

City of Decatur  
Environmental Sustainability Board  
231 Sycamore St.  
Decatur, GA 30030

August 12, 2019

Andrea Arnold  
City Manager  
Decatur City Hall  
509 North McDonough St.  
Decatur, GA 30030

*Re: WSE Development's Stream Buffer Variance Request for Weekes Street Project*

Dear Ms. Arnold:

The purpose of this letter is to convey the Environmental Sustainability Board's (ESB) serious concerns regarding the stream buffer variance request from WSE Development (Applicant) now pending before the Zoning Board of Appeals (ZBA). Specifically, the ESB finds the Applicant's request to be highly problematic on both technical and procedural grounds. Moreover, the ESB believes that a decision to approve this request would undermine the City's stated policy of protecting environmentally sensitive areas, including stream buffers, and set a dangerous precedent for future development within the City of Decatur. City Code requires the ZBA to consider testimony of the City Manager or designee when reviewing stream buffer variance requests. As such, the ESB respectfully requests that these concerns be taken into consideration should the City Manager or designee choose to offer testimony at the next ZBA meeting on August 12.

1. Background

The ESB was formed in 2009 with a mission to “provide recommendations to the City Commission regarding the City’s environmental regulations, plans, and initiatives as well as assisting with implementation of city projects that impact the natural environment to protect and improve the quality of life for citizens and property owners in the City of Decatur.” The ESB’s Charter further delineates ESB roles and responsibilities. These include the responsibility to provide advice and recommendations on a wide range of specific environmental issues, notably the “protection of natural resources including waterways, watersheds and, greenspace” and

“urban forest management.” Applicant’s variance request has far-reaching implications for both waterways and urban forests in Decatur, thus compelling the ESB to submit this letter documenting our concerns.

## 2. Recommendations

The ESB respectfully submits the following recommendations to the City Manager or designee in response to several important issues that have emerged from Applicant’s stream buffer variance request for the proposed Weekes Street Development project:

Consistent with the Code of Ordinances, the City Commission and Staff should honor the ESB Charter by soliciting and considering ESB site-specific recommendations regarding environmental regulations and impacts of the proposed Weekes Street Development project;

The City Commission and Staff should ensure Applicant fully adheres to the stream buffer variance regulations contained in the Unified Development Ordinance (UDO), notably the requirements that an appropriate environmental baseline study be conducted to inform mitigation decisions, and that possible alternative project designs be considered alongside the variance request. UDO 9.2.5.B.5. Ideally, these alternative designs would avoid piping of the East-West branch of Shoal Creek and preserve the mature tree cover south of the Creek.

The City Manager or designee should provide testimony before the ZBA regarding Applicant’s stream buffer variance request, consistent with UDO Section 9.2.5.B.2. The ZBA will consider this request at its next meeting on August 12, so it is the ESB’s hope that the City Manager (or their delegate at the City) chooses to testify, and that this letter is used to inform that testimony.

The City Commission and Staff should give full and fair consideration to the high value assigned to environmental protection by residents when evaluating future development within the City. For example, 2010 Strategic Plan states, “again and again, citizens said they wanted more green spaces, but there is also a sentiment that Decatur should also be a leader in reducing its impact on the environment.” This sentiment was expressed again most recently at the City Stormwater Master Plan workshop held July 30, 2019, where citizens identified the incorporation of green space and green infrastructure as a stormwater management practice as the most important priority.<sup>1</sup>

---

<sup>1</sup> The Strategic Plan also calls for protecting and restoring natural resources by protecting tree canopy, acquiring greenspace when opportunities and resources are available, and conducting stream bank restoration and naturalization of stream channels. The position is affirmed in the Decatur 360

### 3. ESB's Charge Includes Site-Specific Recommendations to City Commission and Staff

The ESB understands that there exists some difference of opinions on the ESB's ability to comment on matters which might have site-specific implications for individual projects being proposed in the City. This issue was recently addressed by City Attorney Bryan Downs in a legal opinion which concluded that "ESB would be exceeding the scope of its authority if it provides an advisory opinion [or any kind of official statement] to the ZBA regarding the Variance Applications." However, nothing in that legal opinion can or should be interpreted as a restriction on the ESB's authority to provide an advisory opinion *to the City Commission* regarding a Variance Application.

A brief review of the ESB Charter makes clear that the Board was created to assist the City Commission and Staff with not just the creation of policy, but also the implementation of the City's environmental plans and regulations.<sup>2</sup> Throughout the Charter, the ESB is tasked with a concern for efficient and effective implementation of environmental programs and regulations. Nowhere does the Charter prohibit recommendations or actions by the ESB involving specific projects or sites; to the contrary, the ESB is actively charged with assisting City Staff on such

---

Comprehensive Plan, 2016: "The natural environment includes areas and resources which are vulnerable to the impacts of development and which require protection by the community. The conservation of environmentally sensitive and ecologically significant resources is becoming increasingly important, as their values to Decatur become better understood. ...

The natural environment places certain opportunities and constraints on the way land is used. Factors such as soil characteristics, topography and flooding frequency affect where development can safely and feasibly occur. Areas particularly vulnerable to developmental impacts receive appropriate measures of protection, such as stream buffers. Although these may be considered development constraints, there is an opportunity to provide limited passive recreation within conservation areas."

<sup>2</sup> As set forth in the ESB Charter, our role is to make recommendations to the City Commission on the City's environmental regulations, including, but not limited to: "protection of natural resources including waterways, watersheds and greenspace"; "environmentally sustainable building policies," "urban forest management," "implementation of the City's stormwater management master plan" (including compliance with pollution discharge permits) (see, ESB Charter Section 1.6, 1.7, 1.8, 1.9) (emphasis added).

In addition, ESB board members are required to support the "efficient and effective implementation of the goals and mission of the City's environmental program." (ESB Charter, Section 2) (emphasis added).

The ESB's "charge" -- according to our Charter -- is to "assist city staff with development and implementation of an environmental sustainability plan that encourages ... the conservation and enhancement of the City's tree canopy ... acquisition of greenspace and similar approaches to sustainable living." (ESB Charter at Section 4.1) (emphasis added).

Similarly, the ESB "is charged" to "provide recommendations regarding the implementation of the City's urban tree management plan and plan for tree bark funds." (ESB Charter at Section 4.2) (emphasis added).

In addition, ESB should "assist city staff in working with stakeholder groups to implement program objectives and activities". (Charter at 4.4).

matters. Moreover, prospective Board members must “demonstrate interest in support for the efficient and effective implementation of the goals and mission of the City’s environmental program” in order to qualify for consideration by the City Commission.

When the ESB was formed in 2009, it "assumed the duties" of the former Decatur Greenspace Commission.<sup>3</sup> The Greenspace Commission was charged with a range of responsibilities, to include the recommendation of "specific places" for conservation (UDO Section 11.1.6.F.2). Accordingly, the ESB now retains this responsibility.

The subject matter for ESB’s recommendations is broad: protection of natural resources, including waterways, watersheds and greenspace; urban forest management; implementation of the City of Decatur’s stormwater management master plan; and compliance with the environmental guidelines established by the Metropolitan North Georgia Water Planning District. The ESB is charged to “provide recommendations in all subject areas of environmental sustainability.” (ESB Charter at Section 4.3.)

ESB can provide a significant benefit to the City by making recommendations on specific regulations as well as implementation. The City has admirably strong environmental regulations, and their proper implementation is critical.

#### 4. Implementation of Stream Buffer Variance Regulations Should be Improved

The issues surrounding stream buffers and variances that are currently being debated in the City are a perfect example of the role the ESB can play in improving the effectiveness of regulation.

We understand that in the case of Applicant’s request for a stream buffer variance for the Weekes Street Development, the ZBA has not been provided with sufficient information to make a reasoned decision under the relevant UDO provisions for stream buffer variances. As the City Manager is surely aware, the UDO requires an applicant to provide sufficient evidence to the ZBA to allow the ZBA to evaluate the effects of the variance, mitigate those effects, and consider whether the variance would be at least as protective of natural resources and the environment. (UDO Section 9.2.5)

Accordingly, the ESB believes this variance request presents an opportunity to improve implementation of the stream buffer regulations by encouraging Applicant to submit additional information to the ZBA in support of Applicant’s variance request.

---

<sup>3</sup> See City of Decatur, Environmental Sustainability Board, *available at* <https://www.decaturga.com/bc-esb>

With respect to this particular regulation, the ESB recommends that the following measures would increase compliance with the UDO provisions regarding stream buffer variances:

- Where there is a reasonable potential for environmental effects from issuance of a variance, an applicant must submit sufficient information (baseline studies) to provide the ZBA with a factual evidentiary basis to evaluate the environmental effects of a variance. This information is necessary for the ZBA to meet its obligations in accordance with UDO 9.2.5. The scope of the information should be commensurate to, reasonable, and proportionate to the magnitude of the potential impacts.
  - These baseline studies should provide sufficient information to evaluate each of the following substantive environmental areas where effects are anticipated, as identified in City Code at UDO 9.2.2.A -- i.e., the benefits of stream buffers:
    - “Protecting, restoring and maintaining the chemical, physical and biological integrity of streams and their water resources;
    - Removing pollutants delivered in urban storm-water;
    - Reducing erosion and controlling sedimentation;
    - Protecting and stabilizing stream banks;
    - Providing for infiltration of stormwater runoff;
    - Maintaining base flow of streams;
    - Contributing organic matter that is a source of food and energy for the aquatic ecosystem;
    - Providing tree canopy to shade streams and promote desirable aquatic habitat;
    - Providing riparian wildlife habitat;
    - Furnishing scenic value and recreational opportunity [*sic*]; and
    - Providing opportunities for the protection and restoration of greenspace.”
  - The ZBA shall require -- as effective, legally binding conditions of any variance - - sufficient conditions on a variance, in order to mitigate any effects of proposed land development in accordance with UDO 9.2.5.B.1. The determination should ensure that the variance issued is at least as protective of the environment and natural resources as denial of the variance in accordance with UDO 9.2.5.B.6.F.
5. Applicant Should Consider Alternative Project Designs That Do Not Underground Shoal Creek or Remove Tree Cover South of the Creek

As you likely know, the stream buffer issue is currently before the ZBA in the form Applicant's variance request for its proposed Weekes Street Development. This particular situation provides an ideal case study in how ESB recommendations can help improve decision-making by encouraging compliance with the UDO.

WSE Development seeks a variance to accommodate a 322-unit, multi-family structure on 4.2 acres at East Decatur Station. Applicant is requesting a buffer variance for 50 feet on the North-South intermittent stream adjacent to the east side of the property. At the south end of the property, the developer is requesting the complete removal of 75-foot stream buffers on both sides of an intermittent stream to pipe roughly 280 feet of a channelized stream from Columbia St. eastward to the property boundary, to accommodate the development.

A proposal to pipe this section of Shoal Creek presents myriad issues which have not been adequately addressed within this variance request. City stormwater management consultants from AECOM have identified piped stormwater infrastructure as a significant challenge for the City. At the last City Stormwater Management Plan meeting (July 29), the public heard from AECOM that Decatur had over 50 miles of pipes and channels with 4,000 structures held in public and private ownership. AECOM explained that most of the piping and structures were installed during early Decatur development and that the task of addressing stormwater (and flooding) issues is complicated by these undersized, crumbling and difficult to access infrastructure.

At the subsequent Stormwater Management Plan session, the public was presented with drainage maps for each of Decatur's four sub-watersheds. The Shoal Creek watershed map prepared by the City's consultant indicates that the pipes (identified as conduits on the map) in and around the Weekes Street Development site are at or nearing capacity. The terminus for this sub-watershed ends at a low elevation where Shoal Creek travels under Columbia as a perennial (flowing year-round) stream. The map provided indicates that neighborhoods above and below the Weekes Street Development site have reported drainage concerns, to include flooding. While Applicant has agreed to maintain and treat stormwater originating from the 4-acre site (and off-site mitigation area), it is not clear that this will adequately address the current and future cumulative impacts from the planned redevelopment of the site and surrounding area.

The piping of a stream is one of the most extreme forms of stream modification. The impacts – to include: flow modification; increased stormwater run-off; change in water quality; downstream impacts; loss of groundwater recharge; temperature change; loss of filtration; loss of riparian vegetation; loss of natural character, aesthetics; and habitat loss for insects, amphibians, birds - are well understood, and Decatur possesses the plans, policies, and regulations to prevent this loss.

Similarly, the ESB understands that Applicant has not provided a habitat analysis demonstrating what ecological functions the East-West branch of Shoal Creek serves (either the aquatic habitat, or the upland area of stream buffer habitat). Nor has a geotechnical assessment of stream conditions been performed, according to the Applicant's testimony before the ZBA.

At this time, the ESB understands that Applicant proposes to remove trees from up to a full acre of forested land, roughly half of which is located within existing protected stream buffers. Based on Applicant's testimony before the ZBA, however, it appears as though Applicant has not provided a tree survey, thereby limiting ESB's (and presumably ZBA's) ability to determine the precise impact to existing tree canopy from Applicant's variance request. A tree survey is the minimal baseline data necessary for a project of this scale to ensure the ZBA can effectively evaluate and mitigate the environmental effects of the tree removal per UDO 9.2.5.B.1.

It is known that at least two species of federally protected birds – the Chimney Swallow and the Pileated Woodpecker - inhabit the vicinity of the project site. Disturbance of nests of these birds could be unlawful under the federal Migratory Bird Treaty Act. However, the ESB is not aware of a nest survey for the area of trees that would be removed by the project.

Stream and tree protection is consistent with City comprehensive plans, but unfortunately these issues have been overlooked in this process. At the Winnona Park neighborhood association and ZBA meetings, citizens heard representatives from Applicant and the Decatur Development Authority quote the Avondale – Decatur Livable Centers Initiative Report (LCI), 2002. The representatives refer to the LCI report to support the buffer variance request at the Weekes property. This report highlights the benefits of a well- planned, high density development.

However, many of the LCI measures and goals regarding environmental protection were not discussed at the meetings, including:

- Decatur LCI Goal: To utilize and capture green space taking advantage of the natural drainage systems to create open space and passive recreational opportunities
- Equally important to the vitality of a neighborhood center are the civic and open space uses. This plan envisions a significant path and greenspace network being created utilizing floodplain properties and existing environmental resources.
- LCI Guiding Principle: Protect environmentally sensitive areas.
- LCI survey question: “What would you like in Mr. Roger’s neighborhood[?]”
  - Response: “Natural Areas-Buffers-Riparian Areas”

In light of all of the above, the ESB therefore recommends that City staff request additional information from Applicant to ensure effective implementation of the City's environmental regulations with respect to stream buffer protection.

Specifically, ESB recommends that the City Manager or designee consider these concerns should they choose to offer testimony before the ZBA, consistent with the requirements of UDO 9.2.5.B.2.<sup>4</sup> ESB further recommends that the City Manager or designee identify relevant gaps in the record, as outlined above and as she may otherwise identify, and encourage the ZBA to follow City Code by soliciting additional information from the applicant.

ESB also recommends that Applicant submit alternative project designs that do not underground the East-West branch of Shoal Creek or remove the tree cover south of that branch. The City should explore options to preserve this branch of Shoal Creek and areas south of it on the site for conservation purposes. The City should also explore intrusions into the buffer area to the north of this branch of the Creek. ESB believes a 25-foot buffer north of this branch is appropriate for evaluation, given existing conditions.

This project is an ideal example of how the ESB can offer site-specific recommendations that assist the City Commission and Staff in implementation of the City's environmental regulations.

## 6. Conclusion

Decatur has a rich history and solid reputation for protecting the urban environment. In 2005, Decatur partnered with GAEPD and EPA to restore a stream at Glenlake Park. This stream was in rough shape with a concrete channel, collapsing stream banks near the ball field filling in the stream with sediment and very little life in the stream; basically, a blemish to the area.

Fortunately, Decatur took a different route and chose to restore the stream to a more natural stream design. Today the stream is a highly visited public amenity that features a healthy riparian buffer that is home to birds, fish, crayfish and dragonflies. The ESB recommends the City consider a similar approach at the Weekes Street Development site.

As set forth above, ESB therefore recommends that the City Commission follow code and ESB Charter which allow ESB to make site-specific recommendations.

---

<sup>4</sup> The UDO requires the City Manager to testify about stream buffer variances unless adequate mitigation addresses the environmental effects of the project and certain other findings are made. UDO 9.2.5.B.

ESB further recommend -- with respect to stream buffer variances in the City generally -- that the City encourage implementation in a manner which allows the ZBA to meet its obligations under code -- specifically, requiring at bare minimum, sufficient environmental baseline data to allow for a proper environmental impact and mitigation analysis.

With respect to Applicant's request for a stream buffer variance, we recommend that the Commission encourage the City Manager or designee to testify that additional information is necessary to sufficiently evaluate the variance request, as provided for in UDO 9.2.5.B.2. Without such data it is difficult to see how the ZBA can meet its obligations to comply with City code and protect the environment in the City of Decatur. ESB further recommends consideration of alternatives where the East-West branch of the creek is kept daylit and the trees south of it are preserved, as set forth above.

Thank you for your time and consideration of these recommendations.

Very truly yours,

Environmental Sustainability Board  
City of Decatur

CC: Mayor Patti Garrett  
Mayor Pro Tem Tony Powers  
Commissioner Scott Drake  
Commissioner Brian Smith  
Commissioner Kelly Walsh  
David Junger, Assistant City Manager  
Courtney Frisch, Project Manager, Community Development