

Article 10 – Buffer Requirements

10.1 Intent

This article shall apply to all properties or portions thereof located within the unincorporated areas of Cherokee County, Georgia, to the extent of the provisions contained herein. The Board of Commissioners of Cherokee County hereby finds that the protection and preservation of trees, the planting of new trees and other landscape material and the provision of buffers between dissimilar uses as part of the land development process is a public purpose and provides for the public health and general welfare.

10.2 Purpose

10.2-1 The purpose of this Article is to preserve and enhance the County's natural environment through tree protection and preservation, the planting of trees and other landscape material, and the provision of natural and/or planted buffers between dissimilar uses. The Article is intended to further the County's policy that all development sites, where trees are most commonly removed, will achieve upon project completion a uniform standard for buffer requirements.

10.2-2 This article is also intended to further the County's policy of encouraging all individuals or firms who propose to develop land and which are required to meet the requirements of this Article, to consider the use of water-efficient landscaping principles and techniques.

10.3 Title

This Article shall be known as "The Buffer Requirements of Cherokee County, Georgia" and may be referred to generally as "The Buffer Requirements."

10.4 Definitions

In construing the provisions hereof and the meaning of each and every word, term, phrase, or part thereof, where the context will permit, the definitions of words as contained in the adopted Zoning Ordinance of Cherokee County, supplemented by the following, shall apply:

Buffer: Land area used to visibly separate one use from another through screening and distance; to shield or block noise, light, glare, or visual or other conditions; to block physical passage to non-similar areas, or to reduce air pollution, dust, dirt and litter.

Clearing: The removal of vegetation from a property, whether by cutting or other means.

Construction Buffer: A type of buffer which is temporary and remains in effect during the construction of a project.

Department: The Cherokee County-Municipal Planning Commission as established by the Cherokee County Zoning Board of Commissioners and as operated through the actions and administration of the appointed Director of said department or his/her designee.

Development Regulations: The adopted regulations providing for the subdivision and development of real property within Cherokee County, Georgia, as amended from time-to-time by the Board of Commissioners of Cherokee County.

Diameter Breast Height (DBH): The diameter of a tree measured at a point 4 and ½ feet above the ground.

Director: The Director of the Department of Planning and Development or his/her designee.

Grading: The placement, removal or movement of earth by use of mechanical equipment on a property.

Land Disturbance Permit (LDP): Any permit other than a Building Permit issued by Cherokee County that authorizes clearing or grading activities on a site or portion of a site. Said permit may be clearing, clearing and grubbing, grading, or development permit as defined and authorized under the Development Regulations of Cherokee County.

Landscape Strip: Land area located within the boundary of a lot and required to be set aside and used for landscaping upon which only limited encroachments are authorized.

Screening: A method of shielding or obscuring one abutting or nearby structure or use from another by opaque fencing, walls, beams, densely planted vegetation or the like.

Shrub: A woody plant of relatively low height, as distinguished from a tree by having several stems rather than a single trunk.

Timber Harvesting: The felling, loading and transporting of timber products (pulpwood, etc.) The term “timber harvesting” may include both clear-cutting and selective cutting of timber.

Tree: Any self-supporting woody perennial plant, usually having a main stem or trunk and many branches, and at maturity normally attaining a trunk diameter greater than 3 inches at any point and a height of over 10 feet.

Tree Diameter: The widest cross-sectional dimension of a tree trunk measured at diameter breast height (dbh) or at a point below dbh for new trees or multi-trunked species, but in no case less than 6 inches from the ground.

Tree Thinning: Selective cutting or thinning of trees only for the clear purpose of good forestry management in order to protect said forest from disease or infestation and in no way shall be construed as clear-cutting.

Zoning Buffer: A buffer required by the Zoning Ordinance or as a condition of zoning or variance approval for a specific property.

Zoning Ordinance: The 1992 Zoning Ordinance of Cherokee County, Georgia, as amended from time-to-time by the Board of Commissioners of Cherokee County.

10.5 Applicability.

Buffers shall be required between dissimilar districts of uses in accordance with the provisions of the Zoning Ordinance or as a condition of zoning or variance approval.

10.6 Standard for Permanent Buffers

10.6-1 Width of Buffers

Buffers shall meet the minimum width requirements contained in this article, except as authorized to be reduced by the applicable buffer reduction process, as follows:

- a. As specified in the “Minimum Buffer Strip Requirement Table”; Table 10.1.
- b. As specified in a residential zoning district for a permitted non-residential use (e.g. a church, temple, synagogue, etc.); or,
- c. As required by a condition of zoning or variance approval.

10.6-2 Screening Requirements.

- a. Buffers shall be natural, undisturbed and free of encroachments except as authorized by a condition of zoning or variance approval, or as authorized herein, and shall contain the existing tree cover and vegetation as well as any supplemental plantings or replanting as may be required.
- b. Buffers shall be of such nature and density so as to screen activities, structures and uses on the property from view from the normal level of a first story window on an abutting lot and shall further provide a year-round effective visual screen.
- c. Buffers required along side property lines shall extend to a street right-of-way line unless otherwise required by the Director/designee in order to observe the sight distance requirements contained in the Development Regulations and the Zoning Ordinance, or as authorized by a condition of zoning approval or variance approval.
- d. In situations where the required buffer width is partially or completely contained within an existing easement (e.g. power or natural gas transmission, etc.), the screening requirements of this Article shall be met outside of the easement area.

10.6-3 Supplemental Plantings.

- a. Buffers in which vegetation is non-existent or is inadequate to meet the screening requirements of this Article shall be planted with supplemental plantings so as to provide a year-round visual screen. A buffer/landscape plan shall be submitted

to the department for approval, delineating the type, size, and location of all supplemental plantings as well as any non-vegetative screening mechanism proposed for use, in accordance with the terms of this Article.

- b. Supplemental plantings and replanting shall consist of evergreen trees, shrubs, or combination thereof, native or adaptable to the region. All trees planted shall be a minimum of 6 feet in height at time of planting and shall be a species which will achieve a height of at least 20 feet at maturity. All shrubs planted shall be of a large growing species, shall be a minimum of 3 feet in height at time of planting and shall be a species which will achieve a height of at least 10 feet at maturity.
- c. All supplemental plantings shall be installed to allow for proper plant growth and maintenance.

10.6-4 Non-Vegetative Screening.

- a. Non-vegetative materials utilized to satisfy the screening requirements of this Article, in addition to the use of existing vegetation and/or supplemental plantings, may consist of walls, fences, earthen berms or any combination thereof.
- b. If walls or fences are to be utilized, their placement and installation shall be such so as to cause minimal disturbance of existing vegetation and located so as to provide an effective visual screen.

10.6-5 Disturbances or Encroachments

- a. Ditches, swales, storm water conveyance facilities, storm water detention ponds, sanitary sewer conveyance facilities, similar facilities and any associated easements shall not encroach into a buffer except that necessary access and utility crossings (e.g. storm water or sanitary sewer pipes) may encroach into the buffer as near to perpendicular as practical.
- b. Supplemental plantings or replantings of vegetation, or authorized non-vegetative screening devices shall be authorized to encroach into a buffer provided there is minimal disturbance of any significant existing vegetation.
- c. Land disturbance is authorized in areas of a buffer that are devoid of significant vegetation provided that the final grade and replanting of vegetation meet the screening requirements contained herein.
- d. Dying, diseased or dead vegetation may be removed from a buffer provided minimal disturbance occurs. Vegetation thus removed shall be replaced where necessary to meet the screening requirements contained herein.

10.6-6 Protection During Land Disturbing Activities.

- a. During authorized land disturbing activities, buffers shall be clearly demarcated and protected prior to commencement of and during construction.
- b. The method of demarcation and protection utilized shall be in accordance with best management practices or as required by the Department.

10.6-7 Stream Buffer Regulations.

There is hereby established along primary and secondary streams, a fifty (50) foot undisturbed natural buffer. Said setbacks shall be measured from the stream bank of all primary and secondary streams. A one hundred fifty (150) foot undisturbed natural buffer is hereby established along the Etowah River. Any and all stream bank buffer regulations shall be reviewed, enforced and/or approved by the Cherokee County Engineering Department.

10.7 Standards for Construction Buffers.

10.7-1 Where Required

Construction buffers shall only be required where specifically provided as a condition of zoning or variance approval.

10.7-2 Time Constraints

Construction buffers shall only be in effect during the construction period of a project and shall terminate upon project completion. In the case of a residential subdivision, a construction buffer shall terminate upon each individual lot with the issuance of a Certificate of Occupancy for the principal dwelling.

10.7-3 Disturbance or Encroachments.

- a. Construction buffers shall be natural, undisturbed and free of encroachments except as authorized by a condition of zoning or variance approval, or as authorized herein.
- b. The encroachments of ditches, swales, storm water conveyance facilities, storm water detention ponds, sediment basins, sanitary sewer conveyance facilities, similar facilities, and any associated easements, into a construction buffer shall not be authorized except that necessary access and utility crossings (e.g. stormwater or sanitary sewer pipes), and natural bottom detention ponds (sediment basins must be located outside of the construction buffer) and their appurtenant structures which require no grading and removal of trees, may encroach upon the construction buffer.
- c. If the construction buffer on a residential lot is devoid of existing trees and vegetation, and a tree survey is submitted to document this situation prior to conducting land disturbing activities (including clearing) on the lot, then the

Department may authorize the encroachment of a building or structure into the construction buffer for a distance not to exceed 10 feet.

10.7-4 Protection During Land Disturbing Activities.

- a. During authorized land disturbing activities, construction buffers shall be clearly demarcated and protected prior to commencement of and during construction.
- b. The method of demarcation and protection utilized shall be in accordance with best management practices or as required by the Department.

10.8 Compliance

10.8-1 Artificial Materials Prohibited

All artificial plants, trees, shrubs, grass or other vegetation shall be prohibited from fulfilling the requirements of these regulations.

10.8-2 Warranty of Maintenance Surety

Upon final installation of new trees, shrubs or other landscape material planted to meet the requirements of this Ordinance, and following acceptance by the Department in accordance with the procedures set forth in the Development Regulations, the owner shall either provide proof of warranty or post a Maintenance Bond or other acceptable surety, warranting the new trees, shrubs or landscape material for a period of no less than one (1) year.

10.8-3 Inspection

- a. The Department shall perform an inspection of the plantings and landscape materials required by these regulations prior to expiration of the one (1) year warranty or maintenance period. The owner shall be notified of any replacements or restoration that must be made to maintain compliance with these regulations or conditions of zoning or variance approval.
- b. Required landscape material found to be dead or near death shall be replaced prior to release by the Department of the warranty or maintenance surety. In no case shall replacement be delayed more than 30 days from notification, unless a performance bond is posted with the Department.

10.8-4 Buffers for Interior Subdivision Lots

When a lot within a residential subdivision fronts on a local street within the subdivision and the back yard is located along either an arterial street, a collector street or freeway

street, then any and all buffer requirements shall apply to the back yard of said lot and the arterial, collector or freeway street.

10.9 Enforcement.

It shall be the responsibility of the Department to enforce these regulations. The Director or his/her designee shall have the authority to revoke, suspend, or void any Clearing, Clearing and Grubbing, Grading, Development, or Building Permit, or to Grubbing, Grading, Development, or Building Permit, or to withhold issuance of a Certificate of Occupancy, and shall have the authority to suspend all work on a site or any portion thereof, where tree removal or damage occurs in violation of these regulations.

10.10 Violation and Penalty.

Any person violating the provisions of these regulations shall be guilty of violating a duly adopted Ordinance of Cherokee County, and upon conviction by a court of competent jurisdiction, may be punished either by a fine not to exceed \$500, or confinement in the County jail not to exceed 60 days, or both. The Court shall have the power and authority to place any person found guilty, of a violation of these regulations, on probation and to suspend or modify any fine or sentence. As a condition of said suspension, the Court may require payment of restitution or impose other punishment allowed by law which may include mandatory attendance at an educational program regarding tree preservation. The owner of any property wherein a violation exists, and any builder, contractor, or agent, who may have assisted in the commission of any such violation, shall be guilty of a separate offense.

10.11 Appeals and Waivers.

10.11-1 Variance from the Zoning Ordinance

The preservation of trees may be considered as a condition peculiar to a piece of property in support of a request for a variance from the literal application of the provisions of the Zoning Ordinance, under the procedures and requirements contained herein.

10.11-2 Appeals

Appeals of the interpretation of the requirements of these regulations by the Director shall be filed and processed in accordance with the appeal procedures as set forth in the Zoning Ordinance (Article 15).

10.12 Repeal Clause.

The provisions of any ordinances or resolutions or parts thereof in conflict herewith are repealed, save and except such ordinances or resolutions or parts thereof, which provide stricter standards than those provided herein.

10.13 Severability.

Should any section, subsection, clause, or provision of this Article be declared by a court of competent jurisdiction to be invalid, such decision shall not affect the validity of this Article in whole or any part thereof other than the part so declared to be invalid.

10.14 Amendment.

This article may be amended from time to time by resolution of the Board of Commissioners of Cherokee County. Such amendments shall be effective as specified in the adopting resolution.

10.15 Effective Date.

This article shall become effective upon its adoption.