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TOWN OF HOLLY RIDGE BOARD OF ADJUSTMENT MEETING MINUTES January 25th, 2022 6:00 P.M.

Call to Order

The meeting was called to order at 6:00 PM. Board members present were Chairwoman Toni Hardin, Verne Jones, and Dave Mosey. Also present were Nathan Rhue, Community Development Director and Marsha-Gray Kircher, Community Development Administrator. Applicant Justin Cosgrove from Tidewater Associates, Inc and property owners Steve Wangerin and Michael Tuton were also present.

Pledge of Allegiance

Chairwoman Toni Hardin led the Pledge of Allegiance.

Adoption of Agenda (Additions and/or Deletions)

A motion was made by *Verne Jones* and seconded by *Dave Mosey* to adopt the agenda as is. *All Agreed.*

Appointment of Chair and Vice-Chair

A motion was made by *Dave Mosey* and seconded by *Verne Jones* to appoint Toni

Hardin as Chair. *All Agreed.*

A motion was made by *Verne Jones* and seconded by *Toni Hardin* to appoint Dave Mosey as Vice-Chair. *All Agreed.*

Adoption of 2022 Board of Adjustment Meeting Schedule

A motion was made by *Dave Mosey* and seconded by *Verne Jones* to adopt the 2022 meeting schedule as is. *All Agreed.*

Adoption of Minutes (Additions and/or Deletions)

A motion was made by *Verne Jones* and seconded by *Dave Mosey* to adopt the minutes from September 28, 2021, as is. *All Agreed.*

New Business

Variance Request – Tidewater Associates, Inc – Folkstone Woods

Chairwoman Toni Hardin announced the case for Tidewater Associates, Inc and the request for a Variance of Holly Ridge Subdivision Ordinance, Section 8-36.9(E)(4). Chairwoman Toni Hardin explained that the hearing on this request is quasi-judicial in nature and will be conducted in accordance with special due process safeguards. Chairwoman Toni Hardin asked all persons wishing to testify in this case to come up to the front to be sworn in and then return to their seat.

Applicant Justin Cosgrove, Steve Wangerin, and Nathan Rhue were sworn in before hearing, administered by Board Chairwoman Toni Hardin.

Chairwoman Toni Hardin gave all Board members the opportunity to reveal possible conflicts and to withdraw from the proceeding if necessary. There were no Board members with any conflicts. All Board members were then asked by the Chairwoman if any of them had any information or special knowledge about the case that may come out at the hearing, and if so to please describe that information for the record so that any interested parties will know and can respond. Chairwoman Toni Hardin and Dave Mosey both disclosed that they had prior knowledge of the development as a whole due to them both being on the Planning Board, and neither wished to withdraw themselves from the meeting.

Chairwoman Toni Hardin stated that in this hearing, we will first hear from the Staff and other Town witnesses, then from the applicant and their witnesses, and then from opponents to the request, if any. Parties may cross-examine witnesses after the witness testifies when questions are called for. Chairwoman Toni Hardin explained that if anyone wants the Board to see written evidence, such as reports, maps, or exhibits, the witness who is familiar with the evidence should ask that it be introduced before, during or at the end of his or her testimony. Chairwoman Toni Hardin expressed that the Board cannot accept reports from persons who are not present to testify. It was also expressed that if any Attorneys who speak should not give

factual testimony but may summarize their client's case.

Chairwoman Toni Hardin opened the hearing on case Tidewater Associates, Inc – Folkstone Woods – request for variance. Nathan Rhue mentioned to the Board that he would like to make a change to the Staff report previously provided to the Board and applicant if permissible. Nathan Rhue explained that applicant Justin Cosgrove sent an email to provide a clarification to Standard 2 of their application, pertaining to the hardship. Nathan Rhue explained that previously it stated that the wetlands are not allowed to be impacted as they are considered conservation; email provided clarification that they may be able to be impacted. Chairwoman Toni Hardin asked if there was anyone present that would like to view or object to the evidence submitted. There were none. Chairwoman Toni Hardin asked the applicant, Justin Cosgrove if he did indeed send the submitted email that was submitted as evidence. Justin Cosgrove confirmed that he did. Nathan Rhue asked that the staff report with applicants' email be submitted into evidence as Exhibit 'A'. Exhibit 'A' was submitted into evidence without objection.

Nathan Rhue explained to the Board that the application is pertaining to 141 Folkstone Road, Parcel # 154331. Nathan Rhue mentioned that the applicants Tidewater Associates, Inc., while previously under a different name (Parker & Associates), are the engineering firm that has continually been involved with the Village/Landings at Folkstone subdivision since approved as a Master Plan in 2011. The acreage subject to this request is the final portion of the development in order to be completely built out. Nathan Rhue explained that while the Villages of Folkstone are primarily single-family dwellings, the Landings of Folkstone are made up of two-family (duplex) dwellings. The area in question of this request is proposed for twenty (20) additional units, two-family dwellings, for a total of 6.01 acres.

Nathan Rhue presented an aerial showing the said property being adjacent to Folkstone Road, with Currituck on the left of the property (the Landings of Folkstone), and Pamlico on the right (the Villages of Folkstone). Nathan Rhue explained to the Board that the variance is in reference to Section 8-36.9(E)(4) which states that “no two (2) streets may intersect with any other street on the same side at a distance of less than four hundred (400) feet measured from center line to center line at the intersections.” As proposed, the intersection of the new road with Currituck Road does not afford the required separation of 400 feet from the intersection of Currituck and Folkstone Road, rather 125 feet.

Nathan Rhue explained that there is approximately 761 feet between Currituck and Pamlico, with the original design that was presented to NCDOT having the lots abut Folkstone Road with driveways coming off that. Since the Master Plan and subsequent preliminary plats were approved by the Town, the Folkstone Road area has become more developed with additional dwellings and, more importantly in consideration of this request, a new school being constructed. This has understandably increased traffic along Folkstone Road and, thereby, increasing the concern related to safety.

Nathan Rhue mentioned that based upon the initial review by NCDOT and in consideration of the stated traffic, direct access to Folkstone was not approved. Other design options were submitted to the Town proposing additional entrances to the newly created lots accessed off of Currituck and Pamlico. While these entrances do not directly access a NCDOT street, Town Staff did inquire as to their opinion related to this new proposal. Douglas Racine, Deputy District Engineer for NCDOT, recommended the new proposal not be approved as the location of each intersection would be too close to Folkstone causing safety concerns to exist. Nathan Rhue presented an email from Douglas Racine and asked that it be submitted into evidence as 'Exhibit B'. Chairwoman Toni Hardin asked if there

was anyone present that would like to view or object to the evidence submitted. There were none. 'Exhibit B' was submitted into evidence without objection.

Nathan Rhue explained that an additional design, subject to this variance request, was submitted and subsequently recommended for approval by NCDOT. As illustrated in the site plan submitted, one (1) entrance off of Currituck is now proposed. Nathan Rhue asked that the email containing feedback and recommendation for this design be submitted into evidence as 'Exhibit C'. Chairwoman Toni Hardin asked if there was anyone present that would like to view or object to the evidence submitted. There were none. 'Exhibit C' was submitted into evidence without objection. Nathan Rhue mentioned that Douglas Racine recommended the design would be favorable as it would alleviate any safety concerns that would negatively impact Folkstone Road or Currituck Drive.

Nathan Rhue mentioned that while NCDOT recommends approval, the location of the entrance only allows for a separation of approximately one hundred twenty-five (125) feet from the intersection of Currituck and Folkstone Road. The Town's Subdivision Ordinance requires a minimum of four hundred (400) feet exist between intersections. Based on the standards and information that the applicant submitted, based on the layout of the land, particularly the wetlands and other things that are applicable to this property, the applicant believes that a variance should be issued.

Nathan Rhue reminded the Board that there are standards for variances that must be considered by the Board of Adjustment from the Town's Ordinance pursuant of Section 7-8-1 to 7-8-4. When necessary hardships would result from carrying out the strict letter of the Town's Ordinance, the Board of Adjustment shall vary any of the provisions of the ordinances upon a showing of all of the following:

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.

Per the applicant - Without approval of this variance the remaining 6 acre frontage of the Village of Folkstone project is not useable. According to NCDOT, no more driveway connections are allowed onto Folkstone Road. The only other feasible option is to connect to Currituck Drive as shown on the enclosed preliminary plat. This driveway connection is 125' from Folkstone Road and is less than the 400' required per Section 8-36.9(E)(4).

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.

Per the applicant - The unique hardships for granting this variance are first related to the frontage on Folkstone Road, where NCDOT will not allow another driveway access due to the new elementary school constructed down the road, and the new signal at Hwy. 17. The other hardship is the useable land is surrounded by wetlands that are not allowed to be impacted as they considered conservation. This last sentence was amended per Justin Cosgrove's email to be changed to: The intent of this provision is to prevent additional wetland and stream impact,

so the property owner should not assume that a future application for filling or alteration would be approved.

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.

Per the applicant - The hardships are a result of highway demands and new infrastructure imposed by NCDOT, and the existing natural wetlands located on the property.

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.

Per the applicant - Allowing the driveway connection less than 400' from the intersection will allow the property to be development in a way that meets all other sections of the ordinance. The proposed use will match the existing residential zoning and be in harmony with the result of the subdivision. The proposed driveway connection (less than 400 feet from the intersection) has already been approved by NCDOT as an acceptable means of access that meets their guidelines. The proposed subdivision is designed by licensed professionals to protect public health safety and welfare. Without approval of this variance for driveway connection, the property will be condemned and not suitable for any development.

Chairwoman Toni Hardin asked if the Board had any questions for staff. Verne Jones mentioned that in one case they are calling it access to driveway, and the next it is an intersection. Nathan Rhue replied that it is an intersection either way because it intersects with Currituck and Currituck intersects with Folkstone, and the drive that is being proposed would be a road. Verne Jones asked what the name of the road would be. Nathan Rhue responded Folkstone Woods Lane. Chairwoman Toni Hardin asked about the distance, that the applicant is asking for a variance because it is 125 feet but looking on the plat it appears to be 51.72 feet, and then a curve, and asked for verification of the distance. Nathan Rhue responded that the applicant can verify that, but per the Town Ordinance, the measurement is taken from the centerline of each road.

Chairwoman Toni Hardin asked if there were any additional questions. A resident present at the meeting had a question, Wendy Falkowski of 107 Pamlico Drive. Wendy Falkowski was sworn in by Chairwoman Toni Hardin. Wendy Falkowski asked for the aerial to be displayed and showed where she lived – 107 Pamlico Drive. Wendy Falkowski stated that she wanted to maintain her property value and have privacy. Wendy Falkowski asked if the wetlands will indeed be protected and stated that she had already seen stakes on the property. Nathan Rhue answered that based on his experience, when it comes to wetlands, there are a lot of strict stipulations related to disturbance of wetlands. Nathan Rhue mentioned that there appears to be a natural tree line buffer, but the developer can speak as to how it will be developed, and they will have an opportunity to respond.

Chairwoman Toni Hardin asked if there were any additional questions for Staff. There were none. Chairwoman Toni Hardin called on the applicant and other proponents of the request; if there any attorneys or other representatives to give a general summary, the Board would like them to go first. Steve Wangerin asked to address Wendy Falkowski's question.

Steve Wangerin stated that they have very specific clearing limits that are part of the plans that are being proposed, and those clearing limits on the construction plans will not permit them to go beyond the clearing limits, which are set at the boundary of what is considered the upland area and the wetlands area. Steve Wangerin explained that there will be a silt fence installed while under construction, and all the wetlands will be protected and there is no intention for them to go in there because they are protected by the US Army Corps of Engineers. Steve Wangerin mentioned that if they were to go in there and do anything that it would carry substantial fines. Steve Wangerin also mentioned that the future property owners would also have those same restrictions and that any disturbances could be reported. Steve Wangerin stated that they have done the right thing with that whole subdivision as there is a lot of wetlands throughout, the greenspace is all wetlands that they have protected.

Applicant Justin Cosgrove from Tidewater Associates, Inc introduced himself to the Board. Justin Cosgrove mentioned that the property owners Steve Wangerin and Michael Tutin are also present. Justin Cosgrove mentioned that the current design does not propose any wetland impacts and the very nature of the design including the variance request is to not impact any wetlands, and assures that no wetlands will be affected, and will remain as is.

Justin Cosgrove stated that he believes that they meet all standards for a variance request. Justin Cosgrove mentioned that he has some additional things to add to the responses that Mr Rhue had already presented to the Board. Justin Cosgrove explained that without this variance, the property owners would undergo unnecessary hardships to develop this property; the reason for the variance request is to avoid impacting the wetlands, and to clarify the 125-foot distance is from centerline of intersection to centerline of intersection. Justin Cosgrove explained that from the prior design they have pushed the intersection as far back as possible adjacent to the wetland limits, and that the design they have now is essentially the only way they have to develop this property without impacting the wetland and effecting the existing permit through the US Army Corps of Engineers.

Justin Cosgrove went over the standards:

1. Unnecessary hardship would result from the strict application of the ordinance – 6 acre tract, there is no more driveways allowed on Folkstone Road. Current design with cul-de-sac is only feasible option to develop this section of the property. The entire master plan has over 50 acres of wetlands that have been conserved.
2. Hardship results from conditions that are peculiar to the property – the wetlands are the conditions that are creating the hardship. Justin Cosgrove asked for the recorded conservation wetlands map to be submitted into evidence as ‘Exhibit D’. Chairwoman Toni Hardin asked if there was anyone present that would like to view or object to the evidence submitted. There were none. ‘Exhibit D’ was submitted into evidence without objection. Justin Cosgrove mentioned the total conservation area of 55 acres, and that all the wetland and stream impacts were permitted as part of the existing permit through the US Army Corps of Engineers. Justin Cosgrove asked that the permit from the US Army Corps of Engineers be submitted into evidence as ‘Exhibit E’. Chairwoman Toni Hardin asked if there was anyone present that would like to view or object to the evidence submitted. There were none. ‘Exhibit E’ was submitted into evidence without objection. Justin Cosgrove stated that it is their professional opinion that an impact on this project would be extremely difficult to obtain and highly unlikely that it would be successful with the Corps.

3. The hardship did not result from actions taken by the applicant or the property owner – the hardship was a result of highway demands and new infrastructure being imposed by NCDOT and the existing wetlands.
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 – the driveway connection is less than 400 feet which is an ordinance requirement, instead it is at 125 feet, which NCDOT has recommended approval and connection of this design. Without the approval of the variance, it would be hard to develop this property at all. The purpose of the variance request is to avoid a wetlands impact and maintain all wetlands surrounding the property.

Chairwoman Toni Hardin asked if there were any questions from the Board or Staff for Mr. Cosgrove. Nathan Rhue asked if the existing permit from US Army Corps of Engineers has an allowance for this new proposed section of 6 acres. Justin Cosgrove responded no, there is nothing in the permit for any wetland impacts for this section. Nathan Rhue asked what the fines are for any activity outside of the existing permit. Justin Cosgrove responded that he believed it is per square footage. Nathan Rhue mentioned to the Board that the reference made earlier for the measurement of intersections is the same as the Town Ordinance. Nathan Rhue also mentioned ‘Exhibit D’ related to the wetlands – the Town’s Land Use Plan is delineated to avoid disturbance of wetlands.

Wendy Falkowski asked for clarification of the wetlands impact due to the unusual shape of the wetlands on the map that she brought with her. Justin Cosgrove stated that the plan is to keep the existing permit with US Army Corps of Engineers as is and have no impact of wetlands surrounding this property including the wetlands next to her property. Nathan Rhue mentioned that this would be considered a major subdivision, therefore they would need to submit documentation to the Town for approval showing how the property is going to be divided, buffering, etc., and if there was any delineation from what is currently proposed with the wetlands, it would need to go through this process again.

Chairwoman Toni Hardin asked if there were any additional questions for the applicant. Vince Audet had a question for Justin Cosgrove. Vince Audet was sworn in by Chairwoman Toni Hardin. Vince Audet of 125 Folkstone Road asked Justin Cosgrove about the intersection and the proposed intersection which would be right in front of his house. Justin Cosgrove explained that they pushed the design of the intersection as far back as possible, and with there only being 10 lots, the traffic generation would be minimal. Justin Cosgrove does not anticipate the traffic generation being significant compared to something that was commercial, and all existing traffic from the rear of the subdivision already uses Currituck as an exit. Vince Audet asked why NCDOT would not let any driveways come off onto Folkstone Road, inquired if it was because of wetlands. Justin Cosgrove mentioned that it was denied due to other development including the school and traffic and safety concerns, and the one presented has been approved by NCDOT.

Steve Wangerin asked if he could clarify something – the way the lots lines are drawn, and the way the properties will be deeded, the properties just go up to the wetlands. The property owners will not have any wetlands on their property, they will remain conserved, and the wetlands will be donated to the HOA of the subdivision once construction is completed. The lot lines will not extend into the wetlands at all and will remain protected. Justin Cosgrove stated that those wetlands around this section would be preserved not conserved, not part of the conservation map, but will be preserved in their natural state.

Chairwoman Toni Hardin asked if there was any other applicant or proponent that was planning on giving testimony. Wendy Falkowski asked if there would be a fence built at the back of the property. Justin Cosgrove responded not a physical fence barrier, just a temporary small black or orange silt fence. Steve Wangerin mentioned that the individual buyers could install their own fences after purchasing, but the developer will not be installing one. Verne Jones asked if NCDOT is planning on expanding Folkstone Road. Nathan Rhue responded that he has not heard of any expansion.

Chairwoman Toni Hardin asked if there was anyone opposing the request that would like to speak. There were none. Chairwoman Toni Hardin announced that the Board would move into deliberation.

Chairwoman Toni Hardin began discussion on standard number 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 – the evidence showed that there would be unnecessary hardship because NCDOT would not allow a driveway connection onto Folkstone Road, therefore the property may be unbuildable without a variance from the required 400 feet to allow the driveway connection at 125 feet.

A motion was made by *Verne Jones* and seconded by *Dave Mosey* to accept the findings of the first standard. *All Agreed.*

Chairwoman Toni Hardin began discussion on standard number 2: The hardship results from the 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 – the evidence showed that this development started back in 2011 and it was all approved and permits issued. Since then, a lot of additional infrastructure such as a new school was built resulting in additional traffic. These changes in NCDOT approval were not caused by the applicant. The wetlands on the property also make it difficult for development; the hardship is peculiar to the property.

A motion was made by *Verne Jones* and seconded by *Dave Mosey* to accept the findings of the second standard. *All Agreed.*

Chairwoman Toni Hardin began discussion on standard number 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 – the evidence showed that all of the hardships that are causing this request for a variance are not imposed by the applicant, that the changes in surrounding area and topography are what caused it, not the applicant.

A motion was made by *Dave Mosey* and seconded by *Verne Jones* to accept the findings of the third standard. *All Agreed.*

Chairwoman Toni Hardin began discussion on standard number 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 – the evidence showed that this property will be

developed to match the surrounding properties of the subdivision. All other requirements of the Town ordinance will be met, the only variance being the distance of the intersection connection. NCDOT recommended driveway design presented, without it, it would be hard to develop this property. It is consistent with the Town's Land Use Plan in avoiding wetlands impact.

A motion was made by *Verne Jones* and seconded by *Dave Mosey* to accept the findings of the fourth standard. *All Agreed.*

A motion was made by *Dave Mosey* and seconded by *Verne Jones* to close the hearing. *All Agreed.*

A motion was made by *Verne Jones* and seconded by *Dave Mosey* to grant the variance. *All Agreed.*

A motion was made by *Dave Mosey* and seconded by *Verne Jones* to direct Staff to prepare the variance and allow Chairwoman Toni Hardin to sign the variance. *All Agreed.*

Board Questions/Comments

There were none.

Adjourn

A motion was made by *Dave Mosey* and seconded by *Verne Jones* to adjourn the meeting at 7:06 PM. *All Agreed.*



Toni Hardin
Chairwoman



Marsha-Gray Kircher
Community Development Department