

## CHAPTER 153: WATERSHED PROTECTION ORDINANCE

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## ***AUTHORITY AND GENERAL REGULATIONS***

### **§ 153.01 AUTHORITY AND ENACTMENT.**

The Legislature of the State of North Carolina has, in NCGS160A, Article 8, Section 174, General Ordinance Authority; and in NCGS 143, Article 21, Watershed Protection Rules, delegated the responsibility or directed local governmental units to adopt regulations designed to promote the public health, safety, and general welfare of its citizenry. The City Council of Belmont does hereby ordain and enact into law the following articles as the Watershed Protection Ordinance of the city.

### **§ 153.02 JURISDICTION.**

The provisions of this Ordinance shall apply within the areas designated as a Public Water Supply Watershed by the N.C. Environmental Management Commission and shall be defined and established on the map entitled, "Watershed Protection Map of the City of Belmont, North Carolina" ("the Watershed Map"), which is adopted simultaneously herewith. The Watershed Map and all explanatory matter contained thereon accompanies and is hereby made a part of this Ordinance. This Ordinance shall be permanently kept on file in the office of the City Clerk.

### **§ 153.03 EXCEPTIONS TO APPLICABILITY.**

(A) Nothing contained herein shall repeal, modify, or amend any Federal or State law or regulation, or any ordinance or regulation pertaining thereto except any ordinance which these regulations specifically replace; nor shall any provision of this Ordinance amend, modify, or restrict any provisions of the Code of Ordinances of the city; however, the adoption of this Ordinance shall and does amend any and all ordinances, resolutions, and regulations in effect in the city at the time of the adoption of this Ordinance that may be construed to impair or reduce the effectiveness of this Ordinance or to conflict with any of its provisions.

(B) It is not intended that these regulations interfere with any easement, covenants or other agreements between parties. However, if the provisions of these regulations impose greater restrictions or higher standards for the use of a building or land, then the provisions of these regulations shall control.

(C) Existing development, as defined in this Ordinance, is not subject to the requirements of this Ordinance. Expansions to structures classified as existing development must meet the requirements of this Ordinance, however, the built-upon area of the existing development is not required to be included in the density calculations.

(D) If a nonconforming lot of record is not contiguous to any other lot owned by the same party, then that lot of record shall not be subject to the development restrictions of this Ordinance if it is developed for single-family residential purposes. Any lot or parcel created as part of a family subdivision after the effective date of these rules shall be exempt from these rules if it is developed for one single-family detached residence and if it is exempt from local subdivision regulation. Any lot or parcel created as part of any other type of subdivision that is exempt from a local subdivision ordinance shall be subject to the land use requirements (including impervious surface requirements) of these rules, except that such a lot or parcel must meet the minimum buffer requirements to the maximum

extent practicable.

(E) In cases where average development density on up to two noncontiguous properties is use for the purposes of achieving compliance with the water supply watershed standards per the provisions of NCGS 143-214.5(d2) as follows:

- (1) The properties are within the same water supply watershed. If one of the properties is located in the critical area of the watershed, the critical area property shall not be developed beyond the applicable density requirements for its classification.
- (2) Overall project density meets applicable density or stormwater control requirements under 15A NCAC 2B .0200.
- (3) Vegetated buffers on both properties meet the minimum statewide water supply watershed protection requirements.
- (4) Built upon areas are designed and located to minimize stormwater runoff impact to the receiving waters, minimize concentrated stormwater flow, maximize the use of sheet flow through vegetated areas, and maximize the flow length through vegetated areas.
- (5) Areas of concentrated density development are located in upland areas and, to the maximum extent practicable, away from surface waters and drainageways.
- (6) The property or portions of the properties that are not being developed will remain in a vegetated or natural state and will be managed by a homeowners' association as common area, conveyed to a local government as a park or greenway, or placed under a permanent conservation or farmland preservation easement unless it can be demonstrated that the local government can ensure long-term compliance through deed restrictions and an electronic permitting mechanism. A metes and bounds description of the areas to remain vegetated and limits on use shall be recorded on the subdivision plat, in homeowners' covenants, and on individual deed and shall be irrevocable.
- (7) Development permitted under density averaging and meeting applicable low density requirements shall transport stormwater runoff by vegetated conveyances to the maximum extent practicable.
- (8) A special use permit or other such permit or certificate shall be obtained from the local Watershed Review Board to ensure that both properties considered together meet the standards of the watershed ordinance and that potential owners have record of how the watershed regulations were applied to the properties.

#### **§153.04 REPEAL OF EXISTING WATERSHED ORDINANCE.**

This Ordinance in part carries forward by re-enactment, some of the **Watershed Ordinance of the City of Belmont, North Carolina** (adopted by the City Council on July 1, 1993 and as amended), and it is not the intention to repeal but rather to re-enact and continue in force such existing provisions so that all rights and liabilities that have accrued thereunder are preserved and may be enforced. All

provisions of the Watershed Ordinance which are not re-enacted herein are hereby repealed. All suits at law or in equity and/or all prosecutions resulting from the violation of any ordinance provisions heretofore in effect, which are now pending in any court of this state or of the United States, shall not be abated or abandoned by reason of the adoption of this Ordinance, but shall be prosecuted to their finality the same as if this Ordinance had not been adopted; and any and all violations of the existing Watershed Protection Ordinance, prosecutions for which have not yet been instituted, may be hereafter filed and prosecuted; and nothing in this Ordinance shall be so construed as to abandon, abate or dismiss any litigation or prosecution now pending and/or which may heretofore have been instituted or prosecuted.

#### **§ 153.05 CRIMINAL PENALTIES.**

Any person violating any provisions of this Ordinance shall be guilty of a misdemeanor and, upon conviction, shall be punished in accordance with NCGS 14-4. The maximum fine for each offense shall not exceed \$500.00. Each day that the violation continues shall constitute a separate offense.

#### **§ 153.06 REMEDIES.**

(A) If any subdivision, development and/or land use is found to be in violation of this Ordinance, the City Council may, in addition to all other remedies available either in law or in equity, institute a civil penalty in the amount of \$1,000.00, action or proceedings to restrain, correct, or abate the violation; to prevent occupancy of the building, structure, or land; or to prevent any illegal act, conduct, business, or use in or about the premises. In addition, the N.C. Environmental Management Commission may assess civil penalties in accordance with NCGS 143-215.6(a). Each day that the violation continues shall constitute a separate offense.

(B) If the Watershed Administrator finds that any of the provisions of this Ordinance are being violated, they shall notify in writing the person responsible for such violation, indicating the nature of the violation, and ordering the action necessary to correct it. They shall order discontinuance of the illegal use of land, buildings or structures; removal of illegal buildings or structures, or of additions, alterations or structural changes thereto; discontinuance of any illegal work being done; or shall take any action authorized by this Ordinance to ensure compliance with or to prevent violation of its provisions. If a ruling of the Watershed Administrator is questioned, the aggrieved party or parties may appeal such ruling to the Watershed Review Board.

#### **§ 153.07 SEVERABILITY.**

Should any section or provision of this Ordinance be declared invalid or unconstitutional by any court of competent jurisdiction, the declaration shall not affect the validity of this Ordinance as a whole or any part thereof that is not specifically declared to be invalid or unconstitutional.

### ***SUBDIVISION REGULATIONS***

#### **§ 153.10 GENERAL PROVISIONS.**

(A) No subdivision plat of land within the Public Water Supply Watershed shall be filed or recorded

by the Gaston County Register of Deeds until it has been approved in accordance with the provisions of this subchapter. Likewise, the Clerk of Superior Court shall not order or direct the recording of a plat if the recording of such plat would be in conflict with this subchapter.

(B) The approval of a plat does not constitute or effect the acceptance by the city or the public of the dedication of any street or other ground, easement, right-of-way, public utility line, or other public facility shown on the plat and shall not be construed to do so.

(C) All subdivisions shall conform to the mapping requirements contained in NCGS 47-30.

(D) All subdivisions of land within the jurisdiction of the city after the effective date of this Ordinance shall require a plat to be prepared, approved, and recorded pursuant to this Ordinance.

### **§ 153.11 SUBDIVISION APPLICATION AND REVIEW PROCEDURES.**

(A) All proposed subdivisions shall be reviewed prior to recording with the Register of Deeds by submitting a vicinity map to the Watershed Administrator to determine whether or not the property is located within the designated Public Water Supply Watershed. Subdivisions that are not within the designated watershed area shall not be subject to the provisions of this Ordinance and may be recorded provided the Watershed Administrator initials the vicinity map. In addition, subdivisions within a WS-IV watershed are subject to the provisions of this Ordinance only when an erosion and sedimentation plan is required under the provisions of State law, or approved local program. Subdivisions within the designated watershed area shall comply with the provisions of this Subchapter and all other state and local requirements that may apply.

(B) Subdivision applications shall be filed with the Watershed Administrator. The application shall include a completed application form, 2 copies of the plat and supporting documentation deemed necessary by the Watershed Administrator or the Watershed Review Board.

(C) The Watershed Administrator shall review the completed application and shall either approve, approve conditionally or disapprove each application. The Watershed Administrator shall take final action within 45 days of submission of the application. The Watershed Administrator or the Board may provide public agencies an opportunity to review and make recommendations. However, failure of the agencies to submit their comments and recommendations shall not delay action within the prescribed time limit. Said public agencies may include, but are not limited to, the following:

- (1) The district highway engineer with regard to proposed streets and highways.
- (2) The director of the Health Department with regard to proposed private water system or sewer systems normally approved by the Health Department.
- (3) The state Division of Water Infrastructure with regard to proposed sewer systems normally approved by the Division, engineered storm water controls or storm water management in general.
- (4) Any other agency or official designated by the Watershed Administrator or Watershed Review Board.

(D) If the Watershed Administrator approves the application, such approval shall be indicated on both copies of the plat by the following certificate and signed by the Watershed Administrator:

***Certificate of Approval for Recording***

*I certify that the plat shown hereon complies with the Watershed Protection Ordinance and is approved by the Watershed Review Board for recording in the Register of Deeds office.*

\_\_\_\_\_  
Date

\_\_\_\_\_  
Watershed Administrator

***NOTICE: This property is located within a Public Water Supply Watershed - development restrictions may apply.***

(E) If the Watershed Administrator disapproves or approves conditionally the application, the reasons for such action shall be stated in writing for the applicant and entered in the minutes. The subdivider may make changes and submit a revised plan which shall constitute a separate request for the purpose of review and application fees.

(F) All subdivision plats shall comply with the requirements for recording of the Gaston County Register of Deeds.

(G) The plat shall be recorded within 30 days of approval. The subdivider shall provide the Watershed Administrator with evidence the plat has been recorded with the Register of Deeds within 5 working days. Penalty, see §153.05 and Remedies, see §153.06.

**§ 153.12 SUBDIVISION STANDARDS AND REQUIRED IMPROVEMENTS.**

(A) *Adequate Building Space.* All lots shall provide adequate building space in accordance with the development standards contained in §153.25 through §153.34. Lots which are smaller than the minimum required for residential lots may be developed using built-upon area criteria in accordance with §153.25 through §153.34.

(B) *Built-Upon Area.* For the purpose of calculating built-upon area, total project area shall include total acreage in the tract on which the project is to be developed.

(C) *Storm Water Drainage Facilities.* The application shall be accompanied by a description of the proposed method of providing storm water drainage. The subdivider shall provide a drainage system that diverts stormwater runoff away from surface waters and incorporates best management practices to minimize water quality impacts.

(D) *Erosion and Sedimentation Control.* The application shall, where required, be accompanied by a written statement that a Sedimentation and Erosion Control Plan has been submitted to and approved by the Gaston Natural Resources Department.

(E) *Roads*. Roads constructed in critical areas and watershed buffer areas. Where possible, roads should be located outside of critical areas and watershed buffer areas. Roads constructed within these areas shall be designed and constructed to minimize their impact on water quality.

**§ 153.13 CONSTRUCTION PROCEDURES.**

(A) No construction or installation of improvements shall commence in a proposed subdivision until a subdivision plat has been approved.

(B) No building or other permits shall be issued for erection of a structure on any lot not of record at the time of adoption of this Ordinance until all requirements of this Ordinance have been met. The subdivider, prior to commencing any work within the subdivision, shall make arrangements with the Watershed Administrator to provide for adequate inspection.

**§ 153.14 PENALTIES FOR TRANSFERRING LOTS IN UNAPPROVED SUBDIVISIONS.**

(A) Any person who, being the owner or agent of the owner of any land located within the jurisdiction of the city, thereafter subdivides their land in violation of this Ordinance or transfers or sells land by reference to, exhibition of, or any other use of a plat showing a subdivision of the land before the plat has been properly approved under this Ordinance and recorded in the office of the Register of Deeds, shall be guilty of a misdemeanor.

(B) The description by metes and bounds in the instrument of transfer or other document used in the process of selling or transferring land shall not exempt the transaction from this penalty.

(C) The city may bring an action for injunction of any illegal subdivision, transfer, conveyance, or sale of land, and the court shall, upon appropriate findings, issue an injunction and order requiring the offending party to comply with this Ordinance.

***DEVELOPMENT REGULATIONS***

**§ 153.25 ESTABLISHMENT OF WATERSHED AREAS.**

(A) The purpose of this Subchapter is to list and describe the watershed areas herein adopted.

(B) For purposes of this Ordinance, the city and its one mile extraterritorial jurisdiction are hereby divided into the following areas, as appropriate:

(1) WS-IV-CA           (Critical Area)

(2) WS-IV-PA           (Protected Area)

**§ 153.26 WATERSHED AREAS DESCRIBED.**

(A) WS-IV Watershed Areas - Critical Area (WS-IV-CA). Only new development activities that

require an erosion/sedimentation control plan under State law or approved local program are required to meet the provisions of this Ordinance when located in a WS-IV watershed. In order to address a moderate to high land use intensity pattern, single family residential uses are allowed at a maximum of 2 dwelling units per acre. All other residential and non-residential development shall be allowed at a maximum of 24% built-upon area. New residuals application sites and landfills are specifically prohibited.

(1) Allowed Uses:

(a) Agriculture subject to the provisions of the Food Security Act of 1985 and the Food, Agriculture, Conservation and Trade Act of 1990 and the rules and regulations of the Soil and Water Conservation Commission.

(b) Silviculture, subject to the provisions of the Forest Practices Guidelines Related to Water Quality (15 NCAC 11.0101-.0209).

(c) Residential.

(d) Non-residential development, excluding landfills and sites for land application of residuals or petroleum contaminated soils.

(2) Density and Built-upon Limits:

(a) Single Family Residential--development shall not exceed two dwelling units per acre on a project by project basis. No residential lot shall be less than 1/2 acre (or 20,000 square feet excluding roadway right-of-way), except within an approved cluster development.

(b) All Other Residential and Non-Residential--development shall not exceed 24% built-upon area on a project by project basis. For the purpose of calculating the built-upon area, total project area shall include total acreage in the tract on which the project is to be developed.

(c) High density options using engineered stormwater control devices are permitted in this district in accordance with §153.45 through §153.52

(B) WS-IV Watershed Areas - Protected Area (WS-IV-PA). Only new development activities that require an erosion/sedimentation control plan under State law or approved local government program are required to meet the provisions of this Ordinance when located in a WS-IV watershed. In order to accommodate moderate to high land use intensity, single family residential uses shall develop at a maximum of 2 dwelling units per acre (2 du/ac). All other residential and non-residential development shall be allowed at a maximum of 24% built-upon area. A maximum of 3 dwelling units per acre (3 du/ac) or 36% percent built-upon area is allowed for projects without a curb and gutter street system.

(1) Uses Allowed:

(a) Agriculture, subject to the provisions of the Food Security Act of 1985 and the Food, Agricultural, Conservation and Trade Act of 1990.

(b) Silviculture, subject to the provisions of the Forest Practices Guidelines Related to Water Quality (15 NCAC 11.0101-.0209).

(c) Residential development.

(d) Non-residential development.

(2) Density and Built-upon Limits:

(a) Single Family Residential--development shall not exceed 2 dwelling units per acre, as defined on a project by project basis. No residential lot shall be less than 1/2 acre (or 20,000 square feet excluding roadway right-of-way), or 1/3 acre for projects without a curb and gutter street system, except within an approved cluster development.

(b) All Other Residential and Non-Residential--development shall not exceed 24% built-upon area on a project by project basis. For projects without a curb and gutter street system, development shall not exceed 36% built-upon area on a project by project basis. For the purpose of calculating built-upon area, total project area shall include acreage in the tract on which the project is to be developed.

(c) High density options using engineered stormwater control devices are permitted in this district in accordance with §153.45 through §153.52

**§ 153.27 CLUSTER DEVELOPMENT.**

Cluster development, if allowed under current city zoning and subdivision ordinances, is allowed in all Watershed Areas under the following conditions:

(A) Minimum lot sizes are not applicable to single family cluster development projects; however, the total number of lots shall not exceed the number of lots allowed for single family detached developments in §153.26. Density or built-upon area for the project shall not exceed that allowed for the critical area, balance of watershed or protected area, whichever applies.

(B) All built-upon area shall be designed and located to minimize stormwater runoff impact to the receiving waters and minimize concentrated stormwater flow, maximize the use of sheet flow through vegetated areas, and maximize the flow length through vegetated areas.

(C) Areas of concentrated density development shall be located in upland area and away, to the maximum extent practicable, from surface waters and drainage ways.

(D) The remainder of the tract shall remain in a vegetated or natural state. The title to the open space area shall be conveyed to an incorporated homeowners association for management; to a local government for preservation as a park or open space; or to a conservation organization for preservation in a permanent easement. Where a property association is not incorporated, a maintenance agreement shall be filed with the property deeds.

(E) Cluster developments that meet the applicable low density requirements shall transport stormwater runoff by vegetated conveyances to the maximum extent practicable.

**§ 153.28 BUFFER AREAS REQUIRED.**

(A) A minimum 100 foot vegetative buffer is required for all new development activities that exceed the low density option; otherwise, a minimum 50 foot buffer is required along the Catawba River mainstem per 15A NCAC 02B.0243 riparian buffer rule, and a minimum 30 foot vegetative buffer for development activities is required along all perennial waters indicated on the most recent versions of U.S.G.S. 1:24,000 (7.5 minute) scale topographic maps or as determined by local government studies. Desirable artificial streambank or shoreline stabilization is permitted.

(B) No new development is allowed in the buffer except for water dependent structures, other structures such as flag poles, signs and security lights which result in only diminutive increases in impervious area and public projects such as road crossings and greenways where no practical alternative exists. These activities should minimize built-upon surface area, direct runoff away from the surface waters and maximize the utilization of stormwater Best Management Practices.

**§ 153.29 RULES GOVERNING THE INTERPRETATION OF WATERSHED AREA BOUNDARIES.**

Where uncertainty exists as to the boundaries of the watershed areas, as shown on the Watershed Map, the following rules shall apply:

(A) Where area boundaries are indicated as approximately following either street, alley, railroad or highway lines or centerlines thereof, such lines shall be construed to be said boundaries.

(B) Where area boundaries are indicated as approximately following lot lines, such lot lines shall be construed to be said boundaries. However, a surveyed plat prepared by a registered land surveyor may be submitted to the city as evidence that one or more properties along these boundaries do not lie within the watershed area.

(C) Where the watershed area boundaries lie at a scaled distance more than 25 feet from any parallel lot line, the location of watershed area boundaries shall be determined by use of the scale appearing on the watershed map.

(D) Where the watershed area boundaries lie at a scaled distance of 25 feet or less from any parallel lot line, the location of watershed area boundaries shall be construed to be the lot line.

(E) Where other uncertainty exists, the Watershed Administrator shall interpret the Watershed Map as to location of such boundaries. This decision may be appealed to the Watershed Review Board.

**§ 153.30 APPLICATION OF REGULATIONS.**

(A) No building or land shall hereafter be used and no development shall take place except in conformity with the regulations herein specified for the watershed area in which it is located.

(B) No area required for the purpose of complying with the provisions of this Ordinance shall be included in the area required for another building.

(C) If a use or class of use is not specifically indicated as being allowed in a watershed area, such use or class of use is prohibited.

**§ 153.31 EXISTING DEVELOPMENT.**

Existing development as defined in this Ordinance, may be continued and maintained subject to the provisions provided herein. Expansions to structures classified as existing development must meet the requirements of this Ordinance, however, the built-upon area of the existing development is not required to be included in the built-upon area calculations.

(A) *Uses of Land.* This category consists of uses existing at the time of adoption of this Ordinance where such use of the land is not permitted to be established hereafter in the watershed area in which it is located. Such uses may be continued except as follows:

- (1) When such use of land has been changed to an allowed use, it shall not thereafter revert to any prohibited use.
- (2) Such use of land shall be changed only to an allowed use.
- (3) When such use ceases for a period of at least one year, it shall not be reestablished.

(B) *Reconstruction of Buildings or Built-upon Areas.* Any existing building or built-upon area not in conformance with the restrictions of this Ordinance that has been damaged or removed may be repaired and/or reconstructed, except that there are no restrictions on single family residential development, provided:

- (1) Repair or reconstruction is initiated within 12 months and completed within 2 years of such damage.
- (2) The total amount of space devoted to built-upon area may not be increased unless stormwater control that equals or exceeds the previous development is provided.

**§ 153.32 WATERSHED PROTECTION PERMIT.**

(A) Except where a single family residence is constructed on a lot deeded prior to the effective date of this Ordinance, no building or built-upon area shall be erected, moved, enlarged or structurally altered, nor shall any building permit be issued nor shall any change in the use of any building or land be made until a Watershed Protection Permit has been issued by the Watershed Administrator. No Watershed Protection Permit shall be issued except in conformity with the provisions of this Ordinance.

(B) Watershed Protection Permit applications shall be filed with the Watershed Administrator. The application shall include a completed application form and supporting documentation deemed necessary by the Watershed Administrator, and application fees as determined by City Council.

(C) Prior to issuance of a Watershed Protection Permit, the Watershed Administrator may consult with qualified personnel for assistance to determine if the application meets the requirements of this Ordinance.

(D) A Watershed Protection Permit shall expire if a Building Permit or Watershed Occupancy Permit for such use is not obtained by the applicant within 12 months from the date of issuance.

**§ 153.33 BUILDING PERMIT REQUIRED.**

No permit required under the North Carolina State Building Code shall be issued for any activity for which a Watershed Protection Permit is required until that permit has been issued.

**§ 153.34 WATERSHED PROTECTION OCCUPANCY PERMIT.**

(A) The Watershed Administrator shall issue a Watershed Protection Occupancy Permit certifying that all requirements of this Ordinance have been met prior to the occupancy or use of a building hereafter erected, altered or moved and/or prior to the change of use of any building or land.

(B) A Watershed Protection Occupancy Permit, either for the whole or part of a building, shall be applied for coincident with the application for a Watershed Protection Permit and shall be issued or denied within 10 days after the erection or structural alterations of the building.

(C) When only a change in use of land or existing building occurs, the Watershed Administrator shall issue a Watershed Protection Occupancy Permit certifying that all requirements of this Ordinance have been met coincident with the Watershed Protection Permit.

(D) If the Watershed Protection Occupancy Permit is denied, the Watershed Administrator shall notify the applicant in writing stating the reasons for denial.

(E) No building or structure which has been erected, moved, or structurally altered may be occupied until the Watershed Administrator has approved and issued a Watershed Protection Occupancy Permit.

**§ 153.35 FEES.**

City Council shall adopt from time to time, a schedule of fees for the permitting, enforcement and other requirements, as specified in this chapter.

***HIGH DENSITY DEVELOPMENT***

**§ 153.45 HIGH DENSITY DEVELOPMENT STANDARDS.**

(A) The Watershed Review Board may approve high density development proposals consistent with the following standards:

(1) *WS-IV Watershed Areas- Critical Area (WS-IV-CA)*. Where new development exceeds either 2 dwelling units per acre or 24% built-upon area, engineered stormwater controls shall be used to control runoff from the first inch of rainfall and development shall not exceed 50% built-upon area.

(2) *WS-IV Watershed Areas- Protected Area (WS-IV-PA)*. Where new development requires a Sedimentation/Erosion Control Plan and exceeds either 2 dwelling units per acre or 24% built-upon area or 3 dwelling units per area or 36% built-upon area for projects without curb and gutter street systems, engineered stormwater controls shall be used to control runoff from the first inch of rainfall and development shall not exceed 70% built-upon area.

(B) High density development shall meet the requirements of this Ordinance.

### **§ 153.46 HIGH DENSITY DEVELOPMENT PERMIT APPLICATION.**

(A) A High Density Development Permit shall be required for new development exceeding the requirements of the low density option.

(B) Application for a High Density Development shall be addressed and submitted to the Watershed Review Board through the Watershed Administrator at least 30 days prior to a Watershed Review Board meeting. Application for High Density Development Permit shall be made on the proper form and shall include the following information:

(1) A completed High Density Development Permit Application signed by the owner of the property. The signature of the consulting engineer or other agent will be accepted on the application only if accompanied by a letter of authorization;

(2) Two reproducible copies of the development plan within the drainage basin including the applicable information listed in the Application Forms, Subdivision Plat Checklist and detailed information concerning built-upon area;

(3) Two reproducible copies of the plans and specifications of the stormwater control structure consistent with §153.47;

(4) When required by law, written verification that a soil erosion and sedimentation control plan has been approved by the appropriate state or local agency;

(5) Permit Application Fees consistent with §153.50.

(C) Prior to taking final action on any application, the Board or the Watershed Administrator may provide an opportunity to public agencies affected by the development proposal to review and make recommendations on the application. However, failure of the agencies to submit their comments and recommendations shall not delay the Board's action within prescribed time limit.

(D) The Watershed Review Board shall either approve or disapprove each application for a High Density Development Permit based on the applicable criteria contained in this Ordinance. First consideration of a completed application shall be at the next regularly scheduled meeting of the Board

following its receipt. The Board shall take action on the application as its first consideration or within 65 days of its first consideration.

(1) If the Board approves the application based on its findings, such approval shall be indicated on the permit and both copies of the site plan and both copies of the plans and specifications of the stormwater control structure. A High Density Development Permit shall be issued after the applicant posts a performance bond acceptable security as required in §153.48 (B)(1) and executes an Operation and Maintenance Agreement as required in §153.48 (C). A copy of the permit and one copy of each set of plans shall be kept on file at the Watershed Administrator's office. The original permit and one copy of each set of plans shall be delivered to the applicant either by personal service or registered mail, return receipt requested.

(2) If the Board disapproves the application based on its findings, the reasons for such action shall be stated in the minutes of the Board and presented to the applicant in writing wither by personal service or registered mail, return receipt requested. The applicant may make changes and submit a revised plan. All revisions shall be submitted, reviewed, and acted upon by the Board pursuant to the procedures of this section, and shall be considered a new submittal subject to the requirements and application fees as set forth under this Ordinance.

(E) The Watershed Review Board shall issue a High Density Development Permit within sixty-five (65) days of its first consideration upon finding that the proposal is consistent with the applicable standards set forth in the Watershed Ordinance and the following conditions are met:

(1) The use will not endanger the public health or safety if located where proposed and developed according to the plan as submitted and approved;

(2) The use minimizes impacts to water quality through the use of best management practices, cluster development, and/or maximum setbacks from perennial waters;

(3) The use is consistent with the officially land use plan for the city.

If the Watershed Review Board finds that any one of the above conditions is not met, the Board shall deny the application.

(F) In addition to any other requirements provided by this Ordinance, the Board may designate additional permit conditions and requirements to assure that the use will be harmonious with the area in which it is proposed to be located and with the spirit of this Ordinance. All additional conditions shall be entered in the minutes of the meeting at which the permit is granted, on all plans and on the permit certificate. All conditions so imposed shall run with the land and shall be binding upon the applicant and the applicant's heir, successors, or assigns during the continuation of the permitted use.

(G) The Board shall issue a written ruling and make copies available at the office of the Watershed Administrator and the City Clerk.

(H) If the Board approves the application based on its findings, such approval shall be indicated on the permit and both copies of the site plan and both copies of the plans and specifications of the stormwater control structure(s). A High Density Development Permit shall be issued after the applicant

posts a performance bond or other acceptable security as required in §153.48 (B)(1) and executes an Operation and Maintenance Agreement as required in §153.48 (C). A copy of the permit and one copy of each set of plans shall be kept on file at the Watershed Administrator's office. The original permit and one copy of each set of plans shall be delivered to the applicant either by personal service or registered mail, return receipt requested.

#### **§ 153.47 STORMWATER CONTROL MEASURES.**

(A) All stormwater control measures shall be designed by a North Carolina registered professional with qualifications appropriate for the type of system required. These registered professionals are defined as professional engineers, landscape architects, to the extent that the NCGS 89A allow and land surveyors, to the extent that the design represents incidental drainage within a subdivision, as provided in NCGS 89 (C)-3(7).

(B) All stormwater runoff from new built-upon surfaces within the project at build-out shall be treated in a primary stormwater control measure (SCM). Primary SCMs shall include: wet ponds, stormwater wetlands, infiltration systems, sand filters, bioretention cells, permeable pavement, green roofs, and rainwater harvesting. Projects shall use an SCM or SCMs designed, constructed, and maintained so that the project achieves either runoff treatment or runoff volume match, and:

- (1) For projects that use an SCM or SCMs designed to achieve runoff treatment, the required storm depth shall be one inch.
- (2) For projects that use an SCM or SCMs designed to achieve runoff volume match, the post-development runoff volume shall not exceed the pre-development runoff volume for the 90th percentile storm.

(C) The required stormwater treatment volume to be controlled shall be calculated using either the Simple Method or the difference between pre- and post-development runoff volume computed using the discrete NRCS Curve Number Method.

- (1) SCMs shall meet the relevant "Minimum Design Criteria" set forth in the North Carolina Department of Environmental Quality Stormwater BMP Manual which is hereby incorporated by reference and is available at: <http://portal.ncdenr.org/web/lr/bmp-manual>.
- (2) Stormwater outlets shall be designed so that they do not cause erosion immediately downslope of the discharge point during the peak flow from the 10-year storm event as shown by engineering calculations.

(D) All land areas outside of the Stormwater control measure shall be provided with a ground cover sufficient to restrain erosion within 30 days after any land disturbance. Upon completion of the stormwater control structure, a permanent ground cover shall be established and maintained as part of the maintenance agreement described in §153.49 (C).

(E) A description of the area containing the stormwater control measure shall be prepared and filed in consistent with §153.51 (A) and (B), as a separate deed with the Gaston County Register of Deeds along with any easements necessary for general access to the stormwater control measure. The

deeded are shall include the stormwater control measure, vegetative filters, all pipes and water control structures, berms, dikes, etc., and sufficient area to perform inspections, maintenance, repairs, and reconstruction.

(F) Qualifying areas of the stormwater control measure may be considered pervious when computing total built-upon area. However, if the structure is used to compute the percentage built-upon area for one site, it shall not be used to compute built-upon are for any other site or area.

#### **§ 153.48 POSTING OF FINANCIAL SECURITY REQUIRED.**

(A) All new stormwater control structures shall be conditioned on the posting of adequate financial assurance for the purpose of maintenance, repairs, or reconstruction necessary for adequate performance of the stormwater control structures.

(B) Financial assurance shall be in the form of the following:

(1) *Security Performance Bond or other security.* The permit applicant shall obtain either a performance bond from a surety bonding company authorized to do business in North Carolina, an irrevocable letter of credit or other instrument readily convertible into cash at face value payable to the city or placed in escrow with a financial institution designated as an official depository of the city. The bond or other instrument shall be in an amount equal to 1.25 times the total cost of the stormwater control structure, as estimated by the applicant and approved by the Watershed Review Board. The total cost of the stormwater control structure shall include the value of all materials such as piping and other structures; seeding and soil stabilization; design and engineering; and grading, excavation, fill, etc. The cost shall not be prorated as part of a larger project, but rather under the assumption of an independent mobilization.

(2) *Cash or Equivalent Security Deposited After the Release of the Performance Bond.* Consistent with §153.51 (C)(1), the permit applicant shall deposit with the city either cash or other instrument approved by the Watershed Review Board that is readily convertible into cash at face value. The cash or security shall be in an amount equal to fifteen percent (15%) of the total cost of the stormwater control structure or the estimated cost of maintaining the stormwater control structure over a 10 year period, whichever is greater. The estimated cost of maintaining the stormwater control structure shall be consistent with the approved operation and maintenance plan or manual provided by the developer under §153.49 (A). The amount shall be computed by estimating the maintenance cost for 25 years and multiplying this amount by two-fifths or 0.4.

(C) Consistent with §153.46, the permit applicant shall enter into the binding Operation and Maintenance Agreement between the Watershed Review Board and all interests in the development. Said Agreement shall require the owning entity to maintain, repair, and if necessary, reconstruct the stormwater control structure in the accordance with the operation management plan or manual provided by the developer. The Operation and Maintenance Agreement shall be filed with the Gaston County Register of Deeds by the Watershed Review Board.

(D) *Default under the performance bond or other security.* Upon default of the permit applicant to complete and/or maintain the stormwater control structure as spelled out in the performance bond or other security, the Board may obtain and use all or any portion of the funds necessary to complete the improvements based on an engineering estimate. The board shall return any funds not spent in completing the improvements to the owning entity.

(E) *Default under the cash security.* Upon default of the owning entity to maintain, repair and, if necessary, reconstruct the stormwater control structure in accordance with the Operation and Maintenance Agreement, the Board shall obtain and use all or any portion of the cash security to make necessary improvements based on an engineering estimate. Such expenditure of funds shall only be made after exhausting all other reasonable remedies seeking the owning entity to comply with the terms and conditions of the Operation and Maintenance Agreement. The Board shall not return any deposited cash funds. Penalty, see §153.05 and Remedies, see §153.06.

#### **§ 153.49 MAINTENANCE AND UPKEEP.**

(A) An operation and maintenance plan or manual shall be provided by the developer for each stormwater control structure, indicating what operation and maintenance actions are needed, what specific quantitative criteria will be used for determining when those actions are to be taken and, consistent with the Operation and Maintenance Agreement, who is responsible for those actions. The plan shall clearly indicate the steps that will be taken for restoring a stormwater control structure to design specifications if a failure occurs.

(B) Landscaping and grounds management shall be the responsibility of the owning entity. However, vegetation shall not be established or allowed to mature to the extent that the integrity of the control structure is diminished or threatened, or to the extent of interfering with any easement or access to the stormwater control structure.

(C) Except for general landscaping and grounds management, the owning entity shall notify the Watershed Administrator prior to any repair or reconstruction of the stormwater control structure. All improvements shall be made consistent with the approval plans and specifications of the stormwater control structure and the operation and maintenance plan or manual. After notification by the owning entity, the Watershed Administrator shall inspect the completed improvements and shall inform the owning entity of any required additions, changes, or modifications and of the time period to complete said improvements. The Watershed Administrator may consult with an engineer or landscape architect (to the extent that the NCGS 89A, allow) designated by the Watershed Review Board.

(D) Amendments to the plans and specifications of the stormwater control structure and/or the operation and maintenance plan or manual shall be approved by the Watershed Review Board. Proposed changes shall be prepared by a North Carolina registered professional engineer or landscape architect (to the extent that the NCGS 89A, allow) and submitted to and reviewed by the Watershed Administrator prior by the Watershed Review Board.

(1) If the Watershed Review Board approves the proposed changes, the owning entity of the stormwater control structure shall file sealed copies of the revisions with the Office of the Watershed Administrator.

(2) If the Watershed Review Board disapproves the changes, the proposal may be revised and resubmitted to the Watershed Review Board as a new proposal. If the proposal has not been revised and is essentially the same that already reviewed, it shall be returned to the applicant.

(E) If the Watershed Review Board finds that the operation and maintenance plan or manual is inadequate for any reason, the Board shall notify the owning entity of any required changes and shall prepare and file copies of the revised agreement with the Gaston County Register of Deeds, the Office of the Watershed Administrator and the owning entity.

#### **§ 153.50 APPLICATION AND INSPECTION FEES.**

(A) Processing and inspection fees shall be submitted in the form of a check or money order made payable to the city. Applications shall be returned if not accompanied by the required fee.

(B) A permit and inspection fee schedule, as approved by the City Council shall be posted in the Office of the Watershed Administrator.

(C) Inspection fees shall be valid for 60 days. An inspection fee shall be required when improvements are made to the stormwater control structure consistent with §153.49 (C), except in the case when a similar fee has been paid within the last 60 days.

#### **§ 153.51 INSPECTIONS AND RELEASE OF THE PERFORMANCE BOND.**

(A) The stormwater control structure shall be inspected by the Watershed Administrator, after the owning entity notifies the Watershed Administrator that all work has been completed. At this inspection, the owning entity shall provide:

(1) The signed deed, related easements and survey plat for the stormwater control structure ready for filing with the Gaston County Register of Deeds;

(2) A certification sealed by an engineer or landscape architect (to the extent that the NCGS 89A, allow) stating that the stormwater control structure is complete and consistent with the approved plans and specifications

(B) The Watershed Administrator shall present the materials submitted by the developer and the inspection report and recommendations to the Watershed Review Board at its next regularly scheduled meeting.

(1) If the Board approves the inspection report and accepts the certification, deed, and easements, the Board shall file the deed and easements with the Gaston County Register of Deeds, release up to 75% of the value of the performance bond or other security and issue a Watershed Protection Occupancy Permit for the stormwater control structure, consistent with §153.34.

(2) If deficiencies are found, the Board shall direct that improvements and inspections be made and/ or documents corrected and resubmitted to the Board.

(C) No sooner than one year after the filing date of the deed, easements and maintenance agreement, the developer may petition the Watershed Review Board to release the remaining value of the performance bond or other security. Upon receipt of said petition, the Watershed Administrator shall inspect the stormwater control structure to determine whether the controls are performing as designed and intended. The Watershed Administrator shall present the petition, inspection report, and recommendations to the Watershed Review Board.

(1) If the Board approves the report and accepts the petition, the developer shall deposit with the Watershed Review Board a cash amount equal to that described in §153.48 (B)(2) after which, the Board shall release the performance bond or other security.

(2) If the Board does not accept the report and rejects the petition, the Board shall provide the developer with instructions to correct any deficiencies and all steps necessary for the release the performance bond or other security.

(D) A Watershed Protection Occupancy Permit shall not be issued for any building within the permitted development until the Watershed Review Board has approved the stormwater control structure, as provided in §153.51 (B).

(E) All stormwater control structures shall be inspected at least once on an annual basis to determine whether the controls are performing as designed and intended. Records of inspection shall be maintained on forms approved or supplied by the North Carolina Division of Energy, Mineral, and Land Resources. Annual inspections shall begin within one year of filing date of the deed for the stormwater control structure.

(F) In the event the Watershed Administrator discovers the need for corrective action or improvements, the Watershed Administrator shall notify the owning entity of the needed improvements and the date by which the corrective action is to be completed. All improvements shall be made consistent with the plans and specifications of the stormwater control structure and the operation maintenance plan or manual. After notification by the owning entity, the Watershed Administrator shall inspect and approve the completed improvements. The Watershed Administrator may consult with an engineer or landscape architect (to the extent that the NCGS 89A, allow) designated by the Watershed Review Board.

(G) Appeals of any order, requirement, decision, or determination made by the Watershed Administrator may be made to and decided by the Watershed Review Board consistent with §153.71.

#### **§ 153.52 SANCTIONS.**

In addition to the remedies described in § 153.06 of this Ordinance and consistent with NCGS 160A-175, the Watershed Review Board may seek enforcement of this Ordinance through the City Council by assessing a civil penalty to be recovered by the city in a civil action in the nature of debt if the offender does not pay the penalty in a prescribed period of time after being cited for violation of the

ordinance. Said violation may be enforced by an appropriate equitable remedy issuing from a court of competent jurisdiction. The court may issue an injunction and order of abatement commanding the defendant to correct the unlawful condition upon or cease the unlawful use of the property. The action shall be governed in all respects by the laws and rules governing civil proceeding, including the Rules of Civil Procedure in general and Rule 65 in particular. If the defendant fails or refuses to comply with an injunction or with an order of abatement within the time allowed by the court, the defendant may be cited for contempt and the city may execute the order of abatement. The city shall have a lien on the property for the cost of executing an order of abatement in the nature of a mechanic's and materialman's lien. The defendant may secure cancellation of an order of abatement by paying all costs of the proceeding and posting a bond for compliance with order. The bond shall be given with sureties approved by the Clerk of Superior Court in an amount approved. By the judge before whom the matter is heard and shall be conditioned on the defendant's full compliance with the terms of the order of abatement within a time fixed by the judge. Cancellation of an order of abatement shall not suspend or cancel an injunction issued in conjunction therewith. Enforcement of this ordinance may be by any one, all or a combination of the remedies authorized in this ordinance. Each day's continuing violation shall be a separate and distinct offence.

### ***PUBLIC HEALTH REGULATIONS***

#### **§ 153.60 PUBLIC HEALTH, IN GENERAL.**

No activity, situation, structure or land use shall be allowed within the watershed which poses a threat to water quality and the public health, safety and welfare. Such conditions may arise from inadequate on-site sewage systems which utilize ground absorption; inadequate sedimentation and erosion control measures; the improper storage or disposal of junk, trash or other refuse within a buffer area; the improper management of stormwater runoff; or any other situation found to pose a threat to water quality.

#### **§ 153.61 ABATEMENT.**

(A) The Watershed Administrator shall monitor land use activities within the watershed areas to identify situations that may pose a threat to water quality.

(B) The Watershed Administrator shall report all findings to the Watershed Review Board. The Watershed Administrator may consult with any public agency or official and request recommendations.

(C) Where the Watershed Review Board finds a threat to water quality and the public health, safety and welfare, the Board shall institute any appropriate action or proceeding to restrain, correct or abate the condition and/or violation.

### ***ADMINISTRATION, ENFORCEMENT AND APPEALS***

#### **§ 153.70 WATERSHED ADMINISTRATOR AND DUTIES THEREOF.**

(A) The city shall appoint a Watershed Administrator, who shall be duly sworn in.

(B) It shall be the duty of the Watershed Administrator to administer and enforce the provisions of this Ordinance as follows:

(1) The Watershed Administrator shall issue Watershed Protection Permits and Watershed Protection Occupancy Permits as prescribed herein. A record of all permits shall be kept on file and shall be available for public inspection during regular office hours of the Administrator.

(2) The Watershed Administrator may serve as clerk to the Watershed Review Board.

(3) The Watershed Administrator shall keep records of all amendments to the local Water Supply Watershed Protection Ordinance and shall provide copies of all amendments upon adoption to the Stormwater Permitting Program of the NC Division of Energy, Mineral, and Land Resources.

(4) The Watershed Administrator is granted the authority to administer and enforce the provisions of this Ordinance, exercising in the fulfillment of their responsibility the full police power of the city. The Watershed Administrator, or their duly authorized representative, may enter any building, structure, or premises, as provided by law, to perform any duty imposed upon them by this Ordinance.

(5) The Watershed Administrator shall keep a record of variances to the local Water Supply Watershed Protection Ordinance. This record shall be submitted for each calendar year to the Division of Energy, Mineral, and Land Resources on or before January 1st of the following year and shall provide a description of each project receiving a variance and the reasons for granting the variance.

#### **§ 153.71 APPEAL FROM THE WATERSHED ADMINISTRATOR.**

(A) Any order, requirement, decision or determination made by the Watershed Administrator may be appealed to and decided by the Watershed Review Board.

(B) An appeal from a decision of the Watershed Administrator must be submitted to the Watershed Review Board within 30 days from the date the order, interpretation, decision or determination is made. All appeals must be made in writing stating the reasons for appeal. Following submission of an appeal, the Watershed Administrator shall transmit to the Board all papers constituting the record upon which the action appealed from was taken.

(C) An appeal stays all proceedings in furtherance of the action appealed, unless the officer from whom the appeal is taken certifies to the Board after the notice of appeal has been filed with him, that by reason of facts stated in the certificate, a stay would in their ~~his~~ opinion cause imminent peril to life or property. In such case, proceedings shall not be stayed otherwise than by a restraining order which may be granted by the Board or by a court of record on application of notice of the officer from whom the appeal is taken and upon due cause shown.

(D) The Board shall fix a reasonable time for hearing the appeal and give notice thereof to the parties and shall decide the same within a reasonable time. At the hearing, any party may appear in person, by agent or by attorney.

**§ 153.72 CHANGES AND AMENDMENTS TO THE WATERSHED PROTECTION ORDINANCE.**

(A) The City Council may, on its own motion or on petition, after public notice and hearing, amend, supplement, change or modify the watershed regulations and restrictions as described herein.

(B) No action shall be taken until the proposal has been submitted to the Watershed Review Board for review and recommendations. If no recommendation has been received from the Watershed Review Board within 45 days after submission of the proposal to the Chairman of the Watershed Review Board, the City Council may proceed as though a favorable report had been received.

(C) Under no circumstances shall the City Council adopt such amendments, supplements or changes that would cause this Ordinance to violate the watershed protection rules as adopted by the N.C. Environmental Management Commission. All amendments must be filed with the Stormwater Permitting Program, N.C. Division of Energy, Mineral, and Land Resources.

**§ 153.73 PUBLIC NOTICE AND HEARING REQUIRED.**

Before adopting or amending this Ordinance, the City Council shall hold a public hearing on the proposed changes. A notice of the public hearing shall be given once a week for two successive calendar weeks in a newspaper having general circulation in the area. The notice shall be published for the first time not less than 10 nor more than 25 days before the date for the hearing.

**§ 153.74 ESTABLISHMENT OF WATERSHED REVIEW BOARD.**

There shall be and hereby is created the Watershed Review Board consisting of all members of the City Council.

**§ 153.75 GENERAL PROCEEDINGS OF THE WATERSHED REVIEW BOARD.**

The mayor shall be the chairman and the mayor pro tempore the vice-chairman of the board. The chairman in turn shall appoint a secretary, who may be an employee of the city, a city officer, or a member of the Watershed Review Board. The chairman, or in their absence the vice-chairman, may administer oaths and request the attendance of witnesses. The Board shall keep minutes of its proceedings, including the names of members present and absent, a record of the vote on every question, together with records of its examinations and other official actions.

**§ 153.76 MEETINGS**

(A) *Board Meetings.* The Board may hold regular monthly meetings at a specified time and place or special meetings of the Board may be called at any time by the chairman or by request of three or more members of the Board. At least 48 hours written notice of the time and place of meetings shall be given by the chairman to each member of the Board. All Board meetings are to be held in accordance with NCGS 143-33B, commonly referred to as the Open Meetings Law.

(B) *Cancellation of Meetings.* Whenever there are no appeals or other business for the Board, or

whenever so many members so notify the secretary of inability to attend that a quorum will not be available, the chairman shall dispense with a meeting giving written or oral notice to all members.

(C) *Quorum.* A majority of the actual membership of the Board plus the chairman, excluding vacant seats, shall constitute a quorum. A member who has withdrawn from a meeting without being excused by majority vote of the remaining members present, shall be counted as present for purposes of determining whether or not a quorum is present.

(D) *Voting.* No member shall be excused from voting except upon matters involving the consideration of their own financial interest or official conduct. In all other cases, a failure to vote by a member who is physically present in the meeting chamber, or who has withdrawn without being excused by a majority vote of the remaining members present, shall be recorded as an affirmative vote. An affirmative vote equal to a majority of all members of the Board not excused from voting on the question in issue (including the chairman's vote in case of an equal division) shall be required to take any action.

#### **§ 153.77 RULES OF CONDUCT FOR MEMBERS.**

Members of the Board may be removed by the City Council for cause, including violation of the rules stated below:

(A) Faithful attendance at meetings of the Board and conscientious performance of the duties required of members of the Board shall be considered a prerequisite to continuing membership on the Board.

(B) No Board member shall take part in the hearing, consideration, or determination of any case in which they are personally or financially interested.

(1) *Financial Interest.* A Board member shall have a "financial interest" in a case when a decision in the case will:

(a) Cause them or their spouse to experience a direct financial benefit or loss, or

(b) Will cause a business in which they or their spouse owns a 10% or greater interest, or is involved in a decision-making role, to experience a direct financial benefit or loss.

(2) *Personal Interest.* A Board member shall have a "personal interest" in a case when it involves a member of their immediate family (i.e., parent, spouse, or child).

(C) No Board member shall discuss any case with any parties thereto prior to the public hearing on that case; provided, however, that members may receive and/or seek information pertaining to the case from the Watershed Administrator or any other member of the Board, its secretary or clerk prior to the hearing.

(D) Members of the Board shall not express individual opinions on the proper judgement of any case prior to its determination on that case.

(E) Members of the Board shall give notice to the chairman at least 48 hours prior to the hearing of any potential conflict of interest which they have in a particular case before the Board.

(F) No Board member shall vote on any matter that decides an application or appeal unless they had attended the public hearing on that application or appeal.

**§ 153.78 POWERS AND DUTIES OF THE WATERSHED REVIEW BOARD.**

(A) *Administrative Review.* The Watershed Review Board shall hear and decide appeals from any decision or determination made by the Watershed Administrator in the enforcement of this Ordinance.

(B) *Variances.* The Watershed Review Board shall have the power to authorize, in specific cases, minor variances from the terms of this Ordinance as will not be contrary to the public interests where, owing to special conditions, a literal enforcement of this Ordinance will result in practical difficulties or unnecessary hardship, so that the spirit of this Ordinance shall be observed, public safety and welfare secured, and substantial justice done. In addition, the city shall notify and allow a reasonable comment period for all other local governments having jurisdiction in the designated watershed where the variance is being considered.

(1) Applications for a variance shall be made on the proper form obtainable from the Watershed Administrator and shall include the following information:

(a) A site plan, drawn to a scale of at least 1 inch to 40 feet, indicating the property lines of the parcel upon which the use is proposed; any existing or proposed structures; parking areas and other built-upon areas; surface water drainage. The site plan shall be neatly drawn and indicate north point, name and address of person who prepared the plan, date of the original drawing, and an accurate record of any later revisions.

(b) A complete and detailed description of the proposed variance, together with any other pertinent information which the applicant feels would be helpful to the Watershed Review Board in considering the application.

(c) The Watershed Administrator shall notify in writing each local government having jurisdiction in the watershed and the entity using the water supply for consumption. Such notice shall include a description of the variance being requested. Local governments receiving notice of the variance request may submit comments to the Watershed Administrator prior to a decision by the Watershed Review Board. Such comments shall become a part of the record of proceedings of the Watershed Review Board.

(2) Before the Watershed Review Board may grant a variance, it shall make the following three findings, which shall be recorded in the permanent record of the case, and shall include the factual reasons on which they are based:

(a) There are practical difficulties or unnecessary hardships in the way of carrying out the strict letter of the Ordinance. In order to determine that there are practical difficulties or unnecessary hardships, the Board must find that the five following conditions exist:

(1) If they comply with the provisions of the Ordinance, the applicant can secure no reasonable return from, nor make reasonable use of, their property. Merely proving that the variance would permit a greater profit to be made from the property will not be considered adequate to justify the Board in granting a variance. Moreover, the Board shall consider whether the variance is the minimum possible deviation from the terms of the Ordinance that will make possible the reasonable use of their property.

(2) The hardship results from the application of the Ordinance to the property rather than from other factors such as deed restrictions or other hardship.

(3) The hardship is due to the physical nature of the applicant's property, such as its size, shape, or topography, which is different from that of neighboring property.

(4) The hardship is not the result of the actions of an applicant who knowingly or unknowingly violates the Ordinance, or who purchases the property after the effective date of the Ordinance, and then comes to the Board for relief.

(5) The hardship is peculiar to the applicant's property, rather than the result of conditions that are widespread. If other properties are equally subject to the hardship created in the restriction, then granting a variance would be a special privilege denied to others, and would not promote equal justice.

(b) The variance is in harmony with the general purpose and intent of the Ordinance and preserves its spirit.

(c) In the granting of the variance, the public safety and welfare have been assured and substantial justice has been done. The Board shall not grant a variance if it finds that doing so would in any respect impair the public health, safety, or general welfare.

(3) In granting the variance, the Board may attach thereto such conditions regarding the location, character, and other features of the proposed building, structure, or use as it may deem advisable in furtherance of the purpose of this Ordinance. If a variance for the construction, alteration or use of property is granted, such construction, alteration or use shall be in accordance with the approved site plan.

(4) The Watershed Review Board shall refuse to hear an appeal or an application for a variance previously denied if it finds that there have been no substantial changes in conditions or circumstances bearing on the appeal or application.

(5) A variance issued in accordance with this Section shall be considered a Watershed Protection Permit and shall expire if a Building Permit or Watershed Occupancy Permit for such use is not obtained by the applicant within six (6) months from the date of the decision.

(6) If the application calls for the granting of a major variance, and if the Watershed Review Board decides in favor of granting the variance, the Board shall prepare a preliminary record of the hearing with all deliberate speed. The preliminary record of the hearing shall

include:

- (a) The variance application;
  - (b) The hearing notices;
  - (c) The evidence presented;
  - (d) Motions, offers of proof, objections to evidence, and rulings on them;
  - (e) Proposed findings and exceptions;
  - (f) The proposed decision, including all conditions proposed to be added to the permit.
- (7) The preliminary record shall be sent to the Environmental Management Commission for its review as follows:
- (a) If the Commission concludes from the preliminary record that the variance qualifies as a major variance and that (1) the property owner can secure no reasonable return from, nor make any practical use of the property unless the proposed variance is granted, and (2) the variance, if granted, will not result in a serious threat to the water supply, then the Commission shall approve the variance as proposed or approve the proposed variance with conditions and stipulations. The Commission shall prepare a Commission decision and send it to the Watershed Review Board. If the Commission approves the variance as proposed, the Board shall prepare a final decision granting the proposed variance. If the Commission approves the variance with conditions and stipulations, the Board shall prepare a final decision, including such conditions and stipulations, granting the proposed variance.
  - (b) If the Commission concludes from the preliminary record that the variance qualifies as a major variance and that (1) the property owner can secure a reasonable return from or make a practical use of the property without the variance or (2) the variance, if granted, will result in a serious threat to the water supply, then the Commission shall deny approval of the variance as proposed. The Commission shall prepare a Commission decision and send it to the Watershed Review Board. The Board shall prepare a final decision denying the variance as proposed.
- (C) Subdivision approval. See §153.10 through §153.14.
- (D) Public Health. See §153.60 and §153.61.
- (E) Approval of all development greater than the low density option. See §153.45 through §153.51.

#### **§ 153.79 APPEALS FROM THE WATERSHED REVIEW BOARD.**

Appeals from the Watershed Review Board must be filed with the Superior Court within 30 days from the date of the decision. Decisions by the Superior Court will be in the manner of certiorari.

## § 153.80 OPERATION AND MAINTENANCE AGREEMENT.

The Watershed Administrator is hereby authorized to sign the operation and maintenance agreement described in § 153.48 (C) on behalf of the city.

### **DEFINITIONS**

#### § 153.90 General Definitions.

For the purpose of this Ordinance, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

**AGRICULTURAL USE.** The use of waters for stock watering, irrigation, and other farm purposes.

**BEST MANAGEMENT PRACTICES (BMP).** A structural or nonstructural management-based practice used singularly or in combination to reduce nonpoint source inputs to receiving waters in order to achieve water quality protection goals.

**BUFFER.** An area of natural or planted vegetation through which stormwater runoff flows in a diffuse manner so that the runoff does not become channelized and which provides for infiltration of the runoff and filtering of pollutants. The buffer is measured landward from the normal pool elevation of impounded structures and from the bank of each side of streams or rivers.

**BUILDING.** Any structure having a roof supported by columns or by walls, and intended for shelter, housing or enclosure of persons, animals or property. The connection of two buildings by means of an open porch, breezeway, passageway, carport or other such open structure, with or without a roof, shall not be deemed to make them one building.

**BUILT-UPON AREA.** Built-upon areas shall include that portion of a development project that is covered by impervious or partially impervious cover including buildings, pavement, gravel areas (e.g. roads, parking lots, and paths), recreation facilities (e.g. tennis courts), etc. (Note: Wooden slatted decks and the water area of a swimming pool are considered pervious.)

**CLUSTER DEVELOPMENT.** Cluster development means the grouping of buildings in order to conserve land resources and provide for innovation in the design of the project including minimizing stormwater runoff impacts. This term includes nonresidential development as well as single-family residential and multi-family developments. For the purpose of this Ordinance, planned unit developments and mixed use development are considered as cluster development.

**CRITICAL AREA.** The area adjacent to a water supply intake or reservoir where risk associated with pollution is greater than from the remaining portions of the watershed. The **CRITICAL AREA** is defined as extending either one-half mile from the normal pool elevation of the reservoir in which the intake is located or to the ridge line of the watershed (whichever comes first); or one-half mile upstream from the intake located directly in the stream or river (run-of-the-river), or the ridge line of the watershed (whichever comes first). Local governments may extend the critical area as needed. Major landmarks such as highways or property lines may be used to delineate the outer boundary of the

critical area if these landmarks are immediately adjacent to the appropriate outer boundary of one-half mile.

**CUSTOMARY HOME OCCUPATIONS.** Any use conducted entirely within a dwelling and carried on by the occupants thereof, which use is clearly incidental and secondary to the use of the dwelling for residential purposes and does not change the character thereof. Provided further that no mechanical equipment is installed or used except as is normally used for domestic or professional purposes, and that not over 25% of the total floor space of any structure is used for the occupation. No home occupation shall be conducted in any accessory building except for the storage and service of a vehicle that is driven off site, such as a service repair truck, delivery truck, etc.

**DEVELOPMENT.** Any land disturbing activity which adds to or changes the amount of impervious or partially impervious cover on a land area or which otherwise decreases the infiltration of precipitation into the soil.

**DISCRETE NRCS CURVE NUMBER METHOD.** A method for calculating the required treatment volume whereby the model described in *Urban Hydrology for Small Watersheds* (NRCS Technical Report 55), available at: [http://www.nrcs.usda.gov/Internet/FSE\\_DOCUMENTS/stelprdb1044171.pdf](http://www.nrcs.usda.gov/Internet/FSE_DOCUMENTS/stelprdb1044171.pdf), is run twice: first, to yield runoff volume from the built-upon areas; and second, to yield runoff volume from the remainder of the project. The total required treatment volume shall be the sum of the two results.

**DWELLING UNIT.** A building, or portion thereof, providing complete and permanent living facilities for one family.

**EXISTING DEVELOPMENT.** Those projects that are built or those projects that at a minimum have established a vested right under North Carolina zoning law as of the effective date of this Ordinance based on at least one of the following criteria:

- (1) Substantial expenditures of resources (time, labor, money) based on a good faith reliance upon having received a valid local government approval to proceed with the project; or
- (2) Having an outstanding valid building permit as authorized by NCGS 160A-385.1; or
- (3) Having an approved site specific or phased development plan as authorized by NCGS 160A-385.1.

**EXISTING LOT (LOT OF RECORD).** A lot which is part of a subdivision, a plat of which has been recorded in the Office of the Register of Deeds prior to July 1, 1993, or a lot described by metes and bounds, the description of which has been so recorded prior to July 1, 1993.

**FAMILY SUBDIVISION.** Family subdivision means a division of a tract of land: (a) to convey the resulting parcels, with the exception of parcels retained by the grantor, to a relative or relatives as a gift or for nominal consideration, but only if no more than one parcel is conveyed by the grantor from the tract to any one relative; or (b) to divide land from a common ancestor among tenants in common, all of whom inherited by intestacy or by will.

**INDUSTRIAL DEVELOPMENT.** Any non-residential development that requires an NPDES permit for an industrial discharge and/or requires the use or storage of any hazardous material for the purpose of manufacturing, assembling, finishing, cleaning or developing any product or commodity.

**LANDFILL.** A facility for the disposal of solid waste on land in a sanitary manner in accordance with NCGS 130A Article 9. For the purpose of this Ordinance this term does not include composting facilities.

**LOT.** A parcel of land occupied or capable of being occupied by a building or group of buildings devoted to a common use, together with the customary accessories and open spaces belonging to the same.

**MAJOR VARIANCE.** A variance from the minimum statewide watershed protection rules that results in any one or more of the following:

- (1) The relaxation, by a factor greater than 10%, of any management requirement under the low density option;
- (2) The relaxation, by a factor greater than 5%, of any buffer, density or built-upon area requirement under the high density option; or
- (3) Any variation in the design, maintenance or operation requirements of a wet detention pond or other approved stormwater management system.

**MINOR VARIANCE.** A variance from the minimum statewide watershed protection rules that results in a relaxation, by a factor of up to 5% of any buffer, density or built-upon area requirement under the high density option; or that results in a relaxation, by a factor of up to 10%, of any management requirement under the low density option.

**90TH PERCENTILE STORM.** The rainfall event with a precipitation depth greater than or equal to 90 percent of all 24-hour storms on an annual basis.

**NONCONFORMING LOT OF RECORD.** A lot described by a plat or a deed that was recorded prior to the effective date of local watershed protection regulations (or their amendments) that does not meet the minimum lot size or other development requirements of the statewide watershed protection rules.

**NON-RESIDENTIAL DEVELOPMENT.** All development other than residential development, agriculture and silviculture.

**PLAT.** A map or plan of a parcel of land which is to be, or has been subdivided.

**PROTECTED AREA.** The area adjoining and upstream of the critical area of WS-IV watersheds. The boundaries of the protected area are defined as within five miles of and draining to the normal pool elevation of the reservoir or to the ridgeline of the watershed; or within 10 miles upstream and draining

to the intake located directly in the stream or river or to the ridgeline of the watershed.

**REQUIRED STORM DEPTH.** The minimum amount of rainfall that shall be used to calculate the required treatment volume or to evaluate whether a project has achieved runoff volume match.

**RESIDENTIAL DEVELOPMENT.** Buildings for residence such as attached and detached single-family dwellings, apartment complexes, condominiums, townhouses, cottages, etc. and their associated outbuildings such as garages, storage buildings, gazebos, etc. and customary home occupations.

**RESIDUALS.** Any solid or semi-solid waste generated from a wastewater treatment plant, water treatment plant or air pollution control facility permitted under the authority of the Environmental Management Commission.

**RUNOFF VOLUME MATCH.** The volume of runoff after development does not exceed the amount of runoff before development for the design storm.

**SIMPLE METHOD.** A method for calculating the required treatment volume using the formula  $V = 3630 * R_D * (0.05 + 0.9 * I_A) * A$ . In this equation,  $V$  = the estimated runoff volume for the design storm,  $R_D$  = design storm rainfall depth in inches,  $I_A$  = impervious fraction (impervious portion of drainage area in acres/ drainage area in acres), and  $A$  = watershed area in acres.

**SINGLE FAMILY RESIDENTIAL.** Any development where:

- (1) No building contains more than one dwelling unit;
- (2) Every dwelling unit is on a separate lot; and
- (3) Where no lot contains more than one dwelling unit.

**STORMWATER CONTROL MEASURE OR SCM.** A permanent structural device that is designed, constructed, and maintained to remove pollutants from stormwater runoff by promoting settling or filtration or mimic the natural hydrologic cycle by promoting infiltration, evapo-transpiration, post-filtration discharge, reuse of stormwater, or a combination thereof.

**STORMWATER CONTROL STRUCTURE.** This term shall be interchangeable with Stormwater Control Measure.

**STREET (ROAD).** A right-of-way for vehicular traffic which affords the principal means of access to abutting properties.

**STRUCTURE.** Anything constructed or erected, including but not limited to buildings, which requires location on the land or attachment to something having permanent location on the land.

**SUBDIVIDER.** Any person, firm or corporation who subdivides or develops any land deemed to be a subdivision as herein defined.

**SUBDIVISION.** All divisions of a tract or parcel of land into two or more lots, building sites, or other divisions for the purpose of sale or building development (whether immediate or future) and shall include all division of land involving the dedication of a new street or a change in existing streets; but the following shall not be included within this definition nor be subject to the regulations authorized by this Ordinance:

- (1) The combination or recombination of portions of previously subdivided and recorded lots where the total number of lots is not increased and the resultant lots are equal to or exceed the standards of this Ordinance;
- (2) The division of land into parcels greater than 10 acres where no street right-of-way dedication is involved;
- (3) The public acquisition by purchase of strips of land for the widening or opening of streets;
- (4) The division of a tract in single ownership whose entire area is no greater than two acres into not more than three lots, where no street right-of-way dedication is involved and where the resultant lots are equal to or exceed the standards of the this Ordinance;
- (5) The division of a tract into plots or lots used as a cemetery.

**TOXIC SUBSTANCE.** Any substance or combination of substances (including disease causing agents), which after discharge and upon exposure, ingestion, inhalation, or assimilation into any organism, either directly from the environment or indirectly by ingestion through food chains, has the potential to cause death, disease, behavioral abnormalities, cancer, genetic mutations, physiological malfunctions (including malfunctions or suppression in reproduction or growth) or physical deformities in such organisms or their off spring or other adverse health effects.

**VARIANCE.** A permission to develop or use property granted by the Watershed Review Board relaxing or waiving a water supply watershed management requirement adopted by the Environmental Management Commission that is incorporated into this Ordinance.

**WATER DEPENDENT STRUCTURE.** Any structure for which the use requires access to or proximity to or citing within surface waters to fulfill its basic purpose, such as boat ramps, boat houses, docks and bulkheads. Ancillary facilities such as restaurants, outlets for boat supplies, parking lots and commercial boat storage areas are not water dependent structures.

**WATERSHED.** The entire land area contributing surface drainage to a specific point (e.g. the water supply intake.)

**WATERSHED ADMINISTRATOR.** An official or designated person of the city responsible for administration and enforcement of this Ordinance.

**§ 153.91 Word Interpretation.**

For the purpose of this Ordinance, certain words shall be interpreted as follows:

- (1) Words in the present tense include the future tense.
- (2) Words used in the singular number include the plural, and words used in the plural number include the singular, unless the natural construction of the wording indicates otherwise.
- (3) The word "person" includes a firm, association, corporation, trust, and company as well as an individual.
- (4) The word "structure" shall include the word "building."
- (5) The word "lot" shall include the words, "plot," "parcel," or "tract."
- (6) The word "shall" is always mandatory and not merely directory.
- (7) The word "will" is always mandatory and not merely directory.