



License and Variance Board Meeting - Final

May 22, 2024
10:00 AM

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



City of Smyrna

Issue Sheet

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

File Number: V24-059

Agenda Date: 5/22/2024

In Control: License and Variance Board

File Type: Variance Item

Agenda Section:
Formal Business

Agenda Number: H

Department: Community Development

Agenda Title:

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

ISSUE AND 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.

RECOMMENDATION / REQUESTED ACTION:

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



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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.

CITY OF SMYRNA

COMMUNITY DEVELOPMENT

MEMORANDUM

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

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.

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.

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

VARIANCE CASE V24-028 through 030

May 15, 2024

Page 3 of 7

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

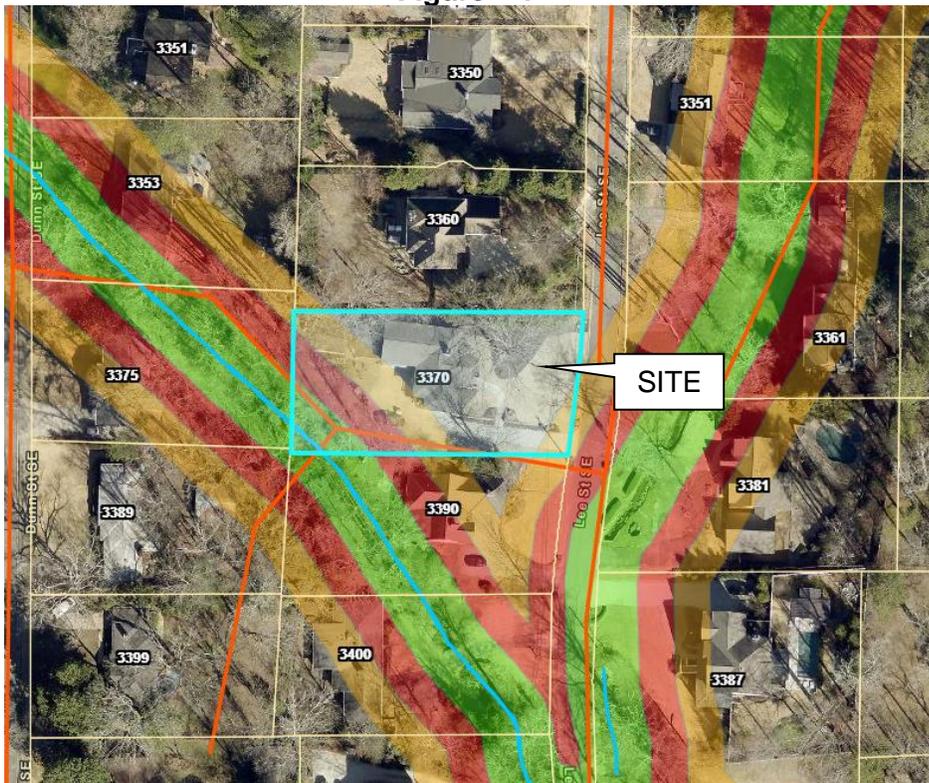


Figure - 2
 Site Plan

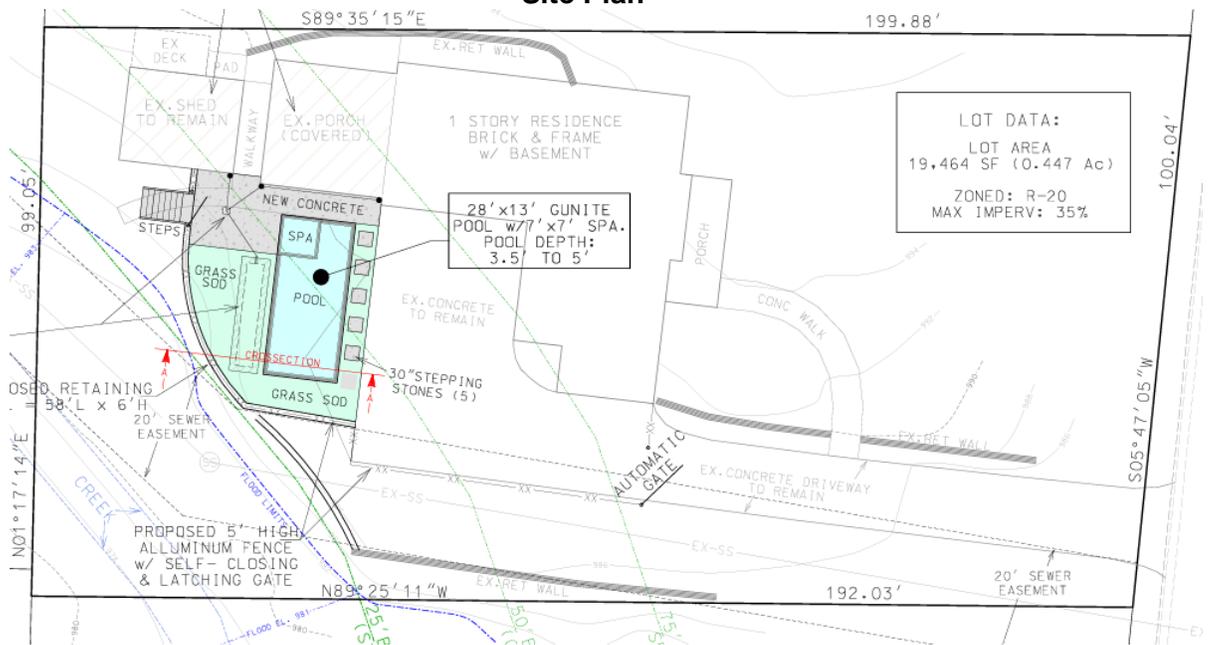


Figure – 3
Subject Property



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



Variance Application

VAR-24-31

Submitted On: Apr 15, 2024

Applicant

 Thomas Strength
 404-374-4020
 @brent.strength@jedunn.com

Primary Location

3370 LEE ST SE
SMYRNA, GA 30080

Applicant Information

First Name

Thomas

Last Name

Strength

Street Address

3370 Lee St SE

City

Smyrna

State

GA

Zip Code

30080

Email

brent.strength@jedunn.com

Phone Number

4043744020

Are you the titleholder of the subject property?

Yes

Property Information

Property Address

3370 Lee St SE

Description of Requested Variances

- 1) 75 Impervious Setback
- 2) 50 Undisturbed Buffer
- 3) Accessory Structures - Additional for pool

Please check the box below if the requested variance(s) includes an increase in the maximum impervious surface area or an encroachment into a City stream buffer.

true

****If the request includes an increase in the maximum impervious surface area or an encroachment into a City stream buffer, a stormwater mitigation plan is REQUIRED prior to submittal of the variance application.****

Please contact City Engineer, Mark Wolff with any questions relating to the stormwater mitigation plan; 678-631-5546 or mwolff@smyrnaga.gov.

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.

1) The purpose of the request is to construction a pool. We have designed the pool to reduce area to minimum reuirements. Structures on the property are already encroaching in the buffer zones, previously approved and constructed prior to my purchase of the property. Additionall water mitigation measures for the detached shed are included in the design of the pool.

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

**NOTIFICATION OF CONTIGUOUS OCCUPANTS
OR LANDOWNERS**

By signature, it is hereby acknowledged that I have been notified at Thomas Strungh,
residing at 3370 Lee Street SE, Smyrna GA
Intends to make an application for a variance for the purpose of installing a small
residential pool on the property

on the premises described in the application.

NAME	ADDRESS
Sarah Bowman	3360 Lee St SE, Smyrna, GA 30081

Please have adjacent property owners sign this form to acknowledge they are aware of your variance request. Adjacent and adjoining properties include any property abutting the subject property as well as any properties directly across a street.

9589 0710 5270 1735 6106 77

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Certified Mail Fee	\$4.40
Extra Services & Fees (check box, add fee as appropriate)	\$0.00
<input type="checkbox"/> Return Receipt (hardcopy)	\$0.00
<input type="checkbox"/> Return Receipt (electronic)	\$0.00
<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	\$0.68
Total Postage and Fees	\$5.08

Sent To 3381 LEE ST SE
Street and Apt. No., or PO Box No.
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City, State, ZIP+4®

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

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<input type="checkbox"/> Adult Signature Restricted Delivery	\$0.00
Postage	\$0.68
Total Postage and Fees	\$5.08

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Real Estate (Your House or Land)

[View Bill](#)

[View bill image](#)

As of	4/15/2024
Bill Year	2023
Bill	16717
Owner	STRENGTH THOMAS BRENT
Parcel ID	17052500050

[View payments/adjustments](#)

Instalment	Pay By	Amount	Payments/Credits	Balance	Interest	Due
1	11/15/2023	\$2,149.44	\$2,149.44	\$0.00	\$0.00	\$0.00
TOTAL		\$2,149.44	\$2,149.44	\$0.00	\$0.00	\$0.00



Printed: 4/15/2024

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:
M & T BANK

STRENGTH THOMAS BRENT

Payment Date: 10/12/2023

Tax Year	Parcel ID	Due Date	Appeal Amount			Taxes Due
2023	17052500050	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	\$6,366.84	\$0.00	



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this bill!

