

**TOWN OF CARY  
ZONING BOARD OF ADJUSTMENT HEARING  
April 2, 2018**

VARIANCE WORKSHEET

IN THE MATTER OF:

CASE NO. 18-V-02

**TOWN OF CARY**

**STATE OF NORTH CAROLINA**

**APPLICANT NAME:**

William and Melissa Feuerstein

**ADDRESS OF SUBJECT PROPERTY:**

324 Fairwinds Drive  
Cary, NC 27518

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

Same as above

**STAFF REPRESENTATIVE:**

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

**REQUEST:** The applicant requests a variance from Land Development Ordinance (LDO) Section 7.3.2(H) to allow a screened porch to be built upon an existing deck and encroach 8 feet into a 50-foot buffer, and to enable stairs to be built to exit the deck on the side which will encroach an additional 6 feet into the 50-foot buffer, for a total encroachment of 14 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 1989 Page 558

[Exhibit C](#): Existing Conditions Survey

[Exhibit D](#): 1989 Correspondence from HOA

[Exhibit E](#): Layout Plan of Proposed Porch and Stairs

[Exhibit F](#): 2017 Correspondence from HOA

[Exhibit G](#): Photographs of Vegetation in Buffer at Rear of Property

[Exhibit H](#): Rendering of Proposed Screened Porch and Stairs

[Exhibit I](#): Land Development Ordinance Section 7.3.2(H)

## **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](#): 324 Fairwinds Drive, Cary, NC 27518
  - [Wake County PIN](#): 0761992112
  - [Lot](#): 23
  - [Subdivision](#): Fairways
  - [Total Lot Size](#): 0.199 acres
  - [Current Zoning District](#): Planned Development District (PDD) Major – Lochmere PDD
4. The Subject Property is platted as part of a subdivision recorded with the Wake County Register of Deeds in Book of Maps 1989 Page 558 ([Exhibit B](#)). The recorded plat for the Subject Property depicts a 50-foot buffer on the lot parallel to the rear property line.
5. The property is improved with a detached dwelling. Based on a survey plan ([Exhibit C](#)) submitted by the applicant, the entire dwelling and a portion of an attached, uncovered deck (built at the time of construction of the dwelling) are located outside the 50-foot buffer.
6. The applicant submitted correspondence ([Exhibit D](#)) that indicates the HOA approved of the 8-foot encroachment of the existing deck into the buffer in 1989.
7. The applicant proposes to construct a screened porch on the existing deck and stairs to be built to exit the deck on the side. Based on the drawing submitted by the applicant ([Exhibit E](#)), the proposed screened porch will encroach 8 feet into the 50-foot buffer and the stairs will encroach an additional 6 feet into the buffer, for a total encroachment of 14 feet. Existing access to and from the interior of the dwelling to the deck upon which the proposed screened porch will be built will be maintained.
8. Based on the drawing submitted by the applicant ([Exhibit E](#)), the proposed screened porch will not be located any closer to the adjacent properties than the existing deck.
9. The applicant submitted correspondence dated 12/8/17 ([Exhibit F](#)) that indicates the HOA has approved the location of the proposed screened porch and stairs.
10. Based on photographs ([Exhibit G](#)) submitted by the applicant, the 50-foot buffer contains existing vegetation between the dwelling and the adjacent golf course use located south of the subject property. The applicant does not propose removal of any existing vegetation within the 50-foot buffer.
11. Chapter 7.3.2(H) of the Land Development Ordinance (LDO) restricts grading, development and land-disturbing activities within buffers.
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:** “Our property, Lot 23, is the smallest Lot in the neighborhood located along the Lochmere Golf Course. The property in this neighborhood is built with one edge of the house being a Zero Lot line and the other side of the house has minimum distance of 34’ to the western property line, that would not enable any structure to be built there. The screened in porch on the existing deck is to enable year-round use of the deck and protect against mosquitos and other unwanted bugs. The porch will be built on the side of the deck that allows for direct entry from the Great Room existing doors. As a result, the existing stairs need to be moved to the other side of the deck. Since that side of the deck is built along the Zero Lot line the stairs must extend toward the rear of the back yard. This requires it to be built within the Buffer Zone. There is a Magnolia Tree and other trees and foliage that exists between the side of the deck where the stairs will be built and the golf course, thus blocking them from site from the view on the golf course. The Lochmere HOA and the Lochmere Architectural Review Board (ARB) have approved to move forward with encroaching on this buffer line. Approval Letter is attached.”

**Staff Comments:** The applicant is proposing to construct a screened porch on the existing attached, uncovered deck that projects from the rear of the dwelling. Existing access to and from the interior of the dwelling to the deck upon which the proposed screened porch will be built will be maintained.

**(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 property is small (0.198 acre) such that in this neighborhood one side of each house is built on the Zero Lot line of the adjacent property and has minimum space to add anything other than landscaping between the properties. These properties are built along the fairway of the 8<sup>th</sup> hole of the Lochmere Golf Club. As a result, the 50’ Buffer was created at the time of the original development. Since these houses were more attractive and saleable with having decks built on the back of the house, approval was granted for the decks to encroach 8 feet into the 50’ Buffer to accommodate building these decks when the houses were originally constructed in the late 1980’s.”

**Staff Comments:** Based on the materials submitted by the applicant, the subject dwelling is situated along (and within close proximity to) the eastern side lot line of the subject property. The dwelling on the adjacent property to the west is situated along (and within close proximity to) the western lot line of the subject property. The existence of the zero lot lines limit the building envelope on the property.

**(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 deck was built with the original construction of the house and received approval to build the deck 8' into the Buffer Zone. The current residents purchased this house in 2016."

**Staff Comments:** The 50-foot buffer along the rear of the subject property has been in existence since the lot was originally platted in 1989. The Applicant submitted correspondence ([Exhibit D](#)) that indicates the HOA approved of the 8-foot encroachment of the existing deck into the buffer in 1989.

**(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 spirit, purpose and intent of the 50' Buffer is to provide adequate separation from golfers and the residents of the house. We are not moving the deck any closer than what has existed since the house was built and will only have several steps added that move closer to the golf course. With the trees and foliage that exists there are no esthetic changes. The HOA and ARB have both reviewed and approved the design and structure of the screened in porch that we request to add."

**Staff Comments:** The proposed screened porch will not be located any closer to the existing dwellings on the adjacent lots than the existing deck. The applicant does not propose removal of any existing vegetation within the 50-foot buffer. The applicant has submitted correspondence ([Exhibit F](#)) from the HOA indicating their approval of the proposed increase in the amount of encroachment into the buffer. 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]*: