

Chapter 7, Watershed Protection

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Sec. 9-7001. Title.

This chapter shall be known and may be cited as the Watershed Protection Ordinance, except as referred to as herein, where it be cited or referred to as “this ordinance” or “this chapter.”

(Ord. No. 94-37, 10-3-94)

Sec. 9-7002. Definitions.

Unless otherwise expressly stated, or unless the context clearly indicates a different meaning, the words and phrases in the following list of definitions shall, for the purpose of this chapter, have the meanings indicated. All words and phrases that are not defined in this chapter shall have their common meaning. When used in this chapter, the present tense includes the future, the singular includes the plural, and words of one gender include the other, as may be applicable. The word “shall” is mandatory, not directory. The word “use” includes designed for use.

Agricultural use. The use of waters for stock watering, irrigation, and other farm purposes.

Animal unit. A unit of measurement developed by the U.S. Environmental Protection Agency that is used to compare different types of animal operations.

Applicant. One who applies for approval under this Ordinance.

Best Management Practices (BMP). A structural or nonstructural management-based practice used singularly or in combination to reduce nonpoint source pollution to receiving waters in order to achieve water quality protection goals.

Board of Adjustment. The Morganton Board of Adjustment, as established by the Zoning Ordinance of the City of Morganton in 9-4015.

Buffer. An area of natural or planted vegetation through which storm water runoff flows in a diffuse manner, the flow does not become channelized, and which provides for infiltration of the water and filtering of pollutants. The buffer is measured landward from the normal pool elevation of lakes and ponds, and from the top of the bank of each side of streams or rivers.

Building. Any structure having a roof supported by columns or by walls, and intended for shelter, housing or enclosure of persons, animal or property. The connection of two buildings by means of an open porch, breezeway, passageway, carport or other such open structure, with or without a roof, shall not be deemed to make them one building.

Built-upon area. Built-upon area shall include that portion of a development project that is covered by impervious cover including buildings, pavement, etc. (Note: Wooden slatted decks and the water area of a swimming pool or pond are considered pervious.)

Cluster development. The grouping of buildings in order to conserve land resources and provide for innovation in the design of the project. This term includes nonresidential development as well as single-family residential subdivisions and multi-family developments.

Composting facility. A facility in which only stumps, limbs, leaves, grass and untreated collected from land clearing or landscaping operations is deposited.

Corridor district. The area contained within the bake Rhodhiss WS-IV protected area outside the Urban Core District.

Critical area. The area adjacent to a water supply intake or reservoir where risk associated with pollution is greater than from the remaining portions of the watershed. The critical area extends either one-half mile from the normal pool elevation of the reservoir in which the intake is located or to the ridge line of the watershed (whichever comes first); or one-half mile upstream from the intake located directly in the stream or river (run-of-the-river), or the ridge line of the watershed (whichever comes first). Major landmarks such as highways or property lines may be used to delineate the outer boundary of the critical area if these landmarks are immediately adjacent to the appropriate outer boundary of one-half mile.

Development. Any man-made change to improved or unimproved real estate, including but not limited to, buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations, or storage of equipment or materials where it is clear that a vested right has been established.

Discharging landfill. A facility with liners, monitoring equipment and other measures to detect and/or prevent leachate from entering the environment and in which the leachate is treated on site and discharged to a receiving stream.

Dwelling unit. A building, or portion thereof, providing complete and permanent living facilities for one family.

Engineer. A professional licensed to practice by the state of North Carolina pursuant to G.S. Chapter 89A.

Exception, minor. Permission to use property granted by the Board of Adjustment that does not qualify as a major exception.

Exception, major. Permission to develop or use property reviewed by the Watershed Review Committee, after approval by the North Carolina Environmental Management Commission that results in any one or more of the following:

- (1) The complete waiver of a management requirement;
- (2) The relaxation, by a factor of more than 10%, of any management requirement expressed in the form of a numerical standard;
- (3) The relaxation of any management requirement that applies to a development proposal intended to qualify under the high density option.

Existing development. Those projects that as of the effective date of this ordinance have been built or for which there has been obtained preliminary approval for residentially developed subdivisions, or those projects that have been established as having a vested right under North Carolina zoning law as of the effective date of this chapter based on at least one of the following criteria:

- (a) Substantial expenditures of resources (time, labor, money) based on a good faith reliance upon having received a valid local government approval to proceed with the project,
- (b) Having an outstanding valid building permit as authorized by the General Statutes (G.S. 153A-344.1, 160A-385.1, and 113A-64), or
- (c) Having an approved preliminary plat, site specific or phased development plan as authorized by the General Statutes (G.S. 153A-344.1 and 160A-385.1).

Existing lot (lot of record). A lot which is part of a subdivision, a plat of which has been recorded in the Office of the Register of Deeds prior to the effective date of this chapter, or a lot described by metes and bounds, the description of which has been so recorded prior to the effective date of this chapter.

Final watershed inspection. An inspection of property made by the Watershed Administrator prior to the issuance of a Certificate of Occupancy by the City/County Inspections Department, certifying that the requirements of this ordinance have been met.

Hazardous material. Any substance listed as such in: SARA 302, Extremely Hazardous Substances, CERCLA Hazardous Substances, or 311 of CWA (oil and hazardous substances).

Impervious area. Any surface which does not permit the rapid infiltration of surface water. Examples include: building roofs, areas paved with asphalt, concrete, brick, compacted stone, or tile, or similar surface as interpreted by the Watershed Administrator. The total gross contiguous acreage of the project shall be used when computing the permitted impervious areas.

Industrial development. Any nonresidential development that requires an NPDES permit for an industrial discharge and/or requires the use or storage of any hazardous material for the purpose of manufacturing, assembling, finishing, cleaning or developing any product or commodity.

Landfill. A facility for the disposal of solid waste on land in a sanitary manner in accordance with Chapter 130A Article 9 of the North Carolina General Statutes. For the purpose of this chapter this term does not include composting facilities.

Landscape architect. A professional licensed to practice in the State of North Carolina, as established by G.S. Chapter 89A.

Land Use Plan. The officially adopted Land Use Plan of the City of Morganton.

Land surveyor. A professional licensed to practice in the State of North Carolina, as established by G.S. Chapter 89(c)-3(7).

Lot, parcel, tract. A parcel of land designated by a number or other symbol as part of a legally approved and recorded subdivision, or as described by metes and bounds.

Non-residential development. All development other than residential development, agriculture and silviculture.

Operation and Maintenance Plan. A document prepared by the applicant and submitted to the Watershed Administrator specifying all operation and maintenance work necessary to keep all storm water control structures in conformance with the design specifications required by this chapter.

Owner. The record title owner of property in accordance with the Register of Deeds or the Tax Office.

Pavement, porous. Those pavements, designed by a registered professional engineer, composed of open-graded asphalt or concrete, which absorb and store rainwater within the structure or the subgrade upon which the pavement rests. Such pavements shall be designed using most recent technical information and shall be certified by the engineer as meeting the storm water retention requirements of this chapter.

Perennial waters. Those waters appearing in solid blue lines on the latest versions of USGS 1:24,000-7.5 scale topographic maps, delineating streams which have year-round measurable water flow.

Performance security. A bond or other financial instrument placed by the applicant with the city, guaranteeing that a storm water control structure will be constructed and maintained as established by this chapter.

Plat. A map or plan of a parcel of land which is to be, or has been subdivided.

Residential development. Buildings for residence such as attached and detached single-family dwellings, apartment complexes, condominiums, townhouses, cottages, etc. and their associated outbuildings such as garages, storage buildings, gazebos, etc. and customary home occupations.

Single family residential. Any development where: (1) no building contains more than one dwelling unit, (2) every dwelling unit is on a separate lot, and (3) where no lot contains more than one dwelling unit.

Site, plan, watershed. Plans of a development proposal, prepared to scale which detail all proposed development, impervious areas, and other site features and which comply with all development regulations and specifications established by the Watershed Ordinance of the City of Morganton.

Special Density Allocation (SDA). A special permit issued by the Watershed Review Committee allowing up to 70% built upon area on a project by project basis. This permit exempts projects from installing storm water control devices upon showing that certain criteria will be met. Not more than 10% of the total area of each WS-III and not more than 1414 acres of the corridor district may be allocated this exemption.

Street (road). A right-of-way for vehicular traffic which affords the principal means of access to abutting properties.

Structure. Anything constructed or erected, located above grade, which requires location on the land or attachment to something having permanent location on the land, as defined by 9-4002 of the Morganton Zoning Ordinance.

Urban core district. An area contained within the Lake Rhodhiss WS-IV Protected Area and being also within a one-half mile radius of the center of downtown Morganton.

Vegetation filter. An earthen channel stabilized with natural or established vegetation designed to conduct storm water runoff to a stream or drainage way after treatment by a wet detention pond.

Water dependant structure. Any structure for which the use requires access to or proximity to or citing within surface waters to fulfill its basic purpose, such as boat ramps, boathouses, docks and bulkheads. Ancillary facilities such as restaurants, outlets for boat supplies, parking lots and commercial boat storage areas are not water dependent structures.

Watershed. The entire land area contributing surface drainage to a specific point (e.g. the water supply intake).

Watershed Administrator. An official or designated person of the City of Morganton responsible for administration and enforcement of this chapter.

Watershed permit. A permit issued by the Watershed Administrator, certifying that the requirements of this chapter, as they affect a particular low or high-density project, have been met.

Watershed Review Committee. A staff level review group consisting of the City Manager, Watershed Administrator, Public Works Director, Director of Engineering, Community Development Director, Public Safety Chief and other representatives as may be deemed appropriate by the City Manager.

Wet detention ponds. A storm water control structure designed for removal of pollutants, with a permanent pool depth of at least three feet.

Zoning Ordinance. The Zoning Ordinance of the City of Morganton.

Sec. 9-7003. Authority and enactment.

The legislature of the State of North Carolina has, in Chapter 160A, Article 19 (Planning and Regulation of Development) and in G.S. Chapter 143, Article 21 (Watershed Protection Rules), delegated the responsibility and required local governmental units to adopt regulations designed to promote the public health, safety and general welfare of its citizenry.

(Ord. No. 94-37, 10-3-94)

Sec. 9-7004. Jurisdiction.

The provisions of this chapter shall apply within the overlay zones and watershed areas designated as a Public Water Supply Watershed as defined and established on the “Watershed Protection Map, Morganton, North Carolina”, such overlay zones and the watershed areas established in 9-7006 being adopted simultaneously herewith. The Watershed Map and all explanatory matter contained thereon accompanies and is hereby made a part of this chapter. This chapter shall be permanently kept on file in the Office of the City Clerk.

(Ord. No. 94-37, 10-3-94)

Sec. 9-7005. Administration and conflicts.

- (a) This chapter shall be administered as a part of the Zoning Ordinance and construed consistently therewith.
- (b) Where a conflict exists between any limitation or requirement in this chapter, the more restrictive limitation or requirement shall prevail.
- (c) The requirements of this chapter are cumulative; however, where a conflict exists between the provisions of this chapter and the Zoning Ordinance, or any other ordinance or law, or where the provisions of this chapter impose overlapping or contradictory regulations, and both regulations cannot be applied cumulative, then the most restrictive provision of the one which imposes the highest standards or requirements shall prevail.

(Ord. No. 94-37, 10-3-94)

Sec. 9-7006. Watershed areas established.

The purpose of this section is to list and describe the watershed areas herein adopted. For purposes of this chapter, the City of Morganton and its extraterritorial jurisdiction is separated into the following areas all of which are shown on the “Watershed Map” and further described in the succeeding sections of this chapter:

WS-III-CA	(Critical Area)
WS-III-BW	(Balance of Watershed)
WS-IV-CA	(Critical Area)
WS-IV-PA	(Protected Area)

Development activities within these areas must comply with the density and built upon limitations established in this chapter.

(Ord. No. 94-37, 10-3-94)

Sec. 9-7007. Interpretation of maps.

Where uncertainty exists as to the boundaries of the watershed areas, as shown on the Watershed Map, the following rules shall apply:

- (a) Where area boundaries are indicated as approximately following either street, alley, railroad or highway lines or centerline thereof, such lines shall be construed to be the boundaries.
- (b) Where area boundaries are indicated as approximately following lot lines, such lot lines shall be construed to be the boundaries. However, a survey plat prepared by a registered land surveyor may be submitted to the Watershed Administrator 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 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 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 Watershed Map as to location of such boundaries and his decision may be appealed to the Board of Adjustment.

(Ord. No. 94-37, 10-3-94)

Sec. 9-7008. Application of regulations.

- (1) 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.
- (2) No area required for the purpose of complying with the provisions of this chapter shall be included in the area required for another building.
- (3) Every residential building hereafter erected, moved or structurally altered shall be located on a lot which conforms to the regulations herein specified, except as permitted in 9-7028.
- (4) 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.

(Ord. No. 94-37, 10-3-94)

Sec. 9-7009. Watershed areas; specific regulations.

(a) *WS-III Watershed Areas- Critical Area (WS-III-CA)*. in the WS-III-CA areas, the following requirements shall apply.

a. Density and built-upon limits:

- i. *Residential*: Development shall not exceed one dwelling unit per acre or 12% built-upon area, as defined on a project by project basis.
- ii. *Non-residential*: Development shall not exceed 12% built-upon area on a project by project basis. For the purpose of calculating built-upon area, the total project area shall include total acreage in the tract on which the project is to be developed.

b. High density:

High density development using engineered storm water control devices are permitted in this district. Where new development exceeds either one dwelling unit per acre or 12% built-upon area, engineered storm water controls shall be used to control runoff from the first inch of rainfall and development shall not exceed 30% built-upon area. *See 9-7016 and 9-7017 for additional explanations and requirements for high density development.*

c. Uses allowed:

The following uses are specifically allowed:

- i. Agriculture, subject to the provisions of the Food Security Act of 1985 and the Food, Agriculture, Conservation and Trade Act of 1990. Agricultural activities conducted after January 1, 1993 shall maintain a minimum ten foot vegetative buffer, or equivalent control as determined by the Soil and Water Conservation Commission, along all perennial waters indicated as solid blue lines on the most recent versions of U.S.G.S. 1:24,000 (7.5 minute) scale topographic maps or as determined by the local government studies. Animal operations greater than 100 animal units shall employ Best Management Practices by July 1, 1994 as recommended by the Soil and Water Conservation Commission.
- ii. Silviculture, subject to the provisions of the Forest Practices Guidelines Related to Water Quality S (15 NCAC 11.6101-.0209).
- iii. Residential.
- iv. Non-residential development, excluding: (1) the storage of toxic and hazardous materials unless a spill containment plan is implemented, (2) landfills, and (3) 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 either used, stored or manufactured on the premises.

d. Uses specifically not allowed.

New sludge application sites and landfills are specifically prohibited.

(b) *WS-III Watershed Areas- Balance of Watershed (WS-III-BW)*. In the WS-III-BW area the following requirements shall apply:

a. Density and built-upon limits:

- i. *Residential*: Development shall not exceed two dwelling units per acre, or 24% built-upon area, as defined on a project by project basis.
- ii. *Non-residential*: Development shall not exceed 24% built-upon area on a project by project basis. For the purpose of calculating built-upon area, the total project area shall include total acreage in the tract on which the project is to be developed.

(2) *High density*. High Density development using engineered wet detention ponds are permitted in this district. Where new development exceeds either two dwelling units per acres or 24% built-upon area, wet detention ponds shall be used to control runoff from the first inch of rainfall and development shall not exceed 50% built-upon area. *See 9-7016 and 9-7017 for additional explanations and requirements for high density development.*

In addition, new non-residential development may occupy 10% of the W.S.-III balance of watershed with a 70% built upon area when approved as a Special Density Allocation (SDA). The Watershed Review Committee is authorized to approve SDA's consistent with the provisions of this chapter, (See 9-7015).

(3) *Uses allowed*: The following uses are specifically allowed:

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

(b) *WS-IV Watershed Areas- Critical Area (WS-IVOCA)*. In all WS-IV-CA areas the following requirements shall apply.

(1) *Applicability*. Only new development activities that require a sedimentation/ erosion control plan under state law or an approved local program are required to meet the provisions of this chapter when located in the WS-IV-CA watershed.

(2) Density and built-upon limits:

- (a) *Residential*: Development shall not exceed two dwelling units per acre or 24% built-upon area, as defined on a project by project basis.
- (b) *Non-residential*: Development shall not exceed 24% built upon area on a project by project basis. For the purpose of calculating built upon area, total area shall include acreage in the tract on which the project is to be developed.

(3) *High density*. High density development using engineered wet detention ponds are permitted in this district. Where new development requires a sedimentation/ erosion control plan and exceeds either two dwelling units per acre or 24% built-upon area, wet detention ponds shall be used to control run-off from the first inch of rainfall and development shall not exceed 50% built-upon area. *See 9-7016 and 9-7017 for additional explanations and requirements for high density development.*

(4) *Allowed uses*. The following uses are specifically allowed:

1. Agriculture, subject to the provisions of the Flood Security Act of 1985 and the Food, Agriculture, Conservation and Trade Act of 1990. Agricultural activities conducted after January 1, 1993 shall maintain a minimum ten foot vegetative buffer, or equivalent control as determined by Soil and Water Conservation Commission (SWCC), along all perennial waters indicated as solid blue lines on the most recent versions of USGS 1:24,000 (7.5 minute) scale topographic maps or determined by local government studies. Animal operations greater than 100 animal units shall employ Best Management Practices by July 1, 1994 as recommended by the SWCC.
2. Silviculture, subject to the provisions of the Forest Practices Guidelines Related to Water Quality (15 NCAC II.6101-.0209).
3. Residential.
4. Non-residential development, excluding: (1) the storage of toxic and hazardous materials unless a spill containment plan is implemented; (2) landfills; and (3) sites for land application of sludge/residuals or petroleum contaminated soils.

(5) Uses not allowed:

New sludge application sites and landfills are specifically prohibited.

- (b) *Lake Rhodhiss WS-IV Watershed Area Protected Area (WS-IV-PA)*. Within the Lake Rhodhiss WS-IV-PA, development regulations have been separated into two distinct city districts. The Urban Core District includes an area no further than a one-half mile radius of the downtown area from the centerline intersection of Sterling and Meeting Streets, containing 502 acres as delineated on the officially adopted Watershed Map. The Corridor District includes all land outside the Urban Core District but within the Lake Rhodhiss WS-IV-PA as delineated on the officially adopted Watershed Map. Within each of these districts the following development regulations shall apply for new development activities:

- (a) *Urban Core District*: New development activities requiring a sedimentation and erosion control plan shall meet the following:

1. Density and built-upon limits:

1. Residential: Development shall not exceed two dwelling units per acre or 24% where curb and gutter is used, or three dwelling units per acre or 36% where curb and gutter is not used.
2. Non-residential: Development shall not exceed 24% built-upon area where curb and gutter is used, or 36% built-upon area where curb and gutter is not used. For the purpose of developing built-upon area, total project area shall include acreage in the tract on which the project is to be developed.

b. High-density. High density development using wet detention ponds is permitted in this district. Where new development exceeds the built-upon limits described above, wet detention ponds shall be used to control run-off from the first inch of rainfall and development shall not exceed 70% built-upon area. *See 9-7016 and 9-7017 for additional explanations and requirements for high density development.*

c. Allowed uses: The following uses are specifically allowed:

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 S (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) *Corridor district*- All new development activities within this district must meet the following:

a. Density and Built-upon limits.

1. Residential: Development shall not exceed two dwelling units per acre, or 24% built-upon area, as defined on a project basis.
2. Non-residential: Development shall not exceed 24% built upon area on a project by project basis. For the purpose of calculating built upon area, the total project area shall include total acreage in the tract on which the project is to be developed.

In addition, new development may occupy up to 1414 acres of the corridor district when approved as a Special Density Allocation (SDA) pursuant to 9-7015.

The Watershed Review Committee is authorized to approve SDA's consistent with the provisions of this chapter (see 9-7015).

b. High density. Up to 1500 acres may be covered with impervious surfaces. High density development using engineered wet detention ponds are permitted in this district. Where new development exceeds either two dwelling units per acre or 24% built-upon area, wet detention ponds shall be used to control runoff from the first inch of rainfall and development shall not exceed 70% built-upon area per project. *See 9-7016 and 9-7017 for additional explanations and requirements for high density development.*

(c) Uses allowed. The following use are specifically allowed:

- (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 S (15 NCAC 11.6101-0209).
- (3) Residential.
- (4) Non-residential development excluding discharging landfills and the storage of toxic and hazardous materials unless a spill containment plan is implemented.

(e) *Catawba River WS-IV Watershed Areas-Protected Areas (WSIV-PA)*. In the Catawba River WS-IV-PA area as delineated on the officially adopted Watershed Map the following regulations shall apply on new development activities requiring a sedimentation/erosion control plan.

(a) *Density and built-upon limits*.

- 1. Residential: Development shall not exceed two dwelling units per acre or 24% built-upon area or 36% built-upon area where curb and gutter is not used.
- 2. Non-residential: Development shall not exceed 24% built-upon area on a project by project basis, or where curb and gutter is not used, development shall not exceed 36% built-upon area, total project area shall include acreage in the tract on which the project is to be developed.

(2) *High density*. High density development using engineered wet detention ponds is permitted in this district. Where new development exceeds the built-upon limits described above, wet detention ponds shall be used to control run-off from the first inch of rainfall and development shall not exceed 70% built-upon area. See 9-7016 and 9-7017 for additional explanations and requirements for High Density Development.

(3) Allowed uses. The following uses are specifically allowed:

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

(Ord. No. 94-37, passed 10-3-94)

Sec. 9-7010. Cluster development.

Cluster developments is allowed in all watershed areas under the following conditions:

- (a) Minimum lot sizes are not applicable to residential cluster development projects; however, the total number of lots of dwelling units shall not exceed the number of lots or dwelling units allowed for residential developments in 9-4008 of the Zoning Ordinance. The built-upon area of the project shall not exceed that allowed for the critical area or protected area, whichever applies.
- (b) All built-upon areas shall be designed and located to minimize storm water runoff impact to the receiving waters and minimize concentrated storm water 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, or the City of Morganton if agreed to by both parties. Where a property association is not incorporated, a maintenance agreement shall be filed with the deeds unless conveyance has been made to the city.

(Ord. No. 94-37, passed 10-3-94)

Sec. 9-7011. Buffer area required.

- (a) A minimum 100 foot vegetative buffer is required for all development activities that exceed the low density option; otherwise, a minimum 30 foot vegetative buffer for development activities is required along all perennial waters indicated as solid blue lines in the most recent versions of USGS 1:24,000 (7.5 minute) scale topographic maps or as determined by local government studies. Desirable artificial streambank or shoreline stabilization is permitted.
- (b) No new development is allowed in the buffer except for water dependant structures and public projects such as road crossings and greenways and their appurtenances 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.

(Ord. No. 94-37, 10-3-94)

Sec. 9-7012. Watershed protection permit.

- (a) Except where a single family residence is constructed on a lot deeded prior to the effective date of this chapter, no building or built-upon area shall be erected, moved, enlarged or structurally altered, nor shall any building permit be issued nor shall any change in the use of any building or land be made until a Watershed Protection Permit has been issued by the Watershed Administrator. No Watershed Protection Permit shall be issued except in conformity with the provisions of this Ordinance.
- (b) Watershed Protection Permit applications shall be filed with the Watershed Administrator. The application shall include a completed application form and supporting documentation deemed necessary by the Watershed Administrator.
- (c) Prior to issuance of a Watershed Protection Permit, the Watershed Administrator may consult with qualified personnel for assistance to determine if the application meets the requirements of this chapter.
- (d) A Watershed Protection Permit shall expire if a building permit or Watershed Occupancy Permit for such use is not obtained by the applicant within 12 months from the date of issuance.

(Ord. No. 94-37, 10-3-94)

Sec. 9-7013. Building permit.

Except for a single family residence constructed on a lot deeded prior to the effective date of this chapter, no permit required under the North Carolina State Building Code shall be issued for any activity for which a Watershed Protection Permit is required until that permit has first been issued.

(Ord. No. 94-37, 10-3-94)

Sec. 9-7014. Watershed protection occupancy permit.

- (1) The Watershed Administrator shall issue a Watershed Protection Occupancy Permit certifying that all requirements of this chapter have been met prior to the occupancy or use of a building hereafter erected, altered or moved and/or prior to the change of use of any building or land.
- (2) A Watershed Protection Occupancy Permit, either for the whole or part of a building, shall be applied for coincident with the application for a Watershed Protection Permit and shall be issued or denied within ten days after the erection or structural alterations of the building.
- (3) When only a change in use of land or existing building occurs, the Watershed Administrator shall issue a Watershed Protection Occupancy Permit certifying that all requirements of this chapter have been met coincident with the Watershed Protection Permit.
- (4) If the Watershed Protection Occupancy Permit is denied, the Watershed Administrator shall notify the applicant in writing stating the reasons for denial.
- (5) No building or structure which has been erected, moved, or structurally altered may be occupied until the Watershed Administrator has approved and issued a Watershed Protection Occupancy Permit.

(Ord. No. 94-37, 10-3-94)

(Blank Area Reserved)

Sec. 9-7015. Special density allocation (SDA).

- (a) In the protected area of the WS-III and Corridor District of the Lake Rhodhiss WS-IV-PA Watershed Areas, the Watershed Review Committee may grant Special Density Allocations (SDA’s) to project sites smaller than five acres. These SDA’s may permit up to 70% built upon area on project by protect basis without the need to install stormwater control devices. No more than 10% of the WS-III-BW watershed land area or 1414 acre of the WS-IV corridor district may be allocated as Special Density Allocation. At no time may the impervious coverage exceed 70% on an SDA Project.
- (b) Upon receipt of an SDA request by an applicant, the Watershed Administrator shall request review of the proposal by the Watershed Review Committee as established by 9-7026 of this chapter. Upon review by the Watershed Review Committee, the Committee shall approve or deny the request. If the request is denied, the applicant may redesign and resubmit the request.
- (c) The Watershed Review Committee shall use the following performance criteria to evaluate requests for SDA’s. Projects must have a point total of at least 200 to qualify for a SDA.

PERFORMANCE STANDARDS FOR DENSITY BONUS CHECKLIST
For allocation of SDA’s in the Watershed III-BW and the WS-IV Corridor District.

Category	Standards	Points
1. Landscaping as per staff recommendations		
street yard parking lot	minimum width 8’	40
	minimum one landscaped space for every 10 spaces	
side yard	provided minimum width 8’	50
2. Greenway easements (100-year flood plain or 5 times width of stream from top of bank) dedicated along perennial streams		30
3. Dedication of street right-of-way for sidewalks		40
4. Multiple story building development		50
5. Parking under building		50
6. Lot of record in commercial or industrial district less than one acre in size not in same ownership		50
60		
7. Undisturbed land in natural vegetation (trees or woody vegetation)		
50% vegetated		50
25-50% vegetated		35
25% vegetated		20
8. Permanent erosion control plan approved and implemented		25
9. Property located in:		
RH Zones		50
CB Zones		75
GB Zones		60
LI Zones		50
HI Zones		50
RM Zones		40
OI Zones		50
10. Special use permit required		25
11. Tax base added		
\$250,000 or less		25
\$250,000- \$500,000		50
\$500,000-\$1,000,000		75
\$1,000,000 or more		100
12. Planned development		50
13. Using surface drainage rather than curb and gutter		40
Drainage through vegetated buffer		60

TOTAL POINTS

- (d) If the request is approved by the Watershed Review Committee, the Watershed Administrator shall issue and SDA permit. The permit shall be valid for one year from date of issuance. A record of all SDA permits shall be kept on file in the Office of the Watershed Administrator.

(Ord. No. 94-37, 10-3-94)

Sec. 9-7016. High-density development standards.

- (a) The Watershed Review Committee may approve high density development proposals consistent with the following standards:
- (a) WS-III Watershed Areas- Critical Area (WS-IV-CA). Where new development exceeds the density or built-upon limits set forth in 9-7009 (a), wet detention ponds shall be used to control run-off from the first inch of rainfall and development shall not exceed 30% built-upon area on a project by project basis.
- (b) WS-III Watershed Areas- Balance of Watershed (WS-III-BW). Where new development exceeds the density or built-upon limits set forth in 9-7009(b), wet detention ponds shall be used to control run-off from the first inch of rainfall and development shall not exceed 50% built-upon area on a project by project basis.
- (c) WS-IV Watershed Area- Critical Area (WS-IV-CA). Where new development exceeds the density or built upon limits set forth in 9-7009(c), wet detention ponds shall be used to control run-off from the first inch of rainfall and development shall not exceed 50% built-upon area on a project by project basis.
- (d) Lake Rhodhiss WS-IV Urban Core District. Where new development requiring sedimentation/erosion control plan exceeds the density or built-upon limits set forth in 9-7009(d), wet detention ponds shall be used to control runoff from the first inch of rainfall and development shall not exceed 70% built-upon area on a project by project basis.
- (e) Lake Rhodhiss WS-IV Corridor District. Up to 1500 acres may be covered with the impervious surfaces within this district. Where new development exceeds the density or built-upon limits set forth in 9-7009(d), wet detention ponds shall be used to control run-off from the first inch of rainfall and development shall not exceed 70% built-upon area on a project by project basis.
- (f) Catawba River WS-IV Watershed Areas- Protected Area (WS-IV-PA). Where new development requiring a sedimentation/erosion control plan exceeds the density or built-upon limits set forth in 9-7009(e), wet detention ponds shall be used to control run-off from the first inch of rainfall and development shall not exceed 70% built-upon area on a project by project basis.

(Ord. No. 94-37, 10-3-94)

Sec. 9-7017. High-density permit.

- (a) A High Density Development Permit shall be required for new development exceeding the requirements of the low-density option.
- (b) Application for a High Density Development Permit shall be addressed and submitted to the Watershed Review Committee through the Watershed Administrator. Application for a High Density Development Permit shall be made on the property form and shall include the following information:
 - (1) A completed High Density Development Permit Application signed by the owner of the property. The signature of the consulting engineer or other agent will be accepted on the application only if accompanied by a sealed letter of authorization;
 - (2) Five copies of the watershed site plan including the applicable information listed in Appendix A.
 - (3) Five copies of the plans, specifications and maintenance plan of the stormwater control structure consistent with 9-7018 and 9-7019.
 - (4) When required by law, written verification that a soil erosion and sedimentation control plan has been approved by the appropriate state or local agency;
 - (5) Permit application fees consistent with 9-6029.
- (c) Prior to taking final action on any application the Committee or the Watershed Administrator may provide an opportunity to public agencies affected by the development proposal to review and make recommendations on the application. However, failure of the agencies to submit their comments and recommendations shall not delay the Committee's action within the prescribed time limit.
- (d) The Watershed Review Committee shall issue a High Density Development Permit upon finding that the proposal is consistent with the applicable standards set forth in the Watershed Protection Ordinance and the following conditions are met:
 - (1) The use will not endanger the public health or safety if located where proposed and delivered according to the plan as submitted and approved;
 - (2) The use minimizes impact to water quality through the Best Management Practices, cluster development, and/or maximum setbacks from perennial waters;
 - (3) The use is vital to the continued growth and economic development of the City of Morganton.
 - (4) The use is consistent with the officially adopted Land Development Plan for the City of Morganton.

If the Watershed Review Committee finds that any one of the above conditions is not met, the Committee shall deny the application.

- (e) In addition to any other requirements provided by this chapter, the Committee may designate additional permit conditions and requirements to assure that the use will be harmonious with the area in which it is proposed to be located and with the spirit of this chapter. All conditions so imposed shall run with the land and shall be binding upon the applicant and the applicant's heirs, successors or assigns during the continuation of the permitted use.
- (f) The Committee shall issue a written ruling and make copies available at the office of the Watershed Administrator and the City Clerk.
 - (1) If the Committee approves the application based on its findings, such approval shall be indicated on the permit and all copies of the site plan and all copies of the plans and specifications of the stormwater control structure(s). A High Density Development Permit shall be issued after the applicant posts a performance bond or other acceptable security as required in 9-7020(b)(1) and executes an Operation and Maintenance Agreement as required in 9-7019(c). A copy of the permit and one copy of each set of plans shall be kept on file at the Watershed Administrator's Office. The original permit and one copy of each set of plans shall be delivered to the applicant either by personal service or registered mail, return receipt requested.

(Ord. No. 94-37, 10-3-94)

Sec. 9-7018. Stormwater control structures.

- (a) For purposes of this chapter, stormwater control structures shall mean any stormwater control structure, device or system designed to control or contain run-off storage volume and allow for the removal of pollutants in accordance with the criteria set forth in this section.
For all development pursuant to this chapter, a wet detention pond when properly designed and maintained shall be deemed a sufficient stormwater control structure. Other stormwater control structures designed and certified by an appropriate professional engineer to properly achieve the criteria set forth in this section, may also be approved by the North Carolina Division of Environmental Management (NCDEM) if deemed in compliance with this chapter; however the city and NCDEM reserve the right to require wet detention ponds as a primary treatment facility if the device fails.
- (b) All stormwater control structures shall be designated by either a North Carolina registered professional engineer or landscape architect, to the extent that the General Statutes, Chapter 89A, allow. Other stormwater systems 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 or 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 89-(C)-3(7).
- (c) All stormwater controls including wet detention ponds and other similar devices or systems as a primary treatment system shall be designed for specific pollutant removal according to modeling techniques approved by the North Carolina Division of Environmental Management. Specific requirements for these systems shall as applicable be in accordance with the following design criteria.
 - a. Stormwater control structures shall be designed to remove 85% of total suspended solids from the permanent pool storage runoff from the permanent pool storage run-off from a one-inch rainfall from the site above the permanent pool;
 - b. The designed run-off storage volume shall be above the permanent pool;
 - c. The discharge rate from these systems following the one-inch rainfall design storm shall be such that the run-off does not draw down to the permanent pool level in less than two days and that the pond is drawn down to the permanent pool level within at least five days;
 - d. The mean permanent pool depth shall be a minimum of three feet;
 - e. The inlet structure shall be designed to minimize turbulence using baffles, dissipators or other appropriate design features.
 - f. Vegetative filters shall be constructed for the overflow and discharge of all stormwater wet detention ponds and shall be at least 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 ten year, 24 hour storm with a two-year, one-hour intensity with a slope of 5% or less. Vegetation in the filter shall be natural vegetation, grasses or artificially planted wetland vegetation appropriate for the site characteristics; and
 - g. All wet detention ponds shall be completely enclosed with a barrier of sufficient height as may be determined by the Watershed Review Committee to keep the children and animals from entering the pond.
- (d) In addition to the vegetative filters required in 9-7018(c)(6), all land areas outside of the pond shall be provided with a ground cover sufficient to restrain erosion within 30 days after any land disturbance. Upon completion of the stormwater controls structure, a permanent ground cover shall be established and maintained as part of the maintenance agreement described in 9-7019(b).

- (e) A description of the area containing the stormwater control structure shall be prepared and filed (consistent with 9-7021(a) and (b), as a permanent drainage and utility easement with the Burke County Register of Deeds along with any easements necessary for general access to the stormwater control structure. The deeded area shall include the detention pond, vegetative filters, all pipes and water control structures, berms, dikes, etc., and sufficient area to perform inspections, maintenance, repairs and reconstruction.
- (f) 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 of area.

(Ord. No. 94-37, 10-3-94)

Sec. 9-7019. Maintenance.

- (a) An operation and maintenance plan or manual shall be provided by the developer for each stormwater control structure, indicating what operation and maintenance actions are needed, what specific quantitative criteria will be used for determining when those actions are to be taken and, consistent with the Operation and Maintenance Agreement, who is responsible for those actions. The plan shall clearly indicate the steps that will be taken for restoring a stormwater control structure to design specifications if a failure occurs.
- (b) Landscaping and grounds management shall be the responsibility of the owning entity. However, vegetation shall not be established or allowed to mature to the extent that the integrity of the control structure is diminished or threatened, or to the extent of interfering with any easement or access to the stormwater control structure.
- (c) Except for general landscaping and grounds management, the owning entity shall notify the Watershed Administrator prior to any repair or reconstruction of the stormwater control structure. All improvements shall be made consistent with the approved plans and specifications of the stormwater control structure and the operation and maintenance plan or manual. After notification by the owning entity, the City Engineer shall inspect the completed improvements and shall inform the owning entity of any required additions, changes or modifications and of the time period to complete said improvements.
- (d) Amendments to the plans and specifications of the stormwater control structure and/or the operation and maintenance plan or manual shall be approved by the Watershed Review Committee. Proposed changes shall be prepared by a North Carolina registered professional engineer or landscape architect (to the extent that the General Statutes, Chapter 89A, allows) and submitted to and reviewed by the Watershed Administrator prior to consideration by the Watershed Review Committee.
 - (1) If the Watershed Review Committee approves the proposed changes, the owning entity of the stormwater control structure shall file sealed copies of the revisions with the Office of the Watershed Administrator.
 - (2) If the Watershed Review Committee disapproves the changes, the proposal may be revised and resubmitted to the Watershed Review Committee as a new proposal. If the proposal has not been revised and is essentially the same as that already reviewed, it shall be returned to the applicant.
- (e) If the Watershed Review Committee finds that the operation and maintenance plan or manual is inadequate for any reason, the Committee shall notify the owning entity of any required changes and shall prepare and file copies of the revised agreement with the Burke County Register of Deeds, the Office of the Watershed Administrator and the owning entity.

(Ord. No. 94-37, 10-3-94)

Sec. 9-7020. Performance security.

- (a) All new stormwater control structures shall be conditioned on the posting of adequate financial assurance for the purpose of maintenance, repairs or reconstruction necessary for adequate performance of the stormwater control structures.
- (b) Financial assurance shall be in the form of the following:
Security performance bond or other security. The permit applicant shall obtain either a performance bond from a surety bonding company authorized to do business in North Carolina, an irrevocable letter of credit or other instrument readily convertible into cash at face value payable to the City of Morganton or placed in escrow with a financial institution designed as an official depository of the City of Morganton. The bond or other instrument shall be in an amount equal to 1.25 times the total cost of the stormwater control structure, as estimated by the applicant and approved by the city. 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; and grading excavation, fill, etc. The costs shall not be prorated as part of a larger project, but rather under the assumption of an independent mobilization.
- (c) Consistent with 9-7019, the permit applicant shall enter into a binding Operation and Maintenance Agreement between the City of Morganton and all interests in the development. The Agreement shall require the owning entity to maintain, repair, and if necessary, reconstruct the stormwater control structure in accordance with the operation and management plan or manual provided by the developer. The Operation and Maintenance Agreement shall be filed with the Burke County Register of Deeds by the Watershed Administrator.
- (d) Default under the performance security. Upon default of the permit applicant to complete and/or maintain the stormwater control structure as specifically provided in the performance security, the city may obtain and use all or any portion of the funds necessary to complete the improvements based on an engineering estimate. The city shall return any funds not spent in completing the improvements to the owning entity.

- (e) Default of Operation and Maintenance Agreement. Upon default of the owning entity to maintain, repair, and if necessary, reconstruct the stormwater control structure in accordance with the Operation and Maintenance Agreement, the city engineering estimate. Except in circumstances where public, health safety and welfare is threatened, such expenditures shall only be made after exhausting all other reasonable remedies seeking the owning entity to comply with the terms and conditions of the Operation and Maintenance Agreement including the assessment of fines. The city shall place any cost accrued as a tax lien against the owning entity of the device.

(Ord. No. 94-37, 10-3-94)

Sec. 9-7021. Inspection and release of performance security.

- (a) The stormwater control structure shall be inspected by the city, after the owning entity notifies the Watershed Administrator that all work has been completed. At this inspection, the owning entity shall provide.
 - a. The signed utility and drainage easement and survey plat for the stormwater control structure ready for filing with the Register of Deeds;
 - b. A certification sealed by an engineer or landscape architect (to the extent that General Statutes allow) stating that the stormwater control structure is complete and consistent with the approved plans and specifications.
- (b) The Watershed Administrator shall present the materials submitted by the developer and the inspection report and recommendations to the Watershed Review Committee at its most regularly scheduled meeting.
 - a. If the Committee approves the inspection report and accepts the certification, and easements, the city shall file the easements and maintenance agreement with the Burke County Register of Deeds, release up to 75% of the value of the performance security and issue a Watershed Protection Occupancy Permit for the stormwater control structure, consistent with 9-7014.
 - b. If deficiencies are found, the city shall direct that improvements and inspections be made and documents corrected and submitted to the city.
- (c) No sooner than one year after the filing date of the easements, and maintenance agreement, the developer may petition the city to release the remaining value of the performance security. Upon receipt of said petition, the city shall inspect the stormwater control structure to determine whether the controls are performing as designed and intended. The Watershed Administrator shall present the petition, inspection report and recommendations to the Watershed Review Committee.
 - a. If the Committee approves the report and accepts the petition, the city shall release the performance security.
 - b. If the Watershed Review Committee does not accept the report and rejects the petition, the Committee shall provide the developer with instructions to correct any deficiencies and all steps necessary for the release of the performance security.
- (d) A Watershed Protection Occupancy Permit shall not be issued for any building within the permitted development until the Watershed Review Committee has approved the stormwater control structure, as provided in 9-7021(b).
- (e) All stormwater control structures shall be inspected at least on an annual basis to determine whether the controls are performing as designed and intended. Records of inspection shall be maintained on forms approved or supplied by the North Carolina Division of Environmental Management. Annual inspections shall begin within one year of filing date of the approved easements and maintenance agreement for the stormwater control structure.
- (f) In the event the Watershed Administrator discovers the need for corrective action or improvements, the Watershed Administrator shall notify the owning entity of the needed improvements and the date by which the corrective action is to be completed. All improvements shall be made consistent with the plans and specifications of the stormwater control structure and the operation and maintenance plan or manual. After notification by the owning entity, the city shall inspect and approve the completed improvements.

(Ord. No. 94-37, 10-3-94)

Sec. 9-7022. Watershed administrator; duties.

The City Manager shall appoint a Watershed Administrator who shall administer and enforce the provisions of this chapter 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 of the Administrator.
- (b) The Watershed Administrator shall serve as staff to the Watershed Review Committee and the Board of Adjustment.
- (c) The Watershed Administrator shall keep records of all amendments to the local Water Supply Watershed Protection Ordinance and shall provide copies to the Water Quality Section, of the North Carolina Division of Environmental Management.
- (d) The Watershed Administrator is granted the authority to administer and enforce the provisions of this chapter, exercising in the fulfillment of his responsibility the full zoning power of the City of Morganton. 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 chapter.

- (e) The Watershed Administrator shall keep a record of all exceptions issued by the Board of Adjustment to this chapter. The Administrator shall also keep records on all Special Density Allocations (SDA's) and high-density allocations issued by the Watershed Review Committee in the calendar year prior to January 1 each year. These records shall be submitted to the supervisor of the Classification and Standards Group, Water Quality Section, Division of Environmental Management on an annual basis and the report shall provide a description of each project receiving and exception, SDA or high density permit and the reasons for granting each.
- (f) The Watershed Administrator, with the consent of the City Manager, may appoint other enforcement personnel and may delegate responsibilities of administering and enforcing the provision of this chapter. Any reference in this chapter to the Watershed Administrator shall be deemed to include other employees designated or charged with the responsibility of administering and enforcing the provisions hereof.

(Ord. No. 94-37, 10-3-94)

Sec. 9-7023. Appeal from administrator.

- (a) Any order, requirement, decision or determination made by the Watershed Administrator may be appealed to and decided by the Board of Adjustment.
- (b) An appeal from a decision of the Watershed Administrator must be submitted to the Board of Adjustment within 30 days from the date the order, interruption, 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.
- (c) 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 a specific order which may be granted by the Board or by a restraining order issued by a court of record on application and notice to the officer from whom the appeal is taken and upon due cause shown.
- (d) 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 a hearing, any party may appear in person, by agent or by attorney.

(Ord. No. 94-37, 10-3-94)

Sec. 9-7024. Board of Adjustment powers & duties.

- (a) Administrative review. The Board of Adjustment shall hear and decide appeals from any decision or determination made by the Watershed Administrator in the enforcement of this Ordinance.
- (b) Exceptions. The Board of Adjustment may permit exceptions (consistent with 9-7002) in specific cases from the strict terms of this chapter as will not be contrary to the public interest where, owing to special conditions, a literal enforcement of this chapter will result in practical difficulties or unnecessary hardship so that the spirit of this chapter shall be observed, public safety and welfare secured and substantial justice done. Prior to authorizing any minor exception the city shall notify and allow a reasonable comment period for all other governments having jurisdiction in the designated watershed or any other entity using the water supply for water consumption where the exception is being considered.
 - (1) Applications for an exception shall be made on the proper forms obtainable from the Watershed Administrator and shall include the following information:
 - i. A site plan, drawn to scale of at least one inch to fifty feet, indicating the property lines of the parcel upon which the uses is proposed; any existing or proposed structures; parking, areas and other built-upon areas; surface water drainage. The site plan shall be neatly drawn and indicate north point, name and address of persons who prepared the plan, date of the original drawing and an accurate record of any later revisions.
 - ii. A complete and detailed description of the proposed exception, together with any other pertinent information which the applicant feels would be helpful to the Board of Adjustment in considering the application.
 - (2) The Watershed Administrator shall notify in writing each local government having jurisdiction in the watershed or other entity consuming water from the water supply. Such notice shall include a description of the exception being requested. Local governments receiving notice of the exception request may submit comments to the Watershed Administrator 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.
 - (3) Before the Board of Adjustment may grant a minor exception, it shall make the following findings of facts which shall be recorded in the permanent record of the case and supported by facts set forth in the record:
 - i. A finding of practical difficulty or unnecessary hardship to be determined only upon the further findings that the following conditions are likely to exist:
 - 1. If the applicant strictly complied with the provisions of this chapter, it is likely that the applicant could not make a reasonable use of this property nor secure a reasonable return;

2. Unnecessary hardship would result from the application of this chapter to the particular property and not from the application of this chapter to property within the jurisdiction of the city in general;
 3. The unnecessary hardship is due to the physical nature of the property, relating to its size, shape, drainage pattern, topography, physical features, presence of perennial streams, bedrock, soil features, contributing off-site drainage impacting the property, or similar features generally different from that of other property in the same general vicinity; and
 4. The hardship is not caused by the actions of the applicant.
- ii. The exception is minor and will not significantly imperil the general purpose and intent of this chapter nor significantly adversely affect the volume or quality of storm water run-off.
 - iii. In granting the exception, the public safety and welfare have been assured and substantial justice done. The Board shall not grant an exception if it finds that doing so would substantially impair the public health, safety or general welfare.
- (4) In granting the exception, the Board may attach thereto such conditions regarding the locations, character, and other features of the proposed building, structure, or use as it may deem advisable in furtherance of the purpose of the purpose of this chapter. If an exception for the construction, alteration or use of property is granted, such construction, alteration or use shall be in accordance with the approved site plan.
 - (5) The Board of Adjustment shall refuse to hear an appeal or an application for an exception previously denied if it finds that there have been no substantial changes in conditions or circumstances bearing on the appeal or application.
 - (6) An exception 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 12 months from the date of the decision.
- (c) Major exception; Environmental Management Commission approval.
- (1) If the application calls for the granting of a major exception, and if the Board of Adjustment decides in favor of granting the exception, the Board shall prepare a preliminary record of the hearing with all deliberate speed. The preliminary record of the hearing shall include:
 - i. The exception applications;
 - 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;
 - vi. The proposed decision, including all conditions proposed to be added to the permit.
 - (2) The preliminary records shall be sent to the Environmental Management Commission for its review as follows:
 - i. If the Commission concludes from the preliminary records that the exception qualifies as a major exception 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 exception will not result in a serious threat to the water supply, then the Commission shall approve the exception as proposed or approve the proposed exception with conditions and stipulations. The Commission shall prepare a Commission decision and send it to the Board of Adjustment. If the Commission approves the exception as proposed, the Board shall prepare a final decision granting the proposed exception. If the Commission approves the exception with conditions and stipulations, the Board shall prepare a final decision, including such conditions and stipulations, granting the proposed exception.
 - ii. If the Commission concludes from the preliminary records that the exception qualifies as a major exception and that (1) the property owner can secure a reasonable return from or make a practical use of the property without the exception, or (2) the exception, if granted will result in a serious threat to the water supply, then the Commission shall deny approval of the exception 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 exception as proposed.

(Ord. No. 94-37, 10-3-94)

Sec. 9-7025. Watershed Review Committee.

There is hereby established and created a Watershed Review Committee to have all the duties and powers herein set out and subject to the rules hereafter established. The Committee shall be appointed by the City Manager and consists of representatives from the Community Development, Engineering, Public Works, Water Resources and Public Safety Departments.

(Ord. No. 94-37, 10-3-94)

Sec. 9-7026. Powers and duties of the Watershed Review Committee.

- (a) The authority to approve development greater than the low-density option and to issue Special Density Allocations (SDA) shall rest solely with the Watershed Review Committee. The review committee shall exercise the authority only established by this chapter.
- (b) Upon application, the Watershed Review Committee shall review within 30 days the application request. A meeting of the Review Committee shall be called by the chairman (City Manager) to review the application. Upon review of the application, the Watershed Review Committee shall approve or deny the issuance of a watershed protection permit based on the findings set forth by the Committee. A written notice of the Committee's findings shall be provided to the applicant within seven days of the review.

No Watershed Occupancy Permits shall be issued until the applicant has complied with all approved plans and specifications of the watershed permit and written notice of the Watershed Review Committee.

(Ord. No. 94-37, 10-3-94)

Sec. 9-7027. Appeals.

Any person or persons, jointly or severally, aggrieved by any decision of the Watershed Review Committee or the Board of Adjustment, or any taxpayer, or any officer, department, board or bureau, may seek review by the Superior Court of Burke County, North Carolina by proceedings in the nature of certiorari. Any petition for review by the Superior Court shall be filed with the Clerk of Superior Court within 30 days after the decision of the Board of Adjustment or Watershed Review Committee is filed in the office of the Watershed Administrator.

(Ord. No. 94-37, 10-3-94)

Sec. 9-7028. Exemptions.

- (a) Existing development, as defined in this chapter, is not subject to the requirements of this chapter. Expansions to structures classified as existing development must meet the requirements of this chapter; however, the built-upon area of the existing development is not required to be included in the density calculations (See Appendix I). For purposes of this chapter only, existing development is defined as those projects that are built or those projects that at a minimum have established a vested right under North Carolina zoning laws as of the effective date of this chapter based on at least one of the following:
 - a. Having expended substantial resources (time, labor, money) based on a good faith reliance upon having received a valid local government approval to proceed with the project;
 - b. Having an outstanding valid building permit as authorized by the General Statutes (G.S. 153A-344.1 and 160A-385.1) or;
 - c. Having an approved site specific or phased development plan as authorized by the General Statutes (G.S. 153A-344.1 and 160A-385.1).
- (b) A pre-existing lot in the WS-IV-CA and WS-IV-PA watershed areas owned by an individual prior to the effective date of this chapter, 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 chapter, provided the property is zoned for this use. However, this exemption is not applicable to multiple contiguous lots under single ownership within the WS-III-CA and WS-III-BW watershed areas, unless the total impervious surfaces established on those lots meets the built-upon limitations provided in 9-7009 or 9-7016, whichever applies.
- (c) Reconstruction of buildings or built-upon areas. Any existing building or built-upon area not in conformance with the density or built-upon restrictions of this chapter that has been damaged or removed may be repaired and/or reconstructed, except that there are no restrictions on single-family residential development, provided:
 - a. The repair or reconstruction is in compliance with applicable zoning regulations;
 - b. Repair or reconstruction is initiated within 12 months and completed within two years of such damage or removal; and
 - c. The total amount of space devoted to the built-upon area may not be increased unless stormwater control that equals or exceeds the previous development is provided.
- (d) Non-Conforming Uses of Land. Uses existing at the time of adoption of this chapter no longer permitted to be established hereafter in the watershed area in which it is located, may be continued, except as follows:
 - a. When such non-conforming use of land has been changed to an allowed use, it shall not thereafter revert to any prohibited use.
 - b. Such non-conforming use of land shall be changed only to an allowed use.
 - c. When such non-conforming use ceases for a period of at least 180 days, it shall not be reestablished.

- (e) 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 chapter amend, modify, or restrict any provisions of the Code of Ordinances of Morganton; however, the adoption of this chapter shall and does amend any and all ordinances, resolutions, and regulations in effect in the city at the time of the adoption of this chapter that conflict with any of its provisions.
- (f) It is not intended that this chapter shall interfere with any easements, 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.

(Ord. No. 94-37, 10-3-94)

Sec. 9-7029. Fees.

- (a) The city may charge an application fee, inspection fee, processing fee or permit fee for the various services rendered by the City under this chapter as such fees may be established in the Schedule of Fees and Charges adopted by the city from time to time.
- (b) Processing and inspection fees shall be submitted in the form of a check or money order made payable to the City of Morganton. Applications shall be returned if not accompanied by the required fee.
- (c) Inspection fees shall be valid for 60 days. An inspection fee shall be required when improvements are made to the stormwater control structure consistent with 9-7019(c), except in the case when a similar fee has been paid within the last 60 days.

(Ord. No. 94-37, 10-3-94)

Sec. 9-7030. Amendments.

- (a) The Morganton 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) No action shall be taken until the proposal has been submitted to the Planning Commission for review and recommendations. If no recommendation has been received from the Planning Commission within 45 days after submission of the proposal to the chairman of the Planning Commission, the City Council may proceed as though a favorable report has been received.
- (c) Under no circumstances shall the City Council adopt such amendments, supplements or changes that would cause this chapter to violate the watershed protection rules as adopted by the North Carolina Environmental Management Commission. All amendments must be filed with the North Carolina Division of Environmental Management, North Carolina Division of Environmental Health, and the North Carolina Division of Community Assistance.

(Ord. No. 94-37, 10-3-94)

Sec. 9-7031. Notice and hearing.

Before adopting or amending this chapter, the City Council shall hold a public hearing on the proposed changes. A notice of the public hearing shall be published once a week for four successive calendar weeks in newspaper having a general circulation in the area. Maps showing the boundaries of the area affected by the proposed ordinance or amendment shall be included in the public notice and the notice shall not be less than one-half of a newspaper page in size. This notice shall only be effective for property owners who reside in the area of general circulation of the newspaper which publishes the notice. Property owners who reside outside the city's jurisdiction or outside of the newspaper circulation area, according to the address listed on the most recent property tax listing for the affected property, shall be notified by first class mail.

(Ord. No. 94-37, 10-3-94)

Sec. 9-7032. Criminal penalties.

Any person violating any provisions of this chapter shall be guilty of a misdemeanor and, upon conviction, shall be punished in accordance with G.S. 14-4. Each day that the violation continues shall constitute a separate offense.

(Ord. No. 94-37, 10-3-94)

Sec. 9-7033. Remedies.

- (1) In addition to any criminal penalty provided in this chapter, any subdivision, development and/or land use found to be in violation of this chapter shall also be a civil offense and shall subject the offender or other person responsible for such violation to a civil penalty in the amount of \$100. Any person violating this chapter shall be issued a written citation in accordance with 1-1005 of this code.
 - a. The written citation may be issued by the Watershed Administrator, any code enforcement officer, any building inspector, any public safety officer or any other enforcement officer authorized by the City Manager.
 - b. The penalty shall be paid to the Tax Collector at the City of Morganton within 72 hours from the time of issuance of the written citation.
 - c. Each day's continuing violation shall be a separate and distinct offense. Further, the provisions of this chapter may also be enforced through equitable remedies issued by a court of competent jurisdiction including an injunction and order of abatement or any other remedy permitted at law.
 - d. This chapter may be enforced by any one, all, of a combination of the remedies authorized herein or in 1-1005 of this code.
- (2) If the Watershed Administrator, or other person charged with enforcing this chapter, finds that any of the provisions of this chapter 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, or of additions, alterations or structural changes thereto; discontinuance of any illegal work being done; or shall take any action authorized by this chapter 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.

(Ord. No. 94-37, 10-3-94)

Sec. 9-7034. Liens.

- (1) If the city shall be required to execute any order of abatement, whether issued by the Watershed Protection Administrator, the City Council, the Board of Adjustment, the Watershed Protection Committee, the North Carolina Environmental Management Commission, any court of competent jurisdiction or other lawful authority, or if the city shall be required to assume the control and operation of any stormwater control structure because of the default or failure of the owner thereof, or if the city shall be required to summarily remove, abate or remedy any condition that is dangerous or prejudicial to the public health or public safety, then the expense of such action shall be paid by the person in default and if not paid, shall be a lien upon the land or premises where the trouble arose and shall be collected as unpaid taxes.
- (2) Any defendant or other person liable under an order of abatement may secure the cancellation of the order or abatement by paying all costs of the proceedings and posting a bond for compliance with the order. The bond shall be given with sureties approved by the Clerk of Superior Court in an amount approved by the judge before whom the matter was heard and shall be conditioned upon the defendants full compliance with the term of the order of abatement within the time fixed by the judge.

(Ord. No. 94-37, 10-3-94)