

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

VARIANCE WORKSHEET

IN THE MATTER OF:

CASE NO. 16-V-04

TOWN OF CARY

STATE OF NORTH CAROLINA

APPLICANT NAME:

Robert A. Brady (Authorized Agent for Property Owners)

ADDRESS OF SUBJECT PROPERTY:

1532 Furlong Loop
Cary, NC 27519

PROPERTY OWNER NAMES/ADDRESS:

Heather M. Stapleton and Miguel G. Rosario

STAFF REPRESENTATIVE:

Contact: Katie Drye, Senior Planner
Phone: (919) 469-4085
Email: katie.drye@townofcary.org

ZONING/SETBACKS/DIMENSIONAL STANDARDS:

Zoning: Residential 40 (R-40), Conservation Residential Overlay District (CROD)
Setbacks: (based on the Cary Land Development Ordinance (LDO) Table 6.3-1, and shown on Wake County Book of Maps: BM 2014, Page 765)
Front: 20 feet
Rear Setback: 20 feet
Side Setback: 10 feet
Patios, terraces, and similar features that are not covered and are located on the ground and constructed at grade level: 5 feet

VICINITY MAP

REQUEST: The applicant requests a variance from Land Development Ordinance (LDO) Table 6.3-1 to allow a portion of an existing pool patio to encroach 2.7 feet into the required 5-foot setback for patios, terraces, and similar features that are not covered and are located on the ground and constructed at grade level. Construction has been completed on the pool and patio and a portion of the patio is located in the required setback due to a construction error.

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](#): Holland Farm Subdivision Plan, Prepared by Withers & Ravenel, 2013

[Exhibit C](#): Book of Maps 2014, Page 765

[Exhibit D](#): Survey Prepared by Jimmy Barbour Surveying, PA, dated October 17, 2015

[Exhibit E](#): Photograph of site facing the eastern property line

[Exhibit F](#): Photograph of site facing the western property line

[Exhibit G](#): Photograph of adjacent HOA Common Open Space

[Exhibit H](#): Aerial View of Neighborhood

[Exhibit I](#): Land Development Ordinance Table 6.3-1: Projections Permitted into Required Setbacks

BACKGROUND:

1. An application for a variance ([Exhibit A](#)) was filed by an authorized agent of 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: 1532 Furlong Loop, Cary, NC 27519
Wake County PIN: 0724755915
Lot: 232
Subdivision: Holland Farm Phase 2
Zoning District: Residential 40 (R-40), Conservation Residential Overlay District (CROD)
4. The subject lot was platted as part of a subdivision recorded with the Wake County Register of Deeds in Book of Maps 2014, Page 765 ([Exhibit C](#)).
5. There are drainage easements on the northeast corner of the property and along the western side property line. A private trail easement is located along the eastern side property line. The rear property line curves inwards towards each side yard property line, reducing the buildable area in the rear yard. Both the eastern and southern property lines do not abut lots and are instead adjacent to Common Open Space owned by the Home Owners Association.
6. A survey of the subject property, prepared by Jimmy Barbour Surveying ([Exhibit D](#)) shows the patio for the pool encroaches 2.7 feet into the required 5-foot setback for patios and terraces as established in Table 6.3-1 of the LDO.
7. The Town of Cary Land Development Ordinance (LDO) Table 6.3-1 Projections Permitted into Required Setbacks, requires a 5-foot setback for patios, terraces, and similar features that are not covered and are located on the ground and constructed at grade level ([Exhibit I](#)).
8. Director's modification procedures contained in Section 3.19.3 of the LDO would allow an encroachment of up to 0.75 feet (15% of the required 5-foot setback) and were unable to address the encroachment of 2.7 feet.
9. 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.

10. The application and other records pertaining to the variance request are part of the record.
11. 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: “Extensive and costly removal of pool decking would be required in order to meet the 5-foot setback requirement. Potentially hazardous conditions would result.”

Staff Comments: Construction has been completed on the pool and patio. At its closest point, the pool patio encroaches 2.7 feet into the required 5-foot rear yard setback for pools and terraces. The encroachment is due to a construction error.

(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 minimum setback leaves insufficient space for the improvements as installed.” ([Exhibit C](#) and [Exhibit D](#))

Staff Comments: The lot size is consistent with other lots in the neighborhood. The lot, however, is impacted by easements which reduce the buildable area more than other similarly situated lots. There are drainage easements on the northeast corner and along the western side property line. A private trail easement is located along the eastern side property line. Additionally the rear property line curves inwards towards each side yard property line, reducing the buildable area in the rear yard.

(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 encroachment is the direct result of a contractor’s oversight.”

Staff Comments: The encroachment of 2.7 feet into the required 5-foot setback for patios and terraces is the result of a contractor’s error during construction.

(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: “The location of this property is adjacent to a 20-foot private trail easement on the east and vacant HOA property to the south results in no negative impact from a grant of this variance.”

Staff Comments: The pool and patio are located in the southeast portion of the lot and are screened by a 4-foot high opaque fence ([Exhibit C](#), [Exhibit D](#), [Exhibit E](#), and [Exhibit F](#)). Both the eastern and southern property lines do not abut lots and are instead adjacent to Common Open Space owned by the Home Owners Association ([Exhibit B](#) and [Exhibit G](#)). Public services or utilities are not

impacted by the existing encroachment. The existence of this structure at this location will not place adjacent structures in non-compliance with North Carolina State Building Code.

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. The opaque privacy fence shall be maintained.
2. The variance shall be only for the existing structure. There shall be no expansion.

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.)