

# ARTICLE 29 WATERSHED PROTECTION

29.01	Adoption Date and Effective Date .....	29-1
29.02	Jurisdiction .....	29-1
29.03	Exceptions to Applicability .....	29-1
29.04	Establishment of Watershed Review Boards .....	29-2
29.05	Establishment of Watershed Areas .....	29-2
29.06	Watershed Areas Described .....	29-2
29.07	Cluster Development .....	29-4
29.08	Buffer Areas Required .....	29-5
29.09	Rules Governing the Interpretation of Watershed Area Boundaries .....	29-5
29.10	Existing Development .....	29-5
29.11	Watershed Protection .....	29-5
29.12	Public Health, Safety, and General Welfare .....	29-6

## **29.01 Adoption Date and Effective Date**

**29.01.01** The provisions in this Article were originally adopted on May 27, 1993 and became effective on June 30, 1993. The authority for implementation of the Water Supply Watershed Regulations are in the N.C. Gen. Stat. § 160A, Article 8, Section 174, General Ordinance Authorization and N.C. Gen. Stat. § 143, Article 21, Watershed Protection Rules.

## **29.02 Jurisdiction**

**29.02.01** The provisions of the Article shall apply within the areas designated as a Public Water Supply Watershed by the North Carolina Environmental Management Commission and shall be defined and established on the map entitled, "Watershed Protection Map of Boone, North Carolina" ("The Watershed Map"), which is adopted simultaneously herewith. The watershed map and all explanatory matter contained thereon accompanies and is hereby made a part of this Article.

## **29.03 Exceptions to Applicability**

**29.03.01** 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 shall any provision of this Article amend, modify, or restrict any provisions of the Code of Ordinances of the Town of Boone; however, the adoption of this Article shall and does amend any and all ordinances, resolutions, and regulations in effect in the Town at the time of the adoption of this Article that may be construed to impair or reduce the effectiveness of this Article or to conflict with any of its provisions.

**29.03.02** 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.

**29.03.03** Existing development is not subject to the requirements of this Article. Expansions to structures classified as existing development must meet the requirements of this Article, however, the built upon area of the existing development is not required to be included in the density calculations.

**29.03.04** A pre-existing lot owned by an individual prior to the effective date of this Ordinance, regardless of whether or not a vested right has been established, may be developed for single family residential purposes without being subject to the restrictions of this Ordinance. However, this exemption is not applicable to multiple contiguous lots under single ownership.

**29.04 Establishment of Watershed Review Boards**

**29.04.01** The Planning Commission shall act as the Watershed Review Board on all subdivision regulation matters. The Board of Adjustment shall act as the Watershed Review Board on all other matters regarding this Ordinance.

**29.05 Establishment of Watershed Areas**

**29.05.01** The purpose of this Section is to list and describe the watershed areas herein adopted.

**29.05.02** For purposes of this Article the Town and its extraterritorial jurisdiction are hereby divided into the following areas, as appropriate:

- A. WS-II-CA (Critical Area)
- B. WS-IV-CA (Critical Area)
- C. WS-IV-PA (Protected Area)

**29.06 Watershed Areas Described**

**29.06.01** *WS-II Watershed Areas Critical Area (WS-II-CA):* In order to maintain a predominately undeveloped land use intensity pattern, single family residential uses shall be allowed at a maximum of one (1) dwelling unit per two (2) acres. All other residential and nonresidential development shall be allowed at a maximum six percent (6%) built upon area. New sludge application sites and landfills are specifically prohibited.

- A. Allowed uses are:**
- 1. Agriculture subject to the provisions of the Food Security Act of 1985 and the Food, Agriculture, Conservation and Trade Act of 1990.
  - 2. Silviculture, subject to the provisions of the Forest Practices Guidelines Related to Water Quality (15 NCAC 11.6101-.0209).
  - 3. Residential development, including both single family and all other residential.
  - 4. Non-residential development, excluding:
    - a. The storage of toxic and hazardous materials unless a spill containment plan is implemented,

- b. Landfills, and
- c. Sites for land application of sludge/residuals or petroleum contaminated soils. New industrial development is required to incorporate adequately designed, constructed and maintained spill containment structures if hazardous materials are used, stored or manufactured on the premises.

**B. Density and built upon limits:**

- 1. Single family residential development shall not exceed one (1) dwelling unit per two (2) acres on a project by project basis. No residential lot shall be less than two (2) acres, except within an approved cluster development.
- 2. All other residential and non-residential development shall not exceed six percent (6%) built upon area on a project by project basis. 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.

**29.06.02** *WS-IV Watershed Areas Critical Area (WS-IV-CA):* In order to address a moderate to high land use intensity pattern, single family residential uses are allowed at a maximum of two (2) dwelling units per acre. All other residential and non-residential development shall be allowed twenty-four percent (24%) built-upon area. New sludge application sites and landfills are specifically prohibited.

**A. Allowed uses are:**

- 1. Agriculture subject to the provisions of the Food Security Act of 1985 and the Food, Agriculture, Conservation and Trade Act of 1990.
- 2. Silviculture, subject to the provisions of the Forest Practices Guidelines Related to Water Quality (15 NCAC 11.6101-.0209).
- 3. Residential.
- 4. Non-residential development, excluding:
  - a. The storage of toxic and hazardous materials unless a spill containment plan is implemented,
  - b. Landfills, and
  - c. Sites for land application of sludge/residuals or petroleum contaminated soils.

**B. Density and built upon limits:**

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

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

**29.06.03** *WS-IV Watershed Areas Protected Area (WS-IV-PA)*: In order to address a moderate to high land use intensity pattern, single family residential uses shall develop at a maximum of two (2) dwelling units per acre. All other residential and non-residential development shall be allowed at a maximum of twenty-four percent (24%) built upon area.

**A.** Uses allowed are:

1. Agriculture, subject to the provisions of the Food Security Act of 1985 and the Food, Agricultural, Conservation and Trade Act of 1990.
2. Silviculture, subject to the provisions of the Forest Practices Guidelines Related to Water Quality (15 NCAC 11.6101-.0209).
3. Residential development.
4. Non-residential development, excluding the storage of toxic and hazardous materials unless a spill containment plan is implemented.

**B.** Density and built upon limits:

1. Single family residential development shall not exceed two (2) dwelling units per acre, on a project by project basis. No residential lot shall be less than one half (1/2) acre, except within an approved cluster development.
2. All other residential and non-residential development shall not exceed twenty-four percent (24%) built upon area on a project by project basis. For the purpose of calculating built upon area, total project area shall include acreage in the tract on which the project is to be developed.

**29.07 Cluster Development**

**29.07.01** Clustering of development is allowed in all watershed areas under the following conditions:

- A.** Built upon area or stormwater control requirements of the project shall not exceed that allowed for the critical area or balance of watershed, whichever applies.
- B.** All built upon area shall be designed and located to minimize stormwater runoff impact to the receiving waters and minimize concentrated stormwater flow.
- C.** The remainder of the tract 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.

**29.08 Buffer Areas Required**

**29.08.01** A minimum thirty foot (30') vegetative buffer for development activities is required along all perennial waters indicated on the most recent versions of U.S.G.S. 1:24,000 (7.5 minute) scale topographic maps or as determined by local government studies. Desirable artificial stream bank or shoreline stabilization is permitted.

**29.08.02** No new development is allowed in the buffer except for water dependent structures 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.

**29.09 Rules Governing the Interpretation of Watershed Area Boundaries**

**29.09.01** The boundaries of the watershed areas are as shown on the Official Watershed Map. Where uncertainty exists, the Administrator shall interpret the Watershed Map as to location of such boundaries. This decision may be appealed to the Board of Adjustment.

**29.10 Existing Development**

**29.10.01** Any existing development 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.

**29.11 Watershed Protection**

**29.11.01** 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 zoning or 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 Administrator. No watershed protection permit shall be issued except in conformity with the provisions of this Ordinance.

**29.11.02** Watershed protection permit applications shall be filed with the Administrator. The application shall include a completed application form and supporting documentation deemed necessary by the Administrator.

**29.11.03** Prior to issuance of a watershed protection permit, the Administrator may consult with qualified personnel for assistance to determine if the application meets the requirements of this Ordinance.

**29.11.04** A watershed protection permit shall expire if a zoning or building permit for such use is not obtained by the applicant within twelve (12) months from the date of issuance.

**29.12 Public Health, Safety, and General Welfare**

**29.12.01** All development shall be located, designed, and proposed so as to promote the public health, safety, and general welfare. All development shall comply with all required regulations and standards in this Ordinance as well as conform with the general plans for the physical development of the Town as embodied in this Ordinance and in the comprehensive plan.