



Board of Adjustment
6:30 PM **Monday, November 6, 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. October 2, 2023 Regular Meeting

7. Variances

a. 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.

New Business - BOA

Title: October 2, 2023 Regular Meeting

Strategic Priority Area:

Staff Resource:

Action(s):

- Approve minutes from October 2, 2023

Explanation:

Background:

Funding Source(s):

Attachment(s):

1. 10.2.23 BOA Draft Minutes

Town of Holly Springs
BOARD OF ADJUSTMENT MEETING MINUTES
Monday October 2nd, 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 October 2nd, 2023 in the Council Chambers, 128 South Main Street. At 6:36p after determining a quorum was present, Vice Chair Jayson Greene called the meeting to order.

Staff Members Present:

Chris Hills, Development Services Director
Cheryl Caines, Senior Planner
Conor Ryan, Planner I
John Schifano, Town Attorney
Mackenzie Fretz, Board of Adjustment Clerk

The Board completed roll call.

Members Present: Jayson Greene
Ben Copeland
Paul Kuhn
Yan Higgins

Alternate Members Present: (Non-Voting)

Members Absent: Cody Loughridge
Joe Cimino
Chanel Wilkins
Herman Goldstein

The Board recited the pledge of Allegiance and opened the meeting with an invocation by a moment of silence.

Agenda Item #5: Agenda Adjustment

There were no agenda adjustments.

Agenda Item #6: Minutes

a. September 6, 2023 Minutes

Motion:

b. Motion to approve the September 6, 2023 Minutes

Motion by: Paul Kuhn

Second by: Ben Copeland

Action: The Board of Adjustment voted in favor of the Motion. (4-0)

Agenda Item #7: Variance

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

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 20' perimeter buffer to be reduced to 6' to accommodate a concrete pad for a fire pit and 10' x 2' seating area. The applicant has noted that the requested reduction in buffer size will be limited to the area of construction for the firepit and seating. The property is located at 305 Obsidian Dr. and is further described with the following Wake County PIN: 0638905807 REID: 0465077.

Mr. Ryan requested that the public hearing be opened.

Vice Chair Greene opened the Public Hearing.

Mr. Ryan then reviewed the staff report with the Board and requested that the report be placed in to evidence.

Mr. Copeland inquired if the vacant property to the east is town or county jurisdiction?

Mr. Ryan addressed the question by stating it was Town jurisdiction within the ETJ with a future land use of potential mixed residential neighborhood.

There were no additional questions for Mr. Ryan.

Swearing-In

Conor Ryan – 128 S. Main St. Holly Springs, NC 27540

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

Vice Chair Greene then offered for the petitioner to approach the Board.

Jerome Gantt approached the podium and stated his name and address for the Board.

Mr. Gantt opened up by providing the Board with background on the project. Mr. Gantt stated that they initially poured concrete for the construction of their firepit in to the buffer. They then cut off concrete to meet the town's ordinance.

Mr. Gantt then shared a photo of his back yard displaying the large hill within their yard limiting their options for their firepit.

Ms. Higgins asked for additional clarification on the location of the buffers.

Mr. Gantt provided clarification.

Ms. Higgins then asked if there were any code regulations as to where the structure could be placed on the property.

Mr. Schifano stated that the town would not allow anything to be placed over top a utility easement.

Mr. Copeland asked if there was a reason that the structure was not placed outside of the buffer.

Mr. Gantt stated that the hill was located there. There was no way to get any size firepit on the top of the hill without going in to the hill.

Mr. Copeland asked if there was a contractor already starting the project.

Mr. Gantt stated that they initially were placing a fireplace on the back of the property and the concrete was accidentally poured in to the buffer; after being asked to avoid the buffer. They then cut the portion of concrete out that was within the buffer to comply.

Mr. Copeland then asked if there was a personal preference of the use of concrete over a different material.

Mr. Gantt stated that due to aging, the look, and the price point, he decided the best option would be concrete

Ms. Higgins then questioned the perimeter and setbacks on the site plan within the presentation.

Mr. Gantt addressed the Boards questions and described the area within his site plan.

Mr. Copeland asked if the entire pit is within the buffer.

Mr. Gantt stated that they will use as much of flat area as able within the area.

Mr. Copeland then went over a summary of the issue at hand.

There were no other questions from the board.

There were none opposing the request.

Mr. Copeland then asked staff if the buffer requirement changed based off of the future zoning.

Staff addressed stating that the current buffer regulation remains. The current subdivision is set and all requirements remain. The surrounding neighbors have been notified of this request and the future land use is mixed residential neighborhood with a five-foot type A buffer requirement.

Mr. Ryan clarified with the Board that everything is moved to the six-foot setback requirement and that the six-foot is the minimum requirement for an accessory structure.

Mr. Kuhn asked if the request specific to the construction of the firepit.

Mr. Ryan stated that yes, this request is specific to this location for construction of this fireplace.

Mr. Copeland asked if Mr. Gantt has you removed all trees as shown within the photos.

Mr. Ganff answered yes.

There were no further questions to the Town from the Board.

The Board began deliberating.

Board Deliberation:

Findings of Fact:

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. 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 holds property owners responsible for the maintenance of all required landscaping, which includes perimeter buffers.
5. The requested variance is to allow for the reduction of the 20' perimeter buffer to be reduced to 6' to accommodate a concrete pad for a fire pit and 10' x 2' seating area.
6. The applicant has specified that the reduction in buffer size will be limited to the area of construction for the firepit and seating.
7. 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.
8. A plot plan/survey depicting the variance has been submitted by the applicant.
9. The Variance application and other records pertaining to the Variance request are part of the record.
10. Notice of the Quasi-Judicial Hearing has been provided as required by NCGS and the Town of Holly Springs Unified Development Ordinance.
11. East vacant property currently zoned RR is included in the Future Land Use Plan that has the Mixed Residential Neighborhood designation that would require a 5' type A buffer.
12. Applicant states no additional trees will be removed from current state.
13. The location submitted would meet minimum setback requirement for accessory structures per UDO Table 2.2.1-A.
14. The size of the fire pit has increased from the original plan.
15. The images presented indicate setback sloping towards the primary structure which impacts possible locations of the proposed accessory structure.
16. Site topography and public utility easement impacted proposed location of the accessory structure.
17. locating accessory structure on or near slope could negatively impact runoff and stormwater conveyance.

Motion:
Motion to close public hearing

Motion by: Ben Copeland

Second by: Paul Kuhn

Action: The Board of Adjustment voted in favor of the Motion. (4-0)

As the Board discussed among themselves, they had a question for the applicant in regards to Trees and there was a motion to reopen the public hearing.

Motion:
Motion to reopen public hearing

Motion by: Ben Copeland

Second by: Yan Higgins

Action: The Board of Adjustment voted in favor of the Motion. (4-0)

The Board asked Mr. Gantt if the trees were not removed from buffer and that no additional trees will be removed from the buffer.

Mr. Gantt stated that no trees have been or will be removed.

The Board then closed the public hearing.

Motion:
Motion to close public hearing

Motion by: Ben Copeland

Second by: Jayson Greene

Action: The Board of Adjustment voted in favor of the Motion. (4-0)

Motion

To adopt the findings of fact for Variance Petition #23-VAR-07 as determined by the Board of Adjustment and written and approve Variance #23-VAR-07 as 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 20' perimeter buffer to be reduced to 6' to accommodate a concrete pad for a fire pit and 10' x 2' seating area. The applicant has noted that the requested reduction in buffer size will be limited to the area of construction for the firepit and seating. The property is located at 305 Obsidian Dr. and is further described with the following Wake County PIN: 0638905807 REID: 0465077.

Motion by: Paul Kuhn

Second by: Ben Copeland

Action: The Board of Adjustment voted in favor of the Motion. (4-0)

Motion

Based upon the Board's Findings of Fact, the Board of Adjustment approved.

Motion by: Paul Kuhn

Second by: Yan Higgins

Action: The Board of Adjustment voted in favor of the Motion. (4-0)

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

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 buffer reduction will only impact the area proposed for the shed placement. The property is located at 200 Magnolia Meadow Way and is further described with the following Wake County PIN: 0648087923 REID: 0358720.

Mr. Ryan requested that the public hearing be opened.

Vice Chair Greene opened the Public Hearing by motion.

Motion to open public hearing

Motion by: Ben Copeland

Second by: Jayson Greene

Action: The Board of Adjustment voted in favor of the Motion. (4-0)

Mr. Ryan then reviewed the staff report with the Board and requested that the report be placed in to evidence.

Mr. Copeland asked staff if site plan north of that what property exists?

Mr. Ryan stated that the property is a mix of undeveloped property as well as Duke owned property.

Mr. Copeland then asked that in theory could homes be built within the Duke owned portion of the property due to sale of land.

Staff stated that in theory, yes.

The Board then asked for clarification on the property buffer.

Staff explained the process of the UDO buffer requirements for the current zoning to the Board.

The Board then stated that the given picture of the property was not an accurate interpretation for the property buffers and that it was hard to understand where the shed will go on the property.

There were no additional questions for staff.

Swearing-In

Conor Ryan – 128 S. Main St. Holly Springs, NC 27540

Gina Farrell – 200 Magnolia Meadow Way Holly Springs, NC 27540
Daniel Zimmerman – 132 Magnolia Meadow Way Holly Springs, NC 27540

Vice Chair Greene then offered for the petitioner to approach the Board.

Gina Farrell who is the property owner approached the Board.

Ms. Farrell apologized as the picture is not to scale and that her understanding was that the buffer zone would not go through the shed but that it would make it enough buffer from behind the shed to the property line.

Ms. Farrell described to the Board the conditions of the backyard and why they want the shed to be placed within the area at question.

Ms. Farrell stated that her HOA as well as the architectural review board approved the shed on her property.

Ms. Farrell clarified that the shed was to be used for storage and that it is detached from the home and that the buffer trees were not disturbed in the placement of the shed.

Ms. Farrell then apologized to the Board for not being more prepared with the variance request.

The Board expressed to the petitioner concerns of lack of evidence before they approve the use of this accessory structure within the property as they need evidence to make sure all criteria is met.

Ms. Farrell then stated to the Board that they were unaware of the shed being an issue as there are two neighbors who have pools within their properties and that the shed did not seem as permanent as a pool.

The Board then explained concerns that the request is to build the structure within the buffer and that if the shed is approved, essentially the structure could be changed to a different structure.

Staff then reminded the Board that the variance can be granted with conditions.

Ms. Higgins then asked about the conditions of the north west corner of the yard.

Ms. Farrell stated that if the shed were to be placed on that side they would not have a backyard to use.

The Board then questioned the placement of the shed on the property from the drawing.

Ms. Farrell clarified that the shed was located where the drawing shows shed at the back corner of the property and it does not back up to the property line.

The Board then expressed continued concern for lack of evidence and approving a variance without all of the accurate facts. The Board explained to the petitioner they would like to see an accurate site plan displaying all of the dimensions and perimeter of the property.

Vice Chair Greene then offered for the proponent to approach the Board.

Daniel Zimmerman approached the Board and stated that he is the current neighbor directly east from the property in question.

Mr. Zimmerman stated that he has evidence to present to the Board to assist with Ms. Farrell's request. Mr. Zimmerman emailed the Clerk photos and requested they be placed in to evidence; the Clerk then emailed the photo evidence to the Board for review.

Mr. Zimmerman then went over the photo evidence with the Board.

Mr. Zimmerman stated that the shed is being placed at the location in question because it is the most un-usable spot within their yard.

The Board then questioned the location of the fence and shed within the evidence presented to them.

Mr. Zimmerman clarified locations within the property and stated that there is a large space behind the shed and the property line so the shed is not right up against the property line.

Ms. Higgins then questioned where the slope is within the property.

Mr. Zimmerman stated that Ms. Farrell's property slopes towards his property.

The board had no further questions.

There were no further questions to the Town from the Board.

There were no opponents.

Board discussed a continuance for the petitioner to obtain additional evidence.

Motion:

Motion to continue public hearing

Motion by: Ben Copeland

Second by: Yan Higgins

Action: The Board of Adjustment voted in favor of the Motion. (4-0)

Agenda Item #9: Other Business

Staff directed the Board to Agenda Item #6 to approve Minutes; Board addressed Agenda Item #6.

Mr. Hills approached the Board and discussed Board terms expiring and that the application process open is currently open to re-apply.

Agenda Item #10: Adjournment

Motion:

Motion to adjourn.

Motion by: Paul Kuhn

Second by: Ben Copeland

Action: The Board of Adjustment voted in favor of the Motion. (4-0)

Time: 8:11 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: 200 Magnolia Meadow Way Variance 23-VAR-08 - Quasi-Judicial Public Hearing

Strategic Priority Area:

Staff Resource:

Action(s):

- Continue 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.
- The variance was continued at the October 2nd meeting and the Board requested more information from the applicant in order to make a ruling on the case.
- The applicant has provided an updated site plan as well as images of the site that will be entered into evidence.

Background:

- The subject property is zoned SR Suburban Residential.

Funding Source(s):

N/A

Attachment(s):

1. 23VAR08_200MagnoliaMeadow_StaffReport_110623
2. 23VAR08_200MagnoliaMeadow_Application_110623
3. 23VAR08_200MagnoliaMeadow_FindingsofFact1_110623
4. 23VAR08_200MagnoliaMeadow_FindingsofFact2_110623
5. 23VAR08_200MagnoliaMeadow_SitePlan_110623



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 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 (Attach additional sheets if needed)	
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 (Attach additional sheets if needed)	
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 Use <u>street</u> address. If none, use closest intersection	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 (Attach additional sheets if needed): 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:

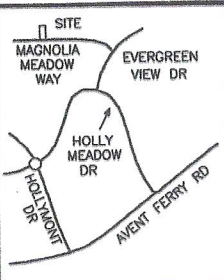
Date: 8/31/23

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.



NOTES

AREA BY COORDINATES
NO HORIZONTAL CONTROL FOUND WITHIN 2000'

THIS SURVEY DID NOT HAVE THE BENEFIT OF A TITLE REPORT AND IS SUBJECT TO ANY MATTERS ONE MAY DISCLOSE.

PROPERTY SUBJECT TO BOTH ABOVE AND/OR BELOW GROUND UTILITIES AND/OR EASEMENTS.

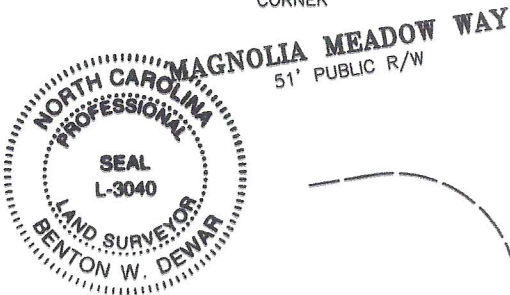
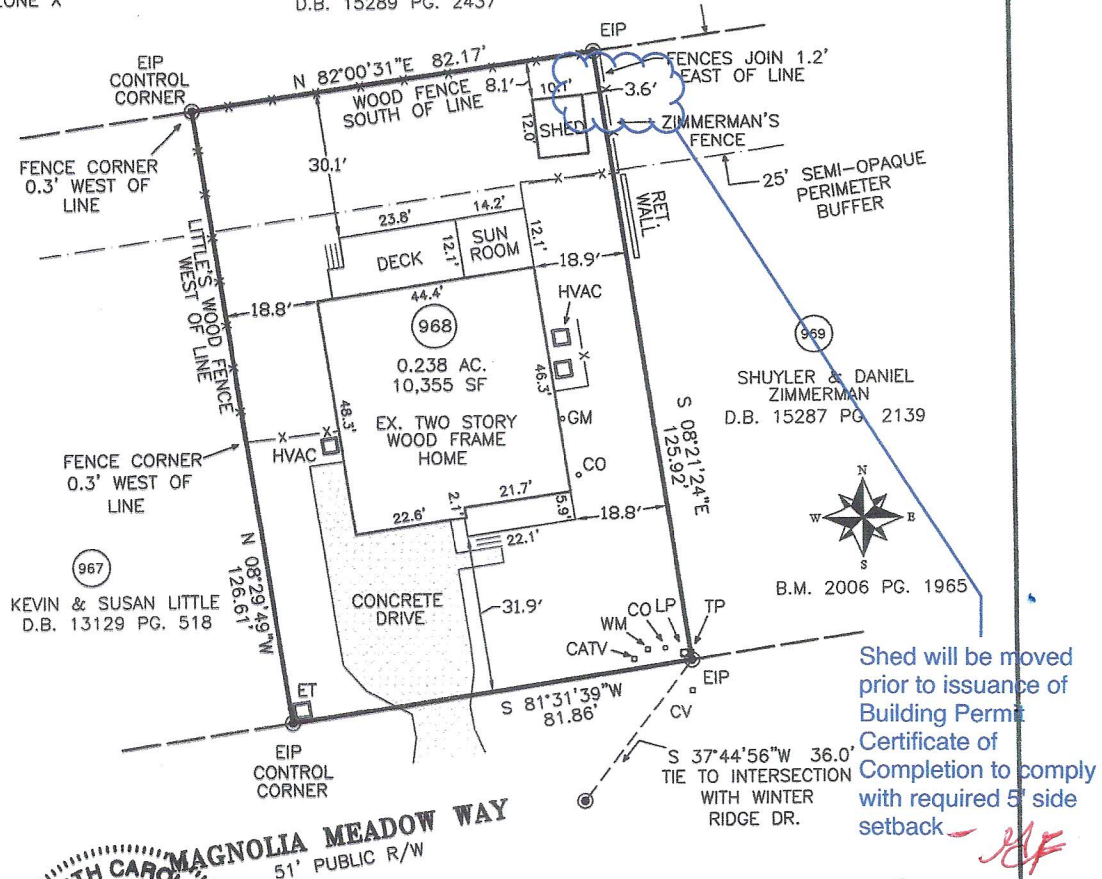
LEGEND

EIP - EXISTING IRON PIPE
WM - WATER METER
CO - SEWER CLEAN OUT
ET - ELECTRIC TRANSFORMER
GM - GAS METER
CATV - CABLE TV PEDESTAL
CV - CABLE VAULT
TP - TELEPHONE PEDESTAL
HVAC - HEAT/AIR UNIT
LP - LIGHT POLE
D.B. - DEED BOOK
B.M. - BOOK OF MAPS
NTS - NOT TO SCALE
R/W - RIGHT OF WAY

VICINITY MAP NTS

THIS LOT IS NOT LOCATED IN A FLOOD HAZARD AREA PER F.E.M.A. MAP #3720064800K
EFF. DATE: 7/19/2022
ZONE X

DUKE ENERGY PROGRESS, INC.
D.B. 15289 PG. 2437



I, BENTON W. DEWAR CERTIFY THAT THIS PLAT WAS DRAWN UNDER MY SUPERVISION FROM AN ACTUAL SURVEY MADE UNDER MY SUPERVISION; THAT THE RATIO OF PRECISION IS 1: 10,000; THAT THE BOUNDARIES NOT SURVEYED ARE SHOWN AS BROKEN LINES PLOTTED FROM INFORMATION FOUND IN BOOK MAP 2006 PAGE 1965; THAT THIS PLAT DOES NOT MEET SIZE REQUIREMENTS FOR RECORDING IN THE REGISTER OF DEEDS, PER G.S. 47-30 AS AMENDED.
LICENSE NUMBER AND SEAL THIS 27th DAY OF OCTOBER 2023.

PROFESSIONAL LAND SURVEYOR L-3040

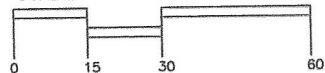
THIS PLAT MAY NOT BE A CERTIFIED SURVEY AND HAS NOT BEEN REVIEWED BY A LOCAL GOVERNMENT AGENCY FOR COMPLIANCE WITH ANY APPLICABLE LAND DEVELOPMENT REGULATIONS AND HAS NOT BEEN REVIEWED FOR COMPLIANCE WITH RECORDING REQUIREMENTS FOR PLATS.

PHYSICAL SURVEY FOR:

PETER & GINA FARRELL

200 MAGNOLIA MEADOW WAY
HOLLY SPRINGS, NC 27540

LOT 968 HOLLY GLEN PHASE 9C
BOOK OF MAPS 2006 PAGE 1965
DEED BOOK 18540 PAGE 2405
PIN #0648087923
HOLLY SPRINGS TOWNSHIP
WAKE COUNTY - NORTH CAROLINA
SCALE: 1" = 30' OCTOBER 27, 2023



BENTON DEWAR & ASSOCIATES
PROFESSIONAL LAND SURVEYOR
5920 HONEYCUTT ROAD
HOLLY SPRINGS, NC 27540
(919)-552-9813

23-118S
FARRELL/23/650