

**TOWN OF CARY
ZONING BOARD OF ADJUSTMENT HEARING
October 2, 2017**

VARIANCE WORKSHEET

IN THE MATTER OF:

CASE NO. 17-V-04

TOWN OF CARY

STATE OF NORTH CAROLINA

APPLICANT NAME:

Doug Ledson

ADDRESS OF SUBJECT PROPERTY:

200 SW Maynard Road
Cary, NC 27511

PROPERTY OWNER NAMES/ADDRESS:

Pensco Trust Company/FBO Douglas W Ledson
6505 New Market Way
Raleigh, NC 27615

STAFF REPRESENTATIVE:

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

ZONING:

Zoning: Residential 12 (R-12)

REQUEST: The applicant requests a variance from Land Development Ordinance (LDO) Chapter 6 to allow a proposed detached residential dwelling to encroach 20-feet into the required 50-foot a roadway 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

[Exhibit B:](#) Recombination Map of 128 Southwest Maynard Road, Book of Maps 2017
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[Exhibit C:](#) LDO Table 6.1-1 Table of Density and Dimensional Standards

[Exhibit D:](#) Survey for Magnum Building Dated August 31, 2017

[Exhibit E:](#) Aerial Photo of Subject Property and Vicinity

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 with Town of Cary Staff as required by LDO Section 3.20.3 (B).
3. The Subject Property is described as follows:
Site Address: 200 SW Maynard Road
Cary, NC 27511
Subdivision: N/A
Lot: B
Wake County PIN:
4. The Subject Property was platted as part of a recombination map entitled “Recombination Plat of 128 Southwest Maynard Road,” recorded with the Wake County Register of Deeds in Book of Maps 2017 Page 1616. ([Exhibit B](#)). The recorded plat shows the Subject Property is located with frontage on SW Maynard Road. The recorded map indicates that the property is impacted by a sanitary sewer easement along the rear property line and by a permanent drainage easement and utility easement adjacent to the front property line.
4. The subject property is zoned Residential 12 (R-12).
5. SW Maynard Road is classified as a thoroughfare.
6. For residential use in the Residential 12 (R-12) zoning district, Cary’s LDO Table 6.1-1, ([Exhibit C](#)) requires a 50-foot roadway setback for properties fronting a thoroughfare.
7. A survey for Mangrum Building was prepared by Robinson & Plante PC Land Surveying on August 31, 2017 ([Exhibit D](#)). This survey shows a proposed home on the subject

- property with a 30 foot roadway setback. This represents an encroachment of 20 feet into the required 50-foot roadway setback for residential uses adjacent to thoroughfares.
8. Aerial photography of the subject property and the surrounding vicinity ([Exhibit E](#)) shows that the subject property is currently vacant and that existing detached residential dwellings located at 202, 204 and 206 SW Maynard road are located approximately 30 feet from the SW Maynard Road property line.
 9. Wake County Tax records indicate that the houses located at 202, 204 and 206 SW Maynard Road were constructed in 1977 and 1978. The Town of Cary could find no record of what the required roadway setback was at that time.
 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 applicant has proposed a condition that a minimum of three (3) evergreen shrubs shall be installed in the front yard of the subject property prior to issuance of a Certificate of Occupancy for the proposed detached residential dwelling.
 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 required 50-foot roadway setback restricts the buildable area more than what was allowed for the existing homes to the west of this site.”

Staff Comments: According to the current Town of Cary Land Development Ordinance, 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: “The lot is shallow. Property has been zoned R-12 for +/- 30 years. The residential lot was subdivided from the commercial parcel in August 2017. Existing houses in the vicinity of the subject property were built before SW Maynard Road was widened and are therefore located approximately 30 feet from the ROW.”

Staff Comments: The shallow lot depth and requirement for a 50-foot setback from a thoroughfare reduce the developable area on the subject property more so than on the majority of the other lots in the immediate 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: "No changes were made to the lot depth as a result of the recombination plat. The plat closely follows the existing zoning line."

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

(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 50' setback considerably reduces the options for building a multi design front elevation. I don't think the intent of the increased setback was made to force a property owner to place a home on the lot that was so far back from the adjacent houses. Likewise, I don't think it was the intent of the ordinance to force a property owner to build a home with minimal design features due to the depth limitations."

Staff Comments: Neither public services nor utilities are impacted by the proposed encroachment. Placement of a detached dwelling within the roadway setback will not interfere 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:

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.)