

## CHAPTER 17: Watershed Protection Overlay District - Update (July 10, 2018)

[Insert map showing critical watershed area]

### **17.1 Authority and Enactment**

The Legislature of the State of North Carolina has, in Chapter 160A, Article 8, Section 174, General Ordinance Authority; and in Chapter 143, Article 21, Watershed Protection Rules, delegated the responsibility or directed local governmental units to adopt regulations designed to promote the public health, safety, and general welfare of its citizenry. The Davidson Board of Commissioners does hereby ordain and enact into law the text contained herein to satisfy said statutory requirements.

### **17.2 Jurisdiction**

The provisions of this section shall apply only within areas designated as Water Supply Watersheds by the NC Environmental Management Commission and shall be depicted on the Town of Davidson's Watershed map. Where there is a conflict between the regulations contained in this section and any other portion of the Planning Ordinance, the provision of this section shall apply to properties located within a designated Water Supply Watershed area.

### **17.3 Definitions**

For the purpose of interpreting this section, certain words or terms are herein defined. Except as defined herein, or in Section 16 - Definitions, all other words shall have their everyday dictionary definition. Where a term is defined in this section and in Section 16 Definitions, the definition in this section shall apply to this section only.

**Agricultural Use:** The use of waters for stock watering, irrigation, and other farm purposes.

**Animal Unit:** A unit of measurement developed by the US Environmental Protection Agency that is used to compare different types of animal operations.

**Buffer, Vegetative:** An area of natural or planted vegetation through which stormwater runoff flows in a diffused 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 Lake Norman and from the top of the bank on each side of streams.

**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.) Built upon areas shall be determined on a project-by-project basis.

**Cluster Development:** ...

**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). 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.

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

**Discharging Landfill:** A facility with liner, monitoring equipment and other measures to detect and/or prevent leachate from entering the environment and in which the leachate is treated on site and discharged to a receiving stream.

**Expansion:** Any walled and roofed extension of or increase in the floor area or height of an existing building connected by a load-bearing wall; and/or, an increase in the built-upon area to site components such as parking, improvements, or other structures. For the purpose of the watershed ordinance, any expansion shall be required to have preserved at least 50% of the interior heated floor area.

**Existing Development:** Projects that are built or projects that have established a vested right under North Carolina zoning law as of the effective date of this ordinance (October 1, 1993) based on at least one of the following criteria:

- (a) Having an approved site specific or phased development plan; or
- (b) Having an outstanding valid building permit; or
- (c) Substantial expenditures of resources (time, labor, money) based on a good faith reliance upon having received a valid local government written approval to proceed with the project.

**Existing Lot of Record:** A lot which is part of a subdivision, a plat of which has been recorded in the Office of the Register of Deeds prior to October 1, 1993 of this ordinance, or a lot described by metes and bounds, the description of which has been recorded prior to October 1, 1993. (Note: This definition containing the October 1, 1993 stipulation shall be applicable only to Section 17 of this ordinance.)

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

**High Density Option:** Any new development which exceeds 24 percent built-upon area (BUA), requiring engineered stormwater control devices approved by the Town of Davidson as prescribed by the Environmental Management Commission's adopted Water Supply Watershed Protection rules.

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

**Landfill:** A facility for the disposal of solid waste on land in a sanitary manner in accordance with Chapter 130A, Article 9 of the N.C. General Statutes. For the purpose of Section 17, this term does not include compost facilities.

**Low Density Option:** Any new development which does not exceed 24 percent built-upon area (BUA).

**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 in a WS-IV water supply in which protection measures are required. The boundaries of the protected areas are defined as extending five miles upstream and draining to water supply reservoirs (measured from the normal pool elevation) or to the ridge line of the watershed (whichever comes first); or ten miles upstream and draining to the intake located directly in the stream or river (run-of-the-river), or to the ridge line of the watershed (whichever comes first). Major landmarks such as highways or property lines may be used to delineate the outer boundary of the protected area if these landmarks are immediately adjacent to the appropriate outer boundary of five or ten miles. In some cases the protected area will encompass the entire watershed.

**Redevelopment:** Rebuilding activities, including demolition, on land containing built upon area as of the effective date of this ordinance (October 1, 1993).

**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.

**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 offspring or other adverse health effects.

**Variance, Major:** A variance from the minimum **Town's** watershed protection rules that results in any one or more of the following:

1. The relaxation by a factor greater than five percent of any buffer, density or built-upon area requirement under the high density option;
2. Any variation in the design, maintenance, or operation requirements of approved stormwater management systems;
3. The relaxation by a factor greater than 10 percent of any buffer, density or built-upon area requirement under the low density option.

**Variance, Minor:** A variance from the minimum Town's watershed protection rules that results in any one or more of the following:

1. The relaxation by a factor of up to, and including, five percent of any buffer, density or built-upon area requirement under the high density option;
2. The relaxation by a factor up to, and including, 10 percent of any buffer, density or built-upon area requirement under the low density option.

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

#### **17.4 Effective Date and Adoption Date**

Section 17 shall take effect and be in force on October 1, 1993. The Davidson Board of Commissioners adopted it on September 14, 1993.

#### **17.5 Rules Governing the Interpretation of Watershed District Boundaries**

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

1. Where watershed district boundaries are indicated as approximately following either street, alley, railroad or highway lines or center lines thereof, such lines shall be construed to be the watershed district boundaries.
2. Where watershed district boundaries are indicated as approximately following lot lines, such lot lines shall be construed to be the watershed district boundary. However, a surveyed plat prepared by a registered land surveyor may be submitted to the Planning Director as evidence that one or more properties along these boundaries do not lie within the watershed area.
3. Where the watershed district boundary lies at a scaled distance of more than 25 feet from an adjoining lot line, the location of the watershed district boundary shall be determined by use of the scale appearing on the map.
4. Where the watershed district boundaries lie at a scaled distance of twenty-five (25) feet or less from any parallel lot line, the location of watershed area boundaries shall be construed to be the lot line.
5. Where other uncertainty exists, the Planning Director shall interpret the Davidson Watershed Map to determine the location of such boundaries. This decision may be appealed to the Board of Adjustment.

#### **17.6 Exceptions to Applicability**

Nothing contained herein shall repeal, modify, or amend any Federal or State law or regulation, or any ordinance or regulation pertaining thereto except any ordinance which these regulations specifically replace; nor restrict any provisions of the Davidson Planning Ordinance; however, the adoption of the Watershed Protection Ordinance shall and does amend any and all ordinances, resolutions, and regulations in effect within the planning jurisdiction of the Town of Davidson (as depicted in the Davidson Planning Areas map) at the time of the adoption of the ordinance that may be construed to impair or reduce the effectiveness of this ordinance or to conflict with any of its provisions.

It is not intended that these regulations interfere with any easement, covenant 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. Nonconformities shall follow the requirements of Section 12 of the Davidson Planning Ordinance.

### **17.6.1 Expansions to Existing Development**

Existing development, as defined in this ordinance, is not subject to the requirements of this section. Expansions to structures classified as existing development on any lot other than a lot containing a single-family residence as the principle use must meet the requirements of this ordinance; however, the built-upon area of existing development is not required to be included in the ~~density~~ **impervious** calculations (i.e. ~~maximum number of units permissible or~~ the maximum built-upon area). **If structures classified as existing development are removed, the parcel's built-upon-area must comply with the standards of this ordinance.**

### **17.6.2 Existing Lots of Record**

~~A pre-existing lot~~ **An existing lot of record** owned by an individual prior to the effective date of these regulations, regardless of whether or not a vested right has been established, may be developed or used for single-family residential purposes without being subject to these regulations. However, this shall not be applicable to multiple contiguous lots under single ownership that do not meet the requirements of the underlying planning area. ~~Multiple undeveloped lots under single ownership will have to conform to the underlying general planning area minimum lot sizes.~~

#### 17.6.3 Nonconforming Situations

#### 17.6.4 Existing Development

### **17.6.3 Redevelopment**

- A. Redevelopment, as defined in this ordinance, shall comply with the Davidson Planning Ordinance subject to item B. below.
- B. Redevelopment, as defined in this ordinance, is not subject to the requirements of this ordinance if located in the following planning areas and meeting the specified conditions:
  - 1. Area A:
    - a. Location: Village Commerce or Village Center parcels within the block bounded by Depot, Main, and Jackson Streets.
    - b. Conditions:
      - 1. The redevelopment will not result in a net increase in built upon area from the previous development and will provide greater or equal storm water control than the previous development; or
      - 2. The redevelopment will result in the disturbance of less than one acre.
  - 2. Area B:
    - a. Location: Village Center parcels along the north side of Depot Street and Village Commerce parcels west of Jackson Street.
    - b. Conditions:
      - 1. The redevelopment will not result in a net increase in built upon area from the previous development and will provide engineered stormwater controls if the built-upon area exceeds 24%; or
      - 2. The redevelopment will result in the disturbance of less than one acre.

## **17.7 Watershed Subareas Established**

The purpose of this section is to list and describe the various watershed subareas herein created. The following subareas shall be in place and are depicted on the Davidson Watershed Map:

- a) Critical Area: The Critical Area is defined as the land area which begins at the normal pool elevation of Lake Norman and extends one-half mile inland or to the ridgeline, whichever is closest, as shown more specifically on the Town of Davidson watershed map.
- b) Protected Area: There is no Lake Norman Protected Area located within the jurisdiction of the Town of Davidson.

### **17.7.1 Critical Area (CA)**

The intent of these regulations is to require higher standards in the Critical Area of the Lake Norman Watershed because of the greater risk of degradation of the drinking water supply from pollution. All uses permitted in the Critical Area are subject to the standards of the both the watershed subarea and underlying zoning district. In every case the more restrictive standard controls.

#### **17.7.1.1 Allowed Uses (Only if Permitted in the Underlying Planning Area)**

- 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, 1993 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. Animal operations with greater than 100 animal units shall employ Best Management Practices by July 1, 1994 as recommended by the Soil and Water Conservation Commission. (Note: The Soil and Water Conservation Commission is the designated management agency responsible for implementing the provisions of Section 16 relating to agricultural activities.)
- B. Silviculture, subject to the provisions of the Forest Practices Guidelines Related to Water Quality (15 NCAC 11.6101-0209).
- C. Residential development.
- D. Non-residential development (i.e. commercial, institutional, or industrial development) excluding: (i) the storage of toxic and hazardous materials unless a spill containment plan is implemented; (ii) landfills; and (iii) sites for land application of sludge/residuals or petroleum contaminated soils.

#### **17.7.1.2 Built-Upon Area Limits**

All development must comply with the built-upon area limits of either the Low Density or High Density Option as described below. When calculating the built-upon area, total project area shall include total **contiguous** acreage of the adjacent or adjoining tract(s) on which the project is to be developed. Note: For the purposes of the watershed ordinance, the terms Low and High Density describe a site's built-upon area (i.e. land coverage); they do not describe units per acre.

- A. **Low Density Option:** Development shall not exceed a built-upon area of 24 percent on a project by project basis.

- B. High Density Option:** Development shall not exceed a built-upon area of 50 percent on a project-by-project basis. Note: Control structures must be used to treat storm water as explained in Section 17.7.3.
- C. Reserve Built-Upon Area:** Development or redevelopment of a Detached House, Attached House, or Townhome approved after (effective date of ordinance revision) shall reserve, at minimum, 1% of the lot area but not less than 150 sq. ft. impervious area per lot to allow for addition of future impervious areas by homeowner/occupant. Such reserve built-upon area shall be treated as part of the built-upon area for the purposes of calculating the 24 percent and 50 percent maximum BUA set forth in A. and B. of this Section 17.1.1.2.

## **17.7.2 Cluster Development**

### **17.7.3 High Density Option**

#### **A. General Requirements**

The Planning Director may approve a project using the high-density option consistent with the following standards:

1. **Critical Area:** Engineered storm water controls shall be used to control runoff from the first inch of rainfall for development which contains a built-upon area of greater than 24 percent to 50 percent on a project-by-project basis. Individual single-family detached houses are not eligible to utilize engineered stormwater controls to meet this section's requirements.
2. **Protected Area:** There is no Lake Norman Protected Area located within the jurisdiction of the Town of Davidson.

#### **B. Inspection Fees**

The Town reserves the right to conduct inspections in accordance with this ordinance. A fee in accordance with the fee schedule approved by the Planning Director shall be required to be paid by the owning entity prior to each inspection being conducted.

#### **C. Operation and Maintenance Plan**

1. Any stormwater control structure approved by the Planning Director shall be prepared by a North Carolina registered professional engineer or landscape architect (to the extent that the General Statutes allow) and predicated on the developer and the Town entering into a binding operation and maintenance plan. The plan shall require the owning entity of the structure(s) to maintain, repair, and, if necessary, reconstruct said structure(s) in accordance with the operation and maintenance plan provided by the developer to the Town. The plan must be approved by the Planning Director prior to, or in conjunction with, approval of the high density option for said project.
2. A separate plan must be provided by the developer for each stormwater control structure, containing, at a minimum, what operation and maintenance actions are needed and will be undertaken, what specific quantitative criteria will be used for determining when those actions are to be taken, and who is responsible for such actions. The Plan shall clearly indicate what steps will be taken for restoring a stormwater control structure to design specifications if a failure occurs.

3. Amendments to the plan and/or specifications of the stormwater control structure(s) may only be approved by the Planning Director. Proposed changes shall be prepared by a North Carolina registered professional engineer or landscape architect, (to the extent that the General Statutes allow) and submitted to the Planning Director for approval. Such amendments shall be accompanied by all information and fees prescribed by this ordinance.
4. If the Planning Director finds that the plan, once approved, is inadequate for any reason, the Planning Director shall notify the owning entity of any changes mandated by the Town and a time-frame in which changes to the plan shall be made.

#### **D. Post of Financial Securities**

All new stormwater control structures approved employing the high density option shall be conditioned on the posting of adequate financial assurances for the purpose of constructing, maintaining, repairing or reconstructing said devices.

1. A surety bond or equivalent security shall be posted in accordance with Davidson Planning Ordinance requirements (6.11 Improvement Guarantees).
2. Once the stormwater control structure(s) has been constructed and inspected in the manner provided for in this ordinance, and approved by the Planning Director, the Planning Director may authorize the release of up to 75 percent of the surety bond or other equivalent security outlined above. The remaining portion of the surety bond or equivalent security may be released to the owning entity in accordance with this ordinance.
3. Prior to said release, the applicant shall be required to deposit with the Town either cash or a similar instrument approved by the Planning Director in an amount equal to 15 percent of the total construction cost or 100 percent of the cost of maintaining, repairing, or reconstructing said structure(s) over a 20-year period, whichever is greater. The estimated cost of maintaining the stormwater control structure(s) shall be consistent with the approved Operation and Maintenance Plan provided by the applicant as outlined in this section.

#### **E. Default**

1. Upon default of the applicant to complete the stormwater control structure(s) as detailed in the surety bond or other equivalent security, the Planning Director may obtain and use all or any portion of the funds necessary to complete the improvements based on actual construction costs. The Planning Director shall return any funds not spent in completing the improvements to the owning entity.
2. Upon default of the owning entity to maintain, repair and, if necessary, reconstruct the stormwater control structure in accordance with the approved Operations and Maintenance Plan, the Planning Director shall obtain and use any portion of the cash security outlined in Section 17.7.3.E to make necessary improvements based on an engineering estimate provided by the Town.

#### **F. Vegetation and Grounds Management**

1. Landscaping and grounds management shall be the responsibility of the owning entity of said structure(s). Vegetation shall not be established or allowed to mature to the extent that



the integrity of the structure(s) is in any way threatened or diminished, or to the extent of interfering with any easement or access to the structure.

2. Except for routine landscaping and grounds maintenance, the owning entity shall notify the Planning Director prior to any repair or reconstruction of the structure. All improvements shall be consistent with the approved plan and specifications for that structure. After notification by the owning entity, the Town shall inspect the completed improvements and inform the owning entity of any required additions, changes, or modifications needed to complete said improvements. A fee, in accordance with a fee schedule adopted by the Planning Director shall be charged to the owning entity for any inspections (and re-inspections). A time period for making such changes shall also be stipulated by the Town.

## **G. Inspections**

### **1. Inspections of Newly Constructed Stormwater Structures**

All new stormwater control structures shall be inspected by the Planning Director or his/her designee after the owning entity notifies the Planning Director that all construction has been completed. At this inspection the owning entity shall provide:

- a. The signed deed, related easements, and survey plat for the structure in a manner suitable for filing with the Register of Deeds, if ownership of the stormwater control structure(s) is to be transferred to another person, firm or entity. (This requirement will be waived for any repair work when such deed has previously been filed.)
- b. A certification by a professional engineer or landscape architect (to the extent allowable by the North Carolina General Statutes) stating that the stormwater control structure is complete and consistent with the approved plan and all specifications previously stipulated by the Town.
- c. The Planning Director shall review the materials submitted by the owning entity along with the Town's inspection for approval. If the Planning Director approves the inspection report and accepts the certification, deed, and easements, the Planning Director shall file said deed and easements with the Register of Deeds. Release of up to 75 percent of the surety bond or other equivalent security called for in Section 17.7.3.C shall be made in a manner as prescribed in this ordinance.
- d. If deficiencies are found as a result of the inspection, the Planning Director shall direct the owning entity to make necessary improvements. Re-inspections will be made thereafter. No release of any funds shall be made by the Town until all deficiencies are properly addressed to the Town's satisfaction.
- e. No sooner than one year after approval of the stormwater control structure(s) by the Town, the owning entity may petition the Planning Director to release the remaining value of the surety bond or equivalent security called for in Section 17.7.3.C. Upon receipt of said petition, the Town shall inspect the stormwater control structure(s) to determine whether the structure(s) is performing as designed and intended. Once the inspection is made, the Planning Director shall present the inspection report and recommendations to the Board of Commissioners.

- f. An occupancy permit shall not be issued for any building within the permitted development until the Planning Director has approved the stormwater control structure(s) in a manner as herein prescribed.

## **2. Annual Inspection of Stormwater Structures**

- a. All stormwater control structures shall be inspected by the Town or their designated agents on an annual basis to determine whether the structures are performing as designed and intended. Records of inspection shall be maintained as approved by the Planning Director. Annual inspections shall begin one year after approval of the stormwater control structure(s) by the Planning Director. A fee, in accordance with a fee schedule adopted by the Planning Director, may be charged to the owning entity for annual inspections (and re-inspections). A copy of each inspection report shall be filed with the Planning Director.
- b. In the event the Town's report indicates the need for corrective action or improvements, the Planning Director shall notify the owning entity of the needed improvements and the date by which such improvements are to be completed. All improvements shall be consistent with the adopted Operation and Maintenance plan and specifications. Once such improvements are made, the owning entity shall forthwith contact the Planning Director and ask that an inspection be made.

## **H. Stormwater Control Structure Specification**

1. All stormwater control structures shall be designed by either a North Carolina registered professional engineer or a landscape architect (to the extent that the General Statutes allow).
2. Stormwater control structures shall treat the runoff generated from the first inch of rainfall.
3. Stormwater control structures used to meet these requirements shall be designed to have a minimum of 85% average annual removal for Total Suspended Solids.
4. Stormwater control structures shall be installed to control the volume leaving the project site at post-development for the 1-year, 24-hour storm. Runoff volume drawdown time shall be a minimum of 24 hours, but not more than 120 hours.
5. Stormwater control structures shall be designed in accordance with the Charlotte-Mecklenburg BMP Design Manual.
6. In addition to the required vegetative filters, all land areas outside of the pond shall be provided with a ground cover sufficient to restrain erosion within 30 days after any land disturbance. Upon completion of the stormwater control structure, a permanent ground cover shall be established and maintained as part of the Operation and Maintenance plan described in this ordinance.
7. A description of the area containing the stormwater control structure(s) shall be prepared and recorded as a separate deed with the Register of Deeds along with any easements necessary for general access to the stormwater control structure(s) should ownership (and maintenance) of the stormwater control structure(s) be transferred to another person, firm

or entity. The deeded area shall include the detention pond, vegetative filters, all pipes and water control structures, berms, dikes, etc., and sufficient area to perform inspections, maintenance, repairs, and reconstruction.

#### **I. Planning Director Approval Process on High Density Application**

The Planning Director shall either approve an application for the high density option, approve the application with fair and reasonable conditions, or disapprove such an application based upon the applicable criteria contained in this Ordinance.

1. If the Planning Director approves the application, such approval shall be predicated on: a) the owning entity and the Town entering into a binding Operation and Maintenance plan as indicated in Section 17.7.3.B and b) the posting of a surety bond or other equivalent security as provided in Section 17.7.3.C. Such approval shall be indicated on the application and on both copies of the plans submitted with the application. A copy of the approved application and one copy of the plans shall be returned to the applicant.
2. If the Planning Director disapproves the application, the reasons for such action shall be sent by personal delivery, electronic mail, or first class mail by the Planning Director to the applicant within five working days of the disapproval. The applicant may make revisions or changes and submit a revised plan. The application fee may be waived if the Planning Director determines the changes are not substantial.

### **17.7.4 Buffer Areas Required**

#### **A. Vegetative Buffers**

Developments must place or maintain undisturbed vegetative buffers, except as specifically provided in this section, along the shoreline of Lake Norman measured horizontally by a licensed land surveyor from the full pond elevation (760' contour) and along each side of all perennial streams (as indicated on the most up-to-date version of a U.S.G.S. 1:24,000-7.5 minute map or as otherwise determined by local government studies) measured from the top of the bank on each side on the stream. Minimum buffer widths are 40 feet if the low density option is used or 100 feet if the high density option is used.

The following actions may not be undertaken without Planning Director approval:

- Restoration: Desirable artificial stream bank or shoreline stabilization.
- Removal: The removal of dead or diseased trees. Removal of underbrush is not permitted in the buffer except at approved pathways and locations.
- Tree Limbing: At approved locations, trees may be limbed up to half the distance of their height, not to exceed 15 feet above grade.

#### **B. Development in the Buffer**

No new development is allowed in the vegetative buffer area except for 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.

### **17.7.5 Public Health Regulations**

No activity, situation, structure or land use shall be allowed within a WS district 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.

The Planning Director shall monitor land use activities within all WS districts to identify situations that may pose a threat to water quality. The Planning Director shall report all findings to the proper agency to handle the threat and/or the Board of Commissioners. The Planning Director may consult with any public agency or official and request recommendations. Where the Planning Director finds a threat to water quality and the public health, safety, and welfare, the Planning Director shall institute any appropriate action or proceeding to restrain, correct or abate the condition and/or violation as herein authorized.

### **17.7.6 Amendments to Regulations Pertaining to a WS District**

Under no circumstances shall the Board of Commissioners adopt any amendment, addition, or deletion that would cause these regulations to violate the watershed protection rules as adopted by the NC Environmental Management Commission. Any amendment to the boundaries of any particular Water Supply Watershed District shall be referred to the NC Division of Environmental Management, NC Division of Environmental Health, and the NC Division of Community Assistance for their review prior to adoption. Otherwise, amendments to the regulations contained in Section 17 shall follow procedures prescribed in Section 14.

### **17.7.7 Variances**

The following sub-sections describe the process for pursuing a variance within the Lake Norman Critical Watershed. Approval of both minor and major variance requests as defined in this ordinance and subject to the regulations contained herein may only be granted upon a 4/5 affirmative vote of the Board of Adjustment.

#### **A. Minor Variance:**

1. **Application Form & Fee:** An application for a minor variance shall be on a form prescribed by the Town and shall be accompanied by a fee, the amount of which is in accordance with a fee schedule established by the Town. An application will not be considered complete unless it contains all information required and is accompanied by said fee. The application shall be accompanied by a map clearly identifying the subject property and all contiguous pieces of properties (including all properties traversed and/or separated by a road, stream, right-of-way or any similar natural or man-made configuration). In addition, a list of names and addresses of the owners of said properties, from the most recent official tax records, shall be provided by the applicant. All applications shall be submitted to the Planning Director.
2. **Application Completeness Determined:** Once having received an application, the Planning Director shall have five working days to determine its completeness. If he determines that the application is not complete, he shall serve a written notice on the petitioner specifying

the application's deficiencies. The Planning Director shall take no further action on the application until the deficiencies are remedied. If the Planning Director fails to so notify the petitioner, the application shall be deemed complete. Once the application is deemed complete, the Board of Adjustment shall hold a public hearing on the application.

3. Scheduling the Board of Adjustment Meeting: The Planning Director, having determined that an application is complete, shall place the application on the agenda of the next Board of Adjustment regular or special meeting occurring at least fifteen days thereafter.
4. Public Hearing Notification: Notification of said Board of Adjustment public hearing shall be as follows:
  - a. Preparation/Content: Notices shall include a description of the minor variance request; indicate the nature of the public hearing; and, list and the date, time, and place at which the hearing is to occur. Notices shall be prepared by the applicant using text provided by the Town.
  - b. Recipients: Notices shall be sent by first class mail to the following:
    - i. Local Governments: The Clerk of all municipal and county governments having jurisdiction within the same watershed; and
    - ii. Major Water Consumers: Any major consumer of water whose point of intake lies within the same watershed.
  - c. Mailing/Date: Notices shall be sent by the Town by first class mail at least 10 days prior to the public hearing.
  - d. Comments Received: Any comments received from notified local governments or major water consumers regarding a minor variance request shall become part of the record of proceedings.
5. Public Hearing: The Board of Adjustment shall conduct the public hearing in a quasi-judicial manner. All persons giving evidence shall be sworn in by the board Chair. In all matters coming before the Board of Adjustment, the applicant shall have the burden of providing clear, competent and material evidence in support of the application. The Board of Adjustment shall base their recommendation on the testimony given at the public hearing and on any comments received from notified local governments or major water consumers regarding the major variance request. The testimony, comments and evidence shall become part of the record of proceedings.
6. Board of Adjustment Recommendation: The Board of Adjustment shall make a recommendation on a minor variance involving property located within a Water Supply Watershed Overlay District no later than 30 days from the close of the public hearing. The Board of Adjustment may recommend a variance only after each of the findings found in Section 14 of the Planning Ordinance are found in the affirmative. Recommendations shall be in one of the following forms:
  - a. Recommend approval of the variance if the findings of fact in Section 14 are found in the affirmative; or
  - b. Recommend approval of the variance with fair and reasonable conditions attached if the findings of fact in Section 14 are found in the affirmative; or
  - c. Recommend denial of the variance if at least one finding of fact in Section 14 is found in the negative.

The concurring vote of four-fifths (4/5) of the voting members of the Board of Adjustment shall be necessary to make a recommendation for approval of a minor variance application involving property located within a Watershed Protection Overlay District.

7. Record of Decision: If the Board of Adjustment makes a favorable recommendation on a major variance application (with or without additional conditions or safeguard) or fails to make any recommendation on the major variance application within the specified time period, the Planning Director shall prepare a record of the public hearing which shall include the following:
- a. The variance application;
  - b. Evidence that proper notification of the public hearing has been made;
  - c. A summary of evidence presented, including comments submitted from other local governments or major water consumers within the same watershed jurisdiction;
  - d. Proposed findings and exceptions;
  - e. The Board of Adjustment's recommendation, if one is submitted within the 30 day time period, including all conditions proposed to be added to the permit.

A copy of the record of decision shall be filed with the Board of Adjustment case materials and one copy presented to the applicant. The approval, with any additional conditions or safeguards, shall become part of any zoning permit issued by the Planning Director.

**B. Major Variance:**

1. Application Form & Fee: An application for a major variance shall be on a form prescribed by the Town and shall be accompanied by a fee, the amount of which is in accordance with a fee schedule established by the Town. An application will not be considered complete unless it contains all information required and is accompanied by said fee. The application shall be accompanied by a map clearly identifying the subject property and all contiguous pieces of properties (including all properties traversed and/or separated by a road, stream, right-of-way or any similar natural or man-made configuration). In addition, a list of names and addresses of the owners of said properties, from the most recent official tax records, shall be provided by the applicant. All applications shall be submitted to the Planning Director.
2. Application Completeness Determined: Once having received an application, the Planning Director shall have five working days to determine its completeness. If he determines that the application is not complete, he shall serve a written notice on the petitioner specifying the application's deficiencies. The Planning Director shall take no further action on the application until the deficiencies are remedied. If the Planning Director fails to so notify the petitioner, the application shall be deemed complete. Once the application is deemed complete, the Board of Adjustment shall hold a public hearing on the application.
3. Scheduling the Board of Adjustment Meeting: The Planning Director, having determined that an application is complete, shall place the application on the agenda of the next Board of Adjustment regular or special meeting occurring at least fifteen days thereafter.
4. Public Hearing Notification: Notification of said Board of Adjustment public hearing shall be as follows:
  - a. Preparation/Content: Notices shall include a description of the major variance request; indicate the nature of the public hearing; and, list and the date, time, and place at which

the hearing is to occur. Notices shall be prepared by the applicant using text provided by the Town.

- b. **Recipients:** Notices shall be sent by first class mail to the following:
  - i. **Nearby Property Owners:** All adjacent and abutting property owners.
  - ii. **Local Governments:** The Clerk of all municipal and county governments having jurisdiction within the same watershed; and
  - iii. **Major Water Consumers:** Any major consumer of water whose point of intake lies within the same watershed.
- c. **Mailing/Date:** Notices shall be sent by the Town by first class mail at least 10 days prior to the public hearing.
- d. **Comments Received:** Any comments received from notified local governments or major water consumers regarding a minor variance request shall become part of the record of proceedings.

5. **Public Hearing:** The Board of Adjustment shall conduct the public hearing in a quasi-judicial manner. All persons giving evidence shall be sworn in by the board Chair. In all matters coming before the Board of Adjustment, the applicant shall have the burden of providing clear, competent and material evidence in support of the application. The Board of Adjustment shall base their recommendation on the testimony given at the public hearing and on any comments received from notified local governments or major water consumers regarding the major variance request. The testimony, comments and evidence shall become part of the record of proceedings.

6. **Board of Adjustment Recommendation:** The Board of Adjustment shall make a recommendation on a major variance involving property located within a Water Supply Watershed Overlay District no later than 30 days from the close of the public hearing. The Board of Adjustment may recommend a variance only after each of the findings found in Section 14 of the Planning Ordinance are found in the affirmative. Recommendations shall be in one of the following forms:

- a. Recommend approval of the variance if the findings of fact in Section 14 are found in the affirmative; or
- b. Recommend approval of the variance with fair and reasonable conditions attached if the findings of fact in Section 14 are found in the affirmative; or
- c. Recommend denial of the variance if at least one finding of fact in Section 14 is found in the negative.

The concurring vote of four-fifths (4/5) of the voting members of the Board of Adjustment shall be necessary to make a recommendation for approval of a minor variance application involving property located within a Watershed Protection Overlay District.

7. **Preliminary Record of Decision:** If the Board of Adjustment makes a favorable recommendation on a major variance application (with or without additional conditions or safeguard) or fails to make any recommendation on the major variance application within the specified time period, the Planning Director shall prepare a record of the public hearing which shall include the following:

- a. The variance application;
- b. Evidence that proper notification of the public hearing has been made;

- c. A summary of evidence presented, including comments submitted from other local governments or major water consumers within the same watershed jurisdiction;
- d. Proposed findings and exceptions;
- e. The Board of Adjustment's recommendation, if one is submitted within the 30 day time period, including all conditions proposed to be added to the permit.

If the Board of Adjustment recommends that an application for a major variance involving property within a Watershed Protection Overlay District should be denied, then the application shall not be forwarded to the Environmental Management Commission, and shall be considered denied by the Board of Adjustment. The Planning Director shall send written notice of the denial by personal delivery, electronic mail, or first class mail to the applicant within five working days of the Board's decision.

- 8. Environmental Management Commission Decision: The preliminary record shall be sent to the Environmental Management Commission for its review. If the Environmental Management Commission concludes from the preliminary record that the variance qualifies as a major variance, the Commission shall make a final decision on the request and mail it to the Planning Director.
  - a. Approval: If the Environmental Management Commission upholds the Board of Adjustment's recommendation for approval of a major variance, the Planning Director shall forward the Environmental Management Commission's decision to the applicant by personal delivery, electronic mail, or first class mail within five working days of receipt of the decision from the Commission. The approval, with any additional conditions or safeguards, shall become part of any zoning permit issued by the Planning Director. A copy of the record of decision shall be filed with the Board of Adjustment case materials.
  - b. Denial: If the Environmental Management Commission overturns the Board of Adjustment's recommendation for approval of a major variance, the Planning Director shall send the decision by personal delivery, electronic mail, or first class mail to the applicant within five working days of receipt of the decision from the Environmental Management Commission. The materials must state that the major variance request was denied and list the reasons for such denial. A copy of the record of decision shall be filed with the Board of Adjustment case materials.

### **17.7.8 Enforcement**

- A. These regulations shall be enforced by the Planning Director. In addition to other duties, the Planning Director shall keep records regarding any expansions approved to structures classified as existing development, so that the maximum coverage of all new expansions do not exceed that allowed in this ordinance.
- B. The Planning Director shall maintain a file on all applications for minor and major variances. A copy of information pertinent to any minor variance application request (including minutes of the hearing, findings made by the Board of Adjustment, actions taken by the Board of Adjustment, names and addresses of all persons giving evidence at the public hearing) shall be submitted annually during the last week of December to the Division of Environmental Management, Supervisor of the Classification and Standards Group.



- C. The penalties and fines described in Section 14 and Section 15 are applicable to this section.

## **17.8 BUILT-UPON AREA AVERAGING (DENSITY AVERAGING)**

Built-Upon Area (BUA) Averaging allows parcels located within the Lake Norman Critical Watershed to obtain additional development rights through an increase in a site's built-upon-area (BUA) by averaging the total BUA of the developing lot (i.e. "receiving lot") with the total BUA of an undeveloped/less developed lot within the same watershed and jurisdiction ("donating lot"). This is accomplished by transferring undeveloped area on a donating lot to a receiving lot via a BUA Averaging Certificate, which includes a non-revocable easement, metes and bounds description, and recorded plat of the area(s) to remain undisturbed. The BUA Averaging Certificate requires approval by the Watershed Review Board, a sub-set of the Board of Adjustment; for the purposes of this ordinance, the Board of Adjustment may act as the Watershed Review Board.

### **17.8.1 PURPOSE & ELIGIBILITY, PROCESS, DOCUMENTATION**

- A. **Purpose:** The purpose of this provision is to preserve open space in the more sensitive areas of the watershed, and to ensure orderly and planned development throughout the watershed.

- B. **Uses:** The participating parcels may include or be developed for residential or non-residential purposes under the Individual Building and Master Plan processes. To be eligible to pursue the averaging process, the parent parcel must first have received approval through the required development approval process.

Eligible uses permitted to utilize this program include but are not limited to: 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.

Note: Individual parcels whose principal use is or will be single-family residential are not eligible to be considered as receiving parcels if the total built-upon area (BUA) would exceed 24 percent; this includes uses within the Single-Family Detached House building type. This does not apply to parcels owned and managed by non-profit entities whose mission is to provide affordable housing.

- C. **Requirements:** The following requirements must be met by all parcels:
1. **Ownership:** Only the owner(s) of the participating parcels may submit a Density Averaging Certificate application. Areas subject to easements, covenants, and/or development restrictions not legally controlled by the owner may not be included as donated parcel area; this includes right-of-way area.
  2. **Pre-Existing Variance:** No parcel for which a watershed variance has been granted, or would be required, may be included as a donating or receiving parcel.
  3. **Location:** Participating parcels shall be located in the same water supply watershed and preferably in the same drainage area of the watershed. All parcels must be located within the Town of Davidson's planning jurisdiction.

4. Transferability: A property in a more restricted watershed area shall not acquire BUA from a property in a less restricted watershed area.
5. Overall Area: The cumulative BUA of all participating parcels shall not exceed the BUA that would be allowed if the parcels were developed separately.
6. Buffers: On all participating parcels buffers shall at least meet the applicable, minimum ordinance requirements for parcels located in water supply watersheds.
7. Preservation: The donated area shall remain in an undisturbed vegetated or natural state. Previously developed or graded lots may be used as donating parcels so long as the donated area of the lot is revegetated according to Davidson Planning Ordinance requirements. The donated area shall be irrevocable unless amended per the requirements of this ordinance prior to the undertaking of any development activity on the participating parcels.
8. Required Features: When the donated area of a parcel abuts street frontage or right-of-way, the preserved area shall feature park or public space amenities as determined by the Planning Director.
9. Stormwater Design: All participating parcels must meet the applicable buffer and engineered stormwater controls as outlined in the ordinance. Parcels shall be controlled by on-site facilities in accordance with the criteria specified in the Davidson Water Quality Design Manual and the Davidson Planning Ordinance for high-density development. Development permitted under BUA averaging and meeting applicable low density requirements shall transport stormwater runoff by vegetated conveyances to the maximum extent practicable.
10. Design: Built-upon areas shall be designed and located to minimize stormwater runoff impact to the receiving waters, minimize concentrated stormwater flow, maximize the use of sheet flow through vegetated areas, and maximize the flow length through vegetated areas.

### **17.8.2 PROCESS**

A Built-Upon Area (BUA) Averaging Certificate shall be obtained from the Watershed Review Board (Board of Adjustment) to ensure that all participating parcels considered together meet the standards of the ordinance and that potential owners have a record of how the watershed regulations were applied to each parcel.

- A. **Applicability**: All participating parcels may be processed under a single BUA Averaging Certificate, and will be considered as one development for the purpose of counting total built-upon-area. One BUA Averaging Certificate will be issued per application. Unless otherwise specified, the application shall follow the rules and procedures specified by the Board of Adjustment and Appeals & Variances sections of this ordinance.

- B. Process:** The following steps outline the typical process for obtaining a BUA Averaging Certificate. Note: Application preparation is considered an iterative process; an application must be deemed complete by the Planning Director and all revisions addressed in order for a Board of Adjustment hearing to be scheduled. Incomplete, improperly formatted, or documentation errors may require revision prior to acceptance by the Planning Director.
1. Lot Identification: The applicant shall identify participating lots, prepare draft plats, and complete a BUA Averaging Form.
  2. Pre-Application Meeting: The applicant must set up an appointment with the Planning Director. At the initial meeting the Planning Director will explain the BUA averaging process and review with the applicant the appropriate ordinances, documents, and plans relevant to the project. Additional meetings may be required prior to application submission, as deemed necessary by the Planning Director.
  3. Submit Application & Fee: The applicant must submit the following documents (see the Documentation section for further information):
    - Town of Davidson Application and Application Fee
    - Surveys of Existing Conditions
    - Existing Plats and Deeds
    - Metes & Bounds Description(s)
    - Final Plats (Drafts)
    - Existing Development Materials (as applicable)
    - Approved Development Plan
    - Public Notice Materials
  4. Application Review: Staff will review the application and determine whether the materials constitute a complete submittal. Application revisions, and additional meetings, may be required by the Planning Director prior to the application being deemed complete. Once the application is determined to satisfy the requirements, a Board of Adjustment hearing may be scheduled.
  5. Board of Adjustment Hearing: A hearing shall be scheduled no later than 45 days after a complete application has been accepted by the Planning Director.
  6. Board of Adjustment Decision: The Board of Adjustment shall issue a decision within 31 days of the close of the public hearing. The board shall make written findings supported by appropriate calculations and documentation that the participating parcels as a whole conform to the intent and requirements of this Article and Section, and that the proposed agreement assures protection of the preserved area. The request must be consistent with adopted plans and/or policies, approved development plans, Davidson Planning Ordinance requirements, and the Board of Adjustment's determination based on these resources that the proposal achieves an identified public interest.
  7. Certificate Issued: If approved, the Town of Davidson will issue a BUA Averaging Certificate to the applicant. The BUA Averaging Certificate shall constitute the Board of Adjustment decision, staff approval letter, and application documentation.

8. EPM Submission: If approved by the Board of Adjustment, the applicant must submit the following documents to Mecklenburg County via the online EPM system:
- Mecklenburg County Application
  - Deeds
  - Final Plats
9. Plat Approval/Signature: Once approved in EPM, the applicant must submit a mylar copy of each plat to the Town of Davidson, Mecklenburg County LUESA, and the Register of Deeds for signature. A digital copy of each plat included in the application and filed with the Register of Deeds must be provided to the Town of Davidson for filing.
10. NC Department of Environmental Quality Submission: Upon issuance of the BUA Averaging Certificate and signed plat, one copy must be sent to the NC Department of Environmental Quality (DEQ). Included with the BUA Averaging Certificate will be the following:
- Site Plans;
  - Registered plats for both properties;
  - Description of both properties;
  - Documentation reflecting the development restrictions all participating parcels, including restrictions for all donated areas.
11. Amendment: If a certificate is approved by the Board of Adjustment, no change in the development proposal authorized for participating parcels shall be made unless the certificate is amended by the Board of Adjustment.

### **17.8.3 DOCUMENTATION REQUIREMENTS**

The following documentation shall be provided to constitute a complete built-upon area (BUA) averaging application:

**A. Administrative:**

1. Town of Davidson Application: A completed BUA Averaging Form, including:
  - a. Description: A description of all participating properties' and their existing conditions.
  - b. Chart: A chart summarizing the existing and proposed BUA for all participating properties.
2. Fee: A remitted fee of \$150 High-Density Residential; \$300 Commercial.

**B. Surveys**: Surveys of all participating parcels showing current BUA and current maximum BUA allowances, along with easements and/or development restrictions. The surveys must be performed by a licensed surveyor.

**C. Existing Plats & Deeds**: Copies of the existing, registered plats and deeds for all participating parcels.

**D. Metes & Bounds Description (Donating Parcel)**: A metes and bounds description of the undisturbed natural area intended for recordation. The description must specify any limits on use and shall be recorded on the plat, in homeowner covenants (if applicable), and on the donating parcel's individual deed and shall be irrevocable unless amended per the ordinance.

- E. Final Plats (Draft):** Revised plats for all participating parcels. The plats must show all components as required in the ordinance, in a format approved by staff. Additionally, the plats must include:

1. Purpose Statement: Recommended text is as follows:

Donor Parcels: *The purpose of this plat is to allocate built-upon-area from this parcel to another parcel of land located within the same watershed. The remaining built-upon-area for this lot is XXXX. The donated [lot/area] is to remain in an undisturbed vegetated state in perpetuity.*

Receiving Parcels: *The purpose of this plat is to receive on this parcel built-upon-area from another parcel of land located within the same watershed. The resulting built-upon-area for this lot is XXXX.*

2. Site Data: Tax Parcel ID#s; Physical Addresses; Planning Area Designation (i.e. Zoning); Acreage.
3. Metes/Bounds Description: Metes/bounds description(s) of designated undisturbed natural area(s).
4. Designation in Perpetuity: A note that the natural area will remain undisturbed in perpetuity.
5. BUA Values: Existing and proposed maximum BUA allowances for all participating parcels.
6. Watershed Designation: The Watershed Overlay District for both parcels.
7. Buffer Delineation: Show any S.W.I.M., watershed, and post-construction buffers.
8. Floodplain/Community Encroachment Area: Show the line(s) associated with any base flood levels potentially affecting the site.
9. BUA Averaging Certification: In addition to certifications required by the ordinance, please include the following certifications on each plat:

*Density Averaging/Built-Upon-Area Transfer Plat*

*This plat represents a transfer of built-upon-area through preservation of a dedicated, undisturbed natural area for properties within the jurisdiction of the Town of Davidson. The resulting action may or may not create tracts of land that are compliant with the Davidson Planning Ordinance (DPO). This parcel is subject to the DPO built-upon area averaging standards: Any change to the development proposal affecting the approved built-upon-area allowance requires amendment to the existing Built-Upon Area Averaging Certificate and approval by the Davidson Board of Adjustment. The Planning Director reserves the right to make periodic site inspections to ensure compliance with these conditions.*

*Date*

*Planning Director, Town of Davidson*

- F. Existing Development:** If a participating parcel(s) is part of an existing development, then the following documentation shall be provided:

1. Approved Stormwater Mitigation Plan: A storm water mitigation plan approved by Mecklenburg County Storm Water Services, Water Quality Program, for the receiving parcel based on the pathway pursued:
- Buffer/Vegetative Conveyances: Must meet all applicable ordinance requirements for parcels located in water supply watersheds.
  - Engineered Stormwater Controls: Must confirm the following:
    - The effected BMP(s) has been designed to handle the additional BUA.
    - All participating lots are in the same drainage basin.
    - Verified as-built information of the existing, approved BMP.

- Sealed engineer calculations to prove existing and future compliance with the water quality requirements based on the proposed BUA to be transferred.
- 2. Homeowner's Covenant Agreements: A draft of revised covenant documents reflecting the additional BUA and other pertinent information for all affected parcels.
- G. **Approved Development Plan**: An approved development plan illustrating the receiving parcel's approved conceptual development. At the Planning Director's discretion, a Preliminary Sketch Plan of the donating parcel showing available details related to the parcel's existing and future conditions shall be provided.
- H. **Public Notice Materials**: If application is accepted, then the following shall be provided:
  - 1. Address List and Envelopes/Letters (Postage Pre-paid): An address list as well as stamped envelopes and notice letters for all adjacent property owners. Draft copies of the letter can be obtained from the Planning Department.
  - 2. Noticing Fee: Reimbursement of fees incurred in fulfillment of statutory noticing requirements.

DRAFT