

Pender County Planning and Community Development

Planning Division

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



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

AGENDA

**Pender County Board of Adjustment Meeting
April 20, 2016 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: _____

Alternates:

Godridge: _____ Peters: _____

1. Election of Officers: (Chairman/Vice-Chairman)

2. Adoption of the Agenda:

3. Adoption of the Minutes: (June 17, 2015)

4. Adoption of the 2016 Meeting Dates Calendar:

5. Public Comment:

*(*Public Hearing Opened*)*

6. Variance:

Frederick W. Mahnken et al, applicant and owners, are requesting a variance for relief from the Pender County Unified Development Ordinance standards outlined in Section 5.3.3.A setback for accessory structure, specifically requesting a variance from the rear yard setback requirement of ten (10) feet for an accessory structure. The subject property is located at 15 Preswick Drive Rocky Point, NC 28457. There is one (1) tract associated with this request totaling ± 0.31 acres and the property may be further identified by Pender County PIN 3273-15-5438-0000.

(Public Hearing Closed*)*

7. Discussion Items:

a. Planning Staff: None

b. BOA Members:

8. Next Meeting: May 18, 2016

9. Adjournment:

Board of Adjustment 2016 Meeting Dates

Meeting Date
1.20.16 (no cases)
2.17.16 (no cases)
3.16.16 (no cases)
4.20.16
5.18.16
6.15.16
7.20.16
8.17.16
9.21.16
10.19.16
11.16.16
12.21.16

PLANNING STAFF REPORT
VARIANCE REQUEST

SUMMARY:

Hearing Date: April 20, 2016
Applicant: Frederick W. Mahnken
Property Owner: Frederick W. Mahnken et. al.
Case Number: 161-2016

Property Location and Description: The subject property is located at 15 Preswick Drive, Rocky Point NC 28457. There is one (1) tract associated with this request totaling ± 0.31 acres and may be further identified by Pender County PIN 3273-15-5438-0000.

Zoning District of Property: The property is zoned PD, Planned Development zoning district.

Variance Requested: Frederick W. Mahnken et al, applicant and owners, are requesting a variance for relief from the Pender County Unified Development Ordinance standards outlined in Section 5.3.3.A setback for accessory structure, specifically requesting a variance from the rear yard setback requirement of ten (10) feet for an accessory structure.

BACKGROUND AND DESCRIPTION OF VARIANCE:

The subject property is located in Phase IIIA of the Avendale residential subdivision, recorded on MB 50 PG 87 (Exhibit 1). The residential subdivision is currently zoned PD, Planned Development zoning district.

According to Section 5.3.3.A of the Pender County Unified Development Ordinance the setback requirement in all zoning districts is ten (10) feet from all property lines. The five (5) solar panels for which this variance is requested are considered accessory structures per Appendix A of the Pender County Unified Development Ordinance an accessory structure is defined as:

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.

The measurement for the setback to the rear lot line has been taken from the six (6) inch steel posts affixing the solar panels into the subject property. The rear yard setback as defined in Appendix A of the Pender County Unified Development Ordinance states:

SETBACK, REAR YARD: The required distance between a building or structure and the rear lot line of the lot containing the building or structure.

In the submitted site plan the five (5) different six (6) inch steel posts are located approximately seven feet and two inches (7' 2") from the rear property line, necessitating a variance for a total of two feet ten inches (2' 10") (Exhibit 2).

The solar panel frames do encroach the setback as well, however it was determined by the Administrator that the solar panel itself would be permissible in the setback similar to an awning or roof overhang as outlined in Section 4.6.10 of the Pender County Unified Development Ordinance as seen below:

4.6.10 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:

- 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.

If a variance is granted by the Board of Adjustment; the applicant must still meet all other building setbacks and requirements in Pender County's Unified Development Ordinance. At current the applicant is seeking relief solely from the standards outlined in Section 4.14; which necessitates the rear yard setback to be in compliance with the approved Master Development Plan in the PD, Planned Development zoning district. The variance request is for seven feet ten inches from the rear yard setback.

ZONING ADMINISTRATOR'S CONCLUSION:

Frederick W. Mahnken et al, applicant and owners, are requesting a variance for relief from the Pender County Unified Development Ordinance standards outlined in Section 5.3.3.A setback for accessory structure, specifically requesting a variance from the rear yard setback requirement of ten (10) feet for an accessory structure.

3.14 VARIANCE

3.14.1 Applicability

- B. 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.
- C. The Board of Adjustment may waive certain requirements when authorized to do so by provisions adopted as a part of this Ordinance.
- D. 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.
- E. 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.
- F. The need for the variance cannot be a result of the owner's own actions and cannot be for strictly economic reasons.
- G. The Board of Adjustment may grant variances in the following special circumstances, as indicated in Section 3.14.7 of 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.
- B. In making the findings above, the Board of Adjustment may give special weight to the number and percentage of nearby properties that share characteristics for which the variance is requested by the applicant. The Board of Adjustment may grant a variance to expand an existing structure, including the expansion of a nonconforming structure if the findings listed above can be made.

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/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:

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 FOR VARIANCE:

MOVED _____ SECONDED _____

APPROVED _____ DENIED _____ UNANIMOUS _____

YEA VOTES: Ferrante ___ Pullen ___ Newton ___

Alternates:

Godridge: _____ Peters: _____

March 4th Due to Staff

APPLICATION FOR VARIANCE

THIS SECTION FOR OFFICE USE			
Application No.	VA 161-2016	Date	2/10/2016
Application Fee	\$ 250	Receipt No.	INVOICE # 816
SECTION 1: APPLICANT INFORMATION			
Applicant's Name:	Fred & Loraine Mahnken	Owner's Name:	Same
Applicant's Address:	15 Preswick Dr	Owner's Address:	
City, State, & Zip	Rocky Point, NC 28457	City, State, & Zip	
Phone Number:	910 = 270-3849	Phone Number:	
Legal relationship of applicant to land owner: <u>same</u>			
SECTION 2: PROJECT INFORMATION			
Property Identification Number (PIN):	3273-15-5438-000	Total property acreage:	0.31 Acres
Zoning Classification:	PD	Variance Size:	7' 10"
Variance Location & Address	15 Preswick Drive Rear yard setback		
Describe Variance and amount or type requested:	See attachment		
SECTION 3: SIGNATURES			
Applicant's Signature	<i>Fred Mahnken</i>	Date:	2/10/16
Owner's Signature	<i>Fred Mahnken</i>	Date:	2/10/16
NOTICE TO APPLICANT:			
<ol style="list-style-type: none"> 1. The Board of Adjustment shall review applications for a variance and shall be the approving authority for all requirements. 2. All applicants seeking a variance shall schedule a pre-application conference with the administrator to discuss the procedures, standards, and regulations required for variance approval. 3. An application for a variance shall be submitted in accordance with application requirements. 4. Once the application has been determined complete, the Administrator shall schedule a public hearing and give notice to adjoining/abutting property owners and aggrieved parties in the form of applicant supplied #10 envelopes with paid first class postage. 5. The applicant seeking the variance shall have the burden of presenting evidence sufficient to allow the Board of Adjustment to reach the conclusions set forth below (Findings), as well as the burden of persuasion on those issues. 6. Applicant must also submit the information described in the Variance Checklist provided below. 7. Applicant or agent authorized in writing must attend the public hearing. 8. Once the public hearing has been advertised, the case will be heard unless the applicant withdraws the application or unless the Board of Adjustment agrees to table or delay the hearing. 			
OFFICE USE ONLY			
<input checked="" type="checkbox"/> VA Fees \$250		Total Fee Calculation \$	
Payment Method:	Cash: <input type="checkbox"/> \$ _____	Credit Card: <input type="checkbox"/> Master Card <input type="checkbox"/> Visa	Check: <input checked="" type="checkbox"/> Check # <u>1142</u>
Application received by:	<i>Megan O'Hare</i>	Date:	2/12/2016
Application completeness approved by:	<i>Megan O'Hare</i>	Date:	2/12/2016
Date scheduled for public hearing:	<u>April 20, 2016 9AM</u>		

Variance Checklist

<input checked="" type="checkbox"/>	Signed application form
<input type="checkbox"/>	Application fee <u>250</u>
<input checked="" type="checkbox"/>	Legible list of all property owners adjacent to the property upon which the use is to be located. The list shall include the mailing address & physical address of these property owners (The application will not be advertised for public hearing until the list is accurate & complete—the list maybe compiled from the public PC terminal in the Pender County Tax Office).
<input checked="" type="checkbox"/>	One business size envelope legibly addressed with first class postage for each of the adjacent property owners on the above list.
<input 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"/>	<u>Project Map(s)</u> —Applicant shall supply 15 (11"x17") project maps at a readable scale, clearly showing the following (as applicable):
<input type="checkbox"/>	<ul style="list-style-type: none"> <input type="checkbox"/> Property Location <input type="checkbox"/> Building Separation Distances <input type="checkbox"/> Dimensions of Property <input type="checkbox"/> Proposed Building Height <input type="checkbox"/> Building Distances From Property Lines (Front, Sides, Rear) <input type="checkbox"/> Location of All Existing Utilities On-Site <input type="checkbox"/> Existing Structures <input type="checkbox"/> Acreage of Property <input type="checkbox"/> Any Proposed Structures <input type="checkbox"/> Additional Information Pertinent to the Variance Request (Pictures, Other Permits, etc.)

RETURN COMPLETED APPLICATION TO:

Pender County
 Planning & Community Development
 P.O. Box 1519
 Burgaw, NC 28425

To whom it may concern,

We had solar panels installed in our backyard by Greg Yurick. He installed the poles too close to the property line as you can see from the survey. The poles are 8 1/2 feet from the property line and they should be 10 feet from the property line. I'm only 2'10" short of the property line.

I need forgiveness so that I can get the permit, so the electrician can file for the permit for the electric. I hope this is enough, if not don't hesitate to call me at 910-470-3146 (Lorraine cell))

Sincerely,
Fred and Lorraine Mahnken



Applicant:
Frederick W. Mahnken et al.

Owner:
Frederick W. Mahnken et al.

Variance

Case Number:
161-2016

Legend



Subject Property



VICINITY





Applicant:
Frederick W. Mahnken et

Owner:
Frederick W. Mahnken et

Variance

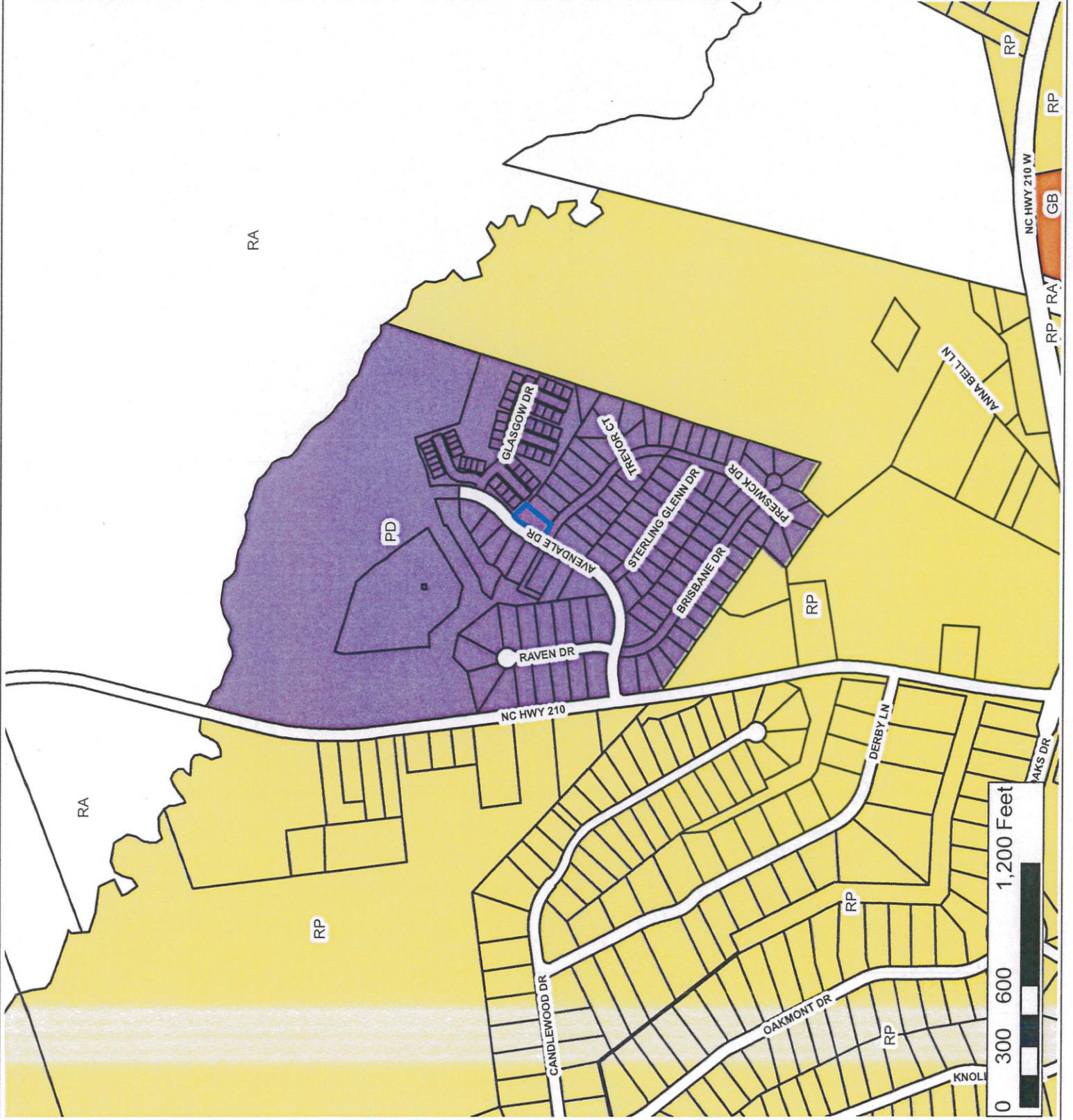
Case Number:
161-2016

Legend

-  Subject Property
-  EC, Environmental Conserv
-  GB, General Business
-  GI, General Industrial
-  IT, Industrial Transitional
-  O&I, Office & Institutional
-  PD, Planned Development
-  RA, Rural Agricultural
-  RP, Residential Performance



CURRENT ZONING





Applicant:
Frederick W. Mahnken et.

Owner:
Frederick W. Mahnken et.

Variance

Case Number:
161-2016

Legend
 Subject Property



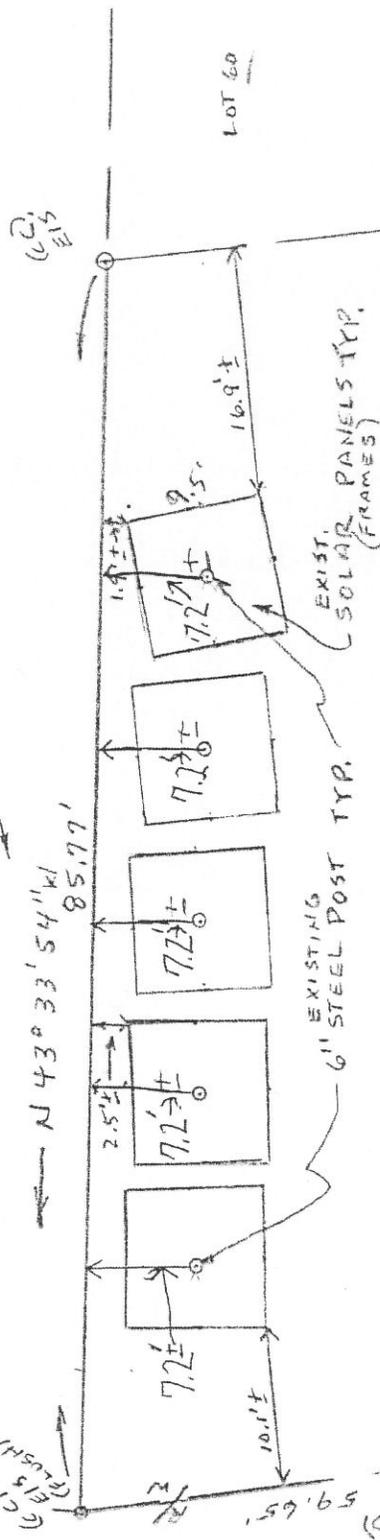
2012 AERIAL



LEGEND:
 E I S = EXIST IRON STAKE
 C C = CONTROL CORNER

NOTE:
 ATTACHED TO MAP OF AVENDALE FOR REFERENCE.

How is FORMERLY THE COTTAGES
 MAP BK 51 P 991
 AVENDALE



LOT 59

- SKETCH -
 LOCATION SURVEY -
 PORTION LOT 59
 AVENDALE PHASE 3A
 MAP BOOK 51 PAGE 147
 FOR

FREDERICK W. MANKEN

AND WIFE
 15 PRESWICK DR.
 ROCKY POINT, NC 28457

LORAIN E. MANKEN
 William H Blake

15 PRESWICK DR.
 WILLYAM H BLAKE, NC PLS #1-2179
 50' PRIVATE R/W BURGAW, NC

11 DEC. 2015 SCALE: 1" = 10'

TOPSAIL TWP, PENDER CO, NC.



PRELIMINARY PLAT
 NOT FOR RECORDATION
 CONVEYANCES OR RESTRICTIONS

AVENDALE DRIVE
 60' PRIVATE R/W

NORTH
 TO MAP 51 P 991

(CHORD)
 1305.51"
 15.09'
 226'
 108.11'
 229'

(CHORD) 59.65'

N 37° 29' 46" E

N 31° 25' 55" E

N 108.11'

15.09'

226'

108.11'

229'

N 37° 29' 46" E

(CHORD) 59.65'

N 31° 25' 55" E

N 108.11'

15.09'

226'

108.11'

229'

N 37° 29' 46" E

(CHORD) 59.65'

N 31° 25' 55" E

N 108.11'

15.09'

226'

108.11'

229'

N 37° 29' 46" E

(CHORD) 59.65'

N 31° 25' 55" E

N 108.11'

15.09'

226'

108.11'

229'

N 37° 29' 46" E

(CHORD) 59.65'

N 31° 25' 55" E

N 108.11'

15.09'

226'

108.11'

229'

N 37° 29' 46" E

(CHORD) 59.65'

N 31° 25' 55" E

N 108.11'

15.09'

226'

108.11'

229'

N 37° 29' 46" E

(CHORD) 59.65'

N 31° 25' 55" E

N 108.11'

15.09'

226'

108.11'

229'

N 37° 29' 46" E

(CHORD) 59.65'

N 31° 25' 55" E

N 108.11'

15.09'

226'

108.11'

229'

N 37° 29' 46" E

(CHORD) 59.65'

N 31° 25' 55" E

N 108.11'

15.09'

226'

108.11'

229'

N 37° 29' 46" E

(CHORD) 59.65'

N 31° 25' 55" E

N 108.11'

15.09'

226'

108.11'

229'

N 37° 29' 46" E

(CHORD) 59.65'

N 31° 25' 55" E

N 108.11'

15.09'

226'

108.11'

229'

N 37° 29' 46" E

(CHORD) 59.65'

N 31° 25' 55" E

N 108.11'

15.09'

226'

108.11'

229'

N 37° 29' 46" E

(CHORD) 59.65'

N 31° 25' 55" E

N 108.11'

15.09'

226'

108.11'

229'

N 37° 29' 46" E

(CHORD) 59.65'

N 31° 25' 55" E

N 108.11'

15.09'

226'

108.11'

229'

N 37° 29' 46" E

(CHORD) 59.65'

N 31° 25' 55" E

N 108.11'

15.09'

226'

108.11'

229'

N 37° 29' 46" E

(CHORD) 59.65'

N 31° 25' 55" E

N 108.11'

15.09'

226'

108.11'

229'

N 37° 29' 46" E

(CHORD) 59.65'

N 31° 25' 55" E

N 108.11'

15.09'

226'

108.11'

229'

N 37° 29' 46" E

(CHORD) 59.65'

N 31° 25' 55" E

N 108.11'

15.09'

226'

108.11'

229'

N 37° 29' 46" E

(CHORD) 59.65'

N 31° 25' 55" E

N 108.11'

15.09'

226'

108.11'

229'

N 37° 29' 46" E

(CHORD) 59.65'

N 31° 25' 55" E

N 108.11'

15.09'

226'

108.11'

229'

N 37° 29' 46" E

(CHORD) 59.65'

N 31° 25' 55" E

N 108.11'

15.09'

226'

108.11'

229'

N 37° 29' 46" E

(CHORD) 59.65'

N 31° 25' 55" E

N 108.11'

15.09'

226'

108.11'

229'

N 37° 29' 46" E

(CHORD) 59.65'

N 31° 25' 55" E

N 108.11'

15.09'

226'

108.11'

229'

N 37° 29' 46" E

(CHORD) 59.65'

N 31° 25' 55" E

N 108.11'

15.09'

226'

108.11'

229'

N 37° 29' 46" E

(CHORD) 59.65'

N 31° 25' 55" E

N 108.11'

15.09'

226'

108.11'

229'

N 37° 29' 46" E

(CHORD) 59.65'

N 31° 25' 55" E

N 108.11'

15.09'

226'

108.11'

229'

N 37° 29' 46" E

(CHORD) 59.65'

N 31° 25' 55" E

N 108.11'

15.09'

226'

108.11'

229'

N 37° 29' 46" E

(CHORD) 59.65'

N 31° 25' 55" E

N 108.11'

15.09'

226'

108.11'

229'

N 37° 29' 46" E

(CHORD) 59.65'

N 31° 25' 55" E

N 108.11'

15.09'

226'

108.11'

229'

N 37° 29' 46" E

(CHORD) 59.65'

N 31° 25' 55" E

N 108.11'

15.09'

226'

108.11'

229'

N 37° 29' 46" E

(CHORD) 59.65'