

### 3.6.4 Watershed Protection District (WPD)

(a) *Intent.*

- (1) The watershed protection district (herein sometimes WPD) is intended to be applied to a portion of the New Hope Watershed draining to Jordan Lake in order to ensure long-term water quality of the Jordan Lake Reservoir, to protect possible future sources of drinking water for the town and surrounding localities, and to control pollution sources affecting water quality.
- (2) In the interpretation and application of this article, all provisions shall be:
  - A. Considered as minimum requirements;
  - B. Strictly construed in favor of the public interest and community benefit; and
  - C. Deemed neither to limit nor repeal any other powers provided by town ordinance or state statute.

(b) *Authority.* This section is established pursuant to the authority vested in the Town of Chapel Hill by the Session Laws and the General Statutes of North Carolina, including, but not limited to, particularly North Carolina General Statutes Chapter 143, Article 21, the authority referenced in section 1.2 of this ordinance, and implementing regulations of the North Carolina Environmental Management Commission or successor statutes and regulations (Administrative Code Section 15 NCAC 28, .0100, .0200, and .0300), hereafter referred to as "state watershed regulations."

(c) *Establishment of Watershed Protection District.*

- (1) The watershed protection district is established for certain lands within the New Hope Watershed as a district that overlays other zoning districts established in section 3. All development within the watershed protection district shall comply with the requirements of this section. In addition, all development within the watershed protection district shall comply with the requirements of any additional overlay districts and the underlying zoning district.
- (2) The area of the district shall be defined generally as an area extending five (5) miles from the normal pool elevation of the Jordan Lake Reservoir, or to the ridge line of the watershed, whichever is less.
- (3) The specific location of the watershed protection district shall be set by ridge lines, identifiable physical features such as highways, or property lines, and shall be shown on the official zoning atlas.

(d) *District Applicability.* This section shall apply to development and land-disturbing activities within the WPD after the effective date (July 1, 1993) of this section with the following exemptions:

- (1) Continued Use, Operation or Maintenance of Development Existing on July 1, 1993. This section shall not apply to the continued use, operation or maintenance of any development existing, or for which construction had substantially begun, on or before July 1, 1993. In addition, this section shall not apply to existing development which has established a vested right under North Carolina zoning law as of July 1, 1993, based on the following criteria:
  - A. Substantial expenditure of resources (time, labor, money) based on a good faith reliance upon having received a valid approval to proceed with the project;
  - B. Having an outstanding valid building permit; or
  - C. Having expended substantial resources (time, labor, money) and having an approved site specific development plan pursuant to section 20.4 of the Development Ordinance.

With respect to the requirements of this section, such development shall not be considered as nonconforming within the meaning of section 7 of this appendix.

- (2) New Development Not Requiring an Erosion and Sedimentation Control Permit. New development activities that do not require an erosion and sedimentation control permit under

State law or approved local government program shall be exempt from the provisions of this section.

- (3) New Single-Family Development on Lots Existing as of July 1, 1993. Single-family development constructed or to be constructed on lots of record as of July 1, 1993 which are established through a duly approved and properly recorded final plat shall be exempt from the provisions of this section.
  - (4) Existing Lots That Do Not Meet Intensity Requirements.
    - A. Lots of record as of July 1, 1993 that do not meet the intensity requirements in subsection 3.6.4(f) and that are not contiguous to any other lot owned by the same party are exempt from the provisions of this section if it is developed for single-family residential use.
    - B. Lots of record as of July 1, 1993 that do not meet the intensity requirements in subsection 3.6.4(f) and that are contiguous to any other lot owned by the same party must be recombined in order to establish a lot or lots that meet or nearly meet the intensity requirements for the intended type of development.
  - (5) Redevelopment. Redevelopment activity that does not have a net increase of built-upon area, redevelopment of lawfully established single-family residences, or redevelopment that meets other exemption criteria of this section is exempt from the provisions of this section. Redevelopment activity that does have a net increase of built-upon area must provide equal or greater stormwater control than the previous development, subject to the performance standards in subsection 3.6.4(g).
  - (6) Expansions to Existing Development. Expansions to existing development as of July 1, 1993, must meet the requirements of this section; however, the built-upon area of existing development is not required to be included in density and impervious surface area calculations, and there are no restrictions on expansion of lawfully established single-family development.
  - (7) Reconstruction of Buildings or Built-Upon Areas. Any building or built-upon area existing prior to July 1, 1993, not meeting the restrictions of this ordinance that has been damaged or removed may be repaired and/or reconstructed, provided:
    - A. Repair or reconstruction is initiated within twelve (12) months and completed within two (2) years of such damage or removal.
    - B. 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, subject to the performance standards in subsection 3.6.4(g).
    - C. Reconstruction of buildings or built-upon area initially constructed on or after July 1, 1993 must meet the requirements of this section.
    - D. Reconstruction of single-family residential development is exempt from these requirements.
- (e) *Permitted uses within the Watershed Protection District.*
- (1) The requirements or permitted uses indicated in the underlying zoning district, or any applicable overlay zone, apply in the watershed protection district, provided the standards of sections 3.6.4(f) and 3.6.4(g) are met.
  - (2) Agriculture, subject to the provisions of the Food Security Act of 1985 and the Food, Agricultural, Conservation and Trade Act of 1990.
  - (3) Silviculture, subject to the provisions of the Forest Practices Guidelines Related to Water Quality (15 NCAC 11.0101 - .0209).
- (f) *Intensity Regulations.*
- (1) The intensity regulations are those generally applicable to the underlying zoning district, or any applicable overlay zone, except as modified below.

- (2) Any development in the watershed protection district shall be subject to the following options, as described in Table 3.6.4-1. All options must meet the applicable performance standards in subsection 3.6.4(g).

Table 3.6.4-1: Development Options

Options	Land Use	Drainage/Stormwater Requirements	Standards
Low Density	Single-family residential	With curb and gutter	Development shall not exceed 2 dwelling units per acre on a project basis. No residential lot shall be less than 1/2 acre or 20,000 square feet excluding roadway right-of-way, except within and approved cluster development.
		Without curb and gutter	Development shall not exceed 3 dwelling units per acre on a project basis. No residential lot shall be less than 1/3 acre, except within an approved cluster development.
	Other residential and non-residential	With curb and gutter	Development shall not exceed 24% built-upon area on a project basis.
		Without curb and gutter	Development shall not exceed 36% built-upon area on a project basis.
High Density	Single-family residential	Use stormwater control measures	Development shall not exceed 50% built-upon area on a project basis.
	Other residential and non-residential	Use stormwater control measures	Development shall not exceed 70% built-upon area on a project basis.

- (g) *Performance standards.* The following standards and criteria shall apply to any portion of a development or, as appropriate, to any land disturbance within the Watershed Protection District.
- (1) Hazardous materials. Any proposed development which uses and stores hazardous materials shall prepare an emergency contingency plan as part of its development application. The emergency contingency plan shall be prepared in accordance with the requirements of the Superfund Amendments and Reauthorization Act (SARA), the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), or Section 311 of the Clean Water Act, as amended. The plan shall identify buildings and the locations of points of storage and use of

hazardous materials and shall be updated annually. The plan shall be approved by the town manager.

Any container or tank used to store hazardous materials shall be equipped with leak detection devices and shall be double-walled or have other secondary containment features to be approved by the town manager.

Points of storage or use of hazardous materials shall be protected by a corrosion-resistant dike, sized to handle the maximum amount of hazardous material to be stored or used.

All floor drains that could collect hazardous materials shall be connected to a corrosion resistant tank or catch basin sized to handle the maximum amount of hazardous material to be stored or used. These floor drains shall not be open to the site's natural drainage system.

- (2) Solid waste minimization. All development shall submit a plan to be approved by the town manager which minimizes solid waste and promotes the recycling of materials in accordance with Section 5.13 of the Development Ordinance.
- (3) Ownership, Design, and Maintenance of Stormwater Control Measures. Development activities which exceed the low density option requirements must control and treat stormwater runoff. Stormwater control measures shall be designed and constructed in accordance with standards and specifications established by the town manager, and designed to control and treat runoff from the first one (1) inch of precipitation and remove eighty-five (85) percent of the Total Suspended Solids using wet detention ponds, or using other measures accepted by the state.

Unless otherwise approved, ownership of the stormwater control measures shall remain with the property owner or a property owner's association.

The property owner shall post a performance bond or other surety instrument satisfactory to the town manager, in an amount approved by the town manager to assure maintenance, repair, or reconstruction necessary for adequate performance of the stormwater control measures.

- (4) Construction Standards. New development shall minimize built-upon area, minimize stormwater runoff impact to the receiving waters, minimize concentrated stormwater flow, maximize the use of sheet flow through vegetated areas, maximize the flow length through vegetated areas, divert stormwater away from surface water supply waters as much as possible, and employ best management practices to minimize water quality impacts.
- (5) Cluster Provisions. The clustering of development superseding general cluster development requirements of section 3.8.8, where they conflict, is encouraged, subject to the following additional standards:
  - A. Minimum lot sizes are not applicable to single-family cluster development projects; however, the overall density of the project meets the associated density and drainage/stormwater control requirements of section 3.6.4(f) for all land use types;
  - B. Areas of concentrated development are located in upland areas and away, to the maximum extent practicable, from surface waters and drainageways;
  - C. Built-upon areas are designed and sited to minimize stormwater runoff impact to the receiving waters and minimize concentrated stormwater flow; and
  - D. The remainder of the tract shall remain in a vegetated or natural state. The title to this area shall be conveyed to an incorporated property owners association, a local government for preservation as a park or open space, a conservation organization, or placed in a permanent conservation or farmland preservation easement. Where a property association is not incorporated, a maintenance agreement shall be filed with the property deeds.

(h) *Variances.*

- (1) Application. An owner of property who alleges that carrying out the strict letter of the provisions of this section would create practical difficulties or unnecessary hardships may apply for a variance. Applications shall meet the following requirements:
  - A. An application for a variance from the board of adjustment shall be filed with the town clerk in accord with the provisions of section 4.12.1. In addition to materials required by that section, the application must also comply with applicable submittal requirements.
  - B. Any owner of property applying to the board of adjustment for a variance from the provisions of this section shall have the burden of establishing that such variance should be granted by the board.
  - C. For all proposed variances, the town manager shall notify in writing all other local governments having jurisdiction within the watershed area governed by the state regulations and the entity using the water supply for consumption. A reasonable comment period shall be allowed for local governments to submit comments to the board of adjustment prior to a decision by the board.
- (2) Minor Variances. A request for a variance from any requirement of this article that does not conflict with any provision in state watershed regulations as amended, may be considered by the board of adjustment of the Town of Chapel Hill.
- (3) Major Variances.
  - A. A request for a variance from any requirement of this article that conflicts with any provision in state watershed regulations, as amended, constitutes a major variance. A request for such a variance shall be considered by the board of adjustment and referred to the North Carolina Environmental Management Commission or its successor agency, in accordance with the following procedures:
    1. If the board of adjustment decides in favor of granting the variance, the board of adjustment shall prepare a preliminary record of the hearing with all deliberate speed and send it to the environmental management commission. The preliminary record of the hearing shall include:
      - i. The variance application;
      - ii. The hearing notices;
      - iii. The evidence presented;
      - iv. Motions, offers of proof, objections to evidence, and rulings on them;
      - v. Proposed findings and exceptions; and
      - vi. The proposed decision, including all conditions proposed to be added to the permit.
  - B. If the environmental management commission approves the variance as proposed, approves the variance with additional conditions, or denies the variance, the commission shall prepare a decision and send it to the board of adjustment. The board of adjustment shall prepare a final decision in accordance with the commission's decision.
- (i) *Correction of violations.* The owner of any land within the watershed protection district shall be presumed responsible for any violation of this section committed on his or her property. The owner of any land within the watershed protection district shall be responsible for correcting any activity undertaken therein in violation of this section. In addition, any other person found in violation of this article shall be liable as provided by law. The town may institute any appropriate action to restrain or prevent any violation of this section or to require any person who has committed any such violation to correct the violation or restore the conditions existing before the violation. The town manager shall enforce this section as provided for in section 4.13 of this appendix.
- (j) *Other approvals required.* No permit or approval required to be issued by the town under the provisions of this section shall be valid until all other permits or variances for the same proposal required by any other ordinance of the town or Orange or Durham Counties or statute of the State of North Carolina or

the United States have been received from those agencies from which such permits or variances are required.

(k) *Records and filings.*

- (1) The town manager shall maintain records of all development permits, approvals, or variances regarding development within the watershed protection district. Such records shall include all actions on applications for such permits, approvals, or variances, as well as any conditions attached thereto.
- (2) The town manager shall submit annually a description of each project receiving a variance and the reasons given by the board of adjustment for granting the variance to the North Carolina Environmental Management Commission.
- (3) The town manager shall maintain records of annual inspections of engineered stormwater management controls.
- (4) The town manager shall notify any applicant in writing of the decision on any application for any permit, approval, or variance with respect to property within the watershed protection district and shall file a copy of it with the town's planning department.
- (5) The applicant shall record any variance with the county register of deeds within sixty (60) days after written notice of approval of such variance by the board of adjustment.

*3.6.5 Neighborhood Conservation District*

Purpose Statement: Within the Town of Chapel Hill there are unique and distinctive older in-town residential neighborhoods or commercial districts which contribute significantly to the overall character and identity of the town and are worthy of preservation and protection. Some of these districts are designated as historic districts, others may lack sufficient historical, architectural or cultural significance at the present time to be designated as historic districts. As a matter of public policy, the town council aims to preserve, protect, enhance, and perpetuate the value of these residential neighborhoods or commercial districts through the establishment of neighborhood conservation districts.

The purposes of a neighborhood conservation district in older town residential neighborhoods or commercial districts are as follows:

- To promote and provide for economic revitalization and/or enhancement
- To protect and strengthen desirable and unique physical features, design characteristics, and recognized identity, charm and flavor
- To protect and enhance the livability of the town;
- To reduce conflict and prevent blighting caused by incompatible and insensitive development, and to promote new compatible development;
- To stabilize property values;
- To provide residents and property owners with a planning bargaining tool for future development;
- To promote and retain affordable housing;
- To encourage and strengthen civic pride; and
- To encourage the harmonious, orderly and efficient growth and redevelopment of the town.

(a) *Designation criteria.* To be designated a neighborhood conservation district, the area must meet the following criteria:

- (1) The area must contain a minimum of one (1) block face (all the lots on one (1) side of a block);

- (2) The area must have been platted or developed at least forty (40) years prior to the date of the submittal and acceptance of a petition to initiate Phase One of the neighborhood conservation district process, or prior to a town council action to initiate Phase One of the neighborhood conservation district process;
- (3) At least seventy-five (75) per cent of the land area in the proposed district is presently improved;
- (4) The area must possess one (1) or more of the following distinctive features that create a cohesive identifiable setting, character or association;
  - A. Scale, size, or type of construction;
  - B. Lot layouts, setbacks, street layouts, alleys or sidewalks;
  - C. Special natural or streetscape characteristics, such as creek beds, parks, gardens or street landscaping;
  - D. Land use patterns, including mixed or unique uses or activities; or
  - E. Abuts or links designated historic landmarks and/or districts.
- (5) The area must be predominantly residential in use and character.

Any designated historic overlay district shall be deemed to satisfy the criteria listed above.

- (b) *Zoning authority.* Separate ordinances are required to designate each district. Ordinances designating each neighborhood conservation district shall identify the designated district boundaries, and specify the individual purposes and standards for that district.

- (1) Overlay district. Neighborhood conservation districts are designed as overlays to the regular zoning districts. Property designated within these districts must also be designated as being within one (1) of the general use districts. Authorized uses must be permitted in both the general use district and the overlay district. Property designated as a neighborhood conservation district may have additional designations. Such property shall comply with all applicable use restrictions.

- (2) Zoning designation.

- A. The zoning designation for property located within a neighborhood conservation district shall consist of the base zone symbol and the overlay district symbol (CD) as a suffix. Neighborhood conservation districts shall be numbered sequentially to distinguish among different districts, i.e., R-4 (CD-1), R-1 (CD-2), etc.
- B. The designation of property within a neighborhood conservation district places such property in a new zoning district classification and all procedures and requirements for zoning/rezoning must be followed.
- C. In the event of a conflict between the provisions of a specific neighborhood conservation district ordinance and the general use district regulations, the provisions of the neighborhood conservation district ordinance shall control.
- D. Except as modified by this section, the procedures for zoning changes set forth in section 4.4 shall otherwise apply to the designation of an area as a neighborhood conservation district.

- (c) *Initiation.* The process to initiate the designation of a neighborhood conservation district shall consist of two (2) phases. Phase One must be completed in order to initiate Phase Two.

- (1) Phase One shall consist of a town sponsored public information meeting to provide general information about neighborhood conservation districts including a review of existing neighborhood conservation districts and an explanation of the rezoning process.
  - A. Phase One may be initiated by the town council; by property owners representing fifty-one (51) per cent of the land area within the proposed district, upon submittal and acceptance of a petition by the town council; or by fifty-one (51) per cent of property owners in a proposed district upon submittal and acceptance of a petition by the town council.

- B. The town manager shall prescribe the form(s) on which a neighborhood conservation district petition is made.
  - C. The planning commission shall review the council motion or the petition to initiate Phase One of the process to create a neighborhood conservation district. The planning commission shall designate a preliminary boundary and set a date to hold a public information meeting regarding the proposed neighborhood conservation district.
  - D. Notification of the public information meeting shall be sent to all property owners located within the preliminary boundary and within five hundred (500) feet of the boundary.
- (2) Phase Two shall consist of a planning commission feasibility review and town council action.
- A. Phase Two may be initiated by the town council; by property owners representing fifty-one (51) per cent of the land area within the proposed district, upon submittal and acceptance of a petition to the town council; or by fifty-one (51) per cent of property owners in a proposed district upon submittal and acceptance of a petition to the town council.
  - B. The town manager shall prescribe the form(s) on which a neighborhood conservation district petition is made.
  - C. The planning commission shall review the council motion or the petition to initiate Phase Two of the process to create a neighborhood conservation district. The planning commission shall set a date and conduct a neighborhood conservation district feasibility review.
  - D. Notification of the planning commission's neighborhood conservation district feasibility review time, date, and place shall be sent to all property owners located within the preliminary boundary and within five hundred (500) feet of the boundary.
  - E. The town staff shall submit to the planning commission a written analysis of the petition and include a recommendation with specific reference to:
    - The community goals: a statement of objective for the neighborhood conservation district;
    - The level of urgency: a description of current development activity in the neighborhood;
    - The plenary or committee structure: a proposal of who will participate in the process of drafting a neighborhood conservation district rezoning proposal. A committee structure shall include ten (10) per cent of households in the initial boundary or twenty (20) people, whichever is less, and a plenary structure shall open the process to the entire neighborhood; and
    - The initial boundary: a map of properties to be included in the neighborhood conservation district.
  - F. The planning commission shall conduct the neighborhood conservation district feasibility review. The neighborhood conservation district feasibility review shall be open to the public and all interested persons shall be given the opportunity to present arguments in favor of or against a rezoning and to ask questions.
  - G. After the neighborhood conservation district feasibility review, the planning commission shall submit its recommendation to the town council with specific reference to the community goals, the level of urgency, the plenary or committee structure, and the initial proposed boundary of the neighborhood conservation district.
  - H. After the neighborhood conservation district feasibility review, the town council shall review the planning commission's recommendation and the town staff recommendation and act on the petition. Action on the petition may include endorsement to begin the rezoning process to establish a neighborhood conservation district or to not begin the process.

- I. Endorsement to begin the rezoning process shall include reference to the community goals, the level of urgency, the plenary or committee structure, and the initial boundary of the neighborhood conservation district.
- J. Notification of the town council action shall be sent by first class mail to owners of properties located within the preliminary boundary and within five hundred (500) feet of the boundary.

(d) *Designation procedures.*

- (1) Following initiation for designation of a neighborhood conservation district, the planning commission, or a committee designated by the town council with representation from the planning commission, shall develop a neighborhood conservation plan for the proposed district that may include:
  - A. Maps indicating the boundaries, age of structures and land use of the proposed district;
  - B. Maps and other graphic and written materials identifying and describing the distinctive neighborhood and building characteristics of the proposed district; and
  - C. Zoning standards for new construction, additions or alterations to the street facades of existing buildings or structures within the proposed district.
- (2) All owners of properties within the proposed district shall be afforded the opportunity to participate in drafting the conservation plan. A conservation plan shall be approved as part of a zoning atlas amendment creating a neighborhood conservation district.

(e) *Zoning standard.*

- (1) The conservation plan approved as part of the zoning ordinance creating a neighborhood conservation district may include zoning standards for new construction or placement of any building, structure, foundation, sign, public art or outdoor apparatus or equipment (including visible utility boxes or mechanical equipment; trucks; lawn or landscaping equipment, but not including lawnmowers or hand tools; playground equipment; or sports equipment), and any additions, alterations, relocation of existing buildings, structures, foundations, sign, public art, or outdoor apparatus or equipment.
- (2) The conservation plan, and requisite design standards shall not apply to those activities which constitute ordinary repair and maintenance, i.e., using the same material and design.
- (3) In addition, the zoning standards may include the following elements governing the features of all property (public or private) within the proposed district:
  - A. Building orientation;
  - B. General site planning (primary, ancillary structures);
  - C. Density;
  - D. Floor area ratio;
  - E. Signage;
  - F. Buffering and screening;
  - G. Entrance lighting;
  - H. Driveways and sidewalks;
  - I. Satellite dishes, utility boxes;
  - J. Street furniture;
  - K. Public art;
  - L. Demolition (see subsection (f)).

(f) *Administration of ordinance.*

- (1) No building permit shall be issued for new construction or an addition to an existing building or structure within a designated neighborhood conservation district without the submission and approval of a zoning compliance application and the issuance of a zoning compliance permit by the town manager.
- (2) The town manager shall review the design plans to determine compliance with the zoning standards contained in the neighborhood conservation plan adopted for the district.)
- (3) If the town manager determines that the zoning compliance application is in conformance with the zoning standards adopted for the district, the town manager shall approve the plans and issue a zoning compliance permit and the department of building inspections may issue a building permit.
- (4) If the town manager determines that the zoning compliance application is not in conformance with the zoning standards adopted for the district, the town manager shall not approve the plans, and will issue notification of non-compliance, identifying the specific zoning standards violated.
- (5) The applicant may appeal the town manager's determination to the board of adjustment as provided in section 4.12.

(Ord. No. 2003-11-10/O-3, § 2; Ord. No. 2004-02-23/O-2; Ord. No. 2006-01-09/O-7, § 1; Ord. No. 2006-03-06/O-1, § 1; Ord. No. 2007-10-08/O-7, § 1; Ord. No. 2009-11-23/O-10, § 1; Ord. No. 2013-09-23/O-2.1, §§ 7, 8; [Ord. No. 2014-03-10/O-2, § 3](#); [Ord. No. 2015-11-23/O-8, § 1](#); [Ord. No. 2015-11-23/O-12, § 1](#); [Ord. No. 2015-11-23/O-16, § 1](#); [Ord. No. 2016-03-21/O-2, § 1](#))