved:** \_\_\_\_\_ **Denied:** \_\_\_\_\_ **Unanimous:** \_\_\_\_\_

**Kane:** \_\_\_\_\_ **Thompson:** \_\_\_\_\_ **Ferrante:** \_\_\_\_\_ **Newton:** \_\_\_\_\_ **Pullen:** \_\_\_\_\_

**Alternates:**

**Peters:** \_\_\_\_\_

## APPLICATION FOR VARIANCE

THIS SECTION FOR OFFICE USE			
Application No.	VA	Date	10-7-13
Application Fee	\$ 250.00	Receipt No.	
<b>SECTION 1: APPLICANT INFORMATION</b>			
Applicant's Name:	John Jay Burney III	Owner's Name:	John Jay Burney III
Applicant's Address:	2144 Echo Lane	Owner's Address:	2144 Echo Lane
City, State, & Zip	Wilmington, NC 28403	City, State, & Zip	Wilmington, N.C. 28403
Phone Number:	910-471-9436 (cell)	Phone Number:	910-471-9436 (cell)
Legal relationship of applicant to land owner: The owner (same)			
<b>SECTION 2: PROJECT INFORMATION</b>			
Property Identification Number (PIN):	3361-13-7426-0000	Total property acreage:	247.61 ac
Zoning Classification:	RA <sup>Rural</sup> <del>Residential</del>	Variance Size:	60 feet +/-
Variance Location & Address	11870 Shaw Hwy, Burgaw, N.C., 28425 Tower is located on Maple Hill Rd. side of property		
Describe Variance and amount or type requested:	Relief from the 35 foot max height requirement		
<b>SECTION 3: SIGNATURES</b>			
Applicant's Signature		Date:	10-1-13
Owner's Signature		Date:	10-1-13
<b>NOTICE TO APPLICANT:</b>			
<ol style="list-style-type: none"> <li>1. The Board of Adjustment shall review applications for a variance and shall be the approving authority for all requirements.</li> <li>2. All applicants seeking a variance shall schedule a pre-application conference with the administrator to discuss the procedures, standards, and regulations required for variance approval.</li> <li>3. An application for a variance shall be submitted in accordance with application requirements.</li> <li>4. Once the application has been determined complete, the Administrator shall schedule a public hearing and give notice to adjoining/abutting property owners and aggrieved parties in the form of applicant supplied #10 envelopes with paid first class postage.</li> <li>5. The applicant seeking the variance shall have the burden of presenting evidence sufficient to allow the Board of Adjustment to reach the conclusions set forth below (Findings), as well as the burden of persuasion on those issues.</li> <li>6. Applicant must also submit the information described in the Variance Checklist provided below.</li> <li>7. Applicant or agent authorized in writing must attend the public hearing.</li> <li>8. Once the public hearing has been advertised, the case will be heard unless the applicant withdraws the application or unless the Board of Adjustment agrees to table or delay the hearing.</li> </ol>			
<b>OFFICE USE ONLY</b>			
<input checked="" type="checkbox"/> VA Fees \$250			Total Fee Calculation \$
Payment Method :	Cash : <input type="checkbox"/> \$ _____	Credit Card: <input type="checkbox"/> Master Card <input type="checkbox"/> Visa	Check: <input type="checkbox"/> Check # _____
Application received by:		Date:	
Application completeness approved by:		Date:	10-7-13
Date scheduled for public hearing:	11-20-13		

### Variance Checklist

<input checked="" type="checkbox"/>	Signed application form
<input checked="" type="checkbox"/>	Application fee
<input checked="" type="checkbox"/>	Legible list of all property owners adjacent to the property upon which the use is to be located. The list shall include the mailing address & physical address of these property owners (The application will not be advertised for public hearing until the list is accurate & complete--the list maybe compiled from the public PC terminal in the Pender County Tax Office).
<input checked="" type="checkbox"/>	One business size envelope legibly addressed with <b>first class</b> postage for each of the adjacent property owners on the above list.
<input checked="" type="checkbox"/>	<u>Variance Description</u> : Written description of the Variance requested, meeting the four identified findings for variance approval described on page 1 of this application and in the Pender County Unified Development Ordinance (Section 3.14.7.A.).
<input checked="" type="checkbox"/>	<p><u>Project Map(s)</u>—Applicant shall supply 15 (11"x17") project maps at a readable scale, clearly showing the following (as applicable):</p> <ul style="list-style-type: none"> <li><input checked="" type="checkbox"/> Property Location</li> <li><input type="checkbox"/> Building Separation Distances</li> <li><input checked="" type="checkbox"/> Dimensions of Property</li> <li><input checked="" type="checkbox"/> Proposed Building Height</li> <li><input checked="" type="checkbox"/> Building Distances From Property Lines (Front, Sides, Rear)</li> <li><input type="checkbox"/> Location of All Existing Utilities On-Site</li> <li><input checked="" type="checkbox"/> Existing Structures</li> <li><input checked="" type="checkbox"/> Acreage of Property</li> <li><input checked="" type="checkbox"/> Any Proposed Structures</li> <li><input checked="" type="checkbox"/> Additional Information Pertinent to the Variance Request (Pictures, Other Permits, etc.)</li> </ul>
<p><b>RETURN COMPLETED APPLICATION TO:</b>  Pender County  Planning &amp; Community Development  P.O. Box 1519  Burgaw, NC 28425</p>	

### 3.14.7 Findings

1.) The special or unique circumstances or conditions or practical difficulties exist due to the main fact of SAFETY. The pheasant tower built on my farm or zoned shooting preserve is on four 50 foot telephone poles augured in the ground 10 feet. There are four security cables fascine on all four corners. The top of platform is 40 feet with an 8x8 box built on top. Total footage or height is 48 feet. Four sections of steps are built to walk to the top of the platform. A pulley system is engineered to carry the crates of birds to a trap door built in floor. The tower was constructed to release pheasants for a controlled shoot for club members and their quest. The structure does not have any utilities hooked up or involved in operation. Unnecessary hardship would result from not being able to use tower, due to it's a zoned, special use permitted, and licensed shooting preserve and Pheasant tower shoots are half of the shooting opportunities and half of the revenue center.

2.) The main reason for the height requirements is due to safety and acreage of shooting field. There are ten hay bales in a complete circle around tower in the middle of 7 to 8 acres. These are ten shooting stations. The height needed for this situation is 50 feet. Tower is 48 feet. The reason is the birds released need to be at a certain altitude, so the shooters will not be shooting level, what so ever. They are situated in a shooting circle. If the field was any larger, the tower would be required to be higher in order to work safely.

3.) The hardship that would be placed on my property would be due to the fact that back in 2003; my property was enrolled in the Coastal Land Trust and NC Water Quality Conservation Easement Programs. There is dedeed easement on entire Tract. In doing so, that placed severe restrictions on the property. It can only be used for Farming and Hunting. That is now the highest and best use. It cannot be developed, what so ever. By not allowing or granting me a height variance would hinder my full use under the usages that are restricted now. All

preserves have towers. Most much taller than mine. Additionally, without the use of a tower, all hunters interested in the sport of hunting or a shooting preserve, would not patronize my due to all other operations have a tower which is widely popular. It would be a major hardship. It could cut my usage of my property by 50% percent.

4.) The request variance is consistent with the spirit and the intent of the ordinance due to fact that the property is zoned RA (Rural Agricultural) and a special use permit has been approved by Pender County Board of Commissioners allowing the shooting preserve due to the fact that Amusements and Recreation Industries are permitted via special use Permit in the RA zoning district. Also in line with the spirit and purpose is that the shooting preserve and property adjoins the Holly Shelter Game Lands, which comprises of over 50,000 acres of public hunting land and opportunities. It is also in the spirit of all other active North Carolina shooting preserves list of activities. Again the height variance request is needed to insure that public safety is secured and substantial justice is achieved due to shooting stations are arranged in a circle.

The first time I realized I was in violation of a variance code is when I submitted construction plans for a building to be built on my farm. This was in the month of April 2013. Scott Henry handed me a letter or print out addressing the tower structure. (Attached). This is the first notice that made me aware of the height requirements. I never received any thing by mail. Mr. Henry will concur with this. I understand I should have gone thru proper agencies and permitting now, but my father was an atty and had always informed me a building permit was not required on structures related to farming and hunting on our farm as long as it didn't have heat and air. Also, it is not something I tried to hide. I have now gone thru the proper permitting process and Pender Co. has issue me a zoning permit. The Pheasant tower is 48 feet tall to the top of an 8 by 8 box. There are four 50 foot power poles augured 10 feet in the ground, with a plat form built at 40 feet. An 8 foot tall box is built on top of the plat form. Requesting a variance of only 13 feet. Most other preserve's Pheasant towers are 70 to 90 feet tall.



**Applicant:**  
John J Burney III

**Owner:**  
John J Burney III

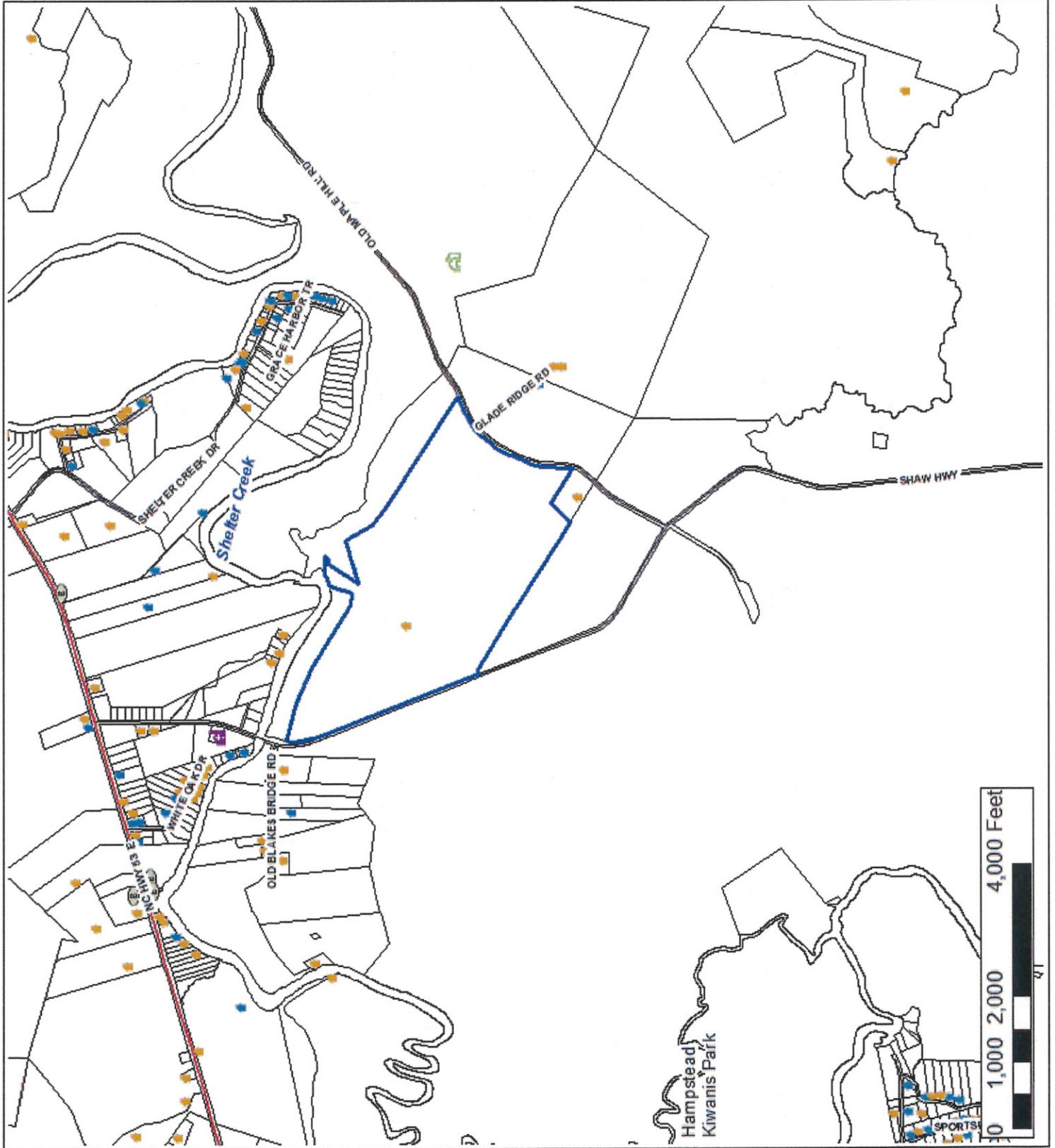
**Variance**  
#11043

**Legend**

Subject Parcel

**Structure Type**

- Business
- Church
- Farm Use
- House
- Manufactured Home





**Applicant:**  
John J Burney III

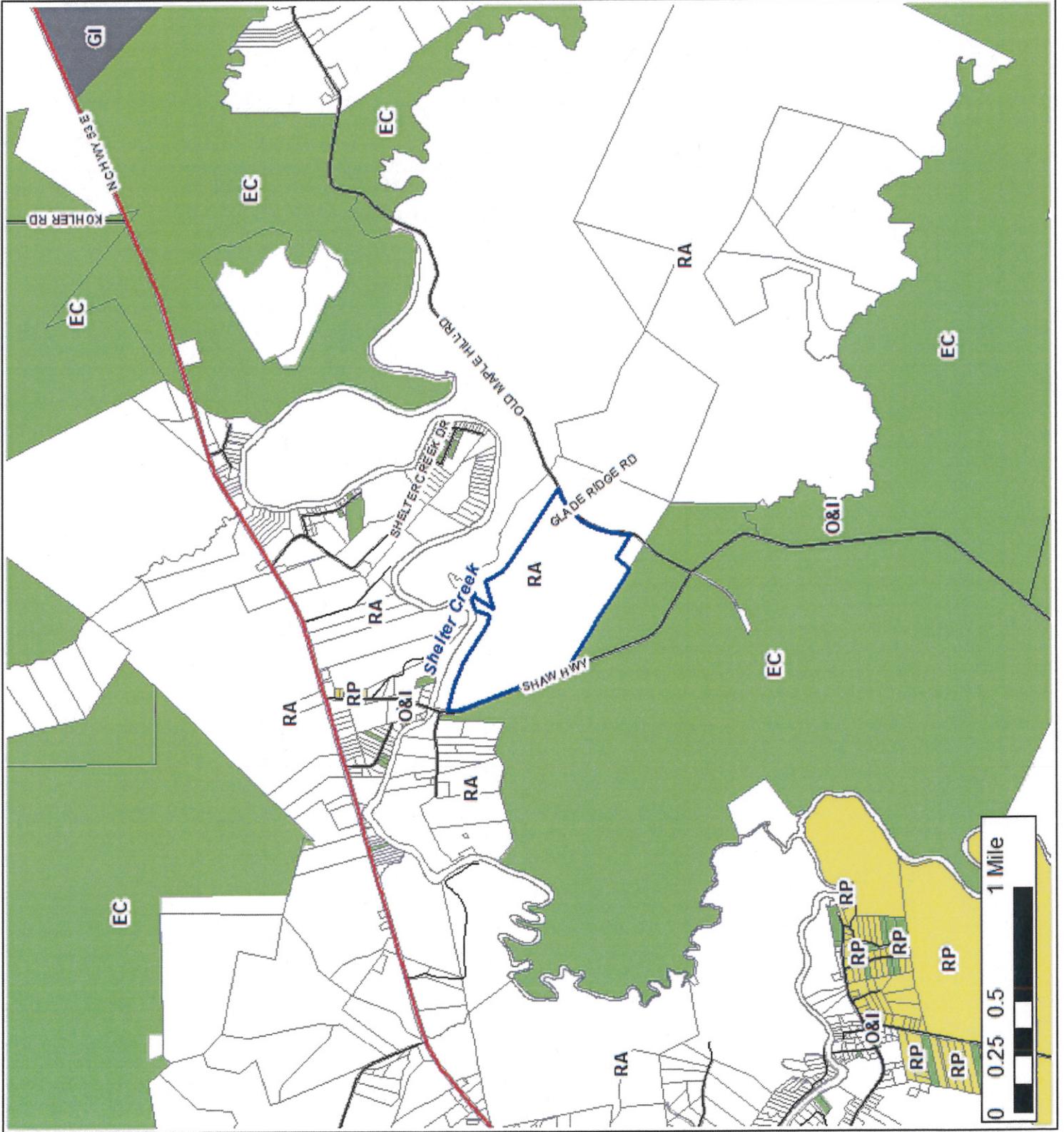
**Owner:**  
John J Burney III

**Variance**  
#11043

- Zoning Classification**
- General Business (GB)
  - General Industrial (GI)
  - Industrial Transition (IT)
  - Office & Institutional (OI)
  - Rural/Agricultural (RA)
  - Planned Development (PD)
  - Residential Performance (RP)
  - Environmental Conservation (EC)
  - Incorporated Areas (IN-CORP)
  - Manufactured Home Park (MH)
  - Residential Mixed (MF)



**ZONING**





**Applicant:**  
John J Burney III

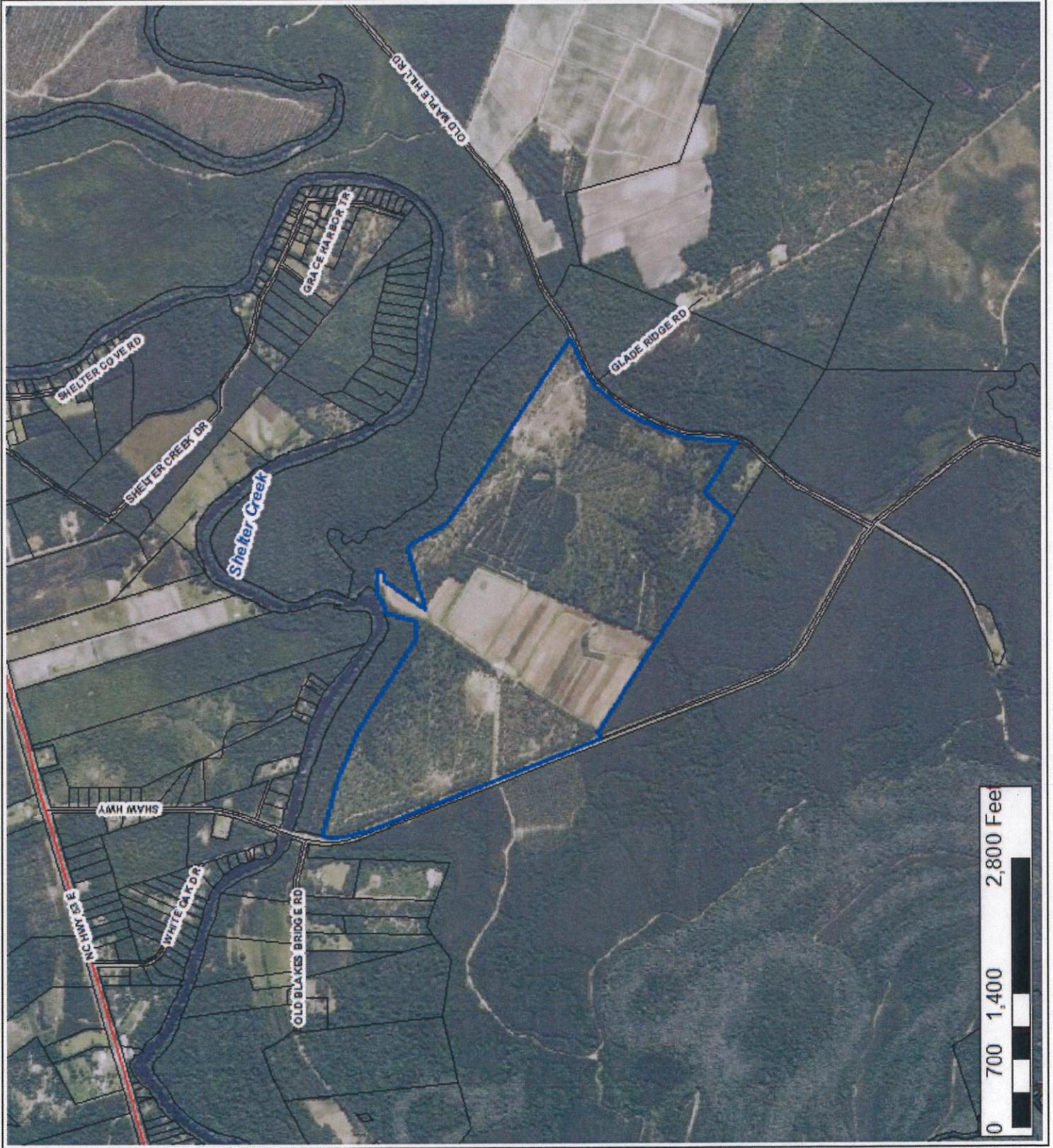
**Owner:**  
John J Burney III

**Variance**  
#11043

**Legend**



**2012 Aerial**





REQUEST FOR BOARD ACTION

ITEM NO. 21.

DATE OF MEETING: August 19, 2013

REQUESTED BY: Ed McCarthy, Planner II, Planning & Community Development

**SHORT TITLE:** Resolution Authorizing Approval of a Special Use Permit (SUP) for the Operation of a Private Recreation Club, Including a Pheasant Shooting Tower.

**BACKGROUND:** Burney Wing and Gun Club, applicant, on behalf of John J Burney, owner, is requesting approval of a Special Use Permit for the use of a private recreation club, including a pheasant tower, which stands approximately sixty feet (60') tall. The property is located on the western side of Old Maple Hill Road, approximately 1,600 feet north of the intersection of Shaw Highway and Old Maple Hill Road. The property may be identified as Pender County PIN 3361-13-7426-0000. The property is zoned RA, Rural Agricultural, and according to the Pender County Unified Development Ordinance §5.2.3 Table of Permitted Uses, All Other Amusement and Recreation Industries are permitted via Special Use Permit in the RA zoning district.

**SPECIFIC ACTION REQUESTED:** To hold a public hearing and consider the approval of a Special Use Permit for the operation of a private recreation club, including a pheasant shooting tower.

RESOLUTION

NOW, THEREFORE BE IT RESOLVED by the Pender County Board of Commissioners that:

the Board hereby approved a special use permit for the operation of a private recreation club, including a pheasant shooting tower as described herein. The Chairman/County Manager is authorized to execute any/all documents necessary to implement this resolution.

AMENDMENTS: The motion includes the following for skeet shooting: No operating hours on Sunday; no set time for mornings Monday through Saturday; and 7:00 p.m. cut-off time Monday through Saturday.

MOVED Ward SECONDED Tate

APPROVED X DENIED \_\_\_\_\_ UNANIMOUS

YEA VOTES: Brown \_\_\_ McCoy \_\_\_ Tate \_\_\_ Ward \_\_\_ Williams \_\_\_

George R. Brown  
George R. Brown, Chairman 8/19/2013  
Date

[Signature]  
ATTEST 8/19/2013  
DATE

**PLANNING STAFF REPORT**  
**Special Use Permit**

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**SUMMARY:**

**Hearing Date:** August 19, 2013  
**Applicant:** Burney Wing and Gun Club  
**Property Owner:** John J Burney  
**Case Number:** 10987

**Land Use Proposed:** The applicant is requesting the approval of a Special Use Permit (SUP) for the use of a private recreation club, including a pheasant tower, which stands approximately sixty feet (60') tall.

**Property Record Number and Location:** The property is located on the western side of Old Maple Hill Road approximately 1,600 feet north of the intersection of Shaw Highway and Old Maple Hill Road. The property may be identified as Pender County PIN 3361-13-7426-0000. There is one tract associated with this request totaling approximately 247.61 acres.

**Zoning District of Property:** The property is currently zoned RA, Rural Agricultural, and All Other Amusement and Recreation Industries are permitted via Special Use Permit in the RA zoning district.

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**PROJECT DESCRIPTION:**

Burney Wing and Gun Club, applicant, on behalf of John J Burney, owner, is requesting approval of a Special Use Permit for the use of a private recreation club, to include hunting, skeet shooting and a pheasant shooting tower, which stands approximately sixty feet (60') tall. The property is located on the western side of Old Maple Hill Road approximately 1,600 feet north of the intersection of Shaw Highway and Old Maple Hill Road. The property may be identified as Pender County PIN 3361-13-7426-0000. The property is zoned RA, Rural Agricultural, and according to the Pender County Unified Development Ordinance §5.2.3 Table of Permitted Uses, All Other Amusement and Recreation Industries are permitted via Special Use Permit in the RA zoning district.

According to the applicant's submitted documents, the site will be used as a private club operation, with available activities to include (dove, deer, duck and turkey) hunting, a pheasant shooting tower and two skeet shooting ranges. In addition, the applicant intends to remodel the existing farm house into a clubhouse and bring the existing pheasant tower into compliance, as it was constructed without approvals from the Planning and Community Development Department.

The subject parcel is approximately 247.61 acres in area and has a single family structure located near the center of the parcel. The pheasant tower is located near the eastern quarter quadrant of the tract in question, approximately 2,000 ft from the single family structure located on site. According to the applicant, "Pheasant Tower- Starts Oct and runs to March with two tower shoots a month for a total of 12 throws. Usually starts around 2:00 pm, shooting for around an hour a shoot and then serve oysters and cook the pheasants killed along with a social gathering around the outside fire pit." This particular area is bordered by a significant amount of vegetation, as shown on the 2012 aerials. The pheasant shooting tower is the only activity on site allowed for non-member use. One must be a private club member in order to participate in any of the other activities (deer, turkey, dove hunting, skeet shooting etc.), detailed below.

The two (2) skeet shooting ranges are located near the center of the property and are open from September through February. The hours of operation run from approximately 9:00 a.m.-11a.m. and 3:00 p.m.-6:00 p.m., and generally on Saturdays and Sundays.

According to the applicant, the hunting activities are as follows:

1. Dove Hunting: Would begin September 1<sup>st</sup> and would continue every Saturday through the end of first season; which is customarily the first Saturday in October. The dove hunting area is shown on the provided site plan
2. Deer Hunting: Starts in middle of October till January 1st.
3. Still Hunting: Would be available only on Tuesdays, Thursdays and Saturdays, mainly during the afternoon in marked deer stands.
4. Duck Hunting: Would begin the 2<sup>nd</sup> Saturday in November and continue through the end of January. Hunting time would be Saturday mornings located around the duck impoundment.
5. Turkey Hunting: Is available in April on the entire tract. Hunting days would be on Wednesday and Saturdays.

The property houses six (6) deer stands, with the closest stand located approximately 500' from the nearest residential property line. To date, there are 22 club members and no paid employees, however, the applicant may hire maintenance staff at a later date.

Prior to the issuance of final zoning approval, a site development plan must be submitted and approved in accordance with applicable provisions of the Pender County Unified Development Ordinance. In addition, all other applicable permits and approvals must be obtained including inspections and health department regulation compliance.

Use Type	Ref NAICS	Zoning Districts									
		RA	RP	RM	MH	PD	GB	OI	IT	GI	EC
<b>MISCELLANEOUS USES</b>											
All Other Amusement & Recreation Industries	71399	S					P	P		P	

**EVALUATION:**

- A. **Public Notifications:** Advertisements for the proposal have been placed in the *Pender-Topsail Post & Voice*. Adjacent property owners were notified by first class mail.
- B. **Basis for Granting SUP:** See attachment A for approval procedures (§3.12.3 of Unified Development Ordinance) and revocation procedures (§3.12.4 of Unified Development Ordinance).
- C. **Unified Development Ordinance Compliance:** The property is currently zoned RA, Rural Agricultural, All Other Amusement & Recreation Industries are permitted in the RA zoning district by Special Use Permit, as prescribed by the Pender County Unified Development Ordinance §5.2.3 Table of Permitted Uses.
- D. **2010 Comprehensive Land Use Plan Compliance:** The subject property is classified as Conservation in the *2010 Comprehensive Land Use Plan*. The Conservation land use classification designates areas that are owned in fee simple or have protective easements. These areas represent areas of special significance and unique characteristics that make them worthy of preservation. Current conservation areas are typically owned by Federal or State agencies or private conservation groups and are often designated as Areas of Environmental Concerns (AECs).

Currently, conservation areas comprise approximately 131,393 acres (24.7%) of the land area within the Pender County zoning jurisdiction.

E. The SUP request may be supported by the following within the 2010 *Comprehensive Land Use Plan*:

- *Policy 10A.1.7 – Protection enhance and encourage a high quality of life, including the conservation and management of natural and man-made resources as an effective component of an economic development diversification strategy.*
- *Policy 10A.1.8 – The County shall seek to foster a travel and tourism (including ecotourism) industry that is compatible with a high quality of life- as a means to facilitate diversification in the local economy.*

F. **Existing Land Use in Area:** The properties to the north and northeast are primarily wooded conservation tracts. The land to the west and southwest include heavily wooded gameland tracts owned by the State of North Carolina. The parcels to the south and southeast include two heavily wooded tracts with a single residential home and a trailer on each parcel, respectively.

G. **Site Access Conditions:** The proposed use lies on a tract adjacent to Shaw Hwy and Maple Hill School Road.

H. **Conditions To Consider In Issuing the Special Use Permit For This Project:**

1. The project shall comply with all requirements of the Pender County Unified Development Ordinance.
2. Unless approved otherwise as a condition of the permit, a Special Use Permit shall expire and become void, if a final zoning permit has not been issued for the project within 12 months.
3. Any violations of the conditions of this permit, confirmed by the Zoning Administrator shall result in this permit becoming void, if not corrected within 30 days of receipt of the notice of violation.
4. The applicant shall meet all other local, state and federal regulations.
5. The obligations imposed by this permit will be the responsibility of the property owner and operator and shall continue in affect for the duration of this permit.
6. Approval for the use and location of the Pheasant Tower shall be contingent upon an approved height variance for said tower.

## Attachment A

### **3.12.3 Procedures for Reviewing Applications**

- A. The special uses, as specified in the various districts, may be established only after review and approval by the Board of Commissioners.
- B. The Board of County Commissioners, acting in a quasi-judicial manner and setting, shall hear evidence from the applicant and any interested members of the public.
- C. The Board of Commissioners shall hold a public hearing on the application for a Special Use Permit within sixty (60) days after the completed application is filed.
- D. The Administrator shall cause notice of the hearing to be published once a week for two successive calendar weeks. The notice shall be published for the first time not less than ten (10) nor more than twenty-five (25) days before the date fixed for the hearing.
- E. All Special Use Permit applications must be presented to the Administrator for a determination of completeness.
- F. An appeal from a completeness determination may be made to the Board of Adjustment within twenty (20) days of the determination.

- G. The Board of Commissioners shall approve, modify, or deny the application for a Special Use Permit. In approving a Special Use Permit, the Board of Commissioners, with due regard to the nature and state of all adjacent structures and uses in the district within same is located, shall make written findings that the following are fulfilled:
1. The use requested is listed among the special uses in the district for which application is made, or is similar in character to those listed in that district;
  2. The requested use will not impair the integrity or character of the surrounding or adjoining districts, nor adversely affect the safety, health, morals, or welfare of the community or of the immediate neighbors of the property;
  3. The proposed use shall not constitute a nuisance or hazard;
  4. The requested use will be in conformity with the Pender County Land Use Plan and other official plans or policies adopted by the Board of County Commissioners;
  5. Adequate utilities, access roads, drainage, sanitation or other necessary facilities have been or are being provided;
  6. That adequate measures have been or will be taken to provide ingress and egress so designed as to minimize the traffic congestion in the public roads;
  7. That the special use shall, in all other respects, conform to the applicable regulations of the district in which it is located; and
  8. The proposed use shall not adversely affect surrounding uses and shall be placed on a lot of sufficient size to satisfy the space requirements of said use.

#### **3.12.4 General Provisions Concerning Special Use Permits**

A. Compliance With Other Codes - Granting of a Special Use Permit does not exempt the applicant from complying with all of the requirements of building codes and other Ordinances.

B. Revocation - In any case where the Special Use Permit or the conditions of a Special Use Permit have not been or are not being complied with, the Administrator may initiate a notice of violation for the provisions of this Ordinance and the conditions of the Special Use Permit not in compliance or the Administrator, may initiate notice of a public hearing to consider revocation of the permit by the Board of Commissioners or both actions may be initiated. Procedures for notice of such hearing shall be the same as procedures for consideration of an initial application for a Special Use Permit and the permittee shall be notified. After a public hearing has been held, the Board of Commissioners may revoke the Special Use Permit upon finding any of the following:

- 1) That the approval was obtained by fraud.
- 2) That the use for which such approval was granted is not being executed.
- 3) That the use for which such approval was granted has ceased to exist or has been suspended for one year.
- 4) That the permit granted is being, or recently has been exercised contrary to the terms or conditions of such approval.
- 5) That the permit granted is in violation of an Ordinance or Statute.
- 6) That the use for which the approval was granted was so exercised as to be detrimental to the public health or safety, or so as to constitute a nuisance.

C. Expiration - Unless a request for additional time is granted or approved otherwise as a condition of the permit, a Special Use Permit shall expire and become void if final Zoning Approval has not been issued for the project within 24 months after the Notice of Approval of the Special Use Permit has been served on the applicant. The Administrator may provide one extension of the expiration date by no more than 6 months, for complex projects requiring major state or federal permits, upon receipt of a written request for such extension by the applicant detailing the reasons for delay in completion of the requirements for the Zoning Approval.

D. Duration of Special Use - Any conditions imposed on a special use authorized and exercised shall be perpetually binding upon the property unless expressly limited by the Pender County UDO 3-28 Article 3 - Review Procedures Special Use Permit or subsequently changed or amended by the Board of Commissioners after application to the Board of Commissioners and a public hearing.

E. Conditions and Guarantees - Prior to the granting of any special use, the Board of Commissioners may stipulate such conditions and restrictions upon the establishment, location, or construction, maintenance, and operation of the special use as it deems necessary for the protection of the public and to secure compliance with the standards and requirements specified in this Ordinance. In all cases in which special uses are granted, the Board of Commissioners shall require such evidence and guarantees as it may deem necessary to assure that conditions stipulated in connection therewith are being and will be complied with.

- 1) Such conditions may include a time limitation.
- 2) Conditions may be imposed which require that one or more things be done before the use requested can be initiated. For example, "that a solid board fence be erected around the site to a height of six (6) feet before the use requested is initiated".
- 3) Conditions of a continuing nature may be imposed. For example, "exterior loud speakers shall not be used between the hours of 10:00 p.m. and 9:00 a.m."

F. Filing of Special Use - The Administrator shall file the approved or disapproved application forms with the decision of the Board of Commissioners.

G. Appeals from the Board of Commissioners - Appeals to the Superior Court may be taken by any person, firm, or corporation aggrieved, or by any officer, department, board of the county affected by any decision of the Board of Commissioners, provided such appeals shall be taken within thirty (30) days after the decision of the Board of Commissioners is filed in the office of the Administrator, or after a written copy thereof is delivered to the applicant, whichever is later. The decision of the Board of Commissioners shall be delivered to the applicant by certified mail, return receipt requested.

H. Revisions - Major revisions to a Special Use Permit must be submitted to the Board of Commissioners. All legal notice and application fee requirements must be met for major revisions. Revisions that are considered minor revisions to an approved Special Use Permit may be reviewed and approved by the Administrator after basic submission requirements have been completed. All revisions approved by the Administrator must meet the original conditions of the permit as approved by the County Commissioners and current provisions of the Zoning Ordinance. The addition of an accessory structure less than 1000 sq. ft., addition of parking or other ancillary facilities or uses or the addition of similar product lines are examples of revisions that may be considered minor revisions.

## PLANNING STAFF REPORT

### Variance

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#### SUMMARY:

**Hearing Date:** December 18, 2013

**Applicant:** Stephanie Todd

**Property Owner:** Robert Holley

**Case Number:** 11073

**Property Location and Description:** The subject property is located at 17990 NC Highway 210, Rocky Point, as referenced on Deed Book 462, Page 002.001 (Exhibit 1), recorded at the Pender County Register of Deeds on September 25, 2009, Map Book 6, Page 84 (Exhibit 2), and may be identified by Pender County 3214-58-9462-0000.

**Zoning District of Property:** The property is zoned RP, Residential Performance District.

**Variance Requested:** Stephanie Todd, applicant, on behalf of Robert Holley, owner, is requesting a variance for the property located at 17990 NC Highway 210 in Rocky Point. The applicant is requesting relief from Section 6.6, Family Division, of the Pender County Unified Development Ordinance, which requires lots created by a Family Division of property to have either direct access to a public street, private street, or a private access easement that is 45 feet in width. Specifically, the applicant is requesting an 18.5 foot variance for a length of 58.9 feet to allow her to record a 45 foot private access easement on the east side of the property, from Highway 210 to Lot "A".

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#### BACKGROUND AND DESCRIPTION OF VARIANCES:

The subject property totals 4.4 acres and hosts two single family residential structures—one located on the southeastern portion of the property and one on the northeastern portion. On the east side of the property, a paved driveway runs from Highway 210 to the northern structure, providing access to both structures on the property (Exhibit 3). The subject property is bound to the east and west by single family structures, cleared land to the north, and Highway 210 on the south.

The applicant currently lives in the northern structure. Her grandfather, Robert Holley, is the owner of the property and lives in the southern structure. Mr. Holley wishes to subdivide the land, deeding Lot "A", a 0.96 acre of land on the northeast corner of the property, to the applicant (Exhibit 3).

The requirements of Section 6.6, Family Division, of the Pender County UDO govern this particular land subdivision. Among other requirements, Section 6.6.2 requires that "the lots created have either direct access to a public street, private street, or a private access easement as defined in this Ordinance" (§ 6.6.2.K). In this case, once the property is subdivided, Lot "A" will not have access to a public or private street. Therefore, a private easement, providing access to a public or private street, is required (§ 6.6.2.I) and that easement must be 45 feet in width with a minimum passable travel way 20 feet wide (§ 6.6.2.L).

The applicant would like to have the required private access easement to Lot "A" recorded on the east side of the property, where the existing paved driveway is located. However, there is not enough room on the east side of the property to record an access easement 45 feet in width all the way from Highway 210 to Lot "A." The

applicant is restricted by the eastern property line and the location of the southern structure, which would encroach into the proposed easement approximately 8.5 feet, for a length of 28.2 feet. Therefore, if an access easement were to be recorded on the east side of the property, a variance would be required.

For the easement to be property recorded, all setback requirements for the RP district must be met. Therefore, in addition to the encroachment of the structure, additional distance must be added to meet the setback requirements. In the RP district, the Pender County UDO requires a side setback of 10 feet (§ 4.14). As such, the total side encroachment would be a total of 18.5 feet (8.5 feet plus the 10 foot side setback).

In her narrative (Exhibit 4), the applicant asserts that she has looked for other ways to provide an access easement to Lot "A," but that other existing accessory structures on the property prevent her from being able to record a 45 foot easement elsewhere on the property.

Without an access easement, the property may not be subdivided as proposed. Therefore, the applicant is requesting an 18.5 foot variance for a length of 58.9 feet to allow her to record the required access easement on the east side of the property, from Highway 210 to Lot "A". As proposed, the access easement would be recorded at the required 45-foot width, except for the portion of the easement around the southern structure, where the easement width would be reduced to 26.5 feet.

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#### **ZONING ADMINISTRATOR'S CONCLUSION:**

Stephanie Todd, applicant, on behalf of Robert Holley, owner, is requesting a variance for the property located at 17990 NC Highway 210 in Rocky Point. The applicant is requesting relief from Section 6.6, Family Division, of the Pender County Development Ordinance, which requires lots created by a Family Division of property to have direct access to a public street, a private street, or a private access easement that is 45 feet in width. Specifically, the applicant is requesting an 18.5 foot variance for a length of 58.9 feet to allow her to record a 45 foot private access easement on the east side of the property, from Highway 210 to Lot "A".

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#### **RELEVANT UDO PROVISIONS:**

##### **3.14 VARIANCE**

###### **3.14.1 Applicability**

- A. The Board of Adjustment may vary certain requirements of this Ordinance, in harmony with the general purpose of these regulations, where special conditions applicable to the property in question would make the strict enforcement of the regulations impractical or result in a hardship in making reasonable use of the property.
- B. The Board of Adjustment may waive certain requirements when authorized to do so by provisions adopted as a part of this Ordinance.
- C. No variance shall be permitted that would have the effect of allowing a use not permitted in the use table of Section 5.2.3.
- D. No variance shall be permitted that would allow a project to exceed the maximum density as to number of dwelling units to the acre in a Zoning District. This maximum density shall be inclusive of any density bonus allowance or additional units in a planned unit development.
- E. The need for the variance cannot be a result of the owner's own actions and cannot be for strictly economic reasons.

- F. The Board of Adjustment may grant variances in the following special circumstances, as indicated in Section 3.14.7 of this Ordinance.

### **3.14.7 Findings**

In granting any variance, the Board of Adjustment shall make the following findings:

- A. That special or unique circumstances or conditions or practical difficulties exist which apply to the land, buildings or uses involved which are not generally applicable to other land, buildings, structures, or uses in the same zoning districts;
- 1) Unnecessary hardship would result from the strict application of the ordinance. It shall not be necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property.
  - 2) The hardship results from conditions that are peculiar to the property, such as location, size, topography. Hardships resulting from personal circumstances, as well as hardships resulting from conditions that are common to the neighborhood or the general public, may not be the basis for granting a variance.
  - 3) The hardship did not result from actions taken by the applicant or the property owner. The act of purchasing property with knowledge that circumstances exist that may justify granting of a variance shall not be regarded as a self-created hardship.
  - 4) The requested variance is consistent with the spirit, purpose, and intent of the ordinance, such that public safety is secured and substantial justice is achieved.
- B. In making the findings above, the Board of Adjustment may give special weight to the number and percentage of nearby properties that share characteristics for which the variance is requested by the applicant. The Board of Adjustment may grant a variance to expand an existing structure, including the expansion of a nonconforming structure if the findings listed above can be made.

### **3.14.9 Action by the Board of Adjustment**

- A. Each decision shall be accompanied by a finding of fact by the Board of Adjustment which specifies the reasons for the decision.
- B. A decision of the Board of Adjustment to approve a variance or reverse an interpretation requires an affirmative vote by four-fifths of the members present and voting.
- C. The Board of Adjustment may approve the request, deny the request, or continue the request. In approving the variance, the Board of Adjustment may prescribe reasonable and appropriate conditions which will ensure that the use will be compatible with neighboring properties and will not alter the character of the neighborhood.

## **6.6 FAMILY DIVISION**

### **6.6.1 Limitations**

- A. Family subdivisions are permitted on parcels that have been created and recorded in the Registry before March 29, 2004.
- B. A total of three parcels (excluding the remnant parcel, if the remnant parcel meets the requirements of this Ordinance) per qualified resident household will be allowed to be created under the family subdivision provisions.
- C. The division does not create a new public or private street.

### **6.6.2 Requirements**

- A. The plat shall be clearly designated "Family Subdivision" in bold letters,

- B. Grantor and Grantee statement, located in Appendix D, shall appear on the plat and be signed by the Grantor(s) and Grantee(s) prior to approval.
- C. Certification by the Licensed Professional preparing the plat that each lot is adjacent to a natural drainage way or perennial stream or a 20 ft. drainage easement is recorded from each lot toward a natural drainage way or a perennial stream or if the lot or lots front on a NCDOT maintained road, approval from NCDOT for such lots to drain to the public road,
- D. The plat shows any designated Special Flood Hazard Areas located within the subdivision,
- E. The plat shows any designated Areas of Environmental Concern located within the subdivision
- F. An Improvement Authorization Permit from Environmental Health for each lot to be created, a soil suitability analysis for each lot to be created or approval to connect to existing public sewer
- G. The lots, other than those restricted for building development, shown on the plat meet the requirements of this Ordinance.
- H. The lots created have access to an access easement as defined in this Ordinance.
- I. The access easement must provide access to a public street.
- J. Waste water disposal requirements – One of the following must be met:
  - 1) An Improvement Authorization Permit has been issued for each of the parcels,
  - 2) The soil suitability analysis shows that at least 5,000 sq. ft. of each lot is suitable for traditional on site waste disposal and the required 5000 sq. ft. is not within 10 ft of any lot boundary,
  - 3) Approval has been granted to connect to public sewer or community sewer or
  - 4) Lots not meeting the requirements of 1, 2, or 3 are indicated by the following note: “THIS PARCEL CANNOT BE USED FOR BUILDING DEVELOPMENT, UNLESS AN APPROVED WASTE WATER DISPOSAL METHOD HAS BEEN APPROVED AND PERMITTED BY THE PENDER COUNTY ENVIRONMENTAL HEALTH DEPARTMENT OR APPROPRIATE STATE AGENCY OR UNLESS A NEW PLAT IS APPROVED AND RECORDED AS REQUIRED UNDER THIS ORDINANCE.”
    - a) For alternative, see Design Requirements, Lots Section of this Ordinance for “Special Purpose Lots”
- K. The lots created have either direct access to a public street, private street or private access easement as defined in this Ordinance.
- L. A minimum passable travel way 20 feet wide shall be provided within a forty five (45’) foot easement at time of zoning approval.
- M. Clearing and grubbing shall be completed five feet of each edge of the travel way;
- N. Maintenance. Upon determination by the Administrator that such travel way as approved are not passable, the Administrator may, in addition to other remedies, prevent issuance of any further development approvals until such travel ways are in a proper state of maintenance as determined by the Administrator.
- O. The Administrator shall review the subdivision to insure that the development will not block future access to properties that are adjacent to the lots.
- P. The plat contains the following note: “All new access easements shown or designated on this plat, include the transfer of an easement to public entities and public utilities for the purpose of installation and maintenance of water, sewer, electric and communication lines.”
- Q. The plat must contain the following note: “All new access easements shown or designated on this plat include the transfer of an easement to Pender County, its employees and agents for access for emergency personnel (police, fire & rescue) and Pender County and its employees for administration of all Pender County Ordinances.”

**Appendix A:**

**ACCESS EASEMENT:** An easement that is at least forty five (45') feet wide and 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.

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**BOARD OF ADJUSTMENT: FINDING OF FACTS**

1. It is the Board's CONCLUSION that the hardship of which the applicant complains **does/does not** result from the strict application of the ordinance. It shall not be necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property. This conclusion is based on the following FINDINGS OF FACT:
2. It is the Board's CONCLUSION that, granting the hardship **does/ does not** result from conditions that are peculiar to the property, such as location, size, topography. Hardships resulting from personal circumstances, as well as hardships resulting from conditions that are common to the neighborhood or the general public, may not be the basis for granting a variance. This conclusion is based on the following FINDINGS OF FACT:
3. It is the Board's CONCLUSION that the hardship **did/ did not** result from actions taken by the applicant or the property owner. The act of purchasing property with knowledge that circumstances exist that may justify granting of a variance shall not be regarded as a self-created hardship. This conclusion is based on the following FINDINGS OF FACT:
4. It is the Board's CONCLUSION that the requested variance **is/ is not** consistent with the spirit, purpose, and intent of the ordinance, such that public safety is secured and substantial justice is achieved. This conclusion is based on the following FINDINGS OF FACT:

**Board Action:**

**Motion:** \_\_\_\_\_ **Seconded:** \_\_\_\_\_

**Approved:** \_\_\_\_\_ **Denied:** \_\_\_\_\_ **Unanimous:** \_\_\_\_\_

**Ferrante:** \_\_\_\_\_ **Pullen:** \_\_\_\_\_ **Newton:** \_\_\_\_\_ **Thompson:** \_\_\_\_\_

**Alternates:**

**Peters:** \_\_\_\_\_

402-2

Prepared by: MOORE & BIBERSTEIN

NORTH CAROLINA, Pender County.

THIS DEED, Made This 30th day of April, A.D. 1973

by Edward A. Bass and wife, Ruth Lamb Bass

of Pender County and State of North Carolina

of the first part, to Robert R. Holley and wife, Deloris Mills Holley

of Pender County and State of North Carolina

of the second part: WITNESSETH, That said parties of the first part

in consideration of Ten dollars and other good and valuable considerations

to them paid by parties of the second part

the receipt of which is hereby acknowledged, have bargained and sold, and by these presents do grant, bargain, sell and convey to said parties of the second part, their

heirs and assigns, a certain tract or parcel of land in Long Creek Township,

Pender County, State of North Carolina, adjoining the lands

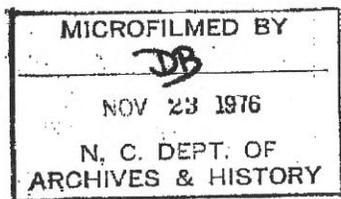
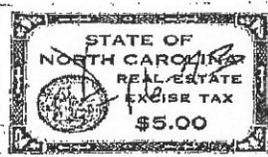
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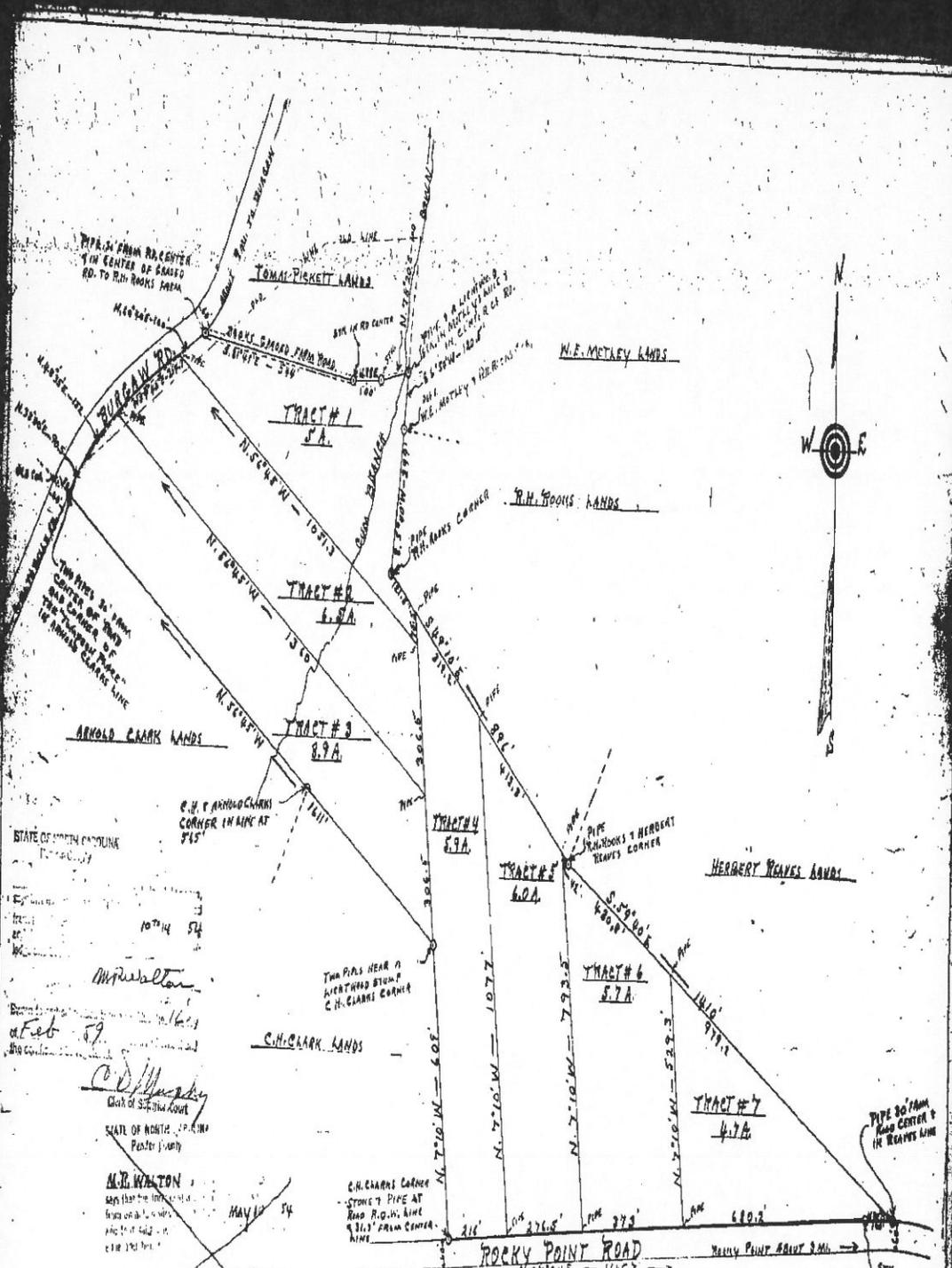
and others and bounded as follows, viz:

BEGINNING at a pipe located in the Northern right-of-way line of North Carolina Highway #210's 60-foot right-of-way, said pipe is located in said line at a point North 88 degrees 39 minutes East 216.0 feet from an old stone and pipe that marks the old dividing corner between the lands of M. R. Walton and C. H. Clark; running thence from said beginning pipe, so located, it being the Southeast corner of a 5.9 acre tract heretofore conveyed by M. R. Walton, et al to Herbert E. Fawcett and wife, Arlene Guyton Fawcett, with the Eastern line of said Fawcett's tract, North 06 degrees 10 minutes West 1077.00 feet to a pipe in the old dividing line between M. R. Walton and R. H. Rooks' lands that runs along the southwestern edge of a ditch; thence with said old dividing line South 48 degrees 10 minutes East 413.30 feet to a pipe in line, the Northwest corner of a 5.65 acre tract heretofore conveyed by M. R. Walton, et al to Benjamin E. Moore; thence with the Western line of said tract; South 06 degrees 10 minutes East 793.50 feet to a pipe in the North right-of-way line of abovesaid Highway #210; thence with said right-of-way line, South 88 degrees 39 minutes West 276.50 feet to the Beginning, containing 6.0 acres, more or less, and is as re-surveyed by Walton and Walton, Registered Land Surveyors, in 1967.

The above described tract of land is a portion of M. R. Walton's Second Tract of his Margaret Satchwell Sloan and Mary Satchwell tract of land that was conveyed to him by deed dated March, 1959. Said deed being duly recorded in Book 358, Page 27 of the Pender County Registry.

Exhibit 1





STATE OF NORTH CAROLINA  
 County of Pender  
 I, *M. R. Walton*  
 Clerk of Superior Court  
 do hereby certify that the within and foregoing plat of  
 the Q. B. Satchwell Subdivision  
 was duly filed for record in my office on the  
 10th day of Feb. 1954  
 at Pender, North Carolina.  
 M. R. WALTON  
 Clerk of Superior Court  
 State of North Carolina  
 Pender County

**MAP**  
 -OF-  
**THE Q. B. SATCHWELL SUBDIVISION**

LOCATED AS PLATED IN LONG CREEK TOWNSHIP, PENDER CO.,  
 N.C. AND KNOWN LOCALLY AS "THE THOMPSON TRACT".  
 ALL LINES ARE "TRUE MAGNETIC" TO DATE AS SURVEYED AND  
 PLATED MAY 10<sup>th</sup> TO 14<sup>th</sup> 1954. M. R. WALTON - REG. SURVEYOR  
*M. R. Walton*

SCALE: 1" = 200'

Filed for registration on the 10th Day of  
 February 1954  
 and registered in the office of the Register of Deeds  
 for Pender County in Book No. 122 Page 84  
 M. R. WALTON  
 Register of Deeds for  
 PENDER COUNTY

November 2, 2013

To Whom It May Concern:

I Stephanie Todd is in the process of buying a modular home with Future Homes in Hampstead NC to place on property in the location of 17982 NC Hwy 210 Rocky Point NC 28457. My grandfather Robert Holley who lives at 17990 NC Hwy 210 Rocky Point NC 28457 is deeding me land of his as a gift to place the modular.

I current live on his property at 17982 NC Hwy 210 Rocky Point NC 28457 where a double has set for several years. I am applying for a variance due to the footage needed for an easement on my grandfather's property to allow access to my property. The driveway to the property that is being gifted has been in place for over 20 years and has been paved for about 10 years.

We have looked and tried other ways to create an easement to allow access to the property being gifted. Due to other structures on the property of my grandfather Robert Holley has made it impossible unless they were removed, but these are building that are used dally.

Approving this variance will allow me to have access to my home and then help maintain the land within my family. My grandfather has lived on the land for over 40 years and our family wishes to maintain it in the family.

As said above the easement that we are hoping to use to have access to the property has existed for over 20 years and has been paved for over 10 years. I am asking that you approve the variance for the easement to be smaller due to the structure of my grandfather's home and property line not meeting the exact footage for the easement needed for the property being deeded.

Exhibit 4

Pictures of 17990 and 17982, NC Highway 210 in Rocky Point  
Variance Case 11073



EXHIBIT 5



**Applicant:**  
Stephanie Todd

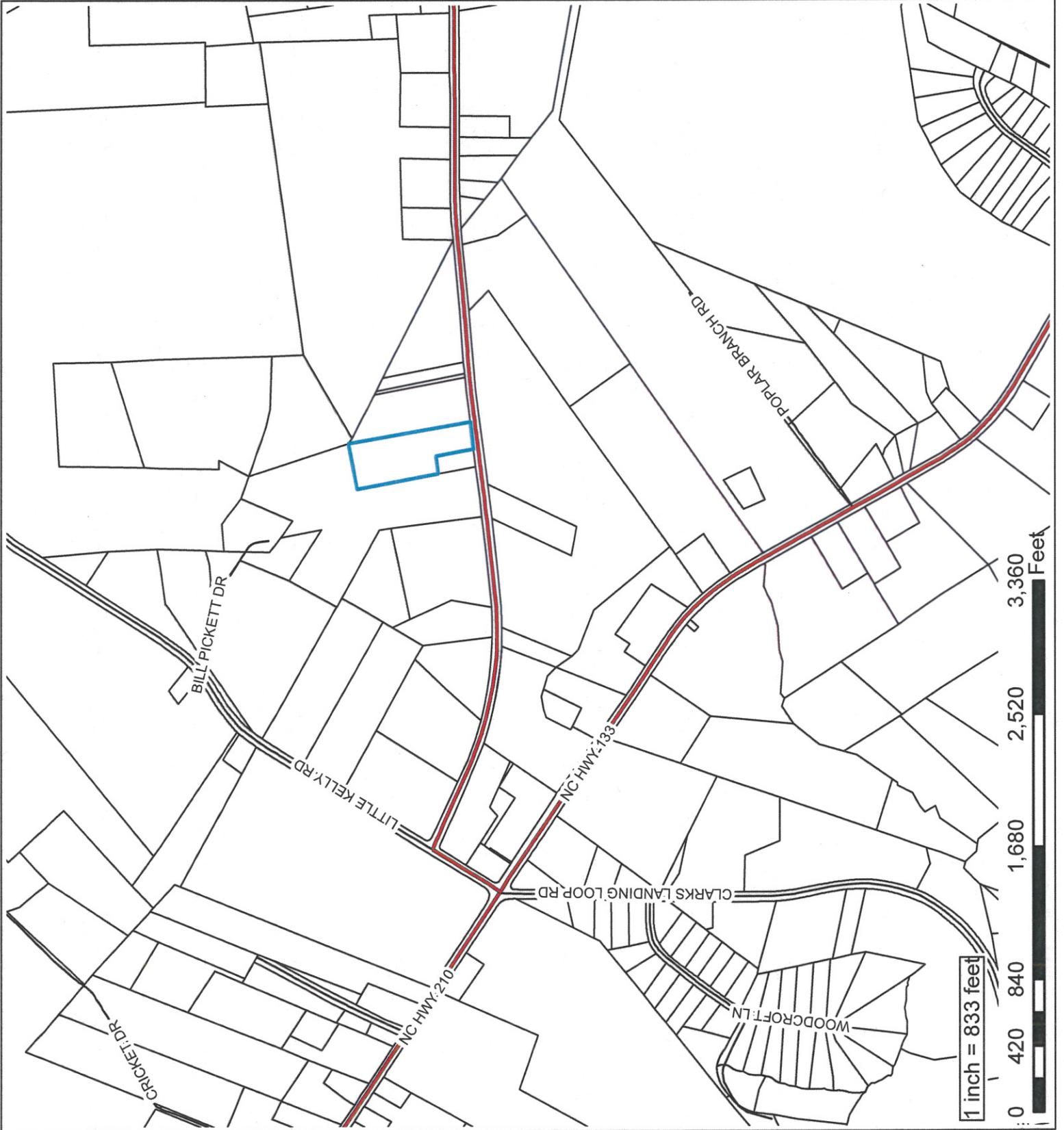
**Owner:**  
Robert Holley

**Variance**

**11073**



**VICINITY**





**Applicant:**  
Stephanie Todd

**Owner:**  
Robert Holley

**Variance**

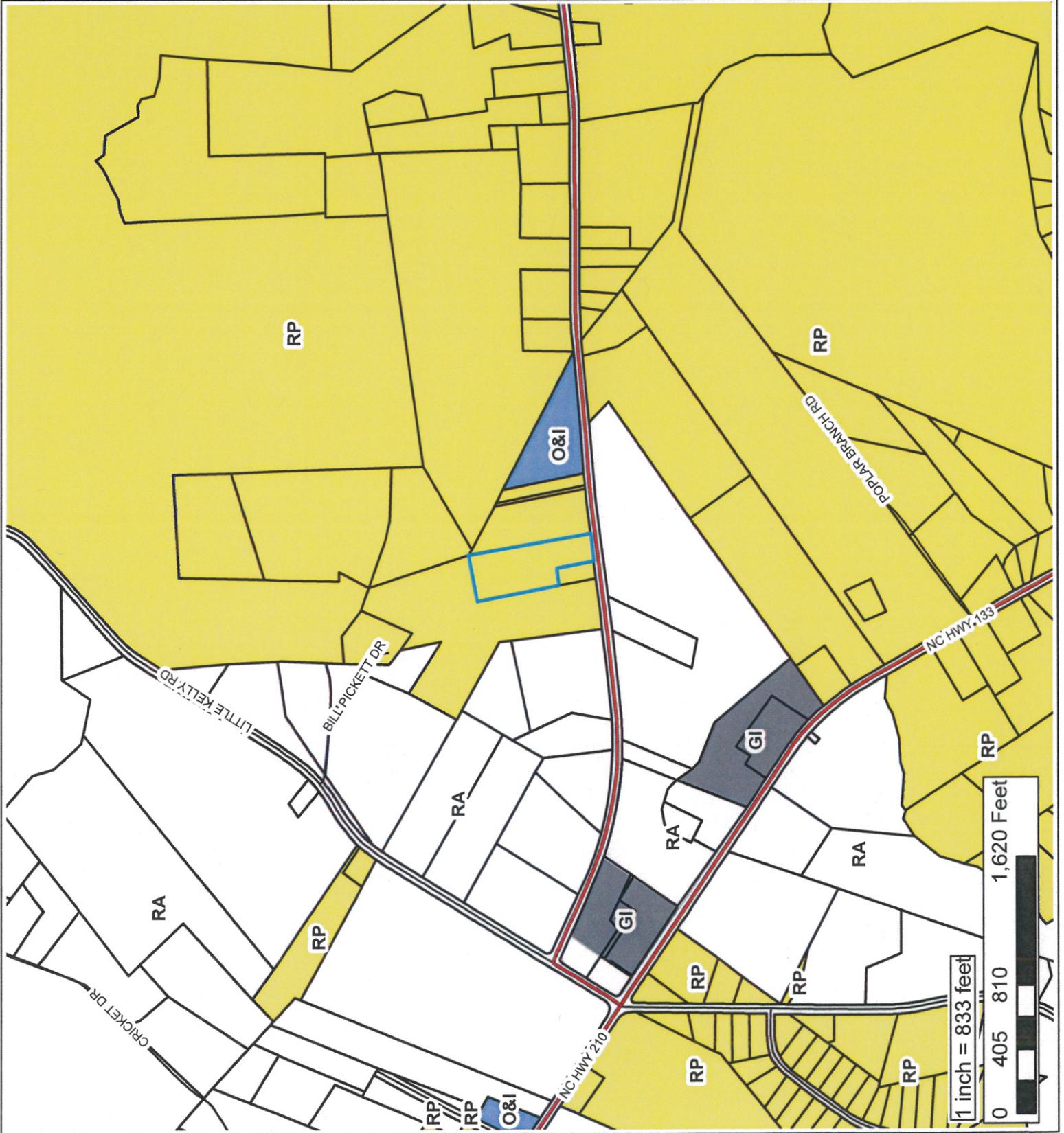
**11073**

**Legend**

-  Subject Property
- Zoning Classification**
- UDO Zoning**
  -  General Business (GB)
  -  General Industrial (GI)
  -  Industrial Transition (IT)
  -  Office & Institutional (OI)
  -  Rural Agricultural (RA)
  -  Planned Development (PD)
  -  Residential Performance (RP)
  -  Environmental Conservation (EC)
  -  Incorporated Areas (INCORP)
  -  Manufactured Home Park (MH)
  -  Residential Mixed (MF)



**ZONING**





**Applicant:**  
Stephanie Todd

**Owner:**  
Robert Holley

**Variance**  
11073

**Legend**

 Subject Parcel



**2012 AERIAL**



## Board of Adjustment Meeting Dates

<b>Meeting Date</b>
1/15/2014
2/19/2014
3/19/2014
4/16/2014
5/21/2014
6/18/2014
7/16/2014
8/20/2014
9/17/2014
10/15/2014
11/19/2014
12/17/2014