

Pender County Planning and Community Development

Planning Division

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MINUTES Pender County Board of Adjustment Meeting September 21, 2016 9:00 a.m. Pender County Public Meeting Room 805 S. Walker Street, Burgaw, North Carolina

Call to Order: Chairman Ferrante called the meeting to order at 9:02 a.m.

Invocation: Administered by Chairman Ferrante

Roll Call: Chairman Ferrante

Pender County Board of Adjustment Members:

Ferrante: Pullen: Newton: Rhodes:

Alternates:

Godridge: Peters:

Alternate Board member Peters served as a full Board member

Chairman Ferrante welcomed all, explained the type of meeting being held, the process of the meeting, and the process of voting.

- 1. Adoption of the Agenda:** Motion to adopt the agenda was made by Vice-Chairman Pullen; seconded by Board member Rhodes. The vote was unanimous.
- 2. Adoption of the Minutes: (August 17, 2016)** Motion to adopt the August 17, 2016 minutes was made by Vice-Chairman Pullen; seconded by Board member Rhodes. The vote was unanimous.

3. Public Comment: None

** (Public Hearings Opened) **

Chairman Ferrante swore in the witnesses who wished to speak during the Hearing.

4. Variance: (Tabled from 8/17/16)

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

information for agenda item four (4), stating that the Homeowner's Association had denied the applicant's request to purchase additional property that they owned.

Richard Hartman, 80 Preswick Drive, Rocky Point, Avendale HOA president, reiterated the history of the request, described the HOA's voting process, provided photographs that showed the view of solar panels from the outside the applicant's property, and submitted letters from the neighbors supporting the applicant's request. Vice-Chairman Pullen asked Mr. Hartman how many proxies out of the ones sent did he receive back; Mr. Hartman answered that he didn't recall an exact number of proxies sent, but the outcome of votes was sixty (60) yes and twenty-one (21) no. Board member Peters stated that the letter submitted by the HOA said they held a meeting on October 18, 2016 and then asked if that was a typo and what date was the meeting held. Mr. Hartman answered that the stated date was a typo, the meeting was held on August 18, 2016.

Fred Mahnken, applicant, stated that he had letters from his surrounding neighbors supporting his request and requested that they be entered into the evidence and asked the Board to please consider approving his request. Vice-Chairman Pullen asked Mr. Mahnken if he had contacted the contractor and made him aware of what was going on due to him not following the procedure, Mr. Mahnken answered yes, but the contractor has been very abrasive, there was no signed contract and has had just a big problem. Brief discussion ensued regarding the cost of moving the solar panels.

Chairman Ferrante stated that he recalled the Board discussing the possibility of the applicant acquiring an easement, but it had been stated that an easement would not be a solution, why? Director Breuer explained that the request was due to the applicant's structure not meeting the required property line setbacks and an easement would not serve as an extension for the property line.

Board member Newton asked if the purpose of setback regulations was for safety and egress and ingress for emergency vehicles etc., Director Breuer answered yes. Attorney Thurman stated that since there was currently a fence between the solar panels and the rear easement/property owned by the HOA, egress and ingress was not restricted, so if the Board wished, they could consider approving the request with the condition of maintaining a fence that screens the solar panels.

Board member Newton made the motion to approve the requested Variance based on the hardship resulting from conditions peculiar to the property, stating that newcomers moved to the area, relied on a local contractor to install solar panels, not knowing themselves that the "post" would have to meet the same building setbacks as a structure, the installed solar panels do not comply with the zoning regulations, but does not create a safety hazard. The Board discussed adding conditions to the motion, the following conditions were added to Board member Newton's motion: a fence that equals the height of the solar panels and blocks their view must be maintained at all times and the existing post cannot be used for anything other than the existing solar panels; seconded by Vice-Chairman Pullen. The vote was unanimous.

5. Appeal:

Double B Farms, Inc., applicant and owner, requested an appeal to the administrative decision issued on June 8, 2016 regarding a violation of the Pender County Unified Development Ordinance Section 5.3.3.E.3, Manufactured Home, Recreational Vehicle & Trailer Parking and Storage. The subject property is located approximately 350 feet west of the intersection of Cape Fear Drive (private) and Riverbend Drive (private) in the Holly Township, NC. There is one (1) tract associated with this request totaling ± .44 acres and the property may be further identified by Pender County PIN: 3331-86-0080-0000. Senior Planner Crowe presented and gave background information for agenda item five (5). Board member Newton asked if the RV was moved every one hundred eighty (180) days would it be compliant, Director Breuer answered that the ordinance views RVs as temporary and it was his understanding that the applicant did not want to move the RV back and forth, they wanted to store it on site permanently. Board member Newton stated that it appeared the applicant was in compliance based on the dates listed, Director Breuer stated that they may have been, but the violation was issued based on details given to the Code Enforcement Officer during the investigation. Vice-Chairman Pullen stated that he noticed in the photographs an electric meter attached to a pole, was that for the dock or RV, Senior Planner Crowe stated that staff had performed a permit search for the property and there were no electrical permits issued for the dock or the RV.

Robert Kenan, attorney for applicant, greeted the Board, entered the property deed into evidence, and called Mrs. Butler to the podium for questioning:

Attorney Kenan – Please state your name and where you live for the record.

Mrs. Butler – Teresa Butler, Claredon, NC.

Attorney Kenan – What County is that?

Mrs. Butler – Columbus County.

Attorney Kenan – How long have you owned the property?

Mrs. Bulter – Since 2015.

Attorney Kenan – When you purchased the property were there any types of dwellings or RVs on the property?

Mrs. Butler – No.

Attorney Kenan – When you bought the property was there septic on the property?

Mrs. Butler – Yes.

Attorney Kenan stated to the Board that documents were provided in their agenda packets showing septic permits were issued for the septic system on the property in 1991 or 1992.

Attorney Kenan – When you bought the property was there electric services?

Mrs. Butler – Yes.

Attorney Kenan – Do you know how long the property has had electric service?

Mrs. Butler – No.

Attorney Kenan – When you purchased the property, what was your long term reason?

Mrs. Butler – To build a house.

Attorney Kenan – A vacation home or permanent residence?

Mrs. Butler – A vacation home at first, then move here.

Attorney Kenan – When did you plan to build a home on that site?

Mrs. Butler – Within twelve (12) months.

Attorney Kenan – Is the RV shown in the photographs yours?

Mrs. Butler – Yes.

Attorney Kenan – When did you place the RV on the property?

Mrs. Butler – Two (2) weeks after we purchased the property, moved it off the property in February 2016 and brought it back in April 2016.
Discussion ensued between Attorney Kenan and Mrs. Butler regarding the property being in a flood zone and requiring a “No Rise Certificate”.
Attorney Kenan – Prior to you purchasing the property, do you know if there was ever any type of recreational vehicles on the property?
Mrs. Bulter – Yes, according to my neighbor there was a camper.
Attorney Kenan – Is that neighbor here?
Mrs. Butler – Yes, Joseph Lanier.
Attorney Kenan called Mr. Lanier to the podium.

Board member Newton asked how long the deed was in the individual names before being transferred to Double B Farms, Inc., Mrs. Butler reviewed the deed history.

Attorney Kenan – Please state your name and where you live for the record.
Mr. Lanier – Joseph Lanier, 100 Melissa Lane, Burgaw.
Attorney Kenan - Are you familiar with the Riverbend subdivision and the lot owned by Double B Farms, Inc.?
Mr. Lanier – Yes
Attorney Kenan – How long have you been familiar with this lot?
Mr. Lanier – Twenty-Seven (27) or Twenty-Eight (28) years.
Attorney Kenan – What has been located on that property?
Mr. Lanier - A mobile home and a camper.
Attorney Kenan – Has the property always had septic tank and electric service?
Mr. Lanier – Yes.
Attorney Kenan – How long has the RV in the photographs been located on the property?
Mr. Lanier - It has been moved on and off.
Discussion ensued between Attorney Kenan and Mr. Lanier regarding the services on the property and Mr. Lanier constructing the dock.

Board member Newton asked Mr. Lanier if he was a contractor, Mr. Lanier stated that he just does work for friends, that he is retired. Board member Newton asked if he applied for the permit to build the dock, Mr. Lanier answered yes. Board member Newton questioned who the owner of the property was when he applied for the permit because the documents stated that the owner was James Alan Delong; Mr. Lanier stated that he didn’t know anyone by that name.

Attorney Kenan asked Mrs. Butler if she was willing to move the RV within the stated one hundred eighty (180) days; Mrs. Butler answer yes.

Attorney Kenan concluded by asking the Board to approve his client’s request based on the language in Section 5.3.3.E.3.a. of the Pender County Unified Development Ordinance does not include any wording regarding recreational vehicles, so when looking at the main meaning of the ordinance and that wording not being there the Pender County Planning Administrator cannot deny his client the right to park their RV on the lot, so therefore the Board should not uphold the decision of the Planning Administrator and grant the appeal.

Brief discussion ensued regarding the violation issued to the applicant, the requirements of the flood damage prevention ordinance, and the RV being connected to a septic system and electric pole. Director Breuer asked Senior Planner Crowe to read the Flood Damage Prevention Ordinance section 5.2. E.4. Senior Planner Crowe read the section and clarified for the Board what was in the Staff Report regarding the violation and how it applied to the ordinances.

Director Breuer asked Charlie Ring, Pender County Code Enforcement Officer, to give an overview of his investigation; Mr. Ring gave an overview of the investigation and the timeline of the investigation.

Board members had a brief discussion with the County Attorney regarding the Pender County Unified Development Ordinance and how they interpreted what it meant in regards to RVs, temporary storage, and using as a permanent dwelling.

Vice-Chairman Pullen made the motion to deny the requested appeal, maintaining the administrative decision; seconded by Board member Newton. The vote was unanimous.

** (Public Hearing Closed) **

6. Discussion Items:

i. Planning Staff: None

ii. BOA Members: None

7. Next Meeting: October 19, 2016, due to no applications the meeting was cancelled.

8. Adjournment: 10:55 am

The entire recording of the Board of Adjustment Meeting and the signed Board Order including the Findings of Facts are on file with the permanent records in the Planning Department office.