

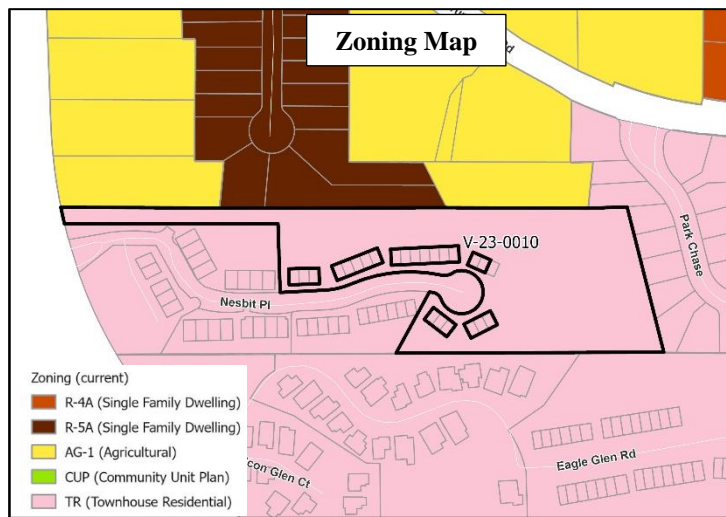


**Board of Zoning Appeals Meeting
September 26, 2023**

CASE NUMBER:	V-23-0010
PROPERTY LOCATIONS:	9165 Nesbit Ferry Road and 26 Nesbit Place
CURRENT ZONING:	TR (Townhouse Residential District) Conditional
PARCEL SIZE:	4.25 Acres
PROPERTY OWNERS:	The Park at Nesbit Place Owners Association Inc. and Luis Garcia
VARIANCE REQUEST:	49-foot encroachment into the 75-foot stream buffer to replace and extend existing timber steps and retaining wall
STAFF RECOMMENDATION:	APPROVAL WITH CONDITIONS

Background

The subject property is located in The Park at Nesbit Place townhome community, and zoned TR (Townhouse Residential District) Conditional. The subject property was originally platted in Fulton County in 1997 with a 25-foot stream buffer. Due to the application of the City’s 50-foot undisturbed buffer and additional 25-foot impervious surface setback, the buffer encompasses the entirety of subject property.



Applicable Code Requirements

City of Johns Creek Code of Ordinances, Chapter 109: Natural Resources and Environmental Protection, Article V: Stream Buffer Protection, Section 109-118: Land Development Requirements.

(a) *Buffer and setback requirements.*

- (1) 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.

- (2) 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 Request

The Applicant is requesting to encroach 49 feet into the 75-foot stream buffer to replace an existing timber wall and steps with new segmental blocks and extension of the wall for soil stabilization. The proposal will result in approximately 584 square feet of land disturbance (shown in red) and 148 square feet of impervious surface in the City's stream buffer. However, the net increase of impervious surface in the stream buffer would only be 86 square feet, as 62 square feet of timber steps and wall already exist. The Applicant has not proposed any new land disturbance within the State's 25-foot stream buffer.

In order to offset stormwater and environmental impacts associated with the proposed encroachment into the stream buffer, the Applicant proposes to plant 2 small trees, 12 shrubs, and 49 ground cover on-site.

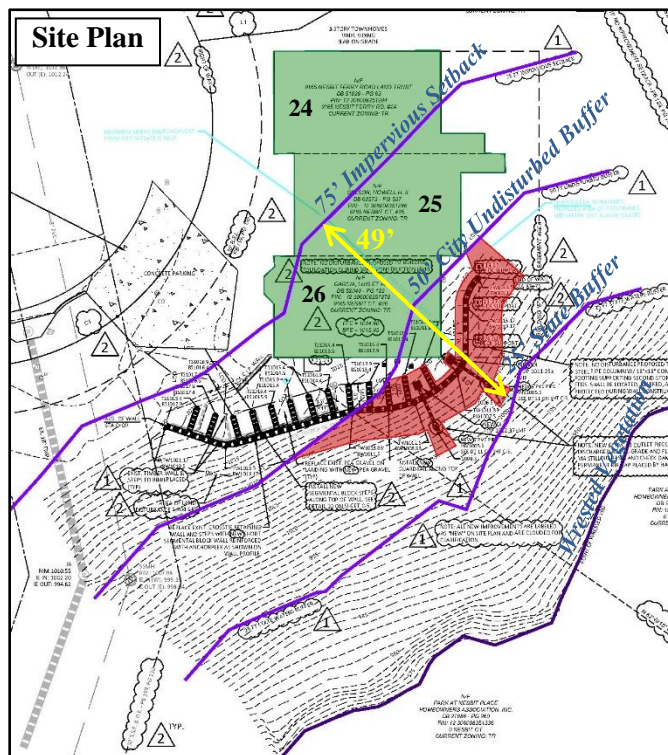
Stream Buffer Variance Review Criteria

City Code Section 109-118(b)(2) lists the following considerations for granting stream buffer variances:

- When a property's shape, topography or other physical conditions existing at the time of the adoption of this article prevents land development unless a buffer variance is granted; or
- Unusual circumstances when strict adherence to the minimal buffer requirements in the article would create an extreme hardship.

Staff Analysis

The subject property was platted in Fulton County in 1997 with a 25-foot stream buffer. However, with the incorporation of the City, the stream buffer was expanded to 50 feet with an additional 25-foot impervious surface setback. The expansion of the stream buffer has created a hardship for the property owners, as buffer encompasses the entirety of subject property in the rear. Based on the current stream buffer regulation, the existing timber wall and steps could not be constructed today without seeking a stream buffer variance. The proposed replacement and extension of the retaining wall and steps are necessary to stabilize the erosion and deterioration of the slope adjacent to townhome #26 and preventing potential damages to its building foundation. The proposal would also extend accessibility around townhome #26 and the common area for the townhome development for purposes of routine maintenance. Granting this variance would bring the proposed improvement into compliance with the Stream Buffer Ordinance, while negligibly impacting the stream.



Staff Recommendation

Based upon the findings and conclusions herein, staff recommends **APPROVAL** of V-23-0010, subject to the following conditions:

- 1) The proposed development shall not exceed the following encroachments, as shown on the site plan received by the Community Development Department on August 21, 2023:
 - a. 49 linear feet of encroachment into the stream buffer;
 - b. 148 square feet of total impervious surface within the stream buffer; and
 - c. 584 square feet of disturbance within the City's 50-foot undisturbed stream buffer.

- 2) A vegetative planting plan shall be submitted to the Community Development Department for approval by the Deputy Director, prior to the issuance of a building permit. Said plan shall be consistent with the mitigation plan received by the Community Development Department on August 21, 2023. The final vegetative planting shall pass City inspection prior to the issuance of a Certificate of Completion for the retaining wall.