

VILLAGE OF MISENHEIMER WATERSHED PROTECTION ORDINANCE

ARTICLE 1 AUTHORITY AND GENERAL REGULATIONS

1.1 AUTHORITY AND ENACTMENT

The legislature of the State of North Carolina has, in Chapter 160D, Section 926; and in Chapter 143, Article 21 (Watershed Protection Rules), directed local governmental units to adopt regulations designed to promote the public health, safety, and general welfare of its citizenry through a watershed protection program.

The Village Council of the Village of Misenheimer hereby enacts the following articles as the *Village of Misenheimer Watershed Protection Ordinance*.

1.2 JURISDICTION

The provisions of this Ordinance shall apply within the areas designated as a Public Water Supply Watershed by the North Carolina Environmental Management Commission. Areas designated as a Public Water Supply Watershed by the N.C. Environmental Management Commission shall be defined and established on the map entitled, "Watershed Protection Map of Stanly County, North Carolina", which is adopted simultaneously herewith. The map and all explanatory matter contained thereon accompanies, and is hereby made a part of this Ordinance. This Ordinance shall be permanently kept on file in the office of the County Clerk and the Village Clerk.

1.3 EXCEPTIONS TO APPLICABILITY

- (A) Nothing contained herein shall repeal, modify, or amend any Federal or State law or regulation, or any ordinance or regulation pertaining thereto except any ordinance which these regulations specifically replace; nor shall any provision of this Ordinance amend, modify, or restrict any provisions of the code of Ordinances of the Village of Misenheimer; however, the adoption of this Ordinance shall and does amend any and all ordinances, resolutions, and regulations in effect in the Village at the time of the adoption of this Ordinance that may be construed to impair or reduce the effectiveness of this Ordinance or to conflict with any of its provisions.
- (B) It is not intended that these regulations interfere with any easement, covenants, or other agreements between parties. However, if the provisions of these regulations impose greater restrictions or higher standards for the use of a building or land, then the provisions of these regulations shall control.
- (C) Existing development, as defined in this Ordinance, is not subject to the requirements of this Ordinance. 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 density calculations.

- (D) If a nonconforming lot of record is not contiguous to any other lot owned by the same party, then that lot of record shall not be subject to the development restrictions of this Ordinance if it is developed for single-family, residential purposes. See Section 10.4 of the Misenheimer Zoning Ordinance.

1.4 CIVIL PENALTIES

Any person violating any provisions of this Ordinance shall be liable for a civil penalty in the amount of \$500.00. Each day that the violation continues shall constitute a separate offense.

1.5 REMEDIES

- (A) If any subdivision, development, and/or land use is found to be in violation of this Ordinance, the Village Council may, in addition to all other remedies available either in law or in equity, institute a civil 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.
- (B) If the Watershed Administrator finds that any of the provisions of this Ordinance are being violated, he shall notify in writing the person responsible for such violation, indicating the nature of the violation, and ordering the action necessary to correct it. He shall order discontinuance of the illegal use of land, 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 appropriate Watershed Review Board. The Misenheimer Planning Board acting as the Board of Adjustment shall hear any appeals under this Ordinance.

1.6 SEVERABILITY

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.

1.7 EFFECTIVE DATE

This Ordinance shall take effect and be in force on February 14, 2022.

ARTICLE 2 RESERVED

ARTICLE 3 DEVELOPMENT REGULATIONS

3.1 ESTABLISHMENT OF WATERSHED AREAS

The purpose of this Article is to list and describe the watershed areas herein adopted.

For purposes of this Ordinance the Village is hereby divided into the following areas, as appropriate:

3.2 WATERSHED AREAS DESCRIBED

(A) **WS-IV Watershed Areas – Critical Area (WS-IV-CA).** 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 the WS-IV Watershed. In order to address a moderate to high land-use intensity pattern, single-family residential uses are allowed at a maximum of two (2) dwelling units per acre. All other residential and non-residential development shall be allowed twenty-four percent (24%) built-upon area. New residual application sites and landfills are specifically prohibited.

(1) **Allowed Uses.**

- (a) Agriculture 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 recommended by the Soil and Water Conservation Commission.
- (b) Silviculture, subject to the provisions of the Forest Practices Guidelines Related to Water Quality (15 NCAC 11.6101-.0209).
- (c) Residential
- (d) Non-residential development, excluding: 1) landfills and 2) sites for land application of residuals or petroleum contaminated soils.

(2) **Density and Built-upon Limits.**

- (a) Single Family Residential – development shall not exceed two dwelling units per acre on a project-by-project basis. No residential lot shall be less than one-half (1/2) acre, except within an approved cluster development.
- (b) All other 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.

(B) **WS-IV Watershed Area – Protected Area (WS-IV-PA).** Only new development activities that require an erosion/sedimentation control plan under State law or approved local government 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, single-family residential uses shall develop at a maximum of two (2) dwelling units per acre. All other residential and non-residential development shall be allowed at a maximum of three (3) dwelling units per acre or thirty-six (36) percent built-upon area is allowed for projects without a curb and gutter street system.

(1) **Uses Allowed.**

- (a) Agriculture, subject to the provisions of the Food Security Act of 1985 and the Food Agricultural, Conservation, and Trade Act of 1990.
- (b) Silviculture, subject to the provisions of the Forest Practices Guidelines Related to Water Quality (15 NCAC 11.6101-.0209).
- (c) Residential development.
- (d) Non-residential development.

(2) **Density and Built-upon Limits**

- (a) Single-Family Residential development shall not exceed two (2) dwelling units per acre, as defined on a project-by-project basis. No residential lot shall be less than one-half (1/2) acre, or one-third (1/3) acre for projects without a curb and gutter system, except within an approved cluster development.

- (b) All Other 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.
- (c) In addition to the development allowed under paragraphs (a) and (b) above, new development and expansions to existing development may occupy up to ten percent (10%) of the protected area with up to seventy percent (70%) built-upon area when approved as a special-intensity allocation (SIA). The Watershed Administrator is authorized to approve SIAs consistent with the provisions of this Ordinance. 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.

3.3 CLUSTER DEVELOPMENT

Clustering of development is allowed in all Watershed Areas under the following conditions:

- (A) 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 Section 3.2. Built-upon area of the project shall not exceed that allowed for the critical area or protected area of the watershed, whichever applies.
- (B) All built-upon areas shall be designed and located to minimize stormwater runoff impact to the receiving waters and minimize concentrated stormwater flow.
- (C) The remainder of the tract shall remain in a vegetated or natural state. Where the development has an incorporated property owners' association, the title 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 the property deeds.

3.4 BUFFER AREAS REQUIRED

- (A) A minimum thirty-five (35) 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.

- (B) No new development is allowed in the buffer except for water-dependent structures 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.

3.5 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:

- (A) 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.
- (B) 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 Village as evidence that one or more properties along these boundaries do not lie within the watershed area, according to geographical and topographical data.
- (C) Where the watershed area boundaries lie at a scaled distance more than thirty-five (35) 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.
- (D) Where the watershed area boundaries lie at a scaled distance of thirty-five (35) feet or less from any parallel lot line, the location of watershed area boundaries shall be construed to be the lot line.
- (E) Where other uncertainty exists, the Watershed Administrator shall interpret the Watershed Map as to location of such boundaries. The decision may be appealed to the Village Planning Board acting as a Board of Adjustment,

3.6 APPLICATION OF REGULATIONS

- (A) 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.
- (B) No area required for the purpose of complying with the provisions of this Ordinance shall be included in the area required for another building.

- (C) 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 3.7.
- (D) If a use or class of use is not specifically indicated as being allowed in a watershed area, such use or class of use is prohibited.

3.7 EXISTING DEVELOPMENT

Any 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 density calculations.

- (A) Vacant Lots. This category consists of vacant lots for which plats or deeds have been recorded in the office of the Register of Deeds of Stanly County. Lots may be used for any of the uses allowed in the watershed area in which it is located, provided the following:
 - (1) Where the lot area is below the minimum specified in this Ordinance, the Watershed Administrator is authorized to issue a watershed protection permit. Lots within recorded plats are not required to be recombined to meet the intent of this Ordinance.
 - (2) Notwithstanding the foregoing, whenever two or more contiguous, deeded, residential, vacant 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, such lots shall be combined to create one or more lots that meet the standards of this Ordinance, or if this is impossible, reduce to the extent possible the nonconformity of the lots.
- (B) Occupied Lots. This category consists of lots, occupied for residential purposes at the time of the adoption of this Ordinance. These lots may continue to be used provided that whenever two or more adjoining lots of record, one of which is occupied, are in single ownership at any time after the adoption of this Ordinance, and such lots individually or together have less area than the minimum requirements for residential purposes for the watershed area in which they are located, such lots shall be combined to create lots which meet the minimum size requirements, or which minimize size requirements, or which minimize the degree of nonconformity.
- (C) 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:

- (1) When such uses of land have been changed to an allowed use, it shall not thereafter revert to any prohibited use.
 - (2) Such use of land shall be changed only to an allowed use.
 - (3) When such use ceases for a period of at least one year, it shall not be reestablished.
- (D) Reconstruction of buildings or built-upon Area. Any existing building or built-upon area not in conformance with the restrictions of this Ordinance that has been damaged or removed may be repaired and/or reconstructed, except that there are no restrictions on single-family residential development provided:
- (1) Repair or reconstruction is initiated within twelve (12) months and completed within two (2) years of such damage.
 - (2) The total amount of space devoted to built-upon area may not be increased.

3.8 WATERSHED PROTECTION PERMIT

- (A) No building or built-upon area shall be erected, moved, enlarged, or structurally altered, nor shall any building permit, or improvements permit be issued, nor shall any change in the use of any building or land be made until a Watershed Protection Permit has been issued by the Watershed Administrator. No Watershed Protection Permit shall be issued except in conformity with the provisions of this Ordinance, or verified exemption therefrom.
- (B) 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.
- (C) Prior to issuance of a Watershed Protection Permit, the Watershed Administrator may consult with qualified personnel for assistance to determine if the application meets the requirements of this Ordinance, or if the proposed development is exempt from the requirements of this Ordinance.
- (D) A Watershed Protection Permit shall expire if a Building Permit or Watershed Occupancy Permit for such use is not obtained by the applicant within twenty-four (24) months from the date of issuance.

3.9 PERMIT REQUIRED

No permit required under the North Carolina State Building Code shall be issued for any activity for which a Watershed Protection Permit is required until that permit has been issued.

3.10 WATERSHED PROTECTION OCCUPANCY PERMIT

- (A) The Watershed Administrator shall issue a Watershed Protection Occupancy Permit certifying that all requirements of this Ordinance have been met prior to the occupancy or use of a building hereafter erected, altered, or moved and/or prior to the change of use of any building or land.
- (B) A Watershed Protection Occupancy Permit, either for the whole or part of a building, shall be applied for coincident with the application for a Watershed Protection Permit and shall be issued or denied as quickly as administratively possible after completion of work described on the permit.
- (C) 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.
- (D) If the Watershed Protection Occupancy Permit is denied, the Watershed Administrator shall notify the applicant in writing stating the reasons for denial.

ARTICLE 4 PUBLIC HEALTH REGULATIONS

4.1 PUBLIC HEALTH, IN GENERAL

No activity, situation, structure, or land use shall be allowed within the watershed which poses a threat to water quality and public health, safety, and welfare. Such conditions may arise from inadequate on-site sewage systems which utilize 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 and hazardous materials; the improper management of stormwater runoff; or any other situation found to pose a threat to water quality.

4.2 ABATEMENT

- (A) The Watershed Administrator shall monitor land use activities within the watershed areas to identify situations that may pose a threat to water quality, or which violate the terms of this Ordinance.
- (B) The Watershed Administrator shall report all findings to the appropriate Watershed Review Board. The Watershed Administrator may consult with any public agency or official and request recommendation.
- (C) 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 5 ADMINISTRATION, ENFORCEMENT AND APPEALS

5.1 WATERSHED ADMINISTRATOR AND DUTIES THEREOF

The Village Council hereby authorizes the Stanly County Planning Department to perform the duties of Watershed Administrator, and shall approve and co-ordinate programs of the Administrator with other County or Village departments or personnel necessary to assure enforcement of the provisions of this Ordinance as follows:

- (A) The Watershed Administrator shall issue Watershed Protection Permits and Watershed Protection Occupancy Permits as prescribed herein. A record of all permits shall be kept on file and shall be available for public inspection during regular office hours of the Administrator.
- (B) The Watershed Administrator shall provide the appropriate Watershed Review Board with all necessary information and documents related to appeals or other matters upon which the Board is required to act under the provisions of this Ordinance.
- (C) The Watershed Administrator shall keep records of all amendments to the local Water Supply Watershed Protection Ordinance and shall provide copies of all amendments upon adoption to the Division of Water Quality Section. (WPA 97-01)
- (D) The Watershed Administrator shall keep a record of variances to the local Water Supply Watershed Protection Ordinance. This record shall be submitted to the Division of Water Quality on or before January 1st of the following year and shall provide a description of each project receiving a variance and the reasons for granting the variance. (WPA 97-01)
- (E) The Watershed Administrator is granted the authority to administer and enforce the provisions of this Ordinance, exercising in the fulfillment of his responsibility the full police power of the County. 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.

5.2 APPEAL FROM THE WATERSHED ADMINISTRATOR

Where an error of interpretation is believed to exist in any order, requirement, decision, or determination made by the Watershed Administrator, the same may be appealed to and decided by the Village of Misenheimer Planning Board acting as a Board of Adjustment.

An appeal from a decision of the Watershed Administrator must be submitted to the Administrator within fifteen (15) days from the date the order, interpretation, decision or determination is made in writing. All appeals must be made in writing stating the reasons for appeal. Following submission of an appeal, the Watershed Administrator shall transmit all papers constituting the record upon which the action appealed from was taken to the Clerk of the Village of Misenheimer Planning Board acting as a Board of Adjustment.

An appeal stays all proceedings in furtherance of the action appealed, unless the officer from whom the appeal is taken certifies to the Board after the notice of appeal has been filed with him, that by reason of facts stated in the certificate, a stay would in his opinion cause imminent peril to life or property. In such case, proceedings shall not be granted by the Board or by a court of record on application of notice of the officer from whom the appeal is taken and upon due cause shown.

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

5.3 CHANGES AND AMENDMENTS TO THE WATERSHED PROTECTION ORDINANCE

- (A) The Village 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.
- (B) Petitions for amendment shall be filed in the office of the Watershed Administrator on forms provided for that purpose. No petition may proceed unless all necessary requested information, administrative fee, and any supporting plans or documents are provided to the Administrator.
- (C) No action shall be taken by the Village Council until the proposal has been submitted to the Village Planning Board for review and recommendations. Review shall proceed as quickly as administratively possible according to rules of procedure of the Board.
- (D) Under no circumstances shall the Village 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.
- (E) 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. Notification and approval by the Division of Environmental Management shall be accomplished prior to final enactment by the local government.

5.4 PUBLIC NOTICE AND HEARING REQUIRED

Before adopting or amending this Ordinance, the Village Council shall hold a public hearing on the proposed changes. A notice of the public hearing 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 fixed for the hearings.

5.5 ESTABLISHMENT OF WATERSHED REVIEW BOARD

- (A) The Village Council hereby appoints the Village of Misenheimer Planning Board acting as a Board of Adjustment to act as the Village of Misenheimer Watershed Review Board. In performing this duty, the Board shall function under its own adopted rules of conduct and procedures, as well as the following rules:
- (1) Faithful attendance at meetings of the Board and conscientious performance of the duties required of members of the Board shall be considered a prerequisite to continuing membership on the Board.
 - (2) No Board member shall take part in the hearing, consideration, or determination of any case in which he is personally or financially interested. A Board member shall have a "financial interest" in a case when a decision in the case will: 1) cause him or his spouse to experience a direct financial benefit or loss, or 2) will cause a business in which he or his spouse owns a 10 per cent or greater interest, or is involved in a decision-making role, to experience a direct financial benefit or loss. A Board member shall have a "personal interest" in a case when it involves a member of his immediate family (i.e., parent, spouse, or child).
 - (3) No Board member shall discuss any case with any parties thereto prior to the public hearing on that case; provided however, that members may receive and/or seek information pertaining to the case from the Watershed Administrator or any other member of the Board, its secretary or clerk prior to the hearing.
 - (4) Members of the Board shall not express individual opinions on the proper judgement of any case prior to its determination on that case.
 - (5) Members of the Board shall give notice to the chairman at least forty-eight (48) hours prior to the hearing of any potential conflict of interest which he has in a particular case before the Board.
 - (6) No Board member shall vote on any matter that decides an application or appeal unless he has attended the public hearing on that application or appeal, or has reviewed the record of the public hearing prior to the vote.

5.6 POWERS AND DUTIES OF THE WATERSHED REVIEW BOARD

- (A) **Administrative Review.** The Village of Misenheimer Watershed Review Board shall hear and decide appeals from any decision or determination made by the Watershed Administrator in the enforcement of this Ordinance, where an error of interpretation is believed to exist.

- (B) Variances. The appropriate Watershed Review Board 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.
- (1) Application for a variance shall be made on the proper form obtainable from the Watershed Administrator and shall include the following information:
- (a) A site plan, drawn to a scale of at least one (1) inch to forty (40) feet (or other clearly legible scale approved upon submission), 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.
- (b) 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.
- (2) Before the Watershed Review Board 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:
- (a) 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 of unnecessary hardships, the Board must find that the five following conditions exist:
- (1) If he 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 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 his property.

- (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.
 - (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.
 - (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.
 - (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 its spirit.
- (b) The variance is in harmony with the general purpose and intent of the Ordinance and preserves its spirit.
 - (c) 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.
- (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 approval site plan.
 - (4) 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 conditions or circumstances bearing on the appeal or application.
 - (5) A variance issued in accordance with this Section shall allow 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.
 - (6) 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 record of the hearing with all deliberate speed. The preliminary record of the hearing shall include:

- (a) The variance application;
- (b) The hearing notices;
- (c) The evidence presented;
- (d) Motions, offers of proof; objections to evidence, and rulings on them;
- (e) Proposed findings and exceptions;
- (f) The proposed decision, including all conditions proposed to be added to the permit.

The preliminary record shall be sent to the Environmental Management Commission for its review as follows:

- (1) If the Commission concludes from the preliminary record that the variance qualifies as a major variance and that (1) the property owner can secure no reasonable return from, nor make any practical use of the property unless the proposed variance is granted, and (2) the variance, if granted, will not result in a serious threat to the water supply, then the Commission 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 Watershed Review Board. If the Commission approves the variance as proposed, the Board shall prepare a final decision granting the proposed variance. If the Commission approves the variance with conditions and stipulations, the Board shall prepare a final decision, including such conditions and stipulations, granting the proposed variance.
 - (2) If the Commission concludes from the preliminary record that the variance qualifies as a major variance and that (1) the property owner can secure a reasonable return from or make a practical use of the property without the variance, or (2) the variance, if granted, will result in a serious threat to the water supply, then the Commission shall deny approval of the variance as proposed. The Commission shall prepare a Commission decision and send it to the Watershed Review Board. The Board shall prepare a final decision denying the variance as proposed.
- (C) Public Health. See Article 4.
 - (D) Amendment Recommendations. See Section 5.3(C)

5.7 APPEALS FROM THE WATERSHED REVIEW BOARD

Appeals from the Watershed Review Board must be filed with the Superior Court with 30 days from the date of the decision. The decision by the Superior Court will be in the manner of certiorari.

ARTICLE 6 DEFINITIONS

6.1 GENERAL DEFINITIONS

AGRICULTURAL USE. The use of waters for stock watering, irrigation, and other farm purposes.

ANIMAL UNIT. A unit of measurement developed by the U.S. Environmental Protection Agency that is used to compare different types of animal operations.

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.

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 which provides for infiltration of the runoff and filtering of pollutants. The buffer is measured landward from the normal pool elevation of impounded structures and from the bank of each side of streams or rivers.

BUILDING. Any structure having a roof supported by columns or by walls, and intended for shelter, housing, or enclosure of persons, animals, or property. The connection of two buildings by means of any open porch, breezeway, passageway, carport, or other such open structure, with or without a roof, shall not be deemed to make them one building. (WPA 97-01)

BUILT-UPON AREA. Built-upon areas shall include that portion of a development project that is covered by impervious or partially impervious cover including buildings, pavement, gravel areas, parking, and recreation facilities (e.g., tennis courts), etc. (Note: Wooden slatted decks and the water area of a swimming pool are considered pervious.)

CLUSTER DEVELOPMENT. The grouping of buildings in order to conserve land resources and provide for innovation in the design of the project. This term includes non-residential subdivisions and multi-family developments that do not involve the subdivision of land.

COMPOSTING FACILITY. A facility in which only stumps, limbs, leaves, grass and untreated wood collected from land clearing or landscaping operations is deposited.

CRITICAL AREA. The area adjacent to a water supply intake or reservoir where risk associated with pollution is greater than from the remaining portions of the watershed. The critical area is defined as extending either one-half mile from the normal pool elevation of the reservoir in which the intake is located or to the ridgeline of the watershed (whichever comes first); or one-half mile upstream from the intake located directly in the stream or river (run-of-the river), or the ridgeline of the watershed (whichever comes first). Local governments may extend the critical area as needed. Major landmarks such as highways or property lines may be used to delineate the outer boundary of the critical area if these landmarks are immediately adjacent to the appropriate outer boundary of one-half mile.

CUSTOMARY HOME OCCUPATIONS. Any use conducted entirely within a dwelling and carried on by the occupants thereof, which use is clearly incidental and secondary to the use of the dwelling for residential purposes and does not change the character thereof. Provided further that no mechanical equipment is installed or used except as is normally used for domestic or professional purposes, and that not over twenty-five percent (25%) of the total floor space of any structure is used for the occupation. No home occupation shall be conducted in any accessory building except for the storage and service of a vehicle that is driven offsite, such as a service repair truck, delivery truck, etc.

DEVELOPMENT. 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.

DISCHARGING LANDFILL. A landfill which discharges treated leachate and which requires a National Pollution Discharge Elimination System (NPDES) permit. (WPA 97-01)

DWELLING UNIT. A building, or portion thereof, providing complete and permanent living facilities for one family.

EXISTING DEVELOPMENT. Those projects that are built or those projects that at a minimum have established a vested right under North Carolina zoning law as of the effective date of this Ordinance based on at least one of the following criteria:

- (1) substantial expenditures of resources (time, labor, money) based on a good faith reliance upon having received a valid local government approval to proceed with the project, or
- (2) having an outstanding valid building permit as authorized by the General Statutes (G.S. 153A-344.1 and G.S. 160A-385.1).

EXISTING LOT (LOT OF RECORD). A lot which is part of a subdivision, a plat of which has been recorded in the Office of the Register of Deeds prior to the adoption of this Ordinance, or a lot described by metes and bounds, the description of which has been so recorded prior to the adoption of this Ordinance.

FAMILY. One or more persons occupying a single dwelling unit, provided that unless all members are related by blood or marriage or adoption, no such family shall contain over five persons, but further provided that domestic servants employed or living on the premises may be housed on the premises without being counted as family or families.

HAZARDOUS MATERIAL. Any substance listed as such in: SARA section 302, Extremely Hazardous Substances, CERCLA Hazardous Substances, or Section 311 of CWA (oil and hazardous substances).

INDUSTRIAL DEVELOPMENT. Any non-residential development that requires an 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.

LANDFILL. A facility for the disposal of solid waste on land in a sanitary manner in accordance with Chapter 130A Article 9 of N.C. General Statutes. For the purpose of this Ordinance, this term does not include composting facilities.

LEACHATE. Leachate is the fluid percolating through the landfills and is generated from liquids present in the waste and from outside water, including rainwater, percolating through the waste

LOT. A parcel of land occupied or capable of being occupied by a building or group of buildings devoted to a common use, together with the customary accessories and open spaces belonging to the same.

MAJOR VARIANCE. A variance that results in any one or more of the following:

- (1) the complete waiver of a management requirement;
- (2) the relaxation, by a factor of more than ten (10) percent, of any management requirement that takes the form of a numerical standard;
- (3) the relaxation of any management requirement that applies to a development proposal intended to qualify under the high-density option.

MINOR VARIANCE. A variance from the minimum statewide watershed protection rules that results in a relaxation, by a factor of up to ten (10) percent, of any management requirements under the low-density option. (WPA 97-01)

NON-RESIDENTIAL DEVELOPMENT. All development other than residential development, agriculture, and silviculture.

NONCONFORMING LOT OF RECORD. A lot described by a plat or a deed that was recorded prior to the effective date of this Ordinance (or its amendments) that does not meet the minimum lot size or other development requirements of this Ordinance. (WPA 97-01)

PLAT. A map or plan of a parcel of land which is to be, or has been subdivided.

PROTECTED AREA. The area adjoining and upstream of the critical area of WS-IV watershed. The boundaries of the protected area are defined as within five miles of and draining to the normal pool elevation of the reservoir or to the ridgeline of the watershed, or within 10 miles upstream and draining to the intake located directly in the stream or river, or to the ridgeline of the watershed. (WPA 97-01)

RESIDENTIAL DEVELOPMENT. Buildings for residence such as attached and detached single-family dwellings, apartment complexes, condominiums, townhouses, cottages, etc., and their associated outbuildings such as garages, storage buildings, gazebos, etc., and customary home occupations.

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.

STREET (ROAD). A right-of-way for vehicular traffic which affords the principal means of access to abutting properties.

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.

TOXIC SUBSTANCE. Any substance or combination of substances (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, their offspring, or other adverse health effects.

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 that is incorporated into this Ordinance.

WATER-DEPENDENT STRUCTURE. Any structure for which the use requires access to or proximity to or siting within surface waters to fulfill its basic purpose, such as boat ramps, boathouses, docks, and bulkheads. Ancillary facilities such as restaurants, outlets for boat supplies, parking lots, and commercial boat storage areas are not water-dependent structures.

WATERSHED. The entire land area contributing surface drainage to a specific point (e.g., the water supply intake.)

WATERSHED ADMINISTRATOR. An official or designated employee of Stanly County responsible for administration and enforcement of this Ordinance.

6.2 WORD INTERPRETATION

For the purpose of this Ordinance, certain words shall be interpreted as follows:

Words in the present tense include the future tense.

Words used in the singular number include the plural, and words used in the plural number include the singular, unless the natural construction of the wording indicates otherwise.

The word “**person**” includes a firm, association, corporation, trust, and company, as well as an individual.

The word “**structure**” shall include the word “**building**”.

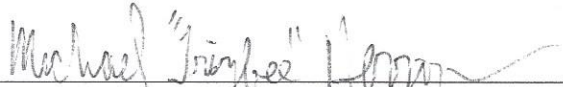
The word “**lot**” shall include the words, “**plot**”, “**parcel**”, or “**tract**”.

The word “**shall**” is always mandatory and not merely directory.

The word “**will**” is always mandatory and not merely directory.

Adopted this 14th day of February, 2022.

**VILLAGE OF MISENHEIMER,
NORTH CAROLINA**


Michael “Frizbee” Herron, Mayor

ATTEST:

**VILLAGE ADMINISTRATOR/CLERK
VILLAGE OF MISENHEIMER,
NORTH CAROLINA**


Anita Blair, Clerk