



***Board of Zoning Appeals Public Hearing
April 19, 2015 — 7:00 P.M***

CASE NUMBER:	V-16-006
PROPERTY LOCATION:	9260 Old Southwick Pass, Johns Creek, GA 30022 1st District, 1st Section, Land Lot 106
CURRENT ZONING:	CUP Conditional (Community Unit Plan)
PARCEL SIZE:	1.94 Acres
PROPERTY OWNERS:	Michael and Tracy Reidenbach
STAFF RECOMMENDATION:	APPROVAL WITH CONDITIONS

REQUEST

The existing residence, located at 9260 Old Southwick Pass, was constructed in 1998 and is approximately 7,100 square feet. The applicant is requesting a stream buffer variance to alter 984-square feet in the 50-foot undisturbed stream buffer in order to increase the parking/turn around area and to make improvements to the stormwater detention area. The proposal includes clearing 426-square feet within the 50-foot undisturbed stream buffer, adding 400-square feet of impervious surface in the 50-foot undisturbed stream buffer, and cutting 158-square feet within the 50-foot undisturbed stream buffer. A state stream buffer was obtained from the Environmental Protection Division (EPD) on February 12, 2016 as the applicant also intends to do work within the 25-foot state undisturbed stream buffer.

BACKGROUND

The subject property, 9260 Old Southwick Pass, is lot number 12 within Phase 1 Pod D and E of the Country Club of the South subdivision. This lot was originally platted in Fulton County with a creek, however, there are no stream buffers delineated on the final plat. The final plat does show a detention pond, sanitary sewer easement, drainage easement, 100-year floor prone area, and 25-year high water elevation. There is still a detention pond on the lot, but it was filled in during the construction of the house.

Portions of the existing home, garage, and driveway are currently located in the 50-foot undisturbed stream buffer and the additional 25-foot impervious surface setback.

This lot is located within the Chattahoochee River Corridor. An as-built survey with current impervious and clearing limits must be submitted to the City of Johns Creek in order to determine compliance with the requirements set by the Atlanta Regional Commission (ARC).

ADJACENT ZONING AND LAND USES

Adjacent properties to the north, south, east, and west are zoned CUP Conditional and are in the Country Club of the South subdivision as well.

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 wretched 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.

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. 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.

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 wretched 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 subject property was platted in Fulton County with a creek, however, no stream buffers were included. The applicant intends to clear 426-square feet within the 50-foot undisturbed stream buffer, add 400-square feet of impervious surface in the 50-foot undisturbed stream buffer, and cut 158-square feet within the 50-foot undisturbed stream buffer in order to increase the parking/turn-around area and improve the stormwater detention area.

The final plat on record at the City of Johns Creek illustrates that under the original plat, the improvements to the parking/turn-around area and the stormwater detention area could have been completed without the need for a variance, if the detention pond was altered to allow for the changes. The proposed alterations will be required to evaluate the needs of the existing detention pond, as well as meet Chattahoochee River Corridor requirements, flood plain requirements, and cut and fill requirements.

The Department would note that the applicant has submitted a replanting plan to mitigate the proposed 984-square-foot intrusion into the stream buffer with an assortment of large trees, small trees, shrubs, and groundcover. It appears that this plan meets the stream buffer mitigation that is required.

In light of the subject property having had the ability to implement the proposed improvement on the lot without a variance based on the original final plat, the applicant's agreement to implement an adequate mitigation plan, and the granting of a state stream buffer variance from the EPD; the Department of Community and Development recommends **APPROVAL WITH CONDITIONS** of this request. However, several conditions shall be put in place to protect the subject property and the surrounding area.

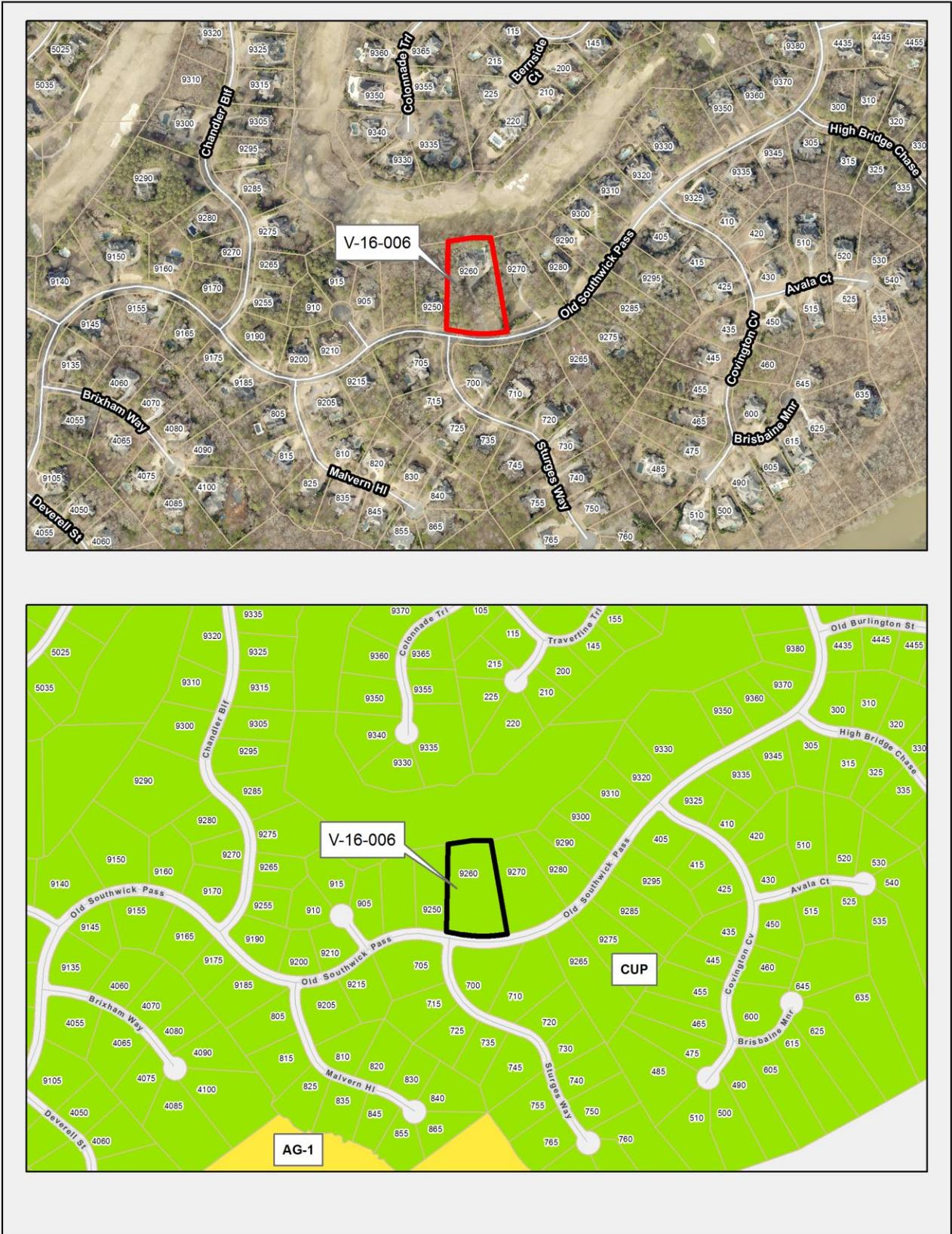
The Department would note that, should the variance be granted by the Board of Zoning Appeals on the merits of this request, the proposed mitigation plan must be executed on the site without removal of existing vegetation and the use of heavy machinery (outside of what is required for the construction of the proposed improvements to the parking/turn-around area and the stormwater detention area).

RECOMMENDED CONDITIONS

Based upon the findings and conclusions herein, Staff recommends **APPROVAL with conditions** of this request, subject to the following conditions of approval:

- 1) The improvements to the parking/turn-around area and the stormwater detention area shall be limited to no more than 984-square feet within the 50-foot undisturbed stream buffer, as shown on the site plan received on March 3, 2016.
- 2) No new impervious area can occur within the additional 25-foot impervious surface setback.
- 3) The applicant must comply with River Corridor requirements, cut and fill requirements, and flood plain requirements, as required by the Land Development Manager and the City Arborist.

- 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 disturbance/impervious surface closer to the stream. Replanting of vegetation shall be consistent with the submitted mitigation plan dated March 22, 2016 or an alternative plan approved by the City Arborist.
- 5) Obtain required building permits/land disturbance permits from the City of Johns Creek Community Development Department prior to commencement of construction.



Community Development