

MEMORANDUM

To: Mayor and City Council
From: Steve Foote, AICP
Date: April 11, 2016
Subject: 2nd Read - Procedures for Replacement of Decks and Porches

ITEM DESCRIPTION

A significant portion of the housing in Dunwoody is 30 or more years in age. The Community Development Department has seen a significant increase in the number of requests from single family residents seeking to make needed repairs to their decks or to replace them completely. The proposed action will recognize the replacement of decks that extend into a city stream buffer as an acceptable activity that meets the needs of residents.

BACKGROUND

The replacement of existing decks/porches typically needs to comply with the city's zoning, building, and stream buffer regulations.

Zoning: Staff considers the replacement of an existing deck as maintenance to the existing structure and allows the replacement so long as no additional nonconformities are created.

Building: Codes have changed since most decks/porches were originally built and the replacement has to comply with current codes. Among other items the updated codes require larger and deeper footings. Complying with these new codes requires a minimal amount of land disturbance to occur.

Stream Buffers: While our stream buffer ordinance permits the maintenance of lawful uses of land, it does not specify an amount of acceptable land disturbing activity that may take place. Therefore, residents have been required to submit an application for a Special Administrative Permit or Variance in order to perform work that is considered routine, causes minimal land disturbance and poses no threat to the adjacent stream. These applications also add a minimum of 30 to 60 days to the review process and additional costs.

The proposed changes will allow existing decks that encroach into a City stream buffer to be replaced in their entirety so long as they do not increase the degree of nonconformity and land disturbance does not exceed 100 sq. ft. Changes would also allow for reasonable sized decks to be added to existing structures that presently do not have a deck.

RECOMMENDED ACTION

The proposed changes will create a streamlined process for residents to safely maintain the use and enjoyment of their property and repair/replace old deck structures, staff recommends approval of the attached ordinance changes to Chapter 16, Division 4 Stream Buffers.

AN ORDINANCE TO REVISE PROVISIONS OF THE STREAM BUFFER REGULATIONS REGARDING CERTAIN EXEMPTIONS FOR REPLACEMENT OF DECKS AND PORCHES

WHEREAS, the Dunwoody is charged with providing for the health, safety and welfare of the citizens of the City; and

WHEREAS, the City currently has a Stream Buffer Ordinance that delineates the required compliance with 75 foot stream buffers in the City and provides for exemptions in certain situations; and

WHEREAS, a significant portion of the houses in Dunwoody is 30 or more years old and as the houses get older, more repairs are needed to the infrastructure, including deck repair or replacement, which action must currently comply with the City's Stream Buffer Ordinance; and

WHEREAS, as a result, residents have to submit an application for a Special Administrative Permit or Variance in order to perform routine maintenance on their decks and porches, work that causes minimal land disturbance and poses no threat to the adjacent stream, which increases the cost of such repairs; and

WHEREAS, in order to provide for a streamlined process for these ordinary and routine repairs and maintenance, the Mayor and City Council find it necessary to exempt certain existing decks from the Stream Buffer requirements.

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

Section 1: Chapter 16 (Land Development Regulations), Article II (Environmental and Natural Resources), Division 4 (Stream Buffers) is hereby revised by amending Section 16-79 (Exemptions and Special Administrative Permits) to read as follows:

Sec. 16-79. Exemptions and Special Administrative Permits

- (a) *Exemptions.* The stream buffer regulations of this division do not apply to any of the following activities, provided that any activity within a state-mandated stream buffer must meet state requirements. Exemption of these activities does not constitute an exemption from any other activity proposed on a property or a requirement to obtain a building/land development permit.
- (1) 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 section. Such usual and customary repair and maintenance activities cannot create any land-disturbance, and must occur within the preexisting disturbed area;

- (2) Maintenance, including the full replacement, of existing decks, porches or similar improvements attached to a dwelling that encroach into a City stream buffer so long as the work does not increase the degree of encroachment or any nonconformity. The complete replacement of these improvements is provided for, including the replacement of stairs and all supporting beams, posts and footings subject to compliance with applicable city codes. The necessary construction of new or improved footings as required to comply with current building codes is allowable up to a maximum of 100 sq. ft. of land disturbance.
- ~~(2)~~(3) Construction of new decks, porches or other similar additions no more than 200 sq. ft. in area, to existing structures without a deck, porch or similar structure, provided that such construction does not require more than 100 sq. ft. of land-disturbance and does not further encroach ~~on~~ more than ten (10) feet into the City stream buffer;
- ~~(3)~~(4) Existing development and on-going land-disturbance activities including existing agriculture, silviculture, landscaping, gardening and lawn maintenance, except that new development or land-disturbance activities on such properties is subject to all applicable buffer requirements;
- ~~(4)~~(5) 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 may 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 expressly identified in this paragraph;
- ~~(5)~~(6) Removal of unwanted ground cover (e.g., poison ivy) using hand tools as long as protective vegetative cover remains to protect water quality and aquatic habitat and a natural canopy is left in sufficient quantity to keep shade on the stream bed;

- ~~(6)~~(7) Land development activities within a dedicated transportation right-of-way existing at the time this section takes effect or approved under the terms of this section;
- ~~(7)~~(8) Within an easement of any utility existing at the time this section takes effect or approved under the terms of this section, land-disturbance activities and such impervious cover as is necessary for the operation and maintenance of the utility, including but not limited to manholes, vents and valve structures;
- ~~(8)~~(9) Emergency work necessary to preserve life or property. However, when emergency work is performed, the person performing it must report such work to the community development department on the next business day after commencement of the work. Within ten business days thereafter, the person must 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;
- ~~(9)~~(10) 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 years after the end of the activities that intruded on the buffer;
- ~~(10)~~(11) Activities to restore or enhance stream bank stability, riparian vegetation, water quality or aquatic habitat, so long as native vegetation and bioengineering techniques are used;
- ~~(11)~~(12) The removal of dead, diseased, insect-infested, or hazardous trees (without any associated land-disturbance), provided the property owner provides sufficient documentation of the condition of the trees before removal, including photographs and a report by a certified arborist; and
- ~~(12)~~(13) Multi-use trails and related improvements that are part of a city council-approved plan. Unless otherwise approved by the state, such encroachments must be located at least 25 feet from the banks of state waters when, after study of alternative trail alignments, the community development director determines that the alignment is the most desirable alternative

and that they are designed to minimize impervious surfaces and incorporate BMPs and other mitigation practices that minimize the impact of encroachments on water quality. Trail improvements that are part of a city council-approved plan are not counted as part of a site's impervious surface area for purposes of site development-related calculations and regulations.

(b) *Special administrative permits.* The following activities may be approved within the stream buffers required by section 16-78 by special administrative permit, pursuant to the process outlined in, chapter 27, article V, division 7:

- (1) Stream crossings by utility lines, roads, driveways or similar transportation routes, including trails for nonmotorized transportation;
- (2) Public water supply intake or public wastewater outfall structures;
- (3) Land development necessary to provide access to a property;
- (4) Public access facilities that must be on the water including boat ramps, docks, foot trails leading directly to the stream, fishing platforms and overlooks;
- (5) Stormwater outfalls to the stream, by pipe or channel, necessary to protect the buffer from erosion caused by high-flow velocities due to steep slopes;
- (6) **Exclusive of the exemptions in (a)(2) and (a)(3) above, M**minor land-disturbing activities totaling no more than 200 square feet in area and located more than 25 feet from the stream, for the construction of decks, porches, or other additions to existing structures, and accessory structures where riparian vegetation is restored or replaced in any disturbed areas; and
- (7) Construction and land disturbance that results in the reduction or removal of impervious surfaces.

Section 2. This Ordinance shall become effective upon adoption by Mayor and City Council.

SO ORDAINED AND EFFECTIVE, this ____ day of _____, 2016.

Approved:

STATE OF GEORGIA
CITY OF DUNWOODY

ORDINANCE 2016-XX-XX

Denis L. Shortal, Mayor

ATTEST:

Approved as to Form and Content:

Sharon Lowery, City Clerk
(Seal)

City Attorney

Mark-up of Changes to Existing Exemption Provisions

Division 4 Stream Buffers; Sec. 16-79. Exemptions and special administrative permits.

- (a) *Exemptions.* The stream buffer regulations of this division do not apply to any of the following activities, provided that any activity within a state-mandated stream buffer must meet state requirements. Exemption of these activities does not constitute an exemption from any other activity proposed on a property or a requirement to obtain a building/land development permit.
- (1) 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 section. Such usual and customary repair and maintenance activities cannot create any land-disturbance, and must occur within the preexisting disturbed area;
 - (2) Maintenance, including the full replacement, of existing decks, porches or similar improvements attached to a dwelling and that encroach into a City stream buffer so long as the work does not increase the degree of encroachment or any nonconformity. The complete replacement of these improvements is provided for, including the replacement of stairs and all supporting beams, posts and footings subject to compliance with applicable city codes. The necessary construction of new or improved footings as required to comply with current building codes is allowable up to a maximum of 100 sq. ft. of land disturbance.
 - (3) Construction of new decks, porches or other similar additions no more than 200 sq. ft. in area, to existing structures without a deck, porch or similar structure, provided that such construction does not require more than 100 sq. ft. of land-disturbance and does not further encroach more than ten (10) feet into the City stream buffer;
 - (4) Existing development and on-going land-disturbance activities including existing agriculture, silviculture, landscaping, gardening and lawn maintenance, except that new development or land-disturbance activities on such properties is subject to all applicable buffer requirements;
 - (5) 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 may 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 expressly identified in this paragraph;
 - (6) Removal of unwanted ground cover (e.g., poison ivy) using hand tools as long as protective vegetative cover remains to protect water quality and aquatic habitat and a natural canopy is left in sufficient quantity to keep shade on the stream bed;
 - (7) Land development activities within a dedicated transportation right-of-way existing at the time this section takes effect or approved under the terms of this section;
 - (8) Within an easement of any utility existing at the time this section takes effect or approved under the terms of this section, land-disturbance activities and such impervious cover as is necessary for the operation and maintenance of the utility, including but not limited to manholes, vents and valve structures;
 - (9) Emergency work necessary to preserve life or property. However, when emergency work is performed, the person performing it must report such work to the community development department on the next business day after commencement of the work. Within ten business days thereafter, the person must 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;

Mark-up of Changes to Existing Exemption Provisions

- (10) 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 years after the end of the activities that intruded on the buffer;
 - (11) Activities to restore or enhance stream bank stability, riparian vegetation, water quality or aquatic habitat, so long as native vegetation and bioengineering techniques are used;
 - (12) The removal of dead, diseased, insect-infested, or hazardous trees (without any associated land-disturbance), provided the property owner provides sufficient documentation of the condition of the trees before removal, including photographs and a report by a certified arborist; and
 - (13) Multi-use trails and related improvements that are part of a city council-approved plan. Unless otherwise approved by the state, such encroachments must be located at least 25 feet from the banks of state waters when, after study of alternative trail alignments, the community development director determines that the alignment is the most desirable alternative and that they are designed to minimize impervious surfaces and incorporate BMPs and other mitigation practices that minimize the impact of encroachments on water quality. Trail improvements that are part of a city council-approved plan are not counted as part of a site's impervious surface area for purposes of site development-related calculations and regulations.
- (b) *Special administrative permits.* The following activities may be approved within the stream buffers required by [section 16-78](#) by special administrative permit, pursuant to the process outlined in [chapter 27](#), article V, division 7:
- (1) Stream crossings by utility lines, roads, driveways or similar transportation routes, including trails for nonmotorized transportation;
 - (2) Public water supply intake or public wastewater outfall structures;
 - (3) Land development necessary to provide access to a property;
 - (4) Public access facilities that must be on the water including boat ramps, docks, foot trails leading directly to the stream, fishing platforms and overlooks;
 - (5) Stormwater outfalls to the stream, by pipe or channel, necessary to protect the buffer from erosion caused by high-flow velocities due to steep slopes;
 - (6) [Exclusive of the exemptions in \(a\)\(2\) and \(a\)\(3\) above, m](#)Minor land-disturbing activities totaling no more than 200 square feet in area and located more than 25 feet from the stream, for the construction of decks, porches, or other additions to existing structures, and accessory structures where riparian vegetation is restored or replaced in any disturbed areas; and
 - (7) Construction and land disturbance that results in the reduction or removal of impervious surfaces.
- (Ord. No. 2013-10-14, 1(Exh. A § 16-6.40), 10-14-2013; Ord. No. 2015-01-04, § 1, 1-26-2015)