



STAFF ANALYSIS: WATERSHED ORDINANCE TEXT AMENDMENTS

Date: May 21, 2018
To: Planning Board
From: Jason Burdette, Planning Director
Re: Davidson Planning Ordinance Section 17 (Watershed Ordinance) - Text Amendments

Note: The following summary reviews the purpose and history of the proposed changes; highlights substantive changes; and, includes discussion topics related to Davidson Planning Ordinance (DPO) Section 17. Proposed changes are annotated in the draft DPO accompanying these materials.

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. PROPOSED CHANGES

SECTION 17.3: DEFINITIONS

- **Remove "Cluster Development" Definition:** Cluster Developments aren't an allowed development type in Davidson.
- **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.
- **Add "Existing Development" and "Redevelopment" Definitions:** Both definitions do not currently exist and were added per Meck. County recommendation.
- **Revise "Low-Density" and "High-Density" Definitions:** NCDEQ suggested this revision. In the current ordinance, the definitions of high/low density are based on whether or not a development contains engineered stormwater. In practice, however, a development is determined to be high or low density based on the proposed built-upon area (BUA). If a development is over 24% BUA it's high density. Then because it is high density, engineered stormwater is required. The revisions clarify the criteria are based on BUA and not engineered stormwater.

- **Revise “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. Additionally, the definitions were revised to match the Environmental Management Commission’s (EMC) definitions. The EMC would not issue a decision on a variation that is not a major variance as they define in 15A NCAC 2B .0202(42).

SECTION 17.6.4 EXISTING DEVELOPMENT

- **Remove Section:** This is a repeat of Section 17.6.1.

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 Single-Family Residential in Expansion Standards, Effective 2025:** Currently non-single family residential buildings are held to the expansion standards, while existing single-family residences are not. The proposed amendments will include single-family residential buildings in these standards beginning in 2025, which means expansions to these structures may extend 24% beyond the existing development footprint.
- **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. It also provides owners that wish to remain on their lot a viable way to do so rather than having to pursue demolition or sale/demolition.

SECTION 17.6.2: LOTS OF RECORD

- **Initially Modify, then Remove Exemptions:**
 - Currently a regulatory disparity exists between residential lots within the watershed – some lots that redevelop as low density are held to the 24% BUA limit (i.e. newer lots or older lots that are subdivided) and others are not (properties whose lot lines have not changed since 1993); this disparity has existed for 25 years. The options weighed by the PBOC included:
 - A. Retain Exemption: Continue to allow some older properties to exceed 24% BUA, holding new lots and older lots that have been subdivided to the 24% BUA limit;
 - B. Remove Exemption/Include Sunset Clause: Allow the exemption to continue for a certain period of time, then remove the exemption.
 - C. Remove Exemption: Remove the exemption, holding all residential lots that choose to demolish a structure and/or construct a new house to the same 24% BUA max. standard.
 - D. Modify Exemption: Revise text to create transition period that allows lots of record up to 34% built-upon area until 2025, after which time these lots become subject to the 24% maximum built-upon area to which post-1993 lots are currently held.
 - The PBOC explored a number of ways to continue or modify the current exemptions, balancing the exemptions with feedback received from the Board of Commissioners, Planning Board, and citizens that the proposed amendments should seek to treat landowners consistently. The PBOC drafted language that would have exempted select lots based on long-standing ownership (i.e. “grandfathering”). This seemed to be a promising alternative;

however, NC case law clearly indicates that such a practice would be difficult to defend legally because it treats landowners differently based on tenure. Likewise, various sunset measures were considered – such as exemption removal 6-12 months after ordinance adoption, or requiring landowners to apply for a specific exemption period after ordinance adoption – but were determined to work against the standards’ purpose by inciting building in excess of 24% on remaining lots or treating landowners differently.

- After further exploring lots and performing case studies, the idea of creating a transitional period allowing exemption up to 34% was conceived. This would allow pre-1993 lots that are both undeveloped and already developed to expand up to 34% built-upon area until 2025 – the maximum amount of built-upon area attained through a minor variance. After 2025 these lots would be subject to the same standards as pre-1993 lots – 24% maximum built-upon area. The transition period affords landowners additional time to plan for and make decisions on their lots while ultimately recognizing the importance of treating all similar lot types the same (i.e. in 2025). Couple with all residential lots meeting the buffer and rainwater management strategies, it represents an incremental approach to achieving regulatory aims and parity.
- Therefore, the proposed standards reflect Option D and would allow all residential lots of record redeveloping via the low density option to go up to a 34% BUA limit. Note: Landowners unable to find a suitable site layout may pursue a major variance for more than 34% BUA coverage. Post-1993 lots would still be held to 24% BUA.

SECTION 17.6.3: NONCONFORMING SITUATIONS

- **Remove Nonconforming Section:** This section was removed because it conflicted with DPO 12 Nonconformities; referencing only one set of standards is important in providing clear guidance. Additionally, a statement noting that nonconformities are dealt with in DPO 12 was included at the start of 17.6.1.
- **Include Redevelopment Section:** This section was added based on feedback from Meck. County and land owners in the Village Center/Village Commerce Planning Areas. The proposed standards allow flexibility on the downtown block bounded by Main, Jackson, and Depot Streets if redevelopment results in no net increase in BUA or the disturbed area is less than one acre; and, the standards appropriately accommodate redevelopment on adjacent blocks (i.e. the Depot building and Sadler Square) by requiring engineered stormwater controls if these blocks pursue redevelopment beyond 24% BUA.

SECTION 17.7 WATERSHED SUBAREAS ESTABLISHED

- **Update Geographic Terms:** This proposed text clarifies that there is no Lake Norman Protected Area located within the jurisdiction of the Town of Davidson.

SECTION 17.7.1 CRITICAL AREA (CA)

- **Update Intent:** The proposed text clarifies the intent of the Watershed Ordinance standards and removes the maximum of two dwelling units per acre rule because the standards do not differentiate residential development from other development types in regards to maximum BUA requirements.

SECTION 17.7.1.1 ALLOWED USES

- **Revise Subsection C:** Language referencing specific residential uses was removed. Specific residential uses permitted in the watershed are outlined in Section 2 of the planning ordinance.

SECTION 17.7.1.2 BUILT-UPON AREA LIMITS:

- **Remove Dwelling Unit Text, Clarify “Low-Density” & “High-Density” Terms:** Language related to a maximum of two dwelling units per acre rule was removed because the standards are not based on use but land coverage. Similarly, a sentence was added clarifies that these terms refer to the amount of hardscape on a site (i.e. land coverage) and not units/acre.
- **Include Contiguous Tract Requirement:** The proposed text includes specific language ensuring that only contiguous parcels that are part of the same plan can be used in determining BUA. 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.
- **Add Reserve BUA Criteria:** Meck. County requested adding a requirement for residential development to allow for homeowners to add additional BUA in the future and still be within the maximum 24% BUA (i.e. patio construction).

SECTION 17.7.2 CLUSTER DEVELOPMENT

- **Remove Section:** These aren’t an allowed development type in Davidson.

SECTION 17.7.3 HIGH-DENSITY OPTION

- **Update Geographic Terms:** This proposed text clarifies that there is no Lake Norman Protected Area located within the jurisdiction of the Town of Davidson (17.7.3.A).
- **Engineered Stormwater/Single-Family Lots:** Language was added to clarify Meck. County does not allow these property types to install stormwater facilities for credit towards the BUA requirements because they would require legal agreements with Meck. County for their design, operations, inspections and maintenance. Also, for individual homeowners they are expensive to construct and maintain (17.7.3.A.1).
- **Bond/Security Standard:** This text was added to reference existing Town of Davidson requirements, ensuring that the bond fees paid are consistent with established processes (17.7.3.D).
- **Stormwater Control Structure Specification:** The text was modified to reference the Meck. County's Stormwater Design Manual, which includes an array of stormwater control devices including but not limited to wet detention ponds. The current language is limiting because it recognizes only one control structure whereas, in practice, multiple approaches can be/are used on the same site (i.e. a wet detention pond, a sand filter, drainage swale) as part of a complete treatment system. The language allows flexibility in what devices are selected to meet the required treatment criteria (17.7.3.H).
- **Remove Incorrect References:** Incorrect ordinance references/citations throughout 17.7.3 High Density Option were removed.

SECTION 17.7.4 BUFFER AREAS REQUIRED

- **Update Measurement Techniques/Management Requirements:** This language was revised per Meck. County’s recommendation to clarify how buffers are measured and what actions may be undertaken within buffer areas with Planning Director approval. The new text further limits undesirable clearing of shoreline areas and requires additional approval.

SECTION 17.7.7 VARIANCES/PROCESS

- **Reorganized:** This section was largely reorganized to provide clarification on the process for Board of Adjustment hearings for both major and minor watershed variance requests. Based on experience with recent variances, a Preparation/Content description was added to clarify the content requirements of public notification letters for Board of Adjustment hearings (17.7.7.4.a).

SECTION 17.8.1.B: BUILT-UPON AREA AVERAGING/ELIGIBILITY & USES

- **Uses:**
 - Comments from the Board of Commissioners and PBOC recommended applying a filter to allow only certain types of uses promoting an identified public interest to utilize the averaging process. The text amendments propose allowing the following uses to be considered automatically eligible for the averaging program: Residential uses intended to meet an identified housing need (i.e. less than 120 percent of AMI), or Civic/Educational/Institutional uses as defined by the Davidson Planning Ordinance. Additional uses will be considered by the Board of Adjustment on a case by case basis (since state law allows any applicant to make a request to pursue the program). Importantly, the text signals the types of proposals the Board of Adjustment would entertain; paired with the 17.8.2.B.6 revision this represents an increase in the board's oversight.
 - The language also clarifies Meck. County's policy that individually-owned single-family residences are not eligible to be receiving sites due to the on-going operations, maintenance, and inspection requirements of engineered stormwater (see 17.7.3.H above for a fuller explanation).

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

- **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.
- **To Summarize 17.8.1.B & 17.8.2.B.6:** The PBOC extensively debated the merits of this program and/or how to improve it. Options considered were:
 - A. Do Not Modify: Leave unchanged within the ordinance;
 - B. Require Board of Commissioners (BOC) Approval: Shift decision-making away from BOA and give to BOC;
 - C. Enhance Board of Adjustment (BOA) Discretion: Give the BOA greater discretion in reviewing/denying proposals;
 - D. Signal Preferred Projects: Clearly identify example projects advancing clearly-identified town aims for participation in the program;
 - E. Remove from the Ordinance: Take it out/do not allow it at all.

Through the course of research and discussions with the NC Department of Environmental Quality, the PBOC learned that even if the BUAA program were removed from the Town of Davidson Watershed Ordinance, landowners would still have the option to utilize the program because it's state law – and, in doing so, they would utilize it according the state's parameters, some of which the PBOC found inconsistent with town aims. Therefore, the PBOC opted to pursue Options C-D.

In sum, as a result of the proposed amendments:

1. The BOA would only review a BUA Averaging request/plan that had received approval through the requisite development process – complete with public input, staff review, and Planning Board comment;
2. Based on the proposed changes, even after that initial approval the BOA's discretion to deny the proposal has been expanded; and

3. The following uses are considered preferred candidates for the averaging program:
Residential uses intended to meet an identified housing need (i.e. less than 120 percent of AMI), or Civic/Educational/Institutional uses as defined by the Davidson Planning Ordinance. Additional uses will be considered by the Board of Adjustment on a case by case basis (this is both practical – in the event an unforeseen but exceptional project emerges – and legally-advisable, since state law does not restrict potential applicants).