

Pender County Planning and Community Development

Planning Division

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MINUTES Pender County Board of Adjustment Meeting October 16, 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 9:16 a.m.

Invocation: Administered by Chairman Ferrante.

Roll Call: Chairman Ferrante

Pender County Board of Adjustment Members:

Ferrante: Pullen: Kane: Newton: Thompson:

Alternates:

Peters

Due to the absences of Board members Kane and Thompson; Alternate Board member Peters served as a full member.

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

** Public Hearing Opened**

Chairman Ferrante swore in witnesses who wished to speak during the Hearing.

4. Variance:

Lizzette Rodriguez, applicant and owner, requested three separate variances to allow for the construction of a 240 ft² accessory building and a 378 ft² accessory building, which will encroach into the required yard setbacks. Specifically, the applicant requested relief from Section 5.3.3.A.1 of the Pender County UDO which addresses the setback requirements of accessory buildings between 50-599 square feet in area. The subject property is located at 154 Crooked Creek Drive, Burgaw, and zoned RA, Rural Agricultural District. The subject property may be identified by Pender County PIN 3322-93-4021-0000.

- Variance 1) a five foot structure separation variance between 240 ft² accessory building and 378 ft² open frame carport
- Variance 2) a four foot, six inch structure separation variance between the existing manufactured home and the proposed open frame carport; and
- Variance 3) a five foot side yard setback variance.

Director Breuer presented and gave background information for agenda item 4. Chairman Ferrante asked for clarification, was staff stating that if the applicant moved the carport forward toward the road, five feet, that it would eliminate the separation problem between the building and the carport but, there would still be a separation problem between the home and the carport; Director Breuer responded yes, but the contingent factor would be the septic tank and the required setbacks from the septic tank. Chairman Ferrante asked if he was correct in saying that the setback requirements for a well and septic could not have a variance; Director Breuer answered that he could not speak to that but, the County's Environmental Health Supervisor, Doug McVey was in attendance and could testify to the rules and guidelines. Mr. McVey addressed the Board stating that currently you can get a variance from a well and a foundation but, you would have to go through the State's Regional Well person; sometimes they are approved and sometimes they are not, that it depends on the situation; Mr. McVey stated that you could not get a variance from the septic system and a foundation. Board member Newton asked Mr. McVey that when he was referring to the system was he talking about the septic tank and septic lines, Mr. McVey answered that the system referred to the septic tank, lines and the repair field. Board member Peters asked if any requirements regarding setbacks had been changed since the purchase of the said property in 2009; Director Breuer answered that the side setbacks for the Rural Agricultural Zoning District did reduce from twenty feet to fifteen feet. Mr. Carrion, applicant's husband, addressed the Board, stating that the reason for their request is due to them trying to move back into this smaller home from a large home and that the way the home was placed on the lot limited their options for storage space. Board member Newton asked Mr. Carrion would there be flexibility in locating the desired structures on the back of his property instead of the side; Mr. Carrion answered that to his understanding due to the well location, the plan provided is the only option they have. Board member Pullen asked for clarification, did the applicant have a choice on where the home was placed or was it purchased as is, Mr. Carrion answered that they bought the home as it was placed. Board member Newton asked if there were any neighbors of the applicant in attendance, since there were none, Board member Newton asked if there had been any comments received regarding the variance requests; Dorothy Ariail, Planner II answered that she only received one inquiring telephone call from an adjoining property owner. Chairman Ferrante stated that the Board would 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** 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: **Setback requirements for the existing well and septic system— which were placed on the property prior to the applicant's purchase of the property— restrict the number of locations on the property that the applicant could place an accessory structure.**
2. It is the Board's CONCLUSION that, granting the hardship **does** 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: **The subject property has an extraordinary or exceptional conditions pertaining to size and shape. The existing structure, well, and septic system were placed on the property prior to the applicant's purchase of the property in 2009, as identified in Deed Book 3686, page 345.**
3. It is the Board's CONCLUSION that 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. This conclusion is based on the following FINDINGS OF FACT: **The existing structure, well, and septic system were**

placed on the property prior to the applicant's purchase of the property in 2009, as identified in Deed Book 3686, page 345.

4. It is the Board's CONCLUSION that 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. This conclusion is based on the following FINDINGS OF FACT: **Accessory buildings are allowed in the RA district. Also, public notice was given to all surrounding property owners and there was no opposition.**

THEREFORE, on the basis of all the foregoing, IT IS ORDERED that the VARIANCE for A **FIVE-FOOT SIDE YARD SETBACK** be **APPROVED**. Motion to approve the requested Variance was made by Board member Peters, seconded by Board member Newton 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 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: **Setback requirements for the existing well and septic system—which were placed on the property prior to the applicant's purchase of the property—restrict the number of locations on the property that the applicant could place an accessory structure.**
2. It is the Board's CONCLUSION that, granting the hardship **does** 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: **The subject property has an extraordinary or exceptional conditions pertaining to size and shape. The existing structure, well, and septic system were placed on the property prior to the applicant's purchase of the property in 2009, as demonstrated in Deed Book 3686, page 345.**
3. It is the Board's CONCLUSION that 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. This conclusion is based on the following FINDINGS OF FACT: **The existing structure, well, and septic system were placed on the property prior to the applicant's purchase of the property in 2009, as demonstrated in Deed Book 3686, page 345.**
4. It is the Board's CONCLUSION that 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. This conclusion is based on the following FINDINGS OF FACT: **Accessory buildings are allowed in the RA district. Also, public notice was given to all surrounding property owners and there was no opposition.**

THEREFORE, on the basis of all the foregoing, IT IS ORDERED that the VARIANCE for A **4.6 FOOT SEPARATION** be **APPROVED**. Motion to approve the requested Variance was made by Board member Newton, seconded by Board member Peters 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 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: **In the RA District, the structure separation requirement for an accessory building between 50-599 square feet in area is ten feet. The applicant,**

whose property is in the RA district, is proposing locating two accessory structures between 50-599 square feet only five feet apart.

2. It is the Board's CONCLUSION that, granting the hardship **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: **The subject property has an extraordinary or exceptional conditions pertaining to size and shape. Setback requirements for the existing well and septic system—which were placed on the property prior to the applicant's purchase of the property—restrict the number of locations on the property that the applicant could place the proposed structures. However, the size of the proposed structure could be reduced to accommodate the District's separation standards.**
3. It is the Board's CONCLUSION that the hardship **did** 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: **The size of one proposed structure—the utility building—could be reduced by the applicant. This would allow the structures to meet structure separation requirements while still being placed in the same location.**
4. It is the Board's CONCLUSION that the requested variance **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: **The applicant can choose to install a smaller structure and meet the required structure separation requirements and therefore the requested variance is not consistent with the spirit, purpose and intent of the ordinance.**

THEREFORE, on the basis of all the foregoing, IT IS ORDERED that the VARIANCE for **A FIVE FOOT STRUCTURE SEPARATION** be **DENIED**. Motion to deny the requested Variance was made by Board member Newton, seconded by Board member Peters and unanimously approved.

* Public Hearing Closed*

5. Adoption of Revised Rules of Procedure:

Director Breuer gave background information on agenda item 5. The Board had a brief discussion to make sure they were clear on the new rules of procedure. Chairman Ferrante asked if there were no further questions, did anyone have a motion.

Motion to approve the Adoption of the Revised Rules of Procedure was made by Board member Peters, seconded by Board member Pullen and unanimously approved.

6. Discussion Items:

a. **BOA Members:** NONE

b. **Planning Staff:**

- i. Attorney Thurman invited the Board to attend a ceremony planned for October 18, 2013 at the Water Plant located at the Industrial Park, at 10:00 am, for an important announcement.

7. Next meeting: November 20, 2013

8. Adjournment: Meeting adjourned at 10:20 a.m.