

## **Watershed Ordinance Summary**

Property is located WS-III-BW (Watershed Three Balance Area)

Below is a full copy of the most recent Ordinance. The most pertinent information and charts for allowed uses have been highlighted on pages 13, 14, 15, 16, 17.

For further questions contact Joe Allen - County Planning Director at Macon County Inspections.

**CHAPTER 156: RESTATED AND AMENDED WATER SUPPLY WATERSHED PROTECTION**

SECTION

***General Provisions***

- 156.01 Authority and Enactment
- 156.02 Jurisdiction
- 156.03 Exceptions to Applicability
- 156.04 Definitions

***Subdivision Regulations***

- 156.15 General Provisions
- 156.16 Subdivision Application and Review Procedures
- 156.17 Subdivision Standards and Required Improvements
- 156.18 Construction Procedures
- 156.19 Penalties for Transferring Lots in Unapproved Subdivisions

***Development Regulations***

- 156.30 Establishment of Watershed Areas
- 156.31 Watershed Areas- Allowed and Not Allowed Uses (Table of Uses)
- 156.32 Watershed Areas – Density and Built-Upon Limits
- 156.33 Cluster Development
- 156.34 Buffer Areas Required
- 156.35 Rules Governing Interpretation of Watershed Area Boundaries
- 156.36 Application of Regulations
- 156.37 Existing Development
- 156.38 Watershed Protection Permit
- 156.39 Building Permit Required
- 156.40 Watershed Protection Occupancy Permit
- 156.41 Drainage of Impoundment Permits Within Watershed Area of the Town of Highlands

***Public Health Regulations***

- 156.50 No Threat to Public Health Permitted
- 156.51 Abatement

***Administration, Enforcement, and Appeals***

- 156.65 Watershed Administrator
- 156.66 Appeal from Administrator
- 156.67 Variances
- 156.68 Appeals from Planning Board
- 156.69 Changes and Amendments to the Ordinance
- 156.70 Public Notice and Hearing Required

156.71 Criminal Penalties  
156.72 Remedies

## ***GENERAL PROVISIONS***

### **§156.01 AUTHORITY AND ENACTMENT**

The Legislature of the State of North Carolina has, in G.S. §153A-121 *et seq.*, General Ordinance Authority; and in Chapter 143, Article 21, Water and Air Resources, , delegated the responsibility or directed local governmental units to adopt regulations designed to promote the public health, safety, and general welfare of its citizenry. G.S. §160D-926 refers specifically to watershed management. G.S. §143-214.5 also includes water supply watershed protection requirements. The Board of Commissioners does hereby ordain and enact into law the following sections as the *Water Supply Watershed Protection Ordinance of Macon County*.

### **§156.02 JURISDICTION**

The provisions of this ordinance shall apply: (1) within the areas designated as public water supply watershed by the NC Environmental Management Commission and shall be defined and established on the maps entitled “Watershed Protection Maps of Macon County, North Carolina” (“Watershed Maps”), which have heretofore been adopted as part of this Ordinance; and (2) those areas designated as excellent quality waters (areas which are of exceptional value in Macon County for recreational or ecological significance) which shall be defined and established on the maps entitled “Watershed Protection Maps Showing Excellent Quality Waters of Macon County, North Carolina” (the “Excellent Quality Waters Maps”) which are adopted simultaneously herewith, copies of which are on file in the office of the Macon County Planner and in the office of the Macon County Manager.

The EQW Watershed Area is further described as: All that area located within 1,000 feet of the top of either bank of the Little Tennessee River and that area located within 500 feet to the top of either bank of any perennial stream which constitutes a tributary of the river and is located north of a point in the center of the dam which creates Lake Emory and extending northerly along said river to the Macon County/Swain County line.

The Watershed Maps and all explanatory matter contained thereon, are hereby made a part of this Ordinance and are incorporated herein by reference as if herein fully set forth.

A copy of this Ordinance shall be permanently kept on file in the office of the Macon County Manager.

### **§156.03 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 ordinance amend, modify or restrict any provisions of the Code of Ordinances of Macon County; however, the adoption of this ordinance shall and does amend any and all ordinances, resolutions, and regulations in effect in the County at the time of the adoption of this ordinance that may be construed to impair or reduce the effectiveness of this ordinance or to conflict with any of its provisions.

(B) It is not intended that these regulations interfere with any easement, covenants or other agreements between parties. However, if the provisions of these regulations impose greater restrictions or higher standards for the use of a building or land, then the provisions of these regulations shall control.

(C) Existing development, as defined in this ordinance, is regulated under the provisions as stated in §156.37.

(D) Expansions to existing development must meet the requirements of this ordinance, except single family residential development 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 Lot of Record is not contiguous to any other lot owned by the same party, then that lot of record shall not be subject to the development restrictions of this ordinance if it is developed for single-family residential purposes. [The County requires the combination of contiguous nonconforming lots of record owned by same party to establish a lot or lots that meet the requirements as set forth in Sections 156.15- 156.19 of this ordinance.]

#### **§156.04 DEFINITIONS**

For the purpose of this ordinance the following definitions shall apply unless the context clearly indicates or requires a different meaning. Words in the present tense include future tense. Words used in the singular number include the plural, and words used in the plural number include the singular, unless the natural construction of the wording indicates otherwise.

***AGRICULTURAL USE.*** The use of waters for stock watering, irrigation, and other farm purposes.

**BALANCE OF WATERSHED (BW).** The area adjoining and upstream of the critical area in a WS-II and WS\_III water supply watershed. The “balance of watershed” is comprised of the entire land area contributing to surface drainage to the stream, river, or reservoir where a water supply intake is located.

**BEST MANAGEMENT PRACTICES (BMPS).** A structural or nonstructural management-based practice used singularly or in combination to reduce non-point source inputs to receiving waters in order to achieve water quality protection goals.

**BUFFER.** An area of natural or planted vegetation through which stormwater runoff flows in a diffuse manner so that the runoff does not become channelized and which provides for infiltration of the runoff and filtering of pollutants. The buffer is measured landward from the normal pool elevation of impounded structures and from the bank of each side of streams or rivers.

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

**BUILT-UPON AREA.** Built-upon areas shall include that portion of a development project that is covered by impervious or partially impervious (does not allow water to infiltrate from surface to subsurface) cover including buildings, pavement, gravel areas (such as roads, parking lots, paths), recreation facilities (such as tennis courts), and the like. (Note: Wooden slatted decks are considered pervious).

**CLUSTER DEVELOPMENT.** The grouping of buildings in order to conserve land resources and provide for innovation in the design of the project including minimizing stormwater runoff impacts. This term includes non-residential development as well as single family residential subdivisions and multi-family developments. For the purpose of this ordinance, planned unit developments and mixed use development are considered as cluster development.

**COMMON PLAN OF DEVELOPMENT.** Site where multiple separate and distinct development activities may be taking place at different times or different schedules but governed by a single development plan regardless of ownership of parcels.

**CRITICAL AREA.** The area adjacent to a water supply intake or reservoir where risk associated with pollution is greater than from the remaining portions of the watershed. The critical area is defined as extending either ½ mile from the normal pool elevation of the reservoir in which the intake is located or to the ridge line of the watershed (whichever comes first); or ½ mile upstream from the intake located directly in the stream or river (run-of-the-river), or the ridge line of the watershed (whichever comes first). The County may extend the critical area as needed. Major landmarks such as highways or property lines may be used to delineate the outer boundary of the critical area if these landmarks are immediately adjacent to the appropriate outer boundary of one-half mile.

***CUSTOMARY HOME OCCUPATIONS.*** Any use conducted entirely within a dwelling and carried on by the occupants thereof, which use is clearly incidental and secondary to the use of the dwelling for residential purposes and does not change the character thereof. Provided further that no mechanical equipment is installed or used except as is normally used for domestic or professional purposes, and that not over 25% of the total floor space of any structure is used for the occupation. No home occupation shall be conducted in any accessory building except for the storage and service of a vehicle that is driven off site, such as a service repair truck, delivery truck, and the like.

***DAM.*** A structure and appurtenant works erected by human effort and direction to impound or divert water.

***DEVELOPMENT.*** Any land disturbing activity which adds to or changes the amount of impervious or partially impervious cover on a land area or which otherwise decreases the infiltration of precipitation into the soil.

***DISCHARGING LANDFILL.*** A landfill which discharges treated leachate and which requires a National Pollution Discharge Elimination System (NPDES) permit.

***DRAINING.*** Any act in furtherance of the release of water from an impoundment at a rate greater than the rate by which the impoundment is normally replenished by its usual groundwater and subsurface sources.

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

***EXISTING DEVELOPMENT.*** Those projects that are built or those projects that at a minimum have established a vested right under North Carolina law as of the effective date of this ordinance, (i.e. November 15, 1993) to which the project is subject. based on at least one of the following criteria:

***EXISTING LOT (LOT OF RECORD).*** A lot which is part of a subdivision, a plat of which has been recorded in the Office of the Register of Deeds prior to the adoption of this ordinance (i.e. prior to November 15, 1993), or a lot described by metes and bounds, the description of which has been so recorded prior to the adoption of this ordinance (i.e. prior to November 15, 1993).

***FAMILY.*** One or more persons occupying a single dwelling unit, provided that unless all members are related by blood or marriage or adoption, no such family shall contain over five persons, but further provided that domestic servants employed or living on the premises may be housed on the premises without being counted as a family or families.

**HAZARDOUS MATERIAL.** Any substance listed as such in: SARA section 302, Extremely Hazardous Substances, CERCLA Hazardous Substances, or Section 311 of CWA (oil and hazardous substances).

**IMPOUNDMENT.** The body of water impounded by a dam.

**INDUSTRIAL DEVELOPMENT.** Any non-residential development that requires an NPDES permit for an industrial discharge and/or requires the use or storage of any hazardous material for the purpose of manufacturing, assembling, finishing, cleaning or developing any product or commodity.

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

**LANDFILL.** A facility for the disposal of solid waste on land in a sanitary manner in accordance with Chapter 130A, Article 9 of the N.C. General Statutes. For the purpose of this ordinance this term does not include composting facilities.

**LOT.** A parcel of land occupied or capable of being occupied by a building or group of buildings devoted to a common use, together with the customary accessories and open spaces belonging to the same. Includes the words “plot”, “parcel”, or “tract”.

**MAJOR VARIANCE.** A variance that is not a Minor Variance as defined in this ordinance.

**MINOR VARIANCE.** A variance from the ordinance that results in a relaxation, by a factor of up to 10%, of any management requirement under the low density option. For variances to a buffer requirement, the percent variation shall be calculated using the foot print of built-upon area proposed to encroach with the buffer divided by the total area of vegetated setback within the project.

**NONCONFORMING LOT OF RECORD.** A lot described by a plat or deed that was recorded prior to the effective date of this ordinance (i.e. prior to November 15, 1993) that does not meet the minimum size or other development requirements of this ordinance.

**NON-RESIDENTIAL DEVELOPMENT.** All development other than residential development, agriculture and silviculture.

**PERENNIAL STREAM.** A well-defined channel that contains water year-round during a year of normal rainfall with the aquatic bed located below the water table for most of the year. Groundwater is the primary source of water for a perennial stream, but it also carries stormwater

runoff. A perennial stream exhibits the typical biological, hydrological, and physical characteristics commonly associated with the continuous conveyance of water.

**PERENNIAL WATERBODY.** A natural or man-made basin, including lakes, ponds, and reservoirs, that stores surface water permanently at depths sufficient to preclude the growth of rooted plants. The water body must be part of a natural drainage way (e.g. connected by surface flow to a stream).

**PERSON.** Includes a firm, association, corporation, trust, and company as well as individual.

**PLAT.** A map or plan of a parcel of land which is to be, or has been subdivided.

**QUALIFIED INDIVIDUAL.** A person certified to perform stream determinations by completing and passing the Surface Water Identification Training and Certification (SWITC) course offered by the N.C. Div. of Water Resources at N.C. State University.

**RECREATIONAL VEHICLE.** A vehicle, which is:

- (a) Built on a single chassis;
- (b) 400 square feet or less when measured at the largest horizontal projection;
- (c) Designed to be self-propelled or permanently towable by a light duty truck; and
- (d) Designed primarily not for use as a permanent dwelling, but as temporary living quarters for recreational, camping, travel, or seasonal use.

**RECREATIONAL VEHICLE PARK OR SUBDIVISION.** A tract or parcel (or contiguous parcels) of land divided into two or more lots or RV parking sites for rent or sale for occupancy by recreational vehicles used as temporary living quarters or for storage of a recreational vehicle.

**RESIDENTIAL DEVELOPMENT.** Buildings for residence such as attached and detached single family dwellings, apartment complexes, condominiums, townhouses, cottages, and the like, and their associated outbuildings such as garages, storage buildings, gazebos and the like, and customary home occupations.

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

**SEDIMENT.** Solid particulate matter, both mineral and organic, that has been or is being transported by water from its site of origin.

**SHALL.** Is always mandatory and not merely directory.



***SINGLE-FAMILY RESIDENTIAL.*** Any development where:

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

***STREET (ROAD).*** A right of way for vehicular traffic which affords the principal means of access to abutting properties.

***STRUCTURE.*** Anything constructed or erected, including but not limited to buildings, which requires location on the land or attachment to something having permanent location on the land. Includes the word “building”.

***SUBDIVIDER.*** Any person, firm, corporation or official who subdivides or develops any land deemed to be a subdivision as herein defined.

***SUBDIVISION.*** All divisions of a tract or parcel of land into two or more lots, building sites, or other divisions for the purpose of sale or building development (whether immediate or future) and shall include all division of land involving the dedication of a new street or a change in existing streets; but the following shall not be included within this definition nor be subject to the regulations authorized by this ordinance:

- (1) The combination or recombination of portions of previously subdivided and recorded lots where the total number of lots is not increased and the resultant lots are equal to or exceed the standards of this ordinance;
- (2) The division of land into parcels greater than 10 acres where no street right-of-way dedication is involved;
- (3) The public acquisition by purchase of strips of land for the widening or opening of streets;
- (4) The division of a tract in single ownership whose entire area is no greater than 2 acres into not more than 3 lots, where no street right-of-way dedication is involved and where the resultant lots are equal to or exceed the standards of this ordinance;
- (5) The division of a tract into plots or lots used as a cemetery.
- (6) The division of a tract into parcels in accordance with the terms of a probated will or in accordance with intestate succession under Chapter 29 of the General Statutes.

***SURFACE WATERS.*** All water of the State as defined in N.C.G.S. §143-212 except underground waters.

***TEN-YEAR STORM.*** The surface run-off resulting from a rainfall of an intensity expected to be equaled or exceeded, on the average, once in ten years, and of a duration which will produce the maximum peak rate of run-off for the watershed of interest under average antecedent wetness conditions.

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

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

***VESTED RIGHT.*** The right to undertake and complete the development and use of property under the terms and condition of an approved site-specific development plan or an approved phased development plan, in accordance with N.C.G.S §160D-108.

***WATER DEPENDENT STRUCTURE.*** Any structure for which the use requires access to or proximity to or citing within surface waters to fulfill its basic purpose, such as boat ramps, boat houses, docks and bulkheads. Ancillary facilities such as restaurants, outlets for boat supplies, parking lots and commercial boat storage areas are not water dependent structures.

***WATERSHED.*** The entire land area contributing surface drainage to a specific point (such as the water supply intake) or alternatively, the geographic region within which water drains to a particular river, stream or body of water.

***WATERSHED ADMINISTRATOR.*** An official or designated person of Macon County responsible for administration and enforcement of this ordinance with the exception of Section 156.41 which shall mean the official or designated person of the Town of Highlands responsible for administration and enforcement of Section 156.41.

***WILL.*** Is always mandatory and not merely directory.

### ***SUBDIVISION REGULATIONS:***

#### **§156.15 GENERAL PROVISIONS**

(A) No subdivision plat of land within the Water Supply Watershed shall be filed or recorded by the Macon County Register of Deeds until it has been approved in accordance with the provisions of this ordinance. Likewise, the Macon County Clerk of Superior Court shall not order or direct the recording of a plat if the recording of such plat would be in conflict with this ordinance.

(B) The approval of a plat does not constitute or effect the acceptance by the County or the public of the dedication of any street or other ground, easement, right-of-way, public utility line, or other public facility show on the plat and shall not be construed to do so.

(C) All subdivisions shall conform with the mapping requirements contained in G.S. §47-30.

(D) All subdivisions of land within the jurisdiction of the County after the effective date of this ordinance (i.e. November 15, 1993) shall require a plat to be prepared, approved, and recorded pursuant to this ordinance.

#### **§156.16 SUBDIVISION APPLICATION AND REVIEW PROCEDURES**

(A) All proposed subdivisions shall be reviewed prior to recording with the Macon County Register of Deeds by submitting a vicinity map to the Watershed Administrator to determine whether or not the property is located within the designated Water Supply Watershed. Subdivisions that are not within the designated watershed area shall not be subject to the provisions of this ordinance and may be recorded provided the Watershed Administrator initials the vicinity map. Subdivisions within the designated watershed area shall comply with the provisions of this ordinance and all other state and local requirements that may apply.

(B) Subdivision applications shall be filed with the Watershed Administrator on forms provided by the Administrator. The application shall include a completed application form, 2 copies of the plat, a description of the proposed method of providing storm water drainage, and supporting documentation deemed necessary by the Watershed Administrator or the Planning Board.

(C) The Watershed Administrator shall review the completed application and shall either approve, approve conditionally, or disapprove the application. The Watershed Administrator shall take final action within 45 days of submission of the application. The Watershed Administrator may provide public agencies an opportunity to review and make. However, failure of the agencies to submit their comments and recommendations shall not delay the Watershed Administrator's action within the prescribed time limit. The public agencies may include, but are not limited to the following:

- (1) The NCDOT district highway engineer with regard to proposed streets and highways.
  - (2) The director of the Macon County Health Department with regard to proposed private water systems or sewer systems normally approved by the Health Department.
  - (3) The state Division of Water Resources with regard to proposed sewer systems normally approved by the Division.
  - (4) The state Division of Energy, Mineral and Land Resources with regard to engineered storm water controls or storm water management in general.
  - (5) County entities responsible for proposed sewer and/or water systems.
  - (6) Any other agency or official designated by the Watershed Administrator or Planning Board.
- (D) If the Watershed Administrator approves the application, such approval shall be indicated on both copies of the plat by the following certificate and signed by the Watershed Administrator.

**Certificate of Approval For Recording**

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

Date: \_\_\_\_\_

Watershed Administrator: \_\_\_\_\_

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

- (E) If the Watershed Administrator disapproves or approves conditionally the application, the reasons for such action shall be stated in writing for the applicant and in accordance with N.C.G.S. §160D-403. The subdivider may make changes and submit a revised plan which shall constitute a separate request for the purpose of review.
- (F) As a condition for approval, all subdivision plats shall comply with the requirements for recording of the Macon County Register of Deeds.
- (G) The Subdivider shall provide the Watershed Administrator with the evidence the plat has been recorded with the Macon County Register of Deeds within 5 working days.

**§156.17 SUBDIVISION STANDARDS AND REQUIRED IMPROVEMENTS.**

(A) *Adequate building space.* All lots shall provide adequate building space in accordance with the development standards contained in §156.30 through 156.41. Lots which are smaller than the minimum required for residential lots may be developed using built-upon area criteria in accordance with Sections §156.30 through 156.41 shall be identified on the plat as “NOT FOR RESIDENTIAL PURPOSES”.

(B) *Total Project Area.* For the purpose of calculating built-upon area, total project area shall include total acreage in the tract on which the project is to be developed.

(C) *Storm Water Drainage Facilities.* The application shall be accompanied by a description of the proposed method of providing storm water drainage. The subdivider shall provide a drainage system that diverts storm water runoff away from surface waters, incorporates Storm Water Control Measures to minimize water quality impacts, and meets any local requirements.

(D) *Erosion and Sedimentation control.* The application shall, where required, be accompanied by the sedimentation and erosion control plan approval by the County’s Soil and Erosion Control Administrator..

**§156.18 CONSTRUCTION PROCEDURES**

(A) No construction or installation of improvements shall commence in a proposed subdivision until a subdivision plat has been approved by the Watershed Administrator.

(B) No building or other permits shall be issued for erection of a structure on any lot not on record at the time of adoption of this ordinance (i.e. November 15, 1993) until all requirements of this ordinance have been met. The subdivider, prior to commencing any work within the subdivision, shall make arrangements with the Watershed Administrator to provide for adequate inspection.

**§156.19 PENALITIES FOR TRANSFERRING LOTS IN UNAPPROVED SUBDIVISIONS**

Any person who, being the owner or agent of the owner of any land located within the jurisdiction of Macon County, thereafter subdivides his or her land in violation of this ordinance or transfers or sells land by reference to, exhibition of, or any other use of a plat showing a subdivision of the land before the plat has been properly approved under this ordinance and recorded in the office of the Register of Deeds, shall be guilty of a misdemeanor. The description by metes and bounds in the instrument of transfer or other document used in the process of selling or transferring land shall not exempt the transaction for this penalty. The County may bring an action for injunction of any illegal subdivision, transfer, conveyance, or sale of land, and the court shall, upon appropriate findings, issue an injunction and order requiring the offending party to comply with this ordinance.

**DEVELOPMENT REGULATIONS**

**§156.30. ESTABLISHMENT OF WATERSHED AREAS**

The purpose of this Section is to list and describe the watershed areas herein adopted.

For purposes of this ordinance, Macon County is hereby divided into the following area(s) as appropriate:

**Watershed Classification**

- WS-I
- WS-II-CA
- WS-II-BW
- WS-III-CA
- WS-III-BW
- WS- EQW

**Watershed Type**

- Watershed One
- Watershed Two Critical Area
- Watershed Two Balance Area
- Watershed Three Critical Area
- Watershed Three Balance Area
- Watershed Excellent Quality Waters

**§156.31. WATERSHED AREAS – ALLOWED AND NOT ALLOWED USES  
(TABLE OF USES)**

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

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

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> Where no other practical alternative exists

<sup>e</sup> In WS-I watersheds and Critical Areas of WS-II and WS-III watersheds, agricultural activities conducted after 1/1/1993 shall maintain a minimum 10 foot vegetated setback or equivalent control as determined by SWCC 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>f</sup> Subject to Forest Practice Guidelines Related to Water Quality (02 NCAC 60C .0100 to .0209) Effective 4/1/2018 <sup>g</sup> See density requirements in 15A NCAC 02B.0624

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

<sup>i</sup> Animal operations deemed permitted, as defined in 15A NCAC 02T.0103 and permitted under 15A NCAC 02T.1300.

## **§156.32. WATERSHED AREAS – DENSITY AND BUILT-UPON 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 | Location in the Watershed   | Maximum Allowable Project Density or Minimum Lot Size |  |
|-----------------------------|---|---|--|
|                             |   | Density Development                                   |  |
|                             |   | Single-Family Detached Residential                    | Non-residential and all other residential* |
| WS-I                        | Not Applicable: Watershed shall remain undeveloped except for the following uses when they cannot be avoided: power transmission lines, restricted access roads, and structures associated with water withdrawal, treatment and distribution of the WS-I water. Built-upon area shall be designed and located to minimize stormwater runoff impact to receiving waters. |   |  |
| WS-II                       | CA  | 1 dwelling unit (du) per 2 acres                      | 6% built-upon area                         |
|                             | BW  | 1 du per 1 acre                                       | 12% built-upon area**                      |
| WS-III                      | CA  | 1 du per 1 acre                                       | 12% built-upon area                        |
|                             | BW  | 2 du per 1 acre                                       | 24% built-upon area**                      |
| WS-EQW                      |   | 2 du per 1 acre                                       | 18% built upon area**                      |

\* For the purposes of calculating built-upon area, total project area shall include total acreage in the tract on which the project is to be developed.

\*\* SNIA's allowed upon approval by Planning Board – see section C below

(B) *Additional Requirements.* In addition to complying with the project density requirements of Paragraph (A) above, projects shall comply with the following:

- (1) 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 County 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-paragraph:



- (a) 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
  - (b) 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.
- (2) Curb Outlet Systems. In lieu of vegetated conveyances, 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:
- (a) 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;
  - (b) The longitudinal slope of the swale or vegetated area shall not exceed 5% 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;
  - (c) The swale's cross section shall be trapezoidal with a minimum bottom width of 2 feet;
  - (d) The side slopes of the swale or vegetated area shall be no steeper than 3:1 (horizontal to vertical);
  - (e) The minimum length of the swale or vegetated area shall be 100 feet; and
  - (f) Projects may use treatment swales designed in accordance with 15A NCAC 02H.1061 in lieu of the requirements specified in (a) through (e) above.

*(C) Special Nonresidential Intensity Allocations (SNIA).*

In WS-II -Balance of Watershed, WS-III -Balance of Watershed and EQW watersheds, non residential uses may occupy 10% of the balance of the watershed, which is outside the critical area, with a 70% built-upon area when approved as a special nonresidential intensity allocation (SNIA). The Planning Board is authorized to approve SNIAs consistent with the provisions of this ordinance, and such approved projects shall be awarded on a first come, first serve basis. Projects must minimize built-upon surface area, direct stormwater away from surface waters and incorporate Best Management Practices to minimize water quality impacts. Non-discharging landfills and residuals applications sites are allowed. Recreational vehicle parks shall not be eligible for a SNIA.

Projects shall comply with the requirements set forth in Paragraph (B) above.

Projects that require point source discharges of a kind and nature which require permitting under Federal, State or local laws, ordinances, rules or regulations (now in existence or hereafter enacted) are prohibited in WS-II-BA, WS-III-BA and EQW watersheds.

### §156.33 CLUSTER DEVELOPMENT

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

(A) Minimum lot sizes are not applicable to single family cluster development projects nor recreational vehicle parks; however, the total number of lots shall not exceed the number of lots allowed for single family detached developments in §156.31. Density or built-upon area for the project shall not exceed that allowed for the critical area, balance of watershed or protected area, 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, maximize the use of sheet flow through vegetated areas, and maximize the flow length through vegetated areas.

(C) Areas of concentrated density development shall be located in upland area and away, to the maximum extent practicable, from surface waters and drainageways.

(D) The remainder of the tract shall remain in a vegetated or natural state. The title to the open space area shall be conveyed to an incorporated homeowners association for management; to a local government for preservation as a park or open space; or to a conservation organization for preservation in a permanent easement. Where a property association is not incorporated, a maintenance agreement shall be filed with the property deeds.

(E) Cluster developments shall transport stormwater runoff by vegetated conveyances to the maximum extent practicable.

### §156.34 BUFFER AREAS REQUIRED

In all watershed areas affected by this ordinance, the following buffer requirements shall be in effect:

(A) A minimum 30-foot vegetative buffer for 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, except around the shore of Lake Sequoya, where the required buffer shall be fifty (50) feet; provided however, that access drives from existing roads located within the Lake Sequoyah buffer shall be permitted. Desirable artificial streambank or shoreline stabilization is permitted.

(Adopted on 9-9-02)

(B) Where USGS topographic maps do not distinguish between perennial and intermittent streams, an on-site stream determination may be performed by an individual qualified to perform such stream determinations.

(C) No new development is allowed in the buffer except for water dependent structures, other structures such as flag poles, signs and security lights which result in only diminutive increases in impervious area, 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.

### **§156.35 RULES GOVERNING INTERPRETATION OF WATERSHED AREA BOUNDARIES**

Where uncertainty exists as to the boundaries of the watershed areas, as shown on the Watershed Maps, 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 County as evidence that one or more properties along these boundaries do not lie within watershed area.

(C) Where the watershed area boundaries lie at a scaled distance more than 25 feet or less from any parallel lot line, the location of watershed area boundaries shall be determined by use of the scaled appearing on the watershed map.

(D) Where the watershed area boundaries lie at a scaled distance of 25 feet or less from any parallel lot line, the location of watershed area boundaries shall be construed to be the lot line.

(E) Where other uncertainty exists, the Watershed Administrator shall interpret the Watershed Maps as to location of such boundaries. This decision may be appealed to the Planning Board.

### **§156.36 APPLICATION OF REGULATIONS.**

(A) No building or land shall hereafter be used and no development shall take place except in conformity with the regulations herein specified for the watershed area in which it is located.

(B) No area required for the purpose of complying with the provisions of this ordinance shall be included in the area required to make another building..

(C) Every residential building hereafter erected, moved or structurally altered shall be located on a lot which conforms to the regulations herein specified, except as permitted in §156.37.

(D) If a use or class of use is not specifically indicated as being allowed in a watershed area, such use or class of use is prohibited.

### **§156.37 EXISTING DEVELOPMENT**

Any existing development, as defined by this ordinance, may be continued and maintained subject to the provisions provided herein.

(A) *Expansions of Existing Development.*

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

(B) *Reconstruction of Buildings or Built-Upon Areas.* Single-family residential development may be repaired and/or reconstructed without restriction. Any other existing building or built-upon area not in conformance with the restrictions of this ordinance that has been damaged or removed may be repaired and/or reconstructed, provided:

(1) Repair or reconstructed is initiated within 12 months and completed within an additional two years of such damage.

(2) The total amount of space devoted to built-upon area may not be increased unless stormwater control that equals or exceeds the previous development is provided and the additional built-upon area meets the expansion requirements above..

(C) *Uses of Land.* This category consists of uses existing at the time of adoption of this ordinance (i.e. prior to November 15, 1993) where such use of the land is not permitted to be established hereafter in the watershed area in which it is located. Such uses may be continued except as follows:

(1) When such use of land has been changed to an allowed use, it shall not thereafter revert to any prohibited use.

(2) Such use of land as a non-permitted use shall be changed only to an allowed use.

(3) When such a non-permitted use ceases for a period of at least 12 consecutive months, it shall not be reestablished.

(D) *Vacant Lots*. This category consists of vacant lots for which plats or deeds have been recorded in the office of the Registrar of Deeds of Macon County. A lot may be used or any of the uses allowed in the water area in which it is located.

### **§156.38 WATERSHED PROTECTION PERMIT**

(A) Except where a single-family residence is constructed on a lot deeded prior to the effective date of this ordinance (i.e. prior to November 15, 1993), no building or built-upon area shall be erected, moved, enlarged, or structurally altered, nor shall any building permit be issued nor shall any change in the use of any building or land be made until a Watershed Protection Permit has been issued by the Watershed Administrator. No Watershed Protection Permit shall be issued except in conformity with the provisions of this ordinance.

(B) Watershed Protection Permit applications shall be filed with the Watershed Administrator. The application shall include a completed application form to be provided by the Watershed Administrator and supporting documentation deemed necessary by the Watershed Administrator.

(C) For those watershed protection permit applications which require use of the built-upon option instead of the lot-size option (i.e. non-residential and all other residential that is not single family residential – see Uses Table), the application shall include the following information:

(1) A site sketch, drawn to scale of at least one inch to 40 feet, of the parcel of property showing its actual dimensions and size, and showing the dimensions and size of all buildings, pavement, gravel roads, recreation facilities, or any other portion of a development that is impervious or partially impervious;

(2) The use to which the completed project shall be devoted; and

(3) Any other information reasonably necessary to evaluate the compliance of the applicant's proposal with the provisions of this ordinance.

(D) Prior to issuance of a Watershed Protection Permit, the Watershed Administrator may consult with qualified personnel for assistance to determine if the application meets the requirements of this ordinance.

(E) A Watershed Protection Permit shall expire if a building permit or Watershed Occupancy Permit for such use is not obtained by the applicant within 12 months from the date of issuance.

### **§156.39 BUILDING PERMIT REQUIRED**

Except for a single-family residence constructed on a lot deeded prior to the effective date of this chapter, no permit required under North Carolina State Building Code shall be issued for any activity for which a Watershed Protection Permit is required until that permit has been issued.

### **§156.40 WATERSHED PROTECTION OCCUPANY PERMIT**

(A) The Watershed Administrator shall issue a Watershed Protection Occupancy permit certifying that all requirements of this ordinance have been met prior to the occupancy or use of a building hereafter erected, altered or moved and/or prior to the change of use of any building or land.

(B) A Watershed Protection Occupancy Permit, either for the whole or part of a building, shall be applied for coincident with the application for a Watershed Protection Permit and shall be issued or denied within 10 business days after the erection or structural alterations of the building. The applicant should notify the Watershed Administrator and request the issued Watershed Protection Occupancy permit when building is complete.

(C) When only a change in use of land or existing building occurs, the Watershed Administrator shall issue a Watershed Protection Occupancy Permit certifying that all requirements of this ordinance have been met coincident with the Watershed Protection Permit.

(D) If the Watershed Protection Occupancy Permit is denied, the Watershed Administrator shall notify the applicant in writing state the reasons for denial. and in accordance with N.C.G.S. §160D-403.

(E) No building or structure which has been erected, moved, or structurally altered may be occupied until the Watershed Administrator has approved and issued a Watershed Protection Occupancy Permit.

### **§156.41 DRAINAGE OF IMPOUNDMENT PERMITS WITHIN WATERSHED AREA OF THE TOWN OF HIGHLANDS**

(A) *Purpose and Scope.* The draining of impoundments without taking adequate precautions to prevent the release of accumulated sediment into the stream below the impoundment shall be considered a threat to the public health, safety and welfare. This section is adopted for the purposes of regulating the draining of impoundments.

(B) *Jurisdiction.* The provisions of this section shall apply within that portion of the watershed area of the Town of Highlands which is located within the County of Macon and not

within the boundaries of the Town of Highlands, as the same is determined on the Watershed Maps.

(Ord. passed 7-1-2002).

(C) *Permit Required.*

(1) Before the owner of any impoundment drains an impoundment, he or she shall first notify the Town of Highlands Watershed Administrator in writing not less than 30 days prior to doing so, specifying the name of the impoundment, if any, the location of the impoundment, the surface area of the impoundment, and the size of the contributing drainage area. The owner or his or her agent shall not proceed with the draining without issuance of an Impoundment Draining Permit from the Town of Highlands Watershed Administrator.

(2) Submittal of the following information shall be required:

(a) *Impoundments either less than or equal to ½ acre in surface area or naturally receiving the surface water runoff of less than or equal to 75 acres.* For impoundments either less than or equal to ½ acre in surface area at full pool, or receiving the surface water runoff from less than or equal to 75 acres of contributing drainage area, or both (such as meeting both of the two foregoing criteria), the applicant shall submit a plan indicating the method to be used in draining the lake and the measures to be taken to prevent the release of sediment from the impoundment. Such plans shall also include the following:

- (i) A time schedule for completion of the draining. The time limit for draining the impoundment shall not exceed 60 days without written permission from the Town of Highlands Watershed Administrator, unless the draining is of a permanent nature, and in such case all areas subject to erosion and sedimentation shall be permanently stabilized.
- (ii) Plans showing the specific measures to be taken to limit turbidity immediately downstream from the impoundment to 50 NTUs at all times during and after draining.

(b) *Impoundments either more than ½ acre in surface area or naturally receiving the surface water runoff of more than 75 acres.* For impoundments either more than ½ acre in surface area at full pool, or receiving the surface water runoff from more than 75 acres of contributing drainage area, or both (such as meeting both of the two foregoing criteria), the applicant shall submit a plan prepared by an N.C. Professional Engineer, indicating the method to be used in draining the lake

and the measures to be taken to prevent the release of sediment from the impoundment. Such plans shall also include the following:

- (i) A time schedule for completion of the draining. The time limit for draining the impoundment shall not exceed 60 days without written permission from the Town of Highlands Watershed Administrator, unless the draining is of a permanent nature, and in such case all areas subject to erosion and sedimentation shall be permanently stabilized.
- (ii) Detailed plans and specifications sealed by an N.C. Professional Engineer showing temporary erosion control measures, diversion measures, or other channel protection measures designed to protect against erosion and the loss of sedimentation at all times up to and including a ten-year storm, and to limit turbidity immediately downstream from the impoundment to 50 NTUs at all times during and after draining.

(c) The Town of Highlands Watershed Administrator may submit any plans received under the foregoing divisions (A) and (B) to the town engineer, to a consulting engineer having expertise in this field, or to the North Carolina Department of Environment and Natural Resources (DENR) for review and comment at the expense of the Town of Highlands. The Town of Highlands Watershed Administrator shall issued the Impoundment Draining Permit only upon a determination that the plan is adequate to prevent the release of sediment from the impoundment and to limit turbidity immediately downstream from the impoundment to 50 NTUs at all times during and after draining.

(d) Such permit shall not relieve the applicant of the obligation to obtain whatever state or federal permits are required under the law.

(e) The applicant shall comply in all respects with the time schedules and approved plans.

(f) The Town of Highlands Watershed Administrator may also request the Town Engineer, qualified officials from the North Carolina Department of Environment and Natural Resources, or other qualified consultants or employees of the Town of Highlands, to conduct turbidity monitoring downstream from the impoundment to ensure compliance with the plan submitted and approved. "Turbidity monitoring" as used herein, shall mean all testing, sampling, or other procedures or activities related to the determination of turbidity levels both upstream and downstream from impoundments. The Town of Highlands Watershed



Administrator may assess the costs of all turbidity monitoring to the applicant. The applicant shall allow access to all portions of the applicant's land necessary to accomplish any of the purposes of this section.

***PUBLIC HEALTH REGULATIONS***

**§156.50 NO THREAT TO PUBLIC HEALTH PERMITTED.**

No activity, situation, structure or land use shall be allowed within the watershed, which poses a threat to water quality and the public health, safety and welfare. Such conditions may arise from in adequate on-site sewage systems which utilize ground absorptions; inadequate sedimentation and erosion control measures; the improper storage or disposal of junk, trash or other refuse within a buffer area: the absence or improper implementation of a spill containment plan for toxic and hazardous materials; the improper management of stormwater runoff, or any other situation found to pose a threat to water quality.

**§156.51 ABATEMENT**

(A) The Watershed Administrator shall monitor land use activities within the watershed areas to identify situations that may pose a threat to water quality.

(B) Where the Watershed Administrator finds a threat to water quality and the public health, safety, and welfare, the Macon County Board of Commissioners shall institute any appropriate action or proceeding to restrain, correct or abate the condition and/or violation.

***ADMINISTRATION, ENFORCEMENT AND APPEALS***

**§156.65 WATERSHED ADMINISTRATOR**

Macon County shall appoint a Watershed Administrator, who shall be duly sworn in. It shall be the duty of the Watershed Administrator to administer and enforce the provisions of this ordinance as follows:

(A) The Watershed Administrator shall issue Watershed Protection Permits and Watershed Protection Occupancy Permits as prescribed herein. A record of all permits shall be kept on file and shall be available for public inspection during regular office hours of the Administrator.

(B) The Watershed Administrator shall keep records of all amendments to the local Water Supply Watershed Protection ordinance and shall provide copies of all amendments upon adoption to the Stormwater Branch of the Division of Energy, Mineral, and Land Resources. .

(C) The Watershed Administrator shall keep records of the jurisdiction's use of the provision that a maximum of 10% of the non-critical area of WSII-BW and WS-III-BW watersheds may be

developed with nonresidential development at a maximum of 70% built-upon surface area. Records for each watershed shall include the total acres of non-critical watershed area, total acres eligible to be developed under this option, total acres approved for this development option, and individual records for each project with the following information: location, number of developed acres, type of land use, and stormwater management plan (if applicable).

(D) The Watershed Administrator is granted the authority to administer and enforce the provisions of this ordinance, exercising in the fulfillment of his or her responsibility the full police power of Macon County, except that no civil or criminal action can be taken without the expressed permission of the County Manager. The Watershed Administrator, or his or her duly authorized representative, may periodically inspect projects to ensure compliance with this ordinance Pursuant to GS 160D-403(e), the Watershed Administrator, or his or her duly authorized representative, must enter the premises during reasonable hours and upon presenting credentials; provided however that the appropriate consent has been given for inspection of areas not open to the public or that an appropriate inspection warrant has been secured.

(E) The Watershed Administrator shall keep a record of variances to the local Water Supply Watershed Protection ordinance and shall submit this record for each calendar year to the Water Quality Section of the Division of Environmental Management on or before January 1st of the following year and shall provide a description of each project receiving a variance and the reasons for granting the variance.

#### **§156.66 APPEAL FROM ADMINISTRATOR**

(A) Any order, requirement, decision or determination made by the Watershed Administrator may be appealed to and decided by the Planning Board.

(B) An appeal from a decision of the Watershed Administrator must be submitted to the Clerk for the Planning Board within 30 calendar days from receipt of the written order, interpretation, decision or determination.. Notice given pursuant to N.C.G.S. 160D-403(b) by first class mail is deemed received on the third business day following deposit of the notice for mailing with the United States Postal Service.

(C) All appeals must be made in writing stating the reasons for the appeal. Following submission of an appeal, the Watershed Administrator shall transmit to the Board and to the appellant (and to the owner of the property that is the subject of the appeal if the appellant is not the owner) all documents and exhibits constituting the record upon which the decision appealed from was taken.

(D) Pursuant to N.C.G.S. 160D-405(f), an appeal of a notice of violation or other enforcement order stays enforcement of the action appealed from and accrual of any fines assessed during the pendency of the appeal to the Planning Board and any subsequent appeal in accordance with G.S. 160D-1402 or during the pendency of any civil proceeding authorized by law or appeals therefrom,

unless the Watershed Administrator certifies to the board after notice of appeal has been filed that, because of the facts stated in an affidavit, a stay would cause imminent peril to life or property or, because the violation is transitory in nature, a stay would seriously interfere with enforcement of the ordinance. In that case, enforcement proceedings are not stayed except by a restraining order, which may be granted by a court. If enforcement proceedings are not stayed, the appellant may file with the official a requires for an expedited hearing of the appeal, and the board shall meet to hear the appeal within 15 days after such a request is filed. .

(E) The Planning Board shall fix a reasonable time for hearing the appeal and give notice thereof to the parties and shall decide the same within a reasonable time. At the hearing, any party may appear in person, by agent, or attorney. Hearings shall be held in accordance with N.C.G.S. 160D-406.

### **§156.67 VARIANCES**

(A) *Variances.* The Planning Board shall have the power to authorize, in specific cases, minor variances from the terms of this ordinance as will not be contrary to the public interests where, owing to special conditions, a literal enforcement of this ordinance will result in practical difficulties or unnecessary hardship, so that the spirit of this ordinance shall be observed, public safety and welfare secured, and substantial justice done. In addition, the County shall notify and allow a reasonable comment period for all other local governments having jurisdiction in the designated watershed where the variance is being considered.

(1) Applications for a variance shall be made on the proper form obtainable from the Watershed Administrator and shall include the following information:

- (a) A site plan, drawn to a scale of at least one inch to 40 feet, indicating the property lines of the parcel upon which the use is proposed; any existing or proposed structures; parking areas and other built-upon areas; surface water drainage. The site plan shall be neatly drawn and indicate north point, name and address of the person who prepared the plan, date of the original drawing, and an accurate record of any later revisions.
- (b) A complete and detailed description of the proposed variance, together with any other pertinent information which the applicant feels would be helpful to the Planning Board in considering the application.
- (c) The Watershed Administrator shall notify in writing each local government having jurisdiction in the watershed and the entity using the water supply for consumption. Such notice shall include a description of the variance being requested. Local governments receiving notice of the variance request may submit comments to the

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

- (2) Before the Planning Board may grant a variance, it shall make the following three findings, which shall be recorded in the permanent record of the case, and shall include the factual reasons on which they are based:
  - (a) There are practical difficulties or unnecessary hardships in the way of carrying out the strict letter of the ordinance. In order to determine that there are practical difficulties or unnecessary hardships, the Board must find that the five following conditions exist:
    1. If he or she complies with the provisions of the ordinance, the applicant can secure no reasonable return from, nor make reasonable use of, his or her property. Merely proving that the variance would permit a greater profit to be made from the property will not be considered adequate to justify the Board in granting a variance. Moreover, the Board shall consider whether the variance is the minimum possible deviation from the terms of the ordinance that will make possible the reasonable use of his or her property.
    2. The hardship results from the application of the ordinance to the property rather than from other factors such as deed restrictions or other hardship.
    3. The hardship is due to the physical nature of the applicant's property, such as its size, shape, or topography, which is different from that of the neighboring property.
    4. The hardship is not the result of the actions of an applicant who knowingly or unknowingly violates the ordinance, or who purchases the property after the effective date of the ordinance (i.e. November 15, 1993), and then comes to the Board for relief.
    5. The hardship is peculiar to the applicant's property, rather than the result of conditions that are widespread. If other properties are equally subject to the hardship created in the restriction, then granting a variance would be a special privilege denied to others, and would not promote equal justice.
  - (b) The variance is in harmony with the general purpose and intent of the ordinance and preserves its spirit.
  - (c) In the granting of the variance, the public safety and welfare have been assured and substantial justice has been done. The Board shall not grant a variance if it finds that doing so would in any respect impair the public health, safety, or general welfare.

- (3) In granting the variance, the Board may attach thereto such conditions regarding the location, character and other features of the proposed building, structure, or use as it may deem advisable in the furtherance of the purpose of this ordinance. If a variance for the construction, alteration, or use of property is granted, such construction, alteration or use shall be in accordance with the approved site plan.
- (4) The PlanningBoard shall refuse to hear an appeal or application for a variance previously denied if it finds that there have been no substantial changes in conditions or circumstances bearing on the appeal or application.
- (5) A variance used in accordance with this section shall be considered a Watershed Protection Permit and shall expire if a Building Permit or Watershed Occupancy Permit for such use is not obtained by the applicant within 6 months from the date of the decision. Once a variance has been issued for a particular parcel, it shall remain in effect for the six-month period, regardless of a transfer in ownership.
- (6) If the application calls for the granting of a major variance, and if the PlanningBoard decides in favor of granting the variance, the Board shall prepare a preliminary record of the hearing with all deliberate speed. The preliminary record of the hearing shall include:
  - (a) The variance application;
  - (b) The hearing notices;
  - (c) The evidence presented;
  - (d) Motions, offers of proof, objections to evidence, and rulings on them;
  - (e) Proposed findings and exceptions;
  - (f) The proposed decision, including all conditions proposed to be added to the permit.

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

- (a) If the Commission concludes from the preliminary record that the variance qualifies as a major variance and that (1) the property owner can secure no reasonable return from, nor make practical use of the property unless the proposed variance is granted, and (2) the variance if granted, will not result in a serious threat to the water supply, then the Commission shall approve the variance as proposed or approve the proposed variance with conditions and stipulations. The Commission shall prepare a Commission decision and send it to the PlanningBoard. If the Commission approves the variance with conditions and stipulations, the Board shall prepare a final decision, including such conditions and stipulations, granting the proposed variance.

(b) If the Commission concludes from the preliminary record that the variance qualifies as a major variance and that (1) the property owner can secure a reasonable return from or make a practical use of the property without the variance or (2) the variance, if granted, will result in a serious threat to the water supply then the Commission shall deny approval of the variance as proposed. The Commission shall prepare a Commission decision and send it to the Planning Board. The Board shall prepare a final decision denying the variance as proposed.

### **§156.68 APPEALS FROM PLANNING BOARD**

Appeals from the Planning Board must be filed with the Superior Court of Macon County in accordance with N.C.G.S. 160D-406(k) and subject to review by the Superior Court by proceedings in the nature of certiorari pursuant to N.C. G.S. 160D-1402. Appeals shall be filed within the times specified in G.S. 160D-1405(d).

### **§156.69 CHANGES AND AMENDMENTS TO THE WATERSHED PROTECTION ORDINANCE**

(A) The Macon County Board of Commissioners may, on its own motion or on petition, after public notice and hearing, amend, supplement, change or modify the watershed regulations and restrictions as described herein.

(B) No action shall be taken until the proposal has been submitted to the Planning Board for review and recommendations. If no recommendation has been received from the Planning Board within 45 days after submission of the proposal to the Chairman of the Planning Board, the Macon County Board of Commissioners may proceed as though a favorable report had been received.

(C) Under no circumstances shall the Macon County Board of Commissioners adopt such amendments, supplements or changes that would cause this ordinance to violate the watershed protection rules as adopted by the N.C. Environmental Management Commission. All amendments must be filed with the N.C. Division of Energy, Mineral and Land Resources.

### **§156.70 PUBLIC NOTICE AND HEARING REQUIRED**

Before adopting or amending this ordinance, the Macon County Board of Commissioners shall hold a public hearing on the proposed changes. A notice of the public meeting shall be given once a week for two successive calendar weeks in a newspaper having general circulation in the

area. The notice shall be published for the first time not less than 10 nor more than 25 days before the date fixed for the hearing.

#### **§156.71 CRIMINAL PENALTIES.**

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

#### **§156.72 REMEDIES**

(A) If any subdivision, development and/or land use is found to be in violation of this ordinance, the Macon County Board of Commissioners may, in addition to all other remedies available either in law or in equity, impose a civil penalty in the amount of \$100.00, action or proceedings to restrain, correct, or abate the violation; to prevent occupancy of the building, structure or land; or to prevent any illegal act, conduct, business, or use in or about the premises. In addition, the N.C. Environmental Management Commission may assess civil penalties in accordance with G.S. §143.215.6(a). The penalties and remedies herein provided shall be in addition to and not in substitution of other penalties now or hereafter provided by law. 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 or she shall notify in writing the person responsible for such violation, indicating the nature of the violation, and ordering the necessary actions to correct it, in accordance with N.C.G.S. §160D-403. . 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. An aggrieved party or parties may appeal a ruling of the Watershed Administrator to the Planning Board.

(Ord. passed 7-1-2002)

**§156.73 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.

Effective upon adoption this —<sup>h</sup> \_\_\_\_ day of November 2021.