



***Board of Zoning Appeals Public Hearing
August 18, 2015 — 7:00 P.M***

CASE NUMBER:	V-15-008
PROPERTY LOCATION:	250 Davenham Court, Johns Creek, GA 30005 1st District, 1st Section, Land Lot 313
CURRENT ZONING:	CUP (Community Unit Plan District)
PARCEL SIZE:	0.40 Acres
PROPERTY OWNERS:	Frank Toth
STAFF RECOMMENDATION:	APPROVAL with conditions

REQUEST

The applicant is requesting a stream buffer variance in order to encroach two feet into the 25-foot impervious surface setback adjacent to the 50-foot stream buffer to allow for the replacement of a deck. The proposed construction would create approximately 63 square feet of new impervious surface within the impervious surface setback. The proposed deck would replace a previous 12-foot by 10-foot (120-square-foot) deck that the applicant has stated was distressed. The proposed deck would be 33 feet by 14 feet (462 square feet), located 10 feet above grade with steps leading to a lower patio.

The subject property is located at 250 Davenham Court within the Enclave at Wellington subdivision. The subdivision was originally platted in Fulton County with a 35-foot stream buffer, which later became subject to the 50-foot stream buffer and additional 25-foot impervious surface setback. The proposed construction would not encroach into the 50-foot undisturbed buffer or 25-foot state buffer.

ADJACENT ZONING AND LAND USES

Adjacent properties to the north, south, and east are zoned CUP and are in the Enclave at Wellington subdivision. All adjacent and nearby properties are developed with single-family homes, except for the Autry Mill Preserve and Heritage Center, which is approximately 250 feet to the east. The single-family residence located immediately to the northwest is zoned R-4A (Single Family Dwelling District) Conditional and is within the Ashland subdivision.

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

The subject property was platted in Fulton County with a 35-foot stream buffer. The applicant seeks to replace a pre-existing deck with a new 463-square-foot deck, which would require a 2-foot linear encroachment into the 75-foot impervious surface setback for 63 square feet of new impervious surface.

The site plan submitted by the applicant would illustrate that under the original plat, the proposed deck could have been completed without the need for a variance. With the expansion of the stream buffer to 50 feet and the addition of the impervious surface setback, nearly the entire rear yard would be encumbered by the stream buffer and impervious surface setback. The Department would note that the applicant has submitted a replanting

plan to mitigate the proposed 63-square-foot intrusion into the stream buffer with an assortment of shrubs and groundcover.

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 and the applicant's agreement to implement an adequate mitigation plan; the Department of Community and Development recommends **APPROVAL WITH CONDITIONS** of this request.

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.

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 deck and screened porch shall encroach no more than two linear feet into the additional 25-foot impervious surface setback adjacent to the 50-foot stream buffer, as shown on the site plan received on July 7, 2015.
- 2) Obtain required building permits from the City of Johns Creek Community Development Department prior to commencement of construction.
- 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 impervious surface closer to the stream. Replanting of vegetation shall be consistent with the submitted mitigation plan dated August 7, 2015.

