



MINUTES
Board of Adjustment Meeting
Wednesday, January 19, 2022 Pender County Public Assembly Room 9:00 AM

MEMBERS PRESENT: Max Kipfer
Andrew Olsen
Douglas Scott Rivenbark
Jeffrey Snider

MEMBERS ABSENT: Kyle Breuer
Samantha Nelson

OTHERS PRESENT: Travis Henley, Planning Director
Trey Thurman, County Attorney
Stephanie Jagoda, Administrative Assistant
Other Staff and Members of the Public.

1 CALL TO ORDER

Called to order 9:14 AM

2 ROLL CALL

3 PLEDGE OF ALLEGIANCE

4 MOMENT OF SILENCE

5 ELECTION OF OFFICERS

County Attorney T. Thurman calls for nominations for Chairman and Vice Chairman.

a) Chairman Kipfer nominated himself to remain as Chairman.

Moved by Max Kipfer, seconded by Jeffrey Snider

Motion to approve Chairman

	For	Against	Abstained	Absent
Max Kipfer	x			
Kyle Breuer				x

Samantha Nelson				x
Andrew Olsen	x			
Douglas Scott Rivenbark	x			
Jeffrey Snider	x			
	4	0	0	2

CARRIED.

- b) Chairman Kipfer nominates current Vice Chairman Breuer to remain Vice Chairman

Moved by Max Kipfer, seconded by Andrew Olsen

Motion to approve Vice Chairman

	For	Against	Abstained	Absent
Max Kipfer	x			
Kyle Breuer				x
Samantha Nelson				x
Andrew Olsen	x			
Douglas Scott Rivenbark	x			
Jeffrey Snider	x			
	4	0	0	2

CARRIED.

6 ADOPTION OF AGENDA

- a) Agenda adopted

Adoption of Agenda Accepted

CARRIED.

7 ADOPTION OF MINUTES

- a) Board of Adjustment Meeting Minutes for November 17, 2021

Adoption of Minutes Accepted

CARRIED.

8 PUBLIC COMMENT

9 VARIANCE

a) VAR 2021-07

Presented by Planner Greg Feldman, the subject property is JE Batson Road, a 1.35 acre piece of land that is a private dirt road that currently serves as access for Lots 3 through 9 of the Greenway II Subdivision. The applicant acquired this piece of land as means of access to the vacant 4.16 parcel of land to the south of the road. The applicant has submitted a preliminary plat to the Pender County Planning Department for review. This subdivision is known as Bodie Point. The applicant plans on improving and paving JE Batson Road, as required by the Pender County Unified Development Ordinance. Neighboring uses include single family homes in each direction, as well as Batson construction and Hampstead Kiwanis Park further to the west, and North Topsail Elementary School to the east. The neighborhood immediately to the east is The Walk at Sloop Point. The subject property approximately 1.35 acres in size and currently consists of a private dirt road. According to the standards outlined in Section 7.5.1.A of the Pender County Unified Development Ordinance, the applicant is required to connect JE Batson Road to W. Bailey Lane. According to the applicant's narrative, they are unable to connect JE Batson Road to W. Bailey Lane due to the mail kiosk that serves The Walk at Sloop Point neighborhood, which is located at the end of the cul-de-sac on W. Bailey Lane. According to the applicant, this is the only location for the mail kiosk that meets NCDOT and USPS standards. As well, the applicant shared that there is an groundwater lowering system located between JE Batson Road and W. Bailey Lane that is beneficial to the functionality of the septic systems within The Walk at Sloop Point. The applicant also added that removing the cul-de-sac at the terminus of W. Bailey Lane would temporarily block access for three property owners within the Walk at Sloop Point. With the development of Bodie Point subdivision and approval of this variance, the applicant plans on adding a hammerhead turn around at the terminus of JE Batson Road.

Robert Jackson, 640 Maritime Way, Topsail Beach, NC - Presented the 2 hardships regarding the need for the variance. First, there is no other location for the mailbox kiosk per NCDOT and removing the pipe will be invalidate the septic permits of the existing homeowners. Just trying to make the existing road better suited for the new lots to be added.

Luke Menius, Stroud Engineering, 100 Capps Court, Wilmington, NC - The right of way that is in place currently, will be rebuilt to NCDOT specifications. Resulting in a 25 foot wide asphalt road with a proper

turn around. Chairman Kipfer reiterated that it would be a back to back cul de sac turn around with a kiosk in the middle. The result will be a private road built to NCDOT specifications. Chairman Kipfer asked about the maintenance of the road. Mr. Menius stated that there will be a maintenance agreement drawn up. The builder states that JE Batson is in real bad shape and there will be a maintenance agreement with the new homeowners. Chairman Kipfer stated the drawing doesn't look like a cul de sac. Mr. Menius stated that it is a 3 point turn around with proper signage.

Brad George, 102 Doral Drive, Hampstead, NC - Here today to show support for the variance.

Moved by Andrew Olsen, seconded by Douglas Scott Rivenbark

Motion to approve Variance with no conditions of approval.

	For	Against	Abstained	Absent
Andrew Olsen	x			
Douglas Scott Rivenbark	x			
Max Kipfer	x			
Kyle Breuer				x
Samantha Nelson				x
Jeffrey Snider	x			
	4	0	0	2

CARRIED.

b) VAR 2021-08

Presented by Planner Greg Feldman, Old North State Water Company, applicant and owner is requesting relief from the Pender County Unified Development Ordinance standards outlined in Sections 4.14, , 5.3.5.C, and 8.2.6. Specifically, the request is to seek relief from the RP, Residential Performance zoning district minimum yard setbacks, sewage lift station project area boundary setbacks, and Type C buffer requirements. The subject property is located within the Majestic Oaks subdivision on the southern side of Dan Owen Drive near the terminus of Milne Way, approximately 0.5 miles east of the intersection of US HWY 17 and NC HWY 210 in the Topsail Township. The subject property is currently zoned RP, Residential Performance. There are two tracts totaling approximately 5.39 acres of land associated with this request. The subject property is located within the Majestic Oaks

Subdivision and currently serves as the Majestic Oaks Wastewater Treatment Facility. The treatment facility was approved through a Special Use Permit in 2007 and subsequently amended in 2017 and 2018. I would like to note here that the lift station was constructed 7 feet from the front setback, prior to any approval of a revised Special Use Permit. As a result, the subject property is currently under a Notice of Violation. Old North State Water Company, LLC (ONSWC) is requesting a variance from the minimum front yard setback requirements in the RP, Residential Performance zoning district. The Pender County UDO requires setbacks for all sewage lift stations to be measured from all property lines to the project area boundary, rather than the lift station itself. Therefore, the applicant is seeking a reduction of the front yard setback to 7 feet so that a fence associated with a Type C buffer could be constructed 7 feet from the front property line. Should this variance request be granted, the existing lift station could remain where it currently is constructed. Additionally, the applicant is requesting relief from the requirement of installing a fence as part of Type C buffer requirements.

Chairman Kipfer asked about the Violation, Planner Greg Feldman responded a NOV has been issued from our code enforcement officer, after residents in Majestic Oaks informed Pender County, that this lift station had been constructed. Chairman Kipfer asked what is likely to happen as a result of a Notice of Violation? Planner Greg Feldman answered those responsible for the violation will continue to accrue fines until said property is brought into compliance with the Unified Development Ordinance. The Chairman asked for it to be in compliance what would need to happen? Planner Greg Feldman stated that the lift station would be moved to meet RP setbacks, or this variance is approved. Director Henley added regardless of whether the variance is approved or not, establishing a lift station on the property requires an additional revision to the special use permit, which needs to be approved by the commissioners.

Karen Kemeriat, Attorney from Fox Rothchild spoke on behalf of Old North State Water Company and Pluris of Hampstead – She stated that the applicant is waving its right to have five members present to hear this request. Attorney Kemeriat provided background as to why this wastewater treatment site is so important. Adjacent property owners were present and hoped to get this issue resolved so that the landscaping could be fully installed. They support this variance request and would like it to be approved. Attorney Kemeriat continued, this variance is necessary, and it will be a win-win situation for the residents of Majestic Oaks as well as provide benefits to those who live in the area surrounding the wastewater treatment plant site, this will make the

Majestic Oaks homeowners happy as well. Attorney Kemeriat then suggested that an administrative oversight by ONSWC and Pluris Hampstead led to the continued construction. Once they were notified of the Notice of Violation, a request for the variance and the Special Use Permit were requested. The Variance requested is for setback allowance and an amendment so that a fence will not be required. Pluris had installed a fence but has since been removed. The Lift station components will not be visible and will be at grade level. The Dean's, the adjacent property owners, previously objected to the Pluris fence that was installed and later removed requested landscaping be installed. Chairman Kipfer asked if these changes were made before the Notice of Violation, Attorney Kemeriat indicated they were. Attorney Kemeriat stated the unnecessary hardship which would result in the strict application of the ordinance. Being that the lift station must be located where it is currently being constructed due to the existence of the wastewater treatment plant and the ponds that already exist on the property. The current location is the only feasible location where the lift station can be located. Attorney Kemeriat informed the board that the rush to get this lift station installed is due to the fact that an infiltration basin is near failing. Attorney Kemeriat stated there were two conditions requested by the Dean's and they are landscaping be extended along the entirety of the property and then the second condition that Pluris at their own cost will connect The Dean's home to county water. Chairman Kipfer asked if the lift station was operational, the attorney stated that work had not be finished.

Randy Hoffer, Sneads Ferry, NC Regional manager for Pluris Hampstead stated that the reason the lift station was slid closer to road into the setback, is due to the existing force mains. Mr. Hoffer stated that to move that station back, those live force mains would have to be moved which would impact existing customers. Once the force mains were discovered the decision was made to slide the project forward slightly so there would be no interruption of service to existing customers. Chairman Kipfer understood the inconvenience, but still questioned the lack of questions asked before decisions were made. The Chairman asked Mr. Hoffer of Pluris, if the Notice of Violation wasn't issued would the work have completed? Mr. Hoffer indicated they would have completed the project. County Attorney Trey Thurman questioned an estimate of \$200,000 cost to move to be in compliance with the setbacks and asked if pump and haul would be a solution. Mr. Hoffer indicated it would but required a permit from the state to do that. County Attorney Thurman then asked if there was any thought to acquiring the adjacent property from the Majestic Oaks HOA and Mr. Hoffer stated they did not. Board Member Andrew Olsen asked if these force mains served other properties outside of this development? Mr. Hopper stated that the force mains serve Majestic Oaks and Salter Haven. Chairman

Kipfer asked who owns the parcel of land the existing treatment plant is located, Director Henley stated Old North State Water Company.

Debra Dean, Hampstead, spoke about her initial concerns but as long as they finish the landscaping and put her on the county water, she was fine with the project. Chairman Kipfer asked the applicant if there was any danger related to the area without having a fence? Mike Gallant, an engineer for the applicant indicated that there was not a safety concern based on the equipment that will be in place.

The engineer spoke of potential failure of the current wastewater treatment plant and an increased urgency to get the new lift station up and running. The Chairman questioned the aesthetics and safety of a fence of a different material? Attorney Kemeriat stated that the applicant would fence the control panel for a safety measure, if that was something requested by the board. Director Henley added additional information regarding the ordinance, the fence originally placed and then removed would not have satisfied the buffer requirements. The Director stated the process of a project of this nature is as follows: Variance, Special Use Permit, and then a Zoning Review prior to any approval for construction being issued. This process needs to occur before any notice of violation is rectified. The Chairman stressed that a lot of money was spent because the applicant didn't ask the questions. Mr. Gallant, Engineer for the applicant, reiterated that Pluris was unaware that this was the process because it was an existing wastewater treatment plant. He stated it was setback from road and not sure of the dimensions. Also, asked about the plans for the drained pond lands in the future? Applicant's engineer said he would not know that information. Attorney Kemeriat stated that there is a process for decommissioning the wastewater plant and draining of the ponds and would follow DEQ requirements.

The applicants Attorney Kemeriat apologized again for the process not being followed but feels this is a good solution for the problem, good for the neighborhood. Board Member Snider asked for a summary of options. Applicants Attorney stated this is to be the only feasible location on the property for the lift station, and willing to comply with all fencing requirements the board requests. Chairman Kipfer included that there are other options, but they are not as cost effective. Attorney Kemeriat restated that it was not a cost issue it is a constraint on the site. Board member Andrew Olsen questioned whether these force mains and under drains should be given same recognition of say a hundred-year-old live oak tree where we would probably grant a variance if someone wanted to leave the tree in place and have their front porch a little too close to the front line. Here, I think there are other solutions but because

if delayed has some environmental impacts that have been testified to, consequently, it isn't just the question of closing down these force mains and moving them at whatever expense but rather the fact that in doing that, there may be some environmental impacts that we can forestall by approving this variance.

Board Member Jeff Snider voiced his concern for the adjacent property owners and that they were satisfied. Chairman Kipfer agreed and added that safety is a concern and anything above ground should be secured behind some type of fencing in accordance with the ordinance and to the Dean's liking. Also, Chairman Kipfer stressed that all penalty fines to date must be paid and will be part of this agreement. That the applicant's will be pay all fines for their negligence and not going through this process ahead of time. Applicants Attorney stated the fines will be paid, the currently working with the county to determine the total amount of fines. County Attorney Thurman stated that it is the county goal for compliance and will work with the applicants even though this is a pretty blatant violation. The Chairman suggested that if board is to approve this variance, the fines to be included from the date of our last meeting and certainly any fencing that required around anything that is above ground. Attorney Kemeriat stated applicants will comply with the condition about the fencing requirements but asked that the penalties for the NOV not be part of it. We will comply but you know my understanding is that the penalties were going accrue from the time of the NOV until our application was submitted and I am not sure we could agree to a condition to change, from what had been told to use previously. Chairman Kipfer stated it was their choice to accept the condition. Board Member Andrew Olsen makes a motion to approve based on his prior comments: fencing agreed to by The Deans and approved by the zoning review, also to pay all fines incurred, however the fines incurred would be determined by the county attorney and the county planning department.

County Attorney Thurman discussed the penalties with the board. The applicants Attorney interjected and stated that she has received authority that we can agree to the condition to what the county assess will be paid and the Dean's home will be connected to county water at no cost to the Dean's. Attorney Thurman addressed the Chairman regarding the Dean's home being connected to county water has nothing to do with this variance doesn't believe it should be part of the conditions and that might be overstepping the boundaries of this board.

Director Henley asked Attorney Kemeriat, "If the variance is not approved, what would happen?" she answered she did not know and stated that the variance is critical. The Director then asked "if the

variance is not approved, will the systems be joined? The applicant's Attorney was unable to say. The Chairman "asked whose responsibility would it be to answer the question", Attorney Kemeriat stated Pluris would have to find a solution.

Robert Jackson addressed the board stating he believes this is a great thing for the county and every neighbor.

Moved by Andrew Olsen, seconded by Jeffrey Snider

Motion to approve Variance with two conditions of approval: 1) a fence shall be installed around all above ground structures relating to the lift station; and 2) all fines accrued as a result of the Notice of Violation shall be paid.

	For	Against	Abstained	Absent
Max Kipfer	x			
Kyle Breuer				x
Samantha Nelson				x
Andrew Olsen	x			
Douglas Scott Rivenbark	x			
Jeffrey Snider	x			
	4	0	0	2

CARRIED.

10 DISCUSSION ITEMS

11 NEXT MEETING DATE

February 16, 2022 9:00 AM
805 S. Walker Street
Burgaw, NC 28425

12 ADJOURNMENT

Meeting adjourned at 11:21 AM