



***Board of Zoning Appeals Public Hearing
December 20, 2016 — 7:00 P.M***

CASE NUMBER:	V-16-024
PROPERTY LOCATION:	365 Cotton Court Johns Creek, GA 30022 1st District, 1st Section Land Lot 204
CURRENT ZONING:	R-4 (Single Family Dwelling District) Conditional
PARCEL SIZE:	0.23 acres
PROPERTY OWNER(S):	Mario Leite Pereira
STAFF RECOMMENDATION:	Approval with Conditions

REQUEST

The applicant is requesting a stream buffer variance to allow for the construction of a covered front porch, concrete walkway, and expanded driveway into the City's 75' no impervious surface stream buffer. The survey submitted on November 28, 2016 shows a 296-square foot covered porch, 166-square foot walkway, and 372-square foot driveway expansion, for a total of 834 square feet all within the 75' no impervious surface stream buffer area. The applicant submitted a building permit application June 17, 2016, for the construction of an 8' x 37' front covered porch. The porch will be constructed of pressure treated floorboards, gable style roof, gutter, and downspouts while a concrete slab will serve as the foundation of the porch.

Staff notes this is an after-the-fact request, as the expansion of the driveway and walkway had already been installed by the applicant. A complaint was made after the owners expanded the driveway and installed a concrete walkway; in both instances, a building permit and right-of-way encroachment permit from the City of Johns Creek were not obtained.

There will be no encroachment into the 50-foot undisturbed buffer or 25-foot State undisturbed buffer.

BACKGROUND

The subject property is located at 365 Cotton Court, lot number 9 within Unit 2, Phase 1 and 2 of the Morton Plantation subdivision. The applicant's 1,176 square foot single-family residence was constructed in 1991. The lot was originally platted by Fulton County and shows a detention pond/lake to the rear of the property. The pond has a State 25-foot undisturbed buffer, a City 50-foot undisturbed buffer and a 75-foot impervious surface setback on both sides of the stream. The residence's lot is non-confirming as the City's 50-foot undisturbed buffer and 75-foot non impervious surface setback was adopted in 2006, fifteen years after the home was built. Portions of the existing house, existing deck and stairs are also encroaching into the 75 foot no impervious surface setback, as well as the 50-foot and 25-foot undisturbed stream buffer.

ADJACENT ZONING AND LAND USES

Adjacent properties to the north, south, east and west are zoned R-4A Conditional pursuant to Fulton County zoning case Z-86-157 and are in the Morton Plantation subdivision.

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 CONSIDERATIONS

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.

STAFF RECOMMENDATION

The final plat on record with the City of Johns Creek illustrates that under the original plat, the covered porch could have been completed without encroaching into the 25' State stream buffer. It is department policy to allow single family homes that do not conform to the current City regulations, such as this case to request variance. The Department would note that the applicant has submitted a replanting plan to mitigate the proposed new 834 square foot of impervious surface intrusion into the stream buffer with one large tree, two small trees, fourteen shrubs, and fifty-three ground cover plants. It appears that this plan meets the stream buffer mitigation that is required.

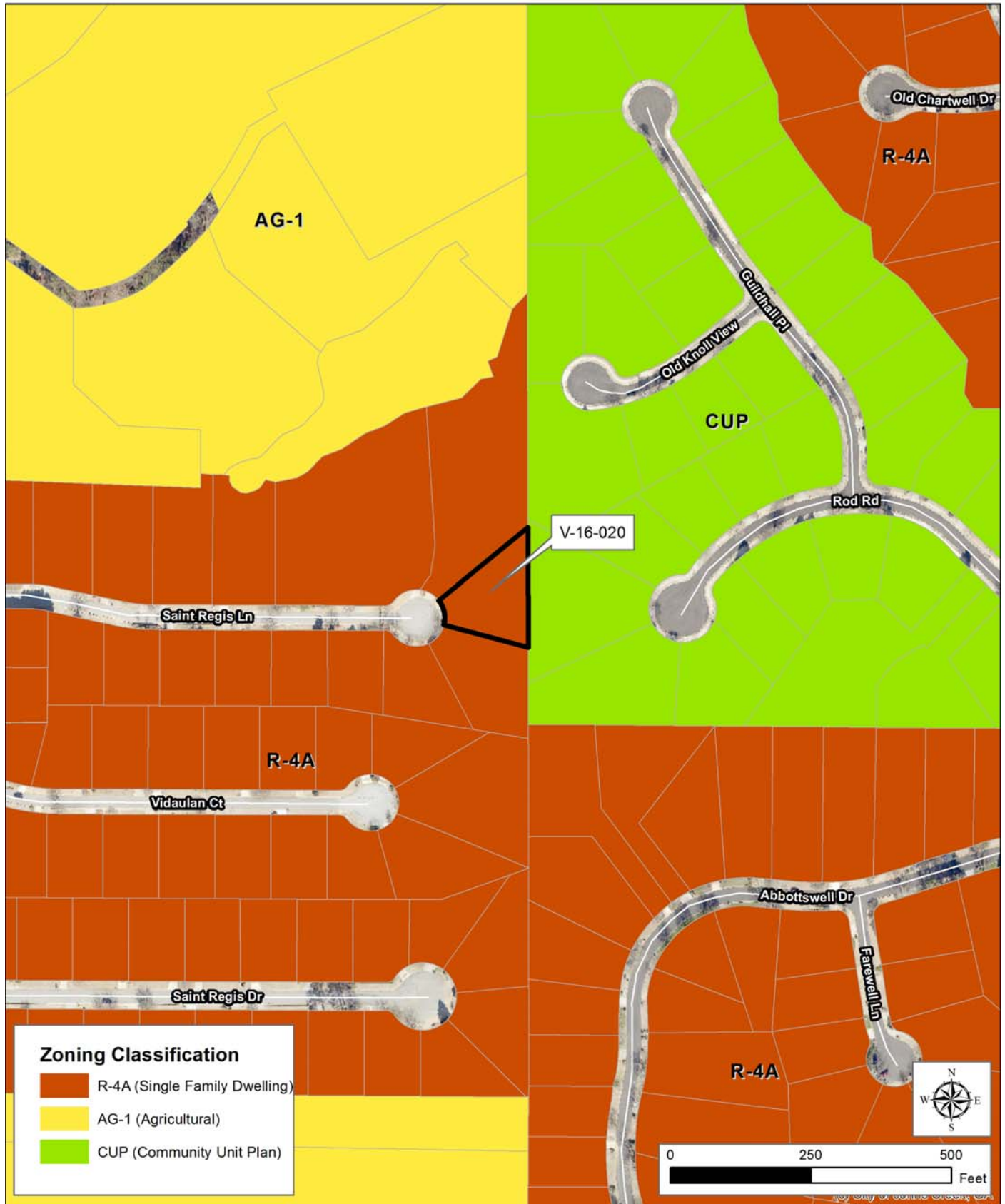
In light of the fact that that the subject property owner had the ability to implement the proposed porch addition on the lot without a variance based on the original final plat, the topography of the lot, and the applicant's agreement to implement an adequate mitigation plan; the Department of Community Development recommends **APPROVAL WITH CONDITIONS** of this request.

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 proposed screen porch, walkway and driveway shall be limited to no more than 834-square feet of new impervious surface area within the 75-foot no impervious setback, as shown on the site plan submitted to the Community Development Department on November 28, 2016.
2. Obtain required building permits from the City of Johns Creek Community Development Department.
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 disturbance/impervious surface closer to the stream. Replanting of vegetation shall be consistent with the submitted mitigation plan dated December 7, 2016 or an alternative plan approved by the City Arborist.

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