



CITY OF DUNWOODY

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MEMORANDUM

To: Mayor and City Council

From: Howard Koontz, City Planner

Date: July 12, 2010

Subject: **First Read - Text Amendment to the Land Development and Environmental Protection Ordinance**

The City of Dunwoody Land Development and Environmental Protection Ordinance, Chapter 16 of the City Code, outlines permissible uses within the City 75-foot Stream Buffer. Those uses are limited to storm water channels, footpaths & trails, and utility or roadway crossings. Staff feels it is an appropriate time to investigate the Stream Buffer Variance process and how it relates to single- and two-family residential lots platted before the institution of the DeKalb Stream Buffer Ordinance.

The above exemptions certainly preclude a swing set, or a flower/vegetable garden, or passive recreation in the buffer. These and other customary residential activities can certainly be established and maintained in certain portions of the buffer in a responsible manner.

Neighboring jurisdictions utilize rational exemptions for certain land uses and structures in specific proximities to stream buffers. Additionally, there are considerations that should be made for existing encroachments into the stream buffer. Such encroachments could include rebuilding decks & porches, so long as they do not increase the degree of non-conformity. These non-invasive activities could be approved by staff via Special Administrative Permit in as little as ten working days instead of the nearly 90-day period now required by Dunwoody Code for a full Board variance.

Attached is a model ordinance from which Dunwoody could adopt a set of rational standards for a text amendment to Chapter 16, Article 2, §16-254(4).

AN ORDINANCE AMENDING CHAPTER 16, LAND DEVELOPMENT, ARTICLE 2 (ENVIRONMENTAL CONTROL), DIVISION 7 (WATER QUALITY CONTROL) PROVIDING FOR EXEMPTIONS TO CERTAIN RESTRICTIONS IN STREAM BUFFERS; AND FOR OTHER PURPOSES

WHEREAS, the current Stream Buffer regulations in the City of Dunwoody outline very limited uses within a protected 75 foot stream buffer that puts a strain on certain residential properties in single- and two-family residences; and

WHEREAS, these restrictions preclude customary residential activities which can otherwise be done and maintained inside the buffer in a responsible manner; and

WHEREAS, the City Council believes that rational exemptions for certain land uses and structures in specific proximities to stream buffers, as well as considerations for existing encroachments, would help promote residential use in the City while continuing to protect the City's stream buffers and, to that end, the Council desires to modify Chapter 16 of the City Code to provide for said exemptions.

THEREFORE, Mayor and City Council of the City of Dunwoody hereby ordain as follows:

Section 1: Chapter 16, Article 2 (Environmental Control), Division 7 (Water Quality Control) of the City Code is hereby amended by revising Section 16-254 to read as follows:

ADDITIONS = UNDERLINED
DELETIONS = ~~STRIKETHROUGHS~~

Sec. 16-254. Drainage System Guidelines.

Stormwater conveyance facilities, which may include but are not limited to culverts, stormwater drainage pipes, catchbasins, drop inlets, junction boxes, headwalls, gutter, swales, channels, ditches, and energy dissipaters shall be provided when necessary for the protection of public right-of-way and private properties adjoining project sites and/or public right-of-ways. Stormwater conveyance facilities that are designed to carry runoff from more than one parcel, existing or proposed, shall meet the following requirements:

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....

(5) This Section shall not apply to the following activities:

- a. Work consisting of the usual and customary repair or maintenance of any lawful use of land that is zoned and approved for such use on or before the effective date of this ordinance. Such usual and customary repair and maintenance activities cannot create any land disturbance, and shall occur within the pre-existing disturbed area.
- b. Replacement of wooden decks or porches attached to single family homes provided such replacements do not require land disturbance and do not further encroach on the stream buffer.
- c. Existing development and on-going land disturbance activities including but not limited to existing agriculture, silviculture, landscaping, gardening and lawn maintenance, except that new development or land disturbance activities on such properties will be subject to all applicable buffer requirements.
- d. Any lawful land development activity that is under construction, has a valid permit, or has submitted a valid and complete application for a permit as of the effective date of this ordinance provided that the permit is or can be issued within ninety (90) calendar days of the effective date of this ordinance and all time frames associated with said permit are observed.
- e. Any lawful land development activity that has not been submitted for approval, but that is part of a larger master development plan, such as a house in a subdivision or a building in an office park or other phased development that has a valid Preliminary Plat Permit per Subsection (d) herein, or approved Concept Plan, or has submitted a valid and complete application for approval of a Concept Plan and receives approval within ninety (90) calendar days as of the effective date of this ordinance provided that the future permit is or can be issued within two (2) calendar years of the effective date of this ordinance and all time frames associated with said permit are observed.

(6) Exemptions. The following specific activities are exempt from this ordinance, however any activity within a state waters' buffer must meet State requirements:

- a. Public sewer line installation in easements running parallel with the stream where necessary, except that all easements (permanent and construction) and land disturbance within a state waters' buffer must meet State requirements. This includes such impervious cover as is necessary for the operation and maintenance of the utility, including but not limited to manholes, vents and valve structures. This exemption shall not be construed as allowing the construction of roads, bike paths or other transportation routes in such easements, regardless of

paving material, except for access for the uses specifically cited in this subsection.

- b. Land development activities within a dedicated transportation right-of-way existing at the time this ordinance takes effect or approved under the terms of this ordinance.
- c. Within an easement of any utility existing at the time this ordinance takes effect or approved under the terms of this ordinance, land disturbance activities and such impervious over as is necessary for the operation and maintenance of the utility, including but not limited to manholes, vents and valve structures.
- d. Emergency work necessary to preserve life or property. However, when emergency work is performed under this subsection, the person performing it shall report such work to the Community Development Department on the next business day after commencement of the work. Within ten (10) business days thereafter, the person shall apply for a permit and perform such work within such time period as may be determined by the Community Development Department to be reasonably necessary to correct any impairment such emergency work may have caused to the water conveyance capacity, stability or water quality of the protection area.
- e. Forestry and silviculture activities on land that is zoned for forestry, silvicultural or agricultural uses and are not incidental to other land development activity. If such activity results in land disturbance in the buffer that would otherwise be prohibited, then no other land disturbing activity other than normal forest management practices will be allowed on the entire property for three (3) years after the end of the activities that intruded on the buffer.

Exemption of these activities does not constitute an exemption for any other activity proposed on a property.

(7) Uses allowable by Special Administrative Permit.

a. Activities for one or more of the following purpose(s):

- (i) a stream crossing by a driveway, transportation route including but not limited to bike paths and pedestrian trails, or utility line;
- (ii) public water supply intake or public wastewater outfall structures;
- (iii) land development necessary to provide access to a property;

- (iv) public access facilities that must be on the water including boat ramps, docks, foot trails leading directly to the river, fishing platforms and overlooks;
- (v) unpaved foot trails and paths;
- (vi) activities to restore and enhance stream bank stability, vegetation, water quality and/or aquatic habitat, so long as native vegetation and bioengineering techniques are used;
- (vii) storm water outfalls to the stream, by pipe or channel, necessary to protect the buffer from erosion caused by high flow velocities due to steep slopes;
- (viii) the removal of dead, diseased, insect-infested, or hazard trees (without any associated land disturbance), provided the property owner can provide documentation of the condition of said trees. Documentation includes, but is not limited to, photographs and a report by a Certified Arborist, and shall be submitted prior to removal;
- (ix) Minor land disturbance activities, totaling less than 200 square feet required for the installation and removal of stormwater management structures, related to projects occurring outside an adjacent stream buffer;
- (x) Buffer encroachments for access, totaling fewer than 200 square feet, required for projects occurring outside an adjacent stream buffer.

(8) Lots of Record.

All lots of record zoned as single-family residential before 12/1/2008 which have been submitted by way of preliminary plat and approved by the DeKalb County Department of Planning and Development in accordance with the provisions of the DeKalb County Zoning Ordinance that are made unbuildable by the buffer and setback provisions, may still be developed on a case-by-case basis. Requests for development of these lots shall be made to the Director of the Community Development Department as Administrative Variances. Approval shall be granted only if mitigation measures are proposed by the applicant.

Section 2: This Amendment shall become effective immediately upon its adoption by the City Council, and incorporated into the Code of the City of Dunwoody, Georgia. This Amendment hereby repeals any and all conflicting ordinances and amendments.

SO ORDAINED, this ___ day of _____, 2010.

STATE OF GEORGIA
CITY OF DUNWOODY

ORDINANCE 2010-07-XX

Approved:

Ken Wright, Mayor

ATTEST:

Approved as to Form and Content:

Sharon Lowery, City Clerk
(Seal)

Brian Anderson, City Attorney