



Board of Adjustment
6:30 PM **Monday, October 2, 2023**

Regular Meeting
Holly Springs Town Hall Council Chambers
128 S. Main Street, 2nd Floor

Agenda

1. Call to Order

2. Roll Call

3. Pledge of Allegiance

4. Invocation

5. Agenda Adjustment

6. Minutes

a. September 6, 2023

7. Variances

a. 305 Obsidian Dr. Variance 23-VAR-07 - Quasi-Judicial Public Hearing

b. 200 Magnolia Meadow Way Variance 23-VAR-08 - Quasi-Judicial Public Hearing

8. Other Business

9. Adjournment

In accordance with ADA regulations please contact the Town Clerk's office at least 48 hours before the meeting to request an auxiliary aid or service needed to participate in this meeting:

linda.mckinney@hollyspringsnc.us 919-557-3900



Holly Springs Board of Adjustment

Board of Adjustment Agenda Cover Sheet

Agenda Item#: 6.a.

Public Hearings

Title: September 6, 2023

Strategic Priority Area:

Staff Resource:

Action(s):

Explanation:

Background:

Funding Source(s):

Attachment(s):

1. 9.6.23 BOA Draft Minutes

Town of Holly Springs
BOARD OF ADJUSTMENT MEETING MINUTES
Wednesday, September 6, 2023 – 6:30 p.m.

Agenda Item #1, 2, 3 & 4:

The Board of Adjustment of the Town of Holly Springs met for their regularly scheduled meeting on September 6, 2023 in the Holleman Room, 128 South Main Street. At 6:30p after determining a quorum was present, Chair Loughridge called the meeting to order.

Staff Members Present: Chris Hills, Development Services Director
Elizabeth Goodson, Land Development Manager
Sean Ryan, Planning Manager
John Schifano, Town Attorney
Jay Osborne, Assistant Town Attorney
Mackenzie Fretz, Board of Adjustment Clerk

The Board completed roll call.

Members Present: Cody Loughridge, Chair
Jayson Greene, Vice Chair
Ben Copeland
Paul Kuhn

Alternate Members Present: (Non-Voting)
Herman Goldstein
Chanel Wilkins
Yan Higgins

Members Absent: Joe Cimino

Agenda Item #5: Agenda Adjustment

There was no agenda adjustment.

Agenda Item #6: Minutes

a. March 6, 2023 Minutes

Motion:
Motion to approve the March 6, 2023 Minutes.

Motion by: Cody Loughridge
Second by: Jayson Greene

Action: The Board of Adjustment voted in favor of the Motion. (7-0)

Agenda Item #7: Other Business

a. Quasi-Judicial Training

Staff went over Quasi-Judicial training as the purpose of the meeting.

Agenda Item #9: Adjournment

Motion:

Motion to adjourn.

Motion by: Cody Loughridge

Second by: Jayson Greene

Action: The Board of Adjustment voted in favor of the Motion. (7-0)

Time: 8:04 PM

Mackenzie Fretz
Board of Adjustment Clerk



Holly Springs Board of Adjustment

Board of Adjustment Agenda Cover Sheet

Agenda Item#: 7.a.

Public Hearings

Title: 305 Obsidian Dr. Variance 23-VAR-07 - Quasi-Judicial Public Hearing

Strategic Priority Area:

Staff Resource:

Action(s):

- Conduct Quasi-Judicial Public Hearing.
- Make and accept the Findings of Fact for consideration of and approve/deny variance.

Explanation:

- The Town has received a request for a Variance from Unified Development Ordinance (UDO) Section 5.6.2 Maintenance (Landscaping) to allow for the reduction of the perimeter buffer from 20 feet to 6 feet.

Background:

- The subject property is zoned SR-CU Suburban Residential – Conditional Use.

Funding Source(s):

N/A

Attachment(s):

1. 23VAR07__305Obsidian_StaffReport_100223
2. 23VAR07_305Obsidian_Application_FindingsofFact_100223
3. 23VAR07_305Obsidian_SitePlan_100223



Development Services

Staff Report

Request for Variance 305 Obsidian Drive 23-VAR-07

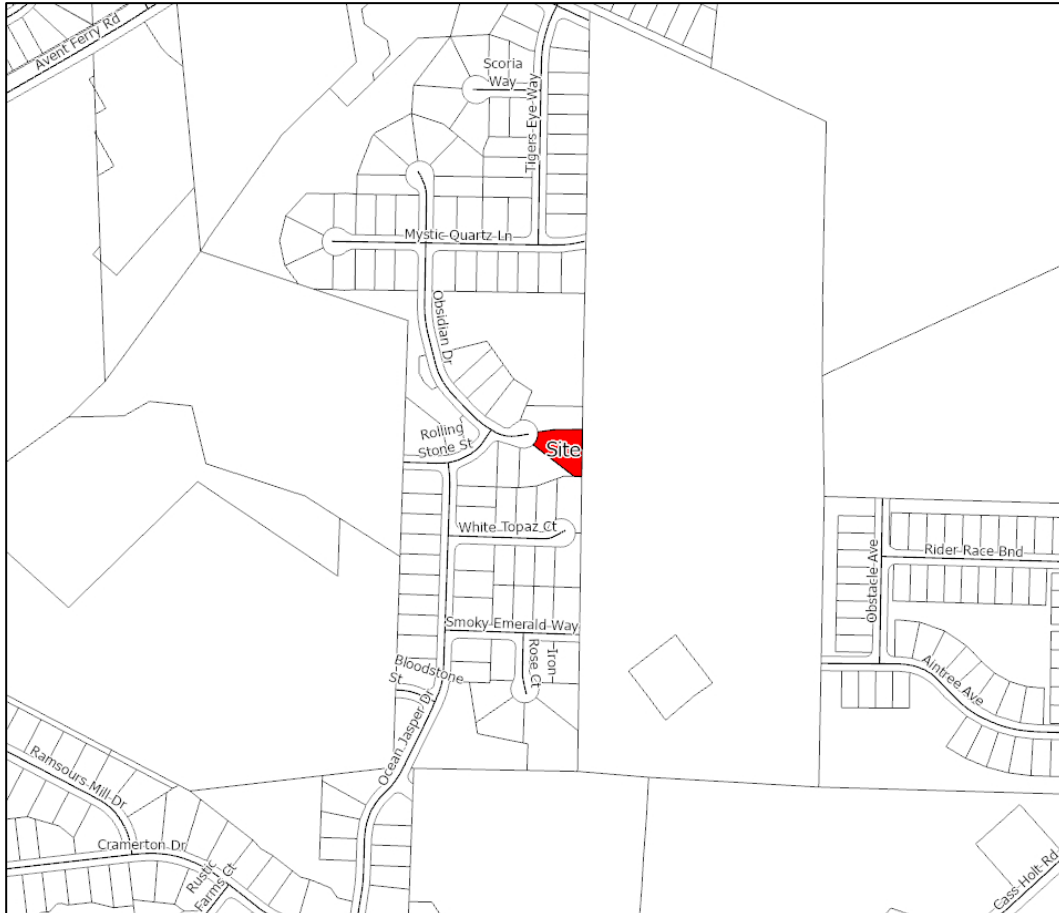
Petitioner:

Jerome Gantt II
305 Obsidian Dr.
Holly Springs, NC 27540

Owner:

Jerome Gantt II & Paquita Gantt
305 Obsidian Dr.
Holly Springs, NC 27540

Location: 305 Obsidian Dr.



☒ Within Corporate Limits of Holly Springs ☐ Within Holly Springs ETJ ☐ Annexation Pending

Staff Contacts: Conor Ryan, Planner I

Attachments: Variance of Development Standards Petition and Supporting Materials



Parcel Information			
Owner	Parcel #	Zoning	Area
Jerome Gantt II and Paquita Gantt	0638905807	SR-CU Suburban Residential – Conditional Use	.45 acres
Total			.45 Acres

Adjacent Property Site Data		
	Zoning	Existing Land Use
Subject Property	SR-CU Suburban Residential – Conditional Use	Single-family residential
North	SR-CU Suburban Residential – Conditional Use	Single-family residential
South	SR-CU Suburban Residential – Conditional Use	Single-family Residential
East	RR Rural Residential	Forestry
West	SR-CU Suburban Residential – Conditional Use	Single-family Residential

Property History

Rezoning History

Rezoning Number: 07-REZ-03
 Original Zoning: R-30
 Proposed Zoning: R-15 CU
 Approved by Town Council on: 3/20/2007

Development Plan History

Project Number: 07-DP-10 (Now 17-MAS-01)
 Description: Development Plan for Stonemont Subdivision
 Approved by Town Council on: 8/21/2007.

Rezoning Number: 11-REZ-07
 Original Zoning: R-15 CU
 Proposed Zoning: R-10 CU (changed to SR-CU with adoption of new UDO)
 Approved by Town Council on: 10/11/2011

Variance Request

Variance 23-VAR-07 requested by Jerome Gantt II to allow for a Variance from Unified Development Ordinance **Section 5.6.2 Maintenance** to allow for the reduction of the perimeter buffer from 20 feet to 6 feet. The property is located at 305 Obsidian Dr. and is further described with the following Wake County PIN: 0638905807 REID: 0465077.

The applicant has noted that the requested reduction in buffer width will be limited to the area of construction for a firepit and seating.

UDO Requirements:

Section 5.6.2 Maintenance

- A. The owner shall be responsible for:



1. The maintenance of all required landscaping by keeping lawns mowed, all plants maintained as disease-free, all planting beds groomed and kept weed free (except in areas of preserved existing natural vegetation (i.e., thickets), and kept free from trash, debris and other objectionable materials;
 2. The replacement of any required planting, which is removed or dies after the date of planting. Such replacement shall occur during the next planting season; and,
 3. The replacement of any tree in a tree preservation area which is removed or dies after the date of approval of a Preservation Landscape Plan. Such replacement shall occur during the next planting season.
 4. Maintenance that damages plant material is prohibited.
 5. Tree topping is prohibited.
- B. Failure to maintain required landscape areas shall constitute noncompliance of this UDO enforceable under the provisions of Chapter 12 – Noncompliance & Enforcement.

Property Owner Notification

All property owner notifications have been made in accordance with North Carolina General Statutes and the Unified Development Ordinance.

1. A notice of the public hearing was mailed to all property owners within 500 feet of the subject property.
2. A notice of public hearing was posted on the subject property.

Background Information

- The subject property is zoned SR-CU Suburban Residential – Conditional Use.
- UDO Section 5.6.2 (Maintenance) holds property owners responsible for the maintenance of all required landscaping areas, which includes Perimeter Buffers. Perimeter Buffers are defined as “the planted area required between land uses to eliminate or minimize conflicts consisting of trees and shrubs, groundcover, or turf, which borders a project area on all sides.”
- The Stonemont Subdivision contains a perimeter buffer along the outer perimeter of the subdivision and located on all perimeter lots.
- The subject property has a single-family detached dwelling on it.
- UDO Chapter 5 provides the intent of landscaping requirements:
 Intent. Landscaping is an essential element of the site design process and is an important feature in promoting the public health, safety, comfort, convenience and general welfare of the Town and its Extraterritorial Jurisdiction. Landscaping is intended to:
 - A. Mitigate incompatibilities between adjacent land uses;
 - B. Reduce the negative impacts of higher intensity land uses on lesser intensity adjacent land uses;
 - C. Provide a critical visual and noise buffering effect between higher intensity districts and lower intensity districts;
 - D. Increase tree canopy in residential use districts;
 - E. Lessen the impact of development on the environment by reducing glare and heat buildup;
 - F. Promote the creation of landscape islands within vehicular areas to enhance pedestrian safety; and,

- G. Break up large expanses of pavement so as to reduce impervious surface area, storm water run-off and the level of pollutants from nonpoint sources.

Board of Adjustment Findings

NOTE: Board of Adjustment Members should use the following area to make notes on evidence presented related to each of the required Findings as it is presented during public hearing.

A variance may be granted by the Board if competent and substantial evidence is presented by the applicant which persuades the Board to either reach each of the following conclusions independently or be reasonably able to meet these conclusions upon implementation of conditions by the Board:

- 1.) 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 Response:

The completion of this project requires that construction is at least 25ft from the primary structure on the property. There is no location on my property that is conducive to our project due to the topography of our lot without posing a safety risk.

- 2.) 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 hardships resulting from conditions that are common to the neighborhood or the general public, may not be the basis for granting a variance.**

Applicant Response:

The majority of the rear of my property is a large steep hill that cannot be cut into safely. A large area of the portion that is useable includes 20' of a perimeter buffer that runs along the full breadth of the rear of my property. Another area of the portion that is useable includes 20' public utility easement that extends from the front to rear of my property on the south side of my property.

- 3.) 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 Response:

No adjustments made to this property by the owner of this property created this situation.

- 4.) 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 Response:

The request will not impact the ordinance as the project will not result in a change to the natural coverage/separation of the existing and adjacent property.



In granting a variance, the Board shall have the authority to impose such conditions as deemed necessary by the Board to protect the interests of the surrounding area, preserve the spirit and intent of the UDO, and to promote the health, safety, morals, comfort, convenience and welfare of person residing or working in or adjacent to the property. Such conditions can be the following non exclusive list of examples:

- 1. Limit the variance for specific duration.*
- 2. Require the provision of additional landscaping, screening, fencing or other methods to allow the varied property to harmonize with adjacent properties.*
- 3. Require the applicant to take steps towards the elimination or reduction of noise, light, dust, vibration, or other possible nuisance problems.*
- 4. Require more stringent signage limitations than provided under the UDO.*
- 5. Limit the Hours of operation of a non-residential site.*

Board of Adjustment Motion

Based upon the Board's Findings of Fact, I move to **approve/deny** Variance 23-VAR-07 requested by Jerome Gantt II to allow for a Variance 23-VAR-07 requested by Jerome Gantt II to allow for a Variance from Unified Development Ordinance Section 5.6.2 Maintenance to allow for the reduction of the perimeter buffer from 20 feet to 6 feet only in the area shown in the attached site plan to accommodate a concrete pad for a fire pit and 10' x 2' seating area. The property is located at 305 Obsidian Dr. and is further described with the following Wake County PIN: 0638905807 REID: 0465077.

In addition, the following conditions must be satisfied (state conditions).

Agenda Item Completeness Checklist		
Staff Member	Approved for Distribution	
	Yes	Initials
Planner	X	CR
Development Review Engineer		
Parks Planner		
Planning Manager / Division Manager / Director/Sr. Planner	X	CC



Holly Springs Board of Adjustment Findings of Fact

1. The application for a variance was filed by all owners of the land affected by the Variance.
2. The property is described as follows:

Site Address: 305 Obsidian Dr.

PIN: 0638905807

Total Lot Size: .45 acres

Current Zoning District: SR-CU Suburban Residential – Conditional Use
3. The property is improved with a detached single-family dwelling unit.
4. The UDO requires landscaping around all new development and all additions to existing development in order to mitigate incompatibilities between adjacent land uses; reduce the negative impacts of higher intensity land uses on lesser intensity adjacent land uses; provide a critical visual and noise buffering effect between higher intensity districts and lower intensity districts; increase tree canopy in residential use districts; lessen the impact of development on the environment by reducing glare and heat buildup; promote the creation of landscape islands within vehicular areas to enhance pedestrian safety; and break up large expanses of pavement so as to reduce impervious surface area, storm water run-off and the level of pollutants from nonpoint sources.
5. The UDO holds property owners responsible for the maintenance of all required landscaping, which includes perimeter buffers.
6. The requested variance is to allow for the reduction of the perimeter buffer from 20 feet to 6 feet to accommodate a concrete pad for a fire pit and 10' x 2' seating area.
7. The applicant has specified that the reduction in buffer size will be limited to the area of construction for the firepit and seating as shown on the attached site plan.

8. There are no specific zoning conditions or conditions of approval that are part of a special use permit, Planned Unit Development or Conditional Zoning District that will be varied by this request.
9. A plot plan/survey of depicting the variance has been submitted by the applicant.
10. The Variance application and other records pertaining to the Variance request are part of the record.
11. Notice of the Quasi-Judicial Hearing has been provided as required by NCGS and the Town of Holly Springs Unified Development Ordinance.

Additional Findings of the Board of Adjustment

BOARD OF ADJUSTMENT HEARING WORKSHEET

Date of
Hearing: _____
Case Number: _____

BOA Member: _____

Finding of Fact	Fact	In Petitioner's Application	From Staff Report	Testimony at Hearing	Proven by Competent & Material Evidence?
Ex.	The property is located at 123 Main Street	X	X	X	X
1					
2					
3					
4					
5					
6					
7					

8					
9					
10					
11					
12					
13					

BOARD OF ADJUSTMENT REMINDERS

- The board can take issue with the facts that are presented by the applicant and find that the facts are NOT “competent,” “material,” or “substantial” and determine that the applicant has failed to establish a prima facie case (ie, the application fails)
 - **Material Evidence**- is recognized to mean “evidence having some logical connection with the facts of consequence or issues.”
 - **Substantial Evidence**- means such “relevant evidence as a reasonable mind might accept as adequate to support a conclusion.”—“It must do more than create the suspicion of the existence of the fact to be established... It must be enough to justify, if the trial were to a jury, a refusal to direct a verdict when the conclusion sought to be drawn from it is one of fact for the jury. Substantial evidence depends on the burden of proof. In a criminal trial, the evidence has to be so substantial as to overcome “reasonable doubt.” However, in civil matters (such as variances), it only needs to overcome a “preponderance of the evidence” standard. It only has to tip the scale of justice a little bit- not all the way as in a criminal matter.
 - **Competent evidence** is evidence that the fact finder determines has a sufficient indicia of reliability (ie, not hearsay or general nonsense) but evidence that as a tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.
 - Additionally, evidence that is deemed to be not competent and which should not be considered by the Board includes lay opinion testimony of: (1) how the proposed variance would affect the value of surrounding properties; (2) that the proposed variance would pose a danger to public safety as a result of increased traffic; and (3) matters only an expert would generally be qualified to testify about. (from 160A-393(k)(3)).
- Use of Expert Testimony: An expert is generally someone smarter than the fact-finder on a given subject (typically licensed in their field). In a judicial proceeding, they are the only ones where their “opinion” is competent, material, and substantial evidence. An example would be a licensed real estate appraiser offering evidence of an opinion of an increase or decrease in property value, or a land planner stating that they are familiar with the “spirit and intent” of the UDO and in their professional opinion, the project is in keeping with the spirit and intent. Expert witness testimony may be challenged, however unless some fault is determined (like they based their opinion on bad data or hearsay), typically you need another expert to offer an expert opinion to contradict what the first expert said. (Exception- the courts have consistently held that a property owner may give their opinion as to the value of their own property, even if they are not a licensed appraiser, however they are often trying to testify as to what the *future* value of their land would be if a project went through, and they are not likely competent to give evidence as to their properties future value.
- Board members sitting in a quasi-judicial capacity must base their decision to grant or deny a variance on objective factors, which are based upon the evidence presented, and not upon their subjective preferences or ideas.

- Board members should not accept outside evidence (conversations outside of sworn testimony, site visits, emails, unsworn documents) and should only rely on facts offered at the hearing, under oath.
- The board may not deny a permit in their unguided discretion or because, in their view, it would adversely affect the public interest.—“The denial of the conditional use permit may not be based on conclusions which are speculative, sentimental, personal, vague or merely an excuse to prohibit the requested use.”
- The Board sitting in a quasi-judicial capacity are performing as judges and must be neutral, impartial, and base their decisions solely upon the evidence submitted.—“Neutrality and the appearance of neutrality are equally critical in maintaining the integrity of our judicial and quasi-judicial processes”
- “Speculative assertions or mere expression of opinion about the possible effects of granting a permit are insufficient to support the findings of a quasi-judicial body”
- In quasi-judicial proceedings, no board or council member should appear to be an advocate for not adopt an adversarial position to a party, bring in extraneous or incompetent evidence, or rely upon ex parte communications (out of hearing) when making their decision.



VARIANCE OF DEVELOPMENT STANDARDS APPLICATION

DPM Appendix #A.16 Supplement 20 February 2023

PETITION CONTACT INFORMATION <i>(Attach additional sheets if needed)</i>	
Applicant and Financially Responsible Party will need to register for an account on the Portal	
Project Applicant Check One: ☒ Owner ☐ Owner's Agent ☐ Design Professional ☐ Developer ☐ Other	
Name: JEROME GANTT	Company:
Mailing Address: 305 OBSIDIAN DR	
City, State, Zip: HOLLY SPRINGS, NC 27540	
Telephone: 919-270-1197	E-Mail: NCGANTTPROPERTIES@GMAIL.COM
REQUIRED: Property Owner(s) if different from Applicant/Contact <i>(Attach additional sheets if needed)</i>	
Name: PAQUITA GANTT	Company:
Mailing Address: 305 OBSIDIAN DR	
City, State, Zip: HOLLY SPRINGS, NC 27540	
Telephone: 919-538-1512	E-Mail: PAQUITAGANTT@GMAIL.COM

PROJECT INFORMATION	
Project Name	FIREPIT PAD INSTALLATION
Project Number	23-VAR-07/PLVAR202300198
Project Location Use street address. If none, use closest intersection	305 OBSIDIAN DR; HOLLY SPRINGS, NC 2750 ☒ Within Corporate Limits ☐ Within Holly Springs ETJ ☐ Pending Annexation
Shopping Center/Lot #	LOT 90
PUD/Development	STONEMONT
PIN(s)	0638905807
Project Acreage	462 sqft
Current Zoning	SR-CU
Sketch Plan Held:	N/A

VARIANCE REQUEST (please be specific)	
UDO Section No:	5.6.2
Section Title:	MAINTENANCE
Specific Vested Rights Request <i>(Attach additional sheets if needed)</i> : I would like to request that the current 20' perimeter buffer be reduced to 6' to accommodate a 12' radius concrete pad for a fire pit and 10' x 2' concrete seating area. The requested reduction will be limited to the proposed area for the firepit and seating area.	



VARIANCE OF DEVELOPMENT STANDARDS APPLICATION

DPM Appendix #A.16 Supplement 20 February 2023

FINDINGS OF FACT

A petition for Variance of Development Standards may only be approved upon the presentation of sufficient evidence. Please include as much detailed information or unique conditions that would enable the Board of Adjustment to make a written determination. Use additional sheets if necessary.

1) 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.

The completion of this project requires that construction is at least 25ft from the primary structure on the property. There is no location on my property that is conducive to our project due to the topography of our lot without posing a safety risk.

2) 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 hardships resulting from conditions that are common to the neighborhood or the general public, may not be the basis for granting a variance.

The majority of the rear of my property is a large steep hill that cannot be cut into safely. A large area of the portion that is useable includes 20' of a perimeter buffer that runs along the full breadth of the rear of my property. Another area of the portion that is useable includes 20' public utility easement that extends from the front to rear of my property on the south side of my property.

3) 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.

No adjustments made to this property by the owner of this property created this situation.

4) 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.

The request will not impact the ordinance as the project will not result in a change to the natural coverage/separation of the existing and adjacent property.

CERTIFICATE OF COMPLETION

I certify that all information presented in this petition is accurate to the best of my knowledge and belief. Further, I grant permission for members of the Town Council and Town Staff to visit the site in question for informational, advertisement, and inspection needs.

Signature of Applicant:

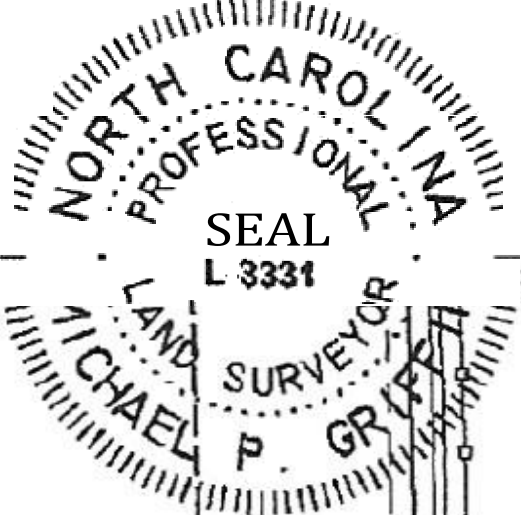
Date: 19 Sep 2023

Signature of Owner:

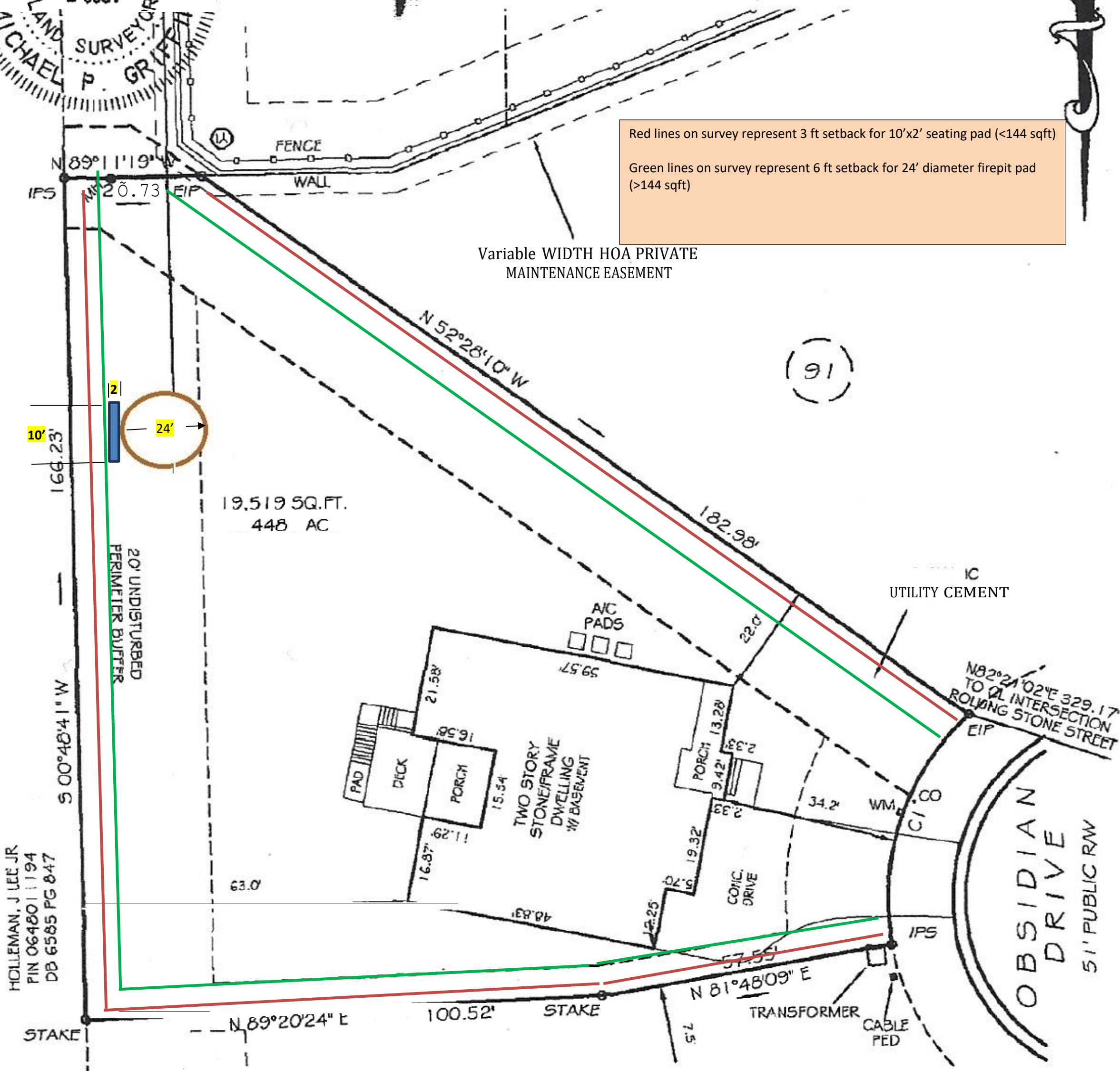
Date: 9/19/23

4 MICHAEL P. GRIFFIN , certify that under my direction and on an actual field survey; that the error of closure of the survey as calculated by coordinates is 1: 10,000+ ; that the area shown hereon was calculated by coordinates. I have my hand and seal this 28TH

WAKE CO. REGISTRY
BM 2019 PGS 350-353



Michael P. Griffin



Red lines on survey represent 3 ft setback for 10'x2' seating pad (<144 sqft)

Green lines on survey represent 6 ft setback for 24' diameter firepit pad (>144 sqft)

Variable WIDTH HOA PRIVATE
MAINTENANCE EASEMENT

19,519 SQ. FT.
448 AC

UTILITY CEMENT

N 82° 24' 02" E 329.17
TO OL INTERSECTION
ROLLING STONE STREET

OBSIDIAN
DRIVE
51' PUBLIC RW

DRIVE & WALKS	1020 SQ. FT.
REAR PORCH	175 SQ. FT.
AC PADS	27 SQ. FT.
PAD	30 SQ. FT.
TOTAL	4085 SQ. FT.
ALLOWABLE	4750 SQ. FT.

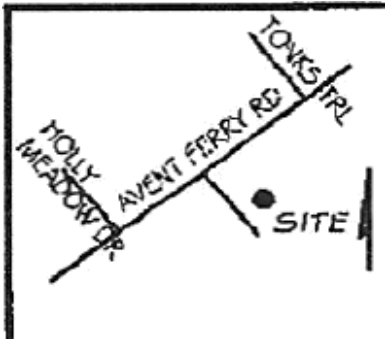
ZOUING &-10
SETBACKS

FRONT	20'
REAR	25'
SIDE	6'

THIS PROPERTY IS NOT LOCATED
IN THE 100 YEAR FLOOD PLANE.

LEGEND

EIP	EXISTING IRON PIPE	KB	FLARED END SECTION
IF	IRON PIPE KEY	WTV	WATER METER
e»	RIGHT OF WAY	CO	CLEAN OUT
XI	NOW OR FORMERLY	FM	FIRE HYDRANT
EIS	EXISTING IRON STAKE	MM	MAN HOLE



GRIFFIN LAND SURVEYING, INC.

P.O. BOX 148
FLOYD COUNTY, NC 27520
(919) 567-1963

DRAWN BY KDF

DATE 10 A 20

CHECKED BY B7 MPO

SCALE 1" = 30'

SURVEY FOR
**PAQUITA &
JEROME GANTT II**
STONEMONT

LOT 90

306 OBSIDIAN DRIVE
HOLLY SPRINGS, N.C.

WAKE COUNTY HOLLY SPRINGS TOWNSHIP



Holly Springs Board of Adjustment

Board of Adjustment Agenda Cover Sheet

Agenda Item#: 7.b.

Public Hearings

Title: 200 Magnolia Meadow Way Variance 23-VAR-08 - Quasi-Judicial Public Hearing

Strategic Priority Area:

Staff Resource:

Action(s):

- Conduct Quasi-Judicial Public Hearing.
- Make and accept Findings of Fact for consideration of and to approve/deny variance.

Explanation:

- The Town has received a request for a Variance from Unified Development Ordinance (UDO) Section 5.6.2 Maintenance (Landscaping) to allow for the reduction of the perimeter buffer from 25 feet to 6 feet.

Background:

- The subject property is zoned SR Suburban Residential.

Funding Source(s):

N/A

Attachment(s):

1. 23VAR08_200MagnoliaMeadow_StaffReport_100223
2. 23VAR08_200MagnoliaMeadow_Application_100223
3. 23VAR08_200MagnoliaMeadow_FindingsofFact1_100223
4. 23VAR08_200MagnoliaMeadow_FindingsofFact2_100223
5. 23VAR08_200MagnoliaMeadow_SitePlan_100223



Development Services

Staff Report

Request for Variance 200 Magnolia Meadow Way 23-VAR-08

Petitioner:

Gina Farrell
200 Magnolia Meadow Way
Holly Springs, NC 27540

Owner:

Gina & Peter Farrell
200 Magnolia Meadow Way
Holly Springs, NC 27540

Location: 200 Magnolia Meadow Way



☒ Within Corporate Limits of Holly Springs ☐ Within Holly Springs ETJ ☐ Annexation Pending

Staff Contacts: Conor Ryan, Planner I

Attachments: Variance of Development Standards Petition and Supporting Materials



Parcel Information			
Owner	Parcel #	Zoning	Area
Peter & Gina Farrell	0648087923	SR Suburban Residential	.24 acres
Total			.24 Acres

Adjacent Property Site Data		
	Zoning	Existing Land Use
Subject Property	SR Suburban Residential	Single-family Residential
North	SR Suburban Residential	Vacant
South	SR Suburban Residential	Single-family Residential
East	SR Suburban Residential	Single-family Residential
West	SR Suburban Residential	Single-family Residential

Property History

Subdivision History

Project Number: 94-S-05
Description: Subdivision Plan for Avent Ferry Road Subdivision
Approved by Town Council on: 4/26/1994

Subdivision History

Project Number: 99-S-04-A02
Description: Amendment to Holly Glen Master Plan for Phase 9
Approved by Town Council on: 6/1/1999

Variance Request

Variance 23-VAR-08 requested by Gina Farrell to allow for Variance from Unified Development Ordinance **Section 5.6.2 Maintenance** to reduce the buffer from 25 feet to 6 feet. The property is located at 200 Magnolia Meadow Way and is further described with the following Wake County PIN: 0648087923 REID: 0358720.

The buffer reduction will only impact the area proposed for the shed placement.

UDO Requirements:

Section 5.6.2 Maintenance

- A. The owner shall be responsible for:
 1. The maintenance of all required landscaping by keeping lawns mowed, all plants maintained as disease-free, all planting beds groomed and kept weed free (except in areas of preserved existing natural vegetation (i.e., thickets), and kept free from trash, debris and other objectionable materials;
 2. The replacement of any required planting, which is removed or dies after the date of planting. Such replacement shall occur during the next planting season; and,
 3. The replacement of any tree in a tree preservation area which is removed or dies after the date of approval of a Preservation Landscape Plan. Such replacement shall occur during the next planting season.
 4. Maintenance that damages plant material is prohibited.
 5. Tree topping is prohibited.
- B. Failure to maintain required landscape areas shall constitute noncompliance of this UDO enforceable under the provisions of Chapter 12 – Noncompliance & Enforcement.



Property Owner Notification

All property owner notifications have been made in accordance with North Carolina General Statutes and the Unified Development Ordinance.

1. A notice of the public hearing was mailed to all property owners within 500 feet of the subject property.
2. A notice of public hearing was posted on the subject property.

Background Information

- The subject property is zoned SR Suburban Residential.
- UDO Section 5.6.2 (Maintenance) holds property owners responsible for the maintenance of all required landscaping areas, which includes Perimeter Buffers. Perimeter Buffers are defined as "the planted area required between land uses to eliminate or minimize conflicts consisting of trees and shrubs, groundcover, or turf, which borders a project area on all sides."
- The Holly Glen Phase 9 subdivision contains a 25' perimeter buffer along the outer perimeter of the subdivision located on all perimeter lots.
- The subject property has a single-family detached dwelling on it.
- UDO Chapter 5 provides the intent of landscaping requirements:
Intent. Landscaping is an essential element of the site design process and is an important feature in promoting the public health, safety, comfort, convenience and general welfare of the Town and its Extraterritorial Jurisdiction. Landscaping is intended to:
 - A. Mitigate incompatibilities between adjacent land uses;
 - B. Reduce the negative impacts of higher intensity land uses on lesser intensity adjacent land uses;
 - C. Provide a critical visual and noise buffering effect between higher intensity districts and lower intensity districts;
 - D. Increase tree canopy in residential use districts;
 - E. Lessen the impact of development on the environment by reducing glare and heat buildup;
 - F. Promote the creation of landscape islands within vehicular areas to enhance pedestrian safety; and,
 - G. Break up large expanses of pavement so as to reduce impervious surface area, storm water run-off and the level of pollutants from nonpoint sources.

Board of Adjustment Findings

NOTE: Board of Adjustment Members should use the following area to make notes on evidence presented related to each of the required Findings as it is presented during public hearing.

A variance may be granted by the Board if competent and substantial evidence is presented by the applicant which persuades the Board to either reach each of the following conclusions independently or be reasonably able to meet these conclusions upon implementation of conditions by the Board:

- 1.) **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 Response:

Because of the location of the house, a 25-foot buffer would make it impossible to use our backyard for building anything additional.

- 2.) 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 hardships resulting from conditions that are common to the neighborhood or the general public, may not be the basis for granting a variance.**

Applicant Response:

We were unaware that the buffer existed because there was no visible or existing buffer material. The area of our yard where we want the shed is currently an unusable hill with no visible buffer material.

- 3.) 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 Response:

We did not remove any buffer material and were attempting to build a shed per the other regulations of the UDO. We met the requirements and were approved by our HOA board and the architectural review board.

- 4.) 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 Response:

The building of the shed has already been approved by our neighborhood HOA and the neighborhood architectural review board. We have followed all guidelines and regulations for look and placement of the shed according to neighborhood rules. We are not requesting to remove the entire buffer, just one small area to build a shed that would otherwise be unusable property. Additionally, even though there was no visible buffer in place, we would be happy to plant some back in where we can after the shed is built. Specifically, a tree and two shrubs to follow current UDO standards.

In granting a variance, the Board shall have the authority to impose such conditions as deemed necessary by the Board to protect the interests of the surrounding area, preserve the spirit and intent of the UDO, and to promote the health, safety, morals, comfort, convenience and welfare of person residing or working in or adjacent to the property. Such conditions can be the following non exclusive list of examples:

- 1. Limit the variance for specific duration.***
- 2. Require the provision of additional landscaping, screening, fencing or other methods to allow the varied property to harmonize with adjacent properties.***
- 3. Require the applicant to take steps towards the elimination or reduction of noise, light, dust, vibration, or other possible nuisance problems.***
- 4. Require more stringent signage limitations than provided under the UDO.***
- 5. Limit the Hours of operation of a non-residential site.***

Board of Adjustment Motion

Based upon the Board's Findings of Fact, I move to **approve/deny** Variance 23-VAR-08 requested by Gina Farrell to allow for Variance from Unified Development Ordinance Section 5.6.2 Maintenance to reduce the buffer from 25 feet to 6 feet only in the area shown in the attached site plan showing the location of the proposed shed. The property is located at 200 Magnolia Meadow Way and is further described with the following Wake County PIN: 0648087923 REID: 0358720.

In addition, the following conditions must be satisfied (state conditions).

Agenda Item Completeness Checklist		
Staff Member	Approved for Distribution	
	Yes	Initials
Planner	X	CR
Development Review Engineer		
Parks Planner		
Planning Manager / Division Manager / Director/Sr. Planner	X	CC



Holly Springs Board of Adjustment Findings of Fact

1. The application for a variance was filed by all owners of the land affected by the Variance.
2. The property is described as follows:

Site Address: 200 Magnolia Meadow Way

PIN: 0648087923

Total Lot Size: .24 acres

Current Zoning District: SR Suburban Residential
3. The property is improved with a detached single-family dwelling unit.
4. The UDO requires landscaping around all new development and all additions to existing development in order to mitigate incompatibilities between adjacent land uses; reduce the negative impacts of higher intensity land uses on lesser intensity adjacent land uses; provide a critical visual and noise buffering effect between higher intensity districts and lower intensity districts; increase tree canopy in residential use districts; lessen the impact of development on the environment by reducing glare and heat buildup; promote the creation of landscape islands within vehicular areas to enhance pedestrian safety; and break up large expanses of pavement so as to reduce impervious surface area, storm water run-off and the level of pollutants from nonpoint sources.
5. The UDO holds property owners responsible for the maintenance of all required landscaping, which includes perimeter buffers.
6. The requested variance is to reduce the 25' rear perimeter buffer to 6' to accommodate a 12' x 12' shed.
7. The applicant has specified that the reduction in buffer size will be limited to the area of construction for the shed as shown on the site plan.

8. The applicant has offered to replant the amount of buffer material that would have been displaced by the shed, totaling 1 tree and 2 shrubs per UDO Table 5.3.1-A for semi-opaque buffers.
9. There are no specific zoning conditions or conditions of approval that are part of a special use permit, Planned Unit Development or Conditional Zoning District that will be varied by this request.
10. A plot plan/survey of depicting the variance has been submitted by the applicant.
11. The Variance application and other records pertaining to the Variance request are part of the record.
12. Notice of the Quasi-Judicial Hearing has been provided as required by NCGS and the Town of Holly Springs Unified Development Ordinance.

Additional Findings of the Board of Adjustment

BOARD OF ADJUSTMENT HEARING WORKSHEET

Date of Hearing: _____ BOA Member: _____
Case Number: _____

Finding of Fact	Fact	In Petitioner's Application	From Staff Report	Testimony at Hearing	Proven by Competent & Material Evidence?
Ex.	<i>The property is located at 123 Main Street</i>	X	X	X	X
1					
2					
3					
4					
5					
6					
7					

8					
9					
10					
11					
12					
13					

BOARD OF ADJUSTMENT REMINDERS

- The board can take issue with the facts that are presented by the applicant and find that the facts are NOT “competent,” “material,” or “substantial” and determine that the applicant has failed to establish a prima facie case (ie, the application fails)
 - **Material Evidence**- is recognized to mean “evidence having some logical connection with the facts of consequence or issues.”
 - **Substantial Evidence**- means such “relevant evidence as a reasonable mind might accept as adequate to support a conclusion.”—“It must do more than create the suspicion of the existence of the fact to be established... It must be enough to justify, if the trial were to a jury, a refusal to direct a verdict when the conclusion sought to be drawn from it is one of fact for the jury. Substantial evidence depends on the burden of proof. In a criminal trial, the evidence has to be so substantial as to overcome “reasonable doubt.” However, in civil matters (such as variances), it only needs to overcome a “preponderance of the evidence” standard. It only has to tip the scale of justice a little bit- not all the way as in a criminal matter.
 - **Competent evidence** is evidence that the fact finder determines has a sufficient indicia of reliability (ie, not hearsay or general nonsense) but evidence that as a tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.
 - Additionally, evidence that is deemed to be not competent and which should not be considered by the Board includes lay opinion testimony of: (1) how the proposed variance would affect the value of surrounding properties; (2) that the proposed variance would pose a danger to public safety as a result of increased traffic; and (3) matters only an expert would generally be qualified to testify about. (from 160A-393(k)(3)).
- Use of Expert Testimony: An expert is generally someone smarter than the fact-finder on a given subject (typically licensed in their field). In a judicial proceeding, they are the only ones where their “opinion” is competent, material, and substantial evidence. An example would be a licensed real estate appraiser offering evidence of an opinion of an increase or decrease in property value, or a land planner stating that they are familiar with the “spirit and intent” of the UDO and in their professional opinion, the project is in keeping with the spirit and intent. Expert witness testimony may be challenged, however unless some fault is determined (like they based their opinion on bad data or hearsay), typically you need an another expert to offer an expert opinion to contradict what the first expert said. (Exception- the courts have consistently held that a property owner may give their opinion as to the value of their own property, even if they are not a licensed appraiser, however they are often trying to testify as to what the *future* value of their land would be if a project went through, and they are not likely competent to give evidence as to their properties future value.
- Board members sitting in a quasi-judicial capacity must base their decision to grant or deny a variance on objective factors, which are based upon the evidence presented, and not upon their subjective preferences or ideas.

- Board members should not accept outside evidence (conversations outside of sworn testimony, site visits, emails, unsworn documents) and should only rely on facts offered at the hearing, under oath.
- The board may not deny a permit in their unguided discretion or because, in their view, it would adversely affect the public interest.—“The denial of the conditional use permit may not be based on conclusions which are speculative, sentimental, personal, vague or merely an excuse to prohibit the requested use.”
- The Board sitting in a quasi-judicial capacity are performing as judges and must be neutral, impartial, and base their decisions solely upon the evidence submitted.—“Neutrality and the appearance of neutrality are equally critical in maintaining the integrity of our judicial and quasi-judicial processes”
- “Speculative assertions or mere expression of opinion about the possible effects of granting a permit are insufficient to support the findings of a quasi-judicial body”
- In quasi-judicial proceedings, no board or council member should appear to be an advocate for not adopt an adversarial position to a party, bring in extraneous or incompetent evidence, or rely upon ex parte communications (out of hearing) when making their decision.



VARIANCE OF DEVELOPMENT STANDARDS APPLICATION

DPM Appendix #A.16 Supplement 20 February 2023

PETITION CONTACT INFORMATION <i>(Attach additional sheets if needed)</i>	
Applicant and Financially Responsible Party will need to register for an account on the Portal	
Project Applicant Check One: ☒ Owner ☐ Owner's Agent ☐ Design Professional ☐ Developer ☐ Other	
Name: Gina Farrell	Company:
Mailing Address: 200 Magnolia Meadow Way	
City, State, Zip: Holly Springs, NC 27540	
Telephone: 917-612-6822	E-Mail: gina@gf-fitness.com
REQUIRED: Property Owner(s) if different from Applicant/Contact <i>(Attach additional sheets if needed)</i>	
Name: Peter Farrell	Company:
Mailing Address:	
City, State, Zip:	
Telephone: 917-837-1284	E-Mail:

PROJECT INFORMATION	
Project Name	200 Magnolia Meadow Way
Project Number	
Project Location <i>Use street address. If none, use closest intersection</i>	200 Magnolia Meadow Way ☒ Within Corporate Limits ☐ Within Holly Springs ETJ ☐ Pending Annexation
Shopping Center/Lot #	N/A
PUD/Development	Holly Glen
PIN(s)	0648087923
Project Acreage	.24
Current Zoning	SR
Sketch Plan Held:	Not required

VARIANCE REQUEST (please be specific)	
UDO Section No: 5.6.2	Section Title: maintenance
Specific Vested Rights Request <i>(Attach additional sheets if needed)</i> : Requesting to reduce the buffer from 25 feet to 6 feet. The buffer reduction will only impact the area proposed for the shed placement.	

VARIANCE OF DEVELOPMENT STANDARDS APPLICATION

DPM Appendix #A.16 Supplement 20 February 2023

FINDINGS OF FACT

A petition for Variance of Development Standards may only be approved upon the presentation of sufficient evidence. Please include as much detailed information or unique conditions that would enable the Board of Adjustment to make a written determination. Use additional sheets if necessary.

1) 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.

Because of the location of the house, a 25 foot buffer would make it impossible to use our backyard for building anything additional.

2) 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 hardships resulting from conditions that are common to the neighborhood or the general public, may not be the basis for granting a variance.

We were unaware that the buffer existed because there was no visible or existing buffer material. The area of our yard where we want the shed is currently an unusable hill with no visible buffer material.

3) 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.

We did not remove any buffer material and were attempting to build a shed per the other regulations of the UDO. We met the requirements and were approved by our HOA board and the architectural review board.

4) 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.

The building of the shed has already been approved by our neighborhood HOA board and the neighborhood architectural review board. We have followed all guidelines and regulations for look and placement of the shed according to the neighborhood rules. We are not requesting to remove the entire buffer, just one small area to build a shed that would otherwise be unusable property. Additionally, even though there was no visible buffer in place, we would be happy to plant some back in where we can after the shed is built..

CERTIFICATE OF COMPLETION

I certify that all information presented in this petition is accurate to the best of my knowledge and belief. Further, I grant permission for members of the Town Council and Town Staff to visit the site in question for informational, advertisement, and inspection needs.

Signature of Applicant:



Date: 8/31/23

Signature of Owner:



Date: 8/31/23

Gina Farrell
200 Magnolia Meadow Way
Holly Springs, NC 27540
917-612-6822

I am submitting this document as an addition to the Findings of Fact information. In statement 4 of the findings of fact, I stated that even though there was no buffer material in place we would be happy to plant some back in after the shed is completed. Specifically, a tree and two shrubs to follow current UDO standards.

