

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

VARIANCE WORKSHEET

IN THE MATTER OF:

CASE NO. 16-V-07

TOWN OF CARY

STATE OF NORTH CAROLINA

APPLICANT NAME:

Todd W. and Jennifer R. Beaufort

LOCATION OF SUBJECT PROPERTY:

105 Michelin Place
Cary NC 27511
(Lot 222; Book of Maps 1995, Page 385)

PROPERTY OWNER NAMES/ADDRESS:

Todd W. and Jennifer R. Beaufort
105 Michelin Place
Cary, NC 27511

STAFF REPRESENTATIVE:

Contact: Katie Drye, Senior Planner
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ZONING/SETBACKS/DIMENSIONAL STANDARDS:

Zoning: Residential 20 (R-20) and Watershed Protection Overlay District (Swift Creek Subdistrict)
Setbacks (identified on Wake County Book of Maps: BM 1995, Page 385):

- Front: 30 feet
- Rear: 25 feet
- Side: 10 feet
- Corner Side: 18 feet

[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 nine (9) feet into a required 25-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)].

[Exhibit A](#): Application for Variance

[Exhibit B](#): MacGregor West Subdivision Plan, Prepared by Withers & Ravenel, 1988

[Exhibit C](#): Book of Maps 1995, Page 385

[Exhibit D](#): Survey, Prepared by Robinson & Plante PC, dated July 15, 2016

[Exhibit E](#): Photographs of site

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

[Exhibit G](#): Land Development Ordinance Section 6.3 Setback Measurement and Requirements

[Exhibit H](#): Proposed Screened Porch Location

[Exhibit I](#): Wake County Real Estate Data for 105 Michelin Place

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: 105 Michelin Place Cary, NC 27511
Wake County PIN: 0752572699
Lot: 222
Subdivision: MacGregor West Phase 5
Zoning District: Residential 20 (R-20) and Watershed Protection Overlay District (Swift Creek Subdistrict)
4. The subject lot was platted as part of a subdivision recorded with the Wake County Register of Deeds in Book of Maps 1995 Page 0385. ([Exhibit C](#)) The recorded plat lists the required setbacks.
5. 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.
6. According to Wake County Real Estate Data ([Exhibit I](#)), the property is developed with a detached residential dwelling that was built in 2000 and the property was purchased by Todd W. and Jennifer R. Beaufort in 2014.
7. A survey of the subject property, prepared by Robinson & Plante PC Land Surveying ([Exhibit D](#)) shows the lot is developed with an existing detached dwelling and an attached deck. The dwelling is located 89.5 feet from the front property line (in excess of the 30-foot required setback), and at its closest point the existing deck is located 16.7 feet from the rear property line.
8. The applicant desires to convert the existing deck into a screened porch. The proposed structure would be classified as part of the principal structure and must meet the rear yard building setbacks of 25 feet as shown on the recorded plat.
9. The applicant requests a variance to encroach nine (9) feet into the required 25-foot setback.
10. Director's Modification procedures contained in Section 3.19.3 of the LDO would allow an encroachment of up to 15% of the required 25-foot setback which would only equal 3.75 feet and would be unable to address the requested encroachment of nine (9) feet.

- 11. 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.
- 12. The application and other records pertaining to the variance request are part of the record.
- 13. 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. Due to the odd-shaped lot, original placement of the home and encroachment of the original deck within the 25-foot setback, the design of a deck or screen porch to meet said setback would be unsightly, awkward, non-traditional, and detract from the home by jeopardizing the integrity of the home’s design and not along with the standards of the neighborhood. Other locations for a screen porch were considered, but there are no other existing entry doors to utilize.”

Staff Comments: Construction of a screened porch is proposed to be located generally in the same location as the existing deck and will not encroach beyond the existing footprint. The proposed structure would be classified as part of the principal structure and must, therefore, meet the rear yard building setbacks of 25 feet as shown on the recorded plat.

(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: “Lot is odd-shaped: 5-sided, end of cul-de-sac, and TOC has determined that there are 2 separate property lines comprising the rear lot property line. The home’s placement on the lot does not allow for a traditional shaped deck or screen porch to be built. The top of a cul-de-sac lot pushes the structure 89 feet back on the lot due to the narrow front. Placement of the structure far beyond the 30-foot required front property line setback causes the structure to be placed closer to one of the rear property line setbacks. Two of the three original brick and mortar footers for the deck encroach into the 25-foot rear property line setback. When we purchased the house we were not advised of any setback violations on the existing deck (see page from Residential Property Owners’ Association Disclosure Statement #24) (included in [Exhibit A](#)). If at the time the house was built, the lot line in question was considered a side property line, the deck structure and therefore the proposed screen porch, would have been in compliance.”

Staff Comments: The subject property is located at the end of a cul-de-sac. Because of the narrowness of the front of the lot, the existing dwelling is located 89.5 feet from the front property line. This limits the buildable area to the rear of the structure. The Town determined the rear property lines/setbacks to be as shown in [Exhibit D](#) (survey of the property), which includes one of the property lines that is coincident with the rear property line of the adjacent lot (lot 216) in the subdivision.

(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: “All structures are as purchased and the current property owner is the sixth property owner.”

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: "Request is to reduce size of existing structure by more than 47 square feet and to enclose as a traditional and typical shaped screen porch and has HOA approval and encouragement, (Included in HOA guidelines) (*included in Exhibit A*). The addition of a screen porch is a common, valued and encouraged addition to homes in the neighborhood.

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 F*) 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 applicants have not proposed any conditions.

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.)