

**TOWN OF CARY
ZONING BOARD OF ADJUSTMENT HEARING
July 12, 2016**

VARIANCE WORKSHEET

IN THE MATTER OF:

CASE NO. 16-V-02

TOWN OF CARY

STATE OF NORTH CAROLINA

APPLICANT NAME:

D. Mark Durrett and Jeannette D. Durrett

ADDRESS OF SUBJECT PROPERTY:

102 Parkgrove Court
Cary, NC 27519

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 – West Park (Parkknoll Subdivision)

Setbacks: (based on plat recorded in Wake County Book of Maps: 1991 Page 1162)

- Front: 25 feet
- Rear 20 feet
- Side 7.5 feet – May be 5 feet or 10 feet but cumulative of 15 feet between units
- Corner Side: 20 Feet

[Vicinity Map](#)

REQUEST: The applicant requests a variance from Land Development Ordinance (LDO) section 6.3 to allow a construction of a screened porch on an existing deck to encroach 15 feet into a required 20-foot rear yard setback.

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](#): West Park Planned Development District (PDD) Master Plan Dated June 11, 1987

[Exhibit C](#): Book of Maps 1991 Page 1162

[Exhibit D](#): Survey prepared by Registered Land Surveyor, Sullivan Surveying dated April 26, 2016

[Exhibit E](#): Preliminary Floor Plan and Elevation by Westpark Designs Dated September 24, 2013

[Exhibit F](#): Notice of Approval from Westpark Community Association, Inc. September 23, 2013

[Exhibit G](#): Photograph of Existing Deck

[Exhibit H](#): Photo of Front of House Illustrating Topography Challenges

[Exhibit I](#): Aerial View of the Neighborhood

[Exhibit J](#): Land Development Ordinance Section 6.3.1 (G)(2) General Guidelines for Determining Residential Setbacks, *Setbacks Shown on Recorded Plat*

[Exhibit K](#): Photo from Adjacent Property Illustrating Topography

[Exhibit L](#): Unified Development Ordinance Chapter 13 Accessory and Temporary Uses and Structures 13.1.1 (b) Setback and yard requirements

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: 102 Parkgrove Court, Cary, NC 27519
Wake County PIN: 073302897433
Lot: 298
Subdivision: Parkknoll Subdivision, Section 2
Zoning District: Planned Development District (PDD) Major
4. The subject property is part of the West Park Planned Development District (PDD) ([Exhibit B](#)). That PDD described the allowed uses and densities of the property but as indicated on the PDD Master Plan, did not specify building setbacks.
5. The subject lot was platted as part of a subdivision recorded with the Wake County Register of Deeds in Book of Maps 1991 Page 1162 ([Exhibit C](#)). The recorded plat listed the building setbacks including a 20-foot rear yard setback.
6. As indicated on the recorded plat, the subject property is located on a cul-de-sac. The front property line is curved. The lot size is 9,429 square feet. The lot is adjacent to Common Open Space (C.O.S.) on the rear property line.
7. A survey of the subject property, prepared by Sullivan Surveying, Registered Land Surveyor ([Exhibit D](#)) shows the lot is developed with an existing two story dwelling which is located 21.33 feet from the rear property line. The main portion of the house is setback 45 feet from the front property line.
8. There is a wooden deck on the rear of the house. At its closest point, the deck is located 8.19 feet from the rear property line which represents an encroachment to current LDO standards. An uncovered deck is permitted to project up to three (3) feet into any required yard or building restriction

line shown on the subdivision plat for the property, but no closer than five (5) feet to the property line or buffer. The Town's Unified Development Ordinance (UDO) that was in place on November 14, 1991 ([Exhibit L](#)) required accessory structures to not be located within five feet of rear or side lot lines.

9. Director's modification procedures contained in Section 3.19.3 of the LDO would allow an encroachment of up to 15% of the required 20-foot setback which would only equal three (3) feet and would be unable to address the requested encroachment of 15 feet.
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 the size, shape, home position, and topography of the lot, there are no alternative locations for the screened porch. Ours is the smallest lot in the neighborhood, and most neighbors have installed screened porches, increasing their quality of life and property value. This deck was in place before the current owners purchased the home in 1997."

Staff Comments: Construction of a screened porch is proposed to be located predominantly on the footprint of the existing deck. Once a roof is placed on the deck, it will be classified as part of the principal structure and must meet the building setbacks of 20 feet as shown on the recorded plat ([Exhibit C](#)) and required by the Cary Land Development Ordinance, Section 6.3.1 (G)(2) ([Exhibit J](#)). The proposed addition will occur over part of the existing deck encroach 15 feet into the required 20-foot setback. Because of the orientation of the dwelling and location of the existing deck, including alignment with doors and windows, it may not be practical to locate the deck on another portion of the house.

(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: "The steep slope of the front yard, position of home and uniquely small lot size compared to surrounding lots severely limits the building area in the rear yard which is the only location for the proposed screened porch. The house is situated on the rear of the lot on the only flat section of the lot which contains a steep slope in the front yard. This results in the home's position being set back from the road approximately 45 feet, compared to our neighbor's flat lot and approximately 30 feet set back from the road."

Staff Comments: As shown in the survey ([Exhibit D](#)), prepared by Sullivan Surveying, the subject property fronts a cul-de-sac and is not rectangular in shape. The rear property line is adjacent to common open space the existing dwelling is angled on the lot. All of these factors limit the buildable area on the rear of the property. The attached garage portion of the house is setback 25 feet from the front property line, and was constructed on the front of the dwelling and not on the side. As the applicant noted, the main portion of the home is setback approximately 45 feet from the front property line. A majority of the other dwellings in the same neighborhood, on rectangular lots, have garages located on the side of the dwelling as indicated in the aerial photo ([Exhibit I](#)). The lot is 9,429 sq. ft., which is the smallest lot on the cul-de-sac. The other five lots on this same street range in size from 10,473 to 12,099

square feet. The applicant provided photographs ([Exhibit H](#) and [Exhibit K](#)) to illustrate the steep topography on 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: The applicant indicated “No” on the application.

Staff Comments: The applicants are seeking approval of a variance prior to applying for an application for a building permit to enclose the existing deck. The Town’s Unified Development Ordinance (UDO) that was in place on November 14, 1991 ([Exhibit L](#)) required accessory structures to not be located within five feet of rear or side lot lines.

(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 deck. The footprint will not change. No other structures or services are being affected. Strict adherence to building codes and associated permitting process will be followed throughout building process. In addition, we will continue to maintain the existing 4-foot cedar fence on all four sides of the property.”

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 I](#)) shows that the size of the proposed structure is not out of character with other development in the neighborhood.

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:

The owner of the subject property shall maintain an opaque wooden fence with a minimum height of four feet adjacent to the rear property line.

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.)