



WATERSHED ORDINANCE SUMMARY

Date: March 26, 2018
To: Planning Board
From: Planning Board Ordinance Committee
Re: DPO Section 17 (Watershed Ordinance) - Text Amendments

Note: The following highlight discussion topics related to DPO Section 17 occurring since the Planning Board last reviewed substantive changes on February 26, 2018.

1. OVERVIEW

- **Purpose:** The standards, in place since 1993, maintain clean water in Lake Norman by requiring vegetative buffers and limiting the amount of "built-upon-area" (BUA) placed on a lot.
- **Background:** In March 2017 Mecklenburg Co., our partner in administering the ordinance (with oversight from NCDEQ), requested that Davidson: Update/clarify standards; address persistent issues and inconsistencies; and, remove inapplicable sections.
- **Equal Application of Standards:** The proposed amendments apply the standards more equally across all lot types, afford sufficient development rights for each lot type, and are guided by adopted plan and policy aims.
- **Scale/Character:** The proposed amendments reinforce the character of existing development.

2. OUTSTANDING TOPICS/RESOLUTION

SECTION 17.3: DEFINITIONS

- **Add "Expansion" Definition (not previously defined):** The definition is needed so that a building can't be taken down to all but its foundation or a single wall and then claimed as an expansion, which in some cases affords more BUA to be put on a site compared to a demolition.
- **Tweak "Variance" Definitions:** Made sure that same language is used in each and clarified that variances are from "Town" standards, which are stricter than state standards in some instances.

SECTION 17.6.1: EXPANSIONS TO EXISTING DEVELOPMENT

- **Shift Non-Conformities Statement:** This statement was moved to the start of 17.6 since it applies to the entire section rather than just 17.6.1-2.
- **Include Enhanced Stormwater Practices for Expansions:** Expansions result in the preservation of existing buildings, a supported policy aim. Their BUA is also treated differently – expansions get 24% BUA beyond the current pre-1993 structure, meaning they may put more than 24% BUA on a site. Currently, they don't have to treat any of the existing or extra BUA. So, to account for this extra BUA and achieve the ordinance's environmental aims, text requiring the inclusion of a

vegetated swale, french drain, etc. on site has been included. This will help treat stormwater runoff for low-density expansions where it's currently not required, while still fostering preservation.

SECTION 17.6.2: EXISTING LOTS OF RECORD

- **Remove Exemptions:** Currently, two exemptions from the BUA requirements are proposed: 1. If the lot existed before 1993 and has nothing on it; and, 2. If the lot has been owned by the same family since 1993. If adopted, these exemptions would allow unlimited BUA on a site. Comments received questioned the need for and fairness of any exemptions. As it turns out, Exemption 1 is believed to affect less than 30 lots and Exemption 2 is not legal (i.e. case law prohibits treating land owners differently based on tenure). The text has been revised to remove these exemptions. Note: This would treat these lots the same as others (Buffers, 24% BUA); and, like others, the owners could pursue a variance via the Board of Adjustment if an increased attention to site design still doesn't result in a satisfactory layout.

SECTION 17.7.1.2 BUILT-UPON AREA LIMITS

- **Address Contiguous Tracts:** Comments recommended that built-upon area be considered only for adjacent/adjoining and contiguous tracts – i.e. only the actual project site is used to determine the BUA limits. This prevents projects with multiple, non-contiguous parcels from using the BUA from nearby but undeveloped parcels to build more on the project site parcel.
- **Clarify “Low-Density” & “High-Density” Terms:** Comments suggested clarifying that these terms refer to the amount of hardscape on a site (i.e. land coverage) and not units/acre.

SECTION 17.7.3.A: CRITICAL AREA

- **Engineered Stormwater Clarification:** Comments recommended the text clarify that individual single-family detached houses are not eligible to utilize engineered stormwater controls to meet this section's requirements. This is because such facilities require legal agreements with Meck. County for their design, operations, inspections and maintenance.

SECTION 17.8.2.B.6: BUILT-UPON AREA AVERAGING/PROCESS

- **Board of Adjustment (BOA) Decision:** Comments requested that the changes consider shifting approval from the BOA to the Board of Commissioners (BOC). Draft text was drafted, reviewed, and withdrawn – the decision's quasi-judicial nature limits the BOC's ability to engage with citizens to discuss any case. However, to address concerns about incompatible development being approved, the amendments now include revised language clarifying the BOA's ability to deny a proposal based on adopted plans and policies.

Note: In the past several weeks the Planning Board Ordinance Committee discussed other topics as part of the revision process. For various reasons, these items were not included in the draft text. Examples include: A sunset date to extend exemptions for a certain period of time; examples related to the exemptions (which are illustrated in presentations); what constitutes a family interest in a lot; and, the treatment of gravel or other similar surfaces on a lot.