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OCT 25 2018

**LAW OFFICE OF  
MATTHEW A. NICHOLS**

**NEW HANOVER COUNTY  
PLANNING & ZONING**

3205 Randall Parkway, Suite 104  
Wilmington, NC 28403

Ph: (910) 508-7476  
Email: matt@mattnicholslaw.com

October 25, 2018

**VIA HAND DELIVERY**

The Honorable Kym Crowell  
Clerk to the New Hanover County Board of Commissioners  
230 Government Center Drive, Suite 175  
Wilmington, NC 28403

Mr. Ben Andrea  
Executive Secretary to New Hanover County Zoning Board of Adjustment  
Current Planning and Zoning Supervisor  
New Hanover County Land Use Department  
230 Government Center Drive, Suite 110  
Wilmington, NC 28403

**Re: NOTICE OF APPEAL TO THE NEW HANOVER COUNTY ZONING BOARD  
OF ADJUSTMENT of an Interpretation/Determination dated October 9, 2018 and  
a June 19, 2018 Notification Letter for property located at 1908 Bailey Ave., New  
Hanover County (PARID: R04517-001-006-000)**

Dear Madam Clerk and Mr. Andrea:

I represent ARM Ventures, LLC, the owner of the above-referenced property located at 1908 Bailey Avenue. Please accept this letter and the enclosed appeal by my client of (1) an Interpretation/Determination by Planning and Zoning Supervisor Ben Andrea dated October 9, 2018, and (2) a June 19, 2018 correspondence from Darrell E. Galloway, CZO, New Hanover County with respect to my client's property.

Please find enclosed the following:

1. Appeal Application with attached Exhibits A, B and C;
2. Authority for Appointment of Agent Form; and,
3. A check made payable to New Hanover County in the amount of \$400.00 for the Appeal Application Fee.

The Honorable Kym Crowell  
Mr. Ben Andrea  
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If it is necessary for me to direct this appeal or provide a copy of this appeal to another County official, please let me know, and I will promptly do so. Also, please let me know if you require any additional information at this time.

We respectfully request that this item be scheduled for hearing at the regularly scheduled December 2018 meeting of the New Hanover County Zoning Board of Adjustment, or as soon thereafter as this matter can be heard by the Board.

Thank you for your time and attention to this matter.

Sincerely yours,



Matthew A. Nichols

MN/nc

Cc: Deputy County Attorney Sharon Huffman (via e-mail: [shuffman@nhcgov.com](mailto:shuffman@nhcgov.com))

# NEW HANOVER COUNTY

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DEPARTMENT OF PLANNING & LAND USE  
 230 Government Center Drive, Suite 110  
 Wilmington, North Carolina  
 Telephone (910) 798-7165  
 FAX (910) 798-7053  
 planningdevelopment.nhcgov.com

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NEW HANOVER COUNTY  
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## APPEAL Application

Applicant/Agent Information		Property Owner(s) If different than Applicant/Agent
<b>Name</b> ARM Ventures, LLC, a NC limited liability company	<b>Owner Name</b> Same as Applicant	
<b>Company</b>	<b>Owner Name 2</b>	
<b>Mailing Address</b> 14581 NC Highway 210	<b>Mailing Address</b>	
<b>City, State, Zip</b> Rocky Point, NC 28457	<b>City, State, Zip</b>	
<b>Phone</b> (910) 508-7476 (c/o applicant's attorney Matt Nichols)	<b>Phone</b>	
<b>Email</b> matt@mattnicholslaw.com (c/o applicant's attorney Matt Nichols)	<b>Email</b>	
Subject Property Information		
<b>Address/Location</b> 1908 Bailey Ave., Wilmington, NC		
<b>Parcel Identification Number(s)</b> R04517-001-006-000		
<b>Total Parcel(s) Acreage</b> ±.46		
<b>Existing Zoning and Use(s)</b> R-15, Residential		
Application Tracking Information (Staff Only)		
<b>Case Number</b> ZBA-930	<b>Date/Time received:</b> 10/25/18	<b>Received by:</b> 

**APPEAL NARRATIVE**

OCT 25 2018

Action being appealed:  Decision or Interpretation  Notice of Violation

NEW HANOVER COUNTY  
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Date of decision/violation being appealed: October 9, 2018, also June 19, 2018 notice of neighbor complaint

In the below space, please provide a narrative of the application including any evidence that proves the decision should be reversed or modified by the Zoning Board of Adjustment. (Additional pages may be attached to the application if necessary)

Applicant appeals from the written interpretation/determination dated October 9, 2018 by Planning and Zoning Supervisor Ben Andrea ("10/9/18 Interpretation/Determination") that the Subject Property is being used in a manner that violates the New Hanover County Zoning Ordinances. The subject interpretation/determination is attached hereto as Exhibit "A". The Applicant also disputes and appeals, if an appeal is necessary and applicable, the June 19, 2018 letter from the County (Darrell E. Galloway, CZO)("6/19/18 Notification Letter") a copy of which is attached hereto as Exhibit "B". The June 19, 2018 letter appears to be notice to the property owner of a neighbor complaint and is not a notice of violation. To the extent that it is a notice of violation (which the Applicant disputes) the Applicant appeals any such notice of violation. The Applicant disagrees with and disputes the June 19, 2018 letter. Additionally, the Applicant appeals any similar or related notice letters that may have been sent by the County in this matter. Please see attached Exhibit "C" for additional narrative and grounds for appeal.

**APPLICATION REQUIREMENTS**

Staff will use the following checklist to determine the completeness of your application. Please verify all of the listed items are included and confirm by initialing under "Applicant Initial". Staff will not process an application for further review until it is determined to be complete.

Required Information		Applicant Initial	Staff Initial
1	Complete Appeal application	MM	
2	Application fee – \$400	MM	
3	Any Supporting Documentation	MM	
4	1 hard copy of ALL documents. Additional hard copies may be required by staff depending on the size of the document/site plan.	MM	
5	1 PDF digital copy of ALL documents AND plans on a Compact Disk (CD).	MM	

## ACKNOWLEDGEMENT AND SIGNATURES

By my signature below, I understand and accept all of the conditions, limitations and obligations of the appeal application for which I am applying. I understand that I have the burden of proving why the decision which is being appealed should be reversed or modified. I certify that this application is complete and that all information presented in this application is accurate to the best of my knowledge, information, and belief.

I also appoint the applicant/agent as listed on this application to represent me and make decisions on my behalf regarding this application during the review process. The applicant/agent is hereby authorized on my behalf to:

1. Submit an application including all required supplemental information and materials;
2. Appear at public hearings to give representation and commitments; and
3. Act on my behalf without limitations with regard to any and all things directly or indirectly connected with or arising out of this application.

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*ARM Ventures LLC by Amanda Carr - Sole Member*

Signature of Property Owner(s)

Print Name(s)

*ARM Ventures LLC / Amanda Carr*      *Amanda Carr*

Signature of Applicant/Agent

Print Name(s)

**NOTE:** Form must be signed by the owner(s) of record. If there are multiple property owners a signature is required for each owner of record.

**\*The land owner or their attorney must be present for the case at the public hearing.**

For Staff Only

Application Comments

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Andrea, Benjamin

**From:** Andrea, Benjamin  
**Sent:** Tuesday, October 09, 2018 2:51 PM  
**To:** 'mcarr0826@gmail.com'  
**Subject:** 1908 Bailey Avenue  
**Attachments:** Appeal Application.pdf

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Mr. Carr,

Thanks for speaking with me this afternoon regarding 1908 Bailey Avenue. The complaints that led to your notice of violation were not only regarding the storage of construction trailers, supplies, and equipment, but also allege that there are business operations including weekly distribution of pay checks to employees.

I personally have conducted site visits to the property and during one site visit witnessed a vehicle leaving the property towing a trailer with construction debris and equipment.

The county's zoning ordinance has uses for construction and related contractors, but they would not be permitted on the property at 1908 Bailey Avenue since the property is zoned R-15, Residential District.

**Table of Permitted Uses**

	PD	R 20S	R 20	R 15	R 10	R 7	O 1	B 2	I 1	I 2	O 2	A 1	A 2	S 1	R 1
<b>Permitted Uses</b>	PD	20S	20	15	10	7	1	2	1	2	2	1	2	1	1
<b>Agriculture, Forestry, Fishing</b>															
<b>Agricultural Uses</b>	P	P	P	P	P		P	P	P	P	P	P	P	P	P
<b>Kennels</b>	P	S	S	S			P	P	P	P	S		P	S	
<b>Veterinaries</b>	P						P	P	P		S		P	P	
<b>Wholesale Nurseries &amp; Greenhouses (12/13/82)</b>	P	P	P	P	P		P	P	P	P	P	P	P	P	P
<b>Construction</b>															
<b>General Building Contractor</b>	P							P	P	P				P	
<b>General Contractors Other Than Building</b>	P								P	P				P	
<b>Landscaping Contractors (12/13/82)</b>	P							P	P	P				P	
<b>Special Trade Contractors</b>	P							P	P	P				P	
<b>Special Trade &amp; General Contractors with no Outside Storage (12/5/88)</b>	P						P	P						P	

As I mentioned on the phone you have a right to appeal this determination to the county's Zoning Board of Adjustment. Absent of an appeal, we will continue to pursue that the violation be resolved. Attached is an application for appeal that provides more details. The next deadline would be 10/23/2018 to be heard at the 11/14/2018 Zoning Board of Adjustment meeting.

Please let me know your intentions. Thank you,



**NEW HANOVER COUNTY**

DEPARTMENT OF PLANNING & LAND USE  
230 Government Center Drive, Suite 110  
Wilmington, North Carolina  
Telephone (910) 798-7165  
FAX (910) 798-7053  
planningdevelopment.nhcgov.com



Wayne Clark, AICP  
Director

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Ken Vafier, AICP  
Planning Manager

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June 19, 2018

ARM Ventures, LLC  
Attn: Amanda Carr, Registered Agent  
14581 NC Highway 210  
Rocky Point, NC 28457

CERTIFIED  
RETURN RECEIPT REQUESTED  
Re-inspection date: July 10, 2018

RE: 1908 Bailey Ave., Wilmington, North Carolina

Dear Amanda Carr, Registered Agent:

We received a complaint that a construction business is being operated at the above listed address. This property is zoned R-15 Residential, a construction business would not be a permitted use listed in the New Hanover County Zoning Ordinance, Article V, Section 50, Table of Permitted Uses. I made a site visit on June 14, 2018 and observed construction equipment being stored in rear of property. A construction business may only operate in the following districts: PD, B1, B2, I1, I2, A1.

The definition for Home Occupations can be found in Article II: Definitions, Section 23-16, a copy of which is enclosed.

I will periodically monitor the situation and respond to any complaints I receive concerning this matter. In the future, if you are found to be in violation of this section, you will be subject without further notice to the penalties in Section 132 of the New Hanover County Zoning Ordinance (attached). Please note, this violation carries a \$100.00 per day civil penalty for a first offense, \$300.00 for a second offense, and \$500.00 for a third and subsequent offense.

If you wish to discuss this violation or what may be done to correct it, call me at (910) 798-7348, Your cooperation in this matter will be appreciated.

Sincerely,

*D. E. Galloway*  
Darrell E. Galloway, CZO  
Zoning Compliance Official

Enclosure



cc: Ben Andrea, AICP, Planning & Zoning Supervisor

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of the required reference boundary (i.e., street right-of-way, zoning district boundary, or property line) to the closest edge of the fuel pump island. (7/3/78). Setback distances from street right-of-way may be reduced by one-half. (7/10/89) (23-54)

G

**Group Home** – A home in which more than three (3) unrelated Disabled Persons live together as a self-supporting and self-sufficient household unit. (12/14/15)

H

**Hazardous Materials** - Any substance listed as such in the Superfund Amendments Reauthorization Act (SARA), Section 302, Extremely Hazardous Substances, CERCLA Hazardous Substances, or Section 311 of CWA (oil and hazardous substances). (11/1/93) (23-101)

**High Density Development** - Any residential development which exceeds the density limit established in the applicable zone. (3/22/82) (23-66)

**Historic Restaurant** - A restaurant facility which is located upon a site which is presently used for restaurant purposes and which has been in continuous use and operation for restaurant purposes since the date of the initial zoning classification of said site pursuant to the official zoning map of New Hanover County. (10/7/91) (23-96)

**Home Occupation** - An occupation for gain or support customarily conducted on the premises by a person or family residing thereon provided:

- (1) Only one (1) person other than members of the family residing on the premises shall be engaged in such occupation;
- (2) The use of the dwelling unit for the home occupation shall be clearly incidental and subordinate to its use for residential purpose by its occupants, and not more than twenty-five (25) percent of the floor area of the dwelling unit shall be used in the conduct of the home occupation.
- (3) There shall be no change in the outside appearance of the building or premises, or other visible evidence of the conduct of such home occupation other than one (1) sign, not exceeding two and one-fourth (2 1/4) sq. ft. in area, non-illuminated, and mounted flat against the wall of the principal building;
- (4) No home occupation shall be conducted in any accessory building;
- (5) No traffic shall be generated by such home occupation in greater volumes than would normally be expected in a residential neighborhood, and any need for parking generated by the conduct of such home occupation shall be met off the street and other than in any required yard. Vehicles used primarily as passenger vehicles including pickup trucks and step-type vans only shall be permitted in connection with the conduct of the customary home occupation;
- (6) No equipment or process shall be used in such home occupation which creates noise, vibration, glare, fumes, or electrical interference detectable to the normal senses off the lot. In the case of the electrical interference, no equipment or process shall be used which

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Exhibit "C"  
to  
New Hanover County Board of Adjustment Appeal Application  
(1908 Bailey Ave.)

APPELLANT/APPLICANT: ARM Ventures, LLC, a North Carolina limited liability company

AGENT: Matthew A. Nichols  
Law Office of Matthew A. Nichols

DATE: October 24, 2018

PROPERTY: 1908 Bailey Ave., Wilmington, New Hanover County  
(PARID: R04517-001-006-000)

**Statement by Appellant/Applicant/Petitioner**

NOW COMES the Appellant/Applicant/Petitioner ARM Ventures, LLC (the "Applicant") and hereby appeals from and responds as follows to (1) the subject Interpretation/Determination dated October 9, 2018, attached to this Appeal as Exhibit "A" (the "10/9/18 Interpretation/Determination") and the June 19, 2018 correspondence from Darrell E. Galloway, CZO, New Hanover County attached to this Appeal as Exhibit "B" (the "6/19/18 Notification Letter"):

1. It is the Applicant's contention that neither the 10/9/18 Interpretation/Determination nor the 6/19/18 Notification Letter constitute a "Notice of Violation" to the Applicant-property owner. However, to the extent that either of these documents does constitute a notice of violation, the Applicant appeals and disputes any such notice of violation. The Applicant pleads the County's lack of specificity in this regard as a defense in this matter and requests a more definite statement from the County regarding the alleged violation of the County's ordinances.
2. The 10/9/18 Interpretation/Determination alleges that the Applicant and/or the Applicant's property is in violation of New Hanover County Zoning Ordinance § 51.6 – Residential District and the Table of Permitted Uses. This allegation is denied. To the extent that the 10/9/18 Interpretation/Determination implies that the Applicant and/or the Applicant's property is in violation of other any other ordinance provisions, these allegations are also denied.
3. The 10/9/18 Interpretation/Determination of the Zoning Ordinance in this matter is incorrect and erroneous and should be reversed. The Applicant disputes and appeals the facts alleged in the 10/9/18 Interpretation/Determination. The Applicant disputes and appeals the determinations and conclusions stated in 10/9/18 Interpretation/Determination.

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4. The 6/19/18 Notification Letter incorrectly and erroneously interprets and applies the Zoning Ordinance and should be reversed. The Applicant disputes and appeals the facts alleged in the 6/19/18 Notification Letter. The Applicant disputes and appeals the determinations and conclusions stated in the 6/19/18 Notification Letter.
5. To the extent not fully responded to above, the Applicant denies that it is in violation of any provision of the New Hanover County Zoning Ordinance or any other County ordinances/regulations, and the Applicant further responds that the County bears the burden of proof on any such alleged violation. Furthermore, the Applicant denies that its property or the use of the Applicant's property are in violation of any County ordinances.
6. The 10/9/18 Interpretation/Determination and the 6/19/18 Notification Letter are nonspecific and vague and do not sufficiently apprise the Applicant of the alleged violation. The Applicant pleads these deficiencies in complete or partial defense to the alleged violation. Alternatively, the Applicant respectfully moves for a more definite statement and explanation of the alleged violation, and the Applicant requests additional time and opportunity to respond to any additional statement or explanation that may be provided by the County in this matter.
7. The Applicant pleads any applicable provisions of Federal and State law as a defense to the 10/9/18 Interpretation/Determination and the 6/19/18 Notification Letter
8. **Reservation of Rights and Defenses.** The Applicant reserves all rights and defenses, including the right to assert additional defenses as the facts become discovered and further known in this matter. The Applicant reserves its right to present witnesses and other evidence at the Hearing in this matter, including all rights to inspect the County's evidence (if any) and the right to cross-examine witnesses at the Hearing.

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**AUTHORITY FOR  
APPOINTMENT OF AGENT**

230 Government Center Drive  
Suite 110  
Wilmington, NC 28403  
910-798-7165 phone  
910-798-7053 fax  
www.nhcgov.com

Please note that for quasi-judicial proceedings, either the land owner or an attorney must be present for the case at the public hearing.

The undersigned owner does hereby appoint an authorized the agent described herein as their exclusive agent for the purpose of petitioning New Hanover County for a variance, special use permit, rezoning request, and/or an appeal of Staff decisions applicable to the property described in the attached petition. The Agent is hereby authorized to, on behalf of the property owner:

1. Submit a proper petition and the required supplemental information and materials
2. Appeal at public meetings to give representation and commitments on behalf of the property owner
3. Act on the property owner's behalf without limitations with regard to any and all things directly or indirectly connected with or arising out of any petition applicable to the New Hanover County Zoning Ordinance.

Agent Information	Property Owner(s)	Subject Property
Name Matthew A. Nichols	Owner Name ARM Ventures, LLC	Address 1908 Bailey Ave.
Company Law Office of Matthew A. Nichols	Owner Name 2	City, State, Zip Wilmington, NC
Address 3205 Randall Pkwy, Suite 104	Address 14581 NC Highway 210	Parcel ID R04517-001-006-000
City, State, Zip Wilmington, NC 28403	City, State, Zip Rocky Point, NC 28457	
Phone (910) 508-7476	Phone	
Email matt@mattnicholslaw.com	Email	
Application Tracking Information (Staff Only)		
Case Number Reference:	Date/Time received:	Received by:

This document was willfully executed on the 24th day of October, 2018.

ARM Ventures, LLC

*Amanda Carr*

Owner 1 Signature

By: Amanda Carr Member, Manager

Owner 2 Signature