

NEW HANOVER COUNTY

DEPARTMENT OF PLANNING & LAND USE
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RECEIVED

FEB - 4 2020

NEW HANOVER COUNTY
 PLANNING & ZONING



VARIANCE Application

Applicant/Agent Information		Property Owner(s) <i>If different than Applicant/Agent</i>	
Name	Daniel Lee Brawley Jeffrey P. Keeter	Owner Name	Susan Moore Skinner, Trustee
Company	Block, Crouch, Keeter, Behm & Sayed, LLP	Owner Name 2	Emily M. Axelrod, Trustee
Address	310 North Front Street	Address of Skinner:	1724 Wayne Street
City, State, Zip	Wilmington, NC 28401	City, State, Zip	Columbia, SC 29201
Phone	910-763-2727	Phone	803-240-7678
Email	dbrawley@bcklawfirm.com jkeeter@bcklawfirm.com	Email for Skinner:	SusanSkinner@hotmail.com
Subject Property Information			
Address/Location 4525 Castle Hayne Rd., Castle Hayne, NC 28429			
Parcel Identification Number(s) PARID R01700-002-003-000			
Total Parcel(s) Acreage 20 Acres, more or less			
Existing Zoning and Use(s) RA-Rural AG Currently Timberland			
Application Tracking Information (Staff Only)			
Case Number	Date/Time received:	Received by:	
ZPA-948	2/4/20 12:30 pm	KV	

PROPOSED VARIANCE NARRATIVE

Subject Zoning Regulation, Chapter and Section: 5.3.3 B ~~621-0-Tree Removal~~

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.*

SEE ATTACHED

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

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	DLB	W
2	Application fee – \$400	DLB	W
3	Site plan or sketch illustrating requested variance	N/A DLB	W
4	1 hard copy of ALL documents	DLB	W

ACKNOWLEDGEMENT AND SIGNATURES


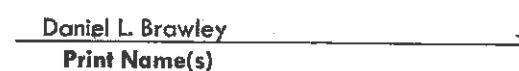
By my signature below, I understand and accept all of the conditions, limitations and obligations of the variance application for which I am applying. I understand that I have the burden of proving why this application meets the require findings necessary for granting a variance. I certify that this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


 Signature of Property Owner(s)

 Signature of Applicant/Agent


 Print Name(s)

 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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Emily M. Axelrod, Trustee / 1/31/2022
Signature of Property Owner(s)

Emily M. Axelrod
Print Name(s)

Daniel L. Brawley
Signature of Applicant/Agent

Daniel L. Brawley
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.

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For Staff Only

Application Comments

ATTACHMENT TO APPLICATION

This Property (4525 Castle Hayne Road, Castle Hayne, NC 28429) is owned by Susan Moore Skinner, Trustee under the Declaration of Trust of Susan Skinner, and Emily M. Axelrod, Trustee under the Declaration of Trust of Emily M. Axelrod. Susan Moore Skinner and Emily M. Axelrod are sisters and the granddaughters of Edward Boushee who acquired the Property in 1924. The Property remained with the family since Mr. Boushee's acquisition in 1924. Mrs. Skinner lives in Columbia, South Carolina and Mrs. Axelrod lives in Wilmette, Illinois.

In May and June 2019, the trees on the Property were, in some instances, deadened, undesirable species and diseased with fusiform rust. (See "Timber Stand Improvement Harvest Plan" attached.) At that time, the Property also had an old uninhabited house.

Due to the poor condition of the trees and in an effort to begin a forestry program on the Property, Mrs. Skinner and Mrs. Axelrod decided to remove the trees and replant. A friend highly recommended Mr. Carlton Dowless for the tree removal and replanting. Initially, Mr. Dowless was with Claybourn Walters Logging, Inc. of Fairmont, North Carolina. Thereafter, Mr. Dowless became associated with Summit Logging, LLC of St. Paul. Mrs. Skinner and Mrs. Axelrod retained Summit Logging, LLC in May, 2019 to remove the trees. At that time, Mrs. Skinner and Mrs. Axelrod were not aware of the requirement for obtaining a permit under Section 62.1-9 of the New Hanover County Zoning Ordinance and were relying on Summit to take all appropriate steps in the removal process and/or advise them of any legal requirements for the removal. Apparently, Summit, being from St. Paul, was also unaware of that requirement - in any event, it did not advise Mrs. Skinner and Mrs. Axelrod of the permit requirement. The trees were removed in May and June, 2019.

On July 9, 2019, Mrs. Skinner and Mrs. Axelrod obtained an estimate for replanting from Mr. Dowless. They approved the replanting but on Mr. Dowless' recommendation scheduled the replanting for an optimum winter planting season. Eight thousand (8,000) trees have been replanted over approximately 17 acres.

In further efforts to improve the Property, the uninhabitable house has been demolished and removed.

Upon receipt of the August 9, 2019 letter from Linda Painter, a New Hanover County Zoning Ordinance Official, advising of the permit violation, Mrs. Skinner promptly contacted Ms. Painter. Mrs. Skinner advised Ms. Painter that the tree removal was without any knowledge of a permit requirement, apologized for the violation, and advised that replanting was being arranged. Mrs. Painter did not indicate any further or corrective action should be taken at that time.

In 2019, in spite of the fact that the Property was not listed or advertised for sale, Mrs. Axelrod was approached by a realtor inquiring about a potential sale of the Property. Initially, Mrs. Axelrod and Mrs. Skinner did not respond to the inquiry but subsequently explored that opportunity. As a result, in October 2019, Mrs. Skinner and Mrs. Axelrod entered into a Contract to sell the Property to Danard Harris and Angela Harris. Mrs. Skinner and Mrs. Axelrod understand that the Harrises intend to locate their retail trailer sales and service business (currently "East Coast Autos and Trailers") on the Property. They are advised that the plans are to construct a main building with showroom, parts department, warehouse/area for assembly and repair work and offices. There will be outside areas for storage and display of trailers along with appropriate landscaping. However, the Contract requires that, among other things, the Property is to be free of any restrictions from the County relating to the past clearing of trees. That

requirement cannot be met, the sale of the Property will not be consummated, and the significant improvements will not be constructed unless a waiver of the Penalty is granted.

It is respectfully submitted (1) that the sale of the Property is a unique opportunity in that its location and size is apparently particularly suited for the potential buyers based on the unsolicited approach by the buyers, (2) that enforcement of the Penalty will result in a loss of the sale and would result in a hardship for Mrs. Skinner and Mrs. Axelrod in that this unique sale opportunity will be lost, (3) that this variance is not contrary to the public interest but rather is consistent with the public interest, (4) that the variance is in harmony with the general purpose and intent of the Ordinance in that removal of deadened, undesirable and diseased trees and replanting preserves and is in harmony with the goal and intent of the Ordinance, (5) that Mrs. Skinner and Mrs. Axelrod were relying on Summit to take appropriate action to meet any regulatory requirements or to advise them of any action or requirement they needed to take or meet, which Summit and its subcontractor¹ failed to do, and (6) that, in granting the variance, the public safety and welfare of the community and County will have been assured and substantial justice will have been done.

Mrs. Skinner and Mrs. Axelrod sincerely regret their lack of knowledge of the permit requirement and their failure to obtain the permit. The tree removal, replanting and removal of the old house were designed to improve the Property and its appearance and the beginning of a forestry program. The sale of the Property to the Harrises and their plans for location of their business with considerable improvements to the Property should be of significant value to the community and New Hanover County. Therefore, Mrs. Skinner and Mrs. Axelrod request that

¹ Mrs. Skinner and Mrs. Axelrod just recently learned that Summit subcontracted the tree removal.

DLS

5,3.3D

the Board of Adjustment grant a variance waiving the Penalty provisions of Section ~~6.2.3~~ of the New Hanover County Zoning Ordinance.

Timber Stand Improvement Harvest Plan

For

Susan Skinner and Emily Axelrod

Axelrod Tract

Location: Skippers Corner
4525 Castle Hayne Rd
Castle Hayne , NC

Objective: The following harvest plan is based upon assessments of conditions of a deadening undesirable species of trees that were observed on the property. The landowner's do not live on site, dead trees and multiple pines with fusiform rust posed as threats around the old house and through out the forest. Threats such as breakage that could harm someone, and diseased trees that could spread throughout the forest. This appeared to be the landowner's main concern. It is a recommended forestry procedure to remove as much as possible and re-plant. Replanting establishes a young vigorous forest.

Tract Description:

The forest land consists of approximately 18 acres mixed species of Pine and Hardwoods previously described in objective paragraph. The remaining acreage is a vacant un-inhabited lot.

