

**ORDINANCE NO. 18-01
WATERSHED ORDINANCE
ARTICLE 100: AUTHORITY AND GENERAL REGULATIONS**

Section 101: Authority and Enactment.

The Legislature of the State of North Carolina has, in Chapter [153A] [160A], Article [6] [8], Section [121] [174], General Ordinance Authority; and in Chapter 143, Article 21, Watershed Protection Rules, delegated the responsibility or directed local governmental units to adopt regulations designed to promote the public health, safety, and general welfare of its citizenry. The Governing Board of Davidson County does hereby ordain and enact into law the following articles as the Watershed Protection Ordinance of Davidson County.

Section 102: Jurisdiction

The provisions of this Ordinance shall apply within the areas designated as a Public Water Supply Watershed by the N.C. Environmental Management Commission and shall be defined on the map entitled, "Town of Midway Watershed Protection Map of Davidson County, North Carolina." The Watershed Map is hereby made a part of this Ordinance. This Ordinance shall be permanently kept on file in the office of the Davidson County Clerk and with the Town of Midway Clerk.

Section 103. Exceptions to Applicability

(A) This Ordinance will not affect existing Ordinances or Agreements between parties unless those Ordinances or Agreements are less restrictive than the Watershed Protection Ordinance. In those situations the Watershed Protection Ordinance will take precedence.

(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 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 not subject to the requirements of this Ordinance. Expansions to 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 calculations.

(D) 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.

Section 104: Criminal Penalties

Any person violating any provisions of this Ordinance shall be guilty of a misdemeanor and, upon conviction, shall be punished in accordance with NCGS 14-4. The maximum fine for each offence shall not exceed \$100.00 per day.

Section 105. Remedies

If any subdivision, development and/or land use is found to be in violation of this Ordinance, the Davidson County Midway Governing Board may institute a civil penalty in the amount of \$100.00, for 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. EMC may assess civil penalties in accordance with G.S. 143-215.G(a).

If the Watershed Administrator finds that any of the provisions of this Ordinance are being violated, he shall notify in writing the person responsible for such violation, indicating the nature of the violation, and ordering the action necessary to correct it. He shall order discontinuance of the illegal use of land, buildings or structures, removal of illegal buildings or structures, or of additions, alterations or structural changes thereto; discontinuance of any illegal work being done; or shall take any action authorized by this Ordinance to ensure compliance, with or to prevent violation of its provisions. If a ruling of the Watershed Administrator is questioned, the aggrieved party or parties may appeal such ruling to the Watershed Review Board.

Section 106; 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.

Section 107; Effective Date

This Ordinance shall take effect and be in force on January 1, 1994 July 17, 2017.

ARTICLE 200: SUBDIVISION REGULATIONS

Section 201; General Provisions

(A) No subdivision plat of land within the Public Water Supply Watershed shall be filed or recorded by the Register of Deeds until it has been approved in accordance with the provisions of this article.

Section 202; Subdivision Application and Review.

(A) All proposed subdivisions shall be reviewed prior to recording with the Register of Deeds by submitting a vicinity map to the Watershed Administrator to determine whether or not the property is located within the designated Public 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 Article and all other state and local requirements that may apply.

(B) If the Watershed Administrator or the Watershed Review Board approves the application,

such approval shall be indicated on both copies of the plat by the following certificate and signed by the Chairman or other authorized member of the Board:

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/Chairman, Review Board

(C) If the Watershed Administrator or Review Board approves or disapproves the application conditionally, the reasons for such action shall be stated in writing for the applicant and entered in the minutes. The sub divider may make changes and submit a revised plan which shall constitute a separate request for the purpose of review.

(D) All subdivision plats shall comply with the requirements for recording of the Davidson County Register of Deeds.

(E) All subdivision plats shall comply with the requirements of the Davidson County Town of Midway Subdivision Ordinance.

Section 203; Subdivision Standards and Required Improvements

(A) Lots which are smaller than the minimum required for residential lots shall be identified on the plat as, "NOT FOR RESIDENTIAL PURPOSES."

(8) 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 sub divider shall provide a drainage system that diverts stormwater runoff away from surface waters and incorporates best management practices to minimize water quality impacts.

(D) Roads constructed in critical areas and watershed buffer areas. Where possible, roads should be located outside of critical areas and watershed buffer areas. Roads constructed within these areas shall be designed and constructed so to minimize their impact on water quality.

Section 204; Construction Procedures

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

(8) No building or other permit shall be issued for erection of a structure on any lot not of record at the time of adoption of this Ordinance until all requirements of this Ordinance have been met.

ARTICLE 300. DEVELOPMENT REGULATIONS

Section 301; Establishment of Watershed Areas

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

For purposes of this Ordinance, Davidson County is hereby divided into the following areas:

WS-111. CA (CRITICAL AREA). BW (Balance of Watershed)
(LAKE THOM-A-LEX WATERSHED)
(UWHARRIE RIVER WATERSHED)

WS-IV. CA (CRITICAL AREA). PA (Protected Area) (YADKIN RIVER WATERSHED)
(LAKE TUCKERTOWN WATERSHED)

Section 302; Watershed Area Described

(A) WS-111 Watershed Areas-Critical Area (WS-111-CA)

(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 (ISNCAC II.6101-.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 one (1) dwelling unit per one (1) acre (40,000 square feet excluding roadway right-of-

way)

(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 amount of imperious surface in the tract on which the project is to be developed shall be included.

B) WS-111 Watershed Areas - Balance of Watershed (WS-111-BW)

(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 11.6101.0209).
- (c) Residential development.
- (d) Non-residential development excluding discharging landfills
- (e) Non-discharging landfills and storage application sites.

(2) Density and Built-Upon Limits:

- (a) Single Family Residential– development shall not exceed one dwelling unit per half acre, as defined on a project by project basis. No residential lot shall be less than one (1/2) acre (or 30,000 square feet excluding roadway right-of-way). (Amended 9/14/2015)
- (b) All Other Residential and Non-Residential– development shall not exceed twenty-four percent (24%) built-upon area on a project by project basis except that up to ten percent (10%) of the balance of the watershed may be developed for non-residential uses to seventy percent (70%) built-upon area when approved as a special non-residential intensity allocation (SNIA). The Watershed Administrator is authorized to approve SNIAs consistent with the provisions of this Ordinance. The 70% built-upon option will be allocated on a project by project basis until the 10% balance is fulfilled. Projects must minimize built-upon surface area,

direct stormwater away from surface waters and incorporate Best Management Practices to minimize water quality impacts. For the purpose of calculating built-upon area, the total amount of impervious surface in the tract on which the project is to be developed shall be included.

~~(Amended on December 12, 1995)~~

Amount of land available as of 7/1/93:

Lake Thom-A-Lex=3,198 acres
Uwharrie River =1,881 acres

(C) WS-IV Watershed Areas - Critical Area (WS-IV-CA). (* See Footnote)

(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 11.6101 - .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 one (1) dwelling unit per half acre on a project by project basis. No residential lot shall be less than one (1/2) acre (or 20,000 square feet excluding roadway right-of-way). ~~(Amended 9/14/2015)~~

(a) 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 the built-upon area, the total amount of impervious surface in the tract on which the project is to be developed shall be included.

(D) WS-IV Watershed Areas- Balance of Watershed (WS-IV-BW)

(1) Uses Allowed:

(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 11.6101-.0209).

(c) Residential development.

(d) Non-residential development, excluding discharging landfills.

(2) Density and Built-Upon Limits:

(a) Single Family Residential-- development shall not exceed one (1) dwelling unit per half acre, as defined on a project by project basis. No residential lot shall be less than one (1/2) acre (or 20,000 square feet excluding roadway right-of-way). (Amended 9/14/2015)

(b) All Other Residential and Non-Residential-- development shall not exceed twenty-four percent (24%) built upon area on a project by project basis except that up to ten percent (10%) of the balance of the watershed may be developed for non-residential uses to seventy percent (70%) built upon area when approved as a special non-residential intensity allocation (SNIA). The Watershed Administrator is authorized to approve SNIA's consistent with the provisions of this Ordinance. The 70% built upon option will be allocated on a project by project basis until the 10% balance is fulfilled. Projects must minimize built upon surface area, direct stormwater away from surface waters and incorporate Best Management Practices to minimize water quality impacts. For the purpose of calculating built upon area, the total amount of impervious surface in the tract on which the project is to be developed shall be included. (Amended on December 12, 1995)

Amount of land available as of 7/1/95:

Yadkin River= 4,906 acres
Tuckertown Lake=2,872 acres

Section 303. CLUSTER DEVELOPMENT

Clustering of development is not allowed in any of the Watersheds of Midway Davidson County.

Section 304. BUFFER AREAS REQUIRED

(A) A minimum ~~one hundred fifty~~ (100) (50) 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.

(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.

Section 305. RULES GOVERNING THE INTERPRETATION OF WATERSHED AREA BOUNDARIES

(A) Where area boundaries are indicated as approximately following either street, alley, railroad or lot lines, such lines shall be construed to be said boundaries.

Section 306. APPLICATIONS 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) 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 Section 307.

Section 307. 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 calculation.

(A) Vacant Lots: This category consists of vacant lots for which plats or deeds have been recorded in the office of the Register of Deeds (Davidson County). Such lots may be used for any of the uses allowed under the Zoning Ordinance as long as the required setbacks are met along with approval for sewage disposal.
(Amended July 14, 2009)

(B) Uses of Land: This consists of uses existing at the time of adoption of this Ordinance 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 revert to any prohibited use.
- (2) Such use of land shall be changed only to an allowed use.
- (3) When such use ceases for a period of at least six (6) months, it shall not be reestablished.

(C) Reconstruction of Buildings or Built-Upon Areas:

Any 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 that:

- (1) Reconstruction is initiated within six months and completed within 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.

Section 308.

WATERSHED PROTECTION PERMIT

Except where a single family residence is constructed on a lot deeded prior to the effective date of this Ordinance, 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.

Section 309.

BUILDING PERMIT REQUIRED

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

Section 310. WATERSHED PROTECTION OCCUPANCY 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 ten (10) days after the erection or structural alterations of the building.

(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 stating the reasons for denial.

(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.

ARTICLE 400: PUBLIC HEALTH REGULATIONS
Public Health, In General

Section 401.

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 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.

Section 402.

ABATEMENT

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

(B) The Watershed Administrator shall report all findings to the Watershed Review Board. The Watershed Administrator may consult with any public agency or official and request recommendations.

(C) 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 Division of Water Quality.

(D) The Watershed Administrator shall keep records of the provision that a maximum of ten percent (10%) of the non-critical area of WS-11I-BW and WS-IV-BW watersheds may be developed with non-residential development to a maximum of seventy percent (70%) built upon surface area. Records for each watershed shall include the total acres of non-critical watershed option, total acres eligible to be developed under this option, and individual records for each project with the following information: location, acres, site plan, use, stormwater management plan as applicable.

(E) The Watershed Administrator is granted the authority to administer and enforce the provisions of this Ordinance, exercising the full police power of ~~Davidson County~~ Midway. The Watershed Administrator, or his duly authorized representative, may enter any building, structure, or premises, as provided by law, to perform any duty imposed upon him by this Ordinance.

(F) The Watershed Administrator shall keep a record of variances to the local Water Supply Watershed Protection Ordinance. This record shall be submitted to the Division of Water Quality on or before January 1st of the following year.

Section 502.

APPEAL FROM THE WATERSHED ADMINISTRATOR

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

An appeal from a decision of the Watershed Administrator must be submitted to the Watershed Review Board within thirty (30) days from the date the decision was made. All appeals must be made in writing stating the reasons for appeal.

The 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 by attorney.

Section 503 **CHANGES AND AMENDMENTS TO THE WATERSHED
PROTECTION ORDINANCE**

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

(B) No action shall be taken until the proposal has been submitted to the Watershed Review Board for review and recommendations. If no recommendations have been received from the Watershed Review Board within forty-five (45) days after submission of the proposal, the Davidson County Board of Commissioners may proceed as though a favorable report had been received.

(C) Under no circumstances shall the ~~Davidson County~~ Midway Board 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 Division of Environmental Management, N.C. Division of Environmental Health, and the N.C. Division of Community Assistance.

Section 504. **PUBLIC NOTICE AND HEARING REQUIRED**

Before adopting or amending this Ordinance, the ~~Davidson County Board of Commissioners~~ Midway Council shall hold a public hearing on the proposed changes. A notice of the public hearing 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 ten (10) nor more than twenty-five (25) days before the date fixed for the hearing.

Section 505. **ESTABLISHMENT OF WATERSHED REVIEW BOARD**

(A) There shall be and hereby is created the Watershed Review Board consisting of five (5) members and two (2) alternates. All of whom shall be residents of The Town of Midway ~~Davidson County~~.

(B) All members shall be appointed for three (3) year terms.

(C) In order to hear and act on all variances or appeals of this Watershed Protection Ordinance, the ~~Davidson County~~ The Town of Midway Zoning Board of Adjustment shall hereby be declared the Watershed Review Board.

Section 506.

RULES OF CONDUCT FOR MEMBERS

Members of the Board may be removed by the ~~Davidson County~~ Town's Governing Board for cause, including violation of the rules stated below:

(A) Faithful attendance at meetings of the Board and conscientious performance of the duties required of members of the Board shall be considered a prerequisite for continuing membership on the Board.

(B) No Board member shall take part in the hearing, consideration, or determination of any case in which he is personally or financially interested. A Board member shall not have a "financial interest" in a case when a decision in the case will: 1) cause him or his spouse to experience a direct financial benefit or loss, or 2) will cause a business in which he or his spouse owns a 10 percent or greater interest, or is involved in a decision making role, to experience a direct financial benefit or loss. A Board member shall not have a "personal interest" in a case when it involves a member of his immediate family (i.e. parent, spouse, or child).

(C) No Board member shall discuss any case with any parties thereto prior to the public hearing on that case, provided, however, that members may receive and/or seek information pertaining to the case from the Watershed Administrator or any other member of the Board, its secretary or clerk prior to the hearing.

(D) Members of the Board shall not express individual opinions on the proper judgment of any case prior to its determination on that case.

(E) No Board member shall vote on any matter that decides an application or appeal unless he had attended the public hearing on that application or appeal.

Section 507.

**POWERS AND DUTIES OF THE
WATERSHED REVIEW BOARD**

(A) **Administrative Review:** The Watershed Review Board shall hear and decide upon all appeals from any decisions made by the Watershed Administrator in the enforcement of this Ordinance.

(B) **Variances:** The Watershed Review Board shall have the power to authorize minor variances as described in this Ordinance as long as it is not contrary to the public health, safety and welfare and can show substantial justice being 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 in the Planning Department and shall include the following information:

(a) A site plan 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. The site plan shall show the north arrow, name and address of person who prepared the plan, and the date of the original drawing.

(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 Watershed Review Board in considering the application.

(c) The Watershed Administrator shall notify in writing each local government having jurisdiction in the watershed. Such notice shall include a description of the variance being requested. Upon receiving notice of the variance request, local governments may submit comments to the Watershed Administrator prior to a decision by the Watershed Review Board.

(2) Before the Watershed Review Board may grant a variance, it shall make the following three findings, and record them in the permanent record. The findings shall include the reasons or facts on which they are based:

(A) There are practical difficulties or hardships in the way of carrying out the letter of the Ordinance. In order to determine that there are practical difficulties or hardships, the Board must find that the five following conditions exist:

(1) If the applicant complies with the provisions of the Ordinance, he can no

longer secure a reasonable return from,
nor make reasonable use of his property.

(2) The hardship is a result from the enforcement of the Ordinance to the property rather than from other factors such as deed restrictions or other hardships.

(3) The hardship is due to the physical nature of the applicants' property, such as its size, shape, or topography, which is different from that of 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, 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 the 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 conditions regarding the location, character, and other features of the proposed building, structure, or use as it may deem advisable to further promote 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 Watershed Review Board shall refuse to hear an appeal of an application for a variance previously denied if it finds that there have been no substantial changes in conditions bearing on the appeal or application.

(S) A variance issued in accordance with this section shall be considered a Watershed Protection Permit and shall expire if a Building Permit for such use is not obtained by the applicant within six (6) months from the date of the decision.

(6) If the application calls for the granting of a major variance, and if the Watershed Review Board decides in favor of granting the variance, the Board shall prepare a preliminary record of the hearing which 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 any reasonable 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 Watershed Review Board. If the Commission approves

the variance as proposed, the Board shall prepare a final decision granting the proposed variance. If the Commission approves the variance with conditions and stipulations, the Board shall prepare a final decision, including such conditions and stipulations, granting the proposed variance.

(b) If the Commission concluded 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 reasonable 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 Watershed Review Board. The Board shall prepare a final decision denying the variance as proposed.

(c) Subdivision Approval. See Article 200

(d) Public Health. See Article 400

Section 508. APPEALS FROM THE WATERSHED REVIEW BOARD

Appeals from the Watershed Review Board must be filed with the Superior Court within 30 days from the date of the decision. The decisions by the Superior Court will be in the manner of certiorari.

ARTICLE 600: DEFINITIONS

Section 601. General Definitions.

Acre. For the purposes of this Ordinance, one acre is equivalent to 40,000 square feet.

Agricultural Use. The use of waters for stock watering, irrigation, and other farm purposes.

Animal Unit. A unit of measurement developed by the U.S. Environmental Protection Agency that is used to compare different types of animal operations.

Best Management Practices (BMP). A structural or nonstructural management-based practice used singularly or in combination to reduce nonpoint 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 enclosure of persons, animals or property. The connection of two buildings by means of an 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 cover including buildings, pavement, gravel areas, recreation facilities (e.g. tennis courts), etc. (Note: Wooden slatted decks and the water area of a swimming pool 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. This term includes non-residential development as well as single-family developments that do not involve the subdivision of land.

Composting Facility. A facility in which only stumps, limbs, leaves, grass and untreated wood collection from land clearing or landscaping operations is deposited.

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 one-half 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 one-half 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). Since WS-1 watersheds are essentially undeveloped, establishment of a critical area is not required. Local governments 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 twenty-five percent (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, etc.

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 Elimination System (NPDES) permit.

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 zoning law as of the effective date of this ordinance based on at least one of the following criteria:

- {1) substantial expenditures of resources {time, labor, money) based on a good faith reliance upon having received a valid local government approval to proceed with the project, or
- (2) having an outstanding valid building permit as authorized by the General Statute (G.S. 153A-344.1) or
- (3) having an approved site specific or phased development plan as authorized by the General Statute {G.S. 153A-344.1).

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, or a lot described by metes and bounds, the description of which has been so recorded prior to the adoption of this ordinance.

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.

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.

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 contiguous 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.

Major Variance. A variance that results in any one or more of the following:

- {1) the complete waiver of a management requirement;
- {2) the relaxation, by a factor of more than ten {10) percent, of any management requirement that takes the form of a numerical standard;

(3) the relaxation of any management requirement that applies to a development proposal intended to qualify under the high density option.

(4) All requests for increased density or built-upon area.

Minor Variance. A variance from the minimum statewide watershed protection rules that results in a relaxation, by a factor of up to ten (10) percent, of any management requirement under the low density option.

Non-conforming Lot of Record. A lot described by a plat or a deed that was recorded prior to the effective date of this ordinance (or its amendments) that does not meet the minimum lot size or other development requirements of this ordinance.

Non-residential Development. All development other than residential development, agriculture and silviculture.

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

Protected Area. The area adjoining and upstream of the critical area of WS-IV watershed. The boundaries of the protected area are defined as within five miles of and draining to the normal pool elevation of the reservoir or to the ridgeline of the watershed; or within 10 miles upstream and draining to the intake located directly in the stream or river or to the ridgeline of the watershed.

Residential Development. Buildings for residence such as attached and detached single-family dwellings, apartment complexes, condominiums, townhouses, cottages, etc. and their associated outbuildings such as garages, storage buildings, gazebos, etc. and customary home occupations.

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.

Subdivider. Any person, firm or corporation 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 two acres into not more than three 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.

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 off spring or other adverse health effects.

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

Water Dependent Structure. Any structure for which the use requires access to or proximity to or siting 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 (e.g. the water supply intake).

Watershed Administrator. An official or designated person of Davidson County responsible for administration and enforcement of this ordinance.

Section 602.

Word Interpretation.

For the purpose of this ordinance, certain words shall be interpreted as follows:

Words in the present tense include the 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.

The word "person" includes a firm, association, corporation, trust, and company as well as an individual.

The word "structure" shall include the word "building."

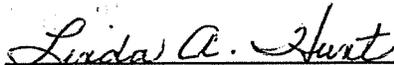
The word "lot" shall include the words, "plot," "parcel," or "tract."

The word "shall" is always mandatory and not merely directory.

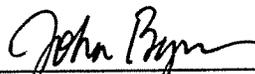
The word "will" is always mandatory and not merely directory.

*: As of the original adoption date of this Ordinance (July 17, 2017), the Town of Midway has no land in which a WS-IV Watershed is located (referenced in Sections 302 (C) and (D)).

ADOPTED the 17th day of July, 2017.



Linda A. Hunt, Town Clerk



John Byrum, Mayor