

## DIVISION 2. - STREAM BUFFER PROTECTION

### Sec. 401-3. - Title.

Division 2 shall be known as the "stream buffer protection ordinance of the city of Norcross."

(Ord. No. 08-2019, § I, 6-3-2019)

### Sec. 401-4. - Reserved.

### Sec. 401-5. - Applicability.

- (a) This division shall apply to all land development activity on property containing a stream protection area as defined in chapter 100, article II. These requirements are in addition to, and do not replace or supersede, any other applicable buffer requirements established under state law and approval or exemption from these requirements do not constitute approval or exemption from buffer requirements established under state law or from other applicable local, state or federal regulations.
- (b) After the effective date of the ordinance from which this article is derived, this article shall apply to new subdividing and platting activities.

(Ord. No. 08-2019, § I, 6-3-2019)

### Sec. 401-6. - Grandfather provisions.

This division shall not apply to the following activities:

- (a) Work consisting of the repair, maintenance or replacement within the same disturbed area of any lawful use of land that is zoned and approved for such use on or before the effective date of the ordinance from which this article is derived.
- (b) Existing development and ongoing 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.
- (c) 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 the ordinance from which this article is derived, provided the permit is or can be issued within 90 calendar days of the effective date of the ordinance from which this article is derived and all time frames associated with said permit are observed.

- (d) 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 (c) of this section, or an approved concept plan, or has submitted a valid and complete application for approval of a concept plan and receives approval within 90 calendar days as of the effective date of the ordinance from which this article is derived, provided the future permit is or can be issued within two calendar years of the effective date of the ordinance from which this article is derived and all time frames associated with said permit are observed.

(Ord. No. 08-2019, § I, 6-3-2019)

Sec. 401-7. - Exemptions.

- (a) The following specific activities are exempt from this division, however any activity within a state waters' buffer must meet state requirements:
- (1) Activities for the purpose of building one of the following:
    - a. A stream crossing by a driveway, transportation route including but not limited to bike paths and pedestrian trails, or utility line;
    - b. Public water supply intake or public wastewater outfall structures;
    - c. Land development necessary to provide access to a property;
    - d. Public access facilities that must be on the water including boat ramps, docks, foot trails leading directly to the river, fishing platforms and overlooks;
    - e. Unpaved foot trails and paths;
    - f. 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; or
    - g. 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.
  - (2) 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 subsection (1) of this section.
  - (3) Land development activities within a dedicated transportation right-of-way existing at the time that the ordinance from which this article is derived takes effect or approved under the terms of this article.

- (4) Within an easement of any utility existing at the time the ordinance from which this article is derived takes effect or approved under the terms of this article, 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.
  - (5) 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 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.
  - (6) 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.
- (b) Exemption for these activities does not constitute an exemption for any other activity proposed on a property.

(Ord. No. 08-2019, § I, 6-3-2019)

Sec. 401-8. - Stream buffer and setback requirements.

All land development activity subject to this article shall meet the following requirements:

- (1) An undisturbed buffer shall be maintained for 50 feet, measured horizontally, on both banks (as applicable) of the stream as measured from the top of the stream bank. The land forming the bank is also considered part of the buffer for purposes of this article.
- (2) An additional setback shall be maintained for 25 feet, measured horizontally, beyond the undisturbed buffer, in which all impervious cover shall be prohibited. Grading, filling and earthmoving shall be minimized within the setback.
- (3) No septic tanks or septic tank drain fields shall be permitted within the buffer or the setback.

Any land development activity within a buffer established hereunder or any impervious cover within a setback established hereunder is prohibited unless a variance is granted pursuant to section 401-9.

(Ord. No. 08-2019, § I, 6-3-2019)

Sec. 401-9. - Variance; procedures.

- (a) Variance requests from the requirements of this article shall be submitted on an application form as prescribed by the Community Development Department or the Director's designee, along with such fees as shall be established by the Mayor and City Council. The Director of the Community Development Department or the Director's designee shall coordinate the review of each variance request with all other affected city departments and shall forward such comments or recommendations as may be received to the Mayor and City Council for action in their normal course of business. The review must include a recommendation from the Public Works Department.
- (b) This section describes how to apply for a variance from this division; however, any activity within a state waters' buffer must meet state requirements.
- (c) Variances may be granted in accordance with the following provisions:
  - (1) If the project involves the construction of one single-family home for residential use by the owner of the subject property on a parcel that was platted prior to the effective date of the ordinance from which this article is derived, and its shape, topography or other existing physical condition prevents land development consistent with this article, and the Public Works Department finds and determines that the requirements of this article prohibit the otherwise lawful use of the property by the owner, the Mayor and City Council may grant a variance from the buffer and setback requirements hereunder, provided such variance requires mitigation measures to offset the effects of any proposed land development on the parcel. The Mayor and City Council are authorized to use a consent agenda to fulfill the terms of this subsection.
  - (2) Except as provided above, the Mayor and City Council shall grant no variance from any provision of this article without first conducting a public hearing on the application for variance and authorizing the granting of the variance by an affirmative vote of the Mayor and City Council. The Community Development Department shall give public notice of each such public hearing in a newspaper of general circulation within the city at least once a week for two consecutive weeks before it is heard. The Community Development Department shall require that the applicant post a sign giving notice of the proposed variance and the public hearing at least 15 days prior to the date of the hearing. The sign shall be of a size and posted in such a location on the property as to be visible from the primary adjacent road right-of-way.
  - (3) No application or reapplication for a variance affecting the same stream segment on a property shall be heard within 12 months from the date of last action by the Mayor and City Council unless such 12-month period is waived by the Mayor and City Council, and in no case may such application or reapplication be reconsidered in less than six months from the date of last action by the Mayor and City Council.

- (4) Variances will not be considered when, following adoption of the ordinance from which this article is derived, actions of any property owner of a given property have created conditions of a hardship on that property.
- (5) Variances will be considered only in the following cases:
  - a. The applicant provides evidence that impacts to the buffer have been avoided or minimized to the fullest extent practicable; and
  - b. The project involves the construction or repair of a structure that, by its nature, must be located within the buffer. Such structures include dams and detention/retention ponds;
  - c. Paved recreational foot trails and viewing areas, providing that impacts to the buffer are minimal;
  - d. The proposed land disturbing activity within the buffer will receive a permit from the United States Army Corps of Engineers (USACE) under section 404 of the Federal Water Pollution Control Act Amendment of 1972, 33 USC 1344, and the Corps of Engineers has received a mitigation plan to be implemented as a condition of such a permit. In addition, land disturbing activities in the buffer that are outside the USACE's jurisdiction must be mitigated;
  - e. The buffer intrusion is mitigated using the procedure established in the city stormwater design manual; or
  - f. A valid and complete application for rezoning of the property is submitted prior to the effective date of the ordinance from which this article is derived and approval of the rezoning application by the Mayor and City Council occurs after the effective date of the ordinance from which this article is derived, and the variance request is consistent with the intent of this article factoring into account the property owner's reliance on standards in effect at the time of the rezoning.

(Ord. No. 08-2019, § I, 6-3-2019)

Sec. 401-10. - Variance request information.

At a minimum, a variance request shall include the following information:

- (1) A site map that includes locations of all streams, wetlands, floodplain boundaries and other natural features, as determined by field survey, vegetation and other physical characteristics of the property;
- (2) A description of the shape, size, topography, slope, soils, vegetation and other physical characteristics of the property;
- (3) A dated site plan that shows the locations of all existing and proposed structures and other impervious cover, the limits of all existing and proposed land disturbance, both inside and outside the buffer and setback. The exact area of the buffer to be affected shall be accurately

and clearly indicated;

- (4) Documentation that impacts to the buffer have been avoided or minimized to the fullest extent practicable;
- (5) A calculation of the total area and length of the proposed intrusion;
- (6) A stormwater management site plan, if applicable;
- (7) Proposed mitigation, if any, for the intrusion. If no mitigation is proposed, the request must include an explanation of why none is being proposed;
- (8) A description of the project, with details of the buffer disturbance, including estimated length of time for the disturbance and justification for why the disturbance is necessary;
- (9) Any other reasonable information related to the project that the Public Works Department may deem necessary to effectively evaluate the variance request;
- (10) A copy of the permit application, supporting documentation, and proposed mitigation plan as submitted to the United States Army Corps of Engineers under section 404 of the Federal Water Pollution Control Act Amendment of 1972, 33 USC 1344, if applicable;
- (11) A copy of the permit application, supporting documentation, and proposed mitigation plan as submitted to the Georgia Environmental Protection Division for a variance from the state waters' buffer; and
- (12) A buffer mitigation plan in accordance with the procedure outlined in the city stormwater design manual.

(Ord. No. 08-2019, § I, 6-3-2019)

Sec. 401-11. - Factors for issuing variance.

The following factors will be considered in determining whether to issue a variance:

- (1) The shape, size, topography, slope, soils, vegetation and other physical characteristics of the property;
- (2) The locations of all streams on the property, including along property boundaries as determined from field inspection;
- (3) The location and extent of the proposed buffer or setback intrusion;
- (4) Whether alternative designs are possible which require less intrusion or no intrusion;
- (5) The long term and construction water-quality impacts of the proposed variance;
- (6) Whether issuance of the variance is at least as protective of natural resources and the environment;
- (7) The value of mitigation activities as calculated in accordance with the city stormwater design manual.

(Ord. No. 08-2019, § 1, 6-3-2019)