

ARTICLE 10 RESOURCE CONSERVATION DISTRICT

10.1 Intent

The Resource Conservation District is intended to be applied to the areas along watercourses within the Town's planning jurisdiction in order to preserve the water quality of the Town's actual or potential water supply sources, to minimize danger to lives and properties from flooding in and near the floodways, to preserve the water-carrying capacity of the Town's watercourses and to protect them from erosion and sedimentation, to retain open spaces and greenways to protect their environmentally sensitive character, to preserve urban wildlife and plant life habitats from the intrusions of urbanization, to provide air and noise buffers to ameliorate the effects of development, and to preserve and maintain the aesthetic qualities and appearance of the Town.

In the interpretation and application of this Article, all provisions shall be: (a) considered as minimum requirements, (b) strictly construed in favor of the public interest and community benefit, and (c) deemed neither to limit nor repeal any other powers provided by Town ordinance or state statute.

10.2 Definitions

Where not otherwise defined by this ordinance, the definitions contained in Article IV of chapter 5 of the Town Code of Ordinances, "Flood Damage Prevention Ordinance," shall apply to this Article.

10.3 Establishment of Resource Conservation District

10.3.1

A Resource Conservation District Elevation is hereby established, and defined to be that elevation two (2) feet above the 100-year floodplain elevation, as said 100-year elevation is delineated in the official Town floodplain maps.

10.3.2

The Resource Conservation District is hereby established as a district which overlays other zoning districts established in Article 3. The Resource Conservation District shall consist of the area bounded by the Resource Conservation District Elevation and the areas within buffer zones established as follows:

- a) Fifty (50) feet from the bank of a perennial stream draining less than one square mile, plus land with a slope greater than fifteen percent (15%), up to seventy-five (75) feet from such a bank, and
- b) Fifty (50) feet from the bank of a perennial stream draining one square mile or more, plus land with a slope greater than fifteen percent (15%), up to one hundred (100) feet from such a bank.

The Resource Conservation District is further delineated by classifying it in two parts. The Resource Conservation-I District is hereby delineated as those areas of the Resource Conservation District generally south and east of a line established as follows: beginning at a point where the centerline of Erwin (a.k.a. Mount Moriah Church) Road meets the northeastern most point of the Town's extraterritorial planning jurisdiction; thence south along the centerline of Erwin Road to the centerline of U. S. Route 15-501; thence west along the centerline of U. S. Route 15-501 Business to a point 1000 feet west of the U. S. Route 15-501 Business/Estes Drive intersection; thence south and west generally parallel to Estes Drive to the centerline of U. S. Route 15-501 By-pass to its intersection with Manning Drive; thence generally south and east along the 300-foot elevation as shown on U.S.G.S. official topographic maps to its intersection with the southern boundary of the Town's extraterritorial jurisdiction. The Resource Conservation-II District is delineated as those areas of the Resource Conservation District generally north and west of said line.

The Board of Adjustment, upon recommendation of the Town Manager, is authorized to adopt such guidelines and criteria for the interpretation and application of this Article, and to make such reasonable adjustments to the boundary of the Resource Conservation District, as shall recognize the greater potential for, and severity of, flooding conditions in the Resource Conservation-I District, as well as the generally lower and flatter terrain of such district.

The use of any land or structure within the Resource Conservation District shall comply with the use regulations applicable to the underlying zoning district.

10.4

Development in Resource Conservation District

After March 19, 1984, no new development shall be permitted, nor shall any land be disturbed (other than accessory land disturbing activities ordinarily associated with single-family or duplex residential uses), within the Resource Conservation District except as permitted by Section 10.5 or pursuant to a variance authorized by this Article and approved by the Board of Adjustment.

The status of any development existing or for which construction had substantially begun on or before March 19, 1984 shall be considered irrespective of the provisions of this Article, except as follows:

- (i) any development existing or for which construction had substantially begun on or before March 19, 1984, that is damaged or destroyed to the extent of fifty percent (50%) or more of its assessed taxable value due to casualty loss from fire, storm, flood or vandalism, may be rebuilt or replaced, if otherwise permitted by law or ordinance, pursuant to any appropriate permit or approval;
- (ii) any development existing or for which construction had substantially begun on or before March 19, 1984, that is demolished, rehabilitated or renovated to the extent of fifty

percent (50%) or more of its assessed taxable value, may be rehabilitated or renovated, if otherwise permitted by law or ordinance, pursuant to any appropriate permit or approval; provided that the owner of such development shall have the burden of demonstrating to the Town Manager, or such body as has jurisdiction over the issuance of any appropriate permit or approval, that the entire development, as renovated, replaced or rebuilt, will benefit the public by improving (a) the development's provision of open spaces or greenways, (b) its effect on maintaining the water quality of the Town's actual or potential water supply sources, and (c) protection of persons and property from dangers caused by flooding.

Notwithstanding the foregoing provisions of this Section, no development or land disturbance shall be permitted within the floodway except to the minimum required by public necessity or by state or federal law.

10.5 Permitted Uses Within Resource Conservation District

10.5.1

Subject to the use regulations for the underlying zoning district, the following uses shall be permitted uses within the Resource Conservation District:

- a. pasture, outdoor plant nurseries, horticulture, forestry, wildlife sanctuary, and other similar agricultural and related uses which do not require extensive land disturbing activities or fences;
- b. ground level loading areas, parking areas, and other similar ground level area uses;
- c. lawns, gardens, play areas and other similar uses;
- d. golf courses, driving ranges, archery ranges, picnic grounds, parks, hiking or horseback riding trails, open space, and other similar public and private recreational uses that do not require extensive use of fences or walls;
- e. public utility and storm drainage facilities that are public necessities;
- f. streets, bridges, and other similar public, community uses where there is no practical alternative to their location within the Resource Conservation District.

Permitted uses shall be subject to the provisions of Sections 10.7 and 10.8.

10.5.2

10.5.2.1

Irrespective of intensity regulations generally applicable to the underlying zoning district, any development permitted within the

Resource Conservation District shall comply with the following modified LUI ratios:

LUI Rating	Use Group	FAR	OSR	LSR	RSR
6	A,B,C	.019	.93	.85	N/A

10.5.2.2

Any development in the Resource Conservation District shall be subject to the the following limitations on impervious surfaces and land disturbing activities:

Impervious Surface Limitation: In Water Quality Critical Area: six percent (6%) of lot within the Resource Conservation District; in sewer area outside Water Quality Critical Area: thirty percent (30%); in unsewered area outside Water Quality Critical Area: twelve percent (12%).

Land Disturbance Limitation: forty percent (40%).

10.5.3

Any development or land disturbance permitted in the Resource Conservation District (other than accessory land disturbing activities ordinarily associated with single-family or duplex residential uses) shall be pursuant to a site plan approval or, as appropriate, pursuant to special use or planned development approval.

10.6 Variance From Board of Adjustment

10.6.1

An owner or property who alleges that the provisions of Sections 10.4 and 10.5 leave no legally reasonable use of his property remaining may apply to the Board of Adjustment for a variance. An application for a variance shall be submitted to the Town Manager. The Town Manager shall prescribe the forms on which such applications shall be made. The Town Manager may require any information in connection with an application that is reasonably required to make a determination regarding the application for a variance.

No application shall be accepted by the Town Manager unless it is complete. Applications which are not complete shall be returned promptly to the applicant, with a notation of the deficiencies in the application.

Upon receiving a complete application, the Town Manager shall make an investigation of it and forward it within a reasonable period of time

to the Board of Adjustment, together with his recommendation thereon, and an evaluation by appropriate Town departments, including Planning and Engineering, for the Board's consideration.

10.6.2

The review of the Board of Adjustment shall extend to the entire zoning lot within which the Resource Conservation District lies. The Board of Adjustment shall grant a variance, subject to the protections of this Article, if it finds that the provisions of Sections 10.4 and 10.5 leave an owner no legally reasonable use of his property remaining, if such a variance is necessary or desirable in order to achieve fairness and substantial justice to such an owner, and if a failure to grant the variance would result in extreme hardship. In making such determination, the Board of Adjustment shall consider the uses available to the owner for the entire zoning lot within which the Resource Conservation District lies.

The Board of Adjustment shall grant the minimum variance necessary to afford appropriate relief under this section. The Board may attach such reasonable conditions to the grant of a variance as it deems necessary to achieve the purposes of this Article.

10.6.3

Any owner of property applying to the Board of Adjustment for a variance from the provisions of this Article shall have the burden of establishing that such variance should be granted by the Board, except as such burden is altered by Section 10.6.4.

10.6.4

If the Resource Conservation District overlays more than 75% of the area of a zoning lot, the owner of that lot shall be presumed entitled to a variance, but such presumption may be rebutted by substantial evidence before the Board of Adjustment.

10.6.5

The Board of Adjustment, before taking final action on an application for a variance, shall refer such application to the Planning Board, Appearance Commission, and other Town boards or commissions as appropriate, for comment. The Board shall not take final action on such an application until it has received and considered such comments.

The Board of Adjustments shall not grant any variance if it finds that such a variance would result in significantly increased flood heights, significantly increased velocity of flow or deposit of sedimentation, significantly increased erosion, significant additional threats to public safety, significant threats to water quality, the removal of significant urban wildlife habitat, extraordinary public expense, public nuisance, or would conflict with the provisions of any other law or ordinance. The Board of Adjustment may refuse to grant any variance

if it finds that the owner of a lot, or any predecessor in interest, has subdivided such lot in an attempt to avoid or evade the provisions of intent of this Article.

10.6.6

10.6.7

In passing on applications for variances pursuant to this Article, the Board of Adjustment shall consider all technical evaluations, all relevant factors, other provisions of statute or ordinance, and:

- a. the danger to life and property due to flooding, sedimentation, and/or erosion damage at the site;
- b. the danger that structures or materials may be swept onto other lands to the injury of others;
- c. the danger to life and property from flood waters backed up or diverted by any obstruction or by debris collected by the obstruction.
- d. the susceptibility of the proposed development and its contents to flood damage and the effect of such damage on the individual owner;
- e. the importance of the services provided by the proposed development to the community;
- f. the necessity to the facility of a waterfront location, where applicable;
- g. the availability of alternative locations, not subject to flooding or erosion damage, for the proposed use;
- h. the compatibility of the proposed use with existing and anticipated development;
- i. the relationship of the proposed use to the comprehensive plan and any flood plain management program for that area;
- j. the safety of access to the property in times of flood for ordinary and emergency vehicles;
- k. the expected heights, velocity, duration, rate of rise, and sediment transport of the flood waters expected at the site;
- l. the effects of the proposed development on the heights, velocity, duration, and rate of rise of the flood waters upstream and downstream of the proposed site;
- m. the costs of maintaining or restoring public services during and after flood conditions including maintenance and repair of public utilities and facilities such as sewer, gas, electrical, and water systems, and streets and bridges;

systems, and streets and bridges;

- n. that susceptibility of water supply and sanitation systems to contamination and unsanitary conditions during and after floods; and
- o. the danger that the issuance of the variance will set a precedent for future development in the Resource Conservation District which cumulatively may increase the flood hazard.

10.7

Requirements for Site Plans

Every application for development of land wholly or partially within the Resource Conservation District, except for a single-family home or duplex (or accessory land disturbing activities normally associated with single-family or duplex residential uses), shall include the following:

- a. a utilities plan;
- b. a grading plan showing existing and final contours;
- c. a sedimentation and erosion control plan;
- d. a storm water management plan;
- e. a soils analysis;
- f. a topographic map of the site, at two-foot intervals, showing the location of streams, watercourses, stormwater runoff channels, etc; the limits of the floodway and floodplain; existing or proposed storm and sanitary sewers and sewer outfalls; septic tank systems and outlets, if any; existing and proposed structures and development; and the 100-year and 10-year flood elevations and limits;
- g. channel profiles for watercourses, at a minimum horizontal scale of 1:60, and minimum vertical scale of 1:10, showing the elevations of the watercourse bed; channel banks, if any; waterway openings of existing and proposed culverts and bridges within and near the site; and size and elevation of existing or proposed sewer and drain outlets; and the 100-year and 10-year flood elevations and limits; and the boundaries of the Resource Conservation District elevation.
- h. a survey of existing vegetation, including a tree and shrub survey; and a landscape plan for the completed development; trees and shrubs of potential value to wildlife shall be identified;
- i. a wildlife habitat survey showing the types of habitat on site and their potential as habitats for various species of wildlife and identifying any relevant limiting factors;
- j. description of proposed storage of materials and of waste disposal facilities;

- k. certificate from a registered professional engineer or architect, with respect to floodproofing, or from a registered professional engineer or surveyor with respect to elevation, that any floodproofing measures or finished elevations meet the requirements of this Article.

10.8

Standards for Development in Resource Conservation District

The following standards and criteria shall apply to any portion of a development or, as appropriate, to any land disturbance, within the Resource Conservation District;

- a. the lowest habitable floor elevation of all permanent structures shall be placed at least eighteen (18) inches above the Resource Conservation District elevation and in such a manner as to not adversely impede the flow of waters;
- b. wherever practicable, a natural vegetative buffer at least fifty (50) feet wide from either bank of the watercourse shall be retained;
- c. ditches, culverts, downspouts, parking and loading areas, any paved areas, and roads shall be designed so as to minimize the direct discharge of storm water runoff into watercourses;
- d. no stormwater discharge shall be allowed directly off an impervious surface into the channel of a watercourse;
- e. safe and convenient access shall be provided to any development at least eighteen (18) inches above the Resource Conservation District elevation; utility lines, roads and driveways shall be located as much as feasible parallel to the flow of waters; where any roads, driveways or utility lines necessarily must cross a watercourse. Such crossing shall be located and designed so as to allow convenient access by wildlife through and beyond such crossing, and shall be designed to safely convey floodwaters to the same extent as before construction of said crossings;
- f. street crossings, utility lines, recreational and greenway facilities and recreational-related surfaces may be permitted in the buffer area, but only to the minimal extent necessary;
- g. the site plan shall be designed to minimize adverse environmental and flooding effects on the Resource Conservation District and to achieve the purposes of this ordinance; permanent structures shall be located, to the maximum extent feasible, as far from the watercourse, and as close to the outer boundary of the Resource Conservation District, as is practical; permanent structures shall be clustered as much as practicable, to minimize land disturbance, to maximize undeveloped open space, and to maximize retention of natural vegetation and buffers;

- h. water supply and sewer systems shall be designed to prevent the infiltration of flood waters into the systems, and discharges from the systems into flood waters, and to avoid impairment during flooding to minimize flood damage; finished floor elevations to be served by sanitary sewer shall be at or above the rim elevation of the nearest upstream manhole cover; sanitary sewer manholes must be provided with locking, watertight manhole covers, or be elevated to a height sufficient to prevent submersion or infiltration by floodwaters; all sewer and sewer outfall lines shall use gravity flow to a point outside the Resource Conservation District or be otherwise approved by the Town Manager and OWASA;
- i. all gas, electrical and other facility and utility systems shall be located and constructed to minimize flood damage;
- j. to the maximum extent feasible, all utility and service facilities shall be installed, constructed and otherwise protected so as to remain operational should floodwaters reach the Resource Conservation District elevation plus eighteen (18) inches;
- k. land disturbing activity shall be kept to the minimum feasible; the smallest practicable area of land shall be exposed at any one time during development; such minimal area shall be kept exposed as short a duration of time as is practical; temporary vegetation or mulching shall be used as needed to protect exposed areas; natural plant covering and vegetation shall be retained and protected to the maximum degree practical when developing the site, as shall natural features and terrain.
- l. filling shall be permitted only if necessary to afford a legally reasonable use of the property; in any event, cutting or filling shall not be permitted if any change in the hydraulic characteristics of the watercourse would result.

10.9 Removal of Illegal Structures

The owner of any land within the Resource Conservation District shall be presumed responsible for any violation of this Article committed on his or her property. The owner of any land within the Resource Conservation District shall be responsible for removing any structure or improvement placed therein in violation of this Article. In addition, any other person found in violation of this article shall be liable as provided in this ordinance.

10.10 Warning and Disclaimer of Liability

With respect to flood hazard, the degree of protection required by this Article is considered reasonable for regulatory purposes. Larger floods than anticipated or protected against herein can and will occur on occasion. This Article does not imply that land outside the Resource Conservation District or uses or variances permitted or allowed within such district will be free from flooding or flood damages. This Article shall not create any liability on the part of the Town, or any officer

or employee thereof, for any flood damages that result from reliance on this Article or any administrative decision or process lawfully made thereunder.

10.11 Other Approvals Required

The granting of any permit, variance or approval under this Article shall in no way affect any other type of approval required by any other ordinance or statute of the Town, state, or United States, but shall be an added and separate requirement.

10.12 Records and Filings

The Town Manager shall maintain records of all development permits, approvals or variances and, as appropriate, of any conditions thereon, and also of actions on applications for such permits, approvals or variances, with respect to property within the Resource Conservation District. Variances granted for the relocation or alteration of watercourses shall be reported to adjacent jurisdictions that may be affected by the action, and to the North Carolina Department of Natural Resources and Community Development. The Town Manager shall report any variances granted to the Federal Insurance Administration unless exempted from this requirement by such Administration.

The Town Manager shall notify any applicant in writing of the decision on any application for any permit, approval or variance with respect to property within the Resource Conservation District and shall file a copy of it with the Town's Planning Department.

The applicant shall record any variance granted with the Orange County Register of Deeds within sixty (60) days after written notice of approval of such variance by the Board of Adjustments.

10.13 Resource Conservation District Guide

The Town Manager shall cause to be prepared a Resource Conservation District Guide. Such guide shall contain presumptive criteria and guidelines for interpretation of this Article and evaluation of applications to develop or disturb land within the Resource Conservation District, as well as design and construction standards, consistent with the general performance standards contained in this Article.