

**Town of Cary, North Carolina
 Special Use and Minor Alteration Staff Report
 Cary Swim Club (13-SU-003 and 13-MA-188)
 Town Council Quasi-Judicial Hearing
 December 12, 2013**

REQUEST

Cary Swim Club has requested approval to expand an existing non-conforming commercial recreation use by erecting an enclosure over their existing pool, resulting in the ability to utilize the facility year-round. Expansion of a non-conforming use requires approval of a Special Use permit, and the addition of the temporary structure on a recurring basis would be approved through the associated Minor Alteration request also before Town Council.

SPECIAL USE NOTES:

Special uses are generally compatible with other land uses permitted in the zoning district. However, because of the unique characteristics or potential impacts on the surrounding neighborhood and on the Town as a whole, they require individual consideration as to location, design, configuration, and/or operation at a particular location. [LDO Sec. 3.8.1(A)].

In accordance with Section 3.8.1(B) of the LDO, an associated site plan is being reviewed in conjunction with this Special Use Permit application.

In accordance with Section 3.8.3(C) of the LDO, the Town Council must follow quasi-judicial procedures when deciding special use permits.

SUBJECT PARCELS

Property Owner	Wake County Parcel Identification Number (PIN) (10-digit)	Real Estate ID Number	Deeded Acreage
Triangle Recreation Club PO Box 483 Cary, NC 27512-0483	0763873063	0071222	4.67
Total Area			4.67

BACKGROUND INFORMATION

Applicant's Agent	Jason H. Oates 700 Warren Avenue Cary, NC 27511 (919) 278-8176
General Location	536 Walnut Street, intersection of Walnut Street and Tanglewood Drive
Land Use Plan Designation	Parks and Open Space (PKS/OS)
Zoning Districts	Residential 12 (R-12) Mixed Use Overlay – Cary Towne Center Regional Mixed Use Center Watershed Protection Overlay – Swift Creek Watershed
Within Town Limits	Yes
Staff Contact	Kevin A. Hales, Senior Planner Town of Cary Planning Department P.O. Box 8005 Cary, NC 27512-8005 (919) 462-3944 kevin.hales@townofcary.org

LIST OF EXHIBITS

The following documents incorporated into this staff report are to be entered into the record for this hearing:

Exhibit A: 13-SU-003 Application and Justification Statement (4 pages)

Exhibit B: 13-MA-188 Application (1 page)

Exhibit C: Layout (1 page)

Exhibit D: Traffic Assessment (13 pages)

Exhibit E: Enclosure Example Photos (3 pages)

Exhibit F: Property Valuation Report (72 pages)

PROJECT DESCRIPTION/SUMMARY OF REQUEST

Cary Swim Club has requested Town Council consideration of a plan to erect a temporary structure over their existing pool to allow year-round use of the pool. The site is operated as a commercial recreational facility and is located in a residential zoning district. This makes the existing operation a legally, non-conforming use at this location. Changes to allow year-round use of the facility would constitute an increase in the intensity of the use through lengthening the time period in which the use operates within a 12-month period. Therefore, a Special Use permit would also be required for the project.

SITE CHARACTERISTICS

Streams: There are no stream buffers that would impact the proposed development.

Floodplain: There is no floodplain or flood hazard area impacting development of the property.

Wetlands: There are no wetlands impacting development of the property.

Topography: The site is fairly level and has already been developed as a recreation facility.

Surrounding Land Uses:

North – Walnut Street (Burger King beyond)

South – Lions Park

East – Christ the King Lutheran Church

West – Detached Dwellings (Allenbrook Subdivision)

SUMMARY OF PROCESS AND ACTIONS TO DATE

Notification

The Planning Department mailed notification of the public hearing on the Special Use permit and Minor Alteration to property owners within 400 feet of the site on November 26, 2013. Notification consistent with North Carolina General Statutes was published in the Cary News both on November 27 and on December 4, 2013.

Property Posting

Notice of the public hearing was posted on the property on November 27, 2013.

CONSISTENCY WITH THE LAND DEVELOPMENT ORDINANCE (LDO)

Traffic

This project was not required by the LDO to have a traffic impact analysis performed through the Town's consultants. However, the applicant did engage SEPI Engineering & Construction to analyze traffic movements for the existing use and to anticipate any potential impacts from the proposed enclosure. The traffic engineer's report, attached as Exhibit D, indicates that the proposed enclosure would not adversely impact the levels of service on adjacent roadways. The proposed enclosure represents an increase in the use over a 12-month period instead of an increase in use on a daily basis.

Comprehensive Transportation Plan (CTP) Improvements

The proposed Minor Alteration is not required to perform road improvements along their frontage due to the nature and scope of the project.

Buffers and Streetscapes

The property has been used as a recreation facility for many years. The proposed enclosure would be located on the existing pool deck and would cover the existing pool; therefore, it will have no impacts on perimeter buffers and/or streetscapes for the site. The southern and western property lines are heavily wooded with natural vegetation. The streetscape along Tanglewood Drive consists of deciduous canopy trees. Scattered canopy trees line Walnut Street, with an open grassy area between the road and the recreation site. This is the site of the former gazebo where the Cary Town Band performed.

Stormwater Management

The proposed enclosure would be erected over the existing pool and attendant deck area, resulting in no increase in the impervious surface area on the site. Therefore, no additional stormwater treatment would be required on the site.

Utilities

There are no proposed changes to the utilities serving the site.

**SPECIAL USE WORKSHEET
AND
SUGGESTED MOTIONS**

Section 3.8.3 of the LDO states the following: *“The decision-making body shall not approve a proposed special use and any accompanying site plan unless and until it determines that the proposed use meets all the criteria set forth below, based on the evidence and testimony received at the public hearing or otherwise appearing in the record of the case.”*

In addition, Section 10.1.8 of the LDO provides additional findings that are necessary in order for Council to approve the enlargement, expansion, alteration, or repair of an existing non-conformity.

1. Does the proposed use or development of the land generally conform with the Comprehensive Plan, other official plans and manuals or documents adopted by the Town?

The existing use is already developed and is generally consistent with the recreational intent of the land use designation of PKS/OS. The site is located within a Mixed Use Center and provides a recreational component for the surrounding community in conjunction with the adjacent public park facilities.

TEST SATISFIED? __ YES __ NO

2. Does the proposed use or development of the land materially endanger the public health or safety?

The proposed enclosure would not change either the nature or the operation of the existing facility with the exception of allowing the use of the facility year-round. The temporary structure would be required to meet all applicable fire and building codes as determined at the time of building permit submittal. The scope of these requirements may be determined, in part, by the length of time the enclosure is in place.

TEST SATISFIED? __ YES __ NO

3. Is the proposed use reasonably necessary for the public health or general welfare, such as by enhancing the successful operation of the surrounding area in its basic community functions or by providing an essential service to the community?

The applicant has indicated that year-round use of the Cary Swim Club facility will provide swim lanes for swim teams that have lost practice lanes at other facilities. Members of the club would also be able to use the facility year-round, providing additional opportunities for exercise in the winter months.

TEST SATISFIED? __ YES __ NO

4. Does the proposed use or development of the land substantially injure the value of adjoining or abutting property? Please note that when determining whether this criteria is satisfied, the Council must also consider and balance (1) the possible detriment or benefit to the owner of the nonconformity resulting from denying the approval, from approving the request but requiring that the nonconformity be brought wholly or partially in compliance, or from approving the request; (2) the possible detriment or benefit to the owners of nearby properties resulting from denying the approval, from approving the request but requiring that the nonconformity be brought wholly or partially into compliance; or from approving the request; and (3) the possible detriment or benefit to the general public resulting from denying the approval, from approving the request but requiring that the nonconformity be brought wholly or partially into compliance; or from approving the request.

The applicant's justification statement indicates they do not anticipate the proposed enclosure to have a significant impact on adjacent property values.

TEST SATISFIED? __ YES __ NO

5. Is the proposed use or development of the land in harmony with the scale, bulk, coverage, density, and character of the area or neighborhood in which it is located?

The proposed enclosure is not anticipated to affect the overall aesthetics of the community. The pool is located behind several one-story buildings serving the facility, resulting in limited visibility from adjacent roadways. The most prominent views from public right-of-way would be from Tanglewood Drive. A privacy fence along the western side of the pool area enhances the screening provided by the wooded buffer area.

TEST SATISFIED? __ YES __ NO

6. Is the proposed use appropriately located with respect to transportation facilities, water supply, fire and police protection, waste disposal, and similar facilities?

The proposed enclosure would not result in changes to the facilities demand for public utilities on a daily basis, but would merely continue the demand throughout the year. It is not anticipated that this would adversely impact public services in the area.

TEST SATISFIED? __ YES __ NO

7. Does the proposed use cause undue traffic congestion or create a traffic hazard or unsafe pedestrian pathway?

The applicant's traffic engineer has provided a report indicating there would be no anticipated adverse impacts to nearby transportation infrastructure due to the extension of the use through the winter months.

TEST SATISFIED? __ YES __ NO

[Begin criteria from §10.1.8]

8. Does the nonconforming use remain compatible with adjacent land uses and the Land Use Plan?

The facility provides recreational opportunities for both the surrounding community and the larger Town community as a whole. The proposed expansion would allow those opportunities to be taken advantage of year-round. The use would also remain consistent with the PKS/OS land use designation for the property.

TEST SATISFIED? __ YES __ NO

9. Are all ingresses and egresses serving the nonconformity adequate with respect to automotive and pedestrian safety, convenience, traffic flow, and access in the case of fire or other emergency?

The proposed changes to the site would not impact the arrangement of ingress and egress to the site, either for emergency services or for the members of the club. In addition, the traffic engineer's report indicates that there were no concerns noted in regard to the availability, the layout, or the circulation in the parking lot, even during peak hours for the use.

TEST SATISFIED? __ YES __ NO

10. Are all parking, loading, refuse collection, and other service areas adequate with respect to automotive circulation, pedestrian circulation, and impacts on adjoining properties?

The addition of the proposed enclosure to the site would not alter use of existing public services except in its creating a demand for such services year-round instead of the current operational schedule.

TEST SATISFIED? __ YES __ NO

11. Are all water, wastewater, schools, emergency services, and other public and private utilities and services adequate with respect to their location, availability, and compatibility with adjoining properties?

The proposed changes to the site would not impact the provision of either public or private utility services except to create year-round demand for services that are currently only used part of the year.

TEST SATISFIED? __ YES __ NO

12. Are all landscaping, screening, and fencing adequate with respect to minimizing the economic, noise, glare, odor, and other impacts of the nonconformity on adjoining properties and other properties in the neighborhood?

The proposed enclosure would be similar in both size and scale to the existing buildings on the property. The enclosure would be visible given the heights of the existing fencing and the nature of the naturally wooded buffers. The visual impact would be expected to be similar to that of the existing structure with the exception of the anticipated white color of the tent. This additional visibility would be off-set by the temporary nature of the structure.

TEST SATISFIED? __ YES __ NO

13. Is the use, including such considerations as storage, the location of the use on the site, the hours of operation, and the numbers of people who are likely to utilize use adequate with respect to minimizing the impacts on adjoining properties, other properties in the neighborhood, and the purposes of the zoning district in which the property is located?

The proposed enclosure would not change the nature of the existing use, but would merely extend the duration of the use within a 12-month period.

TEST SATISFIED? __ YES __ NO

14. Is the surface drainage adequate with respect to on-site and off-site erosion, siltation, pollution, flooding, or other detrimental effects of the nonconformity?

The proposed enclosure would be located within the existing pool and patio footprint, and no additional stormwater impacts would be expected from the proposed work.

TEST SATISFIED? __ YES __ NO

SUGGESTED MOTIONS FOR SPECIAL USE

MOTION TO GRANT THE APPLICATION

For the reasons discussed, I move that we **APPROVE** the request for a Special Use permit as the proposed expansion to the existing use meets all of the approval criteria set forth in Sections 3.8.3 and 10.1.8. This approval shall include the following conditions:

1. The Resolution and Permit approved in this Special Use application shall be recorded with the Wake County Register of Deeds upon the expiration of the appeal period, per Section 3.8.4(E) of the LDO. The original recorded Resolution and Permit shall be returned to the Planning Department when received from the Register of Deeds.
2. The approval of this special use is conditioned on the subsequent approval of a development plan in accordance with LDO Section 3.8.1(B)(2) and as required under LDO Section 3.9.

NOTE: The above two conditions are LDO requirements; any additional condition(s) may be added or modified at the Council's discretion. Pursuant to LDO Section 10.1.8(E), the Council may impose any conditions on approval of the request, including appropriate time limits for meeting those conditions, as it deem necessary to mitigate any potential hazards or problems, or to bring the nonconformity into compliance to the extent necessary to protect the rights and interests of nearby property owners and the general public.

OR

MOTION TO DENY THE APPLICATION

For the reasons discussed, I move that we **DENY** the request for a Special Use permit with the requested setback reduction as the proposed use does not meet all of the approval criteria set forth in Sections 3.8.3 and 10.1.8.

**MINOR ALTERATION WORKSHEET
AND
SUGGESTED MOTIONS**

Section 3.9.2(l) of the LDO states that a development plan may be approved by the Town Council only if it meets six listed criteria. Staff comments are included as appropriate in italics following each criterion. A roadmap of the decisions council must make is provided below:

1. Does the plan comply with all applicable requirements of the LDO, including the development and design standards of Chapters 7 and 8 as well as the dedication and improvements provisions of Chapter 8 as well as all applicable Town specifications?

The proposed enclosure would be a temporary structure within an existing recreational site. No substantial changes to the site would be anticipated, and the structure would not interfere with the operations of the site.

TEST SATISFIED? __ YES __ NO

2. Does the plan adequately protect other property, or residential uses located on the same property, from the potential adverse effects of the proposed development?

The proposed enclosure would be screened from view by the existing structures and by a fence surrounding the existing facility. Additional wooded land to the west would further soften any visual impacts of the temporary structure, though the structure would be visible through the wooded area given its use during the winter months.

TEST SATISFIED? __ YES __ NO

3. Does the plan provide harmony and unity with the development of nearby properties?

The proposed enclosure would be similar in both scale and bulk to the existing buildings on the site. While the materials and colors may not be clearly compatible, the temporary nature of the structure could be seen as a mitigating factor along those lines.

TEST SATISFIED? __ YES __ NO

4. Does the plan provide safe conditions for pedestrians or motorists and prevent a dangerous arrangement of pedestrian and vehicular ways?

The proposed scope of work would not impact any pedestrian or vehicular circulation on the site.

TEST SATISFIED? __ YES __ NO

5. Does the plan provide safe ingress and egress for emergency services to the site?

The proposed scope of work would not impact any pedestrian or vehicular circulation on the site.

TEST SATISFIED? __ YES __ NO

6. Does the plan provide mitigation for traffic congestion impacts reasonably expected to be generated by the project?

The applicant has provided a report from a traffic engineer indicating that no adverse impacts to the surrounding transportation infrastructure would be expected.

TEST SATISFIED? __ YES __ NO

SUGGESTED MOTIONS FOR SITE PLAN

MOTION TO APPROVE THE SUBDIVISION AND SITE PLAN

For the reasons discussed, I move that we **APPROVE** the proposed subdivision and site plan with conditions as stated below, as it meets all of the approval criteria set of Section 3.9.2(I).

This approval is conditioned upon the following:

1. The applicant must satisfactorily address any remaining Development Review Committee comments on the master plan set submitted for signature.
2. *[insert any additional conditions necessary to bring the project into compliance with the LDO or other standards]*

OR

MOTION TO DENY THE SUBDIVISION AND SITE PLAN

For the reasons discussed, I move that we **DENY** the proposed subdivision and site plan, as it does not meet all of the approval criteria set forth in Section 3.9.2(I).