



## STAFF ANALYSIS: WATERSHED ORDINANCE TEXT AMENDMENTS

Date: August 28, 2018  
To: Board of Commissioners  
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.
- **Efforts:** Town staff worked with Mecklenburg Co. and NCDEQ from March 2017 until January 2018 to prepare draft changes. In January 2018 the Planning Board's Ordinance Committee (PBOC), which is comprised of citizen volunteers, began reviewing the topics, proposed changes, and meeting with citizens as well as town/county/state staff and elected officials to tailor the standards to fit Davidson's needs.

The PBOC has continued to work on a revised set of standards since the 5/8/2018 public hearing. At the 7/10/2018 Board of Commissioners work session, the Board asked the PBOC to revise Sections 17.6.1 Expansions to Existing Development and 17.6.2 Existing Lot of Record to retain the existing exemptions for single-family residential structures. The Board of Commissioners also asked for the removal of Section 17.6.3 Redevelopment. The requested revisions were made to the draft watershed ordinance.

### 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 it 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.
- **Keep Existing Single-Family Exemption:** There were minor changes made to this section for the sake of clarity (i.e. the term “density calculations” was replaced with “impervious calculations”). The exemption for expansions to existing single-family residential structures was retained.

#### SECTION 17.6.2: EXISTING LOTS OF RECORD

- **Keep Existing Single-Family Exemption:** The term “pre-existing lot” was replaced with “existing lot of record” for consistency with defined terms in the ordinance. The existing exemption for lots of record developed for single-family residential purposes remains unchanged.

#### 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.

#### 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 may be considered by the Board of Adjustment on a case by case basis.
  - 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. Allow Only Select Projects: Ensure only projects advancing clearly-identified town aims could utilize 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. Only the following uses are 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 may 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).

### **3. PUBLIC PLANS AND POLICIES**

The proposed text changes are consistent with the existing policy and ordinance frameworks adopted by the town. Most changes involve the improvement or clarification of text, or the inclusion of items inadvertently missed in the drafting of the original ordinance. All proposed changes meet the requirements set forth in Davidson Planning Ordinance 1.5.1 Implementation of Adopted Plans & Policies: “Any amendments to, or actions pursuant to, this ordinance should be consistent with these adopted plans and policies, as amended.”

### **4. PLANNING BOARD RECOMMENDATION**

On May 21, 2018 the proposed text amendments came before the Planning Board for a formal recommendation. The Planning Board voted 9-0 in support of the proposed text amendments and signed a consistency statement.

During the public hearing, citizens expressed concern related to limiting the existing exemptions for single-family lots and downtown redevelopment (i.e. sections 17.6.1-6.3). In July, the Planning Board Ordinance Committee recommended adopting the ordinance, save for sections 17.6.1-6.3. The Board of Commissioners directed staff to move forward with the proposed revisions to Section 17, except for the sections related to limiting existing exemptions and downtown redevelopment.

### **5. STAFF RECOMMENDATION**

The proposed changes aim to: update and clarify standards, address persistent issues and inconsistencies, and remove inapplicable ordinance sections. Specific explanations are provided in Section 2 above. These changes are recommended for approval in order to accurately reflect the intent of the Watershed Protection Overlay District standards.