

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 Planning Board
Tuesday, September 10, 2013 7:00 p.m.
Pender County Public Meeting Room
805 S. Walker Street, Burgaw, North Carolina**

Call to Order: Chairman Boney

Roll Call: Chairman Boney

Pender County Planning Board Members:

Boney: ___ Marshburn ___ Baker: ___ Edens: ___ McClammy: ___ Nalee: ___ Williams: ___

1. Adoption of the Agenda:

2. Adoption of Minutes: (August 6, 2013)

3. Public Comment:

(Public Hearings Open)

4. Zoning Map Amendment:

Coastal Land Design, PLLC, applicant, on behalf of Rocky Point Ventures, LLC, owner, is requesting approval of a Zoning Map Amendment for a general use rezoning of one tract totaling 21.14 acres from PD, Planned Development to GI, General Industrial zoning district. The property is located off of Carver Drive in Rocky Point and may be identified by Pender County PIN 3223-51-3062-0000.

5. Zoning Text Amendment

Pender County, applicant, is requesting an amendment to the Pender County Unified Development Ordinance. The proposal consists of amending Sections 2.4.1. and 2.4.7. to reflect updated voting procedures for the Board of Adjustment as well as amending the definition of unnecessary hardship pursuant to new statutory guidelines in accordance with H.B. 276; An Act to Clarify and Modernize Statutes Regarding Zoning Boards of Adjustment.

Anyone wishing to address the **Pender County Planning Board** shall make a request on the "Public Comment" sign-up sheet.
Please provide the information requested.

If you wish to speak on **a specific public hearing item**, please sign-in on the appropriate "Public Hearing" sign-up sheet.
Speakers will be allowed to speak *prior* to any action/vote taken by the Board.

*A time limit of **two** minutes per speaker or up to **ten** minutes for groups of five or more, with a designated speaker will be imposed.

6. Zoning Text Amendment

Pender County, applicant, is requesting an amendment to the Pender County Unified Development Ordinance. The proposal consists of amending Section 7.10, Off-Street Parking and Loading/Parking Requirements by adding a Parking Study option.

(Public Hearings Closed)

7. Discussion Items:

a. Planning Staff Items:

b. Planning Board Members Items:

8. Next Meeting: October 1, 2013

9. Adjournment:

PLANNING STAFF REPORT
Zoning Map Amendment

SUMMARY:

Hearing Date: September 10, 2013 – Planning Board
October 21, 2013 – Board of Commissioners
Application Number: 11000 – Coastal Land Design PLLC (ZMA)
Applicant: Coastal Land Design PLLC
Property Owner: Rocky Point Ventures LLC

Rezoning Proposal: The request consists of rezoning one tract from PD, Planned Development to GI, General Industrial zoning district.

Property Record Numbers, Acreage, and Location: The property consists of 21.14 acres, is located on Carver Drive, Rocky Point, and may be identified by PIN 3223-51-3062-0000.

Staff Recommendation: The request complies with the criteria set forth in Article 3.3.8 of the Unified Development Ordinance. The request is also consistent with 7 policies the 2010 Comprehensive Land Use Plan and conflicts with 3 items. Therefore, staff respectfully recommends that the request be approved.

DESCRIPTION:

Coastal Land Design, PLLC, applicant, on behalf of Rocky Point Ventures LLC, owner, is requesting approval of a general use rezoning for one tract totaling 21.14 acres from PD, Planned Development to the GI, General Industrial zoning district.

The existing zoning in the surrounding area consists of PD, Planned Development, RP, Residential Performance and GI, General Industrial. Currently, the 21.14 acre property is underdeveloped with dense vegetation.

This property is bordered by a platted, 1.18 units per acre density subdivision known as Summit Ridge on the North and West sides and to the South by an industrial complex, commonly known as the Coty Plant, which is not in operation. Carver Drive borders the Eastern portion of the property. The surrounding area has several tracts that are currently zoned GI, General Industrial. Use of this area includes construction, offices and trucking services.

A previous development proposal shows the parcel as “Future Development” for the Summit Ridge subdivision (Attachment 1). The Register of Deeds Map Book 32 Page 89 indicates this property may have 404 Wetlands on this property; there is also a recorded one hundred foot utility right of way for Carolina Power and Light (Attachment 2 & 3). Any development proposals for the property would require a survey of the property and additionally may require delineation by the Army Corps of Engineers to determine if wetlands are present.

The 2010 Comprehensive Land Use Plan designates the subject property as Suburban Growth. As residential development increases in suburban areas, designation of large tracts for significant economic development projects will become more difficult because fewer locations will exist that have the characteristics of an attractive economic development site, particularly in terms of proximity to existing residential areas. Because of the close proximity to general industrial zoned properties and existing residential areas, an industrial use of this property could be economically beneficial. Suburban growth area does not preclude the development of economic sites considered important to the economic sustainability of Pender County.

This is a general use rezoning which will encompass all uses permitted-by-right in the GI, General Industrial zoning district, as shown in the Permitted Use Table 5.2.3 of the *Pender County Unified Development Ordinance*. The GI zoning district is intended to allow a variety of industrial uses including; utilities, construction, manufacturing, wholesale trade, transportation and warehousing, information, finance and insurance, real estate and rental and leasing, professional, scientific and technical services, management of companies and enterprises, administrative and support and waste management and remediation services, accommodation and food services, other services, public administration, and other miscellaneous uses.

EVALUATION:

- A) Public Notifications:** Public Notice of the proposal for map change has been advertised in the *Pender-Topsail Post and Voice*. Adjacent property owners have been given written notice of the request, and a public notification sign has been placed on the property.
- B) Existing Zoning in Area:** The existing zoning in the vicinity of the subject property consists of PD, Planned Development, GI, General Industrial and RP, Residential Performance zoning districts.
- C) Existing Land Use in Area:** The existing land uses of the surrounding property consist of a 1.18 units per acre density single-family residential use in the subdivision known as Summit Ridge bordering three sides of the property. The tract was originally "Future Development" for Summit Ridge Subdivision at time of Master Plan submittal (Attachment 1, 2 & 3). On the Southern border of the property is the industrial complex, commonly known as the Coty Plant which is not in operation.
- D) 2010 Comprehensive Land Use Plan Compliance:** The 2010 Comprehensive Land Use Plan designates the subject property as Suburban Growth. This land use classification identifies those areas of the county where significant residential growth is expected to occur over within the Land Use Plan's planning horizon. Because of the close proximity to general industrial zoned properties and existing residential areas, an industrial use of this property would be economically beneficial. Suburban growth area does not preclude the development of economic sites considered important to the economic sustainability of Pender County.

The following goals and policies within this plan support the rezoning request:

- a) **Growth Management Goal 1A.1:** Manage the physical growth and development of Pender County by promoting more intensive land uses in key locations identified for such growth while preserving and protecting the unique physical character and social assets of the predominant rural lifestyle and coastal environment that makes the County a unique place to live.
- b) **Growth Management Policy 1A.1.2:** Encourage development in areas where the necessary infrastructure – roads, water, sewer, and schools - are available, planned or can be most cost effectively provided and extended to serve existing and future development.
Pender County Utilities has indicated the site has the potential for future sewer and water connections.
- c) **Growth Management Policy 1A.1.4:** The County should develop and utilize innovative and flexible land planning techniques that encourage developments to efficiently use land resources that result in more compact urban areas, infill development, redevelopment, and the adaptive re-use of existing buildings.
- d) **Growth Management Policy 1A.1.5:** The County supports a pro-business/pro-growth attitude, balanced by a concern for preserving the natural assets and quality of life factors that make the area attractive to visitors and permanent residents alike.
- e) **Economic Development Goal 10A.1** Promote economic development which meets the needs of the County for expanding the non-residential tax base and providing well-paying jobs.
- f) **Economic Development Policy 10A.1.2:** Commit County resources to improve and expand efforts to retain and recruit industries. Place emphasis on re-use of vacant buildings, recruitment of clean industries, and creation of jobs. (Clean industries are generally defined as sustainable businesses that participate in environmentally friendly activities to ensure that all processes, products, and manufacturing activities to adequately address environmental concerns.)
- g) **Economic Development Policy 10A.1.6:** New and expanding industries and businesses shall be encouraged to 1) diversify the local economy, 2) train and utilize a more highly skilled labor force and 3) increase per capital income.

The following goals and policies within this plan may not support the rezoning request:

- a) **Growth Management Policy 1A.6:** Use conditional zoning process to enable developers to contribute to addressing the impact of developments on capital facilities and other resources; incorporate regulations into new Unified Development Ordinance to enable a small project to address specific impacts to an existing adjacent community.
- b) **Preferred Development Patterns Policy 3A.1.3:** Support the inclusion in the UDO of conditional zoning which provides more flexibility for the land owner/developer and the County to mutually agree upon specific development conditions and requirements. (Conditional zoning is a method that incorporates all

the site-specific standards directly into the zoning district regulations and then applies that zoning district only to the property that is the subject of the rezoning petition.)

- c) **Rocky Point Small Area Plan Policy 4B.1.4:** New development within the small area should be compatible with existing residential uses.

E) Unified Development Ordinance Compliance: Article 3.3.8 of the Unified Development Ordinance provides for standards that shall be followed by the Planning Board before a favorable recommendation of approval for rezoning can be made. The proposed rezoning meets the standards of Article 3.3.8 of the Unified Development Ordinance.

3.3.8 Review Criteria for Rezoning

The Planning Board and Board of Commissioners shall consider the following matters in considering a rezoning request:

- A. *Whether the range of uses permitted by the proposed change would be appropriate to the area concerned (including not being detrimental to the natural environment, not adversely affecting the health or safety of residents or workers in the area, not being detrimental to the use or development of adjacent property, and not materially or adversely affecting the character of the general neighborhood);*
- B. *Whether adequate public facilities/services (i.e., water, wastewater, roads) exist, are planned, or can be reasonably provided to serve the needs of any permitted uses likely to be constructed as a result of such change;*
- C. *Whether the proposed change is consistent with the County's Comprehensive Land Use Plan and CAMA Land Use Plan or any other adopted land use document.*
- D. *Whether the proposed amendment is reasonable as it relates to the public interest.*

G) Summary & Staff Recommendation: The proposal consists of rezoning a 21.14 acre tract from PD, Planned Development, to GI, General Industrial. The request complies with the criteria set forth in Article 3.3.8 of the Unified Development Ordinance. The request is also consistent with 7 policies the 2010 Comprehensive Land Use Plan and conflicts with 3 items. Therefore, staff respectfully recommends that the request be approved.

VOTING AND RESOLUTION:

Planning Board

Motion: _____ Seconded _____

Approved: _____ Denied: _____ Unanimous _____

Boney: ___ Marshburn: ___ Baker: ___ Edens: ___ McClammy: ___ Nalee: ___ Williams: ___

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GENERAL USE REZONING

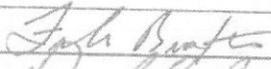
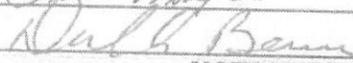
GENERAL

1. An applicant shall be required to schedule a pre-submittal meeting with the Administrator at least thirty (30) days prior to submission of an application.
2. Amendments to the Zoning Map, also called a Rezoning, shall be made in accordance with the provisions of the Pender County UDO and shall follow the review process as shown in Figure 1 at the end of Section 3.4.
3. The County Commissioners shall approve or deny amendments to the Zoning Map of Pender County, as may be required from time to time.
4. Rezoning must correspond with the boundary lines of existing platted lots or tracts. Where the boundaries of a rezoning request do not follow a boundary line or a split zoned property line, it must be possible to subdivide and develop that portion of the property outside the proposed rezoning boundary in accordance with the existing zoning and other requirements of the UDO. An illustration containing a metes and bounds description is required.
5. All zoning requirements shall be met within the boundaries of the area being rezoned. If all of the requirements cannot be met on the site being rezoned, the rezoning shall be expanded to include all property necessary to meet zoning requirements.
6. Must show substantial compliance with the goals and policies of the Comprehensive Land Use Plan and other adopted plans.

APPROVAL STANDARDS

1. Whether the range of uses permitted by the proposed change would be appropriate to the area concerned (including not being detrimental to the natural environment, not adversely affecting the health or safety of residents or workers in the area, not being detrimental to the use or development of adjacent property, and not materially or adversely affecting the character of the general neighborhood).
2. Whether adequate public facilities/services (i.e., water, wastewater, roads) exist, are planned, or can be reasonably provided to serve the needs of any permitted uses likely to be constructed as a result of such change.
3. Whether the proposed change is consistent with the County's Comprehensive Land Use Plan and CAMA Land Use Plan or any other adopted land use document.
4. Whether the proposed amendment is reasonable as it relates to the public interest.

APPLICATION FOR REZONING (Zoning Map Amendment)

THIS SECTION FOR OFFICE USE			
Application No.	ZMA	Date	
Application Fee	\$	Receipt No.	
Pre-Application Conference		Hearing Date	
SECTION 1: APPLICANT INFORMATION			
Applicant's Name:	Coastal Land Design (Frank Braxton)	Owner's Name:	Rocky Point Ventures LLC
Applicant's Address:	P.O. Box 1172	Owner's Address:	P.O. Box 3555
City, State, & Zip	Wilmington, NC 28402	City, State, & Zip	Surf City, NC 28445
Phone Number:	910-254-9333 x-1003	Phone Number:	919-606-1653
Legal relationship of applicant to land owner: Consultant			
SECTION 2: PROJECT INFORMATION			
Property Identification Number (PIN):	3223-51-3062-0000	Total property acreage:	21.14
Current Zoning District:	Residential	Proposed Zoning District:	General Industrial
Project Address :	Carver Drive		
Description of Project Location:	West side of Carver Drive, South of the intersection of Carver Drive and Summit Ridge Road. Adjacent to the former COTY Plant		
SECTION 3: SIGNATURES			
Applicant's Signature		Date:	7/24/13
Owner's Signature		Date:	7/24/13
NOTICE TO APPLICANT			
<ol style="list-style-type: none"> 1. Applicant must also submit the information described on the Rezoning Checklist. 2. Applicant or agent authorized in writing must attend the public hearing. 3. Once the public hearing has been advertised, the case will be heard unless the applicant withdraws the application or unless the Planning Board or other authorized person agrees to table or delay the hearing. 4. All fees are non-refundable 5. A complete application packet must be submitted prior to the deadline in order to be placed on the next Planning Board Agenda 			

Rezoning/Zoning Map Amendment Checklist

<input checked="" type="checkbox"/>	Signed application form
<input checked="" type="checkbox"/>	Application fee
<input checked="" type="checkbox"/>	A list of names and addresses, as obtained from the county tax listings and tax abstract, all adjacent property owners, including property owners directly across any road or road easement, and owners of the property under consideration for rezoning.
<input checked="" type="checkbox"/>	Two (2) business size envelopes legibly addressed with first class postage for each of the adjacent and abutting property owners on the above list.
<input checked="" type="checkbox"/>	Accurate legal description or a map drawn to scale showing the property boundaries to be rezoned, in sufficient detail to for the rezoning to be located on the Official Zoning Map.
<input checked="" type="checkbox"/>	18 (11"x17") map copies to be distributed to the Planning Board
<input checked="" type="checkbox"/>	20 (11"x17") map copies to be distributed to the Board of Commissioners
<input checked="" type="checkbox"/>	Digital (.pdf) submission of all application materials
<input checked="" type="checkbox"/>	A description and/or statement of the present and proposed zoning regulation or district boundary and stating why the request is being made and any information that is pertinent to the case. If the owner and applicant are different, the letter must be signed by both parties.
Office Use Only	
<input type="checkbox"/>	ZMA Fees: (\$500.00 for first 5 acres; \$10/acre thereafter up to 1,000 acres; \$5/acre thereafter) Total Fee Calculation: \$
Attachments Included with Application: (Please include # of copies)	
CD /other digital version	<input type="checkbox"/> Y <input type="checkbox"/> N
Plan Sets	# of large
	# of 11X17
Other documents/Reports	<input type="checkbox"/> Y <input type="checkbox"/> N
Payment Method:	Cash : <input type="checkbox"/> \$ _____
	Credit Card: <input type="checkbox"/> Master Card <input type="checkbox"/> Visa
	Check: <input type="checkbox"/> Check # _____
Application received by:	Date:
Application completeness approved by:	Date:
Dates scheduled for public hearing: <input type="checkbox"/> Planning Board: <input type="checkbox"/> Board of Commissioners:	

RETURN COMPLETED APPLICATION TO:
 Pender County Planning & Community Development
 805 South Walker Street
 P.O. Box 1519
 Burgaw, NC 28425

International Paper Company
D.B. 70-157

International Paper Company
D.B. 70-157

Director of Planning Department
The Board of Planning and Zoning
approves this plan of subdivision for a period of two (2) years.

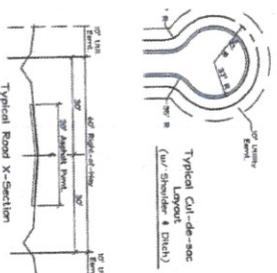
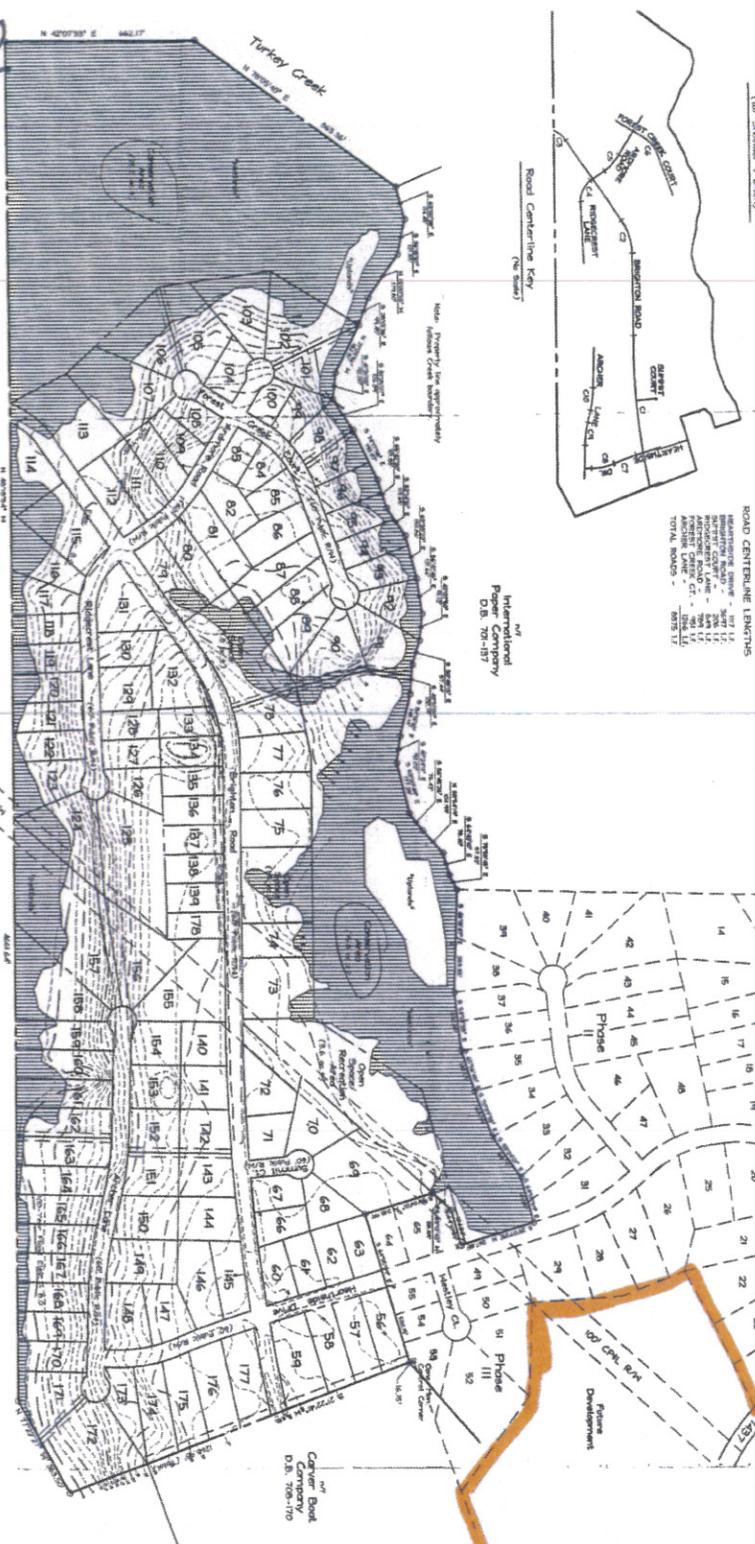


Summit Ridge - IV thru VII

Phase I Preliminary Plat Extension 1 of 1

Wilmington Land Company
P.O. Box 3442
Wilmington, NC 28409
Tel: (910) 763-1784

DESIGN SOLUTIONS Site Planning & Landscape Architecture
1001 W. 10th Street, Suite 200
Wilmington, NC 28401
Tel: (910) 763-1784



Centerline Curve Table

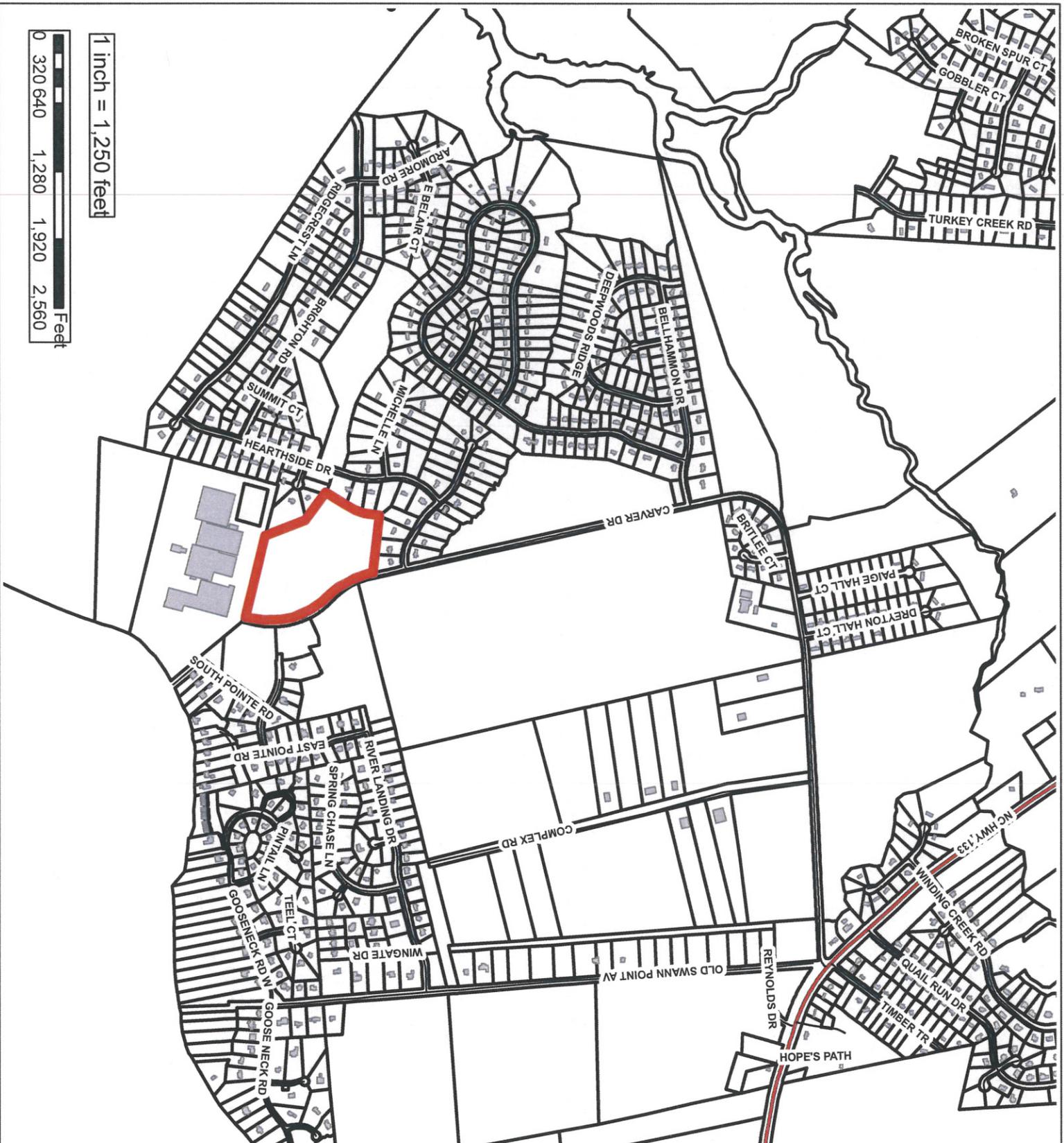
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2	100+50 to 100+100	100	50	1570.8	1570.8
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7	100+300 to 100+350	100	50	1570.8	1570.8
8	100+350 to 100+400	100	50	1570.8	1570.8
9	100+400 to 100+450	100	50	1570.8	1570.8
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11	100+500 to 100+550	100	50	1570.8	1570.8
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114	100+5650 to 100+5700	100	50	1570.8	1570.8
115	100+5700 to 100+5750	100	50	1570.8	1570.8
116	100+5750 to 100+5800	100	50	1570.8	1570.8
117	100+5800 to 100+5850	100	50	1570.8	1570.8
118	100+5850 to 100+5900	100	50	1570.8	1570.8
119	100+5900 to 100+5950	100	50	1570.8	1570.8
120	100+5950 to 100+6000	100	50	1570.8	1570.8
121	100+6000 to 100+6050	100	50	1570.8	1570.8
122	100+6050 to 100+6100	100	50	1570.8	1570.8
123	100+6100 to 100+6150	100	50	1570.8	1570.8
124	100+6150 to 100+6200	100	50	1570.8	1570.8
125	100+6200 to 100+6250	100	50	1570.8	1570.8
126	100+6250 to 100+6300	100	50	1570.8	1570.8
127	100+6300 to 100+6350	100	50	1570.8	1570.8
128	100+6350 to 100+6400	100	50	1570.8	1570.8
129	100+6400 to 100+6450	100	50	1570.8	1570.8
130	100+6450 to 100+6500	100	50	1570.8	1570.8
131	100+6500 to 100+6550	100	50	1570.8	1570.8
132	100+6550 to 100+6600	100	50	1570.8	1570.8
133	100+6600 to 100+6650	100	50	1570.8	1570.8
134	100+6650 to 100+6700	100	50	1570.8	1570.8
135	100+6700 to 100+6750	100	50	1570.8	1570.8
136	100+6750 to 100+6800	100	50	1570.8	1570.8
137	100+6800 to 100+6850	100	50	1570.8	1570.8
138	100+6850 to 100+6900	100	50	1570.8	1570.8
139	100+6900 to 100+6950	100	50	1570.8	1570.8
140	100+6950 to 100+7000	100	50	1570.8	1570.8
141	100+7000 to 100+7050	100	50	1570.8	1570.8
142	100+7050 to 100+7100	100	50	1570.8	1570.8
143	100+7100 to 100+7150	100	50	1570.8	1570.8
144	100+7150 to 100+7200	100	50	1570.8	1570.8
145	100+7200 to 100+7250	100	50	1570.8	1570.8
146	100+7250 to 100+7300	100	50	1570.8	1570.8
147	100+7300 to 100+7350	100	50	1570.8	1570.8
148	100+7350 to 100+7400	100	50	1570.8	1570.8
149	100+7400 to 100+7450	100	50	1570.8	1570.8
150	100+7450 to 100+7500	100	50	1570.8	1570.8
151	100+7500 to 100+7550	100	50	1570.8	1570.8
152	100+7550 to 100+7600	100	50	1570.8	1570.8
153	100+7600 to 100+7650	100	50	1570.8	1570.8
154	100+7650 to 100+7700	100	50	1570.8	1570.8
155	100+7700 to 100+7750	100	50	1570.8	1570.8
156	100+7750 to 100+7800	100	50	1570.8	1570.8
157	100+7800 to 100+7850	100	50	1570.8	1570.8
158	100+7850 to 100+7900	100	50	1570.8	1570.8
159	100+7900 to 100+7950	100	50	1570.8	1570.8
160	100+7950 to 100+8000	100	50	1570.8	1570.8
161	100+8000 to 100+8050	100	50	1570.8	1570.8
162	100+8050 to 100+8100	100			



Applicant:
Coastal Land Design PLLC

Owner:
Rocky Ventures LLC

**Zoning Map Amendment
(ZMA)
General Use Rezoning
11000**



1 inch = 1,250 feet

0 320 640 1,280 1,920 2,560 Feet



Vicinity



Applicant:
Coastal Land Design PLLC

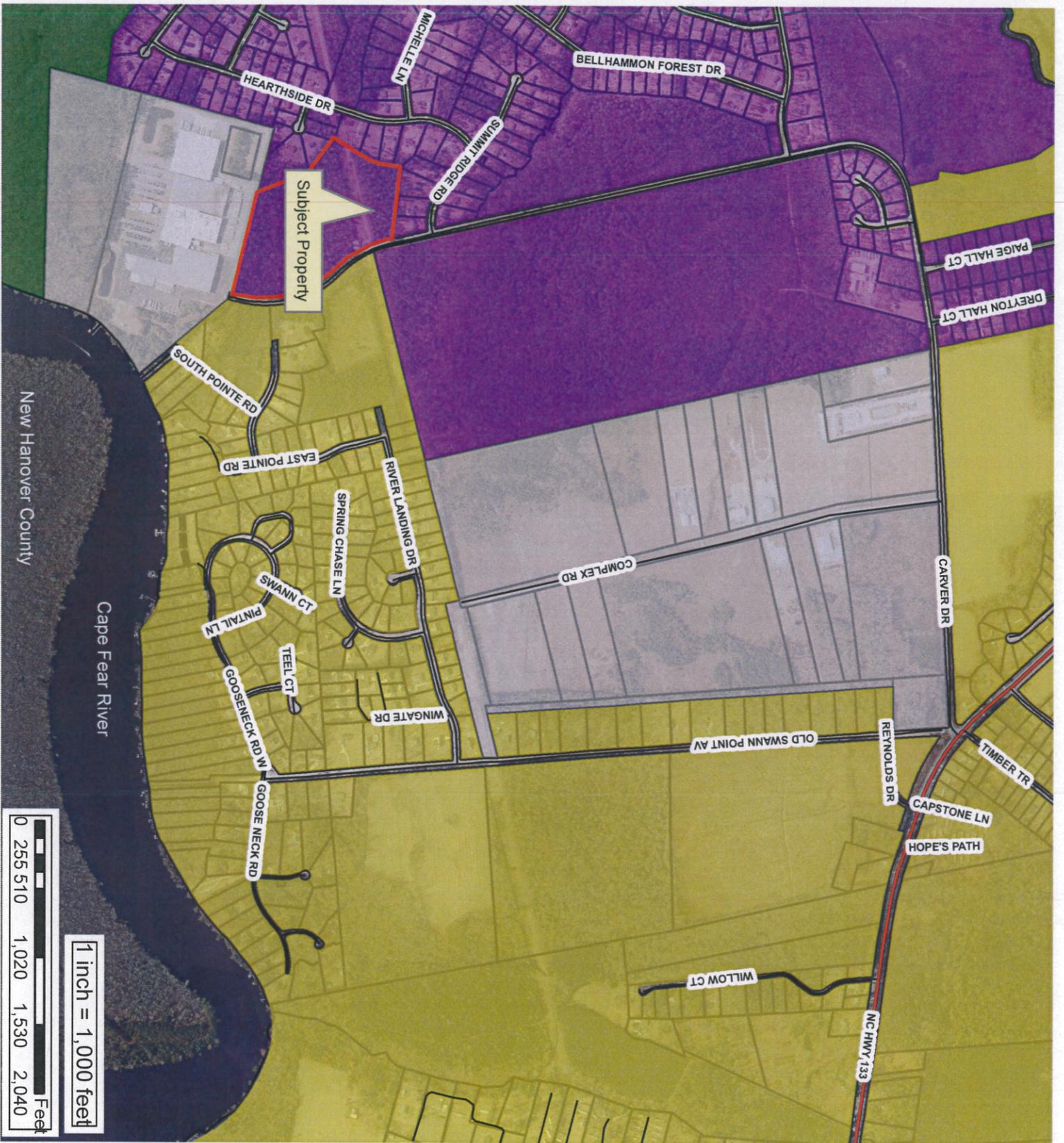
Owner:
Rocky Ventures LLC

Zoning Map Amendment
(ZMA)
General Use Rezoning
11000

Legend	
	UDO Zoning
	Environmental Conservation
	General Business
	General Industrial
	Industrial Transition
	Office Institutional
	Planned Development
	Rural Agriculture
	Residential Performance



Current Zoning





Applicant:
Coastal Land Design PLLC

Owner:
Rocky Ventures LLC

**Zoning Map Amendment
(ZMA)
General Use Rezoning
11000**

Legend

-  Future Land Use
-  Conservation
-  Industrial
-  Mixed Use
-  Office, Institutional, Commercial
-  Rural Growth
-  Suburban Growth



2012 Aerial





Applicant:
Coastal Land Design PLLC

Owner:
Rocky Ventures LLC

**Zoning Map Amendment
(ZMA)
General Use Rezoning
11000**



2012 Aerial



Applicant:
Coastal Land Design PLLC

Owner:
Rocky Ventures LLC

Zoning Map Amendment (ZMA)
General Use Rezoning
11000

Legend

-  Future Land Use
-  Conservation
-  Industrial
-  Mixed Use
-  Office, Institutional, Commercial
-  Rural Growth
-  Suburban Growth



2012 Aerial



1 inch = 1,000 feet

0 255 510 1,020 1,530 2,040 Feet

PLANNING STAFF REPORT
Zoning Text Amendment

SUMMARY:

Hearing Date: Planning Board – September 10, 2013
Board of County Commissioners – September 16, 2013
Applicant: Administrator, Division of Planning
Application Number: ZTA 11004 Pender County

Text Amendment Proposal: The request consists of amending the Pender County Unified Development Ordinance in accordance with North Carolina House Bill 276: An Act to Clarify and Modernize Statutes Regarding Zoning Boards of Adjustment. Specific modifications include amending Board of Adjustment procedures in Section 2.4.1 for voting and Section 2.4.7 further clarifying the definition of unnecessary hardship for a variance.

Background: The following text amendment is the result of recent legislative changes in an effort to modernize Board of Adjustment Statutes effective October 1, 2013.

Administrator/Planning Board Recommendation: Administrator respectfully recommends **amending** the Unified Development Ordinance as described in the staff report.

The following outline describes the proposed amendments by Section of the Pender County Unified Development Ordinance. The proposed amendments are in accordance with North Carolina House Bill 276: An Act to Clarify and Modernize Statutes Regarding Zoning Boards of Adjustment effective October 1, 2013. Amendments would allow for greater uniformity in the variance process aligning Pender County's criteria with other jurisdiction Statewide.

Section 2.4.1 Boards of Adjustment: Establishment, Membership and Rules of Procedure

Section 2.4.1.C. 6. Voting

A concurring vote of four-fifths (4/5's) of the Board of Adjustment is necessary for any final action on any matter according to the current Unified Development Ordinance. H.B. 276 details final action on variances must pass with a four-fifths (4/5's) concurrence of the Board while all other quasi-judicial cases may only require simple majority vote of the Board.

Only members who are excused from voting (conflict of interest or vacant positions) on a quasi-judicial matter do not count towards the four-fifths (4/5's) or simple majority required for final action. Absenteeism does not excuse members from voting and therefore these members are counted toward the total, and counted as a 'nay vote'. For example, one Board member absent from the meeting due to illness, is counted as a 'nay vote' towards a simple majority or four-fifths (4/5's) requirement.

Variance 3.14

Section 3.14.7 Findings

At present to grant a variance the Pender County Ordinance identifies *seven 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) That the special conditions or circumstances or practical difficulties do not result from the actions of the property owner or applicant, their agent, employee, or contractor. Errors made by such persons in the development, construction, siting or marketing process shall not be grounds for a variance except in cases where a foundation survey submitted to the Building Official before a contractor proceeds beyond the foundation stage has not revealed an error which is discovered later;*
- 2) That the strict enforcement of this Ordinance would deprive the owner or applicant of reasonable use of the property that is substantially consistent with the intent of this Ordinance;*
- 3) That the granting of a variance will not result in advantages or special privileges to the applicant or property owner that this Ordinance denies to other land, structures, or uses in the same district, and it is the minimum variance necessary to provide relief;*
- 4) That the variance shall not be materially detrimental to the health, safety or welfare of persons residing or working in the neighborhood. Consideration of the effects of the variance shall include but not be limited to, increases in activity, noise, or traffic resulting from any expansion of uses allowed by the variance;*
- 5) That the proposed use and the appearance of any proposed addition or alteration will be compatible with, and not negatively impact, nearby properties; and*
- 6) That the variance will not result in the expansion of a nonconforming use.*
- 7) In the case of expansions to nonconforming structures, the variance granted shall be the smallest that is reasonably necessary.*

To create consistency across North Carolina, H.B. 276 identified four criteria which will replace current text in the Pender County Unified Development Ordinance;

- 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.*

Evaluation:

As prescribed in the Pender County Unified Development Ordinance (UDO) Article 3.18.5 in evaluating any proposed ordinance text amendment, the Planning Board and the County Commissioners shall consider the following:

- 1) The extent to which the proposed text amendment is consistent with the remainder of the Ordinance, including, specifically, any purpose and intent statements;
- 2) The extent to which the proposed text amendment represents a new idea not considered in the existing Ordinance, or represents a revision necessitated by changing circumstances over time;
- 3) Whether or not the proposed text amendment corrects an error in the Ordinance; and
- 4) Whether or not the proposed text amendment revises the Ordinance to comply with state or federal statutes or case law.

In deciding whether to adopt a proposed Ordinance text amendment, the central issue before the Planning Board is whether the proposed amendment advances the public health, safety or welfare and is consistent with any adopted County Land Use Plan documents and the specific intent of this Ordinance.

Comprehensive Land Use Plan Compliance:

There are no conflicting policies within any adopted land use documents. The proposed text amendment revises the Pender County Unified Development Ordinance to comply with State statutes.

Staff Recommendation:

The proposed text amendment is consistent with the Unified Development Ordinance and North Carolina State Statutes. Therefore, staff is recommending approval of the amendments as presented.

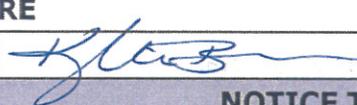
Planning Board

Motion: _____ **Seconded:** _____

Approved: _____ **Denied:** _____ **Unanimous** _____

Boney: __ **Marshburn:** __ **Baker:** __ **Edens:** __ **McClammy:** __ **Nalee:** _____ **Williams:** __

APPLICATION FOR TEXT AMENDMENT

THIS SECTION FOR OFFICE USE			
Application No.	ZTA 11004	Date	7/26/2013
Application Fee	\$	Receipt No.	
Pre-Application Conference	N/A	Hearing Date	9/10/2013
SECTION 1: APPLICANT INFORMATION			
Applicant's Name:	Pender County Planning & Community Development Department		
Applicant's Address:	805 S. Walker Street		
City, State, & Zip	Burgaw, NC 28425		
Phone Number:	910-259-1276		
SECTION 2: UDO TEXT TO BE AMENDED			
Current Text to be Amended (Please site accurate Article number referenced):			
<i>Board of Adjustment procedures in Section 2.4.1 for voting and Section 2.4.7 further clarifying the definition of unnecessary hardship for a variance.</i>			
Proposed Text to be added:			
<i>See Attached.</i>			
SECTION 3: SIGNATURE			
Applicant's Signature			Date: 7/26/2013 ✓
NOTICE TO APPLICANT			
If the applicant makes significant changes to the application for a text amendment after the Planning Board has made its recommendation, the Administrator may refer the modified request back to the Planning Board for an additional public hearing.			
TEXT AMENDMENT CHECKLIST			
<input checked="" type="checkbox"/>	Signed application form		
N/A <input type="checkbox"/>	Application fee		
<input checked="" type="checkbox"/>	A letter describing, in detail the intent and purpose of the amendment presented, meeting the approval criteria set forth in Section 3.18.5 of the Pender County UDO (shown on page 1 of this application)		
Office Use Only			
<input type="checkbox"/> ZTA Fees: \$250		Total Fee Calculation:	
Payment Method:	Cash : <input type="checkbox"/> \$ _____	Credit Card: <input type="checkbox"/> Master Card <input type="checkbox"/> Visa	Check: <input type="checkbox"/> Check # _____
Application Received By:			Date: 7/26/2013
Application completeness approved by:			Date: 8/30/13
Dates Scheduled for Public Hearings:	<input type="checkbox"/> Planning Board: 9/10/13	<input type="checkbox"/> BOC: 9/16/13	

BOARD OF ADJUSTMENT

2.4.1 Establishment, Membership, and Rules of Procedure

- A. Establishment - A Board of Adjustment (BOA) is hereby created to hear appeals from decisions of the Administrator and to consider requests for variances from the terms of the Unified Development Ordinance. This Board may also be known as the Zoning Board of Adjustment or Zoning Board.
- B. Membership
- 1) The BOA shall consist of five (5) members who shall be residents of the County of Pender.
 - 2) The members shall be appointed by the Board of Commissioners for a regular term of office of three (3) years. Board members may be appointed for up to four terms so long as their length of service on the Board does not exceed ten (10) years. In appointing members to fill vacancies, the Board of Commissioners shall appoint persons to serve the remaining term of office rather than a full three (3) years.
 - 3) There will be two (2) alternate members of the Board of Adjustment.
 - 4) No member of the Board of Adjustment shall be permitted to sit concurrently on the Planning Board or the Board of Commissioners.
- C. Rules of Procedure
- 1) The Board of Adjustment is a quasi-judicial body.
 - 2) Meetings of the Board of Adjustment shall be held at the call of the chairman and at such other times as the majority of the Board may determine.
 - 3) All meetings of the Board of Adjustment shall be open to the public.
 - 4) The Board shall keep minutes of its procedures, showing the vote of each member upon each question, or, if absent or failing to vote, an indication of such fact; and final disposition of appeals shall be taken, all of which shall be on public record.
 - 5) A quorum is not obtained unless four voting members are present. In the event there is abstention for reason declared into the record by a voting member, then a particular matter cannot proceed unless and until four other voting members are present and vote.
 - 6) As required by N.C.G.S. 153A-345(e), no final action shall be taken on ~~any matter~~ a variance without the concurring vote of four-fifths (4/5's) of the members of the Board. **All other quasi-judicial matters require a simple majority vote by members of the board.**
 - 7) As early as possible in each new year of the Board, the voting members shall elect a chairman and vice-chairman. Either such party when in the chair shall have the authority to administer oaths to witnesses. The Board may elect such other officers as the Board deems best.
 - 8) All decisions of the Board of Adjustment run with the land, never the person or corporation. Special Exceptions may have time limits imposed on their validity.
 - 9) The minutes of the Zoning Board of Adjustment shall be kept in such detail as necessary, and do not reflect official action of the Board until adoption of same.
 - 10) Minutes shall be filed in the office of the Administrator, as a public record.
 - 11) The Board of Adjustment shall have the authority **through the chair, or in the chair's absence anyone acting as the chair** to subpoena witnesses and compel the production of evidence as specified in N.C.G.S. 153A-345(g).

2.1.1 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) That the special conditions or circumstances or practical difficulties do not result from the actions of the property owner or applicant, their agent, employee, or contractor. Errors made by such persons in the development, construction, siting or marketing process shall not be grounds for a variance except in cases where a foundation survey submitted to the Building Official before a contractor proceeds beyond the foundation stage has not revealed an error which is discovered later;~~
 - ~~2) That the strict enforcement of this Ordinance would deprive the owner or applicant of reasonable use of the property that is substantially consistent with the intent of this Ordinance;~~
 - ~~3) That the granting of a variance will not result in advantages or special privileges to the applicant or property owner that this Ordinance denies to other land, structures, or uses in the same district, and it is the minimum variance necessary to provide relief;~~
 - ~~4) That the variance shall not be materially detrimental to the health, safety or welfare of persons residing or working in the neighborhood. Consideration of the effects of the variance shall include but not be limited to, increases in activity, noise, or traffic resulting from any expansion of uses allowed by the variance;~~
 - ~~5) That the proposed use and the appearance of any proposed addition or alteration will be compatible with, and not negatively impact, nearby properties; and~~
 - ~~6) That the variance will not result in the expansion of a nonconforming use.~~
 - ~~7) In the case of expansions to nonconforming structures, the variance granted shall be the smallest that is reasonably necessary.~~
- 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.

PLANNING STAFF REPORT
Zoning Text Amendment

SUMMARY:

Hearing Date: Planning Board – September 10, 2013
Board of County Commissioners – September 16, 2013
Applicant: Administrator, Division of Planning
Application Number: ZTA 10995 Pender County

Text Amendment Proposal: The request consists of amending Section 7.10, Off-Street Parking and Loading/Parking Requirements; within the Pender County Unified Development Ordinance.

Background: The following text amendment is the result of various administrative discussions and situational circumstances that have been brought to Staff's attention since the effective date of the Pender County Unified Development Ordinance.

Administrator/Planning Board Recommendation: The Administrator respectfully recommends amending the Unified Development Ordinance as described in the staff report.

The proposed amendment serves to create a process that will bring greater flexibility in both the Administration of and compliance with the parking requirements of the Unified Development Ordinance. Currently, commercial site development applicants are required to comply with **7.10.1 Minimum** (minimum parking requirements) for their commercial development(s). It is staffs understanding that these requirements, when strictly enforced, do not apply to all developments, uniformly. Accordingly, staff has devised a "Parking Study Option", which may be utilized by commercial developers as an alternative to the current parking minimum.

Staff is proposing to allow flexibility within the prescribed parking standards by requiring sufficient evidence to be submitted by a traffic/parking professional. This evidence shall address several key factors affecting a reduction (below the required minimum) or increase (above the 125% maximum) in the provision of parking to ensure that the public health, safety and general welfare of all stakeholders are being met. Some factors include: site specific access, mix and traffic loads, anticipated parking turnover and alternative transportation option availability.

To date, the Unified Development Ordinance requires parking to be enforced as stated below:

7.10 Off-Street Parking and Loading/Parking Requirements

"Off-street parking spaces shall be provided for all uses listed below in the amounts specified below. Uses not listed shall be reviewed by the Administrator for a determination of the required spaces. Buildings with multiple uses shall calculate parking based on the square footage of each use in the building." Generally, minimum parking requirements are based on the square footage, number of employees or service areas. However, these requirements may not always correspond directly with actual realized parking utilization rate(s).

Evaluation:

As prescribed in the Pender County Unified Development Ordinance (UDO) Article 3.18.5 in evaluating any proposed ordinance text amendment, the Planning Board and the County Commissioners shall consider the following:

- 1) The extent to which the proposed text amendment is consistent with the remainder of the Ordinance, including, specifically, any purpose and intent statements;
- 2) The extent to which the proposed text amendment represents a new idea not considered in the existing Ordinance, or represents a revision necessitated by changing circumstances over time;
- 3) Whether or not the proposed text amendment corrects an error in the Ordinance; and
- 4) Whether or not the proposed text amendment revises the Ordinance to comply with state or federal statutes or case law.

In deciding whether to adopt a proposed Ordinance text amendment, the central issue before the Board is whether the proposed amendment advances the public health, safety or welfare and is consistent with any adopted County Land Use Plan documents and the specific intent of this Ordinance.

Comprehensive Land Use Plan Compliance:

The Zoning Text Amendment is in compliance with Goals and Policies in the Comprehensive Land Use Plan:

Policy 1A.1.4 The County should develop and utilize innovative and flexible land planning techniques that encourage developments to efficiently use land resources that result in more compact urban areas, infill development, redevelopment, and the adaptive re-use of existing buildings.

Policy 1A1.5 The County supports a pro-business/pro-growth attitude, balanced by a concern for preserving the natural assets and quality of life factors that make the area attractive to visitors and permanent residents alike.

Policy 3A1.2 Use the creation of the Unified Development Ordinance (UDO) as an opportunity to allow more development flexibility while setting higher standards for sustainable development.

There are no conflicting policies within any adopted land use documents.

Staff Recommendation:

The proposed text amendment is consistent with the Unified Development Ordinance and Comprehensive Land Use Plan. Therefore, staff is recommending approval of the amendment as presented.

Planning Board

Motion: _____ **Seconded:** _____

Approved: _____ **Denied:** _____ **Unanimous** _____

Boney: __ Marshburn: __ Baker: __ Edens : __ McClammy: __ Nalee: _____ Williams: __

Attachment 1

7.10.2 Parking Study Option

A. General

Innovative approaches which enable overall flexibility with regard to the administration of the UDO within Pender County are encouraged when the public interest is served and protected. The Administrator or Planning Board, as specified, may reduce or increase the amount of off-street parking required where developer-submitted parking data, prepared and sealed by a professional parking consultant or transportation engineer with proven experience providing similar studies, illustrates that the standards of 7.10 Off-Street Parking and Loading/Parking Requirements do not accurately apply to the specific development. The parking study may be used to justify reductions in the minimum parking requirements, per 7.10.1 Minimum, up to a maximum of 20% required, and increases over 125% of the minimum parking required. The study shall be presented to the Planning Board at time of Master Development Plan. When an MPD is not required, the Administrator shall serve as the review and recommending authority.

The data submitted for an alternative parking plan shall include, at a minimum:

- 1) Introduction/Background: This section shall include details regarding the application such as application type, proposed use, history, a brief explanation as to why the study was undertaken and any other relevant information including Special Use Permits, restrictions, covenants, etc affecting the site.
- 2) A section shall be provided that details the methodology for the study
- 3) Development Site Detail:
 - The following items shall be addressed in the parking study:
 - a) The current zoning of the site
 - b) The size and type of the proposed and existing development(s) on-site
 - c) Site access
 - d) The mix and traffic generation of all uses on site
 - e) The anticipated rate of parking turnover
 - f) The minimum parking amount required by the UDO as compared to Urban Land Institute (ULI) and/or Institute of Transportation Engineers (ITE) projections; other acceptable projections may be approved by the Administrator on a case by case basis
 - g) Total existing on-site parking as well as existing conditions within two blocks of the site
 - h) Alternative transportation options available to the site
 - i) The 85-95% peak utilization threshold for both the UDO minimum and the applicant's supply proposal
 - j) NCDOT Traffic volume counts for roadways adjacent to the potential development site
- 4) Survey Site(s) Parking Survey:
 - a) The parking levels for similar use(s) shall be considered and be based on the appropriate NAICS classification and approved by the Administrator. The following shall be included in the survey:
 - 1) The PIN and address of the survey site(s)

- 2) Each day of the week and times that the study was performed; subject to prior approval by the Administrator
 - 3) A description of the existing supply and conditions on the survey site (zoning, parking supply etc.)
 - 4) If the use exists elsewhere (preferably in Pender County) in a similar situation, the study must outline the similarities between the two locations and why they will generate a similar parking demand
 - 5) The survey should occur for two normal business weeks and should capture peak parking demand, based on peak parking periods defined by the Urban Land Institute (ULI) or an alternative peak schedule for that particular use; the schedule shall be pre-approved by the Administrator
 - 6) Observed parking shall separate out legal, illegal, off-site and total
 - 7) Utilization rates for the survey site(s), including overall observed demand ratios as well as daily demand ratios/time of day. This comparison shall also include a comparison to the survey site's structural (not observed) 85-95% utilization rates, based on their existing supply (i.e. 100 spaces exist/85 & 95 spaces=85% & 95%) (The demand ratios should be presented, per square foot (i.e. 1 .8 cars per 250 ft²))
 - 8) The Minimum, Maximum, Median and Mode shall be reported
 - 9) An assessment of existing conditions within two blocks of the site
 - 10) NCDOT Traffic volume counts for roadways adjacent to the survey site(s)
- 5) A justification of peak periods and analysis of any deviations utilizing the Urban Land Institute's "Shared Parking"
 - 6) A recommendation concerning future parking needs and the site's capacity; reduction requests shall not exceed 20% of the required minimum parking required, per the Unified Development Ordinance's (UDO) 7.10.1 Minimum parking required.
 - 7) A section shall be provided that details the qualifications of the party responsible for preparing the study

B. Evaluation

- 1) *The Administrator or Planning Board shall make a recommendation and decision regarding the required parking supply by considering the following:*
 - a) *The completeness of the applicant submitted parking study.*
 - b) *The accuracy of the data submitted.*
 - c) *The relevance of the data submitted.*
 - d) *The minimum parking supply recommended by section 7.10.1 Minimum, of the Unified Development Ordinance.*
- 2) *The review and recommending authority shall be authorized to increase, decrease, accept, modify or reject the applicant supplied parking supply recommendation.*

C. Deferred Parking

1) In the event that parking is to be reduced, the amount over 5 reduced parking spaces shall be reserved on site. Total reductions shall not be greater than 20% of the minimum parking required, per 7.10.1 Minimum.

- a) The Administrator shall require a written agreement prior to the issuance of a Certificate of Occupancy that a current utilization study be performed after the Certificate of Occupancy has been issued.
- b) The reserved space shall be detailed on a site plan to be approved by the Administrator.
- c) In the event that full build out would trigger additional ADA parking requirements, the potential ADA space(s) shall be provided. This space may be converted to a standard space(s), should the Administrator determine that the site has sufficient parking supply, pursuant to the current site utilization evaluation.

2) The owner/applicant or other responsible party, as determined through a written agreement with the Administrator before a Certificate of Occupancy is issued, shall perform a current utilization study of the approved site, not less than 30 days after a Certificate of Occupancy (CO) has been issued and shall begin no later than before 60 days have lapsed since the Certificate of Occupancy (CO) has been issued.

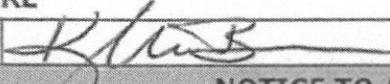
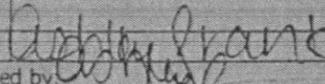
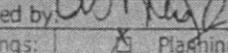
- a) The current site utilization study schedule shall be pre-approved by the Administrator and shall be evaluated with regard to conformity with the Parking Study Option (7.10.2) approved site plan. The study shall evaluate the efficiency/deficiency of parking relative to the realized demand from full build out.

3) The Administrator shall make a recommendation to install additional space up to the minimum required, maintain the space in reserve or absolve the area reserved for parking.

- a) The Administrator shall be authorized to determine if the intent of the Ordinance is being satisfied.

4) The applicant must comply with all other requirements of the Unified Development Ordinance (UDO).

APPLICATION FOR TEXT AMENDMENT

THIS SECTION FOR OFFICE USE			
Application No.	ZTA CASE # 10995	Date	6.21.2013
Application Fee	\$ N/A	Receipt No.	N/A
Pre-Application Conference	4.17.2013	Hearing Date	PB August 6, 2013
SECTION 1: APPLICANT INFORMATION			
Applicant's Name:	Pender County		
Applicant's Address:	805 South Walker Street		
City, State, & Zip	Burgaw, NC 28425		
Phone Number:	(910)259-1202		
SECTION 2: UDO TEXT TO BE AMENDED			
Current Text to be Amended (Please site accurate Article number referenced):			
The proposal consists of amending Section 5.3.3, Table of Permitted Uses by adding and modifying NAICS uses 221320 and 713940 within the RM, Residential Mixed, PD, Planned Development, and RA, Rural Agricultural zoning districts; the amendment will also modify Section 7.10, Off-Street Parking and Loading/Parking Requirements by adding a Parking Study option; the amendment will modify Section 5.3.6, adding use standards to Sewer Treatment Facilities to be located within the RM and PD zoning districts.			
Proposed Text to be added:			
See Attachment			
SECTION 3: SIGNATURE			
Applicant's Signature			Date: 6/21/2013
NOTICE TO APPLICANT			
If the applicant makes significant changes to the application for a text amendment after the Planning Board has made its recommendation, the Administrator may refer the modified request back to the Planning Board for an additional public hearing.			
TEXT AMENDMENT CHECKLIST			
<input checked="" type="checkbox"/>	Signed application form		
N/A <input type="checkbox"/>	Application fee		
<input type="checkbox"/>	A letter describing, in detail the intent and purpose of the amendment presented, meeting the approval criteria set forth in Section 3.18.5 of the Pender County UDO (shown on page 1 of this application)		
Office Use Only			
<input type="checkbox"/> ZTA Fees: \$250		Total Fee Calculation:	
Payment Method:	Cash: <input checked="" type="checkbox"/> \$ _____	Credit Card: <input type="checkbox"/> Master Card <input type="checkbox"/> Visa	Check: <input type="checkbox"/> Check # _____
Application Received By:			Date: 6.21.2013
Application completeness approved by:			Date: 6.21.2013
Dates Scheduled for Public Hearings:	<input checked="" type="checkbox"/> Planning Board:	<input checked="" type="checkbox"/> BOC:	