



ZONING HARDSHIP VARIANCE APPLICATION

Wake County

Submit required documentation to: Wake County Planning Department/Current Planning Section PO Box 550 Raleigh, NC 27602-0550 Contact Current Planning at (919) 856-6335 for additional information

FEB 24 2009

File # Fee Amt Paid Check# Rec'd Date Rec'd By

Zoning Ordinance Regulation(s) Proposed to be Varied (cite each section(s) and identify requirement from which the variance(s) is (are) being requested; quantify variance - i.e. if this is a variance to allow an encroachment into a setback, give depth of encroachment and total square feet of area proposed to encroach into setback:

Applicant is requesting a variance of 2.7% from Section 11-30 of Unified Development Ordinance which requires a maximum impervious surface area of 6% in the Swift Creek Water Supply Watershed

Property

Parcel Identification Number: 0780284994 and 0780282984

Address: 7209 Blaney Bluff Lane

Location: Northeast side of Blaney Bluff Lane, at/between Penny Road and Old Sorrell Road

(street) (street)

\*Total site area in square feet and acres: 207,424 sq. ft. square feet 4.761 acres

Zoning District(s) and Overlay Districts (if any) and land area within each: R-80W

List Conditions of any Conditional Use Zoning Districts: N/A

Present land use(s) Residential- Single Family

How is this proposed use a public necessity? N/A

What is impact on surrounding neighborhood and adjacent properties? There will be minimal impact on the surrounding neighborhood and adjacent properties. This site has been in its current condition since 2004 and the applicant is unaware of any adverse impacts on neighboring property owners nor have there been any complaints lodged against applicant.

Property Owner

Name Kata J. Jenkins

Address: 3329 Manor Ridge Drive

City: Raleigh State: N.C. Zip Code: 27603

E-mail Address: N/A Fax N/A

Telephone Number: (919) 772-9572

Applicant (person to whom all correspondence will be sent)

Name Robin Tatum Currin and Chad W. Essick, Poyner Spruill LLP

Address: 301 Fayetteville Street, Suite 1900

City: Raleigh State: NC Zip Code: 27602

E-mail Address: cessick@poynera.com ; rcurin@poyners.com Fax (919) 783-1075

Telephone Number: (919) 783-6400 Relationship to Owner: Attorney

Extent of Proposed Variance (Describe the extent to which the regulation is proposed to be varied.)

The applicant is requesting a variance of 2.7% from Section 11-30 of the Unified Development Ordinance which limits the impervious surface area in critical areas of the Swift Creek Water Supply Watershed to 6 percent.

All property owners must sign this application unless one or more individuals are specifically authorized to act as an agent on behalf of the collective interest of some or all of the owners (provide a copy of such authorization).

\*The undersigned property owner(s) hereby authorize the filing of this application (and any subsequent revisions thereto). The filing of this application authorizes the Wake County staff to enter upon the site to conduct relevant site inspections as deemed necessary to process the application.

Signature: Kate J. Ferris Date: Feb. 24, 2009

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

\*The undersigned applicant hereby certifies that, to the best of his or her knowledge and belief, all information supplied with this application is true and accurate.

Signature: Kate J. Ferris Date: Feb. 24, 2009

Notes: All documents and maps submitted as required become the property of Wake County. The Wake County Unified Development Ordinance is on the web at [www.wakegov.com](http://www.wakegov.com).

Project Tracking Form  
Board of Adjustment  
Special Use Permit/Variance/Appeal

Application Submittal Date	2/24/09
Development Staff Review Meeting	3/12/09
Board of Adjustment Meeting	4/14/09

**BA V 2108-09** (PIN# 0780.01 28 4994 and 0780.01 28 2984) A Zoning Hardship Variance Request to allow 2.7% above the allowable maximum impervious surface limit of 6% in the Swift Creek Water Supply Watershed (Article 11-30, Wake County Unified Development Ordinance). The property(s) are located on the northeast side of Blaney Bluff Lane, east of the intersection of Blaney Bluff Lane and Penny Road. Both are zoned R-80W (Residential 80 Watershed) and within the rural critical area of the Swift Creek Land Management Plan.

## **STATEMENT OF JUSTIFICATION – KATA JENKINS VARIANCE REQUEST**

### **Applicant's Request**

The applicant, Kata Jenkins, is requesting a 2.7% variance from Section 11-30 of the Wake County Unified Development Ordinance (“UDO”) which requires a maximum impervious surface area of 6.0% in the Swift Creek Water Supply Watershed.

#### **I. Required Findings of Fact to Grant Variance Under UDO § 19-26-7. <sup>1</sup>**

##### **A. Special Circumstances Exist Through No Fault of the Property Owner. (UDO § 19-26-7(A)(1)).**

In order to understand the special circumstances of this case, a brief review of the facts is necessary. In 2002 and 2003, the applicant, Ms. Kata Jenkins, and her late husband, Bill Jenkins, purchased two lots on Blaney Bluffs Lane. Lot #1 was vacant and the dwelling was on Lot #2. In April 2003, Lot #1 and Lot #2 were combined and a recombination plat was recorded on February 26, 2003. In April and June of 2003, the Jenkins worked with an architect to complete plans for an addition and alteration of the existing home. Tragically, in June 2003, Mr. Jenkins was diagnosed with terminal cancer and on September 2, 2003, Mr. Jenkins died.

On September 8, 2003 the architect finalized the plans for the addition and on March 11, 2004, Wake County issued a building permit to Steven LaFovore of SB Homes, Inc. for the additions and alterations (Building Permit # 0042646). In June 2004, Douglas Triangle Enterprises was hired to complete the building project and a Certificate of Occupancy was issued by Wake County on August 2, 2005. Also, on September 6, 2005 Wake County issued another permit for the construction of a retaining wall to secure the house addition (Permit # 0060707).

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<sup>1</sup> The requirements set forth in the UDO for a variance are different from those set forth in the “Zoning Hardship Variance Statement of Justification” on the County’s website. The applicant assumes the factual findings required by the UDO are the correct ones, but in an abundance of caution, has addressed both herein.

At no point during Wake County's review of this project did the County ever raise the issue of excessive impervious surface at the site. In fact, Wake County issued two permits and a Certificate of Occupancy for the additions. The applicant, through no fault of her own, relied on her architect and builder as well as Wake County's approvals which never raised any issues concerning impervious surface.

**B. Granting the Variance is Necessary for the Preservation and Enjoyment of Substantial Property Rights. (UDO § 19-26-7(A)(2)).**

The ability to market and sell one's property is a substantial property right that would be thwarted if this variance request is not approved. The applicant has a contract to sell the property at issue which will be lost unless the issues relating to impervious surface can be resolved. In order for the applicant to sell the subject property, the applicant must either remove impervious surface at considerable cost and which will result in a significant decrease in the value of the Property, or get a variance to allow the site to maintain its current impervious surface ratio. Granting the variance and allowing the site to maintain its current impervious surface ratio would allow the applicant to sell her property while avoiding substantial and unnecessary expenses. It will also allow the property to remain in its current condition while removing impervious surface would compromise its aesthetics and value.

**C. Granting the Variance Will Not Adversely Affect the Health or Safety of Neighboring Persons nor will it be Detrimental to the Public Welfare or Injurious to Property in the Neighborhood. (UDO § 19-26-7(A)(3)).**

As mentioned, the impervious surface ratio on this site has been approximately 8.7% since 2004. Over the past 5 years, no complaints have been lodged and the applicant is not aware of any adverse effects resulting from the current impervious surface area. Therefore, any harm to the neighbors would be highly speculative and substantially outweighed by the harm to the applicant if she is required to remove impervious surface that she paid to have installed with

Wake County's approval. Furthermore, the applicant is not aware of any neighboring property owners opposed to this variance request.

**D. A Denial of the Application Would Cause Practical Difficulties or Unnecessary Hardships to the Landowner. (UDO § 19-26-7(A)(4)).**

The applicant will suffer practical difficulties and unnecessary hardship if the 6.0% maximum impervious surface requirements are enforced. The applicant would be forced to remove impervious surface at considerable cost in relation to the minimal impact the additional impervious surface would have on adjoining property owners and water quality within the Swift Creek Watershed. In addition, the applicant's property renovations were designed with impervious surface area in excess of 6.0%. Had the applicant been aware of the 6.0% requirement, the project would have been designed differently. Now, the County has approved the project and the renovations are complete. To now remove impervious area would not only be expensive, but would destroy the character of the house and would significantly compromise its aesthetics and value. Moreover, the home is currently under contract to be sold; however, the buyer will not complete the purchase without the issuance of a variance or some other assurance that the 6.0% impervious surface requirement will not later be enforced by Wake County. The detrimental effects of having to remove the impervious surface far exceed any adverse impacts associated with maintaining the current impervious surface ratio.

The hardship presented in this case clearly results from the application of the regulation to this particular piece of property and it directly affects the owner's ability to market and sell her property. But for the County's erroneous approval of the applicant's site and building plans, the current practical difficulties and unnecessary hardships would not exist.

## II. “Zoning Hardship Variance – Statement of Justification” (County’s Website)

### 1. Practical Difficulties or Unnecessary Hardships Would Result from Carrying Out the Strict Letter of the Regulation.

*1a. Strict compliance with the regulation provides the property owner no reasonable use of the property.*

It is applicant’s position that she is not required to show that the regulation provides the property owner no reasonable use of the property. Nonetheless, the strict enforcement of the regulation prevents the owner from marketing and/or selling her property and from enjoying her property without fear of enforcement at some future and uncertain date.

*1b. The hardship results from application of the regulation to the property.*

See Section I D, p. 3. The hardship in this case results from applying the 6.0% impervious surface requirement to the property as it currently exists.

*1c. The hardship is one that affects the property directly.*

See Section I D, p. 3. The hardship affects this property directly by preventing the sale of the property and subjecting the owner to future enforcement.

*1d. The hardship is not the result of the property owner’s own actions – that is, special circumstances or conditions causing the hardship exist through no fault of the property owner.*

See Section I A, p. 2-3 above.

*1e. The hardship is peculiar to the property.*

See Section I D, p. 3. The hardship caused by the increased impervious surface is unique and peculiar to this particular piece of property.

### 2. The Variance Would be in Harmony with the General Purpose and Intent of the Zoning Ordinance and Preserve Its Spirit.

The competing objectives of the Swift Creek Land Management Plan is “the protection of water quality, and the logical extension of urban development.” (See Section G of the Swift Creek Land Management Plan). In the instant case, there is no evidence that water quality will be diminished by allowing this variance or that stormwater runoff will substantially increase as a result of the additional impervious surface. The site has been in its current condition for almost five years without any issues of water quality being raised or any complaints being lodged

regarding any adverse effects. Furthermore, the increased impervious surface is minimal and is below 9% of the entire site and all impervious surface is at the front of the lot, furthest away from Lake Wheeler.

**3. In Granting the Variance, the Public Safety and Welfare Would be Assured and Substantial Justice Done, Both for the Land Owner and the Public at Large.**

*3a. The granting of the variance will not materially affect adversely the health or safety of persons residing or working in the neighborhood of the proposed use, and will not be materially detrimental to the public welfare or injurious to property or improvement in such neighborhood.*

See Section I C , p. 2-3 above.

*3b. The granting of the variance is necessary for the preservation and enjoyment of substantial property rights.*

See Section I B, p. 2 above.

Revisions

**NOT ISSUED FOR  
 CONSTRUCTION**

OWNER:  
 Ms. KATA JENKINS  
 3325 Monroe Ridge Drive  
 OREGON CITY, OR 97143  
 503-772-4572

Project  
**KATA JENKINS**

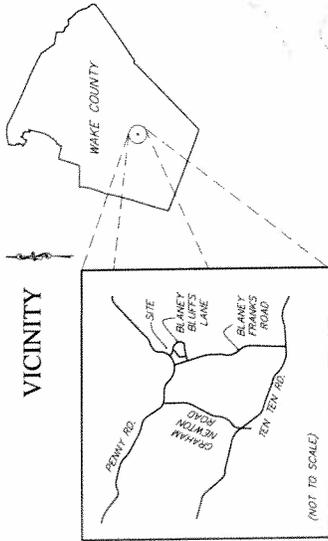
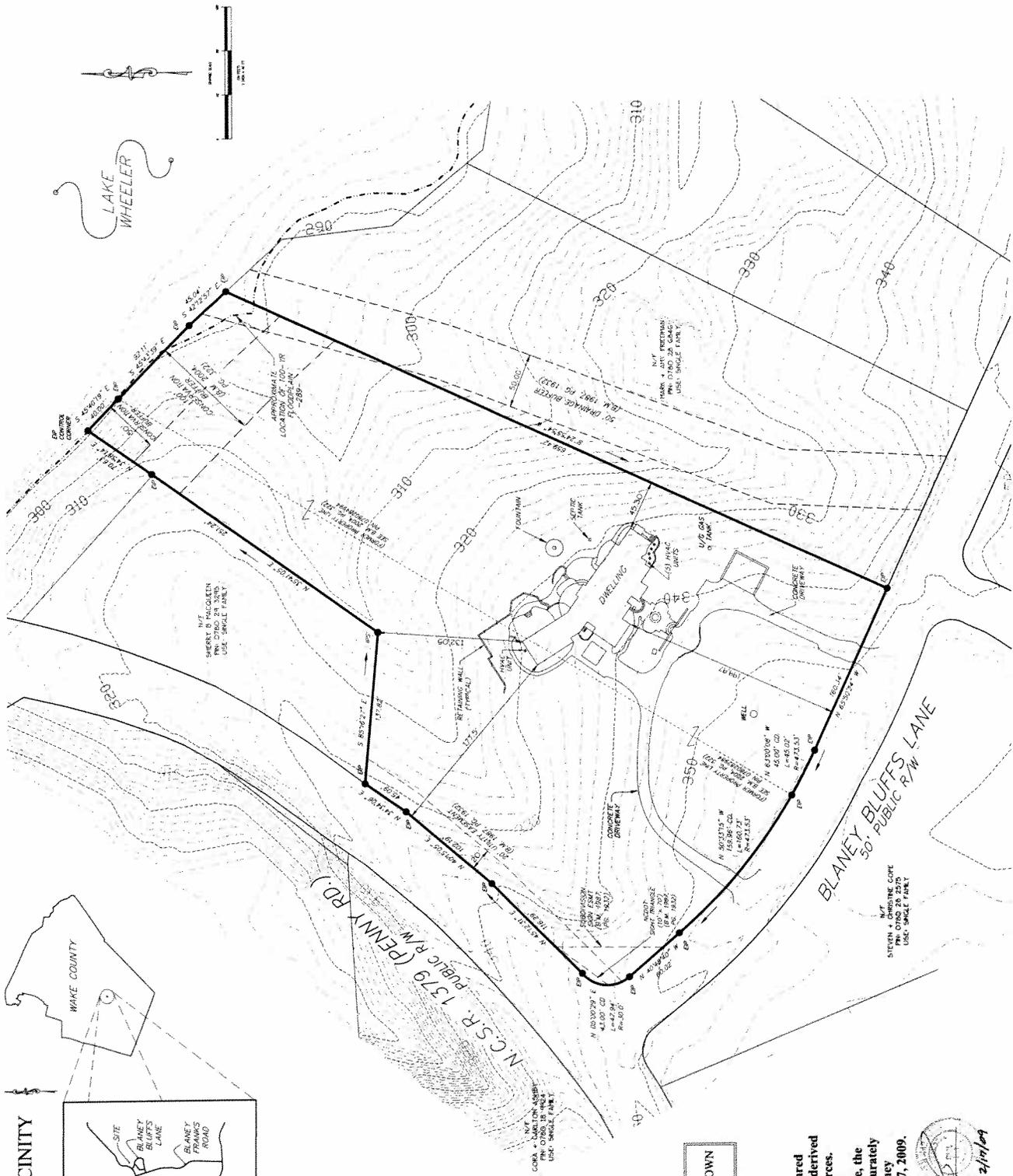
Zoning Variance Site Plan  
 P.L.N. 0780.28.4884  
 P.L.N. 0780.28.2984

Date  
 February 17, 2009

Scale  
 1" = 40'

Sheet

1



NOTE:  
 ALL STRUCTURES SHOWN  
 ARE EXISTING.

This exhibit was prepared based on information derived from a number of sources. Based on personal observations of the site, the exhibit appears to accurately reflect conditions as they exist as of February 17, 2009.

*William G. Daniel*  
 William G. Daniel, P.E.  
 2/17/09

