

Pender County Planning and Community Development

Planning Division

805 S. Walker Street
PO Box 1519
Burgaw, NC 28425



Phone: 910-259-1202
Fax: 910-259-1295
www.pendercountync.gov

Pope Properties – Sneed Tree Mitigation Variance

Case Number: VAR 2023-14

Application Type: Variance

Applicant: Pope Properties on 17, LLC

Owners: Pope Properties on 17, LLC

Location: The subject property is located on the northeast corner of the intersection of US Highway 17 and Scotts Hill Loop RD in the Topsail Township.

Property ID #(s): 3271-41-0365-0000, 3271-41-3641-0000, 3271-41-4387-0000, 3271-41-2253-0000

Description: Pope Properties on 17, LLC., applicant and owner, is requesting a variance for relief from the Pender County Unified Development Ordinance standards outlined in Section 8.1.3.A 'Tree Survey Required'. Specifically, the applicant is requesting the approval of an alternative plan to reduce the number of required mitigated trees on the subject property and plant the remainder of the required mitigated trees at an offsite location and/or offer payment in lieu of planting on an alternative site to the County.

Current Zoning: General Business (GB)

Board of Adjustment Meeting

8/16/2023

Included: Application Materials, Application Package, Narrative, Site Plan

APPLICATION PACKAGE

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VARIANCE APPLICATION

Applicability

- A. The Board of Adjustment may vary certain requirements of this Ordinance, in harmony with the general purpose of these regulations, where special conditions applicable to the property in question would make the strict enforcement of the regulations impractical or result in a hardship in making reasonable use of the property.
- B. The Board of Adjustment may waive certain requirements when authorized to do so by provisions adopted as a part of this Ordinance.
- C. No variance shall be permitted that would have the effect of allowing a use not permitted in the use table in Section 5.2.3.
- D. No variance shall be permitted that would allow a project to exceed the maximum density as to number of dwelling units to the acre in a Zoning District. This maximum density shall be inclusive of any density bonus allowance or additional units in a planned unit development.
- E. The need for the variance cannot be a result of the owner's own actions and cannot be for strictly economic reasons. The Board of Adjustment may grant variances in the following special circumstances, as indicated elsewhere in this Ordinance.

Findings

In granting any variance, the Board of Adjustment shall make the following findings:

- A. That special or unique circumstances or conditions or practical difficulties exist which apply to the land, buildings or uses involved which are not generally applicable to other land, buildings, structures, or uses in the same zoning districts;
 - 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, and topography. Hardships resulting from personal circumstances, as well as hardships resulting from conditions that are common to the neighborhood or the 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 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.
- B. In making the findings above, the Board of Adjustment may give special weight to the number and percentage of nearby properties that share characteristics for which the variance is requested by the applicant. The Board of Adjustment may grant a variance to expand an existing structure, including the expansion of a nonconforming structure if the findings listed above can be made.

APPLICATION FOR VARIANCE

THIS SECTION FOR OFFICE USE

Application No.	VA	Date	
Application Fee	\$	Invoice Number:	

SECTION 1: APPLICANT INFORMATION

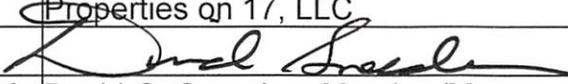
Applicant's Name:	Pope Properties on 17, LLC	Owner's Name:	Pope Properties on 17, LLC
Applicant's Address:	4701 Wrightsville Ave., Suite 1A	Owner's Address:	4701 Wrightsville Ave., Suite 1A
City, State, & Zip	Wilmington, NC 28403	City, State, & Zip	Wilmington, NC 28403
Phone Number:	910-520-7522	Phone Number:	910-520-7522
Email Address:	glea15@aol.com david.sneeden@gmail.com	Email Address:	glea15@aol.com david.sneeden@gmail.com

Legal relationship of applicant to landowner: Applicant is Landowner

SECTION 2: PROJECT INFORMATION

Property Identification Number (PIN):	3271-41-0365-0000 3271-41-3641-0000 3271-41-4387-0000 3271-41-2253-0000	Total property acreage:	±8.17 acres
Zoning Classification:	GB	Variance Size:	±8.17 acres
Variance Location & Address	4314 Scotts Hill Loop Rd., 4260 Scotts Hill Loop Rd., 10642 US 17 Hwy		
Describe Variance and amount or type requested:	Please see attached Exhibit A.		

SECTION 3: SIGNATURES

Applicant's Signature		Date:	7/6/23
Applicant's Name Printed	David G. Sneeden, Member/Manager, Pope Properties on 17, LLC	Date:	
Owner's Signature		Date:	7/6/23
Owner's Name Printed	David G. Sneeden, Member/Manager, Pope Properties on 17, LLC	Date:	

NOTICE TO APPLICANT:

1. The Board of Adjustment shall review applications for a variance and shall be the approving authority for all requirements.
2. All applicants seeking a variance shall schedule a pre-application conference with the administrator to discuss the procedures, standards, and regulations required for variance approval.
3. An application for a variance shall be submitted in accordance with application requirements.
4. Once the application has been determined complete, the Administrator shall schedule a public hearing and give notice to adjoining/abutting property owners and aggrieved parties in the form of applicant supplied #10 envelopes with paid first class postage.
5. The applicant seeking the variance shall have the burden of presenting evidence sufficient to allow the Board of Adjustment to reach the conclusions set forth below (Findings), as well as the burden of persuasion on those issues.
6. Applicant must also submit the information described in the Variance Checklist provided below.
7. Applicant or agent authorized in writing must attend the public hearing.
8. Once the public hearing has been advertised, the case will be heard unless the applicant withdraws the application or unless the Board of Adjustment agrees to table or delay the hearing.

OFFICE USE ONLY

<input type="checkbox"/> VA Fees \$250	Total Fee Calculation \$
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Payment Method :	Cash : <input type="checkbox"/> \$ _____	Credit Card: <input type="checkbox"/> Master Card <input type="checkbox"/> Visa	Check: <input type="checkbox"/> Check # _____
Application received by:		Date:	
Application completeness approved by:		Date:	
Date scheduled for public hearing:			

AUTHORITY FOR APPOINTMENT OF PERSON TO ACT ON MY BEHALF

The undersigned applicant/owner, Pope Properties on 17, LLC,
does hereby appoint Matthew A. Nichols to act on my
behalf for the purpose of making application to the Pender County Board of Adjustment for
a variance or for an appeal to the Board of Adjustment as described in the attached
application.

The applicant/owner does hereby covenant and agree with Pender County that
said person has the authority to do the following acts for and on behalf of the
applicant/owner:

1. To submit a proper application and the required supplemental materials.
2. To appear at quasi-judicial hearings to give testimony and make commitments on
behalf of the applicant/owner.
3. To accept conditions or recommendations of the Board of Adjustment regarding the
applicant/owner's property.
4. To act on the applicant/owner's behalf without limitation regarding any and all things
directly or indirectly connected with or arising out of any application
for a variance from the County regulations or any appeal to the Board of Adjustment.

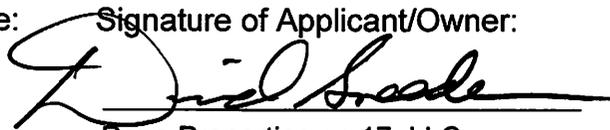
This appointment agreement shall continue in effect until final disposition of the
application submitted in conjunction with this appointment.

Date: 7/6/23

Appointee's Name, Address & Telephone:

Matthew A. Nichols
Law Office of Matthew A. Nichols
3205 Randall Parkway, Suite 104
Wilmington, NC 28403
(910) 508-7476

Signature of Applicant/Owner:



Pope Properties on 17, LLC
By: David G. Sneed, Member/Manager

PROJECT NARRATIVE

Exhibit A Narrative

The Applicant/Property owner is requesting a variance from Pender County UDO Section 8.1.3.A, which states: "Where any significant tree shown on the significant tree survey is proposed to be removed such removal shall be mitigated by the planting on site of two (2) trees of the same species with a minimum caliper of 2" or greater." Pender County UDO § 8.1.3.A(4).

As illustrated on the attached Mitigation Plan prepared by McKim & Creed, an extraordinary amount of significant trees are located on the site. In order to accommodate the proposed building and site improvements, stormwater pond and public access, utility and drainage easements, 79 significant trees would need to be removed, as more particularly shown on the Mitigation Plan, a copy of which is included with this variance application. Furthermore, as more particularly set forth on the Mitigation Plan Table (Landscape Data As It Affects Mitigation Plantings), the mitigation of 79 trees at a 2:1 ratio (resulting in 158 mitigation trees) under the current ordinance creates a significant and unnecessary hardship on the use and development of this particular property. The Applicant is proposing to plant 101 mitigation trees as shown on the Mitigation Plan. Six of the mitigated trees would be planted in a new landscape easement located along the southeastern border of the adjacent property as shown on the Mitigation Plan.

The subject parcels combined are ±8.17 acres, of which ±1.17 acres is wetlands. Further impacting the buildable and plantable area is a large stormwater pond (±2.53 acres) across the back of the property that will be needed to serve the three smaller commercial lots, which total ±4.8 acres. Additionally, installation of required public utilities also significantly impacts the buildable and plantable area. There is simply not enough space to accommodate the required replacement trees and still allow reasonable development of the site. The site would be rendered essentially unsuitable and unusable for the permitted uses within the General Business District without relief from UDO Section 8.1.3.A. That would be contrary to the purpose of the General Business District and the Pender 2.0: Comprehensive Land Use Plan Regional Mixed Use future land use category. The Applicant is requesting a variance to allow for the planting of mitigated trees offsite and/or payment in lieu to the County for the planting of mitigated trees offsite, as determined by the County.

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.

The number of trees that would be required to be planted at a 2:1 mitigation ratio will not allow enough space to develop the property and is impractical in this location. The General Business District, in which the subject property is located, is "established to

provide convenient locations for businesses which serve the needs of surrounding residents, including office, retail, and personal service uses.” Pender County UDO § 4.9.1 GB: General Business District.

In order to develop the property with uses to serve the surrounding residents consistent with the intent of the District, the Applicant/Property Owner must remove a large number of significant trees. Additionally, to properly design the stormwater system, a large stormwater pond is required which will require the removal of additional trees. Due to the limited area of the subject property there will not be room to make all necessary improvements, construct commercial buildings and mitigate trees at a 2:1 ratio. Without a variance, the site cannot be developed appropriately for the GB Business District or the Regional Mixed Use future land use type it is located within.

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

This particular property is unique given its size, shape, location, and unusual amount of significant trees. Access easements and public utility easements are already established and dedicated on the property, as shown on that map recorded in Map Book 68 at Page 144 of the Pender County Registry. Additionally, the stormwater pond required for this property is also quite large in relation to the overall size of the property, and there are site constraints due to wetlands along the northeastern side of the property.

The property consists of ±8.17 acres, which includes ±1.17 acres of wetlands. The large stormwater pond (±2.53 ac. or ±31%) necessary for development of the commercial lots takes up a large portion of the back of the property. The buildable and plantable areas of the remaining 3 commercial lots (±4.8 acres total) are further reduced by the installation of required public utilities (for Duke Energy, AT&T, Spectrum, Pender County Water and Pluris utility easements). These utilities serve the entire Scotts Hill community.

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 granting of a variance shall not be regarded as a self-created hardship.

The hardship did not result from actions taken by the Applicant or the property owner. The hardship derives from the strict application of the ordinance to this particular property and public utility easements that serve the community as a whole, required stormwater facilities and naturally occurring features of the property. These factors

prevent reasonable use of the land for the intended purposes under the UDO's General Business District zoning district.

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.

In order to develop the property consistent with the ordinance and with the Pender County Comprehensive Plan a variance is required. The Pender County Comprehensive Plan Future Land Use Map designates this property as Regional Mixed Use. The Regional Mixed Use category is intended to allow for strategic location of future development where water and sewer infrastructure is already in place along major corridors, in this case U.S. Highway 17.

The Comprehensive Plan states:

The preferred land use mix is primarily commercial/retail and office with multi-family residential uses. Large employment centers and retail spaces are encouraged. Higher density single-family uses should account for less than 25% of a development proposal and should complement a more substantial mix of commercial/office and multi-family development.

Pender 2.0: Comprehensive Land Use Plan (pp. 5-16).

The proposed development of the site is consistent with both the Pender County UDO and the Comprehensive Plan. Development of commercial businesses in this location will be a benefit to nearby residents and to the County as a whole. The variance request to allow for the planting of mitigated trees offsite and/or payment-in-lieu to the County for the planting of mitigated trees offsite will also allow the County to plant or maintain additional trees where best suited, as determined by the County.

OWNERS WITHIN 500 FEET

PIN	OWNER	OWNER MAILING ADDRESS	PROPERTY_ADDRESS	PROPERTY_DESCRIPTION
3270-59-1486-0000	CLAYTON PROPERTIES GROUP INC	441 WESTERN LANE SUITE 100	IRMO SC 29063	TR 1 PB 70/63 BOUNDARY SURVEY FOX NECK LTD PTNRP PROPERTY
3271-30-6743-0000	LEE PROPERTIES OF SCOTTS HILL LLC	256 OSPREY PL	WILMINGTON NC 28411	7.24 AC ON S/E SIDE 17 AT SCOTTS HILL
3271-30-9965-0000	LEE PROPERTIES OF SCOTTS HILL LLC	256 OSPREY PLACE	WILMINGTON NC 28411	ON S/E SIDE AT 1571 & 17
3271-31-3208-0000	HST KAYAK HOLDINGS LLC	1022 ASHES DR SUITE 201	WILMINGTON NC 28405	TR 5(2ND REV) PB 70/81 HST KAYAK HOLDINGS LLC DIVISION
3271-31-5655-0000	BLAKE FARM NORTH COMMERCIAL LLC	1051 MILITARY CUTOFF ROAD SUITE 210	WILMINGTON NC 28405	LT 1 PB 69/14 PENDER FARM COMMERCIAL LLC
3271-31-9960-0000	BLAKE FARM NORTH COMMERCIAL LLC	1051 MILITARY CUTOFF RD SUITE 210	WILMINGTON NC 28403	TR 8B PB 62/12 BLAKE FARM
3271-40-5851-0000	HERRMANN WOLFGANG	4205 SCOTTS HILL LOOP RD	WILMINGTON NC 28411	LT 1 & 2 OAKVALE
3271-41-0365-0000	POPE PROPERTIES ON 17 LLC	P O BOX 4014	WILMINGTON NC 28406	LT 1 PB 68/144 RECOMB POPE PROPERTIES ON 17
3271-41-2253-0000	POPE PROPERTIES ON 17 LLC	P O BOX 4014	WILMINGTON NC 28406	LT 3 PB 68/144 RECOMB POPE PROPERTIES ON 17
3271-41-3641-0000	POPE PROPERTIES ON 17 LLC	P O BOX 4014	WILMINGTON NC 28406	LT 2 PB 68/144 RECOMB POPE PROPERTIES ON 17
3271-41-4387-0000	POPE PROPERTIES ON 17 LLC	P O BOX 4014	WILMINGTON NC 28406	LT 4 PB 68/144 RECOMB POPE PROPERTIES ON 17
3271-41-6009-0000	BLAKE CHRISTOPHER R	4210 SCOTTS HILL LOOP RD	WILMINGTON NC 28411	1.33 AC PB 55/83 BLAKE EST TR
3271-41-6936-0000	SCOTTS HILL A M E CHURCH	PO BOX 10168	WILMINGTON NC 28411	.60 ACRES SCOTTS HILL PB 56/17
3271-42-1163-0000	BLAKE HENRY CHRISTOPHER III	2500 SCOTTS HILL LOOP RD	WILMINGTON NC 28411	2.54AC TR PB 67/82 HENRY & SUSAN BLAKE SURVEY
3271-43-5429-0000	BLAKES OF SCOTTS HILL LLC	2500 SCOTTS HILL LOOP RD	WILMINGTON NC 28411	REMNANT TR PB 67/82 HENRY & SUSAN BLAKE SURVEY
3271-51-2594-0000	'BLAKES' OF SCOTTS HILL LLC'	2500 SCOTTS HILL LOOP RD	WILMINGTON NC 28411	SUSAN BLAKE SURVEY
3281-15-7192-0000	CORBETT WILBUR R	C/O REBECCA CORBETT MCGOWAN	TEGA CAY 29708	33.34 AC ON SOUTH SIDE HWY 17 ON B/S 17 TO SOUND

SITE PLAN

