

**TOWN OF CARY
ZONING BOARD OF ADJUSTMENT HEARING
March 2, 2015**

VARIANCE WORKSHEET

IN THE MATTER OF:

CASE NO. 15-V-02

TOWN OF CARY

STATE OF NORTH CAROLINA

APPLICANT NAME:

S&K Partnership, LLC
Represented by:
Robert A. Brady, Attorney at Law
160 Iowa Lane, Suite 104
Cary, NC 27511

ADDRESS OF SUBJECT PROPERTY:

1401 Brady Springs Road
Cary, NC

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

S&K Partnership, LLC
1000 Darrington Drive
Cary, NC 27513

STAFF REPRESENTATIVE:

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

ZONING/SETBACKS/DIMENSIONAL STANDARDS:

Zoning: Residential 40 (R-40) Within the Conservation Residential Overlay District (CROD)
Roadway Setback: 20'
Roadway Setback Adjacent to Green Hope School Road: 30'
Rear Setback: 20'
Side Setback: 5' Minimum 15' Aggregate

VICINITY MAP

REQUEST: The applicant requests a variance from Land Development Ordinance ("LDO") Section 6.3.2(B) to allow a detached residential dwelling to encroach into the 30-foot roadway setback along Green Hope School Road and be located 25.18 feet from the property line.

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 2014 Page 1569

[Exhibit C](#): Plot Plan by Ward Surveying Services, PLLC prepared 11/12/14

[Exhibit D](#): Building Permit 15-3237 Inspection History

[Exhibit E](#): Photo of Foundation

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: 1401 Brady Springs Road Cary, NC 27513

PIN: #0724954516

Lot: 1

Subdivision: Bellewood Manor

Total Lot Size: 0.30 acres

Zoning District: Residential 40 (R-40)

4. The subject lot was platted as part of a subdivision recorded in Book of Maps 2014 Page 1569 ([Exhibit B](#)). As shown on that plat, the roadway setback from Green Hope School Road is 30 feet.
5. The property owner submitted a survey ([Exhibit C](#)) with a building permit application for a detached residential dwelling showing the dwelling 25.18 feet from the property line adjacent to Green Hope School Road. This survey listed the front setback as 20 feet and noted a minimum side yard setback of 5 feet minimum and 15 feet aggregate, but it did not list the required 30-foot roadway setback along Green Hope School Road.
6. The Inspections and Permits Department issued a building permit, #15-3237 without recognizing the error on the plot Plan, and both the footing and foundation inspections have been approved ([Exhibit D](#)). The error was discovered by the applicant after the inspections occurred and the foundation was installed as shown in the photo ([Exhibit E](#)).
7. Director's modification procedures contained in Section 3.19.3 of the LDO were unable to address the hardship.
8. 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.
9. The application and other records pertaining to the variance request are part of the record.
10. 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 location of the foundation as constructed was erroneously located on the plot plan submitted by the Applicant when the building permit was requested and was erroneously approved by the Town. The proposed structure is a custom built single family residence and destruction of the foundation would result in extreme financial hardship.”

Staff Comments: A building permit for the dwelling in its current location was approved by the town of Cary and the foundation and footings have been constructed.

(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 located at the intersection of Green Hope School Road and Brady Springs Road. Green Hope School Road is the side lot line for the residence that is to be constructed on this lot. This setback restriction as shown of the recorded map appears to have been misinterpreted.”

Staff Comments: The building setbacks listed on the plot plan (Exhibit C), prepared by Ward Surveying Services, PLLC and submitted with the building permit, were not consistent with the setback table shown on the plat recorded in Book of Maps 2014 Page 1569 (Exhibit B).

(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 plot plan that was submitted did not show the setback and the Town approved the location as submitted. It appears that there were mistakes made by both the Town and the applicant in the process of obtaining the building permit.”

Staff Comments: The error on the plot plan was not discovered by the Inspections and Permits Department and was brought to the Town’s attention by the applicant after construction on the dwelling had begun.

(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 construction of the residence in the location as shown by the foundation that is in place will not have an adverse impact on vehicular or pedestrian traffic. Because of the location of the property as a corner lot with no lots to the rear, as well as ample buffer along the rear, no aesthetic compromises are made.

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 subject lot is the only residential lot on the south side of Green Hope School Road within the first block of the subdivision; therefore, the portion of the home that encroaches into the roadway setback is not adjacent to other dwellings. This minimizes the visual impact of the encroachment.

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]*:

(Note: Based on the action taken by the Board of Adjustment, staff will prepare a Resolution to be presented to the board at a future meeting for ratification.)