



Keeping Watch Over Our Waters

3 Puritan Mill 916 Joseph E. Lowery Blvd. Atlanta, GA 30318 404.352.9828 Fax 404.352.9828 www.chattahoochee.org

April 30, 2018

VIA EMAIL

James A. Capp, Chief
Watershed Protection Branch
Georgia Environmental Protection Division
2 Martin Luther King Dr., Suite 1462 East
Atlanta, GA 30334
Email: EPDComments@dnr.ga.gov

RE: Chattahoochee Riverkeeper Comments Regarding Buffer Variance Application
No. BV-060-17-24 for Bobby Jones Golf Course / Bitsy Grant Tennis Center
Proposed Buffer Encroachments on Tanyard and Peachtree Creeks

Dear Mr. Capp:

Please accept these comments from Chattahoochee Riverkeeper (CRK) regarding Georgia Environmental Protection Division's (EPD) public notice of the subject referenced stream buffer variance.

CRK is a non-profit environmental advocacy organization dedicated to the protection and stewardship of the Chattahoochee River, its tributaries, lakes and watershed. CRK represents more than 8,600 members who use and enjoy the river system and depend on the Chattahoochee River and its lakes as a source of drinking water, recreation and economic prosperity. **On behalf of our members and river users we submit these comments opposing the issuance of the requested variance No. BV-060-17-24.**

The Bobby Jones Golf Course (BJGC) project has cleared and is redeveloping more than 88 acres along Tanyard and Peachtree Creeks in Atlanta for a new nine-hole golf course, golf range and training center, and tennis center. In clearing and regrading the site, the development has claimed exemption from the City of Atlanta's 75-foot stream buffer protections and already cleared essentially all trees and vegetation within that protected area along both creeks. Now, the entities redeveloping this site—owner Georgia Building Authority, lessee and developer Bobby Jones Golf Course Foundation and their consultant Contour Environmental, LLC (collectively hereinafter "Applicants")—propose to further encroach into the state's minimum 25-foot buffer along Tanyard Creek, Peachtree Creek and an unnamed tributary of Peachtree Creek. The buffer impact will total 93,531 square feet and 5,445 linear feet. Chattahoochee Riverkeeper staff have made numerous site visits to investigate muddy stormwater runoff from the BJGC into Tanyard and Peachtree Creeks. A site visit attended by CRK, the Foundation and its consultants specifically regarding the variance application and proposed encroachments was held on April 25, 2018.

In the Applicants' stream buffer application, the stated goal for encroaching upon approximately 1 linear mile of stream banks to clear cut trees, remove existing vegetation and regrade stream banks is to "aid in improving water quality with the reduction of sediment and improve the quality of aquatic habitat in the streams by adding structures for hiding and foraging. The streambank slope will be less significant, giving more ease of access to the stream for terrestrial wildlife."

A close review of the variance application shows that the proposed work within the buffer will not achieve and in fact is contrary to this goal. The encroachment and disturbances proposed in BJGC's submittals for BV-060-17-24 do not meet the requirements for a buffer variance to be considered by EPD as set forth in Georgia's Rules and Regulations for Erosion and Sedimentation Control. *See* Ga. Comp. R. & Regs. r. 391-3-7-.05, Buffer Variance Procedures and Criteria.

For the following reasons, we strongly urge EPD to deny this application:

[1] The Applicants submitted the variance application under criteria that do not apply to this project. *See* Ga. Comp. R. & Regs. r. 391-3-7-.05(2)(a), (f).

According to DNR Rule 391-3-7-.05(2), a variance can only be considered by the EPD Director in certain cases. Such cases include criterion 2(a), "the construction or repair of an existing infrastructure project or a structure that, by its nature, must be located within the buffer. ..." and criterion 2(f), "Recreational foot trails and viewing areas..." Some examples of applicable infrastructure projects or structures are dams, public water supply intake structures, detention/retention ponds, waste water discharges, docks, boat launches and stabilization of areas of public access to water. The development of a foot trail or viewing area may permit buffer encroachments provided that impacts to the buffer are minimal.

The Applicants have used criterion 2(a) to justify the majority of the vegetative clearing and grading within the buffers of Tanyard Creek and along portions of Peachtree Creek. Criterion 2(a) does not apply because the Applicants do not propose to construct or repair any infrastructure projects or structures which by their natures must be located within the buffer. The Applicants provide no explanation for applying under criterion 2(a). None of the impacts proposed within the 93,531 square feet disturbed area include construction or repair of infrastructure projects or structures that must be located within the buffer.

Additionally, the Applicants selected criterion 2(f) to justify an encroachment along Peachtree Creek for the construction of a golf cart path and tee pad. Criterion 2(f) considers recreational **foot trails** or viewing areas. The proposed project is a path for motorized carts. Motorized pathways are not listed as acceptable justifications for variances. Allowing such a variance sets a precedent not supported in statute or regulations for buffer variance procedures and criteria. In addition, the Applicants propose to build a golfing tee within the 25-foot buffer of Peachtree Creek and neither criteria (a) or (f) apply.

Finally, DNR Rule 391-3-7-.05(2) permits variances “only where the applicant provides reasonable evidence that impacts to the buffer have been avoided or minimized to the fullest extent practicable...” The Applicants have failed to make such a showing. In fact, the proposed work razes all existing trees and vegetation, essentially maximizing disturbances within the buffer zone. As such, the variance application should be denied for failure to comply with any criteria in the DNR Rules that would permit encroachments within the state buffer.

- [2] **The variance application fails to comply with requirements in the EPD application that the BJGC project to adhere to the most recent state guidance.** See EPD Application for A 25-Foot Vegetative Buffer Encroachment on Designated Warm Waters of the State, (updated May 2016)¹ and EPD Streambank and Shoreline Stabilization Guidance Book, (April 2017).²

On page three of the EPD application for buffer encroachment (found within Applicants’ submittal) a note states:

NOTE: Projects that include “streambank or shoreline stabilization” (e.g., criterion (a)) or “streambank restoration” (e.g., criterion (b)) should adhere to the most current guidance documents: Streambank and Shoreline Stabilization Guidance, Guidelines for Streambank Restoration and Streambank and Shoreline Stabilization – Techniques to Control Erosion and Protect Property.

The variance application fails to adhere to the applicable guidance document, EPD Streambank and Shoreline Stabilization Guidance. The guidance sets forth preferred, acceptable and discouraged practices for streambank stabilization. The preferred practices call for establishment of a fully functional riparian zone, which includes “**native riparian vegetation** consisting of canopy cover, brush and small tree structure, grasses, forbs, and other vegetation and root systems.” (emphasis in the original).³

Clear-cutting of vegetation and severe grading activities are proposed within the buffers on Tanyard and Peachtree Creeks. Applicants’ proposal merely calls for planting non-native grasses along the newly cleared and sloped banks. The Applicants’ project does not include restoration or mitigation that adheres to the relevant EPD guidance. The Applicants cannot eliminate all trees and vegetation from a buffer for the exclusive purpose of clearing a path for golf ball flight. Stabilization and restoration as set forth by EPD is required.

The variance application should be denied as Applicants’ proposed stabilization efforts do not include at a minimum the installation of native riparian vegetation consistent with current EPD guidance.

¹ <https://epd.georgia.gov/erosion-and-sedimentation-forms> (last visited April 27, 2018)

² EPD Streambank and Shoreline Stabilization Guidance Book, found at <https://epd.georgia.gov/erosion-and-sedimentation> (last visited April 27, 2018)

³ EPD Streambank and Shoreline Stabilization Guidance Book, p. 4, <https://epd.georgia.gov/erosion-and-sedimentation>.

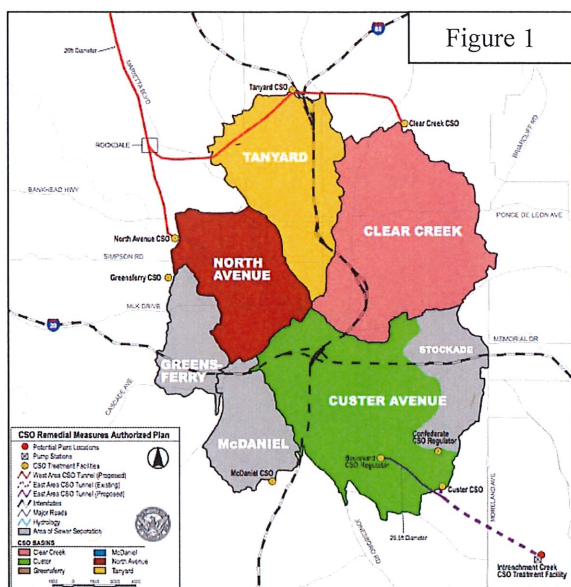
[3] The Applicants' variance application fails to propose mitigation required for major buffer impacts. *See, e.g., Ga. Comp. R. & Regs. r. 391-3-7-.01(q),(r) and r. 391-3-7-.05(4), (7).*

The extensive work proposed by the Applicants will result in major buffer impacts as defined by DNR Rules. *See Ga. Comp. R. & Regs. r. 391-3-7-.01(q),(r).* Major buffer impacts require “a Buffer Mitigation Plan with a descriptive narrative addressing impacts to critical buffer functions based on an evaluation of existing buffer conditions and predicted post buffer conditions pursuant to DNR Rule 391-3-7-.05(7).” *See EPD Application for Buffer Encroachment, p. 4.* The Applicants' three-paragraph attempt at a Buffer Mitigation Plan lacks sufficient detail and does not satisfy the minimum requirements for such a plan.

The Applicants state that no critical buffer functions will change during and after construction, despite plans to clear-cut hundreds of trees and nearly all existing vegetative cover, severely re-slope the stream bank grades, and replace existing trees and vegetation only with grass. Replanting the encroached areas with Zoysia grass does not provide any of the required mitigation as it does not replace the buffer functions provided by current conditions. These essential functions, which include temperature control (shading), streambank stabilization, trapping of sediments, removal of pollutants, aquatic or terrestrial habitat and buffering of flood flows, will be lost under the Applicants' proposed plans for the stream buffers at BJGC.

[4] The Application Fails to Address Peak Stream Flow of Tanyard Creek.

A key component of this project that has not been addressed by the Applicants is the specific hydrology associated with Tanyard Creek. The proposed “stabilization” activities along Tanyard Creek would take place barely 1-mile downstream from the Tanyard CSS control facility, a major combined sewer control facility operated by the City of Atlanta. *See Figure 1.* This facility discharges large volumes of combined stormwater and sewage during extreme weather events that drain large impervious areas including the northern portion of the I-75/I-85 Connector.



During these extreme weather events, significant volumes of flow pour through Tanyard Creek. These flows are documented, not theoretical.

Chattahoochee Riverkeeper has grave concerns regarding the project's proposal to regrade the streambanks at a 3:1 slope and replant with Zoysia grass. Grading straight slopes at 3:1 and replanting with only grass is not standard practice in streambank restoration and stabilization and will likely not hold in place during these events. The applicant has not provided any hydrological or other study that would demonstrate that the proposed design is appropriate for peak flows in Tanyard Creek. CRK believes this project will ultimately result in drastically increased erosion rates within the streambanks of Tanyard Creek.

[5] The Application Lacks Sufficiently Detailed Information Regarding the Proposed Buffer Encroachments.

The majority of information regarding the proposed buffer impacts within the application was provided in vague narratives. Specific design plans for the “stabilization” activities were not provided within the stream buffer variance application for any of the encroachments. Proposed contour lines were not shown on any of the provided plans. It is not possible to conduct a full review of this proposal and understand the full ramifications on the affected streams without complete, detailed design plans and full profiles accurately illustrating proposed sloping and contouring.

[6] The Variance Application Misrepresents the True Project Purpose

In the stream buffer variance application, the project is titled “Bobby Jones Golf Course Streambank Stabilization.” However, the impacts on Tanyard Creek are clearly meant for improving golf ball passage for the golf course and not to stabilize the stream banks. This project proposes to clear the most heavily vegetated and stable streambank sections of Tanyard Creek while ignoring other sections that are currently denuded of vegetation and severely eroded.



Figure 2

For example, this project proposes to remove all of the vegetation from this already-stable section of Tanyard Creek and regrade both sides of the streambank. *See* Figure 2, left.



Figure 3

Yet the project proposes to completely ignore an adjacent section of Tanyard Creek that is in clear need of restoration and stabilization. *See* Figure 3, right.

It is our understanding that EPD staff reviewing this variance application did not visit the site as part of the review. In addition, a full review of EPD files reveals that no photographs of the existing conditions were provided to EPD (with the exception of a single photograph on the cover page of the application). Without carefully reviewing the current conditions, it is not possible for EPD to determine whether the proposed buffer encroachments are appropriate for the site and consistent with DNR Rules.

In addition, there are many sections along Peachtree Creek that are heavily eroded and unstable. *See* Figure 4, at right. The Applicant is proposing along Peachtree Creek to plant Bermuda sod up to the point of erosion and ignore the eroding and unstable banks. The purpose of these buffer encroachments is to create an open golf course layout irrespective of the condition of the stream banks or buffers protecting them. It is entirely inaccurate to characterize this project the “Bobby Jones Golf Course Streambank Stabilization.”



Figure 4

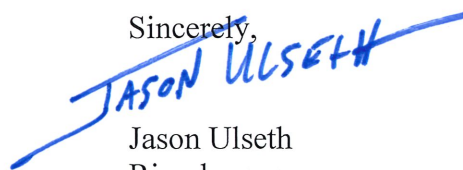
Additionally, the proposed project will damage streams that are already impaired. As Applicants have noted, both Tanyard and Peachtree creeks are listed as impaired on the 305(b)/303(d) impaired streams list for fecal coliform bacteria. These streams are already impaired and do not support their designated uses for fishing. The Applicants’ proposal will further jeopardize the health of these creeks and the Chattahoochee River.

The application fails on its face to comply with minimum standards for granting a variance for buffer encroachments into the 25-foot minimum state buffer. Because of the nature of golf courses and the large amounts of pesticides and fertilizers that are used, it is imperative that both Tanyard and Peachtree Creeks have the highest functioning buffers possible. We are available to meet again to review these recommendations and additional measures that should be adopted to meet the Applicants’ goals while protecting these creeks and the Chattahoochee River.

This variance poses the threat of a substantial negative impact on the Chattahoochee River watershed, is not consistent with DNR Rules, and sets improper precedent. The application does not comply with the law and therefore the variance cannot be issued. If EPD chooses to grant it, Chattahoochee Riverkeeper requests immediate notification once the final decision is made.

Thank you for your consideration and please do not hesitate to contact me at 404-352-9828 or julseth@chattahoochee.org should you have any questions or wish to discuss this further.

Sincerely,



Jason Ulseth
Riverkeeper

CC: Jac Capp – james.capp@dnr.ga.gov
Frank Carubba – frank.carubba@dnr.ga.gov
Marty Elgison – mjulgison@bellsouth.net
Sara Duquette – SDuquette@contourenv.com
Dana Spotts – dspotts@contourenv.com
Byron Kirkpatrick – byron.kirkpatrick@troutman.com