

Chapter 22.

Land Use*

Article 25. Water Supply Watershed Protection

Sec. 22-25-1. Definitions.

Except as specifically described herein, all words in this article shall have their usual and customary meanings. The use of the singular includes the plural and the plural the singular; the present tense includes the future; the use of shall means the action is mandatory; and the use of may or should means the action is optional.

Accessory Building: A subordinate building, the use of which is incidental to, and reasonably related to, a main building on the same lot or to the primary use of the property. The accessory building shall be of a size and nature customarily incidental and subordinate to the principal. Signs and fences are not to be considered as accessory buildings. A “detached” accessory building shall be one that does not have a common wall with the main building on the same lot.

Buffer, Undisturbed: A natural or enhanced vegetated area located adjacent to a reservoir or perennial stream within a water supply watershed.

Conservation Easement: A portion of land set aside in its natural state and preserved as open space in perpetuity.

Corridor: All land within the buffer areas established adjacent to reservoirs or perennial streams within a water supply watershed.

Development or Single Development: Any project or group of related projects constructed or planned for construction on a single parcel or on contiguous parcels under single ownership.

***Editor’s Note** __ Ord. No. 2041, §1, adopted June 7, 1999, amended the Code by adding a new Art. VIII, §§22-420-22-429. Since Ord. No. 2041, adopted March 1, 1999, already enacted provisions designated as §§22-420 --22-433, the editor, at his discretion, has redesignated these new provisions as §§22-450 --22-459.

Hazardous Material: Any “contaminant”, as defined in this article, and any hazardous chemical or which a material safety data sheet must be filed under 42 USC 11021 and 11022.

Hazardous Waste: Any waste which has been defined as a hazardous waste in regulations, promulgated by the administrator of the United States Environmental Protection Agency according to federal act, which are in force and effect on February 1, 1988, codified as 40 CFR § 261.3.

Impervious Surface: A man-made structure or surface that prevents the infiltration of stormwater into the ground below the structure or surface. Examples include buildings, roads, driveways, parking lots, decks, swimming pools, and patios.

Land-disturbing Activity: Any operation that involves excavation or filling of land, clearing of vegetation or construction, rebuilding or alteration of an existing structure. Land-disturbing activity does not include ordinary maintenance and landscaping activities, yard and grounds maintenance, individual home gardens, repairs or minor modifications to a single-family residence or the cutting of firewood for personal use.

Large Quantity Generator of Hazardous Waste: Any person, corporation, partnership, association or other legal entity defined as a “large quantity generator” by the Georgia Department of Natural Resources pursuant to O.C.G.A. 12-8-60 et seq. and regulated by the State of Georgia under that section. To qualify as a large quantity generator, the legal entity must generate at least 2,200 pounds of hazardous waste per year.

Natural Vegetated Area: An undeveloped area largely free from human disturbance where naturally occurring vegetation is allowed to remain undisturbed or is enhanced and maintained by human intervention. Activities specifically allowed in such an area include:

- Conservation or preservation of soil, water, vegetation, fish, shellfish, and other wildlife.
- Outdoor recreational activities, including hunting, fishing, trapping, bird watching, hiking, boating horseback riding, swimming, canoeing, skeet and trap shooting.
- Education, scientific research and nature trails.
- Maintenance or repair of lawfully located roads, structures and utilities used in the service of the public provided that the work is conducted using best management practices to ensure that negative effects on the previous nature of the land shall be maintained.
- Limited excavating, filling and land disturbance necessary for the repair and
- maintenance of structures necessary to the permissible uses.

Nonconforming Use: A land use activity, building or structure legally established prior to adoption of this article or subsequent amendment to it that would not otherwise be permissible under the provisions of this article.

Overlay District: A district that applies supplementary regulations to land previously classified as belonging to a specific zoning district or land use category.

Perennial Stream: A stream that flows throughout the year as indicated by a solid blue line on United States Geological Survey (USGS) 7-minute topographic series (scale of 1/24,000).

Setback: The distance that defines the width of a protective buffer, measured from the boundary of the feature of the landscape (e.g., a wetland or stream bank) that the buffer is designed to protect.

Utility: Public or private water or sewer piping systems, water or sewer pumping stations, electric power lines, fuel pipelines, telephone lines, roads, driveways, bridges, river/lake access facilities, stormwater systems and railroads.

Water Quality Critical Area: The water quality critical area is established for land that lies adjacent to the stream bank and the banks of streams extending upstream to a radius of seven miles from public water intake on the Beaverdam Creek area of Russell Lake and extending to the ridge line boundary of the watershed. The boundary of the water quality critical area shall be set at places readily identifiable on the watershed district map of the City of Elberton and shall be designated on said map.

Water Supply Watershed: The drainage area (watershed) of lands upstream of a governmentally owned public drinking water intake or water supply reservoir. (Ord. No. 2044, § 1(22-420), 6-7-99; Ord. No. 2051, § 1, 9-13-99)

Sec. 22-25-2. Permit Required.

- a) *Permit Requirements.* Within the water supply watershed district, no land-disturbing activity, construction or other development, other than certain exempted activities identified within, may be conducted without a permit from the city manager or his designee and must be in full compliance with the terms of this article and other applicable regulations. All activities that are not permissible as of right or as special permit uses shall be prohibited.
- b) *Temporary Emergency Permit.* Notwithstanding the provisions of this district or any other law to the contrary, the city manager or his designee may issue a temporary emergency permit through oral or written authorization, provided a written permit is accomplished within five days, if it deems that an unacceptable threat to life or severe loss of property will occur if a temporary emergency permit is not granted. The temporary emergency permit may be terminated at any time without process upon a determination by the city manager that the action was not or is no longer necessary to protect human health or the environment.
- c) *Exemptions.* Normal agricultural and forestry activities involving planting and harvesting of crops are exempted if they conform to best management practices established by the Georgia Department of Agriculture. Silvicultural activities must conform to best management practices established by the Georgia forestry commission.
- d) *Enforcement.* The city manager or his designee, its agent, officers and employees shall have authority to enter upon privately owned land for the purpose of performing their duties under this article and may take or cause to be made such examinations, surveys or sampling as the City Manager deems necessary.
 - o The city manager or his designee is hereby designated as the administrator and enforcement authority for this article.
 - o The city manager or his designee shall have authority to enforce this article, issue permits hereunder, and address violations or threatened violations hereof by issuance of violation notices, administrative orders and civil and criminal actions. All costs, fees and expenses in connection with such actions may be recovered as damages against the violator.
 - o Law enforcement officials or other officials having police powers shall have authority to assist the city manager or his designee in enforcement of this article.

- Each violation shall be a separate offense and, in the case of a continuing violation, each day's continuance shall be deemed to be a separate and distinct offense.
- The city manager or his designee shall have the authority to issue cease and desist orders in the event of any violation of this article. Cease and desist orders may be appealed to a court of competent jurisdiction, as identified in section 22-457.
- When a building or other structure has been constructed in violation of this article, the violator shall be required to remove the structure.
- When removal of vegetative cover, excavation or fill has taken place in violation of this article, the violator shall be required to restore the affected land to its original contours and to restore vegetation, as far as practicable.

Sec. 22-25-3. Applications and Permits.

- a) *Where applications filed; Minimum Requirements.* Applications for a development permit within the watershed district shall be made in the office of the city clerk. At a minimum, a site plan and filing fee that is set from time to time by the mayor and council will be required.
- 1) *Site Plans Required.* Except for the exemptions listed in this section, all forms of development within the watershed district shall be required to have a site plan prepared and approved according to this article before any building permits or other development related permits may be issued or any land-disturbing activity may take place.
- A site plan drawn to a scale of 1" = 50' showing all planned improvements including the width, depth and length of all existing and proposed structures, roads, watercourses and drainage ways, water, wastewater and stormwater facilities; and utility installations.
 - Location, dimensions and area of all impervious surfaces, both existing and proposed, on the site.
 - The orientation and distance from the boundaries of the proposed site to the nearest bank of an affected perennial stream or water body.
 - Elevations of the site and adjacent lands within 200 feet of the site at contour intervals of no greater than five feet.
 - Location and detailed design of any spill and leak collection systems designed for the purpose of containing accidentally released hazardous or toxic materials.
 - Calculations of the amount of cut and fill proposed and cross-sectional drawings showing existing and proposed grades in areas of fill or excavation. Elevations, horizontal scale and vertical scale must be shown on cross-sectional drawings.

- 2) *Filing Fee.* At the time of the application, the applicant shall pay a filing fee of \$65.00. This fee may be used to retain expert consultants who will provide services pertaining to functional assessment and mitigation measures as deemed necessary by the city manager or his designee.
- b) *Activities to Comply with Site Plan.* All development activities or site work conducted after approval of the site plan shall conform to the specifications of said site plan. Significant changes to the site plan, that would alter the amount and velocity of storm-water runoff from the site, increase the amount of impervious surface within the development, alter the overall density of development, result in a considerable increase in the amount of excavation, fill or removal of vegetation during construction or otherwise result in an alteration of the overall appearance of the development as proposed, can be amended only with the approval of the city manager or his designee. Minor changes, such as realignment of streets or minor alterations to drainage structures and other infrastructure to meet unexpected conditions, are exempted from this requirement.
- c) *Exemptions from Site Plan Requirement.* The following activities and developments are exempt from the requirement for detailed site plans:
 - 1) Single-family detached homes constructed within a subdivision of fewer than five parcels.
 - 2) Repairs to a facility that is part of a previously approved and permitted development.
 - 3) Construction of accessory buildings or additions to single-family residences.
- d) *Review Procedures.* The application shall be made to the office of the city clerk and reviewed by the building inspector, and notice given to the city manager within 30 days. The review period shall include the preparation of findings by the building inspector and provided to the city manager for final decision. A written permit will be provided to an applicant for approval applications. If the review process is not completed within 45 days, the application is considered to be approved.
- e) *Denial.* If the permit is denied by the city manager or his designee, then the same permit application cannot be considered until the expiration of at least six months immediately following the denial of the permit. A written letter of denial will be provided to the applicant.
- f) *Appeals.* Decisions on permit applications made by the city manager or his designee may be appealed to the zoning board of adjustments (ZBA). The appeal must be made within 30 days of the decision rendered by the city manager or his designee and must be filed in the office of the city clerk.
- g) *Duration of Permit Validity:*
 - 1) If construction described in the development permit has not commenced within 12 months from the date of issuance, the permit shall expire.
 - 2) If construction described in the development permit is suspended after work has commenced, the permit shall expire 12 months after the date that work ceased. In cases of permit expiration due to abandonment or suspension of work, the

landowner shall be required to restore topography to its original contours and restore vegetation as far as practicable.

- 3) Written notice of pending expiration of the development permit shall be issued by the city manager or his designee no later than 30 days prior to expiration.

(Ord. No. 2044, § 1(22-22-422), 6-7-99)

Sec. 22-25-4. Land Use Restrictions.

a) *Within the Water Quality Critical Area.* The following limitations on permissible uses shall apply to water quality critical area.

- 1) *New Hazardous Waste Handling Facilities.* New facilities which handle hazardous materials of the types and amounts determined by the department of natural resources shall perform their operations on impermeable surfaces having spill and leak collection systems as prescribed by the department of natural resources.
- 2) *New Hazardous Waste Treatment or Disposal Facilities.* New hazardous waste treatment or disposal facilities are prohibited.
- 3) *New Sanitary Landfills.* New sanitary landfills are permitted only if they have synthetic liners and leachate collection systems.
- 4) *Agricultural Land Use.* The application of animal waste on land must be accomplished in accordance to the agricultural best management practices.

b) *Within the Limited Development Area:*

- 1) *New Hazardous Waste Handling Facilities.* New facilities which handle hazardous materials of the types and amounts determined by the department of natural resources shall perform their operations on impermeable surfaces having spill and leak collection systems as prescribed by the department of natural resources.
- 2) *New Hazardous Waste Treatment or Disposal Facilities.* New hazardous waste treatment or disposal facilities are prohibited.
- 3) *New Sanitary Landfills.* New sanitary landfills are permitted only if they have synthetic liners and leachate collection systems.
- 4) *Agricultural Land Use.* The application of animal waste on land must be accomplished in accordance to the agricultural best management practices.

(Ord. No. 2044, § 1(22-423), 6-7-99)

Sec. 22-25-5. Impervious Surface Limitations in the Limited Development Area.

- a) *Impervious Surface Limitations.* No more than 25 percent of the watershed protection area may be covered by impervious surface.

- b) *Impervious Surface Setbacks.* For all perennial streams within the water quality critical area, no impervious surface shall be constructed within a 150-foot setback area on both sides of the stream as measured from the stream banks.
- c) *Vegetative Buffers--Undisturbed Stream Buffers Within Water Quality Critical Area.* For all perennial streams within the water quality critical area, an undisturbed vegetative buffer shall be maintained for a distance of 100 feet on both sides of the stream as measured from the stream banks.
- d) *Septic Tank Drain Field Restrictions.* Septic tanks and septic tank drain fields are prohibited in the setback area established in subsection (b) above.
- e) *Street Runoff and Drainage.* New streets constructed within the water quality critical area shall be constructed in accordance with section 22-394(b). New streets that cross perennial streams within the water quality critical area shall be designed in such a way as to avoid direct runoff from the paved surface into the streams they cross. Such design features shall be shown on the site plan.
- f) *Hazardous Materials Handling.* New facilities located within the water supply watershed district that handle hazardous materials of a type and amounts requiring a permit from the department of natural resources or that require disposal at a hazardous materials facility by a hazardous materials handler permitted or licensed by the department of natural resources, shall perform their operations on impermeable surfaces having spill and leak collection systems. Such spill and leak collection systems shall be shown on the site plan in detail and must be approved as part of the site plan.
- g) *Soil Erosion and Sedimentation Control.* All developments and land-disturbing activity within the water supply watershed district shall comply fully with section 22-394(b).

(Ord. No. 2044, § 1(22-424), 6-7-99)

Sec. 22-25-6. Nonconforming Uses.

- a) *Previous Uses Preserved Generally.* The lawful use of any building, structure or land use existing at the time of the enactment of this article may be continued, even though such use does not conform with the provisions of this article, except that the nonconforming structures or use shall not be:
 - 1) Changed to another nonconforming use;
 - 2) Increased in intensity of use;
 - 3) Re-established after discontinuance for one year;
 - 4) Extended except in conformity with this article; or
 - 5) Structurally altered, except for repairs necessary for the continuation of the existing use.

- b) *Replacement of Nonconforming Uses.* A nonconforming building, structure or improvement which is hereafter damaged or destroyed to an extent exceeding 50 percent of the reasonable estimated replacement cost of the structure, building or improvement, as determined by the building inspector, may not be reconstructed or restored to the same nonconforming use except upon written approval of the city manager or his designee.
- c) *Application to Projects partially Complete.* For any development that has received, before the effective date of this article, either preliminary plat approval, site plan approval, building permit or other relevant permits provided by the city manager or his designee and for which substantial work has been completed or substantial investment made in reliance upon such a permit, any future work included in said plat or plan may be completed without being subject to the additional regulations imposed in this article. Any significant additions, expansions or phases that deviate significantly from said plat or plan or that have not yet received a permit shall be subject to the provisions of this article.

(Ord. No. 2044, (22-425), 6-7-99)

Sec. 22-25-7. Variances and Appeals.

- a) *When Issued.* The ZBA or its staff may authorize, upon appeal in individual cases, denial, approval, or variances from the terms of this article as will not be contrary to the public interest. Variances will only be issued in cases where, owing to special conditions, a literal enforcement of the provisions of this article will result in unnecessary hardship. Such variance may be granted in individual cases of practical difficulty or unnecessary hardship only upon a finding by the ZBA that all of the following conditions exist:
 - 1) There are extraordinary and exceptional conditions pertaining to the particular piece of property in question because of its size, shape or topography;
 - 2) The application of this article to the particular piece of property would create an unnecessary hardship;
 - 3) Relief, if granted, would not cause substantial detriment to the water quality of water supply at Elberton Intake or impair the purposes and intent of this article;
 - 4) The special circumstances surrounding the request for a variance are not the result of acts by the applicant;
 - 5) The variance is not a request to permit a use of land, buildings or structures that is not permissible in the district involved; and
 - 6) The variance will not result in an increase of the impervious surface of the development beyond that prescribed according to section 22-454(2).
- b) *Conditions.* The ZBA may, as a condition of the variance to certain provisions of this article, require that alternative measures be taken by the applicant such that the purposes of this article may be achieved through alternative means.

(Ord. No. 2044, § 1(22-426), 6-7-99)

Sec. 22-25-8. Judicial Review.

- a) *Jurisdiction.* All final decisions of the ZBA concerning denial, approval variances, or conditional approval of a special permit shall be reviewable by the Elbert County superior court.
- b) *Alternative Actions.* Based on these proceedings and the decision of the court, the City of Elberton may, within the time specified by the court, elect to:
- c) Institute negotiated purchase or condemnation proceedings to acquire an easement or fee interest in the applicant's land;
- d) Approve the permit application with lesser restrictions or conditions (i.e. grant a variance); or
- e) Institute other appropriate actions ordered by the court that fall within the jurisdiction of the City of Elberton.

(Ord. No. 2044, § 1(22-427), 6-7-99)

Sec. 22-25-9. Amendments.

These regulations and the watershed district map may from time to time be amended in accordance with procedures and requirements in the general statutes and as new information becomes available.

(Ord. No. 2044, §1(22-428), 6-7-99)

Sec. 22-25-10. Assessment Relief.

Assessors and Boards of Assessors shall consider the requirements of these regulations in determining the fair market value of land.

(Ord. No. 2044, § 1(22-429), 6-7-99)