

# **ARTICLE 25. WATER SUPPLY WATERSHED PROTECTION REGULATIONS**

## **Section 25-1: Purpose**

- (A) The purpose of this section is to describe the watershed areas and regulations herein adopted. The Town of Pembroke has within its jurisdiction, a portion of the protected area of the Lumber River Watershed. The Environmental Management Commission classifies the area as WS-IV. The Town Council for the Town of Pembroke, North Carolina, has chosen the ***low-density option*** for development within the watershed areas. These areas are displayed on the Town of Pembroke's Official Zoning Map, and the following regulations apply to these areas in addition to regulations stated elsewhere in this Unified Development Ordinance. As defined by the NC Department of Environmental Quality, high density development is not permitted.
- (B) G.S. 143-214.5 provides for a cooperative program of water supply watershed management and protection to be administered by local governments consistent with minimum statewide management requirements established by the Environmental Management Commission. In order to promote the public health, safety, and welfare, the Town Council for the Town of Pembroke, North Carolina, adopts these Watershed Protection regulations effective for all areas designated Watershed Protection Overlay District on the official Zoning Map of the Town of Pembroke.

## **Section 25-2: Effective Date**

This Overlay District and its provisions governing the use of land and buildings in designated watershed areas are hereby established and declared to be in full force and effect from and after its passage by the Town Council on the 5<sup>th</sup> day of June, 2017.

## **Section 25-3: Watershed Protection Permit Required**

If, at the time of application for a development permit, it is determined that the property lies in a water supply watershed, as shown on the Zoning Map, a Watershed Protection Permit will be required. Requirements outlined in Section 12-1 of this Ordinance will be followed when applying for a Watershed Protection Permit. *(Amended 8/2/2021)*

## **Section 25-4: Issuance of Watershed Protection Permit**

If the proposed activity as set forth in the application is in conformance with the provisions of this ordinance, the UDO Administrator shall issue a Watershed Protection Permit. If any application for a Watershed Protection Permit is not approved, the UDO Administrator shall state in writing on the application, the cause for such disapproval. In no case shall the issuance of a permit be construed as waiving any provision of this or any other ordinance or regulation.

**Section 25-5: Exceptions to Applicability and Pre-Existing Lots**

- (A) It is not intended that these regulations interfere with any easement, covenants, or other agreements between parties. However, if the provisions of these regulations impose greater restrictions or higher standards for the use of a building or land, then the provisions of these regulations shall control.
- (B) If a nonconforming 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 these regulations if it is developed for single-family purposes. Any lot or parcel created as part of a family subdivision after the effective date of these rules shall be exempt from these rules if it is developed for one single-family detached residence and if it is exempt from local subdivision regulation. Any lot or parcel created as part of any other type of subdivision that is exempt from a local subdivision ordinance shall be subject to the land use requirements (including impervious surface requirements) of these rules, except that such a lot or parcel must meet the minimum buffer requirements to the maximum extent possible.
- (C) 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.
- (D) Vacant Lots. This category consists of vacant lots for which plats or deeds have been recorded in the office of the Register of Deeds of Robeson County. Lots may be used for any of the uses allowed in the watershed area in which it is located, provided the following:
  - (1) Where the lot area is below the minimum specified in this ordinance, the UDO Administrator is authorized to issue a watershed protection permit.
  - (2) Notwithstanding the foregoing, whenever two or more contiguous residential vacant lots of record are in single ownership at any time after the adoption of this ordinance and such lots individually have less area than the minimum requirements for residential purposes for the watershed area in which such lots are located, such lots shall be combined to create one or more lots that meet the standards of this ordinance, or if this is impossible, reduce to the extent possible the nonconformity of the lots.
- (E) Occupied Lots. This category consists of lots occupied for residential purposes at the time of the adoption of this ordinance. These lots may continue to be used provided that whenever two or more adjoining lots of record, one of which is occupied, are in single ownership at any time after the adoption of this ordinance, and such lots individually or together have less area than the watershed area in which they are located, such lots shall be combined to create lots which meet the minimum size requirements or which minimize the degree of nonconformity.

- (F) Reconstruction of Built-Up Areas. Any reconstruction of built-upon areas per Article 11 of this Ordinance shall not increase the total amount of space devoted to built-upon area unless storm water control that equals or exceeds the previous development is provided. Reconstruction of single-family residential development is exempt from this regulation.

**Section 25-6: Administration, Enforcement, and Appeals**

(A) Administrator Watershed Duties.

- (1) The Administrator of the Town of Pembroke shall serve as Watershed Administrator and shall issue Watershed Protection Permits as prescribed herein. A record of all permits shall be kept on file for public inspection.
- (2) The Board of Adjustment for the Town of Pembroke (see Article 13, Part II) shall serve as Watershed Review Board, and shall delegate administrative review procedures to the Town of Pembroke Planning Board. The Board of Adjustment shall retain the responsibility to grant variances from these regulations.
- (3) The Town Clerk shall serve as clerk to the Board of Adjustment.
- (4) The 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 Resources.
- (5) The Administrator shall keep records of the jurisdiction's use of the provision that a ten percent (10%) of the protected area of WS-IV watersheds may be developed with new development at a maximum of seventy percent (70%) built-upon surface area. Records for each watershed shall include the total acres of non-critical watershed area, total acres eligible to be developed under this option, total acres approved for this development option, and individual records for each project with the following information: location, number of developed acres, type of land use and stormwater management plan (if applicable).
- (6) The Administrator is granted the authority to administer and enforce the provisions of these regulations, exercising in the fulfillment of his responsibility the full police power of the Town. The 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.
- (7) The Administrator shall keep a record of variances to the local Water Supply Watershed Protection Ordinance. This record shall be submitted for each calendar year to the Division of Water Resources on or before January 1<sup>st</sup> of the following year and shall provide a description of each project receiving a variance and the reasons for granting the variance.

- (B) Rules Governing the Interpretation of Watershed Area Boundaries. Where uncertainty exists as to the boundaries of the watershed areas, as shown on the Official Zoning Map, the rules contained in Section 9-4 of this Ordinance shall apply.
- (C) Penalties/Remedies for Violations. All penalties and remedies for violation of these regulations shall be in accordance with Article 7, Enforcement and Review.
- (D) Changes and Amendments to the Water Supply Watershed Protection Regulations. The Town Council may, on its own motion or on petition, amend, supplement, change, or modify the watershed regulations in accordance with Article 4 of this Ordinance. Under no circumstances shall the Town Council adopt such amendments, supplements, or changes that would cause this Ordinance to violate the watershed protection rules as adopted by the NC Environmental Management Commission. All amendments must be filed with the NC Division of Water Resources, NC Division of Environmental Health, and the NC Division of Community Assistance.
- (E) Appeal from the Administrator. Any order, requirement, decision, or determination made by the Administrator may be appealed to and decided by the Town of Pembroke Board of Adjustment in accordance with Article 5, Section 5-1 of this Ordinance.
- (F) Variances. Variances may be granted by the Board of Adjustment in accordance with Article 5, Section 5-2 of this Ordinance. If the application calls for the granting of a major variance, and if the Board of Adjustment decides in favor of granting the variance, the Board shall prepare a preliminary record of the hearing with all deliberate speed. The preliminary record of the hearing shall include:
- (1) The variance application;
  - (2) The hearing notices;
  - (3) The evidence presented;
  - (4) Motions, offers of proof, objections to evidence, and rulings on them;
  - (5) Proposed findings and exceptions;
  - (6) The proposed decision, including all conditions proposed to be added to the permit.

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

- (1) If the Commission concludes from the preliminary record that the variance qualifies as a major variance and that (a) the property owner can secure no reasonable return from, nor make any practical use of the property unless the proposed variance is granted, and (b) 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 Town of Pembroke Board of Adjustment. 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.

- (2) If the Commission concludes from the preliminary record that the variance qualifies as a major variance and that (a) the property owner can secure a reasonable return from or make a practical use of the property without the variance or (b) 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 Town of Pembroke Board of Adjustment. The Board shall prepare a final decision denying the variance as proposed.

### **Section 25-7: Watershed Overlay District Regulations**

- (A) Only new development activities that require a sedimentation/erosion control plan under State Code (NCAC, Chapter 4) or local government program are required to meet the provisions of this ordinance when located in a WS-IV watershed. These include land-disturbing activities of one acre or more. Sludge application is allowed; new non-discharging landfills are allowed. Best management practices for forestry and transportation (reference NCDOT publication Best Management Practices for the Protection of Surface Waters) are required.
- (B) In addition to Permitted and Special Uses listed for the appropriate district in Article 10, Table of Permitted Uses, the following are allowed uses in the Watershed Protection District. *(Amended 8/2/2021)*
  - (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 (15A NCAC 11.6101-.0209).
  - (2) Not Allowed.
    - (a) Discharging landfills.
    - (b) The storage of toxic and hazardous materials (unless a spill containment plan is implemented).
  - (3) Dimensional Requirements. The following dimensional requirements are in addition to the requirements contained in Article 11 of this Ordinance.
    - (a) Single-Family Residential. For activities disturbing one acre or more of land, minimum lot size is 20,000 square feet, or 24% built-upon, or one-third (1/3)

acre for projects without a curb and gutter street system, except within an approved cluster development.

- (b) All Other Residential and Non-Residential. For activities disturbing one acre or more of land, built-upon area is limited to 24%. For projects without a curb and gutter street system, development shall not exceed thirty-six percent (36%) built-upon area on a project-by-project basis. For the purpose of calculating built-upon area, total project area shall include acreage in the tract on which the project is to be developed.
- (c) In addition to the development allowed under paragraphs (a) and (b) above, new development and expansions to existing development may occupy upon to ten percent (10%) of the protected area with up to seventy percent (70%) built-upon area on a project-by-project basis, when approved as a special intensity allocation (SIA). The UDO Administrator is authorized to approve SIAs consistent with the provision of this ordinance. Projects must, to the maximum extent practicable, minimize built-upon surface area; direct storm water away from surface waters and incorporate Best Management Practices to minimize water quality impacts. For the purpose of calculating built-upon area, total project area shall include total acreage in the tract on which the project is to be developed.

#### **Section 25-8: Cluster Development**

Clustering of development is allowed under the following conditions.

- (A) Minimum lot sizes are not applicable to cluster development projects; however, the total number of lots shall not exceed the number of lots allowed in Article 11. Built-upon area for the project shall not exceed that allowed for the WS-IV watershed protected area.
- (B) All built-upon area shall be designed and located to minimize storm water runoff impact to the receiving waters and minimize concentrated storm water flow, maximize the use of sheet flow through vegetated areas, and maximize the flow length through vegetated areas.
- (C) Areas of concentrated density development shall be located in upland area and away, to the maximum extent practicable, from surface waters and drainageways.
- (D) The remainder of the tract shall remain in a vegetated or natural state, not to be developed at any future date. The title to the open space areas shall be conveyed to an incorporated property owners association for management; to a local government for preservation as a park or open space; or to a conservation organization for preservation in a permanent easement. Where a property owners association is not incorporated, a maintenance agreement shall be filed with the property deeds, and individual property owners shall be responsible for maintenance.

**Section 25-9: Buffers Required**

- (A) A minimum of thirty (30) foot vegetative buffer is required for development activities along all perennial waters indicated on the most recent versions of U.S.G.S. 1:24,000 (7.5 minute) scale topographic maps or as determined by local government studies. Desirable artificial stream bank or shoreline stabilization is permitted.
- (B) No new development is allowed in the buffer except water dependent structures, other structures such as flag poles, signs and security lights which result in only diminutive increase in impervious area, and public projects such as road crossings and greenways where no practical alternative exists. These activities should minimize built-upon surface area, direct runoff away from the surface waters, and maximize the utilization of storm water Best Management Practices.

**Section 25-10: Watershed Protection Permit**

- (A) 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 UDO Administrator.
- (B) Watershed Protection Permit applications shall be filed with the UDO Administrator. The application shall include a completed application form (provided by the UDO Administrator) and supporting documentation deemed necessary by the UDO Administrator.
- (C) Prior to issuance of a Watershed Protection Permit, the UDO Administrator may consult with qualified personnel for assistance to determine if the application meets the requirements of this Ordinance.
- (D) A Watershed Protection Permit shall expire if a Building Permit or Certificate of Occupancy for such use is not obtained by the applicant within twelve (12) months from the date of issuance.

**Section 25-11: Building Permit Required**

No permit required under the North Carolina State Building Code shall be issued for any activity for which a Watershed Protection Permit is required until that permit has been issued.

**Section 25-12: Zoning Compliance Permit for Properties Located in a Watershed Area**

- (A) The UDO Administrator shall issue a Zoning Compliance 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 Zoning Compliance 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 alteration of the building.
- (C) When only a change in use of land or existing building occurs, the UDO Administrator shall issue a Zoning Compliance Permit certifying that all requirements of this Ordinance have been met coincident with the Watershed Protection Permit.
- (D) If the Zoning Compliance Permit is denied, the UDO 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 UDO Administrator has approved and issued a Zoning Compliance Permit.

**Section 25-13: Public Health Regulations**

- (A) Public Health, In General. 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 site sewage systems which utilize ground absorption; inadequate sedimentation and erosion control measures; the improper storage or disposal of junk, trash, or other refuse with a buffer area; the absence or improper implementation of a spill containment plan for toxic and hazardous materials; the improper management of storm water runoff; or any other situation found to pose a threat to water quality.
- (B) Abatement. The Administrator shall monitor land use activities within the watershed areas to identify situations that may pose a threat to water quality.
- (C) The Administrator shall report all findings to the Planning Board. The Administrator may consult with any public agency or official and request recommendations.
- (D) Where the Planning Board finds a threat to water quality and the public health, safety, and welfare, the Board shall institute any appropriate action or proceeding to restrain, correct, or abate the condition and/or violation.