

ARTICLE XVI

WATERSHED OVERLAY DISTRICT

Section 1600. Watershed Overlay District.

It is the purpose of this article as adopted on January 30, 1997, and hereafter amended, to implement the provisions of the Water Supply Watershed Protection Act (N.C.G.S. 143-214.5) within the zoning jurisdiction of the Town of Laurel Park. The provisions of this article are applicable to all property located within the designated water supply watershed as shown on the official zoning map of the Town and shall be in addition to all other requirements of this ordinance. Whenever there is a conflict between this article and other provisions of this ordinance, the stricter requirement shall apply.

Section 1601. Definitions.

The following definitions apply only to enforcement of this article:

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

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

Buffer. An area of natural or planted vegetation through which stormwater runoff flows in a diffuse manner so that the runoff does not become channelized and which provides for infiltration of the runoff and filtering of pollutants. The buffer is measured landward from the normal pool elevation of impounded structures and from 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, animals, 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 areas shall include that portion of a development project that is covered by impervious or partially impervious cover including buildings, pavement, gravel areas (e.g. roads, parking areas, paths), recreation facilities (e.g. tennis courts), etc. (Note: Wooden slatted decks and the water area of a swimming pool 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 including minimizing stormwater impacts. This term includes single family residential subdivisions and multi-family developments that do not involve the subdivision of land.

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

Curb Outlet System. Curb and gutter installed in a development which meets the low density criteria of this ordinance with breaks in the curb used to direct stormwater runoff to grassed swales or other natural or vegetated area.

Development. Any land disturbing activity which adds to or changes the amount of impervious or partially impervious cover on a land area or which otherwise decreases the infiltration of precipitation into the soil.

Dwelling Unit. A building, or portion thereof, providing complete and permanent living facilities for human habitation.

Existing Development. Those projects that are built or those projects that at a minimum have established a vested right under North Carolina zoning law as of the effective date of this article based on at least one of the following criteria:

- (1) substantial expenditures or resources (time, labor, money) based on a good faith reliance upon having received a valid local government approval to proceed with the project, or
- (2) having an outstanding valid building permit as authorized by the General Statutes (G.S. 160A-385.1), or
- (3) having an approved site specific or phased development plan as authorized by the General Statutes (G.S. 160A-385.1), or
- (4) having a subdivision plat recorded in the office of the Register of Deeds prior to the adoption of this ordinance.

Industrial Development. Any non-residential 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 N.C. General Statutes. For the purpose of this ordinance this term does not include composting facilities.

Major Variance. A variance from the minimum statewide watershed protection rules that results in any one or more of the following:

- (1) the relaxation by a factor greater than ten (10) percent of any management requirement under the low density option;
- (2) the relaxation by a factor greater than five (5) percent of any buffer, density, or built-upon area requirement under the high density option;
- (3) any variation in the design, maintenance, or operation requirements of a wet detention pond or other approved stormwater management system.

Minor Variance. A variance from the minimum statewide watershed protection rules that results in the relaxation by a factor of up to five (5%) percent of any buffer or the relaxation by a factor of up to (10%) percent of any management requirement under the low density option.

Nonconforming Lot of Record. A lot described by a plat or a deed that was recorded prior to the effective date of local watershed protection regulations (or their amendments) that does not meet the minimum lot size or other development requirements of the statewide watershed protection rules.

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

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.

Residuals. Any solid or semi-solid waste generated from a wastewater treatment plant, water treatment plant, or air pollution control facility permitted under the authority of the Environmental Management Commission.

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.

Stormwater Collection System. Any conduit, pipe, channel, curb, or gutter for the primary purpose of transporting (not treating) runoff. Such system does not include vegetated swales, swales stabilized with armoring, and/or alternative methods where natural topography prevents the use of vegetated swales, subject to case-by-case review, curb outlet systems, or pipes used to carry drainage underneath built-upon surfaces that are associated with development controlled by the provisions of 15A NCAC 2H .1003 c 1.

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

Subdivider. Any person, firm, or corporation who subdivides or develops any land deemed to be a subdivision as herein defined.

Subdivision. All divisions of a tract or parcel of land into two or more lots, building sites, or other divisions for the purpose of sale or building development (whether immediate or future) and shall include all division of land involving the dedication of a new street or a change in existing streets; but the following shall not be included within this definition nor be subject to the regulations authorized by this ordinance:

- (1) The combination or recombination of portions of previously subdivided and recorded lots where the total number of lots is not increased and the resultant lots are equal to or exceed the standards of this ordinance;

- (2) The division of land into parcels greater than 10 acres where no street right-of-way dedication is involved;
- (3) The public acquisition by purchase of strips of land for the widening or opening of streets;
- (4) The division of a tract in single ownership whose entire area is no greater than two acres into not more than three lots, where no street right-of-way dedication is involved and where the resultant lots are equal to or exceed the standards of the this ordinance;
- (5) The division of a tract into plots or lots used as a cemetery.

Toxic Substance. Any substance or combination of substances (including disease causing agents), which after discharge and upon exposure, ingestion, inhalation, or assimilation into any organism, either directly from the environment or indirectly by ingestion through food chains, has the potential to cause death, disease, behavioral abnormalities, cancer, genetic mutations, physiological malfunctions (including malfunctions or suppression in reproduction or growth) or physical deformities in such organisms or their offspring, or other adverse health effects.

Variance. A permission to develop or use property granted by the Watershed Review Board relaxing or waiving a water supply watershed management requirement adopted by the Environmental Management Commission that is incorporated into this ordinance.

Water Dependent Structure. Any structure for which the use requires access to or proximity to or siting within surface waters to fulfill its basic purpose, such as boat ramps, boat houses, 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 Town responsible for administration and enforcement of this ordinance. The official designated person of the Town responsible for the administration and enforcement of this ordinance is the Zoning Administrator.

Watershed Review Board. A standing board appointed by the Town Council who shall hear and decide appeals from any decision or determination by the Watershed Administrator in the enforcement of this ordinance and who shall hear and decide variances from the terms of this ordinance. The official board designed to hear and decide appeals from any decision or determination by the Watershed Administrator in the enforcement of this ordinance and who shall hear and decide variances from the terms of this ordinance is the Board of Adjustment.

Section 1602. WS-IV Watershed Areas – Protected Area (WS-IV-PA).

In order to accommodate moderate to high land use intensity, single family residential uses shall develop at a maximum of two (2) dwelling units per acre (2 du/ac). All other residential development shall be allowed at a maximum of twenty-four percent (24%) built-upon area. A maximum of thirty-six (36%) percent built-upon area is allowed for projects without a curb and gutter street system.

1602.1 Uses 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 (15 NCAC 11.6101-.0209).
- (3) Residential development.

1602.2 Density and Built-upon Limits

- (1) Single Family Residential – development shall not exceed two (2) dwelling units per acre, as defined on a project by project basis. No residential lot shall be less than one-half (1/2) acre (or 20,000 square feet excluding roadway right-of-way).
- (2) All Other Residential – development shall not exceed twenty-four percent (24%) built-upon area on a project by project basis. For projects without a curb and gutter street system, development shall not exceed thirty-six percent (36%) built-upon area on a project by project basis. For the purpose of calculating built-upon area, total project area shall include acreage in the tract on which the project is to be developed.

Section 1603. Cluster Development.

1603.1 Single Family Development

Cluster development for single family development is allowed on a project by project basis in all Watershed Areas under the following conditions:

- (1) Minimum lot sizes are not applicable to single family cluster development projects; however, the total number of lots shall not exceed the number of lots allowed for single family detached developments in Section 1602. Density or built-upon area for the project shall not exceed that allowed for the critical area or balance of watershed, whichever applies.
- (2) All built-upon areas shall be designed and located to minimize stormwater runoff impact to the receiving waters and to minimize concentrated stormwater flow.

- (3) The remainder of the tract shall remain in a vegetated or natural state. The title to the open space area shall be conveyed to an incorporated homeowners association for management, to a local government for preservation as a park or open space, or to a conservation organization for preservation in a permanent easement. Where a property association is not incorporated, a maintenance agreement shall be filed with the property deeds.

1603.2 Planned Unit Developments (PUDs)

Planned Unit Developments (PUDs) that do not exceed the applicable low density requirements must meet the following criteria:

- (1) Buffers shall meet the minimum statewide water supply watershed protection requirements.
- (2) Stormwater runoff shall be transported primarily by vegetated conveyances. Conveyance systems shall not include a discrete stormwater collection system as defined in 15A NCAC 2B .0202, except that curb outlet systems will be allowed as described in 15A NCAC 2H .1000.
- (3) In reviewing and approving a development plan for a Planned Unit Development (PUD), the Laurel Park Planning Board shall have the option of determining built-upon area for the entire development or for each type of land use within the development. The Planning Board may require additional stormwater controls on a case-by-case basis if it determines that areas of concentrated development are located such that stormwater flows and stormwater impacts to receiving waters are not minimized, that sheet flow through vegetated areas is not maximized, that the flow length through vegetated areas is not maximized; or that areas of concentrated development are not located in upland areas and away, to the maximum extent practicable, from surface waters and drainageways.

Section 1604. Buffer Areas Required.

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

No new development is allowed in the buffer except for water dependent structures or other structures such as flag poles, signs, and security lights which result in only minimal increases in impervious area, and public projects such as road crossings and greenways where no practical alternative exists. These activities should minimize built-upon surface area, direct runoff away from the surface waters, and maximize the utilization of stormwater Best Management Practices.

Section 1605. Rules Governing the Interpretation of Watershed Area Boundaries.

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

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.

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 as evidence that one or more properties along these boundaries do not lie within the watershed area.

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.

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.

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

Section 1606. Application of Regulations.

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.

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

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.

Section 1607. Existing Development.

Existing development as defined in this ordinance, may be continued and maintained subject to the provisions provided herein. Expansions to structures classified as existing development must meet the requirements of this ordinance, however, the built-upon area of the existing development is not required to be included in the built-upon area calculations.

1607.1 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 reestablished.

1607.2 Reconstruction of Buildings or Built-upon Areas

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.

Section 1608. Watershed Protection Permit.

Except where a single family residence is constructed on a lot deeded prior to the effective date of this ordinance, no building or built-upon area shall be erected, moved, enlarged, or structurally altered, nor shall any 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.

Watershed Protection Permit applications shall be filed with the Watershed Administrator. The application shall include any supporting documentation deemed necessary by the Watershed Administrator.

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 ordinance.

A Watershed Protection Permit shall expire if a Building Permit or Watershed Protection Occupancy Permit for such use is not obtained by the applicant within twelve (12) months from the date of issuance.

Section 1609. Building Permit Required.

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 the Watershed Protection Permit has been issued.

Section 1610. Watershed Protection Occupancy Permit.

The Watershed Administrator shall issue a Watershed Protection Occupancy Permit certifying that all requirements of this ordinance 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.

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 (10) days after the erection or structural alterations of the building.

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 ordinance have been met coincident with the Watershed Protection Permit.

If the Watershed Protection Occupancy Permit is denied, the Watershed Administrator shall notify the applicant in writing stating the reasons for denial.

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.

Section 1611. Public Health.

No activity, situation, structure, or land use shall be allowed within the watershed which poses a threat to water quality or to public health, safety, or 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.

Section 1612. Abatement.

The Watershed Administrator shall monitor land use activities within the watershed areas to identify situations that may pose a threat to water quality. Where the Watershed Administrator finds a threat to water quality and the public health, safety, and welfare, the Watershed Administrator shall institute any appropriate action or proceeding to restrain, correct, or abate the condition and/or violation.

Section 1613. Administration.

It shall be the duty of the Watershed Administrator to administer and enforce the provisions of this section as follows:

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.

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

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 Water Quality Section of the Division of Environmental Management.

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. 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.

The Watershed Administrator shall keep a record of variances to the local Water Supply Watershed Protection Ordinance. This record shall be submitted for each calendar year to the Water Quality Section of the Division of Environmental Management 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.

Section 1614. 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 a 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 or be represented by an agent or an attorney.

Section 1615. Changes and Amendments to the Watershed Protection Ordinance.

The Town 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.

The Town Council may submit the proposed amendment to the Planning Board for review and recommendations. If no recommendation has been received from the Planning Board within forty-five (45) days after submission of the proposed amendment, the Town Council may proceed as though a favorable report had been received.

Under no circumstances shall the Town Council adopt such amendments, supplements, or changes that would cause this ordinance to violate the watershed protection rules as adopted by the N.C. Environmental Management Commission. All amendments must be filed with the N.C. Division of Environmental Management, N.C. Division of Environmental Health, and the N.C. Division of Community Assistance.

Section 1616. Public Notice and Hearing Required.

Before adopting or amending this ordinance, the Town Council shall hold a public hearing on the proposed changes. A notice of the public hearing shall be given once a week for two successive calendar weeks in a newspaper having general circulation in the area. The notice shall be published for the first time not less than ten (10) nor more than twenty-five (25) days before the date for the hearing.

Section 1617. Establishment of Watershed Review Board.

The Zoning Board of Adjustment shall perform the duties of the Watershed Review Board.

Section 1618. Powers and Duties of the Watershed Review Board.

1618.1 Administrative Review

The Watershed Review Board shall hear and decide appeals from any decision or determination made by the Watershed Administrator in the enforcement of this ordinance.

1618.2 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 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.

1618.3 Applications

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 scale of adequate size, 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 a North Arrow, the name and address of person who prepared the plan, the 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.

1618.4 Local Government Notification

The Watershed Administrator shall notify in writing each local government having jurisdiction in the watershed and any 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.

1618.5 Watershed Review Board Findings

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 applicant complies with the provisions of the Ordinance, the applicant can secure no reasonable return from, nor make reasonable use of, applicant's 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.

1618.6 Special Conditions

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.

1618.7 Rehearings

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.

1618.8 Timeframe Requirements

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.

1618.9 Major Variance

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.

1618.10 Major Variance Review Procedures

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

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