

# ARTICLE V. ENVIRONMENTAL STANDARDS

## 5.1 Overlay Districts

### A. Flood Overlay District (FPO).

#### 1. Statutory Authorization, Findings of Facts, Purpose and Objectives

##### a. Statutory Authorization.

The Legislature of the State of North Carolina has in Part 6, Article 21 of Chapter 143; Article 6 of Chapter 153A; Article 8 of Chapter 160A; and Article 7, 9, and 11 of Chapter 160D of the North Carolina General Statutes, delegated to local governmental units the authority to adopt regulations designed to promote the public health, safety, and general welfare

##### b. Findings of Fact.

- (1) The flood prone areas within the jurisdiction of Town of North Wilkesboro are subject to periodic inundation which results in loss of life, property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures of flood protection and relief, and impairment of the tax base, all of which adversely affect the public health, safety, and general welfare.
- (2) These flood losses are caused by the cumulative effect of obstructions in floodplains causing increases in flood heights and velocities and by the occupancy in flood prone areas of uses vulnerable to floods or other hazards.

##### c. Statement of Purpose.

It is the purpose of this ordinance to promote public health, safety, and general welfare and to minimize public and private losses due to flood conditions within flood prone areas by provisions designed to:

- (1) Restrict or prohibit uses that are dangerous to health, safety, and property due to water or erosion hazards or that result in damaging increases in erosion, flood heights or velocity
- (2) Require that uses vulnerable to floods, including facilities that serve such uses, be protected against flood damage at the time of initial construction;
- (3) Control the alteration of natural floodplains, stream channels, and natural protective barriers, which are involved in the accommodation of floodwaters;
- (4) Control filling, grading, dredging, and all other development that may increase erosion or flood damage; and
- (5) Prevent or regulate the construction of flood barriers that will unnaturally divert flood waters or which may increase flood hazards to other lands.

##### d. Objectives.

The objectives of this ordinance are to:

- (1) Protect human life, safety, and health;
- (2) Minimize expenditure of public money for costly flood control projects;
- (3) Minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;
- (4) Minimize prolonged business losses and interruptions;
- (5) Minimize damage to public facilities and utilities (i.e. water and gas mains, electric, telephone, cable and sewer lines, streets, and bridges) that are located in flood prone areas;
- (6) Minimize damage to private and public property due to flooding;
- (7) Make flood insurance available to the community through the National Flood Insurance Program;
- (8) Maintain the natural and beneficial functions of floodplains;
- (9) Help maintain a stable tax base by providing for the sound use and development of flood prone areas; and
- (10) Ensure that potential buyers are aware that property is in a Special Flood Hazard Area.

## **2. General Provisions.**

### **a. Lands to which this Ordinance Applies.**

This ordinance shall apply to all Special Flood Hazard Areas within the jurisdiction, including the Extra-Territorial Jurisdictions (ETJs), as allowed by law of Town of North Wilkesboro.

### **b. Basis for Establishing the Special Flood Hazard Areas.**

The Special Flood Hazard Areas are those identified under the Cooperating Technical State (CTS) agreement between the State of North Carolina and FEMA in its FIS dated March 2<sup>nd</sup>, 2009 for Wilkes County and associated DFIRM panels, including any digital data developed as part of the FIS, which are adopted by reference and declared a part of this Zoning Ordinance, and all revisions thereto. Additionally, the most recent updated Flood Insurance Rate Maps adopted by FEMA are declared to be part of this ordinance.

### **c. Establishment of Floodplain Development Permit.**

A Floodplain Development Permit shall be required in conformance with the provisions of this ordinance prior to the commencement of any development activities within Special Flood Hazard Areas determined in accordance with the provisions of Section 6.5(C) Article 3, B of this overlay district ordinance.

### **d. Compliance.**

No structure or land shall hereafter be located, extended, converted, altered, or developed in any way without full compliance with the terms of this ordinance and other applicable regulations.

**e. Abrogation and Greater Restrictions.**

This ordinance is not intended to repeal, abrogate, or impair any existing easements, covenants, or deed restrictions. However, where this ordinance and another conflict or overlap, whichever imposes the more stringent restrictions shall prevail.

**f. Interpretation.**

In the interpretation and application of this ordinance, all provisions shall be:

- (1) Considered as minimum requirements;
- (2) Liberally construed in favor of the Board of Commissioners; and
- (3) Deemed neither to limit nor repeal any other powers granted under State statutes.

**g. Warning and Disclaimer of Liability.**

The degree of flood protection required by this ordinance is considered reasonable for regulatory purposes and is based on scientific and engineering consideration. Larger floods can and will occur. Actual flood heights may be increased by man-made or natural causes. This ordinance does not imply that land outside the Special Flood Hazard Areas or uses permitted within such areas will be free from flooding or flood damages. This ordinance shall not create liability on the part of Town of North Wilkesboro or by any officer or employee thereof for any flood damages that result from reliance on this ordinance or any administrative decision lawfully made hereunder.

**h. Penalties for Violation.**

Violation of the provisions of this ordinance or failure to comply with any of its requirements, including violation of conditions and safeguards established in connection with grants of variance or special exceptions, shall constitute a Class 1 misdemeanor pursuant to NC G.S. § 143-215.58. Any person who violates this ordinance or fails to comply with any of its requirements shall, upon conviction thereof, be fined not more than \$100.00 or imprisoned for not more than thirty (30) days, or both. Each day such violation continues shall be considered a separate offense. Nothing herein contained shall prevent the Town of North Wilkesboro from taking such other lawful action as is necessary to prevent or remedy any violation.

**3. Administration.**

**a. Designation of Floodplain Administrator.**

The Planning Director, hereinafter referred to as the "Floodplain Administrator", is hereby appointed to administer and implement the provisions of this ordinance. In instances where the Floodplain Administrator receives assistance from others to complete tasks to administer and implement this ordinance, the Floodplain Administrator shall be responsible for the coordination and community's overall compliance with the National Flood Insurance Program and the provisions of this ordinance.

**b. Floodplain development application, permit and certification requirements.**

**(1) Application Requirements.**

Application for a Floodplain Development Permit shall be made to the Floodplain Administrator prior to any development activities located within Special Flood Hazard Areas. The following items shall be presented to the Floodplain Administrator to apply for a floodplain development permit:

- (a)** A plot plan drawn to scale which shall include, but shall not be limited to, the following specific details of the proposed floodplain development
  - (i)** The nature, location, dimensions, and elevations of the area of development/disturbance; existing and proposed structures, utility systems, grading/pavement areas, fill materials, storage areas, drainage facilities, and other development;
  - (ii)** The boundary of the Special Flood Hazard Area as delineated on the FIRM or other flood map as determined in Section 6.5 (C) Article 3, B, or a statement that the entire lot is within the Special Flood Hazard Area;
  - (iii)** Flood zone(s) designation of the proposed development area as determined on the FIRM or other flood map as determined in Section 6.5 (C) Article 3, B;
  - (iv)** The boundary of the floodway(s) or non-encroachment area(s) as determined in Section 6.5 (C) Article 3, B;
  - (v)** The Base Flood Elevation (BFE) where provided as set forth in Section 6.5 (C): Article 3, B; Article 4, C; or Article 5, D;
  - (vi)** The old and new location of any watercourse that will be altered or relocated as a result of proposed development; and
  - (vii)** The certification of the plot plan by a registered land surveyor or professional engineer.
- (b)** Proposed elevation, and method thereof, of all development within a Special Flood Hazard Area including but not limited to:
  - (i)** Elevation in relation to NAVD 1988 of the proposed reference level (including basement) of all structures;
  - (ii)** Elevation in relation to NAVD 1988 to which any non-residential structure in Zones A, AE, AH, AO, A99 will be floodproofed; and
  - (iii)** Elevation in relation to NAVD 1988 to which any proposed utility systems will be elevated or floodproofed.
- (c)** If floodproofing, a Floodproofing Certificate (FEMA Form 086-0-34) with supporting data, an operational plan, and an inspection and maintenance plan that include, but are not limited to, installation, exercise, and maintenance of floodproofing measures.
- (d)** A Foundation Plan, drawn to scale, which shall include details of the proposed foundation system to ensure all provisions of this ordinance are met. These

details include but are not limited to.

(i) The proposed method of elevation, if applicable (i.e., fill, solid foundation perimeter wall, solid backfilled foundation, open foundation on columns/posts/piers/piles/shear walls); and

(ii) Openings to facilitate automatic equalization of hydrostatic flood forces on walls in accordance with Article 5, Section B(4)(d) when solid foundation perimeter walls are used in Zones A, AE, AH, AO, A99.

(e) Usage details of any enclosed areas below the lowest floor.

(f) Plans and/or details for the protection of public utilities and facilities such as sewer, gas, electrical, and water systems to be located and constructed to minimize flood damage.

(g) Certification that all other Local, State and Federal permits required prior to floodplain development permit issuance have been received.

(h) Documentation for placement of Recreational Vehicles and/or Temporary Structures, when applicable, to ensure that the provisions of Section 6.5 (C) Article 5, B, subsections (6) and (7) of this ordinance are met.

(i) A description of proposed watercourse alteration or relocation, when applicable, including an engineering report on the effects of the proposed project on the flood-carrying capacity of the watercourse and the effects to properties located both upstream and downstream; and a map (if not shown on plot plan) showing the location of the proposed watercourse alteration or relocation.

(2) **Permit Requirements.** The Floodplain Development Permit shall include, but not be limited to:

(a) A complete description of all the development to be permitted under the floodplain development permit (e.g. house, garage, pool, septic, bulkhead, cabana, pier, bridge, mining, dredging, filling, grading, paving, excavation or drilling operations, or storage of equipment or materials, etc.).

(b) The Special Flood Hazard Area determination for the proposed development in accordance with available data specified in Section 6.5 (C) Article 3, B.

(c) The Regulatory Flood Protection Elevation required for the reference level and all attendant utilities.

(d) The Regulatory Flood Protection Elevation required for the protection of all public utilities.

(e) All certification submittal requirements with timelines.

(f) A statement that no fill material or other development shall encroach into the floodway or non-encroachment area of any watercourse unless the requirements of Section 6.5 (C) Article 5, F have been met.

(g) The flood openings requirements.

- (h) Limitations of below BFE enclosure uses (if applicable). (i.e., parking, building access and limited storage only).
- (i) A statement, that all materials below BFE/RFPE must be flood resistant materials.

**(3) Certification Requirements.**

**(a) Elevation Certificates**

The use of the FEMA Elevation Certificate is required for the purchase of flood insurance and mandatory for CRS participation.

- (i) *Elevation Certificate (FEMA Form 086-0-33)* is required prior to the actual start of any new construction. It shall be the duty of the permit holder to submit to the Floodplain Administrator a certification of the elevation of the reference level, in relation to NAVD 1988. The Floodplain Administrator shall review the certificate data submitted. Deficiencies detected by such review shall be corrected by the permit holder prior to the beginning of construction. Failure to submit the certification or failure to make required corrections shall be cause to deny a floodplain development permit.
- (ii) *Elevation Certificate (FEMA Form 086-0-33)* is required after the reference level is established. Within seven (7) calendar days of establishment of the reference level elevation, it shall be the duty of the permit holder to submit to the Floodplain Administrator a certification of the elevation of the reference level, in relation to NAVD 1988. Any work done within the seven (7) day calendar period and prior to submission of the certification shall be at the permit holder's risk. The Floodplain Administrator shall review the certificate data submitted. Deficiencies detected by such review shall be corrected by the permit holder immediately and prior to further work being permitted to proceed. Failure to submit the certification or failure to make required corrections shall be cause to issue a stop-work order for the project.
- (iii) A final *Finished Construction Elevation Certificate (FEMA Form 086-0-33)* is required after construction is completed and prior to Certificate of Compliance/Occupancy issuance. It shall be the duty of the permit holder to submit to the Floodplain Administrator a certification of final as-built construction of the elevation of the reference level and all attendant utilities. The Floodplain Administrator shall review the certificate data submitted. Deficiencies detected by such review shall be corrected by the permit holder immediately and prior to Certificate of Compliance/Occupancy issuance. In some instances, another certification may be required to certify corrected as-built construction. Failure to submit the certification or failure to make required corrections shall be cause to withhold the issuance of a Certificate of Compliance/Occupancy. The Finished Construction Elevation Certificate certifier shall provide at least 2 photographs showing the front and rear of the building taken within 90 days from the date of certification. The photographs must be taken with views confirming the building description and diagram number provided in Section A. To the extent possible, these photographs should show the entire building including foundation. If the building has split-level

or multi-level areas, provide at least 2 additional photographs showing side views of the building. In addition, when applicable, provide a photograph of the foundation showing a representative example of the flood openings or vents. All photographs must be in color and measure at least 3" x 3". Digital photographs are acceptable.

**(b) Floodproofing Certificate**

- (i)** If non-residential floodproofing is used to meet the Regulatory Flood Protection Elevation requirements, a *Floodproofing Certificate (FEMA Form 086-0-34)*, with supporting data, an operational plan, and an inspection and maintenance plan are required prior to the actual start of any new construction. It shall be the duty of the permit holder to submit to the Floodplain Administrator a certification of the floodproofed design elevation of the reference level and all attendant utilities, in relation to NAVD 1988. Floodproofing certification shall be prepared by or under the direct supervision of a professional engineer or architect and certified by same. The Floodplain Administrator shall review the certificate data, the operational plan, and the inspection and maintenance plan. Deficiencies detected by such review shall be corrected by the applicant prior to permit approval. Failure to submit the certification or failure to make required corrections shall be cause to deny a Floodplain Development Permit. Failure to construct in accordance with the certified design shall be cause to withhold the issuance of a Certificate of Compliance/Occupancy. The FEMA Floodproofing Certificate is optional at the time of permitting the structure but recommended to ensure compliance with this ordinance and properly permit the structure.
- (ii)** A final *Finished Construction Floodproofing Certificate (FEMA Form 086-0-34)*, with supporting data, an operational plan, and an inspection and maintenance plan are required prior to the issuance of a Certificate of Compliance/Occupancy. It shall be the duty of the permit holder to submit to the Floodplain Administrator a certification of the floodproofed design elevation of the reference level and all attendant utilities, in relation to NAVD 1988. Floodproofing certificate shall be prepared by or under the direct supervision of a professional engineer or architect and certified by same. The Floodplain Administrator shall review the certificate data, the operational plan, and the inspection and maintenance plan. Deficiencies detected by such review shall be corrected by the applicant prior to Certificate of Occupancy. Failure to submit the certification or failure to make required corrections shall be cause to deny a Floodplain Development Permit. Failure to construct in accordance with the certified design shall be cause to deny a Certificate of Compliance/Occupancy.
- (c)** If a manufactured home is placed within Zones A, AE, AH, AO, A99 and the elevation of the chassis is more than 36 inches in height above grade, an engineered foundation certification is required in accordance with the provisions of Section 6.5 (C) Article 5, B(3)(b).
- (d)** If a watercourse is to be altered or relocated, a description of the extent of watercourse alteration or relocation; a professional engineer's certified report on the effects of the proposed project on the flood-carrying capacity of the watercourse and the effects to properties located both upstream and downstream; and a map showing the location of the proposed watercourse

alteration or relocation shall all be submitted by the permit applicant prior to issuance of a floodplain development permit.

- (e) Certification Exemptions. The following structures, if located within Zones A, AE, AH, AO, A99, are exempt from the elevation/floodproofing certification requirements specified in items (a) and (b) of this subsection:
  - (i) Recreational Vehicles meeting requirements of Section 6.5 (C) Article 5, B (6) (a);
  - (ii) Temporary Structures meeting requirements of Section 6.5 (C) Article 5, B (7); and
  - (iii) Accessory Structures that are 150 square feet or less or less and meeting requirements of Section 6.5 (C) Article 5, B (8).

**(4) Determinations for Existing Buildings and Structures.**

For applications for building permits to improve buildings and structures, including alterations, movement, enlargement, replacement, repair, change of occupancy, additions, rehabilitations, renovations, substantial improvements, repairs of substantial damage, and any other improvement of or work on such buildings and structures, the Floodplain Administrator, in coordination with the Building Inspector, shall:

- (a) Estimate the market value, or require the applicant to obtain an appraisal of the market value prepared by a qualified independent appraiser, of the building or structure before the start of construction of the proposed work; in the case of repair, the market value of the building or structure shall be the market value before the damage occurred and before any repairs are made;
- (b) Compare the cost to perform the improvement, the cost to repair a damaged building to its pre-damaged condition, or the combined costs of improvements and repairs, if applicable, to the market value of the building or structure;
- (c) Determine and document whether the proposed work constitutes substantial improvement or repair of substantial damage; and
- (d) Notify the applicant if it is determined that the work constitutes substantial improvement or repair of substantial damage and that compliance with the flood resistant construction requirements of the NC Building Code and this ordinance is required.

**c. Duties and Responsibilities of the Floodplain Administrator**

**d. The Floodplain Administrator shall perform, but not be limited to, the following duties:**

- (1) Review all floodplain development applications and issue permits for all proposed development within Special Flood Hazard Areas to assure that the requirements of this ordinance have been satisfied.
- (2) Review all proposed development within Special Flood Hazard Areas to assure that all necessary local, state and federal permits have been received, including Section 404 of the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. 1334.

- (3)** Notify adjacent communities and the North Carolina Department of Public Safety, Division of Emergency Management, State Coordinator for the National Flood Insurance Program prior to any alteration or relocation of a watercourse, and submit evidence of such notification to the Federal Emergency Management Agency (FEMA).
- (4)** Assure that maintenance is provided within the altered or relocated portion of said watercourse so that the flood-carrying capacity is maintained.
- (5)** Prevent encroachments into floodways and non-encroachment areas unless the certification and flood hazard reduction provisions of Article 5, Section F are met.
- (6)** Obtain actual elevation (in relation to NAVD 1988) of the reference level (including basement) and all attendant utilities of all new and substantially improved structures, in accordance with the provisions of Article 4, Section B(3).
- (7)** Obtain actual elevation (in relation to NAVD 1988) to which all new and substantially improved structures and utilities have been floodproofed, in accordance with the provisions of Article 4, Section B(3).
- (8)** Obtain actual elevation (in relation to NAVD 1988) of all public utilities in accordance with the provisions of Article 4, Section B(3).
- (9)** When floodproofing is utilized for a particular structure, obtain certifications from a registered professional engineer or architect in accordance with the provisions of Section 6.5(C): Article 4, B(3) and Article 5, B(2).
- (10)** Where interpretation is needed as to the exact location of boundaries of the Special Flood Hazard Areas, floodways, or non-encroachment areas (for example, where there appears to be a conflict between a mapped boundary and actual field conditions), make the necessary interpretation. The person contesting the location of the boundary shall be given a reasonable opportunity to appeal the interpretation as provided in this Article.
- (11)** When BFE data has not been provided in accordance with the provisions of Section 6.5(C) Article 3, B, obtain, review, and reasonably utilize any BFE data, along with floodway data or non-encroachment area data available from a federal, state, or other source, including data developed pursuant to Section 6.5(C) Article 5, D(2)(c), in order to administer the provisions of this ordinance.
- (12)** When BFE data is provided but no floodway or non-encroachment area data has been provided in accordance with the provisions of Section 6.5(C) Article 3, B, obtain, review, and reasonably utilize any floodway data or non-encroachment area data available from a federal, state, or other source in order to administer the provisions of this ordinance.
- (13)** Permanently maintain all records that pertain to the administration of this ordinance and make these records available for public inspection, recognizing that such information may be subject to the Privacy Act of 1974, as amended.
- (14)** Make on-site inspections of work in progress. As the work pursuant to a floodplain development permit progresses, the Floodplain Administrator shall make as many inspections of the work as may be necessary to ensure that the work is being done

according to the provisions of the local ordinance and the terms of the permit. In exercising this power, the Floodplain Administrator has a right, upon presentation of proper credentials, to enter on any premises within the jurisdiction of the community at any reasonable hour for the purposes of inspection or other enforcement action.

- (15) Issue stop-work orders as required. Whenever a building or part thereof is being constructed, reconstructed, altered, or repaired in violation of this ordinance, the Floodplain Administrator may order the work to be immediately stopped. The stop-work order shall be in writing and directed to the person doing or in charge of the work. The stop-work order shall state the specific work to be stopped, the specific reason(s) for the stoppage, and the condition(s) under which the work may be resumed. Violation of a stop-work order constitutes a misdemeanor.
- (16) Revoke floodplain development permits as required. The Floodplain Administrator may revoke and require the return of the floodplain development permit by notifying the permit holder in writing stating the reason(s) for the revocation. Permits shall be revoked for any substantial departure from the approved application, plans, and specifications; for refusal or failure to comply with the requirements of State or local laws; or for false statements or misrepresentations made in securing the permit. Any floodplain development permit mistakenly issued in violation of an applicable State or local law may also be revoked.
- (17) Make periodic inspections throughout the Special Flood Hazard Areas within the jurisdiction of the community. The Floodplain Administrator and each member of his or her inspections department shall have a right, upon presentation of proper credentials, to enter on any premises within the territorial jurisdiction of the department at any reasonable hour for the purposes of inspection or other enforcement action.
- (18) Follow through with corrective procedures of Section 6.5 (C) Article 4, D.
- (19) Review, provide input, and make recommendations for variance requests.
- (20) Maintain a current map repository to include, but not limited to, historical and effective FIS Report, historical and effective FIRM and other official flood maps and studies adopted in accordance with the provisions of Section 6.5 (C) Article 3, B of this ordinance, including any revisions thereto including Letters of Map Change, issued by FEMA. Notify State and FEMA of mapping needs.
- (21) Coordinate revisions to FIS reports and FIRMs, including Letters of Map Revision Based on Fill (LOMR-Fs) and Letters of Map Revision (LOMRs).
- (22) When the lowest floor and the lowest adjacent grade of a structure or the lowest ground elevation of a parcel in a Special Flood Hazard Area is above the BFE, advise the property owner of the option to apply for a Letter of Map Amendment (LOMA) from FEMA. Maintain a copy of the LOMA issued by FEMA in the floodplain development permit file.

**e. Corrective Procedures.**

- (1) Violations to be corrected: When the Floodplain Administrator finds violations of applicable state and local laws; it shall be his or her duty to notify the owner or occupant of the building of the violation. The owner or occupant shall immediately

remedy each of the violations of law cited in such notification.

- (2) **Actions in Event of Failure to Take Corrective Action:** If the owner of a building or property shall fail to take prompt corrective action, the Floodplain Administrator shall give the owner written notice, by certified or registered mail to the owner's last known address or by personal service, stating:
  - (a) That the building or property is in violation of the floodplain management regulations;
  - (b) That a hearing will be held before the Floodplain Administrator at a designated place and time, not later than ten (10) days after the date of the notice, at which time the owner shall be entitled to be heard in person or by counsel and to present arguments and evidence pertaining to the matter; and
    - (i) That following the hearing, the Floodplain Administrator may issue an order to alter, vacate, or demolish the building; or to remove fill as applicable.
- (3) **Order to Take Corrective Action:** If, upon a hearing held pursuant to the notice prescribed above, the Floodplain Administrator shall find that the building or development is in violation of the Flood Damage Prevention Ordinance, he or she shall issue an order in writing to the owner, requiring the owner to remedy the violation within a specified time period, not less than sixty (60) calendar days, nor more than least one-hundred and eighty (180) calendar days. Where the Floodplain Administrator finds that there is imminent danger to life or other property, he or she may order that corrective action be taken in such lesser period as may be feasible.
- (4) **Appeal:** Any owner who has received an order to take corrective action may appeal the order to the Board of Commissioners by giving notice of appeal in writing to the Floodplain Administrator and the clerk within ten (10) days following issuance of the final order. In the absence of an appeal, the order of the Floodplain Administrator shall be final. The local Board of Commissioners shall hear an appeal within a reasonable time and may affirm, modify and affirm, or revoke the order.
- (5) **Failure to Comply with Order:** If the owner of a building or property fails to comply with an order to take corrective action for which no appeal has been made or fails to comply with an order of the Board of Commissioners following an appeal, the owner shall be guilty of a Class 1 misdemeanor pursuant to NC G.S. § 143-215.58 and shall be punished at the discretion of the court.

**f. Variance Procedures.**

- (1) The Board of Adjustment as established by the Town of North Wilkesboro, hereinafter referred to as the "appeal board", shall hear and decide requests for variances from the requirements of this ordinance.
- (2) Any person aggrieved by the decision of the appeal board may appeal such decision to the Court, as provided in Chapter 7A of the North Carolina General Statutes.
- (3) Variances may be issued for:

- (a) The repair or rehabilitation of historic structures upon the determination that the proposed repair or rehabilitation will not preclude the structure's continued designation as a historic structure and that the variance is the minimum necessary to preserve the historic character and design of the structure;
  - (b) Functionally dependent facilities if determined to meet the definition as stated in Section 6.5(C) Article 2 of this ordinance, provided provisions of Section 6.5(C) Article 4, E (9) (b), (c), and (e) have been satisfied, and such facilities are protected by methods that minimize flood damages during the base flood and create no additional threats to public safety; or
  - (c) Any other type of development provided it meets the requirements of this Section.
- (4) In passing upon variances, the appeal board shall consider all technical evaluations, all relevant factors, all standards specified in other sections of this ordinance, and:
- (a) The danger that materials may be swept onto other lands to the injury of others;
  - (b) The danger to life and property due to flooding or erosion damage;
  - (c) The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;
  - (d) The importance of the services provided by the proposed facility to the community;
  - (e) The necessity to the facility of a waterfront location as defined under Section 6.5(C) Article 2 of this ordinance as a functionally dependent facility, where applicable;
  - (f) The availability of alternative locations, not subject to flooding or erosion damage, for the proposed use;
  - (g) The compatibility of the proposed use with existing and anticipated development;
  - (h) The relationship of the proposed use to the comprehensive plan and floodplain management program for that area;
  - (i) The safety of access to the property in times of flood for ordinary and emergency vehicles;
  - (j) The expected heights, velocity, duration, rate of rise, and sediment transport of the floodwaters and the effects of wave action, if applicable, expected at the site; and
  - (k) The costs of providing governmental services during and after flood conditions including maintenance and repair of public utilities and facilities such as sewer, gas, electrical and water systems, and streets and bridges.
- (5) A written report addressing each of the above factors shall be submitted with the application for a variance.

- (6) Upon consideration of the factors listed above and the purposes of this ordinance, the appeal board may attach such conditions to the granting of variances as it deems necessary to further the purposes and objectives of this ordinance.
- (7) Any applicant to whom a variance is granted shall be given written notice specifying the difference between the BFE and the elevation to which the structure is to be built and that such construction below the BFE increases risks to life and property, and that the issuance of a variance to construct a structure below the BFE may result in increased premium rates for flood insurance up to \$25 per \$100 of insurance coverage. Such notification shall be maintained with a record of all variance actions, including justification for their issuance.
- (8) The Floodplain Administrator shall maintain the records of all appeal actions and report any variances to the FEMA and the State of North Carolina upon request.
- (9) Conditions for Variances:
- (a) Variances shall not be issued when the variance will make the structure in violation of other federal, state, or local laws, regulations, or ordinances.
  - (b) Variances shall not be issued within any designated floodway or non-encroachment area if the variance would result in any increase in flood levels during the base flood discharge.
  - (c) Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.
  - (d) Variances shall only be issued prior to development permit approval.
  - (e) Variances shall only be issued upon:
    - (i) A showing of good and sufficient cause;
    - (ii) A determination that failure to grant the variance would result in exceptional hardship; and
    - (iii) A determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, or extraordinary public expense, create nuisance, cause fraud on or victimization of the public, or conflict with existing local laws or ordinances.
- (10) A variance may be issued for solid waste disposal facilities or sites, hazardous waste management facilities, salvage yards, and chemical storage facilities that are located in Special Flood Hazard Areas provided that all of the following conditions are met.
- (a) The use serves a critical need in the community.
  - (b) No feasible location exists for the use outside the Special Flood Hazard Area.
  - (c) The reference level of any structure is elevated or floodproofed to at least the Regulatory Flood Protection Elevation.

- (d) The use complies with all other applicable federal, state and local laws.
- (e) The Town of North Wilkesboro has notified the Secretary of the North Carolina Department of Public Safety of its intention to grant a variance at least thirty (30) calendar days prior to granting the variance.

#### **4. Provisions for Flood Hazard Reduction.**

##### **a. General Standards.**

In all Special Flood Hazard Areas the following provisions are required:

- (1) All new construction and substantial improvements shall be designed (or modified) and adequately anchored to prevent flotation, collapse, and lateral movement of the structure.
- (2) All new construction and substantial improvements shall be constructed with materials and utility equipment resistant to flood damage in accordance with the FEMA Technical Bulletin 2, *Flood Damage-Resistant Materials Requirements*.
- (3) All new construction and substantial improvements shall be constructed by methods and practices that minimize flood damages.
- (4) All new electrical, heating, ventilation, plumbing, air conditioning equipment, and other service equipment shall be located at or above the RFPE or designed and installed to prevent water from entering or accumulating within the components during the occurrence of the base flood. These include, but are not limited to, HVAC equipment, water softener units, bath/kitchen fixtures, ductwork, electric/gas meter panels/boxes, utility/cable boxes, hot water heaters, and electric outlets/switches.
  - (a) Replacements part of a substantial improvement, electrical, heating, ventilation, plumbing, air conditioning equipment, and other service equipment shall also meet the above provisions.
  - (b) Replacements that are for maintenance and not part of a substantial improvement, may be installed at the original location provided the addition and/or improvements only comply with the standards for new construction consistent with the code and requirements for the original structure.
- (5) All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of floodwaters into the system.
- (6) New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of floodwaters into the systems and discharges from the systems into flood waters.
- (7) On-site waste disposal systems shall be located and constructed to avoid impairment to them or contamination from them during flooding.
- (8) Nothing in this ordinance shall prevent the repair, reconstruction, or replacement of a building or structure existing on the effective date of this ordinance and located totally or partially within the floodway, non-encroachment area, or stream setback, provided there is no additional encroachment below the Regulatory Flood

Protection Elevation in the floodway, non- encroachment area, or stream setback, and provided that such repair, reconstruction, or replacement meets all of the other requirements of this ordinance.

- (9) New solid waste disposal facilities and sites, hazardous waste management facilities, salvage yards, and chemical storage facilities shall not be permitted, except by variance as specified in Section 6.5 (C) Article 4, E (10). A structure or tank for chemical or fuel storage incidental to an allowed use or to the operation of a water treatment plant or wastewater treatment facility may be located in a Special Flood Hazard Area only if the structure or tank is either elevated or floodproofed to at least the Regulatory Flood Protection Elevation and certified in accordance with the provisions of Section 6.5 (C) Article 4, B (3).
- (10) All subdivision proposals and other development proposals shall be consistent with the need to minimize flood damage.
- (11) All subdivision proposals and other development proposals shall have public utilities and facilities such as sewer, gas, electrical, and water systems located and constructed to minimize flood damage.
- (12) All subdivision proposals and other development proposals shall have adequate drainage provided to reduce exposure to flood hazards.
- (13) All subdivision proposals and other development proposals shall have received all necessary permits from those governmental agencies for which approval is required by federal or state law, including Section 404 of the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. 1334.
- (14) When a structure is partially located in a Special Flood Hazard Area, the entire structure shall meet the requirements for new construction and substantial improvements.
- (15) When a structure is located in a flood hazard risk zone with multiple base flood elevations, the provisions for the more restrictive flood hazard risk zone and the highest BFE shall apply.
- (16) Buildings and structures that are located in more than one flood hazard area shall comply with the provisions associated with the most restrictive flood hazard area.

**b. Specific Standards.**

In all Special Flood Hazard Areas where BFE data has been provided, as set forth in Section 6.5 Article 3, B, or Section 6.5 (C) Article 5, D, the following provisions, in addition to the provisions of Article 5, Section A, are required:

- (1) Residential Construction. New construction and substantial improvement of any residential structure (including manufactured homes) shall have the reference level, including basement, elevated no lower than the Regulatory Flood Protection Elevation, as defined in Section 5.3 Definitions of the Zoning Ordinance.
- (2) Non-Residential Construction. New construction and substantial improvement of any commercial, industrial, or other non-residential structure shall have the reference level, including basement, elevated no lower than the Regulatory Flood Protection Elevation, as defined in Section 5.3 Definitions of the Zoning Ordinance.

Structures located in Zones A, AE, AH, AO, A99 may be floodproofed to the Regulatory Flood Protection Elevation in lieu of elevation provided that all areas of the structure, together with attendant utility and sanitary facilities, below the Regulatory Flood Protection Elevation are watertight with walls substantially impermeable to the passage of water, using structural components having the capability of resisting hydrostatic and hydrodynamic loads and the effect of buoyancy. For AO Zones, the floodproofing elevation shall be in accordance with Section 6.5 (C) Article 5, G (2). A registered professional engineer or architect shall certify that the floodproofing standards of this subsection are satisfied. Such certification shall be provided to the Floodplain Administrator as set forth in Section 6.5(C) Article 4, B (3), along with the operational plan and the inspection and maintenance plan.

**(3) Manufactured Homes**

- (a)** New and replacement manufactured homes shall be elevated so that the reference level of the manufactured home is no lower than the Regulatory Flood Protection Elevation, as defined in Section 5.3 Definitions of the Zoning Ordinance.
- (b)** Manufactured homes shall be securely anchored to an adequately anchored foundation to resist flotation, collapse, and lateral movement, either by certified engineered foundation system, or in accordance with the most current edition of the State of North Carolina Regulations for Manufactured Homes adopted by the Commissioner of Insurance pursuant to NCGS 143-143.15. Additionally, when the elevation would be met by an elevation of the chassis thirty-six (36) inches or less above the grade at the site, the chassis shall be supported by reinforced piers or engineered foundation. When the elevation of the chassis is above thirty-six (36) inches in height, an engineering certification is required.
- (c)** All enclosures or skirting below the lowest floor shall meet the requirements of Section 6.5(C) Article 5, B (4).
- (d)** An evacuation plan must be developed for evacuation of all residents of all new, substantially improved or substantially damaged manufactured home parks or subdivisions located within flood prone areas. This plan shall be filed with and approved by the Floodplain Administrator and the local Emergency Management Coordinator.

**(4) Elevated Buildings**. Fully enclosed area, of new construction and substantially improved structures, which is below the lowest floor:

- (a)** Shall not be designed or used for human habitation, but shall only be used for parking of vehicles, building access, or limited storage of maintenance equipment used in connection with the premises. Access to the enclosed area shall be the minimum necessary to allow for parking of vehicles (garage door) or limited storage of maintenance equipment (standard exterior door), or entry to the living area (stairway or elevator). The interior portion of such enclosed area shall not be finished or partitioned into separate rooms, except to enclose storage areas;
- (b)** Shall not be temperature-controlled or conditioned;
- (c)** Shall be constructed entirely of flood resistant materials at least to the

Regulatory Flood Protection Elevation; and

- (d)** Shall include flood openings to automatically equalize hydrostatic flood forces on walls by allowing for the entry and exit of floodwaters. To meet this requirement, the openings must either be certified by a professional engineer or architect or meet or exceed the following minimum design criteria:
- (i)** A minimum of two flood openings on different sides of each enclosed area subject to flooding;
  - (ii)** The total net area of all flood openings must be at least one (1) square inch for each square foot of enclosed area subject to flooding;
  - (iii)** If a building has more than one enclosed area, each enclosed area must have flood openings to allow floodwaters to automatically enter and exit;
  - (iv)** The bottom of all required flood openings shall be no higher than one (1) foot above the higher of the interior or exterior adjacent grade;
  - (v)** Flood openings may be equipped with screens, louvers, or other coverings or devices, provided they permit the automatic flow of floodwaters in both directions; and
  - (vi)** Enclosures made of flexible skirting are not considered enclosures for regulatory purposes, and, therefore, do not require flood openings. Masonry or wood underpinning, regardless of structural status, is considered an enclosure and requires flood openings as outlined above.
- (e)** Additions/Improvements
- (i)** Additions and/or improvements to pre-FIRM structures when the addition and/or improvements in combination with any interior modifications to the existing structure are:
    - 1. Not a substantial improvement, the addition and/or improvements must be designed to minimize flood damages and must not be any more non-conforming than the existing structure.
    - 2. A substantial improvement, with modifications/rehabilitations/improvements to the existing structure or the common wall is structurally modified more than installing a doorway, both the existing structure and the addition must comply with the standards for new construction.
    - 3. Additions to pre-FIRM or post-FIRM structures that are a substantial improvement with no modifications/rehabilitations/improvements to the existing structure other than a standard door in the common wall, shall require only the addition to comply with the standards for new construction.
    - 4. Additions and/or improvements to post-FIRM structures when the addition and/or improvements in combination with any interior modifications to the existing structure are:

- a. Not a substantial improvement, the addition and/or improvements only must comply with the standards for new construction consistent with the code and requirements for the original structure.
  - b. A substantial improvement, both the existing structure and the addition and/or improvements must comply with the standards for new construction.
5. Any combination of repair, reconstruction, rehabilitation, addition or improvement of a building or structure taking place during a one (1) year period, the cumulative cost of which equals or exceeds 50 percent of the market value of the structure before the improvement or repair is started must comply with the standards for new construction. For each building or structure, the one (1) year period begins on the date of the first improvement or repair of that building or structure subsequent to the effective date of this ordinance. If the structure has sustained substantial damage, any repairs are considered substantial improvement regardless of the actual repair work performed. The requirement does not, however, include either:
- a. Any project for improvement of a building required to correct existing health, sanitary or safety code violations identified by the building official and that are the minimum necessary to assume safe living conditions.
  - b. Any alteration of a historic structure provided that the alteration will not preclude the structure's continued designation as a historic structure.

(f) Recreational Vehicles. Recreational vehicles shall either:

(i) Temporary Placement

- 1. Be on site for fewer than 180 consecutive days; or
- 2. Be fully licensed and ready for highway use. (A recreational vehicle is ready for highway use if it is on its wheels or jacking system, is attached to the site only by quick disconnect type utilities, and has no permanently attached additions.)

(ii) Permanent Placement. Recreational vehicles that do not meet the limitations of Temporary Placement shall meet all the requirements for new construction.

(g) Temporary Non-Residential Structures. Prior to the issuance of a floodplain development permit for a temporary structure, the applicant must submit to the Floodplain Administrator a plan for the removal of such structure(s) in the event of a hurricane, flash flood or other type of flood warning notification. The following information shall be submitted in writing to the Floodplain Administrator for review and written approval:

- (i) A specified time period for which the temporary use will be permitted. Time specified may not exceed three (3) months, renewable up to one (1)

year;

- (ii) The name, address, email address and phone number of the individual responsible for the removal of the temporary structure;
- (iii) The time frame prior to the event at which a structure will be removed (i.e., minimum of 72 hours before landfall of a hurricane or immediately upon flood warning notification);
- (iv) A copy of the contract or other suitable instrument with the entity responsible for physical removal of the structure; and
- (v) Designation, accompanied by documentation, of a location outside the Special Flood Hazard Area, to which the temporary structure will be moved.

(h) Accessory Structures. When accessory structures (sheds, detached garages, etc.) are to be placed within a Special Flood Hazard Area, the following criteria shall be met:

- (i) Accessory structures shall not be used for human habitation (including working, sleeping, living, cooking or restroom areas);
- (ii) Accessory structures shall not be temperature-controlled;
- (iii) Accessory structures shall be designed to have low flood damage potential;
- (iv) Accessory structures shall be constructed and placed on the building site so as to offer the minimum resistance to the flow of floodwaters;
- (v) Accessory structures shall be firmly anchored in accordance with the provisions of Section 6.5 (C) Article 5, A (1);
- (vi) All service facilities such as electrical shall be installed in accordance with the provisions of Section 6.5 (C) Article 5, A(4); and
- (vii) Flood openings to facilitate automatic equalization of hydrostatic flood forces shall be provided below Regulatory Flood Protection Elevation in conformance with the provisions of Section 6.5 (C) Article 5, B (4) (d).

An accessory structure with a footprint less than 150 square feet or less and satisfies the criteria outlined above is not required to meet the elevation or floodproofing standards of Section 6.5 (C) Article 5, B (2). Elevation or floodproofing certifications are required for all other accessory structures in accordance with Section 6.5 (C) Article 4, B (3).

(i) Tanks. When gas and liquid storage tanks are to be placed within a Special Flood Hazard Area, the following criteria shall be met:

- (i) Underground tanks. Underground tanks in flood hazard areas shall be anchored to prevent flotation, collapse or lateral movement resulting from hydrodynamic and hydrostatic loads during conditions of the design flood, including the effects of buoyancy assuming the tank is empty;

(ii) Above-ground tanks, elevated. Above-ground tanks in flood hazard areas shall be elevated to or above the Regulatory Flood Protection Elevation on a supporting structure that is designed to prevent flotation, collapse or lateral movement during conditions of the design flood. Tank- supporting structures shall meet the foundation requirements of the applicable flood hazard area;

(iii) Above-ground tanks, not elevated. Above-ground tanks that do not meet the elevation requirements of Section 6.5 (C) B (2) of this ordinance shall be permitted in flood hazard areas provided the tanks are designed, constructed, installed, and anchored to resist all flood-related and other loads, including the effects of buoyancy, during conditions of the design flood and without release of contents in the floodwaters or infiltration by floodwaters into the tanks. Tanks shall be designed, constructed, installed, and anchored to resist the potential buoyant and other flood forces acting on an empty tank during design flood conditions.

(j) Tank inlets and vents. Tank inlets, fill openings, outlets and vents shall be:

(i) At or above the Regulatory Flood Protection Elevation or fitted with covers designed to prevent the inflow of floodwater or outflow of the contents of the tanks during conditions of the design flood; and

(ii) Anchored to prevent lateral movement resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy, during conditions of the design flood.

(k) Other Development.

(i) Fences in regulated floodways and Non- Encroachment Areas that have the potential to block the passage of floodwaters, such as stockade fences and wire mesh fences, shall meet the limitations of Section 6.5 (C) Article 5, F of this ordinance.

(ii) Retaining walls, sidewalks and driveways in regulated floodways and Non- Encroachment Areas. Retaining walls and sidewalks and driveways that involve the placement of fill in regulated floodways shall meet the limitations of Section 6.5 (C) Article 5, F of this ordinance.

(iii) Roads and watercourse crossings in regulated floodways and Non Encroachment Areas. Roads and watercourse crossings, including roads, bridges, culverts, low-water crossings and similar means for vehicles or pedestrians to travel from one side of a watercourse to the other side, that encroach into regulated floodways shall meet the limitations of Section 6.5 (C) Article 5, F of this ordinance.

(iv) Commercial storage facilities are not considered "limited storage" as noted in this ordinance, and shall be protected to the Regulatory Flood Protection Elevation as required for commercial structures.

c. **Reserved.**

d. **Standards for Floodplains without Established Base Flood Elevations.**

- (1) Within the Special Flood Hazard Areas designated as Approximate Zone A and established in Section 6.5 (C) Article 3 B, where no BFE data has been provided by FEMA, the following provisions, in addition to the provisions of Section 6.5 (C) Article 5, A, shall apply:
    - (a) No encroachments, including fill, new construction, substantial improvements or new development shall be permitted within a distance of twenty (20) feet each side from top of bank or five times the width of the stream, whichever is greater, unless certification with supporting technical data by a registered professional engineer is provided demonstrating that such encroachments shall not result in any increase in flood levels during the occurrence of the base flood discharge.
    - (b) The Base Flood Elevation (BFE) used in determining the Regulatory Flood Protection Elevation shall be determined based on the following criteria:
      - (2) When Base Flood Elevation (BFE) data is available from other sources, all new construction and substantial improvements within such areas shall also comply with all applicable provisions of this ordinance and shall be elevated or floodproofed in accordance with standards in Section 6.5 (C) Article 5, A and B.
      - (3) When floodway or non-encroachment data is available from a Federal, State, or other source, all new construction and substantial improvements within floodway and non- encroachment areas shall also comply with the requirements of Section 6.5 (C) Article 5, B and F.
      - (4) All subdivision, manufactured home park and other development proposals shall provide Base Flood Elevation (BFE) data if development is greater than five (5) acres or has more than fifty (50) lots/manufactured home sites. Such Base Flood Elevation (BFE) data shall be adopted by reference in accordance with Section 6.5 (C) Article 3, B and utilized in implementing this ordinance.
      - (5) When Base Flood Elevation (BFE) data is not available from a Federal, State, or other source as outlined above, the reference level shall be elevated or floodproofed (nonresidential) to or above the Regulatory Flood Protection Elevation, as defined in Section 5.3 Definitions of the ordinance. All other applicable provisions of Section 6.5 (C) Article 5, B shall also apply.
- e. *Standards for Riverine Floodplains with Base Flood Elevations (BFE) but without Established Floodways or Non-Encroachment Areas.***
- (1) Along rivers and streams where Base Flood Elevation (BFE) data is provided by FEMA or is available from another source but neither floodway nor non-encroachment areas are identified for a Special Flood Hazard Area on the FIRM or in the FIS report, the following requirements shall apply to all development within such areas:
    - (a) Standards of Section 6.5 (C) Article 5, A and B; and
    - (b) Until a regulatory floodway or non-encroachment area is designated, no encroachments, including fill, new construction, substantial improvements, or other development, shall be permitted unless certification with supporting technical data by a registered professional engineer is provided demonstrating that the cumulative effect of the proposed development, when combined with all

other existing and anticipated development, will not increase the water surface elevation of the base flood more than one (1) foot at any point

**f. Floodways and Non-Encroachment Areas.**

Areas designated as floodways or non-encroachment areas are located within the Special Flood Hazard Areas established in Section 6.5 (C) Article 3, B. The floodways and non-encroachment areas are extremely hazardous areas due to the velocity of floodwaters that have erosion potential and carry debris and potential projectiles. The following provisions, in addition to standards outlined in Article 5, Sections A and B, shall apply to all development within such areas:

- (1) No encroachments, including fill, new construction, substantial improvements and other developments shall be permitted unless:
  - (a) It is demonstrated that the proposed encroachment would not result in any increase in the flood levels during the occurrence of the base flood discharge, based on hydrologic and hydraulic analyses performed in accordance with standard engineering practice and presented to the Floodplain Administrator prior to issuance of floodplain development permit; or
  - (b) A Conditional Letter of Map Revision (CLOMR) has been approved by FEMA. A Letter of Map Revision (LOMR) must also be obtained within six months of completion of the proposed encroachment.
- (2) If Section 6.5 (C) Article 5, F (1) is satisfied, all development shall comply with all applicable flood hazard reduction provisions of this ordinance.
- (3) Manufactured homes may be permitted provided the following provisions are met in addition to all other applicable zoning requirements:
  - (a) The anchoring and the elevation standards of Section 6.5 (C) Article 5, B(3); and
  - (b) The encroachment standards of Section 6.5 (C) Article 5, F (1).

**g. Standards for Areas of Shallow Flooding (Zone AO).**

Located within the Special Flood Hazard Areas established in Article 3, Section B, are areas designated as shallow flooding areas. These areas have special flood hazards associated with base flood depths of one (1) to three (3) feet where a clearly defined channel does not exist and where the path of flooding is unpredictable and indeterminate. In addition to Section 6.5 (C) Article 5, A and B, all new construction and substantial improvements shall meet the following requirements:

- (1) The reference level shall be elevated at least as high as the depth number specified on the Flood Insurance Rate Map (FIRM), in feet, plus a freeboard of one (1) foot, above the highest adjacent grade; or at least (2) feet where a depth is not provided) above the highest adjacent grade if no depth number is specified.
- (2) Non-residential structures may, in lieu of elevation, be floodproofed to the same level as required in Section 6.5 (C) Article 5, I(1) so that the structure, together with attendant utility and sanitary facilities, below that level shall be watertight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads

and effects of buoyancy. Certification is required in accordance with Section 6.5 (C) Article 4, B (3) and Article 5, B (2).

(3) Adequate drainage paths shall be provided around structures on slopes, to guide floodwaters around and away from proposed structures.

**h. Standards for Areas of Shallow Flooding (Zone AH).**

Located within the Special Flood Hazard Areas established in Section 6.5 (C) Article 3, B, are areas designated as shallow flooding areas. These areas are subject to inundation by 1-percent- annual-chance shallow flooding (usually areas of ponding) where average depths are one (1) to three(3) feet. Base Flood Elevations(BFE)are derived from detailed hydraulic analyses are shown in this zone. In addition to Section 6.5 (C) Article 5, A and B, all new construction and substantial improvements shall meet the following requirements:

(1) Adequate drainage paths shall be provided around structures on slopes, to guide floodwaters around and away from proposed structures.

**5. Legal Status Provisions.**

**a. Effect on Rights and Liabilities under the Existing Flood Damage Prevention Ordinance.**

This ordinance in part comes forward by re-enactment of some of the provisions of the Flood Damage Prevention Ordinance enacted April 5<sup>th</sup>, 1994 as amended, and it is not the intention to repeal but rather to re-enact and continue to enforce without interruption of such existing provisions, so that all rights and liabilities that have accrued thereunder are reserved and may be enforced. The enactment of this ordinance shall not affect any action, suit or proceeding instituted or pending. All provisions of the Flood Damage Prevention Ordinance of Town of North Wilkesboro enacted on April 5<sup>th</sup> 1994, as amended, which are not reenacted herein are repealed. The date of the initial Flood Damage Prevention Ordinance for Wilkes County is 2002.

**b. Effect upon outstanding floodplain development permits.**

c. Nothing herein contained shall require any change in the plans, construction, size, or designated use of any development or any part thereof for which a floodplain development permit has been granted by the Floodplain Administrator or his or her authorized agents before the time of passage of this ordinance; provided, however, that when construction is not begun under such outstanding permit within a period of six (6) months subsequent to the date of issuance of the outstanding permit, construction or use shall be in conformity with the provisions of this ordinance.

**d. Severability.**

If any section, clause, sentence, or phrase of the Ordinance is held to be invalid or unconstitutional by any court of competent jurisdiction, then said holding shall in no way effect the validity of the remaining portions of this Ordinance.

**e. Effective date.**

This section of the ordinance shall become effective June 24<sup>th</sup>, 2021.

**B. Watershed Overlay District (WSO).**

**1. Intent.**

It is the purpose of this section to protect the quality of drinking water for the Town of North Wilkesboro by setting standards for the development that occurs within designated public water supply watershed areas. It is further intended that the establishment of watershed regulations reflect the protection of critical environmental areas in accordance with the State of North Carolina's Water Supply Watershed Protection Rules.

**2. Dimensional requirements and supplemental standards.**

- a. Adoption date and effective date. The provisions of this article were adopted on September 9th, 1993 and shall become effective on September 30, 1993.

**3. Authority and enactment.**

The Legislature of the State of North Carolina has, in Chapter 160A, Article 8, Section 174, General Ordinance Making Power; and in Chapter 143, Article 21, Water and Air Resources, authorized local governments to adopt regulations designed to promote the public health, safety, and general welfare of its citizenry. In addition, GS 160D-926 and G.S. 143-214.5 specifically authorize local governments to enact and enforce water supply watershed management regulations. The Governing Board of North Wilkesboro does hereby ordain and enact into law the following articles as the Watershed Protection Ordinance of North Wilkesboro.

**4. Jurisdiction.**

The provisions of this article of the ordinance shall apply within the areas designated as a water supply watershed by the N.C. Environmental Management Commission and shall be defined and established on the Town's online GIS map with the layer labeled "Water Supply Watershed" which is adopted simultaneously herewith. The watershed map and all explanatory matter contained thereon accompanies and is hereby made a part of this article of this ordinance. This ordinance shall be permanently kept on file in the Town.

**5. 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; nor shall any provision of this article amend, modify, or restrict any provisions of the Code of Ordinances of the Town of North Wilkesboro; however, the adoption of this article in the ordinance shall and does amend any and all ordinances, resolutions, and regulations in effect in the town of North Wilkesboro at the time of the adoption of this article 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 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 article, is not subject to the requirements of this

article.

- d. Expansions to structures classified as existing development must meet the requirements of this article, except single family residential development or unless expansion is part of common plan of development. In an expansion, the built-upon area of the existing development is not required to be included in the density calculations. Where there is a net increase of built upon area, only the area of net increase is subject to this ordinance. Where existing development is being replaced with new built upon area, and there is net increase of built upon area, only areas of net increase shall be subject to this ordinance.
- e. If a Non-Conforming Existing Lot is not contiguous to any other lot owned by the same party, then that lot shall not be subject to the development restrictions of this ordinance if it is developed for single-family residential purposes. Local governments may require the combination of contiguous nonconforming lots of record owned by same party to establish a lot or lots that meet requirements in this ordinance.
- f. 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 these rules, except that such a lot or parcel must meet the minimum buffer requirements to the maximum extent practicable.
- g. An applicant may exceed the density limits in **section 11** if all of the following circumstances apply:
  - (1) The property was developed prior to the effective date of the local water supply watershed program.
  - (2) The property has not been combined with additional lots after January 1, 2021.
  - (3) The property has not been a participant in a density averaging transaction under G.S. 143-214.5(d2).
  - (4) The current use of the property is nonresidential.
  - (5) In the sole discretion, and at the voluntary election, of the property owner, the stormwater from all of the existing and new built-upon area on the property is treated in accordance with all applicable local government, state, and federal laws and regulations.
  - (6) The remaining vegetated buffers on the property are preserved in accordance with the requirements of this Ordinance

## 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 \$500.00. Each day that the violation continues shall constitute a separate offense. **(REFERENCE IN ART 4)**

## 7. Remedies.

- a. If any subdivision, development and/or land use is found to be in violation of this Ordinance, **see section 4.3 of this ordinance for zoning enforcement measures.** In

addition, the N.C. Environmental Management Commission may assess civil penalties in accordance with G.S. 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 ordering the action necessary to correct it. The 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 violation of its provisions. **If a ruling of the Administrator is questioned, the aggrieved party or parties may appeal such ruling to the Watershed Review Board.** (appeals go to Board of Adjustment)

**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.

**9. Effective Date.**

**This Ordinance shall take effect and be in force at the date of adoption of this ordinance.**

**10. Establishment of watershed areas.**

The purpose of this section is to list and describe the watershed areas herein adopted. For the purposes of this article the Town of North Wilkesboro and its extraterritorial jurisdiction (ETJ) are hereby divided into the following areas, as appropriate:

- WS-II-CA (Critical Area);*
- WS-II-BW (Balance of Watershed);*
- WS-IV-CA (Critical Area);*
- WS-IV-P (Protected Area).*

**11. Watershed Areas- Allowed and Not Allowed Uses**

Activity/Use	Water Supply Watershed Classification <sup>1</sup>							
	WS-I	WS-II CA	WS-II BW	WS-III CA	WS-III BW	WS-IV CA	WS-IV PA	WS-V
New landfills	No	No	Yes	No	Yes	No	Yes	Yes
New permitted residual land application	No	No	Yes	No	Yes	No	Yes	Yes
New permitted petroleum contaminated soils sites	No	No	Yes	No	Yes	No	Yes	Yes
NPDES General or Individual Stormwater discharges	Yes <sup>a</sup>	Yes	Yes	Yes	Yes	Yes	Yes	Yes
NPDES General Permit Wastewater Discharges pursuant to 15A NCAC 02H .0127	Yes <sup>a</sup>	Yes	Yes	Yes	Yes	Yes	Yes	Yes
NPDES Individual Permit trout farm discharges	Yes <sup>a</sup>	Yes	Yes	Yes	Yes	Yes	Yes	Yes
New NPDES Individual Permit domestic treated wastewater discharge	No	No	No	No	Yes	Yes	Yes	Yes

New NPDES Individual Permit industrial treated wastewater discharge	No	No	No	No <sup>b</sup>	No <sup>b</sup>	Yes	Yes	Yes
Non-process industrial waste	No	No	No	Yes	Yes	Yes	Yes	Yes
New industrial connections and expansions to existing municipal discharge with pretreatment program pursuant to 15A NCAC 02H .0904	No	No	No	No	No	Yes	Yes	Yes
Sewage	No	No <sup>c</sup>	Yes <sup>d</sup>					
Industrial Waste	No	No <sup>c</sup>	Yes <sup>d</sup>					
Other wastes	No	No <sup>c</sup>	Yes <sup>d</sup>					
Groundwater remediation project discharges <sup>e</sup>	Yes							
Agriculture <sup>f</sup>	Yes							
Silviculture <sup>g</sup>	Yes							
Residential Development <sup>h</sup>	No <sup>j</sup>	Yes						
Non-residential Development <sup>hi</sup>	No <sup>j</sup>	Yes						
Nonpoint Source Pollution <sup>k</sup>	Yes							
Animal Operations <sup>l</sup>	Yes							

Notes:

<sup>a</sup> Permitted pursuant to 15A NCAC 02B .0104

<sup>b</sup> Except non-process industrial discharges are allowed

<sup>c</sup> Only allowed if specified in 15A NCAC 02B .0104

<sup>d</sup> Not allowed if activity(ies) has/have adverse impact on human health

<sup>e</sup> Where no other practical alternative exists

<sup>f</sup> In WS-I watersheds and Critical Areas of WS-II, WS-III, and WS-IV watersheds, agricultural activities conducted after 1/1/1993 shall maintain a minimum 10-foot vegetated setback or equivalent control as determined by Soil and Water Conservation Commission along all perennial waters indicated on most recent version of USGS 1:24000 scale (7.5 minute) topographic maps or as determined by local government studies

<sup>g</sup> Subject to Forest Practice Guidelines Related to Water Quality (02 NCAC 60C .0100 to .0209) Effective 4/1/2018

<sup>h</sup> See density requirements in 15A NCAC 02B .0624

<sup>i</sup> See different allowed and not allowed in this table

<sup>j</sup> Watershed shall remain undeveloped except for following uses when they cannot be avoided: power transmission lines, restricted access roads, and structures associated with water withdrawal, treatment, and distribution of WS-I waters. Built upon area shall be designed and located to minimize stormwater runoff impact to receiving waters.

<sup>k</sup> Non Point Source pollution shall not have adverse impact, as defined in 15A NCAC 02H .1002, on use as water supply or any other designated use

<sup>l</sup> Deemed permitted, as defined in 15A NCAC 02T .0103 and permitted under 15A NCAC 2H .0217

**12. Watershed Areas – Density and Built-Up Limits.**

**a. Project Density**

The following maximum allowable project densities and minimum lot sizes shall apply to a project according to the classification of the water supply watershed where it is located, its relative location in the watershed, its project density, and the type of development:

Water Supply Classification	Maximum Allowable Project Density or Minimum Lot Size	
	Low Density Development	High Density Development

	Location in the Watershed	Single-family detached residential	Non-residential and all other residential	All types
WS-II	Critical Area	1 dwelling unit (du) per 2 acres or 1 du per 80,000 square foot lot excluding roadway right-of-way or 6% built-upon area	6% built-upon area	6 to 24% built-upon area
	Balance of Watershed	1 du per 1 acre or 1 du per 40,000 square foot lot excluding roadway right-of-way or 12% built-upon area	12% built-upon area	12 to 30% built-upon area
WS-IV	Critical Area	1 du per one-half acre or 1 du per 20,000 square foot lot excluding roadway right-of-way or 24% built-upon area	24% built-upon area	24 to 50% built-upon area
	Protected Area	1 du per one-half acre or 1 du per 20,000 square foot lot excluding roadway right-of-way or 24% built-upon; or 3 dus per acre or 36% built-upon areawithout curb and gutter street system	24% built-upon area; or 36% built-upon area without curb and gutter street system	24 to 70% built-upon area

**(1) Calculation of Project Density.**

The following requirements shall apply to the calculation of project density:

- (a)** Project density shall be calculated as the total built-upon area divided by the total project area;
- (b)** A project with "Existing Development," as defined in this ordinance, may use the calculation method in Sub-Item (1) of this Item or may calculate project density as the difference of total built-upon area minus existing built-upon area divided by the difference of total project area minus existing built-upon area.
- (c)** Expansions to Existing Development shall be subject to 15A NCAC 02B .0624 except as excluded in Rule15A NCAC 02B .0622 (1)(d).

- (d) Where there is a net increase of built-upon area, only the area of net increase shall be subject to density and built upon area limits.
- (e) Where Existing Development is being replaced with new built-upon area, and there is a net increase of built-upon area, only the area of net increase shall be subject to density and built upon area limits.
- (f) Total project area shall exclude the following:
  - (i) areas below the Normal High Water Line (NHWL); and
  - (ii) areas defined as "coastal wetlands" pursuant to 15A NCAC 07H .0205, herein incorporated by reference, including subsequent amendments and editions, and available at no cost at <http://reports.oah.state.nc.us/ncac.asp>, as measured landward from the NHWL; and
- (g) Projects under a common plan of development shall be considered as a single project for purposes of density calculation except that on a case-by-case basis, local governments may allow projects to be considered to have both high and low density areas based on one or more of the following criteria:
  - (i) natural drainage area boundaries;
  - (ii) variations in land use throughout the project; or
  - (iii) construction phasing

**(2) Low Density Projects.**

In addition to complying with the project density requirements of Item (A) of this Rule, low density projects shall comply with the following:

- (a) **Vegetated Conveyances.** Stormwater runoff from the project shall be released to vegetated areas as dispersed flow or transported by vegetated conveyances to the maximum extent practicable. In determining whether this criteria has been met, the local government shall take into account site-specific factors such as topography and site layout as well as protection of water quality. Vegetated conveyances shall be maintained in perpetuity to ensure that they function as designed. Vegetated conveyances that meet the following criteria shall be deemed to satisfy the requirements of this Sub-Item:
  - (i) Side slopes shall be no steeper than 3:1 (horizontal to vertical) unless it is demonstrated to the local government that the soils and vegetation will remain stable in perpetuity based on engineering calculations and on-site soil investigation; and
  - (ii) The conveyance shall be designed so that it does not erode during the peak flow from the 10-year storm event as demonstrated by engineering calculations
- (b) **Curb Outlet Systems.**

In lieu of vegetated conveyances, low density projects shall have the option to use

curb and gutter with outlets to convey stormwater to grassed swales or vegetated areas. Requirements for these curb outlet systems shall be as follows:

- (i) The curb outlets shall be located such that the swale or vegetated area can carry the peak flow from the 10-year storm and at a non-erosive velocity;
- (ii) The longitudinal slope of the swale or vegetated area shall not exceed five percent except where not practical due to physical constraints. In these cases, devices to slow the rate of runoff and encourage infiltration to reduce pollutant delivery shall be provided;
- (iii) The swale's cross section shall be trapezoidal with a minimum bottom width of two feet;
- (iv) The side slopes of the swale or vegetated area shall be no steeper than 3:1 (horizontal to vertical);
- (v) The minimum length of the swale or vegetated area shall be 100 feet; and
- (vi) Low density projects may use treatment swales designed in accordance with 15A NCAC 02H .1061 in lieu of the requirements specified in Sub -Items (a) through (e) of this Sub-Item.

### **13. Watershed area uses permitted.**

- a. **WS-II Watershed Areas—Critical Area (WS-II-CA).** In order to maintain a predominately undeveloped land use intensity pattern, single-family dwellings shall be allowed at a maximum of one dwelling unit per two acres. All other residential and nonresidential developments shall be allowed at a maximum six percent built-upon area. New sludge application sites and landfills are specifically prohibited.

*Allowed Uses:*

- (1) Agriculture subject to the provisions of the most current federal farm bill. Agricultural activities conducted after January 1, 1993 shall maintain a minimum ten foot vegetative buffer, or equivalent control as determined by the Soil and Water Conservation Commission, along all perennial waters indicated on the most recent versions of U.S.G.S. 1:24,000 (7.5 minute) scale topographic maps or as determined by local government studies. Animal operations greater than one hundred animal units shall employ Best Management Practices by July 1, 1994 recommended by the Soil and Water Conservation Commission;
- (2) Silviculture, subject to the provisions of Forest Practices Guidelines Related to Water Quality (02 NCAC 60C.0100 to .0209);
- (3) Residential development, including both single-family and all other residential;
- (4) Nonresidential development, excluding:
  - (a) the storage of toxic and hazardous materials unless a spill containment plan is implemented;

(b) landfills; and

(c) 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.

(5) *Density and Built-upon Limits:*

(a) Single-Family Residential. Development shall not exceed one dwelling unit per two acres on a project by project basis. No residential lot shall be less than two acres, except within an approved cluster development.

(b) All Other Residential and Nonresidential. Development shall not exceed six percent built-upon area on a project by project basis. For the purpose of calculating built-upon area, total project area shall include total acreage in the tract on which the project is to be developed.

b. **WS-II Watershed Areas, Balance of Watershed (WS- II-BW).** 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 acre. All other residential and nonresidential development shall be allowed at a maximum twelve percent built-upon area. New discharging landfills are specifically prohibited.

*Allowed Uses:*

(1) Agriculture subject to the provisions of the most current federal farm bill.

(2) Silviculture, subject to the provisions of the Forest Practices Guidelines Related to Water Quality (02 NCAC 60C.0100 to .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, and (ii) no new discharging landfills. 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.

*Density and Built-Upon Limits:*

(1) Single-Family Residential. Development shall not exceed one dwelling unit per acre on a project by project basis. No residential lot shall be less than one acre, except with an approved cluster development.

(2) All Other Residential and Nonresidential. Development shall not exceed twelve percent built-upon area on a project by project basis. For the purpose of calculating built-upon area, total project area shall include total acreage in the tract on which the project is to be developed.

(3) In addition to the development allowed under subsections (a) and (b) of this section, new development and expansions to existing development may occupy up to ten percent of

the protected area with up to seventy percent built-upon area on a project-by-project basis, when approved as a special density allocation (SDA). The watershed review board is authorized to approve SDA's consistent with the provisions of this article. Projects must, to the maximum extent practical, incorporate best management practices to minimize water quality impacts. For the purpose of calculating built-upon area, total project area shall include total acreage in the tract(s) on which the project is to be developed.

- c. **WS-IV Watershed Areas—Critical Area (WS-WIV-CA).** Only new development activities that require an erosion/sedimentation control plan under state law or approved local programs 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 twenty-four percent built-upon area. New sludge application sites and landfills are specifically prohibited.

*Allowed Uses:*

- (1) Agriculture subject to the provisions of the most current federal farm bill. Agricultural activities conducted after January 1, 1993 shall maintain a minimum ten foot vegetative buffer, or equivalent control as determined by the Soil and Water Conservation Commission, along all perennial waters indicated on the most recent versions of U.S.G.S. 1:24,000 (7.5 minute) scale topographic maps or as determined by local government studies. Animal operations greater than one hundred animal units shall employ Best Management Practices July 1, 1994 recommended by the Soil and Water Conservation Commission.
- (2) Silviculture, subject to the provisions of the Forest Practices Guidelines Related to Water Quality (02 NCAC 60C.0100 to .0209).
- (3) Residential, including both single-family and all other residential.
- (4) Nonresidential development, except the storage of toxic and hazardous materials unless a spill containment plan is implemented; landfills; and sites for land application of sludge/residuals or petroleum contaminated soils.

*Density and Built-Upon Limits:*

- (1) Single-family residential development shall not exceed two dwelling units per acre on a project-by-project basis. No residential lot shall be less than one-half acre, except within an approved cluster development.
  - (2) All other residential and nonresidential development shall not exceed twenty-four percent built-upon area on a project-by-project basis. For the purpose of calculating the built-upon area, total project area shall include total acreage in the tract(s) on which the project is to be developed.
- d. **WS-IV Watershed Areas Protected Area (WS-IV-P).** 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 BW watershed. In order to address or accommodate 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 twenty-four percent built-upon area.

*Allowed Uses:*

- (1) Agriculture, subject to the provisions of the most current federal farm bill
- (2) Silviculture, subject to the provisions of the Forest Practices Guidelines Related to Water Quality (02 NCAC 60C.0100 to .0209).
- (3) Residential development, including single-family and all other residential.
- (4) Nonresidential development, excluding the storage of toxic and hazardous materials unless a spill containment plan is implemented.

*Density and Built-Upon Limits:*

- (1) Single-family residential development shall not exceed two dwelling units per acre on a project-by-project basis. No residential lot shall be less than one-half acre, except within an approved cluster development.
- (2) All other residential and nonresidential development shall not exceed twenty-four percent built-upon area on a project-by-project basis. For the purpose of calculating built-upon area, total project area shall include acreage in the tract(s) on which the project is to be developed.
- (3) In addition to the development allowed under subsections (i) and (ii) of this section, new development and expansions to existing development may occupy up to ten percent of the protected area with up to seventy percent built-upon area on a project-by-project basis, when approved as a special density allocation (SDA). The watershed review board is authorized to approve SDAs consistent with the provisions of this article. Projects must, to the maximum extent practical, incorporate best management practices to minimize water quality impacts. For the purpose of calculating built-upon area, total project area shall include total acreage in the tract(s) on which the project is to be developed.

**14. Cluster development.**

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

- a. Built-upon area or stormwater control requirements of the project shall not exceed that allowed for the critical area or balance of watershed, whichever applies;
- b. All built-upon area shall be designed and located to minimize stormwater runoff impact to the receiving waters and minimize concentrated stormwater flow. Stormwater detention is required and must be designed by an engineer licensed in the state of North Carolina;
- c. The remainder of the tract shall remain in a vegetated or natural state. Where the development has an incorporated property owners association, the title of the open space area shall be conveyed to the association for management. Where a property association is not incorporated, a maintenance agreement shall be recorded with the property deeds at

the register of deeds.

- d.** Alternatively, the remainder of the undeveloped property may be deeded to the Town for future green-ways, parks, conservation areas, or other greenspace. Acceptance of such property is at the discretion of the Town.
- e.** In order to meet the built-upon area requirements, multiple tracts of land may be included in a cluster development and are not required to be contiguous, but must be in the same watershed.

**15. Buffer areas required.**

- a.** A minimum thirty-five foot vegetative buffer for the development activities is required along all perennial waters indicated on the most recent versions of U.S.G.S. 1:24,000 (7.5 minute) scale topographic maps or as determined by local government studies. Desirable artificial stream bank 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.

**16. 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 centerlines thereof, such lines shall be construed to be said boundaries;
- b.** Where area boundaries are indicated as approximately following lot lines, such lot lines shall be construed to be said boundaries. However, a surveyed plat prepared by a registered land surveyor may be submitted to the Town of North Wilkesboro 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 twenty-five feet from any parallel lot line, the location of watershed area boundaries shall be determined by use of the scale appearing on the watershed map;
- d.** Where the watershed area boundaries lie at a scaled distance of twenty-five 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 Zoning Administrator shall interpret the watershed map as to location of such boundaries. This decision may be appealed to the Board of Adjustment.

**17. Existing development. Any existing development, as defined in this article, may be continued and maintained subject to the provisions provided herein. 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.**

**18. Watershed protection permit. For the purposes of this section, Watershed Protection Permit shall**

mean a Zoning Permit on which the Zoning Administrator has indicated that property is in a watershed.

- a.** Except where a single-family residence is constructed on a lot deeded prior to the effective date of the ordinance codified in this article, no building or built-upon area shall be erected, moved, enlarged or structurally altered, nor shall any zoning or 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 Zoning 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 Zoning Administrator. The application shall include a completed application form and supporting documentation deemed necessary by the Zoning Administrator.
- c.** Prior to issuance of a watershed protection permit, the Zoning 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 a zoning or building permit for such use is not obtained by the applicant within twelve months from the date of issuance.
- e.** Watershed occupancy permit. For the purposes of this section, Watershed Protection Occupancy Permit shall mean a Certificate of Occupancy on which the Zoning Administrator has indicated zoning approval.
- f.** The Zoning 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.
- g.** 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.
- h.** When only a change in use of land or existing building occurs, the Zoning Administrator shall issue a watershed protection occupancy permit certifying that all requirements of this article have been met coincident with the watershed protection permit.
- i.** If the watershed protection occupancy permit is denied, the Zoning Administrator shall notify the applicant in writing stating the reasons for denial.
- j.** No building or structure which has been erected, moved, or structurally altered may be occupied until the Zoning Administrator has approved and issued a watershed protection occupancy permit.
- k.** 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
- l.** Abatement.
  - (1)** The Zoning Administrator shall monitor land use activities within the watershed areas to identify situations that may pose a threat to water quality.

(2) The Zoning Administrator shall report all findings to the watershed review board. The Zoning Administrator may consult with any public agency or official and request recommendations.

(3) 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.

**19. Additional requirements for variances within water supply watersheds.**

a. The Zoning Administrator shall notify in writing each local government having jurisdiction in the watershed and any 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 zoning 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.

b. If the application calls for the granting of a major variance (See 5.3 Definitions), 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:

(1) The variance application;

(2) The hearing notices;

(3) The evidence presented;

(4) Motions, offers of proof, objections to evidence, and ruling on them;

(5) Proposed findings and exceptions;

(6) The proposed decision, including all conditions proposed to be added to the permit.

c. The preliminary record shall be sent to the North Carolina Environmental Management Commission for its review as follows:

(1) 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.

(2) 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.

**20. Special density allocations.**

- a.** The watershed review board may grant special density allocations (SDAs) to project sites in the WS-II-BW and WS-IV-BW watershed areas. The SDAs may permit up to seventy percent built-upon area on a project by- project basis without requiring installation of stormwater control devices. No more than ten percent of the WS-II-BW and WS-IV-BW watershed areas may be developed under SDAs. At no time may the built-upon area of a SDA project site exceed seventy percent of the total SDA project site
- b.** SDA requests must be submitted to the zoning administrator, who shall preview the request and submit it to the watershed review board. The watershed review board will review the SDA request, and either approve or deny the request. If the request is denied, the applicant may redesign the project and resubmit the request.
- c.** If the request is approved by the watershed review board, the zoning administrator shall issue a SDA permit. The permit shall be null and void if construction has not begun for one year from date of issuance. A record of all SDA permits shall be kept on file in the office of the zoning administrator.
- d.** The following review criteria will be used by the watershed review board to evaluate SDA requests. The review criteria will be used to encourage applicants to maximize development in the SDA project areas, as well as incorporate measures to improve the water quality and aesthetics of the project area. Projects must meet five out of the ten criteria in order to qualify. Review Criteria for Evaluating SDA Requests consists of:
  - (1)** 5 or more full-time employees added;
  - (2)** \$200,000 or more tax base added;
  - (3)** <2 acres used for project;
  - (4)** +50 ft. stream buffer;
  - (5)** Landscaping plan submitted;
  - (6)** Multiple story building;
  - (7)** Subdividing unneeded acreage;
  - (8)** Use of grass swales.
  - (9)** Use of stormwater control measures included in the most recent NCDEQ Stormwater Design Manual, including but not limited to: Sand filters; Water quality ponds; Artificial wetlands; Pervious pavement; Level spreader;
  - (10)** Reservation of land for public use as approved by Planning Board.