



License and Variance Board Meeting - Final

February 14, 2024
10:00 AM

M. V24-007 Public Hearing - Variance Request - V24-007 - Allow encroachment into the 75-foot impervious surface area setback - Land Lot 388 - 4561 Derby Lane - David Balzer



City of Smyrna

Issue Sheet

A Max Bacon
City Hall
2800 King Street
Smyrna, GA 30080

File Number: V24-024

Agenda Date: 2/14/2024

In Control: License and Variance Board

File Type: Variance Item

Agenda Section:
Formal Business

Agenda Number: M

Department: Community Development

Agenda Title:

Public Hearing - Variance Request - V24-007 - Allow encroachment into the 75-foot impervious surface area setback - Land Lot 388 - 4561 Derby Lane - David Balzer

Ward 4 Councilmember - Charles

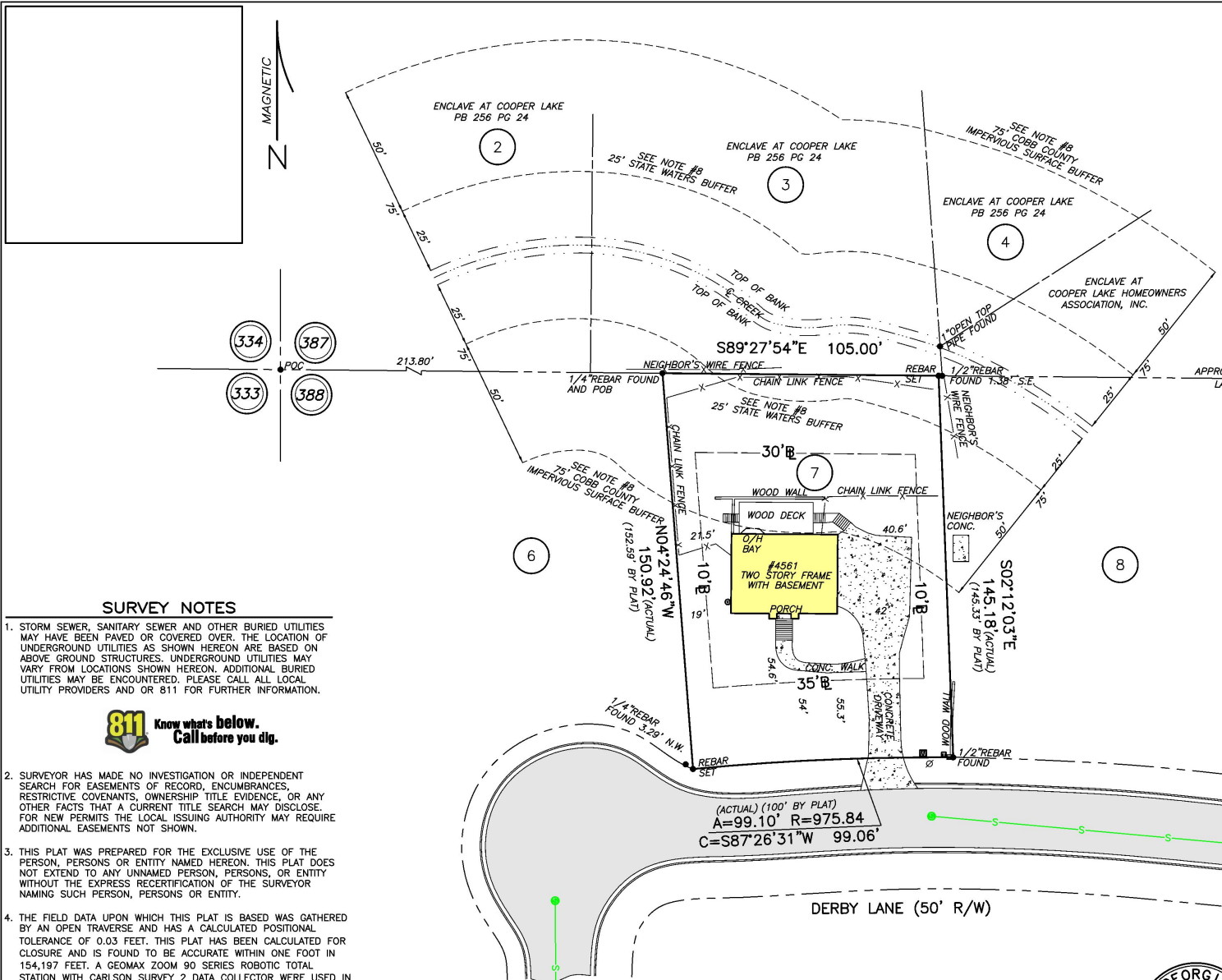
ISSUE AND BACKGROUND:

The applicant is requesting a variance to allow encroachment into the City's 75-foot impervious surface area setback to rebuild an existing deck on the rear of the home. The City's stream buffers are controlled by Chapter 46, Article VI.

RECOMMENDATION / REQUESTED ACTION:

The applicant is requesting relief from the City's 75-foot impervious surface area setback to rebuild an existing deck. 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 condition:

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



SURVEY NOTES

1. STORM SEWER, SANITARY SEWER AND OTHER BURIED UTILITIES MAY HAVE BEEN PAVED OR COVERED OVER. THE LOCATION OF UNDERGROUND UTILITIES AS SHOWN HEREON ARE BASED ON ABOVE GROUND STRUCTURES. UNDERGROUND UTILITIES MAY VARY FROM LOCATIONS SHOWN HEREON. ADDITIONAL BURIED UTILITIES MAY BE ENCOUNTERED. PLEASE CALL ALL LOCAL UTILITY PROVIDERS AND OR 811 FOR FURTHER INFORMATION.
2. SURVEYOR HAS MADE NO INVESTIGATION OR INDEPENDENT SEARCH FOR EASEMENTS OF RECORD, ENCUMBRANCES, RESTRICTIVE COVENANTS, OWNERSHIP TITLE EVIDENCE, OR ANY OTHER FACTS THAT A CURRENT TITLE SEARCH MAY DISCLOSE. FOR NEW PERMITS THE LOCAL ISSUING AUTHORITY MAY REQUIRE ADDITIONAL EASEMENTS NOT SHOWN.
3. THIS PLAT WAS PREPARED FOR THE EXCLUSIVE USE OF THE PERSON, PERSONS OR ENTITY NAMED HEREON. THIS PLAT DOES NOT EXTEND TO ANY UNNAMED PERSON, PERSONS, OR ENTITY WITHOUT THE EXPRESS RECERTIFICATION OF THE SURVEYOR NAMING SUCH PERSON, PERSONS OR ENTITY.
4. THE FIELD DATA UPON WHICH THIS PLAT IS BASED WAS GATHERED BY AN OPEN TRAVERSE AND HAS A CALCULATED POSITIONAL TOLERANCE OF 0.03 FEET. THIS PLAT HAS BEEN CALCULATED FOR CLOSURE AND IS FOUND TO BE ACCURATE WITHIN ONE FOOT IN 154,197 FEET. A GEOMAX ZOOM 90 SERIES ROBOTIC TOTAL STATION WITH CARLSON SURVEY 2 DATA COLLECTOR WERE USED IN THE COLLECTION OF FIELD DATA.
5. BEARINGS SHOWN WERE BASED ON PLAT BOOK 161 PAGE 20.
6. THIS PROPERTY IS SUBJECT TO CURRENT ZONING REGULATIONS AND RESTRICTIONS.
7. ALL REBAR'S SET ARE 1/2" REBAR'S UNLESS OTHERWISE NOTED.
8. THE EXISTENCE, SIZE, AND LOCATION OF IMPERVIOUS BUFFERS ARE SUBJECT TO FINAL DETERMINATION BY THE LOCAL ISSUING AUTHORITY, CITY, OR COUNTY.



Know what's below.
Call before you dig.

LEGEND

B	DENOTES BUILDING LINE
R/W	DENOTES RIGHT-OF-WAY
C	DENOTES CENTERLINE
BC	DENOTES BACK OF CURB
G	DENOTES GUTTER
EP	DENOTES EDGE OF PAVING
TW	DENOTES TOP OF WALL
BW	DENOTES BOTTOM OF WALL
X	DENOTES FENCE
RCP	DENOTES REINFORCED CONCRETE PIPE
CMP	DENOTES CORRUGATED METAL PIPE
PP	DENOTES POWER POLE
LP	DENOTES LIGHT POLE
P	DENOTES GUY WIRE
PM	DENOTES POWER LINE
PB	DENOTES POWER METER
FO	DENOTES FIBER OPTIC
A/C	DENOTES AIR CONDITION
CB	DENOTES CABLE BOX
TB	DENOTES TELEPHONE BOX
GM	DENOTES GAS METER
GV	DENOTES GAS VALVE
GLM	DENOTES GAS LINE MARKER
WM	DENOTES WATER METER
WV	DENOTES WATER VALVE
FH	DENOTES FIRE HYDRANT
MW	DENOTES MONITORING WELL
HW	DENOTES HEADWALL
JB	DENOTES JUNCTION BOX
DI	DENOTES DROP INLET
S	DENOTES SANITARY SEWER LINE
SSMH	DENOTES SANITARY SEWER MANHOLE
CO	DENOTES CLEAN OUT
P.O.B.	DENOTES POINT OF BEGINNING
P.O.C.	DENOTES POINT OF COMMENCEMENT

REFERENCE MATERIAL

1. LIMITED WARRANTY DEED IN FAVOR OF

DEED BOOK 15749 PAGE 5569-5570
COBB COUNTY, GEORGIA RECORDS

FLOOD NOTE

THIS PROPERTY IS NOT LOCATED IN A FEDERAL FLOOD AREA AS INDICATED BY F.I.R.M. OFFICIAL FLOOD HAZARD MAPS. THE FLOOD INFORMATION ON THIS PLAT HAS BEEN DETERMINED AFTER REVIEW OF MAPS WHICH ONLY APPROXIMATE THE LOCATION OF THE APPLICABLE FLOOD HAZARD AREA. FOR MORE ACCURATE INFORMATION, A SECOND OPINION OF THE APPLICABLE FLOOD HAZARD AREA IS RECOMMENDED. FOR FURTHER INFORMATION CONTACT THE LOCAL DRAINAGE DEPARTMENT, CORPS OF ENGINEERS, AN INSURANCE COMPANY OR APPRAISER.

ZONING INFORMATION

CITY OF SMYRNA - R-15
MINIMUM LOT AREA: 15,000 SQUARE FEET
MINIMUM LOT WIDTH: 85 FEET
MAXIMUM FLOOR AREA: 2,000 SQUARE FEET
MAXIMUM LOT COVERAGE: 35 PERCENT
MINIMUM FRONT SETBACK: 35 FEET
MINIMUM SIDE SETBACK: 10 FEET
MINIMUM REAR SETBACK: 30 FEET
MUST BE VERIFIED BY CITY OF SMYRNA PRIOR TO CONSTRUCTION.

SURVEYOR'S CERTIFICATE

This plat is a retracement of an existing parcel or parcels of land and does not subdivide or create a new parcel or make any changes to any real property boundaries. The recording information of the documents, maps, plats, or other instruments which created the parcel or parcels are stated hereon. RECORDATION OF THIS PLAT DOES NOT IMPLY APPROVAL OF ANY LOCAL JURISDICTION, AVAILABILITY OF PERMITS, COMPLIANCE WITH LOCAL REGULATIONS OR REQUIREMENTS, OR SUITABILITY FOR ANY USE OR PURPOSE OF THE LAND. Furthermore, the undersigned land surveyor certifies that this plat complies with the minimum technical standards for property surveys in Georgia as set forth in the rules and regulations of the Georgia Board of Regulation for Professional Engineers and Land Surveyors and as set forth in O.C.G.A. Section 15-6-67.

Michael R. Noles

Michael R. Noles

Georgia RLS No. 2646

12-20-23



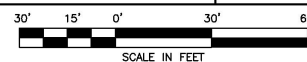
Michael R. Noles
Georgia RLS #2646
Member SAMSOG

NO.	REVISIONS	DATE

McClung Surveying
McClung Surveying Services, Inc.
4833 South Cobb Drive Suite 200
Smyrna, Georgia 30080 (770) 434-3383
www.mcclungsurveying.com Certificate of Authorization #LSF000752

SURVEY FOR
CHRISTOPHER M. HEIN
ELIZABETH HEIN

4561 DERBY LANE S.E.
SMYRNA, GEORGIA
TOTAL AREA= 0.344± ACRES
OR 15,001± SQ. FT.



LOT 7
CHURCHILL DOWNS

LAND LOT 388
17TH DISTRICT 2ND SECTION
COBB COUNTY, GEORGIA
PLAT PREPARED: 12-20-2023
FIELD: 12-18-2023 SCALE: 1"=30'



JOB#262853 PB 161
Pg. 20

Variance Application

VAR-24-5

Submitted On: Jan 11, 2024

Applicant

 Bob Ward
 6786432518
@ sales@barefootdecks.net

Primary Location

4561 DERBY LN SE
SMYRNA, GA 30082

Applicant Information

First Name

David

Last Name

Balzer

Street Address

1220 Kennestone Circle Suite 104

City

Marietta

State

Georgia

Zip Code

30066

Email

david@barefootdecks.net

Phone Number

6786431662

Are you the titleholder of the subject property?

No

Titleholder Information

Full Name (i.e., First and Last Name, or Name of Entity)

Chris Hein

Street Address

4561 Derby Ln

City

Smyrna

State

Georgia

Zip Code

30082

Email Address

chris.ashleigh.house@gmail.com

Phone Number

(470)357-5638

Property Information

Property Address

4561 Derby Ln Smyrna Ga 30082

Description of Requested Variances

encroachment of 75ft steam buffer by 14ft to replace deck (same size as existing)

Comprehensive Narrative

In rendering its decisions, the License and Variance Board shall consider the following factors:

- 1. Whether there are extraordinary and exceptional conditions applying to

the property in question, or to the intended use of the property, that do not apply generally to other properties in the same district.

2. Whether any alleged hardship which is self-created by any person having an interest in the property or is not the result of mere disregard for or ignorance of the provisions from which relief is sought.

3. Whether strict application of the relevant provisions of the zoning code would deprive the applicant of reasonable use of the property for which the variance is sought.

4. Whether the variance proposed is the minimum variance which makes possible the reasonable use of the property.

A comprehensive narrative detailing the extraordinary and exceptional conditions which will necessitate a nonconforming use.

Original deck was built, most likely before the 75ft stream buffer existed, and is now aged, unsafe, and in need of replacement. Replacing deck with a deck of the same dimensions. Moving lower section of stairs slightly to accommodate new deck codes and to land at a safer more level area. Existing stairs fully in stream buffer as they are. Almost the entire existing deck lies within the stream buffer. Would not be able to build any size deck to exit back doors of home without encroaching on the stream buffer. Back doors approx 6ft and 9ft from ground level. Current homeowner purchased the home with deck as is in 2020. Deck appears to be at least 20 years old.

Acknowledgement

Applicant further affirms they are aware that any knowingly false statement made in the permit application may subject said applicant to prosecution for violation of Georgia Criminal Code, Section 16-10-20 (False Swearing) and a possible fine of not more than \$1,000.00 or imprisonment for not less than one (1) nor more than five (5) years, or both.

Applicant Signature:

true

**PROPERTY OWNER AUTHORIZATION**

City of Smyrna Community Development Department, 3180 Atlanta Rd, Smyrna, GA 30080

Office Phone 678-631-5387 / Fax 770-431-2808

I, Christopher Hein, swear that I am the Property Owner of the property

located at: 4561 Derby Ln SE, Smyrna, GA 30082

as shown in the records of Cobb County, Georgia, which is the subject matter of the attached application.

I authorize the person named below to act as the applicant in pursuit of this application.

Name of Applicant (print clearly): Christopher Hein

Address: 4561 Derby Ln SE, Smyrna, GA 30082

Telephone: 470-457-5638

Email: chris.ashleigh.house@gmail.com

I have read, understood, and answered the aforementioned items to the best of my knowledge. If I am found to have misrepresented myself on this affidavit or the attached application, I am aware I may be in violation of the City Code and run the risk of being issued a citation for violation of the City of Smyrna Code of Ordinances.

(Must be signed by the property owner. If the landowner is a corporation, the form must be signed by an officer of the corporation.)

Signature of Property Owner

4561 Derby Ln SE

Address

Christopher Hein

Name of Property Owner (print clearly)

Smyrna, GA, 30082

City, State, Zip

**NOTIFICATION OF CONTIGUOUS OCCUPANTS
OR LANDOWNERS**

By signature, it is hereby acknowledged that I have been notified by Chris Hein at 4561 Derby Ln Smyrna

Intends to make an application for a variance for the purpose of _____
Encroaching 75ft stream buffer by 14ft to replace existing deck with deck of the same size

_____ on the premises described in the application.

NAME	ADDRESS
<u>[Signature]</u>	<u>4551 Derby Ln. Smyrna, GA 30082</u>
<u>Joseph P. Broadhurst</u>	<u>4530 Derby Ln. Smyrna, GA</u>
<u>Katie Cowan</u>	<u>4571 Derby Ln Smyrna 30082</u>
<u>Melissa Alliland</u>	
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

Please have adjacent property owners sign this form to acknowledge they are aware of your variance request. You may also provide certified mail receipts of notification letters sent to adjacent properties. Notification letters shall include a description of the requested variance, the License and Variance Board Meeting date and time, and a copy of the completed variance application. Adjacent and adjoining properties include any property abutting the subject property as well as any properties directly across a street.

3:15

5G 60



Mail Receipt

PDF - 2.5 MB



9589 0710 5270 1281 8183 43

U.S. Postal Service™
CERTIFIED MAIL® RECEIPT
Domestic Mail Only

For delivery information, visit our website at www.usps.com.

Smyrna, GA 30082

OFFICIAL USE

Certified Mail Fee	\$4.35	0676
Extra Services & Fees (check box, add fee as appropriate)	\$0.00	1050
<input type="checkbox"/> Return Receipt (hardcopy)	\$0.00	Postmark
<input type="checkbox"/> Return Receipt (electronic)	\$0.00	Here
<input type="checkbox"/> Certified Mail Restricted Delivery	\$0.00	
<input type="checkbox"/> Adult Signature Required	\$0.00	
<input type="checkbox"/> Adult Signature Restricted Delivery	\$0.00	
Postage	\$0.66	
Total Postage and Fees	\$5.01	01/12/2024

Sent To

Street and Apt. No., or PO Box No.
4390 Nowlin Dr.

City, State, ZIP+4®
Smyrna GA 30082

PS Form 3800, January 2023 PSN 7530-02-000-9047 See Reverse for instructions



https://vpc3uploadedfiles.blob.core.windows.net/vpc3-files/smyrnaga/Chris_Hein_Smyrna_Tax_Tue_Jan_9_2024_14-36-16.png?sv=2023-11-03&st=2... 1/1



Printed: 1/9/2024

Cobb County Online Tax Receipt

Thank you for your payment!

CARLA JACKSON TAX COMMISSIONER
HEATHER WALKER CHIEF DEPUTY
Phone: 770-528-8600
Fax: 770-528-8679

Payer:
PENNYMAC

**HEIN CHRISTOPHER &
WEEKLEY ELIZABETH**

Payment Date: 10/12/2023

Tax Year	Parcel ID	Due Date	Appeal Amount		Taxes Due
2023	17038800440	10/15/2023	Pay:	N/A or	\$0.00
Interest	Penalty	Fees	Total Due	Amount Paid	Balance
\$0.00	\$0.00	\$0.00	\$0.00	\$4,198.07	\$0.00



Scan this code with your
mobile phone to view
this bill!!

NOTE: MAXIMUM LOT COVERAGE 35%
ZONING R-15
REAR YARD 30'
SIDE YARD 10'
MIN. BL. 30'
MIN. FINISHED FLOOR AREA 1000
OWNER TO APPROVE ALL BUILDING PLANS

NOTE: REVISED LOTS 33, 34, 35 TO CORRECT LOT LINES.
RECORDED 10-14-1985 PB 104 PAGE 25
CLERK OF SUPERIOR COURT COB COUNTY GA.
JAY C. STEPHENSON

CURVE DATA

NO	A	R	L	T
1	15.38	715.04	198.70	100.0
2	10.71	1104.15	199.45	100.0
3	90.00	180.00	282.73	180.0
4	1.15	31.66	199.99	100.0
5	8.77	88.69	156.25	80.0
6	13.34	872.36	156.25	80.0

NOTE: REVISED LOTS 33, 34, 35 TO CHANGE LOT LINES.
RECORDED 10-9-1985
PB 104 PAGE 17
CLERK OF SUPERIOR COURT COB COUNTY GA.
JAY C. STEPHENSON



CERTIFICATION

OWNERS CERTIFICATION, STATE OF GEORGIA, THE CITY OF SNYRNA, THE OWNER OF THE LAND SHOWN ON THIS PLAT AND WHOSE NAME IS SUBSCRIBED HERETO, IN PERSON OR THROUGH A DULY AUTHORIZED AGENT, CERTIFIES THAT THIS PLAT WAS MADE FROM AN ACTUAL SURVEY ON THE GROUND AND THAT ALL STATE AND COUNTY AND TOWN TAXES OR OTHER ASSESSMENTS NOW DUE ON THIS LAND HAVE BEEN PAID AND THAT HE DEDICATES TO THE USE OF THE PUBLIC FOREVER ALL STREETS, ALLEYS, PARKS AND WATER COURSES, DRAINS, EASEMENTS AND PUBLIC PLACES THEREON SHOWN FOR THE PURPOSES AND CONSIDERATIONS THEREIN EXPRESSED.

OWNER W. C. Smith SEPT. 1985
C. J. FOUTS

CERTIFICATE

IT IS HEREBY CERTIFIED THAT THIS PLAT IS TRUE AND CORRECT AND WAS MADE FROM AN ACTUAL SURVEY OF THE PROPERTY AND WAS UNDER MY SUPERVISION THAT ALL MONUMENTS SHOWN THEREON ACTUALLY EXIST OR ARE MARKED AS FUTURE MONUMENTS AND THEIR LOCATION, SIZE, TYPE AND MATERIAL ARE CORRECTLY SHOWN AND THAT ALL ENGINEERING REQUIREMENTS OF THE LAND SURVEYING REGULATIONS OF THE CITY OF SNYRNA GEORGIA HAVE BEEN FULLY COMPLIED WITH

BY A. C. Cudde REGISTERED GEORGIA LAND SURVEYOR NO. 1468

CHURCHILL DOWNS

LOCATED IN LAND LOT 333 368 405 17TH. DIST. 2ND. SECT.

CITY OF SNYRNA, COBB COUNTY, GEORGIA

A.O. CARLILE-SURVEYOR 723 COLLINS RD. MARIETTA, GEORGIA 30066 (404) 422-3655

SCALE 1" = 100'

CITY OF SNYRNA GA. CERTIFICATION
THIS PLAT HAVING BEEN SUBMITTED TO CITY OF SNYRNA AND HAVING BEEN FOUND TO COMPLY WITH THE MASTER PLAN, THE CITY OF SNYRNA SUBDIVISION REGULATIONS AND THE CITY OF SNYRNA ZONING REGULATIONS IS APPROVED SUBJECT TO THE INSTALLATION AND DEDICATION OF ALL STREETS, UTILITIES, EASEMENTS AND ALL OTHER IMPROVEMENTS IN ACCORDANCE WITH THE STANDARD DESIGN SPECIFICATIONS.

CITY ENGINEER W. C. Smith
DATE Sept 13, 1985
CHAIRMAN, PLANNING COMMISSION W. C. Smith
DATE Sept 13, 1985
MAYOR W. C. Smith
DATE Sept 13, 1985
CLERK OF SUPERIOR COURT COB COUNTY GA. JAY C. STEPHENSON

CITY OF SMYRNA

COMMUNITY DEVELOPMENT

MEMORANDUM

To: License and Variance Board

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

Date: January 24, 2024

RE: **VARIANCE CASE V24-007**
4561 Derby Lane – Allow encroachment into the 75-foot impervious surface area setback

BACKGROUND

The applicant is requesting a variance to allow encroachment into the City's 75-foot impervious surface area setback to rebuild an existing deck on the rear of the home. The City's stream buffers are controlled by Chapter 46, Article VI.

ANALYSIS

The subject parcel is a 0.34-acre lot located on the north side of Derby Lane (see Figure 1). A stream runs to the north of the property and continues through the adjacent properties to the east and west. The subject parcel and all adjoining parcels are zoned R-15 and are all occupied by single-family detached residences. The subject property is within the Churchill Downs subdivision, which was platted in 1985.

The applicant is proposing to rebuild a 392 square foot deck on the rear of the existing home. The existing house and deck was constructed in 1987, prior to the adoption of the stream buffer ordinance in 2005. 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 in 1987 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. At the time of this report, Community Development has not received any calls in opposition to the request.

STAFF COMMENTS

The applicant is requesting relief from the City's 75-foot impervious surface area setback to rebuild an existing deck. 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 condition:

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

Figure – 1

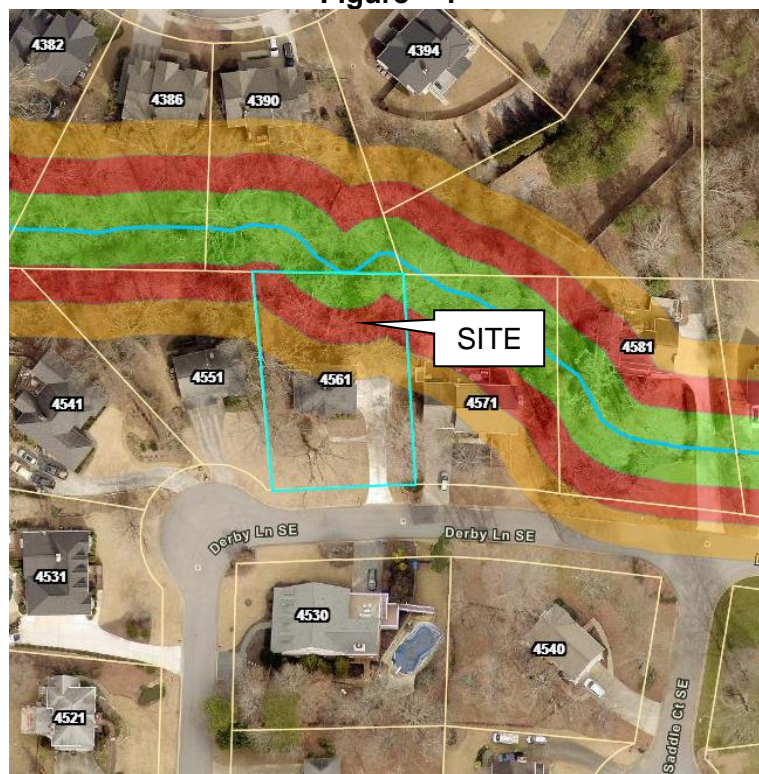


Figure – 2 Site Plan

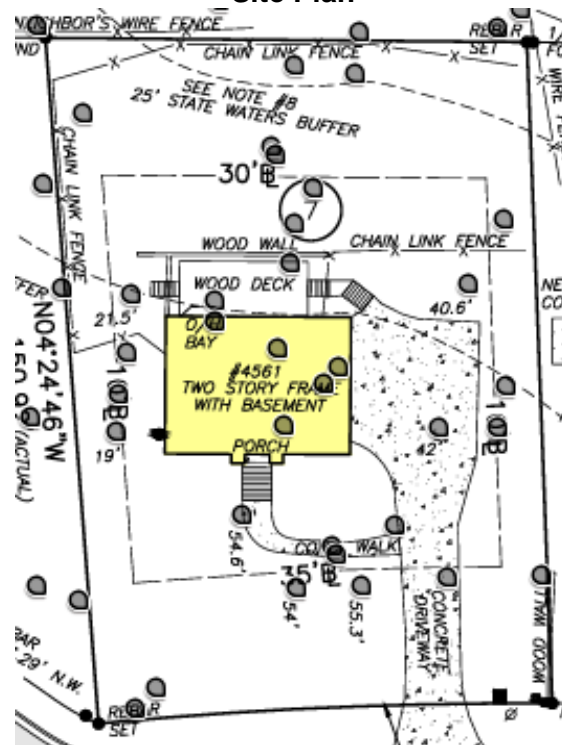


Figure – 3
Subject Property



Figure – 4
Adjacent Property to the East



Figure – 5
Adjacent Property to the West



Figure – 6
Adjacent Property across Derby Lane

