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V-22-0015

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PLANNING & ZONING

To whom it may concern,

I would like to apply for a variance or exemption from the Stream Buffers statute in order to add a single family pool in my backyard. I have provided a design that stays outside of the 25' State buffer except for minimal silt fencing, but does lie within the 50' and 75' city buffers. I believe that I qualify for this hardship variance as the city buffers were added well after my property was established and under these new requirements almost no additional work could be done in my backyard. No alternate plans are provided as this was ultimately the least invasive design we could do with a decent sized pool. Original designs involved removing a retaining wall which would have been much more invasive. Additionally, I may be available for exemption based on a Georgia Supreme Court ruling that exempts property from stream buffers based on the term "wrested vegetation" when the stream shorelines have been rip-rapped, the existence of that rip-rapping and other landscaping features of the property that extensively protect the stream, and the fact that the stream ends just a short distance away on my property into a detention pond.

The Georgia Supreme Court case I mentioned is the 2015 case Turner v. Georgia River Network (often referred to as the "Tired Creek Case"). From the document "THE FINAL REPORT OF THE JOINT LEGISLATIVE STUDY ON STREAM BUFFERS IN GEORGIA SENATE RESOLUTION 152":

In this ruling, the Court determined that because the statute requires stream buffers to be measured from the point of wrested vegetation, then streams and waters that have no wrested vegetation are not legally required to have stream buffers at all. Therefore, waters bordered by rip rap, bulkheads, sea walls, or retaining walls, waters flowing through concrete channels, vegetated waterways, and freshwater wetlands are not entitled to any buffer at all.

The stream on my property has been fortified with both concrete and rock as described above. As mentioned in the ruling above, the existence of this protective barrier invalidates the state's buffer definition as there is no way to define the "wrested vegetation" to measure the buffer from.

Even if you doubt this ruling's validity, I believe that the existence of this rip-rapping provides a solid level of protection for the stream flow. In addition, the placement of the pool, and all additional impervious barriers, is above an already existing retaining wall which should greatly reduce, if not eliminate, any disturbance to storm runoff and erosion concerns. This retaining wall already in place prevents us from having to disturb any type of slope and will allow us to easily direct waterflow. The only true disturbance is below the retaining wall for the required dry well and that should be a very short process to dig and refill this as opposed to the longer process of constructing the pool.

Lastly, in addition to the protections the landscaping provides for the stream already, even in any worst case scenarios, the stream ultimately ends a short distance away on my own

property into a detention pond. What this means to me is that even in a worst case scenario where something were to go wrong with the stream there is little to no risk of causing problems or damage to any of my neighbors or disrupting waterflow for a large portion of the neighborhood.

In conclusion, I feel that my particular case warrants this variance because my situation is pretty unique in that the extent of my landscaping and existing buffer protections and location near the end of the stream at the detention pond make this a pretty low risk situation for the drainage system and the surrounding properties. I have moved forward with this project at significant cost believing that the Georgia Supreme Court ruling gave me a strong case for this variance, if not exemption from the buffers. I know that variances are often granted for similar projects so I am hoping that we can work something out.

Sincerely,

Michael DeBinder