

# TOWN OF RAMSEUR

## WATERSHED PROTECTION ORDINANCE

### ARTICLE 1. AUTHORITY AND GENERAL REGULATIONS

#### Section 1. Intent

The intent of the Water Supply Watershed Ordinance is to protect surface water supplies whose watersheds are located wholly or partially within the jurisdiction of Ramseyur.

#### Section 2. Authority and Enactment

Pursuant to authority given to municipalities in NCGS 160D, Planning and Regulation of Development, and NCGS 143-214.5 Water Supply and Watershed Protection, the Ramseyur Board of Commissioners does hereby ordain and enact into law the following articles as the Watershed Protection Ordinance of Ramseyur.

#### Section 3. Jurisdiction

- A. The provisions of this Ordinance shall apply in those areas within the corporate limits of Ramseyur designated as Public Water Supply Watersheds by the North Carolina Environmental Management Commission and shall be defined and established on the map entitled, "Watershed Protection Map of Ramseyur, North Carolina," which is adopted simultaneously herewith. The Watershed Map and all explanatory matter contained thereon accompanies and is hereby made a part of this Ordinance. This Ordinance shall be permanently kept on file in the office of the Town Clerk.
- B. The Sandy Creek Water Supply Watershed, WS-III, Cape Fear River Basin, designated by the N.C. Environmental Management Commission and the Ramseyur Board of Commissioners are located within Ramseyur.

#### Section 4. Exceptions to Applicability

- A. 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; however, the adoption of this Ordinance shall and does amend any and all ordinances, resolutions, and regulations in effect in the Town at the time of the adoption of this Ordinance

that may be construed to impair or reduce the effectiveness of this Ordinance 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 provisions of these regulations shall control.
- C. Existing development, as defined in this ordinance, is not subject to the requirements of this ordinance. Expansions to structures classified as existing development must meet the requirements of this ordinance, however, the built-upon area of the existing development is not required to be included in the density calculations.
- D. A pre-existing lot owned by an individual prior to the effective date of this ordinance, regardless of whether or not a vested right has been established, may be developed for single-family residential purposes without being subject to the restrictions of this ordinance.

## **Section 6. Criminal Penalties**

Any person violating any provisions of this Ordinance shall be guilty of a misdemeanor and, upon conviction, shall be punished in accordance with NCGS 14 – 4. The maximum fine for each offense shall not exceed \$500. Each day that the violation continues shall constitute a separate offense.

## **Section 7. Remedies**

- A. If any subdivision, development and/or land use is found to be in violation of this Ordinance, the Town Council may, in addition to all other remedies available either in law or in equity, institute a civil penalty in the amount of \$100, action or proceedings to restrain, correct, or abate the violation; to prevent occupancy of the building, structure, or land; or to prevent any illegal act, conduct, business, or use in or about the premises. In addition, the N.C. Environmental Management Commission may assess civil penalties in accordance with NCGS 143-215.6a. Each day that the violation continues shall constitute a separate offense.
- B. If the Watershed Administrator finds that any of the provisions of this ordinance are being violated, he shall notify in writing the person responsible for such violation, indicating the nature of the violation, and order the action necessary to correct it. The Watershed Administrator shall order discontinuance of the illegal use of land, buildings, or structures; removal of 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 ordinance to

ensure compliance with or to prevent violations of its provisions. If a ruling of the Watershed Administrator is questioned, the aggrieved party or parties may appeal such ruling to the Ramseur Board of Adjustment.

### **Section 8. Severability**

Should any section or provision of this Ordinance be declared invalid or unconstitutional by any court of competent jurisdiction, the declaration shall not affect the validity of this Ordinance as a whole or any part thereof that is not specifically declared to be invalid or unconstitutional.

### **Section 9. Effective Date**

This Ordinance, adopted October 15, 2018, shall be effective upon date of adoption.

## **ARTICLE II. SUBDIVISION REGULATIONS**

### **Section 1. General Provisions**

- A. No subdivision plat of land within the Public Water Supply Watershed shall be filed or recorded by the Register of Deeds of Randolph County until it has been approved in accordance with the provisions of this Article. 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 Article.
- B. All applications to subdivide land in a designated water supply watershed shall comply with the application, review, and mapping requirements of the Ramseur Subdivision Ordinance.
- C. The approval of a plat does not constitute or effect the acceptance by the Town 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 construed to do so.
- D. All subdivisions shall conform with the mapping requirements contained in NCGS 47 – 30.
- E. All subdivisions of land within the jurisdiction of Ramseur after the effective date of this ordinance shall require a plat to be prepared, approved, and recorded pursuant to this ordinance.

### **Section 2. 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 Watershed Administrator 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 ordinance and may be recorded. Subdivisions within the designated watershed area shall comply with the provisions of this Article and all other state and local requirements.
- B. Subdivision applications shall be filed with the Watershed Administrator. The application shall include a completed application form, copies of the plat and supporting documentation deemed necessary by the Watershed Administrator or the Watershed Review Board.
- C. If the Planning Board and/or Board of Commissioners approves the application, such approval shall be indicated on the plat by the following certificate and signed by the Watershed Administrator:

**NOTICE: This property is located within a Public Water Supply Watershed and development restrictions may apply.**

\_\_\_\_\_  
**Watershed Administrator**

\_\_\_\_\_  
**Date**

**Section 3. Subdivision Standards and Required Improvements**

- A. Subdivisions in any designated drinking supply watershed shall comply with Article VII, General Requirements and Minimum Standards of Design of the Ramseur Subdivision Ordinance as well as the requirements specified herein.
- B. All lots shall provide adequate building space in accordance with the development standards contained in Article III. Lots which are smaller than the minimum required may be developed using built-upon area criteria in accordance with Article III.
- C. 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.
- D. Storm Water Drainage Facilities. The application shall be accompanied by a description of the proposed method of providing storm water drainage. The subdivider shall provide a drainage system that diverts stormwater runoff away from surface waters and incorporates best management practices to minimize water quality impacts.

- E. Erosion and Sedimentation Control. 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 regional office of the NC. Division of Land Quality.
- F. Roads Constructed in critical areas and watershed buffer areas. Where possible, roads should be located outside of critical areas and watershed buffer areas. Roads constructed within these areas shall be designed and constructed to minimize their impact on water quality.

#### **Section 4. Construction Procedures**

- A. No construction or installation of improvements shall commence in a proposed subdivision until a subdivision plat has been approved.
- 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 Ordinance until all requirements of this Ordinance have been met. The subdivider, prior to commencing any work within the subdivision, shall make arrangements with the Watershed Administrator to provide for adequate inspection.

### **ARTICLE III. DEVELOPMENT REGULATIONS**

#### **Section 1. Establishment of Watershed Overlay District**

To provide an additional layer of protection for the Sandy Creek (WS-III – Balance of the Watershed) drinking water Supply watershed, the Watershed Overlay District is established.

#### **Section 2. Sandy Creek Watershed – Critical Area (WS-III-CA) – Cape Fear River Basin**

Intent. In order to maintain a low land use intensity pattern, single-family detached uses shall be allowed at a maximum of one dwelling unit per 2 acres. All other residential and non-residential development shall be allowed a maximum of 6% built-upon area.

##### **A. Permitted Uses**

1. Uses permitted in the underlying zoning districts where the watershed is located, subject to the modifications below, unless specifically prohibited in (B) Prohibited Uses.

2. Agriculture, subject to the provisions of the Food Security Act of 1985 and the Food, Agriculture, Conservation and Trade Act of 1990, and the rules and regulations of the Soil and Water Conservation Commission.
3. Silviculture, subject to the provisions of the Forest Practices Guidelines Related to Water Quality (15 NCAC 11.6101-0209).

B. Prohibited Uses

1. Discharging landfills or incinerators,
2. Storage of toxic and hazardous materials unless a spill containment plan approved by the Town Council is implemented,
3. New underground fuel or chemical storage tanks,
4. Sites for land application of sludge residuals or petroleum contaminated soils,
5. Commercial uses which sell, store, or distribute motor fuels or other hazardous materials,
6. Airports,
7. Industrial uses,
8. Metal salvage facilities including junkyards,
9. Manufacture, use or storage of any hazardous or toxic materials waste as listed on the EPA hazardous material list or determined by the Ramseur Board of Commissioners, and
10. Community package treatment plants or private sewage disposal systems except for subsurface septic tanks, community package treatment facilities may only be allowed if the Health Department determines that an existing public health problem can be alleviated by constructing sewage facilities.

C. Density and Built-upon Limits

1. Single-Family Residential – development shall not exceed one dwelling unit per 2 acres on a project-by-project basis. No residential lot shall be less than 2 acres, except within an approved cluster development.
2. All Other Residential and Non-Residential development shall not exceed 6% built-upon area on a project-by-project basis. For the purpose of calculating built-upon area, the total project area shall include total acreage in the tract on which the project is to be developed.

### **Section 3. Cluster Development**

Clustering of development is allowed under the following conditions:

- A. Minimum lot sizes are not applicable to single-family cluster development project; however, the total number of lots shall not exceed the number of lots

allowed for single-family detached developments as provided for in the density and built-upon limits for the watershed. Density or built-upon area for the project shall not exceed that allowed for the critical area.

- B. All built-upon area shall be designed and located to minimize stormwater runoff impact to the receiving waters and minimize concentrated stormwater flow.
- C. The remainder of the tract shall remain in a vegetated or natural state. The 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. Where a property association is not incorporated, a maintenance agreement shall be filed with the Register of Deeds Office.

#### **Section 4. Buffer Areas Required**

- A. A minimum of 50 feet undisturbed buffer for development activities is required on all sides of surface waters, such as intermittent streams, perennial streams, lakes and ponds, as indicated on the most recent versions of USGS 1:24,000 (7.5 minute) scale topographic maps or the Soil Survey maps developed by USDA-Natural Resource Conservation Service, or other site-specific evidence that indicates the presence of waters not shown on either of these two maps or evidence that no actual stream or waterbody exists. All riparian protection areas shall be recorded on new or modified plans. Desirable artificial streambank or shoreline stabilization is permitted.
- B. The protection of riparian area begins at the top of bank for intermittent streams and perennial streams and extends landward a distance of 50 feet on all sides of the waterbody, measured horizontally on a line perpendicular to the waterbody. For all other waterbodies, the protection area begins at the top of the bank or mean high water line and extends landward a distance of 50 feet, measured horizontally on a line perpendicular to the waterbody.
- C. Maintenance of the riparian areas shall be such that, to the maximum extent possible, sheet flow of surface water is achieved.
- D. No new development is allowed in the buffer except for water dependent structures and 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.

- E. Around water supply reservoirs, there shall be maintained a 100 feet vegetative buffer, measured from the normal pool line outward.
- F. Septic tank fields shall extend no closer than 200 feet from the reservoir, measured in the same manner. Lots abutting the reservoir shall measure 200 feet in width at the building line.

## **Section 5. 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:

- A. Where area boundaries are indicated as approximately following either street, alley, railroad or highway lines or center lines 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 Town 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 by use of the scale appearing on the watershed map.
- D. Where the watershed area boundaries lie at a scaled distance 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 Board of Adjustment.

## **Section 6. 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.
- B. No area required, for the purpose of complying with the provisions of this Ordinance, shall be included in the area required for another building.



- C. 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.

## **Section 7. Existing Development**

Any existing development as defined in Article 6 Definitions, of this Ordinance may be continued and maintained subject to the provisions provided herein. Expansions to structures classified as existing development must meet the requirements of this Ordinance, however, the built-upon area of the existing development is not required to be included in the density calculations.

- A. Uses of Land. This category consists of uses existing at the time of adoption of this Ordinance 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 uses ceases for a period of at least one year, it shall not be reestablished.
- B. Reconstruction of Buildings on Built-upon Areas. Any existing building or built-upon area not in conformance with the restrictions of this Ordinance that has been damaged or destroyed by any means to an extent of more than 50% of its replacement cost or bulk, exclusive of foundations and land value may be repaired and/or reconstructed, except that there are no restrictions on single-family residential development, provided:
  - 1. Repair or reconstruction is initiated within 12 months and completed within 2 years of such damage.
  - 2. The total amount of space devoted to built-upon area may not be increased unless stormwater control that equals or exceeds the previous development is provided.

## **Section 8. Watershed Protection Permit**

- A. Except where a single-family residence is constructed on a lot deeded prior to the effective date of this Ordinance, no building or 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 Watershed Administrator. No Watershed Protection Permit shall be issued except in conformity with the provisions of this Ordinance.

- B. Watershed Protection Permit applications shall be filed with the Watershed Administrator. The application shall include a completed application form (see Appendix A) and supporting documentation deemed necessary by the Watershed Administrator.
- C. Before issuance of a Watershed Permit Protection Permit, the Watershed Administrator may consult with other qualified personnel for assistance to determine if the application meets the requirements of this Ordinance.
- D. A Watershed Protection 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.

### **Section 9. Building Permit Required**

After receiving a Watershed Protection Permit, a Building Permit shall be obtained from the Randolph County Inspections Department for construction or alteration of any building or structure pursuant to the procedures of the Randolph County Central Permitting Operations Ordinance established by the Randolph County Board of Commissioners.

### **Section 10. Watershed Protection Occupancy Permit**

- A. The Watershed Administrator shall issue a Watershed Protection Occupancy Permit certifying that all requirements of this Ordinance have been met prior to the occupancy or 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 part of a building, shall be applied for coincident with the application for a Watershed Protection Permit and shall be issued or denied within 10 days after the erection or structural alterations of the building.
- C. When only a change in use of land or existing building occurs, the Watershed Administrator shall issue a Watershed Protection Occupancy Permit certifying that all requirements of this Ordinance have been met coincident with the Watershed Protection Permit.
- D. If the Watershed Protection Occupancy Permit is denied, the Watershed Administrator 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 Watershed Administrator has approved and issued a Watershed Protection Occupancy Permit.

#### **ARTICLE IV. PUBLIC HEALTH REGULATIONS**

##### **Section 1. 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. 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.

##### **Section 2. Abatement**

- A. The Watershed Administrator shall monitor land use activities within the watershed areas to identify situations that may pose a threat to water quality.
- B. The Watershed Administrator shall report all findings to the Ramsey Board of Adjustment. The Board of Adjustment may consult with any public agency or official and request recommendations.
- C. Where the Board of Adjustment finds a threat to water quality and the public health, safety and welfare, the Board shall institute any appropriate action or proceeding to restrain, correct or abate the condition and/or violation.

#### **ARTICLE V. ADMINISTRATION, ENFORCEMENT AND APPEALS**

The Zoning Administrator is hereby appointed the Watershed Administrator, who shall be duly sworn in that capacity. It shall be the duty of the Watershed Administrator to administer and enforce the provisions of this Ordinance as follows:

- A. The Watershed Administrator shall issue Watershed Protection Permits and Watershed Protection 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 Zoning Administrator.

- B. The Watershed Administrator shall serve as clerk to the Board of Adjustment which sits as the Watershed Review Board.
- C. The Watershed Administrator shall keep records of all amendments to the Town's Water Supply Watershed Protection Ordinance and shall provide copies of all amendments upon adoption to the Division of Water Quality.
- D. The Watershed Administrator is granted the authority to administer and enforce the provisions of this Ordinance, exercising in the fulfillment of his responsibility the full police power of the Town. The Watershed Administrator, or his duly authorized representative, may enter any building, structure or premises, as provided by law, to perform any duty imposed upon him by this Ordinance.
- E. The Watershed Administrator shall keep a record of variances to the Water Supply Watershed Protection Ordinance. This record shall be submitted each calendar year to the Division of Water Quality on or before January 1<sup>st</sup> of the following calendar year and shall provide a description of each project receiving a variance and the reasons for granting the variance.

## **Section 2. Appeal from the Watershed Administrator**

Any order, requirement, decision, or determination made by the Watershed Administrator may be appealed to and decided by the Board of Adjustment as specified in Article 10 of the Ramseur Zoning Ordinance.

## **Section 3. Changes and Amendments to the Watershed Protection Ordinance**

- A. The Ramseur Board of Commissioners 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 Board of Adjustment for review and recommendations. If no recommendation has been received from the Board of Adjustment within 45 days after submission of the proposal, the Board of Commissioners may proceed as though a favorable report had been received.
- C. Under no circumstances shall the Board of Commissioners adopt such amendments, supplements or changes that would cause this Ordinance to violate the watershed protection rules as adopted by the N.C. Environmental Management Commission. All amendments must be filed with the Division of Water Quality, N.C. Division of Environmental Health and N.C. Division of Community Assistance.

#### **Section 4. Public Notice and Hearing Required**

Before adopting or amending this Ordinance, the Board of Commissioners 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 10 days nor more than 25 days before the date fixed for the hearing.

#### **Section 5. Establishment of Watershed Review Board**

The Board of Adjustment shall serve as the Watershed Review Board. The same rules of procedure as specified in the Ramseur Zoning Ordinance shall apply.

#### **Section 6. Powers and Duties of the Board of Adjustment Acting as Watershed Review Board**

- A. Administrative Review. The Board of Adjustment shall hear and decide appeals from any decision or determination made by the Watershed Administrator in the enforcement of this Ordinance.
- B. Variances. The Board of Adjustment shall have the power to authorize, in specific cases, minor variances from the terms of this Ordinance as will not be contrary to the public interests where, owing to special conditions, a literal enforcement of this Ordinance will result in practical difficulties or unnecessary hardship, so that the spirit of this Ordinance shall be observed, public safety and welfare secured, and substantial justice done.
  1. Applications for a variance shall be made on the proper form obtainable from the Watershed Administrator and shall include information:
    - a. A site plan, drawn to scale, 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.
    - b. A complete and detailed description of the proposed variance, together with any other pertinent information which the applicant feels would be helpful to the Board of Adjustment in considering the application.
    - c. The Watershed Administrator shall notify in writing each local government having jurisdiction in the watershed and the entity using the water supply for consumption. Such notice shall include a description of the variance being requested. Local governments receiving the notice of the variance requested may submit

comments to the prior to a decision by the Board of Adjustment. Such comments shall become a part of the record of proceedings of the Board of Adjustment.

2. Before the Board of Adjustment 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. That there are practical difficulties or unnecessary hardships in the way of carrying out the strict letter of the Ordinance. In order to determine that there are practical difficulties or unnecessary hardships, the Board must find that 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. Merely proving that the variance would permit a greater profit to be made from the property will not be considered adequate 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 hardship.
    - (3) The hardship is due to the physical natural 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. That the Variance is in harmony with the general purpose and intent of the Ordinance and preserves its spirit.
  - c. That 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 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 Ordinance. If a variance for the construction, alteration or use of property is granted, such construction, alteration or use shall be in accordance with the approve site plan.
4. The Board of Adjustment 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 6 months from the date of the decision.
6. If the applicant calls for the granting of a major variance and if the Board of Adjustment 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:
  - 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; and
  - f. The proposed decision, including all conditions proposed to be added to the permit.

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 (1) the property

owner can secure no reasonable return from, nor make any practical use of the property unless the proposed variance is granted, and (2) the variance, if granted will not result in a serious threat to the water supply, then the Commission shall approve the variance as proposed or approve the proposed variance with conditions and stipulations. The Commission shall prepare a Commission decision and send it to the Watershed Review 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, granting the proposed variance.

- b. If the Commission concludes from the preliminary record that the Variance qualifies as a major variance and that (1) the property owner can secure a reasonable return from or make a practical use of the property without the variance, or (2) 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 Board of Adjustment. The Board shall prepare a final decision denying the variance as proposed.

C. Subdivision approval. See Article II.

D. Public Health. See Article IV.

## **Section 7. Appeals from the Board of Adjustment**

Appeals from the Board of Adjustment must be filed with the Superior Court within 30 days from the date of the decision. Decisions by the Superior Court will be in the manner of certiorari.

## **ARTICLE VI. DEFINITIONS**

### **Section 1. General Definitions**

**Access Trails.** Pedestrian trails constructed of pervious or impervious surfaces and related structures to access a surface water, including boardwalks, steps, rails, and signage.

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



**Balance of Watershed Area.** This area is defined as the entire drainage basin upstream of and draining to a WS-III watershed critical area where the risk of water supply pollution is greater than in surrounding areas.

**Best Management Practices (BMP).** A structural or nonstructural management-based practice used singularly or in combination to reduce nonpoint 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 channelized, and which provides for 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 and rivers.

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

**Built-upon Area.** Built-upon areas shall include that portion of a development that is covered by impervious or partially impervious cover including buildings, pavement, gravel areas (e.g., roads, parking lots, paths), recreation facilities (e.g., tennis courts), etc. (Note: Wooden slatted decks and the water area of a swimming pool are considered pervious.)

**Channel.** A natural water-carrying trough cut vertically into low areas of the land surface by erosive action of concentrated flowing water, or a ditch or canal excavated for the flow of water.

**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 non-residential development as well as single-family residential subdivisions and multi-family developments. For the purpose of this Ordinance, planned unit development and mixed-use development are considered as 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). Local governments may extend the critical area as needed. 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.

**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 is 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 of precipitation into the soil.

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

**Ditch.** A man-made, open drainage way in or into which excess surface water or groundwater from land, stormwater runoff, or floodwaters flow either continuously or intermittently.

**Dwelling Unit.** A building, or portion thereof, providing complete and permanent living facilities for one family.

**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 ordinance 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 with the project, or
2. having an outstanding valid building permit as authorized by NCGS 160A-385.1.
3. having an approved site specific or phased development plan as authorized by NCGS 160A-385.1.

**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

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

**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.

**Greenway/Hiking Trails.** Pedestrian trails constructed of pervious or impervious surfaces and related structures including but not limited to boardwalks, steps, rails, and signage, and that generally run parallel to the shoreline.

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

**Intermittent Stream.** A well-defined channel that contains water for only part of the year, typically during winter and spring when the aquatic bed is below the water table. The flow may be heavily supplemented by stormwater runoff. An intermittent stream often lacks the biological and hydrological characteristics commonly associated with the continuous conveyance of water.

**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 the Ordinance 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.

**Major Variance.** A variance from the minimum statewide watershed protection rules that results in any one or more of the following:

1. the complete waiver of a management requirement;
2. the relaxation, by a factor greater than 10%, of any management requirement that takes the form of a numerical standard;
3. the relaxation of any management requirement that applies to a development proposal intended to qualify under the high-density option.

**Minor Variance.** A variance that does not qualify as a major variance.

**Modified Natural Stream.** An on-site channelization or relocation of a stream channel and subsequent relocation of the intermittent or perennial flow as evidenced by

topographic alterations in the immediate watershed. A modified natural stream must have the typical biological, hydrological, and physical characteristics commonly associated with the continuous conveyance of water.

**New Development.** Any development that does not meet the definition of existing development as set-out in this Ordinance.

**Nonconforming Lot of Record.** A lot described by a plat or a deed that was recorded prior to the effective date of this Ordinance that does not meet the minimum lot size or other development requirements of the statewide watershed protection rules.

**Non-residential Development.** All development other than residential development, agriculture and silviculture.

**Perennial Stream.** A well-defined channel that contains water year-round during a year of normal rainfall with the aquatic bed located below the water table for most of the year. Groundwater is the primary source of water for a perennial stream, but it also carries stormwater runoff. A perennial stream exhibits the typical biological, hydrological, and physical characteristics commonly associated with the continuous conveyance of water.

**Perennial Waterbody.** A natural or man-made basin, including lakes, ponds and reservoirs, that stores surface water permanently at depths sufficient to preclude growth of rooted plants. For the purpose of the State's riparian buffer protection program, the waterbody must be part of a natural drainage way (i.e., connected by surface flow to a stream).

**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, apartment complexes, condominiums, townhouses, cottages, etc. and their associated outbuildings such as garages, storage buildings, gazebos, etc. and customary home occupations.

**Residuals.** Any solid or semi-solid waste generated from a wastewater treatment plant, water treatment plant or air pollution control facility permitted under the authority of the Environmental Management Commission.

**Shoreline Stabilization.** Is the in-place stabilization of an eroding shoreline. Stabilization techniques which include "soft" methods or natural materials (such as root wads, or rock vanes) may be considered as part of a restoration design. However, stabilization techniques that consist primarily of "hard" engineering, such as concrete lined channels, riprap, or gabions, while providing bank stabilization, shall not be considered stream restoration.

**Single Family Residential.** Any development where: 1) no building contains more than one dwelling unit, 2) every dwelling unit is on a separate lot, and 3) where no lot contains more than one dwelling unit.

**Stream Restoration.** Is defined as the process of converting an unstable, altered, or degraded stream corridor, including adjacent riparian zone and flood-prone areas to its natural or referenced, stable conditions considering recent and future watershed conditions. This process also includes restoring the geomorphic dimension, pattern, and profile as well as biological and chemical integrity, including transport of water and sediment produced by the stream's watershed in order to achieve dynamic equilibrium. 'Referenced' or 'referenced reach' means a stable stream that is dynamic equilibrium with its valley and contributing watershed. A reference reach can be used to develop natural channel design criteria for stream restoration projects.

**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 requires location on the land or attachment to something having permanent location on the land.

**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 new street or a change in existing streets; but the following shall not be included within this definition nor be subject to the regulations authorized by this Ordinance:

1. The combination or recombination 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 Ordinance;
2. The division of land into parcels greater than 10 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 Ordinance;
5. The division of a tract into plots or lots used as a cemetery.

**Surface Waters.** All water of the state as defined in NCGS 143-212 except underground waters.

**Temporary Road.** A road constructed temporarily for equipment access to build or replace hydraulic conveyance structures such as bridges, culvert, pipes, or water dependent structures, or to maintain public traffic during construction.

**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 off spring or other adverse health effects.

**Variance.** A permission to develop or use property granted by the Watershed Review Board relaxing or waiving a water supply watershed management requirement adopted by the Environmental Management Commission that is incorporated into this Ordinance.

**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).

**Watershed Administrator.** The Zoning Administrator who is responsible for administration and enforcement of this Ordinance.

**Watershed Permit.** A permit, consistent with the Randolph County Central Permitting System, that indicates a specific land use is located in a watershed.

## **Section 2. Word Interpretation**

For the purpose of this Ordinance, certain words shall be interpreted as follows:

1. Words in the present tense include the future tense.
2. Words used in the singular number include the plural and words in the plural number include the singular, unless the natural construction of the wording indicates otherwise.

3. The word “person” includes a firm, association, corporation, trust and company as well as an individual.
4. The word “structure” shall include the word “building.”
5. The word “lot” shall include the words, “plot,” “parcel,” or “tract.”
6. The word “shall” is always mandatory and not merely directory.
7. The word “will” is always mandatory and not merely directory.