

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

VARIANCE WORKSHEET

IN THE MATTER OF:

CASE NO. 16-V-05

**TOWN OF CARY**

**STATE OF NORTH CAROLINA**

**APPLICANT NAME:**

Lori Marie and Robert Michael Petrovich

**ADDRESS OF SUBJECT PROPERTY:**

100 Swiss Lake 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 – Bond Park  
Setbacks: (based on Development Plan)

- Front: 20 feet
- Rear: 20 feet
- Side: 7.5 feet – May be 5 feet or 10 feet, but cumulative 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 17.5 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:** Parkway PUD Amended Land Use Plan Dated February 27, 1987

**Exhibit C:** Bond Park R-3 Subdivision Plan Prepared by Hugh J. Gilleece & Assoc. 1990

**Exhibit D:** Book of Maps 1991 Page 0112

**Exhibit E:** Survey Prepared by Registered Land Surveyors Dewberry & Davis, dated June 24, 1999

**Exhibit F:** Notice of Approval from Parkway Unit Owners Association, Inc. April 26, 2016

**Exhibit G:** Photograph of Current Deck

**Exhibit H:** Photograph of Current Deck; Side View

**Exhibit I:** Photograph of Fence at Rear Yard on Adjacent Property

**Exhibit J:** Aerial View of the Neighborhood

**Exhibit K:** Land Development Ordinance Section 6.3.1 (G) (2) General Guidelines for Determining Residential Setbacks

**Exhibit L:** Wake County Real Estate Data for 100 Swiss Lake Drive

**Exhibit M:** Unified Development Ordinance Chapter 13 Accessory and Temporary Uses and Structures Section 13.1.1 (b) Setback and Yard requirements. November 14, 1991

1. An application for a variance (**Exhibit A**) was filed by all the owners of the land affected by the variance.
2. The applicant took part in a pre-application conference required by LDO Section 3.20.3 (B).
3. The property is described as follows:  
Site Address: 100 Swiss Lake Drive Cary, NC 27513  
Wake County PIN: 0753085119  
Lot: 3  
Subdivision: Bond Pointe Section III  
Zoning District: Planned Development District (PDD) Major
4. The subject property is part of the Parkway 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 0112 (**Exhibit D**). The recorded plat does not list the building setbacks.
6. As indicated on the recorded plat, the subject property has frontage on two public roads. The lot size is 8,339 square feet.
7. A survey of the subject property, prepared by Dewberry & Davis, Registered Land Surveyor (**Exhibit E**) shows the lot is developed with an existing two story dwelling which is located 35.8 feet from the roadway property line along Swiss Lake Drive.
8. The subject property has frontage on two roadways and must meet roadway setbacks on both of these streets. The existing principal structure was built on the lot with setbacks that exceeded those required by over 15 feet on the Swiss Lake Drive side and by over 12 feet on the Bond Lake Drive Side. By being placed back so far from the roadways, the rear yard was reduced. Furthermore, the lot is not rectangular in shape and there is a sign easement at the southeast corner of the lot

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 17.5 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:** "Placement of a covered, screened porch on the existing 12' X 12' deck allows for the most practical, aesthetic and private improvement of the property relative to the design of the home and its placement on the property.

Practical: Converting the existing deck into a screened porch preserves the structural integrity of the home: No additional exterior home doors are required to access the proposed porch. Also, the existing deck is currently located in the rear just off the interior eat-in-kitchen of the home and therefore a logical location to bring prepared food from either the kitchen or a rear grill outdoors.

Aesthetic: Placing the screened porch in the rear of the property, versus the west side, maintains the front-facing appeal of the home. Private: Placing the screened porch in the rear of the property maintains the privacy of the porch, with a maximum overall distance from the homes of the rear and east neighbors. The distance from the rear home is approximately 100 feet. The distance from the east home is approximately 40 feet. Please note that a fence currently exists between the backyard of 100 Swiss Lake Drive [the subject property] and the rear property of 111 Crosswind Drive. The fence belongs to the 111 Crosswind property owners, as does an approximately 10-foot forested vegetative buffer.

Other locations for the addition were considered. However, a screened porch built in the rear of the property that maintains the 20-foot rear setback would have less appeal to future homebuyers as it would A) have an irregular shape with a section that is only 4 feet across due to the bay window area on the eat-in kitchen and B) be closer to the east home by approximately 10 feet but not significantly different in distance from the rear home with the estimated difference being approximately 3 feet and C) cover more of the exterior home windows, reducing natural light inside. A screened porch built on the west of the property would also have less appeal to the neighborhood and future home buyers as it would be A) much less private being visible from the street B) be less functional for the overall use in the home, being off the interior dining room and further from the rear grill, and C) add an additional exterior door to the home.

**Staff Comments:** Construction of a screened porch is proposed to be located on the footprint of the existing deck. The proposed structure would be classified as part of the principal structure and must, therefore meet the rear yard building setbacks of 20 feet as shown on the subdivision plan ([Exhibit C](#)) and required by the Cary Land Development Ordinance, Section 6.3.1 (G)(2) ([Exhibit K](#)).

**(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:** "This property is a very small corner lot consisting of 0.19 acres and the buildable area is reduced because the house has to meet front and side street setbacks on both

the Bond Lake and Swiss Lake sides of the lot as well as a rear/west side easement for the subdivision sign. The home is placed far to the rear of the lot and is slightly off from parallel with the east property line. In particular, the front roadway setback is much larger than required with range of 38 to 45 feet, such that the home maintains a similar distance from the cul-de-sac and the adjoining homes and does not offer them a view of [the] side of house. The requested variance is to allow for the existing rear deck to be enclosed. The variance is required because the rear setback for decks (enclosed or otherwise) increased with the Town's adoption of the LDO. At the time the dwelling and deck were constructed, the setback allowed for its current location.

**Staff Comments:** The subject property has frontage on two roadways and must meet roadway setbacks on both of these streets. The existing principal structure was built on the lot with setbacks that exceeded those required by over 15 feet on the Swiss Lake Drive side and by over 12 feet on the Bond Lake Drive Side. By being placed back so far from the roadways, the rear yard was reduced. Furthermore, the lot is not rectangular in shape and a sign easement at the southeast corner of the lot.

**(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, and added, "At the time the deck was built in 1991, the rear yard setback was less than 20 feet and the deck was in compliance. The current residents are the third owners of this 0.19 acre property, [and are] seeking this variance prior to construction of a covered porch on the footprint of an existing deck."

**Staff Comments:** The applicants are seeking approval of a variance prior to applying for an application for a building permit to enclose and cover their existing deck. According to Wake County Real Estate Data ([Exhibit L](#)), the deck was constructed in 1991, at the time the home was constructed. Wake County obtains information regarding the size and location of structures from the Town of Cary's Permit Office. According to the Town of Cary Unified Development Ordinance (UDO) that was in force on November 14, 1991 ([Exhibit M](#)) accessory were not allowed within five feet of the rear or side lot lines. There were no additional restrictions to accessory structures noted in the Planned Development District (PDD) documents.

**(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 spirit, purpose and intent of the rear property line setback is to provide adequate separation between buildings. As a corner lot, the Property has only two immediately adjacent properties, both of which have dwellings. The dwelling on the adjacent property to the rear is approximately 100 feet from the proposed addition. Such a distance is more than double the combined setbacks on both lots. The proposed addition will not result in shortening the distance between dwellings located on the Property and adjacent side yard property. I am attempting to improve the property for myself and future buyers with a feature that is practical, aesthetic and private. The Town in general will benefit for the increased property value.

**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 J](#)) shows that the size of the proposed structure is not out of character with other development in the neighborhood. The applicant has proposed a condition to install a minimum of three (3) evergreen bushes at the rear of the property line.

**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 property owner shall install a minimum of three (3) evergreen bushes at the rear of the 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.)