

Notice of Petition for Variance Request Stormwater Control Ordinance

INSTRUCTIONS FOR FILING A PETITION FOR VARIANCE

Instructions

1. **Fill out all forms completely.** Because the City Council must find evidence to support each of the questions/statements, the answer "not applicable" is generally not acceptable and shall delay your request. Incomplete applications cannot be accepted.
2. In order for the City Council to grant a variance, **a land hardship must be demonstrated.** Only the following conditions shall constitute a hardship (all three must be met):
 - a. The difficulty or hardship would result only from these regulations and from no other cause, including the actions of the owner or previous owners of the property; and
 - b. The difficulty or hardship is peculiar to the property in question and is not generally shared by other properties in the same neighborhood and/or used for the same purposes; and
 - c. The difficulty or hardships resulting from the application of these regulations would prevent the owner from securing a reasonable return or making a reasonable use of the property. The fact that the property could be utilized more profitably or conveniently with the variance than without the variance shall not be considered as grounds for granting the variance.

Checklist

- N/A* ☐ ☒ If applicable, attach a copy of your permit or plan review comments if this variance resulted from a permit or plan denial.
- ☐ ☒ A survey or to scale site plan must be included. The survey or site plan should include:
- all existing buildings and structures on the property
 - all easements for streets, utilities, driveways and others
 - all proposed improvements should be drawn on the survey or site plan to scale
 - shade in the map to highlight the portion of the improvements that are subject to the requested variance (i.e. for a setback variance, the portion of the structure beyond the setback line)
- ☒ Nonrefundable filing fee of \$500

Additional Information:

1. If construction has started, no further work shall be done on those portions of the project in violation of the Stormwater Control Ordinance.
2. If this variance request is a result of a Notice of Violation, no further enforcement action shall be taken until the City Council makes a decision regarding your case.
3. Once a case has been heard, the City Council may not hear the same case again unless it finds there have been substantial changes in the conditions or circumstances relating to the matter.

Variance Hearing Notes:

1. After hearing the variance case, the City Council shall review the testimony and render a decision. This is usually done immediately following the hearing.
 - You may remain present during the deliberations, but no further testimony may be presented; or,
 - You may call the staff attorney after the hearing to receive the decision of the City Council.
2. All exhibits should be numbered and must remain with the City Council. Please hand them first to the City Clerk. You may show other materials, but do not hand them to the City Council unless you are prepared to leave them.
3. If you feel there is a conflict of interest of any member of the City Council, or an association that would prejudice your case, please let it be known at the start of your case.
4. This is a quasi-judicial proceeding for which only sworn testimony is accepted.
5. All variance hearings held before the City Council are recorded and meeting minutes are prepared.
6. Any party aggrieved by the decision of the City Council with regard to the petition for variance shall have thirty (30) days from the receipt of the decision of the City Council to file a petition for review in the nature of certiorari in Superior Court with the Clerk of Cumberland County Superior Court.

**Notice of Petition for Variance Request – Form #1
City Council**

Stormwater Control Ordinance

Date Filed: _____ **Case Number:** _____ **Received By:** _____

INSTRUCTIONS FOR FILING A PETITION FOR VARIANCE

This form must be filled out completely. Please attach the appropriate additional form depending on your request type along with required information as outlined in the appropriate checklist. Please type or print legibly. All property owners must sign and consent to this application, attach additional sheets if necessary. If the application is not the owner, the owners must sign the Designation of Agent section at the bottom of this form.

The Applicant Hereby requests a variance from the provisions of the Stormwater Control Ordinance as stated on Form #2.

Applicant or Agent's Name: C. Tyrus Clayton JR, P.E.

Mailing Address: 930 Main Campus Drive, Suite 151

City, State, Zip: Raleigh, NC 27606

Daytime Telephone: 919-827-0864 **Home Telephone:** 919-795-6302

Interest in this Case (Please circle one): Owner ☐ **Adjacent Owner** ☐ **Other** ☐

Property Owner(s) [if other than applicant/agent]: Wiseman Mortuary Inc.

Mailing Address: 431 Cumberland Street

City, State, Zip: Fayetteville, NC 28307

Daytime Telephone: _____ **Home Telephone:** _____

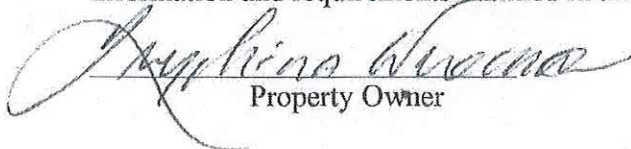
Property Address: 653,655,657 Hillsboro Street

Tax Parcel Number: 0437-48-6801 **Zoning District:** CC

Subdivision Name: -6805 and -6707 **Conditional District:** YES ☐ NO ☒

Applicant Certification and Designation of Agent

I (we) certify that the information in this application, the attached form(s) and documents submitted by me (us) as part of this application are true and correct. In the event any information given is found to be false, any decision rendered may be revoked at any time. I (we) hereby appoint the person named above as my (our) agent to represent me (us) in this application and all proceedings related to it. I (we) further certify to have received, read and acknowledged the information and requirements outlined in this packet.



Property Owner

5/24/18

Date

Property Owner

Date

Notice of Petition for Variance Request – Form #2
City Council

Stormwater Control Ordinance

Date Filed: _____ **Case Number:** _____ **Received By:** _____

Has work started on this project? YES ☐ NO ☒

If yes, did you obtain a building permit? YES ☐ NO ☐ If yes, attach a copy.

Have you received a Notice of Violation for this project? YES ☐ NO ☒ If yes, attach a copy.

Has this property been rezoned? YES ☐ NO ☒ If yes, Petition Number: _____

- (1) What section numbers from the Stormwater Control Ordinance are you seeking a variance from? Please list each section, the requirement and the requested variance.

Item	Code Section	Code Requirement	Variance Request
A	Sec 23-24 (3)	definition	consider this new development
B			
C			
D			
E			

- (2) Please describe why the variances requested are necessary.

Under the current ordinance, stormwater management would be required for the site due to the existing gravel patch on site. With the whole site being under 20,000 sf, the management area would need to be either below ground or take up so much of the site that it would remove the ability to develop the parcel with a building, required parking, and landscaping. A soils report has been completed for the site and the Seasonal High Water Table (which needs to be below our management) varies from 0 to 52 inches deep and averages 24 inches deep overall. With the SHWT as high as it is, we are unable to make underground stormwater management work, and with the above ground stormwater management being so large it makes site un-developable.

- (3) THERE ARE PRACTICAL DIFFICULTIES OR UNCESSARY HARDSHIPS IN THE WAY OF CARRYING OUT THE STRICT LETTER OF THE ORDINANCE. The courts have developed three rules to determine whether, in a particular situation, “practical difficulties of unnecessary hardships” exist. State facts and arguments in support of each of the following:

- (a) If the property owner/applicant complies with the provisions of the Ordinance, the property owner can secure no reasonable return from, or make no reasonable use of his

property. (It is not sufficient that failure to grant the variance simply makes the property less valuable.)

In order to comply with the requirements of the stormwater ordinance with regards to stormwater management, we will be unable to commercially develop the site. With the SHWT being as shallow as the soils report states, the only above ground stormwater measure available is a wet detention basin which requires a large footprint to meet treatment requirements. An underground detention structure could meet the stormwater management requirements, but all underground detention structures are required to have separation from the SHWT which cannot be provided.

(b) The hardship of which the Applicant complains results from unique circumstances related to the Applicant's land. (Note: Hardships common to an entire neighborhood, resulting from overly restrictive ordinance requirements, should be referred to the City Staff. Also, unique personal or family hardships are irrelevant since a variance, if granted, runs with the life of the land.)

The project, which is across the street from the applicants current business, is bounded on both sides by an existing church building, which negates the ability to purchase additional land to accommodate the stormwater requirements. The site is also currently credited with a very small amount of impervious area due to some existing gravel left over from the old house being removed prior to the implementation of the city's stormwater ordinance. This, in turn, pushes the project into a redevelopment instead of a new development. In summary, since this site is a vacant lot with mostly grass but being treated as a redevelopment by the Stormwater Ordinance instead of a new development, the applicant is unable to develop the small parcel and adhere to ordinance.

(c) The hardship is not the result of the Applicant's own actions.

The applicant created no hardship on their parcel. Prior to the City adopting new stormwater regulations in 2009, the owner demolished the existing home on this site. After the City adopted the new Stormwater Ordinance, this site (a grassed lot with approximately 5% gravel coverage) was classified as developed land due to the remaining small patch of gravel.

(4) THE VARIANCE IS IN HARMONY WITH THE GENERAL PURPOSE AND INTENT OF THE ORDINANCE AND PRESERVES ITS SPIRIT. (State facts and arguments to show that the requested variance represents the least possible deviation from the letter of the Ordinance to allow a reasonable use of the land; and, that the use of the property, if the variance is granted, shall not substantially detract from the character of the neighborhood.)

The applicant is trying to develop a parcel to expand their services for the surrounding community and is not trying to harm the neighborhood through development. In a previous public hearing involving the development of this parcel, neighbors have come out to publicly support the applicant and their intentions for the parcel.

- (5) THE GRANTING OF THE VARIANCE SECURES THE PUBLIC SAFETY AND WELFARE AND DOES SUBSTANTIAL JUSTICE. (State facts and arguments to show that, on balance, if the variance is denied, the benefit to the public shall be substantially outweighed by the harm suffered by the Applicant.)



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Date: 08/03/2018

COUNTY OF CUMBERLAND Tax Year: 2018

Time: 07:44:19

Parcel ID: 0437-48-6801- **TaxYear:** 2018

Owner Name(s): WISEMAN MORTUARY INC

Owner Address: 431 CUMBERLAND ST FAYETTEVILLE NC 28301-4617

Situs Address: 000655 HILLSBORO ST FAY

Taxing District: 1000 FAYETTEVILLE

Tax Bill Number: 2589281

Old Parcel ID: 0437-48-5725-

Property Class: COMMERCIAL

Neighborhood: 8016

Zoning: CC -

Frontage: 42.60 **Depth:** 150.00

Map & Sheet: 0437-06

Plat Book & Page: 0008 -0015

Legal Description: VAC W/S HILLSBORO ST

Parcel Taxable Value: (REVALUATION 2017)

	Total	Land	Building	Misc.	Date
Appraised:	11,277.00	11,277.00	0.00	0.00	01/01/2017

Land Assessment:

	Land Use	Land Units	Land Type	Land Rate	Land Value
COMMERCIAL SQ FOOTAG		6,534.00	SF	1.73	11,277.00

(A max of 5 sales can be shown)

Sale History Data:

Deed Book	Deed Page	Sale Date	Sale Price
03221	00161	11/03/1986	0.00
00330	00260	07/01/1984	0.00

(A max of 10 improvements can be shown)

Miscellaneous Improvements:

Description	Type	Unit	Number of Units
NO DATA FOUND			

Choose the Building to Display: 00

Building Characteristics

Building #: 00 OF 00 **# of Stry**

Improvement Type: NO DATA FOUND

Quality Grade:

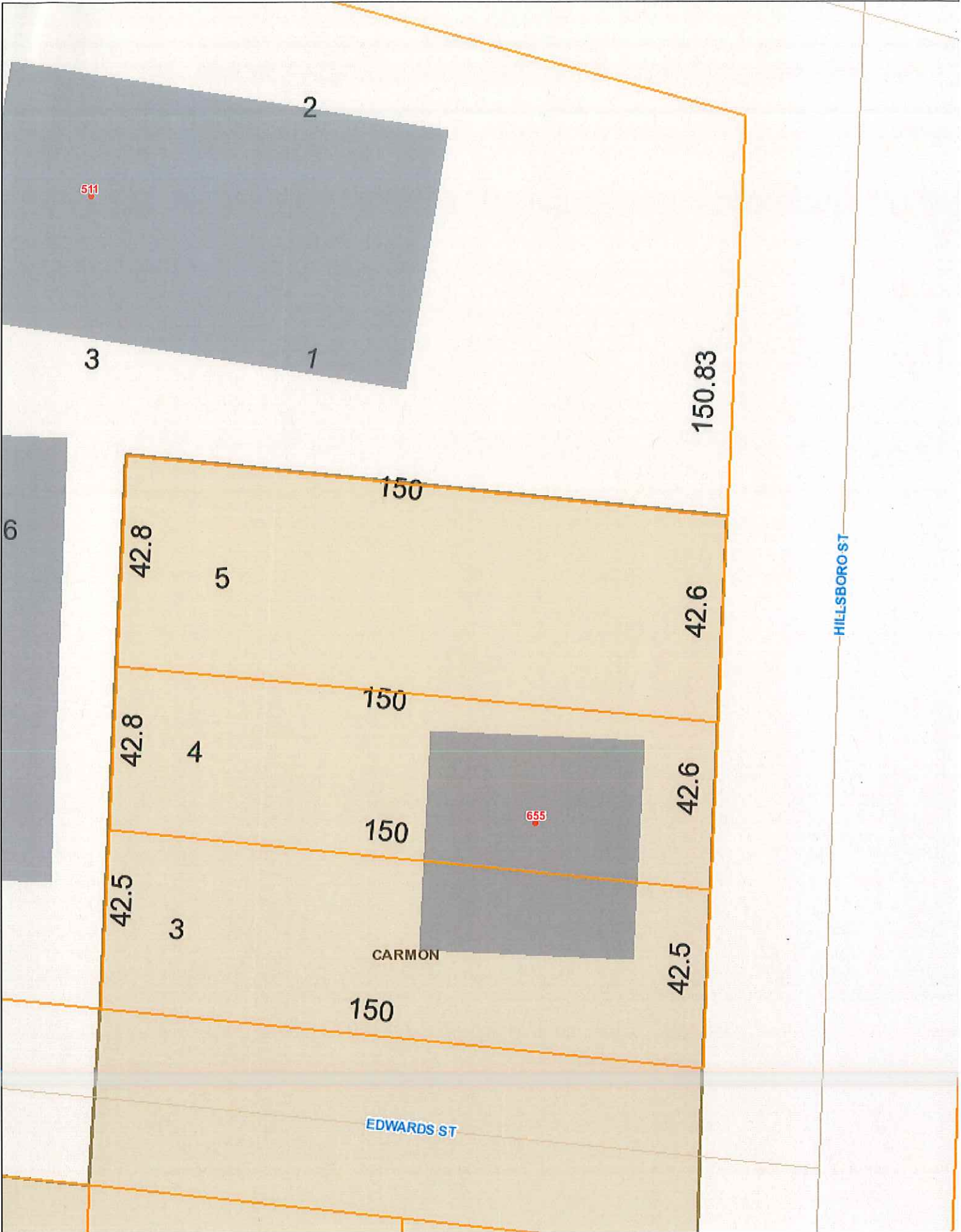
Actual Year Built:

Foundation: **Exterior:**

Heat Method:**Heat Source:****Roof Type:****Cover:****5-Fix Baths:****4-Fix Baths:****3-Fix Baths:****2-Fix Baths:****Extra Fix:****Bedrooms:****Fireplaces:****Air Cond:****Condition:**[Click for Tax Sheet](#)Personal Property Search for WISEMAN MORTUARY INC [| Tax Rate](#) | [| Tax Records](#) | [| General Info](#) | [| Phone Numbers](#) | [| Real Estate](#) | [| Personal](#) | [| GIS Mapping](#) | [| Electronic Pmts](#) | [| County](#) |**Disclaimer:**

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ArcGIS Web Map



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Fayetteville, North Carolina



Google, Inc.

Street View - Jun 2012



ArcGIS Web Map

