

**TOWN OF CARY
ZONING BOARD OF ADJUSTMENT HEARING
October 1, 2018**

VARIANCE WORKSHEET

IN THE MATTER OF:

CASE NO. 18-V-04

TOWN OF CARY

STATE OF NORTH CAROLINA

APPLICANT NAME:

Isabel Worthy Mattox, Attorney at Law

ADDRESS OF SUBJECT PROPERTY:

317 New Rail Drive
Cary, NC 27513

PROPERTY OWNER NAMES/ADDRESS (if different from above):

Philip T. and Kristin A. Barletta
317 New Rail Drive
Cary, NC 27513

STAFF REPRESENTATIVE:

Contact: Wayne Nicholas, Planning Manager
Phone: (919) 465-4610
Email: wayne.nicholas@townofcary.org

REQUEST: The applicant requests variances from Land Development Ordinance (LDO) Section 6.3.1(H)(2) to allow the following encroachments into a 15-foot buffer setback: encroachment of the principal structure by 11.5 feet; encroachment of an attached screened porch by 5.5 feet; and, encroachment of an uncovered deck and stairs by 13 feet.

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](#): Variance Application

[Exhibit B](#): Book of Maps 1993 Page 477

[Exhibit C](#): Survey Plan for Proposed Addition, Screened Porch and Deck

[Exhibit D](#): Land Development Ordinance Section 6.3.1(H)(2)

[Exhibit E](#): Book of Maps 1998 Page 1403

BACKGROUND:

1. The application for a variance ([Exhibit A](#)) was filed by all the owners for the land affected by the variance;
2. The applicant took part in the pre-application conference required by LDO Section 3.20.3 (B).
3. The property is described as follows:
 - Site Address: 317 New Rail Drive, Cary, NC 27513
 - Wake County PIN: 0754993625
 - Lot: 63
 - Subdivision: Silver Oaks, Phase II – Section A
 - Total Lot Size: 0.33 acres
 - Current Zoning District: Planned Development District (PDD) Major – Silverton PDD
4. The Subject Property is platted as part of a subdivision recorded with the Wake County Register of Deeds in Book of Maps 1993 Page 477 ([Exhibit B](#)). The recorded plat for the Subject Property depicts a 50-foot buffer on the lot parallel to the rear property line (as required by the approved Silverton PDD) and a 15-foot buffer setback on the lot parallel to the buffer.
5. Land Development Ordinance (LDO) Section 6.3.1(H)(2) ([Exhibit D](#)) requires development within a master planned community (such as the Silverton PDD) to comply with setbacks shown on an approved plat when the setbacks are not specified by the PDD documents.
6. Under current LDO standards, a total of 20-feet of buffer area is required when creating a subdivision with lots 8,000 square feet in size or greater adjacent to lots of similar size, as is the case for the subject property. In addition, the LDO currently requires a 10-foot setback from buffers for principal structures. Because it is part of a master planned community with larger setbacks shown on an approved plat, the subject property may not utilize these provisions based on LDO Section 6.3.1(H)(2).
7. The property is improved with a detached dwelling. Based on a survey plan of the property submitted by the applicant ([Exhibit C](#)), both the existing dwelling and existing screened porch are located outside of the 50-foot buffer.
8. The subject property is a corner lot with frontage on two roads, resulting in a greater required side setback on the west side than other lots in the subdivision that do not have frontage on two roads.
9. The applicant proposes to construct, as shown on [Exhibit C](#), an addition to the principal structure, a screened porch and an uncovered deck and stairs.
10. The applicant is requesting, as listed in [Exhibit A](#), variances to allow the following encroachments into the 15-foot buffer setback: encroachment of the principal structure by 11.5 feet; encroachment of an

attached screened porch by 5.5 feet; and, encroachment of an uncovered deck and stairs by 13 feet. The proposed encroachments are depicted on the survey plan of the property ([Exhibit C](#)).

11. Based on the survey plan submitted by the applicant ([Exhibit C](#)), the proposed improvements to the property (addition to the principal structure, attached screened porch and uncovered deck and stairs) will not encroach into the 50-foot buffer at the rear of the property.
12. Director's Modification procedures (LDO Section 3.19.3) were unable to address the hardship.
13. 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.
14. The application and other records pertaining to the variance request are part of the record.
15. Notice of the public hearing on this variance request 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: "Without a variance, there is no practical location in which to construct an addition to the house. The home is quite close to the east side property line and would not permit an addition. There are also street setbacks on the north and west sides which limit expansion possibilities. Even though there is a generous backyard with significant fall to the rear, the 50' perimeter buffer and 15' buffer setback render an addition in the rear an impossibility without a variance."

Staff Comments: The subject property is a corner lot with frontage on two roads, resulting in a greater required side setback on the west side than other lots in the subdivision that do not have frontage on two roads. Based on the materials submitted by the applicant ([Exhibit C](#)) and the setbacks shown on the recorded plat for the property ([Exhibit B](#)), the existing dwelling was constructed 2.3 feet from the minimum side setback line on the east side of the property and 1.8 feet from the minimum corner yard setback along Stromer Drive on the property's west side. The recorded plat also depicts a 50-foot buffer on the lot extending in from the rear property line in addition to a 15-foot buffer setback from the edge of the buffer.

(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 hardship conditions are unique to this property. They include (1) topography of lot; (2) built condition of property leaving little to no room for expansion on sides and front; and (3) presence of street setback on two sides. In addition to the foregoing, it is important to understand the history of this property. The rear of the subject lot was on the outside edge of the Silverton PUD where the 50' buffer was imposed apparently as a protective buffer for Silverton. At that time, the future use of the property to the immediate rear was unknown. As the Town of Cary has developed, the adjacent property to the rear was also developed as low density single family residential so there is no need for a 50' rear yard buffering single family detached residential from other single family detached residential. In addition to the buffer being oversized, the 15' buffer setback, as shown on the recorded map, also exceeds the Town of Cary's standards."

Staff Comments: The subject property is located on the perimeter of the Silverton Planned Development District (PDD). The approved PDD requires a 50-foot buffer between the land where the subject property is situated and the adjacent land to the south. The subdivision to the south of the subject property did not exist at the time the Silverton PDD was approved. When the adjacent subdivision to the south was platted in 1998 ([Exhibit E](#)), the lot that abuts the subject property was depicted with a 30-foot undisturbed landscape buffer easement and a 20-foot building setback off that buffer. Both the subject property and the adjacent lot to the south are each greater than 8,000 square feet in area. Under current Land Development Ordinance (LDO) standards, a total of 20-feet of buffer area is required when creating a subdivision with lots 8,000 square feet in size or greater adjacent to lots of similar size. In addition, the LDO currently requires a 10-foot setback from buffers for principal structures.

(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: By checking the "NO" box on the variance application ([Exhibit A](#)), the applicant indicates that the hardship did not result from actions taken by the applicant or the property owner.

Staff Comments: The 50-foot buffer and 15-foot buffer setback on the rear of the subject property have been in existence since the lot was platted in 1993.

(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 granting of this variance will (i) allow the property owners to make the best and most efficient use of their property, (ii) produce the most aesthetically pleasing addition to the home, and (iii) have no significant impact on the generous rear yard buffer."

Staff Comments: The proposed improvements to the subject property (addition to the principal structure, attached screened porch and uncovered deck and stairs) will not be located any closer to the existing dwelling on the adjacent lot to the east and will not encroach into the 50-foot buffer at the rear of the lot. 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:

1. *[insert conditions]*
- 2.

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]*: