

LICENSE AND VARIANCE BOARD

Minutes - Final



Richard Garland, Chairperson
Bo Jones, Board Member
Andrea Worthy, Board Member
Brian Marcos, Board Member
Eric Mohrmann, Board Member
Mary Moore, Board Member
Jill G. Head, Secretary

A. Max Bacon City Hall
Council Chambers
2800 King Street SE
Smyrna, GA 30080

City Attorney Scott Cochran
City Administrator Joseph Bennett
City Clerk Heather K. Peacon-Corn

May 22, 2024
10:00 AM

1. Roll Call

Present: 3 – Chairperson Richard Garland, Boardmember Bo Jones, Boardmember Andrea Worthy

Staff: 5 – Caitlin Crowe, Jill G. Head, Dat Luu, Russell Martin, and Mark Wolff

2. Call to Order

Chairperson Richard Garland called to order the May 22, 2024 License and Variance Board meeting held at A. Max Bacon City Hall in Council Chambers are 10:01 AM.

3. Chairperson Instruction and Comment

4. Formal Business

A. V24-016 Public Hearing - Variance Request - V24-016 - Reduce the front setback from 50 feet to 25 feet - Land Lot 485 - 1076 Concord Road -David Butler

This request is to be withdrawn at the request of the applicant.

Ward 3 Councilmember - Travis Lindley

Boardmember Andrea Worthy made a motion to withdraw item V24-016 at the request of the applicant; seconded by Boardmember Bo Jones.

The motion to withdraw at the request of the applicant carried with the following vote:

Aye: 3 – Chairperson Garland, Boardmember Jones, Boardmember Worthy

Nay: 0 – None

Recuse: 0 – None

B. V24-017 Public Hearing - Variance Request - V24-017 - Reduce the required parking spaces from 23 spaces to 9 spaces - Land Lot 485 - 1076 Concord Road - David Butler

This request is to be withdrawn at the request of the applicant.
Ward 3 Councilmember - Travis Lindley

Boardmember Bo Jones made a motion to withdraw item V24-017 at the request of the applicant; seconded by Boardmember Andrea Worthy.

The motion to withdraw at the request of the applicant carried with the following vote:

Aye: 3 – Chairperson Garland, Boardmember Jones, Boardmember Worthy
Nay: 0 – None
Recuse: 0 – None

**C. V24-030 Public Hearing - Variance Request - V24-030 - Increase the maximum impervious surface area from 49.9% to 50.6% - Land Lot 673 - 1900 Sadler Drive - Kevin Lee
Ward 6 Mayor Pro Tem / Councilmember - Tim Gould**

Caitlin Crowe, Planner I, provided the following background:

The applicant is requesting a variance to increase the maximum impervious surface area to build a sunroom and deck addition on the rear of the single-family home located at 1900 Sadler Drive. The applicant received approval for two variances in March 2024 (Variance Cases- V24- 012 and V24-013) to reduce the rear setback from 30 feet to 22 feet and increase the impervious surface area from 45% to 49.9%, respectively. Since the proposed impervious surface is an increase from the originally approved variances, the applicant is required to request another variance.

The subject parcel is a 0.16-acre lot located on the west side of Sadler Drive within the Stonecrest Manor subdivision (see Figure 1). The subject parcel and all adjoining parcels are zoned RDA and are all occupied by single-family detached homes, with the exception of the property to the west, which is occupied by the Old Vinings Mill amenity area.

Variances were previously approved in March 2024 (Variance Cases- V24-012 and V24-013) to reduce the rear setback from 30 feet to 22 feet and increase the impervious surface area from 45% to 49.9%, respectively. The previous request called for a 300 square foot sunroom and 250 square foot deck addition with accompanying stairs to the rear yard.

The applicant is proposing to revise the original variance request to increase the sunroom to 380 square feet and reduce the deck to 190 square feet. Additionally, the stairs will be realigned on the rear of the deck to keep in line with the new sunroom addition. After the additional square footage of the sunroom and deck to the property, the impervious surface area will be 0.7% over the previously approved 49.9% (or 46 square feet). The applicant is proposing to retain the previous mitigation method for the increase in impervious surface area by adding two flo-wells to the southwest corner of the rear yard. The City Engineer has reviewed the application and is supportive of the proposed mitigation method with stipulations regarding the Stormwater Inspection & Maintenance Agreement and proposed retaining wall encroachments.

During plan redesign, the applicant found that the side property line was inaccurately calculated on the first variance application, gaining an additional 4 feet of property length. Although the proposed rear setback of 26.6 feet is still encroaching into the 30-foot rear

setback, the proposed deck will be less of an encroachment than what was previously approved (22 feet). Thus, the applicant was not required to submit for a second rear setback variance reduction.

Community Development believes the variance is the minimum variance needed to add more outdoor space on the property. Strict application of the ordinance would deny the applicant any ability to modify the existing deck since the existing impervious coverage is already over the allowable maximum impervious coverage. At the time of this report, Community Development has not received any calls in opposition to this request.

The applicant is requesting to deviate from the development standards established by the City for the RDA zoning district, which requires a maximum impervious area of 45%. According to Section 1403 of the Zoning Ordinance, variances must be reviewed under the following standards: (1) Whether there are unique and special or extraordinary circumstances applying to the property; (2) Whether any alleged hardship is self-created by any person having an interest in the property; (3) Whether strict application of the relevant provisions of the code would deprive the applicant of reasonable use of the property; and (4) Whether the variance proposed is the minimum variance needed. After a review of the standards above, Community Development believes that the impervious surface increase will not adversely affect surrounding residents; therefore, staff recommends approval of the requested variance with the following conditions:

1. Approval of the variance is conditioned upon substantial compliance with the site plan and elevations submitted with the variance application.
2. Approval of the variance is conditioned upon substantial compliance with the mitigation plan submitted on 2/28/24 with variance application V24-012 and V24-013.
3. A Stormwater Inspection and Maintenance Agreement shall be completed and recorded with the Cobb County Superior Court prior to issuance of the building permit and an as-built certification statement submitted to Community Development prior to issuance of the Certificate of Completion.
4. The proposed retaining wall may encroach up to 10 feet into the 20-foot drainage easement along the rear property line. The wall and wall footings may not encroach into the 15-foot drainage easement along the southern property boundary. If the retaining wall exceeds 48 inches in height, it will require a separate retaining wall permit.
5. The vegetative buffer to the rear of the property shall be restored prior to the issuance of the Certificate of Completion.

Kevin Lee, applicant – 3230 Wetherbyrne Rd, Kennesaw – had nothing further to add. He stated he understands and agrees with the five stipulations read into record.

A public hearing was called, and no one came forward in favor of or in opposition to this item.

Boardmember Andrea Worthy made a motion to approve item V24-030; seconded by Boardmember Bo Jones.

The motion to approve carried with the following vote:

Aye: 3 – Chairperson Garland, Boardmember Jones, Boardmember Worthy
Nay: 0 – None
Recuse: 0 – None

D. **V24-031** Public Hearing - Variance Request - V24-031 - Allow additional accessory structure - Land Lot 177 - 1461 Veterans Memorial Highway - Bon Fitzgerald
Ward 7 Councilmember - Rickey N. Oglesby Jr.

Caitlin Crowe, Planner I, provided the following background:

The applicant is proposing to add an EV Charger canopy station to the existing RaceTrac gas station at 1461 Veterans Memorial Highway. The proposed canopy will necessitate two variance requests: to allow a second accessory structure and increase the accessory structure height from 15 feet to 20 feet. Section 501 controls the number and height of accessory structures.

The subject parcel is a 1.91-acre lot located on the northeast corner of the intersection of Veterans Memorial Highway and Oakdale Road (see Figure 1). The subject parcel and the adjacent parcel to the east are zoned NS (Neighborhood Shopping) and are occupied by the RaceTrac gas station and a vacant lot, respectively. The adjacent properties to the north, south, and west are in the City of Mableton and are occupied by various commercial uses.

The subject property is currently occupied by a 4,997 square foot building that serves as the RaceTrac service station and a 7,200 square foot canopy over the fuel pumps. The applicant is proposing an additional 1,305 square foot canopy in the northwestern section of the existing parking lot to house four electric vehicle (EV) charging stations. The new canopy will match the existing fuel pump canopy with the RaceTrac red, white, and navy color scheme with EV signage in blue.

The canopy over the existing fuel pumps, the canopy over the proposed EV charging area and the existing enclosed dumpster are all separated from the main service station structure. This means that there are three accessory structures on the parcel, which is not permissible under Section 501.11 of the Zoning Ordinance. However, both of the canopies and the dumpster are essential for business operations and have little to no effect on the surrounding parcels.

To maintain consistency on the subject property, the applicant is proposing the canopy height to be 20 feet rather than the required 15 feet. This will keep the new canopy in line with the existing fuel pump canopy as well as allow for lifted vehicles to access the EV charging stations. This will allow for a broader range of vehicles access to the charging stations as well as maintain the aesthetics across the property.

Community Development believes the variances requested are the minimum variances needed to allow for the installation of EV chargers at the location. Community Development does not foresee any negative impacts to adjacent properties should the variances be approved since the business has been in operation on the subject property since 2010. At the time of this report, Community Development has not received any calls in opposition to these requests.

The applicant is requesting to deviate from the City's accessory structure maximums and height. According to Section 1403 of the Zoning Ordinance, variances must be reviewed under the following standards: (1) Whether there are unique and special or extraordinary circumstances applying to the property; (2) Whether any alleged hardship is self-created by any person having an interest in the property; (3) Whether strict application of the relevant provisions of the code would deprive the applicant of reasonable use of the

property; and (4) Whether the variance proposed is the minimum variance needed. Community Development believes that the requested variances will not adversely affect surrounding properties. Therefore, Community Development recommends approval of the requested variances with the following condition:

1. Approval of the requested variances shall be conditioned upon substantial compliance with the site plan and elevations submitted with the variance application.

Boardmember Worthy asked for clarification that the new canopy will be the same height as the existing fuel canopy. Ms. Crowe confirmed that is correct.

Parks Huff of Sams, Larking & Huff, LLP representing the applicant stated that the new canopy for the EV charging stations will sit to the side and will face Oakdale. He also stated he understands and agrees with the condition read into record.

Questions were asked about the charging stations:

1. What is the typical charging time to charge a vehicle? 15-20 minutes to get a 20-80% charge.
2. Do you charge per wattage? The charge is per kilowatt hour set at a standard rate.

A public hearing was called, and no one came forward in favor of or in opposition to this item.

Boardmember Bo Jones made a motion to approve item V24-031; seconded by Boardmember Andrea Worthy.

The motion to approve carried with the following vote:

Aye: 3 – Chairperson Garland, Boardmember Jones, Boardmember Worthy
Nay: 0 – None
Recuse: 0 – None

**E. V24-032 Public Hearing - Variance Request - V24-032 - Increase the accessory structure height from 15 feet to 20 feet - Land Lot 177 - 1461 Veterans Memorial Highway - Bon Fitzgerald
*Ward 7 Councilmember - Rickey N. Oglesby Jr.***

Neither staff nor the applicant had additional information to add.

A public hearing was called, and no one came forward in favor of or in opposition to this item.

Boardmember Andrea Worthy made a motion to approve item V24-032; seconded by Boardmember Bo Jones.

The motion to approve carried with the following vote:

Aye: 3 – LVB Boardmember Garland, LVB Boardmember Jones, LVB Boardmember Worthy

Nay: 0 – None
Recuse: 0 – None

**F. V24-034 Public Hearing - Variance Request - V24-034 - Allow second accessory structure - Land Lot 525 - 3370 Lee Street - Thomas Strength
*Ward 6 Mayor Pro Tem / Councilmember - Tim Gould***

Caitlin Crowe, Planner I, provided the following background:

The applicant is requesting three variances to allow for the construction of a new swimming pool in the rear yard of 3370 Lee Street: to allow a second accessory structure, allow encroachment into the City's 50-foot undisturbed buffer, and allow encroachment into the City's 75-foot impervious surface setback. Variances (V17-004 through 006) were previously approved on the property in 2017 for a garage and master suite addition to the property which encroached into the City's stream buffers as well as the side setback. As part of the previous building permit approval, the applicant at the time was to install an infiltration pit in the rear yard to mitigate the stream buffer encroachment. There is no record that this was ever constructed or currently exists on the property. Section 501 controls the maximum allowable number of accessory structures while the City's stream buffers are controlled by Chapter 46, Article VI.

The subject parcel is a 0.45-acre lot located on the west side of Lee Street (see Figure 1). A stream runs through the rear of the property and continues through the adjacent properties to the south and west. A 20-foot sanitary sewer easement also runs along the southern side of the property to the adjacent properties in the rear off Dunn Street.

The subject parcel and adjoining parcels to the north and west are zoned R-20 whereas the adjacent parcels to the south and east are zoned R-15; all are occupied by single-family detached residences. The subject property is currently occupied by a 2,445 square foot single-family home and a 325 square foot shed in the rear. The applicant is proposing a new 338 square foot in-ground swimming pool with an accompanying 6-foot-tall retaining wall adjacent to the existing driveway. The accessory structure ordinance allows one accessory structure or use per lot and since a shed is already on the property, a variance is required for the additional structure. Since the swimming pool and storage shed offer different uses for the property, the variance is not self-created.

The rear yard and a portion of the home itself are greatly encumbered by the State's 25-foot undisturbed buffer, the City's 50-foot undisturbed stream buffer, and the City's 75-foot impervious surface setback, with virtually no section of the rear yard untouched by stream buffers. Since the property was platted in 1952, prior to the Stream Buffer Protection Ordinance in 2005, the hardship is not self-created. Additionally, an existing 20-foot sanitary sewer easement runs the length of the southern side yard and splits in the southwest corner of the property to the adjacent properties to the northwest and southwest (see Figure 1). The proposed 58-foot long retaining wall around the pool will border the sanitary sewer easement for roughly 20 feet. The Public Works Assistant Director has reviewed the plan and is supportive with the stipulation that any portion (such as the retaining wall footers) may need to be removed at the expense of the property owner if work is ever required in that section of the easement.

The applicant will require relief from the City's stream buffer ordinance in order to construct the pool in the rear yard. The applicant will mitigate the rear yard disturbance by capturing the roof drainage through underground pipes which will lead to an infiltration

drywell directly behind the proposed pool. The City Engineer has reviewed the application and accompanying conceptual mitigation plan and supports the method used for buffer mitigation per Georgia Stormwater Management Manual requirements with stipulations that a comprehensive mitigation plan be submitted with the building permit.

Due to the existing stream buffers encumbering the entirety of the rear yard and the existing home, Community Development believes these are the minimum variances needed to allow for any outdoor amenity. No other variances are needed as the property is below their impervious coverage maximum of 35%. Strict application of the ordinance would require the existing home to be removed and shifted east due to the existing stream buffers and sanitary sewer easement. Similar variances have been approved throughout the city when an appropriate mitigation method has been included. At the time of this report, Community Development has not received any calls in opposition to the request.

The applicant is requesting relief from the City's 75-foot impervious surface setback, the City's 50-foot undisturbed stream buffer, and the City's accessory structure ordinance to install a pool in the rear yard. According to Section 46-160 of the Stream Buffer Protection Ordinance, variances must be reviewed under the following standards: (1) The shape, size, topography, slope, soils, vegetation and other physical characteristics of the property; (2) The locations of all streams on the property, including along property boundaries; (3) The location and extent of the proposed buffer or setback intrusion; (4) Whether alternative designs are possible which require less intrusion or no intrusion; (5) The long-term and construction water-quality impacts of the proposed variance; (6) Whether as a result of an exchange of buffer area the net buffer area is not reduced; and (7) Whether issuance of the variance is at least as protective of natural resources and the environment. Additionally, according to Section 1403 of the Zoning Ordinance, variances must be reviewed under the following standards: (1) Whether there are unique and special or extraordinary circumstances applying to the property; (2) Whether any alleged hardship is self-created by any person having an interest in the property; (3) Whether strict application of the relevant provisions of the code would deprive the applicant of reasonable use of the property; and (4) Whether the variance proposed is the minimum variance needed. After a review of the standards above from both ordinances, Community Development and the City Engineer believe that the encroachments will not adversely affect surrounding residents nor the existing stream; therefore, staff recommends approval of the requested variances with the following conditions:

1. Approval of the requested variances shall be conditioned upon substantial compliance with the mitigation plan submitted with the variance application.
2. If any part of the retaining wall falls within the 20-foot sanitary sewer easement and work must occur within the area, the retaining wall may be required to be removed at the property owner's expense.
3. Survey stakes must be installed to reflect the edge of the sanitary sewer easement and maintained throughout construction.
4. A Stormwater Inspection and Maintenance Agreement shall be completed and recorded with the Cobb County Superior Court prior to issuance of the building permit and an as-built certification statement submitted to Community Development prior to issuance of the Certificate of Completion.
5. The Stormwater quality infiltration trench shall be sized to mitigate the 75-foot impervious setback and 50-foot undisturbed buffer encroachments. The square footage of the encroachment shall be the minimum area routed to the infiltration trench.
6. Appropriate measures shall be included in the final engineering design to allow for infiltration, but also protect the structural integrity of the proposed retaining wall

and pool wall. The infiltration trench final design shall include a method for overflow.

Mark Wolff, City Engineer, reiterated that this property is encumbered by 25 ft, 50 ft, and 75 ft buffers and setbacks because of the stream behind the property. Any improvements that are proposed will require stormwater and water quality mitigation. The infiltration trench cannot compromise the retaining wall or the pool wall. He stated he has been working with the engineer on the design, and there is still work to do to finalize.

Boardmember asked if the BJ – fencing around pool. Mounted or inset toward pool area? MW – unsure as those have not been reviewed.

Thomas Strength, applicant – 3370 Lee St – stated he had nothing further to add. Boardmember Jones asked if the fence will run along the top of the retaining wall. Mr. Strength stated that is the plan. Chairperson Garland wanted to remind the applicant that should these variances be approved, there is still work to be done for final plans and construction.

A public hearing was called, and no one came forward in favor of or in opposition to this item.

Boardmember Bo Jones made a motion to approve item V24-034; seconded by Boardmember Andrea Worthy.

The motion to approve carried with the following vote:

Aye: 3 – Chairperson Garland, Boardmember Jones, Boardmember Worthy
Nay: 0 – None
Recuse: 0 – None

**G. V24-035 Public Hearing - Variance Request - V24-035 - Allow encroachment into the City's 50-foot undisturbed buffer - Land Lot 525 - 3370 Lee Street - Thomas Strength
*Ward 6 Mayor Pro Tem / Councilmember - Tim Gould***

Chairperson Garland asked Mr. Strength if he understands and agrees to all of the stipulations read into record. Mr. Strength stated he does understand and agree to those stipulations.

A public hearing was called, and no one came forward in favor of or in opposition to this item.

Boardmember Andrea Worthy made a motion to approve item V24-035; seconded by Boardmember Bo Jones.

The motion to approve carried with the following vote:

Aye: 3 – Chairperson Garland, Boardmember Jones, Boardmember Worthy
Nay: 0 – None
Recuse: 0 – None

**H. V24-036 Public Hearing - Variance Request - V24-036 - Allow encroachment into the City's 75-foot impervious surface setback - Land Lot 525 - 3370 Lee Street - Thomas Strength
*Ward 6 Mayor Pro Tem / Councilmember - Tim Gould***

Neither staff nor the applicant had any further information to add.

A public hearing was called, and no one came forward in favor of or in opposition to this item.

Boardmember Bo Jones made a motion to approve item V24-036; seconded by Boardmember Andrea Worthy.

The motion to approve carried with the following vote:

Aye: 3 – Chairperson Garland, Boardmember Jones, Boardmember Worthy

Nay: 0 – None

Recuse: 0 – None

5. Approval of Minutes

**A. MIN2024-063 Approval of the May 8, 2024 License and Variance Board Meeting Minutes
*Citywide***

Boardmember Andrea Worthy made a motion to approve item MIN2024-063; seconded by Boardmember Bo Jones.

The motion to approve carried with the following vote:

Aye: 3 – Chairperson Garland, Boardmember Jones, Boardmember Worthy

Nay: 0 – None

Recuse: 0 – None

6. Other Business / Staff Comment

7. Adjournment

Chairperson Richard Garland adjourned the May 22, 2024 License and Variance Board meeting at 10:27 AM.

Facilities are provided throughout City Hall for the convenience of persons with disabilities.

**THIS MEETING WAS PROPERLY NOTICED AND POSTED AT THE FOLLOWING LOCATIONS IN ACCORDANCE WITH THE NOTICING STANDARDS AS OUTLINED IN O.C.G.A. 50-14-3:
The City of Smyrna website – www.smyrnaga.gov
City Hall, 2800 King Street SE, Notice Boards**