



SANDY SPRINGS

GEORGIA

BOARD OF APPEALS

Mel Mobley, Chair
Sherri Allen, Vice Chair
Nathan Kongthum
Alvin Johnson
Fred Jewell
Bill Thackston

Wednesday, March 2, 2022

Regular Meeting

6:00 p.m.

The Board of Appeals meeting will be held in the Studio Theatre at Sandy Springs City Hall
(1 Galambos Way, Sandy Springs, GA 30328)

Live-stream:	Public Meeting Portal (CivicClerk): https://sandyspringsga.civicclerk.com Zoom Webinar: http://spr.gs/boameeting
Teleconference:	Phone: (646) 558-8656 Webinar ID: 849 7891 9503
Public Comment:	http://spr.gs/publiccomment

I. Call to Order

II. Roll Call and General Announcements

III. Approval of Meeting Agenda

IV. Approval of Meeting Minutes

V. Cases

A. BOA2022-0005 V21-0041

800 N Island Drive

Request for a variance from Sec. 2.2.2. and Sec. 7.8.22.a. to encroach into the primary street setback with a sport court, residential accessory structure between the main structure and primary street

(Presented by: Michele McIntosh-Ross, Planning and Zoning Manager)

B. BOA2022-0006 V21-0048

1175 Windsor Parkway

Request for Variances from Sec. 2.3.2. and Sec. 6.1.2.B. to allow construction of a single unit detached residence to encroach into the primary street building setback (V21-0048) - The review of the Appeals Board is of the Consent Order issued by the Fulton Superior Court of a 25 foot encroachment of the primary street set back

Individuals with disabilities who require certain accommodations in order to allow them to observe and/or participate in a public meeting, or who have questions regarding the accessibility of the meeting or facilities should contact the City Clerk at 770-730-5600 promptly for assistance.

The City will make reasonable accommodations for those persons.

1 Galambos Way, Sandy Springs, Georgia 30328 • 770-730-5600 • SandySpringsGA.gov



SANDY SPRINGS

GEORGIA

(Presented by: Daniel Lee, City Attorney)

C. BOA2022-0007 V22-0003

4805 Merlendale Court

Request for a variance from Sec. 2.3.2.C. and Sec. 9.4.3. to allow a house to encroach into the side common lot line setback; and for a retaining wall to be located further than half way into the side setback and said retaining wall to be taller than 6' in height

(Presented by: LaQuita Williams, Planner Technician)

D. BOA2022-0008 V22-0004

6434 Cherry Tree Lane

Request for a variance from Sec. 2.3.2.A. and Sec. 6.5.2.B.1 to encroach into the primary street setback to build a side entry two-car garage

(Presented by: LaQuita Williams, Planner Technician)

VI. Ongoing Business

VII. New Business

VIII. Adjournment

Individuals with disabilities who require certain accommodations in order to allow them to observe and/or participate in a public meeting, or who have questions regarding the accessibility of the meeting or facilities should contact the City Clerk at 770-730-5600 promptly for assistance.

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SANDY SPRINGS

GEORGIA

P&Z STAFF REPORT

Board of Appeals Meeting, March 2, 2022

Case: **V21-0041 – 800 North Island Drive**
Staff Contact: Michele McIntosh-Ross (mmcintosh-ross@sandyspringsga.gov)
Report Date: February 19, 2022

REQUEST

Request for Variances from Sec. 7.8.22.2.a, to maintain an existing sport court between the main structure and the primary street; and from Sec. 2.2.2 to encroach into the primary street setback.

APPLICANT

Property Owners: Brian Lusink	Petitioner: Lemuel Ward	Representative: Lemuel Ward
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RECOMMENDATIONS

Department of Community Development

Staff recommends **Denial** of **Variance(s)** V21-0041

MATERIALS SUBMITTED AND REVIEWED

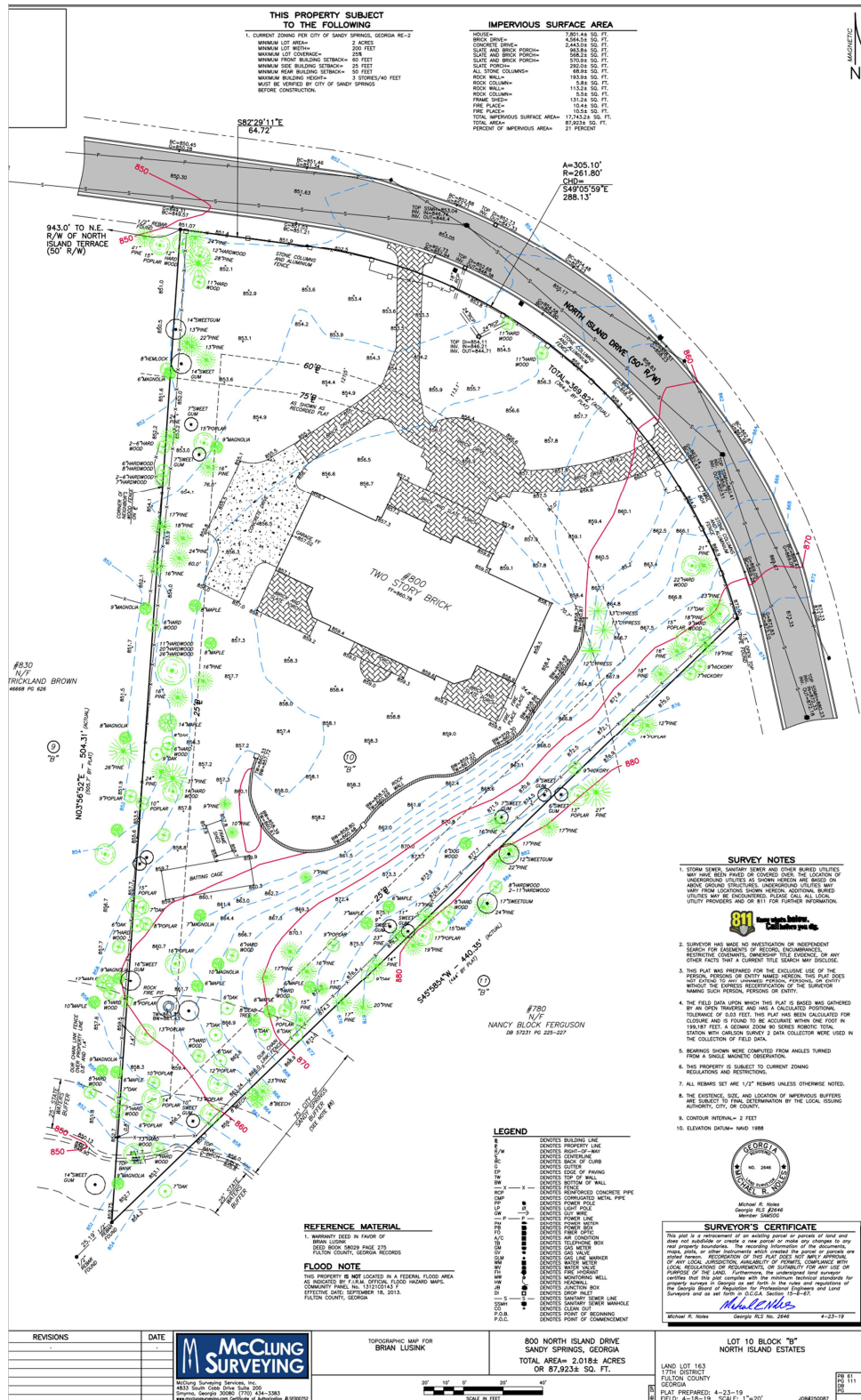
Materials:

1. V21-0041 Application, received December 15, 2021

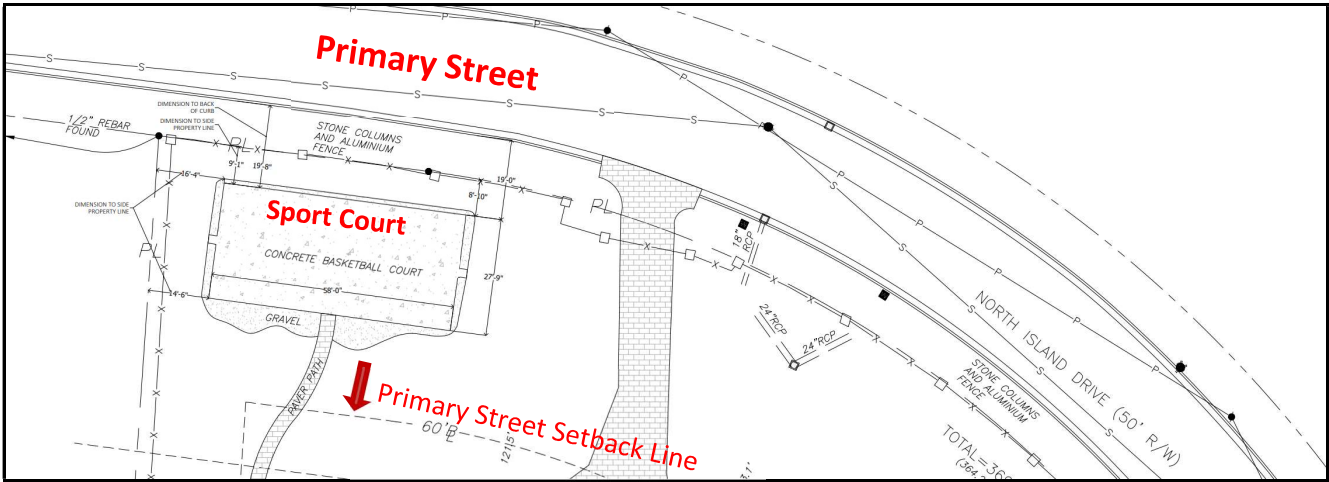
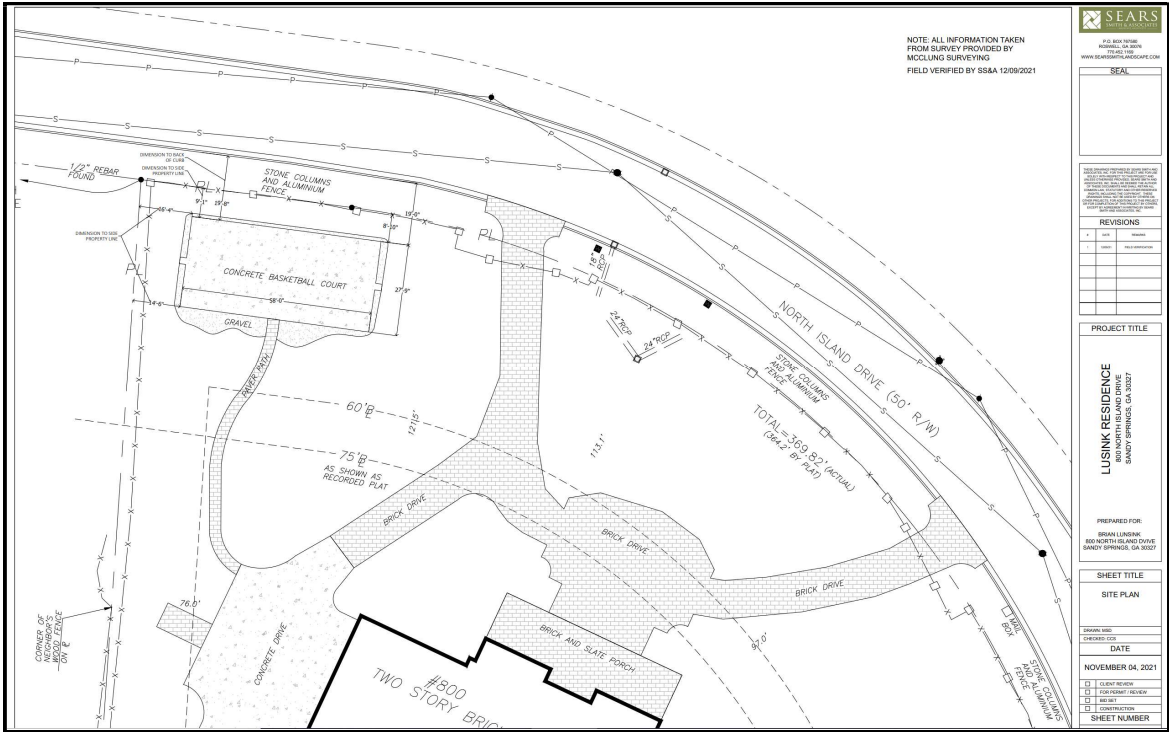
Plans:

1. “*Site Plan*” prepared by Sears Smith & Associates, Land Architects, with all information taken from survey provided by McClung Surveying dated November 04, 2021. Field verified by Sears Smith & Associates on December 09, 2021. Received December 15, 2021
2. “*Survey*” prepared by McClung Surveying Services, Inc. Signed and sealed by Land Surveyor Michael R. Noles, dated April 23, 2019. Received December 15, 2021

PROPERTY INFORMATION	
Location:	800 North Island Drive (Parcel # 17 0163 LL0958)
Council District:	6 – Andy Bauman
Neighborhood:	Northside Woods
Road frontage:	Approximately 430 feet of frontage on North Island Drive
Lot Depth	Approximately 495 feet deep
Acreage:	Approximately 1.63 acre
Current Zoning	RE-2 (Residential Estate)
Existing Land Use:	Single unit detached residence
Previous Zoning Cases:	None
Character Area:	Protected Neighborhood Character Area



SITE PLAN (received December 15, 2021)



PROPOSED DEVELOPMENT

The 1.63-acre subject property is developed with a single unit detached residence, including two driveways, garages, a pool, deck, patios, a putting green and other features and improvements including a sport court located in the front yard, entirely within the primary street setback. The applicants want to keep the already built unpermitted sport court that is located between the house and the primary street and entirely within the primary street setback. To allow this, the applicants are seeking variances from Sec. 7.8.22.2.a, to maintain an existing sport court between the main structure and the primary street; and from Sec. 2.2.2 to encroach into the primary street setback.

Per the Development Code Section 7.8.22.2.a. *Basic Use Standards*

- No minor residential accessory structure may be located between the main building and a primary street.
- 7.8.22.A Residential accessory structures, minor: Sport Court

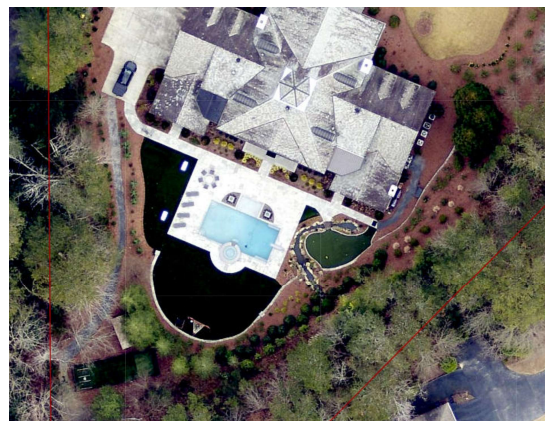
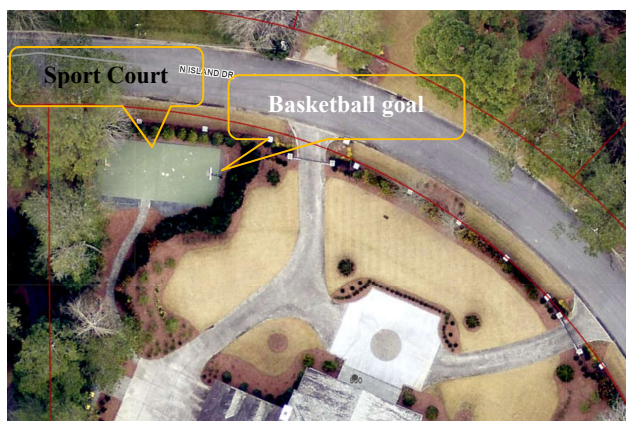
Per the Development Code Section Sec. 2.2.2. *Placement and Height*

- RE-2 primary street setback is 60 feet

The footprint of the unpermitted sport court is approximately 1,614 square feet (27 feet 9 inches by 58 feet) of a hard court impervious concrete service, and according to the applicant it is used for pickleball and basketball by their three children. This sport court is entirely within the 60 foot primary street setback, with an encroachment of 51 feet, 2 inches into the 60 foot primary street setback, reducing the 60 foot primary street setback to 8 feet 10 inches. The additional 1,614 square feet of impervious surface of the sport court causes the subject property to exceed the maximum impervious lot coverage (25%) allowed per the zoning code. If this sport court is allowed to remain, the property will need to seek a variance, or other corrective action per the City's Engineer to come into compliance with its impervious lot coverage.

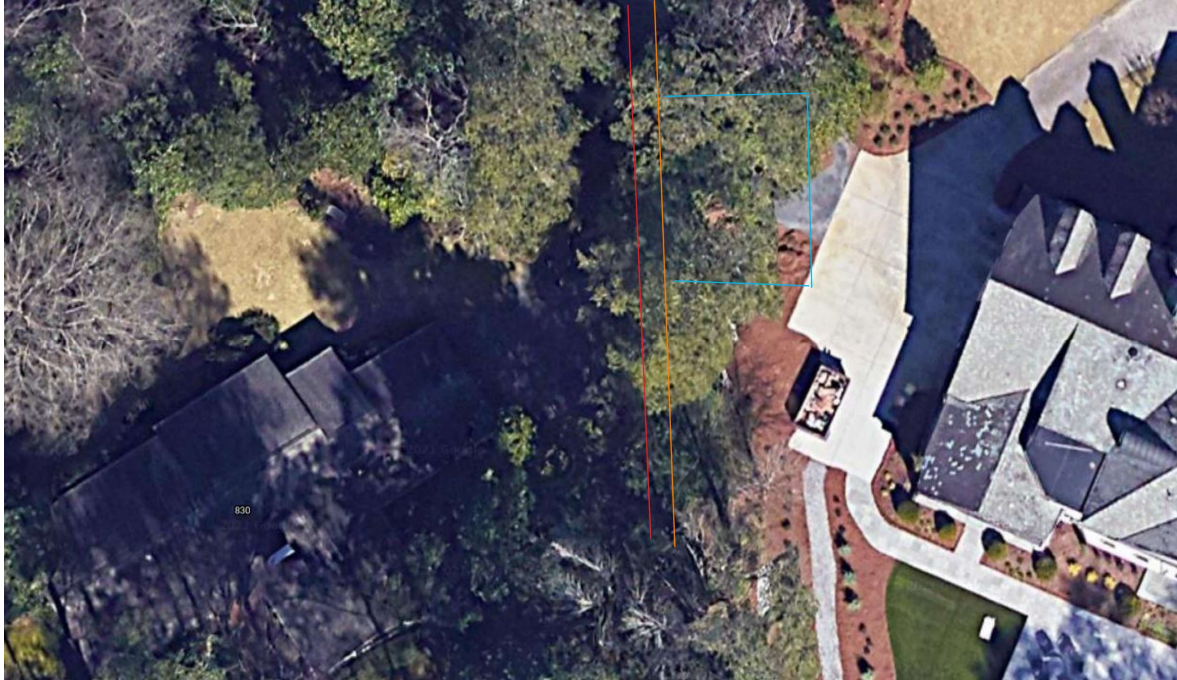
While the sport court is a surface dimension, the basketball hoop apparatus is elevated 10 feet.

The subject property is adjacent to other RE-2 single unit detached residences of a similar lot size on N. Island Drive. The following images show the existing conditions of 800 N. Island Drive per the 2021 aerials.



APPLICANT PROPOSED ALTERNATIVE LOCATION

The applicant offered an alternative location for the sport court that is west of their concrete driveway, behind the front plane of the house, and as close as 10 feet from the side yard property line.



7.8.22.2.b Minor residential accessory structures **may be located between the main building and an interior side, side street, or rear lot line.** Minor residential accessory structures must be a **minimum of 10 feet or the required setback**, from any property line, whichever is less restrictive

View from North Island Drive facing southwest at East gate and driveway



View from North Island Drive facing southwest at West gate and driveway



View of northwest corner of the property, picture facing southwest



View from west neighbor's driveway at 830 N. Island Drive



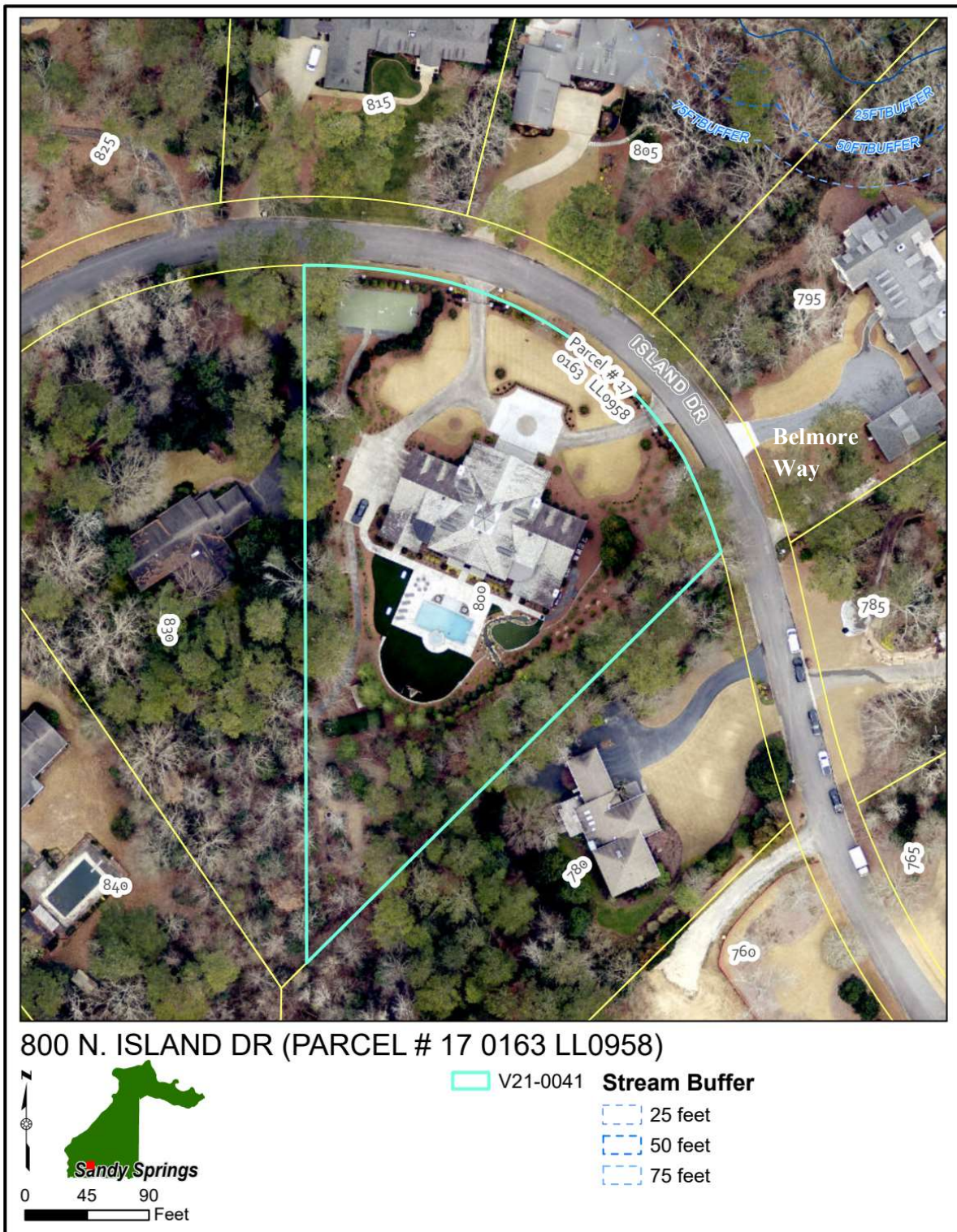
Work Without a Permit Background

The City issued an initial Notice of Violation on September 11, 2019, then a follow up Citation on August 5, 2021 for Work Without a Permit and for an Accessory Structure in an unauthorized location. The case has since been in the City's municipal court, and in December 2021 the applicants applied for a variance to seek compliance to allow the sport court to remain.

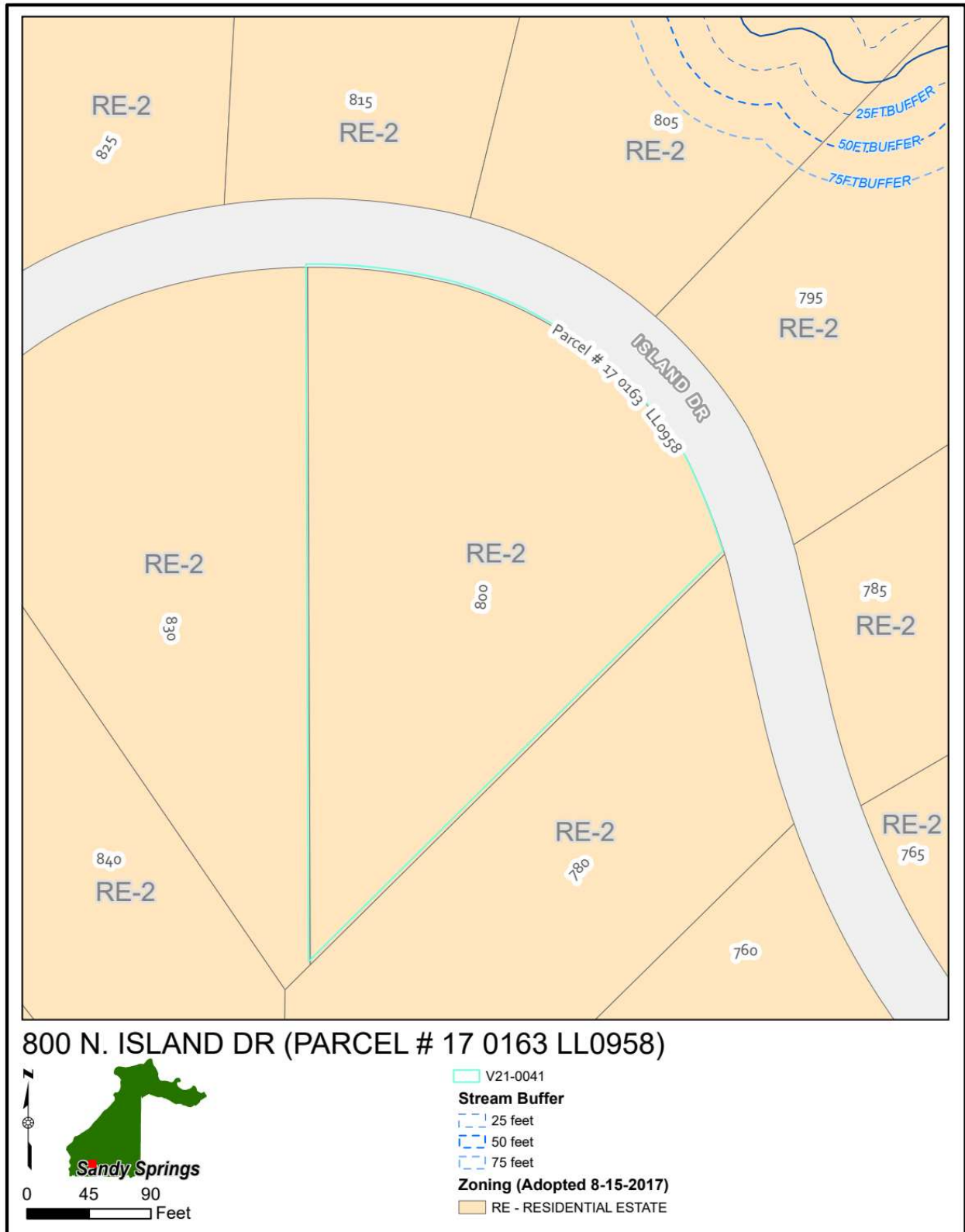
According to the applicant, the owner's reliance on his contractor resulted in the installation of the Court without a permit.

EXISTING ZONING AND LAND USES OF PROPERTY IN THE VICINITY			
Location relative to subject property	Zoning / Land use	Address(es)	Land area (acres) (approximate)
North	--	North Island Drive	--
North	RE-2 / Residential Estate	815 North Island Drive	3.68
North	RE-2 / Residential Estate	805 North Island Drive	3.00
Northeast	RE-2 / Residential Estate	795 North Island Drive	2.54
East & South	RE-2 / Residential Estate	780 North Island Drive	2.00
West	RE-2 / Residential Estate	830 North Island Drive	1.97
West	RE-2 / Residential Estate	795 North Island Drive	0.59
PROPOSED DEVELOPMENT			
--	RE-2 / Residential Estate	800 North Island Drive	1.63

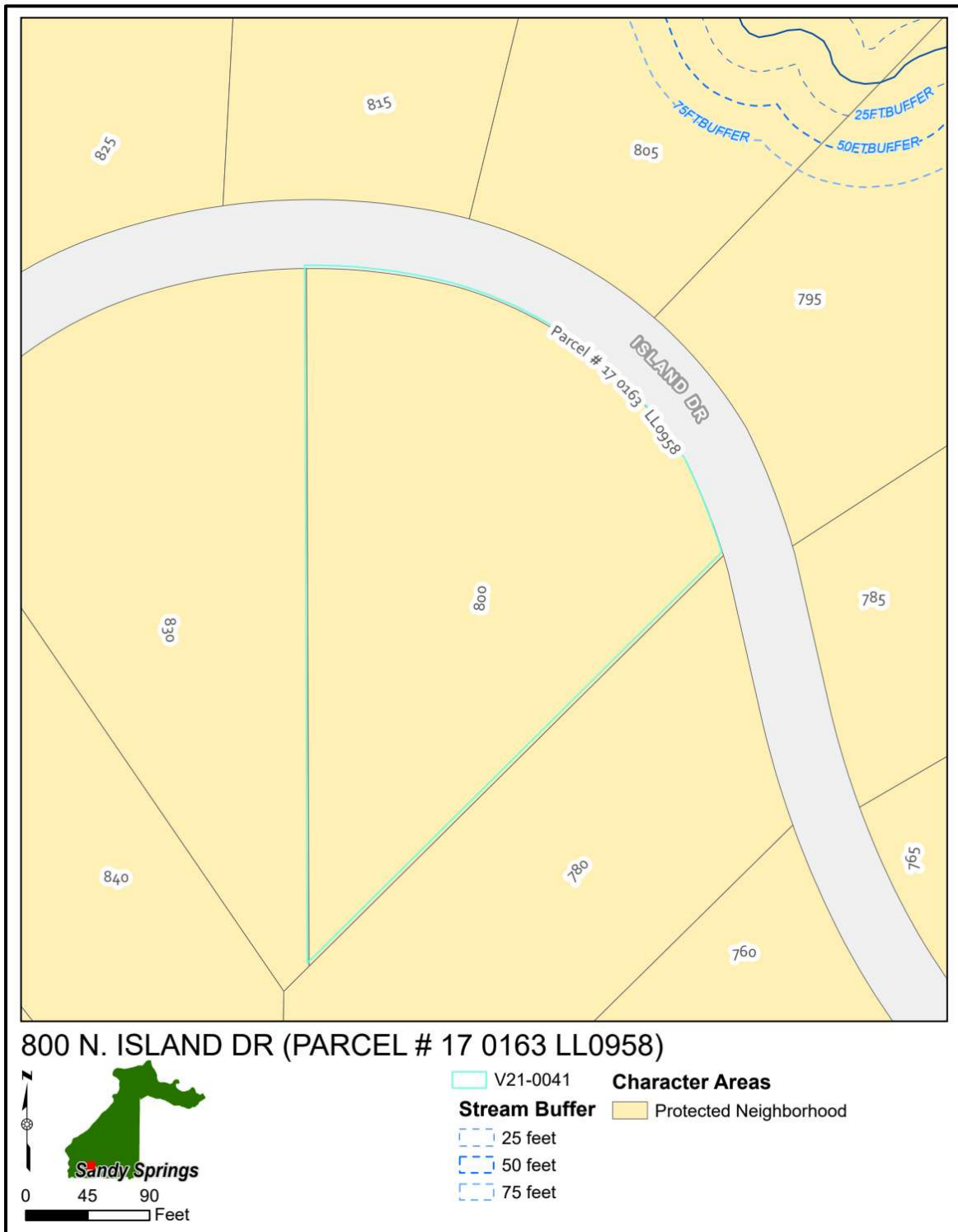
AERIAL IMAGE



ZONING MAP



CHARACTER AREA MAP



V21-0041 VARIANCE CONSIDERATIONS

Per Sec. 11.6.2.G. of the Development Code, the following list of approval criteria for a Variance provides guidance for making decisions on approval:

1. *Variances will only be granted upon showing that:*

- a. *The application of this Development Code would create an unnecessary hardship, and not merely an inconvenience to the applicant; or***

Finding: The application of the Development Code would not create an unnecessary hardship. The 1.63 acre subject property amply accommodates a house, pool and various sport amenities.

- b. *There are extraordinary and exceptional conditions due to the size, shape, or topography, which are specific to the subject property and not generally found in similar properties;***

Finding: There are no extraordinary and exceptional conditions due to the size, shape, or topography, which are specific to the subject property and not generally found in similar properties.

- The subject property is approximately 1.63 acres in size, is triangular in shape (pizza slice), similar to the neighboring property adjacent to the west. The shape is such that the wider portion of the land is at the front of the house, and the rear yard narrows to a single point. While triangular shaped parcels are not ubiquitous in Sandy Springs, it is not unusual.
- The topography is not unusually undulating. The west side of the property is less undulating than the east side. On the east side of the house the grade rises 22 feet from the (east) edge of the house to the east property line, over a distance of approximately 57 feet. The back yard from west to east increases elevation by 20 feet over a distance of 126 feet. The front yard from west to east increases elevation by 26 feet over a distance of 344 feet.
- The combined shape of the parcel and the location of the steep topography versus the flat areas, makes the northwest corner of the property the least challenging location to construct a sport court. However, there are other areas of the yard that can accommodate the construction of a sport court within the permitted buildable areas, and would not constitute a hardship.

2. *Further, the application must demonstrate that:*

- a. *Such conditions are not the result of action or inaction of the current property owner; and***

Finding: The size, shape, and topography of the subject property are not the result of action or inaction of the current property owners. According to the Fulton County Tax Assessors, the residence was built in 2004, before the property's purchase in 2017 by the current property owners. It was since 2017, under the current property owner, that the pool, and other sport amenities, including the illegal sport court were install in 2019.

- b. *The Variance request would provide the minimum relief necessary to make possible the reasonable use of the property; and***

Finding: The Variance request would not provide the minimum relief necessary to make possible the reasonable use of the property. The subject property, minus the illegal sport court, is reasonably developed with a single unit detached residence, including a driveway, garage, deck, pool, and other improvements.

- c. *The Variance request would result in development that is consistent with the general intent of this Development Code, with the Comprehensive Plan policies, and would not be detrimental to the public good, safety and welfare.***

Finding: The Variance request would not result in development that is consistent with the general intent of the Development Code or *The Next Ten*. The Development Code requires that no minor accessory to include a sport court, may be places between the primary street and the main building. The request to maintain a sport court in the front yard and in the primary street setback, is inconsistent with the Development Code. A major feature of *The Next Ten* is to protect and preserve the City's neighborhoods, and a way in which that is codified is through building setback and other regulations governing the location of buildings and structures. Thus, the request would not result in development that is consistent with *The Next Ten*, either. However, the request would not be detrimental to the public good, safety, and welfare.

COMMENTS FROM OTHER PARTIES

Sandy Springs Public Works:

No comment provided.

Sandy Springs City Engineer:

The addition of the sport court causes the subject property to exceed the allowable base maximum impervious coverage. If this is approved, mitigation will be required at a rate of 2.4" of infiltration on site for all areas above the base maximum lot coverage.

Sandy Springs Chief Environmental Compliance Officer:

No comment provided.

Sandy Springs Arborist:

There is no evidence that they applied to remove the trees from this area that was cleared. Aerials show trees removed in 2019 and again in 2020 with no records of permits. Regardless if their variance request is approved or denied, we would need to determine mitigation and/or recompense. They may not be able to maintain the city's canopy coverage requirements and they further may have impacted Protected Trees by the installation of this court.

In regards to the cedars and other landscaping that were planted for screening:

1. The landscaping is not protected in our ordinance. Their concerns are financial.
2. Had they attempted to come into compliance when they were first cited in 2019, the trees would have been easy to transplant as they were brand new.
3. They are still young enough to be transplanted, but the process can be more difficult and expensive due to the labor required.

With proper care and protection, the sports court can be removed without having to remove the landscaping.

Sandy Springs Sustainability Manager:

No comment provided.

Sandy Springs Building Official:

No comment provided.

Sandy Springs Fire Marshal:

No comment provided.

Correspondence Received:

The applicant provided letters in favor of the variance, signed by the owners of the five closest neighbors.

DEPARTMENT OF COMMUNITY DEVELOPMENT RECOMMENDATIONS

Following review, and based on the findings, Staff recommends **Denial** of **Variance** V21-0041 from Sec. 7.8.22.2.a, to maintain an existing sport court between the main structure and the primary street; and from Sec. 2.2.2 to encroach into the primary street setback.

IN THE SUPERIOR COURT OF FULTON COUNTY
 STATE OF GEORGIA

RELIANCE DEVELOPMENT COMPANY,	)	
LLC,	)	
	)	
Petitioner in Certiorari,	)	CIVIL ACTION
	)	
vs.	)	FILE NO: 2021CV351445
	)	
CITY OF SANDY SPRINGS BOARD OF	)	
APPEALS,	)	
	)	
Respondent in Certiorari,	)	
	)	
and	)	
	)	
CITY OF SANDY SPRINGS, GEORGIA,	)	
	)	
Defendant in Certiorari.		

CONSENT ORDER REMANDING CASE TO
THE SANDY SPRINGS BOARD OF APPEALS FOR FURTHER PROCEEDING
CONSISTENT WITH THE PARTIES' AGREEMENT

COME NOW, the parties to this litigation, RELIANCE DEVELOPMENT COMPANY, LLC, Petitioner in Certiorari ("Reliance"), CITY OF SANDY SPRINGS BOARD OF APPEALS Respondent in Certiorari ("BOA") and CITY OF SANDY SPRINGS, GEORGIA, Defendant in Certiorari ("City"), and having come before the Court and consented to the same, and it appearing for good cause shown, that the parties have reached an agreement as to the issues and resolution of the pending action;

IT IS HEREBY FOUND, ORDERED, AND ADJUDGED THAT

The following facts are undisputed:

1.

This action arises from a June 2, 2021, decision of the Respondent City of Sandy Springs Board of Appeals ("BOA") denying a front yard set-back variance for the construction of a new

residence at 1175 Windsor Parkway in the City of Sandy Springs, Tax Id. No. 17 001300040245 (“the Subject Property”). The Petitioner requested a variance (application V21-0048) from Sec. 2.3.2 and Sec 6.1.2.B of the City’s Code of Ordinances to permit construction of a single unit detached residence to encroach into the primary street building setback, a distance of ten (10) feet, from the street¹.

2.

The Subject Property is a triangular shaped lot of approximately 0.80 acres fronting on Windsor Parkway bisected by a stream running roughly parallel to the roadway. Most of the Subject Property is encumbered with required state and city stream buffers such that all but a small strip varying in width from 12 feet to 41 feet at the front of the Subject Property, comprising a total of 0.26 acres, is burdened by stream buffers. The entirety of the 0.26 acres is within the required primary street set back.

3.

The planning and zoning staff with the City of Sandy Springs prepared a detailed 22-page staff report on May 25, 2021, wherein it recommended approval of the set-back variance with conditions.

4.

On June 2, 2021, the Board of Appeals conducted a public hearing on the Petitioner’s application for the setback variance and for encroachment into the stream buffers. Both applications were consolidated and heard together. After hearing from the Petitioner and its representatives and the opposition on both Applications, the Board of Appeals voted 3-3 not to approve the setback variance application.

¹ A second variance was also applied for to allow encroachment into the city stream buffers. That variance however was granted and is not the subject of this action.

5.

Petitioner timely appealed the June 2, 2021, decision of the BOC pursuant to O.C.G.A. 5-4-1 *et. seq.* to the Superior Court on the grounds that there was no evidence in the Record to support denial of the setback variance application and on the grounds that such decision, considering the approval of the buffer encroachment application, was arbitrary., leaving Petitioner with no reasonable use of the Subject Property.

6.

The parties agree and consent that the appeal of the matter be remanded to the CITY OF SANDY SPRINGS BOARD OF APPEALS so that the matter may be settled by the grant of a variance to twenty-five (25) feet from the street pursuant to the plan attached as Exhibit A.

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THIS COURT FINDS THAT the conditions of the Subject Property may justify the granting of a primary street set back variance for a 25-foot set-back and that such a plan may meet the criteria set forth in Section 11.6.2 (G) of the Development Code for such a variance.

AS SUCH, IT IS HEREBY ORDERED THAT:

1.

The Petitioner's application for a setback variance to 25 feet from the primary street be remanded to the City of Sandy Springs Board of Appeals for consideration pursuant to this Order at the February 2, 2022 Board of Appeals Meeting.

2.

If Petitioner's primary street setback variance pursuant to the 25-foot setback plan is not adopted by the Board of Appeals as per the terms of this Consent Order, this Order shall be vacated and shall be null, void and of no force and effect; the parties shall proceed with litigation of this matter and this Order may not be used by any party in any future litigation of this matter.

IT IS HEREBY ORDERED that this case be remanded to the BOA and that this Consent Order be considered and adopted as a resolution of the issue before this Court. IT IS FURTHER ORDERED that this matter shall be marked CLOSED and may only be re-opened by an appropriate motion from the parties.

SO ORDERED this the 19th day of January, 2022.


HONORABLE KIMBERLY M. ESMOND ADAMS
JUDGE, SUPERIOR COURT OF FULTON COUNTY
ATLANTA JUDICIAL CIRCUIT

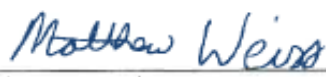
CONSENTED TO BY:

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P&Z STAFF REPORT

Board of Appeals Meeting, March 2, 2022

Case: **V22-0003 4805 Merlendale Lane**
Staff Contact: LaQuita Williams (lwilliams@sandyspringsga.gov)
Report Date: February 22, 2022

REQUEST

Request for a variance from Sec. 2.3.2.C. and Sec. 9.4.3. to allow a house to encroach into the side common lot line setback; and for a retaining wall to be located further than half way into the side setback and said retaining wall to be taller than 6' in height.

APPLICANT

Property Owners: David and Kelly Gold	Petitioner: Bill Caldwell/ BCLA Design, LLC	Representative: Bill Caldwell
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RECOMMENDATIONS

Department of Community Development

Staff recommends **Approval** of **Variance(s)** V22-0003.

MATERIALS SUBMITTED AND REVIEWED

Materials:

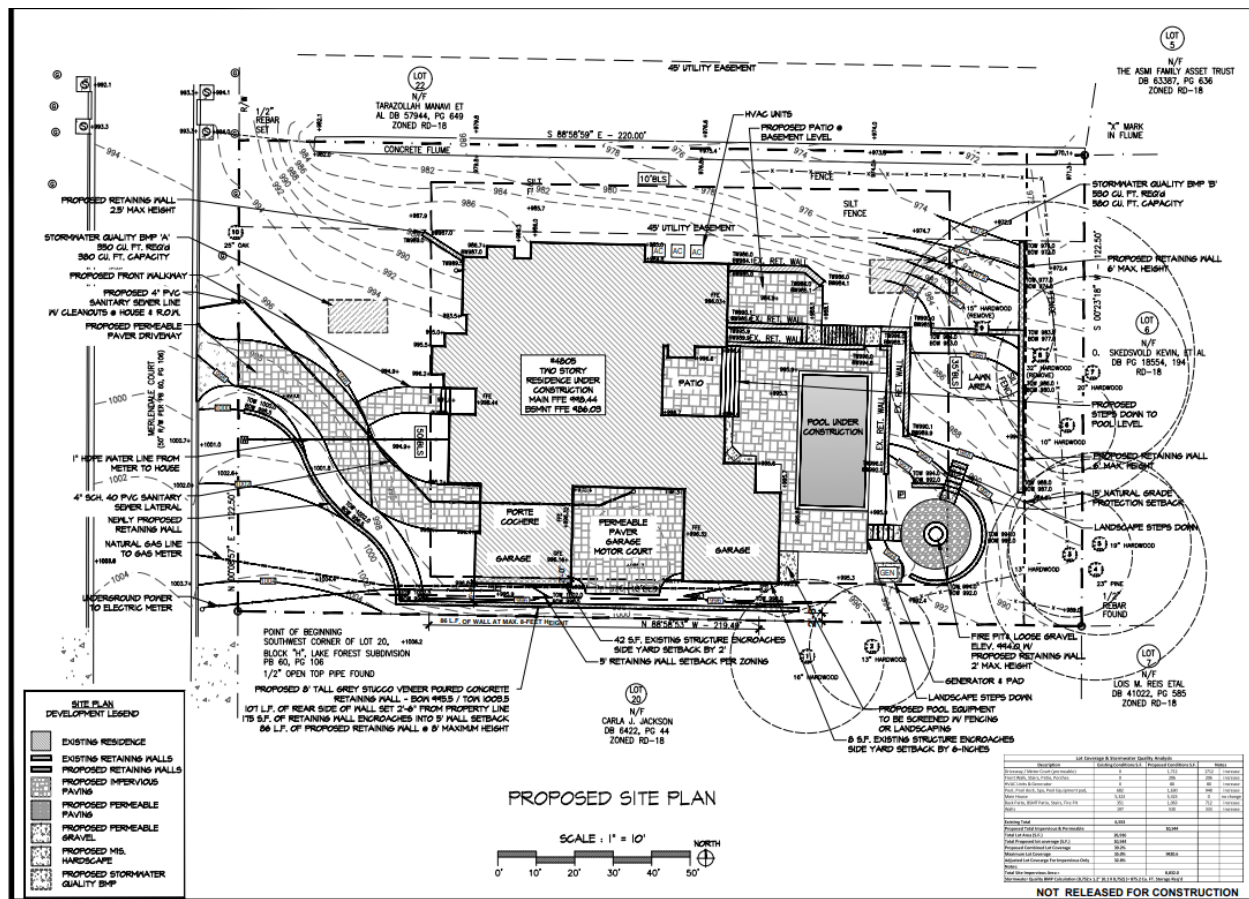
1. V22-0003 Application, received January 25, 2022

Plans:

1. "As-Built Survey," prepared by On Point Surveying and Mapping, dated November 2021. Received January 2022.

PROPERTY INFORMATION	
Location:	4805 Merlendale Drive (Parcel # 17 011900060113)
Council District:	6- Andy Bauman
Neighborhood:	Chastain Park Civic Association
Road frontage:	Approximately 127 feet of frontage on Merlendale Drive
Depth:	Approximately 280 feet deep
Acreage:	Approximately 0.62 acres
Current Zoning:	RD-18 Residential Detached
Existing Land Use:	Residential
Previous Zoning Cases:	N/A
Character Area:	Protected Neighborhood

SITE PLAN (received January 26, 2022) (full size Plan in Package)



PROPOSED DEVELOPMENT

The subject property is 0.62 acres, and is developed with a partially completed single unit detached residence. According to Fulton County Tax records, the structure was described as incomplete in December of 2019.

The homeowner purchased this partially completed structure and discovered a 50 square foot portion of the built garage encroached into the south side common lot line setback by two (2) feet.

Also discovered, was the need for a retaining wall (not already built) between the south side of the building and the south property line to mitigate the grading cut that was done along the south side of the property line. The proposed location of the wall encroaches 2' 6" inches into the 5' retaining wall setback to allow space for utility lines. The wall is also proposed to exceed 6' in height, but no more than 8' in height. This retaining wall will be inward facing as the neighboring property owner to the south is at the higher elevation.

Per the Development Code Section 2.3.2. *Placement and Height*

- RD-18 side common lot line setback is 10'.

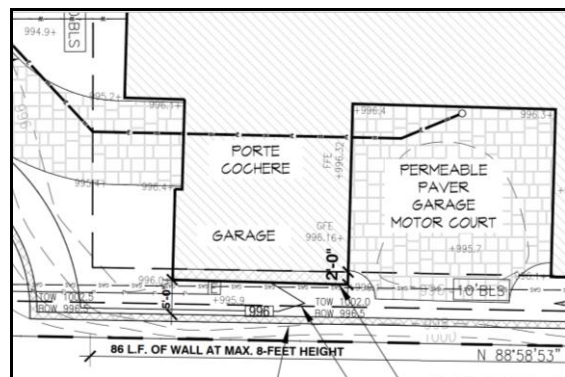
Per the Development Code Section 9.4.3.A.1.b *Retaining Walls Maximum Height*

- Retaining walls are allowed to be up to six (6) feet in exposed wall height as a single wall in RE-, RD-, and RU zoning districts. Up to eight (8) feet in exposed wall height as a single wall in all other districts, except when abutting a Protected Neighborhood.

Per the Development Code Section 9.4.3.C.1.b. *Retaining Walls Setback Encroachment*

- In all RD- districts, retaining walls may encroach up to half the depth of the required side building setbacks.

The applicant requests to allow the already built garage to encroach 2' into the 10' south side common lot line setback; and for a retaining wall to be constructed 2', 6" into the 5' retaining wall setback at the south side common lot line, and said retaining wall to be taller than 6' in height but not taller than 8 feet.



View from Merlendale Ct facing east, the south property line is to the right of house



View of home facing east showing the south side grading cut to the right of the garage



View of subject site to the left and the south neighboring property to the right



View from the south neighboring property facing northeast

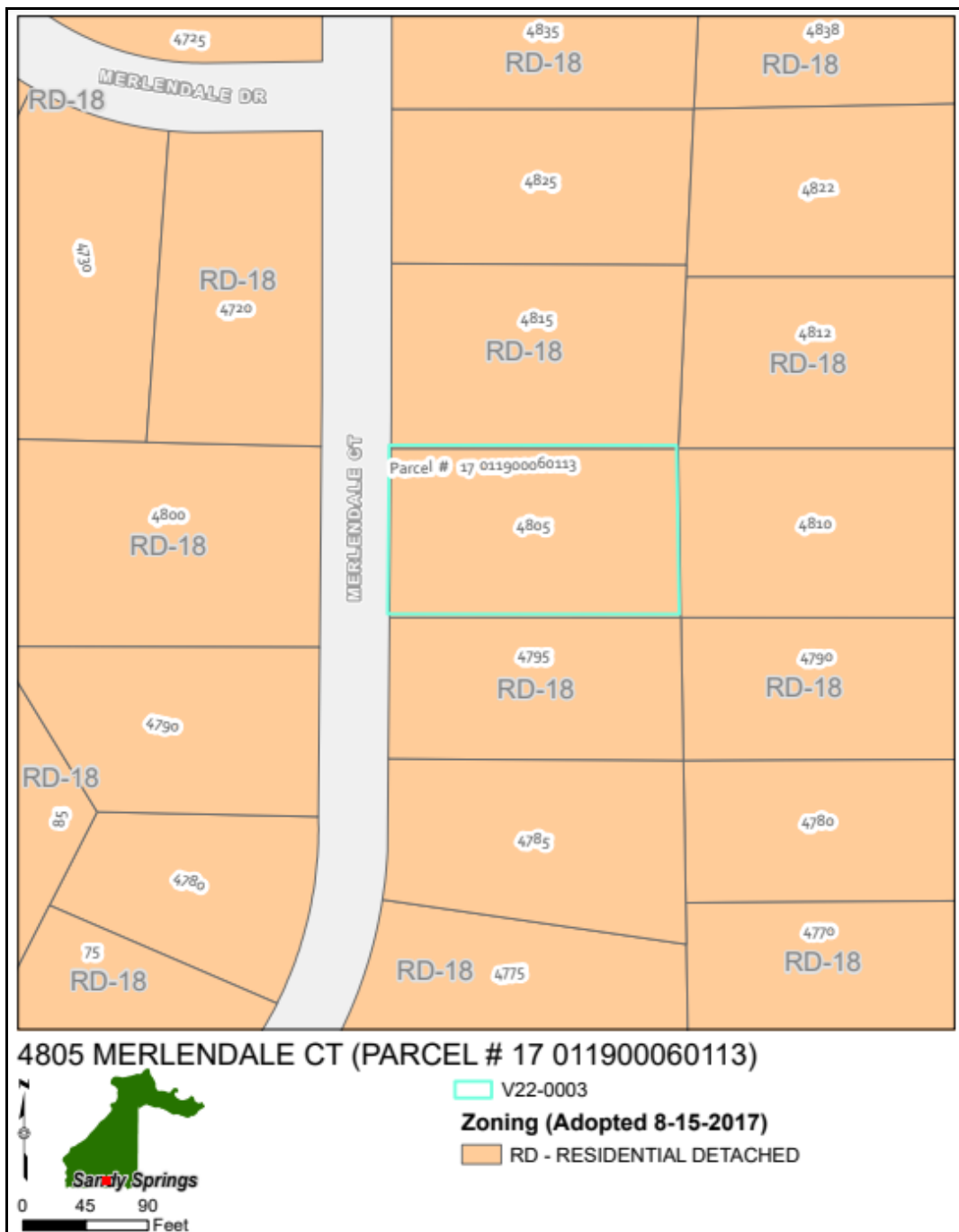


EXISTING ZONING AND LAND USES OF PROPERTY IN THE VICINITY			
Location relative to subject property	Zoning / Land use	Address(es)	Land area (acres) (approximate)
North (adjacent)	RD-18/ Single Unit Detached Residence	4815 Merlendale Court	0.67
East (adjacent)	RD-18/ Single Unit Detached Residence	4810 Lake Forrest Drive	0.63
Northeast	RD-18/ Single Unit Detached Residence	4812 Lake Forrest Drive	0.62
South (adjacent)	RD-18/ Single Unit Detached Residence	4795 Merlendale Court	0.54
Southeast	RD-18/ Single Unit Detached Residence	4790 Merlendale Court	0.54
West	RD-18/ Single Unit Detached Residence	4800 Merlendale Drive	0.91
West	--	Merlendale Court	--
Northwest	RD-18/ Single Unit Detached Residence	4720 Merlendale Drive	0.44
Southwest	RD-18/ Single Unit Detached Residence	4790 Merlendale Court	0.544
PROPOSED DEVELOPMENT			
--	RD-18/ Single Unit Detached	4805 Merlendale Court	0.62

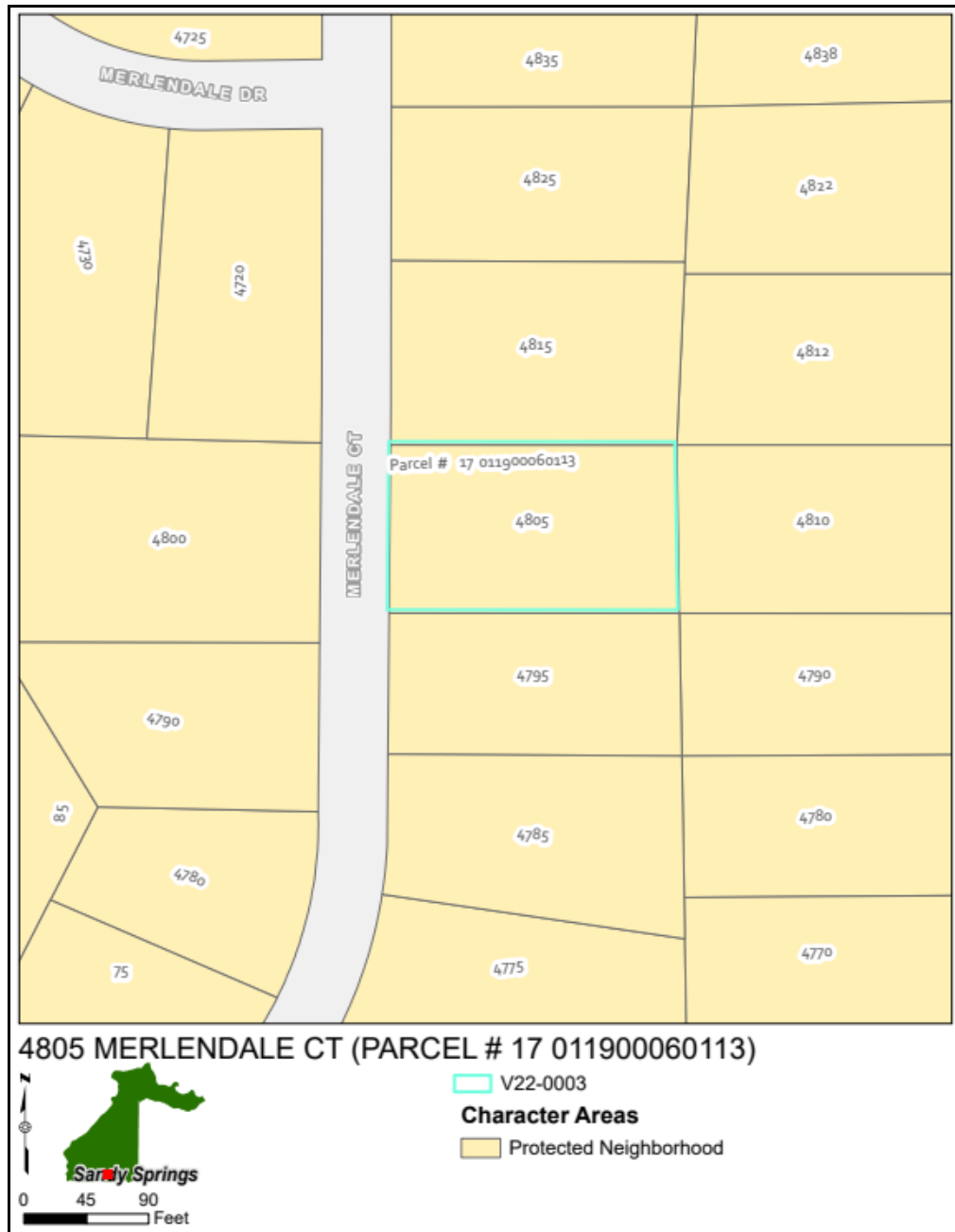
AERIAL IMAGE



ZONING MAP



CHARACTER AREA MAP



V22-0003 VARIANCE CONSIDERATIONS

Per Sec. 11.6.2.G. of the Development Code, the following list of approval criteria for a Variance provides guidance for making decisions on approval:

1. Variances will only be granted upon showing that:

- a. The application of this Development Code would create an unnecessary hardship, and not merely an inconvenience to the applicant; or**

Finding: It is Staff's view that the application of the Development Code would create a hardship rather than an inconvenience to the applicants. Correcting the placement of the home out of the side setback would be a monumental undertaking. The circumstances that created the need to request a variance were not the fault of the applicant, who further attest that they were unaware of the building encroachments upon purchasing the property.

- b. There are extraordinary and exceptional conditions due to the size, shape, or topography, which are specific to the subject property and not generally found in similar properties**

Finding: There are no extraordinary and exceptional conditions due to the size, shape or the natural topography of the subject site as a whole. The parcel is rectangular in shape and slopes downward from the street to the rear of the property, not unlike typical properties in Sandy Springs.

The natural downward slope from the south property line to the north property line was altered by grading done by previous owners, resulting in an eight foot high wall of exposed dirt between the home and the south adjacent property, which makes that portion of the property extraordinary and exceptional topographically. This engineered topography requires a retaining wall to secure the dirt, and with limited space between the garage area, utilities, the dirt, and the property line, Staff finds the circumstances to be exceptional for the southern portion of the property.

2. Further, the application must demonstrate that:

- a. Such conditions are not the result of action or inaction of the current property owner; and**

Finding: The size, shape, and topography of the subject property are not the result of action or inaction of the current property owners. The home was partially constructed and the property was significantly disturbed and graded before the new homeowners purchased the property.

- b. The Variance request would provide the minimum relief necessary to make possible the reasonable use of the property; and**

Finding: The variance request would provide the minimum relief necessary to make possible the reasonable use of the property. The applicant cannot complete the home and move in until the issues related to this variance application is settled.

- c. The Variance request would result in development that is consistent with the general intent of this Development Code, with the Comprehensive Plan policies, and would not be detrimental to the public good, safety and welfare.**

Finding: The Variance request would not result in development that is consistent with the general intent of the Development Code or *The Next Ten*. A major feature of *The Next Ten* is to protect and preserve the City's neighborhoods, and a way in which that is codified is through building setback and other regulations governing the location of buildings and structures. Thus, the request would not result in development that is consistent with *The Next Ten*, either. However, the request would not be detrimental to the public good, safety, and welfare.

COMMENTS FROM OTHER PARTIES
Sandy Springs Public Works: No comment provided. Sandy Springs City Engineer: No comment provided. Sandy Springs Chief Environmental Compliance Officer: No comment provided. Sandy Springs Arborist: No comment provided. Sandy Springs Sustainability Manager: No comment provided. Sandy Springs Building Official: No comment provided. Sandy Springs Fire Marshal: No comment provided. Correspondence Received: No public comment was submitted in writing.

DEPARTMENT OF COMMUNITY DEVELOPMENT RECOMMENDATIONS

Following review, and based on the findings, Staff recommends **Approval** of **Variance V22-0003**, Sec. 2.3.2.C. and Sec. 9.4.3. to allow a house to encroach into the side common lot line setback; and for a retaining wall to be located further than half way into the side setback and said retaining wall to be taller than 6 feet in height.



SANDY SPRINGS
GEORGIA

P&Z STAFF REPORT

Board of Appeals Meeting, March 2, 2022

Case: **V22-0004 6434 Cherry Tree Lane**
Staff Contact: LaQuita Williams (lwilliams@sandyspringsga.gov)
Report Date: February 22, 2022

REQUEST

Request for a variance from Sec. Sections 2.3.2.A. and Section 6.5.2.B.1 to encroach 10 feet into the primary street setback to build a side-entry two-car garage.

APPLICANT

Property Owners:
Atlanta Homes United, LLC

Petitioner:
Atlanta Homes United, LLC
Steve Bedsole

Representative:
Steve Bedsole

RECOMMENDATIONS

Department of Community Development

Staff recommends **Conditional Approval** of **Variance(s)** V22-0004.

MATERIALS SUBMITTED AND REVIEWED

Materials:

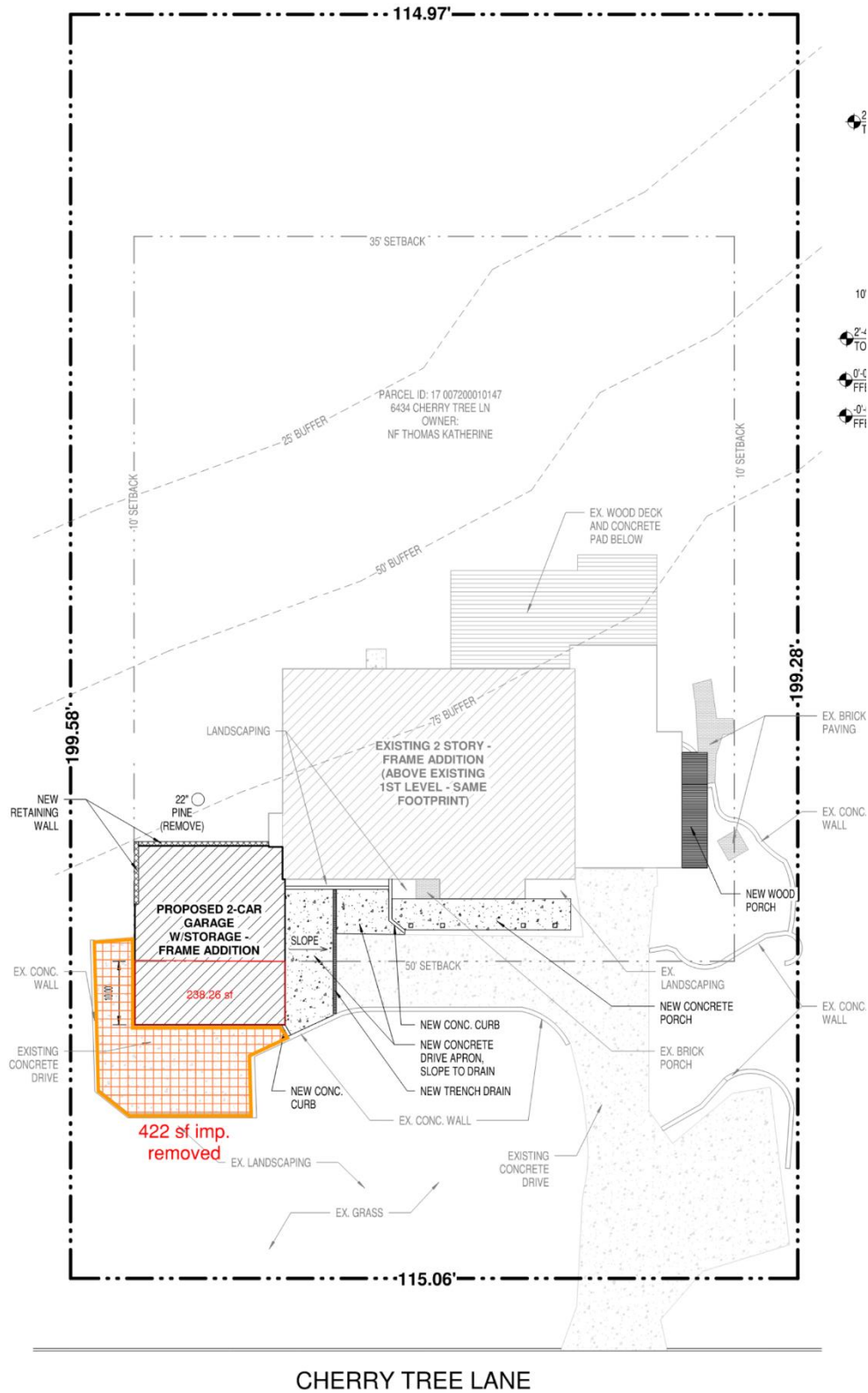
1. V22-0004 Application received January 20, 2022

Plans:

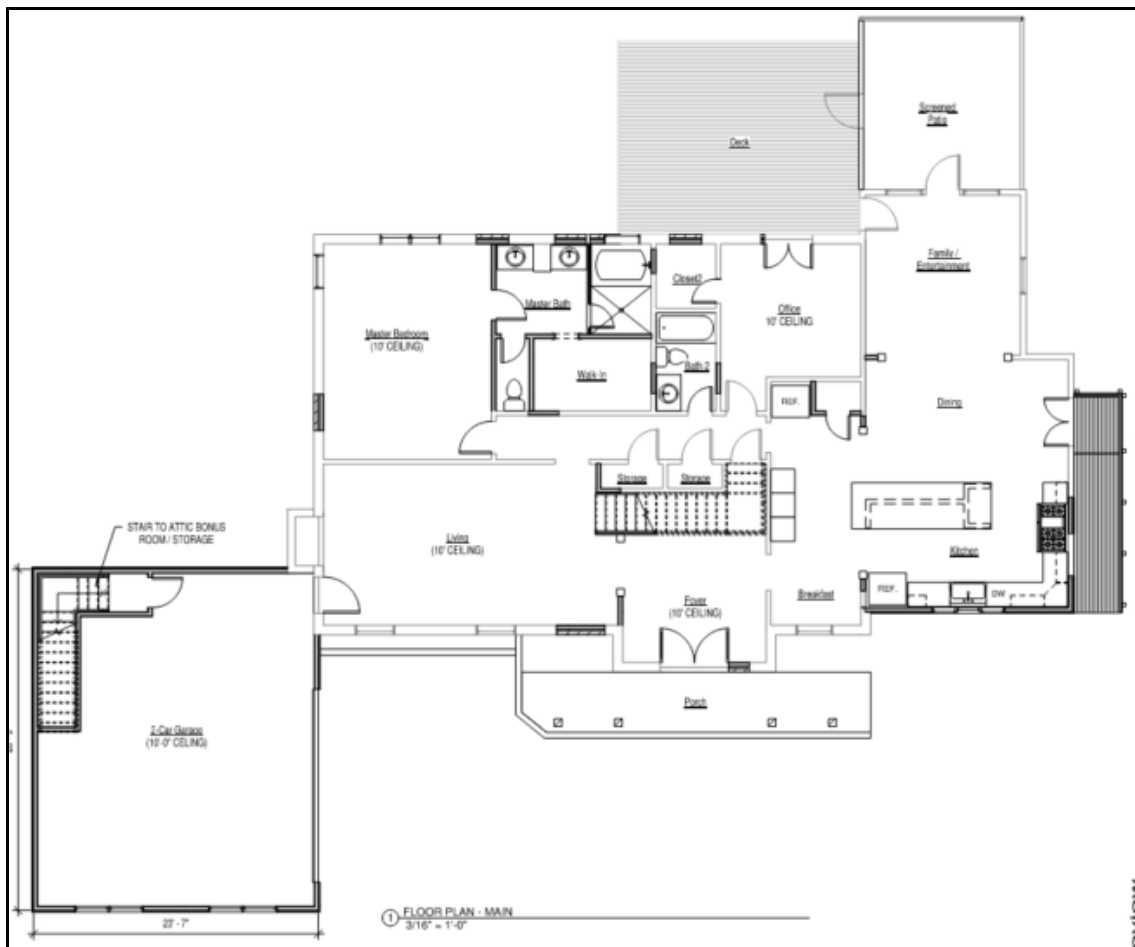
1. "Existing Condition" prepared by Scenic Enterprises., dated January 25, 2021. Received January 7, 2022.
2. "Garage Relocation Conceptual Plan" prepared by Rougely Design and Consulting, dated February 17, 2021. Received January 7, 2022
3. "BR20-00622 Approved Stamped Plans" prepared by Rougely Design and Consulting, dated February 17, 2021. Received January 7, 2022

PROPERTY INFORMATION	
Location:	6434 Cherry Tree Lane (Parcel #17-0072-0001-014-7)
Council District:	4 – Jody Reichel
Neighborhood:	Mount Vernon Woods
Road frontage:	Approximately 115 feet of combined frontage on Cherry Tree Lane
Depth:	Approximately 197 feet deep
Acreage:	Approximately 0.53 acres
Current Zoning:	RD-18 (Residential Detached 18,000 square feet)
Existing Land Use:	Residential
Previous Zoning Cases:	Stream buffer variance application was withdrawn September 4, 2018
Character Area:	Protected Neighborhood





PROPOSED ELEVATIONS & FLOOR PLAN (received November 2, 2021)



PROPOSED DEVELOPMENT

The 0.53-acre subject property is developed with a single unit detached residence, including a driveway and concrete parking pad, but does not currently have a garage. The property was originally a ranch house that had been vacant and in disrepair for several years in the Mount Vernon Woods neighborhood. The applicants are currently renovating the ranch house (built in 1955), including adding a second story and a two-car side-entry garage. During the permitting phase with the City, their proposed garage could not be approved without a variance. The proposed locations for the garage either encroached into the primary street setback on one side, or into the 75' State Waters Stream Buffer on the other side. After several months of working with City staff to evaluate options for the placement of the garage, the applicants decided to seek a variance to allow for the garage to encroach into the primary street setback instead of seeking a variance to build within the State Waters Stream Buffer.

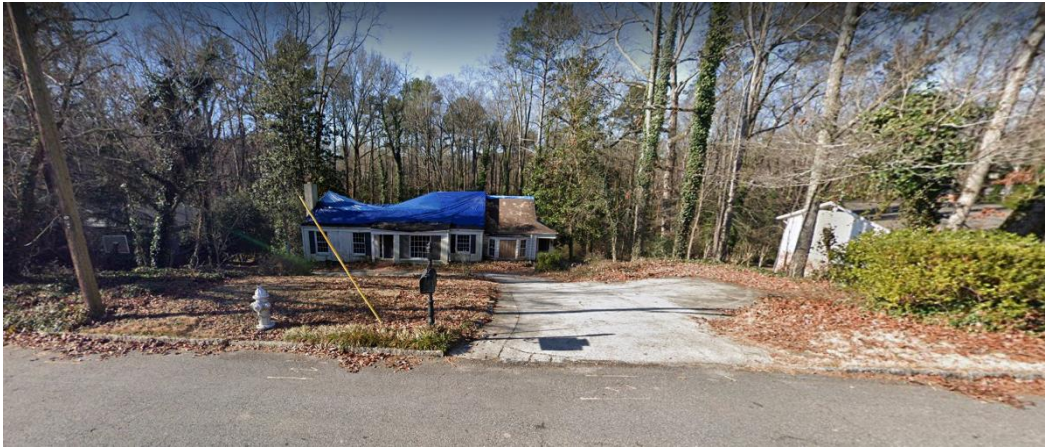
Per the Development Code Section 2.3.2 *Placement and Height*

- RD-18 primary street setback is 50 feet

Per the Development Code Section 6.5.2.B.1 *Residential Parking/ Single Unit Detached Dwellings*

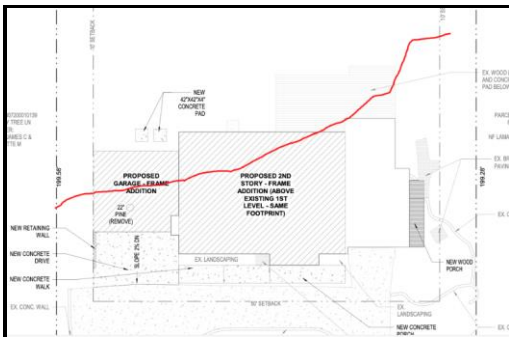
- No garage may encroach into a required setback, except where an alley provides access, in which case the garage may encroach into the rear setback



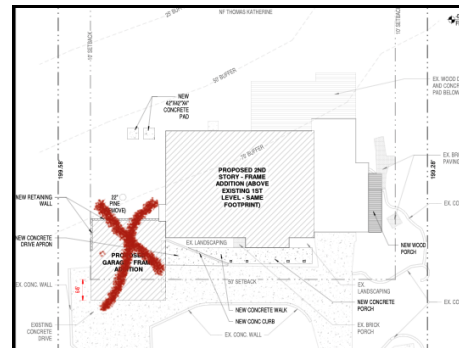


Conditions before renovation (above)

Site plan option with proposed garage (front-entry) encroaching into the stream buffer – could not be approved during permitting

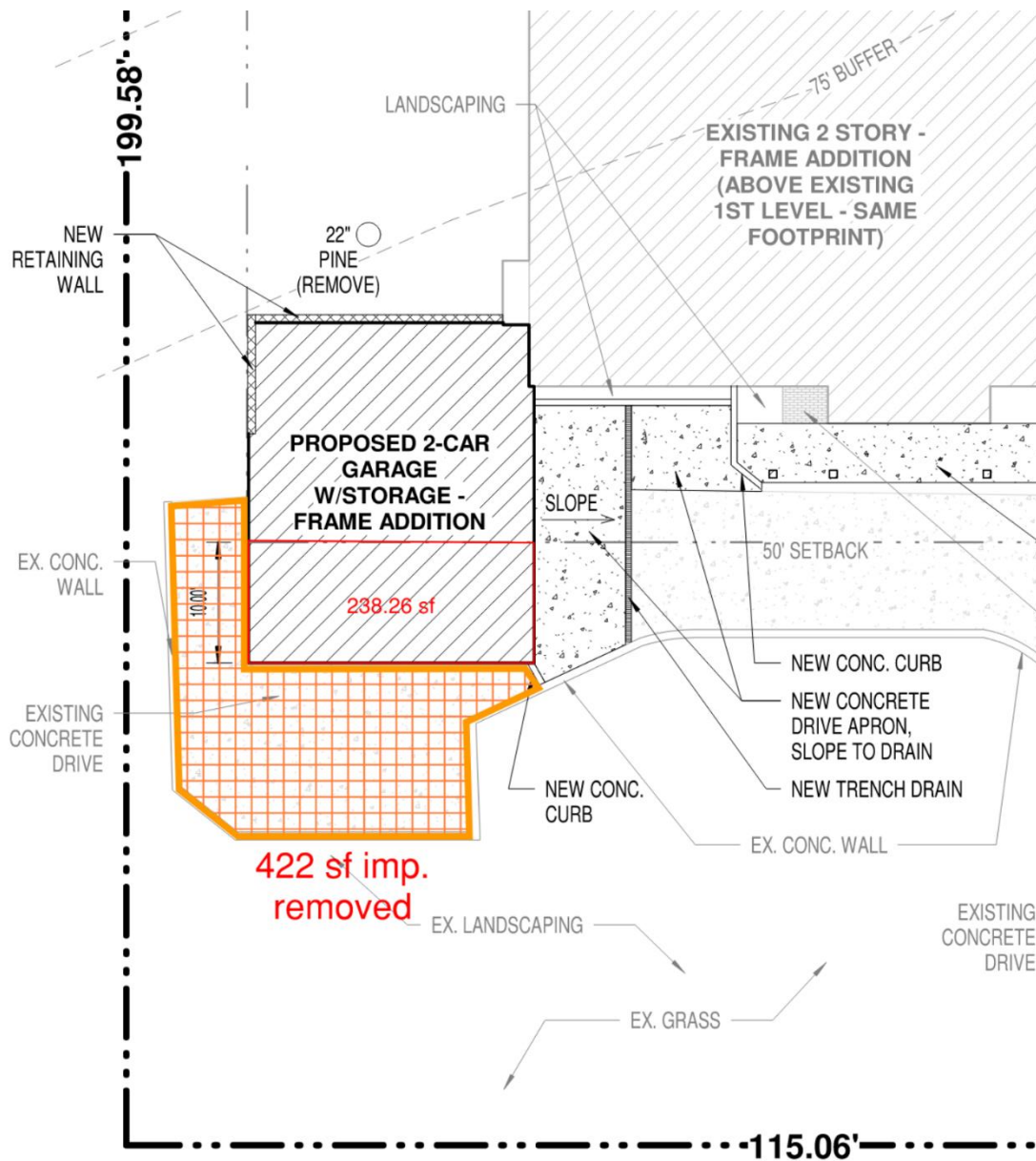


Site plan option with proposed garage (side-entry) encroaching into the 50 foot primary street setback – could not be approved during permitting



The applicant is proposing to build a 668 square foot two-car side-entry garage on the existing concrete pad at the end of the driveway to the south. Their current request abandons the earlier proposal which included a request for encroachment into the State Waters Stream Buffer, and instead proposes a maximum encroachment of 10' into the 50' primary street setback for a total area of approximately 240 sf.

The applicant proposes to remove excess impervious surfaces (concrete) around the proposed garage footprint and replace it with pervious surface.



Area of existing concrete to be removed outlined in orange

View of front of house facing west



View of front of house near the south property line facing west



View of front plane of house standing on location of proposed garage facing north



View of north side yard facing west

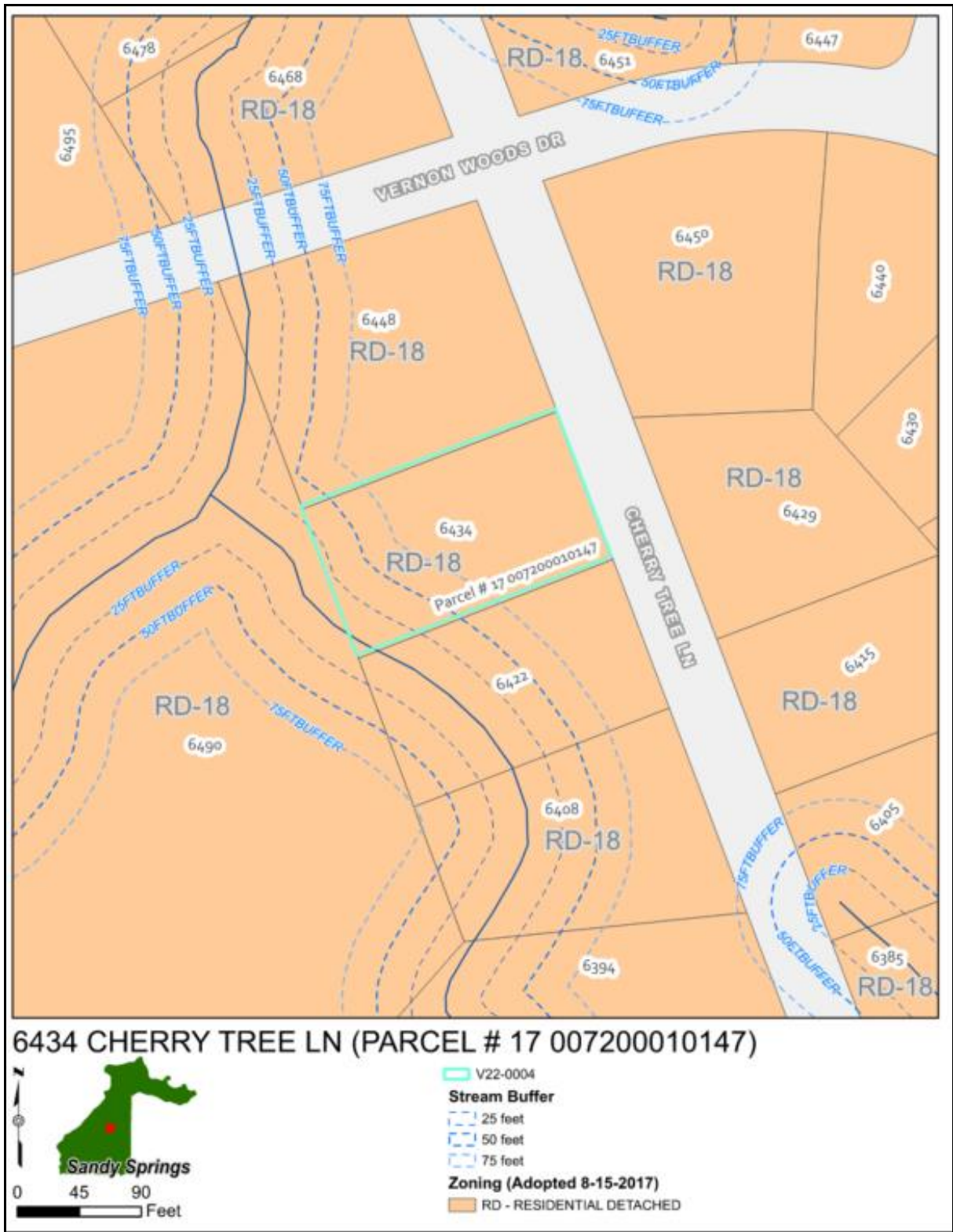


EXISTING ZONING AND LAND USES OF PROPERTY IN THE VICINITY			
Location relative to subject property	Zoning / Land use	Address(es)	Land area (acres) (approximate)
North (adjacent)	RD-18 / Single Unit Detached Residence	6448 Cherry Tree Lane	0.78
West (adjacent)	RD-18 / Neighborhood Amenity Area (swim/tennis)	6490 Vernon Woods Drive	6.11
South (adjacent)	RD-18 / Single Unit Detached Residence	6422 Cherry Tree Lane	0.53
East	--	Cherry Tree Lane	--
East	RD-18 / Single Unit Detached Residence	6429 Cherry Tree Lane	0.55
Northeast	RD-18 / Single Unit Detached Residence	6450 Vernon Woods Drive	0.78
PROPOSED DEVELOPMENT			
--	RD-18 / Single Unit Detached Residence	6434 Cherry Tree Ln	0.53

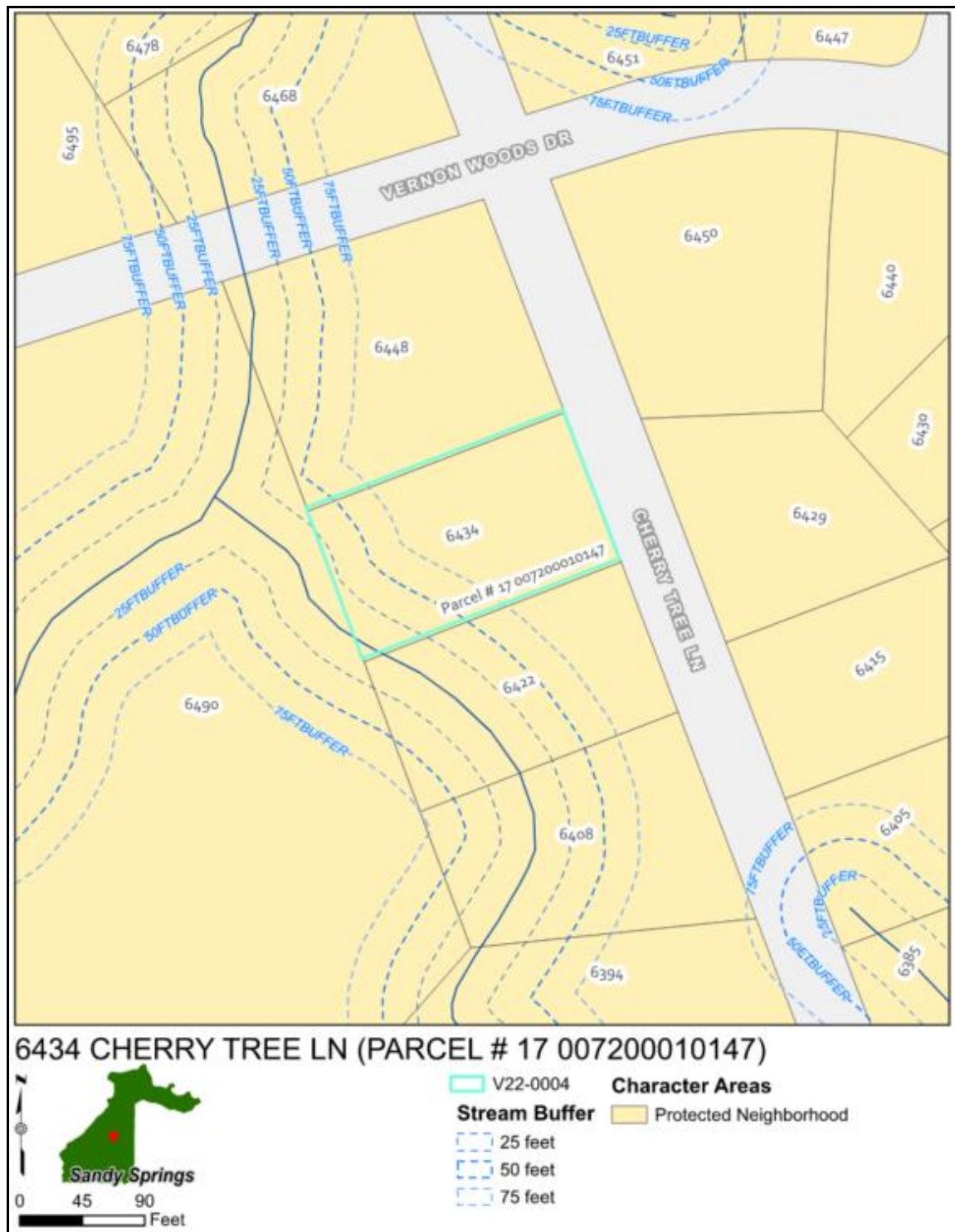
AERIAL IMAGE



ZONING MAP



CHARACTER AREA MAP



V22-0004 VARIANCE CONSIDERATIONS

Per Sec. 11.6.2.G. of the Development Code, the following list of approval criteria for a Variance provides guidance for making decisions on approval:

1. Variances will only be granted upon showing that:

- a. The application of this Development Code would create an unnecessary hardship, and not merely an inconvenience to the applicant; or**

Finding: The application of the Development Code would create an unnecessary hardship in that it would prevent this 0.53 acre, RD-18 subject property in the Mount Vernon Woods neighborhood from having a garage (two-car).

- b. There are extraordinary and exceptional conditions due to the size, shape, or topography, which are specific to the subject property and not generally found in similar properties;**

Finding: There are extraordinary and exceptional conditions due to the size, shape, or topography, which are specific to the subject property and not generally found in similar properties.

- The subject property is approximately 0.53 acres in size, is rectangular in shape, similar to the other properties in the neighborhood.
- However, the property does have significant topography dropping 40' from the street elevation to the rear property line a distance of approximately 197' (average 25% grade). There is a stream that bisects the property in the rear, activating 75' of State Waters Stream Buffer, which includes parts of the already existing ranch home, due to its development before the additional local implements of the stream buffer. Sandy Springs allows renovations on the existing footprint where there are already encroachments, but any extension beyond the footprint that causes additional encroachments into setbacks or buffers, requires a variance.
- The topography challenges and State Waters Stream Buffer encumbrances combine to create exceptional conditions on the property.

2. Further, the application must demonstrate that:

- a. Such conditions are not the result of action or inaction of the current property owner; and**

Finding: The conditions of the subject property are not the result of action or inaction of the current property owners. According to the Fulton County Tax Assessors, the site was developed in 1955, long before the property was purchased in 2020 by the current property owners.

- b. The Variance request would provide the minimum relief necessary to make possible the reasonable use of the property; and**

Finding: The Variance request would provide the minimum relief necessary to make possible the reasonable use of the property. The subject property is in an RD-18 neighborhood of single unit detached homes, a swim & tennis community with a Home Owners Association (HOA) where almost all of the homes have at least two-car garages. A two-car garage is a reasonable use for this neighborhood.

- c. The Variance request would result in development that is consistent with the general intent of this Development Code, with the Comprehensive Plan policies, and would not be detrimental to the public good, safety and welfare.**

Finding: The Variance request would result in development that is consistent with the general intent of the Development Code and *The Next Ten*. While the Development Code requires that buildings are built within the buildable areas and not within setbacks, this property has a distinct challenge in abiding by the Development Code with its extraordinary site conditions. The applicant's proposal is aimed at providing a development that is consistent with the general intent of the Development Code to build a house with a garage consistent with the neighborhood character. The applicant is also reducing the impervious footprint that currently exists to lessen any environmental impacts that may be realized.

COMMENTS FROM OTHER PARTIES
Sandy Springs Public Works: No comment provided. Sandy Springs City Engineer: No comment provided. Sandy Springs Chief Environmental Compliance Officer: No comment provided. Sandy Springs Arborist: No comment provided. Sandy Springs Sustainability Manager: No comment provided. Sandy Springs Building Official: No comment provided. Sandy Springs Fire Marshal: No comment provided. Correspondence Received: No public comment was submitted in writing.

DEPARTMENT OF COMMUNITY DEVELOPMENT RECOMMENDATIONS

Following review, and based on the findings, Staff recommends **Conditional Approval** of **Variance V22-0004**, from Section 2.3.2. and Section 6.5.2.B.1 to encroach into the primary street setback to build a side entry two-car garage.

Staff makes the above recommendation, subject to the following condition:

1. The pervious area to the south of the proposed garage be removed as presented in this Staff Report on page 8.
2. The garage only encroach in the area of the property delineated on “*Garage Relocation Conceptual Plan*” prepared by Rougely Design and Consulting, dated February 17, 2021. Received January 7, 2022.