



Zoning Board of Appeals Staff Report

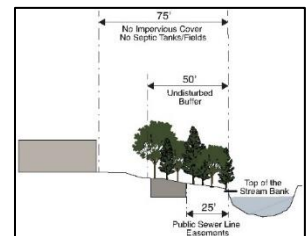
This staff report was prepared for the Zoning Board of Appeals meeting on December 11, 2023.

Applicant(s): Danielle Iuliano
Property Address: 308 Madison Avenue
Parcel ID: 15 212 01 194
Land Use/Zoning: Low Density Residential / R-60 Single Family
Variance Request: Stream Buffer

Existing Conditions	Previous Application	Revised Application
<ul style="list-style-type: none"> • A deck was extended into the 75-foot stream buffer in 2019 without obtaining a variance or permit; it remains incomplete. • This lot has a steep slope with significant erosion from water runoff, which prevents grass growth. • The driveway has cracked and the fence has rotted due to the water and erosion. 	<ul style="list-style-type: none"> • Complete construction of the deck with the correct variances and permits. 	<ul style="list-style-type: none"> • Complete construction of the deck with the correct variances and permits. • Install a flow well and landscaping that will offset encroachment by 124 square feet and prevent erosion. • Repair driveway (not within stream buffers) and fence (within the 75-, 50-, and 25-foot stream buffers).

1. The property is a .17 acre lot located on the east side of Madison Avenue south of Beaty Place. It sits among several other properties subject to the same stream buffer requirements along a tributary of Sugar Creek (see locational map and aerial view).

2. Per Section 9.2.5.A, an undisturbed natural vegetative buffer shall be maintained for 50 feet...as measured from the top of the stream bank. An additional setback shall be maintained for 25 feet...beyond the undisturbed natural vegetative buffer, in which all impervious cover shall be prohibited. Grading, filling, and earthmoving shall be minimized within the setback. No septic tanks or drain fields shall be permitted within the buffer or the setback.

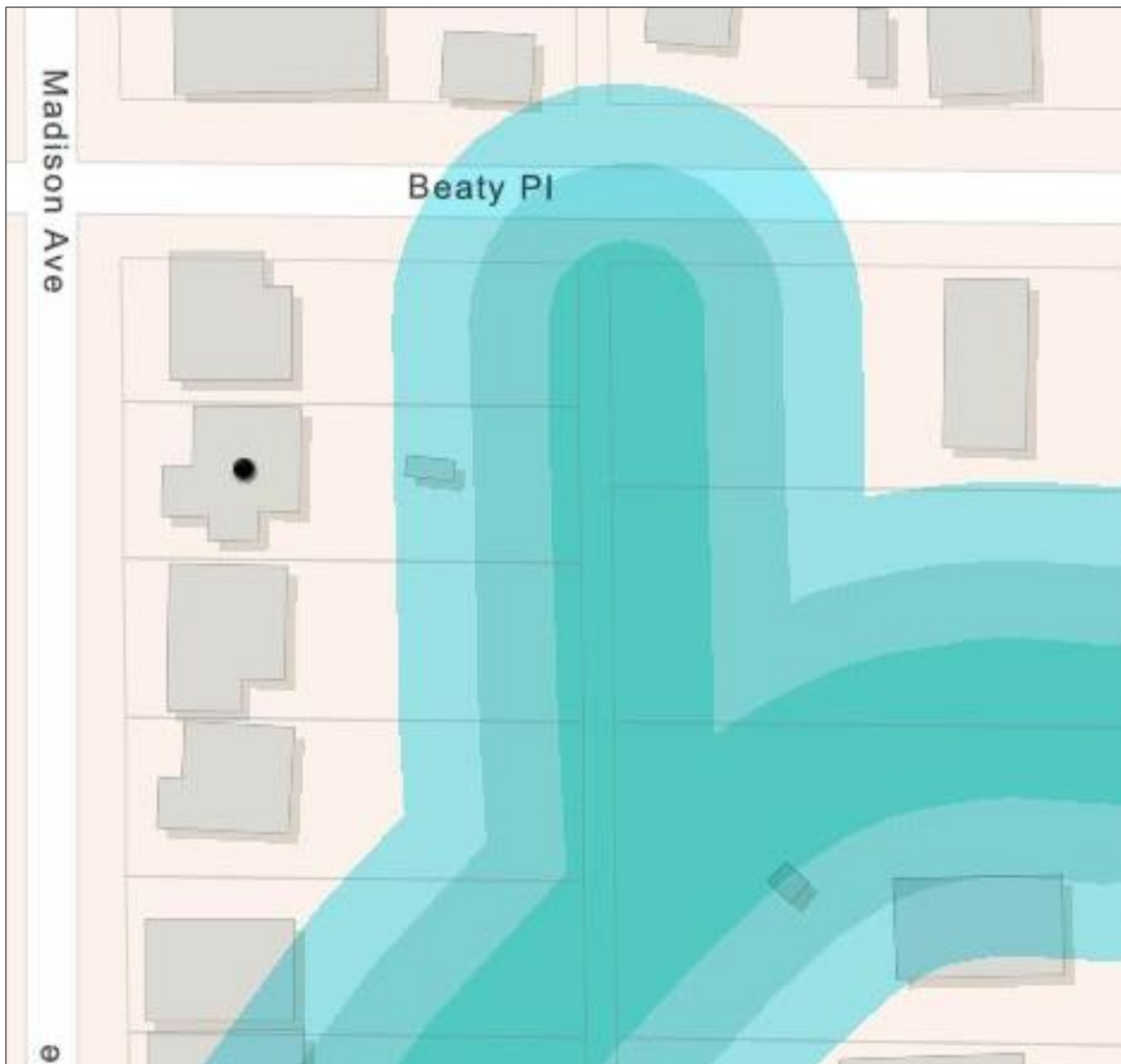


3. City staff recognizes the request is comparable to other variances for decks in a stream buffer granted by the Board, though a discrepancy in the application regarding the extent of encroachment should be clarified. The written description specifies an encroachment of 6 feet, which appears to differ from the plan that shows less encroachment. Alternative designs for the proposed work do not appear possible to eliminate the encroachment into the Stream Buffer. If a variance is granted, it is recommended the board stipulate mitigation of impacts by requiring an infiltration measure such as a rain garden or drywell sized to capture 2 inches from the proposed encroachment or a comparable area, vegetated stabilization of exposed soils in the buffer, and limit fence work to minimal repairs or require 50 percent openness for full fence replacements in the buffer.

4. Per UDO Section 12.2.9.D—Criteria for Approval, no variance shall be authorized unless the Board finds that all of the following conditions exist:
 - a) The special circumstances or conditions applying to the building or land in question are peculiar to such premises and do not apply generally to other land or buildings in the vicinity.
 - b) The granting of the application is necessary for the preservation and enjoyment of a property right and not merely to serve as a convenience to the applicant.
 - c) The condition from which relief or a variance is sought did not result from action by the applicant.
 - d) The authorizing of the variance will not impair an adequate supply of light and air to adjacent properties, unreasonably increase the congestion in public streets, increase the danger of fire, imperil the public safety, unreasonably diminish or impair established property values within the surrounding areas, or in any other respect impair the health, safety, comfort, morals, or general welfare of the inhabitants of the City.
 - e) The granting of the variance will be in harmony with the general purpose and intent of the Decatur Land Use Plan.
 - f) The granting of the variance will not allow a structure or use in a district restricted against such structure or use.
5. Per UDO Section 11.2.9.F—Conditions to Approval, special conditions may be deemed necessary in order to mitigate negative impacts upon surrounding properties which shall be required of the property owner and all subsequent owners as a condition of the use of the property and interpreted and continuously enforced by the Zoning Administrator. Conditions include, but are not limited to:
 - a) Setbacks from any lot line if such setback is a proper part of the application under review;
 - b) Specified or prohibited locations for buildings, parking, loading or storage, or other structures;
 - c) Restrictions in the location of driveways and curb cuts;
 - d) Maximum building heights and other dimensions;
 - e) Landscaping requirements which may include location, type, and maintenance of plant materials, fences, walls, earth berms or other buffers; screening or other protective measures;
 - f) Preservation of existing trees and other vegetation;
 - g) Special measures to alleviate undesirable views, light, glare, noise, dust, or odor;
 - h) Permitted hours of operation;
 - i) Requiring that an existing building be retained;
 - j) Requiring development take place according to a site plan, development plan, and/or building plan;
 - k) Limitation on exterior modifications to existing buildings;
 - l) Public facility improvements by the owner;
 - m) A time limit within which the property must either be used as allowed by the variance, special exception, or other appeal; or
 - n) Any other requirement deemed appropriate and necessary as a condition of approval.
6. In addition to the criteria for approval above, the following factors will be considered in determining whether to issue a variance from buffer requirements per UDO Section 9.2.5.B.6:

- a) The shape, size, topography, slope, soils, vegetation, and other characteristics of the property;
 - b) The locations of all streams on the property, including along property boundaries;
 - c) The location and extent of the proposed buffer or setback intrusion;
 - d) Whether alternative designs are possible which require less intrusion or no intrusion;
 - e) The long-term and construction water-quality impacts of the proposed variance; and
 - f) Whether the variance is at least as protective of natural resources and the environment.
7. If approved, development is subject to applicable permit and compliance procedures, current local life safety and fire codes, local soil erosion, drainage, tree preservation, and other requirements of the stream buffer protection ordinance not subject to this variance.

Locational Map with 75'-50'-25' Stream Buffers



Aerial View with 75'-50'-25' Stream Buffers

