Pender County
Planning and Community Development

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

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

AGENDA
Pender County Board of Adjustment Meeting
January 17, 2018, 9:00 a.m.
Pender County Public Meeting Room
805 S. Walker Street, Burgaw, North Carolina

Call to Order: Chairman Ferrante

Invocation:

Roll Call: Chairman
Pender County Board of Adjustment Members:
Ferrante: ___ Rhodes: ___ Godridge: ___ Pullen: ___

Alternates:
Peters: ___ Rivenbark: ___

1. **Adoption of the Agenda:**

2. **Adoption of the Minutes:** (November 15, 2017)

3. **Adoption of Meeting Calendar – 2018**

4. **Election of Officers**

5. **Public Comment:**

Public Hearing Opened

6. **Variance:**

7. Stroud Engineering, PA, applicant, on behalf of Eugene Smith, owner, is requesting a variance for relief from the Pender County Unified Development Ordinance standards outlined in Sections 7.5.1.A.2 and 7.5.1.A.4, Public and Private Street Design. Specifically, the request is to seek relief from standards requiring a connection between Red Bird Lane (private) and the approved development known as Song Bird Landing. The subject property is located at the terminus of Red Bird Lane (private) and west of Country Club Drive in Hampstead, NC in the Topsail Township. There is one (1) tract associated with this request totaling ± 112.38 acres and may be further identified by Pender County PIN: 4204-61-5445-0000.

** Public Hearing Closed**

8. **Discussion Items:**
   a. Planning Staff:

   b. BOA Members:

9. **Next Meeting:** February 21, 2018, 9:00 AM

10. **Adjournment:**

Board of Adjustment 2018 Meeting Dates

Meeting Date
1.17.18
2.21.18
3.21.18
4.18.18
5.16.18
6.20.18
7.18.18
8.15.18
9.19.18
10.17.18
11.20.18 Tuesday due to Holiday
12.19.18

PLANNING STAFF REPORT
VARIANCE REQUEST

SUMMARY:

Hearing Date:	January 17, 2018
Applicant:	Stroud Engineering, PA
Property Owner:	Pender Land Holdings, Inc.
Case Number:	VAR 777-2017

Property Location and Description: The subject property is located at the terminus of Red Bird Lane (private) and west of Country Club Drive in Hampstead, NC, Topsail Township. There is one (1) tract associated with this request totaling ± 112.38 acres and may be further identified by Pender County PIN: 4204-61-5445-0000.

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

Variance Requested: Stroud Engineering, PA, applicant, on behalf of Pender Land Holdings, Inc., owner, is requesting a variance for relief from the Pender County Unified Development Ordinance standards outlined in Sections 7.5.1.A.2 and 7.5.1.A.4, Public and Private Street Design. Specifically, the request is to seek relief from standards requiring a connection between Red Bird Lane (private) and the approved development known as Song Bird Landing.

BACKGROUND AND DESCRIPTION OF VARIANCE:
The subject property is part of a Master Plan approved by the Pender County Planning Board on October 4, 2016 for the development formerly known as Pender Land Greenway Park (279-2016). As a part of that approval, the project was conditioned to provide a vehicular connection to Red Bird Lane (private) which is also a requirement of the Pender County Unified Development Ordinance. In addition to the connection to Red Bird Lane, the project provides connections to other existing road networks with access from Azalea Drive and are as follows and shown on **Exhibit 1:** *Roadway Connections*: US HWY 17, Country Club Drive (SR 1565), Blue Bird Lane (private), Kiskadee Court (private), and Phoebe Court (private).

According to Section 7.5 Street Design, of the Pender County Unified Development Ordinance, the layout of streets as to arrangement, width, grade, character, and location shall conform to the following...2) Adjoining street systems, 3) Existing, planned and proposed streets, topographic, drainage and other natural features of the property, as well as 4) To provide for continuity in existing streets and proposed streets.

The applicant has asserted that the requirement to connect to existing Red Bird Lane (private) will create an undue hardship for existing residents along Red Bird Lane.

Red Bird Lane (private) was recorded in the Register of Deeds in November 1982 (**Exhibit 2:** *Map of Record*) without a specific designation of public or private. This 60' right of way dead ends into the subject parcel and does not provide any indication of future use, designation, or emergency turnaround s. There are 58 lots that access directly onto Red Bird Lane with 57 structures. The applicant has submitted a site plan (**Exhibit 3:** *Site Plan*) that indicates the desired layout for Song Bird Landing which contains improvements to Red Bird Lane to include an emergency turn-around.

ZONING ADMINISTRATOR'S CONCLUSION:

Stroud Engineering, PA, applicant, on behalf of Pender Land Holdings, Inc., owner, is requesting a variance for relief from the Pender County Unified Development Ordinance standards outlined in Sections 7.5.1.A.2 and 7.5.1.A.4, Public and Private Street Design. Specifically, the request is to seek relief from standards requiring a connection between Red Bird Lane (private) and the approved development known as Song Bird Landing.

3.14 VARIANCE

3.14.1 Applicability

A. The Board of Adjustment may vary certain requirements of this Ordinance, in harmony with the general purpose of these regulations, where special conditions applicable to the property in question would make the strict enforcement of the regulations impractical or result in a hardship in making reasonable use of the property.

B. The Board of Adjustment may waive certain requirements when authorized to do so by provisions adopted as a part of this Ordinance.

C. No variance shall be permitted that would have the effect of allowing a use not permitted in the use table of Section 5.2.3.

D. No variance shall be permitted that would allow a project to exceed the maximum density as to number of dwelling units to the acre in a Zoning District. This maximum density shall be inclusive of any density bonus allowance or additional units in a planned unit development.

E. The need for the variance cannot be a result of the owner's own actions and cannot be for strictly economic reasons.

F. The Board of Adjustment may grant variances in the following special circumstances, as indicated 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___ Rhodes____ Pullen ___ Godridge___

Alternates:
Rivenbark: _____ Peters: _____

7.5 STREET DESIGN

7.5.1 Public and Private Street Design

A. Layout of streets as to arrangement, width, grade, character, and location shall conform to the following:

2. Adjoining street systems,
4. To provide for continuity in existing streets and proposed streets,

RECEIVED

OCT 23 2017

PENDER PLANNING DEPT.

APPLICATION FOR VARIANCE

THIS SECTION FOR OFFICE USE			
Application No.	VA 777-2017	**Date**	10/23/17
Application Fee	$ 250.00	**Receipt No.**	585-24-10-2017

SECTION 1: APPLICANT INFORMATION

Applicant's Name:	STROUD ENGINEERING, PA	**Owner's Name:**	EUGENE SMITH
Applicant's Address:	102D CINEMA DRIVE	**Owner's Address:**	666 TINTAGEL LANE
City, State, & Zip	WILMINGTON NC 28412	**City, State, & Zip**	McLEAN, VA 22101
Phone Number:	910-815-0775	**Phone Number:**	571-278-9456
Email Address:	JFENTRESS@STROUDENGINEER.COM	**Email Address:**	TES_MCLEAN@COX.NET
Legal relationship of applicant to land owner:	APPLICANT IS THE PROJECT ENGINEER FOR THE LAND OWNER		

SECTION 2: PROJECT INFORMATION

Property Identification Number (PIN):	4204-61-5445-0000	**Total property acreage:**	TOTAL TRACT 163.5 AC. PH.1, SEC.1 = 27AC ADJ. TO RED BIRD LN
Zoning Classification:	ENTIRE TRACT IS PD	**Variance Size:**	PH.1, SEC.1 = 27AC. SONGBIRD LANDING
Variance Location & Address	PROPERTY ON COUNTRY CLUB, SOUTH OF HAMPSTEAD KIWANIS PARK		
Describe Variance and amount or type requested:	REQUEST FOR AN EXCEPTION TO THE INTERCONNECTION OF RED BIRD LANE INTO SONGBIRD LANDING SUBDIVISION		

SECTION 3: SIGNATURES

Applicant's Signature		**Date:**	
Owner's Signature	[signature]	**Date:**	9/30/17

NOTICE TO APPLICANT:

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

☒ **VA Fees $250**		**Total Fee Calculation $** 250.00	
Payment Method :	**Cash :** ☐ $_____	**Credit Card:** ☐ Master Card ☐ Visa	**Check:** ☒ Check # 2446
Application received by: KMB		Date: 10/23/17	
Application completeness approved by: [signature]		Date: 10/23/17	
Date scheduled for public hearing: 12/7/2017			

RECEIVED

OCT 23 2017

PENDER PLANNING DEPT.

STROUD ENGINEERING, P.A.

CONSULTING ENGINEERS
102-D CINEMA DRIVE
WILMINGTON, NORTH CAROLINA 28403
(910) 815-0775

Song Bird Landing Subdivision
Variance Application Narrative

Sept. 29, 2017

Overview:

Song Bird Landing's Preliminary Plat was approved on October 12, 2016. One of the approval conditions was for the first phase of this development which includes fifty-eight lots to make roadway connection to Red Bird Lane to the south. This approval condition was required by the Pender County Unified Development Ordinance Articles 7.5.1.A.2 and 7.5.1.A.4. This application requests variance to these articles on the following basis in address of the required findings of fact:

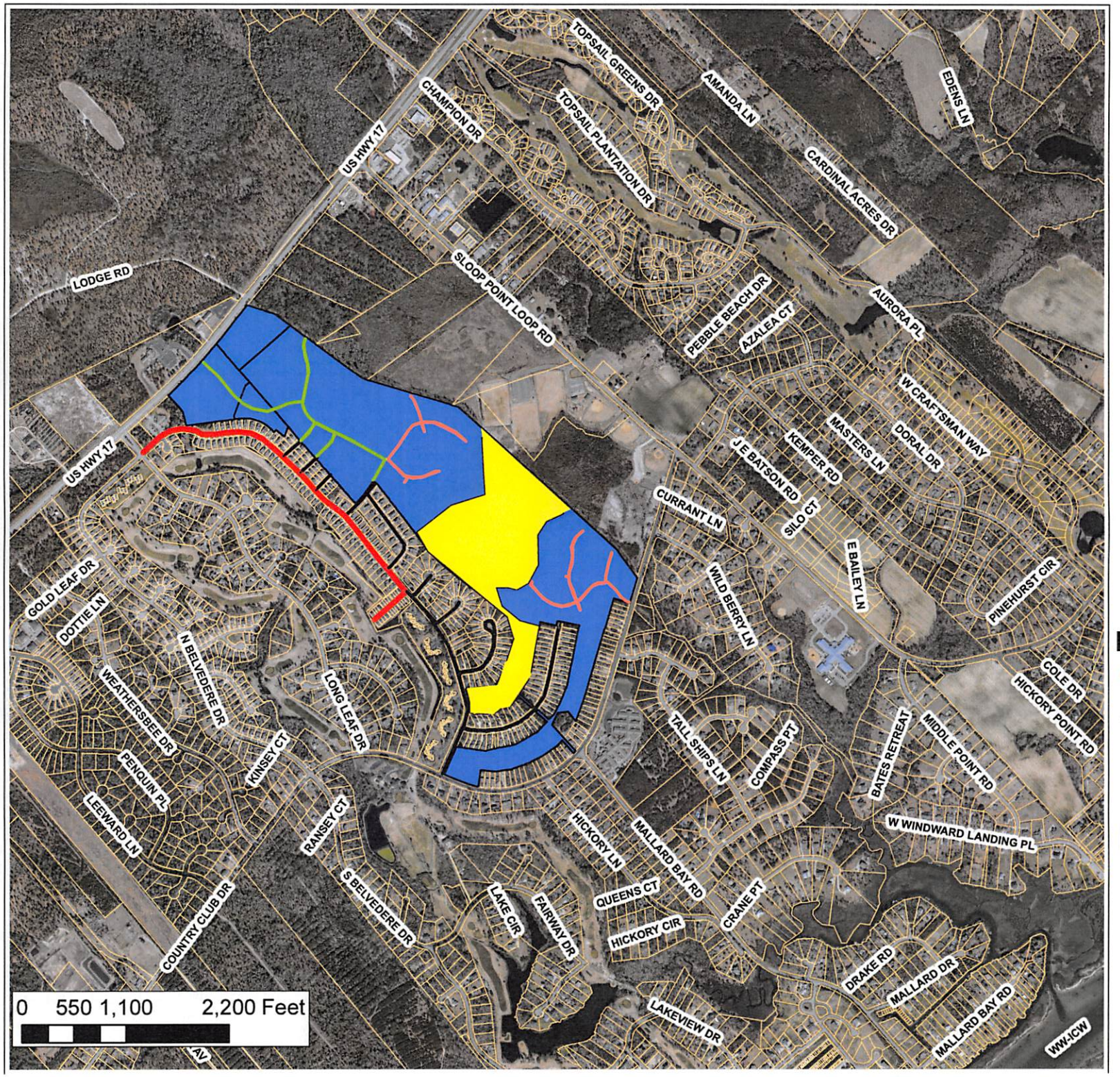
1) Unnecessary hardship would result from the strict application of the ordinance. It shall not be necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property; **Roadway connection to the existing Red Bird Lane requires traversing a very wide ditch to connect an existing private dead end road to a planned private road network. The unnecessary hardship is the burden of those living on Red Bird Lane as being responsible for the maintenance of their road which will include the new culvert and embankment necessary to make the roadway connection across the ditch. The subdivider did not want the connection to Red Bird however understood it as required and prepared to proceed accordingly. The Plantation Point Homeowners Association which includes the residents of Red Bird Lane met with the subdivider to voice protest of the connection. They have presented the attached Petition in this regard.**

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; **The location and required roadway connection of this property to the private Red Bird Lane will benefit southern bound traffic expedited access to US 17. This connection will subsequently impose increased traffic hardship on the existing residents of Red Bird Lane.**

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; **The traffic and maintenance hardship created by the required roadway connection of Songbird Landing private road network to the also private Red Bird Lane is not proposed by, or agreeable to, the existing residents of Red Bird Lane.**

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. **Granting of this requested variance will reduce the public safety threat imposed by additional traffic on Red Bird Lane as well be justified by the fact that money escrowed to maintain the private road will not be used to make repairs required by the use of others not contributing.**

Exhibit 1



COUNTY OF PENDER

Applicant:
Stroud Engineering, P.A.

Owner:
Pender Land Holdings, Inc

Master Development Plan
Preliminary Plat

Case Number:
Master Development Plan
270-2016
Preliminary Plat
293-2016

Pender Land Greenway Parl

Legend

- Proposed Private Roadways
- Proposed Collector Roadway
- Existing Private Roadways
- Existing Public Roadway
- Proposed Park Donation area
- Proposed Development

N

Proposed Roadways

Exhibit 2

STATE OF NORTH CAROLINA — PENDER COUNTY:

THE FOREGOING CERTIFICATE OF EVONNE M. SMITH, NOTARY PUBLIC OF NEW HANOVER COUNTY, IS CERTIFIED TO BE CORRECT THIS THE 08 DAY OF Nov. 1982.

REGISTER OF DEEDS

By: Teresa Hardy - Deputy

CERTIFICATION OF REGISTRATION BY REGISTER OF DEEDS

NORTH CAROLINA — PENDER COUNTY

FILED FOR REGISTRATION ON THE 08 DAY OF Nov. 1982 AT 11:50 AM/PM AND DULY RECORDED IN MAP BOOK 20 AT PAGE 39

REGISTER OF DEEDS

NEW HANOVER COUNTY — NORTH CAROLINA

JACK G. STOCKS, A REGISTERED LAND SURVEYOR, BEING DULY SWORN SAYS THAT THIS MAP WAS MADE BY HIM BY AN ACTUAL SURVEY DURING JULY 1982 AND THAT THIS MAP WAS PREPARED IN ACCORDANCE WITH G.S. 47-30 AS AMENDED. THAT THE ERROR OF CLOSURE AS CALCULATED BY LATITUDES AND DEPARTURES IS 1:5000 THAT THIS MAP IS TRUE AND CORRECT TO THE BEST OF HIS KNOWLEDGE AND BELIEF.

JACK G. STOCKS
REGISTERED LAND SURVEYOR

NORTH CAROLINA — NEW HANOVER COUNTY

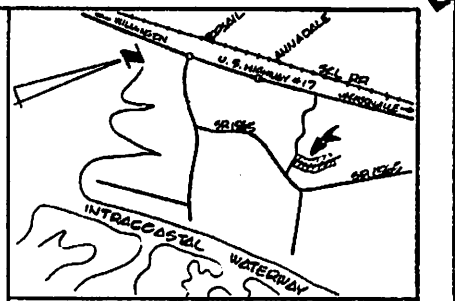
I, EVONNE M. SMITH, A NOTARY PUBLIC FOR SAID COUNTY AND STATE DO HEREBY CERTIFY JACK G. STOCKS PERSONALLY CAME BEFORE ME THIS DAY AND BEING DULY SWORN STATED THE ANNEXED MAP WAS PREPARED BY HIM (OR WAS PREPARED UNDER HIS SUPERVISION) FROM AN ACTUAL SURVEY MADE BY HIM (OR MADE UNDER HIS SUPERVISION) ON THE 7TH DAY OF JULY 1982 AND THAT ACCORDING TO THE BEST OF HIS KNOWLEDGE AND BELIEF SUCH MAP IS IN ALL RESPECTS CORRECT. WITNESS MY HAND AND OFFICIAL SEAL, THIS THE 28TH DAY OF OCT. 1982

EVONNE M. SMITH
NOTARY PUBLIC

MY COMMISSION EXPIRES NOVEMBER 14, 1986.

NORTH CAROLINA REGISTERED L 856 LAND SURVEYOR JACK G. STOCKS

EVONNE M. SMITH NOTARY PUBLIC NEW HANOVER COUNTY, N.C.



LOCATION MAP
NOT TO SCALE

BELVEDERE PLANTATION GOLF COURSE HOLE Nº 27

HOLE Nº 19

HOLE Nº 20

BELVEDERE PLANTATION GOLF COURSE

HICKORY LANE

S. R. # 1565

SECTION VI C BELVEDERE PLANTATION MAP BOOK 20 PAGE 18

REVISION OF SECTION I BELVEDERE PLANTATION MAP BOOK 16 PAGE 20

JACK G. STOCKS
REGISTERED LAND SURVEYOR
N.C. REGISTRATION Nº L856
WILMINGTON, N.C.

SECTION VI C
BELVEDERE PLANTATION

TOPSAIL TOWNSHIP — PENDER COUNTY — NORTH CAROLINA

SCALE IN FEET

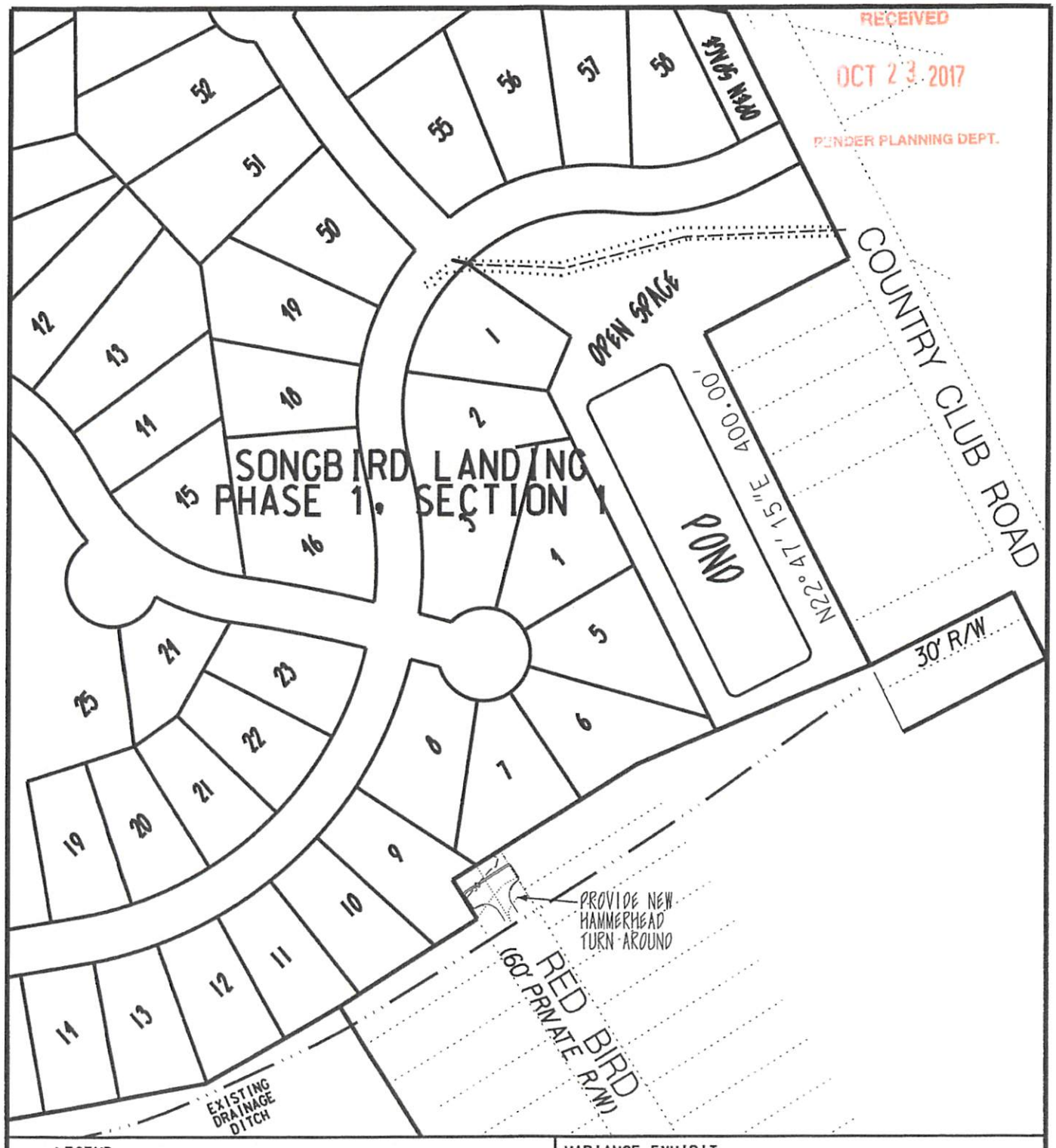
SCALE 1" = 100' — 100 0 100 200 300 400 500

DEVELOPED BY UNITED STATES DEVELOPMENT CORPORATION

JULY 1982

20-39

Exhibit 3



LEGEND

EIP EXISTING IRON PIPE
● PROPERTY CORNER
■ EXISTING CONTROL MONUMENT

150 75 0 150 300

GRAPHIC SCALE: 1" = 150'

STROUD ENGINEERING, P.A.
102-D CINEMA DRIVE
WILMINGTON, NC 28403
(910)815-0775
C-0647

VARIANCE EXHIBIT

FOR

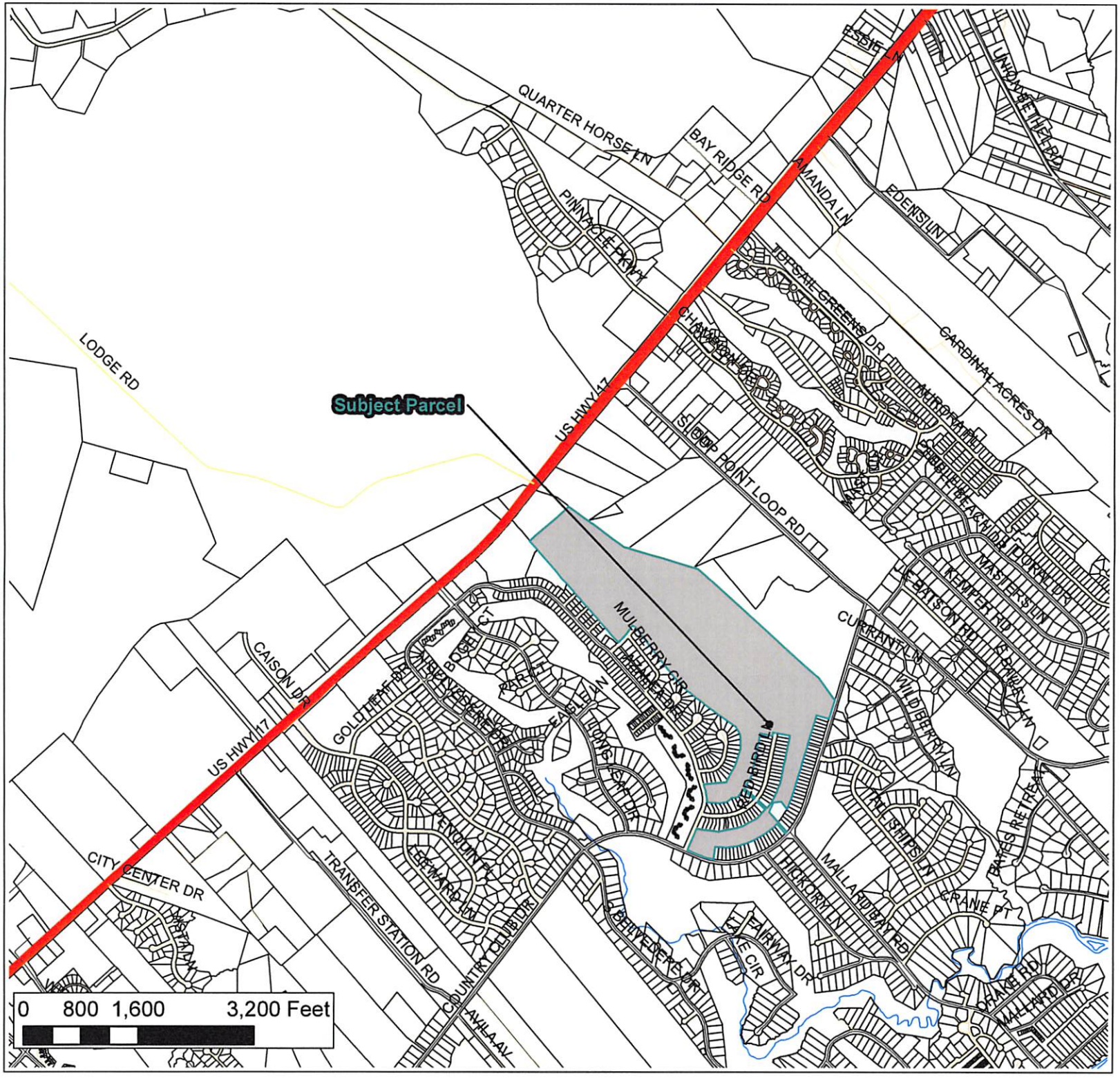
SONGBIRD LANDING

PHASE I - SECTION I

TOPSAIL TOWNSHIP PENDER COUNTY NORTH CAROLINA

DATE: 9/29/17 SCALE: 1"= 0'

W://MASTER/PW169/dgn/MASTER DEVELOPMENT PLAN.dgn



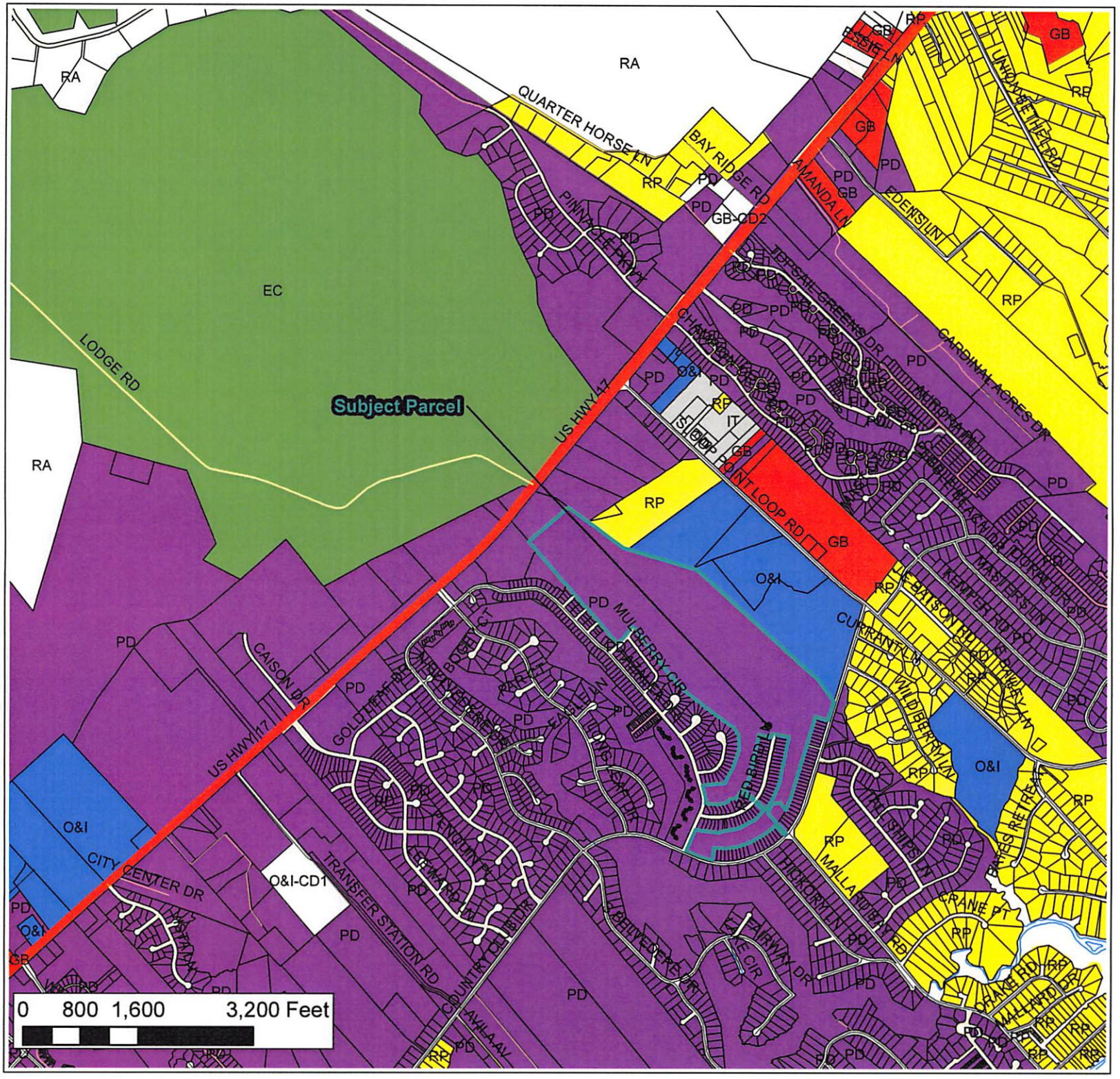
Applicant:
Stroud Engineering, PA

Owner:
Eugene Smith

Variance

Case Number:
777-2017

Vicinity



Applicant:
Stroud Engineering, PA

Owner:
Eugene Smith

Variance

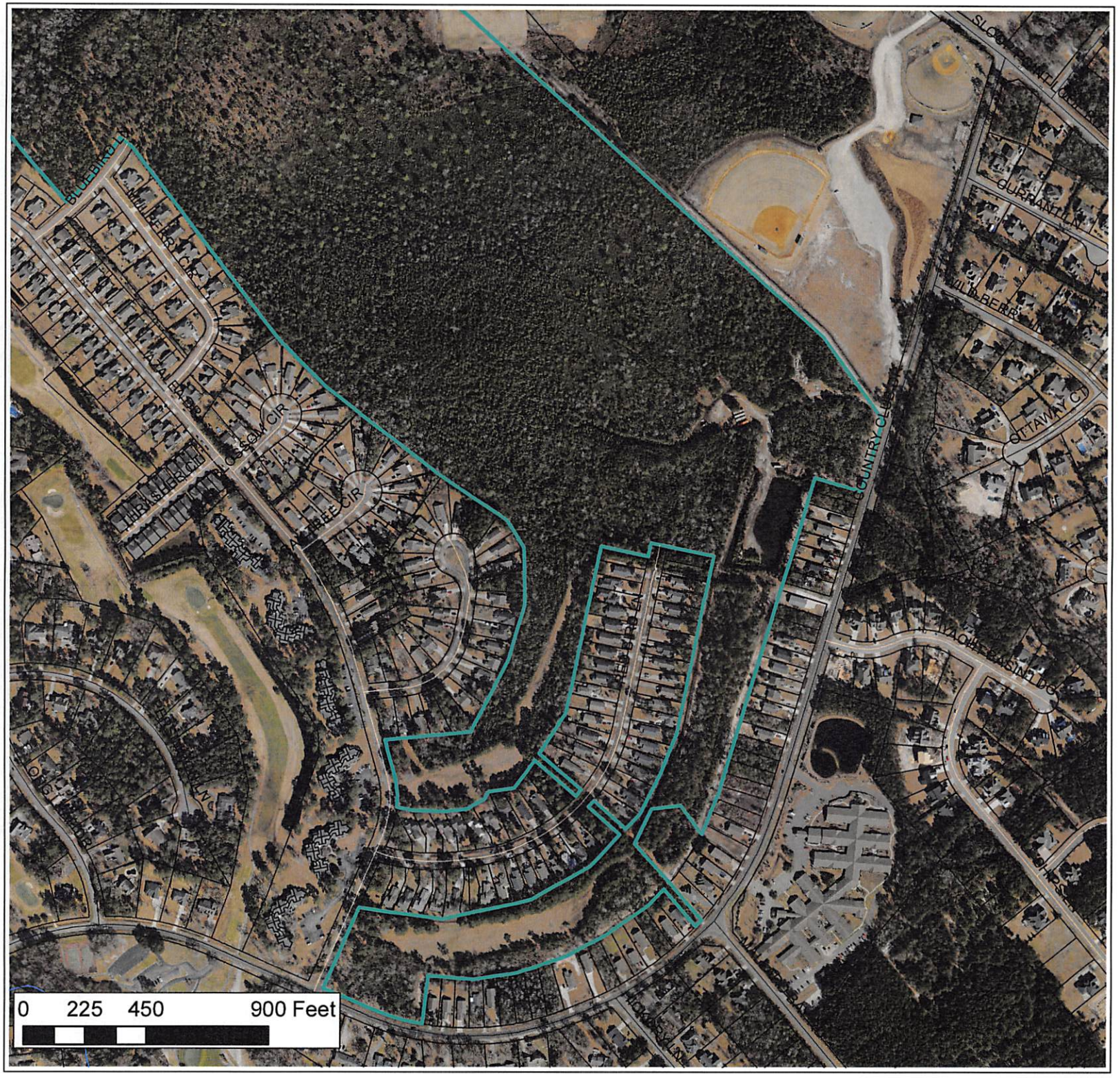
Case Number:
777-2017

Zoning Distrcts

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

N

Zoning



Applicant:
Stroud Engineering, PA

Owner:
Eugene Smith

Variance

Case Number:
777-2017

Aerial - 2016