



Pender County

Agenda

Board of Adjustment Meeting

Wednesday, October 18, 2023 @ 9:00 AM

Pender County Public Assembly Room 805 S. Walker
Street, Burgaw, NC 28425

	Presenter	Page
1. CALL TO ORDER		
2. ROLL CALL		
3. INVOCATION		
4. ADOPTION OF AGENDA		
5. ADOPTION OF MINUTES		
5.1. August 16, 2023 Meeting Minutes August 16, 2023 Meeting Minutes - Pdf		3 - 16
6. PUBLIC COMMENT		
7. APPROVALS AND RESOLUTIONS		
7.1. 2024 Calendar 2024 Calendar - Pdf		17 - 18
8. DISCUSSION ITEMS		
9. NEXT MEETING DATE		
10. ADJOURNMENT		



Pender County August 16, 2023 Meeting Minutes

TO: Board of Adjustment
FROM: Daniel Adams
DATE: October 18, 2023
SUBJECT: August 16, 2023 Meeting Minutes

SUMMARY:

Minutes from the August 16, 2023, Board of Adjustment meeting.

ACTION REQUESTED:

Review and approval of the August 16, 2023, Board of Adjustment meeting minutes.

ATTACHMENTS:

1. August 16, 2023 Meeting Minutes

Pender County Board of Adjustment Meeting Minutes – August 16, 2023

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

Members Absent: None

Others Present: Daniel Adams, Planning Director
Justin Brantley, Deputy Planning Director
Donna Sayre, Planning Technician
Charlie Ring, Code Enforcement Officer
Trey Thurman, County Attorney
Members 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. **Adoption of Minutes**

Mr. Snider made a motion to adopt the minutes from the June 21, 2023, meeting. Mr. Keeler seconded the motion, and the motion was unanimously approved.

6. **Public Comment**

There was no public comment.

7. **Public Hearing**

APPEAL 2023-11 – David Piepmeyer, Applicant, Wooten Holding Co., LLC., Owner

Mr. Breuer requested to be recused from the hearing due to past interactions as a staff member of the Planning Department. Mr. Kipfer asked the other Board members if they had any objection and no objections were voiced.

Mr. Thurman swore in Planning staff members and members of the public who were not previously sworn in at the last hearing.

Mr. Adams, Planning Director, presented a brief overview of the Staff Report that was presented at the last hearing. David Piepmeyer, Applicant, is appealing an administrative decision made by the Planning & Community Development Department to close zoning violation case ZCV-524-2023. The zoning violation was issued to the owners of Wooten Holding Co., LLC., on February 14, 2023, for failing to adhere to the conditions of approval of Special Use Permit case 03-07-21-16 issued on January 15, 2004, and revised as case 04-10-25-17 on November 15, 2004, and December 20, 2004, which permitted the expansion of Hampstead Marina. The subject property is located on the east side of Broadview Lane, adjacent to the Atlantic Intracoastal Waterway, in the Topsail Township and may be further identified by Pender County PIN 3292-63-8007-0000.

Mr. Adams stated that the Applicant's property is located south and west of the Hampstead Marina property.

Mr. Adams stated that the item before the Board today is zoning violation Case ZCV-524-2023. He stated that on February 6, 2023, Mr. Piepmeyer filed a complaint with Pender County Code Enforcement Officer, Charlie Ring. He stated that Mr. Piepmeyer's complaint alleged several violations of the approved conditions related to the issued Special Use Permit. Mr. Adams stated that on February 9, 2023, a site visit was conducted by Code Enforcement staff and a Notice of Violation was issued on February 14, 2023, to the owners of Hampstead Marina.

Mr. Adams stated that the first violation was concerning parking and storage of boats and trailers within the required ten-foot buffer along the southwest fence. He stated that the second violation deals with maintaining permanent vegetative coverage of the required 98 percent, and violation three was that any flood or spotlight shall be oriented away from navigational channels or adjacent properties.

Mr. Adams stated that on March 1, 2023, a compliance site visit was conducted after dark, by both himself and Mr. Ring to determine if the violations listed in the Notice of Violation letter had been corrected. Mr. Adams stated that it was determined that all three violations had been corrected.

Mr. Adams stated that he is going to primarily speak about the lighting situation due to this violation being the most controversial. He presented pictures of the lights that were present at the last hearing. The first picture was the light located down by the boat ramp and is not oriented towards adjacent properties or the waterway. He then spoke of the second light that was mentioned in Mr. Piepmeyer's complaint. Mr. Adams stated that to the best of his knowledge the second light is not located on the property that is governed by the Special Use Permit. He stated that the light is located on a residential property to the west of the marina.

Mr. Adams read Section 7.1.1 of the Pender County Unified Development Ordinance to the Board members. He stated that Pender County has no authority to regulate any light at 124 Broadview Lane due to it being a residential lot.

Mr. Kipfer stated that all the members have been out to visit the site. Mr. Snider stated that he visited the site at 5:20 a.m. and he feels the light that is shining on the back of Mr. Piepmeyer's house is from the light located on the residential lot.

Mr. Kipfer asked Mr. Thurman if the light that is located on property not associated with the Special Use Permit could be discussed by the Board. Mr. Thurman stated that there must be authority in

the Ordinance to address any residential lot. He stated that the County has never tried to regulate a light located on a residential lot due to the County not having the authority to do so.

Mr. Keeler asked Mr. Thurman if the light on the residential property is intended to supply the Special Use Permit property with light, then how would that be handled. Mr. Thurman once again said that the Board is constrained by the Ordinance.

Mr. Olsen asked if the residential property is owned by the same people who own the marina. Mr. Adams stated that both properties are owned by the same company or entity. Mr. Olsen stated that he does not feel that the Board's authority comes from the Ordinance but rather from the Special Use Permit. He stated that he thinks the operators of the light have control of the light which is being for the purpose of the marina.

Mr. Kipfer referenced Section 7.1.2 of the Unified Development Ordinance and read it aloud. He then stated that he is not sure of the intended use of the second light. Mr. Adams stated that he does not know the true intent of the light. Mr. Kipfer stated he feels that the light shines very little on the property on which it is located.

Mr. Olsen stated that he thinks the restrictions of the Special Use Permit restrict the operator of the Special Use Permit and feels that this light is in violation when operated by the operator. He stated he does not feel it matters as to whether there is an Ordinance or not to cite due to the conditions of the Special Use Permit being violated.

Mr. Thurman again asked for the Board to cite some authority for a property that is not subject to the conditions of the Special Use Permit be subject to those conditions. Mr. Olsen stated that he feels the operator is subject to the conditions of the Special Use Permit. Mr. Thurman stated that a Special Use Permit runs with the land and not with individuals.

Mr. Keeler asked if the person renting the property is paying the light bill or is the owner of the marina. Mr. Thurman stated that he does not have an answer to the question, but the Board may be able to ask that question to Mr. Franck or the landowner.

Joyce Wooten, 805 Robinwood Street, stated that she and her husband have owned the property for twenty-one years. Mr. Kipfer asked her if she owns the marina and residential property. Ms. Wooten responded affirmatively and stated that both properties are owned by Wooten Holding Company, LLC.

Ms. Wooten stated that in August of 2020, criminal activity took place at the marina for the first time in the forty years. She stated that during the night, a person came onto the marina property and doused the embankment with a chemical which killed the grass and allowed erosion to take place. Ms. Wooten stated that the size of the area killed was approximately sixty feet in length and eight foot wide. She stated sod was laid in order for the eroding of the embankment to cease.

Ms. Wooten stated that the tenant who lives on the residential lot was very anxious and did not feel his floodlights gave him enough protection. She stated due to the tenant's anxiety, they had the light and light pole installed on the residential lot and Duke Energy was given the instruction that the light was not to shine on adjacent properties. Ms. Wooten stated that they also installed cameras on the property.

Mr. Franck asked Ms. Wooten if they asked Duke Energy to point the light down and not on adjacent properties. Ms. Wooten responded affirmatively and stated they even had Duke Energy come back out to the property a second time to orient the light further downward.

Mr. Franck asked Ms. Wooten if the light casts light on the backyard of the residential property. Ms. Wooten stated that she would have to have her son, Wesley Wooten, respond to that question due to Wesley previously being on the property with a light specialist.

Mr. Franck asked Ms. Wooten to reference a picture from a security video that showed a light shining across the marina property from north to the south in the general direction of Mr. Piepmeyer's home. He asked if she recognized the light and Ms. Wooten responded affirmatively. She stated that she believes the light is coming from Mr. Sidbury's home at 130 Broadview Lane.

Mr. Franck asked Ms. Wooten to look at the second picture which is looking out from the marina property and has some lights located on the right side of the photo. He asked if Ms. Wooten knew the source of the lights and Ms. Wooten stated that the lights are either from Mr. Sidbury's personal home or from the mobile home park that he owns.

Mr. Franck referenced a third picture taken from the marina and asked Ms. Wooten if she can identify the light source. Ms. Wooten stated that the light is located on Jim Wells' property which is adjacent to the back side of Mr. Piepmeyer's home.

Mr. Franck stated that the three lights that they referenced are located on residential properties and shine in the general direction of Mr. Piepmeyer's home. Ms. Wooten agreed with Mr. Franck's statement.

Mr. Keeler asked if the light installation was requested by the owners of the marina. Ms. Wooten stated she requested that pole and light be installed personally. Ms. Wooten stated she requested it as a representative of the residential home. Mr. Keeler asked if the light is paid for out of the rental property income or from an account for the security of the marina. Ms. Wooten stated she receives three bills from Duke Energy which includes one for the gate, one for the small house on the property, and one for the marina. Mr. Franck stated that the tenant receives their own bill for the electric that they use, which would include the light in reference.

Thomas Todd elected not to speak when called upon by Mr. Thurman. Mr. Franck stated that Mr. Todd is the manager of the marina and is prepared to answer any questions the Board may have for him.

David Piepmeyer, 122 Broadview Lane, stated that since the videos he provided Mr. Adams a few months ago were not available at that time for viewing, he wanted to show them presently. Mr. Kipfer asked how long the videos are and Mr. Adams stated that he does not think any one individual video exceeds one minute. Mr. Kipfer asked the Board members if there were any objections to the videos being shown and no response was received.

Mr. Brantley asked Mr. Kipfer if he would like to reference Mr. Franck's pictures as Exhibit #3, which would be in line with the exhibits presented at the last hearing. Mr. Kipfer stated to conform with whatever the next exhibit number in line would be.

Mr. Piepmeyer stated that at the last hearing, Mr. Franck asked that all evidence be presented to him prior to the hearing, which he did. He stated that he did not receive the same courtesy from Mr. Franck with his picture exhibits. Mr. Piepmeyer stated that he feels Mr. Franck wanted to present new evidence and not make himself privy to it beforehand so he is making it known that he is objecting for the record.

Mr. Franck asked Mr. Piepmeyer if he stated that he delivered any evidence to him or his office between the last hearing and today's hearing. Mr. Piepmeyer stated that he provided it to the County, and it is the County's obligation to distribute it to all parties involved. Mr. Franck asked Mr. Piepmeyer if he communicated with the Board members outside of the hearings with Mr. Piepmeyer stating that he only communicated with Mr. Adams. Mr. Franck stated to be totally clear that he has not received anything directly from Mr. Piepmeyer.

Mr. Thurman stated that Mr. Piepmeyer submitted the videos that morning of the last hearing and from a technical standpoint, the videos could not be played. Mr. Thurman told Mr. Piepmeyer that he made sure Mr. Piepmeyer's submittal was sent to Mr. Franck and had Mr. Franck submitted anything, he also would have made sure it was sent to Mr. Piepmeyer. Mr. Thurman stated that there is nothing in the rules and procedures that currently requires this action, so Mr. Piepmeyer can object, and the Board will rule on the objection.

Mr. Thurman stated that he did not see the pictures that Mr. Franck presented to the Board earlier in the hearing and was not sure when they were presented to Planning Staff. Mr. Adams stated that the pictures were presented by Mr. Franck's assistant the day before the hearing at 5:00 p.m.

Mr. Franck stated that he does not intend on submitting more photos or videos and will be using Mr. Piepmeyer's videos when questioning Mr. Piepmeyer. Mr. Franck also stated they do not intend to present any evidence of questionable relevance. Mr. Piepmeyer stated to Mr. Franck that he just did so. Mr. Franck stated that he presented the three pictures in the appropriate manner and is not sure of what else he could have done.

Mr. Kipfer stated that Mr. Piepmeyer's objection is on the record and for Mr. Piepmeyer to continue with his testimony.

Mr. Piepmeyer stated that the basis of his appeal is the County's prematurely and inappropriately closing of the Special Use Permit Violations, particularly one and three. He stated that he did not denote anything relative to the grass. Mr. Piepmeyer stated that actions were not taken to correct the violation and thus then still exist.

Mr. Piepmeyer stated for the record that he is not trying to close the marina or have its Special Use Permit revoked but is requesting that the Wooten's correct the violations. He stated that the violations directly impact his right to peace, quiet, and privacy.

Mr. Piepmeyer asked Mr. Thurman if he could cross-exam previous witnesses. Mr. Thurman responded affirmatively. Mr. Piepmeyer stated that he would like to cross-exam Mr. Ring.

Mr. Kipfer asked Mr. Piepmeyer if he was aware of the vandalism that took place in August of 2020. Mr. Piepmeyer stated he is not aware of the specific details of the incident. He stated he is not a member of the marina and does not go onto the marina property.

Mr. Piepmeyer asked Mr. Ring if he met with the Special Use Permit holders before closing out the violation. Mr. Ring stated that site visits were conducted by himself and Mr. Adams and that was how it was determined that the violation issues had been resolved and the violation closed. Mr. Ring stated that they sent a letter to the Special Use holders to let them know that the violations were resolved, and the file closed.

Mr. Piepmeyer asked Mr. Ring if he still thinks that this matter is a civil matter. Mr. Ring stated that he does feel that this is a civil matter due to the placement of the light being on a piece of property that is not encompassed within the Special Use Permit. Mr. Ring stated that with the light being on an adjacent property that it would not be in violation of the Special Use Permit.

Mr. Piepmeyer stated that he feels that whoever pays the light bill has some acknowledgment of who is requesting the services and are willing to pay for the services.

Mr. Piepmeyer stated that he has talked to an Attorney who provided him with some information about the case, which he started to share with the Board. Mr. Thurman stated that this was hearsay due to the Attorney not being present.

Mr. Piepmeyer stated that he was told that only the County could issue a subpoena to Duke Energy to determine ownership of the pole. Mr. Thurman asked if he had made a request for the County to issue a subpoena with Mr. Piepmeyer responding affirmatively. Mr. Piepmeyer stated he requested through Mr. Adams that one be issued with Mr. Adams stating that he does not recall that request ever being submitted to him. Mr. Thurman stated to the Board that Mr. Adams never approached him about issuing a subpoena. Mr. Kipfer asked Mr. Adams if the request would be made to him in writing and Mr. Adams stated that he has never had such a request in the past but does feel that it should be made in writing.

Mr. Piepmeyer requested that the video identified as number 1404 be shown. Mr. Piepmeyer stated that this video was taken from his driveway and shows that light on the back of his house. He stated that there are no trees located between this light and his house. This video was identified and received by the Board as Exhibit # 4.

Mr. Piepmeyer requested that the video identified as number 1405 be shown. He stated that this was taken at 3:00 a.m. at the entrance of his residence and even at that early hour, his property is illuminated. This video was identified and received by the Board as Exhibit # 5.

Mr. Piepmeyer requested that the video identified as number 1407 be shown. He stated that this video shows that light down by the marina that Mr. Adams indicated was shining straight down. Mr. Piepmeyer stated that he does not feel that this light has a shield on it either due to the video showing how it shines onto his property. He stated that this issue could be corrected easily. This video was identified and received by the Board as Exhibit # 6.

Mr. Kipfer asked Mr. Piepmeyer if this light is a nuisance to him in the evening with Mr. Piepmeyer responding affirmatively. Mr. Piepmeyer stated that the lights at the marina are on all night long and that he is not sure why that practice is necessary.

Mr. Piepmeyer requested that the video identified as number 1399 be shown. He stated that this video is what he looks at from his front porch. This video was identified and received by the Board as Exhibit #7.

Mr. Piepmeyer stated that there is a fence that runs the length of the property and provides both him and the marina with security.

Mr. Piepmeyer stated that he thinks the photo identified as 1173 has already been seen by the Board. This photo was presented and received by the Board as Exhibit #8.

Mr. Piepmeyer requested that the photo labelled number 866 be shown. He stated that this photo shows parking in the buffer area up against the fence. Mr. Keeler asked when this photo was taken with Mr. Piepmeyer responding in May of this year. Mr. Kipfer asked if the house that is shown in the background is the rental property house. Mr. Piepmeyer responded affirmatively. This photo was identified and received by the Board as Exhibit # 9.

Mr. Piepmeyer requested that the photo identified as number 896 be shown. He stated that this photo was taken on a different day and shows a truck and trailer parked against the fence. This photo was identified and received by the Board as Exhibit # 10.

Mr. Franck stated that the fence that is located on the marina property is approximately six inches from the property line and he thinks the actual property line is between the two fences. Mr. Kipfer asked Mr. Franck if he thinks the vehicle in the picture is in violation due to parking in the ten-foot buffer area. Mr. Franck stated that a small white sign is visible in the picture indicating that there is no parking allowed in that section and that parking should be taking place to the right of the sign. Mr. Franck stated that he does believe that the truck and trailer in the photo are parked in the buffer area. Mr. Franck stated that there is a manager on site, Mr. Todd, on the weekends during the summer directing people to not park in the buffer area. He stated that there are also posts with a rope going through them for the majority of the length of the fence.

Mr. Kipfer asked if it is Mr. Todd's responsibility to ask people who have parked in the buffer area to move their vehicles. Mr. Franck responded affirmatively.

Mr. Piepmeyer requested that the picture labelled 1387 be shown. He stated that this picture depicts another vehicle parked in the buffer area. This photo was identified and received by the Board as Exhibit # 11.

Mr. Piepmeyer requested that the photograph labelled as number 1395 be shown. He stated that this photograph depicts a vehicle again parking in the buffer area. This photograph was identified and received by the Board as Exhibit # 12.

Mr. Piepmeyer requested that the video labeled as number 1400 be shown. He stated that this video was taken from his front porch facing the water. The video was identified and received by the Board as Exhibit # 13.

Mr. Kipfer asked Mr. Piepmeyer if the lights that are shown in his pictures and videos are the same way they have been for the last twenty years. Mr. Piepmeyer stated that there has been a shield put on the light located on the marina but for the most part this is how the marina has been illuminated.

Mr. Keeler asked what lights were part of the complaint that was filed back in 2018. Mr. Piepmeyer stated that the earlier violation referred to the mid-level light and the light located near the dock area.

Mr. Piepmeyer requested that the video labelled as number 1401 be shown. He stated that this video shows the lights located on the gazebo which do not shine on his house, but they do shine on the ICWW. This video was identified and received by the Board as Exhibit # 14.

Mr. Piepmeyer requested that the photograph labelled 1421 be shown. He stated that the photograph depicts the marina's fence. This photograph was identified and received by the Board as Exhibit # 15.

Mr. Piepmeyer stated that at this point he feels he has produced enough evidence to re-open the violation file due to nothing be done by the owners of the marina to correct the lighting and buffer issues. He stated that the new light on the residential lot helps Hampstead Marina, and the Special Use holders should either move the light, install a different type of light, or install a shield on the existing light. Mr. Piepmeyer stated that he feels that this is a simple problem with a simple solution. He also stated that he feels the lights should be turned off from 11:00 p.m. until 5:00 a.m., which would help. The lighting and buffer issues are a nuisance to him.

Mr. Piepmeyer stated that the photographs and videos show continued parking in the buffer area with no physical barriers in place.

Mr. Piepmeyer stated that he wants the Board to require a solid hedge be planted for the entire length of the parking area seven to ten feet from the property line fence. He stated that the bushes should be planted three feet apart at or above grade of the mid-parking area and to be maintained at no less than six foot in height.

Mr. Piepmeyer stated that Mr. Todd is always not at the premises. He stated that Mr. Todd works on the weekends and holidays and the public should not be left to themselves to follow directions when it comes to parking.

Mr. Piepmeyer stated that the Board should require an updated site plan to include the new light and hedge row. He stated that there are significant differences in the original site plan and what exists today and feels an updated version is needed.

Mr. Franck asked Mr. Piepmeyer when he built his home. Mr. Piepmeyer stated he built his home twenty years ago. Mr. Franck asked Mr. Piepmeyer if he knows the history of the marina in which Mr. Piepmeyer objected stating that he does not feel his question is of any relevance.

Mr. Franck thanked Mr. Kipfer for the latitude to respond to items that Mr. Piepmeyer raised in his testimony.

Mr. Franck asked Mr. Piepmeyer if he knew of the operation of the marina when he built his home. Mr. Piepmeyer objected to the line of questioning as to it not being relevant. Mr. Piepmeyer stated he does not know what his questions have to do with a light that was installed in the last three years. Mr. Kipfer stated he could choose to answer the question or not. Mr. Piepmeyer chose to not respond to the question. Mr. Franck asked Mr. Kipfer if he is going to accept his

refusal to answer the question then he will move on. Mr. Kipfer stated that Mr. Piepmeyer has the right to refuse responding to the question and for Mr. Franck to move on from the question.

Mr. Franck referenced Exhibit # 8 which is also labelled as photograph number 1173. Mr. Franck stated that it is a picture of the light that is located on the neighboring residential property. Mr. Franck asked if the picture was taken from the corner of the porch.

Mr. Piepmeyer voiced his objection to this line of questioning due to it not being relevant in today's hearing. Mr. Franck stated that he is asking questions based on the evidence that Mr. Piepmeyer presented today.

Mr. Piepmeyer stated that he took the picture labelled as Exhibit # 8 from a window in his back room.

Mr. Franck asked Mr. Piepmeyer if he is looking at the lense of the light or the side of the light. Mr. Piepmeyer responded that he is unable to tell.

Mr. Franck spoke of the other floodlights located on adjacent residential homes. Mr. Piepmeyer objected to Mr. Franck's line of questioning. Mr. Kipfer stated that Mr. Piepmeyer brought in videos indicating other lights and not just the newest light, so Mr. Franck can continue with his line of questioning. Mr. Franck stated that from the videos that Mr. Piepmeyer has entered evidence that light shines on his property from sources other than just the newest installed light.

Mr. Franck showed 3 separate videos showing light shining from 130 Broadview Lane and 118 Broadview Lane. Mr. Franck asked if Mr. Piepmeyer had testified earlier that there are no trees in between the light on the residential lot and his home. Mr. Piepmeyer responded affirmatively. Mr. Franck stated that a person can clearly see that the light casting on Mr. Piepmeyer's home goes through trees. Mr. Piepmeyer stated that he does not agree with Mr. Franck's statement.

Mr. Franck asked Mr. Piepmeyer how many spotlights are located on his home that are directed at adjacent neighboring properties or at navigational channels. Mr. Piepmeyer responded that there are no floodlights located on his house directed at other properties.

Mr. Franck showed another photo of Mr. Piepmeyer's home. The picture is further identified as Slide 15 and entered evidence as Exhibit # 16. Mr. Franck asked Mr. Piepmeyer if this is the façade of his home that faces the ICWW. Mr. Piepmeyer objected to this line of questioning. Mr. Kipfer stated that he has not seen this photo before. Mr. Franck stated that he is introducing the photograph into evidence now. Mr. Franck stated that since Mr. Piepmeyer verified that this picture is a picture of his home, he would like to ask him questions concerning the spotlights locate on the home. Mr. Kipfer asked for the relevance as to the hearing today. Mr. Franck stated that the photograph is directly related to the hearing today since Mr. Piepmeyer has contended that light located on a residential property that shines on neighboring residential properties are in violation of the Ordinance.

Mr. Kipfer asked the Board members if they had any additional questions, and no questions were presented.

Mr. Franck stated that he would like to enter his entire presentation into evidence, including all slides. Mr. Franck's presentation was identified and received by the Board as Exhibit # 17.

Mr. Franck presented his closing argument requesting that the Board upholds the decision of the Planning Staff to close the Violation case.

Mr. Kipfer stated that several of the posts did not have rope through them and he is wondering why the roping hasn't been strung through the posts consistently. Mr. Franck acknowledged there were times when the rope would be damaged or destroyed due to the weather. Mr. Keeler stated that the posts do not go the entire length of the property. Mr. Kipfer stated that he feels the buffer area is only trying to be used as an overflow area and if there are other spaces available, someone might not try to park where they are not supposed to.

Mr. Snider read the condition of the Special Use Permit pertaining to the buffer. Mr. Franck stated that he does not argue with there being a ten-foot buffer along that property line. Mr. Kipfer stated that he feels that the intent is that an environment should be created where the violation should never occur. He stated that the marina has left the environment as a possibility for a violation that may never occur on a daily basis, but the violation can occur. Mr. Keeler stated that on the plot plan from the Special Use Permit, dated May of 2004, landscape timber is indicated as the physical barrier to parking in the buffer.

Mr. Franck stated that he does not know if it possible to have one hundred percent compliance. Mr. Kipfer stated that unless there is someone on site twenty-four hours a day, seven days a week, that the best possible way would be to create an environment where a violation can't occur.

Mr. Keeler stated that since this is a private marina and a membership is required, there should be means to enforce the rules with members.

Mr. Kipfer asked the other Board members if they had any additional questions, and none were presented.

Mr. Snider stated that he is still not clear as to who is paying for the newest light. He stated that he feels all it would take would be a phone call to Duke Energy. Mr. Franck stated that Ms. Wooten testified that the tenant receives their own electric bill, and she receives a bill for everything else. He stated that her bills do not reflect any charge for the light. Mr. Keeler stated that Ms. Wooten stated that she is not sure, and he cannot feel that this issue has been determined and settled.

Mr. Olsen stated that he is not so much concerned with who is paying the bill but rather who requested the light to be installed. He stated that he is prepared to close the hearing and discuss the matter at hand with the other members before rendering a decision.

Mr. Kipfer made a motion to close the hearing to testimony with Mr. Keeler seconding the motion. A vote was taken and was unanimously approved.

Mr. Keeler stated that he feels the plot plan does need to be updated and that the posts and rope need to be more consistent.

Mr. Kipfer stated that he feels that the intent of the ten-foot buffer was to make sure that a vehicle or trailer was not parked in that location. He stated that the buffer needs to be put in place and enforced.

Mr. Olsen stated that he feels Planning staff's decision to close out the Violation was arbitrary and capricious, and the decision should be overturned. He stated that he feels there needs to be a buffer, but he does not care to indicate how that buffer is implemented.

Mr. Kipfer agreed with Mr. Olsen that the Violation cannot be closed out as to the buffering until the buffering is completely in place.

Mr. Olsen made a motion as to the issue of buffering. His motion was to overturn the decision of the Planning staff. Mr. Keeler seconded the motion, and the vote was unanimous.

Mr. Adams asked for some clarification from the Board members as to the buffering. He asked if it is the Board's intention to have a rope or some physical barrier run to twenty-five feet of the residential property. Mr. Keeler stated the buffer needs to be consistent with what was approved by the Special Use Permit.

Mr. Kipfer stated that he is not sure if the Board has the authority to enforce the light due to the property that the light is located on not being a part of the Special Use Permit.

Mr. Olsen stated that he has not seen any case law that stated that the location of violation is determinative when the violation is under the control of the operator of the Special Use Permit.

Mr. Keeler stated that when he walked the property, he could tell that there is no shielding on the side of the light. He stated that he believes the intent of the light is a commercial application that happens to be placed on a residential property. Mr. Keeler stated that he feels that the landowner knew if they placed the light on the marina property that they would have to update their Special Use Permit and would not have to do so if the light was placed on the residential lot.

Mr. Thurman stated that the Special Use Permit runs with the property and not the owner. He stated that the owner could sell the property and the Special Use Permit would continue to apply. Mr. Thurman stated that the Ordinance states that a Special Use Permit applies to a specific property and does not state anything about applying to adjacent properties.

Mr. Olsen stated that he feels the light is oriented for the neighboring property though it may not be oriented that direction primarily. He stated that even though the Ordinance does not restrict the light, the Special Use Permit does. Mr. Olsen stated that he believes that the light not only shines on the subject property but also the adjoining properties, which makes it a violation of the Special Use Permit.

Mr. Thurman stated that determination is entirely up to the Board but to please cite some authority that the conditions of a Special Use Permit apply to a property that is not subject to the Special Use Permit. He stated that by the terms of a Special Use Permit, it only applies to the subject property and not adjoining.

Mr. Olsen stated that based on the authority allowed by the Pender County Unified Development Ordinance that allows conditions to be placed on a Special Use Permit and on the evidence presented to the Board on this Special Use Permit, he made a motion that the light is in violation of the Special Use Permit. Mr. Keeler seconded the motion.

Mr. Snider stated that he agrees that it is a situation that can easily be resolved.

Mr. Kipfer asked for a vote of all who are in favor of Mr. Olsen's motion and Mr. Olsen, Mr. Snider, and Mr. Keeler agreed. Mr. Kipfer opposed the motion. The vote was three in favor and one opposed.

Mr. Brantley asked both Mr. Thurman and Mr. Kipfer for clarification as to whether there is a time frame to make the changes or address the issues. Mr. Kipfer stated that he thinks that Planning staff should figure out an appropriate time frame. Mr. Olsen stated that he does not feel a time frame should be issued due to the chosen method of compliance may take longer to complete. He stated that he feels that the Planning staff will need to monitor the situation for compliance.

8. Discussion Items

Mr. Adams stated at the Board's last meeting in June of 2023, there was a discussion amongst the Board, Mr. Thurman, and Planning staff regarding some rules being put in place concerning the submission of evidence, particularly digital evidence that can be challenging to display to the Board without appropriate time to prepare. He stated that he feels it is inappropriate for someone to bring a cell phone into a hearing and have it shown to each member separately or have all the members try to view it at the same time. Mr. Adams stated he drafted some language that is intended to be a conversation starter.

Mr. Adams stated that the second item of discussion was establishing a time limit for parties that do not have standing. Mr. Thurman stated that if a person does not have standing then they should not be addressing the Board. Mr. Adams clarified during the public comment segment of the hearing.

Mr. Olsen asked Mr. Thurman to explain what the current rule of standing is, to which Mr. Thurman obliged.

Mr. Olsen stated that he would like to have the ability to exclude photos, videos, and other documentation that is not presented before the hearing. He then stated that he also would like the Board to have the authority to accept exhibits at the time of the hearing. Mr. Thurman stated that he agrees with Mr. Olsen's opinion on the ability of the Board to accept or reject evidence that is not presented beforehand.

Mr. Keeler stated that he feels that the Board has spent a longer period of time viewing evidence that has not been submitted before the hearing. He stated that if the evidence was submitted in advance of the hearing, then a great amount of time could be saved in the hearings.

Mr. Adams stated that the intent of the language would be to give the Board authority to decide as it deems appropriate.

Mr. Bruer agreed that evidence should be presented before the hearing but understands that is not always possible. He stated that he thinks a time restraint should be implemented when it comes to people speaking during the public comment period.

Mr. Kipfer stated he thinks it is a good idea when a person steps to the podium to speak that they provide their name, address, and standing. Mr. Adams asked if the Board wanted this procedure to

be written or does the Board want to agree to the procedure informally. Mr. Kipfer stated that he feels that the procedure can be handled informally when the person introduces him or herself.

Mr. Adams stated that with the Board's approval, he will bring back new language at the next hearing that reflects on what was discussed and decided on today. He stated that the next meeting, the new language will be discussed and when the Board is comfortable with how the language is written, a vote will be taken.

Mr. Adams stated that the next hearing date will be September 20, 2023, and there is one case currently on the agenda. He informed the Board if anything changed with the agenda, he would contact them. Mr. Olsen stated that he would not be in attendance of the September meeting.

Mr. Adams stated that an application has been received for a position on the Board from District Five. Mr. Adams reminded the Board that recently they had an application from a community member in the Hampstead area, but the Board of Commissioners denied the Application due to having too many members of the Board of Adjustment from the Hampstead area. He stated that this most recent applicant lives in Maple Hill and her appointment will be going before the Commissioners at the August 21, 2023, meeting.

9. Next Meeting Date

September 20, 2023 @ 9:00 a.m.
Commissioner's Meeting Room
805 S. Walker Street
Burgaw, NC 28425

10. Adjournment

Meeting adjourned at 11:30 a.m.

All exhibits presented are available upon request to the Pender County Planning and Community Development Department.



Pender County 2024 Calendar

TO: Board of Adjustment
FROM: Daniel Adams
DATE: October 18, 2023
SUBJECT: 2024 Calendar

SUMMARY:

Proposed 2024 Board of Adjustment calendar.

ACTION REQUESTED:

Consideration of 2024 calendar.

ATTACHMENTS:

1. Proposed 2024 Calendar

2024 Board of Adjustment Schedule	
Month	Meeting Date
January	1.17.2024
February	2.21.2024
March	3.20.2024
April	4.17.2024
May	5.15.2024
June	6.19.2024
July	7.17.2024
August	8.21.2024
September	9.18.2024
October	10.16.2024
November	11.20.2024
December	12.18.2024