

**TOWN OF CARY
ZONING BOARD OF ADJUSTMENT HEARING
October 3, 2016**

VARIANCE WORKSHEET

IN THE MATTER OF:

CASE NO. 16-V-06

TOWN OF CARY

STATE OF NORTH CAROLINA

APPLICANT NAME:

Greg Boa

LOCATION OF SUBJECT PROPERTY:

109 East Clarksville Court
Cary, NC 27513
Lot 13; Book of Maps 1992 Page 101

PROPERTY OWNER NAMES/ADDRESS:

Greg Boa
109 East Clarksville Court
Cary, NC 27513

STAFF REPRESENTATIVE:

Contact: Debra Grannan, Senior Planner
Phone: (919) 460-4980
Email: debra.grannan@townofcary.org

ZONING/SETBACKS/DIMENSIONAL STANDARDS:

Zoning: Planned Development District (PDD) Major, (Preston)
Setbacks:

- Front: 25 feet
- Rear: 15 feet
- Side: Minimum 5 feet; aggregate 15 feet
- Corner Side: 20 feet
- Buffer: 15

VICINITY MAP

REQUEST: The applicant requests a variance from Land Development Ordinance (LDO) section 6.3 to allow construction of a screened porch on an existing deck to encroach 3.25 feet into a required 15-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.

Exhibit A: Application for Variance

Exhibit B: Subdivision Plat Recorded in Book of maps 1992 Page 0101

Exhibit C: Land Development Ordinance Section 6.3.1 (G) (2)

Exhibit D: Survey of Existing Structures Prepared by Chance Surveying Company, PA July 7, 2016

Exhibit E: Survey of Proposed Porch Prepared by Chance Surveying Company, PA July 11, 2016

Exhibit F: Photo of Existing Deck Side View

Exhibit G: Photo of Existing Deck from Back Yard

Exhibit H: Examples of Porches on Nearby Lots

Exhibit I: View of Backyards Taken From Adjacent Golf Course

Exhibit J: Photo Taken From Existing Deck

Exhibit K: Photo of Front Elevation and Driveway

Exhibit L: Aerial View

Exhibit M: Preston Master Land Use Plan

Exhibit N: Wake County Real Estate Data

BACKGROUND

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 as required by LDO Section 3.20.3 (B).
3. The property is described as follows:
Site Address: 109 East Clarksville Court Cary, NC 27513
Wake County PIN: 0744785783
Lot: 13
Subdivision: Preston Trails
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 1992 Page 101 (**Exhibit B**) The recorded plat shows the dimensions and lot size of the subject property and lists the required building setbacks.
6. As indicated on the recorded plat, the subject property is located at the end of a cul-de-sac and is not rectangular in shape.
7. According to Wake County Real Estate Data, (**Exhibit N**) the property is developed with a detached residential dwelling that was built in 1993 and the property was purchased by Greg L. Boa on May 11, 2016.
8. A survey of the subject property, prepared by Chance Surveying Company, PA Dated July 7, 2016, (**Exhibit D**) shows the lot is developed with an existing detached dwelling and an attached deck. The garage portion of the home is located 28.2 feet from the front property line and the dwelling portion of the house is set back an additional 21 feet from the front property line. At its closest point, the existing deck is located 12.8 feet from the rear property line.

9. A survey of the subject property, prepared by Chance Surveying Company, PA dated July 11, 2016, ([Exhibit E](#)) shows a proposed screen porch addition on the subject property that would be located 11.9 feet from the rear property line at its closest point. This represents an encroachment of 3.1 feet into the required 15-foot rear yard setback.
10. Covered porches are required to meet the same building setbacks as the principal structure.
11. Director's Modification procedures contained in Section 3.19.3 of the LDO would allow an encroachment of up to 15% of the required 15-foot setback which would only equal 2.25 feet and would be unable to address the requested encroachment of 3.25 feet.
12. 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.
13. The application and other records pertaining to the variance request are part of the record.
14. 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: "Yes. The original owners placed the home very far back on the lot in relationship to the neighboring homes. I would like to add a screened, covered porch to protect from mosquitos and arrant golf balls while enjoying the back yard. If the porch is any smaller than the existing deck, it will be relatively useless as it will be too shallow to furnish properly. Many homes in this area and price range have a screened porch or much larger decks, see separate photos." ([Exhibit H](#)) The home backs up to a common open space - Preston Wood County Club. The General Manager, Mr. Matt Massei of PWCC, has already given me his approval to the HOA and myself. The Town of Cary Planning Director only has authority to grant a reduction of 2 feet 3 inches (15%) I am seeking the extra foot in order to keep with the existing design and scale."

Staff Comments: Construction of a screened porch is proposed to be located generally in the same location as the existing deck and only extend one foot beyond the existing footprint.

(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: "Due to the lots relative small size compared to other lots in the neighborhood, and the fact that it has a sloping front yard, it was setback 28 feet rather than the required 25 feet in order to make egress into and out of the driveway possible."

Staff Comments: The subject property is located at the end of a cul-de-sac. The lot is not rectangular in shape due to the cul-de-sac bulb that forms the front property line. Due to the cul-de-sac bulb, the depth of the subject lot is less than other lots within the development and in the immediate vicinity. Due to the narrowness of the front of the lot, the garage portion of the existing dwelling is located 28.2 feet from the front property line and the heated portion of the home is setback an additional 21.7 feet. This limits the buildable area on the rear portion 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: "I purchased my home on May 9, 2016 and my lender did not require a survey. I had made it clear to the real estate agent and owners that my intent was to add a screened, covered porch and at no time did they advise me that this was not going to be possible without a variance. They had built the home and lived in it for 23 years. My agent was the buyers and seller's agent."

Staff Comments: The applicant is seeking approval of the variance prior to applying for a building permit.

(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 proposed screened porch will add to the property values, look better than the old deck, and protect us from mosquitos and arrant golf balls. This addition will not infringe on any neighbors as that area of the home is barely visible from their back yards and the rear of the homes backs up to the golf course.

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 subject property and nearby properties, ([Exhibit L](#)) 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:

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.)