



# Pender County

## Agenda

### Board of Adjustment Meeting

Wednesday, July 20, 2022 @ 9:00 AM  
Pender County Public Assembly Room

|                                                                                                          | Presenter | Page     |
|----------------------------------------------------------------------------------------------------------|-----------|----------|
| 1. CALL TO ORDER                                                                                         |           |          |
| 2. ROLL CALL                                                                                             |           |          |
| 3. PLEDGE OF ALLEGIANCE & MOMENT OF SILENCE                                                              |           |          |
| 4. ADOPTION OF AGENDA                                                                                    |           |          |
| 5. ADOPTION OF MINUTES                                                                                   |           |          |
| 5.1. May 18, 2022 Meeting Minutes<br><a href="#">May 18, 2022 Minutes - Pdf</a>                          |           | 3 - 30   |
| 6. PUBLIC COMMENT                                                                                        |           |          |
| 7. APPEAL                                                                                                |           |          |
| 7.1. APPEAL 2022-07<br><a href="#">APPEAL 2022-07 - Pdf</a>                                              |           | 31 - 112 |
| 8. DISCUSSION ITEMS                                                                                      |           |          |
| 9. NEXT MEETING DATE                                                                                     |           |          |
| 9.1. August 17th, 2022<br>Pender County Public Assembly Room<br>805 S. Walker Street<br>Burgaw, NC 28425 |           |          |
| 10. ADJOURNMENT                                                                                          |           |          |





## **Pender County Request for Board Action**

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**TO:** Zoning Board of Adjustment  
**FROM:** Justin Brantley  
**DATE:** July 20, 2022  
**SUBJECT:** May 18, 2022 Meeting Minutes

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**SUMMARY:**

May 18, 2022 meeting minutes are attached.

**ACTION REQUESTED:**

Review and approval of May 18, 2022 minutes.

Pender County Board of Adjustment Meeting Minutes – May 18<sup>th</sup>, 2022

**Members Present:** Max Kipfer, Chairman  
Kyle Breuer, Vice Chairman  
Douglas-Scott Rivenbark  
Jeffrey Snider, Alternate  
Andrew Olsen, Alternate

**Members Absent:** Samantha Nelson

**Others Present:** Travis Henley, Planning Director  
Trey Thurman, County Attorney  
Justin Brantley, Senior Planner  
Greg Feldman, Current Planner  
Jennifer Roper, Applicant  
Jason Roper, Applicant  
Gordon Hall, Applicant Representative  
Benjamin Kane, Environmental Health Specialist  
Other Staff and Members of the Public

**1 Call To Order:** 9:01am

**2 Roll Call**

**3 Pledge of Allegiance**

**4 Moment of Silence**

**5 Adoption of Agenda**

Mr. Breuer made a motion to adopt the agenda. Mr. Snider seconded the motion, and the motion was unanimously approved.

**6 Adoption of Minutes**

Mr. Breuer made a motion to adopt the minutes from the April 20<sup>th</sup>, 2022, Board of Adjustment Meeting with modification for number 9, subtitle A, where Greg Feldman's title was incorrectly listed as the Planning Director instead of Current Planner. Mr. Rivenbark seconded the motion with Mr. Breuer's exception, and the motion was unanimously approved.

**7 Public Comment**

There was not public comment.

**8 Swearing in of Applicants, Witness, and Other Interested Parties**

The County Attorney swore in and/or affirmed Travis Henley, Greg Feldman, Justin Brantley, Jennifer Roper, Jason Roper, Benjamin Kane, and Gordon Hall as to their testimony being truthful and relevant to the respective case.



## 9 Public Hearings

### a) VARIANCE CASE 2022-10 – Applicants Jason Roper and Jennifer Roper

Mr. Greg Feldman, Planner, presented the Staff Report. This matter was tabled from the April 20, 2022, meeting to allow the Planning Department to meet with the Environmental Health Department to gain more clarification of the septic system and drain lines.

Environmental Health Specialist, Benjamin Kane, addressed the Board. Mr. Kane stated that a drain line needs to be moved but due to no fault of the applicants. The need to move the drain line is due to the proximity to a neighboring well. Mr. Kane stated that the drain line would need to be moved regardless of the variance outcome. His concern was if the building was moved ten feet further within the property, it would be in the repair area, which would not be acceptable. The current location of the building is meeting all Environmental Health setback requirements.

Mr. Kipfer asked Mr. Kane if the drawing was reviewed by Environmental Health and if the drawing is accurate. Mr. Kane affirmed that both the drawing was reviewed and is accurate. Mr. Kipfer then questioned as to whether the pre-existing accessory building was on the drain line and Mr. Kane affirmed that the building is on the drain line, but the building is on blocks and not in the ground. This building has no foundation and is therefore not an issue.

Mr. Olsen stated that the two maps provided are similar but still different. Mr. Kane clarified that there is the preliminary map that was used when the permit was originally approved, and that the second map is more accurate as to the actual system.

Mr. Jason Roper and Mrs. Jennifer Roper presented the Board with a slide show. They stated that they had the drain lines located professionally and marked on the property. The Ropers provided that the back area of the lot is wooded and slopes down into a lake at the rear of the property, that there is a drainage ditch on the edge of the property, and that the repair field area affects their ability to move the building to any other location on the property.

Mr. Kipfer questioned whether this size of building would have been approved if the correct permitting process had taken place originally. Mr. Henley responded by stating that it would not have been permitted due to the setback issues.

Attorney Trey Thurman informed the Board that if the applicants would have applied for the proper permits originally, they could have asked for a variance at that time.

Mr. Kipfer stated that he feels this is a hardship of the applicants' own creation.

Mrs. Roper stated that they had no idea a permit was necessary, or they would have obtained them originally. They were relying on the advice of the contractor's and were told that permitting was not needed. As soon as they were informed that permitting was necessary, they came into the Planning Department immediately to try and remedy the situation.

Mr. Olsen stated that due to the slope of the property, it would probably not be possible to place this exact building anywhere else on the property. He questioned as to whether a building of this size would have been approved if the necessary permits were obtained originally. Mr. Olsen also questioned the effect this building would have on the immediate adjacent neighbors.

Mrs. Roper stated that their immediate two adjacent neighbors have no issue with the building's location. One neighbor was present at the April 20, 2022, meeting and the other neighbor was not able to be present due to work, so they wrote a letter which was provided to the Planning Board.

Mr. Olsen questioned as to whether it would create a hardship for surrounding properties. He stated that the property to the North shares a wetland cove. Mr. Olsen stated that the size of the building probably could have made a big difference and that 1,400 square feet is a big storage building.

Mr. Roper stated that the 1,400 square feet encompasses the concrete patios also. The actual size of the building is 30 by 40 equaling 1,200 square feet.

Mr. Breuer stated that the Board needs to go through each of the four Findings of Fact together to help as a guidance.

Mr. Kipfer stated that the size of the building would have made a big difference in the beginning.

Mr. Olsen stated that of the four required Findings of Fact that he felt that a hardship could be proven on all but the third. He is having an issue with the third Finding of Fact, which provides that "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". Mr. Olsen stated that putting a different size building on this property could have possibly prevented the current issues.

Mr. Snider also stated that he is having an issue with the third Finding of Fact.

Mr. Breuer stated that since the drain line can and will be moved, is this being tailored to the situation that the applicants have created. Due to this, he cannot agree to the variance and made a motion to deny the variance.

Mrs. Roper stated that the drain line will need to be moved regardless of the building. It has nothing to do with the building itself and is no fault of her or Mr. Roper.

Mr. Breuer stated that he cannot support granting this variance due to Finding of Fact number three. This is the owner's doing and due to that he made a motion to deny the variance.

Mr. Rivenbark asked about the contractor's knowledge and responsibility to obtain the necessary permits needed. Mrs. Roper stated that the contractor told them that permits were not necessary for the placement of the building.

Mr. Kipfer asked if the building was properly permitted, would engineering documents would have been needed. Mr. Roper stated that they were presented different options by the contractor. They were told it would be built to code by the contractor so it was assumed that the contractor would know and be responsible for any needed permits. The Ropers' chose at that time to not purchase the option that included the engineering documents due to relying on their assumption that the contractor would handle all necessary permitting.

Mr. Kipfer asked the applicants if they had to buy the engineering documents later anyways. Mr. Roper stated that once they found out that a permit was required, the purchase of the engineering documents was necessary.

Attorney Trey Thurman suggested to the applicants that they contact the Contractor's Licensing Board due to them relying on the contractor to handle the process correctly and that is not what transpired.

Mrs. Roper stated that she does have the number of the licensing board and will proceed with contacting them. She does not want this situation to happen to anybody else.

Mr. Kipfer stated that he does not think that the Board can allow this by granting the variance. It is the responsibility of the landowner to verify with the county if permits are necessary.

Mr. Olsen stated that he is willing and open to hearing the other board members arguments as to why this variance should be granted.

Attorney Trey Thurman stated that the contractor should have known the proper permitting process, but the contractor is not responsible. Ultimately, it is the homeowner's responsibility.

Mr. Kipfer stated that the applicants should have asked permission, especially with a building of this size. With a structure of this size, the applicants should have known to contact the Planning Department regardless of what they were told by the contractors.

Mrs. Roper stated that they did not intentionally place this building on their property without the proper permits. There are several buildings in their neighborhood that have about the same size buildings and due to this information and the fact that they were told by the contractor that they did not need permits, they had the building placed on their property.

Attorney Trey Thurman stated that the Board must follow state statutes and cannot deviate from those statutes.

Mrs. Roper stated that they did not intend to do wrong, and she feels that Finding of Fact number three is a very gray area.

Mr. Olsen seconded Mr. Breuer's motion to deny the variance.

Mr. Rivenbark questioned if the building would need to be moved regardless of the variance outcome. Mr. Kane stated that the issue with Environmental Health is not the building itself

but the drain line. It needs to be moved regardless of this outcome. The drain line needs to be moved to no fault of the applicants, due to its proximity to the neighbor's well.

A vote was taken, and all members unanimously agreed to deny the variance.

County Attorney Trey Thurman informed the applicants that they can obtain the minutes from this meeting to provide to the Contractor's License Board if they choose to make contact. He also suggested that they may want to consider talking to an Attorney concerning the contractor.

Justin Brantley informed the Board and the Applicant that now that the variance has been denied, the enforcement process will begin. A Notice of Violation will be mailed to the landowners and if the violation is not remedied within thirty days, a daily fine of \$100.00 will be enforced.

b) VARIANCE CASE 2022-11 – Applicant Ronald Anderson

Mr. Greg Feldman, Planner, presented the Staff Report. Mr. Feldman provided that Ronald Anderson, applicant and owner, is requested a variance for relief from the Pender County Unified Development Ordinance standards outlined in Section 8.3.2C, "Single row terminal landscape island requirements." Specifically, the request is to seek relief from the requirement of installing a landscape island with more than 120' linear feet of consecutive parking spaces. The subject property is located at 14840 US HWY 17, approximately 0.25 miles north of the intersection of US HWY 17 and NC HWY 210 in the Topsail Township. There is one tract totaling approximately 1.2 acres of land associated with this request and may be further identified by Pender County PIN 3282-97-7548-0000.

Mr. Feldman stated that the site has an existing church that is currently being elevated. The rear portion of the property is paved. The applicant is proposing a land use of a full-service restaurant and bar. This particular use would need forty-eight parking spaces and due to the island requirement, there would be a loss of four parking spaces.

Mr. Feldman stated that the Unified Development Ordinance requires a landscape island if there is more than 120' linear feet of consecutive parking spaces. There are two proposed parking areas consisting of 127.4 and 161.6 linear feet. The applicant is asking for a variance relief in the amount of 7.4 and 41.6 linear feet.

Mr. Feldman stated that the elevation changes drastically at the rear of the property where wetlands exist.

Mr. Breuer questioned if the parking area butted up to the wetlands and the response was that it was.

Mr. Kipfer asked if the islands are existing, and Mr. Feldman stated that the islands are not existing, and the applicant is asking for a variance to not be required to install the two islands.

Mr. Snider asked if a parking requirement variance was explored instead of island variance.

Mr. Feldman stated that a parking space variance was explored and was found too not be possible. The Planning Department worked with the applicant and explored the actual amount of square footage of the building to reach the total number of parking spaces to be forty-eight. Due to working with the square footage of the building, the required number of spaces has already been lowered to the minimum. Mr. Feldman stated that he is concerned with the effect that parking may have on adjacent property owners.

Mr. Henley stated that the Planning staff does have some leeway with the parking requirements.

Architect and Applicant Representative Gordon Hall spoke to the Board. He stated that this project started back in the beginning of 2020, and the applicant is desiring a place for "fellowship" in this neighborhood. From the beginning, handicapped accessibility and parking were major concerns.

Mr. Hall stated that there is a major drastic change in grade on this property. In the front of the property, the grade is forty-eight or forty-nine and drops to twenty-eight at the back of the property. The property also has wetlands at the back of the property that they had to be mindful of.

Mr. Hall stated that there was only one wheelchair access which was a wooden wrap around ramp. Now that the building is being elevated, a wooden ramp would not be an option due to safety concerns. He stated that many different options were reviewed and installing an elevator would be the best option.

Mr. Hall inquired as to whether landscaping can be used to break up the parking lot instead of parking islands. He stated that this land use plan does not require landscaping buffers and any landscaping would be elective. The applicant is planning on adding elective landscaping around the parking lot for visual effects.

Mr. Hall stated that the property shares a driveway with the adjacent property owner and there is also a cemetery that is accessed by the same drive.

Mr. Kipfer asked Mr. Hall if the variance was granted and the two traffic islands were not needed, would they still be short parking spots. Mr. Hall responded if the Board did not require the traffic islands, then there would be no shortage and all forty-eight spots would be possible.

Mr. Breur inquired as the intent of parking spaces seven and forty-two as they are pictured differently on the site plan.

Mr. Hall stated that they are regular parking spaces and the reason they are pictured differently is due to the fact that area is where the existing pavement ends.

Mr. Breur asked as to whether the additional parking spots would be constructed of gravel material, and can the Board impose a condition of what material is used for the new parking spots? Mr. Breur feels that using a material such as #57 gravel would be a good option to help protect run off into the wetlands.

Mr. Trey Thurman responded and stated that yes, the Board could put a condition in the variance that a certain type of material must be used for the new parking spaces in attempts to keep the wetlands disturbance to a minimum. He stated that trying to keep the wetland disturbance.

Mr. Hall stated that if the Board requires the applicant to use #57 gravel, then they would not have an issue.

Mr. Olsen stated that the current parking area would most likely need to be re-surfaced, and the new parking area be a different material. He also stated if pavers would be an option to use also or would that be too costly?

Mr. Hall said that the applicant would be open to using alternative materials.

Mr. Olsen stated that he agrees with having a condition as to what material is used to help minimize the effects of run-off into the wetlands.

Mr. Henley stated that the Department is also open to the applicant using a different material besides pavement.

Mr. Kipfer inquired as to whether there were any other public people who would like to speak, and it was determined that there were not.

Mr. Snider inquired if the parking islands were not present in the parking lot, would it create a dangerous situation.

Mr. Henley stated that it would not create a dangerous situation and the parking islands are more for appearance and environmental issues.

Mr. Kipfer asked the Board members if there were any further questions or need for discussions and no members responded.

Mr. Breur made a motion to approve the Variance with two conditions. The first condition would be that any parking areas identified in blue on the site map be constructed with a pervious material that is sufficient and/or approved by the Planning Department and the second condition is that the landscaping shown on the site map no longer be elective but would rather be required. Mr. Rivenbark seconded the motion, and the motion was unanimously approved.

#### **10 Discussion**

There was no discussion.

#### **11 Next Meeting Date**

June 15<sup>th</sup>, 2022

805 S. Walker Street

Burgaw, NC 28425

Pender County Public Administration Building

**12 Adjournment**

Meeting adjourned at 10:28 am



IF YOU WOULD LIKE TO SPEAK ON ANY  
PUBLIC HEARING ITEM(S) OR WISH TO  
SPEAK DURING THE PUBLIC COMMENT  
SECTION OF THE AGENDA,

PLEASE SIGN IN AT THE ENTRANCE TO  
THIS MEETING ROOM

THANK YOU  
PENDER COUNTY, NORTH CAROLINA



Planning & Community Development

May 18, 2022

Slide 1

1



## Case VAR 2022-10

**PIN: 3247-52-9793-0000**

### *Variance:*

Jason and Jennifer Roper, applicants and owners, are requesting a variance for relief from the Pender County Unified Development Ordinance standards outlined in Section 5.3.3.A 'Accessory Building Setbacks and Separation Requirements.' The applicant is requesting relief from side yard setback requirements for accessory structures within the RA, Rural Agricultural zoning district, along with structure separation requirements for a 30' x 49' (1,470-sf) accessory structure. Specifically, the request is to seek a 7' relief from the required 15' side yard setback, and a 19' relief from the required 30' structure separation requirement within the RA, Rural Agricultural zoning district.

Planning & Community Development

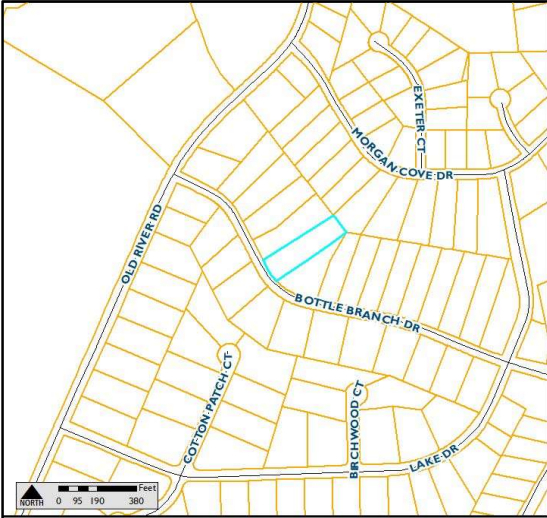
May 18, 2022

Slide 2

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Applicants and Owners:  
Jason & Jennifer Roper

**VARIANCE**

VAR 2022-10

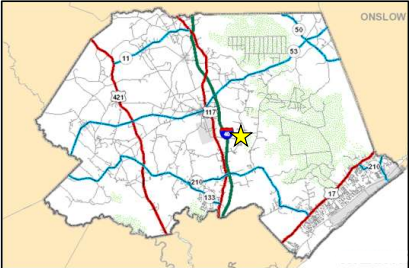
■ Subject Property

Vicinity

Planning & Community Development
May 18, 2022
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Applicants and Owners:  
Jason & Jennifer Roper

**VARIANCE**

VAR 2022-10

■ Subject Property

2020 Aerial

Planning & Community Development
May 18, 2022
Slide 4

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### Variance Request

| Accessory Structure Setbacks<br>UDO Section 5.3.3A |         | PROPOSED SETBACKS FOR 1,470-sf<br>Accessory Structure |
|----------------------------------------------------|---------|-------------------------------------------------------|
| Rear Yard<br>(Northeast)                           | 30 feet | ±220 feet (0' encroachment)                           |
| Side Yard<br>(Southeast)                           | 15 feet | 8 feet (7' encroachment)                              |
| Structure<br>Separation (Existing<br>Shed)         | 30 feet | 11 ½ feet (18'6" encroachment)                        |
| Side Yard                                          | 15 feet | ±40 (0' encroachment)                                 |

Planning &amp; Community Development

May 18, 2022

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Planning &amp; Community Development

May 18, 2022

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Planning & Community Development

May 18, 2022

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Planning & Community Development

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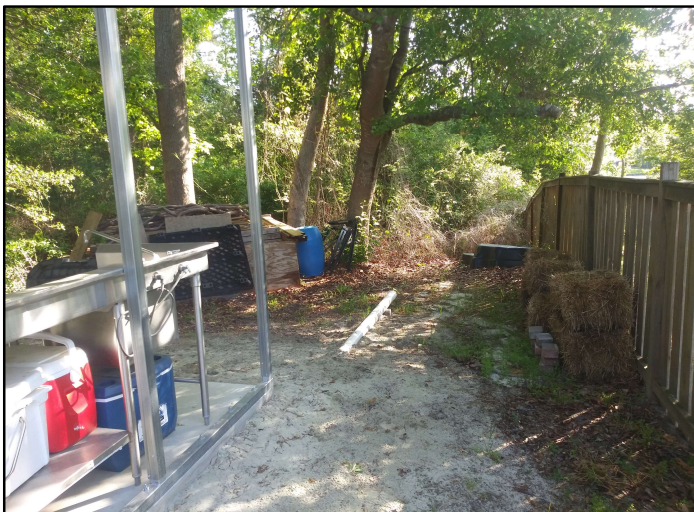
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Planning & Community Development

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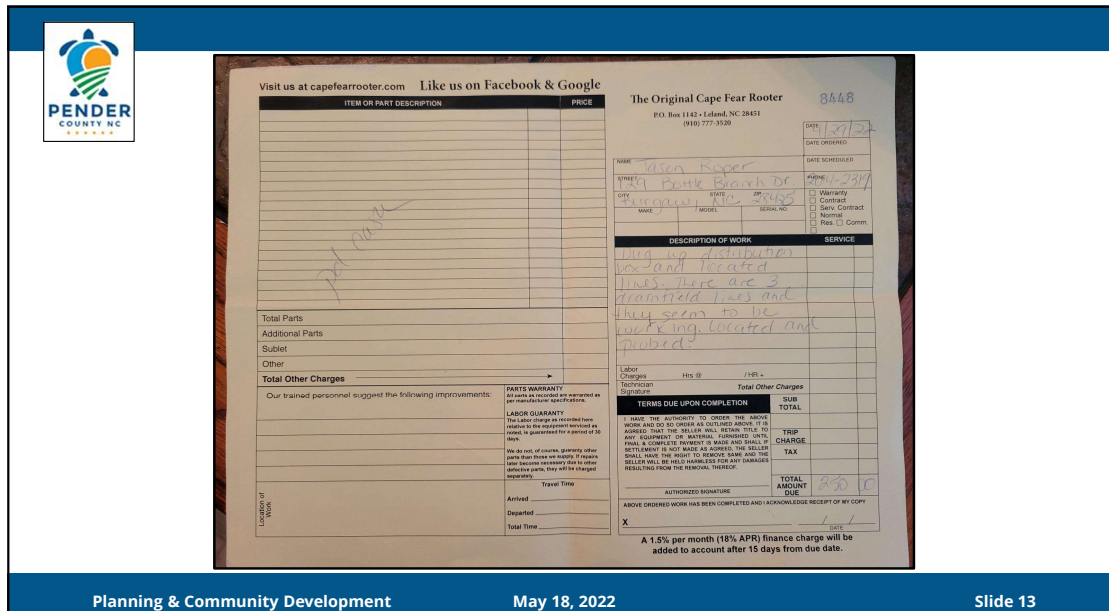
Planning & Community Development

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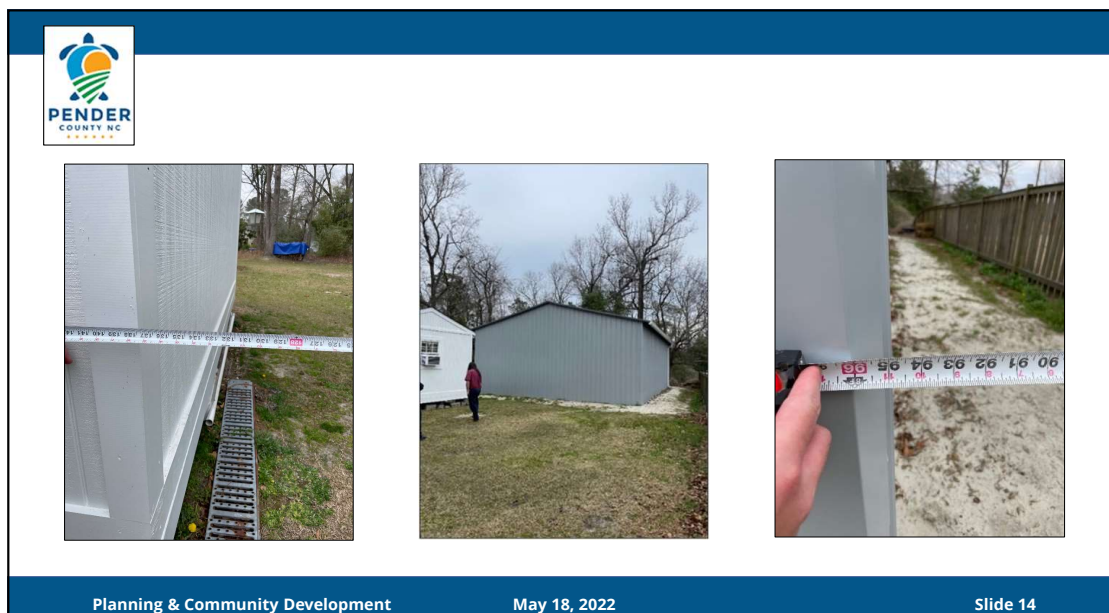
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## *Applicant's Presentation*

Planning & Community Development

May 18, 2022

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129 Bottle Branch Dr.  
Burgaw, NC 28425

Variance application

16

Regarding the septic lines, the farthest line out (closest to the building) is showing in orange here. At it's closest point, the line is 7' from the building. The other 2 lines run between this line and the home. This is confirmation the lines are an acceptable distance from the building.



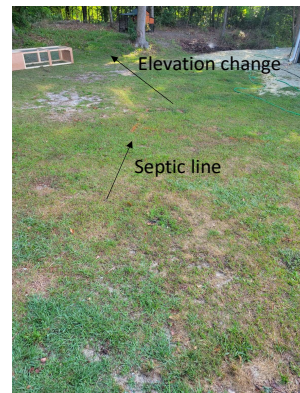
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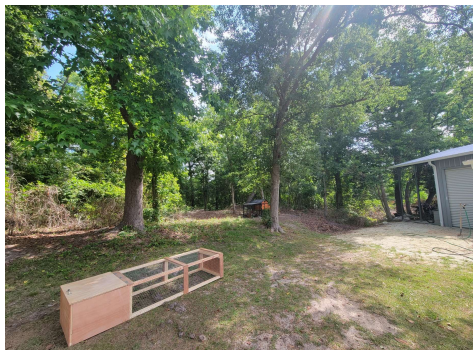


The septic line runs into the middle of the cleared backyard, this is also the septic repair field. Directly behind this, the property elevation changes/increases by about 2 feet and the property becomes wooded.



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The back section of the property is heavily wooded and then there is a significant decrease in elevation to the lake. This part of the property is not buildable due to the extreme elevation changes.



20

The edge of the building is next to a large and deep drainage ditch that drains the water from our property out to the lake behind our home.



21

Pictures of the back of the property



22





23



## Case VAR 2022-11

**PIN: 3282-97-7548-0000**

### *Variance:*

Ronald Anderson, applicant and owner, is requesting a variance for relief from the Pender County Unified Development Ordinance standards outlined in Section 8.3.2.C, 'Single row terminal landscape island requirements.' Specifically, the request is to seek relief from the requirement that single-row parking terminals cannot exceed 120 linear feet without the installation of a parking terminal island.

Planning & Community Development

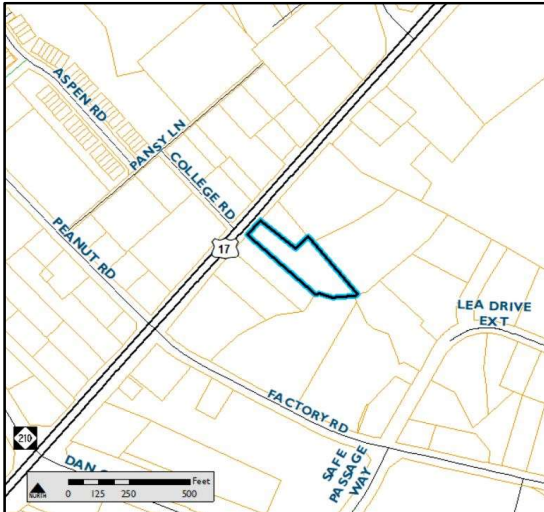
May 18, 2022

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**PENDER**  
COUNTY NC





**PENDER**  
COUNTY NC

Applicant and Owner:  
Ronald Anderson

Variance

VAR 2022-11

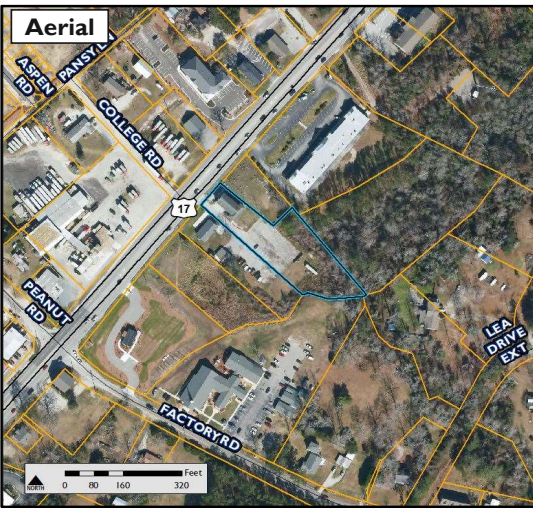
Vicinity

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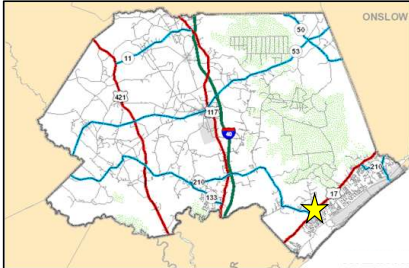


**PENDER**  
COUNTY NC





**PENDER**  
COUNTY NC



Applicant and Owner:  
Ronald Anderson

Variance

VAR 2022-11

Aerial

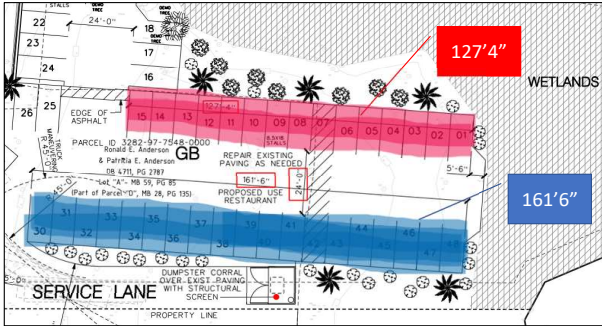
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**Below: Proposed Parking Terminal Length**

| Parking Terminal Length Maximum UDO Section 8.2.3. | Parking Sections Identified on Site Plan | PROPOSED Parking Terminal Length Without Landscaping Island |
|----------------------------------------------------|------------------------------------------|-------------------------------------------------------------|
| 120'                                               | 1 - 15                                   | 127' 4" (7' 4")                                             |
| 120'                                               | 30 - 48                                  | 161' 6" (41' 6")                                            |



Planning & Community Development

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Planning & Community Development

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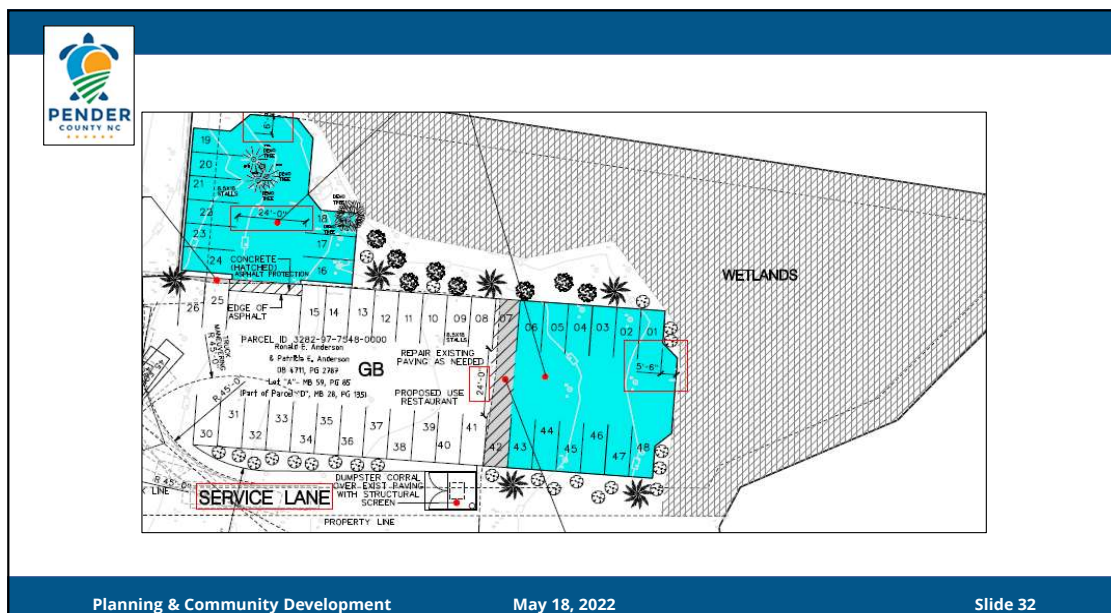
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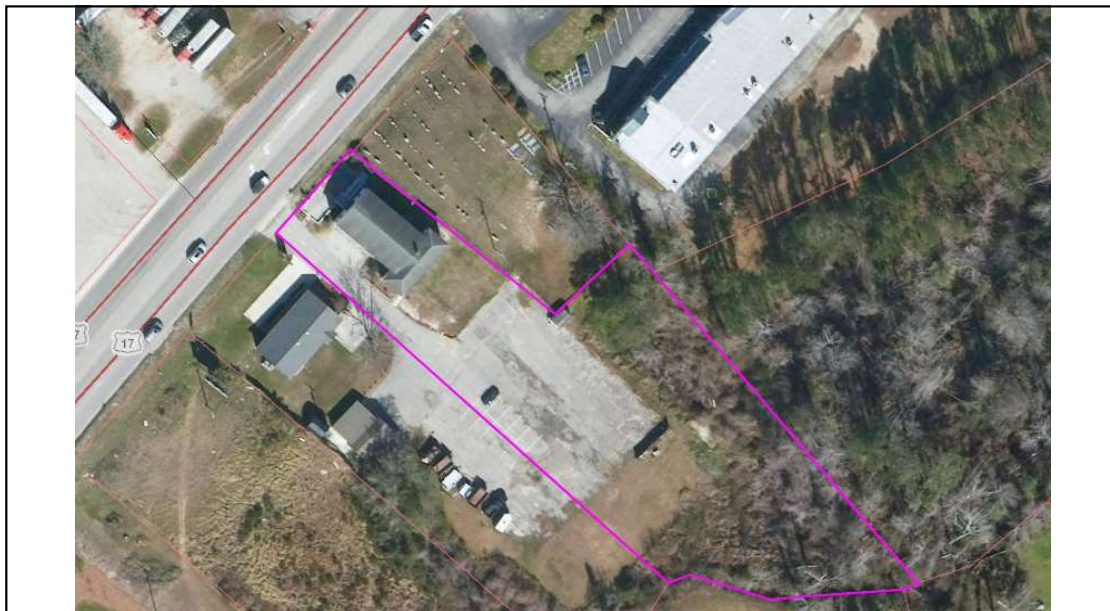
# *Applicant's Presentation*

Planning & Community Development

May 18, 2022

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## Pender County Request for Board Action

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**TO:** Zoning Board of Adjustment  
**FROM:** Justin Brantley  
**DATE:** July 20, 2022  
**SUBJECT:** APPEAL 2022-07

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**SUMMARY:**

Sean Donahue, applicant and owner of Surf City Farm, is requesting an Appeal of an Administrative Decision which found that selling produce grown on other farms does not fall under the bona-fide farm exemption established by North Carolina General Statutes and is thus subject to local zoning requirements. The subject property is located at 101 Northern Escape Way, approximately one-half mile northwest of the mainland intersection of NC 50 and NC 210 in the Topsail Township and may be further identified by Pender County PINs 4236-00-7179-0000 and 4235-00-9594-0000.

**ACTION REQUESTED:**

To hold a public hearing and consider the Appeal of Administrative Decision.

**ATTACHMENTS:**

Listed within packet.

**PLANNING STAFF REPORT  
APPEAL OF ADMINISTRATIVE DECISION**

**SUMMARY:**

**Hearing Date:** July 20, 2022  
**Applicant:** Sean Donahue, Surf City Farm  
**Property Owner:** Sean Donahue  
**Case Number:** APPEAL 2022-07

**Property Location and Description:** The subject property is located at 101 Northern Escape Way, approximately one-half mile northwest of the intersection of NC 210 and NC 50 in the Topsail Township and may be further identified by Pender County PINs 4236-00-7179-0000 & 4235-00-9594-0000. (See Attached Vicinity Map and Aerial Map)

**Zoning District of Property:** The subject property is zoned RP, Residential Performance zoning district. (See Attached Zoning Map)

**Summary of Appeal Request:** Sean Donahue, applicant and owner of Surf City Farm, is requesting an Appeal of an Administrative Decision which found that selling produce grown on other farms does not fall under the bona fide farm exemption established by the State and would be subject to County zoning requirements.

Note: Page 3 of this Report Includes a Complete List of Attached Documents

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**BACKGROUND AND DESCRIPTION OF APPEAL REQUEST:**

NCGS 160D-903. Agricultural Uses (See Attached)

North Carolina General Statute (NCGS) 160D-903 provides that bona fide farm purposes are exempt from county zoning regulations if the farm in question can provide specific documentation evidencing bona fide farm status. Bona fide farms shall qualify under this exemption if one of the four items below are provided:

- (1) A farm sales tax exemption certificate issued by the Department of Revenue.
- (2) A copy of the property tax listing showing that the property is eligible for participation in the present-use value program pursuant to G.S. 105-277.3.
- (3) A copy of the farm owner's or operator's Schedule F from the owner's or operator's most recent federal income tax return.
- (4) A forest management plan.

NCGS 160D-903 also provides that "A building or structure that is used for agritourism is a bona fide farm purpose if the building or structure is located on a property that (i) is owned by a person who holds a qualifying farm sales tax exemption certificate from the Department of Revenue pursuant to G.S. 105-164.13E(a) or (ii) is enrolled in the present-use value program pursuant to G.S. 105-277.3... For purposes of this section, "agritourism" means any activity carried out on a farm or ranch that allows members of the general public, for recreational, entertainment, or educational purposes, to view or enjoy rural activities, including farming, ranching, historic, cultural, harvest-your-own activities, hunting, fishing, equestrian activities, or natural activities and attractions. A building or structure used for agritourism includes any building or structure used for public or private events, including, but not limited to, weddings, receptions, meetings, demonstrations of farm activities, meals, and other events that are taking place on the farm because of its farm or rural setting".

APP 2022-07



NCGS 106-581.1. Agriculture defined (See Attached)

NCGS 106-581.1 further defines agriculture as follows:

For purposes of this Article, the terms "agriculture", "agricultural", and "farming" refer to all of the following:

- (1) The cultivation of soil for production and harvesting of crops, including but not limited to fruits, vegetables, sod, flowers and ornamental plants.
- (2) The planting and production of trees and timber.
- (3) Dairying and the raising, management, care, and training of livestock, including horses, bees, poultry, and other animals for individual and public use, consumption, and marketing.
- (4) Aquaculture as defined in G.S. 106-758.
- (5) The operation, management, conservation, improvement, and maintenance of a farm and the structures and buildings on the farm, including building and structure repair, replacement, expansion, and construction incident to the farming operation.
- (6) When performed on the farm, "agriculture", "agricultural", and "farming" also include the marketing and selling of agricultural products, agritourism, the storage and use of materials for agricultural purposes, packing, treating, processing, sorting, storage, and other activities performed to add value to crops, livestock, and agricultural items produced on a farm, and similar activities incident to the operation of a farm.
- (7) A public or private grain warehouse or warehouse operation where grain is held 10 days or longer and includes, but is not limited to, all buildings, elevators, equipment, and warehouses consisting of one or more warehouse sections and considered a single delivery point with the capability to receive, load out, weigh, dry, and store grain. (1991, c. 81, s. 1; 2005-390, s. 18; 2006-255, s. 6; 2013-347, s. 2; 2017-108, s. 8.1.

Case History

On July 11, 2019, Mr. Sean Donahue, owner and operator of Surf City Farm, received a Conditional Farmer Exemption from the North Carolina Department of Revenue. (See Attached) For further information requiring this exemption, see attached NCGS Section 105-164.13.E. Based on the receipt of this document along with an application for a bona fide farm determination, Pender County Planning and Community Development issued a bona fide farm determination on July 18, 2019 (Case BFF 2019-35, See Attached Application and Approval) for Surf City Farm which documented Surf City Farms' exemption from county zoning regulations for bona fide farm purposes. However, activities that fall outside of bona fide farm purposes are subject to county zoning regulations. At this time everything submitted within the application for the bona fide farm determination was consistent with bona fide farm purposes.

During the months of June and July of 2021, Pender County Planning & Community Development received three complaints concerning the activities being undertaken at Surf City Farm. On July 28, 2021 the Planning Department requested a full description of the farm business and related activities including details of products being shipped to the site, frequency and nature of deliveries, number of customers per day, as well as what is being sold and grown onsite. Shari Donahue, on behalf of Surf City Farm, provided a detailed summary of activities taking place on the farm. This correspondence provided that Surf City Farm was ordering wholesale produce once a week from "Fresh Point", which is a division of Sysco Foods, for resale purposes. In addition, Surf City Farm was noted to have produce delivered directly from local farms as well as to have picked up produce from farms in the area on a regular basis for resale purposes. (See Attached)

On December 7, 2021, Mr. Donahue received a Qualifying Farmer Exemption from the North Carolina Department of Revenue which effectively replaced the Conditional Farmer Exemption which was due to expire on December 31, 2021. (See Attached) This allowed Surf City Farm to maintain its bona fide farm status.

APP 2022-07

On March 7, 2022 Travis Henley, Planning Director, issued a zoning determination letter, which addressed exempt as well as non-exempt activities that may or may not occur on the site related to its farm purpose. (See Attached Determination Letter) In this letter, Mr. Henley addressed the resale of crops/products produced off-site and provided that "Surf City Farm has confirmed that crops/products from other local farms as well as crops/products from other farms from across North Carolina through a third-party vendor. This DOES NOT meet the standard of a bona-fide farm purpose under state statute. This interpretation is based on G.S. 160D-903 and GS 106-581.1(6) as mentioned above, specifically in that items sold on the farm must be either produced on the farm or through activities that add value to items produced on the farm or are related or incidental to the production of crops." In addition, Mr. Henley stated that "this determination shall also be applicable to any other current or future bona-fide farms located within Pender County's planning and zoning jurisdiction".

On April 4, 2022 Sean Donahue filed an application to appeal the March 7, 2022 determination issued by Travis Henley, Planning Director, specifically disagreeing with the interpretation of North Carolina General Statutes as they relate to the selling of produce grown off-site not being exempt from county zoning regulations. The Appeal Application included Sections 160D-903 and 106-581.1 as previously mentioned in this report. (See Attached Appeal Application Package)

#### Documents Referenced within This Report

- Vicinity Map of the Subject Property
- Aerial Map of the Subject Property
- Zoning Map of the Subject Property
- BFF 2019-35 Conditional Farmer Exemption
- Bona Fide Farm Determination Application with Supplemental Documentation (BFF 2019-35)
- Zoning Approval for Bona Fide Farm Determination issued July 18, 2019 (BFF 2019-35)
- BFF 2019-35 Qualifying Farmer Exemption
- Application for Appeal of Administrative Decision April 4, 2022 (Appeal 2022-7)
  - Appeal Application
  - Pender County Appeal Guide
  - Written Description of Appeal
  - Zoning Determination Letter issued March 7, 2022
  - NCGS 160D-903 (Agricultural Uses)
  - NCGS 106-581.1 (Agriculture Defined)
  - Email correspondence with Carlene Shaw and Shari Donahue from July 28, 2021 to December 31, 2021 (Includes Description of Business Provided on July 28, 2021)
  - Email correspondence with Travis Henley and Shari Donahue from January 13, 2022 to April 4, 2022
- Additional NCGS Section Referenced
  - NCGS 105-164.13E (Exemption for Farmers)

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#### **ADMINISTRATOR'S CONCLUSION:**

Sean Donahue, applicant and owner of Surf City Farm, is requesting an Appeal of an Administrative Decision. The appeal is of an interpretation made by Planning Staff of North Carolina General Statutes that address bona fide farm purposes in relation to exemption from county zoning regulations. The majority of uses taking place at Surf City Farm have been determined to fall within the category of bona fide farm purposes. However, it was further determined that the resale of crops and/or products from other farms is not considered an exempt bona fide farm purpose and would therefore be subject to county zoning regulations. It is the conclusion of the Administrator that Planning Staff made the appropriate interpretation of NCGS as they relate to bona fide farm purposes.

APP 2022-07

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**3.16.6 Action by Board of Adjustment**

- A. The Board of Adjustment may reverse or affirm (wholly or partly) or may modify the order, requirement, decision, or determination appealed from and shall make any order, requirement, decision or determination that in its opinion ought to be made in the case before it. To this end, the Board of Adjustment shall have all the powers of the officer from whom the appeal is taken.
- B. A motion to reverse, affirm, modify the order, requirement, decision, or determination appealed from shall include, insofar as practicable, a statement of the specific reasons or findings of fact that support the motion.
- C. If a motion to reverse or modify is not made, or fails to receive the affirmative vote of a majority of members present, the appeal shall be denied.
- D. Any motion to overturn a decision shall state the reasons or findings of fact that support the motion.

---

**BOARD ACTION FOR APPEAL:**

MOVED \_\_\_\_\_ SECONDED \_\_\_\_\_

APPROVED \_\_\_\_\_ DENIED \_\_\_\_\_ MODIFIED \_\_\_\_\_ UNANIMOUS \_\_\_\_\_

YEA VOTES: KIPFER \_\_\_\_\_ BREUER \_\_\_\_\_ RIVENBARK \_\_\_\_\_ OLSEN \_\_\_\_\_ SNIDER \_\_\_\_\_

APP 2022-07



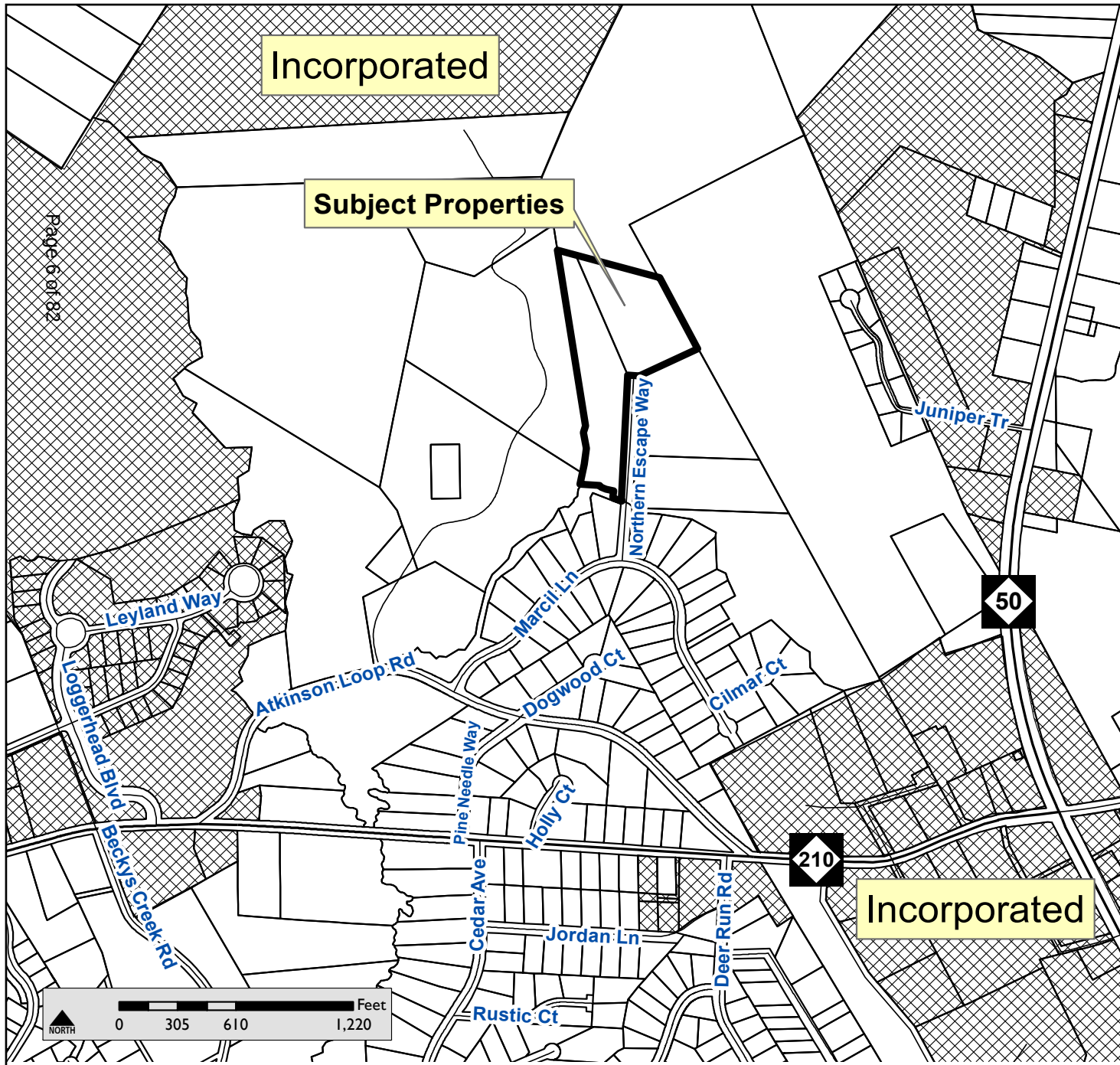
**Applicant:**  
**Sean Donahue,**  
**Surf City Farm**

**Owner:**  
**Sean Donahue**

**Appeal**

**Appeal 2022-7**

**Vicinity**



**Incorporated**

**Subject Properties**

**Incorporated**





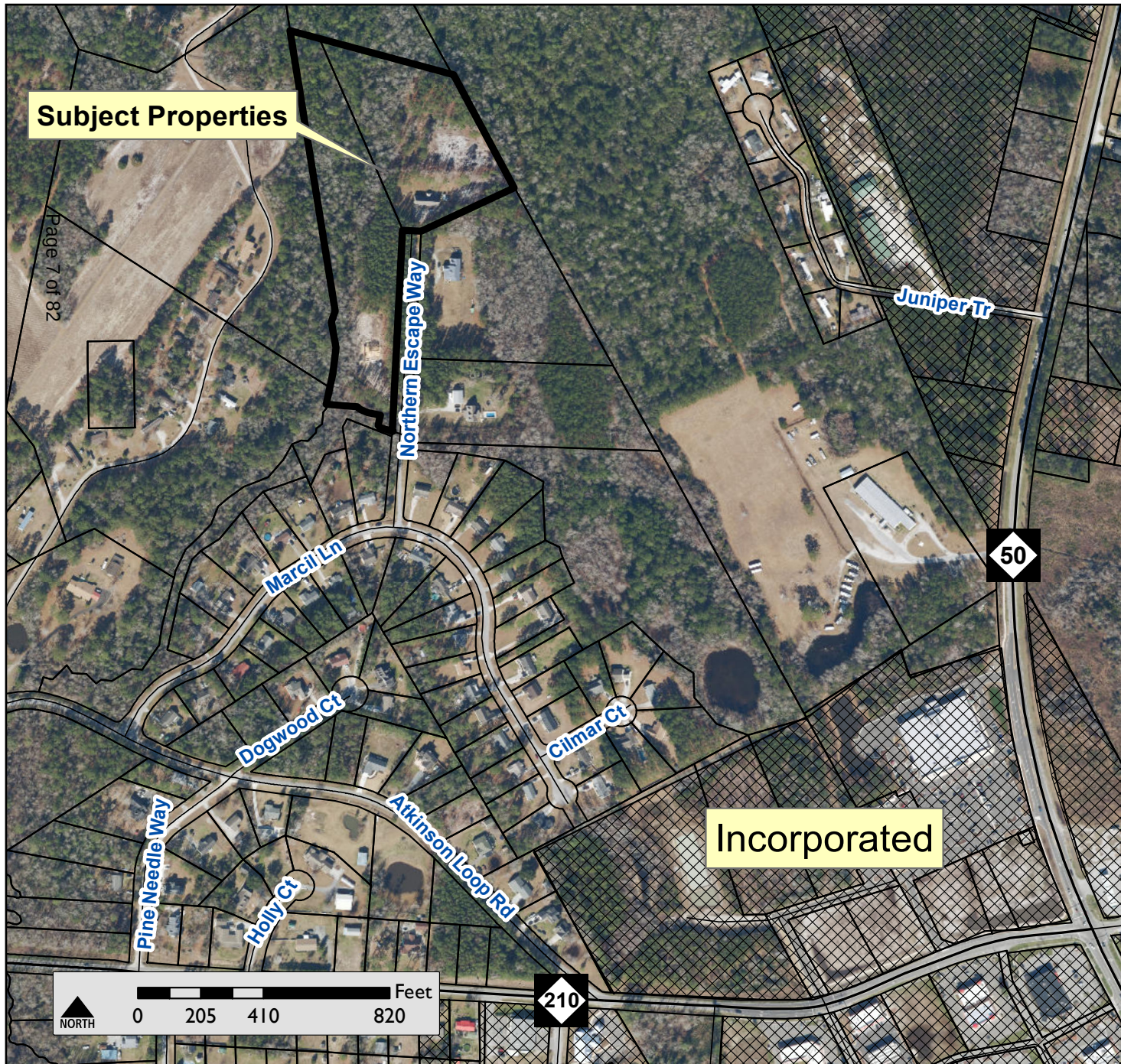
**Applicant:**  
**Sean Donahue,**  
**Surf City Farm**

**Owner:**  
**Sean Donahue**

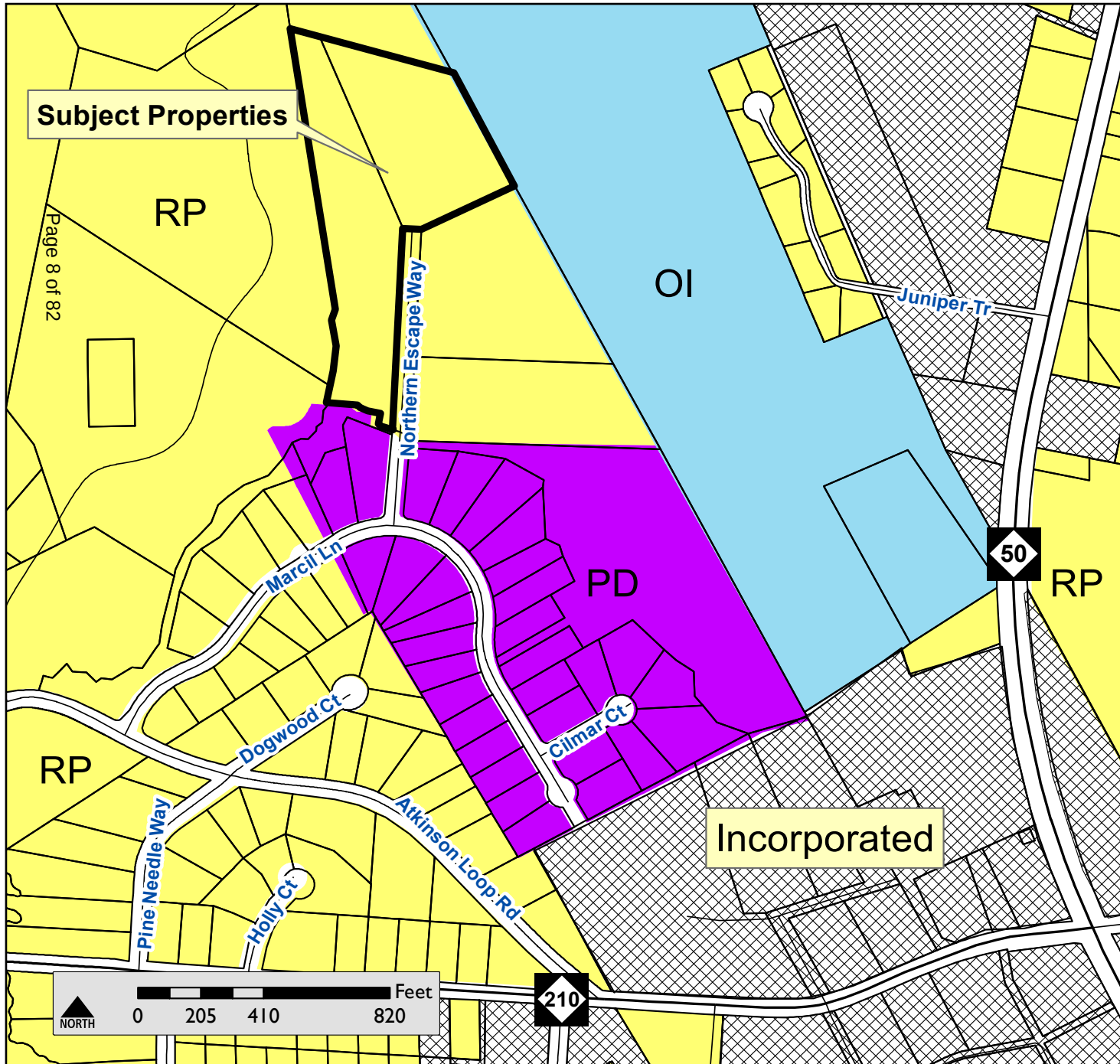
**Appeal**

**Appeal 2022-7**

**Aerial**







**Applicant:**  
Sean Donahue,  
Surf City Farm

**Owner:**  
Sean Donahue

**Appeal**

**Appeal 2022-7**

**Current Zoning**



## North Carolina Department of Revenue

P.O. Box 871, Raleigh, North Carolina 27602-0871

Roy Cooper  
Governor

July 11, 2019

Ronald G. Penny  
Secretary

Mr Sean Donahue  
190 Northern Escape Way  
Hampstead, NC 28443

Dear Mr Donahue:

The Department received the application for a Conditional Farmer exemption certificate number for qualified purchases. The Department has assigned Exemption Certificate Number 806963 to be used to purchase qualified tangible personal property exempt from tax based on your status as a purchaser and the intended use of the property. This letter should be retained for future reference. The perforated card bearing the exemption certificate number at the bottom of this letter can be detached for your convenience.

This exemption certificate number should be used in conjunction with Form E-595E, Streamlined Sales and Use Tax Agreement Certificate of Exemption. This exemption certificate authorizes a retailer to sell a qualified purchase to the holder of the certificate and not collect tax on the sale. A person who makes purchases of property under an exemption certificate without payment of sales and use tax to the retailer is liable for any tax due and applicable penalties and interest if the Department determines that the person is not eligible for the exemption or the qualified property was not used as intended by the person.

A person who no longer qualifies for a use-based exemption certificate number must notify the Department within 30 days to cancel the exemption certificate number and must give notice to each seller that may rely on the exemption certificate on or before the next purchase.

Additional information regarding the use of the Conditional Farmer certificate number is available on the Department's website at [www.ncdor.gov](http://www.ncdor.gov). If you have further questions, contact our Taxpayer Assistance and Collection Center at telephone number 1-877-252-3052.



**NC Department of Revenue**  
**Conditional Farmer Exemption**

**Exemption ID: 806963**  
**Donahue Restaurant Group LLC**  
**Surf City Farm**  
**190 Northern Escape Way**  
**Hampstead, NC 28443**

**Expires: 12/31/2021**



# 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](http://www.pendercountync.gov)



## BONA FIDE FARM DETERMINATION

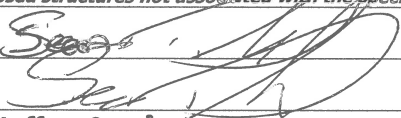
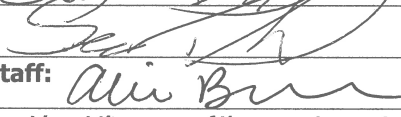
Bona fide farm purposes must comply with § 153A-340(b)(2) of the North Carolina General Statutes:

Except as provided in G.S. 106-743.4 for farms that are subject to a conservation agreement under G.S. 106-743.2, bona fide farm purposes include the **production and activities relating or incidental to the production of crops, fruits, vegetables, ornamental and flowering plants, dairy, livestock, poultry, and all other forms of agriculture** as defined in G.S. 106-581.1.

For purposes of this subdivision, the production of a nonfarm product that the Department of Agriculture and Consumer Services recognizes as a "Goodness Grows in North Carolina" product that is produced on a farm subject to a conservation agreement under G.S. 106-743.2 is a bona fide farm purpose. For purposes of determining whether a property is being used for bona fide farm purposes, any of the following shall constitute sufficient evidence that the property is being used for bona fide farm purposes:

- A farm sales tax exemption certificate issued by the Department of Revenue.
- A copy of the property tax listing showing that the property is eligible for participation in the present use value program pursuant to G.S. 105-277.3.
- A copy of the farm owner's or operator's Schedule F from the owner's or operator's most recent federal income tax return.
- A forest management plan.

|                                                       |  |                                                                                               |  |                                  |  |                            |  |
|-------------------------------------------------------|--|-----------------------------------------------------------------------------------------------|--|----------------------------------|--|----------------------------|--|
| <b>Date:</b> 7-18-2019                                |  | <b>Case Number:</b> 2019-35                                                                   |  | <b>Fee:</b> Exempt               |  | <b>Receipt Number:</b> N/A |  |
| <b>Eligible for Farm Exemption :</b> YES / NO         |  |                                                                                               |  | <b>Approved by:</b> <i>Ali B</i> |  |                            |  |
| <b>SECTION 1: GENERAL INFORMATION</b>                 |  |                                                                                               |  |                                  |  |                            |  |
| <b>Applicant's Name:</b>                              |  | Sean Donahue                                                                                  |  | <b>Owner's Name:</b>             |  | Sean Donahue               |  |
| <b>Applicant's Address:</b>                           |  | 190 Northern Escape Way                                                                       |  | <b>Owner's Address:</b>          |  | 190 Northern Escape Way    |  |
| <b>City, State, &amp; Zip</b>                         |  | Hampstead, NC 28443                                                                           |  | <b>City, State, &amp; Zip</b>    |  | Hampstead, NC 28443        |  |
| <b>Phone Number:</b>                                  |  | 860-810-9271                                                                                  |  | <b>Phone Number:</b>             |  | 860-810-9271               |  |
| <b>Email Address:</b>                                 |  | surfcityfarm@gmail                                                                            |  | <b>Email Address:</b>            |  | surfcityfarm@gmail         |  |
| <b>Legal relationship of applicant to land owner:</b> |  |                                                                                               |  | Self.                            |  |                            |  |
| <b>SECTION 2: PROJECT INFORMATION</b>                 |  |                                                                                               |  |                                  |  |                            |  |
| <b>PIN (Property Id #):</b>                           |  | 4235 009594 0006<br>42360071790000                                                            |  | <b>Total property acreage:</b>   |  | 10.54                      |  |
| <b>Zoning District:</b>                               |  | RP                                                                                            |  | <b>Flood Zone:</b>               |  |                            |  |
| <b>Directions to Site:</b>                            |  | 210 to Atkinson loop rd, to Marul lane to Northern Escape way.<br>Property is at end of road. |  |                                  |  |                            |  |

|                                                                                                                                                                                                                                                                              |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |                                                                                                                   |                                            |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------|--------------------------------------------|
| <b>Farm Name:</b>                                                                                                                                                                                                                                                            |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |                                                                                                                   |                                            |
| <b>Farm Use:</b><br><i>Describe activities to be undertaken at the farm site.</i>                                                                                                                                                                                            | Hydroponic produce grown for local sales to business and public                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          | <b>Proposed Improvements to be Undertaken at Site(s):</b> <i>All proposals must be for the specific farm use.</i> | 3 Greenhouse Built<br>Electrical installed |
| <b>SECTION 3: CRITERIA FOR FARM EXEMPTION</b>                                                                                                                                                                                                                                |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |                                                                                                                   |                                            |
| Check any that apply                                                                                                                                                                                                                                                         | <input checked="" type="checkbox"/> Copy of farm sales tax exemption issued by the Department of Revenue<br><input type="checkbox"/> Copy of property tax listing showing that the property is eligible for participation in the present use value program pursuant to G.S. 105-277.3 <ul style="list-style-type: none"> <li><input type="checkbox"/> Agricultural, horticultural, forestland classification OR combination (please circle which is applicable)</li> </ul> <input type="checkbox"/> Copy of the farm owner or operator's Schedule F for most recent federal income tax return<br><input type="checkbox"/> Copy of forest management plan |                                                                                                                   |                                            |
| <b>SECTION 5: SIGNATURES</b>                                                                                                                                                                                                                                                 |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |                                                                                                                   |                                            |
| <i>In signing, the applicant and owner acknowledge that the proposed structure(s) will be used for the specific farm use identified above. All other proposed structures not associated with the specific farm use must comply with all other Pender County Regulations.</i> |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |                                                                                                                   |                                            |
| <b>Applicant:</b>                                                                                                                                                                                                                                                            |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |                                                                                                                   | <b>Date:</b> 4/27/19                       |
| <b>Owner:</b>                                                                                                                                                                                                                                                                |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |                                                                                                                   | <b>Date:</b> 6/25/19                       |
| <b>Planning Staff:</b>                                                                                                                                                                                                                                                       | Alii Brun                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |                                                                                                                   | <b>Date:</b> 7-18-2019                     |

*\* If the applicant is not the owner of the property, a notarized letter from the property owner may be required.*



## **Surf City Farm**

Bona Fide Farm Application,



190 Northern Escape Way, Hampstead, N.C.

- \*APPLICATION FOR BONA FIDE FARM
- \*COPY OF APPLICATION FOR CONDITIONAL FARMER EXEMPTION TO DOR ( mailed on 6/27/2019)
- \*ASSUMED BUSINESS NAME APPLICATION {COPY} FILED 6/27/19 PENDER COUNTY
- \*L.L.C. AND TAXES
- \*ACCOUNTANT
- \*INSURANCE
- \*PROPERTY INFO & MAPS
- \*PROJECT / BUSINESS OUTLINE
- \*ENVIRONMENTAL CONSULTANT AND ARMY CORPS. OF ENGINEERS
- \*WEBSITE INFO & BLOG
- \*HYDROPONICS INFO
- \*ABOUT US,GOALS

# 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](http://www.pendercountync.gov)



## BONA FIDE FARM DETERMINATION

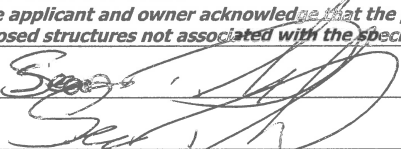
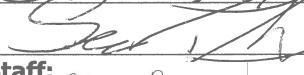
Bona fide farm purposes must comply with § 153A-340(b)(2) of the North Carolina General Statutes:

Except as provided in G.S. 106-743.4 for farms that are subject to a conservation agreement under G.S. 106-743.2, bona fide farm purposes include the **production and activities relating or incidental to the production of crops, fruits, vegetables, ornamental and flowering plants, dairy, livestock, poultry, and all other forms of agriculture** as defined in G.S. 106-581.1.

For purposes of this subdivision, the production of a nonfarm product that the Department of Agriculture and Consumer Services recognizes as a "Goodness Grows in North Carolina" product that is produced on a farm subject to a conservation agreement under G.S. 106-743.2 is a bona fide farm purpose. For purposes of determining whether a property is being used for bona fide farm purposes, any of the following shall constitute sufficient evidence that the property is being used for bona fide farm purposes:

- a. A farm sales tax exemption certificate issued by the Department of Revenue.
- b. A copy of the property tax listing showing that the property is eligible for participation in the present use value program pursuant to G.S. 105-277.3.
- c. A copy of the farm owner's or operator's Schedule F from the owner's or operator's most recent federal income tax return.
- d. A forest management plan.

|                                                                                                   |                                                                                                 |                           |                         |
|---------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------|---------------------------|-------------------------|
| Date:                                                                                             | Case Number:                                                                                    | Fee: Exempt               | Receipt Number: N/A     |
| Eligible for Farm Exemption : <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO |                                                                                                 | Approved by: Abie Bonevac |                         |
| <b>SECTION 1: GENERAL INFORMATION</b>                                                             |                                                                                                 |                           |                         |
| Applicant's Name:                                                                                 | Sean Donahue                                                                                    | Owner's Name:             | Sean Donahue            |
| Applicant's Address:                                                                              | 190 Northern Escape Way                                                                         | Owner's Address:          | 190 Northern Escape Way |
| City, State, & Zip                                                                                | Hampstead, NC 28443                                                                             | City, State, & Zip        | Hampstead, NC 28443     |
| Phone Number:                                                                                     | 860-810-9271                                                                                    | Phone Number:             | 860-810-9271            |
| Email Address:                                                                                    | surfcityfarm@gmail                                                                              | Email Address:            | surfcityfarm@gmail      |
| Legal relationship of applicant to land owner:                                                    |                                                                                                 | Self.                     |                         |
| <b>SECTION 2: PROJECT INFORMATION</b>                                                             |                                                                                                 |                           |                         |
| PIN (Property Id #):                                                                              | 42350095940006<br>42360071790000                                                                | Total property acreage:   | 10.54                   |
| Zoning District:                                                                                  | BP                                                                                              | Flood Zone:               |                         |
| Directions to Site:                                                                               | 210 to Atkinson loop rd, to Marcell lane to Northern Escape way.<br>Property is at end of road. |                           |                         |

|                                                                                                                                                                                                                                                                              |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |                                                                                                                   |                                            |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------|--------------------------------------------|
| <b>Farm Name:</b>                                                                                                                                                                                                                                                            |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |                                                                                                                   |                                            |
| <b>Farm Use:</b><br><i>Describe activities to be undertaken at the farm site.</i>                                                                                                                                                                                            | Hydroponic produce grown for local sales to business and public                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   | <b>Proposed Improvements to be Undertaken at Site(s):</b> <i>All proposals must be for the specific farm use.</i> | 3 Greenhouse Built<br>Electrical installed |
| <b>SECTION 3: CRITERIA FOR FARM EXEMPTION</b>                                                                                                                                                                                                                                |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |                                                                                                                   |                                            |
| <b>Check any that apply</b>                                                                                                                                                                                                                                                  | <input checked="" type="checkbox"/> Copy of farm sales tax exemption issued by the Department of Revenue<br><input type="checkbox"/> Copy of property tax listing showing that the property is eligible for participation in the present use value program pursuant to G.S. 105-277.3 <ul style="list-style-type: none"> <li>○ Agricultural, horticultural, forestland classification OR combination (please circle which is applicable)</li> </ul> <input type="checkbox"/> Copy of the farm owner or operator's Schedule F for most recent federal income tax return<br><input type="checkbox"/> Copy of forest management plan |                                                                                                                   |                                            |
| <b>SECTION 5: SIGNATURES</b>                                                                                                                                                                                                                                                 |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |                                                                                                                   |                                            |
| <i>In signing, the applicant and owner acknowledge that the proposed structure(s) will be used for the specific farm use identified above. All other proposed structures not associated with the specific farm use must comply with all other Pender County Regulations.</i> |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |                                                                                                                   |                                            |
| <b>Applicant:</b>                                                                                                                                                                                                                                                            |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  | <b>Date:</b>                                                                                                      | 6/27/19                                    |
| <b>Owner:</b>                                                                                                                                                                                                                                                                |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  | <b>Date:</b>                                                                                                      | 6/27/19                                    |
| <b>Planning Staff:</b>                                                                                                                                                                                                                                                       | Abie Bonavac                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      | <b>Date:</b>                                                                                                      | 7/18/2019                                  |

*\* If the applicant is not the owner of the property, a notarized letter from the property owner may be required.*



Fax to 919-715-2999

E-595CF  
Web-Fill  
9-18

Registration Unit Application for Conditional Farmer Exemption  
Certificate Number for Qualified Purchases

North Carolina Department of Revenue

Copy of App  
Sent

6/27/2019  
Office Use

A person who does not meet the definition of the term "qualifying farmer" as defined in N.C. Gen. Stat. § 105-164.13E(a) may apply for a conditional farmer exemption certificate number. A person with a conditional farmer exemption certificate is allowed to purchase items exempt from sales and use tax to the same extent as a qualifying farmer. Use this application to apply for a conditional farmer exemption certificate number from the Department.

1. If Corporation, Partnership, or LLC enter Federal Employer ID No.: 815061924 If Proprietorship enter Social Security Number:
2. Type of Ownership: Proprietorship Corporation Partnership ☒ LLC Other (Identify) \_\_\_\_\_
3. Applicant's Legal Name: SEAN DONAHUE / DONAHUE RESTAURANT GROUP LLC
4. Trade Name (DBA Name): SURF CITY FARM
5. Street Address: (Not P.O. Box Number) Street 190 NORTHERN ESCAPE WAY  
City HAMPSTEAD State NC Zip Code 28443
6. Mailing Address: Street or P.O. Box 190 NORTHERN ESCAPE WAY  
City HAMPSTEAD State NC Zip Code 28443
7. Enter agricultural exemption certificate number issued to applicant prior to July 1, 2014, if applicable. 1
8. Applicant intends to engage in the following farming operations. (Fill in all applicable circles)  
Dairy operator Livestock farmer  
Poultry farmer ☒ Farmer of crops  
Egg producer Farmer of an aquatic species as defined in N.C. Gen. Stat. § 106-758  
Horse boarding
9. ☒ Check if applicant certifies that they will timely file State and federal income tax returns that reflect income and expenses incurred from farming operations during the income tax years that the conditional farmer exemption certificate applies.

Signature: Sean Donahue Date: 06-19-20  
I certify that this application is accurate and complete.

Name (Print): SEAN DONAHUE Title: OWNER  
E-mail: surfcityfarm@gmail.com Phone: (860) 810-9271

Mail to: N.C. Department of Revenue, Registration Unit  
P. O. Box 25000, Raleigh, NC 27640-0001  
Page 16 of 82

copy of

**ASSUMED BUSINESS NAME CERTIFICATE (NCGS §66-71.5)**

*Please print legibly.*

1. The assumed business name is:  
SURF CITY FARM

(You may include no more than five (5) assumed business names on this form.)

2. The real name of the person or entity engaging in business under the assumed business name is:  
DONAHUE RESTAURANT GROUP L.L.C.  
SOS ID 1551720

(Corporations, LLC's, limited partnerships must provide the exact name registered with the NC Secretary of State's office and the SOSID number assigned at the time of formation. Go to [www.sosnc.gov/br/search](http://www.sosnc.gov/br/search) to look up your information.)

3. The nature/type of the business is: FARMING, PRODUCE SALES

4. The street address of the principal place of business is: (PO Boxes are not acceptable)  
190 NORTHERN ESCAPE WAY, HAMPSTEAD, N.C. 28443

5. The mailing address, if different from the street address, is:

6. The counties where the assumed business name will be used to engage in business are:

☒ All 100 North Carolina counties

This certificate is signed by the owner/legal representative of the person or entity named above,  
this 27 TH day of JUNE, 2019.

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

Printed/Typed Name: SEAN DONAHUE FOR , DONAHUE RESTAURANT GROUP LLC

Title: OWNER

(See instructions for who must sign for various business entity types.)

THE "DONAHUE RESTAURANT GROUP L.L.C."

THE LLC IS OWNED AND OPERATED  
EQUALLY 50/50 BY:

SEAN & SHARI DONAHUE OF  
190 NORTHERN ESCAPE WAY,  
HAMPSTEAD, N.C.

E.I.N. 815061924

NC SOSID 1551720 {SEC OF STATE ID}

NC TAX # 601091102

THE ASSUMED BUSINESS NAME OF  
"SURF CITY FARM "WAS REGISTERED IN  
BURGAW, AT THE PENDER COUNTY  
REGISTER OF DEEDS OFFICE ON:  
ON JUNE 27 TH 2019

## ACCOUNTING & BOOK KEEPING

PIVER & ANDERSON ACCOUNTING SERVICES,

LEE PIVER, BUSINESS ACCOUNTANT

15430 US-17, Hampstead, NC 28443

**910-319-1016**

LEE PIVER AND HIS STAFF DO ALL THE BOOK KEEPING AND FILING OF TAXES FOR THE DONAHUE RESTAURANT GROUP INCLUDING, SURF CITY FARM, AS WELL AS OUR PERSONAL TAXES, THIS WILL IN THE FUTURE INCLUDE A SCHEDULE F FOR THE FARM.



## INSURANCE

SURF CITY FARM WILL CARRY ALL  
APPLICABLE POLICIES TO PROPERTY,  
BUSINESS, AND PRODUCT AS DEEMED  
RECOMMENDED BY OUR INSURANCE  
AGENT

SFI GROUP (SCOTT & MICHELLE)  
13500 NC-50,  
Surf City, NC 28445  
910-329-4443

POLICIES HAVE BEEN RESEARCHED, BUT,  
NOT YET SECURED, SUBJECT TO BONA FIDE  
FARM DETERMINATION FOR ACCURATE  
PRICING AND QUOTES.

## PROPERTY INFO AND MAPS

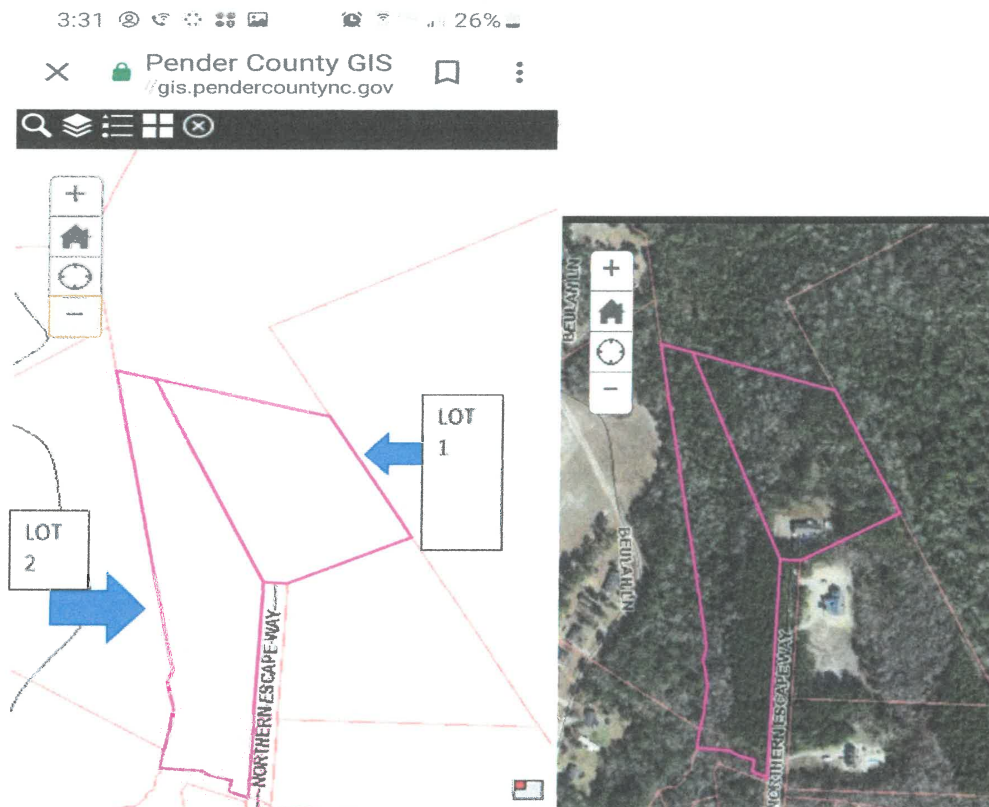
190 Northern Escape way,  
Hampstead, N.C. 28443  
Purchase date April,2014  
OWNED BY SEAN & SHARI DONAHUE

## THE PROPERTY CONSISTS OF 2 ADJACENT LOTS

LOT 1 (NORTH LOT)  
PARCEL 42350095940000  
4.83 ACRES  
ZONED RP  
CONSISTS OF 1 RESIDENTIAL HOME  
WHERE GREENHOUSE PLACEMENT AND PRODUCE  
FARMING WILL TAKE PLACE

LOT 2 (WEST LOT)  
PARCEL 42360071790000  
5.71 ACRES  
ZONED RP  
WOODED UNDEVELOPED LOT  
FUTURE AREA OF SOIL BASED PRODUCE & FLOWER  
PLANTINGS

ADDITIONAL MAPS, PROPERTY TAX INFORMATION



LOT 1, NORTH LOT  
LOT 2 ,WEST LOT

AERIAL VIEW (BEFORE LOT CLEARING WAS DONE)



AERIAL VIEW  
WETLANDS INDICATED IN BLUE,  
FLAGS HAVE BEEN PLACED TO MARK WETLANDS  
AREAS (ON LOT 1)  
GREENHOUSE AND FARMING AREA IN WHITE  
BLOCK, THIS AREA HAS BEEN CLEARED





LOT CLEARING IS COMPLETE



WOODMEN TIMBER CO. LLC.

P.O. BOX 12044

WILMINGTON. N.C. 28405

ROB WARD

REMAINING LAND ON LOT 1, (NORTH LOT) AND ALL LAND OUTSIDE THE GREENHOUSE AREA WILL REMAIN UNTOUCHED FOR THE NUMEROUS DEER WHO VISIT US FREQUENTLY. THIS AREA WILL BE A SAFE PLACE FOR WILDLIFE. (NO HUNTING ALLOWED.) WE CURRENTLY HAVE 5 BUCKS AND 1 DOE WHO ROAM THE LOT DAILY.



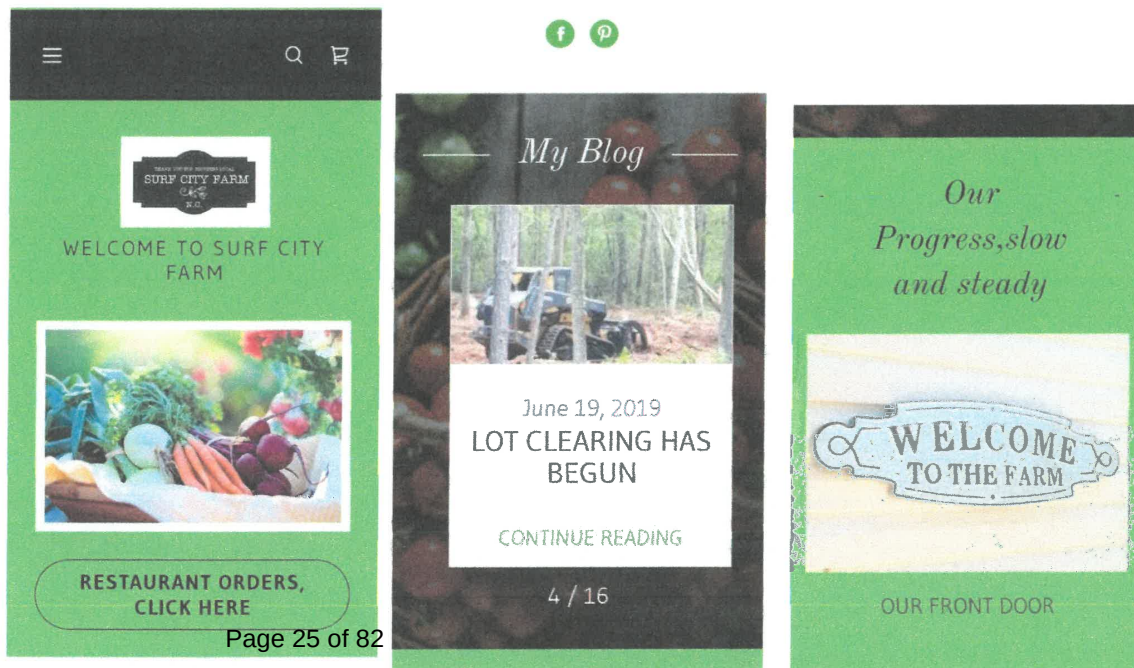
## WEBSITE & BLOG

[Surfcityfarm.com](http://Surfcityfarm.com)

SURF CITY FARM WEBSITE AND BLOG WAS CREATED IN THE VERY EARLY STAGES OF THE FARM PROCESS, TO INVOLVE THE LOCAL COMMUNITY IN THE PROCESS AND HAVE THEM BECOME PART OF THE FARM THROUGH IT'S INCEPTION AND GROWTH, TO HARVEST AND SALES.

(BELOW IS A SAMPLE OF OUR SITE)

\*YOU CAN ALSO FIND US ON FACEBOOK, SURF CITY FARM, WITH OVER 500 ANXIOUS FOLLOWERS !!



Page 25 of 82

THE RESPONSE ON SOCIAL MEDIA, FACEBOOK AND OUR WEBSITE HAS BEEN OVERWHELMING AND WITH POSITIVE SUPPORT THE ANTICIPATION FOR LOCALLY GROWN PRODUCE DIRECTLY FROM THE FARM IS A WELCOME ADDITION TO THE AREA. MOST LOCAL PRODUCE STANDS PURCHASE THEIR PRODUCE FROM WHOLESALERS, WITHOUT NOTIFYING THE CUSTOMER OF THE PRODUCTS ORIGIN. THIS CAN BE, AND IS VERY DECIEVING TO THE CONSUMER. MOST PRODUCE STANDS IN THE AREA DO NOT ACTUALLY OWN A FARM AT ALL.

SURF CITY FARM WILL BE PART OF ALL LOCAL FARMERS MARKETS AND VENDOR EVENTS, INCLUDING, BUT NOT LIMITED TO.  
POPLAR GROVE FARMERS MARKET (WEDNESDAYS)  
TOPSAIL BEACH CRAFT MARKET (THURSDAYS)  
ROADSIDE SALES IN VARIOUS PERMITTED LOCATIONS IN THE AREA,IN THE FUTURE POSSIBLY A FARM STAND ON THE PROPERTY.

SURF CITY FARM WILL BE VERY ACTIVE IN THE LOCAL COMMUNITY, AS WE HOPE TO EDUCATE THE PUBLIC ABOUT SUSTAINABLE FARMING AND HYDROPONICS.

OUR COMMUNITY INVOLVEMENT WILL GO BEYOND FARMING, OUR EXCESS PRODUCE WILL BE DISTRIBUTED TO LOCAL FOOD BANKS LIKE “ SHARE THE TABLE” IN SURF CITY,TO OFFSET THE NON-PERISHABLE DONATED FOODS AND BRING FRESH LOCAL VEGETABLES TO THOSE WHO MAY NOT OTHERWISE BE ABLE TO PURCHASE THEM.

IN OUR PREVIOUS BUSINESS EXPERIENCE AS RESTAURANT OWNERS, WE HAVE MADE NUMEROUS VALUABLE RELATIONSHIPS WITH MOST LOCAL RESTAURANT OWNERS AND MARKETS, MANY WHOM HAVE ALREADY EXPRESSED INTEREST IN OUR LOCAL PRODUCE FOR THEIR INVENTORY. LOCALLY GROWN PRODUCE IS SOMETHING THEIR CUSTOMERS HAVE BEEN ASKING FOR.

LOCAL FARM FRESH PRODUCE , WHEN OFFERED AT LOCAL RESTAURANTS AND BUSINESSES WILL INCREASE SALES AND GUEST COUNTS IN THE IMMEDIATE AREA.



ENVIRO & ARMY CORPS. OF ENGINEERS CORRESPONDENCE

We have already had our property evaluated by an Environmental Consultant to make sure we were compliant ,as it pertains to wetlands in the area.

Below is the correspondence with the Army Corps. Of Engineers, myself and the Consultant,

RE: [Non-DoD Source] Fwd: 190 Northern Escape Way: Preliminary Upland/Wetland Sketch Map (UNCLASSIFIED)

Inbox

**Greer, Emily C CIV USARMY CESAW (USA)**

Mon, Jun 17, 9:28 AM (6 days ago)

to me

CLASSIFICATION: UNCLASSIFIED

Shari-

Thank you for the opportunity to review LMG's map. Based on other data available to me, I would concur with their delineated line as depicted in the attached. As you stated, the upland acreage is large enough to suit your project needs, and you do not intend to impact any wetlands as a result of the proposed work. If earthwork is needed near the wetland line, you will need to establish silt fencing along the "dry" side of the flagged line prior to construction to prevent any soil from inadvertently getting into the wetlands during construction. Since you are not impacting wetlands, there is nothing further that you need from the Corps; therefore, you may proceed with your project as planned. Please feel free to contact me with any further questions.

Thank you-

Emily Greer, Regulatory Specialist  
Wilmington District - Wilmington Regulatory Field Office  
69 Darlington Avenue, Wilmington, NC 28403  
910.251.4567 (o)

-----Original Message-----

From: Shari Donahue [mailto:[sharid810@gmail.com](mailto:sharid810@gmail.com)]  
Sent: Friday, June 14, 2019 1:42 PM



To: Greer, Emily C CIV USARMY CESAW (USA) <[Emily.C.Greer@usace.army.mil](mailto:Emily.C.Greer@usace.army.mil)>

Hi Emily,  
attached is the email I got from Wess about 190 Northern Escape way in Hampstead, he marked the wetlands in the area we requested. He did also see old markings from years ago in the same area he was doing. I have also added a modified map showing where the project area is for the greenhouses/farm area.  
thank you for any help in guiding us moving forward.  
as explained earlier we do not intend to disturb or go near the wetlands area. i am hoping we can save a few dollars by proceeding forward as is.  
Thank you for your time, Shari Donahue  
860-810-9271





----- Forwarded message -----  
 From: Fryar, Wesley <[wfryar@lmgroup.net](mailto:wfryar@lmgroup.net)> <<mailto:wfryar@lmgroup.net>> >  
 Date: Thu, Jun 13, 2019 at 6:41 PM  
 Subject: 190 Northern Escape Way: Preliminary Upland/Wetland Sketch Map  
 To: Shari Donahue <[sharid810@gmail.com](mailto:sharid810@gmail.com)> <<mailto:sharid810@gmail.com>> >

Hi Shari,  
 It was a pleasure meeting you and Sean today out at your property. I have attached a preliminary sketch map based on my GPS points I collected today along the flagged wetland line. The wetland line has been flagged with flags WA1-21. The area you have staked for greenhouse development is completely outside of any jurisdictional wetland area. Please let me know if you have any questions and if you would like for me to initiate any conversation with Emily Greer regarding these findings. I appreciate the opportunity to assist you guys with this evaluation and good luck in getting the greenhouses up and running! If you need me to proceed with compiling a data package and setting up a site meeting with Emily just let me know. Typically, the data package effort (Task 2) runs about \$685 and the site meeting (Task 3) would be estimated around \$525 (all depends on how long Emily would be on-site). If you need me to proceed with these tasks just respond to this email authorizing me to proceed and I will get it setup and we can start working on it. Thanks again!

Wes Fryar | Environmental Scientist – Wetland Section Manager  
 Direct: 452-0001 x 1927 | Cell: 910.471.0018 | Fax: 910.452.0060  
 Email: [wfryar@lmgroup.net](mailto:wfryar@lmgroup.net) <<mailto:wfryar@lmgroup.net>> | Website: [Blockedwww.lmgroup.net](http://www.lmgroup.net) <[Blockedhttp://www.lmgroup.net](http://www.lmgroup.net)>  
 Land Management Group | Environmental Consultants  
 3805 Wrightsville Ave | Suite 15 | Wilmington, NC 28403

WE ARE CURRENTLY IN THE FACT FINDING PHASE FOR 3, 30X100 FT  
 GREENHOUSES AND HYDROPONIC SYSTEMS THAT WILL MEET OUR GOALS.

(WE WILL NEED ELECTRICITY RUN TO THE GREENHOUSE AREA TO RUN THE  
 HYDROPONIC SYSTEM, FOR THE GREENHOUSES)

## LOCAL SURF CITY FARMING, WHY IS THIS A GOOD THING ?

Sustainable agriculture is the wave of the future. But what is it, exactly?

In agriculture, sustainability is a complex idea with many facets, including **Economic**, (providing local jobs and returning profits back into the community), **Social**, (donating fresh local grown produce to the areas needy food banks) and **Environmental**, undisturbed soils (ensuring local land lots remain intact and away from developers)

There are many styles and types of farming available, some sustainable some not.



We have chosen to farm hydroponically, this is a sustainable style of Farming.

Hydroponic farming?

**Hydroponics** is a subset of hydroculture, which is a method of growing plants without soil by using mineral nutrient solutions in a water base.

Plants may be grown with only their roots exposed to the mineral solution, or the roots may be supported by an inert medium, such

as perlite or gravel.

The nutrients used in hydroponic systems can come from an array of different sources; these can include, but are not limited to, byproduct from fish waste, duck manure, or purchased chemical fertilizers.

We will only be using purchased chemical fertilizers on our farm.

Plants expend a great deal of energy growing root systems so they can search the soil for the water and nutrients they need to survive. By providing constant and readily available nutrition, hydroponics allows plants to grow up to 50% faster than they do in soil. This will allow us to keep up with local demand. As anyone who shops for produce locally can attest, your produce purchases seem to deteriorate as soon as you bring them home.

A local farm drastically reduces any shipping and travel time of the produce thus providing a fresher product that will last longer.

By growing hydroponically, the soil and local land will not suffer nutrient depletion over time, the use of greenhouse cover and protection drastically reduces any insect invasion, thus reducing the need for pesticides if any.

Hydroponics can also be grown year-round in climate-controlled greenhouses, lengthening the growing season

\*But what about the use of chemicals in growing hydroponically?

All plants need nutrients to live. In traditional gardening and farming, plants get their nutrients from soil and additives such as compost, manure, and chemical fertilizers. In hydroponics, plants are not grown in soil so nutrients must be delivered directly through the water solution they are supported with.

These nutrients are divided into two categories: macronutrients and micronutrients.

Macronutrients are those that plants need in large amounts, including carbon, phosphorous, hydrogen, nitrogen, oxygen, sulfur, potassium, magnesium, and calcium.

Micronutrients are needed in tiny amounts but are essential. These include zinc, nickel, boron, copper, iron, manganese, molybdenum, boron, and chlorine.

Without these essential elements, plants are unable to build molecules, undergo enzymatic reactions, and complete the life cycle. For hydroponic gardeners, this means that without proper nutrients they cannot produce fruit or vegetables or that what they do produce would be sub-par.

#### **Economic impact** to the community.

Farming commercially can contribute to the local economy in many ways.

\*Providing jobs to local residents.

\*Repair work on equipment will be local

\*Profits are spent in the local area.

\*We will make every attempt to be very competitive with local market prices and plan to bring a savings to the community in their produce purchases.

\*We aim to provide local restaurants with local produce which is in high demand from patrons, therefore increasing their business profits and guest counts. Increasing the local economy.

\*Local grown produce offered at local vendor events such as the Thursday Topsail Beach market and Poplar Grove weekly events will bring more people to the events helping to support other vendors.

#### **Social Impact** to the community.

\*Unsold produce will be donated to the Share the Table Org. A local food bank helping the area residents who may need a hand. Most food currently donated is pre-packaged and non-perishable. Fresh produce will be a welcome addition to their offerings.

\*Aside from local sales to restaurants and vendor fairs we will be offering a crop share program. This will consist of a weekly "bulk box of produce" freshly picked from the farm. Local residents can participate in a variety of ways, with a nominal fee they will receive one box a week (at a cost to be determined) full of produce chosen by the farm. Delivery of the bulk box will be available for disabled and elderly residents in an established delivery area.

The box ingredients will change weekly allowing the purchaser to try new and exciting produce each week. Each box will also contain recipe ideas for the included produce

#### **Environmental impact.**

\*Less land built on or developed for housing.



\*Keeping farmlands intact locally

\*Maintain soil integrity in the area

\*Supporting sustainable farming locally

\*Keeping our local area as green as possible

\*No chemicals in the soil to reach water supplies or wells

Simply put, we will be farming in water...not soil. The plants gain nutrients from added safe chemicals in a protected greenhouse, just like they would if they were depleting it from the soil. This process will allow us to grow year round instead of during a limited growing season of traditional ground soil farming.

As anyone who has purchased "Big Box Store" produce locally knows, crops shipped in from all over the world have a very limited shelf life, as much of their ripe life has been spent in shipping and transport. Most "Big Box Stores" sell seasonally grown crops. Have you paid more for strawberries and tomatoes in January than in June ? That's because the items are shipped from distant climate zones that can produce those items during that time of year. With hydroponics at Surf City Farm you will be able to get fresh tomatoes and other fresh produce all year at roughly the same price point as you did in the spring and summer season. This will make Surf City Farm a welcome addition to the area in the off season.



OUR FAMILY AND OUR MISSION, Sean ,Shari and Gavin

We are Sean and Shari Donahue, we have lived in Hampstead for 5 years. We came from Connecticut in 2014 after Sean retired from twenty years in the State of Connecticut, Dept. of Corrections as a Lieutenant, He currently is a Police Officer at the North Topsail Beach Police Dept, on Topsail Island.

Shari has over twenty years' experience in the Bar and Restaurant business, and creative marketing.

Together we started our LLC and opened The Dirty South Bar and Grill in Topsail Beach N.C. in May of 2017.

Unfortunately, Hurricane Florence in September of 2018 devastated the successful Bar and Grill, after just 16 months of operation.

After the Hurricane, we decided that the risk and costs of repairing and reopening of the restaurant, (just to face another possible hurricane another day ) was an undue stress we did not wish to face. (We are currently still awaiting insurance payment from the loss, nearly ten months post storm).

So, we decided to put all our efforts and savings into farming, something we are passionate about and something the area really needs.

Our goal is to produce quality crops we are proud of. and do it in the sustainable farming style of Hydroponics.

We will follow all food production safety practices, as well as food safety as it pertains to harvesting and sales.

We are also parents to an amazing 14-year-old boy, Gavin.

Gavin is Autistic and suffers from, Aspergers Syndrome, O.C.D. and an Anxiety disorder. Farming with the family will be a career option for him as he grows older.

Gavin upon entering Topsail High School as a freshman in the Fall has enrolled in the Agriculture program offered at the school. We hope he will flourish in this environment and become a productive member of society with the farm and family behind him.



Becoming a Bona Fide Farm will allow us to work from home and work together as a family with Gavin.

Our goal is to have 3 fully operational Hydroponic greenhouses with a variety of crops such as: lettuce, tomatoes, cucumbers, cauliflower, broccoli, peppers, herbs, onion, potato, garlic, to name a few.

We will offer sales of our produce in several ways,

- \* To local businesses and the public.

- \* Mobile farm stand, roadside sales, Farmers Markets, and vendor events.

- \* Bulk produce boxes with recipe ideas will also be available weekly at Farmers Markets at a reduced rate.

- \* We hope to offer delivery to disabled and/ or elderly local residents who simply can not make it out to the farm for purchases.

- \* Donations to local food banks

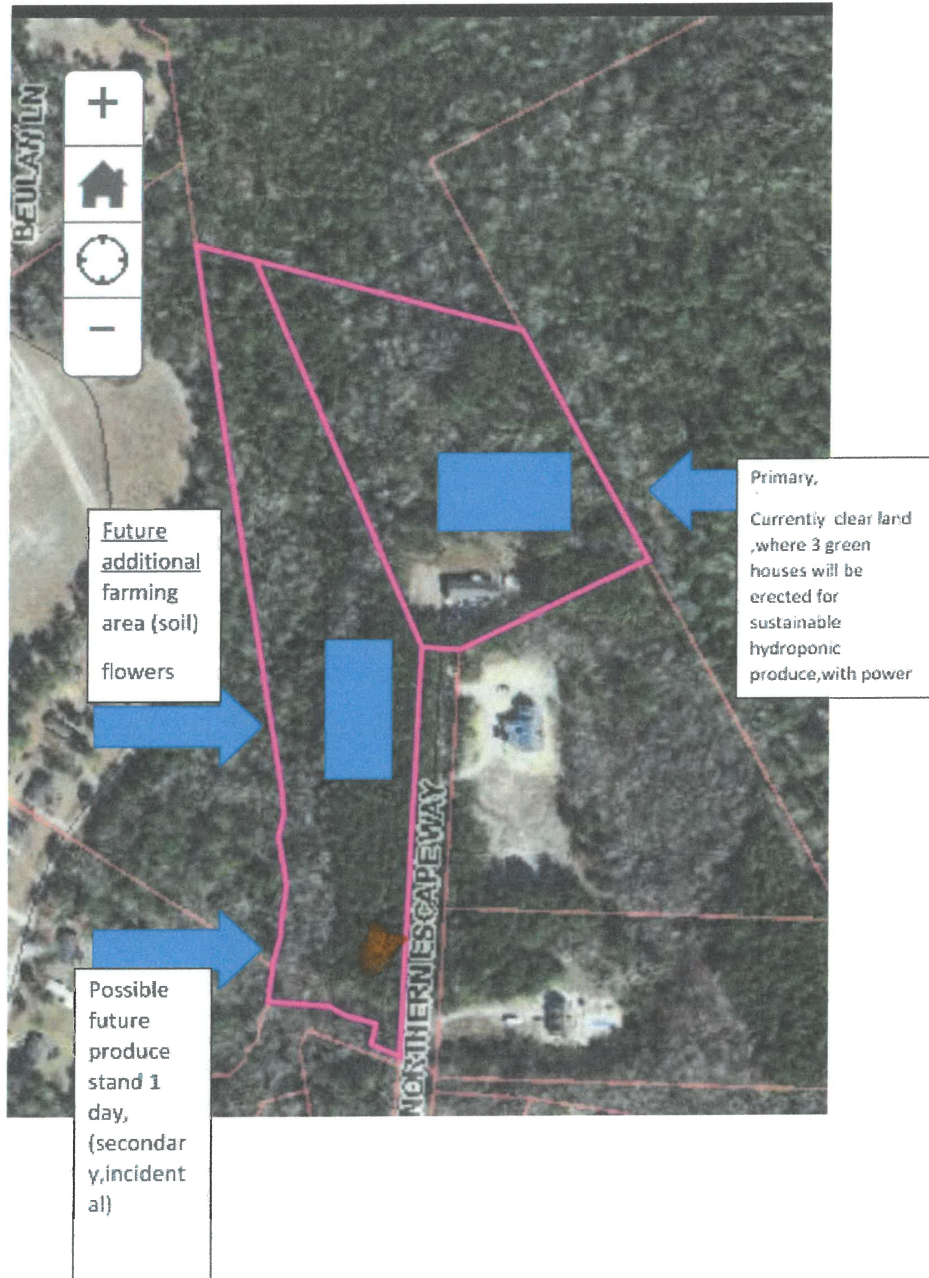
- \* We will become involved members and supporters in the Topsail High School Agriculture Program, as the add their Hydroponics Division of the program.

We hope you will consider our Bona Fide Farm application for approval; the benefits of approval will allow us to follow our dreams of sustainable farming, and support for our family.

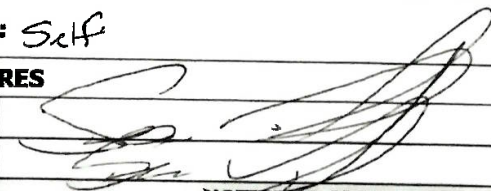
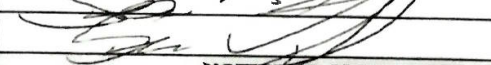
If you have any further questions or require any additional information please feel free to contact us, we will be happy to help in any way.

Sincerely,  
Shari & Sean Donahue  
190 Northern Escape Way,  
Hampstead, N.C. 28443  
860-810-9271  
[surfcityfarm@gmail.com](mailto:surfcityfarm@gmail.com)

## THE FUTURE OF SURF CITY FARM



## APPLICATION FOR APPEAL OF ADMINISTRATIVE DECISION

| THIS SECTION FOR OFFICE USE                                                                                                                                                                                                                                                                                                                                                                       |                                                                                                                                 |                                                                                    |                                               |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------|-----------------------------------------------|
| Application No.                                                                                                                                                                                                                                                                                                                                                                                   | AAD Appeal - 2022-7                                                                                                             | Date                                                                               | 4/13/2022                                     |
| Application Fee                                                                                                                                                                                                                                                                                                                                                                                   | \$ 250.00                                                                                                                       | Receipt No.                                                                        | 25225                                         |
| <b>SECTION 1: APPLICANT INFORMATION</b>                                                                                                                                                                                                                                                                                                                                                           |                                                                                                                                 |                                                                                    |                                               |
| Applicant's Name:                                                                                                                                                                                                                                                                                                                                                                                 | Sean Donahue                                                                                                                    | Owner's Name:                                                                      | Sean Donahue                                  |
| Applicant's Address:                                                                                                                                                                                                                                                                                                                                                                              | 190 Northern Escape Way                                                                                                         | Owner's Address:                                                                   | 190 Northern Escape Way                       |
| City, State, & Zip                                                                                                                                                                                                                                                                                                                                                                                | Hampstead, NC 28443                                                                                                             | City, State, & Zip                                                                 | Hampstead, NC 28443                           |
| Phone Number:                                                                                                                                                                                                                                                                                                                                                                                     | 860-558-1904                                                                                                                    | Phone Number:                                                                      | 860-558-1904                                  |
| Legal relationship of applicant to land owner: Self                                                                                                                                                                                                                                                                                                                                               |                                                                                                                                 |                                                                                    |                                               |
| <b>SECTION 3: SIGNATURES</b>                                                                                                                                                                                                                                                                                                                                                                      |                                                                                                                                 |                                                                                    |                                               |
| Applicant's Signature                                                                                                                                                                                                                                                                                                                                                                             |                                               |                                                                                    | Date: 4-4-2022                                |
| Owner's Signature                                                                                                                                                                                                                                                                                                                                                                                 |                                              |                                                                                    | Date: 4-4-2022                                |
| <b>NOTICE TO APPLICANT:</b>                                                                                                                                                                                                                                                                                                                                                                       |                                                                                                                                 |                                                                                    |                                               |
| 1. Applicant must also submit the information described below in the Appeal of Administrative Decision Checklist.<br>2. Applicant or agent authorized in writing must attend the public hearing.<br>3. 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. |                                                                                                                                 |                                                                                    |                                               |
| <b>APPEAL OF ADMINISTRATIVE DECISION CHECKLIST</b>                                                                                                                                                                                                                                                                                                                                                |                                                                                                                                 |                                                                                    |                                               |
| <input checked="" type="checkbox"/>                                                                                                                                                                                                                                                                                                                                                               | Signed application form                                                                                                         |                                                                                    |                                               |
| <input checked="" type="checkbox"/>                                                                                                                                                                                                                                                                                                                                                               | Application fee                                                                                                                 |                                                                                    |                                               |
| <input type="checkbox"/>                                                                                                                                                                                                                                                                                                                                                                          | One business size envelope legibly addressed with <b>certified</b> postage for all participants for the appeal                  |                                                                                    |                                               |
| <input checked="" type="checkbox"/>                                                                                                                                                                                                                                                                                                                                                               | Appeal Description: Written description of the Appeal taken forward including all pertinent materials (pictures, permits, etc.) |                                                                                    |                                               |
| <b>OFFICE USE ONLY</b>                                                                                                                                                                                                                                                                                                                                                                            |                                                                                                                                 |                                                                                    |                                               |
| <input type="checkbox"/>                                                                                                                                                                                                                                                                                                                                                                          | AAD Fees \$250                                                                                                                  |                                                                                    | Total Fee Calculation \$                      |
| Payment Method :                                                                                                                                                                                                                                                                                                                                                                                  | Cash : <input type="checkbox"/> \$ _____                                                                                        | Credit Card: <input type="checkbox"/> Master Card<br><input type="checkbox"/> Visa | Check: <input type="checkbox"/> Check # _____ |
|                                                                                                                                                                                                                                                                                                                                                                                                   | Application received by: _____                                                                                                  |                                                                                    | Date: _____                                   |
| Application completeness approved by: _____                                                                                                                                                                                                                                                                                                                                                       |                                                                                                                                 | Date: _____                                                                        |                                               |
| Date scheduled for public hearing: _____                                                                                                                                                                                                                                                                                                                                                          |                                                                                                                                 |                                                                                    |                                               |

Print Form

# **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](http://www.pendercountync.gov)

## **APPEAL OF ADMINISTRATIVE DECISION**

As specified in N.C.G.S. 153A-345(b), an appeal by any person aggrieved by a final order, interpretation, or decision of the Administrator or other administrator in regard to the provisions of this Ordinance may be taken to the Board of Adjustment.

### **Application Requirements**

- A. An appeal of an administrative decision shall be taken by filing a written notice of appeal specifying the grounds for the appeal with the Administrator and the Board of Adjustment within thirty days after the decision by the Administrator.
- B. An application for appeal of an administrative decision shall be submitted in accordance with Section 3.1.2, Application Requirements.
- C. A notice of appeal of an administrative decision shall be considered filed when a complete application is delivered to the Administrator. The date and time of filing shall be entered on the notice.

### **Deadline for Submission of Application**

An appeal of an administrative decision shall be filed with the Administrator and Board of Adjustment within thirty (30) days of receipt of the decision.

### **Action by Board of Adjustment**

- A. The Board of Adjustment may reverse or affirm (wholly or partly) or may modify the order, requirement, decision, or determination appealed from and shall make any order, requirement, decision or determination that in its opinion ought to be made in the case before it. To this end, the Board of Adjustment shall have all the powers of the officer from whom the appeal is taken.
- B. A motion to reverse, affirm, modify the order, requirement, decision, or determination appealed from shall include, insofar as practicable, a statement of the specific reasons or findings of fact that support the motion.
- C. If a motion to reverse or modify is not made, or fails to receive the affirmative vote of a majority of members present, the appeal shall be denied.
- D. Any motion to overturn a decision shall state the reasons or findings of fact that support the motion.

### **Appeals from the Board of Adjustment**

Appeals to the Superior Court may be taken by any person, firm or corporation aggrieved, or by any office, department, board, of the County affected by any decision of the Board of Adjustment, provided such appeals shall be taken within thirty (30) days after the decision of the Board of Adjustment is filed in the office of the Administrator, or after a written copy thereof is delivered to the applicant, whichever is later. The decision of the Board shall be delivered to the applicant by certified mail.



shari donahue &lt;surfcityfarm@gmail.com&gt;

## Determination appeal ,Written description of appeal

1 message

shari donahue &lt;surfcityfarm@gmail.com&gt;

Mon, Apr 4, 2022 at 10:44 AM

To: shari donahue &lt;surfcityfarm@gmail.com&gt;

To Whom it may concern,

The following is the required written Appeal description ,as per Pender County Application for Appeal of Administration Decision.

On December 9th 2020, Surf City Farm Barn Opened for Event rental business, at this time we did not offer any produce for sale, being that it was "off season" for most North Carolina crops, but in accordance with the Bona Fide Farm statute, we were able to open and operate as a private event venue. We successfully hosted several private events in the month of December.

In the early months of 2021, the country was forced into mandated shutdowns due to the Caronavirus, we postponed our re-opening to June 11th 2021. Before we opened for business as a produce stand/barn Pender County began receiving complaints, the earliest complaint to my knowledge, was made by Ms. Linda Davenport of 121 Marcil lane, Hampstead. The complaint was dated June 7th 2021. (email included with this information) To note Ms. Davenport purchased her property on Marcil Lane, in Jan. of 2021. Ms. Davenport's property is on the top corner of the private road that the farm is located on.

Per the County's email request on July 28th, I submitted a full detailed description of the farm business and it's day to day operations ,deliveries, traffic counts ect. In that letter of explanation, it was detailed that Surf City Farm does buy and sell crops grown by other farmers, to better offer a variety to our guests beyond what we are able to grow in our area.

To my knowledge and as conveyed to me per phone conversations with Carlene Shaw an employee of the Planning and zoning department, we were in full compliance of the Bona Fide farm Statute, the statute in turn was read several times to Ms. Davenport and any other complainants.

Between the initial complaint on June 7th 2021 ,and the determination meeting on Dec.2nd 2021, Surf City Farm received several visits from Pender County Planning and Zoning as well as visits from Pender County Code Enforcement, NCDA Meat and Poultry Enforcement, NCDA&CS. All found Surf City Farm to be in full compliance of the Bona Fide Farm statute.

On Dec.2nd we met with # members of Planning and zoning to discuss the complaints, it was mentioned they would do a "determination letter " and address the complaints made in the past against the farm, at this point Surf City Farm had been operating the same business plan as described in July 2021. we were informed the determination letter would take approximately 1 week to write up and we would be informed through a mailing and or email. The determination letter was completed and received over 3 months later, at this time Surf City Farm had been in full operation as described to Pender County for over 8 months. Surf City Farm, in that 8 month time period ,heavily invested financially, to build and further grow it's business .

Per the determination letter of March 7th, 2021. Pender county now finds that Surf City Farm is not in compliance with the Bona Fide Farm Statute, per their new "interpretation" of the statute. Pender County finds that "selling produce/crops not grown on the farm, does not meet a Bona Fide Farm purpose, and we will be subject to fines if we continue the same business practices.

We argue that Pender County is a "complaint driven " enforcement department. The complaints were addressed and responded to prior to the Dec.2021 meeting, and no determination letter should have been issued in regards to the complaint. Several of the complaints made to Pender County were fabricated, made up and at times even complete lies, yet Pender County felt the need to address the single complainant. I have repeatedly requested the actual complaints on file and names of any and all complainants, my requests have been denied and any and all questions remain unanswered per direction of the county attorney.



4/4/22, 10:44 AM

Gmail - Determination appeal ,Written description of appeal

My request for a list of Bona Fide Farms in Pender County has also been denied to date,as records are not properly kept by the department for years. This determination not only affects Surf City Farm,but ALL Bona Fide Farms in Pender County. Since Pender is again a "complaint driven" agency,all other farms in Pender County are free to operate under their interpretation of the statute,and buy/sell produce grown by others as they please. Surf City Farm is subject to fines if it operates as such.

Pender County fails to see that selling produce grown by another farm(er) in fact also falls under several sections of the statute,such as agrotourism. It is for that reason we appeal it's determination.

Surf City Farm

Sean Doanhue, Owner

Shari Donahue, Owner

## 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](http://www.pendercountync.gov)

March 7, 2022

Shari and Sean Donohue  
190 Northern Escape Way  
Hampstead, NC 28443

VIA EMAIL: [surfcityfarm@gmail.com](mailto:surfcityfarm@gmail.com)

**Re: Zoning Verification Letter regarding Pender County PINs: 4235-00-9594-0000  
and 4236-00-7179-0000**

Mr. and Mrs. Sean and Shari Donohue,

On June 27<sup>th</sup>, 2019, Sean and Shari Donohue submitted an application for a Bona Fide Farm Determination to the Pender County Planning Department. On July 18<sup>th</sup>, 2019, the Bona-Fide Farm Determination was approved by Pender County Planning Staff. The criteria for farm exemption that met the bona-fide farm requirements was a Conditional Farmer Sales Tax Exemption through the North Carolina Department of Revenue. The Conditional Farmer Exemption was due to expire on December 31<sup>st</sup>, 2021. As of December 7<sup>th</sup>, 2021, Surf City Farm has met the requirements to obtain Qualifying Farmer Exemption, according to the letter from the North Carolina Department of Revenue forwarded to Planning Staff. For this reason, Surf City Farm **is currently exempt from zoning for bona-fide farm purposes.**

The following is a list of uses currently either ongoing or regularly occurring on the Surf City Farm property as has been reported to the Department, along with a final determination as to whether or not each use is considered a bona-fide farm purpose. The listed uses are not intended to be exhaustive nor take into account future uses; such uses shall require additional evaluation by Planning Staff upon request. Furthermore, while written in the context of Surf City Farm, this determination shall also be applicable to any other current or future bona-fide farms located within Pender County's planning and zoning jurisdiction.

Surf City Farm has grown crops on site in ground and hydroponically to be sold at the farm stand. This **DOES** meet the standard of a bona-fide farm purpose under state statute. Additionally, the creation and selling of products that are wholly or partly made from crops grown on-site, including but not limited to jams, sauces, and baked goods, also **DOES** meet the standard of a bona-fide farm purpose under state statute. Finally, the selling of items for consumption on-site that aid in the use and enjoyment of other bona-fide farm purposes\_(including but not limited to coffee and other drinks) **DOES**

meet the standard of a bona-fide farm purpose under state statute. The above determinations are based on North Carolina General Statutes 160D-903 and GS 106-581.1(6), which state that the production, marketing, and selling of agricultural products as well as "other activities that add value to agricultural products produced on the farm" and "activities relating to and incidental to the production of crops" are considered a bona-fide farm purpose.

Surf City Farm has confirmed that crops/products from other local farms as well as crops/products from other farms from across North Carolina through a third-party vendor. This **DOES NOT** meet the standard of a bona-fide farm purpose under state statute. This interpretation is based on G.S. 160D-903 and GS 106-581.1(6) as mentioned above, specifically in that items sold on the farm must be either produced on the farm or through activities that add value to items produced on the farm or are related or incidental to the production of crops.

Surf City Farm has hosted public events at various points since opening. A public event hosted on site **DOES** meet the standard of a bona-fide farm purpose **IF** the primary reason for the event is to allow attendees to view, participate, and enjoy the activities that render Surf City Farm a bona-fide farm. This is based on NC GS 160D-903 that states that agritourism includes events or activities that "allow members of the general public to view or enjoy rural activities like farming, ranching, historic, cultural, harvest-your-own activities, or natural activities and attractions." Public events that are not taking place on the farm because of its farm or rural setting but nonetheless on-site may be permitted through other means including but not limited to a Temporary Event Permit issued by Planning and Community Development, dependent upon the context of the event. Furthermore, purely private events held by individual property owners are not regulated by Pender County Planning and Community Development generally and therefore are not subject to any review for conformance to bona-fide farm requirements, nor would they be on any other property whether established as a bona-fide farm or not.

The above determination is purely applicable to the regulations contained within the Pender County Unified Development Ordinance as informed and permitted by State Statute. There may be planning processes available to establish uses not determined to be bona-fide farm purposes under the existing regulations within the Unified Development Ordinance, potentially including but not limited to a General Use or Conditional Rezoning, or a Special Use Permit. Furthermore, the determination may not exempt Surf City Farm from permitting requirements made by other agencies, such as the Permitting and Inspections Divisions of Pender County Planning and Community Development, Pender County Environmental Health, Pender County Utilities, the Pender County Fire Marshal, the North Carolina Department of Environmental Quality, North Carolina Department of Transportation, North Carolina Alcoholic Beverage Control Commission, or the United States Army Corps of Engineers. Finally, this determination does not consider items not traditionally regulated or enforced by Pender County Planning and Community Development, such as private covenants and

agreements made between property owners or private parties, or items covered in other sections of the Pender County Code of Ordinances.

By virtue of the facts laid out in this Zoning Determination Letter and in accordance with Articles 3 and 13 of the Pender County Unified Development Ordinance, any activity occurring on-site that does not meet the standard of a Bona-Fide Farm Purpose following the date of issuance of this Letter shall be considered a violation of the Pender County Unified Development Ordinance and shall be subject to any enforcement action deemed necessary under Article 13 of the Ordinance as applicable until such point as those uses are ceased, or permitted through the applicable and appropriate methods laid out in the Unified Development Ordinance.

Further, in accordance with provisions laid out in Article 3 of the Unified Development Ordinance, any portion of this determination can be appealed to the Pender County Board of Adjustment within 30 days of receipt of this determination by anyone aggrieved by this determination.

If you have any questions, please do not hesitate to contact me at (910) 259-2110 or [thenley@pendercountync.gov](mailto:thenley@pendercountync.gov).

Sincerely,

A handwritten signature in black ink, appearing to read 'Travis Henley', with a long, sweeping horizontal line extending to the right.

Travis Henley – Director  
Planning and Community Development  
Pender County, North Carolina

**§ 160D-903. Agricultural uses.**

(a) **Bona Fide Farming Exempt From County Zoning.** – County zoning regulations may not affect property used for bona fide farm purposes; provided, however, that this section does not limit zoning regulation with respect to the use of farm property for nonfarm purposes. Except as provided in G.S. 106-743.4 for farms that are subject to a conservation agreement under G.S. 106-743.2, bona fide farm purposes include the production and activities relating or incidental to the production of crops, grains, fruits, vegetables, ornamental and flowering plants, dairy, livestock, poultry, and all other forms of agriculture, as defined in G.S. 106-581.1. Activities incident to the farm include existing or new residences constructed to the applicable residential building code situated on the farm occupied by the owner, lessee, or operator of the farm and other buildings or structures sheltering or supporting the farm use and operation. For purposes of this section, "when performed on the farm" in G.S. 106-581.1(6) includes the farm within the jurisdiction of the county and any other farm owned or leased to or from others by the bona fide farm operator, no matter where located. For purposes of this section, the production of a nonfarm product that the Department of Agriculture and Consumer Services recognizes as a "Goodness Grows in North Carolina" product that is produced on a farm subject to a conservation agreement under G.S. 106-743.2 is a bona fide farm purpose. For purposes of determining whether a property is being used for bona fide farm purposes, any of the following is sufficient evidence that the property is being used for bona fide farm purposes:

- (1) A farm sales tax exemption certificate issued by the Department of Revenue.
- (2) A copy of the property tax listing showing that the property is eligible for participation in the present-use value program pursuant to G.S. 105-277.3.
- (3) A copy of the farm owner's or operator's Schedule F from the owner's or operator's most recent federal income tax return.
- (4) A forest management plan.

A building or structure that is used for agritourism is a bona fide farm purpose if the building or structure is located on a property that (i) is owned by a person who holds a qualifying farm sales tax exemption certificate from the Department of Revenue pursuant to G.S. 105-164.13E(a) or (ii) is enrolled in the present-use value program pursuant to G.S. 105-277.3. Failure to maintain the requirements of this subsection for a period of three years after the date the building or structure was originally classified as a bona fide farm purpose pursuant to this subsection subjects the building or structure to applicable zoning and development regulation ordinances adopted by a county pursuant to G.S. 160D-702 in effect on the date the property no longer meets the requirements of this subsection. For purposes of this section, "agritourism" means any activity carried out on a farm or ranch that allows members of the general public, for recreational, entertainment, or educational purposes, to view or enjoy rural activities, including farming, ranching, historic, cultural, harvest-your-own activities, hunting, fishing, equestrian activities, or natural activities and attractions. A building or structure used for agritourism includes any building or structure used for public or private events, including, but not limited to, weddings, receptions, meetings, demonstrations of farm activities, meals, and other events that are taking place on the farm because of its farm or rural setting.

(b) **County Zoning of Residential Uses on Large Lots in Agricultural Districts.** – A county zoning regulation shall not prohibit single-family detached residential uses constructed in accordance with the North Carolina State Building Code on lots greater than 10 acres in size and in zoning districts where more than fifty percent (50%) of the land is in use for agricultural or silvicultural purposes, except that this restriction does not apply to commercial or industrial districts where a broad variety of commercial or industrial uses are permissible. A zoning regulation shall not require that a lot greater than 10 acres in size have frontage on a public road or county-approved private road or be served by public water or sewer lines in order to be developed for single-family residential purposes.

G.S. 160D-903

Page |



(c) **Agricultural Areas in Municipal Extraterritorial Jurisdiction.** – Property that is located in a city's extraterritorial planning and development regulation jurisdiction and that is used for bona fide farm purposes is exempt from the city's zoning regulation to the same extent bona fide farming activities are exempt from county zoning pursuant to this section. As used in this subsection, "property" means a single tract of property or an identifiable portion of a single tract. Property that ceases to be used for bona fide farm purposes becomes subject to exercise of the city's extraterritorial planning and development regulation jurisdiction under this Chapter. For purposes of complying with State or federal law, property that is exempt from municipal zoning pursuant to this subsection is subject to the county's floodplain regulation or all floodplain regulation provisions of the county's unified development ordinance.

(d) **Accessory Farm Buildings.** – A city may provide in its zoning regulation that an accessory building of a "bona fide farm" has the same exemption from the building code as it would have under county zoning.

(e) **City Regulations in Voluntary Agricultural Districts.** – A city may amend the development regulations applicable within its planning and development regulation jurisdiction to provide flexibility to farming operations that are located within a city or county, voluntary agricultural district, or enhanced voluntary agricultural district adopted under Article 61 of Chapter 106 of the General Statutes. Amendments to applicable development regulations may include provisions regarding on-farm sales, pick-your-own operations, road signs, agritourism, and other activities incident to farming. (2019-111, s. 2.4; 2020-3, s. 4.33(a); 2020-25, ss. 22, 51(a), (b), (d); 2020-74, s. 20.)

**§ 106-581.1. Agriculture defined.**

For purposes of this Article, the terms "agriculture", "agricultural", and "farming" refer to all of the following:

- (1) The cultivation of soil for production and harvesting of crops, including but not limited to fruits, vegetables, sod, flowers and ornamental plants.
- (2) The planting and production of trees and timber.
- (3) Dairying and the raising, management, care, and training of livestock, including horses, bees, poultry, and other animals for individual and public use, consumption, and marketing.
- (4) Aquaculture as defined in G.S. 106-758.
- (5) The operation, management, conservation, improvement, and maintenance of a farm and the structures and buildings on the farm, including building and structure repair, replacement, expansion, and construction incident to the farming operation.
- (6) When performed on the farm, "agriculture", "agricultural", and "farming" also include the marketing and selling of agricultural products, agritourism, the storage and use of materials for agricultural purposes, packing, treating, processing, sorting, storage, and other activities performed to add value to crops, livestock, and agricultural items produced on a farm, and similar activities incident to the operation of a farm.
- (7) A public or private grain warehouse or warehouse operation where grain is held 10 days or longer and includes, but is not limited to, all buildings, elevators, equipment, and warehouses consisting of one or more warehouse sections and considered a single delivery point with the capability to receive, load out, weigh, dry, and store grain. (1991, c. 81, s. 1; 2005-390, s. 18; 2006-255, s. 6; 2013-347, s. 2; 2017-108, s. 8.1.)



shari donahue &lt;surfcityfarm@gmail.com&gt;

**Bona-Fide Farm Explanation**

12 messages

**Carlene Shaw** <cshaw@pendercountync.gov>  
To: "surfcityfarm@gmail.com" <surfcityfarm@gmail.com>

Wed, Jul 28, 2021 at 9:27 AM

Good morning,

This is Carlene again; I visited your farm a few weeks ago. Now that you are open for business, is there any possibility you could write up a full description of your business and what goes on at your property? Please include details of what is shipped in via Sysco or any other sort of delivery (i.e. utensils and paper products, etc.) and how often. We are just trying to update our system with the accurate information. Feel free to give me a call if you have any questions.

All the best,

**Carlene Shaw**

Planner

Pender County Department of Planning & Community Development

Phone: (910)-259-1408

cshaw@pendercountync.gov

**shari donahue** <surfcityfarm@gmail.com>  
To: Carlene Shaw <cshaw@pendercountync.gov>

Wed, Jul 28, 2021 at 11:23 AM

no problem, is this like an update to the proposal??  
or for the few complaints you have received?  
[Quoted text hidden]

**Carlene Shaw** <cshaw@pendercountync.gov>  
To: shari donahue <surfcityfarm@gmail.com>

Wed, Jul 28, 2021 at 11:47 AM

Hi Shari,

We have received additional complaints, unfortunately. For our due diligence, my supervisor is asking me to reach out to you to so we can get a full written description of your business and its operations. Generally speaking, it would be beneficial to include details about the number of customers per day, how frequently you get deliveries, how they are being delivered, and what you are selling and growing on site.

Thank you,

Carlene

**From:** shari donahue <surfcityfarm@gmail.com>  
**Sent:** Wednesday, July 28, 2021 11:24 AM  
**To:** Carlene Shaw <cshaw@pendercountync.gov>  
**Subject:** [External]Re: Bona-Fide Farm Explanation

**CAUTION:** This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

[Quoted text hidden]

shari donahue <surfcityfarm@gmail.com>  
 To: Carlene Shaw <cshaw@pendercountync.gov>

Wed, Jul 28, 2021 at 12:45 PM

Update to Bona Fide Farm ,SURF CITY FARM  
 to outline the business fundamentals and plan, I would first start with the farm products that we grow,  
 Surf City Farm grows both soil and hydroponic crops, these crops include:  
 Tomatoes ( several varieties,both soil and hydroponically)  
 Cucumbers "  
 Squash "  
 zucchini "  
 Green beans (2 varieties in soil)  
 Peppers (several varieties in soil)  
 Strawberries (when in season, soil and hydroponically)  
 smaller quantities and trials of, cabbage,peas,dill,basil,cilantro,carrots,corn,  
 We sell our crops as they become available to harvest in our Barn which is on our property,  
 Since the crops do not all grow in tandem to each other and harvest is also at the mercy of several factors  
 ,such as the health of the crop and the weather,and options and variety..and the fact that we can not grow  
 everything.... we out source to other local farmers in the area. Local farmers we work with include,: Xanadu  
 farms in Holly Ridge ,NC, Ivy and Oak in Holly Ridge, NC and Bear Ridge Farms in Maple Hill,NC .  
 We buy their locally grown crops and offer them for sale in addition to our crops to offer a good variety as  
 well as support other local farmers who do not have a brick and mortar building to offer their goods..  
 A large portion of our customer base prefers to support local business and local NC farmers . They come to  
 us for several reasons, they like knowing that products purchased go directly to the support of a local  
 families and keeps farming in a positive light

In addition to the local area farms ,we have partnered with a company called "Fresh Point" they have a network of NC farmers who offer their crops for sale each week in an " on demand platform" they act as the middleman and the delivery company and facilitate the buy and sell orders and communicate weekly price changes. Each week an availability list is sent out detailing the available crops in NC,what farm they come from and a bio about the farmer is available.They also highlight BIPOC farms (black,indiginous,people of color farms).

.After review of the list we put together a price request order. Fresh Point (acting as the middle man) communicates the requests with the farmers and returns with the price offering,from there an order is placed and delivered each week.

The company "Fresh Point " is currently owned by Sysco foods ,,being that we also offer coffee and in the near future ,baked goods,it was most advantageous for us to use this platform to bring in other local NC farmers goods as well as be able to order our other supplies through one dealer.We do also order other produce that is not available in NC,such as Georgia Peaches,Idaho potatoes ect.not available on Fresh Points platform,in addition to trash bags,coffee cups,coffee creamer,sugar,napkins,paper product,cleaning products.

Currently Sysco offers a " No minimum order requirement" orders are placed for Sysco and Fresh Point on Wednesday,and delivered on Thursday. This time frame ensures we have fresh produce from local NC farmers .Without having to make the near 5 hour round trip to Raleigh ourselves each week or to other local farms not directly located in our area....the delivery fee is \$5.00. This pick up and delivery of items can not be done exclusively by Surf City Farm and certainly not for that price. . We are also looking into a local Burgaw company called "Feast Down East",that work in similar capacity as Fresh Point.

Sysco and Fresh Point orders come together in 1 delivery each week on Thursdays,between the times of noon and 3:00pm. There is only the one delivery each week, the truck size depends on the load and other orders in the area.Large area orders equal a larger truck,smaller demands equal a smaller delivery truck. They do not deliver to us exclusively, and the time length of the delivery is approximately 10 to 15 mins,again only once a week. We do receive other deliveries such as Amazon or other online orders via UPS,FEDEX and USPS ,as all other families and neighbors do. Other deliveries that go to the business are, Xanadu farms deliver on Fri mornings at approx 10am, this delivery is in a personal vehicle,and Ivy & Oak delivery is in an SUV personal automobile.Other than the previously mentioned, My husband Sean picks up from Bear Ridge Farms in Maple Hill..he does this in his standard pick up truck on Friday mornings.

In reference to traffic and customer counts,

our hours of operation are,

Friday 10am -4pm

Saturday 10am-4pm

Sundays 10am-4pm

We notice the traffic is on a small flow,typically 1 car in 1 car out ,with counts of approx

Friday 15 cars

Sat 20 cars

Sun 15-20 cars.

Our peak flow times would be noon to 2pm. with higher volume,

Days we have been open, June 11th - july 28th ( total # of days = 54 ) total days OPEN = 18.

total # of produce truck deliveries in 54 days = 6

Equipment deliveries =1

Each week we offer fresh produce that is delivered Thursday and Fridays,and at close of business on Sunday remaining goods are offered to the local FOOD BANK,Share the Table in Holly Ridge NC. Pick up is done in a standard jeep,by Dawn on Monday mornings.

To my knowledge all the above mentioned falls within the N.C. Bona Fide Farm statute.

If you have any questions or concerns please feel free to contact myself (Shari) or Sean respectfully,

Sean & Shari Donahue

[Quoted text hidden]

shari donahue <surfcityfarm@gmail.com>

To: Carlene Shaw <cshaw@pendercountync.gov>

Wed, Jul 28, 2021 at 1:06 PM



4/4/22, 9:28 AM

Gmail - Bona-Fide Farm Explanation

I would like to add on a separate note the complaints you have received,although unfortunate, have also come with a disturbing level of harassment , vandalism and theft . On several occasions our business directional signs have been removed,knocked down,run over and stolen.

We have had visits (during business hours) from the NC Dept Agriculture ,Meat and Poultry Enforcement Division, we do not stock meat,we do not sell meats or process any meats or any meat byproducts..

If I may request the names of persons making formal complaints,it may better assist us in determining who the responsible party or parties involved are of the vandalism . Further allowing us to prosecute any and all involved in the future . If this information requires a FOIA request please let me know.

I sincerely appreciate any cooperation in this matter.

regards

Shari Donahue

[Quoted text hidden]

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**shari donahue** <surfcityfarm@gmail.com>  
To: Carlene Shaw <cshaw@pendercountync.gov>

Wed, Jul 28, 2021 at 1:25 PM

My husband Sean left a message,if you could give him a call when you have a chance, 860-558-1904

[Quoted text hidden]

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**shari donahue** <surfcityfarm@gmail.com>  
To: Carlene Shaw <cshaw@pendercountync.gov>

Mon, Aug 2, 2021 at 4:47 PM

car counts for this past weekend,july 30,31 & aug 1 2021

|         | friday | saturday | sunday |
|---------|--------|----------|--------|
| 10-11am | 2      | 2        | 2      |
| 11-12   | 5      | 2        | 4      |
| 12-1pm  | 3      | 3        | 3      |
| 1-2pm   | 3      | 0        | 3      |
| 2-3pm   | 3      | 1        | 3      |
| 3-4pm   | 2      | 1bike    | 3      |

total/day 20 9 18

we had 1 extra delivery from sysco in a small box van due to a few items missing from our order..for a total of 2 deliveries on fri...both were in and out in under 15 minutes

[Quoted text hidden]

---

**Carlene Shaw** <cshaw@pendercountync.gov>  
To: shari donahue <surfcityfarm@gmail.com>

Mon, Aug 2, 2021 at 4:54 PM

Thank you, Shari.

I sent your FOIA request to the County Attorney; I'm waiting to hear back from him.

**From:** shari donahue <surfcityfarm@gmail.com>  
**Sent:** Monday, August 2, 2021 4:48 PM  
**To:** Carlene Shaw <cshaw@pendercountync.gov>  
**Subject:** [External]Re: Bona-Fide Farm Explanation

**CAUTION:** This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

car counts for this past weekend,july 30,31 & aug 1 2021

[Quoted text hidden]

[Quoted text hidden]

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**shari donahue** <surfcityfarm@gmail.com>  
To: Carlene Shaw <cshaw@pendercountync.gov>

Mon, Aug 2, 2021 at 5:16 PM

thanx so much

[Quoted text hidden]

---

**shari donahue** <surfcityfarm@gmail.com>  
To: Carlene Shaw <cshaw@pendercountync.gov>

Wed, Aug 11, 2021 at 3:58 PM

just checking back if you heard from the attorney about the FOIA  
request, thx

[Quoted text hidden]

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**Carlene Shaw** <cshaw@pendercountync.gov>  
To: shari donahue <surfcityfarm@gmail.com>

Thu, Aug 12, 2021 at 1:09 PM

Shari,

I spoke to our County Attorney and he informed us that we are able to share the details of complaints with you without going through a formal FOIA request.

We have received three complaints in regards to your business of Surf City Farms.

The first was from Linda Davenport the week of June 7<sup>th</sup>.

*/ open date was june 11*

The second was from Mike McDermott on June 17<sup>th</sup>.

The third was also from Mike McDermott on July 26<sup>th</sup>.

4/4/22, 9:28 AM

Gmail - Bona-Fide Farm Explanation

All the best,

Carlene Shaw

910-259-1408

[Quoted text hidden]

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**shari donahue** <surfcityfarm@gmail.com>  
To: Carlene Shaw <cshaw@pendercountync.gov>

Fri, Aug 13, 2021 at 7:51 AM

thank you very much

[Quoted text hidden]



shari donahue &lt;surfcityfarm@gmail.com&gt;

**Surf City Farm Meeting**

21 messages

shari donahue <surfcityfarm@gmail.com>  
To: Carlene Shaw <cshaw@pendercountync.gov>

Tue, Nov 23, 2021 at 7:58 AM

Hi, could you please tell me the date and time for the Dec meeting, and who will attend ? i wrote it down and now can not find it..is it the 2nd or the 5th..so sorry  
thanks,  
Shari

Carlene Shaw <cshaw@pendercountync.gov>  
To: shari donahue <surfcityfarm@gmail.com>

Tue, Nov 23, 2021 at 8:05 AM

Shari,

1:30 pm on December 2<sup>nd</sup> at the Hampstead Annex.

Best,

Carlene

**From:** shari donahue <surfcityfarm@gmail.com>  
**Sent:** Tuesday, November 23, 2021 7:58 AM  
**To:** Carlene Shaw <cshaw@pendercountync.gov>  
**Subject:** [External]Surf City Farm Meeting

**CAUTION:** This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

[Quoted text hidden]

shari donahue <surfcityfarm@gmail.com>  
To: Carlene Shaw <cshaw@pendercountync.gov>

Tue, Nov 23, 2021 at 9:21 AM

Thank you!

[Quoted text hidden]

4/4/22, 9:30 AM

Gmail - Surf City Farm Meeting

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**shari donahue** <surfcityfarm@gmail.com>  
To: Carlene Shaw <cshaw@pendercountync.gov>

Mon, Dec 6, 2021 at 5:00 PM

hi..quick Q..will we be notified by email when a determination has been made..thanks for any info  
[Quoted text hidden]

---

**Carlene Shaw** <cshaw@pendercountync.gov>  
To: shari donahue <surfcityfarm@gmail.com>

Tue, Dec 7, 2021 at 8:16 AM

Shari,

We will most likely be emailing you the Zoning Determination Letter. If we end up mailing it, I'll send you an email letting you know it's on the way.

All the best,

### **Carlene Shaw, MPS, CZO | Current Planner**

Pender County Planning & Community Development

(910) 259-1408

[cshaw@pendercountync.gov](mailto:cshaw@pendercountync.gov)

805 S. Walker Street,

Burgaw, NC 28425



[www.pendercountync.gov](http://www.pendercountync.gov)

[Quoted text hidden]

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**shari donahue** <surfcityfarm@gmail.com>  
To: Carlene Shaw <cshaw@pendercountync.gov>

Tue, Dec 7, 2021 at 5:37 PM

Thank you!  
[Quoted text hidden]



4/4/22, 9:30 AM

Gmail - Surf City Farm Meeting

**shari donahue** <surfcityfarm@gmail.com>  
To: Carlene Shaw <cshaw@pendercountync.gov>

Mon, Dec 13, 2021 at 12:40 PM

Just doing a flow up in the meeting, has there been any determination yet? Haopy to answer any additional questions or provide any other info if needed..

Thanks again

Shari

[Quoted text hidden]

---

**shari donahue** <surfcityfarm@gmail.com>  
To: Carlene Shaw <cshaw@pendercountync.gov>

Mon, Dec 13, 2021 at 1:04 PM

Forgot to mention. We filed for the qualifying farmer exemption , faxed in to DOR on 12/3/21. I did a follow up call today , only min information from the service person I spoke with..the new qualifying farmer tax exemption numbers are mailed out after application is filed..always approved, if conditions are met ( which we did) but, some times it could take several weeks to receive...since all conditional farmers expire at the end of the year

[Quoted text hidden]

---

**Carlene Shaw** <cshaw@pendercountync.gov>  
To: shari donahue <surfcityfarm@gmail.com>

Mon, Dec 13, 2021 at 3:42 PM

Shari,

Thank you for the additional information. My coworkers and I are working on your letter now, but we are mostly waiting on insight from the County Attorney to make an official determination. I would hope we would get back to you before we leave for holiday break next week.

Also, I don't believe I've told you already, but my last day working for Pender County will be December 30<sup>th</sup>. I have accepted a position with the City of Cambridge, Maryland, and will be relocating at the end of the month. I hope to have your case wrapped up by the time I leave, but if not, I can assure you that Travis and my other coworkers will continue to assist you and Sean.

Please let me know if there is anything I can do for you in the meantime.

[Quoted text hidden]

---

**shari donahue** <surfcityfarm@gmail.com>  
To: Carlene Shaw <cshaw@pendercountync.gov>

Mon, Dec 13, 2021 at 4:22 PM

Congratulations to you ! That's a big move,I wish you success and cant thank you enough for all the work you have put into our farm and guiding us along the way.

Merry Christmas

Shari & Sean

[Quoted text hidden]

---

**3 attachments**

4/4/22, 9:30 AM

Gmail - Surf City Farm Meeting



image001.jpg  
4K



image001.jpg  
4K



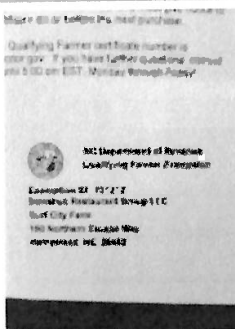
image001.jpg  
4K

---

**shari donahue** <surfcityfarm@gmail.com>  
To: **Carlene Shaw** <cshaw@pendercountync.gov>

Mon, Dec 13, 2021 at 4:30 PM

Looks like I spoke too soon..got our qualifying letter in the mail today  
[Quoted text hidden]



20211213\_162907.jpg  
2975K

---

**Carlene Shaw** <cshaw@pendercountync.gov>  
To: **shari donahue** <surfcityfarm@gmail.com>

Mon, Dec 13, 2021 at 4:43 PM

Awesome! I'll add it to your file.

4/4/22, 9:30 AM

Gmail - Surf City Farm Meeting

**Carlene Shaw, MPS, CZO | Current Planner**

Pender County Planning & Community Development

(910) 259-1408

[cshaw@pendercountync.gov](mailto:cshaw@pendercountync.gov)

805 S. Walker Street,

Burgaw, NC 28425



[www.pendercountync.gov](http://www.pendercountync.gov)

---

**From:** shari donahue <surfcityfarm@gmail.com>  
**Sent:** Monday, December 13, 2021 4:30 PM  
**To:** Carlene Shaw <cshaw@pendercountync.gov>  
**Subject:** [External]Re: [External]Re: [External]Re: [External]Surf City Farm Meeting

**CAUTION:** This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Looks like I spoke too soon..got our qualifying letter in the mail today

On Mon, Dec 13, 2021, 4:22 PM shari donahue <surfcityfarm@gmail.com> wrote:

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Merry Christmas

Shari & Sean

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Also, I don't believe I've told you already, but my last day working for Pender County will be December 30<sup>th</sup>. I have accepted a position with the City of Cambridge, Maryland, and will be relocating at the end of the month. I hope to have your case wrapped up by the time I leave, but if not, I can assure you that Travis and my other coworkers will continue to assist you and Sean.

Please let me know if there is anything I can do for you in the meantime.

All the best,

**Carlene Shaw, MPS, CZO | Current Planner**

Pender County Planning & Community Development

(910) 259-1408

[cshaw@pendercountync.gov](mailto:cshaw@pendercountync.gov)

805 S. Walker Street,

Burgaw, NC 28425

[www.pendercountync.gov](http://www.pendercountync.gov)

**From:** shari donahue <[surfcityfarm@gmail.com](mailto:surfcityfarm@gmail.com)>

**Sent:** Monday, December 13, 2021 1:04 PM

**To:** Carlene Shaw <[cshaw@pendercountync.gov](mailto:cshaw@pendercountync.gov)>

**Subject:** [External]Re: [External]Re: [External]Surf City Farm Meeting

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4/4/22, 9:30 AM

Gmail - Surf City Farm Meeting

Forgot to mention. We filed for the qualifying farmer exemption , faxed in to DOR on 12/3/21. I did a follow up call today , only min information from the service person I spoke with..the new qualifying farmer tax exemption numbers are mailed out after application is filed..always approved, if conditions are met ( which we did) but, some times it could take several weeks to receive...since all conditional farmers expire at the end of the year

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Just doing a flow up in the meeting, has there been any determination yet? Haopy to answer any additional questions or provide any other info if needed..

Thanks again

Shari

On Tue, Dec 7, 2021, 5:37 PM shari donahue <[surfcityfarm@gmail.com](mailto:surfcityfarm@gmail.com)> wrote:

Thank you!

On Tue, Dec 7, 2021 at 8:16 AM Carlene Shaw <[cshaw@pendercountync.gov](mailto:cshaw@pendercountync.gov)> wrote:

Shari,

We will most likely be emailing you the Zoning Determination Letter. If we end up mailing it, I'll send you an email letting you know it's on the way.

All the best,

**Carlene Shaw, MPS, CZO | Current Planner**

Pender County Planning & Community Development

(910) 259-1408

[cshaw@pendercountync.gov](mailto:cshaw@pendercountync.gov)

805 S. Walker Street,

Burgaw, NC 28425

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[Quoted text hidden]

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shari donahue <[surfcityfarm@gmail.com](mailto:surfcityfarm@gmail.com)>

Tue, Dec 14, 2021 at 7:30 AM





[www.pendercountync.gov](http://www.pendercountync.gov)

**From:** shari donahue <surfcityfarm@gmail.com>  
**Sent:** Thursday, December 30, 2021 2:43 PM  
**To:** Carlene Shaw <cshaw@pendercountync.gov>  
**Subject:** [External]Re: [External]Re: [External]Re: [External]Surf City Farm Meeting

**CAUTION:** This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

As today is your last day ,we want to wish you a happy new year and send you wishes for a successful new career move,thank you for all your help and guidance in the past months.

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[www.pendercountync.gov](http://www.pendercountync.gov)

**From:** shari donahue <[surfcityfarm@gmail.com](mailto:surfcityfarm@gmail.com)>  
**Sent:** Monday, December 13, 2021 1:04 PM  
**To:** Carlene Shaw <[cshaw@pendercountync.gov](mailto:cshaw@pendercountync.gov)>  
**Subject:** [External]Re: [External]Re: [External]Surf City Farm Meeting

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Shari,

We will most likely be emailing you the Zoning Determination Letter. If we end up mailing it, I'll send you an email letting you know it's on the way.

All the best,

**Carlene Shaw, MPS, CZO | Current Planner**

Pender County Planning & Community Development

(910) 259-1408

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805 S. Walker Street,

Burgaw, NC 28425

[www.pendercountync.gov](http://www.pendercountync.gov)

[Quoted text hidden]

---

**shari donahue** <surfcityfarm@gmail.com>  
To: Carlene Shaw <cshaw@pendercountync.gov>

Fri, Dec 31, 2021 at 12:34 PM

Thanks so much for the update !  
[Quoted text hidden]

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**2 attachments**



image001.jpg  
4K



image001.jpg  
4K



shari donahue &lt;surfcityfarm@gmail.com&gt;

## On going issues Surf City Farm

5 messages

shari donahue &lt;surfcityfarm@gmail.com&gt;

Thu, Jan 13, 2022 at 12:51 PM

To: thenley@pendercountync.gov

Good afternoon, I apologize for having to contact you again with issues regarding Linda Davenport. But I feel it is important to keep a running documentation as the issues seem to be escalating. Today at 11:22 am I received a call from my delivery Company, Sysco., Sysco owns the company Fresh Point. Fresh Point the a subsidiary who facilitates all the NC produce, In the call they expressed their driver who had just left from delivering my order was approached and questioned by Ms. Davenport at the intersection of Northern Escape way and Marcil lane. as to what he delivers for us, she asked specifically if he delivered vegetables to us and other questions, he called his area sales person who then contacted me to inform me of the interaction. To date we have had no personal interactions with Ms. Davenport, and have never conversed with or even met her, She has made repeated false claims and accusations to Pender County Planning and zoning about our farm business and has even attempted to divert traffic away from our road entrance, as reported by several customers. Ms. Davenport was cited for impeding traffic on Dec. 18th 2021, when she had a verbal altercation with a customer leaving our establishment. My concern is the potential damage to our business name and reputation as this continues on and escalates. Our desire to expand and grow the farm into the full plan previously mentioned is in jeopardy if this harassment continues. Per our previous meetings and conversations Surf City Farm continues to follow the Bona Fide Farm statutes as outlined. We are unclear as to the motivation behind Ms. Davenports continued and repeated attacks and can only assume that the closing of the farm is her goal. We strive each and every week to become a resource in the community for local fresh produce and goods, and provide a safe and comfortable environment to conduct this business. Thank you for you time  
Sean & Shari Donahue  
Surf City farm

Travis Henley &lt;thenley@pendercountync.gov&gt;

Thu, Jan 13, 2022 at 3:02 PM

To: shari donahue &lt;surfcityfarm@gmail.com&gt;

Cc: Alan Cutler Ext &lt;alan.cutler@pendersheriff.com&gt;, Michael Collier Ext &lt;michael.collier@pendersheriff.com&gt;

Hello friends,

Got your voicemail too but felt it better to respond via email in this case.

I understand and apologize that our determination has come slower than normal - unfortunately part of that is down to losing Carlene and Gideon around Christmastime, and part of it is that the determination is applicable not just to Surf City Farm but every bona-fide farm across the County and as such, it requires a great deal of coordination with the County

Attorney. You'll be the first to receive a copy of the determination when it is ready, which will hopefully be very soon.

We hear from Ms. Davenport fairly frequently as you know, however I will say that nothing we've heard from her is really any different than our current understanding of the events occurring at Surf City Farm gleaned from our conversations with you and from your website/social media. I do not believe it is having any effect on the determination or what it will ultimately say or not say.

Planning and Community Development will issue the determination for the bona-fide farm, however we have no authority in regards the behavior of individuals regardless of whether it was just a dispute between neighboring homeowners, if you're a bona-fide farm, or if you were permitted under the Unified Development Ordinance's regulations. The bulk of your email is really either a civil matter between you and her, or a matter for the Sheriff's Office. I'm copying Sheriff Alan Cutler and Major Mike Collier on this email, if either of you have anything to add please feel free.

Best,  
Travis

**Travis Henley, MPA, CFM | Director**  
Pender County Planning & Community Development  
805 S. Walker St.  
Burgaw, NC 28425  
(910) 259-2110



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---

**From:** shari donahue <surfcityfarm@gmail.com>  
**Sent:** Thursday, January 13, 2022 12:51 PM  
**To:** Travis Henley <thenley@pendercountync.gov>  
**Subject:** [External]On going issues Surf City Farm

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4/4/22, 9:32 AM

Gmail - On going issues Surf City Farm

**shari donahue** <surfcityfarm@gmail.com>

Thu, Jan 13, 2022 at 3:53 PM

To: Travis Henley <thenley@pendercountync.gov>

Thank you for your response, we sincerely appreciate any and all help from any department.  
Thanks for including the others in this email.

[Quoted text hidden]

---

**2 attachments**



**Outlook-5zr13ftx.png**  
11K



**Outlook-5zr13ftx.png**  
11K

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**shari donahue** <surfcityfarm@gmail.com>

Thu, Jan 13, 2022 at 3:58 PM

To: Travis Henley <thenley@pendercountync.gov>

My apologies, I was under the belief that the determination was specific to our farm, and the complaints from Ms. Davenport.

Thank you for clearing that up for me.

[Quoted text hidden]

---

**Travis Henley** <thenley@pendercountync.gov>

Fri, Jan 14, 2022 at 8:47 AM

To: shari donahue <surfcityfarm@gmail.com>

I'm certain it was an issue in our communication to y'all, so it should be me apologizing! I could've sworn we mentioned that in our meeting but in truth, I think that quite often and am often wrong...

Have a great weekend,  
Travis

**Travis Henley, MPA, CFM | Director**  
Pender County Planning & Community Development  
805 S. Walker St.  
Burgaw, NC 28425  
(910) 259-2110

4/4/22, 9:32 AM

Gmail - On going issues Surf City Farm



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**From:** shari donahue <surfcityfarm@gmail.com>  
**Sent:** Thursday, January 13, 2022 3:58 PM  
**To:** Travis Henley <thenley@pendercountync.gov>  
**Subject:** [External]Re: [External]On going issues Surf City Farm

[Quoted text hidden]



shari donahue &lt;surfcityfarm@gmail.com&gt;

**Determination Letter**

27 messages

Travis Henley <thenley@pendercountync.gov>  
 To: shari donahue <surfcityfarm@gmail.com>

Mon, Mar 7, 2022 at 8:19 PM

Hello Mrs. Donahue,

I apologize for what has taken some considerable time to pull together - with losing Gideon and Carlene and training new Staff, as well as pulling together all our documents for the next budget cycle, we have been spread quite thin recently.

In addition, the sheer amount of research that has been put into this determination has been quite extensive, I can assure you. The determination letter was sent certified mail earlier today, however I am attaching it to this email as well so you can go ahead and see it - you should be receiving the hard copy within the next day or two.

I want to be clear as to what this is and what isn't - this is a final determination that is written in the context of Surf City Farm but is also applicable to any bona-fide farm within the County. I do not have the legal ability to change it now that it is issued, this is for the purposes of actions that can be taken by me, final. It is able to be appealed within 30 days of its issuance by anyone feeling aggrieved by anything within it to the Board of Adjustment, and that Board would have the ability to modify it through a public hearing if they so chose (of course, any decision they make one way or another is also appealable to Superior Court).

If there are other uses not covered by the letter that you would like me to consider, please let me know and I am more than happy to write another determination. A 2<sup>nd</sup> determination would also be subject to a separate 30-day appeal clock, but would not open up the first one to be appealed again.

(Also, I am just now realizing that I have been spelling your last name incorrectly for some time, including on the envelope I wrote this morning and the hard copy of the determination itself. As someone who's last name is also often spelled wrong, usually with an extra "s" in the middle or without the second "e," I am incredibly embarrassed and hope you'll accept my apology for that.)

Best regards,  
 Travis

**Travis Henley, MPA, CFM | Director**  
 Pender County Planning & Community Development  
 805 S. Walker St.  
 Burgaw, NC 28425  
 (910) 259-2110



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**Surf City Farm Zoning Determination Letter.docx**  
 865K

Travis Henley <thenley@pendercountync.gov>  
 To: shari donahue <surfcityfarm@gmail.com>

Tue, Mar 8, 2022 at 12:23 PM

4/4/22, 9:33 AM

Gmail - Determination Letter

Hi Shari,

Saw I have a voicemail from you... I am running around the County and the region in meetings all of the rest of today and most of tomorrow. I will try to call if able but I'm not confident I will be able to before Thursday. If there's questions I can answer via email I can probably get you answers faster.

Best,  
Travis

Get Outlook for iOS

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**From:** Travis Henley  
**Sent:** Monday, March 7, 2022 8:19:07 PM  
**To:** shari donahue <surfcityfarm@gmail.com>  
**Subject:** Determination Letter

[Quoted text hidden]

---

**shari donahue** <surfcityfarm@gmail.com>  
**To:** Travis Henley <thenley@pendercountync.gov>

Tue, Mar 8, 2022 at 2:09 PM

Thank you for the reply, I would however, like to speak on the phone or in person, if we could set up a time or a meeting. I would also like to request info on the appeal process and, request a current list of ALL bona fide farms in Pender County. respectfully,  
Shari Donahue

[Quoted text hidden]

---

**Travis Henley** <thenley@pendercountync.gov>  
**To:** shari donahue <surfcityfarm@gmail.com>

Tue, Mar 8, 2022 at 2:50 PM

Hi Shari,

The appeal application can be found at the following link: <https://www.pendercountync.gov/pcd/wp-content/uploads/sites/15/2017/06/Appeal-of-Administrative-Decision.pdf>. It's pretty straight-forward - the only guidance I can provide from past experience is to specifically note in the description of the appeal request the section(s) of the decision you are appealing. Given the length of the determination issued, it's just to avoid confusion amongst the Board of Adjustment and public, nothing more.

I will see what I can do about pulling a list of all active bona-fide farms, though this will take some time as our records retention further back than 2016 is inconsistent, and the rules regarding bona-fide farms haven't always been written as they are now. As I believe we've communicated in the past, we are complaint-driven from a code enforcement perspective.

Best,  
Travis

**Travis Henley, MPA, CFM | Director**  
Pender County Planning & Community Development  
805 S. Walker St.  
Burgaw, NC 28425  
(910) 259-2110



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4/4/22, 9:33 AM

Gmail - Determination Letter

**From:** shari donahue <surfcityfarm@gmail.com>  
**Sent:** Tuesday, March 8, 2022 2:09 PM  
**To:** Travis Henley <thenley@pendercountync.gov>  
**Subject:** [External]Re: Determination Letter

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[Quoted text hidden]

**shari donahue** <surfcityfarm@gmail.com>  
**To:** Travis Henley <thenley@pendercountync.gov>

Tue, Mar 8, 2022 at 2:59 PM

Thank you for the response...correct me if i am wrong...it will COST ME \$250.00 TO APPEAL THIS  
[Quoted text hidden]



**Travis Henley** <thenley@pendercountync.gov>  
**To:** shari donahue <surfcityfarm@gmail.com>

Tue, Mar 8, 2022 at 5:23 PM

Hi Shari,

Any Appeal of an Administrative Decision application has a \$250 application fee in accordance with the approved fee schedule for the Department, which is approved through the budget process every year.

Best,  
Travis

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**From:** shari donahue <surfcityfarm@gmail.com>  
**Sent:** Tuesday, March 8, 2022 2:59:03 PM  
**To:** Travis Henley <thenley@pendercountync.gov>  
**Subject:** [External]Re: [External]Re: Determination Letter

[Quoted text hidden]

**shari donahue** <surfcityfarm@gmail.com>  
**To:** Travis Henley <thenley@pendercountync.gov>

Wed, Mar 9, 2022 at 11:43 AM

Thank you for the clarification. We would like to set up an in person meeting at your earliest convenience.  
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4 attachments



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4/4/22, 9:33 AM

Gmail - Determination Letter

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Travis Henley <thenley@pendercountync.gov>  
To: shari donahue <surfcityfarm@gmail.com>

Wed, Mar 9, 2022 at 2:21 PM

Hi Shari,

I will try to move some things around and be available Friday when I'm in Hampstead, but otherwise we may have to look at next week. I'm always available to answer any questions you may have via email.

Best,  
Travis

**Travis Henley, MPA, CFM | Director**  
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**From:** shari donahue <surfcityfarm@gmail.com>  
**Sent:** Wednesday, March 9, 2022 11:43 AM  
**To:** Travis Henley <thenley@pendercountync.gov>  
**Subject:** [External]Re: [External]Re: [External]Re: Determination Letter

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**shari donahue** <surfcityfarm@gmail.com>  
To: Travis Henley <thenley@pendercountync.gov>

Wed, Mar 9, 2022 at 3:25 PM

next week is better since we are working on friday  
[Quoted text hidden]

---

**Travis Henley** <thenley@pendercountync.gov>  
To: shari donahue <surfcityfarm@gmail.com>

Wed, Mar 9, 2022 at 3:32 PM

Shari,



4/4/22, 9:33 AM

Gmail - Determination Letter

Sounds good, I'll look at my calendar and see what will work best. And please please please, if there's questions I can answer ahead of time please don't hesitate. If there's things in the letter that don't make sense to you or you want clarification on, please let me know and I can try to break down those barriers.

Talk to you soon,  
Travis

**Travis Henley, MPA, CFM | Director**  
Pender County Planning & Community Development  
805 S. Walker St.  
Burgaw, NC 28425  
(910) 259-2110



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**From:** shari donahue <surfcityfarm@gmail.com>  
**Sent:** Wednesday, March 9, 2022 3:25 PM  
**To:** Travis Henley <thenley@pendercountync.gov>  
**Subject:** [External]Re: [External]Re: [External]Re: [External]Re: Determination Letter

[Quoted text hidden]

---

shari donahue <surfcityfarm@gmail.com>  
To: Travis Henley <thenley@pendercountync.gov>

Wed, Mar 9, 2022 at 5:56 PM

Sounds good, thank you. With all due respect, There is alot in the letter that needs clarification..I understand it to be an interpretation of the statute, and for that reason, we would like to meet in person.

[Quoted text hidden]

---

4 attachments



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Outlook-ammkv4cm.png  
11K

Page 70 of 82

4/4/22, 9:33 AM

Gmail - Determination Letter



Travis Henley <thenley@pendercountync.gov>  
To: shari donahue <surfcityfarm@gmail.com>

Wed, Mar 9, 2022 at 6:33 PM

Good evening Shari,

Totally understand your position, and as I've said, more than happy to meet in person. I'm not asking for your questions in place of an in-person meeting, I'm asking so that I can have the answers for you when we meet in person, as opposed to meeting and hearing your questions and potentially needing to go do additional research or consult again with our County Attorney, which will take longer and will further eat into your 30 day clock to appeal any portion of the determination if that's the route you're looking to go. At it's core, I just want to get you answers faster, that's all.

The letter talks about ways to establish uses under the existing development code, and you truly do have options there. They all require public hearings though due to the residential zoning of the property.

Best,  
Travis

**Travis Henley, MPA, CFM | Director**  
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805 S. Walker St.  
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(910) 259-2110



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**Sent:** Wednesday, March 9, 2022 5:56 PM  
**To:** Travis Henley <thenley@pendercountync.gov>  
**Subject:** [External]Re: [External]Re: [External]Re: [External]Re: [External]Re: Determination Letter

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shari donahue <surfcityfarm@gmail.com>  
To: Travis Henley <thenley@pendercountync.gov>

Thu, Mar 10, 2022 at 9:59 AM

thank you again,

If you or the county attorney could clarify the following points and issues,  
From the onset of Ms. Davenport's numerous complaints, I was informed that ,on several occasions the statute was read to Ms. Davenport and that we were in compliance and following the statute ,Even after several visits from the Planning and zoning department,, a detailed written

4/4/22, 9:33 AM

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explanation to planning and zoning of the full business model and a visit from the code enforcement office,,it was explained to Ms. Davenport that we were in compliance... what has changed since the past interpretation of the statute?

We can both agree ,and have...that the statute is vague in its entirety.

I would like to know who interpreted the statute? Which method of interpretation was used? (textualism,intentionalism or pragmatism) as all are methods of interpretation, that can lead the fact finder in different directions in dissecting a statute and it's original intent and meaning.

Please help me understand how the county feels (through its interpretation of the statute) That selling agricultural products (no matter who grew them ),is not an activity relating to and incidental to the production of crops..which would be considered a bona-fide farm purpose,OR that it would not fall under agritourism, meaning ANY activity carried out on a farm or ranch that allows members of the general PUBLIC ,for recreational,entertainment,or educational purposes, to view or enjoy rural activities,,including farming,ranching,historic,culture,harvest your own activities, or natural activities and attractions.

Why does one go to a farmers market,several reasons,and they can not be defined as a whole but as individule reasons..all included in the statute.. mostly in the agritourism definition.

One could argue that selling produce from another farmer could constitute a 'public event" related to farming,since the sale of produce weekly takes place on the farm because of its farm or rural setting.Once again putting it into the agritourism definition of the statute.

I would like to know if the county can/will agree that the above statements can/ may also fit the interpretation of the statute?

Who is to determine what a "qualifying public event " would be ? Is the public event that is taking place on the farm because of it's farm or rural setting not also subject to interpretation?

Is a photo with Santa on a farm not a public event if Santa is seated and photographed in front of a 10 foot christmas tree fully decorated and surrounded by farm related decor,on a farm,not a farm related purpose? Or does santa have to be seated on a tractor to make it a more farm related activity?

I would like clarification on private event vs public event

If an artist rents the event space due to its farm or rural setting,to showcase their art..., is the rental of the space in and of itself considered a private event??,even if they advertise it publically?

If a photographer rents a portion of the event space due to its farm or rural setting,is the photographers event private or public?

If the farm were to host a pumpkin patch ,but sell pumpkins from other farms would this be considered a farm related seasonal public event or the sale of crops not grown on the farm?

If the farm were to showcase other available produce/crops grown around the area or the world, and provide "education",recipes or history surrounding that crop,changing the crops and farmers highlighted weekly.Would this constitute a public event ,if advertised as such?

If Surf City Farm became a "private member farm" would all events be considered private to it's members?

I would also like to know how and when ALL other bona-fide farms in Pender County will be notified of the determination letter,as MANY also sell crops from other farms,or host public events that may not fall into this interpretation .

For example,hosting a seasonal pumpkin patch,IS a farm related public event,but also is the selling of another farmers crops.

Reading into your email statement that the Planning and zoning is complaint driven for code enforcement,it puts me in a difficult position and pits one farmer against another,rather than support other farmers.

The lack of ability to sell goods from other farms or vendors, greatly impacts the area in several ways,

Surf City Farm donates unsold produce to the local Share the Table food bank in the amount of hundreds of pounds per month,feeding those less fortunate in the area..the lack of support from Surf City Farm will greatly impact this population who greatly need the support in these difficult times of our economy,one could even find that to be an "educational or cultural"

Due to Ms. Davenport's complaints ,and one could argue full on harassment of Surf City Farm. She has weaponized herself with the planning and zoning department,as a one single person complaint,which I argue again,is not a public complaint but a personal complaint,and underthe farm nuisance,this is a civil issue that Ms. Davenport had the right,ability and access to pursue through the North Carolina Court system under the N.C. Right to farm laws.

There are many interpretations of the statute ,which is why I believe the writers in fact made it vague

.N.C. being a Right to Farm State with agriculture as one of the largest industries in the state,although fast shrinking in numbers due to many factors such as interpretation.

If you could outline the process of non-compliance of an ordinance,what are the fines,ramifications ect.,and what is the position of the county per complaint?

We will appeal the determination,and if we lose it will force us to alter the business model,which will prove the business to be less profitable.

Hence we will be forced to sell our property to the highest paying developer. Owning nearly 11 acres in a highly desired beach community , within an award winning school zone during a real estate boom should not be a problem...but our goal as a farm was to keep it out of the developers hands...these interpretations of the statute do not make our business model profitable ,nor the persistent and ongoing harassment from

Ms.Davenport,who failed to do her own due diligence when purchasing a property next to an existing farm. i apologize for my curt tone as this determination is very detrimental to the livelihood of my family,my farm and ALL other like farms in the area it WILL affect.

respectfully

Sean & Shari Donahue  
Surf City Farm

[Quoted text hidden]

Travis Henley <thenley@pendercountync.gov>  
To: shari donahue <surfcityfarm@gmail.com>

Thu, Mar 10, 2022 at 10:21 AM

Thanks Shari! We'll get these turned around ASAP. You may see a couple rounds of answers come forward as we work through them.

Best,  
Travis

4/4/22, 9:33 AM

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**Travis Henley, MPA, CFM | Director**  
Pender County Planning & Community Development  
805 S. Walker St.  
Burgaw, NC 28425  
(910) 259-2110



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**From:** shari donahue <surfcityfarm@gmail.com>  
**Sent:** Thursday, March 10, 2022 9:59 AM  
**To:** Travis Henley <thenley@pendercountync.gov>  
**Subject:** [External]Re: [External]Re: [External]Re: [External]Re: [External]Re: [External]Re: Determination Letter

[Quoted text hidden]

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shari donahue <surfcityfarm@gmail.com>  
To: Travis Henley <thenley@pendercountync.gov>

Thu, Mar 10, 2022 at 10:39 AM

Thank you! Much appreciated,  
[Quoted text hidden]

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**4 attachments**

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11K



Outlook-bwh30ctg.png  
11K



Outlook-nqkqhw5x.png  
11K

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shari donahue <surfcityfarm@gmail.com>  
To: Travis Henley <thenley@pendercountync.gov>

Mon, Mar 14, 2022 at 7:46 AM

Follow up Questions, and clarifications,

Could you tell me the last date the county will recognize as the last date for an appeal to be filed?

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Can you list all persons who were mailed a copy or received a copy of the determination letter sent by Pender County ?  
Please list all names on the original complaint, and provide a copy of the actual complaint.  
Please list names and addresses of any/all other complaints, and their specific complaints, including dates ect.  
Please list the number of complaints, calls, letters made by Ms. Davenport to Planning and zoning dept., code enforcement, or any other department of Pender County as it relates to Surf City Farm.

Is there an extension for an appeal to the board of adjusters? ,I will need the names of all holders of bona-fide farms in Pender County to address my appeal, if that information is not readily available to me in due time, it may hamper my appeal.

An appeal to the board of adjusters entitles me to a board of 5 members, the county currently has a vacancy, and only 4 board members on the board of adjustment, will this position be filled for the appeal, if so, by whom, if not what will happen in the event the board is split in it's decision on the appeal ?

Please explain the appeal process, is this a simple filing or an in person hearing in front of the board?

Will the complainant(s) appear in person at the appeal?

Are we allowed to continue business practices as they are, before the appeal is made, and will we be allowed to continue through the appeal process timeframe?

How long is the appeal process from date of appeal filing, and the board of adjusters decision?

In the event the determination is changed/adjusted or overturned, how does the county plan to address Ms. Davenport future complaints or any other persons complaints against Surf City Farm?

Thank you again  
Sean & Shari  
Surf City Farm

[Quoted text hidden]

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Travis Henley <thenley@pendercountync.gov>  
To: shari donahue <surfcityfarm@gmail.com>

Mon, Mar 14, 2022 at 10:44 AM

Hi Shari,

Some of the questions I've added to the list to be considered by the County Attorney, however I can answer a few now:

Is there an extension for an appeal to the board of adjusters? ,I will need the names of all holders of bona-fide farms in Pender County to address my appeal, if that information is not readily available to me in due time, it may hamper my appeal.  
There is no ability to grant an extension. The only thing needed by the end of the 30 days is a completed application.

An appeal to the board of adjusters entitles me to a board of 5 members, the county currently has a vacancy, and only 4 board members on the board of adjustment, will this position be filled for the appeal, if so, by whom, if not what will happen in the event the board is split in it's decision on the appeal ?

The Board of Adjustment has two alternate positions, both of which are filled, for exactly this purpose. However, you would be well within your right to request a continuance if you had less than a full board present at the hearing when that takes place. A "tie" is neither an approval nor a denial - it would leave the case in pending status until presented again.

Please explain the appeal process, is this a simple filing or an in person hearing in front of the board?

Submitting the application is just handing the application to a member of staff. Once the application is submitted, Staff will pull together a brief report and any other materials you have submitted or staff feels relevant to the appeal and package that up in an agenda to present to the Board of Adjustment at it's next regularly scheduled meeting. These hearings are advertised in the Pender Topsail Post and Voice, mailers advertising the hearing are sent to every property owner within 500 feet of the site, and a sign is placed on the property. The hearings are quasi-judicial, meaning they function essentially like a courtroom. Staff and any member of the public is sworn in. Staff presents the facts of the case, the applicant presents anything they would like to present, and the Board can and often will ask questions of both. Then they will hear from any member of the public that has signed up to speak to the item. Given the quasi-judicial rules, there may be challenges to the standing made in both directions, and all sides could be cross-examined by the County Attorney. Ultimately, the Board will render a decision. It is possible to appeal a Board of Adjustment ruling in Superior Court by any party.

Will the complainant(s) appear in person at the appeal?

Any member of the public is able to attend these hearings, so if they would like to attend, they would be able to, and they would have the ability to sign up to speak as well. Importantly, the subject of the hearing wouldn't necessarily be Surf City

4/4/22, 9:33 AM

Gmail - Determination Letter

Farm, but the determination issued. The scope is somewhat limited in that respect, as opposed to something like a Special Use Permit or a Rezoning.

Are we allowed to continue business practices as they are ,before the appeal is made,and will we be allowed to continue through the appeal process timeframe?

Any piece not determined to be exempt from zoning would be subject to a zoning violation if continued, which can bring with it fines of \$100 per day and typically those fines accrue regardless of any pending appeal or development application. Of course, the notice of violation itself could also be appealed.

How long is the appeal process from date of appeal filing,and the board of adjusters decision?

The agenda deadlines are always the first Friday of the month for a hearing the following month. Say you were to submit the application on Friday April 1 (the next deadline). Your hearing would be on the third Wednesday in May. If the application comes later than April 1, but still before the 30 days are up, then it would be heard in June.

In the event the determination is changed/adjusted or overturned,how does the county plan to address Ms. Davenport future complaints or any other persons complaints against Surd City Farm?

This can't really be answered in the hypothetical, as every case is different. However, I can say that if we receive a complaint, we are duty bound to investigate it. If a violation is found, a violation notice will be issued. If a violation is not found, that would be communicated to the complainant. As I mentioned above, this would also be subject to appeal in both directions.

**Travis Henley, MPA, CFM | Director**

Pender County Planning & Community Development

805 S. Walker St.

Burgaw, NC 28425

(910) 259-2110



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**From:** shari donahue <surfcityfarm@gmail.com>

**Sent:** Monday, March 14, 2022 7:46 AM

**To:** Travis Henley <thenley@pendercountync.gov>

**Subject:** [External]Re: [External]Re: [External]Re: [External]Re: [External]Re: [External]Re: [External]Re: Determination Letter

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**shari donahue** <surfcityfarm@gmail.com>

Mon, Mar 14, 2022 at 1:23 PM

To: Travis Henley <thenley@pendercountync.gov>

please let us know if you have time avail this week,on tues or wed...it may be beneficial to have the county attorney present as well..thank you

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**Travis Henley** <thenley@pendercountync.gov>

Mon, Mar 14, 2022 at 2:43 PM

To: shari donahue <surfcityfarm@gmail.com>

Hi Shari,

If we want the County Attorney to be present, we're going to need a fair bit more lead time. He's not a staff attorney, he's on retainer and isn't always available during the day. I will see him tonight, I'll inquire as to his availability and let you know.

Best,  
Travis

**Travis Henley, MPA, CFM | Director**

Pender County Planning & Community Development

805 S. Walker St.

Burgaw, NC 28425

(910) 259-2110





4/4/22, 9:33 AM

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**From:** shari donahue <surfcityfarm@gmail.com>  
**Sent:** Monday, March 14, 2022 1:23 PM  
**To:** Travis Henley <thenley@pendercountync.gov>  
**Subject:** [External]Re: [External]Re: [External]Re: [External]Re: [External]Re: [External]Re: [External]Re: [External]Re: Determination Letter

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**shari donahue** <surfcityfarm@gmail.com>  
**To:** Travis Henley <thenley@pendercountync.gov>

Wed, Mar 16, 2022 at 7:39 AM

we don't need the attorney there...but,do need his clarifications to questions presented. if you have time today or monday

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**Travis Henley** <thenley@pendercountync.gov>  
**To:** shari donahue <surfcityfarm@gmail.com>

Wed, Mar 16, 2022 at 8:58 AM

Good morning Shari,

Under direction from the County Attorney, I am going to be unable to meet until after the appeal process has been completed in one form or another. The Determination issued is the final position of the County and cannot be changed unless directed to do so by the Board of Adjustment via their decision on a potential appeal. To that end, we will be unable to answer any of the previously-asked questions with regard to the positions taken by the determination. The Unified Development Ordinance outlines the appeal process, and it is in the appeal hearing with the Board of Adjustment where questions regarding the positions taken by the determination can be openly discussed and potentially changed if the will of the Board of Adjustment. We will answer what we can in the meantime, but the majority of the previously-asked questions would fall into that category.

Best regards,  
Travis

**Travis Henley, MPA, CFM | Director**  
Pender County Planning & Community Development  
805 S. Walker St.  
Burgaw, NC 28425  
(910) 259-2110



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**From:** shari donahue <surfcityfarm@gmail.com>  
**Sent:** Wednesday, March 16, 2022 7:39 AM  
**To:** Travis Henley <thenley@pendercountync.gov>  
**Subject:** [External]Re: [External]Re: [External]Re: [External]Re: [External]Re: [External]Re: [External]Re: [External]Re: [External]Re: Determination Letter

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**shari donahue** <surfcityfarm@gmail.com>  
**To:** Travis Henley <thenley@pendercountync.gov>

Wed, Mar 16, 2022 at 12:28 PM

understood,thank you

4/4/22, 9:33 AM

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If i may still have a current list of the bona fide farms in Pender County,it would be most helpful,or direct me to the proper channel to gain the information needed

Shari

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**Travis Henley** <thenley@pendercountync.gov>  
To: shari donahue <surfcityfarm@gmail.com>

Thu, Mar 17, 2022 at 9:14 AM

Good morning Shari,

Wanted to follow up on thing that has been brought to my attention and was mentioned in the list of questions you sent over last week:

*If Surf City Farm became a "private member farm" would all events be considered private to it's members?*

An addendum to the determination will be issued regarding this piece and delving further into the private events. Using a membership model, while totally allowable to do so, would not impact the "use" when it comes to whether or not something is considered a bona-fide farm purpose and is therefore exempt from zoning. The determination addendum will say more, and will have its own 30-day appeal timeline, but just wanted to let you know that another official determination is coming. In truth, the "purely private" events that the determination mentioned was referencing things like birthday parties, office parties, new years, things like that. The forthcoming determination will cover all of that.

By the way, you do have options to get this permitted through the zoning process. Food and Beverage Stores are permitted via Special Use Permit in the zoning district you are located in. It does require Board of Commissioners approval in a public hearing, and it would be subject to the County's development rules, but it is possible. Just wanted to be clear that you have options even if the eventual appeal doesn't work out the way you want it to.

More to come,  
Travis

**Travis Henley, MPA, CFM | Director**  
Pender County Planning & Community Development  
805 S. Walker St.  
Burgaw, NC 28425  
(910) 259-2110



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**From:** shari donahue <surfcityfarm@gmail.com>  
**Sent:** Wednesday, March 16, 2022 12:28 PM  
**To:** Travis Henley <thenley@pendercountync.gov>  
**Subject:** [External]Re: [External]Re: [External]Re: [External]Re: [External]Re: [External]Re: [External]Re: [External]Re: [External]Re: [External]Re: Determination Letter

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**shari donahue** <surfcityfarm@gmail.com>  
To: Travis Henley <thenley@pendercountync.gov>

Thu, Mar 17, 2022 at 10:13 AM

Thank you,and just for clarification, you are saying that the farm having a private 3 day event.. would not be allowed under the addendum ? the wording is hard to understand,legalese is not my first language.

[Quoted text hidden]

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**shari donahue** <surfcityfarm@gmail.com>  
To: Travis Henley <thenley@pendercountync.gov>

Thu, Mar 17, 2022 at 3:49 PM

To all it may concern,  
It appears ,at this point, regardless of what we do as a bona fide farm ,Pender County is not, and will not be supportive in our attempt to bring agriculture and agritourism to this area.

4/4/22, 9:33 AM

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Being a complaint driven ,code enforcement department, other Pender County farms are free to capitalize on their investment in agriculture and agritourism until a complaint comes in..

We can only expect that while the farm succeeds,the complaints will continue or escalate. thus requiring, further and ever changing interpretations, addendums and determinations of the bona fide farm statute.

The only way the complaints will cease, is if the farm fails or disappears entirely .

At this juncture we are left with little to no choices.

The Special use permit will not cover our barn that was built under the bona-fide farm statute. although all electrical and ect. was inspected, the building did not require permits for the project as a whole.

We followed the statute with the full support of Pender County and the NCDAG&CS.

We still have no answers to what has changed from the time of our fully written explanation of the business where Pender County and Code enforcement ,post visits, found NO violations,and the complainant was read the statute several times and told we were in compliance, to where we are now,with nothing having changed at all, except the degree of complaints, and Pender County having a different interpretation now of the statute on more than one occasion.

It appears that the interpretation of the statute will be ever changing with each persistent complaint and that the determination letter and the new pending addendum prove that the issues and complaints will be ongoing regardless of how we try to modify the business plan, even when it falls with in the statute.

The \$250.00 fee to appeal every possible determination and addendum resulting from every complaint will prove too costly for us financially. We based the farm plan , financials, and our substantial investment into the farm based on the written and verbal communications of past and present staff of Planning and zoning and NCDA&CS. The limitations now presented place a huge financial hardship on the farm as an income producing business. We simply do not have the means to properly appeal every complaint, of every future business decision we may make.

We stand firm in our belief that we fall well within the statute, as outlined for agritourism, as was agreed upon by Pender County previously.

At this time,we have come to the conclusion that the sale of the farm may be necessary for all parties involved.

My husband's health is more important at this time and his heart can not take this level of stress being thrust upon us. This is our livelihood and what feeds our family.

This farm from it's inception was to secure the unknown future of our autistic child,,(a child who has been a part of the Topsail High School Agricultural program since he was a freshman,) so he may always be guaranteed a means of support and a future even after we are gone..

We hope that Pender County will work with any potential farmers interested in the property, if they wish to continue the farming operation and seek a bona fide farm determination. And we hope Pender County will work with any potential builder or developer interested in the acreage as well, as I am sure Planning and zoning would be involved in any development of the property.

[Quoted text hidden]

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Travis Henley <thenley@pendercountync.gov>  
To: shari donahue <surfcityfarm@gmail.com>

Fri, Mar 18, 2022 at 11:02 AM

Good morning,

To be clear, the Special Use Permit is only talking about zoning. Yes the building permit discussion would need to be had, but it would not need to occur until after the Special Use Permit matter was dealt with, and you'd be talking about it from a point of knowing that the zoning was set up for you. You could propose a rezoning too - a bit more difficult of a process on the front end, but also more flexible for you to set it up exactly how want it.

Best,  
Travis

**Travis Henley, MPA, CFM | Director**  
Pender County Planning & Community Development  
805 S. Walker St.  
Burgaw, NC 28425  
(910) 259-2110



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**From:** shari donahue <surfcityfarm@gmail.com>  
**Sent:** Thursday, March 17, 2022 3:49 PM  
**To:** Travis Henley <thenley@pendercountync.gov>  
**Subject:** [External]Re: [External]Re: [External]Re: [External]Re: [External]Re: [External]Re: [External]Re: [External]Re: [External]Re: Determination Letter

4/4/22, 9:33 AM

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**shari donahue** <surfcityfarm@gmail.com>  
Draft

Mon, Apr 4, 2022 at 9:33 AM

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 **Surf City Farm Zoning Determination Letter.docx**  
865K

**§ 105-164.13E. Exemption for farmers.**

(a) Exemption. – A qualifying farmer is a person who has an annual income from farming operations for the preceding taxable year of ten thousand dollars (\$10,000) or more or who has an average annual income from farming operations for the three preceding taxable years of ten thousand dollars (\$10,000) or more. For purposes of this section, the term "income from farming operations" means sales plus any other amounts treated as gross income under the Code from farming operations. A qualifying farmer includes a dairy operator, a poultry farmer, an egg producer, and a livestock farmer, a farmer of crops, a farmer of an aquatic species, as defined in G.S. 106-758, and a person who boards horses. A qualifying farmer may apply to the Secretary for an exemption certificate number under G.S. 105-164.28A. The exemption certificate expires when a person fails to meet the income threshold for three consecutive taxable years or ceases to engage in farming operations, whichever comes first.

Except as otherwise provided in this section, the items exempt under this section must be purchased by a qualifying farmer or conditional farmer and used by the qualifying or conditional farmer primarily in farming operations. For purposes of this section, an item is used by a farmer for farming operations if it is used for the planting, cultivating, harvesting, or curing of farm crops, in the production of dairy products, eggs, or animals, or by a person who boards horses. The items that may be exempt from sales and use tax under this section are:

- (1) Fuel, piped natural gas, and electricity that are measured by a separate meter or another separate device and used for a purpose other than preparing food, heating dwellings, and other household purposes.
- (2) Commercial fertilizer, lime, land plaster, plastic mulch, plant bed covers, potting soil, baler twine, and seeds.
- (3) Farm machinery, attachment and repair parts for farm machinery, and lubricants applied to farm machinery. The term "machinery" includes implements that have moving parts or are operated or drawn by an animal. The term does not include implements operated wholly by hand or motor vehicles required to be registered under Chapter 20 of the General Statutes.
- (4) A container used in the planting, cultivating, harvesting, or curing of farm crops or in the production of dairy products, eggs, or animals or used in packaging and transporting the farmer's product for sale.
- (5) A grain, feed, or soybean storage facility and parts and accessories attached to the facility.
- (6) Any of the following substances when purchased for use on animals or plants, as appropriate, held or produced for commercial purposes:
  - a. Remedies, vaccines, medications, litter materials, and feeds for animals.
  - b. Rodenticides, insecticides, herbicides, fungicides, and pesticides.
  - c. Defoliants for use on cotton or other crops.
  - d. Plant growth inhibitors, regulators, or stimulators, including systemic and contact or other sucker control agents for tobacco and other crops.
  - e. Semen.
- (7) Any of the following animals:
  - a. Baby chicks and poults.
  - b. Livestock.
- (8) Any of the following items concerning the housing, raising, or feeding of animals:
  - a. A commercially manufactured facility to be used for commercial purposes for housing, raising, or feeding animals or for housing equipment necessary for these commercial activities. The exemption

also applies to commercially manufactured equipment, and parts and accessories for the equipment, used in the facility.

- b. Building materials, supplies, fixtures, and equipment that become a part of and are used in the construction, repair, or improvement of an enclosure or a structure specifically designed, constructed, and used for housing, raising, or feeding animals or for housing equipment necessary for one of these commercial activities. The exemption also applies to commercially manufactured equipment, and parts and accessories for the equipment, used in the enclosure or a structure.
- (9) A bulk tobacco barn or rack, parts and accessories attached to the tobacco barn or rack, and any similar apparatus, part, or accessory used to cure or dry tobacco or another crop.
- (10) Repair, maintenance, and installation services.

(b) Conditional Exemption. – A person who does not meet the definition of a qualifying farmer in subsection (a) of this section may apply to the Department for a conditional exemption certificate under G.S. 105-164.28A. A person with a conditional exemption certificate is allowed to purchase items exempt from sales and use tax to the same extent as a qualifying farmer under subsection (a) of this section. To receive a conditional exemption certificate under this subsection, the person must certify that the person intends to engage in farming operations, as that term is described in subsection (a) of this section, and that the person will timely file State and federal income tax returns that reflect income and expenses incurred from farming operations during the taxable years that the conditional exemption certificate applies.

A conditional exemption certificate issued under this subsection is valid for the taxable year in which the certificate is issued and the following two taxable years, provided the person to whom the certificate is issued is engaged in farming and provides copies of applicable State and federal income tax returns to the Department within 90 days following the due date of an income tax return for each taxable year covered by the conditional exemption certificate, including an extension of the due date granted by the Secretary under G.S. 105-263. A conditional exemption certificate issued under this subsection may not be extended or renewed beyond the original three-year period; provided that a person may request a one-year extension of their conditional exemption certificate if the person satisfies all of the following conditions:

- (1) The person holds a conditional exemption certificate that is scheduled to expire within 30 days of an extension request.
- (2) The person suffers a weather-related disaster that prevents the person from becoming eligible for a qualifying exemption certificate.
- (3) The person provides the Department all of the following:
  - a. Documents showing that, but for the disaster, the person would have earned ten thousand dollars (\$10,000) or more in gross sales for the year in which the disaster occurred.
  - b. Documentation of revenues and expenses relating to the damaged crop.
  - c. An affidavit from a county extension director or FSA county committee that the disaster occurred in the area of the county in which the person farms.

The Department may not issue a conditional exemption certificate to a person who has had a conditional exemption certificate issued under this subsection during the prior 15 taxable years.

A person who purchases items with a conditional exemption certificate must maintain documentation of the items purchased and copies of State and federal income tax returns that reflect activities from farming operations for the period of time covered by the conditional exemption certificate for three years following the expiration of the conditional exemption



certificate. The Secretary may require a person who has a conditional exemption certificate to provide any other information requested by the Secretary to verify the person met the conditions of this subsection. A person who fails to provide the information requested by the Secretary in a timely manner or who fails to meet the requirements of this subsection becomes liable for any taxes for which an exemption under this subsection was claimed. The taxes become due and payable at the expiration of the conditional exemption certificate, and interest accrues from the date of the original purchase. Additionally, where the person does not timely provide the information requested by the Secretary, the misuse of exemption certificate penalty in G.S. 105-236(a)(5a) applies to each seller identified by the Department from which the person made a purchase.

(c) Contract with a Farmer. – A qualifying item listed in subdivisions (5), (8), and (9) of subsection (a) of this section purchased to fulfill a contract with a person who holds a qualifying farmer exemption certificate or a conditional farmer exemption certificate issued under G.S. 105-164.28A is exempt from sales and use tax to the same extent as if purchased directly by the person who holds the exemption certificate. A contractor that purchases one of the items allowed an exemption under this section must provide an exemption certificate to the retailer that includes the name of the qualifying farmer or conditional farmer exemption certificate holder and the qualifying farmer or conditional farmer exemption certificate number issued to that holder.

(c1) Services for Farmer. – A qualifying item listed in subdivision (6) of subsection (a) of this section purchased to fulfill a service for a person who holds a qualifying farmer exemption certificate or a conditional farmer exemption certificate issued under G.S. 105-164.28A is exempt from sales and use tax to the same extent as if purchased directly by the person who holds the exemption certificate. A person that purchases one of the items allowed an exemption under this subsection must provide an exemption certificate to the retailer that includes the name of the qualifying farmer or conditional farmer and the exemption number issued to the qualifying farmer or conditional farmer by the Department pursuant to G.S. 105-164.28A. A person that purchases an item exempt from tax pursuant to this subsection must maintain records to substantiate that an item is used to provide a service for a person who holds a qualifying farmer exemption certificate or a conditional farmer exemption certificate.

(d) Definition. – For purposes of this section, the term "taxable year" has the same meaning as defined in G.S. 105-153.3. (2013-316, s. 3.3(a); 2013-363, s. 11.4; 2014-3, s. 3.1(a); 2015-6, s. 2.13(a); 2016-5, s. 3.12(a); 2016-94, s. 38.5(j); 2017-108, s. 20(a); 2018-5, s. 38.5(k); 2019-6, s. 5.4; 2019-169, s. 3.3(l), (m); 2020-6, s. 1(a).)