

# CITY OF SMYRNA

## COMMUNITY DEVELOPMENT

### MEMORANDUM

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To: License and Variance Board

From: Rusty Martin, AICP, Community Development Director  
Caitlin Crowe, Planner I

Date: May 15, 2024

**RE: VARIANCE CASE V24-034**  
**3370 Lee Street – Allow second accessory structure**

**VARIANCE CASE V24-035**  
**3370 Lee Street – Allow encroachment into the City’s 50-foot undisturbed buffer**

**VARIANCE CASE V24-036**  
**3370 Lee Street – Allow encroachment into the City’s 75-foot impervious surface setback**

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#### **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.

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#### **ANALYSIS**

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.

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## **STAFF COMMENTS**

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

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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 moved 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.

Figure - 1

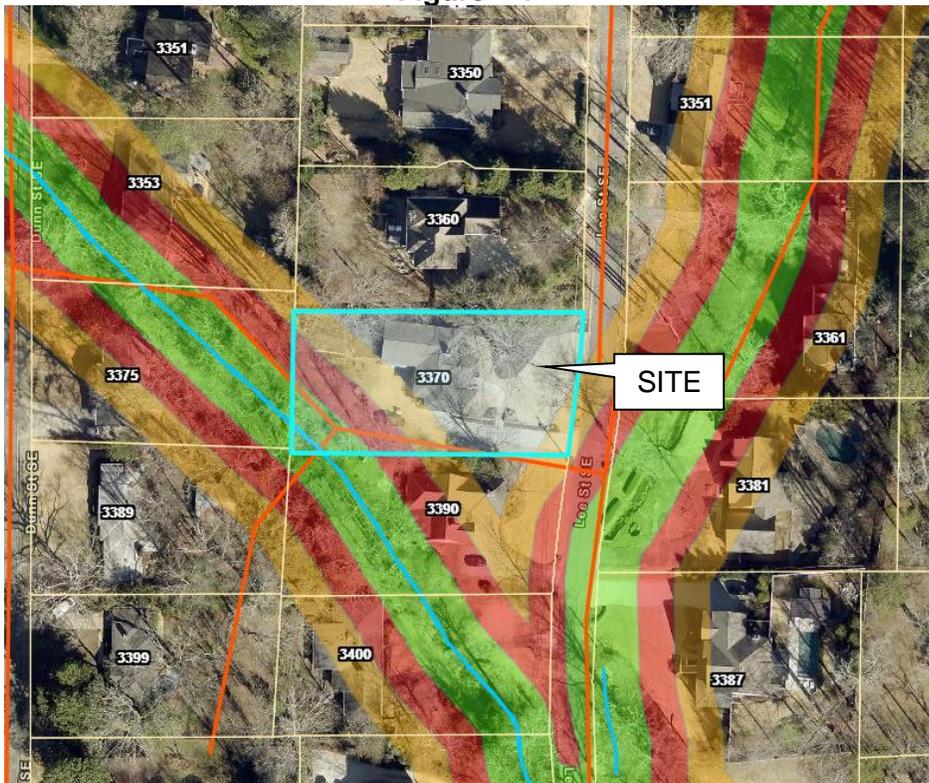
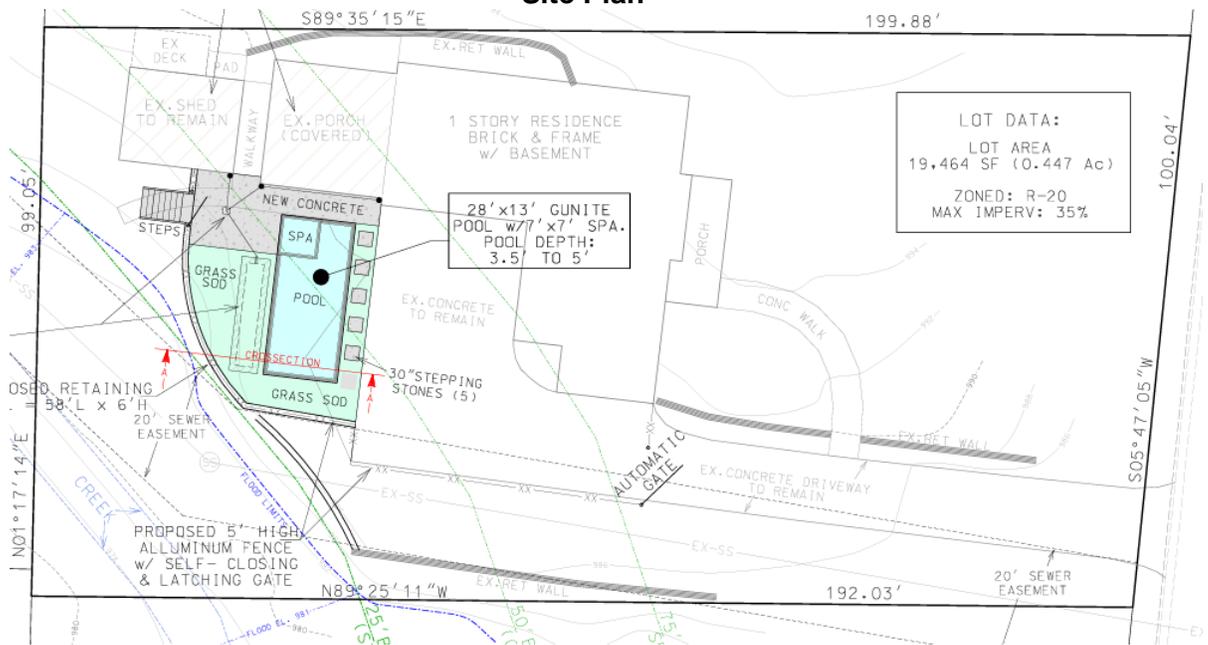


Figure - 2  
Site Plan



**Figure – 3**  
**Subject Property**



**Figure – 4**  
**Adjacent Property to the South**



**Figure – 5**  
**Adjacent Property to the North**



**Figure – 6**  
**Adjacent Property across Lee Street**



**Figure – 7**  
**Adjacent Property across Lee Street**

