



License and Variance Board Meeting - Final

November 13, 2024
10:00 AM

-
- D. **V24-090** Public Hearing - Variance Request - V24-090 - Allow encroachment into the City's 50-foot undisturbed buffer - Land Lot 416 - 2805 Eastfield Road - Joshua Oliver



City of Smyrna

Issue Sheet

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

File Number: V24-169

Agenda Date: 11/13/2024

In Control: License and Variance Board

File Type: Variance Item

Agenda Section:

Formal Business

Department: Community Development

Agenda Title:

Public Hearing - Variance Request - V24-090 - Allow encroachment into the City's 50-foot undisturbed buffer - Land Lot 416 - 2805 Eastfield Road - Joshua Oliver

Ward 5 Councilmember - Susan Wilkinson

ISSUE AND BACKGROUND:

The applicant is requesting a variance to encroach into the City's 50-foot impervious surface setback to allow for the construction of a deck at 2805 Eastfield Road. The City's stream buffers are controlled by Chapter 46, Article VI.

A variance was approved on the property in 2016 to encroach into the 75-foot impervious surface setback (V16-050) for an addition that did not include the deck. At the time, stipulations were placed to install a water quality treatment measure. However, there is no evidence to state that this was done at the time and was done under a previous homeowner. The deck was then built without a permit nor variance sometime in 2020 based off aerial records, also under a previous homeowner.

RECOMMENDATION / REQUESTED ACTION:

The applicant is requesting relief from the City's 50-foot undisturbed buffer to replace a deck 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. After a review of the standards above, Community Development and the City Engineer believe that the encroachment will not adversely affect surrounding residents nor the existing stream; therefore, staff recommends approval of the requested variance with the following conditions:

1. Approval of the requested variance shall be conditioned upon substantial compliance with the mitigation plan submitted with the variance application.
2. A plat shall be submitted to the City for approval and subsequently recorded with the Cobb County



City of Smyrna

Issue Sheet

File Number: V24-169

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2800 King Street
Smyrna, GA 30080

Superior Court to show the extension of the undisturbed buffer and impervious surface setback prior to issuance of the building permit.

CITY OF SMYRNA COMMUNITY DEVELOPMENT MEMORANDUM

To: License and Variance Board

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

Date: November 4, 2024

**RE: VARIANCE CASE V24-090
2805 Eastfield Road – Allow encroachment into the City’s 50-foot undisturbed buffer**

BACKGROUND

The applicant is requesting a variance to encroach into the City’s 50-foot impervious surface setback to allow for the construction of a deck at 2805 Eastfield Road. The City’s stream buffers are controlled by Chapter 46, Article VI.

A variance was approved on the property in 2016 to encroach into the 75-foot impervious surface setback (V16-050) for an addition that did not include the deck. At the time, stipulations were placed to install a water quality treatment measure. However, there is no evidence to state that this was done at the time and was done under a previous homeowner. The deck was then built without a permit nor variance sometime in 2020 based off aerial records, also under a previous homeowner.

ANALYSIS

The subject parcel is a 0.28-acre lot located on the east side of Eastfield Road in the Cheney Woods subdivision (see Figure 1). A stream runs through the rear of the property and continues south. The subject parcel and all adjoining parcels are zoned R-15 and are all occupied by single-family detached residences.

The applicant is proposing to replace an existing 256 square foot deck in its current location. The rear yard and a portion of the home itself is 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 no section of the rear yard untouched by stream buffers. Since the property was platted in 1954, prior to the Stream Buffer Protection Ordinance in 2005, the hardship is not self-created. No other variances are needed as the property is below their impervious coverage maximum of 35% and the deck is well outside the setbacks.

The applicant will require relief from the City’s stream buffer ordinance in order to make the improvements in the rear yard. The applicant will mitigate the rear yard disturbance by extending the 50-foot undisturbed buffer into the 75-foot impervious surface setback and then extending the 75-foot impervious surface setback on the south side of the home to offset the

256 square foot encroachment. The new impervious area will be contiguous with the existing setback area and will require an update to and recording of the parcel plat to delineate the new undisturbed and impervious setback limits. The City Engineer has reviewed the application and accompanying mitigation plan and supports the method used for buffer mitigation per the Georgia Stormwater Management Manual requirements.

Due to the existing stream buffers encumbering the entirety of the rear yard and the existing home, Community Development believes this is the minimum variance needed to allow for any deck replacement. Strict application of the ordinance would require the existing home to be removed and shifted west due to the existing stream buffers. 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 50-foot undisturbed buffer to replace a deck 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. After a review of the standards above, Community Development and the City Engineer believe that the encroachment will not adversely affect surrounding residents nor the existing stream; therefore, staff recommends **approval** of the requested variance with the following conditions:

1. Approval of the requested variance shall be conditioned upon substantial compliance with the mitigation plan submitted with the variance application.
2. A plat shall be submitted to the City for approval and subsequently recorded with the Cobb County Superior Court to show the extension of the undisturbed buffer and impervious surface setback prior to issuance of the building permit.

Figure – 1



Figure – 2
Site Plan

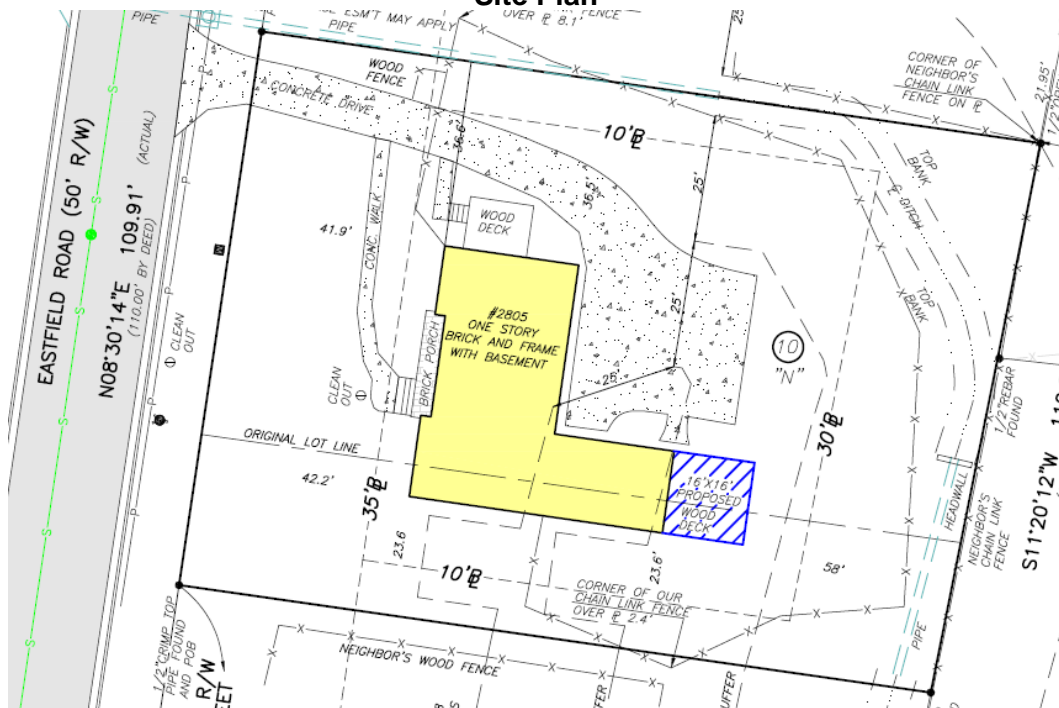


Figure – 3
Subject Property



Figure – 4
Adjacent Property to the North



Figure – 5
Adjacent Property to the South



Figure – 5
Adjacent Property across Eastfield Road



REFERENCE MATERIAL

- LIMITED WARRANTY DEED IN FAVOR OF JOSHUA LEE OLIVER AND MARY KAYLA BROOKS DEED BOOK 16132 PAGE 1617-1619 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.

SURVEY NOTES

- 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.
- 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.
- 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.
- 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 68,986 FEET. A GEOMAX ZOOM 90 SERIES ROBOTIC TOTAL STATION WITH CARLSON SURVEY 2 DATA COLLECTOR WERE USED IN THE COLLECTION OF FIELD DATA.
- BEARINGS SHOWN WERE COMPUTED FROM ANGLES TURNED FROM A SINGLE MAGNETIC OBSERVATION.
- THIS PROPERTY IS SUBJECT TO CURRENT ZONING REGULATIONS AND RESTRICTIONS.
- ALL REBARS SET ARE 1/2" REBARS UNLESS OTHERWISE NOTED.
- THE EXISTENCE, SIZE, AND LOCATION OF IMPERVIOUS BUFFERS ARE SUBJECT TO FINAL DETERMINATION BY THE LOCAL ISSUING AUTHORITY, CITY, OR COUNTY.



CURRENT 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.



Michael R. Niles
 Georgia RLS #2646
 Member SAMSOG

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. Niles

Michael R. Niles

Georgia RLS No. 2646

9-24-2024

Date

NO.	REVISIONS	DATE
1.	SHOW PROP. DECK AND CONSIDERATION WITH THE STATE AND CITY STREAM BUFFERS	10-3-24

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
 JOSHUA LEE OLIVER
 MARY KAYLA BROOKS

2805 EASTFIELD ROAD S.E.
 SMYRNA, GEORGIA

TOTAL AREA= 0.284± ACRES
 OR 16,715± SQ. FT.

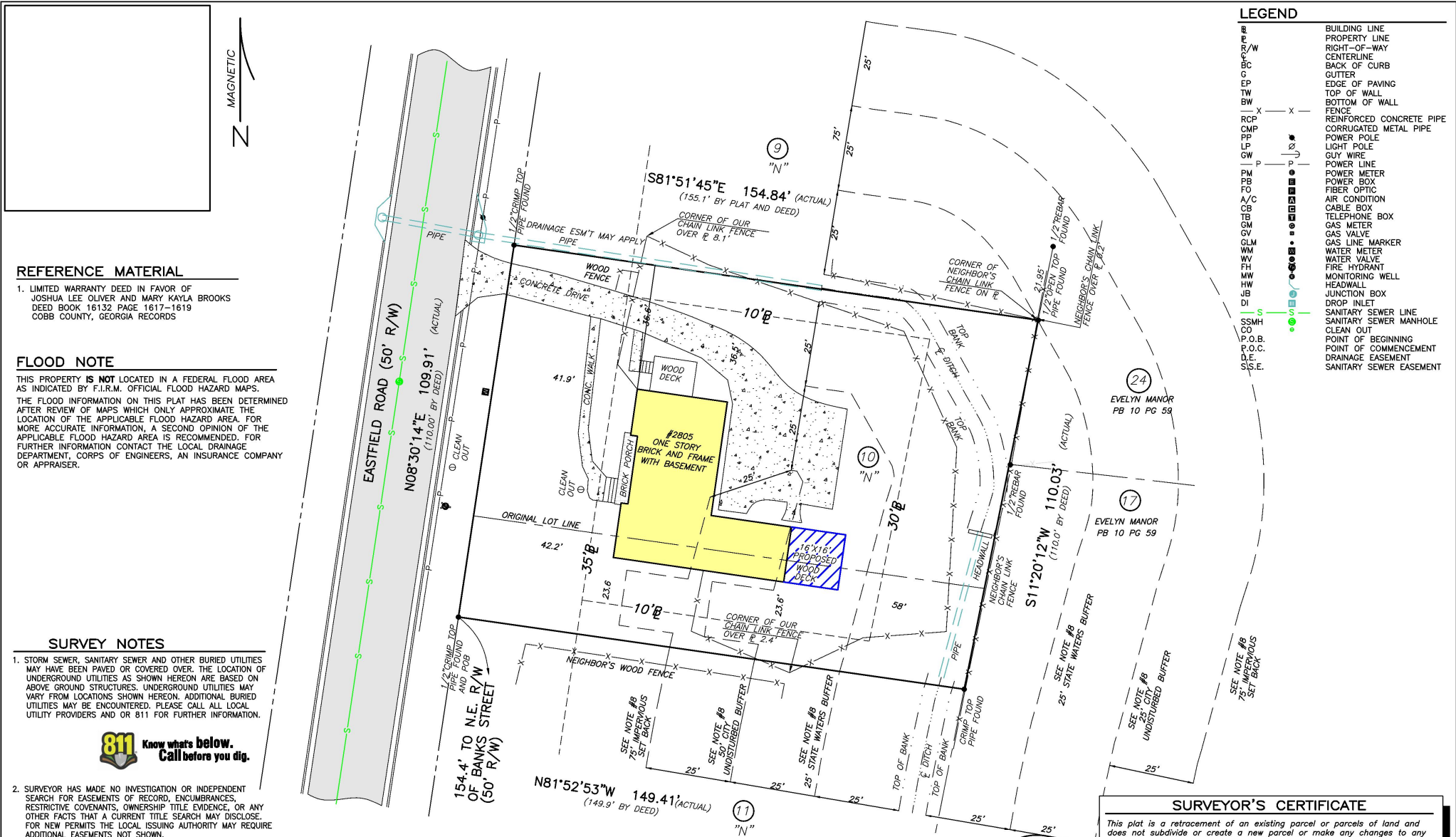
20' 10' 0' 20' 40'
 SCALE IN FEET

2805 EASTFIELD ROAD S.E.
 SMYRNA, GEORGIA

TOTAL AREA= 0.284± ACRES
 OR 16,715± SQ. FT.

LOT 10 AND PART OF LOT 11
 BLOCK "N"
 CHENEY WOODS SUBDIVISION

LAND LOT 416
 17TH DISTRICT 2ND SECTION
 COBB COUNTY, GEORGIA
 PLAT PREPARED: 9-24-2024
 FIELD: 9-23-2024 SCALE: 1"=200B#264694-PROP DE 13




Variance Application

VAR-24-66

Submitted On: Oct 10, 2024

Applicant

 Josh Oliver
 9182328961
 joliver1216@gmail.com

Primary Location

2805 EASTFIELD RD SE
SMYRNA, GA 30080

Applicant Information

First Name

Joshua

Last Name

Oliver

Street Address

2805 Eastfield Rd SE

City

Symrna

State

GA

Zip Code

30080

Email

joliver1216@gmail.com

Phone Number

9182328961

Are you the titleholder of the subject property?

Yes

Property Information

Property Address

2805 Eastfield Rd SE Smyrna GA 30080

Description of Requested Variances

Stream buffer encroachment

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. 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.

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

Please see proposed impervious setback due to deck encroachment into stream buffer. Attached is an arial view of the proposal, along with a site survey done with the proposed setback.

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

US Postal Service
FIRST CLASS MAIL PERMIT NO. 100 NEW YORK, NY 10001
OFFICIAL USE

9505 0742 0004

DATE OF SERVICE: 05/11/2004
TIME OF SERVICE: 10:00 AM
CITY: NEW YORK
STATE: NY
ZIP: 10001

TO: Mr. J. J. Smith
123 Main St
New York, NY 10001

FROM: John J. Smith
05/11/2004

WEIGHT: 1.00 lb
VALUE: \$5.00

POSTAGE: \$0.00
FEE: \$0.00
TOTAL: \$5.00

Signature: John J. Smith

Barcode: 9505 0742 0004



Josh & Mary Kayla Oliver
2805 Eastfield Rd SE
Smyrna, GA 30080

October 10, 2024

Hello Neighbor,

This letter is to inform you that we are requesting a variance permit with the City of Smyrna due to the re-building of a structure within the restricted stream buffer area behind our home. One requirement of the permit application is to notify all adjacent and abutting properties, which includes your property. Your receipt of this variance application does not assume your approval, but rather is to inform you of the hearing on **November 13, 2024, at 10:00 AM**. If you have any questions, concerns, or objections, please feel free to attend this hearing.

Background:

In March of this year, two trees from a neighboring property fell and destroyed part of our home and our back deck. In the application process to rebuild our home and deck, it was realized that the deck was not initially permitted when built (by previous homeowner) and is within the restricted build area due to the small stream that runs behind our home.

Within this letter contains our application and drawings to submit to the City of Smyrna in which we propose to extend the stream buffer and impervious setback by the same area as the deck encroachment. This would allow us to rebuild the deck that was destroyed while adhering to all requirements of the City of Smyrna. There is no impact to your property in this request, nor should there be any negative impact to our neighborhood.

If you would like to reach out to me directly, please feel free to do so at 918-232-8961. We are anticipating moving back into our home by the end of October and look forward to rejoining our community.

Thank you,

Josh Oliver



**APPLICATION FOR VARIANCE
TO THE CITY OF SMYRNA**

Type or Print Clearly

APPLICANT: Joshua & Mary Kayla Oliver

Representative's Name (print): N/A

Address: 2805 Eastfield Rd SE Smyrna GA 30080

Business Phone: N/A Cell Phone: 918-232-8961 Home Phone: N/A

E-Mail Address: joliver1216@gmail.com

Signature of Representative: Josh Oliver

Digitally signed by Josh Oliver
Date: 2024.10.10 11:29:06 -04'00'

TITLEHOLDER: Joshua & Mary Kayla Oliver

Address: 2805 Eastfield Rd SE Smyrna GA 30080

Business Phone: N/A Cell Phone: 918-232-8961 Home Phone: N/A

Signature: Josh Oliver

Digitally signed by Josh Oliver
Date: 2024.10.10 11:29:43 -04'00'

VARIANCE:

Present Zoning: R-15 Type of Variance: Stream buffer encroachment

Explain Intended Use: Proposed impervious setback due to deck encroachment into stream buffer.

Location: 2805 Eastfield Rd SE Smyrna GA 30080

Land Lot(s): 0416 District: 17 Size of Tract: 0.22 Acres

CONTIGUOUS ZONING

North: R-15

East: R-15

South: R-15

West: R-15

ZONING ORDINANCE
SECTION 1403 VARIANCE REVIEW STANDARDS

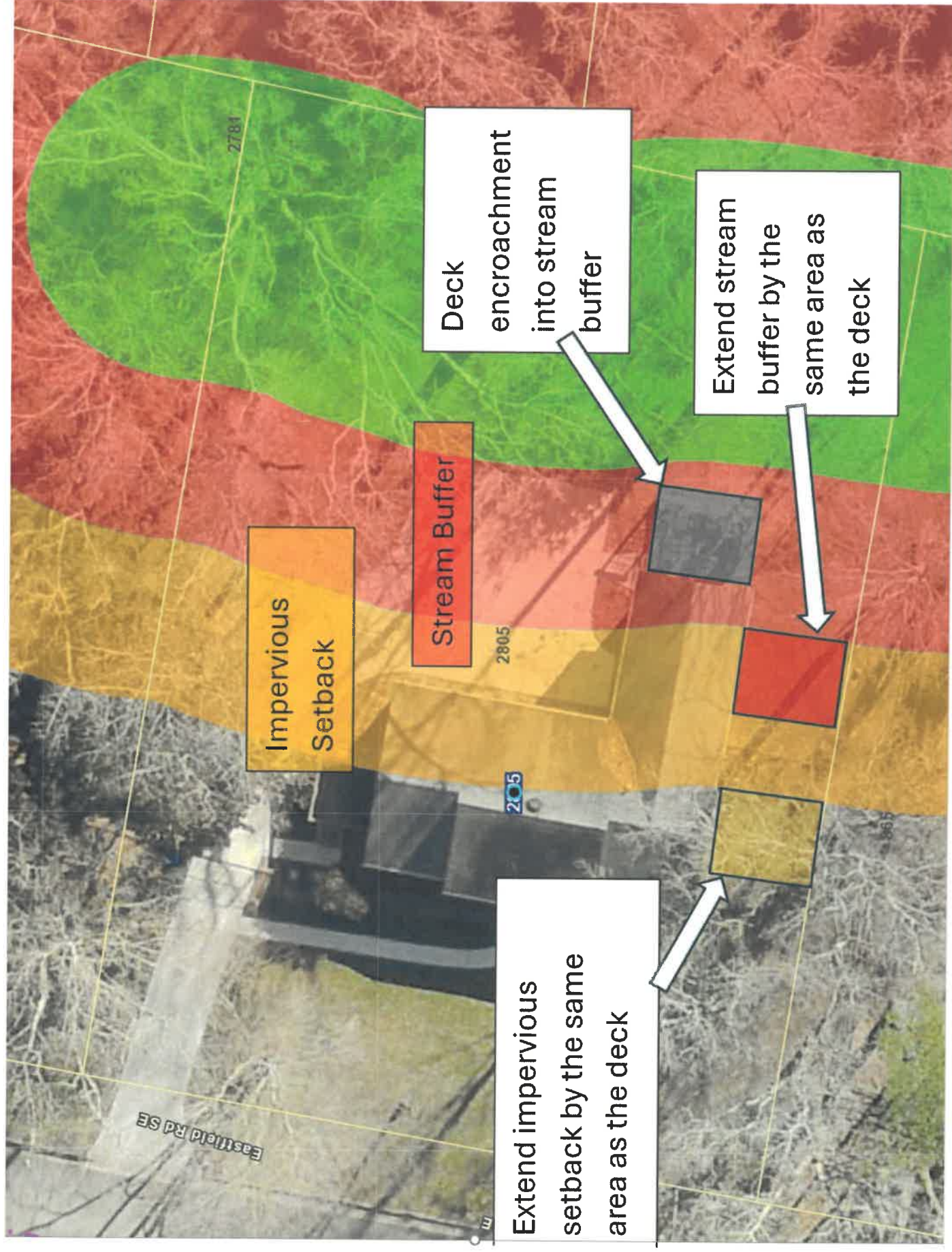
In rendering its decisions, the License and Variance Board shall consider the following factors:

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

Our mitigation plan is to revise the buffer and setback limits of our property. Attached is a survey
the proposed changes to the buffer and setback. The proposed mitigation for the encroachment into
the 50 foot undisturbed buffer area is the re-delineation of the buffer and impervious setback limits
to the property. This was discussed with Mark Wolff, City Engineer, which he determined was an
applicable and satisfactory mitigation.



Munis Self Service

Real Estate (Your House or Land)

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Payments/Adjustments

As of 10/9/2024

Bill Year	2023			
Bill	12901			
Activity	Posted	Entered	Reference #	Paid By/Reference
GI Account Update	7/1/2024	7/1/2024	44766	
GI Account Update	7/1/2024	7/1/2024	26519	
Adjustment	11/20/2023	11/20/2023	293735	
Payment	10/24/2023	10/25/2023	3253909	CORELOGIC
Abatement	9/17/2023	9/18/2023	4322	
				\$1,725.86
				(\$161.82)

[Return to view bill](#)

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

OLIVER JOSHUA LEE & BROOKS MARY
KAYLA

Payer:
DOVENMUEHLE MORTGAGE INC

Printed: 10/9/2024

Cobb County Online Tax Receipt

Thank you for your payment!

Payment Date: 10/11/2023

Tax Year	Parcel ID	Due Date	Appeal Amount	Taxes Due
2023	17041600820	10/15/2023	N/A or	\$0.00
Pay:				
Interest	Penalty	Fees	Total Due	Amount Paid
\$0.00	\$0.00	\$0.00	\$0.00	\$4,101.51
				Balance
				\$0.00



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

CHENEY WOODS SUB.

UNIT-3
17th DIST 2ND SECT
CITY OF SHYRA
COOD COUNTY, GA.
WATER & SEWERAGE
AUGUST 1934
DEED RECORDS
DE 371-1718
APPROVED THIS 1934
SHYRA LAND CO BY

APPROVED THIS 1934
By
Chairman of Planning Comm. Shyra, Ga.



CLAY

RESERVED FOR BUSINESS
RESERVED FOR BUSINESS
RESERVED FOR BUSINESS
SOUTH
CODD
DA
122
123
124