



TO: Zoning Board of Appeals

FROM: Planning and Zoning Department

SUBJECT: V23-006

ADDRESS: 2799 Evans Mill Road Stonecrest GA 30058

DISTRICT: 5 – Councilwoman Tammy Grimes

CYCLE MEETING DATES: November 9, 2023 (**CPIM**) | December 19, 2023 (**ZBA-Deferred**) | January 16, 2024 (**ZBA**)

Summary: Applicant is seeking a second variance to encroach into a stream buffer for the construction of a new gas station and convenience store.

STAFF RECOMMENDATION: DENIAL



V23-006

Planning and Zoning Department

| PROPERTY INFORMATION | |
|---|--|
| Location of Subject Property: 2799 Evans Mill Road Stonecrest GA 30058 | |
| Parcel Number: 16 137 04 009 | |
| Road Frontage: Evans Mill Road & Hillandale Drive | Total Acreage: 1.10 |
| Current Zoning: C-1 - Local Commercial | Overlay District: Stonecrest Overlay Tier 2 |
| Future Land Use Map/ Comprehensive Plan: RC - Regional Center | |
| Zoning Request: A variance request to encroach into a stream buffer for the construction of a new gas station and convenience store. | |
| Zoning History: Petitioner requested Variance #1 on November 16, 2022, to encroach 902 sq ft (3%) into the stream buffer for the construction of a new gas station and convenience store. A condition of the first variance request is to not encroach no more than 902 square feet or 3% into the steam buffer. | |

| APPLICANT / PROPERTY OWNER INFORMATION |
|---|
| Applicant Name: Atai Construction - Naureen Lalani |
| Applicant Address: 6331 Crestgate Lane Tucker GA 30084 |
| Property Owner Name: SRN PROPERTIES LLC |
| Property Owner Address: 2275 Summit Oaks Ct, Lawrenceville, GA |

DETAILS OF ZONING REQUEST

Atai Construction - Naureen Lalani (the “Applicant”) is requesting a second variance to encroach into the stream buffer for the construction of a new gas station and convenience store on +/- 1.10 acres of land being Tax Parcel No. 16 137 04 009 having frontage on 2799 Evans Mill Road (the “Subject Property”).

The current use of the subject property is a gas station known as Chevron. The property is closely located at Hillandale Drive and Evans Mill Road intersection. Petitioner requested Variance #1 on November 16, 2022, to encroach 902 sq ft (3%) into the stream buffer for the construction of a new gas station and convenience store. There is a storm drain through the Northern, Northwestern boundaries and inside the Western portion of the property and stream buffer requirements of 75 feet that has limited buildable area (See image 1 & 2). Additionally, staff believes that the Applicant will be able to operation proposed business if the variance is not granted.

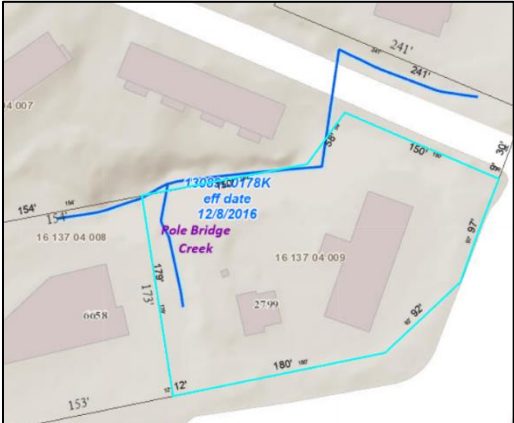
Stream Buffers

The state of Georgia requires that a 25-foot buffer be maintained between the edge of a stream and any new development. DeKalb County requires an additional 50 feet of buffer (for a total of 75 feet). Vegetated buffers near streams provide for filtration of storm water runoff, shade water in streams, and allow wildlife a critical corridor for moving throughout an ecosystem. Any proposed development in the state or county buffer requires a variance from the appropriate agency. (Source: [Water | DeKalb County GA](#))

Image 1



Image 2



ADJACENT ZONING & LAND USE

| | | |
|--------------|---|--|
| NORTH | Zoning: MR-2 - Med Density Residential | Land Use: Dwelling Apartments |
| SOUTH | Zoning: C-1 (Local Commercial) | Land Use: Commercial Developments |
| EAST | Zoning: C-1 (Local Commercial) | Land Use: Commercial Developments |
| WEST | Zoning: C-1 (Local Commercial) | Land Use: Commercial Developments |



PHYSICAL CHARACTERISTICS & INFRASTRUCTURE

This site is currently developed with three (3) road frontages (Evans Mill Road, Hillandale Drive and Lancaster Drive). There is a stream located through the Northern & Northwestern boundaries and inside the Western portion of the property. Stream buffer requirement had limited the buildable area of the property.

MODIFICATIONS AND CHANGES TO APPROVED CONDITIONS OF ZONING CRITERIA

- 1. By reason of exceptional narrowness, shallowness, or shape of a specific lot, or by reason of exceptional topographic and other site conditions (such as, but not limited to, floodplain, major stand of trees, steep slope), which were not created by the owner or applicant, the strict application of the requirements of this chapter would deprive the property owner of rights and privileges enjoyed by other property owners in the same zoning district;**
- 2. The requested variance does not go beyond the minimum necessary to afford relief and does not constitute a grant of special privilege inconsistent with the limitations upon other properties in the zoning district in which the subject property is located.**
- 3. The grant of the variance will not be materially detrimental to the public welfare or injurious to the property or improvements in the zoning district in which the subject property is located.**
- 4. The literal interpretation and strict application of the applicable provisions or requirements of this chapter would cause undue and unnecessary hardship;**
- 5. The requested variance would be consistent with the spirit and purpose of this chapter and the Comprehensive Plan text.**

RECOMMENDATION

Staff recommends the following:

- DENIAL due to the hardship being created by the applicant.



V23-006

Planning and Zoning Department

Attachments Included:

- **Code of Ordinance(s)**
- **Future Land Use Map**
- **Overlay Zoning Map**
- **Zoning Map**
- **Aerial Map**
- **Site Plan/Survey**
- **Letter of Intent**

ARTICLE VII. STREAM BUFFER

Sec. 14-543. Minimum stream buffer requirements.

- (a) Stream buffers are established along all perennial and intermittent streams in the City. These required stream buffers begin at the stream bank and extend 75 feet away from the stream. The buffers must remain undisturbed except as otherwise provided in section 14-544.
- (b) Any new stormwater discharge crossing a stream buffer or state buffer zone must be designed to ensure that sheet flow is established through the stream buffer and to prevent channelized flow through the stream buffer.
- (c) Piping of streams is not allowed in required stream buffers unless a variance is granted.

(Ord. No. 2018-06-03, § 14-543, 6-3-2018)

Sec. 14-544. Exemptions and special administrative permits.

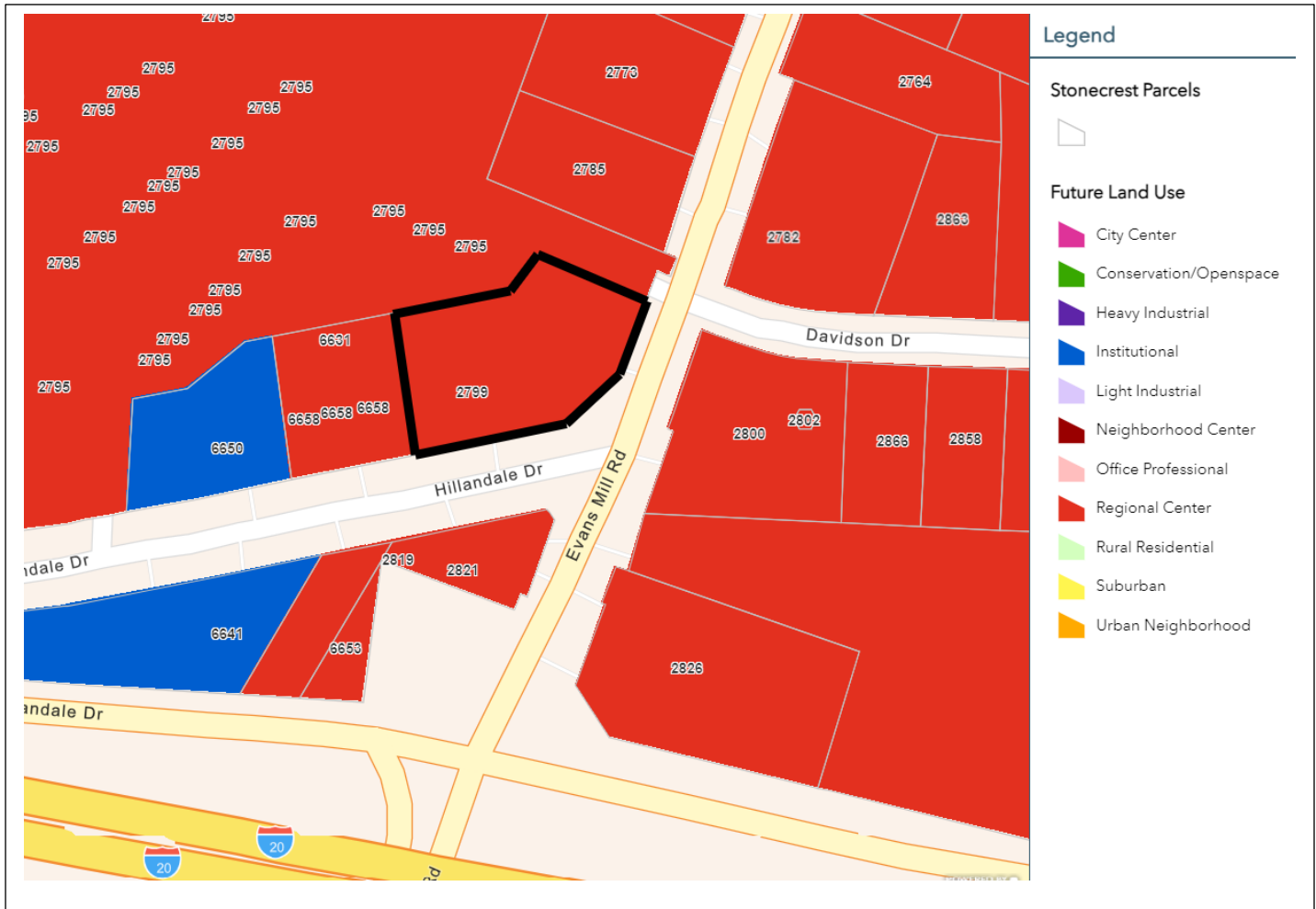
- (a) *Exemptions.* The stream buffer regulations of this article do not apply to any of the following activities, provided that any activity within a state-mandated stream buffer must meet state requirements. Exemption of these activities does not constitute an exemption from any other activity proposed on a property or a requirement to obtain a building/land development permit.
 - (1) Work consisting of the usual and customary repair or maintenance of any lawful use of land that is zoned and approved for such use on or before the effective date of this section. Such usual and customary repair and maintenance activities cannot create any land disturbance, and must occur within the preexisting disturbed area;
 - (2) Maintenance, including the full replacement, of existing decks, porches or similar improvements attached to a dwelling that encroach into a city stream buffer so long as the work does not increase the degree of encroachment or any nonconformity. The complete replacement of these improvements is provided for, including the replacement of stairs and all supporting beams, posts and footings subject to compliance with applicable city codes. The necessary construction of new or improved footings as required to comply with current building codes is allowable up to a maximum of 100 square feet of land disturbance;
 - (3) Construction of new decks, porches or other similar additions no more than 200 square feet in area, to existing structures without a deck, porch or similar structure, provided that such construction does not require more than 100 square feet of land disturbance and does not further encroach more than ten feet into the city stream buffer;
 - (4) Existing development and on-going land-disturbance activities including existing agriculture, silviculture, landscaping, gardening and lawn maintenance, except that new development or land-disturbance activities on such properties is subject to all applicable buffer requirements;
 - (5) Public sewer line installation in easements running parallel with the stream where necessary, except that all easements (permanent and construction) and land disturbance within a state waters' buffer must meet state requirements. This includes such impervious cover as is necessary for the operation

-
- and maintenance of the utility, including, but not limited to, manholes, vents and valve structures. This exemption may not be construed as allowing the construction of roads, bike paths or other transportation routes in such easements, regardless of paving material, except for access for the uses expressly identified in this section;
- (6) Removal of unwanted ground cover (e.g., poison ivy) using hand tools as long as protective vegetative cover remains to protect water quality and aquatic habitat and a natural canopy is left in sufficient quantity to keep shade on the stream bed;
 - (7) Land development activities within a dedicated transportation right-of-way existing at the time this section takes effect or approved under the terms of this section;
 - (8) Within an easement of any utility existing at the time this section takes effect or approved under the terms of this section, land-disturbance activities and such impervious cover as is necessary for the operation and maintenance of the utility, including, but not limited to, manholes, vents and valve structures;
 - (9) Emergency work necessary to preserve life or property. However, when emergency work is performed, the person performing it must report such work to the Community Development Department on the next business day after commencement of the work. Within ten business days thereafter, the person must apply for a permit and perform such work within such time period as may be determined by the Director or designee to be reasonably necessary to correct any impairment such emergency work may have caused to the water conveyance capacity, stability or water quality of the protection area;
 - (10) Forestry and silviculture activities on land that is zoned for forestry, silvicultural or agricultural uses and are not incidental to other land development activity. If such activity results in land-disturbance in the buffer that would otherwise be prohibited, then no other land-disturbing activity other than normal forest management practices will be allowed on the entire property for three years after the end of the activities that intruded on the buffer;
 - (11) Activities to restore or enhance stream bank stability, riparian vegetation, water quality or aquatic habitat, so long as native vegetation and bioengineering techniques are used;
 - (12) The removal of dead, diseased, insect-infested, or hazardous trees (without any associated land disturbance), provided the property owner provides sufficient documentation of the condition of the trees before removal, including photographs and a report by a certified arborist; and
 - (13) Multi-use trails and related improvements that are part of a City Council-approved plan. Unless otherwise approved by the State, such encroachments must be located at least 25 feet from the banks of state waters when, after study of alternative trail alignments, the Director determines that the alignment is the most desirable alternative and that they are designed to minimize impervious surfaces and incorporate BMPs and other mitigation practices that minimize the impact of encroachments on water quality. Trail improvements that are part of a City Council-approved plan are not counted as part of a site's impervious surface area for the purposes of site development-related calculations and regulations.
- (b) *Special administrative permits.* The following activities may be approved within the stream buffers required by section 14-543 by special administrative permit, pursuant to the process outlined in the Zoning Ordinance:
- (1) Stream crossings by utility lines, roads, driveways or similar transportation routes, including trails for nonmotorized transportation;
 - (2) Public water supply intake or public wastewater outfall structures;
 - (3) Land development necessary to provide access to a property;

-
- (4) Public access facilities that must be on the water including boat ramps, docks, foot trails leading directly to the stream, fishing platforms and overlooks;
 - (5) Stormwater outfalls to the stream, by pipe or channel, necessary to protect the buffer from erosion caused by high-flow velocities due to steep slopes;
 - (6) Exclusive of the exemptions in subsections(a)(2) and (3) of this section, minor land-disturbing activities totaling no more than 200 square feet in area and located more than 25 feet from the stream, for the construction of decks, porches, or other additions to existing structures, and accessory structures where riparian vegetation is restored or replaced in any disturbed areas; and
 - (7) Construction and land disturbance that results in the reduction or removal of impervious surfaces.

(Ord. No. 2018-06-03, § 14-544, 6-3-2018)

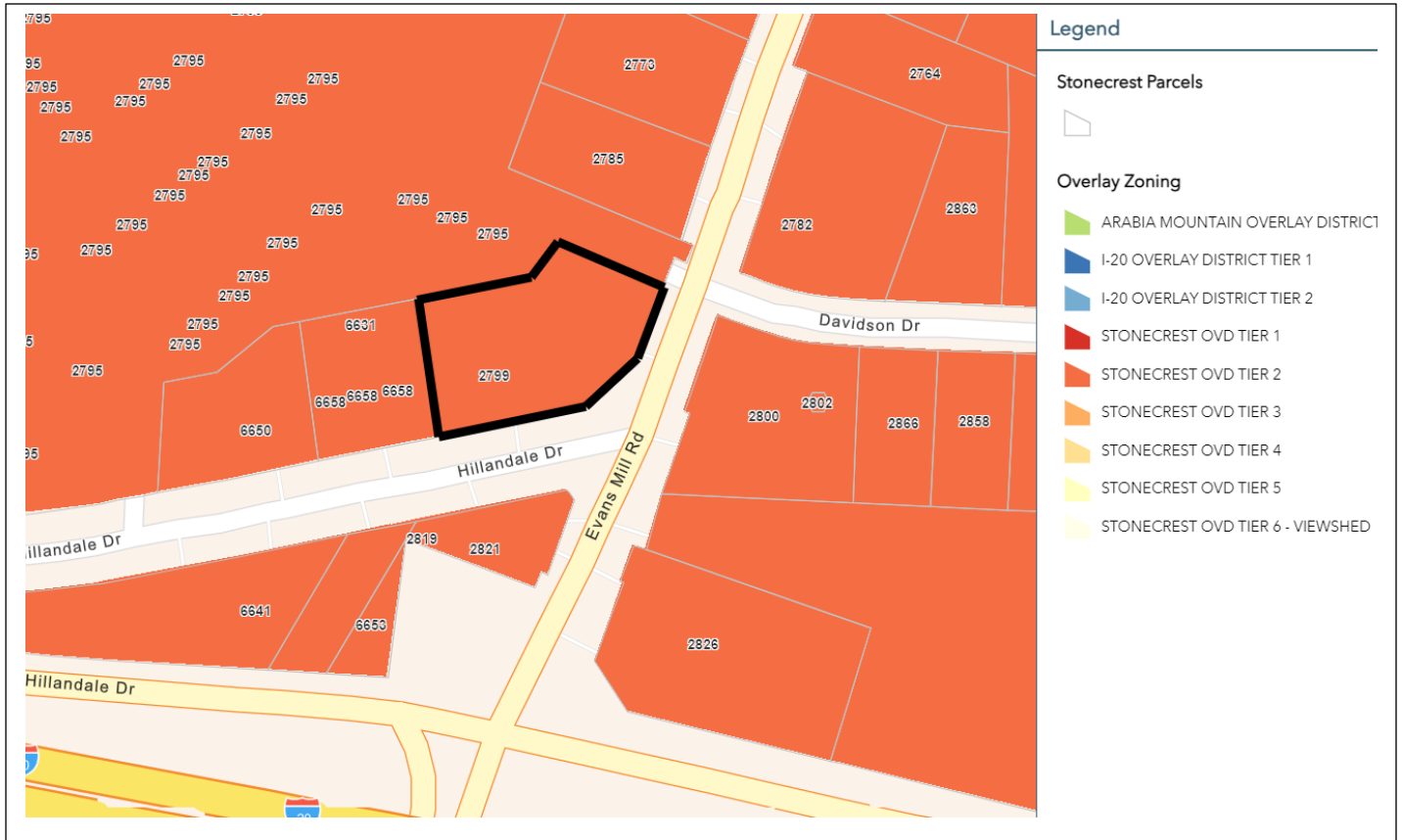
FUTURE LAND USE MAP



Source: Stonecrest GIS map

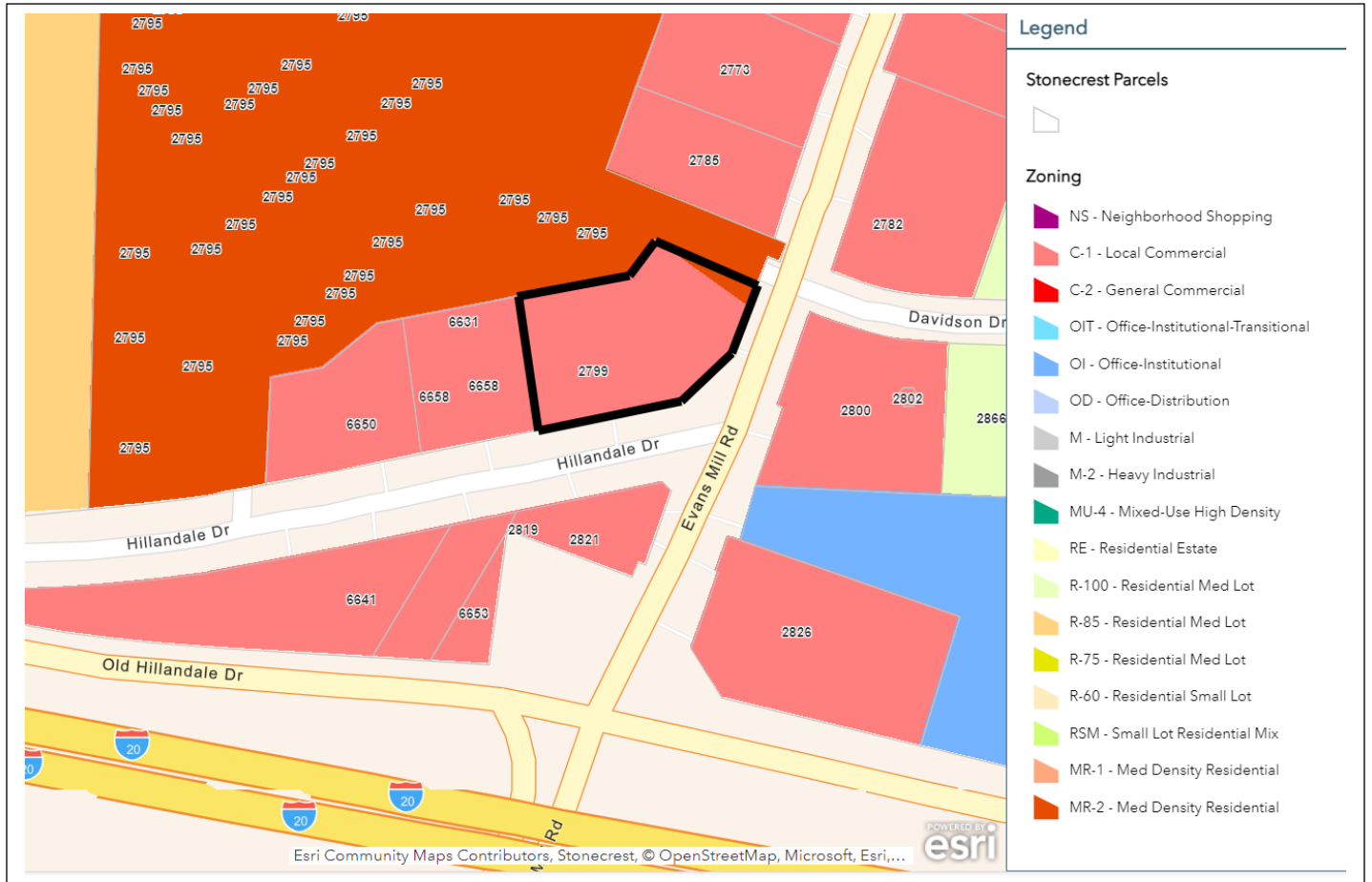


OVERLAY ZONING MAP



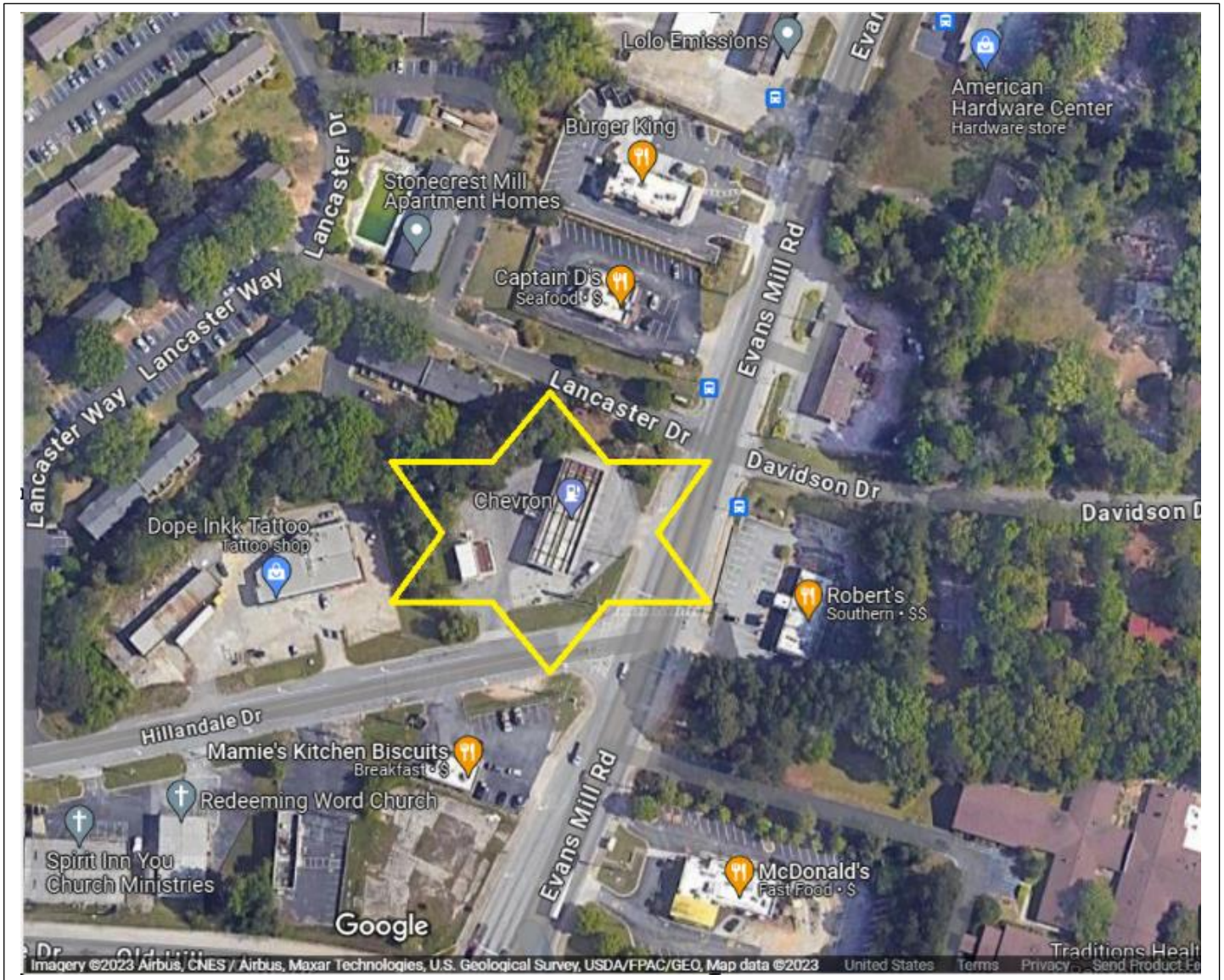
Source: Stonecrest GIS map

ZONING MAP



Source: Stonecrest GIS map

AERIAL MAP



Source: Google Map



V23-006

Planning and Zoning Department

SUBMITTED SITE PLAN

FLOOD HAZARD STATEMENT

I HAVE THIS DATE, EXAMINED THE "FIA FLOOD HAZARD MAP" AND FOUND IN MY OPINION REFERENCED PARCEL IS NOT IN AN AREA HAVING SPECIAL FLOOD HAZARDS.

PANEL 13089C0114K

EFFECTIVE DATE: 12/08/2016

ZONE 'X'

*** LEGEND ***

NOTE: ALL ITEMS IN THIS LEGEND MAY NOT APPEAR ON THIS PLAT.
 AKA ALSO KNOWN AS N/F NOW OR FORMERLY
 APD AS PER DEED NAIL NAIL FOUND
 APP AS PER PLAT P PLAT (BOOK/PAGE)
 BSL BUILDING (SETBACK) LINE POB POINT OF BEGINNING
 CP COMPUTED POINT POC POINT OF COMMENCEMENT
 CTP CRIMP TOP PIPE FOUND R RADIUS LENGTH
 D DEED (BOOK/PAGE) R/W RIGHT-OF-WAY
 DW DRIVEWAY RBF REINFORCING BAR FOUND
 EP EDGE OF PAVEMENT (1/2" UNO)
 FFE FINISH FLOOR ELEVATION RBS 1/2" REINFORCING BAR SET
 FKA FORMERLY KNOWN AS SW SIDEWALK
 IPF IRON PIN FOUND SSE SANITARY SEWER EASEMENT
 L ARC LENGTH SSCO SANITARY SEWER CLEANOUT
 LL LAND LOT -X- FENCE LINE
 LLL LAND LOT LINE ■ WALL
 N NEIGHBOR'S

ALL MATTERS OF TITLE ARE EXCEPTED. THIS PLAT IS SUBJECT TO ALL LEGAL EASEMENTS AND RIGHTS-OF-WAY PUBLIC OR PRIVATE. NOTE: PROPERTY LINES SHOWN ON THIS MAP/PLAT REPRESENT PHYSICAL FIELD CONDITIONS BY EVIDENCE OF APPARENT POSSESSION (IRON PINS FOUND, OLD & ESTABLISHED FENCE LINES, OLD WALL LINES, SHRUB & HEDGE LINE, HOUSE LOCATIONS, ETC.) THEY MAY DIFFER AND BE IN CONTENTION FROM EVIDENCE FOUND AT THE APPLICABLE COUNTY COURTHOUSE. THEY MAY ALSO DIFFER FROM OTHER SURVEYOR OPINIONS AND/OR NEIGHBORS SURVEYS/PLATS. A FULL LAND TITLE REPORT OPINION ON ALL PROPERTIES, INCLUDING ADJACENT AND CONTIGUOUS PROPERTIES MAY BE NEEDED TO RESOLVE ALL POSSIBLE PROPERTY LINE DISPUTES OR DISCREPANCIES.

THIS MAP/PLAT WAS MADE WITHOUT THE BENEFIT OF A CURRENT TITLE COMMITMENT. EASEMENTS AND ENCUMBRANCES MAY EXIST WHICH BENEFIT AND BURDEN THIS PROPERTY. THIS MAP/PLAT IS SUBJECT TO REVISIONS AND UPDATE UPON RECEIPT OF SAID TITLE COMMITMENT.

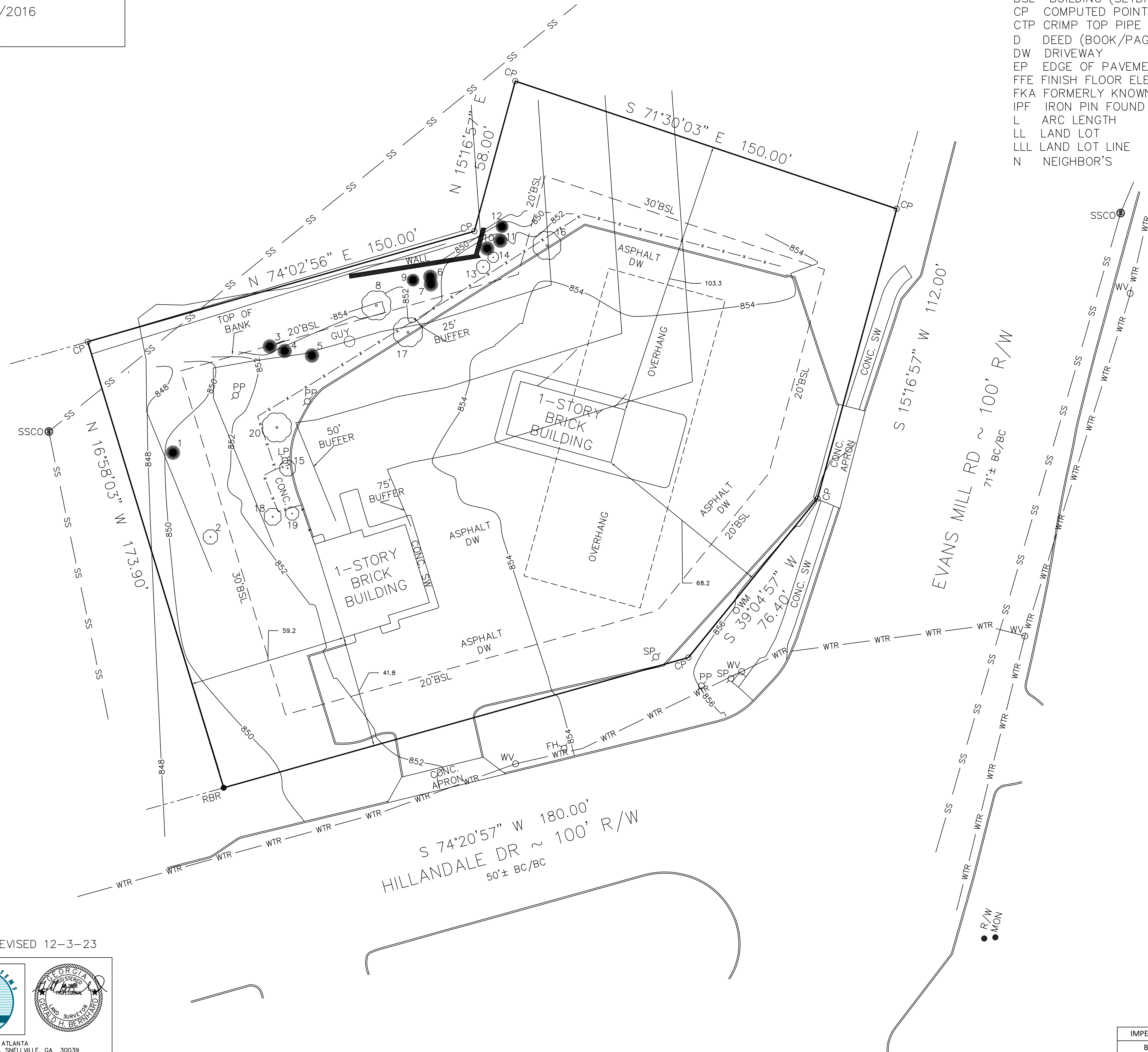
BUILDING LINES SHOWN HEREON DERIVED FROM VARIOUS ONLINE SOURCES. THEY MAY BE IN CONTENTION WITH OR DIFFER FROM INTERPRETATIONS OF GOVERNING AUTHORITIES. IT IS THE CLIENT'S OBLIGATION TO CONFIRM WITH PERMITTING AGENCIES BASED ON THEIR SPECIFIC CONSTRUCTION PROJECTS.

~ THIS MAP/PLAT HAS BEEN FIELD RUN WITH ASSUMED ELEVATIONS, THEN ADJUSTED TO NAVD 88 BASED ON MULTIPLE OBSERVATIONS FROM GOOGLE EARTH SATELLITE IMAGERY OR OTHER ONLINE SOURCES. THE ELEVATIONS SHOWN HEREON ARE +/- 1' (± ONE FOOT).

TREE SYMBOLS ARE NOT TO SCALE. TREE SYMBOLS REPRESENT POSITION OF TREE & ARE NOT THE CRITICAL ROOT ZONE (NOT DRIPLINE).

NOTE: ANY & ALL UNDERGROUND UTILITIES, I.E. SEWER, STORM, GAS, WATER, ETC., HAVE NOT BEEN FIELD LOCATED BY CONVENTIONAL SURVEY METHODS.

REVISED 12-3-23



| | | | |
|--|---|--|--|
| PROPERTY ADDRESS: 2799 EVANS MILL RD, LITHONIA, GA 30058 | PLAT PREPARED FOR: 2799 EVANS MILL RD | | |
| LAND AREA: 47,685 SF 1.09 AC | LAND LOT 137 16th DISTRICT PARCEL ID: 16 137 04 009 BY: | | |
| IMPERVIOUS AREA: EXIST= 27,440 SF= 57.5% | DeKALB COUNTY, GEORGIA FIELD DATE: 04-30-2023 NH CITY OF STONECREST DRAWN DATE: 05-01-2023 AE | SURVEY SYSTEMS ATLANTA 660 LAKE DR. SW. SNELLVILLE, GA 30039 COA #LSF000867, JOBORDE@SURVEYSATLANTA.COM CELL 678-591-6064 ~ OFFICE 404-760-0010 | |
| ZONING: C-1 | REFERENCE: DEED BOOK 27951, PAGE 70 | ALL MATTERS OF TITLE ARE EXCEPTED, NOT TO BE RECORDED NOR USED TO CONVEY PROPERTY. | |
| 0 20 SCALE 1" = 20' | THE FIELD DATA UPON WHICH THIS PLAT IS BASED HAS A CLOSURE OF 1 FOOT IN 10,000+ FEET, AN ANGULAR ERROR OF +/- 1 SECOND PER ANGLE POINT AND WAS ADJUSTED USING THE LEAST SQUARES METHOD. THIS PLAT HAS BEEN CALCULATED FOR CLOSURE AND FOUND TO BE ACCURATE TO 1 FOOT IN 30,000+ FEET. AN ELECTRONIC TOTAL STATION WAS USED IN THE PREPARATION OF THIS PLAT. NO STATE PLANE MONUMENT FOUND WITHIN 500' OF THIS PROPERTY. | | |
| THIS SURVEY WAS PREPARED IN CONFORMITY WITH THE TECHNICAL STANDARDS FOR PROPERTY SURVEYS IN GEORGIA AS SET FORTH IN CHAPTER 180-7 OF THE RULES OF THE GEORGIA BOARD OF REGISTRATION FOR PROFESSIONAL ENGINEERS AND LAND SURVEYORS AND AS SET FORTH IN THE GEORGIA PLAT ACT O.C.G.A. 15-6-67. | | | |

| TREE TABLE | | |
|------------|----------|------|
| TR. NO. | DIAMETER | TYPE |
| 1 | 24" | PINE |
| 2 | 12" | OAK |
| 3 | 24" | PINE |
| 4 | 20" | PINE |
| 5 | 18" | PINE |
| 6 | 26" | PINE |
| 7 | 14" | MAG |
| 8 | 33" | OAK |
| 9 | 12" | PINE |
| 10 | 22" | PINE |
| 11 | 20" | PINE |
| 12 | 12" | PINE |
| 13 | 10" | OAK |
| 14 | 7" | OAK |
| 15 | 13" | OAK |
| 16 | 23" | OAK |
| 17 | 24" | OAK |
| 18 | 14" | OAK |
| 19 | 10" | OAK |
| 20 | 24" | OAK |

| IMPERVIOUS (IN SQUARE FEET) | |
|-----------------------------|--------------|
| BUILDING | 1982 |
| ASPHALT . DW | 23819 |
| CONCRETE | 1550 |
| WALL | 89 |
| TOTAL IMPERVIOUS | 27440 |

Letter of Intent

Letter of Intent

To whom it may concern

As per the previously approved variance, the existing encroachment into the 50-foot buffer was 1,445 square-feet and the proposed (approved encroachment) was 902 square-feet (per the previously proposed plan we had aimed to reduce this encroachment). According to the recent survey the existing encroachment in the 50-foot buffer is 2815.6 square-foot, and proposed to encroach 1197.2 square-foot.

As per the previously approved variance, the existing encroachment into the 75-foot buffer was 3,314 square-feet and the proposed encroachment was 3,996 square-feet (this calculates to an increase of encroachment of only 3% and was limited to the 75-foot buffer.). According to the recent survey the existing encroachment in the 75-foot buffer is 3448.7 square-foot, and proposed to encroach 1909.1 square-foot.

There are no water quality measures on-site currently. If the requested variance is granted, improved landscaping and stormwater management can be achieved with improvements via an underground water quality system and by providing enhanced landscaping strips and buffer areas.

The proposed improvements to the site have the potential to greatly improve the site and its character for the surrounding area. In addition to mitigating water quality and landscaping, which do not currently exist on the site, the proposed improvements will design for stream bank protection that does not currently exist either and will allow for discharge mitigation that is not in place currently.

If granted, the proposed variance will not create or cause excessive or burdensome use of existing infrastructure, transportation facilities, or schools, and will have no adverse effects on the environment or surrounding natural resources.

We appreciate your consideration of our request.

Please contact me anytime with questions or thoughts you may have and thank you.

Sincerely,
Atai Construction
