



Pender County BOA Meeting Minutes 12-14-2022

TO: Board of Adjustment
FROM: Justin Brantley
DATE: January 18, 2023
SUBJECT: BOA Meeting Minutes 12-14-2022

SUMMARY:

BOA Meeting Minutes 12-14-2022

ACTION REQUESTED:

Review and approval of 12-14-2022 meeting minutes

ATTACHMENTS:

1. 12-14-2022 BOA Meeting Minutes

Pender County Board of Adjustment Meeting Minutes – December 14, 2022

Members Present: Max Kipfer, Chairman
Kyle Breuer, Vice Chairman
Brett Keeler
Jeffrey Snider, Alternate

Members Absent: Andrew Olsen, Alternate

Others Present: Justin Brantley, Interim Planning Director
Donna Sayre, Administrative Specialist
Greg Feldman, Planner
Trey Thurman, County Attorney
Matthew Nichols, Applicant's Attorney
Glenn Lea, Applicant and Landowner
Andy Priolo, Member of the Public (with Applicant)
David Sneed, Applicant and Landowner
Kim Meyer, Member of the Public

1. **Call to Order:** 9:03 a.m.

2. **Roll Call**

3. **Invocation**

4. **Adoption of Agenda**

Mr. Breuer made a motion to adopt the agenda. Mr. Snider seconded the motion, and the motion was unanimously approved.

5. **New Business**

5.1 **Assign County Attorney Trey Thurman as Moderator**

Mr. Kipfer stated that Mr. Thurman has been assigned as the Moderator.

5.2 **Nomination and Selection of Chairman and Vice-Chairman**

Mr. Thurman informed the Board that he will open the floor for nominations and the Board members can nominate a member or themselves. A second to the motion is not needed and a vote will be taken.

Mr. Thurman opened the floor for the nomination of Chairman. Mr. Breuer nominated Mr. Kipfer. Mr. Snider seconded the motion, and the vote was unanimous.

The floor was opened by Mr. Thurman for the nomination of Vice-Chairman. Mr. Keeler nominated Mr. Breuer. Mr. Snider seconded the motion, and the vote was unanimous.

5.3 Adoption of Pender County Board of Adjustment 2023 Meeting Calendar

Mr. Breuer spoke of moving the December 20, 2023, meeting until December 13, 2023, to eliminate the meeting being held close to the holiday.

Mr. Breuer made a motion to adopt the 2023 calendar except for the December 20th meeting being moved to December 13, 2023. The time of 9:00 a.m. will remain the same. Mr. Keeler seconded the motion, and the vote was unanimous.

6. Adoption of Minutes

Mr. Breuer made a motion to adopt the minutes from the November 16, 2022, meeting. Mr. Keeler seconded the motion, and the motion was unanimously approved.

7. Public Comment

There was not public comment

8. Public Hearing

Attorney Trey Thurman affirmed Justin Brantley, Greg Feldman, Matthew Nichols, Glenn Lea, David Sneed, Andy Priolo, and Kim Meyer as to their testimony being truthful and relevant to the respective case.

VARIANCE CASE 2022-12 – Applicant and Owner, Pope Properties on 17, LLC

Mr. Feldman, Long Range Planner, presented the Staff Report. Pope Properties on 17, LLC, Applicant and Owner, is requesting a variance for relief from the Pender County Unified Development Ordinance standards outlined in Section 8.1.3 'Tree Survey Required.' Specifically, the request is to seek relief from the mitigation requirements for the removal of significant trees. The subject properties are located east of US Highway 17 at its intersection with Scotts Hill Loop Road in the Topsail Township. There are four tracts totaling approximately 8.16 acres of land associated with this request and may be further identified by Pender County PINs 3271-41-0365-0000, 3271-41-3641-0000, 3271-41-4387-0000, and 3271-41-2253-0000.

Mr. Feldman stated that each of the four tracts of land is fairly wooded with a residential structure located on PIN 3271-41-2253-0000. PIN 3271-41-0365-0000 currently has an active Major Site Development Plan application under review for a convenience store and gas station with the Pender County Planning Department. During the Pender County's Staffs review of the application, it was determined by the Applicant that fulfilling the required significant tree mitigation in accordance with Section 8.1.3 of the Pender County Unified Development Ordinance (UDO) will be challenging. There are four access and utility easements on the subject properties with Section 8.2.5 of the UDO, Planting in Easements, does not allow for the planting of new trees in utility or drainage easements which further limits the area where the required mitigation trees could be planted on site. Mr. Feldman stated that the Applicant has indicated that approximately 1.17 acres of the four parcels have been identified as wetlands.

Mr. Feldman stated that the Applicant is requesting a Variance from the requirement of mitigating all removed significant trees at a 2 to 1 ratio. He stated that according to Section 8.1.3, 'Tree Survey Required' of the Pender County UDO, a tree survey is required for any development proposal on commercial or industrial zoned property, as well as in all mixed-use districts. Mr. Feldman stated that if a significant tree is proposed to be removed, such removal shall be mitigated on site with two trees of the same species with a minimum caliper of 2" or greater.

Mr. Feldman stated that a Major Site Development Plan has been submitted to construct a convenience store with a car wash, fuel station, and a stormwater pond that will serve the future commercial developments across the four subject properties. During that review, Planning Staff noted that the site contained many significant trees requiring mitigation. Per the tree survey, one hundred forty-four significant trees are located on all four parcels with sixty-two trees being impacted by the gas station project. Sixty-two trees would need to be mitigated at a 2 to 1 ratio based on the proposed convenience store and stormwater pond's location. Mr. Feldman stated that the Applicants' required 2 to 1 ratio of the sixty-two significant trees will not allow enough space to develop the property and is impractical in this location.

Mr. Keeler asked if the land is to be clear cut and Mr. Feldman stated that he would have to defer to the Applicants.

Mr. Breuer asked if any of the trees are to be saved or if the applicant intends to wipe the property clear of all trees and replant new ones. Mr. Feldman stated that he would need to defer to the Applicant, but it appears to him that all new planting will be taking place.

Mr. Feldman stated that currently there are multiple easements in place.

Mr. Kipfer asked the Board members if there were any additional questions for the Planning staff and no questions were presented.

Attorney Matthew Nichols who is representing Pope Properties on 17, LLC., stated that the four tracts of land total a little over eight acres and are densely wooded. He feels that the proposed use is in line with the UDO requirements. Access and utility easements have already been established and NC Department of Transportation will state where the driveways are to be located.

Mr. Nichols stated that the stormwater pond is located in the back on Lot 4 while Lot 1 is at the front and is where the proposed gas station will be located. Currently, there are sixty-two trees that will be affected. He stated that due to this amount, meeting the tree mitigation requirements will be very difficult. They are asking for relief from the 2 to 1 tree mitigation requirement by possibly paying a fee in lieu or planting trees elsewhere in the County.

David Sneed, principal member of Pope Properties, stated that he is a native of the area and is very sensitive to development in the Scotts Hill area. He is wanting to save as many trees as possible.

Mr. Sneed stated that the corner lot has thirty-nine significant trees and if two trees are required to be planted as replacement, then seventy-eight trees would be needed. He stated that with the circumference required of each replacement tree then only twenty-four trees would be planted. He stated that there is not enough room to develop the site and plant all the trees required by the UDO.

Mr. Sneed informed that Board members that the site will be well landscaped with a Type A Buffer on US Hwy. 17 and Scotts Hill Loop Road and Type B Buffer on all the interior corners.

Mr. Sneed stated that the stormwater pond is located on Lot 4 and is located in the only space possible. He stated that there is also wetland on Lot 4. There is not much room on Lot 4 to plant trees due to the wetlands and the required distance needed to not disturb them. Mr. Sneed stated that approximately twelve significant trees can be saved on Lot 4.

Mr. Sneed informed the Board members that they could probably find enough space to plant the required trees, but it would not be a beneficial planting. The trees would need to be planted so close together that many of the trees would eventually end up dying due to not having enough space to flourish.

Mr. Sneed stated that they will preserve all the trees they can and will also plant mitigation trees where they can also. He stated that some trees can be planted on Lot 2 and Lot 3 also but not the quantity that the tree mitigation plan requires. Mr. Sneed stated that due to this, they are hoping for other options to comply with the mitigation plan. He stated that he would be willing to pay in lieu or plant trees off site where trees are needed and would flourish.

Mr. Kipfer asked if there is a home currently on Lot 3 and if so, will it stay there. Mr. Sneed stated that there is a home there presently, but it will not stay there. It will either be moved or torn down.

Mr. Keeler asked if the Applicant has identified which trees could be preserved on Lot 4 so that those trees would not need to be included in the Variance. Mr. Sneed stated that he has identified trees that can be preserved, and they consist of different species of Oaks and Dogwood trees. Most of the trees are located between the retention pond and the Scotts Hill branch.

Mr. Keeler then asked if there are any plans of saving any trees that are located on Lot 1. Mr. Sneed stated that at this time they are not looking to save any of the trees from Lot 1. The land has never been cleared or farmed except for a small area where there used to be an old home and then a small service station that was there until the mid-1960's. He stated that there are very few trees in the vicinity of where the service station used to be located.

Mr. Sneed stated that there is a Duke Power easement that runs to the back of the property which Duke has cleared. This area is where the mitigation trees would normally be planted but Duke will not permit this. Mr. Sneed also stated that there are also other access easements that DOT is requiring at the front of the property that is also taking away areas where trees can be planted.

Mr. Keeler asked if the site plan is specific to this site or is it a template site plan for Circle K. Mr. Sneed replied that the site plan has been specifically engineered to this site. Mr. Keeler asked why existing trees have not been considered when the site plan was designed.

Mr. Breuer stated that he feels the logical approach would be to preserve the trees that already are existing. Mr. Keeler stated that if any of the existing trees could be used then the 2 to 1 ratio would not need to be used in respect to existing trees.

Mr. Keeler asked why Lots 2 and 3 were included with this application if Lots 2 and 3 are not going to be developed. Mr. Sneedan replied that there is nothing definite in the works currently, but they are considering a fast-food type restaurant on Lot 2 and a doctor's office or office type building on Lot 3 in the future. Due to the uses and potential placement of future uses, they feel they will be in the same situation with Lots 2 and 3 that they are with Lot 1 when it comes to tree mitigation.

Mr. Sneedan stated he feels that thirty to thirty-eight trees could be saved on Lots 2 and 3. He does not plan on cutting down a tree just to plant two more. Mr. Sneedan informed the Board that he has spent quite a bit of time looking at the site and there are several nice trees that are more significant than the defined significant trees. He stated that there are nice Hickory and Walnut trees on the site that could be preserved but they are not included in the four species that the UDO considers significant.

Mr. Sneedan stated that it does not seem to be practical to cut down a nine or ten-inch Hickory or Walnut tree to then plant two 2-inch mitigation tree due to the Hickory and White oak not being considered significant.

Mr. Breuer stated that he feels leaving existing trees whenever possible is more beneficial than clear cutting a strip of land and having to replant.

Mr. Sneedan stated that there is a site plan that identifies the Oaks on the property with the ability to leave and save them, but they are not considered significant. He then presented the site plans that show existing Dogwoods, Hollies, Magnolias, and Hickory trees. Mr. Sneedan presented a list of other trees that will have to be removed to make room for the mitigation replacement trees.

Mr. Breuer and Mr. Kipfer both stated that if the Applicant can show them what trees can be saved, despite whether they are on the significant tree list, then it will show that the land will not be clear cut. Mr. Kipfer stated that it will give the Board members something to work with and will require less re-planting in the long run.

Mr. Keeler stated that massive tree removal takes away from the character of that area and puts the burden on somebody else whether it be the County or another company in planting trees at another location of the County. He wants to find a solution as to saving as many trees as possible and in good faith cannot approve this application as is.

Mr. Nichols requested of the Board a short recess with the Applicants to discuss the comments given by the Board members. Mr. Kipfer stated that he could speak with his clients and while Mr. Nichols is meeting with his clients, the member(s) of the public that signed up to speak would be heard.

Mr. Brantley called the name of Andy Priolo who stated he is an employee with Circle K and was here in support of the Applicants but did not have any individual comments at this time.

Mr. Brantley then called Kim Meyer for her opportunity of speaking to the Board. Ms. Meyer introduced herself and stated that she resides at 102 Leslie Lane. She appreciates the concern that the Board has pertaining to the trees. Ms. Meyer also stated she is concerned about the water. She stated a desire to have a person work with her and the community as to what meetings can be spoken at so that they can be prepared.

Mr. Brantley reminded the Board members that a Variance requires a four-fifths vote so that would mean a unanimous vote was needed for approval.

Mr. Nichols stated that he feels that it would be beneficial if they had additional time to work with the staff and present the Board of Adjustment with additional information. He stated that they should be prepared to present to the Board again at the February meeting.

Mr. Breuer asked Mr. Thurman to provide some guidance as to whether it is appropriate for the Applicants to be guided in the right direction so that they can leave the meeting confident on what to bring back before the Board if the Applicants are going to request this to be tabled. Mr. Thurman that it would be appropriate to give guidance to the Applicants.

Mr. Breuer and Mr. Kipfer spoke to Mr. Nichols and the Applicants about what the Board is needing to see brought back at the February meeting. Mr. Breuer also commented that the Planning Board will utilize the Planning staff to guide the Board members on any possible conditions needed.

Mr. Keeler stated that if this hearing is to be continued and Lots 2 and 3 are to be considered, he feels that a plot plan of those two lots needs to be submitted also. He is not comfortable with approving Lots 2 and 3 carte blanche.

Mr. Kipfer spoke to the Applicant stating that they had "spec'ed" it out with some tentative buildings and that it would be nice to see the full picture of all the lots.

The Applicant stated that they can do what is being requested. He also stated that the only thing on Lot 2 that they know where it will be placed is the sewage pump station. He stated that the pump station needs to be connected to Lot 1 so that line can be shown to demonstrate the impact. Mr. Sneed stated that they will identify the proposed buildings on Lots 1 and 2, and then overlay the Circle K map in order to identify any and all trees that can be saved. He also stated that he will speak to his landscaper and see how the trees that can be saved are able to be incorporated.

Mr. Breuer stated that he feels that the Planning staff needs to be invited to the on-site meeting between the Applicants and the landscaper.

Mr. Breuer made a motion to continue this case until the regular scheduled February 2023 meeting. Mr. Keeler seconded the motion, and the vote was unanimous.

Mr. Brantley stated notices to the adjoining property owners will not be sent providing the new hearing date due to the hearing being continued during the Board meeting.

Mr. Kipfer stated that the February Board meeting will take place on February 15, 2023.

8. Discussion Items

Mr. Brantley informed the Board members that there is a Variance case scheduled to be heard at the January 2023 meeting.

9. Next Meeting Date

January 18, 2023 @ 9:00 a.m.
Commissioner's Meeting Room
805 S. Walker Street
Burgaw, NC 28425

10. Adjournment

Meeting adjourned at 10:10 a.m.