



# VARIANCE APPLICATION

## APPLICATION FOR VARIANCE FROM SNELLVILLE STREAM BUFFER ORDINANCE

**City of Snellville**  
**Planning & Development Department**  
2342 Oak Road, 2<sup>nd</sup> Floor  
Snellville, GA 30078  
Phone 770.985.3515 Fax 770.985.3551 [www.snellville.org](http://www.snellville.org)

DATE RECEIVED: \_\_\_\_\_

CASE # \_\_\_\_\_

rev 4-25-2022

**Applicant** is: (check one)  Owner's Agent  
 Contract Purchaser  
 Property Owner

**Owner** (if not the applicant):  check here if there are additional property owners and attach additional sheets.

Name (please print) \_\_\_\_\_

Name (please print) \_\_\_\_\_

Address \_\_\_\_\_

Address \_\_\_\_\_

City, State, Zip Code \_\_\_\_\_

City, State, Zip Code \_\_\_\_\_

Phone Number(s) \_\_\_\_\_ Fax \_\_\_\_\_

Phone Number(s) \_\_\_\_\_ Fax \_\_\_\_\_

Contact Person: \_\_\_\_\_ Phone: \_\_\_\_\_ Fax: \_\_\_\_\_

Cell Phone: \_\_\_\_\_ E-mail: \_\_\_\_\_

### Property Information:

Address/Location of Property: \_\_\_\_\_ City: \_\_\_\_\_

District: \_\_\_\_\_ Land Lot: \_\_\_\_\_ Parcel: \_\_\_\_\_ Size in Acres: \_\_\_\_\_ Number of Structures: \_\_\_\_\_ Existing and \_\_\_\_\_ New Proposed

The Subject property  IS  IS NOT a Lot/Parcel of Record. If yes, date platted: \_\_\_\_\_ Plat Book: \_\_\_\_\_ Page No.: \_\_\_\_\_

PROPERTY:  **IS**  **IS NOT** LOCATED WITHIN THE 7 MILE RADIUS OF THE INTAKE OF BIG HAYNES CREEK WATER SUPPLY RESERVOIR. IF THE PROPERTY IS LOCATED WITHIN THE 7 MILE RADIUS OF THE INTAKE OF THE BIG HAYNES CREEK WATER SUPPLY RESERVOIR.

Description of requested Stream Buffer Variance: \_\_\_\_\_

**Relief from the requirements of the City of Snellville Stream Buffer Protection Ordinance may only be considered and granted as follows (CHECK AS APPLICABLE):**

### Administrative Variance

- I. Stream Buffer and Setback Requirements. All land development activity subject to this section must meet the following requirements:
  - A. An undisturbed natural vegetative stream buffer must be maintained for 50 feet, measured horizontally, on both banks (as applicable) of the stream as measured from the top of the stream bank.
  - B. An additional setback must be maintained for 25 feet, measured horizontally, beyond the undisturbed natural vegetative stream buffer (75 feet total), in which all impervious cover is prohibited. Grading, filling and earthmoving must be minimized within the setback.
  - C. No septic tanks or septic tank drain fields are permitted within the stream buffer or the setback.

Administrative variances for properties NOT located within the 7-mile radius of the intake of the Big Haynes Creek Water Supply Reservoir from the requirements on single-family residential lots of record platted before May 23, 2005, may be granted if the applicant submits a residential site drainage plan approved by the Director, in accordance with the following:

1. The lot or parcel's shape, topography, or other existing physical condition prevents land development consistent with this section, and the Director finds and determines that the requirements of this section prohibit the otherwise lawful use of the property by the owner.
2. If a variance is requested from the required 50-foot undisturbed natural vegetative stream buffer, the request is for 10% or less (5 feet or less) of the required buffer.
3. If a variance is requested from the required, additional 25-foot impervious surface setback, the request is for 20% or less (5 feet or less) of the required, additional setback, and no impervious cover is proposed within the reduced, additional setback.
4. If an applicant is requesting a variance from both the undisturbed natural vegetative stream buffer and the required, additional 25-foot impervious surface setback, and the requests meet all the criteria listed above, the Director may grant an administrative variance for both requests.
5. Additional water quality treatment practices appropriate for single-family residential lots, such as the incorporation of bio-retention areas, pervious paving that is at least 40% pervious, and sustainable landscaping, may be allowed by approval of the Director.

**SUBMITTAL REQUIREMENTS (Administrative Variance Only):**

- A. Complete page 1 of application.
- B. Attach Letter of Intent describing the stream and impervious buffer request and how the lot or parcel's shape, topography, or other existing physical condition prevents land development without variance approval. Ensure that requested variance does not exceed the variance limits in Section 3 above. Otherwise, variance consideration shall be provide by the Board of Appeals.
- C. Provide a site plan, drawn to scale, showing the location of all streams on the property and in close proximity to the property. Show the limits of required stream buffers and setbacks on the property. Show proposed land development and areas of encroachment into the stream and impervious buffers and calculate amount of encroachment.
- D. Complete Applicant and Property Owners Certifications (Attachment C).
- E. Remit \$100 application fee.

## □ Big Haynes Creek Watershed Administrative Variance

For properties that are located within the 7-mile radius of the intake of the Big Haynes Creek Water Supply Reservoir the following additional stream protection requirements must be met where applicable:

1. Natural buffer zones and setbacks for impervious surfaces are required adjacent to both sides of perennial streams as measured from the stream bank as follows:

Distance to Water Supply Intake or Water Supply Reservoir*	Minimum Buffer	Minimum Impervious Surface Setback
(Big Haynes Creek Watershed) Within 7 Mile Radius	100 feet	150 feet
(Big Haynes Creek) Outside 7 Mile Radius	50 feet	75 feet

\*Radial distances as measured upstream of a governmentally owned public drinking water supply intake or water supply reservoir.

2. Septic tanks and septic tank drainfields are prohibited within the required setback area. Utilities are exempt from the above stream buffer and setback provisions in accordance with the following conditions if the utilities to be located in the stream buffer or setback areas cannot feasibly be located outside these areas: The utilities must be located as far from the stream bank as reasonably possible, except that all easements (permanent and construction) and land disturbance should be at least 25 feet from the top of bank.
  - a. The installation and maintenance of the utilities must be such as to protect the integrity of the stream buffer and setback areas as best as reasonably possible.
  - b. Roadways, bridges, and drainage structures may encroach upon required stream buffers and setbacks where such structures are necessary to provide access. Such roadways and bridges must cross streams perpendicularly where

reasonably possible. The number of such stream crossings and associated structures must be minimized to the greatest extent possible.

### 3. Variance procedures

All lots or parcels of record as of October 28, 1997, in the Big Haynes Creek Watershed and all lots or parcels which have been submitted by way of preliminary plat and approved by the Department in accordance with the provisions of the 1985 Zoning Resolution of Gwinnett County, as of October 28, 1997, within the Big Haynes Creek Watershed, that are made unbuildable by the stream buffer and setback provisions, may still be developed on a case-by-case basis.

Requests for development of these lots must be made to the Director as administrative variances. If development is allowed, the maximum possible impervious surface setback and stream buffer width, given the configuration of the lot, must be maintained.

### 4. Compatibility with Other Buffers

This section is not intended to interfere with, abrogate, or annul any other ordinance, rule or regulation, statute or other provision of law. The requirements of this section should be considered minimum requirements, and where any provision of this section imposes restrictions different from those imposed by any other ordinance, rule, regulation or other provision of law, whichever provisions are more restrictive or impose higher protective standards for human health or the environment will be considered to take precedence.

### **SUBMITTAL REQUIREMENTS (Big Haynes Creek Watershed Variance Only):**

- A. Complete page 1 of application.
- B. Attach Letter of Intent describing the proposed land development and stream and impervious buffer request and how the lot or parcel's shape, topography, or other existing physical condition prevents land development without variance approval. The maximum possible impervious surface setback and stream buffer width, given the configuration of the lot, must be maintained.
- C. Ensure that proposed land development does not encroach into the 50 feet stream buffer and 75 feet impervious surface buffer. Otherwise, variance consideration shall be provided by the Board of Appeals (see Board of Appeals Variance).
- D. Provide a site plan, drawn to scale, showing the location of all streams on the property and in close proximity to the property. Show the limits of required stream buffers and setbacks on the property. Show proposed land development and areas of encroachment into the stream and impervious buffers and calculate amount of encroachment.
- E. Complete Applicant and Property Owners Certifications (Attachment C).
- F. Remit \$100 application fee.

## Board of Appeals Variance

1. Stream Buffer and Setback Requirements. All land development activity subject to this section must meet the following requirements:
  - A. An undisturbed natural vegetative stream buffer must be maintained for 50 feet, measured horizontally, on both banks (as applicable) of the stream as measured from the top of the stream bank.
  - B. An additional setback must be maintained for 25 feet, measured horizontally, beyond the undisturbed natural vegetative stream buffer (75 feet total), in which all impervious cover is prohibited. Grading, filling and earthmoving must be minimized within the setback.
  - C. No septic tanks or septic tank drain fields are permitted within the stream buffer or the setback.
2. Where a lot was platted before May 23, 2005, and its shape, topography or other existing physical condition prevents land development consistent with this section, and the Director finds and determines that the requirements of this section prohibit the otherwise lawful use of the property by the owner, the Board of Appeals 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 lot.
3. Except as provided above, the Board of Appeals may grant no variance from any provision of this section without first conducting a public hearing on the application for a variance and authorizing the granting of the variance by an affirmative vote of the Board of Appeals. The City must give public notice of each such public hearing in a newspaper of general circulation within the city. The City must require that the applicant post a sign giving notice of the proposed variance and the public hearing. The sign must be of a size and posted in such a location on the property as to be clearly visible from the primary adjacent road right-of-way.

Variations will be considered only in the following cases:

- a. When a property's shape, topography or other physical conditions existing at the time of the adoption of this section prevents land development unless a stream buffer variance is granted.
  - b. Unusual circumstances when strict adherence to the minimal stream buffer requirements in the ordinance would create an extreme hardship.
4. Variations will not be considered when, following the adoption of this section, actions of any property owner of a given property have created conditions of hardship on that property.
- a. At a minimum, a variance request must include the following information:
  - b. A site map that includes locations of all streams, wetlands, floodplain boundaries, and other natural features, as determined by field survey;
  - c. A description of the shape, size, topography, slope, soils, vegetation and other physical characteristics of the property;
  - d. A detailed site plan that shows the locations of all existing and proposed structures and other impervious covers, the limits of all existing and proposed land disturbance, both inside and outside the stream buffer and setback. The exact area of the stream buffer to be affected must be accurately and clearly indicated;
  - e. Documentation of unusual hardship should the stream buffer be maintained;
  - f. At least one alternative plan, which does not include a stream buffer or setback intrusion, or an explanation of why such a site plan is not possible;
  - g. A calculation of the total area and length of the proposed intrusion;
  - h. A stormwater management site plan, if applicable; and,
  - i. Proposed mitigation, if any, for the intrusion. If no mitigation is proposed, the request must include an explanation of why none is being proposed.
5. The following factors will be considered in determining whether to issue a variance:
- a. The shape, size, topography, slope, soils, vegetation and other physical characteristics of the property;
  - b. The locations of all streams on the property, including along property boundaries;
  - c. The location and extent of the proposed stream buffer or setback intrusion; and,
  - d. Whether alternative designs are possible which require less intrusion or no intrusion;
  - e. The long-term and construction water-quality impacts of the proposed variance;
  - f. Whether issuance of the variance is at least as protective of natural resources and the environment.

#### **SUBMITTAL REQUIREMENTS (Board of Appeals Variances):**

- A. Complete page 1 of application.
- B. Attach Letter of Intent describing the proposed land development and stream and impervious buffer request and how the lot or parcel's shape, topography, or other existing physical condition prevents land development without variance approval. The maximum possible impervious surface setback and stream buffer width, given the configuration of the lot, must be maintained.
- C. Analysis of Impact. Provides a response to items (1-4) on Attachment A.
- D. Verification that all County and City property taxes owed are paid in full.
- E. Copy of recorded warranty deed, security deed or other recorded instrument showing ownership of the property.
- F. A site map that includes locations of all streams, wetlands, floodplain boundaries, and other natural features, as determined by field survey.
- G. A description of the shape, size, topography, slope, soils, vegetation and other physical characteristics of the property.
- H. A detailed site plan, drawn to scale, that shows the locations of all existing and proposed structures and other impervious covers, the limits of all existing and proposed land disturbance, both inside and outside the stream buffer and setback. The exact area of the stream buffer to be affected must be accurately and clearly indicated.
- I. Documentation of unusual hardship should the stream buffer be maintained.
- J. Provide at least one alternative plan, which does not include a stream buffer or setback intrusion, or an explanation of why such a site plan is not possible.
- K. A calculation of the total area and length of the proposed intrusion.
- L. A stormwater management site plan, if applicable.
- M. Proposed mitigation, if any, for the intrusion. If no mitigation is proposed, the request must include an explanation of why none is being proposed.
- N. Complete Applicant and Property Owners Certifications (Attachment B).
- O. Original application submittal including all plans and exhibits, bearing original and notarized signatures.
- P. Nine (9) stapled or bound copies of the complete application submittal including all plans and exhibits.
- Q. A USB flash drive or CD-ROM containing a digital .PDF file or files of the complete application submittal.
- R. Remit \$200 application fee and public notification fees for the posting of public notice signs and notices to all adjoining property owners. Call 770-985-3515 to obtain fee amount.

A VARIANCE from the terms of the Unified Development Ordinance shall not be granted by the Board of Appeals unless and until the applicant has **demonstrated and explained** the following. You may attach additional sheets and provide additional documentation as appropriate:

1) **Demonstrate and explain** how special conditions and circumstances exist which are peculiar to the land, structure, or building involved and which are not applicable to other land, structures, or buildings in the same zoning district. \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

2) **Demonstrate and explain** how literal interpretation of the provisions of the UDO would deprive the applicant of rights commonly enjoyed by other properties in the same zoning district under the terms of the UDO.  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

3) **Demonstrate and explain** how the special conditions and circumstances do not result from the actions of the applicant.  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

4) **Demonstrate and explain** that granting the variance (or waiver) requested will not confer on the applicant any special privilege that is denied by the UDO to other lands, structures, or buildings in the same zoning district.  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Please Note:** No non-conforming use of neighboring lands, structures, or buildings in the same zoning district, and no permitted or nonconforming use of lands, will be considered grounds for issuance of a variance or waiver. Peculiar conditions or circumstances which are the result of actions of the owner of property covered by this application cannot be considered as grounds justifying a variance. A "use variance", i.e. a variance for the purpose of using land or a structure, or combination thereof for a purpose prohibited by the present zoning classification of the property covered by this application will not be considered.





## Unified Development Ordinance Section 103-7.2. Powers and Duties

The Board of Appeals has the following powers and duties:

### A. Administrative Review

To hear and decide appeals where it is alleged there is an error in any order, requirement, decision, or determination made by a staff member of the Department in the enforcement of this UDO. See Sec. 103-7.3 (Administrative Decision Appeals).

### B. Variances and Waivers

To authorize, upon appeal in specific cases, such variance from the terms of this UDO as will not be contrary to the public interest where, owing to special conditions, a literal enforcement of the provisions of the UDO would result in unnecessary hardship. A variance may not be granted by the Board of Appeals unless and until:

- I. A written application for a variance or waiver is submitted demonstrating:
  - a. That special conditions and circumstances exist which are peculiar to the land, structure, or building involved and which are not applicable to other land, structures, or buildings in the same zoning district;
  - b. That literal interpretation of the provisions of this UDO would deprive the applicant of rights commonly enjoyed by other properties in the same zoning district under the terms of this UDO;
  - c. That the special conditions and circumstances do not result from the actions of the applicant;
  - d. That granting the variance or waiver requested will not confer on the applicant any special privilege that is denied by this UDO to other lands, structures, or buildings in the same zoning district.

Any application for an administrative review, variance, and/or waiver must be submitted by noon 36 days before the date on which it is to be considered by the Board of Appeals. The applicant must submit nine stapled or bound copies of the application and any supporting documents, in addition to one unbound application bearing original signatures. In addition, a digital copy in .pdf (and .dwg format, as appropriate) of all materials must be submitted using email, flash drive, or other means approved by the Director. The submitted application must also include: Verification by Gwinnett County that all property taxes owed have been paid; a certificate of title for all lots subject to the application; and a map indicating the subject property(ies) and the adjacent properties, identified by tax parcel number. An initiating party must also file any other information or supporting materials that are required by the City Council, Planning Commission, and/or the Department and must pay any filing fee.

The Department must notify the owners of adjoining properties of the property for which the variance is sought and/or their agent by certified mail with return receipt requested as shown by the Gwinnett County GIS Data Browser. The notification must be mailed not fewer than 15 days, nor more than 45 days before the Board of Appeals hearing. The notification must include a description of the application and the date, time, and place of the public hearing.

2. The City must provide notice of the public hearing at least 15 days before the public hearing. Notice of such hearings must be posted on the property for which the variance or waiver is sought and at city hall.
3. Due notice of the Board of Appeals hearing must be published in the newspaper which carries the legal advertisements of the City, by advertising the application and date, time, place and purpose of the public hearing not fewer than 15 days, nor more than 45 days before the date of the Board of Appeals hearing.
4. The public hearing must be held. Any party may appear in person, or by agent or attorney.



5. The Board of Appeals must further make findings that the requirements of this paragraph B have been met by the applicant for a variance or waiver.
6. The Board of Appeals must further make a finding that the reasons set forth in the application justify the granting of the variance or waiver is the minimum variance that will make possible the reasonable use of the land, building, or structure.
7. The Board of Appeals must further make a finding that the granting of the variance or waiver will be in harmony with the general purpose and intent of this UDO, and will not be injurious to the neighborhood, or otherwise detrimental to the public welfare.

In granting any variance, the Board of Appeals may prescribe appropriate conditions and safeguards in conformity with this UDO. Violation of such conditions and safeguards, when made a part of the terms under which the variance is granted, will be deemed a violation of this UDO that is punishable under its provision.

### **Section 103-7.3. Administrative Decision Appeals**

- A. Appeals to the Board of Appeals concerning interpretation or administration of this UDO may be taken by any person aggrieved or by any officer or bureau of the governing body of the City affected by any decision of a staff member of the Department of Planning and Development. Appeals must be filed with the Department within 15 days of said decision on the form/application provided by the City, including payment of fees. The Director must forthwith transmit to the board all papers constituting the record upon which the action appealed from was taken.
- B. An appeal stays all proceedings in furtherance of the action appealed from unless the Director certifies to the Board of Appeals that, by reason of facts stated in the certificate, a stay would, in their opinion, cause imminent peril, to life or property. In such a case, proceedings may not be stayed otherwise than by the Zoning Board of Appeals or by a restraining order granted by a court of record on application, and notice to the Director for good cause shown.
- C. The person requesting the appeal must first submit to Department a written statement clearly defining the nature of the disagreement, the specific reference to the sections of the regulations at issue, and the applicant's own opinion.
- D. If the Department fails to respond within 10 business days from the date of transmittal of the appeal, the Department must automatically forward a copy of the appeal to the Board of Appeals for final action in their normal course of business.
- E. The Board of Appeals must hear and act upon within 45 days of receipt and give public notice thereof. At the hearing, any party may appear in person or by agent or attorney.
- F. In exercising the above-mentioned powers, the Board of Appeals may, so long as such action is in conformity with the terms of the this UDO, reverse or affirm, wholly or partly, or may modify the order, requirement, decision, or determination as ought to be made, and to that end will have the powers of the Department staff member from whom the appeal is taken.

### **Section 103-7.4. Reapplication**

If an application for a variance or waiver is denied by the Board of Appeals, a reapplication for such variance or waiver may not be made earlier than 12 months from the date of the original application.

### **Section 103-7.5. Appeals**

Any person aggrieved by a decision or order of the Board of Appeals may appeal by certiorari to the Superior Court of Gwinnett County. Such appeal must be filed within 30 days from the date of the decision of the Board of Appeals. Upon failure to file the appeal within 30 days, the decision of the

Board of Appeals will be final.