Pender County
Planning and Community Development

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MINUTES
Pender County Board of Adjustment Meeting
November 19, 2014 9:00 a.m.
Pender County Public Meeting Room
805 S. Walker Street, Burgaw, North Carolina

Call to Order: Chairman Ferrante called the meeting to order at 9:01 a.m.

Invocation: Administered by Chairman Ferrante.

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

Alternates:
Godridge: X Peters: _
Alternate member Godridge served as a full Board member

1. **Adoption of the Agenda:** Motion to adopt the agenda was made by Board member Godridge; seconded by Board member Walton. Vote unanimously approved.

2. **Adoption of the Minutes: October 15, 2014:** Motion to adopt the minutes was made by Vice-Chairman Pullen; seconded by Board member Thompson. Vote passed with four votes in favor; Board member Walton abstained due to his absence from the meeting.

3. **Adoption of the 2015 Meeting Dates:** Motion to adopt the 2015 Meeting Dates was made by Vice-Chairman Pullen; seconded by Board member Godridge. Vote unanimously approved.

4. **Public Comment:** None

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

5. **Variance:**
Herb Fannin, applicant, on behalf of Gerald and Dora Batts Revocable Trust, owner, requested a variance for relief from Pender County Unified Development Ordinance standards outlined in Section 4.14, Zoning District Dimensional Requirements, specifically requested for six (6) feet from the minimum side yard setback requirement of ten (10) feet in the RP, Residential Performance Zoning District. The subject property, Tract 10, Map Book 12, Page 45, is located at the terminus of Inlet Court (SR 1639) in Topsail Township. There is one (1) tract associated with this request totaling ± 0.74 acres and the property may be further identified by Pender County PIN 4203-71-7061-0000. Chairman Ferrante stated that he knew Ms. Dora Batts and felt that he could preside fairly on the case; he just wanted to make everyone aware before hearing the case. Senior Planner O'Hare explained the voting process, stating that the request would need four members to vote in favor of approving the request in order to have the Variance granted; Planner O'Hare presented and gave

background information for agenda item 5. Herb Fannin, applicant, stated to the Board that Ms. Batts contacted him in regards to fixing a fairly large hole in her backyard; Mr. Fannin explained in detail the process by which he built a retaining wall to prevent any further property damage and that once the retaining wall was completed something had to be built to cover the large hole since it was hazard; Mr. Fannin explained that once the hole was covered with the deck he felt the rails were needed for safety and the top was added for decoration. Mr. Fannin stressed to the Board that everything he did was to secure Ms. Batts property and for safety. Chairman Ferrante stated that he key question was why the structure was located where it is; Mr. Fannin answered the structure had to be built where it is to cover the large hole created by the erosion. Board member Godridge asked if the structure blocked the view of the water for any of the neighbors; Mr. Fannin replied that neighbors can see the structure but, it is an open structure so the water is still view the water. Board member Walton asked if the marsh had been damaged by the dirt washing away on the property and if the retaining wall had not been built would there have been more damage to the marsh; Mr. Fannin answered yes, that the dirt that was washed away did end up in the marsh area and had he not built the retaining wall more damage would have occurred. Board member Walton asked Mr. Fannin he felt the property owner had done anything to cause the property erosion in the said area verses any other area of the property; Mr. Fannin replied that it wasn't anything that Ms. Batts had done. Board member Walton asked Mr. Fannin that in his opinion did he believe the erosion would have continued over onto the adjourning property had not he fixed it; Mr. Fannin answered yes. Nicholas Pryor, 116 Inlet Ct., Hampstead, stated that he would like to bring it to the Board's attention that there may be an error in the original application, that there was a professional surveyor on the property the day before that informed him the encroachment may be 7.5 feet not 6 feet; Mr. Pryor provided the Board with photos that were taken from the view of his property and stated that the photos showed the encroachment and how the structure obstructs the view of the water from his property. Mr. Pryor stated that he was very grateful for the retaining wall, it was constructed very well, and believe that it would prevent the very old hickory tree on his property from being damaged; however it was not accurate of Mr. Fannin to say that the homeowners have approved what he built, the homeowners actually wrote Ms. Batts a detailed letter stating that the structure was built in violation of the Homeowners Association's Bylaws. Mr. Pryor concluded by requesting that the Board deny the request based on the fact that the hardship was created by the property owner by having the structure built without permits and not meeting the required property setbacks. Vice-Chairman Pullen asked Mr. Pryor if his view would be obstructed if the deck and railings were permitted; Mr. Pryor answered no. Mr. Pryor stated to the Board that he would like to commend staff members Megan O'Hare, Andy Christy, Ed McCarthy, and Sue Sava, that he has never been treated so considerably by any of the County employees as he has by them; Chairman Ferrante thanked Mr. Pryor; stated that he is sure his compliment is well received and the Board his happy to hear it. Mr. Fannin offered a copy of a letter received from the Homeowner's Association to the Board for review that stated they would obey the Board's decision, and reiterated that the structure is attached to the retaining wall.

The Board held their discussion and reviewed the finding of facts as follows:

Board of Adjustment: Finding of Facts

1. It is the Board's CONCLUSION that the hardship of which the applicant complains **results** from the strict application of the ordinance. It shall not be necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property. This conclusion is based on the following FINDINGS OF FACT: *The location of the structure is based on a washout created due to erosion created by recent storm events without regard to the zoning district setback requirements.*

2. It is the Board's CONCLUSION that 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. This conclusion is based on the following FINDINGS OF FACT: *The subject*

property has a higher elevation than where the water is located and therefore the erosion and runoff from recent storm events is a peculiarity of the subject property causing the need for a variance.

3. It is the Board's CONCLUSION that the hardship **did not result** from actions taken by the applicant or the property owner. The act of purchasing property with knowledge that circumstances exist that may justify granting of a variance shall not be regarded as a self-created hardship. This conclusion is based on the following FINDINGS OF FACT: *The location of the washout on the subject property was due to erosion caused by recent storm events with no action taken by the property owner or applicant.*

4. It is the Board's CONCLUSION that the requested variance **is consistent** with the spirit, purpose, and intent of the ordinance, such that public safety is secured and substantial justice is achieved. This conclusion is based on the following FINDINGS OF FACT: *The decking and retaining wall are consistent with the spirit, purpose and intent of the ordinance however, the roof portion of the structure is not.*

Board member Walton made the motion to approve the requested Variance with the following conditions; 1. The applicant may keep the structure in the current location for the decking and pergola portion only; however, the roof of structure shall be removed. 2. All applicable North Carolina Building permits must be obtained for the structure; seconded by Board member Godridge. The vote was unanimous.

6. Variance:

Gerald and Jane Kopecky, applicant and owners, requested a variance for relief from Pender County Unified Development Ordinance standards outlined in Section 4.14, Zoning District Dimensional Requirements, specifically requesting a variance for ten (10) feet from the minimum side yard setback requirement of ten (10) feet in the RP, Residential Performance Zoning District. The subject property, Tract 1 of Section 14 in Mallard Bay Residential Subdivision, Map Book 18, Page 12 (Exhibit 1), is located on Drake Road (SR 1692) in the Topsail Township. There is one (1) tract associated with this request totaling ± 0.56 acres and the property may be further identified by Pender County PIN 4213-16-8199-0000. Senior Planner O'Hare presented and gave background information for agenda item 6. Gerald Kopecky, applicant, explained to the Board that he was unaware at the time that the shed didn't meet the side yard setbacks, the adjourning property was vacant and had been for quite some time, the shed was constructed off site, and there was really no other location on the property to place the shed due to the property's size and the septic system; when the property was sold the encroachment was brought to his attention so he spoke with the neighbors and they agreed to have a recorded encroachment agreement. Mr. Kopecky stated that the shed was installed to meet all building codes. Chairman Ferrante clairifed that the shed was installed without a permit, Mr. Kopecky answered yes, that he was told based on the size of the shed he would not need a permit. Vice-Chairman Pullen asked if the shed was on a foundation with footers; Mr. Kopecky answered that it is on blocks that were sunk into the ground and tied down.

The Board held their discussion and reviewed the finding of facts as follows:

Board of Adjustment: Finding of Facts

1. It is the Board's CONCLUSION that the hardship of which the applicant complains **results** from the strict application of the ordinance. It shall not be necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property. This conclusion is based on the following FINDINGS OF FACT: *The applicant does not have adequate space to locate an accessory structure on the subject property to be in compliance with the Ordinance setback and separation requirements in the RP, Residential Performance zoning district.*

2. It is the Board's CONCLUSION that 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. This conclusion is based on the following FINDINGS OF FACT: *The subject property size does not allow for an accessory structure to be situated in the rear yard due to topography of*

the property by the strict application of the Ordinance for setback and separation requirements in the RP, Residential Performance zoning district.

3. It is the Board's CONCLUSION that the hardship **does not result** from actions taken by the applicant or the property owner. The act of purchasing property with knowledge that circumstances exist that may justify granting of a variance shall not be regarded as a self-created hardship. This conclusion is based on the following FINDINGS OF FACT: *The property owner placed the structure unknowingly over the property line with the adjacent property. Upon realizing the mistake the property owners entered into an Encroachment Agreement recorded with the Pender County Register of Deeds.*

4. It is the Board's CONCLUSION that the requested variance **is consistent** with the spirit, purpose, and intent of the ordinance, such that public safety is secured and substantial justice is achieved. This conclusion is based on the following FINDINGS OF FACT: *There are no safety issues with this request; as there is a recorded Encroachment Agreement for the property the Board considers this portion of the adjacent property as "sold" to the applicant.*

Board member Godridge made the motion to approve the requested Variance with the following condition; 1. All applicable North Carolina Building permits must be obtained for the structure; seconded by Vice-Chairman Pullen. The vote was unanimous.

** Public Hearings Closed**

7. Discussion Items:

a. Planning Staff: Senior Planner O'Hare advised the Board that staff was continuing to work with the Subdivision Sub Committee that included Board members Thompson and Walton on subdivision standards and would bring the information to the Board once it was compiled.

b. Board Members: Chairman Ferrante asked Ms. O'Hare to updated the Board on the case that was tabled from the October 15, 2014 meeting; Ms. O'Hare stated that the Variance request submitted to the Board by Jamie Flynn was discussed with the County Attorney and he advised staff that the applicant should have not came before the Board to request a Variance, so staff will be working with the applicant on the administrative level to assist her with what she can do to come into compliance with the Ordinance.

8. Next meeting: No cases for December; January 21, 2015 as applicable

9. Adjournment: Meeting adjourned at 10:07 a.m.