

APPLICATION FOR VARIANCE TO THE CITY OF SMYRNA

Type or Print Clearly

(To be completed by City)

Ward: 2

Application No: V12-016

Hearing Date: 3/8/17

APPLICANT: Avonlea Square, LLC

Business Phone: 770-951-2278 Cell Phone: _____ Home Phone: _____

*Representative's Name (print): Mark Keappler, Quintus Corporation

Address: 1827 Powers Ferry Rd, Building 2, Suite 200, Atlanta, GA 30339

Business Phone: 770-951-2278 Cell Phone: 706-652-6128 Home Phone: _____

E-Mail Address: mkeappler@quintuscorp.net

Signature of Representative: BY: [Signature]

J. Kevin Moore; Georgia Bar No. 519728
Attorneys for Applicant/Titleholder

TITLEHOLDER: Avonlea Square, LLC

Business Phone: 770-951-2278 Cell Phone: _____ Home Phone: _____

Address: 1827 Powers Ferry Rd, Building 2, Suite 200, Atlanta, GA 30339

Signature: BY: [Signature]
Mark E. Keappler, Manager

VARIANCE:

Present Zoning: RM-15 Type of Variance: Stream Buffer Variance of the City of
Smyrna's additional 25' required stream buffer

Explain Intended Use: Playground and nature park area for residents of Avonlea Square.

Location: 1836 Roswell Street

Land Lot(s): 663 District: 17th Size of Tract: 21.69± Acres

*See Attached for Applicant/Titleholder's Attorney Representative Information

(To be completed by City)

Received: 2/16/17

Posted: 2/26/17

Approved/Denied: _____

CONTIGUOUS ZONING

North: HI, NS, RM-12 (Cobb County)

East: RM-12 (City of Smyrna)

South: R-15 (City of Smyrna)

West: RM-12 (City of Smyrna)

ATTACHMENT TO APPLICATION FOR VARIANCE

Application No.: _____

Hearing Date: March 8, 2017

Applicant/Titleholder: Avonlea Square, LLC

Representative for Applicant/Titleholder:

MOORE INGRAM JOHNSON & STEELE, LLP

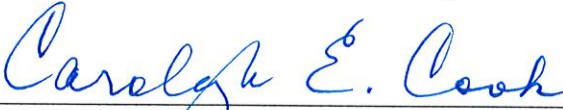
BY: 

J. Kevin Moore
Georgia Bar No. 519728

Attorneys for Applicant/Titleholder

Date Executed: February 16, 2017

Signed, sealed, and delivered in the presence of:



Notary Public

Commission Expires: January 10, 2019

[Notarial Seal]



Moore Ingram Johnson & Steele, LLP
Attorneys at Law
Emerson Overlook
326 Roswell Street
Marietta, Georgia 30060
(770) 429-1499
(770) 429-8631 (Telefax)
E-mail: jkm@mijs.com

ATTACHMENT TO APPLICATION FOR VARIANCE

Application No.:

Hearing Date:

March 8, 2017

Applicant/Titleholder: Avonlea Square, LLC

SUMMARY OF EXTRAORDINARY AND EXCEPTIONAL CONDITIONS

Applicant requests a variance to utilize 200 feet of the property within the 25-foot stream buffer, as established by the City of Smyrna, as a playground area and nature park. The variance is necessitated for the following reasons:

- There is no other area within the property bounds that will sufficiently and safely accommodate the requested park.
- The addition of the playground area and nature park is a reasonable use of the property and will improve the quality of life for the Smyrna residents residing in the Avonlea Square Apartment community.

The requested variance for the playground area and nature park will not intrude on, nor will it impede the flow of, stream waters on the property within the 25-foot EPD buffer. The 25-foot EPD buffer will be further protected by the addition of commercial grade fencing and native plantings.

ATTACHMENT TO APPLICATION FOR VARIANCE

Application No.:

Hearing Date: March 8, 2017

Applicant/Titleholder: Avonlea Square, LLC

NOTIFICATION OF CONTIGUOUS OCCUPANTS OR LAND OWNERS
TO ACCOMPANY APPLICATION FOR VARIANCE

The following contiguous owners will be notified by certified mail, return receipt requested, of Applicant's intention to seek a variance, as more particularly set forth in the Application for Variance:

<u>Property Owner Name and Address</u>	<u>Certified Return Receipt No.</u>
AVONLEA SQUARE LLC 1827 POWERS FERRY TD ATLANTA, GA 30039	7015 1730 0000 9373 9032
JASMINE WOODLANDS OWNER LLC 4901 BIRCH ST NEWPORT BEACH, CA 92660	7015 1730 0000 9373 9049
BENITA DENISE HILL 8123 FLAMINGO DR JONESBORO, GA 30238	7015 1730 0000 9373 9056
TODD CHAFFEE 3501 CEDAR VALLEY DR SMYRNA, GA 30080	7015 0640 0004 7605 4715
DWAIN A EVANS 2580 GORDON CIR SMYRNA, GA 30080	7015 0640 0004 7605 4722
EDITH M LESTER 7050 WINKFIELD PL COLLEGE PARK, GA 30349	7015 0640 0004 7605 4739
WESTDALE PINE VILLAGE NORTH GA LLC 1900 DALROICK RD ROWLETT, TX 75088	7015 0640 0004 7605 4746

**Property Owner
Name and Address**

Certified Return Receipt No.

DEMETRIA WALLS 2555 BATES STREET SMYRNA, GA 30080	70150 640 0004 7605 4753
MARY ELLEN IRELAND PO BOX 2638 SMYRNA, GA 30081	7015 0640 0004 7605 4760
MADLYN McCLURE 2557 BATES ST SMYRNA, GA 30080	7015 0640 0004 7605 4777
VERA S MILLER MATTIE E CONLEY 2554 GORDON CIR SMYRNA, GA 30080	7015 0640 0004 7605 4784
RONDA INGRAM 2565 BATES STREET SMYRNA GA, 30080	7015 0640 0004 7605 4791
LEOLA EVANS 2554 GORDON CIR SMYRNA, GA 30080	7015 0640 0004 7605 4807
VERA S MILLER 1728 NINE MILE POINT RD PENFIELD, NY 14526	7015 0640 0004 7605 4814
MIRA CUCKOVIC 2563 BATES ST SMYRNA, GA 30080	7015 0640 0004 7605 4821
JAMES CHU 160 ROBIN RD SE MARIETTA, GA 30067	7015 0640 0004 7605 4838
KARANJA EUSTACE 2561 BATES ST SMYRNA, GA 30080	7015 0640 0004 7605 4845
FREDERICK W DOWDA PO BOX 2638 SMYRNA, GA 30081	70150640000476054852

**Property Owner
Name and Address**

VALERIE VENEY
KEYANA LASHEA
2567 BATES ST
SMYRNA, GA 30060

HATTIE B KING
6688 WOODFIELD LN
REX, GA 30273

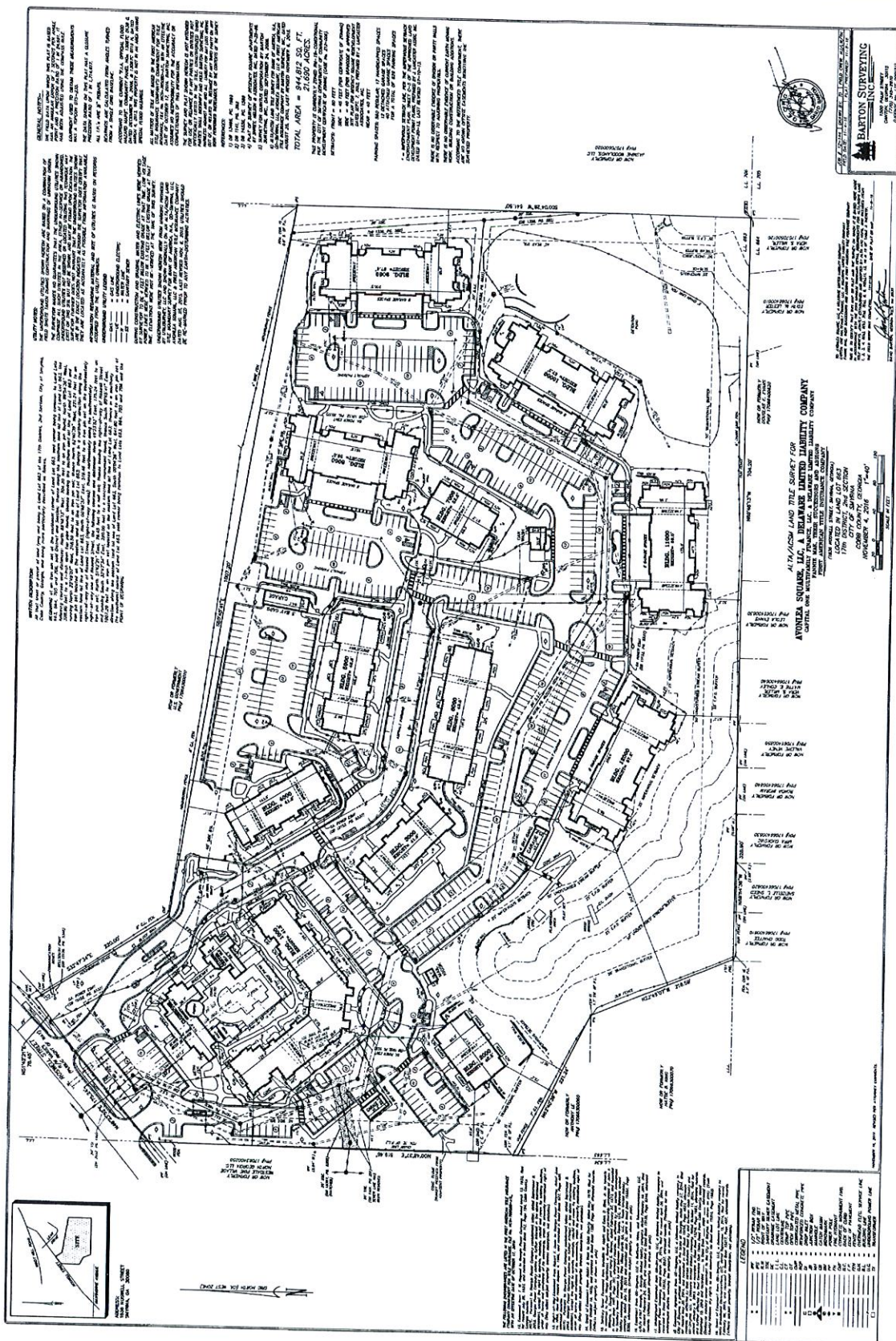
U S GOVERNMENT
75 SPRING ST
ATLANTA, GA 30303

Certified Return Receipt No.

7015 0640 0004 7605 4869

7015 0640 0004 7605 4876

7015 0640 0004 7605 4883





Printed: 1/31/2017

Cobb County Online Tax Receipt

Thank you for your payment!

CARLA JACKSON TAX COMMISSIONER
CHELLY MCDUFFIE CHIEF DEPUTY
Phone: 770-528-8600
Fax: 770-528-8679

Payer:
AVONLEA SQUARE LLC

AVONLEA SQUARE LLC

Payment Date: 10/7/2016

Tax Year	Parcel ID	Due Date	Appeal Amount	Taxes Due
2016	17066300030	10/17/2016	Pay: N/A or	\$0.00

Interest	Penalty	Fees	Total Due	Amount Paid	Balance
\$0.00	\$0.00	\$0.00	\$0.00	\$476.60	\$0.00



Scan this code with your
mobile phone to view
this bill!!



Printed: 1/31/2017

Cobb County Online Tax Receipt

Thank you for your payment!

CARLA JACKSON TAX COMMISSIONER
CHELLY MCDUFFIE CHIEF DEPUTY
Phone: 770-528-8600
Fax: 770-528-8679

Payer:
AVONLEA SQUARE LLC

AVONLEA SQUARE LLC

Payment Date: 10/7/2016

Tax Year	Parcel ID	Due Date	Appeal Amount		Taxes Due
2016	17066300040	10/17/2016	Pay:	N/A or	\$0.00
Interest	Penalty	Fees	Total Due	Amount Paid	Balance
\$0.00	\$0.00	\$0.00	\$0.00	\$352,643.08	\$0.00



Scan this code with your
mobile phone to view
this bill!!

01/31/2017 13:17
 mhickenbottom

 City of Smyrna
 Real Estate Paid Tax Statement

 P 1
 txtaxstm

PARCEL: 17-0663-0-0030

LOCATION: 1844 ROSWELL ST

 CURRENT OWNER:
 AVONLEA SQUARE LLC
 1827 POWERS FERRY RD BLDG/STE 2/200
 ATLANTA GA 30339

 CURRENT STATUS:
 SQ FT: 0
 LAND VALUATION: 46,200
 BUILDING VALUATION: 0
 EXEMPTIONS: 0
 TAXABLE VALUATION : 46,200

DEED DATE:

BOOK/PAGE:

YEAR	TYPE	DUE DATE	PRIN DUE	INT/PEN	DATE	TYPE	AMOUNT
2016	RE-R 1	11/15/2016	166.14	.00	10/07/2016	PD	166.14
	BILL #	763	166.14	.00			166.14
2015	RE-R 1	11/16/2015	166.14	.00	10/19/2015	PD	166.14
	BILL #	12837	166.14	.00			166.14
2014	RE-R 1	11/17/2014	468.74	.00	10/02/2014	PD	468.74
	BILL #	12763	468.74	.00			468.74
GRAND TOTALS			801.02	.00			801.02

01/31/2017 13:18
mhickenbottom

City of Smyrna
Real Estate Paid Tax Statement

P 1
txtaxstm

PARCEL: 17-0663-0-0050

LOCATION: 1810 ROSWELL ST

CURRENT OWNER:
AVONLEA SQUARE LLC
1827 POWERS FERRY RD BLDG/STE 2/200
ATLANTA GA 30339

CURRENT STATUS:
SQ FT: 0
LAND VALUATION: 109,270
BUILDING VALUATION: 0
EXEMPTIONS: 0
TAXABLE VALUATION : 109,270

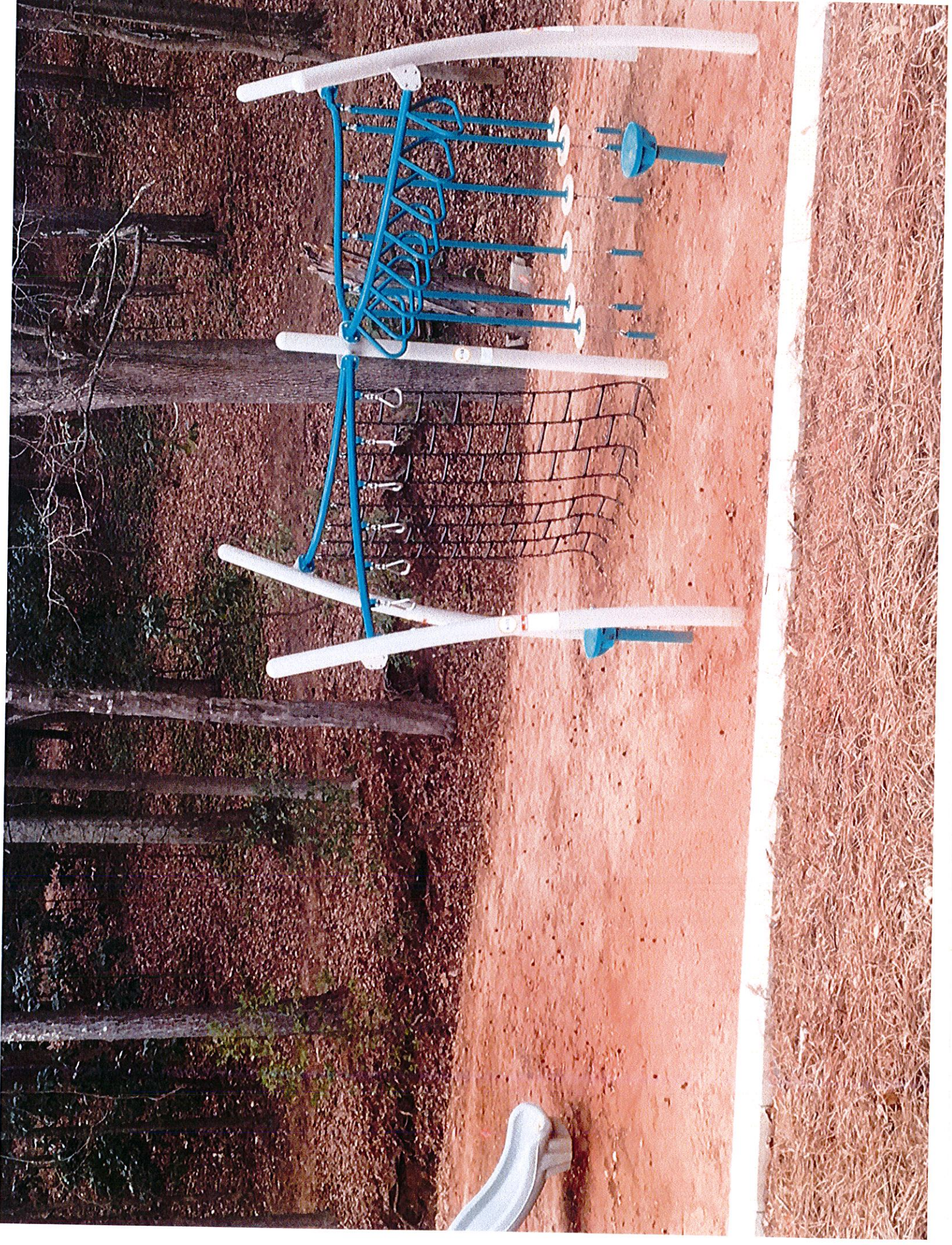
DEED DATE:

BOOK/PAGE:

YEAR	TYPE	DUE DATE	PRIN DUE	INT/PEN	DATE	TYPE	AMOUNT
2016	RE-R 1	11/15/2016	392.93	.00	10/07/2016	PD	392.93
	BILL #	765	392.93	.00			392.93
2015	RE-R 1	11/16/2015	795.47	.00	10/19/2015	PD	795.47
	BILL #	12838	795.47	.00			795.47
2014	RE-R 1	11/17/2014	637.28	.00	10/02/2014	PD	637.28
	BILL #	12764	637.28	.00			637.28
	GRAND TOTALS		1,825.68	.00			1,825.68









ATTACHMENT TO APPLICATION FOR VARIANCE

Application No.: _____
Hearing Date: **March 8, 2017**

BEFORE THE LICENSE AND VARIANCE BOARD
CITY OF SMYRNA, GEORGIA

CONSTITUTIONAL CHALLENGE
ATTACHMENT TO APPLICATION FOR VARIANCE

COMES NOW, Applicant and Property Owner, AVONLEA SQUARE, LLC
(hereinafter collectively referred to as "Applicant/Property Owner"), and assert the following:

1.

By Application for Variance dated and filed February 16, 2017, Applicant/Property Owner applied for a variance as to the requirements of the City of Smyrna Zoning Ordinance and seeks a variance from said ordinance which requires no encroachment into the fifty (50) foot undisturbed stream buffer located within the Subject Property (hereinafter referred to as the "Stream Buffer Ordinance").

2.

The Zoning and Planning Ordinance of the City of Smyrna was established by the appropriate governing authority of the City of Smyrna, Georgia, as amended, being hereinafter referred to as the "Zoning and Planning Ordinance of the City of Smyrna" or in the alternative the "Ordinance."

3.

By Application for Variance, Applicant/Property Owner applied for a variance specifically as to certain real property lying and being in the City of Smyrna, Cobb County,

Georgia, a more particular description and delineation of the subject property being set forth in said Application (hereinafter referred to as the “Subject Property” or “Property”).

4.

The Application for Variance seeks a waiver of the zoning requirements under the Stream Buffer Ordinance as applied to the Subject Property.

5.

There is no question but that enforcement of the Stream Buffer Ordinance would create an unnecessary hardship in that same would deny a more reasonable use of the Property while causing no substantial detriment to the public good nor would it impair the intent of the Stream Buffer Ordinance. The Application for Variance does not seek a use of the Property which is prohibited by any ordinance or resolution.

6.

The Zoning and Planning Ordinance of the City of Smyrna and the Code for the City of Smyrna are unconstitutional as applied to the Property in that said Ordinances deprive Applicant/Property Owner of its Property under and pursuant to Art. I, § I, ¶¶ I and II of the Georgia Constitution of 1983, and the Equal Protection and Due Process Clauses of the Fifth and Fourteenth Amendments to the Constitution of the United States of America. This deprivation of Property without due process violates the constitutional prohibition against the taking of private property without just compensation. Said Ordinances, as they presently exist, violate the Applicant/Property Owner’s rights to unfettered use of its Property in that a refusal to grant the requested variance from said Ordinances would result in unwarranted loss of reasonable use. Further, said Ordinances do not bear a substantial relation to the public health, safety, morality, or general welfare and are therefore confiscatory and void as applied

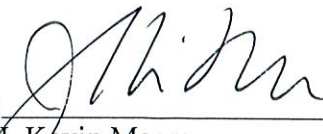
to the Property. Further, said Ordinances are unconstitutional in that same are arbitrary and unreasonable resulting in relatively little gain or benefit to the public, while inflicting serious injury and loss upon the Applicant/Property Owner.

7.

The Zoning and Planning Ordinance of the City of Smyrna and the Code of the City of Smyrna are further unconstitutional in that the procedures contained therein pertaining to the public hearing held in connection with the Application for Variance also violate Art. I, § I, ¶¶ I, II, and XII of the Georgia Constitution of 1983 in that said procedures impose unreasonable time restraints, contain the absence of rebuttal, contain the inability to confront witnesses, contain the lack of procedural and evidentiary safeguards, do not restrict evidence received to the issue at hand and are controlled wholly and solely by political considerations rather than the facts and considerations required by law. These procedures fail to comport with the due process requirements of the Constitution of the State of Georgia 1983 and the due process requirements of the Constitution of the United States of America.

Respectfully submitted, this 16th day of February, 2017.

MOORE INGRAM JOHNSON & STEELE, LLP

BY: 
J. Kevin Moore
Georgia Bar No. 519728

Attorneys for Applicant/Property Owner

Date	Revised/Issue

Avonlea Square Apartments
Park Layout Plan



WINTER DESIGN
Landscape Architecture + Planning
2090 Sycamore Court, Marina del Rey, CA 90293
Phone (310) 775-3542 www.winterdesign.com

ASAC01	2/2/17	1" = 10'

