

NEW HANOVER COUNTY

DEPARTMENT OF PLANNING & LAND USE
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 Wilmington, North Carolina 28403
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ZONING & SUBDIVISION VARIANCE APPLICATION

This application form must be completed as part of a request for a zoning and/or subdivision variance. The application submitted through the county's online COAST portal. The main procedural steps in the submittal and review of applications for a variance are outlined in the flowchart below. More specific submittal and review requirements, as well as the standards to be applied in reviewing the application, are set out in Section 10.3.11 of the Unified Development Ordinance.



1. Applicant and Property Owner Information

Applicant/Agent Name David Bergmark	Owner Name (if different from Applicant/Agent) CITY OF WILMINGTON
Company McAdams	Company/Owner Name 2 Sterling Cheatham (City Manager)
Address 2905 Meridian Parkway	Address 102 N THIRD STREET (P.O. BOX 1810)
City, State, Zip Durham, NC 27713	City, State, Zip WILMINGTON, NC 28402
Phone (919) 449 - 4005 (mobile)	Phone (910-765-7469)
Email bergmark@mcadamsco.com	Email Anne.Ballweg@wilmingtonnc.gov

2. Subject Property Information

Address/Location 205 Sutton Steam Plant Rd	Parcel Identification Number(s) PID: R04000-001-012-000
Total Parcel(s) Acreage 65.47 acres	Existing Zoning and Use(s) I-2 (industrial) / Former Flemington Landfill

Applicant Tracking Information (This section completed by staff)

Case Number: ZBA-955	Date/Time Received: 1/22/21	Received by: RM
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3. Proposed Variance Narrative

Subject Zoning Regulation, Chapter and Section

In the space below, please provide a narrative of the application (attach additional pages if necessary).

The City of Wilmington is seeking to develop the subject property into a regional athletic complex. However the site's former use as a landfill and the associated state regulations governing former landfill sites creates conflicts with local landscaping code. As a result, the applicant is unable to meet the strict language of the County's Tree Retention (Section 5.3.4) and Landscaping for Parking Lot Interiors (Section 5.4.5.C) standards, as they are unable to plant canopy trees within the boundaries of the former landfill due to their root depth. To resolve this conflict, the applicants requests the following variances and associated conditions (and submits **Exhibit L1** for reference):

1. Variance to Section 5.3.4 (Tree Retention)

a. In lieu of providing 15 canopy trees per 1 acre of disturbed area (323 required), the applicant will provide a minimum of 150 canopy trees outside of the former landfill boundary.

2. Variance to Section 5.4.5.C (Landscaping for Parking Lot Interiors)

a. The applicant requests an exemption from the required 1 canopy tree for each 144 SF of interior landscape island planting, but offers to include 6 trees within planters to be placed around the restroom facility.

b. To offset the lack of interior parking lot canopy trees, the applicant offers as a condition to provide a minimum interior landscaped area of 16% of Vehicular Use Area (instead of 8%).

CRITERIA REQUIRED FOR APPROVAL OF A VARIANCE

The 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 (attach 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.

Due to this site's previous use as a landfill, the strict application of local ordinance as it relates to tree plantings would directly conflict with the North Carolina Department of Environmental Quality's vegetative cover regulations for prior landfill sites. The DEQ's planting requirements include that root depth be no greater than 18 inches at maturity with no root runner great than 6 inches (See Exhibit A - Section 2.1 Plant Requirements). This requirement permits grasses and shrubs, but precludes planting of trees within the area of the site previously used as a landfill (which is the vast majority of the site and fully includes the parking area by the building - See Exhibit L1).

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 prior use of the site as a landfill is what is creating the conflict with the Town's landscaping requirements. This existing condition is particular to this site, and with only one other landfill in the county, is not indicative of a condition that is common to the surrounding area or county in general.

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.

Neither the applicant nor the property owner established the prior use as a landfill. Thus, the site-specific circumstance creating the hardship did not result from actions taken by the applicant or the property owner.

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.**

Tree protection and landscaping regulations are intended to enhance the aesthetic appearance of new development with the natural landscape to the benefit of the County's visual and environmental character.

The requested variance to the County's Tree Retention (Section 5.3.4) and Landscaping for Parking Lot Interiors standards (Section 5.4.5.C) represents the minimum variance required in order to accommodate the State's regulations for prior landfill sites by removing specified tree plantings, while providing double the required amount of interior landscape island planting areas to offset the reduction in tree coverage.

Care will be taken to provide natural and aesthetically pleasing landscaping in areas where tree root depth would violate state regulations, through the use of shrubs, ground covers, and ornamental grasses. It is our firm belief that the requested variance proposal is true to the spirit of the ordinance within the site's limitations, and will preserve public safety and justice.

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". Applications determined to be incomplete must be corrected in order to be processed for further review.

Application Checklist

- This application form, completed and signed
- Application fee: \$400 per application
- Site plan or sketch illustrating the requested variance
- One (1) hard copy of ALL documents
- One (1) PDF copy of ALL documents

Applicant Initial	Staff Initial
<u>DB</u>	<u>AB</u>
<u>DB</u>	<u>AB</u>
<u>DB</u>	<u>RM</u>
<u>DB</u>	<u>RM</u>
<u>DB</u>	<u>RM</u>

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 required 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.

If applicable, 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 comments; 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.

Sterling B. Cheatham

Signature of Property Owner(s)

Sterling B. Cheatham

Print Name(s)

David Bergmark

Signature of Applicant/Agent

David Bergmark

Print Name

Note: This 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**