



***Board of Zoning Appeals Public Hearing
September 20, 2011 —7:00 P.M***

CASE NUMBER:	V-11-030
PROPERTY LOCATION:	9300 Block of Chandler Bluff, Johns Creek, GA 30022 1st District, 1st Section Land Lot 104
CURRENT ZONING:	CUP Conditional (Community Unit Plan District)
PARCEL SIZE:	0.881 Acres
PROPERTY OWNER:	CRM Central Properties, LLC
PETITIONER:	Kenneth J. Gary

REQUEST

The applicant has requested a variance to encroach approximately 50 feet into the 50-foot undisturbed buffer and an additional 25-foot impervious surface setback to allow for a future residential structure to be built on the subject property. The property is identified as Lot 15, and is one of the few undeveloped lots remaining in Country Club of The South. The development was originally platted with Fulton County, and the subject property did not indicate a stream on site and only a 20-foot sanitary sewer easement was identified. However, a recent site evaluation performed by the city’s site inspectors confirmed that a natural stream exists on the property. The applicant has submitted this variance request in order to create a buildable lot that would be consistent with existing residential dwellings in the development. It should be noted that the lot would likely be unbuildable without granting a variance.

ADJACENT ZONING AND LAND USES

The subject property is located in Country Club of The South, and is zoned CUP Conditional (Community Unit Plan District). The subject property is located interior to the development and the rear of the lot abuts the country club golf course. Further north of the subject property, across Old Alabama Road is Autrey Mill Middle School and adjacent to it is The Falls of Autry Mill subdivision, zoned R-4 Conditional (Single Family Residential District). Further west is Barnwell Elementary School, and across Barnwell Road is North Peak subdivision, zoned CUP Conditional. South of the property is the Chattahoochee River National Recreation Area – Jones Bridge, and the Chattahoochee River.

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.

RECOMMENDATION

The applicant seeks to accommodate an approximately 5,500 square-foot residential dwelling on the existing lot with the aggregate total of encroachment into the stream buffer proposed at 6,033 square feet. The proposed building footprint, roundabout driveway, patio, porch, and various walkways would require a 50-foot encroachment in depth into the 50-foot undisturbed buffer and additional 25-foot impervious surface setback. The final plat for the subject property does not show a stream but a 20-foot wide sanitary sewer easement. Staff recently made a visit to the property and determined that a stream extends from the northwest rear corner of the property, meandering north to south, with the stream eventually entering into a culvert at the front of the property.

The requested variance would be necessary to build a single-family residential dwelling consistent in form and appearance with existing residences in the Country Club of The South. When considering the location of the stream and applying the 50-foot undisturbed buffer and additional 25-foot impervious surface to the property, the proposed residential dwelling in its entirety would be located within the stream buffer and would present a hardship that would inhibit the applicant from building on the lot without seeking a variance. The submitted site plan illustrates that the applicant would maintain the state required 25-foot water buffer and preserve the existing dense natural vegetation on the eastern portion of the lot. The Department would note that the applicant must not disturb land within the 25-foot state water buffer. Based on the original recorded plat, the applicant would have had the ability to grade and disturb up to the delineation of the 20-foot sanitary sewer easement. Additionally, the applicant has provided a mitigation plan that would provide for a greater aggregate square footage of revegetation on the property than required for the proposed impervious encroachment into the stream buffer, totaling 7,128 square feet of vegetation. Mitigation on the property will consist of an assortment of large and small trees, shrubs and groundcover, and additional landscaping along the frontage of the property.

In light of the subject property having had the ability to construct a residential structure on the lot without a variance based on the original final plat, the proposed development not disturbing and maintaining the 25-foot state water buffer, and the applicant's agreement to implement an adequate revegetation/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 prospective residential structure would be limited to the building footprint as shown on the applicant's submitted site plan.

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 encroachment of the proposed building footprint shall not exceed 50 feet in depth and 6,033 square feet of impervious surface into the 50-foot undisturbed buffer and additional 25-foot impervious surface setback, as shown on the site plan dated August 23, 2011.
- 2) There shall be no land disturbance within the 25-foot state water buffer without previously obtaining an approval from Georgia Department of Natural Resources, Environmental Protection Division.
- 3) Tree save/protection fencing shall be provided around the perimeter of the 25-foot state water buffer during construction.
- 4) Obtain required building permits from the City of Johns Creek Community Development Department prior to commencement of constructing a residential dwelling unit on the subject property.
- 5) As part of the building permit, the applicant is to submit a copy of the revegetation/mitigation plan that was provided with the variance application dated August 23, 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 occupancy, to replant vegetation on the subject property to offset any adverse impact associated with additional impervious cover closer to the stream. Replanting of vegetation shall be consistent with the revegetation/mitigation plan submitted to the Department of Community Development on August 23, 2011.

Aerial and Vicinity Map

