

# ZONING HARDSHIP VARIANCE

## APPLICATION

File #  
 Fee  
 Amt Paid  
 Check #  
 Rec'd Date  
 Rec'd By

V-2107-09  
 1/27/09

Submit required documentation to:

Wake County Planning Department/Current Planning Section  
 PO Box 550 Wake County Office Building  
 Raleigh, NC 27602-0550 336 Fayetteville Street Mall, Downtown Raleigh  
 Contact Current Planning at (919) 856-6335 for additional information.

**Zoning Ordinance Regulation(s) Proposed to be Varied** (cite each section(s) and identify requirement from which the variance(s) is (are) being requested; quantify variance – i.e. if this is a variance to allow an encroachment into a setback, give depth of encroachment and total square feet of area proposed to encroach into setback:

This Variance request is two part. One variance request is from Article 11-21-6, is for the removal of the 50' buffer in the area shown on the attached site plan. The request affects 0.61 acres (26,572 sq. ft.) of the stream buffer on-site. The second part of the variance request is from Article 3-23-4 and is to allow an encroachment for a drive aisle in the front setback for a maximum length of 275 linear feet and 20' wide. Both variance requests are depicted on the accompanying preliminary site plan sheet.

### **Property**

Parcel Identification Number: 0646638201, 0646639511, 0646731226, 0646735671

Address: 3217 & 0 Piney Grove Wilbon Road and 1524 and 0 W. Academy Street

Location: East \_\_\_\_\_ side of Piney Grove Wilbon Road (at) between  
(north, east, south, west) (street)

Piney Grove Wilbon Road and W. Academy Street.  
(street) (street)

Total site area in square feet and acres: 900,385.2 square feet 20.67 acres

Zoning District(s) and Overlay Districts (if any) and land area within each: Highway District

List Conditions of any Conditional Use Zoning Districts: N/A

Present land use(s): Religious Assembly and Vacant

How is this proposed use a public necessity?

*The proposed use is a public necessity because it provides a valuable service to the surrounding community. The existing church has been fortunate enough to provide the community with an opportunity for spiritual health for over 100 years. Due to the growing congregation, the proposed expansion is necessary to continue to adequately serve and to aid in the establishment or repair of spiritual health for individuals within the community.*

What is the impact on surrounding neighborhood and adjacent properties?

*Neither the stream buffer variance nor the front setback encroachment request will have a negative impact on the surrounding neighborhood and adjacent properties. Both variances requests are completely located on church owned property.*

*The church expansion that could occur, if the variance is approved by the Board, would provide the community with a necessary and desired use. Also, future stormwater run-off from the future buildings will be routed to an on-site Best Management Practice (BMP).*

*By allowing the front setback encroachment for the drive aisle, there will be a positive impact on Highway 42 as opposed to the Board not approving the front setback encroachment. NC DOT limits the number of driveway permits along state roads, which includes Highway 42. In order to comply with NC DOT policy, since a 3<sup>rd</sup> driveway from Highway 42 is not probable, an alternate method for transporting visitors around the site had to be developed. By allowing the setback encroachment for a drive aisle in a portion of the front setback, drivers will not be required to enter back onto Highway 42 or Piney Grove Wilbon Road to go to a different section of the site. Vehicular trips onto Highway 42 will be reduced if the setback encroachment is permitted to allow cross access within the site.*

**Property Owner**

Name: Piney Grove Baptist Church FV Inc.

Address: 3217 Piney Grove Wilbon Road City: Fuquay-Varina State: NC Zip Code: 27526-7951

E-mail Address: wayne@williamson-insurance.com Fax: (919) 567-9917

Telephone Number: (919) 567-9580

**Applicant** (person to whom all correspondence will be sent)

Name: Loftee Smith, P.E.

Address: 111 MacKenan Drive City: Cary State: NC Zip Code: 27511

E-mail Address: lsmith@withersravenel.com Fax: (919) 238-0304

Telephone Number: (919) 469-3340 Relationship to Owner: Engineering Consultant

**Extent of Proposed Variance** (Describe the extent to which the regulation is proposed to be varied.)

This variance request is two part. One variance request is from Article 11-21-6, is for the removal of the 50' buffer in the area shown on the attached site plan. The request affects 0.61 acres (26,572 sq. ft.) of the stream buffer on-site. The second part of the variance request is to allow an encroachment for a drive aisle in the front setback for a length of 275 linear feet and 20' wide. Both variance requests are depicted on the accompanying preliminary site plan sheet.

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## ZONING HARDSHIP VARIANCE

### STATEMENT OF JUSTIFICATION

Submit required documentation to:

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PO Box 550 Wake County Office Building  
Raleigh, NC 27602-0550 336 Fayetteville Street Mall, Downtown Raleigh  
Contact Current Planning at (919) 856-6335 for additional information.

For each of the required conclusions listed below, attach a statement that explains how any existing conditions, proposed development features, or other relevant facts would allow the Board of Adjustment to reach the required conclusion, and attach any additional documents or materials that provide supporting factual evidence. Listed under each required conclusion are related principles established by case law.

**Important:** You bear the burden of presenting sufficient factual evidence to support findings of fact that allow the Board to reasonably reach each of the required conclusions. If you fail to meet that burden, the Board has no choice but to deny the application.

**1. Practical difficulties or unnecessary hardships would result from carrying out the strict letter of the regulation.**

**1a. Strict compliance with the regulation provides the property owner no reasonable use of the property.**

Ex.: It is not sufficient that the regulation would make use of the property less profitable or marketable.

Piney Grove Baptist Church has been and existence since 1820 and has occupied the current site since 1924. In addition to the parcel upon which the church is currently located, the church owned two other parcels, identified by PINs 0646639511 0646731226, prior to the effective date of the stream buffer ordinance by Wake County. The bulk of the stream buffer we are requesting to be removed is located on the parcels that were under the Church's control prior to the effective date of the Wake County stream buffer regulations. Therefore, Wake County applied the Neuse River buffer to streams within the Cape Fear River Basin creating new stream buffers that did not exist when the church had control over three of the parcels. The location of the stream buffer severely limits the expansion plans for the church. The inability to locate the proposed expansion as planned will cause for greater separation of the expansion from the existing sanctuary and parking. Due to the grade difference, the church has planned to connect the proposed and existing buildings with an elevator and tunnel to better serve

the parishioners, in particular the elderly parishioners. Additional separation of the two buildings due to the buffer constraints could severely hinder the church's ability to expand on this site.

**1b. The hardship results from application of the regulation to the property.**

Ex.: A hardship resulting from a characteristic of the property not affected by the regulation, or from application of a deed restriction, is not a relevant hardship.

The hardship does result from the direct application of Wake County's Unified Development Ordinance (UDO) regulation to the property. The church expansion is required to comply with all the UDO regulations affecting the use and parcels. One of the County's requirements is stream buffers. Wake County applied the Neuse River buffer rules countywide, which includes parcels within the Cape Fear River Basin. If the buffer requirements had not been applied within the Cape Fear River Basin, these parcels would not have been affected and the variance would not be necessary. Also, any expansion on the site would have to comply with Wake County's ordinances, such as setbacks, bufferyards, streetfronts, and public safety requirements. Due to the setback and bufferyard ordinances, the proposed expansion cannot be pulled forward on-site. In addition, at the full build-out of the expansion, we believe that a vehicular access will be necessary in the rear of the site to ensure fire department access for future expansions. Due to the effective date of the stream buffer regulations and the other ordinance requirements that have to be met, a hardship exists from direct application of Wake County's ordinances to the property.

A setback encroachment is also needed due to the application of the Highway District setback usage ordinance, which creates a hardship when applied to these parcels. Article 3-23-4 does not permit drive aisles to be located within setbacks. However, to provide cross access within the site, a front setback encroachment is needed. Besides just providing cross access within the site, this drive aisle would create a positive impact on Highway 42 since drivers would not be required to enter back onto Highway 42 or Piney Grove Wilbon road to go to a different section of the site.

**1c. The hardship is one that affects the property directly.**

Ex.: The regulation's hindrance to providing a benefit to neighboring properties or to the public is not a relevant hardship.

The hardship does affect the property directly. Due to the application of Article 11-21-6, development of the church expansion cannot occur in a practical and logical manner for either the property owner or the County. Due to the location of wetlands on-site, a large portion of PIN 0646731226, is not very accessible to the existing church location or any potential development west of the wetlands. Due to the wetland locations and the church's desire to protect the wetlands to the greatest extent practicable, the church expansion needs to occur as proposed on the attached site plan sheet.

The hardship created by the ordinance not allowing drive aisles in setbacks does affect the property directly. By creating this hardship, efficient cross access within the site cannot be achieved and vehicles will be required to enter back onto Highway 42 or Piney Grove Wilbon Road to go to a different section of the site.

**1d. The hardship is not the result of the property owner's own actions - that is, special circumstances or conditions causing the hardship exist through no fault of the property owner.**

Ex.: The hardship may not be one the property owner inflicted on himself (e.g., been due to the owner's violation of the regulation) or could have avoided.

The hardship is not the result of the property owner's own actions. The Piney Grove Baptist Church has been in existence for over 175 years. When the church began, the County did not require the 50' stream buffer. The County adoption of the Neuse River rules within the Cape Fear River Basin is why the hardship exists. The County applied the Neuse River buffer rules countywide in the early 2001's, even if the properties were within the Cape Fear River Basin. The application of these buffer rules were well after the church initially began operation. These parcels requesting the variance are located within the Cape Fear River Basin; therefore, it is the County's requirement to provide a 50' buffer that created the hardship, not the applicant's.

Also, the location of the stream, stream buffer, and wetlands aids in the hardship. These features form a convex curve and the shape of these features identifies where the development should occur on-site. The location of the wetlands and stream and associated stream buffer were not determined by the applicant, but by governing entities, such as Wake County, NC DENR, etc.

The drive aisle hardship was also created by the compliance with Wake County's UDO regulations and not be the property owner's own actions.

**1e. The hardship is peculiar to the property.**

Ex.: The hardship must be due to conditions specific to the property, and not to conditions that are neighborhood-wide or widespread throughout the jurisdiction.

The hardship is peculiar to the property. The 26,572 sq. ft. the variance has been requested for is non-continuous stream buffer. By applying the buffer regulations to this piece, the County is creating an undue burden on the property owners because it is creating an island of buffered area in the middle of usable/buildable area. In some areas, the location of the non-continuous stream buffer reduces the depth of the lot by approximately 250 feet. If the stream buffer is not removed in the area identified on the site plan, the lot depth is reduced by 250', but the development cannot occur towards the north due to the wetland locations.

Due to the site constraints created by the UDO and existing grades, in order to meet the UDO requirements and alleviate any public safety concerns, the hardship for creating a continuous vehicular movement on-site is peculiar to this property.

**2. The variance would be in harmony with the general purpose and intent of the Zoning Ordinance and preserve its spirit.**

Ex.: A variance may not permit the expansion or extension of a nonconforming use or feature (which the Zoning Ordinance intends to be made conforming or abandoned), and may not permit a land use or basic development intensity not already permitted (varying basic use and intensity regulations that define zoning districts may be done only through the rezoning or text amendment processes). The extent of a variance must be limited to the minimum necessary to alleviate the hardship.

The variance is in harmony with the general purpose and intent of the UDO and preserves its spirit. Although we are requesting a stream buffer variance, we are attempting to protect the other environmentally sensitive areas (i.e. wetlands) on-site as much as practicable while meeting the development requirements stated in the UDO. Also, the stream is non-continuous and there is no stream buffer on-site downstream. The stream flows toward NC Highway 42; therefore, the variance we are requesting affects the most northern portion of the stream buffer and preserves the southernmost portion of the stream buffer.

Both variance requests would also be in harmony with the purpose and intent of the Ordinance because in addition to meeting the other UDO requirements, public safety

concerns are being addressed as much as possible to protect visitors' general welfare and to alleviate any future problems that might arise in the future with the lack of cross access either along the front or in the rear of the church.

Also, the church is a permitted use and would be considered low intensity use in Highway District (HD) zoning district when compared to uses that are typically seen within a HD zoning designation. A church is a compatible use and creates a low impact on nearby residential development. By approving the stream buffer variance and front setback encroachment request, there are not any foreseen negative impacts that would impact adjacent property owners. One reason for the UDO is to protect adjacent properties and improve the community's quality of life. By approving both requests in this variance application, it will improve the community's quality of life by allowing for an expansion of a quality service desired in the community, which has been in operation for over 100 years.

**3. In the granting of the variance, the public safety and welfare would be assured and substantial justice done, both for the landowner and the public at large.**

**3a. The granting of the variance will not materially affect adversely the health or safety of persons residing or working in the neighborhood of the proposed use, and will not be materially detrimental to the public welfare or injurious to property or improvement in such neighborhood.**

Ex.: A variance may not permit development that would be dangerous to neighbors, change the essential character of the neighborhood, or create additional difficulties re traffic, fire, water supply, sewerage, flooding, etc..

The granting of the variance will not materially affect adversely the health or safety of persons residing or working in the neighborhood of the proposed use, and will not be materially detrimental to the public welfare or injurious to property or improvement in such neighborhood. Except for the 275' linear feet encroachment for a drive aisle in the front setback, all other UDO requirements will be met, which have been established by Wake County to protect the health and safety within the community. We believe that this encroachment also will aid in increasing the public safety and welfare because we would be providing cross access on the site, which would assist public safety vehicles in their response time by avoiding entering onto Highway 42 to enter another section of the site. Also, this use is one of the lowest impact uses permitted within the UDO in a HD zoning district. The use is compatible with the surrounding community and provides a beneficial service to the surrounding community.

**3b. The granting of the variance is necessary for the preservation and enjoyment of substantial property rights.**

Ex.: The harm to the property owner from denying the variance, however, must outweigh the harm to neighbors and the public interest from granting the variance.

The granting of the stream buffer variance is necessary to preserve and enjoy substantial property rights. When the County applied the Neuse River buffer regulations to parcels within the Cape Fear River Basin, property that was once developable now has to be buffered. The stream buffer is non-continuous and due to the location of the required stream buffer, the amount of developable area has been reduced. Also, the granting of this variance request will provide the property owner with logical and reasonable development patterns on-site and increasing their ability to provide a service to the community.

The granting of the front setback encroachment is necessary to preserve and enjoy substantial property rights. The cross access that would be achieved by this

Project Tracking Form  
Board of Adjustment  
Special Use Permit/Variance/Appeal

Project Name & Request      Variance Request for removal of a 50' buffer and an encroachment within a required yard – Piney Grove Baptist Church

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Initial Submittal Date:      01/26/09

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DRS Meeting Date:      02/12/09

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DRS Comments Finalized & Distributed:      02/27/09

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Revised Application Submittal Date:      03/06/09

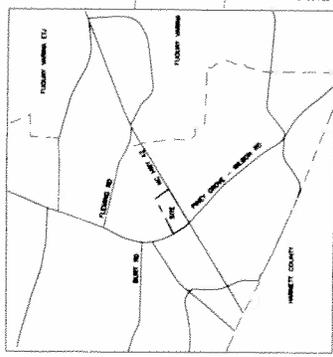
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Board of Adjustment Meeting Date(s):      05/12/09

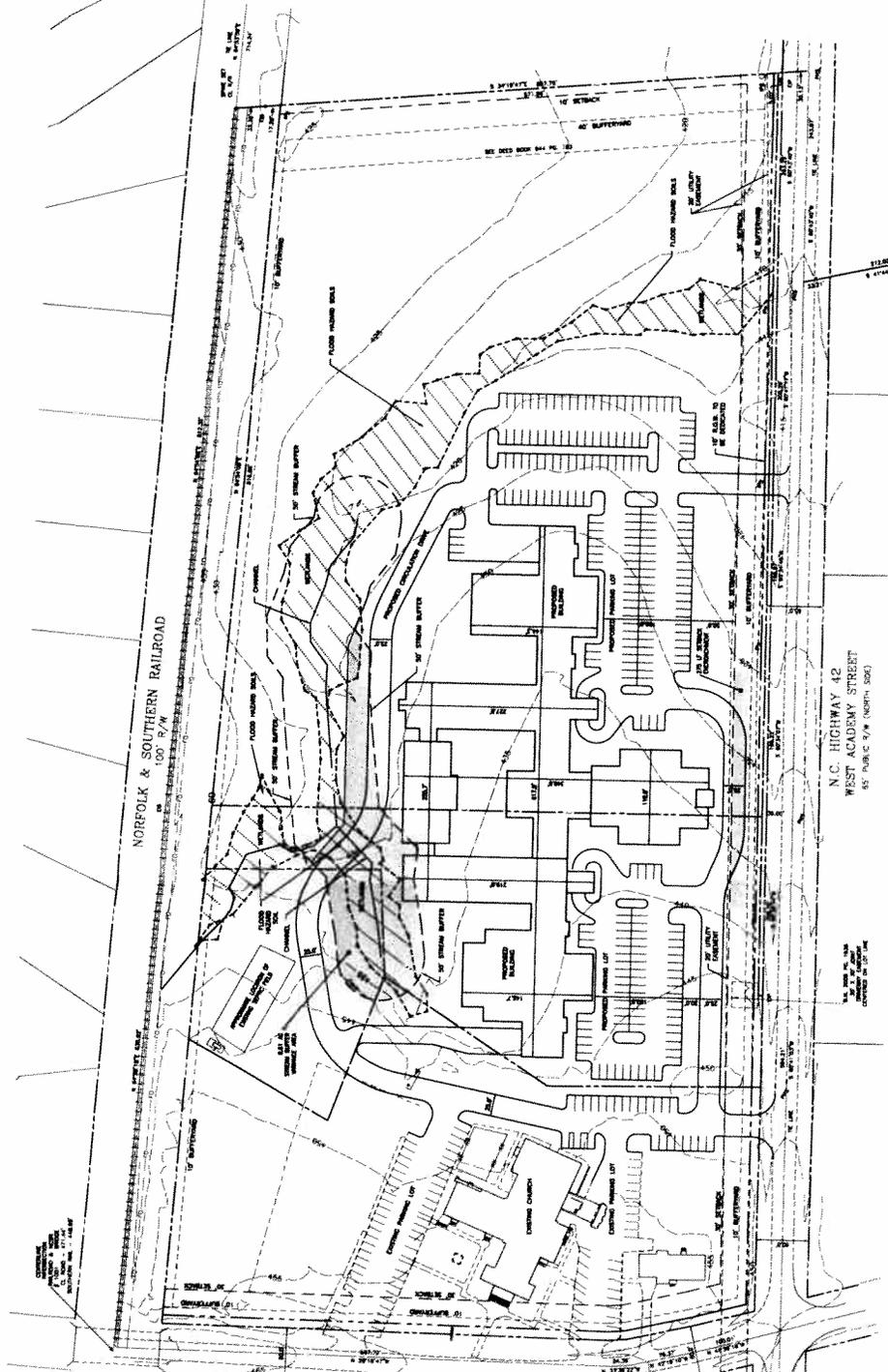
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**BA V 2107-09 (PIN# 0646.04 73 4587)** A Zoning Hardship Variance Request for a.) the removal of a 50'buffer and b.) an encroachment within a front setback. The property is located at 3337 Piney Grove Wilbon Road and is located on the east side of Piney Grove Wilbon Road, between Piney Grove Wilbon Road and West Academy Street. The property is zoned HD (Highway District) and is located within the Town of Fuquay Varina's Short Range Urban Services Area.





PINEY GROVE - WILSON ROAD  
NCSR # 1101  
60' PUBLIC RIGHT OF WAY



**PREPARED FOR:**  
PINEY GROVE BAPTIST CHURCH  
1311 PINEY GROVE WILSON ROAD  
ELQUAY VARIANA  
WAKE COUNTY, NORTH CAROLINA  
PHS: 2040-31447  
CURRENT USE: EXISTING CHURCH

**NOTES:**  
1. THE EXISTING CHURCH AND OFFICE BUILDINGS SHOWN ON THIS PLAN WERE PROVIDED BY THE ARCHITECTURAL FIRM OF BENTON, BOWEN AND ASSOCIATES, INC., 1000 W. WILSON ROAD, WAKE COUNTY, NC 27159.  
2. PREPARED FOR PINEY GROVE BAPTIST CHURCH.



GRAPHIC SCALE  
1" = 100'

Sheet No. **C2.0**

**WITHERS & RAVENEL**  
ENGINEERS | PLANNERS | SURVEYORS

ZONING VARIANCE SITE PLAN

PINEY GROVE BAPTIST CHURCH  
WAKE COUNTY  
NORTH CAROLINA  
ELQUAY VARIANA

DATE:	11/11/2011
BY:	ELIZABETH
FOR:	W/00101
PROJECT:	
SCALE:	
PROJECT NO.:	
DATE:	
BY:	
FOR:	
PROJECT:	
SCALE:	
PROJECT NO.:	