



***Board of Zoning Appeals Public Hearing
September 20, 2016 — 7:00 P.M***

CASE NUMBER:	V-16-019
PROPERTY LOCATION:	11020 Bell Road, Johns Creek, GA 30024 1st District, 1st Section, Land Lot 461
CURRENT ZONING:	AG-1 (Agricultural)
PARCEL SIZE:	7.84 Acres
PROPERTY OWNERS:	Dr. Chalam Mahdevan
STAFF RECOMMENDATION:	PARTIAL APPROVAL

REQUEST

The existing residence, located at 11020 Bell Road, was constructed in 1978 and is approximately 3,750 square feet. The applicant is requesting a stream buffer variance to alter 351-square feet in the 75-foot no impervious surface setback, for the construction of two additions.

The first addition is located on the northwest side of the rear elevation and will be used as a new master bedroom and bathroom, and additional living space. The second addition will be used as a garage on the lower level with additional storage on the second floor. The two-story addition and garage will be clad in brick to match the existing rear elevation. A deck, patio slab and concrete walkway exist in the rear of the house currently.

The first addition will include 23-square feet of new impervious in the 75-foot no impervious surface setback. The second addition will include 328-square feet of new impervious in the 75-foot no impervious surface setback as well. Portions of the existing patio, deck, and concrete walkway at the rear of the house encroach into the 75-foot no impervious surface setback. The proposed construction will not encroach into the 50-foot undisturbed buffer or 25-foot state undisturbed buffer.

BACKGROUND

The subject property, 11020 Bell Road, is currently zoned AG-1 (Agricultural) and is not located in a subdivision. Because of this, the lot was never platted in Fulton County with a tributary buffer around the stream. The subject property's rear property line is adjacent to five parcels within the Bellemont Farms Subdivision. The stream shown on the survey for the subject property runs through the Bellemont Farms Subdivision as well. Bellemont Farms was platted on November 2, 1988. There is evidence that the subdivision was originally platted in Fulton County with a 25-foot tributary buffer around the stream (figure 1). The residence on the subject property was constructed in 1978. Based on this evidence, had the subject property been platted, it most likely would have had a 25-foot tributary buffer as well.

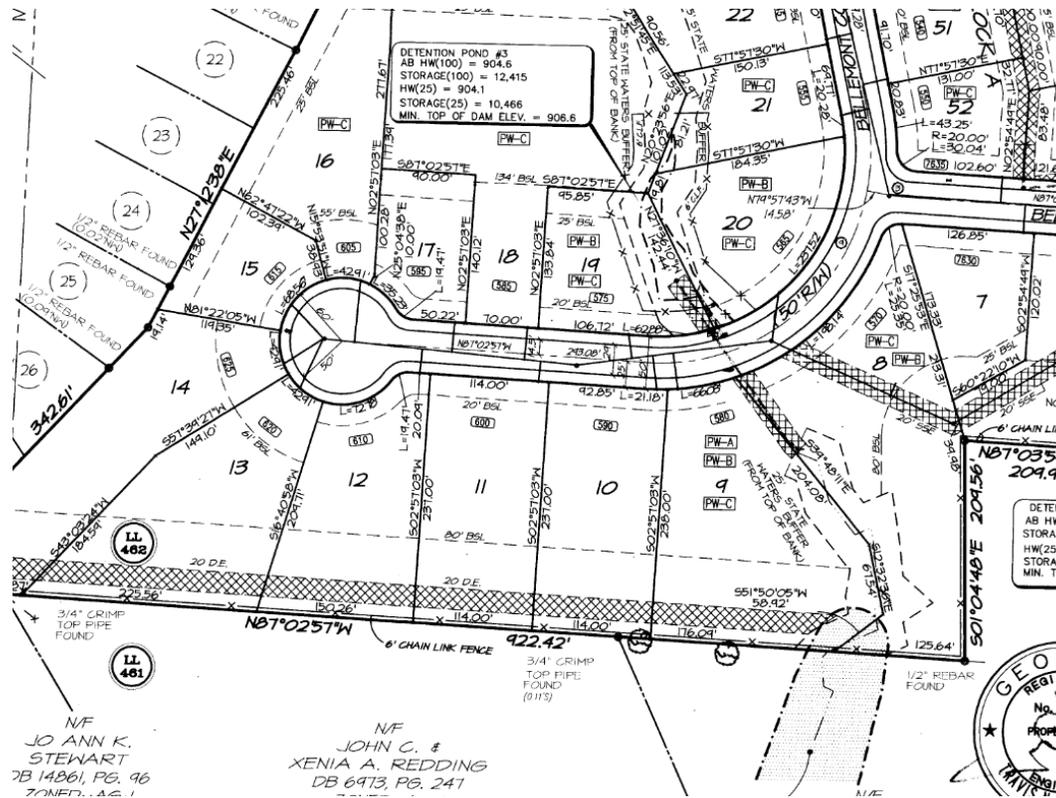


Figure 1. Final Plat for Bellemont Farms Subdivision.

ADJACENT ZONING AND LAND USES

Adjacent properties to the north are zoned CUP (Community Unit Plan) Conditional pursuant to Fulton County zoning case Z-94-124, and are in the Bellemont Farms subdivision. The properties to the east is zoned AG-1 (Agricultural) and is occupied by the Chattahoochee Christian Church. The properties to the south and west are also zoned AG-1 (Agricultural) and are single family dwellings.

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 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

Although the subject property was not platted in Fulton County with a 25-foot tributary buffer, the existing residence was constructed before the adjacent subdivision, Bellemont Farms, was platted. There is evidence that Bellemont Farms was platted with a 25-foot tributary buffer and the subject property would have been platted with the same, had it been part of a subdivision. While it is assumed that the property, when constructed, had a smaller stream buffer, the applicant does not appear to have a hardship as several alternative locations exist for the proposed expansion. Staff can support the request for the additional 23-square feet of new impervious for the master bedroom/living space addition as that addition will follow the existing northwest building line/roof line. However, pushing the garage to the northwest, past the existing footprint, is unnecessary due to the area of developable land located outside of the 75-feet of stream buffers. The relocation of the proposed garage will reduce the requested encroachment into the stream buffer by 328-square feet.

Two clear alternative locations exist for the garage that would allow for the expansion of the home, while respecting the current stream buffer requirements. One alternative location would be to push the proposed

garage forward so that it is more in line with the front of the proposed master bedroom/living space addition (figure 2). Another alternative would be to locate the proposed garage on the other side of the house, where the existing driveway is located (figure 3).

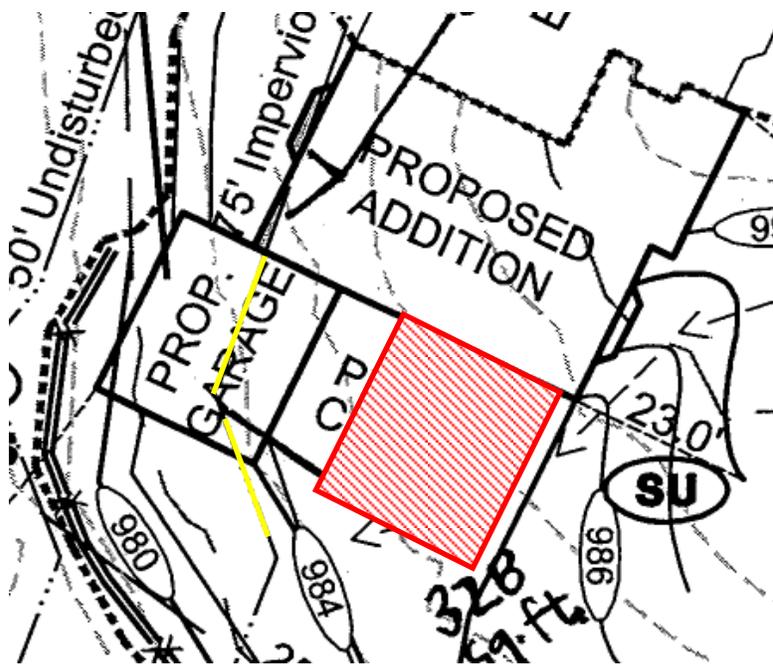


Figure 2. Alternative location, which is outside of the stream buffer, for the proposed garage is shown in red. Yellow line represents 75-foot no impervious surface setback line.

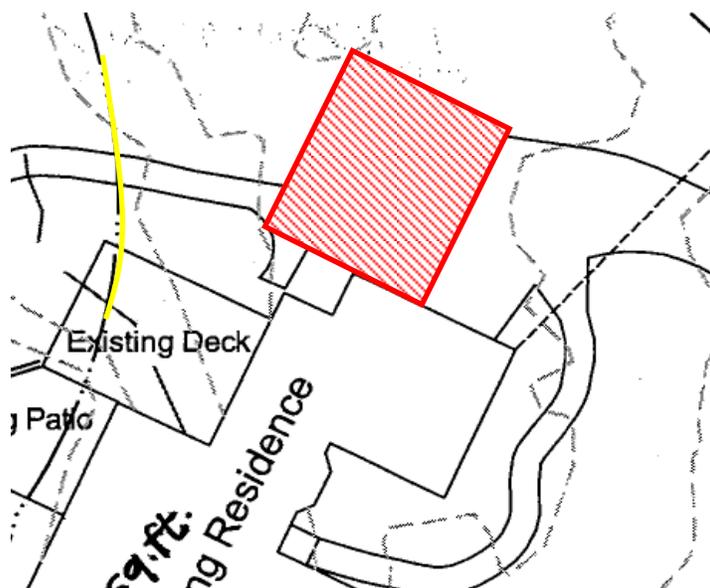


Figure 3. Alternative location, which is outside of the stream buffer and in line with the existing driveway, for the proposed garage is shown in red. Yellow line represents 75-foot no impervious surface setback line.

The Department would note that the applicant has submitted a replanting plan to mitigate the proposed 351-square-foot intrusion into the stream buffer with an assortment of small trees, shrubs, and groundcover. It appears that this plan meets the stream buffer mitigation that is required.

Had the subject property been platted, the applicant would have had the ability to implement the proposed improvement on the lot without a variance. Because of this, the design of the proposed encroachment, the minimal impact, and the applicant's agreement to implement an adequate mitigation plan; the Department of Community and Development recommends **PARTIAL APPROVAL WITH CONDITIONS** of the request to construct a master bedroom/living space addition that encroaches 23-square feet into the 75-foot no impervious surface stream buffer. Due to the alternative locations available for the construction of the proposed garage, the Department of Community and Development does not believe that the applicant has a hardship and therefore recommends that the request to encroach 328-square feet into the 75-foot no impervious surface stream buffer for the construction of a new garage not be approved.

RECOMMENDED CONDITIONS

Based upon the findings and conclusions herein, Staff recommends **APPROVAL with conditions** of the request to encroach 23-square feet into the 75-foot no impervious surface setback for the construction of a master bedroom/living space addition, subject to the following conditions of approval:

- 1) That the addition shall be limited to no more than 23-square feet of new impervious within the 75-foot no impervious surface setback, as shown on the site plan received on August 30, 2016.
- 2) That the proposed garage addition cannot be constructed within the 75-foot no impervious surface setback.
- 3) 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. A new mitigation plan shall be submitted for review by the City Arborist that mitigates the smaller encroachment of 23-square feet.
- 4) Obtain required building permits from the City of Johns Creek Community Development Department prior to commencement of construction.
- 5) Building materials and architectural style shall match existing residence.

Should the Board feel compelled to approve the entire variance request, Staff recommends that approval be subject to the following conditions:

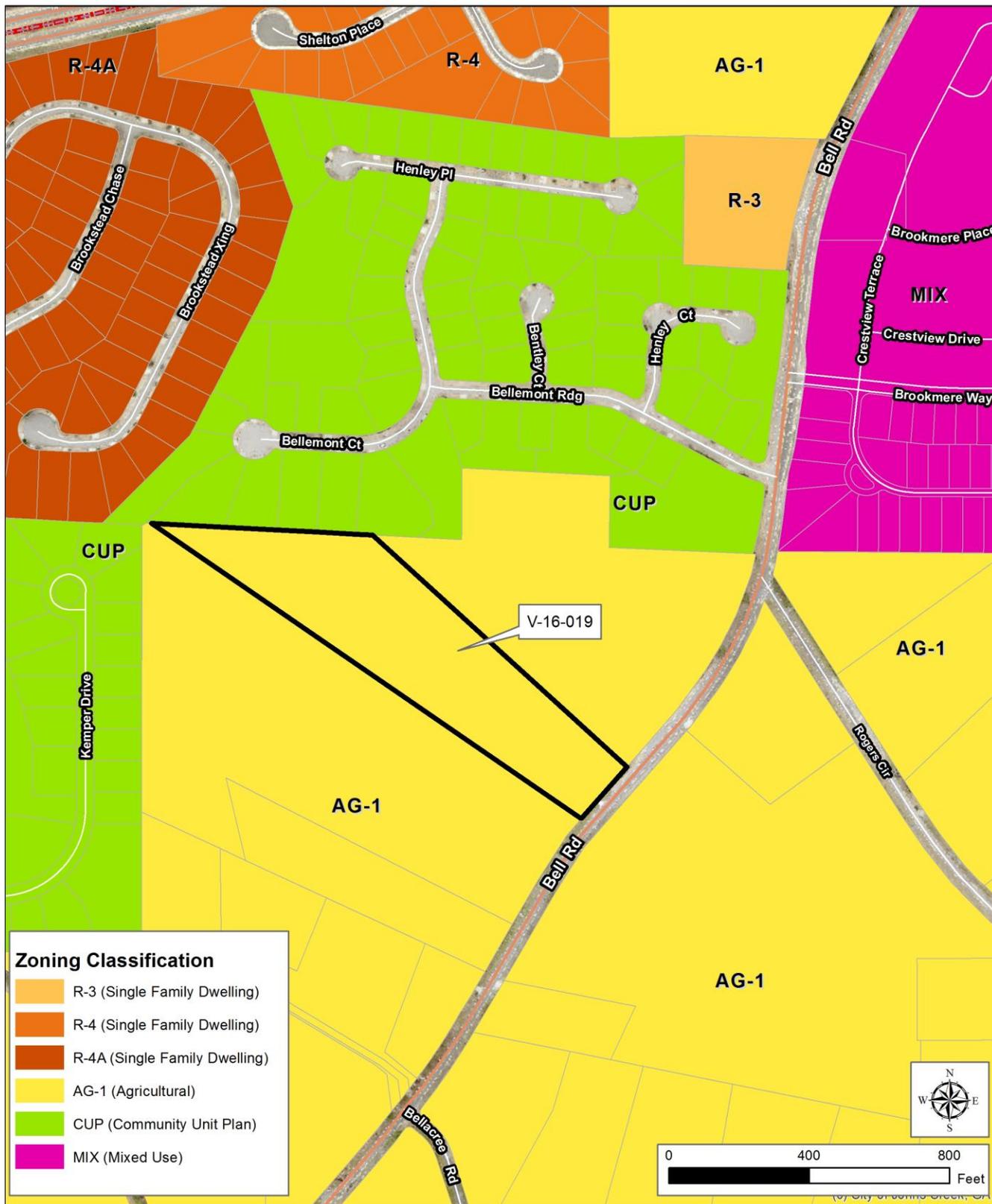
1. The two additions shall be limited to no more than 351-square feet of new impervious within the 75-foot no impervious surface setback, as shown on the site plan received on August 30, 2016.
2. The applicant is required, prior to issuance of a certificate of completion, to replant vegetation on the 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 August 31, 2016 or an alternative plan approved by the City Arborist.

3. Obtain required building permits from the City of Johns Creek Community Development Department prior to commencement of construction.
4. Building materials and architectural style shall match existing residence.



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Community Development

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