

**ZONING BOARD OF APPEALS APPLICATION FOR PUBLIC HEARING  
(VARIANCES, SPECIAL EXCEPTIONS, APPEALS OF ADMINISTRATIVE DECISIONS)**

BOA No. \_\_\_\_\_

Applicant and/or  
Authorized Representative Amy Taylor (authorized representative: Jon Schwartz)

Mailing Address: 1162 Key Road (Amy Taylor) / Law Office of Jon Schwartz, 1100 Peachtree St NE # 250

City/State/Zip Code: Atlanta GA 30316 (Amy Taylor) / Atlanta, GA 30309 (Jon Schwartz)

Email: jon@jonschwartz.net

Telephone Home: \_\_\_\_\_ Business: 404-874-8919 (Jon Schwartz)

**OWNER OF RECORD OF SUBJECT PROPERTY**

Owner: City of Atlanta Office of Enterprise Assets

Address (Mailing): 68 MITCHELL ST SW, # 1225 ATLANTA, GA 30303

Email: RSAINTEL@ATLANTAGA.GOV

Telephone Home: \_\_\_\_\_ Business: 404-546-6326

**ADDRESS/LOCATION OF SUBJECT PROPERTY**

Address: 1350 CONSTITUTION ROAD City: Atlanta State: GA Zip: 30316

District(s): 15 Land Lot(s): 81, 82, 83, 110, 111 Block: \_\_\_\_\_ Parcel: 15-081-08-001  
15-082-01-001

Zoning Classification: R-75 Commission District & Super District: District 3  
Super District 6

**CIRCLE TYPE OF HEARING REQUESTED:**

- VARIANCE (From Development Standards causing undue hardship upon owners of property.)
- SPECIAL EXCEPTIONS (To reduce or waive off-street parking or loading space requirements.)
- OFFICIAL APPEAL OF ADMINISTRATIVE DECISIONS.

**\* PLEASE REVIEW THE FILING GUIDELINES ON PAGE 4. FAILURE TO FOLLOW GUIDELINES MAY RESULT IN SCHEDULING DELAYS. \***

**TO BE COMPLETED BY PLANNING AND SUSTAINABILITY DEPARTMENT:**

Date Received: \_\_\_\_\_ Fee Paid: \_\_\_\_\_

**ZONING BOARD OF APPEALS APPLICATION**

**AUTHORIZATION TO REPRESENT THE PROPERTY OWNER**

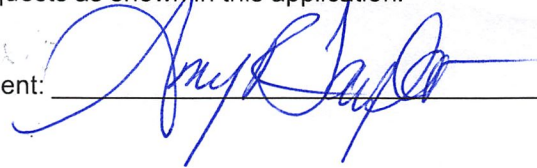
I hereby authorize the staff and members of the Zoning Board of Appeals  
to inspect the premises of the Subject Property

I hereby certify that the information provided in the application is true and correct.

I hereby certify that I am the owner of the property and that I authorize the applicant/agent to apply for a hearing to the  
Zoning Board of Appeals for the requests as shown in this application.

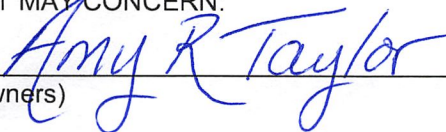
DATE: 2/6/2023

Applicant/Agent:  
Signature



TO WHOM IT MAY CONCERN:

(I)/ (WE)  
(Name of Owners)



being (owner/owners) of the property described below or attached hereby delegate authority to:

Jon Schwartz, Law Office of Jon Schwartz, 1100 Peachtree St. NE, # 250, Atlanta GA 30309

  
Notary Public



  
Owner

Notary Public

Owner

Notary Public

Owner

## ZONING BOARD OF APPEALS APPLICATION

### AUTHORIZATION OF THE PROPERTY OWNER

I hereby authorize the staff and members of the Zoning Board of Appeals  
To inspect the premises of the Subject Property

I hereby certify that the information provided in the application is true and correct.

I hereby certify that I am the owner of the property subject to the application.

DATE:

2/6/2023

Applicant:  
Signature

[Signature]

DATE: \_\_\_\_\_

Applicant:  
Signature

\_\_\_\_\_

## **Letter of Intent**

### **I. ZBA Power to Hear Appeal**

The zoning board of appeals has power to “hear and decide appeals where it is alleged there is error in any ... determination by an administrative official in the enforcement of” certain ordinances, including article II of chapter 14 of the DeKalb County Code and the Zoning Ordinance of DeKalb County.<sup>1</sup>

Article II (Environmental Control) of chapter 14 (Land Development) requires the Planning and Sustainability Director to enforce the article by reviewing development permits “to assure that the permit requirements” of article II are satisfied.<sup>2</sup>

Those requirements state, “No permit shall be issued until the applicant files documents with the development director demonstrating compliance with all applicable local, state and federal requirements.”<sup>3</sup>

The Zoning Ordinance of DeKalb County similarly states that the Planning Director shall not grant any development permit if the land as proposed to be altered would violate any ordinances and laws of the county or the state.<sup>4</sup>

The Planning Director erred by issuing a land development permit for the Atlanta police training center (1350 Constitution Road) because sediment discharges from the site during clearing, grading, and construction would exceed the numeric wasteload allocation for Intrinchment Creek in violation of state and federal law.

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<sup>1</sup> Appendix B, Article XVII, Division 2, Part C, § 1130.

<sup>2</sup> Sec. 14-31(a)(1).

<sup>3</sup> Sec. 14-38(5)(d)(6).

<sup>4</sup> Sec. 27-7.7.6

The planning director also erred by issuing the land development permit because City of Atlanta Ordinance 21-O-0367 authorized the Mayor of Atlanta to enter into a lease with the Atlanta Police Foundation to use “approximately 85 acres for improvements related to public safety training facilities and to preserve approximately 265 acres for greenspace” within three parcels, but the greenspace within those parcels after clearing the site would be less than 210 acres.

Decisions of administrative officials can be appealed by property owners within 250-feet of the subject site.<sup>5</sup> Applicant Amy Taylor owns property within 250-feet of the proposed police training center and is a member of South River Watershed Association, Inc., which also has an interest in this appeal.

## **II. The Erosion, Sedimentation, and Pollution Control Plan Does Not Incorporate the Numeric Wasteload Allocation for Sediment Discharges into Intrenchment Creek**

The Clean Water Act requires states to identify surface waters that don’t meet water quality standards (“impaired waters”), and to calculate how much pollutants the water body can assimilate without violating water quality standards.<sup>6</sup>

The proposed training center is adjacent to Intrenchment Creek, which doesn’t meet the state’s water quality standards because sediment has degraded the fish and benthic macroinvertebrate populations.<sup>7</sup> EPD ranked Intrenchment Creek’s stream health as “very poor” for these species.<sup>8</sup>

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<sup>5</sup> Sec. 27-7.5.2.

<sup>6</sup> 33 U.S.C. § 1313(d).

<sup>7</sup> EPD 303(d) list of impaired surface waters; DNR Rule 391-3-6-.03.

<sup>8</sup> Total Maximum Daily Load Evaluation for Eleven Stream Segments in the Ocmulgee River Basin for Sediment (2017) at p. 33; Total Maximum Daily Load Evaluation for Seventy Stream Segments in the Ocmulgee River Basin for Sediment (2007) at p. 28.

EPD's Intrenchment Creek TMDL established a 945-ton annual sediment load allowance.<sup>9</sup> This includes 579 tons of sediment per year from point sources and 366 tons of sediment per year from nonpoint sources.

The disturbed area for the proposed training center is 85 acres. Stormwater discharges from construction sites with at least one acre of land disturbance are defined as point source discharges that require a National Pollutant Discharge Elimination System ("NPDES") permit under the Clean Water Act<sup>10</sup> – but EPD apportioned the entire 579-ton point source waste load allocation to discharges from the municipal MS4 stormwater system.<sup>11</sup>

This means sediment from other point sources cannot be discharged into Intrenchment Creek because Georgia DNR Rule 391-3-6-.16(8)(a)(6) states, "no permit shall be issued ... to a new source ... if the discharge from the construction ... will cause or contribute to the violation of water quality standards, except as in accordance with Federal Regulations, 40 C.F.R. § 122.4(i)."<sup>12</sup>

40 C.F.R. § 122.4(i) prohibits issuing a permit to a new source proposing to discharge into impaired waters unless the applicant demonstrates there are "sufficient remaining pollutant load allocations to allow for the discharge." Because no pollutant load allocations remain for sediment discharges into Intrenchment Creek, DNR Rule 391-3-6-.16(8)(a)(6) and 40 C.F.R. § 122.4(i) prohibit issuing a permit to discharge any turbidity or sediment from the proposed training center construction site.

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<sup>9</sup> Total Maximum Daily Load Evaluation for Eleven Stream Segments in the Ocmulgee River Basin for Sediment (2017) at p. 58.

<sup>10</sup> 33 U.S.C. §§ 1311(a) and 1342(p); 40 C.F.R. § 122.26(b)(14)(x) and (b)(15).

<sup>11</sup> Total Maximum Daily Load Evaluation for Eleven Stream Segments in the Ocmulgee River Basin for Sediment (2017) at p. 58.

<sup>12</sup> DNR Rule 391-3-6-.16(8)(a)(6).

Stormwater discharges from construction sites in Georgia with at least one acre of land disturbance are regulated by a general permit (General NPDES Permit No. GAR 100001). An applicant is covered under the general permit 14 days after filing a Notice of Intent unless Georgia EPD provides notice to the contrary.

For discharges into or within one mile upstream of impaired streams, the general permit states, “If the TMDL Implementation Plan establishes a specific numeric wasteload allocation that applies to a permittee’s discharge(s) to the Impaired Stream Segment, then the permittee must incorporate that allocation into the Erosion, Sedimentation and Pollution Control Plan and implement all necessary measures to meet that allocation.”<sup>13</sup>

The Erosion, Sedimentation and Pollution Control Plan for the police training center doesn’t incorporate the numeric allocation from the Intrinchment Creek TMDL. Sediment discharges from the site during clearing, grading, and construction would exceed the numeric wasteload allocation for Intrinchment Creek.

The Intrinchment Creek TMDL states that for sites discharging stormwater into or within one mile upstream of an impaired stream, compliance with the general permit is “effective implementation” of the waste load allocation and “demonstrates consistency with the assumptions and requirements of the TMDL.”<sup>14</sup> But the general permit cannot demonstrate consistency with the Intrinchment Creek TMDL because the permit authorizes the discharge of turbidity while the TMDL has no remaining sediment allocation.

The general permit’s 50 Nephelometric Turbidity Unit numeric limit exceeds the Intrinchment Creek TMDL’s remaining waste load allocation for sediment. Even though the general permit requires additional best management practices for erosion control when

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<sup>13</sup> Part III.C.1 at p. 15.

<sup>14</sup> Total Maximum Daily Load Evaluation for Eleven Stream Segments in the Ocmulgee River Basin for Sediment (2017) at p. 52.

discharging into an impaired stream,<sup>15</sup> it doesn't distinguish between discharges into impaired streams with remaining pollutant allocations and discharges into impaired streams without remaining allocations.

Not only are there no remaining allocations from the 945-ton annual sediment load allowance, but the actual discharge of sediment into Intr trenchment Creek far exceeds the annual allowance. After Intr trenchment Creek was listed as impaired, EPD removed the total suspended solids limits from the City of Atlanta's NPDES permit for the East Area Water Quality Control Facility and Custer Avenue Combined Sewage Control Facility, which discharge untreated and partially treated sewage into Intr trenchment Creek.<sup>16</sup>

The City of Atlanta later reported an average annual load of 6,471 tons of suspended sediment into Intr trenchment Creek from these two facilities.<sup>17</sup>

### **III. The Notice of Intent Did Not Disclose the TMDL Implementation Plan for Intr trenchment Creek**

The Intr trenchment Creek TMDL included a TMDL implementation plan.<sup>18</sup> The general permit states that a Notice of Intent "shall include" any "information specified on the NOI in effect at the time of submittal."<sup>19</sup> The Notice of Intent filed for the police training center disclosed that the site would discharge into Intr trenchment Creek, and that the creek is impaired, but the applicant didn't mark the box next to Yes or No in response to the following question:

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<sup>15</sup> General Permit, Part III.C.2 at p. 16.

<sup>16</sup> NPDES Permit No. GA0037168 for City of Atlanta East Area CSO at pp. 15 and 17.

<sup>17</sup> City of Atlanta Department of Watershed Management, Nov. 2017 Intr trenchment and Sugar Watershed Improvement Plan, Appendix B at p. 21 (See excerpt attached to this letter).

<sup>18</sup> Total Maximum Daily Load Evaluation for Eleven Stream Segments in the Ocmulgee River Basin for Sediment (2017) at Section 7.

<sup>19</sup> *General Permit GAR100001*, Part II.B.1.k. at pp. 12-13.

“Does the facility/construction site discharge storm water into an Impaired Stream Segment where a Total Maximum Daily Load (TMDL) Implementation Plan for ‘sediment’ was finalized at least six (6) months prior to the submittal of the Initial NOI ?”

#### **IV. The Site Plan Preserves Less Greenspace than Required by the Ordinance**

The City of Atlanta Ordinance 21-O-0367 authorized the Mayor to enter into a lease with the Police Foundation to use “approximately 85 acres for improvements related to public safety training facilities and to preserve approximately 265 acres for greenspace within” Parcel 15-081-08-001, Parcel 15-081-08-002, and Parcel 15-082-01-001.

The legal description in the ordinance for Parcel 15-082-01-001 included 33.49 acres on the other side of Key Road (1300 Key Road) but the described property is within Parcel 15 081 01 037 and includes buildings and roads.

The description for Parcel 15-081-08-001 included approximately 5 acres on the western side of Parcel 15 082 01 002, which is owned by the State (1300 Constitution Road).

The description for Parcel 15-081-08-001 also included approximately two acres of privately owned residential lots at 1151, 1155, 1159, 1163, 1167, and 1173 Key Road (Parcels 15 081 09 001, 15 081 09 002, 15 081 09 003, 15 081 09 004, 15 081 09 005, and 15 081 09 006).

The City later combined Parcel 15-081-08-002 and portions of Parcel 15-081-08-001 and Parcel 15-082-01-001 into two parcels, with an “Overall Tract Area” of 296.024 acres. These parcels are identified on the site plan as Tract 1 (Parcel 15-081-08-001, 171.095 acres) and Tract 2 (Parcel 15-082-01-001, 124.929 acres). The “greenspace” within these two parcels after clearing the site would be 209.104 acres.

## **V. Conclusion**

The County's erosion control ordinance is intended to protect water quality within perennial streams (including Intrenchment Creek).<sup>20</sup> The County's zoning ordinance is intended to "promote the preservation of ... forested areas, riverbeds, [and] stream beds" and to "achieve compliance with all applicable state and federal regulations."<sup>21</sup>

The Planning Director erred by issuing a land development permit because the applicant cannot demonstrate "compliance with all applicable local, state and federal requirements"<sup>22</sup> and because the proposed construction would violate local and state law.<sup>23</sup>

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<sup>20</sup> Sec. 14-28(a).

<sup>21</sup> Sec. 27-1-1-3 (L), (M).

<sup>22</sup> Sec. 14-38(5)(d)(6).

<sup>23</sup> Sec. 27-7.7.6