



MINUTES
Board of Adjustment Meeting
Wednesday, July 20, 2022 Pender County Public Assembly Room 9:00 AM

MEMBERS PRESENT: Max Kipfer
Kyle Breuer
Andrew Olsen

MEMBERS ABSENT: Jeffrey Snider

OTHERS PRESENT: Travis Henley, Planning Director
Donna Sayre, Administrative Assistant
Other Staff and Members of the Public.

- 1 CALL TO ORDER**
Meeting called to order at 9:05 am
- 2 ROLL CALL**
- 3 PLEDGE OF ALLEGIANCE & MOMENT OF SILENCE**
- 4 ADOPTION OF AGENDA**

a) Motion to adopt the agenda as is.

Moved by Kyle Breuer, seconded by Andrew Olsen

Motion approved

	For	Against	Abstained	Absent
Max Kipfer	x			
Kyle Breuer	x			
Andrew Olsen	x			
Douglas Scott Rivenbark	x			
Jeffrey Snider				x
	4	0	0	1

CARRIED.

5 ADOPTION OF MINUTES

- a) May 18, 2022 Meeting Minutes

Moved by Andrew Olsen, seconded by Kyle Breuer

Motion to approve minutes for the 5-18-2022 BOA meeting minutes as is.

	For	Against	Abstained	Absent
Max Kipfer	x			
Kyle Breuer	x			
Andrew Olsen	x			
Douglas Scott Rivenbark	x			
Jeffrey Snider				x
	4	0	0	1

CARRIED.

6 PUBLIC COMMENT

7 APPEAL

- a) APPEAL 2022-07

Due to the absence of the County Attorney, Planning Director Travis Henley swore in and/or affirmed himself, Justin Brantley, Sean Donahue, Shari Donahue, Linda Davenport, Joe Maccini, Randy Lee, Kristen Case, and Brad Case as to their testimony being truthful and relevant to the respective case.
APPEAL CASE 2022-07 – Applicants Sean Donahue and Shari Donahue

Mr. Brantley, the Senior Planner, presented the Staff Report. Sean Donahue, applicant, and owner of Surf City Farm is requesting an Appeal of an Administrative Decision that found that selling produce grown on other farms does not fall under the bonafide farm exemption established by North Carolina General Statutes and is thus subject to local zoning requirements. The subject property is located at 101 Northern Escape Way, approximately one-half mile northwest of the mainland intersection of NC 50 and NC 210 in the Topsail Township and may be further identified by Pender County PINs 4236-00-7179-000 and 4235-00-9594-0000.

Mr. Brantley provided the case history including the Zoning Determination Letter that was issued on March 7, 2022. The Determination Letter addressed that the resale of crops and/or products from other farms is not considered an exempt bonafide farm purpose and would therefore be subject to Pender County zoning regulations. The Determination Letter was discussed by the Board.

Mr. Brantley read North Carolina General Statute 160D-903, Agricultural Uses, and NCGS 106-581.1, Agriculture defined.

Mr. Henley explained that the bonafide farm definition was established back in the 1950s and 1960's when zoning was not applicable due to no zoning being in place. Allowing counties to have jurisdiction over zoning matters did not take place until the late 1960s. He stated that the statute was very vague and has evolved over time.

Mr. Henley stated that a Conditional Farmer Exemption issued by the North Carolina Department of Revenue was presented to the Planning Department by Surf City Farm to be qualified as a bonafide farm. He stated that Pender County does not have the authority to enforce whether something is a bonafide farm.

Mr. Kipfer asked if other farms' products qualify, and Mr. Henley stated that the General Statute reads any farms owned by applicants or leased by the farm.

Mr. Kipfer asked the Board Members if they had any additional questions or comments for the Planning Board staff and Mr. Olsen stated that under Agriculture Business, there is not a clear answer. Mr. Olsen feels that weddings can be held at the farm and food service would add to the enjoyment of the event.

Mr. Henley stated that the General Statutes are always evolving and changing, and many situations are on a case-by-case basis.

Applicant, Sean Donahue, presented the Board with a presentation packet while Applicant, Shari Donahue gave an overview of the packet. The presentation packet was submitted into record as **Exhibit A**. Also presented to the Board at this time was a 3-ring binder that was submitted into record as **Exhibit B**.

Ms. Donahue stated that the business closed down on March 17, 2022, and hasn't been open since due to all the issues that they have encountered.

Ms. Donahue presented the Board with the past and current numbers of bonafide farms located in Pender County and stated that the Planning Department's determination will not only affect her farm but will affect all bonafide farms in Pender County. The list was provided as a part of **Exhibit A**.

Ms. Donahue stated that on July 7, 2022, additional language was added to clarify North Carolina General Statute 143-138(b4) stating that "A farm building shall include;" (b) "Any structure used for the display and sale of produce, no more than 1000 square feet in size, open to the public for no more than 180 days per year and certified by the Department of Agricultural and Consumer Services as a Certified Roadside Farm Market."

Ms. Donahue provided information pertaining to the Certified Roadside Farm Market Program. The program is designed to promote North Carolina roadside farm markets that primarily sell produce (horticultural crops) grown by the operator or other local farmers. The goal of this program is to increase sales to consumers of products grown and sold by North Carolina farmers. The program also seeks to assist roadside farm markets with improving their marketing skills, improving the quality of products sold, and promoting fair and honest marketing practices. Ms. Donahue stated that they applied to be a Certified Roadside Market on March 14, 2022, and the application is pending.

Mr. Kipfer asked if a Certified Roadside Market is different than a bonafide farm and Mr. Henley affirmed that they are different.

Mr. Kipfer stated that 1000 square feet is the size limit for a Certified Roadside Market and the Applicant is over the size limit. Ms. Donahue stated that their current building is 54x30, 1620 square feet. Ms. Donahue stated that she is interested in having another outside building to sell the produce which will be less than 1000 square feet.

Ms. Donahue stated that produce that is grown by another farmer would be considered Agritourism. She has provided information that was supplied to her by Annie Baggett, North Carolina Department of Agricultural and Consumer Services Marketing Division Specialist, showing examples of Agritourism that includes roadside stands and farm stores, and that selling value-added items produced by the farm and items stocked by other agricultural producers and community partners is another potential revenue stream.

Ms. Donahue stated that they pay full property tax and do not request any farming tax breaks.

Ms. Donahue referred to the USDA, AGMRC Agricultural Marketing Resource Center sheet in **Exhibit A** and brought attention to the highlighted areas. She also referred to the documentation from the Pender County website where their farm is listed under Agritourism and not as a farm. Ms. Donahue stated that Pender County is using their farm to promote Pender County. She then presented the NCDA & CS "Got to be NC" sheet which lists Surf City Farms as a Farmer's Market.

Ms. Donahue informed the Board that most of their sales would be retail and not sit-down eating and she believes that agritourism includes products bought from other farms to be re-sold.

Mr. Olsen asked about the farm not being open and Ms. Donahue stated that they are currently closed. She stated that numerous complaints have been made against the farm from three neighboring properties and that has contributed to their decision to shut down.

Mr. Kipfer asked about the Fresh Point deliveries and Ms. Donahue stated that it is a produce company that she receives a weekly list of produce that is available and from a variety of farms. This allows her to choose products that are grown on North Carolina farms all throughout the year.

Mr. Kipfer stated that the individuals that signed up to speak will be called up to the podium and have two minutes to speak. He asked that the comments keep in line with the matter on hand.

Linda Davenport of 121 Marcil Lane, Hampstead, stated that her home is part of a very small housing development with approximately forty houses. There is only one way in and one way out. She stated that the Fresh Point trucks started coming in every Thursday in June of 2021 and have continued since then. Ms. Davenport stated that the growing season in North Carolina is approximately ninety days so what items is Surf City Farms buying locally in January? Ms. Davenport presented the Board with a five-page packet that she would like to submit to the record as **Exhibit C**.

Joe Maccini of 211 Triton Lane, Surf City, stated that he supports the farm, and he feels that the Board should grant the Appeal. The farm is a positive for people to have in the county and the County should not stop the farm from selling products. The farm has had acts of vandalism against it and that is just unnecessary. Mr. Maccini feels that Pender

County and the residents of Pender County should support small businesses.

Randy Lee of 166 Northern Escape Way stated that he lives across from the farm. The buildings that are currently constructed on the property does not resemble a farm. He stated that he contacted Fresh Point and "local" to them means within a 250-mile radius. Mr. Lee also stated that he was told by a Fresh Point representative that they don't deliver to farms so the Applicants must be using Donahue Restaurant to purchase items. The items that are being brought it are not local, as they should be.

Kristen Case of 76 Northern Escape Way stated that she is in no way against farming or small businesses. She is concerned that this space is becoming too retail and commercial for a rural area.

Brad Case of 76 Northern Escape Way stated that this hearing is not about farming but rather a retail operation taking place in a residential area. This farm is a retail store focusing on retail sales. Mr. Case states that the store should be moved but keep the farm.

Mr. Olsen discussed with the other Board members the need to allow the public to speak for a longer period due to them only having two minutes. Mr. Kipfer stated he had no objection to the suggestion. Mr. Breuer stated he did not object if the speakers keep testimony related to the matter at hand.

Ms. Davenport stated that the Fresh Point truck is not only delivering produce but is also delivering soups, soap, baked goods, and other items. She added that this farm is a retail commercial market, and the Applicants aren't farmers.

8 DISCUSSION ITEMS

9 NEXT MEETING DATE

- a) August 17th, 2022
Pender County Public Assembly Room
805 S. Walker Street
Burgaw, NC 28425

10 ADJOURNMENT

