



SANDY SPRINGS

GEORGIA

BOARD OF APPEALS

Mel Mobley, Chair
Sherri Allen
Jason Bodwell
Fred Jewell
Nathan Kongthum
Justin Sparano
Bill Thackston

Wednesday, January 3, 2024

Regular Meeting

6:00 p.m.

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

Live-stream: www.SandySpringsGA.gov/Stream

Public Comment: <http://spr.gs/publiccomment>

I. Call to Order

II. Roll Call and General Announcements

III. Approval of Meeting Agenda

- A. January 3, 2024 Board of Appeals Meeting Agenda
(Presented by Samantha Brown, Planning and Zoning Clerk)

IV. Approval of Meeting Minutes

- A. December 6, 2023 Board of Appeals Meeting Minutes
(Presented by Samantha Brown, Planning and Zoning Clerk)

V. Cases

- A. **2024-00001 AP23-00003 - 8308 Hewlett Road** - An appeal of the Director's determination of the existing and proposed tree canopy and calculation of tree fund pursuant to their proposed development on the property.
(Presented by Roger Bledsoe, Arborist)

VI. Ongoing Business

VII. New Business

- A. Election of Chair and Vice Chair

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

The City will make reasonable accommodations for those persons.

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- B. Melton Mobley Proclamation of Appreciation
(Presented by Michele McIntosh-Ross, Planning & Zoning Manager)

VIII. Adjournment

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P&Z STAFF REPORT
Board of Appeals Hearing; January 3, 2024

Case: **AP23-00003 – Appeal of Decision**

Staff Contact: Ginger Sottile (gsottile@sandyspringsga.gov)

Report Date: December 15, 2023

REQUEST

To appeal of the fee (\$9,600) required for the Tree Bank per Section 9.3.8.B.2 for 8308 Hewlett Road / BR22-00645.

APPLICANT

Property Owner: Ahamefula Nnodim	Petitioner: Wade Hunnicutt	Representative: Wade Hunnicutt
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PROPERTY INFORMATION

Location:	8308 Hewlett Road
Council District:	1 – John Paulson
Road frontage:	Approximately 83 feet on Hewlett Road
Acreage:	2.71 acres
Existing Zoning: Existing Land Use:	RE-2, Residential
Character Area:	RE-2 (Residential Estate – 2 acres minimum)

SUMMARY

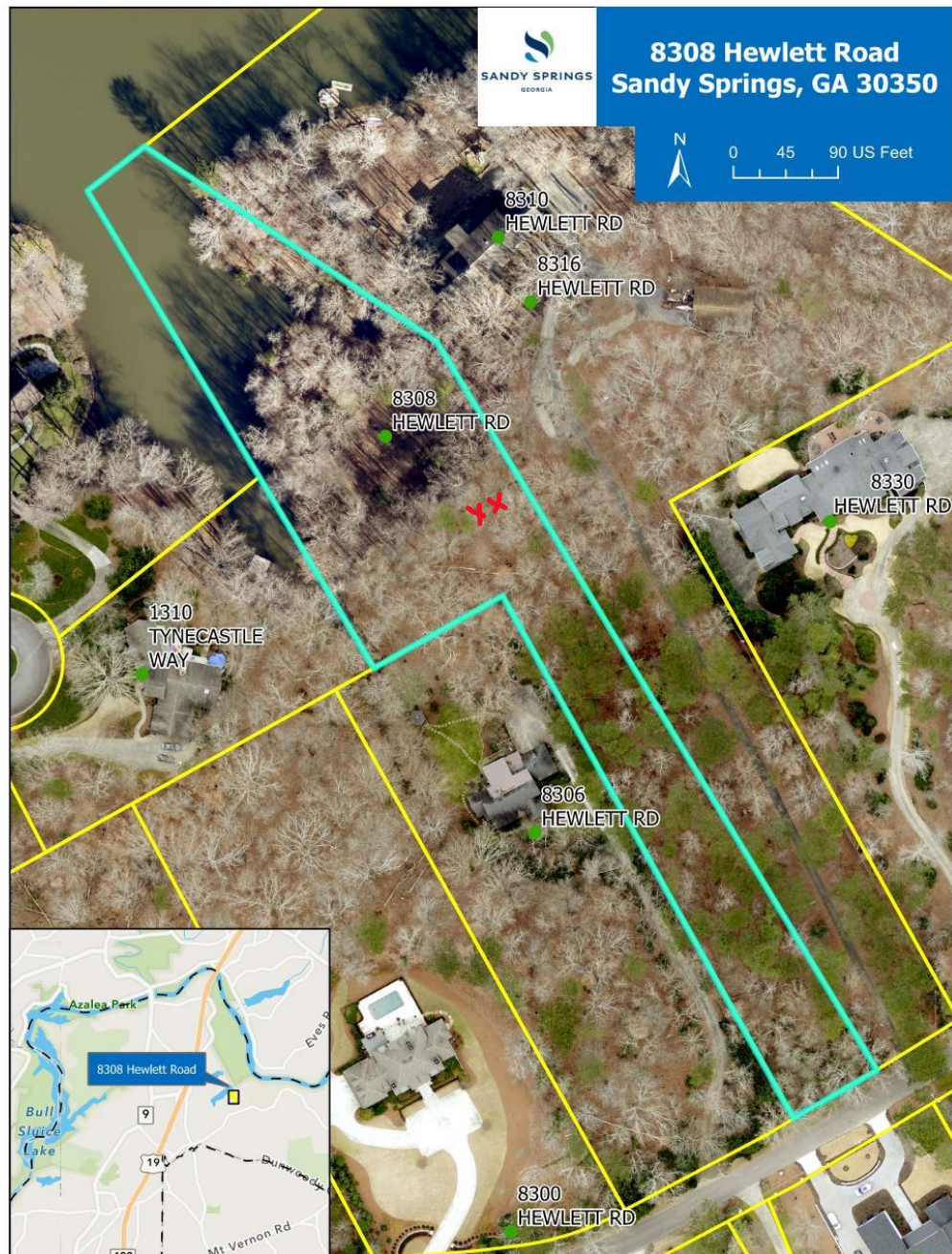
As part of the permit process for 8308 Hewlett Road, which involves the construction of a new residence and associated structures, the tree canopy was reduced below the minimum canopy requirement of 35 percent for a residential land use. As a result, eight large canopy mitigation trees were required to be replanted on the property, and a fee of \$9,600 was assessed as being owed to the Tree Bank during the plan review process. The project engineer, Wade Hunnicutt with Pharr Engineering Services, requested a refund of previously paid fee into Tree Bank. We recommend that the fee remain in the Tree Bank per Section 9.3.3.C.2.c.i.

RECOMMENDATION

Department of Community Development

Uphold the Director's decision to accept the City Arborists' determination that the canopy mitigation fee assessed pursuant to Development Code Section 9.3.3.C.2.c remain in the Tree Bank.

AERIAL IMAGE (Location in outlined in cyan)



APPEAL CONSIDERATIONS

The applicant states that the property is meeting the canopy requirement by preserving 55 percent of the tree canopy. The methodology for this assessment isn't clearly defined in the appeal, but the building permit that was issued for the property follows the protocol for determining compliance with the canopy coverage requirement for the property, and it is described below.

Section 9.3.2 establishes the minimum canopy coverage requirement of 35 percent for residential land use. Therefore, the canopy coverage for a property is calculated by multiplying the lot area by 35 percent. Each tree that is 18 in DBH or larger provides 1,000 sq. ft. / tree of canopy coverage (see Section 9.3.2.B.1). In this case, 2.71 ac / 118,047.6 sq. ft. lot size x 35 percent = 41,316.7 sq. ft. canopy coverage requirement, which is equivalent to preserving 42 trees (42,000 sq. ft. of canopy) that are 18 in DBH or larger. The existing canopy on the property was 67 trees (67,000 sq. ft.) that were 18 in DBH or larger. Based upon the site design, 33 trees (33,000 sq. ft.) were shown as being either lost or removed, and 34 trees (34,000 sq. ft.) were shown as being preserved on the Tree Conservation Plan. A lost tree is defined as a tree that has impacts to the critical root zone of the tree of 25 percent or more. Per Section 9.3.3.C.2.c, if the property falls below the required minimum canopy coverage, large canopy mitigation trees (minimum 2.5" caliper size) are required to be replanted on the property and a \$1,200 / tree fee paid into the Tree Bank (refer to Section 9.3.8.D.2). Since the project design resulted in a canopy deficit of eight trees (42 required trees – 34 preserved trees), eight large canopy mitigation trees were required to be replanted on the property and \$9,600 paid in the Tree Bank (8 x 1,200 / tree). The non-refundable Tree Bank fee was assessed and paid prior to the permit being issued on 6/15/23.

The applicant states that the unique shape of the parcel, zoning setbacks, and slope diminish the ability to favorably access the property. Prior to project initiation, there is an opportunity for the developer to perform due diligence on the property to identify any site constraints. Additionally, the Community Development Department offers developer meetings to review projects in all stages of the development process. The code requirements were available prior to project initiation and limiting factors such as buffers, setbacks, slope, and tree canopy requirements were available for review and discussion. Additionally, the spatial limitations on the lot due to the stream buffers, parcel shape and site access route, and zoning setbacks are not unique to this parcel. Stream buffers are regulated by the State of Georgia and Sandy Springs and are applicable to any state water with wretsted vegetation. Furthermore, the presence of a lake was apparent upon purchase of the property and should have clearly signified the likelihood for buffer requirements. As stated, vehicular access to the property is limited to a narrow corridor due to the parcel shape; however, this issue could have been mitigated through the due diligence process. Moreover, parcels throughout the city are frequently restricted in the location of the primary vehicular access route due to factors such as traffic engineering requirements and the designed layout of the residence. Zoning regulations limit the extent of construction activities on a property, but these requirements are applicable throughout the city, and are not unique to this parcel. In regards to slope, Sandy Springs is located in the Piedmont physiographic region, and the presence of sloping topography is a typical condition for properties in this area. This design constraint should have been observed and flagged for consideration as part of the development process, which is a routine consideration for properties in this area.

The tree conservation ordinance is comparable to other regulations governing properties in the city such as the stream buffer ordinance and Metropolitan River Protection Act (MRPA) in that the tree conservation ordinance is aimed at maintaining a level of environmental integrity throughout the city. The ordinance aims to assist in obtaining the environmental, economic, human health, and aesthetic goals of the city through the preservation of the city's tree canopy, and private properties play an integral part in providing canopy coverage throughout the city.

The right to develop a property is maintained by the tree conservation ordinance as well. The tree conservation ordinance differs from the stream buffer ordinance and MRPA in that portions of a property are not limited from development due to the presence of trees. Furthermore, the tree conservation ordinance doesn't restrict site development as any tree, regardless of size, species, or location, can be impacted or lost through the site development process as long as the minimum standards in the Sandy Springs Development Code are met. If the development of a property causes the property to fall below the minimum requirements, the appropriate mitigation measures are employed in the permit process.

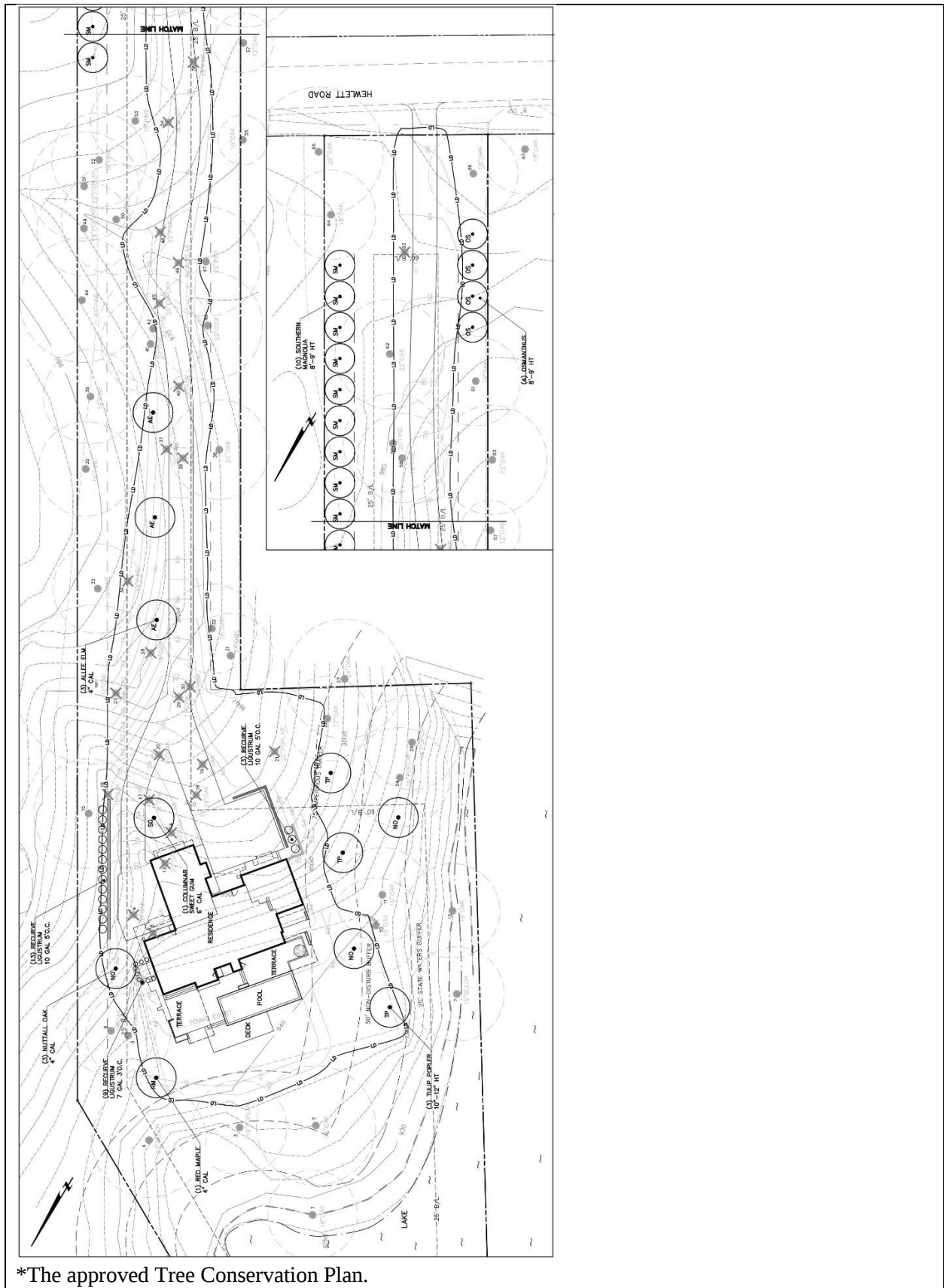
The flexibility of the ordinance allows for compliance with the ordinance in several different ways. For 8308 Hewlett Road, the site design could have been adjusted to preserve additional trees in other areas of the site, which would have offset the loss of trees associated with the vehicular access route. Furthermore, the limits of disturbance could have been retracted in areas where the percent of impact on a tree was at or near the 25 percent threshold, which would have allowed for the preservation of the tree and improved the property's canopy coverage. Additionally, replanting incentives in the impervious setback of the stream (between the 50-foot and 75-foot buffer) and along the street frontage could have been utilized to reduce the replanting requirements.

The applicant stated that the required trees will be planted on-site, but a refund of the fee owed to the Tree Bank is appropriate due to an undue hardship. It is unclear why the applicant finds partial compliance with the ordinance acceptable with the Tree Bank fee required as part of the canopy coverage mitigation considered to be an undue hardship versus the replanting of the mitigation trees. The ordinance is clear that if a property falls below the minimum required canopy coverage, the route to compliance involves both replanting trees and paying into the Tree Bank. The applicant adhered to other development regulations including the stream buffer regulations and required setbacks on the property; therefore, the same regard should also be extended to the tree conservation ordinance. In summation, our opinion is that the application of the tree conservation ordinance did not produce an undue hardship on the development process for the site. This is exemplified by the non-refundable payment of the balance owed to the Tree Bank by the applicant, issuance of the building permit, and commencement of construction activities on the property.

Exhibits / Photos



*This is a view of the cleared access route on the property.



All Trees								
Tree	DBH	Species	Landmark	Keep	Remove	Lost	Impact	Location
1	18	Oak		+				Buffer
2	20	Oak		+			2%	Buffer
3	20	Poplar		+			9%	Buffer
4	23	Beech		+				Buffer
5	17	Pine		+				
6	18	Oak		+				Buffer
7	19	Beech		+				Buffer
8	18	Poplar			X			
9	20	Oak			X			
10	19	Oak		+			9%	Buffer
11	19	Oak		+				Buffer
12	19	Oak		+				Buffer
13	20	Oak			X			
14	20	Oak			X			
15	22	Oak				L	28%	Buffer
16	18	Oak			X			Buffer
17	21	Oak			X			
18	19	Oak			X			Buffer
19	19	Oak			X			Buffer
20	20	Oak			X			
21	20	Poplar				L		Buffer
22	17	Oak		+			24%	Buffer
23	24	Oak		+			4%	Border
24	20	Poplar		+				Buffer
25	19	Poplar		+				Buffer
26	32	Oak	*			L	33%	
27	33	Oak	*		X			
28	18	Oak			X			
29	19	Oak			X			
30	17	Oak			X			
31	17	Oak		+			18%	Buffer
32	18	Oak				L	42%	Buffer
33	18	Pine		+			14%	Buffer
34	18	Pine			X			
35	19	Pine		+				Buffer
36	20	Pine			X			
37	20	Pine			X			
38	20	Oak		+			25%	Buffer
39	19	Pine		+				Buffer
40	18	Pine			X			
41	20	Pine				L	40%	
42	22	Pine				L	47%	
43	22	Gum				L	43%	Buffer
44	25	Pine		+				Buffer
45	20	Poplar			X			
46	19	Poplar			X			
47	22	Pine				L	41%	Buffer
48	22	Pine			X			
49	19	Poplar		+				Buffer
50	22	Pine		+			13%	Buffer
51	22	Poplar		+				Buffer
52	19	Pine		+				Buffer
53	18	Pine		+			11%	
54	18	Pine			X			
55	10	Oak		+				Border
56	18	Pine			X			Buffer
57	12	Oak		+				Buffer
58	18	Pine				L	33%	
59	20	Pine		+			25%	
60	22	Oak		+				Border
61	18	Oak		+				Buffer
62	22	Oak				L	31%	
63	21	Oak			X			Buffer
64	18	Oak		+				Buffer
65	26	Oak		+				Border
66	18	Oak		+				Buffer
67	18	Oak		+				Border
Totals				34	23	10		

Kept 34
Removed 23
Lost 10

Canopy Requirement 35%
Lot 2.71 ac
Req'd 0.95 ac
41,317 sf RCC
Existing Canopy to Remain 34 34,000 sf EC
Landmark Replacement 1 1,500 sf LR
Canopy Replacement 8,817 sf CR
Replacement Trees 3 3,000 sf
5 6,250 SF Buffer trees @ 125%
Tree Fund \$ 9,600.00

*Existing tree chart with percent of impact and canopy calculations.

COMMENTS FROM OTHER PARTIES
N/A

DEPARTMENT OF COMMUNITY DEVELOPMENT RECOMMENDATION
Staff respectfully recommends the Board of Appeals uphold the determination of the City Arborist.

**SANDY SPRINGS
NOTICE OF APPEAL**

Petition Number: AP23-00003
Petitioner: Wade Hunnicutt
Property Location: 8308 Hewlett Road
Parcels #: 06 035600010386
Present Zoning: RE-2
Request: An appeal of the Director's determination of the existing and proposed tree canopy and calculation of tree fund pursuant to their proposed development on the property.
Public Hearings: Board of Appeals
December 6, 2023 at 6:00 p.m.
Location: Sandy Springs City Hall
1 Galambos Way
Sandy Springs, Georgia 30328
770-730-5600
Virtual Option: Zoom Webinar at
www.sandyspringsga.gov/stream for instructions on how to provide public comment during Public Hearing, please visit <http://spr.gs/publiccomment>

☐ PROOF O.K. BY: _____ ☐ O.K. WITH CORRECTIONS BY: _____

PLEASE READ CAREFULLY • SUBMIT CORRECTIONS ONLINE

MA-376600 (100%)

ADVERTISER: CITY OF SANDY SPRINGS

PROOF CREATED AT: 11/15/2023 3:15:43 PM

SALES PERSON: MAM958

NEXT RUN DATE: 11/22/23

SIZE: 2X4

PROOF DUE: 11/16/23 17:00:00

PUBLICATION: MA-NORTHSIDE NEIGHBOR



Received
10/18/2023
2:09pm

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GEORGIA
PROJECT INFORMATION SHEET

PROPERTY	Address(es): 8308 Hewlett Road	
	Parcel Tax ID(s): 06 035600010386	
	Total acreage: 2.71 ac	Council District: 1
	Current zoning: RE-2	Current use:
	Character Area: Protected Neighborhood	Single Family Home

APPLICATION	Detailed request (include Code Section No.):	
	Reduction (refund) of previously paid fees into tree fund. Due to the unique shape, topography, natural resources, & characteristics of the parcel, we are seeking an appeal for the fee (\$9,600) required for the tree fund per Section 9.3.8.B.2. Detailed explanation is presented on accompanying exhibits.	
	Petitioner: Wade Hunnicutt / Pharr Engineering Associates, LLC	
	Petitioner's address:	
	5825 Live Oak Parway * Suite 2D * Norcross, Georgia 30093	
	Phone: [REDACTED]	Email: [REDACTED]

OWNER	Property owner: Ahamefula Nnodim	
	Owner's address:	
	1314 Valley View Road * Atlanta, Georgia 30338	
	Phone: [REDACTED]	Email: [REDACTED]
	Signature (authorizing initiation of the process):	
If the property is under contract, provide a copy of the contract		

- TO BE FILLED OUT BY P&Z STAFF -

Pre-Application Meeting date:	Anticipated Application date:
Anticipated BOA date:	
ADDITIONAL INFORMATION NEEDED:	

Memo

Project: 8308 Hewlett Road Residential
Subject: Tree Bank Assessment & Appeal
From: Wade Hunnicutt
Date: 6/15/23
File: 221415.01/440.1.5

Due to the unique shape, topography, and characteristics of the property, we are seeking an appeal from the amount of payment being required for the Tree Fund. Currently, it is stated that a fee of \$9,600 is required. Some items of merit for this particular property:

- The unique flag-shaped lot does not allow the possibility of a more favorable access to the site. The driveway is only allowed within the 32' between the side-yard setbacks (plus 10' grading encroachments as allowed). Due to the heavily-sloped topography of the site, this allows for only 52' of disturbance with existing cross-slopes of up to 36%. If it were not for the trees removed to allow access to the site, no recompense would be required.
- The 2.71 acre-tract consists of 0.44 acres of lake, and an additional 0.54 acres of undisturbed state water and city buffers. This leaves a remaining area of 1.73 acres and creates a required effective canopy coverage of 55%. This is well over the 35% normally required.

Section 9.3.8.B.2 of the code states"

"Appeals may only be granted for errors of interpretation, application, or where the unique natural features of the site are such that it is impractical or impossible to apply the terms, conditions or standards of this Article, resulting in an undue hardship to the property owner."

We believe the unique natural features of the site (lake, undisturbed buffers, lot shape, topography, and required site access) do created an undue hardship to the property owner and respectfully request that the Tree Bank fee be removed for this site. We will obviously still plant the required trees per code, but penalizing the owner for accessing the site is an undue hardship. Thank you for your consideration.

Submitted,

Wade Hunnicutt, P.E.

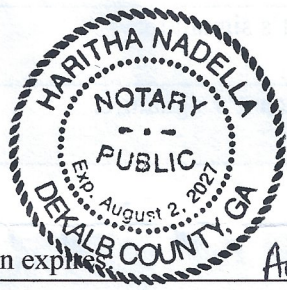


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AUTHORIZATION FORM – PART I

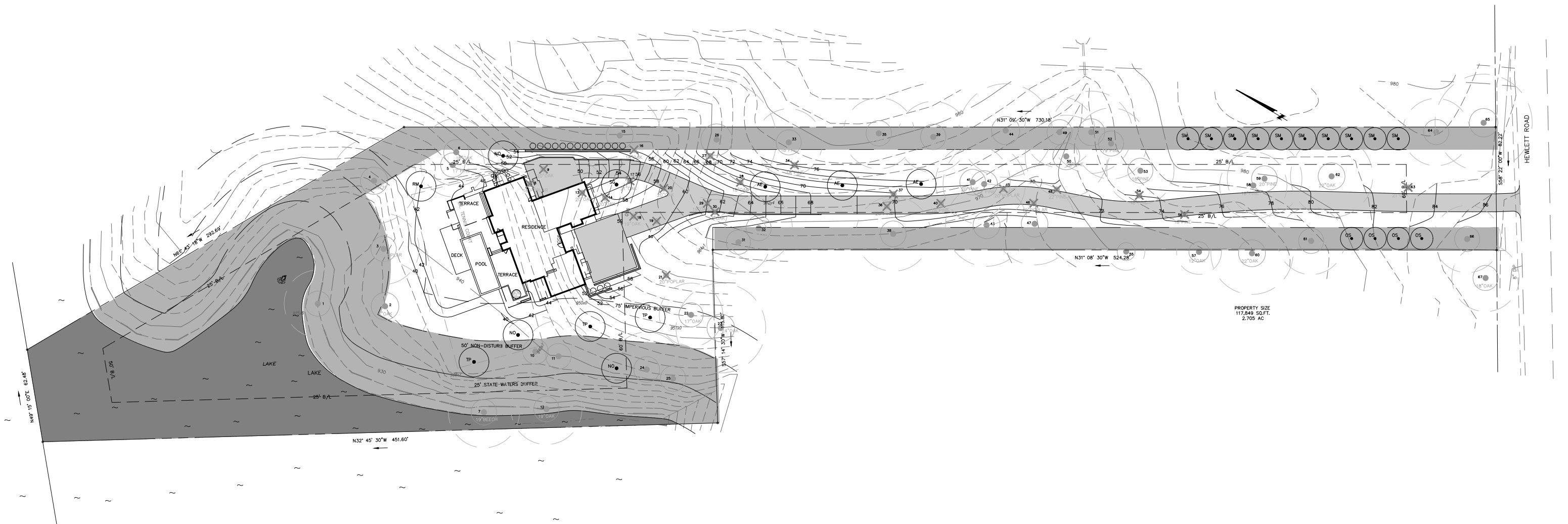
A- The property owner must fill out the following section and have it notarized. If a property has multiple owners, each owner must separately fill out a copy of the Authorization Form.

Owner states under oath that he/she is the owner of the property described in the attached legal description, which is made part of this Application.	
Owner's name: Ahamefula Nnodim	Sworn and subscribed before me this <u>30</u> th day of <u>October</u> 20 <u>23</u>
Address: 1314 Valley Road	
City, State, Zip Code: Atlanta, GA 30338	Notary public: <u>Haritha Nadella</u>
Email address: [REDACTED]	Seal:  Commission expires <u>August 2, 2027</u>
Phone number: [REDACTED]	
Owner's signature: [Signature]	

B- If the Applicant is *not* the owner of the subject property:

Fill out the following section, check the appropriate statement and have it notarized.

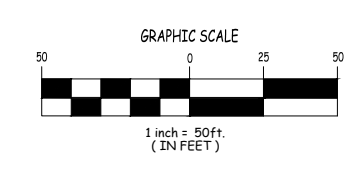
Applicant states under oath that:	
☐ He/she is the executor or Attorney-in-Fact under a Power-of-Attorney for the owner (<i>attach a copy of the contract</i>); or	
☐ He/she has an option to purchase the subject property (<i>attach a copy of the contract</i>); or	
☐ He/she has an estate of years which permits the Applicant to apply (<i>attach a copy of the lease</i>)	
Applicant's name:	Sworn and subscribed before me this
Company name:	
Address:	<u> </u> th day of <u> </u> 20 <u> </u>
City, State, Zip Code:	Notary public:
Email address:	Seal: Commission expires:
Phone number:	
Applicant's signature:	



8308 Hewlett Road

Tree Conservation Plan Sk-1

6/15/23



pharrengineering

Board of Appeals

January 3, 2024



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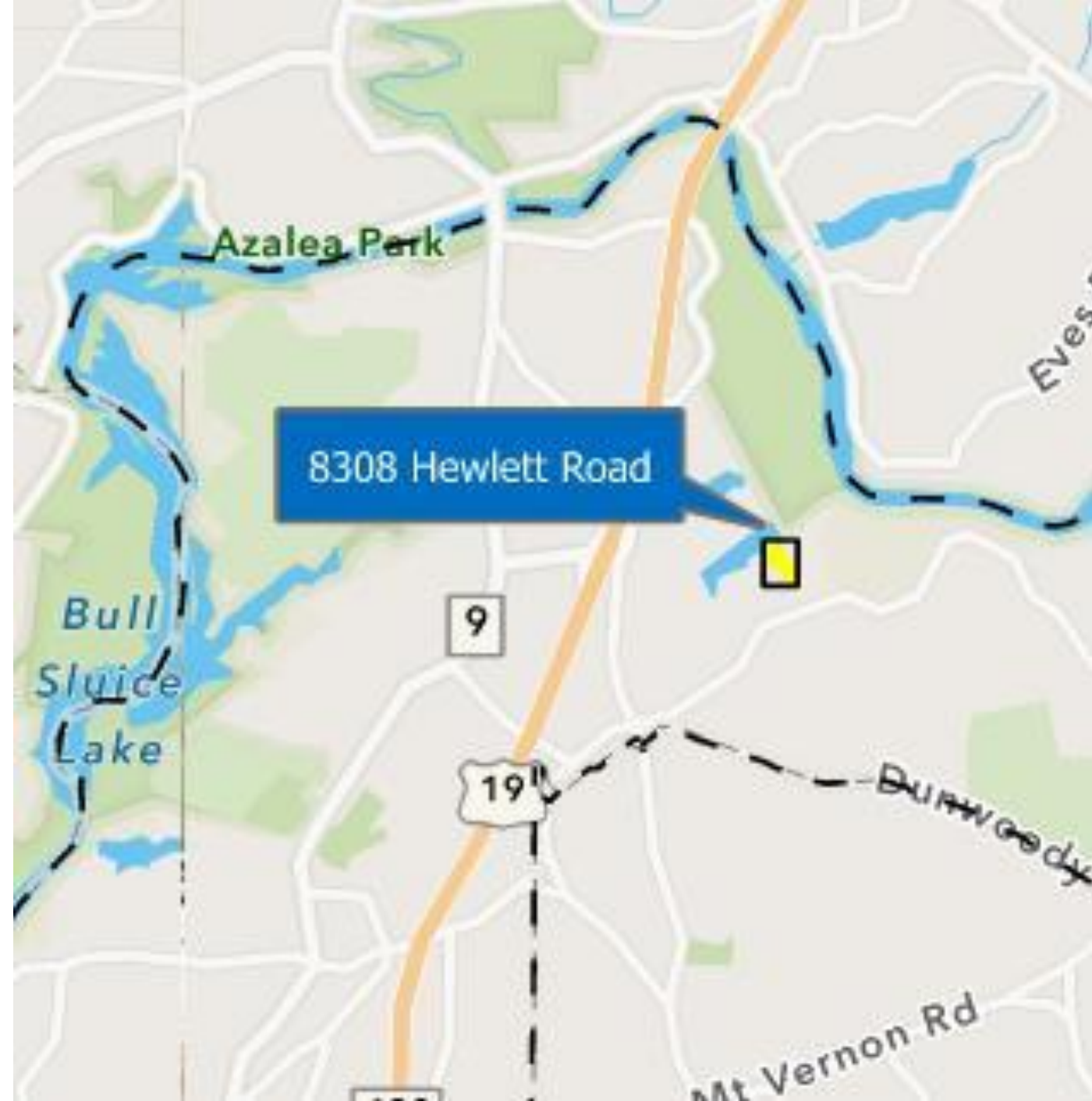
AP23-00003

STAFF RECOMMENDATION:
Denial

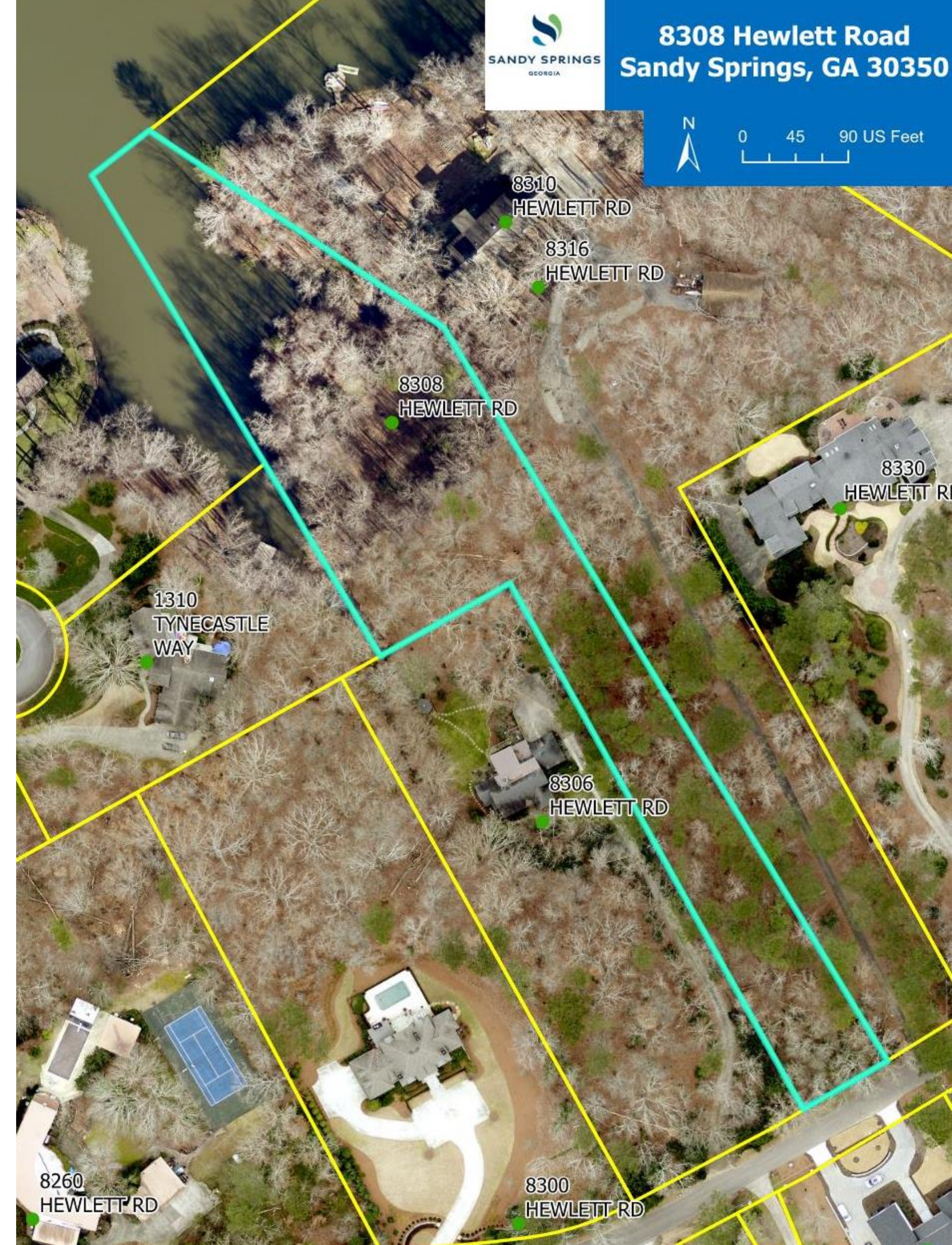
Request

Appeal of the Tree Bank fee (\$9,600) required for tree canopy mitigation per Section 9.3.8.B.2 for 8308 Hewlett Road / BR22-00645.

Location – 8308 Hewlett Road



- 2.71 ac
- RE-2 zoning



City Code – Canopy Coverage Requirement

- 35 percent canopy requirement
- 55% canopy is not being preserved on the property
- 2.71 ac = 118,047.6 sq. ft.
- $118,047.6 \text{ sq. ft.} \times 0.35 = 41,316.7 \text{ sq. ft.}$ of required canopy coverage
- 1,000 sq. ft. / tree of canopy coverage (18 in DBH or larger tree)
 - 67 trees existing canopy (67,000 sq. ft.)
 - 33 lost or removed trees (33,000 sq. ft.)
 - 34 preserved trees (34,000 sq. ft.)
 - Required canopy = 42 preserved trees (42,000 sq. ft.)
 - Canopy deficit = 8 trees (8,000 sq. ft.)
 - Canopy mitigation required:
 - (8) 2.5" caliper large canopy mitigation trees (8,000 sq. ft.)
 - \$9,600 owed to the Tree Bank (8 x \$1,200 / tree)
 - Tree Bank fee paid on 6/15/23.

Hardships

- Issue: Parcel shape
- Response: Due diligence
- Issue: Stream buffers
- Response: Due diligence
- Issue: Site access route
- Response: Guided by several factors on properties
 - Transportation engineering requirements
 - Layout of residence
- Issue: Zoning setbacks
- Response: Applicable throughout the city
- Issue: Slope
- Response: Prevalent throughout the Piedmont region
- Staff position:
 - Perform due diligence
 - Hardships not unique to the site



Tree Conservation Ordinance

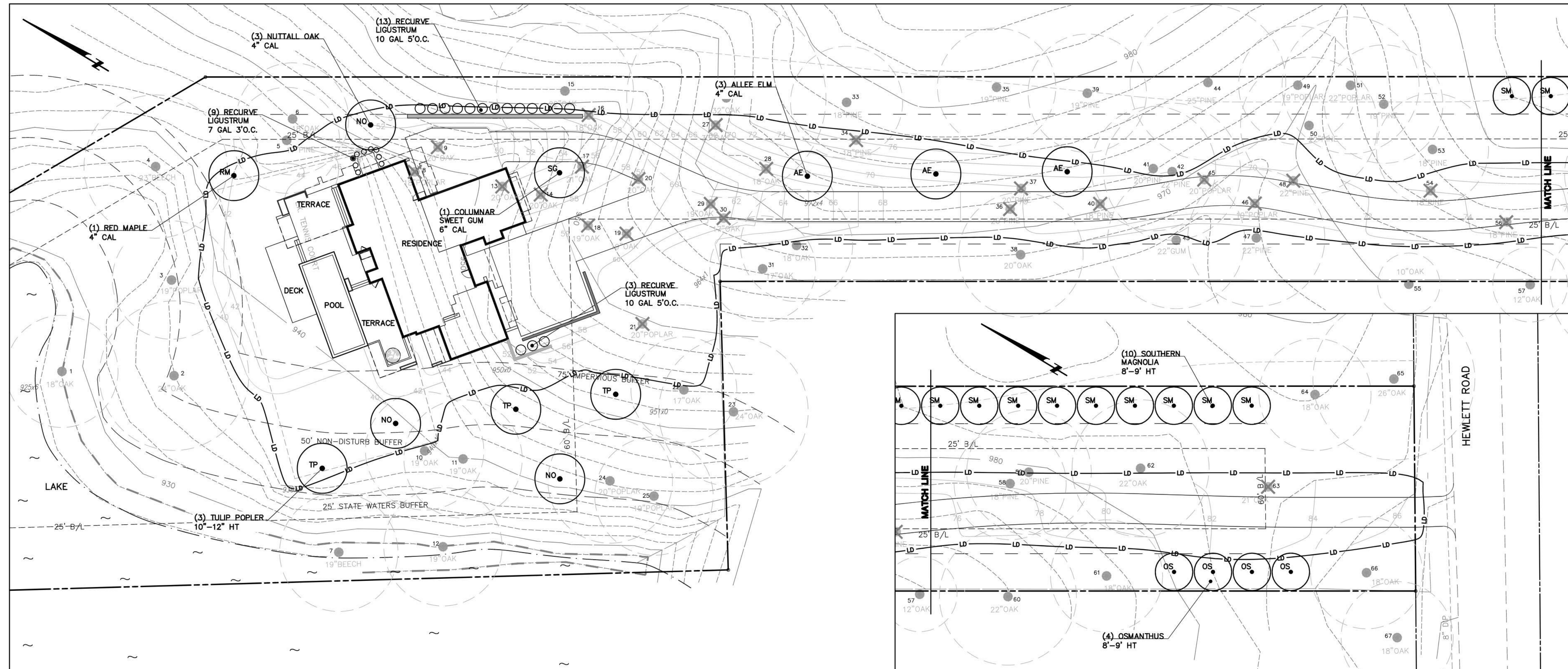
- Similar to the stream buffer ordinance and MRPA
- Goals:
 - Environmental
 - Economic
 - Human health
 - Aesthetic
- Private property is integral to maintaining the city's canopy coverage

Tree Conservation Ordinance

- Differs from setbacks and stream buffers
 - No spatial limitations imposed on the property with tree preservation unlike a stream buffer or setback.
- Any tree can be impacted or removed
 - Mitigation may be required
- Flexible
- Balances right to develop a property with preserving trees

Mitigation Opportunities

- Perform due diligence
- Utilize replanting incentives
- Change limits of disturbance near trees at the 25% impact threshold
- Preserve trees elsewhere on-site to meet canopy requirement
- Modify the site design



Summary

- Applicant intends to replant to meet canopy coverage.
- Applicant is requesting a refund of the non-refundable Tree Bank fee.
- Section 9.3.3.C.2.c states:
 - “If the proposed tree removal causes the canopy to fall below the minimum canopy requirement, the applicant is required to:
 - i. Pay into the Tree Bank for the deficient canopy as set forth in Sec. 9.3.8.D; and
 - ii. Install trees of a similar species to bring the site into compliance with the minimum canopy requirement.”
- Applicant is requesting partial compliance.
- Applicant adhered to other development regulations.
 - Stream buffers
 - Setbacks
- Tree conservation ordinance should be regarded the same as other ordinances with full compliance observed.
- Staff position – no undue hardship
 - Non-refundable Tree Bank fee paid already
 - The building permit has been issued
 - Site construction is underway



Recommendation

- Staff recommends **Denial** of AP23-0003.

Questions?