

Variance Application

VAR-25-32

Submitted On: May 5, 2025

Applicant

 Sean Murphy
 770-630-9205
 @ sean@seanjmurphy.com

Primary Location

1241 KINGSVIEW DR SE
SMYRNA, GA 30080

Applicant Information

First Name

Davin

Street Address

1234 Kingsview Drive

State

Georgia

Email

davindharris@gmail.com

Last Name

Harris

City

Smyrna

Zip Code

30080

Phone Number

770866-2360

Are you the titleholder of the subject property?

No

Titleholder Information

Full Name (i.e., First and Last Name, or Name of Entity)

Joseph Heller

City

Smyrna

Zip Code

30080

Phone Number

(678) 309-0079

Street Address

1231 Kingsview Drive

State

Georgia

Email Address

jj.heller@att.net

Property Information

Property Address

1241 Kingsview Drive

Description of Requested Variances

The applicant seeks variances to both the 75' impervious stream buffer and the 50' undisturbed stream buffers for the purposes of constructing a single family home.

Please check the box below if the requested variance(s) includes an increase in the maximum impervious surface area or an encroachment into a City stream buffer.

true

****If the request includes an increase in the maximum impervious surface area or an encroachment into a City stream buffer, a stormwater mitigation plan is REQUIRED prior to submittal of the variance application.****

Please contact the Engineering Plans Reviewer, Clara Hodges, with any questions relating to the stormwater mitigation plan: 404-576-5401 or chodges@smyrnaga.gov (mailto:chodges@smyrnaga.gov).

Comprehensive Narrative

In rendering its decisions, the License and Variance Board shall consider the following factors:

1. The shape, size, topography, slope, soils, vegetation and other physical characteristics of the property;
2. The locations of all streams on the property, including along property boundaries;
3. The location and extent of the proposed buffer or setback intrusion;
4. Whether alternative designs are possible which require less intrusion or no intrusion;
5. The long-term and construction water-quality impacts of the proposed variance;
6. Whether as a result of an exchange of buffer area the net buffer area is not reduced; and
7. Whether issuance of the variance is at least as protective of natural resources and the environment.

A comprehensive narrative detailing the extraordinary and exceptional conditions which will necessitate a nonconforming use.

Pursuant to the City of Smyrna Stream Buffer Protection Ordinance (Ord. No. 2005-30, 8-1-05; Ord. No. 2023-008, 8-21-23), this narrative is submitted in support of a variance application requesting relief from the required 75-foot and 50-foot stream buffers. The requested relief is necessary to enable reasonable use of the property, which is otherwise rendered unbuildable due to the overlapping buffer zones imposed by both city and state regulations. This request is based on a combination of legal rights, constitutional protections, and environmental mitigation.

1. Physical Characteristics of the Property

The subject property consists of approximately 21,452 sf with 14,199 square feet of buildable area outside the setbacks and is a legally platted residential lot of record located in the City of Smyrna. The lot is characterized by an irregular but slightly rectangular wedge shape with steep slopes bifurcating the lot and sloping toward an unnamed tributary of Nickajack Creek at approximately 1/3 of the width. Soils are generally stable with existing native and pioneering plants and a heavy layer of natural leaf and dead fall debris that is typical in a mature woodland. The lot is vegetated primarily with secondary growth and contains both juvenile and mature trees.

2. Stream Locations on the Property

The lot contains a perennial stream, which triggers the 25-foot state undisturbed buffer, the 50-foot state impervious setback, and the City of Smyrna's additional 75-foot impervious buffer. These buffers overlap significantly and extend across the majority of the lot, including the most reasonably accessible building areas. The location of the stream effectively bifurcates the eastern side of the lot and imposes significant development constraints. There is no evidence of significant flooding from this stream, flood plains and floodway are limited to the well defined creek bed and no areas are retaining water other than the clearly identifiable stream channel which is characterized by clear lines of wretched vegetation on each side.

3. Location and Extent of Buffer Intrusion

Due to the buffer overlap, a buildable footprint of only 1,335 square feet remains confined to a sliver along the western edge of the property, only 14 feet wide at its broadest point. This leaves insufficient space to construct a reasonably sized single-family home consistent with surrounding properties. The proposed variance seeks to intrude minimally into both the city buffers to establish a modest and custom residential structure, respecting

stream proximity and topographic conditions while enabling beneficial use of the land. Plans propose a foot print of 40' width to account for a two car garage space and room for a front door and a front elevation that compliments other homes in the neighborhood. Using the 14' of the buildable area that is not in the buffer that leaves a width of 26' required to reach 40' So that puts the eastern (right) side of the proposed footprint just slightly into the 50' buffer and all the way across the 75' buffer as indicated on the plans. A depth of 60' is proposed which is less than the half of 138' buildable depth of the lot. An additional roughly 50' off the rear and 10' off the eastern side is proposed for the development of useable back and side yard space and to provide the space necessary for construction of the primary home.

4. Consideration of Alternative Designs

Due to the nearly complete coverage of the buildable area by the buffers no alternative layouts were considered, as there is no way to build anything close to a typical home on this lot without impacting the buffer. The extent of the buffer area and the limited width of the remaining buildable land, no viable design avoids intrusion into the buffer without eliminating all reasonable development potential. However the home has been custom designed with retaining walls to limit disturbance as much as possible while still creating viable living areas for an average family home. The proposed plan represents the least intrusive option that allows for meaningful use of the lot. The design avoids unnecessary grading, protects existing trees to the maximum extent possible, and incorporates site-specific stormwater mitigation.

5. Water Quality Impacts – Construction and Long-Term

We are committed to minimizing both short-term and long-term impacts to water quality. The proposed home will utilize **permeable pavement, rain gardens or infiltration basins, and native vegetative landscaping** to absorb and filter runoff. All construction activities will comply with the City of Smyrna's erosion control requirements, and appropriate silt fencing, construction barriers, and grading techniques will be employed. Post-construction, the impervious area will be minimized, and no encroachment will occur into the 25-foot state-mandated undisturbed buffer. These steps ensure that any temporary disturbances are mitigated and long-term water quality is protected. The steep slopes adjacent to the proposed footprint make any use of the remaining buffers impractical for anything other than trails and native landscaping.

6. Buffer Exchange / Net Buffer Area Consideration

The request involves encroachment into portions of the regulated buffer, normally we would propose **offsetting mitigation** through replacement and preservation of what would normally be developable areas adjacent to the disturbed zones. However, there are no areas outside the buffers on this lot where we can afford to offset the impacts. Therefore, we propose instead to enhance and improve the remaining buffers. Where feasible, invasive species will be removed and replaced with native plantings, and additional vegetative stabilization will be provided along the streambank to improve buffer function. As a result, the currently wider but thinly vegetated buffer will be replaced by a more **functional and heavily vegetated buffer creating a total buffer area that will not be reduced** in quality, but instead enhanced through restoration measures.

7. Environmental and Natural Resource Protections

Issuance of this variance will remain protective of natural resources and environmental integrity. The proposed development plan balances the need for reasonable property use with a robust suite of **stormwater, landscaping, and stream protection** measures. All activities will remain outside the most sensitive areas of the buffer (the 25-foot undisturbed zone), and additional conservation practices will be implemented to offset the limited intrusion requested.

Legal Basis for the Variance Request

Vested Rights: The property was lawfully platted and recorded in Cobb County Superior Court on or before May 7, 1965, prior to the City's adoption of stream buffer regulations in 2005, thus entitling the owner to develop the land consistent with those prior rules.

Regulatory Taking: Application of current buffer requirements effectively prohibits any reasonable use of the land, constituting a taking under both federal and state constitutional principles.

Hardship Relief: The hardship is not self-created and arises solely from regulatory changes post-subdivision. The requested variance is the minimum necessary to alleviate the hardship and maintain water quality and environmental standards.

Conclusion

This variance request meets the criteria set forth by the City of Smyrna. It is supported by law, consistent with environmental protection principles, and necessary to enable fair and reasonable use of the property. We respectfully request the License and Variance Board grant the relief sought, subject to any reasonable conditions deemed appropriate.

Acknowledgement

Applicant further affirms they are aware that any knowingly false statement made in the permit application may subject said applicant to prosecution for violation of Georgia Criminal Code, Section 16-10-20 (False Swearing) and a possible fine of not more than \$1,000.00 or imprisonment for not less than one (1) nor more than five (5) years, or both.

Applicant Signature:

true



PROPERTY OWNER AUTHORIZATION

City of Smyrna Community Development Department, 3180 Atlanta Rd, Smyrna, GA 30080
Office Phone 770-319-5387 / Fax 770-431-2808

I, Joseph Heller, swear that I am the Property Owner of the property

located at: 1241 Kingsview Dr. Smyrna, GA, 30080

as shown in the records of Cobb County, Georgia, which is the subject matter of the attached application.

I authorize the person named below to act as the applicant in pursuit of this application.

Name of Applicant (print clearly): Davin Harris

Address: 1234 Kingsview Dr. Smyrna Ga, 30080

Telephone: 770-866-2360 Email: davindharris@gmail.com

I have read, understood, and answered the aforementioned items to the best of my knowledge. If I am found to have misrepresented myself on this affidavit or the attached application, I am aware I may be in violation of the City Code and run the risk of being issued a citation for violation of the City of Smyrna Code of Ordinances.

(Must be signed by the property owner. If the landowner is a corporation, the form must be signed by an officer of the corporation.)

DocuSigned by:

Joseph J. Heller
D218A5B75FD549E...

Signature of Property Owner

1231 Kingsview Dr.

Address

Joseph Heller

Name of Property Owner (print clearly)

Smyrna Ga, 30080

City, State, Zip

**NOTIFICATION OF CONTIGUOUS OCCUPANTS
OR LANDOWNERS**

By signature, it is hereby acknowledged that I have been notified ~~that~~ Davin Harris who resides at 1234 Kingsview Dr Smyrna Ga

is purchasing the vacant lot that is located at 1241 Kingsview Dr. Smyrna Ga

Intends to make an application for a variance for the purpose of improving the lot by building a new home on the lot

on the premises described in the application.

| NAME | ADDRESS |
|---|--------------------------------|
|  | 1231 Kingsview Dr., Smyrna, GA |
| Maura Perkins | 1288 Kingsview Cir, Smyrna, GA |
| Carmen Tucker | 1240 Kingsview Cir, Smyrna, GA |
| Alicia Gadsby | 1272 Kingsview Cir, Smyrna, GA |
| | |
| | |
| | |
| | |

Please have adjacent property owners sign this form to acknowledge they are aware of your variance request. You may also provide certified mail receipts of notification letters sent to adjacent properties. Notification letters shall include a description of the requested variance, the License and Variance Board Meeting date and time, and a copy of the complete variance application. Adjacent and adjoining properties include any property abutting the subject property as well as any properties directly across a street.

9589 0710 5270 1214 5107 64

U.S. Postal Service™
CERTIFIED MAIL® RECEIPT
Domestic Mail Only

For delivery information, visit our website at www.usps.com®.

Smyrna, GA 30080

| | |
|--|--------|
| Certified Mail Fee | \$4.85 |
| Extra Services & Fees (check box, add fee as appropriate) | \$0.00 |
| <input type="checkbox"/> Return Receipt (hardcopy) | \$0.00 |
| <input type="checkbox"/> Return Receipt (electronic) | \$0.00 |
| <input type="checkbox"/> Certified Mail Restricted Delivery | \$0.00 |
| <input type="checkbox"/> Adult Signature Required | \$0.00 |
| <input type="checkbox"/> Adult Signature Restricted Delivery | \$0.00 |

0676
1050

Postmark
Here

| | |
|---------|--------|
| Postage | \$0.73 |
|---------|--------|

05/06/2025

| | |
|------------------------|--------|
| Total Postage and Fees | \$5.58 |
|------------------------|--------|

Sent To

Woodbury Place HOA INC
Street and Apt. No., or PO Box No.
3695 King Springs
City, State, ZIP+4®
Smyrna GA 30080

PS Form 3800, January 2023 PSN 7530-02-000-9047 See Reverse for Instructions

9589 0710 5270 1214 5107 57

U.S. Postal Service™
CERTIFIED MAIL® RECEIPT
Domestic Mail Only

For delivery information, visit our website at www.usps.com®.

Smyrna, GA 30080

| | |
|--|--------|
| Certified Mail Fee | \$4.85 |
| Extra Services & Fees (check box, add fee as appropriate) | \$0.00 |
| <input type="checkbox"/> Return Receipt (hardcopy) | \$0.00 |
| <input type="checkbox"/> Return Receipt (electronic) | \$0.00 |
| <input type="checkbox"/> Certified Mail Restricted Delivery | \$0.00 |
| <input type="checkbox"/> Adult Signature Required | \$0.00 |
| <input type="checkbox"/> Adult Signature Restricted Delivery | \$0.00 |

0676
1050

Postmark
Here
0676
1050

| | |
|---------|--------|
| Postage | \$0.73 |
|---------|--------|

05/06/2025

| | |
|------------------------|--------|
| Total Postage and Fees | \$5.58 |
|------------------------|--------|

Sent To

Dorlene martin RESIDENT
Street and Apt. No., or PO Box No.
1276 Kingsview
City, State, ZIP+4®
Smyrna GA 30080



Real Estate (Your House or Land)

[Return to view bill](#)

Payments/Adjustments

As of 5/5/2025

| | |
|------------------|------|
| Bill Year | 2024 |
| Bill | 7421 |

| Activity | Posted | Entered | Reference # | Paid By/Reference | Amount |
|----------|-----------|-----------|-------------|-------------------|----------|
| Payment | 5/5/2025 | 5/5/2025 | 3661494 | JOSEPH HELLER | \$233.85 |
| Penalty | 5/5/2025 | 5/5/2025 | 20224 | | \$7.19 |
| Fee | 3/24/2025 | 3/24/2025 | 15891 | | \$25.00 |

[Return to view bill](#)

THE OWNER OF THE LAND SHOWN ON THIS PLAT AND WHOSE NAME IS SUBSCRIBED HERETO AND WHO IN PERSON OR THROUGH A HOLY AUTHORIZED AGENT ACKNOWLEDGES THAT THIS PLAT WAS MADE FROM AN ACTUAL SURVEY AND DEDICATES TO THE USE OF THE PUBLIC FOREVER ALL STREETS, ALLEYS, RIGHTS, WATER COURSES, DRAINS, EASEMENTS, AND PUBLIC PLACES THEREON SHOWN FOR THE PURPOSES AND CONSIDERATIONS THEREIN EXPRESSED.

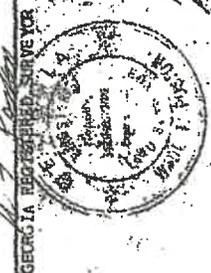
P. D. Luyten
OWNER

*Filed in Office
May 7, 1965
Zyn Lee Jung, Clerk*

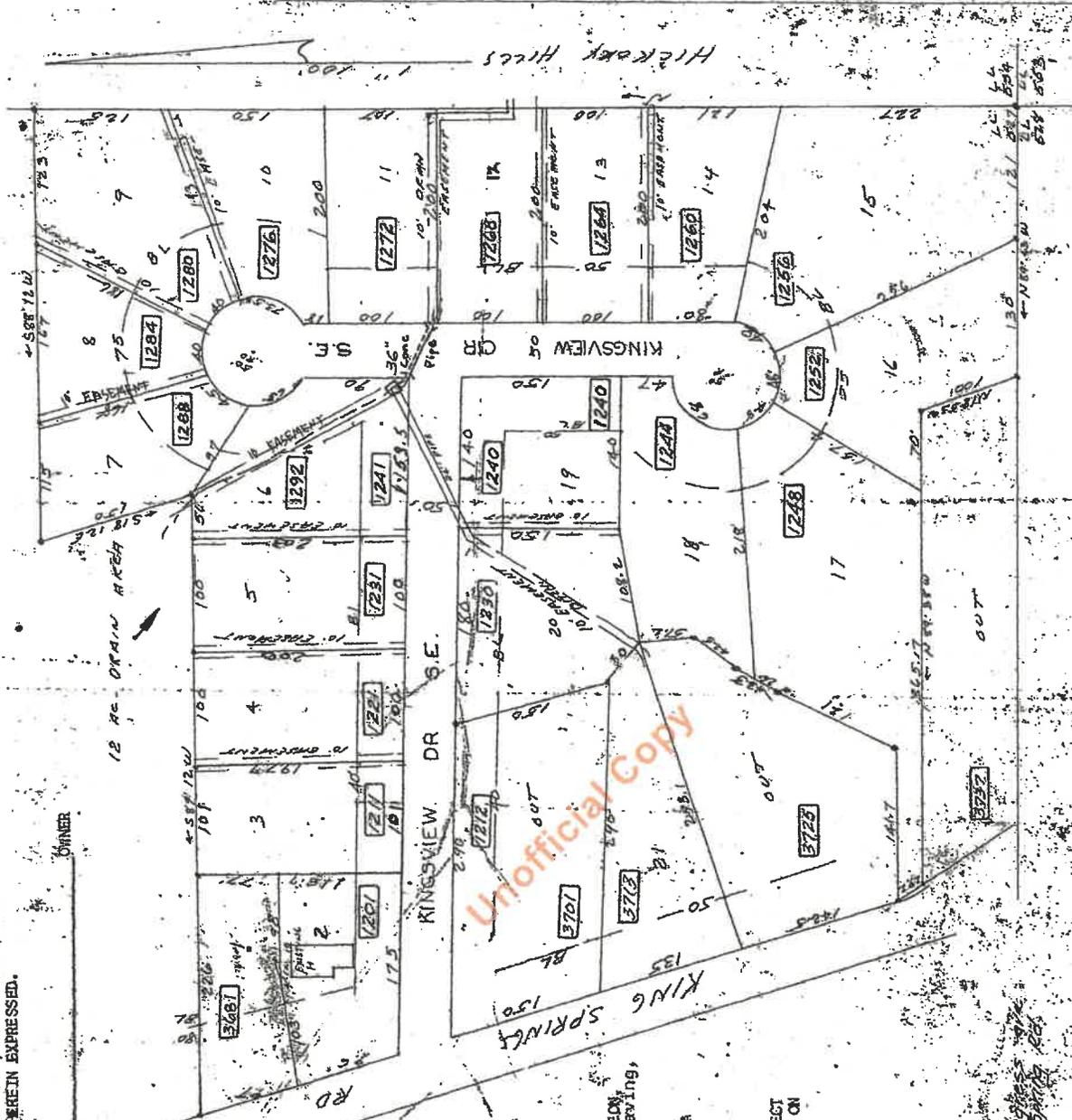
THIS PLAT HAS BEEN SUBMITTED TO AND CONSIDERED BY THE PLANNING AND ENGINEER DEPARTMENTS OF COBB COUNTY, GEORGIA AND IS APPROVED BY SAID DEPARTMENTS.
DATED THIS 15 DAY OF DEC, 1964

THIS PLAT HAS BEEN SUBMITTED TO THE COMMISSIONER OF ROADS AND REVENUES OF COBB COUNTY, GEORGIA AND IS APPROVED SUBJECT TO THE PROTECTIVE COVENANTS SHOWN HEREON and subject to the installation of approved paving, curbs, and gutters.
COMMISSIONER, ROADS AND REVENUES, COBB COUNTY, GEORGIA
CHAIRMAN

IT IS HEREBY CERTIFIED THAT THIS PLAT IS TRUE AND CORRECT AND WAS PREPARED FROM AN ACTUAL SURVEY OF THE PROPERTY ON THE GROUND UNDER MY SUPERVISION.



Note: Egress and ingress are prohibited on lots 17, 18, and 19.



KINGSVIEW SUBD
LAND LOT 527 17TH DISTRICT
2ND SECTION COBB CO GA
DEC 15 1964