

**City of Wilmington**  
**Board of Adjustment**

**Item #5**



Board of Adjustment  
December 12<sup>th</sup>, 2024

**REQUEST FOR A VARIANCE**  
**BADV-18-1224**

Patrick O'Mahony, (910) 341-326, patrick.omahony@wilmingtonnc.gov

<i>Code Section(s)</i>	<b>Land Development Code:</b> Section 18-316(B): Protected trees Section 18-615: Board of adjustment
<b>Subject Property</b>	<b>809 N Kerr Avenue</b>
<i>Parcel ID</i>	R04906-001-002-000
<i>Zoning</i>	R-10, Residential
<i>Request</i>	Variance to tree preservation standards regarding specimen trees in the Commercial Services (CS) district.
<i>Owner</i>	Cameron Company, LTD <span style="float: right;">(910) 251-2324</span> c/o Hill Rogers PO Box 3649 Wilmington, NC 28406
<i>Agent</i>	Kelley Development Company, LLC <span style="float: right;">(214) 535-0550</span> 912 Village Crossing Drive Chapel Hill, NC 27517

**GENERAL INFORMATION**

Subject Property Area	Approximately 108,717 square feet or 2.5 acres
Annexation Date	December 27 <sup>th</sup> , 1964
History if applicable	N/A

**Analysis & Research**

1. The subject property at 809 N Kerr Avenue is currently vacant.
2. The owner has proposed to utilize the subject parcel to access property located to the rear for housing, to include some senior affordable housing.
3. No site plan has been submitted for review by the Technical Review Committee.
4. The applicant has identified 2 specimen trees within the proposed access parcel that would potentially conflict with the required right-of-way.
5. Land Development Code Section 18-316 (B) states that protected trees existing on a site prior to development or redevelopment that meet the size threshold prescribed in Table 18-316.1 shall be retained.
6. Land Development Code Section 18-316 (B) states that removal of specimen trees shall only be authorized by a variance from the board of adjustment.
7. **The applicant has requested a variance to Land Development Code Section 18-316 (B.2) to remove two specimen trees from the property.**

8. The applicant has not demonstrated that the site cannot be developed without removal of the specimen trees.
9. Per section 18-316 (F) of the Land Development Code, removed protected trees shall be mitigated on site using the same or comparable species. Mitigation for significant and specimen trees shall occur at a rate of 200 percent.
10. The project is proposed to remove 2 specimen trees. City Code Section 18-316 (F) requires for every one inch of trees removed, measured in diameter breast height, two inches of mitigation trees, measured in caliper inches shall be planted, which computes to a total of 414 caliper inches in this instance.
  - a. 25-inch long leaf pine \* 2 caliper inches = 50 caliper inches.
  - b. 24.5-inch long leaf pine \* 2 caliper inches = 49 caliper inches.
11. On November 1, 2024, planning staff accepted an application for a **variance to the tree preservation standards** for a property in the R-10 district pursuant to Land Development Code, Section 18-316.
12. This matter is set for hearing by the Board of Adjustment on December 12, 2024.

**Should the Board vote to grant the requested variances, staff proposes the following conditions:**

1. No tree removal shall occur until final site plan approval has been issued by the TRC.
2. The applicant shall work with city staff to design the project in such a manner that specimen trees and other regulated trees are preserved and protected, including employing flexibility of setbacks and waivers from technical standards and the allowance for encroachments into the critical root zone more than what is allowed pursuant to LDC Section 18-316, where appropriate.
3. Any changes made to the site plan that result in the ability to preserve specimen trees shall invalidate the variance as applicable to those trees.

**NEIGHBORHOOD CONTACT**

<b>City Notifications:</b>	<b>Board of Adjustment</b>
Adjacent Letters	11/29/2024
Property Posted	11/27/2024
Advertisement Dates	12/6/2024

**ATTACHMENTS**

- 1.) Application (received 11/1/2024)
- 2.) Location and Zoning Map (2021)
- 3.) Applicant attachments & site plan
- 4.) City Code Chapter 18, Land Development Code references:
  - a. Section 18-316: Tree preservation
  - b. Section 18-615 Board of adjustment

# **ATTACHMENT**

**1**

127 Racine Dr.  
Post Office Box 7068  
Wilmington, NC 28406-7068

P: 910.794.4835  
F: 910.794.4877  
sbf@wardandsmith.com

November 1, 2024

VIA HAND DELIVERY

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NOV 01 2024

PLANNING DEPARTMENT

City of Wilmington  
Planning and Development  
Attn: Brian Chambers and Patrick O'Mahony  
929 North Front Street  
Wilmington, NC 28401

RE: Variance Application on Behalf of Applicant Kelley Development Company, LLC

Dear Brian and Patrick:

Enclosed, please find a Variance Application on Behalf of Kelley Development Company, LLC for removal of two (2) Specimen Trees from New Hanover County Parcel ID R04906-001-002-000. The attached includes the following:

- PDF Variance Application
- Exhibit A – Narrative Responses
- Exhibit B – Plot Plan
- Exhibit C – Tax Map of Applicable Parcel
- Exhibit D – Agent Authorizations
- Application Fee in the amount of \$500.00

Per our discussion prior to filing this application, we have not included tax parcel information or envelopes for adjacent landowners. We understand that the City now prepares these documents. Please let us know if that understanding is incorrect, and we will prepare that list and envelopes promptly.

Please do not hesitate to reach out with any questions or concerns.

Yours very truly,



Samuel B. Franck

**CITY OF WILMINGTON  
STATE OF NORTH CAROLINA**

**APPLICATION FOR A VARIANCE**

**PURPOSE OF VARIANCE** – A Variance is the official allowance of a variation from the dimensional requirements of the City Land Development Code or other development regulations. An applicant for a variance must demonstrate valid reasons which create a need for a Variance. These reasons cannot be strictly economic in nature but must generally involve some physical problem with the subject property which will not allow it to be developed in a reasonable manner if City development regulations are followed literally, such as a lot which is substandard in area or width.

**BOARD OF ADJUSTMENT** - The Board of Adjustment, or BOA, is the official City Board that considers requests for variances. The BOA receives sworn testimony at its quasi-judicial hearings and issues decisions on variance requests based on this testimony. It is the responsibility of each applicant for a Variance to attend the BOA meeting and present sworn testimony in support of the request.

**REASON FOR VARIANCE REQUEST** – Explain in your own words why you are requesting a Variance. Be sure to clearly indicate the problem(s) you will experience in complying with the City development regulations. (Attach additional sheets if needed.)  
See Exhibit A, attached.

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The BOARD OF ADJUSTMENT is required to make the following four (4) findings before granting a Variance. Write a thorough response to each of these items.

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; See Exhibit A, attached.
2. The hardship results from conditions that are peculiar to the property, such as location, size, or topography. Hardships resulting from conditions that are common to the neighborhood or the general public may not be the basis for granting a variance; See Exhibit A, 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 Exhibit A, 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 Exhibit A, attached.

Application No. \_\_\_\_\_

ATTACH PLOT PLAN DESCRIBING VARIANCE REQUEST See Exhibit B, attached.

**PROPERTY LOCATION INFORMATION**

Street address of subject property 809 N. Kerr Ave, Wilmington, NC

Tax Parcel Number of subject property R04906-001-002-000. See Exhibit C, attached.

**ATTACH TAX PARCEL & OWNERSHIP INFORMATION FOR ADJACENT PROPERTIES  
(Include stamped, self-addressed envelopes) \*\***

**APPLICANT INFORMATION**

Name/Address/Telephone/Email

Kelley Development Company, LLC  
Name: c/o Ted Heilbron

Address: 912 Village Crossing Dr, Chapel Hill, NC 27517

Phone #: (214) 535-0550

Email: tedh@kelleydc.com

**OWNER INFORMATION**

Name/Address/Telephone/Email

Cameron Company, L.L.C. c/o Hill Rogers

1201 Glen Meade Road, Wilmington, NC 28401

(910) 251-2324

hill@cameronco.com

**ATTACH AGENT FORM IF THE APPLICANT IS NOT THE OWNER** See Exhibit D, attached.

DATE 11/1/24

APPLICANT'S SIGNATURE

Samuel B. Franck, Ward and Smith, P.A.  
On behalf of Kelley Development Company, LLC

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\*\*Pursuant to our discussion prior to filing this application, we understand that these are no longer required as part of this submittal as the City now prepares the list and envelopes.

**AUTHORITY FOR APPOINTMENT OF PERSON  
TO ACT ON MY BEHALF**

The undersigned owners, Cameron Company, L.L.C. and Smith Creek Land, L.L.C., do hereby appoint Kelley Development Company, LLC and its legal counsel Ward and Smith, P.A. to act on their behalf for the purpose of petitioning, applying, and otherwise interacting with the City of Wilmington for: a) all applications and approvals, including but not limited to any Design Adjustment Committee Application, Board of Adjustment Variance Application, or Rezoning Application (including conditional rezoning), for the real property generally located at 809 N. Kerr Ave., Wilmington, NC with New Hanover County Parcel ID Number R04906-001-002-000 and the real property with New Hanover County Parcel ID R04906-001-030-000 (as applicable for each owner, "Property"); b) all matters related to any proposed rezoning of the Property or variances for the Property; and c) appeals to the Board of Adjustment or City Council regarding the Property.

The owners do hereby covenant and agree with the City of Wilmington that said people have the authority, without limitation, to do the following acts for and on behalf of the owners:

- (1) To submit a proper petition or application and the required supplemental materials;
- (2) To appear at public meetings and quasi-judicial hearings to give testimony, make commitments on behalf of the owners, and to accept conditions or recommendations regarding the Property; and
- (3) To act on the owners' behalf without limitation with regard to any and all things directly or indirectly connected with or arising out of any petition or application.

This appointment agreement shall continue in effect until final disposition of the petition(s) or application(s) submitted in conjunction with this appointment.

*-Signatures on Following Page-*

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Appointees' Name, Address, Telephone & Email:

Kelley Development Company, LLC  
912 Village Crossing Dr.  
Chapel Hill, NC 27517  
tedh@kelleydc.com  
214-535-0550

Ward and Smith, P.A.  
Post Office Box 7068  
Wilmington, NC 28406  
sbf@wardandsmith.com  
910-794-4800

Owners:

Cameron Company, L.L.C.

By: Bruce B. Cameron  
Name: BRUCE CAMERON IV  
Title: MANAGER

Date: 28-OCT-2024

Smith Creek Land, L.L.C.

By: Bruce B. Cameron  
Name: BRUCE CAMERON IV  
Title: MANAGER

Date: 28-OCT-2024

# **ATTACHMENT**

**2**



Martin Luther King Jr Pkwy

N Kerr Ave

BADV-18-1224

Indica Ct

Tabor Ln

Sunglow Dr

Fairlawn Dr

New Hanover County NC

**Board of Adjustment**

11/4/2024

BADV-18-1224 — Aerial Map

809 North Kerr Avenue

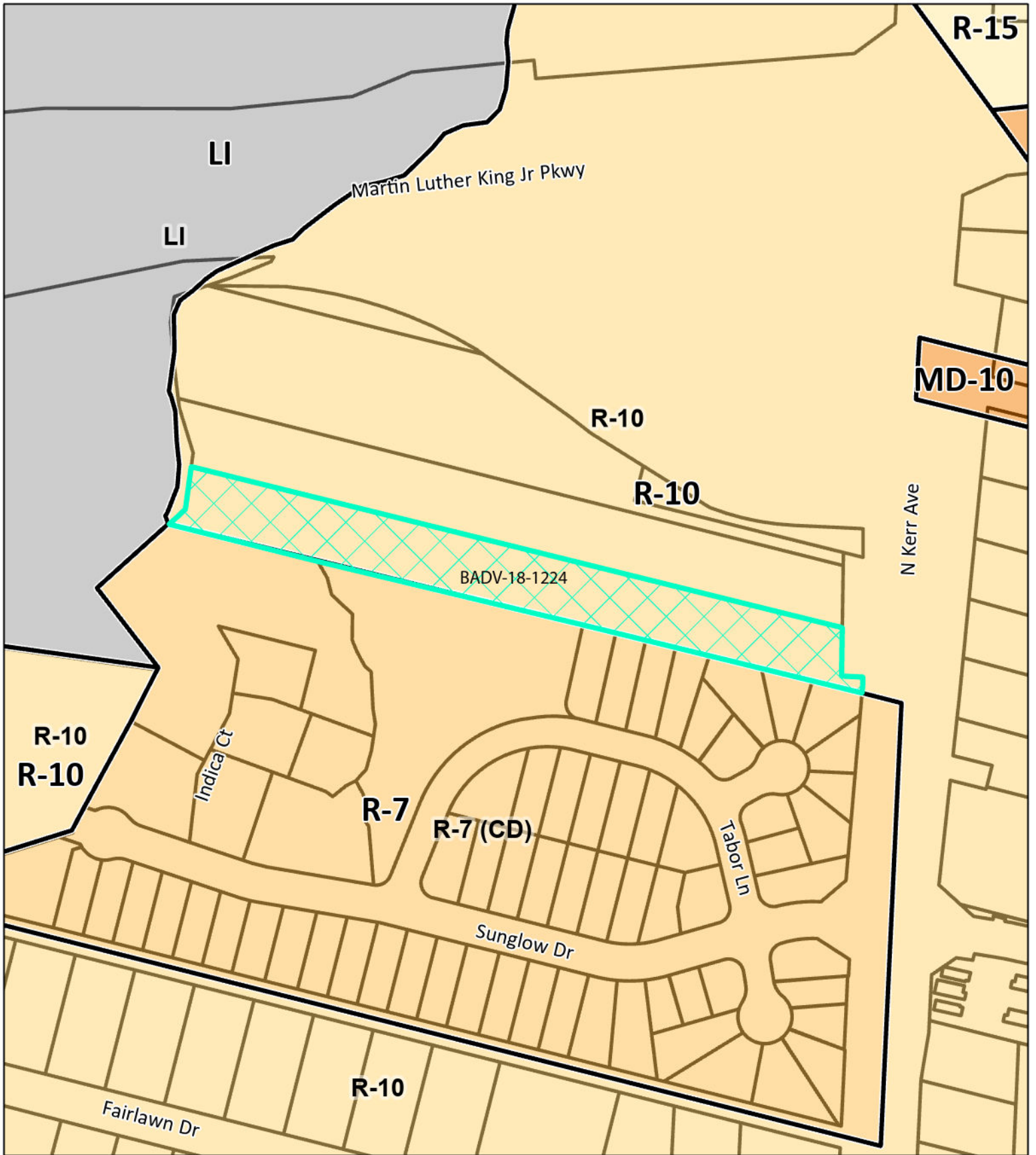


 Site

 Zoning



02550  
  
 Feet



Zoning  
 Parcels  
 Board of Adjustment

0 50 100  
 Feet



**Board of Adjustment**

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**BADV-18-1224 — Zoning Map**

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**809 North Kerr Avenue**

11/4/2024



# **ATTACHMENT**

**3**

**Exhibit A to Variance Application**

**Narrative Responses**

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**Reason for Variance Requests:**

Kelley Development Company, LLC ("Kelley") plans to develop of an access road along New Hanover County Parcel ID R04906-001-002-000 ("Access Parcel") to provide a roadway connection from adjacent Parcel ID R04906-001-030-000 ("Adjacent Parcel") to North Kerr Avenue and in connection with the development of residential homes, including some senior affordable housing on the Adjacent Parcel. The Access Parcel is a long, narrow parcel that currently sits vacant and given its unique shape will most likely be utilized as the applicant intends here, as access from the Adjacent Parcel to North Kerr Avenue.

The Access Parcel currently includes one (1) 25" DBH longleaf pine and one (1) 24.5" DBH longleaf pine as shown on the Plot Plan attached as Exhibit B, both of the same being located directly in the pathway of a reasonable access road that could be built along the Access Parcel. Table 18-316.1 of the Wilmington Land Development Code indicates that any long leaf pine with a minimum diameter at breast height (DBH) of 24 inches is considered a Specimen Tree that requires a variance to remove pursuant to Section 18-316(B)(2). Accordingly, Kelley hereby requests a variance pursuant to Section 18-316(B)(2) of the Wilmington Land Development Code in order to remove these two (2) trees.

The size and location of the Access Parcel already extremely limit the potential use of the same. The parcel is only about 100ft at its widest point, making the highest and best use of this parcel as access from the Adjacent Parcel to North Kerr Avenue. However, both Specimen Trees are located toward the center of the Access Parcel. Therefore, even used as an access road, the dimensions of the parcel and the location of the Specimen Trees make it infeasible for Kelley to properly construct a reasonable 60-foot right of way with pedestrian access according to City standards without removal of the two Specimen Trees.

**Required Findings:**

1. Unnecessary hardship would result from the strict application of the ordinance.

Without approval of the requested variance, the Access Parcel cannot be reasonably developed to provide a 60-foot right of way and otherwise provides very few alternative uses. Accordingly, preventing removal of the Specimen Trees would create an unreasonable hardship by preventing the highest and best use of the property, and would significantly hinder the most reasonable uses of the Access Parcel.

Additionally, disallowing removal of the Specimen Trees would also greatly impact the ability of any applicable owner to use the Adjacent Parcel. Given the location of nearby roads and the general shape and layout of the Adjacent Parcel, the Access Parcel is the most feasible route to provide eastern access from the Adjacent Parcel to a public road. Accordingly, if the Specimen Trees cannot be removed, not only would that likely prevent reasonable use of the Access Parcel, but that would also likely inhibit the use of the Adjacent Parcel.

2. The hardship results from conditions that are peculiar to the property, such as location, size, or topography.

The hardship arises from the peculiar size, location, and dimensions of the Access Parcel. As indicated above, the Access Parcel is uniquely narrow, spanning only about 100ft at its widest point. The long, narrow shape of the parcel and its location next to a parcel currently without direct eastern access to a public right of way makes the highest and best use of the Access Parcel a roadway. The development of a reasonable 60' right of way with sidewalks to provide safe, multimodal, and efficient access would require a pathway that necessitates removal of the Specimen Trees.

Additionally, as noted above, the Specimen Trees are located on the Access Parcel in such central positions as to prevent the construction of a reasonable access road in accordance with the City's requirements. Accordingly, the hardship results from the conditions that are peculiar to the Access Parcel.

3. The hardship did not result from actions taken by the applicant or property owner.

The hardship arises from the size and dimensions of the Access Parcel, the location of the Access Parcel, and the location of surrounding properties. The need for a variance does not arise from Kelley's creation of any burden, but rather is necessitated by peculiar site conditions coupled with the need for compliance with other aspects of the Wilmington Land Development Code. These physical conditions, which are inherent in the site itself, require a variance pursuant to Section 18-316 of the Wilmington Land Development Code.

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.

Any attempt at narrowing the access road or altering the location of the access road within the Access Parcel would not only conflict with City Code standards, but would also likely impact the free flow of traffic and the safety of potential motorists and pedestrians along that road. Accordingly, allowing

the removal of the Specimen Trees ensures that public safety is secured and substantial justice is achieved.

Additionally, the variance is consistent with the spirit, purpose, and intent of the ordinance by providing additional street connections as well as pedestrian connections from the Adjacent Parcel. Section 18-523 of the City Code specifically highlights the intention to provide a safe, direct, well-connected street network. This Section calls for stubbing streets to adjoining property to allow for multiple access points to a subdivision. For example, Section 18-523(D)(1) states that streets shall be interconnected and "shall connect with adjacent streets external to the subdivision to provide multiple routes for pedestrian and vehicle trips from, to, and within the subdivision," and Section 18-523(D)(3) states that "where development adjoins undivided property, stub streets shall be extended to the adjacent property without any restrictions or prohibitions preventing future extension of the stub street into the adjacent property to provide access to the undeveloped property." Section 18-502 of the City Code likewise encourages cross-access between properties.

Moreover, the proposed variance would be consistent with the Create Wilmington Comprehensive Plan theme of Getting Around. The Comprehensive Plan highlights the need for interconnectivity and providing an inclusive, connected community. By allowing this variance, the Access Parcel may be used for its highest and best use as an access road to the Adjacent Parcel. North Kerr Avenue is both a major corridor and an existing green connection, so providing additional access to this road would provide the multimodal interconnectivity the City has encouraged in its policy documents.

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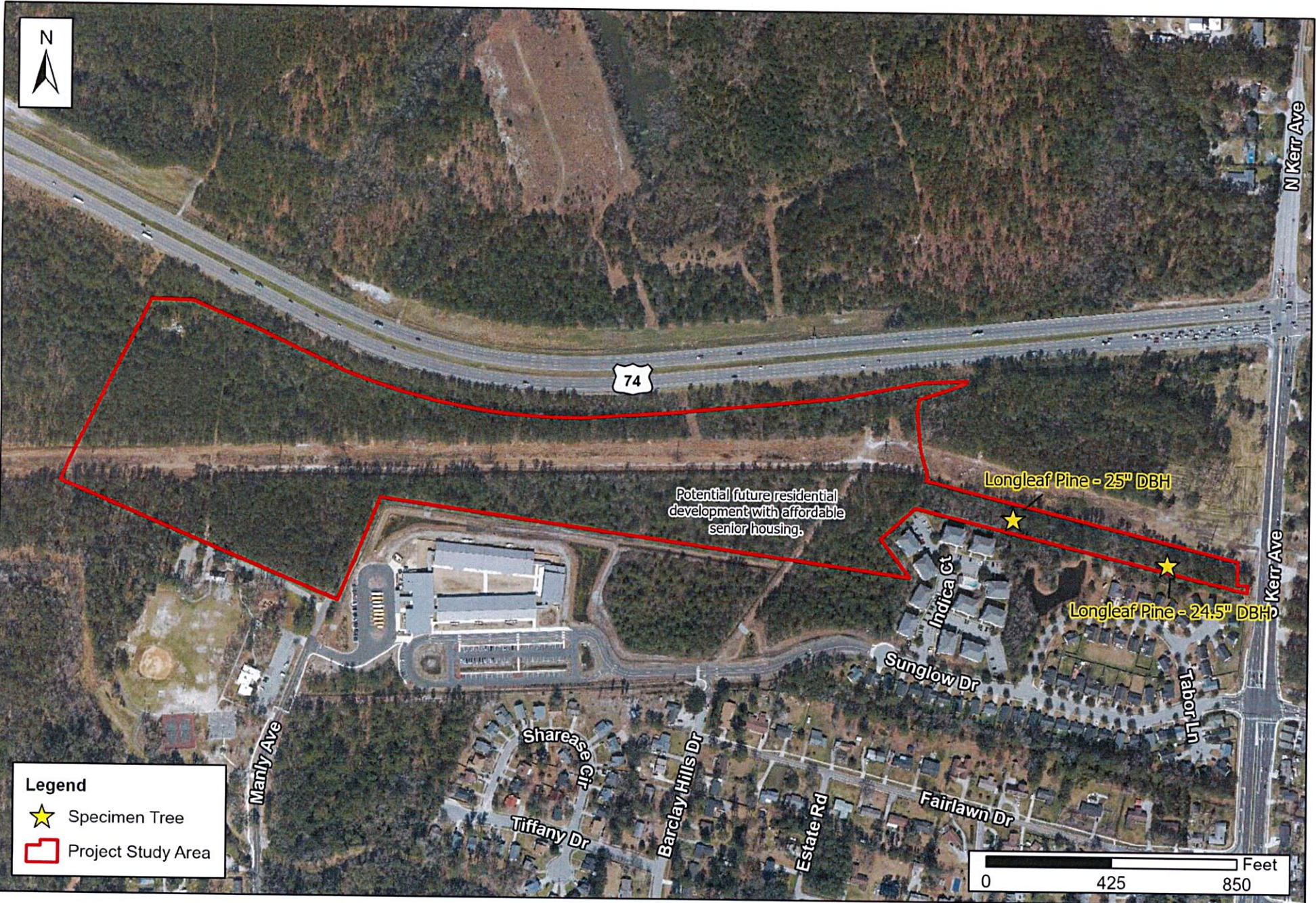


Figure 1: Specimen Tree Overview Map  
 The Pines at Manly Ave  
 Wilmington, New Hanover County, NC  
 October 2024

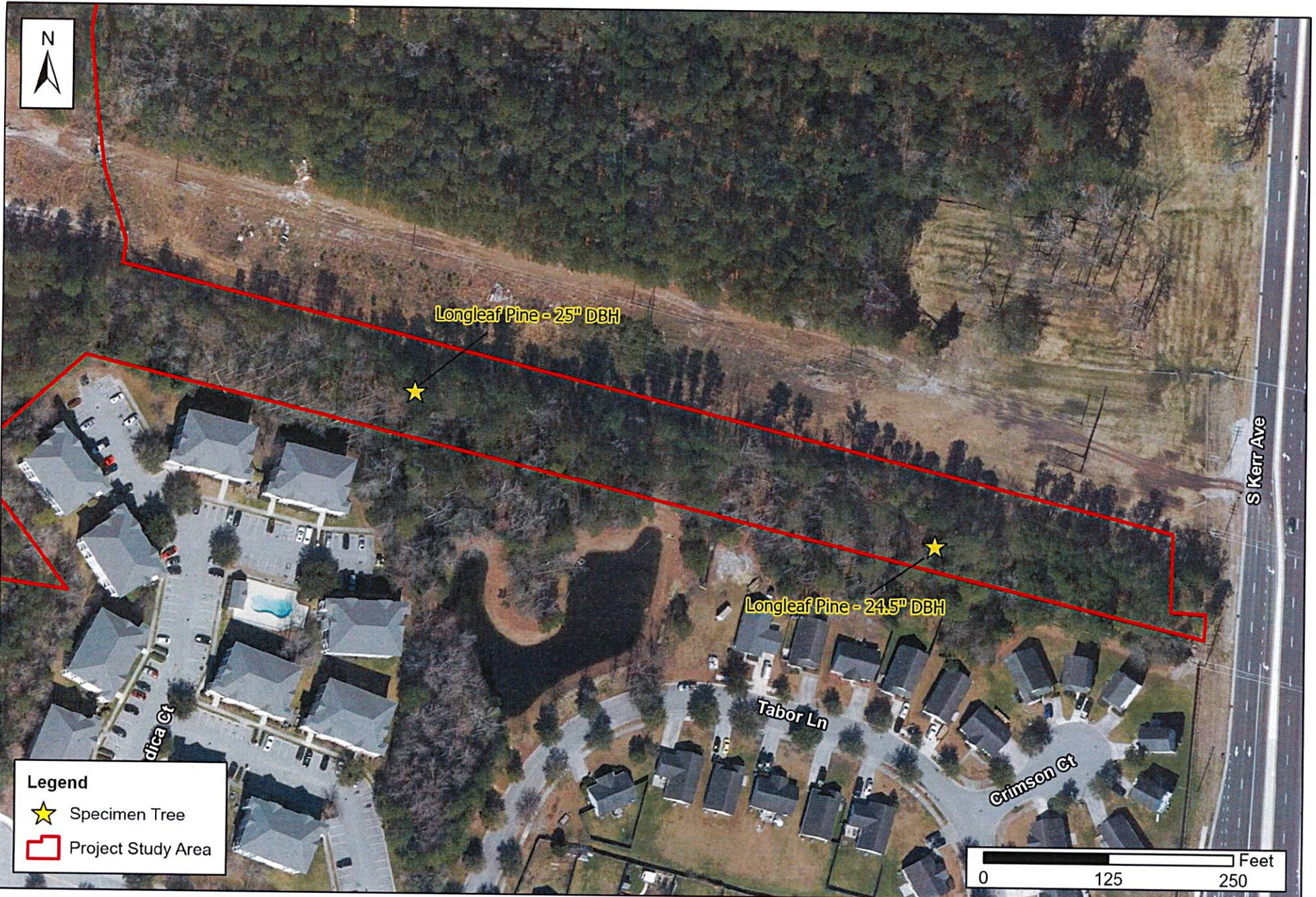


Figure 1.1: Specimen Tree Overview Map  
The Pines at Manly Ave  
Wilmington, New Hanover County, NC  
October 2024

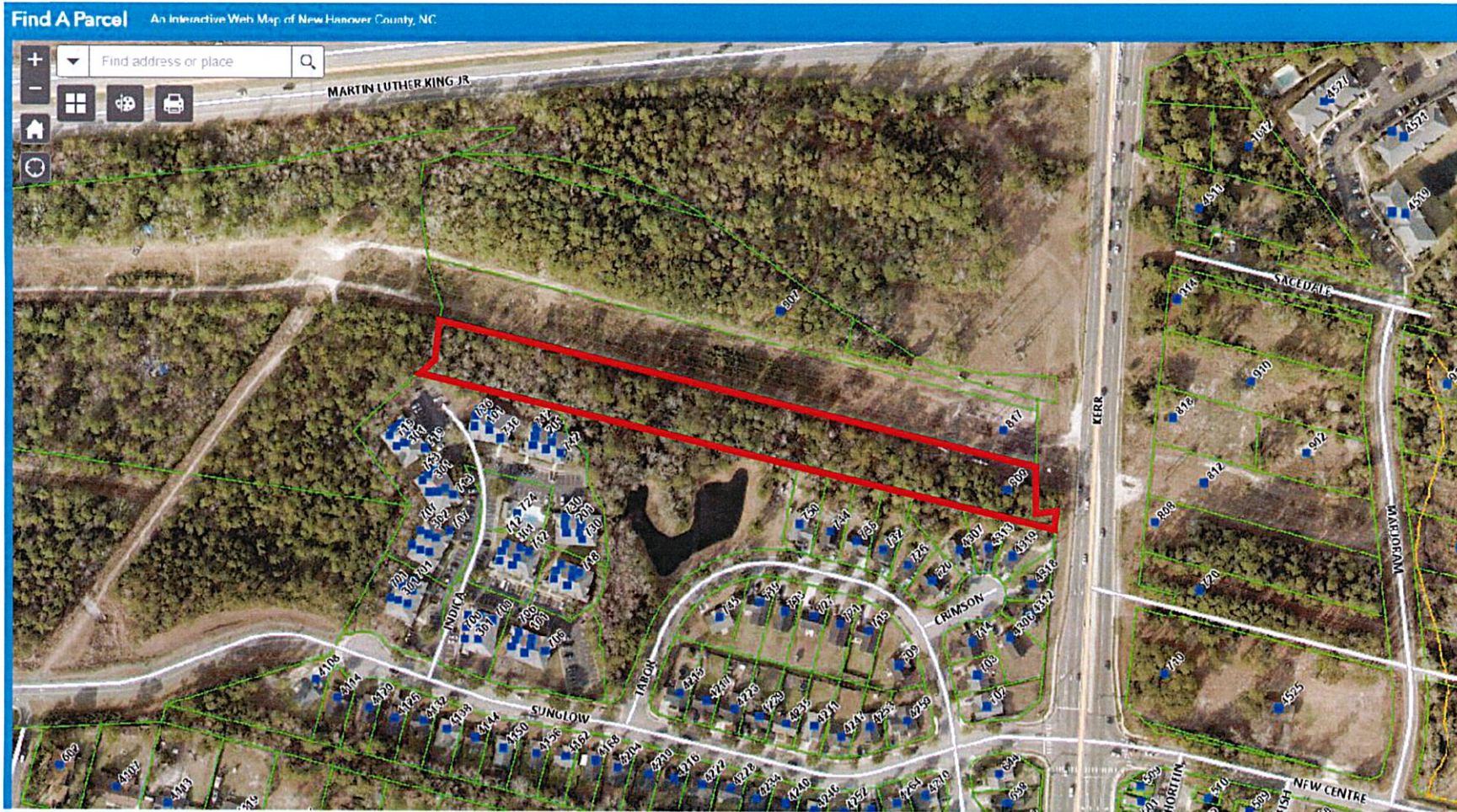


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Exhibit C  
Applicable Parcel – PID R04906-001-002-000



# **ATTACHMENT**

**4**

**Land Development**

**Code References**

- ~~i. Adjacent zoning districts;~~
- ~~j. Approximate locations of all existing trees greater than eight inches diameter at breast height within required streetscape landscaping, buffers, and parking areas and all areas of natural vegetation to be used as part of any buffers;~~
- ~~k. Setbacks of all buildings and structures and specifications for any required screening of buildings, structures, and features, including but not limited to parking areas, mechanical equipment, and trash receptacles;~~
- ~~l. Locations of any conservation resources associated with the lot including any rare and endangered species in accordance with the North Carolina Wildlife Resources Commission;~~
- ~~m. Proposed schedule for landscaping;~~
- ~~n. Approximate location of all existing protected trees, clearly indicating those to be retained and those proposed for removal, and all trees to be planted on site to meet any mitigation requirements; and~~
- ~~o. Location of vegetation impacting vision clearance, as specified in Section 18-667: Vision clearance at all intersections with streets and driveways.~~

(Ord. No. O-2022-41, §22, 6-7-2022)

## Section 18-316: Tree preservation

### A. General

Trees existing on a site at the time of development that are required to be retained in accordance with this section shall be inventoried on a tree survey.

1. Inventory and identification shall be performed by a professional arborist, urban forester, or landscape architect.
2. The location of existing trees shall be certified by a registered land surveyor and submitted as part of a site plan application.
3. The inventory shall include the size and species of each protected tree and any trees proposed for mitigation credits.
4. The approximate locations, species, and critical root zones of all protected trees, both on the site and any located within 20 feet of the site on adjacent properties shall be identified. Groves of protected trees that will not be disturbed shall be labeled as such on the plan, stating the approximate number of protected trees and species mix, without specifying data on each individual tree.
5. A note stating that prior to any clearing, grading, or construction activity, tree protection fencing shall be installed around protected trees or groves of trees and that no construction workers, tools, materials, or vehicles shall be permitted within the tree protection fencing shall be included.
6. The inventory shall identify trees to be retained and those for which removal is proposed.
7. The areas that are designated as tree protection areas that will not be disturbed shall be delineated as such and do not require inventorying individual trees.
8. Existing trees within any required transitional buffer or streetscape landscaping shall be preserved, excluding invasive species. The following standards apply as a minimum to all newly planted landscaped areas and additional trees needed to

meet the requirements of this division.

- a. Invasive species, as identified by the United States Department of Agriculture (USDA), or included as prohibited within the Technical Standards and Specifications Manual are prohibited from being used to meet the requirements of this division.
- b. All plant and tree material shall meet the standards published in the ANSI Z60 Standard for Nursery Stock.
- c. Tree and landscape materials selected for planting shall be free from injury, pests, disease, nutritional disorders, and root defects and shall be healthy at time of planting.
- d. No more than one-third of any plant species within a plant type shall be used within a required landscaped area.
- e. Trees planted within a right-of-way to be dedicated as public may be inspected and shall be approved by the city manager prior to planting.

- b. If the trees are shown to be dead, dying, or greater than 50 percent damaged or diseased because of natural factors or are otherwise exempted, the mitigation requirements may be waived.
- c. The total number of replacement trees shall be subject to the requirements of this section.

**B. Protected trees**

Regulated, significant, and specimen trees shall be considered protected trees. Protected trees existing on a site prior to development or redevelopment that meet the size threshold prescribed in Table 18-316.1: Protected tree species shall be retained on a development or redevelopment site.

- 1. If regulated, significant, or specimen trees are removed, regardless of location on the site, they shall be mitigated.
  - a. Mitigation shall be with replacement trees or by use of credits in accordance with this section.

<b>Table 18-316.1: Protected tree species</b>	
<b>Tree type</b>	<b>Minimum diameter at breast height (DBH)</b>
<b>Regulated trees</b>	
Dogwoods, magnolias, other ornamental flowering trees, and American hollies	4 inches
Hardwood trees, long leaf pine, pocosin (pond) pine, black pine, and non-pine conifer trees	8 inches
Other pine trees not specified	12 inches
<b>Significant trees</b>	
Dogwoods, magnolias, other ornamental flowering trees, and American hollies	8 inches
Hardwood trees, long leaf pine, pocosin (pond) pine, black pine, and non-pine conifer trees	18 inches
Other pine trees, not specified	24 inches
<b>Specimen trees</b>	
Live oak, pond cypress, bald cypress, and long leaf pine	24 inches

2. Removal of specimen trees shall only be authorized by a variance from the board of adjustment. Board of adjustment approval is not required for the removal of specimen trees in the IND district.
3. Invasive tree species shall not be considered protected trees.
4. Any regulated or significant trees within required streetscape landscaping shall be retained and supplemented as necessary to meet the streetscape landscaping planting requirements.
5. Any existing trees or shrubs within required transitional buffers shall be retained and supplemented as necessary with other plantings, fences, or berms to meet the transitional buffer requirements.

### C. Retention standards for protected trees

Protected trees may be removed only if essential site improvements cannot be accommodated elsewhere on the site. If any protected trees are to be cleared from a site for essential site improvements, the proposed removal shall be indicated and the reasons for doing so shall be stated on the tree survey. Such factors as cost or removal to accommodate nonessential site improvements shall not be valid reasons for removal of protected trees. Clearing of sites shall be limited to areas approved for construction.

#### 1. Evaluation

Prior to site development, applicants shall contact the city to determine whether a meeting is required to evaluate the site and tree retention opportunities. Roadways and building sites shall be planned to minimize the removal of protected trees.

#### 2. Grading limits

Land disturbance, including removal of any trees, shall not be permitted outside of necessary grading limits for essential site improvements.

#### 3. Significant and specimen trees

Significant and specimen trees determined to be healthy by the city manager or a certified arborist shall be preserved or relocated inside the limits of disturbance where possible. Trees requiring removal shall be mitigated pursuant to this section.

#### 4. Accommodation of protected trees

- a. The following may be required or permitted by the technical review committee to accommodate protected trees.
  - i. Sites shall be designed to work with significant topographic features to minimize wholesale clearing, massive regrading, and leveling of a site for drainage and other essential site improvements. Buildings, parking, utilities, stormwater features, and other essential site improvements shall be designed and placed to minimize land disturbance and loss of tree cover.
  - ii. Modification of parking requirements may be considered to preserve protected trees.
  - iii. Change in size of required streetscape landscaping, landscape islands, foundation plantings, or setbacks may be permitted for the purpose of retaining trees.
- b. A minimum of 15 trees, at least two inches diameter breast height, shall be retained or planted on the site for each acre disturbed by development. To meet this requirement, spading for the purpose of transplanting existing trees greater than four inches diameter breast height is allowed. This requirement shall be in addition to other landscaping



requirements of this article.

5. Credit for non-protected trees

Credit for trees that are not otherwise classified as protected trees by this division and trees transplanted by spading may be allowed.

- a. Credit towards landscaping requirements shall be granted by the technical review committee for healthy trees of at least two-inch caliper preserved or transplanted by spading from within the limits of disturbance within the improved area of the project boundaries.
- b. Credit shall be allowed for the retention of existing nonprotected trees in accordance with “Table 18-316.2: Credit ratios for non-protected trees.” Credit shall be granted for the caliper inches that exceed the minimum size requirements for trees used to satisfy required landscaping.
- c. To receive credit, existing trees growing in mature native forests or trees growing in stands or natural clusters, as determined by a certified arborist or a North Carolina licensed forester, shall be retained.
- d. Existing protected trees may be donated to the city to be planted on public property.
- e. Credit may be used to satisfy streetscape landscaping or parking lot requirements.
- f. Credit may be used to offset mitigation requirements.
- g. Credit shall not be granted for single-dwelling development, except for retained trees in common areas.

Table 18-316.2: Credit ratios for non-protected trees		
	Credit inches for every 1 inch in DBH retained	
	Specimen tree	Significant trees
Native trees	1	1½
Non-native trees	No credit	1
Native trees growing in stands or natural clusters	1 inch	1½
Non-native trees in stands or natural clusters	No credit	1
Native trees growing in mature native forest	1	1½

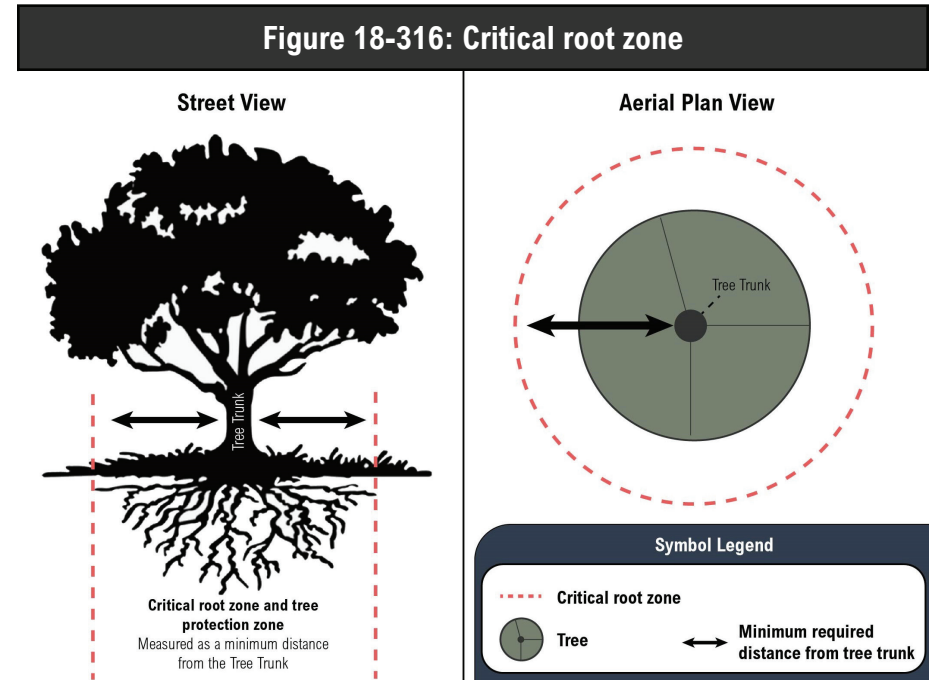
- h. Credit shall not be granted for trees preserved to meet required landscaping.

6. Additional provisions

Trees planted in alternative locations, including rooftops, permanent planters, raised or at grade plazas, over parking decks, or other locations, may be used to meet the requirements of this section if approved by the city manager.

## D. Tree protection during construction

1. The critical root zone shall be protected during construction by tree protection fencing (see Figure 18-316: Critical root zone).
  - a. Tree protection fencing shall be shown on site plans and grading plans around each tree, cluster of trees, perimeter of tree-save areas, required streetscape landscaping and transitional buffers, and limits of disturbance.
  - b. No construction equipment shall be allowed on the site until all tree protection fencing and silt fencing have been installed and approved.
  - c. Tree fencing shall be a minimum of four feet in height.
  - d. Tree protective fencing shall remain in place through completion of construction activities.
2. If the entire critical root zone of a tree cannot be preserved, tree roots must be cleanly pruned prior to any land disturbance and the disturbed area shall extend no closer to the protected tree trunk(s) than a distance of 1.25 feet for every inch in trunk diameter.
3. Disturbance within the critical root zone shall not exceed 20 percent of the critical root zone protection area and only with prior approval by the city manager.
4. Prior to grading, tree roots shall be pruned along all grade cut lines, including excavations and trenches.
5. Disturbance other than that approved, including incorrectly placed tree protection fencing or improper root pruning, shall



be a violation of this section.

- a. In addition to any other penalty or mitigation required by this division, such violation shall also require the site owner to post an irrevocable letter of credit, or other means of performance guarantee approved by the city manager, for three years.
- b. The performance guarantee shall be in an amount sufficient to provide for mitigation of the tree.
- c. If the city manager determines that the tree(s) are not at risk of dying due to the disturbance, the performance guarantee may be waived.
6. Any person responsible for failing to properly install or maintain protection measures pursuant to this division shall be

subject to a fine consistent with the adopted fee schedule and a stop work order shall be placed on the project. The property owner shall also be a jointly and severally responsible party if the improper practices are conducted by an employee, agent, or other person under the control, employ, or direction of the property owner.

Table 18-316.4: Tree replacement by species	
Tree category	Required replacement
Native/naturalized	100%
Non-native	75%
Invasive and prohibited	None

**E. Negligence**

If a tree required to be protected is destroyed, substantially damaged, or dies because of negligence or failure to comply with the requirements of this section on the part of any property owner or agent of the owner, within three years after completion of construction, replacement trees of a similar species or mature size shall be planted on the site in accordance with this section.

**F. Mitigation**

1. Removed protected trees shall be mitigated on site using the same or comparable species.
  - a. Mitigation for significant and specimen trees shall occur at a rate of 200 percent. For every one inch of trees removed, measured in diameter breast height, two inches of mitigation trees, measured in caliper inches shall be planted. Mitigation shall not be required for invasive and prohibited trees that are removed.
  - b. Mitigation for regulated trees shall be as prescribed in Table 18-316.4: Tree replacement by species.
  - c. Any tree planted for mitigation shall measure at least two caliper inches at the time of planting.
2. A minimum growing area of pervious surface shall be required around each replacement tree. The growing area shall be measured in soil volume. The depth shall be a maximum of

three feet for the volume calculation. The soil volume shall be as follows:

- a. 500 cubic feet for understory trees; and
  - b. 1,000 cubic feet canopy trees.
3. In lieu of planting trees required for mitigation, a developer may, if approved by the city manager, pay a fee per caliper inch in an amount set in the adopted fee schedule. Fees in lieu of on-site planting shall be put into the city’s tree improvement fund and reserved solely for planting trees on public lands and rights-of-way.
  4. Any trees planted as required mitigation for the removal of protected trees shall be planted in addition to any tree plantings required in this division and shall not be counted towards requirements of streetscape landscaping, transitional buffers, or interior parking requirements.

**G. Exemptions to mitigation**

1. Regulated trees removed within the area of disturbance necessary for essential site improvements, including, but not limited to, underground utility corridors, detention basins, sidewalks, and required driveway placement, shall be exempt from mitigation.
2. Any protected trees removed by spading and planted elsewhere on the site shall be exempt from mitigation.
3. Protected trees removed by spading and accepted by the city for planting on public property shall be exempt from mitigation.
4. Any tree that has been transplanted for the purpose of mitigation that becomes diseased or dies within three years of transplanting shall be replanted by the party requesting the exemption with a tree of the same species and size or mitigated pursuant to this section.

(Ord. No. O-2022-41, §§23, 24, 6-7-2022; Ord. No. O-2022-88, §§ 6, 7(Att. A), 11-1-2022;  
Ord. No. O-2023-41, §§10, 11, 6-6-2023)

**Section 18-317: Tree removal****A. Permits required**

- ~~1. Removal of any tree four inches diameter breast height or greater shall require a tree removal permit.
 
  - ~~a. A tree removal permit shall be required before any clearing, grading, or other authorizations may be issued, including soil and sedimentation control permits and building permits.~~
  - ~~b. An approved tree removal permit for new or infill construction shall apply to the entire site.~~
  - ~~c. The tree removal permit and approved tree preservation plan shall be posted on the property with other permits for the duration of work on the site.~~
  - ~~d. If a tree is within a conservation resource setback or protective buffer, as defined in article 4, division 3 of this chapter, a tree removal permit shall be required. The application for tree removal may be attached to a submitted site plan and the site plan shall be clearly marked for either approval or denial of tree removal.~~~~
- ~~2. The city may withhold or withdraw any permits, certificates, and other authorizations, including, but not limited to, building permits and certificates of occupancy, until a required tree removal permit is obtained. Where required, a tree removal permit shall be obtained before a soil and sedimentation control permit or building permit may be issued.~~

**ARTICLE 7. DIVISION 3.****BOARDS, COMMISSIONS, AND COMMITTEES****Section 18-615: Board of adjustment****A. Establishment**

The board of adjustment is established to fulfill the duties and powers prescribed by the city of Wilmington Code of Ordinances and by NCGS 160D-302.

**B. Appointment and tenure**

1. The board shall consist of five members and two alternate members, who shall be citizens and residents of the city, holding no other public office under the city government, and shall be appointed by the city council.
2. All members shall be appointed for staggered terms of three years, to serve in accordance with the city council policy on boards and commissions then in effect.
3. Alternate members shall be appointed for the same term, at the same time, and in the same manner as regular members. Each alternate member serving on behalf of any regular member has all the powers and duties of a regular member.
4. All appointments to fill vacancies shall be for the unexpired period of the term.

**C. Compensation**

Members of the board shall serve without compensation and may be removed by the city council at any time.

**D. Organization**

1. The board shall hold meetings in accordance with its rules of procedure for the purpose of transacting its duties assigned in this chapter and shall maintain a public record of its actions.

2. Rules of procedure shall be adopted by the board for the conduct of its business and for the election of its officers. The city council shall approve the rules of procedure and any amendments prior to implementation.
3. All meetings held by the board shall be held in accordance with the North Carolina open meetings law.
4. The board shall keep minutes of its proceedings suitable for review in court showing:
  - a. The factual evidence presented to the board by all parties concerned;
  - b. The findings of fact and the reasons for the determinations by the board; and
  - c. The vote of each member, or if absent or failing to vote indicating such fact, all of which shall be public record and be filed with the secretary to the board.

**E. Duties**

1. The board shall hear and decide all matters upon which it is required to pass under any statute or development regulation.
2. The concurring vote of four-fifths of the board shall be necessary to grant a variance. A majority of the members shall be required to decide any other quasi-judicial matter or to determine an appeal made in the nature of certiorari. Vacant positions on the board and members who are disqualified from voting on the quasi-judicial matter shall not be considered members of the board for calculation of the requisite majority if there are no qualified alternates available to take the place of such members.