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Chief Executive Officer

DeKalb County Zoning Board of Appeals
Department of Planning & Sustainability
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Wednesday, May 8, 2019 at 1:00 PM
Planning Department Staff Analysis

N.2 Case No: A-19-1243205 Parcel ID(s): 18-105-02-120

Commission District: 02 Super District 06

Applicant: Timothy D. Lytton
1096 Rogeretta Drive Northeast
Atlanta, GA 30329

Owner: Gretchen Patsios
2381 Drew Valley Road
Brookhaven, GA 30319

Project Name: 1169 Biltmore Drive Northeast

Location: The property is located on the eastside of Biltmore Drive, approximately 199 feet west of Rogeretta Drive, at 1169 Biltmore Drive Northeast, Atlanta, Georgia.

REQUEST: Appeal to an Administrative Decision to reduce the DeKalb County's stream buffer from 75 feet to 50 feet pursuant to Section 14-44 of the DeKalb County Land Development Ordinance.

Staff Recommendation: "As the Board Desires"

STAFF FINDINGS:

Table 1: Surround Zoning and Land Use

	Adjacent Zoning	Adjacent Land Use
North	R-85	Detached single family homes
East	R-85	Detached single family homes
South	R-85	Detached single family homes
West	R-85	Detached single family homes
Northeast	R-85	Detached single family homes
Northwest	R-85	Detached single family homes
Southeast	R-85	Detached single family homes
Southwest	R-85	Detached single family homes
Street Type		Local Street

Site Location: The property is located on the eastside of Biltmore Drive, approximately 199 feet west of Rogeretta Drive, at 1169 Biltmore Drive Northeast, Atlanta, Georgia.

Appeal: Appeal to an Administrative Decision to allow encroachment of a proposed residential structure (on a platted lot prior to year 2003) into the 20-foot into the outer 25-foot DeKalb County Stream Buffer pursuant Section 14-44.1(b) (2) of the DeKalb County Land Development Ordinance.

Applicant claims this request is an appeal to an administrative variance to reduce the DeKalb County’s stream buffer which was approved on March 14, 2019 the written notification of the direction’s decision does not state the basis for his decision with specific reference to the factors listed in DeKalb County Code Section 14.44.4(i) that were considered and utilized in making the variance division, as claiming this is a requirement of the DeKalb County Code Section 14-44.4(j). Applicant asserts that this renders the administrative variance void.

Staff Approval Considered were based on the following criteria of Chapter 14.44 for administrative variance:

- (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: (a.) Stream bank or soil stabilization. (b.) Trapping of sediment in surface runoff. (c.) Removal of nutrients, heavy metals, pesticides and other pollutants from surface runoff. (d.) Terrestrial habitat, food chain, and migration corridor. (e.) Buffering of flood flows. (f.) Infiltration of surface runoff. (g.) Noise and visual buffers. (h.) Downstream water quality. (i.) Impact on threatened and endangered species, as those species are designated by law or federal or state regulation. The shape, size, topography, slope, soils, vegetation and other physical characteristics of the property. (j.) The locations of all streams on the property, including along property boundaries. (k.) The location and extent of the proposed buffer or setback intrusion. (l.) Whether alternative designs are possible which require less intrusion or no intrusion. (m.) The long-term and construction water-quality impacts of the proposed variance.**

The shape, size, topography, slope, soils, vegetation and other physical characteristics of the property and the location of all streams on the property, including along property boundaries are impacts of the proposed variance.

- (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.**

The survey documents relevant physical conditions of the subject property that were not created by the owner or applicant; there is no opportunity for any development under any design configuration due to the County's sewer easement which bisects the entire property.

- (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.**

Based on the submitted application, the request does not go 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 due to the limitation of the county sewer easement.

- (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.**

Based on the submitted application, granting a variance will not be materially detrimental to the public welfare or injurious to the property or improvements in the area in which the property is located since the proposed structure will be smaller than the other structures along the street. Further the proposal meets side setbacks and imposes no encroachment on either side.

- (5) **Whether the applicant has provided a mitigation plan designed and stamped by Georgia-licensed design professionals and whether that proposed mitigation plan is: (a.) nonstructural; (b.) designed to improve the quality of the stream and the associated buffer; and (c.) Includes a planting schedule and channel protection design.**

The applicant has provided a landscape plan which is considered as the mitigation plan which shows exhibits of the proposed flow-wells and water quality measures to mitigate any impact.

- (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.**

Based on the submitted application, strict application of the applicable provisions or requirements of chapter 14 would cause an extreme hardship due to the location of the county sewer easement that bisects the subject property, which was legally platted 1980.

STAFF RECOMMENDATION: "As the Board Desires".