



ZONING HARDSHIP VARIANCE APPLICATION

File #
Fee
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Rec'd Date
Rec'd By

Submit required documentation to:
Wake County Planning, Development and Inspections
PO Box 550 Wake County Office Building
Raleigh, NC 27602-0550 336 Fayetteville Street Mall, Downtown Raleigh
Contact (919) 856-6335 for additional information.

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:

See Attached: Zoning Ordinance Regulations Proposed to be Varied

Property

Parcel Identification Number: 0733-47-3404

Address: 7120 Turner Creek Road, Cary, NC 27519

Location: North side of Turner Creek Road, at/between
(north, east, south, west) (street)

Amiable Loop and Turner Creek Road Cul-de-sac
(street) (street)

Total site area in square feet and acres: 443,005.20 square feet 10.17 acres

Zoning District(s) and Overlay Districts (if any) and land area within each: R-40W; Jordan Lake non-critical

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

Present land use(s): Residential; Farming

How is this proposed use a public necessity?

N/A

What is impact on surrounding neighborhood and adjacent properties?

See Attached: Impact on Surrounding Neighborhood and Adjacent Properties

Property Owner

Name: William L. Jones and wife, Gene W. Jones

Address: 7120 Turner Creek Road

City: Cary State: NC Zip Code: 27519

E-mail Address: geniejones01@gmail.com Fax: _____

Telephone Number: 919-210-6044

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

Application Submittal Date	03/26/10
Development Staff Review Meeting	05/13/10
Revised Application Submittal Deadline	06/22/10
Board of Adjustment Meeting	

BA V 2122-10 (PIN# 0733.01 47 3404) A Zoning Hardship Variance Request to allow a 14.9' encroachment of a staircase and a portion of a single family dwelling into the required 15' setback (Article 5-11-1, Wake County Unified Development Ordinance). The property is zoned R 40W (Residential 40 Watershed) and is located on the north side of Turner Creek Road, between Amiable Loop and the Turner Creek Road cul-de-sac. The site is located in the Jordan Lake Non Urban Water Supply Watershed.

Zoning Ordinance Regulations Proposed to be Varied:

5-11-1 Residential Watershed Districts

This is a variance to allow a 14.9 ft encroachment of the staircase and a portion of the dwelling as shown a map prepared by Smith & Smith Surveyors entitled, "Survey for William L. Jones" dated January 7, 2010.

Pursuant to Section 5-11-1, R-40W Residential Watershed Districts are required to maintain a minimum of 15-foot setback requirement to the side of a property line. In our appeal we maintain that both the dwelling and the land obtain farm-exempt status and are exempt from such regulations. If this is not the case and the dwelling is not approved for farm-exempt status, Section 5-11-1 will apply and Mr. and Mrs. Jones would be forced to tear down their steps and a portion of their garage.

A 20-foot buffer of common space permanently exists between the Jones steps and the adjoining houses. At the allowance of the property owners Mr. Jones also planted over 1700 trees along a berm that separates his land from the neighborhood. Please see attached map entitled "Survey for William L. Jones" dated January 7, 2010 showing the existing supplemental plantings in the buffer area.

Because Mr. and Mrs. Jones created a 25-foot Tree and Vegetative Protection Zone as shown on the attached map, and the adjoining neighborhood created an additional 20 foot buffer between their lands, as shown on a map recorded in Book of Maps 2007, Page 778, Wake County Registry, we believe the spirit of the Wake County Unified Development Ordinance is more than accomplished without asking Mr. and Mrs. Jones to move their steps.

If the Board of Adjustments finds this solution to be unacceptable then Mr. and Mrs. Jones are willing to remove 6 ft of their staircase to allow a 9 ft encroachment into the required 15ft setback. This measurement is indicated on the attached map entitled, "Survey for William L. Jones" by Smith and Smith Surveyors, dated January 7, 2010.

Please note that even if Mr. and Mrs. Jones removed their staircase and garage, they would still have the right to build a farm-exempt "structure" within the setback area as they obtain farm-exempt status.

Impact on Surrounding Neighborhood and Adjacent Properties:

Approving farm-exempt status for this dwelling would not change its impact on the adjoining neighborhood as the Jones land has been used for farming purposes for over 30 years and existed prior to the construction of the neighborhood. Additionally, the adjoining neighborhood created a 20-foot buffer of common space, as shown on a map recorded in Book of Maps 2007, Page 778, Wake County Registry, to accommodate their lands.

To supplement the 20-foot common space buffer, Mr. Jones planted over 1700 trees in the 25-foot tree and vegetation protection zone as referenced on the attached Preliminary Survey dated January 7, 2010 and in the 20-foot common space buffer as shown in Book of Maps 2007, Page 778 and indicated on the attached Preliminary Survey dated January 7, 2010. The trees serve as a sight and sound buffer between the Jones property and the residents of the adjacent subdivision. Also attached are photos taken from the steps of the Jones' house that show the trees and the 20 ft buffer area.

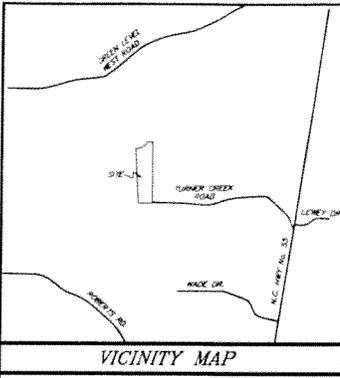
Enforcing the 15 ft setback for this dwelling will not change the current impact on the adjoining properties. The 25ft Tree & Vegetation Protection Zone also serves as an additional buffer between sights and sounds to the Jones property. The Jones invested almost \$20,000 to create this additional buffer so as to preserve the spirit of the Wake County Unified Development Ordinance.

Extent of Proposed Variance:

The proposed variance is 99.9% of Section 5-11 as it applies to the “side” setback requirement for R-40W. If the Board should choose for our client to remove 6ft feet of their steps, then the proposed variance would be 60% of the 15 ft setback requirement. Should the Board choose to require our clients to remove the entire staircase, then the proposed variance would be 13% of the 15 ft setback requirement. Our clients are seeking a 99.9% variance but would also consider a 60% variance if it means not having to demolish part of their dwelling.

Please see the attached map entitled, “Survey for William L. Jones” by Smith and Smith Surveyors that shows in detail the dimensions of the stairs and garage in their relationship to the property line.

As a point of illustration, attached are two photographs that show the proposed variances.



THIS SURVEY WAS BALANCED USING THE COMPASS RULE ADJUSTMENT.
 ALL DISTANCES ARE HORIZONTAL GROUND MEASUREMENTS.
 AREA DETERMINED USING D.M.D. METHOD.

REFERENCES: DEED BOOK 4332, PAGE 482
 DEED BOOK 13845, PAGE 2285 MEMO OF ACTION
 NCDOT ID No. R-28336
 NCDOT PROJECT No. 35520.5.1A1
 NCDOT PARCEL No. 82
 CIVIL CASE No. 10CV001760

A PORTION OF THE PROPERTY SHOWN HEREON IS WITHIN A FLOOD PLAIN PER FEMA FIRM MAP No. 372007J33004, EFFECTIVE DATE OF MAY 2, 2006.
 NO GEODETIC MONUMENT FOUND WITHIN 2000' OF THIS PROPERTY.

NOTES:
 (1) THE PROPERTY SHOWN HEREON IS SUBJECT TO ALL EASEMENTS OF RECORD AFFECTING SAME.
 (2) NO FIELD SEARCH HAS BEEN PERFORMED BY THIS FIRM DURING THE COURSE OF THIS SURVEY.
 (3) THIS SURVEY DOES NOT CERTIFY TO THE EXISTENCE OR NON-EXISTENCE OF ANY UNDERGROUND UTILITIES THAT MAY OR MAY NOT BE PRESENT ON THIS SITE.
 (4) THIS SURVEYER MAKES NO REPRESENTATION OF RIPARIAN ACCRETION REGARDING RIPARIAN BOUNDARY LINE.
 (5) AREA OF TAKING WILL BE ACCURATELY COMPUTED WHEN THIS SURVEYOR RECEIVES A LEGIBLE MAP OF TAKING.

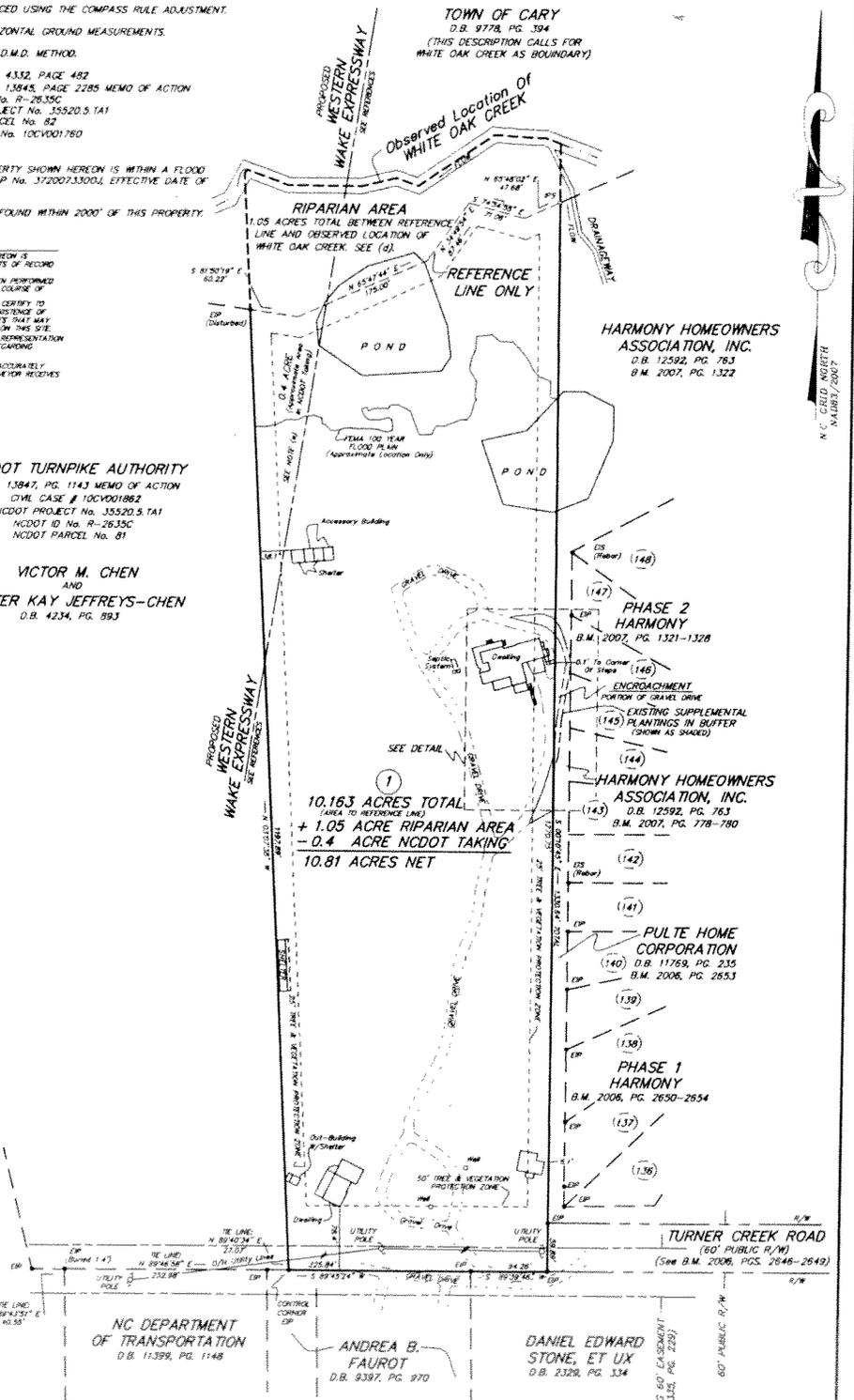
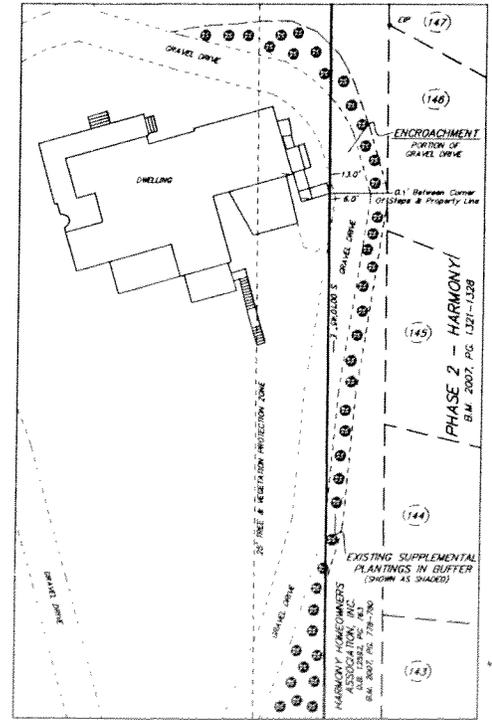
I, STALEY C. SMITH, do hereby certify that this plot was drawn under my supervision from an actual survey made under my supervision using references shown hereon; that the boundaries not surveyed are shown as broken lines plotted from information shown hereon; that the ratio of precision as calculated by latitudes and departures is 1: 25,828; that this plot was prepared in accordance with G.S. 47-30 as amended. Witness my original signature, license number and seal this 18TH day of MARCH, A.D., 2010.

This survey is of an existing parcel or parcels of land and does not create a new street or change an existing street.

Professional Land Surveyor
 L-3788
 License Number

NCDOT TURNPIKE AUTHORITY
 D.B. 13847, PG. 1143 MEMO OF ACTION
 CIVIL CASE # 10CV001862
 NCDOT PROJECT No. 35520.5.1A1
 NCDOT ID No. R-28336
 NCDOT PARCEL No. 81

VICTOR M. CHEN
 AND
 JENNIFER KAY JEFFREYS-CHEN
 D.B. 4234, PG. 893



10.163 ACRES TOTAL
 + 1.05 ACRE RIPARIAN AREA
 - 0.4 ACRE NCDOT TAKING
 10.81 ACRES NET

PRELIMINARY

THIS IS A PRELIMINARY DRAWING AND IS NOT TO BE USED AS A SURVEY OR TO TRANSFER ANY PROPERTY SHOWN HEREON



- LEGEND
- EP - Existing Iron Pipe
 - IPS - Iron Pipe Set
 - ECM - Existing Concrete Monument
 - CMC - Concrete Monument Set
 - ERR - Existing Railroad Spike
 - RRS - Railroad Spike Set
 - MP - Mathematical Point (Not Set)
 - MVS - Map Nail Set
 - U - Utility Pole
 - SS - Sanitary Sewer Manhole
 - SA - Street Address (Typical)
 - R - Total
 - R/W - Right Of Way

FILED FOR REGISTRATION
 DATE
 LAURA M. RIDDICK
 REGISTER OF DEEDS
 WAKE COUNTY
 BY
 ASST./DEPUTY
 TIME

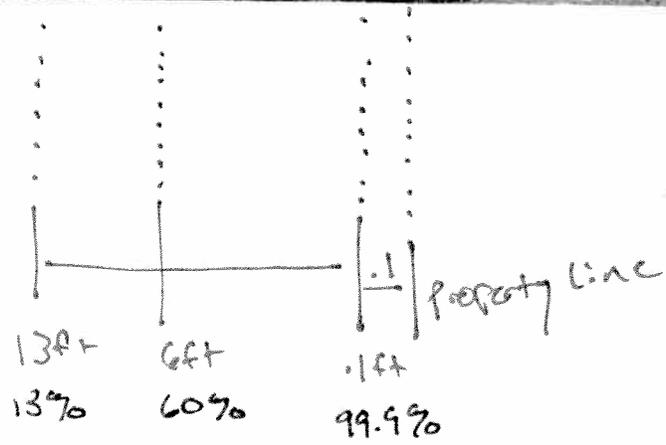
SURVEY FOR
WILLIAM L. JONES
 WHITE OAK TOWNSHIP, WAKE COUNTY, NORTH CAROLINA

LISTED OWNER
 WILLIAM L. JONES &
 GENE W. JONES
 7120 TURNER CREEK RD.
 CARY, N.C. 27519-5614
 P.I.N. 073301-47-5404

Smith and Smith
 surveyors
 FIRM LICENSE No. C-0155
 P.O. BOX 437
 APEL, N.C. 27508
 (919) 362-7111

DATE: JANUARY 07, 2010
 SCALE: 1" = 100'
 DRAWN BY: J.A.B.
 PROJECT NO.: 09-124

RECORDED IN BOOK OF MAPS 2010 PAGE





15 ft.

Approx.
2 ft of
garage

View From The Steps



View From The Steps (cont.)





ZONING HARDSHIP VARIANCE STATEMENT OF JUSTIFICATION

Submit required documentation to:

Wake County Planning, Development and Inspections
PO Box 550 Wake County Office Building
Raleigh, NC 27602-0550 336 Fayetteville Street Mall, Downtown Raleigh
Contact (919) 856-6335 for additional information.

For each of the required conclusions listed below, attach a statement that explains how any existing conditions, proposed development features, or other relevant facts would allow the Board of Adjustment to reach the required conclusion, and attach any additional documents or materials that provide supporting factual evidence. Listed under each required conclusion are related principles established by case law.

Important: You bear the burden of presenting sufficient factual evidence to support findings of fact that allow the Board to reasonably reach each of the required conclusions. If you fail to meet that burden, the Board has no choice but to deny the application.

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.**

Ex.: It is not sufficient that the regulation would make use of the property less profitable or marketable.
 - 1b. **The hardship results from application of the regulation to the property.**

Ex.: A hardship resulting from a characteristic of the property not affected by the regulation, or from application of a deed restriction, is not a relevant hardship.
 - 1c. **The hardship is one that affects the property directly.**

Ex.: The regulation's hindrance to providing a benefit to neighboring properties or to the public is not a relevant hardship.
 - 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.**

Ex.: The hardship may not be one the property owner inflicted on himself (e.g., been due to the owner's violation of the regulation) or could have avoided.
 - 1e. **The hardship is peculiar to the property.**

Ex.: The hardship must be due to conditions specific to the property, and not to conditions that are neighborhood-wide or widespread throughout the jurisdiction.
2. **The variance would be in harmony with the general purpose and intent of the Zoning Ordinance and preserve its spirit.**

Ex.: A variance may not permit the expansion or extension of a nonconforming use or feature (which the Zoning Ordinance intends to be made conforming or abandoned), and may not permit a land use or basic development intensity not already permitted (varying basic use and intensity regulations that define zoning districts may be done only through the rezoning or text amendment processes). The extent of a variance must be limited to the minimum necessary to alleviate the hardship.
3. **In the granting of the variance, the public safety and welfare would be assured and substantial justice done, both for the landowner 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.**

Ex.: A variance may not permit development that would be dangerous to neighbors, change the essential character of the neighborhood, or create additional difficulties re traffic, fire, water supply, sewerage, flooding, etc..
 - 3b. **The granting of the variance is necessary for the preservation and enjoyment of substantial property rights.**

Ex.: The harm to the property owner from denying the variance, however, must outweigh the harm to neighbors and the public interest from granting the variance.

Zoning Hardship Variance – Statement of Justification

1. Practical difficulties or unnecessary hardships would result from carrying out the strict letter of the regulation.

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

Strict compliance will not provide the property owner with no reasonable use but it will greatly hinder the owner's ability to farm the land in that a portion of his farm storage would be taken away.

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

The hardship is a direct result of the application of the regulation to the property. The hardship does not exist if the regulations with the traditional permit process and a 15-foot side setback is not strictly enforced.

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

The hardship of requiring a non-farm-exempt permit process for each structure that was built under farm-exempt status and the removal of the stairs and a portion of the garage will greatly affect the Jones ability to farm the property in the manner that they have operated for over 30 years. Mr. Jones would be left with no place to store his farm equipment and materials such as seeds, fertilizer and chemicals.

d. 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.

As evidenced by the attached farm-exemption approval for the dwelling and upon the advice of the county officer who issued the exemption, the property owners constructed improvements to the dwelling without seeking the permits necessary for non-exempt dwellings. The Jones have attempted to abide by the law and preserve the intentions of the Wake County UDO.

e. The hardship is peculiar to the property.

The hardship is peculiar to the property in that the dwelling that violates Section 5-11 of the Wake County UDO has remained under farm-exempt status since 2000. The land is also farm-exempt by the Department of Agriculture. Having the Planning Department consider the dwelling as not farm-exempt and thus requiring the Jones to meet the regulations of non-exempt structures will require the removal of the steps and a portion of the garage where the Jones store and

access their farm equipment. Not only would this be a monetary hardship, it would hinder their ability to properly farm the property.

2. The variance would be in harmony with the general purpose and intent of the Zoning Ordinance and preserve its spirit.

The Wake County Unified Development Ordinance requires a 15-foot side yard setback for all R-40W dwellings. It should be noted that the adjoining neighborhood created a 20-foot buffer of common space, as shown on a map recorded in Book of Maps 2007, Page 773 and Page 778, Wake County Registry, to accommodate their lands.

To supplement the 20-foot common space buffer and as a gesture of goodwill toward his neighbors, Mr. Jones planted over 1700 trees in the 25-foot tree and vegetation protection zone as shown on the attached Preliminary Survey for William L. Jones dated January 7, 2010 and in the 20-foot common space buffer, which serves as a sight and sound buffer between their property and the residents of the adjacent subdivision. Mr. Jones maintains a good relationship with his adjoining landowners and would seek to offer their testimony to this fact if needed. The purpose of this land has always been farming. See attached pictures showing the 20-foot common buffer, the 25-foot tree and vegetative protection zone and the berm separating the adjoining neighborhood from the Jones land.

We believe that allowing this variance will still maintain the spirit and intent of the Wake County Unified Development Ordinance.

3. In the granting of the variance, the public safety and welfare would be assured and substantial justice done, both for the landowner and the public at large.

- a. **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.**

No.

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

It is necessary for the Jones to continue to farm their land.