



Variance Petition No. V08-052

HEARING & MEETING DATES

Board of Zoning Appeals Hearing

October 15, 2008 (deferred)

November 13, 2008

APPLICANT/PETITIONER INFORMATION

Property Owner	Petitioner	Representative
Amir Tahamtan	Amir Tahamtan	Amir Tahamtan

PROPERTY INFORMATION

Address, Land	5995 Riverside Drive
Lot(s), and District	Land Lot 133, District 17
Council District	3
Frontage and Area	415 feet of frontage along the east side of Riverside Drive and 210 feet of frontage along the south side of Heard's Ferry Road. The subject property has a total area of approximately 2.00 acres.
Existing Zoning and Use	The lot is zoned R-1 (Single-family Dwelling District). The property is developed with a single-family residence.
Overlay District	N/A

2027

Comprehensive Future Land Use Map Designation	R0-1 Residential (0 to 1 units per acre)
---	--

INTENT

The applicant is requesting two (2) primary variances:

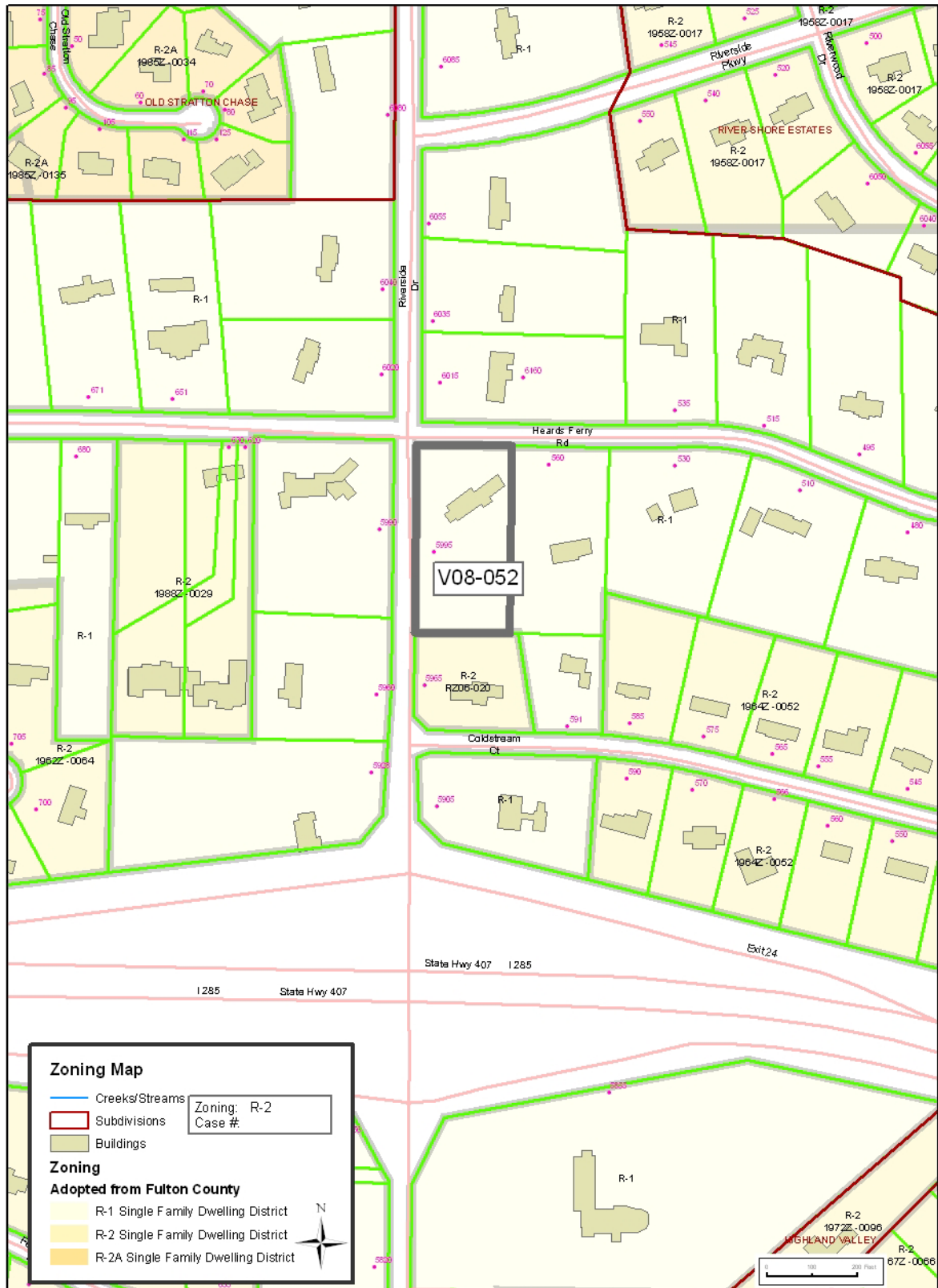
- 1) Variance from Section 4.11.D.4 of the Zoning Ordinance to reduce the required three (3) foot landscape strip between a fence/wall and a right-of-way to zero (0) feet and
- 2) Variance from Section 4.11.F of the Zoning Ordinance to reduce the required three (3) foot setback of a fence/wall from a public right-of-way to zero (0) feet.

The subject property appears to have different types of fences/walls adjacent to front, side, and rear property lines. It is apparent the applicant intended to construct an additional 150 foot section of fence/wall along a southern portion of the side property line, abutting Riverside Drive, that would match the pillar and metal picket style that currently exists along the remaining portion of the side property line adjacent to Riverside Drive and the entire front property line adjacent to Heard's Ferry Road. As the subject 150 foot section of fence/wall construction was under way, the applicant called the City to see if a permit was required to remove trees that may be affected. Upon a site visit, the City placed a stop work order on the subject property, issued a notices of violations, and a citations for constructing

without a required permit and for not controlling soil erosion. The case has since been adjudicated.

At the October 15, 2008 Board of Zoning Appeals (BZA) meeting, the Board deferred the subject application until the November 13, 2008 meeting to allow time to resolve sidewalk and permitting issues.

5995 Riverside Drive



Prepared by the City of Sandy Springs Department of Community Development for the Board of Zoning Appeals Hearing on November 13, 2008

**CITY OF SANDY SPRINGS
DEPARTMENT OF COMMUNITY DEVELOPMENT
VARIANCE ANALYSIS**

CASE NUMBER: V08-052

STAFF CONTACT: Doug Trettin, City Planner 770-206-1515
E-mail: doug.trettin@sandyspringsga.org

BACKGROUND:

The subject property appears to have different types of fences/walls adjacent to front, side, and rear property lines. It is apparent the applicant intended to construct an additional 150 foot section of fence/wall along a southern portion of the side property line, abutting Riverside Drive, that would match the pillar and metal picket style that currently exists along the remaining portion of the side property line adjacent to Riverside Drive and the entire front property line adjacent to Heards Ferry Road. As the subject 150 foot section of fence/wall construction was under way, the applicant called the City to see if a permit was required to remove trees that may be affected. Upon a site visit, the City placed a stop work order on the subject property, issued a notices of violations, and a citations for constructing without a required permit and for not controlling soil erosion. The case has since been adjudicated.

At the October 15, 2008 Board of Zoning Appeals (BZA) meeting, the Board deferred the subject application until the November 13, 2008 meeting to allow time to resolve sidewalk and permitting issues.

REQUEST:

The applicant is requesting relief from Section 4.11.D.4 of the Zoning Ordinance to reduce the required three (3) foot landscape strip between a fence/wall and a right-of-way to zero (0) feet and from Section 4.11.F of the Zoning Ordinance to reduce the required three (3) foot setback of a fence/wall from a public right-of-way to zero (0) feet.

ANALYSIS:

The applicant has submitted a site plan and photographs indicating the subject property to be rectangular in shape and a corner lot. Trees line the side property line adjoining the Riverside Drive right-of-way. A stream is located at the back of the lot, adjacent to the southern rear property line.

The applicant states in order to meet the required landscape strip and right-of-way setback ordinance regarding fences/walls, several trees along Riverside Drive would have to be cut down and removed.

The applicant states the following reasons why variances are needed for building the subject 150 foot section of fence/wall:

- a) Currently, when it rains heavily, it causes dirt from existing land conditions to wash out through the drain system, at the front of the applicant's house, and directly into the creek. The solution would be a grass sidewalk.
- b) Currently, when it heavily rains, the existing topography causes dirt to wash out directly into the creek. The solution to the erosion problem would be a short wall and some small landscaping.
- c) The applicant has three large dogs that have been trying to dig under the existing fence, and the applicant is afraid the dogs will get out and get hit by a vehicle. The solution would be to build the fence/wall as proposed.

The applicant states most of the properties adjacent to the subject property, with the exception of a few, have built their fences/walls on property lines. The applicant states he is requesting the same privilege.

The applicant states some of the properties adjacent to the subject property appear to have fences/walls way inside the right-of-way line.

The applicant states the proposed section of wall would add beauty to the City, and, without a variance, the applicant would be forced to remove a lot more trees which would in no way help our environment.

Staff notes the applicant has stated a permit was issued, under Fulton County, which included the section of wall/fence now under consideration. Currently, Staff is not in possession of a copy of the aforementioned permit. Additionally, Staff has done research and has determined an accurate average cost to construct a five (5) foot wide sidewalk would be about \$19.00 a lineal foot.

Department Comments

The staff held a Focus Meeting on September 3, 2008 at which the following departmental comments were provided:

LAND DEVELOPMENT	Engineering Plan Reviewer	▪ No comments
	Arborist/Landscape Architect	▪ The applicant called to see if a permit was required to remove the trees not the extension of the wall.
BUILDING AND PERMITTING	Building Plan Reviewer	▪ No comments
FIRE DEPT.	Fire Protection Engineer	▪ No comments
TRANSPORTATION	Public Works Dept., Transportation Planner	▪ No comments
	Georgia Department of Transportation	▪ No comments

Standards for Consideration

The applicant has indicated a justification for variance based on the following standard(s):

1. *Relief, if granted, would be in harmony with, or, could be made to be in harmony with, the general purpose and intent of the Zoning Ordinance;*

The applicant states in order to meet the required landscape strip and right-of-way setback ordinance regarding fences/walls, several trees along Riverside Drive would have to be cut down and removed.

The applicant states the following reasons why variances are needed for building the subject 150 foot section of fence/wall:

- a. Currently, when it rains heavily, it causes dirt from existing land conditions to wash out through the drain system, at the front of the applicant's house, and directly into the creek. The solution would be a grass sidewalk.
- b. Currently, when it heavily rains, the existing topography causes dirt to wash out directly into the creek. The solution to the erosion problem would be a short wall and some small landscaping.

- c. The applicant has three large dogs that have been trying to dig under the existing fence, and the applicant is afraid the dogs will get out and get hit by a vehicle. The solution would be to build the fence/wall as proposed.

The applicant states most of the properties adjacent to the subject property, with the exception of a few, have built their fences/walls on property lines. The applicant states he is requesting the same privilege.

The applicant states some of the properties adjacent to the subject property appear to have fences/walls way inside the right-of-way line.

The applicant states the proposed section of wall would add beauty to the City, and, without a variance, the applicant would be forced to remove a lot more trees which would in no way help our environment.

2. *The application of the particular provision of the Zoning Ordinance to a particular piece of property, due to extraordinary and exceptional conditions pertaining to that property because of its size, shape, or topography, would create an unnecessary hardship for the owner while causing no detriment to the public;*

The applicant has submitted a site plan and photographs indicating the subject property to be rectangular in shape and a corner lot. Trees line the side property line adjoining the Riverside Drive right-of-way. A stream is located at the back of the lot, adjacent to the southern rear property line.

Recommended Condition(s)

Should the Board choose to approve the application, Staff recommends the following condition(s):

- 1) The proposed 150 foot section of fence/wall shall be constructed in accordance with the proposed site plan, provided by the applicant dated received August 5, 2008 by the Department of Community Development, for the variance herein, showing the reduction of the required three (3) foot landscape strip between a fence/wall and a right-of-way to zero (0) feet and showing the reduction of the required three (3) foot setback of a fence/wall from a public right-of-way to zero (0) feet.
- 2) The exterior construction material, color, and design of the proposed fence/wall shall be similar to the maximum possible extent to the existing fence/wall adjacent to Riverside Drive and Heard's Ferry Road.

ATTACHMENTS: Letter of appeal, site plan, and photographs.



Variance Petition No. V08-055

HEARING & MEETING DATES

Board of Zoning Appeals Hearing

November 13, 2008

APPLICANT/PETITIONER INFORMATION

Property Owner	Petitioner	Representative
Richard L. Jackson	Cheri Harrington	Jessica Hill

PROPERTY INFORMATION

Address, Land Lot(s), and District	1385 Indian Trail Land Lot(s) 203, District 17
Council District	6
Frontage and Area	410 feet of frontage along the northwest side of Indian Trail. The subject property has a total area of approximately 1.91 acres.
Existing Zoning and Use	The lot is zoned R-1 (Single-family Dwelling District). The property is developed with a single-family residence.
Overlay District	N/A
2027 Comprehensive Future Land Use Map Designation	R0-0.5 Residential (0 to 0.5 units per acre)

INTENT

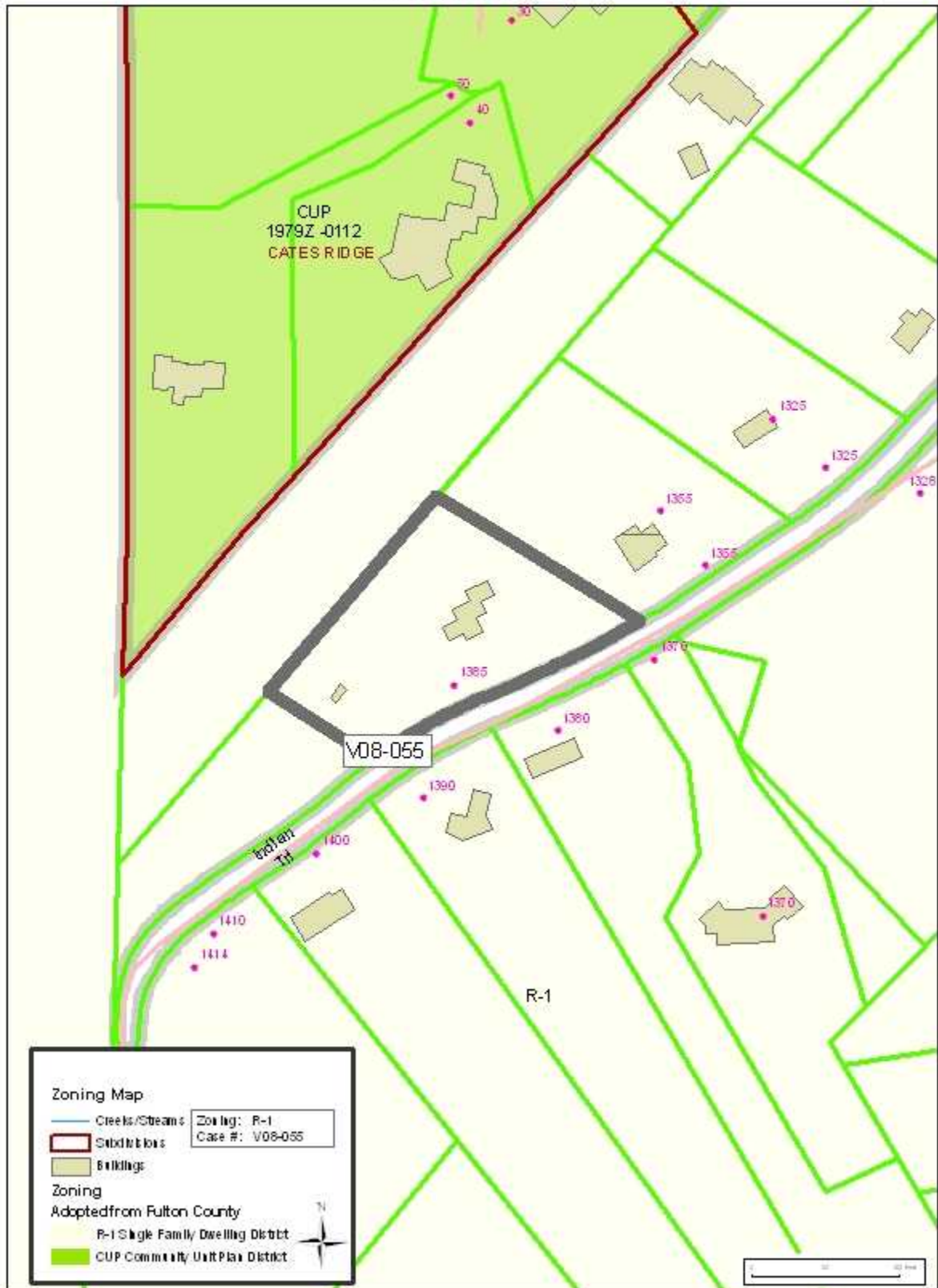
The applicant is requesting two (2) primary variances:

- 1) Variance from Section 6.1.3.D to reduce the required fifty (50) foot minimum rear yard setback to zero (0) feet and
- 2) Variance from Section 6.1.3.I to allow for an accessory structure to be located within a required minimum yard setback.

Both variances to allow for an underground detached garage measuring approximately 120 feet by 60 feet.

Parcel Map

1385 Indian Trail



Prepared by the City of Sandy Springs Department of Community Development for the Board of Zoning Appeals Hearing on November 13, 2008

**CITY OF SANDY SPRINGS
DEPARTMENT OF COMMUNITY DEVELOPMENT
VARIANCE ANALYSIS**

CASE NUMBER: V08-055

STAFF CONTACT: Doug Trettin, City Planner 770-206-1515
E-mail: doug.trettin@sandyspringsga.org

REQUEST:

The applicant is requesting relief as follows:

- 1) Variance from Section 6.1.3.D to reduce the required fifty (50) foot minimum rear yard setback to zero (0) feet and
- 2) Variance from Section 6.1.3.I to allow for an accessory structure to be located within a required minimum yard setback.

Both variances are to allow for an underground detached garage measuring approximately 120 feet by 60 feet.

ANALYSIS:

The applicant has provided site plans, a topographical map, and photographs indicating the subject property to be irregular in shape, wooded, sloping from the Indian Trail right-of-way toward the rear of the property, and to have a lot area of 1.91 acres.

Staff believes the subject property to be "Grandfathered" for having a lot area of 1.91 acres where two (2) acres are required.

The applicant states the following:

This application requests a variance to reduce the rear yard setback to zero to accommodate the construction of a subterranean garage. In addition to the subject property, the applicant also owns the property abutting to the rear. Currently the rear yard of the subject property is a part of a private golf course located interior on the applicant's property. The applicant proposes to connect the garage to an existing paved drive that currently services the golf course area and an existing accessory cottage. The garage entry will be incorporated into the side of an existing knoll on the property as shown on the pictures included in this application and the structure will be below ground. The garage will be used for storage of the applicant's vehicles and will include a workshop for the applicant's use.

The Sandy Springs Zoning Ordinance permits a variance upon a showing that (1) the relief, if granted, would be in harmony with, or could be made to be in harmony with, the general purpose and intent of the Zoning Ordinance; (2) the application of a particular provision of the Zoning Ordinance to a particular piece of property, due to extraordinary and exceptional

conditions pertaining to that property because of its size, shape or topography, would create an unnecessary hardship for the owner while causing no detriment to the public; or (3) conditions resulting from existing foliage or structures bring about a hardship whereby a sign meeting minimum letter size, square footage and height requirements can not be read from an adjoining public road. The proposed variance meets the first and second criteria.

The proposed location for the garage creates the least impact on adjacent homes, the adjacent public nature trails and the nearby river corridor. The applicant is incorporating the garage into an existing hillside and burying the structure below grade. By connecting the garage to an existing paved path on the applicant's property, the need for additional paving to access the garage will be minimized. The entrance to the garage will face the applicant's adjacent property and will be screened from view by a decorative feature thereby also reducing the effect on any third party properties. The foliage screening the applicant's property from adjacent third property owned by third parties and buffering the adjacent nature trails will not be impacted. The configuration of the existing improvements on the applicant's property and the fact that the applicant owns the adjacent property abutting to the rear create a unique situation where granting a variance to reduce the required rear yard setback would be in harmony with the purpose and intent of the Zoning Ordinance.

Due to the existing topography on the applicant's property, the proposed location of the garage is the most suitable. The garage will be buried into an existing hillside and the hillside will screen the garage from view from Indian Trail and the adjoining properties to the east and northwest. An existing berm and stone wall located on the subject property also screens the garage location from view from Indian Trail. Only the entrance to the garage will be visible above grade and it will be oriented interior toward the applicant's adjacent property. To require the applicant to comply with the rear setback requirement would create an unnecessary hardship due to the existing topography on the property.

Department Comments

The staff held a Focus Meeting on October 1, 2008 at which the following departmental comments were provided:

LAND DEVELOPMENT	Engineering Plan Reviewer	▪ No comments
	Arborist/Landscape Architect	▪ The feature does not require a buffer.
BUILDING AND PERMITTING	Building Plan Reviewer	▪ No comments
FIRE DEPT.	Fire Protection Engineer	▪ No comments
TRANSPORTATION	Public Works Dept., Transportation Planner	▪ No comments
	Georgia Department of Transportation	▪ No comments

Standards for Consideration

The applicant has indicated a justification for variance based on the following standard(s):

1. *Relief, if granted, would be in harmony with, or, could be made to be in harmony with, the general purpose and intent of the Zoning Ordinance;*

The applicant states the following:

The proposed location for the garage creates the least impact on adjacent homes, the adjacent public nature trails and the nearby river corridor. The applicant is incorporating the garage into an existing hillside and burying the structure below grade. By connecting the garage to an existing paved path on the applicant's property, the need for additional paving to access the garage will be minimized. The entrance to the garage will face the applicant's adjacent property and will be screened from view by a decorative feature thereby also reducing the effect on any third party properties. The foliage screening the applicant's property from adjacent third property owned by third parties and buffering the adjacent nature trails will not be impacted. The configuration of the existing improvements on the applicant's property and the fact that the applicant owns the adjacent property abutting to the rear create a unique situation where granting a variance to reduce the required rear yard setback would be in harmony with the purpose and intent of the Zoning Ordinance.

2. *The application of the particular provision of the Zoning Ordinance to a particular piece of property, due to extraordinary and exceptional conditions pertaining to that property because of its size, shape, or topography, would create an unnecessary hardship for the owner while causing no detriment to the public;*

The applicant has provided site plans, a topographical map, and photographs indicating the subject property to be irregular in shape, wooded, sloping from the Indian Trail right-of-way toward the rear of the property, and to have a lot area of 1.91 acres.

Staff believes the subject property to be "Grandfathered" for having a lot area of 1.91 acres where two (2) acres are required.

The applicant states the following:

Due to the existing topography on the applicant's property, the proposed location of the garage is the most suitable. The garage will be buried into an existing hillside and the hillside will screen the garage from view from Indian Trail and the adjoining properties to the east and northwest. An existing berm and stone wall located on the subject property also screens the garage location from view from Indian Trail. Only the entrance to the garage will be visible above grade and it will be oriented interior toward the applicant's adjacent property. To require the applicant to comply with the rear setback requirement would create an unnecessary hardship due to the existing topography on the property.

Recommended Condition(s)

Should the Board choose to approve the application, Staff recommends the following condition(s):

1. The proposed garage shall be subterranean and constructed in accordance with the proposed site plan, provided by the applicant dated received September 2, 2008 by the Department of Community Development, for the variance herein, showing an accessory structure located within a required minimum yard setback and showing a reduction in the required fifty (50) foot minimum rear yard setback to zero (0) feet where necessary to accommodate the portion(s) of the encroachment(s) only.
2. The proposed accessory structure shall only be used as a garage/workshop.

ATTACHMENTS: Letter of appeal, site plans, topographical map, photographs, elevation drawing, and supporting documents.



Variance Petition No. V08-056

HEARING & MEETING DATES

Board of Zoning Appeals Hearing

November 13, 2008

APPLICANT/PETITIONER INFORMATION

Property Owner	Petitioner	Representative
Nancy Comerford	Nancy Comerford	Nancy Comerford

PROPERTY INFORMATION

Address, Land Lot(s), and District	7395 Wildercliff Drive Land Lot(s) 85, District 17
Council District	2
Frontage and Area	158 feet of frontage along the east side of Wildercliff Drive. The subject property has a total area of approximately 2.17 acres.
Existing Zoning and Use	The lot is zoned R-2 (Single-family Dwelling District) under zoning case Z58-022. The property is developed with a single-family residence.
Overlay District	N/A
2027 Comprehensive Future Land Use Map Designation	R0-1 Residential (0 to 1 units per acre)

INTENT

The applicant is requesting two (2) primary variances:

- 1) Variance from Section 6.2.3.D of the Zoning Ordinance to reduce the required forty (40) foot minimum rear yard setback to 4.5 feet and
- 2) Variance from Section 6.2.3.I to allow for an accessory structure to be located within a required minimum yard setback.

Both variances to allow for a detached garage.

The City placed a stop work order on the subject property and issued a notice of violation for constructing without a required building permit.

Parcel Map

7395 Wildercliff Drive



**CITY OF SANDY SPRINGS
DEPARTMENT OF COMMUNITY DEVELOPMENT
VARIANCE ANALYSIS**

CASE NUMBER: V08-056

STAFF CONTACT: Doug Trettin, City Planner 770-206-1515
E-mail: doug.trettin@sandyspringsga.org

BACKGROUND:

The City placed a stop work order on the subject property and issued a notice of violation for constructing without a required building permit.

REQUEST:

The applicant is requesting relief as follows:

1) Variance from Section 6.2.3.D of the Zoning Ordinance to reduce the required forty (40) foot minimum rear yard setback to 4.5 feet and

2) Variance from Section 6.2.3.I to allow for an accessory structure to be located within a required minimum yard setback.

Both variances are to allow for a detached garage measuring twenty-one (21) feet by twenty-eight (28) feet.

ANALYSIS:

The applicant has provided site plans, a topographical map, and photographs indicating the subject property to be irregular in shape, wooded, and sloping. The existing house is located on the highpoint of the lot where the land slopes away to the north, south, and west. A stream extends north/south across the front of the property.

The applicant states the following:

The applicant requests approval of this variance and subsequent permit because additional parking is direly needed to address the current parking shortage for the household residents and daily staff and to provide a safe place for each to park. The desired location is the only feasible location in harmony with the original intent of the Zoning Ordinance that does not induce an overwhelming hardship on the property owners.

As shown on the original 1987 plan notes for the house, the subject garage location is the location originally designated for additional parking expansion when the house was built and is the only location on the site suitable to build a small additional garage/storage building without major hardship or ecological impact. Additionally, the aforementioned location was planned for a parking structure from the beginning design and house construction and is the

only location in harmony with the existing neighborhood structures (our house and our neighbors' houses), the landscaping, the site and stream topology, the adjacent forest, and wildlife.

As such, this location is the only one available that is in harmony with the original intentions of the Zoning Ordinance. In fact, the original neighborhood lot plat (attached) does not indicate any prohibited setbacks that would be affected by this structure and the designation on the original approved plans for parking expansion in this area may indicate this area was always perceived to be buildable and in compliance with the Zoning Ordinance, or that a variance was already in place due to the extreme terrain and limited building site locations. Additionally, when the applicant purchased the house, there was a small-prefabricated storage building at this location, which had fallen into disrepair and was recently removed. The applicant is requesting a variance so that the rear setback would be 4.5 feet and would coincide with the location of the previous storage building.

Though relatively large and heavily wooded, the lot has a rough, highly steeped natural topography with a small flat plateau, steep ravine, and a small stream running through it. Wildlife is abundant on our property.

The flat plateau is the only suitable building site on the lot without major expense, site disruption and ecological impact. To build anywhere else on the lot would be a major economic hardship and ecological site impact involving bulldozers, major tree removal and thousands of pounds of fill dirt introduced to level a portion of the site not currently developed.

The house sits on this plateau, with a small portion of additional flat, cleared and paved lot suitable and always planned for an additional garage structure. Building in this area will not involve any tree removal or ecological impact and will be consistent with original house design. Building in this location will enhance property value and site aesthetics. Additionally, building in this location will not create a hardship for any of our neighbors due to site terrain and proximity to the existing house structure; this new structure will not be visible from the street or any of our neighbors' houses.

In addition to the astronomical expense, hardship and ecological impact, building anywhere else on the site would not be in harmony with the site, existing house location and design and would potentially decrease property value and would not be in harmony with our neighbors' property and the original intent of the Zoning Ordinance.

Department Comments

The staff held a Focus Meeting on October 1, 2008 at which the following departmental comments were provided:

LAND DEVELOPMENT	Engineering Plan Reviewer	▪ No comments
	Arborist/Landscape Architect	▪ Site is in the River Corridor.
BUILDING AND PERMITTING	Building Plan Reviewer	▪ No comments
FIRE DEPT.	Fire Protection Engineer	▪ No comments
TRANSPORTATION	Public Works Dept., Transportation Planner	▪ No comments
	Georgia Department of Transportation	▪ No comments

Standards for Consideration

The applicant has indicated a justification for variance based on the following standard(s):

1. *Relief, if granted, would be in harmony with, or, could be made to be in harmony with, the general purpose and intent of the Zoning Ordinance;*

The applicant states the following:

The applicant requests approval of this variance and subsequent permit because additional parking is direly needed to address the current parking shortage for the household residents and daily staff and to provide a safe place for each to park.

The desired location is the only feasible location in harmony with the original intent of the Zoning Ordinance.

As shown on the original 1987 plan notes for the house, the subject garage location is the location originally designated for additional parking expansion when the house was built and is the only location on the site suitable to build a small additional garage/storage building without major hardship or ecological impact. Additionally, the aforementioned location was planned for a parking structure from the beginning design and house construction and is the only location in harmony with the existing

neighborhood structures (our house and our neighbors' houses), the landscaping, the site and stream topology, the adjacent forest, and wildlife.

As such, this location is the only one available that is in harmony with the original intentions of the Zoning Ordinance. In fact, the original neighborhood lot plat (attached) does not indicate any prohibited setbacks that would be affected by this structure and the designation on the original approved plans for parking expansion in this area may indicate this area was always perceived to be buildable and in compliance with the Zoning Ordinance.

Additionally, when the applicant purchased the house, there was a small-prefabricated storage building at this location, which had fallen into disrepair and was recently removed. The applicant is requesting a variance so that the rear setback would be 4.5 feet and would coincide with the location of the previous storage building.

The flat plateau is the only suitable building site on the lot without major expense, site disruption and ecological impact. To build anywhere else on the lot would be a major economic hardship and ecological site impact involving bulldozers, major tree removal and thousands of pounds of fill dirt introduced to level a portion of the site not currently developed.

The house sits on this plateau, with a small portion of additional flat, cleared and paved lot suitable and always planned for an additional garage structure. Building in this area will not involve any tree removal or ecological impact and will be consistent with original house design. Building in this location will enhance property value and site aesthetics. Additionally, building in this location will not create a hardship for any of our neighbors due to site terrain and proximity to the existing house structure; this new structure will not be visible from the street or any of our neighbors' houses.

In addition to the astronomical expense, hardship and ecological impact, building anywhere else on the site would not be in harmony with the site, existing house location and design and would potentially decrease property value and would not be in harmony with our neighbors' property and the original intent of the Zoning Ordinance.

2. *The application of the particular provision of the Zoning Ordinance to a particular piece of property, due to extraordinary and exceptional conditions pertaining to that property because of its size, shape, or topography, would create an unnecessary hardship for the owner while causing no detriment to the public;*

The applicant has provided site plans, a topographical map, and photographs indicating the subject property to be irregular in shape, wooded, and sloping. The existing house is located on the highpoint of the lot where the land slopes away to the north, south, and west. A stream extends north/south across the front of the property.

The applicant states the following:

The desired location is the only feasible location that does not induce an overwhelming hardship on the property owners.

Though relatively large and heavily wooded, the lot has a rough, highly steeped natural topography with a small flat plateau, steep ravine, and a small stream running through it. Wildlife is abundant on our property. The flat plateau is the only suitable building site on the lot.

Recommended Condition(s)

Should the Board choose to approve the application, Staff recommends the following condition(s):

1. The proposed garage shall be constructed in accordance with the proposed site plan, provided by the applicant dated received September 2, 2008 by the Department of Community Development, for the variance herein, showing a detached garage located within a required minimum yard setback and showing a reduction in the required forty (40) foot minimum rear yard setback to 4.5 feet where necessary to accommodate the portion(s) of the encroachment(s) only.
2. The exterior construction material, color, and design of the proposed garage shall be similar to the maximum possible extent to the existing structure.

ATTACHMENTS: Letter of appeal, site plans, topographical map, photographs, and letters of support.



Variance Petition No. V08-057

HEARING & MEETING DATES

Board of Zoning Appeals Hearing

November 13, 2008

APPLICANT/PETITIONER INFORMATION

Property Owner	Petitioner	Representative
Raymond Schoenbaum	Raymond Schoenbaum	Mark Hutcheson

PROPERTY INFORMATION

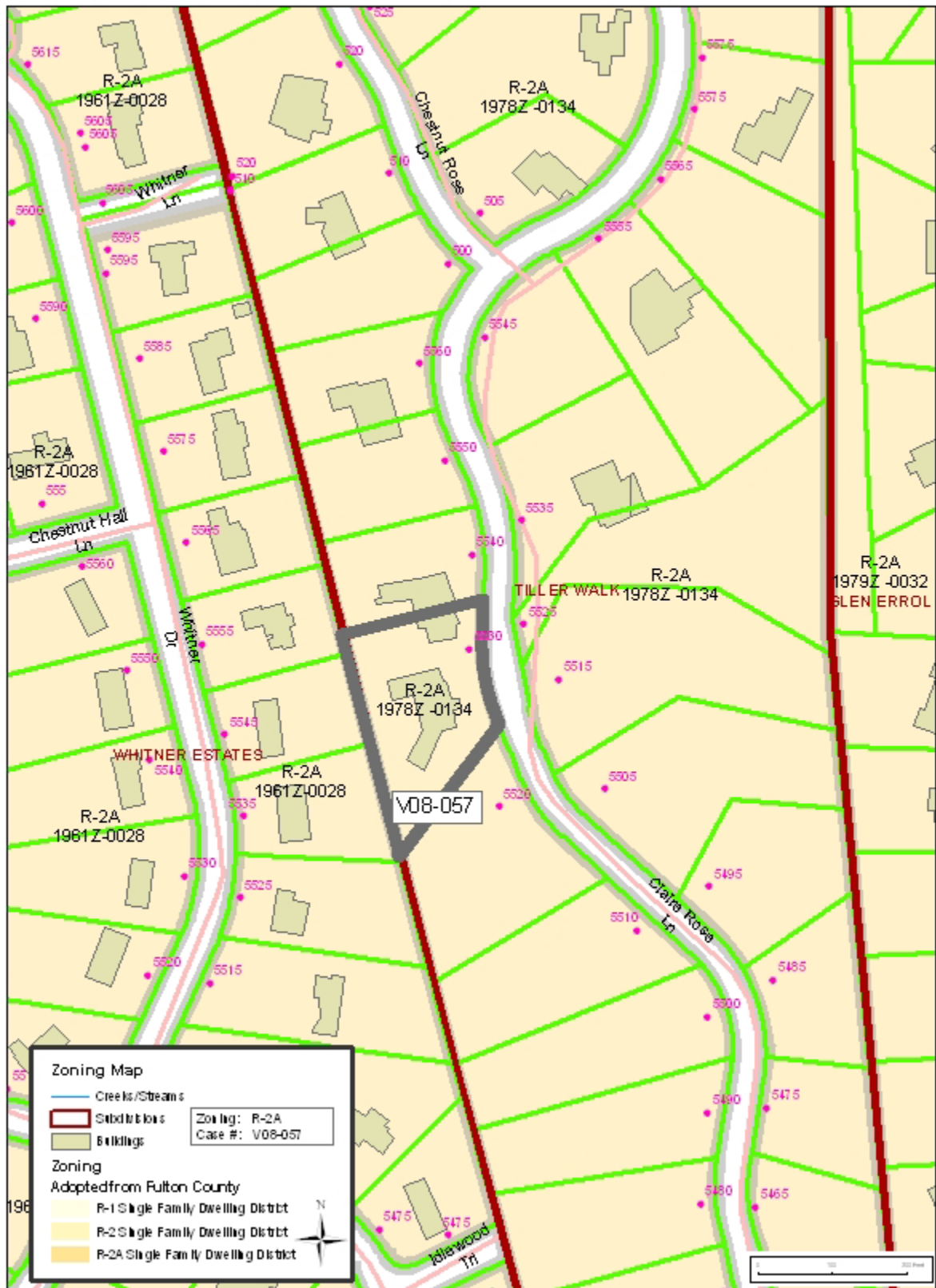
Address, Land Lot(s), and District	5530 Claire Rose Lane Land Lot(s) 134, District 17
Council District	6
Frontage and Area	162 feet of frontage along the west side of Claire Rose Lane. The subject property has a total area of approximately 0.96 acres.
Existing Zoning and Use	The lot is zoned R-2A (Single-family Dwelling District) under zoning case Z78-134. The property is developed with a single-family residence.
Overlay District	N/A
2027 Comprehensive Future Land Use Map Designation	R1-2 Residential (1 to 2 units per acre)

INTENT

The applicant is seeking a primary variance from Section 109-225.a 2 of the Stream Buffer Protection Ordinance to reduce the required twenty-five (25) foot impervious surface setback to eighteen (18) feet to allow for a porch addition to a single-family house.

Parcel Map

5530 Claire Rose Lane



**CITY OF SANDY SPRINGS
DEPARTMENT OF COMMUNITY DEVELOPMENT
VARIANCE ANALYSIS**

CASE NUMBER: V08-057

STAFF CONTACT: Doug Trettin, City Planner 770-206-1515
E-mail: doug.trettin@sandyspringsga.org

REQUEST:

The applicant is requesting relief from Section 109-225.a 2 of the Stream Buffer Protection Ordinance to reduce the required twenty-five (25) foot impervious surface setback to eighteen (18) feet to allow for a porch/pavilion addition to a single-family house.

ANALYSIS:

The applicant has provided site plans and photographs indicating the subject property to be irregular in shape, wooded, and sloping toward an existing stream located along the south side property line. Currently, the subject property is "Grandfathered" for having a house structure within a Stream Buffer.

The applicant states the following:

The roof and structure proposed to be added to the Schoenbaum residence is wanted and needed to provide an area adjacent to the pool so children, grandchildren, and the applicant can relax by the pool and find refuge from the sun.

Because of the shape and topography of the subject lot, the house was placed and built on the lot in a manner consistent with all laws that governed buffer, setbacks, and stream ordinances at that time. This placement dictated the location of the pool, and, therefore, the proposed structure is limited to where it can be built. This structure would not add any impervious surface nor would it do any disruption to the area it is proposed to be added. The roof drains would be tied in to existing downspout drainage pipes so that it will not have any impact on the surrounding environment.

The subject backyard is almost entirely pool and pool deck with a stacked stone wall and privacy hedge along the back property line. This proposed structure would be an extension to our house using the same materials and roofing that already exist, so that it would be in harmony with its surroundings. It would be attached to the house and be a part of the existing pool deck. It is proposed to be inside the existing fenced area and retaining wall, about 8' from the edge of the pool.

There is not another area around the pool for this shade structure to be installed without encroaching on the edge of the water line of the pool. Although this structure would be aesthetically pleasing as it matches the existing house, it would not be in view of any of the neighbors; it would only to be viewed from the existing pool deck.

In order for this structure to function as needed, its roof line would cross over the 40' rear setback by only 6.67 feet; however, the proposed pavilion/porch may extend, by right, up to ten feet into the minimum rear yard. Please find letters from our neighbors on the east side as well as our back neighbors supporting the building of this structure.

Department Comments

The staff held a Focus Meeting on October 1, 2008 at which the following departmental comments were provided:

LAND DEVELOPMENT	Engineering Plan Reviewer	▪ No comment; however, since the addition is apparently over an area already "contained" by existing retaining walls and fences and is over an area already either landscaped and regularly maintained or covered with a concrete patio surface, the typical conditions attached to variances allowing encroachments into impervious setbacks seem to be inappropriate.
	Arborist/Landscape Architect	▪ The site is existing non-conforming.
BUILDING AND PERMITTING	Building Plan Reviewer	▪ No comments
FIRE DEPT.	Fire Protection Engineer	▪ No comments
TRANSPORTATION	Public Works Dept., Transportation Planner	▪ No comments
	Georgia Department of Transportation	▪ No comments

Standards for Consideration

The applicant has indicated a justification for variance based on the following standard(s):

1. *Relief, if granted, would be in harmony with, or, could be made to be in harmony with, the general purpose and intent of the Zoning Ordinance;*

Currently, the subject property is “Grandfathered” for having a house structure within a Stream Buffer.

The applicant states the following:

The roof and structure proposed to be added to the Schoenbaum residence is wanted and needed to provide an area adjacent to the pool so children, grandchildren, and the applicant can relax by the pool and find refuge from the sun.

This structure would not add any impervious surface nor would it do any disruption to the area it is proposed to be added. The roof drains would be tied in to existing downspout drainage pipes so that it will not have any impact on the surrounding environment.

The subject backyard is almost entirely pool and pool deck with a stacked stone wall and privacy hedge along the back property line. This proposed structure would be an extension to our house using the same materials and roofing that already exist, so that it would be in harmony with its surroundings. It would be attached to the house and be a part of the existing pool deck. It is proposed to be inside the existing fenced area and retaining wall, about 8’ from the edge of the pool.

There is not another area around the pool for this shade structure to be installed without encroaching on the edge of the water line of the pool. Although this structure would be aesthetically pleasing as it matches the existing house, it would not be in view of any of the neighbors; it would only to be viewed from the existing pool deck.

Please find letters from our neighbors on the east side as well as our back neighbors supporting the building of this structure.

2. *The application of the particular provision of the Zoning Ordinance to a particular piece of property, due to extraordinary and exceptional conditions pertaining to that property because of its size, shape, or topography, would create an unnecessary hardship for the owner while causing no detriment to the public;*

The applicant has provided site plans and photographs indicating the subject property to be irregular in shape, wooded, and sloping toward an existing stream located along the south side property line.

The applicant states the following:

Because of the shape and topography of the subject lot, the house was placed and built on the lot in a manner consistent with all laws that governed buffer, setbacks, and stream ordinances at that time. This placement dictated the location of the pool, and, therefore, the proposed structure is limited to where it can be built.

Recommended Condition(s)

Should the Board choose to approve the application, Staff recommends the following condition(s):

1. The proposed pavilion/porch shall be constructed in accordance with the proposed site plan, provided by the applicant dated received September 2, 2008 by the Department of Community Development, for the variance herein, showing a reduction in the required twenty-five (25) foot impervious surface setback to eighteen (18) feet where necessary to accommodate the portion(s) of the encroachment(s) only.
2. The exterior construction material, color, and design of the proposed pavilion/porch shall be similar to the maximum possible extent to the existing structure.

ATTACHMENTS: Letter of appeal, site plans, elevation drawings, photographs, and letters of support.



Variance Petition No. V08-058

HEARING & MEETING DATES

Board of Zoning Appeals Hearing

November 13, 2008

APPLICANT/PETITIONER INFORMATION

Property Owner	Petitioner	Representative
Rod Windley	Lee Ann Smith	Carl Westmoreland

PROPERTY INFORMATION

Address, Land Lot(s), and District	53 75 Long Island Drive Land Lot(s) 122, District 17
Council District	6
Frontage and Area	490 feet of frontage along the east side of Long Island Drive. The subject property has a total area of approximately 7.12 acres.
Existing Zoning and Use	The lot is zoned R-2 (Single-family Dwelling District). The property is being developed with a single-family residence.
Overlay District	N/A
2027 Comprehensive Future Land Use Map Designation	R0-1 Residential (0 to 1 units per acre)

INTENT

The applicant is seeking a primary variance from Section 109-225.a 1 and 2 of the Stream Buffer Protection Ordinance to reduce the seventy-five (75) foot buffer and setback requirements (50 foot undisturbed natural buffer and 25 foot impervious surface setback) to a zero (0) foot undisturbed natural buffer to allow for a driveway, vehicular gate, and retaining wall(s).

Part of the scope of this variance application involves an existing retaining wall located at the northeast corner of the property and within the twenty-five (25) foot impervious surface setback. The aforementioned retaining wall was permitted by Sandy Springs. The site plan that was part of the approved wall permit application was drawn by a different design professional now contracted by the applicant and did not indicated the stream in this area.

Parcel Map

5375 Long Island Drive



**CITY OF SANDY SPRINGS
DEPARTMENT OF COMMUNITY DEVELOPMENT
VARIANCE ANALYSIS**

CASE NUMBER: V08-058

STAFF CONTACT: Doug Trettin, City Planner 770-206-1515
E-mail: doug.trettin@sandyspringsga.org

BACKGROUND:

Part of the scope of this variance application involves an existing retaining wall located at the northeast corner of the property and within the twenty-five (25) foot impervious surface setback. The aforementioned retaining wall was permitted by Sandy Springs. The site plan that was part of the approved wall permit application was drawn by a different design professional now contracted by the applicant and did not indicated the stream in this area.

REQUEST:

The applicant is requesting relief from Section 109-225.a 1 and 2 of the Stream Buffer Protection Ordinance to reduce the seventy-five (75) foot buffer and setback requirements (50 foot undisturbed natural buffer and 25 foot impervious surface setback) to a zero (0) foot undisturbed natural buffer to allow for a driveway, vehicular gate, and retaining wall(s).

ANALYSIS:

The applicant has provided revised site plans and photographs indicating the subject property to have a rough parallelogram shape. The back portion of land of the subject property is retained by large walls. Streams are located near the front and both side yards. Easements are located diagonally across the middle of the property. The majority of the front yard is within a 100 year flood plain.

Staff notes the site plan provided by the applicant clearly defines the limits and amounts of land disturbance within the twenty-five (25) foot State Buffer, fifty (50) foot undisturbed natural buffer, and within the twenty-five (25) foot impervious surface setback. Additionally, the proposed new driveway would be constructed primarily over an existing driveway and the applicant has revised the plans to shift the proposed house completely out of the stream buffer. Staff also notes the applicant has applied for a State variance; however, to date, Staff is unaware of an approval.

The applicant states the following:

The property is unique in that it has a limited amount of buildable area (26% of the total site) due to the location of creeks and floodplain on the property and also in that there are several legally non-conforming structures which currently exist within the stream buffer. The primary change in the plan is that the garage on the northern portion of the house which previously extended into the 75-foot buffer has been rotated so that it is now entirely out of the buffer. The only remaining encroachment in that area would be an approximately 25-foot length (50 square feet) of a retaining wall which was permitted earlier by the City and removal of which would

cause substantially more disturbance to the buffer area than allowing it to remain. In addition, there would be an encroachment to allow an amount of fill for construction of the driveway (which would be constructed of a pervious material) and to install a gate across the proposed driveway. The Applicant is willing to commit, as a condition of this variance to remove a total of 10,957 square feet of existing impervious coverage within the stream buffer, consisting of three buildings, a tennis court and the existing driveway and bridge in the center of the property. Therefore, given the 3,047 square feet of new encroachment proposed by this application, there would be a net decrease of buffer encroachment of 7,910 square feet or a 72% decrease from that which currently exists.

Department Comments

The staff held a Focus Meeting on October 1, 2008 at which the following departmental comments were provided:

LAND DEVELOPMENT	Engineering Plan Reviewer	No comment; however, it should be noted that the proposal results in the removal of existing structures that lie within the City and State stream buffer areas, results in the elimination of a vehicular crossing over Long Island Creek, and utilizes an existing driveway and stream crossing of a tributary to Long Island Creek.
	Arborist/Landscape Architect	Originally, the design professional did not accurately show the stream buffer on the site plan.
BUILDING AND PERMITTING	Building Plan Reviewer	No comments
FIRE DEPT.	Fire Protection Engineer	No comments
TRANSPORTATION	Public Works Dept., Transportation Planner	No comments
	Georgia Department of Transportation	No comments

Standards for Consideration

The applicant has indicated a justification for variance based on the following standard(s):

1. *Relief, if granted, would be in harmony with, or, could be made to be in harmony with, the general purpose and intent of the Zoning Ordinance;*

Staff notes, the proposed new driveway would be constructed primarily over an existing driveway and the applicant has revised the plans to shift the proposed house completely out of the stream buffer.

The applicant states the following:

The primary change in the plan is that the garage on the northern portion of the house which previously extended into the 75-foot buffer has been rotated so that it is now entirely out of the buffer. The only remaining encroachment in that area would be an approximately 25-foot length (50 square feet) of a retaining wall which was permitted earlier by the City and removal of which would cause substantially more disturbance to the buffer area than allowing it to remain.

There would be an encroachment to allow an amount of fill for construction of the driveway (which would be constructed of a pervious material) and to install a gate across the proposed driveway. The Applicant is willing to commit, as a condition of this variance to remove a total of 10,957 square feet of existing impervious coverage within the stream buffer, consisting of three buildings, a tennis court and the existing driveway and bridge in the center of the property. Therefore, given the 3,047 square feet of new encroachment proposed by this application, there would be a net decrease of buffer encroachment of 7,910 square feet or a 72% decrease from that which currently exists.

2. *The application of the particular provision of the Zoning Ordinance to a particular piece of property, due to extraordinary and exceptional conditions pertaining to that property because of its size, shape, or topography, would create an unnecessary hardship for the owner while causing no detriment to the public;*

The applicant has provided revised site plans and photographs indicating the subject property to have a rough parallelogram shape. The back portion of land of the subject property is retained by large walls. Streams are located near the front and both side yards. Easements are located diagonally across the middle of the property. The majority of the front yard is within a 100 year flood plain.

The applicant states the following:

The property is unique in that it has a limited amount of buildable area (26% of the total site) due to the location of creeks and floodplain on the property and also in that there are several legally non-conforming structures which currently exist within the stream buffer.

Recommended Condition(s)

Should the Board choose to approve the application, Staff recommends the following condition(s):

- 1) The subject wall(s), driveway, and vehicular gate shall be constructed in accordance with the proposed site plan, provided by the applicant dated received October 27, 2008 by the Department of Community Development, for the variance herein, showing a reduction in the seventy-five (75) foot buffer and setback requirements (50 foot undisturbed natural buffer and 25 foot impervious surface setback) to a zero (0) foot undisturbed natural buffer to allow for a driveway, vehicular gate, and retaining wall(s) where necessary to accommodate the portion(s) of the encroachment(s) only.
- 2) In areas where the fifty (50) foot undisturbed natural buffer and the twenty-five (25) foot impervious setback have been reduced, all paths, or patios shall be constructed of pervious material.
- 3) All proposed driveway(s) shall be constructed of pervious material.
- 4) When garages or parking pads are located in areas where the fifty (50) foot undisturbed natural buffer and the twenty-five (25) foot impervious setback have been reduced, grates used for drainage of these areas (where oil, grease or antifreeze might flow) shall have either soil for filtration before entering the stream or artificial filtration with proof of maintenance required.
- 5) Stream crossings shall be as narrow as possible and shall be pervious.
- 6) Streams shall not be channelized or straightened. Small-unnamed tributaries shall not have concrete poured along the banks. The applicant shall provide proper stream bank restoration if disturbance to the stream bank occurs.
- 7) The remaining fifty (50) foot undisturbed natural buffer shall remain untouched in its current state; grass shall not be planted in the fifty (50) foot undisturbed natural buffer.
- 8) All footings for bridges crossing streams and all pipes located under such bridges shall not be located in the streambed(s). All bridge spans shall be sufficiently wide to prevent any obstruction to the flow of water.
- 9) The owner/developer shall provide for swimming pool water overflow to discharge in a manner that is compliant with the Department of Community Development Pool Discharge Policy.

- 10) Stream bank restoration shall be installed as required by the Director of the Community Development Department.
- 11) All approved encroachments into the fifty (50) foot undisturbed stream buffer shall be clearly delineated both on the approved site plan and on site by use of tree save fence and two (2) rows of type-C silt fence. Additionally, the limits of encroachment into the buffer must be field-verified by staff during a pre-construction meeting before issuance of the applicable permit(s) for the site.

ATTACHMENTS: Letter of appeal, site plans, and photographs.



Variance Petition No. V08-059

HEARING & MEETING DATES

Board of Zoning Appeals Hearing

November 13, 2008

APPLICANT/PETITIONER INFORMATION

Property Owner	Petitioner	Representative
Pete and Merril Rivers	Pete Rivers	Pete Rivers

PROPERTY INFORMATION

Address, Land Lot(s), and District	310 Ledgemont Court Land Lot(s) 68, District 17
Council District	5
Frontage and Area	88 feet of frontage along the north side of Ledgemont Court. The subject property has a total area of approximately 0.17 acres.
Existing Zoning and Use	The lot is zoned R-5 (Single-family Dwelling District). The property is being developed with a single-family residence.
Overlay District	N/A
2027 Comprehensive Future Land Use Map Designation	R2-3 Residential (2 to 3 units per acre)

INTENT

The applicant is requesting two (2) primary variances:

- 1) Variance from Section 6.8.3.D to reduce the required twenty (20) foot minimum rear yard setback to 10.58 feet and
- 2) Variance from Section 6.8.3.I to allow for an accessory structure to be located within a required minimum yard setback.

Both variances are to allow for a gazebo.

The City issued a notice of violation for locating and accessory structure within minimum rear yard setback.

Parcel Map

310 Ledgemont Court



**CITY OF SANDY SPRINGS
DEPARTMENT OF COMMUNITY DEVELOPMENT
VARIANCE ANALYSIS**

CASE NUMBER: V08-059

STAFF CONTACT: Doug Trettin, City Planner 770-206-1515
E-mail: doug.trettin@sandyspringsga.org

BACKGROUND:

The City issued a notice of violation for locating an accessory structure within minimum rear yard setback.

REQUEST:

The applicant is requesting relief as follows:

- 1) Variance from Section 6.8.3.D to reduce the required twenty (20) foot minimum rear yard setback to 10.58 feet and
- 2) Variance from Section 6.8.3.I to allow for an accessory structure to be located within a required minimum yard setback.

Both variances are to allow for a gazebo.

ANALYSIS:

The applicant has provided site plans and photographs indicating the subject lot to be rectangular in shape and tiered and sloping toward the Ledgmont Court right-of-way. The aforementioned rectangular shape is one where the front and rear property lines are larger than the side property lines. The lot area of the subject property is approximately 7,500 square feet which is the minimum lot area required for R-5 zoning districts.

Staff notes a porch, as defined by the Zoning Ordinance, located on a single-family residential lot and attached to the main dwelling may extend, by right, no more than ten (10) feet into a minimum front or rear yard. A deck is defined as follows: A structure abutting a dwelling with no roof or walls except for visual partitions and railings not to exceed 42" above finished floor which is constructed on piers or a foundation above-grade for use as an outdoor living area.

The applicant states the following:

The variance is being requested due to a hardship caused by the slope of the subject property as well as the original placement of the applicant's home on the property in an effort to allow the applicant to keep in place the subject gazebo which was erected in January of 2008.

The gazebo is 100 square feet by 9 feet high and has plant shelves on the interior of the four corners. The applicant purchased the gazebo at a local home improvement store.

The applicant has attached a copy of the product description, product specifications, and product reviews from their website.

Gazebo Product Description:

This simple and modern steel gazebo offers a 10 foot by 10 foot area of usable space and an open airy feel. Its waterproof and natural colored canopy employs a soft and delicate complement to the sturdy and rust-resistant powder coating frame. Its four featured foldable corner planters accommodate potted plants as you may want, and, more importantly, they add unique feelings to the whole product.

Gazebo Product Specifications:

Assembled Height: 123.2 In.
Assembled Width: 123.2 in.
Assembled Depth: 111.8 in.
Collapsible: Yes
Size: 10 Ft. x 10 Ft.

Gazebo Product Reviews:

) Review 1 of 2

"This gazebo is beautiful and would create a relaxing get-a-way in your own back yard. I would recommend bug netting so as to keep it relaxing in the evening as well.

Great buy for the money."

) Review 2 of 2

"The gazebo I purchased from Home Depot is an excellent addition to our deck. Yes we installed it on our deck and it gives us shade and comfort from the summer sun and adds elegance to our backyard entertainment area. Thank you Home Depot."

When the gazebo was purchased, many options were available regarding style and color. The applicant carefully chose a style that was open and airy and a color that complemented the current home and back retaining wall (tan). The applicant wanted to ensure there is a harmonious feel with the gazebo, patio furniture, and surrounding area (please refer to pictures provided).

At the time of the gazebo purchase, the applicant was not aware of any restrictions related to the Sandy Springs Code. There was a larger structure, a children's swing set, was in this same area previously when the applicant purchased the home 3 years ago. The applicant removed the children's swing set and now this is where the gazebo resides.

There were no complaints from the applicant's adjacent neighbors regarding the gazebo until a recent disagreement over fencing which arose between the applicant and the adjacent neighbor to the east. Now the gazebo is an issue. In all correspondence by the adjacent neighbor to the east, the neighbor continues to characterize the gazebo as a tent. The applicant wants to make sure it is clear *this is not a tent*. Due to the unique layout of the six interior homes in the Ledgemont subdivision, the applicant feels the intent of the Sandy Springs ordinances is not meant to deal with this type of situation. If a

variance is not granted, the applicant believes it will be a hardship and render this part of the property essentially unusable.

At a recent Ledgemont homeowners meeting, on August 24, 2008, the applicant asked if there had been any complaints submitted by any other homeowners regarding the gazebo. The applicant was informed by the homeowner president, Richard Holland, there had been no complaints.

It had been pointed out that we do not comply with the setback requirement of an Accessory Structure for the 20 foot minimum space from the rear of our property.

The setback back for the gazebo is 10 feet 6 inches from the side (well beyond the 5 Foot requirement) and 10 feet 7 inches from the rear.

The terrain of the applicant's yard is varied and basically comprised of two tiers. The first tier at the rear of the property is elevated, above the patio area, by 7 feet 2 inches. The applicant has a retaining wall that borders the complete rear of the property (please see attached photos #1, 3, 5, & 6). The second tier starts at the back of the applicant's house and drops another 8 feet and then the yard slopes approximately another 4 feet to the street (please see attached photos #7 & 8). In addition, the applicant's house was designed in a manner that has caused it to be placed on the lot that does not allow for maximum use of the side setbacks thereby impacting our ability to utilize the depth of the lot (please see attached plat markup). A typical lot is rectangular in shape from the front to rear setback. The applicant's lot is opposite and, as a result, the applicant is constrained by the shape of the lot and not able to make the most of the rear setback. This again causes the applicant a hardship in use of this space.

The applicant has reached out to the neighbors that border the property as well as others in the neighborhood and reviewed with them the variance request, letter of appeal, and pictures. Everyone the applicant has been able to meet with, so far, has provided a letter stating the gazebo and location is acceptable to them. These are included as part of the variance request documentation.

Lastly, the applicant would like to point out, up to about 8 to 10 weeks ago, there were bushes on the side yard of the adjacent neighbor to the east and between the applicant's side yard and the neighbor's yard. This landscaping was in excess of 9 feet high and blocked the applicant's view of the neighbor's property as well as the neighbor's view of the applicant's property. To enable a fence to be erected on the adjacent eastern side neighbor's property, these bushes had to be removed. The applicant would be more than willing to replace these bushes on the applicant's subject property, in the interest of being good neighbors, to restrict any view of the gazebo which may remain. The applicant also relocated the gazebo further away from its original location and closer to the house in the past 8 weeks to take away any issues with seeing the accessory structure from the eastern side neighbor's patio and home.

The applicant hopes a positive response to the variance request can be received so the applicant can continue to enjoy sitting outside in the evenings without being attacked by mosquitoes and other types of bugs, which the gazebo allows the applicant to do.

Department Comments

The staff held a Focus Meeting on October 1, 2008 at which the following departmental comments were provided:

LAND DEVELOPMENT	Engineering Plan Reviewer	▪ No comments
	Arborist/Landscape Architect	▪ No comments
BUILDING AND PERMITTING	Building Plan Reviewer	▪ No comments
FIRE DEPT.	Fire Protection Engineer	▪ No comments
TRANSPORTATION	Public Works Dept., Transportation Planner	▪ No comments
	Georgia Department of Transportation	▪ No comments

Standards for Consideration

The applicant has indicated a justification for variance based on the following standard(s):

1. *Relief, if granted, would be in harmony with, or, could be made to be in harmony with, the general purpose and intent of the Zoning Ordinance;*

Staff notes a porch, as defined by the Zoning Ordinance, located on a single-family residential lot and attached to the main dwelling may extend, by right, no more than ten (10) feet into a minimum front or rear yard. A deck is defined as follows: A structure abutting a dwelling with no roof or walls except for visual partitions and railings not to exceed 42" above finished floor which is constructed on piers or a foundation above-grade for use as an outdoor living area.

The applicant states the following:

When the gazebo was purchased, many options were available regarding style and color. The applicant carefully chose a style that was open and airy and a color that complemented the current home and back retaining wall (tan). The applicant wanted to ensure there is a harmonious feel with the gazebo, patio furniture, and surrounding area (please refer to pictures provided).

At the time of the gazebo purchase, the applicant was not aware of any restrictions related to the Sandy Springs Code. There was a larger structure, a children's swing set, was in this same area previously when the applicant purchased the home 3 years ago. The applicant removed the children's swing set and now this is where the gazebo resides.

Lastly, the applicant would like to point out, up to about 8 to 10 weeks ago, there were bushes on the side yard of the adjacent neighbor to the east and between the applicant's side yard and the neighbor's yard. This landscaping was in excess of 9 feet high and blocked the applicant's view of the neighbor's property as well as the neighbor's view of the applicant's property. To enable a fence to be erected on the adjacent eastern side neighbor's property, these bushes had to be removed. The applicant would be more than willing to replace these bushes on the applicant's subject property, in the interest of being good neighbors, to restrict any view of the gazebo which may remain. The applicant also relocated the gazebo further away from its original location and closer to the house in the past 8 weeks to take away any issues with seeing the accessory structure from the eastern side neighbor's patio and home.

2. *The application of the particular provision of the Zoning Ordinance to a particular piece of property, due to extraordinary and exceptional conditions pertaining to that property because of its size, shape, or topography, would create an unnecessary hardship for the owner while causing no detriment to the public;*

The applicant has provided site plans and photographs indicating the subject lot to be rectangular in shape and tiered and sloping toward the Ledgmont Court right-of-way. The aforementioned rectangular shape is one where the front and rear property lines are larger than the side property lines. The lot area of the subject property is approximately 7,500 square feet which is the minimum lot area required for R-5 zoning districts.

The applicant states the following:

The variance is being requested due to a hardship caused by the slope of the subject property as well as the original placement of the applicant's home on the property in an effort to allow the applicant to keep in place the subject gazebo which was erected in January of 2008.

Due to the unique layout of the six interior homes in the Ledgemont subdivision, the applicant feels the intent of the Sandy Springs ordinances is not meant to deal with this type of situation. If a variance is not granted, the applicant believes it will be a hardship and render this part of the property essentially unusable.

The terrain of the applicant's yard is varied and basically comprised of two tiers. The first tier at the rear of the property is elevated, above the patio area, by 7 feet 2 inches. The applicant has a retaining wall that borders the complete rear of the property (please see attached photos #1, 3, 5, & 6). The second tier starts at the back of the applicant's house and drops another 8 feet and then the yard slopes approximately another 4 feet to the street (please see attached photos #7 & 8). In addition, the applicant's house was designed in a manner that has caused it to be placed on the lot that does not allow for maximum use of the side setbacks thereby impacting our ability to utilize the depth of the lot (please see attached plat markup). A typical lot is rectangular in shape from the

front to rear setback. The applicant's lot is opposite and, as a result, the applicant is constrained by the shape of the lot and not able to make the most of the rear setback. This again causes the applicant a hardship in use of this space.

Recommended Condition(s)

Should the Board choose to approve the application, Staff recommends the following condition(s):

- 1) The subject accessory structure shall remain located in accordance with the site plan, provided by the applicant dated received September 10, 2008 by the Department of Community Development, for the variance herein, showing an accessory structure located within a required minimum yard setback and showing a reduction in the required twenty (20) foot minimum rear yard setback to 10.58 feet where necessary to accommodate the portion(s) of the encroachment(s) only.

ATTACHMENTS: Letter of appeal, site plan, photographs, letters of support, letters of opposition, and supporting documents.



Variance Petition No. V08-060

HEARING & MEETING DATES

Board of Zoning Appeals Hearing

November 13, 2008

APPLICANT/PETITIONER INFORMATION

Property Owner

H. Hendessi

Petitioner

Michael Morrison

Representative

Wade G. Anderson

PROPERTY INFORMATION

**Address, Land Lot,
and District** 7855 Roswell Road (SR 9)
Land Lot 30, District 17

Council District 4

Frontage and Area 182 feet of frontage along the east side of Roswell Road (SR 9). The subject property has a total area of approximately 1.23 acres.

**Existing Zoning
and Use** C-1 (Community Business District) conditional under Z86-0098,
currently developed with a commercial building.

Overlay District Suburban District

Interim 2025**Comprehensive****Future Land Use****Map Designation**

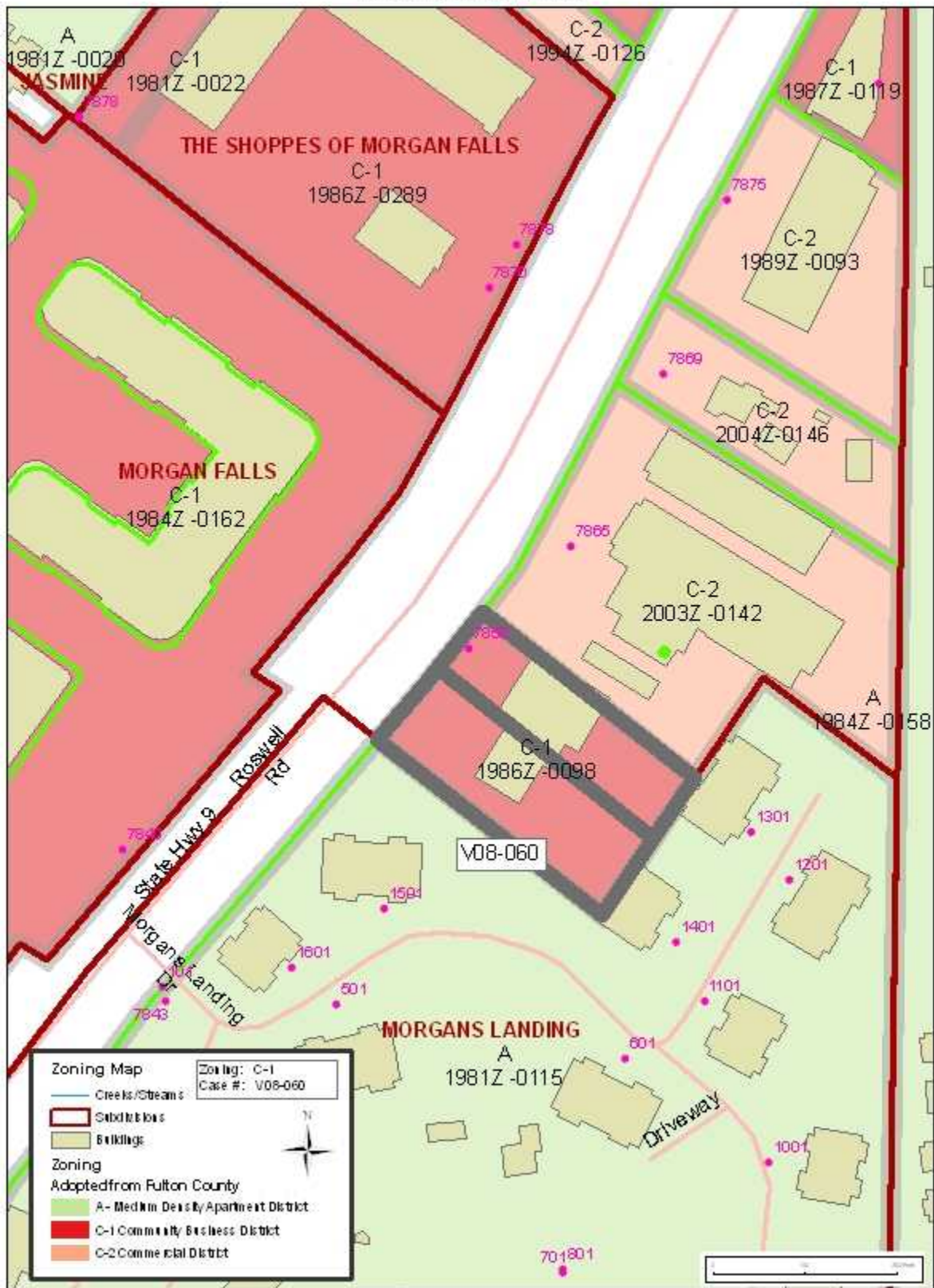
R12-20 Residential (12 to 20 units per acre)

INTENT

The petitioner is seeking a secondary variance to appeal the Department of Community Development's determination that the work completed upon the sign extended its non-conformity; therefore, the sign must be brought into conformance with the City's ordinances.

Parcel Map

7855 Roswell Road



**CITY OF SANDY SPRINGS
DEPARTMENT OF COMMUNITY DEVELOPMENT
VARIANCE ANALYSIS**

CASE NUMBER: V08-060

STAFF CONTACT: Cesar Geraldo, Zoning Administrator
cesar.geraldo@sandyspringsga.org

BACKGROUND:

This petition involves the Inseccion Adult Fantasy Store located at 7855 Roswell Road (SR 9) (hereinafter "Inseccion") and its nonconforming sign. On or about, June 2008, Inseccion made changes to its non-conforming sign. The City issued a notice of violation to the store on July 8, 2008 citing a sign face change without a permit, window signs covering more than the allowable 25% of window area, and opaque windows. Per request of the applicant, on July 29, 2008, a 30 day extension was granted to allow for corrective action. The applicant corrected the violations related to the two windows violations. The applicant was informed that since they modified the sign from its original configuration, it constituted a face change which meant they now needed a permit for a new sign which is smaller than the original grandfathered sign.

Summary:

- 1) The sign was a legal non-conforming sign at the beginning of June 2008.
- 2) On or about mid June 2008, Inseccion performed work on the non-conforming sign.
- 3) After completion of work, the sign was modified from having neon on the bottom side to neon on all four sides.
- 4) Upon inspection, it appeared that three neon sides were added during the work performed on the sign.
- 5) Appellant states that the three neon sides had been there and were just replaced.
- 6) Staff reviewed the changes and determined that the three neon sides were added to the sign.
- 7) The appellant argued that Staff was wrong with technical issues that were the basis for the City's determination as stated in their letter dated August 13, 2008.
- 8) City's Staff analyzed the technical issues and responded with a letter of determination dated August 29, 2008. The letter states that the City's determination is that three neon sides were added to the sign. Therefore, the sign lost its non-conforming status.
- 9) Inseccion filed this appeal to the City's determination in a letter dated September 15, 2008.

APPEAL:

The applicant indicates the following basis for the appeal of the Department's determination:

1. The photographs taken by the City's inspector do not fully document the evidence which should be considered. From the subject photographs, the inspectors conclude that the top and sides of the subject sign were never bordered by neon. This is simply not the case. Other facts should be considered.
2. The inspector failed to photograph a series of small push out holes that originally allowed GTO to run from the transformer (then centered on the bottom of the sign) to the neon fully outlining the sign. This configuration was in place when

the sign was first serviced. This original configuration included some old school wiring; specifically the configuration was grounded to the building – which creates a fire hazard.

3. To eliminate the fire hazard a large hole at lower right was drilled in order to ground the neon properly, in a configuration called virtual grounding. This was accomplished before the subject sign was repaired and restored completely.
4. There was an attempt to obtain a sign permit for the planned repair and restoration through a permit runner. The permit runner returned with no permit after being advised by the City that no permit was necessary given the scope of work and the fact that the Intersection store did not have a business license.
5. Because a permit was not necessary, the sign was repaired and restored. The transformer for the sign is now located in the left hand corner and the GTO does diverge at the large hole at the lower left. However, the current configuration does not prove an absence of neon originally surrounding the entire sign. The large hole at lower right, a temporary remedy to a fire hazard, is now abandoned since the new configuration is grounded in a more permanent fashion.

BASIS FOR DEPARTMENT'S DETERMINATION:

The sign at issue, even if it was allowable, is not completed. The new work on the sign cannot be complete without an approved inspection. The lack of insulators on the connections installed by Affordable Signs and Neon establishes that work is not complete. The lower horizontal run has insulators in place over the connections which are not present on portions of the sign. This is a violation of the National Electrical Code. The inconsistency of the insulators suggests that the work was completed at different times.

Moreover, Staff, on several visits to the site, has never observed holes large enough for GTO cable and the required bushing. A proper ground of wiring to a metal structure is not a fire hazard and in some situations is required per code. Staff has not observed any virtual grounding of the neon that would explain the hole drilled (at the time of renovation) to the lower right of the sign nor a reference to a configuration called "virtual grounding" in the National Electrical Code. In addition, the City did not advise anyone that no permit would be necessary regarding the project.

Section 33.20.A of the Zoning Ordinance states that "A nonconforming sign shall not be replaced by another nonconforming sign, except that the substitution or interchange of poster panels, painted boards, or dismountable material on nonconforming signs shall be permitted provided that said replacement does not constitute a material change to the sign. All nonconforming signs shall be maintained in good repair." And section 33.20.B states that "Minor repairs and maintenance of nonconforming signs shall be permitted; provided, however, no structural repairs or changes in the size or shape of a nonconforming sign shall be permitted except to make the sign comply with the standards of this Article. To the extent that any sign allowable hereunder is damaged or destroyed by act of God or by other circumstances beyond control of owner of sign then such sign may be repaired without regard to the restrictions of this paragraph." Since the work completed upon the sign caused the loss of the non-conforming status by adding three neon sides, the sign must be brought into conformance with the City's ordinances.

CONCLUSION AND REQUESTED ACTION:

Staff respectfully requests the Board of Zoning Appeals to uphold the determination made by the Department of Community Development, thereby requiring the applicant to bring the Intersection sign into conformance with the City's ordinances.

ATTACHMENTS: Site plan, pictures, letters of appeal (w/attachments), letter of determination, code enforcement reports.