

## **ARTICLE 500: ADMINISTRATION, ENFORCEMENT AND APPEALS.**

### **Section 501. Watershed Administrator and Duties Thereof.**

The Archdale Planning Director is hereby appointed the Watershed Administrator, who shall be duly sworn in that capacity. It shall be the duty of the Planning Director or his/her designee acting as watershed administrator to administer and enforce the provisions of this ordinance as follows:

- a. The Planning Director shall issue Watershed Protection Permits and Watershed Occupancy Permits as prescribed herein. A record of all permits shall be kept on file and shall be available for public inspection during regular office hours of the Planning Director.
- b. The Planning Director shall serve as clerk to the Board of Adjustment, which sits as the Watershed Review Board.
- c. The Planning Director shall keep records of all amendments to the City's Water Supply Watershed Protection Ordinance and shall provide copies of all amendments upon adoption to the Water Supply Watershed Administrator, Wetlands and Stormwater Branch, Division of Water Quality.
- d. The Planning Director shall keep records of the jurisdiction's utilization of the provision that a maximum of ten percent (10%) of the non-critical area of Lake Reese watershed may be developed with non-residential development to a maximum of seventy percent (70%) built-upon surface area. Records for each watershed shall include the total acres of non-critical watershed 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, acres, site plan, use, stormwater management plan as applicable and inventory of hazardous materials as applicable.
- e. The Planning Director is granted the authority to administer and enforce the provisions of this Ordinance, exercising in the fulfillment of his responsibility the full police power of the City. The Planning Director, or his duly authorized representative, may enter any building, structure, or premises, as provided by law, to perform any duty imposed upon him by this Ordinance.
- f. The Planning Director shall keep a record of variances to the local Water Supply Watershed Protection Ordinance. The record of all variances granted by the City during the previous calendar year shall be submitted to the Water Supply Watershed Administrator, Wetlands and Stormwater Branch, Division of Water Quality on or before January 1st of the following year and shall provide a description of each project receiving a variance and the reasons for granting the variance.
- g. The Planning Director may seek enforcement of this ordinance by assessing a civil penalty to be recovered by the city in a civil action in the nature of debt if the offender does not pay the penalty in a prescribed period of time after being cited for violation of the ordinance. A civil

penalty of \$100.00 shall be assessed to any offender of this ordinance. Each day shall constitute a separate offense.

#### **Section 502. Appeal from the Planning Director.**

Any order, requirement, decision or determination made by the Planning Director may be appealed to and decided by the Board of Adjustment as specified in Article XV of the Archdale Zoning Ordinance.

#### **Section 503. Changes and Amendments to the Watershed Protection Ordinance.**

- a. The Archdale City Council may, on its own motion or on petition, after public notice and hearing, amend, supplement, change or modify the watershed regulations and restrictions as described herein.
- b. For amendments and changes other than those listed in paragraph A, no modification shall be made until the proposal has been submitted to the Board of Adjustment for review and recommendations. If no recommendation has been received from the Board of Adjustment within forty-five (45) days after submission of the proposal to the Chairman of the Board of Adjustment, the City Council may proceed as though a favorable report had been received.
- c. Under no circumstances shall the City Council adopt such amendments, supplements or changes that would cause this ordinance to violate the watershed protection rules as adopted by the N.C. Environmental Management Commission. All amendments must be filed with the N.C. Division of Environmental Management, N.C. Division of Environmental Health, and the N.C. Division of Community Assistance.

#### **Section 504. Public Notice and Hearing Required.**

Before adopting or amending this ordinance, the City Council shall hold a public hearing on the proposed changes. A notice of the public hearing shall be given once a week for two successive calendar weeks in a newspaper having general circulation in the area.

#### **Section 505. Establishment of Watershed Review Board.**

The Archdale Board of Adjustment shall serve as the Watershed Review Board. The same rules of procedure as specified in the Zoning Ordinance shall apply.

#### **Section 506. Powers and Duties of the Board of Adjustment Acting as Watershed Review Board.**

- a. Administrative Review. The Board of Adjustment shall hear and decide appeals from any decision or determination made by the Planning Director in the enforcement of this ordinance.

- b. Variances. The Board of Adjustment shall have the power to authorize, in specific cases, minor variances from the terms of this Ordinance as will not be contrary to the public interests where, owing to special conditions, a literal enforcement of this Ordinance will result in practical difficulties or unnecessary hardship, so that the spirit of this Ordinance shall be observed, public safety and welfare secured, and substantial justice done.
1. Applications for a variance shall be made on the proper form obtainable from the Planning Director and shall include information required by the Planning Department, at a minimum:
    - (a) A site plan, drawn to scale, indicating the property lines of the parcel upon which the use is proposed; any existing or proposed structures; parking areas and other built-upon areas; surface water drainage.
    - (b) A complete and detailed description of the proposed variance, together with any other pertinent information that the applicant feels would be helpful to the Board of Adjustment in considering the application.
    - (c) The Planning Director shall notify in writing each local government having jurisdiction in the watershed as well as any entity using the watershed for water consumption. Such notice shall include a description of the variance being requested. Local governments receiving notice of the variance request may submit comments to the Planning Director prior to a decision by the Board of Adjustment. Such comments shall become a part of the record of proceedings of the Board of Adjustment.
  2. Before the Board of Adjustment may grant a variance, it shall make the following three findings, which shall be recorded in the permanent record of the case, and shall include the factual reasons on which they are based:
    - (a) That there are practical difficulties or unnecessary hardships in the way of carrying out the strict letter of the Ordinance. In order to determine that there are practical difficulties or unnecessary hardships, the Board must find that the five following conditions exist:
      - 1) If he complies with the provisions of the Ordinance, the applicant can secure no reasonable return from, nor make reasonable use of, his property. Merely proving that the variance would permit a greater profit to be made from the property will not be considered adequate to justify the Board in granting an variance. Moreover, the Board shall consider whether the variance is the minimum possible deviation from the terms of the Ordinance that will make possible the reasonable use of his property.
      - 2) The hardship results from the application of the Ordinance to the property rather than from other factors such as deed restrictions or other hardship.

- 3) The hardship is due to the physical nature of the applicant's property, such as its size, shape, or topography, which is different from that of neighboring property.
  - 4) The hardship is not the result of the actions of an applicant who knowingly or unknowingly violates the Ordinance, or who purchases the property after the effective date of the Ordinance, and then comes to the Board for relief.
  - 5) The hardship is peculiar to the applicant's property, rather than the result of conditions that are widespread. If other properties are equally subject to the hardship created in the restriction, then granting a variance would be a special privilege denied to others, and would not promote equal justice.
- (b) That the variance is in harmony with the general purpose and intent of the Ordinance and preserves its spirit.
  - (c) That in the granting the variance, the public safety and welfare have been assured and substantial justice has been done. The Board shall not grant a variance if it finds that doing so would in any respect impair the public health, safety, or general welfare.
3. In granting the variance, the Board may attach such conditions regarding the location, character, and other features of the proposed building, structure, or use as it may deem advisable in furtherance of the purpose of this ordinance. If a variance for the construction, alteration or use of property is granted, such construction, alteration or use shall be in accordance with the approved site plan.
  4. The Board of Adjustment shall refuse to hear an appeal or an application for a variance previously denied if it finds that there have been no substantial changes in conditions or circumstances bearing on the appeal or application.
  5. A variance issued in accordance with this Section shall be considered a Watershed Protection Permit and shall expire if a Building Permit or Watershed Occupancy Permit for such use is not obtained by the applicant within six (6) months from the date of the decision.
  6. If the application calls for the granting of a major variance, and if the 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:
    - (a) The variance application;
    - (b) The hearing notices;
    - (c) The evidence presented;
    - (d) Motions, offers of proof, objections to evidence, and rulings on them;

- (e) Proposed findings and exceptions;
- (f) The proposed decision, including all conditions proposed to be added to the permit.

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

- (a) If the Commission concludes from the preliminary record that the variance qualifies as a major variance and that (1) the property owner can secure no reasonable return from, nor make any practical use of the property unless the proposed variance is granted, and (2) the variance, if granted, will not result in a serious threat to the water supply, then the Commission shall approve the variance as proposed or approve the proposed variance with conditions and stipulations. The Commission shall prepare a Commission decision and send it to the Watershed Review Board. If the Commission approves the variance as proposed, the Board shall prepare a final decision granting the proposed variance. If the Commission approves the variance with conditions and stipulations, the Board shall prepare a final decision, including such conditions and stipulations, granting the proposed variance.
- (b) If the Commission concludes from the preliminary record that the variance qualifies as a major variance and that (1) the property owner can secure a reasonable return from or make a practical use of the property without the variance or (2) the variance, if granted, will result in a serious threat to the water supply, then the Commission shall deny approval of the variance as proposed. The Commission shall prepare a Commission decision and send it to the Board of Adjustment. The Board shall prepare a final decision denying the variance as proposed.
- (c) Subdivision approval. See Article 200.
- (d) Public Health. See Article 400.

**Section 507. Appeals from the Board of Adjustment.**

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