

Article VI. Zoning Districts

6.5 Overlay Districts.

(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) Permitted uses. Uses permitted by right, uses with conditions, and uses permitted upon the issuance of a special use permit are listed in the table of uses in Section 6.7

(3) 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.

(B) Authority and enactment. The Legislature of the State of North Carolina has, in Chapter 160A, Article 8, Section 174, General Ordinance Authority; and in Chapter 143-214.5, Watershed Protection Rules, delegated the responsibility or directed local governmental units to adopt regulations designed to promote the public health, safety, and general welfare of its citizenry. The Governing Board of North Wilkesboro does hereby ordain and enact into law the following articles as the Watershed Protection Ordinance of North Wilkesboro.

(C) Jurisdiction. The provisions of this article shall apply within the areas designated as a public 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.

(D) Exceptions to applicability.

i. 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 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.

ii. 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.

iii. Existing development, as defined in this article, is not subject to the requirements of this article. Expansions to structures classified as existing development must meet the requirements of this article, however, the built-upon area of the existing development is not required to be included in the density calculations.

iv. A pre-existing lot owned by an individual prior to the effective date of the ordinance codified in this article, regardless of whether or not a vested right has been established, may be developed for single-family residential purposes without being subject to the restrictions of this article.

(E) Establishment of watershed review board. The North Wilkesboro Planning Board shall act as the watershed review board on all subdivision regulation and zoning ordinance matters.

(F) 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 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)*.

(G) Watershed area uses permitted.

(1) *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 development shall be allowed at a maximum six percent built-upon area. New sludge application sites and landfills are specifically prohibited.

Allowed Uses:

- (a) 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;
- (b) Silviculture, subject to the provisions of Forest Practices Guidelines Related to Water Quality (02 NCAC 60C.0100 to .0209);
- (c) Residential development, including both single-family and all other residential;
- (d) Nonresidential development, excluding:
 - (i) the storage of toxic and hazardous materials unless a spill containment plan is implemented;
 - (ii) landfills; and
 - (iii) sites for land application of sludge/residuals or petroleum contaminated soils. New industrial development is required to incorporate adequately designed, constructed and maintained spill containment structures if hazardous materials are either used, stored or manufactured on the premises.

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.

(2) ***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:

- (a) Agriculture subject to the provisions of the most current federal farm bill.
- (b) Silviculture, subject to the provisions of the Forest Practices Guidelines Related to Water Quality (02 NCAC 60C.0100 to .0209);
- (c) Residential development, including both single-family and all other residential;
- (d) 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:

- (a) 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.
- (b) 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.
- (c) 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.

(3) *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:

(a) 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.

(b) Silviculture, subject to the provisions of the Forest Practices Guidelines Related to Water Quality (02 NCAC 60C.0100 to .0209).

(c) Residential, including both single-family and all other residential.

(d) 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:

(a) 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.

(b) 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.

(4) ***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:

(a) Agriculture, subject to the provisions of the most current federal farm bill

(b) Silviculture, subject to the provisions of the Forest Practices Guidelines Related to Water Quality (02 NCAC 60C.0100 to .0209).

(c) Residential development, including single-family and all other residential.

(d) Nonresidential development, excluding the storage of toxic and hazardous materials unless a spill containment plan is implemented.

Density and Built-Upon Limits:

(a) 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.

(b) 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.

(c) 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.

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

i. 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;

ii. 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;

iii. 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.

iv. 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.

v. 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.

(I) Buffer areas required.

i. 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.

ii. 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.

(J) 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:

i. 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;

ii. 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;

iii. 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;

iv. 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:

v. 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.

(K) 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.

(L) 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.

1. 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.
2. 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.
3. 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.
4. 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.
5. 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.
6. 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.
7. 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.
8. 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.
9. If the watershed protection occupancy permit is denied, the Zoning Administrator shall notify the applicant in writing stating the reasons for denial.
10. 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.
11. 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.

(O) Abatement.

- i. The Zoning Administrator shall monitor land use activities within the watershed areas to identify situations that may pose a threat to water quality.
- ii. 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.
- iii. 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.

(P) Additional requirements for variances within water supply watersheds.

- i. 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.
- ii. 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:
 - The variance application;
 - The hearing notices;
 - The evidence presented;
 - Motions, offers of proof, objections to evidence, and ruling on them;
 - Proposed findings and exceptions;
 - The proposed decision, including all conditions proposed to be added to the permit.

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.

(Q) Special density allocations.

i. 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

ii. 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.

iii. 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.

iv. 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. 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.