



***Board of Zoning Appeals Public Hearing  
October 18, 2016 — 7:00 P.M***

<b>CASE NUMBER:</b>	<b>V-16-023</b>
<b>PROPERTY LOCATION:</b>	<b>200 Winnipeg Lane Johns Creek, GA 30022 1<sup>st</sup> District, 2<sup>nd</sup> Section Land Lot 872</b>
<b>CURRENT ZONING:</b>	<b>R-4A (Single Family Dwelling) Conditional</b>
<b>PARCEL SIZE:</b>	<b>.356 Acres</b>
<b>PROPERTY OWNER(S):</b>	<b>Gustavo Moreschi</b>
<b>STAFF RECOMMENDATION:</b>	<b>PARTIAL APPROVAL WITH CONDITIONS</b>

**REQUEST**

The existing residence, located at 200 Winnipeg Lane, was constructed in 1992 and is approximately 3,225 square feet. The applicant is requesting a variance to allow a 16'x27' addition to an existing pool deck in the front yard, and to encroach approximately 7' into the 10-foot side yard setback on the eastern side of the property. Typically, accessory structures are required to comply with the primary building setbacks; however, Section 19.3.12.B.1 provides an exception for pools and their related equipment/structures. Section 19.3.12.B.1 also states pools may only be allowed at the back of the house on a double frontage single-family residential lot as approved by the Department. The subject property has two fronts, Winnipeg Lane and Birchton Street. If approved, the pool deck addition will be located just 3' from the eastern (side) property line and 25' from the southern (front) property line.

**BACKGROUND**

The subject property, 200 Winnipeg Lane, is lot number 71 within Unit One, Phase Two of the Wynbrook subdivision; and is currently zoned R-4A (Single-Family Dwelling District) conditional.

Staff notes that this is partially an after-the-fact request, as the existing pool and deck have already been installed. In this instance, the existing pool and deck were constructed on the property by a previous owner. Based on historic aerial photography, the pool and pool deck were installed before 2003. The current property owners, Gustavo and Maria Moreschi, purchased the home in November of 2011. However, the property owners are requesting to increase the nonconformity of the lot by proposing an addition to the pool deck that will encroach 10' into the front yard setback and 7' into the required 10-foot side yard setback. As currently constructed, the existing pool deck encroaches 3' into the 10-foot side yard setback and is located in the front yard, because the dwelling fronts on both Winnipeg Lane and Birchton Street.

The northeastern portion of property, where the existing pool is located, is located above road grade and has no topography. The southern portion of the property, however, (where the proposed deck would be located), is

above road grade, and has a very steep slope down from the house to Winnipeg Lane, which would make it difficult to construct a deck in this location.

### **ADJACENT ZONING AND LAND USES**

Adjacent properties to the north, south, east, and west are zoned R-4A (Single-Family Dwelling District) conditional pursuant to Fulton County zoning case Z-86-053 and are located in the Wynbrook subdivision as well.

### **APPLICABLE CODE REQUIREMENTS**

City of Johns Creek Zoning Ordinance; Article XIX: Administrative Permits and Use Permit; Section 19.3.12: Swimming Pool, Private; B: Standards; 1: Detached Dwellings;

*Detached Dwellings.* Swimming pools shall be allowed in side and rear yards of single-family dwellings in any district and may also be allowed at the back of the house on a double frontage single-family residential lot as approved by the Department. Pools, pool equipment, and their decks must be a minimum of 10 feet from all property lines, except that when perimeter setbacks are required, for example in NUP and TR zoned districts, pools, pool equipment, and decks cannot be located in perimeter setbacks.

### **VARIANCE CONSIDERATIONS**

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:

- A. 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
- B. 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.

### **STAFF RECOMMENDATION**

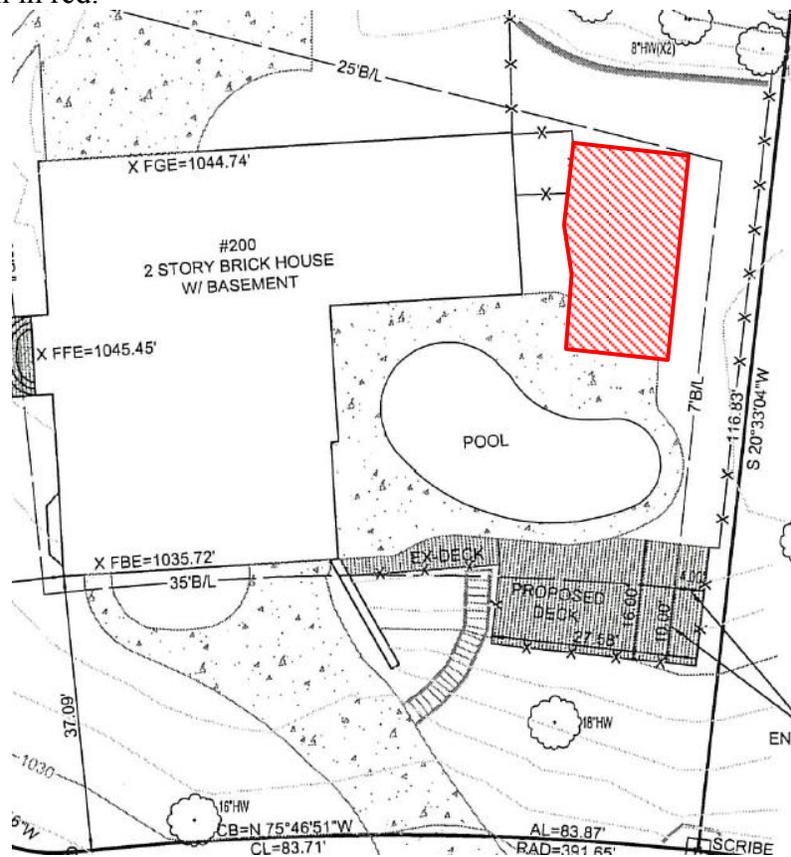
V-16-023, if granted, would not be in harmony with the general purpose and intent of the Zoning Ordinance. Ten-foot side and rear setbacks for pools, pool equipment, and their decks are intended to provide adequate separation between these accessory structures and adjacent properties. In this case, the existing pool deck encroaches approximately 3' into the required ten-foot eastern side setback. Allowing the proposed pool deck to encroach 7' into the required ten-foot eastern side setback would not meet this intent.

Additionally, there are no extraordinary or exceptional conditions on the subject property due to its size, shape, or topography that would create an unnecessary hardship under the provisions of the Zoning Ordinance which

would allow the pool patio to be installed within 10' of the side property line. The fact that a previous owner installed the pool and pool deck does not constitute a hardship, as outlined by the variance considerations in Section 22.3.1 of the City of Johns Creek Zoning Ordinance. Staff has reviewed the site and the northern portion of side yard is flat, with at least one alternative location that the proposed deck could be constructed (see figure 1). By placing the proposed deck where the applicant has requested, the applicant is creating a hardship, as the yard fronting Winnipeg Lane has a very steep slope creating topography issues.

A clear alternative location exists, that would allow for the expansion of the pool deck, while respecting the current setback requirements. The alternative location would be to move the proposed pool deck to the northern side of the pool (figure 1). If the pool deck area is moved to this location, the applicant would still need a variance for the existing pool and pool deck to encroach into the 10-foot side setback, however the applicant would not be increasing the non-conformity.

Figure 1. Alternative location, which complies with the 10-foot setback required for all pools, pool equipment, and their decks, is shown in red.



Therefore, the Community Development Department recommends **PARTIAL APPROVAL WITH CONDITIONS** of the existing pool and pool deck as currently constructed, with a 4-foot encroachment into the 10-foot side yard setback, and shall not encroach past the 35' front building setback on the southern side of the property. Due to the alternative location available for the construction of the proposed pool deck, the Department of Community and Development does not support the proposed variance request. There are any extraordinary or exceptional conditions on the site which would create an unnecessary hardship, and therefore

staff recommends that the request to encroach 7' into the ten-foot setback on the eastern side, required for pools, pool equipment, and decks, and 10' past the front building, as pools may only be allowed at the back of the house on a double frontage single-family residential lot for the construction of a 442-square foot pool deck, not be approved.

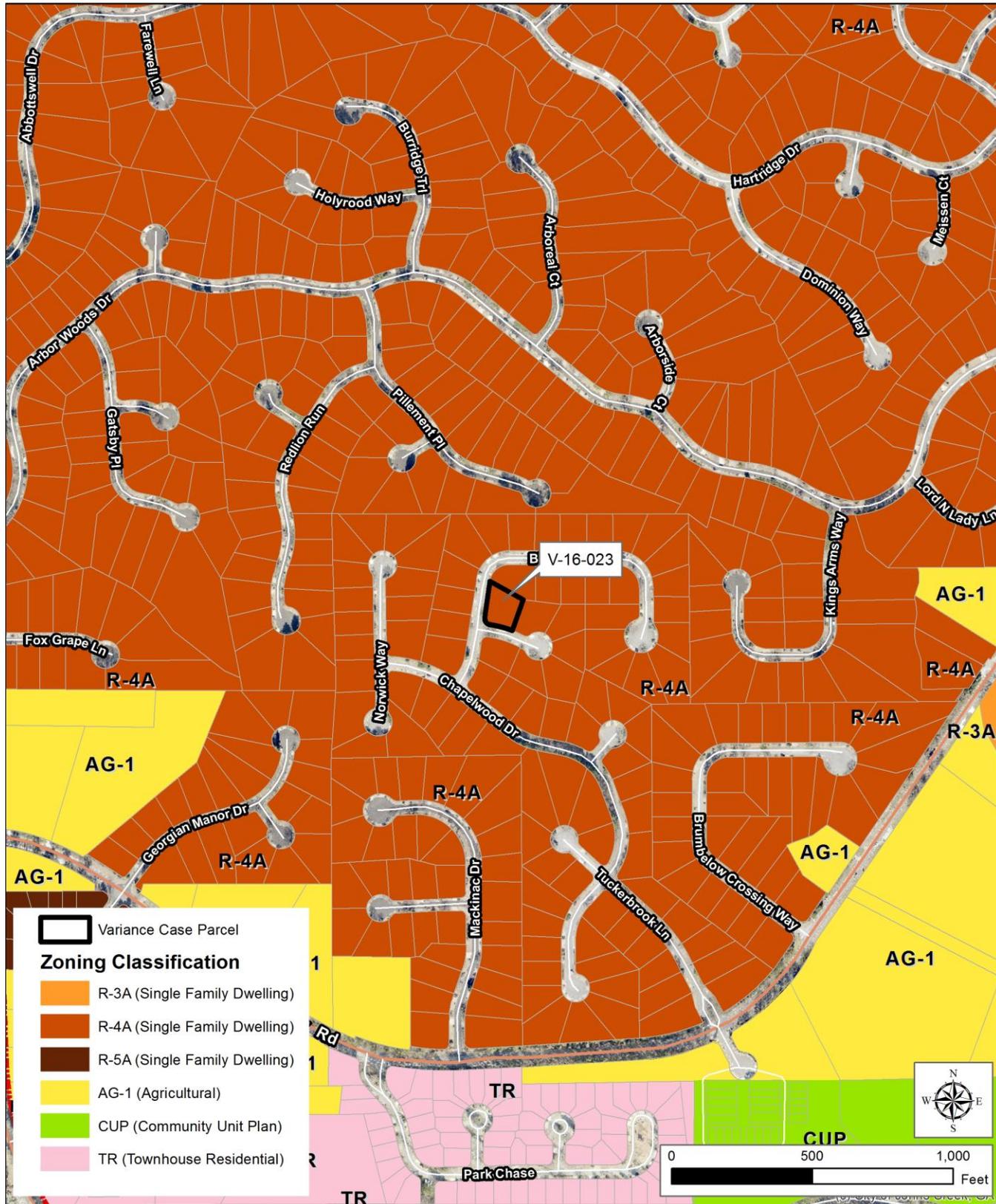
### **RECOMMENDED CONDITIONS**

Based upon the findings and conclusions herein, Staff recommends **APPROVAL with conditions** of the request to allow a pool to be located in the front yard, subject to the following conditions of approval:

1. Existing pool deck shall encroach no more than 3' into the eastern side yard setback for pools, pool equipment, and their decks.
2. Existing pool deck shall not encroach past the 35' front setback on the southern side of the property.

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

1. Pool deck shall encroach no more than 7' into the eastern side yard setback for pools, pool patios, and pool equipment.
2. Pool deck shall encroach no more than 10' into the southern (front) yard setback.
3. Obtain required building permits from the City of Johns Creek Community Development Department prior to commencement of construction.
4. The pool deck shall be limited to no more than 442-square feet of new impervious, as shown on the site plan received on September 1, 2016.



### Community Development



## Community Development