

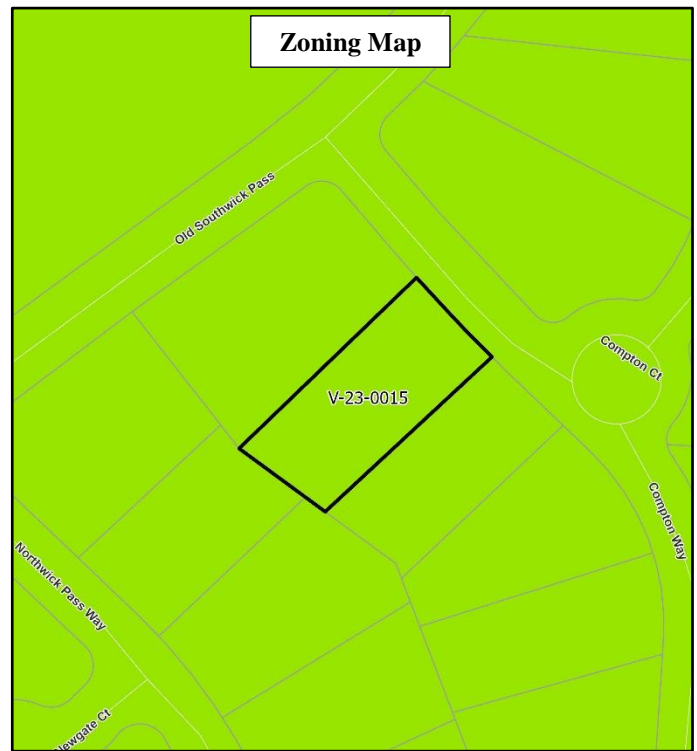
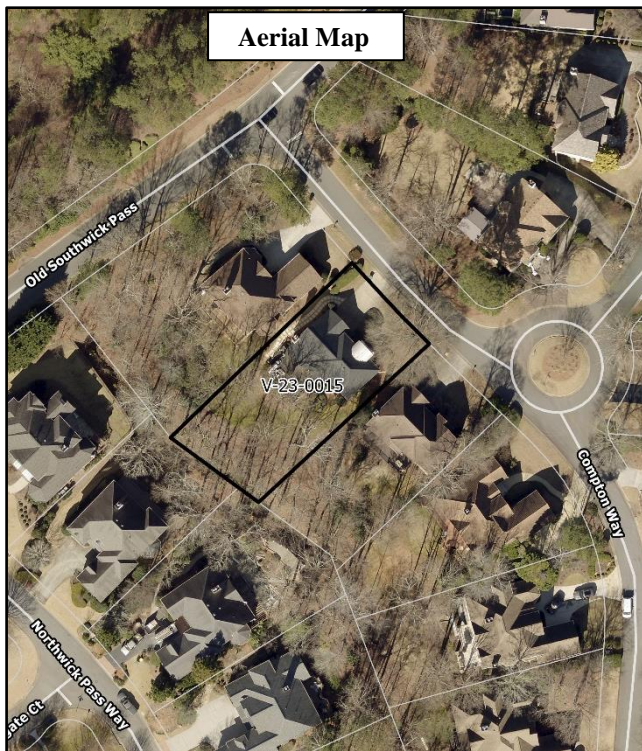


**Board of Zoning Appeals Meeting  
November 21, 2023**

|                              |   |
|------------------------------|---|
| <b>CASE NUMBER:</b>          | <b>V-23-0015</b>  |
| <b>PROPERTY LOCATION:</b>    | <b>2010 Compton Way, Johns Creek, GA 30022</b>  |
| <b>CURRENT ZONING:</b>       | <b>CUP (Community Unit Plan District) Conditional</b>   |
| <b>PARCEL SIZE:</b>          | <b>0.316 Acres</b>  |
| <b>PROPERTY OWNER:</b>       | <b>Oscar Uribe</b>  |
| <b>VARIANCE REQUEST:</b>     | <b>Encroachment into the 75-foot stream buffer to construct a patio, fire-pit and retaining walls</b> |
| <b>STAFF RECOMMENDATION:</b> | <b>APPROVAL WITH CONDITIONS</b>   |

**Background**

The subject property is located in the Country Club of the South subdivision and is zoned CUP (Community Unit Plan District) Conditional. The subject lot was originally platted in Fulton County in 1988 with centerline of the creek shown along the rear property line. Due to the application of the City's 50-foot undisturbed buffer and additional 25-foot impervious surface setback, the buffer encompasses the entirety of the rear yard.



**Community Development**

Earlier this year, the property owner started construction of the patio, fire-pit and retaining walls that encroached into the 75-foot stream buffer, without acquiring a building permit. The City issued a Stop Work Order on May 30, 2023, and subsequently, the property owner submitted an as-built survey that shows the patio, fire-pit and retaining walls encroaching into the 75-foot stream buffer, thus requiring the Applicant to seek a variance to maintain these improvements in their current location.



Original Condition



Construction of Retaining Walls



Construction of Fire-pit



Construction of Patio

**Applicable Code Requirements**

City of Johns Creek Code of Ordinances, Chapter 109: Natural Resources and Environmental Protection, Article V: Stream Buffer Protection, Section 109-118: Land Development Requirements.

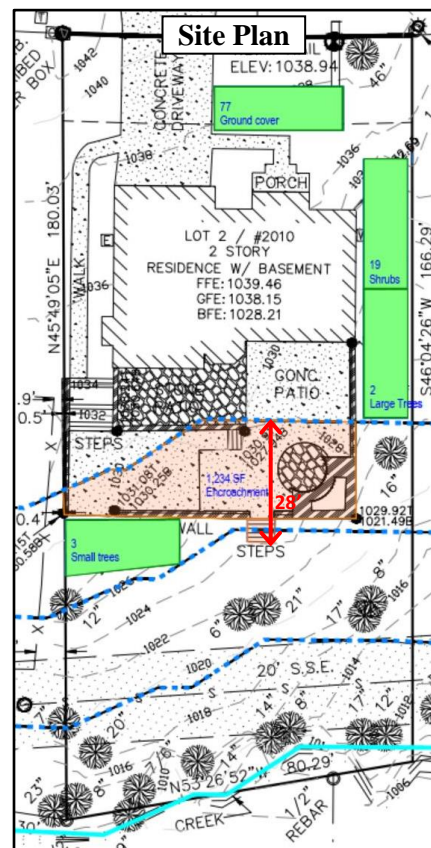
*(a) Buffer and setback requirements.*

- (1) An undisturbed natural vegetative buffer shall be maintained for 50 feet, measured horizontally, on both banks (as applicable) of the stream as measured from the point of wrested vegetation.
- (2) An additional setback shall be maintained for 25 feet, measured horizontally, beyond the undisturbed natural vegetative buffer, in which all impervious cover shall be prohibited. Grading, filling and earthmoving shall be minimized within the setback.

**Variance Request**

The Applicant is requesting to encroach 28 feet into the City’s 75-foot stream buffer to build a patio, fire-pit and retaining walls. The proposal will result in approximately 1,234 sq. ft. of total impervious surface (highlighted in orange) in the stream buffer. The Applicant has not proposed any new land disturbance within the State’s 25-foot stream buffer.

The Applicant has proposed to plant two red-maple (large) trees, three florida-maple (small) trees, 19 buckeye shrubs and 77 ground cover plants providing a total vegetative coverage of 1,312 sq. ft., to offset stormwater and environmental impacts associated with the requested encroachment into





the stream buffer.

### **Stream Buffer Variance Review Criteria**

City Code Section 109-118(b)(2) lists the following considerations for granting stream buffer variances:

- a. When a property's shape, topography or other physical conditions existing at the time of the adoption of this article prevents land development unless a buffer variance is granted; **or**
- b. Unusual circumstances when strict adherence to the minimal buffer requirements in the article would create an extreme hardship.

### **Staff Analysis**

The subject property was platted in Fulton County in 1988 with only a creek centerline shown along the rear property line. However, with the incorporation of the City, the stream buffer was expanded to 50 feet with an additional 25-foot impervious surface setback. The expansion of the stream buffer has created a hardship for the homeowner, as a portion of the existing deck falls within the 75-foot stream buffer, which would not be permitted today without seeking a stream buffer variance. Granting of this variance would bring the proposed improvements into compliance, while negligibly impacting the stream.

### **Staff Recommendation**

Based upon the findings and conclusions herein, staff recommends **APPROVAL** of V-23-0015, subject to the following conditions:

- 1) The proposed development shall not exceed the following encroachments, as shown on the site plan received by the Community Development Department on October 9, 2023:
  - a. 28 linear feet of encroachment into the stream buffer;
  - b. 1,234 square feet of total impervious surface within the stream buffer.
- 2) A vegetative planting plan shall be submitted to the Community Development Department, as part of the building permit resubmittal. Said plan shall be consistent with the mitigation plan received by the Community Development Department on October 9, 2023. The final vegetative planting shall pass City inspection prior to the closeout of issuance of a Certificate of Completion for the proposed improvements.