

**TRANSYLVANIA COUNTY  
WATERSHED PROTECTION ORDINANCE**

**ARTICLE I**

**AUTHORITY AND ENACTMENT**

The Legislature of the State of North Carolina, in Chapter 160D, Article 9, Section 196, Water supply watershed management; and in Chapter 143, Article 21, Watershed Protection Rules, delegates the responsibility or directs local governments to adopt regulations designed to promote public health, safety, and general welfare. Transylvania County does hereby ordain and enact into law the following articles as the Transylvania County Watershed Protection Ordinance.

**ARTICLE II**

**JURISDICTION**

This Ordinance shall apply within the areas designated as a Public Water Supply Watershed by the N.C. Environmental Management Commission and shall be defined and established on the map entitled, "Transylvania County Watershed Protection Map." The Watershed Map is hereby made a part of this Ordinance and shall be permanently kept on file in the Transylvania County Clerk's office and Planning Department. This Ordinance shall not apply to areas owned by the federal government.

**ARTICLE III**

**DEFINITIONS**

**SECTION 1: General Definitions**

- 1.1. Agricultural Use – The use of waters for stock watering, irrigation, and other farm purposes.
- 1.2. Animal Unit – A unit of measurement developed by the U.S. Environmental Protection Agency that is used to compare different types of animal operations.
- 1.3. Best Management Practices (BMP) – A structural or nonstructural management-based practice used singularly or in combination to reduce nonpoint source inputs to receiving waters in order to achieve water quality protection goals.

- 1.4. Buffer – An area of natural or planted vegetation through which stormwater runoff flows in a diffuse manner so that the runoff does not become channelized and filters pollutants. The buffer is measured horizontally from the normal pool elevation of impounded structures and from the bank of each side of a stream.
- 1.5. Building – Any structure used or intended for supporting or sheltering any use or occupancy.
- 1.6. Built-upon Area – Areas covered by impervious or partially impervious cover including buildings, pavement, gravel roads, recreation facilities (e.g. tennis courts). Note: Wooden slatted decks and the water area of a swimming pool are considered pervious.
- 1.7. Cluster Development – Buildings grouped together to conserve land resources and provide for innovation in the design of the project. This term includes non-residential unified development, single-family residential subdivisions, and multi-family development that do not involve land subdivision.
- 1.8. Critical Area – The area extending one-half mile upstream from the water supply intake located directly in the stream or river (run-of-the-river), or the watershed ridge line (whichever comes first). Major landmarks such as highways or property lines may be used to delineate the outer boundary if these landmarks are immediately adjacent to the one-half mile outer boundary.
- 1.9. Development – Any of the following:
  - 1.9.1. The construction, erection, alteration, enlargement, renovation, substantial repair, movement to another site, or demolition of any structure.
  - 1.9.2. The excavation, grading, filling, clearing, or alteration of land.
  - 1.9.3. The subdivision of land as defined in G.S. 160D-802.
  - 1.9.4. The initiation or substantial change in the use of land or the intensity of use of land.
- 1.10. Discharging Landfill – A facility with liners, monitoring equipment and other measures to detect and/or prevent leachate from entering the environment and in which the leachate is treated on site and discharged to a receiving stream or pumped and hauled to a permitted wastewater treatment facility.
- 1.11. Dwelling Unit – A single unit providing complete, independent living facilities for one or more persons, including permanent provisions for living, sleeping, eating cooking and sanitation.

- 1.12. Existing Development – Those projects that are built or those projects that at a minimum have, by the effective date of this Ordinance, met one of the following criteria:
  - 1.12.1. Expended substantial resources (time, labor, money) based on a good faith reliance upon having received a valid local government approval to proceed with the proposed project; or
  - 1.12.2. Obtained a valid building permit.
- 1.13. Existing Lot (Lot of Record) – A lot that is part of a platted subdivision or a lot described by metes and bounds that was recorded in the Register of Deeds office prior to the adoption of this ordinance.
- 1.14. Hazardous Material – Any substance identified in: Superfund Amendment and Reauthorization Act (SARA) SECTION 302, Extremely Hazardous Substances; Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA); or Section 311 of the Clean Water Act (CWA).
- 1.15. Industrial Development – Any non-residential development that requires a National Pollutant Discharge Elimination System (NPDES) permit for an industrial discharge and/or requires the use or storage of any hazardous material for the purpose of manufacturing, assembling, finishing, cleaning or developing any product or commodity.
- 1.16. Landfill – A facility designed to dispose of solid waste on land in a sanitary manner in accordance with Chapter 130A Article 9 of the N.C. General Statutes.
- 1.17. Lot – A portion of a subdivision or any other parcel of land intended as a unit for transfer of ownership or for development, or both. the word lot “lot” includes “plot”, “parcel” or “tract”.
- 1.18. Major Variance – A variance that results in either
  - 1.18.1. the complete waiver of a management requirement; or
  - 1.18.2. the relaxation, by a factor of more than ten (10) percent, of any management requirement that has a numerical standard.
- 1.19. Minor Variance – A variance not qualifying as a major variance.
- 1.20. Non-residential Development – All development other than residential development, agriculture, silviculture and trout farming.

- 1.21. Plat – Includes the terms: map, plan, or replat; a map of plan of a parcel of land which is to be or which has been developed or subdivided.
- 1.22. Residential Development – Buildings for residence such as attached and detached single-family dwelling, apartment complexes, condominiums, townhouses, cottages, etc. and their associated outbuildings such as garages, storage buildings, gazebos, etc.
- 1.23. Single Family Residential – Any development where: 1) no building contains more than one dwelling unit, 2) every dwelling unit is on a separate lot, and 3) where no lot contains more than one dwelling unit.
- 1.24. Road – A dedicated public or private right-of-way for routine vehicular traffic.
- 1.25. Structure – Anything constructed or erected, including but not limited to buildings, which requires location on the land or attachment to something having permanent location on the land.
- 1.26. Subdivider – Any person, firm or corporation who subdivides or develops any land deemed to be a subdivision.
- 1.27. Subdivision – A subdivision means all divisions of a tract or parcel of land into two or more lots, building sites, or other divisions for the purpose of sale or building development (whether immediate or future) and includes all divisions of land involving the dedication of a new road or a change in existing roads; and includes any unified residential or non-residential development; however, the following are not included within this definition and are not subject to any regulations enacted pursuant to this Part:
  - 1.27.1. The combination or recombination of portions of previously subdivided and recorded lots if the total number of lots is not increased and the resultant lots are equal to or exceed the standards of the county as shown in its subdivision regulations;
  - 1.27.2. The division of land into parcels greater than 10 acres where no road right-of-way dedication is involved;
  - 1.27.3. The public acquisition by purchase of strips of land for widening or opening roads;
  - 1.27.4. The division of a tract in single ownership the entire area of which is no greater than two acres into not more than three lots, if no road right-of-way dedication is involved and if the resultant lots are equal to or exceed the standards of the county as shown by its subdivision regulations;

- 1.27.5. The division of land for the purpose of conveying a single lot or parcel to each tenant in common, all of whom jointly inherited the land by intestacy or by will;
  - 1.27.6. The division of land into no more than two (2) parcels for the purpose of conveying at least one (1) of the resulting lots to a grantee(s) who would have been an heir(s) of the grantor if the grantor had died intestate immediately prior to the conveyance;
  - 1.27.7. The division of land pursuant to an order of a court of the General Court of Justice;
  - 1.27.8. The division of land for cemetery lots or burial plots; and
  - 1.27.9. The division of land for the purpose of changing the boundary line(s) between adjoining property owners and no new road right-of-way dedication is involved.
- 1.28. Toxic Substance – Any substance or combination of substance (including disease causing agents), which after discharge and upon exposure, ingestion, inhalation, or assimilation into any organism, either directly from the environment or indirectly by ingestion through food chains, has the potential to cause death, disease, behavioral abnormalities, cancer, genetic mutations, physiological malfunctions (including malfunctions or suppression in reproduction or growth) or physical deformities in such organisms or their off- spring or other adverse health effects.
  - 1.29. Variance – Permission to develop or use property granted by the Watershed Review Board relaxing or waiving a water supply watershed management requirement adopted by the Environmental Management Commission and incorporated into this Ordinance.
  - 1.30. Watershed – The entire land area contributing surface drainage to a specific point (e.g. the water supply intake).
  - 1.31. Watershed Administrator – The person responsible for administering and enforcing this Ordinance.

## ARTICLE IV

### SUBDIVISION REGULATIONS

**SECTION 2: General Provisions – Following the adoption of this Ordinance, no subdivision of land within Transylvania County shall be approved according to the**

**Transylvania County Subdivision Control Ordinance until it is prepared and approved in accordance with the provisions of this Ordinance.**

**SECTION 3: Subdivision Application and Review Procedures**

- 3.1. All proposed subdivisions shall be reviewed by submitting a plat with a vicinity map to the Watershed Administrator to determine whether or not the property is located within the designated Public Water Supply Watershed. **Subdivisions not within the designated watershed area are not subject to the remainder of this Ordinance.**
- 3.2. A person subdividing land within the watershed shall file an application with the Watershed Administrator. The application shall include a completed application form, two (2) copies of the plat and any supporting documentation deemed necessary by the Watershed Administrator.
- 3.3. The Watershed Administrator shall review the completed application and either approve, approve conditionally or disapprove each application. The Watershed Administrator shall take final action within ten (10) working days from the application date.
- 3.4. The Watershed Administrator may provide public agencies an opportunity to review and make recommendations. Failure of the agencies to submit their comments and recommendations shall not delay final action. Said public agencies may include, but are not limited to, the following:
  - 3.4.1. The Health Department director with regard to proposed water or sewer systems normally approved by the Health Department.
  - 3.4.2. The NC Division of Environmental Management with regard to proposed water or sewer systems and engineered storm water controls.
- 3.5. If the Watershed Administrator approves the application, such approval shall be indicated on both the plat and copies by the following certificate.

**Certificate of Approval**

I certify that the plat shown hereon complies with the Transylvania County Watershed Protection Ordinance.

\_\_\_\_\_  
Date

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

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

- 3.6. If the Watershed Administrator disapproves or approves conditionally the application, the reason(s) for such action shall be stated in writing. The subdivider may make changes and submit a revised plan which shall constitute a separate request for review.

#### **SECTION 4: Subdivision Standards and Required Improvements**

- 4.1. All lots shall provide adequate building space in accordance with the development standards contained in Article V. Lots which are smaller than the minimum required for residential lots shall be identified on the plat as "NOT FOR RESIDENTIAL PURPOSES."
- 4.2. For the purpose of calculating built-upon area, the total project area shall include the tract's total acreage on which the project is to be developed. The built-upon area of existing development is not required to be included in the density calculation.
- 4.3. Storm Water Drainage – The application shall be accompanied by a proposed storm water drainage control plan. The subdivider shall provide a drainage system that diverts stormwater runoff away from all perennial streams to minimize water quality impacts.
- 4.4. Erosion and Sedimentation Control – The application shall be accompanied by a copy of the erosion control plan and a written statement from the N.C. Department of Environment, Health, and Natural Resources stating that an erosion control plan has been submitted and approved for the project, if applicable.
- 4.5. Roads Constructed in Critical Areas and Watershed Buffer Areas – Where possible, roads should be located outside of critical areas and watershed buffer areas. Roads constructed within these areas shall be designed and constructed to minimize their impact on water quality.
- 4.6. Spill Containment Plan – The Application shall be accompanied by a spill containment plan for the storing of hazardous materials or toxic substances, if applicable.

### **ARTICLE V**

#### **DEVELOPMENT REGULATIONS**

**SECTION 5: Establishment of Watershed Areas** – Transylvania County has one WS-II watershed divided into two areas, as defined by the N.C. Environmental Management Commission.

WS-II-CA (Critical Area)  
WS-II-BW (Balance of Watershed)

**SECTION 6: WS-II Watershed Areas – Critical Areas (WS-II-CA)**

6.1. Allowed Uses:

- 6.1.1. Agriculture activities subject to the provisions of the Food Security Act of 1985 and the Food, Agriculture, Conservation and Trade Act of 1990. Agricultural activities conducted after January 1, 1993 shall maintain a minimum ten (10) foot vegetative buffer, or equivalent control as determined by the Soil and Water Conservation Commission, 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. Animal operations greater than 100 animal units shall employ Best Management Practices by July 1, 1994, as recommended by the Soil and Water Conservation Commission.
- 6.1.2. Silviculture, subject to the provisions of the Forest Practices Guidelines Related to Water Quality (15 NCAC 11.0101-.0209).
- 6.1.3. Residential development.
- 6.1.4. Non-residential development, **excluding:** 1) the use, storage, or manufacturing of toxic substances and hazardous materials, 2) landfills, and 3) sites for land application of sludge/residuals or petroleum contaminated soils.

6.2. Density and Built-upon Limits:

- 6.2.1. Single family residential development shall not exceed one dwelling unit per two (2) acres on a project by project basis. No residential lot shall be less than two (2) acres, except within an approved cluster development.
- 6.2.2. All other residential and non-residential development shall not exceed six percent (6%) built-upon area on a project by project basis.

**SECTION 7: WS-II Watershed Areas – Balance of Watershed (WS-II-BA)**

7.1. Allowed Uses:



- 7.1.1. Agriculture, subject to the provisions of the Food Security Act of 1985 and the Food, Agricultural, Conservation and Trade Act of 1990.
  - 7.1.2. Silviculture, subject to the provisions of the Forest Practices Guidelines Related to Water Quality (15 NCAC II.0101-.0209).
  - 7.1.3. Trout farming.
  - 7.1.4. Residential development.
  - 7.1.5. Non-re residential development excluding landfills and the storage of toxic substances and hazardous materials unless a spill containment plan is implemented.
- 7.2. Density and Built-upon Limits:
- 7.2.1. Single family residential development shall not exceed one dwelling unit per acre on a project by project basis. No residential lot shall be less than one acre, except within an approved cluster development.
  - 7.2.2. All other residential and non-residential development shall not exceed twelve percent (12%) built-upon area on a project by project basis on any one parcel except that up to five percent (5%) of each of the original tracts located in the balance of the watershed, at the time the Ordinance was adopted, may be developed for non-residential uses to a maximum of seventy percent (70%) built-upon area on a project by project basis. For the purpose calculating built-upon area, total project area shall include total acreage in the tract on which the project is to be developed.

**SECTION 8: Cluster Development** – Cluster development is allowed in all watershed areas under the following conditions:

- 8.1. 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 6 and 7. The project's built-upon area shall not exceed that allowed for the critical area or balance of watershed, whichever applies.
- 8.2. All built-upon area(s) shall be designed and located to minimize stormwater runoff impact to the receiving waters and minimize concentrated stormwater flow.
- 8.3. The remainder of the tract shall remain in a vegetated or natural state. Where the development has an incorporated property owners association, the deed of the open space area shall be conveyed to the association for management. Where a property association is not incorporated, a maintenance agreement shall be filed with all

property deeds. A copy of the deed shall be presented to the Watershed Administrator.

**SECTION 9: Buffer Areas Required**

- 9.1. A minimum thirty (30) foot undisturbed, horizontal vegetative buffer for development activities is required along all perennial waters indicated on the most recent U.S.G.S. 1:24,000 (7.5 minute) scale topographic maps or as determined by local government studies. Artificial stream bank stabilization is permitted.
- 9.2. No new development is allowed in the buffer except for projects such as road crossings and greenways where no practical alternative exists and as approved by the Watershed Review Board. These activities should minimize built-upon surface area. Disturbed buffer areas shall be planted and stabilized within 90 days.

**SECTION 10: 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 shall apply:

- 10.1. Where area boundaries are indicated as approximately following either road or highway lines or center lines thereof, such lines shall be construed to be said boundaries.
- 10.2. Where area boundaries are indicated as approximately following property lines, such lines shall be construed to be said boundaries. However, a surveyed plat prepared by a registered land surveyor may be submitted to the county as evidence that one or more properties along these boundaries do not lie within the watershed area.
- 10.3. Where uncertainty exists, the Watershed Administrator shall interpret the Watershed Map as to boundary location(s). This decision may be appealed to the Watershed Review Board

**SECTION 11: Regulation Applications**

- 11.1. No building or land shall hereafter be used and no development shall take place except in conformity with the regulations herein specified for the watershed area in which it is located.
- 11.2. No area required for the purpose of complying with the provisions of this Ordinance shall be included in the area required for another building.
- 11.3. Every residential building hereafter erected, moved or structurally altered shall be located on a lot which conforms to the regulations herein specified, except as permitted in Section 14.

- 11.4. If a use is not specifically indicated as being allowed in a watershed area, such use is prohibited.

**SECTION 12: Existing Development** – Existing development as defined in this Ordinance, may be continued and maintained subject to the following provisions. Expansions to existing structures shall meet the requirements of this Ordinance; however, an existing structure's built-upon area is not required to be included in the density calculations.

- 12.1. Vacant Lots – This category consists of vacant lots for which plats or deeds have been recorded in the Transylvania County Register of Deeds office prior to the adoption of this Ordinance. Lots may be used for any of the uses allowed in the designated watershed area.
- 12.2. Uses of Land – This category consists of existing land uses at the time the Ordinance is adopted and where such use of the land is not permitted to be established hereafter in the designated watershed area. Such uses may be continued except as follows:
  - 12.2.1. When such use of land is changed to an allowed use, it shall not thereafter revert to any prohibited use.
  - 12.2.2. Such use of land shall be changed only to an allowed use.
  - 12.2.3. When such use ceases for a period of at least one year, it shall not be reestablished.
- 12.3. Reconstruction of Buildings or Built-upon Areas – Any existing building or built-upon area not in conformance with the restrictions of this Ordinance that is damaged or removed may be repaired and/or reconstructed, provided:
  - 12.3.1. Repair or reconstruction is initiated within twelve (12) months and completed within two (2) years of such damage.
  - 12.3.2. The total amount of impermeable surface area devoted to built-upon area is not increased.

**SECTION 13: Watershed Protection Permit**

- 13.1. Except where a single family residence is constructed on a lot deeded prior to the effective date of this Ordinance, no building or built-upon area shall be erected, moved, enlarged or structurally altered, nor shall any building permit be issued nor shall any change in the use of any building or land be made until the Watershed Administrator provides the Transylvania County Building Inspections Department

with an approved Watershed Protection Permit. No Watershed Protection Permit shall be issued that is not in conformance with this Ordinance.

- 13.2. Watershed Protection Permit applications shall be filed with the Watershed Administrator. The application shall include a completed application form and supporting documentation deemed necessary by the Watershed Administrator.
- 13.3. A Watershed Protection Permit shall expire if a Building Permit or Watershed Occupancy Permit for such use is not obtained by the applicant within twelve (12) months from the date of issuance.

#### **SECTION 14: Watershed Protection Occupancy Permit**

- 14.1. The Watershed Administrator shall issue a Watershed Protection Occupancy Permit certifying that all requirements of this Ordinance are met prior to the Inspections Department issuing a final certificate of occupancy for a new, altered or moved building. A Watershed Protection Occupancy Permit shall be applied for coincident with the application for a Watershed Protection Permit and shall be issued or denied within ten (10) working days after the erection or structural alteration of the building is completed.
- 14.2. When only a change in use of land or existing building occurs, the Watershed Administrator shall issue a Watershed Protection Occupancy Permit certifying that all requirements of this Ordinance have been met coincident with the Watershed Protection Permit.
- 14.3. If the Watershed Protection Occupancy Permit is denied, the Watershed Administrator shall notify the applicant in writing stating the reasons for denial.

### **ARTICLE VI**

#### **PUBLIC HEALTH REGULATIONS**

**SECTION 15: Public Health, in General** - No activity, situation, structure or land use that poses a threat to water quality and public health, safety and welfare shall be allowed within the watershed. Such conditions may arise from inadequate on-site sewage systems utilizing ground absorption; inadequate sedimentation and erosion control measures; the improper storage or disposal of junk, trash or other refuse within a buffer area; the absence or improper implementation of a spill containment plan for toxic substances and hazardous materials; improper stormwater runoff management; or any other situation found to pose a threat to water quality.

#### **SECTION 16: Abatement**

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

## ARTICLE VII

### LEGAL PROVISIONS

**SECTION 17: Watershed Administrator and Duties** - Transylvania County shall appoint a Watershed Administrator to administer and enforce this Ordinance. The Watershed Administrator, or his duly authorized representative, may enter any building, structure, or premises, as provided by law, to perform any duty imposed upon him by this Ordinance.

- 17.1. The Watershed Administrator shall issue Watershed Protection Permits and Watershed Protection Occupancy Permits. All permits shall be kept on file and shall be available for public inspection during regular office hours.
- 17.2. The Watershed Administrator shall serve as staff to the Watershed Review Board.
- 17.3. The Watershed Administrator shall keep records of all amendments and variances to the local Water Supply Watershed Protection Ordinance and shall provide copies of all adopted amendments and variances to the Supervisor of the Classification and Standards Group, Water Quality Section, Division of Environmental Management and shall provide a description of each project receiving a variance and the reasons for granting the variance.
- 17.4. The Watershed Administrator shall keep records of the jurisdiction's utilization of the provision that a maximum of five percent (5%) of the non-critical area of WS-II-BW watersheds may be developed to a maximum of seventy percent (70%) built-upon surface area. Records shall include the total acres of non-critical watershed area, total acres eligible to be developed under this option, total acres approved for this development option, and individual records for each project with the following information: location, acres, site plan, use, stormwater management plan as applicable and inventory of hazardous materials, as applicable.

**SECTION 18: Appeal from the Watershed Administrator** – Any order, requirement, decision or determination made by the Watershed Administrator may be appealed in writing to the Watershed Review Board within thirty (30) working days from the date the order,

interpretation, decision or determination is made. All appeals must be made in writing stating the reasons for appeal. Following appeal submission, the Watershed Administrator shall transmit to the Board all papers constituting the record upon which the action appealed from was taken.

The Board shall fix a reasonable time for hearing the appeal and give notice thereof to the parties and shall decide the same within twenty (20) working days. At the hearing, any party may appear in person, by agent or by attorney.

If an appeal is filed, the County will take no action unless the Watershed Administrator certifies to the Watershed Review Board after the notice of appeal is filed with him, that by reason of facts, no corrective action would cause imminent danger to water quality and public health. In such case, corrective action shall not be stayed other than by a restraining order which may be granted by the Watershed Review Board or by a court of record.

**SECTION 19: Changes and Amendments to the Watershed Protection Ordinance**

- 19.1. The Board of Commissioners may from time to time amend the terms of this Ordinance, but no amendment shall become effective unless it shall have been proposed by or shall have been submitted to the Watershed Review Board for review and recommendation. The Watershed Review Board shall have twenty (20) working days from the time the proposed amendment is submitted to it within which to submit its recommendation to the County Commissioners. If the Watershed Review Board fails to submit a report, it shall be deemed to have recommended approval of the amendment(s).
- 19.2. Under no circumstances shall the Transylvania County Board of Commissioners adopt such amendments, supplements or changes that would cause this Ordinance to violate the watershed protection rules as adopted by the N.C. Environmental Management Commission. All amendments must be filed with the N.C. Division of Environmental Management, N.C. Division of Environmental Health, and the N.C. Division of Community Assistance.
- 19.3. No amendment shall be adopted by the Board of Commissioners until a public hearing is held on the proposed amendments. Public hearing notice shall be given once a week for two successive calendar weeks in a newspaper having general circulation in the area. The notice shall be published for the first time not less than ten (10) nor more than twenty-five (25) days before the date scheduled for the hearing.

**SECTION 20: Establishment of Watershed Review Board** – The Transylvania County Planning Board is designated as the Watershed Review Board.

**SECTION 21: Powers and Duties of the Watershed Review Board**

- 21.1. Administrative Review – The Watershed Review Board shall hear and decide appeals from any decision or determination made by the Watershed Administrator.
- 21.2. Variances – The Watershed Review Board shall have the power to authorize, in specific cases, minor variances where, owing to special conditions, a literal enforcement of this Ordinance will result in practical difficulties or unnecessary hardship.
- 21.3. Applications for a variance shall be made on the proper form obtainable from the Watershed Administrator and shall include the following information:
  - 21.3.1. 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.
  - 21.3.2. A written detailed description of the proposed variance, together with any other pertinent information that the applicant feels would be helpful to the Watershed Review Board in considering the application.
- 21.4. Before the Watershed Review Board may grant a variance, it shall make the following findings which shall be recorded in the permanent record and shall include the factual reasons on which they are based:
  - 21.4.1. 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:
    - 21.4.1.1. If the applicant, complying with the Ordinance, can secure no reasonable return from, nor make reasonable use of, property. Merely proving that the variance would permit a greater profit to be made from the property will not be considered adequate to justify the Board in granting a variance. Moreover, the Board shall consider whether the variance is the minimum possible deviation from the terms of the Ordinance that will make possible the reasonable use of the applicant's property.
    - 21.4.1.2. The hardship results from the application of the Ordinance to the property rather than from other factors such as deed restrictions or other hardship.

- 21.4.1.3. 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.
- 21.4.1.4. 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.
- 21.4.2. The variance is in harmony with the general purpose and intent of the Ordinance and preserves its spirit.
- 21.4.3. In the granting of the variance, the public safety and welfare are assured and substantial justice is 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.
- 21.5. 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.
- 21.6. The Watershed Review Board shall refuse to hear an appeal or an application for a variance previously denied if it finds that there have been no substantial changes in condition or circumstances bearing on the appeal or application.
- 21.7. A variance issued in accordance with this Section shall be considered a Watershed Protection Permit and shall expire if a Building Permit or Watershed Occupancy Permit for such use is not obtained by the applicant within six (6) months from the date of the decision.
- 21.8. If the application calls for the granting of a major variance, and if the Watershed Review Board decides in favor of granting the variance, the Board shall prepare a preliminary hearing record. The preliminary hearing record shall include:
  - 21.8.1. The variance application;
  - 21.8.2. The hearing notices;
  - 21.8.3. The evidence presented;



- 21.8.4. Motions, offers of proof, objections to evidence, and rulings on them;
  - 21.8.5. Proposed findings and exceptions;
  - 21.8.6. The proposed decision, including all conditions proposed to be added to the permit.
- 21.9. The preliminary hearing record shall be sent to the Environmental Management Commission for its review and final decision.

**SECTION 22: Appeals** – Appeals from the Watershed Review Board or the N.C. Environmental Management Commission must be filed with the Superior Court within thirty (30) working days from the date of the final decision. The decisions by the Superior Court shall be in the manner of certiorari.

**SECTION 23: Criminal Penalties** – Any person violating this Ordinance shall be guilty of a misdemeanor and, upon conviction, shall be punished in accordance with G.S. 14-4. The maximum fine for each offense shall not exceed \$500.00. Each day that the violation continues shall constitute a separate offense.

**SECTION 24: Remedies**

- 24.1. If any subdivision, development and/or land use is found to be in violation of this Ordinance, the Transylvania County Board of Commissioners may, in addition to all other remedies available in law or in equity, impose a civil penalty in the amount of \$100.00, institute an action or proceedings to restrain, correct, or abate the violation; to prevent occupancy of the building, structure, or land; or to prevent any illegal act, conduct, business, or use in or about the premises. In addition, 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.
- 24.2. If the Watershed Administrator finds that any provision of this Ordinance is violated, he shall notify in writing the person responsible for such violation, indicate the violation, and order the necessary corrective action. He shall order discontinuance of the illegal land use, buildings or structures; removal of illegal buildings or structures, or of additions, alterations or structural changes thereto; discontinuance of any illegal work being done; or shall take any action authorized by this Ordinance to ensure compliance with or to prevent violation of its provisions. If a ruling of the Watershed Administrator is questioned, the aggrieved party or parties may appeal such ruling to the Watershed Review Board.

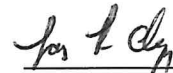
**SECTION 25: Validity** – Should any section or provision of this Ordinance be declared invalid or unconstitutional by any court of competent jurisdiction, the declaration shall not

affect the validity of this Ordinance as a whole or any part thereof that is not specifically declared to be invalid or unconstitutional.

**SECTION 26: Effective Date** – This Ordinance shall take effect and be in force on January 1, 1994 as adopted by the Board of Commissioners of Transylvania County, this 13th day of December, 1993. Amended June 21, 2021.

ATTEST:

  
Clerk to the Board

  
Jason R. Chappell, Chairman  
Transylvania County  
Board of Commissioners

