

# LICENSE AND VARIANCE BOARD

## Action Summary - Final



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

A Max Bacon City Hall  
HR Training Room  
2800 King Street SE  
Smyrna, GA 30080

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

**June 28, 2023**  
**10:00 AM**

### 1. Roll Call

**Present:** 3 – Chairperson Penny Mocer, Boardmember Richard Garland, and Boardmember Bo Jones

**Also Present:** 0 –

**Staff:** 4 – Caitlin Crowe, Jill G. head, Dat Luu, and Starla Whiddon

### 2. Call to Order

Chairperson Penny Mocer called to order the June 28, 2023, License and Variance Board meeting held at S. Max Bacon City Hall in the HR Training Room at 10:05 AM.

### 3. Chairperson Instruction and Comment

### 4. Formal Business

- A. **V23-044** Public Hearing - Variance Request - V23-044 - Allow encroachment into the 50-foot undisturbed buffer and the 75-foot impervious surface area setback - Land Lot 598 - 3383 Kathy Lane - Jim Parks  
***Ward 6 Mayor Pro Tem / Councilmember - Tim Gould***

Caitlin Crowe, Planner I, provided the following background:

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 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.

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.

Jim Parks, applicant, was present and stated that he agrees with the standard condition read into record.

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

Boardmember Richard Garland made a motion to approve item V23-044, a public hearing and variance request (V23-044) to allow encroachment into the 50-foot undisturbed buffer and the 75-foot impervious surface area setback on land lot 598 located at 3383 Kathy Lane by applicant Jim Parks; seconded by Boardmember Bo Jones.

The motion to approve carried with the following vote:

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

## 5. Approval of Minutes

### A. **MIN2023-065** Approval of the June 14, 2023, License and Variance Board Meeting Minutes **Citywide**

Boardmember Bo Jones made a motion to approve item MIN2023-065, the June 14, 2023, License and Variance Board meeting minutes; seconded by Boardmember Richard Garland.

The motion to approve carried with the following vote:

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

## 6. Other Business / Staff Comment

## 7. Adjournment

Chairperson Penny Mocerri adjourned the June 28, 2023, License and Variance Board meeting at 10:11 AM.

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

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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](http://www.smyrnaga.gov)  
City Hall, 2800 King Street SE, Notice Boards