

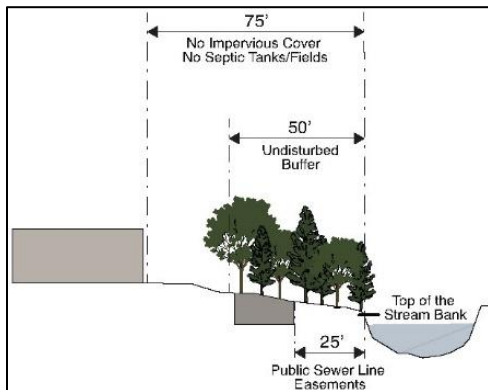
## Zoning Board of Appeals Staff Report

This staff report was prepared for the Zoning Board of Appeals meeting on January 8, 2024.

**Applicant(s):** Kathryn Brookmeyer and Jason Chernock  
**Property Address:** 202 Garden Lane  
**Parcel ID Number:** 18 005 03 079  
**Land Use/Zoning:** Low Density Residential / R-60 Single Family  
**Variance Request:** Stream Buffer

Existing Conditions	Proposed Work
<ul style="list-style-type: none"> <li>There is currently an open deck, concrete driveway, stone walkway and one-story accessory structure that sits within the 75- and 50-foot stream buffers. The residence sits almost entirely within the 75-, 50-, and 25-foot stream buffers.</li> <li>Section 9.2.5.A—Buffer and Setback Requirements: an undisturbed natural vegetative buffer shall be maintained for 50 feet from the top of the stream bank [and] an additional setback shall be maintained for 25 feet.</li> </ul>	<ul style="list-style-type: none"> <li>Convert the existing deck into a screened porch on the same footprint.</li> </ul>

- The property is a 0.27 acre trapezoidal lot located on the south side of Garden Lane east of Scott Boulevard near the curve of the street. It sits next to a City-owned property along a tributary of Peavine Creek (see aerial map and locational view).
- UDO Section 9.2.5.A illustrates the stream buffer requirement as such:



- City staff recognizes the request is comparable to other variances for deck replacements in a stream buffer granted by the Board. 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 that the board stipulate mitigation of impacts by requiring an infiltration zone (rain garden) sized and located to capture 2 inches of runoff from the deck, or equivalent size impervious surface.
- Criteria for Approval.* The Zoning Board of Appeals shall have the authority to authorize upon application in specific cases a variance from the terms of this UDO such as will not be contrary to the public interest,

where, owing to special conditions, a literal enforcement of the provisions of this UDO will result in unnecessary hardship, but where the spirit of the ordinance shall be observed and substantial justice done. Such special conditions shall be limited to exceptional narrowness, shallowness, or shape of a specific piece of property existing at the time of the enactment of this UDO, or exceptional topographic conditions or other extraordinary and exceptional situations or conditions of such piece of property as would result in peculiar, extraordinary, and practical difficulties. Per UDO Section 11.2.9.D, 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. *Additional Criteria for Approval.* In addition to the variance 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.
6. *Conditions to Approval.* Per UDO Section 11.2.9.F, the Zoning Board of Appeals may impose special conditions it deems necessary in order to mitigate negative impacts upon surrounding properties which may be expected without the imposition of those conditions. Such conditions may consist of a variety of requirements, including, but 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.
7. Requirements imposed as a condition of approval 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.
8. *Other requirements.* If approved, the 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**

