

**TOWN OF CARY
ZONING BOARD OF ADJUSTMENT HEARING
November 6, 2017**

VARIANCE WORKSHEET

IN THE MATTER OF:

CASE NO. 17-V-05

TOWN OF CARY

STATE OF NORTH CAROLINA

APPLICANT NAME:

Barry E. Gum and Jennifer M. Gum

ADDRESS OF SUBJECT PROPERTY:

4001 Greyhawk Place

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 12 Conditional Use (R-12-CU)

REQUEST: The applicant requests a variance from Land Development Ordinance (LDO) Table 6.1-1 (Density and Dimensional Standards) to allow an encroachment of 7.8 feet into a required 25-foot rear yard setback for the purpose of converting an existing deck to a screened porch or room addition.

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 [7.2.15].

[Exhibit A:](#) Variance Application

[Exhibit B:](#) Book of Maps 2006 Page 0759

[Exhibit C:](#) Photos of Subject Property

[Exhibit D:](#) Land Development Ordinance Table 6.1-1 (Density and Dimensional Standards)

[Exhibit E:](#) Survey by GDK Geomatics dated June 11, 2013

[Exhibit F:](#) Construction Drawings by The Screen Porch Company of proposed addition

[Exhibit G:](#) Greyhawk Landing Community Association, Inc. Notice of Approval dated October 3, 2017

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: 4001 Greyhawk Place
Subdivision: Greyhawk
Lot: 11
Wake County PIN: 0761416066
Zoning District: Residential 12 Conditional Use (R-12-CU)
4. The Subject Property was platted as part of a subdivision recorded with the Wake County Register of Deeds in Book of Maps 2006 Page 0759. ([Exhibit B](#))
5. The recorded plat shows the Subject Property is 0.49 acres in size and has an irregular rear lot line which abuts a 100-foot Town of Cary Stream Buffer and Common Open Space.
6. The subject property is developed with an existing, detached residential dwelling and has a deck on the rear of the property. Barry Gum purchased the property in 2013.
7. At the time the home was built (2007), decks were allowed to encroach into rear yard setbacks; however, to convert the deck to a screen porch or room addition the structure must be setback from the rear property line 25 feet to comply with Cary's current Land Development Ordinance Table 6.1-1 (Density and Dimensional Standards). ([Exhibit D](#))

8. A survey of the subject property ([Exhibit E](#)) was prepared by CDK Geomatics dated June 11, 2013. This survey shows a proposed screened porch located 17.2 feet from the rear property line.
9. The applicant has submitted construction drawings from The Screen Porch Company to illustrate how the proposed screen porch will be added to the existing home. ([Exhibit F](#))
10. The applicant obtained approval from the Greyhawk Landing Community Association for the proposed addition. ([Exhibit G](#))
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, [unnecessary hardship would result from the strict application of the ordinance.] The existing structure, due to no fault of the applicant, encroaches on the rear yard setback and a portion of it would be torn down rendering the existing improvement unusable. The proposed improvement improved the property without adverse impact to others. The lot is an irregular shaped lot; therefore, the lot lacks alternative practical location on the rear or the side of the dwelling to place the screen porch. The majority of other lots in the neighborhood have rectangular lots that allow the residents the opportunity to have a screen porch or room addition on the rear of their dwellings. The doors of the existing dwelling work with the existing deck and proposed location of the screen porch.”

Staff Comments: The existing deck is located within the rear yard setback. The lot is irregularly shaped, limiting its development potential.

(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 an irregular-shaped lot, especially in comparison to other lots in the subdivision, which are rectangular in shape. The lot is an irregular shape due to a requirement for a riparian buffer. Because of the shallow lot depth and the topography of the lot, the lot lacks a practical location where the screen porch could

be located on the rear of the applicant's home. The property adjacent to the rear lot line abuts the applicant's HOA as open space, and the HOA has reviewed and approved the applicant's new screened porch design and layout. The HOA open space is undeveloped, vacant wooded land."

Staff Comments: The irregular lot shape and shallow lot depth reduce the developable area on the subject property more than 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: "The existing deck, which currently encroaches the rear yard setback, was part of the existing dwelling and permit. The applicant has not received any complaints from property owners or notices of violation from the Town of Cary about the location of the existing deck. The applicant's proposed screen porch will enhance the area. Applicant is seeking approval for the variance prior to commencing construction on the project."

Staff Comments: The existing deck is not in violation of Town ordinances. The reduced lot depth compared to other lots in the vicinity has been in existence since the lot was originally created by the recorded plat for the property.

(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: "As noted above, (1) irregularly shaped rear yard line reduces the utility of the property, (2) encroachment exists due to no fault of the applicant, and (3) the property adjacent to the rear lot line is owned by the applicant's HOA as open space, which will remain undeveloped and vacant and the HOA has reviewed and approved applicant's new screen porch design and layout. Furthermore, no utility lines or easements are impacted by the variance request and the proposed location of the screen porch would not place any adjacent structures into non-compliance with North Carolina building codes. Public safety is secured and substantial justice is achieved by granting the variance requested by the applicant.

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.

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: *[insert conditions here]*

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.)