

PENDER COUNTY BOARD OF ADJUSTMENT
STAFF CASE REVIEW
KENT & DORINDA WARLICK - VARIANCE # 333

APPLICANT: Kent & Dorinda Warlick

PROPERTY OWNER: Same

PROPERTY LOCATION: The property is located at 260 Goose Neck Road, west of US Highway 117 and south of NC Highway 133. This is in Rocky Point Township. (See attached site map).

PROPERTY DESCRIPTION: The property contains .62 acres or 27,429 square feet and is identified as PIN # 3233-33-9589-0000. (See attached map).

ZONING ON SITE: The property is zoned R-20, Residential District and FA, Flood Hazard District.

TYPE OF VARIANCE: The applicant is requesting a variance of 2.9 and 1.3 feet for an accessory building 600 square feet in area or less. This requires a 10 foot setback from all property lines, access easements and other structures.

BACKGROUND AND DESCRIPTION OF VARIANCE:

The applicant is requesting a variance of 2'11" and 1'4" for an accessory building 600 square feet in area or less. This requires a 10 foot setback from all property lines and access easements. The accessory building is a 200 square foot garage.

At the time the shed was delivered and placed on the property the Warlick's followed the Protective Covenants of Swann Plantation. This only required an accessory building to be a minimum of 5 feet off the property line.

A complaint was filed on March 28, 2007 with Pender County Code Enforcement. The Warlick's were notified that the building was placed on the property without a zoning permit. The Warlick's files for a zoning permit. After the site plan was submitted to Pender County Permitting, it was discover that the building is located within the 10 foot setback requirement for accessory buildings 600 square feet or less.

9.2 Accessory Building, Setbacks and Separation Requirements

A. Accessory Buildings 600 Square Feet in Area or Less:

- 1) Must be setback 10 ft. from all property lines and access easements.
- 2) Must be separated from other buildings by 10 ft.

ZONING ADMINSTRATOR'S CONCLUSION:

1. The applicant is requesting a variance after the structure has been constructed on the property.
2. The variance is for an accessory structure 600 square feet in area or less. The building is encroaching on 10 foot setback for an accessory building. (2'11" and 1'4" feet respectively)

APPLICABLE ZONING ORDINANCE PROVISIONS:**SECTION 2 -DEFINITIONS****Accessory Structure and Use**

Accessory Structure A structure or an attached portion of the principal building (or structure) which is ancillary to the principal structure, on the same lot, and/or used for purposes customarily associated with the principal structure (excluding signs). In no instance shall an accessory structure be located in a right-of-way.

Accessory Use Those uses of land found on the same zoning lot as the primary use; and that are ancillary to, and/or associated with the primary use.

Accessory structures and uses are subject to all of the following requirements:

- a) Conducted or located on the same lot as the principal building or use served, or on any lot contiguous to it under common ownership, except as may be specifically provided elsewhere in the ordinance.
- b) Clearly incidental, subordinate in purpose, and serving the principal use.
- c) Is clearly operated and maintained solely for the comfort, convenience, necessity, or benefit of the occupants, employees, customers, or visitors of the principal use.
- d) Garages and/or detached "Dwellings as Accessory Uses" as defined and less than or equal to 1200 Sq. Ft., may be either attached to the principal structure or connected to the principal structure by a covered breezeway no less than (10) feet in length.
- e) Decks, open and covered porches, gazebos as accessory structures may be attached to a principal dwelling.
- f) All other accessory structures must comply with requirements a, b, c above

2.59 Setback

The required distance between every structure and the lot lines of the lot on which it is located.

2.79 Variance

A variance is a relaxation of the terms of the Zoning Ordinance where such variance will not be contrary to the public interest and where, owing to conditions peculiar to the property and not the result of the action of the applicant a literal enforcement of the ordinance would result in unnecessary and undue hardship. As used in this ordinance, a variance is authorized only for height, area, and size of a structure or size of yards and open spaces; establishment or expansion of a use otherwise prohibited shall not be allowed by a variance, nor shall a variance be granted because of the presence of non-conformities in the zoning district or uses in an adjoining zoning district.

3.3 Foundation Surveys**A. Survey Requirements**

Foundation surveys will be required to verify that a new structure meets the set back requirements of this ordinance prior to occupancy. When a foundation survey is required it shall be provided after the foundation is complete. Foundation surveys shall be required for all principal structures and accessory structures greater than 600 square feet with the exceptions noted below. The foundation survey submission shall consist of a map prepared by a Professional Land Surveyor showing the structure, lot boundaries and distance from the structure to the lot boundaries, and be signed and sealed by the surveyor. A signed and sealed letter from a Professional

Land Surveyor, identifying the property and structure and certifying that the structure meets or exceeds the set backs for the zoning district in which it is located may be provided in lieu of a survey map.

B. Survey Submission Schedule

The required foundation verification information shall be submitted within 14 calendar days after the footing inspection for the structure has occurred or as follows:

Double Wide Mobile Home -14 calendar days after the home is set on the site in its permanent location.

Single Wide Mobile Home -14 calendar days after the home is set on the site in its permanent location.

C. Prohibition on Inspections:

No inspections shall be provided by the Pender County Inspection Department on a structure after the "foundation inspection" unless the Foundation Survey is complete. No inspection will be provided on a mobile home until the Foundation Survey is complete. The Inspections Department shall place a stop work order on any construction when the foundation verification is not submitted when required and shall not provide an occupancy permit or any authorization for power connection until the required foundation survey verification is submitted and approved by the Zoning Administrator or their designated representative.

D. Exceptions to Survey Requirements: A foundation survey will not be required in the following circumstances:

- 1) For a structure erected on a bona fide farming operation.
- 2) For individual mobile homes located in a mobile home park.
- 3) For structures when the approved site plan shows the set backs to be double those required by this ordinance and a building inspector upon visit to the site can observe and confirm that the structure has been located as shown on the site plan. The inspector shall verify his observation by providing a signed copy of the site plan or a permit for the structure to the Zoning Administrator. Other form of certification satisfactory to the Building Inspections Director and Zoning Administrator may be provided.
- 4) For structures when the conditions noted below are met and a building inspector upon visit to the site can observe and confirm that the structure has been located as shown on the site plan. The inspector shall verify his observation by providing a signed copy of the site plan or a permit for the structure to the Zoning Administrator. Other form of certification satisfactory to the Building Inspections Director and Zoning Administrator may be provided. The following conditions must be met for this exception to apply:
 - a. Site plan approved by Zoning Administrator and Environmental Health shows front yard set backs to be 10 feet above minimum required and side and rear yard set backs to be 5 feet above minimum required and is available at site.
 - b. A survey map of the site showing the property corners is available at the site.
 - c. The permanent property corners are clearly marked and flagged so as to be visible from the structure.
 - d. The owner or his representative is available at the site to provide measurements if necessary to confirm structure location.

6.4 Powers and Duties of the Board of Adjustment

B. Variiances

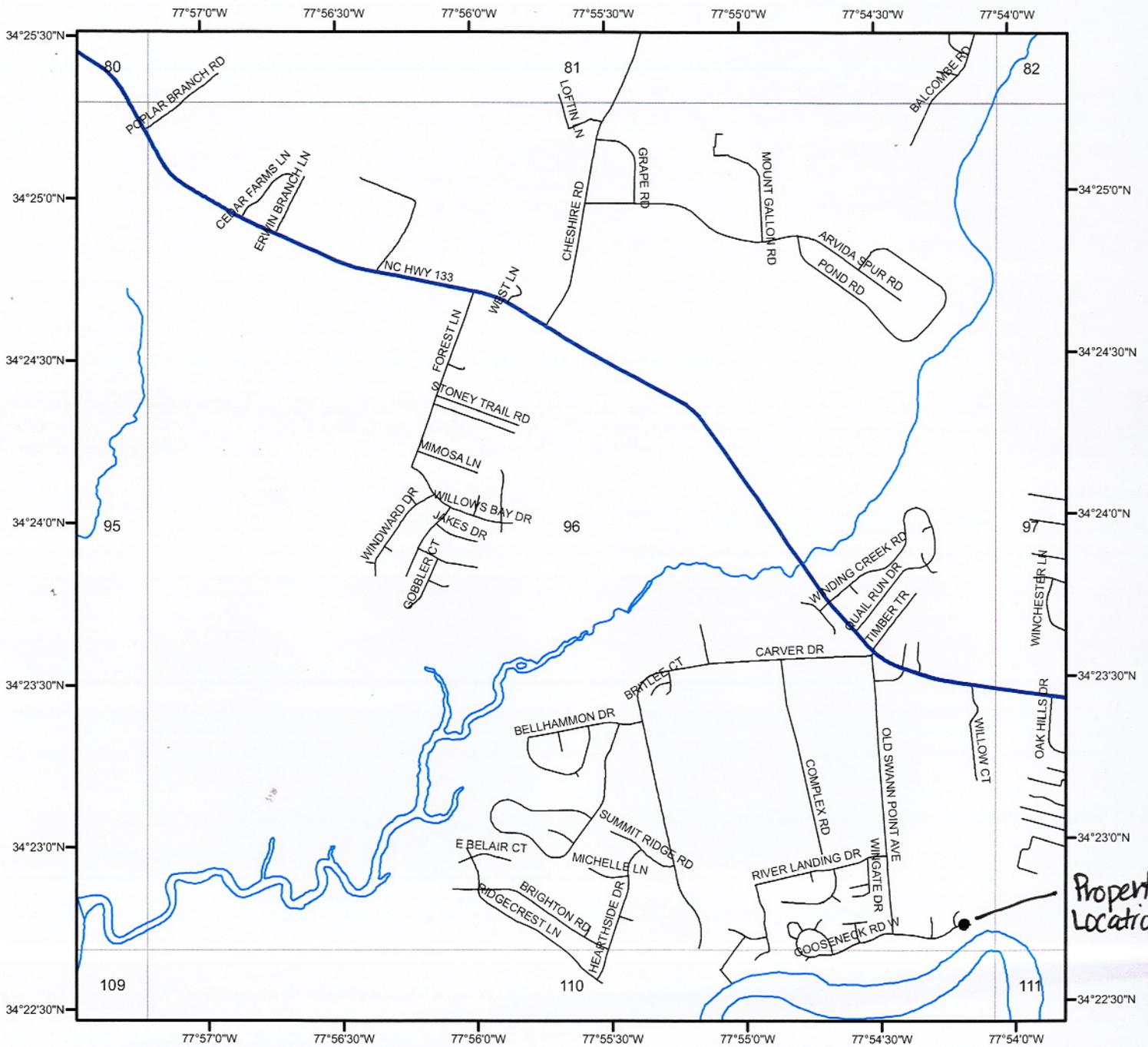
To authorize upon appeal in specific areas variance from the terms of this ordinance as will not be contrary to the public interest where, owing to special conditions, a literal enforcement of the provisions of this ordinance will result in undue hardship, so that the spirit of this ordinance shall be observed and substantial justice done.

A public hearing shall be held at which the following conditions are found to exist:

- (1) There are extraordinary and exceptional conditions pertaining to the particular piece of property in question because of its size, shape, or topography that are not applicable to other lands or structures in the same district.
- (2) Granting the variance requested will not confer upon the applicant any special privileges that are denied to other residents of the zoning district in which the property is located.
- (3) A literal interpretation of the provisions of this ordinance would deprive the applicant of rights commonly enjoyed by other residents of the zoning district in which the property is located.
- (4) The requested variance will be in harmony with the purposes and intent of this ordinance and will not be injurious to the neighborhood or to the general welfare.
- (5) The special circumstances are not the result of the actions of the applicant.
- (6) The variance requested is the minimum variance that will make possible the legal use of the land, building or structure.

In considering all proposed variances from this ordinance the Board shall, before making any finding in a specified case, first determine that the proposed variance will not constitute any change in the zone shown on the zoning map and will not impair an adequate supply of light and air to adjacent property, or materially increase the public danger of fire and safety, or materially diminish or impair established property values within the surrounding area, or in any other respect impair the public health, safety, morals, and general welfare.

In granting a variance the Board may attach thereto such conditions regarding the location, character, and other features of the proposed building, structure, or use, as it may deem advisable in furtherance of the purposes of this ordinance. Violation of such conditions and safeguards when made a part of the terms under which the variance is granted, shall be deemed a violation of this ordinance and punishable under Section 4 of this ordinance.



PENDER COUNTY
NORTH CAROLINA

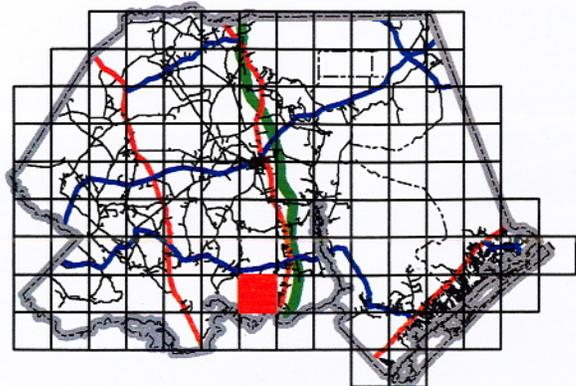
Map Prepared: Oct 10, 2007



1 inch equals 1/2 miles



- Private Roads
- US Highways
- Interstate
- Secondary Roads
- NC Highways



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1:200 feet

Pender County GIS



This map is prepared for the inventory of real property found within this jurisdiction, and is compiled from recorded deeds, plats, and other public records and data. Users of this map are hereby notified that the aforementioned public primary information sources should be consulted for the verification of the information contained on this map. Pender County assumes no legal responsibility for the information contained on this map.

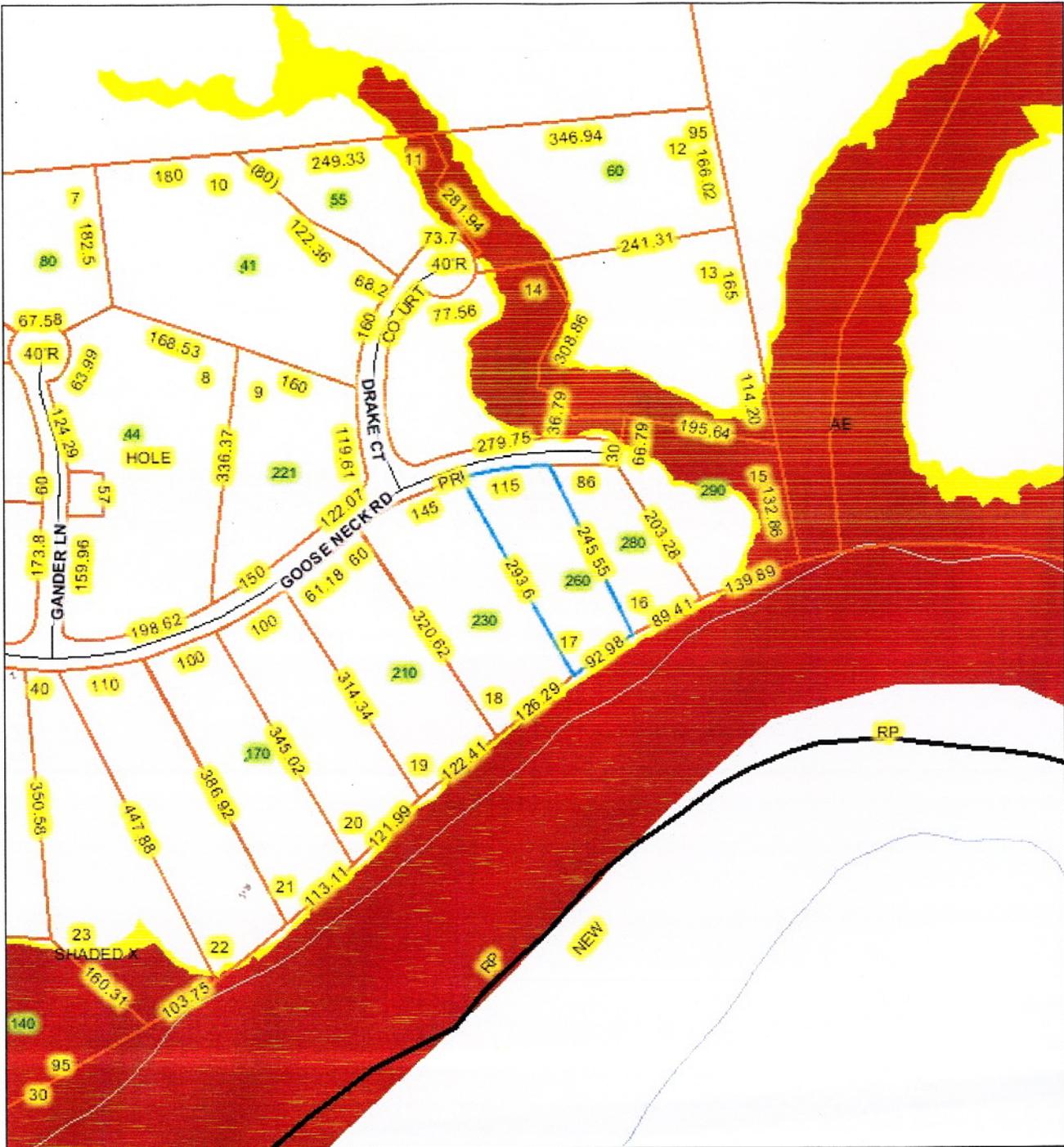


1:1000 feet

Pender County GIS



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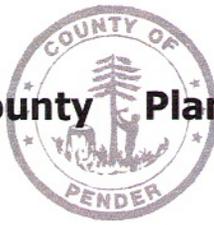


1:200 feet

Pender County GIS



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Pender County Planning Department

805 South Walker Street
Burgaw, North Carolina 28425

Phone (910) 259-1202
Fax (910) 259-1295
Email: planning1@pender-county.com

BOARD OF ADJUSTMENT APPLICATION FOR VARIANCE

Date <u>11/8/07</u>	Application No. _____
Application Fee _____	Receipt No. <u>077079</u>

I. PROPERTY INFORMATION:

Record #: _____ Lot #: 17

Tax Map #: _____ Zoning District: _____

Property Location: 260 Goose Neck Rd Rocky Point, NC 28457

Describe Variance & Reason for Request: Accessory building set back

II. REQUIRED NAMES:

Applicant <u>John & Dorinda Warlick</u>	Owner <u>same as applicant</u>
Address <u>260 Goose Neck Rd</u>	Address _____
<u>Rocky Point, NC 28457</u>	_____
Phone <u>910-617-3740</u> Fax <u>910-397-0073</u>	Phone _____ Fax _____
Email <u>dee@coastalcustomcountertops.com</u>	Email _____

Legal Relationship of Applicant to Property Owner:

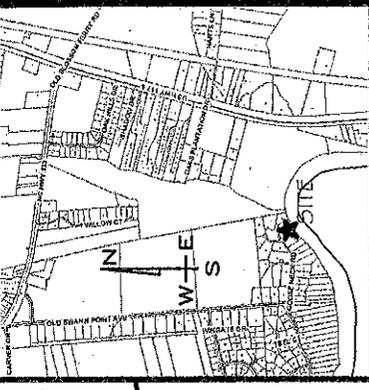
self

Person Authorized to Act for Applicant:

III. SIGNATURE OF OWNER & APPLICANT:

John K Warlick Dorinda Warlick

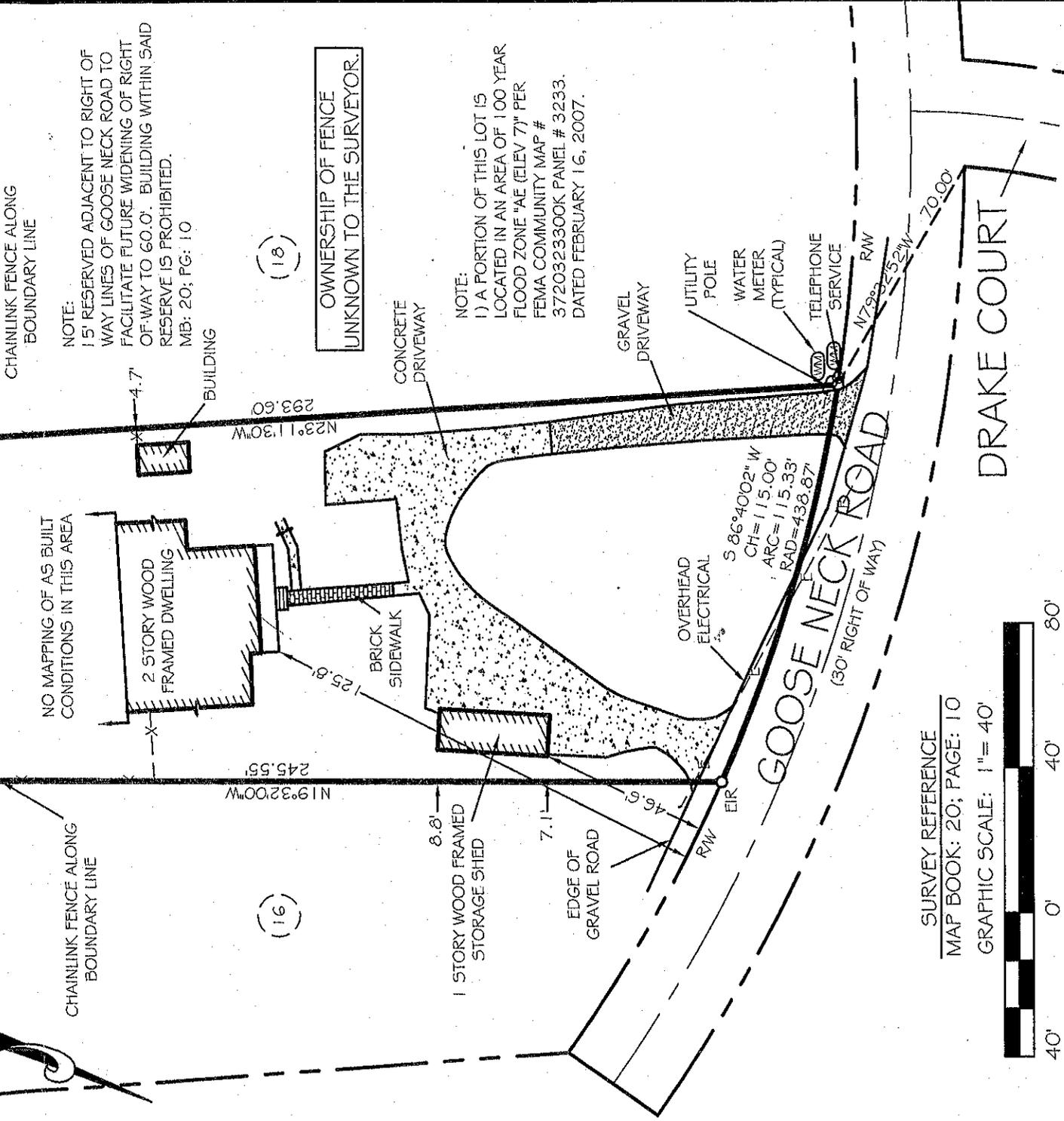
(If owner is different from applicant, both signatures are required)



VICINITY MAP
n.t.s.

NORTHEAST CAPE FEAR RIVER

LOT 17
27,427 sq. ft.
0.62 ACRES +/-



OWNERSHIP OF FENCE UNKNOWN TO THE SURVEYOR.

NOTE:
1) A PORTION OF THIS LOT IS LOCATED IN AN AREA OF 100 YEAR FLOOD ZONE "AE (ELEV 7') PER FEMA COMMUNITY MAP # 3720323300K PANEL # 3233. DATED FEBRUARY 16, 2007.

SURVEY REFERENCE
MAP BOOK: 20; PAGE: 10
GRAPHIC SCALE: 1" = 40'



PLAT OF SURVEY FOR:
JOHN K. WARLICK
DORINDA R. WARLICK
SWANN PLANTATION
LOT: 17
ROCKY POINT TOWNSHIP, PENDER COUNTY
NORTH CAROLINA

LEGEND:
E.I.P. EXISTING IRON PIPE
● PROPERTY CORNER
■ EXISTING CONCRETE MONUMENT

ADDRESS: 260 GOOSE NECK ROAD
MICHAEL UNDERWOOD and ASSOCIATES, PA
102 CINEMA DRIVE, SUITE C
WILMINGTON, NC 28403
PHONE: 910-815-0650
FAX: 910-815-0393
E-MAIL: mua@biztec.rr.com



NORTH CAROLINA
NEW HANOVER COUNTY

I, MICHAEL N. UNDERWOOD, CERTIFY THAT THIS SEAMAS MADE UNDER MY SUPERVISION FROM AN ALLEGED SURVEY MADE UNDER MY SUPERVISION DESCRIPTION AS SPECIFIED ON THE FACE OF PLAT RATIO OF PRECISION AS CALCULATED FROM THE SURVEY DATA 1/10,000 + THAT THE BOUNDARIES NOTED ON THIS PLAT WERE BY BROKEN LINES PLOTTED FROM INFORMATION OBTAINED FROM STANDARDS OF PRACTICE FOR LAND SURVEYING IN NORTH CAROLINA" WITNESS MY ORIGINAL SIGNATURE, LICENSE NUMBER AND SEAL THIS 7TH DAY OF NOVEMBER A.D., 2007.

MICHAEL N. UNDERWOOD, P.L.S.
LICENSE NUMBER L-2962
SEAL OR STAMP

© 2007 MICHAEL UNDERWOOD and ASSOCIATES, PA

Shipman & Wright, L.L.P.

A t t o r n e y s A t L a w

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Board Certified Civil Trial Specialist
National Board of Trial Advocacy

William G. Wright
Certified Mediator

Herbert O. Phillips, IV, MD, JD
Of Counsel

Angelique Adams

Matthew W. Buckmiller

Aileen Wu Viorel

James W. Zisa

Jean S. Martin

November 19, 2007

Pender County Board of Adjustment
808 South Walker Street
Burgaw, North Carolina 28425

RE: Request for a Variance
Kent & Dorinda Warlick – 260 Goose Neck Road

To Whom It May Concern:

This correspondence and its attachments are submitted in connection with the Application for a Variance submitted by Mr. and Mrs. Warlick on or about November 8, 2007. Enclosed please find a scaled map showing the required information, pictures of the shed and business addressed envelopes for the adjacent property owners.

I understand that there has been a complaint(s) made and an investigation by the Pender County Planning Department with regard to a 10 x 20' shed installed on Mr. and Mrs. Warlick's property. For the reasons explained below, we hereby request a variance from the Pender County zoning ordinance requiring that a shed be situated 10 feet from the property line.

Background. In May 2006, the Warlick's had a pre-fabricated wooden shed installed upon their property located at 260 Goose Neck Road for purposes of storing their bikes and four-wheelers. It measures approximately 10 x 20 feet and cost about \$4,000. The front corner of the shed is situated 7'1" from the western property line and the back corner of the shed is 8'7" from the property line.

At the time the shed was delivered and placed upon the property, it was the Warlick's understanding that the only requirements with regard to installing the shed was governed under the subdivision's restrictive covenants, especially with regards to issues concerning the placement of the shed with regard to boundary lines. They were unaware that a permit was required by the County, since the shed was not built on site (like a dwelling building), it was prefabricated. The Warlick's followed the Protective Covenants of Swann Plantation, which

PRACTICE AREAS

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November 19, 2007

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requires "an accessory building . . . be a minimum of 5 feet off the property line." They also confirmed with their adjacent neighbors that they did not and do not have any objections to the location of the shed on their property. For your reference, the adjacent neighbors are as follows: (1) To the East -- Ron and Nancy Core, 280 Gooseneck Drive; (2) to the West -- Reggie & Phyllis Barnes, 230 Goose Neck Rd.; and (3) across the street-- Karen Harding, 411 S. Dudley Street. None of these adjacent neighbors have any objections to the installation or placement of the shed. A copy of a written statement from Mr and Mrs. Core is attached hereto as **Exhibit 1**. (Others have provided their verbal assent, but if written assent is required, please let us know and we will gladly supplement this application.)

Reasons for Granting Variance. Granting the variance requested will not confer upon the Warlicks any special privileges that are denied to other residents in the area. Similarly, to deny them a variance, would deprive them of rights commonly enjoyed by other residents in the neighborhood. For example, there are at least two other outbuildings situated within 10 feet of the boundary lines on other lots in the subdivision, including a towed-in trailer and a much larger building than the shed on the Warlick's property. I understand that permits were not sought nor any variances required for these other structures. Nevertheless, they have remained on the lots. I have not provided the specific locations of these potential violations because as neighbors, the Warlicks have no problem with their location and want to maintain harmony within the neighborhood. However, if such is needed, I can provide additional information at your request.

The variance we seek would be in harmony with the purposes and intent of the ordinance and is not injurious to the neighborhood or its general welfare. As stated above, all the adjacent neighbors have assented to the placement of the shed. In particular, the neighbors closest to the shed (the Cores) have provided their written assent. The only neighbor that has voiced any concerns about the shed, Gary Silivanch of 290 Gooseneck Road, is not an adjacent neighbor (thus, his objections are irrelevant to the issuance of the variance) and the Warlicks complying with the ordinance would not resolve the issues of which he complains, anyway.¹ Nevertheless, although the Warlicks attempted to resolve the complaints he made to the County Planning Board with Mr. Silivanch, he denied having made any such complaints when Mrs. Warlick approached him. He has refused to discuss this issue with the Warlicks.

In addition, moving the shed would cause the Warlicks significant financial hardship because the shed is cemented into the driveway. To move the shed, would cost approximately \$8,000, which includes the cost to break-up and remove the driveway, shift the shed, re-install electrical wiring, and repave a new driveway.

¹ Mr. Silivanch has complained that our placing the shed on the property and finishing our cement driveway is causing water washout and erosion. As to the latter, the driveway is not in violation of any ordinance or law that we are aware of and thus, that issue is not before this Board. With regard to the placement of the shed, moving it over a few feet will not address the alleged problems he is having with water erosion. Whatever water runoff problem he is experiencing is likely due to the downhill location of his property—directly downhill from Goose Neck Road and a number of properties, not just the Warlick's property.

November 19, 2007

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For the foregoing reasons, we respectfully request that a variance be granted.

Sincerely,



Aileen Wu Viorel, Esq.

Shipman & Wright, LLP

575 Military Cutoff Road, Suite 106

Wilmington, NC 28405

Tel: (910) 762-1990

Fax: (910) 762-6752

Attorneys for Kent & Dorinda Warlick

Encl.

Kent & Dorinda Warlick
260 Goose Neck Rd.
Rocky Point, NC 28457

October 31, 2007

RE: Shed Location

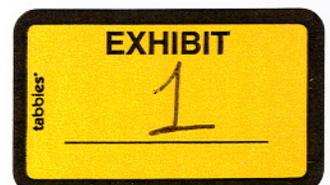
I/We NANCY R. CORE being adjacent neighbors to Kent & Dorinda Warlick at 280 Goose Neck Rd. give them permission to put their shed in the location that they have chosen.

Signature/Date

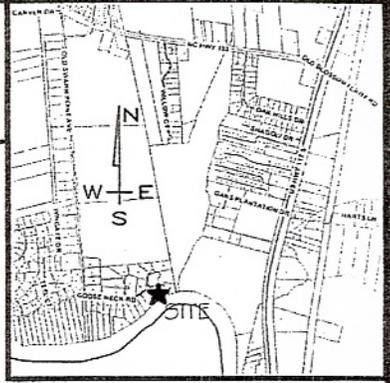
Nancy R. Core
Ron or Nancy Core

Notarized By:

43



NORTHEAST CAPE FEAR RIVER



VICINITY MAP
n.t.s.

LOT 17
27,427 sq. ft.
0.62 ACRES +/-



CHAINLINK FENCE ALONG BOUNDARY LINE

NO MAPPING OF AS BUILT CONDITIONS IN THIS AREA



2 STORY WOOD FRAMED DWELLING

BRICK SIDEWALK

CHAINLINK FENCE ALONG BOUNDARY LINE

NOTE:
15' RESERVED ADJACENT TO RIGHT OF WAY LINES OF GOOSE NECK ROAD TO FACILITATE FUTURE WIDENING OF RIGHT OF WAY TO 60.0'. BUILDING WITHIN SAID RESERVE IS PROHIBITED.
MB: 20; PG: 10

BUILDING

(16)

(18)

OWNERSHIP OF FENCE UNKNOWN TO THE SURVEYOR.

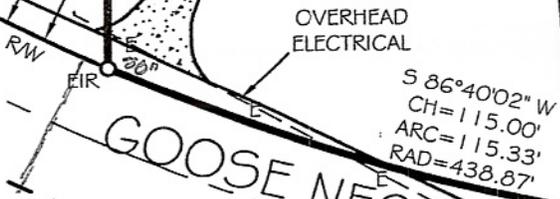
1 STORY WOOD FRAMED STORAGE SHED

CONCRETE DRIVEWAY

NOTE:
1) A PORTION OF THIS LOT IS LOCATED IN AN AREA OF 100 YEAR FLOOD ZONE "AE (ELEV 7)" PER FEMA COMMUNITY MAP # 3720323300K PANEL # 3233. DATED FEBRUARY 16, 2007.

EDGE OF GRAVEL ROAD

GRAVEL DRIVEWAY



OVERHEAD ELECTRICAL

UTILITY POLE

WATER METER (TYPICAL)

TELEPHONE SERVICE

GOOSE NECK ROAD
(30' RIGHT OF WAY)

S 86°40'02" W
CH=115.00'
ARC=115.33'
RAD=438.87'

SURVEY REFERENCE
MAP BOOK: 20; PAGE: 10
GRAPHIC SCALE: 1" = 40'



DRAKE COURT

PLAT OF SURVEY FOR:

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