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**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

December 31, 2018

VIA HAND DELIVERY

Mr. Ken Vafier CFM, AICP
Planning Manager
New Hanover County Land Use Department
230 Government Center Drive, Suite 110
Wilmington, NC 28403

**Re: APPLICATION FOR VARIANCE TO THE NEW HANOVER COUNTY
ZONING BOARD OF ADJUSTMENT for property located at 7419 Dunbar Rd.,
New Hanover County (PARID: R04500-001-009-000)**

Dear Mr. Vafier:

I represent Paul and Sandra Seiferth, the owners of the above-referenced property located at 7419 Dunbar Road. Please accept this letter and the enclosed variance application with respect to my client's property.

Please find enclosed the following:

1. Variance Application with attached Exhibits;
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 Variance Application Fee.

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 January 2019 meeting of the New Hanover County Zoning Board of Adjustment. As I previously indicated, my clients respectfully submit this variance request in the alternative and without prejudice to their pending appeal (ZBA-932) and the arguments raised in that appeal.

Thank you for your time and attention to this matter.

Mr. Ken Vafier
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Sincerely yours,



Matthew A. Nichols

MN/nc

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

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

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VARIANCE Application

Applicant/Agent Information	Property Owner(s) If different than Applicant/Agent	
Name Paul Seiferth, and wife Sandra Seiferth	Owner Name Same as Applicant	
Company	Owner Name 2	
Address 3012 Sturbridge Ct.	Address	
City, State, Zip Allison Park, PA 15101	City, State, Zip	
Phone (910) 508-7476 (c/o Applicants' Attorney, Matt Nichols)	Phone	
Email matt@mattnicholslaw.com c/o Applicants' Attorney, Matt Nichols	Email	
Subject Property Information		
Address/Location 7419 Dunbar Rd.		
Parcel Identification Number(s) R04500-001-009-000		
Total Parcel(s) Acreage Approximately 3.456 acres		
Existing Zoning and Use(s) R-20, vacant		
Application Tracking Information (Staff Only)		
Case Number ZBA-934	Date/Time received: 12/31/18 @ 3:30pm	Received by:

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PROPOSED VARIANCE NARRATIVE

NEW HANOVER COUNTY
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Subject Zoning Regulation, Chapter and Section: NHC Zoning Ordinance Sec. 55.1

In the below space, please provide a narrative of the application. (Additional pages may be attached to the application if necessary)

Applicant requests a variance from the New Hanover County Conservation Overlay District (COD Ordinance)

Chapter 55.1 in order to construct a single family-residence on an R-20 zoned parcel within the COD setback.

Please see attached Exhibit "A" for further explanation of the circumstances leading to the requested variance and the justification for same.

CRITERIA REQUIRED FOR APPROVAL OF A VARIANCE

The Zoning Board of Adjustment may grant a variance if it finds that strict application of the ordinance results in an unnecessary hardship for the applicant, and if the variance is consistent with the spirit, purpose, and intent of the ordinance. The applicant must explain, with reference to attached plans (where applicable), how the proposed use meets these required findings (please use additional pages if necessary).

1. **Unnecessary hardship would result from 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.**

Please see attached Exhibit "A".

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2. **The hardship results from conditions that are peculiar to the property, such as location, size or topography. Hardship resulting from personal circumstances, as well as hardships resulting from conditions that are common to the neighborhood or general public, may not be the basis for granting a variance.**

Please see attached Exhibit "A".

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.**

Please see attached Exhibit "A".

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.**

Please see attached Exhibit "A".

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.

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Required Information	Applicant Initial	Staff Initial
1 Complete Variance application	MN	KV
2 Application fee – \$400	MN	KV
3 Site plan or sketch illustrating requested variance	MN	KV
4 1 hard copy of ALL documents	MN	KV

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ACKNOWLEDGEMENT AND SIGNATURES

By my signature below, I understand and accept all of the conditions, limitations and obligations of the variance application for which I am applying. I understand that I have the burden of proving why this application meets the require findings necessary for granting a variance. 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.

Paul Seiferth
Sandra Seiferth

Paul Seiferth/Sandra Seiferth

Signature of Property Owner(s)

Print Name(s)

Matthew A. Nichols

Matthew A. Nichols

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



NEW HANOVER COUNTY
PLANNING & LAND USE

**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

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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 Paul Seiferth	Address 7419 Dunbar Rd.
Company Law Office of Matthew A. Nichols	Owner Name 2 Sandra Seiferth	City, State, Zip Wilmington, NC 28411
Address 3205 Randall Pkwy, Suite 104	Address 3012 Sturbridge Ct.	Parcel ID R04500-001-009-000
City, State, Zip Wilmington, NC 28403	City, State, Zip Allison Park, PA 15101	
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 21st day of December, 2018.

Paul D Seiferth
Owner 1 Signature
Paul Seiferth

Sandra Seiferth
Owner 2 Signature
Sandra Seiferth

Exhibit "A"
to
Variance Application
(7419 Dunbar Road)

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APPELLANT/APPLICANT: Paul Seiferth and wife, Sandra Seiferth
AGENT: Matthew A. Nichols
Law Office of Matthew A. Nichols
DATE: December 31, 2018
PROPERTY: 7419 Dunbar Rd., Wilmington, New Hanover County
(PARID: R04500-001-009-000)

Statement by Appellants/Applicants/Petitioners

Project Narrative: Dr. Paul Seiferth and wife, Sandra Seiferth, are the owners of the subject property located at 7419 Dunbar Road, Wilmington, New Hanover County, NC. ("Subject Property"). The Subject Property is a large, uniquely shaped, vacant waterfront tract of land consisting of approximately 3.456 acres with significant frontage along Pages Creek. The Seiferths wish to construct a single-family home on the Subject Property for their personal use. The application of the COD setbacks on this uniquely shaped parcel and the manner in which this property is situated on the creek, together with a large utility easement crossing the center of the property, creates a significant and unnecessary hardship on the utilization of this tract for a single-family home.

Applicants Pending Appeal, New Hanover County Planning File No. ZBA-932: On or about December 4, 2018, the Applicants submitted an appeal application to the Board of Adjustment related to a determination by County Staff on the issue of whether the COD ordinance regulations apply to the subject property, including whether the subject property is exempt from the COD ordinance pursuant to NHC Ordinance § 55.1-2(1) and/or (3), and other provisions of the COD ordinance. That appeal is pending and has not yet been heard by the Board of Adjustment. The Applicants respectfully submit this variance request *in the alternative* and without prejudice to their pending appeal and the arguments raised in that appeal. In the event that the Board of Adjustment upholds the County Staff's determination in the appeal proceeding (ZBA-932), the Applicants respectfully request a variance from the application of the COD regulations to their property as more particularly set forth herein and to be presented at the Hearing on this variance request.

Criteria for Variance:

- 1. Unnecessary hardship would result from 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.**

Application of the COD on this particular lot creates an unnecessary hardship on the Applicants' ability to make reasonable use of this unique property for the purposes of constructing a single-family residence. The subject property is essentially the remnant portion of Tract 7 from the 1927 C.N. Dunn Place division map recorded in Map Book 2 at Page 128, New Hanover County Registry, remaining since a division of that tract in 1981. A 30-foot wide utility easement (shown on Map Book 43, Page 309, New Hanover County Registry) crosses the entire width of the subject property, effectively dividing the property into two unequal sides. This large utility easement, coupled with the application of the COD setback, significantly and unnecessarily reduces the potential building footprint for a single-family home. It is significant to note that the Applicants are still required to comply with all applicable State CAMA regulations, setbacks and building requirements, including all other New Hanover County and State Building regulations.

- 2. The hardship results from conditions that are peculiar to the property, such as location, size or topography. Hardship resulting from personal circumstances, as well as hardships resulting from conditions that are common to the neighborhood or general public, may not be the basis for granting a variance.**

The Subject Property is very uniquely shaped and situated on Pages Creek. The hardship in this particular instance is due to the location, size, typography and situation of this property on Pages Creek. The unnecessary hardship created by the application of the COD setbacks on this particular property is not the result of personal circumstances and is not common to any other properties in the vicinity or the general public. No neighboring properties are situated in the same manner as the subject property. Allowing a variance for this unique property does not establish a precedent for any other properties in this particular vicinity or the County generally.

- 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 Applicants did not create the hardship in this instance, which results from the unique shape of the parcel, including its large creek frontage, and the adverse impact of a 30-foot wide utility easement running through what is essentially the middle of the parcel. The subject property is essentially the remnant portion of Tract 7 from the 1927 C.N. Dunn Place division map recorded in Map Book 2 at Page 128, New Hanover County Registry, remaining since a division of that tract in 1981. Additionally, the above-referenced 30-foot wide utility easement (shown on Map Book 43, Page 309, New Hanover County Registry) was established more than fifteen years ago. The Seiferths acquired the subject property in December 2017, by virtue of, that deed recorded in Book 6112 at Page 845, New Hanover County Registry. The hardship in this instance is unique to this particular property.

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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.** DEC 31 2018

Allowing this variance is consistent with the spirit, purposes, and intent of the COD ordinance, including the intent of the exemptions currently allowed in the COD ordinance. Allowing this variance will not create any public safety issues, and the Applicants are still required to comply with all State and County building regulations, including all applicable CAMA setbacks from Pages Creek. Additionally, the construction of a single-family dwelling within the COD setback areas on this particular lot will have no negative affect on any adjacent property owners and will not adversely affect or block any adjacent property owners' view of Pages Creek.

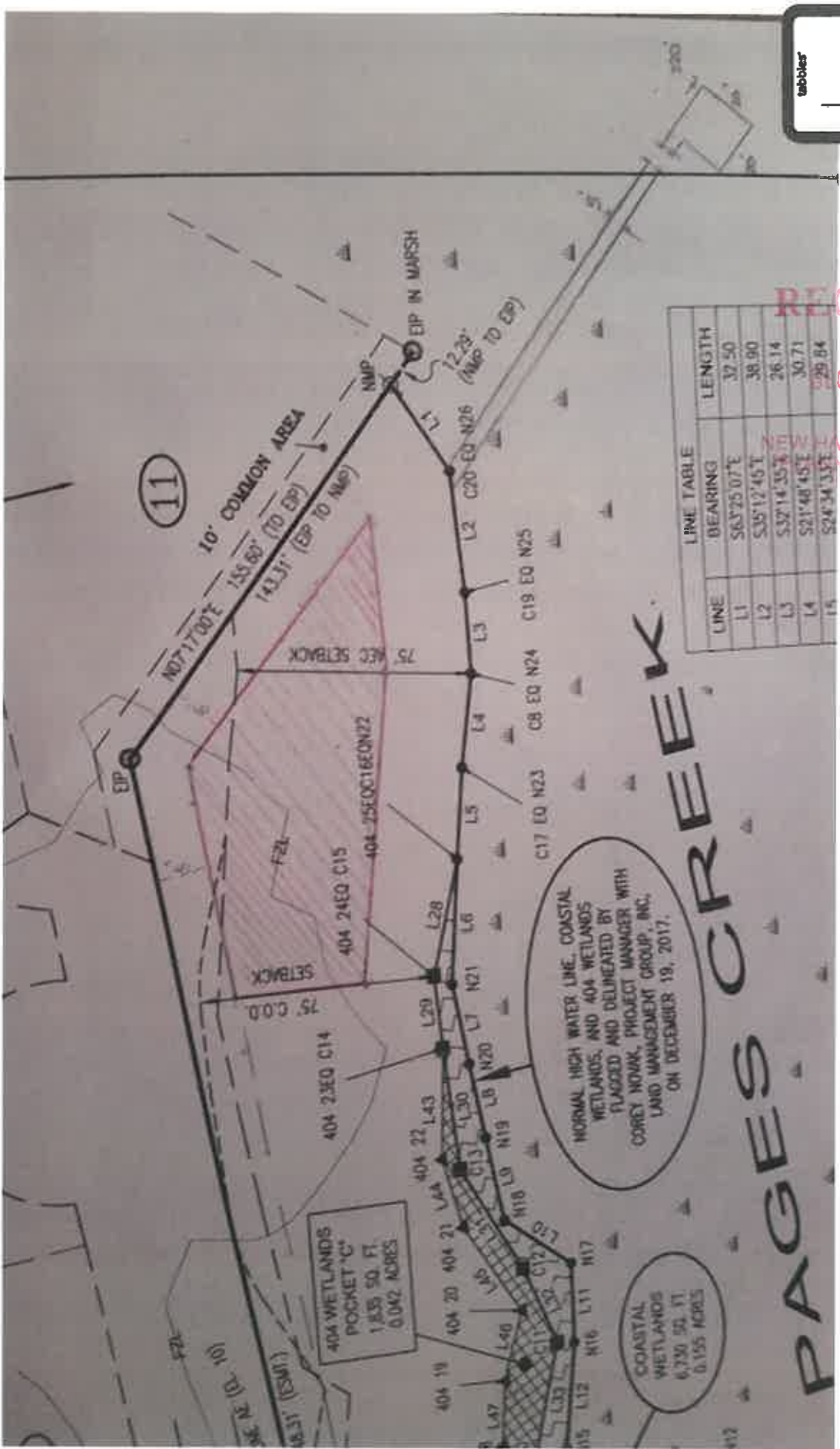
In the event that the Board upholds the County Staff's determination in the aforementioned appeal proceeding (ZBA-932), the Applicants respectfully request a variance from the application of the COD regulations to their property in order to allow for the construction of a single-family residence within that area of their property generally shown as shaded in red on the attached Exhibit "A1".

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LINE TABLE		LENGTH
LINE	BEARING	
L1	S63°25'07"E	37.50
L2	S35°12'45"E	38.90
L3	S32°14'35"E	26.14
L4	S21°48'45"E	30.71
L5	S24°34'33"E	29.84

PAGES CREEK