Appendix B

Watershed Review Board

Rules of Procedure-Appeals, Variances

APPENDIX B: RULES OF PROCEDURE FOR THE WATERSHED REVIEW BOARD REGUARDING THE APPEALS AND VARIANCES

Section 101. General Proceedings of the Watershed Review Board.

The Board shall annually elect a chairman and a vice-chairman from among its members. The chairman in turn shall appoint a secretary, who may be an employee of the [county] [town], [county] [town] officer, or a member of the Watershed Review Board. The chairman, or in his absence the vice-chairman, may administer oaths and request the attendance of witnesses. The Board shall keep minutes of its proceedings, including the names of members present and absent, a record of the vote on every question or abstention from voting, if any, together with records of its examinations and other official actions.

Section 102. Meetings.

(A) Board Meetings. The Board shall hold regular monthly meetings at a specified time and place. Special meetings of the Board may be called at any time by the chairman or by request of three (3) or more members of the Board. At least forty-eight (48) hours written notice of the time and place of meetings shall be given, by the chairman, to each member of the Board. All board meetings are to be held in accordance with Article 33B of Chapter 143 of the General Statutes of North Carolina, commonly referred to as the Open Meeting Law.

(B) Cancellation of Meetings. Whenever there are no appeals or other business for the Board, or whenever so many members so notify the secretary of inability to attend that a quorum will not be available, the chairman may dispense with a meeting by giving written or oral notice to all members.

(C) Quorum. A quorum shall consist of three (3) members of the Board, but the Board shall not pass upon any questions relating to an appeal from the decision or determination of the Watershed Administrator when there are fewer than four-fifths (4/5) of the members present.

(D) Voting. All regular members may vote on any issue unless they have disqualified themselves for one or more the reasons listed in Section 506 of this ordinance. The required vote to decide applications for appeals and variances shall not be reduced by any disqualification. In all other matters, the vote of a majority of the members present and voting shall decide issues before the Board.

Section 103. Appeals and Variances.

(A) Types of Appeals and Variances:

(1) Appeals. The Board shall hear and decide all appeals from any decision or determination made by the Watershed Administrator.

(2) Variances. All applications for variances shall first be presented to the Watershed Administrator, who in turn shall refer the applications to the Watershed Review Board for review and decision in accordance with the procedures outlined in Section 507 of this ordinance.

(B) Procedure for Filing Applications for Appeals and Variances. No hearing shall be held by the Board unless notice thereof is filed with thirty (30) days after the interested party or parties receive the decision or determination by the Watershed Administrator or the aggrieved party or parties receive constructive notice of the decision. Applications shall be filed with the Watershed Administrator, who shall act as clerk for the Board in receiving this notice. All applications shall be made upon the form specified for that purpose and all information required on the form shall be complete before an application shall be considered as having been filed. Once applications have been filed, the Watershed Administrator shall immediately notify the chairman of the Board that such applications have been received.

(C) Hearings:

(1) Time. After receipt of an application for an appeal or variance, the Board chairman shall schedule a time for a hearing which shall be within forty-five (45) days from the filing of such notice of the application

(2) Notice of Hearing. For all applications, notice of the hearing shall be mailed to the adjoining property owners and to such other persons as the Watershed Administrator shall direct as least five (5) days prior to the hearing. Such notice shall state the location of the building or lot, the general nature of the question involved, and the time and place of the hearing.

(3) Conduct of Hearing. The hearing shall be a quasijudicial proceeding. Any party may appear in person or by agent or by attorney at the hearing. The order of business for the hearing shall be as follows: a) the chairman, or such person as he shall direct, shall give a preliminary statement of the case; b) the applicant shall present the argument in support of the application; c) persons opposed to granting the application shall present their argument against the application; d) both sides will be permitted to present rebuttals to opposing testimony; e) the chairman shall summarize the evidence which was been presented, giving the parties opportunity to make objections or correction. Witnesses may be called and factual evidence may be submitted, but the Board shall not be limited to consideration of only such evidence as would be admissible in a court of law. The Board may view the premises before arriving at a decision. All witnesses before the Board shall be placed under oath and the opposing party may cross-examine them.

D) Decisions:

(1) Time. A decision by the board shall be made within thirty-five (35) days from the time of hearing.

(2) Form. Written notice by certified or registered mail of the decision in a case shall be given to the applicant or appellant by the secretary as soon as practical after the case is decided. Also, written notice shall be given to owners of the subject property and to persons who have made a written request for such notice. The final decision of the Board shall be shown in the record of the case as entered in the approved minutes. Such record shall show the reasons for the determination, with a summary of the evidence introduced and the findings of the fact made.

(3) The decision on an application for an appeal may reverse or affirm, wholly or partly, or modify the decision or determination of the Watershed Administrator.

(4) With an application for a major variance, the Watershed Review Board shall provide a recommendation to the N.C. Environmental Management Commission. The N.C. Environmental Management Commission shall have the authority to approve or deny the issuance of a variance. If the N.C. Environmental Management Commission approves the variance, the Watershed Review Board may direct the Watershed Administrator to issue a watershed Protection Permit.

(5) Expiration of Permits. Unless otherwise specified, any order or decision of the Board in granting 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 the decision.

(6) Voting. The concurring vote of four-fifths (4/5) of the members of the Board shall be necessary to reverse any decision or determination of the Watershed Administrator. A majority vote of the members present and voting is required to provide a recommendation to the N.C. Environmental Management Commission on an application for a major variance.

(7) Public Record of Decisions. The decisions of the Board, as filed in its minutes, shall be a public record and available for inspection at all reasonable times. Every decision of the Watershed Review Board shall be filed in the off of the Watershed Administrator and a written copy thereof shall be delivered to the applicant and adjacent property owners by personal service or registered mail.

(8) Decisions and Appeals. Every decision by the Board regarding appeals from the decisions of the Watershed Administrator shall be subject to review by the superior court. All appeals shall be taken to superior court within thirty (30) days after the decision of the Board is filed in the office of the Watershed Administrator, or after a written copy thereof is delivered to the appellant by personal service or registered mail or certified mail, return receipt requested, whichever is later.