

CITY OF SMYRNA COMMUNITY DEVELOPMENT MEMORANDUM

To: License and Variance Board

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

Date: June 13, 2023

**RE: VARIANCE CASE V23-044
3383 Kathy Lane – Allow encroachment into the 50-foot undisturbed buffer and
the 75-foot impervious surface area setback**

BACKGROUND

The applicant is requesting a variance to allow encroachment into the City's 50-foot undisturbed buffer and the City's 75-foot impervious setback to allow for the rebuild of an existing deck. The City's stream buffers are controlled by Chapter 46, Article VI.

ANALYSIS

The subject parcel is a 1.85-acre lot located near the intersection of Veneta Way and Kathy Lane (see Figure 1). A stream runs through the northern section of the property and continues through the adjacent properties to the north and west. The subject parcel and all adjoining parcels are zoned R-20 and are all occupied by single-family detached residences.

At the end of January 2023, Code Enforcement issued a notice of violation to the subject property for working without a permit. The applicant then subsequently submitted a building permit and variance application to rebuild the deck in May/June 2023.

The applicant is proposing to rebuild a 324 square foot deck in the rear yard which will be connected to an existing concrete pad. The existing house was constructed in 1974, prior to the adoption of the stream buffer ordinance in 2005. Per the property owner, the deck has also existed since the 1970s and is reflected on the most current plat, which was recorded in 2004. Currently, the rear yard is greatly encumbered by the State's 25-foot undisturbed stream buffer, the City's 50-foot undisturbed stream buffer and the City's 75-foot impervious surface area setback. No other variances are needed as the property is well below their impervious coverage maximum of 35%.

Since the Stormwater Ordinance does not differentiate between replaced and new impervious area, a variance is required for the nonconforming stream buffer encroachment. Additionally, per Section 1102, "no nonconforming building, structure or use shall be extended, nor shall its total value be enhanced, unless such extensions or alterations conform with the provisions of this ordinance." Since the deck is being completely rebuilt, the property no longer remains

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legally nonconforming. However, since the existing single-family home and deck were already non-conforming, the hardship is not self-created.

Since the stream buffer encroachment occurred at least prior to 2004 and there is no addition of land disturbing activities or stormwater runoff, the City Engineer has determined that no remediation is required in order to support the variance.

The applicant will require relief from the City's stream buffer ordinance in order to rebuild the deck. Community Development believes the hardship is not self-created, as the lot of record has existed before the stream buffer ordinance was adopted. Community Development believes this is the minimum variance needed to allow for any outdoor amenity, and that there should be no negative impacts to adjacent properties if approved. Furthermore, the closest neighboring structure to the deck is almost 200 feet away, so any impacts would be very limited. Community Development has not received any calls in opposition to the request.

STAFF COMMENTS

The applicant is requesting relief from the City's 50-foot undisturbed buffer and the City's 75-foot impervious surface area setback to rebuild an existing deck in the rear yard. 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 encroachment will not adversely affect surrounding residents; therefore, staff recommends **approval** of the requested variance with the following conditions:

1. Approval of the requested variance is conditioned upon substantial compliance with the site plan submitted with the variance application.

Figure – 1



Figure – 2
2004 Plat

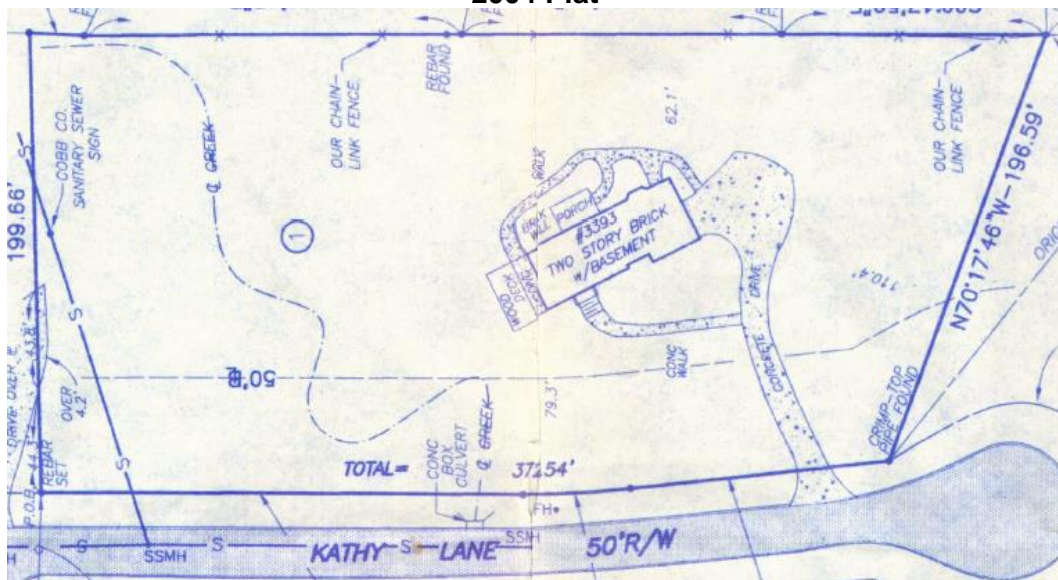


Figure – 3
Subject Property



Figure – 4
Fence Reconstruction



Figure – 5
Adjacent Property to the North



Figure – 6
Adjacent Property to the South



Figure – 7
Adjacent Property across Kathy Lane



Figure – 8
Adjacent Property across Kathy Lane

