Johns Creek

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

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| **CASE NUMBER:** | **V-16-033** |
| **PROPERTY LOCATION:** | **960 Tiverton Lane, Johns Creek, GA 30022** |
| | **1st District, 1st Section, Land Lot 67 and 68** |
| **CURRENT ZONING:** | **CUP Conditional (Community Unit Plan)** |
| **PARCEL SIZE:** | **0.69 Acres** |
| **PROPERTY OWNERS:** | **Richard Bendure** |
| **STAFF RECOMMENDATION:** | **APPROVAL WITH CONDITIONS** |

## REQUEST

The applicant is requesting a stream buffer variance to alter 108-square feet in the 50-foot undisturbed stream buffer in order to install 24 stone steps in the back yard. The rear yard has a major slope from the area where the house and pool are located down to the edge of the water. The applicant is requesting to add additional stone steps within the 50-foot undisturbed stream buffer in order to get better use of the back yard. The applicant intends to do no work within the 25-foot state undisturbed stream buffer.

## BACKGROUND

The subject property, 960 Tiverton Lane is lot number 12 within Phase 1 Pod D and E of the Country Club of the South subdivision. This lot was originally platted in Fulton County with a detention pond, however, there are no stream buffers delineated on the final plat. The final plat does show a detention pond, sanitary sewer easement, drainage easement, 100-year floor prone area, and 25-year high water elevation. There is still a detention pond that backs up to the lot.

Portions of the existing home are currently located in the 75-foot no impervious surface setback. The entire back yard is located in the 25-foot State buffer, the 50-foot City's undisturbed buffer, and 75-foot no impervious surface setback

This lot is located within the Chattahoochee River Corridor. An as-built survey with current impervious and clearing limits must be submitted to the City of Johns Creek in order to determine compliance with the requirements set by the Atlanta Regional Commission (ARC).

## ADJACENT ZONING AND LAND USES

Adjacent properties to the north, south, east, and west are single-family homes zoned CUP Conditional and are in the Country Club of the South subdivision as well.

## 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

The conditions that must be considered for a variance to be granted by the Board of Zoning Appeals are:

(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.

**STAFF RECOMMENDATION**

The subject property was platted in Fulton County with a detention pond, and no stream buffers were included. The applicant intends to add 108-square feet of impervious surface within the 50-foot undisturbed stream buffer, in order to add 24 stone steps from the existing walkway to the edge of the water.

The final plat on record with the City of Johns Creek illustrates that under the original plat, the improvements to the back yard, with the addition of 24 stone steps, could have been completed without the need for a variance, if the detention pond was altered to allow for the changes. It is department policy to allow single-family homes that do not conform to the current City regulations to request a variance if it complies with the State's 25' setback requirement. The proposed alterations will be required to evaluate the needs of the existing detention pond, as well as meet Chattahoochee River Corridor requirements, flood plain requirements, and cut and fill requirements.

The Department would note that the applicant has submitted a replanting plan to mitigate the proposed 108-square-foot intrusion into the stream buffer with an assortment of shrubs and groundcover. It appears that this plan meets the stream buffer mitigation that is required.

In light of the subject property owner having had the ability to implement the proposed improvement on the lot without a variance based on the original final plat, the applicant's agreement to implement an adequate mitigation plan; the Department of Community Development recommends **APPROVAL WITH CONDITIONS** of this request. However, several conditions shall be put in place to protect the subject property and the surrounding area.

The Department notes that, should the variance be granted by the Board of Zoning Appeals on the merits of this request, the proposed mitigation plan must be executed on the site without removal of existing vegetation and the use of heavy machinery.

**RECOMMENDED CONDITIONS**

Based upon the findings and conclusions herein, Staff recommends **APPROVALWITH CONDITIONS** of this request, subject to the following conditions of approval:

1) The improvements to the back yard, with the addition of 24 stone steps shall be limited to no more than 108-square feet within the 50-foot undisturbed stream buffer, as shown on the site plan received on November 1, 2016.

2) No new impervious area can occur within the additional 25-foot impervious surface setback.

3) The applicant must comply with River Corridor requirements, cut and fill requirements, and flood plain requirements, as required by the Land Development Manager and the City Arborist.

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 associated with the additional disturbance/impervious surface closer to the stream. Replanting of vegetation shall be consistent with the submitted mitigation plan dated December 6, 2016 or an alternative plan approved by the City Arborist.

5) Obtain required building permits/land disturbance permits from the City of Johns Creek Community Development Department prior to commencement of construction.



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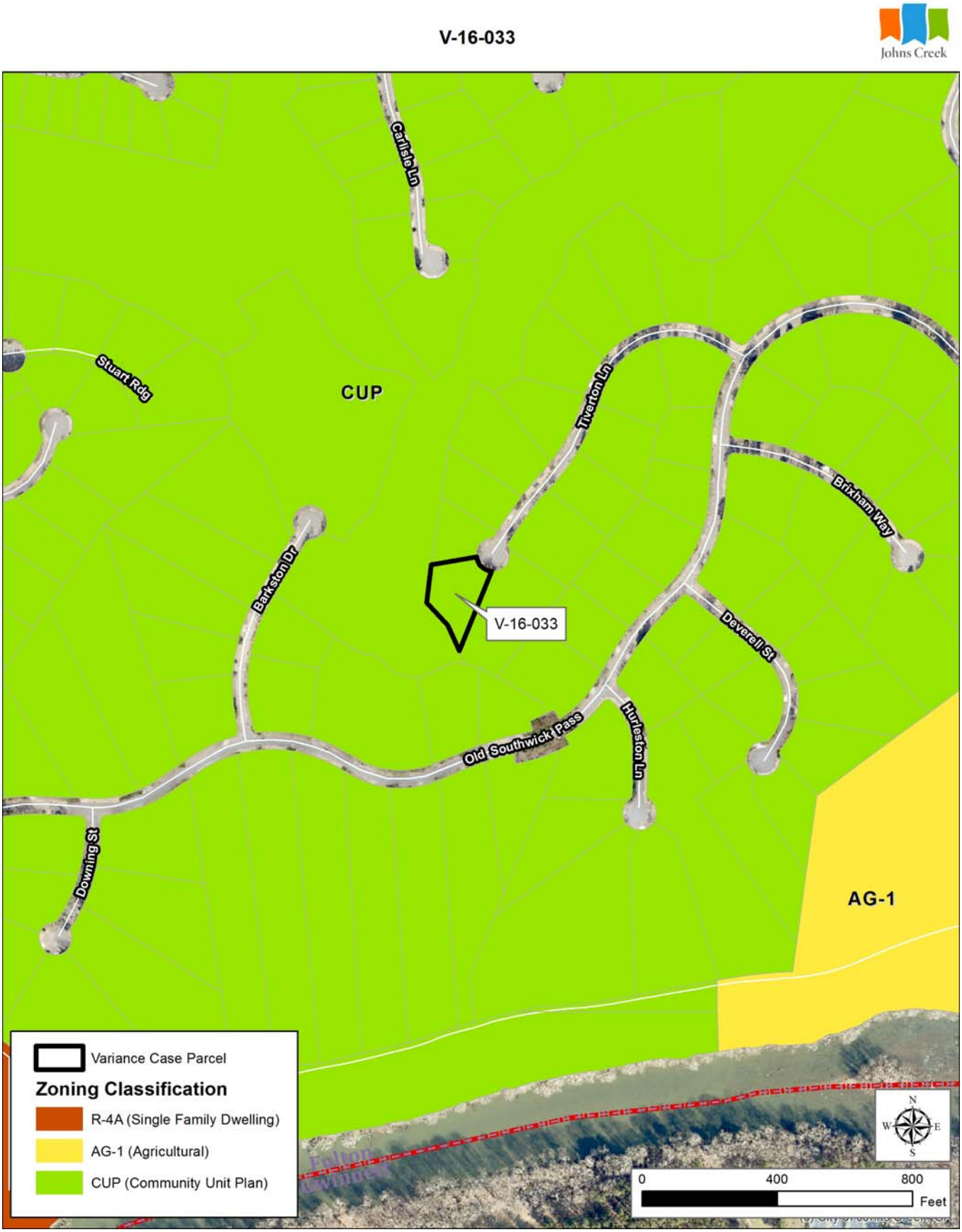
V-16-033
Johns Creek
Carlisle Ln
Stuart Rdg
CUP
Tiverton Ln
Brixham Way
Barkston Dr
V-16-033
Deverell St
Old Southwick Pass
Hurleston Ln
Downing St
AG-1
Variance Case Parcel
Zoning Classification
R-4A (Single Family Dwelling)
AG-1 (Agricultural)
CUP (Community Unit Plan)
N
W
E
S
0
400
800
Feet

## V-16-033

Carlisle Ln
Stuart Rdg
Tiverton Ln
Brixham Way
Barkston Dr
V-16-033
Deverell St
Old Southwick Pass
Hurleston Ln
Downing St
National Park Service Rd
N
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