

Sec. 14-44.1. - Land development requirements and allowable stream buffer encroachments.

(a)

Land development requirements. All land development activity shall meet the following requirements:

(1)

Stream buffers shall consist of the contiguous undisturbed natural vegetative land a minimum of seventy-five (75) feet from each stream bank measured horizontally on both banks of the stream from the top of the stream bank. Stream buffers shall preserve any existing mature riparian forest that can provide shade, leaf litter, woody debris and erosion protection to the stream. Land use in the stream buffer is limited to unpaved footpaths, and utility or roadway crossings, except as otherwise provided in this section.

(2)

The stormwater discharge crossing a stream buffer shall be designed to ensure that sheet flow is established through the stream buffer and prevent channelized flow through the stream buffer.

(3)

No septic tanks or septic tank drain fields shall be permitted within the stream buffer.

(4)

Piping of streams shall not be allowed in a stream buffer except where a variance is granted as provided in section 14-44.1 et seq. However, perpendicular utility crossings such as sewer pipes and water pipes shall be allowed, but shall be kept to an absolute minimum.

(5)

Within the stream buffer, a property owner may remove unwanted ground cover (e.g. poison ivy) using hand tools, and in conformance with subsection 14-38(b)(4)c.15.

(b)

Authorized stream buffer encroachments. Encroachments within the stream buffer shall be allowed only in the following manner in the following areas:

(1)

General requirements. No encroachments shall be allowed in the state buffer without a variance from the director of EPD. No stream buffer variances shall be granted by the director within the twenty-five (25) feet of the county buffer nearest the stream. No stream buffer variance shall be granted by the planning commission. Any sketch plat, preliminary plat or final plat, that contains a delineation, drawing or language construed to be a stream buffer

variance shall be void and of no effect. The only method by which a stream buffer variance may be obtained by an applicant is to comply with the requirements of section 14-44.1 et seq.

(2)

New construction/new development. No stream buffer variance shall be granted by the director within the county buffer if the applicant is constructing a structure on vacant land. However, vacant lots existing and validly platted in the real estate records of the Clerk of the Superior Court of DeKalb County prior to February 24, 2009, that would otherwise be unbuildable as a result of the stream buffer restrictions set forth in section 14-44.1 et seq. may obtain a stream buffer variance from the director to encroach into the county buffer so long as the applicant complies with all of the requirements for the variance as set forth in section 14-44.1 et seq.

(3)

Lot coverage. No stream buffer variance shall be granted by the director if the proposed encroachment created by the variance shall allow an applicant to exceed the allowable maximum lot coverage for the property at issue.

(4)

General variance requirements for redevelopment of any kind of existing structures. In all cases, where any kind of existing structure(s) encroaches into the stream buffer and any such existing structure(s) is to be demolished in whole or in part and replaced with a new structure or a new addition, no stream buffer variance shall be granted if the total size of the new encroachment exceeds twenty (20) percent of the total square footage of the existing encroachment of the structure prior to demolition. In such cases, the new encroachment shall be kept furthest from the stream.

(5)

Redevelopment of existing multifamily residential, commercial or institutional structures.

a.

No stream buffer variance shall be granted for the redevelopment of existing multifamily residential, commercial or institutional structures if the structure was constructed after December 28, 2000, the date of the initial enactment of the fifty-foot county stream buffer.

b.

Existing multifamily structures, existing commercial structures and existing institutional structures erected prior to the enactment of the fifty-foot stream buffer may obtain a stream buffer variance within the outer twenty-five (25) feet of the county buffer, but such variance shall be limited to a maximum depth of ten (10) feet into the outer

county twenty-five-foot stream buffer. The director shall verify that the subject multifamily residential, commercial or institutional structure possesses all required county permits before a variance may be issued. Existing multifamily residential, commercial or institutional structures which are proposed for redevelopment or enlargement may obtain a stream buffer variance provided that the encroachment remains the same and does not alter the existing building footprint resting in the stream buffer.

c.

No stream buffer variance shall be granted by the director for additions or redevelopment of existing multifamily residential, commercial or institutional structures within the existing or year 2025 built-out condition flood plain.

(6)

Redevelopment or addition to existing single-family residential structures.

a.

No stream buffer variance shall be granted for the redevelopment or addition to an existing single-family residential structure if the structure was constructed after December 28, 2000, the date of the initial enactment of the fifty (50) foot county stream buffer.

b.

In the case of redevelopment or addition to existing single-family residential structures erected prior to enactment of the fifty-foot stream buffer, no stream buffer variance shall be granted by the director in the state stream buffer or within the inner twenty-five (25) feet of the county stream buffer. Existing single-family residential structures erected prior to enactment of the fifty-foot stream buffer may obtain a stream buffer variance for no more than ten (10) feet into the outer county twenty-five-foot stream buffer. The director shall verify that the subject single-family residential structure possesses all required county permits before a variance may be issued. Existing single-family residential structures which are proposed for redevelopment or enlargement may obtain a stream buffer variance provided that the encroachment remains the same and does not alter the existing building footprint resting in the stream buffer.

c.

No stream buffer variance shall be granted by the director for additions or redevelopment of existing single-family residential structures within the existing or year 2025 built-out condition flood plain.

d.

The only exception to the requirements set forth in this subsection is as follows: the director may consider granting a stream buffer variance that allows an elevated deck to encroach up to twenty-five (25) feet into the outer twenty-five (25) feet of the county buffer so long as the applicant complies with all other requirements set forth in section 14-44.1 et seq.

(7)

[Compliance.] No stream buffer variance shall be granted by the director if the applicant has not complied with all of the applicable requirements set forth in section 14-44.1 et seq.

(Ord. No. 09-05, Pt. 1, 2-24-09)

Sec. 14-44.2. - Exemptions.

The following specific activities and properties are exempt from having to comply with the provisions of section 14-44.1 and are not required to obtain a stream buffer variance:

(1)

A stream crossing by utility line is not required to obtain a county stream buffer variance.

(2)

Public water supply and public wastewater structures constructed by DeKalb County or by a contractor on behalf of DeKalb County.

(3)

Any encroachment undertaken by the state, or a contractor on behalf of the state.

(4)

Any county floodplain management home buyout project funded by GEMA or FEMA.

(5)

Any perpendicular road crossing that is undertaken by the county or a subcontractor on behalf of the county.

(6)

Emergency work necessary to preserve life or property. However, when emergency work is performed under this section, the person performing it shall report such work to the director on the next business day after commencement of the work. Within ten (10) days thereafter, the person shall apply for a permit and perform such work within such time period as may be determined by the director 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.

(7)

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 activity in the buffer that would otherwise be prohibited, then no other land disturbing activity other than normal forest management practices shall be allowed on the entire property for five (5) years after the end of the activities that intruded on the buffer.

(8)

Public access facilities that must be on the water, including boat ramps.

(Ord. No. 09-05, Pt. 1, 2-24-09)

Sec. 14-44.3. - Administrative variance application requirements. 

Applications for variances shall be made in writing to the director and shall contain materials and documents required by the director that are necessary to demonstrate that said request meets the criteria for granting variances. The director may waive certain application requirements for variance requests associated with construction on an existing, single-family, owner occupied residential structure. At a minimum, and in order to be considered complete, a variance request shall include all of the following information in writing:

(1)

A site map with graphic scale and north arrow that includes locations of all streams, wetlands, floodplain boundaries and other natural features, as determined by field survey.

(2)

A description of the shape, size, topography, slope, soils, vegetation and other physical characteristics of the property.

(3)

A detailed site plan that shows both the locations of all existing and proposed structures and other impervious surfaces (both inside and outside the buffer), and the limits of all existing and proposed land disturbance activity (both inside and outside the buffer). The exact area of the buffer to be affected shall be accurately and clearly indicated. Site plan must clearly show justification for variance request.

(4)

Documentation of unusual hardship should the buffer be maintained.

(5)

- At least one alternative plan, which does not include a buffer intrusion, or an explanation of why such an alternative site plan is not possible.
- (6)
- The maximum lot coverage allowed for the property according to its zoning category and a calculation of the existing and proposed lot coverage.
- (7)
- A calculation of the total area, length and width of the proposed intrusion.
- (8)
- A stormwater management site plan, if applicable.
- (9)
- Delineation of all state waters located on or within two hundred (200) feet of the project site.
- (10)
- Delineation of the twenty-five-foot undisturbed state buffer and the fifty-foot stream buffer along designated streams and measured horizontally on both banks of the stream as measured from the top of the stream bank.
- (11)
- Identification of the project receiving waters and description of adjacent areas such as streams, lakes, drainage ditches, residential areas, which might be affected.
- (12)
- Variance from Georgia Environmental Protection Division required [requirements] for encroachment in the twenty-five-foot state buffer.
- (13)
- Show double-row type C silt fence between land-disturbing activity and state waters, wetlands, and/or intermediate regional flood (IRF).
- (14)
- File notice of intent and notice of termination with Georgia Environmental Protection Division and DeKalb County, if land-disturbance activity is one (1) acre or more or within two hundred (200) feet of state waters. Submission must be at least fourteen (14) days prior to start of any land disturbance activity.
- (15)
- Illustration of soil series and their delineation.
- (16)
- Show limits of disturbance on erosion and sediment control plans (E&SC plans).
- (17)

- Name, address and phone number of applicant/owner or provide power of attorney, if applicant is not the owner.
- (18)
- Provide name and phone number of twenty-four-hour local erosion and sediment control contact.
- (19)
- Show certification number, signature and seal of qualified plan designer.
- (20)
- Provide vegetative plan for all temporary and permanent vegetative practices, including species, planting dates and seeding.
- (21)
- Proposed mitigation plan. All proposed mitigation plans shall be designed and stamped by Georgia-licensed design professionals. Proposed mitigation plans shall be nonstructural and designed to improve the quality of the stream and the associated buffer. Mitigation plans shall include planting schedule, channel protection design and enhancement/improvement as approved the director. Mitigation plans that relate to multiuse trials shall negate the impact of the trail and improve the quality of life of the affected stream.

(Ord. No. 09-05, Pt. 1, 2-24-09)

Sec. 14-44.4. - Administrative variance criteria, standard of review and process.

- (a)
- Except as further limited herein, the director has the authority to grant stream buffer variances.
- (b)
- An applicant may request a variance from the terms of the requirements of section 14-44.1 et seq.
- (c)
- The director shall have no power to consider or to grant variances which are the responsibility of the director of the EPD pursuant to O.C.G.A. § 12-2-8 and other relevant state statutes and regulations.
- (d)
- The director is only authorized to consider applications for variances within the twenty-five (25) feet of the county stream buffer farthest from the stream, but not within the twenty-five (25) feet of the state buffer adjacent to waters of the state or within the twenty-five feet (25) feet of the county stream buffer nearest the stream.
- (e)

Where variances involving the same project are requested from both the director of the EPD and the director, the director may take no action on any such request for variance until the director of the EPD grants the variance or otherwise approves the request pending before the EPD.

(f)

Receiving a variance from the director of the EPD does not obligate the director to permit the project to proceed if the project does not also meet all the other requirements of this article.

(g)

The director has the discretion to deny any variance application based on:

(1)

The condition of the stream on the property;

(2)

Upstream and downstream condition of the stream; and

(3)

The streams that are listed in 303(d) registry of the state.

(h)

No variance from the provisions of section 14-44.1 et seq. may be authorized except as specifically authorized herein or specifically authorized in another section of chapter 14. No stream buffer variance shall be approved within the existing or year 2025 built-out condition flood plain.

(i)

In considering a request for a variance to the terms of this article, the director shall consider all of the following criteria:

(1)

Whether the request, while not strictly meeting the requirements of chapter 14, will, in the judgment of the director, be at least as protective of natural resources and the environment as would a plan which met the strict application of these requirements. In making such a judgment, the director shall examine whether the request will be at least as protective of the natural resources and the environment and shall consider the following factors:

a.

Stream bank or soil stabilization.

b.

Trapping of sediment in surface runoff.

c.

Removal of nutrients, heavy metals, pesticides and other pollutants from surface runoff.

d.

Terrestrial habitat, food chain, and migration corridor.

e.

Buffering of flood flows.

f.

Infiltration of surface runoff.

g.

Noise and visual buffers.

h.

Downstream water quality.

i.

Impact on threatened and endangered species, as those species are designated by law or federal or state regulation. The shape, size, topography, slope, soils, vegetation and other physical characteristics of the property.

j.

The locations of all streams on the property, including along property boundaries.

k.

The location and extent of the proposed buffer or setback intrusion.

l.

Whether alternative designs are possible which require less intrusion or no intrusion.

m.

The long-term and construction water-quality impacts of the proposed variance.

(2)

Whether by reason of exceptional topographic or other relevant physical conditions of the subject property that was not created by the owner or applicant, there is no opportunity for any development under any design configuration unless a variance is granted.

(3)

Whether the request goes beyond the minimum necessary to afford relief and constitutes a grant of special privileges inconsistent with the limitations upon other properties that are similarly situated.

(4)

Whether the grant of the variance will be materially detrimental to the public welfare or injurious to the property or improvements in the area in which the property is located.

(5)

Whether the applicant has provided a mitigation plan designed and stamped by Georgia-licensed design professionals and whether that proposed mitigation plan is:

- a. Nonstructural;
- b. Designed to improve the quality of the stream and the associated buffer; and
- c. Includes a planting schedule and channel protection design.

(6)

Whether the literal interpretation and strict application of the applicable provisions or requirements of chapter 14 would cause an extreme hardship, so long as the hardship is not created by the owner. The applicant is responsible for providing proof of hardship. The proof shall demonstrate the difficult site conditions and possible alternate designs. The director shall not grant any stream buffer variances if the actions of the property owner of a given property have created the conditions of hardship on the property.

(j)

The director shall decide whether to grant or deny the variance and his decision shall be in writing, shall state the basis for the decision, and shall be made no more than forty-five (45) days following receipt of a complete application. In the decision, the director shall specifically reference and describe the factors listed in subsection (i) above that were considered and utilized in making the variance decision.

(k)

Any county projects, other than those exempted in section 14-44.2, are required to obtain a stream buffer variance. For such projects, encroachments shall be limited to the minimum necessary to achieve the project goal and shall be limited to specific locations within the county fifty-foot buffer. Appeal of a variance approval or denial for a county project shall be made to the board of commissioners.

(Ord. No. 09-05, Pt. 1, 2-24-09)

Sec. 14-44.5. - Notice requirements and appeals of stream buffer administrative variance decisions.

(a)

Commissioner notification. District and super district commissioners of the districts within which the property is located shall be notified in writing or by email by the director within three (3) working days of receipt of a complete variance application.

(b)

Posting. Property where an administrative stream buffer variance is requested shall be posted with a sign within forty-eight (48) hours of submittal of a complete stream buffer variance application request to the director. The sign shall be posted by the applicant. The posted sign shall be a minimum of twenty-two (22) inches by twenty-four (24) inches in size and shall contain the following information: address, nature of variance request, date of submittal of application; and planning and development department contact information. Applicants shall notify the director of the completed posting and shall provide the director with a dated photograph of the posted notice as evidence of the posting within forty-eight (48) hours of posting.

(c)

Written notification of initial decision. The director shall send written notification of the stream buffer variance application and the director's written decision to the applicant and to abutting property owners. Abutting property owners are those persons listed in the tax records of DeKalb County as the owners of such abutting property on the date such notifications are required to be sent by the director.

(d)

Appeals. Appeals shall be made to the zoning board of appeals and shall be administered in accordance with the notice requirements, criteria and procedural requirements set forth in section 27-901 et seq.

(Ord. No. 09-05, Pt. 1, 2-24-09)

Sec. 14-44.6. - Validity of previously issued stream buffer variances.

Any stream buffer variance issued by the county prior to February 24, 2009, is and shall remain valid. Stream buffer variances granted by the county prior to the effective date of this ordinance shall not be repealed or deemed invalid by the adoption or approval of Ordinance No. 09-05.

(Ord. No. 09-05, Pt. 1, 2-24-09)