

MINUTES

**City of Milton Board of Zoning Appeals
Regular Meeting
February 19, 2008 7:00 PM**

All Board Members Were Present:

Heidi Sowder
Gary Willis
Scott Kilgore
Marcia Parsons
Todd Chernik
Walt Rekuc
Sandy Jones

Meeting Leader/City Staff:

Angela Rambeau, Community Development
Mike Tuller, Community Development
Mark Law, City Arborist

AGENDA ITEMS

1. Call to order
2. V07-022
13980 Freemanville Road
Wernick & Associates
3. V08-001
15350 Thompson Road
Jodi P. Martin
4. V08-002
12230 Birmingham Road
David Flahardy
5. V08-003
15745 Hamby Road
Roland and Carla Ebright Jr.
6. V08-004
2925 & 2935 Webb Road
Ken Morton
7. V08-005
2905 & 2915 Webb Road
Ken Morton
8. Other business
9. Adjournment

PLEDGE OF ALLEGIANCE

MEETING CALLED TO ORDER

Chair Heidi Sowder called the meeting to order.

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Chair Heidi Sowder: Read purpose and charge of the Board of Zoning Appeals and then called for the first Agenda Item.

APPROVAL OF THE MEETING AGENDA:

Chair Heidi Sowder moved to amend the meeting agenda.

Motion and Second: Heidi Sowder made a motion to amend the meeting agenda and to move case V08-004 and V08-005 up to the number 2 and 3 spots on the agenda. Seconded by Todd Chernik. There was no discussion. Vote 7-0. Motion unanimously carried.

APPROVAL OF THE MEETING MINUTES:

Chair Heidi Sowder: The first order of business was to approve the January 15, 2008 meeting minutes. Were there any corrections other than what were submitted to staff?

There were none.

Motion and Second: Heidi Sowder moved to approve the January 15, 2008 meeting minutes. Seconded by Sandy Jones. Vote: 6-0-1, with Todd Chernik abstaining. Motion carried.

Chair Heidi Sowder: The next order of business is the consideration of application of variances.

Chair Heidi Sowder: Read statement to attendees of meeting regarding time restrictions for presenting, rebuttal, and public comment.

Chair Heidi Sowder: Will Staff present the first application, V08-004.

Staff Angela Rambeau:

Read aloud Petition V08-004, 2925 & 2935 Webb Road. Variance requested: (1) to encroach into the 75 feet impervious setback (Article 14.7.6.5.i) and (2) to encroach into the 50 feet undisturbed stream buffer (Article 14.7.6.5.ii). Staff requires applicant to comply with all GWSCC requirements. The hardship sited is site topography and overall narrow nature of the property, and that allowing the stream to be piped would be in harmony with the stream on the north side of Webb Road which is already piped and would not cause additional detriment to the public. Staff recommends the applicant adhere to all applicable state permitting conditions for piping a stream, based on current environmental compliance standards.

Chair Heidi Sowder:

Mr. Morton would you like to come forward with your presentation and state your name and address for the record.

Ken Morton, 14732 Taylor Valley Way, Milton, GA:

Angela, do you have the presentation that was sent to you.

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Staff Angela Rambeau:

I do have it on my computer. [left meeting to get the presentation].

Applicant Ken Morton:

Lesson learned. Never assume you will be 4th or 5th and be a few minutes late. I apologize for scrambling here. I will go ahead and get started.

Walt Rekuc:

Are you missing people to help you present this?

Applicant Ken Morton:

Yes sir, I am missing my engineer and the person that has my presentation to show you on the screen. We thought we would be 4th or 5th and assumed 7:30 would be more than adequate.

Chair Heidi Sowder:

Okay, then I would like to make a motion to move these back again. Have you contacted them?

Applicant Ken Morton:

Yes, they should be here in minutes.

Chair Heidi Sowder:

Okay, then we will go ahead with the original agenda. I will make a motion.

Motion and Second: Heidi Sowder made a motion to amend the agenda again to move V08-004 and V08-005 back to the original place on the agenda. Seconded by Sandy Jones. Vote 6-0-1, with Todd Chernik in opposition.

Chair Heidi Sowder:

Mike, do you feel comfortable presenting V07-022 in Angela's absence?

Staff Mike Tuller:

Petition V07-022 was read aloud. It is located at 13980 Freemanville Road. The request is for Wernick & Associates to allow a concrete detention wall to encroach into the 50 ft. stream buffer. There are no staff comments. Location of the wall was chosen for topographic reasons which will minimize the amount of impact to the stream. Other locations would require a high degree of site grading with large amounts of parallel stormwater piping systems.

Chair Heidi Sowder:

Will the applicant please come forward.

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Sam McCullough, 260 Autumn Sage Drive, Alpharetta, GA:

I am the Vice-President of Development for Land Solutions. The proposal tonight we have accomplished several times in the past. We have an existing wall in the Triple Crown subdivision already. Basically, when the topography is so steep as is common in the valleys and low areas of the City of Milton, we have a problem sometimes getting a very flat area to slow the water. I wanted to point out that water quality is achieved. There are two other locations on the site that we are actually providing for water quality erosion control. The wall that we are proposing is really just to knock the velocity of the water to slow it down and back it up in the existing channel and then let it go out in an engineered rate. There are only 13 lots on these 20 acres and the lots kind of circle a very small stream that begins on our property. When it leaves our property it continues on through another person's property and then back through the edges of Triple Crown and so it is very important that we slow the water down as it leaves our property. One side of the property is fairly level and the tree cover is not so dense. We were able to put a major water quality pond that the entire street will actually be piped to. However, on the opposite side, the topo goes up - if you look at your exhibit - you will see how dense the contour lines are. For those few houses that are on that side of the stream, we would have to somehow or another go in there and provide a place for that storm detention. The only way the engineers really felt that we could achieve this, would be to strip out the trees and then pipe it backwards against the grade up the stream. About a year ago, the city arborist, Mark Law, and I walked the stream and there is a significant amount of pretty mature Poplar trees. Triple Crown unfortunately had been devastated by pine beetles, but this section there are really some nice trees. As developers in the North Fulton area for 25 years, that has really been one of our mottos to save and protect as many trees on lots as we possibly can, so when we went through this process and it is not an easy one to achieve this, because having to go through with state and federal approval and, of course, when we started this we really did not know how the City of Milton would handle these matters, so we got with staff in time and submitted our engineering plans. We own the property; we have totally engineered the tract of land. LC Engineers felt that this was the best civil design for hydrology for the site, we hired environmental services and they concurred. We had to wade through several alternatives and present those to the DNR and they all came back positive. In the past, the way that we go about actually in the field construction is that we try to limit the area that we go into the stream, we hire the largest concrete pump truck that you can actually buy and it actually pumps out about 100 feet in extension, and we actually pour from that platform. It is completely away from the stream bank. The wall width itself is only about a foot, but because of the height, the footing is about 15-16 feet. We just take that out and because we are able to move the wall up and down the stream just a little bit, often times we are able to save some significant trees when we put the wall in place using the pump. There is no heavy equipment except for the excavation of the footing and just enough clearing to get that wall in place. We have successfully done this in the past. The first one I did exactly like this was about 12 years ago in the Harrington Falls Subdivision. Today, you really cannot even see that wall back in there. The streams are good and intact. I walk these properties occasionally just to see how they last and the stream just runs through a bottom hole in the wall and when there is a secondary hole higher that drops into a box, the water flows into the box, it slides down the face of the wall, goes down into the bottom of the box and then out the hole. The force of the energy of the water has been reduced by the wall and is a very effective method. I think downstream the erosion and environmental of the development is much abated because the wall is in place. We paint the wall black, landscape them, and the date we actually pour the wall we are there matting the wall and because you are only disturbing so little of an area, there is very little runoff downstream from erosion. You are not driving vehicles down there, just merely pumping the concrete.

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Chair Heidi Sowder:

I have a question. You talk about the topography on the south side of the stream where the lines are a lot more dense. The lots that are not immediately adjacent to the road, but to the front of the site plan.

Applicant Sam McCullough:

If your site plan has numbers on it, it should be lots 10, 9, 8 and 7. That is where if we had to provide detention on that slope or worse a storm drain line trying to get a storm pipe back around the stream somehow, because of going against the grade, it is more difficult. The more you have to go against the grade, the more you have to clear because the deeper the pipes are going to have to be and that would be in the words of the engineer, would just devastate the forest we are trying to save.

Chair Heidi Sowder:

How steep is the grade on the land? We heard from staff that if it is 4-1 slope down you would need to put a fence around the detention area. Have you measured the steep slope?

Applicant Sam McCullough:

In the past what we have done is we do fence the ends of the walls to the point that they are in 6 feet of height. We adjust the edges of the walls.

Chair Heidi Sowder:

Because of the topography of the land, would it require fencing the area that you are making into a detention facility?

Applicant Sam McCullough:

No, we just fence the edge of the wall. The topography in this situation is completely different. It is so steep that the detention would be backing up in the creek itself.

Walt Rekuc:

On your state and federal permits, what permit do you get from the feds?

Applicant Sam McCullough:

In the letter of intent, the three things that we basically have is that we did the preconstruction notification 39, the NWP, the Department of Army Corps of Engineers nationwide permit, number 39 - that is what was approved by them, and then a letter from the Georgia DNR. DNR has very specific erosion control standards that you have to prescribe to which is adhered to very easily with this process that I described earlier. There is very little grading in the area.

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Chair Heidi Sowder:

You will have to go in and build forms obviously for this wall, so how many trucks, and how much heavy equipment is going to have to go back in there and what type of disturbance are you talking about?

Applicant Sam McCullough:

To cut out the footing you do need a backhoe so you have about 15-20 that you are trying to get down there and he cuts out the wall. The same backhoe just lowers the panels for the footing and the footing is poured all at one time, the steel is tied and the rebar goes up into the wall and then the wall panels are set just much like a basement house and they are all poured. The entire process only takes about two weeks and you are in and out.

Applicant Sam McCullough:

So other than the backhoe there is not any other equipment?

Applicant Sam McCullough:

There are no cars or trucks running down there. Everything is brought in by the backhoe or the pump truck.

Chair Heidi Sowder:

You said that Mark Law walked the site with you about a year ago?

Applicant Sam McCullough:

Yes.

Chair Heidi Sowder:

My concern is that this is a free-running stream and you are going to turn it into a water feature or a detention facility, so I am assuming that at times when there is rain that the stream banks will come up and possibly some of the trees that are currently not standing in water will be standing in water. Do we have an actual tree count as to which trees might be affected or what types of trees that might withstand water?

Arborist Mark Law:

I am sure there probably will be, but as far as a count, we do not have that. When I initially did the site walk, I was not privy to the layout of the pond or anything at that time. We just did a site walk regarding the specimen trees and designated the stream, so I was not aware of where the pond was going to be placed at that time.

Chair Heidi Sowder:

Do you happen to have that information?

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Applicant Sam McCullough:

The engineers and the scientist take that into consideration and the hydrology study where really the water basically goes into the stream channel and is only there for a very short duration. During the entire time that the stream runs normally, it just goes right straight through the holes in the bottom of the dam. This is not a large body of water. We are talking about a flow of water that you could easily put into a 10 inch hole. Probably 75% of the storms it just fills up the stream channels for a little while and then lets it out. When I went back to look at some of the walls we had done in years past and looked at it to see if there had been any damage to it, you could not tell that the stream had eroded at all where the wall was. Where the head walls coming from storm pipes, there was more erosion that what the wall was creating, but the wall basically just knocks down the velocity and in their studies, it shows that it tends to just hold into the stream bank. Obviously in very big floods it can go up in there, but I did not see any erosion around roots or anything like that from the walls we have done in the past. We have not had any complaints. The one we did in Harrington, the downstream homeowner which owns a lake, he just loves it because it really did stop a lot of the erosion going down into his lake from the velocity because it is very steep on that particular one and then in Kingsley which is also on Birmingham. Depending on the proper engineering, and we think we have hired the best to do that, then I think your fears should be satisfied, but that is a good question.

Chair Heidi Sowder:

So if we say have another Hurricane like we did with Ivan and there is a significant amount of rain fall within a few days, how long with water be held in there? Like a 24 hour period and then everything gets out of there?

Applicant Sam McCullough:

Yes, and it is a little quicker than that. Again, we have the ability to hold some water back on site with water quality, but because of those last lots and the steep topo, the 10, 11, 12 and 13, we cannot control it where it exits our property. We can hold it back in other places and we are doing that. The big charge of water is being held in those two other ponds, but when it leaves the property, unless we put a pipe down there and shift it back upstream or build a pond on the side of that very steep wall, then there is no way to knock it down before it leaves that property. There are lots on both sides of this creek and in order to meet water quality and stormwater detention, you need clear map areas on both sides and it really becomes a really ugly eyesore if you had to do it that way.

Todd Chernik:

You mentioned prior incidents of you installing walls including Triple Crown. Once you complete this project, do you turn the responsibility for the maintenance over to the HOA of Triple Crown?

Applicant Sam McCullough:

Yes, it is in our covenants and I got to applaud the city on this. In our latest project at Kingsley and Vickery that we recorded - not only is it in our covenants spelled out that proper inspection of our stormwater detention must be done on a periodic basis by qualified personnel, and it is in our protective covenants and it will be and now it is a city requirement, so that really works well to notify the HOA of what their charge is to do and to hire the appropriate people to go out and look at it.

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Todd Chernik:

And secondly, have you posted a bond to offset any potential fees with maintaining such detention?

Applicant Sam McCullough:

Not yet have we, because we have not yet built, but the stormwater features are a bondable amount that is put into your development agreement here in the city and those bonds will be running for about a year and a half.

Chair Heidi Sowder:

Downstream from where this wall will be is another lot and I assume is another homeowner. How far is the wall going to be from their home?

Applicant Sam McCullough:

The property immediately next door that is going downstream is current vacant. On your plan you will see that the property line and the wall there is still about 50 feet of undeveloped property, wooded area, that is still on our property. The neighbors in the existing part of the subdivision are much higher and the lots are really large so they would never see it.

Chair Heidi Sowder:

Any other questions for the applicant?

Sandy Jones:

I would like to address some questions for clarification. As part of the land disturbance process, you do not have a LDP. Are you in this process?

Applicant Sam McCullough:

That is correct. We do not have an LDP currently. This would be part of the package that would go through the process and our full set of engineering plans are predicated on this use. We had to do it to be able to get this far so we are ready for a permit, but right now we do not have one.

Sandy Jones:

As part of that permit package, will there be a hydrologic analysis and study that shows the effectiveness?

Staff Mike Tuller:

As part of the permitting process we will be evaluating the hydrologic situation created by this impoundment situation.

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Sandy Jones:

I have a question to Mr. Law. You had mentioned that when you walked the site you did not have this site plan layout at that time. Now that we do have a site plan, is there anything that you would like to bring to the board's attention or anything that we should take into consideration at this time.

Arborist Mark Law:

He does have a good number of specimen trees located on the plan and he would be responsible for any recompense for any trees that would be removed or damaged through the construction of that wall, but those trees would be addressed.

Chair Heidi Sowder:

Okay, thank you Mr. McCullough. I would now like to open up the floor for public comment. If you would please come forward and state your name and address for the record.

Michael Niekuch, 13990 Freemanville Road, Milton, GA:

Good evening. My name is Mike Niekuch and I am here tonight with my wife, Dale. We are adjacent property owners of this project. We have been there for about 10 years and really enjoy living there. We have not received any information from Wernick & Associates about this development as far as where this concrete wall is going to be placed in relation to our property. Our property lines this whole development on the northern border and we have great concern as you can imagine regarding what type of influence and impact this is going to have on our property as far as drainage. This property does drain on our property now and we are concerned about the development and things that occur on this property and how this will affect us and whether it could flood us more. One other thing we are concerned about is what the wall is going to look like. As you can imagine as homeowners yourself, you surely do not want to drive up to your property every night that you have been enjoying for many years and have to look at a massive concrete wall. We do not know what it is going to look like and whether it is aesthetically going to be fixed in a way that is pleasantly pleasing or if it is going to retain water year round like a lake or if it is going to be a mosquito bed in the summertime when the summer rains hit. We have a lot of concerns and nobody has answered any of our concerns so that is why we are here tonight because we do not anything that will impact our property line and the equity that we have developed in our property over the last years since 1994. My main concern tonight is to find out what exactly is going to be happening and how it is going to affect us on the northern border. I have not seen any schematics on where the wall is going to be and we really would just like to get some information as a Milton homeowner what is going on.

Todd Chernik:

I have a question. Are you the yellow house on the right hand side of the property?

Michael Niekuch:

Yes. I am up on the hill. We have 10 acres up there and have been there since 1994.

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Chair Heidi Sowder:

I do have a question for you. You mentioned that you currently have had some flooding issues?

Michael Niekuch:

The people who previously owned the property had a large front yard and that yard now grades down and when there are heavy rains it floods our driveway and the next house in front of us and goes north on Freemanville Road. That can be seen on any heavy rainy day. We are concerned about how this is going to impact us in the future and want to make sure that if this is going to be developed that this is not going to worsen. There is a dirt road there that people from Triple Crown are using to go in and out of the subdivision and it is the original driveway of the people who own the property. It has not been improved. It used to be a construction road and it has been a real pain for my wife and I and nothing still has been done about it. There was a high speed accident where a homeowner from Triple Crown crashed into my fence. That road floods significantly and is very dangerous and slippery and is full of potholes. We as homeowners would just like to know what is going on since we have a vested interest in our property that we have enjoyed and improved since 1994.

Walt Rekuc:

Could you show us on the map we have where your property is located in relationship to the map?

Board Discussion with Applicant and his wife referencing site plan map.

Chair Heidi Sowder:

Is there any other public comment at this time?

There was none.

Chair Heidi Sowder:

Mr. McCullough, would you like to come back up for rebuttal? You have 5 minutes.

Applicant Sam McCullough:

Those are great concerns and we are going to make it aesthetically pleasing as possible with the landscaping and trees that will screen it. We are high on the hill and with the trees will make it where you will not see it. We are 400-500 feet away. The gravel road is a problem and if you will notice, our land plan shows a new road being built and the gravel road will be discontinued at that point. It will not be a daily use means of travel once the construction is done.

Chair Heidi Sowder:

I guess this is a question for staff, but is a gravel road that is not on the maps of the city allowed to just be used by residential traffic. My concern is right now they are allowed to continue to use that road.

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Applicant Sam McCullough:

It is a private drive, but as soon as we get the LDP and are finished, it will be discontinued. Right now it is for construction travel.

Chair Heidi Sowder:

Do you have the ability to barricade it off when you are not using it? Could the road be shut down right now after the workday? This is a concern of the neighborhood.

Applicant Sam McCullough:

That is not my call, as it is not my property, but as soon as the LDP goes in it would be. We would access that road for a very short time to get the equipment in. That is the only way to get in right now. It is still being used for some minor amounts. We did put in some speed bumps in to slow traffic down. I am not the property owner, so I can not make that decision. It will not be used later as a daily way of travel and would be fenced off or gated if our plan goes through. This is a totally different issue.

Todd Chernik:

Having discussed the topic of a bond, would you be willing to post a bond for a longer period of time for the HOA so they can fully assess the impact of the detention pond, say perhaps for a five year period versus a year and a half.

Walt Rekuc:

Let me answer that if I may. Under most bonding capacities, as I am on a bonding subcommittee with Gwinnett County, the longest you can possibly get a bond nowadays is for about 18 months to 2 years. You can renew bonds, but probably not for five years.

Todd Chernik:

Let me restate my question. Would you be willing to pursue a renewal bond for a period of up to 5 years for this project?

Applicant Sam McCullough:

For the wall itself?

Todd Chernik:

And the potential impact that the wall could create. To alleviate some speculation and concerns.

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Applicant Sam McCullough:

I cannot commit to that today. Again, I am not the owner or the investors that are in the limited partnership that will develop this. The city bonding program that they have today is if in their inspection if they found a reason to say that there is a defect in the way that it is operating, they could require us to put up another bond. So in a way I am saying yes, we would do such a thing and get it repaired for 48 months and then renew for two years after if once they inspected they saw any problem whatsoever and then we would do that at that time routinely. I can answer your question that way that yes, we would do that. You have me in a little bit of a legal bind here because I am not the person who is the owner of the partnership. In working with your city and your staff, I am sure that your question would be resolved. These walls are built with structural engineers every step of the wall and they have to pull samples of the concrete and all that.

Todd Chernik:

I am not as concerned with the construction of the wall as I am about potential erosion upstream in the channel and the large specimen trees that may be affected by any upstream erosion affecting then the HOA down the road and we all know the expense that can create.

Applicant Sam McCullough:

If those problems were happening, yes we would put up another bond at that time.

Walt Rekuc:

Are you putting this in the same HOA as the subdivision?

Applicant Sam McCullough:

Yes.

Walt Rekuc:

Are you not funding that HOA to some degree?

Applicant Sam McCullough:

Actually we are built out just about so it is turned over to the association.

Walt Rekuc:

And at the same time, this wall is something that the city has to approve from a structural standpoint as well as Hydrologic. Is Mr. Sanders here?

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Staff Jimmy Sanders:

It will be part of the LDP process. Before the wall gets built we have a separate permit with details on it.

Walt Rekuc:

What is the bonding requirement for detention pond walls in the city and what percentage of the construction costs is typically the maintenance bond? What period of time is that bond? Are they renewal or do they expire after the 18 months? If you do not release it, does it stay in effect?

Staff Jimmy Sanders:

Maintenance bond is generally 30 percent of the construction cost. Period of time is 18 months. If we had a trigger that would cause it to be extended, then it could be extended. Keep in mind that we are talking about a maintenance bond and we may be talking about a different type of bond. If we are talking about a bond for some other inherent problem that might result from the operation of the wall and not the wall itself - there is actually not a bond that we have for that type of purpose. In other words to mitigate any damage downstream or something that might happen upstream - that generally would be in a different category.

Todd Chernik

Are you telling me that this type of bond would not be administered through the city?

Staff Jimmy Sanders:

If we are talking about liability from the operation of it, it is different than the maintenance bond which has to do with repairing and operating the wall itself.

Walt Rekuc:

Under HOA requirements - and this is something you may have to do - that is talk with the HOA and get the insurance to cover that wall and cover the liability to make sure that is included in that policy. That is how I have done it in other HOAs that I have done.

Todd Chernik

Right, because that becomes an HOA liability.

Chair Heidi Sowder:

Since we have legal representation here this evening, I will take the opportunity to ask Mr. Jarrard what the options are for a bond to cover those possibilities.

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City Attorney Ken Jarrard

I agree with Mr. Rekuc. I have always had difficulty getting folks to bond for more than a year and a half or two years for just a standard maintenance bond. It depends how serious the BZA wants to be about this. You can always ask for a revocable letter of credit if there is a concern out there. That is going to be a fairly significant undertaking by the applicant because obviously that ties up cash at their bank, but there are different ways to skin the cat is the point I am making. With respect to just a standard maintenance bond, unless you get it subject to repeated renewal, you are not going to get one much longer than 18 months to 2 years.

Sandy Jones:

And just for clarification, I do not think the maintenance bond addresses what the issue is that was brought up by Mr. Chernik, in that we are not looking at the structural integrity of the wall itself, but other possible problems.

City Attorney Ken Jarrard:

Then you are really into almost a risk management situation where you start talking about an insurance policy and you have to start thinking about asking the HOA to take out an insurance policy, because I think what you are talking about is will there be a pool of money available to someone if this thing begins to fail and the answer is right now, probably not and then you find yourself with an HOA that is not really equipped to handle the problem.

Sandy Jones:

And that is what we are trying to mitigate.

City Attorney Ken Jarrard:

And that issue is being dealt with in various ways by lots of jurisdictions and stormwater utilities is one of them to try to deal with that, but right now the only way I know to make a third party like the developer on the hook for basically a potential liability of an HOA is to ask for some type of a letter of credit and again, you may get some resistance from that.

Sandy Jones:

So right now there is no mechanism to say that for the maintenance bond, let us say for an 18 month period to ensure that the integrity of this system is working as designed?

City Attorney Ken Jarrard:

It is a matter of what somebody is going to underwrite and I am just telling you that I think they would have a difficult time getting a traditional bonding company to issue that. What you are talking about in my estimation is much more similar to an insurance policy and obviously we can ask them to go out and get an estimate and maybe talk to some folks to see if they would be willing to write that type of an insurance policy and bring you make a premium rate. That would be the only way I know.

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Walt Rekuc:

Like for a five year term.

City Attorney Ken Jarrard:

Right now I have no idea how much that would cost and who would right it. I do not even know what insurance companies would write that. I am not aware of any.

Sam McCullough:

One last thing, in the covenants we do, as Walter has indicated, lists this as part of the HOA. The declaration is basically the HOA for a set of time, remembering that there are many ponds on this whole site and there is a much greater liability in that there is a five acre lake with a state class type dam, so they have to be funding their responsibilities throughout. What I early said is what the city is requiring us to do and remembering that this is public information and every homeowner gets a copy of the Protective Covenants and it is listed in those Protective Covenants. We have not had that particular problem in the past and we have developed here for 22 years in the North Fulton area, so I have not had a situation where a facility was improperly constructed, but the legal mechanism to hold them accountable is going to be in the covenants and there has to be an inspection on an annual basis of the facility and the repair as a process of the covenant, so there is a way that everybody as a group can maintain these facilities.

Sandy Jones:

Regarding your construction that you did at Harrington Falls that has been in place for about ten years, what type of maintenance had to be done?

Sam McCullough:

The whole time I was there we never had any maintenance. I walked it just this past week or so and looked at it and it was doing very well. In fact, the vegetation had gone up quite a bit.

Sandy Jones:

Do you know if the HOA has had to pay anything?

Sam McCullough:

Never heard of anyone having to pay any extra on that. The water quality ponds take most of the trash from the pipes from the road. This is just to knock down velocity.

Chair Heidi Sowder:

Anyone else have any questions?

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Chair Heidi Sowder:

Okay, then I would like to make a motion to close public hearing.

Motion and Second: Heidi Sowder made a motion to close public hearing. Seconded by Marcia Parsons. Vote: 7-0. Motion carried unanimously.

Chair Heidi Sowder:

I would like to open up the floor for a motion at this time.

Walt Rekuc:

I would like to make a motion for approval with a couple of conditions. (1) that if this wall is approved to be in harmony with the community and also limit the amount of trees that are cleared, that the wall that is put in place, both walls of this property shall be painted to a dark color to be obscured; (2) that the amount of clearing and disturbance to build these walls will be kept at a minimum as based on the City Arborist's recommendation; (3) that at the time that the LDP permit is issued that the gravel access road that goes through that property be closed to the subdivision.

Chair Heidi Sowder: Restated the motion on the floor. Do we have a second to the motion? Scott Kilgore seconded the motion. Any discussion?

Todd Chernik:

Would you entertain an amendment for a renewable bond?

Chair Heidi Sowder:

You can make an amendment and do not need to ask for permission. We vote on the amendment as a separate motion.

Todd Chernik:

I am looking for your input as to how to address - given your experience - how to address the ongoing liability that potentially arises from this for the HOA.

Walt Rekuc:

I think it would be best if it could be shown that it was necessary to have the insurance from the HOA increased to cover the potential of these costs and liability for the HOA. Again, it does not become a liability until it is built, so perhaps at the time of final platting. That would be the ideal time for the insurance to go into effect to show that that was covered. I am just brainstorming, as I am not an insurance agent. This seems like the most reasonable way. The problem with bonds is whose name is on the bond. The city or the HOA? Somebody has to be liable for getting it repaired and the way the city's ordinance is structured, they may want the HOA to be the one that actually gets it repaired and then they would be liable for the repairs and not the city.

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Todd Chernik:

Okay, I would like to raise a friendly amendment that at the time of final platting the applicant shall be required to work with the HOA an addendum to extend liability coverage to include the detention wall.

Scott Kilgore:

Just a question on order. Was this a motion?

Chair Heidi Sowder:

We have a motion for an amendment to the motion made by Walt Rekuc that is on the floor.

Chair Heidi Sowder: Restated the motion for amendment.

Chair Heidi Sowder:

Do we have a second? Motion seconded by Sandy Jones. Vote: 5-2, with Walt Rekuc and Gary Willis being in opposition. Motion carried with a vote of 5-2.

Chair Heidi Sowder:

I would like to ask staff a really quick question regarding the tree recompense. Is that a part of the LDP process as well. Is that something we would need to add to this motion to make sure that the trees were recompensed?

City Arborist Mark Law:

That will be addressed when the LDP is issued.

Chair Heidi Sowder:

Okay, we will go back to the motion. We have an amended motion now to grant approval of the variance with both walls being painted a dark color, the land disturbance during construction to be kept to a minimum, at the time that the LDP permit is issued the road will be closed to the existing subdivision, and that at the time of final platting, the applicant shall be required to work with the HOA to seek an addendum to extend the liability coverage to include the concrete detention wall. Do we have a second? We still need a second because it is an amended motion.

City Attorney Ken Jarrard:

I do not think you need a second on an amended motion that has been approved by a majority, so you have a motion that is ready for action.

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Scott Kilgore:

I would like to see wording and I am not sure how to word the amendment, but I would like to see wording added to this motion to justify why we are approving it. I believe we are going on the direction of harmony. With the intent of the ordinance we would need to state the intent of the ordinance and why we believe it is in harmony with that as part of the motion.

Chair Heidi Sowder:

I think the topography is the hardship.

Walt Rekuc:

Again, the reason that I have stated the recommendation for approval is to minimize the amount of disturbance within this whole 20-acre site to allow the detention to occur in this drainage basin and therefore not require the great number of trees to be removed that would be necessary if it was located in another area. Secondly, I felt that the topography was such that the land where it could be placed would be a hardship hydrologically to get water from all that area to a single basin and would require multiple basins and clearing and multiple walls to do the same activity as it would for these two walls that are being shown, one of which we are granting a variance on.

City Attorney Ken Jarrard:

Would the potential amendment then be an amendment to site to Section 22.3.1(a) with respect to harmony and 22.3.1(b) with respect to topography as the basis for the granting of the variances?

Walt Rekuc:

That is correct.

Marcia Parsons:

Would like to add to the motion that in addition to the specifications that we put, I would also like to add landscaping, matting, and fencing along the edges of the wall and in accordance with BMT.

Chair Heidi Sowder:

BMT meaning best management practices.

Chair Heidi Sowder: Restate the motion to amend.

Chair Heidi Sowder:

Seconded the motion to amend. I would like to open it up for discussion. The only question I would have would be for staff. Would that allow a lot of land disturbance to go in and then do landscaping along there?

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City Arborist Mark Law:

That is pretty standard when they are within the stream buffer, anywhere that there is disturbance they would have to come back and replant.

Todd Chernik:

As well as the fencing? Would that be included in the wall permit?

City Arborist Mark Law:

I would have to check with Jimmy about that.

Staff Jimmy Sanders:

No, the fencing would be separate. Typically, we fence detention ponds when the slope is steeper than 4-1. Actually I have not examined it to see if it is steeper than 4-1. If it is, it would require a fence. Now, the fencing to prevent somebody from actually accessing the top of the wall is standard.

Chair Heidi Sowder:

Okay, we have a motion to add landscaping, fencing and matting along the edges of the wall and using best management practices. I would like to go ahead now and take a vote: 3-4, with Walt Rekuc, Scott Kilgore and Marcia Parsons voting for and the remainder of the board voting in opposition.

Chair Heidi Sowder:

Okay, going back to the amended motion. The motion on the floor is to grant approval in that it can be made to be in harmony and then there also exists hardship on the site wherein a lot more land disturbance would happen if this detention facility would to be located elsewhere on this site, both walls shall be painted a dark color so that it is kind of obscure, the disturbance is to be kept to a minimum, at the time the LDP permit is issued, the gravel road will be closed to the existing section of Triple Crown Subdivision, and at the time of the final platting, the applicant shall be required to work with the HOA to seek an addendum to extend the liability coverage to include the concrete detention wall.

Okay, I would like to go ahead and take a vote for all those in favor. Vote: 7-0. Motion unanimously carried.

Chair Heidi Sowder:

Okay, I would like to call the next item on the agenda, V08-001, being presented by Jodi Martin.

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Jodi Martin, 15350 Thompson Road, Milton, GA

Jodi Martin: Presented her case to Board.

The variance request is a result of remodeling at our current residence to permit a stair-less additional bedroom and bathroom for my father to reside with us on a permanent basis. This remodel was done using our old garage space. We want to rebuild a garage structure and we are limited to where the garage can be because of trees and the house is not parallel to the road as it is a little twisted. The variance requires that there not be a structure that would be deemed in the front yard. The property is nearly 7 acres and we are 300 feet back off of the road. I have photos showing where the garage is laid out and no neighbors' home is visible, nor will the garage structure be visible from the front of the house.

Gary Willis:

Do you have letters from the adjoining property owners giving you their permission for you to do this? Did you talk to the people across the street?

Jodi Martin:

I do not have letters from the adjoining property owners.

Jodi Martin:

The house across the street has been vacant for 12 months. The property owner for that house actually resides in Florida and the house has been for sale for the last 10 months. My neighbor directly to my east we have spoken to and he is aware of what we are doing and why we are requesting the variance and it is also posted on the front of our property as well as the neighbor behind us and then adjacent to us. It is a very small community of homes and they are all on significant parcels of acreage, and so all of the neighbors touching our property are aware of what is going on, but I do not have letters from them, but they have all received a letter because I was also informed by the City of Milton about this meeting and the request.

Chair Heidi Sowder:

Would you state for the record what your hardship is regarding this variance request?

Jodi Martin:

As far as one of the three items?

Chair Heidi Sowder:

Yes.

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Jodi Martin:

I believe it is in harmony with what the variance is intended to be. We are unable to attach a breezeway. We looked at several options when we were first meeting with the architect to attach a 35 foot breezeway which really serves no purpose other than to adjoin a roofline. One it is outside of the expense that we can bear to complete the remodel and to complete the building of the new garage. The estimates are over \$20,000 to create a non-use breezeway or covered walkway. We are fortunate on the property that we have probably 100 plus year old oak streets that takes 2-3 people to get your arms around. By pushing the garage back, you will be into the root system of those trees and they may be affected. There are problems moving forward closer because of trees and if closer to the house there will not be enough swing room to actually get into the garage. I did speak with Melissa Henderson and we did talk about shortening the garage where we could move a staircase to the back of the garage and get an additional 6 feet, but we still would not be able to take additional space out or you would not be able to open the car doors.

Todd Chernik:

By modifying to the city's recommendations with the staircase you could move it such that it would be no further than 8 feet in front of the home?

Jodi Martin:

It would take an additional 6 feet for the staircase to be put to the rear of the garage and so it would shorten the distance in front of the house, but it would not eliminate it.

Todd Chernik:

But it would shorten it to no more than 8 feet in front of the home.

Jodi Martin:

Well it would be 14 ft. 10 in. minus 6 feet, so 8 feet, 10 inches.

Chair Heidi Sowder:

Does anyone else have any questions for the applicant or is there any public comment?

There were none.

Chair Heidi Sowder:

Mark, did you make a trip out to the site to look at the specimen trees?

City Arborist Mark Law:

There were no specimen trees right behind the out building as that is a front structure so there was nothing in the front and was well away from where the construction would be. It does appear this could be done without jeopardizing any trees.

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Jodi Martin: Presented photos to the Board. Advised Board she had a contractor with her if they had additional questions.

Chair Heidi Sowder:

I will go ahead if there is no more comment to close it.

Motion and Second: Heidi Sowder made a motion to close public. Seconded by Gary Willis. Vote: 7-0. Motion unanimously carried.

Walt Rekuc:

I would like to ask staff regarding their recommendation to make it no more than 5 foot in front, but just looking at the pictures, it does not seem like 5 feet or 14 feet - I do not really know if I could tell the difference whether you would see that much difference because of the layout of the house in relation to the road. I am trying to just see why the request was made for keeping it at 5 foot versus the 14 foot.

Staff Mike Tuller:

I think you are correct with your summations. The original information we had when we made the staff recommendations was that the garage area was to be placed 10 feet from the front plain of the house and not 14 feet, so that was new information to us that may have come from a recent survey. Our thought was to compromise where 5 feet would be barely visible from the roadway.

Walt Rekuc:

What is the normal setback? 60 foot setback in this location?

Staff Angela Rambeau:

It is 60 feet.

Walt Rekuc:

In other words you are looking for a reduction of the front yard setback to 45 feet more or less. And this is AG-1, correct?

Staff Angela Rambeau:

Correct.

Discussion with Board members about setback.

Chair Heidi Sowder:

Are there any other questions of staff? None? Okay, I would like to open up the floor for a motion.

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Motion and Second: Scott Kilgore made a motion to approve V08-001 based upon harmony with the general purpose and intent of the ordinance. If I receive a second, I would like to read a statement in support of my motion and I have that written and will pass it out to everyone. Seconded by Sandy Jones.

Scott Kilgore:

Read along with me if you would like.

Heidi Sowder:

I would actually like to propose an amendment before we go into discussion

Motion and Second: Heidi Sowder made a motion to amend the motion to state that we move the staircase to the rear of the garage as was an option that was discussed with staff in order to bring it back from the 14 ft. 10 in. back to 8 feet in front of the house. Walt Rekuc seconded the motion to amend for discussion.

Discussion:

Todd Chernik:

I think the discussion on this is we should state what the amount of variance we are allowing in feet versus leaving it open-ended. I think this applies to the original motion as well as to the amendment. Whether the right answer is 14, 8, 5 or 0 feet, I think we need to state how much of a variance in feet we are allowing and not be as specific about moving staircases as an option or solution.

Heidi Sowder:

Okay, then let us go ahead and take a vote on the amendment that I have proposed.

Walt Rekuc:

Again, as far as whether it is 6 foot, 8 foot, 9 foot, 14 foot or 15 foot, I do not see this being not in harmony with the community. I do not think making it 5 feet or 10 feet or for that matter 15 feet would make that much of a difference. I think leaving the option to make it as easy as possible for the applicant to make her structure work for the family, especially due to their need to take care of their parents, I can understand that hardship personally having gone through that myself, so if we could consider it and make it greater, I think that would be better, but I think it is going to be hard for most folks to see it. I understand the reason, but I would feel better if we gave them more than less.

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Heidi Sowder:

I guess I will clarify my reasoning for proposing the amendment. If you have an exterior stairway in the front, we are already trying to do our best to make it in harmony I am assuming by this motion. If you put the stairway in the front it is going to be visible from the road.

Scott Kilgore:

I would seconded Walt Reku's statement and that was the reason I was moving to approve the request and I agree with Mr. Chernik's statement that I think we need to state an amount so it is clear. I felt that moving it forward or back 5 feet or in this case more like 9 feet, you are just not going to see a lot of difference from the road and it really is the view from the road that we are talking about when I read my statement. You are not going to be able to see it from the sides. I do not think that it makes a difference placing it forwards or back if it is more convenient for the homeowner to have the staircase interior, I was trying to work with that.

Heidi Sowder:

Okay, we still need to vote on the motion because it was seconded. My motion was to shorten the garage by moving the staircase to the rear of the garage. Vote: 7-0 in opposition. Motion failed.

Okay, back to the original motion. I guess we are still discussing if that is appropriate.

City Attorney Ken Jarrard:

Or madam Chairman, you could just withdraw the second and refrain the motion if you would like as the amendment failed and there is just a brand new motion on the table which is where it is. I think you wanted to restate it is what I heard.

Chair Heidi Sowder:

Are we not allowed to withdraw once it is out on the floor? Are we not allowed to vote on it?

City Attorney Ken Jarrard:

Oh no, you can vote as long as the second agrees to allow the withdrawal.

Sandy Jones:

I will withdraw my second.

Scott Kilgore:

I withdraw my motion.

Chair Heidi Sowder:

I will open up the floor for a new motion.

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Scott Kilgore:

Motion and Second: Scott Kilgore made a motion to approve V08-001 based on harmony with the general purpose and intent of the ordinance and I would include a cap on the amount that the building can break a plain at the front of the house to be not more than 14 feet 10 inches. Seconded by Sandy Jones.

Chair Heidi Sowder:

Any discussion?

Scott Kilgore:

I would like to read a statement in support of my motion.

Statement of Scott Kilgore:

*City of Milton Board of Zoning Appeals
Motion Worksheet
Scott Kilgore*

Variance #: V08-001

Description: *To allow an accessory structure (garage) in the front yard.*

Motion: *I move to **approve** V08-001 based upon **harmony** with the General Purpose and Intent of the ordinance. If I receive a second, I would like to read a statement in support of my motion.*

Supporting Statement:

The applicable ordinance for this case is: Article 5.1.3, Section I, which requires accessory structures to be placed in the side or rear yard.

I submit that the general purpose and intent of this requirement is as follows:

- *Accessory structures are typically unsightly and should be placed to the rear or side of a residence in order to maintain an appealing, un-cluttered appearance from the street.*
- *Unsightly structures in the front yard may present an eyesore to neighbors and citizens, as well as negatively impact neighboring property values.*
- *Accessory structures in the front yard also could impede fire and emergency personnel access to the residence.*

The garage proposed in V08-001 would be in harmony with the intent of the ordinance for the following reasons:

- *The appearance of the proposed garage is typical and in keeping with the character of the area.*

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- *Viewed from the street the garage will appear to be positioned to the side of the residence. Only when viewed directly from the side would it be apparent that the garage breaks the plane of the front of the house. Since the majority of the garage is behind the plane, the overall balance of the design has a side-yard feel. I would add too that it appears from the aerial photograph that the neighbors to either side will have little or no view of the garage due to heavy foliage.*
- *The proposed improvement to the property will almost certainly increase the property value, and as such could only benefit neighboring property values as well.*
- *The side placement of the garage should not in any way impede fire and emergency personnel.*

For these reasons I move to approve V08-001.

Chair Heidi Sowder:

Are there any other comments?

There were none.

Okay, we will move on to taking a vote.

Chair Heidi Sowder: Restated the motion. Vote: 7-0. Motion carried.

Chair Heidi Sowder:

At this time, I would like to make a motion to amend the agenda. Mr. Morton are all of your people here? Okay.

Motion and Second: Heidi Sowder made a motion to amend the agenda to move V08-004 and V08-005 up.

Chair Heidi Sowder:

I am going to withdraw that motion. I would like to make a motion to move up V08-003, V08-004 and V08-005. Seconded by Sandy Jones.

Discussion:

Reason is to facilitate having our lawyer being able to get back home to his family and Mr. Morton has his individuals here and I believe there is going to be lengthy discussion on V08-004 and V08-005 so I thought I would make the motion to move them forward.

Todd Chernik:

To clarify, you want to move V08-004 and V08-005 ahead?

Chair Heidi Sowder:

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V08-003, V08-004 and V08-005. Any other discussion?

Scott Kilgore:

We have not done V8-002.

Walt Rekuc:

We can put that at the end.

Chair Heidi Sowder:

Okay, by a show of hands I would like to vote to amend the agenda. Vote: 7-0. Motion unanimously carried to amend the agenda.

Chair Heidi Sowder:

Okay, Angela, would you present V08-003 please.

Staff Angela Rambeau:

Read aloud Petition V08-003. Variances requested are (1) to build a guesthouse in the side yard of the property; (2) to exceed the maximum allowed heated floor space of a guesthouse. The subject site is located at 15745 Hamby Road. Ordinance states a guesthouse should be located in the rear of a property. Hardship stated is that guesthouse needs to be built as handicapped accessible for immediate members of their family. Current home does not support wheelchairs, walkers or other handicapped accessible features so they would have to rebuild their home to correct these problems. The increased heated floor space requested is to accommodate larger bedrooms, bathrooms, and closets to allow wheelchairs, walkers, and other required medical devices. Staff notes that applicant shall comply with the Flood Prevention Ordinance. Arborist notes that the applicant shall follow all required tree save fencing and the Stormwater Department notes the dam breach zone should be shown on site plan when applicant comes in to apply for a building permit. Staff recommends the following condition: (1) applicant shall comply with all applicable rules and regulations for building in a dam breached zone.

Chair Heidi Sowder:

Is the applicant present tonight? Would you please come forward?

Applicant Roland Ebright, 15745 Hamby Road, Milton, GA:

My wife has had several knee surgeries and several back injuries. It requires 8 steps now to get into our house. We cannot get wheelchairs down the hall or into the bathrooms. My wife's mother is 81 years old and most like to come to live with us within the next few years. In addition to this, our daughter has advanced rheumaty arthritis and it is like that if a cure is not found she will also be coming to live with us. We want to build a home that is handicapped accessible so we can continue to live on our land and take care of ourselves and not have to go to a nursing home. This is the reason to have a guesthouse next to the one we have. If you look at the plan, the way the land is shaped I can only put it beside the existing house. The land in the back, the property lines are too close, and the wells on the property prevent me to moving back there either for the septic fields or the house itself. I

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cannot move much further down the hill or will get into some big specimen trees and my septic tank field lines would then be down in the flood plain itself. Regarding the additional square footage on the heating, you will notice on the plan there is what is called a metal shop there. That is 1500 square feet. We have tried out various plans for 3 bedrooms and it is too tight for me to live with 3 women that are handicapped in 1500 square feet. That is why we are asking for just a little bit more square footage. Our families have been in this area since the 1830s. We want to continue to live in this area and continue our family heritage and pass the property on down to the kids when they come on up.

Chair Heidi Sowder:

You mentioned something about a dam breach zone?

Applicant Roland Ebright:

The dam is about 600-900 feet north of the property that is part of The Manor. It is their dam. In 1990 one of the big hurricanes came through and caused that lake to overflow the dam and come through this field area, went down our property and the creek never overflowed. The dam was just recently rebuilt by The Manor and it is their primary access to the majority of The Manor and their clubhouse so I think it is in pretty good condition.

Chair Heidi Sowder:

Are there any specimen trees that you are going to have to cut down to build the house?

Applicant Roland Ebright:

Most of the specimen trees are outside of the land disturbance area, but there are some trees that will have to come out. The area that the house is sited in is a fairly bald area, but I would like the arborist to come out to see if it is possible to transplant some of the existing trees to align our driveway with. I do not know if they would survive the move or not.

Scott Kilgore:

What are you plans for the existing home?

Applicant Roland Ebright:

If our son moves back and finds a job in this area, he will move into that house and his plans are to stay there and assist us in our old age and take over the land when it gets to be his turn and continue with the family tradition.

Chair Heidi Sowder:

Any other questions of the applicant?

Walt Rekuc:

Have you gotten any letters from adjoining neighbors that would be opposed?

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Applicant Roland Ebright:

The city sent out a letter to the adjacent homeowners notifying them that this meeting was going to occur and I do not see any of my neighbors here tonight. The Manor is a gated community and they will not allow us back there so I do not even know who lives behind us.

Marcia Parsons:

Could you tell me if you have addressed the extension of your septic tank fields?

Applicant Roland Ebright:

Yes, we had a soil test study done and a percolation test done and the two septic fields are laid out as referenced on the plat you have been provided. A primary and an auxiliary for backup in case the primary even fails. My understanding is that if this gets approved I get my permit from Fulton County Health Department.

Scott Kilgore:

I have aerial photo of your property and it looks like there is fairly heavy foliage between you and The Manor. Is that true and are your neighbors to the rear going to have much view of the two structures? [discussion with Board and Applicant at the dais reviewing the aerial photo].

Chair Heidi Sowder:

You mentioned that the topography of your lot precludes putting the guesthouse to the rear of your home?

Applicant Roland Ebright:

Yes. If you look at the plat, you will note that immediately behind the house is a swimming pool and off to the right there are two wells which is our water supply, so we cannot really build behind there. Cannot build down near the flood plain and also there are some specimen trees down there too. There is really only one place left to build this house.

Gary Willis:

How far is your house going to be from The Manor that backs up to?

Applicant Roland Ebright:

The closest house approximately 45 degrees off from the swimming pool will be 300-400 feet from this structure.

Chair Heidi Sowder:

Anyone else have any more questions of applicant or staff?

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Walt Rekuc:

Regarding the requirement about the dam failure flood zone - Jimmy, I do not know if that is something you have done, but I am going to put on my other hat. I am on the Fulton County Stormwater Conservation District that is or was a district lake or dam upstream. If I recall correctly, that is going to be required to be upgraded to a category 1. If that gets upgraded to a category 1, the chance of that failing once it is a category one, will probably be much less. The Manor did take over that dam and they own it now so they are going to be the ones that will be required to upgrade it and I am not 100%, but probably 95% sure that the state is evaluating that dam along with about 7 other of our dams in North Fulton and that is one that is going to be upgraded to a category 1. I know at that time they will do a dam failure flood analysis as required by law.

Jimmy Sanders:

I think you are right. It probably will be done by them at that time. But in looking at the lot, I am not sure that this is really a big issue here either because of where this house is situated and the elevation, so I really do not believe this is going to be an issue. All they probably need to do is take a look at the elevation of the height of the dam and extract it like that on the lot and then you will probably find that it does not affect it.

Walt Rekuc:

I do not think they need to do a long drawn out hydrology study and all that.

Jimmy Sanders:

I do not think they need to do that either. I think they can take the elevation and extrapolate it around the lot and show that it is not in the dam breach zone. It is something that can be shown on the drawing.

Walt Rekuc:

I would like to make sure that we work with him if we can.

Chair Heidi Sowder:

Are there any other questions or comments? Okay, then I will make a motion to close public comment.

Motion and Second: Heidi Sowder made a motion to close the public hearing. Seconded by Marcia Parsons. Vote: 7-0. Motion unanimously carried.

Chair Heidi Sowder:

I would like to open up the floor for a motion.

Scott Kilgore:

I would like to make a motion.

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Motion and Second: Scott Kilgore made a motion to approve V08-003 based upon harmony with the general purpose and intent of the ordinance.

Chair Heidi Sowder:

Would state what the actual zoning ordinances are? Do you have those?

Scott Kilgore:

I do in my supporting statement. Do you just want me to read the variance itself?

Todd Chernik:

It is two parts.

Scott Kilgore:

Okay, parts 1 and 2. Continuing with motion: One to approve a guesthouse in the side yard of the property and part 2 to exceed the maximum allowed heated floor space of the guesthouse. The applicable ordinance is Article 19.3.5(b)(5) and Article 19.3.5(b)(3).

I'm sorry, is that what you are asking for? I said I moved based on harmony with the general purpose and intent of the ordinance. Walt Rekuc seconded the motion.

Chair Heidi Sowder:

Is there any discussion?

Scott Kilgore:

I would like to read a statement into the record in support of my motion.

Statement of Scott Kilgore:

City of Milton Board of Zoning Appeals
Motion Worksheet
Scott Kilgore

Variance #: V08-003

Description: To build guest house in the side yard. To exceed maximum allowed square footage (1500) by 485 feet / 32% -- total 1985 square feet.

Motion: I move to **approve** V08-003 based upon **harmony** with the General Purpose and Intent of the ordinance. If I receive a second, I would like to read a statement in support of my motion.

Supporting Statement:

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The applicable ordinances for this case are: *Article 19.3.5, Section B3*, which limits heated floor space to 1500 square feet, and *Section B5*, which requires guest houses to be placed in the rear yard.

I submit that the general purpose and intent consists of two items:

- The distinction between a residence and a guest house disappears when the size of a guest house approaches the size of a residence. If property owners were allowed to build two full-sized homes per parcel by simply calling the second structure a “guest house”, the result would be circumvention of the 1 house per acre maximum density allowed by AG-1 zoning. The 1500 square foot maximum for a guest house closes this loophole.
- A guest house, though smaller than the primary residence, nonetheless increases the visual density of the area. This detracts from the rural character of the area and potentially diminishes neighboring property values. Placement of the guest house behind the primary residence helps to mitigate these negative impacts.

The guest house proposed in V08-003 would be in harmony with the intent of the ordinance for the following three reasons:

1. Viewed from the street the guest house will be barely visible or perhaps not visible at all, depending upon the season. This is so for several reasons: (1) The property is flag shaped, and the structure will be over 1200 feet from the road, (2) the rear of the property is heavily wooded, (3) neighboring property to the west is heavily wooded, (4) the neighboring property to the east appears to be in the hundreds of acres and is completely wooded, and (5) the closest neighbor to the north would be nearly 200 feet away with heavy woods between. Since both the primary residence, and the guest house will be barely visible from the road or from neighboring properties, the rural character of the area will not be negatively impacted. The houses in this area are quite large, so a guest house that is 1985 square feet would still appear small by comparison. That is, the perceived density would not be increased, since the structures will not give the appearance of two full-sized residential structures. Also, the front of the existing house is approximately 85 feet, whereas the front of the proposed guest house is approximately 50 feet. This too will accentuate the difference in the size of the two structures.
2. Finally, this is a large piece of property, so even if the guest house were considered as a full-sized residence, the physical density of the property will still be well within the 1-house-per-acre AG-1 standards.

For these reasons I move to approve V08-003.

Chair Heidi Sowder:

Any other comments or discussion? Okay, I would like to propose an amendment just to request that the applicant also follows all of the recommendations that staff has suggested in the packet and that would be complying with the flood prevention ordinance, install required tree save fencing, and show the dam breach zone on the site plan. Seconded by Sandy Jones. Vote: 5-2, with Walt Rekcuc and Todd Chernik voting in opposition. Motion carries.

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Chair Heidi Sowder:

Motion on the floor now is to approve V08-003, Part 1 to allow a guesthouse in the side yard of a property and Part 2 to exceed the maximum allowed heated floor space of the guesthouse as requested and to include that the applicant shall comply with the flood prevention ordinance, install required tree save fencing, and show the dam breach zone on the site plan. Vote: 7-0. Motion carries unanimously.

Chair Heidi Sowder:

I would like to take a five minute recess.

Motion and Vote: Heidi Sowder made a motion to take a five minute recess. Seconded by Scott Kilgore. Vote: 7-0. Motion carries unanimously.

Chair Heidi Sowder:

Reconvened meeting at 9:35 p.m. Angela, would you present the next item, V08-004.

Angela Rambeau:

Read aloud Petition No. V08-004, 2925 and 2935 Webb Road. Requested variances are as follows: (1) to encroach into the 75 impervious setback and (2) to encroach into the 50 foot undisturbed stream buffer. Staff recommends that the applicant comply with GWSCC requirements for erosion control and stormwater standards. Applicant states the hardship for the stream includes the site topography and overall nature of the property. If the board approves this application, Staff recommends the that the applicant adhere to all applicable state permitting conditions regarding the stream based on current environmental compliance standards.

Chair Heidi Sowder:

Mr. Morton, would you come forward?

Ken Morton, 14732 Taylor Valley Way, Milton, GA

I do have a presentation and I have made copies to distribute to everyone to follow along. The first two pages will be for this variance and the second variance is shown on the third and fourth pages. the other folks that are here with me tonight are Mark Ballard who is with Ecological Solutions, the company that assisted me in obtaining the State and the Corps permits, Brad Riffel with AEC is my civil engineer and my parents Jack and Margie Morton who are the owners of the western portion of the property that will be discussed tonight. Our family has lived in North Fulton for a very long time - about 150 years to be exact and needless to say, we love our community and understand and accepted the tremendous growth years ago, but we like all of you want to see quality growth and smart quality growth and we thank you for your willingness as citizens of our city to ensure that this occurs. Our city has a very limited amount of commercial property to develop and it is imperative that we develop it correctly and we need your help tonight in ensuring that we are just able to do that. The stream buffer variance that we are requesting is located along Webb Road and Highway 9. The front parcel shown is 1.3 acres. It is zoned C-1 and has been for many years. [Discussion with Board referencing site map and presentation]. Also showed the Board from PowerPoint presentation where

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the springhead starts and the beginning of the intermittent stream]. It runs toward Webb Road and it comes out in the right-of-way [Referencing site map]. Most all of the spring is in the right-of-way. The stream flow is only approximately 50 feet [Referencing site map]. Once the stream goes underneath Webb Road, it is piped under Webb and continues to be piped approximately 500 feet on the property across the street from us and then piped back underneath of Windward Village Parkway and enters behind the town homes. With the exception of the rainy season the spring is nearly dry with little or no evidence of any flowing water. We have obtained our State EPD and the Army Corps of Engineers permits. This past December we received City Council's approval for our rezoning to put a nice sit down restaurant on the corner and we are asking for your approval of this variance based on what the Corps and the State have deemed to be justified and obtain permits for. Our hardships are not self-imposed. We are dealing with a very site with the buffers taking up so much of the property and make it very difficult. We did go to all of our neighbors and got letters from each one of them in support of this particular parcel. I explained to each one of them what we were doing and they all agreed through their letters there would not be any impact on them that would be detrimental to their business or to their residence [copies of the letters will be provided to the Board]. Piping this stream is an absolute necessary to even be able to develop the piece of property. There is no other way around it.

Walt Rekuc:

I have a question for your father. When was Webb Road improved? It looked like it was improved at one time that basically filled that area that caused that area to get depressed. It does not look natural. Do you recall when that occurred?

Jack Morton, 405 Tullamore Road, Milton, GA

I bought the property in the early 1980s from one of the original owners of the property. Webb Road was just a surface paved road then. That was probably done in the 1960s or 1970s when that road was paved there.

Walt Rekuc:

It looks like someone filled a good bit right across the street from you because that land if I remember did have a little bit of a draw running through it. Is that how you remember it?

Jack Morton:

Across the road from our property Alan Carson developed that and filled all that in. There was a lakeside across the road when I was building in that area. I built houses along the road in that area.

Walt Rekuc:

I have a question now for Brad Riffel. Brad, up in the corner of State Route 9 it looks like there is a storm drain pipe that is draining there. Do you know just out of curiosity how much drainage is coming in off of that?

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Brad Riffel, 490 Spring Road Drive, Roswell, GA:

I do not know the exact acreage, but it is not very much. Most of which is probably Highway 9 and then the Remax.

Walt Rekuc:

Okay, and I have a question for Mark Ballard. Regarding your stream, what about the soils on the bottom of that creek. What are we looking at hydrolically. I went down there personally and walked around. I would like to understand a little bit more about the creek and the quality and how you came to get the Corps to approve it as well as the State to approve it.

Mark Ballard, 630 Colonial Park Drive.

I will talk first from a Corps perspective; there is not really a defined stream definition. I have been doing this for 14 years. We go out to the site and use our best professional judgment. We look at things like what is their separation of sand and silt and is there ground water infiltration coming in and we could obviously see that. The channels were not as big of a legal issue then as they are now given the recent Supreme Court ruling. We did actually take stream soil samples in the channel, which was not a common practice in 2006.

Walt Rekuc:

As far as getting the State approval for that stream buffer, explain the application process. I am going through one presently and was rather surprised by the number of questions.

Mark Ballard:

I think the State looks for a rested vegetation line. That is the key thing for the State. In this case we also have the local issuing authority. In this case it was Fulton County at the time that came out and looked and concurred. This went along with the application to the EPD. The EPD has its own set series of criteria you can apply (a-i) and we applied under criteria h., which means you have got the Army Corps of Engineers permit, but it is about a 3-4 page application form describing existing conditions from topography, the soil conditions, the map survey and the overall vegetative character. We just look at the potential detriment to water quality from impact from a stream like this and in this case EPD is really focused on using the term now treatment terrain of BMT or best management practices. Because there are documented conditions showing the project would not have a negative cumulative impact on water quality.

Walt Rekuc:

Maybe this question is for Brad, but are you saying that when this water from both offset as well as onsite comes into the detention/water quality system it is actually getting cleaned as it goes through.

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Mark Ballard:

We are basically replacing buffer functions and in this case I think improving those functions.

Walt Rekuc:

Can you tell me what the length of this proposed stream is?

Mark Ballard:

In this case, from the Corps jurisdiction I think 71.5 feet.

Walt Rekuc:

When do they get excited? What distance?

Mark Ballard:

300 feet of flowing stream and in this case intermittent streams. 300 feet is a real magic number for the Corps as far as a determining issue. One thing to note is that March 18th that is documented on the Corps of Army Engineers permit that is a nationwide permit. It is now 50 permits that apply to a wide range of activities. Every five years the Corps of Engineers reissues those. Those expire in a certain time period. If you had a prior issuance, March 18 of 2007 was when the new permits came out and you then have 12 months beyond that to complete those impacts or you go back and start all over again which would increase the permitting cost and timeframe.

Walt Rekuc:

In walking down there I did see a good bit of debris and tires. Would that be allowed to be touched if we did not approve it? What would have to be done if you do not do anything?

Mark Ballard:

Nine times out of ten nobody does anything about that if it is a restoration project and you would never touch a restoration project at 71 feet. You could do that without a permit and go in and pull the tires out as long as you do not have to get equipment in there.

Walt Rekuc:

Is there any mitigation being required on either of the two permits that you have gotten from the Corps of Engineers or the State?

Mark Ballard:

Not from the Corps. Under the rules that were in place then, 100 linear feet of stream was the magic number that kicked you in toward mitigation. From the State's standpoint when this permit was issued, the State had come out this past year with buffer mitigation guidelines - the EPD did. This permit predates those, but again I think the things that Brad Riffel and the folks at AEC have designed

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in provides that buffer mitigation as far as filtering of the runoff as it comes into the buffer and those types of issues.

Brad Riffel:

There are going to be various methods. We are not sure yet how we are going to provide water quality for the front area. It may be a series of perimeter sand filters where we would drain the surface area through and then from there would go through the underground detention. The back portion would probably be taken of via a very large underground sand filter just given the nature and the depth. Again that would be another underground detention pond.

Walt Rekuc:

When you are putting the filters in place, what are you actually removing from the water?

Brad Riffel:

Under the Georgia Stormwater Management Manual, you are bound to remove 80% of the total suspended solids and that is what we will, of course, be applying for with the different methodology that we would work into the whole stormwater management facility of which Mr. Sanders would be reviewing and approving.

Walt Rekuc:

What about your oils and your carbon elements? Are any of those being removed or treated?

Brad Riffel:

The sand filters would do a portion of that. If we felt we needed to take care of some of the larger parking lot areas, we would probably introduce an inline oil grip separator, one of the various types that are out in the market.

Walt Rekuc:

What about the water coming off of Webb Road, would that water being going into this system or bypassing it?

Brad Riffel:

We have no intention of trying to collect and route Webb Road. Webb Road is draining as such where it is primarily going to be draining toward the large draw that is in the back and that was going to be fed into the pipe system that is already underneath Webb Road.

Walt Rekuc:

It looks like someone moved the driveway off of Webb Road further off of the intersection. It looks like one time under zoning case 2007-090 that the actual driveway for this location was actually going right over the piping.

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Brad Riffel:

It has probably changed because Mr. Carson now has a road that he has installed as a loop system that connects Webb to Highway 9 so we are, of course, bound to align with that one.

Walt Rekuc:

Is there anything else that would benefit us piping this creek or allowing this creek to be piped from your professional opinion besides the water quality being improved and perhaps cleaning out the existing creek and stream?

Brad Riffel:

Well, of course, all of the methodology that we are going to apply would certainly be treating the water to the standards. Other than just allowing a rather prominent and extensive corner to be developed, that would be it.

Mark Ballard:

One thing to look at is routinely the Corps of Engineers would ask is the highest and best use of the land. In this case, we bought the highest and the best use is the proposed development. We can do better water quality treatment than what is there today. You could leave that today and walk away and come back in 20 years and it will not look much different. The trees would still be there, the quality would be the same.

Walt Rekuc:

How can you say that? What are your credentials?

Mark Ballard:

I am a professional _____ scientist. I am not an engineer, but I have done permitting with the Corps of Engineers for about 14 years and this is how I make my living, by trying to convince folks like yourself that these are viable projects and we can get them built. I am speaking on years of experience and being successful in doing that. We also do stream restoration. We are probably the biggest mitigation designer in the State of Georgia. There is a lot of science beyond what we do.

Chair Heidi Sowder:

Anybody else have any questions for the applicant?

There were none.

Okay, I will open it up for public comment.

There was no public comment.

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Chair Heidi Sowder:

Mr. Morton, do you have anything to add?

Ken Morton

No, I do not think so. I think these gentlemen have done a good job of presenting the water quality improvements and so forth versus leaving the stream in the condition that it is in right now, but only improve that and, of course, being able to build there and develop the property.

Chair Heidi Sowder:

I have a couple of questions for staff, so I will go ahead and make a motion to close public hearing.

Motion and Second: Heidi Sowder made a motion to close public hearing. Seconded by Todd Chernik. Vote: 7-0. Motion carried unanimously and public hearing was closed.

Chair Heidi Sowder:

This property came forward for rezoning in December of last year, is that correct? The site plan at that time did not depict any streams on this particular parcel and no stream issues were presented to Council at that time, is this correct?

Angela Rambeau:

The site plan did not show the stream and the buffers, that is correct.

Chair Heidi Sowder:

Was an environmental site analysis done or did anyone actually go out and walk the site?

City Arborist Mark Law

That was done previously I think in 2005 and I did have my site visit notes showing the specimen tree locations and both springs on this project up in the corner and the larger one in the back. How that did not make it on the plan that went to Council I am not aware of that, but I think I did submit my initial site visit notes along with a more recent site visit notes confirming what was out there. Evidently, it appears the stream was overlook in that north corner. In talking with Mr. Morton and another one of his associates in the past when I visited the site again, I brought that to their attention and they were very aware that those streams were there so it was not a matter of them saying they were not there.

Chair Heidi Sowder:

Also, at the rezoning, the square footage per acre was increased from 8,654 sq. ft. up to 44,160 sq. ft. is that correct? This information was from the 2000 rezoning. I guess this parcel had some acreage added to it which brought the density up because of the additional storage facility.

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Staff Angela Rambeau:

I think you are reading a part that I have not seen yet, but I will not argue with those numbers.

Staff Mike Tuller:

Are we evaluating the first tract at Webb and Highway 9?

Chair Heidi Sowder:

Yes, not in total, just for V08-004. It is my understanding that this was the only parcel considered in the rezoning application.

Staff Mike Tuller:

I think you are correct.

Chair Heidi Sowder:

I guess I would request some help from legal then. If this rezoning came forward and the streams were not presented on the site plan, Council approved the rezoning that was given to them with no streams being presented and yet now, two months later, we are looking for a stream variance so I am a little concerned that as a board how do we address that or what concerns might legal have about that?

City Attorney Ken Jarrard:

Obviously, everyone benefits if the streams are identified at the zoning stage, both the developer wants that because that saves the developer or the wood-be developer from having to come back before the governing authority again later. It happens all of the time is the reality of it. Now we can get to motives if we want to, but I do not think that is where we are going tonight as to why they were omitted. Was it a mistake, were they purposely left off, and I can go on and draw these questions up, but a lot of times what will happen is that a zoning will get passed and perhaps the hydrology had been done a few years ago and perhaps there has been a lot more development around the property, and low and behold, guess what? EPD comes up and finds there are streams on there and there were not streams there previously. That happens all the time after the zoning, and when that occurs what that forces the developer to do is to come back before you guys and request a variance that they would have probably preferred to have gotten the first go around if they had known about it. For the developer it is an unfortunate occurrence as well. I do not know what happened on the previous rezoning and why that was omitted. I think I heard it was an oversight. I do not know why the plans were submitted or prepared the way they were, but clearly you are right. So now the question becomes did the Council make a decision based on incomplete information. I do not know the answer to that because I was not at those previous hearings. The bottom line is whether that resulted in a faulty determination the first time or not, you have the variance before you now and you have to make a decision based upon the facts that have been presented to you. I am mindful of your concern and I understand it as far as having to go back and saying were things not put on that previous site plan such that they were not able to make an informed decision, and I am just not able to speak as to why it

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was omitted the first time. I just know what you have in front of you now and you have to act on that in some way.

Chair Heidi Sowder:

Okay, so the permits were filed with the EPD and the Georgia Stormwater Management back in March of 2007, is that correct?

Ken Morton:

In 2006.

Chair Heidi Sowder:

So back in 2006 you were aware that there were streams on this site?

Ken Morton:

2005-06 and it was my mistake because I assumed that with state permits and EPD permits that this is what was necessary to pipe the stream and it was not an oversight on my part except for with those permits in place we would be able to move forward and then I was notified afterwards that you had to go apply for a variance. So it is very important for you to know that there was no intention on our part to mislead anyone in not recognizing those streams. That was the last thing that we wanted to do. We just assumed, and wrongly so, that with the state permits the Corps permit, that we were good to go, and obviously that was not the case, so my apologies for that. As counsel said, it would have been so much easier to do this back in December and we would not have our stress in trying to get this done now. I am very sorry that it has come to your call to make tonight, as it should have been addressed earlier, but once again, it was my oversight in just assuming I was good to go to pipe those streams and I apologize for that.

Chair Heidi Sowder:

I actually do have one more question. The stormwater detention on this site as I understand it is going to be underground stormwater detention at the front corner and within the buffers.

Walt Rekuc:

I have a question for the arborist. On the trees that are in that area, are they considered substantial trees that are specimen trees in this area?

City Arborist Mark Law:

There are three specimen trees up in that corner that appear to be in good health and seem to have good structure. What happens here is once you eliminate the surrounding trees in the cavity of that tree sometimes that changes the structure of the tree as far as the aesthetics and everything. It does not change the fact that it is a specimen size tree, just may change the aesthetics, but the trees appear to be in good health. I did talk with Jim Seeba in transportation and he was concerned about the road widening and that was going to impact those trees if they get too close when they widen Webb Road.

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Walt Rekuc:

I would like to make a motion.

Chair Heidi Sowder:

Does anyone else have any questions for staff at this time?

There were none.

Motion and Vote: Walt Rekuc made a motion for approval to encroach within the 75 foot impervious setback based on Article 14.7.6.5.i and to also encroach into the 50 foot undisturbed stream setback, Article 14.7.6.5.ii. The reason is for the shape of the property and narrowness of the property that would be remaining had the stream buffer stayed in place and also would be in harmony with the property across the street where it was previously piped and in general that they would still have to comply with all the state and federal regulations involved with the stream buffers and what they are required to do. Seconded by Gary Willis.

Chair Heidi Sowder:

Is there any discussion?

There was no discussion.

Chair Heidi Sowder: Restated the motion to approve the two part variance.

Vote: 5-2, with Scott Kilgore and Heidi Sowder voting in opposition. Motion carried.

Chair Heidi Sowder:

Angela would you present the next item?

Staff Angela Rambeau:

Petition V08-005 was read aloud in its entirety. The variances were for 2905 and 2915 Webb Road. Requested variances are as follows: Part 1, to encroach into the 75 foot impervious setback and Part 2, to encroach into the 50 ft. undisturbed stream buffer. Property is located at the southwest corner of Webb Road and Highway 9 and is in the State Route 9 Overlay District. The Georgia Department of Natural Resources has approved the piping the state water portion of the stream to the U.S. Water Springhead. The comments were that the applicant shall comply with GWSCC requirements. Should the board chose to approve this application, Staff recommends the following conditions: That the applicant adhere to all applicable state permitting conditions for piping the stream based on current environmental compliance standards.

Ken Morton:

I want to apology to you again. I think I gave the board my notes with the packet I gave to Mr. Kilgore to pass out. I may do better without them. This parcel is in the rear of the property that my folks have owned for nearly 30 years there. It has been undeveloped for that long or perhaps longer

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than that. It is comprised of 2.8 acres and zoned O&I a few years ago with Fulton County. The proposed variance request is for our request to pipe 75 lineal feet of the state waters. [referencing the diagram where piping would be]. The total length of the stream is 320 feet. It comes up as a spring there on our property and then goes back down underground and then comes back up. It goes from south to north toward Webb Road is the flow there. As you can see from the picture on the left [referencing diagram] it does run dry. This portion that we are talking about with the exception of the rainy season is once again like the other one, a very dry stream. If you went out there now as many of you may have, you will see there was a wet portion up there with the rain that we have had, but this portion [referencing diagram] remains dry throughout most of the year. When we got our zoning back in 2005 as I said earlier, we had a 25 foot setback in place and we were ready to begin construction immediately to get started and we were simply waiting for a letter from Fulton County for sewer. You may know about this particular area, but it was very frustrating after two years of conversation with our friends down there, we finally received this past fall our letter of approval for sewer. Of course, if we would have started back then years ago, the buffers and so forth would not have been in place because we had the O&I, we had the office condominiums which are what we are intending to put here and zoned for, to put on the property. But during this time, the additional setbacks were increased and what we lost was nearly 1.4 acres of buildable property during that time. We are not asking to pipe more stream. Certainly as our engineer has talked about, typically you can pipe up to 300 feet and that is not our intention. We are just trying to pipe enough of the stream just so we are property can be properly built upon. We are only trying to pipe the 75 feet which is a minimum amount in order just to be able to build on the back portion of our property which makes up a good bit of it. [Discussion with Board referencing the diagram]. The density for our buildings are a lot less than what it was previously and with these buffers it really hurt us there, so we only want to pipe the referenced portion of the spring. You can see from our site plan, we want to leave a good portion of the 75 feet as a green area. We do not plan on going in there and putting additional parking. If anything whether we cleared it or not, the minimal impact for me to get in there and put a headwall right there is very minimal and then I can leave this entire area [referencing diagram] either natural if that is the best use for that or maybe a picnic area or just leave it completely out for the park there, but the 75 feet is imperative. There are 2,884 square feet of buildable area that we would not be going into and would also be considered green space. We are excited about the park. We think it is going to be a beautiful office park with a lot of green space. We think our tenants will be excited about having something like this and we are just trying to have a minimal impact of 75 feet just so as I said earlier we can develop a large portion of our property which we will be unable to do because of the amount of buffers.

Todd Chernik:

I am a little confused from looking at this case and the last case regarding the site plans. What you have up there [referencing diagram] shows what appears to be a building on the upper right, but I do not see that on the plans.

Ken Morton:

It is actually between the two. That is exactly right. It is the climate storage building that goes towards Highway 9 and then you have the parcel of property that we talked about previously.

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Todd Chernik:

So is that unit on this parcel? Does it straddle both parcels?

Ken Morton:

It is in between the two. It is zoned C-1. This zone line is the newly created zoning line and I still have to go in front of City Council to do a site modification for our buildings that we are doing here in the office. Does that answer your question?

Todd Chernik:

No, I think I am still confused.

Chair Heidi Sowder:

So the site plan that we are looking at has not been approved yet, is that what you are saying?

Ken Morton:

Right. This site plan with the office buildings has not been approved by Milton City Council. There was a previous site plan for the office condominiums approved by Fulton County a few years ago in 2005.

Chair Heidi Sowder:

And that constituted how many acres?

Ken Morton:

It was right at 3 acres, but we moved the zoning line so I am sorry I could not answer the previous question correctly.

Todd Chernik:

Are there 2 parcels or 3 parcels from the last piece we just heard and this one. Do these parcels meet each other?

Ken Morton:

There is a parcel on the front that is zoned C-1 and then the parcel next to it is zoned C-1, which is the climate storage, and then you have this parcel which is the O&I property, so there are 3 parcels.

Scott Kilgore:

I am also confused. Did I hear you say you are going to be going before Council and when are you going before them?

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Ken Morton:

In March. I believe it is March 18th.

Scott Kilgore:

And was there a reason you split the two and then did not bring the concurrent variance as part of that request? I mean you brought this variance before us instead of it accompanying your rezoning request before Council as a concurrent variance. I am just curious why you did not do it all wrap up together with Council.

Ken Morton:

Because it was not advertised correctly. We were instructed by Staff to do it this way. We were scheduled to go in front of City Council tomorrow night originally, but it was not advertised correctly by the newspaper so they pushed it back 30 more days. And, of course, we had to have this in place and the clock was ticking for our permits from the Corps and State to get them in place in March so we could get the pipe in place.

Chair Heidi Sowder:

I guess I have a question of staff. There was some mention by Mr. Morton a number of times and by his engineers about the permits expiring. Is that a fact?

Ken Morton:

We can prove that right here, right now. We have the letter from the Corps that gives the expiration date.

Chair Heidi Sowder:

Are you allowed to request an extension?

Ken Morton:

You do but it is a \$60,000-\$70,000 extension and it brings with it a several month delay for any type of extension like that.

Chair Heidi Sowder:

We would like to see the letter.

Mark Ballard:

Actually, it would not be an extension, but you would be starting all over again. The way that I mentioned to you earlier, the nationwide permits are done in 5-year increments.

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Chair Heidi Sowder:

Do you have a letter from them stating you are going to lose this in March?

Todd Chernik:

Does the project have to be completed by March 18th?

Mark Ballard:

The regular impact the Corps regulates needs to be executed by then. That would be the stream impacts need to be executed by that time.

Todd Chernik:

Even if you were to start today, you have crunch time here.

Chair Heidi Sowder:

What exactly would you have to have done by March to satisfy that?

Ken Morton:

Just get the two pipes in place and that is it. We do not have to do any clearing or grading; just get the two pipes in place by March 18th to satisfy what the Corps's permit is for. It is just a 2-week construction process once we have the permit. We can get the headwall in there quickly.

Gary Willis:

Could you read us what it says regarding this?

Mark Ballard:

June 29, 2005, Army Corps of Engineers Permit Verification

The Verification will be valid for a period of two years from the date of this letter, or until the Nationwide Permit is modified, reissued, or revoked, whichever occurs first. All of the Nationwide Permits are scheduled to expire on March 18, 2007....If you commence or are under contract to commence this activity before the date the Nationwide Permit is modified or revoked, you will have twelve months from the date of the modification or revocation to complete the activity under the present terms and conditions of this Nationwide Permit.

Mark Ballard:

So what that means is that while it expired on March 18th of last year, we were under contract to commence these activities, the Corps contract says you hired an engineer and a consultant to do this and you have 12 months from that expiration date, so March 18th of 2007 was the date it was published in the federal register as far as how it came to be there as the magic date.

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Gary Willis:

Can I have a copy of that?

Mark Ballard:

Sure I am one right here.

Heidi Sowder:

I have another question for Mr. Morton. Why did you wait so long if you knew since March 18th of last year you only had 12 months, why did you wait until the last minute?

Ken Morton:

That is a very good question. We were waiting on a sewer letter and we started the process last fall. Fulton County really jerked me around as far as giving us that letter so that we knew we could go forward with this project. We were not going to spend tens to thousands of dollars on engineers and doing all the things that we were doing civilly and have site plans and all of those things until we knew that we had our sewer in place. It would be foolish as the owner of this property to go forward until we had that. Once we had that, which was given to us in September or October of last year, then the wheels got in motion, so that is the reason. I would have liked to have started construction two years ago, but I could not do anything without Fulton County giving me that letter.

Heidi Sowder:

I guess I am just curious, but when you came forward for rezoning of the commercial parcel, why you did not bring forward the office parcel if you already had your letter for sewer.

Ken Morton:

We did not have the site plan and were still working with roof agents and site planners trying to come up with a site plan and we just recently had a site plan for doing the office. We had to change things and move things around and make sure that because we moved the rezoning line, the C-1 line into the O&I line and until we had approved in December, we did not for sure if we were going to get that approval, which we did get December 13th. Once we got that approval then we could get the wheels started with the planning of the office development which started happening in December. Does that answer your question?

Heidi Sowder:

I guess I am just confused because I have a copy that Staff provided of the site plan when it was rezoned in 2005, so you had a site plan.

Ken Morton:

But we did not. That was not a site plan that was accurate because the O&I line was moved, so we could not use that site plan.

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Heidi Sowder:

And you could engineer it around and do it all at once?

Ken Morton:

Not knowing for sure, I was not going to go and spend a bunch of money not knowing whether City Council was going to approve my climate storage in that line there. Once that was approved, then we could do that.

Walt Rekuc:

What about the stream buffers.

Ken Morton:

That plan that you are looking at there is for 25 foot buffers. That was done two years ago; everything was thrown out of the window when the 75 foot buffers came into play.

Walt Rekuc:

Okay, are you ready for some heavy punching? First of all, the 300 foot piping, are you getting a variance from the Corps to do mitigation? What is going on with the piping of that for that approval?

Ken Morton:

We are not piping anymore than the 75 feet. We are leaving the rest of the stream alone.

Walt Rekuc:

Okay. Secondly, it shows to me it appears there is a wall that is going perpendicular to the existing stream. Am I interpreting that plan correctly? I see a line on my plan [referencing diagram]. Perhaps this is a Brad question.

Ken Morton:

That is covering up the headwall. It is a big wall. I really do not know why it is so long.

Heidi Sowder:

How tall and wide is it?

Brad Riffel:

It is basically a wall that is about 12 feet from the actual U.S. Springhead so that we can construct the wall so we are not doing anything disturbing to the springhead. Obviously, that is the U.S. Waters Springhead and we can only have limited disturbance. If we move 12 feet back from that so we constructed this wall. The wall basically bridges the draw if you will. The draw being a "V" shape and the wall expands across that draw to a certain elevation and at the highest point I believe it may

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be 7 or 8 feet and then, of course, it tapers to zero when it gets to the end. At the bottom of that wall will be the pipe that we then extend upstream to the state designated springhead at which point we would then stop it and collect the water and go to that point shown.

Walt Rekuc:

So we have a wall perpendicular to the creek and that wall is intercepting both the state stream buffer as well as the new city undisturbed buffer, is that correct?

Brad Riffel:

That is correct. Basically what is being created there by virtue of piping this portion is as soon as you pipe that portion of the stream you then can create a perpendicular disturbed area in nature as opposed to the continuous radial point around that springhead so again, by introducing that pipe, you have then removed that radial portion and it now becomes a perpendicular portion.

Walt Rekuc:

I also see another wall that looks like it is outside of the 50 foot city buffer, but it is inside of the 75 foot impervious buffer. [referencing from the diagram].

Brad Riffel:

That is correct. When we did that originally we had not done a grading plan so we did not know the extent of the wall, but we have since done a grading plan and that wall is greatly reduced. Basically, the parking lot portion that is shown between the end of the buildings and Webb Road, which is a more current picture. That wall is basically to hold up the parking area.

Walt Rekuc:

Is the cross-hatched area shown for recompense?

Brad Riffel:

That is correct. It is a compensatory kind of limit to the area that we will be as an impervious area.

Walt Rekuc:

But there is a part of the parking lot that will go into the impervious area, is that still going to occur?

Brad Riffel:

A very little bit. We were just trying to get enough parking around that one particular office building, but yes, just a small amount that will penetrate that 75 foot impervious area.

Walt Rekuc:

What about the other wall shown?

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Brad Riffel:

Again, since we have done the grading plan, we now have no walls that are surrounding the buildings, which is what that was showing, so you might have an older site plan, but we now have no walls that are back behind the building between property line.

Scott Kilgore:

Do I understand then that this is not the final site plan that we have before us?

Brad Riffel:

It is the latest one that we have submitted, but since that submittal we have refined it by virtue of doing the grading plan and knowing more about how it is working.

Scott Kilgore:

I thought there was a point where a site plan was permitted and approved and finalized, is that not true? I am just concerned that we are being asked to rule on something and we are not looking at the final plan here.

Staff Mike Tuller:

Angela has stepped away, but I will ask the applicant if they submitted the one that does not show the retaining walls.

Walt Rekuc:

Let me mention something. Everything I mentioned about these walls, they are all in areas that are impervious setbacks so there is nothing against those walls going into that location.

Scott Kilgore:

So the wall is allowed in the impervious area?

Staff Jimmy Sanders:

It depends on your point of view. It does constitute some impervious surface. The walls are going to be made out of some type of impervious so it would be somewhat impervious. That could be part of this variance request to disturb in the 75 foot setback. As far as the site plan, we have seen the site plan. Typically, until the site plans are approved, we usually make comments, the engineer usually further refines it and we really do not get a final version of the site plan until we approve it. As long as it is somewhat consistent with what we have started with and what gets approved by the Boards, then generally that does not constitute some insurmountable issue. We have seen a site plan and it probably shows the walls on there, but if they bring in a site plan that reduces the walls, that is generally not an issue.

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Walt Rekuc:

I have a question for staff. This perpendicular wall that could be placed in this creek here, can trees and plants be planted in this area for re-vegetation?

Staff Mark Law:

We probably would not want to over plant it, but they can do some.

Walt Rekuc:

On the question on your state permit and Corps permit, do you have to do any recompense for doing any of this work for mitigation?

Brad Riffel:

I do not believe so.

Mark Ballard:

We are below the 100 foot mitigation threshold.

Todd Chernik

I have two questions and one is regarding the headwall, is there further permitting requirements with the city for this wall?

Brad Riffel:

We will have to go through a full LDP process, so yes, there will be a separate wall permit. All site walls will go through a separate wall permitting process.

Todd Chernik:

And from Staff's standpoint, what is the typical duration of that process? We are operating under the pretense that they are under the clock here for the next 30 days so if we had this permitting in there what is that typical cycle?

Staff Jimmy Sanders:

This is on rather a fast track. In other words we will probably issue a land disturbance permit only if approvals are granted and given that, once they install the pipe, the wall can be installed later. They have a variance to get into this area. The pipe is the issue so once the pipe is there they can build the wall at any time after that.

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Todd Chernik:

Okay, so what I am hearing from that is the permitting process should not stand in the way of these gentlemen meeting the Corps deadline of March 18th.

Staff Jimmy Sanders:

No, the wall should not impede that process.

Todd Chernik:

My second question is regarding the fact that this is not a final plan which will be reviewed by Council next month. It appears from the drawings that we have up here that some of these buildings are within setbacks and therefore Council may deny or request that those buildings move yet again, which could impact how much piping you install. Instead of 75 feet, you may go to 100 feet for example if they want to move these buildings forward or to the side.

Ken Morton:

I really will not have a choice. I am stuck at the length that I have gotten permitted from State and the EPD. I cannot increase the pipe length. I would not be able to do that.

Todd Chernik:

So what I am describing though is that it feels a bit like we are putting the cart before the horse in that we are trying to help you in understanding your circumstances, yet your circumstances could change yet again in front of Council based on their determination of the final plan and the variances you are seeking.

Ken Morton:

It would be a reduction of square footage or of the parking area if we had to go to lower parking to do that. What I am going for is typically C-1 to C-1 has a 10 foot landscape strip and I have O&I and C-1 and I am asking for that 20 foot to be lowered to 10 foot because of the hardships of the narrowness of the property and the stream buffers and so on and so forth. So that is what I will go before Council on in March, but it should not change the actual placement of the pipe. If we can get this pipe in place, we can still make the project viable in going forward.

Todd Chernik:

Even if Council does not grant you what you are asking for. You are saying that you would then have to just reduce the building sizes and/or the parking spaces. I would be forced to which would be detrimental. Especially that one part of the building - most of my building there [referencing diagram]. Obviously we are outside of it there, but there we had to get into the 20 foot landscape strip there. The hardship over here [referencing the diagram] would be that you cannot eliminate a row of parking in front of your building. It is going to be hard to sell a building without any parking in front of it, so it could be certainly a challenge to go back to the drawing board and figure out how to move it around with those buffers, but to be able to pipe this 70 feet if critical to even think about for this project to be viable to even go forward, so I have to have the piping of the stream to even

