

WATERSHED ORDINANCE TEXT AMENDMENTS

Frequently Asked Questions

5/24/18

These questions were produced by the Planning Board Ordinance Committee (PBOC), which is comprised of Planning Board members (i.e. citizens) that volunteer their time to work with staff in reviewing proposed text amendments. The information below includes responses to questions/topics frequently raised as well as general information about the watershed amendments and process. Abbreviations are used as follows: Board of Adjustment (BOA); Built-Upon Area (BUA); Davidson Planning Ordinance (DPO).

I. OVERVIEW

1. SUMMARY: What is the Watershed Ordinance?

Response: The Watershed Ordinance is Section 17 of the DPO. The DPO contains the rules by which development may occur in Davidson; Section 17's regulations govern parcels within town near Lake Norman. The standards apply to properties within 0.5 mi. of the lake (i.e. the "critical area"), which is generally everything west of Main Street.

2. PURPOSE: What is the purpose of the Watershed Ordinance?

Response: 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, residential or non-residential. The less buffers and more BUA a lot contains then the more runoff containing dirt, fertilizer, chemicals from cars, etc. washes off onto our streets and gets into the lake. The Watershed Ordinance helps to manage these issues.

3. BUILT-UPON-AREA (BUA): What is BUA?

Response: BUA is hardscape surfaces, like a driveway or building footprint, that generally repel, rather than absorb, rainwater. BUA does not include structures like fences or decks that have grass, mulch, or earth underneath them.

4. ORIGIN: How did we get the standards?

Response: The standards come from state legislation that was passed in the early 1990's. They were adopted in Davidson (and across the state) in 1993. These rules relate to the Safe Drinking Water Act passed by the federal government in the 1970's, as amended over the years. Note: The watershed's extent is defined by state law and Mecklenburg County specifically delineates the boundaries of the watershed in accordance with this statute.

5. REASONS FOR AMENDMENTS: Why is the town undertaking changes to the Watershed Ordinance?

Response: In March 2017 Mecklenburg County, our partner in administering the ordinance (with oversight from the NC Department of Environmental Quality), requested that

Davidson: Update/clarify standards; address persistent issues and inconsistencies; and, remove inapplicable sections.

6. PROPERTIES AFFECTED: How can I tell if my property is within the watershed?

Response: See Mecklenburg County's [Polaris 3G website](#). Type an address into the search bar, and scroll down the left side of the page to Environmental Information – if the field next to the row saying Regulated Drinking Watershed Class says “CA” then that means the property is located within the Critical Area of the watershed and subject to the ordinance.

II. REGULATIONS

7. DEVELOPMENT ALLOWED: What types of development are allowed in the watershed? How does the Watershed Ordinance classify development within the watershed?

Response: Most of the types of development allowed generally in Davidson (see specific uses and building types addressed in DPO Section 2) are also allowed in the watershed.

The Watershed Ordinance classifies development within the watershed as either “Low Density” or “High Density.” Importantly, these terms as used in the Watershed Ordinance do not describe a site’s building units per acre. Instead, the terms Low Density and High Density describe a site’s BUA (i.e. land coverage). Our Watershed Ordinance uses these terms to align with state law.

8. BUA LIMITS: What are the limits for the amount of BUA on a site? Is there an overall maximum?

Response: Low Density proposals can cover up to 24% of their lot with BUA; High Density proposals can cover up to 50% of their lot with BUA, but they must have engineered stormwater controls to capture and treat rainwater on-site. These are the maximum limits allowed, subject to the ability of landowners to obtain a variance (see FAQ Item 9) or to secure approval from the BOA to use Built-Upon Area Averaging (see FAQ Item 10). Note: The amendments do not propose changing the 24% and 50% thresholds.

9. VARIANCE: If for some reason a landowner can’t meet the maximum BUA limit, is there a process to build more BUA on a site than what is typically allowed?

Response: Yes. The landowner may pursue a variance. Variances are decided by the Board of Adjustment, a group of citizen volunteers made of Planning Board members. Specific types of variances are:

- a. **Minor:** What if a landowner wants to construct a single-family detached house that exceeds the maximum BUA allowed for the low-density option (24%) What if a citizen wants to build a home that would be 28% impervious? What is the process?

Response: Minor variances of up to 10% may be granted for low-density proposals, and up to 5% for high-density proposals. For example, if a landowner wants to construct a single-family detached house that exceeds the maximum BUA allowed for the low-density option (24%), they can apply for a variance with the BUA for permission to put up to 34% BUA on their site. For a high-density proposal, the request would be for up to 55% BUA on a site.

- b. Major:** Major variances exceed 10% for low-density proposals and 5% for high-density proposals. For example, if a landowner wants to construct a single-family detached house that covers 35% of the lot, they follow the same process as a minor variance – they apply to the Board of Adjustment (BOA). For a high-density proposal of 56% it's the same process, too; but, these proposals also require the state Department of Environmental Quality to approve the major variance.

10. BUILT-UPON AREA AVERAGING: What is BUA Averaging? Will the amended version of the Watershed Ordinance continue to allow it?

Response: BUA Averaging, currently known as “Density Averaging,” allows one parcel in the watershed to set aside undeveloped land in a non-revocable easement and transfer the area of this easement to another lot in the watershed, thereby increasing the amount of BUA that may be built on the receiving lot. This program is allowed by the state law. The proposed amendments continue to allow this program with two important revisions: 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; and, 2. Based on the proposed changes, even after that initial approval the BOA’s discretion to deny the proposal has been expanded. In effect, this means that such proposals must be approved twice.

Additionally, the proposed changes identify certain project types believed to be suitable for the program – those meeting a clearly identified public interest (i.e. one supported in the Comprehensive Plan/DPO). The draft language identifies the following as suitable projects: Residential proposals geared towards affordable or workforce housing; and, Civic/Institutional/Educational uses as defined by the DPO. The language would also allow the BOA to consider other types of proposals on a case by case basis.

11. NON-CONTIGUOUS PARCELS & BUILT-UPON AREA: Can parcels that are part of the same development proposal but not next to each other share the total built-upon area between parcels?

Response: Outside of the built-upon area averaging program described in Item 10, no: The proposed changes allow only contiguous parcels that are adjoining (share a boundary) or adjacent (share a boundary across a right-of-way/street) to be considered one project in terms of built-upon area. The proposed change addresses ambiguity in the current ordinance and is stricter than Mecklenburg County’s standard.

12. EXEMPTIONS: Are there any exemptions for properties that would allow landowners to exceed the BUA limits without obtaining a variance or approval for BUA Averaging?

Response: There is currently an exemption for properties whose lot lines have not changed since 1993. The proposed amendments recommend phasing out this exemption because this allows these lots to exceed the amount of BUA criteria (24% or 50%) to which other lots are held. This is based on feedback received from the Planning Board and the Board of Commissioners, who have expressed a desire that the updated standards treat similar lots equally to the greatest extent possible. Therefore, until July 1, 2025 pre-1993 lots would be allowed to construct up to 34% built-upon area on a site – the same amount

permitted as a minor variance. After 2025, all lots pursuing the low-density option would be held to 24% built-upon area.

For further context: 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 and others are not; this disparity has existed for 25 years. The proposed standards would hold all residential lots redeveloping via the low density option to a 24% BUA limit starting in 2025, equalizing the treatment of all residential lots. This is an important consideration the PBOC has heard citizens, Planning Board members, and Commissioners articulate throughout the process. The PBOC drafted language that would have exempted select lots based on long-standing ownership (i.e. “grandfathering”), but this was determined not to be supported legally.

- 13. RESIDENTIAL VS. NON-RESIDENTIAL PROPERTIES:** Do the proposed amendments treat residential properties differently than non-residential properties within the watershed?

Response: Both the current and proposed amended standards apply the 24% and 50% BUA limits to all properties within the watershed regardless of whether they are residential or non-residential. The proposed amendments, however, recommend flexibility in meeting watershed requirements on the block bounded by Main/Depot/Jackson Streets and adjacent properties. This is supported by the Comprehensive Plan, which cites the importance of removing barriers to development in already developed areas to allow investment to occur.

- 14. RAINWATER MITIGATION:** What are measures that any/all current or prospective single-family homeowners in the watershed area can do to help mitigate stormwater runoff issues?

Response: There are a variety of low-cost measures that residents can utilize to manage rainwater. These range from rain gardens and French drains to disconnected downspouts and rain barrels capturing rain from a roof. Many of these measures are being implemented already by residents throughout town for environmental and aesthetic reasons. By installing and redirecting rainwater towards these facilities residents can increase rainwater infiltration on-site and reduce the amount of pollutants from fertilizers and car chemicals being washed off site during rain events. The proposed amendments would require expansions resulting in more than 24% built-upon area and the redevelopment of single-family lots to install some of these features as part of permit approval. Examples are included in the resources materials on the [Map & Text Amendments webpage](#).

- 15. ENGINEERED STORMWATER FACILITIES:** What are these facilities and when are they required?

Response: These are specific structures designed to treat prescribed amounts of rainwater and remove a certain level of pollutants before infiltrating or discharging the captured rainwater. These are expensive, rigorously designed devices that must be constructed by projects pursuing the high-density option (i.e. for projects that construct between 24-50 percent built-upon area on site that are not otherwise exempt from the standards). Examples include underground storage vaults made of concrete and

sophisticated rain gardens or infiltration trenches. While some strategies are also described above in the rainwater mitigation question, the difference is that engineered stormwater facilities must meet certain design/treatment standards approved by Meck. County – the proposed standards described in the rainwater mitigation question do not (i.e. they're low-cost treatment strategies that many citizens are already implementing).

- 16. OTHER DEVELOPMENT STANDARDS:** If the Watershed rules apply to my property, do they limit what you can build? Are the Watershed criteria the only rules that determine what can be built on a property?

Response: The watershed standards allow low-density proposals to cover up to 24% of their lot with BUA; high-density proposals can cover up to 50% of their lot with BUA. Each of these thresholds permits a range of development opportunities on each site. Moreover, the DPO also contains standards concerning setbacks, building height, building volume (i.e. floor area ratio), tree planting requirements, and parking standards – among many others – that determine what can be built on a site. In many cases these matter more than the watershed criteria in determining what can be done on a site. The proposed amendments allow flexibility for a variety of designs on both residential and non-residential parcels. Additionally, conversations related to the watershed ordinance have raised interest in evaluating criteria related to some of these other site design standards.

- 17. REGULATORY DISPARITY/DESIGN SOLUTIONS:** If my lot is impacted by the proposed changes, will I still be able to develop a sufficiently-sized single-family house?

Response: The Planning Board Ordinance Committee (PBOC), comprised of staff and citizens, recognizes the concern of landowners regarding future site designs and the ability to develop a property as a single-family home. Yes, each lot will be able to develop in a manner that suits the landowner's interests and is comparable to existing/new construction in the vicinity. This can be accomplished through a variety of strategies, each tailored to the particular features of a specific lot. For example, use of an attached rather than detached garage, shorter rather than longer driveway, and installation of a deck rather than a patio are all viable strategies to reduce a site's BUA while still providing high-quality housing and site design that meet DPO requirements.

Additionally, existing features like a driveway may be able to be considered existing BUA and therefore not count against the site's existing BUA limit. Each case is different and with thoughtful design landowners will be able to achieve solutions that work for their site in a manner that is consistent with the character of existing/recent homes. The proposed standards are supported by case studies of specific properties illustrating comparable levels of development under the current and proposed standards.

III. PUBLIC INPUT & RESOURCES

- 18. PUBLIC ENGAGEMENT:** How much public discussion has occurred regarding the proposed amendments? How have citizens been made aware of the proposed amendments? How have citizens' comments been solicited and incorporated into the proposed amendments?

Response: Beginning in the fall of last year the Board of Commissioners has discussed the proposed amendments four times at work sessions/public meetings – once in the fall of 2017 and three times in the winter of 2018. In addition, the Planning Board has discussed the proposed amendments at each of its four meetings in 2018, with the Planning Board Ordinance Committee (PBOC) hosting meetings with citizens before or after each meeting in order to hear comments and answer questions about the proposed changes. The PBOC will also host an open house on Monday, 4/30 to answer questions and hear comments. In between all these events staff as well as PBOC members have held numerous meetings with interested citizens and landowners. In fact, the majority of changes proposed since January 2018 have been in response to citizen comments concerning the regulatory disparities amongst residential lots (i.e. equality of treatment), built-upon area averaging, and expansions (i.e. preservation), among others.

Each of the official meeting events are advertised in the Board of Commissioners and Planning Board agendas. Further notice of the proposed changes has been provided via various media channels, including E-Crier announcements, Planning Dept. webpage Updates, and the upcoming Town Messenger newsletter, which is mailed to each residence. Together, these measures significantly exceed the minimum state requirements concerning text amendments, which require only a single public hearing.

19. DRAFT AMENDMENTS: Where can I see the proposed changes?

Response: The [Map & Text Amendments webpage](#) contains an annotated copy of the DPO and highlights proposed changes. It also contains an overview of the changes and a timeline of the proposed changes' history. This information has been updated consistently since January 2018.

20. ADDITIONAL RESOURCES: Are there additional resources that would help me understand the proposed changes?

Response: The [Map & Text Amendments webpage](#) contains several resources noted above. It also includes diagrams to help illustrate the proposed changes; these are all based on a low density, maximum BUA limit of 24%. Additionally, citizens may view the [Planning Board agendas](#) from each of the four meetings in 2018 to see the "Handout" summarizing various changes/topics discussed at each meeting.

IV. MISCELLANEOUS

21. STATE LEGISLATION: Are the proposed text amendments compliant with state legislation? Isn't the Dept. of Environmental Quality (DEQ) updating their standards now? Why change our standards before theirs are updated?

Response: Yes, the proposed amendments are compliant with current and future state legislation. The state legislature requires all state agencies to re-adopt all of their rules every 10 years or the rules would expire; DEQ has elected to update its standards effective 1/1/19 and has put out their proposed changes for public comment.

The DEQ has reviewed each iteration of Davidson's proposed changes and has not found anything that needs to be changed as a result of the DEQ's proposed amendments. In fact,

Davidson is already anticipating the proposed changes in some ways. For example, the state proposes to revise the mandatory wet detention pond requirement to allow for different approaches (just like Davidson proposes to reference the Meck. County Stormwater Manual that lists a variety of treatment strategies rather than prescribing one that may not fit a site's context).