

**Redlines-TA-24-5**  
**Recordation of Approved and Denied Special Use Permits, Variances, and**  
**Density Averaging Cases**

**(F) *Density averaging.***

(1) *Legal authority.* G.S. § 143-214.5 d2 permits density averaging in the state.

(2) *Definition and applicability.* Density averaging is the transfer of impervious development rights from one property to another, and involves two noncontiguous parcels in the same water supply watershed. A local government implementing a water supply watershed program shall allow an applicant to average development density on up to two noncontiguous properties for purposes of achieving compliance with the water supply watershed development standards if all of the following circumstances exist:

(a) The properties are within the same water supply watershed. If one of the properties is located in the critical area of the watershed, the critical area property shall not be developed beyond the applicable density requirements for its classification;

(b) Overall project density meets applicable density or stormwater control requirements under 15A NCAC 2B .0200;

(c) Vegetated buffers on both properties meet the minimum statewide water supply watershed protection requirements;

(d) Built upon areas are designed and located to minimize stormwater runoff impact to the receiving waters, minimize concentrated stormwater flow, maximize the use of sheet flow through vegetated areas, and maximize the flow length through vegetated areas;

(e) Areas of concentrated density development are located in upland areas and, to the maximum extent practicable, away from surface waters and drainageways;

(f) The property or portions of the donor properties that are not being developed will remain in a vegetated or natural state and will be managed by a homeowners' association as common area, conveyed to a local government as a park or greenway, or placed under a permanent conservation or farmland preservation easement unless it can be demonstrated that the local government can ensure long-term compliance through deed restrictions and an electronic permitting mechanism. A metes and bounds description of the areas to remain vegetated and limits on use shall be recorded on the subdivision plat, in homeowners' covenants, and on individual deed and shall be irrevocable;

(g) Development permitted under density averaging and meeting applicable low-density requirements shall transport stormwater runoff by vegetated

conveyances to the maximum extent practicable;

(h) A special use permit or other such permit or certificate shall be obtained from the local Watershed Review Board, being the City of Mount Holly Board of Adjustment, as authorized under § [12.10](#), to ensure that both properties considered together meet the standards of the watershed ordinance and that potential owners have record of how the watershed regulations were applied to the properties; and

(i) All parcels must be located within the planning and zoning jurisdiction of the City of Mount Holly, and located within the Lake Wylie Watershed Critical Overlay District or in the Lake Wylie Watershed Protected Area Overlay District.

(3) *Process.*

(a) A pre-application meeting is required to go over the application materials and any questions about the process.

(b) A City of Mount Holly watershed density averaging application must be submitted with the following:

1. Surveys of both properties showing the current existing impervious amount and maximum impervious amount;
2. Draft of revised property deeds;
3. Stormwater mitigation plan;
4. Draft of revised plats for the revised impervious allowances;
5. Draft of homeowner covenants (if applicable); and
6. Board of Adjustment fee.

(c) Once all submittal requirements are met, the request will be heard by the Board of Adjustment (as the Watershed Review Board) at the next available hearing.

(d) The Board of Adjustment must make written findings that the proposed project meets the requirements set forth in § [12.12](#).

(e) If approved, the applicant shall submit two mylar maps for recording and one paper copy of each plat for filing with the Planning Department for final review.

(f) Once approved, the mylars and the deeds for each parcel must be recorded at the Gaston County Register of Deeds Office. **As well, all decisions rendered by the Board of Adjustment regarding density averaging cases (approved & denied cases) will be filed in the Gaston County Register of Deeds via a prepared order developed by City staff. The City will be responsible for recording these orders & will charge a fee that is equal to the fee charged by the Gaston County Register of Deeds to record deeds and other real estate documents, which will be added to the application fee associated with density averaging requests, and which will be paid by the applicant upon submittal.**

(g) The Planning Department will issue a density averaging certificate to the applicant, at which time the applicant can submit plans for zoning and building permits.

(h) A copy of the density averaging certificate, including surveys, recorded plat(s) deeds/property descriptions, and any documentation reflecting the restrictions to the parcel that will remain undeveloped, will be forwarded to the North Carolina Division of Water Quality.

(i) No change in the development proposal can be made unless the certificate is amended by the Board of Adjustment.

(Ord. passed 5-13-1996; Am. Ord. passed 9-12-2022)

## **§ 12.6 SPECIAL USE PERMITS.**

(A) The Board shall hear and decide, in particular cases, and subject to appropriate conditions and safeguards, special use permits as authorized by the district regulations in Ch. 6 of this ordinance. Reasonable and appropriate conditions and safeguards may be imposed upon these permits by the Board.

(B) Any special use permit so authorized shall be perpetually binding upon the property included in such permit unless subsequently changed or amended by the Board, as provided for in this chapter.

(C) Minor modifications to special use permits that do not involve a change in uses permitted or the density of overall development permitted may be reviewed and approved administratively by the Zoning Enforcement Official. Any other modification or revocation of a special use permit shall follow the same process for approval as is applicable to the approval of a special use permit. If multiple parcels of land are subject to a special use permit, the owners of individual parcels may apply for permit modification so long as the modification would not result in other properties failing to meet the terms of the special use permit or regulations. Any modifications approved shall only be applicable to those properties whose owners apply for the modification. If the permit or any modification is approved, then the special use permit is required to be recorded with the register of deeds by the applicant. Appeals of these decisions shall be followed under § [15.6](#) of this ordinance.

(D) All decisions rendered by the Board of Adjustment regarding special use permits (approved & denied cases) will be filed in the Gaston County Register of Deeds via a prepared order developed by City staff. The City will be responsible for recording these orders & will charge a fee that is equal to the fee charged by the Gaston County Register of Deeds to record deeds and other real estate documents, which will be added to the application fee associated with special use permits, and

which will be paid by the applicant upon submittal.

(Ord. passed 5-13-1996)

## § 12.7 VARIANCES.

(A) When unnecessary hardships would result from carrying out the strict letter of the Zoning Ordinance, the Board shall vary any of the provisions of the ordinance, upon a showing of all of the following:

(1) Unnecessary hardship would result from the strict application of the ordinance. It shall not be necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property;

(2) The hardship results from conditions that are peculiar to the property, such as location, size or topography. Hardships resulting from personal circumstances, as well as hardships resulting from conditions that are common to the neighborhood or general public, may not be the basis for granting a variance. A variance may be granted when necessary and appropriate to make a reasonable accommodation under the Federal Fair Housing Act, being 42 U.S.C. §§ 3601 et seq., for a person with a disability;

(3) The hardship did not result from actions taken by the applicant or property owner. The act of purchasing property with knowledge that circumstances exist that may justify the granting of a variance shall not be regarded as a self-created hardship; and

(4) The requested variance is consistent with the spirit, purpose and intent of the ordinance, such that public safety is secured and substantial justice is achieved.

(B) No change in permitted uses may be authorized by a variance. Appropriate conditions may be imposed on any variance; provided that, the conditions are reasonably related to the variance. Any other ordinance that regulates land use or development may provide for variances consistent with the provisions of this section.

(C) In granting the variance, the Board may attach thereto such conditions regarding the location, character and other features of the proposed building, structure or use as it may deem advisable in furtherance of the purpose of this ordinance.

(D) Minor modifications that do not require a variance by the Board of Adjustment and are permitted by the Planning Department Director or designee are as follows: when a lot of record as defined in § 3.4 of this ordinance with an existing structure constructed prior to the adoption of this ordinance is subdivided that creates new lots that meet the minimum lot size requirements, but the lot with the existing structure meets the minimum lot size and not all of the setbacks. Appeals shall follow § 15.6 of this ordinance.

(E) All decisions rendered by the Board of Adjustment regarding variances (approved & denied cases) will be filed in the Gaston County Register of Deeds via a prepared order developed by City staff. The City will be responsible for recording these orders & will charge a fee that is equal to the fee charged by the Gaston County Register of Deeds to record deeds and other real estate documents, which will be added to the application fee associated with variances, and which will be paid by the applicant upon submittal.

(Ord. passed 5-13-1996)

## **§ 12.8 VARIANCES FROM WATERSHED OVERLAY DISTRICT REQUIREMENTS.**

(A) The Board of Adjustment may authorize variances from the specific requirements of the Watershed Overlay Districts in the same manner and subject to the same procedures and requirements of this chapter for authorizing other variances; provided that:

(1) The notice required in § [12.4](#) of this chapter shall also be mailed by first class mail to all other local governments having watershed regulation jurisdiction within the particular watershed where the variance is requested and to each entity using that water supply for consumption; and

(2) If the variance request is for a major variance as defined herein, the following procedure shall apply. If the Board of Adjustment decides in favor of granting the major variance, the Board shall then prepare a preliminary record of the hearing and submit it to the North Carolina Environmental Commission (EMC) for review and action. If the Board does not decide in favor of granting the major variance such unfavorable action shall constitute denial.

(B) In the event of favorable action by the Board on a major variance, the Board shall cause the record of their hearing to be promptly submitted to the EMC. The record of the hearing shall include, but not be limited to:

- (1) The variance application;
- (2) The hearing notice;
- (3) The evidence presented;
- (4) Motions, offers of proof, objections to evidence and rulings on them;
- (5) Findings and exceptions; and
- (6) The action of the Board including any conditions proposed.

(C) If the EMC approves the major variance or approves with conditions or stipulations added, the EMC shall prepare a decision which authorizes the Board of Adjustment to issue a final decision which would include any conditions or stipulations added by the EMC. If the EMC denies the major variance, then the EMC shall prepare a decision and transmit it to the Board of Adjustment. The

Board shall then prepare a final decision denying the major variance.

(D) All decisions rendered by the Board of Adjustment regarding variances from watershed overlay district requirements (approved & denied cases) will be filed in the Gaston County Register of Deeds via a prepared order developed by City staff. The City will be responsible for recording these orders & will charge a fee that is equal to the fee charged by the Gaston County Register of Deeds to record deeds and other real estate documents, which will be added to the application fee associated with variances from watershed overlay district requirements, and which will be paid by the applicant upon submittal.

(Ord. passed 5-13-1996)

### **§ 12.10 WATERSHED DENSITY AVERAGING CREDITS.**

As authorized by G.S. § 143-214. 5, the Board of Adjustment, in addition to its authority as the watershed review board in deciding appeals and making adjustments to the exterior boundary of Watershed Overlay Districts, per § [12.8](#) and § [12.9](#), respectively, shall have the authority to approve applications for density averaging for the WS-IV Lake Wylie Protected and Critical Watersheds, in accordance with § [5.15\(F\)](#). All decisions rendered by the Board of Adjustment regarding density averaging cases (approved & denied cases) will be filed in the Gaston County Register of Deeds via a prepared order developed by City staff, per [5.15 F-3-f](#). The City will be responsible for recording these orders & will charge a fee that is equal to the fee charged by the Gaston County Register of Deeds to record deeds and other real estate documents, which will be added to the application fee associated with density averaging requests, and which will be paid by the applicant upon submittal.

Adopted by City Council on June 10, 2024.