



***Board of Zoning Appeals Public Hearing
January 17, 2017 — 7:00 P.M***

CASE NUMBER:	V-17-001
PROPERTY LOCATION:	1821 Ballybunion Drive, Johns Creek, GA 30022 1st District, 1st Section, Land Lot 327 and 340
CURRENT ZONING:	CUP Conditional (Community Unit Plan)
PARCEL SIZE:	0.60 Acres
PROPERTY OWNERS:	Adam Pearlman
STAFF RECOMMENDATION:	APPROVAL WITH CONDITIONS

REQUEST

The applicant is requesting a stream buffer variance to alter 728-square feet in the in the 75-foot no impervious surface setback and 50-foot undisturbed stream buffer, for the construction of a deck in the back yard. The rear yard has a major slope from the rear of the existing dwelling down to the stream. The proposed deck is 615-square feet and is located entirely within the 75-foot no impervious surface setback. The proposed steps total 113-square feet and extend off the southwestern side of the deck; of which 68-square feet is in the 75-foot no impervious surface setback and 45-square feet is located in the 50-foot undisturbed stream buffer. The project in total encroaches approximately 32-feet.

The proposed deck is located on the west side of the rear elevation. The deck and stairs will be constructed of wood and will extend from the existing stone deck located on the first story.

The applicant intends to do no work within the 25-foot state undisturbed stream buffer.

BACKGROUND

The subject property, 1821 Ballybunion Drive is lot number A163 within Phase 2 Pod 4 of the St. Ives subdivision. This lot was originally platted in Fulton County with no stream buffers delineated on the final plat. However, the final plat does show a sanitary sewer easement and 100-year flood prone area.

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

ADJACENT ZONING AND LAND USES

Adjacent properties to the north, south, east, and west are single-family homes zoned CUP (Community Unit Plan) Conditional pursuant to Fulton County zoning case Z-91-057 and are in the St. Ives 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 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

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 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 subject property was platted in Fulton County with no stream buffers were included, but a 100-year flood prone area was shown. The applicant intends to add 683-square feet of impervious surface within the 75-foot

no impervious surface setback and 45-square feet within the 50-foot undisturbed stream buffer, totaling 728-square feet of new impervious in order to construct a deck and stairs.

The Department would note that the applicant has submitted a replanting plan to mitigate the proposed 728-square-foot intrusion into the stream buffer with an assortment of large trees, small trees, shrubs, and groundcover. It appears that the plan meets the stream buffer mitigation that is required.

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 the deck and stairs, could have been completed without the need for a variance. 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.

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.

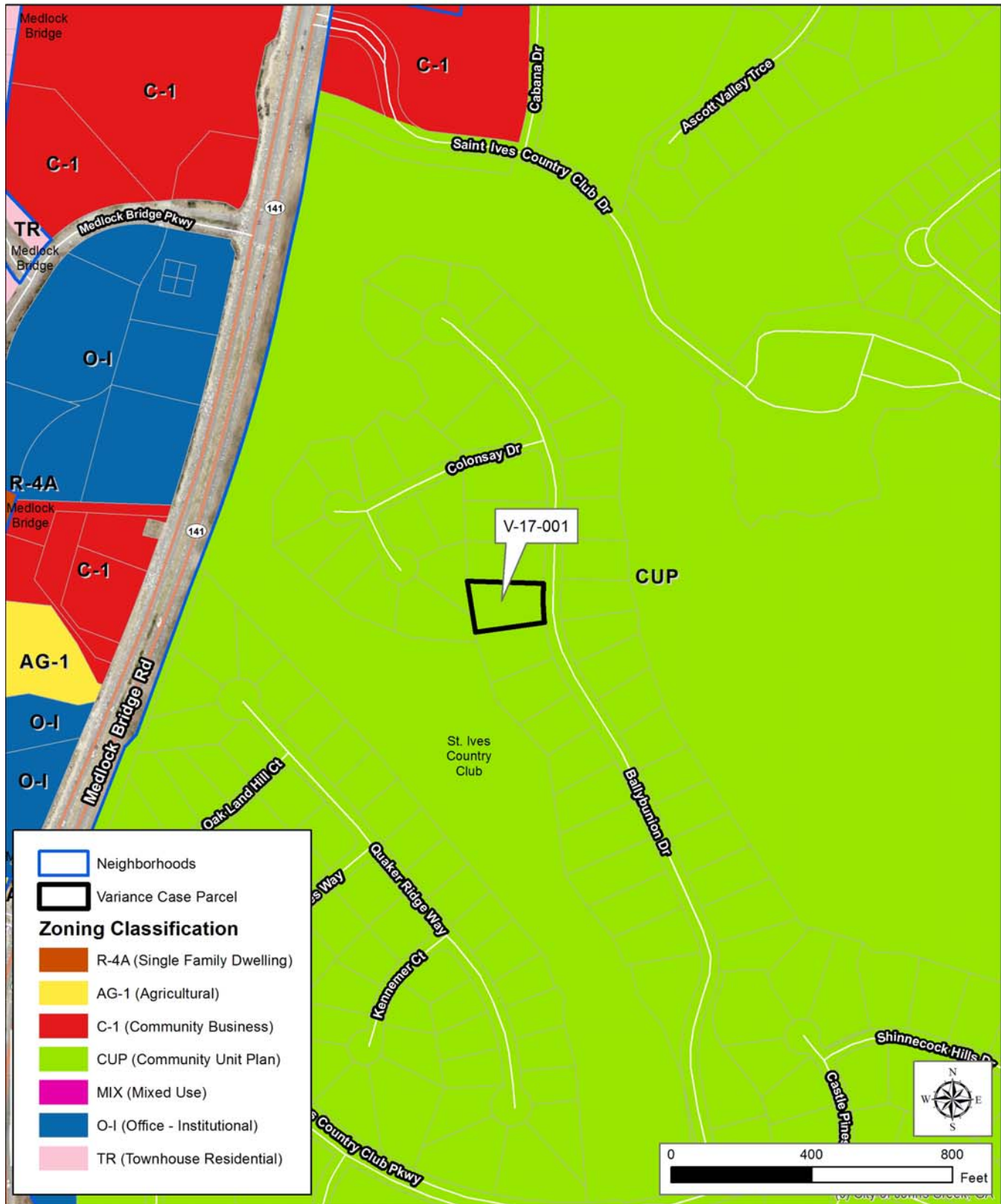
The Department would note that, should the variance be granted by the Board of Zoning Appeals on the merits of this request, the construction of the addition and deck, as well as the proposed mitigation plan, must be executed on the site without removal of existing vegetation or the use of heavy machinery as this will increase the encroachment of the 50-foot undisturbed buffer. The contractor has stated that the limits of disturbance will not increase past the footprint of the addition and/or deck.

RECOMMENDED CONDITIONS

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

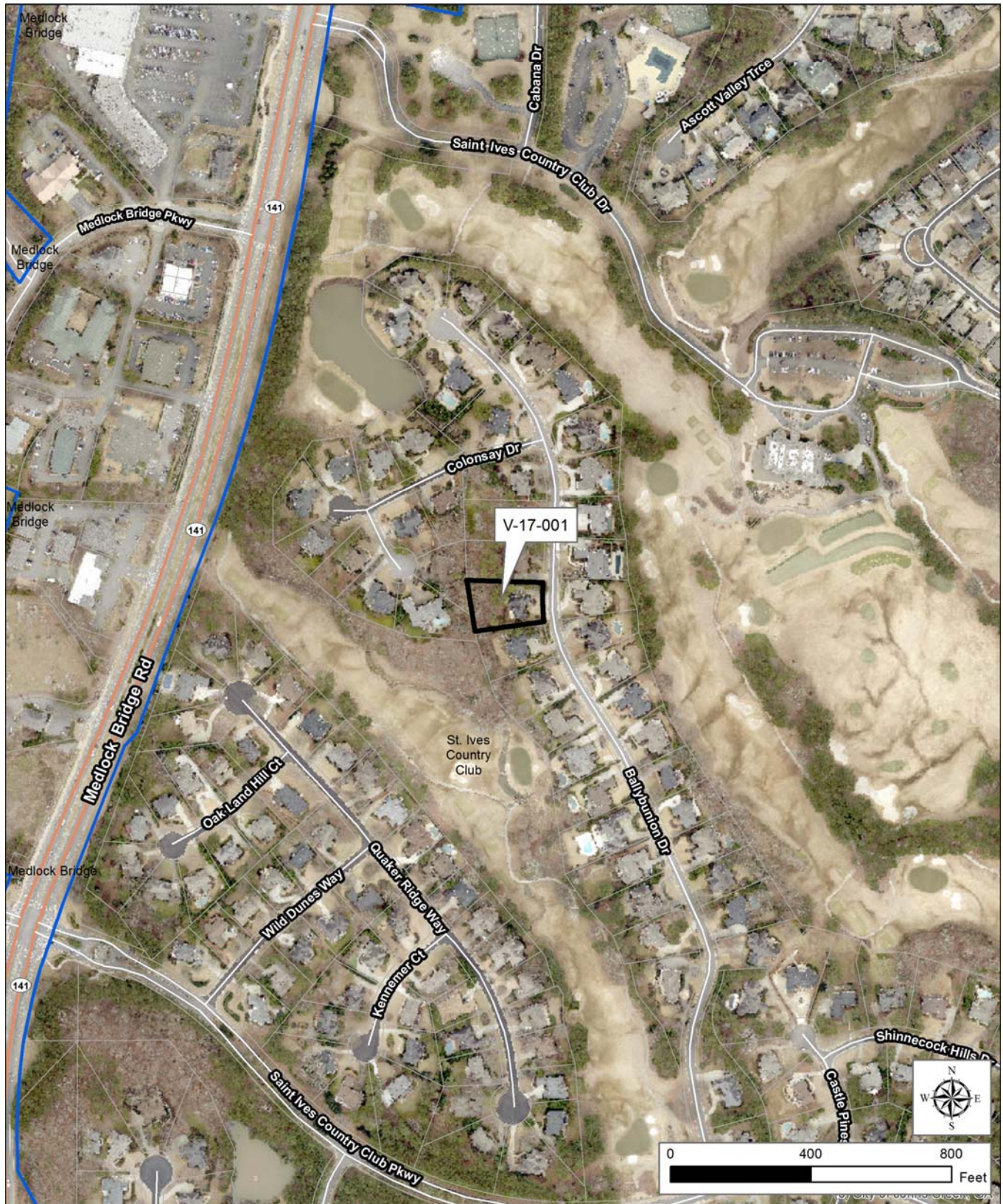
- 1) The improvements to the back yard, with the addition of a wooden deck and stairs shall be limited to no more than 728-square feet within the 75-foot no impervious surface setback and 50-foot undisturbed stream buffer, as shown on the site plan received on December 7, 2016.
- 2) No new impervious area can occur within the additional 25-foot impervious surface setback.
- 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 January 2, 2017 or an alternative plan approved by the City Arborist.
- 4) 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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