

**Camden County Board of Adjustment  
Special Meeting  
August 21, 2024 7:05 pm  
Camden County Library Board Room  
Camden, North Carolina**

**MINUTES**

**BOARD MEMBERS PRESENT/ABSENT**

<b>Present:</b>	<b>Absent:</b>
Chairman Steven Bradshaw	Marshall “Lee” Powell (Alt)
Vice Chairman Nathan Lilley	
Tom White	
Briant Robey	(Arrived after meeting started)
Roger Lambertson	
Ray Albertson (Alt)	

**STAFF PRESENT**

<b>Name:</b>	<b>Title:</b>
Amber Curling	Director of Planning
Hunter Munro, Lauren Lee	Planning Officer(s)

**OTHERS PRESENT**

<b>Name</b>	<b>Title:</b>	<b>Purpose / Representing</b>	<b>Meeting Section</b>
Kelsey Connelly	Agent	Attorney for Appellant	
Donald Porter	Complainant	Adjacent property owner	
Marcia Berry	Complainant	Adjacent property owner	

**ITEM 1. CALL TO ORDER & WELCOME**

Calling to order the meeting for Board of Adjustment by Chairman Steven Bradshaw at 7:05 pm  
My name is Steven Bradshaw and I am the Chairman of the Camden County Board of Adjustment. For those of you who have not been here before, the board of adjustment hears request for variances and appeals under the Camden County Code. We are a Quasi-Judicial body which means we must make our decisions in accordance with that ordinance. We must base our decision only upon sworn testimony and evidence received at these hearings. When we are deciding these cases, our discretion is limited to the code which was enacted by the Board of Commissioners. We can interpret it and apply it but we cannot change it. The first order of business for today is approve the minutes from last meeting.

**ITEM II. CONSIDERATION OF AGENDA**

**Motion to approve the agenda as presented.**

<b>RESULT:</b>	<b>APPROVED [5 – 0]</b>
<b>MOVER:</b>	Chairman Steven Bradshaw
<b>SECONDER:</b>	Vice Chairman Nathan Lilley
<b>AYES:</b>	Steven Bradshaw, Nathan Lilley, Roger Lambertson, Tom White, Ray Albertson
<b>NAYES:</b>	
<b>ABSENT:</b>	Lee Powell

**ITEM III. CONSIDERATION OF MINUTES**

Vice Chairman Nathan Lilley called for the consideration of the minutes from July 17th, 2024 meeting.

**Motion to approve the minutes as presented.**

<b>RESULT:</b>	<b>APPROVED [5 – 0]</b>
<b>MOVER:</b>	Vice Chairman Nathan Lilley
<b>SECONDER:</b>	Chairman Steven Bradshaw
<b>AYES:</b>	Steven Bradshaw, Nathan Lilley, Roger Lambertson, Tom White, Ray Albertson
<b>NAYES:</b>	
<b>ABSENT:</b>	Lee Powell

**ITEM IV. COMMENTS from the PUBLIC**

- None

**ITEM V. OLD BUSINESS**

None.

## ITEM VI. NEW BUSINESS

- **Request for Variance to the Minimum lot size in the Rural Residential Zoning District dimensional requirement for 160 Sandhills Dr, Camden NC 27921.**
  - **Amber Curling, Planning Director, presented the Staff Report (incorporated herein after as Attachment A)** took the floor and states “I am submitting into evidence, the Staff Report, notices required by law and attachments for the 160 Sand Hills Rd Variance Application for the Board. The applicant is requesting a variance to the dimensional requirement for the minimum lot size for 160 Sand Hills Rd in Camden NC, 27921. The property is located in the Rural Residential Zoning District. This district requires a 2-acre minimum lot size. The request is to reduce the required 2-acre minimum lot size to half an acre, which also contains a home. I want to draw your attention to 2 documents in the applicant’s application folder. The first one is on page 23 of your packet. It’s part of the narrative in the applicant’s variance application addendum; it states “However through circumstances that are unknown to the applicant, the mortgage was incorrectly secured by a small portion of the property, which constituted of just 0.5 of an acre where the home was located. It was a mistake that occurred during the origination of the loan that led to the mortgage only securing the half-acre portion of the property. The applicant is not the originator of the loan.” The second item I would like to bring to your attention is also part of the applicant’s application. It is Deed Book 363, page 633-635, which is on page 52 of your packet. The language of this deed on page 635 states, “Title to the property herein described is subject following exceptions: subject to ad valorem taxes; all applicable zoning and land use ordinances. Statutes and regulations, and to the provisions of all applicable restrictive covenants and easements of record. No variance should be granted as a result of applicant’s actions obtaining the property in a mortgage foreclosure. There is an obligation for them to research the title and the deed. The defective mortgage was purchased with the deed referencing the purchase buying is subject to the zoning laws. The Zoning ordinance applies to the property. It’s Buyer’s Beware. The buyer has an obligation to inspect and research what is being purchased. Zoning laws that existed at the time the property was mortgage would always be subject to possible foreclosure. Then sold with the deed of interest of only 0.5 acres and house would seem that the deed was defective, it has language in there that it’s subject to the zoning and land use regulations; but no legal subdivision was ever obtained. This problem is of the lending company’s own making. The property states in the deed that it is subject to zoning requirements. It is the position of the Planning Department, with these findings, not to grant a variance for the 0.5 acres with the home on it which is part of a larger parcel identified as 160 Sand Hills Rd in Camden County, NC. Does anyone have any questions?”
  - **Chairman Bradshaw:** The Camden County tax record shows that Donald Porter owns the property.
  - **Amber Curling:** Yes, it does.

- **Chairman Bradshaw:** I am just not exactly sure how we got here because the land was never subdivided. How can you have a deed for property if you have no property.
- **Amber Curling:** Ms. Connelly can answer that question for you. I didn't want to repeat what was in her packet.
- **Chairman Bradshaw:** How are the taxes divided?
- **Amber Curling:** Mr. Donald Porter is here, I believe he can answer those questions. I am not with the Tax Department so I do not have that information. I'm going to let Ms. Connelly go ahead and present.
- **Kelsey Connelly:** I am Kelsey Connelly. I am an attorney for the firm representing the applicant here. They are a financial institution. They are currently the owners of this half acre. To answer questions on how we got to this position; On January 17<sup>th</sup>, 2007, Melanie Harrington took title to approximately 13 acres on a property located at 160 Sand Hills Rd. At the same time, she took out a mortgage. The mortgage only secured half an acre parcel of land. As stated in the application, we aren't really sure the loan originator only secured half an acre of the larger parcel. The deed and the mortgage were taken out at the exact same time.
- **Steven Bradshaw:** Can I ask a question? You're saying a half acre parcel; do you have an identifier for that half acre parcel?
- **Kelsey Connelly:** In the Deed of Trust it has the meets and bounds.
- **Chairman Bradshaw:** So there never was a PIN number?
- **Kelsey Connelly:** No, there never was. She maintained ownership of this parcel until 2015. On April 17<sup>th</sup>, 2015 Melanie deeded the entire contents of the parcel to Mr. Donald Porter and his wife Carla. At the time, on the Porter's deed, on the very last page, it says that Mr. Porter's deed specifically takes title to the property subject to the mortgage. The Deed of Trust was an exception to the mortgage. The Deed of Trust was never paid off during that land transaction. The lien on the property for the Deed of Trust remained even past the transaction from Harrington to Porter. At that time, she effectively abandoned the home, she also abandoned the mortgage payments which led the company holding the servicing rights to the mortgage to have to foreclose on the property. They could only foreclose on what was secured by that mortgage which was approximately a half acre of land. Which is how we got into this situation. They went through the foreclosure process. Throughout the foreclosure process, Mr. Porter and his wife were properly notified of the foreclosure process. To my knowledge they didn't participate in the foreclosure process in any way and at the time the foreclosure process completed, the property went into foreclosure sale. The only bidder at the time of the foreclosure sale was the lender. They completed the bid and got the property back into REO. The foreclosing attorney (since it wasn't a typical land transaction in which they do search the title), it wasn't until after the fact (after the foreclosure was completed), when it was attempted to record deed at the Tax Office that they were made aware of the zoning requirement. My client attempted to work with the foreclosure attorney for a work-around; there just wasn't. Their only hope to get this property sold is through a Variance. The client only wants to get this property sold. There is no attempt to try and create a subdivision or

anything that would be outside the purview of what this ordinance is trying to protect. They want the land to have a productive purpose. They are upkeeping the yard, but the house is in disrepair. One of the biggest issues that the Planning Board has brought to our attention is the location of the septic tank. We had the septic company go out on July 22<sup>nd</sup> and they marked where the lines are, and the realtor took a larger photo. The lines are well within the bounds of the property. Even if they are not found to be within the property line, we maintain that we have an implied easement based on necessity and prior use. For that to be effective, there needs to be a common ownership of a dominant and subservient parcel of land and then a severance of those, and we do have that here. Before the transfer, the owner had to use part of the tract for the benefit and use. We have that with the septic tank; it's our understanding that the house has been there since 1972, which means there has been septic use there the entire time. By nature, a septic tank's use is meant to be permanent. It needs to be continuous, apparent, and there has to be an implication that it was meant to be permanent. We feel that we meet all those requirements. We believe the septic tank is on the property, and we have photos.

- **(Kelsey Connelly and the Board have conversation while reviewing photos of the property)**
- **Vice Chairman Nathan Lilley:** Did anyone ever do a title search?
- **Kelsey Connelly:** Because of the nature of a foreclosure, titles do not get searched during foreclosure bidding. The last title search that would've been done is when Mr. Porter took title of the land. He had a general warranty deed, which is why on his deed it specifically states that he is taking title to the property subject to this particular mortgage.
- **(Conversation ensues between Kelsey Connelly, the Board, Mr. Donald Porter and Amber over pictures of the septic lines and the location).**
- **Vice Chairman Nathan Lilley:** To my understanding, we are trying to grant a variance or approve of a variance for this property. Really all of the backstory is sort of irrelevant, unless you're trying to make this case this is a hardship. But it was well known out there that someone dropped the ball on the closing of this property. They didn't have it subdivided then. It sounds like it was due diligence on that side that was missed, which is why you hire closing attorneys, to catch this stuff.
- **Kelsey Connelly:** There is no closing attorney on a foreclosure.
- **Vice Chairman Nathan Lilley:** But there was a closing attorney when they did the mortgage. It should have been done back then.
- **Kelsey Connelly:** Yes. But a closing attorney wouldn't normally check the Deed of Trust.
- **Vice Chairman Nathan Lilley:** If the paperwork says half an acre and the deed says 13 acres, wouldn't that raise a red flag?
- **Kelsey Connelly:** Not necessarily. Lenders during a mortgage can secure part of the land or on the entire land.
- **Vice Chairman Nathan Lilley:** I've never seen where you can borrow on a portion of land.

- **Kelsey Connelly:** I don't represent the originator of this loan. This loan was sold in a bundle. Whatever went on with them and the closing attorney; I cannot speak to. My client is stuck maintaining and upkeeping this parcel of land that they can't use at all.
- **Vice Chairman Nathan Lilley:** But if it went to public auction, and say I went there and bid on it and I ended up winning the property, then this would become my problem; but that's just the risk involved in buying the property. That still doesn't create a hardship, because in my opinion, even on an auction, you still do your due diligence.
- **Dr. Roger Lambertson:** This has been going on forever and everybody knows about it; What is the simplest thing we could do tonight to get this resolved?
- **Kelsey Connelly:** We are requesting a Variance so that we can sell this property. We'd rather sell it to someone in the community than let it just sit there and fall into disrepair.
- **Amber Curling:** Can I ask a question? At the neighborhood meeting we talked about how we weren't sure if it was actually half an acre. Has a survey been done?
- **Kelsey Connelly:** We have been trying to get one. We are having issues in availability with finding a surveyor.
- **Tom White:** On the county tax card it says 1 acre?
- **Amber Curling:** Every home site that is part of a larger parcel is seen as being 1 acre. That's how Tax sees it.
- **Chairman Steven Bradshaw:** Has your client paid taxes on this property?
- **Kelsey Connelly:** I am not aware that they have. When this was taken to the tax office, that's when this was rejected. They were not given a PIN number to pay taxes on.
- **Chairman Steven Bradshaw:** My point is that the county never recognized this as a separate entity.
- **Kelsey Connelly:** Correct. Mr. Morrison was the one who suggested filing the Variance because of the circumstances. There have been options. Mr. Porter made a very low offer. I encouraged communication at the neighborhood meeting but I haven't heard anything, so we are moving forward with the Variance application.
- **Chairman Steven Bradshaw:** Was your client aware of this specific issue?
- **Kelsey Connelly:** They are now. Once the foreclosure happened, and they tried to record deed, that's when it became known.
- **Chairman Steven Bradshaw:** Have they ever been able to record it?
- **Kelsey Connelly:** They have never been able to record it. There was only the one foreclosure on this particular property All the other deeds are correct with the 13.37 acres. It's the Deed of Trust, which was recorded, that secured only a smaller portion.
- **Dr. Roger Lambertson:** It seems to me that some of this discussion is irrelevant. There was a mistake made sometime in the past and this board can fix it. End of story as far as I'm concerned. What do we need to do to fix it?
- **Vice Chairman Nathan Lilley:** But to that; what would stop someone from "creating" a mistake later on down the road, and then coming in and asking for a

variance. A mistake was made, but that's why you have attorneys. If they missed it, then that's on them. That doesn't justify giving a variance.

- **Kelsey Connelly:** While some of how we got here is irrelevant, some of it is relevant because my client did not make a mistake. Someone else made a mistake and (my client) they were only following what they do. Now they're stuck with a piece of property and there's nothing they can do with it. We're trying to fix those mistakes.
- **Ray Albertson:** But he wasn't forced to buy this property, was he?
- **Kelsey Connelly:** (explains how foreclosure sales work and how the lender ended up with the property)
- **Chairman Steven Bradshaw:** Is your client's business model to buy these "distress" properties.
- **Kelsey Connelly:** No, they bought a bundle from the mortgage servicer.
- **Tom White:** Mr. Chairman if I may, I'm sort of with Mr. Lambertson. There's a lot of unfortunate circumstances that created the problem. We don't like to give a variance, but then again; this property will sit here forevermore and deteriorate, when someone could correct the problem. It's never going to go away unless we fix it.
- **(Chairman Bradshaw opens the floor to the public)**
- **Donald Porter:** I live 163 Sand Hills road, I am the one who owns the land on 160 Sand Hills. Firstly, some of the information that has been given tonight is incorrect. The property is not "half an acre". It's more like a 1/3 of an acre. If the county grants them a variance, does the county say this is a new subdivision? Because it is it should have a stormwater runoff plan. Another thing is, in the paperwork you have on page 19, it says that it was part of 13.37 acres. On the title search I have, it says 10 acres. The reason they won't have a survey done is because they can't find the pins. You're going to either give land to the bank from Don Porter or from Tommy Berry and his wife and give it to the bank. I don't think that's right.
- **(Mr. Porter goes into detail about the original Harrington land division in 1974, the loan taken out, the errors made, the foreclosure sale, the issues in the ambiguity with the property lines, the taxes, and the offer that he made on the property. He also offered providing supplementary documentation)**
- **(Kelsey Connelly rebuts and her and Mr. Porter go back and forth on due diligence on the part of the other)**
- **Dr. Roger Lambertson: (To Mr. Porter)** What do you recommend we do?
- **Donald Porter:** I recommend you don't grant them the variance.
- **Vice Chairman Nathan Lilley:** You said earlier that with your ten acres and the Berry's land, if they did cut out a half acre, they would have to go into your land or their land?
- **Donald Porter:** That's right
- **Vice Chairman Nathan Lilley:** To me, that brings up a whole different issue. Because we aren't necessarily applying a variance on half an acre if we don't know for sure that it's a half an acre without involving someone else's property.

- **Donald Porter:** Three different times surveyors have tried to survey this property. I have done my due diligence and I do not want to lose one inch of my land.
- **Dr Roger Lambertson:** If we can't verify that it's a half an acre, we can't apply a variance.
- **Vice Chairman Nathan Lilley:** I personally looked into this property 4 years ago to purchase it and these issues were known then. The amount of money to bring the house up wasn't worth it, not to mention the septic issue.
- **Dr. Roger Lambertson:** What do we need to do to get a survey?
- **Chairman Steven Bradshaw:** That's not our problem.
- **Vice Chairman Nathan Lilley:** Maybe we table the issue until they provide a survey? So we can verify whether it is half an acre or not.
- **(Chairman Steven Bradshaw goes into the additional questions about the legality of the size of the septic on the property.)**
- **Chairman Steven Bradshaw:** Can you ask for a variance a second time?
- **Amber:** This application specifically says that it is for half an acre. So, if it turns out that it isn't half an acre...
- **Ray Albertson:** Well it's hard to give a variance to a piece of property that you don't know how big it is.
- **Chairman Steven Bradshaw:** Yes, and also, it's never been recognized by the county. I don't see where I can approve a variance where I can't even see the boundaries for what the variance is for.

**Chairman Steven Bradshaw made a motion to Deny the Appeal.**

<b>RESULT:</b>	<b>APPROVED DENIAL OF APPEAL [5 – 0]</b>
<b>MOVER:</b>	Chairman Steven Bradshaw
<b>SECONDER:</b>	Vice Chairman Nathan Lilley
<b>AYES:</b>	Steven Bradshaw, Nathan Lilley, Roger Lambertson, Tom White, Ray Albertson
<b>NAYES:</b>	
<b>ABSENT:</b>	Lee Powell

**ITEM VII. INFORMATION FROM BOARD AND STAFF**

None

**ITEM VIII. CONSIDER DATE OF NEXT MEETING**

September 18<sup>th</sup>, 2024



**ITEM VIII. ADJOURN**

<b>RESULT:</b>	<b>APPROVED [5 – 0]</b>
<b>MOVER:</b>	Chairman Steven Bradshaw
<b>SECONDER:</b>	Vice Chairman Nathan Lilley
<b>AYES:</b>	Steven Bradshaw, Nathan Lilley, Wayne “Roger” Lambertson, George “Tom” White, Ray Albertson
<b>NAYES:</b>	
<b>ABSENT:</b>	Marshall “Lee” Powell

There being no further matters for discussion Chairman Steven Bradshaw adjourned the meeting at 8:00 PM.

ATTEST:

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Steven Bradshaw, Chairman  
Camden County Board of Adjustment

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Hunter Munro  
Planning Officer

The GIS maps, application & deed attachments, tax card, neighborhood meeting summary, notice to applicant & adjacent property owners, specific Unified Development Ordinance Sections and other documents are herein incorporated by reference and can be found in the August 21, 2024 Board of Adjustment Packet located in the Planning Department.

Attachment A:

## STAFF REPORT

### UDO# 2024-06-127 Variance Application Request for 160 Sand Hills Dr, Camden NC, 27921

#### PROJECT INFORMATION

**File Reference:** 2024-06-127  
**Project Name:** 160 Sand Hills Dr  
**PIN:** 028944003019030000

**Applicant:** US Bank Trust, NA as Trustee for  
LSF9 Master Participation Trust c/o  
Caliber Home Loans, Inc.

**Address:** 16745 W. Bernardo Drive, Suite 300  
San Diego, CA 92127

**Phone:** 469-663-2683

**Email:** kpreston@fayservicing.com

**Agent for Applicant:** Kelsey Connelly

**Address:** 2990 Forestville Road, Suite 100  
Box #9, Raleigh, NC 27616

**Phone:** 919-228-9532

**Email:** andersonlegal@andersonlegalnc.com

**Current Owner of Record:** Donald S. Porter Jr. &  
Carla H. Porter

**Address:** 163 Sand Hills Road, Camden NC 27921

**Meeting Dates:**

7/27/2024      **Neighborhood Meeting**

8/21/2024      **Board of Adjustment Meeting**

**Application Received:** 6/25/24

**By:** Planning Department

**Application Fee paid:** \$500.00

**Completeness of Application:** Application is generally complete

**Documents received upon filing of application or otherwise included:**

- A. Variance Application & Deed Attachments
- B. Tax Card
- C. Neighborhood Summary
- D. Notice to Applicant and Adjacent Owners
- E. Tax Card
- F. Zoning District Rural Residential Dimensional Requirements
- G. Variance Procedures Article 151.2.3.26

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**REQUEST:** The applicant is requesting a variance to the minimum lot size in the Rural Residential Zoning District dimensional requirements for 160 Sand Hills Drive, Camden NC 27921.

**PROJECT LOCATION/DESCRIPTION: Street Address:** 160 Sand Hills Dr, Camden NC 27921

**Location Description:** The approximately 0.5-acre property is located on the east side of Sand Hills Road. It is part of the 13.87 parcel identified by pin number 02-8944-00-30-1903-0000.

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160 Sand Hills Rd



House



**History:** In 2007, Melanie Harrington the former property owner of 13.87 acres at 160 Sand Hills Rd took out a mortgage which was secured with only 0.5 acres and the house. The parcel was not subdivided. On April 17, 2015 Donald Porter Jr and Carla Porter Deed Bk 334 Pg 795-797 bought the property at 160 Sand Hills Rd. Melanie Harrington defaulted on the mortgage. In 2016 and 2017 foreclosure proceedings were carried out. However, the property was not subdivided and the house on 0.5 acres was not sold. The septic system is included on the 0.5 parcel. The Substitution Trustee's Deed from February 7, 2018 in deed book 363 page 633-635, specifically page 635 states " *Subject to ad valorem taxes; all applicable zoning and land use ordinances, statues and regulations; and to the provisions of all applicable restrictive covenants and easements of record.*"

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## **SITE DATA**

**Size of Lot:** House on Approximately ½ acre entire parcel- 13.87 acres  
**Flood Zone:** X  
**Zoning District(s):** Rural Residential  
**Existing Land Uses:** Vacant Residential home  
**Adjacent Property Uses:** Residential Lots, Woodlands, Farmland

**FINDINGS:** When unnecessary hardship would result from carrying out the strict letter of the zoning Ordinance, the Board of Adjustment shall vary any of the provisions of this chapter upon a showing of all of the following:

### **Required Findings:**

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.

**Applicant Response:** Section 3.5.3 B Dimensional Requirements #C requires that a lot must be at least two acres to build a home in an area designated as Rural Residential. 160 Sand Hills Drive, which is designated as Rural Residential, is on approximately half an acre and contains a single-family home. Due to the two-acre requirement in the Ordinance, the current owner is unable to record their deed and the property remains unmarketable. The current owner is a financial institution and is not able to use the land. If the variance is not granted, the owner will not be able to sell the property to someone who can use the property for a productive purpose.

**Staff Response:** The parcel at 160 Sand Hills Rd is currently zoned Rural Residential. The current Unified Development Ordinance requires a minimum lot size of 2 acres when subdividing property in the Rural Residential Zoning District.

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.

**Applicant Response:** The property size requisite under Section 3.5.3 B Dimensional Requirements causes a hardship for the current owner. Section 3.5.3 B requires that the lot be at least two acres. The owner only acquired half an acre through the foreclosure and is therefore prevented from recording its ownership deed. The property remains unmarketable.

**Staff Response:** The hardship is not a result of location, size or topography. The hardship was created due to foreclosure on the 0.5 acres with house which is part of 13.87 parcel of land.

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 the variance shall not be regarded as a self-created hardship.

**Applicant Response:** The hardship is not the result of the applicant's own actions. The current owner did not purchase the half acre property and did not build the single-family home that is located on the property. Through a mistake during the origination process, the previous owner obtained a mortgage and only secured the note with half an acre of the full 13.87 acres she owned at the time. The original intent was to secure the entire 13-87-acre tract of land with the mortgage note. The current owner was the lender of the mortgage who obtained the property through foreclosure. The two-acre requirement is not readily discoverable during a standard title search. The foreclosure firm did obtain a standard title search during the foreclosure process. At the time of the foreclosure, it was unknown that the half acre was a smaller portion of a larger lot. After the foreclosure was completed, the new owner was made aware of the ordinance requiring a minimum of two acres when they attempted to record a deed.

**Staff Response:** The hardship is a result of the original lender in 2007 not securing the loan with the entire parcel.

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 variance will not authorize the initiation of a nonconforming use of land.

**Applicant Response:** The variance will not authorize the initiation of a nonconforming use of land, because the current owner is in the unique situation of having been the mortgagee on the property then came to be the record owner of the property upon foreclosure. The current owner only wishes to be able to market and sell the property so that a) it can recover the debt it is owed and b) so that the property can be conveyed to a party that will be able to use it.

**Staff Response:** The minimum lot dimensional requirements of 2 acres will not be met. The variance is not consistent with the Future Land Use Plans which identify the property as low density residential of 1-2 acre lots. The variance request to reduce the dimensional requirement of minimum lot size of 2 acres to approximately ½ acre will create a nonconforming lot.

**Other Considerations:** In addition to the making the required findings above, the BOA may also consider the following:

1. The variance approval is the minimum necessary to make possible the reasonable use of the land, building, or structure;
2. All property taxes on the land subject to the variance application have been paid in full;
3. None of the following may be used as the basis for approving a variance:
  - A. Neither the nonconforming use of lands, buildings, or structures in the same zoning district, or the permitted use of lands, buildings, or structures in other zoning districts, or personal circumstances;
  - B. A request for a particular use that is expressly, or by inference, prohibited in the zoning district;

- C. Hardships resulting from factors other than application of the relevant standards of this Ordinance;
- D. The fact that land or a structure may be utilized more profitably or be more marketable with a variance;
- E. The citing of other conforming or nonconforming uses of land or structures in the same or other zoning districts; or
- F. Financial hardship.

## **Summary**

The County's CAMA and Comprehensive Future Land Use Map (Adopted 2012) identifies the parcel Low Density Residential and Rural Preservation which is identified as One to Two Acre Rural Residential. The approximately half acre requested subdivision is inconsistent with the Future Land Use Maps. The variance request to reduce the dimensional requirement of minimum lot size of 2 acres to approximately ½ acre will create a nonconforming lot. In the Substitution Trustee's Deed (deed book 363 page 633-635) on 2-7-2018 states " *Subject to ...all applicable zoning and land use ordinances*" therefore any subdivision will comply with the Ordinances.

The requested variance is in the Planning Staff belief inconsistent with the spirit, purpose and intent of the ordinance.