



***Board of Zoning Appeals Public Hearing  
September 15, 2015 —7:00 P.M***

<b>CASE NUMBER:</b>	<b>V-15-014, V-15-015, and V-15-016</b>
<b>PROPERTY LOCATION:</b>	<b>11355 Medlock Bridge Road, Johns Creek, GA 30097 1<sup>st</sup> District, 1st Section, Land Lots 374 and 375</b>
<b>CURRENT ZONING:</b>	<b>C-1 (Community Business District) Conditional</b>
<b>PARCEL SIZE:</b>	<b>1.10 Acres</b>
<b>PROPERTY OWNERS:</b>	<b>Maxwell-Reddick and Associates</b>
<b>STAFF RECOMMENDATION:</b>	<b>APPROVAL with conditions of V-15-014 DENIAL of V-15-015 and V-15-016</b>

**REQUEST**

The applicant is requesting three variances in order to construct an office development at 11355 Medlock Bridge Road:

- V-15-014: to encroach 50 feet into the 50-foot undisturbed stream buffer and additional 25-foot impervious surface setback;
- V-15-015: to encroach 20 feet into the 40-foot front building setback; and
- V-15-016: to reduce the landscape strip along Medlock Bridge Road from 40 feet to 20 feet.

The proposed construction would include two office buildings to the north and south of a 43-space surface parking lot. New impervious surface within the stream buffer and impervious surface setback would total 7,760 square feet. There would be no disturbance or impervious surface within the 25-foot state stream buffer.

The site is currently vacant and was zoned C-1 (Community Business District Conditional) under Fulton County zoning case Z-98-117 (Exhibit A), which allows for retail, service commercial and/or office and accessory uses. Zoning conditions reference a site plan (Exhibit B) showing a 35-foot stream buffer. It should be noted that the proposed development exceeds the overall maximum density requirement dictated by the zoning conditions. According to these conditions, the property is permitted to have a maximum density of 1,712.3 gross square feet per acre zoned or a total of 10,000 square feet, whichever is less. The original zoning request covered approximately 5.8 acres. A subsequent rezoning for a portion of this property was rezoned in 2006 which removed approximately 2.1 acres from the original area zoned. Therefore, approximately 3.7 acres remains with would allow for approximately 6,300 square feet of retail, service commercial and/or office and accessory uses to be developed on the site. The current proposal is to construct 10,000 square feet of office. Correcting this issue would require revisions to the site plan or a rezoning. The stream buffer variance would still be necessary to develop the site under both of these scenarios.

## **ADJACENT ZONING AND LAND USES**

The property is located on the east side of Medlock Bridge Road approximately 1,000 feet north of its intersection with Bell Road. The adjacent property to the north is also zoned C-1 Conditional and is currently the site of Sunrise Senior Living. Parcels immediately to the south and to the east across a small lake are zoned M-1A (Industrial Park) Conditional are within the Technology Park office park. The Standard Club golf course, zoned AG-1 (Agricultural District), and a senior living complex within Johns Creek Walk, zoned MIX (Mixed Use District), are located to the west across Medlock Bridge Road.

## **APPLICABLE CODE REQUIREMENTS**

City Code; Chapter 109: Natural Resources & Environmental Protection; Article V: Stream Buffer Protection: Section 109-118: Land Development Requirements.

- (i) An undisturbed natural vegetative buffer shall be maintained for 50 feet, measured horizontally, on both banks (as applicable) of the stream as measured from the point of wrested vegetation.
- (ii) An additional setback shall be maintained for 25 feet, measured horizontally, beyond the undisturbed natural vegetative buffer, in which all impervious cover shall be prohibited. Grading, filling and earthmoving shall be minimized within the setback.

Zoning Ordinance Sec. 12E.3. – Development Standards.

### *A. Landscaping*

1. A minimum 40-foot-wide landscape strip shall be provided along the proposed future rights-of-way of Georgia Highway 141 (a.k.a. Medlock Bridge Road).

Zoning Ordinance Sec. 9.1 – C-1 Community Business District.

### *9.1.3. Development Standards*

#### *B. Minimum Front Yard: 40 feet*

## **VARIANCE REQUIREMENTS**

Staff is including the specific conditions that must be considered for a variance to be granted in an effort to assist the Board of Zoning Appeals in considering the application and its merits. For V-15-014 (stream buffer variance), these considerations include:

- (i) When a property's shape, topography or other physical conditions existing at the time of the adoption of this ordinance prevents land development unless a buffer variance is granted.
- (ii) Unusual circumstances when strict adherence to the minimal buffer requirements in the ordinance would create an extreme hardship.

For V-15-015 and V-15-016 (front building setback variance and landscape strip variance), these considerations include:

- (i) Relief, if granted, would be in harmony with, or, could be made to be in harmony with, the general

purpose and intent of the Zoning Ordinance; or

- (ii) The application of the particular provision of the Zoning Ordinance to a particular piece of property, due to extraordinary and exceptional conditions pertaining to that property because of its size, shape, or topography, would create an unnecessary hardship for the owner while causing no detriment to the public.

### **ADDITIONAL STREAM BUFFER CONSIDERATIONS**

Stream buffers are the areas of land immediately adjacent to the banks of state waters which facilitate the protection of water quality and aquatic habitat. Buffers also preserve green space, improve aesthetics, reduce stormwater runoff velocities, help control flooding, and keep stream water cool by providing shade. These buffers must remain undisturbed in their natural state during and after construction, however variances can be obtained that allow for encroachment under certain conditions. Stream buffers are regulated on both the state and local levels and each agency has different rules regarding buffer widths. The Georgia Environmental Protection Division (EPD) requires 25 foot buffers on both sides of a stream, measured from the point of wrested vegetation which is usually located at the tops of the banks. The City of Johns Creek requires an undisturbed buffer of 50 feet with an additional 25 feet where all impervious surfaces are prohibited. Variance applications may be granted on a case by case basis provided the applicant submit information showing the location of the stream, the extent of encroachment, and documentation of the unusual hardship should the buffer be maintained. These variance applications must also provide mitigation measures to offset the impacts of land development or disturbance on the proposed property. Although allowed by ordinance, granting of stream buffer variances should be kept to a practicable minimum in order to preserve water quality and minimize flood risks from future, upstream development. The location and extent of buffer encroachment, long term water quality impacts, and potential, less intrusive alternate designs are all factors to be considered in determining whether to issue a variance. Stream Buffer Variances granted by the City of Johns Creek are subject to annual audits by the Metropolitan North Georgia Water Planning District and the EPD. The City must ensure that consistency and thorough examination to long term impacts are considered in order to justify granting variances.

### **STAFF RECOMMENDATION**

The applicant seeks to construct two office buildings separated by a parking lot, with a proposed 50-foot linear encroachment into the 75-foot impervious surface setback for 7,760 square feet of new impervious surface within the buffer area. The subject property was rezoned in Fulton County with conditions tying it to a site plan with a 35-foot stream buffer. The stream buffer was subsequently expanded to 50 feet, and the additional 25-foot impervious surface setback was added.

The site plan considered in the 1998 rezoning case shows that, with a 35-foot stream buffer in place, the property's shape, topography or other physical conditions existing at the time of the adoption of this ordinance would not have prevented land development. While the site does have topographical challenges, they do not constitute an extreme hardship when a 35-foot stream buffer is applied to the site. Applying the current stream buffer standards could constitute an extreme hardship. For this reason, the Department supports a stream buffer variance in conformance with the 35-foot stream buffer. This would allow development to encroach 40 feet into the 75-foot stream buffer. Therefore, staff recommends **APPROVAL with conditions** of V-15-014. Recommended conditions limit the encroachment to 40 feet.

The rezoning site plan shows that the subject property could be developed with the 40-foot landscape strip and 40-foot front building setbacks in place. In addition, the applicant has submitted alternative plans (Exhibit C)

that indicate other options are possible if the 40-foot landscape strip and building setback are maintained. In fact, Alternative 2 shows that the site could be developed with a two-story building and parking lot while maintaining the 35-foot staff-recommended stream buffer and the 40-foot landscape strip and setback along Medlock Bridge Road. With a 35-foot stream buffer in place, there would be no exceptional circumstances that create an unusual hardship on the property.

Additionally, the 40-foot landscape strip and 40-foot front building setback are intended to provide an aesthetically pleasing visual screen between structures and parking along the Medlock Bridge corridor. The reduction of the landscape strip or building setback would not be in keeping with the stated intent of the zoning ordinance to provide for the protection and enhancement of the design and use of streets and landscape features. Therefore the Department of Community Development recommends **DENIAL** of V-15-015 and V-15-016.

The Department would note that, should the variance be granted by the Board of Zoning Appeals on the merits of this request, the proposed mitigation plan (Exhibit D) must be executed on the site without removal of existing vegetation and the use of heavy machinery.

### **RECOMMENDED CONDITIONS**

Should the Board of Zoning Appeals choose to approve these variance petitions, Staff recommends the following conditions of approval:

- 1) The proposed construction shall encroach no more than 40 linear feet into the 50-foot stream buffer and additional 25-foot impervious surface setback. The applicant shall provide a revised site plan to the Community Development Department that meets these conditions, the requirements of the City's Development Regulations and Zoning Ordinance.
- 2) The site plan shall be revised to reflect the maximum square footage permitted by the existing zoning conditions or seek a rezoning to allow additional square footage beyond 1,712.3 gross square feet per acre.
- 3) The applicant/developer shall obtain required building permits from the City of Johns Creek Community Development Department prior to commencement of construction.
- 4) The applicant is required, prior to issuance of a certificate of completion, to replant vegetation on the subject property to offset any adverse impact associated with the additional impervious surface closer to the stream. Replanting of vegetation shall be consistent with a mitigation plan based on the required revised site plan and shall be approved by the City Arborist.

