

**VARIANCE REQUEST  
ZONING BOARD OF ADJUSTMENT  
DECEMBER 10, 2019**

**CASE:** ZBA-947

**PETITIONER:** Myron Smith, Jr., Thomas Oliver, and Marybeth Lengyel

**REQUEST:** Variance from the access requirements for structures per Section 61.2-1 of the New Hanover County Zoning Ordinance.

**LOCATION:** 4245, 4285 Buck Drive  
PID: R01900-001-010-023, R01900-001-010-039

**ZONING:** R-15, Residential District

**ACREAGE:** 8.4

**PETITIONER'S REQUEST:**

Myron Smith, Jr., Thomas Oliver, and Marybeth Lengyel, applicants, are requesting a variance to access standards per Section 61.2-1 of the Zoning Ordinance. The properties are located at 4245 and 4285 Buck Drive.

**BACKGROUND AND ORDINANCE CONSIDERATIONS:**

The subject parcels are two of twelve lots with access to Buck Drive, which is an unimproved, dedicated right-of-way with direct access to Sidbury Road. Mr. Smith and Mr. Oliver are the owners of 4245 Buck Drive (Parcel 1), which is a 7.32-acre parcel, while Ms. Lengyel is the owner of 4285 (Parcel 2), a 1.08-acre parcel directly to the north.

Beginning as early as the 1990s, several lots having access to Buck Drive were divided and conveyed via metes and bounds descriptions outside of the county's prescribed subdivision approval process. As such, certain infrastructure improvements required by the New Hanover County Subdivision Ordinance, specifically the improvement of Buck Drive to the minimum private road standard, did not occur. As a result of this issue, a Notice of Noncompliance was filed in the New Hanover County Register of Deeds in 1995 which stated that building permits would be withheld on certain lots accessing Buck Drive until the necessary improvements were completed.

On October 19, 2018, the applicant's agent requested information from county staff relating to the permitting of a single-family residence on 4245 Buck Drive. On November 13, 2018, county staff responded with a determination that allowing a structure to be permitted on the lot would not comply with the access requirements specified in Section 61.2 of the New Hanover County Zoning Ordinance:

***Section 61.2: Structures to Have Access***

*61.2-1: Every structure hereafter erected or moved shall be on a lot adjacent to a road as defined in Section 23-86, or to a right-of-way or easement which was platted and recorded prior to 1969. The following are exempt from the requirements of this Section: (1/5/81) (8/2/82).*

- (1) Lots of record prior to the adoption of this Ordinance that have sufficient area to meet the minimum requirements of the district in which they are located;*

- (2) Structures that are to be used in conjunction with a bona fide farming operation; and,
- (3) Building lots having access over a private driveway or easement at least thirty (30) feet in width (5/1/89) to a road as defined in Section 23-86, provided the driveway or easement is an easement appurtenant to three (3) or fewer lots and the easement is solely owned by a lot owner or in common by three (3) or fewer lot owners.

“Roads”, as referred to in subsection (3) above, is defined in Section 23-86 as follows:

*Roads - Any road, highway, way, alley, lane, court, drive, or easement, whether public or private, used as a means of access which meets the minimum requirements for subdivision roads as specified by NCDOT and New Hanover County and which has been duly platted and recorded as per the requirements set forth by New Hanover County. (8/3/87) (23-86)*

Staff determined that the subject property does not meet any of the exemptions stated in Section 61.2-1, nor is Buck Drive currently constructed to the minimum requirements for NCDOT or private subdivision roads, which are detailed in the NCDOT Subdivision Manual and the New Hanover County Subdivision Ordinance. As staff currently considers Buck Drive a *private driveway* (as referred to in Section 61.2-1(3)) that is providing access to more than three lots, staff made the interpretation that an additional building permit cannot be granted until the road is improved to NCDOT or private subdivision road standards. The county’s private street requirements and cross sections are depicted in *Exhibit A* of this summary.

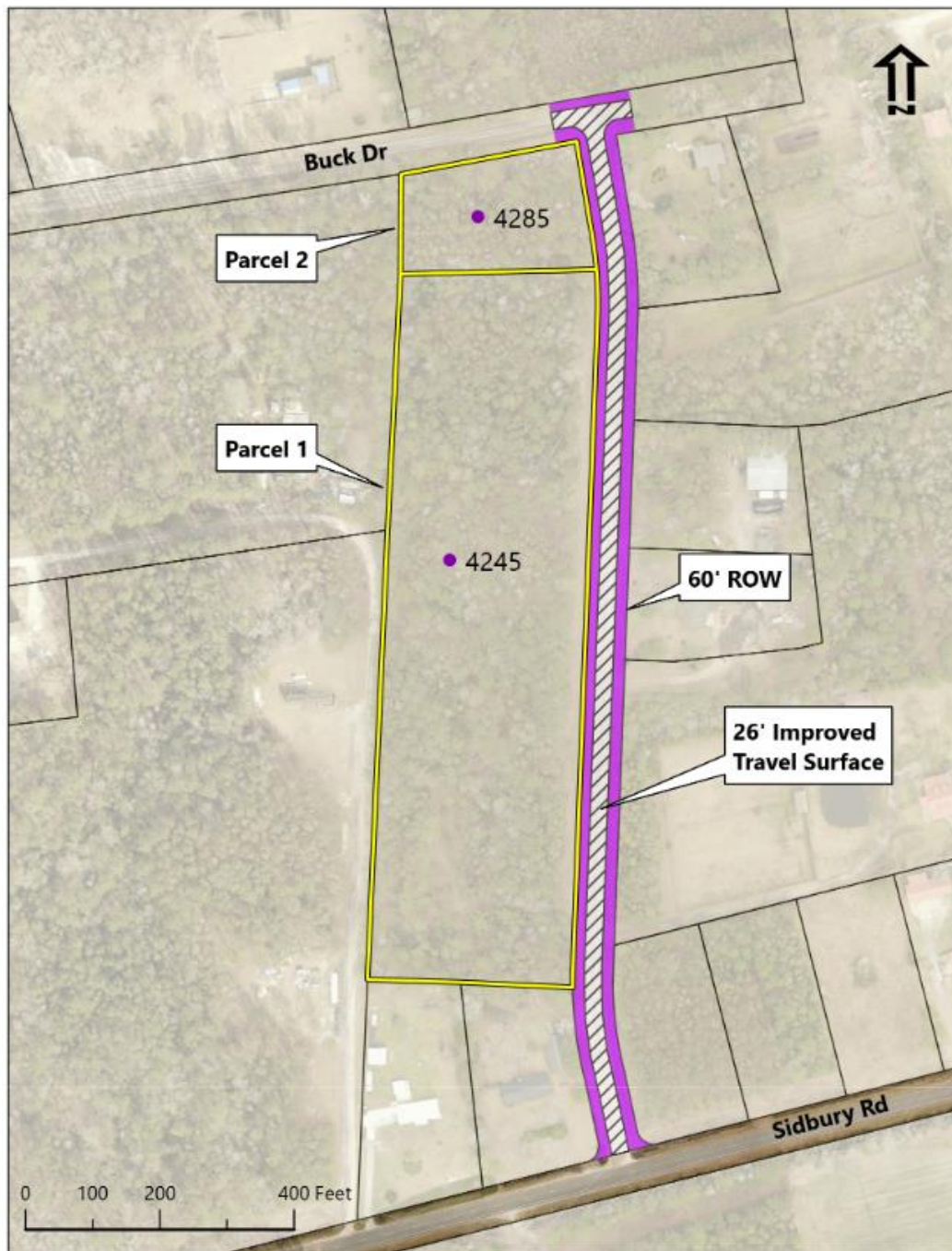


*Typical section of Buck Drive showing 26' wide travel surface within a 60' dedicated right-of-way*

Subsequent to this staff interpretation, an appeal was filed and appeared on the February 2019 agenda. The applicant received a continuance for the case at this meeting, and has since received several additional continuances from the Board in an attempt to resolve the matter outside of a Board of Adjustment hearing.

The applicant is now proposing to resurface Buck Drive in an effort to improve the roadway infrastructure to the lots. The private road standard that would be required to be met for a subdivision of more than 4 lots includes a

minimum 45' right-of-way, 24' travel surface, and a sidewalk on one side of the street. In addition, the minimum NCDOT local road construction standard is required to be met, which consists of base course and pavement surface specifications. The applicant is proposing to improve the condition of the road by resurfacing it with 4" of ABC stone or other non-compacted parking surface, as well a soil stabilizing fabric overlaying compacted subgrade. This improvement would begin at the intersection of Buck Drive and Sidbury Road and continue north for approximately 1,500 linear feet, including the resurfacing of a "T" or "hammerhead" turnaround north of the subject parcels where Buck Drive is configured with a 3-way intersection. The proposed improvements meet or exceed the minimum right-of-way and travel surface requirements, thus the variance request is specific to relief of the sidewalk construction requirement and the minimum NCDOT local road pavement specifications.



*Extent of proposed improvements to Buck Drive*

The owner of Parcel 1 does intend to further subdivide the parcel into no more than 4 total lots. With the inclusion of Parcel 2, the variance request would provide relief of the access standards specified in Section 61.2-1 to only these 5 potential lots. A potential subdivision of Parcel 1 would be required to meet all other applicable requirements of the county's Technical Review Committee at the time a further division of the property is proposed.

As the proposed improvement to Buck Drive is not anticipated to meet the minimum construction standard referenced in the Subdivision Ordinance, the applicant is requesting a variance from the requirement to build to the standards referenced in the definition of "Road" and further detailed in the Subdivision Ordinance. In addition, the applicant is requesting a variance to exceed the 3-lot limitation on lots being served by a private driveway or access easement by an amount not to exceed 5 additional lots. The applicant has proposed that the variance request be accompanied with the following conditions:

1. *Improvement of existing Buck Drive approximately 1,500 feet in length, 26-feet in width, from Sidbury Road to and including the northerly lane at the T-junction of Buck Drive as shown on the Variance Exhibit attached hereto as Exhibit A-2, including 4" ABC Stone or other non-compacted parking surface, geosynthetic soil stabilizer fabric, and compacted subgrade as shown on the Gravel Driveway Section of Exhibit A-2, or to a standard otherwise acceptable to the New Hanover County Fire Marshal.*
2. *Limiting the density of the subject property to a maximum total of five (5) lots and single-family residences, including any permitted accessory structures allowed under the County ordinances.*
3. *Maintenance Agreement for improved section of Buck Drive.*

In summary, the applicant is requesting a variance to allow no more than 5 additional lots to be served from a private driveway or easement, as well as to the requirement to serve the proposed lots by a means of access that would not meet the minimum county private road standard. In lieu of meeting the minimum private road construction standard, the applicant is proposing a resurfacing and improvement to Buck Drive in order to improve the condition of Buck Drive.

#### **BOARD OF ADJUSTMENT POWER AND DUTY:**

The Zoning Board of Adjustment has the authority to hear and decide appeals where it is alleged by the appellant that there is error in any decision made by the zoning administrator or other administrative officials in the carrying out or enforcement of any provision of the Zoning Ordinance. A majority of the members of the Board shall be necessary to reverse, wholly, or partly, any such decision. Vacant seats and disqualified members are not considered in calculating majority.

An appeal from the decision of the Zoning Board of Adjustment shall be subject to review by the Superior Court by proceedings in the nature of certiorari. Any petition for review by the Superior Court shall be filed with the Clerk of Superior Court within 30 days after the decision of the Board is filed in the Office of the Clerk to the Board, or after a written copy thereof is delivered to every aggrieved party who has filed a written request for such copy with the Clerk or Chairman of the Board at the time of the hearing of the case, whichever is later.

#### **ACTION NEEDED (Choose one):**

- 1. Motion to uphold all or some of the zoning determinations issued by staff.**
- 2. Motion to table the item in order to receive additional information or documentation (Specify).**
- 3. Motion to overturn any or all of the zoning determinations issued by staff.**

## Exhibit A

### **New Hanover County Subdivision Ordinance**

#### 52-4 Streets (12/10)

All streets shall be constructed, inspected, and approved in accordance with the following requirements. (5/88)

##### Private Streets:

(a) Streets designated as private shall be constructed to minimum construction standards as adopted by New Hanover County and certified by a professional legally recognized by a State of North Carolina licensing board as being licensed to perform such activities or undertakings.

(b) Pavement design shall meet the requirements as specified and shown in the road profiles depicted in Article VIII of the County's Subdivision Regulations under Appendices & Certificates.

(c) Streets designated as private may be allowed in subdivisions once they are reviewed and approved by the County's Technical Review Committee (TRC). In their review, the TRC will consider unique physical conditions of the property including but not limited to connectivity, topography, geometric design, storm water, tree preservation, ingress and egress, reduction of speed to desirable or safe levels and other safety measures and that sufficient language is provided through a legally established property owner's association that the streets will be properly maintained.

(d) Whenever a private street intersects a U.S., NC highway, or Secondary Road, an approved NCDOT Driveway Permit signed by the District Engineer will be required prior to final plat approval.

(e) Private road stubs and dead end streets shall be constructed/paved to the property boundary and shall not contain gates or obstructions to qualify for connectivity standards as stated in Section 41-1 (7)(f).

(f) Streets designed as collector roads that accept traffic from local streets will be required to be designated as public and adhere to the standards under public streets as noted above.