

# 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



## VARIANCE Application

### REVIEW PROCESS

#### **Step 1: Pre-Application Conference**

In order to assist applicants through the variance process, applicants are highly encouraged to attend a pre-application conference prior to application submittal. Applicants are requested to review Section 122-1(2) of the Zoning Ordinance and sections relating to the application, and advised to contact Planning Staff with any questions. The purpose of the pre-application conference is to provide the applicant an opportunity to become familiar with the submittal requirements and procedures of the application, and also to receive preliminary comments from staff regarding the proposal's compliance with any applicable development regulations.

#### **Step 2: Application Submittal**

Applications must be received by the Planning and Inspections Department by 5:00 PM on the application deadline date. A complete application consists of the items detailed in the submittal checklist provided in this application.

#### **Step 3: Staff Review**

Upon receiving a completed application, staff may distribute it to certain departments and agencies for review. County Planning staff shall review the application, and prepare a staff report for the Zoning Board of Adjustment.

#### **Step 4: Zoning Board of Adjustment Review and Action**

The New Hanover County Zoning Board of Adjustment shall consider the application at a public hearing. Public hearings for variance applications are conducted in a quasi-judicial manner and include additional standards for the testimony and evidence presented during the hearing. The property owner, or their attorney, must be present for the meeting.

A variance shall be approved if the applicant provides substantial evidence that the proposed use will meet the following 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.*
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.*
3. **The hardship did not result from actions taken by the applicant or the property owner.** *The act of purchasing property with knowledge that circumstances exist that may justify the granting of a variance shall not be regarded as a self-created hardship.*

**4. The requested variance is consistent with the spirit, purpose, and intent of the ordinance, such that public safety is secured, and substantial justice is achieved.**

No change in permitted uses may be authorized by a variance. The Zoning Board of Adjustment may impose appropriate conditions on a variance, provided that the conditions are reasonably related to the variance. A concurring vote of a majority of members of the Board is necessary to grant a variance.

The Planning and Inspections Department shall notify the public of the hearing in accordance with standards of the Zoning Ordinance. This includes sending mailed notice to nearby residents, posting a sign on the subject property, and advertising the hearing in a local newspaper.

**RECEIVED**

**FEB 5 2019**

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PLANNING & ZONING**

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## VARIANCE Application

Applicant/Agent Information		Property Owner(s) <i>If different than Applicant/Agent</i>	
<b>Name</b> EDWARD H. CLARK, MANAGER		<b>Owner Name</b> BILL CLARK HOMES OF WILMINGTON, LLC	
<b>Company</b> BILL CLARK HOMES OF WILMINGTON, LLC		<b>Owner Name 2</b> BY: EDWARD H. CLARK, MANAGER	
<b>Address</b> 127 RACINE DRIVE, SUITE 201		<b>Address</b> 127 RACINE DRIVE, SUITE 201	
<b>City, State, Zip</b> WILMINGTON, NC 28403		<b>City, State, Zip</b> WILMINGTON, NC 28403	
<b>Phone</b> 910-350-1744		<b>Phone</b> 910-350-1744	
<b>Email</b> HEATH.CLARK@BILLCLARKHOMES.COM		<b>Email</b> HEATH.CLARK@BILLCLARKHOMES.COM	
<b>Subject Property Information</b>			
<b>Address/Location</b> 1014 PINER ROAD & 1301 MYRTLE GARDENS DRIVE			
<b>Parcel Identification Number(s)</b> RO7600-004-004-000 & RO7600-004-002-005			
<b>Total Parcel(s) Acreage</b> 12.3			
<b>Existing Zoning and Use(s)</b> R-15, VACANT			
<b>Application Tracking Information (Staff Only)</b>			
<b>Case Number</b> VAR-19-0004	<b>Date/Time received:</b> 2/5/19 3:30pm	<b>Received by:</b> BS	

## PROPOSED VARIANCE NARRATIVE

Subject Zoning Regulation, Chapter and Section: 62.2-3(1)(A)

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

SEE ATTACHED

## 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.*

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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.**

SEE ATTACHED

- 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.**

SEE ATTACHED

- 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.**

SEE ATTACHED

# Kaylies Cove

## Project Narrative

The site is located off Piner Road (SR 1521) in an unincorporated portion of New Hanover County, NC. The site and adjoining properties are zoned R-15. The subdivision is comprised of a number of smaller tracts which have been acquired over the course of a few years and appended to the original 71 lot plan on 28.4 acres approved by Technical Review Committee, TRC, on January 26, 2016. As a result of three additional land acquisitions, approvals are now in place for a total of 110 single family homes on an expanded 42 acre Kaylies Cove master plan. The second land acquisition referred to as Phase 2 consisted of 8 lots and was TRC approved in April 27<sup>TH</sup>, 2017. The third and fourth land acquisitions known as Phase 4 was TRC approved on November 8<sup>th</sup>, 2017 proposing 31 single family homes on 12.3 acres. Prior phases are either completed or are in the final stages of site construction. Design work has been completed on the subject phase and permitting—much of which consists of modifying existing permits—is nearing completion.

The subdivision is bounded to the south and east by residential development. A church and associated private school are located to the west of the site. Myrtle Grove Middle School is located across Piner Road to the North.

The site topography is generally flat and drained by ditches that run from north to south towards a stream along Myrtle Gardens Drive that flows west and outfalls to Mott Creek then to the Cape Fear River. Tree cover on the property has been typically loblolly pine and smaller hardwoods with medium undergrowth.

The subdivision development extends Cape Fear Public Utility Authority water and sewer mains. Waterline improvements include completing a connection from Piner Road through to Sentry Oaks increasing the system's quality and capacity. Sewer improvements include a regional public pump station enabling future connections of existing homes in the area. The entire development has both state and county stormwater permits for onsite detention.

## Variance Request Narrative

Phase 4 proposed nine acres of clearing. The clearing was completed prior to conducting a tree inventory and obtaining a New Hanover County tree removal permit. Section 62.2-3(1)(A) of the New Hanover County Ordinance prescribes a 3 year hold on subdivision plan approval or building permits in response to clearing that removes a substantial number of regulated or significant trees without a permit. This application substantiates relief to such a hold.

Significant trees are reported by ordinance to be pines greater than 24 inches in diameter, hardwoods greater than 12 inches and flowering trees greater than 8 inches. A total of 7 significant trees were located within the right of way of the original 71 lot project. Tree mitigation for these seven trees totaling 175 diameter inches was to consist of planting (2) 3 inch diameter trees per lot. No significant trees were located in the second phase, however, the 2 tree per lot planting was proposed to remain consistent with the original mitigation plan. A total of 474 diameter inches of trees will be planted in phases 1-3 in response to the 350 inches of required mitigation. This appreciably exceeds the ordinance minimum requirement.

The landowner/applicant proposes to continue planting (2) 3 inch diameter trees on each of the 21 lots in phase 4. This will yield 220 new trees totaling 660 diameter inches throughout the subdivision.

### **Variance Criteria #1**

#### **Unnecessary hardship would result from strict application of the ordinance.**

Withholding subdivision plan approval or building permits would prevent the timely completion of what has been to date a successful residential development. Such delays would bring about hardships reminiscent of the abandoned projects stemming from the economic downturn of 2008. Such projects were observed to affect not only the subject property owner but also adjacent property owners and the community at large. Based on this experience, it should be expected that:

- Property values of residents in completed phases would be negatively affected by the uncertainty of the project's completion or whether there would be continuity in the housing type.
- Residents of completed phases would be subjected to a partially cleared jobsite at the end of dead end roads. Vacant jobsites are often targets of dumping and vandalism.
- While bound to maintain erosion control measures during the 3 year holding period, the quality of storm water runoff from the jobsite would be negatively affected until the storm water collection and treatment systems are installed per design and the site is permanently stabilized with maintained lawns.
- Similarly, permitted roadways and utilities cannot be completed and conveyed to the rightful maintenance provider.

### **Variance Criteria #2**

#### **The hardship results from conditions that are peculiar to the property, such as location, size, or topography.**

Failure to secure tree approval was the result of an oversight. There have been two prior tree approvals secured for this phased project. The oversight resulted in large part to the project being acquired, designed, and approved in a phased manner. Three different properties have been added to the original project in the course of its development. The oversight has occurred in the last phase, Phase 4. Some infrastructure associated with Phase 3 extended into Phase 4. Phase 3 development construction proceeded as Phase 4 permitting was being filed. To complete the underground utilities serving phase 3 clearing extended into phase 4. This was discussed at the preconstruction meeting on July 2<sup>nd</sup>, 2018. Revisions to the Phase 4 Soil Erosion and Sedimentation Control plans were filed at this same meeting. The clearing proceeded from there as the same contractor was engaged to build Phase 4. The vegetation was no different in character than the prior phases. It was presumed at that time the tree survey and required submittals had been made as had been done for the prior phases. It was not until recently revisiting the permit status did we realize the oversight. This was then promptly reported to planning staff with request of how best to proceed.

**Variance Criteria #3**

**The hardship did not result from actions taken by the applicant or property owner.**

Bill Clark Homes is the applicant and property owner. Bill Clark Homes was not a party to, or aware of, this mistake. The hardship was in no way the result of their actions.

**Variance Criteria #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.**

Implementation of the proposed mitigation, which is the continued planting of (2) 3 inch diameter trees per lot, will result in 660 diameter inches of trees planted on the new lots. This is estimated to be one nearly twice of what is ordained. Substantial justice can be achieved in the realization of this excess.

Public health and safety will be best served by the timely completion of this development so as to enable the residents their Homeowners Association responsibilities of maintaining the roads and common areas.

Several attachments follow in support of this discussion.



ORIGINAL TREE SURVEY AND MITIGATION PROPOSAL

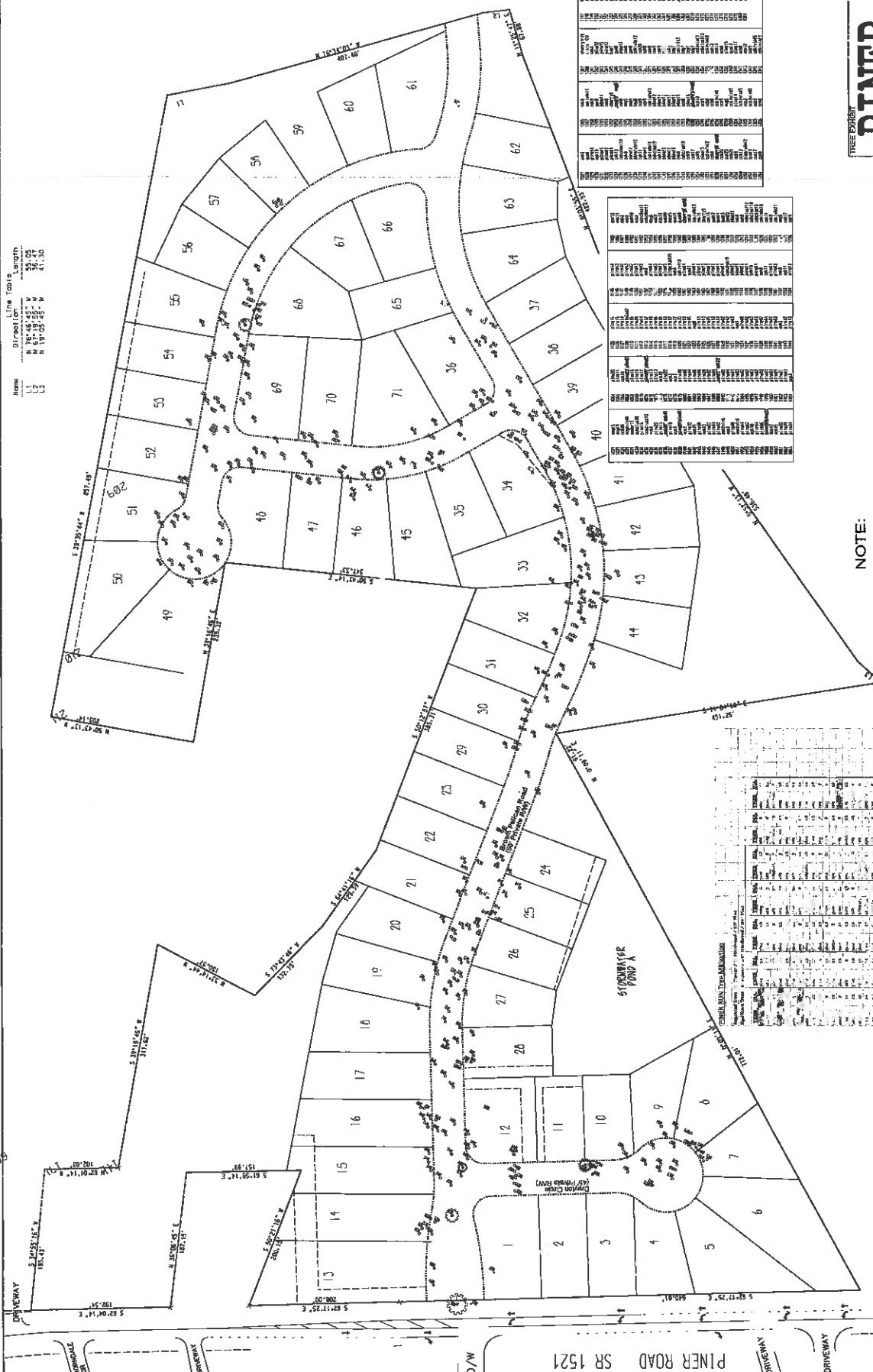
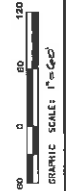
# PINER RUN

DESIGNED: JHE  
 DRAWN: OAG  
 APPROVED: JHE  
 DATE: 05/11/18  
 SCALE: 1" = 60'  
 SHEET 1 OF 1

STROUD ENGINEERING, P.A.  
 1000 S. STATE ST. SUITE 100  
 WEST HAVERT COUNTY, NC 28689



NOTE:  
 MITIGATION WILL BE FULFILLED BY  
 PLANTING 2" 3" DIAMETER TREES  
 ON EACH OF THE 71 LOTS.



Lot No.	Tree Species	DBH (in)	Height (ft)	Health	Notes
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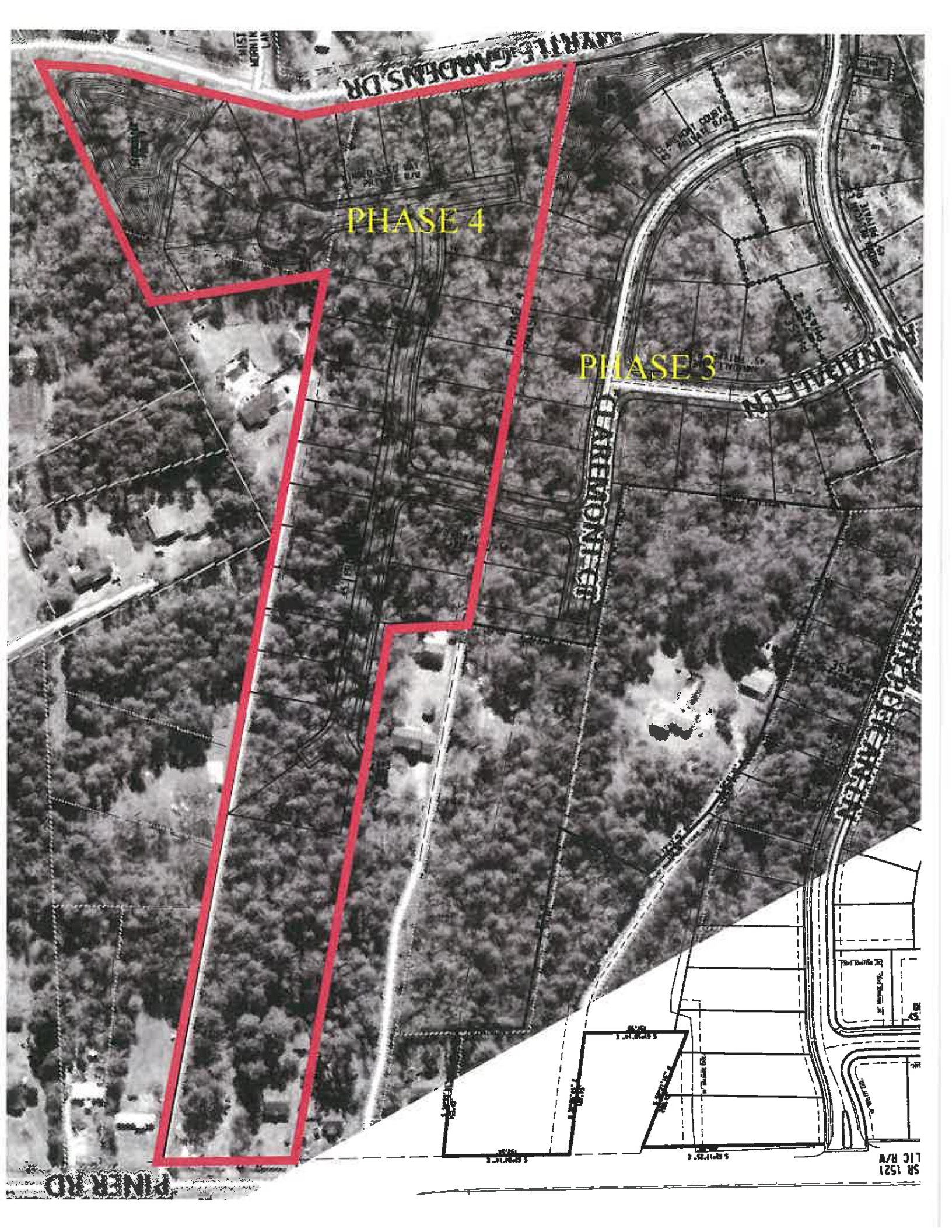
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Directions to the Table Length

Direction	Length
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S	132.44
E	132.44
W	132.44







PHASE 4

PHASE 3

GARDENS DR

GAREMONT CT

PINE RD

SR 1521  
LIC R/M

## 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 Variance application		KV
2	Application fee - \$400		KV
3	Site plan or sketch illustrating requested variance		KV
4	1 hard copy of ALL documents		KV

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PLANNING & ZONING

## 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.

*[Handwritten Signature]*  
Signature of Property Owner(s)

EDWARD H. CLARK *CHERYL BLANTON, MANAGER*  
Print Name(s) *BILL CLARK HOMES OF WILMINGTON, LLC*

\_\_\_\_\_  
Signature of Applicant/Agent

~~EDWARD H. CLARK~~  
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**

\_\_\_\_\_  
\_\_\_\_\_