Pender County
Planning and Community Development

Planning Division
805 S. Walker Street
PO Box 1519
Burgaw, NC 28425

Phone: 910-259-1202
Fax: 910-259-1295
www.pendercountync.gov

MINUTES
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 called the meeting to order at 9:00 a.m.

Invocation: Administered by Vice-Chairman Pullen.

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

Alternates:
Peters X
Due to the absence of Board member Newton; 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 Vice-Chairman Pullen. Vote unanimously approved.

2. **Adoption of the Minutes: November 20, 2013:** Motion to adopt minutes was made by Vice-Chairman Pullen; seconded by Board member Peters. Vote unanimously passed.

3. **Public Comment:** None

** Public Hearings Opened**
Chairman Ferrante 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 next meeting where five Board members would be present.
Motion to continue the requested Variance was made by Vice-Chairman Pullen, seconded by Board member Peters and unanimously approved.

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 Unified 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. Planner Ariail presented and gave background information for agenda item 5. Chairman Ferrante asked for clarification on the size of the current easement; Planner Ariail confirmed that the size was 45 feet. Vice-Chairman Pullen requested to see the aerial map; Planner Ariail provided the map. Vice-Chairman Pullen asked that when the Ordinance was written for the 45 foot access easement, was it for emergency vehicles access; why did it have to be that wide; Director Breuer answered that the reason for the size was for future conveyance, in case the adjacent properties were developed. Chairman Ferrante asked if there were any other questions for staff at this time; due to no questions Chairman Ferrante asked to hear from the applicant if they wished to speak. Stephanie Todd, applicant, stated that her grandfather owned and lived on the said property for 40 plus years and that she has lived in one of the homes located on the property since she was 9 months old; that the driveway was created in 1980 and paved in or around 2004; Ms. Todd concluded by stating that she was a family oriented person, that she loved where she lived and wanted to place a modular home on the tract that her grandfather was subdividing for her and asked the Board to please consider granting her request. Eddie Thomas, applicant's father, stated that he was the original owner of the said double wide located at the rear of the property, which he placed on the property around 1984; Mr. Thomas explained that the property owner Mr. Holly was simply trying to divide the property up for his heirs. Board member Thompson asked Mr. Thomas had the family tried to acquire some of the property on the eastside for the purpose of the easement requirement; Mr. Thomas answered that the owners of the property were not interested in selling. Chairman Ferrante stated that if there were no further questions the Board would move forward with their discussion and the review of the Finding of Facts.

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: ***Prior to the adoption of the 45-foot requirement, the Pender County Unified Development Ordinance only required private access easements to be 20 feet in width. The structures and driveway were built prior to the 45-width requirement.***

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: ***The existing structures and driveway were built on the property prior to the adoption of the 45-foot access easement requirement in the Pender County UDO.***

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 and driveway were built on the property prior to the adoption of the 45-foot access easement requirement in the Pender County UDO.***

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: ***The intent of the 45-foot private easement requirement was to provide adequate access to properties. Testimony was***

given that showed emergency vehicles would continue to be able to access the northern structure with the reduced access easement width. Therefore, granting this variance stays within the spirit and intent of the Ordinance.

THEREFORE, on the basis of all the foregoing, IT IS ORDERED that the requested VARIANCE for be ***APPROVED***. Motion to approve the requested Variance was made by Board member Peters, seconded by Vice-Chairman Pullen. The vote was unanimous.

6. **Discussion Items:**
   a. **BOA Members:** Board member Thompson requested that staff look into changing the ordinance regarding access easements requirements for 3 lot and family subdivisions. Director Breuer responded that staff would research the request and bring the findings and suggestions back to the Board for discussion.

   b. **Planning Staff:** Director Breuer explained that the Board would not have a full attendance in January, so the pending case for Mr. Burney would be on the February agenda. Director Breuer stated that the open position for a new Board member had been advertised; Chairman Ferrante suggested asking Mr. Luther if he would serve on the Board as an alternate until a new Board member was appointed.

7. **Next meeting:** February 19, 2014

8. **Adjournment:** Meeting adjourned at 9:45 a.m.