

ASHE COUNTY, N.C. ORDINANCE

CHAPTER 155: WATERSHED PROTECTION

General Provisions

- 155.01 Authority and enactment
- 155.02 Exceptions to applicability
- 155.03 Definitions

Subdivision Regulations

- 155.15 General provisions
- 155.16 Subdivision application and review procedures
- 155.17 Subdivision standards and required improvements
- 155.18 Construction procedures
- 155.19 Transferring lots in unapproved subdivisions

Cross-reference:

Residential subdivisions, see Ch. 156

Watershed Area Use and Development

- 155.30 Establishment of watershed areas
- 155.31 Watershed areas described
- 155.32 Cluster development
- 155.33 Buffer areas required
- 155.34 Rules governing the interpretation of watershed area boundaries
- 155.35 Application of regulations
- 155.36 Existing development
- 155.37 Watershed protection permit
- 155.38 Building permit required
- 155.39 Watershed protection occupancy permit

Public Health Regulations

- 155.50 Public health in general
- 155.51 Abatement

CHAPTER 155: WATERSHED PROTECTION

Administration and Enforcement

155.65	Watershed Administrator; duties
155.66	Appeal from the Watershed Administrator
155.67	Changes and amendments to the watershed protection ordinance
155.68	Public notice and hearing required
155.69	Planning Board to act as watershed Review Board
155.70	Rules of conduct for members
155.71	Powers and duties of the Planning Board
155.72	Appeals from the Planning Board
155.98	Remedies
155.99	Penalty

GENERAL PROVISIONS

***155:01 AUTHORITY AND ENACTMENT.**

The Legislature of the State of North Carolina has, in G.S. Chapter 153A, Article 6, Section 121, 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 public health, safety and general welfare of its citizenry. The Governing Board of the county does hereby ordain and enact into law the following chapter as the watershed protection ordinance of the county.
(Ord. Passed 12-20-93)

***155.02 EXCEPTIONS TO APPLICABILITY.**

- (A) Nothing contained herein shall repeal, modify, or amend any federal or state law or regulation, or any chapter or regulation pertaining thereto except any chapter which these regulations specifically replace; nor shall any provision of this chapter amend, modify, or restrict any provisions of the code of ordinances of the county; however, the adoption of this chapter shall and does amend any and all ordinances, resolutions, and regulations of effect in the county at the time of the adoption of this chapter that may be construed to impair or reduce the effectiveness of this chapter or to conflict with any of its provisions.
- (B) It is not intended that these regulations interfere with any easement, covenants 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 provision of these regulations shall control.

CHAPTER 155: WATERSHED PROTECTION

- (C) Existing development, as defined in this chapter, is not subject to the requirements of this chapter. Expansions to structures classified as existing development must meet the requirements of this chapter, however, the built-upon area of the existing development is not required to be included in the density calculations.
- (D) If a nonconforming lot of record is not contiguous to any other lot owned by the same party, then that lot of record shall not be subject to the development restrictions of this chapter if it is developed for single-family residential purposes
(Ord. Passed 12-20-93; Am. Ord. Passed - - 97)

***155.03 DEFINITIONS.**

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning. Words in the present tense include the future tense. Words used in the singular number include the plural, and words used in the plural number include the singular, unless the natural construction of the wording indicates otherwise.

AGRICULTURAL USE. The use of waters for stock watering, irrigation, and other farm purposes.

ANIMAL UNIT. A unit of measurement developed by the U.S. Environmental Protection Agency that is used to compare different types of animal operations.

BEST MANAGEMENT PRACTICES. A structural or nonstructural management based practice used singularly or in combination to reduce non-point source inputs to receiving waters in order to achieve water quality protection goals.

BUFFER. An area of natural or planted vegetation through which stormwater runoff flows in a diffuse manner so that the runoff does not become channeled and which provides the infiltration of the runoff and filtering of pollutants. The buffer is measured landward from the normal pool elevation of impounded structures and from the bank of each side of streams or rivers.

BUILDING. Any structure having a roof supported by columns or by walls, and intended for shelter, housing or enclosure or persons, animals or property. The connection of two buildings by means of an open porch, breezeway, carport or other structure, with or without a roof, shall not be deemed to make them one building.

BUILDING INSPECTOR. An official or designated person of the county responsible for administration and enforcement of this chapter.

CHAPTER 155: WATERSHED PROTECTION

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).

CLUSTER DEVELOPMENT. The grouping of buildings in order to conserve land resources and provide for innovation in the design of the project. This term includes nonresidential developments as well as single-family residential subdivisions and multifamily developments that do not involve the subdivision of land.

COMPOSITE 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 as extending either one-half mile from the normal pool elevation of the reservoirs in which the intake is located or to the ridgeline 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 ridgeline (whichever comes first). Local governments may extend the critical area as needed. Major landmarks such as highway 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.

CUSTOMARY HOME OCCUPATIONS. Any use conducted entirely within a dwelling and carried on by the occupants thereof, which use is clearly incidental and secondary to the use of the dwelling for residential purposes and does not change the character thereof. Provided further that no mechanical equipment is installed or used except as normally used for domestic or professional purposes, and that not over 25% of the total floor space of any structure is used for the occupation. No home occupation shall be conducted in any accessory building except for the storage and service of a vehicle that is driven off site, such as a service repair truck, delivery truck, etc.

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

DISCHARGING LANDFILL. A facility which requires a National Pollution Discharge Elimination System (NPDES) permit.

DWELLING UNIT. A building or portion thereof, providing complete and permanent living facilities for one family.

CHAPTER 155: WATERSHED PROTECTION

EXISTING DEVELOPMENT. Those projects that are built or those projects that at a minimum have established a vested right under North Carolina zoning law as of the effective date of this chapter based on at least one of the following criteria:

- (1) Substantial expenditures of resources (time, labor, money) based on a good faith reliance upon having received a valid local government approval to proceed with the project, or
- (2) Having an outstanding valid build permit as authorized by G.S.*153A-344.1 and G.S.*160A-385.1, or
- (3) Having an approved site specific of phased development plan as authorized by the General Statutes (G.S.*153A-344.1).

EXISTING LOT (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 the adoption of this chapter, or a lot described by metes and bounds, the description of which has been so recorded prior to the adoption of this chapter.

FAMILY. One or more persons occupying a single dwelling unit, provided that unless all members are related by blood or marriage or adoption, no such family shall contain over five persons, but further provided that domestic servants employed or living on the premises may be housed on the premises without being counted as a family or families.

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).

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 G.S. Chapter 130A, Article 9. For the purpose of this chapter this term does not include composting facilities.

LOT. A parcel of land occupied or capable of being occupied by a building or group of buildings devoted to a common use, together with the customary accessories and open spaces belonging to the same. Includes the words “plot”, “parcel”, or “tract”.

MAJOR VARIANCE. A variance from the minimum statewide water supply watershed protection rules that results in any one or more of the following:

CHAPTER 155: WATERSHED PROTECTION

- (1) The relaxation, by a factor of more than 10%, of any management requirement that takes the form of a numerical standard:
- (2) The relaxation of any management requirement that applies to a development proposal intended to qualify under the high density option.

MINOR VARIANCE. A variance from the minimum statewide watershed protection rules that results in a relaxation, by a factor of up to 10%, of any management requirement under the low density option.

NONCONFORMING LOT OF RECORD. A lot described by a plat or a deed that was recorded prior to the effective date of this chapter (or its amendments) that does not meet the minimum lot size or other development requirements of this chapter.

NONRESIDENTIAL DEVELOPMENT. All development other than residential development, agriculture and silviculture.

PLAT. A map or plan of a parcel of land which is to be, or has been subdivided.

RESIDENTIAL DEVELOPMENT. Buildings for residence such as attached and detached single-family dwellings, apartments complexes, condo-minimums, townhouses, cottages, etc., and their associated outbuildings such as garages, storage buildings, gazebos, etc., and customary home occupations.

SHALL. Is mandatory.

SINGLE FAMILY RESIDENTIAL. Any development where: no building contains more than one dwelling unit, every dwelling unit is on a separate lot, and where no lot contains more than one dwelling unit.

STREET (ROAD). A right-of-way for vehicular traffic which affords the principal means of access to abutting properties.

STRUCTURE. Anything constructed or erected including but not limited to buildings, which require location on the land or attachment to something having permanent location on the land. Includes the word "building".

SUBDIVIDER. Any person, firm or corporation who subdivides or develops any land deemed to be a subdivision as herein defined.

SUBDIVISION. All divisions of a tract or parcel of land into two or more lots, building sites, or other divisions for the purpose of sale or building development (whether immediate or future) and shall include all division of land involving the dedication of a

CHAPTER 155: WATERSHED PROTECTION

new street or a change in existing streets; but the following shall not be included within this definition and shall not be subject to the regulations authorized by this chapter.

- (1) The combination or re-combinations of portions of previously subdivided and recorded lots where the total number of lots is not increased and the resultant lots are equal to or exceed the standards of this chapter;
- (2) The division of land into parcels greater than ten acres where no street right-of-way dedication is involved;
- (3) The public acquisition by purchase of strips of land for the widening or opening of streets;
- (4) The division of a tract in single ownership whose entire area is no greater than two acres into not more than three lots, where no street right-of-way dedication is involved and where the resultant lots are equal to or exceed the standards of this chapter;
- (5) The division of a tract into plots or lots used as a cemetery.

TOXIC SUBSTANCE. Any substance or combination of substances (including disease causing agents), which after discharge and upon exposure, ingestion, 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 off spring or other adverse health effects.

VARIANCE. A permission to develop or use property granted by the Planning Board relaxing or waiving a water supply watershed management requirement adopted by the Environmental Management Commission that is incorporated into this chapter.

WATER DEPENDENT STRUCTURE. Any structure for which the use requires access to or proximity to or citing within surface waters to fulfill its basic purpose such as boat ramps, boat houses, docks and bulkheads. Ancillary facilities such as restaurants, outlets for boat supplies, parking lots and commercial boat storage areas are not water dependent structures.

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

WILL. Is mandatory.
(Ord. Passed 12-20-93; Am. Ord. Passed -97)

CHAPTER 155: WATERSHED PROTECTION

SUBDIVISION REGULATIONS

***155.15 GENERAL PROVISIONS.**

- (A) No subdivision of land within the Public Water Supply Watershed shall be filed or recorded by the Register of Deeds until it has been approved in accordance with the provisions of this subchapter. Likewise, the Clerk of Superior Court shall not order or direct the recording of a plat if the recording of such plat would be in conflict with this subchapter.
- (B) The approval of a plat does not constitute or effect the acceptance by the county or the public of the dedication of any street or other ground, easement, right-of-way, public utility line, or other public facility shown on the plat and shall not be construed to do so.
- (C) All subdivisions within public water supply watersheds shall conform with the mapping requirements contained in G.S.*47-30.
- (D) All subdivisions of land within public water supply watershed falling under the jurisdiction of Ashe County after the effective date of this chapter shall require a plat to be prepared, approved, and recorded pursuant to this chapter. (Ord. Passed 12-20-93)

***155.15 SUBDIVISION APPLICATION AND REVIEW PROCEDURES.**

- (A) All proposed subdivisions shall be reviewed prior to recording with the Register of Deeds by submitting a vicinity map to the Building Inspector to determine whether or not the property is located within the designated public water supply watershed. Subdivisions that are not within the designated watershed area shall not be subject to the provisions of this chapter. Subdivisions within the designated watershed area shall comply with the provisions of this subchapter and all other state and local requirements that may apply.
- (B) Subdivision applications shall be filed with the Building Inspector. The applications shall include a completed application form, two copies of the plat and supporting documentation deemed necessary by the Building Inspector or the Planning Board (see Appendix A).
- (C) The Building Inspector shall review the completed application and submit recommendations to the Planning Board for further review and final action. The Planning Board shall either approve, approve conditionally or disapprove each application by a majority vote of the members present and voting. First consideration of the application shall be at the next regularly scheduled meeting of the Board after the application is submitted. The Board shall take final action within two regularly scheduled meeting of its first

CHAPTER 155: WATERSHED PROTECTION

consideration. The Building Inspector or the Board may provide public agencies an opportunity to review and make recommendations. However, failure of the agencies to submit their comments and recommendations shall not delay the Board's action within the prescribed time limit. Said public agencies may include, but are not limited to, the following:

- (1) The district highway engineer with regard to proposed streets and highways.
 - (2) The Director of the Health Department with regard to proposed private water system or sewer systems normally approved by the Health Department.
 - (3) The State Division of Environmental Management with regard to proposed sewer systems normally approved by the Division, engineered storm water controls or stormwater management in general.
 - (4) Any other agency or official designated by the Building Inspector or Planning Board.
- (D) If the planning Board approves the application, such approval shall be indicated on both copies of the plat by the following certificate and signed by the chairman or other authorized member of the Board.

“Certificate of Approval for Recording”

I certify that the plat shown hereon complies with the watershed protection chapter and is approved by the Planning Board for recording in the Register of Deeds office.

Date: _____ Chairman, Planning Board: _____

Notice: This property is located within a Public Water Supply Watershed – development restrictions may apply.

- (E) If the Planning Board disapproves or approves conditionally the application, the reasons for such action shall be stated in writing for the applicant and entered in the minutes. The sub-divider may make changes and submit a revised plan which shall constitute a separate request for the purpose of review.
- (F) All subdivision plats shall comply with the requirements for recording of the County Register of Deeds.
- (G) The sub-divider shall provide the Building Inspector with evidence the plat has been recorded with the Register of Deeds within five working days of its being recorded. (Ord. Passed 12-20-93)

CHAPTER 155: WATERSHED PROTECTION

***155.17 SUBDIVISION STANDARDS AND REQUIRED IMPROVEMENTS.**

- (A) All lots shall provide adequate building space in accordance with the development standards contained in **155.30 through 155.39. Lots which are smaller than the minimum may be developed using built-upon area criteria in accordance with *155.31.
- (B) For the purpose of calculating built-upon area, total project area shall include total acreage in the tract on which the project is to be developed.
- (C) The application shall be accompanied by a description of the proposed method of providing storm water drainage. The sub-divider shall provide a drainage system that diverts storm water runoff away from surface waters and incorporates best management practices to minimize water quality impacts.
- (D) The application shall, where required, be accompanied by a written statement that a sedimentation and erosion control plan has been submitted to and approved by the local agency administering a sedimentation and erosion control ordinance approved by the State Division of Land Quality.
- (E) Where possible, roads should be located outside of critical areas and watershed buffer areas. Roads constructed within these areas shall be designated and constructed so to minimize their impact on water quality.
(Ord. Passed 12-20-93; Am. Ord. Passed –97)

***155.18 CONSTRUCTION PROCEDURES.**

- (A) No construction or installation of improvements shall commence in a proposed subdivision until a subdivision plat has been approved by the Planning Board.
- (B) No building or other permits shall be issued for erection of a structure on any lot not of record at the time of adoption of this chapter until all requirements of this chapter have been met. The sub-divider, prior to commencing any work within the subdivision, shall make arrangements with the Building Inspector to provide for adequate inspection.
(Ord. Passed 12-20-93) Penalty, see *155.99

***155.19 TRANSFERRING LOTS IN UNAPPROVED SUBDIVISIONS.**

Any person who, being the owner or agent of the owner of any land located within a public water supply watershed falling within the jurisdiction of the county, thereafter sub-divides has land in violation of this chapter or transfers or sells land by reference to, exhibition of, or any other use of a plat showing subdivision of the land

CHAPTER 155: WATERSHED PROTECTION

before the plat has been properly approved under this chapter and recorded in the office of the register of deeds, shall be guilty if a misdemeanor. The description by metes and bounds in the instrument of transfer or other document used in the process of selling or transferring land shall not exempt the transaction from this penalty. The county may bring an action for injunction of any illegal subdivision, transfer, conveyance, or sale of land, and the court shall, upon appropriate findings, issue an injunction, an order requiring the offending party to comply with this chapter.

(Ord. Passed 12-20-93) Penalty, see *155.99

WATERSHED AREA USE AND DEVELOPMENT

***155.30 ESTABLISHMENT OF WATERSHED AREAS.**

- (A) The purpose of this subchapter is to list and describe the watershed areas herein adopted.
- (B) For purposes of this chapter the county is hereby divided into the following areas, as appropriate:

- (1) WS-IV-CA (Critical Area)
- (2) WS-IV-PA (Protected Area)
- (3) Reddies River WS-II-PA (protected area) in Wilkes County, N.C.

(Ord. Passed 12-20-93; Am. Ord. Passed - - 97)

***155.31 WATERSHED AREAS DESCRIBED.**

- (A) *WS-IV Watershed Areas – Critical Area (WS-IV-CA)*. Landfills and residuals application sites are specifically prohibited.

- (1) *Allowed uses.*

- (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 or as determined by local government studies. Animal operations greater than 100 animal units shall employ Best Management Practices by July 1, 1994 recommended by the Soil and Water Conservation Commission.
- (b) Silviculture, subject to the provisions of the Forest Practices Guidelines Related to Water Quality (15 NCAC II.6101-.0209).

CHAPTER 155: WATERSHED PROTECTION

- (c) Residential.
 - (d) Nonresidential development, excluding landfills and land application of residuals or petroleum contaminated soils.
- (2) *Density and built-upon limits:*
 - (a) *Single-family residential.* Development shall not exceed two dwelling units per acre, as defined on a project by project basis. No residential lot shall be less than one-half acre, except within an approved cluster development.
 - (b) *All other residential and non-residential.* Development shall not exceed 24% built-upon area on a project by project basis. For the purpose of calculating built-upon area, total project area shall include total acreage in the tract on which the project is to be developed.
- (B) WS-IV *Watershed Areas-Protected Area (WS-IV-PA).* Only new development activities that require an erosion/sedimentation control plan under state law or approved local government program are required to meet provisions of this chapter when located in the WS-IV watershed. In order to address a moderate to high land use intensity pattern, single-family residential uses are allowed at a maximum of two units per acre. All other residential and non-residential development shall be allowed 24% built-upon area. A maximum of three dwelling units per acre or 36% built upon area is allowed for projects without a curb and gutter street system.
 - (1) *Allowed uses.*
 - (a) Agriculture, subject to the provisions of the Food Security Act of 1985 and the Food Agricultural, Conservation and Trade Act of 1990.
 - (b) Silviculture, subject to the provisions of the Forest Practices Guidelines Related to Water Quality (15 NCAC II.6101-.0209).
 - (c) Residential development.
 - (d) Non-residential development, excluding the storage of toxic and hazardous materials unless a spill containment plan is implemented.
 - (2) *Density and built-upon limits.*
 - (a) *Single-family residential.* Development shall not exceed two dwelling units per acre, as defined on a project by the project basis. No residential lot shall be less than one-half acre, or one-third acre for projects without a curb and gutter system, except within an approved cluster development.

CHAPTER 155: WATERSHED PROTECTION

- (b) *All other residential and non-residential.* Development shall not exceed 24% built-upon area on a project by project basis. For projects without a curb and gutter system, developments shall not exceed 36% built-upon areas on a project by project basis. For the purpose of calculating built-upon area, total project area shall include total acreage in the tract on which the project is to be developed.
- (c) *The 10% - 70% provision.* In addition to the development allowed under (a) and (b) above, new development and expansions to existing development may occupy up to 10% of the protected area with up to 70% built-upon area on a project by project basis, when approved as a special intensity allocation (SIA). The Watershed Administrator is authorized to approve SIA's consistent with the provisions of this section. Projects must, to the maximum extent practicable, minimize the built-upon area, direct stormwater away from surface waters, and incorporate Best Management Practices (BMP) to minimize water quality impacts. For the purpose of calculating built-upon area, total project area shall include the total acreage in the tract on which the project is to be developed.

(C) WS-II Watershed Areas-Protected Area (WS-II-PA)

(1) *Allowed uses.*

- (a) Agriculture, subject to the provisions of the Food Security Act of 1985 and the Food Agricultural, Conservation, and Trade Act of 1990.
- (b) Silviculture, subject to the provisions of the Forest Practices, Guidelines Related to Water Quality (15 NCAC II.6101-.0209).
- (c) Residential Development of one dwelling unit per acre. No residential lot shall be less than one acre.
- (d) All other non-residential development shall not exceed 12% built-upon area.
(Ord. Passed 12-20-93; Am. Ord. Passed 4-23-97; Am. Ord. Passed - - 97)

CHAPTER 155: WATERSHED PROTECTION

***155.32 CLUSTER DEVELOPMENT.**

Clustering of development is allowed in all watershed areas (except WS-I) under the following conditions:

- (A) Minimum lot sizes are not applicable to single-family cluster development projects: however, the total number of lots shall not exceed the number of lots allowed for single-family detached developments in *155.31. Built-upon area or stormwater control requirements of the project shall not exceed that allowed for the critical area or balance of watershed, whichever applies.
- (B) All built-upon area shall be designed and located to minimize stormwater runoff impact to the receiving waters and minimize concentrated storm-water flow.
- (C) Title to the open space area shall be conveyed to an incorporated homeowners association for management; to a local government for preservation as a park or open space; or to a conservation organization for preservation in a permanent easement.
(Ord. Passed 12-20-93; Am. Ord. Passed - - 97)

***155.33 BUFFER AREAS REQUIRED.**

- (A) A minimum 100-foot vegetative buffer is required for all new development activities that exceed the low-density option; otherwise, a minimum 30 foot buffer for development activities is required along perennial waters indicated on the most recent versions of U.S.G.S. 1:24,000 (7.5 minute) scale topographic. Desirable artificial stream bank or shoreline stabilization is permitted.
- (B) No new development is allowed in the buffer area, except water dependent structures such as flag poles, signs, and security lights which result in only diminutive increases in the impervious area, and public projects such as road crossings and green-ways 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 storm-water Best Management Practices.
(Ord. Passed 12-20-93; Am. Ord. Passed - - 97)

***155.34 RULES GOVERNING THE INTERPRETATION OF WATERSHED AREA BOUNDARIES.**

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

CHAPTER 155: WATERSHED PROTECTION

- (A) Where area boundaries are indicated as approximately following either street, alley, railroad or highway lines or centerlines thereof, such lines shall be construed to be said boundaries.
- (B) Where area boundaries are indicated as approximately following lot lines, such lot lines shall be construed to be said boundaries. However, a surveyed plat prepared by a registered land surveyor may be submitted to the county as evidence that one or more properties along these boundaries do not lie within the watershed area.
- (C) Where the watershed area boundaries lie at a scaled distance more than 25 feet from any parallel lot line, the location of watershed area boundaries shall be determined by use of the scale appearing on the watershed map.
- (D) Where the watershed area boundaries lie at a scaled distance of 25 feet or less from any parallel lot line, the location of watershed area boundaries shall be construed to be the lot line.
- (E) Where other uncertainty exists, the Watershed Administrator shall interpret the watershed map as to location of such boundaries. This decision may be appealed to the Planning Board.
(Ord. Passed 12-20-93)

***155.35 APPLICATION OF REGULATIONS.**

- (A) No building or land shall hereafter be used and no development shall take place except in conformity with the regulations herein specified for the watershed area in which it is located.
- (B) No area required for the purpose of complying with the provisions of this chapter shall be included in the area required for another building.
- (C) Every residential building hereafter erected, moved or structurally altered shall be located on a lot of which conforms to the regulations herein specified, except as permitted in *155.36.
- (D) If a use, or class of use, is not specifically indicated as being allowed in a watershed area, such use or class of use is prohibited.
(Ord. Passed 12-20-93) Penalty, see *155.99

***155.36 EXISTING DEVELOPMENT.**

Any existing development as defined in this chapter, may be continued and maintained subject to the provisions provided herein. Expansions to structures classified as existing development must meet the requirements of this chapter, however, the built-upon area of the existing development is not required to be included in the density calculations.

CHAPTER 155: WATERSHED PROTECTION

- (A) *Occupied lots.* This category consists of lots occupied for residential purposes at the time of the adoption of this chapter.
- (B) *Uses of land.* This category consists of uses existing at the time of adoption of this chapter where such use of the land is not permitted to be established hereafter in the watershed area in which it is located. Such uses may be continued except as follows:
- (1) When such use of land has been changed to an allowed use, it shall not thereafter revert to any prohibited use.
 - (2) Such use of land shall be changed only to an allowed use.
 - (3) When such use ceases for a period of at least one year, it shall not be reestablished.
- (C) *Reconstruction of buildings or built-upon areas.* Any existing building or built-upon area not in conformance with the restrictions of this chapter that has been damaged or removed may be repaired and/or reconstructed, except that there are no restrictions in single-family residential development, provided:
- (1) Repair or construction is initiated within 12 months and completed within two years of such damage.
 - (2) The total amount of space devoted to built-upon area may not be increased unless storm-water control that equals or exceeds the previous development is provided.
- (Ord. Passed 12-20-93) Penalty, see *155.99

***155.37 WATERSHED PROTECTION PERMIT.**

- (A) Except where a single family residence is constructed on a lot deeded prior to the effective date of this chapter, no building or built-upon area shall be erected, moved, enlarged or structurally altered, nor shall any building permit be issued nor shall any change in the use of any building or land be made until a watershed protection permit has been issued by the Building Inspector. No watershed protection permit shall be issued except in conformity with the provisions of this chapter.
- (B) Watershed protection permit applications shall be filed with the Building Inspector. The application shall include a completed application form (see Appendix A) and supporting documentation deemed necessary by the Building Inspector.
- (C) Prior to issuance of a watershed protection permit, the Building Inspector may consult with qualified personnel for assistance to determine if the application meets with the requirements of this chapter.

CHAPTER 155: WATERSHED PROTECTION

- (D) A watershed protection permit shall expire if a building permit shall expire if a building permit or watershed occupancy permit for such use is not obtained by the applicant within 12 months from the date of issuance.
(Ord. Passed 12-20-93)

***155.38 BUILDING PERMIT REQUIRED.**

Except for a single-family residence constructed on a lot deeded prior to the effective date of this chapter, no permit required under the North Carolina State Building Code shall be issued for any activity for which a watershed protection permit is required until that permit has been issued.
(Ord. Passed 12-20-93)

***155.39 WATERSHED PROTECTION OCCUPANCY PERMIT.**

- (A) The Building Inspector shall issue a Watershed Protection Occupancy Permit certifying that all requirements of this chapter have been met prior to the occupancy of use of a building hereafter erected, altered or moved and/or prior to the change of use of any building or land.
- (B) A Watershed Protection Occupancy Permit, either for the whole or the part of a building, shall be issued or denied within ten days after the erection or structural alternations of the building.
- (C) When only a change in use of land or existing building occurs, the Building Inspector shall issue a Watershed Protection Occupancy Permit certifying that all requirements of this chapter have been met coincident with the Watershed Protection Permit.
- (D) If the Watershed Protection Occupancy Permit is denied, the Building Inspector shall notify the applicant in writing stating the reasons for denial.
- (E) No building or structure which has been erected, moved, or structurally altered may be occupied until the Building Inspector has approved and issued a Watershed Protection Occupancy Permit.
(Ord. Passed 12-20-93)

PUBLIC HEALTH REGULATIONS

***155.50 PUBLIC HEALTH IN GENERAL.**

No activity, situation, structure or land use shall be allowed within the watershed which poses a threat to water quality and the public health, safety and welfare.
(Ord. Passed 12-20-93)

CHAPTER 155: WATERSHED PROTECTION

***155.51 ABATEMENT.**

- (A) The Building Inspector shall monitor land use activities within the watershed areas to identify situations that may pose a threat to water quality.
- (B) The Building Inspector shall report all findings to the Planning Board. The Building Inspector may consult with a public agency or official and request recommendations.
- (C) Where the Planning Board finds a threat to water quality and public health, safety and welfare, the Board shall institute any appropriate action or proceeding to restrain, correct or abate the condition and/or violation.
(Ord. Passed 12-20-93)

ADMINISTRATION AND ENFORCEMENT

***155.65 WATERSHED ADMINISTRATOR; DUTIES.**

The county shall appoint a Watershed Administrator, who shall be duly sworn in and be issued an identification badge. It shall be the duty of the Watershed Administrator to administer and enforce the provisions of this chapter as follows:

- (A) The Watershed Administrator shall issue Watershed Protection Permits and Watershed Occupancy Permits as prescribed herein. A record of all permits shall be kept on file and shall be available for public inspection during regular office hours of the Administrator.
- (B) The Watershed Administrator shall serve as clerk to the Watershed Review Board.
- (C) The Watershed Administrator shall keep records of all amendments to the local water supply watershed protection ordinance and shall provide copies of all amendments upon adoption to the Water Quality Section of the Division of Environmental Management.
- (D) The Watershed Administrator shall keep records of the jurisdiction's use of the 10% - 70% provision of the non-critical area of the county's WS-IV watershed. Records shall include the total acres of non-critical watershed area, total acres eligible to be developed under this provision, total acres approved for this development option, and individual records for each project with the following information: location, number of developed acres, type of land use, and storm water management plan, if applicable.
- (E) The Watershed Administrator is granted the authority to administer and enforce the provisions of this chapter, exercising in the fulfillment of his responsibility the full police power of the county. The Watershed Administrator, or his duly authorized representative, may enter any

CHAPTER 155: WATERSHED PROTECTION

Building, structure, or premises, as provided by law, to perform any duty imposed upon him by this chapter.

- (F) The Watershed Administrator shall keep a record of variances to the local water supply watershed protection ordinance. This record shall be submitted for each calendar year to the Water Quality Section of the Division of Environmental Management on or before January 1 of the following year and shall provide a description of each project receiving a variance and the reasons for granting the variance.

(Ord. Passed 12-20-93; Am. Ord. Passed 4-23-97)

***155.66 APPEAL FROM THE WATERSHED ADMINISTRATOR.**

- (A) Any order, requirement, decision or determination made by the Watershed Administrator may be appealed to and decided by the Watershed Review Board.
- (B) An appeal from a decision of the Watershed Administrator must be submitted to the Watershed Review Board within 30 days from the date the order, interpretation, decision or determination is made. All appeals must be made in writing stating the reasons for appeal. Following submission of an appeal, the Watershed Administrator shall transmit to the Watershed Review Board all papers constituting the record upon which the action appealed from was taken.
- (C) An appeal stays all proceedings in furtherance of the action appealed, unless the officer from whom the appeal is taken certifies to the Watershed Review Board after the notice of appeal has been filed with him, that by reason of facts stated in the certificate, a stay would in his opinion cause imminent peril to life or property. In such case, proceedings shall not be stayed otherwise than by a restraining order which may be granted by the Watershed Review Board or by a court of record on application of notice of the officer from whom the appeal is taken and upon the due cause shown.
- (D) The Watershed Review Board shall fix a reasonable time of hearing the appeal and give notice thereof to the parties and shall decide the same within reasonable time. At the hearing, any party may appear in person, by agent or by attorney.

(Ord. Passed 12-20-03; Am. Ord. Passed 4-23-97)

CHAPTER 155: WATERSHED PROTECTION

***155.67 CHANGES AND AMENDMENTS TO THE WATERSHED PROTECTION ORDINANCE.**

- (A) The County Governing Board may, on its own motion or on petition, after public notice and hearing, amend, supplement, change or modify the watershed regulations and restrictions as described herein.
- (B) No action shall be taken until the proposal has been submitted to the Planning Board for review and recommendations. If no recommendation has been received from the Planning Board within two regularly scheduled meetings after submission of the proposal to the Chairman of the Planning Board, the County Governing Board may proceed as though a favorable report had been received.
- (C) Under no circumstances shall the County Board adopt such amendments, supplements or changes that would cause this chapter to violate the watershed protection rules as adopted by the State Environmental Management Commission. All amendments must be filed with the State Division of Environmental Management, North Carolina Division of Environmental Health, and the State Division of Community Assistance.
(Ord. Passed 12-20-93)

***155.68 PUBLIC NOTICE AND HEARING REQUIRED.**

Before adopting or amending this chapter, the County Governing Board shall hold a public hearing on the proposed changes. A notice of the public hearing shall be given once a week for two successive calendar weeks in a newspaper having general circulation in the area. The notice shall be published for the first time not less than ten nor more than 25 days before the date fixed for the hearing.
(Ord. Passed 12-20-93)

***155.69 PLANNING BOARD TO ACT AS WATERSHED REVIEW BOARD.**

The County Planning Board shall act as the Watershed Review Board on all subdivision regulation and zoning ordinance matters.
(Ord. Passed 12-20-93)

***155.70 RULES OF CONDUCT FOR MEMBERS.**

Members of the Board may be removed by the County Governing Board for cause, including violation of the rules stated below:

CHAPTER 155: WATERSHED PROTECTION

- (A) Faithful attendance at meetings of the Board and conscientious performance of the duties required of members of the Board shall be considered a prerequisite to continuing membership on the Board.
- (B) No Board member shall take part in the hearing, consideration, or determination of any case in which he is personally or financially interested. A Board member shall have a “financial interest” in a case when a decision in the case will:
 - (1) Cause him or his spouse to experience a direct financial benefit or loss, or
 - (2) Will cause a business in which he or his spouse owns a 10% or greater interest, or is involved in a decision-making role, to experience a direct financial benefit or loss. A Board member shall have a “personal interest” in a case when it involves a member of his immediate family (i.e. parent, spouse, or child).
- (C) No Board member shall discuss any case with any parties thereto prior to the public hearing on that case; provided, however, that members may receive and/or seek information pertaining to the case from the Building Inspector or any other member of the Board, its secretary or clerk prior to the hearing.
- (D) Members of the Board shall not express individual opinions on the proper judgement of any case prior to its determination on that case.
- (E) Members of the Board shall give notice to the chairman at least 48 hours prior to the hearing of any potential conflict of interest which he has in a particular case before the Board.
- (F) No Board member shall vote on any matter that decides an application or appeal unless he had attended the public hearing on that application or appeal.
(Ord. Passed 12-20-93)

***155.71 POWERS AND DUTIES OF THE PLANNING BOARD.**

- (A) *Administrative Review.* The Planning Board shall hear and decide appeals from any decision or determinations made by the Building Inspector in the enforcement of this chapter.
- (B) *Variances.* The Planning Board shall have the power to authorize, in specific cases, minor variances from the terms of this chapter as will not be contrary to the public interests where, owing to special conditions, a literal enforcement of this chapter conditions, a literal enforcement of this chapter will result in practical difficulties or unnecessary hardship, so that the spirit of this chapter shall be observed, public safety and welfare secured, and substantial justice done. In addition, the county shall notify and allow a reasonable comment period for all other local governments having jurisdiction in the designated watershed where the variance is being considered.

CHAPTER 155: WATERSHED PROTECTION

- (1) Applications for a variance shall be made on the proper form obtainable from the Building Inspector and shall include the following information:
 - (a) A site plan, drawn to a scale of at least one inch to 40 feet, indicating the property lines of the parcel upon which the use is proposed; any existing or proposed structures; parking areas and other built-upon areas; surface water drainage. The site plan shall be neatly drawn and indicate north point, name and address of person who prepared the plan, name and address of person who prepared the plan, date of the original drawing, and an accurate record of any later revision.
 - (b) A complete and detailed description of the proposed variances together with any other pertinent information which the applicant feels necessary considering the application.
 - (c) The Building Inspector shall notify in writing each local government having jurisdiction in the watershed. Such notice shall include a description of the variance being requested. Local governments receiving notice of the variance request may submit comments to the Building Inspector prior to a decision by the Planning Board. Such comments shall become a part of the record of proceedings of the Planning Board.
- (2) Before the Planning Board may grant a variance, it shall make the following three findings, which shall be recorded in the permanent record of the case, and shall include the factual reasons on which they are based.
 - (a) There are practical difficulties or unnecessary hardships in the way of carrying out the strict letter of the ordinance. In order to determine there are practical difficulties or unnecessary hardships, the Board must find that the five following conditions exist:
 1. If he complies with the provisions of the ordinance, the applicant can secure no reasonable return from, nor make reasonable use of, his property. Hereby, providing that the variance would permit a greater profit to be made from the property will not be considered adequately to justify the Board in granting a variance. Moreover, the Board shall consider whether the variance is the minimum possible deviation from the terms of the ordinance that will make possible the reasonable use of his property.
 2. The hardship results from the application of the ordinance to the property rather than from other factors such as deed restrictions or other hardships.

CHAPTER 155: WATERSHED PROTECTION

3. The hardship is due to the physical nature of the applicant's property, such as its size, shape, or topography, which is different from that of neighboring property.
 4. The hardship is not the result of the actions of an applicant who knowingly or unknowingly violates the ordinance, or who purchases the property after the effective date of the ordinance, and then comes to the Board for relief.
 5. The hardship is peculiar to the applicant's property, rather than the result of conditions that are widespread. If other properties are equally subject to the hardship created in the restriction, then granting a variance would be a special privilege denied to others, and would not promote equal justice.
 - (b) The variance is in harmony with the general purpose and intent of the ordinance and preserves its spirit.
 - (c) In the granting of the variance, the public safety and welfare have been assured and substantial justice has been done. The Board shall not grant a variance if it finds that doing so would in any respect impair the public health, safety, or general welfare.
- (3) In granting the variance, the Board may attach thereto such conditions regarding the location, character, and other features of the proposed building, structure, or use as it may deem advisable in furtherance of the purpose of this chapter. If a variance for the construction, alteration or use of property is granted, such construction, alteration or use shall be in accordance with the approved site plan.
 - (4) The Planning Board shall refuse to hear an appeal or an application for a variance previously denied if it finds that there have been no substantial changes in conditions or circumstances bearing on the appeal or application.
 - (5) A variance issued in accordance with this section shall be considered a watershed protection permit and shall expire if a building permit or watershed occupancy permit for such use is not obtained by the applicant within six months from the date of the decision.
 - (6) If the application calls for the granting of a major variance, and if the Planning Board decides in favor of granting the variance, the Board shall prepare a preliminary record of the hearing with all deliberate speed. The preliminary record of the hearing shall include:

CHAPTER 155: WATERSHED PROTECTION

- (a) The variance application;
 - (b) The hearing notices;
 - (c) The evidence presented;
 - (d) Motions, offers of proof, objections to evidence, and rulings on them;
 - (e) Proposed findings and exceptions;
 - (f) The proposed decision, including all conditions proposed to be added to the permit.
- (7) The preliminary record shall be sent to the Environmental Management Commission for its review as follows:
- (a) If the Commission concludes from the preliminary record that the variance qualifies as a major variance and that the property owner can secure no reasonable return from, nor make any practical use of the property unless the proposed variance is granted, and the variance, if granted, will not result in a serious threat to the water supply, then the Commission shall approve the proposed variance with conditions and stipulations. The Commission shall prepare a Commission decision and send it to the Planning Board. If the Commission approves the variance as proposed, the Board shall prepare a final decision granting the proposed variance. If the Commission approves the variance with conditions and stipulations, the Board shall prepare a final decision, including such conditions and stipulations, granting the proposed variance.
 - (b) If the Commission concludes from the preliminary record that the variance qualifies as a major variance and that the property owner can secure a reasonable return from or make a practical use of the property without the variance or the variance, if granted will result in a serious threat to the water supply, then the Commission shall deny approval of the variance as proposed. The Commission shall prepare a Commission decision and send it to the Planning Board. The Board shall prepare a final decision denying the variance as proposed.
- (C) *Subdivision Approval*. See *155.15 through *155.19.
- (D) *Public Health*. See *155.50 and *155.51.
(Ord. Passed 12-20-93)

***155.72 APPEALS FROM THE PLANNING BOARD.**

Appeals from the Planning Board must be filed with the Superior Court within 30 days from the date of the decision. The decisions by the Superior Court will be in the manner of certiorari. (Ord. Passed 12-20-93)

CHAPTER 155: WATERSHED PROTECTION

***155.98 REMEDIES.**

- (A) If any subdivision, development and/or land use is found to be in violation of this chapter, the County Governing Board may, in addition to all other remedies available either in law or in equity, institute a civil penalty in the amount of \$ _____, action or proceedings to restrain, correct, or abate the violation; to prevent occupancy of the buildings, structure, or land; or to prevent any illegal act, conduct, business, or use in or about the premises. In addition, the North Carolina Environmental Management Commission may assess civil penalties in accordance with G.S.*143-215.6(a). Each day that the violation continues shall constitute a separate offense.
- (B) If the Building Inspector finds that any of the provisions of this chapter are being violated, he shall notify in writing the person responsible for such violation, indicating the nature of the violation, and ordering the action necessary to correct it. He shall order discontinuance of the illegal use of land, buildings or structures; removal or illegal buildings or structures, or of additions, alterations or structural changes thereto; discontinuance of any illegal work being done; or shall take any action authorized by this chapter to ensure compliance with or to prevent violation of its provisions. If a ruling of the Building Inspector is questioned, the aggrieved party or parties may appeal such ruling to the Planning Board.
(Ord. Passed 12-20-93)

***155.99 PENALTY.**

Any person violating any provisions of this chapter shall be guilty of a misdemeanor and, upon conviction, shall be punished in accordance with G.S.*14-4. The maximum allowed under G.S.*14-4. Each day that the violation continues shall constitute a separate offense.
(Ord. Passed 12-20-93)