

**VARIANCE REQUEST
BOARD OF ADJUSTMENT
April 27, 2021**

CASE: BOA-960

PETITIONER: Palm Investment, Inc., applicant and property owner.

REQUEST: Variance of 10' from the 20' minimum Performance Residential periphery setback requirement per Section 3.1.3.D of the New Hanover County Unified Development Ordinance.

LOCATION: 502 Pilots Ridge Road
PID: R07900-001-484-000

ZONING: R-15, Residential District

ACREAGE: 0.50 Acres

BACKGROUND AND ORDINANCE CONSIDERATIONS:

Palm Investment, Inc., applicant and property owner, is requesting a variance from the minimum Performance Residential Subdivision periphery setback requirement of 20' in order to construct a single-family residence and an aircraft hangar on the subject property. The parcel is located within Pilots Ridge, a community in southern New Hanover County platted in 2006 which provides residents with access to a private runway. Many of the residences in Pilots Ridge have personal aircraft which are stored in hangars on individual lots.

The subject property is located on a 0.50-acre undeveloped lot on the far western extent of Pilots Ridge. The individual aircraft hangars in Pilots Ridge would be considered as accessory structures, which the UDO defines as follows:

ACCESSORY STRUCTURE - *A structure subordinate to a principal structure and use, the use of which is customarily found in association with and is clearly incidental to the use of the principal structure of the land and which is not attached by any part of a common wall or roof to the principal structure. (When a specific structure is identified in this Ordinance as accessory to another use or structure, the structure need not be customarily incidental to, or ordinarily found in association with, the principal use to qualify as an accessory structure.)*

Section 4.4.4 of the UDO requires that accessory structures in excess of 600 sf meet the minimum required setbacks for a principal structure in their respective zoning district:

4.4.4 STANDARDS FOR SPECIFIED ACCESSORY USES AND STRUCTURES

B. Accessory Structure

Accessory structures shall comply with the following standards:

1. *No accessory structure shall be erected in any required yard nor within five feet of any other building, except that accessory buildings not exceeding 600 square feet may be permitted in the required side and rear yards provided such*

accessory buildings are at least five feet from the property line and do not encroach into any required easements.

The UDO allows for two different types of subdivision design: Performance Residential Developments and Conventional Residential Developments. In a performance development, individual lots are not subject to the specific yard requirements of a zoning district provided that the density for the zoning district is not exceeded. In a conventional development, the UDO requires that the dimensional standards for each zoning district be met. The subject parcel is a part of Pilots Ridge, which was recorded as a performance subdivision.

Section 3.1.3 of the UDO contains provisions governing Performance Subdivisions, which generally address design parameters and other approval requirements. Although the conventional front, side, and rear yard requirements are not mandated on a performance residential lot, this section still requires a 20' setback on the periphery of the subdivision:

3.1.3. SUPERSEDING DIMENSIONAL STANDARDS

D. Performance Residential Development

Performance Residential Developments are not subject to the minimum lot size, minimum lot width, and front, rear, and side setback requirements in the zoning district where they are located. Performance Residential Developments shall comply with the standards in this section and with all other applicable standards in this Ordinance.

1. Setbacks and Spacing

- a. Buildings on the periphery of a Performance Residential Development shall be setback a minimum of 20 feet from the adjoining property line.

The subject property's side yard lies on the periphery of Pilots Ridge, as shown on the plat recorded in MB 50, Page 275 of the New Hanover County Register of Deeds:

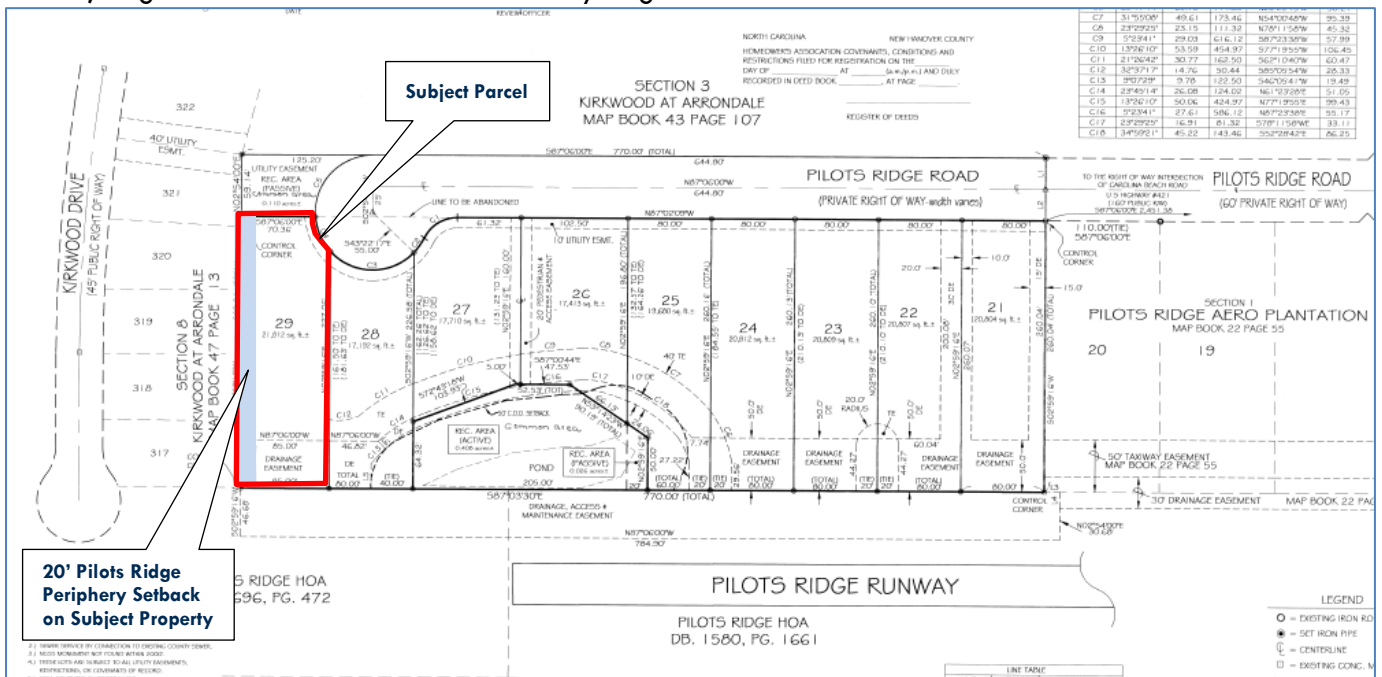


Figure 1: Inset from recorded plat of Pilots Ridge with staff markings showing approximate location of required periphery setback on subject property.

The applicant contends that the variance is necessary in order to provide flexibility in the site design for the lot, which contains a drainage easement on the south side which limits the ability to access the runway in a similar design to other lots in Pilots Ridge.

In summary, the applicant is requesting a variance from the 20' Performance Subdivision periphery setback requirement of 10' in order to construct a future single family residence and aircraft hangar on the subject property, which will be set back 10' from the periphery of Pilots Ridge.

BOARD OF ADJUSTMENT POWER AND DUTY:

The Board of Adjustment has the authority to authorize variances from the terms of the Unified Development Ordinance where, due to special conditions, a literal enforcement of the regulations would result in unnecessary hardship. In granting any variance, the Board may prescribe appropriate conditions and safeguards in conformity with the Unified Development Ordinance. A concurring vote of four-fifths (4/5) of the voting members of the Board shall be necessary to grant a variance. A variance shall not be granted by the Board unless and until the following findings are made:

1. Unnecessary hardship would result from the strict application of the ordinance. It shall not be necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property.
2. The hardship results from conditions that are peculiar to the property, such as location, size, or topography. Hardships resulting from personal circumstances, as well as hardships resulting from conditions that are common to the neighborhood or the general public, may not be the basis for granting a variance.
3. The hardship did not result from actions taken by the applicant or the property owner. The act of purchasing property with knowledge that circumstances exist that may justify the granting of a variance shall not be regarded as a self-created hardship.
4. The requested variance is consistent with the spirit, purpose, and intent of the ordinance, such that public safety is secured, and substantial justice is achieved.

ACTION NEEDED (Choose one):

1. **Motion to approve the variance request based on the findings of fact (with or without conditions)**
2. **Motion to table the item in order to receive additional information or documentation (Specify).**
3. **Motion to deny the variance request based on specific negative findings in any of the 4 categories above.**