



P&Z STAFF REPORT

Board of Appeals Meeting, January 8, 2018

Cases: **V18-0036 (3023 Eamont Terrace), V18-0037 (3013 Eamont Terrace), V18-0038 (3008 Eamont Terrace), V18-0039 (3003 Eamont Terrace)**
Staff Contact: Louisa Tovar (ltovar@sandyspringsga.gov)
Report Date: December 21, 2018

REQUESTS

Request for a **Variance** from Sec. 6.1.2.B.3.d. to allow HVAC units encroachments closer than the required 5' from the lot line.

APPLICANT

Property Owner: Pulte Home Company, LLC	Petitioner: Pulte Home Company, LLC	Representative: Alex Alvarez
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SUMMARY / PROPOSED DEVELOPMENT

The applicant requests a **Variance** to allow HVAC units closer than the required 5' from the lot line, and therefore into the 5' side setback for the following single-family homes in the Atwater Subdivision:

- V18-0036: 3023 Eamont Terrace (Lot 72) - Building permit currently under review
- V18-0037: 3013 Eamont Terrace (Lot 77) - Building permit currently under review
- V18-0039: 3003 Eamont Terrace (Lot 82) – No Building Permit applied for yet.
- V18-0038: 3008 Eamont Terrace (Lot 58) – Single-family home built with HVAC units encroaching. Certificate of Occupancy is pending.

The Atwater Community is the result of an approved 2014 rezoning request to develop 88 housing units, of which 45 are single-family homes. The majority of the houses have been built. However, there are currently four single-family units that have not obtained a Certificate of Occupancy from the City. Of these four units, one unit (Lot 58) is completely built with the HVAC unit installed and awaiting CO approval, two units (Lot 72 and 77) are currently under review in the permitting process. The applicant has not yet applied for building permits for Lot 82.

The Atwater Community is zoned CS-3 (City Springs- 3 Stories Maximum). Under Development Code Sec. 6.1.2.B.3.d., mechanical equipment may encroach into the required setback, if such encroachment is at least 5' from the lot line.

In order to obtain COs for these four units, the applicant requests a variance to allow the HVAC units to be closer than the required 5' to the property line.

PROPERTY INFORMATION	
Location:	3023, 3013, 3003, and 3008 Eamont Terrace Parcel # 17 0090 0001 1169; 1218; 1036; 1267
Council District:	3 – Chris Burnett
Road frontage:	N/A
Acreage:	N/A
Current Zoning:	CS-3 (City Springs, 3 stories maximum height)
Existing Land Use:	Single-family and townhome Development
Current Character Area:	City Springs

Background Information:

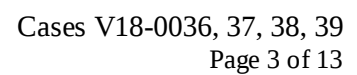
The building permit review process for Atwater started in 2015.

Per our records, the site plans for all single-family homes permitted before and in 2017 clearly labeled and showed the location of the HVAC units on the properties without showing any encroachments. For this reason, Planning & Zoning approved permits by relying on the information provided on the site plan.

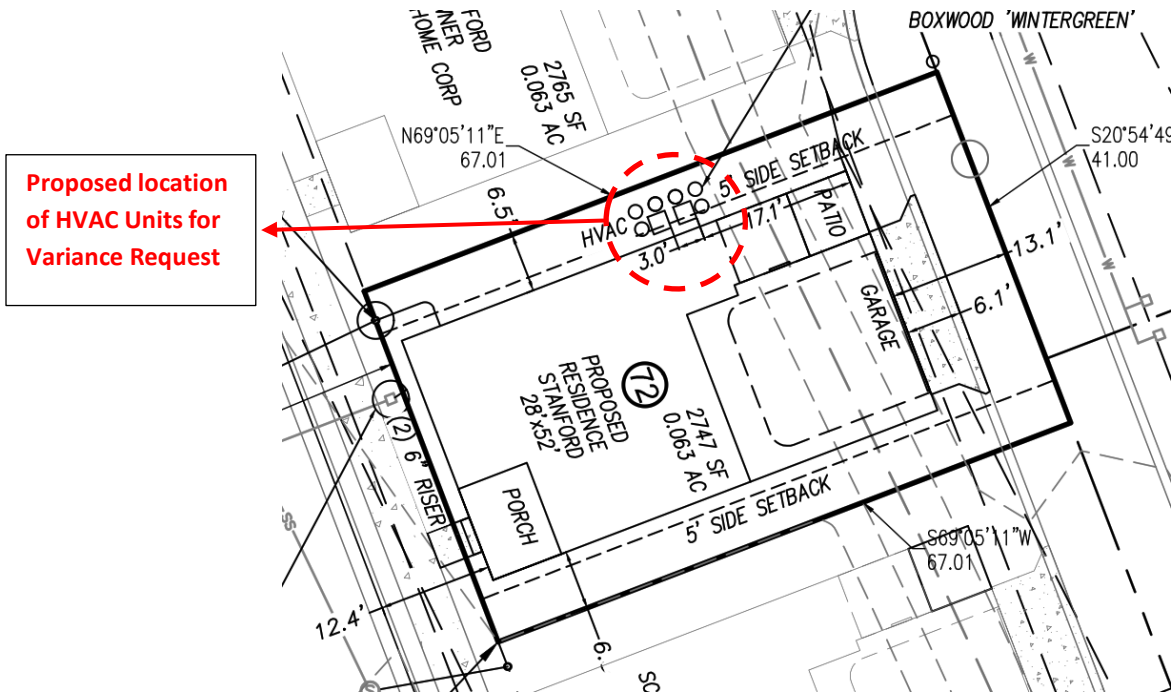
Since 2017, the City, as a new policy, requires applicants to obtain as-built surveys for COs. The City Engineer, is the only person who reviews and approves COs. The HVAC unit location is not under his purview.

During Fall 2018, the applicant became aware of potential HVAC encroachments through a combination of comments received during plan review and subsequent site inspections.

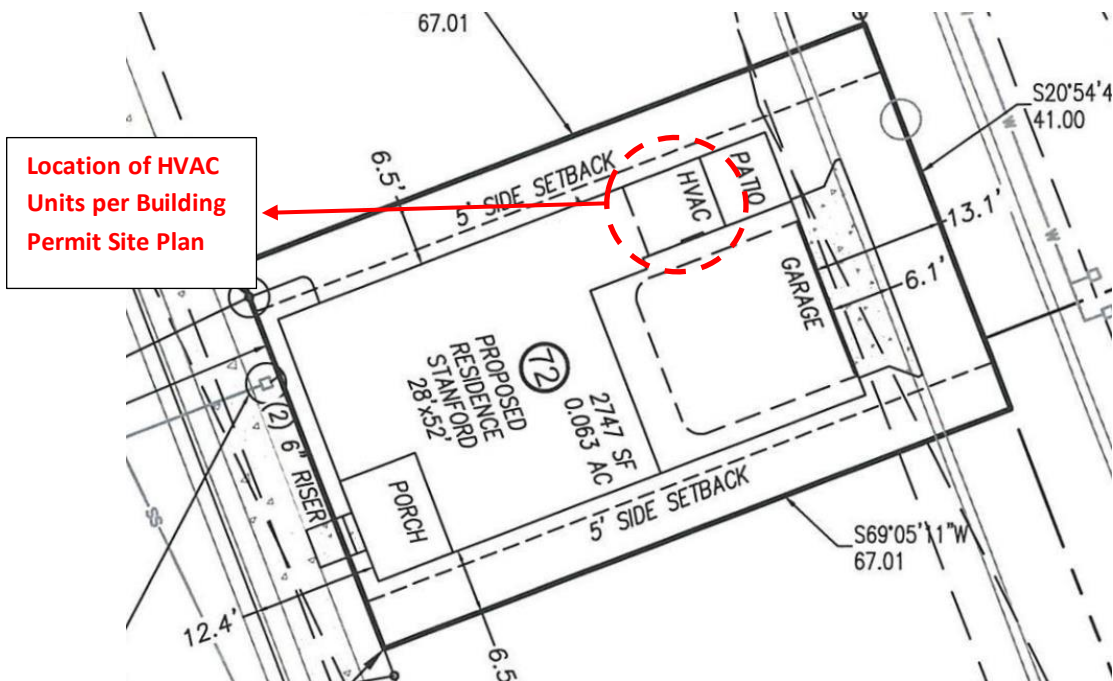
In October 2018, the Director recommended only requesting variances for those four lots where COs have not been issued.



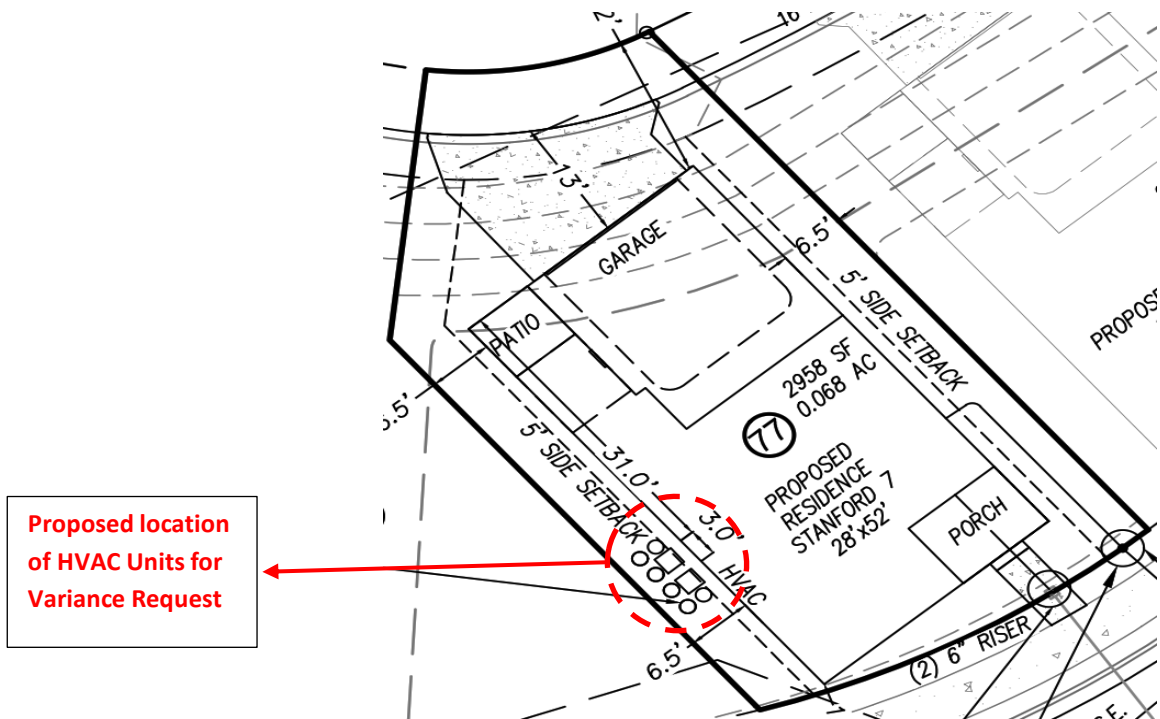
**PROPOSED SITE PLAN FOR VARIANCE REQUEST (3023 Eamont Terrace –LOT 72)
(Dated Received December 3, 2018)**



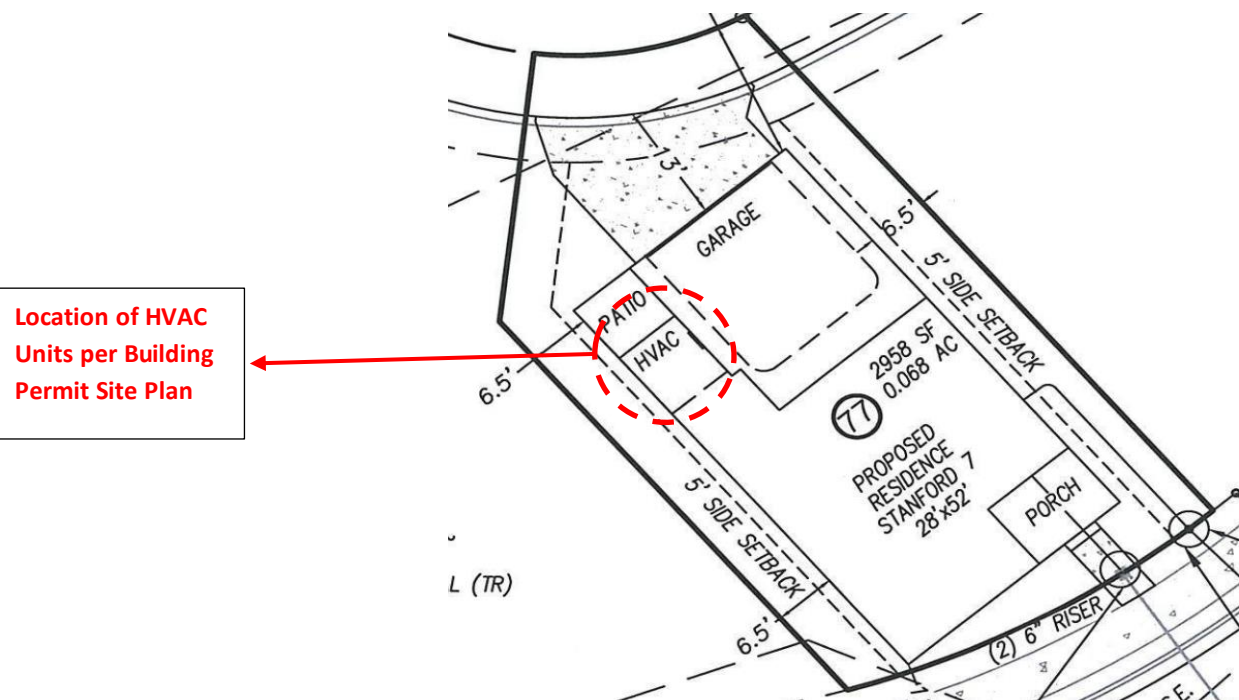
Site Plan for 3023 Eamont Terrace (Lot 72) as Shown on 1st Building Permit Submittal (Dated Received September 26, 2018) - Permit not approved yet.



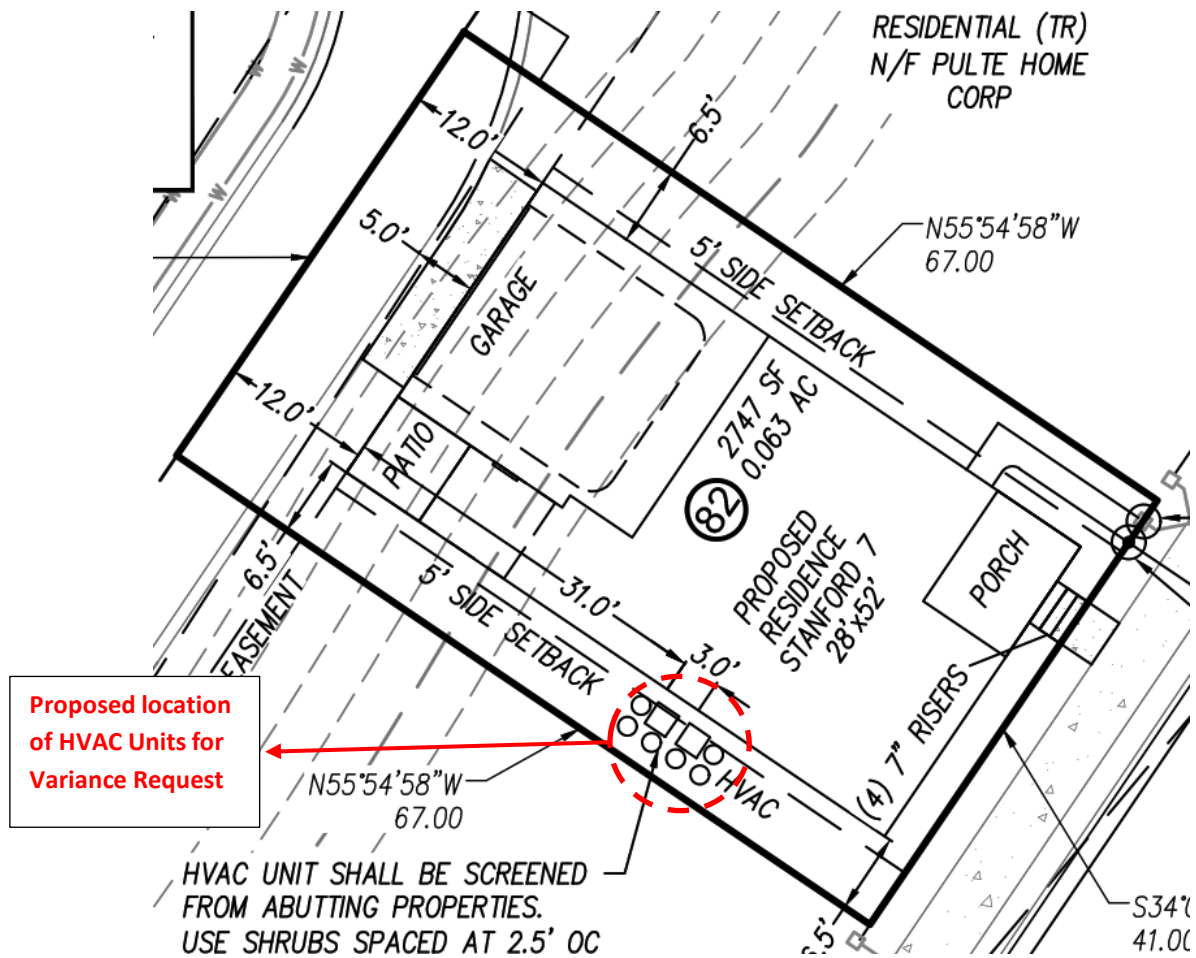
PROPOSED SITE PLAN FOR VARIANCE REQUEST (3013 Eamont Terrace –LOT 77) (Dated Received December 3, 2018)



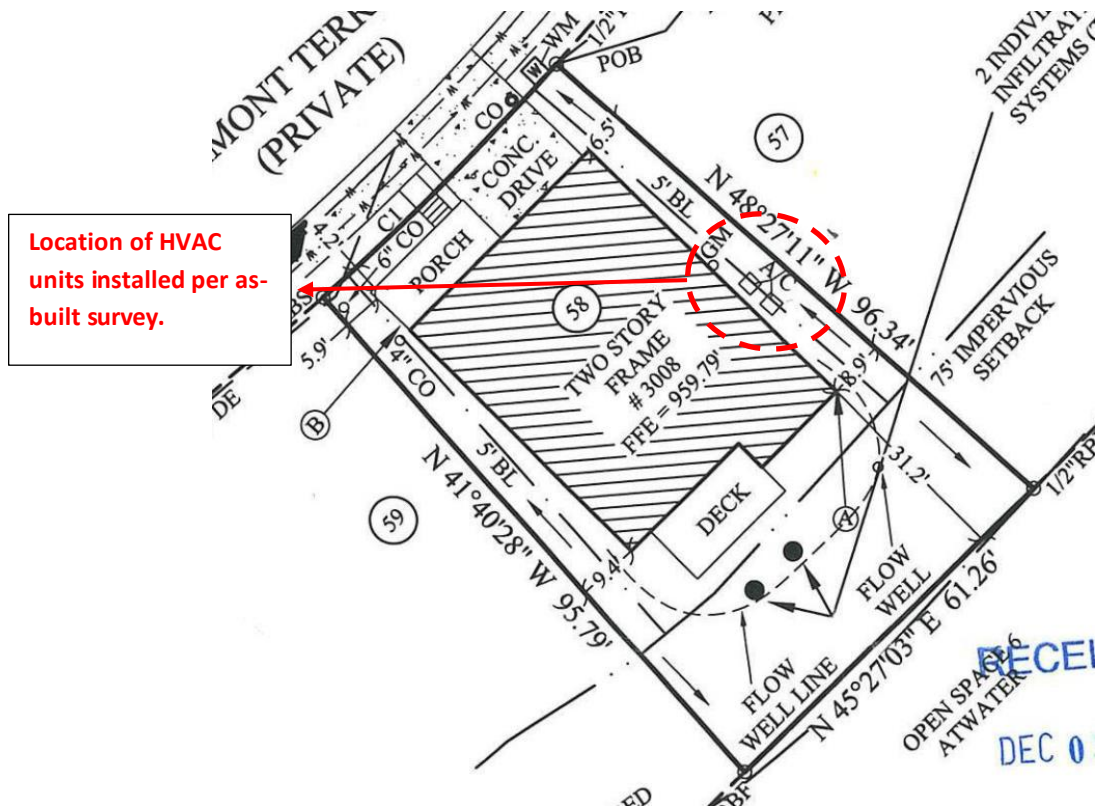
Site Plan for 3013 Eamont Terrace (Lot 77) as Shown on 1st Building Permit Submittal (Dated Received October 5, 2018) – Permit not approved yet.



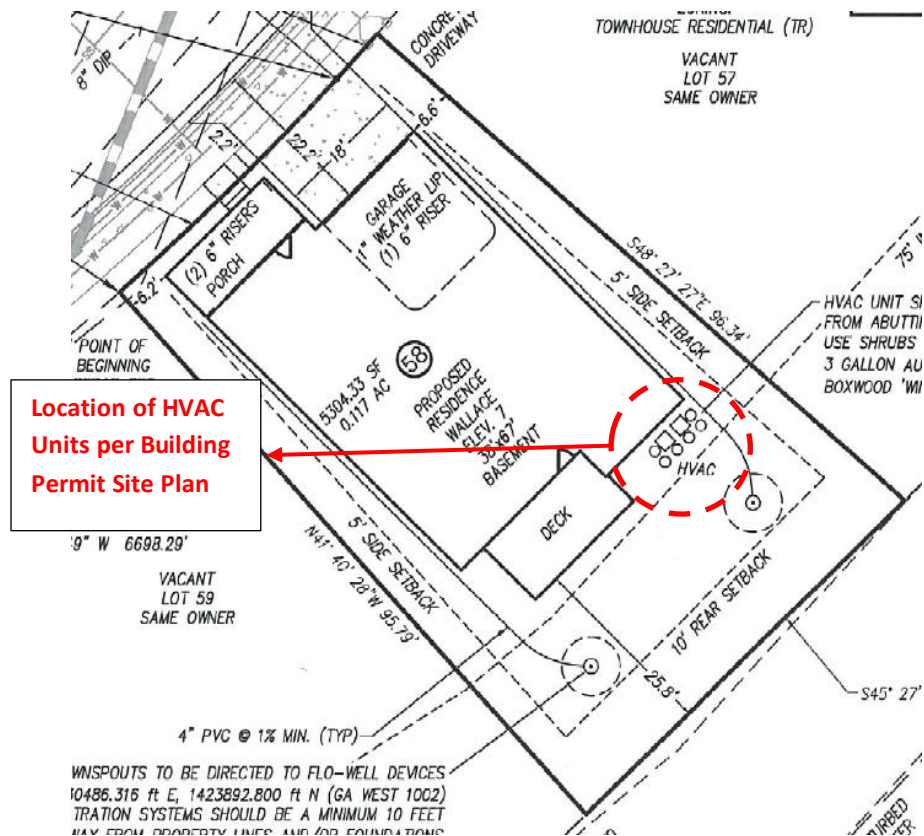
PROPOSED SITE PLAN FOR VARIANCE REQUEST (3003 Eamont Terrace –LOT 82) (Dated Received December 3, 2018) – NO BUILDING PERMIT



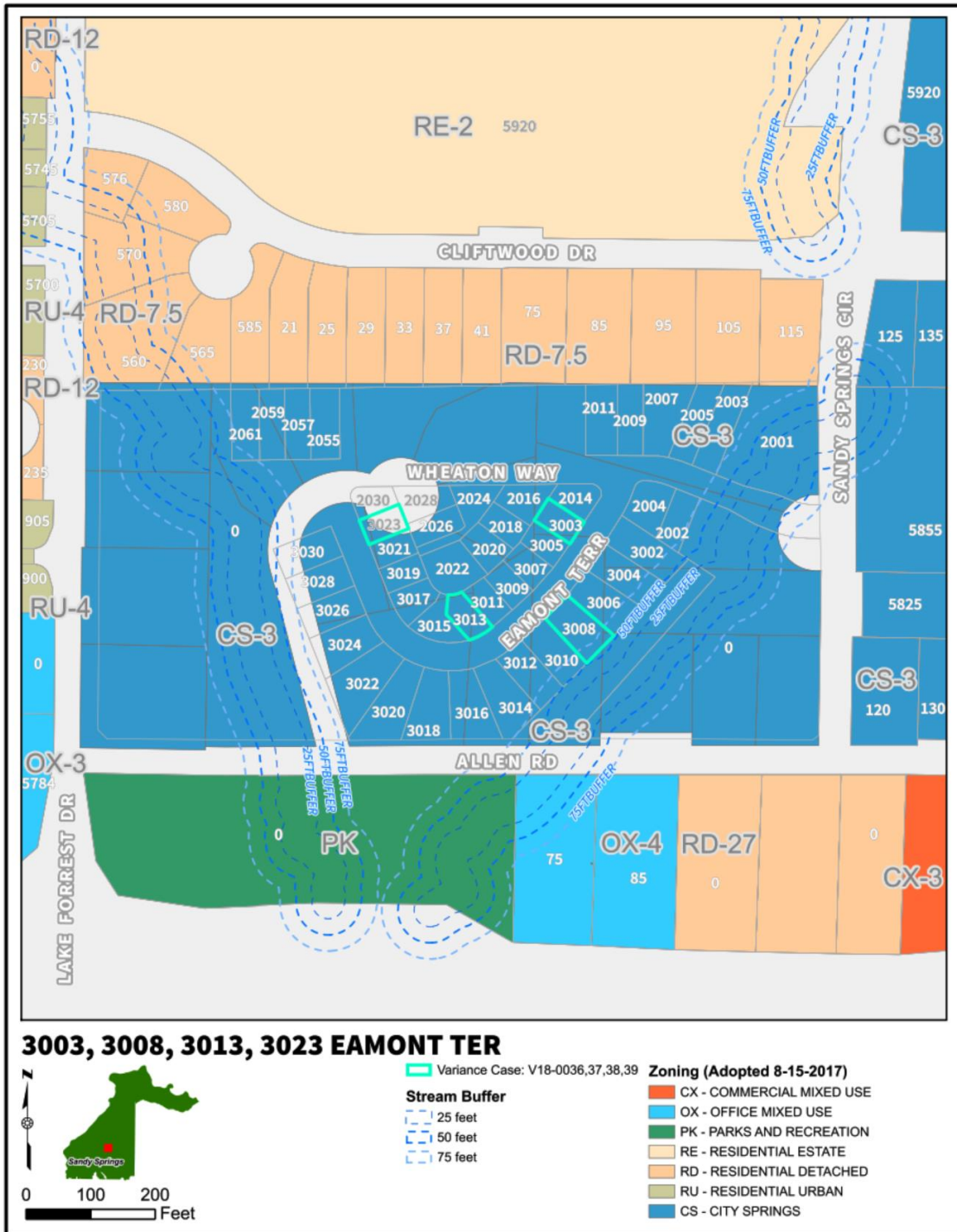
AS-BUILT SURVEY (3008 Eamont Terrace – LOT 58) (Dated October 29, 2018)



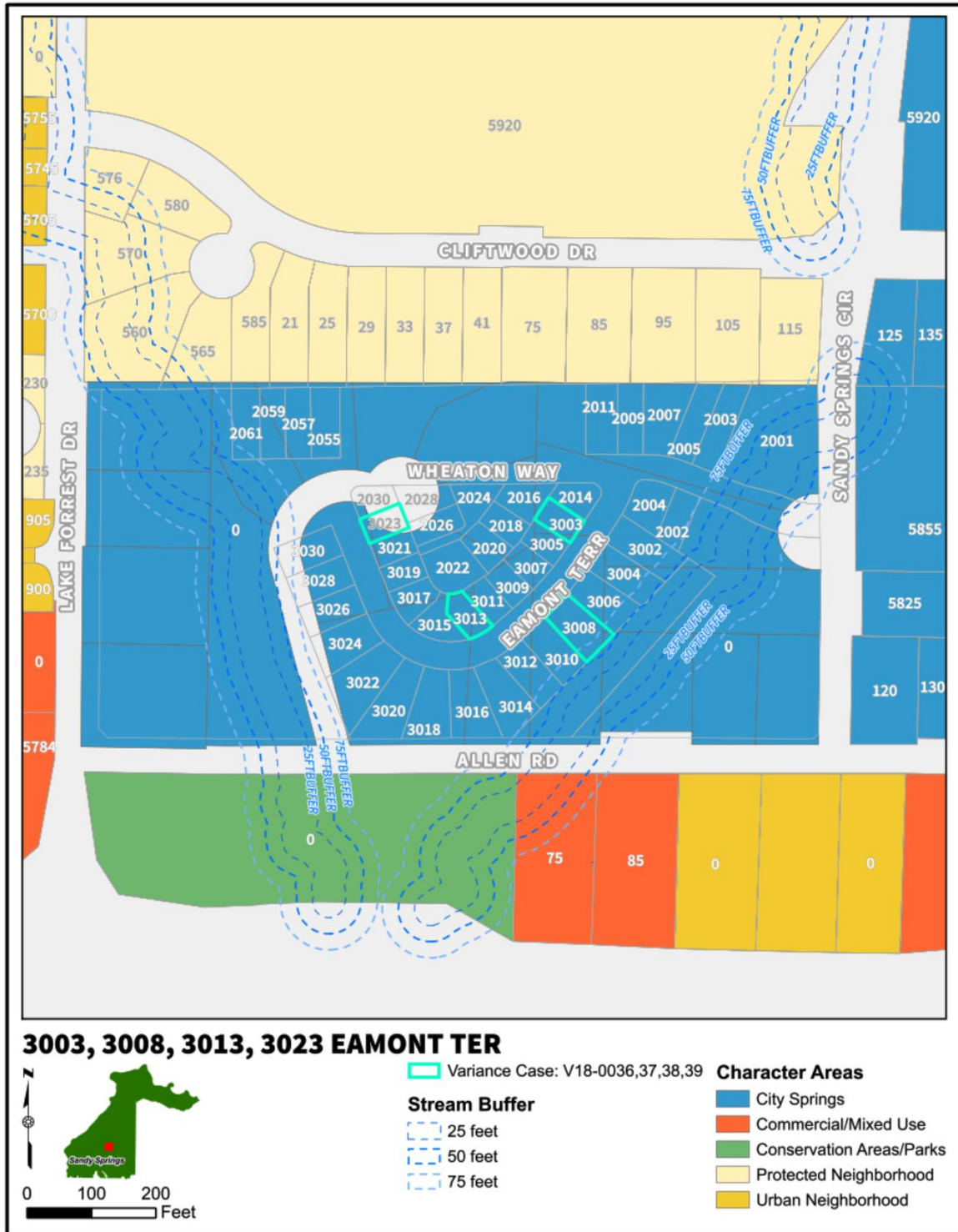
APPROVED SITE PLAN for BR17-00189 (Dated April 20, 2017)



ZONING MAP



CHARACTER AREA MAP



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.

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*
- 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;*

Further, the application must demonstrate that:

- a. Such conditions are not the result of action or inaction of the current property owner; and*
- b. The variance request would provide the minimum relief necessary to make possible the reasonable use of the property; and*
- 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.*

Findings:

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

Lot 72, 77, and 82 are small urban lots of approximately 2,700 sq. ft. - 3,000 sq. ft. and lot 58 is approximately 5,300 sq. ft in area. All lots have the same setbacks 0' front, 5' side, and 10' rear.

Regarding the existing topography, Lot 72, 77, and 82 slope down from the private drive (or rear) to the front, where the main entrance of the houses are located, along Eamont Terrace. Lot 58, slopes down from the entrance of the house along Eamont Terrace toward the rear of the property. Also, a portion of the rear of lot 58 lies within the 25' additional impervious surface setback. Staff does not see how the existing topography of these lots have any bearing on the location of HVAC units and does not see this as a hardship for the applicant.

An approved building permit was issued on April 20, 2017 for lot 58. The approved site plan (see page 7 of this report), showed the HVAC units in the rear of the lot without any encroachment.

Staff is of the opinion that the four lots do not appear to have extraordinary and exceptional conditions regarding topography, even though all lots are relatively small in area with minimal setbacks. Staff believes that the applicant has enough buildable area ranging from 1,600 sq.ft. through 2,900 sq. ft. to locate the HVAC units in compliance with Code, if planned accordingly.

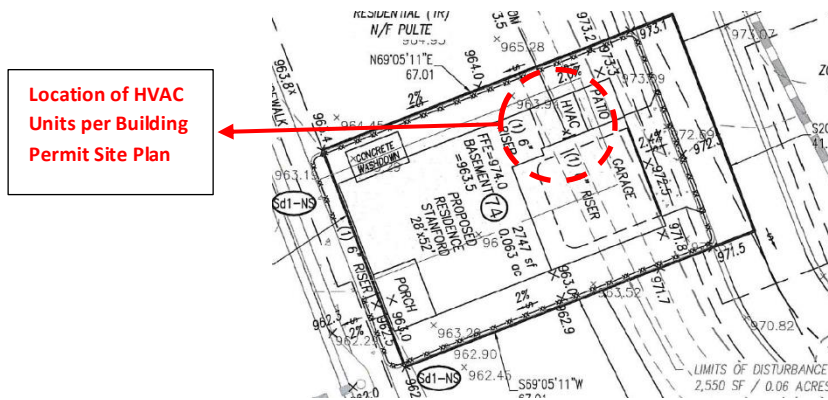
Variance #	Address	Lot #	Lot Area	Buildable Area	Setbacks		
					Front	Side	Rear
V18-0036	3023 Eamont Terrace	72	2,747 sq. ft.	1,600 sq.ft.	0'	5'	10'
V18-0037	3013 Eamont Terrace	77	2,958 sq. ft.	1,800 sq. ft.	0'	5'	10'
V18-0038	3008 Eamont Terrace**	58	5,304 sq. ft.	2,700 sq. ft.	0'	5'	10'
V18-0039	3003 Eamont Terrace	82	2,747 sq. ft.	1,600 sq. ft.	0'	5'	10'
	**25% of rear portion of lot is within the 25' impervious setback						

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

The Final Plat of the Atwater Community was designed in 2014 under supervision of the owner/developer of the property at the time, John Wieland Homes. Later, PulteGroup became the owner/developer in 2016, and therefore, PulteGroup argues that these conditions are not the result of their own actions. Staff disagrees with the applicant, as it is Staff's opinion that the applicant must be held responsible in knowing all City's requirements in the design and permitting process, independent of previous ownership, project or permit status. Staff is of the opinion that the current property owner must mitigate and rectify potential noncompliance, and should plan and design accordingly.

Staff agrees with the applicant that these lots are, in fact, smaller urban lots, with smaller or no front/rear setbacks and no backyards with limited outdoor area for HVAC installation. However, from looking at construction plans for Lots 72, 77, and 82, it appears as if the current owner/developer did not carefully plan the location of the HVAC units in the design process to meet the City's requirements, although the applicant was and is aware of the nature of the lots. From looking at the site plans submitted under building permits for Lots 72 and 77, and other* similar Lots that have the Certificate of Occupancy issued, the applicant labels and shows the location of the HVAC units behind the patio and next to the garage. The applicant later explained that this is the mechanical room equipment where the Heater and Water Meter is located, and therefore, does not provide any additional space for the Air Conditioning Units, which must be located outdoors.

***Example of Different Lot with Approved Site Plan and CO.**



The applicant obtained a building permit in 2017 for Lot 58. On the approved site plan (See Page 7 in this Report), the HVAC units were not encroaching in any setbacks. It appears as if property owner did not follow the approved site plan when installing the HVAC units, hence the variance request. Staff is of the opinion that the request for Lot 58 is also result of the current property owner as it reflects noncompliance with the approved site plan specifications.

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

Staff is of the opinion that the variance request would provide more than the minimum relief and believes compliance with the required 5' distance will not limit the current owner from the reasonable use of the property. For Lots 72, 77, and 82, the applicant could redesign the footprint of the proposed house and for Lot 58, the applicant could relocate the existing units to the original HVAC unit location shown on the approved site plan for the building permit.

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.

The intent behind the requirement to setback HVAC units closer from the lot line is to mitigate the potential noise generated by the HVAC unit and potential disturbance to adjacent property owners. The applicant proposes to have the HVAC unit within 5' of the structure and at least 1' from the property line. Staff is of the opinion that the installation of HVAC units being 1' from the lot line in Lots 72, 77, and 82 is extremely close to the adjacent lot line and therefore to the next single-family home, located parallel to the proposed location of the HVAC unit. If the HVAC unit were to be installed 1' from the lot line, the HVAC unit will be 7' away from the next structure, causing potential unfavorable noise disturbance to future adjacent homeowners.

For Lot 58, these HVAC units were not installed in the same location as shown on the approved site plan. Per the as-built survey provided by the applicant, the HVAC unit currently encroaches approximately 1.5' into the 5' side setback. The HVAC unit as currently placed would be approximately 11.5' from the next structure to the northeast (lot 57), as there is a distance of

approximately 16' between the two structures (lot 58 and 57). This 11.5' distance between the HVAC units in lot 58 and the structure on lot 57 could be enough for noise mitigation. However, Staff is of the opinion that the applicant is in violation of the Development Code, as they did not follow the approved site plan specification, and therefore, should remove and reinstall the HVAC units as originally approved.

Staff is of the opinion that the variance request for all four lots would result in development that is inconsistent with the general intent of the Development Code and Comprehensive Plan policies and would be detrimental to public good, safety, and welfare of adjacent property owners.

COMMENTS FROM OTHER PARTIES

Sandy Springs Site:

No comment provided at this time.

Sandy Springs Building Official:

No comment provided at this time.

DEPARTMENT OF COMMUNITY DEVELOPMENT RECOMMENDATION

Staff has reviewed the request relative to the variance standards contained in Sec. 11.6.2. of the Development Code. Based upon this review, staff recommends **DENIAL** of variance request V18-0036, V18-0037, V18-0038, V18-0039 to allow HVAC units closer than the required 5' from the lot line.



P&Z STAFF REPORT

Board of Appeals Meeting, January 8, 2019

Case: **V18-0042 – 201 Mount Vernon Highway**
Staff Contact: Matthew Anspach (manspach@sandyspringsga.gov)
Report Date: January 3, 2019

REQUEST

Request for a **Variance** from Sec. 8.2.10.2. to allow for installation of a ten-foot (10') tall privacy fence.

APPLICANT

Property Owner: Executive Equities, Inc.	Petitioner: Kalyn Keeney	Representative: Kalyn Keeney
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SUMMARY / PROPOSED DEVELOPMENT

The applicant requests a **Variance** to install a ten-foot (10') tall horizontal wooden picket privacy fence along the southern side of the existing regional detention pond located in the northeast corner of Arlington Memorial Park.

In order to install a fence over ten feet (10'), the applicant asks for a variance allowing for a two-foot (2') height encroachment from the Development Code (Sec.8.2.10.2):

“All other fences and walls, including side and rear yard residential fences and walls, may contain a solid or opaque fence or wall provided they do not exceed a height of 8 feet above grade.”

PROPERTY INFORMATION

Location:	201 Mount Vernon Highway (Arlington Memorial Park)
Council District:	3 – Chris Burnett
Road frontage:	N/A
Acreage:	N/A
Current Zoning:	CON (Conservation)
Existing Land Use:	Cemetery
Current Character Area:	Conservation Areas/Parks

Background Information:

The northern detention pond located at Arlington Memorial Park is a regional detention pond that was constructed back in the early 1980s by Fulton County. The pond was restored to working condition in the summer of 2017, but in return, all of the trees were removed from within the limits of the pond. A request was made by the neighbors located at the Enclave at Long Island Subdivision to provide screening along the road within the cemetery that leads to the existing maintenance building onsite. The main issue is that the neighbors' homes are located between ten and 20 feet above the elevation of the road to the maintenance building, and the neighbors can see daily cemetery activities. Several meetings have been held between Fulton County, the City, and the neighbors regarding this matter.

Originally, a planted buffer was proposed on the south side of the detention pond to provide screening of the roadway by Leyland Cypress, Carolina Sapphire Cypress, and Nellie Stevens Holly trees to shield the neighbors from cemetery activities. The neighbors liked the screening idea but also requested that a fence be installed. The neighbors originally requested that a 14' tall fence be installed, but additional screening was added south of this area to screen the existing concrete coffin vault area, and they agreed to a ten-foot (10') tall fence with Nellie Stevens Hollies in front of the fence.

AERIAL IMAGE (201 Mount Vernon Highway)



SITE VISIT:



View from storage location toward part of residential area.



Side view of proposed fence installation location.

SITE VISIT:

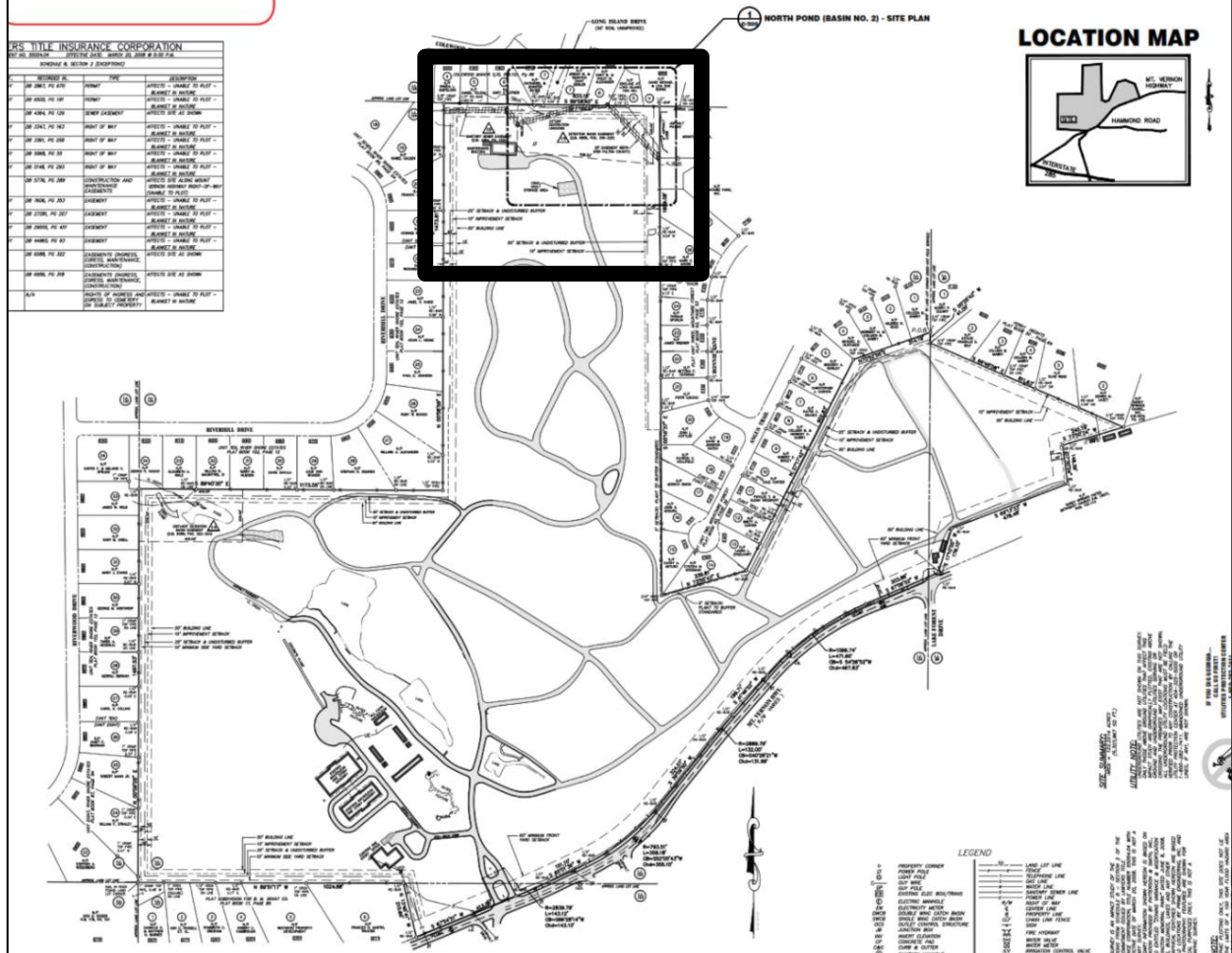


View of detention pond that was restored.



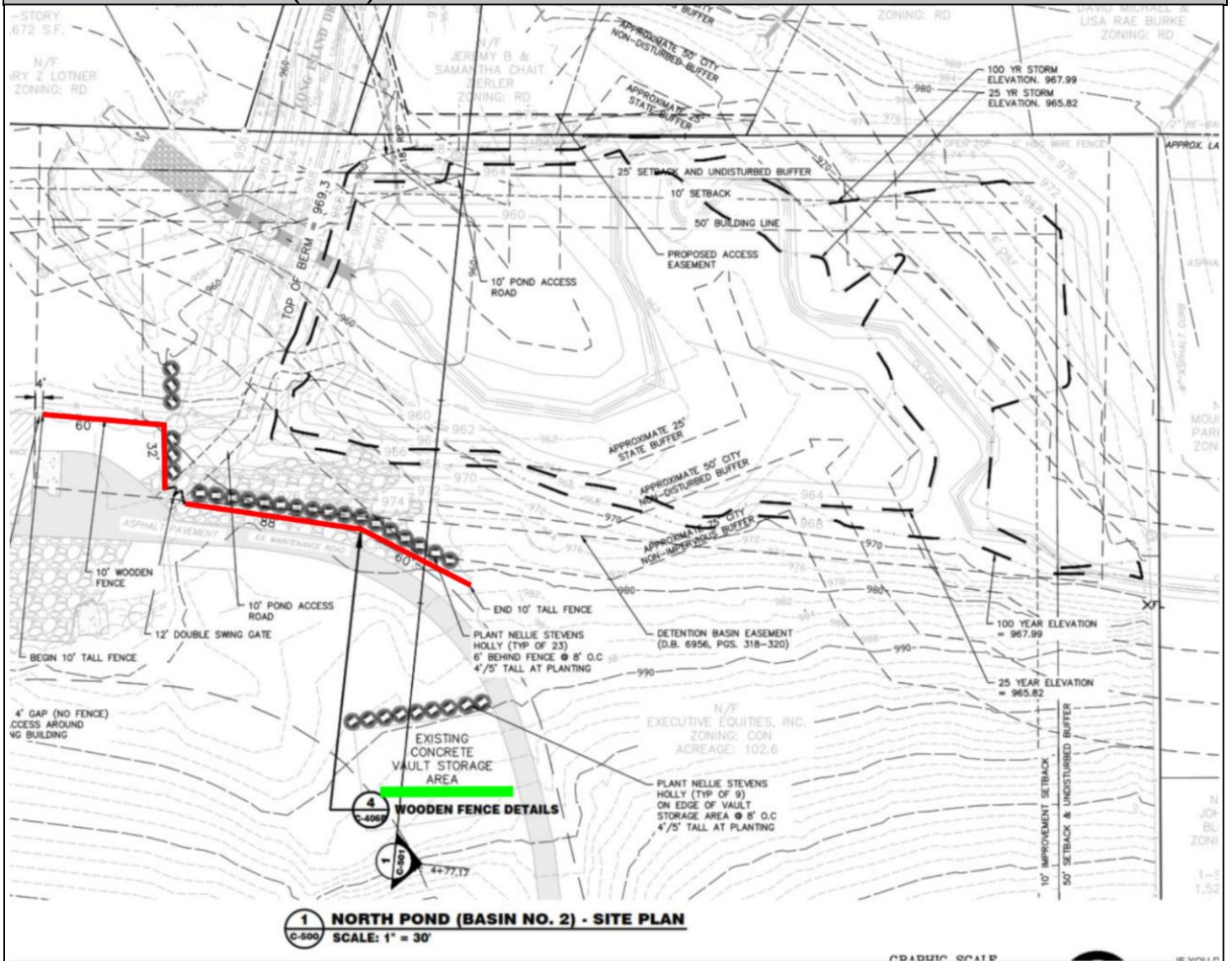
View from residential area toward cemetery storage location.

OVERALL SITE (201 Mount Vernon Highway)

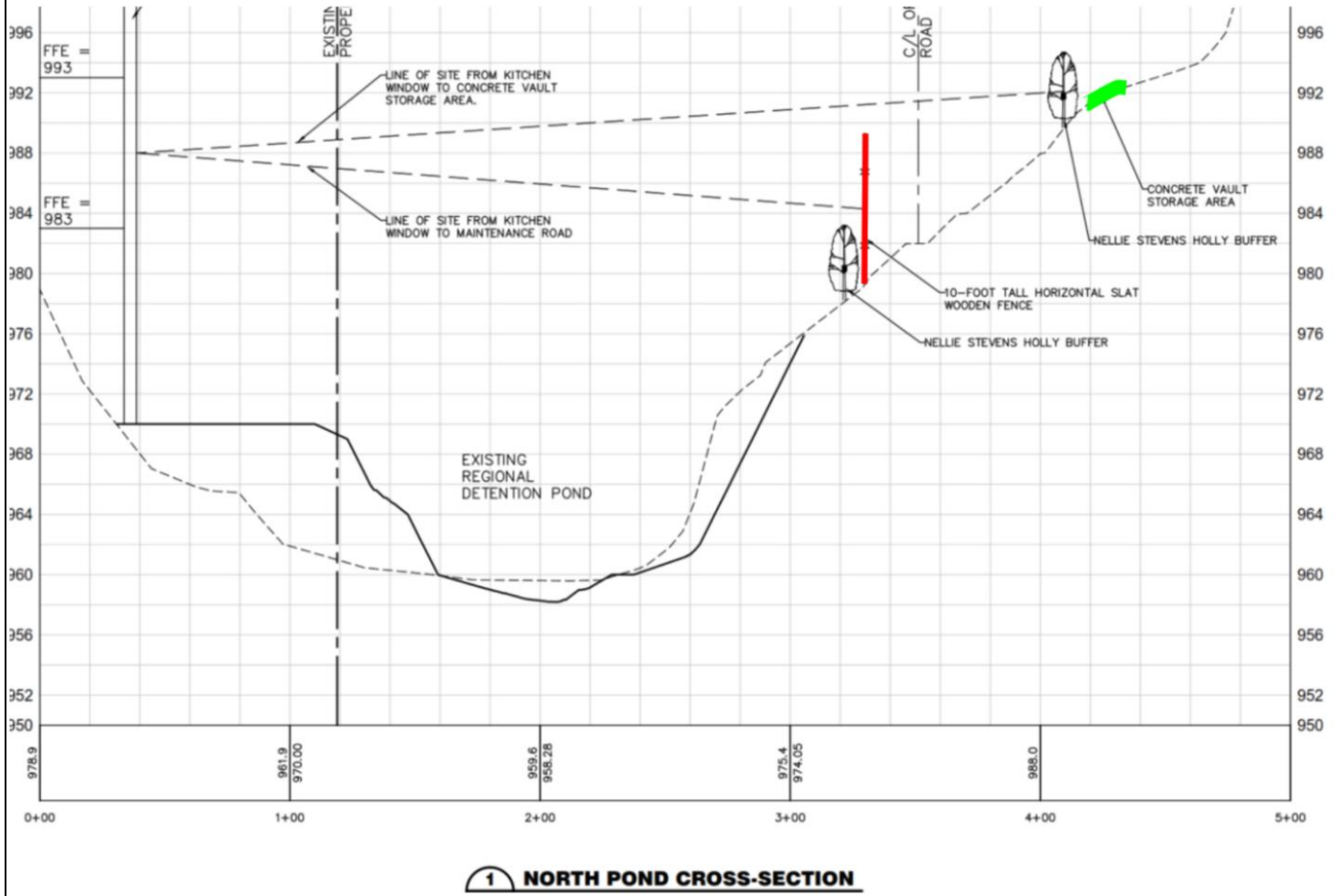


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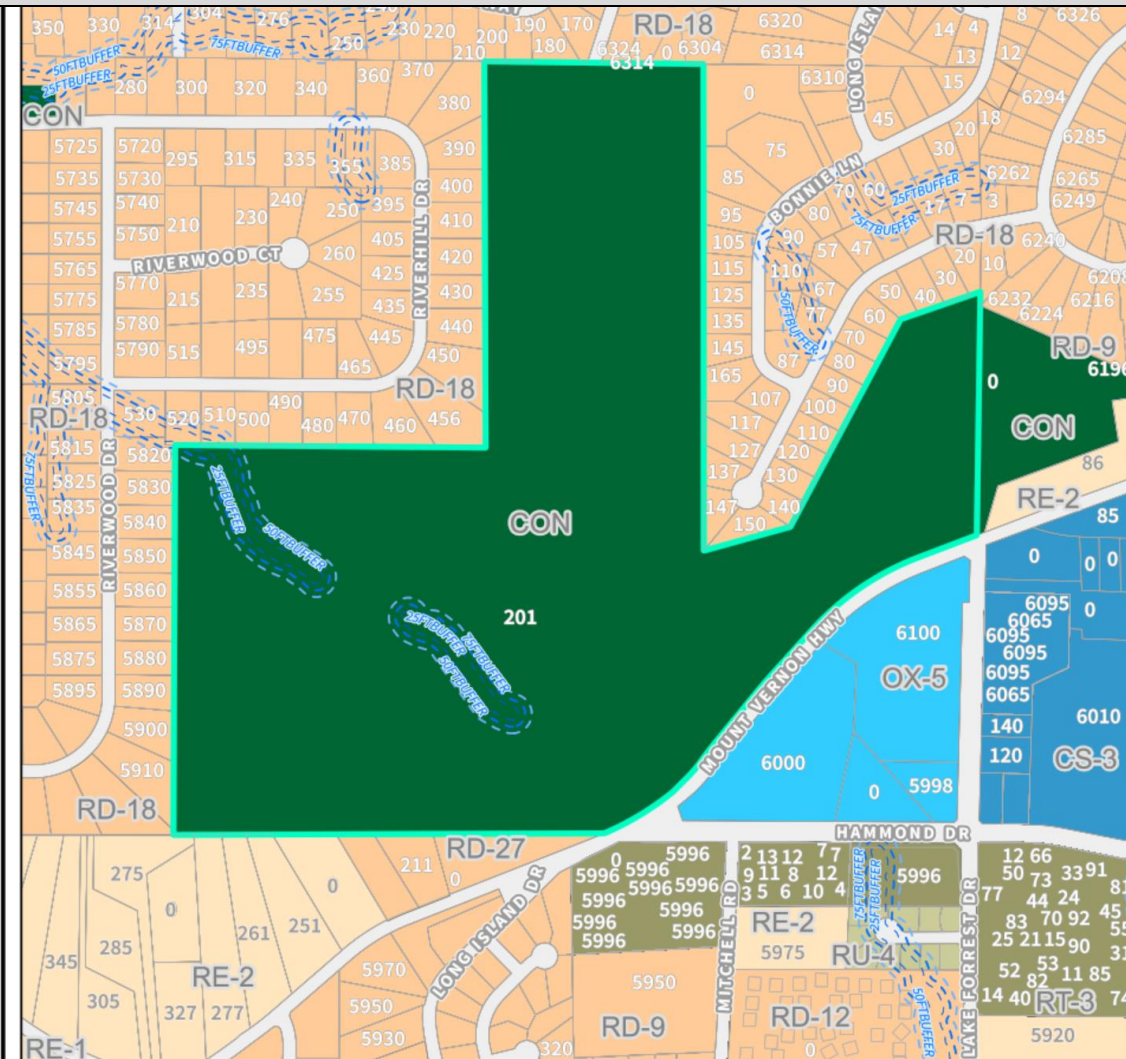
PROPOSED SITE PLAN (Aerial)



PROPOSED SITE PLAN (Cross Section)



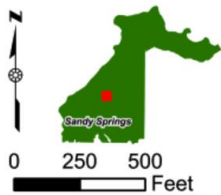
ZONING MAP



201 MOUNT VERNON HWY

Variance Case: V18-0042

Zoning (Adopted 8-15-2017)

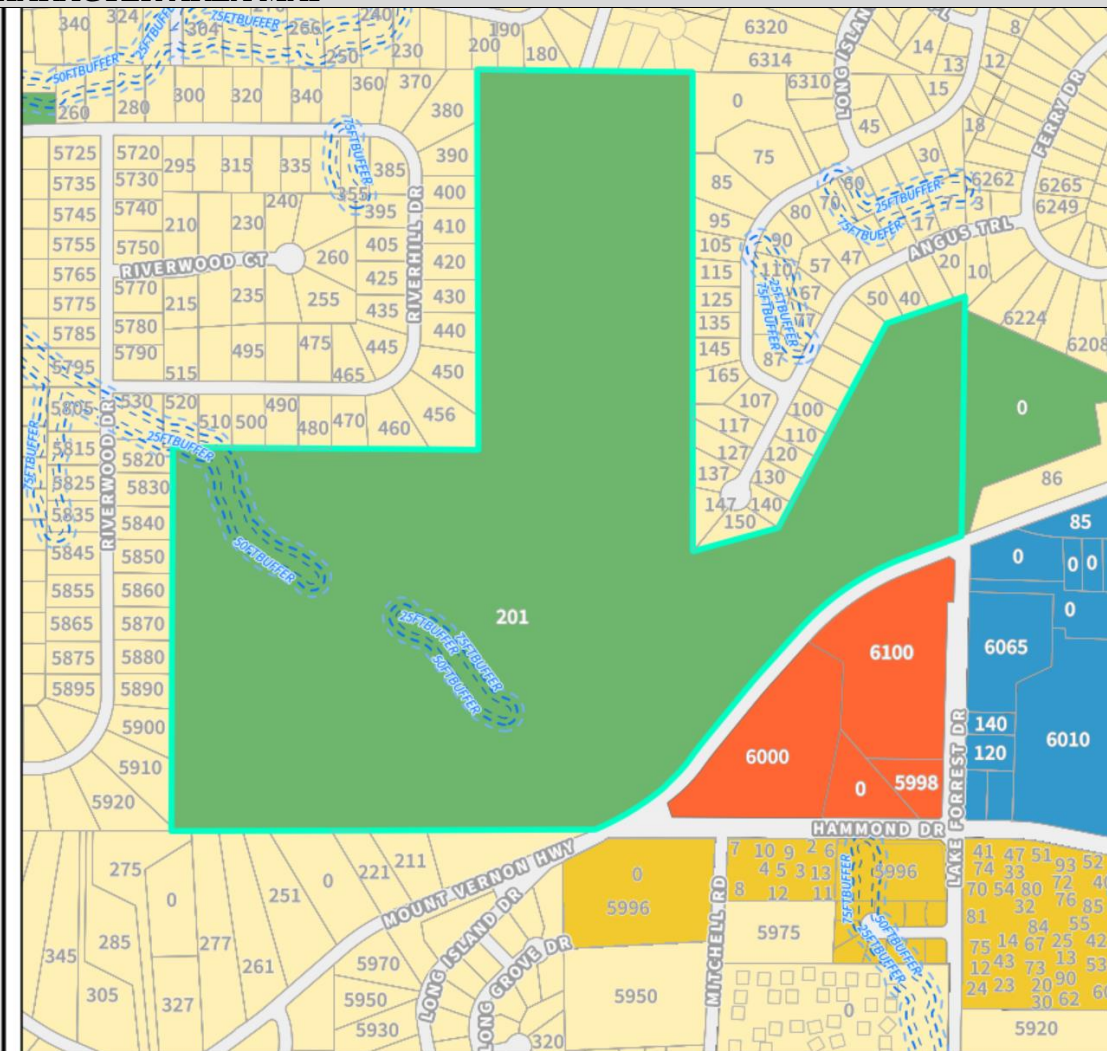


Stream Buffer

- 25 feet
- 50 feet
- 75 feet

- OX - OFFICE MIXED USE
- CON - CONSERVATION AND OPEN SPACE
- RE - RESIDENTIAL ESTATE
- RD - RESIDENTIAL DETACHED
- RU - RESIDENTIAL URBAN
- RT - RESIDENTIAL TOWNHOUSE
- CS - CITY SPRINGS

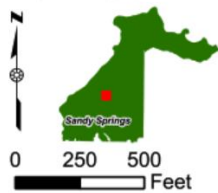
CHARACTER AREA MAP



201 MOUNT VERNON HWY

 Variance Case: V18-0042

Character Areas



Stream Buffer

-  25 feet
-  50 feet
-  75 feet

-  City Springs
-  Commercial/Mixed Use
-  Conservation Areas/Parks
-  Protected Neighborhood
-  Urban Neighborhood

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.

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*
- 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;*

Further, the application must demonstrate that:

- a. Such conditions are not the result of action or inaction of the current property owner; and*
- b. The variance request would provide the minimum relief necessary to make possible the reasonable use of the property; and*
- 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.*

Request: Request to install a ten-foot (10') tall horizontal wooden picket privacy fence along the southern side of the existing regional detention pond located in the northeast corner of Arlington Memorial Park.

Findings:

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

Staff does not believe that application of the Development Code would create an unnecessary hardship for the applicant. Staff does note that the inconvenience to the neighbors would be temporary in nature; that is to say until the evergreens that were planted recently reach a height sufficient to screen the cemetery storage area from any reasonable vantage point of abutting residences.

It is of staff's opinion that the restoration work in the pond, which resulted in the loss of trees that had previously screened the cemetery storage was not a hardship to the applicant, but certainly an inconvenience to the community that abuts the applicant, and that granting relief to the applicant would in essence grant relief to the community.

It is also noted that the topography is generally steep for the site (15-20%) as both the storage area and residences frame the detention pond which is naturally at the bottom of the slopes from both directions. The detention site is largely exposed between the storage area and residences.

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

The conditions are the result of action taken in conjunction by the property owner and the responsible jurisdiction who performed the restoration to the detention pond.

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

The subject site is part of the Arlington Memorial Park (Cemetery), which is over 100 acres in size. The proposed variance does not come in contact with any buffers, property lines, or setbacks and would assist in screening cemetery-related storage from residential properties. Staff does believe that the fence would be a minimum necessary based on the context of the property, its size, and lack of intrusion into any buffers, property lines, or setbacks to visually screen the storage area in the immediate time frame.

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.

Staff believes that screening of a service or similar type area would be consistent with the general intent of the Development Code, with the Comprehensive Plan policies in that it would not be detrimental to the public good, safety and welfare of the public; but rather, would be beneficial to the surrounding community and in their best immediate interests. However, the height requested does not respond to a hardship.

COMMENTS FROM OTHER PARTIES

Sandy Springs Arborist:

No comment provided at this time.

Sandy Springs Site/Land Development:

No comment provided at this time.

Sandy Springs Building Official:

No comment provided at this time.

Public Comments:

There were no public comments.

DEPARTMENT OF COMMUNITY DEVELOPMENT RECOMMENDATION

Staff has reviewed the request relative to the variance standards contained in Sec. 11.6.2. of the Development Code and did not find evidence of a hardship. Based upon this review, staff recommends **DENIAL** of variance request V18-0042 to allow installation of a ten-foot (10') tall privacy fence. However, staff recognizes that the fence would not be detrimental to the public and would in fact satisfy the neighbors.