



## License and Variance Board Meeting - Final

September 11, 2024  
10:00 AM

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C. **V24-068** Public Hearing - Variance Request - V24-068 - Allow rear setback reduction from 20 feet to 11.4 feet - Land Lot 487 - 0.70 acres - 3024 Trae Court - Ari Kowalsky



# City of Smyrna

## Issue Sheet

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

File Number: V24-125

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**Agenda Date:** 9/11/2024

**In Control:** .

**File Type:** Variance Item

**Agenda Section:**

Formal Business

**Department:** Community Development

**Agenda Title:**

Public Hearing - Variance Request - V24-068 - Allow rear setback reduction from 20 feet to 11.4 feet - Land Lot 487 - 0.70 acres - 3024 Trae Court - Ari Kowalsky

***Ward 3 Councilmember - Travis Lindley***

**ISSUE AND BACKGROUND:**

The applicant is requesting a variance to reduce the rear setback from 20 feet to 11.4 feet to build a deck on the rear of 3024 Trae Court. The subject property was approved in 2020 (zoning case Z20-004) with conditions, one of which required a rear setback of 20 feet.

**RECOMMENDATION / REQUESTED ACTION:**

The applicant is requesting to deviate from the development standards established by zoning case Z20-004 for the rear setback of 20 feet to erect a deck on the rear of a new home in the Trae Court subdivision. 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 encroachments will not adversely affect surrounding residents; therefore, staff recommends approval of the requested variance with the following condition:

1. Approval is conditioned upon substantial compliance with the site plan and elevations submitted with the variance application.
2. An Engineer's Letter with a detail showing the depth of the sanitary sewer pipe and its zone of influence in relation to the house foundation shall be submitted prior to building permit issuance.
3. An as-built survey shall be submitted to Community Development prior to the foundation pour inspection.
4. Survey stakes must be installed to reflect the edge of the sanitary sewer easement and must be



# City of Smyrna

## Issue Sheet

File Number: V24-125

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City Hall  
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Smyrna, GA 30080

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maintained throughout construction.

# CITY OF SMYRNA

## COMMUNITY DEVELOPMENT

### MEMORANDUM

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To: License and Variance Board

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

Date: August 29, 2024

**RE: VARIANCE CASE V24-068**  
**3024 Trae Court – Reduce the rear setback from 20 feet to 11.4 feet**

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#### **BACKGROUND**

The applicant is requesting a variance to reduce the rear setback from 20 feet to 11.4 feet to build a deck on the rear of 3024 Trae Court. The subject property was approved in 2020 (zoning case Z20-004) with conditions, one of which required a rear setback of 20 feet.

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#### **ANALYSIS**

The subject parcel is located on the south side of the Trae Court cul-de-sac (see Figure 1). The subject parcel and adjacent parcels to the north, east, and west are zoned RM-10-C and are within the Trae Court subdivision, all of which will be occupied with single-family homes. The adjacent property to the south is zoned RHR and is occupied by the Mitchell's Park apartment complex.

The subject property has a 20-foot sanitary sewer easement on the eastern side of the property and a 12-foot drainage easement and 10-foot landscape buffer in the rear. Due to the reduced buildable area, the proposed home footprint nearly touches all required setbacks while still maintaining the 22-foot minimum driveway. Each home in the subdivision has either a deck or patio in the rear for an outdoor amenity. Of the eight permitted homes thus far (out of eleven in the subdivision), the average patio size is 182 square feet, with the smallest patio being 160 square feet due to its location on the corner of Trae Court and Church Street. Since patios that are flush to the ground are not required to meet building setbacks, each previously permitted patio has been almost fully in the rear setback. Due to the topography in the rear of the subject property, a patio would not have been feasible. To maintain a consistent product throughout the subdivision, the applicant has requested a rear setback reduction of 8.6 feet to build a 136 square foot deck on the rear of the house on both the first and second floor. If the home were to be shifted north to provide more room for a deck, two additional variances would have been required to reduce the driveway length and reduce the front setback. Thus, to reduce the scope and number of variances, the applicant has requested the rear setback reduction.

The deck will remain outside the required 10-foot landscape buffer in the rear of the property but will encroach into the 12-foot private drainage easement by 3 feet. The City Engineer has reviewed the application and does not believe the deck will have adverse effects on the overall

drainage of the subdivision. Since the drainage easement is private, a variance is not required for the encroachment. Additionally, the foundation of the home is touching the sanitary sewer easement. The Public Works Assistant Director and Chief Building Official have both reviewed the application and can support the request with the stipulation that an Engineer's Letter be provided to ensure that if the full 20-foot sanitary sewer easement was used, the foundation of the house would not be compromised.

Community Development believes that the encroachment will not adversely affect the surrounding residents, as the nearest structure at the Mitchell Park apartments is over 50 feet away and across a private roadway. With an 8.6-foot encroachment on the rear of home at the back of the subdivision, the requested variance for the encroachment will not be noticeable to the general public. Strict application of the ordinance would prohibit the erection of any outdoor amenity since the home is proposed to abut the rear setback. At the time of this report, Community Development has not received any calls in opposition to the request.

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### **STAFF COMMENTS**

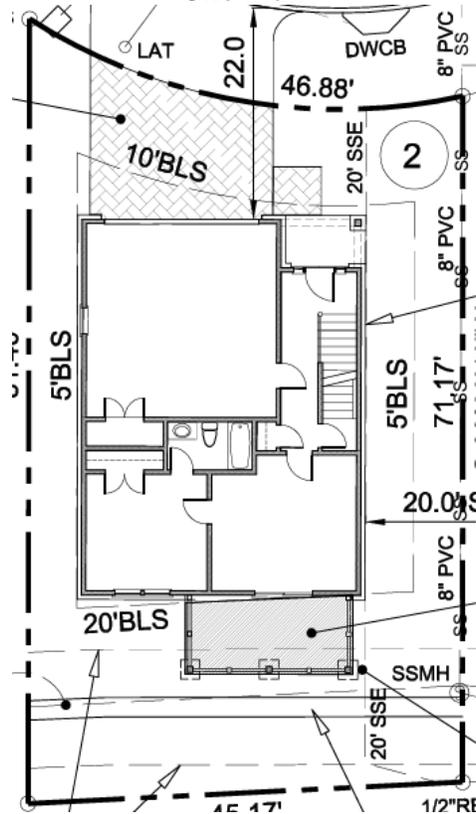
The applicant is requesting to deviate from the development standards established by zoning case Z20-004 for the rear setback of 20 feet to erect a deck on the rear of a new home in the Trae Court subdivision. According to Section 1403 of the Zoning Ordinance, variances must be reviewed under the following 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 encroachments will not adversely affect surrounding residents; therefore, staff recommends **approval** of the requested variance with the following condition:

1. Approval is conditioned upon substantial compliance with the site plan and elevations submitted with the variance application.
2. An Engineer's Letter with a detail showing the depth of the sanitary sewer pipe and its zone of influence in relation to the house foundation shall be submitted prior to building permit issuance.
3. An as-built survey shall be submitted to Community Development prior to the foundation pour inspection.
4. Survey stakes must be installed to reflect the edge of the sanitary sewer easement and must be maintained throughout construction.

Figure - 1



Figure - 2  
Site Plan



**Figure – 2**  
**Front Elevation**



**Figure – 3**  
**Subject Property**



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



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



**Figure – 6**  
**Adjacent Property across Trae Court**





**Variance Application**

**VAR-24-51**

Submitted On: Aug 5, 2024

**Applicant**

 Ari Kowalsky  
 4046615482  
 arijay@bellsouth.net

**Primary Location**

3024 TRAE CT SE  
SMYRNA, GA 30080

**Applicant Information**

**First Name**

Ari

**Last Name**

Kowalsky

**Street Address**

840 Monroe Circle NE, Unit B

**City**

Atlanta

**State**

GA

**Zip Code**

30308

**Email**

arijay@bellsouth.net

**Phone Number**

404-661-5482

**Are you the titleholder of the subject property?**

No

**Titleholder Information**

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

Trae Court Development LLC

**Street Address**

840 Monroe Circle NE, Unit B

**City**

Atlanta

**State**

GA

**Zip Code**

30308

**Email Address**

arijay@bellsouth.net

**Phone Number**

404-661-5482

**Property Information**

**Property Address**

3024 Trae Court SE Smyrna GA 30080

**Description of Requested Variances**

To allow rear deck of proposed residence to encroach rear building setback by 8.6'

**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.**

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## 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.**

The zoning calls for a 22' driveway and 2 car garage facing the street. Since the lot is very narrow and limited in depth, in addition it falls off sharply at the rear, we are requesting a variance to build the rear deck in the rear setback. Without this variance, it is unlikely for the prospective homeowners to have any usable outdoor space. It should be noted that the existing detention pond close to this lot is positioned further back towards the rear property line as to what the proposed deck would be. It should also be noted that the living space is not big enough to enable us to sacrifice interior usable space to allow for a rear deck. The posts of the proposed deck would be within the private drainage easement, however they would not affect the drainage swell that is required as per the site plan.

## 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 770-319-5387 / Fax 770-431-2808

I, Ari Kowalsky as Manager Trae Court Developmet LLC, swear that I am the Property Owner of the property

located at: 3024 Trae Court SE, Smyrna, GA 30080

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): Ari Kowalsky

Address: 840 Monroe Cir NE, Unit B, Atlanta GA 30308

Telephone: 4046615482 Email: arijay@bellsouth.net

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

840 Monroe Cir NE, Unit B  
Address

Ari Kowalsky as manager  
Name of Property Owner (print clearly)

Atlanta, GA 30308  
City, State, Zip

**NOTIFICATION OF CONTIGUOUS OCCUPANTS  
OR LANDOWNERS**

By signature, it is hereby acknowledged that I have been notified ~~that~~ Trae Court Development LLC

Intends to make an application for a variance for the purpose of \_\_\_\_\_  
Reduce the rear setback

\_\_\_\_\_ on the premises described in the application.

**NAME**

**ADDRESS**

James Smith

1102 Church St SE Smyrna GA 30080

Peresvto, V. W...

1119 Medlin St, Smyrna GA 30080

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.



APPLICATION FOR VARIANCE TO THE CITY OF SMYRNA

Type or Print Clearly

APPLICANT: Trae Court Development LLC

Representative's Name (print): Ari Kowalsky

Address: P O Box 889083 Atlanta GA 30356

Business Phone: 404-661-5482 Cell Phone: 404-661-5482 Home Phone:

E-Mail Address: arijay@bellsouth.net

Signature of Representative: [Handwritten Signature]

TITLEHOLDER: Trae Court Development LLC

Address: P O Box 889083 Atlanta GA 30356

Business Phone: 404-661-5482 Cell Phone: 404-661-5482 Home Phone:

Signature: [Handwritten Signature]

VARIANCE:

Present Zoning: RM10 Type of Variance: Reduce the rear setback

Explain Intended Use: Construct a rear deck for proposed new house

Location: 3024 Trae Court SE Smyrna GA 30080 (Lot # 2)

Land Lot(s): 71, 72, 73, 74 District: 17th Size of Tract: 0.075 Acres

CONTIGUOUS ZONING

North: RM10

East: R15

South: Multifamily

West: RAD

**ZONING ORDINANCE  
SECTION 1403 VARIANCE REVIEW STANDARDS**

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.

Please include your narrative here, or you may submit a typed narrative as a supplement to this application.

**COMPREHENSIVE NARRATIVE**

The zoning calls for a 22' driveway and 2 car garage facing the street. Since the lot is very narrow and limited in depth, in addition it falls off sharply at the rear, we are requesting a variance to build the rear deck in the rear setback. Without this variance, it is unlikely for the prospective homeowners to have any usable outdoor space. It should be noted that the existing detention pond close to this lot is positioned further back towards the rear property line as to what the proposed deck would be. It should also be noted that the living space is not big enough to enable us to sacrifice interior usable space to allow for a rear deck. The posts of the proposed deck would be within the private drainage easement, however they would not affect the drainage swell that is required as per the site plan.

## Munis Self Service

# Real Estate (Your House or Land)

### View Bill

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<b>As of</b>	8/5/2024
<b>Bill Year</b>	2023
<b>Bill</b>	17630
<b>Owner</b>	TRAE COURT DEVELOPMENT LLC
<b>Parcel ID</b>	17048700460

[View payments/adjustments](#)

Installment	Pay By	Amount	Payments/Credits	Balance	Interest	Due
1	11/15/2023	\$962.47	\$962.47	\$0.00	\$0.00	\$0.00
<b>TOTAL</b>		\$962.47	\$962.47	\$0.00	\$0.00	\$0.00

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FLOOD NOTE:

THIS PLAN HAS BEEN REVIEWED BY THE CITY OF ATLANTA AND THE STATE OF GEORGIA FOR COMPLIANCE WITH THE FLOOD DAMAGE PREVENTION ACT AND THE FLOOD CONTROL ACT OF 1954.

SPECIAL NOTES:

1. THIS DEVELOPMENT SHALL BE SUBJECT TO THE APPROVAL OF THE CITY OF ATLANTA AND THE STATE OF GEORGIA.
2. THE DEVELOPER SHALL MAINTAIN ACCESS TO ALL ADJACENT PROPERTIES AT ALL TIMES.
3. THE DEVELOPER SHALL MAINTAIN ALL EXISTING UTILITIES AND SHALL BE RESPONSIBLE FOR ANY REPAIRS OR REPLACEMENTS.
4. THE DEVELOPER SHALL MAINTAIN ALL EXISTING EASEMENTS AND SHALL BE RESPONSIBLE FOR ANY REPAIRS OR REPLACEMENTS.

NO OTHER PLANS HAVE BEEN APPROVED FOR THIS DEVELOPMENT.

THE DEVELOPER SHALL MAINTAIN ACCESS TO ALL ADJACENT PROPERTIES AT ALL TIMES.

DISTANCES SHOWN ON PLAN ARE UNCIRCLED DISTANCES.

GENERAL NOTES:

1. THE TOTAL AREA OF THIS PLAN IS 10.00 ACRES.
2. THE TOTAL AREA OF THIS PLAN IS 10.00 ACRES.
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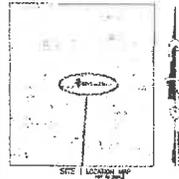
SYMBOLS:

- A. EXISTING BUILDINGS
- B. EXISTING DRIVEWAYS
- C. EXISTING EASEMENTS
- D. EXISTING UTILITIES
- E. EXISTING CURBS
- F. EXISTING SIDEWALKS
- G. EXISTING STREETS
- H. EXISTING ALLEYS
- I. EXISTING FENCES
- J. EXISTING SIGNAGE
- K. EXISTING LANDSCAPE
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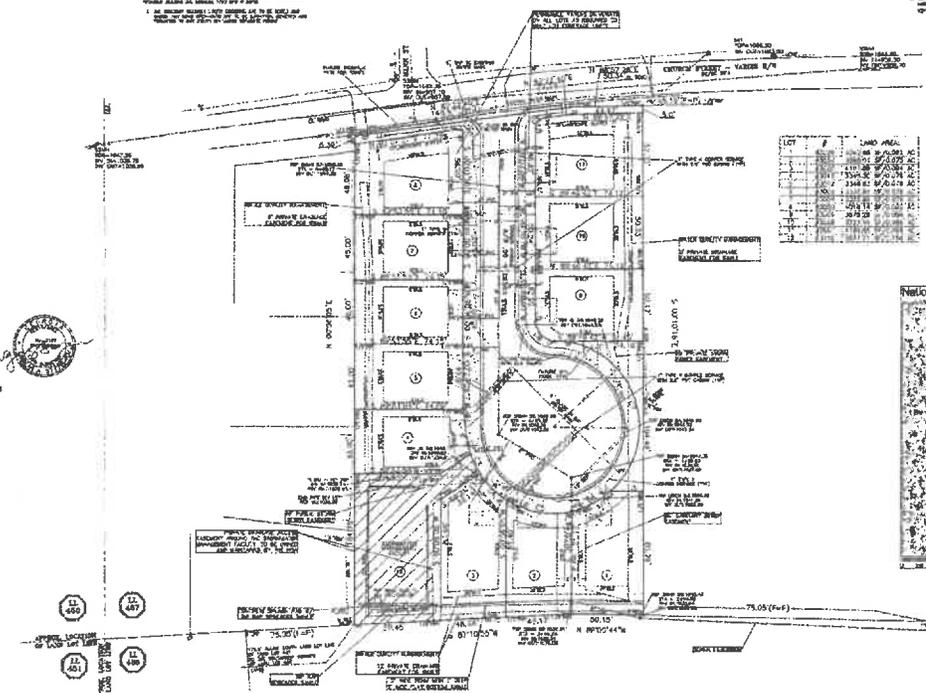
LEGEND:

- 1. EXISTING BUILDINGS
- 2. EXISTING DRIVEWAYS
- 3. EXISTING EASEMENTS
- 4. EXISTING UTILITIES
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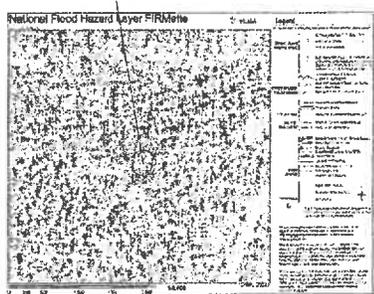
Plot Book 282 Page 199  
 Filed and Recorded 10/23/23 2:58:00 PM  
 2023-0082901  
 Corinne Taylor  
 Clerk of Superior Court  
 Cobb County, GA  
 PARCEL IDENT: B527701521



PROPERTY RECORDS AND ENCUMBRANCES  
 CITY OF ATLANTA  
 770-526-1000



LOT	LAND AREA
1	1.00 AC
2	1.00 AC
3	1.00 AC
4	1.00 AC
5	1.00 AC
6	1.00 AC
7	1.00 AC
8	1.00 AC
9	1.00 AC
10	1.00 AC



Year	Length	Width	Area	Volume	Depth	Flow	Velocity	Force	Damage
10	100	10	1000	10000	10	100	10	100	1000
20	200	20	4000	40000	20	200	20	400	4000
30	300	30	9000	90000	30	300	30	900	9000
40	400	40	16000	160000	40	400	40	1600	16000
50	500	50	25000	250000	50	500	50	2500	25000
60	600	60	36000	360000	60	600	60	3600	36000
70	700	70	49000	490000	70	700	70	4900	49000
80	800	80	64000	640000	80	800	80	6400	64000
90	900	90	81000	810000	90	900	90	8100	81000
100	1000	100	100000	1000000	100	1000	100	10000	100000

PROPERTY DEVELOPER  
 TRAR COURT DEVELOPMENT, LLC  
 20 BOX 84288  
 ATLANTA, GA 30354  
 24 HOUR CONTACT: JIM KOWALCZYK  
 TELEPHONE: (404) 881-8428

PROJECT ENGINEER/ARCHITECT  
 CONTINO GROUP, LLC  
 750 CHAMBERLAIN DRIVE, SUITE 800  
 DECATUR, GA 30030  
 24 HOUR CONTACT: SAM KENDRICK  
 TELEPHONE: (770) 901-2078  
 EMAIL: THEO@CONTINOGROUP.COM

SPR: 10/23/23 10:00 AM  
 YEAR COURT RESIDENTIAL SUBDIVISION  
 TRAR COURT DEVELOPMENT, LLC  
 SURVEY LAND EXPRESS, INC.  
 LAND SURVEYING SERVICES