

**TOWN OF CARY  
ZONING BOARD OF ADJUSTMENT HEARING  
June 5, 2017**

VARIANCE WORKSHEET

IN THE MATTER OF:

CASE NO. 17-V-03

**TOWN OF CARY**

**STATE OF NORTH CAROLINA**

**APPLICANT NAME:**

Will Buttitta and Jennifer Dobias

**ADDRESS OF SUBJECT PROPERTY:**

215 Southbank Drive  
Cary, NC 27518

**PROPERTY OWNER NAMES/ADDRESS:**

Same as above

**STAFF REPRESENTATIVE:**

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

**ZONING:**

Zoning: Planned Development District (PDD) Major

**REQUEST:** The applicant requests a variance from Land Development Ordinance (LDO) section 7.2.3 (H) Development within Required Buffers to allow an area of approximately 64 square feet for the steps and landing of a proposed deck, and an area of approximately 47 square feet of an existing concrete driveway, to be located within a buffer.

**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 1988 Page 1060

[Exhibit C:](#) Wake County Real Estate Data

[Exhibit D:](#) Existing Deck; House Location Plot Plan, dated March 15, 2017

[Exhibit E:](#) Proposed Deck; House Location Plot Plan, dated March 15, 2017

[Exhibit F:](#) Land Development Ordinance Section 7.2.3 (H), 12.4 (Development)

[Exhibit G:](#) Aerial Photos from Town of Cary MapInfo 1999 and 2001

[Exhibit H:](#) Photo from Subject Property of Buffer Area

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 was purchased by the current Owners/Applicants in 2006 and is described as follows:  
 Site Address: 215 Southbank Drive  
 Cary, NC 27518  
 Subdivision: Lochview South  
 Lot: 833  
 Wake County PIN: 0761798299  
 Zoning District: Planned Development District (PDD) Major
4. The Subject Property was platted as part of a subdivision recorded with the Wake County Register of Deeds in Book of Maps 1988 Page 1060. ([Exhibit B](#)) The recorded plat shows the Subject Property is located on a cul-de-sac and is only 29.81 feet wide at the street. The existing dwelling is setback on the lot approximately 65 feet. The property is impacted by a sanitary sewer easement on three sides of the lot and is impacted by a landscape buffer on two sides of the lot. An area of approximately 3,500 square feet of the lot is located within a 100- year flood plain. Together, the buffer and floodplain area cover over 20% of the Subject Property.
5. Wake County Real Estate Data ([Exhibit C](#)) indicates that a single family dwelling was built on the property in 1992 and that a deck extension permit was issued in 2001. Aerial

photography of the subject property show that there was no deck visible on the subject property in 1999 and that one is present in the 2001 photography.

6. An existing conditions survey prepared by Residential Land Services, PLLC dated March 15, 2017 ([Exhibit E](#)) showed the existing deck to be removed and replaced. A portion of the existing deck and steps encroached into the buffer area along the eastern property line as shown on Exhibit D.
7. A second survey by Residential Land Services, PLLC also dated March 15, 2017 shows a reconfigured deck with a landing and steps encroaching 64 square feet in the buffer area. The survey also shows an area of 47 square foot of the existing concrete driveway is located in the landscape buffer along the eastern edge of the subject property.
8. At the time the lot was recorded, the Cary Unified Development Ordinance (UDO) allowed streetscape buffers to be part of individual, privately owned lots. Cary's current LDO requires streetscape buffers to be platted separately and to be under the maintenance of a Home Owners Association.
9. Chapter 7.2.3 (H) of the LDO restricts grading development and land-disturbing activities within required buffers. ([Exhibit F](#)).
10. The height of the deck is nine (9) feet and a staircase with landing was incorporated into the original design for safe access.
- 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:** "The height of the deck is nine (9) feet. A staircase with landing was designed for safe access to the deck. There is no way to change the location of the stairs without significantly changing the layout of the deck and possibly compromising on safety. Removal of the driveway from the buffer would be cost prohibitive and would make access to the garage difficult."

**Staff Comments:** 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 circumscribed on three sides by buffers. The backyard has a steep grade. Together, this limits where the stairs can be located."

**Staff Comments:** The subject property is located at the head of a cul-de-sac and is only 29.81 feet wide at the street. This causes the existing dwelling to be setback on the lot approximately 65 feet. Furthermore, the lot is impacted on three sides by sanitary sewer easements and on two sides by landscape buffer areas. Finally an area of approximately 3,500 square feet of the lot is impacted by a 100 year flood plain. This covers over 20% of the subject property. These factors reduce the developable area on the subject property more so than on 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 driveway and deck were encroaching in the buffer when we purchased the house in 2006. We are replacing the deck because it caused extensive damage to the house. We discovered the encroachment when we submitted a permit for the rebuild."

**Staff Comments:** Wake County Real Estate records indicate that the original house was constructed in 1992 and a permit was issued to extend the deck in 2001. The applicant is requesting a variance to allow the encroachment of a new deck structure and a portion of an existing driveway.

*(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 proposed location of the stairs minimizes their visibility from surrounding properties. The deck and driveway do not impact any utility easements and do not harm existing vegetation, thereby securing public safety."

**Staff Comments:** Neither public services nor utilities are impacted by the proposed and existing encroachments. Placement of these 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:

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.)