

**TOWN OF CARY
ZONING BOARD OF ADJUSTMENT HEARING
May 1, 2017**

VARIANCE WORKSHEET

IN THE MATTER OF:

CASE NO. 17-V-02

TOWN OF CARY

STATE OF NORTH CAROLINA

APPLICANT NAME:

Johnny and Mirna Chang

ADDRESS OF SUBJECT PROPERTY:

101 Bourne Wood Drive
Cary, NC 27518

PROPERTY OWNER NAMES/ADDRESS:

Same as above

STAFF REPRESENTATIVE:

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

ZONING:

Zoning: Residential 8 (R8)

REQUEST: The applicant requests a variance from Land Development Ordinance (LDO) section 7.2.3 (H) Development within Required Buffers to allow an area of approximately 210 square feet for an existing stone patio, steps and a corner of the roof an existing screened porch to remain within a 50-foot-wide streetscape buffer which is contained on the subject property.

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

Exhibit B: Book of Maps 1996 Page 1812

Exhibit C: Survey by James Nipper Dated January 5, 2017

Exhibit D: Land Development Ordinance Section 7.2.3 (H), 12.4 (Development)

Exhibit E: Record of Building Permit 06-1974; approved May 24, 2006

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 Subject Property is described as follows:
Site Address: 101 Bourne Wood Drive, Cary, NC 27518
Subdivision: Lochmere Village
Lot: 99
Wake County PIN: 0772253259
Zoning District: Residential 8 (R-8)
4. The Subject Property was platted as part of a subdivision recorded with the Wake County Register of Deeds in Book of Maps 1996 Page 1812. (**Exhibit B**)
5. The recorded plat shows the Subject Property has frontage on both Bourne Wood Drive and Piney Plains Road. A 50-foot-wide streetscape buffer located on the subject property adjacent to Piney Plains Road. This buffer runs the entire length of the lot and covers approximately 5,500 square feet of the Subject Property.
6. At the time the lot was recorded, the Cary Unified Development Ordinance (UDO) allowed streetscape buffers to be part of individual, privately owned lots. Cary's current LDO requires streetscape buffers to be platted separately and to be under the maintenance of a Home Owners Association.
7. The owners of the subject property applied for a building permit (06-1974) from the Town of Cary for the covered porch in 2006. The Town did not require a foundation survey and the permit was approved and the structure received a Certificate of Occupancy on May 24, 2006.
8. A survey of the subject property was prepared by James Nipper and dated January 5, 2017. This survey shows a corner of the porch encroaching into the streetscape buffer by 1.5 feet and a slate patio area of approximately 210 feet encroaching into the streetscape buffer. Development is defined as "The initiation, construction, change, or enlargement of any use or structure, the disturbance of land through the removal of ground cover, or the division of land into two (2) or more parcels." (**Exhibit D**).
9. A survey of the subject property, prepared by Residential Land Services, PLLC and dated March 15, 2017 shows steps on porch, a small portion of the porch and gravel areas located within the streetscape buffer. This survey was included as part of the variance application (**Exhibit A**).
10. Chapter 7.2.3 (H) of the LDO restricts grading development and land-disturbing activities within required buffers. (**Exhibit D**).
11. The applicant has offered conditions to maintain supplemental landscaping with a minimum of five (5) evergreen shrubs or trees and a minimum of two (2) ornamental trees within the streetscape buffer area.
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: “The patio was designed as a complete unit. A component of this design achieved safe ingress, egress and regress from the porch door. Further, the cost of removal is prohibitive.

Staff Comments: Staff concurs with the applicant’s statement.

(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 is a corner lot with frontage on two roads, thus reducing usable area on [the] property. Backyard/play area was within the streetscape buffer. In the process of improving the landscape, a stone patio was placed in the open area. No trees were removed.”

Staff Comments: The subject property has frontage on two roadways and must meet roadway setbacks on both of these streets. In addition, an area of approximately 5,500 square feet (over 1/3 of the 15,003 square foot lot) is contained within a streetscape buffer. The lot is curved along the front property line, and narrows toward the rear of the lot. These factors reduce the developable area on the subject property more so than on the majority of the other lots in the vicinity.

(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: “In the process of beautifying our property, we replaced the open grass area with this stone patio without knowledge that stone could [not] be used within the buffer. A building permit was issued for the porch, we did not realize that there was an issue until we tried to sell.”

Staff Comments: Typically, structures are measured from the foundation to the property line and roof and step encroachments are not always realized. Patios and pedestrian walkways do not require a building permit from the Town of Cary. The screened porch was permitted by the Town of Cary’s Inspections and Permits Department in 2006. They did not require the property owners to submit a foundation survey; therefore, the minor encroachment was not discovered, and a Certificate of Occupancy was issued for the porch on May 24, 2006.

(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: “Since this area stands inside a fenced backyard and is surrounded by significant natural vegetation, it is not obvious to off-site views. This maintains the intent of the landscape buffer. We have installed and maintained several types of plants including ornamental evergreens, apple and pear trees as well as maintained existing vegetation and existing trees. We have also abstained from cutting any vegetation within the fenced area [of the subject property.] The patio does

not impact any utility easements and does not harm any existing vegetation, thereby securing public safety. The patio does not encroach on any utility easement nor does it restrict access.”

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. The encroachment of the steps and corner of the porch roof into the buffer are minor and not readily apparent.

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 property owner shall maintain supplemental landscaping within the streetscape buffer with a minimum of five (5) evergreen trees or shrubs and at least two (2) ornamental trees.
2. The existing patio and screened porch shall not extend beyond the existing encroachment.

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.)