

**AN ORDINANCE**

**AN ORDINANCE TO AMEND  
THE CODE OF DEKALB COUNTY, GEORGIA,  
CHAPTER 14, STREAM BUFFER VARIANCES  
AND FOR OTHER PURPOSES.**

**WHEREAS**, the governing authority of DeKalb County is tasked with the protection of the county's public health, safety, and general welfare; and

**WHEREAS**, the governing authority finds that stream buffers provide numerous benefits including protecting, restoring and maintaining the chemical, physical and biological integrity of streams; and removing pollutants delivered in urban stormwater; reducing erosion and controlling sedimentation; protecting and stabilizing stream banks; providing for infiltration of stormwater runoff; maintaining base flow of streams; contributing organic matter that is a source of food and energy for the aquatic ecosystem; providing tree canopy to shade streams and promote desirable aquatic habitat; providing riparian wildlife habitat; furnishing scenic value and recreational opportunities; and providing opportunities for the protection and restoration of greenspace; and

**WHEREAS**, the governing authority finds that these amendments are needed to protect the public health, safety, environment and general welfare; to minimize loss due to erosion, siltation and water pollution; and to maintain stream water quality; and

**WHEREAS**, these amendments protect water resources by minimizing land development within stream buffers and by requiring authorization for any such activities.

**NOW THEREFORE**, be it ordained by the Governing Authority of DeKalb County, Georgia, and it is hereby ordained by the authority of same, that Chapter 14 of the Code of DeKalb County, be and the same is hereby amended as follows:

**PART I. ENACTMENT**

*Section 14-1 is amended to add the following definitions in alphabetical order and to replace the current definition of “director” with the definition set forth as follows:*

**Section 14-1. Definitions.**

*“Buffer, stream” means the state buffer and the county buffer which are measured horizontally from the edge of the stream bank.*

*Buffer, county means an area of land fifty (50) feet in depth immediately adjacent to the state buffer.*

*“Buffer, state” means the area of land twenty-five (25) feet in depth immediately adjacent to the banks of state waters in its natural state of vegetation, which facilitates the protection of water quality and aquatic habitat.*

*Director means the director of the planning and development department, or his designee.*

*Floodplain in section 14-44.1 et seq. means any land area susceptible to flooding, which would have at least a one percent (1%) probability of a flooding occurrence in any calendar year based on the basin being fully developed as shown on the current land use plan; i.e., the regulatory flood.*

*“Footpath” in section 14-44.1 et seq. means any unpaved, narrow and pervious trail in a stream buffer allowing for pedestrian travel.*

*Parcel in section 14-44.1 et seq. means any plot, lot or acreage shown as a unit on the latest county tax assessment records.*

*Riparian means belonging or related to the bank of a river, stream, lake, pond or impoundment.*

*“Stream” in section 14-44.1 et seq. means state waters, and natural, running water flowing continuously or intermittently in a channel on or below the surface of the ground, and includes, but is not limited to, all natural or manmade streams depicted on the most recent DeKalb County Geographic Information System (GIS) map maintained by the DeKalb County GIS director. Stream also means the location of a spring, seep or groundwater outflow that sustains streamflow. No stream shall be excluded from this definition due to its failure to be identified on the GIS map. Field verification shall be performed to make a final determination as to the existence of a stream where a dispute exists. Such field verification may be performed by the director.*

*Stream channel in section 14-44.1 et seq. means the portion of a watercourse that contains the base flow of the stream.*

*Watershed means the land area that drains into a particular stream.*

\* \* \*

*Section 14-34(c)(1) shall be deleted in its entirety to remove stream buffer variances from the chapter 14 standard variance section and a new section 14-34(c)(1) shall be inserted in lieu thereof to read as follows:*

(c) *Variances.*

- (1) Except as further limited herein, an applicant may request a variance from the terms of the requirements of sections 14-37, 14-38, 14-40, and 14-42 of Chapter 14. 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. Where variances involving the same project are requested from both the director of the EPD and the director, the director shall 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. 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. No variance from the provisions of Chapter 14 shall be authorized except as specifically authorized in this section or specifically authorized in another section of Chapter 14.

\* \* \*

*Section 14-42(i) that discusses stream buffers is hereby repealed and no new subsection is enacted in its place.*

\* \* \*

*Sections 14-.44.1 through 14-44.5 are added to address the process and standards for stream buffer variances to read as follows:*

**Section 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 edge 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 section 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. No stream buffer variances shall be granted by the director in the state buffer or within the twenty-five 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 \_\_\_\_\_ (*Note to Clerk and Codifier, please insert date of enactment of this ordinance*) 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 percent (20%) of the total square footage of the existing encroachment of the structure prior to demolition.
- (5) *Redevelopment of existing multi-family residential, commercial or institutional structures.* In the case of redevelopment of existing multi-family residential structures, existing commercial structures or existing institutional structures, no stream buffer variance shall be granted by the director in the state buffer. Existing multi-family residential structures, existing commercial structures and existing institutional structures may obtain a stream buffer variance within the twenty-five (25) feet of the county buffer farthest from the stream but such variance shall be limited to a maximum depth of ten (10) feet.
- (6) *Redevelopment of existing single family residential structures.*
- (a) No stream buffer variance shall be granted for the redevelopment of an existing single family residential structure if the structure was constructed prior to \_\_\_\_\_, the date of the initial enactment of the fifty foot county stream buffer.
  - (b) In the case of redevelopment of existing single-family residential structures, no stream buffer variance shall be granted by the director in the state buffer or within the first twenty-five (25) feet of the county buffer. Existing single-family residential structures 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.
  - (c) No stream buffer variance shall be granted by the director for 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 twenty-five (25) feet of the county buffer farthest from the stream so long as the applicant complies with all other requirements set forth in section 14-44.1 *et seq.*
- (7) *Multi-use trails.* Within the stream buffer, the director may approve specific encroachments of multi-use trails that are part of a Master Plan for Multi-Use Trails in DeKalb County approved by the governing authority. Such encroachments shall be limited to specific locations not less than twenty-five (25) feet from the banks of state waters when, after study of alternative trail alignments, the director determines that there is no feasible alternative to the proposed encroachment. Such encroachments shall be

designed to minimize impervious surfaces, encroachments shall incorporate BMPs and other mitigation practices that minimize the impact of encroachments on water quality.

- (8) 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.*

**Section 14-44.2. Exemptions.**

- (a) The following specific activities or property 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;
  - (2) public water supply intake or public wastewater outfall structures;
  - (3) any encroachment undertaken by the state, or a contractor on behalf of the state;
  - (4) any encroachment approved by the county governing authority and undertaken by the county or a contractor on behalf of the county;
  - (5) public access facilities that must be on the water including boat ramps, docks, foot trails leading directly to the river, fishing platforms and overlooks;
  - (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 three (3) years after the end of the activities that intruded on the buffer.

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

- (a) 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. 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 the locations of all existing and proposed structures and other impervious surface, the limits of all existing and proposed land disturbance activity, both inside and outside the buffer and setback. 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 or setback 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 twenty-five (25) foot undisturbed state buffer and the fifty (50) 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 effected;
- (12) Variance from Georgia environmental protection division required for encroachment in twenty-five (25) foot state buffer;
- (13) Show double row Type-C silt fence between land disturbing activity and state waters, wetlands, and/or 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 sedimentation 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 (24) 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 non-structural 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 multi-use trials shall negate the impact of the trail and improve the quality of life of the affected stream.

**Section 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 authorized to consider applications for variances within the fifty (50) feet of the county stream buffer but not within the twenty-five (25) feet of the state buffer adjacent to waters of the state.
- (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 the condition of (1) 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 of Georgia.
- (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; and
  - (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 were not created by the owner or applicant, there is no opportunity for any development under any design configuration unless a variance is granted; and
- (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; and
- (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; and
- (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) non-structural; (b) designed to improve the quality of the stream and the associated buffer; (c) includes a planting schedule and channel protection design; and
- (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 (b) above that were considered and utilized in making the variance decision.

**Sec. 14-44.5 Notice requirements and appeals of stream buffer 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 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.
- (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.*

**PART II. EFFECTIVE DATE**

This ordinance shall become effective upon adoption by the Board of Commissioners and approval by the Chief Executive Officer.

**PART III. SEVERABILITY**

Should any section or provision of this ordinance be declared by a court of competent jurisdiction to be invalid or unconstitutional, such decision shall not affect the validity of the ordinance as a whole nor any part thereof other than the part so declared to be invalid or unconstitutional. All ordinances or resolutions, or parts thereof, in conflict with this ordinance are repealed.

**ADOPTED** by the DeKalb County Board of Commissioners, this \_\_\_\_ day of \_\_\_\_\_, 2008.

\_\_\_\_\_  
**KATHIE GANNON**  
Presiding Officer  
Board of Commissioners

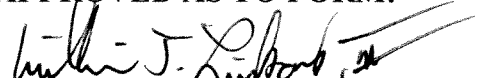
**APPROVED** by the Chief Executive Officer of DeKalb County, this \_\_\_\_ day of \_\_\_\_\_, 2008.

\_\_\_\_\_  
**VERNON JONES**  
Chief Executive Officer

**ATTEST:**

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**MICHAEL J. BELL**  
Ex-Officio Clerk  
Board of Commissioners and  
Chief Executive Officer  
DeKalb County, Georgia

**APPROVED AS TO FORM:**

  
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**WILLIAM J. LINKOUS III**  
County Attorney