

3.6.4 Watershed Protection District (WPD)

(a) Intent

The Watershed Protection District (herein sometimes WPD) is intended to be applied to a portion of the New Hope Watershed draining to Jordan Lake in order to ensure long-term water quality of the Jordan Lake Reservoir, to protect possible future sources of drinking water for the Town and surrounding localities, and to control pollution sources affecting water quality.

Watershed protection regulations are applied by the Town of Chapel Hill pursuant to North Carolina General Statutes, Chapter 143, Article 21, Watershed Protection Rules, and implementing regulations of the North Carolina Environmental Management Commission, or its successor statutes and regulations.

In the interpretation and application of this Article, all provisions shall be: (a) considered as minimum requirements, (b) strictly construed in favor of the public interest and community benefit, and (c) deemed neither to limit nor repeal any other powers provided by Town ordinance or State statute.

(b) Establishment of Watershed Protection District

The Watershed Protection District is established for certain lands within the New Hope Watershed as a District that overlays other zoning districts established in Article 3. All development within the Watershed Protection District shall comply with the requirements of this Article. In addition, all development within the Watershed Protection District shall comply with the requirements of any additional overlay districts and the underlying zoning district.

The area of the District shall be defined generally as an area extending five (5) miles from the normal pool elevation of the Jordan Lake Reservoir, or to the ridge line of the Watershed, whichever is less.

The specific location of the Watershed Protection District shall be set by ridge lines, identifiable physical features such as highways, or property lines, and shall be shown on the official Zoning Atlas.

(c) Development in the Watershed Protection District

This Article shall apply to development and land-disturbing activities within the WPD after the effective date (July 1, 1993) of this Article unless exempted by this Section, or permitted by Section 3.6.4(d), or allowed pursuant to a variance authorized by this Article and approved by the Board of Adjustment.

- (1) Application of Watershed Protection District to Development Existing on July 1, 1993

This Article shall not apply to the continued use, operation or maintenance of any development existing, or for which construction had substantially begun, on or before July 1, 1993. In addition, the Article shall not apply to Existing development which has established a vested right under North Carolina zoning law as of July 1, 1993, based on the following criteria:

- A. substantial expenditure of resources (time, labor, money) based on a good faith reliance upon having received a valid approval to proceed with the project;
- B. having an outstanding valid building permit; or
- C. having expended substantial resources (time, labor, money) and having an approved Site Specific Development Plan pursuant to Section 20.4 of the Development Ordinance.

With respect to the requirements of this Article, such development shall not be considered as nonconforming within the meaning of Article 7 of this Chapter.

Multiple lots under single ownership as of July 1, 1993 are not subject to the provisions of this ordinance if vested rights have been established in accordance with North Carolina law. If no vested rights are established, then owners must comply with the provisions of this ordinance. Compliance may include requiring the recombination of lots.

(2) Application to Existing Single Family and Two-Family Lots

This Article shall not apply to single family and two-family development constructed or to be constructed on existing single-family lots created prior to July 1, 1993. This exemption is not applicable to multiple lots under single ownership. For purposes of constructing a single-family or two-family dwelling, lots of record as of July 1, 1993 which are established through a duly approved and properly recorded final plat shall be exempt from the provisions of this ordinance.

(3) Application of the Watershed Protection District to the Redevelopment or Expansion of Development

Redevelopment is allowed under the provisions of this Article if the redevelopment activity does not have a net increase of built-upon area or provides equal or greater stormwater control than the previous development, except that there are no restrictions on lawfully established single family and two-family residential redevelopment.

Expansions to existing development as of July 1, 1993 must meet the requirements of this Article; however, the built-upon area of existing development is not required to be included in density and impervious surface area calculations, and there are no restrictions on expansion of lawfully established single family and two-family development.

(d) Permitted Uses Within the Watershed Protection District

- (1) The requirements or permitted uses indicated in the underlying zoning district, or any applicable overlay zone, apply in the Watershed Protection District, provided the standards of Sections 3.6.4(e) and 3.6.4(g) are met.

(e) Intensity Regulations

- (1) Land Use Intensity Regulations

The intensity regulations are those generally applicable to the underlying zoning district, or any applicable overlay zone, except as modified below.

- (2) Additional Intensity Regulations

In order to prevent an excessive amount of stormwater runoff from damaging the water quality of the reservoirs, it is desirable to require as much infiltration as possible of runoff from hard surfaces onto land areas which can absorb and filter runoff.

Any development in the Watershed Protection District shall be subject to one of two options, or a combination of options, to control non-point source and stormwater pollution, as described in Table 3.6.4-1.

Table 3.6.4-1: Development Options

Option	Standards
Low Density Option	Development activities shall not exceed two (2) dwelling units per acre (gross land area) or twenty-four percent (24%) built-upon area (impervious surface area) of gross land area.
High Density Option	Development activities which exceed the Low Density Option requirements must control the runoff from the first inch of rainfall. In addition, the built-upon area may not exceed fifty percent (50%) of gross land area for residential development or seventy percent (70%) for development with a non-residential component. All development under the High Density Option must meet the applicable performance standards of Section 3.6.4(g).

(f) Stream Buffer Requirements

All development shall comply with the provisions of Section 3.6.3, Resource Conservation District. In addition, the following standards for stream buffers shall apply to all perennial streams in the Watershed Protection District, in the event the Resource Conservation District is less restrictive than the following:

- (1) For developments choosing the Low-Density Option, the required stream buffer is thirty (30) feet.
- (2) For developments choosing the High-Density Option, the required stream buffer is one hundred (100) feet.
- (3) For all developments, no new development is allowed within the stream buffer area; water dependent structures, and public projects such as road crossings and greenways may be allowed where no practicable alternative exists; these activities shall minimize built-upon area, divert runoff away from surface waters and maximize the use of Best Management Practices.

All stream buffers shall be a natural or vegetated area through which stormwater runoff flows in a diffuse manner so that the runoff does not become channelized and which provides for infiltration of the runoff and filtering of pollutants. If clearing, grading, or other land-disturbing activities have occurred and have reduced the effectiveness of the buffer, the buffer shall be replanted in accordance with a Landscape Plan to be approved by the Town Manager.

A stream buffer shall be measured landward from the normal pool elevation of impounded structures and from the bank of each side of perennial streams or rivers.

(g) Performance Standards

The following standards and criteria shall apply to any portion of a development or, as appropriate, to any land disturbance within the Watershed Protection District.

(1) Hazardous Materials

Any proposed development which uses and stores hazardous materials shall prepare an Emergency Contingency Plan as part of its development application. The Emergency Contingency Plan shall be prepared in accordance with the requirements of the Superfund Amendments and Reauthorization Act (SARA), the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), or Section 311 of the Clean Water Act, as amended. The Plan shall identify buildings and the locations of points of storage and use of hazardous materials and shall be updated annually. The Plan shall be approved by the Town Manager.

Any container or tank used to store hazardous materials shall be equipped with leak detection devices and shall be double-walled or have other secondary containment features to be approved by the Town Manager.

Points of storage or use of hazardous materials shall be protected by a corrosion-resistant dike, sized to handle the maximum amount of hazardous material to be stored or used.

All floor drains that could collect hazardous materials shall be connected to a corrosion resistant tank or catch basin sized to handle the maximum amount of hazardous material to be stored or used. These floor drains shall not be open to the site's natural drainage system.

(2) Solid Waste Minimization

All development shall submit a plan to be approved by the Town Manager which minimizes solid waste and promotes the recycling of materials in accordance with Section 5.13 of the Development Ordinance.

(3) Ownership, Design, and Maintenance of Engineered Stormwater Controls

Unless otherwise approved, ownership of the engineered stormwater controls shall remain with the property owner or a property owner's association.

Engineered stormwater controls shall be designed and constructed in accordance with standards and specifications established by the Town Manager, and designed to control the first one inch of stormwater using wet detention ponds, or using other methods accepted by the State.

The property owner shall post a performance bond or other surety instrument satisfactory to the Town Manager, in an amount approved by the Town Manager to assure maintenance, repair, or reconstruction necessary for adequate performance of the engineered stormwater controls.

The establishment of a stormwater utility by the Town of Chapel Hill shall be deemed adequate financial assurance.

(4) Construction Standards

The construction of new roads, bridges, residential and non-residential development shall minimize built-upon area, divert stormwater away from surface water supply waters as much as possible, and employ Best Management Practices to minimize water quality impacts.

(5) Cluster Provisions

The clustering of development in accordance with Section 3.8.8 of the Development Ordinance is encouraged, subject to the following additional standards:

- A. Overall density of the project meets the associated density or stormwater control requirements of Section 3.6.4(e);

- B. Built-upon areas are designed and sited to minimize stormwater runoff impact to the receiving waters and minimize concentrated stormwater flow; and
- C. The remainder of the tract shall remain in a vegetated or natural state.

(h) Variances from the Board of Adjustment

(1) Application

An owner of property who alleges that the provisions of this Article leave no legally reasonable use of the property may apply for a variance.

This Article is established pursuant to North Carolina General Statutes Chapter 143, Article 21, and implementing regulations of the North Carolina Environmental Management Commission (Administrative Code Section 15 NCAC 28, .0100, .0200, and .0300), hereafter referred to as "State Watershed Regulations". A request for a variance from any requirement of this Article that does not conflict with any provision in State Watershed Regulations as amended, may be considered by the Board of Adjustment of the Town of Chapel Hill

A request for a variance from any requirement of this Article that conflicts with any provision in State Watershed Regulations, as amended, constitutes a variance of a more significant nature. A request for such a variance may only be granted in unique circumstances when necessary to accommodate important social and economic development. A request for such a variance shall be considered by the Board of Adjustment and referred to the North Carolina Environmental Management Commission, in accordance with the following procedures:

If the Board of Adjustment decides in favor of granting the variance, the Board of Adjustment shall prepare a preliminary record of the hearing with all deliberate speed and send it to the Environmental Management Commission. The preliminary record of the hearing shall include:

- A. the variance application;
- B. the hearing notices;
- C. the evidence presented;
- D. motions, offers of proof, objections to evidence, and rulings on them;
- E. proposed findings and exceptions; and
- F. the proposed decision, including all conditions proposed to be added to the permit.

If the Environmental Management Commission approves the variance as proposed, approves the variance with additional conditions, or denies the variance, the Commission shall prepare a decision and send it to the Board of Adjustment. The Board of Adjustment shall prepare a final decision in accordance with the Commission's decision.

An application for a variance from the Board of Adjustment shall be filed with the Town Manager in accord with the provisions of Section 4.12.1. In addition to materials required by that Section, the application must also comply with applicable submittal requirements.

On receipt of a complete application, the Town Manager shall cause an analysis to be made by appropriate Town staff based on the findings required in Section 3.6.4(h)(2). Within a reasonable period of time, the Town Manager shall submit the application and a report of his or her analysis to the Board of Adjustment.

(2) Required Findings

- A. The review of the Board of Adjustment shall extend to the entire zoning lot that includes area within the District. The Board of Adjustment shall grant a variance, subject to the provisions of this Article, if it finds:
1. That the provisions of this Article leave an owner no legally reasonable use of the zoning lot; and
 2. That a failure to grant the variance would result in extreme hardship; and
 - a. That the hardship complained of is one suffered by the applicant rather than by neighbors or the general public;
 - b. That the hardship relates to the applicant's property rather than to personal circumstances;
 - c. That the hardship is peculiar to the applicant's property, rather than a hardship shared by the neighborhood or resulting from the existence of nonconforming situations in the vicinity;
 - d. That the hardship is not the result of the applicant's own actions; and
 3. That the variance will not substantially interfere with or injure the rights of others whose property would be affected by granting of the variance; and

4. That the variance will not result in a violation of the provisions of Article 7 by allowing the enlargement, expansion, extension, or the greater permanence or intensity of a nonconforming use or feature, nor will it result in a violation of Section 3.6.3.

In making such findings, the Board of Adjustment shall consider the uses available to the owner in the underlying zoning district.

- B. The Board of Adjustment shall grant the minimum variance necessary to afford appropriate relief under this Section. The Board may attach such reasonable conditions to the grant of a variance as it deems necessary to achieve the purposes of this Article.
- C. The Board of Adjustment shall not grant any variance if it finds that such a variance would:
 1. result in significantly increased velocity of flow or deposit of sediment; or
 2. result in significantly increased erosion, significant additional threats to public safety; or
 3. result in significant threats to water quality.

(3) Burden of Proof

Any owner of property applying to the Board of Adjustment for a variance from the provisions of this Article shall have the burden of establishing that such variance should be granted by the Board.

(4) Referral

The Board of Adjustment, before taking final action on an application for a variance, may refer such application to Town advisory boards or commissions.

For all proposed variances, the Town Manager shall notify and allow a reasonable comment period for all other local governments having jurisdiction within the watershed area governed by the State regulations and the entity using the water supply for consumption.

(5) Review Criteria

In reviewing applications for variances pursuant to this Article, the Board of Adjustment shall consider all technical evaluations, all relevant factors, other provisions of statute or ordinance, and:

- A. the danger to life and property due to flooding, contamination, pollution, sedimentation, and/or erosion damage at the site;
- B. the importance of the services provided by the proposed development to the community;
- C. the availability of alternative locations for the proposed use;
- D. the compatibility of the proposed use with existing and anticipated development within the vicinity;
- E. the relationship of the proposed use to the Comprehensive Plan and the stormwater management plan for that area;
- F. the danger that issuance of the variance will set a precedent for future development which cumulatively may increase threats to ensuring the water quality of Jordan Lake Reservoir;
- G. the effect to water quality of Jordan Lake Reservoir; and
- H. the degree to which drainage conditions in the vicinity would be improved by the proposed development.

(i) *Correction of Violations*

The owner of any land within the Watershed Protection District shall be presumed responsible for any violation of this Article committed on his or her property. The owner of any land within the Watershed Protection District shall be responsible for correcting any activity undertaken therein in violation of this Article. In addition, any other person found in violation of this Article shall be liable as provided by law. The Town may institute any appropriate action to restrain or prevent any violation of this Ordinance or to require any person who has committed any such violation to correct the violation or restore the conditions existing before the violation. The Town Manager shall enforce this Article as provided for in Section 4.13 of this Chapter.

(j) *Other Approvals Required*

No permit or approval required to be issued by the Town under the provisions of this Article shall be valid until all other permits or variances for the same proposal required by any other ordinance of the Town or Orange or Durham Counties or statute of the State of North Carolina or the United States have been received from those agencies from which such permits or variances are required.

(k) *Records and Filings*

- (1) The Town Manager shall maintain records of all development permits, approvals, or variances regarding development within the Watershed Protection District. Such records shall include all actions on applications for such permits, approvals, or variances, as well as any conditions attached thereto.
- (2) The Town Manager shall submit annually a description of each project receiving a variance and the reasons given by the Board of Adjustment for granting the variance to the North Carolina Environmental Management Commission.
- (3) The Town Manager shall maintain records of annual inspections of engineered stormwater management controls.
- (4) The Town Manager shall notify any applicant in writing of the decision on any application for any permit, approval, or variance with respect to property within the Watershed Protection District and shall file a copy of it with the Town's Planning Department.
- (5) The applicant shall record any variance with the Orange County Register of Deeds within sixty (60) days after written notice of approval of such variance by the Board of Adjustment.