

**TOWN OF CARY
ZONING BOARD OF ADJUSTMENT HEARING
October 5, 2015**

VARIANCE WORKSHEET

IN THE MATTER OF:

CASE NO. 15-V-05

TOWN OF CARY

STATE OF NORTH CAROLINA

APPLICANT NAME:

George A. Hartford Jr. and Maureen A. Hartford

ADDRESS OF SUBJECT PROPERTY:

319 Glen Abbey Drive
Cary, NC 27513

PROPERTY OWNER NAMES/ADDRESS:

Same as above

STAFF REPRESENTATIVE:

Contact: Debra Grannan, Senior Planner
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ZONING/SETBACKS/DIMENSIONAL STANDARDS:

Zoning: Planned Development District (PDD) Major – Preston (Preston Chase Subdivision)
Setbacks: (based on recorded plat BM1993 Page 0537)
Roadway Setback: 20 feet
Rear Setback: 20 feet
Side Setback: 5 feet minimum, 15 feet aggregate
Buffer: 15 feet

VICINITY MAP

REQUEST: The applicant requests a variance from the recorded 15-foot setback from a 25-foot perimeter buffer to allow the construction of a proposed room addition, a portion of which would encroach 13.6 feet into the 15-foot setback. The applicant also seeks approval of the encroachment of a corner of the existing home (principal structure) to encroach 1.8 feet into the same recorded 15-foot setback from the 25-foot-wide buffer adjacent to the rear property line. If approved, the principal structure would be 26.4 feet from the rear property line at its closest point. No encroachment into the 25-foot buffer is proposed.

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 for Variance

[Exhibit B](#): Book of Maps 1993 Page 0537

[Exhibit C](#): Survey Prepared by David W. Barrier, dated June 30, 2015

[Exhibit D](#): Survey Prepared by David W. Barrier with drawing of proposed addition; revised August 7, 2015

[Exhibit E](#): Preliminary Floor Plan Hartford Residence, dated August 2, 2015

[Exhibit F](#): Preliminary Rear Elevation Hartford Residence, dated August 2, 2015

[Exhibit G](#): Preliminary Side Elevation Hartford Residence dated August 2, 2015

[Exhibit H](#): Photos of Proposed location of addition

[Exhibit I](#): Square Footages of Homes on Glen Abby Drive)

[Exhibit J](#): Photo of Front of House (319 Glen Abbey Drive)

[Exhibit K](#): Photo of Location of Closest Tree

[Exhibit L](#): LDO Table 6.3.-01 Setbacks from Required Buffers

[Exhibit M](#): Preston Master Land Use Plan, dated January 12, 1995

[Exhibit N](#): Notice of Conditional ARC Approval, dated September 8, 2015

[Exhibit O](#): Site Plan for Preston Retreat, dated July 8, 2015

[Exhibit P](#): LDO Section 7.2.3, Requirements for Perimeter Buffers and Landscape Areas

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: 319 Glen Abbey Drive, Cary, NC 27513
Wake County PIN: 0744577277
Lot: 638
Subdivision: Preston Chase
Zoning District: Planned Development District (PDD) Major; Preston
4. The subject lot was platted as part of a subdivision recorded with the Wake County Register of Deeds in Book of Maps 1993 Page 0537 (**Exhibit B**).
5. As indicated on the recorded plat, the front property line and rear property line of the subject property are not parallel and the lot is not rectangular in shape. This lot shape is not common to the other lots in the same development.
6. As indicated on the recorded plat, the subject property has a 25-foot-wide buffer located adjacent to the rear property line. The table of building setbacks on the plat requires a 15-foot setback off the buffer.

7. A survey of the subject property prepared by David W. Barrier (**Exhibit C**) identifies the 25-foot buffer but does not note the 15-foot setback from the buffer that is shown on Book of Maps 1993 Page 0537.
8. A revised survey by David W. Barrier dated August 7, 2015 (**Exhibit D**) identifies the 15-foot setback from the 25-foot buffer and shows the location of a proposed 13-foot X 18-foot room addition. The proposed addition encroaches 13.6 feet into the 15-foot setback from the buffer. The survey also shows that a corner of the existing dwelling encroaches 1.8 feet into the 15-foot setback from the recorded buffer.
9. The Town of Cary Land Development Ordinance (LDO) Section 6.3.2(B) requires a 10-foot setback off perimeter buffers if existing vegetation meets required buffer standards; and no setback if new vegetation is installed to meet required buffer standards. (**Exhibit L**).
10. There was no indication on the recorded plat as to the planting standards required for the 25-foot buffer. The revised survey by David W. Barrier (**Exhibit D**) identifies a maple tree which is 14 inches in caliper within the buffer area.
11. A photograph of the rear of the property (**Exhibit K**) shows that the area of the buffer adjacent to the proposed room addition and existing dwelling is devoid of vegetation, with the exception of the 14-inch tree noted above.
12. The applicant provided a preliminary floor plan (**Exhibit E**), a preliminary rear elevation (**Exhibit F**) and a side elevation (**Exhibit G**) to illustrate how the proposed addition would be attached to the existing dwelling.
13. The applicant provided a photograph (**Exhibit H**) to further illustrate the proposed location of the addition.
14. The applicant provided a list of the house sizes of adjacent homes located on Glen Abbey Drive. (**Exhibit I**)
15. The existing dwelling is set back 65 feet from the front property line along Glen Abbey Drive, as indicated on the surveys (**Exhibits B and C**) and as illustrated in a photograph provided by the applicant (**Exhibit J**).
16. Director's modification procedures contained in Section 3.19.3 of the LDO were unable to address the hardship.
17. 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. The Preston PDD Master Plan (**Exhibit M**) identified a perimeter buffer on the subject property, but did not require an additional setback off that buffer.
18. The applicants received a Notice of Conditional ARC Approval (**Exhibit N**), dated September 8, 2015, from the Preston Community Association which granted approval of the applicant's request, contingent on the applicant receiving Town of Cary permits
19. The property adjacent to the rear of the subject property was approved for detached residential development with 25-foot rear yard setbacks on July 8, 2015 as part of the Preston Retreat Development Plan. (**Exhibit O**).
20. The application and other records pertaining to the variance request are part of the record.
21. 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: "Strict application of the setback eliminates any possible kitchen expansion. Our 2,347 square foot home has the smallest square footage of the nearby homes in Preston Chase on Glen Abbey Drive. The 234 square-foot proposes addition would increase our home's square footage to 2,561 square feet, still considerably less than the 3,034 mean square footage of the nearby

homes on Glen Abbey. Strict interpretation [application] of the ordinance [15-foot setback] substantially decreases the available buildable square footage on out lot.”

Staff Comments: The buildable area in the rear yard and interior side yard of the subject lot is limited by the 25-foot buffer, the setback from the buffer and the limited land area that resulted from the principal structure being setback from the front yard a distance of 65.4 feet. It would not be feasible to reposition the existing dwelling on the subject property.

(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: “Our lot is the most unusually shaped lot on the south side of Glen Abby Drive. Our lot also has a very steep slope from Glen Abbey to the front of the house. Because of this the house had to be set back further than the required 20 feet note on the recorded plat. Unlike most lots in the same neighborhood, our rear property line is a sharp diagonal, rather than perpendicular to the side property lines.”

Staff Comments: The applicant has provided an accurate description of the unusual circumstances impacting the subject property.

(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: “We purchased this home with the intention of expanding the small kitchen and limited seating area. The survey provided to us at our closing did not show the unusual 15-foot setback from the 25-foot buffer adjacent to the rear property line.”

Staff Comments: The applicant is requesting approval of a variance to construct a new room addition and to correct a minor encroachment for one corner of the existing dwelling.

(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: “Our buffer and setback far exceed the required setbacks for current residential development.... The 234 square-foot proposed addition to the rear of our home will be 26.4 feet from the rear property line. There will be no tree removal required and sufficient area around the proposed addition to construct the room addition without damaging and vegetation in the buffer area. If our requested variance is approved, this addition to our home and any new construction in Preston Retreat [recently approved subdivision] **(Exhibit O)** would still be at least 50 feet apart.”

Staff Comments: If the 15-foot setback off the 25-foot buffer had not been recorded on the subdivision plat, the Town would not have required any additional setback from the buffer. The Preston PDD **(Exhibit M)** required a perimeter buffer; however, the 15-foot setback shown on the recorded plat was not specified as a zoning condition in the PDD. The Land Development Ordinance only requires a 10-foot setback off a buffer when there is existing vegetation to be protected. A developer may propose a setback or buffer width that is more restrictive than approved zoning conditions or exceeds LDO standards. If such an increase is shown on a recorded plat, as is the case here, then staff must enforce the recorded setback unless a variance is granted by the Zoning Board of Adjustment.

The 25-foot perimeter buffer that was required as part of the Preston PDD was implemented at a time when the subject property abutted the Barbee Family farm. That adjacent property has now been

approved for residential development as part of the Preston Retreat Subdivision. (Exhibit O). Chapter 7 of Cary's current LDO only requires a 20-foot-wide landscape strip which may be located within the platted portion of a lot, rather than a separately platted buffer between two similar uses.

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 applicant has proposed a condition to add landscaping to the 25-foot buffer adjacent to the proposed room addition. This will lessen the impact of the addition.

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. Property owner agrees to add four (4) trees (three evergreen and one ornamental) to the buffer in the vicinity of the propped addition to increase the opacity between the subject lot and the Preston Retreat lot adjacent to the subject property.

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 for ratification the night of the meeting if the request is approved, or at a future meeting if the request is denied.)