

Pender County Planning and Community Development

Planning Division

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MINUTES

Pender County Board of Adjustment Meeting

July 17, 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 Kane; seconded by Board member Newton. Vote unanimously approved.
- 2. Adoption of the Minutes: March 20, 2013:** Motion to adopt minutes was made by Board member Pullen; seconded by Board member Kane. Vote unanimously passed.
- 3. Public Comment:** None

** Public Hearing Opened**

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

- 4. Variance:** Le Voise English, applicant and owner, requested three separate variances to allow for the subdivision of one tract into two tracts in addition to allowing a breezeway to encroach into the required side yard setbacks. Specifically, the applicant requested relief from the Pender County Unified Development Ordinance, Section 4.14, Zoning District Dimensional Requirements, as it pertains to the minimum lot size and setback requirements. The subject property is located at 685 and 715 NC Highway 50, Wallace. The property is zoned RA, Rural Agricultural District and may be identified by Pender County PIN: 3375-44-6162-0000.
 - Variance 1) 0.26 acre or 11,151.36 ft² variance from the minimum lot size requirement of one (1) acre in the RA, Rural Agricultural District. The current lot is .74 ac. or 32,234.4 sq. ft.
 - Variance 2) Proposed Lot 1 would require a three (3) foot variance from the 15 foot side yard setback as required in the RA, Rural Agricultural District.
 - Variance 3) Proposed Lot 2 would require a seven (7) foot variance from the 15 foot side yard setback as required in the RA, Rural Agricultural District.

Senior Planner Frank presented and gave background information for agenda item 4. Chairman Ferrante asked where the proposed property line will actually be located, Senior Planner Frank provided the Board with a map that showed the proposed property line. Chairman Ferrante asked if

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the encroachment was only the breezeway, Senior Planner Frank answered yes. Board member Pullen asked if it was the roof of the breezeway that made the structure nonconforming, Senior Planner Frank answered yes. Board member Kane asked if one of the properties were being sold and would that be the purpose of the variance request, Senior Planner Frank asked to defer the question to the applicant. Mrs. English, applicant, stated that yes she wanted to sell the rest home. Mrs. English gave the board a brief background of the property's history and layout. Board member Pullen asked why the Deed was dated 2005 if they had been involved with the property for so many years; Mrs. English responded that the Deed was transferred to her in 2005 when her mother passed away. Board member Newton asked Mrs. English if she was involved with the management of the rest home, Mrs. English answered that she was the administrator of the home, Board member Newton asked how long had she been the administrator, Mrs. English answered since 1992. Board member Newton asked Mrs. English if she lived in the residential home with her mother, Mrs. English responded that she did once her mother got sick. Board member Newton asked Mrs. English if she has had the rest home up for sale or if it was her plans for the future, Mrs. English stated that she had spoken with a lady about selling the home but, she found out about the subdivision issues that would have to be taken care of first. Chairman Ferrante asked Mrs. English did she have someone interested in buying once the Deed was cleared up; Mrs. English answered yes. Board member Newton stated that she had one more question, that in the initial comments it was stated that Mrs. English had the potential to have additional land deeded to her to make the acre she needed but, would still need an additional .24, Mrs. English answered no. Director Breuer interrupted to clarify some items in the presented case; Director Breuer stated that the information of Mrs. English possibly being able to acquire more land was brought to staff's attention today, Board member Newton asked if there was a possibility of acquiring more land then wouldn't today's hearing be premature. Senior Planner Frank explained that again the conversation between Mrs. English and her brother regarding the land was only brought to staff's attention prior to the hearing. There was a brief discussion regarding the ordinance and subdividing properties. Chairman Ferrante suggested that the Board act on each variance individually. The board held their discussion and acted as follows:

Board of Adjustment: Finding of Facts (Variance 1)

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 subject property does not have extraordinary or exceptional conditions pertaining to size, shape, or topography.**
2. It is the Board's CONCLUSION that, granting the variance requested **will not** 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 subject property currently meets the standards for the RA, Rural Agricultural District, therefore, meets the minimum yard standards of the district. However the applicant has not exhausted other options for self-help in regards to the size of the tract.**
3. It is the Board's CONCLUSION that a literal interpretation of the provisions of this ordinance **would** 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: **There are other tracts in Pender County that are smaller than the lot size requirements for RA, Rural Agricultural District and anyone may apply for a variance.**

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 applicant needs to exhaust options of self-help prior to the request of the variance.***
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, based on the fact that nothing has changed from the original setup and no hardship exists, was made by Board member Newton, seconded by Board member Pullen and unanimously approved.

Board of Adjustment: Finding of Facts (Variance 2)

1. It is the Board's CONCLUSION that the hardship of which the applicant complains ***does*** 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 subject property has an extraordinary or exceptional conditions pertaining to size, shape, or topography. The home site and rest home facility were both constructed prior to the adoption of the Pender County Zoning Ordinance Codified in 1988.***
2. It is the Board's CONCLUSION that, granting the variance requested ***will not*** 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 subject property currently meets the standards for the RA, Rural Agricultural District, therefore, meets the minimum yard standards of the district, the open air breezeway connection between structures provides a safe route between the structures.***
3. It is the Board's CONCLUSION that a literal interpretation of the provisions of this ordinance ***would*** 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: ***There are other tracts in Pender County that are smaller than the lot size requirements for RA, Rural Agricultural District and anyone may apply for a variance.***
4. It is the Board's CONCLUSION that the requested variance ***will be*** in harmony with the purposes and intent of this ordinance and ***will not*** be injurious to the neighborhood or to the general welfare. This conclusion is based on the following FINDINGS OF FACT: ***The structures with open air breezeway connections were established prior to the adoption of the Pender County Zoning Ordinance Codified in 1988.***
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 actions are not a result of the applicant, as Pender County adopted zoning after the construction of the subject structures.***

THEREFORE, on the basis of all the foregoing, IT IS ORDERED that the application for a VARIANCE be ***Approved***. Motion to approve the requested Variance was made by Board member Kane, seconded by Board member Pullen and unanimously approved.

Board of Adjustment: Finding of Facts (Variance 3)

1. It is the Board's CONCLUSION that the hardship of which the applicant complains **does** 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 subject property has an extraordinary or exceptional conditions pertaining to size, shape, or topography. The home site and rest home facility were both constructed prior to the adoption of the Pender County Zoning Ordinance Codified in 1988.**
2. It is the Board's CONCLUSION that, granting the variance requested **will not** 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 subject property currently meets the standards for the RA, Rural Agricultural District, therefore, meets the minimum yard standards of the district, the open air breezeway connection between structures provides a safe route between the structures.**
3. It is the Board's CONCLUSION that a literal interpretation of the provisions of this ordinance **would** 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: **There are other tracts in Pender County that are smaller than the lot size requirements for RA, Rural Agricultural District and anyone may apply for a variance.**
4. It is the Board's CONCLUSION that the requested variance **will be** in harmony with the purposes and intent of this ordinance and **will not** be injurious to the neighborhood or to the general welfare. This conclusion is based on the following FINDINGS OF FACT: **The structures with open air breezeway connections were established prior to the adoption of the Pender County Zoning Ordinance Codified in 1988.**
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 actions are not a result of the applicant, as Pender County adopted zoning after the construction of the subject structures.**

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

Public Hearing Closed

** Public Hearing Opened**

Variance: Manuel F. Sanabria, applicant, on behalf of Derrell Coleman Sr., owner, requested a nine foot (9') variance from the required ten foot (10') side yard setback as outlined in the Pender County Unified Development Ordinance (UDO) Section 5.3.3.A.2 along with Section 4.14 as it pertains to the setback requirements for the RP, Residential Performance District. The subject property is located at 532 Bolick Road, Burgaw. The property is zoned RP, Residential Performance District and may be identified by Pender County PIN 3209-95-8467-0000. Senior Planner Frank presented and gave background information for agenda item 5. Chairman Ferrante asked to hear from the applicant, Mr. Sanabria, applicant, stated to the Board that he had spoken with Scott Henry, building inspector, when he purchased his permits and went with the setbacks of the GIS map, not realizing until after the job was complete that the GIS was not accurate. Mr. Sanabria stated that he was asking for a variance so that the home owners would be able to get their Certificate of Occupancy because at this point they were out of compliance and would not be able to receive it. Mr. Sanabria stated that the property owner of the neighboring parcel was in the audience and had no problem with approving

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the requested variance. Chairman Ferrante clarified that the contractor started the project based off of a printed picture of the property from the Pender County GIS and that the information was incorrect, Senior Planner Frank answered that yes that was correct but, the GIS system has a disclaimer that has to be checked acknowledging that the information is information provided to the Pender County Tax office and is not information provided by a survey. Chairman Ferrante asked how the project was even passed by the inspector; Senior Planner Frank answered that an inspector would actually be looking for building code, to make sure the building meet North Carolina State Building Code. Director Breuer reviewed over the responsibility of the inspectors and stated that the mistake was caught when the required survey was given to staff. Jaki Pace, Senior Permit Technician, explained the initial meeting with applicant, stating that she advised the applicant that the GIS was not completely accurate and that he would have to provide a Foundation Survey prior to the completion of the building. Board member Newton asked if what the applicant initially submitted was based off of the GIS drawing, Ms. Pace responded yes and that based off of that drawing the applicant met the required setbacks and separation. The board held their discussion and acted as follows:

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 applicant applied for permits with Pender County and due to an error interpreting the lot line the accessory structure was placed within the required side yard setback.**
2. It is the Board's CONCLUSION that, granting the variance requested **will not** 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 applicant applied for and received both zoning and building permits; Pender County Permitting assisted the applicant using the online GIS to establish the property line location.**
3. It is the Board's CONCLUSION that a literal interpretation of the provisions of this ordinance **would 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 applied for and received both zoning and building permits; Pender County Permitting assisted the applicant using the online GIS to establish the property line location.**
4. It is the Board's CONCLUSION that the requested variance **will be** in harmony with the purposes and intent of this ordinance and **will not** be injurious to the neighborhood or to the general welfare. This conclusion is based on the following FINDINGS OF FACT: **The accessory structure received zoning and building permits and no opposition from the adjacent property owner was noted.**
5. It is the Board's CONCLUSION that, the special circumstances **are not** 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 applied for and received both zoning and building permits; Pender County Permitting assisted the applicant using the online GIS to establish the property line location.**

THEREFORE, on the basis of all the foregoing, IT IS ORDERED that the application for a VARIANCE be **Approved**. Motion to approve the requested Variance was made by Board member Pullen, seconded by Board member Kane and unanimously approved.

Public Hearing Closed

Chairman Ferrante stated that there was a request for a brief recess.

5. Discussion Items:

a. BOA Members: NONE

b. Planning Staff:

i. HB 276, AN ACT TO CLARIFY AND MODERNIZE STATUTES REGARDING ZONING BOARDS OF ADJUSTMENT

1. The North Carolina General Assembly recently adopted statutes which change certain aspects of the Board of Adjustment. Staff prepared a preliminary report of the changes. Director Breuer presented the report to the Board as information. Attorney Thurman explained that only rare cases would go to mediation, and that there was no need to adopt anything. Director Breuer stated that the new statutes would come into effect on October 1, 2013. Chairman Ferrante suggested that the Board should start using the new questions to base their decisions on cases.

- ii. Director Breuer explained that the Planning Board members had agreed to start utilizing the available technology to receive their packets online and would like to move forward with the same process for the Board of Adjustment, the Board members agreed that receiving their packets digitally verses notebooks would be a more efficient process.

6. Next meeting: Director Breuer stated that there would be no meeting in August, a potential meeting in September, that staff would follow up on; otherwise the next scheduled meeting would be **October 16, 2013.**

7. Adjournment: Meeting adjourned at 11:20 a.m.