



# ZONING HARDSHIP VARIANCE APPLICATION

Submit required documentation to:  
Wake County Planning, Development and Inspections  
PO Box 550 Wake County Office Building  
Raleigh, NC 27602-0550 336 Fayetteville Street Mall, Downtown Raleigh  
Contact (919) 856-6335 for additional information.

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

**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:

4-73-1 ON PAGE 4-54 OF UDO  
REQUESTING A VARIANCE TO THE LIMIT OF NO MORE THAN  
A TOTAL OF 45 DAYS OF OPERATION PER CALENDAR YEAR FOR  
OUTDOOR SEASONAL SALES.

### Property

Parcel Identification Number: WAKE Co. GIS 0788081777

Address: O LEESVILLE ROAD, RALEIGH NC

Location: EAST side of LEESVILLE ROAD, at/between  
(north, east, south, west) (street)

LEESVILLE ROAD and NORWOOD ROAD  
(street) (street)

Total site area in square feet and acres: 147,581 square feet 3.388 acres

Zoning District(s) and Overlay Districts (if any) and land area within each: R-40W

List Conditions of any Conditional Use Zoning Districts:

Present land use(s): AGRICULTURE - FARM

How is this proposed use a public necessity? PROVIDES COMMUNITY WITH A CONVENIENT LOCATION TO PURCHASE NC GROWN PRODUCTS SUCH AS FLOWERS, PUMPKIN, AND CHRISTMAS TREES.

What is impact on surrounding neighborhood and adjacent properties?  
NO NEGATIVE IMPACT THAT WE CAN SEE. POSITIVE IMPACT IS THAT WE ADD COLOR AND INTEREST TO THE PROPERTY

### Property Owner

Name: LOIS SPIKES BERRY

Address: 10909 LEESVILLE ROAD

City: RALEIGH State: NC Zip Code: 27613

E-mail Address: Fax:

Telephone Number: 919-848-3101

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

Name: Don A. Smith

Address: PO Box 130

City: JEFFERSON State: NC Zip Code: 28640

E-mail Address: WPM\_JEFFERSON@YAHOO.COM Fax: 336-846-1871

Telephone Number: 336-846-1870 Relationship to Owner: RENTER

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

SEE ATTACHED

All property owners must sign this application unless one or more individuals are specifically authorized to act as an agent on behalf of the collective interest of some or all of the owners (provide a copy of such authorization).

The undersigned property owner(s) hereby authorize the filing of this application (and any subsequent revisions thereto). The filing of this application authorizes the Wake County staff to enter upon the site to conduct relevant site inspections as deemed necessary to process the application.

Signature: Lain Spitzer Berry Date: 3-7-11

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

The undersigned applicant hereby certifies that, to the best of his or her knowledge and belief, all information supplied with this application is true and accurate.

Signature: [Signature] Date: 3-7-11

Notes: All documents and maps submitted as required become the property of Wake County. The Wake County Unified Development Ordinance is on the web at [www.wakegov.com](http://www.wakegov.com).

## EXTENT OF PROPOSED VARIANCE

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We are seeking a variance to the 45 day temporary use permit to enable us to offer to the local community three separate seasonal products: flowers in the spring, pumpkins in the fall, and Christmas trees in the winter. We are asking for a variance from 45 days to 135 days.

In the spring we operate under the name of 'GERTIES FLOWERS AND PLANTS'. We offer hanging baskets, mixed planters, vegetable plants, perennials, bedding plants, and flowering shrubs. In 2010 we were on the property from April 7<sup>th</sup> through June 25<sup>th</sup> (80 days).

In the fall we operate under the name of 'THE PUMPKIN PATCH'. We offer pumpkins, gourds, straw, corn shocks, and mums. In 2010 we were on the property from October 1<sup>st</sup> through October 31<sup>st</sup> (31 days).

In the winter we operate under the name of 'BOOGER MOUNTAIN CHRISTMAS TREES'. We offer real Christmas trees, wreaths, and garland. In 2010 we were on the property from November 26<sup>th</sup> through December 19<sup>th</sup> (24 days).

# ZONING HARDSHIP VARIANCE STATEMENT OF JUSTIFICATION

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1a – 45 day temporary use limit does not allow enough time for all three seasonal sales. We have been operating on the Berry property on Leesville road since the fall of 2005. We provide a safe and natural location to which families can bring their children in order to enjoy the seasonal products and atmosphere. We trust the community enough to run the displays on an honor system when we have no staff on the lot.

1b – The 45 day temporary use limit does not allow us to provide the community with all the products that they have come to expect from the location.

1c - The community has come to expect to see a spring flower lot, a fall pumpkin lot, and a winter Christmas tree lot at the location. It has been our experience that if we move one of our locations even less than one half mile, we will be lost by some of the residents. We are very comfortable with the area and the residents and feel that we are part of the landscaping on the Berry property.

1d – We were not aware of the 45 day limit on temporary use in Wake County. We have operated in the triangle area since 1991 with multiple Christmas tree lots and pumpkin lots. We have always obtained permits from city of Raleigh, town of Cary, city of Durham, town of Fuquay-Varina, etc. All that was required for county locations was a temporary power permit to have Power Company connect power. We were unaware of 45 day limit on temporary use in Wake County that came into effect with the 2006 Wake County UDO.

1e – The hardship is peculiar to the property because we have been operating on the property since the fall of 2005. We are part of the community now.

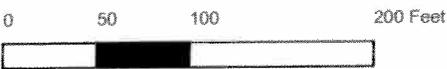
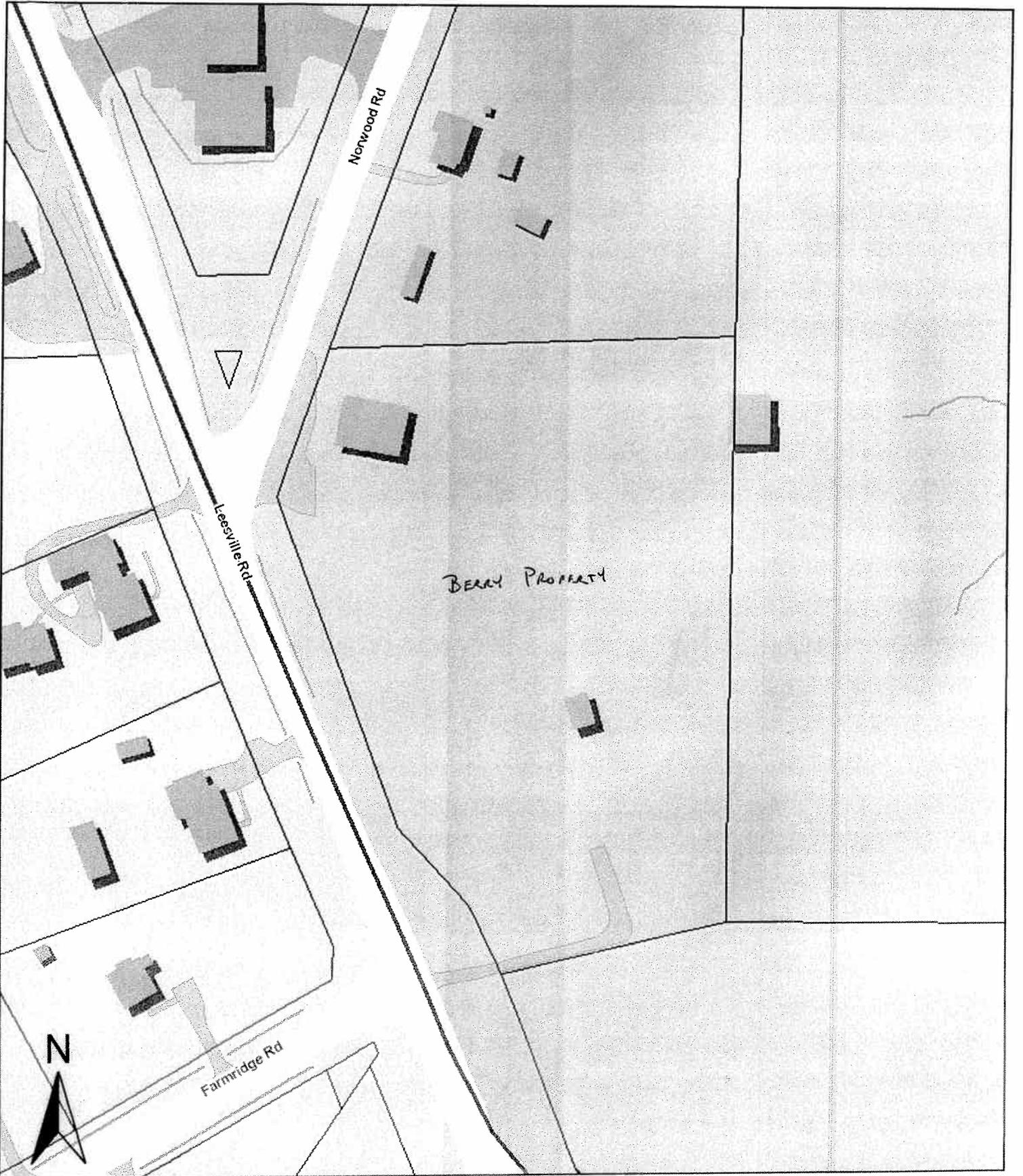
2

Zoning ordinance 4-73 (outdoor seasonal sales) was created to allow seasonal sales of products to local communities. The 45 day limit is to keep the product seasonal as opposed to a permanent location that would sell all year round. We are asking for a variance of 135 days so that we may offer two other products on a seasonal basis. Each season is completely separate from the other seasons and the property is vacated between seasons. No permanent structure has been built.

3

3a – The granting of the variance will not affect the health or safety of the neighborhood or be materially detrimental to the public welfare. We are offering agricultural items on agriculture property. We are not doing any harm to the property or the watershed.

3b – The granting of the variance is necessary for the preservation of the agricultural theme of the property. The property has been in the Berry family since 1902 and has always been in agricultural production. We produce 100% of the fall and winter products at our farms located in Ashe County, NC. The spring products are mainly produced locally in the Raleigh area. We feel the old-timey feeling of our operation is in keeping with the agricultural designation of the property.



SITE PLAN

