

**ORDINANCE # ZA-23-09**  
**AN ORDINANCE TO AMEND THE TOWN OF SMITHFIELD**  
**UNIFIED DEVELOPMENT ORDINANCE**  
**ARTICLE 10, SECTION 10.92 WATER SUPPLY WATERSHED PROTECTION**  
**OVERLAY DISTRICTS, SECTION 10.119 FINAL PLAT CERTIFICATIONS AND**  
**OTHER DOCUMENTATION AND APPENDIX A, DEFINITIONS.**

**WHEREAS**, the Smithfield Town Council wishes to amend certain provisions in the Town of Smithfield Unified Development Ordinance by making changes to Unified Development Ordinance Article 10, Section 10.92, Water Supply Watershed Protection Overlay Districts, Article 10, Section 10.119 Final plat certifications and other documentation, and Appendix A Definitions to be in compliance with general statutes, NCGS 143-214.5.

**WHEREAS**, it is the objective of the Smithfield Town Council to have the UDO promote regulatory efficiency and consistency and the health, safety, and general welfare of the community;

**NOW, THEREFORE**, be it ordained that the following Articles are amended to make the following changes set forth in the deletions (strikethroughs) and additions (double underlining) below:

[Amend Article 10, Section 10.92]

**PART 1**

***Sec. 10.92. Water Supply Watershed Protection Overlay Districts.***

**10.92.1. Purpose.**

The purpose of this section is to regulate development and land use activities in a manner which will limit exposure of water supply watersheds to pollution. Sources of pollution include leachate from septic tank nitrification fields, storm water runoff, accidental spillage from residential, commercial, and industrial activities, and discharge of process and cooling water, among others.

As required by the Water Supply Watershed Protection Act of 1989, the State of North Carolina has reclassified each of the state's drinking water supply watersheds to its most appropriate classification. The Neuse River watershed is classified as WS-IV which are protected water supply watersheds which are generally moderate to highly developed. Water supply watershed protection is a proactive approach to the preservation and treatment of drinking water supplies rather than a reactive approach of treatment prior to consumption.

**10.92.2. Authority.**

Statutory authority for this section is derived from G.S. § 160D-702, ~~and~~ G.S. § 160D-703, and G.S. § 160D-926.

**10.92.3. Jurisdiction.**

The regulations established shall apply within areas designated as a Public Water Supply Watershed by the North Carolina Environmental Management Commission and the boundaries of the watershed areas shall be as noted on the Town of Smithfield Zoning Map and is hereby made a part of this Ordinance, a map adopted in conjunction with these regulations.

#### **10.92.4 Exceptions to Applicability.**

10.92.4.1. Existing development, as defined in this ordinance, is not subject to the requirements of this ordinance.

10.92.4.2. Expansions to existing development must meet the requirements of this ordinance, except single family residential development or unless expansion is part of common plan of development. In an expansion, the built-upon area of the existing development is not required to be included in the density calculations. Where there is a net increase of built upon area, only the area of net increase is subject to this ordinance. Where existing development is being replaced with new built upon area, and there is net increase of built upon area, only areas of net increase shall be subject to this ordinance.

10.92.4.3. Any lot or parcel created as part of a Family Subdivision after the effective date of these rules shall be exempt from these rules if it is developed for one single-family detached residence and if it is exempt from subdivision regulation.

10.92.4.4. Any lot or parcel created as part of any other type of subdivision that is exempt from a local subdivision ordinance shall be subject to the land use requirements (including impervious surface requirements) of these rules, except that such a lot or parcel must meet the minimum buffer requirements to the maximum extent practicable.

10.92.4.5. An applicant may exceed the density limits in Sections 10.92.6 and 10.927 if all of the following circumstances apply:

10.92.4.5.1. The property was developed prior to the effective date of the local water supply watershed program.

10.92.4.5.2. The property has not been combined with additional lots after January 1, 2021.

10.92.4.5.3. The property has not been a participant in a density averaging transaction under G.S. 143214.5(d2).

10.92.4.5.4. The current use of the property is nonresidential.

10.92.4.5.5. In the sole discretion, and at the voluntary election, of the property owner, the stormwater from all of the existing and new built-upon area on the property is treated in accordance with all applicable local government, state, and federal laws and regulations.

10.92.4.5.6. The remaining vegetated buffers on the property are preserved in accordance with the requirements of this Ordinance.

#### **10.92.5. Violations of Water Supply Watershed Protection Overlay District Ordinance.**

In addition to the enforcement provisions in Section 1.8, the N.C. Environmental Management Commission may assess civil penalties in accordance with G.S. 143-215.6(a). Each day that the violation continues shall constitute a separate offense.

#### **10.92.6. Effective Date.**

This Ordinance shall take effect and be in force on January 23 2024.

#### **10.92.7. Standards.**

The standards of both the Water Supply Watershed Protection Overlay Districts and the underlying zoning district shall apply. Where these standards differ, the standards of the Overlay Districts shall govern.

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## 10.92.8. Establishment of Watershed Areas.

For the purposes of this section, the Town of Smithfield and its extraterritorial jurisdiction are divided into the following Water Supply Watershed Protection Overlay Districts:

10.92.8.1. WS-IV-CA Critical Area Overlay District.

10.92.8.2. WS-IV-PA Protected Area Overlay District.

## 10.92.9. Development Regulations—WS-IV-CA District.

Only new development activities that require an erosion/sedimentation control plan under State law or approved local program are required to meet the provisions of this ordinance when located in a WS-IV watershed. In order to address a moderate to high land use intensity pattern, development shall be allowed at a maximum of twenty-four percent (24%) built-upon area.

The following regulations shall apply within the WS-IV-CA:

### 10.92.9.1. Allowed Uses.

~~10.92.9.1.1. Agricultural uses are not subject to the stormwater requirements of this ordinance. (Amended 10/3/2017) Agriculture subject to the provisions of the Food Security Act of 1985 and the Food, Agriculture, Conservation and Trade Act of 1990 and the rules and regulations of the Soil and Water Conservation Commission.~~

10.92.9.1.2. Silviculture, subject to the provisions of the Forest Practices Guidelines Related to Water Quality (15 NCAC 11.0101-.0209).

10.92.9.1.3. Residential uses.

~~10.92.6.1.4. Non-residential development, excluding: 1) landfills and 2) sites for land application of residuals or petroleum contaminated soils. Expansions to existing nonresidential development in accordance with Section 10.92.9.~~

### 10.92.9.2. Density and Built-Upon Limits. (Amended 10/3/2017)

~~10.92.9.2.1. Residential and Non-Residential development shall not exceed twenty-four percent (24%) built-upon area on a project-by-project basis. For the purpose of calculating the built-upon area, total project area shall include total acreage in the tract on which the project is to be developed. Impervious Surface Limitations. Development shall not exceed twenty-four (24) percent built upon area on a project by project basis unless the high density option is utilized. For the purpose of calculating the built upon area, total project area shall include the gross acreage in the tract on which the project is to be developed.~~

10.92.9.2.2. High Density Option. High Density Option. Impervious surfaces may be increased up to a maximum of seventy (70) percent subject to the following requirements: In addition to the development allowed under sections 10.92.9.2.1 and 10.92.9.2.2 above, the Town Council may approve new development and expansions to existing development utilizing the high-density option with up to fifty percent (50%) built-upon area on a project-by-project basis. Projects must, to the maximum extent practicable, minimize built-upon surface area, direct stormwater away from surface waters and incorporate Best Management Practices to minimize water quality impacts. For the purpose of calculating built-upon area, total project area shall include total acreage in the tract on which the project is to be developed:

10.92.9.3. Stormwater Control Requirements. Where development proposes intensity greater than twenty-four (24) percent engineered stormwater controls shall be used to control stormwater runoff from the first inch of rainfall in order to meet water quality concerns.

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**10.92.6.2.3.2. Ownership, Design, and Maintenance of Engineered Stormwater Controls.**

**10.92.6.2.3.2.1.** Unless otherwise approved, ownership of the engineered stormwater controls shall remain with the property owner or a property owners' association, which shall be responsible for the continued care and maintenance of such controls.

**10.92.6.2.3.2.2.** Engineer stormwater controls shall be designed and constructed in accordance with standards and specifications established by the Town of Smithfield and to the state's minimum standards. The BMP design criteria shall require eighty-five (85) percent average annual removal of total suspended solids and the discharge rate must meet one (1) of the following criteria:

**10.92.6.2.3.2.2.1.** The discharge rate following the one-inch design storm shall be such that the runoff draws down to the pre-storm design within five (5) days, but not less than two (2) days; or

**10.92.6.2.3.2.2.2.** The post development peak discharge rate shall equal the predevelopment rate for the one-year, twenty-four hour storm.

**10.92.6.2.3.2.3.** Except as allowed in paragraph 10.92.6.2.3.2.3.3 below, no building permit shall be issued for a site proposed for development, until:

**10.92.6.2.3.2.3.1.** UDO Administrator has approved plans and specifications for the proposed engineered stormwater controls and the property owner has entered into an agreement and covenants or operation and maintenance agreement with the town in accordance with the terms established by the town including being referenced on a final plat which must be recorded along with the agreement in the Johnston County Register of Deeds; and

**10.92.6.2.3.2.3.2.** The property owner has posted a performance bond, other surety instrument, or other payment in acceptable form to the town in an amount determined by the UDO Administrator as appropriate to assure construction, maintenance, repair, and/or reconstruction necessary for adequate performance of the engineered stormwater controls.

**10.92.6.2.3.2.3.3.** For multi-family projects, building permits may be issued; but construction drawing approval, or water and sewer permit approval, shall be withheld until compliance with paragraphs 10.92.6.2.3.2.3.1 and 10.92.6.2.3.2.3.2 above.

**10.92.6.2.3.2.3.4.** The agreement and covenants or operation and maintenance agreement required under paragraph 10.92.6.2.3.2.3.1 above, may be required prior to site plan or preliminary plat approval.

**10.92.6.2.3.2.4.** No certificate of compliance/occupancy shall be issued for any structure constructed within a site proposed for development, other than as allowed below, until the UDO Administrator has approved construction of the engineered stormwater controls and after review and approval of "as-built" drawings. Notwithstanding this requirement, the UDO Administrator may allow for delay in approval of construction of stormwater controls and submission and approval of as-built drawings for single-family housing and other developments requiring multiple certificates of occupancy.

**10.92.9.3.1. Low Density Projects.** In addition to complying with the project density requirements, low density projects shall comply with the following:

**10.92.9.3.1.1. Vegetative Conveyances.** Stormwater runoff from the project shall be released to vegetated areas as dispersed flow or transported by vegetated conveyances to the maximum extent practicable. Vegetated conveyances shall be maintained in perpetuity to ensure that they function as designed. Vegetated conveyances shall meet the following:

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10.92.9.3.1.1.1. Side slopes shall be no steeper than 3:1 (horizontal to vertical) unless it is demonstrated to the local government that the soils and vegetation will remain stable in perpetuity based on engineering calculations and on-site soil investigation.

10.92.9.3.1.1.2. The conveyance shall be designed so that it does not erode during the peak flow from the 10-year storm event as demonstrated by engineering calculations.

10.92.9.3.1.2. Curb Outlet Systems. In lieu of vegetated conveyances, low density projects shall have the option to use curb and gutter with outlets to convey stormwater to grassed swales or vegetated areas. Requirements for these curb outlet systems shall be as follows:

10.92.9.3.1.2.1. The curb outlets shall be located such that the swale or vegetated area can carry the peak flow from the 10-year storm and at a non-erosive velocity.

10.92.9.3.1.2.2. The longitudinal slope of the swale or vegetated area shall not exceed five percent except where not practical due to physical constraints. In these cases, devices to slow the rate of runoff and encourage infiltration to reduce pollutant delivery shall be provided.

10.92.9.3.1.2.3. The swale's cross section shall be trapezoidal with a minimum bottom width of two feet.

10.92.9.3.1.2.4. The side slopes of the swale or vegetated area shall be no steeper than 3:1 (horizontal to vertical).

10.92.9.3.1.2.5. The minimum length of the swale or vegetated area shall be 100 feet;

10.92.9.3.1.2.6. Low density projects may use treatment swales designed in accordance with 15A NCAC 02H .1061 in lieu of the requirements specified in 10.92.9.3.1.2.1 through 10.92.9.3.1.2.5.

10.92.9.3.2. High Density Projects.

10.92.9.3.2.1. Stormwater Control Measures (SCMs) shall be designed, constructed, and maintained so that the project achieves either "runoff treatment" or "runoff volume match" as those terms are defined in 15A NCAC 02B .0621;

10.92.9.3.2.2. For high density projects designed to achieve runoff treatment, the required storm depth shall be one inch. Applicants shall have the option to design projects to achieve runoff volume match in lieu of runoff treatment;

10.92.9.3.2.3. Stormwater runoff from off-site areas and Existing Development, shall not be required to be treated in the SCM. Runoff from off-site areas or existing development that is not bypassed shall be included in sizing of on-site SCMs;

10.92.9.3.2.4. SCMs shall meet the relevant Minimum Design Criteria set forth in 15A NCAC 02H .1050 through .1062

10.92.9.3.2.5. Stormwater outlets shall be designed so that they do not cause erosion downslope of the discharge point during the peak flow from the 10-year storm event as shown by engineering calculations.

10.92.9.4. Posting of Financial Security Required. All new stormwater control structures shall be conditioned on the posting of adequate financial assurance for the purpose of maintenance, repairs, or reconstruction necessary for adequate performance of the stormwater control structures in accordance with Article 5, Section 5.7.8.10

10.92.9.5. Stormwater SCM Operation and Maintenance Agreement. The permit applicant shall enter into the binding Operation and Maintenance Agreement between the Town of Smithfield and all interests in the development. Said Agreement shall require the owning entity to maintain, repair, and if necessary,

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reconstruct the stormwater control structure in accordance with the operation management plan or manual provided by the developer. The Operation and Maintenance Agreement shall be filed with the Johnston County Register of Deeds.

**10.92.9.6. Calculation of Density.**

10.92.9.6.1. Project density shall be calculated as the total built-upon area divided by the total project area.

10.92.9.6.2. A project with "Existing Development," as defined in this ordinance, may use the calculation method in 10.92.9.2.1. or may calculate project density as the difference of total built-upon area minus existing built-upon area divided by the difference of total project area minus existing built-upon area.

10.92.9.6.3 Expansions to Existing Development shall be subject to 15A NCAC 02B .0624 except as excluded in Rule 15A NCAC 02B .0622 (1)(d).

10.92.9.6.4. Where there is a net increase of built-upon area, only the area of net increase shall be subject to density and built upon area limits.

10.92.9.6.5. Where Existing Development is being replaced with new built-upon area, and there is a net increase of built-upon area, only the area of net increase shall be subject to density and built upon area limits

10.92.9.6.6. Total project area shall exclude the following:

10.92.9.6.6.1. Areas below the Normal High Water Line (NHWL).

10.92.9.6.6.2. Areas defined as "coastal wetlands" pursuant to 15A NCAC 07H .0205, herein incorporated by reference, including subsequent amendments and editions, and available at no cost at <http://reports.oah.state.nc.us/ncac.asp>, as measured landward from the NHWL.

10.92.9.6.7. Projects under a common plan of development shall be considered as a single project for purposes of density calculation except that on a case-by-case basis, local governments may allow projects to be considered to have both high and low density areas based on one or more of the following criteria:

10.92.9.6.7.1 Natural drainage area boundaries.

10.92.9.6.7.2. Variations in land use throughout the project.

10.92.9.6.7.3. Construction phasing.

**10.92.10. Development Regulations—WS-IV-PA District.**

Only new development activities that require an erosion/sedimentation control plan under State law or approved local program are required to meet the provisions of this ordinance when located in a WS-IV watershed. Residential and non-residential development shall be allowed at a maximum of twenty-four percent (24%) built-upon area. New residuals application sites and landfills are specifically prohibited.

The following regulations shall apply within the WS-IV-PA:

**10.92.10.1. Allowed Uses.**

10.92.10.1.1. Agriculture, subject to the provisions of the Food Security Act of 1985 and the Food, Agricultural, Conservation and Trade Act of 1990. Agricultural uses are not subject to the stormwater requirements of this ordinance. (Amended 10/3/2017)

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**10.92.10.1.2.** Silviculture, subject to the provisions of the Forest Practices Guidelines Related to Water Quality (15 NCAC 11.0101-.0209).

**10.92.10.1.3.** Residential development.

**10.92.10.1.4.** Nonresidential development, excluding storage of toxic and hazardous materials unless a spill containment plan is implemented.

**10.92.10.2.** Density and Built-Upon Limits.-(Amended 10/3/2017)

**10.92.10.2.1.** Residential and Non-Residential--development shall not exceed twenty-four percent (24%) built-upon area on a project-by-project basis. For projects without a curb and gutter street system, development shall not exceed thirty-six percent (36%) built-upon area on a project-by-project basis. For the purpose of calculating built-upon area, total project area shall include acreage in the tract on which the project is to be developed. Impervious Surfaces. Development shall not exceed twenty-four (24) percent built-upon area on a project-by-project basis unless the high-density option is utilized.

For the purpose of calculating the built-upon area, total project area shall include the gross acreage in the tract on which the project is to be developed.

**10.92.10.2.2.** High Density Option. In addition to the development allowed under paragraphs 10.92.10.2.1 and 10.92.10.2.2 above, the Town Council may approve new development and expansions to existing development utilizing the high-density option with up to seventy percent (70%) built-upon area on a project-by-project basis. Projects must, to the maximum extent practicable, minimize built-upon surface area, direct stormwater away from surface waters and incorporate Best Management Practices to minimize water quality impacts. For the purpose of calculating built-upon area, total project area shall include total acreage in the tract on which the project is to be developed. Impervious surfaces may be increased up to a maximum of seventy (70) percent subject to the following requirements:

**10.92.10.3.** Stormwater Control Requirements. Where development proposes intensity greater than twenty-four (24) percent engineered stormwater controls shall be used to control stormwater runoff from the first inch of rainfall in order to meet water quality concerns.

**~~10.92.7.2.3.2.~~** Ownership, Design, and Maintenance of Engineered Stormwater Controls.

**~~10.92.7.2.3.2.1.~~** Unless otherwise approved, ownership of the engineered stormwater controls shall remain with the property owner or a property owners' association, which shall be responsible for the continued care and maintenance of such controls.

**~~10.92.7.2.3.2.2.~~** Engineer stormwater controls shall be designed and constructed in accordance with standards and specifications established by the Town of Smithfield and to the state's minimum standards. The BMP design criteria shall require eighty-five (85) percent average annual removal of total suspended solids and the discharge rate must meet one (1) of the following criteria:

**~~10.92.7.2.3.2.2.1.~~** The discharge rate following the one-inch design storm shall be such that the runoff draws down to the pre-storm design within five (5) days, but not less than two (2) days; or

**~~10.92.7.2.3.2.2.2.~~** The post-development peak discharge rate shall equal the predevelopment rate for the one-year, twenty-four-hour storm.

**~~10.92.7.2.3.2.3.~~** Except as allowed in paragraph 10.92.7.2.3.2.3.3 below, no building permit shall be issued for a site proposed for development, until:

**~~10.92.7.2.3.2.3.1.~~** UDO Administrator has approved plans and specifications for the proposed engineered stormwater controls and the property owner has entered into an agreement and covenants or operation and maintenance agreement with the town in accordance with the terms established by the town including being referenced on a final plat

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which must be recorded along with the agreement in the Johnston County Register of Deeds; and

**10.92.7.2.3.2.3.2.** The property owner has posted a performance bond, other surety instrument, or other payment in acceptable form to the town in an amount determined by the UDO Administrator as appropriate to assure construction, maintenance, repair, and/or reconstruction necessary for adequate performance of the engineered stormwater controls.

**10.92.7.2.3.2.3.3.** For office, institutional, commercial, industrial, and multi-family projects, building permits may be issued; but construction drawing approval, or water and sewer permit approval, shall be withheld until compliance with paragraphs 10.92.7.2.3.2.3.1 and 10.92.7.2.3.2.3.2 above.

**10.92.7.2.3.2.3.4.** The agreement and covenants or operation and maintenance agreement required under paragraph 10.92.7.2.3.2.3.1 above, may be required prior to site plan or preliminary plat approval.

**10.92.7.2.3.2.4.** No certificate of compliance/occupancy shall be issued for any structure constructed within a site proposed for development, other than as allowed below, until the UDO Administrator has approved construction of the engineered stormwater controls and after review and approval of "as-built" drawings. Notwithstanding this requirement, the UDO Administrator may allow for delay in approval of construction of stormwater controls and submission and approval of as-built drawings for single-family housing and other developments requiring multiple certificates of occupancy.

**10.92.10.3.1. Low Density Projects.** In addition to complying with the project density requirements, low density projects shall comply with the following:

**10.92.10.3.1.1. Vegetative Conveyances.** Stormwater runoff from the project shall be released to vegetated areas as dispersed flow or transported by vegetated conveyances to the maximum extent practicable. Vegetated conveyances shall be maintained in perpetuity to ensure that they function as designed. Vegetated conveyances shall meet the following:

**10.92.10.3.1.1.1.** Side slopes shall be no steeper than 3:1 (horizontal to vertical) unless it is demonstrated to the local government that the soils and vegetation will remain stable in perpetuity based on engineering calculations and on-site soil investigation.

**10.92.10.3.1.1.2.** The conveyance shall be designed so that it does not erode during the peak flow from the 10-year storm event as demonstrated by engineering calculations.

**10.92.10.3.1.2. Curb Outlet Systems.** In lieu of vegetated conveyances, low density projects shall have the option to use curb and gutter with outlets to convey stormwater to grassed swales or vegetated areas. Requirements for these curb outlet systems shall be as follows:

**10.92.10.3.1.2.1.** The curb outlets shall be located such that the swale or vegetated area can carry the peak flow from the 10-year storm and at a non-erosive velocity;

**10.92.10.3.1.2.2.** The longitudinal slope of the swale or vegetated area shall not exceed five percent except where not practical due to physical constraints. In these cases, devices to slow the rate of runoff and encourage infiltration to reduce pollutant delivery shall be provided;

**10.92.10.3.1.2.3.** The swale's cross section shall be trapezoidal with a minimum bottom width of two feet;

**10.92.10.3.1.2.4.** The side slopes of the swale or vegetated area shall be no steeper than 3:1 (horizontal to vertical);

**10.92.10.3.1.2.5.** The minimum length of the swale or vegetated area shall be 100 feet



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10.92.10.3.1.2.6. Low density projects may use treatment swales designed in accordance with 15A NCAC 02H .1061 in lieu of the requirements specified in 10.92.9.3.1.2.1 through 10.92.9.3.1.2.5.

10.92.10.3.2. High Density Projects.

10.92.10.3.2.1. Stormwater Control Measures (SCMs) shall be designed, constructed, and maintained so that the project achieves either "runoff treatment" or "runoff volume match" as those terms are defined in 15A NCAC 02B .0621; (

10.92.10.3.2.2. For high density projects designed to achieve runoff treatment, the required storm depth shall be one inch. Applicants shall have the option to design projects to achieve runoff volume match in lieu of runoff treatment;

10.92.10.3.2.3. Stormwater runoff from off-site areas and Existing Development, shall not be required to be treated in the SCM. Runoff from off-site areas or existing development that is not bypassed shall be included in sizing of on-site SCMs;

10.92.10.3.2.4. SCMs shall meet the relevant Minimum Design Criteria set forth in 15A NCAC 02H .1050 through .1062

10.92.10.3.2.5. Stormwater outlets shall be designed so that they do not cause erosion downslope of the discharge point during the peak flow from the 10-year storm event as shown by engineering calculations.

10.92.10.4. Posting of Financial Security Required. All new stormwater control structures shall be conditioned on the posting of adequate financial assurance for the purpose of maintenance, repairs, or reconstruction necessary for adequate performance of the stormwater control structures in accordance with Article 5, Section 5.7.8.10

10.92.10.5. Stormwater SCM Operation and Maintenance Agreement. The permit applicant shall enter into the binding Operation and Maintenance Agreement between the Town of Smithfield and all interests in the development. Said Agreement shall require the owning entity to maintain, repair, and if necessary, reconstruct the stormwater control structure in accordance with the operation management plan or manual provided by the developer. The Operation and Maintenance Agreement shall be filed with the Johnston County Register of Deeds.

10.92.10.6. Calculation of Density.

10.92.10.6.1. Project density shall be calculated as the total built-upon area divided by the total project area.

10.92.10.6.2. A project with "Existing Development," as defined in this ordinance, may use the calculation method in 10.92.9.2.1. or may calculate project density as the difference of total built-upon area minus existing built-upon area divided by the difference of total project area minus existing built-upon area.

10.92.10.6.3 Expansions to Existing Development shall be subject to 15A NCAC 02B .0624 except as excluded in Rule15A NCAC 02B .0622 (1)(d).

10.92.10.6.4. Where there is a net increase of built-upon area, only the area of net increase shall be subject to density and built upon area limits.

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10.92.10.6.5. Where Existing Development is being replaced with new built-upon area, and there is a net increase of built-upon area, only the area of net increase shall be subject to density and built upon area limits

10.92.10.6.6. Total project area shall exclude the following:

10.92.10.6.6.1. Areas below the Normal High Water Line (NHWL).

10.92.10.6.6.2. Areas defined as "coastal wetlands" pursuant to 15A NCAC 07H .0205, herein incorporated by reference, including subsequent amendments and editions, and available at no cost at <http://reports.oah.state.nc.us/ncac.asp>, as measured landward from the NHWL.

10.92.10.6.7. Projects under a common plan of development shall be considered as a single project for purposes of density calculation except that on a case-by-case basis, local governments may allow projects to be considered to have both high and low density areas based on one or more of the following criteria:

10.92.10.6.7.1 Natural drainage area boundaries.

10.92.10.6.7.2. Variations in land use throughout the project.

10.92.10.6.7.3. Construction phasing.

#### **10.92.11. ~~Impervious Surface Transfer Credit. (Amended 10/3/2017)~~ Density Averaging.**

Two non-contiguous parcels can shall be treated as one single parcel to meet the built-upon area/density requirements of the WSWP rules and this ordinance. These parcels can be under the same or separate ownership. Density averaging of non-contiguous parcels for purposes of complying with local Water Supply programs is permitted with the following minimum requirements.

The impervious surface limit provisions of this section can be exceeded through an impervious surface credit transfer. Credit for the impervious surfaces allowed on one (1) or more parcels ("donor parcels") can be transferred to non-contiguous parcels ("receiving parcels"), such that the amount of impervious surface available for a development project would be the total of what is normally allowed on the receiving parcel plus what is transferred from the donor parcel(s). Impervious surface credit transfer is subject to the following provisions:

10.92.11.1. The donor parcel and receiving parcel shall be located within the same water supply watershed. If one of the properties is located in the critical area of the watershed, the critical area property shall not be developed beyond the applicable density requirements for its classification.

10.92.11.2. The impervious surface credit transfer shall not be from a donor parcel in protected area to a receiving parcel in critical area.

10.92.11.3. Overall project density meets applicable density or stormwater control requirements under 15A NCAC 2B .0200.

10.92.11.4. Vegetated buffers on both properties meet the minimum buffer requirements in accordance with Sections 10.55d and 10.92.11.of this ordinance.

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

10.92.11.6. Areas of concentrated density development are located in upland areas and, to the maximum extent practicable, away from surface waters and drainageways.

10.92.11.7. The property or portions of the properties that are not being developed will remain in a vegetated or natural state and will be managed by a homeowners' association as common area, conveyed to the Town as a park or greenway with Town Council approval, or placed under a permanent conservation or farmland preservation easement, or with deed restrictions. A metes and bounds description of the areas to remain vegetated and limits on use shall be recorded on the subdivision plat, in homeowners' covenants, and on individual deed and shall be irrevocable. The portion of the donor parcel which is restricted from development as part of the impervious surface credit transfer shall remain in a vegetated or natural. The portion of the donor site restricted from development shall be protected from all future development through use of a permanent conservation easement in favor of either:

~~10.92.8.3.1. Town of Smithfield; or~~

~~10.92.8.3.2. A land trust or similar conservation-oriented non-profit organization with legal authority to accept such easements (the organization shall be bona fide and in perpetual existence and the conveyance instruments shall contain an appropriate provision for retransfer to the town in the event the organization becomes unable to carry out its functions). If the entity accepting the easement is not the town then a third-right of enforcement favoring the town shall be included in the easement.~~

10.92.11.8. Development permitted under density averaging and meeting applicable low density requirements shall transport stormwater runoff by vegetated conveyances to the maximum extent practicable

10.92.11.9. The impervious surface credit transfer density averaging shall be reviewed and approved through use of the site plan process.

~~10.92.8.5. The donor parcel shall be deemed appropriate for acceptance by the town under the Town of Smithfield Review Criteria for Acceptance of Conservation Easements for Impervious Surface Transfer.~~

## **10.92.12. Buffer Areas Required. (Amended 10/3/2017)**

10.92.12.1 A minimum one hundred (100) foot vegetative buffer is required for all new development activities that exceed the low-density option; otherwise, a minimum fifty (50) foot vegetative buffer for development activities is required along all perennial waters indicated on the most recent versions of U.S.G.S. 1:24,000 (7.5 minute) scale topographic maps or as determined by local government studies. Desirable artificial streambank or shoreline stabilization is permitted. For all new development activities proposed within the WS-IV-CA or WS-IV-PA Districts, a minimum fifty-foot vegetative buffer is required, unless the high density option is utilized in which case the minimum buffer will be one hundred (100) feet, adjacent to all perennial waters as indicated on the most recent versions of USGS 1:24,000 (7.5 minute) scale topographic maps or as determined by other reliable sources. Vegetation within such buffers shall remain undisturbed except as permitted by state rules and as may be necessary to accommodate any of the following uses:

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

~~10.92.9.1. Boat docks, ramps, piers, or similar structures.~~

~~10.92.9.2. Reconstruction, rehabilitation, or restoration of structures listed on the National Register of Historic Places.~~

~~10.92.9.3. Roads, provided they cross the buffer at a horizontal angle of at least sixty (60) degrees.~~

~~10.92.9.4. Other public projects, where no practical alternative exists.~~

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#### **~~10.92.10. Existing Single-Family Development Exempt.~~**

Existing single-family dwelling units or proposed additions or expansions to existing single-family dwelling units shall be exempt from these regulations.

#### **10.92.13. Other Existing Development.**

Existing development as defined in this ordinance, may be continued and maintained subject to the provisions provided herein. Expansions to structures classified as existing development must meet the requirements of this ordinance, however, the built-upon area of the existing development is not required to be included in the built-upon area calculations. Existing development as defined herein (other than single-family residential development) which does not currently comply with these provisions, may be continued and maintained without penalty. Proposed expansions to structures classified as existing development, including nonresidential development within the critical area, which would qualify as permitted uses within the underlying zoning district may be allowed but shall be required to comply fully with these requirements. The existing built-upon area shall not be required to be included when calculating permissible density.

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

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

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

10.92.13.1.3. When such use ceases for a period of at least one year, it shall not be reestablished.

#### **~~10.92.12. Existing Vacant Lots.~~**

Existing vacant lots, for which plats or deeds have been recorded in the Johnston County Register of Deeds office prior to the adoption of these regulations, may be used for any of the permissible uses allowed in the watershed area in which it is located, provided that whenever two (2) or more contiguous residential lots of record are in single ownership at any time after the adoption of this ordinance and such lots individually have less area than the minimum requirements for residential purposes for the watershed area in which such lots are located, then such lots shall be considered as a single property for the purpose of compliance with these requirements.

#### **~~10.92.13. Occupied Lots.~~**

Lots occupied for residential purposes at the effective date of these regulations may continue to be used, provided that whenever two (2) or more contiguous lots of record, one (1) of which is occupied, are in single ownership on the effective date of these regulations, and such lots individually or together have less area than required by the minimum standards, then such lots shall be considered as a single property for the purpose of compliance with these requirements.

#### **~~10.92.14. Swale Street Systems.~~**

Within the WS-IV-CA and WS-IV-PA Districts, the Town Council may authorize development which would utilize a swale rather than a curb and gutter street system provided such streets are designed and constructed in accordance with the NCDOT Division of Highways manual entitled "Minimum Construction Standards for Subdivision Roads," as amended, or its successor document, for the classification of street proposed. Additionally,

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best management practices (BMPs) as prescribed in the NCDOT manual "Water Supply Watershed Best Management Practices" shall be utilized for all new roadway construction within watershed areas.

#### **10.92.15. Planned Unit Development within Watershed Areas.**

For planned unit developments proposed within water supply watershed areas, development densities shall comply with the regulations established under this section.

#### **10.92.14. Variances.**

The Board of Adjustment shall have the power to authorize, in specific cases, minor variances from the terms of this Ordinance as will not be contrary to the public interests where, owing to special conditions, a literal enforcement of this Ordinance will result in practical difficulties or unnecessary hardship, so that the spirit of this Ordinance shall be observed, public safety and welfare secured, and substantial justice done. In addition, the town shall notify and allow a reasonable comment period for all other local governments having jurisdiction in the designated watershed where the variance is being considered.

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

10.92.14.1.1. A site plan, drawn to a scale of at least one (1) inch to forty (40) feet, indicating the property lines of the parcel upon which the use is proposed; any existing or proposed structures; parking areas and other built-upon areas; surface water drainage. The site plan shall be neatly drawn and indicate north point, name and address of person who prepared the plan, date of the original drawing, and an accurate record of any later revisions.

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

10.92.14.1.3. The Watershed Administrator shall notify in writing each local government having jurisdiction in the watershed and the entity using the water supply for consumption. Such notice shall include a description of the variance being requested. Comments received by each local government shall become a part of the record of proceedings of the Watershed Review Board.

10.92.14.2. Required Findings. Before the Board of Adjustment may grant a variance, it shall make the following three findings, which shall be recorded in the permanent record of the case, and shall include the factual reasons on which they are based:

10.92.14.2.1. There are practical difficulties or unnecessary hardships in the way of carrying out the strict letter of the Ordinance. In order to determine that there are practical difficulties or unnecessary hardships, the Board must find that the five following conditions exist:

10.92.14.2.1.1. If the applicant complies with the provisions of the Ordinance, the applicant can secure no reasonable return from, nor make reasonable use of, his property. Merely proving that the variance would permit a greater profit to be made from the property will not be considered adequate to justify the Board in granting an variance. Moreover, the Board shall consider whether the variance is the minimum possible deviation from the terms of the Ordinance that will make possible the reasonable use of his property.

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

10.92.14.2.1.3. The hardship is due to the physical nature of the applicant's property, such as its size, shape, or topography, which is different from that of neighboring property.

10.92.14.2.1.4. The hardship is not the result of the actions of an applicant who knowingly or unknowingly violates the Ordinance, or who purchases the property after the effective date of the Ordinance, and then comes to the Board for relief.

10.92.14.2.1.5. The hardship is peculiar to the applicant's property, rather than the result of conditions that are widespread. If other properties are equally subject to the hardship created in the restriction, then granting a variance would be a special privilege denied to others and would not promote equal justice.

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

10.92.14.2.3. In the granting of the variance, the public safety and welfare have been assured and substantial justice has been done. The Board shall not grant a variance if it finds that doing so would in any respect impair the public health, safety, or general welfare.

10.92.14.3. In granting the variance, the Board may attach thereto such conditions regarding the location, character, and other features of the proposed building, structure, or use as it may deem advisable in furtherance of the purpose of this ordinance. If a variance for the construction, alteration or use of property is granted, such construction, alteration or use shall be in accordance with the approved site plan.

10.92.14.4. The Board shall refuse to hear an appeal or an application for a variance previously denied if it finds that there have been no substantial changes in conditions or circumstances bearing on the appeal or application.

10.92.14.5. A variance issued in accordance with this Section shall be issued a zoning permit and such permit shall expire if a Building Permit or a Certificate of Occupancy for such use is not obtained by the applicant within six (6) months from the date of the decision.

10.92.14.6. If the application calls for the granting of a major variance, and if the Board of Adjustments decides in favor of granting the variance, the Board shall prepare a preliminary record of the hearing with all deliberate speed. The preliminary record of the hearing shall include:

10.92.12.1. Whenever an application is filed for a variance to the provisions contained in this section the town shall notify the other local governments having jurisdiction within the watershed and any entity using the water supply for consumption purposes to allow these parties an opportunity to comment on the application.

10.92.12.2. The Board of Adjustment shall conduct a hearing on the application in accordance with Section 4.10, the procedures established under this ordinance. The Board of Adjustment shall have the power to authorize, in specific cases, minor variances, as defined herein, from the terms of this section as will not be contrary to the public interest.

10.92.12.3. If the application for a variance calls for the granting of a major variance, as defined herein, and if the Board of Adjustment decides in favor of granting the variance, a preliminary record of the hearing shall be prepared within thirty (30) days. The preliminary record shall include:

10.92.12.3.1. The variance application;

10.92.12.3.2. The hearing notices;

10.92.12.3.3. The evidence presented;

10.92.12.3.4. Motions, offers of proof, objections to evidence, and rulings on them;

10.92.12.3.5. Proposed findings and exceptions;

10.92.12.3.2. The proposed decision, including any conditions proposed to be added to the permit.

**10.92.14.7.** The preliminary record shall be sent to the Environmental Management Commission (EMC) for review as follows:

**10.92.14.7.1.** If the EMC concludes from the preliminary record that the variance qualifies as a major variance and that (a) the property owner can secure no reasonable return from nor make any proposed variance is granted, and (b) the variance, if granted, will not result in a threat to the water supply, then the EMC shall approve the variance as proposed or approve the proposed variance with conditions and stipulations. The Commission shall prepare a Commission decision and send it to the Town Board of Adjustments. If the Commission approves the variance as proposed, the Board of Adjustments shall prepare a final decision granting the proposed variance. If the Commission approves the variance with conditions and stipulations, the Board of Adjustments shall prepare a final decision, including such conditions and stipulations, granting the proposed variance.

**10.92.14.7.2.** If the EMC concludes from the preliminary record that the variance qualifies as a major variance and that (a) the property owner can secure a reasonable return from or make a practical use of the property without the variance or, (b) the variance, if granted, will result in a serious threat to the water supply, then the EMC shall deny approval of the variance as proposed. The Commission shall prepare a Commission decision and send it to the Town Board of Adjustment. The Board of Adjustment shall prepare a final decision denying the variance as proposed.

~~**10.92.16.5.** The EMC shall prepare a final Commission decision relative to the proposed variance and transmit it to the Board of Adjustment. The Board shall advise the applicant for the proposed variance of the EMC's final decision.~~

~~**10.92.16.6.** A record of all variances granted during a calendar shall be transmitted to the Division of Environmental Management on or before January 1st of the following year.~~

### **10.92.15. Cluster Subdivisions. (~~Amended 10/3/2017~~)**

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

**10.92.15.1.** Minimum lot sizes are not applicable to single family cluster development projects; however, the total number of lots shall not exceed the number of lots allowed for single family detached developments in Sections 10.92.6 and 10.92.7. Density or built-upon area for the project shall not exceed that allowed for the critical area, balance of watershed or protected area, whichever applies.

**10.92.15.2.** All built-upon area shall be designed and located to minimize stormwater runoff impact to the receiving waters and minimize concentrated stormwater flow, maximize the use of sheet flow through vegetated areas, and maximize the flow length through vegetated areas.

**10.92.15.3.** Areas concentrated density development shall be located in upland area and away, to the maximum extent practicable, from surface waters and drainage ways.

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

**10.92.15.5.** Cluster developments that meet the applicable low-density requirements shall transport stormwater runoff by vegetated conveyances to the maximum extent practicable.

### **10.92.16. Rules Governing the Interpretation of Watershed Area Boundaries.**

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

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

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

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

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

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

### **10.92.17. Changes and Amendments to Water Supply Watershed Protection Ordinance Regulations.**

The Town Council may, on its own motion or upon a properly filed petition, amend, supplement, or modify the watershed regulations set forth under this section in accordance with the procedures established under Article 4 of this ordinance, provided that no amendments shall be adopted which shall cause these regulations to violate the minimum watershed protection rules adopted by the North Carolina Environmental Management Commission. All amendments shall subsequently be filed with the North Carolina Division of Environmental Management, the North Carolina Division of Environmental Health, and the North Carolina Division of Community Assistance.

10.92.17.1. The Town Council may, on its own motion or on petition, after public notice and hearing, amend, supplement, change or modify the watershed regulations and restrictions as described herein.

10.92.17.2. No action shall be taken until the proposal has been submitted to the Planning Board for review and recommendations. If no recommendation has been received from the Planning Board within forty-five (45) days after submission of the proposal to the Chairman of the Planning Board, the Town Council may proceed as though a favorable report had been received.

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



**10.92.19. Summary of Water Supply Watershed Protection Rules.**

The following table summarizes the water supply watershed protection regulations contained herein, which were adopted by the Smithfield Town Council on August 2, 2017; to become effective and in force from that day forward.

Classifications	Dischargers	Residential Density-Low Density Option	Nonresidential Development	Sludge Application	Landfills	Hazardous Materials	Sewer Lines
WS-IV Critical Area	None	2du/1ac**	No new development	None	None	None	Allow
Protected Area	Domestic and Industrial	Same	Allow maximum 24% built upon	None	None	Inventory spill/failure	Allow

NOTES:

\*\* Minimum lot size where public water or sewer is not available shall be forty thousand (40,000) square feet.

- (1) Critical area is one (1) mile draining to river intake or to the ridgeline, whichever is greater.
- (2) Protected area is ten (10) miles upstream draining to river intake or to the ridgeline, whichever is greatest.
- (3) For residential and nonresidential development, a minimum buffer width of fifty (50) feet shall be provided adjacent to all perennial waters.
- (4) Spill containment structures are required for new industry where hazardous materials are used, stored, or manufactured.
- (5) Storm water control structures shall not be employed within the critical or protected portion of the watershed as a means to exceed the minimum criteria established herein.
- (6) Agricultural activities are subject to provisions of the Food Security Act of 1985 and the Food, Agriculture, Conservation, and Trade Act of 1990. In critical area agricultural activities must maintain a ten-foot vegetated buffer or equivalent control. Animal operations with greater than one hundred (100) animals must use BMPs as determined by the Soil and Water Conservation Commission.
- (7) Forestry activities are subject to the provisions of the forest practices guidelines related to water quality (15A NCAC 11.0101-.0209).
- (8) The Department of Transportation must use BMPs as described in their document, "Water Supply Watershed Best Management Practices."
- (9) Swale street systems constructed in accordance with NCDOT standards may be permissible within the critical and protected areas.

[Amend Article 10, Section 10.119 adding a Watershed Protection Approval Certification]

**PART 2**

**10.119.1.6. Watershed Protection Approval Certification.** I certify that the plat shown hereon complies with the Watershed Protection Ordinance and is approved by the Town Council for recording in the Johnston County Register of Deeds office.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Watershed Administrator

**NOTICE:** This property is located within a Public Water Supply Watershed - development restrictions may apply.

[Amend Appendix A, as it pertains to Watershed definitions]

### PART 3

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

**Family Subdivision.** Family subdivision means a division of a tract of land: (a) to convey the resulting parcels, with the exception of parcels retained by the grantor, to a relative or relatives as a gift or for nominal consideration, but only if no more than one parcel is conveyed by the grantor from the tract to any one relative; or (b) to divide land from a common ancestor among tenants in common, all of whom inherited by intestacy or by will.

**Major variance (watershed).** A variance that is not a Minor Variance as defined in this ordinance.

**Minor variance (watershed).** ~~Minor variance (watershed).~~ (Amended 10/3/2017) A variance from the minimum statewide watershed protection rules that results in a relaxation, by a factor of up to five (5) percent of any buffer, density or built-upon area requirement under the high density option; or that results in a relaxation, by a factor of up to ten (10) percent, of any management requirement under the low density option. A variance from the minimum statewide watershed protection rules that results in a relaxation, by a factor of up to five (5) percent of any buffer, density or built-upon area requirement under the high density option; or that results in a relaxation, by a factor of up to ten (10) percent, of any management requirement under the low density option. For variances to a vegetated setback requirement, the percent variation shall be calculated using the foot print of built-upon area proposed to encroach with the vegetated setback divided by the total area of vegetated setback within the project.

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

### PART

That the Unified Development Ordinance shall be page numbered and revision dated as necessary to accommodate these changes.

### PART 5

That these amendments of the Unified Development Ordinance shall become effective upon adoption.

That these amendments of the Unified Development Ordinance shall become effective upon adoption.

Duly adopted this the 29<sup>th</sup> day of January 2024.

*M. Andy Moore*

M. Andy Moore, Mayor

ATTEST

*Shannan Parrish*

Shannan L. Parrish, Town Clerk

