Pender County
Planning and Community Development

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

Due to the absence of Chairman Ferrante, Vice chairman Pullen presided as Chairman.

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

Invocation: Administered by Chairman Pullen.

Roll Call: Chairman Pullen
Pender County Board of Adjustment Members:
Ferrante: _ Pullen: X Newton: X Thompson: X

Alternates:
Peters X
Due to the absence of Board member Ferrante and the resignation of Board member Kane; 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 Newton. Vote unanimously approved.

2. **Adoption of the Minutes: October 16, 2013:** Motion to adopt minutes was made by Board member Peters; seconded by Board member Newton. Vote unanimously passed.
Chairman Pullen reviewed the North Carolina Statutes for a Board of Adjustment vote; which stated the vote required four affirmative votes for a variance to be approved. Due to only having four Board members; Chairman Pullen explained that any applicant had the opportunity to come back before the Board at the next meeting if they preferred to have their variance heard before a five member board. The applicants took a brief moment amongst themselves to discuss their options. Mr. Burney wished to table his Variance request.

3. **Public Comment:** None

** Public Hearings Opened**
Chairman Pullen swore in witnesses who wished to speak during the Hearing.

4. **Variance:**
John J Burney III, applicant and owner, requested 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 is 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. The applicant requested to table the variance request until the December 18, 2013 meeting.

Motion to continue the requested Variance was made by Board member Thompson, seconded by Board member Peters and unanimously approved.

5. Variance:

Stroud Engineering, applicant, on behalf of Parks Family Forestry LLC, owner, requested a variance to allow for the construction of seven (7) single family residential driveways on Island Creek Road (NCSR 1002) for individual residential lots. Specifically, the applicant requested relief from Section 7.2.6 addressing Design Standards for Lots on Thoroughfares as prescribed by the Pender County Unified Development Ordinance. The subject property is located on the north side of Island Creek Road just east of the New Hanover County line, west of Hunter Court (Wood Cliff Estates), Rocky Point. The property is zoned RA, Rural Agricultural District and may be identified as PIN 3252-97-7356-0000. Planner O'Hare presented and gave background information for agenda item 5. Chairman Pullen asked if the Board had any questions for staff. Board member Newton asked if the WMPO came into effect after the initial application for the said lots was made; Planner O'Hare answered no, that the MOP planning documents were adopted by the Pender County Board of Commissioners in 2011 and that was the 2035 Commutes Plan and the Thoroughfare Plan for Pender County in 1997 does identify the said road as a Collector street. Chairman Pullen made the comment that this would be the first variance case the Board had heard regarding collector streets and asked if the applicant wished to speak. Jimmy Fentress, Stroud Engineering, spoke on behalf of the applicant, Mr. Fentress stated that the issue was the applicant was looking to propose a subdivision and it was difficult to serve the lots on the northeastern edge of the property from roads internal due to the wetlands and flood zone; Mr. Fentress stated that the NCDOT was not in objection to providing driveways off of Island Creek Road, that the NCDOT does not administer the MPO, the MPO is the County's transportation planning authority so therefore if the Variance was granted the NCDOT would permit the driveway permits provided that the applicant met the NCDOT standards which consisted of 100 feet between driveways and the applicant can comply with that requirement. Mr. Fentress explained the proposed plan for the driveways which included individual driveways for lots 3, 4, 5, 6, and 7, the driveway for lot 11 would access off of the main road entering the development and two proposed lots would have a shared driveway. Chairman Pullen asked if the applicant could provide common driveways for all the lots to reduce the amount of driveways; Mr. Fentress answered that in opposed to the request being denied the Parks Family Forestry would be agreeable to common driveways. Mr. Fentress stated that the application was made, addressing the four Finding of Facts and would like to enter that into the record as evidence that the application meets the criteria, primarily based on environmental hardship. Board member Newton asked in reference to lots 1-8 as shown on the provided plat there is 124 acres above the lots, what is in that acreage; Mr. Fentress answered nothing yet that it is forestry. Board member Newton asked what was in the upper North area of the proposed lots; Mr. Fentress answered that it was the same forestry area bounded by a branch of wetland drain that runs between the two. Board member Newton asked if Parks Family Forestry LLC, or any principle of Parks Family Forestry LLC, have any ownership or development interest in any other housing development in the said area; Mr. Fentress stated not that he was aware of and pointed out the applicant's boundary. Board member Newton asked for clarity, was the applicant asking the Board to approve a variance to allow eight home sites access to a main road because it would be expensive to reroute due to the wetlands; Mr. Fentress answered it would be to build a road internal to the property; Board member Newton commented that it would be absorbingly expensive; Mr. Fentress answered that and it would be an impact on the environment. Board member Newton stated that impacting the environment didn't seem to be a concern when looking at the plat provided with wetlands running through all of the lots and the applicant is proposing to develop the lots in the wetlands and asking the Board for approval; Mr. Fentress stated that the lots shown were in excess of an acre in size and have adequate building area on the lots to provide a home site and septic drain field. Board member Newton stated that her concern and confusion was if Parks Family Forestry LLC, wanted to get into the development business and have lots with access to wetlands for the homeowners, why didn't they develop on the 124 acres they have and then they would have an internal road and wouldn't have to request a variance. Mr. Fentress answered that

the applicant does propose to provide lots that are adjacent to the navigable waters and describe where he thought those lots and access road would be but, prior to further development the applicant would have to receive a certain yield from the property. Board member Newton commented that she didn't believe her question was answered, why didn't the applicant cut out the 8 lots from the 124 acres that does not have wetlands running through it, if it is not a concern of financial, if the concern was wetlands then why wouldn't they put the lots on another portion of their property; Mr. Fentress stated the finances were a concern, Board member Newton stated that, that was the hardship; Mr. Fentress answered coupled with the wetland impacts, yes. Board member Newton commented that again wetland impacts did not seem to be a concern of the applicant when looking at the plat as proposed. Mr. Fentress explained the applicants proposed development plans, explaining that it would unfeasible financially to build the initial 8 lots in the 124 acres. Board member Newton asked for clarification on what was considered to be the water front lots in the proposed plan; Mr. Fentress pointed out the water front lot locations and explained the plan for an access road. Board member Newton asked what was stopping the applicant from taking lot 8 putting in the road, putting a bridge over the wetlands and giving lots 1-6 entrance and egress through that private road into the development from lot 8, which would also give access to the future development of the 124 acres when the time comes, and isn't that part of a planned community that you the applicant has to lay out the streets first and the primary egress and ingress but, the applicant's plat does not show these things however, it has been said that there will be future development; Mr. Fentress answered correct, and the problem with accessing the stated lots from the rear would be having to create a bridge over the wetland area; Board member Newton stated which would have to be done anyway; Mr. Fentress replied not if access was given off of Island Creek Road; Board member Newton commented but, it would be needed in the future to access the 124 acres to continue development after the first lots were sold; Mr. Fentress answered yes a single crossing. Board member Newton and Mr. Fentress continued a brief debate over the developers' concern or non-concern over the impacts of wetlands by the development. Board member Peters asked regardless of the outcome of the variance would the applicant still have to obtain CAMA's approval to build on some of the proposed lots; Mr. Fentress answered that he did not believe CAMA's regulations would apply to the lots in question due to the wetlands not being tidle waters, the development would have to comply with the Army Corps of Engineers wetland regulations. Mr. Fentress reiterated that if it were more palatable to the Board to have common driveways on the 8 lots shown, then that was a position the developer would be agreeable to. Chairman Pullen asked if Lots 1 and 2 would be accessed from the behind via the road into the development; Mr. Fentress answered lot 1 more so than lot 2. Board member Thompson made the comment that he believed Board member Newton's suggestion of putting a road in at lot 8 and running it behind the lots would interfere with a future road design. Planner O'Hare commented that based on preliminary conversations with the applicant and a submitted Rezoning Map Amendment application on October 18, 2013, the applicant has submitted a Comprehensive Map amendment, which she would like to submit for the record a road diagram that would be submitted with that request, Planner O'Hare provided the Board with a copy of the road diagram. Mr. Fentress stated that Coleman Parks had arrived to represent the Parks Family Forestry LLC. Chairman Pullen asked if Mr. Parks would like to speak, Mr. Parks answered yes if possible. Chairman Pullen swore Mr. Parks in. Mr. Parks thanked the Board for their considerations and stated that a lot of time had been spent to get the subdivision approved, they have tried to meet criteria that is not always written or stated clearly as to what an applicant is supposed to do, in reference to the first lot on the plat, he would agree with the Board that there is a lot of wetlands on that lot, that the lots lines could be changed to accommodate a home site on the front of the lot, that the plan was preliminary and was submitted so the they could come before the Board and sort it out, wetlands are obviously protected, it is costly but, it is in this day and time the government decided that we would protect all wetlands and property owners do not get compensated. Mr. Parks explained his development plans to include and protect the wetlands. Mr. Parks stated that he had met with the NCDOT twice on the site and have met all their requirements for distance and safety and aligned their development entrance with the proposed collector road across the street. Mr. Parks commented that he believed it would be a well-designed

subdivision once it was finished, that was the purpose of today's meeting to iron out the issues and to make sure they were taking it into consideration and he wanted the Board to know that they are. Chairman Pullen asked if this was one of those deals that you had to pass the law to find out what was in it; Mr. Parks answered no, that it is difficult and frustrating for him at times to reach the common goal of developing home sites to sell, that he could not and did not want to sell a swamp to someone and he wanted to make sure people were safe coming out of their driveways. Mr. Parks commented that on his way to the meeting he noticed that there is lots and lots of driveways on the main roads but, you don't see everybody trying to pull out at the same time, and is not quite sure if he understands some of the highway department's decisions to channel all the traffic into one spot, which does create an issue and would probably eventually require a stop light if everything in his subdivision comes out onto one road. Mr. Parks stated to the Board that he hoped they would grant him the variance for the shared driveways off of Island Creek Road, that they would be able to meet the NCDOT's requirements, that he was not stupid, wanted to be reasonable, and hoped to receive the same thing, a meeting in the middle, that if they needed to make changes, they could make changes. Attorney Thurman asked Chairman Pullen if he could ask a couple of questions; Chairman Pullen gave permission for Attorney Thurman to proceed. Attorney Thurman asked Mr. Fentress in regards to the preliminary proposal was it showing a 90 degree turn, to the left; Mr. Fentress reviewed the proposal and answered yes. Attorney Thurman asked that in reference to the applicant's submittal "Description of Variance" number 3, the applicant states that the prohibition of driveways along collector roads was not known at the time of the purchase of the property or planned out, the applicant is not saying that it was not a part of the policy at the time, the property was conveyed in 2011, correct; Mr. Fentress answered that the policy was in effect but, the owner did not know about the policy. Attorney Thurman advise the Board to hear input from the staff regarding what the NCDOT does or does not do, for some clarification that will be helpful to the Board. Chairman Pullen requested to hear from any sign ups first if the applicants were ready to relinquish the podium. Board member Newton requested to ask the applicants a question prior to them relinquishing the podium. Board member Newton requested clarification regarding the statement that was made in the narrative submission, that granting the requested variance would result in development no different than that already existing on Island Creek Road, how many developments of 8 or more building lots are there with the individual lots having their driveway off of Island Creek Road; Mr. Parks stated that he could not answer that, that there is not a lot of development in the area. The Board questioned the neighboring development, Attorney Thurman clarified that the neighboring development had one entrance with no individual driveways off of Island Creek Road. Mr. Parks commented that he wanted the Board to understand that he knew what the rules and regulations are on collector streets and he was not questioning that, that this was a variance meeting and he was for an alternative to saying the only way the development was going to work would be with one road entering into the development and he already explained his logic of having 80 lots come out onto one spot opposed to sharing multiple driveways. Mr. Parks asked if it was a reasonable proposal to make all the traffic come out at one spot; Attorney Thurman responded that the policy decision has been made by the elected officials of Pender County and that is the policy decision, so questioning the policy does not get a variance, the policy is established, the applicant has to show there is a hardship and that is where the focus of the case needs to be. Mr. Parks comment that he had been down this road before that this was not his first subdivision that he is not asking for laws to be changed just for him but, this County grants driveway variances all the time; Attorney Thurman stated that with all due respect the Board of Adjustment had never granted a driveway variance during his tenure. Board member Newton stated to Mr. Parks that her questions and comments stemmed from, that he was not a private homeowner that has purchased a piece of property to build a home, he is a commercial developer beginning a project in what is now an undeveloped area that will in time be developed causing traffic, so why should the Board grant a variance based on the applicant's financial hardship for putting in the development's roads before selling lots. Mr. Parks asked if there was a logical reason why everything had to come out at one point, could anyone explain that. Chairman Pullen responded that the attorney had already explained that this Board could not do anything regarding the logic of a policy; Mr. Parks commented "so we

just do these things whether they make sense or are logical or not"; Attorney Thurman responded no that what he was saying is that this Board is not the form to address issues with policies, that there were traffic experts who helped create the policy. Mr. Parks asked if the attorney would not say that the NCDOT were not experts because they met with him and approved the proposed driveways. Attorney Thurman responded that NCDOT had their own regulations and would give any one a driveway permit, which is why he requested that the Board hear from staff regarding the NCDOT regulations. Mr. Parks thanked the Board and left. Ashley Frank, Senior Planner, explained why CAMA's regulations would not apply to the proposed 8 lots but, would regulate any building done a long Island Creek; Mrs. Frank stated that in reference to NCDOT, they will issue driveway permits but, if the lots do not meet the County's criteria than the driveway permits are unnecessary. Chairman Pullen asked to hear from anyone who signed up and wished to speak. Patricia Moffitt, 131 Hunter Court, stated that she was told that the developer would be using the ingress and egress of Hunter Court subdivision for access to their property during development; Mr. Fentress explained that developer had not proposed nor had any intentions of using the road in Hunter Court or providing any connections. Chairman Pullen asked how many homes were in Hunter Court; Ms. Moffitt answered 20-25. Ms. Moffitt also commented that the said location was on a really bad curve, and had been the scene of several car accidents. The Board discussed the finding of facts as they pertained to the case.

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 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: *The applicant discussed with the Board the ultimate intent for which the property would be developed into a residential subdivision, not simply the eight lots for which the drive variance was requested. The capital from the sale of the first eight lots would be used in part to finance the development of the remainder of the property. As there is potential for substantial future development on the property and a financial hardship is not a hardship which the Board of Adjustment may grant a variance.*

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, and 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 potential for alternate driveway and internal network configuration could allow for use of the property despite potential wetlands.*

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: *Island Creek Road was identified as a collector street, in transportation planning documents prior to the purchase of the property which restricts the number and location of individual residential driveways.*

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: *As Island Creek Road (NC SR 1002) is classified as a major collector street in transportation planning documents, multiple driveways accessing on this road is not recommended. Public safety would be a risk if the variance was granted due to the large curve on Island Creek Road at the subject property location as well as traffic on this major collector street.*

THEREFORE, on the basis of all the foregoing, IT IS ORDERED that the requested VARIANCE for be ***DENIED***. Motion to deny the requested Variance was made by Board member Newton, seconded by Board member Peters. The vote was unanimous.

6. Variance:

Coleman Parks, applicant, on behalf of Washington Acres Inc., owner, requested two separate variances to allow for the construction of two individual residential driveways to be located on proposed Lots 92 and 93 of the conditionally approved Master Plan Community of Hampstead Landing. Specifically, the applicant requested relief from §7.2.6 and 7.2.7 of the Pender County Unified Development Ordinance which addresses individual lot access on Thoroughfares and Collector Streets. The subject property is located off of US Highway 17 along Washington Acres Drive, Hampstead. The property is zoned RP, Residential Performance District and may be identified as PIN 3282-71-0479-0000. Ashley Frank, Senior Planner, presented and gave background information for agenda item 6. Attorney Thurman addressed the fact that Mr. Fentress would be speaking on the variance case as a witness, due to the absence of Mr. Parks. Jimmy Fentress, Stroud Engineering, stated that the application before the Board for individual driveways for lot 92 and 93 is a result of the right a ways being recorded by the original land owners in the 80's under an ordinance that allowed lots to be cut off of road ways. Mr. Fentress reviewed the demographics of Washington Acres, explaining the need to create the driveways off of the collector street due to no other option. Attorney Thurman asked if it would be possible to do a shared driveway for the two lots; Mr. Fentress answered that he thought they could probably do a shared driveway. Attorney Thurman also asked for it to be put on the record that he has always that of Mr. Fentress as a wise engineer. The Board discussed the finding of facts as they pertained to the case.

Board of Adjustment: Finding of Facts

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: *The original tract of land was initially subdivided within the Washington Acres Subdivision prior to the adoption of zoning regulations in Pender County.*

2. It is the Board's CONCLUSION that, 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: *Due to the location of the existing wetlands no alternate driveway and/or internal road network configuration is available therefore rendering the lot(s) unusable.*

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 original tract of land was initially subdivided within the Washington Acres Subdivision prior to the adoption of zoning regulations in Pender County, as well as the designation of collector street status was not in existence at the time the Washington Acres Subdivision was created.*

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 all of the FINDINGS OF FACT: *The existing Washington Acres Subdivision has individual driveway permits that front directly on to Washington Acres Road; therefore the hardship is not of the owner's making but created by the Pender County UDO.*

THEREFORE, on the basis of all the foregoing, IT IS ORDERED that the application VARIANCE be Approved with the condition of One (1) driveway connection referred to as a shared driveway will be allowed for proposed lots 92 and 93. Motion to approve the requested Variance with the condition was made by Board member Newton, seconded by Board member Peters and unanimously approved.

** Public Hearings Closed**

7. **Adoption of the 2014 Meeting Dates:**
   Ashley Frank reviewed the Meeting Dates for 2014 and made note of the correction for the August meeting date.

   Motion to approve the Adoption of the 2014 Meeting Dates was made by Board member Peters, seconded by Board member Pullen and unanimously approved.

8. **Discussion Items:**
   a. **BOA Members:** NONE

   b. **Planning Staff:** Ashley Frank, Senior Planner, announced that Board member Kane had resigned from the Board, so there are two openings at this time for the Board.

9. **Next meeting:** December 18, 2013

10. **Adjournment:** Meeting adjourned at 10:30 a.m.