



***Board of Zoning Appeals Public Hearing
October 18, 2011 —7:00 P.M***

CASE NUMBER:	V-11-036
PROPERTY LOCATION:	200 Block of Donamere Way, Johns Creek, GA 30022 1st District, 1st Section Land Lot 225
CURRENT ZONING:	R-4 Conditional (Single Family Dwelling District)
PARCEL SIZE:	0.391 Acres
PROPERTY OWNER:	Christopher Sanna

REQUEST

The applicant requests a variance to encroach 20 feet into the 50-foot undisturbed buffer and additional 25-foot impervious surface setback required by the City of Johns Creek to reconstruct and expand a 440 square-foot multi-level deck in the rear yard. The proposed deck would extend nine feet beyond the length of the existing deck from the rear of the house. The subject property is located in Donamere subdivision and the northeast corner of the subject property contains a portion of a lake. The subject property was originally platted with a stream buffer requirement of 35 feet from the edge of the lake. Fulton County, and subsequently the City of Johns Creek, has adopted the larger stream buffer standards of a 50-foot undisturbed buffer and an additional 25-foot impervious surface setback. There currently exists on the property a two-story single family residential dwelling unit with an existing deck off the main floor, and a separate landing with a staircase directly off the basement floor level.

ADJACENT ZONING AND LAND USES

The subject property is zoned R-4 Conditional (Single Family Dwelling District) and is located within Donamere subdivision. The subject property is located at a terminus of a cul-de-sac, interior to the subdivision, and abutting a lake to the rear, which is shared by Donamere, Waterford, and Lakehill subdivisions. North of the subject property are Waterford and Hunter's Close subdivision, zoned R-4 Conditional and TR Conditional, respectively. East of the property is Lakehill subdivision, zoned CUP Conditional (Community Unit Plan District). To the west is Morton Plantation subdivision, zoned R-4 Conditional. Further south of the subject property, across West Morton Road, is Aviary subdivision, zoned R-4 Conditional.

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 wretched 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

Donamere subdivision was developed adjoining a lake at the rear of the development and shared by adjoining established residential neighborhoods. The subject property was originally platted with a 35-foot stream buffer from the edge of the lake. The applicant has proposed construction of a 440 square-foot multi-level deck requiring an approximate 20-foot encroachment into the 50-foot undisturbed buffer and additional 25-foot impervious surface setback.

The site plan submitted by the applicant illustrates that under the previous stream buffer condition, the proposed multi-level deck could have been constructed on the property without encroaching into the 35-foot stream buffer. With the adoption of the larger stream buffer standards of 50-foot undisturbed buffer and additional 25-

foot impervious surface setback, much of the existing residence lies within the stream buffer. Additionally, with the lake protruding into the northeast corner of the lot, the established stream buffer would encompass a greater portion of the subject property and the total extent of the rear yard, rendering much of the property unbuildable without seeking a variance. The requested encroachment of 20 feet would not require additional removal of mature vegetation from the rear yard, as the rear is grassed and the proposed land disturbance would occupy an area that has been previously disturbed with the construction of the existing retaining wall and deck. The applicant has proposed a replanting plan to mitigate the proposed intrusion into the stream buffer, providing additional vegetation to a property that is comprised of untouched woodland and established mature trees, shrubs, and ornamental ground cover. Although the proposed multi-level deck would encroach into the 50-foot undisturbed buffer and additional 25-foot impervious surface setback, the development would be constructed outside the platted 35-foot stream buffer. The Department would note that the applicant conveyed to staff during a recent site visit that land disturbance required for the proposed project would occur within a previously disturbed area and would have no effect on the undisturbed portion of the rear yard. Only the lower portion of the proposed multi-level deck would cantilever beyond the limits of the existing retaining wall.

In light of the proposed mitigation plan to be implemented by the applicant, the subject property having had the ability to construct a multi-level deck under the previously platted stream buffer, and the proposed deck having no 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 multi-level deck shall encroach no more than 20 feet in depth into the 50-foot undisturbed buffer and additional 25-foot impervious surface setback, as shown on the site plan dated September 6, 2011.
- 2) The multi-level deck shall not exceed 440 square feet of additional impervious surface in the rear yard.
- 3) There shall be no land disturbance associated with the construction of the multi-level deck within the 35-foot stream buffer and 100-year floodplain.
- 4) Obtain required building permits from the City of Johns Creek Community Development Department prior to commencing construction of the multi-level deck addition.
- 5) The applicant is required, prior to issuance of a certificate of completion, to replant vegetation on the subject property to offset any adverse impact with the additional impervious surface closer to the stream. Replanting of vegetation shall be consistent with the submitted mitigation plan dated September 28, 2011.

Aerial and Vicinity Map

