

## **An Ordinance Amending the Burke County Zoning Ordinance**

ZTA-2013-02

Be it ordained that the Burke County Zoning Ordinance is hereby amended to include Article XXII, Water Supply Watershed Protection Overlay District:

(All new text.)

### **ARTICLE XXII: WATER SUPPLY WATERSHED PROTECTION OVERLAY DISTRICT**

#### **Section 2200. Establishment of Watershed Areas.**

Within the County Planning jurisdiction the following watershed overlay districts shall be established:

- Warrior Fork WS-III-CA (Critical Area) (150 acres)
- Warrior Fork WS-III-BW (Balance of Watershed) (53,144 acres)
- Jacob Fork WS-III (Balance of Watershed) (29,833 acres)
- Catawba River WS-IV-CA (Critical Area) (190 acres)
- Catawba River WS-IV-PA (Protected Area) (8,677 acres)
- Lake Hickory WS-IV-CA (Critical Area) (two intakes) (1,619 acres)
- Lake Hickory WS-IV-PA (Protected Area) (11,501 acres)
- Lake Rhodhiss WS-IV-CA (Critical Area) (three intakes) (12,161 acres)
- Lake Rhodhiss WS-IV-PA (Protected Area) (56,601 acres)

#### **Section 2201. Intent**

The purpose of the Water Supply Watershed Protection Overlay District (WSWP) is to define the area of water supply watersheds within the County. The intent of the overlay district is to manage the uses of land and structures encompassed by water supply watersheds within the County in order to maintain a high quality of surface water in these watersheds; this being accomplished by enforcing standards that limit the impact from existing or potential sources of contamination through the regulation of average lot size, development intensity, and built upon area.

##### **2201.01 Scope**

Land use within the WSWP overlay district must comply with all the requirements of both the underlying general use district and the applicable Water Supply Watershed overlay district classification. If a use or class of use is not specifically indicated as being permitted in a watershed area, such use or class of use is prohibited.

##### **2201.02 Establishment of Boundaries**

This incorporates by reference the "Official Water Supply Watershed Map for Burke County," hereinafter "Official Water Supply Watershed Map," and subsequent amendments thereto, showing all water supply watershed areas designated by the NCEMC. The Official Water Supply Watershed Map shall be maintained by the Planning Director and kept in the Planning Department. The Official Water Supply Watershed Map shall also be shown as an overlay district on and become part of the Official Zoning Map for the County. The rules of interpretation for the boundaries of the map (see Article VI, Sec. 606 Rules for Determining Boundaries) apply. In addition, where any WSWP overlay district boundaries lie at a scaled distance of more than 25 feet from any parallel lot line, the location of these map boundaries shall be determined by using the scale of the map.

If a property owner can demonstrate his or her land drains into another watershed or into the receiving stream below the intake in the same watershed, the Zoning Administrator can exempt that specific area from the watershed regulations. Minor boundary interpretations must be sent to NCDWQ for verification and final approval.

#### 2201.03 Impact on Water Quality and Public Health

No activity, situation, structure or land use shall be allowed within a WSWP overlay sub-district that poses a threat to water quality and/or the public health, safety and welfare. Such conditions may arise from inadequate on-site sewage systems which utilize ground absorption; inadequate sedimentation and erosion control measures; the improper storage or disposal of junk, trash or other refuse within a buffer area; the improper management of stormwater runoff; or any other situation found to pose a threat to water quality. The Zoning Administrator shall monitor land use activities within the watershed areas to identify situations that may pose a threat to water quality. Where such activities are found, the Zoning Administrator shall take any appropriate action or proceeding to restrain, correct or abate the condition and/or violation.

#### 2201.04 General.

- (a) Watershed Protection Permit shall be part of the Burke County Zoning Permit.
- (b) Prior to issuance of a Watershed Protection Permit, the Zoning Administrator may consult with qualified personnel for assistance to determine if the application meets the requirements of this ordinance.

#### 2201.05. Existing Development.

Any 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 density built-upon area calculations if built prior to January 1, 1994.

## **Section 2202. Watershed Areas Described.**

### **2202.01 WS-III Watershed Areas - Critical Area (WS-III-CA).**

#### **Applicable to Warrior Fork WS-III-CA**

In order to maintain a low to moderate land use intensity pattern, single family residential uses shall be allowed at a maximum of one dwelling unit per acre. All other residential and non-residential development shall be allowed at a maximum twelve percent (12%) built-upon area. New residuals application sites and landfills are specifically prohibited.

#### **(1) Allowed Uses:**

(a) Agriculture subject to the provisions of the Food Security Act of 1985 and the Food, Agriculture, Conservation and Trade Act of 1990 and the rules and regulations of the Soil and Water Conservation Commission.

(b) Silviculture, subject to the provisions of the Forest Practices Guidelines Related to Water Quality (15 NCAC 11-.0101-.0209).

(c) Residential.

(d) Non-residential development, excluding: 1) landfills and 2) sites for land application residuals or petroleum contaminated soils.

#### **(2) Density and Built-upon Limits:**

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

(b) All Other Residential and Non-Residential--development shall not exceed twelve percent (12%) built-upon area on a project by project basis. For the purpose of calculating built-upon area, the total project area shall include total acreage in the tract on which the project is to be developed.

### **2202.02 WS-III Watershed Areas - Balance of Watershed (WS-III-BW).**

#### **Applicable to Warrior Fork WS-III and Jacob Fork WS-III**

In order to maintain a low to moderate land use intensity pattern, single family detached uses shall develop at a maximum of two (2) dwelling units per acre (2du/ac). All other residential and non-residential development shall be allowed a maximum of twenty-four percent (24%) built-upon area.

In addition, new development and expansions to existing development may occupy ten percent (10%) of the balance of the watershed area in the county with up to seventy Percent (70%) built upon area when approved as a special intensity allocation (SIA). The Zoning Administrator is authorized to approve



SIA's consistent with the provisions of this ordinance. Projects must, to the maximum extent practicable, minimize built-upon surface area, direct stormwater away from surface waters and incorporate Best Management Practices (BMPs) to minimize water quality impacts. Non-discharging landfills and residuals application sites are allowed (landfills (see Article IX, Sec. 920 Table of Permitted and Permissible Uses by District). Projects applying for an SIA will be considered on a case by case basis and in a first come first serve order. When ten percent (10%) of the balance of the watershed has received SIAs no further SIAs will be allowed. *Warrior Fork WS-III shall have 5,314 acres for SIA; Jacob Fork WS-III shall have 2,983 acres for SIA.*

(1) Allowed Uses:

- (a) Agriculture, subject to the provisions of the Food Security Act of 1985 and the Food, Agricultural, Conservation and Trade Act of 1990.
- (b) Silviculture, subject to the provisions of the Forest Practices Guidelines Related to Water Quality (15 NCAC 11.0101-.0209).
- (c) Residential development.
- (d) Non-residential development excluding discharging

(2) Density and Built-upon Limits:

- (a) Single Family Residential--development shall not exceed two (2) dwelling units per acre on a project by project basis. No residential lot shall be less than one half (1/2) acre except within an approved cluster development.

**2202.03 WS-IV Watershed Areas - Critical Area (WS-IV-CA).**

**Applicable to Catawba River WS-IV-CA, Lake Hickory WS-IV-CA, Lake Rhodhiss WS-IV-CA**

All new development activities that require an erosion/sedimentation control plan under State law are required to meet the provisions of this ordinance when located in the WS-IV-CA watershed. In order to address a moderate to high land use intensity pattern, single family residential uses are allowed at a maximum of two (2) dwelling units per acre or as established in Sec. 1001, Minimum Lot Area. All other residential and non-residential development shall be allowed twenty-four percent (24%) built-upon area. New residuals application sites and landfills are specifically prohibited.

(1) Allowed Uses:

- (a) Agriculture, subject to the provisions of the Food Security Act of 1985 and the Food, Agriculture, Conservation and Trade Act of 1990 and the rules and regulations of the Soil and Water Conservation Commission.

(b) Silviculture, subject to the provisions of the Forest Practices Guidelines Related to Water Quality (15 NCAC 11-.0101-.0209).

(c) Residential.

(d) Non-residential development, excluding: 1) landfills, and 2) sites for land application of residuals or petroleum contaminated soils.

(2) Density and Built-upon Limits:

(a) Single Family Residential--development shall not exceed two dwelling units per acre on a project by project basis. No residential lot shall be less than one half (1/2) acre except within an approved cluster development.

(b) All Other Residential and Non-Residential--development shall not exceed twenty-four percent (24%) built-upon area on a project by project basis. For the purpose of calculating built-upon area, the total project area shall include total acreage in the tract on which the project is to be developed.

**2202.04 WS-IV Watershed Areas - Protected Area (WS-IV-PA).**

**Applicable to Catawba River WS-IV, Lake Hickory WS-IV-PA, Lake Rhodhiss WS-IV-PA**

Only new development activities that require an erosion/sedimentation control plan under State law are required to meet the provisions of this ordinance when located in the WS-IV-PA watershed. In order to address a moderate to high land use intensity pattern, single family residential uses shall develop at a maximum of two (2) dwelling units per acre. All other residential and non-residential development shall be allowed at a maximum of twenty-four percent (24%) built upon area.

(1) Allowed Uses:

(a) Agriculture, subject to the provisions of the Food Security Act of 1985 and the Food, Agricultural, Conservation and Trade Act of 1990.

(b) Silviculture, subject to the provisions of the Forest Practices Guidelines Related to Water Quality (15 NCAC 11-.0101-.0209).

(c) Residential development.

(d) Non-residential development.

(2) Density and Built-upon Limits:

(a) Single Family Residential--development shall not exceed two (2) dwelling units per acre, as defined on a project by project basis. No residential lot shall be



less than one-half (1/2) acre except within an approved cluster development (see Article X, Sec. 1001 Minimum Lot Area).

(b) All Other Residential and Non-Residential--development shall not exceed twenty-four percent (24%) built-upon area on a project by project basis. A maximum of thirty-six percent (36%) built-upon area is allowed for projects without a curb and gutter street system. For the purposes of calculating built-upon area, total project area shall include acreage in the tract on which the project is to be developed.

(c) In addition to the development allowed under paragraphs (a) and (b) above, other development may occupy up to ten percent (10%) of the protected area with up to seventy percent (70%) built-upon area on a project by project basis, when approved as a special intensity allocation (SIA). The Zoning Administrator is authorized to approve SIAs consistent with the provisions of this ordinance. *Catawba River WS-IV-PA shall have 868 acres for SIA; Lake Hickory WS-IV-PA shall have 1,150 acres for SIA; and Lake Rhodhiss WS-IV-PA shall have 5,660 acres for SIA.* Projects must, to the maximum extent practicable, minimize built-upon surface area, direct stormwater away from surface waters and incorporate best management practices (BMPs) to minimize water quality impacts. 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.

### **Section 2203. Cluster Development.**

Clustering of development is allowed in all Watershed Areas under the following conditions:

(A) Minimum lot sizes are not applicable to single family cluster development projects; however, the total number of lots shall not exceed the number of lots allowed for single family detached developments. Density or built-upon area of the project shall not exceed that allowed for the critical area or 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 drainage ways.

(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 that meet the applicable low density requirements shall transport stormwater runoff by vegetated conveyances to the maximum extent practicable.

#### **Section 2204. Buffer Areas Required.**

(A) A minimum one hundred (100) foot vegetative buffer is required for all new development activities that exceed the low density option (utilize the 10/70 provision); otherwise, a minimum thirty (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. Desirable artificial streambank or shoreline stabilization is permitted.

(B) 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 (BMPs).

#### **Section 2205: Administration**

##### **2205.01 Recordkeeping.**

The Zoning Administrator shall enforce the provisions of the zoning chapter as specified in Article XV, Sec. 1502. Within the watershed overlay districts, he or she shall have the following additional duties:

(1) Submit copies of all amendments upon adoption to the NC Division of Water Quality;

(2) Maintain list of all variances, including a description of each project receiving a variance and the reasons for granting the variance, and submit a copy each calendar year to the NC Division of Water Quality by January 1 of each calendar year;

(3) Keep records of the jurisdiction's utilization of the provision that a maximum of 10% of the non-critical area of the *Warrior Fork WS-III (5,314 acres SIA)*; *Jacob Fork WS-III (2,983 acres SIA)*, *Catawba River WS-IV-PA (868 acres SIA)*, *Lake Hickory WS-IV-PA (1,150 acres SIA)* and *Lake Rhodhiss WS-IV-PA (5,660 acres SIA)* may be developed to a maximum of 70% built-upon area;

(4) Monitor land-use activities in the watershed to identify situations that may threaten water quality. He or she shall report these situations to the agency with direct regulatory responsible for these activities;



(5) Ensure that a certificate of approval is included on all plats subject to the Burke County Subdivision Regulations as follows:

I certify that the plat shown hereon complies with the Burke County Watershed Protection Overlay District and is approved for recording in the Register of Deeds office.

\_\_\_\_\_  
Date                      Zoning Administrator

#### 2205.02 Appeals.

All appeals from the decision of the zoning enforcement officer shall be submitted to the Board of Adjustment (see Article XVII, Sec. 1702). Further, any appeals from the board of adjustment shall be to the Superior Court within 30 days (see Article XVII, Sec. 1702.05), not to the County Board of Commissioners.

#### 2205.03 Amendments.

All amendments to the watershed regulations shall be handled as specified (Article XVI, Sec. 1601) through (Article XVI, Sec.1603). Under no circumstances shall the county amend supplement or change the watershed regulations that would cause the regulations to violate the watershed protection rules as adopted by the NCEMC (NCGS 143-214.5 and 15A NCAC .0100 and .0200). All amendments shall be filed with NCDWQ.

#### 2205.04 Watershed Variances.

(1) The Board of Adjustment shall handle minor variances.

(2) *Major variance.*

(a) If a **MAJOR VARIANCE** (see definition) is requested, the Board of Adjustment, after making a favorable decision in granting the request, shall prepare a preliminary record of the hearing. The preliminary record of the hearing shall include:

1. The variance application;
2. The hearing notices;
3. The evidence presented;
4. Motions, offers of proof, objections to evidence, and rulings on them;
5. Proposed findings and exceptions;
6. The proposed decision, including all conditions proposed to be added to the permit.



(b) The information shall be sent to the NCEMC for its review.

(c) North Carolina Environmental Management Commission.

1. The NCEMC shall review the preliminary record and determine whether or not:

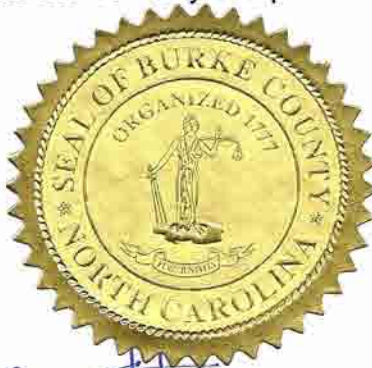
a. The request qualifies as a major variance;

b. The property owner can secure no reasonable return from, nor make any practical use of, the property, unless the proposed variance is granted; and

c. The variance, if granted, will not result in a serious threat to the water supply. Based on its findings the NCEMC shall approve the variance as proposed or approve the proposed variance with conditions and stipulations, or disapprove it. The NCEMC shall prepare a decision and send it to the County Board of Adjustment. This Board shall prepare a final decision, based on the determination of the NCEMC.

(3) In designated drinking water supply watersheds, the Zoning Administrator shall notify and allow a reasonable comment period for any jurisdictions within the watershed and the entity using the water supply for consumption of a proposed variance to the watershed regulations. Local governments may submit any comments to the Zoning Administrator before the public hearing by the County Board of Adjustment.

Adopted this the 16<sup>th</sup> day of April 2013 by the Burke County Board of Commissioners.



*Maynard M. Taylor*  
Maynard M. Taylor, Chairman  
Burke County Board of Commissioners

Attest:

*Kay Honeycutt*  
Kay Honeycutt, Clerk to the Board