

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

AGENDA

**Pender County Board of Adjustment Meeting
August 20, 2014 9:00 a.m.
Pender County Public Meeting Room
805 S. Walker Street, Burgaw, North Carolina**

Call to Order: Chairman

Invocation:

Roll Call: Chairman

Pender County Board of Adjustment Members:

Ferrante: _____ Pullen: _____ Newton: _____ Thompson: _____ Walton: _____

Alternates:

Godridge: _____ Peters: _____

1. Adoption of the Agenda:

2. Adoption of the Minutes: July 16, 2014

3. Public Comment:

Public Hearing Opened

4. Variance:

J.C. Hearne, II, applicant, on behalf of Hampstead Community Building, Inc, owner, is requesting four (4) separate variances for relief from the requirement of Section 5.3.3.A of the Pender County Unified Development Ordinance. Specifically, the applicant is requesting a variance from the required ten (10) foot building separation and setback requirements as outlined in the Pender County UDO 5.3.3.A for accessory buildings of 50-599 square feet in area. The subject property is located at 14335 US HWY 17 in Hampstead, NC, and is zoned GB, General Business District, and may be identified by Pender County PIN 3282-86-0228-0000.

** Public Hearing Closed**

5. Discussion Items:

a. Planning Staff:

- i. Limited Subdivisions: (Continued Discussion from July 16, 2014 meeting)

b. BOA Members:

6. Next Meeting: September 17, 2014, as applicable

7. Adjournment:

PLANNING STAFF REPORT
Variance Request

SUMMARY:

Hearing Date: August 20, 2014

Applicant: J.C. Hearne, II Attorney

Property Owner: Hampstead Community Building, Inc. (Hampstead Womens Club, Incorporated)

Case Number: 11213

Property Location and Description: The subject property is located at 14335 US HWY 17 in Hampstead, NC. There is one (1) tract associated with this request totaling \pm 2.01 acres. The property may be identified by Pender County PIN 3282-86-0228-0000.

Zoning District of Property: The property is zoned GB, General Business District.

Variance Requested: J.C. Hearne, II, applicant, on behalf of Hampstead Community Building Inc., owner, is requesting four separate variances for the property located at 14335 US HWY 17 in Hampstead.

- Variance 1: a six foot, six inch variance from the ten foot requirement between existing accessory structure "1" and existing principle structure;
- Variance 2: a one foot variance from the ten foot requirement between existing principle structure and accessory structure "2";
- Variance 3: a five foot variance from the ten foot requirement between existing accessory structure "2" and accessory structure "3";
- Variance 4: a three foot variance from the ten foot requirement between existing accessory structure "3" and "Accessory Structure "4".

These variances are for relief from the requirement of *Pender County Unified Development Ordinance Section 5.3.3.A*. Specifically, the applicant is requesting a variance from the required ten (10) foot building separation and setback requirements as outlined in the *Pender County UDO 5.3.3.A* for accessory buildings of 50-599 square feet in area.

BACKGROUND AND DESCRIPTION OF VARIANCE:

The subject property is currently 2.01 acres and hosts the Hampstead Community Building, Inc. The property contains five (5) accessory structures on the northern corner.

On Wednesday, March 5th, 2014, two complaints were received by the Pender County Code Enforcement Officer. The first complaint concerned the placement of a trailer on the subject property. The second complaint concerned the placement of storage buildings, or accessory structures, on the subject property, and whether they conform to ordinance standards (Exhibit 1- Complaint Investigation Report).

On Monday, March 10, 2014 the Pender County Code Enforcement Officer conducted a site visit and measured all accessory structures, separation, and setbacks. All structures meet setbacks as required by *Pender County Unified Development Ordinance Section 5.3.3.A*.

5.3.3 Accessory Uses and Structures

A. Accessory Building Setbacks and Separation Requirements

1) Accessory Buildings 50-599 Square Feet In Area:

- a) Setback of ten (10) feet from all property lines, access easements, and any other structures located on the property.

2) Accessory Buildings 600-1,199 Square Feet In Area:

- a) Setbacks shall adhere to zoning district requirements and separation must be ten (10) feet from any other structure and access easements located on the property.
- 3) Accessory Buildings 1,200 Square Feet in Area or Greater:
 - a) Same setback and separation requirements as principal buildings per zoning district regulations

Four accessory structures do not meet the minimum ten (10) foot separation requirement of *Pender County Unified Development Ordinance Section 5.3.3.A*. (Exhibit 2- Applicant Map). The Code Enforcement Officer was advised by the store manager within the Hampstead Community Building, Inc. that the trailer would be removed from the subject property within the week (Exhibit 3- Photos).

On Friday, March 14, 2014, the Pender County Code Enforcement Officer contacted Ms. Patricia Truscello, President of Hampstead Womens Club, Incorporated (Hampstead Community Building, Inc.). The Code Enforcement Officer advised Ms. Truscello that the site visit on March 10, 2014 was to determine if any code violations existed on the property. An application to begin the permitting process was given to Ms. Truscello.

A first Notice of Violation was sent to Hampstead Womens Club, 14435 US HWY 17, Hampstead, NC 28443 on March 27, 2014 (Exhibit 4- First NOV).

Pender County Code Enforcement Officer observed that the trailer in violation had been removed from the property as of April 16, 2014. A second Notice of Violation was sent to Hampstead Womens Club, 14435 US HWY 17, Hampstead, NC 28443 on April 28, 2014 (Exhibit 5- Second NOV), as there had been no action to permit the accessory structures on site. The Pender County Planning Department requested a conference call on May 5, 2014 with J.C. Hearne, II Attorney to discuss a potential variance for the accessory structures. On July 1, 2014, a stay was enforced by the Pender County Code Enforcement Officer as a completed variance application had been received for the property.

ZONING ADMINISTRATOR'S CONCLUSION:

J.C. Hearne, II, applicant, on behalf of Hampstead Community Building, Inc., owner, is requesting four (4) separate variances for relief from the requirement of *Pender County Unified Development Ordinance Section 5.3.3.A*. Specifically, the applicant is requesting a variance from the required ten (10) foot building separation and setback requirements as outlined in the *Pender County UDO 5.3.3.A* for accessory buildings of 50-599 square feet in area. The subject property is located at 14335 US HWY 17 in Hampstead, NC, and is zoned GB, General Business District, and may be identified by Pender County PIN 3282-86-0228-0000.

- Variance 1: a six foot, six inch variance from the ten foot requirement between existing accessory structure "1" and existing principle structure;
- Variance 2: a one foot variance from the ten foot requirement between existing principle structure and accessory structure "2";
- Variance 3: a five foot variance from the ten foot requirement between existing accessory structure "2" and accessory structure "3";
- Variance 4: a three foot variance from the ten foot requirement between existing accessory structure "3" and accessory structure "4".

RELEVANT UDO PROVISIONS:

3.14 VARIANCE

3.14.1 Applicability

- A. The Board of Adjustment may vary certain requirements of this Ordinance, in harmony with the general purpose of these regulations, where special conditions applicable to the property in question would make the strict enforcement of the regulations impractical or result in a hardship in making reasonable use of the property.
- B. The Board of Adjustment may waive certain requirements when authorized to do so by provisions adopted as a part of this Ordinance.

- C. No variance shall be permitted that would have the effect of allowing a use not permitted in the use table of Section 5.2.3.
- D. No variance shall be permitted that would allow a project to exceed the maximum density as to number of dwelling units to the acre in a Zoning District. This maximum density shall be inclusive of any density bonus allowance or additional units in a planned unit development.
- E. The need for the variance cannot be a result of the owner's own actions and cannot be for strictly economic reasons.
- F. The Board of Adjustment may grant variances in the following special circumstances, as indicated elsewhere in this Ordinance.

3.14.7 Findings

In granting any variance, the Board of Adjustment shall make the following findings:

- A. That special or unique circumstances or conditions or practical difficulties exist which apply to the land, buildings or uses involved which are not generally applicable to other land, buildings, structures, or uses in the same zoning districts;
 - 1) Unnecessary hardship would 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.
 - 2) The hardship results 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.
 - 3) 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.
 - 4) 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.

5.3.3 Accessory Uses and Structures

- B. Accessory Building Setbacks and Separation Requirements
 - 1) Accessory Buildings 50-599 Square Feet In Area:
 - b) Setback of ten (10) feet from all property lines, access easements, and any other structures located on the property.
 - 2) Accessory Buildings 600-1,199 Square Feet In Area:
 - a) Setbacks shall adhere to zoning district requirements and separation must be ten (10) feet from any other structure and access easements located on the property.
 - 3) Accessory Buildings 1,200 Square Feet in Area or Greater:
 - a) Same setback and separation requirements as principal buildings per zoning district regulations

Appendix A

ACCESSORY STRUCTURE (Appurtenant Structure): a structure located on the same parcel of property as the principal structure and the use of which is incidental to the use of the principal structure. Garages, carports and storage sheds are common urban accessory structures. Pole barns, hay sheds and the like qualify as accessory structures on farms, and may or may not be located on the same parcel as the farm dwelling or shop building.

Board of Adjustment: Finding of Facts

1. It is the Board's CONCLUSION that the hardship of which the applicant complains **(results/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:

2. It is the Board's CONCLUSION that, the hardship **(results/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:

3. It is the Board's CONCLUSION that the hardship **(results/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:

4. It is the Board's CONCLUSION that, the requested variance is **(consistent/ 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 all of the FINDINGS OF FACT:

Board Action:

Motion: _____ Seconded: _____

Approved: _____ Denied: _____ Unanimous: _____

Ferrante: _____ Pullen: _____ Newton: _____ Thompson: _____ Walton: _____

Alternates:

Godridge: _____ Peters: _____

APPLICATION FOR VARIANCE

THIS SECTION FOR OFFICE USE

Application No.	VA 11213	Date	7.1.2014
Application Fee	\$ 250.00	Receipt No.	141638

SECTION 1: APPLICANT INFORMATION

Applicant's Name:	J.C. Hearne, II Attorney	Owner's Name:	Hampstead Community Building, Inc.
Applicant's Address:	PO Box 179	Owner's Address:	14435 US Hwy 17
City, State, & Zip	Wilmington, NC 28402	City, State, & Zip	Hampstead, NC 28443
Phone Number:	910-313-3336	Phone Number:	910-270-9549

Legal relationship of applicant to land owner: Attorney

SECTION 2: PROJECT INFORMATION

Property Identification Number (PIN):	3182-86-0228-0000	Total property acreage:	2.01 1.48 Acres
Zoning Classification:	B2 GB	Variance Size:	unknown
Variance Location & Address	Part of 14335 US 17 Hampstead, NC 28443		
Describe Variance and amount or type requested:	Relief from Zoning Notification dated 3/27/14 related to accessory structures		

SECTION 3: SIGNATURES

Applicant's Signature		Date:	6/27/14
Owner's Signature	Attorney for Owner	Date:	6/27/14

NOTICE TO APPLICANT:

1. The Board of Adjustment shall review applications for a variance and shall be the approving authority for all requirements.
2. All applicants seeking a variance shall schedule a pre-application conference with the administrator to discuss the procedures, standards, and regulations required for variance approval.
3. An application for a variance shall be submitted in accordance with application requirements.
4. Once the application has been determined complete, the Administrator shall schedule a public hearing and give notice to adjoining/abutting property owners and aggrieved parties in the form of applicant supplied #10 envelopes with paid first class postage.
5. The applicant seeking the variance shall have the burden of presenting evidence sufficient to allow the Board of Adjustment to reach the conclusions set forth below (Findings), as well as the burden of persuasion on those issues.
6. Applicant must also submit the information described in the Variance Checklist provided below.
7. Applicant or agent authorized in writing must attend the public hearing.
8. Once the public hearing has been advertised, the case will be heard unless the applicant withdraws the application or unless the Board of Adjustment agrees to table or delay the hearing.

OFFICE USE ONLY

<input checked="" type="checkbox"/> VA Fees \$250	Total Fee Calculation \$			
Payment Method:	<table style="width: 100%;"> <tr> <td style="width: 33%;">Cash: <input type="checkbox"/> \$ _____</td> <td style="width: 33%;">Credit Card: <input type="checkbox"/> Master Card <input type="checkbox"/> Visa</td> <td style="width: 33%;">Check: <input checked="" type="checkbox"/> Check # 2384</td> </tr> </table>	Cash: <input type="checkbox"/> \$ _____	Credit Card: <input type="checkbox"/> Master Card <input type="checkbox"/> Visa	Check: <input checked="" type="checkbox"/> Check # 2384
Cash: <input type="checkbox"/> \$ _____	Credit Card: <input type="checkbox"/> Master Card <input type="checkbox"/> Visa	Check: <input checked="" type="checkbox"/> Check # 2384		
Application received by:	Date:			
Application completeness approved by: <i>Andr. H. Cruz</i>	Date: 7/7/14			
Date scheduled for public hearing: 8/20/14				

Variance Checklist

<input checked="" type="checkbox"/>	Signed application form
<input checked="" type="checkbox"/>	Application fee
<input checked="" type="checkbox"/>	Legible list of all property owners adjacent to the property upon which the use is to be located. The list shall include the mailing address & physical address of these property owners (The application will not be advertised for public hearing until the list is accurate & complete--the list maybe compiled from the public PC terminal in the Pender County Tax Office).
<input checked="" type="checkbox"/>	One business size envelope legibly addressed with first class postage for each of the adjacent property owners on the above list.
<input checked="" type="checkbox"/>	<u>Variance Description</u> : Written description of the Variance requested, meeting the four identified findings for variance approval described on page 1 of this application and in the Pender County Unified Development Ordinance (Section 3.14.7.A.).
<input checked="" type="checkbox"/>	<p><u>Project Map(s)</u>—Applicant shall supply 15 (11"x17") project maps at a readable scale, clearly showing the following (as applicable):</p> <ul style="list-style-type: none"> <input type="checkbox"/> Property Location <input type="checkbox"/> Building Separation Distances <input type="checkbox"/> Dimensions of Property <input type="checkbox"/> Proposed Building Height <input type="checkbox"/> Building Distances From Property Lines (Front, Sides, Rear) <input type="checkbox"/> Location of All Existing Utilities On-Site <input type="checkbox"/> Existing Structures <input type="checkbox"/> Acreage of Property <input type="checkbox"/> Any Proposed Structures <input type="checkbox"/> Additional Information Pertinent to the Variance Request (Pictures, Other Permits, etc.)
<p>RETURN COMPLETED APPLICATION TO: Pender County Planning & Community Development P.O. Box 1519 Burgaw, NC 28425</p>	

Print Form

WHITE & HEARNE, L.L.P.

ATTORNEYS AT LAW
265 RACINE DRIVE, SUITE 104
WILMINGTON, NORTH CAROLINA 28403
WWW.WHITEANDHEARNE.COM

J.C. HEARNE, II
JCH@WHITEANDHEARNE.COM
BOARD CERTIFIED SPECIALIST IN REAL PROPERTY LAW:
RESIDENTIAL, COMMERCIAL, BUSINESS AND
INDUSTRIAL TRANSACTIONS

MAILING ADDRESS
POST OFFICE BOX 179
WILMINGTON, NC 28402
TELEPHONE (910) 313-3336
FACSIMILE (910) 798-9294

June 30, 2014

Pender County
Planning & Community Development
PO Box 1519
Burgaw, NC 28425

Via Hand Delivery

Re: *Variance*
14435 US 17, Hampstead, NC 28443

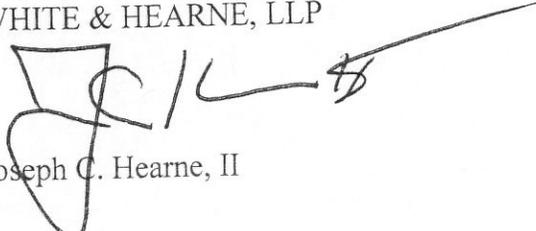
Variance Description

The applicant seeks a Variance from Notice of Violation regarding 14435 US 17, Hampstead, NC 28443

The Notice would require the applicant to move old and fragile buildings that have been on the property for more than 10 years. The buildings probably would be lost at a significant financial hardship to the applicant. The property size will make it very difficult to adjust these buildings to fit and still have good use of the property. The buildings have been used for over a decade and applicant had no knowledge of a violation. Finally, the requested Variance is consistent with the spirit purpose and intent of the ordinance. The Hampstead Women's Club is an exceptional community asset. This minor Variance shall not endanger the public and granting this Variance shall allow The Hampstead Women's Club to continue to operate and assist the town of Hampstead. Substantial justice shall be achieved.

Sincerely,

WHITE & HEARNE, LLP



Joseph C. Hearne, II

JCHII/shj
Enclosures (as stated)

PENDER COUNTY PLANNING DEPARTMENT
805 Walker St.
Burgaw, North Carolina 28425

EXHIBIT 1 -

COMPLAINT INVESTIGATION REPORT

Date Received 3-5-14 Time 2:00PM Taken By: C Ring

Complainant: Ken Just Telephone 270-0545 795-8100

Address: Hampstead City: _____ Date: _____ Zip: _____

Complainant: #2

Location of Complaint 14435 US Hwy 17 Hampstead, NC 28443

P.I.N 3282-86-0228-0000.

Zoning District GB

Type of complaint: Residential Commercial Business Other

Describe Complaint: . Potential Permitting Violation

Responsible Property Owner: Hampstead Comm. Bldg. Telephone: _____

Address: 14435 US Hwy 17 Hampstead, NC 28443

Complaint Referred to: C Ring Date 3-5-14

INSPECTION / SITE VISIT

Date of Inspection: 3-7-14 Time 3:00 PM Inspector C Ring

Observations: observed

Actions taken by Inspector / Planning Dept: Photos. Photos taken

Date report filed: 3-5-14



Inspector / Code official

BUILDINGS

~~1319~~
~~1320~~
~~1321~~

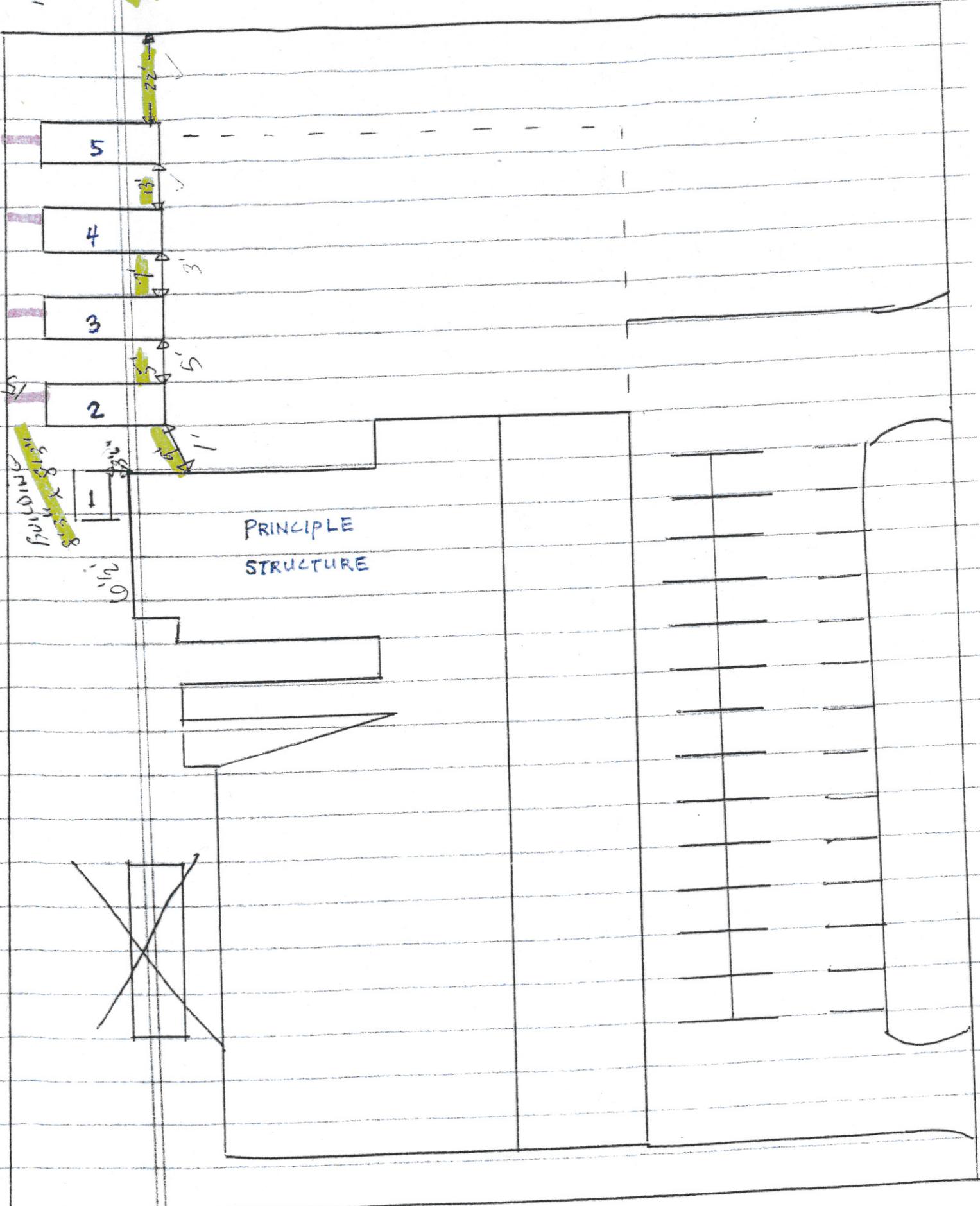


EXHIBIT 3 - PHOTOS



Accessory Structure (1 as labeled on Applicant Map)



Accessory Structures (2-5 as labeled on Applicant Map)



View from US HWY 17 (Accessory Structures are to the right of the Principle Structure)



Trailer (removed from the property as of April 16, 2014)

Pender County Planning and Community Development

Code Enforcement

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



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

1st NOTICE OF VIOLATION

DATE: March 27, 2014

TO: Hampstead Woman's Club
14435 US Hwy 17
Hampstead, NC 28443

NOTICE OF ZONING VIOLATION:

You are hereby given notice that a violation or violations of the Pender County Unified Development Ordinance exists at the property described below and owned/occupied by you.

LOCATION AND DESCRIPTION OF PROPERTY WHERE VIOLATION EXIST:

Property located at 14435 US Hwy 17, Hampstead, NC, 28443, and identified by the Pender County Tax Office as Tax Record Number 3282-86-0228-0000.

CONDITIONS THAT CREATE VIOLATION: Zoning Approval has not been approved as required. A violation of setbacks and separation requirements currently exist on this property.

ARTICLES OF COUNTY ORDINANCE VIOLATED:

ARTICLE 3 REVIEW PROCEDURES

3.2 PERMITS AND CERTIFICATIONS

3.2.1 Zoning Approval

A. Activities for which a Zoning Approval is required: A valid Zoning Approval shall be required for any application for a Building or Electrical Permit. No Building or Electrical Permit shall be issued for any activity in a zoned area until such Zoning Approval or a written determination by the Administrator that no approval is required, has been issued. Zoning approvals may be issued in the form of an individual permit or as a corresponding approval on a related form, such as a building permit. In all circumstances a Zoning Approval shall be required for the following activities:

- 1) To commence the excavation for or the construction of any building or other structures including accessory structures,
- 2) To commence the moving, exterior alteration, expansion or substantial repair (see definition of substantial repair) of any structure including accessory structures,
- 3) To initiate a new use or change the use on any land, lot, parcel or property,
- 4) To initiate a new use or change the use for any building including accessory structures.

The Administrator shall not issue the Zoning Approval for such activities until a determination has been

made that such activities, work or use and the plans and specifications required herein are in compliance with the provisions of this ordinance. A Zoning Approval shall be required for these activities whether or not a building or related permit is required.

5.3.3 Accessory Uses and Structures

A. Accessory Building Setbacks and Separation Requirements

- 1) Accessory Buildings 50-599 Square Feet In Area:
 - a) Setback of ten (10) feet from all property lines, access easements, and any other structures located on the property.
- 2) Accessory Buildings 600-1,199 Square Feet In Area:
 - a) Setbacks shall adhere to zoning district requirements and separation must be ten (10) feet from any other structure and access easements located on the property.
- 3) Accessory Buildings 1,200 Square Feet in Area or Greater:
 - a) Same setback and separation requirements as principal buildings per zoning district regulations

CORRECTIVE ACTIONS THAT MUST BE TAKEN BY PROPERTY OWNER/VIOLATOR:
A Zoning Permit must be applied for and received in order the accessory structure to be legally constructed or placed on the property. If permits are not obtained the structure must be removed from the property.

DATE BY WHICH CORRECTIVE ACTION MUST BE COMPLETE:

This violation must be corrected within thirty (30) consecutive calendar days of receipt of this notice. If the violation(s) is/are are not corrected within this period, you will immediately thereafter be subject to the penalties noted herein.

PROPERTY OWNER/VIOLATOR'S RIGHT TO APPEAL:

You are hereby given notice that you have the right to appeal the determination made by the Code Enforcement Officer to the Pender County Board of Adjustment. If you elect to appeal this determination, you must file a written request for appeal, specifying the reason for the appeal and paying the associated fees for appeal within thirty (30) days of receipt of this notice. The appeal shall be filed with the Pender County Planning Department, Zoning Administrator, 805 South Walker Street, Burgaw, NC 28425. An appeal will stay all required proceedings under this notice until the Board of Adjustment acts upon the appeal.

PENALTIES FOR VIOLATIONS NOTED: When corrective action is not taken as prescribed in the notice, the property owner/violator shall upon conviction be guilty of a misdemeanor punishable by fine of up to \$50.00, or imprisoned for not more than thirty (30) days, for each offense. **In addition, the property owner/violator will be subject to a civil penalty of \$100.00 each day the violation continues after the date specified that the violation was to have been corrected.**

REMEDIES IF CORRECTIVE ACTION NOT TAKEN:

The County shall through its County Manager and County Attorney initiate legal action to insure compliance through court action and the violator may be subject to paying the cost of this action, pursuant to G.S. 153A-123, in addition to any penalties noted above.

DATE OF NOTIFICATION:

This determination of violation first made on March 7, 2014 by the Pender County Code Enforcement Officer, after inspection of the property and the conditions. Please feel free to contact this office at any time. We will be happy to discuss this issue with you.



Charlie Ring

Code Enforcement Officer

Pender County Planning and Community Development

Code Enforcement

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



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

2nd NOTICE OF VIOLATION

DATE: April 28, 2014

TO: Hampstead Woman's Club
14435 US Hwy 17
Hampstead, NC 28443

NOTICE OF ZONING VIOLATION:

You are hereby given notice that a violation or violations of the Pender County Unified Development Ordinance exists at the property described below and owned/occupied by you.

LOCATION AND DESCRIPTION OF PROPERTY WHERE VIOLATION EXIST:

Property located at 14435 US Hwy 17, Hampstead, NC, 28443, and identified by the Pender County Tax Office as Tax Record Number 3282-86-0228-0000.

CONDITIONS THAT CREATE VIOLATION: Zoning Approval has not been approved as required. A violation of setbacks and separation requirements currently exist on this property.

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- 1) To commence the excavation for or the construction of any building or other structures including accessory structures,
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- 3) To initiate a new use or change the use on any land, lot, parcel or property,
- 4) To initiate a new use or change the use for any building including accessory structures.

The Administrator shall not issue the Zoning Approval for such activities until a determination has been

made that such activities, work or use and the plans and specifications required herein are in compliance with the provisions of this ordinance. A Zoning Approval shall be required for these activities whether or not a building or related permit is required.

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- A. Accessory Building Setbacks and Separation Requirements
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This violation must be corrected within thirty (30) consecutive calendar days of receipt of this notice. If the violation(s) is/are are not corrected within this period, you will immediately thereafter be subject to the penalties noted herein.

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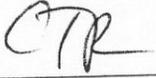
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The County shall through its County Manager and County Attorney initiate legal action to insure compliance through court action and the violator may be subject to paying the cost of this action, pursuant to G.S. 153A-123, in addition to any penalties noted above.

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This determination of violation first made on March 7, 2014 by the Pender County Code Enforcement Officer, after inspection of the property and the conditions. Please feel free to contact this office at any time. We will be happy to discuss this issue with you.

Charlie Ring



Code Enforcement Officer



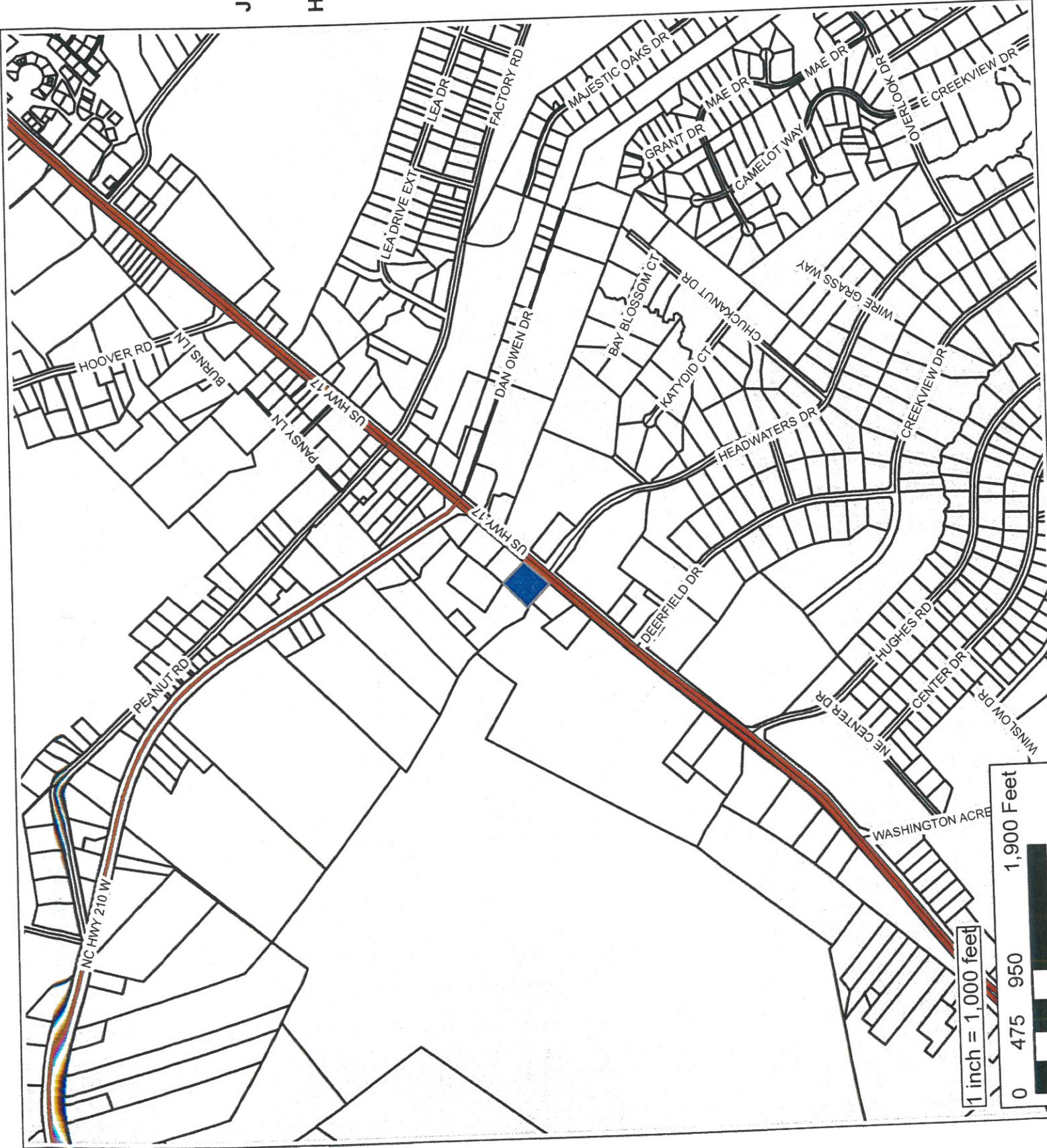
Applicant:
J.C. Hearne, II Attorney

Owner:
Hampstead Community
Building, Inc.

Variance Case #
11213



VICINITY





Applicant:
J.C. Hearne, II Attorney

Owner:
Hampstead Community
Building, Inc.

Variance Case #
11213

Legend

 Subject Parcel

Zoning Classification

UDO Zoning

 General Business (GB)

 General Industrial (GI)

 Industrial Transition (IT)

 Office & Institutional (OI)

 Rural Agricultural (RA)

 Planned Development (PD)

 Residential Performance (RP)

 Environmental Conservation (EC)

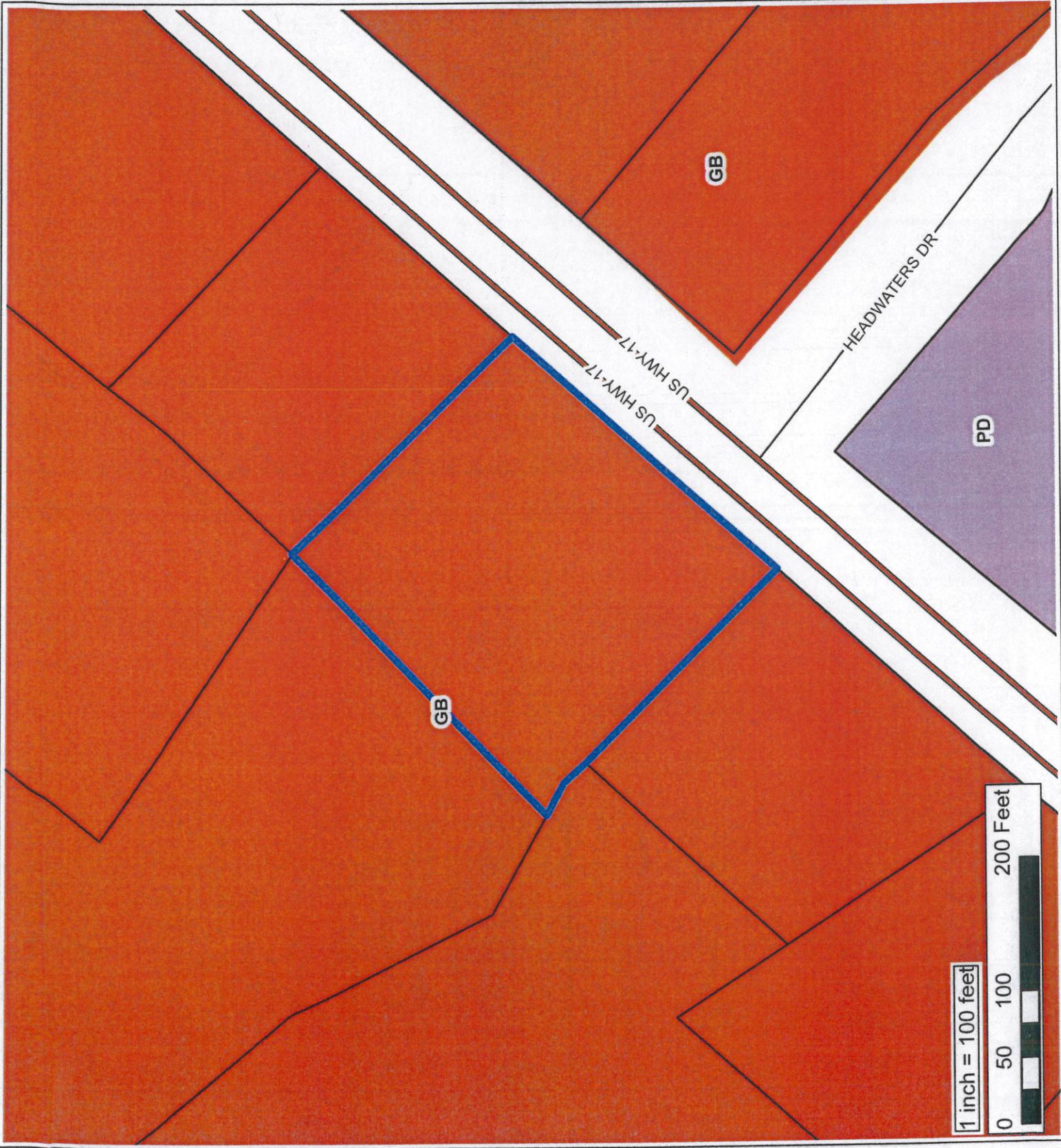
 Incorporated Areas (INCORP)

 Manufactured Home Park (MH)

 Residential Mixed (MF)



ZONING



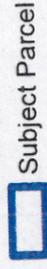


Applicant:
J.C. Hearne, II Attorney

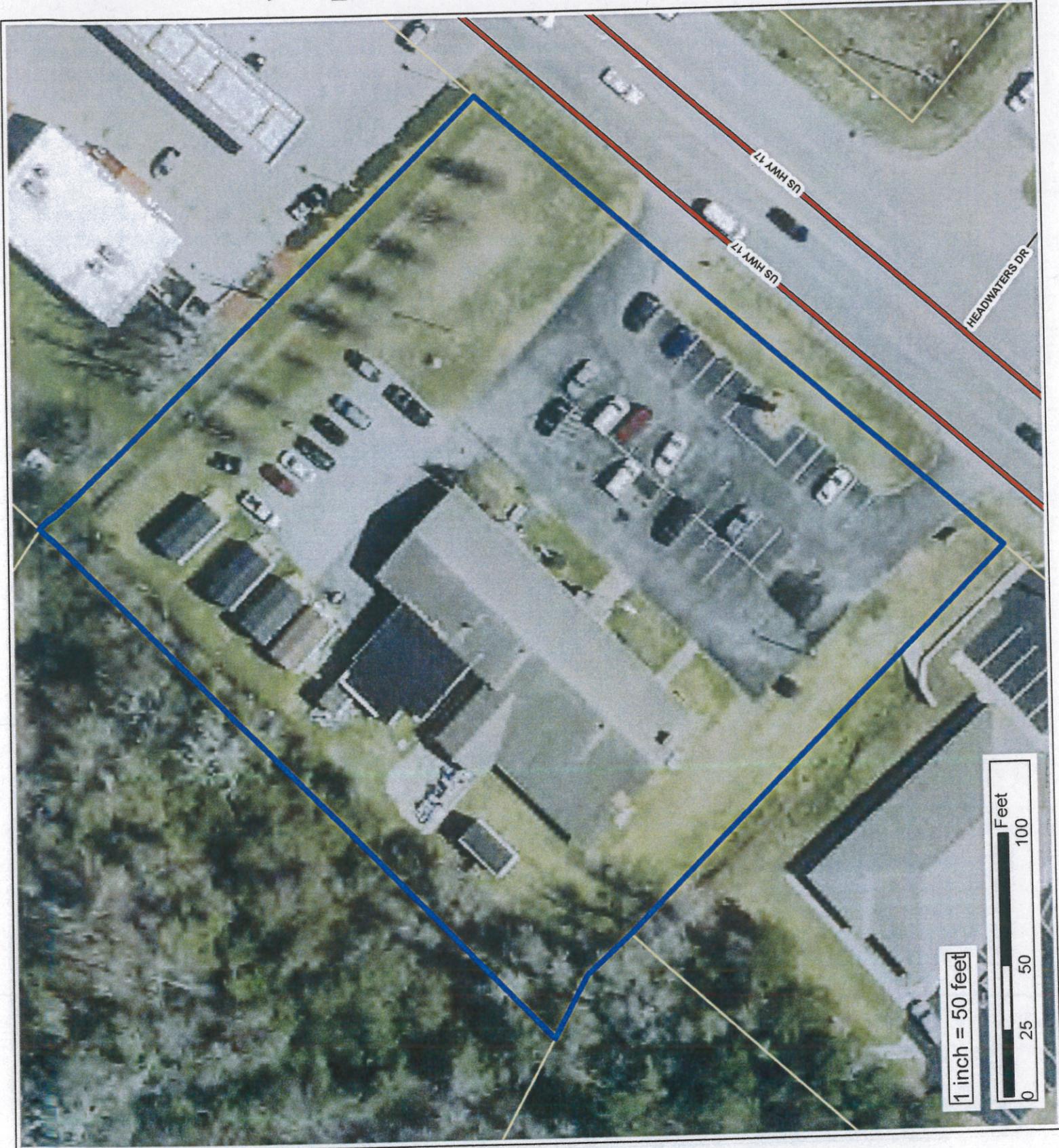
Owner:
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Legend



Aerial



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

MEMORANDUM

To: Pender County Board of Adjustment

From: Planning Staff

Date: July 16, 2014

RE: Discussion Items

Board of Adjustment Members,

Staff has prepared and will be presenting to you information on limited subdivisions as outlined in the Pender County Unified Development Ordinance (UDO) Sections 6.6; 6.7; and 6.8; per the Board of Adjustment request in February 2014. Specifically, the Board directed staff to provide a list of complaints received regarding limited subdivisions and other jurisdiction's requirements for similar type approvals.

Listed below is a definition of Subdivision as defined in NC General Statute §153A-335, as well as the available subdivision types as prescribed in the Pender County UDO. Staff has also included issues that have recently arisen, and questions to be considered regarding limited subdivisions.

Four (4) attachments have also been included:

Attachment A: Contains an excerpt from Pender County's UDO containing Sections 6.6-6.8 which addresses limited subdivision regulations in Pender County; with additional supplemental provision that are pertinent to limited subdivisions.

Attachment B: contains an overview of how surrounding jurisdictions (counties) within North Carolina address similar types of limited subdivision regulation.

Attachment C: contains a discussion on Road Maintenance agreements with an example of a draft agreement.

Subdivisions:

- (a) All divisions of a tract or parcel of land into two or more lots, building sites, or other divisions when any one or more of those divisions are created for the purpose of sale or building development (whether immediate or future) and includes all division of land involving the dedication of a new street or a change in existing streets; however, the following is not included within this definition and is not subject to any regulations enacted pursuant to this Part:
- (1) The combination or recombination of portions of previously subdivided and recorded lots if the total number of lots is not increased and the resultant lots are equal to or exceed the standards of the county as shown in its subdivision regulations.

- (2) The division of land into parcels greater than 10 acres if no street right-of-way dedication is involved.
 - (3) The public acquisition by purchase of strips of land for widening or opening streets or for public transportation system corridors.
 - (4) The division of a tract in single ownership the entire area of which is no greater than two acres into not more than three lots, if no street right-of-way dedication is involved and if the resultant lots are equal to or exceed the standards of the county as shown by its subdivision regulations.
- (b) A county may provide for expedited review of specified classes of subdivisions.

Subdivision Types:

Pender County current offers 5 types of subdivision options that are specifically addressed in Section 3.8 of the UDO:

1. Major Subdivisions- eleven (11) lots or more are classified as Major Subdivisions and are required to follow the Master Development Plan review process with TRC review and Planning Board approval. All major subdivisions shall include a preliminary and final plat.
2. Minor Subdivisions-ten (10) lots or less, except family and three lot divisions are classified as a minor subdivision and shall follow the preliminary plat review process. Requires TRC review and meets the same requirements as a Major Subdivision.
3. 3 Lot Division on an NCDOT Road- Limited Subdivision – four (4) or less lots with each lot having frontage on an NCDOT maintained road or other public road and requires Planning Staff approval
4. 3 Lot Division on an Access Easement- Limited Subdivision– four (4) or less lots with one (1) or more lots having ingress/egress via an access easement and requires Planning Staff approval
5. Family Division- Limited Subdivision- four (4) or less lots created by a qualified resident household per this provision and requires Planning Staff approval.

Common Issues with Limited Subdivisions:

The following are the most common issues Staff discusses with surveyors, property owners, real estate agents, and citizens concerning the current Pender County Unified Development Ordinance requirements for limited subdivisions:

1. Desire to record an access easement rather than road improvements required for Minor Subdivision
2. Number of parcels that can be created on an existing easement
3. Length of easement
4. Width Requirement
5. Time limitation from the date in which a parcel was created

Questions to Consider:

How should limited subdivision be reviewed?

How many lots should limited subdivision allow?

Should Access Easements be regulated? By what factors: Zoning District, length and width, number of lots, construction and maintenance of easement

How many times should a property qualify for a limited subdivision?

Attachment A

6.6 FAMILY DIVISION

6.6.1 Limitations

- A. Family subdivisions are permitted on parcels that have been created and recorded in the Registry before March 29, 2004.
- B. A total of three parcels (excluding the remnant parcel, if the remnant parcel meets the requirements of this Ordinance) per qualified resident household will be allowed to be created under the family subdivision provisions.
- C. The division does not create a new public or private street.

6.6.2 Requirements

- A. The plat shall be clearly designated "Family Subdivision" in bold letters,
- B. Grantor and Grantee statement, located in Appendix D, shall appear on the plat and be signed by the Grantor(s) and Grantee(s) prior to approval.
- C. Certification by the Licensed Professional preparing the plat that each lot is adjacent to a natural drainage way or perennial stream or a 20 ft. drainage easement is recorded from each lot toward a natural drainage way or a perennial stream or if the lot or lots front on a NCDOT maintained road, approval from NCDOT for such lots to drain to the public road,
- D. The plat shows any designated Special Flood Hazard Areas located within the subdivision,
- E. The plat shows any designated Areas of Environmental Concern located within the subdivision
- F. An Improvement Authorization Permit from Environmental Health for each lot to be created, a soil suitability analysis for each lot to be created or approval to connect to existing public sewer
- G. The lots, other than those restricted for building development, shown on the plat meet the requirements of this Ordinance.
- H. The lots created have access to an access easement as defined in this Ordinance.
- I. The access easement must provide access to a public street.
- J. Waste water disposal requirements – One of the following must be met:
 - 1) An Improvement Authorization Permit has been issued for each of the parcels,
 - 2) The soil suitability analysis shows that at least 5,000 sq. ft. of each lot is suitable for traditional on site waste disposal and the required 5000 sq. ft. is not within 10 ft of any lot boundary,
 - 3) Approval has been granted to connect to public sewer or community sewer or
 - 4) Lots not meeting the requirements of 1, 2, or 3 are indicated by the following note: "THIS PARCEL CANNOT BE USED FOR BUILDING DEVELOPMENT, UNLESS AN APPROVED WASTE WATER DISPOSAL METHOD HAS BEEN APPROVED AND PERMITTED BY THE PENDER COUNTY ENVIRONMENTAL HEALTH DEPARTMENT OR APPROPRIATE STATE AGENCY OR UNLESS A NEW PLAT IS APPROVED AND RECORDED AS REQUIRED UNDER THIS ORDINANCE."
 - a) For alternative, see Design Requirements, Lots Section of this Ordinance for "Special Purpose Lots"
- K. The lots created have either direct access to a public street, private street or private access easement as defined in this Ordinance.

- L. A minimum passable travel way 20 feet wide shall be provided within a forty five (45') foot easement at time of zoning approval.
- M. Clearing and grubbing shall be completed five feet of each edge of the travel way;
- N. Maintenance. Upon determination by the Administrator that such travel way as approved are not passable, the Administrator may, in addition to other remedies, prevent issuance of any further development approvals until such travel ways are in a proper state of maintenance as determined by the Administrator.
- O. The Administrator shall review the subdivision to insure that the development will not block future access to properties that are adjacent to the lots.
- P. The plat contains the following note: "All new access easements shown or designated on this plat, include the transfer of an easement to public entities and public utilities for the purpose of installation and maintenance of water, sewer, electric and communication lines."
- Q. The plat must contain the following note: "All new access easements shown or designated on this plat include the transfer of an easement to Pender County, its employees and agents for access for emergency personnel (police, fire & rescue) and Pender County and its employees for administration of all Pender County Ordinances."

6.7 THREE LOT DIVISION - NCDOT ROAD

6.7.1 Limitations – The following limitations will apply to three lot subdivisions:

- A. Three lot subdivisions located on an existing NCDOT maintained or other public road will be limited to no more than three such parcels (excluding the remnant parcel, if the remnant parcel meets the requirements of this Ordinance) being created from any parcel that had been created and recorded in the Registry before March 29, 2004.
- B. The division does not create a new public or private street.

6.7.2 Requirements

The following shall be submitted to the Administrator with each proposal for a division of up to three lots fronting on an existing NCDOT maintained public road:

- A. Plat prepared as required by NCGS §47-30, The plat shall be clearly designated "Three Lot Subdivision on NCDOT Road" in bold letters,
- B. Certification by the Licensed Professional preparing the plat that each lot is adjacent to a natural drainage way or perennial stream or a 20 ft. drainage easement is recorded from each lot toward a natural drainage way or a perennial stream or if the lot or lots front on a NCDOT maintained road, approval from NCDOT for such lots to drain to the public road,
- C. The plat shows any designated Special Flood Hazard Areas located within the subdivision
- D. The plat shows any designated Areas of Environmental Concern located within the subdivision,
- E. An Improvement Authorization Permit from Environmental Health for each lot to be created, a soil suitability analysis for each lot to be created or approval to connect to existing public sewer.
- F. The lots, other than those restricted for building development, shown on the plat meet the requirements of this Ordinance,
- G. Waste water disposal requirements – One of the following must be met:
 - 1) An Improvement Authorization Permit has been issued for each of the parcels,

- 2) The soil suitability analysis shows that at least 5,000 sq. ft. of each lot is suitable for traditional on site waste disposal and the required 5,000 sq. ft. is not within 10 ft of any lot boundary,
 - 3) Approval has been granted to connect to public sewer or community sewer or
 - 4) Lots not meeting the requirements of 1, 2, or 3 are indicated by the following note: "THIS PARCEL CANNOT BE USED FOR BUILDING DEVELOPMENT, UNLESS AN APPROVED WASTE WATER DISPOSAL METHOD HAS BEEN APPROVED AND PERMITTED BY THE PENDER COUNTY ENVIRONMENTAL HEALTH DEPARTMENT OR APPROPRIATE STATE AGENCY OR UNLESS A NEW PLAT IS APPROVED AND RECORDED AS REQUIRED UNDER THIS ORDINANCE."
 - a) For alternative, see Design Requirements, Lots Section of this Ordinance for "Special Purpose Lots."
- H. The lots created have access to a NCDOT maintained public street.
 - I. The Administrator determines that the subdivision complies with the limitations on Three Lot Subdivisions contained in the General Provisions Section of this Ordinance.
 - J. The Administrator shall review the subdivision to insure that the development will not block future access to properties that are adjacent to the lots.
 - K. The plat contains an ownership and dedication statement signed by the owner or owners in the format provided by this Ordinance.
 - L. The plat contains the following note: "All new access easements shown or designated on this plat, include the transfer of an easement to public entities and public utilities for the purpose of installation and maintenance of water, sewer, electric and communication lines"

6.8 THREE LOT DIVISION – PRIVATE ROAD/ACCESS EASEMENT

6.8.1 Limitations - The following limitations will apply to three lot subdivisions:

- A. Three lot subdivisions located on an access easement will be limited to no more than three such parcels (excluding the remnant parcel, if the remnant parcel meets the requirements of this Ordinance) being created from any parcel that had been created and recorded in the Registry before March 29, 2004.
- B. Three lot subdivisions located on an access easement as defined in this Ordinance will be limited to three such parcels (excluding the remnant parcel, if the remnant parcel meets the requirements of this Ordinance) being created from any parcel that had been created and recorded in the Registry before March 29, 2004 or any parcel that has been created and approved by the Administrator under the provisions of this Ordinance.
- C. The division does not create a new public or private street.

6.8.2 Requirements

The following shall be submitted to the Administrator with each proposal for a division of up to three lots fronting on an access easement that provides access to an existing NCDOT maintained public road:

- A. Plat prepared as required by NCGS §47-30,
- B. The plat shall be clearly designated "Three Lot Subdivision on Access Easement" in bold letters,
- C. Certification by the Licensed Professional preparing the plat that each lot is adjacent to a natural drainage way or perennial stream or a 20 ft. drainage easement is recorded from each

- lot to a natural drainage way or a perennial stream or if the lot or lots front on a NCDOT maintained road, approval from NCDOT for such lots to drain to the public road,
- D. The plat shows any designated Special Flood Hazard Areas located within the subdivision,
- E. The plat shows any designated Areas of Environmental Concern located within the subdivision,
- F. An Improvement Authorization Permit from Environmental Health for each lot to be created, a soil suitability analysis for each lot to be created or approval to connect to existing public sewer.
- G. The lots, other than those restricted for building development or designated and reserved for open space, shown on the plat meet the requirements of this Ordinance
- H. Waste water disposal requirements – One of the following must be met:
- 1) An Improvement Authorization Permit has been issued for each of the parcels,
 - 2) The soil suitability analysis shows that at least 5,000 sq. ft. of each lot is suitable for traditional on site waste disposal and the required 5,000 sq ft. is not within 10 ft of any lot boundary,
 - 3) Approval has been granted to connect to public sewer or community sewer,
 - 4) or Lots not meeting the requirements of 1, 2, or 3 are indicated by the following note: "THIS PARCEL CANNOT BE USED FOR BUILDING DEVELOPMENT, UNLESS AN APPROVED WASTE WATER DISPOSAL METHOD HAS BEEN APPROVED AND PERMITTED BY THE PENDER COUNTY ENVIRONMENTAL HEALTH DEPARTMENT OR APPROPRIATE STATE AGENCY OR UNLESS A NEW PLAT IS APPROVED AND RECORDED AS REQUIRED UNDER THIS ORDINANCE."
- a) For alternative, see Design Requirements, Lots Section of this Ordinance for "Special Purpose Lots."
- I. The lots created have access to an access easement as defined in this Ordinance,
- J. The access easement that provides access to a public street is no longer than 500 ft.
- K. A minimum passable travel way 20 feet wide shall be provided within a forty five (45') foot easement at time of zoning approval.
- L. Clearing and grubbing shall be completed five feet of each edge of the travel way;
- M. Maintenance. Upon determination by the Administrator that such travel way as approved are not passable, the Administrator may, in addition to other remedies, prevent issuance of any further development approvals until such travel ways are in a proper state of maintenance as determined by the Administrator.
- N. The Administrator determines that the subdivision complies with the limitations on Three Lot Subdivisions contained in the General Provisions Section of this Ordinance.
- O. The plat contains an ownership and dedication statement signed by the owner or owners.
- P. The plat contains the following note: "All new access easements shown or designated on this plat, include the transfer of an easement to public entities and public utilities for the purpose of installation and maintenance of water, sewer, electric and communication lines."
- Q. The plat must contain the following note: "All new access easements shown or designated on this plat include the transfer of an easement to Pender County, its employees and agents for access for emergency personnel (police, fire & rescue) and Pender County and its employees for administration of all Pender County Ordinances."

The following text from the Pender County Unified Development Ordinance specifically details access easements; the design, standards and notes required on plats for record.

5.3.2.B. STRUCTURES TO HAVE ACCESS

- 1) Every structure hereafter erected or moved shall be on a lot adjacent to or having access to a public right-of-way, street or road not less than thirty (30') feet in width. When the lot is not adjacent to the public road and access is provided by an access easement to the public road, the easement must be a minimum of twenty (20') feet wide.

7.2.1 LOT DESIGN REQUIREMENTS

- A. All lots not designated as open space, recreation, street or other reserved area shall meet all area, usable area, size, dimensional, yard and density requirements contained in Article 4, Zoning Districts and Zoning Map.
- B. All new lots not designated as open space, recreation, street or other reserved area that front on a public or private street shall meet minimum lot width requirements.
- C. No more than three lots may be created that are provided access by a single access easement. All lots or parcels shall meet the minimum access requirements established in this Ordinance.
- D. Access easements may not be included to meet any minimum lot area or dimension requirements for a lot or right of way.

7.2.8 ACCESS

All single family dwelling subdivision lots shall have frontage upon a public or private street or access easement. All multi-unit developments shall provide access to a public street directly from each unit or from each unit across a common area owned by the multi-unit development or owned by a Homeowners Association to which the dwelling unit owner is required to be a member.

7.2.10 SPECIAL PURPOSE LOTS

- A. Special purpose lots that do not meet the minimum lot area, minimum lot dimensions, minimum access requirements or other requirements of this Ordinance may be approved by the Planning Board or Administrator under the following circumstances:
 - 1) The lot has a 20 ft. access easement to a public or private road,

APPENDIX A- DEFINITIONS

ACCESS EASEMENT: An easement that is at least forty five (45') feet wide and is recorded by map or other instrument in the Registry that specifically transfers rights to the adjacent property owners or specific property owners and their assigns, invitees, licensors and permittees for ingress, egress and utilities and for the construction and maintenance of ingress, egress and utility facilities. An access easement by designation on a recorded plat also transfers the right to construct and maintain water, sewer, electric and communication lines within the easement by any public entity or public utility.

Attachment B

Surrounding Jurisdiction Regulations

The following are excerpts from local county ordinances:

Brunswick County Unified Development Ordinance Section 6.1.2

- A. Every lot shall have (direct or indirect) access to a public or private street. Access must provide a reasonable means of ingress and egress for emergency vehicles as well as for all those likely to need or desire access to the property in its intended use.
- B. In general, the minimum required width is equal to a 20-foot-wide public access easement, although this may be reduced by the Planning Director if access sufficient to satisfy paragraph A. above is provided. Additional width access easements may also be required to accommodate driveways or roadways serving large developments.

Duplin County Subdivision Regulation Section 303.2

Subdivisions that qualify for the private easement exemption follow the procedural requirements for minor subdivisions as required in section 304 provided all the following are met.

- A. All parcels created by the subdivision about a private ingress and egress easement of at least 50' in width.
- B. The subdivision creates a maximum of three contiguous parcels.
- C. The minimum area of all new parcels shall be no less than 21,780 sq. ft. in area and have no less than twenty feet (20) of frontage along the ingress and egress easement.
- D. Adequate documentation concerning the ownership and perpetual maintenance of the private ingress and egress easement is submitted with the plat and noted on the plat.

New Hanover County Zoning Ordinance Section 61.2-1 (3)

Building lots having access over a private driveway or easement at least thirty (30) feet in width (5/1/89) to a road as defined in Section 23-86, provided the driveway or easement is an easement appurtenant to three (3) or fewer lots and the easement is solely owned by a lot owner or in common by three (3) or fewer lot owners.

Onslow County Subdivision Ordinance

Family Division (exempt division): The following is a list of requirements/statements that must be submitted with an exempt plat for a subdivision of property for family purposes:

1. A plat listing the names of the family members and identifying which lots are to be conveyed to each with a statement that "the lot(s) shown are created for the purpose of family ownership";
 2. Where lots are not adjacent in a public street, a note on the plat stating that the lot is benefited by a permanent easement for access and utilities.
 3. The following note shall appear on the plat: "No additional lots, including the resubdivision of the lots served by the access easement and utility, shall be permitted unless the access and utility easement is upgraded to meet or exceed the standards of the Onslow County Subdivision Ordinance."
 4. A note stating that the property owners are responsible for the upkeep and maintenance of the access and utility easement shall be placed on the plat; and
 5. A septic permit or letter of sewer availability shall be required for each lot to be created or a statement shall be placed on the plat that the property is being conveyed as forestland or farmland.
- Numbers 2, 3, and 4 only apply only when the lot(s) created do not have direct access to a public street. Any map of an exemption shall be presented to the Planning Department for sign-off prior to recordation. If the Planning Department determines that the intent to make use of any of these

exemptions is to circumvent the provisions of the Subdivision Ordinance, then the use of this exemption may be denied. The applicant may then appeal to the Planning Board for decision.

Minor Subdivision – A minor subdivision is a division of 10 or fewer lots, including the residual parcel where each lot will have street frontage along an existing public or private street, where no new street improvements and/or right of-way dedication is required, and where no water and/or sewer utility extensions are required. The minor subdivision may not be used by an owner, developers, subsequent purchaser, or successor-in-interest a second time within three years on any property less than 1,500 feet from the original property boundaries or the boundaries of an approved minor subdivision created within the original property.

Rural Subdivision – A subdivision where ten (10) or fewer lots result with each lot at least one (1) acre in size. The Rural Subdivision may be used only once for any parent parcel or unit of ownership as of the effective date of this ordinance.

Access Requirements

All newly created lots and parcels shall have access to a public street via a proposed public street, a paved private street evidenced by a recorded easement or right-of-way for access or, in the case of a rural subdivision, a private lane evidenced by a recorded easement for access and utilities. However, direct access (driveways) to some roads may be prohibited. (See section 603.3.C) Multi-family, cottage developments and commercial developments may be served by private parking access areas provided that the design meets the requirements of the Onslow County Zoning Ordinance and that the upkeep and maintenance of these areas are included in the property owner documentation to be recorded at the time of the final plat approval. When property is proposed to be subdivided as a rural subdivision which has access along an existing private easement, no more than 10 residential units may be served by the easement. The applicant must provide the names and addresses (and stamped envelopes) of the other property owners whose property is served by the existing easement so that the Planning Department may notify them of the proposed development

Attachment C

Road Maintenance Agreements

There is a potential to require a road maintenance agreement between property owners recorded through Register of Deeds who wish to further subdivide property without roadway improvement to NCDOT standards at the time of subdivision as required in § 3.9.3.B & § 6.4.C. This would allow private owners to maintain the roadways on access easements to ensure a safe, passable ingress and egress. If a road maintenance agreement is deemed appropriate, a Zoning Text Amendment to the Pender County Ordinance will be required. A sample road maintenance agreement can be seen below.

DECLARATION OF RESTRICTIONS

AND PROVISIONS FOR PRIVATE ROAD MAINTENANCE

ORANGE COUNTY

THIS DECLARATION, made this ____ day of _____, 200__, by **[INSERT NAME OF DECLARANTS]**, hereinafter called Declarants, having a mailing address of **[INSERT MAILING ADDRESS HERE]**.

WITNESSETH:

WHEREAS, Declarants own in fee simple the real property described in Article 1 below; and

WHEREAS, the said property will have access to **[INSERT NAME OF STATE ROAD HERE]** (S.R.) via the private roads shown on the plat hereinafter referred to, said private roads being known as **[INSERT NAME OF PRIVATE ROADS HERE]** (hereinafter referred to as private road); and

WHEREAS, Declarants by this Declaration of Restrictions, wish to bind themselves, their successors and assigns to provide all owners of any portion of said property owned by Declarants described below perpetual ingress, egress and regress to State Roads; and

WHEREAS, Declarants by this Declaration of Restrictions, wish to bind themselves, their successors and assigns to provide for maintenance of said private road until such time as the said private road is accepted by the State of North Carolina for maintenance;

NOW, THEREFORE, Declarants agree for themselves and with any and all persons, firms or corporations hereafter acquiring any of the property described in Article 1 below, that the same shall be subject to the following restrictions, conditions, and covenants relating to the use and occupancy thereof, which restrictions, conditions, and covenants shall run with the said property and insure to the benefit of and be binding upon the heirs, successors and assigns of Declarants and other acquiring parties and persons.

Article 1. The real property which is, and shall be, held, transferred, sold and conveyed subject to the protective and restrictive covenants set forth in the various Articles of this declaration is located in **[INSERT NAME OF TOWNSHIP HERE]** Township, Orange County, North Carolina, and is more particularly described as follows:

[INSERT APPROPRIATE LEGAL DESCRIPTION OF ALL TRACTS BURDENED BY THE PRIVATE ROAD EASEMENT - INCLUDE PLAT REFERENCE]

Article 2. Declarants hereby grant unto themselves and the future record owners of the aforesaid property adjoining and abutting the private road as shown on the aforesaid recorded plat(s) and as said private road may be extended into the aforesaid property, perpetual ingress, egress and regress over, on

and under the said private road including the use of the road for the purposes of installation and maintenance of utilities.

TO HAVE AND TO HOLD the above-described easement as an appurtenance to all of the property, which easement shall run with said lands forever.

Article 3. The road shall be maintained to Class **[INSERT ROAD CLASS HERE]** road standards as prescribed by Orange County now and as the same may be revised from time to time.

For so long as Declarants shall be willing and able to serve they shall be responsible for:

1. Determining what maintenance is necessary in order to maintain **[INSERT ROAD NAME HERE]**.
2. Contracting repairs and notifying the owners of Lot abutting **[INSERT ROAD NAME HERE]** of their respective assessments at least annually; and
3. Estimating the costs of maintenance in advance, and depositing the funds received in a separate account, the records of which shall be available for inspection by any owner subject to assessment.

If at any time Declarants are unable or unwilling to provide for the maintenance of said road, the owners of the subdivided lots as shown on the recorded plats herein before referred to shall be responsible for maintenance as herein provided. Any owner of a subdivided lot within said property served by said road or the owner of any interest therein, shall have the right to enforce the maintenance standard by sending by registered or certified mail, return receipt requested, written notice of all proposed maintenance and of the time and place of a meeting of the said record owners (said meeting to take place no less than 10 days following the mailing of such notice) to all such record owners at their last known addresses as shown on the Orange County Tax Records.

At such owners' meeting all maintenance shall be approved by a majority of the votes cast (each owner having one vote for each subdivided lot owner and three for each dwelling unit on a lot).

Every owner of any of the aforesaid property using said road shall bear on a pro-rata basis the cost of maintaining said private road, this being each owner's pro-rata share for grading costs, gravel, or rock hauled in to fill ruts, holes, and washed-out sections and necessary replacement of or additional drainage culverts.

Each owner's pro-rata share of the maintenance costs of said private road shall be the total cost of maintenance multiplied by said owner's votes and divided by the total of all the owners' votes within the property. Each owner's pro-rata share of the maintenance cost of said private road shall be due and owing to whichever other owner initiated the maintenance enforcement within 10 days of the said owners' meeting. If not paid by that time, said initiating owner may file suit for the same on behalf of all of the owners.

Notwithstanding the vote at the owners' meeting, nothing in this Declaration of Restrictions shall be construed as denying any owner the right to see that the said road is maintained to Class **[INSERT ROAD CLASS HERE]** standards, and any owner may require that the maintenance requirements be submitted to binding arbitration under the rules and regulations of the American Arbitration Association (as governed by the Uniform Arbitration Act of North Carolina, North Carolina General Statutes Section 1.567.1 et seq, as it may be from time to time amended) by notice mailed to all said record owners at their last known addresses by registered or certified mail, return receipt requested, by 5:00 p.m. on the second working day following the owners' meeting, unless such arbitration notice is sent, the vote of the majority of the owners shall be conclusive as to what maintenance mandated by this Declaration of Restrictions.

Article 4. The private road located within said property may be dedicated to the public at the election of a majority vote of the owners under the same procedure used in Article 3 for the maintenance of said road. In that event, the owners and their successors in title and interest to any of the property

described herein will remain responsible for road maintenance by the North Carolina Department of Transportation or other governmental body.

It is probable that future development of the property described in Article 1 will require upgrading of the private road providing access to the property described in Article 1 to either a higher private road standard or to North Carolina Department of Transportation standards. In the event that Orange County or any other governmental body, as a condition to the approval of any further subdivision of the property described in Article 1, may require said private road to be upgraded above a Class [INSERT ROAD CLASS HERE] standard or publicly dedicated and constructed to Department of Transportation standards, then in that event, Declarants and all persons taking title to the property described in Article 1 shall be responsible for maintenance and the costs of maintenance of the entire road system to the new standard on the point system described in Article 3. Provided, however, that the initial cost of construction the road or any portion of the road to a higher private road standard or to Department of Transportation standards shall be borne solely by the owners of the portion of said property, the subdivision of which requires that the road or any portion of it be upgraded. The cost of construction the road or any portion of it to a higher private road standard or to Department of Transportation Standards shall be bared by the owners responsible for the upgrading according to the system described in Article 3. In the event public dedication of the said private road or any extension of the private road or portions thereof is required by Orange County, all persons taking title to the aforesaid property from and through Declarants shall dedicate to the public that portion of the road required to be dedicated.

Article 5. In the event that extensions are made to the said private road within the aforesaid property, or to other property, or for utility access to other property, the costs of maintaining the entire road system shall be borne by all the record owners of any property served by the entire road system as set forth in Article 3; provided, however, that the initial costs of constructing any extension of the road shall be borne solely by the owners of the portion of said property abutting said road extension as they may agree, or if they do not agree, then among them by the same point system as set out above.

Article 6. This Agreement shall remain in full force and effect as to said road or any portion thereof until such time as said road or any portion thereof shall be taken over by the North Carolina Department of Transpiration for maintenance purposes, and any portion of said road not so taken over by the North Carolina Department of Transportation shall remain subject to this Agreement. Declarants accept all liability related to the use and maintenance of said road and agree to hold Orange County and the State of North Carolina harmless from such liability. Declarants acknowledge that some public services may not be provided to the lots abutting the said private road due to the private nature of said road.

Article 7. This agreement is to govern the maintenance of said road when subject to ordinary use. If any owner liable under this agreement shall cause any extraordinary wear and tear on said road by building, well drilling, or other heavy use, said owner shall be responsible to pay such extraordinary cots of maintenance as is caused by said use. If the responsibility for such extraordinary cots of maintenance is not agreed between the owners at an owners' meeting called under the provisions of Article 3 above, the responsibility for said cost shall be subject to binding arbitration as set out in Article 3 above.

Article 8. This Agreement shall run with and be appurtenant to the land and shall be binding upon the heirs, successors, and assigns of each record owner of the aforesaid property. When used in this Agreement, the singular shall include the plural, the masculine shall include the feminine and the neuter, and vice versa, as the meaning may require.

IN WITNESS WHEREOF, Declarants have caused this instrument to be signed and sealed on the day and year first written above.

_____(SEAL)

_____(SEAL)

NORTH CAROLINA

_____ COUNTY

I, a Notary Public of said State and County, do hereby certify that _____ personally appeared before me this day and acknowledged the due execution of the foregoing Declaration of Restrictions and Provisions for Private Road Maintenance.

Witness my hand and notarial seal, this ____ day of _____, 20 ____.

Notary Public

My Commission Expires: _____

**STATE OF NORTH CAROLINA
COUNTY OF ORANGE**

I, a Notary Public of said State and County, do hereby certify that _____ personally appeared before me this day and acknowledged the due execution of the foregoing Declaration of Restrictions and Provisions for Private Road Maintenance.

Witness my hand and notarial seal this the ____ day of _____, 20 ____.

Notary Public

My Commission Expires: _____