

Chapter 14 ENVIRONMENT*

*Cross references: Land development, ch. 20; buildings and building regulations, § 20-61 et seq.; floods, § 20-166 et seq.; erosion and sedimentation control for land use, § 20-318; manufactured homes and trailers, § 20-406 et seq.; solid waste, ch. 23; solid, medical, hazardous, and/or low-level radioactive waste facilities, § 23-46 et seq.; streets, sidewalks and other public places, ch. 26.

State law references: Regulation of junk and abandoned vehicles, G.S. 153A-132; noise regulation, G.S. 153A-133.

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ARTICLE I. IN GENERAL

Secs. 14-1--14-30. Reserved.

ARTICLE II. ABANDONED VEHICLES*

*State law references: Junk and abandoned vehicles, G.S. 153A-132 et seq.

Sec. 14-31. Definitions.

The following words, terms and phrases when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Code Administrator for this Article means the person assigned by County Manager the duties of enforcing and administrating this Article of the Richmond County Code

Abandoned motor vehicle means a vehicle that:

- (1) Is left on public grounds or county-owned property in violation of a law or ordinance prohibiting parking;
- (2) Is left for longer than 24 hours on property owned or operated by the county;
- (3) Is left for longer than two hours on private property without the consent of the owner, occupant, or lessee of the property; or
- (4) Is left for longer than seven days on public grounds.

Junked motor vehicle means a motor vehicle that does not display a current license plate and:

- (1) Is partially dismantled or wrecked;
- (2) Cannot be self-propelled or moved in the manner in which it originally was intended to move;
- (3) Is more than five years old and appears to be worth less than \$100.00; or

Motor vehicle means any machine designed or intended to travel over land or water by self-propulsion or while attached to self-propelled vehicle.

Nuisance vehicle means a vehicle on public or private property that is determined and declared to be dangerous and prejudicial to the public health or safety. Finding of such nuisance vehicle can be shown by evidence of the following no-exclusive list:

- (1) A breeding ground or harbor for mosquitoes, other insects, rats or other pests; or
- (2) A point of heavy growth of weeds or other noxious vegetation over eight (8) inches in height; or
- (3) A point of collection of pools or ponds of water; or
- (4) A point of concentration of quantities of gasoline, oil or other flammable or explosive materials as evidenced by odor; or
- (5) One which has areas of confinement which cannot be operated from the inside, such as trunks, hoods, etc.; or
- (6) So situated or located that there is a danger of it falling or turning over; or
- (7) One which is a point of collection of garbage, food waste, animal waste, or any other rotten or putrescent matter of any kind; or
- (8) One which has sharp parts thereof which are jagged or contain sharp edges of metal or glass; or
- (9) Any other vehicle specifically declared a health and safety hazard and a public nuisance by the Richmond County Board of Commissioners.

Nothing in this definition would not include any vehicle on a bona fide farm, but any use of farm property for non-farm purpose is subject to this section.

(Ord. of 3-2-1987, § 1; Ord. of 9-11-2000, Ord. 5-3-2004, Ord. 8/2004)
Cross references: Definitions generally, § 1-2.

Sec. 14-32. Abandoned vehicles, junked motor vehicles, and nuisance vehicles unlawful; removal authorized.

- (a) It shall be unlawful for the owner or person entitled to possess a motor vehicle or for the owner, lessee, or occupant of the real property upon which that vehicle is located to leave or allow that vehicle to remain on the property after it has been declared an abandoned motor vehicle or a junked motor vehicle or a nuisance vehicle.
- (b) Upon investigation, the Code Administrator may determine and declare that a vehicle is a health or safety hazard or an abandoned vehicle or junked motor vehicle or nuisance vehicle and order the vehicle removed.

(Ord. of 3-2-1987, § 2; Ord. of 9-11-2000, Ord. 5-3-2004, Ord. 8/2004)

Sec. 14-33. Removal of abandoned vehicles or junked motor vehicles; pre-towing notice requirements.

- (a) A vehicle to be towed or otherwise removed because it has been declared to be an abandoned vehicle, nuisance vehicle, or junked motor vehicle shall be towed only after notice to the owner or person entitled to possession of the vehicle. If the names and mailing addresses of the owners of the vehicle or the real property upon which it is located can be ascertained in the exercise of reasonable diligence, the notice shall be given to both by first-class mail. The person who mails the notice shall retain a written record to show the name and address to which mailed, and the date mailed. If such names and addresses cannot be ascertained, affixing on the windshield or some other conspicuous place on the vehicle shall give notice. The notice shall state that the county will remove the vehicle on a specified date, no sooner than seven days after the notice is affixed or mailed, unless the owner or legal possessor prior to that time removes the vehicle.
- (b) With respect to abandon vehicle on private property, nuisance vehicle and junked motor vehicle to which notice is required to be given, if the owner or person entitled to possession does not remove the vehicle but chooses to appeal the determination that the vehicle is an abandoned vehicle or junked motor vehicle, such appeal shall be made to the board of commissioners in writing, heard at the next regularly scheduled meeting of the board of commissioners and further proceedings to remove the vehicle shall be stayed until the appeal is heard and decided.
- (c) An abandoned vehicle or junked motor vehicle may be removed without giving the minimum seven days' prior notice only in those circumstances where the authorizing official finds, and enters such findings in appropriate records, a special need for prompt action to maintain the public health, safety and welfare. Circumstances justifying the removal of vehicles without prior notice include:
- (1) Vehicles abandoned on streets or highways. For vehicles left on public streets and highways over which Richmond County has authority the Board of Commissioners hereby determines that immediate removal of such vehicles may be warranted when they are:
 - a. Obstructing traffic; or
 - b. Parked in violation of an ordinance or other law or regulation prohibiting or restricting parking; or
 - c. Parked in a no-stopping or standing zone; or
 - d. Parked in loading zones; or
 - e. Parked in bus zones; or
 - f. Parked in violation of temporary parking restriction imposed by Ordinances or other laws or regulations.
 - (2) With respect to abandoned or nuisance vehicles left on County owned property other than the streets and highway, and on private property, such vehicles may be removed without giving prior notice only in those circumstances where the

authorizing official finds a special need for prompt action to protect and maintain the public health, safety and welfare. By way of illustration and not of limitation, such circumstances include vehicles blocking or obstructing ingress or egress to businesses and residences, vehicles parked in such a location or manner as to pose a traffic hazard, and vehicles causing damage to public or private property.

(Ord. of 3-2-1987, § 3; Ord. of 9-11-2000, Ord. 6-7-2004)

Sec. 14-34. Removal of vehicle; post towing notice requirements.

(a) Any vehicle, which has been determined to be an abandoned vehicle, nuisance vehicle or junked motor vehicle may be removed to a storage garage or area by towing business contracting to perform such services for the county. Whenever such vehicle is removed, the building inspector shall immediately notify the last known registered owner of the vehicle, such notice to include the following:

- (1) A description of the removed vehicle;
- (2) The location where the vehicle is stored;
- (3) The violation with which the owner is charged, if any;
- (4) The procedure the owner must follow to redeem the vehicle; and
- (5) The procedure the owner must follow to request a probable cause hearing on the removal.

(b) This notice shall be mailed to the owner's last known address, unless waived in writing.

(c) If the vehicle is registered in the state, notice shall be mailed within 24 hours. If the vehicle is not registered in this state, notice shall be mailed to the owner within 72 hours from the removal of the vehicle.

(d) Whenever an abandoned vehicle or a junked motor vehicle is removed and such vehicle has no valid registration or registration plate, the authorizing county official shall make reasonable efforts, including the checking of the vehicle identification number, to determine the last known registered owner of the vehicle and to notify him of the information as set forth in subsections (a)(1) through (5) of this section.

(Ord. of 3-2-1987, § 4; Ord. of 9-11-2000, Ord. 5-3-2004)

Sec. 14-35. Right to probable cause hearing before sale or final disposition of vehicle.

After removal of a vehicle declared to be an abandoned vehicle or junked motor vehicle, the owner or other person entitled to possession may request in writing a hearing to determine if probable cause existed for removing the vehicle. The request must be filed with the magistrate in the county where the vehicle was towed. The magistrate will set the hearing within 72 hours of receipt of the request, and the hearing will be conducted in accordance with provisions of G.S. 20-219.11.

(Ord. of 3-2-1987, § 5; Ord. of 9-11-2000)

Sec. 14-36. Sale and disposition of unclaimed vehicles.

- (a) With the consent of the owner, the building inspector may dispose of any vehicle as an abandoned vehicle or junked motor vehicle without holding it for any prescribed period of time.
- (a) Any unclaimed abandoned vehicle or junked motor vehicle shall be held for a period of at least 15 days. The owner of any such vehicle may claim his vehicle during the 15-day retention period by exhibiting proof of ownership to the building inspector and after paying all reasonable costs incident to the removal and storage of the vehicle plus administrative expenses. If after the vehicle is held 15 days it remains unclaimed, such vehicle may be destroyed or sold at private sales as junk.
- (b) Within 15 days after final disposition of an abandoned vehicle or a junked motor vehicle, written notice thereof shall be given to the department of motor vehicles that the vehicle has been determined to be an abandoned vehicle or junked motor vehicle and disposed of as such. The notice shall contain as full and accurate a description of the vehicle as can be reasonably determined.
- (c) Disposition of such vehicle shall be carried out in coordination with the County and in accordance with Article 1 of Chapter 44A of the North Carolina General Statutes.

(Ord. of 3-2-1987, § 6; Ord. of 9-11-2000, Ord. 5-3-2004)

Sec. 14-37. Disposition of proceeds of sale.

The proceeds of the sale of an abandoned vehicle or junked motor vehicle, after all costs of removal, storage, investigation and sale, and satisfaction of any lien of record on the vehicle have been deducted therefrom, shall be held by the county finance officer for 30 days and paid to the owner upon demand. If the owner does not appear to claim the remainder of the proceeds within 30 days after disposal of the vehicle, the funds shall be deposited into the county general fund and the owner's rights therein shall be forever extinguished.

(Ord. of 3-2-1987, § 7; Ord. of 9-11-2000)

Sec. 14-38. Immunity.

Neither the county nor any person shall be held to answer in any civil or criminal action to any owner or other person legally entitled to the possession of any junked, lost or stolen vehicle for disposing of such vehicle as contemplated by this article.

(Ord. of 3-2-1987, § 8; Ord. of 9-11-2000)

Sec. 14-39. Exceptions.

Nothing in this article shall apply to any motor vehicle in an enclosed building, any motor vehicle kept or stored at a bona fide automobile graveyard or junkyard as defined in G.S. 136-143, or to any motor vehicle that is used on a regular basis for business or personal use.

(Ord. of 3-2-1987, § 9; Ord. of 9-11-2000)

Secs. 14-40--14-60. Reserved.

ARTICLE III. NOISE

Sec. 14-61. Purpose.

- (a) It is recognized that excessive and unnecessary noise endangers the physical and emotional health and welfare of the people, interferes with legitimate business and recreational activity, increased construction costs, depresses property values, offends the senses, creates public nuisances, and in other respects reduces the quality of life.
- (b) Because the regulation of excessive and unnecessary noise that may jeopardize human health or welfare or substantially degrade the quality of life is well within the purview of the governing body's police powers, it is declared to be the purpose of this section to prevent, prohibit, and provide the regulation and abatement of excessive and unnecessary noise which may injure the physical and emotional health or welfare of its citizens or degrade the quality of life.

(Ord. of 7-10-1995, § 1)

Sec. 14-62. Certain noises and sounds prohibited.

- (a) It shall be unlawful for any person, firm or corporation to create or assist in creating any unreasonably loud, disturbing sound levels in the county, taking into consideration volume, duration, frequency, and other characteristics of the sound.

(b) The following activities, among others, are hereby declared to be unreasonably loud, disturbing sound levels, but such enumeration shall not be deemed to be exclusive:

- (1) The playing of any musical instrument or electronic sound amplification equipment in such manner or with such volume, particularly during hours between 11:00 p.m. and 7:00 a.m., such that a reasonably prudent person would recognize as likely to unreasonably disturb persons in the vicinity.
- (2) The keeping of any animal or bird which makes frequent or long continued sounds, such that a reasonably prudent person would recognize as likely to unreasonably disturb persons in the vicinity.
- (3) The use of any automobile, motorcycle or vehicle so out of repair or in such manner as to create unreasonably loud, disturbing sounds.
- (4) The operating of any garage or service station in any residential area so as to cause unreasonably loud, disturbing sounds to be emitted between the hours of 9:00 p.m. and 7:00 a.m. on any day.
- (5) The creation of unreasonably loud, disturbing sound levels adjacent to any school, educational facility, church, or court during normal operating hours, or within 150 feet of any hospital, which a reasonably prudent person would recognize as likely to unreasonably interfere with the working of such institutions, provided conspicuous signs are displayed indicating that such area is a school, educational facility, church, court, or hospital area.
- (6) The erection (including excavation), demolition, alteration or repair of any building in a residential or business district other than between the hours of 7:00 a.m. and 9:00 p.m. on any day, except in the case of urgent necessity in the interest of public safety, and then only under the direction of an appropriate county official.
- (7) The firing or discharging of a gun, firecrackers, gun powder or other combustible substance in the streets or elsewhere for the purpose of making noise or disturbance, except by permit from the sheriff.
- (8) The shouting and crying of peddlers, barkers, hawkers, and vendors which disturbs the quiet and peace of the neighborhood.
- (9) The operating or permitting the operation within a multifamily dwelling of any source of sound in a manner such that a reasonably prudent person would recognize as likely to unreasonably disturb persons in the vicinity.
- (10) The operating or permitting the operation of any mechanically powered saw, drill, grinder, lawn or garden tool, or similar tool between the hours of 10:00 p.m. and 6:00 a.m. unless such equipment is operated inside a building or other

structure so that the sound therefrom does not travel across any residential real property line. All such equipment shall be properly muffled and maintained in working order so as not to create excessive and unnecessary noise.

- (11) The operating or permitting the operation of any motor boat or similar craft in any lake, river, stream, canal, bay, or other waterway in such a manner as to cause unnecessary and excessive noise within a residential area.

(Ord. of 7-10-1995, § 2)

Sec. 14-63. Exemptions from section 14-62.

The following are exempt from the provisions of section 14-62:

- (1) Lawn mowers and agricultural equipment during the hours of 6:00 a.m. to 10:00 p.m. when operated with all manufacturers' standard mufflers and noise reduction equipment in use and proper operating condition;
- (2) Nonamplified crowd noises resulting from the activities such as those planned by students, governmental, or community groups;
- (3) Construction operations for which building permits have been issued or construction operations not requiring permits due to ownership of the project by an agency of government; providing all equipment is operated in accord with the manufacturers' specifications and with all standard equipment manufacturers' mufflers and noise reducing equipment in use and in proper operating condition;
- (4) Noises of safety signals, warning devices, emergency pressure relief valves and bells and chimes of churches;
- (5) Any other noise resulting from activities of a temporary duration permitted by law and for which a license or permit therefore has been granted by the county in accordance with the above. Regulation of noises emanating from operations under permit shall be according to the conditions and limits stated on the permit and contained above;
- (6) Noises made by persons having obtained a permit to use the streets;
- (7) All noises coming from the normal operations of aircraft (not including scale model aircraft) and all noises emanating from the Rockingham-Hamlet Airport property within the NEF (Noise Exposure Forecast) zones as established by the most recent survey, and maintained in the office of the airport manager;
- (8) All noises coming from the normal operations of the vehicles, aircraft, vendors, law enforcement authorities, and patrons emanating from the North Carolina Speedway

and the Rockingham Dragway during regular business hours and scheduled activities and events;

(9) All noises made by animals when a person is trespassing or threatening to trespass upon private property in or upon which the animal is situated or for any legitimate cause which teased or provoked the animal.

(10) All activities and operations on property within Heavy Industrial Zoning Districts as defined in the Richmond County Zoning Ordinance (as amended)

(Ord. of 7-10-1995, § 3) (Ord. of 5-13/2014)

Sec. 14-64. Special permits for relief from allowable noise level limits.

Applications for a permit for relief from the prohibited allowable noise level limits designated in section 14-62 may be made in writing to the Sheriff or his duly authorized representative. Any permit granted by the Sheriff under this article must be in writing and shall contain all conditions upon which such permit shall be effective. The Sheriff or his duly authorized representative may grant the relief as applied for under the following conditions:

- (1) General requirements. The Sheriff may prescribe any reasonable conditions or requirements he deems necessary to minimize adverse effects upon the community or the surrounding neighborhood, including use of mufflers, screens, or other sound attenuating devices.
- (2) Permits for entertainment. Permits may be granted for the purpose of entertainment under the following conditions:
 - a. The function must be open to the public (admission may be charged).
 - b. The function must take place on public property.
 - c. The permit will be given for only four hours in one 24-hour day.
 - d. The function must be staged between the hours of 9:00 a.m. and 12:00 midnight.
- (3) Other. Special permits for non-entertainment special purposes may be issued under the following conditions:
 - a. If the special purpose relates to the operation of a trade or business, that the special purpose not be in the ordinary course of that trade or business; or
 - b. If the special purpose does not relate to the operation of a trade or business, that the special purpose not be an ordinary event in the affairs of the applicant.

- (4) Recurring purpose. If the special purpose is a recurring purpose, that it not recur more often than four times each calendar year.
- (5) Special necessary purpose. That the special purpose be absolutely necessary to the operations of the applicant's trade or business.
- (6) Compatibility with surrounding neighborhood. If the special purpose does not relate to the operation of the trade or business, that the special purpose be compatible with the ordinary activities of the neighborhood in which the special purpose is to occur.
- (7) Emergency situations. Except in emergency situations, as determined by the Sheriff, the special permit may be issued only for eight hours between 7:00 a.m. and 5:00 p.m. on weekdays.
- (8) Duration. Special permits may be issued for no longer than 15 consecutive days, renewable by further application to the Sheriff.
- (9) Exterior loudspeaker not permitted. No permit may be issued to permit the use of any loudspeaker or sound amplifying device on the exterior of any building which at any time is unnecessary or excessive except those used for emergency warnings.
- (10) Appeal. Anyone aggrieved by the provisions of this section shall have the right to appeal the decision of the Sheriff to the board of commissioners. The appeal shall be in writing and filed with the County Manager within ten days after the decision of the Sheriff. Upon receipt of a notice of appeal, the board of commissioners shall grant a hearing to the appellant at the next regular meeting, provided, such notice of appeal is received by 5:00 p.m. of the Friday before such board of commissioner's meeting.
- (11) At the hearing before the board of commissioners pursuant to an appeal as requested pursuant to this article, the board of commissioners shall hold a public hearing to determine whether issuance of the permit would be detrimental to the public health, safety, and welfare of the community. If the board of commissioners determines that the issuance of the permit would not be detrimental to the public health, safety, and welfare, the board of commissioners shall specifically authorize the sheriff to issue the permit to the applicant. If the board of commissioners determines that the issuance of the permit would be detrimental to the public health, safety and welfare of the community, the board of commissioners shall so notify the applicant, and the Sheriff shall not issue the permit.

(Ord. of 7-10-1995, § 4)

Sec. 14-65. Enforcement responsibility for control of excessive or unnecessary noise.

The Sheriff shall have primary responsibility for enforcement of this article.

(Ord. of 7-10-1995, § 5)

Sec. 14-66. Penalties.

- (a) When a violation of section 14-62 occurs for the first time or more than 12 months after a previous violation, the violator shall be issued a warning by the Sheriff or a Deputy Sheriff. For subsequent violations within a 12-month period of the first violation, the violator shall be deemed guilty of a misdemeanor punishable by a fine of up to \$500.00 pursuant to section 1-6.
- (b) When a source of noise is being conducted in violation of this article, any resident of the county may institute any appropriate causes or proceeding to restrain, correct, or abate such violations or otherwise prevent the unlawful use of such noise operation or the unlawful operation of such facility by any person.

(Ord. of 7-10-1995, § 6)

Secs. 14-67--14-90. Reserved.

ARTICLE IV. WATERSHED PROTECTION*

*Editor's note: The following appendixes, mentioned throughout this article, are not printed herein, but are on file in the county offices:

Appendix A--Application for a Watershed Subdivision Approval

Appendix B--Rules of Procedure for the Watershed Review Board Regarding the Appeals and Variances

State law references: General ordinance-making powers, G.S. 153A-121.

DIVISION 1. GENERALLY

Sec. 14-91. Authority and enactment.

The Legislature of the State of North Carolina has, in G.S. 153A-121, General Ordinance Authority; and in G.S. 143-211 et seq., Watershed Protection Rules, delegated the responsibility or directed local governmental units to adopt regulations designed to promote the public health, safety, and general welfare of its citizenry. The board of commissioners does hereby ordain and enact into law the following articles as the watershed protection ordinance of the county.

(Ord. of 11-1-1993, § 101; Ord. of 8-8-1994; Ord. of 11-3-1997; Ord. of 5-7-2001, § 101)

Sec. 14-92. Jurisdiction.

The provisions of this article shall apply within the areas designated as a Public Water Supply Watershed by the state environmental management commission and shall be defined and established on the map entitled, "Watershed Protection Map of Richmond County, North Carolina" ("the watershed map"), which is adopted simultaneously with the ordinance from which this article is derived. The Watershed Map and all explanatory matter contained thereon accompanies and is hereby made a part of this article. This article shall be permanently kept on file in the office of the County Clerk.

(Ord. of 11-1-1993, § 102; Ord. of 8-8-1994; Ord. of 11-3-1997; Ord. of 5-7-2001, § 102)

Sec. 14-93. Exceptions to applicability.

- (a) Nothing contained in this article shall repeal, modify, or amend any Federal or State law or regulation, or any ordinance or regulation pertaining thereto except any ordinance which these regulations specifically replace; nor shall any provision of this article amend, modify, or restrict any provisions of the code of the county; however, the adoption of this article shall and does amend any and all ordinances, resolutions, and regulations in effect in the county at the time of the adoption of the ordinance from which this article is derived that may be construed to impair or reduce the effectiveness of this article or to conflict with any of its provisions.
- (b) It is not intended that this article interfere with any easement, covenants or other agreements between parties. However, if the provisions of this article impose greater restrictions or higher standards for the use of a building or land, then the provisions of this article shall control.
- (c) Existing development, as defined in section 14-221, is not subject to the requirements of this article. Expansions to structures classified as existing development must meet the requirements of this article, 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 article if it is developed for single-family residential purposes. Any lot or parcel created as part of a family subdivision after the effective date of the ordinance from which this article is derived, shall be exempt from these rules if it is developed for one single-family detached residence and if it is exempt from local subdivision regulation. Any lot or parcel created as part of any other type of subdivision that is exempt from a local subdivision ordinance shall be subject to the land use requirements (including impervious surface requirements) of this article, except that such a lot or parcel must meet the minimum buffer requirements to the maximum extent practicable.

(Ord. of 11-1-1993, § 103; Ord. of 8-8-1994; Ord. of 11-3-1997; Ord. of 5-7-2001, § 103)

Sec. 14-94. Criminal penalties.

Any person violating any provisions of this article shall be guilty of a misdemeanor and, upon conviction, shall be punished in accordance with G.S. 14-4. The maximum fine for each offense shall not exceed \$500.00. Each day that the violation continues shall constitute a separate offense.

(Ord. of 11-1-1993, § 104; Ord. of 8-8-1994; Ord. of 11-3-1997; Ord. of 5-7-2001, § 105)

Sec. 14-95. Remedies.

(a) If any subdivision, development and/or land use is found to be in violation of this article, the board of commissioners may, in addition to all other remedies available either in law or in equity, institute a civil penalty in the amount of \$100.00, 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 state 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 Watershed Administrator finds that any of the provisions of this article 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 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 article to ensure compliance with or to prevent violation of its provisions. If a ruling of the watershed administrator is questioned, the aggrieved party or parties may appeal such ruling to the Watershed Review Board.

(Ord. of 11-1-1993, § 105; Ord. of 8-8-1994; Ord. of 11-3-1997; Ord. of 5-7-2001, § 106)

Sec. 14-96. Repeal of existing watershed ordinance.

This article in part carries forward by re-enactment, some of the Watershed Ordinance of the county, (adopted by the board of commissioners on November 1, 1993, as amended), and it is not the intention to repeal but rather to reenact and continue in force such existing provisions so that all rights and liabilities that have accrued there under are preserved and may be enforced. All provisions of the watershed ordinance, which are not re-enacted in this article, are hereby repealed. All suits at law or in equity and/or all prosecutions resulting from the violation of any ordinance provisions heretofore in effect, which are now pending in any court of this state or of the United States, shall not be

abated or abandoned by reason of the adoption of the ordinance, from which this article is derived but shall be prosecuted to their finality the same as if this article had not been adopted; and any and all violations of the existing watershed protection ordinance, prosecutions for which have not yet been instituted, may be hereafter filed and prosecuted; and nothing in this article shall be so construed as to abandon, abate or dismiss any litigation or prosecution now pending and/or which may heretofore have been instituted or prosecuted.

(Ord. of 5-7-2001, § 104)

Secs. 14-97--14-110. Reserved.

DIVISION 2. SUBDIVISION REGULATIONS

Sec. 14-111. General provisions.

- (a) No subdivision plat 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 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) 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 shall conform with the mapping requirements contained in G.S.47-30.
- (d) All subdivisions of land within the jurisdiction of the county after the effective date of the ordinance from which this article is derived shall require a plat to be prepared, approved, and recorded pursuant to this article. The County Subdivision Ordinance, set forth in division 2 of article V of this chapter, shall regulate all subdivision, by definition, in concurrence with this article. Where this article conflicts with any applicable federal, state, or local law, the most stringent shall govern.

(Ord. of 5-7-2001, § 201)

Sec. 14-112. 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 article and may be recorded provided the Watershed Administrator initials the vicinity map. In addition, subdivisions within a WS-IV watershed are subject to the provisions of this article only when an erosion and sedimentation plan is required under the provisions of state law, or approved local program. Subdivisions within the designated watershed area shall comply with the provisions of this article and all other state and local requirements that may apply.

- (b) Subdivision applications shall be filed with the Watershed Administrator. The application shall include a completed application form, two copies of the plat and supporting documentation deemed necessary by the Watershed Administrator or the Watershed Review Board (see appendix A; on file in the county offices).
- (c) The Watershed Administrator shall review the completed application and shall either approve, approve conditionally or disapprove each application. The Watershed Administrator shall take final action within 45 days of submission of the application. The Watershed Administrator or the Watershed Review 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 action within the prescribed time limit. Such 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 storm water management in general.
 - (4) Any other agency or official designated by the Watershed Administrator or Watershed Review Board.
- (d) If the Watershed Administrator approves the application, such approval shall be indicated on both copies of the plat by the following certificate and signed by the Watershed Administrator:

CERTIFICATE OF APPROVAL FOR RECORDING

I certify that the plat shown hereon complies with the Watershed Protection Ordinance and is approved by the Watershed Review Board for recording in the Register of Deeds office.

Date

Watershed Administrator

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

- (e) If the Watershed Administrator 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 subdivider 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 plat shall be recorded within 30 days of approval. The subdivider shall provide the Watershed Administrator with evidence the plat has been recorded with the Register of Deeds within five working days.

(Ord. of 5-7-2001, § 202)

Sec. 14-113. Subdivision standards and required improvements.

- (a) Adequate building space. All lots shall provide adequate building space in accordance with the development standards contained in division 3 of this article. Lots, which are smaller than the minimum required for residential lots, may be developed using built-upon area criteria in accordance with division 3 of this article.
- (b) Calculating built-upon area. 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) 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.
- (d) 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 state division of land quality.
- (e) 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.

(Ord. of 5-7-2001, § 203)

Sec. 14-114. 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 the erection of a structure on any lot not of record at the time of adoption of the ordinance from which this article is derived, until all requirements of this article 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.

(Ord. of 5-7-2001, § 204)

Sec. 14-115. Penalties for transferring lots in unapproved subdivisions.

Any person who, being the owner or agent of the owner of any land located within the jurisdiction of the county, thereafter subdivides his land in violation of this article or transfers or sells land by reference to, exhibition of, or any other use of a plat showing a subdivision of the land before the plat has been properly approved under this article and recorded in the office of the Register of Deeds, shall be guilty of 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 and order requiring the offending party to comply with this article.

(Ord. of 5-7-2001, § 205)

Secs. 14-116--14-140. Reserved.

DIVISION 3. DEVELOPMENT REGULATIONS

Sec. 14-141. Establishment of watershed areas.

- (a) The purpose of this division is to list and describe the watershed areas herein adopted.
- (b) For purposes of this article, the county is hereby divided into the following areas, as appropriate:

WS-II-CA (Critical area)
WS-II-BW (Balance of watershed)
WS-III-CA (Critical area)
WS-III-BW (Balance of watershed)
WS-IV-CA (Critical area)

WS-IV-PA (Protected area)

(Ord. of 11-1-1993, § 301; Ord. of 8-8-1994; Ord. of 11-3-1997; Ord. of 5-7-2001, § 301)

Sec. 14-142. Description of watersheds.

- (a) WS-II watershed areas - critical area (WS-II-CA). In order to maintain a predominately undeveloped land use intensity pattern, single-family residential uses shall be allowed at a maximum of one dwelling unit per two acres. All other residential and nonresidential development shall be allowed at a maximum six percent built-upon area. New sludge application sites and landfills are specifically prohibited.
- (b) WS-II watershed areas - balance of watershed (WS-II-BW). In order to maintain a predominantly undeveloped land use intensity pattern, single-family residential uses shall be allowed at a maximum of one dwelling unit per acre. All other residential and nonresidential development shall be allowed a maximum of 12 percent built-upon area. In addition, nonresidential uses, new development and expansions to existing development may occupy ten percent of the balance of the watershed, which is outside the critical area, with a 70 percent built-upon area when approved as a special intensity allocation (SIA). The Watershed Administrator is authorized to approve SIAs consistent with the provisions of this article. Projects must minimize built-upon surface area, direct stormwater away from surface waters and incorporate Best Management Practices to minimize water quality impacts. Nondischarging landfills and sludge application sites are allowed.
- (c) WS-III watershed areas - critical area (WS-III-CA). In order to maintain a low to moderate land use intensity pattern, single-family residential uses are allowed at a maximum one dwelling unit per 40,000 square feet. All other residential and nonresidential development shall be allowed to a maximum of 12 percent built-upon area. New sludge application sites and landfills are specifically prohibited.
- (d) WS-III watershed areas - balance of watershed (WS-III-BW). In order to maintain a low to moderate land use intensity pattern, single-family detached uses shall develop at a maximum of one dwelling unit per 40,000 square feet unless the residential unit is hooked into a public sewer system, then the maximum will be two dwelling units per acre. All other residential and nonresidential development shall be allowed a maximum of 24 percent built-upon area. In addition, new development and expansions to existing development may occupy ten percent of the balance of the watershed, which is outside the critical area, with a 70 percent built-upon area when approved as a special nonresidential intensity allocation (SIA). The Watershed Administrator is authorized to approve SIAs consistent with the provisions of this article. Projects must minimize built-upon surface area, direct stormwater away from surface waters and incorporate Best Management Practices to minimize water quality impacts. Nondischarging landfills and sludge application sites are allowed.

(e) WS-IV watershed areas - critical area (WS-IV-CA). Only new development activities that require an erosion/sedimentation control plan under state law or approved local program are required to meet the provisions of this article 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 dwelling units per acre. All other residential and nonresidential development shall be allowed 24 percent built-upon area. New sludge application sites and landfills are specifically prohibited.

(f) 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 the provisions of this article when located in a WS-IV watershed. In order to address a moderate to high land use intensity pattern, single-family residential uses shall develop at a maximum of two dwelling units per acre. All other residential and nonresidential development shall be allowed at a maximum of 24 percent built-upon area. A maximum of three dwelling units per acre or 36 percent built-upon area is allowed for projects without a curb and gutter street system.

(Ord. of 11-1-1993, § 302; Ord. of 8-8-1994; Ord. of 11-3-1997; Ord. of 5-7-2001, § 302)

Sec. 14-143. Density and built-upon limits.

The following table specifies the density limits for single-family residential development and the built-upon area limits for all other residential development and nonresidential development:

| Watershed Type | Single Family Residential Density | Other Residential and Non Residential Development (Maximum Percentage Built-Upon Area) | Special Intensity Allocation (SIA) |
|-----------------------|--|---|---|
| WS-II-CA | 1 per 2 acres | 6% | N/A |
| WS-II-BW | 1 per acre | 12% | 10%-70% |
| WS-III-CA | 1 per 40,000sqft | 12% | N/A |
| WS-III-BW* | 1 per 40,000sqft | 24% | 10%-70% |
| WS-IV-CA | 1 per 20,000sqft | 24% | N/A |
| WS-IV-PA** | 1 per 20,000sqft | 24% - 36%** | N/A |

| | | | |
|--|------------------|--|--|
| | 1 per 14,500sqft | | |
|--|------------------|--|--|

* If dwelling unit is attached to a public sewer system, the minimum lot size per dwelling unit is 20,000 square feet

** In residential or nonresidential developments with a curb and gutter system, the minimum single family residential lot shall be one-half acre and the maximum built-upon area shall not exceed 24 percent. In residential and nonresidential developments without a curb and gutter system, the minimum single-family lot shall be one-third acre and the maximum built-upon area shall not exceed 36 percent.

For reference purposes regarding ground absorption sewage collection (septic systems) please refer to 15 NCAC 1211.

(Ord. of 11-1-1993, § 303; Ord. of 8-8-1994; Ord. of 11-3-1997; Ord. of 5-7-2001, § 303)

Sec. 14-144. Allowed uses.

(a) The following uses are allowed in the critical areas of the WS-II, WS-III, and WS-IV Public Water Supply Watersheds.

- (1) 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 USGS 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 as recommended by the Soil and Water Conservation Commission.
- (2) Silviculture, subject to the provisions of the Forest Practices Guidelines Related to Water Quality (15 NCAC 11.6101-.0209).
- (3) Residential development, including both single-family and all other residential.
- (4) Nonresidential development, excluding: i) the storage of toxic and hazardous materials unless a spill containment plan is implemented, ii) landfills, and iii) sites for land application of sludge/residuals or petroleum contaminated soils. New industrial development is required to incorporate adequately designed, constructed and maintained spill containment structures if hazardous materials are either used, stored or manufactured on the premises.

(b) The following uses are specifically prohibited in the critical areas of all watersheds:

new sludge application sites and landfills.

- (c) The following uses are allowed in the balance of WS-II and WS-III watersheds and the protected area of WS-IV watersheds.
- (1) Agriculture, subject to the provisions of the Food Security Act of 1985 and the Food, Agricultural, Conservation and Trade Act of 1990.
 - (2) Silviculture, subject to the provisions of the Forest Practices Guidelines Related to Water Quality (15 NCAC 11.6101-.0209).
 - (3) Residential development, using density criteria as shown in the table in section 14-143.
 - (4) Nonresidential development excluding the storage of toxic and hazardous materials unless a spill containment plan is implemented, using density calculation as found in section 14-143.
 - (5) Nondischarging landfills and sludge application sites.
 - (6) Discharging landfills are allowed in the WS-IV protected area. Discharging landfills are not allowed in the balance of WS-II and WS-III watersheds.
- (Ord. of 11-1-1993, § 304; Ord. of 8-8-1994; Ord. of 11-3-1997; Ord. of 5-7-2001, § 304)

Sec. 14-145. Cluster development.

Clustering of development is allowed and encouraged in all Public Water Supply Watershed areas under the following conditions:

- (1) 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 as stated in sections 14-142--14-143. Density or built-upon area for the project shall not exceed that allowed for the critical area, protected area, or balance of watershed, whichever applies as per sections 14-142--14-143.
- (2) All built-upon area shall be designed and located to minimize stormwater runoff impact to the receiving waters and minimize concentrated stormwater flow.
- (3) 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 property deeds.

(Ord. of 11-1-1993, § 305; Ord. of 8-8-1994; Ord. of 11-3-1997; Ord. of 5-7-2001, § 305)

Sec. 14-146. 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 vegetative buffer for development activities is required along all perennial waters indicated on the most recent versions of USGS 1:24,000 (7.5 minute) scale topographic maps or as determined by local government studies. Desirable artificial streambank or shoreline stabilization is permitted.
- (b) 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.

(Ord. of 11-1-1993, § 306; Ord. of 8-8-1994; Ord. of 11-3-1997; Ord. of 5-7-2001, § 306)

Sec. 14-147. 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:

- (1) 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 such boundaries.
- (2) Where area boundaries are indicated as approximately following lot lines, such lot lines shall be construed to be such 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.
- (3) 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.
- (4) 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.
- (5) 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 Watershed Review Board.

(Ord. of 11-1-1993, § 307; Ord. of 8-8-1994; Ord. of 11-3-1997; Ord. of 5-7-2001, § 307)

Sec. 14-148. Application of regulations.

- (a) No building or land shall hereafter be used and no development shall take place except in conformity with the regulations specified in this article for the water supply watershed area in which it is located.
- (b) No area required for the purpose of complying with the provisions of this article 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 which conforms to the regulations specified in this article, except as permitted in section 14-147.
- (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. of 11-1-1993, § 308; Ord. of 8-8-1994; Ord. of 11-3-1997; Ord. of 5-7-2001, § 308)

Sec. 14-149. Existing development.

Any existing development as defined in section 14-221 may be continued and maintained subject to the provisions provided in this article. Expansions to structures classified, as existing development must meet the requirements of this article; however, the built-upon area of the existing development is not required to be included in the density calculations.

- (1) Vacant lots. This category consists of vacant lots for which plats or deeds have been recorded in the office of the Register of Deeds of the county. Lots may be used for any of the uses allowed in the watershed area in which it is located, provided the following:
 - a. Where the lot area is below the minimum specified in this article, the Watershed Administrator is authorized to issue a watershed protection permit.
 - b. Notwithstanding the foregoing, whenever two or more contiguous residential vacant lots of record are in single ownership at any time after the adoption of the ordinance from which this article is derived and such lots individually have less area than the minimum requirements for residential purposes for the watershed area in which such lots are located, such lots shall be combined to create one or more lots that meet the standards of this article, or if this is impossible, reduce to the extent possible the nonconformity of the lots.
- (2) Occupied lots. This category consists of lots, occupied for residential purposes at the time of the adoption of the ordinance from which this article is derived. These lots

may continue to be used; provided that whenever two or more adjoining lots of record, one of which is occupied, are in single ownership at any time after the adoption of the ordinance from which this article is derived and such lots individually or together have less area than the minimum requirements for residential purposes for the watershed area in which they are located, such lots shall be combined to create lots which meet the minimum size requirements or which minimize the degree of nonconformity.

- (3) Uses of land. This category consists of uses existing at the time of adoption of the ordinance from which this article is derived, 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:
- a. When such use of land has been changed to an allowed use, it shall not thereafter revert to any prohibited use.
 - b. Such use of land shall be changed only to an allowed use.
 - c. When such use ceases for a period of at least one year, it shall not be reestablished.
- (4) Reconstruction of buildings or built-upon areas. Any existing building or built-upon area not in conformance with the restrictions of this ordinance that has been damaged or removed may be repaired and/or reconstructed, except that there are no restrictions on single-family residential development, provided:
- a. Repair or reconstruction is initiated within 12 months and completed within two years of such damage.
 - b. 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.

(Ord. of 11-1-1993, § 309; Ord. of 8-8-1994; Ord. of 11-3-1997; Ord. of 5-7-2001, § 309)

Sec. 14-150. Watershed protection permit.

- (a) Except where a single-family residence is constructed on a lot deeded prior to the effective date of the ordinance from which this article is derived, 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 Watershed Administrator. No Watershed Protection permit shall be issued except in conformity with the provisions of this article.

- (b) Watershed Protection Permit applications shall be filed with the Watershed Administrator. The application shall include a completed application form (see appendix A, on file in the county offices) and supporting documentation deemed necessary by the Watershed Administrator.
- (c) Prior to issuance of a Watershed Protection Permit, the Watershed Administrator may consult with qualified personnel for assistance to determine if the application meets the requirements of this article.
- (d) A Watershed Protection Permit shall expire if the applicant does not obtain a building permit or Watershed Occupancy Permit for such use within 12 months from the date of issuance.

(Ord. of 11-1-1993, § 310; Ord. of 8-8-1994; Ord. of 11-3-1997; Ord. of 5-7-2001, § 310)

Sec. 14-151. Building permit required.

No permit required under the State Building Code shall be issued for any activity for which a Watershed Protection Permit is required until that permit has been issued.

(Ord. of 11-1-1993, § 311; Ord. of 8-8-1994; Ord. of 11-3-1997; Ord. of 5-7-2001, § 311)

Sec. 14-152. Watershed protection occupancy permit.

- (a) The Watershed Administrator shall issue a Watershed Protection Occupancy Permit certifying that all requirements of this article 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 ten 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 article 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.

(Ord. of 11-1-1993, § 312; Ord. of 8-8-1994; Ord. of 11-3-1997; Ord. of 5-7-2001, § 312)

Secs. 14-153--14-180. Reserved.

DIVISION 4. PUBLIC HEALTH REGULATIONS

Sec. 14-181. General, provisions.

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 improper management of stormwater runoff; or any other situation found to pose a threat to water quality.

(Ord. of 11-1-1993, § 401; Ord. of 8-8-1994; Ord. of 11-3-1997; Ord. of 5-7-2001, § 401)

Sec. 14-182. 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 Watershed Review Board. The Watershed Administrator may consult with any public agency or official and request recommendations.
- (c) Where the Watershed Review Board 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.

(Ord. of 11-1-1993, § 402; Ord. of 8-8-1994; Ord. of 11-3-1997; Ord. of 6-7-2001, § 402)

Secs. 14-183--14-200. Reserved.

DIVISION 5. ADMINISTRATION, ENFORCEMENT AND APPEALS*

*Cross references: Administration, ch. 2.

Sec. 14-201. Watershed Administrator; duties.

The board of commissioners shall appoint a Watershed Administrator, who shall be duly sworn in. It shall be the duty of the Watershed Administrator to administer and enforce the provisions of this article as follows:

- (1) The Watershed Administrator shall issue Watershed Protection Permits and Watershed Protection Occupancy Permits as prescribed in this article. A record of all permits shall be kept on file and shall be available for public inspection during regular office hours of the Administrator.
- (2) The Watershed Administrator shall serve as clerk to the Watershed Review Board.
- (3) The Watershed Administrator shall keep records of all amendments to this article and shall provide copies of all amendments upon adoption to the Water Quality Section of the Division of Environmental Management.
- (4) The Watershed Administrator shall keep records of the jurisdiction's use of the provision that a maximum of ten percent of the noncritical area of WS-II and WS-III watersheds and, for local governments that do not choose to incorporate the high density option, ten percent of the protected area of WS-IV watersheds may be developed with new development at a maximum of 70 percent built-upon surface area. Records for each watershed shall include the total acres of noncritical watershed area, total acres eligible to be developed under this option, 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 stormwater management plan, if applicable.
- (5) The Watershed Administrator is granted the authority to administer and enforce the provisions of this article, 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 building, structure, or premises, as provided by law, to perform any duty imposed upon him by this article.
- (6) The Watershed Administrator shall keep a record of variances to this article. 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. of 11-1-1993, § 501; Ord. of 8-8-1994; Ord. of 11-3-1997; Ord. of 5-7-2001, § 501)

Sec. 14-202. 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 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 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 Board or by a court of record on application of notice of the officer from whom the appeal is taken and upon due cause shown.
- (d) The Board shall fix a reasonable time for hearing the appeal and give notice thereof to the parties and shall decide the same within a reasonable time. At the hearing, any party may appear in person, by agent or by attorney.

(Ord. of 11-1-1993, § 502; Ord. of 8-8-1994; Ord. of 11-3-1997; Ord. of 5-7-2001, § 502)

Sec. 14-203. Changes and amendments to article.

- (a) The 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 in this article.
- (b) No action shall be taken until the proposal has been submitted to the Watershed Review Board for review and recommendations. If no recommendation has been received from the Watershed Review Board within 45 days after submission of the proposal to the Chairman of the Watershed Review Board, 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 article 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, State Division of Environmental Health, and the State Division of Community Assistance.

(Ord. of 11-1-1993, § 503; Ord. of 8-8-1994; Ord. of 11-3-1997; Ord. of 5-7-2001, § 503)

Sec. 14-204. Public notice and hearing required.

Before adopting or amending this article, 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 ten nor more than 25 days before the date for the hearing.

(Ord. of 11-1-1993, § 504; Ord. of 8-8-1994; Ord. of 11-3-1997; Ord. of 5-7-2001, § 504)

Sec. 14-205. Watershed Review Board--Establishment.

The County Board of Adjustments and Appeals as created in section 20-31 et seq., is hereby designated as the Watershed Review Board.

(Ord. of 11-1-1993, § 505; Ord. of 8-8-1994; Ord. of 11-3-1997; Ord. of 5-7-2001, § 505)

Sec. 14-206. Same--Rules of conduct for members.

The board of commissioners for cause, including violation of the rules stated below, may remove members of the Board:

- (1) 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.
- (2) 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:
 - a. Cause him or his spouse to experience a direct financial benefit or loss, or
 - b. Will cause a business in which he or his spouse owns a ten percent 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).
- (3) 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 Watershed Administrator or any other member of the Board, its secretary or clerk prior to the hearing.
- (4) Members of the Board shall not express individual opinions on the proper judgment of any case prior to its determination on that case.
- (5) 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.
- (6) 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. of 11-1-1993, § 506; Ord. of 8-8-1994; Ord. of 11-3-1997; Ord. of 5-7-2001, § 506)

Sec. 14-207. Some--Powers and duties.

- (a) Administrative review. The Watershed Review Board shall hear and decide appeals from any decision or determination made by the Watershed Administrator in the enforcement of this article.
- (b) Variances. The Watershed Review Board shall have the power to authorize, in specific cases, minor variances from the terms of this article as will not be contrary to the public interests where, owing to special conditions, a literal enforcement of this article will result in practical difficulties or unnecessary hardship, so that the spirit of this article 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.
 - (1) Applications for a variance shall be made on the proper form obtainable from the Watershed Administrator 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, date of the original drawing, and an accurate record of any later revisions.
 - 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 Watershed Review Board 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 notice of the variance request may submit comments to the Watershed Administrator prior to a decision by the Watershed Review Board. Such comments shall become a part of the record of proceedings of the Watershed Review Board.
 - (2) Before the Watershed Review 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 this article. In order to determine that 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 this article, 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 an variance. Moreover, the Board shall consider whether the variance is the minimum possible deviation from the terms of the article that will make possible the reasonable use of his property.
 2. The hardship results from the application of this article to the property rather than from other factors such as deed restrictions or other hardship.
 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 this article, or who purchases the property after the effective date of the ordinance from which this article is derived, 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 this article 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 article. 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 Watershed Review 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 the applicant does not obtain a building permit or Watershed Occupancy Permit for such use within six months from the date of the decision.
- (6) If the application calls for the granting of a major variance, and if the Watershed Review 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:
 - 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 (i) the property owner can secure no reasonable return from, nor make any practical use of the property unless the proposed variance is granted, and (ii) 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, 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 (i) the property owner can secure a reasonable return from or make a practical use of the property without the

variance or (ii) 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 Watershed Review Board. The Board shall prepare a final decision denying the variance as proposed.

(c) Subdivision approval. See division 2 of this article.

(d) Public health. See division 4 of this article.

(e) Approval of all development greater than the low density option. See appendix C, on file in the county offices.

(Ord. of 11-1-1993, § 507; Ord. of 8-8-1994; Ord. of 11-3-1997; Ord. of 5-7-2001, § 507)

Sec. 14-208. Appeals from the Watershed Review Board.

Appeals from the Watershed Review Board 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.

(Ord. of 11-1-1993, § 508; Ord. of 8-8-1994; Ord. of 11-3-1997; Ord. of 5-7-2001, § 508)

Secs. 14-209--14-220. Reserved.

DIVISION 6. DEFINITIONS

Sec. 14-221. General definitions.

The following words, terms and phrases, when used in this division, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Agricultural use means the use of waters for stock watering, irrigation, and other farm purposes.

Best management practices (BMP) means 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 means 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 or rivers.

Building means 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 means and includes that portion of a development project 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.)

Cluster development means the grouping of buildings in order to conserve land resources and provide for innovation in the design of the project including minimizing stormwater runoff impacts. The term "cluster development" includes nonresidential development as well as single-family residential and multifamily developments. For the purpose of this article, planned unit developments and mixed use development are considered as cluster development.

Critical area means 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 means 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 percent 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 means 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.

Dwelling unit means a building, or portion thereof, providing complete and permanent living facilities for one family.

Existing development means those projects that are built or those projects that at a minimum have established a vested right under state zoning law as of the effective date of the ordinance from which this article is derived, 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;
- (2) Having an outstanding valid building permit as authorized by G.S. 153A-344.1 and G.S. 160A-385.1; or
- (3) Having an approved site specific or phased development plan as authorized by G.S. 153A-344.1 and G.S. 160A-385.1.

Existing lot and lot of record mean 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 the ordinance from which this article is derived, or a lot described by metes and bounds, the description of which has been so recorded prior to the adoption of the ordinance from which this article is derived.

Family means 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.

Family subdivision means a division of a tract of land to:

- (1) Convey the resulting parcels, with the exception of parcels retained by the grantor, to a relative or relatives as a gift or for nominal consideration, but only if no more than one parcel is conveyed by the grantor from the tract to any one relative; or
- (2) Divide land from a common ancestor among tenants in common, all of whom inherited by intestacy or by will.

Industrial development means any nonresidential 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 means a facility for the disposal of solid waste on land in a sanitary manner in accordance with G.S. 130A-290 et seq. For the purpose of this article the term "landfill" does not include composting facilities.

Lot means 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 such parcel.

Nonconforming lot of record means a lot described by a plat or a deed that was recorded prior to the effective date of the ordinance (or its amendments) from which this article is derived that does not meet the minimum lot size or other development requirements of the statewide watershed protection rules.

Nonresidential development means all development other than residential development, agriculture and silviculture.

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

Protected area means the area adjoining and upstream of the critical area of WS-IV watersheds. The boundaries of the protected area are defined as within five miles of and draining to the normal pool elevation of the reservoir or to the ridgeline of the watershed; or within ten miles upstream and draining to the intake located directly in the stream or river or to the ridgeline of the watershed.

Residential development means 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 means any solid or semisolid waste generated from a wastewater treatment plant, water treatment plant or air pollution control facility permitted under the authority of the environmental management commission.

Single-family residential means any development where:

- (1) No building contains more than one dwelling unit,
- (2) Every dwelling unit is on a separate lot, and
- (3) No lot contains more than one dwelling unit.

Street and road mean a right-of-way for vehicular traffic which affords the principal means of access to abutting properties.

Structure means 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 means any person, firm or corporation who subdivides or develops any land deemed to be a subdivision as defined in this article.

Subdivision means 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 includes 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 article:

- (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 article;
- (2) The division of land into parcels greater than five 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 article;
- (5) The division of a tract into plots or lots used as a cemetery.

Subdivision ordinance means the county's subdivision ordinance adopted by the board of commissioners, July 12, 1999, as amended, and set forth in article V, division 2, of this chapter.

Toxic substance means any substance or combination of substances (including disease causing agents) which after discharge and upon exposure, ingestion, inhalation, or assimilation into any organism, either directly from the environment or indirectly by ingestion through food chains, has the potential to cause death, disease, behavioral abnormalities, cancer, genetic mutations, physiological malfunctions (including malfunctions or suppression in reproduction or growth) or physical deformities in such organisms or their offspring or other adverse health effects.

Variance means 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 article.

Variance, major, means a variance from the minimum statewide watershed protection rules that results in any one or more of the following:

- (1) The relaxation, by a factor greater than ten percent, of any management requirement under the low-density option;
- (2) The relaxation, by a factor greater than five percent, of any buffer, density or built-upon area requirement under the high-density option;

(3) Any variation in the design, maintenance or operation requirements of a wet detention pond or other approved stormwater management system.

Variance, minor, means a variance from the minimum statewide watershed protection rules that results in a relaxation, by a factor of up to five percent of any buffer, density or built-upon area requirement under the high density option; or that results in a relaxation, by a factor of up to ten percent, of any management requirement under the low density option.

Water dependent structure means 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 means the entire land area contributing surface drainage to a specific point (e.g., the water supply intake.)

Watershed Administrator means an official or designated person of county responsible for administration and enforcement of this article.

(Ord. of 11-1-1993, § 601; Ord. of 8-8-1994; Ord. of 11-3-1997; Ord. of 5-7-2001, § 601)
Cross references: Definitions generally, § 1-2.

Sec. 14-222. Word interpretation.

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

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.

The term "person" includes a firm, association, corporation, trust, and company as well as an individual.

The term "structure" shall include the term "building."

The term "lot" shall include the terms, "plot," "parcel," or "tract."

The term "shall" is always mandatory and not merely directory.

The term "will" is always mandatory and not merely directory.

(Ord. of 11-1-1993, § 602; Ord. of 8-8-1994; Ord. of 11-3-1997; Ord. of 5-7-2001, § 602)