

ARTICLE 5

GENERAL REQUIREMENTS

5.1 SUITABILITY OF THE LAND

5.1.1 Land subject to flooding, improper drainage or erosion, and any land deemed to be unsuitable for development due to steep slope, unsuitable soils or subsurface conditions, etc., shall not be subjected to development for any uses as may continue such conditions or increase danger to health, safety, life, and property, unless steps are taken to eliminate or abate these conditions.

5.1.2 Unsuitable Land Must Be Included in Buildable Lots (amended 9-22-97)

- a. Land within a proposed subdivision or development which is unsuitable for development shall be incorporated into the buildable lot as excess land. Lots which do not comply with the requirements of the Zoning Ordinance are prohibited.
- b. Exceptions

Signage and Landscape Features

The creation of an unbuildable lot in a proposed subdivision for the exclusive purpose of subdivision identification signage or subdivision entrance landscape features is authorized only under the following circumstances (modification applications from the circumstances of this exception shall not be accepted):

- (a) The lot shall be located at an entrance to the subdivision as an "island" in the right-of-way of a local or minor collector street;
- (b) A mandatory homeowner's association shall be required for the subdivision for ownership and maintenance of the lot as common area;
- (c) The lot shall meet the requirements of the Zoning Ordinance or as may be approved by a variance;
- (d) Right-of-way of a minimum width of six feet from back of curb shall be provided adjacent to the perimeter of the lot; and
- (e) Landscape plantings within the right-of-way shall not extend more than three feet above the street grade.

5.2 OFFERS OF LAND DEDICATION

5.2.1 Whenever a developer proposes the dedication of land to public use, and the Planning Director or the appropriate agency finds that such land use neither required nor is it suitable for public use, the Planning Director shall require the rearrangement of lots to include such land in private ownership.

5.3 ZONING AND OTHER REGULATIONS

5.3.1 Whenever there is a discrepancy between minimum standards or dimensions required herein and those contained in Zoning Ordinance, building codes, or other official regulations, the most restrictive shall apply. In those instances where the required right-of-way width or roadway improvements have been established as a condition of zoning approval, the requirements of the zoning condition shall control whether more or less restrictive than the requirements of these Regulations.

5.3.2 Building setback lines shall at least conform to the minimum yard requirements of the Zoning Ordinance. Building setback lines along all public streets shall be no less than the front yard setback required on the property by the applicable zoning district in the Zoning Ordinance.

5.4 REQUIRED PUBLIC IMPROVEMENTS

5.4.1 General Requirements

Every developer of lands within the jurisdiction of these Regulations shall provide the public improvements included in these Regulations, as shall be appropriate to serve the project, in accordance with these Regulations and other pertinent Codes, Ordinances, and regulations of the City of Duluth. Said improvements and associated land shall be provided at no cost to the City of Duluth, and shall be dedicated or otherwise transferred, as required, to the public in perpetuity and without covenant or reservation, except as otherwise provided herein.

5.5 LOTS

5.5.1 Lots shall at least conform to requirements of the City of Duluth Zoning Ordinance.

5.5.2 Double frontage and reverse frontage lots shall be required for residential subdivisions along major thoroughfares where internal access can be provided. A no-access easement of at least ten feet in width, across which there shall be no right of access, shall be provided along the line of lots abutting the major thoroughfare. Said no-access easement shall be planted with a single line of shrubs or trees, or contain a solid or decorative fence, or contain such other landscaping treatment or grade changes which will produce a partial screening effect, as may be proposed by the developer.

In no-access easements along minor collectors or local streets, planting or other screening treatments shall be at the sole option of the developer.

5.6 SURVEY MONUMENTS

5.6.1 All corners shall be marked with an iron rebar or pin, at least one-half inch in diameter and 18 inches long and driven into the ground so as to extend no less than one inch above the finished grade.

5.6.2 On subdivisions containing floodplains, flood elevation references shall be set in accordance with the requirements of the Floodplain Management Ordinance.

5.7 BUFFERS, LANDSCAPING, TREE PRESERVATION AND TREE REPLACEMENT

5.7.1 General Applicability

The standards and requirements contained in this Section shall apply only to tree protection and replanting, landscaping, buffers and landscaping areas specifically required by the Zoning Ordinance, Buffer, Landscape and Tree Ordinance or other City code, ordinance or regulation, and shall not apply to voluntary landscaping. Plans shall be drawn in accordance with the Buffer, Landscape and Tree Ordinance as adopted on April 26, 1993, as amended. (amended 9-22-97)

5.7.2 Tree Harvesting

On properties where tree harvesting is proposed, all buffers as required in Article 16 of the Zoning Ordinance shall remain undisturbed. All requirements of Section 14-94-5 of the Code of the City of Duluth, Georgia shall be enforced including, but not limited to, notification and plan requirements. (added 12/9/02)

5.7.3 General Requirements

Any property required by the Buffer, Landscape and Tree Ordinance, the Zoning Ordinance or conditions of zoning, conditional use, special use or variance approval to provide a buffer or other specific landscaping shall do so in compliance with the standards included in the Buffer, Landscape and Tree Ordinance, and this Section.

- a. For any such property, a Buffer and Landscape Plan shall be prepared by those individuals as required and authorized by the Buffer, Landscape and Tree Ordinance, and shall be approved by the Department prior to issuance of a Development Permit.
- b. At the discretion and option of the applicant, a required Buffer and Landscape Plan and a required Tree Preservation/Replacement Plan may be combined into a single document, as long as the details and elements of the plans can be clearly and easily identified.

- c. Buffer areas or portions of buffer areas where natural vegetation provides an adequate visual screen as required by the Buffer, Landscape and Tree Ordinance, shall remain natural and undisturbed by any clearing, grading or other construction activity except as authorized by the Development Permit.
- d. In buffer areas where natural vegetation is non-existent or inadequate to provide a visual screen, replanting or supplemental planting shall be required in accordance with the Buffer, Landscape and Tree Ordinance. The Department may also approve additional or alternative screening elements such as planted earthen berms or solid fences where appropriate to the intent of the requirements of the Buffer, Landscape and Tree Ordinance.
- e. New plantings in buffers shall be selected for natural survival expectancy for the City of Duluth environment and for their ability to meet the screening standards established in the Buffer, Landscape and Tree Ordinance.
- f. Landscape areas or strips shall include trees and shrubs to the extent required by the Buffer, Landscape and Tree Ordinance, the Zoning Ordinance or conditions of zoning, special use, conditional use, or variance approval. Plant materials may be grouped or arranged so as to achieve aesthetic results following professional landscaping standards, provided sight distances as required by these Regulations are preserved.

5.7.4 Tree Preservation and Replacement Requirements

- a. Any property required to preserve and protect existing trees or to plant replacement trees under the provisions of the Buffer, Landscape and Tree Ordinance shall do so in compliance with said ordinance.
- b. Areas set aside for the preservation of existing trees or the planting of new replacement trees, in fulfillment of any portion of the tree density standard of a property other than the property upon which the areas are located, shall be established within an easement drawn in favor of the other property, and appropriately recorded.

5.7.4.5 Landscape Performance Surety

In the event that the requirements of this Section have not been met at the time that a Certificate of Development Conformance otherwise can be approved by the Department, and the Certificate is requested, the Director shall require a Landscaping Performance Bond. The owner/developer or the contractor employed by the owner/developer shall post a Landscaping Performance Bond or other City approved surety in an amount equal to 110 percent of the cost of materials, labor, and other attendant costs, incidental to the installation of the required landscaping as part of the owner's Development Performance and Maintenance Agreement with the City. The surety shall:

- a. Be drawn in favor of the City of Duluth

- b. Be in a form satisfactory to the City Attorney.
- c. Specify the time for the completion of the landscaping, which shall not be longer than 3 months following approval of the Certificate of Development Conformance or be in accordance with such other time table for completion acceptable to the Department.

5.8 RECREATION AREAS & OPEN SPACE

5.8.1 Recreation Areas

Land for use as project open space or recreation shall be provided in single family detached subdivisions having a gross area of 50 acres or more and a minimum lot size less than one acre; in duplex subdivisions having a gross area of 50 acres or more; and in single family attached, townhouse, and apartment developments having a gross area of 10 acres or more. Provided, however, that payment of any mandatory impact fee as may be established by the City Council for parks or recreational use shall entirely relieve the developer of providing the land area required hereunder.

- a. For each development, 6 percent of the gross land areas shall be provided for recreational use, but in no case shall the area required exceed 6 acres. Not over 60 percent of the area may be within the 100-year floodplain.
 - (1) If recreational facilities are not proposed to be constructed, the land so provided shall be contiguous or separated only by parking areas and private drives, and of suitable shape and condition for construction of at least one (1) swimming pool and one (1) regulation-size tennis court.
 - (2) If the developer constructs at least a swimming pool and tennis court, or other acceptable active recreation facilities, as part of the project, then the land so provided need not be a single contiguous parcel and the total set-aside area required by this paragraph can be reduced to the amount actually required for the construction and maintenance of the facilities, but not less than 50% of the gross recreational set-aside requirements outlined herein.
- b. In subdivisions, land provided for recreational use in accordance with "a" (1), above, and not proposed for improvement by the developer shall be deeded to the City of Duluth or to a qualified Property Owners Association upon the approval of the final plat containing said land and shall be used exclusively for recreational purposes. The qualified Property Owners Association shall provide for the voluntary membership of all the owners of property within the subdivision, and shall be established under the laws of Georgia. It shall be responsible for the perpetuation, maintenance and function of the recreation areas and all uses or facilities therein. The association shall have the authority and duty to assess its members for such

maintenance and improvements as set forth in the instrument creating the association. All covenants shall be recorded simultaneously with the final subdivision plat.

- c. If the developer constructs recreational facilities as approved under “a” (2), above, on the recreational land in a subdivision, the land area shall be deeded to a Homeowner's Association or other legal entity incorporated under the laws of Georgia. The land shall be deeded to said organization with a restriction that the land shall be used exclusively for recreational purposes and shall be made available to all residents of the subdivision project on an equal basis. The deed shall be filed with the Department simultaneously with the final plat and shall be held by the Department until a Certificate of Occupancy is issued for the recreational facilities, whereupon the deed shall be recorded. Failure to construct or complete the approved facilities shall cause the land to be dedicated to the City of Duluth.
- d. In multi-family rental or condominium projects, land provided for recreational use in accordance with these requirements shall be held in the ownership of the owner of the project.
- e. The City of Duluth may lease or sell land reserved for public parks to a qualified Property Owners Association with a deed restriction that the land be used exclusively for open space or public recreational purposes in perpetuity. The organization of a qualified Property Owners Association and its adequate financing for the discharge of its responsibilities shall be assured through acceptable private deed covenants running with the land or other such documents as approved by the City Council.

5.9 STANDARD DRAWINGS (amended 9-22-97)

5.9.1 The Department shall maintain a file for consultation and distribution a set of Standard Drawings illustrating details of construction and design of streets, storm water drainage facilities, site improvements and other elements related to the development of land in accordance with these Regulations and under the jurisdiction of the Department.

5.9.2 The Standard Drawings shall illustrate minimum acceptable standards for land development activities authorized under these Regulations, but shall not supersede more restrictive prudent design requirements or good engineering practice as applied to specific situations on a case-by-case basis.

5.9.3 The Standard Drawings shall be treated as though a part of these Regulations for application to the minimum standards for design and construction of improvements required herein and subject to modification and appeal provisions in Article 13.

5.10 OPEN SPACE

Open space provided in projects located in the City of Duluth shall meet the following requirements:

a. Open Space Shall be Natural and Undisturbed

Open space shall be permanent and shall remain in its natural state, undisturbed and unoccupied by any structures or impervious surfaces to include septic tanks and septic tank drain fields. Pedestrian access in open space shall be subject to the review and approval of the Planning Director. Buffers, floodplains and wetlands may be utilized as open space.

b. Ownership Requirements

Open space provided in a development shall be owned and maintained by the property owner, or in the case of a subdivision, by a property owner's association. The association shall be established by the developer prior to or concurrent with the recording of the Final Plat of the subdivision. The association by-laws shall include the following provisions:

- 1) Automatic (mandatory) membership of all purchasers of lots therein and their successors; and,
- 2) Conditions and timing of transferring control of the association from the developer to the lot owners shall be specified which shall not exceed four (4) years from the date of recording of the Final Plat of the subdivision; and,
- 3) Responsibility for maintenance, insurance and taxes; and,
- 4) Sharing of the costs of maintenance among the lot owners with shares defined by the association by-laws; and,
- 5) Authority to place liens on the real property of members who fail to pay their dues or assessments; and,
- 6) Prohibition on the dissolution of the association without the approval of the Mayor and City Council.

c. Maintenance

The property owner, or the property owner's association, shall be responsible for the maintenance of open space. Open space shall be kept in reasonable order and condition and shall be maintained free from refuse, junk and debris.

5.11 WETLANDS

5.11.1 National Wetland Inventory Maps

The National Wetland Inventory Maps, prepared by the United States Fish and Wildlife Service, shall be the official wetland maps of the incorporated areas of the City of Duluth. These maps show the general locations of wetlands and should be consulted by persons contemplating activities in or near wetland areas.

5.11.2 Plans

Design professionals, after consulting the National Wetland Inventory Maps, shall indicate wetlands on plans required for land disturbance permit applications.

5.11.3 Design Professional Statement

Prior to issuance of a land disturbance permit, the design professional who prepared the required plans accompanying the permit application, shall add a statement to the plan sheet indicating land disturbance and the statement shall read as follows:

Wetland Certification:

The design professional, whose seal appears hereon, certifies the following: 1) the National Wetland Inventory Maps have been consulted; and, 2) the appropriate plan sheet [] DOES/[] DOES NOT (circle the appropriate box) indicate wetlands as shown on the maps; and, 3) if wetlands are indicated, the land owner or developer has been advised that land disturbance of protected wetlands shall not occur unless the appropriate federal wetlands alteration ("Section 404") permit has been obtained.

5.11.4 The issuance of land disturbance permits by the City shall be coordinated with the US Army Corps of Engineers Section 404 permitting process. If the "wetland certification" above indicates the presence of wetlands as shown on the NWI generalized wetlands maps, no land disturbance permit will be issued by the City until a Section 404 Permit or Letter of Permission is obtained by the US Army Corps of Engineers.