

## CHAPTER 53: STORMWATER MANAGEMENT

Section

### ***General Provisions***

- 53.01 Purpose
- 53.02 ~~Definitions~~ [Authority](#)
- 53.03 ~~Applicability; exceptions~~ [Findings](#)
- [53.04 Definitions](#)
- [53.05 Applicability and jurisdiction; exceptions](#)
- [53.06 Design manual](#)
- [53.07 Relationship to other laws, regulations and private agreements](#)

### ***Administration and Procedures***

- [53.08 Review procedures](#)
- [53.09 Site plans](#)
- [53.10 Appeals](#)
- [53.11 Variances](#)

### ***Stormwater Quality and Quantity***

- 53.15 ~~Generally~~ [General standards](#)
- 53.16 ~~Allowable annual total nitrogen (TN) loading standards~~ [Nitrogen loading rate targets](#)
- 53.17 ~~Calculating annual total nitrogen loading~~ [Built upon area standards](#)
- 53.18 ~~Nitrogen reduction calculations for BMPs~~ [Methods to meet nutrient control requirements](#)
- 53.19 ~~Offset payment calculations~~ [Control and treatment of runoff volume](#)
- 53.20 ~~Recording of BMPs~~ [Use of permanent nutrient offset credits](#)
- 53.21 [Recording of BMPs](#)
- 53.22 ~~Acceptable peak flow calculation method~~

## ***Riparian Buffers***

- 53.35 Delineation
- 53.36 Riparian buffers; generally

## ***Maintenance***

- 53.50 Maintenance policy
- 53.51 ~~Maintenance agreement~~ [Operation and maintenance plans](#)
- 53.52 ~~Standards for detention ponds~~ [Operation and maintenance agreement](#)
- 53.53 ~~Maintenance plans~~ [Special requirements for homeowners' and other associations](#)
- [53.54 Standards for detention ponds](#)
- [53.55 Inspection program](#)
- [53.56 Records of installation and maintenance activities](#)
- [53.57 Nuisance](#)
- [53.58 Maintenance easement](#)

## **GENERAL PROVISIONS**

### **§ 53.01 PURPOSE.**

~~The purpose of this chapter is to establish procedures and standards addressing stormwater runoff from development activities to protect water quality, to promote the public health, safety, and general welfare of the community, and to satisfy 15A NCAG-2B-0235 Neuse River Basin Nutrient Sensitive Waters Management Strategy: Basinwide Stormwater Requirements.~~

~~(1989 Code, § 17-1) (Ord. 01-02, passed 4-23-2001)~~

(A) This ordinance shall be officially known as “The Neuse River Basin Stormwater Ordinance for New Development.” It is referred to herein as “this ordinance” or “this chapter”. The purpose of this chapter is to establish minimum requirements, procedures and standards to control the adverse effects of nitrogen in stormwater runoff and nonpoint and point source pollution associated with new development in the watershed of the Neuse River Basin estuary. It has been determined that proper management of post-development stormwater runoff will protect water quality and aquatic resources; safeguard the public health, safety, and

general welfare of the community; minimize damage to public and private property and infrastructure; and satisfy 15A NCAC 2B.0700–Nutrient Management Strategy Rules for Surface Water, sections 2B.0701 through 2B.0711 Neuse Nutrient Strategy for Stormwater.

(B) This chapter seeks to meet its general purpose through the following specific objectives and means:

(1) Establishing decision-making processes for development that protects the integrity of watersheds and preserves the health of water resources;

(2) Requiring that new development not exceed export targets for nitrogen in stormwater runoff for the watershed through site layout, engineered stormwater controls, or permanent nutrient offset credits;

(3) Establishing minimum post-development stormwater management standards and design criteria for the regulation and control of stormwater runoff quantity and quality;

(4) Establishing design and review criteria for the construction, function, and use of engineered stormwater controls that may be used to meet the minimum post-development stormwater management standards;

(5) Encouraging the use of better management and site design practices, such as the use of vegetated conveyances for stormwater and the preservation of greenspace, riparian buffers and other conservation areas to the maximum extent practicable;

(6) Establishing provisions for the long-term responsibility for and maintenance of engineered stormwater controls to ensure that they continue to function as designed, are maintained appropriately, and pose no threat to public safety;

(7) Establishing administrative procedures for the submission, review, and approval and disapproval of site plans, for the inspection of approved projects, and to assure appropriate long-term maintenance;

(8) Controlling illicit discharges into the stormwater system and waters of the State;

(9) Providing education and outreach to the public regarding methods to prevent and minimize pollutant contributions to the stormwater system and waters of the State;

(10) Requiring that new development maintain the pre-development hydrologic response in their post-development state for the applicable design storm to reduce flooding, streambank erosion, nonpoint and point source pollution and increases

in stream temperature, and to maintain the integrity of stream channels and aquatic habitats.

## **§ 53.02 DEFINITIONS AUTHORITY.**

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

**~~AGRICULTURE.~~** Any activities for the production of plants and animals useful to humans, including, but not limited to, forage and sod crops, grain and feed crops, tobacco, cotton, and peanuts; dairy animals and dairy products; poultry and poultry products; livestock, including beef cattle, sheep, swine, horses, ponies, mules, or goats, including the breeding and grading of any or all the animals; bees and apiary products; and fur animals.

**~~ANNUAL TOTAL NITROGEN (TN) LOADING.~~** The amount of total nitrogen, in pounds, that enters a surface water in a given year.

**~~BEST MANAGEMENT PRACTICES (BMPs).~~** Structural and nonstructural practices that reduce the amount of pollutants that enter surface waters.

**~~DEVELOPMENT ACTIVITY.~~** Any land-disturbing activity of a size described in § 53.03(B) taken by a public or private person or entity for development for which a building permit or the approval of a development plan is required. The term includes, but is not limited to, clearing, grubbing, stripping, dredging, grading, excavating, or filling of land or tree or stump removal.

### **~~EXISTING DEVELOPMENT.~~**

(1) ~~Those development projects that do not require a state permit and that are built or those development activities that at a minimum have established 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) Expenditures or incurred contractual obligations substantial in amount, incidental to or as part of the acquisition of a building site or the construction or equipment of a proposed building, where the obligations and/or expenditures are incurred in good faith and are made in reasonable reliance on and after the issuance of a valid building permit authorizing the requested use; or~~

~~(b) Having an approved site specific or phased development plan in compliance with G.S. § 160D-108.1.~~

(2) ~~For projects that require a state permit, such as landfills, National Pollutant Discharge Elimination System wastewater discharges, land application of residuals, and road construction activities, **EXISTING DEVELOPMENT** means those~~

~~projects that are built or those projects for which a state permit was issued prior to the date of adoption of this chapter.~~

~~**EXPANSION.** Any modification or change in the use of property that would involve a building permit and that would cause an increase in impervious surface.~~

~~**FORESTRY.** Any activity undertaken on forest land for the production and harvesting of timber and timber products.~~

~~**IMPERVIOUS SURFACES.** Surfaces that generally do not allow precipitation to infiltrate into the soil, including, but not limited to, buildings, pavement, gravel roads, parking areas, and recreation facilities. Wooden-slatted decks and the water area of swimming pools are considered pervious surfaces.~~

~~**LAND-DISTURBING ACTIVITY.** Any use of land by any person or entity for residential, industrial, educational, institutional, business, or commercial development or highway and road construction and maintenance that results in a change in the natural cover or topography and that may cause or contribute to sedimentation. The term specifically includes grubbing, stump removal, and/or grading.~~

~~**OFFSET PAYMENT.** Money paid to the North Carolina Wetlands Restoration Fund to compensate for annual total nitrogen loading levels above the allowable levels established by this chapter.~~

~~**PEAK DISCHARGE.** The highest stormwater quantity expressed in cubic feet per second (cfs) for a given storm event.~~

~~**PERVIOUS SURFACES.** Surfaces that generally allow precipitation to infiltrate into the soil, including, but not limited to, lawns, gardens, forests, meadows, pastures, or landscaped areas.~~

~~**POINT OF DISCHARGE.** The point or points where concentrated stormwater runoff leaves a site.~~

~~**POST-DEVELOPED CONDITIONS.** The conditions that will exist on a given site after the site is developed.~~

~~**PRE-DEVELOPED CONDITIONS.** The conditions that exist on a given site prior to development of the site.~~

~~**PROPERTY OWNER.** The person or entity who or which owns the land upon which any development activity occurs or, if the person or entity is not the owner of the land, the person or entity who or which controls the development activity. The term includes a homeowner's association where the association owns and is responsible for the maintenance of any best management practices established pursuant to this chapter.~~

~~**SITE.** The property upon which a development activity takes place.~~

~~**STORMWATER.** The flow of water that occurs during and following any form of precipitation.~~

~~**TIDALLY INFLUENCED STREAM.** The portion of a stream that has a perennial water surface elevation that is generated by and fluctuates with the water surface elevation in the Neuse River/Pamlico Sound.~~

~~(1989 Code, § 17-2) (Ord. 01-02, passed 4-23-2001; Ord. 21-O-04, passed 6-28-2021)~~

The Board of Commissioners of the City of Havelock is authorized to adopt this ordinance pursuant to North Carolina law, including but not limited to Article 14, Section 5 of the Constitution of North Carolina; City of Havelock municipal charter; North Carolina General Statutes Chapter 143-214.7 and rules promulgated by the Environmental Management Commission thereunder; Chapter 143-215.6A; Chapter 160A §174 and §185, and Chapter 160D.

**§ 53.03 APPLICABILITY; EXCEPTIONS FINDINGS.**

~~(A) The procedures and standards set forth in this chapter shall apply to all areas within the corporate limits and extraterritorial jurisdiction of the City.~~

~~(B) The following development activities shall be required to satisfy the procedures and standards set forth in this chapter:~~

~~(1) Any land-disturbing activity of greater than one acre of land that involves the construction, expansion, or modification of a facility or structure within a single-family residential district or a mobile home residential district, as those districts are described in Chapter 155; or~~

~~(2) Any land-disturbing activity of greater than one-half acre of land that involves the construction, expansion, or modification of a facility or structure within a multi-family residential district, a business district, or an industrial district, as those districts are described in Chapter 155.~~

~~(C) For expansion of an existing development, the procedures and standards set forth in this chapter shall apply only to those portions of the development that involve the actual disturbance of land or expansion greater than the size identified in division (B) above.~~

~~(D) This chapter shall not apply to:~~

~~(1) Existing development, except as provided in division (C) above;~~

~~(2) Agriculture;~~

~~(3) Mining;~~

~~(4) Forestry;~~

~~(5) Activities within the property of Marine Corps Air Station Cherry Point;~~  
or

~~(6) Any other activities specifically exempted from the provisions of this chapter in any other section of this chapter.~~

~~(E) The standards and procedures established by this chapter shall be followed where they differ from the requirements established by Chapters 152 and 154.~~

~~(1989 Code, § 17-3) (Ord. 01-02, passed 4-23-2001)~~

It is hereby determined that:

(A) Development alters the hydrologic response of local watersheds and increases stormwater runoff rates and volumes, flooding, soil erosion, stream channel erosion, nonpoint and point source pollution, and sediment transport and deposition, as well as reducing groundwater recharge;

(B) These changes in stormwater runoff contribute to increased quantities of water-borne pollutants and alterations in hydrology that are harmful to public health and safety as well as to the natural environment; and

(C) These effects can be managed and minimized by applying proper design and well-planned controls to manage stormwater runoff from development sites.

(D) Further, the Commission has identified the Neuse River Basin Estuary, as nutrient sensitive waters; has identified all or a portion of the estuary as impaired waters under the federal Clean Water Act due to exceedances of the chlorophyll a standard; and has promulgated rules (the "Neuse River Basin Rules") to reduce the average annual loads of nitrogen delivered to the estuary from all point and nonpoint sources of these nutrients located within its watershed, including stormwater from new development in this jurisdiction;

(E) Therefore, the Board of Commissioners establishes this set of water quality and quantity regulations to meet the requirements of state and federal law regarding control of stormwater runoff and discharge for development.

#### **§ 53.04 DEFINITIONS.**

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

**AGRICULTURE.** Any activities for the production of plants and animals useful to humans, including, but not limited to, forage and sod crops, grain and feed crops, tobacco, cotton, and peanuts; dairy animals and dairy products; poultry and poultry products; livestock, including beef cattle, sheep, swine, horses, ponies, mules, or

goats, including the breeding and grading of any or all the animals; bees and apiary products; and fur animals.

**ANNUAL TOTAL NITROGEN (TN) LOADING.** The amount of total nitrogen, in pounds, that enters a surface water in a given year.

**APPROVED ACCOUNTING TOOL.** The most recent version of the accounting tool for calculating *nutrient* loading and reduction approved by the Division for the relevant geography and development type under review.

**BEST MANAGEMENT PRACTICES (BMPs).** Structural and nonstructural practices that reduce the amount of pollutants that enter surface waters.

**BUILT-UPON AREA (BUA).** Impervious surface and partially impervious surface to the extent that the partially impervious surface does not allow water to infiltrate through the surface and into the subsoil. "Built-upon area" does not include a slatted deck; the water area of a swimming pool; a surface of number 57 stone, as designated by the American Society for Testing and Materials, laid at least four inches thick over a geotextile fabric; a trail as defined in G.S. 113A-85 that is either unpaved or paved as long as the pavement is porous with a hydraulic conductivity greater than 0.001 centimeters per second (1.41 inches per hour); or landscaping material, including, but not limited to, gravel, mulch, sand, and vegetation, placed on areas that receive pedestrian or bicycle traffic or on portions of driveways and parking areas that will not be compacted by the weight of a vehicle, such as the area between sections of pavement that support the weight of a vehicle.

**Statutory reference:**

*For state law as to definition, see N.C.G.S. 143-214.7 (b2).*

**COMMISSION.** The North Carolina Environmental Management Commission, in the Department.

**DEPARTMENT.** The North Carolina Department of Environmental Quality.

**DESIGN MANUAL.** The State Stormwater Design Manual approved by the Department for the proper implementation of the State Minimum Design Criteria for engineered stormwater controls. All references herein to the Design Manual are to the latest published edition or revision

**DEVELOPER.** A person, including a governmental agency or redevelopment authority, who undertakes any development and who is the landowner of the property to be developed or who has been authorized by the landowner to undertake development on that property.

**Statutory reference:**

*For state law as to definition, see N.C.G.S. 160D-102(11).*

**DEVELOPMENT.** Any land-disturbing activity that increases the amount of built-upon area or that otherwise decreases the infiltration of precipitation into the subsoil.



When additional development occurs at a site that has existing development, the built-upon area of the existing development shall not be included in the density calculations for additional stormwater control requirements, and stormwater control requirements cannot be applied retroactively to existing development, unless otherwise required by federal law.

**Statutory reference:**

For state law as to definition, see N.C.G.S. 143-214.7 (a1)(1).

**DEVELOPMENT ACTIVITY.** Any land-disturbing activity of a size described in §53.05(B) taken by a public or private person or entity for development for which a building permit or the approval of a development plan is required. The term includes, but is not limited to, clearing, grubbing, stripping, dredging, grading, excavating, or filling of land or tree or stump removal.

**DEVELOPMENT APPROVAL.** An administrative or quasi-judicial approval made pursuant to this Chapter that is written and that is required prior to commencing development or undertaking a specific activity, project, or development proposal. Development approvals include, but are not limited to, zoning permits, site plan approvals, special use permits, variances, and certificates of appropriateness. The term also includes all other regulatory approvals required by regulations adopted pursuant to this Chapter, including plat approvals, permits issued, development agreements entered into, and building permits issued.

**Statutory reference:**

For state law as to definition, see N.C.G.S. 160D-102(13).

**EXISTING DEVELOPMENT.** Those projects that are built or those projects that have established a vested right under North Carolina law as of the effective date of the state stormwater program or applicable based on at least one of the following criteria:

(1) Expenditures or incurred contractual obligations substantial in amount, incidental to or as part of the acquisition of a building site or the construction or equipment of a proposed building, where the obligations and/or expenditures are incurred in good faith and are made in reasonable reliance on and after the issuance of a valid building permit authorizing the requested use; or

(2) Having an approved site specific or phased development plan in compliance with G.S. § 160D-108.1.

For projects that require a state permit, such as landfills, National Pollutant Discharge Elimination System wastewater discharges, land application of residuals, and road construction activities, EXISTING DEVELOPMENT means those projects that are built or those projects for which a state permit was issued prior to the date of adoption of this chapter.

**Statutory reference:**

For state law as to definition, see 15A NCAC 02H.1002(18).

**ENGINEERED STORMWATER CONTROL.** A physical device designed to trap,

settle out, filter, or otherwise remove pollutants from stormwater runoff; to alter or reduce stormwater runoff velocity, amount, timing, or other characteristics; to approximate the pre-development hydrology on a developed site; or to achieve any combination of these goals. Engineered stormwater control includes physical practices such as constructed wetlands, vegetative practices, vegetated conveyances, filter strips, grassed swales, and other methods installed or created on real property. "Engineered stormwater control" is synonymous with "structural practice," "Primary SCM", "stormwater control facility," "stormwater control practice," "stormwater treatment practice," "stormwater management practice," "stormwater control measures," "structural stormwater treatment systems," and similar terms used in this chapter. It is a broad term that may include practices that do not require design by a professionally licensed engineer.

**EXPANSION.** Any modification or change in the use of property that would involve a building permit and that would cause an increase in impervious surface.

**FORESTRY.** Any activity undertaken on forest land for the production and harvesting of timber and timber products.

**IMPERVIOUS SURFACES.** Surfaces that generally do not allow precipitation to infiltrate into the soil, including, but not limited to, buildings, pavement, gravel roads, parking areas, and recreation facilities. Wooden-slatted decks and the water area of swimming pools are considered pervious surfaces.

**LAND-DISTURBING ACTIVITY.** Any use of the land that results in a change in the natural cover or topography that may cause or contribute to sedimentation.

**Statutory reference:**

For state law as to definition, see 15A NCAC 02B.0202(34).

**LARGER COMMON PLAN OF DEVELOPMENT OR SALE.** A site where multiple separate and distinct development activities may be taking place at different times on different schedules but governed by a single development plan regardless of ownership of the parcels. Information that may be used to determine a "common plan of development" include plats, blueprints, marketing plans, contracts, building permits, public notices or hearings, zoning requests, and infrastructure development plans.

**Statutory reference:**

For state law as to definition, see 15A NCAC 02H.1002(8).

**LOAD.** Means the mass quantity of a nutrient or pollutant released into surface waters over a given time period. Loads may be expressed in terms of pounds per year and may be expressed as "delivered load" or an equivalent "discharge load."

**LOADING RATE.** Means the mass quantity of a nutrient or pollutant released from a given area into surface waters over a given time period. Loading rate in this chapter refers to pounds of nitrogen or phosphorus per acre per year.

**LOT AREA.** Lot area refers to the amount of horizontal land area contained inside the lot lines of a lot or site.

**MAJOR VARIANCE.** A variance that is not a "minor variance" as that term is defined in this Rule.

**MINIMUM DESIGN CRITERIA (MDC).** The requirements set forth in this Section for siting, site preparation, design and construction, and post-construction monitoring and evaluation necessary for the Department to issue stormwater permits that comply with State water quality standards adopted pursuant to G.S. 143-214.1.

**Statutory reference:**

*For state law as to definition, see 15A NCAC 02H.1002(24).*

**MINOR VARIANCE.** A variance from the minimum Neuse Stormwater rules that results in the relaxation of up to 10 percent of any vegetated setback, density, or minimum lot size requirement applicable to low density development, or the relaxation of up to five percent of any vegetated setback, density, or minimum lot size requirement applicable to high density development. For variances to a vegetated setback requirement, the percent variation shall be calculated using the footprint of built-upon area proposed to encroach within the vegetated setback divided by the total area of vegetated setback within the project.

**NITROGEN.** Means total nitrogen unless specified otherwise.

**NUTRIENT, NUTRIENTS.** Means the combination of total nitrogen and total phosphorus. means the combination of total nitrogen and total phosphorus for the purpose of the nutrient rules of this section.

**1-YEAR, 24-HOUR STORM.** Means the maximum amount of rainfall during a 24 consecutive hour period expected, on average, to occur once a year. One-year, 24-hour storm depths are estimated by the National Oceanic and Atmospheric Administration (NOAA) Precipitation Frequency Data Server (PFDS), which is herein incorporated by reference, including subsequent amendments and editions, and may be accessed at no cost at <http://hdsc.nws.noaa.gov/hdsc/pfds/>.

**Statutory reference:**

*For state law as to definition, see 15A NCAC 02H.1002(30).*

**OFFSET PAYMENT.** Money paid to the North Carolina Riparian Buffer Restoration Fund to compensate for annual total nitrogen loading levels above the allowable levels established by this chapter.

**OUTFALL.** A point at which stormwater (1) enters surface water or (2) exits the property of a particular owner.

**OWNER.** The legal or beneficial owner of land, including but not limited to a mortgagee or vendee in possession, receiver, executor, trustee, or long-term or commercial lessee, or any other person or entity holding proprietary rights in the

property or having legal power of management and control of the property. “Owner” shall include long-term commercial tenants; management entities, such as those charged with or engaged in the management of properties for profit; and every person or entity having joint ownership of the property. A secured lender not in possession of the property does not constitute an owner, unless the secured lender is included within the meaning of “owner” under another description in this definition, such as a management entity.

**PARCEL.** Means the same as project in this list of definitions.

**PERMANENT NUTRIENT OFFSET CREDITS.** A nutrient load reduction credit that does not automatically expire. Permanent nutrient offset credits account for permanent nutrient load reductions resulting from permanently installed and maintained nutrient reduction practices. Permanent nutrient offset credits may be used for compliance with new development stormwater rules of this Subchapter and may also satisfy other nutrient load reduction requirements as described in this Subchapter. Nutrient offset credits are expressed in pounds of total nitrogen or total phosphorus per year.

**Statutory reference:**

For state law as to definition, see 15A NCAC 02B.0701(38).

**PEAK DISCHARGE.** The highest stormwater quantity expressed in cubic feet per second (cfs) for a given storm event.

**PERSON.** Includes individuals, firms, partnerships, associations, institutions, corporations, municipalities and other political subdivisions, and governmental agencies.

**Statutory reference:**

For state law as to definition, see 15A N.C.G.S. 143-212(4).

**PERVIOUS SURFACES.** Surfaces that generally allow precipitation to infiltrate into the soil, including, but not limited to, lawns, gardens, forests, meadows, pastures, or landscaped areas.

**PHOSPHORUS.** Means total phosphorus unless specified otherwise.

**POINT OF DISCHARGE.** The point or points where concentrated stormwater runoff leaves a site.

**POST-DEVELOPED CONDITIONS.** The conditions that will exist on a given site after the site is developed.

**PRE-DEVELOPED CONDITIONS.** The conditions that exist on a given site prior to development of the site.

**PRIMARY SCM.** Means a wet pond, stormwater wetland, infiltration system, sand

filter, bioretention cell, permeable pavement, green roof, rainwater harvesting, or an approved new stormwater technology that is designed, constructed and maintained in accordance with the MDC.

**Statutory reference:**

For state law as to definition, see 15A NCAC 02H.1002(37).

**PROJECT.** Means the proposed development activity for which an applicant is seeking a stormwater permit from the state or other entity in accordance with this Section. "Project" shall exclude any land adjacent to the area disturbed by the project that has been counted as pervious by any other development regulated under a federal, State, or local stormwater regulation. Owners and developers of large developments consisting of many linked projects may consider developing a master plan that illustrates how each project fits into the design of the large development.

**Statutory reference:**

For state law as to definition, see 15A NCAC 02H.1002(38).

**PROPERTY OWNER.** The person or entity who or which owns the land upon which any development activity occurs or, if the person or entity is not the owner of the land, the person or entity who or which controls the development activity. The term includes a homeowner's association where the association owns and is responsible for the maintenance of any best management practices established pursuant to this chapter.

**REDEVELOPMENT.** Any land-disturbing activity that does not result in a net increase in built-upon area and that provides greater or equal stormwater control to that of the previous development.

**Statutory reference:**

For state law as to definition, see N.C.G.S.143-214.7(a1)(2).

**RUNOFF TREATMENT.** Means that the volume of stormwater runoff generated from all of the built-upon area of a project at build-out during a storm of the required storm depth is treated in one or more primary SCMs or a combination of Primary and Secondary SCMs that provide equal or better treatment.

**Statutory reference:**

For state law as to definition, see 15A NCAC 02H.1002(43).

**RUNOFF VOLUME MATCH.** Means that the annual runoff volume after development shall not be more than ten percent higher than the annual runoff volume before development, except in areas subject to SA waters requirements per Rule .1019 of this Section where runoff volume match means that the annual runoff volume after development shall not be more than five percent higher than the annual runoff volume before development.

**Statutory reference:**

For state law as to definition, see 15A NCAC 02H.1002(44).

**SITE.** The property upon which a development activity takes place.

**SITE PLAN.** A scaled drawing and supporting text showing the relationship

between lot lines and the existing or proposed uses, buildings, or structures on the lot. The site plan may include site-specific details such as building areas, building height and floor area, setbacks from lot lines and street rights-of-way, intensities, densities, utility lines and locations, parking, access points, roads, and stormwater control facilities that are depicted to show compliance with all legally required development regulations that are applicable to the project and the site plan review. A site plan approval based solely upon application of objective standards is an administrative decision and a site plan approval based in whole or in part upon the application of standards involving judgment and discretion is a quasi-judicial decision. A site plan may also be approved as part of a conditional zoning decision.

**STORMWATER.** Means the flow of water which results from precipitation and which occurs immediately following rainfall or a snowmelt.

**Statutory reference:**

For state law as to definition, see N.C.G.S. 143-213(16a).

**STORMWATER SYSTEM.** All engineered stormwater controls and conveyances owned or controlled by a person that drain to the same outfall. A system may be made up of one or more engineered stormwater controls.

**SUBDIVISION.** All divisions of a tract or parcel of land into two or more lots, building sites, or other divisions when any one or more of those divisions is created for the purpose of sale or building development, whether immediate or future, and includes all divisions 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 G.S. 160D-802:

(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 the local government as shown in its subdivision regulations.

(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 or for public transportation system corridors.

(4) The division of a tract in single ownership whose entire area is no greater than 2 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 local government, as shown in its subdivision regulations.

(5) The division of a tract into parcels in accordance with the terms of a probated will or in accordance with intestate succession under Chapter 29 of the General Statutes.

**TIDALLY INFLUENCED STREAM.** The portion of a stream that has a

perennial water surface elevation that is generated by and fluctuates with the water surface elevation in the Neuse River/Pamlico Sound.

#### **§ 53.05 APPLICABILITY AND JURISDICTION; EXCEPTIONS.**

(A) **General.** Beginning with and subsequent to its effective date, this chapter shall be applicable to all development and expansion of development throughout the corporate limits and extraterritorial jurisdiction of the City of Havelock within the Neuse River Basin watershed, including, but not limited to, site plan applications, subdivision applications, and land clearing applications, unless exempt pursuant to this chapter.

(B) The following development activities shall be required to satisfy the procedures and standards set forth in this chapter:

(1) Any land-disturbing activity of greater than one acre of land that involves the construction, expansion, or modification of a facility or structure within a single-family residential district or a mobile home residential district, as those districts are described in Chapter 154; or

(2) Any land-disturbing activity of greater than one-half acre of land that involves the construction, expansion, or modification of a facility or structure within a multi-family residential district, a business district, or an industrial district, as those districts are described in Chapter 154.

(C) For expansion of an existing development, the procedures and standards set forth in this chapter shall apply only to those portions of the development that involve the actual disturbance of land or expansion greater than the size identified in division (B) above.

(D) This chapter shall not apply to:

(1) Existing development, except as provided in division (C) above;

(2) Agriculture;

(3) Mining;

(4) Forestry;

(5) Activities within the property of Marine Corps Air Station Cherry Point;

(6) Single family and duplex residential and related recreational development and expansion of development that disturbs less than one acre;

(7) Commercial, industrial, institutional, multifamily residential or local government development that disturbs less than one half acre and does not expand existing structures on a parcel;

(8) Commercial, industrial, institutional, multifamily residential or local government development that disturbs less than one half acre and expands existing structures on a parcel, but does not result in a cumulative built-upon area for the parcel exceeding twenty-four (24) percent;

(9) Development that disturbs less than the above thresholds are not exempt if such activities are part of a larger common plan of development or sale and the larger common plan exceeds the relevant threshold, even though multiple, separate or distinct activities take place at different times on different schedules.

(10) Development of an individual single-family or duplex residential lot that is not part of a larger common plan of development or sale and does not result in greater than five (5) percent built-upon area on the lot;

(11) Existing development or redevelopment;

(12) Activities subject to requirements of the Neuse River Basin Agriculture Rule, 15A NCAC 02B .0712;

(13) Development or expansion of development with a vested right per the standards of N.C.G.S. 160D-108;

(14) Development or expansion of development for which the permit application was submitted prior to adoption of this chapter is optionally exempt from the provisions of this chapter per the requirements of N.C.G.S. 143-755; or

(15) Any other activities specifically exempted from the provisions of this chapter in any other section of this chapter.

(E) The standards and procedures established by this chapter shall be followed where they differ from the requirements established by Chapters 156 and 158.

(F) No development or expansion until compliance and permit. No development or expansion of development shall occur except in compliance with the provisions of this chapter or unless exempted. No development or expansion of development for which a permit is required pursuant to this City code shall occur except in compliance with the provisions, conditions, and limitations of the permit.

(G) Final approvals, complete applications.

(1) All development and expansion of development projects for which complete and full applications were submitted to the City prior to the effective date of this chapter may be exempted from complying with all provisions of this chapter dealing with the control and/or management of stormwater by the choice of the developer.

(2) A phased development plan shall be deemed complete prior to the



effective date of this chapter if it shows:

(a) For the initial or first phase of development or expansion of development, the type and intensity of use for a specific parcel or parcels, including at a minimum, the boundaries of the project and a subdivision plan that has been approved.

(b) For any subsequent phase of development or expansion of development, sufficient detail so that implementation of the requirements of this chapter to that phase of development would require a material change in that phase of the plan.

### **§ 53.06 DESIGN MANUAL.**

#### (A) Reference to Design Manual.

(1) The City shall use the policy, criteria, and information, including technical specifications and standards, in the State of North Carolina Stormwater Design Manual as the basis for decisions about stormwater permits and about the design, implementation and performance of engineered stormwater controls and other practices for compliance with this chapter.

(2) The Design Manual includes a list of acceptable stormwater treatment practices, including specific design criteria for each stormwater practice. Stormwater treatment practices that are designed, constructed, and maintained in accordance with these design and sizing criteria will be presumed to meet the minimum water quality performance standards of the Neuse River Basin Rules.

(B) Changes to standards and specifications. The Design Manual may be updated and expanded from time to time, based on advancements in technology and engineering, or changes to State Minimum Design Criteria. If the standards, specifications, guidelines, policies, criteria, or other information in the Design Manual are amended subsequent to the submittal of an application for approval pursuant to this chapter but prior to approval, the applicant shall have the choice of using the new Design Manual in reviewing the application and in implementing this chapter with regard to the application, or using the old Design Manual.

(C) Whenever an applicant proposes to utilize a practice or practices not designed and constructed in accordance with the criteria and specifications in the Design Manual, the applicant shall have the burden of demonstrating that the practice(s) will satisfy the minimum water quality and quantity performance standards of this chapter. The applicant must provide the documentation, calculations, and examples necessary for the City to make a determination.

### **§ 53.07 RELATIONSHIP TO OTHER LAWS, REGULATIONS AND PRIVATE AGREEMENTS.**

(A) Conflict of Laws. This chapter is not intended to modify or repeal any other ordinance, rule, regulation, or other provision of law. The requirements of this chapter

are in addition to the requirements of any other ordinance, rule, regulation, or other provision of law. Where any provision of this chapter imposes restrictions different from those imposed by any other ordinance, rule, regulation, or other provision of law, whichever provision is more restrictive or imposes higher protective standards for human or environmental health, safety, and welfare shall control.

(B) *Private Agreements.* This chapter is not intended to revoke or repeal any easement, covenant, or other private agreement. However, where the regulations of this chapter are more restrictive or impose higher standards or requirements than such an easement, covenant, or other private agreement, the requirements of this chapter shall govern. Nothing in this chapter shall modify or repeal any private covenant or deed restriction, but such covenant or restriction shall not legitimize any failure to comply with this chapter. In no case shall the City be obligated to enforce the provisions of any easements, covenants, or agreements between private parties.

## **ADMINISTRATION AND PROCEDURES**

### **§ 53.08 REVIEW PROCEDURES.**

(A) Permit(s) required; Must Apply for permit(s).

(1) A State of North Carolina construction stormwater permit is required for all development and expansion of development unless exempt pursuant to this chapter. Approval must be obtained from the North Carolina Department of Environmental Quality (Department) prior to submitting an application for a City land clearing permit. A Coastal Area Management Act (CAMA) permit may also be required. A CAMA permit is obtained directly from the State of North Carolina Division of Coastal Management prior to submitting an application for a City land clearing permit. A City land clearing permit may only be issued subsequent to a properly submitted and reviewed permit application, pursuant to this section.

(2) The applicant must submit a complete set of site plans and an operations and maintenance plan for all post-construction engineered stormwater controls. The permit application(s) shall detail how post-development stormwater runoff will be controlled and managed and how the proposed project will meet the requirements of this chapter. Supporting calculations shall be provided for review and approval to the City Director of Planning and Inspections with the development plans.

(B) Effect of Permit(s)

(1) The state's construction stormwater permit and City's land clearing permit shall govern the installation and construction of stormwater management and control practices on the site, including engineered stormwater controls and other elements of site design for stormwater management.

(2) The permits are intended to provide a mechanism for the review, approval, and inspection of the approach to be used for the management and control of stormwater for the development site consistent with the requirements of this chapter, whether the approach consists of engineered stormwater controls or other techniques

such as low-impact or low-density design. The permit(s) do not continue in existence indefinitely after the completion of the project; rather, compliance after project construction is assured by the maintenance provisions of this chapter.

### **§ 53.09 SITE PLANS.**

(A) *Qualifications.* All site plans shall be prepared by a qualified registered North Carolina professional engineer, surveyor, soil scientist or landscape architect, and the engineer, surveyor, soil scientist or landscape architect shall perform services only in their area of competence, and shall verify that the designs and plans are sufficient to comply with applicable standards and policies found in the Design Manual, and that the designs and plans ensure compliance with this chapter.

#### (B) *As-Built Plans, Inspection and Final Approval.*

(1) Upon completion of a project, and before a certificate of occupancy shall be granted, the applicant shall certify that the completed project is in accordance with the approved plans and designs, and shall submit actual “as built” plans for all stormwater management facilities or practices after final construction is completed.

(2) The plans shall show the final design specifications for all stormwater management facilities and practices and the field location, size, depth, and planted vegetation of all measures, controls, and devices, as installed. The designer of the stormwater management measures and plans shall certify, under seal, that the as-built stormwater measures, controls, and devices are in compliance with the approved plans and designs and with the requirements of this chapter.

(3) The City shall have the authority, upon presentation of proper credentials, to enter and inspect any land, building, structure, or premises to ensure compliance with this chapter. A final inspection and approval by the City shall occur before the release of any performance securities.

(C) *Enforcement and Violations.* Enforcement is authorized by N.C.G.S. 143-215.6A (civil penalties), N.C.G.S. 143-215.6B (criminal penalties), and N.C.G.S. 143-215.6C (injunctive relief). If the property owner fails to comply with the requirements of this chapter, the City may seek the equitable remedies, including injunctive relief and order of abatement, as authorized by N.C.G.S. 160A-175.

### **§ 53.10 APPEALS.**

#### (A) *Right of Appeal.*

(1) Except as provided in N.C.G.S. 160D-1403.1, any aggrieved *person* affected by any decision, order, requirement, or determination relating to the interpretation or application of this chapter may file an appeal to the Board of Adjustment within 30 days from receipt of the notice of a determination.

(2) Procedures for appeals are set forth in Chapter 159.01.

## § 53.11 VARIANCES.

(A) Any person may petition the City for a variance granting permission to use the person's land in a manner otherwise prohibited by this chapter.

(B) Variance procedures are set forth in Chapter 159.02(C).

## **STORMWATER QUALITY AND QUANTITY**

### **§ 53.15 ~~GENERALLY.~~ GENERAL STANDARDS.**

(A) This chapter identifies procedures and standards that shall apply to development activities in addition to any other local, state, or federal requirements. The intent of this chapter is to establish standards and procedures to satisfy ~~15A-NCAC 2B.0235 Neuse River Basin Nutrient Sensitive Waters Management Strategy: Basinwide Stormwater Requirements~~ 15A NCAC 2B.0700–Nutrient Management Strategy Rules for Surface Water, sections 2B.0701 Nutrient Strategies Definitions through 2B.0711 Neuse Nutrient Strategy: Stormwater.

(B) All projects to which this chapter applies shall comply with the standards of this section. The approval of the site plans and land clearing permit shall require an enforceable restriction on property usage that runs with the land, such as a recorded deed restriction or protective covenants, to ensure that future development and expansion of development maintains the site consistent with the approved project plans for built upon area and engineered stormwater controls.

~~(1989 Code, § 17-4) (Ord. 01-02, passed 4-23-2001)~~

### **§ 53.16 ~~ALLOWABLE ANNUAL TOTAL NITROGEN (TN) LOADING STANDARDS.~~ NITROGEN LOADING RATE TARGETS.**

~~(A) A property owner undertaking any development activities must achieve an annual TN loading level as provided in Appendix A and must demonstrate that measures have been taken to satisfy Appendix A.~~

~~(B) Standard tables are provided in the appendices at the end of this chapter to provide a uniform means of verifying that the particular development activity satisfies the standards set forth in Appendix A. The appropriate tables shall be completed by the property owner and shall be approved by the City Director of Planning and Inspections prior to the approval of any building permit or development plan. All BMPs shall be designed by a North Carolina registered professional with qualifications appropriate for the type of system required. For purposes of this section, registered professional means a professional engineer or a landscape architect (to the extent that G.S. Ch. 89A allows) or a land surveyor (to the extent that the design represents incidental drainage within a subdivision, as provided in G.S. § 89C-3(7)).~~

~~(1989 Code, § 17-5) (Ord. 01-02, passed 4-23-2001)~~

The purpose of the requirements in this section is to reduce the nitrogen loads

from stormwater runoff within the Neuse River Basin, by implementing the Neuse Nutrient Strategy as defined in 15A NCAC 02B. 0700 through .0711. The Neuse stormwater rules apply in all areas draining to nutrient sensitive waters within the basin, and to all surface waters within the City and its extraterritorial jurisdiction.

(A) Proposed development projects that would replace or expand existing structures and result in a net increase in built-upon area shall meet one of two options for the project less any existing built-upon area. The project shall meet either:

(1) A nitrogen stormwater loading rate target of 3.6 pounds per acre per year (lb/ac/yr) for the Neuse River Basin; or

(2) Meet “runoff volume match” as defined in this chapter.

(B) The developer shall determine the nitrogen load and loading rate generated from the project area without engineered stormwater controls and determine the needed nitrogen load reduction to meet nutrient targets by using the approved accounting tool.

(C) The nitrogen loading standards in this chapter are supplemental to, not replacements for, stormwater standards otherwise required by federal, state or local law, including without limitation any riparian buffer requirements

### **§ 53.17 CALCULATING ANNUAL TOTAL NITROGEN LOADING. BUILT UPON AREA STANDARDS.**

~~(A) Appendix B provides procedures for calculating the annual TN loading rate from development activity. Appendix B must be completed and submitted to the City Director of Planning and Inspections as required in § 53.16.~~

~~(B) Appendix C describes the annual TN loading rates for various land uses within the City.~~

~~(1989 Code, § 17-6) (Ord. 01-02, passed 4-23-2001)~~

(A) Project density is used for determining stormwater requirements. The project area used for nutrient calculation and stormwater requirements includes the site area less any existing built-upon area (BUA). The project density is the amount of built-upon area subject to this chapter at project completion divided by the project area. Project density shall be calculated according to 15A NCAC 2H .1003(1) and as indicated in the Design Manual.

(B) A project is categorized as either high density or low density based on the percent BUA, and the density treatment threshold varies depending upon the project’s location and proximity to SA waters, which are classified as tidal, salt waters with

designated use of shellfishing (15A NCAC 02B. 0221). SA waters are more sensitive and are subject to higher standards.

<u>Receiving Water Classification</u>	<u>Low Density Projects</u>	<u>High Density Projects</u>	<u>Design Storm</u>	<u>Special Provisions</u>
<u>SA – tidal salt waters *</u> <u>SA – HQW</u> <u>SA – ORW</u>	<u>&lt; 12 % BUA</u>	<u>&gt; 12 % BUA</u>	<u>1-year, 24-hour storm</u>	<u>Maximum 25 % BUA within 575 ft of SA-ORW waters</u>
<u>Other Coastal County Waters</u>	<u>&lt; 24 % BUA</u>	<u>&gt; 24 % BUA</u>	<u>1.5 inch storm</u>	<u>None</u>

\* Per State of North Carolina Surface Water Classifications, all SA tidal salt waters are also high quality waters (HQW) by definition. A subset of SA waters are classified as outstanding resource waters (ORW).

(C) The City is subject to the Coastal Counties Rule, as set forth in 15A NCAC 02H .1019. The Coastal Rule applies to projects that meet one of the following criteria:

(1) Nonresidential projects that propose to cumulatively add 10,000 square feet or more of built-upon area; or

(2) Residential projects that are within ½ mile of and draining to SA waters, and propose to cumulatively add more than 10,000 square feet of built-upon area, and result in a percentage built-upon area greater than 12 percent (high-density).

(D) All other projects not meeting the criteria in (C) will meet the minimum standards described in 15A NCAC 02H .1003.

**§ 53.18 NITROGEN REDUCTION CALCULATIONS FOR BMPs. METHODS TO MEET NUTRIENT CONTROL REQUIREMENTS.**

~~(A) The allowable BMPs, their associated nitrogen reduction capability, and their corresponding resource for design standards are shown in Appendix D. A description of BMPs to be used and supporting design calculations shall be submitted with a completed Appendix B as required in § 53.17.~~

~~(B) Appendix E provides procedures for calculating the annual TN loading rates from a BMP. Appendix E shall be completed for each BMP that is used to satisfy the standards set forth in Appendix A. A completed Appendix E shall be submitted with a completed Appendix B as required in § 53.17.~~

~~(1989 Code, § 17-7) (Ord. 01-02, passed 4-23-2001)~~

(A) Projects subject to this chapter shall meet nitrogen loading targets through a combination of the following methods:

(1) any combination of engineered stormwater controls treating runoff on the site;

(2) in an approved offsite regional engineered stormwater control; or

(3) through the acquisition of permanent nutrient offset credits.

(B) The developer shall calculate the nitrogen reduction provided by these controls using the approved accounting tool.

(C) Proposed development projects may utilize an offsite regional engineered stormwater control, dedicated to treating an area encompassing the project, provided the engineered stormwater control is designed to meet all applicable requirements.

(D) Where a project does not meet the nitrogen target loading rate, the developer may meet nitrogen reduction needs for the project through the use of permanent nutrient offset credits. A project with less than 24 percent BUA may meet nutrient rate targets entirely by nutrient offset credits but must also meet low density stormwater requirements set forth in 15A NCAC 02H.1003.

(E) Proposed development undertaken by a local government solely as a public road expansion or public sidewalk project, or proposed development subject to the jurisdiction of the Surface Transportation Board, may meet nitrogen reduction needs for the project entirely through the use of permanent nutrient offset credits pursuant to the Nutrient Offset Credit Trading Rule, 15A NCAC 02B .0703.

### **§ 53.19** **OFFSET PAYMENT CALCULATIONS** CONTROL AND TREATMENT OF RUNOFF VOLUME.

~~(A) Appendix F provides the procedures for calculating offset payments for development activities in single-family residential districts and mobile home residential districts, as such districts are described in Chapter 155, and determines how much offset payment, if any, is required. A completed Appendix F must be submitted with a completed Appendix B for any development activity in the districts if the annual TN loading rate determined by Appendix E is greater than 3.6 lbs/ac/yr.~~

~~—(B) Appendix G provides the procedures for calculating offset payments for development activities in multi-family residential districts, business districts, or industrial districts, as those districts are described in Chapter 155, and determines how much offset payment, if any, is required. A completed Appendix G must be submitted with a completed Appendix B for any development activity in the districts if the annual TN loading rate determined by Appendix E is greater than 3.6 lbs/ac/yr.~~

~~—(C) The property owner is required to provide the City Director of Planning and Inspections with a certified letter from the North Carolina Department of Environment and Natural Resources, Division of Water Quality, as evidence that the offset fee has been paid in full prior to the approval of any subdivision plat or building permit.~~

~~(D) When a development activity consists of multiple uses, the property owner must use Appendices F and G above or generate table similar to Appendices F and G. The property owner must demonstrate to the City Director of Planning and Inspections that the development activity satisfies the standards set forth in Appendix A.~~

~~(1989 Code, § 17-8) (Ord. 01-02, passed 4-23-2001)~~

(A) The requirement for runoff volume match serves to control and treat the runoff volume generated from the built-upon area, and helps to maintain the pre-development hydrology of the project site. Within the Coastal Counties, the definition of runoff volume match depends upon the project location:

(1) For projects that drain to SA waters, runoff volume match means the annual runoff volume after development shall not be more than five percent higher than the annual runoff before development

(2) For projects that drain to other Coastal County waters, runoff volume match means the annual runoff volume after development shall not be more than ten percent higher than the annual runoff before development.

(B) Within the Coastal Counties, the design storm used to determine the runoff volume also depends upon the project location:

(1) For projects that drain to SA waters, the design storm is the one-year, 24-hour storm.

(2) For projects that drain to other Coastal County waters, the design storm depth is 1.5 inches.

(C) Projects meeting the definition of runoff volume match do not need to further address nutrient export or treatment.

(D) All projects shall meet the stormwater system minimum design requirements set forth in 15A NCAC 02H.1003. All engineered stormwater controls will meet the standards set in the Design Manual and the State's Minimum Design Criteria, 15A NCAC 02H.1050 through .1062.

(E) All project designs shall incorporate vegetated setbacks, dispersed flow, vegetated conveyances and curb outlet systems.

(F) High-density projects shall be designed to control and treat the volume of runoff generated from all built-upon area in one or more Primary SCMs, using the appropriate design storm based on the project location and receiving water. High-density projects that drain to SA waters are subject to more stringent standards as indicated in the Design Manual.

(G) Low-density projects are not required to be equipped with engineered stormwater controls in exchange for limiting the built-upon area, maximizing dispersed flow and ensuring that stormwater conveyances are vegetated.



**§ 53.20 ~~RECORDING OF BMPs~~ USE OF PERMANENT NUTRIENT OFFSET CREDITS.**

~~A legal description of the area containing any BMPs shall be prepared and filed as a separate deed with the Craven County Register of Deeds within thirty (30) business days of completion of the BMPs, along with any easements necessary for general access to the BMPs. The deeded area shall include sufficient area to perform inspections, maintenance, repairs, and reconstruction of the BMPs. The deeded area shall include, but is not limited to, detention ponds, vegetative filters, all pipes and water control structures, berms, and dikes. For those measures where stormwater temporarily or permanently ponds, any easement shall be located outside of the anticipated one-hundred-year (100) flood elevation. Any BMP must be located either on the same property on which the development activity occurs or on an adjoining property with a recorded BMP easement of the owner of the adjoining property.~~

~~(1989 Code, § 17-9) (Ord. 01-02, passed 4-23-2001)~~

(A) Permanent nutrient offset credits allowed by this chapter can be acquired pursuant to N.C.G.S. 143-214.26 and shall meet the requirements of the Nutrient Offset Credit Trading Rule, 15A NCAC 02B .0703. Nutrient offset credits are obtained in units of pounds per year of nitrogen for the Neuse River Basin.

(B) Sufficient permanent nutrient offset credits to meet project nutrient reduction needs not provided by engineered stormwater controls serving the project shall be acquired prior to approval of the development plan. The developer shall provide proof of credit acquisition to the City as part of the site plan submittal. The City shall issue an approval letter for the development that documents the needed nitrogen credits and where the development is located relative to the Neuse River Basin Rules' geographic requirements.

(C) A developer subject to this chapter may acquire permanent nutrient offset credits through one of the following methods:

(1) Through a private nutrient bank;

(2) Through offsite offset provided by the developer and approved by the City;

(3) Through payment into the State of North Carolina Riparian Buffer Restoration Fund established in N.C.G.S. 143-214.21 and managed by the Division of Water Resources (Division).

(D) Excess permanent nutrient offset credits acquired beyond what is required for the development may not be applied to any other development.

(E) Credits may only be acquired from an offset project located within the same hydrologic area as the proposed development.

**§ 53.21 ~~PEAK FLOW REDUCTION.~~ RECORDING OF BMPs.**

~~Development activities shall not produce an increase in peak discharge leaving the development activity site from the pre-development conditions for the one-year, twenty-four hour (24) storm (3.9 inches), unless one of the following applies:~~

~~(A) The increase in peak flow between pre- and post-development does not exceed 10% at the point(s) of discharge;~~

~~(B) The development activity is less than 15% impervious surface and the runoff from the impervious surface drains through pervious surfaces to the maximum extent practical; or~~

~~(C) The point(s) of discharge outfalls directly into a tidally influenced stream and it is demonstrated that the outfall is adequately protected from erosion.~~

~~(1989 Code, § 17-10) (Ord. 01-02, passed 4-23-2001)~~

(A) A legal description of the area containing any engineered stormwater control(s) shall be prepared and filed as a separate deed with the Craven County Register of Deeds within thirty (30) business days of completion of the engineered stormwater control(s), along with any easements necessary for general access to the engineered stormwater control(s). The deeded area shall include sufficient area to perform inspections, maintenance, repairs, and reconstruction of the engineered stormwater control(s). The deeded area shall include, but is not limited to, detention ponds, vegetative filters, all pipes and water control structures, berms, and dikes. For those measures where stormwater temporarily or permanently ponds, any easement shall be located outside of the anticipated one hundred-year (100) flood elevation. Any engineered stormwater control must be located either on the same property on which the development activity occurs or on an adjoining property with a recorded engineered stormwater control easement of the owner of the adjoining property.

(B) Deed Recordation and indications on plat. The applicable Operations and Maintenance Agreement pertaining to every engineered stormwater control shall be referenced on the final plat and shall be recorded with the county Register of Deeds upon final plat approval. If no subdivision plat is recorded for the site, then the Operations and Maintenance Agreement shall be recorded with the County Register of Deeds so as to appear in the chain of title of all subsequent purchasers under generally accepted searching principles.

## **RIPARIAN BUFFERS**

### **§ 53.35 DELINEATION.**

Property owners undertaking any development activity shall demonstrate that the development activity does not affect riparian buffer zones as defined in ~~15A-~~

~~NCAC 2B.0233 Neuse River Riparian Buffer Rule~~ [15A NCAC 2B.0610–Managing Activities Within Riparian Buffers: Definitions and 15A NCAC 2B.0700–Nutrient Management Strategy Rules for Surface Water, sections 2B.0701 Nutrient Strategies Definitions through 2B.0711 Neuse Nutrient Strategy: Stormwater](#). The riparian buffer shall be delineated on the subdivision plat, property boundary, or site plan for the development activity along with any limits imposed on the proposed development activity.

(1989 Code, § 17-12) (Ord. 01-02, passed 4-23-2001)

### **§ 53.36 RIPARIAN BUFFERS; GENERALLY.**

The City will not approve any development activity within the riparian buffer as defined in ~~15A NCAC 2B.0233–Neuse River Riparian Buffer Rule~~ [15A NCAC 2B.0714– Neuse Nutrient Strategy: Maintenance of Existing Riparian Buffer](#) unless one of the following is obtained from the North Carolina Department of Environment and Natural Resources, Division of Water Quality (NCDWQ):

(A) Approval of the development activity from NCDWQ. This may include a permit or authorization certificates for an allowable use within the riparian buffer;

(B) An opinion from NCDWQ that vested rights have been established for the development activity;

(C) An on-site determination from NCDWQ that surface waters or coastal wetlands are not present; or

(D) A letter from NCDWQ documenting that a variance has been approved for the development activity.

(1989 Code, § 17-13) (Ord. 01-02, passed 4-23-2001)

## **MAINTENANCE**

### **§ 53.50 MAINTENANCE POLICY.**

(A) Unless otherwise approved, ownership of engineered stormwater controls established pursuant to this chapter shall remain with the property owner. The property owner shall be responsible for proper maintenance and ~~performance of BMPs~~. [operate it so as to preserve and continue its function in controlling stormwater quality and quantity at the degree or amount of function for which the engineered stormwater control was designed.](#)

~~(B) The City shall perform inspections of all BMPs at least annually to verify that the property owner is following the maintenance plan approved by the City Director of Planning and Inspections as provided in § 53.53. In conducting these inspections, the City shall verbally notify the property owner of the deficiencies and establish an acceptable time for a follow-up inspection. If the follow-up inspection reveals that~~

~~maintenance is still required, the City will notify the property owner in writing and establish a reasonable deadline for the maintenance to be performed. If the property owner does not complete the required maintenance in the time specified, the City may seek the equitable remedies, including injunctive relief and order of abatement, as authorized by G.S. § 160A-175, to accomplish the required maintenance.~~

~~(1989 Code, § 17-14) (Ord. 01-02, passed 4-23-2001)~~

(B) Annual maintenance inspection and report. The person responsible for maintenance of any engineered stormwater control installed pursuant to this chapter shall submit to the City an inspection report from a qualified professional certified by the North Carolina Cooperative Extension Service for stormwater treatment practice inspection and maintenance. The inspection report shall contain all of the following:

- (1) The name and address of the land owner;
- (2) The recorded book and page number of the lot of each engineered stormwater control;
- (3) A statement that an inspection was made of all engineered stormwater controls;
- (4) The date the inspection was made;
- (5) A statement that all inspected engineered stormwater controls are performing properly and are in compliance with the terms and conditions of the approved maintenance agreement required by this chapter; and
- (6) The original signature and seal of the engineer, surveyor, or landscape architect.

(C) All inspection reports shall be on forms supplied by the City. An original inspection report shall be provided to the Director of Planning and Inspections beginning one year from the date of as-built certification and each year thereafter on or before the date of the as-built certification.

**§ 53.51 MAINTENANCE AGREEMENT. OPERATION AND MAINTENANCE PLANS.**

(A) Any development activity for which BMPs are used shall be the subject of a maintenance agreement executed by the property owner with the City prior to the approval of a building permit or development plan.

(B) The maintenance agreement shall contain, at a minimum, the following provisions:

(1) Acknowledgment that the property owner shall continuously operate and maintain the BMPs;

(2) Granting to the City a right of entry to inspect, monitor, maintain, repair, and reconstruct the BMPs if the property owner fails to do so. This statement also shall acknowledge that any inspection or work done on the BMPs by the city does not create any liability for the city for or as a result of the BMPs;

(3) Acknowledging that the City shall not be liable to any private person or entity for the condition or operation of the BMPs; and

(4) Allowing the City to recover from the property owner any and all costs the City expends to maintain or repair the BMPs or to correct any operational deficiencies. Failure to pay to the City all of its expended costs, after forty-five-days' (45) written notice, shall constitute a breach of the maintenance agreement. The City shall thereafter be entitled to bring an action against the property owner or to foreclose upon any lien authorized by law against the property, or both, in the case of a deficiency. Interest, collection costs, and attorneys' fees shall be added to the recovery.

(1989 Code, § 17-15) (Ord. 01-02, passed 4-23-2001)

(A) The property owner undertaking any development activity for which engineered stormwater controls are used shall submit an Operation and Maintenance Plan (O&M Plan) with any development plans submitted to the Director of Planning and Inspections for review and approval.

(B) There shall be an O&M Plan for every engineered stormwater control. The O&M Plan shall specify all operation and maintenance work necessary to maintain the proper function of all engineered stormwater control components, including the stormwater conveyance system, perimeter of the device, inlet(s), pretreatment measures, main treatment area, outlet, vegetation, and discharge point.

(C) The O&M Plan shall require the owner to maintain, repair and, if necessary, reconstruct the engineered stormwater controls, and shall state the terms, conditions, and schedule of maintenance for the engineered stormwater controls. The O&M Plan shall specify methods to be used to maintain or restore the engineered stormwater controls to design specifications in the event of failure.

(D) The O&M Plan shall be signed by the owner and notarized. The owner shall keep maintenance records and these shall be available upon request by the City of Havelock.

(E) The maintenance/monitoring operations include, but are not limited to, the following:

(1) Routine maintenance measures such as grass mowing, trash removal, and other general measures;

(2) Checking of grass cover and seeding exposed areas;

(3) Checking sediment forebay and removal of sediment when maximum depth is reached;

(4) Checking outlet protection for erosion or debris blockage and performing proper repairs;

(5) Checking outlet structure, removing any debris blockage, or repairing any damage;

(6) Checking a BMP after large storm events for structural damage or erosion;

(7) Checking underdrain for proper drainage; and

(8) Checking vegetation required that provide nutrient removal and identifying when vegetation should be harvested, cut, or replanted to maintain a healthy stand.

**§ 53.52 ~~STANDARDS FOR DETENTION PONDS.~~ OPERATION AND MAINTENANCE AGREEMENT.**

~~(A) *Generally.* It is the intent of this section to provide fencing standards for all stormwater detention ponds required by the State of North Carolina in an effort to mitigate any safety and aesthetic issues they may present. The enforcement of these standards will be through the City's zoning and general police powers.~~

~~(B) *Fencing required.* Fencing shall be provided around the perimeter of all stormwater detention ponds located within the corporate limits and its extraterritorial jurisdiction. The required fence shall be no less than four feet in height. It shall be a steel or aluminum chain-link fence with black or green vinyl coating. All fences shall provide securable entrances to allow access for maintenance personnel and equipment, and to provide for the safety of citizens.~~

~~(C) *Applicability to existing detention ponds.* The existence of detention ponds within the corporate limits that do not provide for adequate fencing surrounding the ponds presents a threat to the safety of the City's citizens. Therefore, all detention ponds located within the corporate limits existing at the time of adoption of this section shall, within one year after the effective date of this subchapter, be altered to comply with the provisions of this section.~~

~~(1989 Code, § 17-16) (Ord. 05-03, passed 5-23-2005)~~

(A) Prior to the conveyance or transfer of any lot or building site to be served by engineered stormwater controls pursuant to this chapter, and prior to issuance of any permit for development requiring engineered stormwater controls pursuant to this chapter, the applicant or owner of the site must enter into an Operation and Maintenance Agreement (O&M Agreement) with the City of Havelock.

(B) The O&M Agreement shall require the applicant or owner to maintain, repair, or reconstruct the engineered stormwater controls in accordance with the approved design plans and the Operation and Maintenance Plan. The O&M Agreement shall be binding on all subsequent owners of the site, portions of the site, and lots, or parcels served by the engineered stormwater control. Until the transference of all property, sites, or lots served by the engineered stormwater control, the original owner or applicant shall have primary responsibility for carrying out the provisions of the O&M Agreement.

(C) The O&M Agreement shall grant to the City a right of entry in the event that the City has reason to believe it has become necessary to inspect, monitor, maintain, repair, or reconstruct the engineered stormwater control; however, in no case shall the right of entry, of itself, confer an obligation on the City to assume responsibility for the engineered stormwater controls.

(D) The O&M Agreement must be approved by the City prior to development plan approval, and it shall be referenced on the final plat and shall be recorded with the county Register of Deeds upon final plat approval. A copy of the recorded O&M Agreement shall be submitted to the City within fourteen (14) days following its recordation.

(E) The O&M Agreement shall acknowledge that the City shall not be liable to any private person or entity for the condition or operation of the engineered stormwater controls; and

(F) The O&M Agreement shall allow the City to recover from the property owner any and all costs the City expends to maintain or repair the engineered stormwater controls or to correct any operational deficiencies. Failure to pay to the City all of its expended costs, after forty-five-days' (45) written notice, shall constitute a breach of the maintenance agreement. The City shall thereafter be entitled to bring an action against the property owner or to foreclose upon any lien authorized by law against the property, or both, in the case of a deficiency. Interest, collection costs, and attorneys' fees shall be added to the recovery.

### **§ 53.53 MAINTENANCE PLANS. SPECIAL REQUIREMENTS FOR HOMEOWNERS' AND OTHER ASSOCIATIONS.**

~~(A) The property owner undertaking any development activity for which BMPs are used shall submit a maintenance plan with any development plans submitted to the City Director of Inspection for review and approval. The maintenance plan shall identify and describe the maintenance/monitoring operations required to maintain the proper function of the BMPs. The description of maintenance/ monitoring operations shall be specific to each of the BMPs on the site.~~

~~(B) The maintenance/monitoring operations include, but are not limited to, the following:~~

~~(1) Routine maintenance measures such as grass mowing, trash removal, and other general measures;~~

~~(2) Checking of grass cover and seeding exposed areas;~~

~~(3) Checking sediment forebay and removal of sediment when maximum depth is reached;~~

~~(4) Checking outlet protection for erosion or debris blockage and performing proper repairs;~~

~~(5) Checking outlet structure, removing any debris blockage, or repairing any damage;~~

~~(6) Checking a BMP after large storm events for structural damage or erosion;~~

~~(7) Checking underdrain for proper drainage; and~~

~~(8) Checking vegetation required that provide nutrient removal and identifying when vegetation should be harvested, cut, or replanted to maintain a healthy stand.~~

~~(1989 Code, § 17-17) (Ord. 01-02, passed 4-23-2001)~~

(A) For all engineered stormwater controls required pursuant to this chapter and that are to be or are owned and maintained by a homeowners' association, property owners' association, or similar entity, the required O&M Agreement shall include all of the following provisions:

(1) Acknowledgment that the association shall continuously operate and maintain the *engineered* stormwater controls according to the specifications laid out in the Operation and Maintenance Plan.

(2) Establishment of an escrow account, which can be spent solely for sediment removal, structural, biological or vegetative replacement, major repair, or reconstruction of the engineered stormwater controls. If engineered stormwater controls are not performing adequately or as intended or are not properly maintained, the City in its sole discretion, may remedy the situation, and in such instances the City shall be fully reimbursed from the escrow account. Escrowed funds may be spent by the association for sediment removal, structural, biological or vegetative replacement, major repair, and reconstruction of the engineered stormwater controls, provided that the City shall first consent to the expenditure.

(3) Both developer contribution and annual sinking funds shall fund the escrow account. Prior to plat recordation or issuance of construction permits, whichever shall first occur, the developer shall pay into the escrow account an amount equal to



fifteen (15) percent of the initial construction cost of the engineered stormwater controls. Two-thirds (2/3) of the total amount of sinking fund budget shall be deposited into the escrow account within the first five (5) years and the full amount shall be deposited within ten (10) years following initial construction of the engineered stormwater controls. Funds shall be deposited each year into the escrow account. A portion of the annual assessments of the association shall include an allocation into the escrow account. Any funds drawn down from the escrow account shall be replaced in accordance with the schedule of anticipated work used to create the sinking fund budget.

(4) The percent of developer contribution and lengths of time to fund the escrow account may be varied by the City depending on the design and materials of the engineered stormwater controls.

(5) Granting to the City a right of entry to inspect, monitor, maintain, repair, and reconstruct engineered stormwater controls.

(6) Allowing the City to recover from the association and its members any and all costs the City expends to maintain or repair the engineered stormwater controls or to correct any operational deficiencies. Failure to pay the City all of its expended costs, after forty-five days written notice, shall constitute a breach of the agreement. In case of a deficiency, the City shall thereafter be entitled to bring an action against the association and its members to pay, or foreclose upon the lien hereby authorized by the agreement against the property, or both. Interest, collection costs, and attorney fees shall be added to the recovery.

(7) A statement that this agreement shall not obligate the City to maintain or repair any engineered stormwater controls, and the City shall not be liable to any person for the condition or operation of engineered stormwater controls.

(8) A statement that this agreement shall not in any way diminish, limit, or restrict the right of the City to enforce any of its chapters as authorized by law.

(9) A provision indemnifying and holding harmless the City for any costs and injuries arising from or related to the engineered stormwater controls, unless the City has agreed in writing to assume the maintenance responsibility for the engineered stormwater controls and has accepted dedication of any and all rights necessary to carry out that maintenance.

#### **§ 53.54 STANDARDS FOR DETENTION PONDS.**

(A) Generally. It is the intent of this section to provide fencing standards for all stormwater detention ponds required by the State of North Carolina in an effort to mitigate any safety and aesthetic issues they may present. The enforcement of these standards will be through the City's zoning and general police powers.

(B) Fencing required. Fencing shall be provided around the perimeter of all stormwater detention ponds located within the corporate limits and its extraterritorial jurisdiction. The required fence shall be no less than four feet in height. It shall be a steel or aluminum chain link fence with black or green vinyl coating. All fences shall

provide securable entrances to allow access for maintenance personnel and equipment, and to provide for the safety of citizens.

(C) *Applicability to existing detention ponds.* The existence of detention ponds within the corporate limits that do not provide for adequate fencing surrounding the ponds presents a threat to the safety of the City's citizens. Therefore, all detention ponds located within the corporate limits existing at the time of adoption of this section shall, within one year after the effective date of this subchapter, be altered to comply with the provisions of this section.

#### **§ 53.55 INSPECTION PROGRAM.**

(A) The City shall have the authority, upon presentation of proper credentials, to enter and inspect any land, building, structure, or premises to ensure compliance with this chapter.

(B) Inspections and inspection programs by the City may be conducted or established on any reasonable basis, including but not limited to routine inspections; random inspections; inspections based upon complaints or other notice of possible violations; and joint inspections with other agencies inspecting under environmental or safety laws. Inspections may include, but are not limited to, reviewing maintenance and repair records; sampling discharges, surface water, groundwater, and material or water in the engineered stormwater controls; and evaluating the condition of engineered stormwater controls.

(C) If the owner or occupant of any property refuses to permit such inspection, the City shall proceed to obtain an administrative search warrant pursuant to N.C.G.S. 15-27.2 or its successor. No person shall obstruct, hamper or interfere with the City inspector while carrying out his or her official duties.

#### **§ 53.56 RECORDS OF INSTALLATION AND MAINTENANCE ACTIVITIES.**

The owner of each engineered stormwater control shall keep records of inspections, maintenance, and repairs for at least five years from the date of creation of the record and shall submit the same upon reasonable request to the City.

#### **§ 53.57 NUISANCE.**

The owner of each engineered stormwater control, whether engineered stormwater control or non-engineered stormwater control, shall maintain it so as not to create or result in a nuisance condition.

#### **§ 53.58 MAINTENANCE EASEMENT.**

Every engineered stormwater control and its associated maintenance accesses on privately owned land, except for those located on single family residential lots, installed pursuant to this chapter shall be made accessible for adequate maintenance and repair by a permanent maintenance easement. The easement shall be recorded and its terms shall specify who may make use of the easement and for what purposes.

The engineered stormwater control will be shown and labeled within the easement.

## ~~APPENDIX A: NITROGEN LOADING REQUIREMENTS~~

<del><i>Single-Family and Mobile Home Residential</i></del>	<del><i>Multi-Family, Business, and Industrial</i></del>
<del>If the computed annual TN loading rate is less than 6.0 lbs/ac/yr, then the property owner may either:</del>	<del>If the computed annual TN loading rate is less than 10.0 lbs/ac/yr, then the property owner may either:</del>
<del>1. Install Best Management Practices (BMPs) to remove enough nitrogen to bring the annual TN loading rate of the development down to 3.6 lbs/ac/yr;</del>	<del>1. Install BMPs to remove enough nitrogen to bring the annual TN loading rate of the development down to 3.6 lbs/ac/yr;</del>
<del>2. Pay a one-time offset payment of \$850.50/lb/ac to bring the annual TN loading rate down to the 3.6 lbs/ac/yr; or</del>	<del>2. Pay a one-time offset payment of \$850.50/lb/ac to bring the annual TN loading rate down to the 3.6 lbs/ac/yr; or</del>
<del>3. Do a combination of BMPs and offset payment to achieve a 3.6 lbs/ac/yr annual TN loading rate.</del>	<del>3. Do a combination of BMPs and offset payment to achieve a 3.6 lbs/ac/yr annual TN loading rate.</del>
<del>If the computed annual TN loading rate is greater than 6.0 lbs/ac/yr, then the property owner must use on-site BMPs to bring the development's annual TN loading rate down to 6.0 lbs/ac/yr. Then, the property owner may use one of the three reduction options above to achieve the reductions between 6.0 and 3.6 lbs/ac/yr.</del>	<del>If the computed annual TN loading rate is greater than 10.0 lbs/ac/yr, then the property owner must use on-site BMPs to bring the development's annual TN loading rate down to 10.0 lbs/ac/yr. Then, the property owner may use one of the three reduction options above to achieve the reductions between 10.0 and 3.6 lbs/ac/yr.</del>

~~(Ord. 01-02, passed 4-23-2001; Ord. 07-0-06, passed 8-27-2007)~~

**APPENDIX B: TOTAL ANNUAL NITROGEN LOADING CALCULATIONS FOR NEW DEVELOPMENTS**

Development Name: \_\_\_\_\_

		<i>Type of Land Use</i>	<i>Area (acres)</i>	<i>Annual TN Loading Rate (lbs/ac/yr)</i>	<i>Annual TN Loading (lbs/yr)</i>
1.		Residential zoning (i.e., R20, R15, ...)			
	a.				
	b.				
	c.				
	d.				
	e.				
2.		New ROW (i.e., minor thoroughfare)			
	a.				
	b.				
	c.				
	d.				
	e.				
3.		Pervious surface—undisturbed space (forest, unmowed meadow, and the like)		0.6	
4.		Pervious surface—open space (grass, landscaping, and the like)		1.2	
5.		Impervious surfaces (roads, parking lots, driveways, roofs, paved storage areas, and the like)		21.2	
6.		Total		N/A	
7.		Total Annual Nitrogen Loading (per acre)	N/A	N/A	

**DIRECTIONS**

*Line 1.* Line 1 shall be completed for residential developments that choose to utilize the annual TN loading rates shown in Appendix C for the portion of the development in residential lots. Determine the area in acres and annual TN loading rate per acre from Appendix C, for each type of residential zoning district on the entire site. The residential percent impervious and annual TN loading rates, in Appendix C, are based on the on the maximum allowable building coverage of the lot per the City code and adding typical driveway and walkway areas. If the residential development chooses to use a different percent imperviousness on the lots, then Line 1 shall remain blank and the residential area shall be included in Lines 3 through 5.

~~Line 2. Line 2 shall be completed if the development chooses to utilize the annual TN loading rates shown in Appendix C for the portion of the development in right-of-way (ROW). Determine the area in acres and annual TN loading rate per acre from Appendix C, for each type of new ROW on the entire site. The ROW percent imperviousness and annual TN loading rates, in Appendix C, are based on the on the required pavement widths per the City code. If the development chooses to use a different percent imperviousness, then Line 2 shall remain blank and the ROW area shall be included in Lines 3 through 5. Existing ROW and pavements are not required to be included in the annual TN loading calculation. If additional turn lanes and pavement are included in the development, the additional pervious and impervious surfaces within the ROW shall be included in Lines 3 through 5.~~

~~Line 3. Line 3 shall include all undisturbed pervious area that is permanently protected by an easement. If there are no undisturbed pervious areas permanently protected by an easement on the site, then Line 3 shall remain blank.~~

~~Line 4. Line 4 shall include all pervious areas not included in Lines 1, 2, or 3. Footprints of pervious and impervious areas shall be shown on the development plans. If the footprints are not known, then the plat and plans shall show the total area and the maximum allowable pervious and impervious areas for each parcel. Upon approval of the plat and plans, the plat including the allowable pervious and impervious area shall be recorded with the Craven County Register of Deeds and filed with the City Clerk within 90 days.~~

~~Line 5. Line 5 shall include all impervious areas not included in Lines 1 or 2. Footprints of pervious and impervious areas shall be shown on the development plans. If the footprints are not known, then the plat and plans shall show the total area and the maximum allowable pervious and impervious areas for each parcel. Refer to Line 4 for plat requirements.~~

~~Lines 1-5. Multiply each area by the annual TN loading rate per acre to get annual TN loading from each use.~~

~~Line 6. Total the area for all types of land use. Total area shall equal the total site area.~~

~~Line 7. Divide the total annual TN loading by the total area to get the overall annual TN loading per acre for the site.~~

(Ord. 01-02, passed 4-23-2001)

## APPENDIX C: NITROGEN LOADING RATES

<i>Land Use</i>	<i>% Impervious (1)</i>	<i>Annual TN-Loading (lbs/acre/year)</i>
<del>Impervious Surface</del>	<del>100</del>	<del>21.2</del>
<del>Pervious Surface Undisturbed Space (2)</del>	<del>0</del>	<del>0.6</del>
<del>Pervious Surface Open Space</del>	<del>5</del>	<del>1.2</del>
<del>For Residential Lots: (3)</del>		
<del>R20 and R20A single family Min. 20,000 sf lots</del>	<del>34</del>	<del>5.6</del>
<del>R15 single family Min. 15,000 sf lots</del>	<del>35</del>	<del>5.7</del>
<del>R13A single family Min. 13,000 sf lots</del>	<del>36</del>	<del>5.8</del>
<del>R12 single family Min. 12,000 sf lots</del>	<del>41</del>	<del>6.7</del>
<del>R10 single family Min. 10,000 sf lots</del>	<del>42</del>	<del>7.0</del>
<del>R7 single family Min. 7,000 sf lots</del>	<del>49</del>	<del>8.5</del>
<del>R-M Multi-family</del>	<del>Calculate</del>	<del>Calculate</del>
<del>R-MH Mobile Home Min. 5,000 sf lots</del>	<del>57</del>	<del>10.1</del>
<del>For Rights-of-Way: (4)</del>		
<del>ROW US 70 and NC 101</del>	<del>Calculate</del>	<del>Calculate</del>
<del>ROW Major thoroughfare</del>	<del>Calculate</del>	<del>Calculate</del>
<del>ROW Minor thoroughfare</del>	<del>59</del>	<del>10.5</del>
<del>ROW Collector street</del>	<del>53</del>	<del>9.3</del>
<del>ROW Local street</del>	<del>47</del>	<del>7.9</del>
<del>ROW Cul-de-sac</del>	<del>47</del>	<del>7.9</del>
<del>ROW Cul-de-sac turnaround</del>	<del>80</del>	<del>15.6</del>
<del>ROW Marginal access</del>	<del>Calculate</del>	<del>Calculate</del>
<del>ROW Frontage road</del>	<del>47</del>	<del>7.9</del>
<del>H-C Highway Commercial 1 and 2-story bldgs.</del>	<del>Calculate</del>	<del>Calculate</del>
<del>H-C AIGUZ Highway Commercial Air Compatible</del>	<del>Calculate</del>	<del>Calculate</del>
<del>HC-O+I Highway Commercial Office and Institutional</del>	<del>Calculate</del>	<del>Calculate</del>
<del>HC-O+I Highway Commercial Office</del>	<del>Calculate</del>	<del>Calculate</del>

and Institutional		
L-I Light Industrial	Calculate	Calculate
I-A Industrial + Agriculture	Calculate	Calculate
LI-AICUZ Light Industrial Air Compatible	Calculate	Calculate

**NOTES TO TABLE:**

(1) The percent impervious is considered the maximum percent imperviousness for a given land use. Where the table shows "calculate," the area annual TN loading rate shall be determined based on the pervious and impervious surfaces. If the development chooses to utilize a different percent impervious; then the development plans shall show the footprint of the pervious and impervious areas. If the footprints are not known, then the total area and allowable impervious area for each parcel shall be shown on the plat and plans.

(2) Undisturbed areas must be permanently protected by an easement; otherwise, these areas shall be considered open space in the annual TN loading rate calculation.

(3) The percent impervious and annual TN loading rate does not include the ROW.

(4) The percent impervious is based on the standard pavement widths provided in the City code.

(Ord. 01-02, passed 4-23-2001)



**APPENDIX D: NITROGEN REDUCTION BMPs, REDUCTION RATES, AND DESIGN STANDARDS**

<b><i>Nitrogen Reducing BMPs</i></b>	<b><i>Annual TN Loading Reduction Rate</i></b>	<b><i>Appropriate Design Standards</i></b>
Wet detention ponds	25%	NC and MD Design Manuals*
Constructed wetlands	40%	NC and MD Design Manuals
Open channel practices	30%	NC and MD Design Manuals
Riparian buffers	30%	Neuse Riparian Buffer Rule (15A NCAC 2B.0233)
Vegetated filter strips with level spreader	20%	NC and MD Design Manuals and other literature information
Bioretention	25%	NC and MD Design Manuals
Sand filters	35%	NC and MD Design Manuals
Proprietary BMPs	Varie s	Per manufacturer subject to DWQ approval
Other BMPs	Varie s	Subject to DWQ approval

**NOTES TO TABLE:**

\* ***NC DESIGN MANUAL*** means the Stormwater Best Management Practices, North Carolina Department of Environment and Natural Resources, Division of Water Quality Section (April 1999, as subsequently amended). ***MD DESIGN MANUAL*** means the 2000 Maryland Stormwater Design Manual, Volumes I and II, Maryland Department of the Environment, Water Management Administration (October 2000, as subsequently amended). Both documents are incorporated herein by reference.

(Ord. 01-02, passed 4-23-2001)

**APPENDIX E: CALCULATIONS TO DETERMINE ANNUAL TN LOADING RATE FROM BMPS**

Development Name: \_\_\_\_\_ BMP: \_\_\_\_\_

		<i>Descripti on</i>	<i>Area (acre s)</i>	<i>Annual TN Loading- Rate- (lbs/ac/yr)</i>	<i>Annual TN- Loading (lbs)</i>
1.		TN Loading directly to Structural BMP			
a.		Residential Zoning (i.e., R20,- R15)			
	i.				
	ii.				
	iii.				
	iv.				
b.		ROW (i.e., minor thoroughfare)			
	i.				
	ii.				
	iii.				
	iv.				
e.		Pervious Surfaces — Undisturbed space		0.6	
d.		Pervious Surfaces — Open space		1.2	
e.		Impervious surfaces		21.2	
f.		Total TN Loading from the portion of development that drains to BMP	—	—	
2.		Total TN Loading contributed from any upstream BMP(s)	—	—	
3.		Total TN Loading to BMP	—	—	
4.		Nitrogen Reduction Rate (from Appendix D)	—	—	
5.		Total TN Loading removed	—	—	
6.		Total TN Loading Discharging from BMP	—	—	
<b>DIRECTIONS</b>					

~~One copy of Appendix E shall be completed for each BMP used on the site. You should begin with the most upstream BMP and work downstream. The following steps shall be taken to complete Appendix E.~~

~~1. *Lines 1a–1f.* Calculates the annual TN loading that drains directly to the specific structural BMP. Lines 1a–1f shall be completed in the same manner as Lines 1–6 of Appendix B except it only includes the area that drains directly to the specific structural BMP. If there is a structural BMP located upstream (BMP in series), do not include the areas that drain directly into the upstream measure. Multiply each area by the annual TN loading rate per acre to get the annual TN loading from each use that drains directly into the structural BMP. If two BMPs are directly in series, there may not be any additional loading from the site to the downstream BMP.~~

~~2. *Line 2.* If there is a structural BMP upstream, enter the annual TN loading discharging from the upstream structural BMP (Line 6 of Appendix E for the upstream measure).~~

~~3. *Line 3.* Add Lines 1f and 2 for the total annual TN loading that drains into the BMP.~~

~~4. *Line 4.* Enter the nitrogen reduction rate from Appendix D for the BMP.~~

~~5. *Line 5.* Calculate the total annual TN loading removed by the BMP by multiplying Line 3 by Line 4.~~

~~6. *Line 6.* Calculate the total annual TN loading discharge from the BMP by subtracting Line 5 from Line 3.~~

~~(Ord. 01-02, passed 4-23-2001)~~

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**APPENDIX F: TOTAL OFFSET PAYMENT CALCULATIONS FOR RESIDENTIAL DEVELOPMENTS**

Development Name: \_\_\_\_\_

1.	Total annual TN loading from site		From Line 6, Appendix B
2.	Total annual TN loading directly to a BMP		Total of Line 1f of Appendix E for each BMP
3.	Total annual TN loading from site not reduced by a BMP		Subtract Line 2 from Line 1
4.	Total annual TN loading discharging offsite from BMPs.		Total of Line 6 of Appendix E for each on-site BMP that discharges off-site
5.	Total annual TN loading from site		Add Lines 3 and 4
6.	Total site area in acres		From Line 6, Appendix B
7.	Total net annual TN loading per acre		Divide Line 5 by Line 6. Must be equal to or less than 6 lbs/ac/yr
8.	Allowable annual TN loading per acre	3.6	
9.	Required mitigation per acre		Subtract Line 8 from Line 7. If less than or equal to 0, then stop here
10.	Offset payment per acre	\$850.50	To Wetland Restoration Program
11.	Total offset payment required		Multiply Line 6, Line 9, and Line 10

(Ord. 01-02, passed 4-23-2001; Ord. 07-0-06, passed 8-27-2007)



## CHAPTER 159: APPEALS, VARIANCES AND INTERPRETATIONS

### Section

- 159.01 Appeals
- 159.02 [01.1](#) Erosion and sedimentation control appeals
- [159.01.2](#) Appeals from “The Neuse River Basin Stormwater Ordinance for New Development
- 159.03 [02](#) Variances
- 159.04 [03](#) Interpretations
- 159.05 [04](#) Requests to be heard expeditiously
- 159.06 [05](#) Burden of proof in appeals and variances
- 159.07 [06](#) Quasi-judicial procedures for evidentiary hearings
- 159.08 [07](#) Notice of hearing
- 159.09 [08](#) Board of Adjustment action on appeals and variances
- 159.10 [09](#) Evidence
- 159.11 [10](#) Modification of application at hearing
- 159.12 [11](#) Record
- 159.13 [12](#) Written decision
- 159.14 [13](#) Appeal of Board of Adjustment decisions to Superior Court

### § 159.01 APPEALS.

(A) *Generally.* An appeal from any final order, requirement, interpretation or decision of the Zoning Administrator or other administrative official charged with enforcement of the UDO, except as provided in § ~~159.02~~ [159.01.1 and 01.2](#), may be taken to the Board of Adjustment by any person aggrieved. The appeal system established in this chapter provides for a review of cases in which a decision or interpretation made by the Zoning Administrator or other administrative official charged with enforcement of the UDO is alleged to be erroneous. For example, an appeal may contest the Zoning Administrator’s decision regarding whether a particular use is permitted within a particular zoning district or the Zoning Administrator’s interpretation of the methodology for computation of sign area.

B) *Applicability.* The appeal system established herein applies only to decisions or interpretations made by the Zoning Administrator or other administrative official charged with enforcement of the UDO. This appeal system does not apply to decisions or interpretations made by the Planning Board or the City Board of Commissioners. Additionally, the Board of Adjustment is not authorized to issue advisory decisions regarding appeals, except as provided in § ~~159.02~~ [159.01.1 and 01.2](#), . Only the formal decisions or interpretations of the Zoning Administrator or other administrative official charged with enforcement of the UDO may be appealed to the Board of Adjustment.

(C) *Filing.* An appeal is taken by filing with the Zoning Administrator and the Board of Adjustment a written notice of appeal specifying the grounds therefore. A notice of appeal shall be considered filed with the Zoning Administrator and the Board of Adjustment when delivered to the Planning and Inspections Department, the required

filing fee paid, and the date and time of filing entered on the notice by the Planning and Inspections staff. The owner or other party must file the appeal within 30 days from receipt of the written notice of the determination. In the absence of evidence to the contrary, notice given by first-class mail is deemed received on the third business day following deposit of the notice for mailing.

(D) *Transmittal of record.* Whenever an appeal is filed, the Zoning Administrator shall forthwith transmit to the Board of Adjustment all the papers, applications and recordings constituting the record relating to the action appealed from. A copy of the record shall also be provided to the appellant and to the owner of the property if the appellant is not the owner.

(E) *Stay of action.* An appeal stays all actions by the Zoning Administrator seeking enforcement of or compliance with the order or decision appealed from, including fines, unless the Zoning Administrator certifies to the Board of Adjustment that (because of facts stated in the certificate) a stay would, in his or her opinion, cause imminent peril to life or property and/or seriously interfere with the enforcement of the UDO for the reason that the violation charged is transitory in nature. In this case, proceedings shall not be stayed except by a restraining order which may be granted by a court. If enforcement is not stayed, the appellant may file with the Zoning Administrator a request for an expedited hearing of the appeal, and the Board shall meet to hear the appeal within 15 days after the request is filed.

(F) *Decision.* The Board of Adjustment may reverse or affirm (wholly or partly) or may modify the order, requirement or decision or determination appealed from and shall make any order, requirement, decision or determination that in its opinion ought to be made in the case before it. To this end, the Board of Adjustment shall have all the powers of the officer from whom the appeal is taken. Board of Adjustment action on appeal requests shall comply with the voting requirements of § 159.~~09~~ 08.

(G) *Hearing.* Evidentiary hearing procedures and notice requirements for appeal requests are delineated in §§ 159.~~08~~ 07 et seq.

(1) The official who made the decision (or his or her successor if the official is no longer employed by the City) shall be present at the hearing as a witness. At the hearing, the appellant shall not be limited to matters stated in the appeal notice. If any party or the City would be unduly prejudiced by the presentation of matters not presented in the appeal notice, the Board shall continue the hearing.

(Ord. passed 7-25-2011; Ord. 21-O-04, passed 6-28-2021)

## ~~159.02~~ 159.01.1 EROSION AND SEDIMENTATION CONTROL APPEALS.

(A) *Generally.* The disapproval or modification of any proposed erosion control plan by the Director of Planning and Inspections or designee as defined by Chapter 156, shall entitle the person submitting the plan to an evidentiary hearing if the person submits written demand for an appeal and hearing within 15 days after receipt of written notice of disapproval or modification.

(B) *Specifically.* Appeals to the disapproval or modification of a proposed erosion control plan shall follow the requirements and procedures of § 159.01, 159.05 ~~04~~ through 159.14 ~~13~~, except as follows:

(1) Hearings shall be conducted by the Board of Adjustment within 30 days after the date of the receipt of the written demand for an evidentiary hearing. The date of the hearing shall be advertised once in a newspaper of general circulation prior to the date of the hearing.

(2) The person submitting the erosion control plan shall have 30 days following the Board of Adjustment's disapproval or modification of a proposed erosion control plan to appeal the Board's decision to NC DEQ and the Sedimentation Control Commission pursuant to G.S. § 113A-61(c).

### **§159.01.2 APPEALS FROM "THE NEUSE RIVER BASIN STORMWATER ORDINANCE FOR NEW DEVELOPMENT."**

(A) *Right of Appeal.* Except as provided in N.C.G.S. 160D-1403.1, any aggrieved person affected by any decision, order, requirement, or determination relating to the interpretation or application of this chapter may file an appeal to the Board of Adjustment within 30 days from receipt of the notice of a determination.

(1) Appeals of variance requests shall be made as provided in the section on Variances. In the case of requests for review of proposed civil penalties for violations of this chapter, the Board of Adjustment shall make a final decision on the request for review within 90 days of receipt of the date the request for review is filed.

(2) Procedures for appeals are set forth in Chapter 159.01

(B) *Filing of Appeal and Procedures.*

(1) Appeals shall be taken within the specified time period by filing a notice of appeal and specifying the grounds for appeal on forms provided by the City. All documents constituting the record on which the decision was appealed shall be submitted to the Board of Adjustment and a copy of the record shall be provided to the appellant and to the owner of the property that is the subject of the appeal if the appellant is not the owner.

(2) The hearing conducted by the Board shall be conducted in the nature of a quasi-judicial proceeding as provided in N.C.G.S. 160D-406 and §§ 159.06 with all findings of fact supported by competent, material evidence.



**§ 159.03\_02 VARIANCES.**

(A) *General.*

(1) An application for a variance along with the required filing fee shall be submitted to the Board of Adjustment by filing a copy of the application with the Zoning Administrator

(2) A variance may be granted by the Board of Adjustment if it concludes that strict enforcement of the UDO would result in unnecessary hardships for the applicant. The Board shall vary any provision of the zoning regulation upon a showing of all of the following:

(a) If the applicant complies strictly with the provisions of the UDO, he or she will experience unnecessary hardship;

(b) 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 the 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 for a person with a disability;

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

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

(3) In granting variances, the Board of Adjustment may impose such reasonable conditions as will ensure that the use of the property to which the variance applies will be as compatible as practicable with the surrounding properties. Appropriate conditions, which must be reasonably related to the condition or circumstance that gives rise to the need for a variance, may be imposed on any approval issued by the Board of Adjustment.

(4) A variance may be issued for an indefinite duration or for a specified duration only. Unless otherwise specified, any order or decision of the Board of Adjustment granting a variance shall expire if the applicant does not obtain a building permit or certificate of occupancy for such use within 60 calendar days from the date of the decision or if construction of the use has not commenced within 180 calendar days from the date of the issuance of a building permit.

(5) The nature of the variance and any conditions attached to it shall be entered on the face of the zoning permit, or the zoning permit may simply note the issuance of the variance and refer to the written record of the variance for further

information. All such conditions are enforceable in the same manner as any other applicable requirement of the UDO.

(6) No change in permitted uses may be authorized by variance.

(7) Evidentiary hearing procedures for variance requests are delineated in § 159.07 06. Hearing notice requirements are outlined in § 159.08 07.

(B) *Variations from Flood Hazard Overlay District requirements.* The Board of Adjustment, hereinafter referred to as the “appeal board”, is authorized to review and decide upon request for variances from the Flood Hazard Overlay District Requirements delineated in § 156.02 pursuant to the provisions delineated in this section.

(1) Variances may be issued by the Board of Adjustment for:

(a) The repair or rehabilitation of historic structures upon the determination that the proposed repair or rehabilitation will not preclude the structure’s continued designation as a historic structure and that the variance is the minimum necessary to preserve the historic character and design of the structure;

(b) Functionally dependent facilities if determined to meet the definition as stated in Chapter 163, provided the provisions of Chapter 156 have been satisfied, and such facilities are protected by methods that minimize flood damages during the base flood and create no additional threats to public safety; or

(c) Any other type of development provided it meets the requirements stated in this section.

(2) In passing upon variances, the Board of Adjustment shall consider all technical evaluations, all relevant factors, all standards specified in other sections of the UDO, and:

(a) The danger that materials may be swept onto other lands to the injury of others;

(b) The danger to life and property due to flooding or erosion damage;

(c) The susceptibility of the proposed facility and its contents to flood damage and the effect of the damage on the individual owner;

(d) The importance of the services provided by the proposed facility to the community;

(e) The necessity to the facility of a waterfront location as defined under Chapter 163 as a functionally dependent facility, where applicable;

(f) The availability of alternative locations, not subject to flooding or erosion damage, for the proposed use;

(g) The compatibility of the proposed use with existing and anticipated development;

(h) The relationship of the proposed use to the comprehensive plan and floodplain management program for that area;

(i) The safety of access to the property in times of flood for ordinary and emergency vehicles;

(j) The expected heights, velocity, duration, rate of rise and sediment transport of the floodwaters and the effects of wave action, if applicable, expected at the site; and

(k) The costs of providing governmental services during and after flood conditions including maintenance and repair of public utilities and facilities such as sewer, gas, electrical and water systems and streets and bridges.

(3) A written report addressing each of the above factors shall be submitted with the application for a variance.

(4) Upon consideration of the factors listed above and the purposes of the UDO, the Board of Adjustment may attach conditions to the granting of variances as it deems necessary to further the purposes of the UDO.

(5) Any applicant to whom a variance is granted shall be given written notice specifying the difference between the base flood elevation (BFE) and the elevation to which the structure is to be built and that such construction below the base flood elevation increases risks to life and property, and that the issuance of a variance to construct a structure below the base flood elevation will result in increased premium rates for flood insurance up to \$25 per \$100 of insurance coverage. The notification shall be maintained with a record of all variance actions, including justification for their issuance.

(6) The Zoning Administrator shall maintain the records of all appeal actions and report any variances to the Federal Emergency Management Agency and the state upon request.

(7) *Conditions for variances:*

(a) Variances shall not be issued when the variance will make the structure in violation of other federal, state or local laws, regulations or ordinances;

(b) Variances shall not be issued within any designated floodway or non-encroachment area if the variance would result in any increase in flood levels during the base flood discharge;

(c) Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief;

(d) Variances shall only be issued prior to development permit approval;  
and

(e) Variances shall only be issued upon:

1. A showing of good and sufficient cause;

2. A determination that failure to grant the variance would result in exceptional hardship; and

3. A determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, or extraordinary public expense, create nuisance, cause fraud on or victimization of the public or conflict with existing local laws or ordinances.

(8) A variance may be issued for solid waste disposal facilities, hazardous waste management facilities, salvage yards, and chemical storage facilities that are located in special flood hazard areas provided that all of the following conditions are met. A floodplain development permit may be issued for the development only if a variance is granted.

(a) The use serves a critical need in the community.

(b) No feasible location exists for the use outside the special flood hazard area.

(c) The reference level of any structure is elevated or floodproofed to at least the regulatory flood protection level.

(d) The use complies with all other applicable federal, state and local laws.

(e) The city has notified the Secretary of the North Carolina Department of Public Safety of its intention to grant a variance at least 30 days prior to granting the variance.

*(C) Variances from “The Neuse River Basin Stormwater Ordinance for New Development.”*

(1) The Board of Adjustment, hereinafter referred to as the “Board”, is authorized to review and decide upon requests for major and minor variances for the stormwater ordinance in Chapter 53 pursuant to the provisions set forth in this section.

(2) Any person may petition the City for a variance granting permission to use the person’s land in a manner otherwise prohibited by the stormwater ordinance in Chapter 53.

(3) For all proposed variances from the stormwater ordinance, the Board of Adjustment shall make findings of fact in accordance with the procedures set forth in Chapter 159 and 153.03 showing that:

(a) there are practical difficulties or unnecessary hardships that prevent compliance with the strict letter of the ordinance;

(b) the variance is in harmony with the general purpose and intent of the stormwater ordinance and preserves its spirit; and

(c) in granting the variance, the project will ensure equal or better protection of waters of the State than the requirements of 15A NCAC 02B.0711 (Neuse Storm Water Rule) and that the public safety and welfare have been assured and substantial justice has been done.

(4) In the case of a request for a minor variance, as defined in Chapter 53, the Board may vary or modify any of the regulations or provisions of the chapter so that the spirit of the ordinance shall be observed, public safety and welfare secured, and substantial justice done may impose reasonable and appropriate conditions and safeguards upon any variance it grants.

(5) The Board may attach conditions to the variance approval that support the purpose of the stormwater ordinance.

(6) If the variance request qualifies as a major variance, as defined in Chapter 53, and the Board 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 Management Commission for review and approval. If the Commission approves the major variance or approves with conditions or stipulations added, then the Commission shall prepare a Commission decision which authorizes Board to issue a final decision which would include any conditions or stipulations added by the Commission. If the Commission denies the major variance, then the Commission shall prepare a decision to be sent to the Board and the Board shall prepare a final decision denying the major variance.

(7) Appeals from the Board's decision on a major or minor variance request are made on certiorari to the local Craven County Superior Court. Appeals from the Commission decision on a major variance request are made on judicial review to Superior Court.

~~(C)~~ (D) *Administrative action on insignificant or "de minimis" variances.* The Planning and Inspections Director, after consultation with the City Attorney, shall be authorized to grant a "no action" letter to applicants for a variance when the violation of set back or similar failure to meet ordinance standards is less than five per cent of requirements. The letter shall state that the city will not take enforcement action based on the submitted violation. The applicant must provide the Planning and Inspections Director with a plat or drawing clearly illustrating the ordinance discrepancy and must also

document that the correction of the error would be cost prohibitive. No prospective actions may be considered.

**§ 159.04 03 INTERPRETATIONS.**

(A) When uncertainty exists with respect to the boundaries of any district as shown on the Official Zoning Map, City of Havelock, North Carolina, the following rules shall apply.

(1) Boundaries indicated as approximately following the center lines of streets, highways, alleys or railroads shall be construed to the following those center lines.

(2) Boundaries indicated as approximately following platted lot lines shall be construed as following those lot lines.

(3) Boundaries indicated as following shore lines shall be construed to follow the shore lines, and in the event of change in the shore line shall be construed as moving with the actual shore line; boundaries indicated as approximately following the course of streams, rivers, canals or other bodies of water shall be construed to follow the center lines of the bodies of water.

(4) Distances not specifically indicated on the official zoning map shall be determined by the scale of the map.

(5) Where physical or cultural features existing on the ground are at variance with those shown on the official zoning map, or in circumstances not covered by divisions (A)(1) through (A)(4) above, the Board of Adjustment shall interpret the district boundaries, subsequent to study and recommendation by the Planning Board.

(6) If a district boundary divides a lot, the requirements for the district in which the greater portion of the lot lies shall be extended to the balance of the lot, provided that the extension shall not include any part of the lot which lies more than 100 feet beyond the district boundary, and provided further that the remaining parcel shall not be less than the minimum required for the district in which it is located.

(B) The Board of Adjustment is authorized to interpret the zoning map and to pass upon disputed questions of lot lines or district boundary lines and similar questions. If the questions arise in the context of an appeal from a decision of the Zoning Administrator, they shall be handled as provided in § 159.01.

(C) An application for a map interpretation shall be submitted to the Board of Adjustment by filing a copy of the application with the Zoning Administrator. The application shall contain sufficient information to enable the Board of Adjustment to make the necessary interpretation.

(D) Interpretations of the location of floodway and floodplain boundary lines may be made by the Zoning Administrator as provided in Chapter 156.

(E) When interpretations of the UDO are specifically required to be determined by the Board of Adjustment, the required application fee shall be waived.

(Ord. passed 7-25-2011)

**§ 159.05 04 REQUESTS TO BE HEARD EXPEDITIOUSLY.**

The Board of Adjustment shall hear and decide all appeals, variance requests and requests for interpretations as expeditiously as possible, consistent with the need to follow regularly established agenda procedures, provide notice in accordance with § 159.08 07 and obtain the necessary information to make sound decisions.

(Ord. passed 7-25-2011)

**§ 159.06 05 BURDEN OF PROOF IN APPEALS AND VARIANCES.**

(A) When an appeal is taken to the Board of Adjustment in accordance with § 159.01, the Zoning Administrator shall have the initial burden of presenting to the Board of Adjustment sufficient evidence and argument to justify the order or decision appealed from. The burden of presenting evidence and argument to the contrary then shifts to the appellant, who shall also have the burden of persuasion.

(B) The burden of presenting evidence sufficient to allow the Board of Adjustment to reach the conclusions set forth in § 159.03 02 as well as the burden of persuasion on those issues, remains with the applicant seeking the variance.

(Ord. passed 7-25-2011)

**§ 159.07 06 QUASI-JUDICIAL PROCEDURES FOR EVIDENTIARY HEARINGS.**

(A) Before making a decision on an appeal or an application for a variance, the Board of Adjustment shall hold an evidentiary hearing on the appeal or variance.

(B) Subject to division (C) below, the hearing shall be open to the public. All persons with standing to appeal the decision regarding the appeal or application shall be given an opportunity to present evidence and arguments and ask questions of persons who testify. Non- parties may be allowed to present competent, material, and substantial evidence that is not repetitive.

(C) The Board of Adjustment may place reasonable and equitable limitations on the presentation of evidence and arguments and the cross-examination of witnesses so that the matter at issue may be heard and decided without undue delay.

(D) The Board of Adjustment may continue the hearing until a subsequent meeting and may keep the hearing open to take additional information up to the point a final decision is made. No further notice of a continued hearing need be published.

(Ord. passed 7-25-2011; Ord. 21-O-04, passed 6-28-2021)

**§ 159.08 07 NOTICE OF HEARING.**

The Zoning Administrator shall give notice of any evidentiary hearing required by § 159.07 06 as follows.

(A) *Mailed notice.*

(1) Notice of an evidentiary hearing shall be mailed to the person or entity whose appeal, application, or request is the subject of the hearing.

(2) To the owner of the property that is the subject of the hearing if the owner did not initiate the hearing.

(3) To the owners of all parcels of land abutting the parcel of land that is the subject of the hearing.

(4) To any other persons entitled to receive notice.

(5) In the absence of evidence to the contrary, the county tax listing shall be used to determine owners of property entitled to mailed notice.

(6) The notice must be deposited in the mail at least ten (10) days, but not more than 25 days, prior to the date of the hearing.

(7) The Board may continue an evidentiary hearing that has been convened without further advertisement. If an evidentiary hearing is set for a given date and a quorum of the Board is not then present, the hearing shall be continued until the next regular board meeting without further advertisement.

(B) Within the time period in § 159.08 07 (A)(6), a notice of the hearing shall be prominently posted on the site that is the subject of the hearing or on an adjacent street or highway right-of-way, notice posted on the City's website, and published in a newspaper with general circulation in the city.

(C) The notice required by this section shall state the date, time and place of the hearing, reasonably identify the property that is the subject of the application or appeal, and give a brief description of the action requested or proposed.

(D) *Administrative materials.*

(1) The Zoning Administrator or staff to the Board shall transmit to the Board all applications, reports, and written materials relevant to the matter being considered. If the administrative materials are distributed to the members of the Board prior to the hearing, at the same time, a copy must also be provided to the appellant or applicant and to the landowner if that person is not the appellant or applicant.



(2) The administrative materials shall become a part of the hearing record.

(3) The administrative materials may be provided in written or electronic form.

(4) The Chair shall rule on objections to inclusion or exclusion of administrative material, and may be appealed to the full Board. Objections to inclusion or exclusion of administrative materials may be made before or during the hearing. Rulings on unresolved objections shall be made by the Board at the hearing.

(Ord. passed 7-25-2011; Ord. 21-O-04, passed 6-28-2021)

**§ 159.09 08 BOARD OF ADJUSTMENT ACTION ON APPEALS AND VARIANCES.**

(A) With respect to appeals, a motion to reverse, affirm or modify the order, requirement, decision or determination appealed from shall include, insofar as practicable, a statement of the specific reasons or findings of facts that support the motion. If a motion to reverse or modify is not made or fails to receive the four-fifths vote necessary for adoption, then the motion is not approved.

(B) Before granting a variance, the Board of Adjustment must take a vote and vote affirmatively (by a four-fifths majority) on the required findings stated in § 159.03 02. Insofar as practical, a motion to make an affirmative finding on each of the requirements set forth in § 159.03 shall include a statement of the specific reasons or findings of fact supporting the motion.

(C) A motion to deny a variance may be made on the basis that any one or more of the criteria set forth in § 159.03 02 are not satisfied or that the application is incomplete. Insofar as practical, such a motion shall include a statement of the specific reasons or findings of fact that support it. This motion is adopted as the Board of Adjustment's decision if supported by more than one fifth of the Board's membership.

(D) For the purposes of this section, vacant positions on the Board and members who are disqualified from voting on a quasi judicial matter shall not be considered "members of the Board" for calculation of the requisite supermajority if there are no qualified alternates available to take the place of the members.

(E) Pursuant to the requirements of G.S. § 160D-109(d), a member of the Board of Adjustment shall not participate in or vote on any quasi judicial matter in a manner that would violate affected persons' constitutional rights to an impartial decision maker. Impermissible conflicts include, but are not limited to, a member having a fixed opinion prior to hearing the matter that is not susceptible to change, undisclosed ex parte communications, a close familial, business or other associational relationship with an affected person, or a financial interest in the outcome of the matter. If an objection is raised to a member's participation and that member does not recuse himself or herself, the remaining members shall by majority vote rule on the objection.

(Ord. passed 7-25-2011; Ord. 21-O-04, passed 6-28-2021)

**§ 159.10 09 EVIDENCE.**

(A) The provisions of this section apply to all hearings for which a notice is required by § 159.07.

(B) All persons who intend to present evidence to the Board of Adjustment, rather than arguments only, shall be sworn.

(C) All findings and conclusions necessary to the issuance or denial of the requested appeal or variance (crucial findings) shall be based upon reliable evidence. Competent evidence (evidence admissible in a court of law) shall be preferred whenever reasonably available, but in no case may crucial findings be based solely upon incompetent evidence unless competent evidence is not reasonably available, the evidence in question appears to be particularly reliable, and the matter at issue is not seriously disputed.

(D) The Board of Adjustment may subpoena witnesses and compel the production of evidence. If a person fails or refuses to obey a subpoena issued pursuant to this division (D), the Board of Adjustment may apply to the Superior Court of Craven County for an order requiring that its order be obeyed, and the court shall have jurisdiction to issue these orders after notice to all proper parties. No testimony of any witness before the Board of Adjustment pursuant to a subpoena issued in exercise of the power conferred by G.S. § 160D-406(g) may be used against the witness in the trial of any civil or criminal action other than a prosecution for false swearing committed on the examination. Any person, who, while under oath during a proceeding before the Board of Adjustment, willfully swears falsely, will be subject to enforcement under § 162.04.

(Ord. passed 7-25-2011; Ord. 21-O-04, passed 6-28-2021; Ord. 22-O-01, passed 1-24-2022)

**§ 159.11 10 MODIFICATION OF APPLICATION AT HEARING.**

(A) In response to questions or comments by persons appearing at the hearing or to suggestions or recommendations by the Board of Adjustment, the applicant may agree to modify his or her application, including the plans and specifications submitted.

(B) Unless the modifications are so substantial or extensive that the Board cannot reasonably be expected to perceive the nature and impact of the proposed changes without revised plans before it, the Board of Adjustment may approve the application with the stipulation that the permit will not be issued until plans reflecting the agreed upon changes are submitted to the Zoning Administrator.

(Ord. passed 7-25-2011)

**§ 159.12 11 RECORD.**

(A) A record shall be made of all hearings required by § 159.07 and the record shall be kept as provided by state law. Accurate minutes shall also be kept of all the proceedings, but a transcript need not be made.

(B) Whenever practical, all documentary evidence presented at a hearing as well as all other types of physical evidence shall be made a part of the record of the proceedings.

(Ord. passed 7-25-2011)

**§ 159.13 ~~12~~ WRITTEN DECISION.**

(A) Any decision made by the Board of Adjustment regarding an appeal or variance shall be reduced to writing and served upon the applicant or appellant and all other persons who make a written request for a copy.

(B) In addition to a statement of the Board of Adjustment's ultimate disposition of the case and any other information deemed appropriate, the written decision shall state the Board's findings and conclusions, as well as supporting reasons or facts.

(Ord. passed 7-25-2011)

**§ 159.14 ~~13~~ APPEAL OF BOARD OF ADJUSTMENT DECISIONS TO SUPERIOR COURT.**

Every final decision of the Board of Adjustment shall be subject to review by the Superior Court of Craven County by proceedings in the nature of certiorari (see § 162.07).

(Ord. passed 7-25-2011; Ord. 21-O-04, passed 6-28-2021)

**§ 150.38 BOARD OF ADJUSTMENT TO HEAR APPEALS.**

All appeals which may be taken from decisions or order of the Inspector shall be heard and determined by the Board of Adjustment. As the appeals body, the Board shall have the power to fix the times and places of its meetings, to adopt necessary rules of procedure and any other rules and regulations which may be necessary for the proper discharge of its duties. The Board shall perform the duties prescribed in the Unified Development Ordinance Section § 159.09 ~~08~~ and shall keep an accurate journal of all its proceedings.

(Ord. 12-O-02, passed 11-26-2012)

**§ 153.12 SPECIAL USE PERMIT REGULATIONS.**

(G) *Evidentiary hearing requirements and procedures.*

(2) The Zoning Administrator shall provide due notice of any evidentiary hearing following the procedures in § 159.~~08~~ 07.

#### **§ 156.02 FLOOD DAMAGE PREVENTION.**

(D) Administration

(5) *Variance procedures.* Floodplain variance procedures are specified in Chapter 159.~~03~~ 02 (B).

#### **§ 158.11 MODIFICATIONS AND VARIANCES.**

(F) Where, because of topographical or other conditions peculiar to the site, strict adherence to the provisions of the regulations of this chapter would cause an unnecessary hardship, the Board of Adjustment may authorize a variance pursuant to § 159.~~03~~ 02 , if the variance can be made without destroying the intent of these regulations and if the other requirements of Chapter 159 are met.

#### **§ 162.07 JUDICIAL REVIEW.**

(B) *Statutes of limitation.* Unless specifically provided otherwise, a petition for review of a quasi-judicial decision shall be filed with the Clerk of Superior Court by the later of 30 days after:

(1) A written copy of the Board of Adjustment's decision has been filed in the office of the Zoning Administrator; or

(2) A written copy of the Board of Adjustment's decision has been given in accordance with § 159.~~43~~ 12 (C). When first-class mail is used to deliver notice, three (3) days shall be added to the time to file the petition.