



***Board of Zoning Appeals Public Hearing
May 17, 2011 —7:00 P.M***

CASE NUMBER:	V-11-021
PROPERTY LOCATION:	8700 Block of Mount Rushmore Drive, Johns Creek, GA 30022 1st District, 2nd Section Land Lot 929
CURRENT ZONING:	CUP Conditional (Community Unit Plan District)
PARCEL SIZE:	0.38 Acres
PROPERTY OWNER:	Tara & Greg Ciul

REQUEST

The applicant requests a variance to encroach 14 feet into the 50-foot undisturbed buffer and additional 25-foot impervious surface setback required by the City of Johns Creek to construct a concrete patio in the rear yard. The proposed concrete patio totals 823 square feet of additional impervious surface in the rear yard. The subject property is located adjacent to the golf course in Rivermont subdivision with a stream traversing near the rear property line. The subject property was originally platted with a 25-foot stream buffer from the point of wretched vegetation. Fulton County, and subsequently the City of Johns Creek, has adopted the larger stream buffer standards of a 50-foot undisturbed buffer and additional 25-foot impervious surface setback. The property is currently developed with a two story single-family dwelling.

ADJACENT ZONING AND LAND USES

The subject property is zoned CUP Conditional (Community Unit Plan District) and is located in Rivermont subdivision. The subject property is located interior to the subdivision, bounded by CUP Conditional zoned property on three sides and the Rivermont Country Club golf course to the rear. North of the subject property are North Peak at Rivermont and The Ridge at Brumbelow subdivisions, both zoned CUP Conditional. East of the subject property are Country Club of the South and River Glen subdivisions, zoned CUP Conditional and R-4 Conditional (Single Family Dwelling District) respectively. To the west across Brumbelow Road are Hartridge and Brumbelow Crossing subdivisions, both zoned R-4A Conditional (Single Family Dwelling District).

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 stream 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.

RECOMMENDATION

The subject property was originally platted with a 25-foot stream buffer from the banks of the stream that exist exterior of the subject lot adjacent to the rear property line. The applicant has proposed construction of a concrete patio that would extend 14-feet in depth from the rear of the dwelling and would stretch 65-feet wide from corner to corner of the residential structure, totaling 823 square feet of additional impervious surface. The area of improvement is the first terraced level of the rear yard, which is held by existing concrete retaining walls. The existing wood deck shown on the applicant's site plan will remain and is not included in the proposed project.

The site plan submitted by the applicant illustrates that under the previous stream buffer requirement, the proposed improvement would have been completed without encroaching into and maintaining a sufficient setback from the 25-foot state water buffer. With the adoption of the larger stream buffer standards of a 50-foot undisturbed buffer and additional 25-foot impervious surface setback per the requirement of the Metropolitan North Georgia Water Planning District, majority of the applicant's rear yard would be rendered unusable

without seeking a variance. The requested encroachment of 14 feet would not result in removal of mature vegetation in the rear yard, as the proposed patio will be constructed in a previously disturbed area. Also, the applicant is willing to provide mitigation for the requested encroachment into the stream buffer, additionally contributing to the existing natural vegetation found in the rear yard and around the perimeter of the subject lot.

In light of the applicant having had the ability to implement improvements on the property without seeking a variance based on the previous stream buffer requirement, the applicant's intent to provide mitigation on the property, and the proposed improvements not having an adverse effect on existing vegetation; the Department of Community and Development recommends **APPROVAL with conditions** of this request.

Based upon the findings and conclusions herein, Staff recommends **APPROVAL with conditions** of this request, subject to the following conditions of approval or as may be amended by the Board of Zoning Appeals:

- 1) The proposed concrete patio improvement shall encroach no more than 14 feet in depth into the 50-foot undisturbed buffer and additional 25-foot impervious surface setback, as shown on the site plan dated April 4, 2011.
- 2) The proposed improvements shall not exceed 823 square feet of additional impervious surface.
- 3) The proposed concrete patio shall not encroach into the established 30-foot sanitary sewer and drainage easement located at the northern portion of the site.
- 4) Obtain required building permits from the City of Johns Creek Community Development Department prior to commencement of proposed improvements.
- 5) As part of the building permit, the applicant is to submit a copy of the mitigation plan that was provided with the variance application dated April 25, 2011. The mitigation plan must clearly depict the location, number, and plant material to be installed on the property.
- 6) The applicant is required, prior to issuance of a certificate of completion, to replant vegetation on the subject property, in order to offset any adverse impact associated with additional impervious cover closer to the stream. Replanting of vegetation shall be consistent with the submitted mitigation plan dated April 25, 2011.

Aerial and Vicinity Map

