

ARTICLE XIV

STREAMSIDE MANAGEMENT BUFFER REQUIREMENTS

SECTION 1 – INTENT AND PURPOSE.

A. Intent

It is the intent of this Article to amend the Zoning Ordinance of the City of Lakeland to establish a new Streamside Management Buffer to restrict development and limit land use adjacent to all perennial streams and rivers in Lakeland. The purposes of the Streamside Management Buffer are: to protect public and private water supplies, to trap sediment and other pollutants in surface runoff, to promote bank stabilization, to protect riparian wetlands, to minimize the impacts of floods, to prevent increases in base flow, to protect wildlife habitat, and to generally maintain water quality.

B. Purpose

The quality of the groundwater that is used for drinking, agricultural and industrial purposes in the City of Lakeland and Shelby County, Tennessee is connected with the quality of the surface water in the streams and rivers of Lakeland. Furthermore, the Board of Commissioners finds that the protection of the streams and rivers of Lakeland is vital to the health, safety and welfare of its citizens.

The standards and regulations set forth in this Article are created under the authority of the City of Lakeland's zoning powers granted by Sections 13-7-201 through 13-7-210, Tennessee Code Annotated, to provide for the establishment of districts within the corporate limits of the City of Lakeland. In the event of a conflict between or among any provision of this Ordinance, or any other ordinances of the City of Lakeland, the requirement that is most restrictive and protective of water quality shall apply.

C. Repeal of Existing Regulations

The provisions of any ordinances or resolutions or parts thereof in conflict herewith are repealed, save and except such ordinances or resolutions or parts thereof which provide stricter standards than those provided herein.

SECTION 2 – TITLE.

A. Long Title

This Article shall be known as “The Streamside Management Buffer Requirements of the City of Lakeland.”

B. Short Title

This Article may be referred to generally in the Zoning Ordinance as “Streamside Management Buffer Requirements.”

SECTION 3 – DEFINITIONS.

For the purposes of this Article, the terms below have the following meaning:

1. Active Channel – means the area of the stream channel that is subject to frequent flows (approximately once per one and one half years), and that includes the portion of the channel below where the floodplain flattens.
2. Best Management Practices (BMP’s) -- means Conservation practices or management measures which control soil loss and reduce water quality degradation caused by nutrients, animal wastes, toxins, sediment, and runoff.
3. Buffer -- means a vegetated area, including trees, shrubs and herbaceous vegetation, which exists or is established to protect a stream system. Alteration of this natural area is strictly limited.
4. Development -- means (1) the improvement of property for any purpose involving building; (2) subdivision, or division of a tract or parcel in to two (2) or more parcels; (3) the combination of any two or more lots, tracts, or parcels of property for any purpose; or (4) the preparation of land for any of the above purposes.
5. Existing Land Use -- means a land use which, prior to the effective date of this Ordinance, is either:
 - a. Completed; or
 - b. Ongoing, as in the case of agricultural activity; or
 - c. Under construction; or
 - d. Fully approved by the governing authority; or
 - e. The subject of a fully completed application, with all necessary supporting documentation, which has been submitted for approval to the governing authority or the appropriate government official, for any construction-related permit.

6. Impervious Surface -- means any paved, hardened, altered or structural surface which does not allow for complete on-site infiltration of precipitation. Such surfaces include but are not limited to buildings, driveways, streets, parking lots, graded land, swimming pools, dams, tennis courts, and any other structures that meet the above definition.
7. Land Disturbing Activity -- means any grading, scraping, excavating or filling of land, clearing of vegetation and any construction, rebuilding or significant alteration of a structure.
8. Non-Point Source Pollution -- means pollution which is generated by various land use activities rather than from an identifiable or discrete source, and is conveyed to waterways through natural processes, such as rainfall, storm runoff, or groundwater seepage rather than direct discharge.
9. Protected Area -- means any land and vegetation that lies within the Streamside Management Buffer, as defined herein.
10. Second Order Stream or Higher -- means any stream that is formed by the confluence of two or more other streams, as indicated by solid or dashed blue lines on the United States Geologic Survey 7.5 minute quadrangle maps, of the most recent edition (*see Exhibit "A" attached herein*).
11. Stream or River -- means all of the following:
 - a. Any perennial stream or river (or portion thereof) that is portrayed as a solid line on a United States Geologic Survey 7.5 minute quadrangle map, of the most recent edition (*see Exhibit "A" attached herein*); and
 - b. Any intermittent stream or river (or portion thereof) that is portrayed as a dashed line on a United States Geologic Survey 7.5 minute quadrangle map, of the most recent edition (*see Exhibit "A" attached herein*); and
 - c. Any other stream as may be identified by the City of Lakeland or State or Federal authority.
12. Stream Bank -- means the uppermost limit of the active stream channel, usually marked by a break in slope.
13. Stream Channel -- means part of a watercourse either naturally or artificially created which contains an intermittent or perennial base flow of groundwater origin. Base flows of groundwater origin can be distinguished by any of the following physical indicators:

- a. Hydrophytic vegetation, hydric soil or other hydrologic indicators in the area(s) where groundwater enters the stream channel, in the vicinity of the stream headwaters, channel bed or channel banks; or
- b. Flowing waters not directly related to a storm event; or

Historical records of a local high groundwater table, such as well and stream gauge records maintained by local, state or federal authorities.

- 14. Streamside Management Buffer or “SMB” -- is an overlay zone that encompasses all land within a minimum of fifty (50) feet on either side of all streams in the City of Lakeland, measured as a horizontal line extending perpendicular from the top of the stream bank.
- 15. Substantial Improvement -- means any repair, reconstruction or improvement of a structure, the cost of which equals or exceeds fifty percent (50%) of the market value of the structures either:
 - a. Before the improvement or repair is started; or
 - b. If the structure has been damaged and is being restored, before the damage occurred. For the purposes of this definition, “Substantial Improvement” is considered to occur when the first alteration of any wall, ceiling, floor, or other structural part of the building commences whether or not the alteration affects the external dimensions of the structure.

The term does not, however, include either:

- (1) Any project for improvement of a structure to comply with existing State or local health, sanitary, or safety code specifications which are solely necessary to assure safe living conditions; or
- (2) Any alteration of a structure listed on the national Register of Historic Places.

- 16. Top of Bank -- means the stage or elevation at which water overflows the natural banks of streams or other waters of the State and begins to inundate upland areas. In the absence of physical evidence, the two (2) year recurrence interval flood elevation may be used to approximate the “bank full stage” or delineate the top of bank.

SECTION 4 – APPLICABILITY.

This Article shall apply to the following:

1. This Article shall apply to all proposed development except for that development which meets variance criteria as outlined in Section 10 of this Article.
2. This Article is intended to modify the location of new development in relation to streams and other water resources but not to modify its overall density. The provisions here shall apply to the construction of any building or any land disturbance resulting from or in connection with any activity or use requiring any of the following:
 - a. Building Permit
 - b. Board of Zoning Appeals (Variance)
 - c. Special Exception approval
 - d. Subdivision/Planned Development/Site Plan approval
 - e. Grading Permit/Land Disturbance Permit.
3. This Article shall apply to all timber harvesting activities, except those timber harvesting operations which are implementing a forest management plan that has been deemed to be in compliance with this Article and has received approval from the State of Tennessee.
4. This Article shall apply to surface mining operations except that the design standards shall not apply to active surface mining operations that are operating in compliance with an approved surface mining permit issued by the State of Tennessee.
5. Except as provided in Section 10 of this Article, this Article shall apply to all parcels of land, structures, and activities that are causing or contributing to:
 - a. Pollution, including nonpoint source pollution, of the waters of the State of Tennessee
 - b. Erosion or sedimentation of stream channels
 - c. Degradation of aquatic or riparian habitat

SECTION 5 – BOUNDARY DETERMINATION.

- A. **Planning Commission to Determine Boundary** -- The Planning Commission upon the recommendation of the Natural Resource Director and/or City Engineer shall be responsible for determining the location of the Streamside Management Buffer. An applicant shall provide all necessary plans, maps, and other supplemental information as required by the Natural Resource Director and/or City Engineer to make such determination. The Planning Commission shall review the information provided by the applicant along with the recommendation of the Natural Resource Director and/or City Engineer and either approve, approve with conditions, or disapprove citing the reasons for such disapproval.
- B. **Appeal of Planning Commission Determination** -- Any party aggrieved by the decision of the Planning Commission as to the boundaries of the Streamside Management Buffer or the conditions placed upon it may appeal such decision in writing to the Board of Zoning Appeals. The Board shall hear the appeal and render its decision to approve, approve with conditions, or disapprove the boundaries and related conditions pertaining thereto. The decision of the Board of Zoning Appeals shall be final.

SECTION 6 – STREAMSIDE MANAGEMENT BUFFER USE AND REGULATIONS.

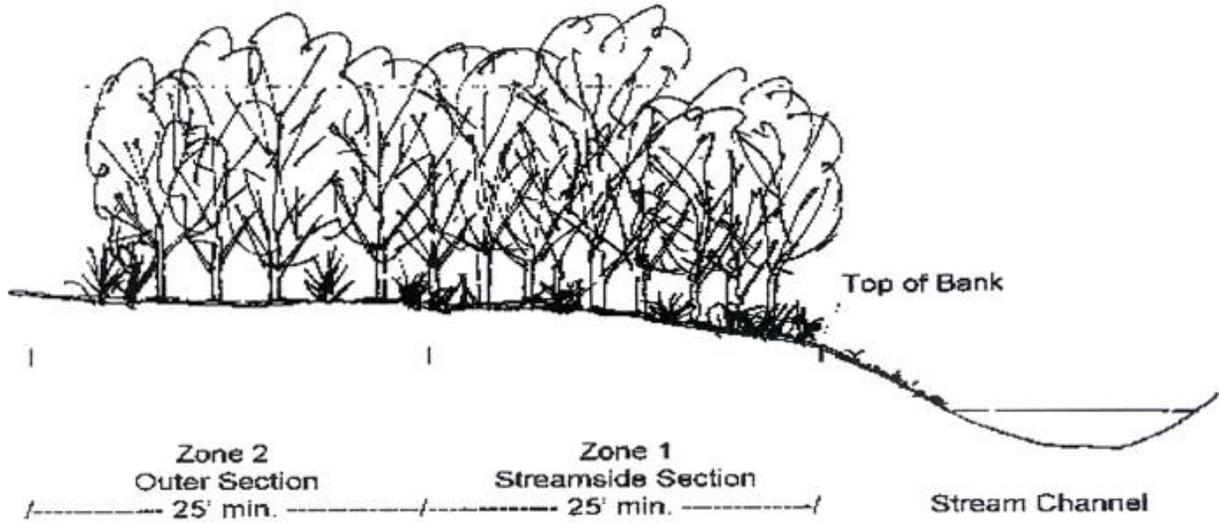
A. Streamside Management Buffer District

The Streamside Management Buffer (hereinafter referred to as “SMB”) is an overlay buffer zone that encompasses all land within fifty (50) feet unless additional buffer is required due to the size of the drainage basin served by the stream on either side of all streams in the City of Lakeland, measured as a horizontal line extending perpendicular from the top of the stream bank immediately adjoining the subject parcel(s). The SMB must be maintained in a naturally vegetated state. Any property or portion thereof that lies within the SMB is subject to the restrictions of the SMB as well as any and all zoning restrictions that apply to the tax parcel as a whole.

B. Distinct Sections within Streamside Management Buffer

The Streamside Management Buffer shall be composed of two distinct zones, with each zone having its own set of allowable uses and vegetative targets as specified in this Article (see Figure XIV-1).

Figure XIV-1
 Illustration of Streamside Management Buffer Cross-Section



1. Zone 1 -- Streamside Section
 - a. The function of the streamside section is to protect the physical and ecological integrity of the stream ecosystem.
 - b. The streamside section will begin at the edge of the stream bank of the active channel and extend a minimum of twenty-five (25) feet from the top of the bank.
 - c. Allowable uses within the streamside section are highly restricted to:
 - (1) flood control structures;
 - (2) utility rights-of-way;
 - (3) footpaths; or
 - (4) road crossings, where permitted.
 - d. The vegetative target for the streamside section is undisturbed native vegetation.

2. Zone 2 – Outer Section
 - a. The function of the outer section is to protect key components of the stream, to prevent encroachment into the SMB, filter runoff from residential and commercial development, and to provide transition between upland development and the streamside section.

- b. The outer section will begin at the outer edge of the streamside section and extend a minimum of twenty-five (25) feet plus any additional streamside management buffer width as specified in Section 6 of this Ordinance.
- c. There shall be no septic systems, permanent structures or impervious cover, with the exception of paths, within the outer zone.
- d. Allowable uses within the *outer* section are restricted to:
 - (1) Biking or hiking paths; or
 - (2) Stormwater management facilities, with the approval of the City Engineer; or
 - (3) Recreational uses as approved by the Planning Commission; or
 - (4) Limited tree clearing with approval from the Planning Commission.
- e. The vegetative target for the outer zone may vary, although planting of native vegetation adapted to the region should be encouraged to increase the cover within this zone.

SECTION 7 – DESIGN STANDARDS FOR STREAMSIDE MANAGEMENT BUFFER.

A. Design Standards for Streamside Management Buffer --

- 1. A streamside management buffer for a stream system shall consist preferably of a forested strip of land extending along both sides of a stream and its adjacent wetlands, floodways or slopes. The streamside management buffer width shall be adjusted to include contiguous sensitive areas, such as steep slopes or erodible soils, where development or disturbance may adversely affect water quality, streams, wetlands or other water bodies.
- 2. The streamside management buffer shall begin at the top edge of the stream bank.
- 3. The required width for all streamside management buffer(s) (i.e., the “base buffer width”) encompassing both Zone 1 and Zone 2 as more fully described below shall be a minimum of fifty (50) feet, with the requirement to expand the streamside management buffer depending on stream order, size of drainage basin, percent slope, floodway, and wetlands or critical area considerations as provided for in this Article.

4. In third order and higher streams, add twenty-five (25) feet to the base buffer width.
5. Streamside management buffer width shall be modified to account for steep slopes. If the average percent slope within the baseline fifty (50) foot buffer is fifteen (15) percent or above, an additional buffer width in Zone 1, as described in Table XIV-1, shall apply. In those cases, the streamside management buffer width will be adjusted in accordance with Table XIV-1 below.

Table XIV-1. Additional Streamside Management Buffer Width Requirements for Both Sides of Streams with Steep Slopes	
Percent Slope	Additional Width to Each Side of Zone 1 in Base Buffer
15%-17%	Add 10 feet to base buffer width
18%-20%	Add 30 feet to base buffer width
21%-23%	Add 50 feet to base buffer width
24%-25%	Add 60 feet to base buffer width

6. Streamside management buffers shall be extended to encompass the entire floodway and a buffer with a minimum of fifty (50) feet beyond the edge of the floodway.
7. Streamside management buffers shall be modified to account for the size of the drainage basin the stream is serving. An additional buffer width in Zone 1 (in addition to that prescribed in Table XIV-1 above), as described in Table XIV-2 below, shall apply. In those cases, the streamside management buffer will be adjusted in accordance with Table XIV-2 below. The additional buffer width required in Table XIV-2 may be combined with the additional buffer width requirements contained in Table XIV-1 upon approval by the City Engineer.

Table XIV-2 Additions Required To Streamside Management Buffer (SMB) Based on Drainage Basin Size *	
Size of Stream Drainage Basin	Additional Width to Add to SMB
0 to less than 32 acres	No additional buffer width required
32 acres to less than 160 acres	Add 25 feet to each side of Zone 1
160 acres to less than 320 acres	Add 50 feet to each side of Zone 1
320 acres or greater	Add 75 feet to each side of Zone 1

* Note: See also Table XIV-1, which may require further additions to the SMB.

8. When wetland or critical areas extend beyond the edge of the required streamside management buffer width, the streamside management buffer shall be adjusted so that the buffer consists of the extent of the wetland plus a twenty-five (25) foot buffer extending beyond the wetland edge.

B. Water Pollution Hazards

The following land uses and/or activities are designated as potential water pollution hazards, and must be set back in addition to the streamside management buffer base width from any stream or water body by the distance indicated below:

1. Storage of hazardous substances - (500 feet)
2. Above ground or underground petroleum storage facilities - (250 feet)
3. Drainfields from onsite sewage disposal and treatment systems (i.e., septic systems) - (200 feet)
4. Raised septic systems - (250 feet)
5. Solid waste landfills or junkyards – (500 feet)
6. Confined animal feedlot operations - (150 feet)
7. Subsurface discharges from a wastewater treatment plant - (250 feet)
8. Land application of biosolids - (150 feet)

Additional buffer may be required by the City based upon slope and the size of drainage basin in accordance with Table XIV-1 and Table XIV-2 above.

SECTION 8 – STREAMSIDE MANAGEMENT AND MAINTENANCE.

A. Management Practices in Streamside Management Buffer --

1. The streamside management buffer, including wetlands and floodways, shall be managed to enhance and maximize the unique value of these resources. Management includes specific limitations on alteration of the natural conditions of these resources. The following practices and activities are restricted within Zones 1 and 2 of the SMB, except with approval by Natural Resource Director and Planning Commission:
 - a. Clearing of existing vegetation
 - b. Soil disturbance by grading, stripping, or other practices

- c. Filling or dumping
 - d. Drainage by ditching, underdrains, or other systems
 - e. Use, storage, or application of pesticides *and herbicides* except for spot spraying of noxious weeds or non-native species consistent with recommendations of Natural Resource Director.
 - f. Housing, grazing, or other maintenance of livestock
 - g. Storage or operation of motorized vehicles, except for maintenance and emergency use approved by Natural Resource Director or Planning Commission.
2. The following structures, practices, and activities are permitted in the SMB, with specific design or maintenance features, subject to the review of Natural Resource Director and Planning Commission:
- a. Roads, bridges, paths, and utilities:
 - (1) An analysis needs to be conducted to ensure that no economically feasible alternative is available.
 - (2) The right-of-way should be the minimum width needed to allow for maintenance access and installation.
 - (3) The angle of the crossing shall be perpendicular to the streamside management buffer in order to minimize clearing requirements.
 - (4) The minimum number of road crossings should be used within each subdivision, and no more than one roadway crossing is allowed for every one thousand (1,000) linear feet of streamside management buffer running parallel with the stream channel.
 - b. Stormwater management:
 - (1) An analysis needs to be conducted to ensure that no economically feasible alternative is available and that the project is either necessary for flood control, or significantly improves the water quality or habitat in the stream.
 - (2) In new developments, onsite and nonstructural alternatives will be preferred over larger facilities within the SMB.
 - (3) When constructing stormwater management facilities (i.e., BMPs), the area cleared will be limited to the area required for construction and adequate maintenance access.

(4) Material dredged or otherwise removed from a BMP shall be stored outside the SMB.

c. Stream restoration projects, facilities and activities approved by Natural Resource Director, City Engineer, and Planning Commission are permitted within the SMB.

d. Water quality monitoring and stream gauging are permitted within the streamside management buffer, as approved by City Engineer or Natural Resource Director.

B. Maintenance of Streamside Management Buffer

1. Individual trees within the SMB in danger of falling, causing damage to dwellings or other structures, or causing blockage of the stream may be removed upon approval by the Natural Resource Director or City Engineer.

2. Other timber cutting techniques approved by the City and/or State of Tennessee may be undertaken within the SMB under the advice and guidance of City and/or State of Tennessee if necessary to preserve the forest from extensive pest infestation, disease infestation, or threat from fire.

SECTION 9 – PLAN REQUIREMENTS AND ADMINISTRATION.

A. Plan Requirement

In accordance with Section 4 of this Article, a plan approved by the Natural Resource Director and/or City Engineer and Planning Commission is required for all development, timber harvesting operations, surface mining operations, and agricultural operations in the streamside management buffer.

B. Plan Submittal

The plan shall set forth an informative, conceptual, and schematic representation of the proposed activity by means of maps, graphs, charts, or other written or drawn documents so as to enable the Planning Commission an opportunity to make a reasonably informed decision regarding the proposed activity.

C. Required Plan Details

The plan shall be prepared to scale (same scale as preliminary site plan or preliminary plat or 1”:100’) and shall contain, at a minimum, the following information:

1. A location or vicinity map;
2. Field delineated and surveyed streams, springs, seeps, bodies of water, and wetlands (include a minimum of 200 feet into adjacent properties);
3. Field delineated and surveyed existing and proposed forest cover within the SMB;
4. Limits of the floodway and one hundred (100)-year floodplain (if available and applicable);
5. Hydric soils mapped in accordance with the NRCS soil survey of the site area;
6. Steep slopes greater than fifteen (15) percent for areas adjacent to and within two hundred (200) feet of streams, wetlands, or other water bodies; and
7. A narrative of the species and distribution of existing vegetation within the streamside management buffer.

D. Streamside Management Buffer Plan in Conjunction with Grading Plan

The streamside management buffer plan shall be submitted in conjunction with the required grading plan for any development, and the SMB should be clearly delineated on the final grading plan.

E. Permanent Boundary Markers Required

Permanent boundary markers, in the form of signage approved by Design Review Commission, shall be installed prior to final approval of the required clearing and grading plan. Signs shall be placed at the outer edge of Zone 2 (See Section 6, B. 2. of this Article). A notation shall be made upon the plan denoting where the permanent boundary markers shall be installed.

F. Notation of Streamside Management Buffer Required on Plans

All site plans and subdivision plats, and final development plans for planned developments prepared for recording and all right-of-way plans shall clearly:

1. Show the extent of any SMB on the subject property;
2. Label the streamside management buffer (“SMB”);

3. Provide a note to reference any streamside management buffer stating: "There shall be no clearing, grading, construction or disturbance of vegetation except as permitted by the City of Lakeland"; and
4. Provide a note to reference any protective covenants governing all streamside management buffer stating: "Any Streamside Management Buffer shown hereon is subject to protective covenants that may be found in the land records and that restrict disturbance and use of these areas."

G. Dedication of Streamside Management Buffer Required

The Streamside Management Buffer for every Second Order or higher stream when such buffer corresponds with the City of Lakeland's Park and Greenway Master Plan shall be dedicated without liens or encumbrances to the City of Lakeland. The entire Streamside Management Buffer shall be dedicated with the initial phase of development to establish protection of the stream at the outset of development. The dedication offer will be reviewed by the City Engineer and a recommendation shall be made on acceptance of the dedication by the Parks and Recreation Board to the Board of Commissioners.

H. Declaration of Protection Covenant Required

All streamside management buffers shall be maintained through a declaration of protective covenant, which is required to be submitted for approval by Natural Resource Director and/or City Engineer and Planning Commission. The covenant shall be recorded in the land records and shall run with the land and continue in perpetuity. A copy of the recorded covenant shall be presented to the City.

1. All lease agreements must contain a notation regarding the presence and location of protective covenants for streamside management buffer and shall contain information on the management and maintenance requirements for the streamside management buffer for the new property owner.
2. An offer of dedication of a streamside management buffer to the City shall not be interpreted to mean that this automatically conveys to the general public the right of access to this area.

I. Annual Inspection of Streamside Management Buffers

The City may inspect established streamside management buffers annually for evidence of sediment deposition, erosion, or concentrated flow channels and corrective actions taken to ensure the integrity and functions of the streamside management buffer.

J. Successional Growth in Streamside Management Buffer Allowed

Streamside Management Buffers may be allowed to grow into their vegetative target state naturally, but methods to enhance the successional process such as active reforestation may be used when deemed necessary and appropriate by Natural Resource Director to ensure the preservation and propagation of the streamside management buffer. Streamside Management Buffers may also be enhanced through reforestation or other growth techniques as a form of mitigation for achieving preservation requirements.

SECTION 10 – EXCEPTIONS AND VARIANCES.

A. Exceptions

1. This Article shall apply to all proposed development except for activities that were completed prior to the effective date of this Article and had received the following:
 - a. A valid, unexpired permit in accordance with development regulations;
 - b. A current, executed public works agreement;
 - c. A valid, unexpired building permit; or
 - d. A waiver in accordance with current development regulations.
2. This Article shall not apply to any development or land disturbance occurring after its effective date to a development or land disturbance which:
 - a. Is covered by a valid, unexpired plat in accordance with the Lakeland Subdivision Regulations.
 - b. Is covered by a current, executed Development Agreement with the City of Lakeland.
 - c. Is covered by a valid, unexpired Building Permit.
 - d. Is an existing nonconforming building or use that is not permitted under this Article. Existing nonconforming buildings and uses may be continued but the existing building footprint or use shall not be expanded or enlarged unless approved by the Planning Commission. Discontinued nonconforming uses may be resumed within one (1) year from such discontinuance but not thereafter unless approved by

the Planning Commission, provided, however, that no change or resumption of use shall be more detrimental to any streamside management buffer than the existing or former nonconforming use, as measured against the intent and objectives of this Article.

3. This Article shall not apply to agricultural operations that are covered by approved BMP's as defined by the Tennessee Department of Agriculture and the U.S. Department of Agriculture. Livestock operations may be subject to limited application of this Article relative to the protection of Streamside Management Buffer from significant degradation of the stream system and accelerated streambank erosion from livestock.

B. Variances -- The Board of Zoning Appeals may grant a variance for the following:

1. Those projects or activities for which it can be demonstrated that strict compliance with the ordinance would result in a practical difficulty;
2. The requirements of the SMB represent an extreme hardship for the landowner such that little or no reasonable economic use of the land is available without reducing the width of the SMB;
3. The size, shape or topography of the property, as of the effective date of this Article, is such that it is not possible to construct a single-family dwelling without encroaching upon the SMB;
4. Those projects or activities serving a public need where no feasible alternative is available;
5. A determination that the granting of the variance would not impact adjoining properties or affect the public health, safety and welfare;
6. Whether plan modifications or conditions of approval can achieve similar conservation objectives of this Article;
7. The repair and maintenance of public improvements where avoidance and minimization of adverse impacts to associated aquatic ecosystems have been addressed; or
8. Those developments which have had buffers or conservation easements applied in conformance with previously issued requirements.

C. Variance from Required Streamside Management Buffer Width

Variances from required streamside management buffer widths for development may also be granted, if deemed appropriate by the Board of Zoning Appeals,

provided, however, the streamside management buffer width may be reduced at some points as long as the average width of the streamside management buffer meets the minimum requirement. This averaging of the streamside management buffer may be used to allow for the presence of an existing structure or to recover a lost lot, as long as the streamside management buffer (Zone I) is not disturbed or encroached upon and no new structures are built within the one hundred (100)-year floodplain unless otherwise permitted by the Floodway regulations contained in the Zoning Ordinance. Under no circumstance shall the streamside management buffer be less than twenty-five (25) feet (the buffer required for Zone 1).

D. Application for Variance Required

The applicant shall submit a written request for a variance to the Board of Zoning Appeals at least thirty (30) days prior to the hearing. The application shall include specific reasons justifying the variance and any other information necessary to evaluate the proposed variance request. The Board may require an alternative analysis that clearly demonstrates that no other feasible alternatives exist and that minimal impact will occur as a result of the project or development. Each applicant for a variance must provide documentation that describes in detail:

1. Existing site conditions, including the status of the protected area; and
2. The needs and purpose for the proposed project; and
3. Justification for seeking a variance, including how buffer encroachment will be minimized to the greatest extent possible; and
4. A proposed mitigation plan that offsets the effects of the proposed encroachment during site preparation, construction and post-construction phases.

E. Requirements from Board of Zoning Appeals

In granting a request for a variance, the Board of Zoning Appeals may require site design, landscape planting, fencing, signs, and water quality best management practices to reduce adverse impacts on water quality, streams, wetlands, floodways and floodplains. All landscape, fencing and signage plans shall be subject to review and approval by the Design Review Commission.

F. Conditions for Granting a Variance

Any variance granted by the Board of Zoning Appeals will meet, at a minimum, the following conditions:

1. The width of the SMB is reduced only by the minimum extent necessary to provide relief; and
2. Land disturbing activities must comply with the requirements of the Erosion and Sediment Control Ordinance of the City of Lakeland and all applicable best management practices. Such activities shall not impair water quality, as defined by the federal Clean Water Act and the rules governing water quality of the State of Tennessee Department of Environment and Conservation; and
3. As an additional condition of issuing the variance, the Board of Zoning Appeals may require water quality monitoring downstream from the site of land disturbing activities to ensure that water quality is not impaired.

G. Decision of Board of Zoning Appeals

The decision of the Board of Zoning Appeals shall be final.

SECTION 11 – ENFORCEMENT.

In addition to any other enforcement right provided herein, the City may bring civil action to restrain a violator from proceeding with any development or land disturbance pending the completion of the proceedings provided in this Article, to restrain the violator from violating any provision of this Article and to require the violator to restore at his/her expense any damage to the Streamside Management Buffer which he/she caused. The violator shall be liable to the City for all costs, including attorney fees, which the City may incur in bringing such an action. Alternatively, the City may seek damages from the violator in the amount necessary to repair any damage to the Streamside Management Buffer and may also recover any costs and its attorney fees incurred in obtaining a recovery of damages.

SECTION 12 – 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.