

**TOWN OF CARY
ZONING BOARD OF ADJUSTMENT HEARING
March 7, 2016**

VARIANCE WORKSHEET

IN THE MATTER OF:

CASE NO. 16-V-01

TOWN OF CARY

STATE OF NORTH CAROLINA

APPLICANT NAME:

Ayaz Pathan and Nadia Khan

ADDRESS OF SUBJECT PROPERTY:

111 Devonbrook Lane
Cary, NC 27518

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 – Regency Park (Barrington Park Subdivision)
Setbacks: (based on plat recorded in Wake County Book of Maps: BM 1996 Page 1210)
Front: 30 feet
Rear Setback: 25 feet
Side Setback: 10 feet
Corner Side: 18 feet
Buffer: 10 feet

VICINITY MAP

REQUEST: The applicant requests a variance to Land Development Ordinance (LDO) section 6.3 to allow a portion of an existing detached garage to encroach 3.2 feet into the recorded 18-foot corner side setback adjacent to Witham Court

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 1996 Page 1210

Exhibit C: Survey Prepared by Turning Point Surveying, PLLC, Dated November 17, 2015

Exhibit D: Photograph of existing structure

Exhibit E: Close-up Photograph of existing structure

Exhibit F: Aerial View of Neighborhood

Exhibit G: Land Development Ordinance Section 6.3 (G) (2) General Guidelines for Determining Residential Setbacks *Setbacks Shown on Recorded Plan*

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: 111 Devonbrook Drive Cary, NC 27518
Wake County PIN: 0751960979
Lot: 3
Subdivision: Barrington Park Phase 1 Section 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 1996 Page 1210 (**Exhibit B**).
5. As indicated on the recorded plat, the subject property has frontage on two roadways. The front of the principal dwelling faces Devonbrook Lane as in compliance with the required front (roadway) setback. The required corner-side setback adjacent to Witham Park Court is 18 feet. Witham Park Court is a cul-de-sac, and the width of the right of way increases near the end of the road at the head of the cul-de-sac.
6. A survey of the subject property, prepared by Turning Point Surveying, (**Exhibit C**) shows that at the point on the subject property where the side property line curves inward to accommodate the wider right-of-way at the end of the cul-de-sac, a portion of a detached garage encroaches into the required 18-foot setback adjacent to Witham Park Court.
7. Director's modification procedures contained in Section 3.19.3 of the LDO would allow an encroachment of up to 2.7 feet (15% of the required 18-foot setback) and were unable to address the encroachment of 3.2 feet.
8. 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.
9. The application and other records pertaining to the variance request are part of the record.
10. 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: "It's an existing structure of which one wall buds out into the setback. It is not feasible to cut the corner of the structure as it will jeopardize the structural integrity of the garage. The lot is on a cull de sac and the setback lined curve taking the corner out of the setback. "

Staff Comments: Construction has been completed on the entire garage. One corner of the structure encroaches into the required building setback. There is not a practical way to remove a portion of the structure.

(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: "Cul-de-sac lot curves the setback lines, keeping all but one small portion of the structure within the setback. It's only obvious in the survey; not apparent when looking at property in person as shown in the photographs" ([Exhibit D](#) and [Exhibit E](#))

Staff Comments: The subject property is a corner lot with road frontage on Devonbrook Lane and on Witham Park Court. Witham Park Court is a cul-de-sac and the end or "head" of the cul-de-sac widens and the public right of way increases at the point where the encroachment occurs.

(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: "No survey was done or required at time of purchase. Saw permits were issued on Wake County website. Had no issue with bank or title company or attorney during purchase. We got the survey done in which we say that one portion of the garage was off the setbacks."

Staff Comments: The applicant purchased the subject property recently and requesting approval of a variance to bring the corner of an existing structure into compliance.

(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: "Everything on the property meets setback requirements except for this small portion that protrudes out (visible on survey) into the setbacks. This is at a cul-de-sac's end not causing any obstacles."

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. An aerial view of the neighborhood, ([Exhibit F](#)) shows that the size of the detached structure is not out of character with other development in the vicinity.

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 proposed 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.)