

# Pender County Planning and Community Development

## Planning Division

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



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## AGENDA

**Pender County Board of Adjustment Meeting  
October 15, 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:** September 17, 2014; September 24, 2014

**3. Public Comment:**

*\*Public Hearing Opened\**

**4. Variance:**

Thomas Smith, applicant, on behalf of Darrell Register, owner, is requesting a five foot (5') variance from the required ten foot (10') side yard setback from the northeast and southwest property lines as prescribed in the Pender County Unified Development Ordinance, Section 4.14, Zoning District Dimensional Requirements. The subject property is zoned RP, Residential Performance District and contains ± 0.34 acres. There is one (1) tract associated with this request and may be identified as Lot 24 of Map Book 10 Page 62 and is located on the south side of Mallard Bay Road (SR 1566) in Hampstead. The tract may be further identified by Pender County PIN 4213-35-2444-0000.

**5. Variance:**

Lindsey Hess, applicant, on behalf of Hampstead Medpro Partners, LLC, owner, is requesting a ten foot (10') variance from the required twenty foot (20') setback requirement for a pylon/free-standing sign as prescribed in the Pender County Unified Development Ordinance, Section 9.9.1.A(3), Pylon/Free-Standing Sign. The subject property is zoned GB, General Business District and contains ± 2.79 acres. The property is located at 14057 US HWY 17 in Hampstead and may be further identified by Pender County PIN 3282-64-5881-0000.

**6. Variance:**

Jamie Flynn, applicant, on behalf of Mildred Phillips, owner, is requesting a variance for relief from the requirement of the definition of Accessory Structure in Appendix A, specifically that an accessory

structure be located on the same parcel of property as the principal structure as prescribed in the Pender County Unified Development Ordinance. The subject property is zoned RP, Residential Performance District and contains ± 0.67 acres. The property is located at 101 Circle Drive (SR 1064) in Hampstead and may be further identified by Pender County PIN 3281-99-2291-0000.

*\* Public Hearing Closed\**

**7. Discussion Items:**

a. Planning Staff:

b. BOA Members:

**8. Next Meeting:** November 19, 2014

**9. Adjournment:**

**PLANNING STAFF REPORT**  
**Variance Request**

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**SUMMARY:**

**Hearing Date:** October 15, 2014  
**Applicant:** Thomas Smith  
**Property Owner:** Darrell Register  
**Case Number:** 10269

**Property Location and Description:** The subject property, Lot 24 of Mallard Bay Subdivision, is located on the south side of Mallard Bay Road (SR 1566) in Hampstead, as referenced in Map Book 10 Page 62 (Exhibit 1), recorded at the Pender County Register of Deeds on May 22, 1969 and may be identified by Pender County 4213-35-2444-0000.

**Zoning District of Property:** The property is zoned RP, Residential Performance District.

**Variance Requested** Thomas Smith, applicant, on behalf of Darrell Register, owner, is requesting a five foot (5') variance from the required ten foot (10') side yard setback from the northeast and southwest property lines as prescribed in the Pender County Unified Development Ordinance, Section 4.14, Zoning District Dimensional Requirements.

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**BACKGROUND AND DESCRIPTION OF VARIANCE:**

The applicant would like to construct a single family home on Lot 24 of Mallard Bay Subdivision. The subject property was subdivided in 1969 prior to the adoption of zoning within Pender County, as shown on Map Book 10, Page 62 (Exhibit 1). The property is ±0.34 acres (14,810 ft<sup>2</sup>) and is zoned RP, Residential Performance District. The current provision for the RP District of the Pender County UDO requires the following:

Dimensional Standards	RP
Lot Size	15,000 ft <sup>2</sup>
Lot Size Duplex	22,000 ft <sup>2</sup>
Min. Lot Width-Ft	80
Min. Chord Length at ROW line for "cul de sac's"	30
Min. Front Yd.-Ft.	30
Min. Side Yard-Ft	10
Min. Corner Yard Ft (10)	15
Min. Rear Yard-Ft	25
Max. Height-Ft	35
Min. Req. Structure Separation	30

According to § 10.2.1 of the Pender County Unified Development Ordinance (UDO); Lot 24 of Mallard Bay Subdivision is a non-conforming single lot of record as the lot was created prior to the adoption of zoning in Pender County and does not meet the minimum lot width of 80 feet for the RP, Residential Performance District or the required minimum lot size of 15,000ft<sup>2</sup>. § 10.2.2.A.1 of the UDO, specifically addresses:

a single lot that is nonconforming as to area or width requirements may be built upon if compliance is achieved with regard to all other Ordinance requirements.

As stated in the applicant's narrative (Exhibit 2), the proposed building envelope is unable to meet the Ordinance requirement of ten feet (10') for the side yard setback for both the left and right yards. The applicant proposal (Exhibit 3) illustrates a building envelope of 40' by 140'. This dimension would require a 5 foot variance from the required 10 foot side yard setback in the RP, Residential Performance district as prescribed by the Pender County Unified Development Ordinance, Zoning District Dimensional Requirements § 4.14.

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## **ZONING ADMINISTRATOR'S CONCLUSION:**

Thomas Smith, applicant, on behalf of Darrell Register, owner, is requesting a five foot (5') variance from the required ten foot (10') side yard setback from the northeast and southwest property lines as prescribed in the Pender County Unified Development Ordinance, Section 4.14, Zoning District Dimensional Requirements. .

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### **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.

#### **4.6.10 Permitted Obstruction in Required Yards**

In all districts, the following shall not be considered obstructions when located within a required yard, except that these items shall not be located within any required clear site triangle.

- A. In any Required Yard:
  - 1. Sidewalks, uncovered steps and handicapped access ramps.
  - 2. Off street parking facilities may be located in the required front yard. Off-street parking and loading facilities may not be located in a required buffer.
  - 3. Plantings and vegetation, arbors and trellises, open terraces, including natural plant landscaping.
  - 4. Awnings or canopies projecting up to six (6') feet from a building wall, provided that the awning has no supports other than provided by the wall or its integral part.
  - 5. Cornices, eaves, and awnings may extend up to five (5') feet into any required yard, but shall remain at least two (2') feet from the property line, except on zero lot line homes.

6. Bay windows, entrances, balconies, and similar features that are less than ten (10') feet wide may extend up to one and one-half (1 ½') foot into any required yard, but shall remain at least six (6') feet from the property line.
  7. Chimneys projecting not more than three (3') feet into the required yard.
  8. Fire escapes or staircases may project no more than eight (8') feet into the required yard.
  9. Directional signs may be installed in conformance with the Article 10, Signs.
  10. Driveways.
  11. Flagpoles having only one structural ground member.
  12. Mailboxes.
  13. Project boundary buffers and street buffers.
  14. Fountains, sculpture or other similar objects of art.
  15. Street furniture such as, but not limited to benches, drinking fountains, and light standards.
  16. Retaining walls or bulkhead no more than six (6') feet in height.
  17. Security gates and guard stations.
  18. When screened from adjacent residential dwellings, at-grade patios, decks or uncovered terraces may extend up to eight (8') feet into any required front yard.
- B. In any Required Side or Rear Yard:
1. When screened from adjacent residential dwellings, at-grade patios, decks or uncovered terraces may extend up to four (4') feet into any required side yard, or within ten (10) feet of a rear property line.
  2. Recreational equipment, such as play houses, swings, etc.
  3. Off street parking and loading facilities may be located in the required side or rear yard. Off-street parking and loading facilities may not be located in a required buffer.

#### 4.7.2 RP: Residential Performance

The Residential Performance District is intended to allow a variety of residential uses and densities and also limited commercial activities as well as agritourism. Existing or new agricultural and farm uses shall be allowed on undeveloped land prior to development.

- A. Residential Performance District (RP) shall meet the following general standards:
- 1) Buildings on the periphery of a Residential Performance Development shall be setback no less than twenty (20') feet from the adjoining property line. Additional buffers may be required based on the adjacent land use. See buffer chart in Section 8.2.6.
  - 2) All undivided areas within the development (other than street rights-of-way, parking, and structures) shall be designated as open space as defined in Appendix A Definitions and Article 8. Such open space shall be offered to the public or encumbered for the perpetual benefit of the residents.
  - 3) Private streets will be permitted in Performance Residential Developments; however, dedication of public streets and utility easements shall be required if such are indicated on the official plans as adopted by Pender County or any municipality if it is determined by the County Planning Board.
  - 4) When a development proposal is submitted under this Article, it shall be processed as a Master Plan.
  - 5) Projects proposing less than ten (10) lots shall be submitted as one phase and must be contiguous when submitted for final plat.
  - 6) A homeowners association shall be established and kept continuously active, for the maintenance of open and private spaces and stormwater runoff, along with any private water, sewer or roads, when warranted.
  - 7) All requirements of Article 9 Flood Damage Prevention must be met.
  - 8) Any land designated as usable open space shall be used in calculating the density for a proposed development.
  - 9) Buffer strips shall be required and maintained by the Homeowner's Association.
  - 10) All preliminary plans shall provide the approximate delineation of Corps of Engineers Section 404 and Section 10 Wetlands.

#### 4.14 Zoning District Dimensional Requirements

Dimensional Requirements Table

Dimensional Standards <sup>(9)</sup>	RA	RP	RM	MH	GB	OI	IT	GI	PD	EC
Lot Size	1 Acre <sup>(8)</sup>	15,000 <sup>(5)</sup> Sq. Ft.	(1)	(7)	15,000 Sq. Ft. <sup>(8)</sup>	15,000 Sq. Ft.	1 Acre	1 Acre	(1)	1 Acre
Lot Size Duplex	60,000 Sq. Ft.	22,000 Sq. Ft.	(1)						(1)	
Min. Area Rezoning(3)	NA	5 Acres	10 Acres	5 Acres	1 Acre	1 Acre	5 Acres	5 Acres	100 acres	NA
Min. Lot Width-Ft	100 <sup>(8)</sup>	80 <sup>(6)</sup>	(1)	(7)	80 <sup>(8)</sup>	80	100	100	(1)	100
Min. Chord Length at ROW line for "cul de sac's"	45	30	(1)	20	30	30	45	45	(1)	45
Min. Front Yd.-Ft.	30 <sup>(8)</sup>	30	(1)	(7)	25 <sup>(8)</sup>	25	40	50	(1)	50
Min. Side Yard-Ft	15 <sup>(8)</sup>	10	(1)	(7)	10 <sup>(8)</sup>	10	25	25	(1)	25
Min. Corner Yard Ft (10)	15	15	(1)	(7)	12	12	20	25	(1)	25
Min. Rear Yard-Ft	30 <sup>(8)</sup>	25	(1)	(7)	10 <sup>(8)</sup>	10	25	25	(1)	25
Max. Height-Ft	35 <sup>(2)</sup>	35 <sup>(2)</sup>	45	35	40	40	50	50	(1)	40
Min. Req. Structure Separation	40 <sup>(8)</sup>	30	(1)		50 <sup>(8)</sup>	50	50	100	(1)	30

#### 5.3.2 Residential Uses

##### A. Residential Principal Structure

- 1) In any residential district, up to three residential structures are permitted, on a single lot provided a plat drawn to scale by a licensed registered surveyor is submitted showing that all yards and other requirements of this Ordinance have been met for each structure.

#### 10.2 Nonconforming Lots

##### 10.2 Definition

A lot existing at the effective date of this Ordinance or any amendment hereto that cannot meet the minimum standards or requirements of the district in which the lot is located.

##### 10.2.1 Continuation

##### A. Nonconforming Single Lot

- 1) A single lot that is nonconforming as to area or width requirements may be built upon if compliance is achieved with regard to all other Ordinance requirements.

##### B. Nonconforming Contiguous Lots of Record

- 1) If two or more contiguous vacant lots of record established prior to the effective date of this Ordinance are in single ownership and are nonconforming to the dimensional requirements of the district where located, such lots, at the owner's option, may be combined to form a single or several lots which reduce the degree of nonconformity with regards to lot area and width requirements of the district, provided compliance is achieved with regard to all other requirements of this Ordinance.

#### Appendix A

**BUILDING:** Any structure having a roof supported by columns or walls and intended for the shelter, housing or enclosure of any persons, animals, processes, equipment, goods or materials of any kind.

**LOT:** A designated parcel, tract or area of land established or to be established by plat or subdivision or previously established as a recorded lot.

1. **LOT AREA:** The total area within the lot lines of a lot.
2. **LOT, CORNER:** A lot abutting two or more streets at their intersection. (See Figure 4.1)
3. **LOT COVERAGE:** The total built upon area, including all non-pervious surface materials.
4. **LOT, INTERIOR:** A lot other than a corner lot. (See Figure 4.1)
5. **LOT LENGTH:** The distance between the front lot line and the rear lot line measured at the maximum distance.
6. **LOT LINE, FRONT:** The front of a lot shall be considered to be that side of the lot which fronts on a street. In the case of a corner lot, either side abutting a street may be considered to be the front, provided the structure to be located on the lot is situated to meet the required front, side and rear yards for the zoning district in which the lot is located. (See Figure 4.1)
7. **LOT LINE, REAR:** The lot line opposite and parallel to the front lot line or within 45° of being parallel to the front lot line. (See Figure 4.1)
8. **LOT LINE, SIDE:** Any lot line other than front or rear lot lines. (See Figure 4.1)
9. **LOT OF RECORD:** A lot for which a plat or survey description has been legally recorded with the Pender County Register of Deeds.
10. **LOT, PIPESTEM:** A residential lot fronting on a public or a private street in which access is provided by a narrow strip of land, referred to as the "pipestem driveway yard," which is less than the minimum required front yard width, and located between adjoining residential lots fronting on the same street.
11. **LOT, THROUGH:** A lot, other than a corner lot, with frontage on more than one street. These lots may also be called "double frontage lots". (See Figure 4.1)
12. **LOT WIDTH:** The horizontal distance between side lot lines measured at the front yard setback line.

**SETBACK:** The required distance between a building or structure and a lot line.

1. **SETBACK, FRONT YARD:** The required distance between a street right-of-way line and the front line of a building or structure.
2. **SETBACK, REAR YARD:** The required distance between a building or structure and the rear lot line of the lot containing the building or structure.
3. **SETBACK, SIDE YARD:** The required distance between a building or structure and the side lot line of the lot containing the building or structure.

**STRUCTURE:**

1. Any man-made object having an ascertainable stationary location on or in land or water, whether or not it is affixed to the ground. All buildings are "structures."
2. For floodplain management purposes, a walled and roofed building, including a gas or liquid storage tank, that is principally above ground, as well as a manufactured home. Structure, for insurance rating purposes, means a walled and roofed building, other than a gas or liquid storage tank, which is principally above ground and affixed to a permanent site, as well as a manufactured home on a permanent foundation. For the latter purpose, the term includes a building while in the course of construction, alteration or repair, but does not include building materials or supplies intended for use in such construction, alteration or repair, unless such materials or supplies are within an enclosed building on the premises.

**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: \_\_\_\_\_

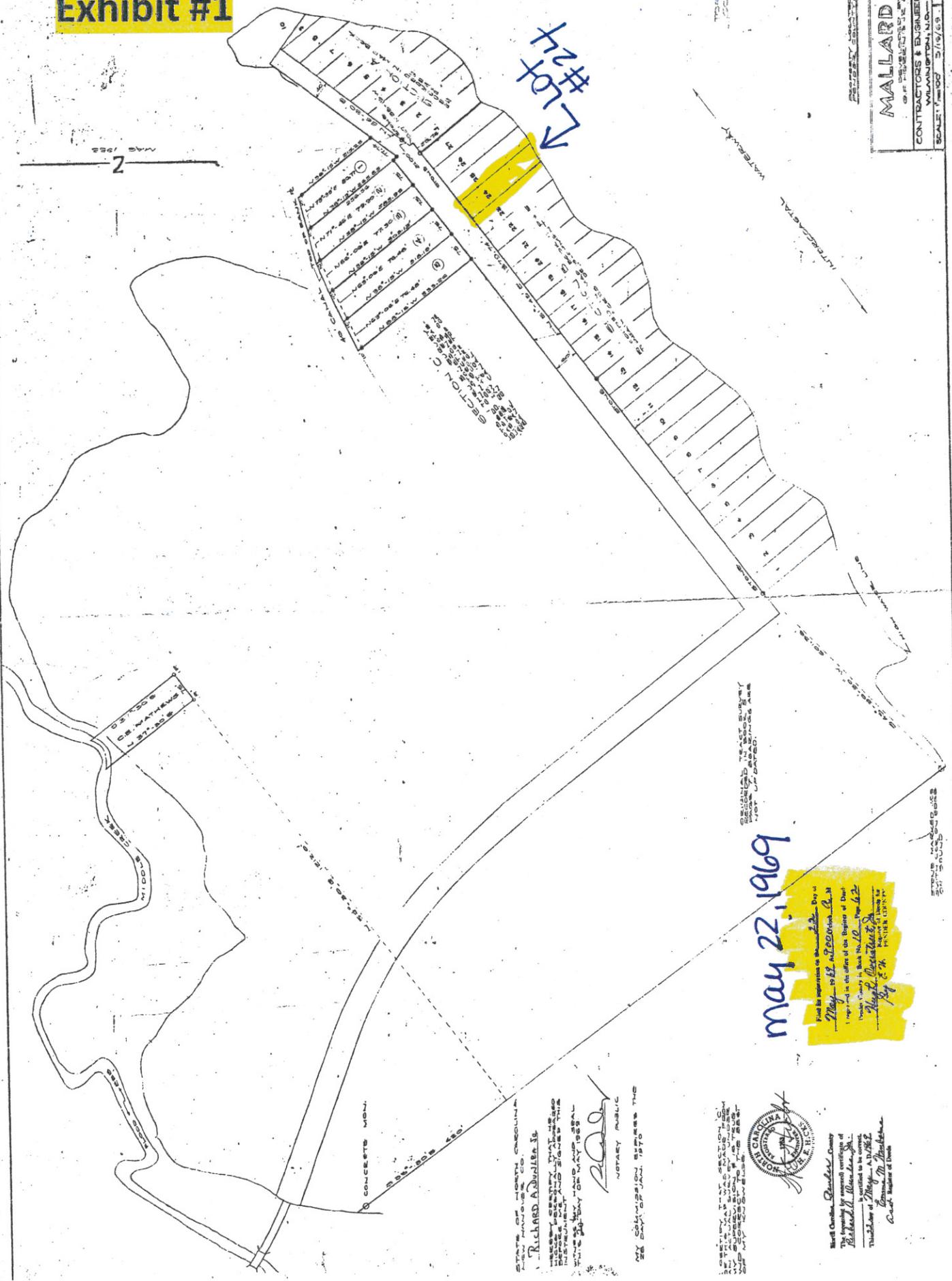
Ferrante: \_\_\_\_\_ Pullen: \_\_\_\_\_ Newton: \_\_\_\_\_ Thompson: \_\_\_\_\_ Walton: \_\_\_\_\_

**Alternates:**

Godridge: \_\_\_\_\_ Peters: \_\_\_\_\_

1.

Exhibit #1



MALLARD BAN  
CONTRACTORS & ENGINEERS SERV  
WILMINGTON, N.C. - GOLDEN  
SCALE: 1"=100' 5/16/69

BOUNDARY SURVEY  
FOR RECORD

may 22, 1969

Filed for registration on May 22, 1969, by  
May 22, 1969, at 10:50 AM, in Book 10, Page 42  
I certify in the office of the Register of Deeds  
of Wake County, N.C., that the above is a true and correct  
copy of the original instrument as recorded in the  
office of the Register of Deeds, Wake County, N.C., on  
May 22, 1969.

STATE OF NORTH CAROLINA  
RICHARD A. DAVIS, JR.  
NOTARY PUBLIC  
MY COMMISSION EXPIRES THE  
22nd DAY OF JAN. 1970

WAKE COUNTY, N.C.  
I hereby certify that the foregoing is a true and correct copy of the original instrument as recorded in the office of the Register of Deeds, Wake County, N.C., on May 22, 1969.

North Carolina, Wake County  
The foregoing is a true and correct copy of the original instrument as recorded in the office of the Register of Deeds, Wake County, N.C., on May 22, 1969.  
Richard A. Davis, Jr.  
Notary Public, Wake County, N.C.

10-62

# Exhibit #2

August 29, 2014

To: Members of Board of Adjustment

The address of the lot under consideration is Lot 24 Mallard Bay Drive. The variance being requested is a reduction in the side-setback from 10' to 5'. The lot is very narrow and the area which is acceptable for septic system will restrict the size and location of the house. In order to build the size and design of house we are attempting, we will need approximately 40' of width. This subdivision was platted in 1969 which pre-dates zoning and the lots are non-conforming by today's zoning regulations. The lot is only 50' wide and today's standard is 80', which allows for a typical house width of 50' to 60'. Many of the houses on Mallard Bay appear to have setbacks of less than 10' according to the GIS photos attached.

# Exhibit #3

## Mallard Bay Lot 24, Section B Septic Proposal

Scale: 1" = 50'

### MALLARD BAY DRIVE

#### Lot 24 Wastewater Treatment System Design

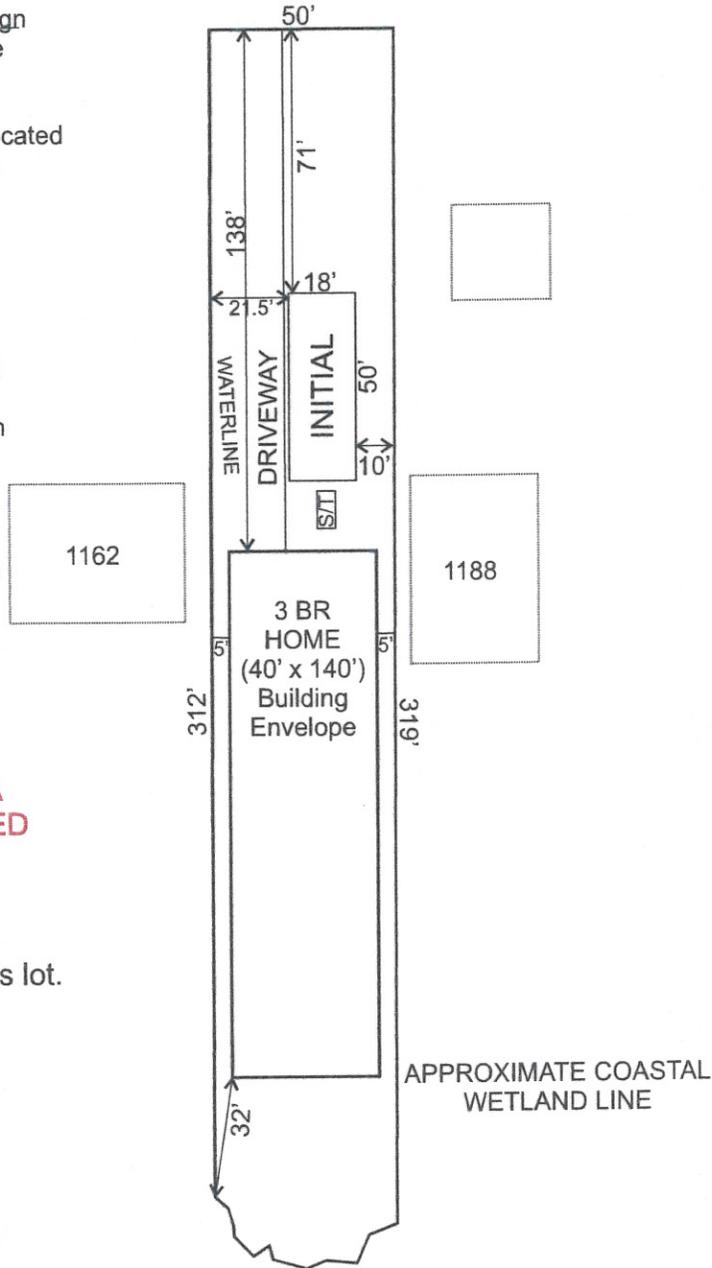
- 4 Bedroom Home; 480 gal/day flow rate
- 1000 gal septic tank
- >30" soil wetness condition
- Septic system serving 1188 appears to be located approximately 12' from the lot 24 lot line

#### Initial - Shallow Bed System

- 0.8 gal/ day/ sq ft LTAR
- $480/0.8 = 600$  sq ft
- $600$  sq ft x  $1.5 = 900$  sq ft
- 18' x 50' bed area
- 6 lines on 3' centers and located at least 1.5' from edge of bed wall
- 18" trench bottom at lowest elevation in proposed system area
- 6" cap on lower end to grade

#### Repair - Exempt

See MB 10, PG 62, dated May 22, 1969



**ELEVATE SEPTIC TANK OR A PUMP TANK WILL BE REQUIRED**

A CAMA Permit may be required for this lot.



Boundary information taken from the Pender County GIS website.

pre-submittal  
=> August 11

### APPLICATION FOR VARIANCE

THIS SECTION FOR OFFICE USE			
Application No.	VA <del>11269</del> 11269	Date	8-28-14
Application Fee	\$ 250.00	Receipt No.	# 142177
<b>SECTION 1: APPLICANT INFORMATION</b>			
Applicant's Name:	Thomas Smith	Owner's Name:	Darrell Register
Applicant's Address:	1420 Beasley Road	Owner's Address:	224 50th Ave N
City, State, & Zip	Wilmington, NC 28409	City, State, & Zip	Saint Petersburg, FL 33703
Phone Number:	914-562-4511	Phone Number:	727-647-7449
Legal relationship of applicant to land owner: <b>Property under contract</b>			
<b>SECTION 2: PROJECT INFORMATION</b>			
Property Identification Number (PIN):	4213-35-2444-0000	Total property acreage:	0.34 Acres
Zoning Classification:	RP	Variance Size:	5 foot Variance from both left and right side yards
Variance Location & Address	Lot 24 of Mallard Bay Subdivision Map Book 0010, Page 0062		
Describe Variance and amount or type requested:	5 foot right and left yard setbacks from the required 10 feet per the RP District.		
<b>SECTION 3: SIGNATURES</b>			
Applicant's Signature	<i>Thomas R Smith</i>	Date:	8-25-14
Owner's Signature	<i>Darrell S. Register</i>	Date:	8/26/2014
<b>NOTICE TO APPLICANT:</b>			
<ol style="list-style-type: none"> <li>1. The Board of Adjustment shall review applications for a variance and shall be the approving authority for all requirements.</li> <li>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.</li> <li>3. An application for a variance shall be submitted in accordance with application requirements.</li> <li>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.</li> <li>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.</li> <li>6. Applicant must also submit the information described in the Variance Checklist provided below.</li> <li>7. Applicant or agent authorized in writing must attend the public hearing.</li> <li>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.</li> </ol>			
<b>OFFICE USE ONLY</b>			
<input checked="" type="checkbox"/> VA Fees \$250	Total Fee Calculation \$		\$ 250.00
Payment Method :	<input type="checkbox"/> Cash : \$ _____ <input type="checkbox"/> Credit Card: <input type="checkbox"/> Master Card <input type="checkbox"/> Visa	<input type="checkbox"/> Check: <input type="checkbox"/> Check # _____	
Application received by:			Date: _____
Application completeness approved by:	<i>[Signature]</i>		Date: 8-28-14
Date scheduled for public hearing:	October 15, 2015		





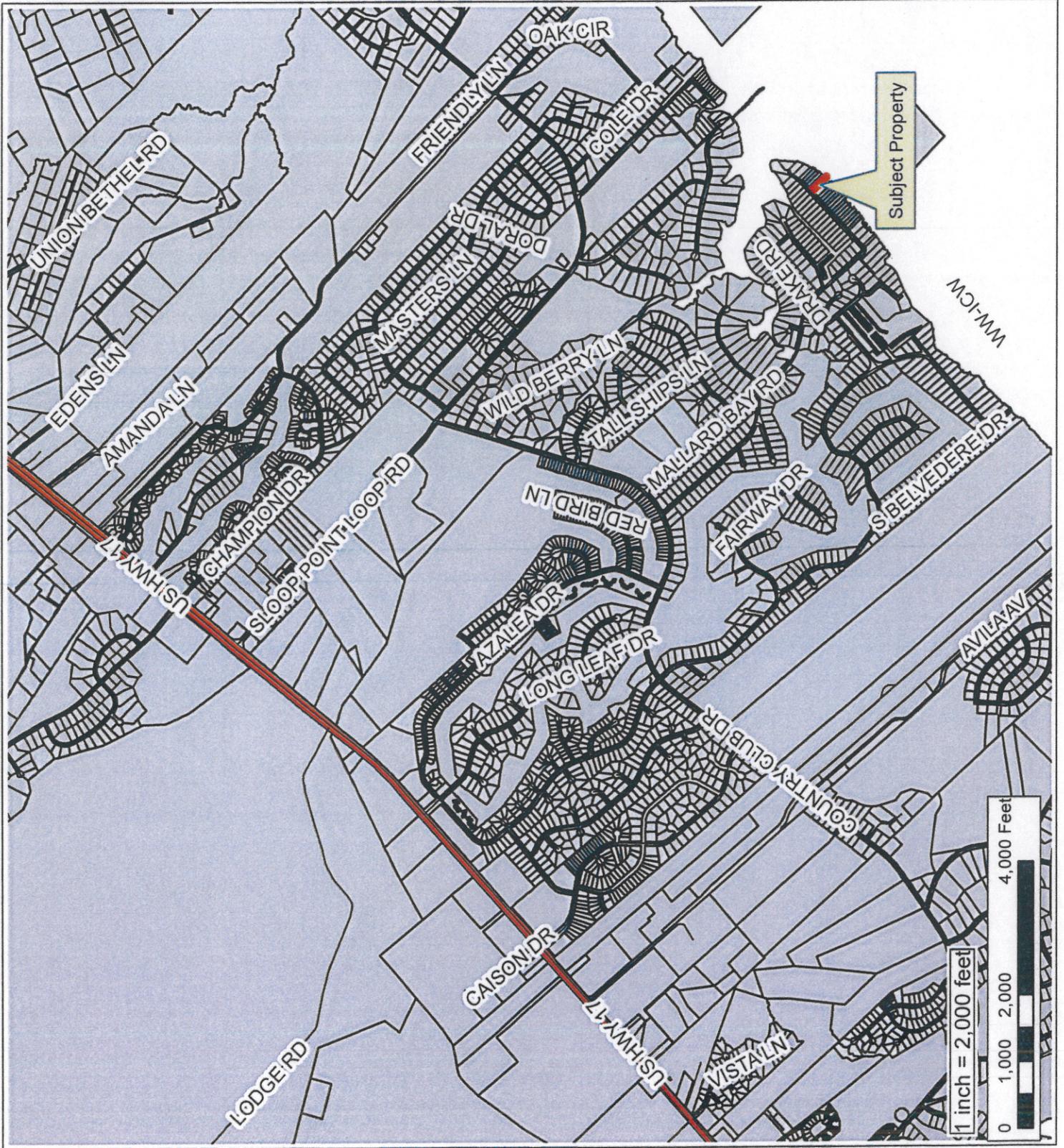
**Applicant:**  
Thomas Smith

**Owner:**  
Darrell Register

**ZMA Case #**  
11269



**VICINITY**





**Applicant:**  
Thomas Smith

**Owner:**  
Darrell Register

**ZMA Case #**  
11269

**Legend**

 Subject Parcel

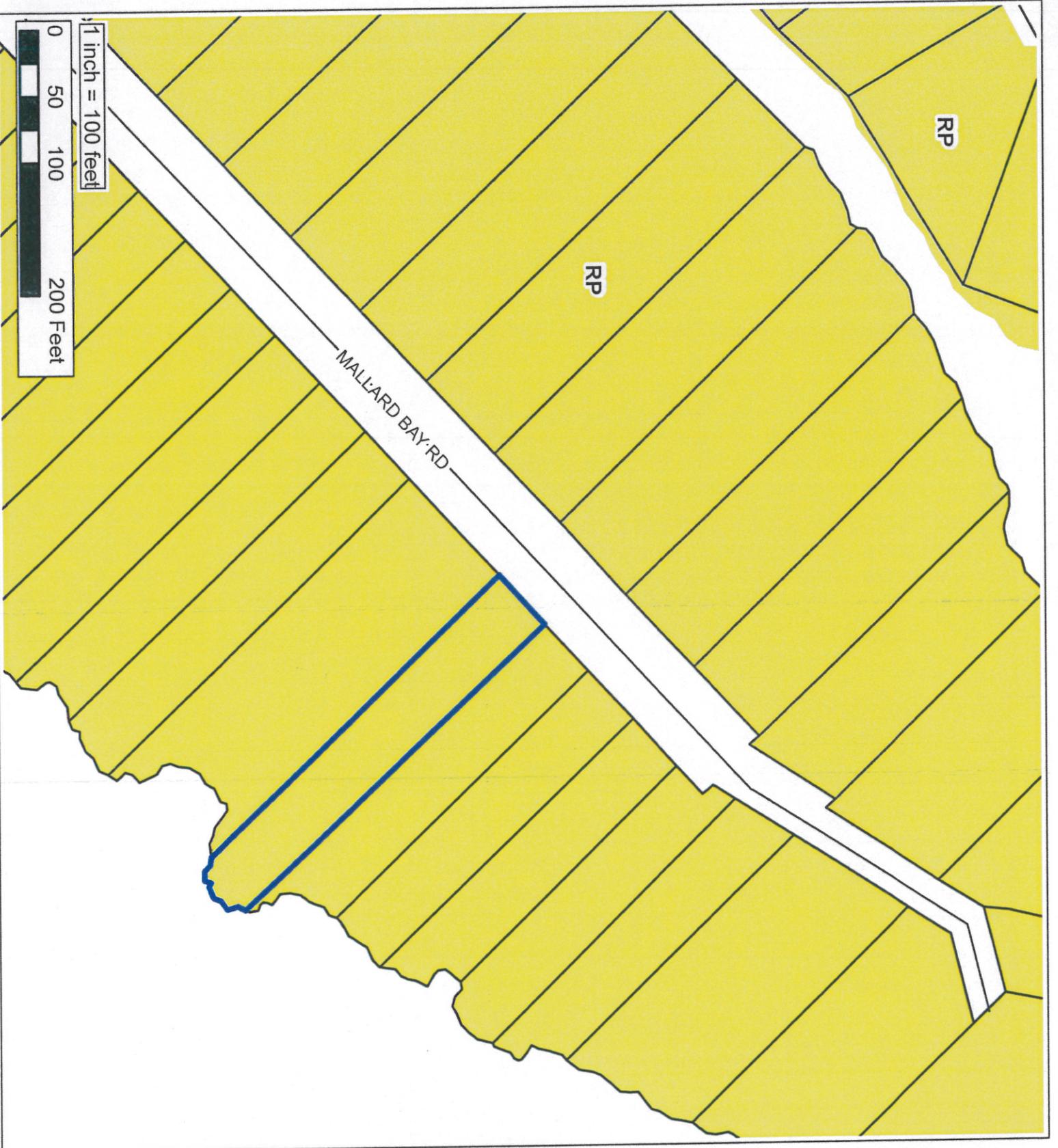
**Zoning Classification**

**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 (I)
-  Incorporated Areas (INCCORP)
-  Manufactured Home Park (MH)
-  Residential Mixed (MF)



**ZONING**





**Applicant:**  
Thomas Smith

**Owner:**  
Darrell Register

**ZMA Case #**  
11269

**Legend**



Subject Parcel



**Aerial**



**PLANNING STAFF REPORT**  
**Variance Request**

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**SUMMARY:**

**Hearing Date:** October 15, 2014  
**Applicant:** Lindsey Hess  
**Property Owner:** Hampstead Medpro Partners, LLC  
**Case Number:** 11249

**Property Location and Description:** The subject property (Map Book 3274, Pages 339-351 [Exhibit 1]) is located at 14057 US HWY 17 in Hampstead. There is one tract associated with this request totaling 2.79 acres. The property may be identified by Pender County PIN 3282-64-5881-0000.

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

**Variance Requested:** Lindsey Hess, applicant, on behalf of Hampstead Medpro Partners, LLC, owner, is requesting a variance for relief from the requirement of *Pender County Unified Development Ordinance Section 9.9.1.A (3)*. Specifically, the applicant is requesting a ten foot variance from the requirement that a pylon/free-standing sign for a multi-unit commercial office be no closer than twenty feet to any property line or road right-of-way.

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**BACKGROUND AND DESCRIPTION OF VARIANCE:**

The subject property currently hosts the Beacon Building, a multi-unit commercial office. On August 19, 2014, Pender County Planning staff received an email from Lindsey Hess, applicant and Asset Manager for the subject property, stating that she would like to start the process of applying for a sign variance for the property located at 14057 US HWY 17 in Hampstead. On August 27, 2014, Pender County Planning staff received a completed variance application for the property.

As noted in the Narrative/Applicant Letter, the applicant describes the building on the subject property as having “zero visibility from HWY 17 both North and South bound as you are approaching the property.” The Applicant Map (Exhibit 2) demonstrates this lack of visibility. The applicant has included photographs showing northbound and southbound views from the property (Exhibit 3) and a photograph showing the view of US HWY 17 southbound looking toward the subject property (Exhibit 4).

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**ZONING ADMINISTRATOR’S CONCLUSION:**

Lindsey Hess, applicant, on behalf of Hampstead Medpro Partners, LLC, owner, is requesting a variance for relief from the requirement of *Pender County Unified Development Ordinance Section 9.9.1.A (3)*. Specifically, the applicant is requesting a ten foot variance from the requirement that a pylon/free-standing sign for a multi-unit commercial office be no closer than twenty feet to any property line or road right-of-way. The subject property is located at 14057 US HWY 17 in Hampstead, and is zoned GB, General Business district, and may be identified by Pender County PIN 3282-64-5881-0000.

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**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.

## **9.9 SHOPPING CENTER SIGNS, MALLS, STRIP MALLS AND OFFICE, BUSINESS & INDUSTRIAL PARKS/BUILDINGS**

### **9.9.1 Pylon/free Standing Sign**

For multi-unit commercial, office & industrial developments under single ownership or under unified control, one (1) pylon or free standing sign shall be allowed for each street frontage not to exceed two signs per development and the total sign area does not exceed 200 sq. ft. When a single frontage development has 400 or more of road frontage, a second sign will be allowed as long as both signs do not exceed 200 sq. ft.

- A. Such signs shall be subject to the following:
  - 1) Content: Such sign shall advertise only the name and location of such center and/or name and type of business of each occupant of the center, or other activities on the site.
  - 2) Area: The gross area in square feet allowed for the pylon/free standing signs shall be one (1) square foot per lineal foot of development frontage; however such signs shall not exceed a total of two hundred (200) square feet.
  - 3) Location: The sign shall not be closer than twenty (20) feet to any property line or road right-of-way and shall not project higher than twenty five (25') feet above ground level.
- B. When a single frontage development has 400 or more feet of road frontage, the following standards shall apply for increased square footage.
  - 1) For each additional foot of road frontage exceeding 400', the square footage of the Pylon/free standing sign may be increased by 0.25.

- 2) The total allowable square footage based on road frontage shall not exceed 350 sq. ft. or 1000' of lineal road frontage and may be divided between two signs following Section 10.9.1.A.3.

**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 <del>11249</del> 11249	Date	8/27/14
Application Fee	\$ 250 <sup>00</sup>	Receipt No.	142334
<b>SECTION 1: APPLICANT INFORMATION</b>			
Applicant's Name:	Lindsey Hess	Owner's Name:	Hampstead Medpro Partners, LLC
Applicant's Address:	1051 Military Cutoff Rd, Suite 200	Owner's Address:	1051 Military Cutoff Rd, Suite 200
City, State, & Zip	Wilmington, NC 28405	City, State, & Zip	Wilmington, NC 28405
Phone Number:	910-344-1016	Phone Number:	910-344-1016
Legal relationship of applicant to land owner: <b>Asset Manager</b>			
<b>SECTION 2: PROJECT INFORMATION</b>			
Property Identification Number (PIN):	32826458810000	Total property acreage:	2.79 Acres
Zoning Classification:	<del>B2</del> GB	Variance Size:	10ft. setback vs required 20ft.
Variance Location & Address	14057 US Hwy 17, Hampstead, NC 28443 <small>(See map diagram for details)</small>		
Describe Variance and amount or type requested:	See attached narrative, pictures and map		
<b>SECTION 3: SIGNATURES</b>			
Applicant's Signature	<i>Lindsey E. Hess</i>	Date:	8-25-14
Owner's Signature	<i>Glenn H. McAvaney</i>	Date:	8-25-14
<b>NOTICE TO APPLICANT:</b>			
<ol style="list-style-type: none"> <li>1. The Board of Adjustment shall review applications for a variance and shall be the approving authority for all requirements.</li> <li>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.</li> <li>3. An application for a variance shall be submitted in accordance with application requirements.</li> <li>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.</li> <li>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.</li> <li>6. Applicant must also submit the information described in the Variance Checklist provided below.</li> <li>7. Applicant or agent authorized in writing must attend the public hearing.</li> <li>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.</li> </ol>			
<b>OFFICE USE ONLY</b>			
<input checked="" type="checkbox"/> VA Fees \$250		Total Fee Calculation \$ 250 <sup>-</sup>	
Payment Method :	Cash : <input type="checkbox"/> \$ _____	Credit Card: <input type="checkbox"/> Master Card <input type="checkbox"/> Visa	Check: <input checked="" type="checkbox"/> Check # <u>636</u>
Application received by:			Date:
Application completeness approved by:	<i>Amber H. Ginz</i>		Date: 8/27/14
Date scheduled for public hearing:	10/15/14		

### 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 <b>first class</b> 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"> <li><input type="checkbox"/> Property Location</li> <li><input type="checkbox"/> Building Separation Distances</li> <li><input type="checkbox"/> Dimensions of Property</li> <li><input type="checkbox"/> Proposed Building Height</li> <li><input type="checkbox"/> Building Distances From Property Lines (Front, Sides, Rear)</li> <li><input type="checkbox"/> Location of All Existing Utilities On-Site</li> <li><input type="checkbox"/> Existing Structures</li> <li><input type="checkbox"/> Acreage of Property</li> <li><input type="checkbox"/> Any Proposed Structures</li> <li><input type="checkbox"/> Additional Information Pertinent to the Variance Request (Pictures, Other Permits, etc.)</li> </ul>
<p><b>RETURN COMPLETED APPLICATION TO:</b>  Pender County  Planning &amp; Community Development  P.O. Box 1519  Burgaw, NC 28425</p>	

**Print Form**



Pender County  
Planning and Community Development  
805 S. Walker Street  
PO Box 1519  
Burgaw, NC 28425

RE: 14057 Hwy 17, Hampstead, NC Signage Variance Request

The property known as the Beacon Building, 14057 Hwy 17, Hampstead, was built in 2007/2008 and at that time, a sign was constructed to be installed at the property at the cost of \$5,000+/- . During construction, former management applied for a variance with the County for a zero setback from the property line, when the setback requirement at the time was 15ft. from property line or ROW. At this time, we are submitting a different size variance request for your review. As you can see on the map diagram and photos, this office building suffers from zero visibility from Hwy 17 both North and South bound as you are approaching the property. Neighboring properties have overgrowth of trees and brush on both sides of the property (see included pictures). We have requested permission to remove some of this overgrowth from the property owners but all attempts have been denied. The Beacon building is primarily medical office and patients have complained that the building is hard to find and hard to see, and the traffic pattern does not allow easy access to and from the building. We have also placed more than one request to the DOT to allow us to place the sign in the ROW, all requests were denied per the attached paperwork. Also, there are numerous signs in the nearby vicinity of the property that are not 15ft or 20ft setback from the road, we have included pictures for of these signs that have somehow been given a variance.

For the subject property, the current 20ft. setback requirement from the property line essentially places the sign in the parking lot of the building (please see attached diagram). Even a 15ft. setback would require moving of trees and landscaping to try to accommodate the sign. We are requesting at this time a 10ft. setback from the property line, approximate placement per the diagram. This would allow installation of the sign in a reasonable and visible location to patrons of the building. We very much appreciate your time and consideration.

Lindsey Hess  
Asset Manager

BK 3274 PG 339

FILED

07 JUL 17 AM 11:56

JOYCE M. SWICEGOOD  
REGISTER OF DEEDS  
PENDER COUNTY, NC

PENDER COUNTY NC 07/17/2007  
\$1000.00



Real Estate  
Excise Tax

Recorded and Verified  
Joyce M. Swicegood  
Register of Deeds  
Pender County, NC

STATE OF NORTH CAROLINA

COUNTY OF PENDER

PIN # 3282-64-5881-0000  
DATE 7-17-07 INT-PC

Revenue Stamps: \$1,000.00  
Parcel ID Number: 3282-64-5881-0000

Prepared by Kevin J. Strickland, Attorney at Law

Mail after recording to Kevin J. Strickland, PO Box 220, Burgaw, NC 28425

*Jeffrey D. Keeter, PO Box 4, Wilmington, NC 28402*  
This GENERAL WARRANTY DEED, made and entered into this the  
16<sup>th</sup> day of July, 2007, by and between MBDI, LLC, the GRANTOR herein;  
and HAMPSTEAD MEDPRO PARTNERS, LLC, whose mailing address is 120  
Preston Executive Drive, Suite 200, Cary, NC 27513 the GRANTEE herein.

WITNESSETH

That the Grantor, for and in consideration of the sum of One Dollar and other valuable consideration, the receipt of which is hereby acknowledged, has and by these present, does grant, bargain, sell, and convey unto the Grantee in fee simple, that real property located in Topsail Township, Pender County, State of North Carolina, and being more particularly described as follows:

To have and to hold the aforesaid lot or parcel, together with all privileges and appurtenances thereto, heretofore belonging to the Grantee in fee simple.

The Grantor covenant with the Grantee that the Grantor is seized of the premises in fee simple, have the right to convey the same in fee simple, that the title is marketable and free and clear of all encumbrances, and that the Grantors will warrant and defend the title against all lawful claims of all persons whomsoever except for the exceptions herein stated. Title to the property hereinabove described is subject to the following exceptions:

- 2007 Ad Valorem Taxes
- City and County Zoning and Land Use Ordinances
- All Easements of Record
- All Applicable Restrictive Covenants

In witness whereof, the Grantor has caused this instrument to be signed in its name by its duly authorized manager, this the day and year first above written.

MBDI, LLC

By: [Signature] (SEAL)  
JOHN A. HOLTZ, Member/Manager

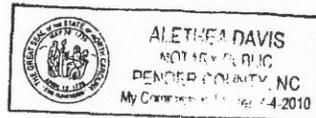
The attorney preparing this instrument has made no record search or title examination as to the property herein described, unless the same is shown by his written and signed certificate.

STATE OF NORTH CAROLINA  
COUNTY OF NEW HANOVER

I, Alethea Davis, a Notary Public of the County and State aforesaid, certify that, JOHN A. HOLTZ, personally appeared before me this the 16 day of July, 2007 and acknowledged that she is a Manager of MBDI, LLC, and that by authority duly given and as the act of the Limited Liability Company, the foregoing instrument was signed in its name by its Member/Manger for the purposes therein set out.

[Signature]  
Notary Public

My Commission Expires: 7-4-10



## SCHEDULE "A"

BEGINNING at a point in the Northwestern right of way line of US Highway 17; said point marking the most Southern corner of Tract B as shown on a map entitled "Map of Survey for Delmar R. Mobley and Virginia M. Norris" recorded in Map Book 23 at Page 93 of the Pender County Registry; running thence from said Beginning point with the Northwestern right of way line of US Highway 17 North 39 degrees 09 minutes 11 seconds East 199.91 feet, more or less, to a point marking the most Southern corner of a tract conveyed to Theodore Piekut and wife, Dorothy Piekut, in Book 1365 at Page 34 of the Pender County Registry; running thence with the Southwestern line of said Piekut Tract North 49 degrees 52 minutes 47 seconds West 402.11 feet to a point marking the most Western corner of said Piekut Tract and located in a common line of a tract conveyed to William R. Howard in Book 1280 at Page 335 of the Pender County Registry; running thence with and along said line of the Howard Tract, South 39 degrees 56 minutes 21 seconds West 350.90 feet, more or less, to a point located in the most Southern corner of said Howard Tract and located in the Southwestern line of Tract B of the Mobley/Norris Property; running thence with said Southwestern line of Tract B South 53 degrees 42 minutes 04 seconds East 205.41 feet South 85 degrees 48 minutes 19 seconds East 217.02 feet and South 72 degrees 48 minutes 49 seconds East 25.73 feet to the point of Beginning.

The same being a portion of Tract B of the Mobley/Norris Property as shown on said map recorded in Map Book 23 Page 93 of the Pender County Registry.

FILED

BK 3274 PG 342

07 JUL 17 AM 11:57

JOYCE M. SWICEGOOD  
REGISTER OF DEEDS  
PENDER COUNTY, NC

Prepared by: Jeffrey P. Keeter



After recording, return to:

SunTrust Bank

351 Wellesely Trade Lane, Suite 109

Cary, NC 27560

Attn: Cindy Vogler

Recorded and Verified  
Joyce M. Swicegood  
Register of Deeds  
Pender County, NC

**SUNTRUST**

**Deed of Trust  
North Carolina (All Obligations)**

**Collateral Includes Fixtures**

**(This Document Serves as a Fixture Filing Under Section 9-502 of the North Carolina Uniform Commercial Code.)**

This Deed of Trust is made and entered into as of July 16, 2007, by and among Hampstead MedPro Partners, LLC (whether one or more, referred to as "Grantor"); in favor of Southland Associates, Inc., whose business address is 351 Wellesley Trade Lane, Ste. 109, Cary, NC 27513 (referred to as "Trustee"); for the benefit of SunTrust Bank, having an address of 211 Perimeter Center Parkway, Suite 100, Atlanta, GA 30346, its present and future affiliates and their successors and assigns ("SunTrust").

For and in consideration of the indebtedness herein recited and the trust herein created, Grantor grants, bargains, mortgages, assigns, sells and conveys unto Trustee, in trust, with power of sale and with general warranty of title, all of Grantor's real estate located in Pender County, North Carolina, and more particularly described on attached **Exhibit A** which has the address of HIGHWAY 17 HAMPSTEAD, NC together with all easements and appurtenances thereto, all of the rights of Grantor in and to the streets, alleys and rights-of-way appurtenant to and adjoining or adjacent to the land described above and together with any and all right, title and interest of Grantor in and to the improvements, which shall include any and all buildings and structures now or at any time erected in the future, constructed or situated upon said land or any part thereof, together with all fixtures, machinery, apparatus, fittings and equipment now or hereafter located in or upon the premises and now owned or which may hereafter be owned by Grantor, in and upon said land and premises, or which may hereafter be placed thereon, including, but not limited to, any equity which may be acquired by Grantor in such property as a result of making installment payments on account of the purchase thereof, including but not limited to elevators, escalators, boilers, engines, heating, ventilating and air conditioning systems, sprinkler or fire extinguishing systems, plumbing, partitions, wiring, storm doors and windows, wire screens, awnings, carpeting, drapes, window shades, switchboards, communications apparatus, floor tiling, linoleum, attached cabinets, wall panels and decorations attached to walls and ceilings, gas and electrical fixtures, chattels, attached appliances, and material used and to be used in the buildings and structures, but excluding any consumer goods not purchased with the Secured Indebtedness, as defined below, (all of which are deemed part and parcel of the real estate

10

and appropriated to the use of the real estate and, whether affixed or not, shall for the purposes of this Deed of Trust be deemed conclusively to be real estate and conveyed hereby);

TO HAVE AND HOLD the foregoing rights, interests and properties, and all rights, estates, powers and privileges appurtenant thereto, together with the proceeds of all the foregoing (herein collectively called the "Property") unto the Trustee and the Trustee's successors and assigns, in trust, in fee simple forever, (a) to secure the prompt payment of the Secured Indebtedness, as defined below, payable to SunTrust; and (b) to secure performance and observance of the terms and conditions of this Deed of Trust and the Note (as defined below).

SunTrust has extended credit to Hampstead MedPro Partners, LLC

(whether one or more, "Debtor," and which as used herein shall include any one or more and any combination of the parties constituting Debtor). The term "Secured Indebtedness" as used herein shall mean all obligations, liabilities and indebtedness of Debtor to SunTrust, whether now existing or hereinafter arising, direct or indirect, fixed or contingent, due or to become due, joint or several, for whatever purpose, irrespective of how such indebtedness is evidenced, whether by notes, bonds, letters of credit, advances, overdrafts, interest rate hedge agreements, foreign exchange contracts or other derivative transaction documents, accounting entries or otherwise, or by the endorsement or guaranty by Debtor of the obligations of another; provided, that the aggregate outstanding principal amount of all Secured Indebtedness secured by this Deed of Trust shall not at any one time exceed the maximum aggregate amount of principal stated below, plus interest thereon (at the rate or rates set forth in the Notes or Agreements or other evidences of such indebtedness), fees due with respect to any such indebtedness, and, to the extent permitted by applicable law, all costs of collection with respect thereto, including without limitation, any costs and expenses incurred by Trustee or SunTrust in connection with the enforcement of this Deed of Trust or as otherwise provided herein.

As used herein the term "Note" shall mean each promissory note executed and delivered by Debtor to SunTrust, whether joint or several or joint and several, to repay the Secured Indebtedness or any part thereof, and any modifications, extensions or renewals thereof, including without limitation that certain promissory note, dated as of July 16, 2007 in the principal amount of \$3,860,000.00. The term "Agreement" shall mean each agreement between Debtor and SunTrust of whatever nature executed and delivered by Debtor to SunTrust in connection with any Note or the Secured Indebtedness or any part thereof.

**This Deed of Trust secures all future obligations (including future advances)** made or which may be incurred by Debtor under any Note, any Agreement and this Deed of Trust. The principal amount secured hereby on the date hereof is \$\_\_\_\_\_ (if no amount is entered, then the amount of present obligations is zero) and the maximum principal amount which may be secured hereby at any one time is \$3,860,000.00. The time period within which such future obligations may be incurred expires on the date which is fifteen (15) years from the date hereof, but in no event shall SunTrust be obligated to disburse any future loans, obligations or advances to the extent it is not obligated to do so in the Note or any Agreement. Obligations secured hereby shall not be required to be evidenced by a "written instrument or notation" as described in Section 45-68(2) of the North Carolina General Statutes, it being the intent of the parties that the requirements of Section 45-68(2) for a "written instrument or notation" for each advance shall not be applicable to obligations incurred under any Note or any Agreement.

It is understood and agreed that the Secured Indebtedness will be advanced from time to time by SunTrust in accordance with the provisions of any Note or any Agreement, each of which is incorporated herein and made a part hereof by reference to the same extent as if fully set forth herein, and it is further understood and agreed that, from time to time, repayments on account of the Secured Indebtedness may be made and SunTrust may thereafter make additional advances including re-advances of sums previously repaid, to the extent provided in any Note or any Agreement, it being understood and agreed that each and every advance made at the present or hereafter to Debtor or on behalf of Debtor or Grantor shall be deemed to be an advance made on account of the Secured Indebtedness and secured hereby unless otherwise specifically provided in the Note, Agreement or other documents evidencing such advance.

If checked, this deed of Trust secures an obligation incurred for the construction of an improvement on the aforesaid land and as such constitutes a "construction mortgage" under Section 25-9-334(h) of the North Carolina General Statutes.

Grantor represents, warrants, covenants and agrees as follows:

1. **Payment and Performance.** Grantor shall perform its obligations under and comply with the provisions of this Deed of Trust and the Note.

2. **Covenants; Warranty of Title; Payment of Taxes and Assessments; Prior Deeds of Trust or Mortgages.** Grantor (i) is lawfully seized of the Property in fee simple absolute or the leasehold estate if this Deed of Trust is on a leasehold, (ii) has the right to convey the same and (iii) conveys the Property free and clear of any liens, encumbrances, assessments or other charges except for easements, restrictions and rights of way of record specifically disclosed to SunTrust and approved by SunTrust in writing, and (iv) will warrant and defend title to the Property against all claims and demands whatsoever, subject only to the foregoing permitted encumbrances. At the time of recordation, this Deed of Trust shall be a (indicate one)  First  Second  \_\_\_\_\_ lien and encumbrance on the Property. Grantor will execute such further assurances as Trustee or SunTrust deems necessary or desirable in order to more fully vest title in Trustee. So long as any part of the Secured Indebtedness shall be unpaid, Grantor will protect the title and possession of the Property and will pay, when the same become due, all taxes and assessments now existing or hereafter levied or assessed upon the Property or the interest created by this Deed of Trust, or which by the laws of the jurisdiction where the Property is located may be levied or assessed against Trustee or its successors, or SunTrust, for or on account of the Secured Indebtedness upon this Deed of Trust or the interest in the Property thereby created, together with all sums now or hereafter owing on any senior deeds of trust or mortgages. Grantor will provide SunTrust with evidence of any such payments which from time to time may be required by SunTrust. Grantor will, at its expense, take such other action and execute such other instruments as may be necessary or desirable in the sole discretion of SunTrust to preserve and protect the lien and priority of this Deed of Trust and all other instruments evidencing or securing payment of the sums secured by this Deed of Trust.
3. **Preservation and Maintenance of Property; Environmental Requirements.** No building or other improvement shall be substantially altered, removed or demolished, except for changes which enhance its value, nor shall any fixtures or attached appliances on, in or about said buildings or improvements be severed, removed, sold or mortgaged without the prior written consent of SunTrust (provided, however, that minor non-structural changes costing not more than \$10,000 may be undertaken without such consent, and that replacement of such appliances or fixtures of equivalent value and function may be undertaken without such consent). Grantor will not commit or suffer any waste, nor permit or suffer any impairment or deterioration of the Property, or any part thereof. Grantor will at all times keep and maintain the Property and every part thereof in good condition, fit and proper for the respective purposes for which they were originally erected or installed. Grantor will comply with all statutes, orders, requirements or decrees relating to the Property, whether under federal, state, county or municipal authority, and will observe and comply with all conditions and requirements necessary to preserve and extend any and all rights, licenses, permits (including, but not limited to, zoning variances, special exceptions and nonconforming uses), privileges, franchises and concessions which are applicable to the Property or which have been granted to or contracted for by Grantor in connection with any existing or presently contemplated use of Property. Grantor will permit SunTrust or its agents to enter upon and inspect the Property at all reasonable times. SunTrust shall have the right, at Grantor's expense, to order such appraisals, reappraisals, appraisal updates or environmental inspections as SunTrust, in its sole discretion, may deem necessary from time to time.
- Grantor represents and warrants that the Property never has been, and never will be so long as this Deed of Trust remains in effect, used for the generation, collection, manufacture, storage, treatment, disposal, release or threatened release of any hazardous substance, as those terms are defined in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C., Section 9601, et seq. ("CERCLA"), Superfund Amendments and Reauthorization Act ("SARA"), applicable state laws, or regulations adopted pursuant to either of the foregoing. Grantor agrees to comply with any federal, state or local law, statute, ordinance or regulation, court or administrative order or decree or private agreement regarding materials which require special handling in collection, storage, treatment or disposal because of their impact on the environment ("environmental requirements"). Grantor agrees to indemnify and hold SunTrust harmless against any and all claims and losses and expenses and costs resulting from a breach of this paragraph and Grantor will pay or reimburse SunTrust for all costs and expenses for expert opinions, inspections or investigations required or requested by SunTrust which, in SunTrust's sole discretion, are necessary to ensure compliance with this paragraph. This obligation to indemnify shall survive the payment of the Secured Indebtedness and the release of this Deed of Trust.
4. **Insurance.** Grantor will keep the Property and the improvements thereon insured against loss by fire, casualty and other hazards (including flood damage, if the improvements are located in a special flood hazard area) as may from time to time be required by SunTrust for the benefit of SunTrust. If permitted by applicable law, Grantor will maintain such public liability and indemnity insurance as may from time to time be required by SunTrust. All such insurance shall be written in forms, amounts and by companies satisfactory to SunTrust and losses thereunder shall be payable to SunTrust pursuant to a standard noncontributing mortgagee's clause. Certificates or other proof of insurance shall be delivered to SunTrust and Grantor shall provide SunTrust with such evidence of payment of premiums due on account of such insurance as from time to time may be required by SunTrust. All

such policies shall provide for at least thirty (30) days' prior written notice to SunTrust of any cancellation or modification thereof, including without limitation, cancellation for nonpayment of premium. Grantor shall give SunTrust prompt notice of any loss covered by such insurance and SunTrust shall have the right to join Grantor in adjusting any loss. Grantor authorizes SunTrust, at SunTrust's option, to collect, adjust and compromise any losses under any such insurance policies herein referred to. Any funds received as payment for any loss under any such insurance shall be paid over to SunTrust and shall be applied, after deducting the costs of collection, at the option of SunTrust, either to the prepayment of the Secured Indebtedness or to the reimbursement of Grantor for expenses actually incurred by Grantor in the restoration or replacement of Property, or any part thereof. In the event of foreclosure of this Deed of Trust or other transfer of title to the Property all right, title and interest of Grantor, in and to any insurance policies then in force, shall pass to the purchaser or grantee, which may be, but shall not be limited to, SunTrust.

5. **SunTrust's Right to Remedy Defaults.** In the event Grantor shall neglect or refuse (a) to keep the Property in good repair and condition; (b) to pay promptly when due all taxes and assessments as described above; (c) to remove any statutory liens on the Property; (d) to keep the buildings, improvements and chattels insured as described above; (e) to deliver certificates or other proof of the policies or policy of insurance or the renewals to SunTrust as described above; (f) or if all amounts owed under the Note or indebtedness secured by any other deed of trust or other lien on the Property are not paid promptly when due, or all obligations, covenants, conditions and agreements under such deed of trust or other lien are not observed, the SunTrust may, if it elects, in addition to any other rights it may have under this Deed of Trust, with or without taking possession of the Property, make repairs as it deems necessary, pay such taxes and assessments with any accrued penalties and/or interest, pay any necessary expenses, redeem the Property which may have been sold or forfeited for taxes or assessments thereon, remove any statutory liens or encumbrances and prosecute or defend any suit in relation thereto, or insure and keep insured said buildings, improvements and chattels as provided herein, or make any payments as may be necessary to cure any default. Any sums including, without limitation, costs, expenses and attorneys' fees which may be expended by SunTrust or Trustee in so doing or otherwise for the protection or preservation of the Property or the lien of this Deed of Trust thereon, shall bear interest from the dates of such payments at the highest rate of interest being paid on the Secured Indebtedness (but in no event higher than the rate or rates permitted under applicable law), shall be paid by Grantor to SunTrust upon demand, shall become a part of the Secured Indebtedness and shall be recoverable as such in all respects. Any such liens, claims, taxes, expenses, assessments or tax titles so purchased, paid or redeemed by SunTrust shall, as between the parties hereto and their successors in interest, be deemed valid, so that in no event shall the necessity or validity of any such payment be disputed.
6. **Default, Acceleration of Payments; Trustee's Sales or Lease; Advertisement Required.** Any of the following shall constitute an event of default under this Deed of Trust: (a) Debtor's failure to make when due any installment or other payment of the Secured Indebtedness, whether of principal, interest, late charge or otherwise; (b) the death, dissolution, merger, acquisition, consolidation or termination of existence of Grantor, Debtor, any guarantor or endorser of the Secured Indebtedness or any party who has pledged any property as collateral for the Secured Indebtedness (collectively, a "Party"); (c) the insolvency of any Party, or the application for the appointment of a receiver for any Party or the filing of a petition under any provisions of the Federal Bankruptcy Code, as now or hereinafter in effect, by or against any Party or any assignment for the benefit of creditors by or against any Party; (d) the entry of a judgment against any Party or the issuance of service of any attachment, levy or garnishment against any Party or the property of any Party; (e) a determination by SunTrust that it deems itself insecure or that a material adverse change in the financial condition of any Party has occurred since the date of this Deed of Trust; (f) the failure of any Party to perform any obligation under the Note or this Deed of Trust; (g) a default under any superior or inferior lien upon the Property; or (h) the sale, transfer, conveyance or assignment of any beneficial interest in any Party, including but not limited to voting stock, partnership interests or beneficial interests in a trust, without the prior written consent of SunTrust. Upon the occurrence of any event of default regardless of whether SunTrust shall have cured such event of default on behalf of Grantor in accordance with the terms of this Deed of Trust, SunTrust may elect, without notice, to cause all the Secured Indebtedness to be at once due and payable in full, and the Trustee, or its successor in trust, as soon as reasonably practicable after requested to do so by SunTrust (i) may take possession of the Property and may make any repairs or replacements to the Property deemed necessary by Trustee or SunTrust and/or sell (and in case of default of any purchaser, resell) in whole or in part the Property at public auction at such time and place and upon such terms and conditions as Trustee may deem appropriate or as otherwise required by applicable law after first having given such notice of hearing as to commencement of foreclosure proceedings and obtained such findings or leave of court as then may be required by law and then having given such notice and advertised the time and place of such sale in such manner as then may be provided by law, and in case of any sale or resale, Trustee may require a bidder's deposit of not more than

ten percent (10%) of the sales price, but not less than \$1,000, and shall (the terms of sale having been complied with) execute a deed or deeds, assignment and transfer of title to the Property to the purchaser; at any such sale or resale, SunTrust may bid and become the purchaser of the Property; and (ii) may revoke any license granted to Grantor to collect and apply rents, issues and profits and may take possession of the Property and may lease the Property either pending sale or until the amount of the Secured Indebtedness is paid and may deduct from rents received all costs of collection, repair, replacement and administration and apply the net proceeds to the Secured Indebtedness. The Trustee is hereby empowered to bring in its name, or in the name of SunTrust, any suit or action it deems advisable for the enforcement of the provisions of this clause, but the Trustee and the SunTrust shall be in no way personally liable under any of the provisions of such lease or of this clause, and shall not be personally liable to any person by virtue of their possession of the Property or by virtue of their acting under any provisions of this clause, except to the extent of accounting for rents actually received by them.

The Trustee shall be entitled to a commission of 5% of the gross proceeds of sale for a completed foreclosure. In the event foreclosure is commenced, but not completed, the Grantor shall pay all expenses incurred by Trustee, including reasonable attorneys' fee, and a partial commission computed on 5% of the outstanding indebtedness in accordance with the following schedule, to wit: one-fourth thereof before the Trustee issues a notice of hearing on the right to foreclosure; one-half thereof after the issuance of said note; and three fourths thereof after such hearing; and the full commission after the initial sale.

The proceeds of any sale of the Property by Trustee shall be applied by Trustee: First, to pay all proper costs and charges, including but not limited to court costs, advertising expenses, auctioneers' allowances, the expenses, if any, required to correct any irregularity in the title, auditors' fees, attorneys' fees, cost of repairs or replacements, and all other expenses of sale incurred in and about the protection and execution of this Deed of Trust, and a trustee's commission of five percent (5%) of the amount of gross proceeds of said sale or sales, and attorneys' fees and expenses of any litigation which may arise on account of the execution and enforcement of this Deed of Trust or the Note; Second, to pay all taxes and assessments due upon said land and premises at time of sale; Third, to pay and satisfy all the Secured Indebtedness, interest and all other charges hereby secured then remaining unpaid, and interest thereon to date of payment, whether the same shall be due or not, it being understood and agreed by Grantor that the amounts due under the Note shall, upon such sale being made before the maturity thereof, be and become immediately due and payable at the election of SunTrust; and Fourth, to pay the remainder of said proceeds, if any to any person lawfully entitled thereto. If after so applying such proceeds, any portion of the Secured Indebtedness shall remain unpaid, such balances shall continue to be due and payable, and shall be subject to collection by SunTrust by suit or otherwise. In the event the Property shall be advertised for sale as provided above but be withdrawn from sale or for any other reason not sold, Trustee shall be entitled to one-half of the commission above provided to be computed on the amount of the debt hereby secured or so much thereof as remains unpaid, including any advances, re-advances and accruals, and any fees of attorneys or auctioneers, and any other expenses shall be charged to and paid by Grantor.

In addition, in the event of default, SunTrust shall have all rights and remedies permitted by law and by any document evidencing, governing, or securing the obligations secured by this Deed of Trust.

7. **Substitute Trustee.** SunTrust has the irrevocable right and power to substitute without cause or notice a trustee or trustees in the place of any Trustee named under this Deed of Trust. Such power of appointment and substitution may be exercised at any time and as many times as SunTrust, its successors or assigns, may desire. Such substitute Trustee(s) shall be vested with the same titles and powers as are granted to the original Trustee. Nothing shall deprive SunTrust of its right to apply for and receive any relief regarding the Trustee which is now, or which may be, provided for by the internal laws of the jurisdiction in which the Property is located or applicable federal law.
8. **Condemnation.** Grantor irrevocably grants, assigns, transfers and sets over unto SunTrust all right, title and interest of Grantor in and to any award or payment made (not to exceed the outstanding Secured Indebtedness including, without limitation, accrued interest, and costs, expenses, reasonable attorneys' fees, and disbursements incurred by SunTrust in connection with collection of such award and payment) in respect of (a) any taking of the Property or any part thereof as a result of, or by agreement in anticipation or in lieu of, any exercise of the power of eminent domain or condemnation; and (b) any such taking of any appurtenances to the Property; and (c) any damage to the Property or any part thereof due to governmental action affecting, but not resulting in a taking of, the Property, including, by way of example and not by way of limitation, the changing of the grade of a street adjacent or proximate to the Property. Grantor agrees to promptly notify SunTrust of the commencement of any condemnation or eminent domain proceeding. Grantor further agrees, upon request, to make, execute and deliver any assignments or other instruments necessary for the purpose of assigning or transferring any such award or awards to SunTrust free and clear of any encumbrances. The excess amount of such award over and above sums

due SunTrust on account of the Secured Indebtedness, interest and other charges, shall be paid to Grantor, its successors and assigns.

9. **Restrictions on Transfer of Property; No Secondary Financing; Mechanics' Liens.**  
**NOTICE - THE DEBT SECURED HEREBY IS SUBJECT TO CALL IN FULL OR THE TERMS THEREOF BEING MODIFIED IN THE EVENT OF SALE OR CONVEYANCE OF THE PROPERTY.**
- a. If all or any part of the Property is sold, transferred, conveyed or encumbered without SunTrust's prior written consent, SunTrust may, at its option, require immediate payment in full of all sums secured by this Deed of Trust and exercise all remedies provided in this Deed of Trust in the event of default. However, this option shall not be exercised by SunTrust if exercise is prohibited by federal law as of the date of this Deed of Trust. SunTrust reserves the absolute option and right, if permitted by applicable law, among other things, to require the agreement by Grantor and Grantor's transferee to any terms and conditions that SunTrust may require upon transfer, increase the rate of interest upon transfer, and charge an assumption fee.
  - b. To the extent permitted by applicable law, Grantor shall not voluntarily or otherwise permit to be created or filed against the Property, without the prior written consent of SunTrust in each instance, any other deed of trust or mortgage or other lien or liens inferior or superior to the lien of this Deed of Trust.
  - c. Grantor will keep and maintain the Property free from all liens arising by virtue of all persons supplying labor performed on or materials incorporated in or on the Property, notwithstanding by whom such labor or materials may have been contracted, and if any liens in respect to such labor or materials are filed against the Property, Grantor shall cause the lien to be released completely of record either by payment and discharge or by the posting of a collateral bond or other substitute collateral in accordance with applicable laws within twenty (20) days of the filing of the lien, and Grantor will make all payments on all liens permitted herein (if any), when due.
10. **Assignment of Rents.** Grantor hereby assigns unto SunTrust or its successors all leases of the Property and the rents, issues and profits accrued and to accrue from all Leases and tenants of the Property or any part thereof, during the term of this Deed of Trust, or any extensions thereof. Until and unless revoked by the SunTrust, Grantor shall have a license to manage and operate the Property and to collect and apply to its own account all rents, issues and profits as they become due, but no more than one month in advance. SunTrust may revoke this license at any time, in its sole and absolute discretion. SunTrust shall give the Grantor notice of any demand for rents made against tenants of the Property contemporaneously with the giving of notice to tenants. Grantor will not execute any assignment of the rents, issues and profits from the Property or any part thereof unless such assignment shall provide that it is subordinate to the assignment of rents set forth in this Deed of Trust and any other assignments executed pursuant to or in conjunction with this Deed of Trust.
11. **Notice of Adverse Claim of Lien.** If Grantor receives any notice or other instrument which might materially adversely affect the Property or the lien of this Deed of Trust, Grantor will furnish, within three (3) days following such receipt, by certified mail, a copy of such notice or other instrument to SunTrust. The notices referred to herein shall include, but not be limited to, notices from any tenant or lessee claiming a default by Grantor under any lease or occupancy agreement, any notice by any public authority concerning any tax or special assessment; and any notice of any alleged violation of any building, zoning, fire or other law or regulation affecting the Property.
12. **Remedies Cumulative; Forbearance by SunTrust/Trustee Not a Waiver.** All remedies available to SunTrust or the Trustee with respect to this Deed of Trust or under any instrument evidencing, governing or securing the Secured Indebtedness, including, but not limited to, any other deeds conveying other property in trust to secure payment of the obligations secured hereunder, or provided by law or in equity or by any statute, or otherwise, shall be cumulative and may be pursued concurrently or successively. Grantor, for itself and all who claim under it, waives to the extent that it lawfully may, all right to have the Property marshalled upon any sale or foreclosure hereunder. No delay or omission of Trustee or SunTrust to exercise any right, power or remedy shall impair any such right, power or remedy, or shall be construed to be a waiver of any default or any acquiescence therein. No delay or omission on the part of SunTrust to exercise any option granted for acceleration of the maturity of the Secured Indebtedness or for foreclosure following any default or any other option granted to SunTrust hereunder in any one or more instances, or tender to and/or acceptance by SunTrust of any partial payment on account of Grantor's or Debtor's obligations shall constitute a waiver of any such default or operate to rescind any such acceleration and each such option shall remain continuously in full force and effect.
13. **Hold Harmless.** Grantor shall save SunTrust and Trustee harmless from all costs and expenses, including reasonable attorneys' fees and costs incurred by reason of any action, suit, proceeding, hearing, motion or application before any court or administrative body in and to which SunTrust and/or Trustee may be or become a party by reason of this Deed of Trust, including, but not limited to, condemnation, bankruptcy, probate and

- administration proceedings, as well as any of the foregoing wherein proof of claim is by law required to be filed or in which it becomes necessary to defend or uphold the terms or priority of this Deed of Trust, and all money paid or expended by SunTrust or Trustee in that regard, together with interest thereon from date of such payment at the highest rate of interest being charged on the Secured Indebtedness (but in no event higher than the rate or rates permitted under applicable law), shall be immediately and without notice due and payable by Grantor, shall become a part of the Secured Indebtedness and shall be recoverable as such in all respects.
14. **Trustee's Authority.** Trustee or any person acting in its stead shall have, at its discretion, authority to employ all proper agents and attorneys in the execution of this Deed of Trust, and pay for such services rendered out of the proceeds of the sale of the Property, should any be realized; and if no sale be made, then Grantor hereby undertakes and agrees to pay to Trustee the cost of such services rendered. If from time to time more than one Trustee or substitute Trustee shall have been appointed, then any one Trustee or substitute Trustee may act for all such Trustees and/or Substitute Trustee(s).
  15. **Governing Law.** This Deed of Trust, without regard for the place of contract, advance of funds or payment, shall be governed, construed and enforced according to the laws of the state of North Carolina
  16. **Severability of Provisions.** In the event any one or more of the provisions of this Deed of Trust or of the Note shall for any reason be held to be invalid, illegal or unenforceable, in whole or in part or in any respect, or in the event any one or more of the provisions of this Deed of Trust or of the Note operate or would prospectively operate to invalidate this Deed of Trust, then and in any of those events, at the option of SunTrust, such provision or provisions shall be severable and shall not affect any other provision of this Deed of Trust or of the Note or the validity of Grantor's or Debtor's other obligations and the remaining provisions of this Deed of Trust or of the Note shall remain operative and in full force and effect and shall in no way be affected, prejudiced or disturbed thereby.
  17. **Waiver of Notice of Future Advances and Consent to Extensions, Modifications and Release.** If Grantor (or any one or more of the parties constituting Grantor) is not the Debtor, then Grantor expressly (a) waives notice of any and all loans and/or advances made from time to time during the continuance of this Deed of Trust by the SunTrust to Debtor (or any one or more of the parties constituting Debtor); (b) agrees that modifications of the terms of the Note, including without limitation, modifications extending the term for payment or adjusting the interest rate applicable to the Secured Indebtedness, may be made from time to time between SunTrust and Debtor without notice or consent of Grantor; (c) agrees that SunTrust, without notice to or further consent of Grantor, may grant extensions of time and other indulgences to and renew any of the obligations of Debtor without regard to the number and length of such extensions, renewals or other indulgences. Grantor further agrees that SunTrust without notice to or further consent of Grantor, may release or discharge any persons who are or may be liable for the payment of the Note or release or discharge any collateral for payment of the Secured Indebtedness and that any such release or discharge shall not alter, modify, release or limit the liability of Grantor (or any one or more of the parties constituting Grantor) or the validity or the enforceability of this Deed of Trust; and (d) agrees that SunTrust may exercise its rights under this Deed of Trust prior to taking any action against the Debtor.
  18. **Release of Deed of Trust.** Upon payment of the Secured Indebtedness and the performance of all the covenants and conditions, Trustee and/or SunTrust shall release and discharge, at the expense of the Grantor if permitted by law, this Deed of Trust and the liens, security interests and assignments created by this Deed of Trust.
  19. **Time is of the Essence.** Time shall be of the essence for each and every provision of the Note, this Deed of Trust and all other documents, agreements and contracts evidencing, securing or governing the obligations secured hereby.
  20. **References; Applicability.** All references in the foregoing covenants to SunTrust shall apply equally to any subsequent holder or assignee of the Note.
  21. **Titles.** The titles contained in this Deed of Trust are for reference purposes only and shall not affect the meaning or interpretation of this Deed of Trust.
  22. **Designations.** In any designation hereunder, the use of one gender shall include any other gender wherever the same may be appropriate, and the plural shall be substituted for the singular or the singular substituted for the plural in any place in which the context may require such substitution.
  23. **Riders to this Deed of Trust.** The terms and conditions of any rider executed by Grantor and recorded together with this Deed of Trust shall be incorporated into and shall amend and supplement the covenants and agreements of this Deed of Trust as if the rider is a part of this Deed of Trust.  A \_\_\_\_\_ Rider is attached to this Deed of Trust.

Grantor has caused this Deed of Trust to be signed and delivered as of the date first written above.

Signature(s) of Individual Grantor(s)

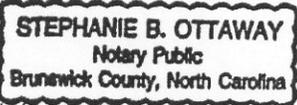
Signature(s) of Non-Individual Grantor(s)

\_\_\_\_\_  
 Signature (Seal) Hampstead MedPro Partners, LLC  
 Grantor  
 Name, printed or typed By: Gregory L. Brock  
 \_\_\_\_\_  
 Signature (Seal) Gregory L. Brock, MANAGER  
 Name and title, printed or typed  
 \_\_\_\_\_  
 Name, printed or typed Hampstead MedPro Partners, LLC  
 Grantor  
 \_\_\_\_\_  
 (Seal) By: \_\_\_\_\_  
 \_\_\_\_\_  
 Name, printed or typed Name and title, printed or typed

New Hanover County, North Carolina

I certify that the following persons(s) personally appeared before me this day, each acknowledging to me that he or she voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated: MANAGER OF HAMPSTEAD MEDPRO PARTNERS LLC

Date: 7-16-07  
 (Official Seal) Stephanie B. Ottaway  
STEPHANIE B. OTTAWAY, Notary Public  
 My commission expires: 7-15-2010



\_\_\_\_\_ County, North Carolina

I certify that the following persons(s) personally appeared before me this day, each acknowledging to me that he or she voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated: \_\_\_\_\_

Date: \_\_\_\_\_  
 (Official Seal) \_\_\_\_\_, Notary Public  
 My commission expires: \_\_\_\_\_

\_\_\_\_\_ County, North Carolina

I certify that the following persons(s) personally appeared before me this day, each acknowledging to me that he or she voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated: \_\_\_\_\_

Date: \_\_\_\_\_

\_\_\_\_\_, Notary Public

(Official Seal)

My commission expires: \_\_\_\_\_

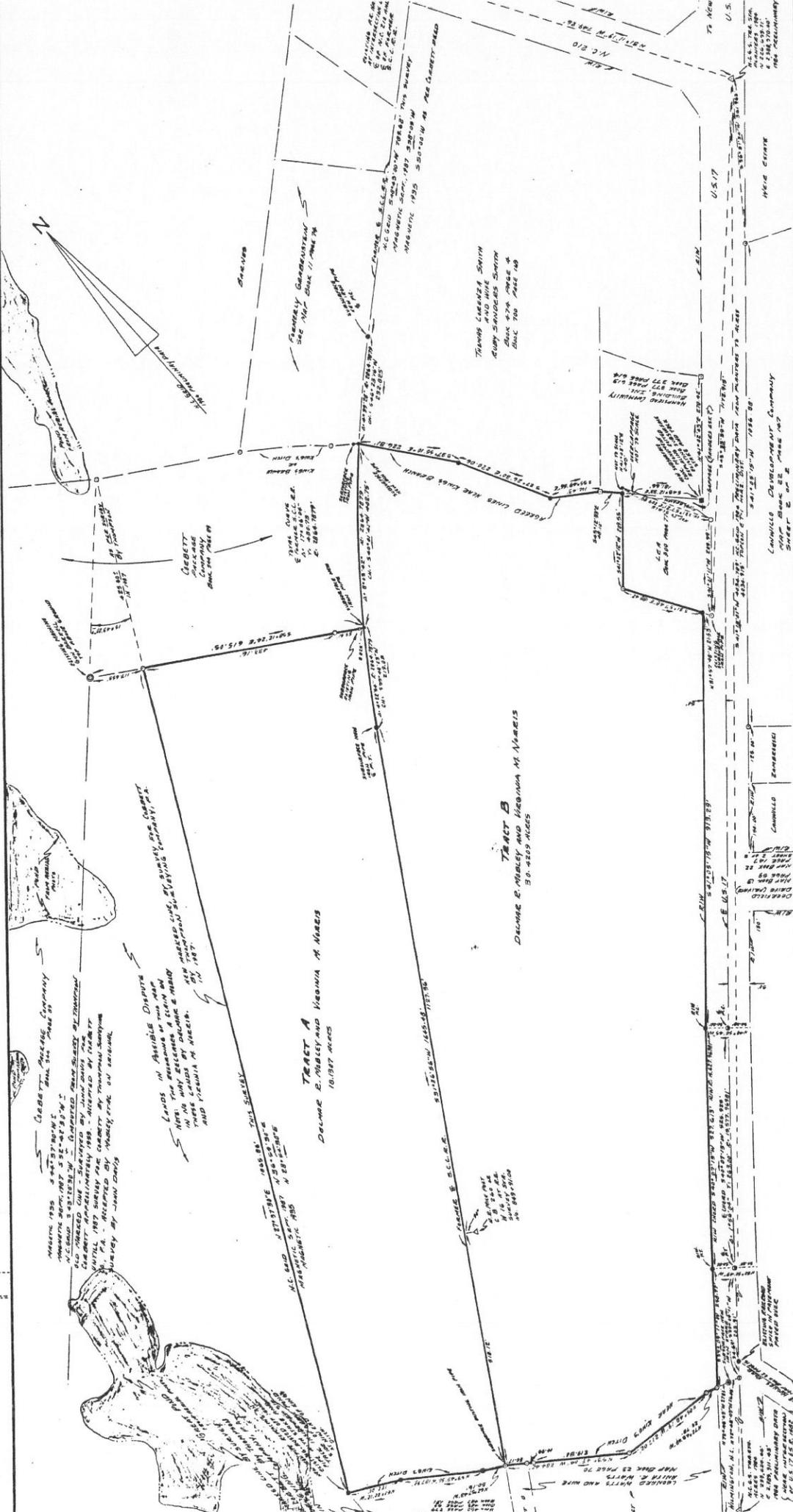
## Exhibit A

Exhibit A to attached Deed of Trust, dated 7/16/07, by Hampstead MedPro Partners, LLC  
("Grantor").

## Legal Description

Beginning at a point in the northwestern right of way line of US Highway 17; said point marking the most southern corner of Tract B as shown on a map entitled "Map of Survey for Delmar R. Mobley and Virginia M. Norris" recorded in Map Book 23, Page 93, of the Pender County Registry; running thence from said beginning point with the north western right of way line of US Highway 17 North 39 degrees 09 minutes 11 seconds East 199.91 feet, more or less, to a point marking the most southern corner of a tract conveyed to Theodore Piekut and wife, Dorothy Piekut, in Book 1365, Page 034, of the Pender County Registry; running thence with the southwestern line of said Piekut Tract North 49 degrees 52 minutes 47 seconds West 402.11 feet to a point marking the most western corner of said Piekut Tract and located in a common line of a tract conveyed to William R. Howard in Book 1280, Page 335, of the Fender County Registry; running thence with and along said line of the Howard Tract, South 39 degrees 56 minutes 21 seconds West 350.90 feet, more or less, to a point located in the most southern corner of said Howard Tract and located in the southwestern line of Tract B of the Mobley/Norris Property, running thence with said southwestern line of Tract B South 53 degrees 42 minutes 04 seconds East 205.41 feet, and South 72 degrees 48 minutes 49 seconds East 25.73 feet to the point of beginning.

The same being a portion of Tract B of the Mobley/Norris Property as shown on said map recorded in Map Book 23, Page 93 of the Fender County Registry.



**MAP OF SURVEY**  
 FOR  
**DELCHAE R. HOBLEY and VIRGINIA M. HOBLEY**  
 TOWNSHIP 1787  
 PEACOCK COUNTY NORTH CAROLINA  
 SURVEYED AND MAPPED 1987 SCALE 1" = 400'  
 JOHNIE C. GARRASON, REGISTERED LAND SURVEYOR NO. L-1347  
 WILMINGTON, NORTH CAROLINA, 28403

**LEGEND AND NOTES**

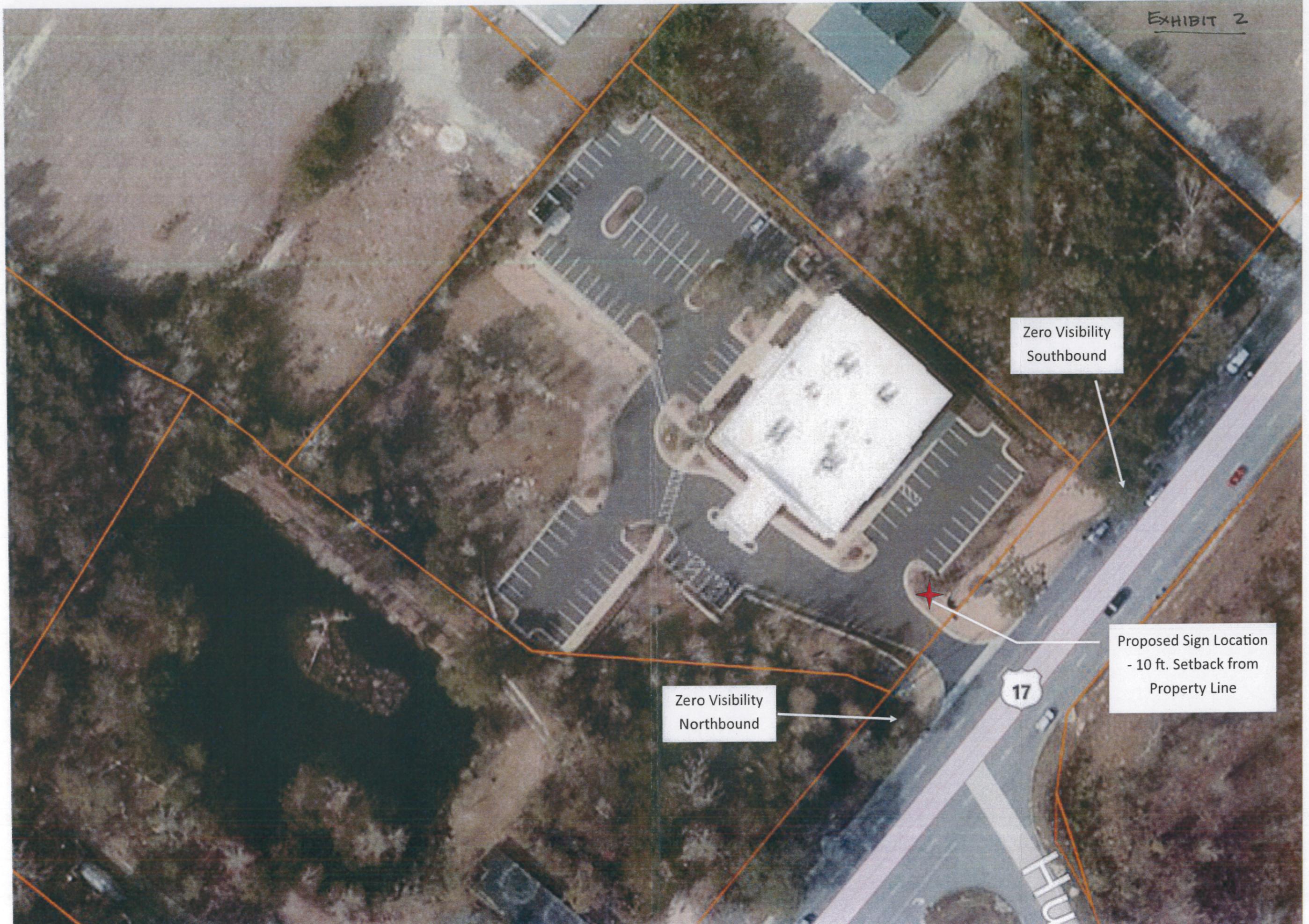
- 1. EXISTING CONCRETE MONUMENT (TOP SURFACE OF CONCRETE)
- 2. NEW CONCRETE MONUMENT (SURFACE)
- 3. EXISTING IRON PIPE (TOP SURFACE WITH BOUNDING)
- 4. EXISTING IRON PIPE (TOP SURFACE WITH BOUNDING)
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- 19. EXISTING IRON PIPE (TOP SURFACE WITH BOUNDING)
- 20. EXISTING IRON PIPE (TOP SURFACE WITH BOUNDING)

**ALIGNMENT LEGEND**

- 1. POINT ON TANGENT (LINE)
- 2. POINT ON TANGENT (LINE)
- 3. POINT ON TANGENT (LINE)
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- 18. POINT ON TANGENT (LINE)
- 19. POINT ON TANGENT (LINE)
- 20. POINT ON TANGENT (LINE)

**NOTARY PUBLIC**  
 JOHNIE C. GARRASON  
 WILMINGTON, NORTH CAROLINA

**LOCATION MAP** - SCALE 1" = 2 MILES  
 NORTH CAROLINA  
 PEACOCK COUNTY  
 TOWNSHIP 1787  
 RANGE 1000 E  
 SECTION 36  
 DELCHAE R. HOBLEY and VIRGINIA M. HOBLEY  
 SURVEYED AND MAPPED 1987  
 JOHNIE C. GARRASON, REGISTERED LAND SURVEYOR NO. L-1347  
 WILMINGTON, NORTH CAROLINA, 28403



Zero Visibility  
Southbound

Proposed Sign Location  
- 10 ft. Setback from  
Property Line

Zero Visibility  
Northbound

17

HUN

EXHIBIT 3



Northbound view  
from property



Southbound view  
from property



Hwy 17 Southbound -  
 Building on Right Ahead

8/20/2014

<https://apps.dot.state.nc.us/ContactUS/Confirmation.aspx>**EXHIBIT 5****NCDOT - North Carolina Department of Transportation****Division 3****Instructions**

1.  this page (or write down the Tracking Number and URL displayed below) and keep it for your records.
2. If you have provided us a valid email address, within seven business days you will receive an email with instructions for how to view the response to your comment. Note: If you choose to submit a comment anonymously, you will not receive this email notification. In order to receive an email notification, you must enter your email address in the Email field.  
Make sure you retain the tracking number and the URL to your comment for future use, when submitting a comment anonymously.
3. If you do not receive an email within seven business days, please go to the URL listed below.

**Tracking Number:** 83G5T2N9W**URL:** [Response.aspx?TrackingNumber=83G5T2N9W&UserEmail=ecaveness@ec.ir.com](https://apps.dot.state.nc.us/ContactUS/Response.aspx?TrackingNumber=83G5T2N9W&UserEmail=ecaveness@ec.ir.com)**User Information****Name:** ELIZABETH CAVENESS **Phone:** (910)520-2248 **Email:** [ecaveness@ec.ir.com](mailto:ecaveness@ec.ir.com)**Message Detail****Sent By:** ELIZABETH CAVENESS **Date/Time:** 8/20/2014**Comment:**

I am an owner of the Beacon Building located at 14057 Hwy 17 Hampstead, NC. We have a sign that was made in 2007 when the building was built but the county said the sign had to be placed 15 feet from the property line. The property line is about 15 or 20 feet from the road. The placement of the sign that far from the road would put it in our parking lot and not be visible from the road. We would like permission to place the sign in the right of way. The neighboring properties have dense vegetation on the cause the building to be hidden until you almost pass it. We would not put the sign close to the road, but in a location to make it visible. Thank you.

PERMIT PROCEDURES

Permits Required

No person shall erect and/or maintain any outdoor advertising within 660 feet of the nearest edge of the right of way of the controlled route, including outdoor advertising mounted on trailers or skids, without first obtaining a permit from the Department of Transportation. The following signs do not require permits: on-premise signs; official signs and notices; public utility signs; service club and religious notices; and public service signs.

The district engineer of the Division of Highways of the Department of Transportation for the county in which the outdoor advertising structure is proposed to be located is authorized to issue permits on behalf of the Department of Transportation.

A permit will not be issued for any unlawful outdoor advertising structures as determined by the North Carolina Outdoor Advertising Control Act (G.S. 136-126 et seq.) and the rules and regulations promulgated by the Department of Transportation pertaining to outdoor advertising structures (Title 19A NCAC 2E.0200).

The permit requirements contained herein are in addition to any permit or licensing requirements of local governing bodies, or other state agencies.

Application

No permit shall be issued until an application has been completed for each separate outdoor advertising structure and submitted to the appropriate district office along with the required initial fee and attachments as noted in 19A NCAC 2E.0206. Incomplete applications will be returned to the applicant.

Applications for a permit to erect and/or maintain an existing outdoor advertising device may be obtained from the Division of Highways' district engineer who has jurisdiction over the county in which the sign is located. The district offices for each county are shown as an Exhibit. Questions about outdoor advertising should be directed to the appropriate district office.

Instructions for completing and processing the application are included on the permit form. A sample permit application is also included as an Exhibit.

Fees

Initial application and annual renewal fees shall be paid by the owners of the outdoor advertising structures for each permit requested.

An initial non-refundable fee of one hundred twenty dollars (\$120.00) per outdoor advertising structure shall be submitted with each application. Annual renewal fees of sixty dollars (\$60.00) per sign structure shall be paid by the owners of the outdoor advertising structures by April 15th of each year. If requested by the district engineer, the sign owner must provide a valid lease or other proof of interest in the land where the sign is located.

Permit and Permit Emblem

The erection of new outdoor advertising structures shall not commence until a permit has been approved and the emblem issued. The permit emblem must be placed on the outdoor advertising in such a position as to be visible and readable from the main traveled way of the controlled route.

Any person, firm or corporation owning or maintaining outdoor advertising shall affix the name of the sign owner to the sign structure in sufficient size to be clearly visible from the main traveled way of the controlled route.

SIGNS ON HIGHWAY RIGHT OF WAY

Those signs erected on highway right of way do not fall under the controls of the act. However, they are in violation of the following General Statute and/or North Carolina Administrative Code.

19A NCAC 2E.0415 provides it shall be unlawful for any person, firm or corporation to erect or place any advertising or other sign, except regulation traffic and warning signs approved by the Department of Transportation, on any highway or the right of way thereof, or so as to overhang the right of way, or to permit the erection or placing of any advertising or other sign, as herein prohibited, on any highway right of way which is situated over any land owned, rented, leased or claimed by such person, firm or corporation. It shall be unlawful for any person, firm or other corporation that has erected or placed, any advertising or other sign, as herein prohibited, or for any person, firm or corporation owning, renting, leasing or claiming any land over which a highway or highway right of way is situated and on which highway or highway right of way any advertising or other sign has been erected or placed, to allow such advertising or other signs to remain on state highway or right of way thereof.

SCENIC BYWAYS

Outdoor advertising is prohibited adjacent to any highway designated as a Scenic Byway by the NC Board of Transportation after the date of designation. (Ref. NCAC 2E.0224) The routes are clearly marked with highway signs and the Scenic Byways logo. A list of specific routes is available from the appropriate district engineer or may be viewed at the NC Scenic Byway web site at: [www.doh.dot.state.nc.us/operations/dp\\_chief\\_eng/roadside/scenic](http://www.doh.dot.state.nc.us/operations/dp_chief_eng/roadside/scenic)

## Lindsey Hess

---

**From:** Racine, Douglas W <dracine@ncdot.gov>  
**Sent:** Thursday, August 21, 2014 11:09 AM  
**To:** Lindsey Hess  
**Cc:** Grady, Don H  
**Subject:** RE: Request for Sign in DOT ROW  
**Attachments:** Signs in the Right of Way.pdf

Ms. Hess,

Per our conversation earlier NCDOT will not allow signs in the NCDOT Right of Way. I have attached the regulation from the August 2000 Outdoor Advertising Manual covering signs in the right of way. If you have any questions, please contact me.

Thank You,  
Douglas W. Racine  
Journey Engineering Technician  
North Carolina Department of Transportation  
295 Wilmington Hwy. Suite A  
Jacksonville, NC 28540  
(910)-346-2040

---

**From:** Lindsey Hess [mailto:lindsey@capefearcommercial.com]  
**Sent:** Thursday, August 21, 2014 10:59 AM  
**To:** Racine, Douglas W  
**Cc:** Elizabeth Caveness (beth.caveness@gmail.com)  
**Subject:** Request for Sign in DOT ROW

Mr. Racine,

I am the Asset Manager for the property located at 14057 US Hwy 17, Hampstead, NC, the Beacon Building. I have copied Beth Caveness on this email, she is a Managing Partner/Owner of the property.

This property was built in 2008 and at that time, a sign was constructed to be installed at the property at the cost of \$5,000+/- . We are requesting permission to place the sign in the DOT ROW as the property suffers from zero visibility from Hwy 17 both North and South bound. The neighboring properties have thick tree cover and brush which extends just a few feet from the highway (as seen in attached photos and map).

Please let us know if this would be possible or if you need more information. I appreciate your time and consideration.

Best Regards,

Lindsey E. Hess



1051 Military Cutoff Road, Suite 200

Wilmington, NC 28405  
910.344.1000 (main)  
910.344.1016 (direct)  
910.344.1036 (fax)  
[lindsey@capefearcommercial.com](mailto:lindsey@capefearcommercial.com)  
[www.capefearcommercial.com](http://www.capefearcommercial.com)

Per NC Real Estate Law, we ask you to review "*Working with Real Estate Agents*", or if this is a lease transaction, "*Working with Real Estate Agents [Lease Transaction]*". After you have reviewed the applicable publication, please schedule a meeting with us to discuss the contents of the publication.

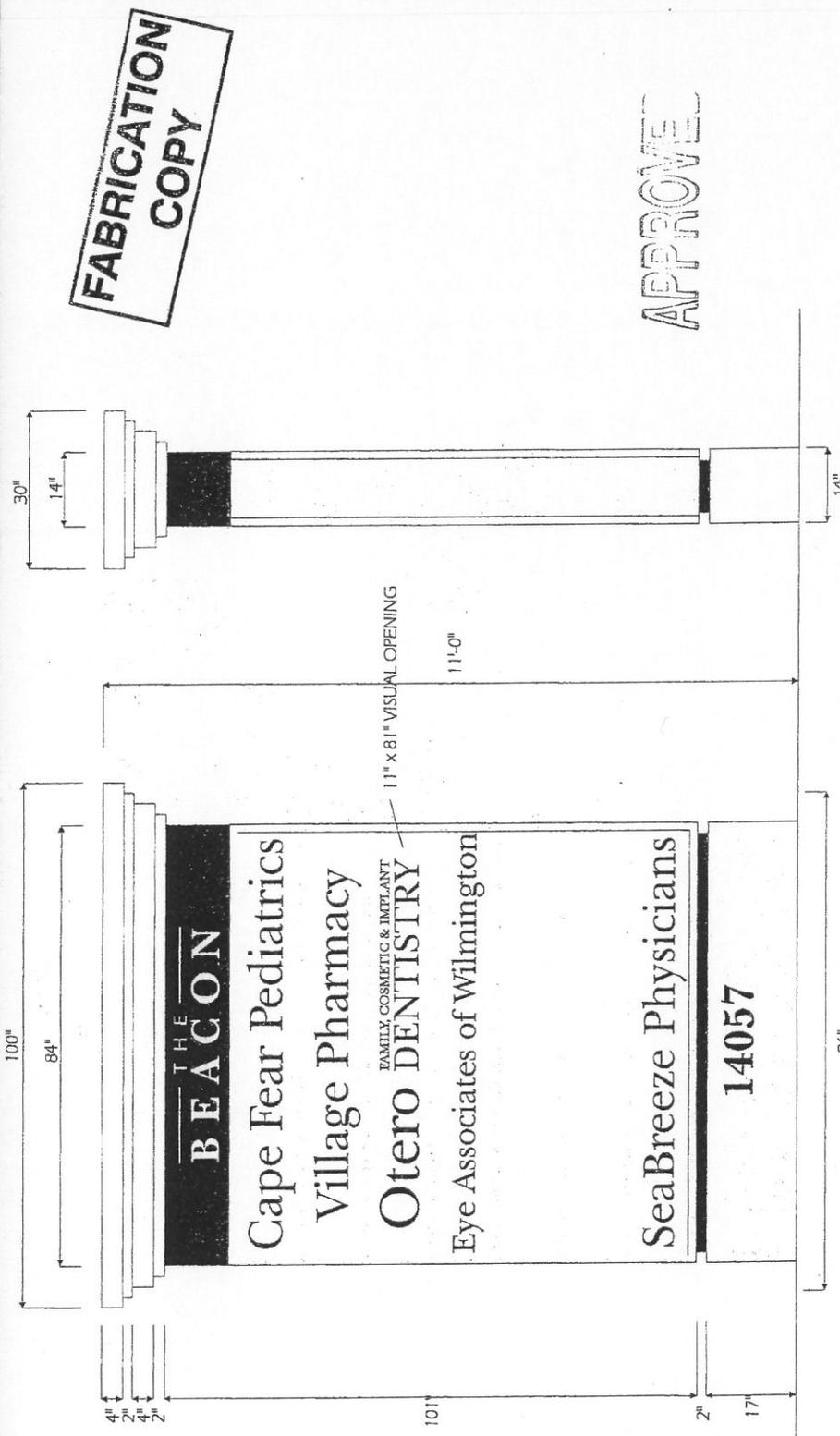
CONFIDENTIALITY STATEMENT

This email transmission contains information from Cape Fear Commercial, LLC., which is privileged and confidential. It is intended only for the use of the addressee(s) shown above. If you are not the intended recipient, you are hereby notified that any dissemination, distribution, or copying of such information is strictly prohibited. If you have received this e-mail in error, please immediately notify us by reply e-mail or telephone (collect call accepted). Thank you.

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Email correspondence to and from this sender is subject to the N.C. Public Records Law and may be disclosed to third parties.

# MONUMENT SIGN



**FABRICATION COPY**

**APPROVED**

QTY 1) DOUBLE FACE NON-ILLUMINATED SIGN CONSTRUCTED FROM ALUMINUM WITH A STEEL SUB FRAME. TENANT SECTION TO HAVE WHITE ALUMINUM FACES WITH DIVIDER BARS. TENANT PANELS TO HAVE APPLIED BLACK HP VINYL GRAPHICS. TOP SECTION TO HAVE APPLIED WHITE HP VINYL TO BLACK PAINTED BACKGROUND. TENANT CABINET TO BE PAINTED BEIGE. CAP TO BE CONSTRUCTED FROM SIMULATED PRECAST CONCRETE PAINTED WHITE. 2" REVEAL TO BE PAINTED BLACK. ALUMINUM SKIRT TO BE PAINTED BEIGE. ADDRESS NUMBERS TO BE APPLIED WHITE HP VINYL TO SIDE OF CABINET FACING HWY 17.

**The Sign Company**  
 DESIGN - FABRICATION - SERVICE - INSTALLATION  
 910-392-1414 FAX: 910-392-2726

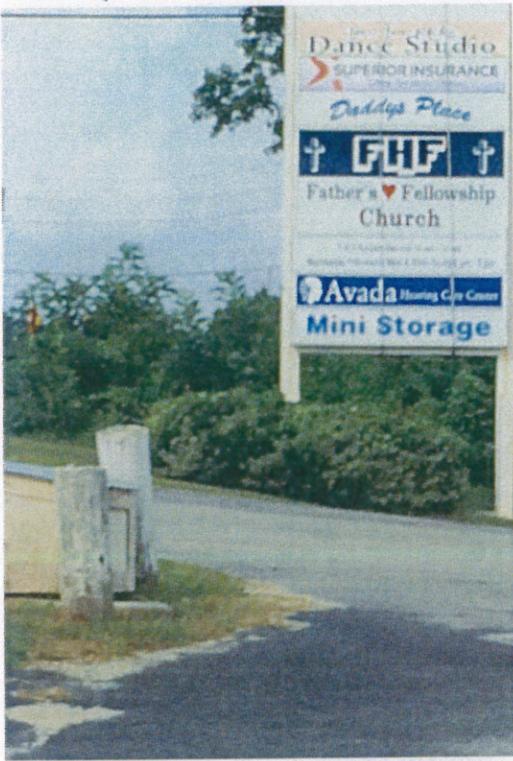
This Layout is The Property of TSCW. It Has Been Submitted For Your Personal Review In Connection With A Project Being Planned For You By TSCW. It is NOT To Be Shown To Anyone Outside YOUR Organization Nor Is It To Be REPRODUCED, COPIED Or EXHIBITED In Any Fashion. Violators Will Be Fined \$750.00, Unless TSCW Has Been Compensated For The Layout Or Written Permission Has Been Granted.

DRAWN BY: JAW/KFR REV  
 SCALE: 3/8" = 1'-0"  
 APPROVED BY:

OAKS CONSTRUCTION  
 HAMPSTEAD, NC

DRAWING NO: 081408-190  
 DATE: AUGUST 29, 2008  
 FILE: HAMPSTEAD\_MED\_10.CDR

PMS COLORS ARE INK OFFERINGS AND IN MOST CASES CANNOT BE ACCURATELY REPRODUCED. WHEN NECESSARY TO FURNISH PMS COLORS, TSC CANNOT ASSUME RESPONSIBILITY FOR THE DIFFERENCE IN PAINT COLOR AND PMS COLOR. WE WILL HOWEVER TRY TO PROVIDE YOU WITH THE CLOSEST MATCH POSSIBLE.



Other nearby properties with special variances









**Applicant:**  
Lindsey Hess

**Owner:**  
Hampstead Medpro  
Partners, LLC

**ZMA Case #**  
11249

**Legend**

Subject Parcel

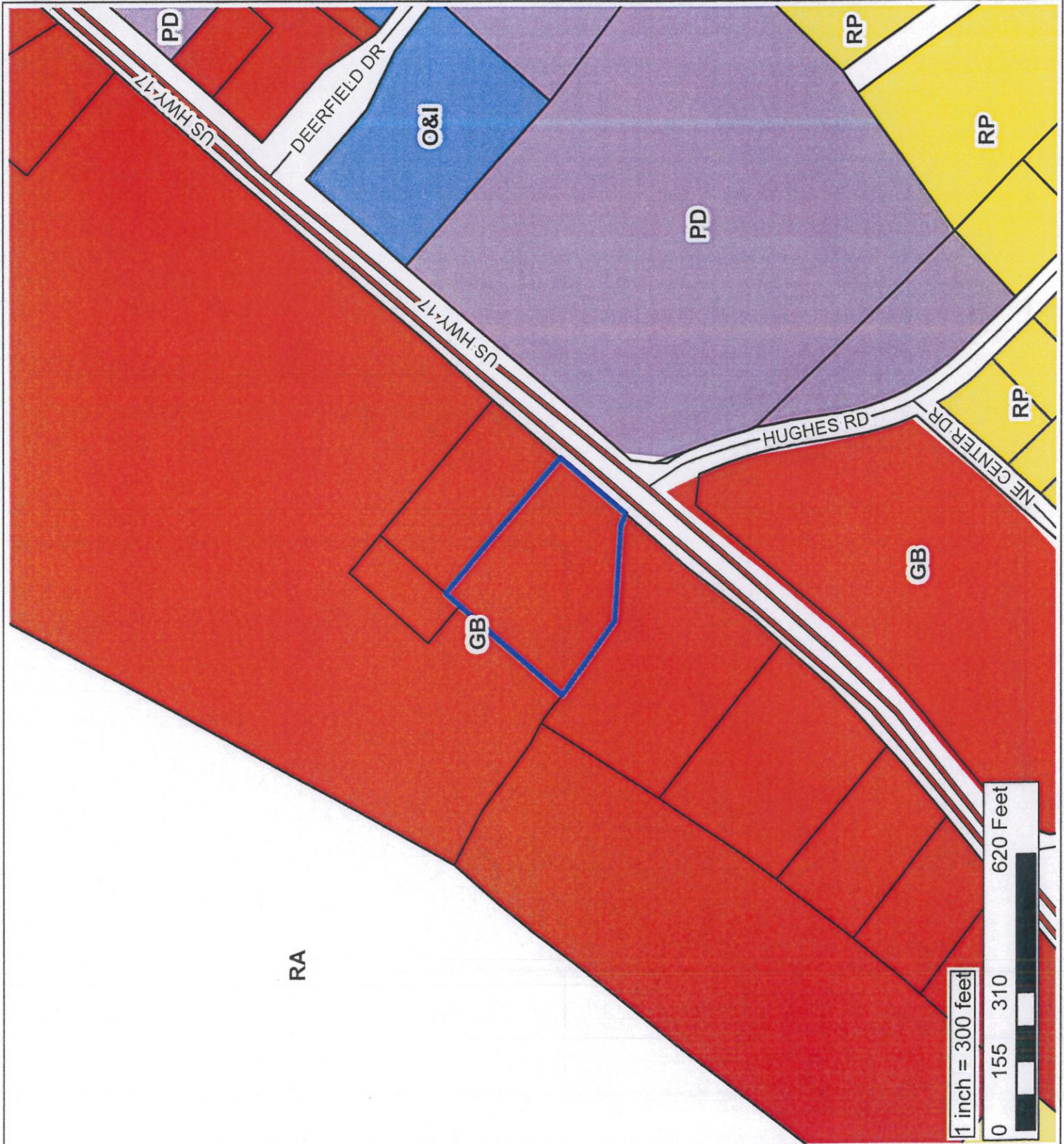
**Zoning Classification**

**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:**  
Lindsey Hess

**Owner:**  
Hampstead Medpro  
Partners, LLC

**ZMA Case #**  
11249

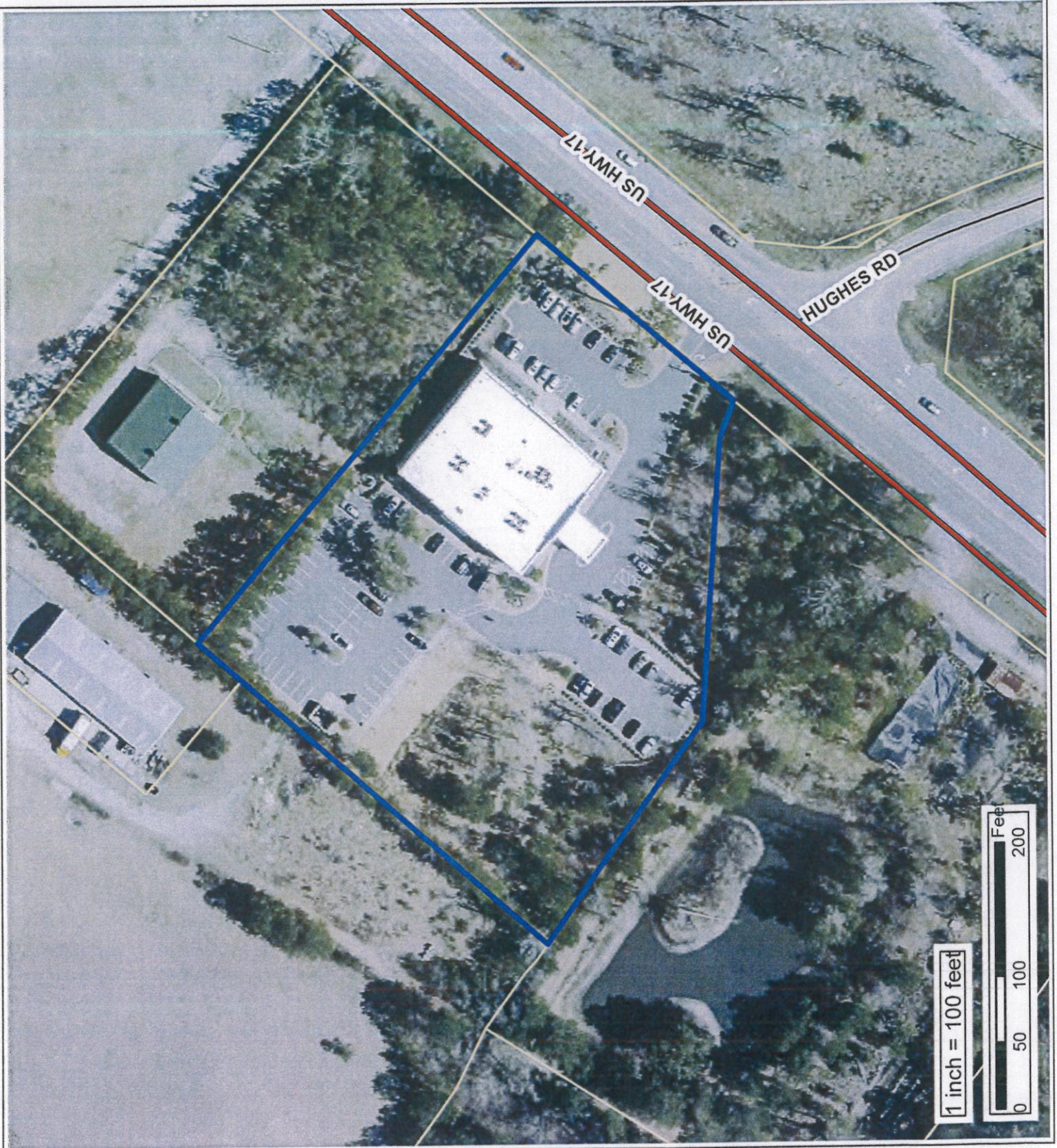
**Legend**



Subject Parcel



**Aerial**



**PLANNING STAFF REPORT**  
**Variance Request**

---

**SUMMARY:**

**Hearing Date:** October 15, 2014  
**Applicant:** Jamie Flynn  
**Property Owner:** Mildred Phillips  
**Case Number:** 11254

**Property Location and Description:** The subject property (Map Book 452, Page 104 [Exhibit 1]) is located at 101 Circle Drive (SR 1064) in Hampstead. There is one tract associated with this request. The property may be identified by Pender County PIN 3281-99-2291-0000.

**Zoning District of Property:** The property is zoned RP, Residential Performance district.

**Variance Requested:** Jamie Flynn, applicant, on behalf of Mildred Phillips, owner, is requesting a variance for relief from the requirement of the definition of *Accessory Structure* in *Appendix A* of the *Pender County Unified Development Ordinance* that an accessory structure be located on the same parcel of property as the principle structure.

---

**BACKGROUND AND DESCRIPTION OF VARIANCE:**

On April 1, 2014, the Pender County Code Enforcement officer received a complaint regarding an unpermitted storage building located on the property at 101 Circle Drive (SR 1064) in Hampstead. After conducting a site visit on April 2, 2014, the Code Enforcement officer sent an information letter to the owner of the subject property with notification of the complaint and the placement of the unpermitted structure on the property. A second information letter was sent on May 29, 2014, followed by a 1<sup>st</sup> Notice of Violation on June 30, 2014 (Exhibit 4).

Accessory structures are permitted within the RP, Residential Performance district. However, by definition, an accessory structure is 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. In this case, a principle structure does not exist on the parcel. The applicant lives in the single-family residence on the adjacent lot.

Pender County Planning staff met with the applicant on July 14, 2014. A completed variance application was received by Pender County Planning staff on September 2, 2014.

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**ZONING ADMINISTRATOR'S CONCLUSION:**

Jamie Flynn, applicant, on behalf of Mildred Phillips, owner, is requesting a variance for relief from the requirement of the definition of *Accessory Structure* in *Appendix A* of the *Pender County Unified Development Ordinance* that an accessory structure be located on the same parcel of property as the principle structure. The subject property is located at 101 Circle Drive (SR 1064) in Hampstead, is zoned RP, Residential Performance district, and may be identified by Pender County PIN 3281-99-2291-0000.

---

**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**

- 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

### **Appendix A**

- 1) **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: \_\_\_\_\_

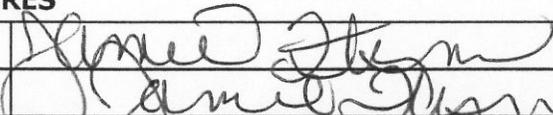
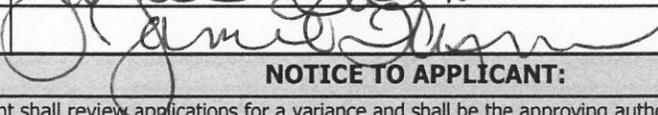
Approved: \_\_\_\_\_ Denied: \_\_\_\_\_ Unanimous: \_\_\_\_\_

Ferrante: \_\_\_\_\_ Pullen: \_\_\_\_\_ Newton: \_\_\_\_\_ Thompson: \_\_\_\_\_ Walton: \_\_\_\_\_

**Alternates:**

Godridge: \_\_\_\_\_ Peters: \_\_\_\_\_

## APPLICATION FOR VARIANCE

THIS SECTION FOR OFFICE USE			
Application No.	VA 11254	Date	9/2/14
Application Fee	\$ 250-	Receipt No.	142335
<b>SECTION 1: APPLICANT INFORMATION</b>			
Applicant's Name:	Jamie FLYNN	Owner's Name:	Jamie + Shanen Flynn
Applicant's Address:	101 Circle DR	Owner's Address:	101 Circle DR
City, State, & Zip	Hampstead NC 28043	City, State, & Zip	Hampstead NC 28043
Phone Number:	910 619-9190	Phone Number:	SAME
Legal relationship of applicant to land owner: Granddaughter.			
<b>SECTION 2: PROJECT INFORMATION</b>			
Property Identification Number (PIN):	3281-99-2291-0000	Total property acreage:	
Zoning Classification:	RP	Variance Size:	N/A
Variance Location & Address	101 Circle Drive, Hampstead (2 lots share same address - this lot is the northern-most)		
Describe Variance and amount or type requested:	Variance to allow an accessory structure on a lot that does not have a principle structure.		
<b>SECTION 3: SIGNATURES</b>			
Applicant's Signature			Date: 9-2-14
Owner's Signature			Date: 9-2-14
<b>NOTICE TO APPLICANT:</b>			
<ol style="list-style-type: none"> <li>1. The Board of Adjustment shall review applications for a variance and shall be the approving authority for all requirements.</li> <li>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.</li> <li>3. An application for a variance shall be submitted in accordance with application requirements.</li> <li>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.</li> <li>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.</li> <li>6. Applicant must also submit the information described in the Variance Checklist provided below.</li> <li>7. Applicant or agent authorized in writing must attend the public hearing.</li> <li>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.</li> </ol>			
<b>OFFICE USE ONLY</b>			
<input checked="" type="checkbox"/> VA Fees \$250		Total Fee Calculation \$	
Payment Method:	Cash: <input type="checkbox"/> \$ _____	Credit Card: <input type="checkbox"/> Master Card <input type="checkbox"/> Visa	Check: <input checked="" type="checkbox"/> Check # 1193
Application received by:	Anita H. Cing	Date:	9/2/14
Application completeness approved by:	Anita H. Cing	Date:	9/2/14
Date scheduled for public hearing:	10/15/14 @ 9 AM		

Sept. 2. 14

To Whom this may Concern:

My husband and I purchased the property at 101 Circle Drive from my Grandmother approx. 2 yrs ago. My Grandparents have owned the property for over 45 years and have always used both lots as one. As you can see from the picture, the second lot is our back yard and has been used for that purpose for over 45 years.

After purchasing the home we have since had twins which are almost 2 and we also just had a (4th) child that is 5 mos old. We have a 5 year old son as well.

Our home is 3rd room. Therefore we have a extreme need for a 4th bedroom

Which is why we purchased the building to store our childrens toys, and extra items so that we could clear out our garage and make plans to build a (4th) bed room out of the Garage. Without the building we have no where to store our childrens items for play as well as our Family items. (4) Children and only (2) Bedrooms for them just is not working well.

I am asking that you please allow us to keep our Building where it is located (1) because there is no other spot on our property that will hold it and (2) because we desperately need the storage so that we can continue with our plans to enclose the Garage for a much needed 3rd bedroom for our children.

Thank You,  
Jamie Flynn  
James Flynn

THIS DEED, made this 11TH day of AUGUST, 1972,

by and between Ed Loftin and wife, Evelyn M. Loftin

of Pender County and State of North Carolina

of the first part, and Gerald W. and wife, Mildred M. Phillips

of Pender County and State of North Carolina

of the second part:

**WITNESSETH:**

That the said parties of the first part for and in consideration of the sum of One Hundred and 00/100 Dollars, and other valuable considerations to them in hand paid by the said parties of the second part, the receipt whereof is hereby acknowledged, have given, granted, bargained and sold, aliened and conveyed, and by these presents do hereby give, grant, bargain and sell, alien, convey and confirm unto the said parties of the second part and to their heirs and assigns forever, all that certain tract or parcel of land lying and being in the County of Pender, State of North Carolina, and more particularly de-

scribed as follows, to-wit:

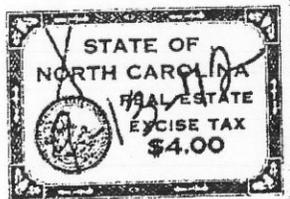
Being all of Lot 35, Section 6, Washington Acres, according to map thereof duly recorded in Map Book 8, Page 92, Pender County Registry, reference to which map is hereby made for more particulars.

Subject to restrictions of record and subject to the additional restriction that no dwelling shall be erected on the above described lot having less than 1800 square feet of heated floor space and the further restrictions that no outbuilding may be erected on said lot unless it is built of the same material as the main dwelling.

Subject to the line of taxes for 1972.

Together with a right of ingress and egress for the parties of the second part, their house guests and family, over and across that certain tract of land designated as "Tract A; Section 1, as shown on the recorded map of Washington Acres, Section 1, duly recorded in Map Book 6, Page 39, Pender County Registry.

Together with all and singular, the lands, tenements, easements and appurtenances thereto belonging, or in anywise appertaining.



TO HAVE AND TO HOLD the above granted and described premises, together with all and singular, the rights, privileges, easements, tenements and appurtenances thereunto belonging, or in anywise appertaining unto the said part ies of the second part, their heirs and assigns, in fee simple FOREVER.

And the said part ies of the first part, for them selves \_\_\_\_\_ heirs and assigns, do \_\_\_\_\_ covenant to and with the said part ies \_\_\_\_\_, of the second part, their heirs and assigns, that it is \_\_\_\_\_ seized in fee of the above granted and described premises,

*Ed Loftin*  
ED LOFTIN

(Seal)

*Evelyn M. Loftin*  
EVELYN M. LOFTIN

(Seal)

(Seal)

(Seal)

Attest:

(Seal)

(Seal)

STATE OF North Carolina  
COUNTY OF Pender

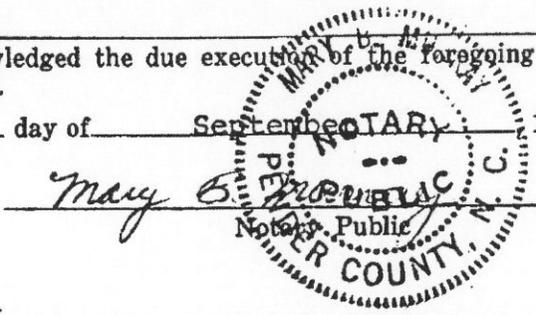
I, Mary B. Murray, a Notary Public in and for the state and county aforesaid, do hereby certify that Ed Loftin and wife, Evelyn M. Loftin

personally appeared before me this day and acknowledged the due execution of the foregoing and annexed instrument for the purposes therein approved.

WITNESS my hand and seal, this the 13th day of September, 19 72

My commission expires:

May 15, 1977



STATE OF \_\_\_\_\_  
COUNTY OF \_\_\_\_\_

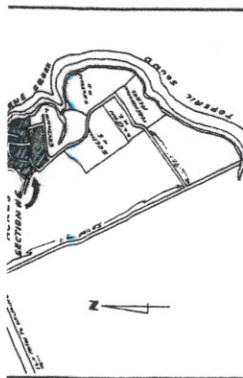
I, \_\_\_\_\_, a Notary Public, in and for the state and county aforesaid, do hereby certify that \_\_\_\_\_ personally appeared before me this day and acknowledged that he is the Secretary of \_\_\_\_\_ a corporation, and that by authority duly given and as the act of the corporation, the foregoing instrument was signed in its name by its President, sealed with its corporate seal and attested by \_\_\_\_\_ self as its Secretary.

WITNESS my hand and seal, this \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_\_

My commission expires:

Notary Public

STATE OF NORTH CAROLINA, Pender ~~New Hanover~~ County  
The foregoing Certifies Mary B. Murray



**SECTION 6**  
**WASHINGTON ACRE**  
 OWNED & DEVELOPED BY  
**RAYMOND E. HUGHES**  
 HAMPSHIRE, N. C.

TOPSAIL TOWNSHIP - PENDER COUNTY - NORTH CAROLINA  
 SURVEYED BY **RAYMOND E. HUGHES**  
 JULY-AUGUST 1963  
 REGISTERED LAND SURVEYOR  
 ROCKY POINT, N. C.

**NOTES:**  
 1. CONCRETE MONUMENTS AT ALL CORNERS EXCEPT AS SHOWN  
 TRUE (3).  
 2. ALL DIMENSIONS SHOWN ARE PROPOSED.  
 3. ALL REPRESENTATIVE MONUMENTS BELOW SURFACE  
 ARE TO BE SET IN ACCORDANCE WITH THE FOLLOWING:  
 4. BEARING AS CALCULATED BY LATITUDES AND DEPARTURES  
 5. DISTANCE AS CALCULATED BY LATITUDES AND DEPARTURES  
 6. BEARING CORRECT IN ANGULAR RELATION.  
 7. BEARING CORRECT IN ANGULAR RELATION.  
 8. BEARING CORRECT IN ANGULAR RELATION.  
 9. BEARING CORRECT IN ANGULAR RELATION.  
 10. BEARING CORRECT IN ANGULAR RELATION.

**CURVE DATA:**

CURVE #	CHORD BEARING	CHORD DISTANCE	CURVE #	CHORD BEARING	CHORD DISTANCE
1	S 72° 20' 00" W	117.227'	1	S 72° 20' 00" W	117.227'
2	S 72° 20' 00" W	117.227'	2	S 72° 20' 00" W	117.227'
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 6. BEARING CORRECT IN ANGULAR RELATION.  
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 9. BEARING CORRECT IN ANGULAR RELATION.  
 10. BEARING CORRECT IN ANGULAR RELATION.

**CURVE DATA:**

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 10. BEARING CORRECT IN ANGULAR RELATION.



COPY

NORTH CAROLINA

PENDER COUNTY

CONTRACT TO PURCHASE REAL PROPERTY

THIS **CONTRACT TO PURCHASE REAL PROPERTY**, made and entered into this \_\_\_\_\_ day of April, 2013 by and between **Mildred M Phillips** (hereinafter known as "Seller" ) and **Jamie L. Flynn** and husband **Shanen S. Flynn** (hereinafter collectively known as "Buyer" or "Buyers");

The names and addresses of the parties hereto are: **Mildred M. Phillips** whose address is: 412 Cinderella Lane, S.E., Dawson, Ga. 39842, as **Seller** and **Jamie L. Flynn and Husband Shanen S. Flynn** whose address is 101 Circle Drive, Hampstead, N.C. 28443, as **Buyer**.

WITNESSETH:

That subject to the terms and conditions hereafter set forth, Seller has agreed to sell unto said Buyer and said Buyer does agree to purchase from Seller a certain tract or parcel of land, (hereinafter known as "property" or "the property") lying and being in Pender County, North Carolina, and being more particularly described as follows:

**Being described as being lots 35 and 56, Section 6 of Washington Acres Subdivision as the same are shown on that certain map recorded in Map Book 8, Page 92 of the Pender County Registry, reference to which is hereby made for a more complete and accurate description. These tracts or parcels are conveyed together with and subject to all appurtenances described in the Deeds recorded in Book 450 at Page 150 and 452 at Page 104, both of the Pender County Registry.**

This agreement between Seller and Buyer is subject to the following terms and

conditions:

1. Buyer shall take possession of said described property on or before the 15<sup>th</sup> day of September, 2012 and shall pay as contract payments the amount of One Thousand fifteen dollars (\$1,015.00) per month beginning on the 15<sup>th</sup> day of September, 2012. Buyer shall make said contract payments by making payment directly to Seller's Mortgagees: NationStar (Acct #0611869918) and Springleaf Financial (Acct. #313413005378). Seller shall give written permission to Seller's Mortgagees to disclose information concerning Seller's mortgages to Buyer.

All of Buyer's payments shall be made pursuant to the attached amortization schedule which is incorporated herein by reference. Buyer shall make one hundred fifty two payments in the amount of \$1,015.00 with a payment being due on the 15<sup>th</sup> day of each consecutive month and a final payment in the amount of \$720.00 which shall be due on May 15, 2025. In the event that one or both of Seller's mortgages are paid off, Buyer will pay directly to Seller any amount of the contract payment not necessary to pay Seller's mortgages. If Seller dies prior to the payout of this contract, Buyer will continue to make the remaining payments to Seller's Estate or as directed. Buyer and Seller acknowledge that Buyer has been making the monthly purchase payments since September 15, 2012. Buyers also agree to pay the ad valorem taxes and Insurance bills by paying those costs directly to Seller's Insurance Company or the Pender County Tax collector.

Buyers may obtain "Renter's" or "Contents" insurance to protect Buyer's personal property. In the event of any insurable loss to the property described herein, Seller assigns her insurance proceeds to Buyer except to the extent that such proceeds are required to pay off Seller's mortgages on said property.

2. Unless sooner terminated by the prior sale and purchase of said property as hereinafter set forth, this contract shall exist and continue until 12:00 P.M. on May 15, 2025. Buyer may pay off the total remaining amount due Seller at any time during the pendency of this contract. When Buyer pays off all amounts due to be paid hereunder, Seller will convey good title to the property described herein to Buyer.

3. If Buyer fails to complete its purchase under the terms of this contract, they shall on the 16<sup>th</sup> day of May, 2025, deliver possession of said property to Sellers in as good a condition as the same is now, ordinary wear and tear excepted.

4. It is agreed that if Buyer does not elect to purchase under the terms of this contract, all improvements and repairs upon said property made by him shall be considered a part of the real estate and taken as and considered rent by Seller. Buyer does not need to obtain Seller's written permission in the event that Buyer desires to may any changes or repairs to the house that would require a building permit or involve any structural changes.

5. When Buyer completes its financial obligations hereunder to purchase said property

under the terms of this contract, Sellers will, upon full payment by Buyer, execute and deliver unto Buyer a good and sufficient general warranty deed conveying said property to Buyer.

6. Sellers represent that they are the fee simple owners of the above described property and that they have the right to convey title to same free and clear of any encumbrances save and except the outstanding mortgages to Springleaf Financial and Bank of America and the lien of ad valorem taxes for 2013 and subsequent years along with any existing easements or rights of way.

7. It is understood and agreed, however, that that if any one of the monthly payments due hereunder remains overdue and unpaid for sixty days, Buyer shall be in default and then and in that event, seller may, at Seller's option, declare the entire balance due and payable.

8. In the event of a default, Debra H. Bridges, acting as a mutual Trustee for the parties hereto, may upon request of said Seller, institute judicial foreclosure proceedings in the manner provided for by North Carolina Law.

9. Sellers warrant that they will not further encumber said property with any further mortgages or debts and will not allow said property to become subject to any other liens or judgments of any kind and will indemnify Buyer for any losses that Buyer may suffer as result of Sellers failure to safeguard said property from such liens, judgments or encumbrances. Additionally, in the event that a judgment or lien is docketed against the subject property, Seller shall take such actions necessary to remove said judgment or lien within a period of sixty days following notice of the existence of any such lien.

10. Buyer warrants that he will make all payments when due. Any payment not received by Seller within fifteen days after the same is due shall bear a late fee of four per cent of such rent payment. Buyer shall have all utility accounts placed in Buyer's name and shall pay all manner of utility bills for the subject property in a timely manner.

11. Payment of all amounts due hereunder is a condition precedent to Buyer's right to demand transfer of title to Buyer. This means that all payments due must have been paid either pursuant to the attached amortization schedule or by early payment at the time Buyer demands conveyance of the property described herein.

12. Buyer may terminate this agreement prior to the end of the contract term. If Buyer so terminates this agreement prior to the end of the term, Buyer shall pay all payments due until Buyer's departure and give Seller not less than thirty days notice of Buyer's intended departure.

**Termination of this contract, either voluntary or involuntary, shall result in a forfeiture of Buyer's right to purchase Seller's property described above. In the event of any forfeiture herein, all payments previously made by Buyer shall be considered rent and Buyer shall not be entitled to a refund of any amounts paid.**

**Buyer has the right to cure a default hereunder, including failure to pay the payments when due, once during the twelve month tenure of this agreement.**

13. Seller warrants that he has not allowed the property to be exposed to any hazardous substances or materials. Buyer agrees that he will not expose the property to any hazardous substances or materials.

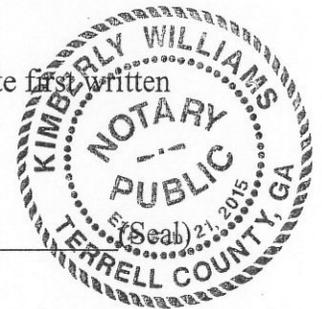
14. Buyer shall maintain said property in good condition wear and tear excepted. All structural and non-structural maintenance and repairs are the responsibility of Buyer.

15. This agreement shall not be assigned by either party unless said assignment is made by written instrument signed by all parties to this agreement.

16. This agreement shall be construed under the laws of the State of North Carolina and all parties hereto agree that the situs for the resolution of any dispute under this agreement shall be Pender County, North Carolina.

17. This agreement contains all of the terms of the agreement between the parties hereto and may not be varied except by a written instrument signed by all such parties. Further this agreement shall be binding upon all parties hereto and their heirs and assigns. Upon the event of Seller's death prior to the conclusion of this contract, Buyer may continue to make the payments due hereunder to Seller's Estate or as directed by Seller's Estate.

This instrument has been executed in duplicate originals the day and date first written above.



Mildred M. Phillips  
Mildred M. Phillips-Seller

Jamie L. Flynn (Seal)  
Jamie L. Flynn-Buyer

Shanen S. Flynn (Seal)  
Shanen S. Flynn-Buyer

State of Georgia- County of Terrell

I, the undersigned Notary Public of the County and State aforesaid, certify that Mildred M. Phillips personally appeared before me this day and acknowledged the due execution of the foregoing instrument for the purposes therein expressed. Witness my hand and Notarial stamp or seal this 20 day of February, 2014.

My Commission Expires: Feb 21, 2015

Kimberly Williams  
Notary Public

Printed name of Notary

State of North Carolina - County of Pender

I, the undersigned Notary Public of the County and State aforesaid, certify that Jamie L. Flynn and Shanen S. Flynn personally appeared before me this day and acknowledged the due execution of the foregoing instrument for the purposes therein expressed. Witness my hand and Notarial stamp or seal this 10 day of ~~April~~, 2013.  
March, 2014

My Commission Expires: 09/25/2018

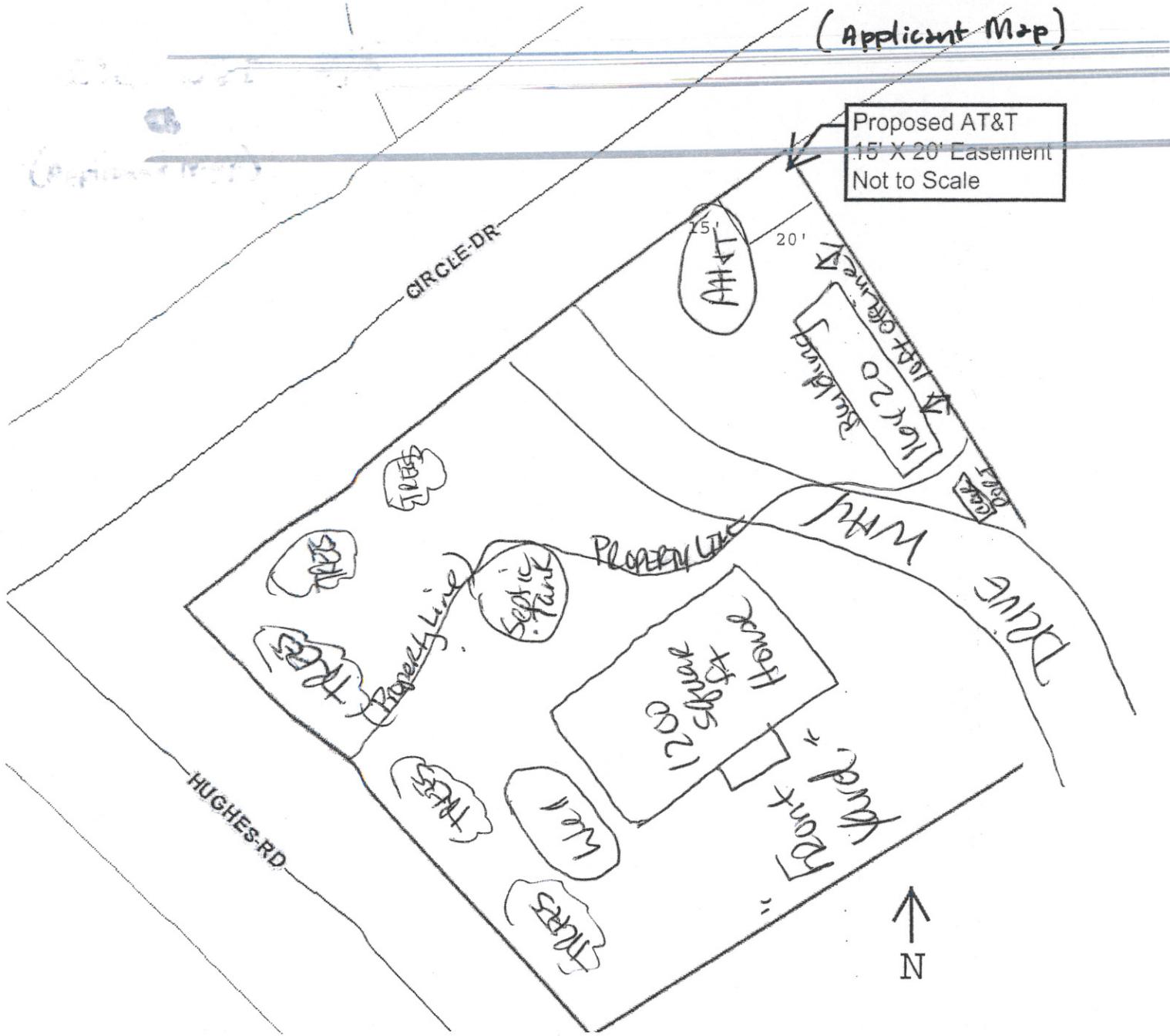
SUSAN L STRZESZYNSKI  
NOTARY PUBLIC  
PENDER COUNTY, NC  
My Commission Expires 9-25-2018

Susan L Strzeszynski  
Notary Public

Susan L Strzeszynski  
Printed name of Notary

**EXHIBIT 3**

(Applicant Map)



PIN: 3281-99-2291-0000

ADDR: 101 CIRCLE DRIVE  
CITY: HAMPSTEAD  
STATE: NC  
ZIP: 28443  
PROPERTY ADDRESS: 101 CIRCLE DR  
PROPERTY DESCRIPTION: L35 PB 8/92  
WASHINGTON A CRES

PLAT: 00080092  
ACCOUNT: 17374.000000  
TOWNSHIP: 102  
TNSH DESC: TOPSAIL  
ACRES: 0

PENDER COUNTY PLANNING DEPARTMENT

805 Walker St.

Burgaw, North Carolina 28425

COMPLAINT INVESTIGATION REPORT

Date Received 4-1-14 Time 2:00 PM Taken By: C Ring

Complainant: # Mike Harrison Building Inspector Telephone

Address: Annex Hampstead City: Date: Zip:

Complainant: #2

Location of Complaint 101 Circle Drive, Hampstead, NC 28443

~~P.I.N. 3281-98-5916-0000~~

Zoning District RP

Type of complaint: (X) Residential ( ) Commercial ( ) Business ( ) Other

Describe Complaint: . Unpermitted acc. Bldg.

Responsible Property Owner: Mildred Phillips Telephone:

Address: 101 Circle Drive, Hampstead, NC 28443

Complaint Referred to: C Ring Date 4-1-14

\*\*\*\*\*

INSPECTION / SITE VISIT

Date of Inspection 4-2-14 Time 3:00 PM Inspector C Ring

Observations: observed

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

Date report filed: 4-3-14

Inspector / Code official

# 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](http://www.pendercountync.gov)

Information Letter

April 7, 2014

Mildred Phillips  
101 Circle Drive  
Hampstead, NC 28443

### **RE: Complaint of Unpermitted Structure on property.**

Dear Ms. Phillips,

A complaint has been received regarding conditions observed on property owned and/or under your control. The property is located at 101 Circle Drive, Hampstead, NC 28443, Pin: 3281-99-2291-0000. The complaint revolves around the placement of an Unpermitted Structure on the property.

I visited the property on 4-2-2014. At that time I observed the new storage building that has been placed on your property. It is a violation of the Pender County Unified Development Ordinance to place an Accessory Structure on the property without proper permits.

## 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

Please comply with this ordinance by contacting the Pender County Permitting Department at (910) 270-5477, located at 18676 US Hwy 17, Hampstead, NC 28443. Failure to comply will result in a Notice of Violation being issued with possible fines and/or court appearance. I may be reached at 259-1519. Thank you in advance for your cooperation regarding this matter.

Respectfully,



Charlie Ring  
Pender County Zoning 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](http://www.pendercountync.gov)

Information Letter 2

May 29, 2014

Mildred Phillips / Jamie Flynn  
101 Circle Drive  
Hampstead, NC 28443

### RE: Complaint of Unpermitted Structure on property.

Dear Ms. Phillips,  
Jamie,

A complaint has been received regarding conditions observed on property owned and/or under your control. The property is located at 101 Circle Drive, Hampstead, NC 28443, Pin: 3281-99-2291-0000. The complaint revolves around the placement of an Unpermitted Structure on the property.

Per our last discussion, please advise if contact with attorney will allow you to proceed with property combining, or the building will be permitted and moved to a location on your current property.

## 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.

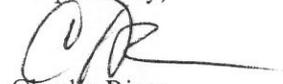
##### 3) Accessory Buildings 1,200 Square Feet in Area or Greater:

a) Same setback and separation requirements as principal buildings per zoning district regulations

Please comply with this ordinance by contacting the Pender County Permitting Department at (910) 270-5477, located at 18676 US Hwy 17, Hampstead, NC 28443. Failure to comply will result in a Notice of Violation being issued with possible fines and/or court appearance.

I may be reached at 259-1519. Thank you in advance for your cooperation regarding this matter.

Respectfully,



Charlie Ring  
Pender County Zoning 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](http://www.pendercountync.gov)

## 1<sup>st</sup> NOTICE OF VIOLATION

DATE: June 30, 2014

TO: Mildred Phillips / Jamie Flynn  
101 Circle Drive  
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 101 Circle Drive, Hampstead, NC 28443 and identified by the Pender County Tax Office as Tax Record Number 3281-99-2291-0000.

**CONDITIONS THAT CREATE VIOLATION: Zoning Approval has not been approved as required.**

### 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:

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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.

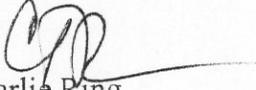
**PENALTIES FOR VIOLATIONS NOTED:** When corrective action is not taken as prescribed in the notice, the property owner/violator shall upon conviction be guilty of a misdemeanor punishable by fine of up to \$50.00, or imprisoned for not more than thirty (30) days, for each offense. **In addition, the 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 April 2, 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. I can be reached at (910) 259-1519.



Charlie Ring

Code Enforcement Officer

4-2-14



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SINCE 1997



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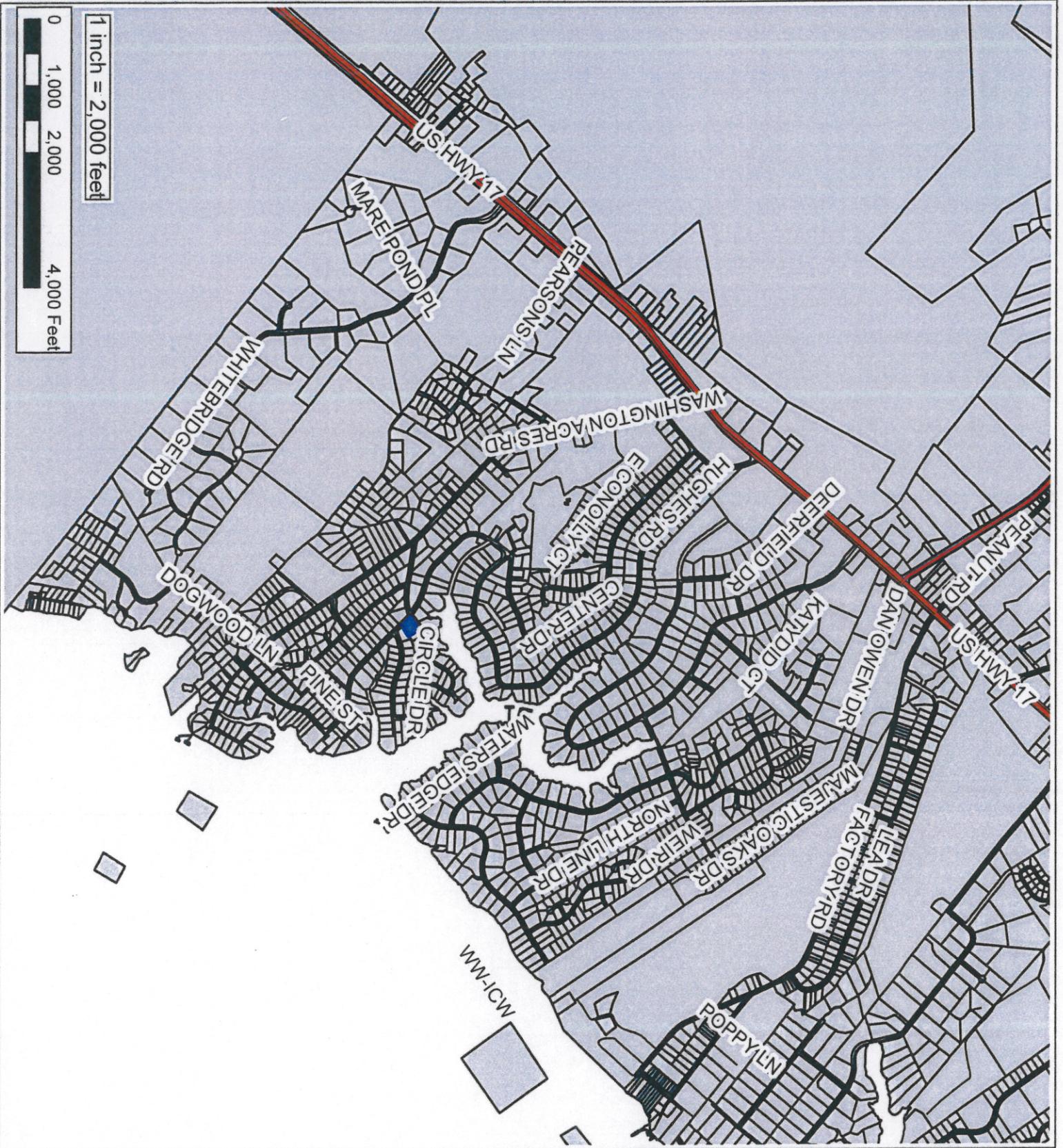
**Applicant:**  
Jamie Flynn

**Owner:**  
Mildred Phillips

**ZMA Case #**  
11254



**VICINITY**





**Applicant:**  
 Jamie Flynn

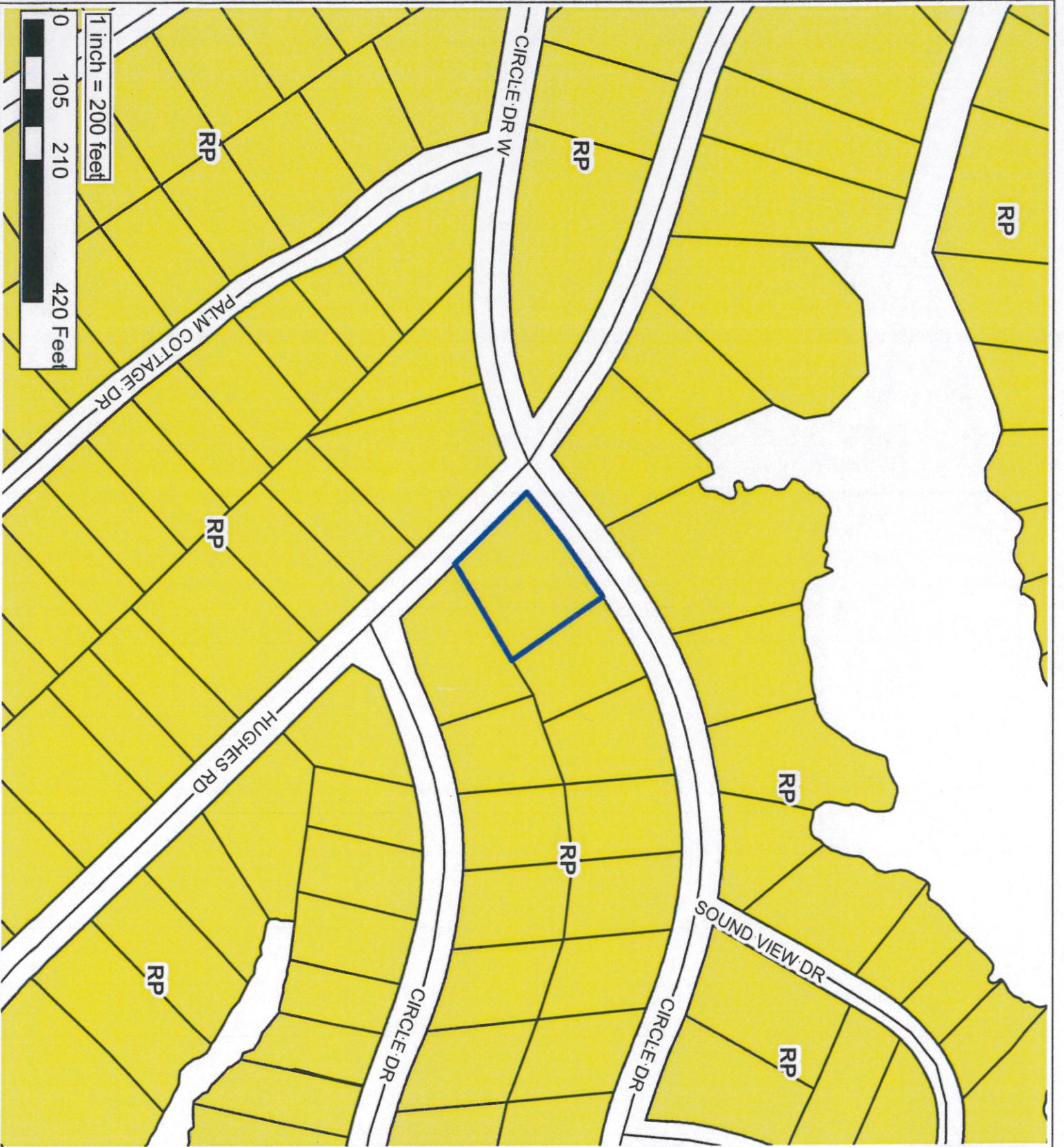
**Owner:**  
 Mildred Phillips

**ZMA Case #**  
 11254

- 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:**  
Jamie Flynn

**Owner:**  
Mildred Phillips

**ZMA Case #**  
11254

**Legend**

 Subject Parcel



**Aerial**



1 inch = 60 feet

