



***Board of Zoning Appeals Public Hearing
December 13, 2011 —7:00 P.M***

CASE NUMBER:	V-11-037 & V-11-038
PROPERTY LOCATION:	9700 Block of Murano View, Johns Creek, GA 30022 1st District, 1st Section Land Lot 257 & 286
CURRENT ZONING:	MIX Conditional (Mixed Use District)
PARCEL SIZE:	3.40 Acres
PROPERTY OWNER:	New Haven Property Owners Association, Inc.
PETITIONER:	James Neff, Ingenium Design Group

REQUEST

The New Haven Property Owners Association seeks to install a playground near the existing detention pond located at the southwest corner of the development, also referred to as “common area D,” which is one of four common areas platted within the subdivision. The applicant has requested a variance to encroach 68 feet into the 100-foot setback for recreational areas from all property lines. Additionally, the applicant has requested a variance to encroach 47 feet into the 50-foot undisturbed buffer and 25-foot impervious surface setback, as stream buffers extend from the edge of the detention pond and from the banks of the existing stream located west of the proposed playground. Construction and installation of the playground would consist of 3,228 square feet of land disturbance and impervious surface area located within the stream buffer. The subject property was required to maintain the state mandated 25-foot stream buffer from the edge of the detention pond and from the point of wrested vegetation of the stream. Fulton County and subsequently, the City of Johns Creek have adopted the larger stream buffer standards of a 50-foot undisturbed buffer and an additional 25-foot impervious surface setback.

ADJACENT ZONING AND LAND USES

The subject property is zoned MIX Conditional (Mixed Use District) and is referenced as “common area D” of the Towne Village at New Haven subdivision. To the west of the subject property is State Bridge Crossing Elementary School, zoned R-1 Conditional. To the north, across State Bridge Road, is Johns Creek High School, zoned MIX Conditional. To the east is a commercial office building, zoned O-I (Office Institutional District) Conditional, and further east is Medlock Crossing Shopping Center, zoned C-1 (Community Business District) Conditional. South of the subject property is an AG-1 (Agricultural District) zoned parcel owned by Perimeter Church, and adjacent to it is Chelsea Ridge Apartments, zoned A (Medium Density Apartment District) Conditional.

APPLICABLE CODE REQUIREMENTS

City of Johns Creek Zoning Ordinance; Article XIX: Administrative Permits and Use Permits; Section 19.3.8.: Recreational Court, Private; B. Standards.

3. Neighborhood. Recreational courts serving a neighborhood must be located within the limits of the

underlying zoning.

b. Recreational courts, accessory structures, fencing, and parking shall be located **a minimum of 100 feet from all adjoining property lines.**

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 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

The applicant is proposing to construct a playground on the subject property, also referred to as “common area D”. The proposed location of the playground would require a 68-foot encroachment into the 100-foot setback required for outdoor recreational areas from all property lines. Additionally, the proposed playground would require an encroachment of 47 feet (3,228 square feet) into the 50-foot undisturbed buffer and 25-foot impervious surface setback from the edge of the existing detention pond and from the point of wrested vegetation of the stream that is located to the west of the proposed playground. The final plat for the subdivision does not identify a stream buffer, but the applicant would be subject to the 25-foot state water buffer standard enforced by the State of Georgia.

The applicant’s site plan would illustrate that under the previous stream buffer requirement, the proposed playground could have been constructed without encroaching into and maintaining an adequate setback from the state mandated 25-foot stream buffer from both the detention pond and stream. With the city’s adoption of the larger stream buffer standards of 50-foot undisturbed buffer and additional 25-foot impervious surface setback, a large portion of the playground and associated walkway and grading/land disturbance would encroach into the stream buffer. Although the proposed playground would encroach into the stream buffer, it would be constructed outside the 25-foot state water buffer and located below the grade of the pond, thus there would be no issue of additional water runoff affecting adjacent homeowners as a result of playground construction. With the applicant’s additional request to encroach 68 feet into the 100-foot setback required of outdoor recreational areas from all property lines, the proposed playground would comply with development standards of the zoning ordinance, if the variance is approved. The requested encroachment of 47 feet into the stream buffer would not require removal of existing plant material, as the subject property is currently grassed. The rear (south) property line of the development adjacent to Chelsea Ridge Apartments and Perimeter Church is lined with mature and dense vegetation, which the applicant will maintain and additionally enhance with a mitigation plan that would furnish the subject property with 3,228 square feet of supplementary vegetation and plantings around the perimeter of the playground.

In light of the subject property having had the ability to construct a playground under the previous stream buffer requirement, the proposed development not disturbing and maintaining the 25-foot state water buffer, with the proposed development having no adverse effect on existing vegetation, 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.

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 playground shall encroach no more than 68 feet into the 100-foot building setback from all property lines, as shown on the site plan dated November 29, 2011.
- 2) The proposed playground shall encroach no more than 47 feet (3,228 square feet) into the 50-foot undisturbed buffer and additional 25-foot impervious surface setback, as shown on the site plan dated November 29, 2011.
- 3) Obtain building permit(s) from the City of Johns Creek Community Development Department prior to commencement of construction of the proposed playground facility.
- 4) 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

and edge of the detention pond. Replanting of vegetation shall be consistent with the submitted mitigation plan dated November 29, 2011.

Aerial and Vicinity Map

