



Development Services Center  
178 Sams Street  
Decatur, GA 30030  
[www.dekalbcountyga.gov/planning](http://www.dekalbcountyga.gov/planning)  
404-371-2155 (o); 404-371-4556 (f)

Chief Executive Officer **DEPARTMENT OF PLANNING & SUSTAINABILITY** Interim Director  
Michael Thurmond Cedric Hudson

**ZONING BOARD OF APPEALS APPLICATION FOR PUBLIC HEARING (VARIANCES, SPECIAL EXCEPTIONS, APPEALS OF ADMINISTRATIVE DECISIONS)**

Applicant and/or Authorized Representative: Virginia Tate  
Mailing Address: 1166 Lullwater Road  
City/State/Zip Code: Atlanta, GA 30307  
Email: vctate1@outlook.com  
Telephone Home: 404-314-7075 Business: same

**OWNER OF RECORD OF SUBJECT PROPERTY**

Owner: David Martin and Beth Finnerty  
Address (Mailing): 1136 Lullwater Road, Atlanta, GA 30307  
Email: bfinnerty@skylandtrail.com Telephone Home: \_\_\_\_\_ Business: 678-686-5930

**ADDRESS/LOCATION OF SUBJECT PROPERTY**

Address: 1176 Lullwater Road City: Atlanta State: GA Zip: 30307  
District(s): 18 Land Lot(s): 054 Block: 06 Parcel: 001  
Zoning Classification: R-85 Commission District & Super District: 2 & 6

**CHECK TYPE OF HEARING REQUESTED:**

- VARIANCE (From Development Standards causing undue hardship upon owners of property.)
- SPECIAL EXCEPTIONS (To reduce or waive off-street parking or loading space requirements.)
- OFFICIAL APPEAL OF ADMINISTRATIVE DECISIONS.

**\*PLEASE REVIEW THE FILING GUIDELINES ON PAGE 4. FAILURE TO FOLLOW GUIDELINES MAY RESULT IN SCHEDULING DELAYS.\***

Email [plansustain@dekalbcountyga.gov](mailto:plansustain@dekalbcountyga.gov) with any questions.

**APPEAL NUMBER 1246840**

**Letter of Intent to Appeal Administrative Decision on a Stream Buffer Variance for 1176 Lullwater Road**

**Appellant, Virginia Tate, is appealing the grant of a stream buffer variance, Application 1246723, by an Administrative Official pursuant to Code 7.5.3.**

**Background:**

The Applicants, David Martin and Beth Finnerty, have been attempting to obtain approvals to build on the lot at 1176 Lullwater Road for the last 2 ½ years and it has been heavily contested. There was a seventh hearing before the ZBOA on December 13, 2023. It's has been before the HPC for a COA at least four or five times. It has been before the BOC as recently as December 5 when the BOC reversed the HPC grant of a COA. The applicants refiled for a COA with the HPC and that was granted on January. That will be appealed again to the BOC.

The applicants previously applied for an administrative stream buffer variance which was denied on September 13, 2023 by Interim Director Cedric Hudson. The letter denying the variance states that the applicant would need to appeal to the ZBOA if they disagreed with the ruling. Instead, the applicants re-applied for an administrative variance on October 16 and then resubmitted it on October 24. An administrative variance was granted in a one-page letter on December 11. However, no one knew about that approval except the applicant.

Soon after the applicant filed their second application, on November 3, I sent an Open Records Request to Planning and Sustainability regarding this request for an administrative variance specifically requesting any documentation and decisions. I never received anything for weeks. After several follow up emails, I finally was able to obtain a copy of the application form that submitted, 42 days after my open records request, but nothing else.

It wasn't until early January, in reading through applicant's application to the HPC for a COA, that I discovered that an approval of the stream buffer variance was issued in December. There has been no sign posting stating that a variance was granted and listing the appeal date, and there have been no mailings of that approval to abutting landowners. Despite my very specific Open Records Request and numerous follow-up emails, I was never provided anything other than the application form. It wasn't until I copied my Commissioner on one of the requests and wrote Interim Director Hudon on two occasions regarding the lack of due process and transparency, that finally on January 8, I was provided with an electronic copy of the one- page approval. I still have not received the documentation that supplements the application form despite my many requests.

Those of us who have been engaged in the numerous hearings and filings regarding this new construction have absolutely no insight or input into what has happened with the administrative variance. Further, it took numerous follow-up requests to even get a copy as there was no notice whatsoever. This is an egregious lack of due process and transparency.



Further, the one page variance approval does not address any of the issues raised by the staff in the September 13 denial of the variance request and other considerations. It doesn't address new construction on a vacant lot, building within the 2025 built out condition flood plain, or that a variance would be materially detrimental to the public welfare or injurious to the property in the area.

**1) The Administrative Official Acted in An Arbitrary Manner and There Was An Erroneous Finding of Material Fact.**

Mr. Sheppard in the December 11 approval acted in an arbitrary manner and there was an erroneous finding of material fact. Therefore, ZBOA should reverse the approval. Code 7.5.3.

The administrative variance failed to address any of the substantive findings of the September 13 denial. In that denial, the staff found:

**STAFF FINDINGS:** Staff has denied stream buffer application AP# 1246497 because the application would allow new residential construction on vacant land, the subject property is within the existing or year 2025 built-out condition flood plain, and approval of the variance would be materially detrimental to the public welfare or injurious to the property or improvements in the area. Additionally, this application does not address many of the criteria and is incomplete. The variance request fails to comply with criteria 14.44.1 (b) 2, 14.44.1 (b) 7, 14.44.3, 14.44.4 (h), 14.44.1-(i) 1, 14.44.1-(i) 4, 14.44.1-(i) 5.

There are numerous reasons why the variance should be denied, some of which were in the finding of the September 13 denial.

- **No stream buffer variance shall be granted if it is for new construction on a vacant lot. Ordinance Section 14-44.1(b).** This is new construction on a vacant lot.
- **No stream buffer variance shall be approved with the existing or year 2025 built-out condition flood plain. Section 14-44.4(h).** The property is within the 2025 built-out condition flood plain.
- **New construction shall not be allowed within the limits of the future-conditions floodplain. Section 14-432(a).** It is within the limits of the floodplain.
- **Whether the variance would be materially detrimental to the public welfare or injurious to the property in the area. Section 14-44.1(i).** Granting the variance would be detrimental because it would allow development in the future flood plain. As the staff found in its September denial, "No development shall be allowed within the future-condition floodplain that could result in: raising the base flood elevation or future-conditions flood elevation, reduce the base flood or future-condition flood storage capacity, change the flow characteristics, create hazardous or erosion-producing velocities or resulting in excessive sedimentation."
- **The director must consider whether the request would be at least as protective of natural resources and the environment as a strict application. Section 14-44.1(i).** By its very nature, the proposal is not protective of the natural resources and environment as it affects the flood plain and the tributary that flows into an already fragile Peavine Creek.

The administrative approval did not address any of the above. The December 11 approval was arbitrary and not based on material facts. Accordingly, the approval should be reversed.

**2) Applicant Failed to Appeal to the ZBOA as Required, Therefore the Current Approval Should Be Rendered Invalid.**

As stated in the September 13 denial, Interim Director Hudson states that the applicant has the right to appeal the denial to the ZBOA.

**Appeals. Appeals shall be made to the zoning board of appeals and shall be administered in accordance with the notice requirements, criteria and procedural requirements set forth in section 27-901 et seq.**

Section 27-5.2. B. Appeals of decisions of administrative officials. Appeals of decisions of administrative officials may be filed by (1) any person aggrieved by; (2) any elected member of the DeKalb County Governing Authority affected by; or (3) an owner of property within two hundred fifty (250) feet of the nearest property line of the property that is the subject of any final order, requirement, or decision of an administrative official, based on or made in the enforcement of this zoning ordinance, or as otherwise authorized by local law or the Code of DeKalb County as Revised 1988. by filing with the secretary of the zoning board of appeals an application for appeal, specifying the grounds thereof, within fifteen (15) days after the action was taken by the official that is the subject of the appeal.

However, the applicant failed appeal to the ZBOA and instead refiled their application for an administrative variance. Because applicant failed to properly follow the correct procedure, the December 11 approval should be considered invalid or reversed.

**3) There Has Been An Absolute Denial of Due Process and Transparency.**

The applicant originally had the stream buffer variance request in front of the ZBOA which would have allowed for due process. At some point, they withdrew that request and submitted a request for an administrative variance. The administrative variance apparently does not allow for any parties other than the applicant to provide input even though this has been a highly contested build.

As stated, I filed an open records request on November 3 and followed up numerous times to get a copy of the application, supporting documentation and any decision that may have been rendered. It was virtually impossible to get a response and then I only received a copy of the application form with no supporting documentation. I still haven't received any of that documentation. When the applicant mentioned at a December 13 ZBOA hearing that they were expecting an approval, I made more requests regarding any decision. Nothing. I finally received an electronic copy after much ado on January 8. Meanwhile, there was no sign posting stating there was an approval and the appeal date and nothing was mailed to the abutting landowners with a copy of the approval. In fact, to date, neither has happened.



Due to the absolute and egregious lack of due process and transparency, the ZBOA should either render invalid or reverse the variance.

Respectfully submitted,

Virginia Tate

1166 Lullwater Road

Chief Executive Officer  
Michael Thurmond

**DEPARTMENT OF PLANNING & SUSTAINABILITY**

Interim Director  
Cedric Hudson

**TO:** Battle Law

**FROM:** Mr. Cedric Hudson, Interim Director  
DeKalb County Department of Planning & Sustainability  
178 Sams Street, Suite A3607  
Atlanta, Georgia 30030

**DATE:** September 13, 2023

**SUBJECT:** DeKalb County's SBV Response Letter under the Provisions of DeKalb County Ordinance, Chapter 14, Article II, Section 14-44(1-5) and Article IV. Section 14-432.  
**1176 Lullwater Road**  
**Atlanta, GA 30307**

The DeKalb County Inspections Division of the Department of Planning & Sustainability has reviewed your stream buffer variance application for the 1176 Lullwater Road. The review was conducted to consider the potential impacts of the proposed project's encroachment on the buffers to State waters as factored within Georgia Erosion and Sedimentation Act (GESA) and Georgia's National Pollutant Discharge Elimination System (NPDES).

Stream Buffer application AP# 1246497 was received 7/10/2023 for the proposed construction of a new single family detached home that will encroach 25' into the 75' county buffer. Your application for an administrative variance was reviewed on 7/26/2023 and has been denied. The reason for the denial is that the proposed request violates DeKalb County ordinance Sec. 14-44.1(b)2, 14-44.4 (h) and 14-432 (a).

*Section 14-44.1 (b) No stream buffer variance shall be granted by the director within the county buffer if the applicant is construction a structure on vacant land.*

- *Parcel 18 054 06 001 (1176 Lullwater Road) is currently vacant, and the applicant proposed to construct a new structure.*

*Section 14-44.4 (h) No variance from the provisions of sections 14-44.1 et seq. may be authorized except as specifically authorized herein or specifically authorized in another section of chapter 14. No stream buffer variance shall be approved within the existing or year 2025 built-out condition flood plain.*

- *Parcel 18 054 06 001 (1176 Lullwater Road) is within the existing or year 2025 built-out condition flood plain.*

*Section 14-432 (a) New construction or substantial improvements of principal buildings (residential or nonresidential), including manufactured homes, shall not be allowed within the limits of the future-conditions floodplain.*

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- *The new construction proposed at Parcel 18 054 06 001 (1176 Lullwater Road) is within the limits of the future condition's floodplain.*

You have the right to appeal this decision before DeKalb County Zoning Board of Appeals. Should you choose to appeal this decision, please go to the ZBOA website, and fill out the ZBOA application:

(<https://www.dekalbcountyga.gov/planning-and-sustainability/zoning-board-appeals-guidelines-checklists-and-calendars> )

You will also find the filing and meeting dates for ZBOA, as well as the contact email information.

If you have any questions, please contact Kennisha Collins, Land Development Inspections Division, at 470-829-1523.

*Cedric Hudson*

Cedric G. Hudson  
Interim Director

## Stream Buffer Variance Written Decision

**Stream Buffer Variance Application Number:**1246497 **Parcel ID:** 18 054 06 001

**Commission District 02 Super District 06**

**Applicant:** Battle Law

**Owner:**

**Project Name:** 1176 Lullwater Road- New Construction of Single Family Detached Dwelling

**Location:** The property has approximately 100 feet of street frontage on the western side of Lullwater Road, approximately 150 feet south of the intersection with North Decatur Road.

**Request:** Variances from Section 14-44.1 and 14-432 to reduce the DeKalb County Stream Buffer within a future- condition flood plain from 50 feet to 25 feet under the criteria described in Section 14-44.4.

**Staff Determination:** Denial. Staff has denied stream buffer application AP# 1246497 because the application would allow new residential construction on vacant land, the subject property is within the existing or year 2025 built-out condition flood plain, and approval of the variance would be materially detrimental to the public welfare or injurious to the property or improvements in the area. Additionally, this application does not address many of the criteria and is incomplete. The variance request fails to comply with criteria 14.44.1 (b) 2, 14.44.1 (b) 7, 14.44.3, 14.44.4 (h), 14.44.1-(i) 1, 14.44.1-(i) 4, 14.44.1-(i) 5.

**Report:** The DeKalb County Inspections Division of the Department of Planning & Sustainability received the subject stream buffer variance request, Application # 124697, received on 07/10/2023. Staff conducted the review to consider the potential impacts of the proposed project's encroachment on the buffers to State waters as factored within Georgia Erosion and Sedimentation Act (GESA) and Georgia's National Pollutant Discharge Elimination System (NPDES).

The DeKalb County Land Development Ordinance describes the Administrative variance criteria, standard of review and process in [Section 14-44.4](#). Below are the relevant criteria from Section 14-44.1 and 44.4 used to evaluate the requested variance along with staff findings regarding those criteria.

**Sec. 14.44.1 (b) Authorized stream buffer encroachments. Encroachments within the stream buffer shall be allowed only in the following manner in the following areas:**

**(1) General requirements. No encroachments shall be allowed in the state buffer without a variance from the director of EPD. No stream buffer variances shall be granted by the director within the twenty-five (25)**



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**feet of the county buffer nearest the stream. No stream buffer variance shall be granted by the planning commission. Any sketch plat, preliminary plat or final plat, that contains a delineation, drawing or language construed to be a stream buffer variance shall be void and of no effect. The only method by which a stream buffer variance may be obtained by an applicant is to comply with the requirements of section 14-44.1 et seq**

**STAFF FINDINGS:** The request is to encroach into the outer 25 feet buffer, the application meets this requirement.

**(2) New construction/new development. No stream buffer variance shall be granted by the director within the county buffer if the applicant is constructing a structure on vacant land. However, vacant lots existing and validly platted in the real estate records of the Clerk of the Superior Court of DeKalb County prior to February 24, 2009, that would otherwise be unbuildable as a result of the stream buffer restrictions set forth in section 14-44.1 et seq. may obtain a stream buffer variance from the director to encroach into the county buffer so long as the applicant complies with all of the requirements for the variance as set forth in section 14-44.1 et seq.**

**STAFF FINDINGS:** The applicant proposes to construct a structure on vacant land. The application does not address the date the lot was platted or if the lot would otherwise be unbuildable as a result of the stream buffer restrictions. Therefore, this variance shall not be approved.

**(3) Lot coverage. No stream buffer variance shall be granted by the director if the proposed encroachment created by the variance shall allow an applicant to exceed the allowable maximum lot coverage for the property at issue.**

**STAFF FINDINGS:** The site plan included with the application states a proposed 18.4% lot coverage, which is less than the 35% maximum.

**(4) General variance requirements for redevelopment of any kind of existing structures.**

**STAFF FINDINGS:** Not Applicable (NA), there is no existing structure.

**(5) Redevelopment of existing multifamily residential, commercial or institutional structures.**

**STAFF FINDINGS:** Not Applicable (NA), there is no existing structure.

**(6) Redevelopment or addition to existing single-family residential structures.**

**STAFF FINDINGS:** Not Applicable (NA), there is no existing structure.

**(7) [Compliance.] No stream buffer variance shall be granted by the director if the applicant has not complied with all of the applicable requirements set forth in section 14-44.1 et seq.**

**STAFF FINDINGS:** The applicant has not submitted sufficient information regarding 14-44.1 (b) (2) to determine compliance with these requirements.

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**Sec. 14-44.2. - Exemptions. The following specific activities and properties are exempt from having to comply with the provisions of section 14-44.1 and are not required to obtain a stream buffer variance:**

**STAFF FINDINGS:** The proposed scope of work does not fall within these describe specific activities and properties.

**Sec. 14-44.3- Administrative variance application requirements. Applications for variances shall be made in writing to the director and shall contain materials and documents required by the director that are necessary to demonstrate that said request meets the criteria for granting variances. The director may waive certain application requirements for variance requests associated with construction on an existing, single-family, owner occupied residential structure. At a minimum, and in order to be considered complete, a variance request shall include all of the following information in writing:**

**STAFF FINDINGS:** The application is incomplete and failed to include the following information:

- (4) Documentation of unusual hardship should the buffer be maintained.
- (5) At least one alternative plan, which does not include a buffer intrusion, or an explanation of why such an alternative site plan is not possible.
- (7) A calculation of the total area, length and width of the proposed intrusion.
- (8) A stormwater management site plan, if applicable.
- (9) Delineation of all state waters located on or within two hundred (200) feet of the project site.
- (11) Identification of the project receiving waters and description of adjacent areas such as streams, lakes, drainage ditches, residential areas, which might be affected.
- (13) Show double-row type C silt fence between land-disturbing activity and state waters, wetlands, and/or intermediate regional flood (IRF).
- (15) Illustration of soil series and their delineation.
- (16) Show limits of disturbance on erosion and sediment control plans (E&SC plans).
- (18) Provide name and phone number of twenty-four-hour local erosion and sediment control contact.
- (19) Show certification number, signature and seal of qualified plan designer.
- (20) Provide vegetative plan for all temporary and permanent vegetative practices, including species, planting dates and seeding.
- (21) Proposed mitigation plan. All proposed mitigation plans shall be designed and stamped by Georgia-licensed design professionals. Proposed mitigation plans shall be nonstructural and designed to improve the quality of the stream and the associated buffer. Mitigation plans shall include planting schedule, channel protection design and enhancement/improvement as approved the director. Mitigation plans that relate to multiuse trials shall negate the impact of the trail and improve the quality of life of the affected stream.

**Sec. 14-44.4. - Administrative variance criteria, standard of review and process. Includes but is not limited to the following:**

**(d) The director is only authorized to consider applications for variances within the twenty-five (25) feet of the county stream buffer farthest from the stream, but not within the twenty-five (25) feet of the state buffer adjacent to waters of the state or within the twenty-five feet (25) feet of the county stream buffer**

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**nearest the stream.**

**STAFF FINDINGS:** The application meets this criterion.

**(h) No variance from the provisions of section 14-44.1 et seq. may be authorized except as specifically authorized herein or specifically authorized in another section of chapter 14. No stream buffer variance shall be approved within the existing or year 2025 built-out condition flood plain.**

**STAFF FINDINGS:** The subject property is within the existing or year 2025 built-out condition flood plain. Therefore, this stream buffer variance shall NOT be approved.

**(i) In considering a request for a variance to the terms of this article, the director shall consider all of the following criteria:**

**(1) Whether the request, while not strictly meeting the requirements of chapter 14, will, in the judgment of the director, be at least as protective of natural resources and the environment as would a plan which met the strict application of these requirements. In making such a judgment, the director shall examine whether the request will be at least as protective of the natural resources and the environment and shall consider the following factors:**

**STAFF FINDINGS:** The application did not address these factors and did not provide enough information for staff to make a positive determination.

**(2) Whether by reason of exceptional topographic or other relevant physical conditions of the subject property that was not created by the owner or applicant, there is no opportunity for any development under any design configuration unless a variance is granted.**

**STAFF FINDINGS:** There are exceptional topographic conditions on the property that were not caused by the owner. Additionally, the subject parcel is within the Druid Hills Historic District which has guidelines regarding the scale, location, and design further regulating any development at this location.

**(3) Whether the request goes beyond the minimum necessary to afford relief and constitutes a grant of special privileges inconsistent with the limitations upon other properties that are similarly situated.**

**STAFF FINDINGS:** Because the application is not complete, staff is unable to determine if the request is the minimum necessary to afford relief.

**(4) Whether the grant of the variance will be materially detrimental to the public welfare or injurious to the property or improvements in the area in which the property is located.**

**STAFF FINDINGS:** Granting this variance may be materially detrimental to the public welfare or injurious to the property or improvements in the area because granting it will allow development in the future flood plain. No development shall be allowed within the future-condition floodplain that could result in: raising the base flood elevation or future-conditions

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flood elevation, reduce the base flood or future-condition flood storage capacity, change the flow characteristics, create hazardous or erosion-producing velocities or resulting in excessive sedimentation.

(5) Whether the applicant has provided a mitigation plan designed and stamped by Georgia-licensed design professionals and whether that proposed mitigation plan is:

**STAFF FINDINGS:** The applicant has not provided a mitigation plan.

(6) Whether the literal interpretation and strict application of the applicable provisions or requirements of chapter 14 would cause an extreme hardship, so long as the hardship is not created by the owner. The applicant is responsible for providing proof of hardship. The proof shall demonstrate the difficult site conditions and possible alternate designs. The director shall not grant any stream buffer variances if the actions of the property owner of a given property have created the conditions of hardship on the property.

**STAFF FINDINGS:** The property owner has not created the extreme topographic change or the stream buffer.

**(j) The director shall decide whether to grant or deny the variance and his decision shall be in writing, shall state the basis for the decision, and shall be made no more than forty-five (45) days following receipt of a complete application. In the decision, the director shall specifically reference and describe the factors listed in subsection (i) above that were considered and utilized in making the variance decision.**

**STAFF FINDINGS:** Staff has denied stream buffer application AP# 1246497 because the application would allow new residential construction on vacant land, the subject property is within the existing or year 2025 built-out condition flood plain, and approval of the variance would be materially detrimental to the public welfare or injurious to the property or improvements in the area. Additionally, this application does not address many of the criteria and is incomplete. The variance request fails to comply with criteria 14.44.1 (b) 2, 14.44.1 (b) 7, 14.44.3, 14.44.4 (h), 14.44.1-(i) 1, 14.44.1-(i) 4, 14.44.1-(i) 5.

**Sec. 14-44.5. - Notice requirements and appeals of stream buffer administrative variance decisions.**

**(a) Commissioner notification. District and super district commissioners of the districts within which the property is located shall be notified in writing or by email by the director within three (3) working days of receipt of a complete variance application.**

**STAFF FINDINGS:** Commissioners for Districts 2 and 6 were notified.

**(b) Posting. Property where an administrative stream buffer variance is requested shall be posted with a sign within forty-eight (48) hours of submittal of a complete stream buffer variance application request to the director. The sign shall be posted by the applicant. The posted sign shall be a minimum of twenty-two (22) inches by twenty-four (24) inches in size and shall contain the following information: address, nature of variance request, date of submittal of application; and planning and development department contact information. Applicants shall notify the director of the completed posting and shall provide the director with a dated photograph of the posted notice as evidence of the posting within forty-eight (48) hours of**

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**posting.**

**STAFF FINDINGS:** Staff has not received photo confirmation of sign posting.

**(c) Written notification of initial decision. The director shall send written notification of the stream buffer variance application and the director's written decision to the applicant and to abutting property owners. Abutting property owners are those persons listed in the tax records of the county as the owners of such abutting property on the date such notifications are required to be sent by the director.**

**STAFF FINDINGS:** Staff mailed written notice to the applicant and abutting property owners on September 13, 2023.

**(d) Appeals. Appeals shall be made to the zoning board of appeals and shall be administered in accordance with the notice requirements, criteria and procedural requirements set forth in section 27-901 et seq.**

Section 27-5.2. B. Appeals of decisions of administrative officials. Appeals of decisions of administrative officials may be filed by (1) any person aggrieved by; (2) any elected member of the DeKalb County Governing Authority affected by; or (3) an owner of property within two hundred fifty (250) feet of the nearest property line of the property that is the subject of any final order, requirement, or decision of an administrative official, based on or made in the enforcement of this zoning ordinance, or as otherwise authorized by local law or the Code of DeKalb County as Revised 1988. by filing with the secretary of the zoning board of appeals an application for appeal, specifying the grounds thereof, within fifteen (15) days after the action was taken by the official that is the subject of the appeal.

Chief Executive Officer  
Michael Thurmond

DEPARTMENT OF PLANNING & SUSTAINABILITY

Interim Director  
Cedric Hudson

**TO:** Linda Dunlavy  
245 N. Highland Ave, NE  
Suite 230 #905  
Atlanta, GA 30307

**FROM:** Mr. Robert Sheppard, Chief Building Official  
DeKalb County Department of Planning & Sustainability  
178 Sams Street, Suite A1406  
Atlanta, Georgia 30030

**DATE:** December 11, 2023

**SUBJECT:** DeKalb County's Letter of Approval under the Provisions of DeKalb County ordinance Chapter 14, Article II, Section 14-44(1-5).  
**Lullwater Stream Buffer**  
Permit 1246723  
1176 Lullwater Road  
Atlanta, GA 30307

The DeKalb County Inspections Division of the Department of Planning & Sustainability has reviewed your stream buffer variance application for the property located at '1176 Lullwater Road'. The review was conducted to consider the potential impacts of the proposed project's encroachment on the buffers to State waters as factored within Georgia Erosion and Sedimentation Act (GESA) and Georgia's National Pollutant Discharge Elimination System (NPDES).

This review, and the variance granted, is limited to only the request(s) in the application that was submitted by you, the applicant and/or your agent, for permission to conduct land-disturbing activities within the 75-foot buffered area of the State waters where vegetation has been wrested by normal stream flow or wave action.

You are hereby authorized and granted encroachment within the outer 25 ft of the 75-foot buffer of DeKalb County, for the proposed new single-family residence, driveway and retaining wall. The total area of the encroachment is not to exceed 1857 square feet and there is to be not grading/filling in the floodplain. Impacts affecting the buffer, in this request, must be completed within 5 years of the date of this approval letter.

Please adhere to the following contingencies and conditions:

- I. All slopes must be properly protected until permanent vegetative is established.
- II. Land clearance should be kept to a minimum.
- III. All disturbed areas must be protected until permanent vegetation is established.
- IV. Double row of type "C" silt fence or approved high performance silt fence must be installed between the disturbed land area and the State water.
- V. The project must be conducted in a strict manner and in accordance with the 'approved' erosion and sedimentation control plan'.

If you have any questions, please contact Kennisha Collins, Land Development Inspections Division, at 470-829-1523.

**Robert Sheppard,**  
Chief Building Official

**vctate1@outlook.com**

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**From:** virginia tate  
**Sent:** Tuesday, January 2, 2024 4:17 PM  
**To:** Collins, Kennisha A.  
**Cc:** Bragg, Rachel L.; Rowden, Jeanette; Robert R. Sheppard; Rob Kincheloe  
**Subject:** RE: Open Records Request 1176 Lullwater Road

Hi Ms. Collins. This is what you sent before. It is only the filled out application form. It doesn't include the attached documents supporting the application. That is what I'm requesting as well as any decision. Can you please send? Thanks. Virginia Tate

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**From:** Collins, Kennisha A. <kacollins@dekalbcountyga.gov>  
**Sent:** Tuesday, January 2, 2024 3:44 PM  
**To:** virginia tate <vctate1@outlook.com>  
**Cc:** Bragg, Rachel L. <RLBragg@dekalbcountyga.gov>; Rowden, Jeanette <jrowden@dekalbcountyga.gov>; Robert R. Sheppard <rrsheppard@dekalbcountyga.gov>; Rob Kincheloe <rkincheloe@metareps.com>  
**Subject:** RE: Open Records Request 1176 Lullwater Road

Good Afternoon Ms. Tate,

Per your request please find attached a copy of the stream buffer variance application.

Thank you and have a great day,

## Kennisha Collins

Department of Planning & Sustainability  
**Environmental & Compliance Inspections Supervisor**  
178 Sams Street, Suite A1505  
Decatur, GA 30030  
Cell: 470.829.1523  
Email: [kacollins@dekalbcountyga.gov](mailto:kacollins@dekalbcountyga.gov)

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**From:** virginia tate <[vctate1@outlook.com](mailto:vctate1@outlook.com)>  
**Sent:** Friday, December 29, 2023 10:46 AM  
**To:** virginia tate <[vctate1@outlook.com](mailto:vctate1@outlook.com)>; Collins, Kennisha A. <[kacollins@dekalbcountyga.gov](mailto:kacollins@dekalbcountyga.gov)>  
**Cc:** Bragg, Rachel L. <[RLBragg@dekalbcountyga.gov](mailto:RLBragg@dekalbcountyga.gov)>; Rowden, Jeanette <[jrowden@dekalbcountyga.gov](mailto:jrowden@dekalbcountyga.gov)>; Robert R. Sheppard <[rrsheppard@dekalbcountyga.gov](mailto:rrsheppard@dekalbcountyga.gov)>; Rob Kincheloe <[rkincheloe@metareps.com](mailto:rkincheloe@metareps.com)>  
**Subject:** RE: Open Records Request 1176 Lullwater Road

Ms. Collins, as previously requested, could you please send the attachments to the application and any decision on the Variance request. Thank you. Virginia Tate



**From:** virginia tate <[vctate1@outlook.com](mailto:vctate1@outlook.com)>

**Sent:** Wednesday, December 20, 2023 2:26 PM

**To:** Collins, Kennisha A. <[kacollins@dekalbcountyga.gov](mailto:kacollins@dekalbcountyga.gov)>

**Cc:** Bragg, Rachel L. <[RLBragg@dekalbcountyga.gov](mailto:RLBragg@dekalbcountyga.gov)>; Rowden, Jeanette <[jrowden@dekalbcountyga.gov](mailto:jrowden@dekalbcountyga.gov)>; Robert R. Sheppard <[rrsheppard@dekalbcountyga.gov](mailto:rrsheppard@dekalbcountyga.gov)>

**Subject:** Re: Open Records Request 1176 Lullwater Road

Ms. Collins, can you please send the attachments that were submitted with the application? Thank you! Virginia Tate

On Dec 15, 2023, at 3:20 PM, Collins, Kennisha A. <[kacollins@dekalbcountyga.gov](mailto:kacollins@dekalbcountyga.gov)> wrote:

Good Afternoon,

Please find attached a copy of the stream buffer variance application that was uploaded by the Dunlavy Law Group on October 24, 2023.

Please advise if any additional information will be needed.

## Kennisha Collins

Department of Planning & Sustainability

**Environmental & Compliance Inspections Supervisor**

178 Sams Street, Suite A1505

Decatur, GA 30030

Cell: 470.829.1523

Email: [kacollins@dekalbcountyga.gov](mailto:kacollins@dekalbcountyga.gov)

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**From:** Rowden, Jeanette <[jrowden@dekalbcountyga.gov](mailto:jrowden@dekalbcountyga.gov)>

**Sent:** Friday, December 15, 2023 1:21:02 PM

**To:** virginia tate <[vctate1@outlook.com](mailto:vctate1@outlook.com)>; Bragg, Rachel L. <[RLBragg@dekalbcountyga.gov](mailto:RLBragg@dekalbcountyga.gov)>

**Cc:** Plansustain <[plansustain@dekalbcountyga.gov](mailto:plansustain@dekalbcountyga.gov)>; Collins, Kennisha A.

<[kacollins@dekalbcountyga.gov](mailto:kacollins@dekalbcountyga.gov)>; Katharine Butler <[katharine.butler@comcast.net](mailto:katharine.butler@comcast.net)>; Wells, Debora M

<[dmwells@dekalbcountyga.gov](mailto:dmwells@dekalbcountyga.gov)>; Enloe, Caroline <[cienloe@dekalbcountyga.gov](mailto:cienloe@dekalbcountyga.gov)>

**Subject:** RE: Open Records Request 1176 Lullwater Road

Ms. Tate,

Included on this email is Kennisha Collins at [kacollins@dekalbcountyga.gov](mailto:kacollins@dekalbcountyga.gov), who may best assist you with information pertaining to Stream Buffer Variances.

Best Regards,

<image001.png>

JEANETTE ROWDEN | ADMINISTRATIVE SPECIALIST  
DeKalb County Government | Planning & Sustainability  
178 Sams Street, Decatur, GA 30030  
Cell Phone# 404-272-7798  
[jrowden@dekalbcountyga.gov](mailto:jrowden@dekalbcountyga.gov)  
[www.dekalbcountyga.gov](http://www.dekalbcountyga.gov)

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**From:** virginia tate <[vctate1@outlook.com](mailto:vctate1@outlook.com)>  
**Sent:** Wednesday, December 13, 2023 8:31 PM  
**To:** Bragg, Rachel L. <[RLBragg@dekalbcountyga.gov](mailto:RLBragg@dekalbcountyga.gov)>  
**Cc:** Plansustain <[plansustain@dekalbcountyga.gov](mailto:plansustain@dekalbcountyga.gov)>; Rowden, Jeanette <[jrowden@dekalbcountyga.gov](mailto:jrowden@dekalbcountyga.gov)>; Collins, Kennisha A. <[kacollins@dekalbcountyga.gov](mailto:kacollins@dekalbcountyga.gov)>; Katharine Butler <[katharine.butler@comcast.net](mailto:katharine.butler@comcast.net)>; Wells, Debora M <[dmwells@dekalbcountyga.gov](mailto:dmwells@dekalbcountyga.gov)>; Enloe, Caroline <[clenloe@dekalbcountyga.gov](mailto:clenloe@dekalbcountyga.gov)>  
**Subject:** Re: Open Records Request 1176 Lullwater Road

Hello all, can someone please respond? It's my understanding from the applicant that an approval is forthcoming, so I need that also. It's only a 15 day appeal time frame so it's imperative that I get that as soon as it is issued. Thanks! Virginia Tate

Sent from my iPad

On Dec 12, 2023, at 11:19 AM, Bragg, Rachel L. <[RLBragg@dekalbcountyga.gov](mailto:RLBragg@dekalbcountyga.gov)> wrote:

Hi Virginia,

I do not have the stream buffer variance application, as this is handled by another Planning and Sustainability division.

You have contacted the ORR staff (cc'd) and other staff on this email who may be able to assist.

Thank you,

<image001.png>

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**From:** virginia tate <[vctate1@outlook.com](mailto:vctate1@outlook.com)>  
**Sent:** Monday, December 11, 2023 9:49 PM  
**To:** Bragg, Rachel L. <[RLBragg@dekalbcountyga.gov](mailto:RLBragg@dekalbcountyga.gov)>  
**Cc:** Plansustain <[plansustain@dekalbcountyga.gov](mailto:plansustain@dekalbcountyga.gov)>; Rowden, Jeanette <[jrowden@dekalbcountyga.gov](mailto:jrowden@dekalbcountyga.gov)>; Collins, Kennisha A. <[kacollins@dekalbcountyga.gov](mailto:kacollins@dekalbcountyga.gov)>; Katharine Butler <[katharine.butler@comcast.net](mailto:katharine.butler@comcast.net)>; Wells, Debora M <[dmwells@dekalbcountyga.gov](mailto:dmwells@dekalbcountyga.gov)>; Enloe, Caroline <[clenloe@dekalbcountyga.gov](mailto:clenloe@dekalbcountyga.gov)>  
**Subject:** Re: Open Records Request 1176 Lullwater Road

Hi Rachel, I still haven't received anything on this and my request was on November 3. The Applicant, Beth Finnerty, states in her renewed application to the ZBOA for Wednesday's hearing that they will be getting an administrative variance on the stream buffer. This is news to me. How do I find out more about this? I can't seem to get a response from anyone. Thanks. Virginia Tate

Sent from my iPad

On Dec 4, 2023, at 5:40 PM, virginia tate <[vctate1@outlook.com](mailto:vctate1@outlook.com)> wrote:

Hi Rachel. I still haven't received anything pursuant to my request. Can someone please respond? Thanks! Virginia Tate

On Nov 6, 2023, at 10:24 AM, Bragg, Rachel L. <[RLBragg@dekalbcountyga.gov](mailto:RLBragg@dekalbcountyga.gov)> wrote:

Thanks Virginia.

<image001.png>

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**From:** virginia tate <[vctate1@outlook.com](mailto:vctate1@outlook.com)>  
**Sent:** Friday, November 3, 2023 11:21 AM  
**To:** Bragg, Rachel L. <[RLBragg@dekalbcountyga.gov](mailto:RLBragg@dekalbcountyga.gov)>; Plansustain <[plansustain@dekalbcountyga.gov](mailto:plansustain@dekalbcountyga.gov)>  
**Cc:** Rowden, Jeanette <[jrowden@dekalbcountyga.gov](mailto:jrowden@dekalbcountyga.gov)>; Collins, Kennisha A. <[kacollins@dekalbcountyga.gov](mailto:kacollins@dekalbcountyga.gov)>; Katharine Butler <[katharine.butler@comcast.net](mailto:katharine.butler@comcast.net)>; Wells, Debora M <[dmwells@dekalbcountyga.gov](mailto:dmwells@dekalbcountyga.gov)>  
**Subject:** RE: Open Records Request 1176 Lullwater Road

Hi Rachel and all. Please see new ORR on 1176 Lullwater. I'm specifically looking on anything to do with the renewed application for an administrative variance on the stream buffer. Thanks so much. Virginia Tate

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**From:** Bragg, Rachel L. <[RLBragg@dekalbcountyga.gov](mailto:RLBragg@dekalbcountyga.gov)>  
**Sent:** Tuesday, October 17, 2023 5:23 PM  
**To:** virginia tate <[vctate1@outlook.com](mailto:vctate1@outlook.com)>  
**Cc:** Rowden, Jeanette <[jrowden@dekalbcountyga.gov](mailto:jrowden@dekalbcountyga.gov)>; Collins, Kennisha A. <[kacollins@dekalbcountyga.gov](mailto:kacollins@dekalbcountyga.gov)>; Katharine Butler <[katharine.butler@comcast.net](mailto:katharine.butler@comcast.net)>;



Wells, Debora M <[dmwells@dekalbcountyga.gov](mailto:dmwells@dekalbcountyga.gov)>

**Subject:** RE: Open Records Request?

Hi Virginia,

Okay great, understood. We just received a photo of this posting and notice the variance was submitted. Let us pull it together and we will send you a copy.

Thank you,

<image001.png>

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**From:** virginia tate <[vctate1@outlook.com](mailto:vctate1@outlook.com)>

**Sent:** Tuesday, October 17, 2023 4:31 PM

**To:** Bragg, Rachel L. <[RLBragg@dekalbcountyga.gov](mailto:RLBragg@dekalbcountyga.gov)>

**Cc:** Rowden, Jeanette <[jrowden@dekalbcountyga.gov](mailto:jrowden@dekalbcountyga.gov)>;

Collins, Kennisha A. <[kacollins@dekalbcountyga.gov](mailto:kacollins@dekalbcountyga.gov)>;

Katharine Butler <[katharine.butler@comcast.net](mailto:katharine.butler@comcast.net)>

**Subject:** Re: Open Records Request?

Hi Rachel, yes I'm looking for anything related to an Administrative Variance request regarding the stream buffer. See photo of notice just posted. I would like a copy of that application and any subsequent documentation regarding review, consideration and decision. Thanks so much! Virginia

<image002.jpg>

Sent from my iPhone

On Oct 17, 2023, at 1:42 PM, Bragg,

Rachel L.

<[RLBragg@dekalbcountyga.gov](mailto:RLBragg@dekalbcountyga.gov)> wrote:

Good afternoon,

I understand you recently requested some documents from us, but there was some confusion about exactly what you were looking for. Can you let me know and I'll assist?

Thanks!

<image001.png>

<1176 LULLWATER ROAD SBV 1246723.pdf>

vctate1@outlook.com

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**From:** virginia tate  
**Sent:** Monday, January 8, 2024 4:22 PM  
**To:** Collins, Kennisha A.  
**Cc:** Bragg, Rachel L.; White, Brandon L.  
**Subject:** RE: Lullwater Stream Buffer Requested information

Ms. Collins, Rachel and Mr. White, please note that this is the first time Dekalb County Planning has provided me with a copy of the December 11 Approval after repeated requests pursuant to my Open Records Request sent on November 3. Thus, December 11 cannot be the official date on record for the approval. Furthermore, no mailing was made to abutting landowners as required. There may be others who wish to file an appeal but don't know that an approval has actually been issued. In addition, the photo of the sign postage is simply that an application was filed. There has been no sign posting stating that an approval was granted and the date for appeal.

I still have not received the accompanying documentation for the application.

Please provide the name and contact information for the attorney for Planning and Sustainability as I would like to further discuss this matter. Thanks. Virginia Tate

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**From:** Collins, Kennisha A. <kacollins@dekalbcountyga.gov>  
**Sent:** Monday, January 8, 2024 4:07 PM  
**To:** virginia tate <vctate1@outlook.com>  
**Cc:** Bragg, Rachel L. <RLBragg@dekalbcountyga.gov>; White, Brandon L. <BLWhite@dekalbcountyga.gov>  
**Subject:** Lullwater Stream Buffer Requested information

Good Afternoon Ms. Tate,

As a follow up to your open records request I have provided the following information:

- Picture of the posted signage
- The submitted application
- Letter of Approval
- Response Letter

I apologize for the delay and additional information regarding the Zoning Board of Appeals will be forthcoming.

Please feel free to contact me should you need any additional assistance.

Thank you and have a great day,

## **Kennisha Collins**

Department of Planning & Sustainability

**Environmental & Compliance Inspections Supervisor**

178 Sams Street, Suite A1505

Decatur, GA 30030

Cell: 470.829.1523

Email: [kacollins@dekalbcountyga.gov](mailto:kacollins@dekalbcountyga.gov)