17.1 AUTHORITY AND ENACTMENT

The Legislature of the State of North Carolina has, in Chapter 160A, Article 8, Section 174, General Ordinance Authority; and in Chapter 143, 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 Davidson Board of Commissioners does hereby ordain and enact into law the text contained herein to satisfy said statutory requirements.

17.2 JURISDICTION

The provisions of this section shall apply only within areas designated as Water Supply Watersheds by the NC Environmental Management Commission and shall be depicted on the Town of Davidson's Watershed map. Where there is a conflict between the regulations contained in this section and any other portion of the Planning Ordinance, the provision of this section shall apply to properties located within a designated Water Supply Watershed area.

17.3 DEFINITIONS

For the purpose of interpreting this section, certain words or terms are herein defined. Except as defined herein, or in Section 16 - Definitions, all other words shall have their everyday dictionary definition. Where a term is defined in this section and in Section 16 Definitions, the definition in this section shall apply to this section only.
17.3.1 WATERSHED PROTECTION DEFINITIONS

For the purpose of interpreting this section, certain words or terms are herein defined. Except as defined herein, or in Section 16 - Definitions, all other words shall have their everyday dictionary definition.

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

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

**Buffer, Vegetative:** An area of natural or planted vegetation through which stormwater runoff flows in a diffused 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 bodies of water and from the bank of each side of streams or rivers.

**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 roads, recreation facilities (e.g. tennis courts), etc. (Note: Wooden slatted decks and the water area of a swimming pool are considered pervious.) Built upon areas shall be determined on a project-by-project basis.

**Cluster Development:** The grouping of buildings in order to conserve land resources and provide for innovation in the design of a project.

**Composting Facility:** A facility in which only stumps, limbs, leaves, grass and untreated wood collected 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). 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.

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

**Discharging Landfill:** A facility with liner, monitoring equipment and other measures to detect and/or prevent leachate from entering the environment and in which the leachate is treated on site and discharged to a receiving stream.
**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 October 1, 1993 of this ordinance, or a lot described by metes and bounds, the description of which has been so recorded prior to October 1, 1993. (Note: This definition containing the October 1, 1993 stipulation shall be applicable only to Section 17 of this ordinance.)

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

**High Density Option:** Any development which contains engineered stormwater control devices approved by the Town of Davidson thereby enabling development to occur at a higher intensity (than if the low-density option were used) as prescribed by the Environmental Management Commission’s adopted Water Supply Watershed Protection rules.

**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 Section 17, this term does not include compost facilities.

**Low Density Option:** Any development which does not contain engineered stormwater control devices (i.e. wet detention ponds) approved by the Town of Davidson.

**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 in a WS-IV water supply in which protection measures are required. The boundaries of the protected areas are defined as extending five miles upstream and draining to water supply reservoirs (measured from the normal pool elevation) or to the ridge line of the watershed (whichever comes first); or ten miles upstream and draining to the intake located directly in the stream or river (run-of-the-river), or to the ridge line of the watershed (whichever comes first). Major landmarks such as highways or property lines may be used to delineate the outer boundary of the protected area if these landmarks are immediately adjacent to the appropriate outer boundary of five or ten miles. In some cases the protected area will encompass the entire 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.

**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, Major: A variance that results in any one or more of the following:
1. The complete waiver of a management requirement;
2. Any request to increase the amount of built-upon area or density above that which is allowed in that particular WS district;
3. The relaxation of any management requirement that applies to a development proposal intended to qualify under the high density option;
4. The relaxation, by a factor of more than 10 percent of any other management requirement contained in this ordinance that takes the form of a numerical standard.
Note: This definition applies only to Section 17, Watershed Protection Overlay District.
Variance, Minor: A variance that does not qualify as a major variance.
Watershed: The entire land area contributing surface drainage to a specific point (e.g. the water supply intake).

17.4 EFFECTIVE DATE AND ADOPTION DATE
Section 17 shall take effect and be in force on October 1, 1993. The Davidson Board of Commissioners adopted it on September 14, 1993.

17.5 RULES GOVERNING THE INTERPRETATION OF WATERSHED DISTRICT BOUNDARIES
Where uncertainty exists as to the boundaries of the watershed areas, as shown on the Davidson watershed map, the following rules shall apply:
1. Where watershed district boundaries are indicated as approximately following either street, alley, railroad or highway lines or center lines thereof, such lines shall be construed to be the watershed district boundaries.
2. Where watershed district boundaries are indicated as approximately following lot lines, such lot lines shall be construed to be the watershed district boundary.
3. Where the watershed district boundary lies at a scaled distance of more than 25 feet from an adjoining lot line, the location of the watershed district boundary shall be determined by use of the scale appearing on the map.
17.6 EXCEPTIONS TO APPLICABILITY

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 restrict any provisions of the Davidson Planning Ordinance; however, the adoption of the Watershed Protection Ordinance shall and does amend any and all ordinances, resolutions, and regulations in effect within the planning jurisdiction of the Town of Davidson (as depicted in the Davidson Planning Areas map) at the time of the adoption of the ordinance that may be construed to impair or reduce the effectiveness of this ordinance or to conflict with any of its provisions.

It is not intended that these regulations interfere with any easement, covenant 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.

17.6.1 EXISTING DEVELOPMENT

Existing development, as defined in this ordinance, is not subject to the requirements of this section. Expansions to structures classified as existing development on any lot other than a lot containing a single-family residence as the principle use must meet the requirements of this ordinance; however, the built-upon area of existing development is not required to be included in the density calculations (i.e. maximum number of units permissible or the maximum built-upon area).

17.6.2 PRE-EXISTING LOTS

A pre-existing lot owned by an individual prior to the effective date of these regulations, regardless of whether or not a vested right has been established, may be developed or used for single-family residential purposes without being subject to these regulations. However, this shall not be applicable to multiple contiguous lots under single ownership that do not meet the requirements of the underlying planning area. Multiple undeveloped lots under single ownership will have to conform to the underlying general planning area minimum lot sizes.

17.6.3 NONCONFORMING SITUATIONS

A. General

Nonconforming situations which existed on or after the effective date of these regulations shall comply with the provisions contained in this section, with the following exceptions:

1. Nonconforming Lots
   a. A nonconforming lot of record which existed on or before October 1, 1993 which contains a single-family residence, shall not be subject to the rules and regulations pertaining to the WS district in which it is located, except as provided in Section 16.7.5.A.1.b below.
   b. A nonconforming vacant lot of record which existed on or before October 1, 1993
can be used for single family purposes as long as the applicable front, side, and rear yard requirements can be met.

c. A nonconforming vacant lot of record which existed on or before October 1, 1993 can be used for other than single family purposes as long as all other applicable regulations herein contained are met.

2. Nonconforming Structures

If, on or after the effective date of these regulations, a lot contained one or more structures where aggregate built-upon area calculations exceeded the maximum allowed for the particular WS district in which said lot is located, and such structure is destroyed (i.e. received damage in excess of 60 percent of its assessed value at the time of destruction), reconstruction of said structures may occur provided that the structure is rebuilt in accordance with all applicable regulations in both the Watershed Overlay District and general planning area in which it is located.

17.6.4 EXISTING DEVELOPMENT

A. 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 calculations.

17.7 ESTABLISHMENT OF WATERSHED AREAS AND AREAS FOR THE HIGH DENSITY OPTION

The purpose of this section is to list and describe the various water supply watershed overlay districts herein created. The following overlay districts shall be in place and are depicted on the Town of Davidson watershed map:

WS-IV-CA (Critical Area) Overlay District

WS-IV-PA (Protected Area) Overlay District

These overlay districts are established to provide for certain additional requirements and/or uses for properties located in one or more general planning areas. Thus, in addition to the requirements of the underlying planning area, the provisions of the overlay district would also prevail in the areas so zoned.

In the WS-IV watershed area, any development may occur using the high density option under the rules and guidelines described. The use of the high density option for any particular project shall be subject to the Planning Director’s approval and, where deemed necessary by the Town, submitted to the Division of Environmental Management’s Water Quality section for review and recommendation.
17.7.1 WS-IV-CA CRITICAL AREA OVERLAY DISTRICT

Any land-disturbing activity in the WS-IV critical area is required to comply with all buffer regulations in this ordinance. In order to address a moderate land use intensity pattern, single family residential uses are allowed at a maximum of two dwelling units per acre in this area. All other development shall be allowed a maximum built-upon ratio of 24 percent on a project-by-project basis. If the high-density option is chosen and approved, developments shall be allowed a maximum built-upon ratio of up to 50 percent on a project-by-project basis. See Section 17.3.1 for examples of how built-upon area is determined. New sludge application sites and landfills are specifically prohibited.

17.7.1.1 ALLOWED USES (ONLY IF PERMITTED IN THE UNDERLYING PLANNING AREA)

A. Agriculture subject to the provisions of the Food Security Act of 1985 and the Food, Agriculture, Conservation and Trade Act of 1990. Agricultural activities conducted after January 1, 1993 shall maintain a minimum ten foot vegetative buffer, or equivalent control as determined by the Soil and Water Conservation Commission, along all perennial waters indicated on the most recent versions of U.S.G.S. 1:24,000 (7.5 minute) scale topographic maps. Animal operations with greater than 100 animal units shall employ Best Management Practices by July 1, 1994 as recommended by the Soil and Water Conservation Commission. (Note: The Soil and Water Conservation Commission is the designated management agency responsible for implementing the provisions of Section 16 relating to agricultural activities.)

B. Silviculture, subject to the provisions of the Forest Practices Guidelines Related to Water Quality (15 NCAC 11.6101-0209).

C. Residential uses (Single-family, manufactured homes, manufactured home parks, two-family, multi-family and cluster developments).

D. Non-residential development (i.e. commercial, institutional, or industrial development) excluding: (i) the storage of toxic and hazardous materials unless a spill containment plan is implemented; (ii) landfills; and (iii) sites for land application of sludge/residuals or petroleum contaminated soils.

17.7.1.2 DENSITY AND MAXIMUM BUILT-UPON LIMITS

A. Single Family Residential Uses

Development shall not exceed a maximum of two dwelling units per acre, as defined on a project by project basis. No residential lot shall be less than one-half acre, with maximum 24 percent impervious surface except within an approved cluster development.

B. All Other Residential and Non-Residential Uses

Development shall not exceed a maximum built-upon area of 24 percent on a project-by-project basis. If the high density option is chosen and approved, development shall be allowed with a maximum built-upon area ratio of up to 70 percent on a project-by-project basis. For the purpose of calculating the built-upon area, total project area shall include total acreage in the tract on which the project is to be developed.
17.7.2 CLUSTER DEVELOPMENT

Clustering of development is allowed in all WS overlay districts if it is permitted in the underlying planning area under the following conditions:

A. Density

The minimum lot sizes shall conform to the underlying planning area classification; however, the total number of lots shall not exceed the number of lots allowed for single family developments as applicable in the individual WS districts. Built-upon area or stormwater control requirements of the project shall not exceed that allowed in that particular WS district. The maximum density level for any residential cluster development shall be as follows:

**Maximum Density (lots per acre) in a Watershed District**

**WS-IV CA - Two dwelling units per acre**

**WS-IV PA - Two dwelling units per acre**

B. Stormwater Run-off

All built-upon areas shall be designed and located to minimize stormwater runoff impact to the receiving waters and minimize concentrated stormwater flow.

C. Natural Areas

The remainder of the tract where development is not to take place shall remain in a vegetated or natural state. Where the development has an incorporated property owners’ association, the title of the open space area shall be conveyed to the association for management. Where a property association is not incorporated, a maintenance agreement shall be filed with the property deeds.

17.7.3 HIGH DENSITY OPTION

A. General Requirements

In any designated WS-IV Critical or Protected Watershed Area, any development may occur using the high density option under the rules and guidelines herein described. The use of the high density option for any particular project shall be subject to Planning Director approval and where deemed necessary by the Town, submitted to the Water Quality section of the Division of Environmental Management for review and recommendation.

B. High Density Option Development Standards

The Planning Director may approve a project using the high density option consistent with the following standards:

1. If the area proposed to be developed lies in a designated WS-IV Critical Area watershed, engineered stormwater controls shall be used to control runoff from the first inch of rainfall for development which contains a built-upon area of 24 percent to 50 percent on a project-by-project basis.

2. If the area proposed to be developed lies in a designated WS-IV Protected Area watershed, engineered stormwater controls shall be used to control runoff from the first inch of rainfall for development which contains a built-upon area of 24 percent to 70 percent on a project-by-project basis.
C. Inspection Fees

The Town reserves the right to conduct inspections in accordance with Sections 16.7.3.I.1 and 16.7.3.I.2. A fee in accordance with the fee schedule approved by the Planning Director shall be required to be paid by the owning entity prior to each inspection being conducted.

D. Operation and Maintenance Plan

1. Any stormwater control structure approved by the Planning Director shall be predicated on the developer and the Town entering into a binding Operation and Maintenance Plan. Said Plan shall require the owning entity of the structure(s) to maintain, repair, and, if necessary, reconstruct said structure(s) in accordance with the Operation and Maintenance Plan provided by the developer to the Town. Said Plan must be approved by the Planning Director prior to, or in conjunction with, approval of the high density option for said project.

2. A separate plan must be provided by the developer for each stormwater control structure, containing, at a minimum, what operation and maintenance actions are needed and will be undertaken, what specific quantitative criteria will be used for determining when those actions are to be taken, and who is responsible for such actions. The Plan shall clearly indicate what steps will be taken for restoring a stormwater control structure to design specifications if a failure occurs.

3. Amendments to the Plan and/or specifications of the stormwater control structure(s) may only be approved by the Administrator. Proposed changes shall be prepared by a North Carolina registered professional engineer or landscape architect, (to the extent that the General Statutes allow) and submitted to the for approval. Such amendments shall be accompanied by all information and fees prescribed in Section 17.7.3.C of this ordinance.

4. If the Planning Director finds that the plan, once approved, is inadequate for any reason, the Planning Director shall notify the owning entity of any changes mandated by the Town and a time-frame in which changes to the plan shall be made.

E. Post of Financial Securities

All new stormwater control structures approved employing the high density option shall be conditioned on the posting of adequate financial assurance for the purpose of constructing, maintaining, repairing, or reconstructing said devices.

1. A surety bond or equivalent security shall be posted in the amount not less than 1.25 times the cost of constructing required stormwater control structures.

2. Once the stormwater control structure(s) has been constructed and inspected in the manner provided for in Sections 17.7.3.I.1 and 17.7.3.I.2, and approved by the Planning Director, the Planning Director may authorize the release of up to 75 percent of the surety bond or other equivalent security outlined in Section 17.7.3.F. The remaining portion of the surety bond or equivalent security may be released to the owning entity in accordance with Sections 17.7.3.I.1 and 17.7.3.I.2.

3. Prior to said release, however, the applicant shall be required to deposit with the Town either cash or a similar instrument approved by the Planning Director in an amount equal to 15 percent of the total construction cost or 100 percent of the cost of maintaining, repairing, or reconstructing said structure(s) over a 20-year period, whichever is greater. The estimated cost of maintaining the stormwater control structure(s) shall be consistent with the approved Operation and Maintenance Plan.
provided by the applicant as outlined in this section.

F. Default

1. Upon default of the applicant to complete the stormwater control structure(s) as spelled out in the surety bond or other equivalent security, the Planning Director may obtain and use all or any portion of the funds necessary to complete the improvements based on actual construction costs. The shall return any funds not spent in completing the improvements to the owning entity.

2. Upon default of the owning entity to maintain, repair and, if necessary, reconstruct the stormwater control structure in accordance with the approved Operations and Maintenance Plan, the Planning Director shall obtain and use any portion of the cash security outlined in Section 17.7.3.D to make necessary improvements based on an engineering estimate provided by the Town.

G. Vegetation and Grounds Management

1. Landscaping and grounds management shall be the responsibility of the owning entity of said structure(s). However, vegetation shall not be established or allowed to mature to the extent that the integrity of the structure(s) is in any way threatened or diminished, or to the extent of interfering with any easement or access to the structure.

2. Except for routine landscaping and grounds maintenance, the owning entity shall notify the Planning Director prior to any repair or reconstruction of the structure. All improvements shall be consistent with the approved plan and specifications for that structure. After notification by the owning entity, the Town shall inspect the completed improvements and inform the owning entity of any required additions, changes, or modifications needed to complete said improvements. A fee, in accordance with a fee schedule adopted by the Planning Director shall be charged to the owning entity for any inspections (and re-inspections). A time period for making such changes shall also be stipulated by the Town.

H. Inspections

1. Inspections of newly constructed stormwater structures. All new stormwater control structures shall be inspected by the Planning Director after the owning entity notifies the Planning Director that all construction has been completed. At this inspection the owning entity shall provide:

   a. The signed deed, related easements, and survey plat for the structure in a manner suitable for filing with the Register of Deeds, if ownership of the stormwater control structure(s) is to be transferred to another person, firm or entity. (This requirement will be waived for any repair work when such deed has previously been filed.)

   b. A certification by an engineer or landscape architect (to the extent allowable by the North Carolina General Statutes) stating that the stormwater control structure is complete and consistent with the approved plan and all specifications previously stipulated by the Town.

   c. The Planning Director shall review the materials submitted by the owning entity along with the Town's inspection for approval. If the Planning Director approves the inspection report and accepts the certification, deed, and easements, the Planning Director shall file said deed and easements with the Register of Deeds. Release of up to 75 percent of the surety bond or other equivalent security called for in Section
17.7.3.F shall be made in a manner as prescribed in Section 17.7.3.F.2 and 17.7.3.F.3.

d. If deficiencies are found as a result of the inspection, the Planning Director shall direct the owning entity to make necessary improvements. Re-inspections will be made thereafter. No release of any funds shall be made by the Town until all deficiencies are properly addressed to the Town’s satisfaction.

e. No sooner than one year after approval of the stormwater control structure(s) by the Town, the owning entity may petition the Planning Director to release the remaining value of the surety bond or equivalent security called for in Section 17.7.3.F.2. Upon receipt of said petition, the Town shall inspect the stormwater control structure(s) to determine whether the structure(s) is performing as designed and intended. Once the inspection is made, the Planning Director shall present the inspection report and recommendations to the Board of Commissioners.

f. An occupancy permit shall not be issued for any building within the permitted development until the Planning Director has approved the stormwater control structure(s) in a manner as herein prescribed.

2. Annual Inspection of Stormwater Structures

a. All stormwater control structures shall be inspected by the Town on an annual basis to determine whether the structures are performing as designed and intended. Records of inspection shall be maintained on forms approved or supplied by the North Carolina Division of Environmental Management. Annual inspections shall begin one year after approval of the stormwater control structure(s) by the Planning Director. A fee, in accordance with a fee schedule adopted by the Planning Director, shall be charged to the owning entity for annual inspections (and re-inspections). A copy of each inspection report shall be filed with the Planning Director.

b. In the event the Town’s report indicates the need for corrective action or improvements, the Planning Director shall notify the owning entity of the needed improvements and the date by which such improvements are to be completed. All improvements shall be consistent with the adopted Operation and Maintenance plan and specifications. Once such improvements are made, the owning entity shall forthwith contact the Planning Director and ask that an inspection be made.

I. Stormwater Control Structure Specifications

1. All stormwater control structures shall be designed by either a North Carolina registered professional engineer or a landscape architect (to the extent that the General Statutes allow).

2. All stormwater control structures shall use wet detention ponds as the primary treatment system. Wet detention ponds shall be designed for specific pollutant removal according to modeling techniques approved by the North Carolina Division of Environmental Management. Specific requirements for these systems shall be in accordance with the following criteria:

a. Wet detention ponds shall be designed to remove a minimum of 85 percent of total suspended solids in the permanent pool and storage runoff from a one-inch runoff from the site above the permanent pool;
b. The designed runoff storage volume shall be above the permanent pool;
c. The discharge rate from these systems following the one-inch rainfall design storm shall be such that the runoff does not draw down to the permanent pool level in less than two days and that the pond is drawn down to the permanent pool level within at least five days;
d. The mean permanent pool depth shall be a minimum of three feet;
e. The inlet structure shall be designed to minimize turbulence using baffles or other appropriate design features.
f. Vegetative filters shall be constructed for the overflow and discharge of all stormwater wet detention ponds and shall be at least 30 feet in length. The slope and width of the vegetative filter shall be determined so as to provide a non-erosive velocity of flow through the filter for a ten-year 24-hour storm with a ten-year one-hour intensity with a slope of five percent or less. Vegetation in the filter shall be natural vegetation, grasses or artificially planted wetland vegetation appropriate for the site characteristics.

3. In addition to the required vegetative filters, all land areas outside of the pond shall be provided with a ground cover sufficient to restrain erosion within 30 days after any land disturbance. Upon completion of the stormwater control structure, a permanent ground cover shall be established and maintained as part of the Operation and Maintenance plan described in Section 17.7.3.E of this ordinance.

4. A description of the area containing the stormwater control structure(s) shall be prepared and filled, consistent with Section 17.7.3.I of this ordinance as a separate deed, with the Register of Deeds along with any easements necessary for general access to the stormwater control structure(s) should ownership (and maintenance) of the stormwater control structure(s) be transferred to another person, firm or entity. The deeded area shall include the detention pond, vegetative filters, all pipes and water control structures, berms, dikes, etc., and sufficient area to perform inspections, maintenance, repairs, and reconstruction.

J. Planning Director Approval Process on High Density Application

The Planning Director shall either approve an application for the high density option, approve the application with fair and reasonable conditions, or disapprove such an application based upon the applicable criteria contained in this Ordinance.

1. If the Planning Director approves the application, such approval shall be predicated on:
   a) the owning entity and the Town entering into a binding Operation and Maintenance plan as indicated in Section 17.7.3.E and b) the posting of a surety bond or other equivalent security as provided in Section 17.7.3.F. Such approval shall be indicated on the application and on both copies of the plans submitted with the application.

   If the Planning Director approves the application, a copy of the application and one copy of the plans shall be returned to the applicant.

2. If the Planning Director disapproves the application, the reasons for such action shall be sent by first class mail by the Planning Director to the applicant within five working days of the disapproval. The applicant may make revisions or changes and submit a revised plan. The application fee may be waived if the Planning Director determines the changes are not substantial.
17.7.4 BUFFER AREAS REQUIRED

A. Vegetative Buffers

Should any new development take place on or after the effective date of these regulations on a lot containing or bordering a perennial stream (as indicated on the most up-to-date version of a U.S.G.S. 1:24,000 - 7.5 minute - map or as otherwise determined by local government studies) and which is subject to the regulations of Section 17, a vegetative buffer shall be placed or maintained immediately perpendicular and parallel to said stream. Said buffer shall be a minimum of 40 feet in width if the low density option is used or 100 feet in width if the high density option is used. Desirable artificial stream bank or shoreline stabilization is permitted. No limbing up of trees or removal of underbrush is permitted in the vegetative buffer except at approved pathways.

B. Development in Buffer

No new development is allowed in the vegetative buffer area except for water-borne structures (e.g. piers, docks, etc.) 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.

17.7.7 PUBLIC HEALTH REGULATIONS

A. No activity, situation, structure or land use shall be allowed within a WS district which poses a threat to water quality and 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 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.

B. The Planning Director shall monitor land use activities within all WS districts to identify situations that may pose a threat to water quality. The Planning Director shall report all findings to the proper agency to handle the threat and/or the Board of Commissioners. The Planning Director may consult with any public agency or official and request recommendations. The Planning Director may consult with any public agency or official and request recommendations. Where the Planning Director finds a threat to water quality and the public health, safety, and welfare, the Planning Director shall institute any appropriate action or proceeding to restrain, correct or abate the condition and/or violation as herein authorized.
17.7.8 AMENDMENTS TO REGULATIONS PERTAINING TO A WS DISTRICT

A. Under no circumstances shall the Board of Commissioners adopt any amendment, addition, or deletion that would cause these regulations to violate the watershed protection rules as adopted by the NC Environmental Management Commission. Any amendment to the boundaries of any particular Water Supply Watershed District shall be referred to the NC Division of Environmental Management, NC Division of Environmental Health, and the NC Division of Community Assistance for their review prior to adoption. Otherwise, amendments to the regulations contained in Section 17 shall follow procedures prescribed in Section 14.

17.7.9 VARIANCES

A. Minor Variances

Minor variance (see definition) to the regulations contained herein may be approved by a 4/5 affirmative vote of the Board of Adjustment, except that a copy of the public hearing notice plus a description of the minor variance requested, shall be sent by first class mail to the Clerk of all municipal and county governments having jurisdiction within the same watershed and to any major consumer of water whose point of intake lies within the same watershed. Said notice and description shall be mailed at least ten (10) days prior to the public hearing. Any comments received from notified local governments, regarding a minor variance request shall be entered into the record of proceedings.

NOTE: Any request to vary maximum density or built-upon areas shall be deemed a major variance request.

B. Major Variances

Applications for major variances shall be handled in the following manner:

1. Application Form and Fee

An application for a major variance shall be on a form prescribed by the Town and shall be accompanied by a fee, the amount of which is in accordance with a fee schedule established by the Town. An application will not be considered complete unless it contains all information required and is accompanied by said fee. The application shall be accompanied by a map clearly identifying the subject property and all contiguous pieces of properties (including all properties traversed and/or separated by a road, stream, right-of-way or any similar natural or man-made configuration). In addition, a list of names and addresses of the owners of said properties, from the most recent official tax records, shall be provided by the applicant. All applications shall be submitted to the Planning Director.

Once having received an application, the Planning Director shall have five working days to determine its completeness. If he determines that the application is not complete, he shall serve a written notice on the petitioner specifying the application’s deficiencies. The Planning Director shall take no further action on the application until the deficiencies are remedied. If the Planning Director fails to so notify the petitioner, the application shall be deemed complete.
2. **Scheduling of Board of Adjustment Meeting**

The Planning Director, having determined that an application is complete, shall place the application on the agenda of the next Board of Adjustment regular or special meeting occurring at least fifteen days thereafter.

3. **Public Hearing Notification**

The Board of Adjustment shall hold a public hearing on the application. Notification of said Board of Adjustment public hearing shall be as follows:

   a. Notices shall be sent by the Town by first class mail to the applicant and all abutting property owners at least five days prior to the public hearing.

   b. Said mail notice and a description of the major variance request shall also be sent by first class mail to the Clerk of all municipal and county governments having jurisdiction within the same watershed and

   c. To any major consumer of water whose point of intake lies within the same watershed. Said notice and description shall be mailed at least ten days prior to the public hearing. Any comments received from notified local governments, or major water consumers regarding a major variance request, shall become part of the record of proceedings. The notice shall indicate the nature of the public hearing and the date, time and place at which it is to occur.

4. **Public Hearing**

The Board of Adjustment shall conduct the public hearing in a quasi-judicial manner. All persons giving evidence shall be sworn in by the Chairman. In all matters coming before the Board of Adjustment, the applicant shall have the burden of providing clear, competent and material evidence in support of the application. The Board of Adjustment shall base their recommendation on the testimony given at the public hearing and on any comments received from notified local governments or major water consumers regarding the major variance request. The testimony, comments and evidence shall become part of the record of proceedings.

5. **Board of Adjustment Recommendation:**

The Board of Adjustment shall make a recommendation on a major variance involving property located within a Water Supply Watershed Overlay District no later than 30 days from the close of the public hearing. The Board of Adjustment may recommend a variance only after each of the findings found in Section 14 of the Planning Ordinance are found in the affirmative recommendations shall be in one of the following forms:

   a. Recommend approval of the variance if the findings of fact in Section 14 are found in the affirmative; or

   b. Recommend approval of the variance with fair and reasonable conditions attached if the findings of fact in Section 14 are found in the affirmative; or

   c. Recommend denial of the variance if at least one finding of fact in Section 14 is found in the negative.

The concurrent vote of four-fifths (4/5) of the voting members of the Board of Adjustment shall be necessary to make a recommendation for approval of a major variance application involving property located within a Water Supply Watershed Overlay District.
6. Preliminary Record

If the Board of Adjustment makes a favorable recommendation on a major variance application (with or without additional conditions or safeguard) or fails to make any recommendation on the major variance application within the specified time period, the Planning Director shall prepare a preliminary record of the public hearing which shall include the following:

a. The variance application;

b. Evidence that proper notification of the Board of Adjustment public hearing has been made;

c. A summary of evidence presented including comments submitted from other local governments or major water consumers within the same watershed jurisdiction;

d. Proposed findings and exceptions;

e. The Board of Adjustment’s recommendation, if one is submitted within the 30 day time period, including all conditions proposed to be added to the permit.

The preliminary record shall be sent to the Environmental Management Commission for its review. If the Environmental Management Commission concludes from the preliminary record that the variance qualifies as a major variance, the Commission shall make a final decision on the request and mail it to the Planning Director.

Upon receipt of the final decision, the Planning Director shall forward the Environmental Management Commission’s decision to the applicant by first class mail within five working days of receipt of the decision from the Environmental Management Commission. The approval, with any additional conditions or safeguards, shall become part of any zoning permit issued by the Planning Director.

If the Board of Adjustment recommends that an application for a major variance involving property within a Water Supply Watershed Overlay District should be denied, then the application shall not be forwarded to the Environmental Management Commission, and shall be considered denied by the Board of Adjustment. The Planning Director shall send written notice of the denial by first class mail to the applicant within five working days of the Board’s decision.

7. Environmental Management Commission Action

If, after having received and reviewed the major variance application and the preliminary record, the Environmental Management Commission approves the major variance, the Planning Director shall send the decision by first class mail to the applicant within five working days of receipt of the decision from the Environmental Management Commission, stating that the major variance was approved.

If the Environmental Management Commission overturns the Board of Adjustment’s recommendation for approval of a major variance, the Planning Director shall send the decision by first class mail to the applicant within five working days of the decision from the Environmental Management Commission, stating that the major variance request was denied, and the reasons for such denial.
17.7.10 ENFORCEMENT

A. These regulations shall be enforced by the Planning Director. In addition to other duties, the Planning Director shall keep records regarding any expansions approved to structures classified as existing development, so that the maximum coverage of all new expansions do not exceed that allowed in this ordinance.

B. The Planning Director shall maintain a file on all applications for minor and major variances. A copy of information pertinent to any minor variance application request (including minutes of the hearing, findings made by the Board of Adjustment, actions taken by the Board of Adjustment, names and addresses of all persons giving evidence at the public hearing) shall be submitted annually during the last week of December to the Division of Environmental Management, Supervisor of the Classification and Standards Group.

C. The penalties and fines described in Section 14 and Section 15 are applicable to this section

17.8 DENSITY AVERAGING

A. A density averaging certificate shall be considered one development request.

B. Overall impervious area/amount of the paired parcel averaged-density development, calculated by built-upon area, shall not exceed the impervious that would be allowed if the parcels were developed separately. The parcel pair shall be located in the same water supply watershed and preferably in the same drainage area of the watershed. Parcel pairs may be located in the Critical Area and in the Protected Area. However, if one of the parcels is located in the Critical Area and one is located in the Protected Area, the Critical Area parcel shall not be developed beyond those impervious amounts allowed in the critical area provisions of the Davidson Planning Ordinance. A property in a more restricted watershed area shall not acquire impervious rights from a property in a less restricted area of the watershed. The purpose of this provision is to preserve open space in the more sensitive areas of the watershed.

C. The paired parcels may include or be developed for residential or non-residential purposes.

D. Buffers shall at least meet the appropriate minimum Davidson Planning Ordinance water supply watershed protection requirements on both parcels in the parcel pair.

E. The portion of the parcel(s) which is not developed as part of the paired parcel, but that is being averaged in the land area being evaluated to meet the built-upon surface area, shall remain in an undisturbed vegetated or natural state. A metes and bounds description of the space to be undisturbed and limits on use shall be recorded on the subdivision plat, in homeowner covenants, and on individual deed and shall be irrevocable. The resultant impervious area/amount for the two lots combined shall not exceed the original allowable impervious amount for each individual lot if they were developed separately. It shall be noted on the plat that the Planning Director shall reserve the right to make periodic inspections to ensure compliance.
F. A Density Averaging Certificate shall be obtained from the Watershed Review Board (Board of Adjustment) to ensure that both parcels considered together meet the standards of the ordinance and that potential owners have record of how the watershed regulations were applied to the parcel pair. Only the owner(s) of both of the paired parcels may submit the application for the Density Averaging Certificate. A site plan for both of the parcels must be submitted and approved as part of the Density Averaging Certificate. If such a certificate is granted, no change in the development proposal authorized for either parcel shall be made unless the certificate is amended. Upon issuance of such certificate, one copy will be forwarded to the North Carolina Division of Water Quality (DWQ). Included with the Density Averaging Certificate will be a site plan, registered plats for both properties, a description of both properties, and documentation reflecting the development restrictions to the parcel pair that will remain undeveloped.

G. The Watershed Review Board shall make written findings supported by appropriate calculations and documentation that the paired parcel averaged-density development plan as a whole conforms to the intent and requirements of this Article and Section, and that the proposed agreement assures protection of the public interest.

H. The undisturbed land area shall be recorded in the deed for the parcel to which it applies. The Density Averaging Certificate shall be recorded in the deed for each of the parcels in the parcel pair. Both the designated undisturbed land area and the certificate shall be noted on the subdivision plat that applies to each of the parcels.

I. Stormwater runoff from paired parcel averaged density-averaged development which meets the low-density option development requirements shall be controlled by vegetative conveyances to the maximum extent practicable and shall be approved by Mecklenburg County Storm Water Services’ Water Quality Program.

J. Stormwater runoff from paired parcel averaged density development which meets the high-density option development requirements shall be controlled on the parcel(s) where the high-density development is occurring in accordance with the criteria specified in the Davidson Water Quality Design Manual and the Davidson Planning Ordinance for high-density development.

K. No parcel for which a watershed variance has been granted, or would be required, may be included as part of a parcel pair.

L. Compliance with criteria A - L shall be evidence that the parcel pair is consistent with the orderly and planned distribution of development throughout the watershed.