

**TOWN OF CARY
ZONING BOARD OF ADJUSTMENT HEARING
July 6, 2015**

VARIANCE WORKSHEET

IN THE MATTER OF:

CASE NO. 15-V-04

TOWN OF CARY

STATE OF NORTH CAROLINA

APPLICANT NAME:

Bonnie Wolfe
111 Knotts Valley Lane
Cary, NC 27519

ADDRESS OF SUBJECT PROPERTY:

111 Knotts Valley Lane
Cary, NC 27519

PROPERTY OWNER NAMES/ADDRESS:

Same as above

STAFF REPRESENTATIVE:

Contact: Debra Grannan, Senior Planner
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Email: Debra.grannan@townofcary.org

ZONING/SETBACKS/DIMENSIONAL STANDARDS:

Zoning: Transitional Residential Conditional Use (TR-CU)
Setbacks (Based on plat recorded in Book of Maps 1999 Page 1516)
Roadway Setback: 20'
Rear Setback: 20'
Side Setback: 16' (aggregate)
Decks: 5' from buffers and property line

[Vicinity Map](#)

REQUEST: The applicant requests a variance from Land Development Ordinance ("LDO") Section 6.3.2(B) to allow a portion of a proposed screened porch to encroach up to six (6) feet into a required 20-foot rear yard setback and ultimately be located 14 feet from the rear 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 1999 Page 1516

[Exhibit C](#): Survey by Niall Gillespie, dated May 10, 2001 with Drawing of Proposed Addition

[Exhibit D](#): Photo of Existing Patio

[Exhibit E](#): Drawing of Proposed Porch

[Exhibit F](#): Photo of a Similar Porch

[Exhibit G](#): Photo of Existing Landscaping

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: 111 Knotts Valley Lane, Cary, NC 27519

PIN: #0734896338

Lot: 256

Subdivision: Heritage Pines

Zoning District: Transitional Residential Conditional Use (TR-CU)

4. The subject lot was platted as part of a subdivision recorded in Book of Maps 1999 Page 1516. ([Exhibit B](#)). This plat shows that the subject property is adjacent to a 30-foot-wide Type B Landscape Buffer and that the rear property line is not parallel to the front property line.
5. The property owner submitted a survey ([Exhibit C](#)) that included a drawing showing the proposed location of a proposed screened in porch on the rear of the property in the same location as an existing patio ([Exhibit D](#)).
6. A screened porch would be considered part of the principal structure. The owner is requesting a variance from LDO section 6.3.2 (B) to allow a portion of the principal structure (screened porch) to encroach six (6) feet into the required 20-foot rear yard setback.
7. The applicant provided a drawing of the proposed porch addition ([Exhibit E](#)) and a photograph of a similar addition in the same neighborhood ([Exhibit F](#)).
8. There is existing, mature evergreen plant material within the adjacent landscape buffer located between the subject property and the homes to the south ([Exhibit G](#)).
9. Director's modification procedures contained in Section 3.19.3 of the LDO were unable to address the hardship.
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 application and other records pertaining to the variance request are part of the record.
12. 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: "Subject lot is one of the smallest in the neighborhood; 90% of the other lots are larger. Request is for an addition that is allowed on many other homes. There are eight [screened porches] within one block of this lot. No other location on the lot for this structure."

Staff Comments: The existing dwelling includes a 10-foot X 12-foot patio at the rear of the building. Several other homes in this neighborhood have enclosed this patio area with a screened-in porch or room addition.

(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: "Lot size; slanted rear to line. It [lot line] is not parallel to the house foundation. If lot was not slanted, we would have been eligible for a director's modification. The lot backs up to a common open space, a sanitary sewer easement and a buffer"

Staff Comments: According to Book of Maps 1999 Page 1516 (**Exhibit B**) the length of the northern property line is 126.16 feet and the length of the southern property line is 110.0 feet. This variation in the side lot lines creates a lot that is not uniform in depth across the entire lot and limits the building area in the rear yard. The subject property is adjacent to common open space along the rear and southern property lines.

(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 lot shape and size existed when the home was purchased. The request is for a proposed structure."

Staff Comments: The applicant is requesting approval of a variance to construct a new screened porch addition. No construction has commenced and no building permits have been issued at this time.

(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: "[structure is] not going to encroach into any buffer or easements; Large common area behind the house with a tall row of bushes between homeowner and neighbors. Have contacted two of the closest neighbors and they will attest to it. There is a fence that extends from the home on each side 10-feet out which is the length of the proposed structure."

Staff Comments: Public services or utilities are not impacted by the proposed encroachment. Placement of this structure at the proposed location will not place adjacent structures in non-compliance with North Carolina State Building Code. The subject property is adjacent to common

open space which has been landscaped with a hedgerow of evergreen shrubs. This may reduce 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.)