



Board of Adjustment Case Report

City of Raleigh
Planning & Development Department
One Exchange Plaza
Raleigh, NC 27601
(919) 996-2475
www.raleighnc.gov

Case File: A-115-16

Property Address: 1805 Wills Avenue

Property Owner: Patrick and Allison Smith

Project Contact: Patrick Smith

Nature of Case: A request a 2' side yard setback variance and a 1' rear yard setback variance from the regulations set forth in Section 2.2.1 of the Unified Development Ordinance to allow for the construction of a two story detached garage/storage building resulting in a 3' side yard setback and a 4' rear setback on a .18 acre property zoned Residential-10 and Neighborhood Conservation Overlay District located at 1805 Wills Avenue.

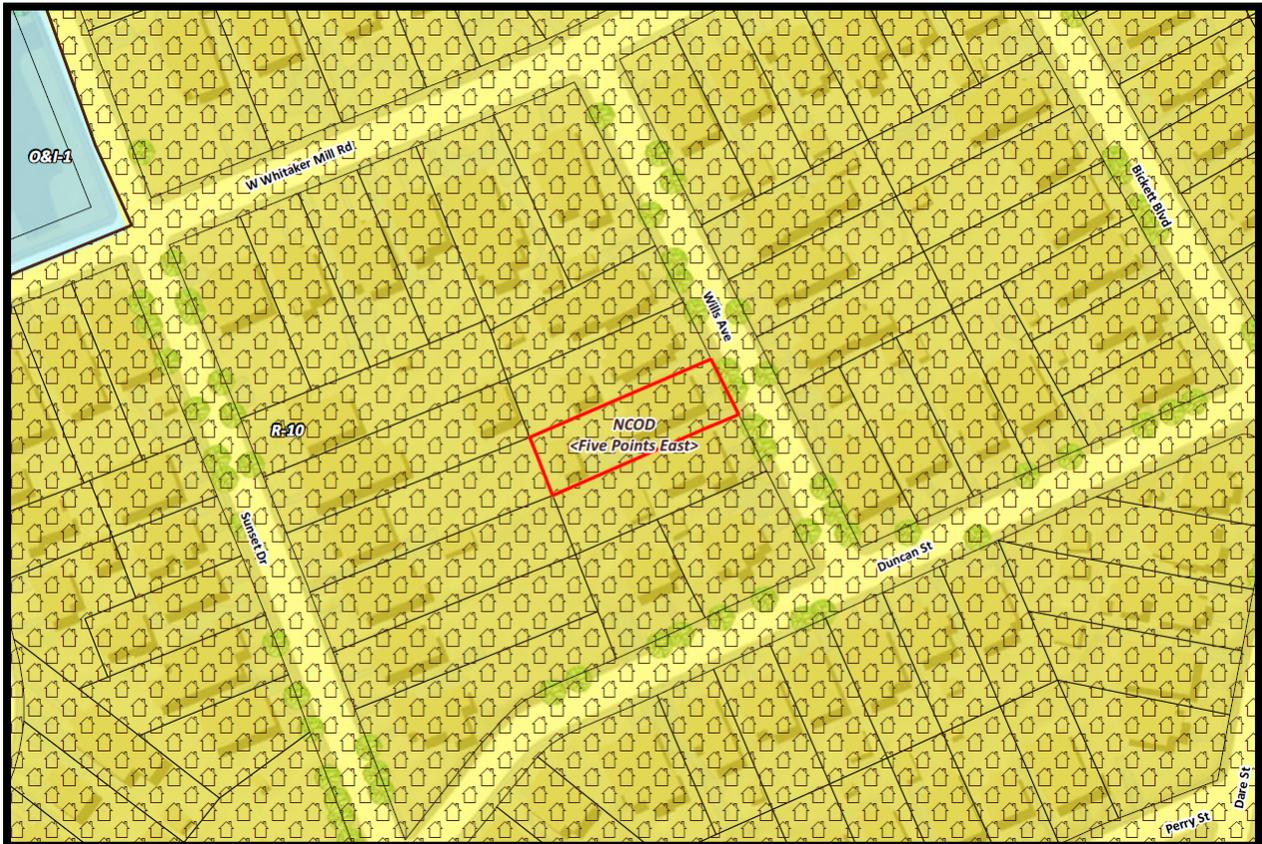


1805 Wills Avenue – Location Map

To BOA: 6-8-15 (A-46-15: Approved but request was only for side setback variance)
10-10-16

Staff Coordinator: Eric S. Hodge, AICP

ZONING DISTRICTS: Residential-10 & Neighborhood Conservation Overlay District (Five Points East)



1805 Wills Avenue – Zoning Map

VARIANCE STANDARDS: In accordance with UDO [§10.2.10 Variance](#), before a variance request is granted, the Board of Adjustment shall show all of the following:

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.
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.

- 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.
- 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.

Setback Standards: The subject property is zoned Residential-10

Yard Type	Minimum Setback
Front Yard	10'
Side Street	10'
Side	5'
Sum of Side Setbacks	10'
Rear	20'
Accessory Structure: Side	5'
Accessory Structure: Rear	5'
Accessory Structure: Primary Street:	50'
Accessory Structure: Side Street:	20'
Accessory Structure Setback from all other structures on the lot:	10'

Neighborhood Conservation

Overlay District Standards: Five Points East Neighborhood

- a. Core Area
 - i. Maximum lot size: 13,067 square feet.
 - ii. Front yard setback: Within 10% of the average front yard setback of houses on the same block face as the new construction.
 - iii. Maximum building height: 2 stories, 35 feet. Buildings may exceed 35 feet when the average height of houses on the same block face as the new construction exceeds 35 feet, and then the allowed height shall be within 10% of the average height of houses in the same block face as the new construction.

Application for Variance



Department of City Planning | 1 Exchange Plaza, Suite 300 | Raleigh, NC 27601 | 919-996-2626

Submit application to: Development Services Customer Service Center, 1 Exchange Plaza, Suite 400, Raleigh, NC 27601

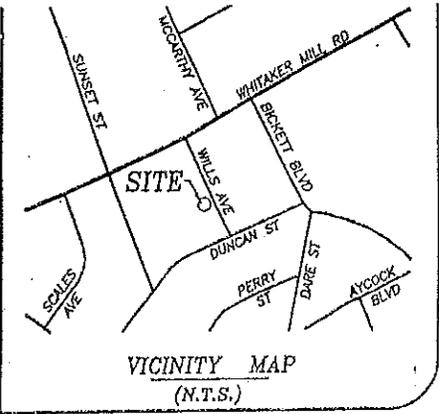
NATURE OF REQUEST	OFFICE USE ONLY
<p>Nature of variance request (if more space is needed, submit addendum on separate sheet): To ask for an amendment to the previous variance approval, A-46-15, to include an additional 6 ft in the depth of the variance. Also to ask for an additional variance of 1 ft on the right rear set back. See attached for further explanation.</p>	<p>Transaction Number A-115-16</p>
<p>Provide all previous transaction numbers for Coordinated Team Reviews, Due Diligence Sessions, or Pre-Submittal Conferences. If this property was the subject of a previous variance request, provide the case number. case # A-46-15</p>	

GENERAL INFORMATION			
Property Address 1805 Wills Ave		Date 8/22/2016	
Property PIN 1704671961		Current Zoning R-10	
Nearest Intersection Whitaker Mill/ Duncan St		Property size (in acres)	
Property Owner John Patrick and Allison Smith		Phone 919-669-8090	Fax
Owner's Mailing Address 1805 Wills Ave		Email psmith@integrated-funding.com	
Project Contact Person Patrick Smith		Phone 919-669-8090	Fax
Contact Person's Mailing Address 1805 Wills Ave		Email psmith@integrated-funding.com	
Property Owner Signature <i>John Patrick and Allison B. Smith</i>		Email psmith@integrated-funding.com	
<p>Notary <i>[Signature]</i> Sworn and subscribed before me this <u>7th</u> day of <u>September</u>, 20<u>16</u></p> <div data-bbox="212 1665 688 1856" style="border: 1px solid black; padding: 5px; width: fit-content; margin: 0 auto;"> <p>Olaf T Von Ramm, III NOTARY PUBLIC Wake County, NC</p> </div>		<p>Notary Signature and Seal <i>[Signature]</i></p> <div data-bbox="846 1608 1317 1787" style="border: 1px solid black; padding: 5px; width: fit-content; margin: 0 auto;"> <p>Olaf T Von Ramm, III NOTARY PUBLIC Wake County, NC</p> </div>	

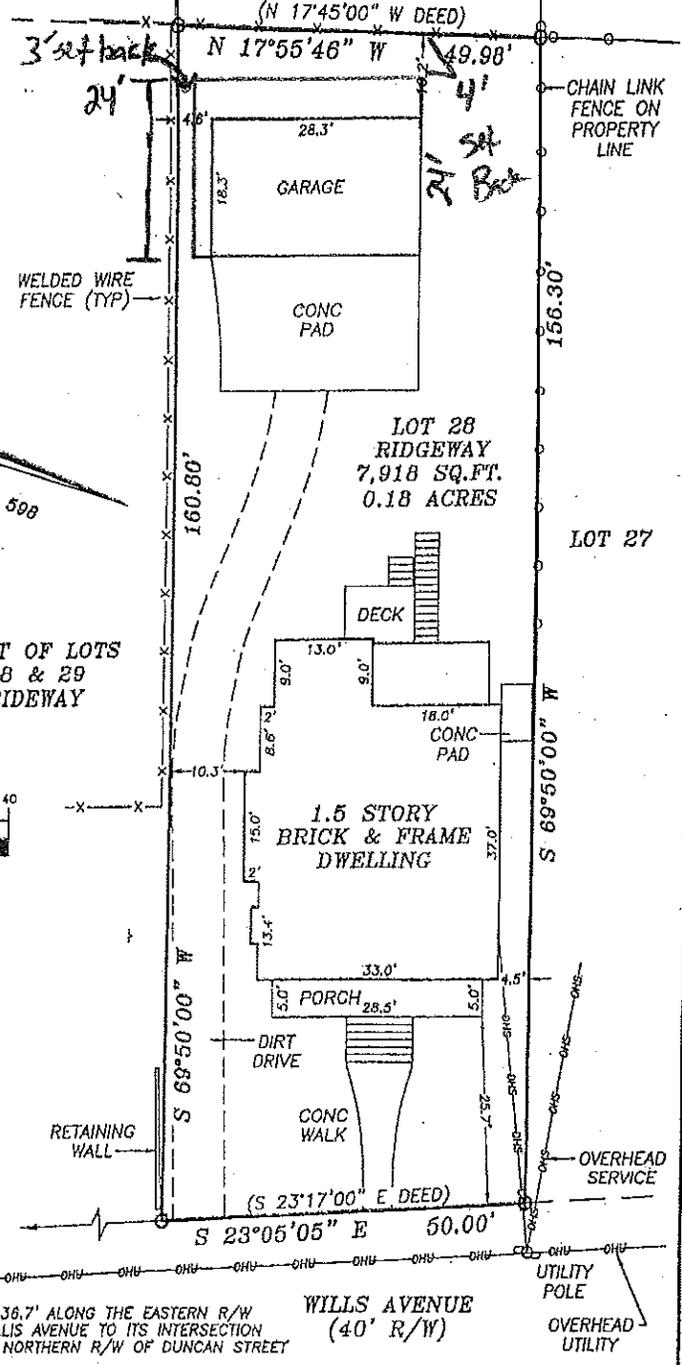
When I originally requested a variance in 2015 I was unaware that the request was only for the exact dimensions of the garage I am proposing to rebuild. It wasn't until after the hearing that I called Mr. Hodges and was informed that to increase the foot print of the garage I would have to go back for a new variance request. At that time, I engaged my architect to work on plans to try and come up with a design that would work within the existing foot print. After many revisions and consultations with several different builders we have all come to the conclusion that it would be difficult and cause a lot of unnecessary lumber waste to build such a building. The garage I have now is only 18 ft deep, with the typical depth of a garage being 24 ft deep to allow for most cars to be pulled in and parked. Even with the design we came up with, it would still not allow for a typical car to be stored inside, which is the purpose of a garage.

I am asking that the board re-approve my request with an addition to the existing foot print, for a total of 24 feet depth.

In addition I am also asking the board for a variance of 1 ft on the rear property line, which will only affect approximately 10 ft of the rear of the building. According to the current survey I have on file, the rear set back on the back right of the garage is 10.2 ft, which if the building envelope was increased to 24 Ft would be in the current set back by approximately 1 ft. However due to the angle of the rear property line, this encroachment would only affect approximately 10 feet of the new proposed building.

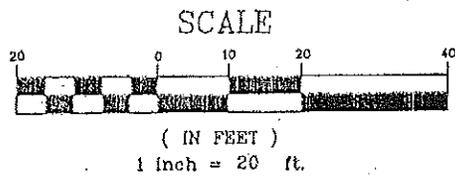


LOT 18 & PART OF 17 BOM 1920, PG 090
 LOT 19 LOT 20



LEGEND
 ○ EXISTING IRON PIPE
 ● NEW IRON PIPE
 X COMPUTED CORNER

NOTE:
 THIS PROPERTY DOES NOT LIE WITHIN 2000' OF A N.C.G.S. MONUMENT.
 THIS SURVEY IS OF AN EXISTING PARCEL OR PARCELS OF LAND.
 ALL CREEKS, EASEMENTS, BUFFERS, FLOOD LIMITS & SETBACKS TAKEN FROM BOM 1920, PG 172.



FLOOD CERTIFICATION
 THIS WILL CERTIFY THAT THE SUBJECT PROPERTY () IS or (X) IS NOT located in a SPECIAL FLOOD HAZARD AREA as determined by the Department of Housing and Urban Development, or as shown on the FLOOD INSURANCE RATE MAP.

370243 0341 E
 COMMUNITY # PANEL SUFFIX

Jeffrey H. Davis, PLS
 PROFESSIONAL LAND SURVEYOR

I, Jeffrey H. Davis, PLS, certify this map was drawn under my supervision from an actual survey made under my supervision; and that the error of closure as calculated by latitudes and departures is 1/10,000+; that the boundaries not surveyed are shown as broken lines plotted from information found in Book - ; that this map was prepared in accordance with G.S. 47-30 amended.

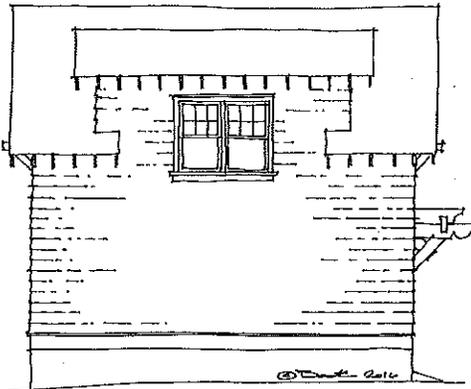
Witness my original signature, registration number and seal this 29th day of SEPTEMBER 2003.

Signed *Jeffrey H. Davis*
 Seal
 NORTH CAROLINA PROFESSIONAL LAND SURVEYOR
 SEAL L-3453
 JEFFREY H. DAVIS

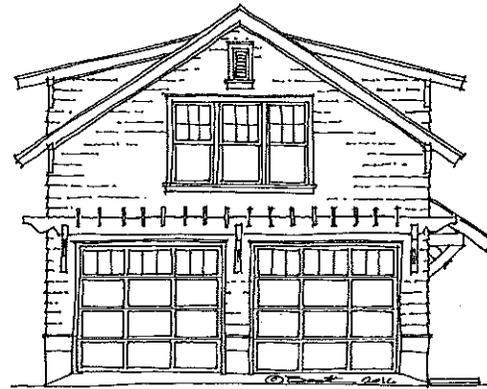
MAKE CO. REC.	C.N. = 2016 B.O.M. 1920 PAGE 172	JOHN PATRICK SMITH ALLISON SMITH LOT 28 RIDGEWAY 1805 WILLS AVENUE RALEIGH NORTH CAROLINA
	DATE: 09-26-2003 SCALE: 1" = 20'	DWG. NO. A-4780

TURNING POINT SURVEYING PLLC

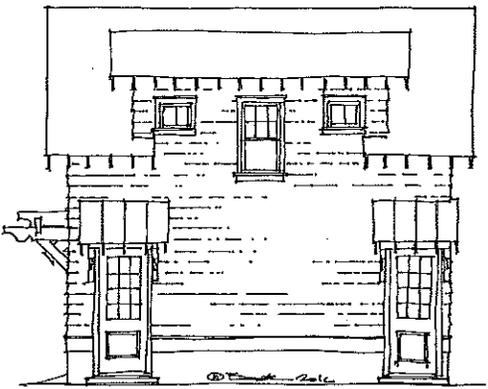
4113 JOHN S. RABOTEAU WYND
 RALEIGH, NORTH CAROLINA 27612
 FAX 510-8742 PH 781-0234



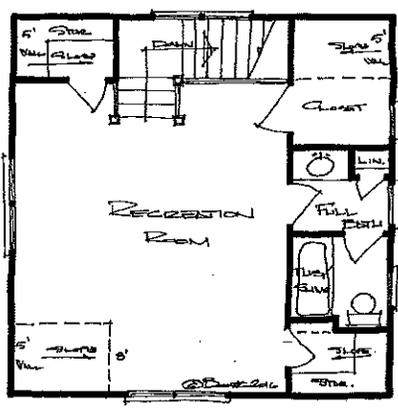
LEFT SIDE ELEVATION
 25x10' 2 2 4 6 8 10'



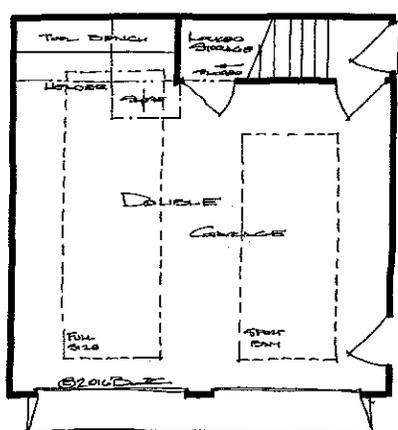
FRONT ELEVATION
 25x10' 2 2 4 6 8 10'



RIGHT SIDE ELEVATION
 25x10' 2 2 4 6 8 10'



UPPER LEVEL PLAN
 25x10' 2 2 4 6 8 10'



MAIN LEVEL PLAN
 25x10' 2 2 4 6 8 10'

Drawn: Steve Chance
 Design: Michael S. Davis
 Plans: 910-031-1766
 Date: 07-02-2016
 © Steve 2016

1704671961
SMITH, JOHN P SMITH, ALLISON B
1805 WILLS AVE
RALEIGH NC 27608-2447

1704579878
PIPER, JUSTINE R
1808 SUNSET DR
RALEIGH NC 27608-2452

1704579894
CAMDEN, WES J CAMDEN, EMILY O
1806 SUNSET DR
RALEIGH NC 27608-2452

1704579953
DEVLALIWALLA, NEVILLE M
DEVLALIWALLA, LAURA E
1810 SUNSET DR
RALEIGH NC 27608-2452

1704589096
LITTLE, JAMES P LITTLE, MEREDITH T
305 W WHITAKER MILL RD
RALEIGH NC 27608-2441

1704670639
BOOTH, SHARON ROSE
1800 SUNSET DR
RALEIGH NC 27608-2452

1704670719
CRAMER, DOUGLAS B
1804 SUNSET DR
RALEIGH NC 27608-2452

1704670724
SHERBURNE, EDWARD W III SHERBURNE,
JESSICA R
1802 SUNSET DR
RALEIGH NC 27608-2452

1704671778
RAYNAL, CHARLES E IV
202 DUNCAN ST
RALEIGH NC 27608-2464

1704671887
RICHARDSON, AMY E HAVERKAMP,
MATTHEW B
1803 WILLS AVE
RALEIGH NC 27608-2447

1704671956
BECKER, DANIEL L BECKER, LAURA H
1807 WILLS AVE
RALEIGH NC 27608-2447

1704672852
SCREWS, GARRETT A JR SCREWS, JULIE
M
1801 WILLS AVE
RALEIGH NC 27608-2447

1704673848
GARMAN, RANDY LEE
110 DUNCAN ST
RALEIGH NC 27608-2430

1704673939
VELLA, JOSEPH L VELLA, JEAN GREER
1804 WILLS AVE
RALEIGH NC 27608-2448

1704673980
DICKENS, STEPHEN KENT JR DICKENS,
RACHAEL MARIE HU...
108 DUNCAN ST
RALEIGH NC 27608-2430

1704680058
LITTLE, JAMES MCALLISTER LITTLE,
SUSAN P
303 W WHITAKER MILL RD
RALEIGH NC 27608-2441

1704681020
CONNELL, JAMES LEE JR CONNELL,
NICOLE S
1811 WILLS AVE
RALEIGH NC 27608-2447

1704681111
CHERRY, PATRICE B
301 W WHITAKER MILL RD
RALEIGH NC 27608-2441

1704682098
CASSIDY, JOHN CASSIDY, KATHY
VIAROPULOS
1808 WILLS AVE
RALEIGH NC 27608-2448

1704683013
SHAFER, BENJAMIN S
1806 WILLS AVE
RALEIGH NC 27608-2448

Chairman McLamb opened the floor for nominations for the office of Secretary. He nominated Mr. Jeffreys to continue serve as Secretary. His motion was seconded by Mr. Conti. Chairman McLamb asked if there any other nominations. No other nominations were made; therefore, nominations were closed and a roll call vote was taken that resulted in all members voting for the nomination. Chairman McLamb ruled the motion adopted and Mr. Jeffreys continued in the office of Secretary.

Following the election of officers, Assistant Planning Director Travis Crane and Planning Administrator Eric Hodge were both sworn in with Mr. Hodge using a PowerPoint presentation in aid to presenting testimony, and the following items were discussed with actions taken as shown:

A-46-15 – 7/13/15

Decision: Approved as requested.

WHEREAS, Patrick and Allison Smith, property owners, request a 2' side yard setback variance from the regulations set forth in Section 2.2.1 of the Unified Development Ordinance to allow for the construction of a two story detached garage/storage building resulting in a 3' side yard setback on a .18 acre property zoned Residential-10 and Neighborhood Conservation Overlay District located at 1805 Wills Avenue.

Planning Administrator Eric Hodge (sworn) indicated this item was deferred from the Board's June 8, 2015 meeting at the Applicants' request. He went on to review the request stating the Applicants wish to utilize an existing concrete pad to build the garage. He pointed out the property survey showing the proposed location as well as elevation drawings were included in the application packet and stated the Code normally requires a 5 foot setback for accessory buildings; however, several lots in the Cameron Park area have accessory structures set closer to 3 feet from the property line. He indicated staff is not opposed to the request.

Applicant

Patrick Smith, 1805 Wills Avenue (sworn), urged the Board to grant the variance indicating he and his wife made every effort to maintain the property's historic integrity. In response to questions, he stated the existing structure was not originally built well and has since become an eyesore. He stated the proposed rebuild will meet code and will include additional footings to support the new structure. He pointed out a next door neighbor's recently-built accessory building would be located approximately 30 feet from his garage.

Mr. Jeffreys questioned how the structure's upper level would be used with Mr. Smith responding current plans are to leave the area unfinished and used for storage; however, eventually there are plans to convert the area into a play room for the children.

Dan Becker, 1807 Wills Avenue (sworn), submitted and summarized the following prepared statement:

a. Unnecessary hardship would result from the strict application of the ordinance:

- Strict application would require the partial or full demolition of a useful floor slab.
 1. Potential cracking and/or damage to the existing slab either during the construction process or in the future due to slab loading. The removed portion would no longer have its turned down foundation edge (that does not meet today's code for the proposed accessory structure, but was adequate at the time of construction of the existing accessory structure).
 2. Creation of additional construction debris would place an unnecessary burden on construction landfill capacity.

b. The hardship results from a condition that is peculiar to the property:

- The existing building (ca. 1993) (source: Wake County online real estate records – assessment notes) is constructed very cheaply, unlike other historic and contemporary accessory buildings in the area. It has non-traditional orientation and proportions, no raking eaves, and its vinyl siding is peeling off in little more than 20 years.
- The concrete floor slab is useful; the building is a substandard eyesore and is not useful.

c. The hardship results from actions taken by the prior owner:

- Location of the building was chosen by the prior owner when it was constructed in 1993.

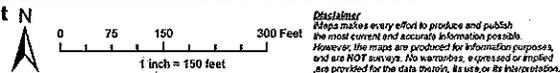
d. Granting of the variance will secure the public safety and achieve substantial justice:

- The parcel to the south has a recently constructed accessory building (2015) (source: Wake County online Real Estate records – assessment notes) that is approximately 31 feet away from the subject accessory building (as measured by the City of Raleigh online IMAPS ruler tool). The granting of the variance will result in approximately 29.5 feet of separation between the two structures. This separation distance is more than adequate for public safety to prevent the spread of fire and to allow emergency vehicle access to the rear yard of both parcels.
- Within the immediate area of the neighborhood surrounding the subject parcel, there are at least 19 instances where existing accessory buildings are closer to the lot line than 5 feet. See attached Exhibit A.
- Substantial justice will be realized by allowing the construction of an accessory building that is consistent with the built environmental characteristics of the neighborhood.

- Substantial justice will be realized by permitting the property owners of 1805 Wills Avenue an accessory building setback that is enjoyed by numerous neighbors.



EXHIBIT A -- Nearby Acces. Bldg. Setbacks <5 feet N



Mr. Becker also submitted a notarized statement in support of the application from the following property owner:

Amy Richardson, 18803 Wills Avenue.

Opposition

None.

Requests for Notification

None.

Findings of Fact

1. Applicant seeks a variance from UDO §2.2.1 to allow the construction of a detached two-story accessory structure.
2. The Board has considered Applicant's verified application and the evidence and testimony adduced at the hearing.

3. Applicant participated in a pre-application conference with a Planning and Development Officer to review the Application.
4. Public Notice requirements of UDO §10.2.1.C. have been met.
5. In order to comply with UDO §2.2.1, Applicant would have to provide a five foot side yard setback.
6. Applicant is unable to comply with UDO §2.2.1 because Applicants propose to replace an existing substandard accessory structure on an existing concrete slab, which is three feet from the side property line.
7. The proposed structure will be no closer to the side property line than the existing structure.
8. The subject property is located in the Cameron Park neighborhood, an older neighborhood where three foot side yard setbacks for accessory structures are not uncommon.
9. The proposed structure will be approximately 30 feet from the closest adjacent structure, and its architectural style is more consistent with adjacent properties than the structure it would replace.
10. Strict compliance with the provisions of the ordinance would deprive Applicant from the reasonable use of the property.
11. The character of surrounding properties would not be adversely affected by the granting of the variance.
12. Denial of the variance would result in insignificant public benefit but would greatly harm Applicant.
13. The Board has also considered the following relevant factors:
 - (a) The character and use of buildings and structures adjoining or in the vicinity of the property mentioned in the application.
 - (b) The number of persons residing, studying, working in or otherwise occupying prior decision may be reversed, modified, or affirmed buildings adjoining or in the vicinity of the property mentioned in the application.

Conclusions of Law

1. Unnecessary hardship would result from the strict application of the ordinance.
2. The hardship results from conditions that are peculiar to the property.
3. The hardship did not result from actions taken by the Applicant or the property owner.
4. The variance is consistent with the spirit, purpose and intent of the ordinance such that public safety is secured, and substantial justice is achieved.
5. This decision is subject to review for fraud, material misrepresentation, or other misconduct at the proceeding or for violations on the subject property of either any provision of the UDO or an imposed limiting condition, and if such a determination is made by the Board, its prior decision may be reversed, modified or affirmed.

Motion

Mr. Williams moved to approve the variance as requested. His motion was seconded by Chairman McLamb and received the following vote: Ayes – 5 (Williams, McLamb, Jeffreys,

Conti, Kemerait); Noes – 0. Chairman McLamb ruled the motion adopted and the variance granted.

A-39-15 – 7/13/15

Decision: Approved as requested.

WHEREAS, the City of Raleigh Housing and Neighborhoods Department, property owners, request a 15’ corner side yard setback variance from the standards set forth in Section 10-2075 of the Part 10 Zoning Code to allow for the construction of a detached house resulting in a 5’ corner side yard setback on a .07 acre property zoned Residential-20 located at 602 E. Cabarrus Street.

Planning Administrator Eric Hodge (sworn) indicated the subject lot would be the result of a recombination of 2 lots to build the proposed structure. He requested that the Applicant provide additional information regarding the proposal to build the structure closer to the side street and not to the opposite property line.

Applicant

Attorney Susan Ellinger, Ellinger and Carr, 2840 Plaza Place, Suite 200 (sworn), representing the Applicant, reviewed the request noting the variance would result in a structure placed in consistent alignment with other structures in the neighborhood.

Ken Thompson, Glenwood Avenue (sworn), stated the reason many structures built closer to the side street on corner lots is to increase distance between structures.

Discussion took place regarding driver sight issues with Ms. Kemerait noting the proposed dwelling would be placed farther back from Cabarrus than a nearby neighboring structure and Mr. Thompson indicating that is correct.

Opposition

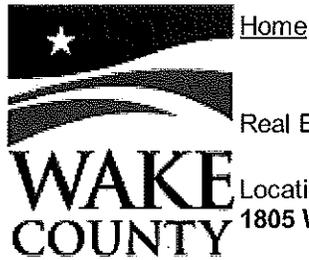
None.

Requests for Notification

None.

Findings of Fact

1. Applicant seeks a variance from Raleigh City Code Section 10-2075 to construct a dwelling on an existing lot.
2. The Board has considered Applicant's verified application and the evidence and testimony adduced at the hearing.

[Home](#)

Wake County Real Estate Data Account Summary

[iMaps](#)
[Tax Bills](#)

Real Estate ID 0030394

PIN # 1704671961

 Location Address
 1805 WILLS AVE

 Property Description
 LO28 RIDEWAY

 Account
 Search

[Pin/Parcel History](#) [Search Results](#) [New Search](#)
[NORTH CAROLINA](#) | [Account](#) | [Buildings](#) | [Land](#) | [Deeds](#) | [Notes](#) | [Sales](#) | [Photos](#) | [Tax Bill](#) | [Map](#)

Property Owner SMITH, JOHN P & ALLISON B (Use the Deeds link to view any additional owners)		Owner's Mailing Address 1805 WILLS AVE RALEIGH NC 27608-2447		Property Location Address 1805 WILLS AVE RALEIGH NC 27608-2447	
Administrative Data Old Map # F011-F0028-0015 Map/Scale 1704 07 VCS 01RA245 City RALEIGH Fire District Township RALEIGH Land Class R-<10-HS ETJ RA Spec Dist(s) Zoning R-10 History ID 1 History ID 2 Acreage .18 Permit Date 8/23/2016 Permit # 0000133941		Transfer Information Deed Date 9/29/2003 Book & Page 10469 1377 Revenue Stamps 605.00 Pkg Sale Date 9/29/2003 Pkg Sale Price \$302,500 Land Sale Date Land Sale Price		Assessed Value Land Value Assessed \$220,000 Bldg. Value Assessed \$412,837 Tax Relief Land Use Value Use Value Deferment Historic Deferment Total Deferred Value Use/Hist/Tax Relief Assessed Total Value Assessed* \$632,837	
		Improvement Summary Total Units 1 Recycle Units 1 Apt/SC Sqft Heated Area 2,902			

*Wake County assessed building and land values reflect the market value as of January 1, 2016, which is the date of the last county-wide revaluation. Any inflation, deflation or other economic changes occurring after this date does not affect the assessed value of the property and cannot be lawfully considered when reviewing the value for adjustment.

The January 1, 2016 values will remain in effect until the next county-wide revaluation. Until that time, any real estate accounts created or new construction built is assessed according to the 2016 Schedule of Values.

For questions regarding the information displayed on this site, please contact the Revenue Department at RevHelp@wakegov.com or call 919-856-5400.

Real Estate ID **0030394**

PIN # **1704671961**

Account Search

Location Address
1805 WILLS AVE

Property Description
LO28 RIDEWAY

[Pin/Parcel History](#) [Search Results](#) [New Search](#)

[Account](#) | [Buildings](#) | [Land](#) | [Deeds](#) | [Notes](#) | [Sales](#) | [Photos](#) | [Tax Bill](#) | [Map](#)

Building Location Address 1805 WILLS AVE		Building Description 01RA245		Card 01 Of 01	
Bldg Type	01 Single Family	Year Blt	1930	Eff Year	2000
Units	1	Addns	1992	Remod	1948
Heated Area	2,902	Int. Adjust.	BSMT-Unfinished		
Story Height	1.75 Story	Other Features	One Fireplace		
Style	Conventional			Base Bldg Value	\$208,383
Basement	10% Partial Bas			Grade	A+25 180%
Exterior	Brick			Cond %	A 90%
Const Type				Market Adj.	F 120%
Heating	Central			Accrued %	108%
Air Cond	Central			Incomplete Code	
Plumbing	Extra Fixtures			Card 01 Value	\$412,837
				All Other Cards	
				Land Value Assessed	\$220,000
				Total Value Assessed	\$632,837

Main and Addition Summary						Other Improvements						
	Story	Type	Code	Area	Inc	Units	DesItem	Code	Year	%ADJ	Inc	Value
M	1T	BR/PB		1251		18X28	SF GARFR	0307	1992	50		7740
A		OP	R	224								
B	2	SFR	E	238								
C	1	SFR	A	16								
D		DK	@	198								
E	1	SFR	A	85								
F	2	SFR	E	68								
G												
H												

