

MEMORANDUM

To: Mayor and City Council
From: Richard McLeod, Community Development Director
Date: February 11, 2019
Subject: Amendment to City of Dunwoody Ordinances
Chapter 16—Stream Buffer Exemptions

ITEM DESCRIPTION

Request to consider text amendment to the land development code (Chapter 16). The proposal would clarify that all improvements related to city council-approved plans that required encroachment in the first 50-feet of the City's 75-foot stream buffer **would be referred to City Council for approval**, rather than the Zoning Board of Appeals.

DISCUSSION

As code currently reads, "multi-use trails and related improvements that are part of a city council approved plan" are permitted to encroach the first 50-feet of the City's 75-foot stream buffer without a variance. Any other encroachment, even if part of a city council approved plan, would require a variance to be approved by the Zoning Board of Appeals. This appeal requirement could potentially create a delicate legal scenario; should the ZBA choose to reject a variance being requested by the City, the City and its Zoning Board would be adversarial litigants upon appeal to DeKalb Superior Court.

This amendment would move jurisdiction for approval of stream buffer variances in relation to city council approved plans from the Zoning Board of Appeals to the City Council. This change would preserve the opportunity for public input while keeping authority to approve or deny stream buffer encroachments with the same body that has the authority to approve of city development plans and related changes.

NOTE 1: All procedures associated with variances as typically heard before the Zoning Board of Appeals would be preserved with this amendment. A public hearing would be required. 30-days prior to the hearing, a sign would be posted on the property, a notice would run in the paper, and letters would be mailed to all property owners within a 500-foot radius.

NOTE 2: This amendment does not apply to the State's 25-foot stream buffer. Any work within the State's 25-foot stream buffer would require acquisition of a variance from Georgia's Environmental Protection Division. This amendment applies only to the area 25-75 feet from applicable bodies of water.

RECOMMENDATION

Staff recommends Mayor and City Council approve the attached draft changes to Chapter 16, as prepared.

Attachments:

Chapter 16 Ordinance

STATE OF GEORGIA

CITY OF DUNWOODY

ORDINANCE NO. 2019-

AN ORDINANCE TO AMEND CHAPTER 16 (LAND DEVELOPMENT REGULATIONS); TO AMEND THE FROM STREAM BUFFER VARIANCE PROCESS FOR CITY COUNCIL APPROVED MUNICIPAL PROJECTS; TO PROVIDE FOR AN EFFECTIVE DATE; AND FOR OTHER PURPOSES

WHEREAS, the Mayor and City Council of the City of Dunwoody are empowered to regulate Land development Regulations within the City of Dunwoody; and

WHEREAS, the Mayor and Council wish to amend the stream buffer variance process for City Council approved municipal projects.

THEREFORE, THE MAYOR AND COUNCIL OF THE CITY OF DUNWOODY, GEORGIA HEREBY ORDAIN:

SECTION I: Subsection 16-32 of Chapter 16 is hereby amended to read as follows:

Sec. 16-32. - Variances.

- (a) *Authorized variances.* Except as further limited herein, an applicant may request a variance from the grading regulations of article II, division 2, the soil erosion, sedimentation and pollution control regulations of article II, division 3, the stream buffer regulations of article II, division 4, and the stormwater management regulations of article II, division 5. See section 16-141 for information about variances to flood damage prevention regulations.
- (b) *Authority to hear and consider.* The zoning board of appeals is authorized to hear variance requests. The zoning board of appeals may not consider or grant variances that are the responsibility of the director of the environmental protection division pursuant to O.C.G.A. § 12-2-8 and other relevant state statutes and regulations.
 - (1) *Improvements related to City approved plans.* City council is authorized to consider applications for variances to the stream buffer requirements of section 16-78 but not within the 25-foot state buffer zone adjacent to waters of the state as set forth in section 16-59 for City improvements that are part of a city council-approved plan. All public notice requirements as outlined in Chapter 27 and all appeal processes as outlined in Chapter 16, Sec. 16-34 apply.
- (c) *Stream buffer variances.* The zoning board of appeals is authorized to consider applications for variances to the stream buffer requirements of section 16-78 but not within the 25-foot state buffer zone adjacent to waters of the state as set forth in section 16-59. Where variances involving the same project are requested from both the state director of the environmental protection division and the community development director, the community development director may not take action on any such request for variance until

the state acts on the subject application. Receiving a variance from the director of the environmental protection division does not obligate the zoning board of appeals to permit the project to proceed if the project does not also meet all the other requirements of this chapter. No variance from the provisions of this chapter may be authorized except as expressly authorized in this section or another section of this chapter.

- (d) *Applications.* Applications for variances authorized in subsection (a) must be made in writing to the community development director and must contain all of materials and documents necessary to demonstrate that the request meets the criteria for granting variances. The community development director must review the variance request and make a recommendation of approval or denial to the zoning board of appeals.
- (e) *Decision-making criteria.* In considering a request for a variance authorized in subsection (a), the zoning board of appeals must make all of the following findings:
- (1) The request, while not strictly meeting the requirements of this chapter, will be, in the judgment of the zoning board of appeals, 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 zoning board of appeals must examine whether the request will be at least as protective of the natural resources and the environment with regard to 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; and
 - i. Impact on threatened and endangered species, as those species are designated by law or federal or state regulation.
 - (2) By reason of exceptional topographic or other relevant physical conditions of the subject property that were not created by the owner or applicant, there is no opportunity for any development under any design configuration unless a variance is granted.
 - (3) The request does not go beyond the minimum necessary to afford relief and does not constitute a grant of special privileges inconsistent with the limitations upon other properties that are similarly situated.
 - (4) The grant of the variance will not be materially detrimental to the public welfare or injurious to the property or improvements in the area in which the property is located.
 - (5) The literal interpretation and strict application of the applicable provisions or requirements of this chapter would cause an extreme hardship, provided the hardship was not created by the owner.

(Ord. No. 2013-10-14, 1(Exh. A § 16-3.70), 10-14-2013; Ord. No. 2015-01-04, § 1, 1-26-2015)

SECTION II:

a. It is hereby declared to be the intention of the Mayor and Council that all sections, paragraphs, sentences, clauses and phrases of this Ordinance are or were, upon their enactment, believed by the Mayor and Council to be fully valid, enforceable and constitutional.

b. It is hereby declared to be the intention of the Mayor and Council that, to the greatest extent allowed by law, each and every section, paragraph, sentence, clause or phrase of this Ordinance is severable from every other section, paragraph, sentence, clause or phrase of this Ordinance. It is hereby further declared to be the intention of the Mayor and Council that, to the greatest extent allowed by law, no section, paragraph, sentence, clause or phrase of this Ordinance is mutually dependent upon any other section, paragraph, sentence, clause or phrase of this Ordinance.

c. In the event that any section, paragraph, sentence, clause or phrase of this Ordinance shall, for any reason whatsoever, be declared invalid, unconstitutional or otherwise unenforceable by the valid judgement or decree of any court or competent jurisdiction, it is the express intent of the Mayor and Council that such invalidity, unconstitutionally or unenforceability shall, to the greatest extent allowed by law, not render invalid, unconstitutional or otherwise unenforceable any of the remaining sections, paragraphs, sentences, clauses or phrases of this Ordinance and that, to the greatest extent allowed by law, all remaining sections, paragraphs, sentences, clauses or phrases of this Ordinance shall remain valid, constitutional, enforceable, and of full force and effect.

SECTION III: All ordinances or parts of ordinances in conflict with this Ordinance are hereby repealed to the extent of such conflict.

SECTION IV: This Ordinance shall be codified in accordance with State law and the Code of the City of Dunwoody, Georgia. This Ordinance shall become effective upon adoption.

SO ORDAINED, this _____ day of _____, 2019.

Approved by:

Approved as to form:

Denis L. Shortal, Mayor

City Attorney

Attest:

Sharon Lowery, City Clerk

SEAL