SECTION 11.1 GENERAL PROVISIONS

11.1.1 AUTHORITY

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 Board of Commissioners of Cornelius does hereby ordain and enact into law the following sections as the Watershed Protection Ordinance of the Town of Cornelius.

11.1.2 JURISDICTION AND COORDINATION WITH OTHER ORDINANCES

The provisions of this Chapter shall apply only to those lands within the Town of Cornelius corporate boundaries and extraterritorial jurisdictional limits that have been designated as a Public Water Supply Watershed by the N.C. Division of Water Quality. These areas are identified by the overlay districts "Lake Norman (LN)" and "Mountain Island Lake (MIL)" as shown and established on the Protected Streams, Watersheds and Wetlands Map of the Town of Cornelius.

The requirements stated in this Chapter shall supersede all other applicable codes enumerated in this Ordinance, unless otherwise provided.

11.1.3 RULES GOVERNING THE INTERPRETATION OF WATERSHED AREA BOUNDARIES

Where uncertainty exists as to the boundaries of the watershed areas, as shown on the Protected Streams, Watersheds and Wetlands Map, the following rules shall apply:

A. Where area boundaries are indicated as approximately following either street, alley, railroad or highway lines or centerlines thereof, such lines shall be construed to be said boundaries.

B. Where area boundaries are indicated, as approximately following lot lines, such lot lines shall be construed to be said boundaries. However, a surveyed plat prepared by a registered land surveyor may be submitted to the Town or Cornelius as evidence that one or more properties along these boundaries do not lie within the watershed area.

C. Where the watershed area boundaries lie at a scaled distance more than twenty-five (25) feet from any parallel lot line, the location of watershed area boundaries shall be determined by use of the scale appearing on the watershed map.

D. Where the watershed area boundaries lie at a scaled distance of twenty-five (25) feet or less from any parallel lot line, the location of watershed area boundaries shall be construed to be the lot line.

E. Where other uncertainty exists, the Watershed Administrator shall interpret the Protected Streams, Watersheds and Wetlands Map as to location of such boundaries. This decision may be appealed to the Watershed Review Board.

11.1.4 APPLICATION OF REGULATIONS

A. No building or land shall hereafter be used and no development shall take place except in conformity with the regulations herein specified for the watershed area in which it is located.

B. No area required for the purpose of complying with the provisions of this ordinance shall be included in the area required for another building.

C. If a use or class of use is not specifically indicated as being allowed in a watershed area, such use or class of use is prohibited.

D. 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. Land area which is below the 760-foot contour line of Lake Norman may not be used in this calculation.

11.1.5 GENERAL REMEDIES

A. If any subdivision, development and/or land use is found to be in violation of this Ordinance, the Town Board may, in addition to all other remedies available either in law or in equity, utilize such remedies specified in Section 14.6 of this Code. In addition, the N.C. Environmental Management Commission may assess civil penalties in accordance with G.S. 143-215.6(a). Each day that the violation continues shall constitute a separate offense.

B. If the Watershed Administrator finds that any of the provisions of this ordinance are being violated, he shall notify in writing the person responsible for such violation, indicating the nature of the violation, and ordering the action necessary to correct it. He shall order discontinuance of the illegal use of land, buildings or structures; removal of illegal buildings or structures, or of additions, alterations or structural changes thereto; discontinuance of any illegal work being done; or shall take any action authorized by this ordinance to ensure compliance with or to prevent violation of its provisions. If a ruling of the Watershed Administrator is questioned, the aggrieved party or parties may appeal such ruling to the Watershed Review Board.

SECTION 11.2 EXCEPTIONS TO APPLICABILITY

11.2.1 GENERAL PROVISIONS

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

B. 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.

11.2.2 LOTS LESS THAN ONE-ACRE IN SIZE

In the Lake Norman Critical Area, new development or redevelopment on parcels platted or described by metes and bounds in a recorded deed prior to the adoption date of the Lake Norman Watershed

Protection Ordinance may be developed for non-residential or multi-family, high density residential uses without having to comply with the typical built upon limitations, provided the parcel is less than one acre in size and does not require an erosion/sedimentation control plan under State law or approved local program. However, such development shall comply with the following:

1. Subject to an approved plan, lots less than one acre in size shall not exceed 80% of a combined total of existing and new built-upon area and should comply with the Town of Cornelius Low Impact Development Policy.

2. This exemption shall not impact any requirement for storm water detention, buffers, setbacks, or any other portion of this ordinance.

3. All development subject to this provision shall submit a conceptual plan to the Mecklenburg County Land Use and Environmental Services Agency (LUESA) for review and approval prior to formal engineering plan submittal.

11.2.3 EXISTING DEVELOPMENT

Existing development as defined in this ordinance may be continued and maintained subject to the provisions provided herein. Expansions to structures or modifications to plans 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 built-upon area calculations.

A. *Exemption Dates.* Lots recorded at the Register of Deeds prior to the dates listed in the chart below are exempt from built upon requirements unless the recorded plat specifies differently.

Zoning Jurisdiction	
Town of Cornelius	**Mecklenburg County**
Lake Norman Critical Area September 20, 1993	*Lake Norman Critical Area* June 20, 1994
Mountain Island Protected Area September 20, 1993	*Mountain Island Protected Area* March 8, 1993

B. *Uses of Land.* This category consists of uses existing at the time of adoption of this ordinance where such use of the land is not permitted to be established hereafter in the watershed area in which it is located. Such uses may be continued except as follows:

1. When such use of land has been changed to an allowed use, it shall not thereafter revert to any prohibited use.

2. Such use of land shall be changed only to an allowed use.

3. When such use ceases for a period of at least one year, it shall not be re-established.

C. *Reconstruction of Buildings or Built-upon Areas.* Any existing building or built-upon area not in conformance with the restrictions of this ordinance that has been damaged or removed may be repaired and/or reconstructed, except that there are no restrictions on single family residential development, provided:

1. Repair or reconstruction is initiated within twelve (12) months and completed within two (2) years of such damage.

2. 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.

D. *Exemption when existing uses are present and ongoing*. This rule shall not apply to portions of the riparian buffer where a use is existing and ongoing according to the following:

1. A use shall be considered existing if it was present within the riparian buffer as of the time of adoption of this ordinance. Existing uses shall include, but not be limited to, agriculture, buildings, industrial facilities, commercial areas, transportation facilities, maintained lawns, utility lines and onsite sanitary sewage systems. Only the portion of the riparian buffer that contains the footprint of the existing use is exempt from this rule. Change of ownership through legal purchase or inheritance is not considered change of use. Activities necessary to maintain uses are allowed provided that no additional disturbance occurs in the buffer.

2. A use shall be considered as existing if projects or proposed development at a minimum have established a vested right under North Carolina zoning law as of the effective date of this rule, based on at least one of the following criteria:

   a. Substantial expenditures of resources (time, labor, and money) based on good faith reliance upon having received a valid local government approval to proceed with the project.

   b. Having an outstanding valid building permit in compliance with G.S. 153A-344.1 or G.S. 160A-385.1.

   c. Having and approved site specific or phased development plan in compliance with G.S. 153A-344.1 or G.S. 160A-385.1.

   d. Project requires a 401 Certification/404 Permit and these were issued prior to the effective date of this rule.

SECTION 11.3 BUFFER AREA REQUIRMENTS

The following buffer requirements for all new development activities in the Lake Norman (LN-O) and Mountain Island Lake (MIL-O) shall apply:

A. A minimum one-hundred (100) foot undisturbed buffer is required along the shoreline of Lake Norman and along perennial streams for all new development activities that utilize the High Impervious Cover Option; otherwise, a minimum fifty (50) foot undisturbed buffer is required. Buffers are measured horizontally from the high water mark of impounded structures and from the top of bank of streams.

B. An existing vacant lot, as defined in the *Code*, platted 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 subject to the buffer requirements. The minimum buffer width shall be established by the recorded setback, if less than 50 feet and recorded prior to adoption of this ordinance.

C. No trees larger than two (2) inches in caliper are to be removed except for diseased trees. Trees less than two (2) inches in caliper and undergrowth may be removed and replaced by an effective stabilization and filtering ground cover utilizing Land Use and Environmental Services Agency guidelines and as approved by Land Use and Environmental Services Agency and the Town of Cornelius Planning Department. The Town of Cornelius may require enhancement of the existing vegetation through the use of supplemental plantings in the buffer area, if necessary, to ensure that the buffer area can properly and effectively perform its filtering and absorption functions, based upon Land Use and Environmental Services Agency guidelines.

D. No permanent structures, impervious covers, septic tank systems or any other disturbance of existing vegetation is allowed in the buffer except:

1. Water dependent structures and other structures such as flag poles, signs and security lights, which result in only diminutive increases in impervious area.

2. Artificial stream bank or shoreline stabilization plans shall be submitted to Land Use and Environmental Services Agency for approval.

3. 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.)

E. Where stream buffers are also required in another section of this Code, the more stringent requirement shall apply.

F. *Diffuse Flow Requirement*. Diffuse flow of runoff shall be maintained in the buffer by dispersing concentrated flow and reestablishing vegetation. Techniques for providing diffuse flow are specified in the *Charlotte-Mecklenburg Land Development Standards Manual.*

1. Concentrated runoff from ditches or other manmade conveyances shall be diverted to diffuse flow before the runoff enters the buffer.

2. Periodic corrective action to restore diffuse flow shall be taken by the property owner as necessary to impede the formation of erosion gullies.

SECTION 11.4 PUBLIC HEALTH REGULATIONS

11.4.1 PUBLIC HEALTH - GENERAL PROVISIONS

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 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 improper management of stormwater runoff; or any other situation found to pose a threat to water quality.

11.4.2 ABATEMENT

A. The Watershed Administrator shall monitor land use activities within the watershed areas to identify situations that may pose a threat to water quality.

B. The Watershed Administrator shall report all findings to the Watershed Review Board. The Watershed Administrator may consult with any public agency or official and request recommendations.

C. Where the Watershed Review 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.

SECTION 11.5 STORMWATER CONTROL

11.5.1 STORMWATER CONTROL STRUCTURES

A. All stormwater control structures shall be designed by a North Carolina registered professional with qualifications appropriate for the type of system required; these registered professionals are defined as professional engineers, landscape architects (to the extent that the General Statutes, Chapter 89A allow) and land surveyors (to the extent that the design represents incidental drainage within a subdivision, as provided in General Statutes 89C-3(7)).

B. All stormwater controls shall use wet detention ponds as a primary treatment system unless alternative stormwater management measures, as outlined in this Section, are used. Wet detention ponds shall be designed for specific pollutant removal according to modeling techniques approved by the N.C. Division of Water Quality. Specific requirements for these systems shall be in accordance with Charlotte-Mecklenburg Land Development Standards and with the following minimum design criteria:

1. Wet detention ponds shall be designed to remove 85% of total suspended solids in the permanent pool and storage runoff from a one inch rainfall from the site above the permanent pool;
2. The designed runoff storage volume shall be above the permanent pool;
3. 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 (2) days and that the pond is drawn down to the permanent pool level within at least five (5) days;
4. The mean depth of the permanent pool shall be a minimum of three (3) feet;
5. The design shall assume full development (maximum allowed in accordance to applicable zoning regulations) in the contributing drainage area;
6. The inlet structure shall be designed to minimize turbulence using baffles or other appropriate design features;
7. Vegetative filters shall be constructed for the overflow and discharge of all storm water wet detention ponds and shall be at least thirty (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 10-year, 24-hour storm with a slope of five percent (5%) or less. Vegetation in the filter shall be natural vegetation, grasses or artificially planted wetland vegetation appropriate for the site characteristics.

C. Alternative stormwater management systems, consisting of one treatment option or a combination of treatment options, may be used. The design criteria for alternative systems are as follows:

1. Alternative systems shall be designed to remove an average of 85% of total suspended solids on an annual basis;
2. The discharge rate following the one inch design storm shall be such that the runoff draws down to the pre-storm design stage within five (5) days, but no less than two (2) days or the post development peak discharge rate shall be equal to the predevelopment rate for the one (1) year, 24 hour storm.
3. Meet the Town of Cornelius Low Impact Development (LID) Policy Guidelines.

D. Qualifying areas of the stormwater control structure may be considered pervious when computing total built-upon area. However, if the structure is used to compute the percentage built-upon area for one site, it shall not be used to compute the built-upon area for any other site or area.

E. In addition to the vegetative filters required above, all land areas outside of the pond shall be

provided with a ground cover sufficient to restrain erosion within thirty (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 maintenance agreement. An applicant seeking the high-density development option shall enter into a binding Operation and Maintenance Agreement between Mecklenburg County and all interests in the development. Said agreement shall require the owning entity to maintain, repair and, if necessary, reconstruct the stormwater control structure in accordance with the operation and maintenance plan or manual provided by the developer. The Operation and Maintenance Agreement shall be recorded at the Mecklenburg County Register of Deeds.

F. A description of the area containing the stormwater control structure(s) shall be prepared and recorded as a separate deed with the Mecklenburg County Register of Deeds along with any easements necessary for general access to the stormwater control structure. The deeded area shall include the stormwater control structure, vegetative filters, all pipes and water control structures, berms, dikes, etc., and sufficient area to perform inspections, maintenance, repairs and reconstruction.

11.5.2 OPERATION AND MAINTENANCE (O & M) PLAN REQUIRED

Any stormwater control structure approved by the Town Board shall be predicated on the developer, Mecklenburg County, and the Town entering into a binding Operation and Maintenance (O & M) Plan. Said Plan shall require the owning entity (i.e. the developer or his assigns) 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 Mecklenburg County and the Town Board prior to, or in conjunction with, approval of the high-density option for said project.

A separate O & M 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 be recorded in the Mecklenburg County Register of Deeds Office and shall clearly indicate what steps will be taken for restoring a stormwater control structure to design specifications if a failure occurs.

Amendments to the Plan and/or specifications of the stormwater control structure(s) may only be approved by the Town Board. Proposed changes shall be prepared by a North Carolina registered professional with qualifications appropriate for the type of system designed and submitted to the Town Board for approval. Such amendments shall be accompanied by all information and fees prescribed in this Ordinance.

If the Town Board finds that the O & M Plan, once approved, is inadequate for any reason, the Watershed Administrator 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.

11.5.3 POSTING OF FINANCIAL SECURITIES REQUIRED

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

A. If the Board of Commissioners approves the use of the high impervious cover option for a particular project, it may do so only after the applicant has posted a surety bond, cash, irrevocable letter of

credit, or equivalent security, in an amount not less than 1.25 times the cost of constructing the necessary stormwater control structure(s). Such financial security shall be paid to the Town and shall be in a form prescribed by the Town. All construction costs shall be verified by the Town in consultation with other agencies and the Town may assess the applicant for actual costs associated with such verification. The total cost of the stormwater control structure shall include the value of all materials such as piping and other structures, seeding and soil stabilization, design and engineering, grading, excavation, fill, etc. The costs shall not be prorated as part of a larger project, but rather shall be priced as an individual project.

B. Once the stormwater control structure(s) has been constructed and inspected in the manner provided for in this Ordinance, and approved by the Board of Commissioners, the Board of Commissioners may authorize the release of up to seventy-five percent (75%) of the surety bond or other equivalent device outlined above. The remaining portion of the surety bond or equivalent device may be released to the owning entity in accordance with Section 11.5.5.

C. Prior to said release, the applicant shall be required to deposit with the Town either cash or similar instrument approved by the Board of Commissioners in an amount equal to fifteen percent (15%) of the total construction cost or one hundred percent (100%) of the cost of maintaining, repairing or reconstructing said structure over a twenty (20) year period, whichever is greater. The estimated cost of maintaining the stormwater control structure(s) shall be consistent with the approved O & M Plan provided by the applicant.

11.5.4 DEFAULT

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

Upon default of the owning entity to maintain, repair and, if necessary, reconstruct the stormwater control structure in accordance with the O & M Plan, the Board of Commissioners shall obtain and use any portion of the cash security posted to make necessary improvements based on the actual costs borne by the Town to make such improvements.

11.5.5 INSPECTIONS

A. INSPECTIONS OF NEWLY CONSTRUCTED STORMWATER STRUCTURES

1. All new stormwater control structures shall be inspected by the Town or their designated agents after the owning entity notifies the Watershed Administrator 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 a professional engineer or landscape architect (to the extent allowable by the General Statutes) stating that the stormwater control structure is complete and consistent with the approved Plan and all specifications previously stipulated by the Town.

2. The Watershed Administrator shall present the materials submitted by the owning entity along

with the Town's Inspection report to the Town Board for their review and approval. If the Town Board approves the inspection report and accepts the certification, deed and easements, the Watershed Administrator shall file said deed and easements with the Register of Deeds. Release of up to seventy-five percent (75%) of the surety bond or other equivalent security called for in this Chapter shall be made in a manner as prescribed in Section 11.5.3.

If deficiencies are found as a result of the inspection, the Town Board 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.

No sooner than one (1) year after approval of the stormwater control structure(s) by the Town, the owning entity may petition the Town Board to release the remaining value of the surety bond or equivalent security called for in Section 11.5.3. Upon receipt of said petition, the Town shall forthwith inspect the stormwater control structure(s) to determine whether the structure(s) is performing as designed and intended. Once the inspection is made, the Watershed Administrator shall present the inspection report and recommendations to the Town Board.

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

B. ANNUAL INSPECTION OF STORMWATER STRUCTURES

1. All stormwater control structure(s) shall be inspected by the Town or their designated agents 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 N.C. Division of Water Quality. Annual inspections shall begin one (1) year after approval of the stormwater control structure(s) by the Town Board or one year after the approval of the Town Board's approval of the filing date of the deed for the stormwater control structure(s). A fee, in accordance with a fee schedule adopted by the Town Board, shall be charged to the owning entity for all annual inspections (and re-inspections). A copy of each inspection report shall be filed with the Watershed Administrator.

2. In the event the Town's report indicates the need for corrective action or improvements, the Watershed Administrator 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 O & M Plan and specifications. Once such improvements are made, the owning entity shall forthwith contact the Watershed Administrator and ask that an inspection be made.

C. VEGETATION AND GROUNDS MANAGEMENT

1. Landscaping and grounds management shall be the responsibility of the owning entity of said structure(s). 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 of access to the structure.

2. Except for routine landscaping and grounds maintenance, the owning entity shall notify the Watershed Administrator 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, Town staff shall inspect the completed improvements and inform the owning entity of any required additions, changes, or modifications needed to complete said improvements. A time period for making such changes shall also be stipulated by the Town. A fee, in accordance with the fee schedule adopted by the Board of Commissioners, shall be charged the entity for each inspection (or re-inspection).

11.5.6 PERIODIC INSPECTION AND FEE

Inspection of all stormwater control structures shall be conducted: 1) after work on the stormwater control structure is complete, 2) annually once the stormwater control structure(s) has been approved by the Town, and 3) any time after improvements, modifications, or changes to said structures have been made by the owning entity. A fee in accordance with a fee schedule approved by the Town Board shall be required to be paid by the owning entity prior to each inspection being conducted.

SECTION 11.6 ADMINISTRATION, ENFORCEMENT AND APPEALS

11.6.1 WATERSHED ADMINISTRATOR AND DUTIES THEREOF

The Town of Cornelius Planning Director shall be appointed as Watershed Administrator, who shall be duly sworn in. It shall be the duty of the Watershed Administrator to administer and enforce the provisions of this ordinance as follows:

A. The Watershed Administrator shall issue Watershed Protection Permits and Watershed Protection 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.

B. The Watershed Administrator shall serve as clerk to the Watershed Review Board.

C. The Watershed 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 N.C. Division of Water Quality.

D. The Watershed Administrator 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 Town of Cornelius. The Watershed 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.

E. The Watershed Administrator shall keep a record of variances to the requirements of this Chapter. This record shall be submitted for each calendar year to the N.C. 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.

11.6.2 APPEAL FROM THE WATERSHED ADMINISTRATOR

Any order, requirement, decision or determination made by the Watershed Administrator may be appealed to and decided by the Watershed Review Board.

An appeal from a decision of the Watershed Administrator must be submitted to the Watershed Review Board within thirty (30) days from the date the order, interpretation, decision or determination is made. All appeals must be made in writing stating the reasons for appeal. Following submission of an appeal,

the Watershed Administrator shall transmit to the Board all papers constituting the record upon which the action appealed from was taken.

An appeal stays all proceedings in furtherance of the action appealed, unless the officer from whom the appeal is taken certifies to the Board after the notice of appeal has been filed with him, that by reason of facts stated in the certificate, a stay would in his opinion cause imminent peril to life or property. In such case, proceedings shall not be stayed otherwise than by a restraining order which may be granted by the Board or by a court of record on application of notice of the officer from whom the appeal is taken and upon due cause shown.

The Board shall fix a reasonable time for hearing the appeal and give notice thereof to the parties and shall decide the same within a reasonable time. At the hearing, any party may appear in person, by agent or by attorney.

11.6.3 CHANGES AND AMENDMENTS TO THE WATERSHED PROTECTION ORDINANCE

The Cornelius Board of Commissioners shall not adopt any amendment, addition, or deletion that would cause these regulations to violate the watershed protection rules as adopted by the N.C. Environmental Management Commission (EMC). All proposed amendments to this Chapter 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 for their review prior to adoption by the Board of Commissioners. After review and approval, all amendments shall follow the procedures outlined in Chapter 18 of this Ordinance.

11.6.4 POWERS AND DUTIES OF THE WATERSHED REVIEW BOARD

The Planning Board shall be designated as the Watershed Review Board and shall be vested with the responsibility to hear and approve all subdivisions and all site plans which utilize the high impervious cover option. They shall also hear and decide upon all appeals to the decision of the Watershed Administrator, and all variances to the provisions of these regulations.

11.6.5 VARIANCES

The Watershed Review Board 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. In addition, the Town of Cornelius shall notify and allow a reasonable comment period for all other local governments having jurisdiction in the designated watershed where the variance is being considered.

A. Applications for a variance shall be made on the proper form obtainable from the Watershed Administrator and shall include the following information:

    1. A site plan, drawn to a minimum scale of at least one (1) inch to forty (40) feet, 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; and surface water drainage. The site plan shall be neatly drawn and indicate north point, name and address of person who prepared the plan, date of the original drawing, and an accurate record of any later revisions.

2. A complete and detailed description of the proposed variance, together with any other pertinent information which the applicant feels would be helpful to the Watershed Review Board in considering the application.

3. The Watershed Administrator shall notify in writing each local government having jurisdiction in the watershed and the entity using the water supply for 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 Watershed Administrator prior to a decision by the Watershed Review Board. Such comments shall become a part of the record of proceedings of the Watershed Review Board.

B. Before the Watershed Review Board 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:

1. 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:

   a) 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 a 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.

   b) The hardship results from the application of the Ordinance to the property rather than from other factors such as deed restrictions or other hardship.

   c) 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.

   d) 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.

   e) 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.

2. The variance is in harmony with the general purpose and intent of the Ordinance and preserves its spirit.

3. In the granting of 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.

C. In granting the variance, the Board may attach thereto 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.

D. The Watershed Review Board 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.

E. 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.

F. If the application calls for the granting of a major variance, and if the Watershed Review Board 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.

G. The preliminary record shall be sent to the N.C. Division of Water Quality (DWQ) for its review as follows:

1. If the DWQ 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 DWQ shall approve the variance as proposed or approve the proposed variance with conditions and stipulations. The DWQ shall prepare a decision and send it to the Watershed Review Board. If the DWQ approves the variance as proposed, the Board shall prepare a final decision granting the proposed variance. If the DWQ 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 DWQ 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 DWQ shall deny approval of the variance as proposed. The DWQ shall prepare a decision and send it to the Watershed Review Board. The Board shall prepare a final decision denying the variance as proposed.

11.6.6 APPEALS FROM THE WATERSHED REVIEW BOARD

Appeals from the Watershed Review Board must be filed with the Superior Court within thirty (30) days from the date of the decision. Decisions by the Superior Court will be in the manner of certiorari.

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