

CHAPTER 17: WATERSHED PROTECTION

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§ 17-1 AUTHORITY AND ENACTMENT.

The North Carolina General Assembly has by G.S. § 143-211, Declaration of Public Policy stated that it is declared to be the public policy of this state to provide for the conservation of its water and air resources and has by G.S. § 143-214.5, Water Supply Watershed Protection delegated the responsibility for water supply watershed management and protection to be administered by local governments and has by G.S. § 143-214.5 directed local governmental units to adopt regulations designed to promote the public health, safety, and general welfare of its citizenry. The City Council pursuant to the provisions of G.S. §§ 143-211 and 143-214.5, G.S. § 160A-381 Zoning, G.S. § 160A-371, Subdivision Regulation, G.S. § 160A-174(a), Delegation and Exercise of the General Police Power, G.S. § 160A-185, Emission of Pollutants or Contaminants, and G.S. § 160A-193, Abatement of Public Health Nuisances, does hereby ordain and enact into law the following articles as the Watershed Protection Ordinance of the city. (Ord. passed 6-24-93; Am. Ord. passed 8-16-94)

§ 17-2 JURISDICTION.

The provisions of this chapter 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 Eden, 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 chapter. This chapter shall be permanently kept on file in the office of the City Clerk. (Ord. passed 6-24-93)

§ 17-3 EXCEPTIONS TO APPLICABILITY.

(A) Nothing contained herein shall repeal, modify, or amend any federal or state law or regulation, pertaining thereto except any ordinance which these regulations specifically replace; nor shall any provision of this chapter amend, modify, or restrict any provisions of the Code of Ordinances of the city; however, the adoption of this chapter shall and does amend any and all ordinances, resolutions, and regulations in effect in the city at the time of the adoption of this chapter that may be construed to impair or reduce the effectiveness of this chapter 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 chapter, is not subject to the requirements of this chapter. Expansions to structures classified as existing development must meet the requirements of this chapter, however, the built-upon area of the existing development is not required to be included in the density calculations.

(D) A pre-existing lot owned by an individual prior to the effective date of this chapter, regardless of whether or not a vested right has been established, may be developed for single-family residential purposes without being subject to the restrictions of this chapter. However, this exemption is not applicable to multiple contiguous lots under single ownership. See § 17-45(A)(2), regarding the recombination of existing lots.

(Ord. passed 6-24-93)

§ 17-4 CRIMINAL PENALTIES.

Any person violating any provisions of this chapter shall be guilty of a misdemeanor and, upon conviction, shall be punished in accordance with G.S. § 14-4. The maximum fine for each offense shall not exceed \$500. Each day that the violation continues shall constitute a separate offense.

(Ord. passed 6-24-93)

§ 17-5 REMEDIES.

(A) If any subdivision, development and/or land use is found to be in violation of this chapter, 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 \$500, 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 access civil penalties in accordance with G.S. § 143-215.6A. Each day that the violation continues shall constitute a separate offense.

(B) If the Watershed Administrator finds that any of the provisions of this chapter are being violated, he shall notify in writing the person responsible for such violation, indicating the nature of the violation, and ordering the action necessary to correct it. He 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 action authorized by this chapter 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 Board of Adjustment.

(Ord. passed 6-24-93)

§ 17-6 SEVERABILITY.

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

(Ord. passed 6-24-93)

§ 17-7 EFFECTIVE DATE.

This chapter shall take effect and be in force on July 1, 1993.

(Ord. passed 6-24-93)

ARTICLE II: SUBDIVISION REGULATIONS

Section

- 17-20 General provisions
- 17-21 Subdivision application and review procedures
- 17-22 Subdivision standards and requirement improvements
- 17-23 Construction procedures
- 17-24 Penalties for transferring lots in unapproved subdivisions

Cross-reference:

Subdivision regulations, see Chapter 14

§ 17-20 GENERAL PROVISIONS.

(A) No subdivision plat of land within the public water supply watershed shall be filed or recorded by the County Register of Deeds until it has been approved in accordance with the provisions of this article. 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 article.

(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 with the mapping requirements contained in G.S. § 47-30.

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

(Ord. passed 6-24-93) Penalty, see § 17-4

§ 17-21 SUBDIVISION APPLICATION AND REVIEW PROCEDURES.

(A) All proposed subdivisions shall be reviewed prior to recording with the County 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 chapter 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 chapter 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 article and

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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, two copies of the plat and supporting documentation deemed necessary by the Watershed Administrator or the Planning Board.

(C) The Watershed Administrator shall review the completed application and submit recommendations to the Planning Board for further review and final action. The Planning Board shall either approve, approve conditionally or disapprove each application by a majority vote of the members present and voting. First consideration of the application shall be at the next regularly scheduled meeting of the Board after the application is submitted. The Board shall take final action within 45 days of its first consideration. 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 the Board's 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 County Health Department with regard to proposed private water system or sewer normally approved by the Health Department.

(3) The State Division of Environmental Management 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 Planning Board.

(D) If the Planning Board approves the application, such approval shall be indicated on both copies of the plat by the following certificate and signed by the chairman or other authorized member of the Board:

“Certificate of Approval for Recording

I certify that the plat shown hereon complies with the watershed protection ordinance and is approved by the Planning Board for recording in the County Register of Deeds office.

Date

Chairman, Planning Board

NOTICE: This property is located within a public water supply watershed - development restrictions may apply.”

(E) If the Planning Board 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.

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

(G) The subdivider shall provide the Watershed Administrator with evidence the plat has been recorded with the County Register of Deeds within five working days of its being recorded.
(Ord. passed 6-24-93)

§ 17-22 SUBDIVISION STANDARDS AND REQUIREMENT IMPROVEMENTS.

(A) All lots shall provide adequate building space in accordance with the development standards contained in Article III. Lots which are smaller than the minimum required for residential lots shall be identified on the plat as “NOT FOR RESIDENTIAL PURPOSES.”

(B) 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) 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) 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 State Division of Land Quality.

(E) Where possible, roads should be located outside of critical areas and watershed buffer areas. Roads constructed within these areas shall be designed and constructed so to minimize their impact on water quality.
(Ord. passed 6-24-93)

§ 17-23 CONSTRUCTION PROCEDURES.

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

(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 chapter until all requirements of this chapter 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.
(Ord. passed 6-24-93) Penalty, see § 17-4

§ 17-24 PENALTIES FOR TRANSFERRING LOTS IN UNAPPROVED SUBDIVISIONS.

Any person who, being the owner or agent of the owner of any land located within the jurisdiction of the city, thereafter subdivides his land in violation of this chapter 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 chapter and recorded in the office of the County Register of Deeds, shall be guilty of a misdemeanor. 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. 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 chapter.

(Ord. passed 6-24-93)

ARTICLE III: DEVELOPMENT REGULATIONS

Section

- 17-40 Establishment of watershed areas
- 17-41 Cluster development
- 17-42 Buffer areas required
- 17-43 Rules governing the interpretation of watershed area boundaries
- 17-44 Application of regulations
- 17-45 Existing development
- 17-46 Watershed protection permit
- 17-47 Building permit required
- 17-48 Watershed protection occupancy permit

Cross-reference:

Zoning regulations, see Chapter 18

§ 17-40 ESTABLISHMENT OF WATERSHED AREAS.

The purpose of this article is to list and describe the watershed areas herein adopted. For purposes of this chapter the city is hereby divided into the following areas, as appropriate:

- WS-IV-CA (Critical Area)
- WS-IV-PA (Protected Area)

(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 chapter when located in the 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 two dwelling units per acre. All other residential and nonresidential development shall be allowed 24% built-upon area.

(1) *Prohibited uses.*

- (a) Flammable and combustible liquid and gas storage and distribution facilities; residential and commercial sales and distribution; and, bulk and wholesale storage and distribution.
- (b) Junkyard and motor vehicle wrecking yards.
- (c) Land application of sludge residuals or petroleum contaminated soils.

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(d) Landfills, demolition and sanitary.

(e) Manufacture of: chemicals and allied products; food, beverages and kindred products; primary metal products; rubber products; plastic products; and, concrete products.

(f) Mining and quarrying activities.

(g) Motor freight transportation (truck) terminals.

(h) Motor vehicle related operations: gasoline and fuel sales operation; and, repair, service and maintenance operations.

(i) Storage and/or manufacture of hazardous materials, toxic substances and the storage and/or treatment of waste from hazardous materials and toxic substances.

(2) *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. Agricultural activities conducted after January 1, 1994 shall maintain a minimum ten-foot vegetative buffer, or equivalent control as determined by the Soil and Water Conservation Commission, 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. Animal operations greater than 100 animal units shall employ Best Management Practices by July 1, 1994 recommended by the Soil and Water Conservation Commission.

(b) Silviculture, subject to the provisions of the Forest Practices Guidelines Related to Water Quality (15 NCAC 11.6101-.0209).

(c) Residential.

(d) Nonresidential development, excluding:

1. The storage of toxic and hazardous materials unless a spill containment plan is implemented,

2. Landfills, and

3. Sites for land application of sludge/residuals or petroleum contaminated soils.

(3) *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 ½ acre, except within an approved cluster development.

(b) All other residential and nonresidential 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.

(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 chapter when located in a WS-IV watershed. In order to address a moderate to high land use intensity pattern, single-family residential uses shall develop at a maximum of two dwelling units per acre. All other residential and nonresidential development shall be allowed at a maximum of 24% built-upon area. A maximum of three dwelling units per acre or 36% built-upon area is allowed for projects without a curb and gutter street system.

(1) *Prohibited uses.*

(a) Sanitary landfills (demolition landfills are allowed subject to approval of North Carolina Division of Solid Waste Management).

(b) Mining and quarrying activities.

(c) Manufacture of hazardous materials, toxic substances and the storage and/or treatment of waste from hazardous materials and toxic substances.

(2) *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 11.6101-.0209).

(c) *Residential development.*

(d) Nonresidential development, excluding the storage of toxic and hazardous materials unless a spill containment plan is implemented.

(3) *Density and built-upon limits.*

(a) Single-family residential development shall not exceed two dwelling units per acre, as defined on a project by project basis. No residential lot shall be less than ½ acre, or _ acre for projects without a curb and gutter system, except within an approved cluster development.

(b) All other residential and nonresidential 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.

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(c) 1. In addition to the development allowed under paragraphs (a) and (b) new development and expansions may be developed under the 10/70 provisions. This means that up to 10% of the acreage designated as protected area for the Smith River and Dan River watersheds, may be developed with up to 70% built-upon area (impervious surface). This shall be approved on a project by project basis subject to the provisions below.

2. Projects must, to the maximum extent practicable, minimize built-upon surface area, direct stormwater away from surface waters and incorporate best management practices to minimize water quality impacts. 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.

A. Only projects within the protected area (PA) of either the Smith or Dan River watersheds under the jurisdiction of the city of may qualify. There shall be no transfer of development rights between the Smith and Dan River Watersheds. There shall be a maximum acreage permitted for the Smith River Watershed Protected Area and a separate maximum for the Dan River Watershed Protected Area.

B. Developments using this option shall provide an engineer's certification of runoff control for control of the first one inch of runoff from all built upon area.

C. No project that does not have access to public sewer shall qualify for the 10/70 provision. Approval may be granted subject to connection to public sewer provided such connection is made within one year from the date the approval is granted. When a building permit for the site is issued or the subdivision plat for a development is recorded, an allocation shall be assigned. Expiration of a building permit shall terminate the allocation. If in the case of a subdivision plat a building permit is not issued within one year from the date of recording the allocation shall be terminated. In all cases unless construction has been initiated and is proceeding, the allocation shall be terminated after one year.

D. Allocation shall be made by the City Council upon recommendation from the Watershed Administrator and the Planning Board. Each project shall be considered on its own merit based upon its impact to the local economy, its impact to the city's water reclamation program, the potential level of hazard to the water supply, soil conditions, drainage ways, slope, undisturbed areas, proximity to waterways, and whether it is an expansion of an existing development or a new development. New development shall receive a higher priority than expansions of existing development. The City Council may consider any other factors that it deems relevant in its decision making.

E. No existing use that is prohibited by this article or is non-conforming to any other city land use regulation shall be allowed to expand using the 10/70 provision.

(Ord. passed 6-24-93; Am. Ord. passed 1-16-99) Penalty, see § 17-4

§ 17-41 CLUSTER DEVELOPMENT.

(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 § 17-40. Built-upon area or stormwater control requirements of the project shall not exceed that allowed for the critical area or balance of watershed, 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.

(C) The remainder of the tract shall remain in a vegetated or natural state. Where the development has an incorporated property owners association, the title of the open space area shall be conveyed to the association for management. Where a property association is not incorporated, a maintenance agreement shall be filed with the property deeds.

(Ord. passed 6-24-93) Penalty, see § 17-4

§ 17-42 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 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 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.

(Ord. passed 6-24-93) Penalty, see § 17-4

§ 17-43 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 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 Board of Adjustment.
(Ord. passed 6-24-93)

§ 17-44 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 chapter shall be included in the area required for another building.

(C) Every residential building hereafter erected, moved or structurally altered shall be located on a lot which conforms to the regulations herein specified, except as permitted in § 17-45.

(D) 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.
(Ord. passed 6-24-93)

§ 17-45 EXISTING DEVELOPMENT.

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

(A) *Vacant lots.* This category consists of vacant lots for which plats or deeds have been recorded in the office of the County Register of Deeds. Lots may be used for any of the uses allowed in the watershed area in which it is located, provided the following:

(1) Where the lot area is below the minimum specified in this chapter the Watershed Administrator is authorized to issue a watershed protection permit.

(2) Notwithstanding the foregoing, whenever two or more contiguous residential vacant lots of record are in single ownership at any time after the adoption of this chapter and such lots individually have less area than the minimum requirements for residential purposes for the watershed area in which such lots are located, such lots shall be combined to create one or more lots that meet

the standards of this chapter, or if this is impossible, reduce to the extent possible the nonconformity of the lots.

(B) *Occupied lots.* This category consists of lots, occupied for residential purposes at the time of the adoption of this chapter. These lots may continue to be used provided that whenever two or more adjoining lots of record, one of which is occupied, are in single ownership at any time after the adoption of this chapter, and such lots individually or together have less area than the minimum requirements for residential purposes for the watershed area in which they are located, such lots shall be combined to create lots which meet the minimum size requirements or which minimize the degree of nonconformity.

(C) *Uses of land.* This category consists of uses existing at the time of adoption of this chapter where such use of 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.

(D) *Reconstruction of buildings or built-upon areas.* Any existing building or built-upon area not in conformance with the restrictions of this chapter 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 two 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.
(Ord. passed 6-24-93)

§ 17-46 WATERSHED PROTECTION PERMIT.

(A) Except where a single-family residence is constructed on a lot deeded prior to the effective date of this chapter, 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 chapter.

(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.

(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 chapter.

(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.
(Ord. passed 6-24-93)

§ 17-47 BUILDING PERMIT REQUIRED.

Except for a single-family residence constructed on a lot deeded prior to the effective date of this chapter, 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.
(Ord. passed 6-24-93)

§ 17-48 WATERSHED PROTECTION OCCUPANCY PERMIT.

(A) The Watershed Administrator shall issue a watershed protection occupancy permit certifying that all requirements of this chapter 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 ten 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 chapter 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.
(Ord. passed 6-24-93)

ARTICLE IV: PUBLIC HEALTH REGULATIONS

Section

17-60 Public health, in general

17-61 Abatement

Cross-reference:

Health, sanitation, and nuisances, see Chapter 6

§ 17-60 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 absence or improper implementation of a spill containment plan for toxic and hazardous materials; the improper management of stormwater runoff; or any other situation found to pose a threat to water quality.

(Ord. passed 6-24-93) Penalty, see § 17-4

§ 17-61 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 Board of Adjustment. The Watershed Administrator may consult with any public agency or official and request recommendations.

(C) Where the Board of Adjustment 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.

(Ord. passed 6-24-93)

ARTICLE V: ADMINISTRATION, ENFORCEMENT AND APPEALS

Section

- 17-70 Watershed Administrator and duties thereof
- 17-71 Appeal from the Watershed Administrator
- 17-72 Changes and amendments to the watershed protection ordinance
- 17-73 Public notice and hearing required
- 17-74 Establishment of Watershed Review Board
- 17-75 Powers and duties of the Board of Adjustment
- 17-76 Appeals from the Board of Adjustment

§ 17-70 WATERSHED ADMINISTRATOR AND DUTIES THEREOF.

The city shall appoint a Watershed Administrator, who shall be duly sworn in. It shall be the duty of the Watershed Administrator to administer and enforce the provisions of this chapter as follows:

(A) The Watershed Administrator or his duly authorized representative 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.

(B) The Watershed Administrator shall serve as Administrative Assistant to the Board of Adjustment.

(C) The Watershed Administrator shall be responsible for keeping records of all amendments to the local water supply watershed protection ordinance and shall provide copies of all amendments upon adoption to the Supervisor of the Classification and Standards Group, Water Quality Section, Division of Environmental Management.

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

(E) The Watershed Administrator shall keep a record of variances to the local Water Supply Watershed Protection ordinance. This record shall be submitted to the Supervisor of the Classification and Standards Group, Water Quality Section, Division of Environmental Management on or before

January 1 of the following year and shall provide a description of each project receiving a variance and the reasons for granting the variance.

(Ord. passed 6-24-93; Am. Ord. passed 8-16-94)

§ 17-71 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 Board of Adjustment.

(B) Any appeal from a decision of the Watershed Administrator must be submitted to the Board of Adjustment 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 appeals 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 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.

(Ord. passed 6-24-93)

§ 17-72 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 Planning Board for review and recommendations. If no recommendation has been received from the Planning Board within 45 days after submission of the proposal to the Chairman of the Planning 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 chapter to violate the watershed protection rules as adopted by the N.C. Environmental Management Commission. All amendments must be filed with the N.C. Division of Environmental Management, N.C. Division of Environmental Health, and the N.C. Division of Community Assistance.

(Ord. passed 6-24-93)

§ 17-73 PUBLIC NOTICE AND HEARING REQUIRED.

Before amending this chapter, 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 ten nor more than 25 days before the date fixed for the hearing.

(Ord. passed 6-24-93)

§ 17-74 ESTABLISHMENT OF WATERSHED REVIEW BOARD.

The Board of Adjustment is hereby established as the Watershed Review Board.

(Ord. passed 6-24-93)

§ 17-75 POWERS AND DUTIES OF THE BOARD OF ADJUSTMENT.

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

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

(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 one 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 Board of Adjustment in considering the application.

(c) The Watershed Administrator shall notify in writing each local government having jurisdiction in the watershed. 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 Board of Adjustment. Such comments shall become a part of the record of proceedings of the Board of Adjustment.

(2) Before the Board of Adjustment 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 chapter. In order to determine that there are practical difficulties or unnecessary hardships, the Board must find that the five following conditions exist:

1. If he complies with the provisions of the chapter, the applicant can secure no reasonable return from, nor make reasonable use of, his 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 chapter that will make possible the reasonable use of his property.

2. The hardship results from the application of the chapter 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 chapter, or who purchases the property after the effective date of the chapter, 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 chapter 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 chapter. 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 Board of Adjustment 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 months from the date of the decision.

(6) If the application calls for the granting of a major variance, and if the Board of Adjustment 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 the property owner can secure no reasonable return from, nor make any practical use of the property unless the proposed variance is granted, and 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 Board of Adjustment. 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 the property owner can secure a reasonable return from or make a practical use of the property without the variance or 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 Board of Adjustment. The Board shall prepare a final decision denying the variance as proposed.

(C) *Subdivision approval.* See Article II.

(D) *Public health.* See Article IV.

(E) *Approval of development.* Approval of all development greater than the low density option.
(Ord. passed 6-24-93; Am. Ord. passed 8-16-94)

§ 17-76 APPEALS FROM THE BOARD OF ADJUSTMENT.

Appeals from the Board of Adjustment must be filed with the Superior Court within 30 days from the date of the decision. The decisions by the Superior Court will be in the manner of certiorari.
(Ord. passed 6-24-93)

ARTICLE VI: DEFINITIONS

Section

- 17-85 General definitions
- 17-86 Word interpretation

§ 17-85 GENERAL DEFINITIONS.

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

ANIMAL UNIT. A unit of measurement developed by the U. S. Environmental Protection Agency that is used to compare different types of animal operations.

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 roads, recreation facilities (e.g. tennis courts), etc. (Note: Wooden slatted decks and the water area of a swimming pool are considered pervious.)

CLUSTER DEVELOPMENT. The grouping of buildings in order to conserve land resources and provide for innovation in the design of the project. This term includes nonresidential development as well as single-family residential subdivisions and multi-family developments that do not involve the subdivision of land.

COMPOSTING FACILITY. A facility in which only stumps, limbs, leaves, grass and untreated wood collected from land clearing or landscaping operations is deposited.

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). Since WS-I watersheds are essentially undeveloped, establishment of a critical area is not required. 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.

DISCHARGING LANDFILL. A facility with liners, monitoring equipment and other measures to detect and/or prevent leachate entering the environment and in which the leachate is treated on site and discharged to a receiving stream.

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 chapter 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 G.S. § 153A-344.1 and G.S. § 160A-385.1), or
- (3) Having expended substantial resources (time, labor, money) and having an approved site specific or phased development plan as authorized by G.S. § 153A-344.1 and G.S. § 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 County Register of Deeds prior to the adoption of this chapter, or a lot described by metes and bounds, the description of which has been so recorded prior to the adoption of this chapter.

FAMILY. One or more persons occupying a single dwelling unit, provided that unless all members are related by blood or marriage or adoption, no such family shall contain over five persons, but further provided that domestic servants employed or living on the premises may be housed on the premises without being counted as a family or families.

HAZARDOUS MATERIAL. Any substance listed as such in: SARA section 302, Extremely Hazardous Substances, CERCLA Hazardous Substances, or Section 311 of CWA (oil and hazardous substances).

INDUSTRIAL DEVELOPMENT. Any nonresidential development that requires a 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 G.S. Chapter 130A, Article 9. For the purpose of this chapter 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 that results in any one or more of the following:

- (1) The complete waiver of a management requirement;
- (2) The relaxation, by a factor of more than 10%, of any management requirement that takes the form of a numerical standard;
- (3) The relaxation of any management requirement that applies to a development proposal intended to qualify under the high density option.

MINOR VARIANCE. A variance that does not qualify as a major variance.

NONRESIDENTIAL 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 ten miles upstream and draining to the intake located directly in the stream or river or to the ridgeline of the watershed.

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.

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.

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 require 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 chapter:

- (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 chapter;
- (2) The division of land into parcels greater than ten 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 this chapter;
- (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 Board of Adjustment relaxing or waiving a water supply watershed management requirement adopted by the Environmental Management Commission that is incorporated into this chapter.

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 chapter.
(Ord. passed 6-24-93; Am. Ord. passed 3-16-99)

§ 17-86 WORD INTERPRETATION.

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

(A) Words in the present tense include the future tense.

(B) 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.

(C) The word “person” includes a firm, association, corporation, trust, and company as well as an individual.

(D) The word “structure” shall include the word “building.”

(E) The word “lot” shall include the words, “plot,” “parcel,” or “tract.”

(F) The word “shall” is always mandatory and not merely directory.

(G) The word “will” is always mandatory and not merely directory.
(Ord. passed 6-24-93)

