

MEMORANDUM

To: Zoning Board of Appeals

From: Allegra DeNooyer, Planner II

Date: March 7, 2024

Subject: ZBA 24-02 – 2849 Sumac Drive, Parcel ID #06 307 02 006

REQUEST

Brandon and Lekeisha Johnson, homeowners at 2849 Sumac Drive, Dunwoody, GA, 30360, request a variance from Chapter 27, Section 269 to allow a retaining wall to encroach into the side and rear setback.

APPLICANT

Property Owner:
 Brandon and Lekeisha Johnson

BACKGROUND & PROPOSED DEVELOPMENT

The subject lot, 2849 Sumac Drive, is zoned Single-dwelling Residential-100 (R-100) and abuts R-100 on all sides. The subject lot is 0.6 acres and is currently developed with a 2,438 SF one-story building constructed in 1965 and remodeled in 1991.

Aerial image:



Zoning Map:

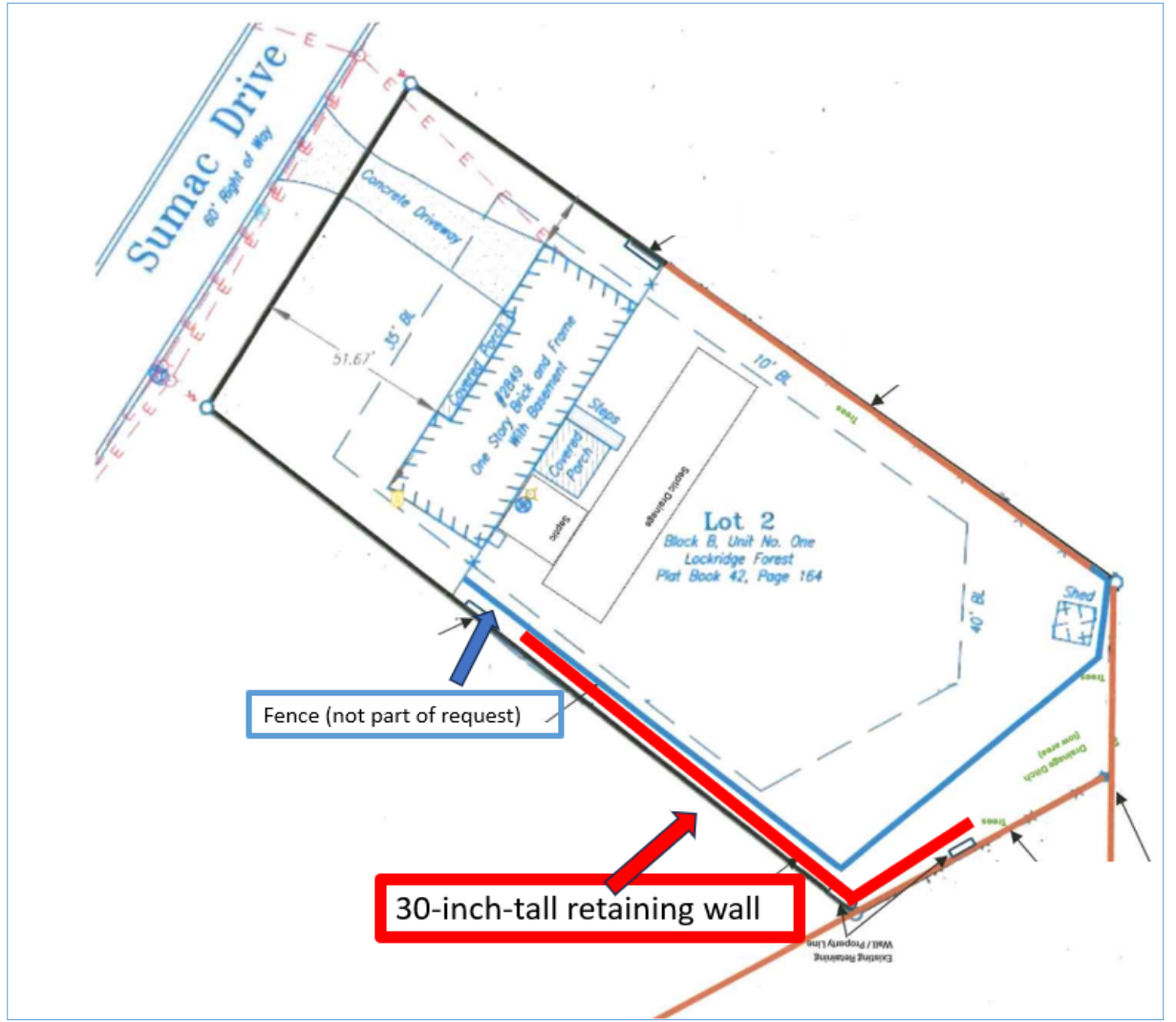


There is a 20-foot drainage easement along the rear property line. The drainage easement begins on the adjacent property (2841 Sumac Drive) and continues onto the subject property. While typically drainage easements are on the property line directly, this drainage easement is entirely on the subject property, not the rear property line.

In November 2023, while conducting an inspection for the adjacent property, city staff noticed a new unpermitted 3-foot-tall retaining wall under construction at 2849 Sumac Drive. The new retaining wall

encroaches a maximum of 9 feet into the side setback and a maximum of 39 feet into the rear setback – remaining approximately 1 foot from the side and rear property lines –, prompting a variance request. The applicants have installed a fence while the property is under a stop work order – this fence meets the code requirements where it does not encroach into the drainage easement and is not part of the variance request.

Site Plan with Existing Conditions (Improvements Already Constructed)



REVIEW AND APPROVAL CRITERIA

Chapter 27, §27-397 identifies the following criteria for evaluation that should be examined when determining the appropriateness of a variance:

- (1) The grant of the variance will not be detrimental to the public health, safety or welfare or injurious to property or improvements;
- (2) The variance request is based on conditions that (1) are unique to the subject property (2) are not generally applicable to other properties in the same zoning district and (3) were not created by the owner or applicant;

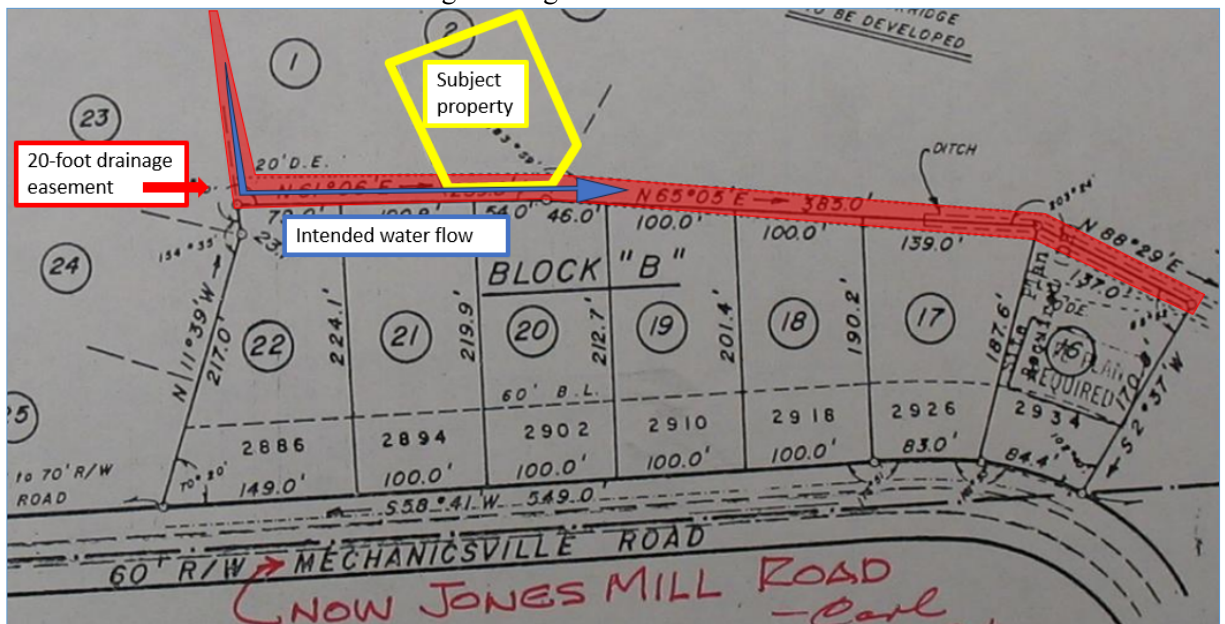
- (3) Because of the particular conditions, shape, size, orientation or topographic conditions, the strict application of the requirements of this zoning ordinance would deprive the property owner of rights and privileges enjoyed by other similarly situated property owners;
- (4) The requested variance 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 similarly situated properties;
- (5) The literal interpretation and strict application of the applicable provisions or requirements of this zoning ordinance would cause undue hardship or practical difficulty, as distinguished from a mere inconvenience; and
- (6) The requested variance would be consistent with the spirit and purpose of this zoning ordinance and the comprehensive plan.

The encroachment of the 30-inch-tall retaining wall into the side and rear setback would normally prompt a Special Administrative Permit. However, since the work was done without a permit, the applicant is required to obtain a variance. The applicant states that the retaining wall was an updated replacement; however, there is no documentation of a previously existing retaining wall. Therefore, staff considers the retaining wall to be new construction. The exact conditions on the subject property prior to the wall installation are unknown due to the unpermitted work.

The subject property drops off approximately 20 feet from the property line along Sumac Drive to the rear of the property, creating a sloped backyard. At only 30 inches tall, the retaining wall is a relatively minor improvement. Without accounting for the unique conditions of the site, the strict application of the setbacks would prevent incremental changes to the use of the property, which staff considers a practical difficulty.

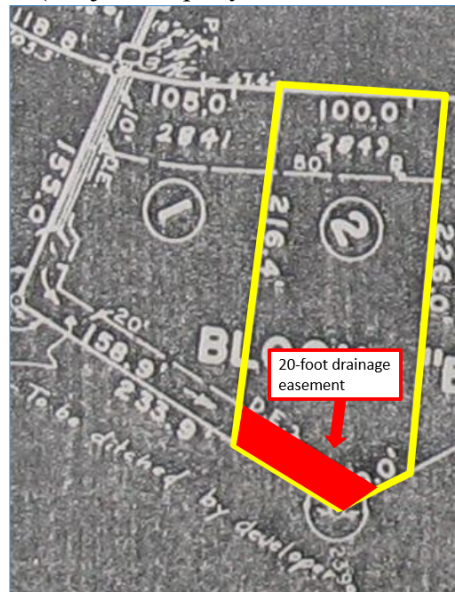
There is a 20-foot drainage easement along most of the rear property line of the subject property which begins at the adjacent lot and which was intended to be ditched by the original developer.

Plat Showing Drainage Easement for the Subdivision



The neighborhood has existing drainage concerns, which were reported on in a 2020 study conducted by an engineering firm and commissioned by the City of Dunwoody. This study states that the drainage ditch in question on the subject and adjacent properties “has reduced conveyance capacity because it is heavily blocked by debris” and due to its “poor maintenance” and “alterations by the homeowners” in the area. The overall functioning of the initially installed ditch is likely poor; however any future fixes would require the area of the drainage easement. Staff thus considers the section of the retaining wall located in the drainage easement to be injurious to property or improvements given that it blocks the drainage easement and has the potential to worsen drainage issues on adjacent properties and block future repair projects. If remaining, stormwater received from the property at 2841 Sumac Drive would not be able to pass through the subject property as intended and would be instead pushed to the adjacent properties to the rear.

Plat (Subject Property Outlined in Yellow)



COMMENTS FROM OTHER PARTIES

City Engineer, Kevin Moore: I would recommend removal of the fence, retaining wall and any fill material from the 20' drainage easement in the rear of the property. This area should be returned to the condition it was in prior to the installation of the retaining wall and associated fill material.

DEPARTMENT OF COMMUNITY DEVELOPMENT RECOMMENDATION

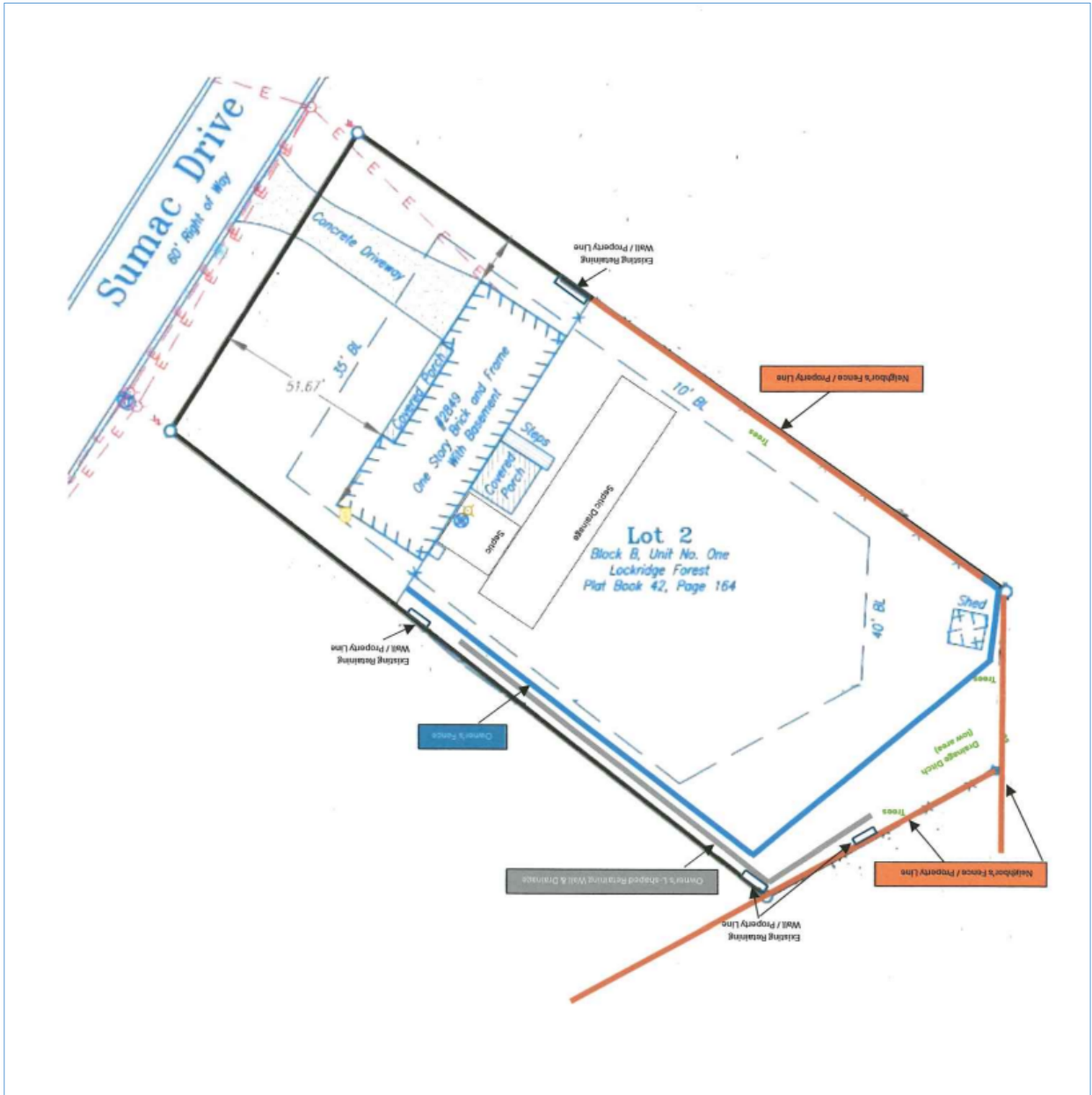
Based on the above analysis and findings, staff has determined that the requested variance to allow a retaining wall to encroach into the side and rear setback do meet the requirements of Chapter 27, §27-397; therefore, staff recommends APPROVAL of the request subject to the following conditions:

1. Construction must be in substantial compliance with the submitted site plan, prepared by the applicant, with the exception that the portion of the retaining wall, fence, and any fill material located in the 20-foot drainage easement be removed (See Appendix A).
2. The fence, retaining wall, and fill material located in the 20-foot drainage easement along the rear property line shall be removed within 90 days of this variance approval and the previously existing conditions shall be re-established. A permit application to accomplish this shall be submitted within 30 days of this variance approval.

ATTACHMENTS

- Staff Memo
- Appendix A, Site Plan, prepared by the applicant
- Appendix B, Site Photos
- Variance Application

Appendix A, Site Plan



Appendix B, Site Photos



The subject property is on the right side of the photo, from September 7, 2023.



The retaining wall.



The new fence.



VARIANCE APPLICATION

Community Development

4800 Ashford Dunwoody Road | Dunwoody, GA 30338

Phone: (678) 382-6800 | Fax: (770) 396-4828

Project #: _____ Date Received: _

Type: _____

Type of Request: Chapter 16-Streams Chapter 16-Other Chapter 20-Signs Chapter 27-Zoning

Code section from which variance is sought: Chapter 27 Section 269

Nature of Request: Retaining wall between less than 1 foot tall to 3 feet tall located in backyard, encroaching into right setback and rear setback.

Project:

Name of Project / Subdivision: Lockridge Forest

Zoning: R-100

Property Address / Location: 2849 Sumac Drive, Dunwoody, GA 30360

District: 6th

Land Lot: 307

Block: B

Property ID: _____

Owner Information:

Owner's Name: Brandon & Lekeisha Johnson

Owner's Address: 2849 Sumac Drive, Dunwoody, GA 30360

Phone: 4047836514 4047836522 Fax: _

Email: JohnsonFam050303@gmail.com

Applicant Information: Check here if same as Property Owner

Contact Name: _____

Address: _____

Phone: _

Fax: _

Email: _____

Terms & Conditions:

I hereby certify that to the best of my knowledge, this application form is correct and complete. If additional materials are determined to be necessary, I understand that I am responsible for filing additional materials as specified by the City of Dunwoody Zoning Ordinance. I understand that failure to supply all required information (per the relevant Applicant Checklists and Requirements of the Dunwoody Zoning Ordinance) will result in the rejection of this application.

Applicant's Name: Brandon & Lekeisha Johnson

Applicant's Signature: [Signature]

Date: December 30th 2023

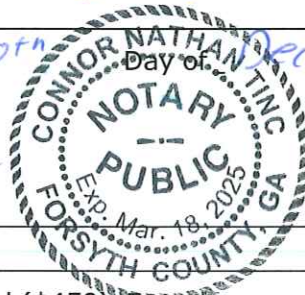
Notary:

Sworn to and subscribed before me this 30th Day of December, 2023

Notary Public: Connor Nathan Tinc

Signature: [Signature]

My Commission Expires: 02/15/2025



Office Use:

Application Fee Paid Public Notice Fee Paid (\$450) Fee: \$

Payment: Cash Check CC Date: _

Approved Approved w/ Conditions Denied Date: _



Property Owner(s) Notarized Affidavit

Community Development
4800 Ashford Dunwoody Road | Dunwoody, GA 30338
Phone: (678) 382-6800 | Fax: (770) 396-4828

The owner and petitioner acknowledge that this application form is correct and complete. By completing this form, all owners of the subject property certify authorization of the filing of the application for variance(s), and authorization of an applicant or agent to act on their behalf in the filing of the application including all subsequent application amendments.

Property Owner (If Applicable):

Owner Name: Brandon Johnson


Signature: [Signature] Date: December 30th, 2023

Address: 2849 Sumac Drive, Dunwoody, GA 30360

Phone: 4047836514 Fax: Email: JohnsonFam050303@gmail.com

Sworn to and subscribed before me this Day of December, 2023

Notary Public: [Signature]



Property Owner (If Applicable):

Owner Name: Lekeisha Johnson


Signature: [Signature] Date: December 30th, 2023

Address: 2849 Sumac Drive, Dunwoody, GA 30360

Phone: 4047836522 Fax: Email: JohnsonFam050303@gmail.com

Sworn to and subscribed before me this Day of December, 2023

Notary Public: [Signature]



Property Owner (If Applicable):

Owner Name: _____

Signature: _____ Date: _____

Address: _____

Phone: _____ Fax: _____ Email: _____

Sworn to and subscribed before me this Day of _____, 20

Notary Public: _____



Campaign Disclosure Ordinance

Community Development
4800 Ashford Dunwoody Road | Dunwoody, GA 30338
Phone: (678) 382-6800 | Fax: (770) 396-4828

Campaign Disclosure Ordinance
Please read the law and complete the Campaign Disclosure Statement on the following page if you are requesting a Rezoning, Concurrent Variance, or Conditional Use.

GA Citation/Title
GA Code 36-67A-3, Disclosure of campaign contributions
*38069 Code, 36-67A-3

CODE OF GEORGIA TITLE 36. LOCAL GOVERNMENT PROVISIONS APPLICABLE TO COUNTIES AND MUNICIPAL CORPORATIONS CHAPTER 67A. CONFLICT OF INTEREST IN ZONING ACTIONS
(Current through 2000 General Assembly)

36-67A-3 Disclosure of campaign contributions.

- a) When any applicant for rezoning action has made, within two years immediately preceding the filing of that applicant’s application for the rezoning action, campaign contributions aggregating \$250.00 or more to a local government official who will consider the application, it shall be the duty of the applicant to file a disclosure report with the governing authority of the respective local government showing:
 - 1) The name and official position of the local government official to whom the campaign contribution was made; and
 - 2) The dollar amount and description of each campaign contribution made by the applicant to the local government official during the two years immediately preceding the filing of the application for the rezoning action and the date of each such contribution.

- b) The disclosures required by subsection (a) of this Code section shall be filed within ten days after the application for the rezoning action is first filed.

- c) When any opponent of a rezoning action has made, within two years immediately preceding the filing of the rezoning action being opposed, campaign contributions aggregating \$250.00 or more to a local government official of the local government which will consider the application, it shall be the duty of the opponent to file a disclosure with the governing authority respective local government showing:
 - 1) The name and official position of the local government official to whom the campaign contribution was made; and
 - 2) The dollar amount and description of each campaign contribution made by the opponent to the local government official during the two years immediately preceding the filing of the application for the rezoning action and the date of each such contribution.

- d) The disclosure required by subsection (c) of this Code section shall be filed at least five calendar days prior to the first hearing by the local government of any of its agencies on the rezoning application.

(Code 1981, 36-67A-3, enacted by Ga. L. 1986, p. 1269, 1; Ga. L. 1991, p. 1365, 1; Ga. L. 1993, p. 91, 36.)

Official Code of Georgia Annotated Copyright 1982 – 2000 State of Georgia.


Campaign Disclosure Statement

Community Development
 4800 Ashford Dunwoody Road | Dunwoody, GA 30338
 Phone: (678) 382-6800 | Fax: (770) 396-4828

Have you, within the two years immediately preceding the filing of this application, made campaign contributions aggregating \$250.00 or more to a member of the City of Dunwoody City Council or a member of the City of Dunwoody Planning Commission?

YES NO

Applicant / Owner:

Signature: 	Date: December 30 th , 2023
Address: 2849 Sumac Drive, Dunwoody, GA 30360	

If the answer above is yes, please complete the following section:

Date	Government Official	Official Position	Description	Amount

EXHIBIT "A"
LEGAL DESCRIPTION

All that tract or parcel of land lying and being in Land Lot 307 of the 6th District, DeKalb County, Georgia, being Lot 2, Block "B", Unit One of Lockridge Forest Subdivision, as per plat recorded in Plat Book 42, Page 164, DeKalb County, Georgia Records, and being more particularly described as follows:

BEGINNING at an iron pin on the Southeasterly side of Sumac Drive 223.8 feet from the right-of-way of Winters Chapel Road; running thence Northeasterly along the Easterly side of Sumac Drive 100.0 feet to an iron pin; thence South 54 degrees 50 minutes East a distance of 226.0 feet to an iron pin; thence South 1 degree 45 minutes West a distance of 50.0 feet to an iron pin; thence South 61 degrees 07 minutes West a distance of 75.0 feet to an iron pin; thence North 52 degrees 15 minutes West a distance of 216.4 feet to an iron pin on the Southeasterly side of Sumac Drive and the point of beginning; being improved property known as 2849 Sumac Drive, according to the present system of numbering houses in DeKalb County, Georgia.

Approval of this variance will not be detrimental to the public health, safety or welfare of the public or injurious to the property or improvements. The modular block retaining wall is an L-shaped wall located completely in the backyard with drainage built inside along the foot of the wall that is 1) between less than 1-foot tall and 2-feet tall, and approximately 125 linear feet 1 to 2 feet from the right-side property line (Right-side Wall) to allow access for future maintenance, and 2) 3-feet tall and approximately 35 linear feet 1-foot from the back property line (Back Wall) to allow access for future maintenance.

Right-Side Wall

Initially, our plans were to only construct the Right-side wall due to extensive flooding in our basement and erosion along the right-side of our property. We discovered there was an existing brick retaining wall located along the right-side of the property while we were constructing the Right-side wall.

Back Wall

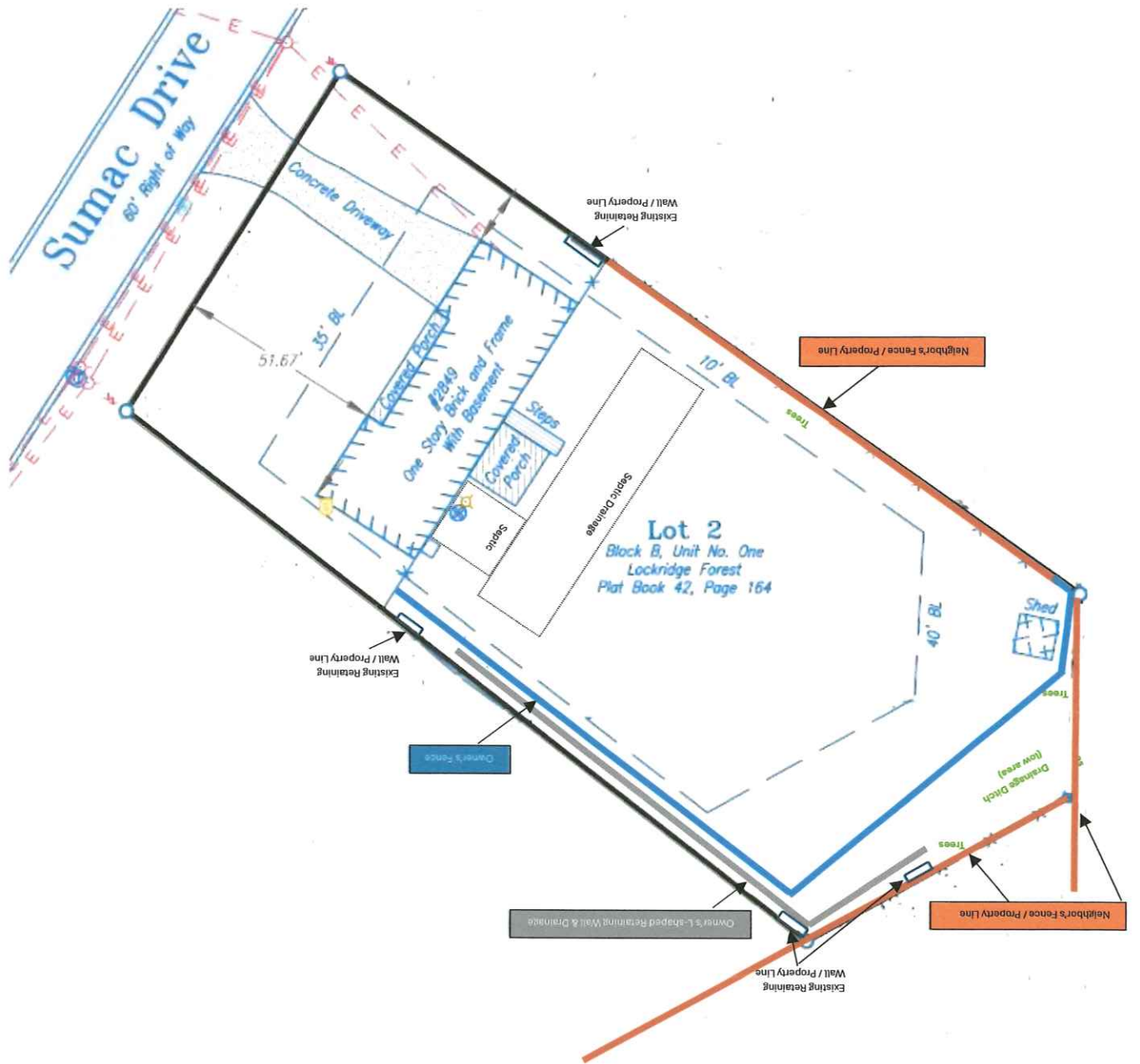
The back wall was replaced after our neighbor invited us onto his property to show us the existing timber and brick retaining wall that was badly in need of repair due to existing flooding and erosion. Prior to him inviting us onto his property to see the existing retaining wall, we were unaware of it.

Background

We purchased our home from an elderly couple that were no longer able to maintain the property which resulted in substantial overgrowth of trees, shrubbery, and weeds, which is why the existing walls were not visible on the property. We have been cleaning up the property since we purchased it in 2019. Since then, we have also discovered the following issues outside of our control which have caused substantial erosion to our front and backyards.

1. Two City storm drains (catch basins) on Sumac Drive are undersized and outdated (not the modern "1034" GDOT standard catch basins) resulting in excessive rainwater on our property and many neighboring properties when it rains. See Jones Mill Drainage Study prepared for City of Dunwoody August 12, 2020 for more information.
2. Former home next door to our property at 2841 which was required to be demolished in 2014 or 2015 due to foundational issues during renovation, where the prior owner also demolished the drainage system alongside the property (which sits next to the one of the City's storm drains referenced above). See Jones Mill Drainage Study prepared for City of Dunwoody August 12, 2020 for more information. As the property sits at a higher elevation than ours and construction debris was pushed up alongside our property creating a dump and never required to be cleaned up properly, rainwater floods the right side of our property causing extensive erosion to the land and damage to the existing retaining walls.
3. A new build next door at 2841 was approved by the City in or around 2021 or 2022 but no parameters were put in place to lessen the impact of flooding and erosion to our property or other neighboring properties, nor were any recommendations implemented by the City that we are aware of as noted in the Jones Mill Drainage study (e.g., replacing the 2 storm drains on Sumac). Additionally, the new build was allowed to be constructed at a higher elevation than the old build and was built on top of an existing septic tank, with a new septic tank added also at a higher elevation and will presumably result in future drainage issues.

In our attempt to take responsibility for our own property, we rebuilt the Right-side wall and after our neighbor notified us of the existence of the Back-wall that was no longer in good repair, we replaced it. We also believed since the wall was less than 4 feet tall, no permit was required. However, we discovered it is impossible to request a permit from the City for a retaining wall no matter the size, and an existing wall must be the same size (height/width) and in good repair for it to be considered an existing wall for replacement purposes. Therefore, we have submitted this application for a variance to take responsibility for our own property and lessen the impacts of flooding and erosion to our property, to be able to enjoy all of our property with our daughters and German shepherd in a safe manner, and to ensure we can enjoy the property as we age in place for as long as possible the same as our neighbors and not worry about an eroded landscape and flooding.





Starting point of Right-Side of new L-shaped Retaining wall.

Remnants of existing retaining wall.



Right-Side of new L-shaped Retaining wall.





Corner of L-shaped Retaining Wall.



Corner of L-shaped Retaining Wall with remnants of existing retaining wall.



Back of L-shaped Retaining Wall.



Remnants of existing retaining wall.

Allegra DeNooyer

From: noreply@incode.tylerhosting.cloud
Sent: Tuesday, January 2, 2024 4:35 PM
To: Allegra DeNooyer
Subject: Receipt #10042720

Caution: External Message

City of Dunwoody
678-382-6700

DATE : 1/2/2024 3:31 PM
OPER : AD
TKBY : Allegra Denooyer
TERM : 3
REC# : 10042720
201.0000 BUILDING PERMITS
ZBA 24-02 2849 SUMAC DRIVE 700.00

Paid By:ZBA 24-02 2849 SUMAC DRIVE
4 - CC POS_BL 700.00AUTH:437164