



ZONING HARDSHIP VARIANCE APPLICATION

File #
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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.

Unified Development 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- be specific):

Property owner requests a variance from the 30 foot rear yard setback in UDO Section 5-11-2 applicable to their property at 6704 Virgil Drive, in accordance with the property's R-80W zoning, in order to construct a modest size sunroom and deck adjacent to the rear of their home which will extend 15 and 20 feet respectively from the back of their modest homes.

Property

Parcel Identification Number: 1806388086

Address: 6704 Virgil Drive Raleigh NC 27614

Location: East side of Virgil (street), at/between Jamies Drive (street) and Sun Drive (street)

Total site area in square feet and acres: 41,365 square feet .95 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

How is this proposed use a public necessity? Owners need a more accessible entry point to their home than existing conditions based on sloping topography and substantial stair case entry for existing main access to their home. Owners advancing age necessitates improvements for better and more safe and convenient access.
What is impact on surrounding neighborhood and adjacent properties?

Property Owner

Name: Luke Daniel Wilkins and Mary Ellen Toft

Address: 6704 Virgil Drive

City: Raleigh State: NC Zip Code: 27614

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

Telephone Number: 919.848.1025
919.801.0065

Applicant (person to whom all correspondence will be sent)

Name: Benjamin R. Kuhn
Address: 2840 Plaza Place, Ste 400
City: Raleigh State: NC Zip Code: 27612
E-mail Address: bkuhn@rl-law.com Fax: 919.783.8991
Telephone Number: 919.881.2201 Relationship to Owner: Owner's Attorney

Extent of Proposed Variance (Describe the extent to which the regulation is proposed to be varied.)
Attach additional sheet as necessary.

See attached Statement.

A variance is requested for (i) up to 13 feet reducing the 30' rear yard setback to 17' as to a proposed sunroom, and (ii) up to 17 feet reducing the 30' rear yard setback to 13 feet from the rear property line of Lot 32 based on the 1970 plat (Book of Maps 1970, Page 187) as to the proposed deck.

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: _____ Date: _____

Signature: _____ Date: _____

Signature: _____ Date: _____

Land use professionals (architects, engineers, planners, landscape architects, etc.), as well as employees of corporate or municipal applicants, may testify at quasi-judicial proceedings about factual matters in support of an application, petition or appeal. However, they MAY NOT examine or cross-examine witnesses, make legal arguments as to why an application, petition or appeal should be granted, or otherwise advocate for results on behalf of another individual or entity at a quasi-judicial proceeding. These functions can ONLY be performed at a quasi-judicial proceeding by an attorney licensed to practice law in North Carolina. Therefore, it is **strongly recommended** that unless you are an individual representing yourself in a quasi-judicial proceeding, you have an attorney present to present your case.

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: _____ Date: _____

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.

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Signature: Mary Ellen Tjot Date: 11-14-14

Signature: Lake Daniel Wilkins Date: 11-14-16

Signature: _____ Date: _____

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Signature: Brian R. Kuhn Date: 11/14/2016

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Extent of Proposed Variance

Mr. Wilkins acquired the property by Deed in December 1981 (a copy of the Deed is attached as Exhibit A). The property at that time was shown as Lot 32 on a plat of the Bayleaf Ridge Subdivision. A copy of the plat showing said lot 32 is attached hereto as Exhibit B (Book of Maps 1970, Page 187).

When Mr. Wilkins and Ms. Taft contacted the county about building a modest home on Lot 32 in 1983, county officials advised then that they needed to place the home towards the rear of Lot 32 so the property could accommodate a septic system and repair area. Accordingly, they located the home to the rear of the lot as directed by Wake County officials at the time.

Subsequently, in February 1988, and due to the limited area to the rear of their home, Mr. Wilkins and Ms. Taft acquired by deed a 10' wide strip of property that had previously been a part of Lot 33 that is located behind lot 32. The owner of Lot 33 at the time was Mr. Wilkins' Mother, who conveyed a 10' strip of Lot 33 to Mr. Wilkins and Ms. Taft by Deed recorded in Book 4198, Page 173 (a copy of which is attached as Exhibit C). Mr. Wilkins' mother desired to convey a portion of her property to her son so that in the future, should Mr. Wilkins need or desire to add on to the home, they would have more land to the rear of the home to do so (given that there was not much space to the rear of the home on Lot 32 based on Mr. Wilkins heeding county officials request and instructions that he build the home in the location where it is currently situated so as to facilitate placement of a septic system and repair area).

Lot 32 and the 10' strip of property located behind it, however, have not been recombined into one single lot. Accordingly, though both are under single ownership they continue to remain as two separate tracts based on the 1970 plat and the February 1988 Deed for the 10' strip of land.

If Lot 32 and the 10' strip of land had been recombined the variance may not be needed for all but a foot or two of width of the 20 foot wide deck (as the 30' rear yard setback would be pushed 10 feet further behind the home). The 15' sunroom would not require a variance if the 10' strip of land had been recombined with Lot 32. However, because these two separate tracts have never been recombined, the 30' rear yard setback is (according to County staff) required to be measured from the original boundary of the rear lot line of Lot 32 as shown on the 1970 plat. See Exhibit B. This results in the 30 yard setback line being located approximately 7-8 feet from the rear of the existing home. See Exhibit D. If the 10' strip had been recombined with Lot 32, the 30' rear yard setback line would be located about 17-18 feet from the rear of the existing home (the sunroom would not require a variance but the deck

would require a small variance of about 2-3 feet so as to accommodate the 20 foot depth of the deck from the rear of the home).

The modest house at 6704 Virgil Drive sits on a lot with substantial topography (rising approximately 32 feet in elevation from the front of the lot to the rear). See topo map attached hereto as Exhibit E and Site Pictures attached hereto as Exhibit F. The existing access to the home is via the front door and a series of stairs which are approximately 15' in height. Mr. Wilkins and Ms. Taft are advancing in age and must traverse these stairs for access to their home, which is not ideal and becoming unsafe for them. They desire to have the ability to access their home towards the rear and side where they can create an entry with the proposed new construction of the deck and sunroom such that they will have to climb only a few stairs (if any) to gain entry to their home. See pictures of the home on Lot 32 showing front stair case and access to home, and the rear area of the home where a deck and sunroom is proposed that will ease access issues for Mr. Wilkins and Ms. Taft.

Based on the above, including (i) county staff's direction in years past as to directing them to place their home far to the rear of the lot, (ii) the county's zoning of the land to R-80W, (iii) the existing septic and repair field, (iv) the substantial topography of the Lot, as well as (v) the separate legal existence of Lot 32 and the 10 foot strip of land at the rear all of which Mr. Wilkins and Ms. Taft own, unnecessary hardship results from carrying out the strict letter of the zoning/unified development ordinance in that they are prohibited from being able to reasonably add to the rear of their home so as to make access safer and more convenient. The only way to have safe and convenient access to their home on Lot 32, and be in compliance with existing setbacks under applicable zoning regulations, would be to build a new foundation on the lot further from the rear lot line and move the house at great trouble, time, and expense.

The hardship outlined herein results from conditions that are peculiar to the property, including (a) the location, (b) size, and (c) topography (including significant change in topography limiting placement of septic and repair field resulting in only area where addition can be located is the rear of the existing home).

The hardship did not result from the actions of the property owner. Indeed, county staff instructed Mr. Wilkins to place the home to the rear of the lot in a manner that placed it close to the rear yard setback based on zoning regulations that were adopted subsequently by the County. Further, Mr. Wilkins and Ms. Taft did not rezone their property R-80W to make their lot non-conforming. The County did.

The limited nature of the requested variance, particularly in light of the common ownership of Lot 32, and the 10' strip of land directly to the rear (which was acquired for the very purpose of

making additional land in the rear of Lot 32 available for a future addition), demonstrates that it is consistent with the spirit, purpose, and intent of the ordinance. The owner of Lot 33 to the rear does not object to the variance request and has signed a statement in support which will be presented at the hearing before the Board of Commissioners.

Based on the above, Mr. Wilkins and Ms. Taft respectfully request that the Board approve a variance as follows:

1. A variance of (i) up to 13 feet reducing the rear yard setback to 17 feet from the rear property line of Lot 32 based on the 1970 plat (Book of Maps 1970, Page 187) as to the proposed sunroom, and (ii) up to 17 feet reducing the rear yard setback to 13 feet from the rear property line of Lot 32 based on the 1970 plat (Book of Maps 1970, Page 187) as to the proposed deck. See Exhibit D attached hereto.

