



***Board of Zoning Appeals Public Hearing
November 17, 2015 — 7:00 P.M***

CASE NUMBER:	V-15-024
PROPERTY LOCATION:	7265 Devonhall Way, Johns Creek, GA 30097 1st District, 1st Section, Land Lot 439
CURRENT ZONING:	R-4A Conditional (Single Family Dwelling)
PARCEL SIZE:	0.34 Acres
PROPERTY OWNERS:	Bob Hilton
STAFF RECOMMENDATION:	APPROVAL WITH CONDITIONS

REQUEST

The existing residence, located at 7265 Devonhall Way, was constructed in the early 1990s and is approximately 2,600 square feet. The applicant is requesting a stream buffer variance in order to encroach 16 feet into the 25-foot impervious surface setback adjacent to the 50-foot stream buffer to allow for the replacement and expansion of a recently demolished deck. The new deck creates approximately 90 square feet of new impervious surface within the impervious surface setback from a stream. This is an after-the-fact request as the deck has already been constructed (approximately 60-70% complete). No building permit was filed prior to construction and a stop work order has been issued by the City.

The lot previously contained a 15-foot by 14-foot (210-square-foot) deck that was demolished by the applicant due to safety concerns. The replacement deck is 20-foot by 14-foot (280-square-foot). The stair layout also changed with the new deck and adds an additional 20-square feet of impervious surface in the 25-foot impervious surface setback from a stream buffer. The first 10 feet of the deck is covered by an unenclosed roof.

The subject property is located at 7265 Devonhall Way within the Devonhall 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, east, and west are zoned R-4A Conditional and are in the Devonhall 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 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.

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 recently demolished deck with a new 280-square-foot deck (and stairs). The new deck would require a 16-foot

linear encroachment into the 75-foot impervious surface setback for 90 square feet of new impervious surface. The deck has already been constructed and is approximately 60-70% complete.

The site plan submitted by the applicant illustrates that under the original plat showing the 35-foot stream buffer, the new deck could have been completed without the need for a variance. With the subsequent expansion of the stream buffer to 50 feet and the addition of the impervious surface setback, approximately 75-percent of the property is now located within a stream buffer. The Department would note that the applicant has submitted a replanting plan to mitigate the proposed 90-square-foot intrusion into the stream buffer with an assortment of 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 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 (covered and uncovered) and stairs shall encroach no more than 16 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 October 26, 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 October 26, 2015.

