Pender County
Planning and Community Development

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MINUTES
Pender County Board of Adjustment Meeting
February 19, 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 9:05 a.m.

Invocation: Administered by Vice-Chairman Pullen.

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

Alternates:
Peters X

1. **Election of Officers: Chairman/Vice-Chairman:** Chairman Ferrante opened the floor for nominations for the Chairman of the Board of Adjustment. Vice-Chairman Pullen nominated Chairman Ferrante to serve another year as the Chairman; seconded by Board member Newton. There were no other nominations for Chairman; Vote unanimously approved Board member Ferrante as the Chairman of the Board of Adjustment. Chairman Ferrante opened the floor for nominations for the Vice-Chairman of the Board of Adjustment. Board member Newton nominated Vice-Chairman Pullen to serve another year as the Vice-Chairman; seconded by Board member Thompson. There were no other nominations for Vice-Chairman; Vote unanimously approved Board member Pullen as the Vice-Chairman of the Board of Adjustment.

2. **Adoption of the Agenda:** Motion to adopt the agenda was made by Vice-Chairman Pullen; seconded by Board member Newton. Vote unanimously approved.

3. **Adoption of the Minutes: December 18, 2013:** Motion to adopt minutes was made by Vice-Chairman Pullen; seconded by Board member Newton. Vote unanimously passed.

4. **Public Comment:** None

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

5. **Variance:**
John J Burney III, applicant and owner, requested 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 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'). Planner McCarthy presented and gave background information for agenda item 5. Chairman Ferrante asked for

clarification between a structure and a building; Director Breuer explained that they are one in the same in some aspects, a building would be considered a structure but, a tower is a structure not a building. Director Breuer gave the history of the case and stated that staff had been working with the applicant to bring the use into compliance, as mentioned in the staff report the applicant did receive a Special Use Permit from the Pender County Board of Commissioners with the condition that the applicant apply for a Variance for the height of the tower. Vice-Chairman Pullen asked what determined the height requirement of the said tower; Director Breuer answered that an actual height had not been determined; the height was determined by normal construction standards and the process of construction, but to answer the question; the height can be taken from the average street grade or at the building line, whichever one is essentially at the advantage of the property owner. Vice-Chairman Pullen asked that since there was no electricity on the structure would it effect the Board's decision process; Attorney Thurman answered that the original 35 foot height restriction was put into policy for the reason of fire safety being the fire truck ladders could only reach to that said height; it would be entirely up to the Board if they wished to use the fact of the structure not have electricity as a factor to base their findings. Board member Newton asked if the structure had a roof; John Burney, applicant, answered no; provided the Board with pictures of the structure and explained that he had turned his farm into a shooting reserve; Mr. Burney provided the Board with a description of the activities that take place at the shooting reserve and stated that the height of the tower was necessary for safety, to protect shooters from shooting each other.

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: **The hardship has resulted in part from the strict interpretation of the height requirement of the Unified Development Ordinance (UDO), specifically 4.14 Zoning District Dimensional Requirements.**

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 nature of the use (firearm discharge), safety requires that the tower be of a certain height and secondly, the property is specifically restricted by covenants that limit the scope of permitted uses on the property.**

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: **In 2003, the property was submitted into a conservation easement (Coastal Land Trust and the North Carolina Water Quality Conservation easement programs) and the property can only be utilized for farming and hunting.**

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: **This proposal is materially similar to a number of other items that are expressly exempt (deer stands) in Section 4.6.1.**

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

6. **Discussion Items:**
   a. **BOA Members:** None

   b. **Planning Staff:** Follow-up regarding access to family/3-lot subdivisions on easements. Director Breuer provided the Board with copies of the provisions in the UDO regarding family/3-lot subdivisions on easement and explained that staff was asked to review the provisions to see if an exception could be created for minimal impact subdivisions to incorporate or utilize a reduced easement. Director Breuer gave an overview of what staff was working on in regards to the request. Director Breuer explained that the intention of the discussion was to receive feedback from the Board and then present the item to the Planning Board in March for discussion. Chairman Ferrante responded that reading through the provided materials it was his conclusion that some of the examples were particular circumstances that the Ordinance could not be written off of particular circumstances that was the purpose of the Board of Adjustment existence. Board member Newton commented that there was already a lot of discussion regarding the conditions of roads/access easements throughout the County; it would seem making more changes would put a lot on having to make preliminary decisions versus having hearings on case by case bases. Board member Thompson commented that it was his thought that something should be done but, one size don't fit all, there should be some provision that allows the head of the department to make a final decision based on the circumstances. Chairman Ferrante asked Board member Thompson if he was suggesting providing some latitude rather than trying to define specifically; Director Breuer asked specifically for easement width; Board member Thompson answered width and length, dependent upon the type of passage soils. Director Breuer asked if the Board would be amenable to staff looking into requiring road maintenance agreements and/or standards in the development of roadways; Board member Thompson agreed that there should be a road maintenance agreement and it should be included in the property deed and follow the deed from transfer to transfer. The Board held a brief discussion regarding their personal experiences with easements. It was the Board's conclusion that staff provide the Board via email a list of complaints received regarding easements and other jurisdiction's requirements.

7. **Next meeting:** March 19, 2014; Due to no cases there will be no meeting on March 19, 2014.

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