

## PLANNING AND DEVELOPMENT DEPARTMENT STAFF REPORT

Public Hearing Date: October 10, 2024

Item #: PZ2024-1355

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### 3443 KESWICK COURT – STREAM BUFFER VARIANCE

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**Project Name:** Sommerfeld Project  
**Applicant:** Outdoor Makeover & Living Space c/o William Reed  
**Owner:** Casey and Alex Sommerfeld  
**Zoning District:** NR-1 (Neighborhood Residential 1)  
**Address:** 3443 Keswick Court  
**Parcel ID:** 18 300 01 029

#### EXECUTIVE SUMMARY WITH STAFF RECOMMENDATION:

**Proposed Project:** Encroachment into the stream buffer setbacks for the construction of a sunken patio, retaining wall, artificial turf, and underground stormwater management system.

**Requests:** One (1) variance

**Summary Analysis:**

- The property is located within the 25-foot State, 50-foot undisturbed, and 75-foot no impervious surface stream buffer setbacks.
- The applicant is requesting a variance for the encroachment into the 50- and 75-foot stream buffer setbacks for a rear yard improvement that includes construction of a sunken patio, artificial turf, 10-foot-tall retaining wall, paver steps and steppingstones.
- To improve stormwater management, the applicant proposes to install a 50-gallon 3NDS flow-well and french drains.
- The project has been completed without a permit and is the subject a code enforcement violation. The applicant is requesting a stream buffer variance to allow the work to remain.

**Site Aerial:**

- Current Zoning:** The property is located in NR-1 (Neighborhood Residential 1)
- This zoning district is intended primarily for single-family residences and related accessory uses.
- Current Use:** Single Family Residential
- Surrounding Land Uses:**
- North – NR-1: Single Family Residential
  - South – NR-1: Single Family Residential
  - East – NR-1: Single Family Residential
  - West – NR-1: Single Family Residential

**Site Description and History of Property:**

The subject property is a 0.39-acre lot located north of Keswick Drive and northwest of Keswick Park. In 2019, the original one story, 4,000 square foot residential structure was demolished, and the property was redeveloped with a 4,287 square foot traditional stick frame residence. The project also included construction of a 6-foot-tall retaining wall and removal of several trees. In 2020 a privacy fence was installed and in 2022 the basement was finished. Located east of the main structure, a tributary to Nancy Creek bisects the property. The property slopes downwards from west to east, towards the stream, approximately 30 feet. There is also a small portion of FEMA 100-year floodplain located on the eastern portion of the property on the

stream. The rear yard, within the fenced area immediately adjacent to the main structure, is mostly removed of natural vegetation. Outside the fence there is dense foliage and tree coverage around the creek. During construction of the residence in 2019, 190-inches of canopy was removed from the 367-inches on the subject property, reducing the site to 177-inches of tree canopy coverage. In the same year, a 41-inch specimen oak tree was removed from the 75-foot stream buffer. The minimum tree recompense was to replace the 41-inches of canopy. Seven trees were replanted to account for 21-inches and payment into the tree bank of \$2,500 made up the 20-inch deficit.

The property has an active code enforcement case, 20240994, for completing land disturbance and constructing a retaining wall without a permit. The completed work includes grading and installation of the 10-foot-tall retaining wall, sunken patio, steps and pavers.

**Project Description:**

The applicant has encroached into the 50- and 75-foot stream buffer setbacks for the installation of a 192 square foot sunken patio, 404 square feet of artificial turf, 195 linear feet of a modular block retaining wall with aluminum railing and a maximum height of 10-feet, 50 square feet of paver steps and 76 square feet of 2x2 steppingstones. The applicant proposes to bury a 50-gallon 3NDS flow-well and 62 linear feet of modified french drains for stormwater management. Plants are proposed including 10, 3-gallon shrubs within the 25- stream buffer. Overall, the project has increased the impervious surface of the site in the 50- and 75-foot stream buffer from 0 to 685 square feet and caused 26 square feet of disturbance in the 50-foot undisturbed stream buffer. The applicant is requesting a stream buffer variance to allow the unpermitted work to remain and to complete the instillation of the flow-well and french drains.

**Applicant's Variance Request:**

The applicant requests a variance from Title 3 of the UDO:

1. Variance from Section 310-19(a)(1), to encroach into the 75-foot no impervious and 50-foot undisturbed stream buffer setbacks.

The UDO, in Section 310-19(e), provides the following factors for granting a variance from stream buffer requirements. An analysis of these factors is included below:

**a. The shape, size, topography, slope, soils, vegetation and other physical characteristics of the property;**

The Nancy Creek tributary bisects the rear of the subject property from north to south. The main structure and existing rear deck do not fall within the stream buffer or the 100-year flood plain; however, most of the rear yard of the property falls within the stream buffer which affects 60.35% of the total land area. The topography from the rear of the house slopes approximately 33% to the creek. An existing wooden fence and dense underbrush block any visuals of the creek, beyond the fence, there are mature deciduous trees and shrubbery. The work completed to install the sunken patio and retaining wall have created additional topographical changes within the stream buffer.

**b. The locations of all streams on the property, including along property boundaries;**

There is a single tributary creek to Nancy Creek located on the property. The creek enters the property from the northern property line and exits through the southeastern property line. On the northern bank, the creek is 69-feet from the eastern property line and 38-feet from the rear property line on the southern bank.

**c. The location and extent of the proposed buffer or setback intrusion;**

Much of the 75-foot buffer has been disturbed to accommodate the retaining wall and graded patio area. The limits of disturbance of the project total 2,232 square feet, of which 1,168 square feet fall within the 75-foot no impervious and 26 square feet in the 50-foot undisturbed buffer. The total impervious surface added is 685 square feet, of which 659 square feet placed in the 75-foot buffer and 26 square feet in the 50-foot buffer. Increasing the total impervious surface from 3,362 or 19.9% to 4,279 square feet or 25.3%.

**d. Whether alternative designs are possible which require less intrusion or no intrusion;**

Alternative designs could be possible to provide relief from the need for a stream buffer variance. The rear eastern corner of the house is 4-feet from the 75-foot buffer and ranges up to 15-feet on the left corner of the house, so any substantial design would cause intrusion into the stream buffer.

**e. The long-term and construction water-quality impacts of the proposed variance; and**

The property owner has proposed to minimize runoff into the creek by installing modified french drains from the house and sunken patio that would collect runoff into a 50-gallon flow well. Best Management Practices would be implemented for the duration of the project to minimize erosion, which would address the short- and long-term water-quality impacts.

**f. Whether issuance of the variance is at least as protective of natural resources and the environment.**

The stream buffer variance request does not meet the variance procedural condition in Section 310-19(c)(4), as the actions of the property owner have created the conditions of hardship on the property, because the work was done prior to the variance request. Installation of the modified french drains and flow well, planting 10 evergreen shrubs within the 25-foot State stream buffer and the applicant's proposals to protect existing trees is protective of natural resources and the environment. However, it should be noted that the grading work that has been done in the 75-foot buffer has significantly altered the state of the buffer. Making it unknown if the extent of the Best Management Practices utilized for the project prior to the violation and if completion of the project is protective of the natural resources.



**Staff Recommendation:**

Staff has no recommendations for the following variance request, in case PZ2024-1355. Section 310-19(c)(4) states that variances will not be considered when actions of any property owner of a given property have created conditions of a hardship on that property. The applicant began land disturbance within the stream buffers without prior approval. A substantial amount of work has already been completed including construction of the sunken patio and retaining wall.

Should City Council approve the variance request, staff recommends the following conditions of approval:

1. The development shall be constructed in substantial conformity with the Site Plan and Elevations received by the Planning and Development Department dated received on August 20, 2024, with revisions required by conditions of approval as reviewed and approved by the Planning & Development Director.
2. The applicant shall utilize artificial turf with a high permeability rating reviewed and approved by the city engineer.
3. The applicant and their design professional shall coordinate with the city engineer to design best management practices (BMP) in accordance with the guidelines established in the Georgia Stormwater Management Manual (GSMM). The BMP shall be included in the land disturbance permit application and shall be inspected by city personnel during construction and prior to final sign-off by the city.
4. The applicant shall install an infiltration device to treat the area greater or equal to the rear yard encroachment. These devices shall include but are not limited to dry flow wells and drainage systems.

**Attachments:**

Attachment 1 – Application

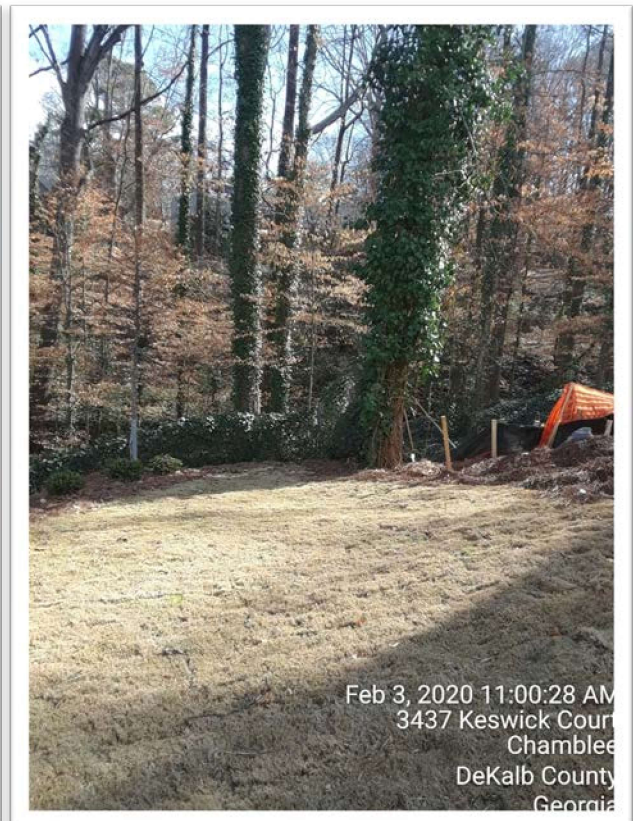
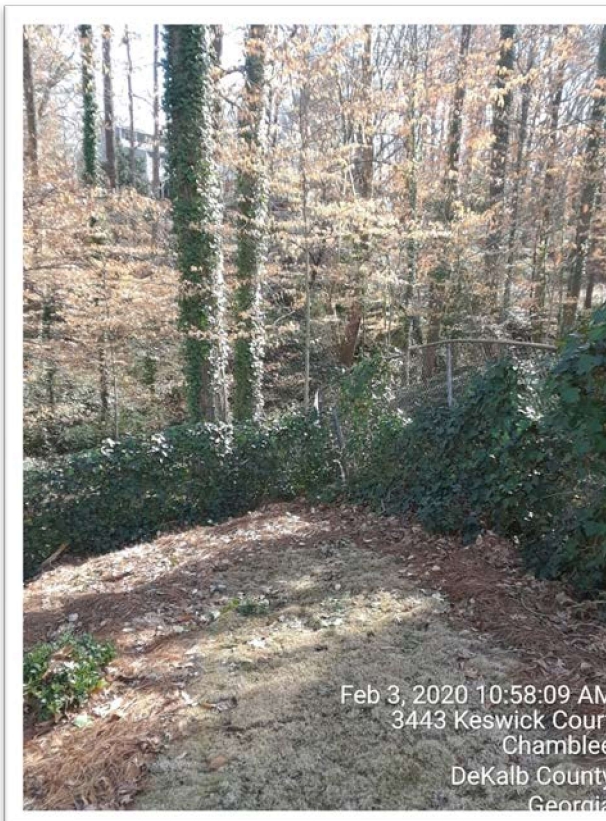
Attachment 2 – Site Plan

Attachment 3 – Maps

**Site Visit:**

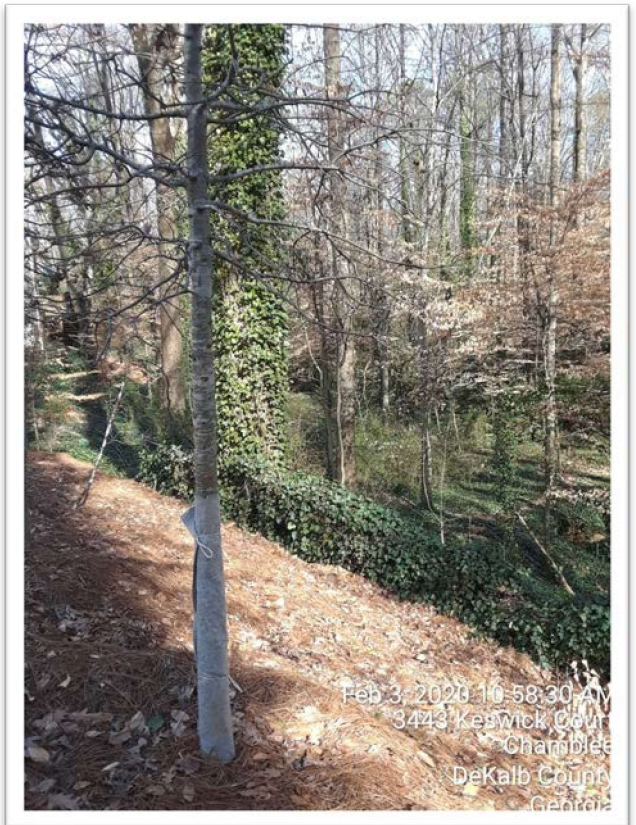
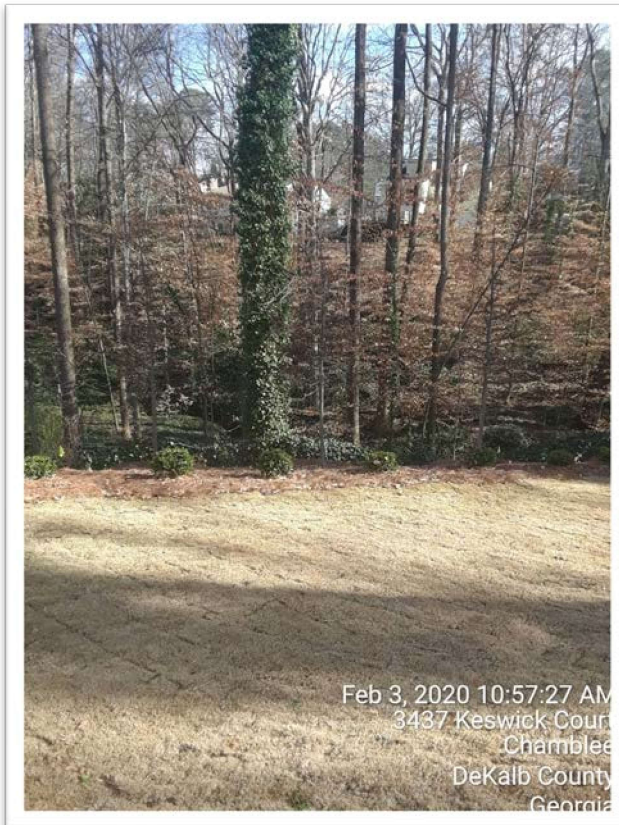


Frontage along Keswick Court

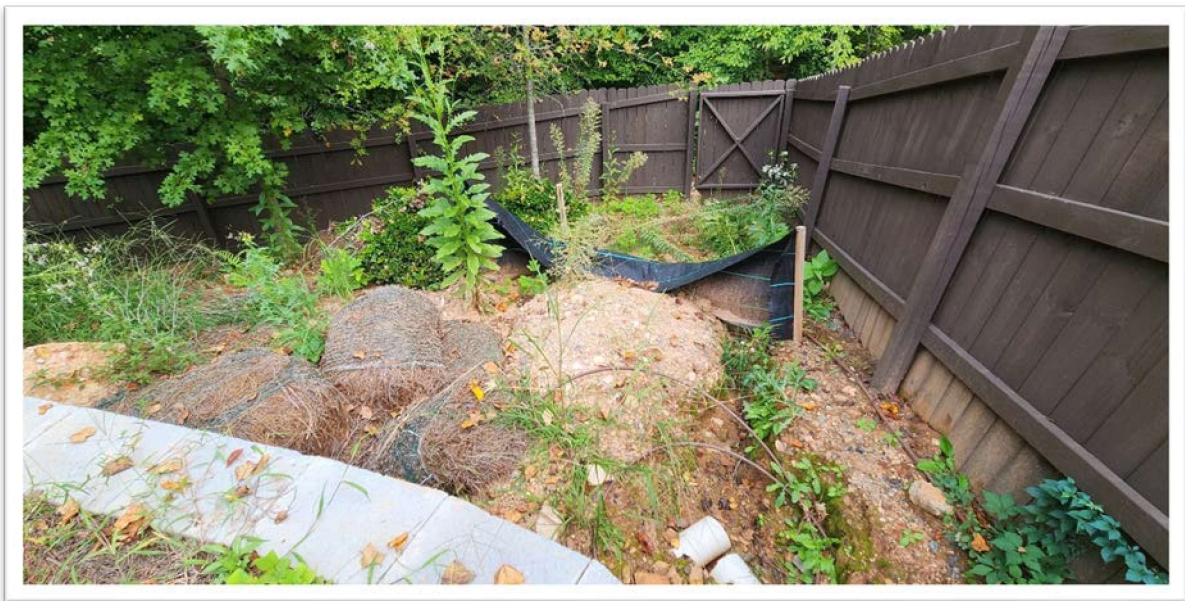


Photos from 2020 Zoning Final



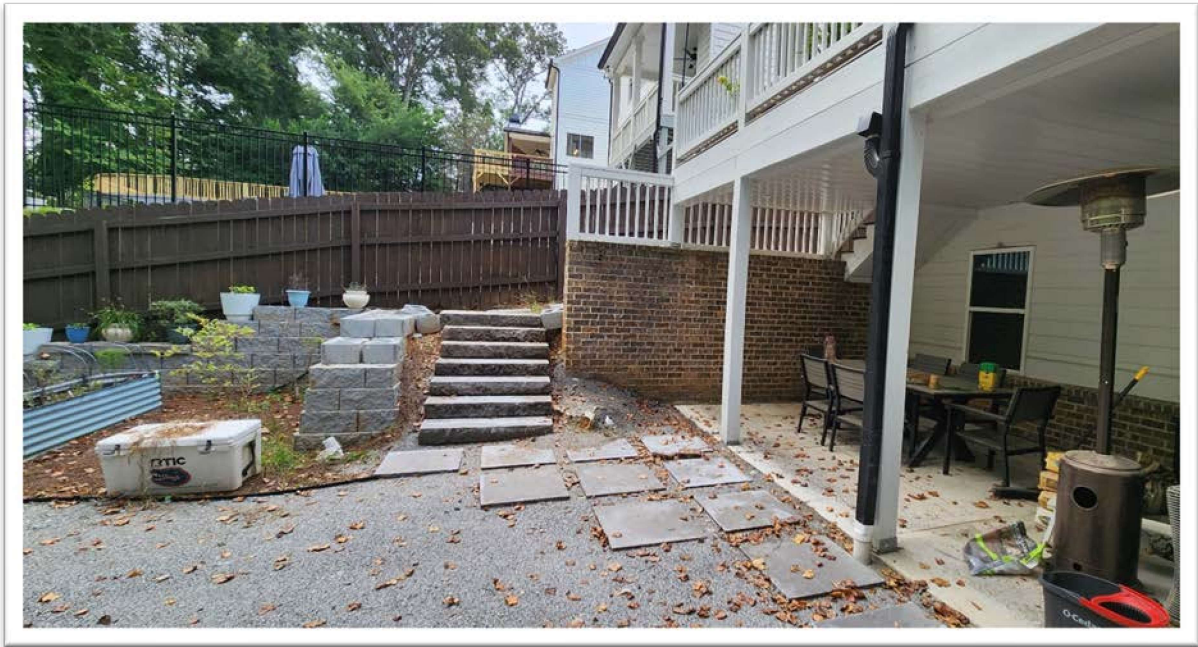


Photos from 2020 Zoning Final



Existing fence in stream buffer

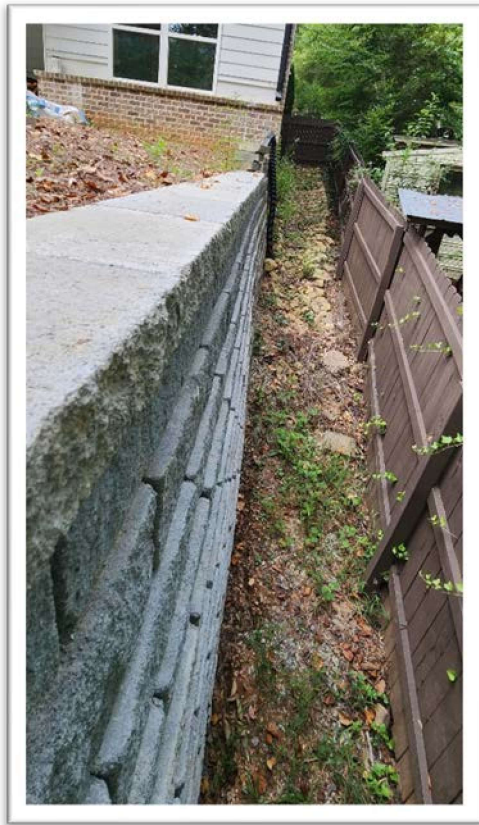




Graded rear yard and installed stairs, pavers, and retaining walls



Installed sunken patio with retaining wall encroaching in the 50-foot buffer



Retaining wall on north side of property