

**TOWN OF CARY
ZONING BOARD OF ADJUSTMENT HEARING
July 6, 2015**

VARIANCE WORKSHEET

IN THE MATTER OF:

CASE NO. 15-V-03

TOWN OF CARY

STATE OF NORTH CAROLINA

APPLICANT NAME:

Ronald D. Willoughby and
Nanette K. Willoughby
1007 Wolfs Bane Drive
Apex, NC 27539

ADDRESS OF SUBJECT PROPERTY:

1007 Wolfs Bane Drive
Apex, NC 27539

PROPERTY OWNER NAMES/ADDRESS:

Same as above

STAFF REPRESENTATIVE:

Contact: Debra Grannan, Senior Planner
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Email: Debra.grannan@townofcary.org

ZONING/SETBACKS/DIMENSIONAL STANDARDS:

Zoning: Planned Development District (PDD) Major - Westlake
Roadway Setback: 20'
Rear Setback: 20'
Side Setback: 10'

[VICINITY MAP](#)

REQUEST: The applicant requests a variance from Land Development Ordinance ("LDO") Section 6.3.2(B) to allow a screened porch to encroach 9.5 feet into a required 20-foot rear yard setback and ultimately be located 10.5 feet from the rear property line.

THE VARIANCE PROCESS is intended to provide limited relief from the LDO in those cases where strict application of a particular requirement will create unnecessary hardship. Variances are not intended, and should not be used, to remove inconveniences or financial burdens that the requirements of the LDO may impose on property owners in general. Instead, a variance is intended to be used to provide relief where a hardship results from conditions peculiar to the property itself. Neither state nor federal laws or requirements may be varied by the Town. [3.20.1]

The following standards are eligible for a variance [3.20.2]:

- Any of the development or zoning district standards listed in Table 3.19-1 or any building encroachment into a required setback, but only when the Minor Modification procedures in Section 3.19 are unable to address the hardship; and,
- Any other provision of the LDO, so long as the LDO does not provide a mechanism for modification or waiver of the provision, and the requested variance would not constitute a use variance.

The board may not grant a variance to allow a use expressly, or by implication, prohibited under the LDO for the zoning district containing the property for which the variance is sought [3.20.4(E)]. The board may not grant a variance from any written conditions attached by the council to its approval of a Special Use, subdivision plat or site plan, conditional use district, or aspect of an approved planned development master plan [3.20.4(F)]. There may be no variance from the Overlay District regulations unless specifically permitted in Section 4.4. There may be no variance that modifies the thoroughfare buffer or vegetation [4.4.4(E)].

[Exhibit A](#): Application

[Exhibit B](#): Book of Maps 2006 Page 1046

[Exhibit C](#): Survey by Griffin Land Surveying, Inc. October 9, 2006

[Exhibit D](#): Map of proposed porch addition

[Exhibit E](#): Architectural Review Committee Approval Letter, April 23, 2015

[Exhibit F](#): Photo of Existing Deck, Landscaping and Topography

BACKGROUND:

1. An application for a variance ([Exhibit A](#)) was filed by all the owners for the land affected by the variance.
2. The applicant took part in the pre-application conference required by LDO Section 3.20.3 (B).
3. The property is described as follows:

Site Address: 1007 Wolfs Bane Drive

Apex, NC 27539

PIN: #0679285579

Lot: 4

Subdivision: West Lake Phase 1

Zoning District: Planned Development District (PDD) Major

4. The subject lot was platted as part of a subdivision recorded with the Wake County Register of Deeds in Book of Maps 2006 Page 1046 ([Exhibit B](#)). As indicated on that plat map, Lot 4, 1007 Wolfs Bane Drive, has frontage on two public roads and abuts a 20-foot-wide Type "B" Buffer along the northern property line. The plat map also identifies a variable width drainage easement on the northeast corner of the subject property.
5. The property owner submitted a survey ([Exhibit C](#)) that shows the existing principal structure is setback 55.8 feet from Homeplace Drive and 40 feet from Wolfs Bane Drive. The exhibit also shows an existing deck which is setback 11.5 feet from the rear property line.
6. As part of their application, the homeowners provided a map ([Exhibit D](#)) showing the location of a proposed screened porch in the general vicinity of the existing deck. A screened porch would be considered part of the principal structure. The owners are requesting a variance from LDO Section 6.302 (B) to allow a portion of the principal structure (screened porch) to encroach 9.5 feet into the required 20-foot rear-yard setback.
7. On April 23, 2015, the property owners received approval for the proposed addition from the neighborhood's Architectural Review Committee ([Exhibit E](#)).
8. The applicant provided a photo ([Exhibit F](#)) to illustrate the existing deck, landscaping and topography variations on the subject property.
9. Director's modification procedures contained in Section 3.19.3 of the LDO were unable to address the hardship.

- 10. There are no specific zoning conditions or conditions that are part of a special use permit or a Planned Development District (PDD) approval that will be varied by this request.
- 11. The application and other records pertaining to the variance request are part of the record.
- 12. Notice has been provided as required by law.

The board may approve the Variance only if it finds that all of the criteria below have been met:

3.20.5 Approval Criteria

(A) Unnecessary hardship would result from the strict application of the ordinance. It shall not be necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property.

Applicant Position: “Due to a variable width drainage easement unique to this property, no alternate location exists for screened porch placement other than the street-side of Homewood Place. However, the visual impact of such a street-side placement would result in negative aesthetics for the greater neighborhood and subdivision in particular and would be inconsistent with the placement of all other subdivision screened porches. Of 99 single –family subdivision homes, 45 of the homes already have screened porches in place... all located in the rear of the home, which is consistent with this application.”

Staff Comments: The buildable area in the rear yard and interior side yard of the subject lot is limited since the existing principal structure (dwelling) is setback greater than the minimum required setback from the adjacent roadways. The dwelling size and size of the proposed screened porch addition is consistent with those on other similarly situated properties.

(B) The hardship results from conditions that are peculiar to the property, such as location, size, or topography. Hardships resulting from personal circumstances, as well as hardship resulting from conditions that are common to the neighborhood or the general public, may not be the basis for granting a variance.

Applicant’s Position: “Impact of being required to meet two roadway setbacks and variable width drainage easement on the northeast corner of the lot severely limited the building area. In addition the location of the variable width drainage easement resulted in D.R. Horton placing dwelling 55.8 feet from Homeplace Drive.”

Staff Comments: The subject property has frontage on two public roads which requires two sides of the lot to meet roadway setbacks. Also, the land is impacted by a variable width drainage easement. Variations in the topography near the drainage easement are readily apparent in the photo provided by the applicants ([Exhibit F](#)). The property abuts a perimeter buffer along the northern property line; therefore, the proposed encroachment would not be directly adjacent to another dwelling.

(C) The hardship did not result from actions taken by the applicant or the property owner. The act of purchasing property with knowledge that circumstances exist that may justify the granting of a variance shall not be regarded as a self-created hardship.

Applicant’s Position: “Plan is to build screened porch on existing elevated deck constructed by D.R. Horton at the time home was built.”

Staff Comments: The applicant is requesting approval of a variance to construct a new room addition (screened porch) on the same footprint of a previously approved, existing deck.

(D) The requested variance is consistent with the spirit, purpose, and intent of the Ordinance, such that public safety is secured, and substantial justice is achieved.

Applicant’s Position: “Screened porch is to be constructed on existing elevated deck. Footprint doesn’t change. No other structures or services are being affected. Strict adherence to the building codes and associated permitting process will be followed through out.”

Staff Comments: Public services or utilities are not impacted by the proposed encroachment. Placement of this structure at this location will not place adjacent structures in non-compliance with North Carolina State Building Code. The subject property is adjacent to a perimeter buffer with the neighborhood’s common open space. There is mature existing vegetation in this buffer which will minimize the visual impact of the encroachment.

SUGGESTED MOTIONS

MOTION TO GRANT VARIANCE

For the reasons discussed, I move that we GRANT the variance as it meets all the approval criteria in section 3.20.5 of the Land Development Ordinance.

OR

MOTION TO GRANT VARIANCE WITH CONDITIONS

For the reasons discussed, I move that we GRANT the variance with the following conditions deemed necessary and appropriate to satisfy the approval criteria of section 3.20.5 of the Land Development Ordinance:

- 1. *[insert conditions]*
- 2.

OR

MOTION TO DENY VARIANCE

For the reasons discussed, I move that we deny the variance request as it does not meet all of the approval criteria set out in Section 3.20.5, specifically, *[indicate the reason why the request does not meet the approval criteria]*:

(Note: Based on the action taken by the Board of Adjustment, staff will prepare a Resolution to be presented to the board at a future meeting for ratification.)